

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/0083.02
Proposed development:	Modifications to Approved External Shopfront Alterations for Nando's Restaurant (Shop 54/55)
Property address:	569 - 595 High Street, PENRITH NSW 2750
Property description:	Lot 1 DP 1137699
Date received:	1 November 2017
Assessing officer	Sufyan Nguyen
Zoning:	Zone B3 Commercial Core - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a Section 96(1A) modification application for modifications to approved signage for a Nando's restaurant at Westfield Penrith, 569 - 595 High Street, Penrith. The subject site is zoned B3 Commercial Core under *Penrith Local Environmental Plan 2010* and the proposed development is permissible with Council consent.

The positioning of the modified signage is centered above the front door entrance. This location clearly indicates the entrance point to the premises. In addition, the siting of the modified signage is consistent with the majority of the existing signage along Riley Street and is therefore an acceptable outcome.

An assessment of the modified proposal under Section 96(1A) and Section 79C of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to recommended condition amendments.

Site & Surrounds

The subject premises is known as Nando's restaurant and is located at Westfield Penrith, 569 - 595 High Street, Penrith. The subject site is legally described as Lot 1 DP 1137699. The premises is situated on the western side of Riley Street. The ground floor shop occupies Westfield Penrith (Penrith Plaza) shopping centre and is located between Henry Street (southwards) and Jane Street (northwards). The shopping centre accommodates a range of retail and commercial uses and makes provision for several hundred car parking spaces.

The broader road network includes Jane Street 80m to the north of the premises, the intersections of Mulgoa Road and Jamison Road 1.395km to the south-east and Mulgoa Road and the M4 Motorway 3.25km to the south-east. Available public transport modes include bus services and the Penrith Railway Station approximately 240m north-east of the premises.

Proposal

The applicant seeks approval for modifications to approved signage for a Nando's restaurant at Westfield Penrith, 569 - 595 High Street, Penrith. The modified proposal re-positions the business identification sign to above the front entrance door, whereas previously this was approved as a hanging under awning sign.

Plans that apply

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

Planning Assessment

• **Section 96(1A) - Modifications involving minimal environmental impact**

Under the provisions of Section 96(1A) of the *Environmental Planning and Assessment Act 1979* Council may, in response to an application being made, modify a previously approved development if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

(b) it is satisfied that the modified development is substantially the same development for which consent was originally granted, and

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

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

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

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

In this regard, the following is noted:

(a) The proposed modification is considered to be of minimal environmental impact.

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

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

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the modified development is of the same essence and therefore is substantially the same as the originally approved development.

There is no radical transformation to the development as the modified signage will remain not too dissimilar to the originally approved signage. Overall, the changes do not change the essence of the original approval.

(c) The modified development did not warrant notification and/or advertising.

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

State Environmental Planning Policy No 64—Advertising and Signage

The proposed modification is not considered to diminish the development's compliance with *State Environmental Planning Policy No 64—Advertising and Signage*

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The proposed modification is not considered to diminish the development's compliance with *Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River*.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 5.10 Heritage conservation	N/A
Clause 7.8 Active street frontages	Complies
Clause 8.1 Application of Part	Complies
Clause 8.4 Design excellence	Complies

Section 79C(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	N/A
C4 Land Management	N/A
C5 Waste Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Complies - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	N/A
E11 Penrith	Complies

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

The proposed modification is not considered to diminish the approved development's compliance with the regulations.

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

The proposed modification does not appreciably alter the likely impacts of the development as identified in the original assessment report for the proposal.

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

The proposed modification will not diminish the suitability of the site for the development.

Section 79C(1)(d) Any Submissions

Community Consultation

Given the nature of the proposed modification, notification of the application was not warranted.

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 modification does not alter the public interest considerations noted in the original assessment report for the proposal.

Conclusion

The proposed modification has been assessed against the relevant heads of consideration contained in Section 96(1A) and Section 79C of the *Environmental Planning and Assessment Act 1979* and has been found to be satisfactory. The modified development will result in minimal environmental impact, the site is suitable for the proposed development and the proposal is in the public interest. Given that there are no outstanding planning considerations and that the Section 96(1A) modification application is in accordance with the relevant provisions, the application is worthy of Council's support and is recommended for approval.

Recommendation

That DA16/0083.02 for modifications to approved signage for a Nando's restaurant at Westfield Penrith, 569 - 595 High Street, Penrith be approved subject to the following condition amendment:

Condition 1

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 stamped approved plans and by the following conditions.

Drawing Title	Prepared By	Reference No.	Dated	Revision
External Works Layout Plan	Design Clarity	A-01	09/03/2016	D
Site Plan	Design Clarity	A-00	03/11/2015	A
Shopfront Elevations	Design Clarity	A-03	09/03/2016	C
Shopfront Elevation	Design Clarity	E-01	06/10/2017	J
Shopfront Entry Details	Design Clarity	E-01.2	09/03/2016	B

Note: The originally approved hanging under awning sign shall be removed prior to (or concurrently with) the erection of the approved fascia sign.

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 stamped approved plans and by the following conditions.

Drawing Title	Prepared By	Reference No.	Dated	Revision
External Works Layout Plan	Design Clarity	A-01	09/03/2016	D
Site Plan	Design Clarity	A-00	03/11/2015	A
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Shopfront Entry Details	Design Clarity	E-01.2	09/03/2016	B

Note: The originally approved hanging under awning sign shall be removed prior to (or concurrently with) the erection of the approved fascia sign.

As amended on 28 December 2017 under Section 96(1A) of the Environmental Planning and Assessment Act 1979.

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

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

3 [A039 - Graffiti](#)

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

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

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

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

The installation of the signage must be carried out strictly in accordance with the manufacturer's specifications. Any wiring or installation fixtures associated with the signage or internal illumination must be contained wholly within the body of the signage or must not be visible from the public domain.

Environmental Matters

6 [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.

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

All 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

8 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.

Construction

9 H002 - All forms of construction

Prior to the commencement of construction works:

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

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

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

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

10 H024 - Glass installations AS1288

Glass installations within the building shall comply with AS 1288 and the Building Code of Australia. On completion of the glass installation, a report shall be submitted certifying compliance with AS 1288.

11 H041 - Hours of work (other devt)

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

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

Other construction works carried out inside a building/tenancy and 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

12 K Special Condition BLANK

The proposed works in the Riley Street frontage are to comply with the requirements of DA15/0951 and any related engineering conditions provided for by that approval.

13 K Special Condition BLANK

Prior to the issue of an Occupation Certificate, all works are to comply with Penrith City Council CBD Public Domain Technical Manual.

14 [K Special Condition BLANK](#)

Prior to the issue of a Construction Certificate, any civil works within the footway area are to be approved by Council.

Certification

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

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

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

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

Information to accompany the Notice of Commencement

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

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

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

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

C9.4 Commercial, Mixed Use and Industrial Zones

The positioning of the modified signage is centered above the front door entrance. This location clearly indicates the entrance point to the premises. In addition, the siting of the modified signage is consistent with the majority of the existing signage along Riley Street and is therefore an acceptable outcome.