

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA21/0016.02
Description of development:	S4.55(1A) Modification to Amend Conditions of Consent
Classification of development:	Class 6

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 301 DP 860777
Property address:	137 Coreen Avenue, PENRITH NSW 2750

### DETAILS OF THE APPLICANT

Name & Address:	Rusty Penny Brewing PO Box 131 CRANEBROOK NSW 2749
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### DECISION OF CONSENT AUTHORITY

In accordance with Sections 4.18(1) (a) and 4.55 of the Environmental Planning and Assessment Act 1979, consent is granted subject to the conditions listed in attachment 1.

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

Date from which consent operates	9 August 2021
Date the consent expires	9 August 2026
Date of this decision	9 August 2021 as amended on 8 November 2021 under Section 4.55 of the Environmental Planning and Assessment Act.

## POINT OF CONTACT

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

Assessing Officer:	Jake Bentley
Contact telephone number:	+612 4732 8087

## NOTES

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### **Reasons**

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

### **Conditions**

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

### **Certification and advisory notes**

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

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

### **Review of determination**

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

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

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

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

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

### **Designated development**

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

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

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

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

# ATTACHMENT 1: CONDITIONS OF CONSENT

## General

- 1 The development must be implemented substantially in accordance with the following stamped approved plans issued 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.

<b>Drawing Title</b>	<b>Sheet/Drawing No.</b>	<b>Job No.</b>	<b>Issue</b>	<b>Prepared By</b>	<b>Dated</b>
Floor Plan	-	-	-	-	-
Swept Path Plan	-	-	-	Civil and Traffic Management (within Traffic Assessment)	-

- Waste Management Plan, undated.

The various components of the use are to be contained within the areas nominated on the approved floor plan.

2 The maximum patron capacity of the premises is as follows:

*Monday to Friday*

6am - 5pm - 80 patrons  
5pm - 10pm - 120 patrons

*Saturday*

6am - 4pm - 100 patrons  
4pm - 10pm 120 patrons

*Sunday*

10am - 10pm - 120 patrons

In accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000*, a sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted in the building.

The above patron capacity shall be trialed for a period of 18 months from the date of this modified consent to ensure the operations do not adversely impact on car parking and traffic both on-site and within the local road network. After the 18 month trial period the 80 patron capacity shall be reinstated, unless a modification application is lodged and approved for the continuance of the above patron capacity.

A modification application for the above purpose shall be lodged 3 months prior to the end of the 18 month trial period and be accompanied by a Traffic and Car Parking Report.

***As amended on 8 November, 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979.***

3 The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2015 and the Australian and New Zealand Food Standards Code are met at all times.

4 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.

5 A separate development application for the erection of signage, other than signage listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Chapter C9 Advertising and Signage of Penrith Development Control Plan 2014.

6 The approved operating hours are restricted as follows:

- Manufacturing of Beer and Spirits - 24 hours a day Monday to Sunday
- Takeaway Retail Sales - 9am to 10pm Monday to Saturday and 10am to 10pm Sunday
- Sale/Supply for On Premise Consumption - 9am to 10pm Monday to Saturday and 10am to 10pm Sunday
- Workshops/Events - 6am to 5pm Monday to Saturday

Delivery and service vehicles, including waste collection vehicles generated by the development are limited to between 7am and 6pm.

- 7 No retail sale of goods or products, other than those produced on the site shall be conducted from the subject premises. However, the sale of ancillary items such as merchandise, soft drinks and brewing education and supply kits from classes (all strictly in accordance with the approved use) are accepted.

***As amended on 8 November, 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979.***

- 8 All materials and goods associated with the use shall be contained within the building at all times.
- 9 Exterior lighting shall be provided to the car parking and common areas of the site and 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 AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).
- 10 The finishes of the building are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 11 **Prior to the issue of an Occupation Certificate**, a baby change table shall be installed within the toilet facilities.
- 12 The flue pipe associated with the smokers shall not provide for an unsightly projection above the roof.
- 13 The operator must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard, the operator/management team are responsible for noise management and minimisation as well as litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council and the Licensing Authority.
- 14 A Plan of Management is to be prepared addressing the operational procedures and requirements of the development as well as any additional matters outlined within this determination by way of conditions of consent, including but not limited to;
  - Patron Capacity
  - Traffic and Car Parking Arrangements
  - Hours of Operation
  - Licensing Requirements
  - Security
  - Noise and Amenity
  - Complaints

The Plan of Management is to be periodically reviewed (at least annually) and revisions to the Plan are to be made to address and mitigate operational issues if they arise. A copy of the in force Plan of Management is to be provided to Council.

- 15 Tour groups and operators are to be arranged so that no more than one coach (at full capacity) is attending the premise at any one time.
- 16 At no times shall the car parking areas be used for any aspect of the development including the service or consumption of food and drink associated with the development.

- 17 The premise shall only offer for sale and tasting alcoholic beverages that have been produced on the site.
- 18 Food must be available to patrons, of a nature and quantity consistent with the responsible sale, at all times alcoholic beverages are available for consumption on the premises.
- 19 The activities are to operate so as to not interfere with the operation of other businesses in the complex
- 20 The approved use shall not commence until such time that the necessary liquor licence has been issued by Liquor & Gaming NSW.

## Environmental Matters

- 21 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 the areas are to be fully enclosed when the site is unattended.
- 22 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.

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.

- 23 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.
- 24 All works and storage areas where spillages are likely to occur shall be bunded. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. All bunded areas shall be designed so as to facilitate emptying and cleaning.
- 25 **Prior to the issue of an Occupation Certificate**, details of any pre-treatment facilities as required by Sydney Water and, if required a Section 73 Certificate issued by Sydney Water for the said development, are to be submitted to the Certifying Authority.
- 26 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.
- 27 All manufacture associated with the use shall be conducted within the confines of the building at all times.
- 28 All air related discharges generated by the use of the premises including the BBQ smokers shall be collected into a flue-stack system with a suitable design and where required filter system for discharge to the atmosphere. The quality of the discharges from the stack system shall comply with the requirements of the *Protection of the Environment Operations Act, 1997*.
- 29 The approved waste management plan and other waste associated information submitted by the applicant as

part of the application must be implemented on-site and adhered to throughout all stages of the development including construction and operational phases of the development.

- 30 Where an intruder alarm is installed on the premises it shall be fitted with a timing device in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.
- 31 In the event of Council receiving a complaint regarding odour and/or offensive air emissions, the person(s) in control of the premises from where the odour and/or offensive air emissions are emanating may be directed by Council to at their own cost arrange for an odour/air impact assessment and investigation to be carried out (by a suitably qualified person) and submit a report to Council specifying any need for proposed methods for the control of odour and/or offensive air emissions emanating from the premises. Any such report must be provided to Council within 30 days of being requested. The recommendations, if any, of the assessment report upon approval from Council are to be implemented within the timeframe specified by Council.
- 32 In the event of Council receiving a complaint regarding excessive noise, the person(s) in control of the premises from where the noise is emanating may be directed by Council to at their own cost arrange for an acoustic investigation to be carried out (by a suitably qualified person) and submit a report to Council specifying any need for proposed methods for the control of noise emanating from the premises. Any such report must be provided to Council within 30 days of being requested. The recommendations, if any, of the assessment report upon approval from Council are to be implemented within the timeframe specified by Council.
- 33 No music is to be played from the premises that exceeds 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.

***As amended on 8 November, 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979.***

- 34 All waste is to be stored in a manner that ensures compliance with the *Protection of the Environment Operations Act, 1997* that prevents odour, pollution and access by vermin. The waste storage area must be designed to facilitate easy cleaning with water and chemicals in a manner that does not allow polluted waste water to enter the stormwater system.

## **BCA Issues**

- 35 In accordance with Clause 94 of the Environmental Planning and Assessment Regulation 2000, the following works are to be completed to ensure the safety of the occupants;
  - Latching devices on the required exit doors are to comply with Clause D2.21 of the building Code of Australia (BCA).
  - Exit travel distances are to comply with Clause D 1.4 (c) of the BCA. In this respect the travel distances from the amenities area will need to be checked for compliance.
- 36 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".
- 37 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.

38 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

39 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*.

Your attention is drawn to the following requirements:

- Hand basins must be serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands free operation. Where sensor taps are installed the basin must not be more than 6 metres from the hot water system. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.
- Hot water services must be positioned at least 75mm clear of the adjacent wall surfaces, and mounted at a minimum 150mm above the floor level on a non-corrosive metal stand. The hot water system must be sized to meet the demands of the food business during peak operating and cleaning periods and be able to provide sufficient hot water throughout the working day. Discharge from the hot water system must enter the sewer through a tongue dish in accordance with Sydney Water's requirements.
- The floor of the food premises must be finished in an approved non absorbent material, evenly laid, or graded and drained to a trapped floor waste. All floor wastes in the food preparation, service and brewery area must be fitted with a sump removable basket and grate, a minimum 200mm in diameter, and finished in all stainless steel.

- The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other approved material to a height of 2 metres. The intersection of tiles and render must have a flush finish, or be splayed at a 45 degree angle to eliminate a ledge that would allow dust and grease to accumulate.
- The ceiling in the preparation, service and brewery areas must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.
- Service pipes, electrical conduits, refrigeration condensate pipes shall be enclosed or chased into walls, floors or plinths. Where it can be demonstrated that this is not feasible pipes and conduits fixed on brackets, providing a minimum of 25 mm clearance from the adjacent wall and 100 mm from the floor or adjacent horizontal surface, can be used. All openings in walls, floors and ceilings, through which service pipes and conduits pass, must be vermin proof.
- Details of the dishwashing/glass washing machines must be submitted to Council and approved prior to installation. All utensils and equipment must undergo a washing, sanitising and rinsing cycle. The sanitising rinse cycle must achieve a water temperature of 80°C for 2 minutes or 75°C for 10 minutes.
- All wash sinks and food preparation sinks must be serviced with hot and cold water through a single outlet. Wash sinks must be supplied with water at a temperature of not less than 54 °C for washing.
- The cleaners sink must be serviced with hot and cold water through taps fitted with hose connectors. Cleaner's sinks must be located outside of areas where open food is handled.
- All food preparation benches must be constructed in stainless steel or finished in a smooth and non-absorbent approved material that is free of joints.
- All storage cabinets (internal and external surfaces) must be finished in a smooth and non-absorbent approved material that is free of joints.
- Light bulbs or tubes are to be shatterproof or fitted with approved light diffusers (covers or shields) to prevent contamination of food by glass from a broken light globe or tube. Light fittings must be free from any feature that would collect dirt or dust, harbour insects or make the fitting difficult to clean. Light fittings must be recessed into ceilings or equipment where possible. Heat lamps must be protected against breakage by a shield extending beyond the bulb.
- Shelves must be smooth and impervious; free from joints, cracks and crevices; and able to be easily cleaned. The lowest shelf must be at least 200mm off the floor to allow easy cleaning underneath. Approved materials must be used, such as galvanised piping, stainless steel or laminated plastic. Shelves are to be sealed to the wall or kept clear of walls to allow easy access for cleaning (>40 mm).
- The coolroom and/or freezer room floor must be finished with a smooth even surface and graded to the door. A sanitary floor waste must be located outside the coolroom and freezer adjacent to the door. All metal work in the coolroom and freezer room must be treated to resist corrosion.

- 40 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.

The exhaust hood must completely cover the equipment to be ventilated 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 2000mm above floor level.

**Prior to the issue 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 AS 1668 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

- 41 Details of the kitchen, brewery, bar and food preparation and storage areas must be in accordance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code and AS 4674-2004 *Design, Construction and Fitout of Food Premises* and provided to Council for approval prior to works commencing.
- 42 Condensation from coolrooms and refrigeration motors must discharge to sewer via a tundish with air gap separation in accordance with Sydney Water requirements.
- 43 The coolroom and freezer room must be provided with:
- A door which can at all times be opened from inside without a key and
  - An approved alarm device located outside the room, but controlled only from the inside.
- 44 All garbage must be stored in accordance with the requirements of the Food Safety Standards of the Australian and New Zealand Food Standards Code and the *Protection of the Environment Operations Act 1997* to prevent the harbourage of vermin or generation of odours.
- 45 The business is required to be licensed with the NSW Food Authority. The business shall meet licence and registration requirements prior to the commencement of operation. Details of this license shall be submitted to Council **prior to the commencement of the business**.
- 46 The construction and operation of the premises shall comply with the NSW Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2000.

## Utility Services

- 47 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](http://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**.

## Construction

48 Stamped plans, specifications, a copy of the development consent 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 is to be erected:

- at the commencement of, and for the full length of the, construction works on-site, 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.

49 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 Council, or
- alternatively, any other sewage management facility approved by Council.

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

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

Other construction works carried out inside a building/tenancy and 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

51 **Prior to the issue of an Occupation Certificate**, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith Development Control Plan 2014.

All common car parking areas must be line marked in accordance with the stamped approved plans.

52 **Prior to the issue of any Occupation Certificate**, the car parking area shall be linemarked in accordance with the approved car parking layout diagram to the satisfaction of the Principal Certifying Authority.

53 Sight distance requirements at driveways are to be in accordance with AS 2890

54 The one way movement in the southern parking area shall be appropriately line marked and sign posted.

55 All vehicles must enter and leave the site in a forward direction.

56 The accessible parking space in the south-eastern corner on the stamped approved plans shall be used as a regular parking space.

## Landscaping

57 No trees are to be removed, ring barked, cut, topped or lopped or willfully destroyed without the prior consent of Penrith City Council and in accordance with Chapter C2 Vegetation Management of Penrith Development Control Plan 2014.

## Certification

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

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

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

## SIGNATURE

Name:	Jake Bentley
Signature:	

For the Development Services Manager