

Department of Planning, Industry
and Environment
12 Darcy Street
PARRAMATTA NSW 2150

Our Ref: GMC:DT:mm:tn:2594

24 February 2021

**Attention: Luke Downend
& Elvie Magallanes**

By Email

Dear Mr Downend & Ms Magallanes,

**Application for Site Compatibility Certificate SCC2020NBEAC-4
Property: 58 Laitoki Road, Terrey Hills**

We refer to the above matter and confirm we act for Tolucy Pty Ltd, being the Applicant in Site Compatibility Certificate Application (SCC Application) number SCC2020NBEAC-4 for the property at 58 Laitoki Road, Terrey Hills.

The purpose of this letter is to respond to the letter from Northern Beaches Council dated 20 January 2021 which enclosed Council's submission in response to our client's SCC Application. In particular, we wish to correct a number of errors made in Council's submission in order to ensure that the Department makes an informed decision based on accurate and actual information provided with the SCC Application.

Response to Council's Submission

- Firstly, the Land and Environment Court proceedings remain on foot. On 12 July 2019 a Commissioner of the Land and Environment Court approved the development application. On 3 August 2020, a Judge at the Land and Environment Court held that there were legal errors made in the Judgement handed down by the Commissioner. The proceedings have been adjourned until 18 May 2021 to allow this SCC Application to be determined. The Court will then hear the matter.
- On page 4 of 11 of Council's submission it is stated that the proposed development comprises "*sixty (60) serviced self – care dwellings within eight (8) separate*



Department of Planning, Industry and

24 February 2021

accommodation blocks, each being two to three storeys in height and scale and 90 bed residential care facility."

This is incorrect. The SCC Application proposes forty eight (48) serviced self – care dwellings in addition to the 90 bed residential care facility. Refer to page 4 of the Town Planning Report Site Compatibility Certificate prepared by Minto Planning Services dated September 2020.

- In determining the initial site compatibility certificate, the Department of Planning and Infrastructure determines that the application did satisfy the objectives of the RU4 Primary Production Small Lots zone. The Land and Environment Court determined that it was satisfied that the proposed development "*adequately resolved building bulk and scale for the purposes of the SCC.*" [Tolucy Pty Ltd v Northern Beaches Council [2019] NSWLEC 1284 at 167]
- The Land and Environment Court continued to state that "*the form and layout of the proposed development has been developed with consideration of the site, and I am satisfied that the proposed development demonstrates that adequate regard has been given to the design principles in Division 2 of the SEPP HSPD as required by cl 32*" [168].
- The Land and Environment Court's positive findings on bulk, scale and character were not appealed or challenged. The suitability of the site for the proposed development remains unchanged.
- The SCC Application does in fact include an additional letter prepared by Building Code & Bushfire Hazard Solutions dated 15 September 2020. Council has incorrectly stated that in the Section 56A appeal, the Court found that "*insufficient detail had been provided*" regarding bushfire impacts. The proper reading of the decision of Moore J is that the Commissioner made his decision without having the bushfire evidence before him: -
 - "*The sufficiency or otherwise of the additional material is irrelevant in the context where the Commissioner had unequivocally stated that he was going to give consent - a statement made prior to, and in anticipation of, the provision of that material.*" [Northern Beaches Council v Tolucy Pty Ltd [2020] NSWLEC 76 at 63]

His honour did not question the sufficiency of the material. The only assessment of the bushfire material is provided by Commissioner Horton who found it to be satisfactory and sufficient.

- The Cumulative Impact Study (CIS) prepared by Minto Planning Services responds to the matters raised in the *State Environmental Planning Policy (Housing for Seniors or People with a Disability)* 2004 (the SEPP). Mr Minto is a planner with significant



Department of Planning, Industry and

24 February 2021

experience working in public and private practice. Mr Minto has appeared as an expert town planning witness in a significant number of Land and Environment Court matters with a particular focus on Seniors Living developments. Mr Minto can confidently be identified an expert in this field of planning and understands the requirements of the SEPP. Having again reviewed the CIS submitted with the SCC Application, there is no doubt that it sufficiently addresses the requirements of the SEPP.

Council in its assessment does not provide any justification for its suggestion that the CIS is insufficient.

- The Land and Environment Court found that the site is suitably provided with services and infrastructure, including transport services: [*Tolucy Pty Ltd v Northern Beaches Council* [2019] NSWLEC 1284 at 119, 128 - 132]

It is important that the Panel is provided with true and correct information regarding the SCC Application before it as well as correct interpretations of the two Land and Environment Court proceedings. We request that the Panel acknowledge receipt of this letter so that our client can be assured that procedural fairness and natural justice are being provided to its application.

We advise you to contact Graham McKee or David Tyrrell of this office if you wish to discuss this letter.

Yours faithfully

McKEES LEGAL SOLUTIONS



Graham McKee
Principal