

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA15/1449.02
Proposed development:	Modification of Condition 12 - Cafe Kitchen
Property address:	84 - 88 River Road, EMU PLAINS NSW 2750
Property description:	Lot 34 DP 1114973
Date received:	13 July 2018
Assessing officer	Sandra Fagan
Zoning:	Zone R2 Low Density Residential - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

This modification application seeks to amend condition 12 of development consent DA15/1449, so as to allow the required restoration works to the Ancher House Kitchen to be completed within a specified 12 month period, rather than prior to the issue of an Occupation Certificate. The applicant's reason for this request is to allow the existing café to continue to operate after the new kitchen is built, rather than having to cease operations for the time period that the former kitchen is restored. The 12 month period will start when the new kitchen is due to be completed at the end of January 2019. Therefore, the real time period sought is until 1 February 2020.

Development consent was issued on 25 February 2016, to construct a new commercial kitchen for the existing gallery/café use. This consent will lapse in February 2019, as a one year extension was granted before the expiration date. The consent includes condition 12, which requires the recommendations in the heritage impact report to be carried out prior to the issue of an Occupation Certificate. The relevant heritage impact report contained six recommendations, with one being the restoration of the Ancher House Kitchen.

It is considered that the applicant's reasoning for the proposal is acceptable, given that the café is currently operating and will transition from the existing kitchen to the new kitchen at the appropriate time. It is also considered unreasonable to require the café use to cease operation while the restoration works are being carried out. The risk that the works will not be completed are low, given that Penrith City Council is both the landowner and the applicant and has made progress in tendering for and detailing the restoration works.

Therefore, it is considered reasonable in the circumstances of this proposal, to allow a 12 month period, in which to complete the restoration works to the Ancher House Kitchen. Because of changes occurring in September 2018, in particular, the removal of the ability to issue Interim Occupation Certificate's, it is recommended to change the wording of condition 12 of the consent so as to allow an alternate 12 month time period, rather than rely on Interim Occupation Certificates.

The main planning assessment for this application is contained under the heading Clause 5.10 Heritage Conservation.

The applicant and landowner is Penrith City Council. Normally, applications lodged by Council would have to be determined by the Local Planning Panel, in accordance with the Minister's direction. This is to ensure there is no perceived or real conflict of interest. However, the Minister's direction excludes "*maintenance and restoration of a heritage item*". The existing consent is for the maintenance and restoration of a heritage item and the proposal relates to the timing of the restoration works. Therefore, it is considered that the application meets the requirements of the Minister's direction and the application can be determined under delegated authority of staff.

In addition, this assessment report has been peer reviewed by an independent, external planning consultant. The planning consultant has concluded that "*The recommendation and proposed modified condition is considered to be appropriate*".

Site & Surrounds

The property is a group of former residential buildings, listed as a Heritage Item under the Penrith LEP 2010 (Item number 69). The item name is Lewers Bequest and Regional Art Gallery, Houses and Gardens. The original house is an early Federation style brick cottage with verandahs on all sides, and a separate kitchen and bath house. The grounds now include a gallery and associated café, with the heritage item including the Lewers House, Ancher House and the Gardens. The house was renovated with the help of architect, Sydney Ancher, and that part now known as Ancher House, was built in 1967 on the northern part of the original house.

The property is currently operated as a regional art gallery, which is an appropriate and relevant use, given that the original house has historic significance as the former home and workshop of Gerald and Margot Lewers, artist's of the mid twentieth century period in Australia. The Penrith Heritage Inventory also states that the property has social significance at a regional level because its function as an art gallery provides an important and valued resource for the community.

The property was given to Penrith City Council following the death of Margot Lewers in 1978. The art gallery buildings were then constructed to link the original, historic buildings in 1981.

The surrounding area is generally low density residential dwellings, with the Nepean River opposite and to the east of the property.

Proposal

Consent is sought to amend condition 12 of the approval so as to permit the occupation of the new kitchen for at least 12 months whilst the restoration of the existing Ancher House Kitchen is carried out. The applicant has made the following statements in support of their proposal:-

- The café is currently operating from the existing Ancher House Kitchen and the operator will relocate into the new kitchen once it is completed;
- Once the operator has moved into the new kitchen, the Ancher House Kitchen will be vacated and then the restoration works can commence;
- If the Occupation Certificate cannot be issued once the new kitchen is complete, the café will need to close its operations while the restoration works are undertaken;
- A close of the business will lead to a financial loss to the café operator and potential loss of customers;
- Council is the applicant undertaking the construction works;
- While the new kitchen will be constructed by a nominated builder, and is scheduled to start in August 2018, those works will not be completed until around December/January;
- The restoration works will then follow the completion of the new kitchen and will start after the café operator has moved into the new kitchen. The restoration works will be carried out by a specialist heritage builder; and
- The works program for the restoration works has an anticipated 12 month program due to bespoke equipment, including 1950's kitchen equipment, being manufactured by artists.

The proposed modification of condition 12 will in effect, give a 12 month period from 1 February 2019 in which to complete the restoration works to Ancher House Kitchen. This would allow the café to occupy the new kitchen for that same 12 month period while the restoration works to the original kitchen are carried out. The restoration works would need to be completed by 1 February 2020.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 79C - Evaluation**

The modification application has been assessed in accordance with the matters for consideration under Section 4.15 (formerly Section 79C) and Section 4.55 (formerly Section 96) of the EP&A Act, including the relevant state and regional planning policies. Those issues requiring further discussion are identified and considered below.

- **Section 96(1A) - Modifications involving minimal environmental impact**

This modification application has been lodged pursuant to Section 4.55 (1A), (formerly Section 96(1A)) of the Environmental Planning and Assessment Act. To be considered under this section the consent authority must be satisfied that the proposed modification:

- (a) is of minimal environmental impact;
- (b) results in the modified consent being substantially the same development as the originally granted development (before any other modifications were granted, if any); and
- (c) has been notified in accordance with the Penrith DCP and any submission taken into account.

In this regard, it is considered that the proposed modification to change the timing of the restoration works to the kitchen will be of minimal environmental impact, provided those works are fully carried out and completed in the nominated time frame. Further, the proposed change to the timing of the works will not alter the fundamental outcomes and attributes of the originally approved consent, and will in fact, result in exactly the same consent, once the works are completed.

The Penrith DCP did not require notification of the original development application and no submissions were received. This modification application does not require notification.

Therefore, the modification application meets the prerequisite requirements of Section 4.55(1A).

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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The site is located opposite the west bank of the Nepean River. The aim of the planning policy is to protect the environment of the river system. The proposed modification will have no impact to the river system.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 5.10 Heritage conservation	Complies - See discussion
Schedule 5 Environmental Heritage	Complies

Clause 2.3 Permissibility

The original development application assessment concluded that the café use was ancillary to the existing art gallery use, with the art gallery use being deemed to be a 'community facility'. Community facilities are permissible with consent in the zone. Under this ancillary consideration, the proposed café was deemed to be permissible with consent.

In addition to the conclusion reached above, Clause 5.10 (10) of the Penrith LEP 2010 permits a consent authority to grant consent to development for any purpose of a building that is a heritage item, even though development for that purpose would otherwise not be allowed by the LEP, if the consent authority is satisfied that:

- (a) the conservation of the item is facilitated by the granting of consent;
- (b) the development is in accordance with a heritage management document;
- (c) the development would require that all the necessary conservation work identified in the management document is carried out;
- (d) the development would not adversely affect the heritage significance of the item; and
- (e) the development would not have any significant adverse effect on the amenity of the surrounding area.

Having regard to the above prerequisites, it is considered that the café use helps support the function, public offerings, viability and use of the heritage item as a whole. The approved development will also ensure that the Ancher House Kitchen is restored, which is in accordance with the approved Heritage Statement submitted with the original development application. The issue of the timing of the works is discussed elsewhere in this report.

Clause 5.10 Heritage conservation

The relevant objectives of Clause 5.10 - Heritage Conservation for this subject application are; to conserve the environmental heritage of Penrith; and to conserve the heritage significance of items, including associated fabric, settings and views. The original development consent, requiring the restoration of the Ancher House Kitchen, will meet and fulfil the LEP heritage objectives, and these aspects of the approval are therefore an important and integral feature of the consent.

The positive outcomes of the restoration works are not questioned and the applicant is not seeking to 'water down' the extent of the required works. What this modification application seeks to change is the timing of the works. With a proposed change to the timing of the works, comes a question of possible associated risks that the works are not completed.

In normal circumstances, and as Condition 12 currently requires, all works relating to the development consent would have to be completed prior to the issue of an Occupation Certificate. The Environmental Planning and Assessment Act, 1979 (EP&A Act) states that "*an occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent have been complied with*". The withholding of an Occupation Certificate is the usual mechanism used to ensure planning outcomes are achieved. It is an important incentive to complete the works, as the landowner/developer cannot lawfully use the finished building until all the works are completed (to BCA compliance) and the Occupation Certificate is issued.

In addition, changes that occurred to the EP&A Act on 1 March 2018 (with this specific change due to operate from 1 September), will remove the ability to issue Interim Occupation Certificates. In this case, while the option of not allowing a Final Occupation Certificate until the restoration works were completed, would have been a viable and good alternative, it cannot now be used because of the upcoming operational changes to the Act.

Therefore, in the absence of this mechanism to ensure the completion of works, another alternative is to require the completion of works within a set time frame (as is proposed in this modification application). Although this option weakens the incentive to complete the works, it still provides a level of repercussion of compliance action if the works are not completed. Further, for the purpose of this assessment it is also relevant and necessary to **assess the possible risks** associated with allowing a time period rather than an occupation certificate, as well as assessing **the particular circumstances of this case**.

With regard to the two heads of consideration in bold above, the following points are relevant and form part of my assessment of the modification application:

- Council is both the landowner and applicant for this development and specific Council staff members are tasked with project managing the approved works (both for the construction of the new kitchen and the restoration works);
- Council has approved and allocated budget for the works (with a separate budget for the new kitchen and the restoration works);
- The site is currently used as a regional art gallery and associated café and these uses will continue to operate during the construction works;
- The current wording of condition 12 would require the café use to cease while the restoration works were being carried out, regardless of the fact that the new kitchen would likely be completed first and would be functional;
- The cessation of the café use could have a negative impact on the viability and function of the property, and this in turn could have a negative heritage impact if the site was not used to its best ability and in a manner which provides attraction to members of the public;
- In terms of heritage conservation, it is better to work around the existing use rather than require that a use cease while heritage works were carried out. This is not an uncommon practice when a heritage item is currently occupied, and supports ongoing maintenance of an item;
- The existing Ancher House Kitchen, which the café currently uses, is dated and requires upgrading if it was to continue to be used as a commercial kitchen. The proposal to construct a new modern kitchen rather than upgrade the Ancher House Kitchen is positive, both in terms of heritage fabric and public interest;
- The proposed staging of the works has taken into account the need for the café business to continue its operations with limited disruption. Therefore, it is proposed to construct and complete the new kitchen first, and then to move the café operator into the new kitchen when it is completed. Once this occurs, the Ancher House Kitchen will be vacated entirely and this will allow the restoration works to commence;
- Detailed drawings of the restoration works to the Ancher House Kitchen have been commissioned and completed by heritage consultants, Lucas Stapleton Johnson, who are experienced and reputable heritage specialists. The detailed drawings include sections and elevations of specific features of the kitchen, including the built-in spice drawer, the oven panel, the stovetop, and the fridge panel;
- The same heritage consultants have been commissioned, and have now submitted, a full Specification and Schedule of Works for the restoration;
- While some existing fabric, such as the original cupboard doors and stainless steel sink will be salvaged and repaired, other features and equipment will need to be bespoke, and created from scratch by artisans, including possibly tiles and carpentry. Other equipment, such as 1950's kitchen equipment will need to be sourced or made. This makes the construction program a little longer than usual;
- Council staff have already tendered for the new kitchen works and have decided on a builder. The new kitchen is due to commence in August/September 2018, and is likely to be completed by the end of January 2019, at which time the café operator will move to the new kitchen and vacate the Ancher House Kitchen;
- The tender for the restoration works is due to go out in August to heritage specialist builders;
- The archival recording of the kitchen has been completed by the heritage consultants and has been submitted to Council; and
- Once the restoration works are complete, the Ancher House Kitchen will no longer function as a commercial kitchen and will be open on public display as part of the 1960's house designed by Sydney Ancher. This is a positive heritage outcome.

Conclusion:

In conclusion, it is considered that the risks associated with the proposed modification, relating to the timing of the restoration works, is **low**. This is having regard to the facts of this project as stated above, including that Council is both the landowner and applicant, Council staff are project managing the development, Council has already approved and allocated budget for the specific restoration works, Council staff have engaged heritage consultants who have prepared detailed drawings and specifications for the works, and the timing and staging plan for the works is reasonable and appropriate.

It is also considered that the particular circumstances of this case are relevant and reasonable. It would be onerous to expect a small business to cease operations while heritage restoration works were completed in another (unrelated) part of the site.

In addition, if the scenario occurs that the restoration works are not completed, Council has the option to investigate and initiate compliance action for breach of a condition of consent. This scenario is likely to act as an additional incentive to complete the works as it may affect the reputation of Penrith City Council.

Having regard to Clause 5.10(4) of the Penrith LEP, it is considered that the effect of the proposed modification on the heritage item would not be significantly adverse, and will allow maintenance and upkeep of a heritage item in a reasonable manner, taking into account that the site is currently, and will continue to be, occupied for an important community and regional use.

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

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	N/A
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	Complies
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	N/A

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

The requirements of the Regulations, particularly Division 12 relating to modification applications, has been taken into account during the assessment of this application.

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

Section 4.15 (formerly Section 79C) of the Act requires consideration of the likely impacts of the development, including consideration of any environmental impacts on both the natural and built environments, and the social and economic impacts in the locality. In this regard, the proposed modification will not have an adverse impact on the built or social environment, provided the restoration works are completed in the specified time frame.

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

Site suitability was considered under the original development application, and the site was deemed suitable for the proposed works. The proposed modification in this application does not alter or affect site suitability.

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

Building Surveyor

While the proposal has not been formally referred to the Building Surveyor, their previous comments and conditions have been taken into account.

Environmental - Public Health

As above.

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

The proposed modification will be in the public interest, as it allows the restoration of a heritage item in a reasonable manner, having regard to the points raised in this report above. With regard to either real or perceived conflict of interest, I can confirm that I have not met the applicant (being the specific staff member project managing the development), and I am detached from the staff members involved in the works, the previous consents, and the site. I therefore confirm that I believe I have no perceived or real conflict of interest in assessing this application.

Conclusion

The modification application seeks to amend condition 12 of the consent, so as to allow the restoration works to the Ancher House Kitchen to be completed after an Occupation Certificate is issued, and within a 12 month time period, following the completion of the new kitchen. This will allow the café operator to vacate the heritage kitchen and move into the new kitchen without a break in operations. It then allows the applicant to complete the restoration works in the heritage kitchen when it is wholly vacated. The risks associated with this are considered to be relatively low for the detailed reasons given in this assessment. This includes the fact that Council are project managing the restoration works, have an approved budget to complete the works and have progressed to the detailed plan and tender stage for the restoration works. Overall, this is a suitable compromise given that the heritage property is currently occupied and can continue to operate in its full capacity if staging of the works is permitted in the manner sought.

Recommendation

The modification application is recommended for approval and amended wording to condition 12 is recommended to allow the restoration works to the Ancher House Kitchen to be completed within 12 months of the new kitchen being built.

CONDITIONS

General

1 [A001](#)

The development must be implemented substantially in accordance with the plans tabled below 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.

Plan	Numbered	Drawn By
Site Plan	DA01 Issue P1	CPL Architecture
Demolition Plan	DA02 Issue P1	CPL Architecture
Floor Plan	DA03 Issue P1	CPL Architecture
Sections Plan	DA04 Issue P1	CPL Architecture
Elevations Plan	DA05 Issue P1	CPL Architecture

2 [A008 - Works to BCA requirements \(Always apply to building works\)](#)

The work must be carried out in accordance with the requirements of the Building Code of Australia. If the work relates to a residential building and is valued in excess of \$20,000, then a contract of insurance for the residential development shall be in force in accordance with Part 6 of the Home Building Act 1989.

{Note: Residential building includes alterations and additions to a dwelling, and structures associated with a dwelling house/dwelling such as a carport, garage, shed, rural shed, swimming pool and the like}.

3 [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.

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

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

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

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

6 [A special BLANK](#)

Plant and equipment noise is to be controlled so it does not exceed the intrusive, amenity or sleep disturbance noise criteria detailed in the NSW Environment Protection Authority's Industrial Noise Policy.

Demolition

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

All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition**.

8 B003 - ASBESTOS

You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" **before any demolition works commence on the site.**

Prior to commencement of demolition works on site, a portaloos with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environmental Protection Authority to receive asbestos wastes.

9 B004 - Dust

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

10 B005 - Mud/Soil

Mud and soil from vehicular movements to and from the site must not be deposited on the road.

11 B006 - Hours of work

Demolition works will 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 demolition work is permitted on Sundays and Public Holidays.

In the event that the demolition relates to works inside the building and do not involve external walls or the roof, and do not involve the use of equipment that emits noise then the demolition works are not restricted to the hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Heritage/Archaeological relics

12 C Special (BLANK)

The recommendations listed in the statement of heritage significance submitted with the application, written by Rosemarie Canales and dated 2 December 2015 are required to be implemented in the development with compliance demonstrated **prior to the issue of an Occupation Certificate, with the exception of the restoration works to the Ancher House Kitchen. These restoration works are permitted to occur within a specified time frame and are to be wholly completed by 1 February 2020. Documentary evidence that the works have been completed is to be submitted to Penrith Council's Principal Planner, Development Services by 30 March 2020. Documentary evidence is to include a statement from a suitably qualified heritage consultant confirming that the scope of restoration works has been completed.**

As amended on 13 August 2018 via modification application DA15/1449.02 under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979.

Environmental Matters

13 D001 - Implement approved sediment& erosion control measures

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

14 **D005 – No filling without prior approval (may need to add D006)**

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

15 **D007 - Cut and fill of land requiring Validation Certificate –limited to footprint**

Cut and fill operations on the property are only permitted in conjunction with the building works as detailed on the approved plans and specifications, and shall not extend more than 2 metres past the defined building footprint.

Before any fill material is imported to site, a validation certificate issued by an appropriately qualified person is to be provided to the Principal Certifying Authority. The validation certificate must demonstrate that the fill material is free from contaminants and weeds, that it is suitable for its intended purpose and land use, and that it will not pose an unacceptable risk to human health or the environment.

If Penrith City Council is not the Principal Certifying Authority, a copy of the validation certificate is to be submitted to Council for their reference.

{Note: Penrith Contaminated Land Development Control Plan defines an appropriately qualified person as “a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.”}

16 **D009 - Covering of waste storage area**

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

17 **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.

BCA Issues

18 **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.
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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.

19 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

20 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*.

21 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.

22 F030 - Hot water service

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.

23 F046 - Cleaners 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.

24 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:

- a. Plinths – plinths must be an integral part of the floor, constructed of solid materials similar to the floor at least 75mm in height and 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.
- b. Wheels or castors – fittings and fixtures can be supported on wheels or castors. The wheels and castors must be capable of supporting and easily moving a full loaded fitting. All wheels and castors must be provided with a restraining device.
- c. Legs – fittings and fixtures can be supported on legs but must be constructed of a non-corrosive, smooth metal or moulded plastic. All legs must be free from cracks and crevices. All legs must have a clearance space between the floor and the underside of the fitting of at least 200 mm.

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

25 F048 - Food prep benches

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.

26 **F050 - Light bulbs & tubes**

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.

27 **F051 - Shelving**

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).

28 **F067 - Staff Belongings**

Staff belongings and other items not associated with the business shall be kept completely separate to food contact surfaces. A designated space shall be provided for the storage of staff belongings.

Construction

29 **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.

30 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 backfilling 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.

31 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.

32 [H041 - Hours of work \(other devt\)](#)

Construction works or subdivision works that are carried out in accordance with 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

33 [L002 - Landscape construction](#)

The required landscaping for the site must be constructed by a suitably qualified landscape professional.

34 [L006 - Aust Standard](#)

All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

35 [L009 - Tree Preservation Order \(subdivision\)](#)

No trees are to be removed from within the subdivision without the prior consent of Penrith City Council. Any trees to be removed as part of the engineering work are to be shown on engineering plans submitted for Council's consideration and subsequent approval.

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

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

Certification

37 [Q01F - Notice of Commencement & Appointment of PCA2 \(use for Fast Light only\)](#)

Prior to the commencement of any earthworks or construction works on site, the proponent is to:

- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

38 [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 new kitchen.

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.