



JP. GAICD, PIA.  
Town Planner, Property Consultant

PH. 0417 241 827

E. [terry@tcwconsulting.com.au](mailto:terry@tcwconsulting.com.au)

A/H: 02 4227 1746

A. 45 Eastern Av,  
Mangerton, NSW 2500

ABN 57 055 186 126

30 March 2020

## Project # 1837

Ms. Monica Gibson  
Executive Director Local & Regional Planning  
Planning & Assessment  
Level 2  
26 Honeysuckle Drive  
Newcastle NSW 2300

Dear Sir

### **Site Compatibility Certificate 120 Walker Street Helensburgh**

Thank you for the opportunity to respond to Council's latest advice to the Department in relation to the above Site Compatibility Certificate (SCC). This correspondence follows our previous submission of 7 January 2020 (copy enclosed) and is in response to Council's correspondence to the Department's Director, Southern Region dated 10 March 2020.

The current application is the second Site Compatibility submission seeking to have the site considered for a seniors living development. It is acknowledged that this is the last opportunity to provide information to counter Council's opinion. Therefore, each of the issues raised by Council are addressed individually.

However, it is considered that the application is detailed and it is not the intention to revisit all of the information provided.

The issues raised by Council in its correspondence of 10 March 2019 are summarised and responded to hereunder:

- (i) **a location close to Helensburgh town centre would provide better outcomes for the occupants and the wider community**

Although responded to previously, Council has failed to identify a site in closer proximity to the town centre capable of accepting a seniors living development. Of course, consolidation of properties could achieve such an outcome but this would necessitate agreement by multiple owners which would be unlikely.

The subject site is separated from the residential area of the township by a single rural residential property and a distance of approximately 250 metres.

(ii) **Residential purposes was not envisaged by the Review of former 7(d) lands at Helensburgh, Otford and Stanwell Tops, being the strategic document for land surrounding R2 zoned land in Helensburgh**

A report to Council, on 28 November 2011, advised that the 7(d) lands contain significant bushland, which is connected to the Woronora Catchment area, the Royal National Park and Illawarra Escarpment. The area is also the head waters of the Hacking River.

The extensive bushland results in high bushfire risk. Conversely, some of the 7(d) lands have been historically cleared for farming, tourism, coal mining, industrial uses and housing.

The subject site falls into the latter category having been extensively cleared and used for equestrian purposes. The report continues by stating that the future of the 7(d) lands surrounding Helensburgh, Otford and Stanwell Park has been the subject to debate for over 30 years.

In 1994, the Helensburgh Commission of Inquiry examined a number of urban expansion proposals, including land in the Land Pooling Precinct, Gills Creek catchment and the Lady Carrington Estate.

In a later report to Council relating to the Walker Street precinct on 29 July 2013, the following was stated:

*“The Helensburgh Commission of Inquiry (1994) noted that this precinct had one of the highest capabilities for urban development. However, the residential development of this precinct has not been proposed”*

In considering the future of the 7(d) lands in the 28 November 2011 report to Council, it was stated that the conflicting issues of the 1980s and 1990s remain relevant, including:

- the need to protect/improve the water quality of the Hacking River;
- the need to provide a buffer to the Royal National Park and Garrawarra State Conservation area to protect their values;
- the need to conserve endangered ecological communities, significant bushland, habitats and linkages;
- the need to manage bushfire impacts;

- resolving the final development footprint of the Helensburgh suburb area and its population level;
- whether there is future population growth within and/or surrounding Helensburgh;
- whether there should be additional local employment opportunities within Helensburgh;
- whether significant bushland area should remain in private ownership or be brought into public ownership; and
- whether landowners can build a dwelling house on vacant lots.

Where relevant, the SCC has considered these conflicts.

The Review of the 7(d) lands lead to the preparation of a Planning Proposal and, thereafter, the rezoning of lands. It is not, in itself, a strategic planning policy.

However, what it does indicate is that planning is not static and should not be necessarily tied to the past.

The SCC provides an opportunity to provide for much needed seniors living accommodation and the proposal should be assessed on current benefits and constraints. At the time of the making of the LEP 2009 the Seniors Living SEPP was operable and contained a provision similar to the existing clause 4 of the SEPP.

**(iii) The use of the land for self-care seniors housing, enabled by a SCC, would be tantamount to a rezoning of the land without the prior rigour of a Planning Proposal and its associated community exhibition process**

Council has apparently failed to recognise the necessity for a SCC for the proposal. As advised in the correspondence from Foundation Law Group dated 31 March 2020 and provided with this letter a SCC does not allow any development to proceed. Once issued the SCC allows for the submission a thorough and detailed development application for determination.

**Clause 24** of the Seniors Living SEPP applies to a development application for seniors housing of the development applies to land that adjoins land zoned primarily for urban purposes. The Department has formally accepted that the land adjoins land zoned primarily for urban purposes

The proposed use is not permissible within the RU2 zone. Therefore, **Clause 24 (2)** applies, which states:

*“(2) A consent authority must not consent to a development application to which this clause applies unless the consent authority is satisfied that the relevant panel has certified in a current site compatibility certificate that, in the relevant panels opinion*

*(a) the site of the proposed development is suitable for more intensive development, and*

*(b) development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding environment having regard to (at least) the criteria specified in **Clause 25 (5) (b).***

The issue of a SCC is, therefore, not “*tantamount to a rezoning of the land.*” It does, however, allow for the submission of a development application, which would allow for the public exhibition of the proposal.

Council's response also fails to recognise its powers under **Clause 24 (3,)** whereby it can down scale or refuse the development application.

The criteria contained in **Clause 25 (5) (b)** of the SEPP have been addressed within the application for the SCC and further addressed in our correspondence to the Department of 7 January 2020.

**(iv) Adjoining lands are not considered to be land used primarily for urban purposes**

The Department has accepted that the land zoned IN2 in Walker Street is adjoining land zoned for urban purposes.

**(v) It is unclear that the necessary statutory approvals to support the caravan park would be obtained under current legislation**

The SCC application includes advice from Council that the consent for the caravan park has achieved physical commencement. This approval was mentioned as evidence that the precinct can experience transition from small rural holdings through approvals for the waste recovery facility, bus depot and the approval for the caravan park.

**(vi) The submission fails to demonstrate that the proposal satisfies the requirements of Clause 26 of the Seniors Living SEPP such as compliant access to facilities and services**

The SCC addresses **Clause 26** criteria. The issue of gradients and access pathways is a matter that will be considered in detail in a future development application.

**(vii) Under Chapter E13 of the Wollongong Development Control Plan 2009 critical utilities are not considered to be a suitable land use within a medium flood risk precinct**

Since receipt of Council's latest responses of 10 March 2019, additional flood advice has been obtained from Rienco, dated 27 March 2020. Rienco was the author of a Hydraulic Investigation (26 July 2018) and a Flood Study (16 December 2019). This later correspondence is attached.

This correspondence notes that the then DIPNR guidelines for Councils and applicants on “Housing for Seniors or People with a Disability makes the point that *“only genuinely high flood hazard affected areas should be identified in LEPs. This will avoid identifying land in an LEP that would be suitable for residential development.”*

The guidelines go on to state that *“only high hazard areas require prohibition”* and that *“Councils should be consistent with the latest management of flood liable lands as notified by the Minister for Infrastructure and Planning and Minister for Natural Resources”*.

The correspondence refers to conversation with a Department Officer relating to the conflict between the contents of the SEPP and WDCP for development in flood prone areas with only genuinely high hazard areas excluded/identified in the SEPP. The response was that if a conflict occurred the SEPP would prevail.

As there are no *“high hazard”* areas on site, it is considered that the site is suitable for seniors housing.

(viii) **The proposal does not give due regard to the potential risk to human life and damage to property arising from the natural flood hazard**

The latest Rienzo correspondence states that there is no loss of life, or property damage, expected on the site. This is achieved via the application of Council’s standard controls for risk reduction in a Medium Flood Risk Precinct. This way is clearly stated in the Rienzo Flood Study of 16 December 2019.

(ix) **The flooding impacts may directly influence the built form across the site**

The proposed built form only has a minor, and local influence on flood behavior, as evidenced in the detailed flood model results. All of these minor and local influences are readily accommodated on the site.

(x) **Possible that a place or places of refuge would be required for residents on site**

Refuge is available on site in the probable PMF event. This event is roughly equivalent to a 1 in 10-million-year event.

The development does not have to rely on this refuge in such a rare event, as the site has full and direct access to Walker Street in all flood events up to and including the PMF.

(xi) **Additional fill may be required**

No filling will be required. Typical slab on ground construction will deliver FFLs 500mm above the shallow overland flow across the site.

**(xii) The site is environmentally sensitive**

The site is not considered as being environmentally sensitive within any EPI. The land is not described in any of the descriptions contained within Schedule 1 Environmentally Sensitive land contained in the Seniors Living SEPP.

**(xiii) The existing unlined dams on the property intersect the known perched aquifer in the area**

This issue was addressed in our correspondence to the Department of 7 January 2020 and is again repeated hereunder.

Council has expressed concerns with the possible impacts of the proposed development on the water quality of the perched aquifer underlying the site and Gills Creek. This concern, in itself, does not appear a reason for not supporting the application as Council's response states that, although the existing dams on the site any redevelopment of the land would require the dams to be lined and the development would require design, siting, construction and management to ensure protection of the water quality in the area. Ongoing monitoring of water quality would also be required.

These requirements could be incorporated as conditions of consent.

Council provided a copy of the document titled "Impact of hydrology and hydrochemistry on the ecological continuum of the Maddens Plains Upland Wetlands" produced by Dr Iradj Yassini. Dr Yassini was an employee of Council, however, no advice has been provided as to the veracity of the document, any peer review or wider scientific acceptance.

The Rienco detailed flood study does, however, reference the Yassini report and advises that another study of the Gills Creek catchment, which includes the subject site, was undertaken by Forbes Rigby (1992). The study developed a water quality monitoring programme to determine the quality and quantity of exports of pollutants from the Gills Creek Catchment and a local urban catchment to the Hacking River. It also performed predictive modelling of the likely effects, in regard to pollutant exports to the river, of levels of urbanisation of the catchment on the basis of the monitoring programme and other relevant data.

According to Forbes Rigby (1992), the existing land uses of Gills Creek Catchment result in the export of significant amounts of suspended solids and phosphorous to the Hacking River system. The rates of suspended solids and phosphorus export exceed at all times and an equivalent areal

basis, that exported by the existing urbanised catchment at the northern end of Helensburgh (draining to the Hacking via Wilsons Creek), which is largely seweraged but devoid of runoff controls (Forbes Rigby, 1992).

While rates of runoff water would be increased upon urbanisation of the Gills Creek Catchment (due to increase in impervious surfaces), rate of phosphorous and suspended solids export would be reduced significantly below that observed under present rural-mixed land uses. This would occur even without installation of stormwater runoff quality control measures (Forbes Rigby, 1992).

Should Council seek the lining of the dams through the development, this could be readily conditioned. However, the research put forward by Council to substantiate its concerns (produced by Dr Yassini), in fact, promotes the development, as the proposed development will produce reductions in Phosphorous and Nitrogen generation on the site, which the Yassini paper explicitly states leads to a reduction in algal growth and the proliferation of exotic species.

The owners of the site have advised that the dams were constructed in accordance with instructions provided by Dr. Yassini.

**(xiv) There may not be enough sewer capacity to service the proposed development**

The SCC application included advice from Sydney Water that there is enough capacity in the wastewater system at the subject site location to allow more connections.

In relation to the proposed connection to the existing 150mm wastewater, Sydney Water advised:

- the discharge manhole must have a protective coating installed to prevent corrosion from Hydrogen Sulphide
- where possible all pumped flows should enter the gravity sewers at a point where there is an upstream flow to help with flushing the pump flows.

This information is included. During the course of assessment of the application, there has never, at any time, been a request for additional information.

**(xv) Summary**

This is the second application for an SCC for Seniors Living development on the subject site. It is submitted that the information provided is adequate to address Council's issues.

There are a number of permissible land uses within the RU2 zone, which could result in a further transition within the precinct.

These include hospitals, places of public worship, respite day care centres, veterinary hospitals, crematoria. None of these land uses were considered or excluded during the review of the 7(d) lands. The provisions of the Seniors Living SEPP allow for consideration of a SCC for that purpose. In no way does it imply that approval is granted.

The NSW Government has cited that it is committed to providing housing choice for seniors and people with disabilities. This is an opportunity that could be considered in the public interest.

The purpose of town planning has been described as shaping a quality and living environment, facilitating economic development and promoting the health, safety, convenience and general welfare of the community by guiding and controlling development and the use of land. Based on the principle of sustainable development, town planning seeks to bring about an organised efficient and desirable place for the community to live and work in.

Importantly, the proposal will support the object outlined in **Section 5(a) (ii)** of the Environmental Planning & Assessment Act in encouraging the promotion and co-ordination of the orderly and economic use and development of lands. The proponents seek the opportunity to make a development application.

Yours faithfully

T Wetherall

Director

TCW Consulting Pty Ltd

**Attachments:**

- Summary of Flood & Groundwater Investigations-Rienco 27/3/2020.
- Legal Advice-Foundation Law Group-31/3/2020.
- Correspondence from TCW Consulting-7/1/2020.
- Wastewater Connection Application-Sydney Water 18/6/2018.