

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0763.02
Proposed development:	Section 4.55(1A) Modifications to Approved Nepean Village Outdoor Dining Precinct including Amendments to Pergola Structure, Increase in Outdoor Dining Area & Installation of Children's Playground Shade Sail - Alterations & Additions to Nepean Village Outdoor Dining Precinct & Use of "Victorian House" as Food & Drink Premises
Property address:	148 Station Street, PENRITH NSW 2750 122 Station Street, PENRITH NSW 2750 146 Station Street, PENRITH NSW 2750
Property description:	Lot 80 DP 709313 Lot 1 DP 715198 Lot 11 DP 715161
Date received:	5 May 2020
Assessing officer	Jacqueline Klincke
Zoning:	Zone B4 Mixed Use - LEP 2010
Class of building:	Class 6 , Class 10a
Recommendations:	Approve

Executive Summary

Council is in receipt of a Section 4.55(1A) modification application for the approved 'Nepean Village Outdoor Dining Precinct' at 122 and 146-148 Station Street, Penrith. The proposed modifications include:

- Reconfiguration and alterations to the approved pergola structure
- Provision of translucent roof sheeting attached to the pergola structure,
- Increased seating area,
- Replacement of existing paving,
- Shade sails over the children's playground, and
- Installation of way-finding signage.

In accordance with Council's adopted *Community Engagement Strategy and Community Participation Plan 2019* and Appendix F4 of the *Penrith Development Control Plan 2014*, the proposal was notified to nearby and adjoining properties and publicly exhibited between 9 May and 1 June 2020. No submissions were received in response.

An assessment of the modified proposal under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* has been undertaken and the modification application is recommended for approval, subject to amended conditions of consent.

Site & Surrounds

The subject site comprises of 3 lots:

- Lot 1, DP 715198 - 122 Station Street
- Lot 11, DP 715161 - 146 Station Street, containing 'Kentucky Villa' (Item no 216)
- Lot 80, DP 709313 - 148 Station Street, containing 'Victorian House' (Item no 217)

A number of easements and restrictions are registered on the lots. These have been investigated and are not impacted by the proposal.

The total site area is 5.35 hectares and contains an existing shopping centre known as Nepean Village. The centre contains a range of commercial premises, including supermarkets, cafes and speciality retail shops. Adjacent to the site is Penrith Paceway and Penrith Swimming Pool to the west on Station Street. To the south is commercial development, and to the north and east is residential development.

History

There is a long history of consents on the site dating back to the 1980s related to various commercial uses within the shopping centre. The consents largely relate to shop fit outs, alterations and signage.

In proximity to the subject proposal the relevant consents include:

- 158/84 - An Office Building
- DA970130 - Upgrade of 'Kentucky'
- DA00/5043 - Change of Use of Bank to Pizza and Ribs Food Shop
- DA05/0510 - Fitout of Gloria Jeans Coffees
- DA07/1362 - Internal Fitout for Nando's Restaurant
- DA15/0588 - Nando's Restaurant Signage
- DA17/1199 - External Building Alterations, Internal Fitout and Use of 'Kentucky' Villa Heritage Item as a Café

Proposal

The application seeks consent to modify an approved outdoor dining precinct development which was approved via DA19/0763. The proposed modifications include the following aspects:

- Provision of translucent roof sheeting attached to the pergola structure,
- Removal of approved storage areas and replacement with pergola structure, thereby resulting in an additional 33m² of seating area,
- Reconfiguration of pergola to remove section fronting Station Street and around the Victorian House heritage item, thereby resulting in an additional 21m² of outdoor seating,
- Additional 10m² of outdoor seating area to legitimise use for Gloria Jeans,
- Replacement of existing paving to differentiate the walkway and dining area,
- Replacement of approved pergola structure with retractable awning,
- Shade sail over approved children's play area, and
- Installation of two (2) illuminated way finding signs (measuring 2.8m high x 45cm wide).

It is noted the applicant has since requested to remove the proposed retractable awning component from the subject modification and retain the pergola structure as approved under DA19/0763. In this regard, the stamped approved plans have been marked-up accordingly to reflect this.

Plans that apply

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

Planning Assessment

• Section 4.55(1A) - Modifications involving minimal environmental impact

The proposed modifications have been assessed in accordance with the matters for consideration under Section 4.55(1A) and Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposed modifications satisfy the relevant provisions of the Act in this regard.

Under the provisions of Section 4.55(1A) Modifications involving minimal environmental impact of the *Environmental Planning and Assessment Act 1979*, Council may, in response to an application being made, modify a previously approved development if:

(a) *it is satisfied that the proposed modifications are of minimal environmental impact, and*

(b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

(c) *it has notified the application in accordance with:*

(i) *the regulations, if the regulations so require, or*

(ii) *a development control plan, if the consent authority is a Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

(d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In this regard, the following is noted:

(a) The proposed modifications are considered to be of minimal environmental impact as the proposal involves alterations and additions to an approved outdoor dining precinct, including the redesign of an approved pergola structure, additional seating area, replacement of paving, shade sails, and the installation of way-finding signage. The modified development is therefore unlikely to result in any adverse impacts on the natural and built environments, overbearing or privacy impacts on adjoining properties, or flooding risks.

(b) In *Vacik Pty Ltd v Penrith City Council* (unreported 1992) the question of substantially the same development was considered by Stein J, and in particular the meaning of the word 'substantially'. In his opinion 'substantially' is taken in the context to mean 'essentially or materially or having the same essence'.

In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) the NSWCA recognised that a modified development must be different in some respect to the approved development and used the formulation that 'modify' meant 'to alter without radical transformation'.

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the modified development is of the same essence as minor external modifications are proposed. The modified outdoor dining area result in a development not too dissimilar to the original approval, nor does it change the essence of the development.

(c) The modified development was notified to nearby and adjoining properties as per the requirements of the Council's adopted *community Engagement Strategy and Participation Plan 2019* and the *Penrith Development Control Plan 2014*.

(d) No public submissions were received regarding the application.

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

State Environmental Planning Policy No 55—Remediation of Land

As assessment has been undertaken of the proposal against the relevant criteria within the *State Environmental Planning Policy No 55—Remediation of Land* and the modified development is satisfactory subject to recommended conditions of consent.

State Environmental Planning Policy No 64—Advertising and Signage

The modification application incorporates two (2) internally illuminated wayfinding pylon signs located at the Station Street and southern pedestrian entrances of the dining precinct. An assessment has been undertaken of the proposed signs against the relevant criteria within the *State Environmental Planning Policy No. 64 - Advertising and Signage* and the proposed signs are consistent with the aims and objectives of SEPP 64.

An assessment of the proposal under Schedule 1 has been undertaken below:

Criteria	Assessment	Compliance
<p>1 Character of the area</p> <ul style="list-style-type: none"> • Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? • Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<p>The proposed signs are located within an existing retail/commercial shopping centre and are consistent with the retail character of the area.</p>	Yes
<p>2 Special areas</p> <ul style="list-style-type: none"> • Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? <p>3 Views and vistas</p> <ul style="list-style-type: none"> • Does the proposal obscure or compromise important views? • Does the proposal dominate the skyline and reduce the quality of vistas? • Does the proposal respect the viewing rights of other advertisers? 	<p>The proposal is considered to be acceptable in this regard as the signs provide directional content to assist wayfinding throughout the dining precinct.</p> <p>The proposed locations of the signs will not obscure or dominate the existing vista from Station Street or adjacent properties.</p>	Yes
<p>4 Streetscape, setting or landscape</p> <ul style="list-style-type: none"> • Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? • Does the proposal contribute to the visual interest of the streetscape, setting or landscape? • Does the proposal reduce clutter by rationalising and simplifying existing advertising? • Does the proposal screen unsightliness? • Does the proposal protrude above buildings, structures or tree canopies in the area or locality? • Does the proposal require ongoing vegetation management? 	<p>The proposal is considered to be acceptable as the scale and proportion of the proposed signs are appropriate for the streetscape and carpark and will not dominate the overall streetscape of the shopping centre, noting the overall height of the signs is 2.8m high which sits well below the canopy of nearby trees, the height of the pergola structure and all surrounding buildings on site. Ongoing vegetation management will be managed by Centre Management</p>	Yes

<p>5 Site and building</p> <ul style="list-style-type: none"> • Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? • Does the proposal respect important features of the site or building, or both? • Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<p>The proposed sign is considered to be ancillary to the dominate use of the site as a retail and commercial shopping centre and provide directional content for way finding purposes.</p>	<p>Yes</p>
<p>6 Associated devices and logos with advertisements and advertising structures</p> <ul style="list-style-type: none"> • Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? 	<p>All logos and lighting fixtures are integrated within the design of the signs. The signs and its associated fixtures and supports appear as wholly integrated elements.</p>	<p>Yes</p>
<p>7 Illumination</p> <ul style="list-style-type: none"> • Would illumination result in unacceptable glare? • Would illumination affect safety for pedestrians, vehicles or aircraft? • Would illumination detract from the amenity of any residence or other form of accommodation? • Can the intensity of the illumination be adjusted, if necessary? • Is the illumination subject to a curfew? 	<p>The signs will be fitted with a light sensor to automatically adjust the brightness and ambient light when required - this can also be adjusted manually. Given the proposed location and orientation of the signs, there are no adverse impacts to surrounding properties or vehicles expected from the illumination of the signs.</p>	<p>Yes</p>
<p>8 Safety</p> <ul style="list-style-type: none"> • Would the proposal reduce the safety for any public road? • Would the proposal reduce the safety for pedestrians or bicyclists? • Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? 	<p>The proposed signs will not reduce sightlines given its proposed position and distance from the footpath and road.</p>	<p>Yes</p>

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

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

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 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	Complies
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.8 Active street frontages	Complies
Clause 8.1 Application of Part	Complies
Clause 8.2 Sun access	Complies
Clause 8.3 Minimum building street frontage	Complies
Clause 8.4 Design excellence	Complies
Clause 8.5 Building separation	Complies

Clause 5.10 Heritage conservation

The subject land contains two heritage items listed in Schedule 5 of the *Penrith Local Environmental Plan 2010* being:

- Kentucky Villa (item no. 216), 146 Station Street
- Victorian House (item no. 217), 148 Station Street

In accordance with Clause 5.10, a Heritage Impact Statement, prepared by Urbis, dated November 2020, was submitted in support of the modification application. The plans and documentation submitted with the application have been reviewed by Council's Heritage Advisor, who does not support the proposed modifications. It is noted the outdoor dining area and use of pergolas to facilitate the use and seating between the heritage buildings is acceptable. However, the proposed roofing (i.e. translucent sheeting) attached to the pergola resulting in the permanent enclosure of this space is considered to not respect the historic curtilage around the two (2) heritage buildings and is therefore not supported. In this regard, the application is recommended approval, subject to a condition of consent (Condition 15) requiring the pergola structure not be covered. The stamped approved plans will also be annotated accordingly.

Therefore, the relevant objectives of Clause 5.10 of Penrith LEP are achieved, in that the heritage significance of the heritage items on the site are conserved by the proposal. The works proposed are relatively low scale, and therefore the risk related to potential damage of the buildings is reduced, particularly with the application of consent conditions as recommended.

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

It is noted that both the *Draft Environment SEPP* and *Draft Remediation of Land SEPP* apply to the subject site, but while so, so not affect or alter the recommendation of this report.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

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

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

There are no planning agreements applying to the proposal.

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

The modified proposal remains compliant with the relevant Regulations, subject to amended conditions of consent.

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

The likely impacts of the development as identified during the assessment of the original proposal remain in principal unaltered.

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

The suitability of the site was assessed as part of the original development application (DA19/0763) and the site remains suitable for the modified development.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Council's adopted *Community Engagement Strategy and Community Participation Plan 2019* and Appendix F4 of the *Penrith Development Control Plan 2014*, the proposed development was notified to nearby and adjoining residents with the exhibition period between 18 May and 1 June 2020. No submissions were received in response.

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
Development Engineer	No objections - subject to conditions
Heritage	Not supported
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions
Social Planning	No objections

Heritage

The matters raised by Council's Heritage Advisor are resolved via conditions of consent as discussed under Part C7 of the DCP - Culture and Heritage of this report.

Traffic Engineer

The above internal referral comments relate to the original development application. All matters that were initially raised were resolved via revised plans, documents and recommended conditions of consent. An internal referral to Council's Traffic Engineer was not warranted for the subject modification application.

Section 4.15(1)(e)The public interest

The modified development will not generate any significant issues relating to the public interest.

Conclusion

In assessing the modification application against the relevant environmental planning policies, being the *State Environmental Planning Policy No 55 - Remediation of Land*, *State Environmental Planning Policy No. 64 - Advertising and Signage*, *Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No 2 - 1997)*, *Penrith Local Environmental Plan 2010* and *Penrith Development Control Plan 2014*, the modified development satisfies the aims, objectives and provisions of these policies.

In this regard, the modified proposal is worthy of support, subject to amended conditions of consent.

Recommendation

That DA19/0763.02 for modifications to an approved outdoor dining precinct at 122 and 146-148 Station Street, Penrith, be approved, subject to the following amended conditions.

CONDITIONS

General

1 [A001 - Approved plans table](#)

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

Doc. No.	Issue	Title	Date
Architectural Plans by BN Group Pty Ltd, Project No. S1863			
A001.01	A	Title Sheet, Location Plan & Drawing List	16/11/2020
A01.01	A	Existing Plan - Ground Level	27/09/2019
A01.02	A	Existing Roof Plan	27/09/2019
A01.01	A	Existing & Demolition Plan – GL	16/11/2020
A02.10	A	Proposed Site Plan - Aerial View	16/11/2020
A03-01	A	Existing & Demolition – Elevations	27/09/2019
A03-02	A	Existing & Demolition - Elevations	27/09/2019
A06.01	A	Proposed Ground Floor Layout	16/11/2020
A06.02	A	Proposed Roof Plan Layout	16/11/2020
A06.03	A	Proposed Ground Level - Seating Areas	16/11/2020
A09.01	A	Reflected Ceiling Plan	16/11/2020
A10.01	A	Proposed Elevations	16/11/2020
A10.02	A	Proposed Elevations	16/11/2020
A11.01	A	Proposed Sections	16/11/2020
A11.02	A	Proposed Sections	16/11/2020
A80-01	A	3D Views	16/11/2020
Fixtures and Finishes by BN Group Pty Ltd			
-	DA-A	Fixtures + Finishes Schedule	16/11/2020
Signage Plan by Diadem			
DIR_PED_T1	00	Internally Illuminated Directional Pedestrian Sign	-
Generally consistent with Landscape Plan by Monaco Designs PL, Job No. 5395			
1	-	Landscape Concept	15/10/2019
Stormwater Concept Plans by JHA Engineers, Job No. 190531			
H000	P5	Cover Sheet	16/11/2020
H100	P5	Ground Floor Sewer & Trade Waste Drainage Systems	16/11/2020
H200	P5	Ground Floor Water & Gas Systems	16/11/2020
H300	P5	Ground Floor Stormwater Drainage System	16/11/2020
H400	P5	Erosion & Sediment Control Plan	16/11/2020

Reports:

- Nepean Village Plan of Management prepared by Urbis, dated December 2019.
- Accessibility Design Review Report prepared by Mackenzie Group, Job No. 190016, **Revision B, dated 13/03/2020**.
- Report on Preliminary Environmental Site Assessment (PESA): Nepean Village Outdoor Precinct, 146-148 Station Street Penrith, NSW, prepared by Edison Environmental & Engineering Pty Ltd, Doc. Ref. E19010-NV-01-R.docx, dated 15/10/2019.
- Operational Waste Management Plan, Nepean Village, prepared by Vicinity Centres, Revision 2, dated October 2018.
- Nepean Village Outdoor Dining Precinct, Penrith - Heritage Impact Statement prepared by Urbis, Project Code P10929, Revision 2, dated 31/10/2019, **as amended by Heritage Advice prepared by Urbis 20/11/2020**.
- Traffic Statements prepared by Colston Budd Rogers & Kafes Pty Ltd, Ref. JH\130\1jj dated 03/10/2019 and 17/12/2019.
- Tree Risk Assessment Report prepared by Moore Trees Arboricultural Services, dated November 2018.

- Arborist Inspection Report prepared by Moore Trees Consulting Arborist, Ref. Nepean 220219, dated 14/03/2019.
- **Vicinity Retail Design Guidelines.**
- **Stormwater Management Plan prepared by JHA Engineers, dated 16 November 2020.**

As amended on 12 February 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

2 **A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)**

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

3 **A026 - Advertising sign (not for residential)**

A separate development application for the erection of any sign or advertising structure, other than those approved by this consent or an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Part C9 of Penrith Development Control Plan - Advertising and Signage.

4 **A029 - HOURS OF OPERATION AND DELIVERY TIMES**

The operating hours are to be 8am to 10pm, Monday to Sunday.

5 **A038 - LIGHTING LOCATIONS**

Prior to the issue of an Occupation Certificate, a lighting system shall be installed for the development to provide 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 land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with Australia Standard 4282 Control of the obtrusive effects of outdoor lighting (1997).

6 **A039 - Graffiti**

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

7 **A046 - Obtain Construction Certificate before commencement of works**

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

8 **A Special (BLANK)**

No vehicular access into or parking within the dining precinct is permitted, other than for emergency vehicle access.

Removable bollards are to be installed to ensure there are no vehicle/pedestrian conflicts within the precinct in accordance with the approved plans and the Nepean Village Plan of Management by Urbis, dated December 2019.

9 **A special BLANK**

There are to be no changes to existing food shop fit outs unless prior approval is granted.

10 **A special BLANK**

The requirements of the Smoke Free Environment Act 2000 are to be met at all times.

11 [A Special CPTED Requirements](#)

The following community safety and Crime Prevention through Environmental Design (CPTED) requirements are required to be implemented:

Lighting

- All outdoor/public spaces throughout the development must be lit to the minimum Australian Standard of AS 1158. Lighting must be consistent in order to reduce the contrast between shadows and illuminated areas and must be designed in accordance with AS 4282 - Control of the obtrusive effects of outdoor lighting.

Building Security & Access Control

- Intercom, code or card locks or similar must be installed to all restricted (staff only) entries to the buildings.
- Australian Standard 220 – door and window locks must be installed in all premises.
- Monitored alarm systems must be installed in all premises.
- CCTV is to be provided to cover communal public space areas. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.

Graffiti/Vandalism

- Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls/planter beds etc.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, and common areas. This includes reporting incidents to police and/or relevant authorities.
- All outdoor furniture must be well secured or packed away after hours to minimise vandalism and opportunities for loitering.

Landscaping

- All vegetation must be regularly pruned to ensure that sight lines are maintained.

Demolition

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

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

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

13 [B003 - ASBESTOS](#)

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

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

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

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

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

Heritage/Archaeological relics

14 **C Special (BLANK)**

No building works are approved in relation to the building known as 'Victorian House' (Heritage Item Number 217) at 148 Station Street, Penrith.

A separate development approval must be obtained from Penrith City Council for any fit out or alterations to the building associated with the approved use as a food and drink premises.

15 **C Special (BLANK)**

No covering, cladding, sheeting, roofing or the like is to be applied to the pergola structure adjacent to the heritage buildings known as 'Victorian House' and 'Kentucky House'.

The pergola must not be fixed or joined by flashing or other materials to the heritage buildings.

The pergola must remain an open-roofed, detached structure in the areas adjoining the heritage buildings.

Environmental Matters

16 **D001 - Implement approved sediment& erosion control measures**

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

17 **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.

18 **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.

19 **D026 - Liquid wastes**

Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If mains sewer is not available or if Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

20 **D06A – Approval for bulk earthworks/major filling operations (Use for bulk earthworks/ major filling operations)**

No fill material shall be imported to the site until such time as a Validation Certificate (with a copy of any report forming the basis for the validation) for the fill material has been submitted to the Certifying Authority. The Validation Certificate shall:

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (as defined in Penrith Development Control Plan 2014) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- clearly indicate the legal property description of the fill material source site,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

An appropriately qualified person/s (as defined in the Penrith Development Control Plan 2014) shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

The contact details of any appropriately qualified person/s engaged for the works shall be provided with the Notice of Commencement.

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances the works shall be carried out prior to any further approved works.

{Note: Penrith Development Control Plan 2014 defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soilscience, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}

21 **D - Dust**

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

22 **D - Mud/Soil**

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

23 **D Special BLANK**

Intrusive ground works that are expected to disturb natural soils are to be carried out in such a manner so as to minimise the potential for dermal contact, dust generation or ingestion of soils.

BCA Issues

24 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

25 F064 - Outdoor dining & trading

Prior to commencing outdoor dining or trading, the operator of the business shall obtain an Outdoor Eating & Trading Licence in accordance with Council's Outdoor Eating & Trading Policy. An application form can be obtained by contacting Council on (02) 4732 7777 or from Council's website www.penrithcity.nsw.gov.au.

Construction

26 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.

27 H002 - All forms of construction

Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

28 H041 - Hours of work (other devt)

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

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

Other construction works carried out inside a building/tenancy 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

29 K101 - Works at no cost to Council

All roadworks, stormwater drainage works, associated civil works and dedications, required to effect the consented development shall be undertaken at no cost to Penrith City Council.\

30 **K201 - Infrastructure Bond**

An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of any Construction Certificate, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

31 **K202 - S138 Roads Act – Works and Structures - Minor Works in the public road DRIVEWAYS ROAD OPENINGS**

Prior to the issue of any Construction Certificate, a Section 138 Roads Act application, including payment of application and inspection fees, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) Concrete footpaths and or cycleways
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- d) Road occupancy or road closures
- e) The placement of hoardings, structures, containers, waster skips, signs etc. in the road reserve
- f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- a) Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.

32 **K227 - Stormwater Legal Discharge Point**

Prior to the issue of any Construction Certificate for internal works associated with the development, the site must be serviced by a legal point of discharge including any required infrastructure drainage works. The drainage works may include inter-allotment drainage construction, upgrades and / or road drainage extensions located on lands owned by others.

33 **K302 - Traffic Control Plan**

Prior to commencement of any works associated with the development, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Maritime Services' publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Maritime Services Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note:

- a) A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.
- b) Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council prior to the issue of a Construction Certificate.

34 [K405 - Turf to Verge](#)

Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

35 [K501 - Penrith City Council clearance – Roads Act/ Local Government Act](#)

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall ensure that all works associated with any S138 Roads Act approval have been inspected and signed off by Penrith City Council.

Landscaping

36 [L001 - General](#)

All landscape works are to be constructed in accordance with the stamped approved plans and Part C6 of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plan, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity as the vegetation which died or was removed.

37 [L002 - Landscape construction](#)

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

38 [L003 - Report requirement](#)

The following report relating to landscaping is to be submitted to the nominated consent authority at the appropriate time periods as listed below.

i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by a suitably qualified landscape professional.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

39 [L005 - Planting of plant](#)

All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in Penrith Development Control Plan 2014.

40 [L006 - Aust Standard](#)

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

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

41 [L007 - Tree protection measures – no TMP with DA](#)

All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards prescribed in Appendix F5 of Penrith Development Control Plan 2014.

Any garden beds or raised planter boxes shall not increase the depth of soil placed around existing tree trunks in a way that would inhibit the ongoing health of those trees.

42 [L008 - Tree Preservation Order](#)

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

Certification

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

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

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

(b) submit a Notice of Commencement to Penrith City Council.

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

Information to accompany the Notice of Commencement

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

44 [QZ1 A Special \(BLANK\)](#)

The approved wayfinding signage shall be erected strictly in accordance with the manufacturer's or engineer's specifications, and the relevant Australian Standards. Any installation fixtures associated with the signage or internal illumination shall be wholly contained within the body of the signage and not be visible from the public domain.

Inserted on 12 February 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

45 [QZ2 Added A Special \(BLANK\)](#)

The intensity of the illumination of the approved wayfinding signage shall be controlled in accordance with AS 4282 - 1997 "Control of the obtrusive effects of outdoor lighting". The signage shall include an integrated and automatic light dimmer to enable the intensity of the lighting to be adjusted if required.

Inserted on 12 February 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

46 [QZ3 Special \(BLANK\)](#)

The approved wayfinding signs shall be a maximum height of 2.2m.

Inserted on 12 February 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C7 Culture and Heritage

This modification development application seeks consent for the following:

- Reconfiguration and alterations to the approved pergola structure,
- Provision of translucent roof sheeting attached to the pergola structure,
- Increased seating area,
- Replacement of existing paving,
- Shade sails over the approved children's playground, and
- Installation of way-finding signage.

The plans and documentation submitted with the application was reviewed by Council's Heritage Advisor who does not support the proposed translucent sheet roofing attached to the approved pergola structure. It is considered the permanent enclosure of this space does not provide a sympathetic curtilage around the two (2) heritage buildings and is therefore not supported. In this regard, Condition 15 which requires the pergola structure not be covered will not be amended within the consent, and the stamped approved plans will be annotated accordingly to ensure the pergola structures are not covered.

It is noted no concerns are raised in regards to the proposed modifications relating to the seating area, paving, shade sails or way-finding signage.

C9 Advertising and Signage

The proposal seeks consent for the installation of two (2) internally illuminated 2.8m high way-finding signs located at the Station Street and southern pedestrian entrances of the dining precinct. Concerns were raised in regards to the overall height of the signs being overbearing to the human-scale. In this regard, a condition of consent and stamped plans have been marked-up requiring these signs be a maximum height of 2.2m. Standard conditions of consent have also been recommended regarding the illumination of each sign.