



**PCU070879**

Our Ref: 2017/115971

17 May 2017

Wayne Williamson  
Team Leader, Sydney Region East  
Department of Planning and Environment  
GPO Box 39  
SYDNEY, NSW 2001

Dear Mr Williamson

**Site Compatibility Certificate - 199 FOREST WAY, BELROSE**

I refer to your letter dated 13 April 2017, received on 20 April 2017, concerning an application for a Site Compatibility Certificate (SCC) under State Environmental Planning Policy (Housing for Seniors or People with Disability) 2004 for the abovementioned site.

Council's has assessed the application and has determined that the Seniors Housing is a prohibited development on the subject site as the site does not adjoin land that is zoned or "*primarily used for urban purposes*".

In addition, Council has determined that the scale and built form of the proposed development is not considered to be compatible with surrounding residential development. In this regard, please find Council's detailed assessment with regards to the set criteria under Clause 25 (5) (b) of the SEPP as an attachment to this letter.

Council appreciates the opportunity to make a submission and trusts that the issues raised will be duly considered in the assessment of the application by the Department.

Should you wish to discuss the matters raised or require any further clarification, please do not hesitate to contact Lashta Haidari – Senior Planner on 9942246 or via [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au).

Yours faithfully

Mark Ferguson  
**Chief Executive Officer**

Encl: Northern Beaches Council Site Compatibility Certificate Submission



## ATTACHMENT A

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### NORTHERN BEACHES COUNCIL SUBMISSION

#### SITE COMPATIBILITY CERTIFICATE - 199 FOREST WAY, BELROSE

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##### CURRENT DEVELOPMENT AND SITE CONTEXT

In considering the proposal, the following key features of the site and its location are identified:

The site is located on the eastern side of Forest Way and the southern side of Glenaeon Avenue and is regular in shape (rectangular).

The site has a surveyed area of approximately 12,000m<sup>2</sup> (1.2 ha) and presently accommodates several structures relating to the existing use as a detached dwelling house (being a dwelling house centrally located upon the site, swimming pool, detached garage and a small outbuilding).

Vehicular access/egress is presently via a driveway from Glenaeon Avenue. None of said structures are visible from Forest Way. An informal road reserve exists to the west of the site and a man-made channel runs through the length of the site leading to a large pond feature in the north-eastern corner of the site.

The site is located within the B2 Oxford Falls Valley locality under the *Warringah Local Environment Plan 2000* (the LEP).

The land both to the north and the south of the subject site is also within the B2 Oxford Falls Valley locality. It should be noted that an existing Seniors Housing development is situated upon the land on the opposite side of Glenaeon Avenue, directly north of the subject site.

The B2 Oxford Falls Valley Locality is generally characterised by detached style housing on large allotments of land. Notwithstanding this, the immediate vicinity surrounding the site includes a large Seniors Housing development to the north, detached dwelling houses on large allotments to the south (similar to the subject site) and bushland to the east and west. The predominant character of the area is best described as structures for residential use of varying scale, age and architecture.

The site is generally flat with a 14m rise from east to west and the topography has not been substantially modified.

The subject site is not bound (by virtue of shared boundaries) by any land zoned primarily for urban purposes. The R2 Low Density Residential zone as per the *Warringah Local Environment Plan 2011* is located 147m south of the site (and diagonally across Forest Way), and is bound by Wyatt Avenue and Forest Way. The site is also located 220m north-east of the John Colet School and 275m south of the Belrose Rural Fire Brigade.





**Figure 1 – Aerial photograph of the site and surrounding area**

## **KEY FEATURES OF THE APPLICATION**

Council understands the key features of the application are for the use of the site which would provide the framework and parameters for a future development application for Seniors Housing (Residential Care Facility). The application is accompanied by detailed architectural plans.

The SCC Application indicates that the proposal is for the following:

- Site preparation works;
- Construction and occupation of a two (2) storey residential care facility building and a partial lower ground level consisting of 144 beds with ancillary services and facilities;
- At grade car parking for 48 cars, one (1) taxi parking space, one (1) ambulance parking space, and one (1) minibus parking space;
- Associated landscaping and public domain work;
- Extension and augmentation of physical infrastructure utilities as required; and
- Creation of part of unformed road to access at grade car park at the rear of the site.



## STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

### PERMISSIBILITY OF THE DEVELOPMENT

Under Warringah LEP 2000, Seniors Housing is permitted as a Category Two development, but only on land in paragraph (c) under the heading "Housing Density" 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".*

The word "locality" is defined in the Dictionary to LEP 2000 as *"a discrete area of land ....listed as a locality in an Appendix to this plan and identified on the map"*. The Locality within which the subject is located (being B2 Oxford Falls Valley) is not characterised as *"primarily used for urban purposes"*. So regard must be had to adjoining localities.

The subject site adjoins the C8 (Belrose North) Locality, which is across the road (Forest Way). The adjoining C8 locality is also not characterised as *"primarily used for urban purposes"*, for the following reasons:

- State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (Seniors SEPP), makes it clear that the C8 Locality is not land zoned primarily for urban purposes;
- An analysis of the categories of development permissible in the C8 locality and the desired future character statement is indicative of land used primarily for non-urban purposes;
- The closest residential land (being R2 – Low Density Residential Zone) is diagonally across Forest Way, which is 147m away. This land is considered to be a significant distance away and therefore should not be considered as being "adjoining".
- There are numerous Land and Environment Court cases, which relate to the issue of what constitutes **"adjoining"**, specifically:
  - In *ACN 115 840 509 Pty Ltd v Kiama Municipal Council* [2006] NSWLEC 151 the closest residential land was 65 metres (separated by a road and railway line) but by foot it was a distance of **1.15km**. This land was considered to be **"adjoining"**.
  - In *Signature Gardens Retirement Resort Pty Limited v Cessnock City Council* [2013] NSWLEC 1070 land directly across from other land where the only intervening land was a road and a small **10m** open

space zoned strip adjoining the road was considered to be "adjoining".

- In *MoDog Pty Ltd v Baulkham Hills Shire Council* [2000] NSWLEC 180, the subject property was surrounded on three sides by rural zoned land. Across the road was also rural zoned land, but beyond the rural zoned land there was residential zoned land **220m** away. In that case, the Court considered the closest residential zoned land was "not adjoining".

Accordingly, Council considers that Seniors Housing is a prohibited development on the subject site as the site does not adjoin land that is zoned or "primarily used for urban purposes",

If the Department forms a view that the development is in fact permissible on the site, despite Council's submissions, the following section of this submission should be considered prior to the issuing of the Site Compatibility Certificate (SCC).

## **SITE COMPATIBILITY CRITERIA**

The issuing of a SCC is similar in some respects to the re-zoning of land to another land use, in that it will allow a development application to be lodged for the development of the site for the new land use. The DA would then be subject to a more detailed and complete assessment of all the environmental considerations by the consent authority.

The criteria under Clause 25(5) (b) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (the SEPP) have been used to provide a detailed assessment of the application as follows:

## **THE NATURAL ENVIRONMENT**

- (i) *The natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development.*

### Comment

The proposed development is located upon land which is surrounded by existing mature vegetation to the east, west and south. Council's records indicate that the site contains modified stands of native vegetation and fauna habitat features. There are no known records of threatened species for the site, however numerous records exist for other sites in close proximity to the subject site.

The extension of the Asset Protection Zones (APZ's) onto the adjoining vacant Crown Land is not supported.

The site is located at the headwaters of Snake Creek, a sub-catchment of the Narrabeen Lagoon Catchment. According to the *Warringah Creek Management Study 2004*, Snake Creek is a Group B catchment which is characterised as generally having



a 10-15% connected impervious area with some degradation in the upper catchments, but high ecological value downstream.

The site appears to contain an unmapped creek; however this has not been ground-truthed.

There are known Aboriginal sites within the area and no sites have been recorded (to date) upon the subject allotment. It is noted that the site has been the subject to previous disturbance, reducing the likelihood of unrecorded Aboriginal sites.

In addition, the whole of the site is identified as Bushfire Prone Land on the Warringah Bushfire Prone Land Map. In this regard, Council raises concerns that the proposed development may be prohibited under Schedule 1 of the SEPP in that Bushfire Hazard could be interpreted to meet the definition and/or intent of "Natural Hazard" under the SEPP. Notwithstanding the above, any future application that were to be received by Council would be required to address Clause 27(1) and (2) of the SEPP.

#### **IMPACT ON THE LIKELY FUTURE USES OF THE LAND**

- (ii) *The impact that the proposed development is likely to have on the uses that, in the opinion of the Director-General, are likely to be the future uses of that land,*

##### Comment

The site is located within the B2 Oxford Falls Valley under the WLEP 2000 and as mentioned earlier, the use of the site for the purposes of Seniors Housing is not a permissible use on the site.

The granting of a Site Compatibility Certificate for a residential development of such a density as that proposed has the potential to prejudice the development of the adjoining lots for uses such as those that are permitted within this locality as well the adjoining C8 locality, as the likely future uses may be in conflict with the amenity expected in a significantly more dense residential development such as seniors housing.

#### **THE AVAILABILITY OF SERVICES AND INFRASTRUCTURE**

- (iii) *the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,*

##### Comment

The proposed development is not within walking distance of any surrounding local amenities including shops, retail or neighbourhood centres.

The site will have public transport access to a local neighbourhood centre on Ralston Avenue, 1.3km south of the site, which includes a small supermarket, food and drink premises and a Newsagency. Further opportunities for leisure including the Belrose Bowling Club and Belrose Hotel are located approximately 2.9km to the south of the site.

The site has public transport / private transport access to the Glen Street Cultural Hub (including library, theatre and shopping centre), the Frenchs Forest Hospital and other anticipated retail and commercial developments within the vicinity, and the Forestway Shopping Centre.

Notwithstanding the lack of pedestrian access to these services, the site is located within close proximity to bus stops which could provide regular transport to and from the abovementioned locations in accordance with Clause 26(2) of the SEPP.

#### **IMPACT ON LAND ZONED FOR OPEN SPACE OR SPECIAL USES**

- (iv) *in the case of applications in relation to land that is zoned open space or special uses—the impact that the proposed development is likely to have on the provision of land for open space and special uses in the vicinity of the development,*

##### Comment

The site is not zoned for open space or special purposes and it is not anticipated that the proposed development of the site will have any unreasonable impact upon surrounding lands zoned for open space or special uses.

#### **IMPACT OF THE BULK, SCALE, BUILT FORM AND CHARACTER**

- (v) *without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,*

##### Comment

The Desired Future Character for the B2 Locality under WLEP 2000 reads as follows:

*The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.*

*Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.*

*The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the*



*buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

*A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.*

*Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.*

The proposed development involves the construction of a large Seniors Housing (Residential Care Facility) development on the site.

The scale of the proposed building will dominate approximately 50% of the total site area and shows inadequate measures to reduce the massing and visual bulk and scale of the building. It is noted that some articulation via lateral stepping has been provided on the northern and southern facades of the development, however these articulations are minor and not substantial enough nor commensurate to the overall scale of the development.

The development appears to exceed the maximum building height of 8.5 metres as per the built form controls of the WLEP 2000.

Furthermore, the development does not comply with the maximum building height development standards (Cl. 40 (4)) of the SEPP. The building height standard is intended to ensure that the scale of such developments do not depart too significantly from the prevailing scale, built form and character of the local area.

It is expected that the built form as proposed would be significantly reduced to present as a 'interconnected pavilion style' development with varying setbacks, built forms and building heights in order to achieve the visual perception of *detached style housing*.

As proposed, the development makes little effort to relate to the bulk, scale, built form and character of the existing, approved and future uses of the land within the vicinity of the development.

## **IMPACT UPON NATIVE VEGETATION**

- (vi) *if the development may involve the clearing of native vegetation that is subject to the requirements of section 12 of the [Native Vegetation Act 2003](#)—the impact that the proposed development is likely to have on the conservation and management of native vegetation.*

### **Comment**

The proposed development of the site will require extensive clearing of native vegetation, and natural features. Any impacts of such will be assessed in detail by Council upon lodgement of any DA.



It is noted that the *Native Vegetation Act 2003* does not apply in the Warringah LGA as per Schedule 1 Part 3 (13) of the Act.

## **CONCLUSION**

Having considered the application in accordance with the criteria of Cl. 25 (5) of the SEPP, the following key issues have been identified:

### Clause 25(5) (b) (v)

The scale of the development is inconsistent with the provisions of the SEPP, particularly in respect to bulk, scale and the character of the development. The design should better relate to the predominant surrounding character.

The resulting mass and bulk of the building is a significant departure from the desired future character of the area. Should the SCC be issued, the design of the development requires significant amendment to reduce the massing and visual bulk and scale.

### Permissibility

The application does not satisfy Clauses 4 (1), (2A) and (4) of the SEPP relating to the permissibility of the development on the subject site for Housing for Seniors or People with a Disability, as the land is not found to be zoned primarily for urban purposes or land which adjoins land zoned primarily for urban purposes.

For the above reasons, the proposal is not found to be compatible with the criteria under Clause 25 (5) (b) of the SEPP and Council is not satisfied that the development is permissible upon the land.

It is requested that these matters be addressed in the Department's determination of the Site Compatibility Certificate application. If the Department considers that the proposal satisfies the provisions of Clause 24 and 25 of the SEPP, that the site is suitable for the proposed development and approves the SCC, Council requests that the issues raised herein be included as conditions of any issue of the certificate.