

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA14/1278
Proposed development:	External Alterations, Signage & Outdoor Dining (Shop 64A)
Property address:	569 - 595 High Street, PENRITH NSW 2750
Property description:	Lot 1 DP 1137699
Date received:	13 October 2014
Assessing officer	Clare Aslanis
Zoning:	ZONE B3 COMMERCIAL CORE PCCLEP 2008 ZONE SP2 INFRASTRUCTURE PCCLEP 2008
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for external alterations, signage and outdoor dining at Westfield Penrith (569-595 High Street, Penrith). Under the Penrith City Centre Local Environmental Plan 2008 the subject site is zoned B3 - Commercial Core. Cafes are a permissible land use in the zone with Council consent.

Key issues identified for the proposed development and site include:

- Ensuring a consistent aesthetic for shopfronts along Riley Street and within the City Centre in general. The proposed shopfront is a high quality, modern design which is considered to sit well within the established streetscape of Riley Street.
- The outdoor seating area is acceptable provided that a 2 metre wide thoroughfare is retained and that the area adjacent to the disabled set down/emergency services layback kerb is kept clear.

An assessment 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 currently occupied by the Westfield Penrith Plaza shopping centre which contains a variety of retail tenancies and makes provision for several hundred car parking spaces. The surrounding area is characterised predominantly by retail and commercial development.

The current application relates to a recently reconfigured tenancy on the western side of Riley Street just south of the street's traffic lights. The parallel bay adjacent to the development's frontage is designated as no parking - emergency services, disabled set down and Australia Post vehicles are excepted.

Proposal

The proposed development consists of the external; alterations of Shop 64A in Westfield Penrith as a Coco Cubano Café.

The predominant use of Coco Cubano is the service of food, both for consumption on and off the premises. There are no charcoal or wood fired cooking processes proposed.

The fitout will include various other plumbing and electrical works, and works to configure the layout of the tenancy, including built-in seating, counters, and internal walls. Coco Cubano is proposing to install as part of its works a new shopfront which will be characterised by the following;

- Black aluminium doors
- Clad existing columns in decorative tile
- External wall lights
- New external under awning roll down fabric

Coco Cubano also proposes the installation of the following signage;

- Internally illuminated, double sided blade side with Coco Cubano logo
- Illuminated sign fixed to awning with Coco Cubano logo

The tenancy proposes the following trading hours;

- Monday to Sunday - 7:00am to 12 midnight

Both deliveries to the site, and waste services leaving the site, will be managed through the shared loading dock provided by the centre.

Coco Cubano is proposing the following seating numbers;

- 78 within the tenancy
- 220 located adjacent to the tenancy within Riley Street and Henry Street
- 298 total seats

Patrons will be serviced by approximately 10-15 floor staff working during peak periods.

The proposed development does not involve any alterations to existing car parking provisions, nor does it involve any landscaping works.

Plans that apply

- Penrith Local Environmental Plan 2008 (City Centre)
- Development Control Plan 2006
- Development Control Plan 2007 (City Centre)
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

Section 79C - Evaluation

The 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 Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Penrith Local Environmental Plan 2008 (City Centre)

Provision	Compliance
Clause 2 - Aims of the Plan	Complies
Clause 12 - Zoning of land to which this plan applies	Complies
Clause 13 - Zone objectives	Complies
Clause 15 - Additional permitted uses for particular land	N/A
Clause 16 - Subdivision consent requirements	N/A
Clause 17 - Temporary use of land	N/A
Clause 21 - Height of buildings	Complies
Clause 22 - Architectural roof features	N/A
Clause 23 - Sun Access	N/A
Clause 24 - Floor space ratio	N/A
Clause 25 - Minimum building street frontage	Complies
Clause 26 - Design Excellence	Complies
Clause 27 -Car parking	Complies
Clause 28 - Ground floor development within B3 and B4	Complies
Clause 29 - Building separation	N/A
Clause 30 - Ecologically sustainable development	Complies
Clause 31 - Serviced apartments	N/A
Clause 32 - Exceptions to development standards	N/A
Clause 33 - Land acquisition within certain zones	N/A
Clause 34 - Development on proposed classified roads	N/A
Clause 35 - Classification and reclassification of public land	N/A
Clause 36 - Community use of educational establishments	N/A
Clause 37 - Classified roads	N/A
Clause 38 - Development in proximity to a rail corridor	N/A
Clause 39 - Preservation of trees or vegetation	N/A
Clause 40 - Heritage conservation	N/A
Clause 41 - Bush fire hazard reduction	N/A
Clause 42 - Development for group homes	N/A
Clause 43 - Crown development and public utilities	N/A

Clause 44 - Location of sex services premises and restricted premises	N/A
Schedule 1 - Additional permitted uses	N/A
Clause 45 - Application of Part	N/A
Clause 46 - Interpretation	N/A
Clause 48 - Suspension of covenants, agreements and instruments	N/A
Clause 49 - Land use zones	N/A
Clause 50 - zone objectives and land use table	N/A
Clause 51 - Height of buildings	N/A
Clause 52 - Development near zone boundaries	N/A
Clause 53 - Architectural roof features	N/A
Clause 54 - Heritage Conservation	N/A
Clause 55 - Earthworks	N/A
Clause 56 - Savings provision relating to pending applications	N/A
Clause 47 - Certain planning instruments cease to apply to the land	N/A

This Plan applies to most of the area known as the Penrith City Centre and the aims relevant to the subject development proposal are:

- (a) to strengthen the regional position of the Penrith City Centre as a multifunctional and innovative centre that encourages employment and economic growth,*
- (c) to promote employment, residential, recreational and leisure, cultural, social and tourism opportunities within the Penrith city centre,*
- (d) to respond to the economic and social needs of the region by providing centrally located services and facilities,*
- (e) to facilitate new commercial and residential development in the Penrith city centre that is consistent with the desired future character of the area as described in the Penrith City Centre Development Control Plan 2007,*
- (g) to encourage development that contributes to the provision of alternative and sustainable access to the city centre,*
- (h) to enhance access to the city centre, particularly by public transport, walking and cycling,*
- (i) to facilitate the development of building design excellence appropriate for a regional city and improve the quality of urban design and ensure the public domain is safe and attractive,*
- (j) to encourage responsible management, development and conservation of resources and to ensure that the Penrith city centre achieves sustainable social, economic and environmental outcomes,*

The development proposal satisfies these relevant aims of the Plan. The proposal incorporates a modern, aesthetically pleasing design of its shopfront, facilities and fixtures whilst remaining compliant with the relevant Australian Standards (AS) and the BCA. It will result in an improved external appearance of the shopfront and streetscape in general whilst improving the function of its internal area which will contribute to the economic and social needs of the region.

Under the provisions of PLEP 2008, the property is within the B3 Commercial Core zone, in which Cafes are permissible with Council consent. The current use and its signage are considered to be consistent with the aims and objectives of this zone.

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

The draft zoning of the allotment under Stage 2 of the Penrith Local Environmental Plan 2010 remains B3 - Commerical Core. The proposal remains consistent with the relevant aims and objectives of the Plan generally as well as the B3 zone. There are no clauses of the draft EPI which would have significant implications for the permissibility or design of the proposed development.

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

Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	N/A
Chapter 2.2 - Crime prevention through environmental design	Complies
Chapter 2.3 - Engineering works	N/A
Chapter 2.4 - Erosion and sediment control	N/A
Chapter 2.5 - Heritage management	N/A
Chapter 2.6 - Landscape	N/A
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	N/A
Chapter 2.9 - Waste planning	Complies
Chapter 2.10 - Flood liable land	N/A
Chapter 2.11 - Car parking	Complies
Chapter 2.12 - On-site sewage management	N/A
Chapter 2.13 - Tree preservation	N/A
Chapter 3.1 - Advertising signs	N/A
Chapter 3.2 - Baby care rooms	N/A
Chapter 3.4 - Health care consulting rooms	N/A
Chapter 3.6 - Outdoor eating and trading areas - Penrith and St Marys CBD's	Complies - see Appendix - Development Control Plan Compliance
Chapter 3.3 - Child care centres	N/A
Chapter 3.5 - Siting and aesthetics of telecommunication facilities	N/A

Development Control Plan 2007 (City Centre)

Provision	Compliance
Part 2 - Building form	Complies
Part 3 - Pedestrian amenity	Complies
Part 4 - Accessing, parking and servicing	Complies
Part 5 - Sustainable development	Complies

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

There are no planning agreements applying to this application.

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

Fire Safety

Under Part 9 of the Environmental Planning and Assessment Regulation 2000 owners of buildings must provide the FRNSW Commissioner with a copy of the Fire Safety Certificate for the building (along with the current Fire Safety Schedule). The Fire Safety Certificate is issued when essential fire safety measures have been assessed by a qualified person as being capable of performing to the standard defined by the Schedule. A condition of consent will be imposed to ensure that this occurs on an annual basis.

Prescribed Conditions

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the BCA, will be imposed as conditions of consent where applicable.

As such subject to the recommended conditions of consent, the proposed development complies with the requirements of the Regulations.

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

Impacts raised in referral comments

No issues of concern raised, subject to the imposition of recommended conditions of consent.

Other impacts identified in assessment

Subject to the recommended conditions of consent, it is considered that the proposal will not result in any significant impacts on the natural, social or economic environments of the locality due to its scale, location and consistency with surrounding uses.

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

The subject site is deemed suitable for the following reasons:

- The zone and draft zone permit the proposed use.
- The use is consistent and compatible with surrounding/adjoining land uses.
- The site is adequately serviced by access and parking infrastructure which has the capacity to cope with any changes in demand associated with the proposed development.
- Recommended conditions of consent will ensure that the proposal will have minimal effects on the surrounding environment during the construction stage.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Chapter 2.7 of the Penrith Development Control Plan for the City of Penrith 2006 – Notification and Advertising, the proposed development did not have to be notified.

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 - Public Health	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

Subject to the recommended conditions of consent the proposal is considered to be consistent with the relevant sections of the Environmental Planning and Assessment Act 1979, the relevant Local Environmental Plan, relevant State Environmental Planning Policies and the Penrith City Centre Development Control Plan because it does not contravene any development standards and will not result in any significant impacts on the natural, social or economic environments.

The site is suitable for the proposed development, the proposal does not conflict with the public interest, and there is unlikely to be negative impacts arising from the proposed development. Accordingly, the application is worthy of support and recommended for approval, subject to recommended conditions.

Recommendation

1. That DA14/1278 for signage, external alterations and outdoor dining at 569-595 High Street, Penrith (Westfield) be approved subject to the attached conditions.

General

1 A001

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 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

3 A021 - Business registration, notification and food safety supervisor

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 A026 - Advertising sign (not for residential)

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 A039 - Graffiti

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

6 A046 - Obtain Construction Certificate before commencement of works

A **Construction Certificate** shall be obtained prior to commencement of any building works.

7 A Special (BLANK)

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.

8 A Special (BLANK)

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.

9 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 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.

10 **A Special (BLANK)**

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

11 **B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE**

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**.

12 **B004 - Dust**

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

13 **B006 - Hours of work**

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

14 **D009 - Covering of waste storage area**

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.

15 **D010 – Appropriate disposal of excavated or other waste**

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.

BCA Issues

16 **E008 - FIRE SAFETY LIST WITH CONSTRUCTION CERTIFICATE**

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.

17 **E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)**

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.

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.

Construction

19 **H001 - Stamped plans and erection of site notice**

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.

20 [H002 - All forms of construction](#)

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.

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

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

22 [L008 - Tree Preservation Order](#)

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.

23 [L012 - Existing landscaping \(for existing development\)](#)

Existing landscaping is to be retained and maintained at all times.

Certification

24 [Q01F - Notice of Commencement & Appointment of PCA2 \(use for Fast Light only\)](#)

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.

25 [Q05F - Occupation Certificate for Class10](#)

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.

Appendix - Development Control Plan Compliance

Development Control Plan 2006

Part 3 - City wide specific land uses

Chapter 3.6 - Outdoor eating and trading areas - Penrith and St Marys CBD's

The proposed outdoor eating area is considered to be acceptable as:

- The area of footpath in which it is proposed is greater than 3.5 m wide.
- The outdoor eating area retains a 2m wide pedestrian thoroughfare.
- The outdoor eating area will be conditioned to remain clear of any seating, shading or other structures where it is adjacent to the existing layback kerb which serves as an accessible pathway from the emergency services/Australia Post/disabled set down stopping bay.
- The outdoor area does not extend beyond the frontage of the development to which it is associated.
- An application for an Outdoor Eating and Trading Licence has been made with Council's Property Department. A recommended condition of consent requires that this licence be granted prior to the commencement of outdoor trading.