

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/0590
Proposed development:	Outdoor Dining Area for Nando's Restaurant
Property address:	569 - 595 High Street, PENRITH NSW 2750
Property description:	Lot 1 DP 1137699
Date received:	22 June 2016
Assessing officer	Sufyan Nguyen
Zoning:	Zone B3 Commercial Core - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for an outdoor dining area for Nando's restaurant at 569-595 High Street, Penrith. The subject site is zoned B3 Commercial Core under the *Penrith Local Environmental Plan* 2010 and the proposed development is permissible with consent.

The key issues raised were in relation to the safety of the pedestrian walkway and the inconsistency with the approved Riley Street upgrade (DA15/0951). The proposed outdoor dining area barrier provided only a 1m - 1.395m setback from the building line to allow for a clear walkway which did not permit safe pedestrian circulation. In addition, the outdoor dining area included planter boxes which were inconsistent with the Riley Street upgrade.

Revised plans were submitted which re-positioned the outdoor dining area adjacent to the building line along with new barriers to establish a legible shoreline and 1.5m clear walkway which is consistent with the the adjoining area for Chilli Jam Thai Restaurant. Although the minimum 2m clear walkway setback from the building shoreline is not provided, this configuration permits access and safety for all users of this space. Furthermore, this arrangement will be temporary until the Riley Street upgrade under DA15/0951 is completed. A variation to the DCP is therefore acceptable in this case.

An assessment of the proposal under Section 79C of the *Environmental Planning and Assessment Act* 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The subject site is situated on the western side of Riley Street, Penrith and located in the heart of the Penrith city Centre. The ground floor shop occupies Westfield Penrith shopping centre and is between Henry/High Street to the south of the site and the Great Western Highway to the north. Westfield Plaza accommodates a range of retail and commercial land uses and makes provision for several hundred car parking spaces. Public transport is approximately 320m north-east of the site and includes bus services and Penrith train station.

Proposal

The applicant seeks approval for additional dining seating spaces for the approved Nando's restaurant (DA16/0083) at shop 54/55, 569-595 High Street, Penrith - Westfield Penrith shopping centre.

The proposal involves the following:

- A total of 122 dining seating spaces including 80 internal dining seats + 42 outdoor dining seats
- 12 waiting area seats

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

The proposed development has been assessed in accordance with the matters for consideration under Section 79C 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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within the *Sydney Regional Environmental Plan* No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies - See discussion
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 7.8 Active street frontages	Complies - See discussion
Clause 8.1 Application of Part	Complies - See discussion

Clause 1.2 Aims of the plan

The proposal is ancillary to the approved Nando's restaurant. Given that the proposal will contribute to the socio-economical development in the heart of Penrith CBD, the aims of the plan are satisfied.

Clause 2.3 Permissibility

The proposed outdoor dining area is within Penrith's public domain and is permissible with consent.

Clause 2.3 Zone objectives

The proposal is ancillary to the approved commercial land use and is therefore a suitable land use which will assist in strengthening the B3 Commercial Core zone.

Clause 7.8 Active street frontages

The proposal aims to utilise the pedestrian traffic in the busy Penrith City Centre.

Clause 8.1 Application of Part

The subject site is identified as being within the Penrith City Centre.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies - see Appendix - Development Control Plan Compliance
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	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	Complies - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	N/A
E11 Penrith	Complies - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this proposed development.

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

Subject to the recommended conditions of consent, the proposed development will comply with the relevant requirements of the Regulations.

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

Context and Setting

The B3 Commercial Core zone promotes a wide range of commercial land uses. Given that the subject site is within the area of a future approved street upgrade (DA15/0951) and the proposed outdoor dining area is compatible with the desired character of the commercial hub, in addition to being consistent with neighbouring food outlets, the proposal is a compatible land use.

Access, Transport and Traffic

The amended layout plan provides an adequate pedestrian walkway. There will be minimal impact on local traffic and parking conditions given that Penrith Westfield makes provision for several hundred parking spaces on-site and commuters park is located 80m north of the site on Jane Street.

Noise and Vibration

To maintain the acoustic privacy and amenity of the surrounding area, a standard condition restricting hours of operation and construction work hours is recommended.

Site Design and Internal Design

The proposal provides high quality design and the floor plan permit safe mobility. The contemporary design will enhance the visual amenity of the site and will therefore provide aesthetic value to the Penrith City Centre.

Socio-Economic Impacts

The proposal aims to increase the capacity of servicing in relation to the approved business. Productivity is a vital step towards Penrith City achieving a sustainable and prosperous region which is consistent with the objectives of the *Penrith Development Control Plan 2014* and the provisions under the *Penrith Local Environmental Plan 2010*.

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

The site is within the public domain which permit outdoor dining areas. The proposal is compatible with the approved Nando's restaurant and the design is consistent with the character of the surrounding area. The site is therefore considered suitable for the proposed development.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, notification of the proposed development was not required.

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
Property Development	No objections - subject to conditions

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

The proposed development will not generate any significant issues of public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being *Penrith Local Environmental Plan 2010* and *Penrith Development Control Plan 2014*, the proposal satisfies the aims, objectives and provisions of these policies. The proposal does not contravene any development standards and is unlikely to have any significant impacts on the natural, social or economic environments. The site is suitable for the development and the proposal is in the public interest. Therefore, the application is worthy of support and is recommended for approval subject to recommended conditions.

Recommendation

That DA16/0590 for an outdoor dining area for Nando's restaurant at 569-595 High Street, Penrith be approved subject to the attached 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 approved plans and by the following conditions.

Drawing Title	Plan No.	Prepared By	Dated	Revision
Site Plan	A-00	Design Clarity	15/06/2016	C
Temporary External Layout Plan	A-01	Design Clarity	28/07/2016	Q

2 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

The development shall not be used or occupied until an Occupation Certificate has been issued.

3 A039 - Graffiti

The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

4 A Special (BLANK)

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 1.5 metres is to be made available at all times on the southern side of outdoor dining area.
- The outdoor dining areas must be defined by a barrier, with no sharp edges or protruding feet that may cause a trip hazard to pedestrians or patrons. This barrier must be of sturdy construction, a minimum of 60 cm high and complementary in colour to the seating.
- No food is to be prepared or stored outside. No hot food counters, boilers or urns shall be placed on public areas or areas external to the premises.
- All furniture must be put away inside the premises when it is closed. No furniture is to be left on the street at any time when the eating area is not operating.

BCA Issues

5 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.

Construction

6 [H041 - Hours of work \(other devt\)](#)

Construction 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 that 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.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposal aims to increase socio-economic activity which will assist Penrith City in achieving long term economic and social security, a key step to transitioning into a sustainable city. Given that there will be minimal impacts on the surrounding environment, the proposal therefore satisfies the principles of the DCP.

Part C - City-wide Controls

C8 Public Domain

Outdoor dining areas must provide a minimum setback of 2m from the building, a clear walkway distance of at least 2m adjacent to the outdoor seating and a barrier height of 60cm under Section 8.4 Outdoor Dining and Trading Areas of the *Penrith Development Control Plan 2014*.

The proposed outdoor seating area contravened the safety of the pedestrian walkway given clear walkway of 1m - 1.395m between the building was provided. Revised plans were submitted which re-positions the barrier of the outdoor dining area 2.375m from the building line and provides a 1.5m clear walkway. Although the minimum 2m setback from the building and a 2m clear walkway adjacent to the outdoor dining area is not provided, the configuration provides access and safety for all users of this space given that the 'shoreline' established by the outdoor dining barrier lines up with those used by the existing Chilli Jam Thai restaurant and additional pedestrian walkway area is provided by footway within the road reserve beyond the colonnade. Therefore, a variation to the DCP is acceptable.

E11 Penrith

Concerns were raised in relation to the inconsistency between the approved Riley Street upgrade (DA15/0951) and outdoor dining area. The Riley Street upgrade provides an outdoor dining area with a 3.77m width from facades to colonnade and pushed the walkway out into the road reserve. Although the outdoor dining area has been reduced in comparison to the Riley street upgrade, the barrier shoreline and 1.5m clear walkway will be consistent with the adjoining Thai Chilli Jam outdoor dining area to the east of the site. Once the Riley Street upgrade works have been undertaken, the outdoor dining areas will be re-configured to be consistent with the approval (DA15/0951) by way of Council's Outdoor Dining License process.