

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

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| Application number: | DA15/0565 |
| Proposed development: | Fit-Out & Use as Cafe |
| Property address: | 134 - 138 Henry Street, PENRITH NSW 2750 |
| Property description: | Lot 1 DP 164798 |
| Date received: | 12 June 2015 |
| Assessing officer | Clare Aslanis |
| Zoning: | Zone B3 Commercial Core - LEP 2010 |
| Class of building: | Class 6 |
| Recommendations: | Approve |

Executive Summary

Council is in receipt of a development application for the subject development on the subject site and the proposal is a permissible land use with Council consent.

Site & Surrounds

The subject site is zoned B3 Commercial Core under the Penrith Local Environmental Plan 2010. The proposal is defined as a 'restaurant or café' and is permissible within the zone, only with development consent.

The subject site is located in the city centre, adjacent to the Tax Office. The site is specially located on Gaymark Lane which provides access from Henry Street through to the Allen Place Carpark.

Proposal

The proposed development includes the following aspects:

- Use of the existing restaurant with seating for 32 patrons;
- Proposed restaurant opening hours between 8am – 4pm Monday to Friday and 9am – 1pm Saturday and Sunday;
- Maximum of 2 deliveries per day during 8am and 8:30am;
- Use of the existing Council car park (Allen Place Carpark);
- Internal fit-out of the premises; and
- Signage to identify the café.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2007 (City Centre)
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within 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 2.3 Permissibility | Complies - See discussion |

Clause 2.3 Permissibility

Permissibility

The subject site is zoned B3 Commercial Core under the Penrith Local Environmental Plan 2010. The proposal is defined as a 'restaurant or café' and is permissible within the zone, only with development consent. A restaurant or café is defined by the instrument as:

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

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

There are no draft Environmental Planning Instruments that apply to the proposal.

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

Development Control Plan 2007 (City Centre)

| Provision | Compliance |
|---|---|
| Part 4 - Accessing, parking and servicing | Complies - see Appendix - Development Control Plan Compliance |

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

There are no planning agreements applying to this application.

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

Fire safety

In accordance with Section 143 of the Environmental Planning and Assessment Regulation 2000, an assessment of the fire protection and structural capacity of the proposed building is necessary.

The application has been referred to Council's Building Surveyors for assessment who concluded that the proposed development complies with the requirements of the Regulations.

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

As outlined previously the proposal is considered to have a negligible impact on the current traffic volumes of the area. The proposal will utilize the existing building on the subject site.

The proposed development represents an efficient and economic use of the land which will contribute to a diversity of uses within the City Centre and enhance the cultural and social fabric of the City Centre. The restaurant will be in a convenient location of the CBD with easy access for customers and staff. Opportunities for employment will be increased during the fitout of the building, and during operation of the restaurant.

Hours of operation have been nominated as 8am – 4pm on weekdays and 9am - 1pm on weekends, which are considered satisfactory when considered with context with the other premises in the immediate vicinity of the development site.

The proposed signage is limited to 3 stickers on windows measuring 60cm X 90cm to identify the business. This is consistent with the surrounding area.

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

The proposed development is considered to be compatible with the surrounding area. A restaurant is permissible within the zone only with development consent. The proposal ensures that the existing amenity is maintained through compliance with Penrith LEP 2010 and Penrith DCP 2014.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

Community consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development did not have to be notified to nearby and adjoining residents.

Referrals

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

| Referral Body | Comments Received |
|-------------------------------|---------------------------------------|
| Building Surveyor | No objections - subject to conditions |
| Environmental - Public Health | No objections - subject to conditions |

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

The proposed development will not generate any significant issues of public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being the Penrith LEP 2010 and DCP 2014, the proposal satisfies the aims, objectives and provisions of these policies.

In its current form, the proposal will have a positive impact on the surrounding character of the area.

The proposed design is site responsive, complies with key development standards and is in the public interest.

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, subject to recommended conditions.

Recommendation

1. That DA15/0565 for fit out and use for Café Fleur at 134-138 Henry Street Penrith, be approved subject to the attached conditions.

CONDITIONS

General

1 [A001](#)

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

| Plan | Numbered | Dated |
|--------------------------|----------|-----------|
| Elevations Plan | Plan 1 | 27/7/2015 |
| External Colour Schedule | Plan 2 | 27/7/2015 |
| Locality Plan | Plan 3 | 27/7/2015 |
| Sections plan | Plan 4 | 27/7/2015 |
| Sections plan | Plan 5 | 27/7/2015 |
| Site Plan | Plan 6 | 27/7/2015 |
| Floor Plan | Plan 7 | 27/7/2015 |
| Signage details | Plan 8 | 27/7/2015 |

2 [A012 - Food Act](#)

The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2010 and the Australian and New Zealand Food Standards Code are met at all times.

3 [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.

4 [A021 - Business Registration](#)

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.

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

The approved operating hours are from 8 am to 4 pm Mondays to Fridays, and 9 am to 1 pm Saturdays and Sundays.

6 [A032 - Goods in buildings](#)

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

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

Outdoor Eating & Trading does not form part of this consent.

BCA Issues

8 [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".

9 [E007 - Shade policy in public places](#)

Access to the first floor wc facilities is to be made available to the patrons at all times the cafe is open to the public.

10 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.

11 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

12 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*.

13 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.

Detailed plans together with calculations for the system must be provided as part of the development application or as part of the Construction Certificate application.

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 issuing 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 AS1668 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

14 **F024 - Food authority notification**

Prior to the operation of the food business the business must notify the NSW Food Authority of their details including:

- (a) Contact details for the food business, including the name and address of the business and the proprietor of the business.
- (b) The nature of the food business.
- (c) The location of any other food premises associated with the food business, within the jurisdiction of NSW Food Authority.

Should these details change during the operation of the business the business operator must provide the NSW Food Authority with an update of these details.

Notification can be completed free of charge on the NSW Food Authority's Food Notify website at www.foodnotify.nsw.gov.au.

15 **F025 - Food safety supervisor**

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.

Certification

16 **Q05F - Occupation Certificate for Class10**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation/use of the café.

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 2007 (City Centre)

4 Access, Parking and Servicing

The DCP stipulates that a restaurant is to provide 1 space per 6m² of seating area, plus 1 space per employee. The proposal incorporates 47.99m² and therefore a requirement for 8 car spaces. The proposal does not incorporate additional parking and therefore does not specifically comply with the DCP. However, the proposal does not increase floor space of the existing building and as such it is considered that additional parking is unwarranted.

Sufficient on site parking is considered to be available for the use within the Allen Place carpark. It is noted that there is potential for traffic and parking impacts to be associated with the proposal. However this impact is likely to be minimal given that clientele targeted for the café would be those already in the City Centre, for example people employed in the City Centre or people frequenting Westfield shopping centre. It is considered that the proposal will generate minimal disruption to the local traffic network.