

13 March 2019

Our Ref: HSK:SKB:LLR001/4001

Planning Panel Secretariat  
320 Pitt Street  
SYDNEY NSW 2000  
ATTN: Sydney North Planning Panel

By Email: [enquiry@planningpanels.nsw.gov.au](mailto:enquiry@planningpanels.nsw.gov.au)  
Copy to Northern Beaches Council:  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Dear Sir/Madam

**DA 2018/1332 - Glenaeon Retirement Village, 199 and 207 Forest Way, Belrose**

- 1.1 We act for Lendlease Retirement Living (**LLRL**) in relation to the above development application (the **DA**), which is tentatively scheduled to be determined by the Sydney North Planning Panel (the **Panel**) at its meeting on 24 April 2019.
- 1.2 As you may recall, the DA, lodged in August 2018 proposes to upgrade part of the existing Glenaeon Retirement Village (**Village**) by replacing 24 independent living units with 60 new, fully accessible units, and will add a 102 bed aged care facility to the Village (**Proposed Development**).
- 1.3 The Panel was briefed on the DA by both the applicant (LLRL) and the Northern Beaches Council (**Council**) on 17 October 2018. For ease of reference, we have annexed to this letter the two publicly available "Records of Briefing & Site Visits":
  - (a) Record of Briefing on 17 October 2018 (**Briefing Note**); and
  - (b) Record of Briefing on 17 October 2018 with Applicant (**Applicant Briefing Note**).
- 1.4 We would like to draw your attention to the final bullet point under the heading "Key Issues Discussed" in the Briefing Note, which states: *"Council considers that Seniors Housing is prohibited development as the subject site does not adjoin land that is zoned. Further legal advice being sought."*
- 1.5 We also draw to your attention the fourth bullet point under the heading "Key Issues Discussed" in the Applicant Briefing Note, which states *"Copies of Legal advice submitted to Panel regarding land use permissibility"*. We attach a copy of that legal advice from Malcolm Craig QC which concludes that the Proposed Development is permissible under the Warringah Local Environmental Plan 2000 (**WLEP 2000**).
- 1.6 It is our understanding that at the Panel briefing on 17 October 2018 Council indicated to the Panel that it was awaiting 'final' legal advice on the permissibility issue and that it would provide that 'final' legal advice to the Panel and LLRL as soon as it was available (and prior to the determination of the DA) in order to assist the Panel in its determination of the DA and so as to facilitate open and transparent discussions between the parties regarding the DA.
- 1.7 It is also relevant to note that the Department of Planning and Environment (**DPE**) advised that it would not be appropriate to issue a Site Compatibility Certificate (**SCC**) for the Proposed Development as it is permissible under the WLEP 2000. A copy of the letter from DPE is enclosed for your reference.

- 1.8 We have recently learned from Council, after approximately six months of waiting for a copy of the 'final' legal advice, that it does not intend to provide a copy of that advice to the Panel or LLRL. We understand that the legal advice may instead only be "referenced" in the Council's assessment report to the Panel. We also understand that Council will be recommending refusal of the DA on the basis of Council's view that the Proposed Development is prohibited. In our view, a reasonable inference that may be drawn from Council's unwillingness to provide a copy of the 'final' legal advice is it may be prejudicial to the Council's position on the permissibility issue and/or equivocal in the conclusions it reaches on that issue. We struggle to understand why Council would otherwise not make the 'final' advice available to the Panel and LLRL.
- 1.9 It is evident that Council has not been willing to work transparently and cooperatively with LLRL throughout the DA process, since the first pre-DA meeting was held over two years ago in December 2016.
- 1.10 Relevantly, we note that section 4.7(2)(b) of the *Environmental Planning and Assessment Act 1979* states the following in relation to the functions of a Council when a planning panel is the consent authority:
- "The following consent authority functions of a Sydney district or regional planning panel are to be exercised on behalf of the panel by the council of the area in which the proposed development is to be carried out... (b) "undertaking assessments of the proposed development and providing them to the panel (but without limiting the assessments that the panel may undertake)".*
- Council's unwillingness to make available to the Panel and LLRL a copy of its 'final' legal advice on the permissibility issue, in our view, amounts to a failure to be open and transparent and goes against the intent and spirit of the above provision. Moreover, it is not conduct befitting of a public authority.
- 1.11 Further, in our view, it could be said that Council is acting contrary to its obligations in section 8A(2)(e) of the *Local Government Act 1993 NSW*, which provides that: "*Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.*" It appears that Council is not being transparent in its decision-making process in relation to the DA.
- 1.12 In our view, notwithstanding that the legal advice from Council will not be provided to the Panel or to LLRL, the Panel should be confident that it has sufficient material before it to make a determination in relation the permissibility of the Proposed Development (given the legal advice of Malcolm Craig QC and the letter from DPE) as well as in relation to the merits of the DA. We therefore request that the Panel proceed to determine the DA on the basis of the material before it.

We would be grateful if you would please distribute this letter to the Panel members, and we are happy to discuss this letter at your convenience.

Yours faithfully



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**BRIEFING DETAILS**

<b>BRIEFING DATE / TIME</b>	Wednesday, 17 October 2018 – 11.50am Site inspection undertaken before meeting
<b>LOCATION</b>	Northern Beaches Council, 725 Pittwater Road Dee Why

**BRIEFING MATTER(S)**

2018SNH046 – Northern Beaches – DA2018/1332  
199 and 207 Forest Way Belrose

**PANEL MEMBERS**

<b>IN ATTENDANCE</b>	Peter Debnam (Chair), John Roseth, Annelise Tuor, Steve Kennedy
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Sue Francis declared a non-pecuniary conflict as her firm is providing planning consulting on senior housing developments in close proximity.

**OTHER ATTENDEES**

<b>COUNCIL ASSESSMENT STAFF</b>	Lashta Haidari, Anna Williams, Peter Robinson
<b>OTHER</b>	Kim Holt, Panel Secretariat

**KEY ISSUES DISCUSSED**

- Overview of application
- Review of plans
- RFS has issued concurrence
- Council considers that Seniors Housing is prohibited development as the subject site does not adjoin land that is zoned. Further legal advice being sought.

**TENTATIVE PANEL MEETING DATE: 18 December 2018**



**BRIEFING DETAILS**

<b>BRIEFING DATE / TIME</b>	Wednesday, 17 October 2018 – 12.15pm Site inspection undertaken before meeting
<b>LOCATION</b>	Northern Beaches Council, 725 Pittwater Road Dee Why

**BRIEFING MATTER(S)**

2018SNH046 – Northern Beaches – DA2018/1332  
199 and 207 Forest Way Belrose

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**OTHER ATTENDEES**

<b>COUNCIL ASSESSMENT STAFF</b>	Lashta Haidari, Anna Williams, Peter Robinson
<b>APPLICANT REPRESENTATIVES</b>	Simon Militano – Head of Development Lendlease Retirement Living Michael Lockwood – General Manager, Property Catholic Healthcare Karen Armstrong
<b>OTHER</b>	Kim Holt, Panel Secretariat

**KEY ISSUES DISCUSSED**

- Introduction and overview of Glenaeon
- 70 letters of support, plus a petition
- Planning Overview & Summary
- Copies of Legal advice submitted to Panel regarding land use permissibility.
- Overview from architect

**TENTATIVE PANEL MEETING DATE:** 18 December 2018



17/09202

Mr Mark Ferguson  
General Manager  
Northern Beaches Council  
PO Box 1336  
DEE WHY NSW 2099

Dear Mr Ferguson

**Site compatibility certificate for 199 Forest Way, Belrose – *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004***

I refer to an application submitted to the Department of Planning and Environment on 11 April 2017 and additional information received on 26 April 2017 for a site compatibility certificate under clause 25(1) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors Housing SEPP) for 199 Forest Way, Belrose.

I have reviewed the proposal and consider that seniors housing on the land is consistent with the desired future character of this part of Belrose North, given that a significant seniors housing development and facilities are located adjacent to the site and that land adjacent to Forest Way is developed for urban purposes. I note that Council has previously formed this opinion when approving the original adjoining seniors living development and the subsequent expansion of the development.

The provisions under the Warringah Local Environmental Plan (LEP) 2000 appear to permit seniors housing on the land, given the site adjoins land being used for urban purposes. This would allow a development application to be submitted with Council for the proposed seniors housing development without the requirement of a site compatibility certificate. Council can also consider the suitability for permitting greater building heights at this site than what is prescribed under the LEP by considering an application made under *State Environmental Planning Policy No 1—Development Standards*. The standards in clause 29 are development standards and do not form part of the description of the land.

On this basis I encourage Council to accept a development application for the site and it be determined on the merits of the application.

Should you have any further questions in relation to this matter, please contact Mr Wayne Williamson, Team Leader, Sydney Region East at the Department on 9274 6585.

Yours sincerely



**Marcus Ray**  
**Deputy Secretary**  
**Planning Services**

*26/07/2017*  
Cc: Daniel West, Ethos Urban Planning

**RE: LLRL MANAGEMENT SERVICES PTY LIMITED:  
SENIORS HOUSING DEVELOPMENT AT BELROSE**

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**ADVICE**

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Addisons Lawyers  
DX 262 Sydney

Attention: Harshane Kahagalle

**LLRL Management Services Pty Limited:**  
**Seniors Housing Development at Belrose**

**ADVICE**

1. LLRL Management Services Pty Limited (**LLRL**) proposes to develop two adjoining parcels of land at Belrose. The first is the site of the present Glenaeon Retirement Village (**the Glenaeon Village**) located on land known as 207 Forest Way, Belrose. The second is an allotment of land to the south of 207, presently accommodating a single residence and ancillary facilities, and known as 199 Forest Way, Belrose. LLRL proposes that these two parcels be developed as a single site for the purpose of seniors housing. This would involve the redevelopment of the existing Glenaeon Village with the extension onto No.199 of facilities to serve the occupants of that Village.
2. My advice is sought as to whether the development proposed, at least as a seniors housing concept, is permissible under the provisions of Warringah Local Environmental Plan 2000 (**LEP 2000**) with the consent of Northern Beaches Council (**the Council**), the consent authority under that instrument.
3. The circumstance giving rise to the question posed for my consideration is unfortunate. The Council contends that the development proposed by LLRL is prohibited. The Department of Planning and Environment, from whom a Site Compatibility Certificate has been sought under cl 25(1) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (**the Seniors Living SEPP**), contends that the proposed development is permissible development under LEP 2000 with the



consequence that the certificate sought by LLRL cannot be issued: cl 24(1A). The position taken by the Department is understandable, not only by reason of the provisions of LEP 2000 but also by reference to the circumstance that the predecessor Council to the present Council had granted development consents to a number of applications for seniors living purposes on the present Glenaeon Village site, including consents granted after LEP 2000 became the operative local planning instrument.

### **The development site**

4. The land at 199 Forest Way is separated from 207 Forest Way by Glenaeon Avenue, a road opened for the purpose of developing the latter site. That road intersects with Forest Way and serves only to provide access to the Nos 199 and 207 where it terminates. Although that road separates the two parcels, as I have indicated, those parcels will together constitute the site that will be the subject of the development application for seniors living. It is convenient to refer to the combined sites as "the development site".

### **Land use controls**

5. The primary land use controls directed to the control of development on the development site are those found in LEP 2000. Although that planning instrument has, for the most part, been repealed in its application to the former Warringah Shire area by Warringah Local Environmental Plan 2011 (LEP 2011), the application of the latter instrument to the development site is a "Deferred matter". That has the consequence that the provisions of LEP 2000 continue to control development on those areas of land that remain "deferred" from LEP 2011.
6. LEP 2000 does not adopt a conventional zoning approach to control development on land to which it relates. Rather, it utilises "Locality Statements" as the mechanism for development control. Those

Statements differentiate areas of land that are delineated on a map. The criteria adopted for delineating a named locality is both geographical as well as identifying particular characteristics that the locality is said to possess. Each Locality Statement identifies the desired future character of land within that locality as being the foundation for development control. The development site is identified as being within "Locality B2 – Oxford Falls Valley" (**Locality B2**).

7. Land uses within each locality that are permissible with consent are given a categorisation of 1, 2 or 3, while prohibited uses are separately identified. Category 1 development is assumed to be consistent with the desired future character expressed in the particular Locality Statement. Development in categories 2 and 3, while permissible, is, by comparison with category 1, likely to be less compatible with the desired future character of the locality and thus requires the consent authority to be satisfied that the development in these categories "is consistent with the desired future character" described in the Locality Statement for the locality (cl 12(3)(b)).
8. Category 2 developments in Locality B2 include "housing for older people or people with disabilities (on land described in paragraph (c) under the heading 'Housing density' below)". Development that is described as being prohibited in Locality B2 includes "housing for older people or people with disabilities (**other than** on land described in paragraph (c) under the heading 'Housing density' in the B2 Locality Statement)" (emphasis added).
9. Paragraph (c) under the heading "Housing density" in the B2 Locality Statement (referred to in this Advice as "para (c)") relevantly describes the land to which it relates as being:

"...land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of 'housing for

older people or people with a disability' and the development complies with the minimum standards set out in clause 29."

#### **Satisfying the "land" descriptor for permissibility**

10. For present purposes, in order to satisfy the provisions of para (c) so as to render seniors housing permissible there are two issues of relevance that must be satisfied. First, it is necessary to identify a "locality primarily used for urban purposes", if any, that the development site adjoins. Second, it is necessary that the development site is one on which a dwelling house is permissible.

#### ***A dwelling house is permissible***

11. The second issue that I have identified may be succinctly addressed. Category 2 development that is permissible upon the development site also includes "housing". That term is defined in the Dictionary to LEP 2000 as development "involving the creation of one or more dwellings whether or not used as a group home". The term "dwelling" is also defined in the Dictionary in conventional terms, namely "a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile".
12. Applying those definitions, there can be no doubt that a "dwelling house" is permissible on the development site.

#### ***Adjoining a locality primarily used for urban purposes***

13. The consideration of this issue requires that two matters be addressed. The first is whether there is a "locality" primarily *used* for urban purposes in the vicinity of the development site. Second, it must be determined that the "locality" so used *adjoins* the development site.

#### ***The "locality"***

14. The term "locality" is defined in the Dictionary to LEP 2000 to mean "a discrete area of land...listed as a locality in an Appendix to this plan and identified on the map". That is, a "locality" is a reference to an area that is identified in a separate Locality Statement found in one of the appendices to LEP 2000. However, the meaning of that term must also be considered in the context of the phrase in which it is used. Not only are the surrounding words important but the context of the phrase, relevant for present purposes, is one where there are two local environmental planning instruments that are directed to land uses in the area within which the development site is located. Those areas subject to the controls imposed by LEP 2000 are areas that are deferred matters under LEP 2011. As cl 1.3(1A) of the latter LEP provides, that instrument does not apply to land identified in the Land Application Map as a "deferred matter".
15. Broad area land use controls under LEP 2011 are implemented through a conventional zoning system. Land in the vicinity of the development site is land "zoned" under that instrument. By way of contrast, LEP 2000 does not, in terms, divide land into "zones". It is therefore necessary to consider how the provisions of the two planning instruments might interact when, by the provisions of one of them, it is necessary to determine some feature or aspect of development that is the subject of planning controls imposed by the other instrument.
16. If a given parcel of land in Locality B2, proposed for seniors housing, is surrounded by and abuts land zoned and used for residential housing under LEP 2011, it would render the provisions of LEP 2000 sterile if the residential development and zoning of that surrounding land could not be considered when determining the permissibility of development for seniors housing on the B2 land because that surrounding land was not a

“locality” within the meaning of LEP 2000. An interpretation of the provisions of the latter instrument to that effect would not reflect the context and purpose of the “adjoining locality” provisions of the latter instrument. Such an interpretation would be inconsistent with modern principles of statutory construction (*CIC Insurance Limited v Bankstown Football Club Limited* (1997) 187 CLR 384 at 408; [1997] HCA 2; *Commissioner of Taxation v Consolidated Media Holdings Limited* [2012] HCA 55 at [39]). Application of those principles would require that both instruments be considered together to determine how, if at all, they should properly interact.

17. In substance, that was the exercise undertaken by Talbot J in *Mete v Warringah Council* [2004] NSWLEC 273 and by Preston Ch J in *Retirement by Design Pty Limited v Warringah Council* (2007) 153 LGERA 372; [2007] NSWLEC 87. In *Mete* Talbot J said at [23]:

“Although innovative and maybe not strictly the conventional approach, on balance, in my view, it is open, and appropriate, to regard the adoption of Locality Statements in [LEP 2000] as a means of placing land in a zone and, accordingly, it establishes a system of zoning. It is, therefore, a matter of construction to determine whether land included in any Locality Statement is zoned primarily for urban purposes by reference to uses permissible in each locality. I find that SEPP (SL) applies to land within the Warringah local government area identified in that way as being effectively zoned for urban purposes or adjoining land zoned for that purpose.”

18. An analysis of the manner in which land use controls were imposed under LEP 2000 and their relationship with the conventional “zoning” system of land use control was carried out by the Chief Judge in *Retirement by Design Pty Limited v Warringah Council* at [44]–[75]. At [73] his Honour said:

“The applicant’s land, for example, is identified, by means of inclusion in a locality, as being land on which development for specified purposes is permitted. In this sense, the applicant’s land can be said to be ‘zoned’ for those specified purposes.”

His Honour then embraced as correct the statement earlier quoted from the decision of Talbot J in *Mete*. As a consequence, the Chief Judge rejected at [75] the contention of the Warringah Council that LEP 2000 did not “zone land” in its local government area, with the consequence that, according to the Council’s rejected contention, LEP 2000 did not interact with another planning instrument, in that case as stated in the Seniors Living SEPP. That rejected submission seems nonetheless to be repeated by the Council in its email of 7 February 2018 to LLRL.

19. Applying both the principles of interpretation that I have identified as well as the decisions to which I have referred, I am satisfied that when considering the critical phrase used in para (c) of the B2 Locality Statement, it is appropriate to read the word “locality” as equating to land “zoned” under another planning instrument. Thus, the phrase may properly be read as describing “land that adjoins a locality or zone primarily used for urban purposes”.
20. It must also be noticed that words or phrases defined in a statute or statutory instrument apply “except insofar as the context or subject-matter otherwise indicates or requires”: s 6 *Interpretation Act 1987*. On that basis, it would be equally legitimate to give “locality” its ordinary meaning as being “an area or district”. So understood, the phrase would maintain its intended focus upon the manner of use of land that “adjoins” the land upon which seniors housing is contemplated.

*“Adjoining” land*

21. Before turning to the principles by which the term “adjoins” should be interpreted in its context, it is necessary to identify the land uses in the vicinity of the development site. Almost all land to the immediate north, east and south of the development site is within Locality B2 under LEP 2000. On the western side of Forest Way, the land directly opposite to the development site is also deferred from the operation of LEP 2011. It

is within Locality C8 under LEP 2000. Development for seniors housing on land within Locality C8 is prohibited, subject to an exception expressed in similar terms to that applicable for development of that kind in Locality B2. Importantly, the purposes of which the C8 land is presently used do not appear to be lands primarily used for urban purposes.

22. There are two small areas zoned RE1 – Public Recreation under LEP 2011, each sharing a section of the common boundary between them and the northern boundary of the development site. For the purpose of this advice I leave aside consideration of the use of those two areas.
23. Approximately 115m south of the southern boundary of the development site, Forest Way, which runs North/South in this vicinity, intersects with Morgan Road, a cross road that changes name to Wyatt Avenue on the western side of the intersection. The development site is separated from that intersection by two allotments of land.
24. Commencing on the south-west corner of the Forest Way/Morgan Road intersection is a large tract of land that is zoned R2 Low Density Residential under LEP 2011. Permissible land uses by reference to the land use table for land so zoned include dwelling houses, educational establishments, home businesses, places of worship and secondary dwellings. The area encompassed by the R2 zone extends southerly along Forest Way for some distance and westerly along Wyatt Avenue. Relevantly, that area is already developed and used for urban purposes, being the area that principally comprises the residential and retail area of the suburb of Belrose.
25. Those areas within the R2 zone that are adjacent to the Forest Way/Morgan Road intersection are streets lined with dwelling houses. By direct measurement from the southern boundary of the development site to the residential land at the south-west corner of the intersection, the separation distance is said to be a little under 150m.

26. The term “adjoins”, as used in a phrase similarly framed to that found in para (c) of the B2 Locality Statement, has received judicial consideration over a number of years. That is because cl 11(2)(a) of State Environmental Planning Policy No.5 – Housing for Aged and Disabled Persons proscribed the grant of development consent for seniors living unless the consent authority was satisfied, among other matters, that “the land is within or adjoins land zoned for urban purposes”. SEPP 5 was promulgated in the early years of the EPA Act and was the first State Planning Policy that sought to address what is now known as seniors living.
27. As Preston Ch J made clear in *ACN 115 840 509 Pty Limited v Kiama Municipal Council* (2006) 145 LGERA 147; [2006] NSWLEC 151 at [15]-[16], when considering the relevant phrase it is necessary to distinguish the proximity of land zoned or used for urban purposes to the intended site for seniors housing that renders development permissible from aspects of the land to be developed that may impinge upon ready accessibility from that land to the “urban land” identified for the purpose of satisfying the locational requirement of the clause. The determination that the land proposed to be developed meets the locational requirement is the only incident of a clause such as para (c) directed to permissibility. As his Honour observed, accessibility is generally a merit consideration, not one that determines permissibility.
28. His Honour’s point of distinction is made apparent on the facts relevant to the case that he was deciding. The direct measurement between the site to be developed and the nearest point of residentially zoned land was 65m. However, the travel distance between the two was 1.15km, a fact that his Honour held at [37] was not determinative of the question as to whether the land the subject of the development application “adjoined” land zoned primarily for urban purposes.



29. For the purpose of deciding whether the land proposed for seniors housing did adjoin land zoned primarily for urban purposes, his Honour reviewed a number of decisions both of the Court of Appeal (*Hornsby Shire Council v Malcolm* (1986) 60 LGRA 429; *DEM (Australia) Pty Limited v Pittwater Council* (2004) 136 LGERA 187; [2004] NSWCA 434) and of the Land and Environment Court (*Auckland Lai v Warringah Shire Council* (1985) 58 LGRA; *Pepperwood Ridge Pty Limited v Newcastle City Council* (2005) 142 LGERA 231; [2005] NSWLEC 257; *Modog Pty Limited v Baulkham Hills Shire Council* (2000) 109 LGERA 443) in which the critical phrase had been considered. Having done so, his Honour said at [31]:

"[31] These cases of the Court of Appeal and in this Court are consistent in holding that it is not necessary, in order for the subject land to answer the description of the land that 'adjoins' land zoned primarily for urban purposes to be conterminous with (that is, having a common boundary with) or be immediately adjoining the 2(a) Residential land. It is sufficient that the subject land is 'near to' or is 'neighbouring on' or is 'in sufficient proximity to' the 2(a) Residential land which is land zoned primarily for urban purposes."

No later decision of either the Court of Appeal or the Land and Environment Court has sought to limit or qualify the statement there made as to the meaning attributed to the word "adjoins" when used in a phrase similar to that found in para (c) of the B2 Locality Statement. Importantly, no decision has sought to qualify the word "adjoins" by prescribing a maximum distance beyond which land proposed for seniors housing will not qualify as land adjoining land primarily zoned or used for urban purposes.

30. Applying the principles that I have identified to the present case, it seems to me that the planning body exercising the decision-making role under the EPA Act for seniors housing upon the development site could lawfully conclude that the site "adjoins" the R2 zoned land I have identified, being land primarily used for urban purposes, that is, land primarily used for

residential housing and the services that are ancillary to that use. The latter land is "near to" or is "in sufficient proximity to" the development site such as to engage the provisions of para (c). The separation of the development site from the R2 land by the frontage of two intermediate allotments of land and the width of a road intersection, measuring in all a distance of less than 150m, seems to me to satisfy either of those descriptors. Geographical proximity is sufficient to satisfy the permissibility requirement of para (c).


31. Moreover, the conclusion I have reached is not antithetical to the apparent purpose of the provisions of para (c), understood in their context. That purpose, so it seems to me, is that seniors housing should not be isolated from urban areas, enabling residents of that housing to live in proximity to the services and facilities ordinarily present and available in areas being used for urban purposes. It cannot rationally be said that the purpose or purposes I have identified are defeated or compromised by the distance that, in fact, separates the development site from the existing urban development of suburban Belrose.

### Conclusion

32. For these reasons, I conclude that the development of the development site for seniors housing is, in concept, a permissible form of development under the provisions of LEP 2000. As would be appreciated, in expressing that opinion as to permissibility, I am not in a position to express any opinion as to the merits of such an application, no particular form of seniors housing having been presented for my consideration.

Chambers

23 April 2018



MALCOLM CRAIQ QC