

# PENRITH CITY COUNCIL

## FAST LIGHT ASSESSMENT REPORT

<b>Application number:</b>	DA19/0101
<b>Proposed development:</b>	Restaurant - Tenancy T1 - Lone Star
<b>Property address:</b>	78 - 88 Tench Avenue, JAMISONTOWN NSW 2750
<b>Property description:</b>	Lot 3 DP 30354
<b>Date received:</b>	13 February 2019
<b>Assessing officer</b>	Sarah Sampson
<b>Zoning:</b>	SP3 Tourist - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendation:</b>	Approve

### Executive Summary

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Council is in receipt of a development application for the fit-out of and use of a building newly constructed as a restaurant and 2 business identification signs at 78-88 Tench Avenue, Jamisontown. Under the Penrith Local Environmental Plan (LEP) 2010 the proposal is defined as a 'restaurant or café' and 'business identification signage'. The subject site is zoned SP3 Tourist in which restaurants or cafes and business identification signs are permitted with consent under the provisions of LEP 2010.

In accordance with Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014 the application did not require notification to surrounding property owners.

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

## Site & Surrounds

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The subject site is located on the south-eastern side of Tench Avenue in Jamisontown. The site is rectangular in shape, has a frontage of 131.16m and is approximately 3.34ha in area. The site is located within the Nepean River floodplain and is predominately flat with a slight fall from the front of the site to the rear.

The site sits directly opposite the boat ramp and associated car parking area which forms part of the larger open space network identified as Tench Reserve. The immediately surrounding land uses are, at present, typically rural-residential on large land holdings.

Vehicular access to the site is provided directly from Tench Avenue. A paper road known as Wilson's Lane adjoins the site along the entire rear boundary. There is an existing shared path along the frontage of the site providing connections to the Great River Walk for pedestrians and cyclists.

Currently the site contains a newly constructed approximately 4200m<sup>2</sup> building occupied by several café/restaurants and several vacant tenancies. The building is situated in the north-western corner of the site and is separated from the front boundary by a landscaped and outdoor eating area. There is a car parking area of about 8500m<sup>2</sup> adjacent to the building, with an overflow carpark under construction. The remainder of the site is grassed.

The section of the building relevant to the subject development application is known as tenancy 1 which is located at the south western end of the site.

## Proposal

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The proposed development involves the fit-out and use of Tenancy 1 as a restaurant including a seating area capable of seating 100 people, bar area, kitchen, cool room, dry store and outdoor seating area capable of holding 97 people. The proposal includes 2 business identification signs located at the front and side of the building. The side elevation sign addresses driveway giving access to and from the site.

## Plans that apply

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BUSHFIRE PRONE LAND (PARTLY)  
PENRITH DCP 2014  
LOW FLOOD ISLAND  
LEP 2010/ DCP 2014 - Scenic and Landscape Values  
PLAN INST - SREP NO 9 EXT IND (NO 2-1995) AA  
PLAN INST - SREP NO 20 HAW NEP RIV (NO2-1997) AA  
FLOOD RELATED DEVEL CONTROLS - LOW FLOOD ISLAND  
Local Environmental Plan 2010  
PRECINCT 2010  
SEC 94 CONTRIB PLAN - CULTURAL FACILITIES  
SEC 94 CONTRIB PLAN - LOCAL OPEN SPACE 2007  
SEC 94 CONTRIB PLAN - DISTRICT OPEN SPACE FACILS  
SP3 Tourist - LEP 2010  
LEP 2010 - Clause 7.2 Flood Planning  
LEP 2010 - Additional Land Use Notes

## Planning Assessment

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- **Section 4.14 - Bushfire prone land assessment**

The development has been assessed in accordance with the matters for consideration under Section 4.14 (Consultation and development consent—certain bush fire prone land) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following points are made:

- The proposed development involves internal building works and signage only

In this regard there are no adverse bushfire impacts associated with the proposed development and no additional bushfire construction requirements are applicable.

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

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

Is the development permissible in the zone?	<b>Complies</b>
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Is the development consistent with any requirements of environmental planning instruments relevant to this proposal (including any applicable SEPP's, SREP's and LEP's)?	<b>Complies</b>
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### **Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument**

Is the development consistent with any draft planning instruments relevant to this proposal	<b>N/A</b>
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### **Section 79C (1)(a)(iii) Any development control plan**

Is the development consistent with the provisions of any development control plan relevant to this proposal?	<b>Complies - See discussion</b>
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### **Section 79C (1)(a)(iv) Any applicable regulations**

Is the development consistent the provisions of any regulations relevant to this proposal?	<b>Complies</b>
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## Section 79C (1)(b) The likely impacts of the development

### Context and setting

Is the development consistent with the bulk, scale colour and design of other development in the locality?	<b>Complies</b>
Will the development have only a minor impact of the amenity of the area and the streetscape?	<b>Complies</b>
Is the development compatible with surrounding and adjacent land uses	<b>Complies</b>
Will the development have no or minimal impact on the amenity of the area in terms of:	
Sunlight (overshadowing):	<b>N/A</b>
Visual and acoustic privacy:	<b>Complies</b>
Views or vista:	<b>Complies</b>

### Access and Transport

Will the development have no or minimal impact on the local road system	<b>Complies</b>
Is the existing and any proposed access arrangements and car parking on site adequate for the development?	<b>Complies</b>

### Heritage

The property is not subject to any heritage order or is identified as heritage under a planning instrument.	<b>N/A</b>
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### Soil

The development will have minimal impact on soil erosion and sedimentation	<b>N/A</b>
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### Natural and Technological Hazards

The development is not subject to flooding, subsidence or slip	<b>Complies</b>
Land is not considered to be contaminated:	<b>N/A</b>
Bushfire requirements provided for the development	<b>Complies</b>
Acoustic requirements provided for the development	<b>N/A</b>

### Site design

The development is sensitive to environmental conditions and site attributes.	<b>Complies</b>
Does the development safe guard the health and safety of the occupants	<b>Complies</b>

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

Was the site inspected?	<b>Yes</b>
Does the proposal fit locality?	<b>Yes</b>
Are the site attributes conducive to development?	<b>Yes</b>
Will the proposal have minimal social and economic impacts on the locality?	<b>Yes</b>
Has any applicable 88b instrument been considered?	<b>N/A</b>
Does the development propose the removal of trees?	<b>No</b>
Have the plans been checked by any relevant developer groups?	<b>N/A</b>
Has a BASIX certificate been provided?	<b>N/A</b>

## **Section 79C (1)(d) Any submissions made in accordance with the EPA Act and Regulations?**

Was the application required to be publicly notified?	<b>No</b>
Were any submissions received during the public notification period?	<b>N/A</b>

## **Section 79C (1)(e)Public Interest**

The application will have minimal impacts on public interest	<b>Complies</b>
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## **Conclusion/Summary**

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In assessing this proposal against the relevant environmental planning policies, being Penrith Local Environmental Plan 2010, Penrith Development Control Plan 2014 and State Environmental Planning Policy No. 64 - Advertising and Signage, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development and the proposal is in the public interest. There are unlikely to be any negative impacts arising from the proposed development.

Therefore, the application is worthy of support, subject to recommended conditions.

## **Recommendation**

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That DA19/0101 for the fit-out and use of a building as a restaurant and 2 business identification signs at 78-88 Tench Avenue, Jamisontown be approved subject to the attached conditions.

## General

### 1 [A001](#)

The development must be implemented substantially in accordance with the plans prepared by Kretail Design, Project No. LS1808, Issue C, dated 23.01.19 and stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the approved plans and by the following conditions.

### 2 [A012 - Food Act](#)

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.

### 3 [A019 - Occupation Certificate](#)

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.

### 4 [A021 - Business Registration](#)

The business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council prior to the issuing of the occupation certificate and operation of the business.

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

The hours of operation shall be in accordance with the approved hours of operation for the complex under DA15/0335 (as modified).

### 6 [A032 - Goods in buildings](#)

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

### 7 [A039 - Graffiti](#)

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

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

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

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

Outdoor furniture shall be provided in a location that does not obstruct pedestrians utilising the pedestrian accessway.

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

The approved signage shall not be fitted with any flashing or moving lights or elements and shall not distract passing motorists or impact on visual amenity.

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

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

## Environmental Matters

### 12 [D009 - Covering of waste storage area](#)

All waste materials stored on-site during construction 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.

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

All wastes generated as a result of the development are to be disposed of at a lawful waste management facility, 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

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

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

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

(b) be given:

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

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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.

15 **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.

## **Health Matters and OSSM installations**

16 **F001 - General Fitout**

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*.

## **Construction**

17 **H001 - Stamped plans and erection of site notice**

Stamped plans, specifications, a copy of the development consent, the Construction Certificate 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 onsite, 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.



## 18 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 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.

## 19 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.

## Certification

## 20 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 1979, 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 of 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.

## 21 Q05F - Occupation Certificate for Class10

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

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**

### **Penrith Development Control Plan 2014**

#### **C1 Site Planning and Design Principles**

It is noted that the submitted Furniture Plan indicates that furniture will be provided within the pedestrian access area located outside Tenancy 1. In this regard a condition of consent is recommended ensuring outdoor furniture locations do not impede pedestrian access along the designated pedestrian accessway.

#### **C9 Advertising and Signage**

The proposed signage consists of 2 business identification signs with the following aspects:

- Front elevation sign: Illuminated 1388mm wide and 553mm in height located on the façade of the shop front.
- Side elevation sign: Illuminated 2000mm wide and 700mm in height located on the façade of the exterior wall.

Each sign consists of black lettering with a golden brown backdrop. The proposed signage is considered to be located within suitable locations as the proposal will not result in more than one sign on one building elevation and each sign is of a suitable size and colour.

#### **C12 Noise and Vibration**

A recommended condition of consent is to be imposed ensuring operational hours of the proposed restaurant are in accordance with those approved under DA15/0335 (as modified) for the complex. The approved hours of operation are as follows:

7am - 10pm Monday to Sunday, and 7am - 5pm Monday to Friday for delivery and service vehicles.

### **Penrith Local Environmental Plan 2010 (Amendment 4)**

#### **Part 7 Additional Local Provisions**

##### *Clause 7.5 Protection of Scenic Character*

The proposed shop front signs will have minimal visual impacts