

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA21/0421
Proposed development:	Fitout and Use of Shop 10 for a Café
Property address:	11 Dunheved Road, WERRINGTON COUNTY NSW 2747
Property description:	Lot 11 DP 733094
Date received:	17 June 2021
Assessing officer	Pukar Pradhan
Zoning:	Zone B2 Local Centre - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for a fit-out of existing shop a café and an free standing covered structure for use as a hookah smoking lounge and associated 2 fascia signage at Shop 10, 11 Dunheved Road Werrington. Under LEP 2010, the proposal is defined as commercial premises The subject site is zoned B2 - Local Centre and the proposal is a permissible land use in the zoning with Council consent.

The application has been notified to adjoining properties and exhibited between 28 June 2021 to 12 July 2021 in accordance with relevant legislation. There were two submissions raising concerns relating to the potential harm to public health from smoking and objecting to the proposed smoking lounge. This will be discussed in the later part of the assessment report.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and whilst the fit out of existing shop for a Café is acceptable and can be supported, the proposed outdoor structure for Shisha/Hookha smoking lounge is considered to result in poor streetscape and design outcome and likely to cause health harm to public and is therefore, not supported. This has been discussed with the applicant who has raised no objection to the application being determined on that basis. The application is therefore, recommended for approval of the Café part only and outdoor structure is recommended to be deleted.

Site & Surrounds

The site is located within an existing Dunheved Local Shopping Centre complex and situated on the southern side of Dunheved Road, and opposite the intersection of Henry Lawson Avenue. The subject Shop numbered 10 forms part of an existing building with three shops, one to the west is an Australia Post Shop, and the other to the south is a Chinese Take Away Restaurant within the shopping centre. The small building that will be used as a Café is located at the eastern top part of the complex and south of the internal vehicular access. The building contains . A KFC restaurant is located to the east of the building with a vehicular access in between. Main car parking area is located at the southern part of the site closer to the residential area of Werrington.

The area is in close proximity are predominantly residential known as the Werrington to the south and Werrington County to the north of the site.

Proposal

The proposal is for the use of an existing shop as a Cafe and construction of a light weight outdoor structure for Hookah Lounge mainly for smoking purpose. Hookha Lounge has dimension of 11.26m x 6.5m and height of 3m and it will be constructed with Colorbond metal roof, dwarf walls and aluminium bi-fold windows and doors and to be located at the corner of the building within an access pathway with a setback of 3.6m from Dunheved Road.

The main existing shop 10 has a total floor area of 99 sqm which will under go minor amendments to include new accessible toilet and service desk and seating arrangements to contain 3 tables with 4 chairs and 2 benches with 4 seats each.

The maximum number of staff are 7 at any one time.

The Hours of Operation will be:

- Monday to Wednesday 8:30am to 10:00pm
- Thursdays 8:30am to 11:00pm
- Fridays & Saturdays 8:30am to 12:00am (Midnight)
- Sundays 8:30am to 9:30pm

Plans that apply

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

Planning Assessment

• Section 4.15 - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

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

State Environmental Planning Policy No 64—Advertising and Signage

Clause 13(1)(b) of this SEPP states that the consent authority must not grant consent to an application to display an advertisement to which the Policy applies unless the structure has been assessed in accordance with the assessment criteria contained in Schedule 1 of the SEPP. Accordingly, an assessment of the proposal against these 8 criterion is contained in the following:

1.Character of the Area

The site is nominated as a Local Centre and contains several single storey type of building in which commercial uses are operating including a supermarket. The existing building has been built over 30 years ago and whilst it serves its purpose, the design of the building presents the trend of late 80s architecture with car parking areas along the southern part of the site and minimum landscaping along the Dunheved road frontage with little openings along the front elevations except for the subject building which has glazed large windows. The Shop Units within the shopping complex have business identification signage above the glazed windows or entrances that are located along the fascia not protruding above the roof.

The proposed business identification signage and its dimension of 1m x 3.6m is considered to be too large for the existing building and protrudes over the roof resulting in poor aesthetics of the building. The signage will need to be reduced in its size to be similar to the one that is existing on the Post Office shop and located above the central part of the glazed windows lower than the roof line roughly of dimension of 0.5m x 2m located along the north elevation. Similarly, the signage proposed along the eastern elevation should also be reduced in size similar to the northern elevation and located above the glazed window. This will maintain a good presentation to both the elevations and also be consistent with the existing signage along the same building. This will be indicated on the approved elevations and conditioned.

2. Special areas

The proposed signage size is considered to be larger than other signage existing on the other shops in the shopping complex buildings and would detract from the amenity or visual quality of the building. The proposed signage, therefore will need to be reduced in dimension and located above the glazed doors which will result in an acceptable design outcome of the building. This has been indicated in red on the elevations.

3. Views and vistas

The reduced size of the signage would fit in with rest of the other signage in the development site and maintain uniformity along the northern elevation to Dunheved Road and is considered not to compromise existing views.

4.Streetscape, setting or landscape

The amended signage is considered not to detract views or sight-line and in keeping with the existing design of the building.

5. Site and building

The built form and its location is considered not have adverse impact from visual of environmental impacts.

6.Associated devices and logos with advertisement and advertising structures

The materials, dimensions and locations of the signage on the facade is appropriate and will not detract from the character of the area.

7. Illumination

No lighting devices are proposed as part of the proposal, however a condition has been applied to minimise adverse lighting effects to the area.

8. Safety

The sign will be located within the two elevations of the building and unlikely to obscure any sight line from the street and unlikely to reduce safety on any public roads.

As assessment undertaken of the application against relevant criteria with State Environmental Planning Policy No 64—Advertising and Signage as amended by Council and it is concluded that it is satisfactory subject to recommended conditions of consent.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the work proposed is will involve no excavation works and as such the application is satisfactory.

Local Environmental Plan 2010

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.3 Height of buildings	Complies

Clause 2.3 Permissibility

The site is zoned B2 - Local Centre under LEP 2010 and the proposal is a Café which is captured by the definition of a *Commercial Premises*, which is permissible in the zone with Council consent. The shop is existing and the proposal for a Café is a change of use and as such is permissible with consent.

Clause 2.3 Zone objectives

The objectives of the zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide retail facilities for the local community commensurate with the centre's role in the local and regional retail hierarchy.*
- *To ensure that future housing does not detract from the economic and employment functions of a centre.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The proposal is considered to generally meet the above objectives of the zone.

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

There are no draft Environmental Planning Instruments that apply to the proposal.

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

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Complies
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Complies - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies

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

There are no planning agreements applying to this application.

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

The proposed development can comply with the requirements of the Regulations.

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

Design

The site is located on the southern part of Dunheved road and the subject shop is located along the eastern part of the complex and west of KFC restaurant and is visible from Dunheved Road. The existing building is located at a distance of 12m from the front boundary with its eastern elevation fronting the vehicular access-way in to the complex and west of KFC restaurant building. The existing building contains glazed windows located along the northern and eastern elevations with some landscaping area located along the north-eastern corner of the site that provides a relief to the continuous blank wall of the other larger building facing Dunheved Road.

The proposed portable structure is to be located at the northern-eastern corner and within the only open area space fronting Dunheved Road containing some landscaping and foot-pathway leading from internal driveway access. The proposed light structure building for the Hookha lounge with dimension of 6.5m x 11.26m and 3m height will occupy half of the existing open space area located in front of the existing building and will also reduce the existing pedestrian pathway leading to the supermarket from Dunheved Road and north-eastern landscaped area.

The proposed structure is not integrated with the existing building nor it is compatible with the rest of the buildings or KFC and it will occupy the area that is open and the only area available for landscape embellishment and will reduce or even eliminated existing the pedestrian pathway available to the public. The proposed light weight structure is likely to reduce the openness and amenity currently enjoyed

and have detrimental visual overall impact of the development and is considered to result in poor design outcome of the development.

The use of existing shop number 10 as a cafe is considered to be acceptable and is unlikely to have any detrimental impact on the existing shopping complex, however. the light weight structure is considered to be not suitable in design in the proposed location which will reduce the landscaping area and not compatible with the rest of the building existing on site that will result in poor urband design outcome and poor amenity of the area and as such is not supported.

It is therefore recommended that only the change of use of shop 10 for a Cafe be supported.

Landscape Design

The site currently has minimum landscaping and vegetation within the shopping complex except for the little area that is at the north-eastern corner of the site. The location of the proposed new structure is proposed in that location which will further diminish existing vegetation area and landscaping and as such will result in loss of vegetation and poor design outcome and hence the new structure is not supported.

\Building Matters

The application has been reviewed by Senior Building Surveyor who had advised that the proposed new structure for smoking area would generate additional seating capacity and would require additional toilet facilities which it does not provide. However, now the outdoor structure is not supported, he has re-assessed the application and as it will provide a new additional accessible toilet facility shown on within the existing Unit, it will comply with the toilet facility requirement under the BCA and hence raised no objection to the proposal subject to it being constructed prior to release of the CC and recommended conditions.

Advertising and Signage

This has been discussed under SEPP 64 heading and the proposed signage have been required to be reduced and located above the glazed doors/opening to achieve a good design outcome of the development.

Transport, Access and Parking

There is no changes to the existing vehicular accesses or the parking arrangement. The car parking requirement have been calculated for all existing building and as such the existing parking spaces are considered to be sufficient to cater for the proposed changes to the use to cafe.

Environmental

Two submissions were received raising concern of public health from smoking (one from **Nepean Blue Mountains Local Health District**) in general and the likeliness of adverse impact from the proposed new facility to have adverse impact on the health of people. This matter has been also raised by Council's Environmental Health Officer and agrees with this concern. As the proposal will result in poor design outcome and also considering the likely adverse health impact it may cause to the public and does not support Smoking area. In view co this the Shisha/Hookha smoking lounge has been required to be deleted and only Cafe is being recommended for approval. The applicant has been advised of this matter.

Council's Environmental Health Officer has raised no objection to the Cafe subject to their recommended conditions being included in the consent conditions.

Noise and Vibration

The proposed hours of operation Shisha smoking lounge are as follows:

- Monday to Wednesday 8:30am to 10:00pm
- Thursdays 8:30am to 11:00pm
- Fridays & Saturdays 8:30am to 12:00am (Midnight)
- Sundays 8:30am to 9:30pm

The hours of operation for Hookha/Shisha smoking lounge is now not relevant as it is not supported.

The hours of operation as discussed with the applicant indicates that it would operate from 8:30am to 10pm. Considering that it is located next to a busy road and there is already another one restaurant

operating in the complex, and KFC, the hours of operation can be limited to 8:30am to 10pm for the Cafe which is unlikely to have detrimental noise impact to nearby residents.

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

- The site is zoned to permit the proposed use
- The use is compatible with surrounding/adjoining land uses
- The new portable structure will result in poor design outcome and amenity and as such not supported.
- The change of use of shop 10 to Cafe is only supported.
- The site is able to drain to Council's satisfaction
- The site is suitable for the change of use but not for additional structure proposed on the site.

Section 4.15(1)(d) Any Submissions

Community Consultation

The application was notified to adjoining properties and was exhibited to the public between 28 June 2021 to 12 July 2021 in accordance with relevant legislation. There were two submissions raising concerns relating to the potential harm to public health from smoking to nearby residents and public.

Comments:

Concerns relating to the potential harm to public health from smoking

The proposed light weight temporary structure proposed for Shisha/Hookha smoking is not supported and as such there will no longer be smoking of Shisha in this application.

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	Not supported, however conditions provided

Section 4.15(1)(e) The public interest

- NSW Health regulates the use of tobacco and vapour products in public areas through the Smoke free Environment Act 2000 and Smoke free Environment Regulation 2016. The legislation stipulates where it is permissible to smoke, and to use vapourised products, and provides standards and requirements for building structures regarding whether they are considered "enclosed."
- The applicant has not provided information, plans, and calculation required to support the application to demonstrate that the proposed Hookah Lounge will meet the requirements of the 'Act' and 'Regulation and in particular to 6A (1)(i) of the 'Act' Smoke free areas— outdoor public places and clause 8 of the 'Regulation' Guidelines for determining if a place enclosed meets the requirement.
- In view of the above and concerns raised by the Blue Mountains Nepean Local Health District of health impact to the public, the support of Hookah smoking room would not be in the public interest.
- Whilst the Smoking structure for hookahs is not supported, the change of use of existing shop for Café only would provide service to the public and as such it will not generate any significant issues of public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being SEPP 64, LEP 2010 and DCP 2014, the proposal satisfies the aims, objectives and provisions of these policies.

- The proposed design of light weight portable structure for Shisha/Hookah smoking will result in poor design outcome and as such is not worthy of support.
- The change of use of existing shop number 10 to a Café is considered to be result in maintaining the streetscape unchanged and will result in satisfactory design outcome for existing shopping complex.
- The proposed two signs are considered to be too large and not compatibly with other signage and has been required to be reduced in its dimensions, and to be located above glazed doors to be consistent with other existing signage of the shopping complex.
- The site is suitable for the proposed café development.
- The proposal will provide service to the local public and as such is in the public interest.
- There is unlikely to be negative impacts arising from the proposed development.

Therefore, the application for the Hookah smoking structure is not supported but the proposed Café is worthy of support and recommended for approval, subject to recommended conditions.

Recommendation

1. That DA21/0421 for the change of use of shop 10 to a Cafe at 11, Dunheved Road, Werrington County, be approved subject to the attached conditions (Development Assessment Report Part B).

General

1 [A001 - Approved plans table](#)

The development must be consistent with the the following plans:

Description	Plan No.	Issue/Rev	Prepared by	Date
Site and Location Plan	21-109-01	1	Wayne Wilson	12/6/2021
Existing Floor Plan	21--109-02	1	Wayne Wilson	12/6/2021
Proposed Floor Plan	21-109-03	1	Wayne Wilson	12/6/2021
Elevations & Sections	21-109-04	1	Wayne Wilson	12/6/2021
Signage Details	21-109-07	1	Wayne Wilson	12/6/2021

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 attached plans and by the following conditions.

2 [A012 - Food Act](#)

The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2010 and the Australian and New Zealand Food Standards Code are met at all times.

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

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

4 [A019 - Operation of the business](#)

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

5 [A021 - Business Registration](#)

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

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

The operating hours are from 8:30 am to 10 pm .

7 [A032 - Goods in buildings](#)

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

8 [A038 - LIGHTING LOCATIONS](#)

[Prior to the issue of an Occupation Certificate, any lighting system to be installed for the development shall be provided with uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding landuses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

9 [A039 - Graffiti](#)

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

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

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

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

The number of staff is to be limited to maximum of 4 for the Cafe.

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

The signage shall be limited in size to be a maximum of 60cm high x 2.5m wide as marked in red on the stamped approved plans.

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

Signage must not contain/use;

- Flashing Lights or messages.
- Animated display, moving parts or simulated movements.
- Complex displays that hold a driver's attention beyond "glance appreciation".
- Displays resembling traffic signs or signals, or giving instruction to traffic by using colours and shapes that imitate a prescribed traffic control device or words such as 'halt' or 'stop'.
- A method of illumination that distracts or dazzles.
- The approved sign shall have a minimum dwell time of 4 seconds between change of messages/pictures.

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

The outdoor structure and use of the structure as a smoking lounge is not approved as part of this consent and is to be deleted from the Construction Certificate documentation.

Environmental Matters

15 [D009 - Covering of waste storage area](#)

All waste materials stored onsite 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 the areas are to be fully enclosed when the site is unattended.

16 [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.

17 [D014 - 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 noise.

BCA Issues

18 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

19 F001 - General Fitout

The construction, fit out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS4674-2004 *Design, Construction and Fitout of Food Premises*. Detailed plans of the fitout must be provided to the Environmental Health Team for approval prior to any fitout or construction works beginning.

Your attention is drawn to the following requirements:

- *Hand basins must 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.*
- *A hand basin must be located within the toilet cubicle.*
- *Hand basins must be freestanding, serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands free operation. Where sensor taps are 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.*
- *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.*
- *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 brewery 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 brewery 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, refrigeration condensate pipes shall be enclosed or chased into walls, floors or plinths. Where it can be demonstrated that this is not feasible pipes and conduits fixed on brackets, providing a minimum of 25 mm clearance from the adjacent wall and 100 mm from the floor or adjacent horizontal surface, can be used. All openings in walls, floors and ceilings, through which service pipes and conduits pass, must be vermin proof.
- 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.
- The food preparation sink must be separated from all other sinks by a minimum distance of 2 metres or have an approved form of physical barrier that separates the sink.
- The cleaners sink must be serviced with hot and cold water through taps fitted with hose connectors. Cleaner's sinks must be located outside of areas where open food is handled.
- All food preparation benches must be constructed in stainless steel or finished in a smooth and non-absorbent approved material that is free of joints.
- 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).
- 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.

20 **F022 - Commercial kitchen(exhaust system)**

Cooking appliances which exceed a total maximum power input of 8kw for electrical, or a total gas input of 29MJ/h for a gas appliance are required to have a kitchen exhaust system installed in accordance with Clause F4.12 of the Building Code of Australia and Australian Standard AS1668 Parts 1 & 2.

Detailed plans together with calculations for the system must be provided as part of the development application or prior to any construction or fitout work beginning. Should a commercial exhaust system not be proposed as part of this development only pre-packaged and foods requiring minimal preparation can be sold from this business.

The exhaust hood must completely cover the equipment to be ventilation and extended at least 200mm beyond the perimeter of the equipment. The exhaust hood must be provided with a condensation gutter around its base. The gutter must be at least 50mm wide by 25mm deep. Where abutting walls are located the hood must be constructed so as to finish flat against the wall surface.

The low edge of a canopy type exhaust hood must be at least 2000 mm above floor level.

Prior to the operation of the business, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and Australian Standard AS1668 Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Team.

21 **F025 - Food safety supervisor**

A Food Safety Supervisor, with a current Food Safety Supervisor Certificate recognised by the NSW Food Authority, must be appointed by the business prior to commencement of the business.

22 **F047 - Fixtures & fittings**

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

All fittings and fixtures must be built into the wall and floor so as to be free from joint, gaps and cavities to enable easy cleaning or alternatively, supported on one of the following:

- Plinths – plinths must be an integral part of the floor, constructed of solid materials similar to the floor at least 75mm in height and coved at the intersection with the floor. All plinths must have a smooth and impervious finish. All fittings and fixtures must be properly sealed to the plinth so to be free from gaps, cracks and cavities.
- 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.
- Legs – fittings and fixtures can be supported on legs but must be constructed of a non-corrosive, smooth metal or moulded plastic. All legs must be free from cracks and crevices. All legs must have a clearance space between the floor and the underside of the fitting of at least 200 mm.

NOTE: False bottoms under fittings are not permitted (AS4674-2004 – Section 4.2 and 4.3).

23 F056 - Storerooms

The storeroom must be constructed in accordance with AS4674-2004 by providing the following:

- A smooth, even, non-slip floor surface.
- 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.
- Walls must be provided with a smooth even surface and painted with a light coloured washable paint to enable easy cleaning.
- 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.
- Shelving or storage racks must be designed and constructed to enable easy cleaning.

24 F057 - Waste storage

All garbage must be stored in accordance with the requirements of the Food Safety Standards of the Australian and New Zealand Food Standards Code and the *Protection of the Environment Operations Act 1997* to prevent the harbourage of vermin or generation of odours.

25 F060 - Grease Arrestor

A grease arrestor must be installed in accordance with Sydney Water requirements unless a written exemption is provided. The grease arrestor must not be installed in any kitchen, food preparation or food storage area.

26 F186 - Smoke Free Environment

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

Construction

27 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.

28 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) All excavations and back filling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) 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.

29 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.

Landscaping

30 L012 - Existing landscaping (for existing development)

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

Certification

31 **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 1979, 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 of 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.

32 **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 or the use of the Shop 10 for a Cafe.

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

C1 Site Planning and Design Principles

The site is located on the southern part of Dunheved road and the subject shop is located along the eastern part of the complex and west of KFC restaurant and is visible from Dunheved Road. The subject building is located at a distance of 12m from the front boundary and with its eastern elevation fronting the vehicular access-way to the complex and west of KFC restaurant building. The proposed location of the portable structure is to be in the only open area space available fronting the Road, with some landscaping and foot-pathway.

The building is exposed to the road and the glazed windows located along the northern elevation and some landscaping area located along the north-eastern corner of the site provides a relief to the continuous blank wall facing Dunheved Road. The proposed light structure building for the Hookha lounge with dimension of 6.5m x 11.26m and 3m height will occupy half of the existing open space area located in front of the existing building and will also reduce the existing pedestrian pathway leading to the supermarket from Dunheved Road and north-eastern landscaped area.

The proposed structure is not integrated with the existing building nor it is compatible with the rest of the buildings or KFC and it will occupy the area that is open and the only area available for landscape embellishment and will reduce or even eliminated existing the pedestrian pathway available to the public. The proposed light weight structure is likely to reduce the openness and amenity currently enjoyed and have detrimental visual overall impact of the development and is considered to result in poor design outcome of the development.

The use of existing shop number 10 is unkindly to have any detrimental impact on the existing shopping complex, however. the light weight structure is considered to be not suitable in design and location and as such is not supported. It is therefore recommended that only the change of use be supported to maintain the existing amenity.

C2 Vegetation Management

The site has minimum landscaping and vegetation within the shopping complex except for the little area that is at the north-eastern corner of the site. The location of the proposed new structure will further diminish existing vegetation area and as such will result in loss of vegetation and poor design outcome and hence new structure is not supported.

C6 Landscape Design

As mentioned above, the existing landscaping and area available within the shopping centre is minimal and if the proposed structure is constructed, it will further reduce landscaping area which in turn will result in poor design outcome.

C9 Advertising and Signage

This has been discussed under SEPP 64 heading and the proposed signage have been required to be reduced and located above the glazed doors/opening to achieve a good design outcome of the development.

C10 Transport, Access and Parking

There is no changes to the existing vehicular accesses or the parking arrangement. The car parking requirement have been calculated for all existing building and as such the existing parking spaces are considered to be sufficient to cater for the proposed changes to the use to cafe.

C12 Noise and Vibration

The proposed hours of operation Shisha smoking lounge are as follows:

- Monday to Wednesday 8:30am to 10:00pm
- Thursdays 8:30am to 11:00pm
- Fridays & Saturdays 8:30am to 12:00am (Midnight)

- Sundays 8:30am to 9:30pm

The hours of operation for Hookha is now not relevant as it is not supported.

The hours of operation as discussed with the applicant indicates that it would operate from 8:30am to 10pm. Considering that it is located next to a busy road and there is already another one restaurant operating in the complex, and KFC, the hours of operation can be limited to 8:30am to 10pm for the Cafe which is unlikely to have detrimental noise impact to nearby residents.