

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA19/0782
<b>Proposed development:</b>	Modification of Licensed Premises Area for Existing Hotel to include Portion of First Floor
<b>Property address:</b>	359 High Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 2 DP 513015
<b>Date received:</b>	8 November 2019
<b>Assessing officer</b>	Jacqueline Klincke
<b>Zoning:</b>	Zone B3 Commercial Core - LEP 2010
<b>Class of building:</b>	Class 9b
<b>Recommendations:</b>	Approve

### Executive Summary

Council is in receipt of a development application for the extension of the licensed area to the first floor lounge and verandah areas for liquor supply and consumption at 359 High Street, Penrith, (the Australian Arms Hotel). The proposal includes the provision of a small bar facility in the lounge area, and associated upgrade and alteration works to comply with the relevant provisions of the Building Code of Australia (BCA) due to a change of use from a Class 3 to a Class 9b building.

The Australian Arms Hotel is listed as a heritage item under Schedule 1 of the *Penrith Local Environmental Plan 2010* as the hotel is the "oldest and most intact twentieth century hotel in Penrith town centre, the hotel provides a positive contribution to the streetscape of High Street and contributes to defining important road intersection framed by historic buildings and near St Nicholas Catholic Church".

Under the *Penrith Local Environmental Plan 2010*, the subject site is zoned B3 Commercial Core and a *hotel* is a permissible land use in the zone.

The key issue identified as part of the assessment of the proposal was in regards to:

- Non-compliance with BCA, and
- Impact on heritage significance of staircase.

The applicant was advised of these issues and subsequently, Council received additional information which is considered to adequately address the issues raised above.

The proposal was notified to twenty-two (22) nearby and adjoining properties and exhibited between 14 and 28 November 2019. No submissions were received in response.

An assessment under Section 4.15 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to recommended conditions of consent.

## Site & Surrounds

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The subject site is legally described as Lot 2 DP 513015 and is located on the north-eastern corner of High Street and Lawson Street at 359 High Street, Penrith. The site is 1688m<sup>2</sup> in size and is currently occupied by the Australian Arms Hotel and associated car park.

The Hotel (construction circa 1940) is described as: "A two storey inter-war/P&O style commercial hotel with street corner location highlighted by a brick turret element. Parapet and upper floor open balcony. Original suspended cantilevered awning with decorative pressed metal awning. Original half glazed doors with terrazzo treads. Bar moderately intact. Exterior wall tiles removed."

The Australian Arms Hotel is listed as an heritage item (heritage item - 196) under Schedule 5 of the *Penrith Local Environmental Plan 2010*. The site's heritage statement of significance states that as "the oldest and most intact twentieth century hotel in Penrith town centre, the hotel provides a positive contribution to the streetscape of High Street and contributes to defining important road intersection framed by historic buildings and near St Nicholas Catholic Church".

The locality is characterised by commercial and retail development to the east, south and west, and a carpark to the north.

### Site History:

- DA940082 - Extension to Trading Hours
- DA960188 - Office Building and Refurbishment
- DA960318 - Redevelopment of Hotel
- DA970443 - Upgrade and Refurbishment of Outdoor Area
- DA05/0381 - Construction of a Bar and Screen Wall
- DA15/0551 - New Function Centre and Car Parking
- DA16/1046 - Alterations and Additions to Function Centre
- DA20/0523 - Internal Alterations to Existing Building and Construction of 7 Storey Accommodation Hotel (currently under assessment)

## Proposal

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The proposal seeks approval to extend the licensed area of the existing hotel to the first floor lounge and verandah area (approximately 95.98m<sup>2</sup> in floor area) for liquor supply and consumption for the purposes of functions and dining activities. The proposal includes the provision of a small bar facility within the lounge area whilst no alterations are proposed to the accommodation rooms. The provided Statement of Environmental Effects has stated *'the hours of operation remain unchanged from previous approvals at 10am to 12 midnight and patron capacity numbers and parking requirements similarly remain unchanged.'*

However, the proposal constitutes a change of building use as part of the building (i.e. first floor) from a Class 3 to a Class 9b. In this regard, the following upgrade and alteration works are proposed in order to comply with the relevant provisions of the BCA:

- Installation of a detached structure located behind the existing heritage staircase balustrade (bolted to the outside of the stair stringer) providing 10mm toughened glass sheeting to close off large gaps within the barriers of the balustrade, with an additional timber handrail on the first floor landing to ensure the balustrade is a compliant height (i.e. greater than 1m),
- Decorative wall on the outdoor balcony to limit travel distances,
- Provision of non-slip nosings on the staircase,
- Additional exit and direction signs to the verandah, lounge and common area,
- Latches to be provided to the door leading to the lounge area from the verandah and double doors leading from the lounge area to the common area, and
- Reconfiguration of the air conditioning system to shut-down on the detection of smoke.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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### • Section 4.15 - Evaluation

The proposal has been assessed in accordance with the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following issues have been identified for further consideration.

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

#### **State Environmental Planning Policy No 55—Remediation of Land**

An assessment has been undertaken of the proposal against the relevant criteria within the *State Environmental Planning Policy No. 55 - Remediation of Land* and the proposal is satisfactory subject to recommended conditions of consent.

#### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

An assessment has been undertaken of the proposal against the 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
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	Complies
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.7 Servicing	Complies
Clause 7.8 Active street frontages	Complies
Clause 8.6 Serviced apartments	N/A
Clause 8.1 Application of Part	Complies
Clause 8.2 Sun access	N/A
Clause 8.3 Minimum building street frontage	Complies
Clause 8.4 Design excellence	Complies
Clause 8.5 Building separation	Complies

#### **Clause 5.10 Heritage conservation**

Under Schedule 5 of the *Penrith Local Environmental Plan 2010*, the subject site contains a local heritage item 196 - Australian Arms Hotel. In this regard, the proposal was referred to Council's Heritage Advisor for review. No objections were initially raised however, upon receipt of Council's Building Surveyor referral comments, the staircase balustrade and handrail leading up to the first floor (which is identified to contain high heritage significance) did not comply with the relevant Building Code of Australia provisions associated with the change of use from a Class 3 building to a Class 9b, and consequently required upgrades.

Therefore, following a site inspection, the submission of an amended Heritage Impact Statement and revised architectural plans, the application was re-referred to Council's Heritage Consultant who deemed the proposed upgrade works to the heritage significant staircase are acceptable, subject to conditions of consent. In this regard, the proposed development satisfies the provisions of Clause 5.10 of the *Penrith Local Environmental Plan 2010*.

It is noted no external works are proposed to the external facade of the building.

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

It is noted that both the *Draft Environmental SEPP* and *Draft Remediation of Land SEPP* apply to the subject site but while so, do not affect or alter the recommendation of this report.

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

##### **Development Control Plan 2014**

<b>Provision</b>	<b>Compliance</b>
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	Complies - see Appendix - Development Control Plan Compliance
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
E11 Penrith	Complies

#### **Section 4.15(1)(a)(iia) The provisions of any planning agreement**

There are no planning proposals that apply to the subject proposal.

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

The proposal is assessed as now being capable of complying with the applicable provisions and requirements outlined within the Building Code of Australia, the relevant Australian Standards and the *Environmental Planning and Assessment Regulation 2000*. Council's Building Surveyor has reviewed the amended proposal raising no objections, subject to recommended conditions of consent.

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

In accordance with Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

In this regard, the proposal is of a minor scale, noting the development consists of extending the licensed area of the hotel to the first floor, minor alterations, and upgrade works to the staircase which contains high heritage significance. Subject to recommended conditions of consent, the proposed works are considered satisfactory and will not adversely impact the heritage significance of the building or staircase.

In addition, given the nature of the surrounding area, and the nearest sensitive receivers being located approximately 140m to the south-east of the subject site, it is considered that there will be no offensive noise generated as a result of the proposed development. Notwithstanding this, various conditions of consent are recommended requiring the development comply with the existing hours of operation of the premises as outlined within the Statement of Environmental Effects, and that all noise associated with the use of the facility comply with the provisions of the *Protection of the Environment Operations Act 1997*.

Furthermore, the proposal does not pose any adverse environmental impacts as all associated works are located within the footprint of the existing building.

In terms of socio-economic impacts, it is considered that the development will not adversely impact on adjoining or neighbouring property values or the local community.

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

The site is considered suitable for the proposed development as the proposal is minor in scale and will not cause any detrimental impacts to the natural and built environments. Furthermore, subject to recommended conditions of consent, the proposed extension of the licensed area, alterations, and upgrade works to the staircase will not impact the heritage significance of the building. In addition, the existing use (i.e. hotel) will not change or be altered. In this regard, the site is suitable for the proposed development.

## Section 4.15(1)(d) Any Submissions

### Community Consultation

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, the proposed development was notified to twenty-two (22) nearby and adjoining properties and exhibited between 14 and 28 November 2019. No submissions were received in response.

### 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
Heritage	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Community Safety Officer	No objections - subject to conditions
Social Planning	Not supported

### Social Planning

The referral comments received from Council's Social Planning section raise issues that are not within the scope of this application and therefore cannot be taken in consideration.

## Section 4.15(1)(e) The public interest

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

## Section 94 - Developer Contributions Plans

Section 7.11 or 7.12 Development Contributions do not apply to this proposal.

### Conclusion

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In assessing the proposed development against the relevant environmental planning policies, primarily being the *Penrith Local Environmental Plan 2010* and the *Penrith Development Control Plan 2014*, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposal and there are no significant negative impacts envisioned as a result of the proposal. Therefore, the application is worthy of support, subject to the recommended conditions of consent.

### Recommendation

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That DA19/0782 for the extension of the licensed area to the first floor, associated alterations, and upgrade works to the heritage significant staircase at 359 High Street, Penrith, be approved, subject to the attached conditions of consent.

# CONDITIONS

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## General

1 [A001 - Approved plans table](#)

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

Drawing Title	Drawing No.	Revision	Prepared By	Dated
Licenced Areas Plan	1186 DA.03/C	C	N. F. Billyard	2/10/2020
Stair/Handrail Plans	1186 DA.04/A	A	N. F. Billyard	2/10/2020
Stair/Handrail Details	1186 DA.05/A	A	N. F. Billyard	2/10/2020

- Heritage Impact Statement, prepared by Damian O'Toole, dated October 2020
- 2 [A008 - Works to BCA requirements \(Always apply to building works\)](#)  
The work must be carried out in accordance with the requirements of the Building Code of Australia.
- 3 [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.
- 4 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)  
**The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 5 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)  
The operating hours are to be in accordance with the approved existing hours of operation.
- 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 design and upgrade works to the staircase (i.e. toughened glass and additional handrail) shall be a separate and completely detached structure from the existing historic handrail and balustrades. Any upgrade works cannot come into direct contact with the original ironwork of the balustrades and handrail of the staircase.
- 8 [A Special \(BLANK\)](#)  
The development shall comply with the relevant requirements outlined within the *Liquor Act 2007* and *Liquor Regulation 2018*.

## Environmental Matters

9 [D014 - Plant and equipment noise](#)

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 offensive noise.

10 [D Special BLANK](#)

Noise associated with the use of the facility, including the use of music and public address systems, is not to be audible at the boundaries of the property.

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

11 [D Special BLANK](#)

Doors and windows of the facility are to remain closed and adequately sealed within the stated operational hours so as to minimise noise emitted from the facility. All external doors are to be adequately sealed when closed to minimise the escape of noise.

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

## BCA Issues

## 12 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.

## 13 E Special BLANK

The following are to be completed **prior to the issue of an Occupation Certificate** for the development:

- The carpet to the part of the building that is the subject of the development consent is to be certified as complying with the requirements of Clause C1.10 of the Building Code of Australia (BCA) or, alternately, is to be replaced with complying carpet. Certification is to be provided to the Principal Certifier.

- The door leading to the lounge area from the first floor balcony is to be made to comply with Clause D2.21 of the BCA.

- The ducted air conditioning system is to be configured to shut down on the detection of smoke in accordance with NSW Table E2.2b of the BCA.

- Additional exit and direction signs are to be provided to the first floor balcony, lounge and common area in accordance with the requirements of Clauses E4.5, E4.6 and E4.8 of the BCA.

## Health Matters and OSSM installations

### 14 F001 - General Fitout

The construction, fit out and finishes of the bar must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS4674-2004 *Design, Construction and Fitout of Food Premises*. All surfaces must be smooth and impervious and easily cleaned. As a minimum two sinks must be provided, including (1) a hand basin and (2) a separate general glass/cleaning sink.

### 15 F027 - Hand basins

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. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.

### 16 F029 - Hand basin within staff toilets

The hand basins within the toilets used by bar staff 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. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.

### 17 F031 - Floor & floor waste

The floor of the bar must be finished in an approved non absorbent material, evenly laid, or graded and drained to a trapped floor waste.

### 18 F032 - Floor covering

Approved, recessed coving must be provided at all intersections of the floor with the walls within the bar area. All coving must have a minimum concave radius of 25mm and be installed so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface.

### 19 F033 - Walls – food prep area

The walls of the bar area must be of solid construction and finished with glazed ceramic tiles or other approved material 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.



20 **F036 - Service pipes**

Service pipes, electrical conduits, 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 25 mm clearance from the adjacent wall and 100 mm 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.

21 **Food Preparation**

Food is not to be prepared at the bar and the bar is only to be used for service of alcohol and other drinks.

## **Certification**

22 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

Prior to the commencement of any works on site, the proponent is to:

(a) employ a Principal Certifier to oversee that the said works carried out on the site are in accordance with the development consent 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 Certifier shall submit to Council an "Appointment of Principal Certifier" in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

### **Information to accompany the Notice of Commencement**

Two (2) days before any works are to commence on site, the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

23 **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 use of the licensed area on the first floor

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 2014

### Part C - City-wide Controls

#### C7 Culture and Heritage

As previously stated within this report, the subject site contains local heritage item 196 - Australian Arms Hotel which is currently operational. This subject application seeks to extend the licensed area of the hotel from the ground floor to the first floor lounge and verandah area, approximately 95.98m<sup>2</sup> in floor area and include a small bar facility within the lounge area.

However, following a preliminary review of the application and a site inspection of the property, the original proposal could not be supported by Council's Building Surveyor as the proposal constitutes a change of BCA classification from a Class 3 to a Class 9b and therefore required a number of upgrade works and alterations to comply with the relevant provisions of the BCA. In particular, the existing staircase (which is identified to contain high heritage significance due to its Art Deco design with decorative ironwork balustrade and original timber handrail) did not provide for compliant gaps in-between the barriers of the balustrade, and the handrail on the landing of the first floor was less than the 1m requirement outlined within the BCA.

Subsequently, the applicant has provided an Heritage Impact Statement, prepared by Damian O'Toole, dated October 2020, in conjunction with additional plans to rectify this issue whilst ensuring the heritage significance of the staircase is maintained. The proposed works now include the construction of an independent and detached structure (bolted to the outside of the stair stringer, located behind the existing staircase balustrade), and will provide for 10mm toughened glass sheeting to close off large gaps within the barriers of the balustrade, and an additional timber handrail at the first floor landing to ensure the balustrade height is greater than 1m (i.e. 1.01m).

This documentation was reviewed by Council's Building Surveyor and Heritage Consultant who both raised no objections to the proposal, subject to a condition of consent ensuring the upgrade works to the staircase be completely detached and not come into direct contact to the original ironwork of the balustrades and handrail of the staircase.

It is also noted no significant works are proposed to the external facade of the heritage building. In this regard, the proposal is considered to satisfy the objectives and controls outlined within Section C7 of the *Penrith Development Control Plan 2014*.