

COUNCIL ASSESSMENT REPORT

Panel Reference	
DA Number	DA20/0419.02
LGA	Penrith City Council
Proposed Development	Clause 4.56 Modification Application – Addition of Two Residential Balconies to Eastern Elevation – Related to an Approved Residential Aged Care Facility
Street Address	5-7 Floribunda Avenue, Glenmore Park NSW 2745
Applicant/Owner	Owner-Applicant - Principal Healthcare Finance P/L
Date of DA lodgement	15 September 2020
Number of Submissions	No submissions
Recommendation	Approval, subject to the amendment to Condition 1
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Development with a CIV >\$30 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River • State Environmental Planning Policy (State and Regional Development) • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • State Environmental Planning Policy No.55 – Remediation of Land • State Environmental Planning Policy (Vegetation in Non-rural Area) 2017 • Rural Fires Act 1997 • Penrith Local Environmental Plan 2010 • Penrith Development Control Plan 2014
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Appendix A – Section 34 Court Conditions • Appendix B – Applicant Town Planner's Letter • Appendix C – Architectural Plans
Clause 4.6 requests	Not applicable
Summary of key submissions	Not applicable, no submissions.
Report prepared by	Kathryn Saunders – Senior Development Assessment Planner
Report date	29 October 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Not Applicable

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not Applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Not applicable

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

SWCPP Ref. No.:	PPSSWC-107
DA No.:	DA19/0419.02
PROPOSED DEVELOPMENT:	Section 4.56 Modification to an Approved Residential Aged Care Facility for the Addition of Two Balconies with Pergolas & Balustrades - Lot 1 DP 825553,5 - 7 Floribunda Avenue, GLENMORE PARK NSW 2745
APPLICANT:	Principal Healthcare Finance Pty Ltd
REPORT BY:	Kathryn Saunders, Senior Development Assessment Planner, Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of a Section 4.56 modification application related to a Court issued consent which approved the demolition of existing structures and the construction of a residential aged care facility at 5-7 Floribunda Avenue, Glenmore Park. Approval was granted to application no DA19/0419 by the Land and Environment Court of NSW by way of a Section 34 Agreement on 19 May 2020 (Penrith City Council ats Principal Healthcare Finance Pty Limited - LEC No. 2019/321826).

This s4.56 modification application seeks approval for alterations and additions to the approved residential aged care facility which comprises of the following:

- the addition of two upper level residential balconies to the rear facing, eastern elevation of the building.

The northern most balcony is adjacent to the northern boundary, which is shared with a Council owned community centre and car parking hardstand. The southern most balcony provides an east facing outlook only, and is flanked on the south, west and northern sides by the 'wings' of the aged care facility building itself.

The additions do not add calculable floor space to the development and in this respect, the approved floor space ratio remains, as was approved by the Court under DA19/0419 and is less than 1:1 FSR, compliant with clause 48 *Standards that cannot be used to refuse development consent for residential care facilities*, under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. No floor space ratio is identified for the site under PLEP 2010.

Under Penrith Local Environmental Plan 2010 (PLEP), the proposal is defined as development ancillary to an approved residential care facility and is permissible in the R2 Low Density Residential zone under PLEP with consent. The proposal is also permissible under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Clause 120 of the Regulation requires that as soon as practicable after receiving an application for the modification of a development consent, a consent authority must cause a copy of the application to be given to each concurrence authority and approval body for the development to which the application relates. A copy of the modification application (CNR-10370) was provided to the Rural Fire Service (RFS) via the NSW Government's ePlanning Portal, who were a concurrence authority to the original application. The RFS have confirmed in correspondence received 28 October 2020, that no objection is raised. General Terms of Approval issued under DA19/0419 will remain applicable.

The application has been notified to each person who made a submission in respect of the relevant development application of the proposed modification (being the subject of a Class 1 Appeal to the NSW Land and Environment Court) in accordance with the requirements of Section 4.56(1)(c) of the Environmental Planning and Assessment Act 1979, with the exhibition period being between 12 October and 26 October 2020. No submissions were received.

This application is to be determined by the Sydney Western City Planning Panel as the cost of works of 'the development' has a Capital Investment Value of greater than \$30 million, being \$39,917,436.

An assessment under Section 4.15 and Section 4.56 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval subject to the recommended modification of Condition 1 of DA19/0419, which lists the set of approved architectural drawings.

Site & Surrounds

The subject site is approximately 10,000sqm's in area and is currently occupied by a former privately operated facility for the education of children. The site is sloped to the rear and has a fall of approximately 6.5m, and has vehicular and pedestrian access from Floribunda Avenue via two driveway crossings. The Council owned Floribunda Community Centre adjoins the site to the north and Rotary Park and Glenmore Loch are located to the site's immediate east. The site shares its southern most boundary with the rear yards of five dwelling houses which front Freesia Place to the south.

Single residential dwellings are located opposite the subject site, on the western side of Floribunda Avenue. The Glenmore Park Town Centre is located approximately 600metres to the south of the site.

The surrounding land uses are predominantly low density residential dwellings consisting of 1-2 storey single dwelling houses.

Court issued consent no. DA18/0419 approved the demolition of all structures on the site and construction of a part 1 part 2 storey residential aged care facility on the site. The consent approved a mixture of surface and undercroft car parking and extensive landscaping of the site including some tree removal and replacement tree planting and required some select vegetation retention. As part of the approved development various stormwater works were approved, and Council gave its consent as the land owner of the site to the rear, to allow for the construction of stormwater drainage and the creation of a related easement.

The court issued consent was recently amended through the lodgment of a clause 4.56 modification application (DA19/0419.01) which was determined by the Sydney Western City Planning Panel, and was related to the timing of the registering of an easement over Council's land.

Proposal

The application seeks approved under Section 4.56 for the modification of Court issued development consent DA19/0419 (by way of a Section 34 agreement), which approved the construction of a part 1, part 2 storey residential aged care facility at 5-7 Floribunda Avenue, Glenmore Park.

This Section 4.56 modification application seeks approval to alter the residential aged care facility building as follows:

- Inclusion of two north and north-east facing, upper level balconies with associated columns, balustrades, building openings and pergolas.

The northern most balcony is adjacent to the northern boundary, which is shared with a Council owned community centre and car parking hardstand. The southern most balcony provides an east facing outlook only, and is flanked on the south, west and northern sides by the 'wings' of the aged care facility building itself.

Each proposed balcony is for the use of the residents and will provide for additional amenity and outdoor access from individual rooms and, in the case of the southern most balcony, additional opportunity for outlook and natural light to a communal sitting room.

The additions do not add calculable floor space to the development and in this respect, the approved floor space ratio remains, as was approved by the Court under DA19/0419.

The application was submitted with written advice from Willowtree Planning, which states that the proposed alterations and additions *"to allow additional amenity for residents, and provide a number of rooms with balconies to achieve a far better aesthetic and more desirable outcome for residents"* and also states that the proposed new balconies *... "are intended to provide additional break-out areas for residents, overlooking the adjacent public open space"*.

Related applications

DA19/019.01 - The Court, as part of the approval, consented to a stormwater scheme for the site that included the construction of a stormwater outlet pipe and headwall in land at Rotary Park (Council's property) adjacent to the site's boundary, and the creation of an easement over Council's property, which would allow for stormwater to drain from the subject site. This aspect of the proposal was subject to a previous clause 4.56 modification application under DA19/0419.01. This previous modification application sought to alter the timing required (through condition of consent) of the registering of the easement over Council land, and was approved by the Sydney Western City Planning Panel.

DA19/0419 - The Land and Environment Court of NSW issued development consent (DA19/0419), by way of a Section 34 agreement, which approved the construction of a part 1, part 2 storey residential aged care facility at 5-7 Floribunda Avenue, Glenmore Park.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Vegetation in non-rural areas) 2017
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

The application has been assessed in accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979 and the application will be determined by the Sydney Western City Planning Panel as the approved development (as is proposed to be modified) has a Capital Investment Value (CIV) greater than \$30 million.

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 (the Act) as is provided within this report.

- **Section 4.56 - Modification by consent authorities of consents granted by the Court**

The application is lodged under Section 4.56 of the Environmental Planning and Assessment Act 1979 (the Act). Section 4.56 *Modification by consent authorities of consents granted by the Court*, states at 4.56(1) that 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 before that consent as originally granted was modified (if at all), and

(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

(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

(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.

With regard to the above at (a), (b) and (c), Council is satisfied that the development to which the consent as modified relates is substantially the same development for which consent was originally granted. The proposal to add two residential balconies to the approved residential aged care facility, is considered to be minor in environmental impacts and does not materially change the development as was approved.

Further, the application has been notified in accordance with the requirements of the Regulations and in accordance with Council's notification policy. Additionally, the application has been notified to each person who made a submission in respect of the relevant development application of the proposed modification. No submissions were received in response to the notification and exhibition of the application.

Section 4.56(1A)

Section 4.56(1A) of the Act states that 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.

This report includes an assessment of the matters outlined in section 4.15(1). The reasons given by the consent authority for the grant of the consent that is sought to be modified, are detailed below and are considered on assessment, to be satisfied.

DA19/0419 Reasons for the grant of consent - Section 34 Agreement

Refer to attached Court bundle including Section 34 Agreement Between the Parties.

Section 4.56(2)

Section 4.56(2) requires that after determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification. No submissions were received and as such no notification is required.

In accordance with the above, the modification application is considered satisfactory having regard to the matters detailed under section 4.56 of the Act and is supported.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

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

As assessment has been undertaken of the application against relevant criteria under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, and the application is considered to be satisfactory, subject to the conditions of consent and amended drawing list.

The proposal to add two residential balconies is acceptable when assessed against the Aims of Policy expressed at clause 2, and the general matters for consideration under Part 1 of the Policy, which include that housing is to be *designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.*

The design of the residential aged care facility is assessed as being acceptable having regard to the Design principles at Part 3, Division 2. Further, the proposed amendments do not propose to alter the approved height, density or scale, landscaped area, parking numbers and will not result in any increase in residents, staff or visitors.

State Environmental Planning Policy (State and Regional Development) 2011

In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) was identified as the determining authority for the original application. The approved development was identified as being regionally significant development under the provisions of State Environmental Planning Policy (State and Regional Development) 2011 being either a community facility with a capital investment value in excess of \$5 million or other general development with a capital investment value in excess of \$30 million (noting that the development includes residential aged care housing as well as an allied health facility component).

The modification to the application, which is sought under clause 4.56 of the Act is therefore identified as being Regionally significant development and the consent authority to the application is the Sydney Western City Planning Panel.

State Environmental Planning Policy (Vegetation in non-rural areas) 2017

An assessment has been undertaken of the application against State Environmental Planning Policy (Vegetation in non-rural areas) 2017 and the application is satisfactory, subject to the existing conditions of consent under DA19/0419, as modified, noting the recommended amendments to the list of approved plans.

State Environmental Planning Policy No 55—Remediation of Land

The modifications proposed do not raise any matters which require further consideration of land contamination or remediation under the Policy, in addition to those matters considered as part of the approval of the original approval. The proposal is considered satisfactory, having regard to the Policy.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and is found to be compliant with the general planning considerations of the Policy.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies - See discussion
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 4.3 Height of buildings

The clause 4.56 modification application proposes alterations and additions to the approved residential aged care building which are related to the addition of two upper level balconies and associated building openings, columns and balustrades. The modifications will not alter the approved height of building as was originally consented to, under court issued consent no. DA19/0419.

Clause 4.4 Floor Space Ratio

The modification application proposes the addition of two external balconies which do not add calculable floor area and in this respect, the proposed modifications will not alter the approved floor space consented to under DA19/0419.

Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating the following seven existing SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

The proposed modification to the original consent is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land State Environmental Planning Policy (SEPP 55)

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 10.7 Planning Certificates.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. The Draft SEPP will not alter or affect the findings in respect to contamination of the Site.

The proposed modification is not inconsistent with the provisions of this Draft Instrument.

Draft Amendments to Penrith LEP 2010 - Amendment No. 4

The amendments to the Penrith LEP do not impact the subject application.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	N/A
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	N/A
D2.6 Non Residential Developments	Complies
E7 Glenmore Park controls	Complies

Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements in place that apply to the subject modification application.

Section 4.15(1)(a)(iv) The provisions of the regulations

The proposal under Section 4.56 of the Act has been assessed against the relevant sections of the Regulations and is compliant.

Clause 117 of the Regulations applies to an application under Section 4.55(1A) of the Act or under section 4.56 of the Act in respect of a modification which, in the opinion of the consent authority, is of minimal environmental impact. Clause 117(2) states that if an application to which this clause applies is required by a community participation plan to be notified or advertised and the development consent was granted by the Court on appeal, the application must be so notified or advertised by the consent authority to which the original development application was made.

Clause 117(3) requires, for such applications, that the consent authority is to notify the Court of -

- (a) the manner in which the application was notified or advertised,*
- (b) any submission period required by the community participation plan, and*
- (c) the date (or dates) on which the application was notified or advertised.*

As Council's Development Control Plan does not require notification or advertisement of the section 4.56 modification application, Council is not required to notify the Court of the matters referred to above, noting that the Act requires under 4.56(1)(c), that the application be notified to persons who have made submissions to the original application. This notification was carried out, with the exhibition period being between 12 October and 26 October 2020, and the application documentation was made available on Council's DA Tracker, with no submissions received.

Clause 120 of the Regulation requires that an application for the modification of a development consent, is to be provided to each concurrence authority and approval body for the development to which the application relates. A copy of the modification application was provided to the Rural Fire Service, who were a concurrence authority to the original application and no objections were raised.

Section 4.15(1)(b) The likely impacts of the development

The proposed balcony additions will not materially alter the development which has been approved by the Court, and will not result in any environmental impacts which have not already been considered of the proposal thus far. The likely impacts resulting from the proposal are limited to a minor increase in trafficable floor area at the upper level and addition of views toward the north and north-east.

Views to the north will be over Council owned land associated with a community center car park, views to the north-east will be to the Council owned park at the rear of the site. Views to existing residences to the south are not increased as the southern most balcony is flanked by the building, on the remaining three sides.

The approved layout of landscaping, total floor space ratio, site coverage and approved building height are not altered.

Section 4.15(1)(c) The suitability of the site for the development

The site is assessed as suitable for the proposed modification.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with the requirements of the Regulations and Penrith Development Control Plan 2014, the proposed development was notified to those which had previously registered a submission against the original application, with the exhibition period being between 12 October and 26 October 2020. No submissions were received in response.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections

Section 4.15(1)(e)The public interest

The proposed modification to the approved design of the residential aged care facility will not generate any issues which would be contrary to public interest.

Section 94 - Developer Contributions Plans

Development contributions under Council's Section 7.11 and Section 7.12 plans do not apply to this modification application.

Conclusion

The Section 4.56 modification application has been assessed against the matters for consideration under section 4.56 and section 4.15 of the Environmental Planning and Assessment Act 1979 and is found to be acceptable and is not in conflict with the public interest. The proposal is also found to be substantially the same development as that which the Land and Environment Court of NSW approved by way of a Section 34 agreement on 19 May 2020 (Penrith City Council ats Principal Healthcare Finance Pty Ltd - LEC No. 2019/321826) and in this respect, can be considered under Section 4.56 and is assessed to be minor in nature.

The proposed alterations, being the addition of two residential upper level balconies will not result in any unacceptable impacts on residential amenity and will not impact the reasons as to which consent was granted in the first instance.

The proposal is not in conflict with any environmental planning instruments or draft environmental planning instruments and is suitable for the site. The Section 4.56 modification application is recommended for approval, subject to the recommended amended wording of Condition 1.

Recommendation

1. That the modification application received under clause 4.56 of the *Environmental Planning and Assessment Act 1979*, for the addition of two balconies and associated works, related an approved residential aged care facility, be approved subject to the attached amended drawing list noted in Condition 1 of DA19/0419 (as amended), and;
2. That the Rural Fire Service be notified of the determination.

CONDITIONS

General

- 1 The development must be consistent with the plans and other documentation as provided by the NSW Land and Environment Court, as are Annexed to the Court Judgement of Appeal No. 2019/321826, and as amended by the below listed and stamped approved plans.

Plan/Report No.	Description	Prepared by	Revision	Date
A100	Lower Ground Floor	Calderflower	D	28.08.2020
A101	Ground Floor Plan	Calderflower	D	28.08.2020
A200	Elevations	Calderflower	D	28.08.2020
A210	Sections	Calderflower	C	28.08.2020