

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA21/0421
Description of development:	Fitout and Use of Shop 10 for a Café
Classification of development:	Class 6

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 11 DP 733094
Property address:	11 Dunheved Road, WERRINGTON COUNTY NSW 2747

### DETAILS OF THE APPLICANT

Name & Address:	Wayne Wilson 8/162-164 Fragar Road SOUTH PENRITH NSW 2750
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### DECISION OF CONSENT AUTHORITY

In accordance with Section 4.18(1) (a) of the Environmental Planning and Assessment Act 1979, consent is granted subject to the conditions listed in attachment 1.

Please note that this consent will lapse on the expiry date unless the development has commenced in that time.

Date from which consent operates	5 October 2021
Date the consent expires	5 October 2026
Date of this decision	1 October 2021

### POINT OF CONTACT

If you have any questions regarding this determination you should contact:

Assessing Officer:	Pukar Pradhan
Contact telephone number:	+612 4732 7726

## NOTES

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### **Reasons**

The conditions in the attached schedule have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 as amended.

### **Conditions**

Your attention is drawn to the attached conditions of consent in attachment 1.

### **Certification and advisory notes**

You should also check if this type of development requires a construction certificate in addition to this development consent.

It is recommended that you read any Advisory Note enclosed with this notice of determination.

### **Review of determination**

The applicant may request Council to review its determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 within twelve months of receiving this Notice of Determination.

These provisions do not apply to designated development, complying development or crown development pursuant to Section 8.2(2) of the Environmental Planning and Assessment Act 1979.

### **Appeals in the Land and Environment Court**

The applicant can appeal against this decision in the Land and Environment Court within twelve months of receiving this Notice of Determination.

There is no right of appeal to a decision of the Independent Planning Commission or matters relating to a complying development certificate pursuant to clause 8.6(3) of the Environmental Planning and Assessment Act 1979.

### **Designated development**

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 56 days after the date of this notice.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 56 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

### **Sydney Western City Planning Panels**

If the application was decided by the Sydney Western City Planning Panel, please refer to Section 2.16 of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

# ATTACHMENT 1: CONDITIONS OF CONSENT

## General

- 1 The development must be consistent with the the following plans:

Description	Plan No.	Issue/Rev	Prepared by	Date
Site and Location Plan	21-109-01	1	Wayne Wilson	12/6/2021
Existing Floor Plan	21--109-02	1	Wayne Wilson	12/6/2021
Proposed Floor Plan	21-109-03	1	Wayne Wilson	12/6/2021
Elevations & Sections	21-109-04	1	Wayne Wilson	12/6/2021
Signage Details	21-109-07	1	Wayne Wilson	12/6/2021

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.

- 2 The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2010 and the Australian and New Zealand Food Standards Code are met at all times.
- 3 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 4 A satisfactory inspection from an authorised officer of Council's Environmental Health Team is required prior to the operation of the business. The occupier is to contact the Environmental Health Team to organise an appointment at least 72 hours prior to the requested inspection time.
- 5 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.
- 6 The operating hours are from 8:30 am to 10 pm .
- 7 All materials and goods associated with the use shall be contained within the building at all times.
- 8 **[Prior to the issue of an Occupation Certificate]**, any lighting system to be installed for the development shall be provided with uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding landuses. 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).

- 9 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 10 A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 11 The number of staff is to be limited to maximum of 4 for the Cafe.
- 12 The signage shall be limited in size to be a maximum of 60cm high x 2.5m wide as marked in red on the stamped approved plans.
- 13 Signage must not contain/use;
- Flashing Lights or messages.
  - Animated display, moving parts or simulated movements.
  - Complex displays that hold a driver's attention beyond "glance appreciation".
  - Displays resembling traffic signs or signals, or giving instruction to traffic by using colours and shapes that imitate a prescribed traffic control device or words such as 'halt' or 'stop'.
  - A method of illumination that distracts or dazzles.
  - The approved sign shall have a minimum dwell time of 4 seconds between change of messages/pictures.
- 14 The outdoor structure and use of the structure as a smoking lounge is not approved as part of this consent and is to be deleted from the Construction Certificate documentation.

## **Environmental Matters**

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

- 16 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.

- 17 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 noise.

## BCA Issues

- 18 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

- 19 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*. Detailed plans of the fitout must be provided to the Environmental Health Team for approval prior to any fitout or construction works beginning.

Your attention is drawn to the following requirements:

- *Hand basins must 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.*
- *A hand basin must be located within the toilet cubicle.*
- *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.*

- *Staff toilets must be provided on the premises. Where a toilet adjoins a food preparation area it must be separated by an air lock and its doors must be fitted with self closing devices. Toilets intended for customer use must not be accessed through areas where open food is handled, displayed or stored.*
- *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.*
- *Approved, recessed coving must be provided at all intersections of the floor with the walls within all food preparation, service, storage and scullery areas. All coving must have a minimum concave radius of 25mm and be installed so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface.*
- *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 walls at the rear of cooking appliances must be surfaced with an impervious material, such as stainless steel, which extends from the canopy to the floor. Where a cooking appliance is sealed to the wall, the material must be lapped over the top edge of the appliance to provide a grease and vermin proof seal. Cooking appliances must only be sealed to walls made of a non-combustible material.*
- *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.*
- *Any window sill within a food preparation area, service or scullery area must be located 450mm above the top of any bench/sink and tiled at a splayed angle of 45 degrees.*
- *Flyscreens or other approved means of excluding flies must be provided to all window and door openings.*
- *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 double bowl sink must be constructed of stainless steel, have a minimum bowl size of 450mm x 300mm x 300mm to enable cleaning of large pots and equipment, be fitted with a draining area at each end, and have a splashback as part of the unit at least 300mm up the wall.*
- *The food preparation sink must be separated from all other sinks by a minimum distance of 2 metres or have an approved form of physical barrier that separates the 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.*

- *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).*
- *Sufficient lockers must be provided in the food preparation area or store room specifically for the storage of cleaning materials, employees' clothing and personal belongings.*

- 20 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.

Detailed plans together with calculations for the system must be provided as part of the development application or prior to any construction or fitout work beginning. Should a commercial exhaust system not be proposed as part of this development only pre-packaged and foods requiring minimal preparation can be sold from this business.

The exhaust hood must completely cover the equipment to be ventilation and extended at least 200mm beyond the perimeter of the equipment. The exhaust hood must be provided with a condensation gutter around its base. The gutter must be at least 50mm wide by 25mm deep. Where abutting walls are located the hood must be constructed so as to finish flat against the wall surface.

The low edge of a canopy type exhaust hood must be at least 2000 mm above floor level.

Prior to the 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 AS1668 Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Team.

- 21 A Food Safety Supervisor, with a current Food Safety Supervisor Certificate recognised by the NSW Food Authority, must be appointed by the business prior to commencement of the business.
- 22 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:

- 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.

- 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.
- 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).

23 The storeroom must be constructed in accordance with AS4674-2004 by providing the following:

- A smooth, even, non-slip floor surface.
- Coving at all intersections of the floor and walls with approved, recessed coving to a minimum concave radius of 25mm, so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface. “Feather edge skirting” and non-rebated coving are not permitted.
- Walls must be provided with a smooth even surface and painted with a light coloured washable paint to enable easy cleaning.
- The ceiling 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 intersections of the walls and ceiling must be tight-jointed, sealed and dustproof. Drop in panel style ceilings are not permitted.
- Shelving or storage racks must be designed and constructed to enable easy cleaning.

24 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.

25 A grease arrestor must be installed in accordance with Sydney Water requirements unless a written exemption is provided. The grease arrestor must not be installed in any kitchen, food preparation or food storage area.

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



## Construction

27 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.

28 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 back filling 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.

29 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.

## Landscaping

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

## Certification

- 31 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 1979, 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 of 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.

- 32 **An Occupation Certificate is to be obtained** from the Principal Certifying Authority on completion of all works and prior to the occupation or the use of the Shop 10 for a Cafe.

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.

## SIGNATURE

Name:	Pukar Pradhan
Signature:	

For the Development Services Manager