



22 November 2024

Ref: WTJ24-143
Contact: Jamie Bryant

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Via NSW Planning Portal

**SECTION 4.56 APPLICATION FOR MODIFICATION OF DA807/01 (LEC REF. NO. 10973 of 2001)
APPROVED DEVELOPMENT FOR THE ERECTION OF HOUSING FOR OLDER PEOPLE AND PEOPLE
WITH A DISABILITY
PROPERTY AT 440 BOBBIN HEAD ROAD, NORTH TURRAMURRA, 2074 (LOT 1 IN DP 858405)**

Dear Jonathan,

Reference is made to development consent **DA807/01** (LEC Ref. No. **10973 of 2001**) granted on 21 May 2022 for the erection of housing for older people and people with a disability at 440 Bobbin Head Road, North Turramurra, more formally described as Lot 1 in DP 858405 (the Site) and known as 'The Landings'.

1. INTRODUCTION

This statement has been prepared in support of a Section 4.56 Modification Application (MA) submitted to Ku-ring-gai Council, seeking to modify to development consent **DA807/01 (Appendix 1)** which granted consent for:

"Housing for Aged Persons and People with a Disability comprising 220 dwellings, car parking for 286 vehicles, community facilities and associated landscaping"

This application is made pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), on behalf of *LDK Turramurra Pty Ltd as trustee for the LDK Turramurra Unit Trust*. The following supporting documentation has been provided as part of this application:

Appendix 1	Development Consent (DA807/01)
Appendix 2	Updated Architectural Plans
Appendix 3	Design Report
Appendix 4	Owner's Consent and Company Extract
Appendix 5	Legal Advice relating to permissibility
Appendix 6	Cost Summary Report
Appendix 7	Access Report
Appendix 8	Not used
Appendix 9	ESD Report
Appendix 10	Stormwater Infrastructure Confirmation
Appendix 11	Acoustic Report

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Appendix 12	Bushfire Assessment
Appendix 13	Waste Management Plan
Appendix 14	Traffic and Parking Assessment
Appendix 15	BCA Report (inclusive of Fire Safety Schedule)
Appendix 16	Indicative Construction Traffic Management Plan

The overall intent of the proposed modification is to enable the internal reconfiguration of a single block within the Site, known as No. 1 Sir Neville McNamara Drive (the subject site), to allow for a higher degree of care for existing residents. The proposed modifications are discussed in detail at **Section 3**.

2. SITE LOCATION AND CHARACTERISTICS

The Site is identified as 440 Bobbin Head Road, North Turramurra, containing the following land holdings:

TABLE 1. SITE IDENTIFICATION		
Site Address	Legal Description(s)	Land Area (approx.)
440 Bobbin Head Road, North Turramurra	Lot 1 in DP858405	11.87ha

The Site is a large battle-axe allotment and exhibits a total area of approximately 11.87ha with a primary street frontage to Bobbin Head Road. Vehicular and pedestrian access to the Subject Site is facilitated via an access handle of approximately 180m in length and 14m wide off Bobbin Head Road.

The Site currently operates as 'The Landings', a retirement village comprising 220 individual homes, 106 villas, 80 apartments and 34 villa apartments.

Adjacent to the west and north of the Site is Ku-ring-gai Chase National Park. To the east of the Site is Lady Davidson Hospital and Eden Ridge residential development. The hospital has expansive grounds and is well landscaped with a number of established native trees spread across the Site. The dwellings within Eden Ridge residential development are primarily single storey villa style dwellings providing a common architectural style and theme. To the south of the Site is primarily residential development including Princess Juliana Retirement Lodge/ nursing homes.

The Site is affected by a number of encumbrances on the Certificate of Title. A transmission line traverses the south-western corner of the Site. In addition, a Bushland Regeneration and Propagation Area is located in the south-western corner.

The proposed modification is confined to the building at No. 1 Sir Neville McNamara Drive (the subject site), denoted by the star within **Figure 1** and **Figure 2** below. The subject site itself is clear of environmental affectations.



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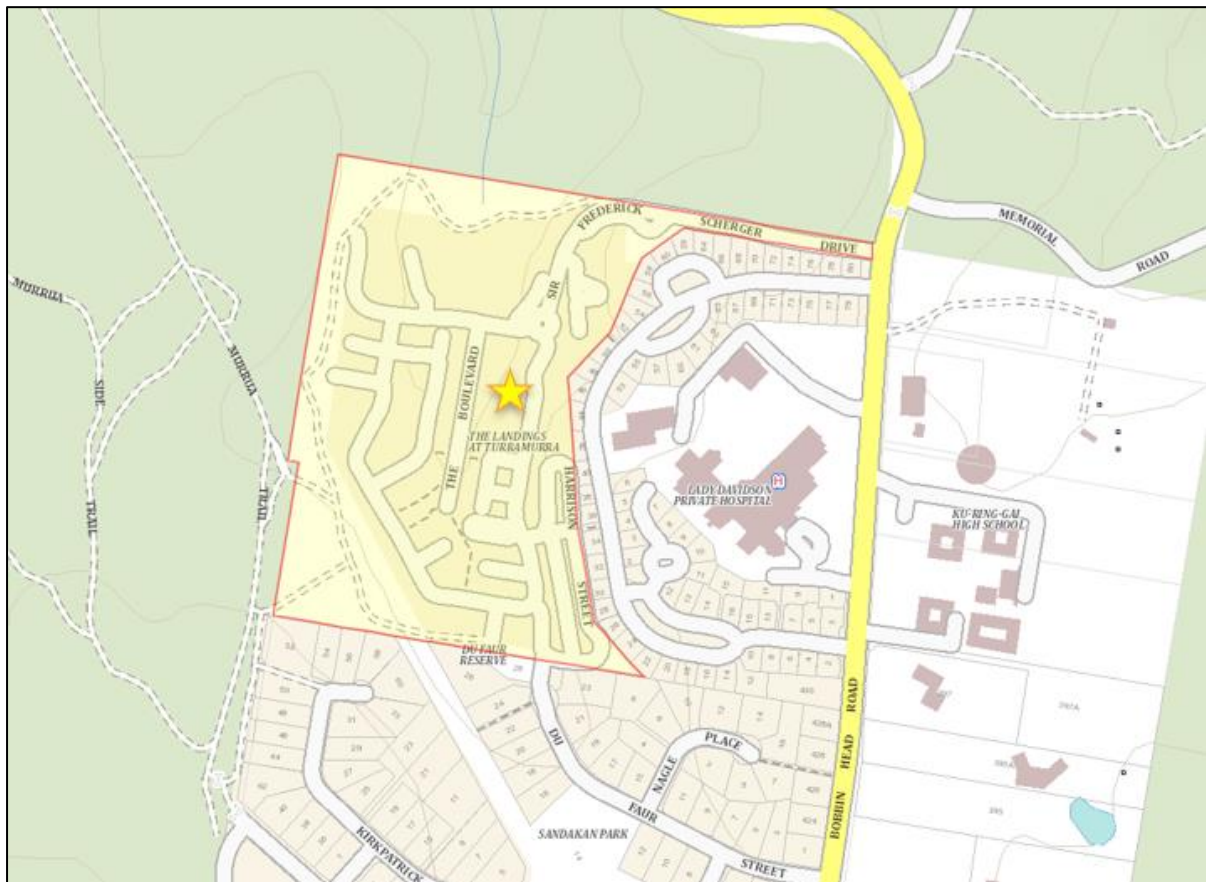


Figure 1. Cadastral Map (Source: SIX Maps, 2024)





Figure 2. Aerial Map (Source: Near Map, 2024)

3. PLANNING HISTORY

Below is a summary of the development applications relating to the Site that have been Determined and are considered relevant to the proposed modification.

TABLE 1. DEVELOPMENT HISTORY	
Development Consent reference	Description
DA0403/20	DA0403/20 was granted consent in February 2021 for alterations and additions to the community facilities at the existing seniors living development.
DA 0725/08	DA 0725/08 was lodged on 18 July 2008 for the construction of 46 SEPP HSPD (<i>Housing for Seniors or People with a Disability 2004</i>) dwellings within two apartment buildings (28 apartments) and 9 duplex villas (18 dwellings) at 440 Bobbin Head Road, North Turramurra (The Landings).



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	The application was refused by Council on 20 October 2008. The application was appealed to the Land and Environment Court. The appeal was upheld, and consent was granted on 12 June 2009 to modify development consent No. 807/01 pursuant to SEPP HSPD. This development consent does not incorporate the subject site.
DA 1426/06	On 21 December 2006, development Application DA 1426/06 was lodged with Council which sought to supersede the earlier approval in respect of that part of the Court approved development known as the 'East Bank'. Council refused the application on the basis that the Rural Fire Service was not prepared to issue a bush fire safety authority (s100B of the Rural Fires Act 1997) in accordance with the legislative requirements of s.79BA of the EPA Act 1979. Council could not grant consent to the application due to existing use rights and bushfire. On 28 February 2008, the Land and Environment Court dismissed an appeal against the refusal of a development application for construction of a residential precinct consisting of 58 dwellings, referred to as the 'East Bank Development', which intended to increase the total number of dwellings on the Site from 220 to 232.
DA 807/01	On 29 June 2001, DA 807/01 was lodged with Council which sought to supersede the previous approval DA 4843/96. The application was made under the SEPP 5 provisions (<i>State Environmental Planning Policy No. 5 – Housing for Aged Persons and People with a Disability</i>), which was the predecessor to SEPP HSPD. Consent was sought for the erection of 220 dwellings, community facilities, ancillary buildings, 286 car parking, landscaping and associated works. The application was appealed to the Land and Environment Court. The appeal was upheld, and consent was granted on 21 May 2002 at the request of the parties and with the agreement of the Rural Fire Services. The subject site comprises 'Villa Apartments – Type A'.
DA 4843/96	In 1998, RAAFA was granted consent (DA 4843/96) to erect a retirement village comprising 313 dwellings and community facilities. A Construction Certificate was issued on the 15 February 2001 and physical commencement was carried out.

4. PROPOSED MODIFICATIONS

Modifications are sought to allow the village and its facilities to respond to evolving best practices and community needs. The principal change would see the conversion of five (5) of the existing apartments at 1 Sir Neville McNamara Drive (being the subject site), which contains 12 bedrooms, into eight (8) secure studios with a combined communal living and dining space – similar to the **group home model**. This would be for the internal transfer of existing residents at The Landings who need a more secure environment due to their dementia journey; or need to be closer to a higher concentration of care.

These studios would be for existing residents only; LDK would not be selling these units to new residents. It is also intended that there would be couple splits i.e. one partner is well and stays in their existing dwelling whilst the unwell partner moves into this new secure environment.



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It is also proposed to repurpose the adjacent garages into a dementia day respite area that would service the whole village and would include areas that support the main building i.e. laundry and cleaning room, as well as additional office space for administrative functions, together with staff amenities. The day respite would comprise a free service to all residents which they or their partner could utilise to complete activities that enrich their lives, whilst allowing the care-giving partner some respite from their caring duties.

All changes would be internal within the existing building envelope; the appearance and façades of the building would not change save for some minor external alterations, namely the incorporation of glass balustrades for health and safety purposes, and the garage doors being converted into windows and residential doors.

The following table provides a comparison of the development parameters that are sought to be modified as part of this MA.

5. AMENDED DEVELOPMENT CONSENT

The desired development outcome as outlined above requires the following modifications to development consent **DA807/01**.

The proposed amendments are demonstrated in blue, with deletions as a ~~striketrough~~ and additions in bold.

4.1 Proposed Conditions

Condition No. 1

*Development consent is granted for a development pursuant to State Environmental Planning Policy No. 5 – Housing for Aged Persons and People with a Disability comprising 220 dwellings, car parking for 286 vehicles, community facilities and associated landscaping to be constructed in accordance with plans drawn by Stephen Bowers Architect Pty Limited numbered DA01C and DA02B-DA14B; and as amended by plans drawn by Rothe Lowman numbered **DA00.04 – DA00.05, DA00.10 – DA00.11, DA01.01 – DA01.03, DA02.01 – DA02.02, DA03.01 – DA03.02 and DA04.01.***

6. STATUTORY PLANNING FRAMEWORK

5.1 Environmental Planning and Assessment Act 1979

The EP&A Act is the principal planning and development legislation in New South Wales. Pursuant to Part 4, the proposal is local development. The modifications sought to the development consent **DA807/01** warrants consideration of the provisions of Section 4.56 of the EP&A Act. The provisions of Section 4.56 of the EP&A Act provided in **TABLE 2** below require consideration in this instance.

TABLE 2. SECTION 4.56 (1) ASSESSMENT

Clause	Response
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if— —	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and	Given the nature and extent of the changes proposed, the modifications sought would



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TABLE 2. SECTION 4.56 (1) ASSESSMENT

Clause	Response
<i>before that consent as originally granted was modified (if at all), and</i>	have no undue environmental impacts. This is discussed further below. Section 7 of this statement considers the proposed modification's impacts on the immediate and surrounding environments.
<i>(b) it has notified the application in accordance with— (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i>	It is understood that notification would be undertaken in accordance with Appendix 1 of Council's <i>Community Participation Plan 2020</i> , which denotes 'Type B' requirements.
<i>(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</i>	Council will be required to make a reasonable attempt to notify persons who made a submission in respect of DA807/01 of the proposed modification by sending written notice to the last known address to the consent authority of the objector or other person.
<i>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</i>	It is acknowledged that Council must consider any submissions that are received in connection with the proposed modification.
<i>(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.</i>	The proposed modifications are consistent with the matters referred to in section 4.15(1) of the EP&A Act (refer to below) and has considered the reasons given by the consent authority for the original grant of consent. This is further described in the section below.

5.1.1 Section 4.56 (1) – Substantially the same

Section 4.56 of the EP&A Act allows for the modification by consent authorities of consents granted by the Land and Environment Court. The consent authority in this instance would be Ku-ring-gai Council. Council may modify a Development Consent granted by the Court if it is satisfied that the resultant development is "substantially the same" development as the development for which the consent was originally granted.



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Recent decisions by the Court simplify the approach to modifying development consents, particularly when answering the “substantially the same” test, and provide support for ‘balanced’ assessments, allowing large changes to be approved via the Section 4.56 pathway.

Recent caselaw (*Realize Architecture Pty Ltd v Canterbury-Bankstown Council [2023] NSWLEC 1437*) has confirmed that the task of determining whether a development is “substantially” the same as the original approval does **not** need to follow any complicated formulas (such as comparing ‘qualitative’ and ‘quantitative’ differences or identifying ‘essential elements’ or ‘critical elements’ or ‘material and essential features’, despite these having been traditionally used throughout the industry for the past three decades. Instead, the approach can be an ‘instinctive’ decision based upon a balancing or weighting of the relevant facts. Ultimately this gives much more freedom to applicants and consent authorities to argue for or to support modifications, for whatever reasons they see as being relevant or important.

Similarly, older caselaw (*Michael Standley & Associates Pty Ltd v North Sydney Council [1998] 43 NSWLR 468*) has established that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a development consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

This is further analysed in *Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280* which applied a quantitative and qualitative test to determine what qualifies a development as being “substantially the same”, providing a comparison of the development as approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development. The comparison involves an appreciation, qualitatively, as well as quantitatively, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The development, as modified, is substantially the same development in all material aspects and would not result in a radical transformation of **DA0807/01** for the following reasons:

- The proposal would not result in any significant quantitative changes to the approved development, and from a qualitative perspective, the development would retain its identity as “Housing for Aged Persons and People with a Disability” with minimal evident change arising.
- The development would still offer the same services as those offered as part of the original approval; there would be no diminution in the services or facilities provided.
- The modifications proposed would be confined to one block (the subject site) within a wider development comprising 220 villas and apartments.
- There would be no change to vehicular access to and from the Site, or to emergency access arrangements.
- The development would continue to offer the intended types and range of residential accommodation.
- There would be no change to any built form, massing, physical configuration, or layout of the development as approved; save for the internal reconfiguration of the subject site.
- The proposed modifications would not change the relationship to surrounding development as the modifications would maintain the character of the original approval.
- There would be no material effect to the amenity of future occupiers or neighbours of the development owing to the retention of all openings within 1 Sir Neville McNamara Drive.



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- There would be no change to the intensity of the use. The conversion of the existing five apartments containing 12 bedrooms into 8 studios would result in a less intensive use of 1 Sir Neville McNamara Drive.

In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of DA0807/01. The proposal does not result in any significant quantitative or qualitative changes to the development as approved.

Therefore, the proposal as amended, would be substantially the same development as approved, and would satisfy the requirements for the application to be assessed and approved pursuant to Section 4.56 of the EP&A Act.

5.1.2 Section 4.15 – Reasons given by the consent authority for the grant of the consent

Section 4.15(1) of the EP&A Act specifies the matters which a consent authority must consider when determining a development application. The relevant matters for consideration under Section 4.15(1) of the EP&A Act are provided in **TABLE 3** below.

TABLE 3. SECTION 4.15(1)(A) CONSIDERATIONS	
Section	Response
Section 4.15(1)(a)(i) any environmental planning instrument, and	Refer to Section 6 of this statement.
Section 4.15(1)(a)(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	There are no applicable draft instruments for consideration.
Section 4.15(1)(a)(iii) any development control plan, and	Refer to Section 6.1 of this statement.
Section 4.15(1)(a)(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	Not applicable.
Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	Refer to Section 5.2 of this statement.
Section 4.15(1)(b)-(c)	Refer to Section 7 of this statement.

5.1.3 Section 4.46 – Integrated Development

Section 4.46 of the EP&A Act defines ‘integrated development’ as matters which require consent from Council and one or more authorities under related legislation. In these circumstances, prior to granting consent, Council must obtain from each relevant approval body their General Terms of Approval (GTA) in relation to the development.

The Site comprises bushfire prone land (although the subject site does not). The proposed MA constitutes integrated development under Section 4.46.



5.2 Environmental Planning & Assessment Regulation 2021

This application has been prepared in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

5.2.1 Schedule 3 – Designated Development

Section 4(1) of the EP&A Regulation states, that any development described in Part 2 of Schedule 3, would be declared to be Designated Development for the purposes of the EP&A Act. The proposed development, as a modification to an approved development for 'Housing for Aged Persons and People with a Disability', does not trigger the relevant thresholds and is therefore not considered 'Designated Development'.

5.3 State Environmental Planning Policy (Housing) 2021

On 26 November 2021, the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD) were repealed by *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Schedule 7A of the Housing SEPP provides savings and transitional provisions for specific development.

Specifically, Clause 2 of Schedule 7A states the following:

(1) This Policy does not apply to the following matters—

(a) a development application made, but not yet determined, on or before the commencement date,

(b) a concept development application made, but not yet determined, on or before the commencement date,

(c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,

(d) a development consent granted on or before the commencement date,

(da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date,

(e) an environmental impact statement prepared in compliance with an environmental assessment requirement that is—

(i) issued by the Planning Secretary on or before the commencement date, and

(ii) in force when the statement is prepared,

(f) the carrying out of an activity after the commencement date if—

(i) notice of the activity has been given to the council under the repealed ARH SEPP, clause 40A(2), and

(ii) an approval required under the Act, Part 5 for carrying out the activity is granted by the determining authority before 26 November 2022.

Pursuant to Clause 1(d), the Housing SEPP does not apply to development applications which were granted development consent on or before the commencement date of 26 November 2021. As the modification relates to a Development Application that received development consent on 21 May 2002, the Housing SEPP therefore, does not apply to this application.



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5.4 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

On 31 March 2004, the provisions of the *State Environmental Planning Policy No. 5 – Housing for Older People with a Disability* (SEPP 5) was repealed by SEPP HSPD.

Clause 6 of the HSPD SEPP provides transitional provisions for specific development.

Specifically, Clause 6 states the following:

(1) Despite clause 5 (1), State Environmental Planning Policy No 5—Housing for Older People or People with a Disability as in force immediately before its repeal continues to apply to and in respect of the following as if it had not been repealed—

(a) any development application made under that Policy on or before 18 February 2004, but not finally determined before the commencement of this Policy, and

(b) any development application, whether made before or after the commencement of this Policy, that relates to development for which a development consent was granted under the Policy as referred to in section 80 (4) of the Act, and

(c) the carrying out of any development for which development consent was granted under the Policy before its repeal or that is granted under the Policy (as continued in force by this subclause).

(2) For the purposes of subclause (1), State Environmental Planning Policy No 5—Housing for Older People or People with a Disability is taken to be continued in force as if any requirement in that Policy for the installation or use of thermostatic mixing devices for hot water in kitchens, laundries or bathrooms could be satisfied by the installation or use of tempering valves for hot water in bathrooms only.

(3) The provisions of State Environmental Planning Policy No 5—Housing for Older People or People with a Disability, as continued in force by subclause (1), do not apply so as to allow any enlargement, expansion or intensification of any development to which that subclause applies or any redevelopment.

Development consent was granted for **DA0807/01** under SEPP 5. As the proposed MA seeks the marginal enlargement, expansion or intensification of the approved development (being the minor increase in GFA at the subject site), the provisions of SEPP 5 would not apply pursuant to Clause 6(3) of the SEPP HSPD. As such, the SEPP HSPD applies to the proposed modification.

TABLE 4 below provides a summary of all relevant provisions of the SEPP HSPD as they apply to the proposed modification.

TABLE 4: SEPP HSPD ASSESSMENT		
Control	Compliance	Commentary
PART 2 – SITE-RELATED REQUIREMENTS		
27 Bushfire Prone Land <i>(1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land identified on a bush fire prone land map certified under</i>	YES	As illustrated below, the Site is mapped as bush fire prone land, however the subject site is not identified within such land. The Site mainly comprises part of the 'Vegetation Buffer' to the surrounding National Park.



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section 10.3 of the Act as “Bush fire prone land—vegetation category 1”, “Bush fire prone land—vegetation category 2”, “Bush fire prone land—vegetation category 3” or “Bush fire prone land—vegetation buffer” unless the consent authority is satisfied that the development complies with the requirements of the document titled <i>Planning for Bush Fire Protection</i>, ISBN 978 0 646 99126 9, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, Industry and Environment, dated November 2019.		 The MA nevertheless constitutes integrated development with referral to the NSW Rural Fire Service required. A Bushfire Assessment has also been prepared to support the MA and is enclosed at Appendix 12.
(4) Water and Sewer (a) The consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.	YES	The proposed modification relates primarily to the internal reconfiguration of an established block, being No. 1 Sir Neville McNamara Drive. Confirmation that the existing stormwater infrastructure is suitable for the proposed modification is enclosed at Appendix 10.
PART 4 - DEVELOPMENT STANDARDS TO BE COMPLIED WITH		
48. Standards that cannot be used to refuse development consent for residential care facilities (a) Building Height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or	YES	The proposed modifications do not seek to amend the established building envelope of the subject site..
(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,	YES	The proposed modifications do not seek to amend the established building envelope of the subject site.



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(c) landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,	N/A	No amendments are proposed to the existing/ approved, generous provision of external landscaping serving the Site and the subject site.
(d) parking: if at least the following is provided: (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia) , and (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and (iii) 1 parking space suitable for an ambulance.	YES	With reference to the Architectural Plans provided at Appendix 2 and the Traffic and Parking Assessment enclosed at Appendix 14, the proposed modification seeks to remove the five (5) ILUs and their allocated car parking spaces within the garages. No changes are proposed to the resident visitor car parking provision across the Site, therefore the removal of the ILUs generates a car parking 'credit' of one (1) resident visitor space. The proposed modification would generate a requirement of one (1) space. Furthermore, there would be no change to the number of staff at the Site, therefore there is no additional employee car parking requirement. An indented ambulance parking bay is already provided to the immediate north-east of the subject site.

5.5 Local Planning Context

5.5.1 Ku-ring-gai Local Environmental Plan 2015

The subject site is subject to the provisions of the *Ku-ring-gai Local Environmental Plan 2015* (KLEP 2015). The relevant permissibility and development standards are summarised below.

Zoning and permissibility

The subject site is zoned within the C4 Environmental Living zone pursuant to the KLEP 2015 as illustrated in **Figure 3** below.



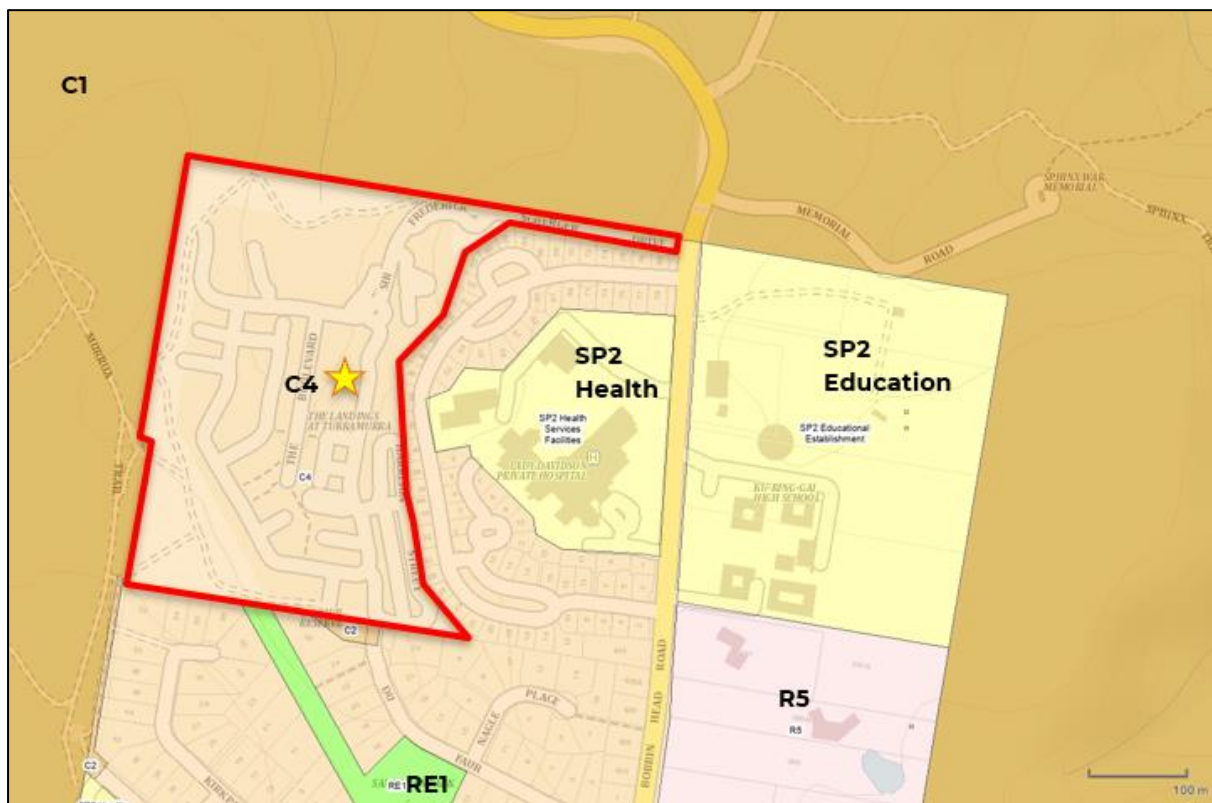


Figure 3. KLEP 2015 Zoning Map (Source: NSW Legislation, 2024)

The objectives and permitted land uses within the C4 Environmental Living zone are set out in **TABLE 6** below.

TABLE 5. ZONE OBJECTIVES AND PERMITTED LAND USE	
Requirement	Application to the Site
C4 Environmental Living	
1. Zone Objectives	- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. - To ensure that residential development does not have an adverse effect on those values. - To ensure development does not result in further fragmentation of ecological communities, biodiversity corridors or other significant vegetation or habitat. - To minimise direct and indirect risks to life, property and the environment from bushfire events. - To ensure that development in this zone on land that adjoins land in Zone C1 National Parks and Nature Reserves or Zone C2 Environmental Conservation is compatible with the objectives of those zones. - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
2. Permitted without Consent	Home occupations



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3. Permitted with Consent	<i>Bed and breakfast accommodation; Community facilities; Dwelling houses; Environmental facilities; Environmental protection works; Flood mitigation works; Home-based child care; Home businesses; Home industries; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Roads; Secondary dwellings; Tank-based aquaculture</i>
4. Prohibited	<i>Industries; Local distribution premises; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3</i>

The proposed modifications do not seek to alter the use approved under **DA807/01**. The permissibility of the proposed modification is discussed in detail within the Legal Advice provided by Mills Oakley, enclosed at **Appendix 5**.

Development standards

TABLE 6 below sets out the proposed modification's consistency and compliance with the relevant development standards and controls under the KLEP 2015.

TABLE 6. KLEP 2015 DEVELOPMENT STANDARDS	
Clause	Comment
Clause 4.1 – Minimum Subdivision Lot Size	The Site is subject to a minimum lot size of 1,500m ² . No subdivision or change to the existing lot size is proposed.
Clause 4.3 – Height of Buildings	The Site is subject to a maximum building height of 9.5m. No change to the maximum building height is proposed.
Clause 4.4 – Floor Space Ratio	The Site is subject to a maximum floor space ratio of 0.2:1. There would be no change to the existing quantum of floorspace at the Site. The proposed modification seeks the internal re-configuration of the subject site only.
Clause 5.10 – Heritage Conservation	The Site is not identified as containing any heritage items and is not located within a heritage conservation area. The Site does however adjoin the following heritage item: ▪ <i>Item No. 1491: "Flowton" Lady Davidson Hospital Administration Block, of local significance.</i> Given the minor nature of the proposed modifications, it is considered that there would be no impacts to the heritage significance of this item.
Clause 6.1 – Acid Sulfate Soils	The Site is identified as comprising Class 5 Acid Sulfate Soils in the relevant KLEP 2015 mapping and accordingly is subject to the provisions of Clause 6.1. Development consent is required for works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum by which the water table is likely to be lowered below 1m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.



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	The proposed modification would not alter the water table below 1m. No intrusive works are proposed. Therefore, it is not considered that an acid sulfate soil assessment is required.
Clause 6.4 – Riparian Lands and Watercourse	The Site is identified as having a watercourse traverse across it in a north-south direction. Therefore Clause 6.4 applies. The Site is identified as containing a Category 3 and 3a Riparian Land. The proposed modification would not alter the watercourse across the Site. No further consideration of this clause is required.

6 NON-STATUTORY PLANNING FRAMEWORK

6.1 Ku-ring-gai Development Control Plan 2024

The *Ku-ring-gai Development Control Plan 2024* (KDCP 2024) supplements the KLEP 2015 and provides a comprehensive framework to guide development in Ku-ring-gai Local Government Area.

It is noted KDCP 2024 does not specify provisions for Seniors Living Development.

It is further noted that the proposed modification comprises the internal re-configuration of the subject site (being the property at 1 Sir Neville McNamara Drive).

7 LIKELY IMPACTS OF DEVELOPMENT

7.1 Context and Setting

The proposed modification maintains the form, scale, layout, and qualitative identity of the approved development as 'Housing for Aged Persons and People with a Disability'.

The scope of the proposed modification is limited to a single block, being No. 1 Sir Neville McNamara Drive (the subject site), to enable the conversion of its five (5) existing apartments to eight (8) secure studios with a combined communal living and dining space – similar to the **group home model**. This would be for the internal transfer of existing residents at The Landings who need a more secure environment due to their dementia journey; or need to be closer to a higher concentration of care.

The scope of works at the subject site is largely limited to the internal reconfiguration of the subject site, with minor consequential alterations to its external fabric; notably arising from the conversion of the existing garages, which would marginally increase the GFA by 239m².

The proposed modification would not exhibit any environmental effects beyond the parameters of the approved scheme and would not adversely impact on the amenity of any adjoining residents at the Site.

The proposed modification is therefore considered to retain its compatibility with the site context and setting.

7.2 Built Form

The proposal, as modified, does not intensify the visible built form of the development, instead focusing on the internal layout of the subject site.

The only slight proposed change to the built form relates to the conversion of the existing garages into a dementia day respite area that would service the whole village and would include areas that support



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the main building i.e. laundry and cleaning room, as well as additional office accommodation for administrative functions, together with staff amenities. This would marginally increase the GFA by 239m².

7.3 Design and Appearance

The proposal, as modified, maintains the design and appearance of the approved development. Amendments proposed to the external fabric of No. 1 Sir Neville McNamara Drive comprise minor alterations as a consequence of its internal reconfiguration: namely the incorporation of glass balustrades for health and safety purposes, and the garage doors being converted into windows and residential doors.

7.4 Traffic and Transport

With reference to the Architectural Plans provided at **Appendix 2** and the Traffic and Parking Assessment enclosed at **Appendix 14**, the proposed modification seeks to remove the five (5) ILUs and their allocated car parking spaces within the garages.

No changes are proposed to the resident visitor car parking provision across the Site, therefore the removal of the ILUs generates a car parking 'credit' of one (1) resident visitor space. The proposed modification would generate a requirement of one (1) space.

Furthermore, there would be no change to the number of staff at the Site, therefore there is no additional employee car parking requirement.

An indented ambulance parking bay is already provided to the immediate north-east of the subject site.

It is pertinent to note that the existing residents of No. 1 Sir Neville McNamara Drive would be relocated to alternative accommodation within the Site that is suitable for them. All apartments that they would be moving to would have existing parking spaces attached to them, meaning there would be no additional parking stress.

7.5 Emissions

The development approved under **DA807/01** satisfactorily assessed the potential noise and vibration impacts anticipated with the development and its operations.

Anticipated noise impacts associated with the proposed modification have been assessed within the Acoustic Assessment enclosed at **Appendix 11**.

7.6 Other Matters for Consideration

All other matters for consideration have been previously assessed as part of **DA807/01** and remain unaffected by the proposed modification.

7.7 Suitability of Site for Development

The subject site will remain suitable for the purpose of a Seniors Living development that responds to the characteristics of the Site and the surrounding locality.

7.8 Submissions

No submissions have been received at the time of writing this statement. Any submissions received post lodgement shall be reviewed and considered.



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7.9 The Public Interest

The development as modified would have no adverse impact on the public interest. The proposed modifications would improve the functionality of operations, with no adverse visual or amenity impacts for neighbouring properties or the public domain.

8 CONCLUSION

This application seeks consent for modifications to development consent **DA807/01**, pursuant to Section 4.56 of the EP&A Act. The proposal has been prepared after taking into consideration the following key issues:

- Development history of the subject site;
- Development Consent **DA807/01**;
- Site context and locality;
- Relevant heads of consideration under Section 4.56 of the EP&A Act; and
- Relevant statutory and non-statutory planning instruments.

The proposed modifications are considered acceptable, and worthy of support by Council, for the following reasons:

- The proposed modification allow the village and its facilities to respond to evolving best practices and community needs;
- The proposed modifications maintain compliance with the key development standards contained within the SEPP HSPD and the KLEP 2015; and
- The development, as modified, would remain substantially the same, and would not result in any additional environmental impacts.

In light of the above, the modifications proposed to development consent **DA807/01** are considered worthy of support by Ku-ring-gai Council.

Should you require additional information, please do not hesitate to contact Jamie Bryant on 0407 227 431 or at jbryant@willowtp.com.au.

Yours sincerely,



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