

SWCPP Ref. No.:	PPSSWC-4
DA No.:	DA19/0419
PROPOSED DEVELOPMENT:	Demolition of Existing Structures & Construction of a Two Storey Residential Aged Care Facility Including 142 Beds, At-Grade Car Parking, Earthworks and Landscaping - Lot 1 DP 825553,5 - 7 Floribunda Avenue, GLENMORE PARK NSW 2745
APPLICANT:	Principal Healthcare Finance Pty Ltd
REPORT BY:	Ian Dencker, , Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of a Development Application from Principal Healthcare Finance Pty Ltd for the Demolition of Existing Structures & Construction of a Two Storey Residential Aged Care Facility Including 142 Beds, At-Grade Car Parking, Earthworks and Landscaping.

The land is zoned R2 Low Density Residential under Penrith Local Environmental plan 2010 (PLEP) and a residential care facility is permissible development within the zone subject to development consent. It is also noted that State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 permits residential care facilities on land zoned for urban purposes where dwelling houses are permissible. As a result the proposal is also permissible with consent under the provisions of the SEPP.

As a result of the assessment of the application, the following key concerns and issues have been identified:-

- The design of the development has not adequately responded to, or resolved, the issues raised by Council's Urban Design Review Panel which necessitated a reduction in building form, scale, massing, staggered and stepped setbacks to achieve perceived breaks in the built form, greater tree retention and canopy planting and more contextually relevant and complimentary architectural building design
- The proposal is not considered to be site responsive in terms of the extent of proposed earthworks, building bulk, scale, setbacks, massing, tree retention and character integration
- The proposal's impacts on the character of the area and on the amenity of neighbouring residential properties is unsupportable and necessitates substantial amendments to the design of the development and associated landscaping and earthworks
- Unsatisfactory streetscape presentation resulting from the extent of proposed earthworks and car parking within the front setback
- The proposal is not considered to comply with the objectives of the R2 zone pursuant to PLEP 2010
- The proposal does not comply with the SEPP provisions relating to required single storey construction for the rear 25% of the site and the applicant's request to vary the development standard is not considered to be sufficiently founded to support the variation.
- The proposal provides inadequate design detail to adequately assess car parking design and does not demonstrate compliance with Penrith DCP 2014 and the Australian Standards
- The proposal has not satisfied the provisions of SEPP 55 as it has not been sufficiently demonstrated that the site is suitable for the proposed development.

The proposal is considered to be inconsistent with the LEP 2010 R2 zone objectives and key SEPP

requirements, in that negative impacts attributable to the bulk and scale of the development are not adequately mitigated by the setbacks, built form, articulation, materials or finishes, and by the landscaping proposed, including an unacceptable loss of significant trees. Due to the slope of the land and the extent and level of each building platform, the development presents as a three-storey construction to a large proportion of the site, which is not comparable or complementary to the site's context and results in unsupportable impacts on the streetscape character and on the privacy and amenity of neighbouring dwellings.

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents within the exhibition period between 5 July 2019 to 5 August 2019. The application was also advertised in a local newspaper until 5 August 2019. Council has received:

- 15 x unique individual submissions (including 1 submission from Penrith City Council's Property Management Team)
- 4 x form letter submissions
- 1 x electronic petition containing the contact details and comments of 117 individuals
- 1 x representations from the local member on behalf of residents

The issues raised within the received submissions relate primarily to traffic generation, tree and vegetation loss, incompatible design and SEPP non compliances, noise generation and waste management concerns.

The proposal was referred to the NSW Rural Fire Service (RFS) as a special fire protection purpose (integrated development). A Bushfire Safety Authority (concurrence) has been received and requires clearing to meet APZ requirements under Planning for Bushfire Protection. The impacts of this additional clearing have not been assessed in combination with the proposed landscaping design of the development noting that the existing tree and vegetation removal has been raised as a matter of concern.

In accordance with Section 2.12 of the Environmental Planning and Assessment Act, 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for this application. The proposal is 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 development application is recommended for refusal.

Site & Surrounds

The site is approximately 10,000sqm's in area with access to Floribunda Avenue via two driveway crossings. The Council owned Floribunda Community Centre adjoins the site to the north; Glenmore Park Town Centre is located approximately 600 metres to the South of the site and Rotary Park and Glenmore Loch are located to the site's immediate east. The site shares its southern most boundary with the rear yards of 5 dwelling houses which front Freesia Place to the south. The land slopes from south-west down to the north-east rear boundary with a fall of approximately 6.5metres.

Single residential dwellings are located opposite the subject site, on the western side of Floribunda Avenue.

Surrounding land uses are predominantly low density residential dwellings consisting of 1-2 storey single dwelling house. The site currently contains two separate one storey buildings and existing vegetation. The site is located approximately 6.4 km south of Penrith CBD via Mulgoa Road.

Proposal

The development application seeks consent for the following

- The demolition of all structures
- The construction of a mixed use development comprising of a part 2, part 3 storey 142 bed Residential Aged Care Facility (RACF) and,
- A Medical Services Facility.

The RACF comprises of the following elements:

- Total gross floor area of 8,183 m² (Lower ground floor (excluding parking, lifts and stairs) being 633 m², Ground floor being 4,000 m², First floor being 3,550 m²)
- A floor space ratio of 0.82:1
- 42 car parking spaces
- Bulk earthworks including cut and fill
- Site access via Floribunda Avenue
- Internal hard stands and turning loops to accommodate vehicular movements
- 3902 m² of landscaped area
- Removal of 29 Trees and other vegetation clearing
- Ancillary landscaping and civil and services works.

The proposed hours of operation are 24 hours per day, 7 days per week for the RACF.

40 staff are proposed in relation to the operations of the RACF, plus 3 consultants related to the medical services component which is integrated into the building envelope, fronting Floribunda Avenue.

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 No 19 - Bushland in Urban Areas
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

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

In accordance with Section 2.12 of the Environmental Planning and Assessment Act, 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for this application. The proposal is 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).

- **Section 4.14 - Bushfire prone land assessment**

The development has been assessed in accordance with the matters for consideration under Section 4.14 (Consultation and development consent—certain bush fire prone land) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following points are made:

The New South Wales Rural Fire Service (NSW RFS) has been referred the application for concurrence and the issue of a Bushfire Safety Authority having regard to Section 100B of the Rural Fires Act. In response received dated 31 July 2019, the RFS has provided conditions and issued a Bush Fire Safety Authority.

The conditions provided in the correspondence from the RFS relate to the provision of water, electricity and gas supplies in accordance with the Planning for Bush Fire Protection (PBFP) 2006 document; Preparation of a Bush Fire Management and Evacuation Plan; and that landscaping at the site comply with the principles of Appendix 5 of PBFP.

It is unclear what impacts the required compliance with the requirements PBFP will have on trees and vegetation across the site.

- **Section 4.15 - Evaluation**

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

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

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

The proposal has been assessed against the applicable provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 [Seniors SEPP] and is found to be non-compliant with key development standards as outlined below.

The proposal is defined as a Residential care facility, which is a type of Seniors housing under the Seniors SEPP.

The development application is required to demonstrate compliance with the applicable provisions of the SEPP including those provisions related to seniors development, residential aged care facilities, bush fire prone land, water and sewer and the development standards to be complied with under Part 4.

Importantly the application fails to satisfactorily address the impact on local character arising from the massing and bulk of the buildings footprint, and is unsatisfactory having regard to the matters for consideration under Part 3, Division 2 Design principles.

Part 3, Division 2 Design principles

Part 3, Division 2 Design principles stipulates under various headings, how the development shall respond to its context. Particular clauses of Division 2 are detailed below:

Clause 33 Neighbourhood amenity and streetscape

requires that 'the proposed development should -

'(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and...

(c) maintain reasonable neighbourhood amenity and appropriate residential character by—

(i) providing building setbacks to reduce bulk and overshadowing, and

(ii) using building form and siting that relates to the site's land form, and

(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and

(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and

(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and

(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and

(f) retain, wherever reasonable, major existing trees,...

[Council emphasis added].

The proposal does not adequately align itself with the above principle. The proposal has not been designed having sufficient regard to the context in which it will sit and the attributes of the site, as the land surrounding the site is predominantly zoned R2 Low Density Residential, with a development form of single and two storey residential dwellings. The proposal provides a building length and massing that is inconsistent with the detached dwelling character of the locality with the front setback substantially eroded by the provision of car parking forward of the building line and associated tree loss.

Further, due to the extent of the building platforms and their levels, three storey elements are proposed within <7m to the south-east boundary which is shared with the low density rear backyards of dwellings fronting Freesia Place, which will result in negative, avoidable and detrimental overbearing, amenity and privacy impacts.

The development seeks excavation within the front setback to lower the building form and massing as viewed from Floribunda Avenue however filling is then proposed through the majority of the site culminating in a three storey building form towards the rear. The proposed tree loss in the front setback, and filling and non compliant building height through to the rear of the development reinforces issues of incompatibility with the character integration considerations within the SEPP and the low density housing objectives within the LEP.

The development proposal would require a significant re-design and potentially a reduction in scale, to suitably align itself with the provisions of Division 1 and Division 2 under Part 3 of the Policy and is unsupportable, having regard to these requirements.

Part 4 Development standards to be complied with

Clause 40 of Part 4 details the development standards with regard to minimum sizes and building heights. Clause 40(1) states that 'a consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this

clause'. In this respect, the application is found to be non-compliant with the following clauses:

Clause 40(4) Height in zones where residential flat buildings are not permitted, states that:

'If the development is proposed in a residential zone where residential flat buildings are not permitted—

(a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

The proposal is for a part 2, part 3 storey development for a substantive portion of the area of the building; and for 3 storeys within the rear 25% of the site. In this regard, the proposal does not comply with the development standards under 40(4)(a), (b) and (c).

Clause 40(5) Development applications to which clause does not apply, states that clause 40(4)(c) does not apply to developments made by the Department of Housing or any other social housing provider. The application is not made by either of these entities.

Written request to vary a development standard

A written request to vary the development standards referred to above has been provided and is discussed further under the PLEP section of this report.

The proposal is therefore not considered to comply with the Seniors SEPP and cannot be supported.

Part 7 Development Standards that cannot be used as grounds to refuse consent

Clause 48 lists the standards that cannot be used to refuse development consent for residential care facilities as follows:

(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or

(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,

(c) landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,

(d) parking for residents and visitors: if at least the following is provided—

(i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and

(ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and

(iii) 1 parking space suitable for an ambulance.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.

With regard to (b), (c) and (d) above, the development application is considered to be satisfactory. Notwithstanding, it is determined that the development proposal is not compliant with (a) building height, as the development is 3 storeys in height for a significant portion of the building.

'Height' is defined within the Policy under Clause 3 Interpretation, which states that *'in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point'*. The submitted elevations indicate much of the building exceeds 8m, noting that 'ground level' is also defined under Clause 3 and is defined as *'the level of the site before development is carried out pursuant to this Policy'*.

State Environmental Planning Policy (Infrastructure) 2007

An assessment has been undertaken of the application against the relevant criteria of State Environmental Planning Policy (Infrastructure) 2007 and the application is unsatisfactory. No details have been provided in respect of the proposed 'allied health services' to allow meaningful development assessment to be made. The proposed allied health activity relies upon the Infrastructure SEPP for permissibility.

State Environmental Planning Policy No 19 - Bushland in Urban Areas

An assessment has been undertaken of the application against relevant criteria of State Environmental Planning Policy No 19—Bushland in Urban Areas and the application is satisfactory.

State Environmental Planning Policy No 55—Remediation of Land

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy No 55—Remediation of Land having regard to Clause 7 of the SEPP which requires the consent authority to be satisfied that the site is suitable, or can be made suitable, to accommodate the proposed development.

The development application is accompanied by a Preliminary Site Contamination Assessment prepared by Martens Consulting Engineers dated May 2019. This investigation included some site sampling and testing and an assessment of historic practices and activities on the site. The report acknowledges that potential contamination sources exist within and under existing buildings on the site with respect to potential asbestos, pesticides and heavy metals. There are also suggestions within the report that pesticides and hydrocarbons may have been stored within the site shed and that fill material may have been used across the site.

While the laboratory tests and field observations did not identify any contaminating substances within the fill material, Clause 7.12 of the report identifies data gaps requiring a soil sampling regime under buildings and shed footprints following demolition. Further this clause suggests that investigations of the fill material on the site was limited to 100mm and 60mm depths providing a limited visual assessment.

This preliminary assessment report specifically recommends that a more detailed assessment of the fill across the site be done via test pitting with an excavator as well as further testing following demolition works and does not conclude that the site is suitable, only that the site is expected to be suitable following the recommended works.

As such it has not been demonstrated that the site is suitable for the proposed development and a detailed site investigation report is required to be prepared and submitted for assessment that concludes that the site is, or can be made suitable, for the development. Where there is a suggestion that the site can be made suitable by way of remediation, this requires development consent due to the implications of SEPP 55 overlaid with SREP 20 necessitating inclusion of remediation and preparation of a remedial action plan as part of this application.

State Environmental Planning Policy No 64—Advertising and Signage

An assessment has been undertaken of the application against relevant criteria of State Environmental Planning Policy No 64—Advertising and Signage, and the application is satisfactory.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and is found to be compliant with the general planning considerations of the Policy. Notwithstanding, the proposal has not demonstrated that the subject site can adequately accommodate the proposed development and is recommended for refusal.

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 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 7.1 Earthworks	Does not comply - See discussion

Clause 2.3 Permissibility

The subject site is zoned R2 Low Density Residential under Penrith Local Environmental Plan 2010. The proposed 'residential care facility' is a permissible form of development in the R2 zone.

Notwithstanding the LEP provisions, the proposal has been lodged (and is permissible with consent) under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Clause 2.3 Zone objectives

The land is zoned R2 Low Density Residential under Penrith Local Environmental plan 2010 (PLEP). The proposal shall have regard to the objectives of the zone which include:

1. *to promote the desired future character by ensuring that development reflects features or qualities of traditional detached dwelling houses that are surrounded by private gardens,*
2. *to enhance the essential character and identity of established residential areas and,*
3. *to ensure a high level of residential amenity is achieved and maintained.*

The proposal remains inconsistent with the zone objectives, in that negative impacts attributable to the bulk and scale of the development are not adequately mitigated by the setbacks, built form, articulation, materials or finishes, and by the landscaping proposed, including an unacceptable loss of significant trees.

Clause 4.6 Exceptions to development standards

A written request to vary two development standards contained within the Senior SEPP has been provided and accompanies the development application.

An analysis of the levels and storeys proposed suggests that the assertion that the variations sought are only 33% is not correct. i.e. the variation sought for the rear 25% of the site is 100% - 200% (going from 1 to 2 to part 3 storeys) and for the side boundary 50% (going from 2 to 3 storeys).

Variations of 50-100-200% will not enable the '*reasonable neighbourhood amenity and appropriate residential character*' currently enjoyed by surrounding R2 Low Density Residential development to be maintained, as required by Clause 33 of the Seniors SEPP. The written request is therefore not supported and unsatisfactory justification is provided for the variances.

The proposal in its current form does not respond to context and is out of character with its surroundings as outlined above. This is also due to not only the very large variances sought to as described above, but also an incorrect application of the SEPP requirement for 25% of the rear boundary to not exceed single storey in height.

The assertion in the Statement of Environmental Effects that the variations sought are only 33% is not correct. i.e. the variation sought for the rear 25% of the site is 100%-- 200%(going from 1 to 2 -3 storeys) and for the side boundary 50% (going from 2 to 3 storeys).

The variations sought of 50-100 and 200%, will not enable the '*reasonable neighbourhood amenity and appropriate residential character*' currently enjoyed by surrounding R2 Low Density Residential development to be maintained and are not complemented by the proposed development, as envisaged by Clause 33 of the SEPP. The written request is not supported and unsatisfactory justification is provided for the variances which are considered to be largely self-imposed.

Clause 7.1 Earthworks

Given the excessive level of fill and retaining walls proposed, the proposal is inconsistent with the objectives of the Earthworks clause, specifically: 7.1 (1) (a) "to ensure that earthworks for which development consent is required will not have a detrimental impact on, neighbouring uses."

Furthermore, as per clause 7.1 (3) (d), before granting consent the consent authority must consider the effect of the proposed development on the existing and likely amenity of adjoining properties. Given the proposal does not minimize the earthworks the impacts upon streetscape and neighbourhood character and residential amenity are considered adverse.

Section 79C(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 proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land State Environmental Planning Policy

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 proposal is not inconsistent with the provisions of this Draft Instrument.

Section 79C(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	Does not comply - see Appendix - Development Control Plan Compliance
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iv) The provisions of the regulations

The application was referred to Council's Building Surveying Team for assessment and who have provided standard conditions of consent with regard to the Building Code of Australia. These conditions will not be included in the Notice of Determination as the development application is recommended for refusal. Furthermore, the development application has been notified, exhibited and advertised in accordance with the requirements of the Regulation.

Section 79C(1)(b)The likely impacts of the development

The following matters identified during the assessment process are likely to result in likely adverse impacts:

- Departures from the applicable development controls and bulk and scale and amenity impacts
The development is likely to result in overbearing, privacy and amenity impacts in particular effecting the residential neighbours to the south-east adjacent to the shared most southern boundary of the Site. These impacts are directly related to the bulk and scale of the development and its non-compliance with the Development standards under Clause 40 of the Seniors SEPP, and the inability of the design (due to its scale and density) to appropriately respond to, or complement local character as envisaged by Division 2 Design principles and by the requirement under Clause 29 to consider Clause 25(5)(b) (v) in particular, which relates to a consideration towards *'the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development'*.
- Tree removal
Although it is noted that some trees will be retained along the frontage of the site, and within the rear setback, the development proposal does not retain significant canopy trees on the site due to the scale of the buildings platform and it is unclear what additional trees and shrubs may be required to be removed in order to comply with the requirements of the RFS and the Planning for Bush Fire document. Further, insufficient landscaping is proposed within the front and side setbacks.
- Traffic and design matters including amenity impacts,
The development does not provide for basement car parking and the surface car parking that is located forward of the building line negatively impacts on local character and due to the site's 24 hour, 7 day per week proposed operating hours, will result in amenity impacts on neighbouring sites due to headlights and vehicle noise.
- Site responsiveness
The design and scale of the development is not site responsive for the reasons discussed within this report. Additionally the extent of cut, fill and earthworks are contrary to the controls of the Penrith DCP and earthworks provisions within the PLEP in that they are excessive and likely to result in poor boundary interface arrangements. The impacts of the minimal western side setbacks and heights of retaining walls may pose a safety risk to the neighbouring community facility and poorly present to this neighbour. Walls are not adequately landscaped or tiered to reduce their overall scale.

Section 79C(1)(c)The suitability of the site for the development

The suitability of the site to accommodate the proposed development is in part dependant on a recognition of site conditions, attributes and constraints and ensure that the proposal has suitably responded to those conditions in the design, spatial arrangement and construction of the proposal.

Due to the slope of the land and the extent and level of each building platform, there is with an excessively large basement protruding from the ground. PLEP defines a "basement" means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing). Because the basement is assessed as being more than 1 metre above ground level (existing) it has the appearance and impact of a building storey.

As a result of this protrusion, the proposed development presents as three-storeys to a large proportion of the site, which is not comparable or complementary to the site's context and is directly linked to unsupportable impacts on the streetscape character and on the privacy and amenity of neighbouring dwellings. Where a basement of this extent and exposure is necessary, this would suggest that the site is not suitable for the proposed development, or the scale and design of the development as currently proposed.

The site is zoned R2 low density residential development with objectives in the LEP that encourage and require a low density scale and form of development on this site. While this does not preclude the ability to propose an aged care facility, the scale and form of this proposal must reflect the existing character of the area as established by virtue of the zoning of the land. The proposal then must demonstrate compliance with these low density objectives. This relates to the building size, building depth, building length, stepped architecture and provision of perceived spatial breaks in the built form and retention and embellishment of the existing landscape setting that is within the site.

As a consequence of the issues raised within this assessment report, it is not considered that the site is suitable for the nature and scale of the proposed development.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents within the exhibition period between 5 July to 5 August 2019. The application was also advertised in a local newspaper until 5 August 2019. Council has received:

- 15 x unique individual submissions (including 1 submission from Penrith City Council's Property Team)
- 4 x form letter submissions
- 1 x electronic petition containing the contact details and comments of 117 individuals
- 1 x representations from the local member on behalf of residents

The submissions have raised concerns with the development relating to traffic and privacy impacts, loss of vegetation, waste management and the developments compatibility with the surrounding locality. These issues are summarised and discussed below.

Issue	Response
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<i>Adverse Traffic Impacts</i>	<p>Council's Traffic Engineers who do not support the proposal and note the following matters:</p> <ul style="list-style-type: none"> • Inadequate separation of staff parking and waste collection areas, • Poor pedestrian safety outcomes, • Swept paths clash with car spaces, • No provision for emergency services (Ambulance) vehicles, • Lack of detail provided, in particular dimensions of car spaces and aisles, • The location of accessible spaces away from primary entry points and provision of safe access pathways, • Southern driveway not being perpendicular to the kerb, • Non-compliance with Australian Standards, and • Non-compliance with Section C10 of PDCP 2014.
<i>Loss of Vegetation</i>	<p>The removal of vegetation within the property is considered detrimental to the character of the area. The proposal is therefore not in accordance with Clause 33, Neighbourhood Amenity and Streetscape of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP), nor is it considered to be in accordance with Part C2 of Penrith DCP 2014 as the siting and layout of development has therefore not considered the location of trees and favored their retention (DCP Section C2.1(6)(a)). Subsequently, this issue has been identified as part of the assessment and is one of the reasons the application is recommended for refusal.</p>
<i>Incompatible Design</i>	<p>The overall bulk, scale and length of the building's two to three storey elevations are not supported, particularly given the planar design vertically, and lack of upper level setbacks. Significant consideration must be given to reducing the scale of the development overall, breaking up the building form in plan and in elevation to add articulation, and to the provision of increased landscaped setbacks to the side boundaries.</p>
<i>Poor Waste Management</i>	<p>Council's Waste Team has advised that the waste collection infrastructure and collection proposal is not permitted in its current configuration.</p>
<i>Overlooking</i>	<p>The setback to the eastern most boundary, remains insufficient. Impacts of overbearing and visual and acoustic privacy on the neighbouring residential uses will result and appear, on review, to be unacceptable. It is not considered that the impact of overlooking from resident's rooms would equal or comparable to that of a bedroom attached to a dwelling house, as the nature and utilisation of these rooms and their number, differs greatly from a typical residential development type.</p>
<i>Excessive Noise</i>	<p>Insufficient information is provided in the Acoustic Report related to hours of operation, staffing and patron numbers for the medical centre component. Further detail is required related to truck movements, plant machinery, deliveries and loading dock related noise and the impacts on sensitive receivers.</p>
<i>Non-compliance with SEPP</i>	<p>In relation to the written request for a variation under Clause 4.6 pursuant to PLEP, early analysis indicates that the assertion that the variations sought are only 33% is not correct. i.e. the variation sought for the rear 25% of the site is 100-200% (going from 1 to 2 and part 3 storeys) and for the side boundary 50% (going from 2 to 3 storeys).</p> <p>Variations of 50-100-200% will not enable the "reasonable neighbourhood amenity and appropriate residential character" currently enjoyed by surrounding R2 Low Density Residential development to be maintained, as required by Clause 33 of the SEPP. The written request is not supported, and unsatisfactory justification is provided for the variances which are considered to be largely self-imposed.</p> <p>In addition, the Statement of Environmental Effects accompanying the development application has not addressed the "Seniors Living Policy - Urban Design Guidelines for Infill Development".</p>

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 - subject to conditions
Development Engineer	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	Not supported
Environmental - Public Health	Not supported
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	Not supported
Tree Management Officer	Not supported
Social Planning	Not supported

Section 79C(1)(e)The public interest

The proposed development has been assessed to be contrary to the primary aims, objectives and controls of the applicable planning instruments and will result in negative and unacceptable impacts in the locality and as such, support of the proposal would not be in the public interest.

Conclusion

The proposal remains inconsistent with the zone objectives under PLEP 2010, in that negative impacts attributable to the bulk and scale of the development are not adequately mitigated by the setbacks, built form, articulation, materials or finishes, and by the landscaping proposed, including an unacceptable loss of significant trees. Cut and fill at the site is considered to be excessive and is resultant from the slope of the land an inability to step the building platform (associated with the nature of the use as RACF), and the overall scale and density of the development.

The proposal does not comply with the development standards and considerations related to site context and local character within the Seniors SEPP and the written request to vary the development standard is not considered to adequately demonstrate the better planning outcome or justification for the departures.

Due to the slope of the land and the extent and level of each building platform, the development presents as three-storey to a large proportion of the site, which is not comparable or complementary to the site's context and is directly linked to unsupportable impacts on the streetscape character and on the privacy and amenity of neighbouring dwellings. It is for the above reasoning and that which is detailed within the report, that the development proposal cannot be supported and is recommended for refusal.

Recommendation

1. That DA19/0419 for the proposed demolition of existing structures and construction of a two (part three) storey residential aged care facility Including 142 Beds, Car Parking, Earthworks and Landscaping at 5-7 Floribunda Avenue, Glenmore Park NSW 2745 be refused for the following reasons; and
2. That those making submissions are notified of the determination.

CONDITIONS

Refusal

- 1 The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the following provisions of:

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

- Clause 33 - Neighbourhood amenity and streetscape
- Clause 34 - Visual and acoustic privacy
- Clause 29 - Which requires that a consent authority, in determining a development application to which this clause applies, must take into consideration the criteria referred to in clause 25 (5) (b) (i), (iii) and (v) of the Policy.
- Clause 25 Application for site compatibility certificate, (5)(b)(v)
- Clause 40 - Development standards—minimum sizes and building height, (4)(a), (b) and (c),
- Clause 48 - Standards that cannot be used to refuse development consent for residential care facilities (a) Building height.

- 2 The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the following provisions of:

Penrith Local Environmental Plan 2010

- Clause 2.3 - Objectives- The proposal is inconsistent with the objectives of the R2 Low Density Residential zone, specifically:

- (i) To promote the desired future character by ensuring that development reflects features or qualities of traditional detached dwelling houses that are surrounded by private gardens,
- (ii) To enhance the essential character and identity of established residential areas, and
- (iii) To ensure a high level of residential amenity is achieved and maintained.

- Clause 4.6 - Exceptions to development standards - Clause 33 and 29 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Unsatisfactory justification is provided for the variances which are considered to be largely self-imposed.

- Clause 7.1 - Earthworks - The proposal is inconsistent with the objectives of the Earthworks clause, specifically:

- (i) to ensure that earthworks for which development consent is required will not have a detrimental impact on neighbouring uses.

- 3 The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions of the Penrith Development Control Plan 2014:
- C1 Site Planning and Design Principles
 - C2 Vegetation Management
 - C3 Water Management
 - C4 Land Management
 - C5 Waste Management
 - C6 Landscape Design
 - C10 Transport, Access and Parking
 - C12 Noise and Vibration
- 4 The application is not satisfactory for the purpose of Section 4.15(1)(a) of the Environmental Planning and Assessment Act as the proposal has not complied with the provisions of State Environmental Planning Policy No. 55 as it has not been demonstrated that the land is suitable for the proposed development.
- 5 The application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in terms of the following matters identified during the assessment process and which are likely to result in likely adverse impacts:
- Departures from the applicable development controls
 - Bulk, scale, massing and building design
 - Tree removal and landscaping impacts
 - Traffic management and carpark design, and;
 - Site responsiveness and impacts on neighbourhood and streetscape character.
- 6 The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act as the site is not suitable for the bulk and scale of the proposed development. This includes the extent of earthworks and tree removal associated with the proposal.
- 7 Based on the above deficiencies and submissions received, approval of the development would not be in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.
- 8 The application is not satisfactory for the purpose of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 due to matters raised in submissions which include the development's incompatibility with the surrounding locality and, amenity and privacy impacts.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

As detailed in this report the development is considered to be inconsistent with the following objectives of the DCP:

C1. 1.2. B. a) to ensure that development is designed on a 'whole of building' approach by:

- (i) responding to the site's context, the desired scale and character of an area;
- (iii) minimising likely bulk and scale impacts if a building; and
- (iv) considering the natural topography and landform and minimise excavation and likely visual impacts of the development.

C2 Vegetation Management

The siting and layout of development has not considered the location of trees and favoured their retention (DCP Section C2.1(6)(a)). The objectives of this section are to promote the benefits of trees and other vegetation, protect and enhance native vegetation, habitat for fauna and manage non-native vegetation in accordance with its cultural and landscape significance. Trees and vegetation must also be retained where they form part of the landscape character of an area, however the proposal does not comply with this requirement under Section C2.1(6)(h).

The retention of trees within the front setback is critical to ameliorating the visual bulk, scale and built form presentation of the development in a street that is characterised by detached low density housing. The proposed excavation works, extensive car parking and tree loss within the front setback does not contribute to the existing streetscape character, but rather the proposal detracts from the character and necessitates significant amendment to relocate the car parking from the setback zone and retain trees and embellish landscaping in the front and side setbacks.

C3 Water Management

Council's Environmental Waterways Team has advised that the current use of surcharge pits is not supported as the pipes need to be free draining. Also, no information has been provided in relation to water conservation. Accordingly, objective C3. i) "To utilise principles of Water Sensitive Urban Design in designing new developments or infill development in existing areas." has not been satisfied.

The proposal has not sufficiently demonstrated compliance with Council's DCP and Water Sensitive Urban Design Policy and while it is acknowledged that amendments and additional information would likely resolve this issue, the other design and contextual integration concerns raised within the report are considered to warrant refusal of the application.

It is also noted that a drainage easement is required over Council owned land to the rear, and that owners consent from Council's Property Management Team has not been sought or provided as yet. This is necessary to ensure that a legal point of discharge is available to the development to suitably dispose of stormwater. In addition, it is unclear how various pits will discharge to the OSD basin without being inundated with water. The stormwater management system must be free draining to the basin and rubble drains in the bottom of the pits is not acceptable.

C4 Land Management

The proposal has not satisfied C4. 4.1. Site Stability and Earthworks, which seeks to ensure

that site planning for any proposed development takes into account the topography, geology and soils of the site and surrounding land. As a result, major disturbance to existing landforms and costly earthworks are proposed and compliance with the following objectives is not achieved (C4. B.):

- a) To take into account the stability of land having regard to its topography, geology and soils as part of site planning principles;
- b) To minimise the extent of earthworks when creating a building site; and
- c) To minimise disturbance of vegetation that stabilises land, particularly on sloping sites.

Further it has not been sufficiently demonstrated that the land is suitable for the proposed development having regard to SEPP 55 requirements and the conclusions and recommendations outlined within the submitted PSI which necessitate further site testing to establish suitability.

C5 Waste Management

Council's Waste Services Team has advised that the waste collection infrastructure and collection proposal is not permitted in its current configuration as detailed in this report.

The proposal has not sufficiently demonstrated compliance with Council's DCP and while it is acknowledged that amendments and additional information would likely resolve this issue, the other design and contextual integration concerns raised within the report are considered to warrant refusal of the application.

C6 Landscape Design

As detailed in this report, the following C6 B. Objectives have not been met:

- a) To promote landscape design and planning as part of a fully integrated approach to site development;
- b) To ensure landscape design takes into account the site's context, landscape and visual character, existing landscape features and amenity, both at the local and regional scale;
- c) To encourage the development of quality landscape design associated with new development that is consistent with industry best-practice;
- d) To encourage the retention of existing trees and vegetation to enhance landscape character;
- e) To ensure landscape design adequately complements the proposed built form and minimises the impacts of scale, mass and bulk of the development in its context;

The retention of trees within the front setback is critical to ameliorating the visual bulk, scale and built form presentation of the development in a street that is characterised by detached low density housing. The proposed excavation works, extensive car parking and tree loss within the front setback does not contribute to the existing streetscape character, but rather the proposal detracts from the character and necessitates significant amendment to relocate the car parking from the setback zone and retain trees and embellish landscaping in the front and side setbacks.

C10 Transport, Access and Parking

As detailed in this report, the proposal is inconsistent with the following DCP objectives:

- a) To require that access internal to the development is adequate to accommodate traffic generated by the development.
- b) To provide a safe, convenient and legible movement network for people with diverse abilities, including those using wheelchairs, mobility scooters, people with prams, small children, elderly people and people with temporary injuries, between residences and points of attraction

within and beyond the development.

The proposal provides inadequate information to adequately assess parking spaces, aisles, ramps, crossovers and the like. The plans must be suitably scaled and dimensioned to ensure that the parking design and arrangement complies with Council's DCP and at a minimum, the Australian Standards.

There is not considered to be adequate separation of staff parking and the waste collection/loading area. This was specifically requested to be addressed, upon DA submission, when the issue was raised with the applicant at pre-lodgement meetings and subsequent correspondence. It is considered to be a pedestrian safety matter that should be resolved if the proposal is supported.

The waste and service vehicle swept paths provided with the application also show the vehicle tracking over the end parking space, in the staff car parking area, when reversing into the loading area. Reference is made to standards and Council's DCP requirements below:

- AS2890.2 – 2018 – 4.1 – “The design of service areas should provide separation [of heavy vehicles] from areas for car parking, pedestrian activity, entrances and exits. Where separation of these areas is not possible service areas shall be designed to mitigate conflict between pedestrian movement and vehicles”.
- Penrith DCP – C10 – 2.e – “The layout and design of parking areas must minimise vehicle to pedestrian impacts, especially where heavy vehicle access to loading docks is proposed”.
- Penrith DCP – C10 – 5.p – “The design of car parks should ensure adequate separation of staff/visitor parking and loading dock circulation areas for heavy vehicles”.
- Penrith DCP – C10 – 5.t.ii – “All loading and unloading areas are to be... separated from car parking”.

Upon addressing the above matters, clarification is also required from the applicant as to the largest vehicle nominated as required to enter the site, as the swept paths provided are only for a medium rigid vehicle (MRV) and 9.8m garbage truck. However, it is likely that some contractors and third party providers will make deliveries in 12.5m heavy rigid vehicles (HRV), for which swept paths have not been provided. Information from the applicant would need to address how this would be managed to prevent external contractors accessing the site with HRVs (or larger).

The emergency vehicle parking area is to be clearly marked and designated on the plans if the application was to be supported.

Accessible car parking spaces are to be relocated adjacent to the entrance with the provision of an adjoining safe, accessible travel path to the facility entrance for mobility impaired pedestrians (as requested at pre-lodgement meetings).

Lastly, the southern driveway must be designed to be perpendicular to the kerb.

Traffic Generation

Forecast peak vehicle trips generated by the proposed development are acceptable and it is anticipated they can be adequately accommodated by the surrounding road network.

C12 Noise and Vibration

As detailed in this report insufficient information has been provided in relation to hours of

operation, staffing and patron numbers for the medical centre component. Further detail is required related to truck movements, plant machinery, deliveries and loading dock related noise and the impacts on sensitive receivers. The proposal provides no certainty that C12 B. General Objectives which is "...to ensure that future development that generates noise or vibration does not adversely affect the amenity of surrounding land uses" can be attained.

An assessment of the submitted noise impact assessment report has also been undertaken by Council's Environmental Management Team and the following issues have been raised necessitating address if the application was supported:-

- The submitted acoustic assessment report identifies the Health Building Consulting Rooms, however, details of the operation of this aspect of the development are not provided, for example the hours of operation, staff numbers and anticipated patron numbers are not discussed or assessed in regard to potential noise impact. Given that the Health Centre is to be used by the public, this aspect of the development should be given consideration in regard to the potential noise impact upon nearby sensitive receivers.
- The report also does not discuss or assess the noise impact that shall be associated with loading dock activities and garbage removal. The report is required to assess all activities that have the potential to generate noise and impact nearby receivers, including loading dock, garbage removal and servicing activities.
- The report states that the noise generated by traffic has been assessed based upon the sound level of a car driving on the driveway at 5-10km/hr. The report does not discuss the noise associated with car doors closing. The report is also required to clarify that the noise levels predicted will also apply when the noise of car doors closing is considered. Should the noise associated with car doors closing not have been considered during modelling, then an amendment to the report is required addressing this aspect of the development.
- The submitted acoustic report does not address the NSW Road Noise Policy in terms of the vehicular traffic to be generated by the development which is necessary to assess the impacts of local roads on the amenity of residents within the proposed development.
- Table 15 of the AA be amended to include the address details of the receiver location with actual predicted noise levels provided so that it can clearly be identified what noise levels are to be expected at each nearby receiver location.
- The report states that a detailed review of all external plant should be undertaken at Construction Certificate stage. The report states that 'all plant can be satisfactorily attenuated to levels complying with noise emission criteria through appropriate location and ...standard acoustic treatments', however, evidence or assessment information has not been included in the report to support this statement. The report does not provide any indication of potential likely plant noise levels and the impacts of those upon nearby receivers. Furthermore, there is inadequate detail to suggest that a proposed area for plant and equipment has been nominated. Given the nature of the proposed development, noise from plant and equipment is an aspect most likely to potentially affect the noise environment for nearby receivers during all times (day, evening and night 24/7). Whilst it is appreciated that specific plant and equipment may not be chosen at this stage, it is still appropriate and reasonable to conduct a modelling prediction of likely noise impacts from plant and equipment. This will inform as to the best location(s) for the placement of plant and equipment. Should noise attenuation be required to reduce noise levels from plant and equipment, the provision of screens may be required and this aspect of the development may require consideration in terms of building design and presentation.

As outlined, the submitted acoustic assessment is not considered to be satisfactory and the provisions and objectives of the DCP have not yet been satisfied.

