

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA20/0021
<b>Proposed development:</b>	Use of Premises as Educational & Training Studio (Business Premises)
<b>Property address:</b>	112 a Stafford Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 11 DP 29452
<b>Date received:</b>	20 January 2020
<b>Assessing officer</b>	Jacqueline Klincke
<b>Zoning:</b>	Zone B1 Neighbourhood Centre - LEP 2010
<b>Class of building:</b>	Class 9b
<b>Recommendations:</b>	Approve

### Executive Summary

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Penrith City Council is in receipt of a development application for the change of use of an existing shop to an educational and training studio (Unity Studios) at 112a Stafford Street, Penrith. Unity Studios offers academic, music and creative arts knowledge and skills classes to members of the community of all ages.

Under the *Penrith Local Environmental Plan 2010*, the subject site is zoned B1 Neighborhood Centre and a *business premises* is a permissible land use in this zone with consent.

During a site inspection conducted by Council officers, internal fit-out of the premises and signage for the proposed business was identified to have already been completed. However, it is noted that correspondence with the applicant has confirmed that the business is not currently operating.

Other key issues identified as part of the assessment of the proposal include:

- Suitability of proposed shopfront signage; and
- Impact of parking and traffic on the locality.

Based on further investigation and recommended conditions of consent, these matters are considered to be resolved.

In accordance with Appendix F4 - Notification and Advertising of the *Penrith Development Control Plan 2014*, and due to the nature and scale of the proposal, notification of the application was not required. Council received no public submissions in this regard.

The subject site is owned by a Penrith City Councillor and in accordance with Schedule 2 of the Minister's Local Planning Panels Direction, the Penrith Local Planning Panel is the determining authority for the application.

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

## Site & Surrounds

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The subject site is legally described as Lot 11 DP 29452 and is commonly known as 112a Stafford Street, Penrith. The property is located on the southern side of Stafford Street, approximately 255m west from the intersection of Stafford Street and The Northern Road (Parker Street), and is currently occupied by eleven (11) neighbourhood shops. Parking and access for these neighbourhood shops is available by way of on-street parking via a one-way service road.

The retail floor space area of the subject shop is approximately 67m<sup>2</sup> and also contains an external closet pan and wash basin. The shop was previously used as an awning/blind retail premises, however, a review of Council's records has indicated no recent approvals have been granted by Council for the premises. In addition, during a site inspection conducted by Council officers, internal fit-out of the premises and signage for the proposed business was identified to have already been completed. However, it is noted that correspondence with the applicant has confirmed that the business is not currently operating.

The surrounding area is characterised by existing neighbourhood shops to the immediate east and west, low to medium density residential development to the north and south, and the Pauline Fields Park further to the east.

## Proposal

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The proposal seeks approval for the change of use of an existing shop to an educational and training studio (Unity Studios). The academic, music and creative arts educational premises includes the following aspects:

- Hours of operation: Monday - Saturday, 9:30am - 8pm;
- Maximum of four (4) staff members and twelve (12) students on site at any one time;
- Maximum of six (6) sessions/classes scheduled on a staggered basis per day;
- Two (2) 85cm x 75cm full-length vinyl business identification door signs and two (2) 1.9m x 1.58m full-length vinyl business identification window signs; and
- Use of on-street car parking.

It is noted that the submitted Statement of Environmental Effects states the business will be located at the premises until December 2020 until a new long-term location is secured.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014

## Planning Assessment

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### • Section 4.15 - Evaluation

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

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

## Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.3 Height of buildings	N/A
Clause 4.4 Floor Space Ratio	N/A
Clause 7.1 Earthworks	N/A
Clause 7.4 Sustainable development	Complies
Clause 7.7 Servicing	Complies

### Clause 2.3 Permissibility

The subject site is zoned B1 Neighbourhood Centre under the *Penrith Local Environmental Plan 2010*. The proposal is for an academic, music and creative arts studio. In this regard, the proposal is characterised as a *business premises*, which is defined as follows:

**'business premises'** means a building or place at or on which -

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdresser, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

The proposed business premises is a permissible land use in the B1 zone with consent.

### Clause 2.3 Zone objectives

Under the *Penrith Local Environmental Plan 2010*, the objectives of the B1 Neighbourhood Zone are:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To provide retail facilities for the local community commensurate with the centre's role in the local and regional retail hierarchy.
- To create opportunities to improve the public domain and encourage the integration of centres with public transport and pedestrian networks.
- To ensure that development reflects the desired future character and dwelling densities of the area.

The proposed business premises is considered to directly satisfy the first zone objective by serving the needs of those working or living within the surrounding locality.

The proposal is not contrary to the other objectives of the B1 zone.

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

There are no draft environmental planning instruments that directly apply to the proposal.

## 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	N/A
C3 Water Management	Complies
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Does not comply - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	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

In accordance with the requirements of Clause 93 of the *Environmental Planning and Assessment Regulation 2000*, when determining a development application, the consent authority is to take into consideration whether the fire protection and structural capacity of the subject building will be appropriate to the building's proposed use. In this regard, the existing fire safety measures are considered adequate and therefore an upgrade under Clause 93 is not required.

In addition, under the provisions of the Building Code of Australia (BCA) 2019, and noting a maximum number of four (4) staff members and twelve (12) students will be on site at any one time, the proposed development would require:

- One (1) closet pan and wash basin for male staff/students; and
- One (1) closet pan and wash basin for female staff/students.

However, as identified during a site inspection of the subject premises, one (1) closet pan and one (1) wash basin is available solely for the use of the occupants of the premises.

Whilst it is acknowledged that this does not result in full compliance with the BCA 2019, based on the maximum number of occupants expected to be on site at any one time, and the short period of time the occupants will be on the premises (anticipated to range from 30 minutes to 2 hours as per the Statement of Environmental Effects), the existing sanitary facilities are acceptable in this instance.

It is also noted that the provision of an additional closet pan and wash basin would result in the requirement for substantial building works which is considered to be unreasonable given the health and amenity of the occupants will unlikely be impacted.

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

### ***Context and Setting***

The proposal is for the occupation of the premises for the purpose of an educational and training studio with associated signage. The development will have minimal impact on the amenity of the locality given that the subject shop is located within a neighbourhood shopping complex. The application proposes trading hours of 9:30am to 8pm, Monday to Saturday which is similar to other business and commercial trading hours within the complex. A condition of consent is recommended to ensure the business complies with these hours of operation.

### ***Access, Transport and Traffic***

Given the proposal is for a small scale business, it is unlikely that there will be any adverse impacts on local traffic conditions. As discussed within the Appendix to this report, the existing access arrangements and on-street car parking around the site are considered adequate for the proposed educational and training studio.

### ***Utilities and Services***

The site has connections to utility services and contains an external closet pan and hand-basin which will have the capacity to cope with the demand associated with the proposal.

### ***Noise and Vibration***

It is considered that any noise generated by the use of the premises will not unreasonably impact on the amenity of the surrounding area. To maintain acoustic privacy and amenity to the surrounding area, a condition is recommended requiring compliance with the nominated hours of operation.

### ***Environmental Impacts***

There will be no adverse impacts on water resources or soil quality as a result of the proposal and the development does not require the removal of any significant biodiversity or threatened species. The amount of waste to be generated is considered to be manageable.

### ***Socio-Economic Impacts***

The proposal does not contravene any development standards and is unlikely to have any significant impacts on the natural, social or economic environments. It is considered the proposed business will provide a service that will cater to the needs of the community.

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

The site is considered suitable for the proposed development as the proposal is minor in scale and will not cause any detrimental impacts to the natural and built environments. Furthermore, the proposed business is considered to provide a service that will support residents of the local community. Subject to modifications to the proposed signage, which can be required as a condition of consent, the proposed business is considered to be in keeping with the character of the existing neighbourhood shopping complex. In this regard, the site is suitable for the proposed development.

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

### **Community Consultation**

In accordance with Appendix F4 - Notification and Advertising of the *Penrith Development Control Plan 2014*, applications for commercial or retail fit-outs and uses do not require public notification. It was also considered that due to the nature and scale of the proposal, particularly being located within an existing neighbourhood shop, public notification was not warranted. Council received no public submissions in this regard.

### **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
Traffic Engineer	Not supported

### Traffic Engineer

The application was referred to Council's Traffic Engineer who did not support the reliance on on-street car parking for the proposed use.

Notwithstanding this position, at any one time, the proposed business is expected to have a maximum of four (4) staff members and twelve (12) students on site, with a maximum of six (6) 30-minute sessions/classes per day. It is anticipated that the majority of students will be picked-up and dropped-off by parents and caregivers, and classes are to be arranged on a staggered basis so as to ensure adequate on-street parking is available. In addition, the proposed business is located within an existing neighbourhood shopping complex which provides for adequate on-street parking for all shops via a purpose-built one-way service road that caters specifically for the eleven (11) shops along Stafford Street, as well as the surrounding local road network.

In this regard, whilst the proposal is reliant on the availability of on-street car parking, it is considered that the business will not cause any detrimental impacts to the local road network or existing parking conditions. In addition, given the nature and scale of the proposed business, there will be adequate on-street car parking available for the subject premises and other shops along Stafford Street, particularly during peak periods.

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

Given the nature and scale of the proposal, the proposed development is not considered likely to generate any significant issues of public interest. In this regard, the public interest is best served by the orderly and economic use of the land for purposes permissible under the relevant planning provisions and in accordance with the prevailing planning controls, which is considered to be achieved in this instance.

## Conclusion

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In assessing the proposed development against the relevant environmental planning policies being the *Penrith Local Environmental Plan 2010* and the *Penrith Development Control Plan 2014*, the proposal broadly satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposal and there are no significant negative impacts envisioned as a result of the proposal. Therefore, the application is worthy of support, subject to the recommended conditions of consent.

## Recommendation

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That DA20/0021 for the use of an existing shop as an educational and training business premises with associated signage at 112a Stafford Street, Penrith, be approved, subject to the recommended conditions of consent.

# CONDITIONS

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## General

1 [A001 - Approved plans table](#)

The development must be implemented substantially in accordance with the following stamped approved plans, 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 Description	Prepared By	Dated
Tenancy Location Plan	Cassandra Jensen	--
Floor Plan	Cassandra Jensen	--
Signage Details	--	--

2 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)

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

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

The approved hours of operation are from 9:30am to 8pm, Mondays to Saturdays.

4 [A032 - Goods in buildings](#)

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

5 [A039 - Graffiti](#)

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

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

**Prior to the issue of an Occupation Certificate**, the two (2) door signs are to be removed and the two (2) window signs are to be reduced in size and modified to be no more than 1.2m above the window sill height as shown on an annotated diagram provided with the Notice of Determination. No other signage may be erected without prior approval, as necessary.

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

In the event that Council receives a complaint regarding excessive noise, the person(s) in control of the premises shall at their own cost arrange for an acoustic investigation to be carried out (by a suitably qualified person) and provide a report specifying proposed methods for control of noise emanating from the premises.

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

Any intruder alarm installed at the premises shall be fitted with a timing device in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

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

All classes/sessions shall be arranged on a staggered basis to ensure minimal impact to the availability of on-street parking.

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

A maximum of sixteen (16) people are permitted to be on site at any one time.

## BCA Issues

11 **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:

**Schedule**

<b>Statutory Fire Safety Measure</b>	<b>Minimum Standard of Performance / Design / Installation</b>	<b>Currently Implemented</b>	<b>Proposed / Required to be Implemented</b>
Smoke alarms	AS 3786-1993	x	
Portable fire extinguishers	BCA Clause E1.6 AS 2444-2001	x	

(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.

## **Certification**

12 **Q05F - Occupation Certificate**

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

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.



# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part C - City-wide Controls

#### C9 Advertising and Signage

Section C9.1 of the *Penrith Development Control Plan 2014* outlines various types of signage that are desirable, including painted window signs. In this regard, the proposal includes the installation of two (2) 85cm x 75cm full-length vinyl graphic business identification door signs displaying the Unity Studios logo, and the wording 'These Premises are Alarmed & Under Video Surveillance' with the image of a light bulb. In addition, two (2) 1.9m x 1.58m full-length vinyl business identification window signs are proposed, displaying the business name 'Unity Studios', logo and types of sessions/classes offered, as well as the business phone number and website with large-scale colourful graphics.

It is considered that having the shopfront completely covered with window signage does not provide for an appropriate shopfront presentation and does not reflect the signage located on the shopfronts of the adjacent shops along Stafford Street. In this regard, and to ensure adequate privacy is maintained for students whilst also providing for a satisfactory level of passive surveillance, a condition of consent is recommended requiring the two (2) door signs be removed and the two (2) window signs be reduced in size and modified to be no more than 1.2m above the window sill height.

#### C10 Transport, Access and Parking

The *Penrith Development Control Plan (DCP) 2014* does not identify parking rates or requirements specifically for educational and training studios. However, the DCP requires car parking for business premises to be provided at a rate of one (1) car space per 40m<sup>2</sup> of gross floor area. In this regard, the subject shop is approximately 67m<sup>2</sup> in gross floor area and therefore requires a minimum of two (2) on-site car parking spaces.

However, the subject site does not contain any on-site parking, except for the provision of one (1) space for the shop-top resident. In this regard, the subject premises and proposed business is reliant on on-street parking via the purpose built one-way service road which caters specifically for the eleven (11) neighbourhood shops along Stafford Street, as well as the surrounding local road network.

At any one time, the proposed business is expected to have a maximum of four (4) staff members and twelve (12) students on site, with a maximum of six (6) 30-minute sessions/classes per day. It is anticipated that the majority of students will be picked-up and dropped-off by parents and caregivers, and classes are to be arranged on a staggered basis so as to ensure adequate on-street parking is available.

In this regard, whilst the proposal is reliant on the availability of on-street car parking, it is considered that the business will not cause any detrimental impacts to the local road network or existing parking conditions. In addition, given the nature and scale of the proposed business, there will be adequate on-street car parking available for the subject premises and other shops along Stafford Street, particularly during peak periods.

Overall, the proposed transport, access and parking arrangements are considered to be satisfactory.