

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-138
DA Number	DA19/0419.04
LGA	Penrith
Proposed Development	Section 4.56 Modifications to Approved Residential Aged Care Facility including Increase from 142 Beds to 156 Beds, Internal Layout Amendments & Addition of One Surface Car Space
Street Address	5 – 7 Floribunda Drive Glenmore Park
Applicant/Owner	Principal Healthcare Finance Pty Ltd
Date of DA lodgement	5 February 2021
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> One submission received in objection
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	<p>CIV >\$30 Million</p> <p>Modification Application under Section 4.56 of the Act, to a Court Issued Consent</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> State Environmental Planning Policy No. 55 – Remediation of Land State Environmental Planning Policy (Vegetation in Non-rural Areas) 2017 State Environmental Planning Policy (Infrastructure) 2007 Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River Draft SEPP Environment Draft SEPP Remediation of Land Penrith Local Environmental Plan 2010 Penrith Development Control Plan 2014 Environmental Planning and Assessment Regulation 2000
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Appendix 1 – Applicant's Section 4.56 Report Appendix 2 – Architectural Plans Appendix 3 – Court Judgement Appendix 4 – Architectural Design Statement
Clause 4.6 requests	<ul style="list-style-type: none"> N/A
Summary of key submissions	<ul style="list-style-type: none"> Internal and resident amenity Scale of wellness centre being reduced Profits over resident care
Report prepared by	Kathryn Saunders, Senior Development Assessment Planner
Report date	17 May 2021

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?

Yes

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)?

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

Not applicable

Conditions

Have draft conditions been provided to the applicant for comment?

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

No

SWCPP Ref. No.:	PPSSWC-138
DA No.:	DA19/0419.04
PROPOSED DEVELOPMENT:	Section 4.56 Modifications to Approved Residential Aged Care Facility including Increase from 142 Beds to 156 Beds, Internal Layout Amendments & Addition of One Car Space - 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 at Principal Healthcare Finance Pty Limited - LEC No. 2019/321826). The application is noted to have been lodged through the NSW Government's ePlanning Portal on 21 December 2021.

This Section 4.56 modification application seeks approval for internal alterations to the layout of resident rooms to facilitate the introduction of companion rooms. The alterations will result in an increase of 14 beds from 142 to 156 beds and includes the addition of one staff car parking space. Minor internal alterations are proposed to the allied health facility known as the 'wellness centre', approved within the building which results in the reduction of consultation rooms from three to two.

The reasoning provided by the applicant for the proposed alterations is to allow for companion rooms. The applicant states that companion rooms are best described as *'residential care facility rooms for two bed to enable couples and the like within the facility to enjoy comfort and privacy'*. The applicant also states that *'The provision of companion rooms is a common desired element of aged care facilities and will meet the needs of many current and future residents'*.

The internal alterations to rooms to facilitate the companion rooms does not alter the approved height of the facility and does not result in any additional floor space.

No changes are proposed to the approved floor space ratio or building footprint. No tree removal is proposed or will result from the addition of the extra staff car parking space which is proposed to be co-located with other approved car parking on the northern side of the development adjacent to the Council owned community facility. Car parking and landscape requirements remain compliant.

The modification application was referred to Council's building surveying and traffic engineering units with no objections raised, subject to the existing conditions of consent.

Under Penrith Local Environmental Plan 2010 (PLEP) the proposal is defined as development ancillary to an approved residential care facility and health services 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. The health services facility which is approved and is located within the building is also permissible within the zone under State Environmental Planning Policy (Infrastructure) 2007.

Clause 120 of the Regulations 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 was provided to the Rural Fire Service (RFS) via the NSW Government's ePlanning Portal (CNR-19058).

The RFS were a concurrence authority to the original application. The RFS have confirmed in correspondence received 4 May 2021, that no objection is raised subject to compliance with previously issued advice dated 05/02/2021. A Bush Fire Safety Authority has been issued, RFS Reference DA-2019-02464-S4.55-(none), dated 5 February 2021.

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 1 March and 15 March 2021. One submission was 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 condition amendments listed at the end of this report.

Site & Surrounds

The subject site is approximately 10,000sqm's in area and was previously occupied by a privately operated care facility in the form of a homestead, for the care and 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. 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 600 metres to the south of the site.

The surrounding land uses are comprised of parklands, a community centre and low density residential dwellings consisting of 1-2 storey single dwelling houses.

Court issued consent no. DA19/0419 approved the demolition of all existing structures and the 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 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.

Related matters

The Court issued consent has been amended through the lodgment of several Section 4.56 modification applications (DA19/0419.01, .02 & .03) which were each determined by the Sydney Western City Planning Panel (or as delegated by the Panel). The modification applications related to: a request to alter the timing of the registering of an easement over Council's land through a change to the wording of a consent condition; the addition of several upper level balconies for residents, and related architectural amendments; and additional tree removal.

Council records indicate that legal action has been undertaken in relation to unauthorised works at the site which include tree removal. It is noted that the matter is resolved. DA19/0419.03 included conditions of consent that required additional tree replacement planting.

Proposal

This Section 4.56 modification application seeks approval for:

- internal alterations to the layout of resident rooms to facilitate the introduction of companion rooms. The alterations will result in an increase of 14 beds from 142 to 156 beds,
- the addition of one staff car parking space, and
- minor internal alterations to the approved allied health facility (located within the building) which result in the reduction of consultation rooms from three to two.

The reasoning provided by the applicant for the proposed alterations is to allow for companion rooms. The applicant states that companion rooms are best described as *'residential care facility rooms for two bed to enable couples and the like within the facility to enjoy comfort and privacy'*. The applicant also states that *'The provision of companion rooms is a common desired element of aged care facilities and will meet the needs of many current and future residents'*.

The internal alterations to rooms to facilitate the companion rooms does not alter the approved height of the facility and does not result in any additional floor space.

No changes are proposed to the approved building footprint. No tree removal is proposed or will result from the addition of the extra staff car parking space which is proposed to be co-located with other approved car parking on the northern side of the development adjacent to the Council owned community facility.

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 (Infrastructure) 2007
- 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 4.14 - Bushfire prone land assessment**

The modification application is acceptable having regard to the Regulations. The NSW RFS has not objected to the proposal subject to compliance with the previously issued Bush Fire Safety Authority and General Terms of Approval, which remain relevant. The original application was submitted with a Bush Fire Report which was deemed satisfactory.

- **Section 4.15 - Evaluation**

The modified 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 which includes the addition of one car parking space and internal alterations which will result in the increase in the number of beds by 14 to accommodate companion rooms, does not significantly alter the development to which consent was originally granted, and would not impact the reasoning provided to the grant of consent under DA19/0419.

The proposal is considered to be minor in environmental impact and does not materially change the development as was originally approved.

The application has been notified in accordance with the requirements of the Regulations. Additionally, the application has been notified to each person who made a submission in respect of the original development application. One submission was received in response to the notification and exhibition of the application and the matters raised in the submission are addressed elsewhere in this report.

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 Appendix 3 - Court Judgement. The development proposal is not in conflict with the reasons provided for the grant of consent.

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. One submission was received and as such notification of the determination to submitters forms one of the recommendations of this report.

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 the modification is recommended to be 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

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

The proposal to make internal alterations to the room configurations to allow the introduction of companion rooms (14 additional beds) and the addition of one staff car parking space, 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 otherwise unaltered and has previously been 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, floor space ratio or scale and will not result in any unreasonable increase in residents, staff or visitors.

The Policy requires at Clause 48(c), that *a consent authority must not refuse consent to a development application for the carrying out of development for the purpose of a residential care facility...if a minimum of 25 square metres of landscaped area per residential care facility bed is provided.* The development was approved having 30.50sqm of landscaped area per bed and is proposed to be altered to provide 27.8sqm of landscaped area per bed which remains compliant with the requirement of the Policy for a minimum of 25sqms.

The addition of 14 beds to bring the total number of beds up from 142 to 156 beds results in a car parking requirement of 15.6 car parking spaces for residents and visitors under the Policy. The reconfiguration of the allied health facility will result in the requirement for 6 spaces and the 43 staff members proposed requires 21.5 spaces for staff. The total number of parking spaces required is assessed to be $15.6 + 6 + 21.5 = 43.1$ (rounded to 43). A total of 43 space is proposed which complies with the parking requirement of the Policy, noting also that the proposed development remains compliant with the requirement under the Policy for one ambulance parking space.

State Environmental Planning Policy (Infrastructure) 2007

The modification of the development is considered to be acceptable having regard to the Policy. In particular the part of the development which is proposed to be used as an allied health facility can be defined as a health services facility and is permissible within the R2 Low Density Residential zone under PLEP and is also permissible within the zone under Division 10 of the Policy as the zoning is a prescribed zone.

The modification application does not trigger a requirement to consider Clause 100, 101 or 102 of the Policy and is not identified as being traffic generating development under Clause 104 of the Policy.

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 development, which is sought under Section 4.56 of the Act is identified as being regionally significant development and the consent authority for 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.

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 proposal. The modified 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 the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and the proposal is found to be compliant with the relevant 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	N/A
Clause 4.4 Floor Space Ratio	N/A
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

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 court issued 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 to the Court issued consent, is not inconsistent with the provisions of this Draft Instrument.

Draft Amendments to Penrith LEP 2010

The current draft 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	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	Complies
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	N/A
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 modified 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 1 March and 15 March 2021 and the application documentation was made available on Council's DA Tracker, with one submission received.

The matters raised in the submission received are addressed elsewhere in this report.

Clause 118 *Applications under section 4.55(2) and 4.56 for modifications of certain development consents* states that the clause applies to applications lodged under Section 4.56(1) of the Act to modify a development consent if the original development application for the consent was an application to carry out any of the following:

- (a) *designated development*,
- (b) *State significant development*,
- (c) *nominated integrated development, threatened species development or Class 1 aquaculture development where the application was made to a consent authority other than a council*.

The development application is nominated integrated development, being seniors housing (a special fire protection purpose under Section 100B (6)(f)) requiring the issue of a bush fire safety authority under Section 100B of the Rural Fires Act. Section 100B(5)(a) states that development to which this clause applies does not include the carrying out of internal alterations to any building, and is not complying development for the purposes of the EP&A Act, despite any environmental planning instrument. The amendments sought in relation to landscaping and the alterations to car parking are not assessed to be Exempt or Complying Development and thus the section applies and a bush fire safety authority is required.

Section 118 of the Regulations does not apply as the original development application for the consent was not made to a consent authority other than Council.

Clause 120 of the Regulations 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 subject to complying with the General Term of Approval already issued for the site under DA9/0419. A Bush Fire Safety Authority has been issued for the development and remains relevant.

Section 123BA of the Regulations does not stipulate that Council is able to determine modification applications lodged under Section 4.56 of the Act and the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW Planning Portal on 30 June 2020, is silent on Section 4.56 applications. It is assessed that Council is not the determination authority for development applications lodged under Section 4.56 of the Act and in this respect the application is referred to the Sydney Western City Planning Panel for determination.

The proposal is considered satisfactory having regard to the provisions of the Regulations and as detailed above.

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

The proposed addition of one car parking space and the internal alterations included, to enable the establishment of companion rooms will not materially alter the development which has been approved by the Court, and will not result in any significant environmental impacts. The likely impacts resulting from the modified proposal are acceptable and not unreasonable. Refer also to discussion regarding landscaping under SEPP (Affordable Rental Housing) elsewhere in this report.

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

The site is assessed as suitable for the proposed modification to the approved development. The works are largely internal and do not alter the footprint of the building, its approved height, floor space ratio or setbacks.

The proposed development will not be detrimental to the amenity and outlook of nearby neighbours and will not impact on the outlook or amenity of future residents of the development, and in this respect the proposal can be supported.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with the requirements of the Regulations, the modification application was notified to those who had previously registered a submission against the original application and to nearby and adjoining residents, with the exhibition period being between 1 March and 15 March 2021. One submission in objection was received in response.

Matters raised in the objection are addressed below. Matters raised do not warrant refusal of the application.

Matter raised

Officer response

Prioritises profit over people.

The proposal remains compliant with the key objectives and the applicable development controls of the Seniors Policy. The economics of the business are not a consideration that would warrant refusal of the application.

Room size and amenity is poor.

The room sizes are adequate for the use as companion rooms and adequate amenity is provided. The alteration to convert the single rooms into companion rooms does not reduce the area provided for each resident when assessed against the approved development. The single room module is doubled in area for each two bed companion room.

The proposal decreases the only wellness area and the number of consulting rooms while increasing bed numbers.

The inclusion of the 'wellness' area as part of the medical services facility of the residential aged care facility is optional, and will service the needs residents of the development and local residents.

Privacy goes down, waiting times go up, and the quality of life in the facility decreases over time.

Should wait times become too long as a result of the proposal to delete one consultant room, there are medical service facilities located elsewhere which could be utilised.

The privacy of residents is not impacted by this alteration.

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
Traffic Engineer	No objection

Section 4.15(1)(e)The public interest

The proposed modification to the approved residential aged care facility will not generate any issues which would be contrary to public interest, subject to the recommended amended conditions. Matters raised in the submission received do not warrant refusal of the application and are addressed in this report.

Conclusion

This 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 one staff car parking space and internal alterations to the internal medical services facility and residential aged care facility, which includes the increase in the number of beds by 14, will not result in any unacceptable impacts on residential amenity and will not impact the reasons as to why consent was granted in the first instance.

The modified proposal is not in conflict with any environmental planning instruments or draft environmental planning instruments and the development as modified under this application is suitable for the site. The Section 4.56 modification application is recommended for approval, subject to the recommended amended conditions at the end of this report.

Recommendation

1. That the modification application received under Section 4.56 of the *Environmental Planning and Assessment Act 1979*, for the addition of one car parking space and internal alterations related to the inclusion of companion rooms resulting in an increase of 14 beds from 142 to 156 beds, related to the construction of an approved residential aged care facility be approved, subject to the following recommended condition amendments; \
2. That the NSW Rural Fire Service be notified of the determination; and
3. That the submitter be advised of the determination and of the consideration given to their concerns.

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 as amended, and as further amended by the below listed and stamped approved plans.

Plan/Report No.	Description	Prepared by	Revision	Date
A100	Lower Ground Floor	CalderFlower	E	02/02/2021
A101	Ground Floor Plan	Calderflower	E	02/02/2021
A102	First Floor Plan	CalderFlower	C	02/02/2021