

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	Mod22/0002
Proposed development:	Section 4.55(1A) Modification to DA19/0631 for Extension of Trading Hours - Recreation Facility (Indoor) - Unit 4 - ThrowAxe
Property address:	2 Abel Street, JAMISONTOWN NSW 2750
Property description:	Lot 3 DP 735039
Date received:	10 January 2022
Assessing officer	Mahbub Alam
Zoning:	SEPP WSA - Affected by Obstacle Limitation SEPP WSA - Affected by Wildlife Buffer Zone Zone B5 Business Development - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a modification application for an amendment to the approved hours of operation for an indoor recreation facility (ThroxAxe) at 2 Abel Street, Jamisontown, that are contained within Condition 5 of the development consent for DA19/0631. The proposed modification seeks to extend the daily opening and closing times of the indoor recreation facility to be 9am to 10:30pm.

The subject site is zoned B5 Business Development under Penrith Local Environmental Plan (LEP) 2010 and the proposal is permissible with consent.

The modification application was not required to be advertised or notified to adjacent property owners and occupiers in accordance with the Penrith City Council Community Engagement Strategy.

An assessment under Section 4.15 and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended consent condition amendments.

Site & Surrounds

The subject site is known as 2 Abel Street, Jamisontown and is legally described as Lot 3 DP 735039. The site is situated on the southern side of the Abel Street and York Road intersection. The subject lot has an area of 2,373m² and is rectangular in shape. The site consists of 4 units with a 14 space car parking area.

The surrounding area accommodates a range of businesses. Opposite is Jamison Park which provides a vast area of green open space and recreational activities. The broader road network includes the intersection of York Road and Jamison Road approximately 520m northwards and the intersection of York Road and Batt Street approximately 250m southwards.

Proposal

The proposed modified development includes the following aspects:

- Amended hours of operation for the approved use that are to be 9am to 10:30pm daily.

Plans that apply

- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

Planning Assessment

- **Section 4.55(1A) - Modifications involving minimal environmental impact**

The proposed modification to the development has been assessed against the relevant heads of consideration contained in Section 4.15 and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 and has been found to be satisfactory, as detailed below.

Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act), Council may modify a development consent provided several parameters are satisfied. These parameters are briefly discussed below.

(a) The proposed modifications are of minimal environmental impact.

The modification application is for an extension of trading hours for a throw axe recreation facility within an industrial area. There are no sensitive receivers nearby and all activities occur indoors. The nature and scale of the proposal is not considered likely to adversely impact on neighbouring tenancies in terms of noise and vibration. The application was referred to Council's Environmental Management Officer for review and comment and they raised no objection subject to conditions.

(b) The modified development is substantially the same development as was previously approved.

The submitted Section 4.55(1A) application does not alter the nature of the development. Its use and building form are consistent with that originally approved. It is therefore considered that the proposed modification represents substantially the same development for which consent was originally granted.

(c) The application has been notified where required.

The application was not required to be advertised or notified to adjacent property owners and occupiers in accordance with the Penrith City Council Community Engagement Strategy.

(d) Any submissions received from the notification process have been considered.

No submissions were received in relation to the application.

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

An assessment has been undertaken of the modified proposal against relevant criteria within State Environmental Planning Policy (Biodiversity and Conservation) 2021 and the proposal remains satisfactory.

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

There are no provisions under this SEPP that specifically relate to the proposal.

Local Environmental Plan 2010

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies

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

There are no draft environmental planning instruments that directly apply to the proposal.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies

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

There are no planning agreements applicable to the subject site or proposal.

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

The proposed modified development complies with the relevant requirements of the Environmental Planning and Assessment Regulation 2021.

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

Noise Impacts

The modification application is for an extension of trading hours for a throw axe recreation facility within an industrial area. There are no sensitive receivers nearby and all activities occur indoors. The nature and scale of the proposal is not considered likely to adversely impact on neighbouring tenancies in terms of noise and vibration. The application was referred to Council's Environmental Management Officer for review and comment and they raised no objection subject to conditions.

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

The site remains suitable for the development in accordance with the original development consent granted.

Section 4.15(1)(d) Any Submissions

Community Consultation

The application was not required to be advertised or notified to adjacent property owners and occupiers in accordance with the Penrith City Council Community Engagement Strategy.

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
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions

Section 4.15(1)(e)The public interest

The development as modified is consistent with the objectives of the *EP&A Act 1979* in so far as it promotes the co-ordinated, orderly and economic use and development of the land. The above assessment has noted that the modified proposal complies with the aims and objectives and numerical standards of the relevant statutory and non-statutory controls. As a result, Council can be satisfied that the development as modified is consistent with the public interest.

Conclusion

The proposed modification to the development has been assessed against the relevant heads of consideration contained in Section 4.15 and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 and has been found to be satisfactory. Each of the relevant criteria under Section 4.15 and Section 4.55(1A) of the Act have been satisfied. The development as modified will achieve minimal environmental impact and is substantially the same development as originally approved. The proposed modification to the development is therefore acceptable and worthy of approval.

Recommendation

That Mod22/0002 for a modification to an approved indoor recreation facility (axe throwing facility) including an extension of the daily opening and closing times of the business (9am to 10:30pm) at 2 Abel Street, Jamisontown, be approved subject to the following modified conditions of consent.

CONDITIONS

General

1 **A001**

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

Drawing Title	Prepared By	Reference No.	Dated	Revision
Site Plan	Summit Drafting Services	296-01	31/08/19	A
Ground Floor Plan (as amended)	Summit Drafting Services	296-02	31/08/19	A
Section	Summit Drafting Services	296-03	31/08/19	A

2 **A012 - Food Act**

The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2010 and the Australian and New Zealand Food Standards Code are met at all times. Food shall not be prepared or sold from the business without further approval from Council.

Any external caterers used by the business must be registered with the NSW Food Authority or their local Council and all food provided by the caterer must be prepared in a commercial kitchen approved by the Council or NSW Food Authority.

3 **A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)**

The development shall not be used or occupied until a final inspection by Penrith City Council has been undertaken.

4 **A026 - Advertising sign (not for residential)**

A separate development application for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Section C9 Advertising and Signage of *Penrith Development Control Plan 2014*.

5 **A029 - HOURS OF OPERATION AND DELIVERY TIMES**

The approved operating hours are from 9:00am to 10:30pm daily.

Amended on 1 April 2022 under the provisions of Section 4.55(1A) of the Environmental Planning Assessment Act 1979.

6 **A030 - No retail sales**

No retail sale of goods shall be conducted from the subject premises, except for the sale of non-alcoholic drinks for the immediate consumption by participants.

7 **A032 - Goods in buildings**

All materials and goods associated with the use shall be contained within the premises at all times.

8 **A038 - LIGHTING LOCATIONS**

Suitable security lighting in the car park and at the entrance to the premises shall be installed **prior to the final inspection**.

9 **A039 - Graffiti**

The finishes of the site is to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

10 **A Special (BLANK)**

Use of the subject unit shall be restricted to a maximum of 30 participants and four staff members at any one time.

11 **A Special (BLANK)**

Group sessions shall be staggered by a minimum period of 15 minutes to reduce the impact on available on-site parking spaces.

12 **A Special (BLANK)**

The activity is to operate so as not to interfere with the operation of other businesses in the complex.

13 [A Special \(BLANK\)](#)

Council reserves the right to review parking arrangements for the use should issues of concern arise in the future.

14 [A Special \(BLANK\)](#)

All axes and axe throwing equipment shall be safely and securely stored within the premises when not in use.

15 [A Special \(BLANK\)](#)

Prior to the final inspection a Waste Management Plan is to be provided to Council demonstrating how the development will manage ongoing waste as part of the operation.

BCA Issues

16 [E003 - Structural alterations](#)

In accordance with the requirements of Clause 94 of the Environmental Planning and Assessment Regulation 2000, the following works are to be completed to ensure the fire safety of the unit;

- All required exits are to be fitted with latching devices that comply with Clause D2.21 of the Building Code of Australia (BCA).
- Portable fire extinguishers are to be provided in accordance with the requirements of the BCA.

17 [E006 - Disabled access and facilities](#)

Access 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".

18 [E01A - BCA compliance for Class 2-9](#)

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.

Engineering

19 [K Special \(BLANK\)](#)

Signage indicating the car spaces and times that parking spaces are available to Axe Throw customers are to be installed at every available parking space.

20 [K Special \(BLANK\)](#)

All parking spaces are dedicated for the parking of vehicles only and not be used for storage of materials / products / waste materials etc.

Certification

21 **Q - Amplified Music**

Amplified music from the premises is not to be audible at the boundaries of the property. No amplified music is to be used externally, including in the car park.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

Inserted on 1 April 2022 under the provisions of Section 4.55(1A) of the Environmental Planning Assessment Act 1979.