

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA14/0354
Proposed development:	Retail Premises - Vehicle Hire & Site Office
Property address:	614 - 632 High Street, PENRITH NSW 2750
Property description:	Lot 10 DP 1162271
Date received:	2 April 2014
Assessing officer	Jane Hetherington
Zoning:	ZONE B4 MIXED USE PCCLEP 2008
Class of building:	Class 5
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for a retail premises - vehicle hire and site office at 614 - 632 High Street, Penrith. Under Penrith City Centre Local Environmental Plan 2008, the proposal is defined as a retail premises. The subject site is zoned B4 Mixed Use and the proposal is a permissible land use in the zoning with Council consent. An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

Properties of the site

The subject site is located within Penrith CDB and has two street frontages, High Street to the north and Union Lane to the South. The site has a total area of 4715m² and is an irregular shape and is currently vacant. The lands immediately adjacent to the site, in all directions, accommodate other commercial uses and activities.

History

The applicant attended a pre-lodgement meeting with the Development Advisory Panel on 31 March 2014 with the following advice being provided by Council:

- Consent for the proposal should be sought on a temporary basis. The subject site is a key re-development site in the Penrith City Centre and is earmarked for future mixed commercial and residential development. In view of the strategic vision for the site, Council will initially only consider a 12 month period for the proposed use.
- There is a restriction on the use of the land under DP 1162271 that no building or development is permitted on the land identified as a new public street in Figure 7.2 of Penrith City Centre Development Control Plan (DCP) 2007 unless satisfactory arrangements have been made with Council and the owners of adjoining lots. The proposal shall be clear of this affectation or documentary evidence of the latter shall be provided.
- Existing site fencing and landscaping shall be upgraded to improve the presentation of the site from High Street and Union Lane.
- The application shall include details of the intended operational aspects of the proposed use. Details shall include the intended uses of the site and operational procedures, proposed hours of operation, staffing numbers, nature and frequency of vehicle movements, loading and unloading operations, ancillary uses (e.g. vehicle washing) and the like.
- The relevant provisions contained in Section 2.2 (Crime Prevention Through Environmental Design) of Penrith DCP 2006 shall be satisfied. In particular, low level lighting shall be provided to the site and be in accordance with AS 4282 to ensure external light does not unreasonably spill onto adjoining properties.
- The site is not affected by local overland flows.
- It is not clear whether the proposal will create additional hardstand area. Should the proposal seek to create additional hardstand area, stormwater drainage for the site shall be provided in accordance with the following:
 - o Penrith Development Control Plan 2006.
 - o Stormwater Drainage for Building Developments (Working Draft) Policy.
 - o Water Sensitive Urban Design Policy and Technical Guidelines.

Proposal

The proposed development involves:

- Temporary (three year) use of site to operate a vehicle hire premises;
- Installation of one (1) demountable buildings;
- Operating hours: Monday to Fridays, 7am to 6pm and Saturday to Sunday, 8am to 5pm;
- Maximum of two staff on site at any one time;
- 2 customer parking spaces;
- 17 SRV parking spaces and 16 car parking spaces.

Plans that apply

- Penrith Local Environmental Plan 2008 (City Centre)
- Development Control Plan 2006
- Development Control Plan 2007 (City Centre)
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

• 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 with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Penrith Local Environmental Plan 2008 (City Centre)

Provision	Compliance
Clause 2 - Aims of the Plan	Complies
Clause 12 - Zoning of land to which this plan applies	Complies
Clause 13 - Zone objectives	Complies
Clause 15 - Additional permitted uses for particular land	N/A
Clause 16 - Subdivision consent requirements	N/A
Clause 17 - Temporary use of land	N/A
Clause 21 - Height of buildings	Complies
Clause 22 - Architectural roof features	N/A
Clause 23 - Sun Access	N/A
Clause 24 - Floor space ratio	Complies
Clause 25 - Minimum building street frontage	Complies
Clause 26 - Design Excellence	N/A
Clause 27 -Car parking	Complies
Clause 28 - Ground floor development within B3 and B4	Complies
Clause 29 - Building separation	N/A
Clause 30 - Ecologically sustainable development	N/A
Clause 31 - Serviced apartments	N/A
Clause 32 - Exceptions to development standards	N/A
Clause 33 - Land acquisition within certain zones	N/A
Clause 34 - Development on proposed classified roads	N/A
Clause 35 - Classification and reclassification of public land	N/A
Clause 36 - Community use of educational establishments	N/A

Clause 37 - Classified roads	N/A
Clause 38 - Development in proximity to a rail corridor	N/A
Clause 39 - Preservation of trees or vegetation	Complies
Clause 40 - Heritage conservation	N/A
Clause 41 - Bush fire hazard reduction	N/A
Clause 42 - Development for group homes	N/A
Clause 43 - Crown development and public utilities	N/A
Clause 44 - Location of sex services premises and restricted premises	N/A
Schedule 1 - Additional permitted uses	N/A
Clause 45 - Application of Part	N/A
Clause 46 - Interpretation	N/A
Clause 48 - Suspension of covenants, agreements and instruments	N/A
Clause 49 - Land use zones	N/A
Clause 50 - zone objectives and land use table	N/A
Clause 51 - Height of buildings	N/A
Clause 52 - Development near zone boundaries	N/A
Clause 53 - Architectural roof features	N/A
Clause 54 - Heritage Conservation	N/A
Clause 55 - Earthworks	N/A
Clause 56 - Savings provision relating to pending applications	N/A
Clause 47 - Certain planning instruments cease to apply to the land	N/A

Permissibility

The subject site is zoned B4 Mixed Use under the provisions of Penrith City Centre Local Environmental Plan 2008. The proposal is most closely defined as a retail premises and is permissible in the zone with Council consent.

Retail premises means a building or place used for the purpose of selling items by retail, or for hiring or displaying items for the purpose of selling them by retail or hiring them out, whether the items are goods or materials (or whether also sold by wholesale).

LEP and Zone Objectives

The proposal is consistent with the LEP and zone objectives.

Development Standards**Clause 21 Height of Buildings**

Under the LEP a maximum building height of 24m is permitted at the subject site. The proposal complies with this requirement being 2.4m high.

Clause 24 Floor space ratio

Under the LEP a maximum FSR of 3:1 is permitted at the subject site. Given that the development is single storey with a small footprint the proposal readily complies with this standard.

Clause 25 Minimum building street frontage

Clause 25 specifies that Council must not grant consent to the erection of a building on land zoned B4 Mixed Use if it does not have at least one street frontage of 20 metres or more. The subject site has a frontage over 74m to high street complying with this standard.

Clause 26 Design Excellence

Clause 26 specified that Council must not grant consent to development unless the proposed development exhibits design excellence. The clause applies to development involving the construction of a new building or external alterations to an existing building. As the proposal involves the siting of a prefabricated building on the site for a temporary period, this clause is not applicable to the subject development.

Clause 27 Car Parking

This clause specifies that consent must not be granted for development on land zoned B3 Commercial Core or B4 Mixed Use that involves the erection of a new building unless at least one car parking space is provided for every 60 square metres of the floor area of that is to be used for commercial activities. The development provide 55m² of GFA to be used for retail purposes. and provides two customer car parking spaces complying with this requirement.

Clause 28 Ground floor development within Zones B3 and B4

The development does not provide any new buildings on site and the limited floor space associated with the development makes it difficult to activate street frontages. Nevertheless, the development will provide some activation to Union Lane.

Clause 29 Building Separation

The development provides limited GFA and will easily achieve all building separation requirements.

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument**Planning Proposal - Penrith Local Environmental Plan 2010 (Stage 2)**

The Stage 2 Planning Proposal was on public exhibition until July 2013. Under the Stage 2 Planning Proposal the subject site is going to remain zoned B4 Mixed Use. The proposal which is defined as a *vehicle sales or hire premises* (type of commercial premises) is permissible in the zone with Council consent.

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

Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	N/A
Chapter 2.2 - Crime prevention through environmental design	Complies
Chapter 2.3 - Engineering works	N/A
Chapter 2.4 - Erosion and sediment control	N/A
Chapter 2.5 - Heritage management	N/A
Chapter 2.6 - Landscape	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	N/A
Chapter 2.9 - Waste planning	Complies
Chapter 2.10 - Flood liable land	N/A
Chapter 2.11 - Car parking	Complies - see Appendix - Development Control Plan Compliance
Chapter 2.12 - On-site sewage management	N/A
Chapter 2.13 - Tree preservation	Complies
Chapter 3.1 - Advertising signs	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 3.2 - Baby care rooms	N/A
Chapter 3.4 - Health care consulting rooms	N/A
Chapter 3.6 - Outdoor eating and trading areas - Penrith and St Marys CBD's	N/A
Chapter 3.3 - Child care centres	N/A
Chapter 3.5 - Siting and aesthetics of telecommunication facilities	N/A

Development Control Plan 2007 (City Centre)

Provision	Compliance
Part 2 - Building form	Does not comply - see Appendix - Development Control Plan Compliance
Part 3 - Pedestrian amenity	Does not comply - see Appendix - Development Control Plan Compliance
Part 4 - Accessing, parking and servicing	Complies - see Appendix - Development Control Plan Compliance

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

The application has been referred to Council's Building Surveyors for assessment who raised no objection to the proposal and recommended conditions to be imposed in the consent.

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

Natural and Built Environment

Only limited building works are proposed by the development and as such the proposal is considered to have minimal impact to the built environment. No washing or servicing of vehicles is to be undertaken on the site and therefore the proposal is considered to have only minimal impact to the natural environment.

Social and Economic

The proposal will provide several new employment opportunities and is considered to have only positive social and economic impacts.

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

The site is suitable for the following reasons:

- The subject site is zoned B4 Mixed Use under Penrith City Centre Local Environmental Plan 2008 which permits the proposed use.
- The subject site is located within the CBD and is well serviced by infrastructure necessary to support the proposed use.
- The site is not located near any sensitive land uses and is clear of vegetation.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Chapter 2.7 of the Penrith Development Control Plan for the City of Penrith 2006 – Notification and Advertising, 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
Development Engineer	No objections - subject to conditions

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

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

Section 94 - Developer Contributions Plans

The Penrith City Centre Civic Improvement Plan (2008) applies to the site where developments involve an increase of gross floor area for commercial and business related uses. As the proposal includes increasing the gross floor area by 55 square metres Section 94 are applicable to the proposal. The following Section 94 plans apply to the site:

Penrith City - administration
Penrith City Commercial Office

The following Section 94 calculations apply to the proposed development.

Type of Contribution	Contribution Rate x Calculation Rate	Total
Penrith City - Administration	55 x \$1	\$55
Penrith City Commercial Office	55 x \$171	\$9,405
	NET TOTAL	\$9,460

As approval for the use of the site is to be granted on a temporary basis (1 year), Section 94 contributions are not required to be paid. However, should the applicant seek to extend the length of time by way of a further development consent, the use of the site would no longer be temporary and Section 94 contributions would be applicable. This will be conditioned in the consent.

Conclusion

In assessing this application against the relevant environmental planning policies, being Penrith City Centre Local Environmental Plan 2008, Development Control Plan 2007 and Development Control Plan 2006 the proposal satisfies the aims, objectives and provisions of these policies. The proposed design is site responsive, complies with key development standards and is in the public interest. Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

1. That DA14/0354 for vehicle hire and site office at 614 - 632 High Street, Penrith, be approved subject to the attached conditions.

General

1 [A001](#)

The development must be implemented substantially in accordance with the following plans 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.

Drawing Title	Drawing No	Prepared By	Dated
Site Plan	Sheet 1 of 2	AbCad Design and Drafting	-
Floor Plan & Elevations	Sheet 2 of 2	AbCad Design and Drafting	-

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 a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan-Advertising Signs.

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

The approved operating hours are from 7 am to 6 pm Mondays to Fridays and 8 am to 5 pm Saturdays to Sundays.

5 [A046 - Obtain Construction Certificate before commencement of works](#)

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

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

Approval for the use of the site as a vehicle hire and sales office is limited to a 1 year period commencing from the date of notice of determination. Use of the site as a vehicle hire and sales office beyond that time shall be subject to a separate application and further development consent by Council.

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

All vehicular access to the site is to be provided by Union Lane.

Environmental Matters

8 [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.

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

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.

BCA Issues

10 [E002 - BCA ISSUES TO BE ADDRESSED](#)

The temporary office building shall be installed in accordance with the manufacturers specifications and be provided with an appropriate portable fire extinguisher.

11 [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".

12 **E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)**

The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

(a) deal with each essential fire safety measure in the building premises, and

(b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.
-

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

13 **E01A - BCA compliance for Class 2-9**

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

Utility Services

14 **G002 - Section 73 (not for**

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

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

15 **G004 - Integral Energy**

Prior to the issue of a Construction Certificate, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

Engineering

16 **K101 - Works at no cost to Council**

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

17 [K202 - Section 138 Roads Act – Minor Works in the public road](#)

Prior to the issue of a Construction Certificate, a S138 Roads Act application/s, including payment of fees shall be lodged with Penrith City Council, as the Roads Authority for any works required in a public road. These works may include but are not limited to the following:

- Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- Road opening for utilities and stormwater (including stormwater connection to Council infrastructure)
- Road occupancy or road closures

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. Contact Council's **City Works Department** on (02) 4732 7777 for further information regarding the application process.

Note:

1. Approvals may also be required from the Roads and Maritime Service for classified roads.

Landscaping

18 [L012 - Existing landscaping \(for existing development\)](#)

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

Development Contributions

19 [N001 - Section 94 contribution \(apply separate condition for each Contribution Plan\)](#)

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan(s) for Penrith City - Administration. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$55 is to be paid to Council however is deferred unless further development consent is sought extending the approved time period. This rate is subject to quarterly reviews and will be reviewed at time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Penrith City - Administration may be inspected at Council's Civic Centre, 601 High Street, Penrith.

20 [N001 - Section 94 contribution \(apply separate condition for each Contribution Plan\)](#)

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan(s) for Penrith City Commercial Office. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$9,405 is to be paid to Council however is deferred unless further development consent is sought extending the approved time period. The rate is subject to quarterly reviews and will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Penrith City Commercial Office may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Payment of Fees

21 [P002 - Fees associated with Council land \(Applies to all works & add K019\)](#)

Prior to the commencement of any works on site, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees and Infrastructure Restoration fees.

Certification

22 [Q05F - Occupation Certificate for Class10](#)

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

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 2006

Part 2 - City wide controls

2.11 Car Parking

Under the DCP, commercial premises are required to provide car parking at a rate of 1 space per 40sqm of gross floor area. The proposed office has a floor area of 55m² requiring 1.3 car spaces to be provided. The proposal complies with this requirement providing 2 customer car spaces.

Part 3 - City wide specific land uses

3.1 Advertising Signs

No signage is proposed in the application. It is recommended that a condition of consent be included requiring that a separate development application be submitted for signage not considered exempt development.

Development Control Plan 2007 (City Centre)

2 Building Form

Figure 2.1 identifies that development on the site should be built to street alignment along High Street. The proposal does not comply with this requirement with the proposed office being setback approximately 40m off High Street. Figure 2.2 identifies that development of the site should have a minimum height of 16m and a maximum height of 20m. The proposal does not comply with this requirement with the office have a height of 2.4m. Given that the office and use of the site is temporary, these non-compliances are not considered to impact on the proposal meeting the objectives of the DCP.

3 Pedestrian Amenity

3.2 Active Street Frontages and Address

Figure 3.2 identifies that site as being required to be provided with an active street frontage. Under the DCP active frontage uses are defined as one or a combination of the following at street level:

- entrance to retail;
- shop front;
- glazed entries to commercial and residential lobbies occupying less than 50% of the street frontage, to a maximum of 12 metres frontage;
- cafe or restaurant if accompanied by an entry from the street;
- active office uses, such as receptio, if visible from the street;
- public building if accompanied by an entry.

The proposal does not meeting the definitions outlined above. Given that the application is for the temporary use of the site, while it awaits further redevelopment, this non-compliance is not considered to impact on the proposal meeting the objectives of the DCP.

3.3 Front Fences

The existing boundary fence is approximately 2m high constructed of metal wire. The development does not propose any new fencing. Although the existing fence exceeds the maximum height (1.2m) for front fences specified in the DCP it allows for passive surveillance of the street and clearly defines the interface between the public and private domain. As the proposal is for the temporary use of the site, the existing fence is considered to satisfactory.

4 Access, Parking and Servicing

The development does not propose any new access points, vehicle crossovers or hardstand area. With the existing hardstand area, there is sufficient space on-site to enable vehicles to enter and exit the site in a forward direction. Council's Engineer has recommended that a condition of consent be included requiring that all vehicles access to the site via Union Lane. This will form part of the consent.

With the washing and servicing of vehicles to occur off-site, the development will generate very limited waste streams. All bins will be serviced and removed by commercial waste contractors, with waste streaming and recycling to occur in accordance with industry standards.

Although the applicant has applied for a 3 year consent, given the above concessions, Council considers that a 1 year consent is appropriate. The use of the site as a vehicle hire and sales office beyond that time will be subject to a further development