



**REPORT TO ACCOMPANY A SECTION 4.56
APPLICATION TO MODIFY THE
DEVELOPMENT CONSENT GRANTED BY THE
LAND AND ENVIRONMENT COURT TO
DA21/0607**

94-100 Explorers Way, St Clair

**Prepared for
Principal Healthcare Finance Pty Limited (Opal Healthcare)**

**By
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Appendix 2: Amended DA Drawings

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1. INTRODUCTION

Development consent to DA21/0607 was granted by the Land and Environment Court on 17 August 2023 for the *“the demolition of a dwelling, tree removal and construction of a two-storey residential aged care facility, comprising 149 beds and associated facilities/services, drainage and landscaping works,”* (“the consent”) at 94-100 Explorers Way, St Clair NSW (“the site”).

This report has been prepared by BBC Consulting Planners for Principal Healthcare Finance Pty Limited (Opal Healthcare) (“the Applicant”) to accompany a Section 4.56 application to modify the consent to allow minor internal design changes and minor changes to the external façade. These modifications have arisen during the detailed design process and are required to achieve operational efficiencies and to ensure compliance with the BCA.

A set of amended architectural plans with the proposed design modifications clouded is provided in **Appendix 1**.

2. THE SITE

The site is located within St Clair which is located 39km south-west of the Sydney CBD, in the Local Government Area (LGA) of Penrith. It is adjacent to the M4 Motorway with access to the motorway via east facing ramps at Erskine Park Road approximately 1 km to the east of the site.

The site comprises Lot 36 in DP 239502 and has an area of approximately 1.057 hectares. The site is generally rectangular in shape and has a frontage to Explorers Way of approximately 79.5m (including a partly unformed section of road).

The topography of the site slopes downwards from a high point of RL 56.66m AHD (along the south-western boundary to Explorers Way) to a low point of RL 52.8m AHD (along the north-eastern boundary of the site (towards the M4 Motorway) resulting in a gentle 1 in 40 slope. The site contains a drainage depression across the northern part of the site draining from the residential subdivision to the west and this is exposed to flooding from overland flow.

The land to which this application relates is the same as the land to which the development consent relates.

3. NATURE OF THE MODIFICATION

Since consent was granted, the Applicant has commenced the detailed design process leading up to the preparation of drawings for construction certificates. This detailed design process has identified changes to the design to achieve operational efficiencies and improved resident amenity. The changes incorporated into this modification are as follows.

3.1 Proposed changes

Internal alterations

A number of minor design changes are proposed to the front of house elements of the building to improve functionality and amenity of residents. These include:

Ground floor:

1. Relocate the hair salon to adjoin the therapy area to co-locate resident services and administration services. This provides improved operational efficiency by co-locating like functions.
2. Relocate café to address internal courtyard and outdoor seating area with the addition of bi-fold doors to the courtyard. This provides a better location for a café for residents and their families or visitors and provides an improved relationship to the internal courtyard and to main entry and reception areas.
3. Rearrange spaces in the therapy area with reduction in the number of treatment rooms and an increase in the size of the therapy room – this has resulted in a minor change in the location of the secondary entry to the allied health area. This rearrangement of internal spaces improves the operation of the facility based on experience at other facilities.
4. Change in the design of the administration area to better suite operational requirements and improve circulation.

First floor:

5. Change to internal layout to separate bedrooms from patient common areas including:
 - relocation of one bedroom from the western side of the building to the courtyard side to provide greater separation of bedrooms from living areas;
 - Colocation of multi-purpose and lounge areas with main dining and lounge areas to provide a centrally located contiguous living and dining areas.

External alterations

The internal changes discussed above result in minor changes to the façade including:

1. Changes to southern (front) elevation at ground floor level:
 - Relocation of the door external door to the allied health area resulting from internal changes and changing the door from a swing door to a sliding door;

- Minor relocation of windows to the admin areas to suit room layout;
- 2. Changes to the northern elevation (central wing) on the first floor:
 - A new window to the to the expanded main lounge room;
 - A new window to the relocated bedroom facing the courtyard;
- 3. A change to the eastern elevation to reflect the relocation of the café.
- 4. A change to the western elevation on the upper level to provide additional glazing to the multi-purpose and lounge room area noting this is setback a considerable distance from the western boundary.

A further change is proposed to four ground floor units facing the secure internal garden area (referred to as the Gumnut Garden on the landscape drawings) by replacing windows with doors to provide resident access directly to the secure garden area. This provides an improved residential amenity to these residents. This change is reflected on the eastern elevation.

All design changes are clouded in red on the modification application drawings contained in **Appendix 2**.

3.2 Changes to consent

These changes can be implemented through a change to the table of drawings in Condition 1 of the consent as follows (with deleted text marked as a ~~strike through~~ and new text shown in **bold**):

Plan/Report Number	Description	Prepared by	Revision	Date
Architectural Plans				
DA0.15	Demolition Plan	Custance	C	09.06.2023
DA0.20	Site Plan	Custance	D E	16.06.2023 19.12.2023
DA1.20	Ground Floor	Custance	E F	16.06.2023 19.12.2023
DA1.21	Level 1	Custance	C D	09.06.2023 19.12.2023
DA1.22	Roof Plan	Custance	D	16.06.2023
DA3.00	External Elevations 1	Custance	C D	09.06.2023 19.12.2023
DA3.01	External Elevations 2	Custance	C D	09.06.2023 19.12.2023
DA3.10	Building Sections	Custance	C D	09.06.2023 19.12.2023
DA3.11	Building Sections	Custance	C D	09.06.2023 19.12.2023

DA5.20	3D Isometric View	Custance	C	09.06.2023
DA5.21	3D Isometric View (8.5m height place)	Custance	C	09.06.2023
DA12.00	Material + Finishes Schedule	Custance	C	09.06.2023
DA12.10	Perspective Views	Custance	C	09.06.2023

There is no change to the building footprint, landscaping, parking access arrangements or building materials.

3.3 Supporting documentation

This modification application is accompanied by a statement from the BCA consultant confirming that the changes in the modification do not alter the findings of the BCA and Access reports accompanying the application that the development is capable of complying with the relevant provisions of the BCA.

4. RELEVANT PROVISIONS OF SECTION 4.56

Section 4.56(1) of the Environmental Planning and Assessment Act, 1979 relevantly states as follows:

“(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, and

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.”

In relation to Section 4.56(1)(a) above, Council can be satisfied that the development as originally approved will still be substantially the same development when modified in accordance with this Section 4.56 application. The proposed design changes are internal to the building with consequential changes to elevations to suit room function. The development as modified is substantially the same as the development as originally approved.

In relation to Section 4.56(1)(b),(c) and (d) Council may notify the application and consider any submissions made.

Section 4.56(1A) of the Environmental Planning and Assessment Act, 1979 states as follows:

“(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The Section 4.15(1) matters are discussed in Section 5 of this report.

5. SECTION 4.15(1) CONSIDERATIONS

5.1 Section 4.15(1)(a): Statutory Planning Considerations

Section 4.56(1A) of the Environmental Planning and Assessment Act, 1979 states that the matters referred to in Section 4.15(1) of the Act, as are of relevance to the development the subject of the application, must be taken into consideration in determining an application for modification of a consent.

Section 4.15(1)(a) requires the consent authority to take into consideration the following matters:-

“(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (iv) (Repealed)*

that apply to the land to which the development application relates”

In relation to Section 4.15(1)(a)(i) and (ii), relevant matters are addressed below in Section 5.2.1 below.

In relation to Section 4.15(1)(a)(iii), relevant matters are addressed below in Section 5.2.2 and 5.2.3 below.

In relation to Section 4.15(1)(a)(iiia), there is no planning agreement pursuant to Section 7.4 of the Act relating to this application.

In relation to Section 4.15(1)(a)(iv), there are no matters arising out of the proposed modifications to the consent which raise compliance issues with relevant regulations.

5.2 Consideration of Relevant Planning Instruments

5.2.1 Penrith Local Environmental Plan 2010 (“PLEP”)

The development is permissible with consent and has been found to be consistent with the provisions of this instrument. It is noted that:

- The development remains consistent with the objectives of the zone and the plan;
- There is no change to the height of the building resulting from the modification;
- There are no additional earthworks.

5.2.2 Penrith Development Control Plan

The modifications do not change the compliance of the development with the provisions of the DCP in that:-

- the development still responds positively to the qualities of the site and its context;
- the development still contributes positively to the surrounding character of the area;
- the development still improves the livability of the LGA; and
- the development still caters to the needs of the community through the provision of additional accommodation.

5.3 Section 4.15(1)(b): Impacts on the Environment

Section 4.15(1)(b) requires the consent authority to take into consideration the following:-

“(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”

5.3.1 Impacts on the natural and built environment

The proposed design modification will have no discernible impact on the natural and built environments.

5.3.2 Amenity Impacts

The proposed changes to room arrangements have no significant impact on the amenity of neighbouring properties or residents in the development. The privacy of residents in their bedrooms is maintained there will be no significant additional overlooking of adjoining residential areas. The modifications have no acoustic impacts on residents or neighbours.

5.3.3 Social and economic impacts in the locality

The social and economic impacts of the proposed modifications to the current consent will be positive by improving amenity for residents and staff in a manner that has no adverse impact on surrounding development.

5.4 Section 4.15(1)(c): Suitability of the Site

Section 4.15(1)(c) requires the consent authority to take into consideration the following:-

“(c) the suitability of the site for the development”

The approved development is an entirely suitable use of the site and the proposed modifications to the current consent have no adverse effect on this suitability.

5.5 Section 4.15(1)(d): Submissions Received

Section 4.15(1)(d) requires the consent authority to take into consideration the following:-

“(d) any submissions made in accordance with this Act or the regulations”

Any submissions made when the Section 4.56 application is notified for public comment will need to be considered by Council in the determination of the modification application. Given the nature of modifications proposed, notification of the application is not considered necessary.

5.6 Section 4.15(1)(e): The Public Interest

Section 4.15(1)(e) requires the consent authority to take into consideration the following:-

“(e) the public interest.”

The public interest is best served by the requested modifications that are reasonable and appropriate, and does not create any significant adverse impacts on the environment or on neighbouring land. The proposal is therefore in the public interest.

6. Other Matters

6.1 Biodiversity

Section 7.17 of the Biodiversity Conservation Act 2016 deals with modifications of development consents and provides that a further biodiversity development assessment report is not required to be submitted if the authority or person determining the application for modification is satisfied that the modification will not increase the impact on biodiversity values.

The changes included in this modification affect only the existing building without extending the building or changing the landscaping. There is no increase in the impact on biodiversity values. Consequently a biodiversity development assessment report is not required to accompany this application.

6.2 Bushfire Prone Land

The original development application was integrated development and required general terms of approval from RFS prior to determining the application. The changes included in this modification do not alter the nature of the development in relation to bushfire risk.

7. CONCLUSION

The approved development will result in the provision of important social infrastructure in the Penrith LGA in a manner that is consistent with the planning controls and the character of the local area.

The proposed modification to the current consent to make a design minor internal and external design changes to the building is in the public interest and will not give rise to any adverse environmental or amenity impacts.

The proposed modifications to the current consent for which approval is now sought will not alter the original merit-based findings made in relation to the original DA regarding the appropriateness and reasonableness of the proposal when considered in light of the matters listed in Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

The approved development, as modified, will remain substantially the same development as the development originally approved.

The Section 4.56 application thus warrants approval.



APPENDICES
