

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA14/1377
Proposed development:	External Alterations & Signage (Shop 55)
Property address:	569 - 595 High Street, PENRITH NSW 2750
Property description:	Lot 1 DP 1137699
Date received:	31 October 2014
Assessing officer	Mathew Rawson
Zoning:	ZONE B3 COMMERCIAL CORE PCCLEP 2008 ZONE SP2 INFRASTRUCTURE PCCLEP 2008
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application relating to the 'Chilli Jam' restaurant on Riley Street including external alterations and signage at Westfield Penrith (569-595 High Street, Penrith). Under the Penrith City Centre Local Environmental Plan 2008, the subject site is zoned B3 - Commercial Core. Restaurants are a permissible land use in the zone with Council consent.

Key issues identified for the proposed development and site include:

- Ensuring a consistent aesthetic for shopfronts along Riley Street and within the City Centre in general. The proposed shopfront is a high quality, modern design which is considered to sit well within the established streetscape of Riley Street.
- The outdoor seating area proposed is directly adjacent to the Restaurant's front facade. Generally Council has been un-supportive of these set outs as shopfronts are used as wayfinding points/guides for people with a disability. However given that the dining area is not within the road reserve and located entirely within the subject allotment which is well away from any transit area for people with a disability, the proposed seating area is considered to be acceptable. As the eating area is located entirely within the subject allotment, the siting of this eating area will not require an Outdoor Eating Trading Licence to be issued by Council.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

NOTE: This application does not include any of the internal fitout or the land use approval for the restaurant. This is provided for under the blanket food premises fit out and use approval for Westfield Penrith (DA10/1187).

Site & Surrounds

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

The current application relates to a vacant existing tenancy on the western side of Riley Street just north of the street's traffic lights.

Proposal

The application proposes alterations to Shop 55 at Westfield. These shopfront alterations consist of the construction of a new front facade and signage and outdoor eating area for a new Chilli Jam Restaurant which is to be established under the blanket food premises fit out and use approval at Westfield Penrith (DA10/1187).

Plans that apply

- Penrith Local Environmental Plan 2008 (City Centre)
- Development Control Plan 2006
- Development Control Plan 2007 (City Centre)
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

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

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

State Environmental Planning Policy No 64—Advertising and Signage

An assessment has been undertaken of the application against relevant criteria within State Environmental Planning Policy No. 64—Advertising and Signage and the application is considered satisfactory. The style of the proposed signage is considered to be consistent with the existing character of signage within the locality as there are existing examples of internally illuminated signage which uses a similar timber aesthetic. Additionally the signage is of a restrained scale which results in relatively minor visual prominence.

The signage is unlikely to cause any impacts in terms of the amenity of the locality due to the proposed internal lighting and the signage's flush finish to the wall to which it is to be attached as well as the recommended conditions of consent.

Therefore subject to the recommended conditions of consent the proposed signage is compliant with SEPP 64 due to the scale and type of the signage being generally consistent with the existing signage in the area.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Penrith Local Environmental Plan 2008 (City Centre)

Provision	Compliance
Clause 2 - Aims of the Plan	Complies
Clause 12 - Zoning of land to which this plan applies	Complies
Clause 13 - Zone objectives	Complies
Clause 15 - Additional permitted uses for particular land	N/A

Clause 16 - Subdivision consent requirements	N/A
Clause 17 - Temporary use of land	N/A
Clause 21 - Height of buildings	N/A
Clause 22 - Architectural roof features	N/A
Clause 23 - Sun Access	N/A
Clause 24 - Floor space ratio	N/A
Clause 25 - Minimum building street frontage	N/A
Clause 26 - Design Excellence	Complies
Clause 27 -Car parking	N/A
Clause 28 - Ground floor development within B3 and B4	Complies
Clause 29 - Building separation	N/A
Clause 30 - Ecologically sustainable development	Complies
Clause 31 - Serviced apartments	N/A
Clause 32 - Exceptions to development standards	N/A
Clause 33 - Land acquisition within certain zones	N/A
Clause 34 - Development on proposed classified roads	N/A
Clause 35 - Classification and reclassification of public land	N/A
Clause 36 - Community use of educational establishments	N/A
Clause 37 - Classified roads	N/A
Clause 38 - Development in proximity to a rail corridor	N/A
Clause 39 - Preservation of trees or vegetation	Complies
Clause 40 - Heritage conservation	Complies
Clause 41 - Bush fire hazard reduction	N/A
Clause 42 - Development for group homes	N/A
Clause 43 - Crown development and public utilities	N/A
Clause 44 - Location of sex services premises and restricted premises	N/A
Schedule 1 - Additional permitted uses	N/A
Clause 45 - Application of Part	N/A
Clause 46 - Interpretation	N/A
Clause 48 - Suspension of covenants, agreements and instruments	N/A
Clause 49 - Land use zones	N/A
Clause 50 - zone objectives and land use table	N/A
Clause 51 - Height of buildings	N/A
Clause 52 - Development near zone boundaries	N/A
Clause 53 - Architectural roof features	N/A

Clause 54 - Heritage Conservation	N/A
Clause 55 - Earthworks	N/A
Clause 56 - Savings provision relating to pending applications	N/A
Clause 47 - Certain planning instruments cease to apply to the land	N/A

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

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

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

Development Control Plan 2006

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

Development Control Plan 2007 (City Centre)

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

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

There are no planning agreements applying to this application.

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

Fire Safety

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

Prescribed Conditions

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

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

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

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

Impacts raised in referral comments

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

Other impacts identified in assessment

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

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

The subject site is deemed suitable for the following reasons:

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

Section 79C(1)(d) Any Submissions

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions

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

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

Conclusion

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

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

Recommendation

1. That DA14/1377 for external alterations and signage for Shop 55 at 569-595 High Street, Penrith (Westfield) be approved subject to the attached conditions.

General

1 A001

The development must be implemented substantially in accordance with the plans numbered 02 (Revision B), 01, 03, 04 05 (Revision C), drawn by Horizon Design Studio, dated 27/10/14, and stamped approved by Council, the application form, and any supporting information received with the application, except as may be amended in red on the approved plans and by the following conditions.

2 A019 (amended) - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

3 A021 - Business registration, notification and food safety supervisor

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

4 A026 - Advertising sign (not for residential)

A separate development application for the erection of any additional sign or advertising structure, other than that shown on the approved plans or an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan-Advertising Signs.

5 A039 - Graffiti

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

6 A046 - Obtain Construction Certificate before commencement of works

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

7 A Special (BLANK)

The approved signage must comply with the following:

- The signage must not be externally illuminated.
- All aspects of the signage illumination and fixture to the building should be incorporated into the body of the sign and hidden from view.
- Lighting from signage must not cause glare for pedestrians, motorists or cyclists and must be compliant with the Australian Standard 4282-1997 - Control of the Obtrusive Effects of Outdoor Lighting.
- Signage must not be moving, flashing or animated in any way.

8 A Special (BLANK)

The approved outdoor eating area shall comply with the following:

- The furniture shall be high quality in design and construction, and complement the existing streetscape. Lightweight plastic furniture, which may become airborne on windy days if not adequately weighted, is not permitted.
- The furniture is to be maintained in a clean and hygienic state at all times.
- The eating area is not to cause inconvenience or to disrupt pedestrian traffic along the footpath or thoroughfare. A clear distance of at least 2.0 metres is to be made available at all times either side of the premises doorway.
- The outdoor dining areas must be defined by a barrier, with no sharp edges or protruding feet that may cause a trip hazard to pedestrians or patrons. This barrier must be of sturdy construction, a minimum of 60 cm high and complementary in colour to the seating.
- No food is to be prepared or stored outside. No hot food counters, boilers or urns shall be placed on public areas or areas external to the premises.
- All furniture must be put away inside the premises when it is closed. No furniture is to be left on the street at any time when the eating area is not operating.

Environmental Matters

9 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.

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

All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of at a lawful waste management facility. Details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

BCA Issues

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

A fire safety list of essential fire or other safety measures shall be submitted to Penrith City Council prior to the issue of the Construction Certificate. The fire safety list shall specify all measures (both current and proposed) that are required for the building so as to ensure the safety of persons in the building in the event of fire. The fire safety list must distinguish between:

- the measures that are currently implemented in the building premises,
- and the measures that are to be proposed to be implemented in the building premises, and must specify the minimum standard of performance for each measure.

12 **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.

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 F022 – Commercial kitchens (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.

Details of the installation of the kitchen exhaust system shall be submitted with the Construction Certificate application.

The kitchen exhaust system must be designed to prevent or minimise air pollution including the emission of odours, vapours and oils in accordance with the Protection of the Environment Operations Act 1997.

Prior to the issue of an Occupation Certificate, the installer of the kitchen exhaust system (either the individual person or the Company who installed the exhaust system) shall certify or submit appropriate documentation (as instructed by the Principal Certifying Authority) that all practical pollution control measures have been installed to achieve the requirements of the Protection of the Environment Operations Act 1997.

Construction

15 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.

16 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.

17 **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

18 **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.

19 **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 restaurant.

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.