

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-177
DA Number	DA21/0607
LGA	Penrith City Council
Proposed Development	Demolition of a Dwelling, Tree Removal, and Construction of a Two (2) Storey Residential Aged Care Facility, comprising of 153 beds with Associated Facilities / Services, an ancillary Cafe, and Health Consulting and Treatment Rooms
Street Address	94-100 Explorers Way, St Clair
Applicant/Owner	Principal Healthcare Finance Pty. Ltd. / Principal Healthcare Finance (Opal HealthCare)
Date of DA lodgement	17 August 2021
Total number of Submissions:	• 6
Number of Unique Objections:	• 6
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Capital Investment Value of the proposed development is more than \$30 million
List of all relevant s4.15(1)(a) matters	• State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Precincts – Western Parkland City) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Penrith Local Environmental Plan 2010 • Penrith Development Control Plan 2014
List all documents submitted with this report for the Panel's consideration	• Architectural Plans • Landscape Plan • Stormwater Plans • Statement of Environmental Effects • Urban Design Response • Written (Clause 4.6) Request • Biodiversity Development Assessment Report • Arborist Report • Waste Management Plan • Geotechnical Report • Noise Management Assessment Report • Detailed Site Investigation • Traffic Advice • Site Survey
Clause 4.6 request(s)	• The proposal exceeds the maximum building height Development Standard of Clause 4.3 of the Penrith Local Environmental Plan 2010
Summary of key submissions	• Proposal being inconsistent with the character of the area • Amenity impacts • Traffic and parking concerns • Health related impacts • Construction related impacts • Impact on property values
Report prepared by	Robert Walker, Senior Development Assessment Planner
Report date	4 August 2022

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?

Yes

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

No

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

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PROPOSED DEVELOPMENT:	Demolition of a Dwelling, Tree Removal, and Construction of a Two (2) Storey Residential Aged Care Facility, comprising of 153 beds with Associated Facilities / Services, an ancillary Cafe, and Health Consulting and Treatment Rooms
PROPERTY ADDRESS:	94 - 100 Explorers Way, ST CLAIR NSW 2759
PROPERTY DESCRIPTION:	Lot 36 DP 239502,
ZONING:	Zone R2 Low Density Residential - LEP 2010
CLASS OF BUILDING:	Class 9c , Class 5
ASSESSING OFFICER	Robert Walker
APPLICANT:	Principal Healthcare Finance Pty Ltd
DATE RECEIVED:	17 August 2021
REPORT BY:	Robert Walker, Acting Principal Planner, Penrith City Council
RECOMMENDATIONS:	Refuse

Assessment Report

Executive Summary

Council is in receipt of Development Application No. 20/0607, which seeks Development Consent for the demolition of a dwelling, tree removal, and construction of a two (2) storey residential care facility (comprising of 153 beds, with associated facilities including an ancillary cafe, health consulting and treatment rooms, and associated car parking (with 37 car parking spaces), at the subject site.

The site is located within an established low density residential area of St Clair, approximately 1.3km (walking distance) from the St Clair Shopping Centre. The neighbourhood is characterised by low density residential developments, being single and two storey detached dwelling houses.

The site is rectangular in shape and has a site area of approximately 1.057 hectares. The site's main frontage is to Explorers Way (to the south) and although the site also shares its northern boundary with the M4 Western Motorway (to the north), no access is provided to this interface. The site contains areas with substantial native trees and is subject to an overland flow path (draining from the west of the site, to the M4 Western Motorway corridor to the north of the site).

The subject site is identified as being bush fire prone and the application is Integrated development and was referred to the Rural Fire Service (RFS). The RFS has issued its General Terms of Approval. As is detailed in this assessment report, the RFS requirement to maintain an Inner Protection Area (IPA) will impact on trees and biodiversity values as the site is also identified on the NSW Government's Biodiversity Values Map and Threshold Tool as containing biodiversity values.

The site is zoned 'R2 – Low Density Residential', pursuant to the Penrith Local Environmental Plan 2010. The proposed development is defined as a 'residential care facility' and a 'health services facility'. While 'residential

care facilities' are permitted with Development Consent in the 'R2 – Low Density Residential' zone pursuant to the Penrith Local Environmental Plan 2010, 'health services facilities' are prohibited. Notwithstanding this, pursuant to Clause 2.60 (1) of State Environmental Planning Policy (Transport and Infrastructure) 2021, 'health services facilities' are permitted with Development Consent in the 'R2 – Low Density Residential' zone.

The proposal was subject to a pre-lodgement review by Council's Urban Design Review Panel, with advice issued on 2 July 2020 and further advice issued on 22 October 2020. Additionally, the proposal was subject to two (2) pre-Development Application meetings, with advice issued on 28 August 2019 and 22 December 2020. The subject Development Application was lodged on 17 August 2021 and the application presented again to Council's Urban Design Review Panel 20 October 2021. It is noted that the application as lodged, comprised of a total of 154 beds. Subsequently a detailed letter was issued to the Applicant on 19 November 2021, following the briefing of the Sydney Western City Planning Panel (on 15 November 2021). The Applicant has now finalised their response to Council's letter, which included the submission of amended plans and additional information (including the provision of a Biodiversity Development Assessment Report).

The application was exhibited, advertised and notified in accordance with the Penrith City Council Community Engagement Strategy, and six (6) submissions were received. There are several matters raised within the submissions, which the application has failed to adequately address.

Key issues that have been identified as a result of the assessment and which remain unresolved, include:

- That the application has failed to demonstrate that impacts of the development have been avoided or minimised on 'Cooks River / Castlereagh Ironbark Forest'.
- Consideration of the submitted Biodiversity Development Assessment Report, has revealed multiple anomalies in the preparation of such.
- The proposed height of 9.84m, contravenes the maximum building height of 8.5m, pursuant to Clause 4.3 of the Penrith Local Environmental Plan 2010 and the 'Written Request' to vary the Development Standard is not supported.
- The proposal provides insufficient landscaping in the area alongside the western side setback area.
- The provision of 2.1m high acoustic fencing along the western side boundary, adjoining low density residential premises, is considered to be unsatisfactory.
- The poor relationship of the north western portion of the car parking area with adjoining low density residential premises.
- The positioning of fire boosters, water and gas meters, and a substation, alongside the immediate street frontage.
- The application fails to demonstrate that the proposed development will not adversely affect the extent of flooding on any adjoining property, and the impact of the proposed development on flood behaviour in the vicinity of the site is unclear.
- The proposal does not comply with and fails to demonstrate compliance with Part C1 (Site Planning and Design Principles), Part C2 (Vegetation Management), Part C3 (Water Management), Part C5 (Waste Management), Part C6 (Landscape Design) and Part C10 (Transport, Access and Parking) of the Penrith Development Control Plan 2014.

The Capital Investment Value of the proposed development has been estimated as being \$34,179,665 (exclusive of GST), accordingly (as such is more than \$30 million is) pursuant to Section 2.19 and Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021, the proposal is declared to be 'Regionally Significant Development. Therefore pursuant to Clause 4.5 (b) of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel is the 'Consent Authority'.

The application has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, and it is recommended that the application be determined (in accordance with Section 4.16), by way of refusing consent.

Site & Surrounds

The site consists of a single allotment (Lot 36 DP 239502), commonly known as Nos. 94-100 Explorers Way, St Clair. The site is rectangular like in shape and has a site area of approximately 1.057 hectares.

The site fronts and is accessed from Explorers Way (to the south), which leads (to the east) towards Erskine Park Road, nearby its intersection with the M4 Western Motorway.

The site also adjoins the M4 Western Motorway (to the north). Improvements to the site are limited to a 2 storey dwelling, located in the south eastern portion of the site, addressing Explorers Way. The site, particularly within the northernmost part, contains areas with substantial native trees.

The site is subject to an overland flow path, across a defined gully / existing drainage depression and a piped drainage system, draining from the west of the site, to a head-wall in the M4 Western Motorway corridor immediately to the north of the site.

The site is located within an established low density residential area of St Clair, approximately 1.3km (walking distance) from the St Clair Shopping Centre and approximately 600m (walking distance) from the nearest a bus stop, which is located on Colorado Drive, near the intersection with Explorers Way. The neighbourhood is characterised by low density residential developments, being single and two storey detached dwelling houses.

Proposal

The Development Application seeks consent for the following:

- Demolition of a dwelling.
- Tree removal.
- Construction of a two (2) storey residential care facility. The residential care facility comprises of 153 beds, which are spread over 123 rooms, with 93 single rooms and 30 double rooms. All rooms comprise of an open bed / living room and an ensuite. The facility includes a main kitchen, dining rooms, laundry, lounge rooms, sitting rooms, recreation rooms / areas, nursing stations, offices, team rooms, a loading dock, storage rooms, amenities, a function / training room, a hair salon, a cafe, health consulting and treatment rooms, and a gym / therapy room.
- Car parking areas comprising of a total of 37 spaces, plus an ambulance bay.
- Associated earthworks, drainage and landscaping works.

The application outlines that there will be a maximum of 38 staff on site at any one time. Furthermore, the application details that while the majority of clients of the health consulting and treatment rooms, and the therapy room, are to be residents of the residential care facility, it is proposed that others (i.e. residents of the surrounding area) would be able to access such.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Precincts—Western Parkland City) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

Planning Assessment

• **Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016**

An area in the northern part of the site is identified on the Biodiversity Values Map. The proposed development extends to within this area and involves the clearing of native vegetation within.

Pursuant to Section 1.7 of the Environmental Planning & Assessment Act 1979, consideration is to be given to the provisions of Part 7 of Biodiversity Conservation Act 2016.

In accordance with Section 7.2, development is likely to significantly affect threatened species, if:

it is likely to significantly affect threatened species or ecological communities, or

their habitats, according to the test in section 7.3, or the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or

it is carried out in a declared area of outstanding biodiversity value.

A Biodiversity Development Assessment Report has been prepared and was provided (on 30 June 2022) for consideration. Assessment of the Biodiversity Development Assessment Report, by Council's Senior Biodiversity Officer, has found:

- The information provided within the Biodiversity Development Assessment Report has not provided an adequate explanation of how the Plant Community Type was determined.
- No quantitative analysis of site survey data or how the analysis was undertaken to determine the Plant Community Type, is provided within the Biodiversity Development Assessment Report.
- While the Biodiversity Development Assessment Report identifies the vegetation type of the site as 'Broad-leaved Ironbark – Grey Box – Melaleuca decora grassy open forest on clay gravel soils of the Cumberland plain, Sydney Basin Bioregion' (PCT 724), the site has been mapped (by the Sharing and Enabling Environmental Data in NSW database, Threatened Ecological Communities Greater Sydney mapping) as containing 'Cooks River / Castlereagh Ironbark Forest'. This appears to be the reason why the site has been identified on the Biodiversity Values Map, as 'Cooks River / Castlereagh Ironbark Forest' is listed as an entity which is at risk of serious and irreversible impacts. Based on the information provided the Assessor has not considered 'Cooks River / Castlereagh Ironbark Forest' as a possible community.
- The attached Credit Reports are incomplete (missing pages).
- The threatened species identification for assessment (within Table 9), excludes Grey-headed Flying-fox, Little Lorikeet, Swift Parrot and Regent Honeyeater, based on habitat constraints. However, these species do not have habitat constraints.
- The area of direct impacts provided (in Table 19) indicates that 0.219 hectares of PCT 724 will be removed and that 0.075 hectares of such will be retained. However, it appears that consideration has not been given to the the Asset Protection Zone requirements. In this regard, it is noted that the General Terms of Approval, issued by the NSW Rural Fire Service, requires that the entire property is to be managed as an Inner Protection Area.
- The statements made within the Biodiversity Development Assessment Report have not demonstrated that impacts have been avoided or minimised, with a verifiable analysis or supported by adequate assessment. There is potential that the vegetation within the development site may be 'Cooks River / Castlereagh Ironbark Forest', which is an entity at risk of serious and irreversible impacts.

- **Section 4.15 - Evaluation**

The proposed development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, and having regard to such, the following have been identified for consideration.

- **Section 4.46 - Integrated development**

The site is mapped as 'bushfire prone land' and the development defined as a 'special fire protection purpose' pursuant to Section 100B of the Rural Fires Act 1997. Therefore the application is an 'Integrated Development' under Section 4.46 of the Environmental Planning & Assessment Act 1979.

Accordingly the application was referred to the NSW Rural Fire Service, which resulted in 'General Terms of Approval' and a 'Bush Fire Safety Authority' being issued. In this regard it is noted that such is subject to the entire property being managed in perpetuity as an 'Inner Protection Area' with impacts on trees resultant.

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

An assessment has been undertaken of the proposal against the relevant criteria within Chapter 9 (Hawkesbury - Nepean River), which found the proposal to be satisfactory in this regard.

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

Clause 4 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, outlines that such applies to land that is zoned primarily for urban purposes or that adjoins land zoned primarily for urban purposes, but only if any of the following is permitted:

- dwelling houses
 - residential flat buildings
 - hospitals
 - development of a kind identified in respect of land zoned for special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries
- or the land is being used for the purposes of a registered club.

The site is zoned 'R2 – Low Density Residential', pursuant to the Penrith Local Environmental Plan 2010 (being land zoned primarily for urban purposes). Accordingly, the Seniors Housing SEPP applies to the subject land.

It is noted that the proposed development is specifically defined by Clause 11 of the Seniors Housing SEPP, as a 'residential care facility', which is, residential accommodation for seniors or people with a disability that includes:

- meals and cleaning services, and
 - personal care or nursing care, or both, and
 - appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,
- not being a dwelling, hostel, hospital or psychiatric facility.

It is noted that Clause 15 of the Seniors Housing SEPP, outlines that Chapter 3 (which comprises of

Clauses 14 to 50), allows development for seniors housing, on land zoned primarily for urban purposes, despite the provisions of any other Environmental Planning Instrument, if the development is carried out in accordance with this Policy. As 'residential care facilities' are permitted with Development Consent in the 'R2 – Low Density Residential' zone, pursuant to Clause 2.3 of the Penrith Local Environmental Plan 2010 (i.e. allowing the proposal by other means), the proposal is therefore not subject to these provisions of the Seniors Housing SEPP (i.e. Clauses 14 to 50). Notwithstanding this, the application outlines that consideration has been given to the provisions of such in the design and an assessment has been undertaken of the proposal against the provisions of Chapter 3. The following discusses significant points which were identified by the assessment.

Clause 18 of the Seniors Housing SEPP outlines that:

(1) Development allowed by this Chapter may be carried out for the accommodation of the following only:

- (a) seniors or people who have a disability
- (b) people who live within the same household with seniors or people who have a disability
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(2) A consent authority must not consent to a development application made pursuant to this Chapter unless:

- (a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates
- (b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1).

Accordingly, it is recommended that an associated condition be imposed in the event of the application being approved. Noting it is recommended that the application be determined by way of refusing consent.

Assessment against Clause 26

The site is located approximately 600m from the nearest bus stop, where direct access is provided throughout each weekday to Town Centre type locations, where facilities / services are available. While the site does not satisfy the 400m maximum distance requirement of Clause 26, the application has been accompanied by justification of such, outlining the services and facilities to be provided on site, which include:

- access to a community bus for resident outings.
- services available through the allied health facility such as physiotherapy, exercise physiologists, rehabilitation therapy.
- services of a pharmacist, music therapist, podiatrist and the like.
- areas for recreational activities including secure courtyard spaces, internal activity spaces and TV / audio rooms and the like;

Furthermore, the application also outlines that the proposed residential care facility has been specifically designed to care for people who are no longer capable of taking adequate care of themselves, who are not capable of independent living and travel, and are unlikely to use a public bus.

Assessment against Clause 27

Consideration has been given to the general location of the proposed development from a bush fire safety perspective.

The proposal is a 'Special Fire Protection Purpose' (Integrated Development), requiring a 'Bush Fire Safety Authority' from the NSW Rural Fire Service (pursuant to Section 100B of the Rural Fires Act 1997). The

application was referred to the NSW Rural Fire Service and a 'Bush Fire Safety Authority' has been issued, which included various conditions, such as requiring the provisions of a Bush Fire Emergency Management and Evacuation Plan.

Overall it is considered that the proposal would satisfy the provisions of Clause 27.

Assessment against Clause 28

The site is served by a reticulated water system and is seweraged, and it is considered that the proposal would satisfy the provisions of Clause 28.

It is recommended that in the event of the application being approved that a condition be imposed requiring the obtaining of a Section 73 Certificate from Sydney Water.

Assessment against Clause 29

While it is considered that sufficient services and infrastructure are available, within the suburb and its surrounds to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services), it is considered that the application fails to demonstrate that the proposed development is compatible with the natural environment. Furthermore, it is also considered that the application fails to demonstrate that the impact of the proposal on existing low density residential developments in the vicinity of the site is acceptable.

Accordingly, it is considered that the proposal is inconsistent with the provisions / criteria of Clause 29.

Assessment against Clause 30

The application has been accompanied by detailed site analysis information, which is considered to satisfy the information requirements of Clause 30.

Assessment against Part 3 Division 2

It is considered that the application fails to demonstrate that the proposal is consistent with the provisions / design principles of Division 2 (Clauses 33 to 39), in relation to:

- The insufficient setback of the car parking area and insufficient landscaping provided in the area alongside the western side boundary, having regard to the adjoining low density residential premises.
- The provision of 2.1m high acoustic fencing along the western side boundary.
- The relationship of the north western portion of the car parking area with adjoining residential zoned land.
- Elements of external finishes being unclear, including in relation to specifications of the glazed privacy screens, sections of feature brickwork and driveway pavement.
- The positioning of fire boosters, water and gas meters, and a substation, alongside the immediate street frontage.

In combination the aforementioned matters would compromise neighbourhood amenity and residential character of the area, and privacy afforded to neighbouring residential premises. Overall, it is considered that the application fails to demonstrate that the proposal in its current form responds adequately to context of the neighbourhood.

Assessment against Clause 40

The site area of approximately 1.057 hectares and site frontage of 80.456m, satisfy the minimum site area and frontage requirements of Clause 40 (2) & (3).

Pursuant to Clause 40 (4) (a) the height of all buildings must be 8m or less. The proposal has an overall maximum building height of approximately 9.84m, exceeding such, as well as the maximum building height of 8.5m that applies to the site pursuant to the Penrith Local Environmental Plan 2010. This matter is addressed under Clause 4.6 of the Penrith Local Environmental Plan 2010.

The development is a maximum of 2 storeys in height, which satisfies the requirements of Clause 40 (4) (b).

The rear of the building is 2 storeys in height and extends to a rear setback of 23.9m, which is in the rear 25% area of the site (i.e. within 34.55m of the rear boundary). While the proposal does not satisfy the requirements of Clause 40 (4) (c), the application has been accompanied by justification of such, which includes:

- The associated area of the site adjoins the M4 motorway.
- There are no residences adjoining the rear 25% area of the site.
- The proposal is setback 6m from the eastern side boundary and 15m from the western side boundary.

It is noted that Clause 48 of the Seniors Housing SEPP, outlines various standards that cannot be used to refuse Development Consent for residential care facilities. The following key associated matters are noted in relation to the proposal:

- Building height, if all proposed buildings are 8m or less in height. The proposal has an overall maximum building height of approximately 9.84m and this matter is addressed under Clause 4.6 of the Penrith Local Environmental Plan 2010.
- Density and scale, if the proposal has a floor space ratio of 1:1 or less. The proposal provides for a floor space ratio of approximately 0.79:1.
- Landscaped area, if a minimum of 25 sqm of landscaped area per bed is provided. The proposal provides in excess of 3,825 sqm of landscaped area, being the minimum requirements for a 153 bed facility.
- Parking for residents and visitors, if at least 1 space is provided for each 10 beds and at least 1 space for each 2 persons to be employed and on duty at any one time, plus an ambulance bay. The layout includes car parking areas comprising of a total of 37 spaces, plus an ambulance bay. Which meets the aforementioned minimum requirements for the 'residential care facility' component of the development.

State Environmental Planning Policy (Housing) 2021

Pursuant to Schedule 7A of State Environmental Planning Policy (Housing) 2021, this Policy does not apply to a Development Application made, but not yet determined, on or before the commencement date. Therefore, as the application was made on 17 August 2021 and that State Environmental Planning Policy (Housing) 2021 was commencement on 26 November 2021, this Policy does not apply, and the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the associated repealed instrument) continue to apply to such.

State Environmental Planning Policy (Planning Systems) 2021

The Capital Investment Value of the proposed development has been estimated as being \$34,179,665 (exclusive of GST), accordingly (as such is more than \$30 million is) pursuant to Section 2.19 and Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021, the proposal is declared to be 'Regionally Significant Development. Therefore pursuant to Clause 4.5 (b) of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel is the 'Consent Authority'.

State Environmental Planning Policy (Precincts—Western Parkland City) 2021

While the site is located within the '13km Wildlife Buffer Zone' area, the proposal does not relate to any purpose defined as 'relevant development' for the purpose of Clause 4.19 of State Environmental Planning Policy (Precincts - Western Parkland City) 2021, and therefore no further assessment is required pursuant to such.

The site is located within the 'Obstacle Limitation Surface' area and the proposal does not penetrate the identified prescribed air space. Accordingly no further assessment is required pursuant to Clause 4.22 of State Environmental Planning Policy (Precincts - Western Parkland City) 2021.

Accordingly the proposal is considered to satisfy the provisions of State Environmental Planning Policy (Precincts-Western Parkland City) 2021.

State Environmental Planning Policy (Resilience and Hazards) 2021

Pursuant to Clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021, Development Consent must not be granted unless consideration has been given to whether the land is contaminated. A Detailed Site Investigation has been provided, which concluded that the site contains asbestos containing material (ACM) and that remediation works will be required before the site could be considered suitable for the proposed development.

The Detailed Site Investigation has been considered by Council's Environmental Health Officer, who supported the proposal, subject to conditions being imposed. Accordingly, it is considered that the proposal is satisfactory having regard to the provisions of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The application details that while the majority of clients of the health consulting and treatment rooms, and the therapy room, would be residents of the residential care facility, it is proposed that others (i.e. elderly residents of the surrounding area) would be able to access such. It is therefore considered that this element is characterised as a 'health services facility'.

Pursuant to Clause 2.59 of State Environmental Planning Policy (Transport and Infrastructure) 2021, the 'R2 – Low Density Residential' zone is defined as a 'prescribed zone', and therefore pursuant to Clause 2.60 (1) a 'health services facility' is permitted with Development Consent. Notwithstanding this, it is noted that pursuant to Clause 2.60 (4), a consent authority may refuse to grant Development Consent, by reference to its own assessment of the compatibility of the development with the surrounding land uses.

The site has frontage to the 'M4 - Western Motorway', which listed as a 'classified road'. Given the proposed vehicular access arrangements (being from Explorers Way) and the nature of the development, the proposal will not adversely affected the operation of such, and accordingly it is considered that the proposal is consistent with the provisions of Clause 2.119 (2) (a) & (b).

The development is a type which is considered to be sensitive to traffic noise, while it includes development defined as a 'residential care facility', being a type of 'seniors housing', which is a type of 'residential accommodation'. Accordingly, consideration must be given to the provisions of Clauses 2.119 (2) (c) and 2.120. While the application has been accompanied by a detailed Noise Impact Report, which has considered the 'Development near Rail Corridors and Busy Roads Interim Guideline', and outlines that the required internal noise levels can be achieved. Such is subject to required acoustic construction measures and the design plans do not detail the recommendations / requirements of such.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The site is zoned 'R2 – Low Density Residential', pursuant to the Penrith Local Environmental Plan 2010. The proposed development is defined as a 'residential care facility' and a 'health services facility'. While 'residential care facilities' are permitted with Development Consent in the 'R2 – Low Density Residential' zone pursuant to the Penrith Local Environmental Plan 2010, 'health services facilities' are prohibited. Notwithstanding this, as previously outlined, pursuant to Clause 2.60 (1) of State Environmental Planning Policy (Transport and Infrastructure) 2021, 'health services facilities' are permitted with Development Consent in the 'R2 – Low Density Residential' zone.

Clause 2.3 Zone objectives

The previous review of the proposal by Council's Urban Design Review Panel, which was undertaken on the application as initially lodged, raised the following matters:

- Dominance of the street setback by hardscape, surface parking and services not being acceptable.
- Extent of surface parking is too great.
- Numerous surface car parking bays are in very poor locations, with no connection to the building which is dangerous.
- Too much reliance on painted render.
- Privacy is an issue between the function training room and the rooms to the north, and potentially between the beds in the middle wing and the multi-purpose room.
- All first floor decks close to the boundary should be deleted (i.e. near fire stairs to the south and also to the south western balcony off the bedroom).

While it is noted that amendments and refinements were made to the overall proposal, which have addressed a number of associated issues, the following concerns remain with the proposal:

- The insufficient setback of the car parking area and insufficient landscaping provided in the area alongside the western side boundary, having regard to the adjoining low density residential premises.
- The provision of 2.1m high acoustic fencing along the western side boundary.
- The relationship of the north western portion of the car parking area with adjoining residential zoned land.
- Elements of external finishes being unclear, including in relation to specifications of the glazed privacy screens, sections of feature brickwork and driveway pavement.
- The positioning of fire boosters, water and gas meters, and a substation, alongside the immediate street frontage.

It is considered that the aforementioned elements require embellishment, in order to satisfy the following (being objectives for the 'R2 – Low Density Residential' zone):

- Promote the desired future character by ensuring that development reflects features or qualities of traditional detached dwelling houses.
- Enhance the essential character and identity of established residential areas.
- Ensure a high level of residential amenity is achieved and maintained. Accordingly, it is considered that the proposal does not meet the objectives of the 'R2 – Low Density Residential' zone.

Clause 4.3 Height of buildings

The proposal has an overall maximum building height of approximately 9.84m, which exceeds the maximum building height of 8.5m that applies to the site. The application has been accompanied by a 'Written Request' (pursuant to Clause 4.6) seeking to justify the contravention of the Development Standard (see following discussion).

Clause 4.6 Exceptions to development standards

As previously noted, the proposed height of (approximately) 9.84m, exceeds the maximum building height Development Standard of 8.5m (pursuant to Clause 4.3), equating to a variation of 15.8%. Accordingly, the application has been accompanied by a 'Written Request' (pursuant to Clause 4.6), seeking to justify the contravention.

It is noted that the maximum building height Development Standard (pursuant to Clause 4.3), is not a Development Standard excluded by Clause 4.6 (6) or (8).

The objectives of Clause 4.3 are:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*
- (c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*

(d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

The 'Written Request' includes the following items of justification, in relation to the contravention of the Development Standard:

The building complies with the building controls except to the north of the site where there are no adjoining residential buildings.

The non-compliance relates predominantly to the roof and roof mounted plant.

The non-compliant elements of the building are mostly recessed behind the building facade and eaves height, and thus would not generally be visible from the adjoining public domain or from adjoining sites.

There is no significant loss of views created by the non-compliance.

Impacts on solar access to the adjoining park and to adjoining residences have been minimised by building setbacks and orientation.

Because the development is for a residential aged care facility, it is appropriate that the floor levels are at a consistent level, thus avoiding the need for ramps and stairs within the building.

The roof form and plant are acceptable in terms of bulk and scale.

The extent to which the roof and plant exceeds the maximum building height does not change the relationship of the development to adjoining land.

While overall, it is considered, given the aforementioned items of justification, that the proposed variation is unlikely to provide any amenity impacts given the configuration of the building, and that such has the potential to be supported, pursuant to Sub-clause 4.6 (4) (a) (ii):

Development Consent must not be granted for development that contravenes a Development Standard, unless the consent authority is satisfied that, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The application has failed to demonstrate that the proposal will be in the public interest, for the reasons outlined within this report and it is considered that the proposal does not meet Objectives for the 'R2 – Low Density Residential' zone.

Clause 5.21 Flood planning

The submitted Flooding Design Statement and other supporting information, fails to demonstrate that the proposed development will not adversely affect the extent of flooding on any adjoining property, and overall the impact of the proposed development on flood behaviour is unclear.

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

There are no Draft Environmental Planning Instruments that are specifically relevant to the subject application, noting that the Draft Design and Place State Environmental Planning Policy is no longer proceeding.

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

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C12 Noise and Vibration	Complies

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

There are no planning agreements which apply to the site or the proposed development.

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

Prescribed Conditions

Should Development Consent be issued, relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia, will need to be imposed.

Advertising and Notification

The application was advertised and notified, in accordance with the requirements of the Regulations and the Penrith City Council Community Engagement Strategy.

Clause 61 - Additional Matters

Should Development Consent be issued conditions requiring demolition works being undertaken in accordance with the provisions of Australian Standard 2601, will need to be imposed. Noting it is recommended that the application be determined by way of refusing consent.

Clause 86 - Seniors housing

Should Development Consent be issued a condition requiring a restriction being registered (in accordance with Section 88E of the Conveyancing Act 1919), against the title of the property relating to the development, will need to be imposed, in accordance with Clause 86. Noting it is recommended that the application be determined by way of refusing consent.

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

The application has failed to demonstrate that impacts of the development have been avoided or minimised on 'Cooks River / Castlereagh Ironbark Forest', the proposal compromises neighbourhood amenity and residential character of the area (given the insufficient landscaping provided in the area alongside the western side boundary, the provision of 2.1m high acoustic fencing along the western side boundary, the relationship of the north western portion of the car parking area with adjoining residential zoned land and the extent of the immediate street frontage which comprises of utility / service fixtures), the application fails to demonstrate that the proposed development will not adversely affect the extent of flooding on any adjoining property, and the overall the impact of the proposed development on flood behaviour is unclear.

Accordingly, there are potential and likely impacts of the proposed development from biodiversity, neighbourhood amenity, residential / neighbourhood character and stormwater management / flooding perspectives.

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

The application has failed to demonstrate that site is suitable for the proposed development, for the reasons outlined within this report.

Section 4.15(1)(d) Any Submissions

Community Consultation

The application was advertised in a local newspaper, notified to adjacent property owners and residents, and publicly exhibited from 13 September 2021 until 13 October 2021, in accordance with the Penrith City Council Community Engagement Strategy. Six (6) submissions were received in response to this process, which raised the following matters.

- Concern was raised in relation to the proposal being inconsistent with the existing character of the area.

Response: It is considered that elements of the overall design require attention (i.e. the insufficient landscaping provided in the area alongside the western side boundary, the provision of 2.1m high acoustic fencing along the western side boundary, the relationship of the north western portion of the car parking area with adjoining residential zoned land and the extent of the immediate street frontage which comprises of utility / service fixtures), in order to provide a development which is in keeping with the character with the area (being an established low density residential area).

- Concern was raised regarding potential amenity impacts, including in relation to noise, overshadowing and light spillage.

Response: It is considered that elements of the overall design require attention (i.e. the embellishment of landscaping to be provided in the area alongside the western side boundary and the relationship of the north western portion of the car parking area with adjoining residential properties), in order to provide a development which adequately maintains amenity levels of adjacent residential premises.

- Concern was raised regarding potential traffic impacts, including from a safety perspective.

Response: It is considered that the proposal does not provide for any noteworthy traffic related impacts, and that the layout provides adequate sight distances to / from both associated driveways, to enable safe

vehicular related movements. Furthermore in this regard, referral comments provided by Council's Senior Traffic Engineer, raised no concerns with the proposal.

- Concern was raised regarding the insufficient car parking to be provided, including associated impacts on street parking available in the area.

Response: Assessment of the proposal has found that while the proposal provides sufficient car parking for the 'residential care facility' component (satisfying the requirements of Clause 48 of the Seniors Housing SEPP), the proposal does not include parking for the 'health consulting rooms' component, in accordance with the minimum car parking requirements, pursuant to Part C10.5.1 of the Penrith Development Control Plan 2014.

- Concern was raised regarding health related impacts associated with the proposed substation.

Response: It is recommended that in the event of the application being approved, that a condition be imposed requiring the provision of a report, in the format required by the Australian Radiation Protection and Nuclear Safety Agency, showing that the predicted levels of electromagnetic energy surrounding the development will comply with the associated safety limits (imposed by the Australian Communications and Media Authority, and the Electromagnetic Radiation Standard). Noting it is recommended that the application be determined by way of refusing consent.

- Concern was raised regarding potential construction related impacts.

Response: It is considered that the site and overall development do not provide any unique construction management matters. It is recommended that in the event of the application being approved that standard construction conditions be imposed. Noting it is recommended that the application be determined by way of refusing consent.

- Concern was raised regarding the potential impact of the development on property values.

Response: The impact on property values is not a relevant matter in considering a Development Application under the Environmental Planning and Assessment Act 1979. Notwithstanding such, no evidence has been provided quantifying that the proximity of a property to a boarding house is likely to impact upon property values.

Referrals

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

Landscape Architect - Not supported

Building Surveyor - No objections, subject to conditions

Development Engineer - Not supported

Environmental - Environmental management - No objections, subject to conditions

Environmental - Waterways - No objections, subject to conditions

Environmental - Public Health - Not supported

Environmental - Biodiversity - Not supported

Waste Services - Not supported

Traffic Engineer - No objection, subject to conditions

Community Safety Officer - No objection, subject to conditions

NSW Rural Fire Service - 'General Terms of Approval' and 'Bush Fire Safety Authority' issued

Section 4.15(1)(e)The public interest

The application fails to demonstrate that the proposal is in the public interest for the reasons outlined within this report.

Conclusion

The application has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, and it is recommended that the application be determined (in accordance with Section 4.16), by way of refusing consent.

Recommendation

1. That Development Application No. 21/0607, be determined in accordance with Section 4.16 of the Environmental Planning and Assessment Act 1979, by way of refusing consent.
2. That all submitters be notified of the determination.

CONDITIONS

Refusal

- 1 The Development Application is not satisfactory for the purposes of Section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979, as the proposal has not adequately considered the likely impacts of the development on the environment relating to ecology. Specifically, the application has not addressed whether impacts will occur on Cooks River / Castlereagh Ironbark Forest which is listed as entity at risk of Serious Irreversible Impacts and a number of anomalies have been identified within the submitted Biodiversity Development Assessment Report, which has not been prepared in accordance with the Biodiversity Assessment Method 2020.
- 2 The application has not been supported by a verifiable analysis or adequate assessment, demonstrating that the development has been designed to avoid and minimise impacts on areas containing high biodiversity values, as required in Section 6.12 (c) of the Biodiversity Conservation Act 2016.
- 3 The Development Application is not satisfactory for the purposes of Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979, as the proposal does not meet Objectives for the 'R2 – Low Density Residential' zone. Elements of the overall layout require embellishment, in order to provide a development which, promotes the desired future character by ensuring that development reflects features or qualities of traditional detached dwelling houses, enhances the essential character and identity of established residential areas, and ensures a high level of residential amenity is achieved and maintained.
- 4 The Development Application is not satisfactory for the purposes of Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979, as the proposal contravenes the maximum building height Development Standard of Clause 4.3 of the Penrith Local Environmental Plan 2010 and the 'Written Request' (made pursuant to Clause 4.6) to vary the Development Standard is not supported.
- 5 The Development Application is not satisfactory for the purposes of Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979, as the application does not satisfy the provisions Clause 5.21 of the Penrith Local Environmental Plan 2010. The application fails to demonstrate that the proposed development will not adversely affect the extent of flooding on any adjoining property, and overall the impact of the proposed development on flood behaviour is unclear.
- 6 The Development Application is not satisfactory for the purposes of Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, as the proposal does not comply with or fails to demonstrate compliance with requirements of Part C1 (Site Planning and Design Principles), Part C2 (Vegetation Management), Part C3 (Water Management), Part C5 (Waste Management), Part C6 (Landscape Design) and Part C10 (Transport, Access and Parking) of the Penrith Development Control Plan 2014.
- 7 The application has failed to demonstrate that the proposal is satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning & Assessment Act 1979, in terms of potential and likely impacts of the proposed development, from biodiversity, neighbourhood amenity, residential / neighbourhood character and stormwater management / flooding perspectives.
- 8 The application has failed to demonstrate that site is suitable for the proposed development, for the purpose of Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979.

- 9 The application has failed to demonstrate that proposed development is in the public interest, for the purpose of Section 4.15(1)(e) of the Environmental Planning & Assessment Act 1979.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

Part C1 Site Planning and Design Principles

While the overall proposal is generally consistent with site applicable planning and design principles, the following concerns have been identified:

- The insufficient setback of the car parking area and insufficient landscaping provided in the area alongside the western side boundary, having regard to the adjoining low density residential premises.
- The provision of 2.1m high acoustic fencing along the western side boundary.
- The relationship of the north western portion of the car parking area with adjoining residential zoned land.
- The extent of the immediate street frontage which comprises of utility / service fixtures.

Part C2 Vegetation Management

The application, including having regard to the submitted Biodiversity Development Assessment Report, has not adequately considered the likely impacts of the development on the environment relating to ecology. Specifically, the application has not addressed whether impacts will occur on Cooks River / Castlereagh Ironbark Forest, which is listed as entity at risk of Serious Irreversible Impacts. Furthermore a number of anomalies have been identified within the submitted Biodiversity Development Assessment Report, which has not been prepared in accordance with the 'Biodiversity Assessment Method 2020'. Accordingly, overall the application has failed to adequately respond to the requirements of Parts C2.1 & C2.2.

Part C3 Water Management

As previously outlined in accordance with assessment of the application pursuant to Clause 5.21 of the Penrith Local Environmental Plan 2010, the submitted Flooding Design Statement and other supporting information, fails to demonstrate that the proposed development will not adversely affect the extent of flooding on any adjoining property, and overall the impact of the proposed development on flood behaviour is unclear. Accordingly, it is considered that the application has failed to adequately respond to the requirements of Part C3.5.

The alignment of a portion of the to be diverted piped drainage line is below a proposed culvert, which will provide for maintenance difficulties. Furthermore, insufficient detail (i.e. cross-sections) have been provided of the proposed swale. Accordingly, it is considered that the application has failed to adequately respond to the requirements of Part C3.6.

Part C5 Waste Management

A detailed Waste Management Plan which provides specific details of demolition and construction elements, has not been provided, as required by Part 5.3.1. While comprehensive details have not been provided of the garbage storeroom and therefore it is unclear whether such provides for compliance with the requirements Part 5.3.4.

Part C6 Landscape Design

Assessment of the proposed landscaping scheme (including by Council's Landscape Architect), has identified the following:

- The car parking arrangement undermines the potential integration of the development into the existing low density residential setting. Furthermore, it increases the impervious footprint of the development and reduces the area of deep soil available for the canopy trees to thrive.

- Particular concern is raised regarding the western aspect, which requires additional canopy to mitigate the late afternoon summer sun. The setback (including of the car parking area) and overall configuration (including the proposed drainage swale) of the development, alongside low density residential development to the west, provide insufficient landscaping opportunities.
- The planting schedule contains anomalies in relation to the quantity of trees to be provided.
- The overall layout is not in alignment with the goals of Council's Cooling the City Strategy.

Accordingly, overall it is considered that the landscape design does not provide for the adequate screening of the development and is inconsistent with provisions of Parts 6.1.3 & 6.1.4.

Part C10 Transport, Access and Parking

There are no specific minimum on-site car parking requirements contained within the Penrith Development Control Plan 2014 for 'residential care facilities', however Part C10.5.1 outlines that 'health consulting rooms' are to provide 3 spaces per health care professional practising at any one time plus 1 space per receptionist / support staff. While the proposal provides sufficient car parking for the 'residential care facility' component (satisfying the requirements of Clause 48 of the Seniors Housing SEPP), the proposal does not include parking for the 'health consulting rooms' component, in accordance with the aforementioned minimum car parking requirements.

The submitted design plans, do not demonstrate that the layout of the car parking spaces, driveway areas and access aisles, satisfy the requirements Australian Standard 2890.

The plans (including the design and Landscape Plans) do not provide details of any bicycle parking. Accordingly it is unclear whether the proposal provides for compliance with the requirements of Part C10.7.