

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0117
Proposed development:	Fit-Out & Use as Restaurant - Tella Balls Dessert Bar (Tenancy T5)
Property address:	78 - 88 Tench Avenue, JAMISONTOWN NSW 2750
Property description:	Lot 3 DP 30354
Date received:	11 March 2020
Assessing officer	Sufyan Nguyen
Zoning:	SP3 Tourist - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for retrospective approval for a fit-out and use as a food and drink premises ('Tella Balls' dessert bar) including associated signage at Tenancy 5, 78 - 88 Tench Avenue in Jamisontown. The subject site is zoned SP3 Tourist under the *Penrith Local Environmental Plan 2010* and the development proposal is permissible with Council consent.

The subject premises (Tenancy T5) is a part of an approved restaurant and café development for the site (DA15/0335). Council's Senior Environmental Health Officer undertook a site inspection of the premises on 1 April 2020, which advised that the existing commercial kitchen is largely compliant with the relevant Food Standards Code and AS 4674 applicable to the development proposal. It is noted that there was a minor concern regarding the adequacy of mechanical ventilation, which will be addressed via recommended consent conditions.

It is also noted that a previous assessment of the restaurant and cafe complex reviewed and approved the waste management and servicing for the site. Further, the most recent modified development (DA15/0335.03) approved an extension of hours of operation between 7am to 1am, Monday to Sunday for the tenancies and included the requirement to formalise overflow car parking spaces at the rear of the site to address off-street parking, and as such, the proposal is not considered to result in any amenity, parking or traffic impacts on the immediately surrounding area in this regard.

An assessment of the proposal under Section 4.15 of *Environmental Planning and Assessment Act 1979* (EP&A Act) has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The subject site has a street address of 78 - 88 Tench Avenue, Jamisontown and is legally described as Lot 3 DP 30354. The site is located on the south-eastern side of Tench Avenue and is rectangular in shape, with a frontage of 131.16m and a land area of 3.34ha. The subject premises (Tenancy T5) forms part of an approved restaurant and cafe development and is located in the centre, front-most part of building 2 (of 3). The premises has a gross floor area of 123m² and a designated 21m² of outdoor seating situated in front of the premises.

The site is situated within the Nepean River floodplain and is located directly opposite the boat ramp and associated car parking area, which forms part of the larger open space network identified as Tench Reserve. The surrounding land uses are typically rural-residential on large land holdings.

Proposal

The applicant seeks retrospective approval for a fit-out and use as a food and drink premises ('Tella Balls' dessert bar) and associated signage at Tenancy T5, 78 - 88 Tench Avenue, Jamisontown.

The development proposal comprises of the following aspects:

- Kitchen, dessert bar, dining and lighting fit-out;
- One illuminated business identification (fascia) sign;
- Signage on umbrellas for the outdoor dining area;
- Maximum capacity of 150 patrons including 50 internal dining seats and 100 outdoor dining seats;
- Maximum of 20 staff; and
- Hours of operation between 7am to 1am, Monday to Sunday.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.14 - Bushfire prone land assessment

The site is identified as bushfire prone land due to the vast green open space corridors adjoining the property. Although the rear portion of the subject premises is situated within a bushfire zone, the nearest vegetation is greater than 100m from the premises. Given that there is insufficient threat to warrant any specific construction requirements, the proposal raises no bushfire risk.

• Section 4.15 - Evaluation

The development proposal has been assessed in accordance with the matters for consideration under Section 4.15 of the EP&A Act, 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 55—Remediation of Land

As assessment has been undertaken of the application against relevant criteria within *State Environmental Planning Policy No. 55—Remediation of Land* (SEPP 55) and the application is satisfactory subject to recommended consent conditions, noting that a previous assessment of SEPP 55 criteria was carried out for the restaurant and cafe complex, which was considered satisfactory.

State Environmental Planning Policy No 64—Advertising and Signage

The proposed business identification signage is ancillary to the proposal and is considered to be of a minor scale. The proposed signage provides effective communication without compromising the visual quality and amenity of the immediately surrounding area. Given that the approved restaurant and cafe complex accommodates various signage styles for existing tenancies, it is considered that the simplistic design and overall, minimal proposed signage is compatible with the desired future character of the immediate surrounding area.

Schedule 1 (Assessment Criteria):

Criteria	Comments
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1 Character of the area - Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? - Is the proposal consistent with a particular theme for outdoor advertising in the area of locality?	The premises is a part of the restaurant and cafe complex, which contains various forms of business identification signage. In consideration of the minor scale signage, in addition to its simplistic design, being once fascia sign and an umbrella sign, the proposed signage is compatible with the desired future character of the area. It is noted that the statement of environmental effects states that two A-Frame signs are proposed, however the submitted signage plans do not include these details and it is also noted that A-Frame signs are not supported by in accordance with the DCP.
2 Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The site is not within or in close proximity to any environmentally sensitive areas, heritage areas, natural or other conservation areas, waterways or rural landscapes. The proposed signage will be sited out of view from adjoining residential properties.
3 Views and vistas - Does the proposal obscure or compromise important views? - Does the proposal dominate the skyline and reduce the quality of vistas? - Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not obstruct any important views or vistas and is not within a skyline view, nor will it compromise other business identification signage on the site
4 Streetscape, setting or landscape - Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? - Does the proposal contribute to the visual interest of the streetscape, setting or landscape? - Does the proposal reduce clutter by rationalising and simplifying existing advertising? - Does the proposal screen unsightliness? - Does the proposal protrude above buildings, structures or tree canopies in the area or locality? - Does the proposal require ongoing vegetation management?	The scale and design of the proposed signage is in proportion to the size of the building on the site. The proposal does not require any vegetation management as a result of the proposed signage.
5 Site and building - Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? - Does the proposal respect important features of the site or building, or both? - Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed illuminated fascia signage is integrated with the building facade and is of a minor scale relative to the size of the building. The colour design and illuminated sign will spark visual interest without compromising the amenity of the streetscape.
6 Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed illuminated fascia sign will be installed according to manufacturer and engineering requirements, which will be addressed via a recommended consent condition.

7 Illumination • Would illumination result in unacceptable glare? • Would illumination affect the safety for pedestrians, vehicles or aircraft? • Would illumination detract from the amenity of any residence or other form of accommodation? • Can the intensity of the illumination be adjusted, if necessary? • Is the illumination subject to a curfew	The illuminated signage will not result in overbearing glare or safety hazards to oncoming motorists or pedestrians. A consent condition is imposed to ensure that the signage illumination will be in accordance with AS 4282 - 1997 requirements.
8 Safety • Would the proposal reduce the safety for any public road? • Would the proposal reduce the safety for pedestrians or bicyclists? • Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage that will be visible from the streetscape is provided with a generous front setback and is not considered likely to reduce safety for local traffic or pedestrians.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

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

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 5.10 Heritage conservation	N/A
Clause 7.2 Flood planning	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.7 Servicing	Complies

Clause 7.5 Protection of scenic character and landscape values

The development proposal includes a small business identification (illuminated) sign that will be visible from street view. The proposed illuminated signage is not considered to detract from the scenic values and is considered to be of minimal visual impact on the immediately surrounding area.

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

It is noted that both the *Draft Environment SEPP* and *Draft Remediation of Land SEPP* are at present applicable to the subject site, but while so, does not affect or alter the recommendations 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	N/A
C3 Water Management	Complies
C4 Land Management	N/A
C5 Waste Management	Complies - see Appendix - Development Control Plan Compliance
C6 Landscape Design	N/A
C8 Public Domain	N/A
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 - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies - see Appendix - Development Control Plan Compliance
E13 Riverlink Precinct controls	Complies

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

There are no planning agreements applicable to the development proposal.

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

The relevant prescribed conditions under the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, will be imposed as consent conditions. Subject to the recommended consent conditions, as recommended by Council's Building Surveyor, the development proposal complies with the requirements under Section 143 of the *Environmental Planning and Assessment Regulation 2000*.

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

Under Section 4.15(1)(b) of the EP&A Act, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

The development proposal is for retrospective approval for a fit-out and tenancy use as a food and drink premises for a previously approved restaurant and cafe complex. Council's Senior Environmental Health Officer undertook a site inspection of the premises on 1 April 2020, which advised that the existing commercial kitchen is largely compliant with the Food Standards Code and AS 4674 applicable to the proposal, noting that a minor concern was raised regarding the adequacy of the mechanical ventilation, which has been addressed via recommended consent conditions. As such, the proposed use is not considered to result in any significant impacts as initially assessed in relation to the building, including noise impacts, parking and traffic impacts, and servicing capacity for the site. In addition, the proposed signage is of a minor scale and is not considered to result in any visual impacts on the streetscape.

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

The development proposal is of a small scale and is a permissible land use in the SP3 Tourist zone. The site has access to sufficient facilities and services. In consideration of the nature and scale of the development, the proposal will not result in any adverse impacts on the surrounding natural and built environments, including local traffic flows. The overland flooding which affects the site raises no concern, noting that a flood evacuation plan is in place as part of the restaurant and cafe complex. The site is therefore suitable for the proposal.

Section 4.15(1)(d) Any Submissions

Community Consultation

In consideration of the minor scale and nature of the development proposal, notification of the application was not considered warranted in accordance with Appendix F4 - Notification and Advertising of the *Penrith Development Control Plan 2014*.

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 4.15(1)(e)The public interest

In consideration of the nature and scale of the development proposal, in addition to the proposal being compliant with the applicable development controls, the health and safety of the public will not be adversely affected and therefore the development will not generate any significant issues of public interest. Further, it is noted that the existing use has not resulted in any formal complaints to Council and that no public submissions were received in relation to the proposal.

Conclusion

In assessing this application against the relevant environmental planning policies, including *Penrith Local Environmental Plan 2010*, *Penrith Development Control Plan 2014*, *State Environmental Planning Policy No 55—Remediation of Land*, *State Environmental Planning Policy No 64—Advertising and Signage* and *Sydney Regional Environmental Plan No.20—Hawkesbury Nepean River*, the development proposal satisfies the aims, objectives and provisions of these policies. The proposal does not contravene any development controls and is unlikely to have any significant impacts on the natural, social or economic environments. The site is suitable for the development and the proposal is in the public interest. Therefore, the application is worthy of support and is recommended for approval, subject to conditions.

Recommendation

That DA20/0117 for the use as a food and drink premises ('Tella Balls' dessert bar) and associated signage at Tenancy T5, 78 - 88 Tench Avenue, Jamisontown be approved, subject to attached conditions.

General

1 [A001 - Approved plans table](#)

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

Drawing Title	Prepared By	Sheet No.	Dated	Revision
Location Plan (Overall GA Plan- Ground Level)	Morson Group Pty Ltd	A101	07-09-18	11
Legend - Part 1 of 3	AGC Catering Equipment	A-2.1	10-12-19	--
Legend - Part 2 of 3	AGC Catering Equipment	A-2.2	24-02-20	--
Legend - Part 3 of 3	AGC Catering Equipment	A-2.3	24-02-20	--
Floor Plan	AGC Catering Equipment	B-1.1	24-02-20	--
Plan Dimensioned	AGC Catering Equipment	B-2.1	24-02-20	--
Plan Ceiling	AGC Catering Equipment	B-3.1	24-02-20	--
Plan Finishes	AGC Catering Equipment	B-4.1	24-02-20	--
Plan - Power and Data	AGC Catering Equipment	B-5.1	24-02-20	--
Plan - Plumbing	AGC Catering Equipment	B-6.1	24-02-20	--
Shopfront Elevation	AGC Catering Equipment	C-1.1	24-02-20	--
Sections	AGC Catering Equipment	C-2.1	24-02-20	--
Detail - Signage	AGC Catering Equipment	D-1.1	24-02-20	--

Documents:

- Waste Management Plan prepared by Simon Kappatos, dated 6 March 2020.
- 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 \(ALWAYS APPLY\)](#)
An Occupation Certificate for the development must be issued within 60 days from the date of this notice of determination.
- 4 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)
The approved operating hours for the site are limited between 7am to 1am, Monday to Sunday. Delivery and service vehicles generated by the development shall be limited to 7am to 5pm, Monday to Friday.
- 5 [A032 - Goods in buildings](#)
All materials and goods associated with the use shall be contained within the building at all times.
- 6 [A039 - Graffiti](#)
The finishes of all structures and the premises are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 7 [A Special \(BLANK\)](#)
Outdoor furniture shall be provided in a location that does not obstruct pedestrians utilising the pedestrian accessway.
- 8 [A Special \(BLANK\)](#)
The approved signage shall not be fitted with any flashing or moving lights or elements and shall not distract passing motorists or impact on visual amenity.
- 9 [A Special \(BLANK\)](#)
"The intensity of the signage illumination and any obtrusive effects of outdoor lighting shall be controlled in accordance with AS 4282 - 1997, "Control of the obtrusive effects of outdoor lighting".

Environmental Matters

10 [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.

11 **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 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.

12 **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.

13 **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.

14 **D030 - Air handling system**

Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, are to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

BCA Issues

15 **E006 - Disabled access and facilities**

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility".

16 **E007 - Shade policy in public places**

Toilet facilities for staff and patrons are to be provided in accordance with Table F2.3 of the Building Code of Australia.

17 **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

18 **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 Fit-out of Food Premises*. Shelving associated with food storage and storage of packaging must be sealed, smooth and impervious.

19 **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 AS 1668 Parts 1 & 2.

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 2000mm above floor level.

Prior to the issue of an Occupation Certificate, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and AS 1668 Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Penrith City Council's Environmental Health Team if Council is not the Principal Certifying Authority.

Note: Additional ventilation will be required for ventilation of cooking equipment or the dishwasher should routine inspections by Penrith City Council's Environmental Health Officers identify issues with condensation or an accumulation of fats, oil, and grease above appliances.

20 **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 at all times.

21 **F067 - Staff Belongings**

Staff belongings and other items not associated with the business shall be kept completely separate to food storage and food activities and equipment and maintained in a clean condition.

Certification

22 **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

C5 Waste Management

C5.3.1 Site Management

Waste management for the site was assessed as apart of the approved restaurant complex and is to be serviced by a private contractor. The waste is to be sorted and cleared daily after service to be temporarily stored in the designated complex bin area then removed by an external waste collection contractor service, which is deemed satisfactory.

C10 Transport, Access and Parking

C10.5 Parking, Access and Driveways

The most recent modification application (DA15/0335.03) imposed an amended consent condition for the requirement to formalise the overflow parking spaces at the rear of the car parking area to ensure that there will be sufficient parking spaces for future tenancies on the site and as such, the proposal is not considered to result in any parking and traffic impacts.

C12 Noise and Vibration

C12.4 Industrial and Commercial Development

It is noted that the tenancies on the site have approved hours of operations between 7am to 1am, Monday to Sunday under (DA15/0335.03). Therefore, the proposed hours of operation between 7am to 1am, daily, raises no concerns in this regard.

C13 Infrastructure and Services

C13.2 Utilities and Service Provision

While so, the premises does not make provision for any toilets, the restaurant and cafe complex includes purpose built communal toilets on the ground floor that were considered as part of the building design, which is considered satisfactory to service the proposal. In addition, adequate loading/unloading bays are located on the ground floor.