

21 January 2014

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Team Coordinator Development Assessment
Newcastle City Council
Transmission by email: wwilson@ncc.nsw.gov.au

Dear Wesley,

‘SHORTLAND WATERS DA’ 2012/419
CONCEPT OF SENIORS HOUSING DEVELOPMENT, GOLF COURSE & ASSOCIATED
WORKS
JRPP No. 2012HCC016

Response No. 2- Additional Panel Queries

This submission has been prepared in response to the Panel’s request for additional information in relation to the remaining 2 matters listed within the Meeting Minutes of the 4th December (also see previously submitted *Response No. 1*, dated 9 January).

Information is also provided in relation to an additional matter (subdivision) raised verbally by the Panel during the Meeting.

Again, we request that Council please contact the author urgently with any queries or concerns that Council might have in relation to the below. We would be pleased to attend a meeting with Council to discuss any matter, if desired.

- 1. Further information is required to be submitted in relation to the issue of SEPP 14- Coastal Wetlands, in particular a map of the site indicating the boundaries of the applicable SEPP 14 Coastal Wetlands Map and the extent of remediation works/ activities required/ proposed within the mapped area***

A map of the SEPP 14 wetland adjacent to the site was previously presented as Figure 13 within the *Statement of Environmental Effects* (City Plan, April 2012).

In addition, a map (Drawing 1, Appendix A) was included in the Remedial Action Plan (RAP) for the Lorna Street site (RCA, January 2013) which indicated the approximate/ possible extent of previous landfilling activities. This spatial extent was based on available

information at the time of writing, however it is acknowledged that further assessment is required to confirm the extent of landfilling before any works commence (i.e. to support a future detailed DA).

At the time the RAP was prepared, the golf course works were (conceptually only) proposed to occur over the majority of the site, including in close proximity to the wetland edge, as indicated in the development plans submitted with the DA. For this reason, it was assumed that remediation would have to occur over almost the entire extent of landfilling, due to the potential hazards to users of the golf course works from contamination.

Accordingly, the map within the RAP indicated that the required remediation works were likely to extend over the whole site, including to the water's edge.

Proposed Buffer to Water's Edge & Amendments to Proposal

However since that time, the proposal has evolved and the boundaries of the proposed golf course works are to be amended. In particular, the Office of Water (OoW) has imposed General Terms of Approval (GTA) which limit development from occurring in close proximity to the wetlands. GTA No. 22 specifies that:

The consent holder must establish a 20m wide riparian corridor/ buffer along all SEPP 14 wetlands and any other waterfront land in accordance with a plan approved by the NSW Office of Water... All riparian buffers are to be suitably fenced or otherwise separated from the golf course and any other development areas (p5).

The Assessment Report provided details of additional liaison between the author and the OoW clarifying that *the 20m buffer is from the water's edge (not SEPP 14 map edging), usable turf area on fairway cannot be within this 20m buffer, and the 20m area must be vegetated and not accessible (p12).*

For this reason, the golf course design will have to be significantly amended as part of a subsequent detailed DA, to ensure all works are located landward of this buffer zone.

As no golf course works will be located within the buffer, no remediation works will therefore be required in the buffer area. As indicated in the RAP and Site Audit advice *the objective of the RAP is to determine the most appropriate remedial method to render the site suitable for use as public open space (use as a golf course).* As indicated in the GTAs, the proposed buffer area will be separated from the golf course and inaccessible to the public or other golf

course users. Accordingly, no contamination remediation works are required or proposed in this area.

The only works within the buffer will be those required by the OoW (i.e. to establish locally occurring vegetative ecotones, etc). The most appropriate methods of restoring the buffer land must be determined at a later date in liaison with the OoW, supported by appropriate management plans (e.g. a Vegetation Management Plan, Erosion & Sediment Control Plan, etc). However, this restoration is not envisaged to involve any 'capping' or 'filling' of the land. Of course, consent to undertake these works would be sought as part of a detailed future DA.

Relationship to SEPP 14 Boundaries- Extent of Works

The 20m buffer zone boundary is positioned *landward* (east) of the SEPP 14 boundaries in all cases, as shown in the map at **Attachment 1** (with 2 exceptions, as discussed below). Accordingly, all development associated with the golf course (including remediation) will occur outside of the SEPP 14 wetland areas due (if nothing else) to the presence of the buffer.

It is noted that the position of the 'water's edge' and therefore the buffer have been estimated visually via aerial mapping and is therefore considered to be approximate.

The SEPP 14 boundaries do extend significantly landward- beyond the buffer zone- in 2 minor 'point' locations (near the site's northern and south-western boundaries- see **Attachment 1**), most likely due to the inherent inaccuracy of the SEPP 14 mapping (prepared in accordance with aerial mapping in the late 1980s). Despite these point incursions, it is confirmed that no golf course or remediation works are proposed to occur in these SEPP 14 areas. This will be reflected in the final golf course design to be submitted with a future detailed DA.

In conclusion- no golf course or remediation ('filling') works are proposed within the SEPP 14 boundaries as part of this Concept DA, as demonstrated on the map at **Attachment 1**.

Applicability of SEPP 14- Clause 7

As shown above, no golf course works or contamination remediation works (as described within the RAP) are proposed to occur within the SEPP 14 boundaries i.e. no 'clearing' or 'filling' of the land is proposed, pursuant to subclause 7(1). Therefore the clause is not

triggered and no 'designated development' is proposed (subclause 7[3]). Accordingly, the preparation of an Environmental Impact Statement is not required.

Applicability of SEPP 14- Clause 7A

Within the SEPP, 'restoration works' are defined as works:

- (a) that are carried out to restore or enhance the natural values of coastal wetlands in order to rectify a breach of this Policy (including works to restore or enhance plant communities, water levels, water flow and soil composition), and*
- (b) that are not carried out in association with other development, and*
- (c) that do not have a significant impact on the environment beyond the site of the works.*

Clause 7A requires the consent of Council and the concurrence of the Director for the undertaking of any 'restoration works', as well as the preparation of a restoration plan.

This clause is not triggered in the case of the current Concept DA as:

- The proposed works within the SEPP 14 boundaries (associated with the OoW's required riparian buffer) are not proposed to *rectify a breach* of SEPP 14, as the land in its current form and position was present well before SEPP 14 was gazetted and so cannot be considered to be in breach of the SEPP; and
- The proposed works could be considered to be *in association with other development* (i.e. the golf course works, etc).

Accordingly, even though the proposed works would serve to 'restore and enhance' the natural values of the wetlands (as acknowledged within the Assessment Report- p23), the proposal does not meet the definition of 'restoration works' and subclause 7A is not triggered. Therefore consent to undertake the proposed works will be sought from the Council as part of a future detailed DA without reference to this provision.

2. Further clarification must be provided in relation to the coverage of the Site Compatibility Certificate

During the meeting of 4th December, the Panel raised a query with regard to the application of the Site Compatibility Certificate (SCC) (provided as **Attachment 2** for your reference). It is noted that this issue was not raised within the Assessment Report.

The SCC specifically lists Part Lot 103 DP 881682 (the 'Vale Street' site) as being *suitable for more intensive development* pursuant to clause 25(4)(a) of the Housing for Seniors SEPP. The Panel questioned whether or not the SCC should also apply to the 'Chichester Pipeline' lot and the 'Uni Access Lot', as described in **Table 1** and shown in **Figure 1** below, as these lots are proposed to contain some elements of development related to the seniors housing proposal (i.e. landscaping and roads). The approximate position of proposed development is also shown.

Table 1: Subject site & proposed development

Parcel name	Lot & DP	Comment
'Vale St site' (Shortland Waters Golf Course)	Part Lot 103 in DP 881682	The only lot where 'seniors housing' is proposed and listed as the subject of the SCC.
'Chichester Pipeline'	Lot 151 in DP 1143683	Narrow lot bisecting the Vale St site- owned by Hunter Water and accommodating an underground water pipeline. Apart from an access road and landscaping areas, no development is proposed in this lot- see development plans submitted with the DA.
'Uni Access Lot'	Part of Lot 101 in DP 881682 (shown in <i>maps.six.nsw.gov.au</i> as Part of Lot 1 in DP 1188100)	Owned by the University. The existing (only) access road to the Vale St Site crosses this lot. No development is proposed apart from a <i>possible</i> upgrade to the existing road to accommodate increased traffic from the seniors housing development. This development was raised as a possibility by Council after DA lodgement, as a result of the DA assessment process.

Advice was sought in relation to this matter from the Department of Planning & Infrastructure (DP&I). Katrine O'Flaherty (Team Leader) provided the following opinion (email dated 10/12/13):

*...the SCC applies to the relevant lot, that being the lot on which seniors housing is to be located.
My reasoning for this:*

The SCC applies to the portion of the DA that relates to the use 'seniors housing' ('seniors housing' is defined in clause 10 of the SEPP, for example a 'residential care facility', 'hostel' or 'group of self-contained dwellings'). The certificate does not and cannot apply to any other use, including golf courses (e.g. proposed Lorna Street golf course development).

In issuing a SCC the Director-General's delegate has considered that infrastructure required to meet the demand for the development will be available (clause 25[5][b][iii], with consideration of the requirements in clause 26). However, the specific details of this infrastructure, including its

precise location, are to be determined by the consent authority through a subsequent DA. A SCC therefore does not typically define the land which may be required for this infrastructure provision (e.g. road upgrades, water/ sewer connections). Although a DA was available for this proposal I understand from Council's Assessment Report that the inclusion of (the Uni Access Lot) occurred at a later stage, as a result of the assessment process.

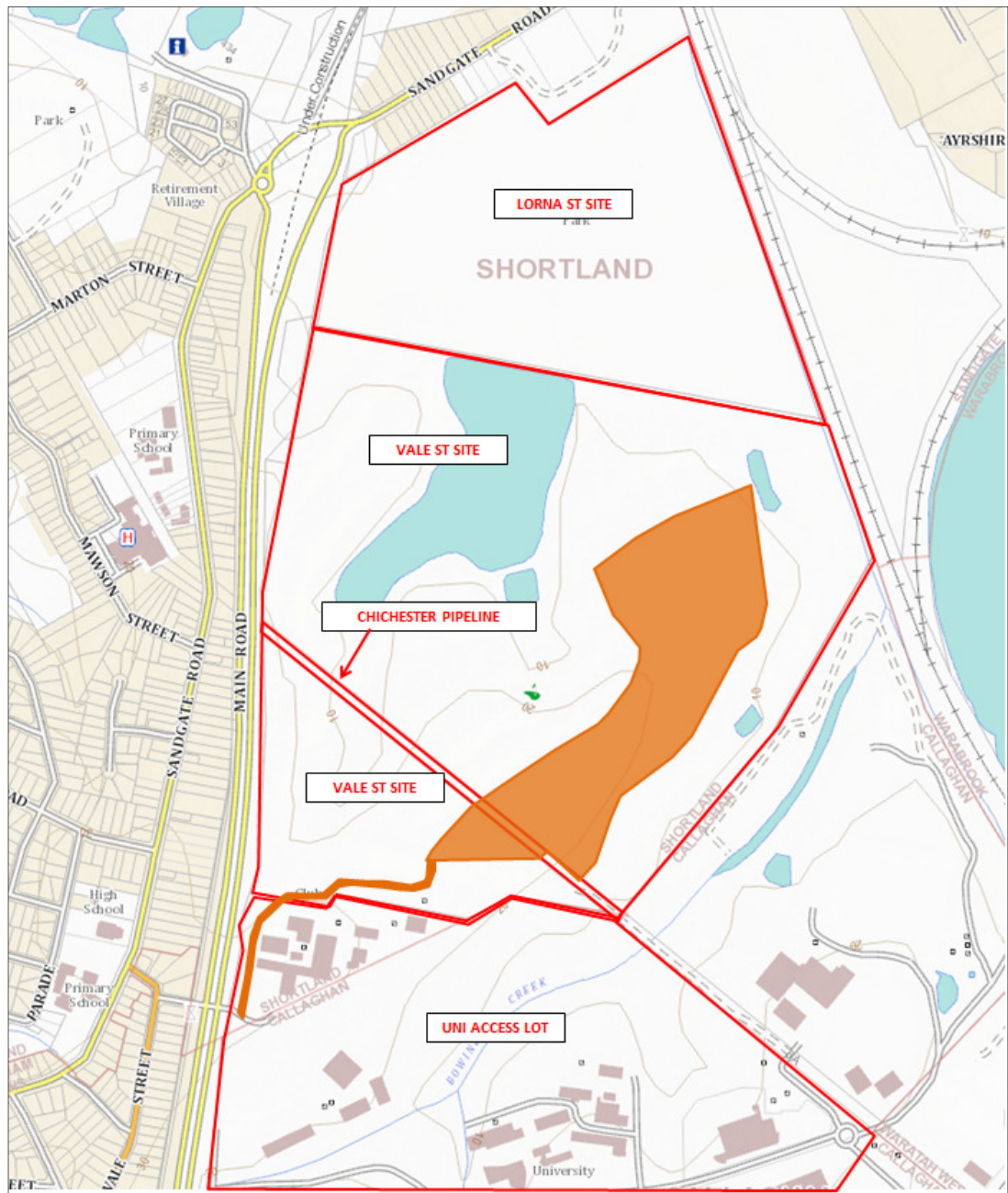


Figure 1: Lots relevant to the proposed development, including approximate position of seniors housing and access road

*Finally, the SCC has been issued for Part of Lot 103 DP 881682. Although no maps support the certificate, the definition of 'part' can be obtained from the subject area as considered by the Director-General (see map at **Attachment 3**). This could be inferred to include part of (the Chichester Pipeline lot) because, although that lot is not expressly listed, it is included within the boundary of the subject land in the application.*

It is emphasised that the purpose of a SCC is to certify that the site of a seniors housing development is suitable for more intensive development, and that the housing will be compatible with the surrounding environment (clause 24[2] of the SEPP). It is not intended to define the complete extent of any future related DA application area (such as land accommodating servicing easements, emergency egress roads, etc). This view is supported by DP&I, as outlined above.

Regardless, the full extent of the 'seniors housing' development area, including the Chichester Lot, was demonstrably considered by the Director-General when issuing the SCC, as indicated by the map at **Attachment 3**. For this reason the SCC can be seen to apply to the relevant part of the Chichester Lot even if not expressly listed in the SCC, as outlined above.

The road through the Uni Access lot was not included in the SCC area (as the potential upgrade requirements were raised only after the SCC was issued). However, if the Panel still has concerns with regard to the applicability of the SCC to this lot (despite the discussion above) there is the potential for the applicant to seek consent for the upgrade separately as part of a future DA with no reliance on the provisions of the Housing for Seniors SEPP. The relevant land (on which the access road is located) is zoned 6(a) Open Space & Recreation under the *Newcastle Local Environmental Plan 2003* (the relevant LEP under which the DA was lodged). While the development of 'roads' is not listed as being permissible with consent, the road is an 'existing use' pursuant to section 106 of the EP&A Act. The EP&A Regulation provides that an existing use may be *enlarged, expanded or intensified* (which would include works such as the minor upgrading of a road) with development consent (clauses 41 and 42).

It is noted that, under the current *Newcastle Local Environmental Plan 2012* the development of 'roads' in this area is permissible with consent (i.e. the RE2 Private Recreation zone).

In summary, it is submitted that the application area of the current SCC is appropriate and does not need to be amended to include additional lots.

3. Additional issue- Subdivision

Whilst not formally requested in the Meeting Minutes, additional information with regard to subdivision was sought during the Panel Meeting of 4th December. The Assessment Report indicated concerns with the conceptual subdivision of the seniors housing component of the Vale Street land into 6 superlots i.e.:

This assessment does not support this component of the application as the Seniors Living SEPP does not permit subdivision until the seniors living development has been completed/ carried out (p10). It is recommended that this concept application not permit inclusion of subdivision in the proposed development scope. Subdivision will therefore only be permitted following completion of the entire development (p15).

It is emphasised that clause 21 of the Housing for Seniors SEPP permits the subdivision of land on which seniors housing has been carried out with consent. Accordingly it is appropriate that the current DA identified the conceptual subdivision of the land, as submitted. The only query that remains is one of timing- i.e. at what stage of the development's construction/ completion should consent for any subdivision be sought through the lodgement of a subsequent DA. It is submitted that the timing issue be explored in greater detail in association with the lodgement of any future detailed DAs.

For the purposes of the current DA, it is considered that the inclusion of the concept of subdivision is appropriate, and should not be excluded from the development scope (as suggested in the Assessment Report). It is emphasised that the ability to subdivide the development in the future is crucial to the feasibility of the development. As could reasonably be expected, if no allowance is made to allow for the seeking of consent for future subdivisions, it severely restricts the ability to finance the overall development.

It is emphasised that the intent of Concept proposals under s83B of the Act is to give a level of certainty to developers/ investors by supporting the general idea of development, with detailed matters to be *the subject of subsequent development applications*. It is submitted that the appropriateness of the conceptual use of the site for seniors housing and a golf course is undisputed, and there are no merit considerations which would preclude the future subdivision of the development. The details of future subdivision timing can and should be dealt with at the detailed DA stage.

I trust that the above information adequately addresses Council's/ the Panel's queries. However if Council has any concerns or outstanding queries with the information presented above, it is requested that Council please contact the undersigned urgently so that all efforts can be made to resolve the matters as quickly as possible.

Yours Sincerely,



JILLIAN KUCZERA
SENIOR PROJECT PLANNER
CITY PLAN STRATEGY AND DEVELOPMENT PTY LIMITED

ATTACHMENTS:

1. SEPP 14 & remediation extent map
2. Site Compatibility Certificate (8 March 2013)
3. Map showing SCC as considered by DP&I





CC:

Damian Jaeger (NCC Senior Development Officer)
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Suzie Jattan (JRPP Secretariat) Suzie.Jattan@planning.nsw.gov.au

SHORTLAND WATERS GOLF CLUB

KEY

-  SEPP14 Wetlands
-  Approximate 20m Riparian Buffer from Waters Edge
-  Approximate extent of proposed remediation works
-  Approximate extent of former landfill (source: RAP) amended to exclude non-development areas





**Planning &
Infrastructure**

Office of the Director General

Chamber Developments
C/o – Brian Brown
PO Box 5335
Wollongong NSW 2520

Our ref: 13/01856

Dear Sir

Determination of application for a site compatibility certificate - State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 for No.2/90 Vale Street, Birmingham Gardens - Shortland Waters Golf Club

I refer to your application of 8 January 2013 for a site compatibility certificate under clause 25(1) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (Seniors Housing))* in relation to Part of Lot 103, DP 881682, being No. 2/90 Vale Street, Birmingham Gardens.

I, the Director General, have determined the application under clause 25(4)(a) of the *SEPP (Seniors Housing)* by issuing a site compatibility certificate subject to satisfaction of certain requirements specified in the certificate (clause 25(7)). I have attached the Certificate of Site Compatibility.

If you have any questions in relation to this matter, please contact Susan Blake, of the Department of Planning and Infrastructure's Newcastle office on (02) 4904 2700.

Yours sincerely

Richard Pearson
A/Director General

Enc: SCC certificate

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Certificate of Site Compatibility

I, Director General of the Department of Planning and Infrastructure determine the application made by Chamber Developments on 8 January 2012 by issuing this certificate under clause 25(4)(a) of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

I certify that in my opinion:

- the site described in Schedule 1 is suitable for more intensive development; and
- the development described in Schedule 1 is compatible with the surrounding environment and surrounding land uses, having had regard to the criteria specified in clause 25(5)(b).



Richard Pearson
A/Director General

Date certificate issued:

8 / 2 / 13

Please note: This certificate will remain current for 24 months from the date of this certificate (clause 25(9)).

SCHEDULE 1

Site description: Part of Lot 103 in DP 881682, No.2/90 Vale Street, Birmingham Gardens

LGA: Newcastle

Project description: 245 Serviced Self-Care Housing dwellings and a 127 bed Residential Care Facility plus ancillary community, administration and commercial facilities.

SCHEDULE 2

Application made by: Chamber Developments

Requirements imposed on determination: The location and final numbers of dwellings and bed provision, plus ancillary community, administrative and commercial facilities permitted on the site shall be determined by council through the development application under section 79C of the *Environmental Planning and Assessment Act 1979*.



