

DA/328/2024 – Bush Fire Land Use Considerations

3 Violet Town Rd, Mount Hutton NSW 2290

26000011.001A, NCA25L182902

20 June 2025



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Lake Macquarie City Council
PO Box 1906
Hunter Region Mail Centre
NSW 2310

Attention: Emma Sabovic

Subject: DA/328/2024 – Bush Fire Land Use Considerations
3 Violet Town Rd, Mount Hutton NSW 2290

1 INTRODUCTION

This letter has been prepared on behalf of Opal Healthcare Pty Ltd (Opal Healthcare) (the 'Client'), Bloompark Consulting Pty Ltd (Bloompark) and Willowtree Planning Pty Ltd (Willowtree Planning) in relation to Development Application DA/328/2024, classified as *alterations and additions to a residential care facility* (the 'proposed development') at Lot 100 Deposited Plan (DP) 802320, Opal Hillside, 3 Violet Town Road, Mount Hutton NSW 2290 (the 'subject site').

The Applicant for DA/328/2024 is Principal Healthcare Finance Pty Ltd, who is understood to be represented by the Client (Opal Healthcare) and Bloompark. The buildings that are the subject to DA/328/2024 are located in the central / eastern portion of the subject site and include:

- A 'H' shaped single storey brick building containing 32 bedrooms providing 94 beds, lounge, dining, kitchen, laundry, ancillary resident facilities and staff facilities with associated landscaping.
- An attached, adjoining two storey brick building to the east containing 47 assisted living apartments, a communal lounge area, laundry and storeroom.

DA/328/2024 is currently under assessment by Lake Macquarie City Council (LMCC), with issue of a Bush Fire Safety Authority (BFSA) required for DA/328/2024 as Integrated Development under Section 4.46 of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) and Section 100B of the NSW *Rural Fires Act 1997* (RF Act).

The Commissioner of NSW Rural Fire Service (RFS) is the approval authority for issue the BFSA under Section 100B of the RF Act.

2 BACKGROUND

Kleinfelder prepared the Bush Fire Assessment Report (BFAR) for DA/328/2024, including amendment of the BFAR to address a request for information (RFI) issued by the RFS on 3 May 2024 (RFS Ref. DA20240327001252-Original-1). The RFS issued General Terms of Approval (GTA) for DA/328/2024, provided to Opal Healthcare as part of draft conditions of consent on 6 March 2025. Kleinfelder prepared a response to the RFS GTA titled *DA/328/2024 – Bush Fire Review* (dated 28 April 2025, Ref. 26000011.001A) to support the response to draft conditions of consent prepared by Willowtree Planning.

Following review of the Kleinfelder letter (*DA/328/2024 – Bush Fire Review*), the RFS issued a request for information (RFI) for DA/328/2024 on 16 May 2025 (RFS Ref. DA20240327001242-S38-1), requesting the following:



- *In order to proceed, an updated Bush Fire Assessment Report, will need to be provided for further assessment of the proposal against the provisions of Planning for Bush Fire Protection 2019 and should address, the extent to which the proposed development conforms or deviates from the specifications in PBP 2019, addressing all the requirements in Clause 45 of the Rural Fires Regulation 2022;*
- *Additional information will need to be provided to illustrate, the schemes compliance with PBP 2019, based on its change of use (assisted living units into a bed residential care facility), and therefore not able to be classed as Infill SFPP, as well as reduced separation distances and would therefore have to comply with the required APZs to achieve compliance with PBP 2019 Chapters 3 and 6 and exposure to radiant heat levels not in excess of 10kW/sqm;*
- *The proposed works, as described in their Statement of Environment Effects, by Willowtree Planning, Ref: WTJ23- 409, Andrew Pigott, 18 March 2024, for alterations and additions including the conversion of 47 assisted living units into a 45 bed residential care facility; internal alterations; new communal spaces; new lift; partial roof replacement; external works and upgrades of building services; and,*
- *In the event that the proposal, cannot satisfy and illustrate compliance with Method 1 Deemed to satisfy Table A1.12.1, they may want to investigate the preparation of an alternate performance based solution via AS 3959 2018 Method 2 Radiant heat modelling, to illustrate that with the reduced separation distance from 67m to 24m, can still result in resultant radiant heat levels, less than 10kW/sqm and achieve compliance with PBP 2019 specifically Section 6.8.1 APZs and building construction.*

Kleinfelder have liaised with the NSW RFS (phone call 15 May 2025) regarding DA/328/2024. Kleinfelder were informed that the second point listed above (RFS RFI, 16 May 2025), specifically that “...based on its change of use (assisted living units into a bed residential care facility...” DA/328/2024 cannot “.... be classed as Infill SFPP....” is pertinent to the current assessment of the proposed development by the RFS.

3 LETTER PURPOSE

This letter has been prepared at the request of the Client’s project management representative, Bloompark, to accompany a meeting request between the Client’s representatives, the RFS and LMCC. The intent of the meeting is to discuss the ‘change of use’ perspective and agree on the best path forward for determination of DA/328/2024.

The following sections of this letter have been prepared to inform LMCC and the RFS of the Client’s representatives’ perspective of the assessed ‘change of use’ and how this relates to bush fire assessment under Section 4.14 of the EP&A Act and Section 100B of the RF Act.

4 CHANGE OF USE – BUSH FIRE CONTEXT

4.1 LAND USE APPROVALS

Review of the LMCC online DA register indicates that approval for construction of a 100-bed nursing home occurred under DA/234/1983, which pre-dates the first iteration of *Planning for Bush Fire Protection*, being *Planning for Bush Fire 2001* (PBP 2001), endorsed in 2002.

Table 1 provides a list of DA’s relevant to the existing building subject to DA/328/2024 alongside the land-use category assigned to the relevant DA, determined via ‘Application Description’ on the LMCC DA Tracker unless stated otherwise. In addition, **Table 1** provides the current ‘planning definition’ for each land use, based upon review of the following legislature:

- *NSW Public Health Act 2010.*
- *NSW Retirement Villages Act 1999.*
- *NSW Standard Instrument—Principal Local Environmental Plan.*
- *NSW Lake Macquarie Local Environmental Plan 2014 (LM LEP 2014).*
- *Commonwealth Aged Care Act 1997.*



Table 1: DA's relevant to DA/328/2024 and their applicable land use.

DA Reference	Application Description	Approval Date	Land Use Category	Land Use Definition	
				Description	Source
DA/234/1983	100 Bed Nursing Home	22/08/1983	Nursing Home	Nursing home means a facility at which residential care (within the meaning of the <i>Aged Care Act 1997</i> of the Commonwealth) is provided, being— (a) a facility at which that care is provided in relation to an allocated place (within the meaning of that Act) that requires a high level of residential care (within the meaning of that Act), or (b) a facility that belongs to a class of facilities prescribed by the regulations.	<i>Public Health Act 2010</i> - Section 5
				Meaning of residential care (1) Residential care is personal care or nursing care, or both personal care and nursing care, that: (a) is provided to a person in a residential facility in which the person is also provided with accommodation that includes: (i) appropriate staffing to meet the nursing and personal care needs of the person; and (ii) meals and cleaning services; and (iii) furnishings, furniture and equipment for the provision of that care and accommodation; and (b) meets any other requirements specified in the Subsidy Principles. (2) However, residential care does not include any of the following: (a) care provided to a person in the person's private home; (b) care provided in a hospital or in a psychiatric facility; (c) care provided in a facility that primarily provides care to people who are not frail and aged; (d) care that is specified in the Subsidy Principles not to be residential care.	Commonwealth <i>Aged Care Act 1997</i> - Section 41-3
DA/528/1984	Retirement Village	29/01/1985	Retirement Village	Meaning of “retirement village” (1) For the purposes of this Act, a retirement village is a complex containing residential premises that are—	<i>Retirement Villages Act 1999</i> - Section 5



DA Reference	Application Description	Approval Date	Land Use Category	Land Use Definition	
				Description	Source
				<p>(a) predominantly or exclusively occupied, or intended to be predominantly or exclusively occupied, by retired persons who have entered into village contracts with an operator of the complex, or</p> <p>(b) prescribed by the regulations for the purposes of this definition.</p> <p>(2) It does not matter that some residential premises in the complex may be occupied by employees of the operator or under residential tenancy agreements containing a term to the effect that this Act does not apply to the premises the subject of the agreement (instead of being occupied under residence contracts), or that those premises do not form part of the retirement village.</p> <p>(3) However, a retirement village does not include any of the following—</p> <p>(a) any building or any part of a building used or intended to be used for the provision of residential care, within the meaning of the <i>Aged Care Act 1997</i> of the Commonwealth, by an approved provider under that Act, Note.</p> <p>Paragraph (a) excludes from the definition of retirement village buildings that are commonly known as Commonwealth-subsidised hostels and nursing homes.</p> <p>(b) a nursing home within the meaning of the <i>Public Health Act 2010</i>,</p> <p>(c) any building or part of a building intended to be used for the provision of respite care (within the meaning of <i>Aged Care Act 1997</i> of the Commonwealth),</p> <p>(d) a community within the meaning of the <i>Residential (Land Lease) Communities Act 2013</i>,</p> <p>(e) any residential premises the subject of a residential tenancy agreement to which the NSW Aboriginal Housing Office or the New South Wales Land and Housing Corporation is a party,</p> <p>(f) a boarding-house or lodging house,</p> <p>(g) any accommodation provided in a complex for employees of the complex who are not residents of the retirement village,</p> <p>(h) any residential premises the subject of a residential tenancy agreement in the form prescribed under the Residential Tenancies Act 2010 to which the operator of a retirement village is a party and that contains a term to the effect that this Act does not apply to the residential premises the subject of the agreement,</p>	



DA Reference	Application Description	Approval Date	Land Use Category	Land Use Definition	
				Description	Source
				(i) any other place or part of a place excluded from this definition by the regulations.	
DA/296/1988	Aged Persons – Hostel Suites/ Dwelling Units	22/08/1988	Aged Persons – Hostel Suites/ Dwelling Units	<p>independent living unit means a dwelling or part of a building, whether or not attached to another dwelling—</p> <p>(a) used to house seniors or people with a disability, and</p> <p>(b) containing private facilities for cooking, sleeping and bathing, and</p> <p>(c) where clothes washing facilities or other facilities for use in connection with the dwelling or part of a building may be provided on a shared basis,</p> <p>but does not include a hostel.</p> <p>Note—</p> <p>Independent living units are a type of <i>seniors housing</i></p>	<p><i>Standard Instrument—Principal Local Environmental Plan</i></p> <p><i>Lake Macquarie Local Environmental Plan 2014</i></p>
DA/2195/1999	2 Lot Subdivision	23/02/1999	N/A	N/A	N/A
DA/474/2002	Storage Shed	19/09/2001	No change assumed.	N/A	N/A
DA/2229/2002	Nursing Home Extension	18/10/2002	Nursing Home	See DA/234/1983	See DA/234/1983
DA/148/2009	Internal Alterations to Nursing Home	5/03/2009	Nursing Home	See DA/234/1983	See DA/234/1983
DA/299/2012	Retirement Village	5/12/2012	Described as 'Retirement Village' (LMCC DA Description), 'Nursing Home', 'Assisted Living', Retirement Living' under Australian Bushfire Assessment Consultants BFAR (2012) ¹	Note – separate building.	Note – separate building.
DA/926/2014	Sprinkler System Installation - Seniors Housing	11/07/2012	Seniors Housing (LMCC DA Tracker), Aged Care	<p>Seniors housing means a building or place that is—</p> <p>(a) a residential care facility, or</p>	<i>Standard Instrument—Principal Local Environmental Plan</i>

¹ Australian Bushfire Assessment Consultants (2012). *Bushfire Assessment In relation to Proposed New Nursing Home Building Domain Principal Hillside Lake Macquarie Lot 100 DP 802320 3 Violet Town Road Mount Hutton*, Issue 3, dated February 2012



DA Reference	Application Description	Approval Date	Land Use Category	Land Use Definition	
				Description	Source
			Facility (BBC Consulting Planners, 2012) ²	<p>(b) a hostel within the meaning of <i>State Environmental Planning Policy (Housing) 2021</i>, Chapter 3, Part 5, or</p> <p>(c) a group of independent living units, or</p> <p>(d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),</p> <p>and that is, or is intended to be, used permanently for—</p> <p>(e) seniors or people who have a disability, or</p> <p>(f) people who live in the same household with seniors or people who have a disability, or</p> <p>(g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,</p> <p>but does not include a hospital.</p>	<i>Lake Macquarie Local Environmental Plan 2014</i>
				<p>Residential care facility means accommodation for seniors or people with a disability that includes—</p> <p>(a) meals and cleaning services, and</p> <p>(b) personal care or nursing care, or both, and</p> <p>(c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,</p> <p>but does not include a dwelling, hostel, hospital or psychiatric facility.</p> <p>Note.</p> <p>Residential care facilities are a type of <i>seniors housing</i></p>	<i>Lake Macquarie Local Environmental Plan 2014</i>
DA/186/2014	Signage	17/03/2014	Not relevant.		
DA/1325/2014	Retirement Village		Described as 'Retirement Village' (LMCC DA Description), 'Residential	Note – separate building.	Note – separate building.

² BBC Consulting Planners (2012). *Statement of Environmental Effects – Fire Sprinkler System at Hillside Residential Aged Care Facility, 3 Violet Town Road, Mount Hutton*, prepared for Domain Principal Group, Ref. 12063, June 2012



DA Reference	Application Description	Approval Date	Land Use Category	Land Use Definition	
				Description	Source
			Aged Care Facility' (LMCC, 2015) ³ .		
DA/1325/2014 /A	Retirement Village (Modification)	1/12/2015	See above.	See DA/1325/2014	See DA/1325/2014
DA/1325/2014 /B	Retirement Village (Modification)	31/03/2017	See above.	See DA/1325/2014	See DA/1325/2014

³ LMCC (2015). *DA/1325/214 Report for the Hunter and Central Coast Joint Regional Planning Panel*



Review of **Table 1** indicates that the building(s) subject to DA/328/2024 have been previously classified as several different land uses, including (but not limited to):

- Nursing Home.
- Retirement Village (despite inconsistencies with other classifications under current legislation, see Section 5(3) of the NSW *Retirement Villages Act 1999* as outlined in **Table 1**).
- Seniors Housing, which includes the classification of a Residential Care Facility.

The definition of ‘seniors’ under Chapter 3 (Diverse Housing), Part 5 (Housing for seniors and people with a disability), Division 2 (Preliminary), Section 82 (Definitions) of the NSW *State Environmental Planning Policy (Housing) 2021* includes reference to “.... people who are resident at a facility at which residential care, within the meaning of the *Aged Care Act 1997 of the Commonwealth*....”. This is consistent with reference to “...residential care (within the meaning of the *Aged Care Act 1997 of the Commonwealth*)...” for the definition of ‘nursing home’ under the NSW *Public Health Act 2010* (**Table 1**). Nursing homes are specifically stated as SFPP development under NSW Planning Circular PS 21-010⁴.

4.2 RF ACT AND REGULATION – SPECIAL FIRE PROTECTION PURPOSE

The classification of Special Fire Protection Purpose (SFPP) development is made pursuant to Section 100B(6) of the RF Act and clause 47 of *Rural Fires Regulation 2022* (RF Regulation) as follows:

RF Act, Section 100B(6):

(6) *In this section—*

special fire protection purpose means the purpose of the following—

- (a) *a school,*
- (b) *a child care centre,*
- (c) *a hospital (including a hospital for the mentally ill or mentally disordered),*
- (d) *a hotel, motel or other tourist accommodation,*
- (e) *a building wholly or principally used as a home or other establishment for mentally incapacitated persons,*
- (f) *seniors housing within the meaning of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004,*
- (g) *a group home within the meaning of State Environmental Planning Policy No 9—Group Homes,*
- (h) *a retirement village,*
- (i) *any other purpose prescribed by the regulations.*

RF Regulation, clause 47:

For the purposes of the Act, section 100B(6), definition of special fire protection purpose, paragraph (i), the following purposes are prescribed—

- (a) *a manufactured home estate, within the meaning of State Environmental Planning Policy (Housing) 2021, Schedule 7, comprising two or more caravans or manufactured homes, used for the purposes of casual or permanent accommodation, but not tourist accommodation,*
- (b) *a sheltered workshop, or other workplace, established solely for the purpose of employing persons with disabilities,*
- (c) *a respite care centre, or similar centre, that accommodates persons with a physical or mental disability or provides respite for carers of the persons,*
- (d) *student or staff accommodation associated with a school, university or other educational establishment,*

⁴ NSW Government (2021). *Planning Circular - Development on bush fire prone land*, PS 21-010, revised 10 August 2023 < <https://www.planning.nsw.gov.au/sites/default/files/2023-03/planning-circular-ps-21-010-development-on-bush-fire-prone-land.pdf> >



(e) a community bush fire refuge approved by the Commissioner.

Communication with the RFS (email titled *RE: Seniors Housing SEPP - S.100B RF Act and PBP* and dated 18/12/2024) confirmed that reference to the superceded *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* under Section 100B(6)(f) of the RF Act may be taken as a reference to the meaning of ‘seniors housing’ as per the *State Environmental Planning Policy (Housing) 2021*, which then refers to the definition provided under the *NSW Standard Instrument—Principal Local Environmental Plan (Table 1)*.

The subject buildings have previously been classified as ‘Seniors Housing’ and have thus been previously classified as, and therefore operated as, SFPP development pursuant to Section 100B(6)(f) of the RF Act and approvals DA/296/1988 (if classified as ‘independent living units’) and DA/926/2014. Where a ‘nursing home’ is considered equivalent to ‘seniors housing’ (see **Section 4.1**), DA/234/1983, DA/2229/2002 and DA/148/2009 provide further classification for the subject buildings to be classified as SFPP.

Despite inconsistencies between the definition of ‘retirement village’ (DA/528/1984, DA/299/2012, DA/1325/2014) and other approved land uses (see **Table 1**) it is noted that a ‘retirement village’ is classified as SFPP development pursuant to Section 100B(6)(h) of the RF Act.

4.3 DA/328/2024 AND CURRENT LAND USE

4.3.1 Classification

DA/328/2024 includes alterations and additions to an existing seniors housing development and formalisation of an existing at grade carpark for staff and visitors. Specifically, DA/328/2024 is described as including the following items under the Willowtree Planning SEE (2024):

- Conversion of 47 assisted living units into a 45 bed residential care facility (43 single rooms + 2 companion rooms);
- Internal alterations to facilitate the proposed use;
- Creation of new communal spaces (within the existing building);
- Installation of new lift;
- Partial roof replacement;
- External refurbishment works including upgraded balcony balustrades;
- Upgrade building services i.e. electrical and data, hydraulic, security, mechanical and fire;
- External addition and upgrades to create a new entry point and Porte Cochere for the Banks Building; and
- Formalisation and paving of an existing informal at grade, gravel carpark for staff and visitors to provide 35 spaces.

(Willowtree Planning, SEE, pp.16, 2024)⁵.

DA/328/2024 includes development for the purposes of Seniors Housing and the sub-category of a Residential Care Facility. This development is thus classified as SFPP Development pursuant to Section 100B(6)(f) of the RF Act. However, given the current land-use as SFPP development, the proposed development does not constitute a change of classification under the RF Act with consistent classification of ‘Seniors Housing’.

4.3.2 Assessment under PBP 2019

Assessment of SFPP development in NSW occurs in-line with the requirements of the RFS document *Planning for bush fire protection 2019* (PBP 2019), *Planning for Bush Fire Protection Addendum November 2022* (PBP Addendum 2022) and clause 45(2) of the RF Regulation.

SFPP Development is assessed pursuant to Chapter 6 of PBP 2019, with Section 6.4 of PBP 2019 applicable to the development of existing SFPP facilities. On this basis, Section 6.4 of PBP 2019 states the following regarding application of bush fire protection measures for an existing SFPP facility (pp. 52):

“The intention for any building work occurring within an existing SFPP development is to achieve a better bush fire outcome than if the development did not proceed. Achieving this may require a combination of measures including improved construction standards, APZs and evacuation management. This may result in a level of

⁵ Willowtree Planning (2024). *Statement of Environmental Effects: Alterations and additions to an existing seniors housing development*, Ref. WTJ23-409, Version 1, dated 11 March 2024



retrofitting of existing buildings and managing other portions of the site (i.e. APZs) to ensure an improved level of bush fire protection.

Intensification of the use or increase in occupancy must consider the risk to occupants and firefighters. Where practically achievable, full compliance should be provided before variations to the required BPMs are considered. Proposals that involve internal alterations only, are not subject to any specific requirements unless the proposal results in a change of use, re-purpose and/or involves an increase in occupants”.

Kleinfelder notes that the RFS RFI (16 May 2025) states that “...based on its change of use (assisted living units into a bed residential care facility...” DA/328/2024 cannot “.... be classed as Infill SFPP....”. However, as provided above, PBP 2019 allows for intensification of use for existing SFPP, allowing assessment of use changes under Section 6.4 where the use remains a SFPP development.

In light of the above, it is considered that assessment of DA/328/2024 should utilise a combination of bush fire protection measures (BPMs) to balance bush fire protection, site constraints as described under Section 5 of the Kleinfelder letter DA/328/2024 – Bush Fire Review (dated 28 April 2025, Ref. 26000011.001A).

5 NATIONAL CONSTRUCTION CODE 2022

Attachment 1, prepared by CKDS (2025)⁶ provides an illustration of the components of DA/328/2024 and their associated building class under the National Construction Code 2022 (NCC 2022), whereby the following is noted:

- DA/328/2024 includes minor ‘new works’ (adjacent to entry) and ‘refurbishment’ (lounge / staff entry, dining, kitchen, nearby rooms) of the existing ‘H’ shaped banks building, which is classed as a Class 9a building under the NCC. These works do not constitute a change of use for the prescribed Class 9a building (see **Attachment 1**).
- DA/328/2024 includes internal refurbishment (dining, lounge, activities, bedrooms / internal living spaces) of Class 3 building components, with ‘new works’ in areas classified as a Class 3 building including works for communal and operational spaces alongside construction of a new roof space. Residential care facilities for the elderly may be classed as Class 3 buildings under the NCC 2022 where they do not meet the classification of a Class 9 (a, b or c) building.

Attachment 1 indicates that, under the NCC 2022, DA/328/2024 does not seek to modify existing Class 3 and Class 9a building classifications.

6 CONCLUSION

Thank you for your consideration of this response to the RFS RFI issued for DA/328/2024. If you have any questions please do not hesitate to contact me using the below listed contact details.

Sincerely,

Kleinfelder Australia Pty Ltd

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⁶ CKDS (2025). *Opal Tingira Hills – Miscellaneous – Markup Issued to Bloompark*, drawing SK-0013, project 22135



Attachments

Attachment 1: Building Class Works Diagram (CKDS, 2025)



ATTACHMENT 1: BUILDING CLASS WORKS DIAGRAM (CKDS, 2025)



