

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA21/0016
<b>Proposed development:</b>	Artisan Food and Drink Industry - Fit-out and Use of Tenancy as a Microbrewery, Distillery and Smoke House with Amendments to Parking Layout
<b>Property address:</b>	137 Coreen Avenue, PENRITH NSW 2750
<b>Property description:</b>	Lot 301 DP 860777
<b>Date received:</b>	17 January 2021
<b>Assessing officer</b>	Jake Bentley
<b>Zoning:</b>	IN1 General Industrial - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Approve

### Executive Summary

---

Council is in receipt of a development application for the fit-out and use of an artisan food and drink industry (microbrewery) at 137 Coreen Avenue, Penrith. The proposal is a permissible with consent land use in the sites IN1 General Industrial zoning under the provisions of Penrith Local Environmental Plan 2010 (PLEP).

During the assessment of the proposal it was investigated whether the application triggered designated development provisions for breweries and distilleries and a Local Planning Panel determination relating to liquor license type. The applicant has confirmed that the pursued liquor license type does not trigger the Local Planning Panel and the application has demonstrated that a significant amenity impact on the neighbourhood by way of odour or traffic will not occur noting the proximity of residential zoned land. In this regard, the proposal is not identified as Designated Development.

The following issues were raised and addressed during the assessment of the proposal:

- permissibly,
- noise impacts,
- amenities, and
- floor space allocation.

In accordance with Council's Community Engagement Strategy 2019 the application was notified to surrounding property owners between 1 February and 15 February, 2021. No submission were received in response.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval subject to the attached recommended conditions of consent.

## Site & Surrounds

---

The site is a rectangular allotment with a 1.06 hectare lot size and is on the corner of Coreen Avenue and Coombes Drive. The site is occupied by multiple attached warehouse structures split into 5 working areas (tenancies). Vehicular access is available via one driveway on Coreen Avenue and two driveways via Coombes Drive. Car parking areas are located within the Coombes Drive setback and loading areas are available within the car parking areas as well as the western driveway. The eastern and southern street frontages are occupied by landscaping with mature trees and a small car yard occupies the southern street frontage including a small office structure.

The site is burdened by a right of carriageway within the north-eastern corner, easement for electricity purposes within the southern street frontage and is benefitted by an easement to drain water. The site is identified as having scenic and landscape values and is impacted by flood related development controls.

The subject area of works is the middle tenancy within the northern most structure. The area has southern and eastern roller door access with an approximate area of 1421m<sup>2</sup>. The neighbouring tenancy to the west (area 3) is occupied by a waste transfer facility and the neighbouring tenancy area 5 to the east is occupied by a tyre and auto service centre.

The neighbouring properties to the north and west are also zoned IN1 and are occupied by industrial land uses. The neighbouring properties to the east are zoned IN2 Light Industrial whereas neighbouring southern properties are zoned IN2 and E3 Environmental Management. It is noted that local heritage item 'Combewood' is located to the south of the subject site.

### History

The proposal currently runs out of a nearby premises at 4 Dean Place, Penrith via the approval DA16/0956.

## Proposal

---

The proposal seeks to use and fit-out the existing tenancy for the purposes of an artisan food and drink industry (microbrewery) with the following features:

- production of craft beverages (beer and spirits) for wholesale, takeaway and consumption on-site,
- microbrewery/distillery operations,
- installation of two smokers used to reheat cooked food for distribution on-site, BBQ kitchen and cool rooms,
- facilities for tours, tastings and workshops,
- construction of brewery area, back of house storage area, retail takeaway area and bar, staff room, storage room and food serving areas,
- 120 person capacity (however, 80 person capacity approved),
- yearly beer and spirit production 115,000L and 2,600L,
- 24/7 manufacturing operation and retail sales and consumption on premises hours Mon - Sat 6 am till 10 pm and Sunday 10 am till 10 pm (however, reduced hours of operation have been approved as per the conditions of consent),
- storage of raw materials (grain, yeast and hops), and
- amended parking layout to provide additional parking spaces and one way movement in southern parking area.

## Plans that apply

---

- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

### • Section 4.15 - Evaluation

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

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

##### State Environmental Planning Policy No 55—Remediation of Land

In accordance with Clause 7 Contamination and remediation to be considered in determining development application 'a consent authority must not consent to the carrying out of any development on land unless:

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.'

A review of aerial photographs of the site and Council's records does not indicate any potential land contaminating land uses occurring with the subject area of works. In addition, the proposal has been referred to Council's Environmental Management Team which have raised no issues with the proposal in regard to land contamination.

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

An assessment has been undertaken of the 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 conditions of consent.

##### Local Environmental Plan 2010

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies
Clause 5.4 Controls relating to miscellaneous permissible uses	Complies - See discussion
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

##### Clause 2.3 Permissibility

The application has been lodged seeking consent for an '*artisan food and drink industry*' which is defined in the PLEP as follows:

*'artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following:*

- (a) a retail area for the sale of the products,*
- (b) a restaurant or cafe,*
- (c) facilities for holding tastings, tours or workshops.*

*Artisan food and drink industries are a type of light industry—see the definition of that term in this Dictionary.'*

The proposal is described as a microbrewery in which craft beverages are produced for wholesale, retail and takeaway consumption. The proposal includes a retail sales point for the beverage product, a cafe component and facilities for tastings, tours and workshops.

There were major concerns that the proposal did not meet the definition requirement of being primarily for the production of the craft product noting the capacity pursued and floor space allocation being a large seating/serving area in comparison to the brewery area. The applicant has responded to these concerns stating that the current operation at a nearby site only roughly 10% of the product produced goes through the tap room with the remainder used for takeaway and wholesale distribution. This is evident on the provided floor plan which shows a tiny bar and cool room area in comparison to the back of house storage area used for deliveries.

The applicant has noted that a large seating area has been provided in comparison to the brewery area to allow for natural business growth which would see additional brewing equipment brought on-site. In addition, the seating areas on the floor plan are separated into different use areas such as workshop and tasting areas. In this regard, it is has been demonstrated that the large seating area will be utilised for different components of the proposal.

In light of the above, the application has demonstrated that the primary use is for the industrial activity involving the manufacture of the craft product considering the size of the brewery area and back of house storage area used for distribution of the product as well as the split in floor area uses for different components of the business. It is noted that the Planning Circular PS 18-008 - Amendments to Retail Land Use Definitions suggests the one of the reasons for the artisan food and drink industry definition was to create an experience while testing or tasting the product which in this case has been achieved whilst adhering to the definition requirements.

The proposal includes the smoking of meats cooked of site for consumption on-site. This aspect is considered ancillary to the main operation as the food sale will assist with responsible service of alcohol requirements and is a permissible use (restaurant or cafe) via the artisan food and drink industry definition.

**Clause 5.4 Controls relating to miscellaneous permissible uses**

Sub-clause (10) states **artisan food and drink industry exclusion** *If development for the purposes of an artisan food and drink industry is permitted under this Plan in an industrial or rural zone, the floor area used for retail sales (not including any café or restaurant area) must not exceed:*

(a) 25% of the gross floor area of the industry, or

(b) 400 square meters,

*whichever is the lesser.*

The submitted Floor Plan shows that the floor area of the proposal is 1169m<sup>2</sup>. The area shown for retail takeaway consumption is 10.5m<sup>2</sup> which accounts for 0.9% significantly below the above thresholds.

It is noted that a large bar/food serving area, cafe/tasting area and training/event area has been shown on the floor plans but is excluded from the retail sales calculation noting that any cafe or restaurant area is excluded. As discussed within the permissibly section of this report, the application has been considered against all floor spaces proposed and is considered to be primarily for the purpose of product manufacturing given the applicants justification.

#### **Clause 5.10 Heritage conservation**

The proposal does not involve any works which would impact the heritage significance of the nearby heritage item to the south-west.

#### **Clause 5.20 Standards that cannot be used to refuse consent - playing and performing music**

The application is not being recommended for refusal.

#### **Clause 7.2 Flood planning**

The site is identified as being impacted by mainstream flooding at RL 25.3m AHD. The Survey Plan provided identifies the floor level as being RL 25.74m AHD. In this regard, and considering the tenancy is benefited by two roller doors to the east and south with no other openings, there are no adverse flooding impacts envisioned.

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

### **Draft Environmental SEPP**

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. Changes proposed include consolidating a total of seven existing SEPPs being:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

It is noted that the amendments to Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

### **Draft Remediation of Land SEPP**

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

The proposed new land remediation SEPP will:

- provide a state-wide planning framework for the remediation of land,
- maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- clearly list the remediation works that require development consent, and
- introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the Draft SEPP will not alter or affect the findings in respect to contamination of the site.

## 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 - see Appendix - Development Control Plan Compliance
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
C7 Culture and Heritage	Complies
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	Complies
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
D4.1. Key Precincts	Complies
D4.2. Building Height	N/A
D4.3. Building Setbacks and Landscape	Complies
D4.4. Building Design	Complies
D4.5. Storage of Materials and Chemicals	Complies
D4.6. Accessing and Servicing the Site	Complies
D4.7. Fencing	N/A
D4.8 Lighting	Complies
D5.1. Application of Certification System	N/A
D5.2. Child Care Centres	N/A
D5.3. Health Consulting Rooms	N/A
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	Complies
D5.6. Places of Public Worship	N/A
D5.7. Vehicle Repair Stations	N/A
D5.8. Cemeteries, Crematoria and Funeral Homes	N/A
D5.9. Extractive Industries	N/A
D5.10 Telecommunication Facilities	N/A
D5.11 Boarding Houses	N/A

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

The proposal has been referred to Council's Building Surveying Department which have raised no issues with the proposal subject to recommended conditions of consent. The recommended conditions of consent will ensure compliance with the relevant provisions of the Building Code of Australia and the regulations.

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

The application has demonstrated that suitable parking is provided given the nature of the operation during and outside of conflicting tenancy operations. The revised parking scheme will not impact the ability of vehicles to access tenancies and enter/leave the site in a forward direction. It is noted that the loading area at the rear of the proposal can be accessed within the site. The application has demonstrated that no adverse noise or odour impacts are evident considering all equipment is located inside, the industrial nature of surrounds and that a flue pipe will be used for the smokers which will not be smoking large quantities of meat products.

The toilet facilities can service the capacity pursued. The different components of the proposal (such as tastings, workshops, restaurant) are permissible via the artisan food and drink industry definition and the application has demonstrated that primary function will be product manufacturing as discussed earlier within this report. In light of the above and the findings of this report, there are no adverse likely impacts envisioned.

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

The site is located within an industrial complex suitably distanced from sensitive receivers, parking spaces are not allocated to land parcels as the site is not strata title, existing driveways will be maintained and the proposal does not involve any external works to the built form. In this regard, the site is suitable for the proposal.

### **Section 4.15(1)(d) Any Submissions**

#### **Community Consultation**

In accordance with Council's Community Engagement Strategy 2019 the application was notified to surrounding property owners between 1 February and 15 February, 2021. No submission were received in response.

#### **Referrals**

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

<b>Referral Body</b>	<b>Comments Received</b>
Building Surveyor	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	Awaiting additional information

### **Traffic Engineer**

Council's Traffic Engineering Department raised concerns with the amount of parking spaces noting existing operations on-site as well as maneuvering within the new parking layout and the loading area to the rear. In addition, issues were raised with the accessible parking space proposed in the south-eastern corner.

The applicant has since demonstrated that operation of the business will create a significantly reduced parking rate during conflicting operations by way of buses dropping off clients for tours and events/workshops. The swept paths provided show vehicles requiring to reverse into the site at the rear loading bay however, there is ample space for maneuvering to occur within the site. In addition, the parking dimensions and aisle widths show that suitable maneuvering can occur. In this regard, recommended conditions of consent will ensure internal maneuvering occurs.

A recommended condition of consent will ensure the accessible parking space in the south-east corner is provided as a normal space as no shared area is provided.

### **Section 4.15(1)(e)The public interest**

There are no significant issues relating to the public interest envisioned as a result of the proposal.

### **Conclusion**

---

In assessing the proposed development against relevant environmental planning instruments the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support and is recommended for approval, subject to recommended conditions.

### **Recommendation**

---

That DA21/0016 for the fit-out and use as an artisan food and drink industry with associated car park layout amendments at 137 Coreen Avenue, Penrith be approved subject to the attached recommended conditions of consent.

# CONDITIONS

## General

### 1 [A001 - Approved plans table](#)

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

Drawing Title	Sheet/Drawing No.	Job No.	Issue	Prepared By	Dated
Floor Plan	-	-	-	-	-
Swept Path Plan	-	-	-	Civil and Traffic Management (within Traffic Assessment)	-

- Waste Management Plan, undated.

The various components of the use are to be contained within the areas nominated on the approved floor plan.

### 2 [A001b - Capacity – Venues, Function Centres, Pubs, Clubs, Restaurants](#)

The maximum capacity of the premises is 80 persons. In accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000*, a sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted in the building (including staff and customers).

### 3 [A012 - Food Act](#)

The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2015 and the Australian and New Zealand Food Standards Code are met at all times.

### 4 [A019 - Occupation Certificate](#)

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

A satisfactory inspection from an authorised officer of Council's Environmental Health Department is required **prior to the issue of the Occupation Certificate**. The occupier is to contact the Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time.

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

A separate development application for the erection of signage, other than signage listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Chapter C9 Advertising and Signage of Penrith Development Control Plan 2014.

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

The approved operating hours are restricted as follows:

- Manufacturing of Beer and Spirits - 24 hours a day Monday to Sunday
- Takeaway Retail Sales - 9am to 10pm Monday to Saturday and 10am to 10pm Sunday
- Sale/Supply for On Premise Consumption - 9am to 10pm Monday to Saturday and 10am to 10pm Sunday
- Workshops/Events - 6am to 5pm Monday to Saturday

Delivery and service vehicles, including waste collection vehicles generated by the development are limited to between 7am and 6pm.

### 7 [A030 - No retail sales](#)

No retail sale of goods or products, other than those produced on the site shall be conducted from the subject premises.

### 8 [A032 - Goods in buildings](#)

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

### 9 [A038 - LIGHTING LOCATIONS](#)

Exterior lighting shall be provided to the car parking and common areas of the site and located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

### 10 [A039 - Graffiti](#)

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

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

**Prior to the issue of an Occupation Certificate**, a baby change table shall be installed within the toilet facilities.

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

The flue pipe associated with the smokers shall not provide for an unsightly projection above the roof.

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

The operator must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard, the operator/management team are responsible for noise management and minimisation as well as litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council and the Licensing Authority.

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

A Plan of Management is to be prepared addressing the operational procedures and requirements of the development as well as any additional matters outlined within this determination by way of conditions of consent, including but not limited to;

- Patron Capacity
- Traffic and Car Parking Arrangements
- Hours of Operation
- Licensing Requirements
- Security
- Noise and Amenity
- Complaints

The Plan of Management is to be periodically reviewed (at least annually) and revisions to the Plan are to be made to address and mitigate operational issues if they arise. A copy of the in force Plan of Management is to be provided to Council.

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

Tour groups and operators are to be arranged so that no more than one coach (at full capacity) is attending the premise at any one time.

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

At no times shall the car parking areas be used for any aspect of the development including the service or consumption of food and drink associated with the development.

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

The premise shall only offer for sale and tasting alcoholic beverages that have been produced on the site.

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

Food must be available to patrons, of a nature and quantity consistent with the responsible sale, at all times alcoholic beverages are available for consumption on the premises.

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

The activities are to operate so as to not interfere with the operation of other businesses in the complex

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

The approved use shall not commence until such time that the necessary liquor licence has been issued by Liquor & Gaming NSW.

## Environmental Matters

21 [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 the areas are to be fully enclosed when the site is unattended.

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

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.

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.

23 **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.

24 **D023 - Bunding**

All works and storage areas where spillages are likely to occur shall be bunded. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. All bunded areas shall be designed so as to facilitate emptying and cleaning.

25 **D024 - Pre-treatment**

**Prior to the issue of an Occupation Certificate**, details of any pre-treatment facilities as required by Sydney Water and, if required a Section 73 Certificate issued by Sydney Water for the said development, are to be submitted to the Certifying Authority.

26 **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.

27 **D029 - Manufacture use**

All manufacture associated with the use shall be conducted within the confines of the building at all times.

28 **D031 - Air discharges to the environment**

All air related discharges generated by the use of the premises including the BBQ smokers shall be collected into a flue-stack system with a suitable design and where required filter system for discharge to the atmosphere. The quality of the discharges from the stack system shall comply with the requirements of the *Protection of the Environment Operations Act, 1997*.

29 **D - Waste Management Plan**

The approved waste management plan and other waste associated information submitted by the applicant as part of the application must be implemented on-site and adhered to throughout all stages of the development including construction and operational phases of the development.

30 **D Intruder Alarm**

Where an intruder alarm is installed on the premises it shall be fitted with a timing device in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

31 **D Regulation of Air Quality Impacts**

In the event of Council receiving a complaint regarding odour and/or offensive air emissions, the person(s) in control of the premises from where the odour and/or offensive air emissions are emanating may be directed by Council to at their own cost arrange for an odour/air impact assessment and investigation to be carried out (by a suitably qualified person) and submit a report to Council specifying any need for proposed methods for the control of odour and/or offensive air emissions emanating from the premises. Any such report must be provided to Council within 30 days of being requested. The recommendations, if any, of the assessment report upon approval from Council are to be implemented within the timeframe specified by Council.

32 **D Regulation of Noise Impacts**

In the event of Council receiving a complaint regarding excessive noise, the person(s) in control of the premises from where the noise is emanating may be directed by Council to at their own cost arrange for an acoustic investigation to be carried out (by a suitably qualified person) and submit a report to Council specifying any need for proposed methods for the control of noise emanating from the premises. Any such report must be provided to Council within 30 days of being requested. The recommendations, if any, of the assessment report upon approval from Council are to be implemented within the timeframe specified by Council.

33 **D Special BLANK**

No amplified music is to be played on the premises.

34 **D Waste Storage**

All waste is to be stored in a manner that ensures compliance with the *Protection of the Environment Operations Act, 1997* that prevents odour, pollution and access by vermin. The waste storage area must be designed to facilitate easy cleaning with water and chemicals in a manner that does not allow polluted waste water to enter the stormwater system.

## BCA Issues

### 35 E004 - Floor wastes

In accordance with Clause 94 of the Environmental Planning and Assessment Regulation 2000, the following works are to be completed to ensure the safety of the occupants;

- Latching devices on the required exit doors are to comply with Clause D2.21 of the building Code of Australia (BCA).
- Exit travel distances are to comply with Clause D 1.4 (c) of the BCA. In this respect the travel distances from the amenities area will need to be checked for compliance.

### 36 E006 - Disabled access and facilities

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

### 37 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.

### 38 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

### 39 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*.

Your attention is drawn to the following requirements:

- Hand basins must be 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.
- Hot water services must be positioned at least 75mm clear of the adjacent wall surfaces, and mounted at a minimum 150mm above the floor level on a non-corrosive metal stand. The hot water system must be sized to meet the demands of the food business during peak operating and cleaning periods and be able to provide sufficient hot water throughout the working day. Discharge from the hot water system must enter the sewer through a tongue dish in accordance with Sydney Water's requirements.
- The floor of the food premises must be finished in an approved non absorbent material, evenly laid, or graded and drained to a trapped floor waste. All floor wastes in the food preparation, service and brewery area must be fitted with a sump removable basket and grate, a minimum 200mm in diameter, and finished in all stainless steel.
- The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other approved material to a height of 2 metres. The intersection of tiles and render must have a flush finish, or be splayed at a 45 degree angle to eliminate a ledge that would allow dust and grease to accumulate.
- The ceiling in the preparation, service and brewery areas must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.
- Service pipes, electrical conduits, refrigeration condensate pipes shall be enclosed or chased into walls, floors or plinths. Where it can be demonstrated that this is not feasible pipes and conduits fixed on brackets, providing a minimum of 25 mm clearance from the adjacent wall and 100 mm from the floor or adjacent horizontal surface, can be used. All openings in walls, floors and ceilings, through which service pipes and conduits pass, must be vermin proof.
- Details of the dishwashing/glass washing machines must be submitted to Council and approved prior to installation. All utensils and equipment must undergo a washing, sanitising and rinsing cycle. The sanitising rinse cycle must achieve a water temperature of 80°C for 2 minutes or 75°C for 10 minutes.
- All wash sinks and food preparation sinks must be serviced with hot and cold water through a single outlet. Wash sinks must be supplied with water at a temperature of not less than 54 °C for washing.
- The cleaners sink must be serviced with hot and cold water through taps fitted with hose connectors. Cleaner's sinks must be located outside of areas where open food is handled.
- All food preparation benches must be constructed in stainless steel or finished in a smooth and non-absorbent approved material that is free of joints.
- All storage cabinets (internal and external surfaces) must be finished in a smooth and non-absorbent approved material that is free of joints.
- Light bulbs or tubes are to be shatterproof or fitted with approved light diffusers (covers or shields) to prevent contamination of food by glass from a broken light globe or tube. Light fittings must be free from any feature that would collect dirt or dust, harbour insects or make the fitting difficult to clean. Light fittings must be recessed into ceilings or equipment where possible. Heat lamps must be protected against breakage by a shield extending beyond the bulb.
- Shelves must be smooth and impervious; free from joints, cracks and crevices; and able to be easily cleaned. The lowest shelf must be at least 200mm off the floor to allow easy cleaning underneath. Approved materials must be used, such as galvanised piping, stainless steel or laminated plastic. Shelves are to be sealed to the wall or kept clear of walls to allow easy access for cleaning (>40 mm).
- The coolroom and/or freezer room floor must be finished with a smooth even surface and graded to the door. A sanitary floor waste must be located outside the coolroom and freezer adjacent to the door. All metal work in the coolroom and freezer room must be treated to resist corrosion.

#### 40 [F022 - Commercial kitchen\(exhaust system\)](#)

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

The exhaust hood must completely cover the equipment to be ventilated 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 Occupational Certificate**, and operation of the business, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and Australian Standard AS 1668 Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Department if Council is not the Principal Certifying Authority

#### 41 [F026 - Kitchen bar & food prep area-certification](#)

Details of the kitchen, brewery, bar and food preparation and storage areas must be in accordance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code and AS 4674-2004 *Design, Construction and Fitout of Food Premises* and provided to Council for approval prior to works commencing.

#### 42 [F053 - Coolrooms – condensation](#)

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

#### 43 [F054 - Coolrooms – doors & alarms](#)

The coolroom and freezer room must be provided with:

- A door which can at all times be opened from inside without a key and
- An approved alarm device located outside the room, but controlled only from the inside.

#### 44 [F057 - Waste storage](#)

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

#### 45 [F062 - Licensed premises](#)

The business is required to be licensed with the NSW Food Authority. The business shall meet licence and registration requirements prior to the commencement of operation. Details of this license shall be submitted to Council **prior to the commencement of the business**.

#### 46 [F186 - Smoke Free Environment](#)

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

## Utility Services

#### 47 [G002 - Section 73 \(not for](#)

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

## Construction

#### 48 H001 - Stamped plans and erection of site notice

Stamped plans, specifications, a copy of the development consent 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 is to be erected:

- at the commencement of, and for the full length of the, construction works on-site, 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.

#### 49 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 Council, or
- alternatively, any other sewage management facility approved by Council.

#### 50 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 and 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.

## Engineering

#### 51 K222 - Access, Car Parking and Manoeuvring – General

**Prior to the issue of an Occupation Certificate**, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith Development Control Plan 2014.

All common car parking areas must be line marked in accordance with the stamped approved plans.

#### 52 K511 - Directional signage

**Prior to the issue of any Occupation Certificate**, the car parking area shall be linemarked in accordance with the approved car parking layout diagram to the satisfaction of the Principal Certifying Authority.

#### 53 K Special (BLANK)

Sight distance requirements at driveways are to be in accordance with AS 2890

#### 54 K Special (BLANK)

The one way movement in the southern parking area shall be appropriately line marked and sign posted.

#### 55 K Special (BLANK)

All vehicles must enter and leave the site in a forward direction.

56 **K Special (BLANK)**

The accessible parking space in the south-eastern corner on the stamped approved plans shall be used as a regular parking space.

## **Landscaping**

57 **L008 - Tree Preservation**

No trees are to be removed, ring barked, cut, topped or lopped or willfully destroyed without the prior consent of Penrith City Council and in accordance with Chapter C2 Vegetation Management of Penrith Development Control Plan 2014.

## **Certification**

58 **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 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

#### C1 Site Planning and Design Principles

The proposal includes entries facing the street and the roller door can be lifted to provide passive surveillance. It is noted that no outdoor activities are proposed therefore, monitoring can be conducted within the tenancy.

The building entries do not conflict with parking arrangements and are therefore easily accessible.

#### C5 Waste Management

The application has demonstrated that waste materials from the fit-out and on-going operation will use local waste service groups and an on-site industrial bin.

It is noted that the spent grain will be stored in air type drums then distributed to local farmers. Should the quantity of spent grain being disposed of at off-site facilities go beyond the Environmental Protection Authority exemptions then a waste company specialising in food waste disposal will be utilised. The above arrangements have been reviewed by Council's Environmental Management Team which have raised no objections subject to conditions.

#### C10 Transport, Access and Parking

The application has been accompanied by a Traffic Report which provides a parking calculation based upon an industrial activity within Penrith Development Control Plan 2014 (DCP) and based upon a 275 person capacity. Considering the application seeks a capacity of 120 people (further reduced by conditions to 80) and the differing land uses proposed (i.e. restaurant/cafe) the Traffic Report cannot be fully relied upon but can be used to inform. In this regard, a traffic/parking assessment has been conducted below.

In accordance with the parking rates in the DCP the following is applicable:

- industry = 1 space per 75m<sup>2</sup> (577m<sup>2</sup> for back of house storage and brewery area) = 8 spaces
- pubs = 1 space per 4m<sup>2</sup> of bar floor area (15m<sup>2</sup>) = 4 spaces
- restaurants = 1 space per 6m<sup>2</sup> of seating area - 30 spaces

It is noted that a training and event area has been nominated with a floor area of 84m<sup>2</sup>. If this area was to be used similarly to the restaurant use then an additional 14 parking spaces would be required. Further to the above, a takeaway retail area has been nominated however, the parking for this component is considered negligible noting customers will not be on-site for long periods of time.

In light of the above, if the parking requirements for the differing components of the business were applied a total of 56 parking spaces would be required.

A review of aerial photographs of the site, previous approved plans on-site and the proposed parking layout plan identified that 48 parking spaces are available on-site (not including space blocking access to tile showroom area). The neighbouring tenancies operate at the following times:

- tyre workshop (neighbour to east) = 8 am - 5 pm Monday to Friday and 8 am - 1 pm Saturdays,
- vinnies recycling (neighbour to west) = 8 am - 3:30 pm Monday to Friday and 8 am - 4 pm Saturdays,
- beaumont tiles (neighbour to south) = 8:30 am - 5 pm Monday to Friday and 9 am - 4 pm Saturdays

The approvals for the tyre workshop and vinnies recycling shows that a total of 17 spaces dedicated to these uses. The tile showroom has an area of roughly 780m<sup>2</sup> which requires 16 parking spaces if a bulky goods premises rate is applied. In this regard, during conflicting operational hours roughly 33 spaces are required to be available with 15 spaces remaining.

The application has discussed that during conflicting hours (outside of peak operation for proposal) with neighbouring tenancies, tour groups and corporate events (workshops) are conducted in which buses (2 in most circumstances) would drop the clients off then leave the site before picking up again. In this regard, the pursued capacity would be mostly full and no parking impacts would be provided.

The site is not a strata title therefore, parking spaces are not designated to land parcels. During periods when neighbouring tenancies are not operating and the proposal is likely to be at optimal capacity there are 48 parking spaces available however, the DCP calculation requires 56 spaces. The 8 parking spaces shortfall can be justified as follows:

- The use involves consumption of alcoholic beverages on-site therefore, car pooling, ride share apps, taxi services, walking (noting proximity of residential areas) will be utilised. It is noted that the restaurant parking calculation would not consider the above noting not all restaurants are for the purpose of alcohol consumption. In addition, the capacity pursued will restrict the amount of people on-site not just floor space allocation. In this regard, the 8 space shortfall is satisfactory.

Council's Traffic Engineering Department have raised no issues with the traffic generation of the proposal.

The revised parking layout includes one way movement within the southern parking area to accommodate parallel spaces. This arrangement is not considered to impact vehicle access to neighbouring tenancies noting the driveway at the south-western corner services uses and the tyre shop has a drive thru access.

The proposal will be serviced by a rear storage area with a roller door for vehicle access. The Swept Paths provided within the Traffic Report do not show vehicles maneuvering within the site which is required by the DCP. A review of the northern parking/maneuvering area indicates that suitable space is provided to access the roller door allowing access and egress in a forward direction. A condition of consent will ensure this occurs.

A review of the southern parking area layout shows that spaces and aisles have suitable dimensions therefore, maneuvering in this area is not considered an issue and will be covered by recommended conditions of consent.

The revised parking plan shows an accessible space within the south-eastern corner without a shared space. In this regard, the accessible space will be required to be deleted via a condition of consent.

The proposed parking layout provides suitable buffers from parking areas to the proposed entrance.

In light of the above, the application has demonstrated that suitable parking and maneuvering can be provided.

## **C12 Noise and Vibration**

Council's Environmental Management Team have reviewed the proposal and have raised no issues relating to noise impacts subject to recommended conditions of consent.

The application no longer includes outdoor dining, reduced capacity, no air conditioning has been pursued, all equipment is stored within the premises and the applicant has demonstrated that equipment will not generate adverse noises. The site is located within an industrial complex suitably distanced from sensitive receivers. In this regard, there are no adverse noise

impacts envisioned however, a recommended condition of consent will ensure appropriate measures are provided to alleviate noise impacts should they occur in the future.