

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA21/0295
Proposed development:	Fit-Out & Use of Tenancy FS004 & "Victorian House" as Restaurant, Wine Bar & Gelato Shop
Property address:	148 Station Street, PENRITH NSW 2750
Property description:	Lot 80 DP 709313
Date received:	30 April 2021
Assessing officer	James Heathcote
Zoning:	Zone B4 Mixed Use - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for the Fit-Out & Use of Tenancy FS004 & "Victorian House" as a Restaurant, Wine Bar & Gelato Shop at 148 Station Street, Penrith NSW 2750

Under Penrith Local Environmental Plan 2010 (LEP), the proposal is defined as alterations to an existing 'food and drink premises' (which is a type of 'retail premises', which is a type of 'commercial premises'). The subject site is zoned B4 Mixed Use and the proposal is permissible in the zoning with Council consent.

During assessment of the application, the following aspects were confirmed for the proposal, existing premises and site:

- The existing food and drink premises use was established through Council approved DA No.19/0763.
- The proposal includes fit-out of the 'Gellafrenda' bar and kitchen area, including installation of storage room along north elevation, and installation of pizza oven along northern wall.
- The proposal also includes extension of the food and drink premises into the "Victorian House" heritage item (food premises established through DA19/0763) as a dining area only. No food preparation is proposed within this building.
- Proposed trading hours for these premises include: Monday to Sunday, 6:00am to 2:00am.
- The application was referred to Council's Building team and Heritage Advisor, with a suitable outcome recommended subject to conditions of consent.
- The proposed layout is consistent with the approved plans for DA19/0763.

In consideration of the above points, the requirements of Penrith Development Control Plan 2014 (DCP) and noting the city centre location of the subject site, the proposal is considered to be suitable in this instance.

In accordance with Penrith DCP 2014, the proposed development was not required to be notified.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval.

Site & Surrounds

Properties of the Site:

The subject site is part of an existing restaurant precinct within a large commercial complex, being the Nepean Village Shopping Centre, which is 5.169 hectares in site area. The subject buildings are located on the south-eastern side of Station Street, approximately 210m south-west of the intersection of Station Street and Reserve Street in Penrith. The subject site has an area of approximately 699.8sqm, with the tenancies including in the subject application having an approximate area of 330sqm (including surrounding patios, paths and landscaping).

The Nepean Village Shopping Centre is made up of several large scale and smaller scale commercial premises, as permitted in the B4 Mixed Use zone, being the subject zone of the site. The site is legally described as Lot 80 of DP 709313.

The site is identified as being flood affected (FA), noting that this affectation is for the surrounding 5.169 hectare site (shopping centre), and should not have any implications for the subject proposal.

The subject site includes a Heritage Item No 217 'Victorian House', locally listed under Schedule 5 of Penrith Local Environmental Plan 2010.

Site History:

There is extensive consent history on this site, due to the large scale 'Nepean Village Shopping Centre' commercial development existing on site. The subject buildings relate to the 'Percy Plunkett' commercial precinct, with the following relevant consent history:

- DA21/0295 - Subject application.
- DA19/0763.02 - Section 4.55(1A) Modifications to Approved Nepean Village Outdoor Dining Precinct including Amendments to Pergola Structure, Increase in Outdoor Dining Area & Installation of Children's Playground Shade Sail - Alterations & Additions to Nepean Village Outdoor Dining Precinct & Use of "Victorian House" as Food & Drink Premises.
- DA19/0763 - Alterations & Additions to Nepean Village Outdoor Dining Precinct & Use of "Victorian House" as Food & Drink Premises.

Restrictions on the Land (Lot 80 DP 709313):

- Deposited plan on Council records reviewed.
- No restrictions noted that impact the proposal.

Proposal

The proposed development includes the following:

- Fit-Out & Use of Tenancy FS004 & "Victorian House" as a restaurant, wine bar & gelato shop.

More specifically, the proposal includes:

- Fit-out of the 'Gellafrenda' bar and kitchen area, including installation of storage room along north elevation, and installation of pizza oven along northern wall.
- Extension of food and drink premises into the "Victorian House" heritage item (food premises established through DA19/0763) as a dining area only. No food preparation is proposed within this building.
- Amended hours of operation, which are: Monday to Sunday, 6:00am to 2:00am.

Plans that apply

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

Planning Assessment

- **Section 4.15 - Evaluation**

The proposed 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 7.12 - Developer Contributions**

The site and proposal are subject to Penrith City Council's City-Wide Section 7.12 Development Contributions Plan for Non-Residential Development. Based on the applicable rate under this Development Contributions Plan, the following development contribution applies to the proposal:

0.5% x \$150,000.00 (cost of construction works) = \$750.00

A condition of consent requiring the payment of this development contribution, prior to the issue of a Construction Certificate, has been recommended.

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

State Environmental Planning Policy No 55—Remediation of Land

SEPP 55 aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 requires a consent authority to be satisfied that the site is suitable for the proposed development, or can be made suitable prior to the determination of the application.

The site is zoned and purposed for B4 Mixed Use zone purposes, which is unchanged as a result of the proposed development. There is no recorded history of any contaminating activities occurring on the site.

As such, the application has satisfactorily addressed the considerations of SEPP 55.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No 2 - 1997) applies to the subject land and stipulates that the consent authority shall not grant consent to the application unless it is of the opinion that the carrying out of the development is consistent with any relevant, general and specific aim of the plan.

The general aims and objectives of the plan are directed towards improving the amenity of the river and protecting the lands within the river valley, including scenic quality. An assessment has been undertaken of the proposal against criteria within Sydney Regional Environmental Plan No. 20 and the proposal is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 2.6 Subdivision - consent requirements	N/A
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	Complies
Clause 7.1 Earthworks	N/A
Clause 7.2 Flood planning	Complies
Clause 7.5 Protection of scenic character and landscape values	N/A
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

It is noted that consent (DA19/0763) was recently granted by Council on the subject site for "Alterations and Additions to Nepean Village Outdoor Dining Precinct & Use of the "Victorian House" as a Food and Drink Premises".

This consent enabled a food and drink premises to be established for the subject premises. However, this consent excluded any details relating to the use of the subject heritage building and how it would be integrated with the surrounding buildings.

The subject application seeks to establish the heritage item as an extension of the dining area for the premises.

In any case, the subject site is zoned B4 Mixed Use under Penrith LEP 2010, and a food and drink premises is a type of retail premises, which is a type of commercial premises, which is permitted in the zone with consent.

Given the above, the proposal satisfies the requirements of Clause 2.3 of the LEP.

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

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury/Nepean River (No.2-1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property*

It is noted that the proposed changes to State Environmental Planning Policy No. 19 - Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River (No. 2 - 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No. 55 - Remediation of Land.

The proposed new land remediation SEPP will:

- Provide a state-wide planning framework for the remediation of land,
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- Clearly list the remediation works that require development consent, and
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the draft SEPP will not alter or affect the findings in respect to contamination of the site.

Other Draft NSW Planning Instruments

It is noted that the Draft Vegetation SEPP and Draft Design and Place SEPP apply to the subject site. However, these do not affect or alter the recommendation of this report.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies
C8 Public Domain	Complies
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D3.1. Bulky Good Retailing	N/A
D3.2. Sex Services Premises	N/A
D3.3. Restricted Premises	N/A
E11 Penrith	Complies

Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applicable to the subject site or application.

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

The requirements of the Regulations have been considered in the assessment of the application, with applicable conditions of consent being recommended.

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

Context and Setting

The proposed development and use is appropriate to the building and consistent within its context, being a restaurant within close proximity to the Penrith City Centre.

Environmental Impacts

Given the use and proposed works, and the site's location in the city centre, environmental impacts resulting from the proposal are considered to be minimal.

Heritage

See discussion under the Heritage Referral section of this report for more information.

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

The site is suitable for the following reasons:

- The proposal is permissible in the zone with Council consent.
- The use is compatible with surrounding/adjoining land uses.
- The grade of the site is suitable for the design proposed.
- The site is able to drain to Council's satisfaction.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Penrith Council's Community Participation Plan, the application was not required to be notified or advertised.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Heritage	Not supported
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Community Safety Officer	No objections - subject to conditions

Building Surveyor

The application was referred to Council's Building Surveyor, who noted the following:

1. The construction of the partition wall in the "Victorian House" will require a Construction Certificate. As part of the Construction Certificate process, the requirements of the Disability (Access to Premises - Buildings) Standards 2010 will need to be complied with. In this regard, compliant access will need to be provided through the "principal pedestrian entrance" of the building to and within the "new part" of the building (being the "sales" area and new hallway created by the partition wall). Compliance from a Deemed-To-Satisfy perspective will likely mean the following works will need to be undertaken:

- Provision of step ramps to the terrace area at the rear and from the terrace area to the inside of the building.*
- A significant widening of the rear doorway to provide an unobstructed width of at least 850mm.*
- Replacement of door hardware to ensure the provision of a compliant "D-type" lever handle.*

A performance solution may also be proposed in lieu of the above.

Given the status of the building as a heritage item, it is noted that there may be concerns regarding these works. If this is the case, it is recommended that the applicant be requested to provide detail of the proposed method(s) of compliance in this regard at the DA stage for assessment. Alternatively, the following condition may be placed on any development consent granted:

"Prior to the issue of a Construction Certificate, details of the proposed method of compliance with the Disability (Access to Premises - Buildings) Standards 2010 for "Victoria House" shall be provided to and approved by the Development Services Manager of Penrith City Council.

Noting the heritage considerations mentioned above, see discussion under the Heritage Referral section for more information. It has been assessed that the above recommended condition will result in the same outcome as if BCA information was provided upfront. Therefore, the proposal should not result in any negative impacts to the heritage item in order to comply with the BCA, subject to recommended conditions of consent.

Community Safety Officer

The application was referred to Council's Community Safety Officer, who raised no objections to the proposal subject to recommended conditions of consent (including incorporation of CPTED measures and provision of a POM).

Environmental - Environmental management

The proposal was referred to Council's Environmental Management Team, which advised the following:

- Noise impacts: The nearest sensitive receivers are located approximately 160m east and 200m north of the existing development. It is not anticipated that there will be any offensive noise generated as a result of the proposal, even with the operating hours proposed. It's noted that amplified music and public address are not proposed.
- Air pollution/odour: No air quality impacts are expected as a result of the proposal.
- Waste management: The waste management plan submitted with the application addresses the construction and operational phases of the proposal, which is satisfactory subject to conditions.
- Water management: No sediment and erosion control plan was provided with the application. This can be addressed through conditions of consent.

Environmental - Public Health

The application was referred to Council's Public Health Team, which raised no objections to the proposal subject to recommended conditions of consent.

Heritage

The application was referred to Council's Heritage Advisor, as the "Victorian House" subject to the proposal is Heritage Item No. 217 under Schedule 5 of Penrith LEP 2010.

Council's Heritage Advisor comments were as follows:

- The applicant requires a BCA consultant to review the proposal, regarding the accessibility from outside to the interior including measures to overcome the outside verandah and front porch steps and throughout the interior, e.g. door opening widths and the like.
- The proposal is not supported until the above is addressed.

Referral comments from Council's Building Surveyor noted the BCA aspects and their potential impact to the heritage significance of the item. It was noted that the construction of the partition wall in the "Victorian House" will require a Construction Certificate and as part of the Construction Certificate process, the requirements of the Disability (Access to Premises - Buildings) Standards 2010 will need to be satisfied. In this regard, compliant access will need to be provided through the "principal pedestrian entrance" of the building to and within the "new part" of the building (being the "sales" area and new hallway created by the partition wall). Compliance from a deemed-to-satisfy perspective will likely mean the following works will need to be undertaken:

- Provision of step ramps to the terrace area at the rear and from the terrace area to the inside of the building.
- A significant widening of the rear doorway to provide an unobstructed width of at least 850mm.
- Replacement of door hardware to ensure the provision of a compliant "D-type" lever handle.

It was noted also that a performance solution may also be proposed in lieu of the above.

Given the status of the building as a heritage item, Council's Building Surveyor recommended that:

1. The applicant be requested to provide a detail of the proposed method(s) of compliance in this regard at the DA stage for assessment by the assessing officer; or
2. The following condition be placed on any development consent granted:

"Prior to the issue of a Construction Certificate, details of the proposed method of compliance with the Disability (Access to Premises - Buildings) Standards 2010 for the "Victorian House" shall be provided to and approved by the Development Services Manager of Penrith City Council".

In consideration of the comments from both the Heritage and Building referrals, whether or not the information is provided upfront during assessment or as per the recommended building condition, Council will have input into ensuring that the outcome from the development will have minimal impact to the heritage item. As such, subject to recommended conditions of consent, the application can be suitably supported for approval based on the information provided.

Section 4.15(1)(e)The public interest

The proposal should not generate any significant issues of public interest.

Conclusion

In assessing this application against several state policies, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest, and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

That DA21/0295 for the Fit-Out & Use of Tenancy FS004 & "Victorian House" as Restaurant, Wine Bar & Gelato Shop at 148 Station Street, Penrith NSW 2750, be approved subject to the attached recommended conditions.

CONDITIONS

General

1 [A001 - Approved plans table](#)

The development must be implemented substantially in accordance with the following plans, the Statement of Environmental Effects, 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.

Description	Plan No.	Revision	Prepared By	Date
Notes	Job No. 0427 Drawing No. 01	H	Killing Matt Woods	01.12.20
Site Plan	Job No. 0427 Drawing No. 02	H	Killing Matt Woods	01.12.20
Existing Floor Plan	Job No. 0427 Drawing No. 03	H	Killing Matt Woods	01.12.20
Proposed Floor Plan	Job No. 0427 Drawing No. 04	H	Killing Matt Woods	01.12.20
Proposed Floor Plan	Job No. 0427 Drawing No. 05	H	Killing Matt Woods	01.12.20
Station Street Elevation	Job No. 0427 Drawing No. 11	H	Killing Matt Woods	01.12.20
Station Street Elevation - Car Park Elevation	Job No. 0427 Drawing No. 11	H	Killing Matt Woods	01.12.20
Section - Interior Section - 1/148 Station Street	Job No. 0427 Drawing No. 21	H	Killing Matt Woods	01.12.20
Section - Interior Section - FS004 Nepean Village	Job No. 0427 Drawing No. 21	H	Killing Matt Woods	01.12.20
Section - Typical Section	Job No. 0427 Drawing No. 31	H	Killing Matt Woods	01.12.20

2 [A019 - Occupation Certificate](#)

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

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

3 [A021 - Business Registration](#)

The business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council prior to the issue of an Occupation Certificate and operation of the business.

4 [A026 - Advertising sign \(not for residential\)](#)

A separate development approval for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be obtained.

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

The approved operating hours are from 6:00am to 2:00am, Monday to Sunday.

Delivery and service vehicles generated by the development are to be limited to between 7:00am and 5:00pm, Monday to Saturday, and between 8:00am and 5:00pm on Sunday.

6 [A032 - Goods in buildings](#)

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

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 CPTED Requirements](#)

Prior to the issue of an Occupation Certificate and/or as part of the ongoing use of the premises, the following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

(a) Lighting

- All outdoor/public spaces throughout the development must be lit to the minimum Australian Standard of AS 1158. Lighting must be consistent in order to reduce the contrast between shadows and illuminated areas and must be designed in accordance with AS 4282 - Control of the obtrusive effects of outdoor lighting.

(b) Building Security & Access Control

- Intercom, code or card locks or similar must be installed for all entries to the buildings.
- Australian Standard 220 door and window locks must be installed.
- CCTV is to be provided to cover communal public space areas. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
- A Plan of Management for the venue must be provided and include provisions for patron egress from the venue of an evening. This should include information regarding noise minimisation and deterring congregation in adjacent car parks.

(c) Graffiti/Vandalism

- Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls, etc.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing and common areas. This includes reporting incidents to police and/or relevant authorities.

(d) Landscaping

- All vegetation must be regularly pruned to ensure that sight lines are maintained.

Demolition

9 [B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE](#)

Any required demolition works are to be conducted in accordance with the provisions of AS 2601-2001 "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**.

10 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, toilet facilities with appropriate washing facilities shall be located on the site and the Principal Certifier 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 Environment Protection Authority to receive asbestos wastes.

Environmental Matters

11 D001 - Implement approved sediment& erosion control measures

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

12 D004 - Dust

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

13 D005 - Mud/Soil

Mud and soil from vehicular movements to and from the site during works must not be deposited on the public roadway.

14 D009 - Covering of waste storage area

All waste materials stored on-site during works 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.

15 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 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.

16 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.

17 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.

18 D Special

In the event of ongoing noise complaints relating to the development being received by Council, the owner and/or occupier of the development may be required by Council to obtain the services of a suitably qualified acoustic consultant to undertake a noise impact assessment on the development to address the concerns of the community.

The noise impact assessment report is to be prepared and provided to Council within 45 days of being requested. Any mitigation works are to be undertaken within 30 days from the date of notice from Council, unless otherwise specified.

19 D Special

Amplified music associated with the development is not to be audible at the location of the nearest sensitive receivers.

Public address systems are not to be used on the site at any time.

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

BCA Issues

20 E001 - BCA compliance

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).

21 E Special (BLANK)

Prior to the issue of a Construction Certificate, details of the proposed method of compliance with the Disability (Access to Premises - Buildings) Standards 2010 for the "Victorian House" shall be provided to, and approved by, the Development Services Manager of Penrith City Council.

22 E Special (BLANK)

Prior to the issue of an Occupation Certificate, signage is to be provided for the toilet facilities in accordance with the requirements of Clause D3.6 of the Building Code of Australia.

Health Matters and OSSM installations

23 F Special (BLANK)

The following public health requirements are to be implemented prior to the commencement of the business and/or be maintained for the duration of the operation of the business:

- The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2010 and the Australian and New Zealand Food Standards Code are met at all times.
- 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.
- 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 AS 4674-2004 *Design, Construction and Fitout of Food Premises*.
- 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 AS 1668, Parts 1 & 2. Detailed plans together with calculations for the system must be provided as part of the Construction Certificate application. The exhaust hood must completely cover the equipment to be ventilated and extended at least 200mm beyond the perimeter of the equipment. The exhaust hood must be provided

with a condensation gutter around its base. The gutter must be at least 50mm wide by 25mm deep. Where abutting walls are located the hood must be constructed so as to finish flat against the wall surface. The low edge of a canopy type exhaust hood must be at least 2000mm above floor level. Prior to the issuing of an Occupation Certificate, and operation of the business, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and Australian Standard AS 1668, Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Department if Council is not the Principal Certifying Authority.

- Hand basins must be serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands free operation. Where sensor taps are installed the basin must not be more than 6 metres from the hot water system. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.
- Hot water services must be positioned at least 75mm clear of the adjacent wall surfaces, and mounted at a minimum 150mm above the floor level on a non-corrosive metal stand. The hot water system must be sized to meet the demands of the food business during peak operating and cleaning periods and be able to provide sufficient hot water throughout the working day. Discharge from the hot water system must enter the sewer through a tongue dish in accordance with Sydney Water's requirements.
- 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.
- Approved, recessed coving must be provided at all intersections of the floor with the walls within all food preparation, service, storage and scullery areas. All coving must have a minimum concave radius of 25mm and be installed so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface.
- 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.
- The walls at the rear of cooking appliances must be surfaced with an impervious material, such as stainless steel, which extends from the canopy to the floor. Where a cooking appliance is sealed to the wall, the material must be lapped over the top edge of the appliance to provide a grease and vermin proof seal. Cooking appliances must only be sealed to walls made of a non-combustible material.
- The ceiling in the preparation, service and scullery areas must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.
- Service pipes, electrical conduits and refrigeration condensate pipes shall be enclosed or chased into walls, floors or plinths. Where it can be demonstrated that this is not feasible pipes and conduits fixed on brackets, providing a minimum of 25mm clearance from the adjacent wall and 100mm from the floor or adjacent horizontal surface, can be used. All openings in walls, floors and ceilings, through which service pipes and conduits pass, must be vermin proof.
- Appliances used to store potentially hazardous food must have a capacity to keep foods hotter than 60°C, refrigerated foods less than 5°C, and frozen foods less than -18°C and be provided with a digital thermometer, accurate to 1°C that can be easily observed from outside the appliance.
- Any window sill within a food preparation area, service or scullery area must be located 450mm above the top of any bench/sink and tiled at a splayed angle of 45 degrees.
- Flyscreens or other approved means of excluding flies must be provided to all window and door openings.
- Details of the dishwashing/glass washing machines must be submitted to Council and approved prior to installation. All utensils and equipment must undergo a washing, sanitising and rinsing cycle. The sanitising rinse cycle must achieve a water temperature of 80°C for 2 minutes or 75°C for 10 minutes.
- All wash sinks and food preparation sinks must be serviced with hot and cold water through a single outlet. Wash sinks must be supplied with water at a temperature of not less than 54°C for washing.
- The double bowl sink must be constructed of stainless steel, have a minimum bowl size of 450mm x 300mm x 300mm to enable cleaning of large pots and equipment, be fitted with a draining area at each end, and have a splashback as part of the unit at least 300mm up the wall.
- All fixtures, fittings and equipment must be provided with smooth and impervious surfaces, free from cracks and crevices to enable easy cleaning. All fittings and fixtures must be built into the wall and floor so as to be free from joint, gaps and cavities to enable easy cleaning or alternatively, supported on one of the following:

(a) Plinths – plinths must be an integral part of the floor, constructed of solid materials similar to the floor at least 75mm in height and covered at the intersection with the floor. All plinths must have a smooth and impervious finish. All fittings and fixtures must be properly sealed to the plinth so to be free from gaps, cracks and cavities.

(b) Wheels or castors – fittings and fixtures can be supported on wheels or castors. The wheels and castors must be capable of supporting and easily moving a full loaded fitting. All wheels and castors must be provided with a restraining device.

(c) Legs – fittings and fixtures can be supported on legs but must be constructed of a non-corrosive, smooth metal or moulded plastic. All legs must be free from cracks and crevices. All legs must have a clearance space between the floor and the underside of the fitting of at least 200mm.

Note: False bottoms under fittings are not permitted (AS 4674-2004 – Sections 4.2 and 4.3).

- All storage cabinets (internal and external surfaces) must be finished in a smooth and non-absorbent approved material that is free of joints.
- Light bulbs or tubes are to be shatterproof or fitted with approved light diffusers (covers or shields) to prevent contamination of food by glass from a broken light globe or tube. Light fittings must be free from any feature that would collect dirt or dust, harbour insects or make the fitting difficult to clean. Light fittings must be recessed into ceilings or equipment where possible. Heat lamps must be protected against breakage by a shield extending beyond the bulb.
- Shelves must be smooth and impervious; free from joints, cracks and crevices; and able to be easily cleaned. The lowest shelf must be at least 200mm off the floor to allow easy cleaning underneath. Approved materials must be used, such as galvanised piping, stainless steel or laminated plastic. Shelves are to be sealed to the wall or kept clear of walls to allow easy access for cleaning (>40 mm).
- The coolroom and/or freezer room floor must be finished with a smooth even surface and graded to the door. A sanitary floor waste must be located outside the coolroom and freezer adjacent to the door. All metal work in the coolroom and freezer room must be treated to resist corrosion.
- Condensation from coolrooms and refrigeration motors must discharge to sewer via a tundish with air gap separation in accordance with Sydney Water requirements.
- Sufficient lockers must be provided in the food preparation area or store room specifically for the storage of cleaning materials, employees' clothing and personal belongings.
- The storeroom must be constructed in accordance with AS 4674-2004 by providing the following:

(a) A smooth, even, non-slip floor surface.

(b) Coving at all intersections of the floor and walls with approved, recessed coving to a minimum concave radius of 25mm, so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface. "Feather edge skirting" and non-rebated coving are not permitted.

(c) Walls must be provided with a smooth even surface and painted with a light coloured washable paint to enable easy cleaning.

(d) The ceiling must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersections of the walls and ceiling must be tight-jointed, sealed and dustproof. Drop-in panel style ceilings are not permitted.

(e) Shelving or storage racks must be designed and constructed to enable easy cleaning.

Utility Services

24 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

25 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 on-site, 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.

26 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 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.

27 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 that 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.

Engineering

28 [K201 - Infrastructure Bond](#)

An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of any Construction Certificate, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

29 [K209 - Stormwater Discharge – Minor Development](#)

Stormwater drainage from the site shall be discharged to the existing site drainage system.

The proposed development and stormwater drainage system shall be designed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

The proposed method of stormwater discharge shall be detailed in the Construction Certificate issued by the Certifying Authority.

Landscaping

30 [L012 - Existing landscaping \(for existing development\)](#)

Existing landscaping is to be retained and maintained at all times.

Development Contributions

31 [N001a - Section 7.12 contribution](#)

This condition is imposed in accordance with Penrith City Council's Development Contributions Plan for Non-Residential Development. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$750.00 is to be paid to Penrith City Council **prior to a Construction Certificate being issued for the development** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.12 plan.

The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule. Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.12 invoice accompanying this consent should accompany the contribution payment. The Section 7.12 Contributions Plan for Non-Residential Development may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Certification

32 [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 Certifier 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 Certifier shall submit to Council an "Appointment of Principal Certifier" in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

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

33 **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 development.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C10 Transport, Access and Parking

The proposal complies with the parking requirements of this Chapter, given its city centre location and ample parking provision from the Nepean Village Shopping Centre.