

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA14/1377.01
<b>Proposed development:</b>	Modification to Outdoor Dining Area
<b>Property address:</b>	569 - 595 High Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 1 DP 1137699
<b>Date received:</b>	28 June 2016
<b>Assessing officer</b>	Sufyan Nguyen
<b>Zoning:</b>	Zone B3 Commercial Core - LEP 2010
<b>Class of building:</b>	N/A
<b>Recommendations:</b>	Approve

### Executive Summary

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Council is in receipt of a Section 96(1A) application for a modification of the approved outdoor dining area barriers for Chilli Jam Thai restaurant at 569 - 595 High Street, Penrith. The modified proposal involves the replacement of ten (10) barriers by ten (10) planter boxes.

An outdoor dining area must provide a minimum 2m clear distance under Section 8.4 Outdoor Dining and Trading Areas of the *Penrith Development Control Plan 2014*. However, a 1.5m clear distance shall be maintained at all times which is aligned with the original approval and the approved adjoining Nando's outdoor dining area (DA16/0950). This will create a consistent shoreline along this pedestrian walkway for persons with a disability.

Given that this 1.5m clear distance permits safe access for users of this space and there is additional pedestrian walkways space located within the road reserve beyond the colonnade, a variation to this provision is acceptable. In addition, the proposal remains substantially the same, therefore there will be no adverse impacts as a result of the modified proposal.

An assessment of the proposal 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 subject site is situated on the western side of Riley Street in Penrith and is between Henry Street to the south and the Great Western Highway to the north. The ground floor shop occupies Penrith Westfield shopping centre which accommodates a range of retail and commercial land uses. Riley Street accommodates a number of restaurants with associated outdoor dining areas. Bus services are available directly outside the site and Penrith train station is approximately 320m to the north-east.

### Proposal

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The applicant seeks amendments to an approved outdoor dining area for Chilli Jam Thai in Penrith. The proposal involves the replacement of four (4) barriers by eight (10) planter boxes.

## Plans that apply

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

## Planning Assessment

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

The proposed modifications have been assessed in accordance with the matters for consideration under Section 96(1A) and Section 79C of the *Environmental Planning and Assessment Act* 1979. The proposed modifications will have no adverse impacts on the surrounding area and represent substantially the same development as that originally granted development consent.

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

#### **State Environmental Planning Policy No 64—Advertising and Signage**

An assessment has been undertaken of the modified proposal against relevant criteria within *State Environmental Planning Policy No 64—Advertising and Signage* and the proposal is satisfactory.

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

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

#### **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 5.9 Preservation of trees or vegetation	Complies
Clause 5.10 Heritage conservation	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.8 Active street frontages	Complies
Clause 8.1 Application of Part	Complies
Clause 8.4 Design excellence	Complies

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

### Development Control Plan 2014

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

## Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this proposal.

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

Subject to the recommended conditions of consent, the modified development will comply with the relevant requirements of the Regulations.

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

The modified proposal does not appreciably alter the likely impacts of the development as identified during the assessment of the original proposal.

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

The site remains suitable for the proposed development in consideration of the proposed modifications.

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

### Community Consultation

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, notification of the proposed development was not required.

### 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 modified development will not generate any significant issues of public interest.

### **Conclusion**

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Council is able to modify a previously issued development consent that will result in minimal environmental impact and where the development remains substantially the same. Given that there are no outstanding planning considerations, the Section 96(1A) application is in accordance with these provisions and therefore the modified proposal is worthy of support and is recommended for approval subject to the recommended condition amendments.

### **Recommendation**

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That DA14/1377.01 for modifications to the approved external alterations at 569 - 595 High Street, Penrith, be approved subject to an amendment to the approved plans referenced in Condition 8 of the consent for DA14/1377.

## General

### 1 A001

The development must be implemented substantially in accordance with the plans numbered 02 (Revision B), 01, 03, 04 05 (Revision C), drawn by Horizon Design Studio, dated 27/10/14, and stamped approved by Council, except as amended by the plans stamp approved by Council (reference DA14/1377.01), 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.

Drawing Title	Plan No.	Prepared By	Dated	Revision
Site Plan	-	-	-	-
Proposed Floor Plan	-	-	-	-
Out Door Furniture	-	-	-	-

***As amended on 4 July 2016 under Section 96(1A) of the Environmental Planning and Assessment Act 1979.***

### 2 A019 (amended) - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

### 3 A021 - Business registration, notification and food safety supervisor

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

### 4 A026 - Advertising sign (not for residential)

A separate development application for the erection of any additional sign or advertising structure, other than that shown on the approved plans or 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 A039 - Graffiti

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

### 6 A046 - Obtain Construction Certificate before commencement of works

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

### 7 A Special (BLANK)

The approved signage must comply with the following:

- The signage must not be externally illuminated.
- All aspects of the signage illumination and fixture to the building should be incorporated into the body of the sign and hidden from view.
- Lighting from signage must not cause glare for pedestrians, motorists or cyclists and must be compliant with the Australian Standard 4282-1997 - Control of the Obtrusive Effects of Outdoor Lighting.
- Signage must not be moving, flashing or animated in any way.

### 8 A Special (BLANK)

The approved outdoor eating area shall comply with the following:

- The furniture shall be high quality in design and construction, and complement the existing streetscape. Lightweight plastic furniture, which may become airborne on windy days if not adequately weighted, is not permitted.
- The furniture is to be maintained in a clean and hygienic state at all times.
- The eating area is not to cause inconvenience or to disrupt pedestrian traffic along the footpath or thoroughfare. A clear distance of at least 1.5m is to be made available at all times between the outdoor dining seating and the columns.
- The outdoor dining area must be defined by a planter box barrier, with no sharp edges or protruding feet that may cause a trip hazard to pedestrians or patrons. This planter box barrier must be of sturdy construction, a minimum of 60 cm high and complementary in colour to the seating.
- The planter box barrier shall be positioned a maximum of 2.4m from the front facade of the tenancy.
- No food is to be prepared or stored outside. No hot food counters, boilers or urns shall be placed on public areas or areas external to the premises.
- All furniture must be put away inside the premises when it is closed. No furniture is to be left on the street at any time when the eating area is not operating.

***As amended on 4 July 2016 under Section 96(1A) of the Environmental Planning and Assessment Act 1979.***

## Environmental Matters

### 9 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.

### 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. 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

### 11 E008 - FIRE SAFETY LIST WITH CONSTRUCTION CERTIFICATE

A fire safety list of essential fire or other safety measures shall be submitted to Penrith City Council prior to the issue of the Construction Certificate. The fire safety list shall specify all measures (both current and proposed) that are required for the building so as to ensure the safety of persons in the building in the event of fire. The fire safety list must distinguish between:

- the measures that are currently implemented in the building premises,
- and the measures that are to be proposed to be implemented in the building premises, and must specify the minimum standard of performance for each measure.

### 12 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.

### 13 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

#### 14 F022 – Commercial kitchens (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.

Details of the installation of the kitchen exhaust system shall be submitted with the Construction Certificate application.

The kitchen exhaust system must be 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*.

Prior to the issue of an Occupation Certificate, the installer of the kitchen exhaust system (either the individual person or the Company who installed the exhaust system) shall certify or submit appropriate documentation (as instructed by the Principal Certifying Authority) that all practical pollution control measures have been installed to achieve the requirements of the *Protection of the Environment Operations Act 1997*.

## Construction

#### 15 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.

#### 16 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) 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.

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

Construction works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm if inaudible on neighbouring residential premises, otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

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

## Certification

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

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

- employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and accompanying Regulation, and
- 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 construction 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*.

#### 19 [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 restaurant.

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 B - DCP Principles

The proposed modification will enhance the visual amenity for the surrounding area. This will attract pedestrian traffic and assist in strengthening the local region through stimulating socio-economic activity. The proposal is therefore aligned with the principles of sustainability and satisfies the DCP principles.

### Part C - City-wide Controls

#### C8 Public Domain

The proposed modification remains largely the same given that the only change is that the barriers will be replaced by planter boxes. The outdoor dining area layout shall provide a clear distance of 1.5m which does not satisfy the 2m minimum requirement. However, given that the alignment will be consistent with the original approval and approved Nando's outdoor dining area (DA16/0590), the 1.5m clear distance does not pose any hazard to pedestrians or patrons or users of this space.