



JRPP Ref No.	2012HCC016 DA
DA No.	Integrated Development Application DA-2012/419
Proposal	Concept of Seniors Housing Development, Golf Course and Associated Works (Staged Development)
Property	Lots 103 DP 881682: 2/90 Vale Street, Birmingham Gardens Part Lot 10 DP1149782, 8/475 Sandgate Road, Shortland Lot 151 DP 1143683, 4/50A Queen Street, Waratah Part Lot101 DP 881682 (University Land) - now Part Lot 1 DP1188100
Applicant	Chamber Developments Pty Ltd
Report By	TCG Planning on behalf of The City of Newcastle Council
Checked by	Team Co-ordinator Development Assessment Team

Supplementary Report and Recommendation

1. Background

The Joint Regional Planning Panel (JRPP) considered the proposed development on 4 December 2013.

The report (p40-41) concluded (in part, of relevance to this supplementary report):

*The proposed use of the Lorna Street site (a former landfill site) is overall considered to be a suitable use for this land, however the information submitted relating to this site, known to be contaminated is insufficient to meet the provisions of SEPP 55 (Remediation of Land). The potential impacts of groundwater contamination on the SEPP 14 wetland are also unknown. The information submitted with the application has also not sufficiently demonstrated that the Golf Course land (Lot 103) and Lorna Street Site (Part Lot 10) is suitable for the proposed use due to contamination, and potential contamination (the extent of which is yet unknown). **On this basis, the proposed concept development application cannot be supported and is recommended for refusal.***

The concept development application also proposed subdivision of the land, excising the golf course and for allotments generally reflecting the proposed staging of the seniors living development (including provision of the residential care facility at Stage 5). However the assessment of the application identified that the Seniors Living SEPP does not permit the proposed subdivision...

The report recommended (p41):

That the Joint Regional Planning Panel refuse Integrated Development Application DA-2012/419 as, pursuant to Section 79C(1)(a)(i), (b), (c) and (e), of the Environmental Planning and Assessment Act 1979, the proposed concept development application is unsatisfactory having regard to the potential contamination of the land and associated risks to human health and the environment, including the adjacent SEPP 14 wetland.

At its meeting of 4 December 2013, the Panel resolved the following:

The Panel is generally supportive of the proposed use of the site as a seniors housing development and golf course but will require compelling legal advice supported by Council to the effect that the additional information sought in respect of the contamination and remediation issues is not required for the purpose of this stage of the approval and/or

provide the additional reports sought by Council's Planning Consultant outlined in the assessment report. In addition, further information is required to be submitted in relation to the issue of SEPP 14 - Coastal Wetlands, in particular map of the site indicating the boundaries of the applicable SEPP 14 Coastal Wetland map and the extent of remediation works/activities required/proposed within the mapped area. Further clarification must be provided in relation to the coverage of the Site Compatibility Certificate.

The Panel unanimously agreed to defer determining the application to allow the applicant an opportunity to address the matters referred to above. The Panel has set a timetable, which includes requiring the applicant to address the additional information to Council no later than 3 February 2014. Council is to assess the additional information and is to provide a supplementary assessment report to the Panel no later than 27 February 2014 for the Panel's consideration at a meeting around mid-March 2014.

2. Additional Information Submitted

The applicant provided responses to these issues in the following documents:

Response 1: Contamination/Remediation Issue

Addressed in City Plan Services correspondence received and dated 9 January and associated attachments:

1. Summary of Contamination Status and Council Consultation
2. Legal Advice from HWL Ebsworth Lawyers, dated 4 December 2013 and 7 January 2014.

A copy of this response and attachments is provided at **Appendix A**.

Response 2: SEPP 14 Wetland, Site Compatibility Certificate (SCC) and Subdivision Issue

Addressed in City Plan Services correspondence received and dated 21 January 2014 and associated attachments:

1. SEPP 14 and remediation extent map
2. Site Compatibility Certificate (SCC) (8 March 2013)
3. Map showing SCC as considered by Department of Planning and Infrastructure (DPI)

A copy of this response and attachments is provided at **Appendix B**.

Additional Information relating to Site Compatibility Certificate Issue

City Plan Services has advised Council that they have applied to the Department of Planning & Infrastructure for an amended Site Compatibility Certificate to cover the Chichester Pipeline Lot. It is understood that this amended certificate is likely to be received prior to the JRPP determination meeting. This report, and its recommendation, is subject to this amended certificate being received.

3. Assessment of Issues

A. Contamination/Remediation

Applicant's Submission

The applicant's Response 1 information, including legal advice by HWL Ebsworth, (copy at **Appendix A**), in summary, argues that:

- The proposal is a concept proposal only, forming a staged DA under section 83B of the Environmental Planning Assessment Act 1979 and no stage 1 works are proposed.
- The existing contamination information is considered to be sufficient to allow for the determination of the concept proposal DA in relation to SEPP 55 subclause 7(1)(b), which indicate that the site can be made suitable for the proposed development after remediation. Additional requested information is required only to inform the detailed design of remediation control measures.
- It is incorrect for Council's assessment to rely on subclause 7(1)(b) of SEPP 55 for its refusal as this clause has not been "triggered" by the concept DA and therefore strict compliance is not required as there is no carrying out of work proposed. The SEPP 55 considerations will become relevant and applicable to development applications for the future stages of the proposal when carrying out of development is actually proposed.
- Section 79C of the Act has been satisfied as follows:
 - *79C(1)(a)(i) the provisions of any environmental planning instrument:* Clause 7(1)(b) of SEPP 55 is not applicable for the reasons listed above;
 - *79C(1)(b) the likely (environmental) impacts of that development:* the proposed remediation works for the Lorna Street site will improve the current environmental condition of the site, and the proposed golf course and seniors living uses will not create new contamination impacts on both the Lorna Street and Vale Street sites. Off-site impacts of the development (of concern by Council – i.e. groundwater contamination) are not expected, and are an existing/ongoing attribute of the site which will be improved by the development, and is not a relevant consideration. The results of the Phase 1 contamination assessment and advice from the Site Auditor indicate that any existing or potential contamination of the site can be readily dealt with as part of future DAs for the carrying out of works.
 - *79C(1)(c) suitability of the site:* the Council Assessment Report acknowledges (with the exception of the off-site groundwater issue) the use of the Lorna St site for a golf course is considered to be a highly suitable outcome and, (except for the contamination matters), the development of the Vale Street site is suitable for the locality. The presence of groundwater contamination under the Lorna Street site does not mean that the site is unsuitable for surface activities (referenced by Department of Environment and Climate Change Guidelines). The Lorna Street site Phase 1 contamination assessment and advice from the Site Auditor indicate that any existing or potential contamination of the site can be made suitable for the proposed development of a golf course and seniors housing, after remediation, the details of which can be readily dealt with as part of future detailed DAs for the carrying out of works.
 - *79C(1)(e) the public interest:* the "do nothing" approach will not improve the existing groundwater contamination and would result in a greater contamination hazard. The proposed remediation of the Vale Street site (with details to be provided in a subsequent DA) will result in positive environmental outcomes and other identified public interest outcomes.

Independent Legal Advice sought by Council

Council engaged Local Government Legal to review the applicant's above submitted information (in addition to the applicant's Response No. 2). Local Government Legal provided written advice dated 15 January 2014 (**Appendix C**) and 20 January 2014 (via email), in response to queries from Council staff arising from the initial advice. In summary, this advice stated:

"On the basis that DA 12-419 is an application for a concept consent under s.83B only and that any consent granted will not authorise the carrying out of any development, I respectfully agree with the advice from HWL Ebsworth and Tony Pickup, that this DA does not trigger clause 7 of SEPP 55.

However, this does not mean that the Council is not obliged to consider the contamination issue as part of its 79C Assessment, particularly its obligation to have regard to the likely impacts of the development, and the suitability of the site for the development as required by 79C(1)(b) and (c) respectively. Council should have regard to the applicant's submitted documents and decide whether, having regard to the provisions of Section 79C of the EPA Act, the application should be recommended for approval.

I confirm that the applicant should be made aware, through any supplementary report to the JRPP, and perhaps by an advisory note on any consent document, that

- *the clause 7 SEPP 55 assessment has not been undertaken as part of this consent and will be triggered by any subsequent DA to carry out a stage of the concept development,*
- *at that time the cost of the assessment will be incurred, and*
- *whether the consent authority will be satisfied as required under clause 7 and thus able to grant consent to a subsequent stage of the development is not known in the absence of the assessment as part of the concept DA. Consent to carry out a subsequent stage accordingly may not be granted.*

There is no utility in considering imposing a deferred commencement condition to any consent to the concept DA, dealing with this issue. The consent will not authorise the carrying out of any development (s.83B(3)). If, contrary to my view, the cl 7 SEPP 55 assessment has to be done at the time of this concept DA, then I do not think it can properly be the subject of a deferred commencement condition.

The question of possible designated development also probably only arises at a later stage, and not at the stage of a concept DA under s.83B, although in the absence of a full review of the current concept DA, I cannot be certain of this."

In response to the earlier legal advice provided by Council's Lawyer regarding the Mison Principles, Local Government Legal advised:

"...staged development application provisions under section 83B of the EPA Act are amongst those provisions which His Honour suggest may need to qualify the Mison Principles. Therefore, there may need to be a qualification of the Mison Principles given that a concept approval may not need to have the same level of finality in relation to aspects of the development, given that there will be further applications at a later stage which will be assessed and if warranted approved. We should note that there is little case law in dealing with section 83B of the EPA Act so as to assist in taking this aspect any further.

Further, we note that section 83D(3) provides that a staged development consent can be modified in accordance with the EPA Act. Accordingly, it may be possible to modify the concept consent to accommodate changes to the development even after one or more stages have been completed. However, such modifications would be subject to the usual requirements for modification of a consent."

Assessment by Council's Senior Environmental Protection Officer

The following draft conditions were provided having regard to the information provided:

"Lorna Street site

- *All contamination remediation works at Lot 10 DP 1149782 known as 475 Sandgate Road, Shortland (the Lorna Street site) shall be conducted as part of Stages 1 and 2 of the proposed development.*
- *As part of the future development application for Stage 1, a revised Remedial Action Plan prepared in accordance with the Environment Protection Authority's (EPA) 'Guidelines for Consultants Reporting on Contaminated Sites' and certified by the appointed EPA accredited Site Auditor being submitted to the relevant consent authority. The revised Remedial Action Plan shall address the Review Comments and Conclusions and Recommendations from the Interim Advice #1 prepared by Ian Gregson dated 10 April 2013.*

Vale Street site

- *As part of any future development applications lodged for Lot 103 DP 881682 known as 90 Vale Street, Birmingham Gardens and Lot 151 DP 1143683 known as 50A Queen Street, Waratah (the Vale Street site) additional investigation as recommended in the Phase 1 Environmental Site Assessment prepared by RCA Australia dated January 2013 is to be submitted to the relevant consent authority.*

A condition requiring the submission of a Remediation Action Plan for the Vale Street site was not included as the additional investigation may alter the outcome and the Remediation Action Plan can be dealt with in the development application process."

Planning Comment and Conclusion

The applicant's submitted information and further independent legal advice sought by Council confirms that Clause 7 of SEPP 55 is not relevant to the subject concept development application, and that these provisions will apply to future development applications associated with the actual works. However, the provisions of Section 79C (1)(b) 'the likely (environmental) impacts' and (1)(c) 'suitability of the site' for the proposed development need to be taken into consideration. The applicant's submitted information demonstrates that the future recommended remediation works for the Lorna Street site, and further contamination testing (and remediation works, if required) of the Vale Street site can be readily achieved, and this is accepted.

To address these matters, recommended conditions of development consent have been drafted (refer **Appendix D**) requiring these matters to be addressed at the very initial stages of the development (Stages 1 and 2), and before commencement of the Seniors Living Development, so as to attempt to provide certainty to the proponent and Council regarding the intended remediation of the site. Future development applications for the golf course redesign (Stage 3 for the Vale Street site and Stage 4 for the Lorna Street site), may be incorporated in the Stage 2 and 1 DAs respectively. **Appendix E** is a plan indicating the required staging of the development following assessment of the development application (and incorporates the timing of the construction of the road works, residential care facility, and subdivision – all stages that differ from the staging plan submitted by the applicant – refer **Appendix F**).

B. SEPP 14 Wetland

The Assessment Report of 4 December 2013 (p23-24) stated:

Regardless of the location of the boundary of the mapped SEPP 14 coastal wetland, and applicability of the abovementioned provisions of the SEPP, it is considered that the proposed future site remediation and required riparian/SEPP 14 wetland buffer zones will improve the environmental outcomes of the coastal wetland and therefore meet the aims of the SEPP. However, the exact area and impacts needs to be ascertained. Therefore the following needs to be provided prior to the provisions of the SEPP being satisfactorily addressed:

- A map indicating (a) the applicable SEPP 14 Coastal Wetland map and (b) extent of remediation works;
- If the remediation works and riparian corridor/buffer are located within the mapped SEPP 14 wetland area, the applicant must address the provisions of SEPP14, including whether Clause 7(3) of the SEPP is triggered (designated development) and the applicability of the preparation of a restoration plan (Clause 7A).

Applicant's Submission

The applicant's Response 2 information, (copy at **Appendix B**), in summary, provides the following:

- A map was submitted indicating the SEPP 14 wetland location and the "evolved"/amended location of the proposed works at the interface location with the SEPP 14 wetland (excerpt reproduced below at Figure 1). This revised plan predominantly resulted from the General Terms of Approval (GTAs) imposed by the Office of Water (OoW), which requires a vegetated 20m riparian buffer from the water's edge, which must not be accessible and not include the golf course fairway.

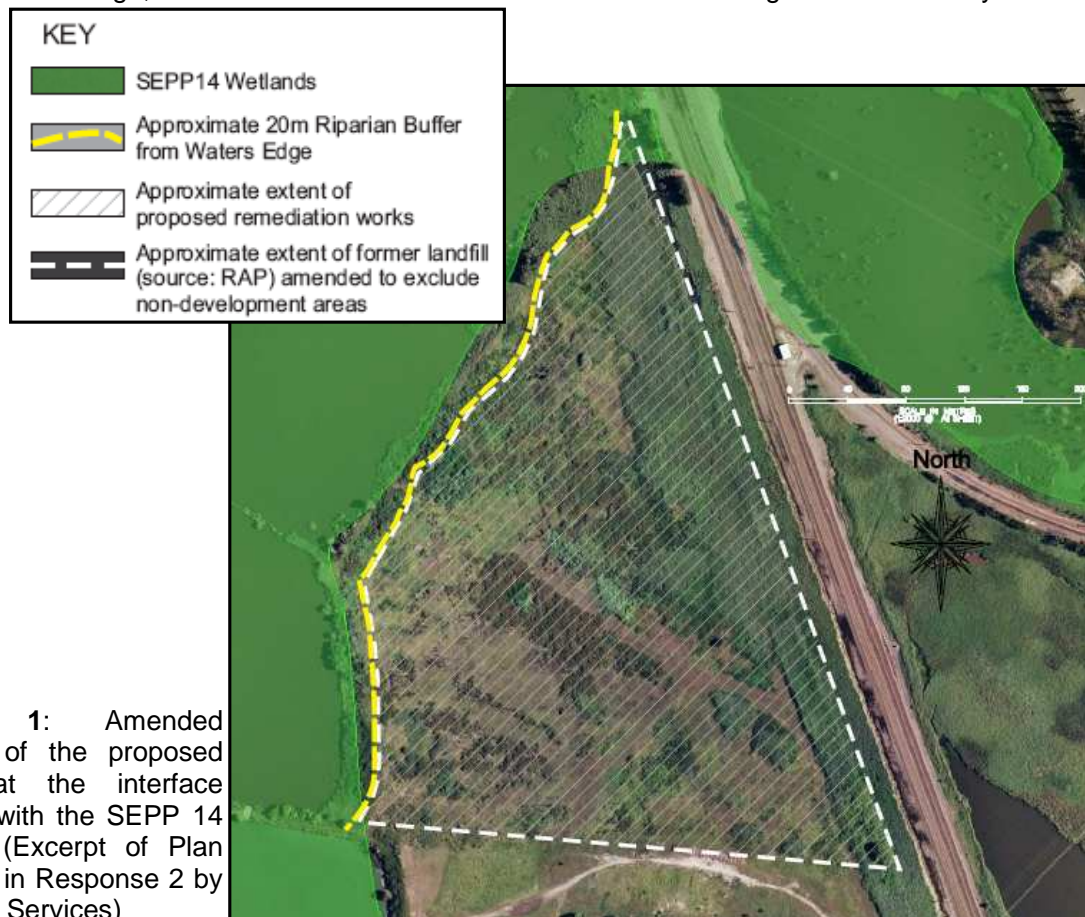


Figure 1: Amended location of the proposed works at the interface location with the SEPP 14 wetland (Excerpt of Plan provided in Response 2 by City Plan Services)

- The golf course design will have to be significantly amended as part of a subsequent detailed DA, to ensure that all works are located landward of this buffer zone.
- As no golf course works will be located within this (inaccessible) buffer, no remediation works will therefore be required in this buffer area. The works will be limited to restoration works in consultation with the OoW (and as part of a detailed future DA) and is not envisaged to involve any capping or filling of the land.
- With two minor exceptions (where no golf course works are proposed), the buffer zone boundary is positioned landward of the boundaries of the mapped SEPP 14 wetland, and all development associated with the golf course will occur outside the SEPP 14 wetland areas.
- As no works (either golf course works or remediation works) are proposed within the SEPP 14 boundaries, then Clause 7(1) of SEPP 14 is not triggered and no 'designated development' is proposed. Accordingly the preparation of an environmental impact statement is not required.
- The provisions of Clause 7A require Council consent and concurrence of the Director-General for the carrying out of required future restoration works within the SEPP 14 mapped area, however the proposed works do not fall within the definition of 'restoration works' and therefore do not trigger this provision.

Assessment by Council's Senior Environmental Protection Officer

The submitted letter from City Plan Services dated 21 January 2014 notes that remediation works will not be required in the riparian buffer zone required by the Office of Water. The letter prepared by City Plan Services dated 21 January 2014 cites Condition 22 from the General Terms of Approval issued by the Office of Water dated 8 May 2013 as the 'buffers are to be suitably fenced or otherwise separated from the golf course and other development area' and will result in no capping or containment as users of the golf course will be excluded from the area.

However, the letter from City Plan Services omits part of Condition 22 that requires 'The 20m riparian zone must be restored and managed to provide an ecological buffer zone to the existing wetlands'. Therefore, the condition aims to restore the buffer zone and would include remediation of the existing landfill area, the extent which is not currently known as outlined in the Interim Advice #1 prepared by Ian Gregson, to ensure the environmental protection of the existing wetland area.

Therefore, the cap and contain strategy may potentially be located within the riparian buffer zone and may impact on the assessment of the application under State Environmental Planning Policy (SEPP) 14 – Coastal wetlands.

The proposed cap and contain strategy may result in the placement of fill within the boundaries of the dedicated SEPP 14 – Coastal wetland and trigger further assessment under the environmental planning instrument. However, the extent of capping is currently unknown and will be determined as part of further investigation recommended by Ian Gregson.

Independent Legal Advice sought by Council

Local Government Legal briefly commented on this matter as follows:

"...the question of possible designated development also probably only arises at a later stage, and not at the stage of a concept DA under s.83B, although in the absence of a full review of the current concept DA, I cannot be certain of this."

Planning Comment and Conclusion

The additional information submitted by the applicant argues that there will be no works within the mapped SEPP 14 wetland area, except for buffer planting, to be inaccessible, as required by the OoW General Terms of Approval and therefore the trigger for SEPP 14 does not apply. It is not clear what the OoW's exact requirements for the "*restored and managed*" requirement of this condition is, nor is the exact requirements for remediation (which is to be determined by a future Remediation Action Plan). Hence, while the likelihood is low, there is still uncertainty with respect to whether SEPP 14 may be triggered until the detailed RAP and OoW requirements are known.

If SEPP 14 is triggered, then the future development application for the Stage 1 works, being the contamination and remediation works of the Lorna Street site, may be designated development and will require an Environmental Impact Statement (EIS). While this process is not ideal (as it defers assessment of key issues until later DAs), it is enabled and permitted by the planning legislation. On this basis, the uncertainties of the future process do not warrant refusal of the application.

Furthermore, it is likely that, even if there are remediation works required in the mapped SEPP 14 wetland area, the outcome of the remediation works, once complete, will provide long term benefits to the site and receiving wetlands - provided there are methods for the remediation that do not adversely impact during remediation works, which will be assessed at that time.

The timing delays and subsequent development application process associated with the Stage 1 works being designated development are at the risk of the proponent (including any required modifications to the design which may result). As indicated in the section above addressing contamination issues, the draft conditions recommend that the Stage 1 works (and Stage 2 works relating to the remediation of the Vale Street site, if relevant), can be incorporated within the golf course redesign works, and hence this matter will be addressed at the early stage of the development. As Stages 1 and 2 must be completed prior to any works commencing on the Seniors Living Development (Stage 5), the conditions, as drafted, will give some certainty to the proponent and Council that the remediation matters (and applicability with respect to the Vale Street site) will be addressed early on in the development. It is recommended that a notation be included in the development consent advising the proponent of the possibility of the future Stage 1 being "designated development" so there is no doubt on this matter.

C. Site Compatibility Certificate

Applicant's Submission (A)

The applicant's Response 2 information, (copy at **Appendix B**), provides the following information (in summary) which submits that the current SCC is appropriate and does not need to be amended to include additional lots.

- A map showing the location of the seniors living component of the development to the various lots applicable to the entire development (Figure 1 of Response 2);
- A description of the proposed development within each allotment of the subject land (noting only roads and landscaping are proposed on the Chichester Pipeline lot, and possible upgrade requirement of the Uni access Lot.
- A copy of the plan forwarded to the DPI when the SCC was applied for, which clearly indicates the Chichester Pipeline.
- Advice was sought from the DPI which supports the view that the SCC is not intended to define the complete extent of any future DA application area (such as land accommodating servicing easements, emergency access roads etc).

Independent Legal Advice sought by Council and Request for Further Information

In response to this, Council's solicitors, Local Government Legal, requested further information in an email to Council staff (dated 21 January 2014), which was forwarded to the applicant on 23 January 2014 by Council's Development Assessment Team in the following terms to be addressed:

"A Site Compatibility Certificate (SCC) is a legal document with legal ramifications. Information relied on by the Director-General in agreeing to grant a SCC is not the same as listing the land to which the SCC relates on the actual SCC.

Council's legal advice requests confirmation of the current arrangements regarding use of the pipeline land by the golf club. If the pipeline land is currently being used for the purposes of an 'existing registered club' (a club in respect of which a certificate of registration under the Registered Clubs Act 1976 is in force) then it is Council's belief that the SCC needs to specifically identify Part of Lot 151 pursuant to clause 24(1)(a)(iii) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP). In this instance an amended SCC must be sought.

If the pipeline land is not currently being used for the purposes of an 'existing registered club' (Council would need to be legally satisfied in this regard as the aerial photography of the site shows golf course fairways traversing the pipeline land) then the above clause of the SEPP does not apply to Lot 151; there is no need for the SCC to identify Lot 151 and the road/structural bridge and landscaping could be dealt with under separate DA/s for that specific development concurrently with DAs for the seniors housing development, noting that 'roads' and 'recreation areas' are permissible uses in the RE2 zone."

Applicant's Submission (B)

City Plan Services has advised Council that they have applied to the Department of Planning & Infrastructure for an amended Site Compatibility Certificate to cover the Chichester Pipeline Lot. It is understood that this amended certificate is likely to be received prior to the JRPP determination meeting.

Planning Comment and Conclusion

This report, and its recommendation, is subject to an amended certificate being received. This matter would be satisfied with the provision of an amended Site Compatibility Certificate identifying the Chichester Pipeline Lot. If the amended Site Compatibility Certificate is not received in time, the JRPP determination meeting may need to be postponed. Alternatively, the JRPP may be minded to grant a deferred commencement consent requiring the Site Compatibility Certificate prior to the grant of an operational consent.

D. Additional Issue: Subdivision

This issue was not formally requested in the meeting minutes of the JRPP Meeting held on 4 December 2013, but was raised in the discussion by the panel.

The Assessment Report of 4 December 2013 (p15) stated:

"Clause 21 (if the Seniors Living SEPP) states that "land on which the development has been carried out under this chapter may be subdivided with the consent of the consent authority." The applicant seeks concept subdivision of the site under this Clause, however this is not considered to be permitted under this Clause, which requires the development to be completed.

The wording of this clause (in past tense) infers this and this wording differs from other clauses in the SEPP which reference development “to be carried out” or “development that may be carried out” (i.e. future tense). 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.”

Applicant's Submission

The applicant's Response 2 information, (copy at **Appendix B**), in summary, provides the following:

- Emphasises that Clause 21 of the Seniors Living 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, and should not be excluded from the development scope (as suggested in the Assessment Report).
- The only query that remains is one of timing - i.e. at what stage of the development's construction/completion should consent for 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.
- The ability to subdivide the development in the future is crucial to the feasibility of the development and if no allowance is made to allow for the seeking of future subdivisions, the ability to finance the overall development is severely restricted.
- There is no merit consideration 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.

Planning Comment and Conclusion

The applicant's submission is acknowledged and it is agreed that subdivision of the land be included within the scope of the concept staged development application. However the proposed subdivision staging, as submitted, will be required to be amended to reflect the provisions of the Seniors Living SEPP and hence a draft condition has been recommended nominating the subdivision of the land as 'Stage 6', where subdivision may not occur until Stage 5a has been carried out.

4. Conclusion

The additional information submitted by the applicant with respect to the contamination and remediation and SEPP 14 Coastal Wetlands has been assessed (including by independent legal advice sought by Council) and it had been identified that the Section 83B concept staged development application can be determined without the previously sought detailed site investigations as no "works" are proposed as part of this application, and can be addressed within future DAs for the applicable stages of development.

While this planning legality is recognised, it is considered to not be an ideal approach for the efficient long term planning of the site, as there is no absolute guarantee that these matters can be satisfactorily addressed in the assessment of future DAs (including the minor possibility of the SEPP 14 works being 'designated development'). However, the applicant's submitted information demonstrates that the future recommended remediation works for the Lorna Street site, and further contamination testing (and remediation works, if required) of the Vale Street site can be readily achieved, is accepted.

Recommended conditions of development consent have been drafted (refer **Appendix D**) requiring these matters to be addressed at the very initial stages of the development (Stages 1 and 2), and before commencement of the Seniors Living Development, so as to attempt to provide certainty to the proponent and Council regarding the intended remediation of the site. Future development applications for the golf course redesign (Stage 3 for the Vale Street site and Stage 4 for the Lorna Street site), may be incorporated in the Stage 2 and 1 DAs respectively.

There is also the potential for the concept proposal to be modified (within the terms of the Act) resulting from these issues, which is a risk to the proponent, both in terms of the design and financial implications.

An amended Site Compatibility Certificate is currently being sought to satisfy the matter of land applicable to the development. It is understood that this amended certificate is likely to be received prior to the JRPP determination meeting, or can be dealt with by way of 'deferred commencement'.

The information submitted by the applicant with respect to the additional issue of subdivision of land is also accepted, and will remain incorporated within the concept development proposal; albeit in amended terms (i.e. will be permitted at the completion of Stage 5a of the Senior Living Development). A condition of development consent reflecting this has been recommended.

As indicated in the previous report,

Other relevant considerations under Section 79C (including but not limited to built form, traffic management, flooding and stormwater, vegetation removal and compensatory planting requirements, economic benefits, noise, environmental constraints, and the public interest) were assessed to be generally satisfactory and/or could be addressed via appropriate conditions of development consent for the concept development application (in the event that the application was recommended for approval). As a concept planning proposal, the assessment identified that numerous matters will be required to be satisfactorily addressed at the future development application stages.

An exception to this, also identified in the previous report, is the proposed development of the residential care facility in the final stage of the application, which is not permitted under the provisions of the Seniors Living SEPP. A condition has therefore been recommended requiring provision of this facility in the first stage of development.

Having regard to the additional information and associated legal advice to Council, the development application may be determined based on the submitted information and, accordingly is recommended for approval subject to the nominated conditions of consent.

5. Recommendation

- A. That, in the event of an amended Site Compatibility Certificate identifying the Chichester Pipeline Lot being received, the Joint Regional Planning Panel grant consent to DA 2012/419, subject to the conditions contained within **Appendix D**.

OR

- B. That the Joint Regional Planning Panel grant a deferred commencement consent requiring an amended Site Compatibility Certificate identifying the Chichester Pipeline Lot (part of Lot 151 DP 1143683) to be submitted to Council prior to the consent becoming operational, subject to the conditions contained within **Appendix D**.

APPENDICES

Appendix A: Applicant's Response 1: Contamination/Remediation Issue: City Plan Services correspondence received and dated 9 January and associated attachments:

1. Summary of Contamination Status and Council Consultation; and
2. Legal Advice from HWL Ebsworth Lawyers, dated 4 December 2013 and 7 January 2014

Appendix B: Applicant's Response 2: SEPP 14 Wetland, Site Compatibility Certificate (SCC) and Subdivision Issue: City Plan Services correspondence received and dated 21 January 2014 and associated attachments:

1. SEPP 14 and remediation extent map
2. Site Compatibility Certificate (SCC) (8 March 2013)
3. Map showing SCC as considered by Department of Planning and Infrastructure

Appendix C: Local Government Legal's advice dated 15 January 2014

Appendix D: Draft recommended conditions for concept development application DA-2012/419

Appendix E: Required staging plans of the concept development application (Concept Staging Plan; Sheet A.006 Rev C dated 27/03/2012; prepared by BHI Architecture amended by TCG Planning)

Appendix F: Staging plan as submitted by the applicant (Concept Staging Plan; Sheet A.006 Rev C dated 27/03/2012; prepared by BHI Architecture)