

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA13/0715
Proposed development:	Commercial Development - New Commercial Kitchen
Property address:	308 - 332 Londonderry Road, LONDONDERRY NSW 2753
Property description:	Lot 1 DP 1084891
Date received:	16 July 2013
Assessing officer	Alison Butler
Zoning:	RU4 Primary Production Small Lots - LEP 2010
Class of building:	Class 9b
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for a Commercial Kitchen at 308-332 Londonderry Road Londonderry. Richmond Race Club is currently in ownership of the site.

The subject site is zoned RU4 Primary Production Small Lots under Penrith Local Environmental Plan 2010. The proposal is ancillary to the existing land use of the site. The use is defined as a '*recreation facility (major)*', which is not listed as a permissible use in the RU4 zone. However, the proposal enjoys 'existing use rights' and can therefore be considered by Council as if it were a permissible use in the zone.

The proposal is generally compliant with the provisions of Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2010.

Having regard to the matters discussed in this report, and the assessment under Section 79C of the Environmental Planning and Assessment Act 1979, the application is recommended for approval, subject to the imposition of conditions.

Site & Surrounds

The subject site is located on the western side of Londonderry Road. It is 29.82 Ha in area and is orientated in an eastern direction.

The surrounding area is characterised by small lot rural properties.

The site is currently occupied by Richmond Race Club which comprises a grandstand, race track and associated car parking. Development consent DA07/0383 was granted approval on the 13 June 2007 for the internal refurbishment of the existing buildings on the site as part of the operations of the club.

Proposal

The proposed development involves the conversion of an existing function room to a commercial kitchen. The proposed kitchen will provide meals to patrons seated in the viewing room of the grandstand during race meetings (Wednesday and Saturday evenings).

Plans that apply

- Local Environmental Plan 2010 (Stage 1 LEP)
- Development Control Plan 2010

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Existing Use Rights

Definition

Section 106 of the Environmental Planning and Assessment Act 1979 defines as existing use as:

(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use,

and

(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

The existing racing club located on the site was approved in its current form as part of development consent DA07/0383, which approved the 'Internal Refurbishment of Race Club and Demolition of Grandstand'. The use was permissible under the provisions of Penrith Local Environmental Plan No.201 - Rural Lands, which therefore satisfies Clause (a).

Based on the above discussion the proposal is considered to enjoy existing use rights, as it satisfies that above Clause (a) and (b)(i)(ii) of the Environmental Planning and Assessment Act 1979.

Intensification

Section 41 of the Environmental Planning and Assessment Regulation 2000 outlines in relation to existing uses:

(1) An existing use may, subject to this Division:

(a) be enlarged, expanded or intensified, or

(b) be altered or extended, or

(c) be rebuilt, or

(d) be changed to another use, but only if that other use is a use that may be carried out with it without development consent under the Act, or

(e) if it is a commercial use- be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or

(f) if it is a light industrial use- be changed to another light industrial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).

The proposal is most appropriately defined as an alteration or extension, in accordance with Clause 1(b) of Section 41 of the Regulations.

Section 43 of the Regulations outlines that development consent is required for 'any alteration or extension of a building or work used as an existing use'.

Clause 2 outlines:

(2) The alteration or extension:

(a) must be for the existing use and for no other use, and

(b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

The proposal satisfies Clause 2(a) as it is for a use associated with the existing use of the premises as a club. The proposal also satisfies Clause 2(b) as it will be carried out only on land to which the existing use was carried out.

Based on the above discussion it can be seen that the proposal benefits from existing use rights and the proposed kitchen addition is a permissible land use with the consent of Council.

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

Local Environmental Plan 2010 (Stage 1 LEP)

Provision	Compliance
Clause 2.3 Is the use permissible?	Does not comply - See discussion
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Zone objectives	Complies
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.5 Additional permitted uses for particular land	N/A
Clause 2.6 Subdivision - consent requirements	N/A
Clause 2.7 Demolition requires development consent	N/A
Clause 2.8 Are the temporary use of land requirements achieved?	N/A
Clause 4.1 - the minimum lot size	N/A
Clause 4.1AA Minimum subdivision lot size for community title schemes	N/A
Clause 4.2 Rural Subdivision	N/A
Clause 4.3 Height of buildings	N/A
Clause 4.4 Floor Space Ratio	N/A
Clause 4.5 Calculation of floor space ratio and site area	N/A
Clause 4.6 Exceptions to development standards	N/A
Clause 5.1 Relevant acquisition authority	N/A
Clause 5.10 Heritage conservation	N/A
Clause 5.11 Bush fire hazard reduction	N/A
Clause 5.12 Infrastructure development and use of existing buildings of the Crown	N/A
Clause 5.13 Eco-tourist facilities	N/A
Clause 5.2 Classification and reclassification of public land	N/A

Clause 5.3 Development near zone boundaries	N/A
Clause 5.4 Controls relating to miscellaneous permissible uses	N/A
Clause 5.5 Development within the coastal zone	N/A
Clause 5.6 Architectural roof features	N/A
Clause 5.7 Development below mean high water mark	N/A
Clause 5.8 Conversion of fire alarms	N/A
Clause 5.9 Preservation of trees or vegetation	N/A
Clause 5.9AA Trees or vegetation not prescribed by development control plan	N/A
Clause 6.1 Earthworks	N/A
Clause 6.10 Villages of Mulgoa and Wallacia	N/A
Clause 6.11 Orchard Hills	N/A
Clause 6.12 Twin Creeks	N/A
Clause 6.13 Waterside Corporate	N/A
Clause 6.14 Development of land in the flight paths of the site reserved for the proposed Second Sydney Airport	N/A
Clause 6.15 Location of sex services premises and restricted premises	N/A
Clause 6.2 Salinity	N/A
Clause 6.3 Flood Planning	N/A
Clause 6.4 Development on natural resources sensitive land	N/A
Clause 6.5 Protection of scenic character and landscape values	N/A
Clause 6.6 Servicing	N/A
Clause 6.7 Dwelling houses on certain land in Llandilo and Mulgoa	N/A
Clause 6.8 Dual occupancies and secondary dwellings in certain rural and environmental zones	N/A
Clause 6.9 Mulgoa Valley	N/A
Schedule 1 Additional permitted uses	N/A

Permissibility

The subject site is zoned RU4 Primary Production Small Lots under the provisions of Penrith Local Environmental Plan 2010. The proposal is ancillary to the existing use of the site, defined as a "recreation facility (major)" and not considered a permissible use in the zone. The permissibility of the proposal however can be considered under the existing use rights provisions of the Environmental Planning & Assessment Act 1979. This has been discussed previously in this report.

Zone Objectives

The proposal is considered to be consistent with the objectives of the zone in that the works (and use) does not conflict with adjoining land uses and is of a scale that is compatible with the lands capability to accomodate the works.

Development Standards

There are no relevant development standards applicable to the subject development.

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

Development Control Plan 2010

Provision	Compliance
Part B - DCP Principles	Complies
Part C 1 - Site planning and design principles	Complies
Part C2 - Vegetation management	N/A
Part C3 - Water management	Complies
Part C4 - Land management	N/A
Part C5 - Waste management	Complies
Part C6 - Landscape design	N/A
Part C7 - Culture and heritage	N/A
Part C8 - Public domain	N/A
Part C9 - Advertising and signage	N/A
Part C10 - Transport, access and parking	Complies
Part C11 - Subdivision	N/A
Part C12 - Noise and vibration	N/A
Part C13 - Infrastructure and services	Complies

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

The proposal was referred to Council's Building Surveyor for comment. No objections were raised to the proposal subject to the imposition of conditions.

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

Likely impacts of the proposed development as identified throughout the assessment process include:

- ***The character of the place and its local and regional context***

The proposal is consistent with the bulk, scale, colour and design of other development in the locality.

The development is unlikely to significantly impact on the amenity of the area and the streetscape.

The development is compatible with the existing use of the site.

The development is unlikely to significantly impact the amenity of the area in terms of solar access, visual and acoustic privacy, access to views or vistas.

- ***Heritage conservation***

The property is not identified as having heritage significance.

- ***Access, traffic and transportation impacts***

The development is unlikely to significantly impact on the local road system and the existing access arrangements and car parking on site will be adequate for the development.

- ***Health, safety and compatibility issues***

The proposed development is sensitive to site attributes and safeguards the safety of the occupants.

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

The site attributes are conducive to the proposed development. The proposal for a commercial kitchen is ancillary to the existing use of the site as a major recreation facility. The conversion of the current function room into a kitchen to prepare meals for patrons is considered an improved outcome for the site, as meals are currently prepared in the existing kitchen on the ground floor and transported by staff to the grandstand.

Section 79C(1)(d) Any Submissions

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. The proposal is consistent with the intended use of the site and is considered to have a positive impact on the surrounding area and will be in the public interest.

Conclusion

The proposed development has been assessed under Section 79C of the Environmental Planning and Assessment Act and the Environmental Planning and Assessment Regulations and is considered to perform adequately in terms of its relationship to surrounding built environment. The following is noted:

- The proposal is generally compliant with the provisions of Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2010.
- The proposal benefits from 'existing use rights' in accordance with the Environmental Planning & Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.
- The proposed development is considered to perform adequately in terms of its relationship to the surrounding area and built environment.

Accordingly, the application is considered to be satisfactory and is recommended for approval, subject to the imposition of conditions.

Recommendation

1. That DA13/0715 for a Commercial Kitchen at Lot 1 DP 1084891 308-332 Londonderry Road Londonderry be approved subject to the attached conditions (Development Assessment Report Part B).

General

1 A001

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

Plan Name	Plan Number	Drawn By	Date
Unnamed	Plans 1 to 6	Castlewood Kitchens (6 sheets)	12/07/2013
Appliance List and Positioning	DA 01	Petra Refridgeration	07/06/2013
Refurbished Lounge Area	Dwg 3A	J O'Sullivan P/L	Amended March 2008

2 A012 - Food Shop

The proprietor of the food business shall ensure that the requirements of the Food Act 2003 and Food Regulation 2010 are met at all times. All food shop construction works shall be carried out in accordance with the requirements of AS4674-2004 "Design, Construction and Fitout of Food Premises," the Food Act 2003 and Food Regulation 2010.

3 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

4 A021 - Business registration, notification and food safety supervisor

The business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council prior to the issuing of the occupation certificate and operation of the business.

5 A026 - Advertising sign (not for residential)

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 Penrith Development Control Plan-Advertising Signs.

6 A046 - Obtain Construction Certificate before commencement of works

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

Environmental Matters

7 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.

BCA Issues

8 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.
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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.

9 **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

10 **F Special BLANK**

A satisfactory inspection from Council's Environmental Health Department is required prior to the issuing of the Occupation Certificate and operation of the business. The occupier is to contact the department to organise an appointment at least 72 hours prior to the anticipated commencement date.

11 **F Special condition**

Prior to the operation of the food business the business must notify the NSW Food Authority of their details including:

- (a) Contact details for the food business, including the name and address of the business and the proprietor of the business.
- (b) The nature of the food business.
- (c) The location of any other food premises associated with the food business, within the jurisdiction of NSW Food Authority.

Should these details change during the operation of the business the business operator must provide the NSW Food Authority with an update of these details.

Notification can be completed free of charge on the NSW Food Authority's Food Notify website at www.foodnotify.nsw.gov.au.

12 **F Special condition**

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.

13 **F Special condition**

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.

14 **F Special condition - Fitout general**

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 **F Special condition - Floor and floor wastes**

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.

16 **F Special condition - Walls**

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.

17 **F special condition - Waste storage areas and rubbish bins**

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

18 [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.

Construction

19 [H001 - Stamped plans and erection of site notice](#)

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details is to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

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

Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Certification

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

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

- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.