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The General Manager
Penrith City Council
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ATTN: KATHRYN SAUNDERS – PRINCIPAL PLANNER

RE: PROPOSED RESIDENTIAL AGED CARE HOME

PROPERTY AT: 5-7 FLORIBUNDA AVENUE, GLENMORE PARK (LOT 1 IN DP825553)

Dear Kathryn,

This Section 4.56 Modification Application is submitted to Penrith City Council on behalf of Principal Healthcare Finance Pty Ltd in support of amendments to Development Consent **DA 2019/0419** for the construction of a 142 bed Aged Care Home at 5-7 Floribunda Avenue, Glenmore Park. Approval was granted by the Land and Environment Court of NSW by way of a Section 34 Agreement on 19 May 2020 (Penrith City Council v Principal Healthcare Finance Pty Limited - LEC No. 2019/321826) for the proposed development (refer **Appendix 1**).

This Application represents the first Modification to **DA 2019/0419** and seeks to amend condition 2 as shown in red and bold below:

2. Prior to the issue of a ~~Construction Certificate~~ *Occupation Certificate*, the Applicant must:

- a) *Ensure the creation of an easement to drain water (minimum of 2.5 metres wide) over Lot10 DP832179 in favour of Lot 1 DP 825553 to contain the stormwater outlet pipe and headwall delineated on Plan 19117_DA_C101, revision 11, dated 06.03.2020, prepared by Henry & Hymas.*
- b) *Submit to Council suitable documentary evidence that indicates the creation of the abovementioned easement as being registered with NSW Land Registry Services.*

The proposed amendment to condition 2 seeks to negate any delay to the commencement of construction on the site. It is anticipated that compliance with condition 2 as it is presently drafted would cause several months of delay to the project. The creation of the easement is required to facilitate the approved stormwater management arrangements as per the approval granted by the Land and Environment Court. It is therefore considered unnecessary to impose this requirement prior to the issue of a Construction Certificate as it will have no material impact or benefit to the construction of the development.

In respect of the easement required, it is noted that Council have granted their consent for this over their land (refer **Appendix 2**).

The provisions of Section 4.56(1) of the *Environmental Planning and assessment Act 1979* (EP&A Act) have been considered and are addressed as follows:

- *(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*

Response: The proposed amendment, being to modify the condition of consent to delay registration of the easement as required by condition 2, will have no material impact on the built form outcomes or approved stormwater management arrangements. It is considered that the proposal as amended is therefore substantially the same as approved.

- (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

Response: In accordance with Councils Development Control Plan, the Application should not be re-notified as there will be no material built/operational form change and the creation of the easement was not raised as an item of public concern during the previous exhibition phase.

- (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

Response: Council will notify the relevant parties which made a submission to the original Development Application.

- (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.

Response: It is noted that Council will duly consider any submission received.

- (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.

Response: The relevant matters from consideration are detailed below in **Table 1**:

Table 1. Section 4.15(1)(A) Considerations	
Section	Response
Section 4.15(1)(a)(i) any environmental planning instrument, and	The proposal as amended is deemed to be wholly consistent with the provisions of <i>Penrith Local Environmental Plan 2010</i> (PLEP 2010) and <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i> (SEPP HSPD).
Section 4.15(1)(a)(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	There are no applicable draft instruments for consideration.
Section 4.15(1)(a)(iii) any development control plan, and	The proposal as amended is wholly consistent with Councils DCP.
Section 4.15(1)(a)(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	There is no Voluntary Planning Agreement that applies to the proposal or site.

Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	There are no matters prescribed by the regulation that are relevant to the proposal.
Section 4.15(1)(b)-(c)	The proposal as amended shall result in no additional environmental impacts beyond that considered under the parent DA.

Section 4.56(1) - Substantially the Same

The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of *Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358*, whereupon Commissioner Mason P. found in relation to modification of development consents that the word "modify" was given the ordinary meaning of "to alter without radical transformation". Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

The development, as modified, is substantially the same development and will not result in a radical transformation for the following reasons:

- The approved land use remains.
- The modification will not result in an intensification of the approved building bulk, scale, design or use.
- There are no detrimental quantitative changes to the approved building bulk or scale that will impact the environmental impact of the proposed development (as modified).
- The stormwater management arrangements as approved remain unchanged, with only changes to the timing of registration of the easement proposed.

It is considered that the proposed change to condition 2 will have no material impact on the development as approved and for the reasons stated throughout this letter, can be supported by Council.

Should you require further information, please contact the undersigned.

Yours Faithfully,



Andrew Cowan
Director
Willowtree Planning

Enclosed:

Appendix 1 – Section 34 Agreement
Appendix 2 – Council Land Owner Consent