

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0522
Proposed development:	Change of Use to an Indoor Recreation Facility in Tenancy T10 & T11
Property address:	78 - 88 Tench Avenue, JAMISONTOWN NSW 2750
Property description:	Lot 3 DP 30354
Date received:	5 August 2019
Assessing officer	Paul Anzellotti
Zoning:	SP3 Tourist - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a Development Application for a change of use to an indoor recreation facility in Tenancy T10 and T11 to an existing building at 78-88 Tench Avenue, Jamisontown.

The subject site is zoned SP3 (Tourist) and the proposal is a permissible land use as provided by the land use table within the Penrith Key issues identified for the proposed development include:

- The proposal is considered to provide for an appropriate use to the upper floor level of the existing building maintaining a mixture of cafe's and restaurants on the ground floor level,
- The hours of operation are not considered to create an impact upon surrounding uses and ground floor tenancies noting that the proposed gymnasium will commence operations at an earlier opening time and close prior to cafes and restaurants also closing. It is noted that a single residential dwelling is located directly adjoining the subject site to its immediate south. To allow for a proper consideration of the acoustic impact to be created (noting the position of the car park adjoining and possible impact created via the movement of vehicles), it is considered appropriate that the 5am opening time be provided for a 12 month trial period to review any possible concerns which may be created,
- The proposal will provide for the conversion of up stairs toilet facilities into change rooms specific for the use of the proposed gymnasium. The conversion is considered acceptable noting the availability of separate sanitary facilities on the ground floor for use by the remaining tenancies, and
- While the proposal has identified external signage to be provided to the front and rear facades, due to the lack of detail provided, a proper assessment cannot be conducted. In this regard, were the application to be approved, conditions of consent are included providing for no signage as part of this application.

The application was notified to adjoining and nearby properties and exhibited from the 19 August to 2 September, 2019. During this period, no submissions were received.

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 on the south east side of Tench Avenue. The site is rectangular in shape, has a frontage of 131.16m and is approximately 3.34ha in area. The site is located within the Nepean River floodplain and is predominately flat with a slight fall from the front of the site to the rear.

The site sits directly opposite the boat ramp and associated car parking area which forms part of the larger open space network identified as Tench Reserve. The surrounding land uses are, at present, typically rural-residential on large land holdings.

Currently existing on the subject site is a two (2) storey built form containing eleven (11) tenancies including an outdoor alfresco dining area, landscaping and car parking facilities positioned to the rear of the subject site behind the existing building. The subject site was provided with a Development Consent (DA15/0335) and subsequent modifications to this consent which has provided for a part 1, part 2 building form. Tenancies T10 and T11, subject to this development application are located on the first floor. It is noted that these two tenancies are the only ones provided to this upper level.

Proposal

The application seeks approval for a change of use encompassing Tenancies T10 and T11 at the existing building at 78-88 Tench Avenue, Jamisontown to a new premium gymnasium facility. Tenancies T10 and T11 are currently vacant.

The proposal provides for the following works;

- Repositioning of the existing entry glazing line for Tenancy T10 to facilitate a new entry into the proposed gym facility,
- Alterations to the existing toilet facilities on this level to also incorporate male and female change rooms and a unisex disabled toilet.
- The Gymnasium is proposed to be separated into two (2) areas, a southern and a northern wing which will each host group classes and personal training based fitness.
- The southern wing (Tenancy T10) is to be provided with a reception area, small office, seating area, change rooms, infrared sauna and a yoga studio.
- The northern wing is to accommodate four (4) training studios including one for functional group training, one for group spin cycle classes, one for group, low impact boxing and cardio classes and a small studio for private training.
- Digital signage is proposed to be located to the front (west) and back (east) facades of the gymnasium.
- A total of fifty (50) persons are to train in the gymnasium at any one time
- The hours of operation are proposed as follow; Monday to Friday 5am to 10pm, Saturday 5am to 6pm and Sunday 6am to 6pm.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

- **Section 4.14 - Bushfire prone land assessment**

Section 4.14 'Consultation and development consent - certain bushfire prone land' of the Environmental Planning and Assessment Act, 1979 requires that a Consent Authority;

(a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or

(b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.

An assessment of the provided plans has identified that the proposal is located on land which is identified by Council's mapping as being partially bush fire prone and the proposal is therefore required to be assessed accordingly under the 'Planning for Bushfire Protection (PBP) – 2006' document prepared by the Rural Fire Service. While so, it is noted that the existing building is constructed and that the application will provide for only a change of use to existing vacant tenancies to the proposed gymnasium facility.

Noting the above, the proposal is therefore satisfactory in relation to an evaluation under Section 4.14 of the Environmental Planning and Assessment Act, 1979.

- **Section 4.15 - Evaluation**

The development 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

State Environmental Planning Policy No 64—Advertising and Signage

The application has identified the provision of a number of digital signage locations to the north western and south eastern elevations. Two signs in the form of transparent LED display signage are proposed to front onto Tench Avenue with one sign in the form of a video wall sign is proposed to face the rear car parking area. While so, the proposal has not been accompanied by a SEPP 64 discussion within the Statement of Environmental Effects nor has detailed signage been provided, rather a plan identifying generic examples of possible signage.

Noting the above, the identified signage positions on the accompanying plans is not considered to allow for a proper assessment of their impact upon its immediate surrounds. In this regard, should the application be approved, any determination is to include a condition indicating that a separate development application for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of this section of the Penrith DCP.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposal against relevant criteria within the Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2-1997) will not compromise the water or scenic qualities of the river environment and is therefore consistent with the planning considerations, strategies and aims of SREP 20.

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 - See discussion
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	N/A
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.2 Flood planning	N/A
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The proposal is defined as a recreation facility (indoor) being a gymnasium.

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

Development for the purpose of indoor recreation within the SP3 Tourist zone is permissible with Council consent.

Clause 2.3 Zone objectives

The following objectives are provided for the subject site's SP3 Tourist zone;

- *To provide for a variety of tourist-oriented development and related uses.*
- *To provide for diverse tourist and visitor accommodation and activities that are compatible with the promotion of tourism in Penrith.*
- *To create an appropriate scale that maintains important views to and from the Nepean River as well as to the Blue Mountains escarpment, while also improving important connections to the Penrith City Centre and the Nepean River.*

The provision of a gymnasium is considered to be compatible with the above objectives noting that point 1 identifies that related uses may be provided for. In this regard, noting the existing uses within the subject building, it is not considered an inappropriate expectation to consider that persons visiting the Penrith area may desire to also use the indoor recreational facility. The proposed operation of the gymnasium is considered to provide for activities which may attract the interest not only of persons residing in the vicinity but visitors to the area and is an appropriate use to the first floor being separated from the cafes and restaurants provided to the subject building currently existing on the ground floor.

Clause 5.10 Heritage conservation

It is noted that the subject site is located directly opposite the Nepean River which maintains the Nepean Rowing Course. This rowing course is identified as a Local Heritage Item (No. 148) under Schedule 5 *Environmental heritage* of the Penrith Local Environmental Plan 2010. As the proposal will provide for a fit out to existing vacant tenancies to and existing building, it is not considered that any immediate impact is created upon the significance of the adjoining heritage item.

Clause 7.5 Protection of scenic character and landscape values

It is noted that the subject site is partially located within an area maintaining scenic and landscape values as provided by Council's mapping records associated with the Penrith Local Environmental Plan 2010. While so, as the proposal will provide only for a fitout of the existing vacant tenancies and as to be discussed within this report, will be conditioned to not provide for the proposed requested signage, no immediate visual impact is considered to be created by the approval of the application to its surrounds.

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

The proposal has been assessed against the applicable provisions of *Draft State Environmental Planning Policy No. 55 - Remediation of Land* and the *Draft Environment State Environmental Planning Policy* and is considered to be acceptable.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	Complies - see Appendix - Development Control Plan Compliance
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Does not comply - 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 - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
E13 Riverlink Precinct controls	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 proposal.

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

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, will be imposed as conditions of consent where applicable. Subject to the recommended conditions of consent, the proposed development complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

The proposal was also advertised, notified and exhibited from 19 August 2019 to 2 September 2019 in accordance with Clause 89(3) of the EP&A Regulation 2000.

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

Context and Setting

The proposal is provided to an existing building previously approved under DA15/0335 which was approved for the *construction of three (3) buildings straddling an existing Coffee Club building including eleven (11) tenancies for future restaurant and café uses and associated outdoor seating piazza, car parking, landscaping and stormwater drainage works*. In this regard, it is noted that the ground floor is currently used for the purpose of café and restaurant activities with the remaining upper level being tenancy's 10 and 11) currently vacant. The application has also identified that an approval was previously provided to this upper level for us as a restaurant which has not been acted upon.

As the subject tenancies are the sole tenancies to this upper level of the subject building, their use as an indoor recreation facility is considered to maintain the desired presentation an operation of this precinct as a food and drink location noting the current nature of the ground floor operations. Furthermore, it is considered that a specialised upper level would assist in providing for the activation of a currently vacant

area which is not considered optimal in regard to attracting persons for the purpose of either a restaurant or café operation.

In principle, the proposal is positioned in a building which is generally isolated from surrounding residential uses (except for a dwelling house positioned directly adjoining to the south at No. 92 Tench Avenue). In this regard, it is considered that subject to any determination being appropriately conditioned that the impact on the amenity to surrounding properties can be appropriately mitigated.

Site Design and Internal Design

Modification to the internal layout are generally considered appropriate with operations to be maintained within the existing tenancies layouts and the toilet facilities expanded to also cater for change room utilities. In addition, a lift is provided to the building to allow for equitable access to the first floor when accessed either from Tench Avenue or the rear car parking area.

As toilet facilities are also provided to the ground floor to cater for ground floor tenancy use, no concern is raised in regard to the upper level toilets being solely dedicated to the operations of the new gymnasium. It is not considered that sufficient detail has been provided to proposed signage to enable a proper assessment to be provided for in regard to its visual impact upon its surrounds. In this regard, any approval granted will be conditioned to not include signage.

Access, Transport and Traffic

The proposal is provided access to a car parking area located to the rear of the existing building which has been identified to maintain appropriate car parking facilities to cater for the intended use. Furthermore, it is noted that a bus service is provided along Tench Avenue (Route No. 795) to assist in serving the proposed operations.

Utility Services

The site has connections to utility services and the existing infrastructure has the capacity to cope with the additional demand associated with the proposal.

Hours of Operation

The application has requested the following hours of operation;

- *Monday to Friday 5am to 10pm,*
- *Saturday 5am to 6pm and*
- *Sunday 6am to 6pm.*

It is noted that the development consent granted for the construction of the existing building maintaining the 11 tenancies (being DA 15/0335 as amended by subsequent modification applications) provided for condition 6 which in part reads, *'The approved operating hours for the site are limited to 7am to 1am, Monday to Sunday'*.

DA15/0335 provided hours of operation in relation to the operation of cafes and restaurants envisaged to be provided to individual tenancies as part of that application. While the proposed hours of operation vary from the approved hours (in particular to the morning opening times), it is not considered that the proposed hours will conflict with the operation of the ground floor tenancies within the existing complex noting its earlier starting times. While so, it is acknowledged that a dwelling house is located directly to the south of the existing car park area associated with the Tench Avenue complex. In this regard, the movement of persons within the parking area especially in the early morning is considered to potentially impact upon the amenity of the occupants of this dwelling. To therefore allow for an appropriate consideration of the amenity of the adjoining residents it is considered appropriate to provide for a condition in relation to hours of operation as a 12 month trial period with the continuation of these hours requiring further Council approval following the expiry of the trial period.

In addition, any approval granted will also include conditions indicating that should operations create an amenity concern, then the applicant will be required to conduct their own necessary acoustic

investigations.

Socio-Economic Impacts

The proposal poses no threats to the health and safety of the community. The health and fitness opportunities will contribute to social cohesion via the mixing of social groups in addition to creating employment opportunities. This will in turn strengthen this area of the Penrith Council area and reflects the key principles of sustainability. In addition, the proposal is of a minor-scale and not considered likely to adversely impact on surrounding businesses or property values.

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

The site is deemed suitability for the proposed development given the following reasons:

- The proposal is considered to be of a minor scale
- The site is in proximity to available parking spaces and public transport modes
- Sufficient services and facilities are available
- The predicted noise levels subject to appropriate monitoring over a 12 month trial period are acceptable
- There are no hazardous land uses or activities in proximity to the site

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, notification and exhibition of the proposal was provided for a period of 14 days from the 19 August to 2 September, 2019. During this period 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
Development Engineer	No objections
Environmental - Environmental management	Not supported, however conditions provided
Environmental - Public Health	No objections - subject to conditions
Waste Services	No objections - subject to conditions
Traffic Engineer	No objection

Environmental - Environmental management

Comments returned from Council's Environmental Management team have identified concerns in regard to traffic movements to and from the proposal particularly in relation to the adjoining residential dwelling adjoining to the south of the car parking area. In addition, concern was raised in regard to the overall noise generated by the proposed facility. The existing building upon the subject site is provided with a two way driveway access from Tench Avenue along the southern boundary adjoining the existing dwelling at 90a Tench Avenue. It is noted that this dwelling was constructed in accordance with Development Consent DA14/0747 under a previous applicable Rural 1(A1) zoning which has been transformed to the current SP3 Tourist zoning for the subject site and the adjoining neighbour with the subject Tourist zoning not allowing for a residential dwelling.

In this regard, the current operations on the subject site and the adjoining site, while sharing the same zoning provide for a permitted and a non permitted use. With a 5am starting time, it is acknowledged that the movement of vehicles especially and the actions of persons entering and exiting vehicles may create an immediate impact upon the amenity of the adjoining dwelling at 90a Tench Avenue. Noting this level of uncertainty, it is considered appropriate that were approval to be forthcoming that this be in the manner of a trial period of 12 months in relation to the hours of operation to enable a proper analysis of the impacts which are created, with the applicant required to provide for a modification prior to this 12 month period expiring to formalise the operating hours.

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

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with the prevailing planning controls. In this regard, the proposed works are considered to be consistent with the relevant planning provisions. Subject to compliance with conditions of any development consent and modifications to the development design as outlined within this report, the proposal is considered worthy of support.

Section 94 - Developer Contributions Plans

No Section 94 contribution plans apply to the proposal.

Conclusion

The proposal has been assessed against the relevant environmental planning policies including the *State Environmental Planning Policy No. 64 - Advertising and Signage*, *Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No 2—1997)*, *Penrith Local Environmental Plan 2010* and *Penrith Development Control Plan 2014* and in this regard the proposal is considered to satisfy the aims, objectives and provisions of these policies. The proposal is considered to provide for an appropriate use for the upper floor of the existing building in conjunction with the operations of the ground floor cafes and restaurants. Subject to appropriate conditions included with any determination granted, in particular the provision of a 12 month trial period in relation to the proposed hours of operation, the noise generated by the proposal is not considered will impact upon the ground floor uses or adjoining properties. In addition, the application has identified that equitable access is available to the subject tenancies via the location of a lift while the hours of operation are not considered to impact upon the amenity of surrounding land uses.

The proposal is not considered likely to create any significant impacts on the natural, social or economic environments and in this regard, the application is considered worthy of support and is recommended for approval subject to appropriate conditions.

Recommendation

That DA19/0522 for the change of use of existing vacant tenancies to an indoor recreation facility in Tenancy T10 and T11 at 78=88 Tench Avenue, Jamisontown be approved subject to attached conditions.

General

1 [A001 - Approved plans table](#)

The development must be implemented 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.

Doc No.	Revision	Title	Prepared By	Dated
0553-DA100	01	Title Page	PopovBass	23 July, 2019
0553-DA101	01	Site and Parking Plan	PopovBass	23 July, 2019
0553-DA102	01	Tenancy Location Plan	PopovBass	23 July, 2019
0553-DA103	01	Detail Tenancy Plan	PopovBass	23 July, 2019
0553-DA104	01	Elevations	PopovBass	23 July, 2019
0553-DA105	01	Sections	PopovBass	23 July, 2019
0553-DA106	01	Sections	PopovBass	23 July, 2019

- DA Noise Impact Assessment prepared by Rodney Stevens Acoustics, Revision, Report No. 190348R1, dated 22 July, 2019, and
- Waste Management Plan prepared by Elephants Foot, Revision E, dated 22 February, 2018.

2 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)

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

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

The approved operating hours shall be from 5am to 10pm weekdays, 5.00am to 6pm Saturday and 6.00am to 6.00pm Sundays, for a trial period of 12 months from the date of this consent. The continuation of the hours of operation will require Council's further approval for any time period following the expiry of this trial period. The applicant is to submit an application to Council prior to the expiration of the 12 month trial period for Council's consideration. If no application is received, the opening hours of operation for the indoor recreation facility are to be in line with the approved hours of operation provided for by way of Development Consent No. DA15/0335 at the expiry of the 12 month trial period.

4 [A032 - Goods in buildings](#)

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

5 [A036 - Baby care room](#)

A baby care room shall be provided to the male and female change rooms and/or within the disabled facilities. The change tables shall be smooth, impervious and easy to clean and disinfect. Safe and adequately installed wall mounted fold down facilities would be acceptable. Plastic bag lined bins with a lid that closes shall be provided within close proximity to the change tables.

6 [A039 - Graffiti](#)

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

7 [A046 - Obtain Construction Certificate before commencement of works](#)

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

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

If pre-packaged refrigerated drinks are to be sold on-site, the refrigerated appliance must be capable of maintaining a temperature of less than 5°C and be provided with a digital thermometer accurate to 1°C that can be easily observed from outside the appliance.

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

There shall be a combined maximum of fifty (50) participants in the gymnasium at any one time. Furthermore, the following facilities are to be provided;

- A total of three (3) training studios providing for one (1) functional group training (up to 20 people at one time), one (1) spin cycle class (up to 25 people) and one (1) low impact boxing group (up to 25 people),
- One (1) yoga studio (up to 25 people), and
- One (1) infrared sauna (up to 7 people).

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

No public address audio systems are to be used. Background music is to be played only through a small hi fi or stereo system. Speaker systems are to be controlled only by staff, not patrons.

11 **A Special (BLANK)**

A facility that is easily accessible to members and visitors (not located within staff areas) to refill drinking containers with cool potable water shall be provided. This should be a designated sink, bubbler or water cooler used entirely for this purpose. Toilet hand wash basins must not be used for filling drinking containers.

12 **A Special (BLANK)**

No open food is to be sold on-site and no food preparation is to occur on-site without prior approval from Penrith City Council

13 **A Special (BLANK)**

Prior to the issue of a Construction Certificate, a Noise Management Plan is to be submitted to Council for approval. The Noise Management Plan is to be prepared by a suitably qualified person and is to:

- address all noise related aspects of the development's operational phases;
- recommend systems and controls to be implemented to minimise the potential for any adverse noise, reverberation and vibration impacts to nearby receivers, with consideration given to:
 - floor and wall treatments, and other relevant building construction elements; and
 - use of music, microphones, AV equipment and speakers.

The approved Noise Management Plan is to be implemented and adhered to during all operations.

14 **A Special (BLANK)**

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

Demolition

15 **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**.

16 **B003 - ASBESTOS**

You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" **before any demolition works commence on the site**.

Prior to commencement of demolition works on site, a portaloo with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environmental Protection Authority to receive asbestos wastes.

17 **B004 - Dust**

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

18 **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

19 **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.

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

All waste 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.

21 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Da Noise Impact Assessment prepared by Rodney Stevens Acoustics, Revision 0, Report No. R190348R1, dated 22 July, 2019. The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application.

A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

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

22 **D026 - Liquid wastes**

Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If mains sewer is not available or if Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

23 **D030 - Air handling system**

Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, are to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

24 **D Special (BLANK)**

Prior to the issue of the Construction Certificate, further details on the type and location of all mechanical plant and equipment associated with the development is to be provided to the Principal Certifying Authority for consideration and approval. Suitable data and information on the noise impacts associated with this plant and equipment is also to be supplied to demonstrate compliance with the established noise criteria.

25 **D Special BLANK**

Six (6) months after the issue of an Occupation Certificate, an Acoustic Compliance Report is to be submitted to and approved by Council. The report is to be prepared by a suitably qualified acoustic consultant and is to address, but not limited to, all noise generating activities on the site and the level of compliance with the noise criteria set within the DA Noise Impact Assessment (prepared by Rodney Stevens Acoustics, dated 22 July 2019, REF:190348R1, Rev 0). It is also to consider the requirements of the NSW Environment Protection Authority's Noise Policy for Industry, other relevant guideline documents and the conditions of this development consent.

Should the Compliance Report identify any non-compliance issues, the Report is to provide suitable recommendations for the mitigation of those issues. Any mitigation works are to be undertaken within thirty (30) days from the date of the notice from Council, unless otherwise specified.

26 **D Special BLANK**

The on-waste infrastructure provided within the development is to be maintained in accordance with the details provided on the approved architectural plans and Waste Management Plan prepared by Elephants Foot, Revision E, dated 22 February, 2018. On-site waste infrastructure permissible to change only in accordance with conditions stipulated by Councils Waste Service department.

BCA Issues

27 **E006 - Disabled access and facilities**

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.

28 **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.

29 **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

30 **F186 - Smoke Free Environment**

The construction and operation of the premises shall comply with the NSW Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2000.

31 **F Special BLANK**

Public areas and toilets in the premises shall be maintained in a clean and hygienic condition, free from a build-up of waste at all times.

32 **F Sspecial (BLANK)**

All garbage shall be stored in accordance with the requirements of *Protection of the Environment Operations Act 1997* to prevent the harbourage of vermin or generation of odours.

33 **F Sspecial (BLANK)**

Disinfectant spray and paper towel or disinfectant wipes shall be provided throughout the facility for patrons to wipe down equipment before and/or after use.

Construction

34 **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.

35 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.

36 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 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.

Certification

37 Q006 - Occupation Certificate (Class 2 - 9)

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building/tenancy and commencement of the approved use. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of that Certificate including the above mentioned documents shall be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

38 [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 4.19 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 4.19 of the Environmental Planning and Assessment Act 1979.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

The proposal has been assessed against the applicable provisions of the Penrith Development Control Plan 2014, in particular those under Part C, City Wide Controls. Compliance with particular Sections is discussed below:

C5 Waste Management

It is noted that approval was originally granted for the use of the subject tenancies for a restaurant with the proposed gymnasium waste generation rates much lower in comparison when using Council's waste generation. In this regard, it is accepted that the existing waste collection facilities for the overall development (maintaining 11 tenancies) exceed those required for the proposed gymnasium. Furthermore, small waste and recycling bins with a maximum size of 30 litres are to be located in bathrooms, office area and waiting area with cleaners to collect the waste and recycling daily from these bins and to be transported to an existing central collection area servicing the whole facility.

In this regard, this information was reviewed by Council's Waste Section and considered acceptable.

C9 Advertising and Signage

The provided architectural plans have identified digital signage is to be provided to both the front and rear elevation facing Tench Avenue and the rear car park respectively. While so, it is not considered that appropriate details have been provided with the application to clarify dimensions and the nature of the signage to be provided to these building's facades.

Noting the above, should the application be approved, any determination is to include a condition indicating that a separate development application for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of this section of the Penrith DCP.

C10 Transport, Access and Parking

The subject site is currently provided with an existing car parking area to the rear of the building maintaining existing tenancies. The application was referred to Council's Traffic Engineering Section who provided the following comments;

The proposed change of use to a gym facility requires a lower parking rate than the previously approved restaurant rates. As such, the existing parking conditions are appropriate and additional parking spaces are not required as part of this development.

Noting the above, no concern is considered to be created by the use of a gymnasium in this location.

C12 Noise and Vibration

As discussed within this report, Development Consent DA15/0335 (as amended) provides for operating hours for each tenancy within the subject building of 7am to 1am, with the current proposed operating hours requesting a variation to establish operating hours for the proposed gymnasium of 5am to 10pm. Comments from Council's Environmental Management section have advised that particular concern is raised in regard to the possible impact that patrons accessing the site may have on an adjoining residential property, especially with access to and from the open car park situated to the rear of the existing commercial building. While conditions were provided by Council's Environmental Section, to allow for a proper consideration on the potential impact of the operating hours, it is considered appropriate that a trial period of 12 months be provided for the proposed hours of operation to allow for a proper consideration of the immediate impacts especially to the adjoining residential premises with any condition of this nature to be worded requiring the applicant to provide for a modification of the provided condition to allow for permanent hours of operation.

E13 Riverlink Precinct

E13 Riverlink Precinct

As the proposal will provide for a change of use to existing tenancies located within an approved commercial building, it is not considered that the controls provided for within the Riverlink Precinct will be impacted upon in any manner noting these controls primarily are related to urban manner, connectivity, built form and future character strategies.