

**PERMISSIBILITY OF A DEVELOPMENT FOR A SEPP SENIORS
LIVING DEVELOPMENT IN A B7 BUSINESS PARK ZONE AT 5
SKYLINE PLACE FRENCHS FOREST**

1. The purpose of this note is to refer to two matters, which the Planning Panel might consider relevant in determining the permissibility of a SEPP Seniors Living development in a B7 Business Park zone under the Warringah LEP 2011 at 5 Skyline Place Frenchs Forest.
2. I have been provided with the report of Sydney Central City Planning Panel reference number 2017SWC124. I have read that report. On 18 August 2016 a Joint Regional Planning Panel approved a Master Plan for a Seniors Living Development located in the B7 Business Park zone under the Hills LEP 2012. The approved development was in the Circa Precinct of the Norwest Business Park. It was to be carried out over 6 stages with a total of 446 retirement living units, with a built form in stage 1 comprising buildings A and B in which 131 retirement living units were provided with 140 parking spaces.
3. As at the date of the approval of a modification application on 11 April 2018, the development was under construction.
4. A development application was made concurrently with the modification application in respect of building B in Stage 1 application increasing the height and floor area of building B in stage 1 and increasing the total number of units over the 6 stages from 446 to 462.

5. **The proposal was made under SEPP (Housing for Seniors or People with a disability) 2004 (SEPP).**
6. The B7 Business Park zone in the Hills LEP 2012 permitted Light industries which was but one permissible use amongst a number of other non-industrial permissible uses. “Light industry” was defined as follows:

“**light industry** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:
 1. (a) high technology industry,
 2. (b) home industry.
Note. Light industries are a type of **industry**—see the definition of that term in this Dictionary.”
7. Notwithstanding that the B7 zone permitted “Light industries” with development consent and was therefore arguably inconsistent the provisions of clauses 5 and 4(6)(b) of SEPP, the Planning Panel approved the development and the subsequent modification as noted above.
8. That brings me to the advice (read by me) of Pikes & Verekers dated 24 January 2018, which argued that development for the purpose of the SEPP was permissible in the B7 zone on the subject site at 5 Skyline Place, Frenchs

Forest. The proposition in the advice was, in relevant part, that even though Light industries (defined in the same terms as in the Hills LEP 2012) was a permissible use in the B7 zone in the Warringah LEP 2011, “the inclusion of light industry as a permissible purpose [did] not render the land “zoned” for industrial purposes.” Rather, the land permitted Light Industries on land zoned for Business Park. Other zones in the Warringah LEP 2011 were specifically zoned for industrial purposes, namely, IN1 and IN2 for Industrial and Light Industrial purposes respectively.

9. Amendment 38 to the Hills LEP 2012 permitted seniors housing development (which included a form of development under the SEPP) with development consent. But, that did not answer the provisions of clause 5 of the SEPP (the provisions of the SEPP prevailed to the extent of inconsistency between the SEPP and the LEP); nor did it answer the provisions of cl 4(6)(b) of the SEPP (SEPP Seniors Living was not permitted on land zoned for industrial purposes) unless the Planning Panel in the Norwest Business Park development was of the view that the B7 zone was not zoned for industrial purposes as similarly argued in the Pikes & Verekers advice.
10. On that basis it appears, the Planning Panel approved the SEPP development in the B7 zone under the Hills LEP 2012 even though Light industries was a permissible use in that zone. If Light industries was simply a permissible use, amongst other non-industrial uses, in the B7 zone, then the Planning Panel could not have considered the land was

zoned for industrial purposes. Otherwise approving the development would have been contrary to Cl 5 and cl 4(6)(b) of the SEPP.

11. The two examples, one of the approval of a SEPP development in the B7 zone, and the other being the Pikes & Verekers advice, might be considered by the Planning Panel as adequate authority for the approval of the SEPP development at 5 Skyline Place, Frenchs Forest.

Dennis Wilson,

Chambers 3 November 2018.