

NEPEAN VILLAGE OUTDOOR DINING PRECINCT

4.55(1A) MODIFICATION
TO DA 19/0763



4 MAY 2020
P0010929
FINAL
PREPARED FOR VICINITY GROUP



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1. INTRODUCTION

This Section 4.55(1A) application has been prepared by Urbis on behalf of Vicinity Centres (**the applicant**) to amend Development Application DA19/0763 (**DA**) affecting the Nepean Village Shopping Centre. The modification specifically relates to two lots located at 146-148 Station Street, Penrith.

This Section 4.55(1A) has been prepared in accordance with the requirements of *the Environmental Planning and Assessment Act 1979* (**the Act**) and the relevant provisions of the *Environmental Planning and Assessment Regulations 2000*.

In addition to this letter, the application contains:

- A completed Section 4.55 form and checklist, including owner's consent;
- Architectural Drawings prepared by BN Group (**Appendix A**);
- Heritage advice prepared by Urbis (**Appendix B**);
- Traffic advice prepared by Coulston, Budd, Rogers and Kafes (**Appendix C**);
- Accessibility Design Review Report prepared by Mckenzie Group (**Appendix D**);
- Vicinity Centres Retail Design Guidelines (**Appendix E**); and
- Playground Equipment Drawings prepared by Estilo Creative (**Appendix F**).

The proposal is the subject of a Section 4.55(1A) application, as the proposed amendments will result in substantially the same development as that approved under DA19/0763. The modifications will not result in additional FSR on site or building height, and no environmental impacts will be generated by the proposal upon the surrounding locality.

As a result of COVID-19, the commercial performance of Nepean Village has been suffering. This project is fully funded and 'shovel ready' for commencement of construction. This modification aims to improve the overall development for the public benefit and assurance of tenants, through the weather proofing and amendments to the overall layout of seating areas, installation of playground equipment and additional security measures on site.

2. THE SITE

The site at 146-148 Station Street, Penrith, forms part of the Nepean Village Shopping Centre, a local shopping centre which serves the local Penrith community. This application specifically relates to four free standing brick buildings identified in **Figure 1** which contain a mix of dining and commercial uses, including the Centre Management offices.

Figure 1 – Site aerial



Source: Urbis

The site includes two local heritage listed items – Items 216 (“Kentucky” villa) and 217 (Victorian House). These buildings front Station Street. The Kentucky villa is currently occupied by the Percy Plunkett café and the Victorian House is currently vacant. The previous use of the Victorian House building was as a business premises but now has an approval for a food and drink premises. The two buildings in the south of the lots are not identified as heritage items and were built in the late 1980s. Both buildings provide ground floor food and drink premises. Commercial offices (comprising Nepean Village Centre Management) are located on the second storey of the two storey building at the south-west corner of the site (Centre Management Building). These buildings have been designed to mimic the heritage characteristics of the Station Street buildings.

Pedestrian access is available from the Station Street frontage through the site to the main shopping centre via a pedestrian crossing in the car park. Tenancies face outwards towards the surrounding car park (to the east and west) with internal space currently comprising a paved courtyard area with access to back of house facilities for tenants. Car parking serving these tenancies is located within the general shopping centre car park.

Figure 2 – Current site photos



Picture 1 – Item 216 - “Kentucky” villa



Picture 2 – Item 217 - Victorian House



Picture 3 – Internal area of site



Picture 4 – Pedestrian walkway to the shopping centre

2.1. PLANNING BACKGROUND

DA19/0763 was lodged in October 2019 to create an outdoor dining precinct associated with the Nepean Village shopping centre. Development consent was granted on 31 January 2020 for the following development:

“Alterations and additions to Nepean Village Outdoor Dining Precinct and Use of “Victorian House” as Food and Drink Premises”.

This application specifically sought consent for covered pergola structures to create a walkway and covered outdoor seating to be associated with the adjacent food and drink tenancies. While the approved development included the pergola structures, Condition 15 states:

“No covering, cladding, sheeting, roofing or the like is to be applied to the pergola structure adjacent to the heritage buildings known as ‘Victorian House’ and ‘Kentucky House’

The pergola must not be fixed or joined by flashing or other materials to the heritage buildings.

The pergola must remain an open-roofed, detached structure in the areas adjoining the heritage buildings.”

A meeting was held at Penrith Council on February 25 2020 to discuss this condition and its impact on the viability of the outdoor dining precinct. In attendance was:

- Robert Craig - Principal Planner, Penrith Council
- Kathryn Sprang - Heritage Officer, Penrith Council

- Sonia Davis - Vicinity Centres
- Darren White - Vicinity Centres
- Jacqueline Parker – Planning, Urbis
- Brigitte Bradley – Planning, Urbis
- Fiona Binns – Heritage, Urbis
- Bernice Phillips – Heritage, Urbis

The purpose of this meeting was to discuss and confirm the intention of the condition.

At the meeting, further heritage advice was also sought on a revised design approach for the roof sheeting. Comments from Council's heritage team identified issues with the proposed covered sheeting which was perceived as not allowing natural ventilation through to the heritage items. Further details of these comments are outlined in the Heritage Impact Statement enclosed in **Appendix B**. Council also confirmed that to amend the condition, the applicant would need to seek a modification to the original consent.

Based on comments made during the meeting, design amendments have been proposed to reflect Council's comments and provide a more functional outdoor dining precinct for Vicinity Centres. Operation and management of the outdoor dining precinct will be managed by Vicinity Centres with tenants prescribed specific instructions that no further sheeting or materials may be added to the pergola structures. Additional design criteria for tenants are outlined in Vicinity Centre's design guidelines enclosed in **Appendix E**.

3. PROPOSED MODIFICATION

3.1. DESIGN MODIFICATIONS

The Section 4.55(1A) modification seeks to modify the following conditions of the consent of DA19/0763:

- Condition 1 – General: update approved plans to reflect the proposed amendment
- Condition 15 – Heritage/Archaeological relics: Remove Condition

The above changes to the Consent are sought in order to support the design modifications detailed in the following sections.

3.1.1. Pergola structures & Translucent Sheeting

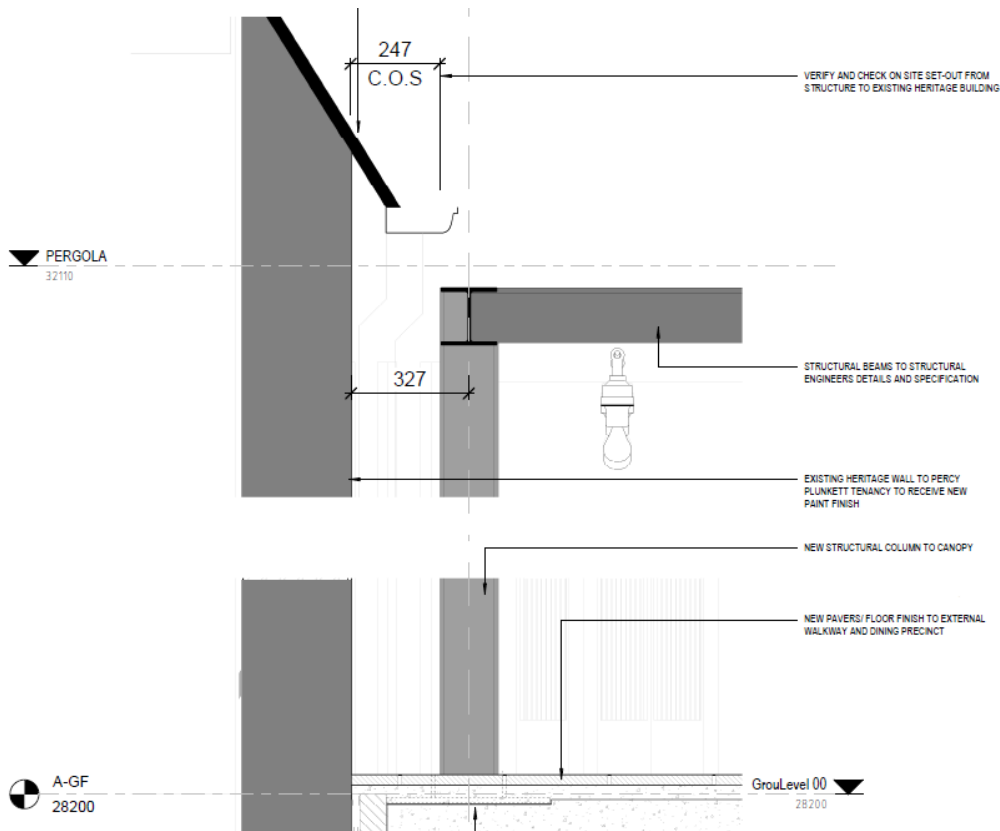
In response to Council’s comments, the design has been amended to include substantial sections of uncovered pergola, whilst reducing the extent of translucent sheeting in a manner that responds sympathetically to the heritage buildings.

Translucent covering has been omitted from the area adjacent to the southern façade of Kentucky villa and the northern façade of Victorian House, leaving the majority of the pergola area immediately adjacent to the significant heritage fabric of these buildings unenclosed.

Pedestrian Walkway

An ‘open to sky’ pedestrian walkway is proposed through the site from Station Street to Nepean Village. The walkway is located along the full extent of the southern boundary of the Kentucky villa (containing Percy Plunkett) and also extending further to the east. The approved pergola structures above this walkway will include creeper plantings and festoon lighting to create a sense of arrival and place. This structure will not have any impact on any heritage fabric on site illustrated in **Figure 3**. This extent is shown in orange in the diagram below (**Figure 4**).

Figure 3 - Open to sky Pergola Structure from Station Street

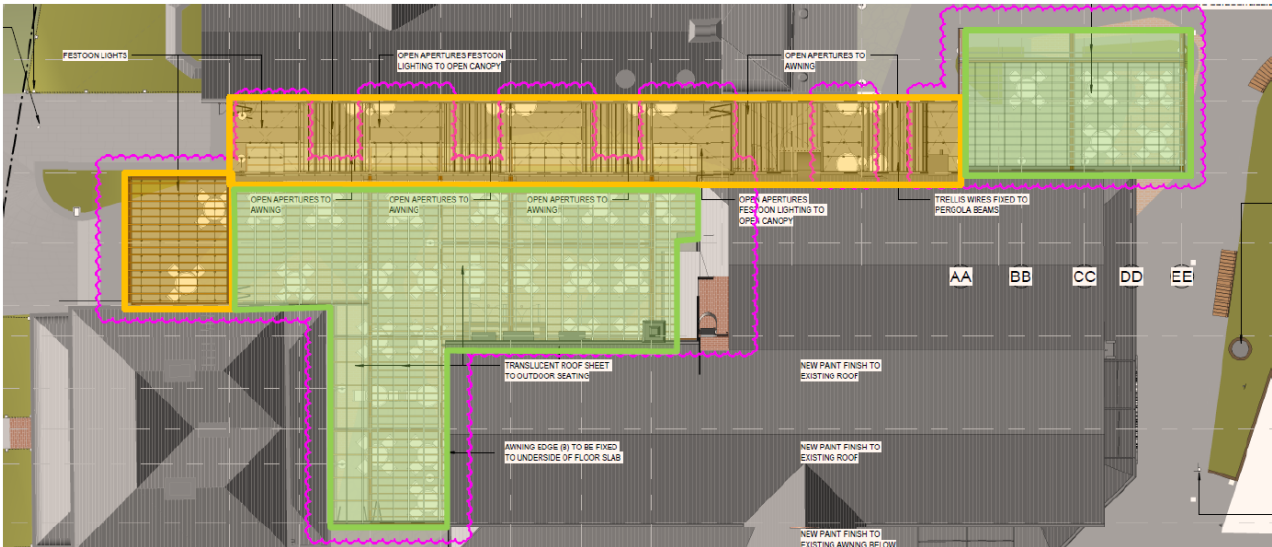


Source: BN Group

Uncovered Outdoor Seating Area

Similar to the treatment proposed for the walkway, a section of outdoor seating is proposed at the northern side of Victorian House, which will remain unenclosed. This approved pergola structure will include creeper plantings and festoon lighting. This extent is shown in orange in the diagram below (**Figure 4**).

Figure 4 - Roof plan illustrating the open areas of the awning (orange) and covered (green).

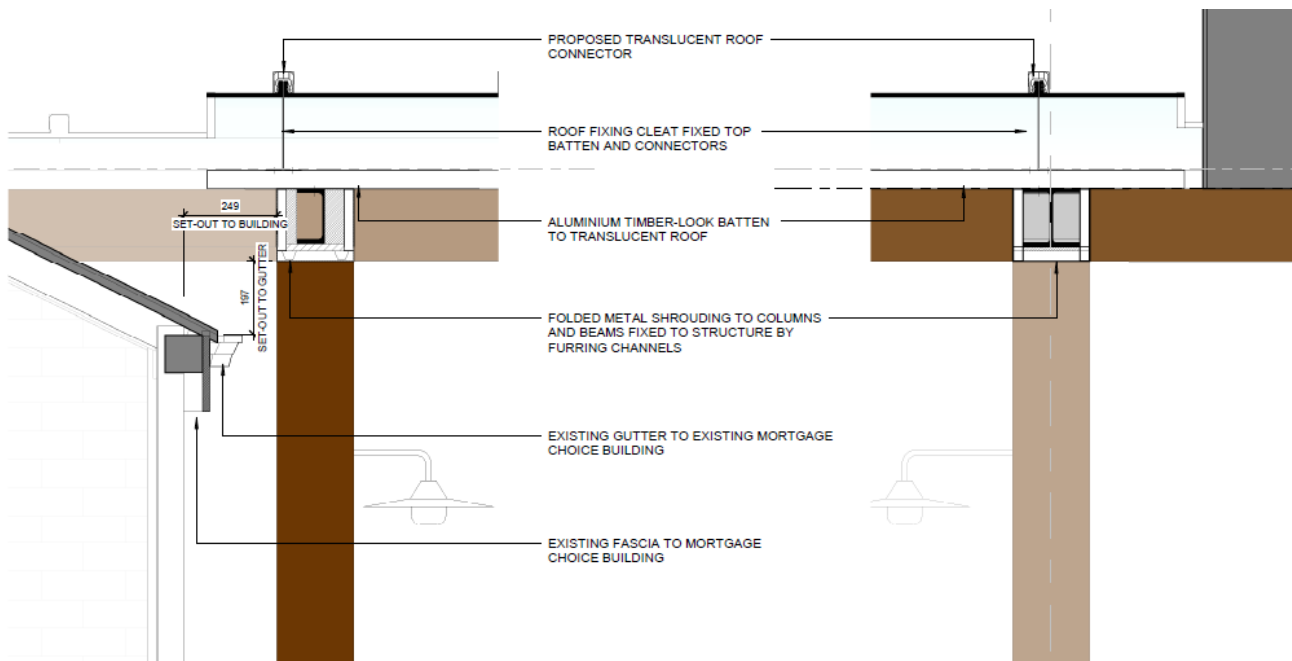


Source: BN Group, overlay by Urbis

Covered Outdoor Seating Areas

Translucent sheeting is proposed to be attached to the approved pergola structure in two areas to provide waterproof cover for designated outdoor seating areas identified in green in the diagram below (**Figure 3**). The translucent sheeting is concentrated to the rear of and internal to the site between Victorian House and the Centre Management building. It is also proposed to be located adjacent to the existing Gloria Jeans tenancy. Figure 5 provides a section showing how the structure sits above the eave of Victoria House and does not impact on any heritage fabric. The light brown horizontal structure sits behind Victorian House and is also separated by approximately 250mm from Victorian House.

Figure 5 – Section between Victorian House and Centre Management Building

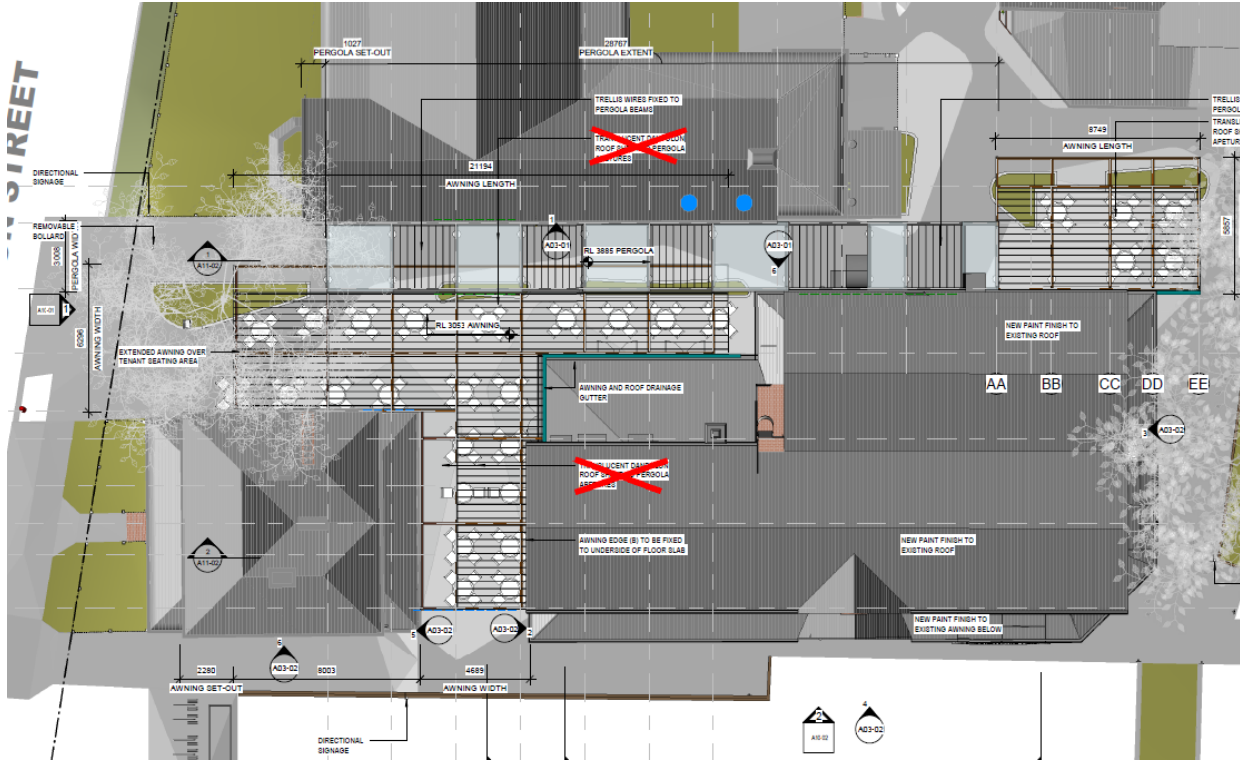


Source: BN Group

3.1.2. Changes to storage areas / Increase to outdoor dining area

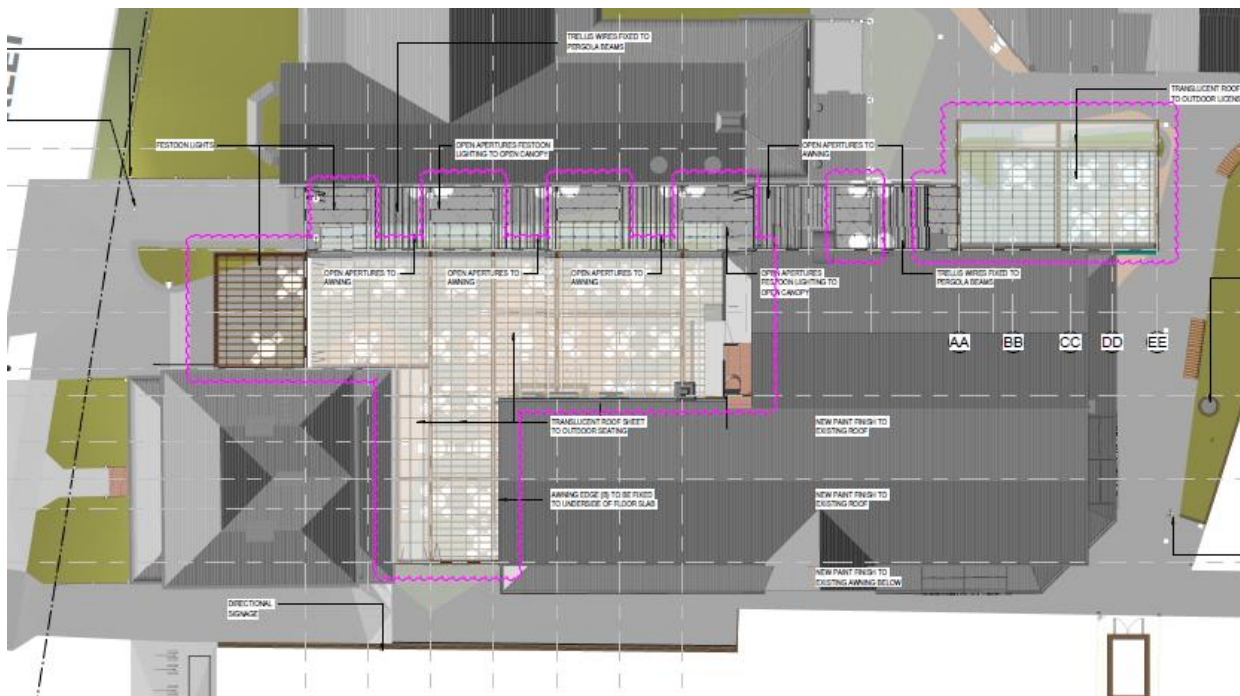
Two approved storage areas within the dining precinct are proposed to be removed to simplify the outdoor dining areas for the public and reduce the need for staff to access stored goods within the dining areas. This results in additional 54sqm of outdoor dining area (to a total of 127sqm) and an overall reduction in GFA on site.

Figure 6 – Approved roof plan



Source: BN Group

Figure 7 – Proposed roof plan



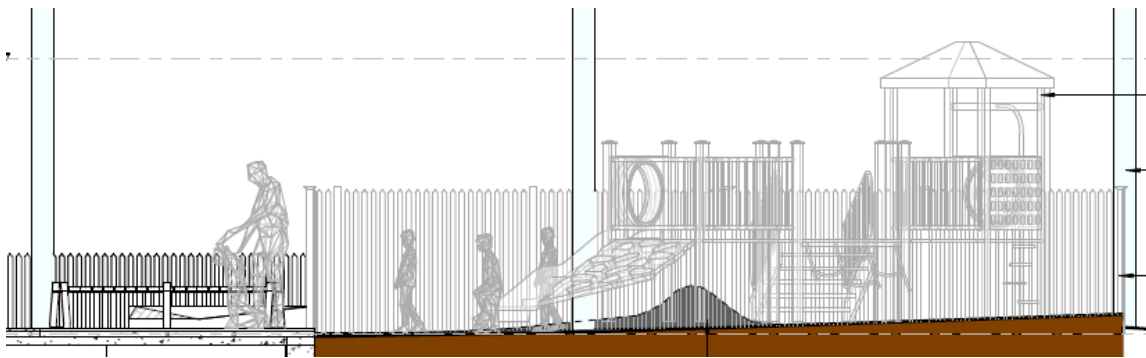
Source: BN Group

3.1.3. Playground Area

The initial playground proposed for the site was considered exempt development under the *State Environmental Planning Policy (Exempt and Complying Codes) 2008* (Codes SEPP). As part of the design development of the precinct, the preferred playground equipment and shade structure requires development consent. It is proposed to be located between the Kentucky villa (Percy Plunkett) and Gloria Jean’s buildings but will be significantly separated from any heritage fabric of Percy Plunkett with a minimum separation distance of 2.5 metres.

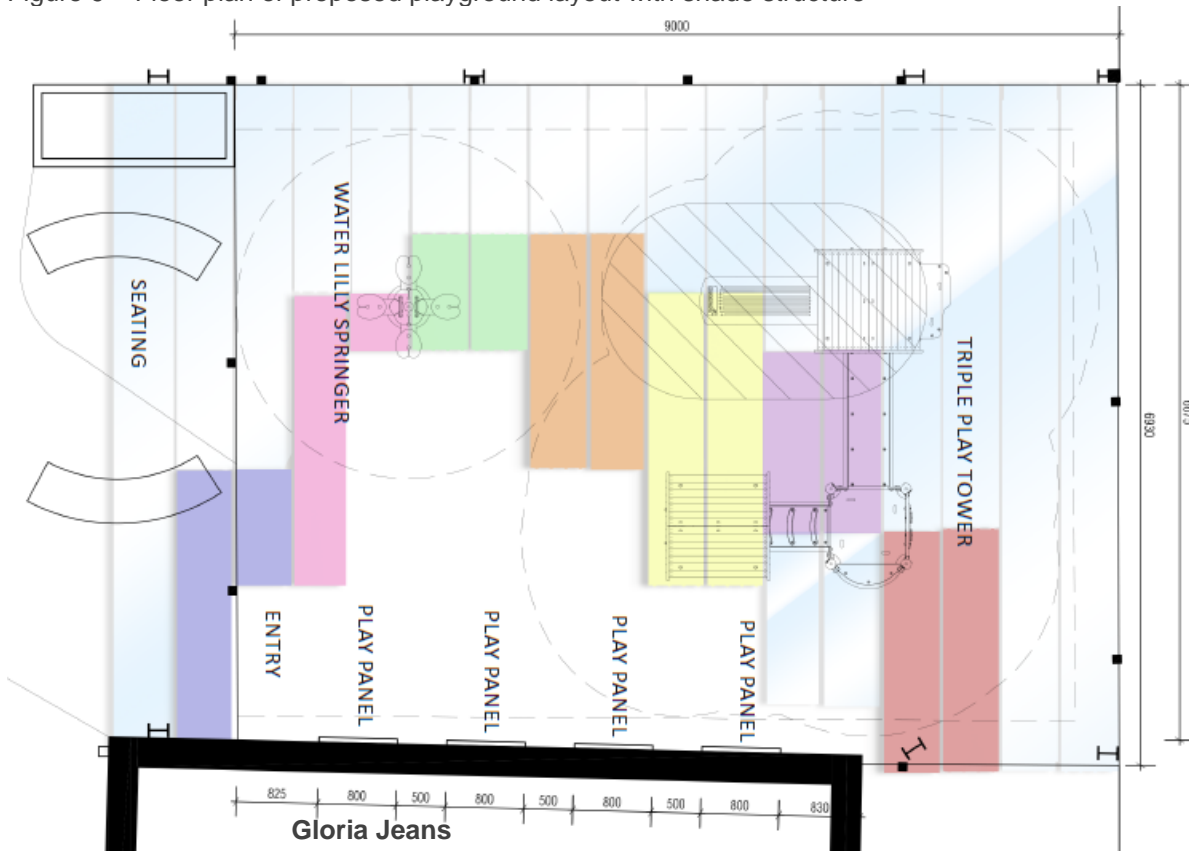
A shade structure is proposed above the playground area with multi-coloured translucent roof sheeting, illustrated in **Figure 5**. This sheeting will be designed in the same style as the approved pergola structures above the eating and walkway areas to create a cohesive design for the site. The existing timber fence will remain around the playground space for safety.

Figure 8 – Elevation of proposed playground equipment



Source: BN Group

Figure 9 – Floor plan of proposed playground layout with shade structure



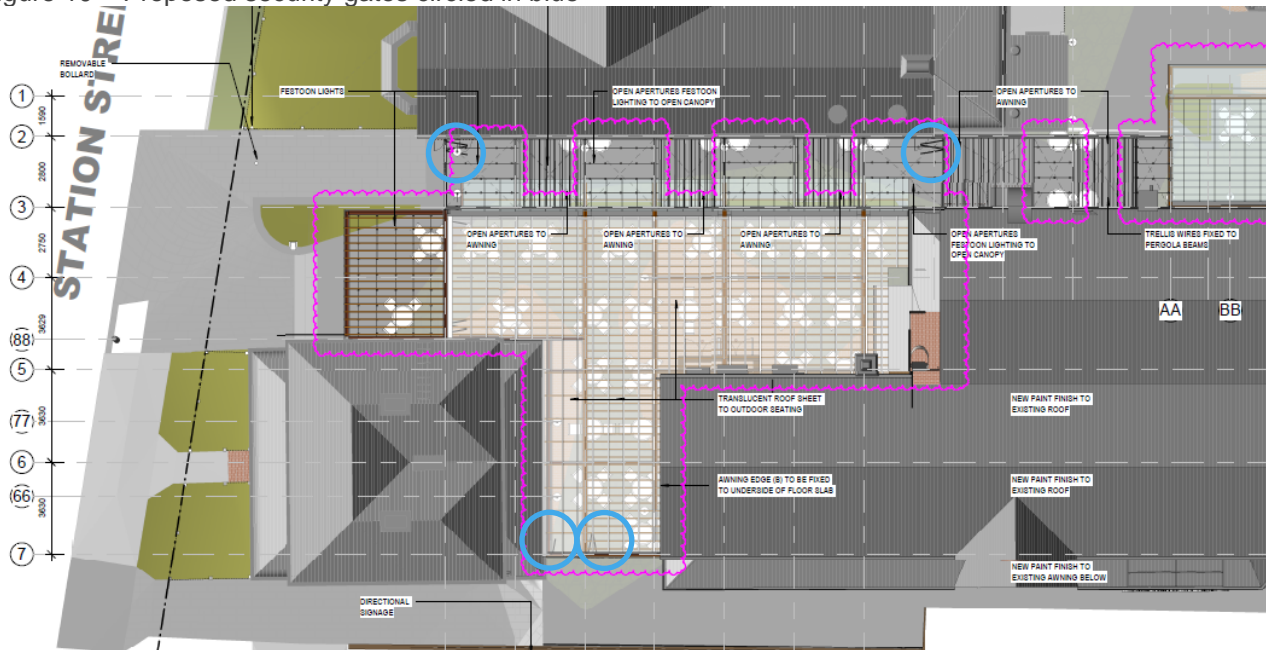
Source: Estilo Creative

3.1.4. Security Gates

This modification seeks approval for bi-fold security gates to be installed at the entrances of the outdoor dining precinct – at the Station Street entrance, at the southern car park interface, and at the eastern extent adjacent Centre Management building and Percy Plunkett building. These security measures for the outdoor precinct are an essential requirement to ensure the safety and security for the new dining precinct.

The proposed security gates will be fixed to the approved pergola structure only and will not touch any heritage fabric on site. As illustrated in **Figure 11**, the gates are designed to be functional while also largely transparent to allow views through to the area at all hours to mitigate the feeling or appearance of enclosure. Further detail of the fences are outlined in the Heritage advice enclosed in **Appendix B**.

Figure 10 – Proposed security gates circled in blue



Source: BN Group

Figure 11 – Photomontage of proposed gate on southern site boundary (signage not proposed)



3.2. PROPOSED AMENDMENTS TO CONDITIONS OF CONSENT

The proposed modifications to the conditions of the consent are shown by a ~~strike through~~ the deleted text and **red text** for new text. To ensure consistency is maintained, the approved architectural set is proposed to be replaced by a new set that incorporates the proposed design amendments.

General

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

Doc No,	Issue	Title	Date
Architectural Plans by BN Group Pty Ltd, Project No, S1863			
A01.01	A	Existing Plan – Ground Level	27/09/2019
A01.02	A	Existing Roof Plan	
A02-01	A	Existing and Demolition Plan – Ground Level	27/09/2019
A02-02	A	Existing and Demolition Plan – Roof Plan	27/09/2019
A03-01	A	Existing and Demolition - Elevations	27/09/2019
A03-02	A	Existing and Demolition - Elevations	27/09/2019
A06-01	B	Proposed Ground Floor Layout	17/12/2019
A06-02	A B	Proposed Roof Plan Layout	27/09/2019 21/02/2020
A06-03		Awning – Canopy Layout	21/02/2020
A08-00	A	Seating Areas	17/12/2019
A10-01	A	Proposed Elevations	27/09/2019
A10-02	A	Proposed Elevations	27/09/2019
A11-01	B	Proposed Sections	27/09/2019 21/02/2020
A11-02	B	Proposed Sections	17/12/2019
Design Development Plans by BN Group Pty Ltd			
-	B	Outdoor Dining	4/07/2019
-	B	Kids Activation Zone	4/07/2019
-	B	Analysis	4/07/2019
-	B	Proposed Plan	4/07/2019
-	B	Floor Finishes Plan	4/07/2019
-	B	Exterior Floor Finish	4/07/2019
-	B	Reflected Ceiling Plan	4/07/2019
-	B	Awning Elevation – Station Street	4/07/2019
-	B	Awning Elevation	4/07/2019
	B	Storage Area	4/07/2019
	B	Storage Area Planter Beds	4/07/2019
	B	Storage Area Planter Beds	4/07/2019
	B	Precinct Branding	4/07/2019
	B	Kids Play Area – Fixed Seating	4/07/2019
	B	Gloria Jeans – Awning Treatments	4/07/2019
	B	Raised Planter Beds	4/07/2019
	B	Raised Planter Beds	4/07/2019
Landscape Plan by Monaco Designs PL, Job No. 5395			
1	-	Landscape Concept	15/10/2019
Stormwater Concept Plans by JHA Engineers, Job No. 190411			
H102	P1	Hydraulic Services – Proposed Drainage System	18/10/2019
H200	P1	Hydraulic Services – Erosion and Sediment Control Plan Layout	18/10/2019

Reports:

- Nepean Village Plan of Management prepared by Urbis, dated December 2019
- Accessibility Design Review Report prepared by Mackenzie Group, ~~Revision A dated 15/10/2019~~ **Revision B 13/03/2020**
- Report of Preliminary Environmental Site Assessment (PESA): Nepean Village Outdoor Precinct, NSW prepared by Edison Environmental and Engineering Pty Ltd, dated 15/10/2019
- Operational Waste Management Plan, Nepean Village, prepared by Vicinity Centres, Revision 2. Dated October 2018.
- Nepean Village Outdoor Dining Precinct, Penrith – Heritage Impact Statement prepared by Urbis, Revision 2, dated 31/10/2019 **appended by Heritage Advice prepared by Urbis**
- Traffic Statements prepared by Colston Budd Rogers and Kates Pty Ltd, dated 03/10/2019 and 17/12/2019 **and 17/03/2020.**
- Tree Risk Assessment Report prepared by Moore Trees Arboricultural Services, dated November 2019.
- Arborist Inspection Report prepared by Moore Trees Consulting Arborist, dated 14/03/2019.
- **Vicinity Retail Design Guidelines**

Heritage/Archaeological relics

15. ~~No covering, cladding, sheeting, roofing or the like is to be applied to the pergola structure adjacent to the heritage buildings known as 'Victorian House' and 'Kentucky House'~~

The pergola must not be fixed or joined by flashing or other materials to the heritage buildings.

*The pergola must remain **open-roofed**, detached structure in the areas adjoining the heritage buildings.*

4. SECTION 4.55(1A) ASSESSMENT

The proposed modifications to DA19/0273 are sought under Section 4.55(1A) of the EP&A Act. The consent authority may approve an application to modify a development consent where it is satisfied that the proposed modification will satisfy the requirements set out in Section 4.55(1A). An assessment against this relevant section is provided below.

4.1. MINIMAL ENVIRONMENTAL IMPACT

In accordance with Section 4.55(1A)(a), the proposed modification is of minor environmental impact as it will not alter the approved commercial use of the site and will not impact on the heritage character of the site. The amended proposal is considered to have a minimal environmental impact for the following reasons:

Proposed modifications have no additional heritage impacts:

- The proposed roofing which encloses part of the structure would be entirely within the approved extent of the pergola structures and would therefore be no closer to the existing building than the approved structure, which is setback a minimum 300mm from the significant fabric. Enclosed roofing has also been located away from the most significant heritage fabric. There is also no impact on the existing ability for the external walls to achieve natural ventilation.
- The proposed playground equipment and awning is setback from all heritage fabric on site to minimise visual impact of key heritage views from Station Street.
- The proposed security gates will be fixed to the approved pergola structure only and will not have any physical impacts on the heritage items. An assessment of the heritage impact and investigations into gate options are enclosed in the Heritage advice prepared by Urbis enclosed in **Appendix B**.

The external impacts of the development remain substantially the same: The proposal does not result in any additional impacts in relation to overshadowing, aural and visual privacy, landscaping, public domain interface and overall visual bulk

4.2. SUBSTANTIALLY THE SAME DEVELOPMENT

The proposed modifications will result in substantially the same development as that originally approved and are consistent with the principles set out in the relevant case law that applies to test whether a development is 'substantially the same' for the reasons outlined below:

- The modifications do not change the purpose/uses for which the development as proposed to be modified was approved;
- The additional playground equipment and security gates are considered ancillary to the use of the site as an outdoor dining precinct;
- There is no proposed change to the approved number of tenancies or increased GFA associated with the development consent;
- The removal of storage space and replacement with additional outdoor seating will result in negligible traffic impacts as it is likely a large number of patrons would already be using the larger shopping centre; and
- All modifications are considered minor in nature and aim to improve the commercial viability of the overall dining precinct.

4.3. PUBLIC NOTIFICATION AND SUBMISSIONS

The Section 4.55(1A) application may be publicly notified in accordance with the provisions of the DCP and any third party submissions will need to be assessed by Council.

5. SECTION 4.15 ASSESSMENT

The matters referred to in Section 4.15 of the Act also need to be considered in the assessment of the proposed modification. Each of the matters relevant to the proposal are assessed below.

5.1. ENVIRONMENTAL PLANNING INSTRUMENTS

No changes are proposed which would impact on the following environmental planning instruments addressed in the approved development application:

- Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River (SREP 20)
- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy 64 – Advertising and Signage (SEPP 64)

5.1.1. Penrith Local Environmental Plan 2010

The *Penrith Local Environmental Plan 2010 (PLEP 2010)* is the principal environmental planning instrument governing development at the site. The relevant controls of PLEP 2010 are addressed in Table 1.

Table 1 – LEP Controls

Consideration	Control	Proposal	Compliance
Clause 2.2 – Land Use	B4 Mixed Use	Commercial premises are permitted with consent. This modification does not seek any changes to the use of any of the tenancies on site.	Yes
Clause 4.3 – Building Height	20 metres	The proposed works do not increase the existing height of the building which is a maximum of 9.4 metres.	Yes
Clause 4.4 – Floor Space Ratio (FSR)	1.5:1	The modification will reduce the overall GFA on site and does not result in an overall non-compliance in FSR.	Yes
Clause 5.10 – Heritage Conservation	Items 216 (“Kentucky” villa) and 217 (Victorian House) are located on the site	A Heritage Impact Statement prepared by Urbis forms part of this application which includes an assessment of the heritage impacts of the proposed modification. Refer to discussion and assessment in Section 5.6.1 of this report.	Yes
Part 8 – Penrith City Centre	The site is identified as “Site 5” on the PLEP Key Sites Map.	The proposed works does not result in a loss of design excellence on site.	Yes

5.2. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments are relevant to this proposal.

5.3. DEVELOPMENT CONTROL PLAN

Part C City Wide Provisions of the *Penrith Development Control Plan 2014 (PDCP)* provides detailed controls for development. The proposed modified development remains compliant with the relevant sections of the DCP with no changes proposed in relation to:

- C5 – Waste Management
- C6 – Landscape Design
- C9 – Advertising and Signage

As outlined in Table 2 below, the proposal retains consistency with the specific provisions of the PDCP that apply to the proposed works.

Table 2 – Relevant PDCP Controls

C7 Culture and Heritage	
1) Any Heritage Impact Statement must be prepared for development that may impact on a heritage item.	A Heritage Impact Statement has been prepared by Urbis and is located in Appendix B . The proposal will not create any adverse impacts on the heritage significance of the site. Heritage impacts are discussed in Section 5.6.1 .
C8 Public Domain	
General Design Principles	
1) The location of building entrances and glazing should provide natural surveillance to the public domain without compromising passive solar design principles;	No changes are proposed to the current building entrances within the subject site.
2) The built form should provide, where it is appropriate, a visual transition to the public space by avoiding continuous lengths of blank walls and high fences at the interface between the public and private space;	No changes are proposed to the current approved built form. This modification provides delineation between the walkway and outdoor dining areas through the treatment of the approved pergolas. The proposed security gates will only be locked when access to the precinct is unavailable and will not be visually distracting during the hours of operation.
3) Views into and from the public domain are to be protected as they increase opportunities for natural surveillance. Where appropriate, ground floor areas abutting public space should be occupied by uses that create active building fronts with pedestrian flow, and contribute to the life of the streets and other public spaces; and	The precinct will continue to encourage passive surveillance and social gathering, with clear sightlines afforded to Station Street and Nepean Village Shopping Centre.
4) Accessibility should be provided for all members of the community, particularly those with a disability, and should occur across all areas of the public domain. This includes designing for durability, adaptability, maintenance and replacement.	A review of access requirements for the modification has been prepared by McKenzie Group forms part of this application, enclosed in Appendix D . Overall the assessment confirmed that the project documentation provides appropriate accessibility capable of complying with the BCA & Disability (Access to Premises – Buildings) Standards 2010 and the spirit and intent of the Disability Discrimination Act (DDA) 1992.

Pedestrian Activity	
1) Active Street Frontage and Address	Active frontages are provided for all ground floor uses.
a) Active street frontages are to be located on the ground/street level of all buildings	
4) Landscape in the Public Domain and Street Tree Planting	No changes are proposed to the approved landscape plans which are compliant with Council controls.
Street Furniture	
1) The location and design of street furniture and paving shall take into account the needs of people with a disability, particularly where it abuts the building's elevations.	As stated in the amended Accessibility Design Review Report prepared by McKenzie Group, located in Appendix D , external public paths achieve a minimum width of 1800mm allowing two wheelchairs to pass.
2) Where appropriate, the design of street furniture may be an expression of public art.	Planting, elements of green and natural materials have been incorporated to improve the visual amenity of the site. Additional playground equipment has been designed to reflect the design principles of the overall precinct.
3) The design and selection of materials should be low maintenance and resistant to graffiti and vandalism.	The overall design has considered maintenance and resistance to vandalism. Additional security measures form part of this modification to ensure the ongoing safety of the outdoor dining precinct.
4) Street furniture should respond to and enhance the visual character of the streetscape and the public domain.	This modification does not result in any changes to the pergola structures but will result in a more usable dining precinct during all weather situations. Elements such as the mix of colours in the transparent sheeting over the proposed playground add to the overall visual character while still presenting a cohesive design which does not detract from the heritage character of the site.
5) Secure bicycle parking is to be included in the public domain and should be conveniently located.	No additional bicycle parking is proposed. Existing bicycle parking serving the Nepean Village Shopping Centre is located on the Station Street frontage adjacent to the public footpath with additional bicycle parking located closer to the Nepean Village Shopping Centre entrance.
Lighting	
1) Council's adopted Public Lighting Policy and the implementation of an energy efficient lighting system should be incorporated into any design.	Lighting is to be provided as described in the approved development.
Outdoor Dining and Trading Areas	
1) Outdoor Dining Areas	
a) The outdoor dining area must operate in conjunction with a food and drink premises including hours of operation. Where alcohol is to be sold or served within the outdoor dining area,	The proposed outdoor dining areas are all located in conjunction with a food and drink premises. Operation and management of these spaces will be arranged between the various tenancies and the land owner. Where liquor licencing is proposed, that will be detailed in the relevant licencing application.

<p>the liquor licence issued for the food and drink premises should include this area.</p>	
<p>b) The outdoor dining area must be located in that part of the public domain that is immediately in front of the food and drink premises.</p>	<p>No outdoor dining is proposed in the public domain. All will be contained within the site.</p>
<p>c) If the outdoor dining area is located wholly within the development site and:</p> <ul style="list-style-type: none"> i. The floor area of the outdoor dining area exceeds 30m²; or ii. The furniture is fixed to the ground (unable to be removed at the close of each operating day); <p>The floor area occupied by the outdoor dining area will be included in the calculation for the total floor space of the food and drink premises. This will be used for the purposes of calculating car parking and amenities (including parenting facilities) only.</p>	<p>The approved development application includes 108sqm of seating area, including 73sqm outdoor seating area and 35m² indoor seating area. The modification will provide an additional 54sqm outdoor seating area. However, given the scale of the overall shopping centre, this increase in seating is considered to be minimal and will not result in traffic or parking implications. Further details of parking impacts are located in Section 5.6.</p>
<p>d) The outdoor dining area must:</p> <ul style="list-style-type: none"> i. Be setback a minimum of 2m from the building to provide unobstructed continuous clearance along the building shoreline. ii. Not be on land that is used for vehicular access, circulation or parking, or a designated loading/unloading area; iii. Not be immediately in front of an ingress/egress, including fire exist(s); iv. Be setback from street furniture; v. A clear distance of at least 2 metres must be maintained adjacent to the seating area for pedestrian circulation, exclusive of any obstruction or street fixture. vi. Where possible the preferred location for seating in an outdoor dining area is away from the building edge. Alternative configurations can be considered based on their merit and the principles contained in the DCP. The merit assessment will also depend on the space available and other relevant site constraints. vii. Present an open, inviting image and be easily accessible from the public way. Full height 	<p>Tables and chairs within the outdoor dining precinct will be setback a minimum of 2 metres within proposed outdoor seating areas to enable sufficient manoeuvrability and access.</p> <p>An amended Accessibility Design Review Report prepared by McKenzie Group, located in Appendix D has assessed the proposed design scheme and considered the proposed dining areas and pedestrian paths are provide equitable access to the public realm.</p> <p>Vehicular access is not available into dining areas. Security gates have been proposed at all entrances for safety purposes and will ensure vehicle access in unavailable to the site. Loading is available from the Nepean Village Shopping Centre loading dock with details included in the Operational Waste Management Plan prepared by Vicinity Centres, enclosed in Appendix E.</p>

<p>and solid screens and any type of enclosure including public screens, are not permissible. Direct physical contact with the outdoor environment is an integral part of the experience and a safe, amenable microclimate can be created through proper siting and furniture layout.</p>	
<p>e) The outdoor dining area must:</p> <ul style="list-style-type: none"> i. Be defined by a barrier that is of sturdy construction and is a minimum of 60cm high with no sharp edges or protruding feet that may cause a trip hazard to pedestrians or patrons; and ii. Complimentary in colour to the seating; and iii. Have a current Outdoor Eating licence from Penrith Council, with a copy of the licence affixed in a prominent location visible from the outdoor dining area. 	<p>All outdoor dining areas are defined by the pergola structures which provide weather proofing as well as delineation from the main walkway through the site.</p> <p>An Outdoor Eating licence will be applied for separately from this development application.</p>
<p>e) If the outdoor dining area is located on a classified road, the application will be referred to the RMS as part of the assessment process.</p>	<p>The outdoor dining is not located outside the private property.</p>
<p>f) The area must be kept clean at all times. If waiter service is not provided, a bin must be placed where it is visible to patrons in the outdoor dining area and is positioned so it does not cause an obstruction to pedestrians</p>	<p>All operators of tenancies within the outdoor dining precinct will be made aware of all operational requirements.</p>
<p>g) No food is to be prepared or stored outside. No hot food counters, boilers or urns shall be placed on public areas or areas external to the premises.</p>	<p>All operators of tenancies within the outdoor dining precinct will be made aware of all operational requirements. All food will be prepared and sold from individual retail operators within their premises.</p>
<p>Furniture in Outdoor Dining Areas</p> <p>h) Overhead structures for weather protection may be placed in the outdoor dining area so long as they:</p> <ul style="list-style-type: none"> i. Are a minimum height of 2.1m, have vents at the pinnacle to reduce wind loading and are appropriately anchored (if anchored on the ground and the outdoor dining area is located on Council land including the footpath, then this will require Council approval by lodging a Road Reserve Opening Permit); ii. Do not overhang the carriageway or obstruct pedestrians; and 	<p>The approved pergolas have a maximum height of 3.2 metres exceeding the 2.1 metre clearance required.</p> <p>The transparent sheeting attached to the pergolas will remain within the site and will not provide any additional impacts on the development from an amenity or heritage perspective.</p> <p>Further details are outlined in Section 5.6.</p>

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| iii. Do not present potential trip hazards. That is, they use flat plate anchor bases rather than raised types. | |
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5.4. PLANNING AGREEMENTS

No planning agreements are relevant to this proposal.

5.5. REGULATIONS

The application has been prepared in accordance with the relevant provisions of the Environmental Planning and Assessment Regulations 2000.

5.6. LIKELY IMPACTS

5.6.1. Heritage

In accordance with Clause 5.10 of the PLEP and the relevant controls of the PDCP, a Heritage assessment has been prepared by Urbis. The proposed modifications to the approved works have been assessed as having no detrimental impact on the heritage significance of the heritage items for the following reasons:

Pergola Roofing

- In response to Council's comments regarding the original roofing, the translucent covering over the pergolas is concentrated to the rear of the site and adjacent to the existing Nandos Building which is of no heritage significance. The translucent roof in the covered areas will provide light and views through to the heritage buildings.
- The transparent sheeting will be entirely within the approved extents of the pergola structure and would therefore be no closer to the heritage buildings than the approved structure. There will be no impact on the existing ability for the currently external heritage walls to breathe.
- The space between the two heritage items is an incidental space created by the construction of the flanking building and has no identified significance in its own right other than providing a sympathetic curtilage around the significant fabric. Providing partially covered areas (substantially set back from the street) with a translucent cover will not significantly alter the appearance of the pergola, or have any impact on an understanding of the original subdivision pattern.

Playground

- The proposed new play equipment has been setback from the heritage items on site to ensure there are no physical interventions to significant fabric. In addition, the setback minimises visual impacts by retaining key views of the heritage items from Station Street and from within the Nepean Square carpark.
- The proposed awning above the play area is also setback from the heritage buildings and will be identifiable as a contemporary, self-supporting structure and will be seen separately from the heritage items. In addition, the design of the awning is consistent with the approved pergola structures to ensure the overall design does not present as ad hoc.

Security Gates

- The proposed gates will provide the required security for the outdoor eating area. As outlined in the options analysis enclosed in the heritage advice in **Appendix B**, a more contemporary design for the gates is appropriate in the context than the other options explored.
- Gates will be fixed to the approved pergola structure only and will not have any physical impacts on the heritage items. They are designed to be functional while also largely transparent to allow views through to the area at all hours. This mitigates the feeling or appearance of enclosure.
- During opening hours the gates will fold against the side of the buildings. This will cause minor visual obstruction to the southern façade of 146 Station Street (Kentucky villa) and the northern and eastern

façade of 148 Station Street (Victorian House). These visual impacts however will be minor as the gates will only obstruct a small portion of the buildings' facades. In addition, due to the simple design, the masonry walls will still be visible through the gate while folded.

Overall, the proposed modification will enhance the use of the heritage buildings without detracting from their significance by creating a destination precinct, encouraging appreciation of the significant fabric on site. Given the site is owned by a major landlord in Penrith and in the context of economic challenges in 2020 it is appreciated that a precinct revitalisation which encourages new tenants would lead to the use and therefore maintenance of the significant fabric on the site.

5.6.2. Built Form

The proposed modifications are minor in scale, with the majority of built form relied upon already approved as part of the original DA. Accordingly, the proposed works have been sympathetically designed such that there is no detrimental impact on the heritage fabric of the site. Overall, the modification:

- Do not result in an increased perceivable external building scale; and
- Do not result in any unreasonable overshadowing of adjoining roads, properties or public open spaces;

The proposed modifications will be unobtrusive and will have a negligible environmental impact on the amenity of the surrounding area. The works have been specifically designed to improve the overall use of the site whilst still retaining its distinct heritage character. The use of operation of the outdoor precinct by tenants to the outdoor dining precinct will also be managed by Vicinity Centres through leasing mechanisms including design guidelines enclosed in **Appendix E**. This will ensure there will be no future amendments to the area including additional plastic sheeting above or along the pergola structures.

5.6.3. Crime Prevention Through Environmental Design

Maintenance and management responsibility of the outdoor dining precinct will be undertaken by Vicinity Centres to ensure the following can be achieved on site:

- The proposed landscaping areas and outdoor dining areas provide passive surveillance with clear sightlines to Station Street and Nepean Village Shopping Centre.
- The internal walkway has been designed to maintain site lines from Station Street to the Nepean Village Shopping Centre providing safer pedestrian connection.
- Dining areas, seating and other elements are located in the internal space and delineated from the walkway encouraging pedestrian flow through the site rather than crossing through the car park.
- Fixed furniture and additional security measures are proposed to mitigate opportunities for vandalism and property damage.

5.6.4. Acoustic Impacts

The proposed modifications do not result in any additional acoustic impacts. Additional noise from the proposed playground will have minimal impacts on the surrounding dining areas and will not impact on any residential or sensitive noise monitors.

5.6.5. Traffic and Parking

Parking for the dining precinct will be located in the existing Nepean Village Shopping Centre car park which includes 861 car spaces. Amended traffic advice has been prepared by Colston Budd Rogers & Kafes Pty Ltd, enclosed in **Appendix C**. As the centre currently contains a mix of uses including health services, retail and commercial premises and food and drink premises, the additional outdoor dining area will not be noticeable in the context of more than 800 existing spaces at the site.

The traffic impact statement has considered the overall car parking provisions for the centre and concludes that the existing parking provision at the centre is appropriate as patrons of the outdoor dining precinct are most likely to be existing customers of the shopping centre. Given the nature of the proposal and that no additional parking spaces are to be provided, the proposal is not anticipated to generate significant increased traffic generation above what currently exists.

5.6.6. Loading and Servicing

Loading and servicing for all tenancies within the dining precinct will continue to be undertaken from the shopping centre's existing loading dock. The proposed modification does not result in any changes to the approved loading and servicing arrangements. Security fencing will allow for additional security but will not impact on loading/servicing into the precinct.

5.7. SUITABILITY OF THE SITE

The site is considered highly suitable for the proposed development for the following reasons:

The proposal is permissible under all relevant planning controls and achieves a high level of planning policy compliance;

- The proposal provides services expected within a commercial shopping centre but does not impact on the economic viability of other centres in the locality;
- The proposed works are unobtrusive and will not pose a risk to cyclists, pedestrians or vehicles within the surrounding area; and
- The proposal is 'shovel ready' and will provide an improved outdoor dining precinct ready for customers to return to the centre when the current COVID situation settles.

5.8. THE PUBLIC INTEREST

The proposed development is considered in the public interest for the following reasons:

- The proposal accords with the principles and objectives of all relevant planning controls and it has been demonstrated that no adverse social, environmental or economic impacts will result from the proposed development;
- The proposal will generate local job opportunities within the Penrith LGA. This includes temporary construction jobs and on-going retail, maintenance and administration jobs;
- The proposal has been designed in accordance with CPTED design principles to increasingly help deter crime and anti-social behaviour;
- The proposed works will provide an improved customer experience, as the proposal will provide a more attractive, functional and accessible site; and
- The proposal will provide a net positive heritage impact and allow the heritage significance of the site to be increasingly experienced by all into the future.

Considering the above, the proposed development is seen to be in the public interest.

6. CONCLUSION

This SEE has been prepared by Urbis on behalf of Vicinity Centres to accompany a DA to Penrith City Council for a minor modification to the outdoor dining precinct at Nepean Village Shopping Centre. The proposal has been assessed against the provisions of Section 4.55(1A) of the EP&A Act and is considered appropriate for the following reasons:

- **The proposal satisfies the applicable planning controls and policies:** The proposal satisfies the objectives of all relevant planning controls including the PLEP and PDCCP. In addition, the proposal also achieves a high level of planning policy compliance.
- **The proposal is substantially the same:** The proposal results in an improved outdoor dining precinct with no additional impacts on the heritage significance of the site and provides an improved user experience with new playground equipment, weatherproof seating areas and improved security on site. The proposal will result in substantially the same development as that originally approved.
- **The proposal is in the public's best interest:** The proposal is in the public's best interest as it will provide increased job opportunities, an enhanced customer experience and a net positive heritage impact. In addition, the proposal will generate no adverse social, environmental or economic impacts, yet will provide an attractive space to gather.

Accordingly, it is recommended that approval be granted, subject to appropriate conditions of consent.

DISCLAIMER

This report is dated 1 May 2020 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Vicinity Centres (**Instructing Party**) for the purpose of Statement of Environmental Effects (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

APPENDIX A

ARCHITECTURAL PLANS

APPENDIX B

HERITAGE ADVICE

APPENDIX C

TRAFFIC ADVICE

APPENDIX D

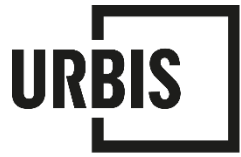
ACCESSIBILITY DESIGN REVIEW REPORT

APPENDIX E

VICINITY CENTRES RETAIL DESIGN GUIDELINES

APPENDIX F

PLAYGROUND EQUIPMENT DRAWINGS



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