

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA15/0552
<b>Proposed development:</b>	Fit-Out & Use as Korean Barbecue Restaurant
<b>Property address:</b>	388 High Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 1 DP 656875
<b>Date received:</b>	11 June 2015
<b>Assessing officer</b>	Mathew Rawson
<b>Zoning:</b>	Zone B4 Mixed Use - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Approve

### Executive Summary

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Council is in receipt of a development application for the fit out and use of a restaurant at 388 High Street, Penrith. The restaurant has been existing since 23 September 2014 and as such requires retrospective approval. The restaurant is permissible with Council consent in the B4 Mixed Use zone under the Penrith Local Environmental Plan (LEP) 2014.

This application is to be determined under delegated authority by the Senior Officer Review Team as it relates to an existing unauthorised use.

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

### Site & Surrounds

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The site currently accommodates a single-storey, masonry building that covers the full extent of the site. The restaurant is currently operating from the site.

Being located only 420 m south-east of the Penrith Rail Station, the site sits within an established CBD environment. As such lands immediately adjacent to the site, in all directions, accommodate other commercial and retail land uses.

## Proposal

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The development seeks retrospective consent for the internal fit out of the subject site for a restaurant that involves the use of charcoal grills as part of the preparation and cooking of food. The fit-out included the following:

- New kitchen area
- New reception area
- New bar area
- Reconfigured seating area
- Reconfigured bathrooms
- Accessible entry and toilet
- Replacement existing shop front window with bi-fold doors
- Refurbished kitchen area
- Installation of a ventilation system

The development does not seek to provide any new gross floor area or introduce any change to parking, or vehicle access and egress arrangements. The development seeks approval for operating hours between 10 am - 12 am, 7 days a week.

The development requires a maximum of 8 staff.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2010
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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### • Section 79C - Evaluation

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

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

#### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

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

## Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.7 Servicing	Complies
Clause 7.8 Active street frontages	Complies
Clause 8.1 Application of Part	Complies
Clause 8.2 Sun access	N/A
Clause 8.3 Minimum building street frontage	N/A
Clause 8.4 Design excellence	Complies
Clause 8.5 Building separation	Complies
Clause 8.6 Serviced apartments	Complies

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

### Development Control Plan 2010

Provision	Compliance
Part B - DCP Principles	Complies
Part C 1 - Site planning and design principles	Complies
Part C2 - Vegetation management	N/A
Part C3 - Water management	Complies
Part C4 - Land management	N/A
Part C5 - Waste management	Complies
Part C6 - Landscape design	N/A
Part C7 - Culture and heritage	N/A
Part C8 - Public domain	N/A
Part C9 - Advertising and signage	Complies - see Appendix - Development Control Plan Compliance
Part C10 - Transport, access and parking	Complies - see Appendix - Development Control Plan Compliance
Part C11 - Subdivision	N/A
Part C12 - Noise and vibration	Complies
Part C13 - Infrastructure and services	Complies
Part D3 - Commercial and retail development	Complies

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

### **Fire Safety**

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

### **Prescribed Conditions**

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

### **Clause 92 - Additional Matters**

- The development does not propose any new demolition.
- The development is not subject to government Coastal Policy
- The development is not situated on land subject to an order made under Schedule 5 of the Act (paper subdivisions).

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

### **Impacts raised in referral comments**

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

### **Other impacts identified in assessment**

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

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

The subject site is deemed suitable for the following reasons:

- The zone permits the proposed use.
- The use is consistent and compatible with surrounding/adjoining land uses.
- The site is adequately serviced by transport, water and sewer infrastructure which has the capacity to cope with any increase in demand associated with the proposed development.

## **Section 79C(1)(d) Any Submissions**

### **Referrals**

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

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

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

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

## **Conclusion**

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Subject to the recommended conditions of consent the proposal is considered to be consistent with the relevant sections of the Environmental Planning and Assessment Act 1979, relevant State Environmental Planning Policies, the relevant Local Environmental Plan and the Penrith Development Control Plan 2014 because it does not contravene any development standards and will not result in any significant impacts on the natural, social or economic environments.

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

## Recommendation

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1. That DA15/0552 for an existing fit out and use of a Korean BBQ Restaurant at 388High Street, Penrith, be approved subject to the attached conditions.

## General

1 [A001](#)

The development must be implemented substantially in accordance with the plans stamped approved by Council, the application form, and any supporting information received with the application, except as may be amended in red on the approved 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 - Final Health Inspection](#)

A satisfactory inspection from an authorised officer of Council's Environmental Health Department is required within 3 months of the date of this consent to ensure compliance with this development consent. The occupier is to contact the Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time.

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

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

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

The approved operating hours are from 10 am to 12 am Mondays to Sundays.

6 [A032 - Goods in buildings](#)

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

7 [A039 - Graffiti](#)

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

8 [A Special \(Liquor Licence\)](#)

A current liquor licence must have been issued by the Office of Liquor, Gaming and Racing prior to the sale of any liquor at the premises.

9 [A Special \(no outdoor trading and dining without licence\)](#)

No outdoor eating or trading areas are permitted without a current Outdoor Eating and Trading Licence being issued by Penrith Council.

## Environmental Matters

10 [D010 – Appropriate disposal of excavated or other waste](#)

All wastes generated as a result of the development are to be re-used, recycled or disposed of at a lawful waste management facility. Waste storage devices must be located entirely within the subject premises and must not be viewable from the public domain.

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

## BCA Issues

11 **E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)**

The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

- (a) deal with each essential fire safety measure in the building premises, and
- (b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

12 **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**

13 **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 AS 4674-2004 *Design, Construction and Fitout of Food Premises*.

14 **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 AS 1668, Parts 1 & 2.

The exhaust hood must completely cover the equipment to be ventilated and extend 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 final inspection by Council's Environmental Health Department, 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.

15 **F023 - Exhaust for charcoal cooking**

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

16 **F024 - Food authority notification**

The food business must notify the NSW Food Authority of their details including:

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

Should these details change during the operation of the business the business operator must provide the NSW Food Authority with an update of these details. Notification can be completed free of charge on the NSW Food Authority's Food Notify website at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au).

17 **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.

18 **F027 - Hand basins**

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.

19 **F030 - Hot water service**

Hot water services must be positioned at least 75 mm clear of the adjacent wall surfaces, and mounted at a minimum 150 mm 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.

20 **F035 - Ceilings**

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.

21 **F052 - Coolrooms**

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.

22 **F053 - Coolrooms – condensation**

Condensation from coolrooms and refrigeration motors must discharge to the sewer via a tundish with air gap separation in accordance with Sydney Water requirements.

# **Appendix - Development Control Plan Compliance**

## **Development Control Plan 2010**

### **Part C - Controls applying to all land uses**

The application has been assessed against the Penrith Development Control Plan 2014 which came into effect 17 April 2015. The proposal is generally compliant with the DCP controls however the following matters are noted for discussion.

#### **Section C9 - Advertising and signage**

There are extensive exemptions for business identification signage in the B4 zone. The existing signage is of a scale and design similar to that of the surrounding development.

#### **Section C10 - Transport, access and parking**

Car parking spaces for retail premises in the Penrith city centre are determined by gross floor area. The amount of gross floor area remains unchanged and therefore there is no additional car parking requirement for the development.

Note: The standard instrument LEP definitions outline that: Restaurants are a type of food and drink premises. Food and drink premises are a type of retail premises.

#### **Section E11, Part A - Penrith City Centre**

This section of the DCP applies to new built form for the the most part. The subject development is compliant with the applicable aspects being the aims and objectives and key character areas.