

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA14/1278
Description of development:	Fit-Out & Use as Cafe (Coco Cubano), External Alterations, Signage & Outdoor Dining (Shop 64A)
Classification of development:	Class 6

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 1 DP 1137699
Property address:	569 - 595 High Street, PENRITH NSW 2750

DETAILS OF THE APPLICANT

Name & Address:	Otto Design Interiors 11/69 Carlton Crescent SUMMER HILL NSW 2130
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DECISION OF CONSENT AUTHORITY

In accordance with Section 81(1) (a) of the Environmental Planning and Assessment Act 1979, consent is granted subject to the conditions listed in attachment 1.

Please note that this consent will lapse on the expiry date unless the development has commenced in that time.

Date from which consent operates	15 December 2014
Date the consent expires	15 December 2016
Date of this decision	27 November 2014

POINT OF CONTACT

If you have any questions regarding this determination you should contact:

Assessing Officer:	Clare Aslanis
Contact telephone number:	(02) 4732 8195

NOTES

Reasons

The conditions in the attached schedule have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 as amended.

Conditions

Your attention is drawn to the attached conditions of consent in attachment 1.

Certification and advisory notes

You should also check if this type of development requires a construction certificate in addition to this development consent

It is recommended that you read any Advisory Note enclosed with this notice of determination.

Review of determination

The applicant may request Council to review its determination pursuant to Section 82A of the Environmental Planning and Assessment Act 1979 within 6 months of receiving this Notice of Determination.

You cannot make this request if the development is Designated Development, Integrated Development or State Significant development or if the application was decided by a Joint Regional Planning Panel.

Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within six (6) months of receiving this Notice of Determination.

You cannot appeal if a Commission of Inquiry was held for the subject development application, or if the development is a State Significant Development.

An appeal to the Land and Environment Court is made by lodging an application to the Court in accordance with the Rules of the Court.

Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 28 days after the date of this notice. The objector cannot appeal if a Commission of Inquiry was held.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 28 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

Joint Regional Planning Panels

If the application was decided by a Joint Regional Planning Panel, please refer to Section 23H of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

ATTACHMENT 1: CONDITIONS OF CONSENT

General

- 1 The development must be implemented substantially in accordance with the plans tabled below and stamped approved by Council, the application form, and any supporting information received with the application, except as may be amended in red on the approved plans and by the following conditions.

Plan	Numbered	Drawn By	Dated
Floor Plan	01.01 (Issue E)	Otto Design Interiors	11 November 2014
External Seating Plan*	01.02 (Issue B)	Otto Design Interiors	3 November 2014
Elevations	02.01 (Issue D)	Otto Design Interiors	11 November 2014
Site Plan	2.0 (front page of Statement of Environmental Effects)	Otto Design Interiors	-

*Note: the red pen changes, specifically relating to the extent of outdoor seating.

- 2 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 3 The business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council prior to the issuing of the occupation certificate and operation of the business.
- 4 A separate development application for the erection of a sign or advertising structure, **other than that approved by this consent or an advertisement listed as exempt development**, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan-Advertising Signs.
- 5 The approved operating hours are from 7:00am to 12 midnight Monday to Sunday.
- 6 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 7 A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 8 The area of footpath adjacent to the existing kerb layback, as outlined in red on the approved plans, is to be kept free of any seating, tables, shading or any other structure to enable free and easy access to and from Riley Street.
- 9 The approved signage must comply with the following:
 - The signage must not be externally illuminated.
 - All aspects of the signage illumination and fixture to the building should be incorporated into the body of the sign and hidden from view.
 - Lighting from signage must not cause glare for pedestrians, motorists or cyclists and must be compliant with the Australian Standard 4282-1997 - Control of the Obtrusive Effects of Outdoor Lighting.
 - Signage must not be moving, flashing or animated in any way.
- 10 The approved outdoor eating area shall comply with the following:
 - The furniture shall be high quality in design and construction, and complement the existing streetscape. Lightweight plastic furniture, which may become airborne on windy days if not adequately weighted, is not permitted.

- The furniture is to be maintained in a clean and hygienic state at all times.
- The eating area is not to cause inconvenience or to disrupt pedestrian traffic along the footpath or thoroughfare. A clear distance of at least 2.0 metres is to be made available at all times between the approved outdoor furniture and the shopfront.
- The outdoor furniture should not be fixed to the pavement. Should it need to be fixed permanently in place an approval under the Roads Act 1993 may be required. Should this approval be required, the application for a Construction Certificate is to accompany documentation specifying that a Roads Act approval, including payment of application and inspection fees under the Roads Act, has been sought from Penrith City Council for the erection of any structures over or on the road reserve. The Roads Act approval is to be obtained prior to the issue of the Occupation Certificate.

- 11 An Outdoor Eating and Trading Licence must be issued for the development by Penrith City Council prior to the commencement or use of any outdoor eating or trading areas.

Demolition

- 12 All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition**.

- 13 Dust suppression techniques are to be employed during demolition to reduce any potential nuisances to surrounding properties.

- 14 Demolition works will be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm if inaudible on neighbouring residential premises, otherwise 8am to 1pm
- No demolition work is permitted on Sundays and Public Holidays.

In the event that the demolition relates to works inside the building and do not involve external walls or the roof, and do not involve the use of equipment that emits noise then the demolition works are not restricted to the hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Environmental Matters

- 15 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

- 16 All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

- 17 The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the *Protection of the Environment Operations Act 1997* apply to the development, in terms of regulating noise.

BCA Issues

- 18 A preliminary assessment of the plans submitted with the application has disclosed that the following design and/or construction issues need to be addressed prior to the issue of any Construction Certificate to ensure compliance with the Building Code of Australia:

- Written documentation is to be obtained from Westfield Ltd stating that wc amenities will be available for the patrons and staff of the food premises at all times during business hours of the food premises.

- 19 Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.

- 20 A fire safety list of essential fire or other safety measures shall be submitted to Penrith City Council prior to the issue of the Construction Certificate. The fire safety list shall specify all measures (both current and proposed) that are required for the building so as to ensure the safety of persons in the building in the event of fire. The fire safety list must distinguish between:

- the measures that are currently implemented in the building premises,
- and the measures that are to be proposed to be implemented in the building premises, and must specify the minimum standard of performance for each measure.

- 21 The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

(a) deal with each essential fire safety measure in the building premises, and

(b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in

the building.

- 22 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:
- (a) complying with the deemed to satisfy provisions, or
 - (b) formulating an alternative solution which:
 - complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
 - (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/statement for the building.

Health Matters and OSSM installations

- 23 Cooking appliances which exceed a total maximum power input of 8kw for electrical, or a total gas input of 29MJ/h for a gas appliance, are required to have a kitchen exhaust system installed in accordance with Clause F4.12 of the Building Code of Australia and Australian Standard 1668, Parts 1 & 2.

Details of the installation of the kitchen exhaust system shall be submitted with the Construction Certificate application.

The kitchen exhaust system must be designed to prevent or minimise air pollution including the emission of odours, vapours and oils in accordance with the Protection of the Environment Operations Act 1997.

Prior to the issue of an Occupation Certificate, the installer of the kitchen exhaust system (either the individual person or the Company who installed the exhaust system) shall certify or submit appropriate documentation (as instructed by the Principal Certifying Authority) that all practical pollution control measures have been installed to achieve the requirements of the Protection of the Environment Operations Act 1997.

- 24 All fittings and fixtures must be built into the wall and floor so as to be free from joints, gaps and cavities to enable easy cleaning or alternatively, supported on one of the following:
- a. Plinths – plinths must be an integral part of the floor, constructed of solid materials similar to the floor at least 75mm in height and coved at the intersection with the floor. All plinths must have a smooth and impervious finish. All fittings and fixtures must be properly sealed to the plinth so to be free from gaps, cracks and cavities.
 - b. Wheels or castors – fittings and fixtures can be supported on wheels or castors. The wheels and castors must be capable of supporting and easily moving a full loaded fitting. All wheels and castors must be provided with a restraining device.
 - c. Legs – fittings and fixtures can be supported on legs but must be constructed of a non-corrosive, smooth metal or moulded plastic. All legs must be free from cracks and crevices. All legs must have a clearance space between the floor and the underside of the fitting of at least 200 mm.

NOTE: False bottoms under fittings are not permitted (AS 4674-2004 – Section 4.2 and 4.3).

- 25 Prior to the operation of the food business the business must notify the NSW Food Authority of their details

including:

- (a) Contact details for the food business, including the name and address of the business and the proprietor of the business.
- (b) The nature of the food business.
- (c) The location of any other food premises associated with the food business, within the jurisdiction of the NSW Food Authority.

Should these details change during the operation of the business, the business operator must provide the NSW Food Authority with an update of these details.

Notification can be completed free of charge on the NSW Food Authority's Food Notify website at www.foodnotify.nsw.gov.au.

- 26 A Food Safety Supervisor, with a current Food Safety Supervisor Certificate recognised by the NSW Food Authority, must be appointed by the business prior to commencement of the business.
- 27 Hand basins must be freestanding, serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands free operation. Where sensor taps are installed the basin must not be more than 6 metres from the hot water system. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.
- 28 The cleaner's sink must be serviced with hot and cold water through taps fitted with hose connectors. Cleaner's sinks must be located outside of areas where open food is handled.
- 29 The coolroom and/or freezer room floor must be finished with a smooth even surface and graded to the door. A sanitary floor waste must be located outside the coolroom and freezer adjacent to the door. All metal work in the coolroom and freezer room must be treated to resist corrosion.
- 30 Condensation from coolrooms and refrigeration motors must discharge to sewer via a tundish with air gap separation in accordance with Sydney Water requirements.
- 31 The coolroom and freezer room must be provided with:
 - A door which can at all times be opened from inside without a key, and
 - An approved alarm device located outside the room, but controlled only from the inside.
- 32 Approved, recessed coving must be provided at all intersections of the floor with the walls within all food preparation, service, storage and scullery areas. All coving must have a minimum concave radius of 25mm and be installed so as to be integral to the surface finish of both the floor and wall in such a manner as to form a continuous, uninterrupted surface.
- 33 The construction, fit out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS 4674-2004 *Design, Construction and Fitout of Food Premises*.
- 34 All fixtures, fittings and equipment must be provided with smooth and impervious surfaces, free from cracks and crevices to enable easy cleaning.
- 35 Shelves must be smooth and be impervious, free from joints, cracks and crevices, and be able to be easily cleaned. The lowest shelf must be at least 200mm off the floor to allow easy cleaning underneath. Approved materials must be used, such as galvanised piping, stainless steel or laminated plastic. Shelves are to be sealed to the wall or kept clear of walls to allow easy access for cleaning (>40 mm).

- 36 All storage cabinets (internal and external surfaces) must be finished in a smooth and non-absorbent approved material that is free of joints.
- 37 Light bulbs or tubes are to be shatterproof or fitted with approved light diffusers (covers or shields) to prevent contamination of food by glass from a broken light globe or tube. Light fittings must be free from any feature that would collect dirt or dust, harbour insects or make the fitting difficult to clean. Light fittings must be recessed into ceilings or equipment where possible. Heat lamps must be protected against breakage by a shield extending beyond the bulb.
- 38 The floor of the food premises must be finished in an approved non-absorbent material, evenly laid, or graded and drained to a trapped floor waste. All floor wastes in the food preparation, service and scullery area must be fitted with a sump removable basket and grate, a minimum 200mm in diameter, and finished in all stainless steel.
- 39 Flyscreens or other approved means of excluding flies such as air curtains or plastic strips must be provided to all window and door openings. The design must prevent insects from entering and harbouring in the premises.
- 40 Hot water services must be positioned at least 75mm clear of the adjacent wall surfaces, and mounted at a minimum 150mm above the floor level on a non-corrosive metal stand. The hot water system must be sized to meet the demands of the food business during peak operating and cleaning periods and be able to provide sufficient hot water throughout the working day. Discharge from the hot water system must enter the sewer through a tongue dish in accordance with Sydney Water's requirements.
- 41 Sufficient lockers must be provided in the food preparation area or store room specifically for the storage of cleaning materials, employees' clothing and personal belongings.
- 42 Cooking appliances which exceed a total maximum power input of 8kw for electrical, or a total gas input of 29MJ/h for a gas appliance, are required to have a kitchen exhaust system installed in accordance with Clause F4.12 of the Building Code of Australia and Australian Standard 1668, Parts 1 & 2.

The exhaust hood must completely cover the equipment to be ventilated and extended at least 200mm beyond the perimeter of the equipment. The exhaust hood must be provided with a condensation gutter around its base. The gutter must be at least 50mm wide by 25mm deep. Where abutting walls are located the hood must be constructed so as to finish flat against the wall surface.

The low edge of a canopy type exhaust hood must be at least 2000mm above floor level.

- 43 The meter box must be provided with an approved non-absorbent, smooth faced cover. The cover is to be splayed at an angle of 45 degrees to the wall at the top and made tight fitting to the wall surfaces.
- 44 Prior to commencing outdoor dining or trading, the operator of the business shall obtain an Outdoor Eating & Trading Licence in accordance with Council's Outdoor Eating & Trading Development Control Plan. An application form can be obtained by contacting Council on (02) 4732 7777 or from Council's website www.penrithcity.nsw.gov.au.
- 45 Service pipes, electrical conduits and refrigeration condensate pipes shall be enclosed or chased into walls, floors or plinths. Where it can be demonstrated that this is not feasible pipes and conduits fixed on brackets, providing a minimum of 25mm clearance from the adjacent wall and 100mm from the floor or adjacent horizontal surface, can be used. All openings in walls, floors and ceilings, through which service pipes and conduits pass, must be vermin proof.

- 46 All storerooms used for storage of food and associated food products within the premises and Westfield's Shopping Centre must be constructed in accordance with AS 4674-2004 by providing the following:
- A smooth, even, non-slip floor surface.
 - Coving at all intersections of the floor and walls with approved, recessed coving to a minimum concave radius of 25mm, so as to be integral to the surface finish of both the floor and wall in such a manner as to form a continuous, uninterrupted surface. "Feather edge skirting" and non-rebated coving are not permitted.
 - Walls must be provided with a smooth even surface and painted with a light coloured washable paint to enable easy cleaning.
 - The ceiling must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersections of the walls and ceiling must be tight-jointed, sealed and dustproof. Drop in panel style ceilings are not permitted.
 - Shelving or storage racks must be designed and constructed to enable easy cleaning.
- 47 Appliances used to store potentially hazardous food must have a capacity to keep foods hotter than 60°C, refrigerated foods less than 5°C, and frozen foods less than -18°C and be provided with a digital thermometer, accurate to 1°C that can be easily observed from outside the appliance.
- 48 The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other approved materials to a height of 2 metres. The intersection of tiles and render must have a flush finish, or be splayed at a 45 degree angle to eliminate a ledge that would allow dust and grease to accumulate.
- 49 The food preparation sink must be separated from all other sinks or have an approved form of physical barrier that separates the sink.
- 50 All garbage must be stored in accordance with the requirements of the Food Safety Standards of the Australian and New Zealand Food Standards Code and the *Protection of the Environment Operations Act 1997* to prevent the harbourage of vermin or generation of odours.
- 51 Any window sill within a food preparation area, service or scullery area must be located 450mm above the top of any bench/sink and tiled at a splayed angle of 45 degrees.
- 52 Prior to the issue of an Occupational Certificate, and operation of the business, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and Australian Standard 1668, Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Department if Council is not the Principal Certifying Authority.
- 53 The walls at the rear of cooking appliances must be surfaced with an impervious material, such as stainless steel, which extends from the canopy to the floor. Where a cooking appliance is sealed to the wall, the material must be lapped over the top edge of the appliance to provide a grease and vermin proof seal. Cooking appliances must only be sealed to walls made of a non-combustible material.

Utility Services

- 54 A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92.

Construction

- 55 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details are to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

- 56 Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

- 57 Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Landscaping

- 58 No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.
- 59 Existing landscaping is to be retained and maintained at all times.

Certification

- 60 Prior to the commencement of any earthworks or construction works on site, the proponent is to:
- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
 - (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

- 61 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation/use of the development.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

SIGNATURE

Name:	Clare Aslanis
Signature:	

For the Development Services Manager