

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0496
Proposed development:	Change of Use to Takeaway Food Premises at Shop 1
Property address:	71 Great Western Highway, EMU PLAINS NSW 2750
Property description:	Lot 1 DP 552614
Date received:	29 July 2019
Assessing officer	Jacqueline Klincke
Zoning:	Zone B2 Local Centre - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for the change of use of an existing tenancy to a pizza, pasta and ribs food and drink premises (Spaghetti Eddy's) with associated signage at Shop 1, 71 Great Western Highway, Emu Plains. The subject site is zoned B2 Local Centre under the *Penrith Local Environmental Plan 2010* and the proposed development is permissible with Council consent.

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, the subject application did not require public notification.

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.

Site & Surrounds

The subject site is located at the north-eastern corner of the intersection of the Great Western Highway and Billington Place, Emu Plains. The site is known as Shop 1/71 Great Western Highway, Emu Plains and is legally described as Lot 1 DP 552614 with an area of 69.6m². The surrounding area is characterised by existing shop-top housing with commercial premises operating on the ground floor, car parking to the north, and low to medium density residential development to the south.

Site History:

The premise has previously been occupied by a charcoal chicken shop (Chicken on the Run), and a health foods cafe (Nutrition Station and NU Healthy Cafe). However, no approval for these uses can be found on Council records.

Proposal

The applicant seeks approval for the change of use of an existing tenancy to a pizza, pasta and ribs food and drink premises at 1/71 Great Western Highway, Emu Plains.

The proposal includes the following aspects:

- Utilisation of existing fit-out, utilities, services, and structures within the premise,
- Hours of operation between 4pm and 11pm Sunday to Thursday, and between 4pm and 1am Friday and Saturday,
- Three (3) full time and four (4) casual staff,
- Replacement of existing business identification signage on the fascia of the external awning,
- Car parking spaces are to be provided via the existing 152 shared parking spaces servicing the subject shopping complex and train station.

Correspondence with the applicant confirmed that the boarded up glazing will be removed and the external facade of the building will be repainted white (or a similar neutral colour).

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 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 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 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 - See discussion
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	N/A
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.7 Servicing	Complies
Clause 7.12 Maximum gross floor area of commercial premises	Complies - See discussion

Clause 2.3 Permissibility

The proposal is defined as a 'food and drink premises' with ancillary signage which is a permissible land use under the provisions of the B2 Local Centre zone in the *Penrith Local Environmental Plan 2010*.

Clause 7.2 Flood planning

The subject site is identified as being on Low Flood Island. However, considering the proposal will be located within existing flood space of a commercial shop and involves minor internal construction works, there are no adverse impacts from a flood planning perspective envisioned.

Clause 7.12 Maximum gross floor area of commercial premises

The proposed development includes a fit-out of approximately 60.6m² of floor area within an existing tenancy and does not involve the creation of additional floor space. The proposal therefore satisfies the total gross floor area of all buildings used for commercial premises at the site and the site will not exceed the maximum permitted gross floor area of 6,000 square meters as a consequence of the subject application.

Section 79C(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* are both applicable to the subject site, but while so, do not affect or alter the recommendations of this report.

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

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	Complies
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	Complies - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
E5 Emu Plains controls	Complies

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

There are no planning agreements applying to this proposal.

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

The proposal has been referred to Council's Building Surveyor and Public Health Department who have both recommended conditions of consent to ensure the development complies with the Building Code of Australia, the relevant Australian Standards and the regulations.

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

Context and Setting

The proposal is for the occupation of an existing premises for the use as a pizza, pasta and ribs food and drink premises with associated signage. The development will have minimal impact on the amenity of the locality, subject to conditions. The application proposes trading hours of 4pm to 11pm Sunday to Thursday, and 4pm to 1am on Friday and Saturday. A condition of consent is recommended to ensure the business complies with these hours of operation. These hours of operation are considered to be appropriate due to the hours of operation of surrounding premises such as O'Donoghues Irish Pub which is open until 2am on Fridays and Saturdays, and the location of a 24 hour gym located adjacent to the subject site.

Access, Transport and Traffic

Given the proposal is for a small scale business, it is unlikely that there will be an adverse impact on local traffic conditions. The existing access arrangements and car parking near the site will be adequate for the proposed food and drink premises.

Utilities and Services

The premise is already fit-out for a food premises and has connections to utility services which have the capacity to cope with the demand associated with the proposed business.

Noise and Vibration

It is considered that any noise generated by the use of the premises will not unreasonably impact on the amenity of the surrounding uses.

Environmental Impacts

The proposal is for a change of use and minor internal works only. There will be no major impacts on water resources or soil quality and the development does not require the removal of any significant biodiversity or threatened species. The amount of waste expected to be generated is considered to be manageable.

Socio-Economic Impacts

The proposal does not contravene any development standards and is unlikely to have any significant impacts on the natural, social or economic environments.

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

The subject site is deemed suitable for the proposed development for the following reasons:

- The use is consistent and compatible with the adjoining land uses,
- The site is adequately serviced by water and sewage infrastructure, and access and parking has the capacity to cope with any increase in demand associated with the proposed development, and
- The proposal does not contravene any development standards and is unlikely to have any significant impacts on the natural, social or economic environments.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, public notification of the proposed development was not required. In this regard, no submissions were received.

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

In assessing the proposed development against the relevant environmental planning instruments being the *Penrith Local Environmental Plan 2010*, *Penrith Development Control Plan 2014* and *Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 - 1997)*, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest, and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support and is recommended for approval, subject to recommended conditions.

Recommendation

1. That DA19/0496 for the use of an existing premises as a food and drink premises (pizza, pasta and ribs) at Shop 1/71 Great Western Highway, Emu Plains, be approved subject to the attached conditions.

CONDITIONS

General

1 [A001 - Approved plans table](#)

The development must be implemented substantially in accordance with the following stamped approved plans issued by Council, the application form, the Statement of Environmental Effects, 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.	Prepared By	Dated
Floor Plan	H	-	22/7/2019
Elevation	K	-	24/7/2019
Signage	-	-	-

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.

3 [A019 - Occupation Certificate](#)

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

A satisfactory inspection from an authorised officer of Council's Environmental Health Department is required **prior to the issue of the Occupation Certificate**. The occupier is to contact the Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time.

4 [A021 - Business Registration](#)

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**.

5 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)

The approved hours of operation are from 4pm to 11pm Sunday - Thursday, and 4pm to 1am on Friday and Saturday.

6 [A032 - Goods in buildings](#)

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

7 [A039 - Graffiti](#)

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

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

In the event that Council receives substantiated complaints regarding excessive noise from the food and drink premises, the person(s) in control of the premises shall at their own cost arrange for an acoustic investigation to be carried out (by a suitable qualified consultant) and provide a report specifying proposed methods for control of noise emanating from the premises.

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

An intruder alarm installed at the premises shall be fitted with a timing device in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

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

The approved awning signage is to be erected strictly in accordance with the manufacturer's specifications and relevant Australian Standards and shall not unduly reduce or compromise the structural integrity of the existing building. In addition, the signage shall not be illuminated and not contain any advertising relating to a person/business who does not carry out business at the subject premise.

BCA Issues

11 [E001 - BCA compliance](#)

In accordance with the requirements of Clause 94 of the *Environmental Planning and Assessment Regulation 2000*, the following work is to be completed to ensure the fire safety of the building;

- All required exits are to be provided with latching devices that comply with Part D of the Building Code of Australia.

12 E006 - Disabled access and facilities

Access for persons with disabilities is to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility".

13 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.

Health Matters and OSSM installations

14 F001 - General Fitout

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 AS4674-2004 *Design, Construction and Fitout of Food Premises*.

15 F022 - Commercial kitchen(exhaust system)

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 AS1668 Parts 1 & 2.

Detailed plans together with calculations for the system must be provided as part of the development application or as part of the Construction Certificate application.

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 2000 mm above floor level.

Prior to the issuing 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 AS1668 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

16 F025 - Food safety supervisor

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.

17 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. 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.

18 F028 - Staff toilets

Staff toilets must be provided on the premises. Where a toilet adjoins a food preparation area it must be separated by an air lock and its doors must be fitted with self closing devices. Toilets intended for customer use must not be accessed through areas where open food is handled, displayed or stored.

19 **F029 - Hand basin within staff toilets**

A hand basin must be located within the toilet cubicle. 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 used 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.

20 **F030 - Hot water service**

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.

21 **F031 - Floor & floor waste**

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.

22 **F032 - Floor covering**

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 floor and wall in such a manner as to form a continuous, uninterrupted surface.

23 **F033 - Walls – food prep area**

The walls of the food preparation 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.

24 **F034 - Walls – behind cooking appliances**

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.

25 **F035 - Ceilings**

The ceiling in the preparation, service and scullery areas 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 intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.

26 **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.

27 **F037 - Temperature control**

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.

28 **F043 - Hot & cold water at sinks**

All wash sinks and food preparation sinks must be serviced with hot and cold water through a single outlet. Wash sinks must be supplied with water at a temperature of not less than 54 °C for washing.

29 **F044 - Sink & splashback construction**

The double bowl sink must be constructed of stainless steel, have a minimum bowl size of 450mm x 300mm x 300mm to enable cleaning of large pots and equipment, be fitted with a draining area at each end, and have a splashback as part of the unit at least 300mm up the wall.

30 F047 - Fixtures & fittings

All fixtures, fittings and equipment must be provided with smooth and impervious surfaces, free from cracks and crevices to enable easy cleaning.

All fittings and fixtures must be built into the wall and floor so as to be free from joint, 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 (AS4674-2004 – Section 4.2 and 4.3).

31 F048 - Food prep benches

All food preparation benches must be constructed in stainless steel or finished in a smooth and non-absorbent approved material that is free of joints.

32 F049 - Storage cabinets

All storage cabinets (internal and external surfaces) must be finished in a smooth and non-absorbent approved material that is free of joints.

33 F050 - Light bulbs & tubes

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.

34 F051 - Shelving

Shelves must be smooth and impervious; free from joints, cracks and crevices; and 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).

35 F057 - Waste storage

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.

Utility Services

36 G002 - Section 73 (not for

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.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Certification

37 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 business.

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

C9 Advertising and Signage

The proposal involves the replacement of existing business identification signage on the fascia of the awning fronting Billington Place and the Great Western Highway. The signage will display the business logo, phone number and the wording "free local delivery" which is considered acceptable. The signage is not illuminated, and a condition of consent is recommended to ensure that the signage will not contain any advertising relating to a person/business who does not carry out business at the subject premise. In this regard, the proposed business identification signage on the fascia of the awning is deemed satisfactory and recommended for approval.

C10 Transport, Access and Parking

Car parking spaces are to be provided via the existing 152 shared parking spaces servicing the subject complex and train station. Street parking (although limited at times) is available. It is also envisioned that the proposal will not generate a significant increase in traffic volume or parking demand.