

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/0508
Proposed development:	Occupation and Fitout for a Fitness Studio
Property address:	249 Queen Street, ST MARYS NSW 2760
Property description:	Lot 3 DP 807365
Date received:	31 May 2016
Assessing officer	Peter Woodworth
Zoning:	Zone B4 Mixed Use - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for Occupation and Fitout for a Fitness Studio at 249 Queen Street, St Marys. Under Penrith Local Environmental Plan 2010 the proposal is defined as a 'recreation facility (indoor)'. The subject site is zoned B4 Mixed Use and the proposal is a permissible land use in the zoning with Council consent under the provisions of the LEP.

Key issues identified for the proposed development and site include:

- No parking is available for customers on site and the proposal relies on the public car park to the north-east of the site.

Under Appendix F4 of Penrith Development Control Plan 2014 required notification is not specified in *Table F4.1: Public notification and advertising* and notification of the development application is at the discretion of the responsible officer. As the proposal does not involve external alteration to the existing building, except for the replacement of signage, or any structural works, and the subject site is located within the town centre and also on a classified road, public notification of the development was not required. No submissions were received.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

Properties of the site

The subject site is situated on the north-west corner of the intersection of Great Western Highway and Queen Street. The site has a total area of 770m², with a frontage to Great Western Highway of 38m and a depth of 20m. The land slopes to the east and has a fall of 2m across the site. The site currently contains an existing building and has previously been used for retail purposes.

The surrounding area is commercial in character and the site is adjoined by commercial and retail land uses.

There is an existing right of footway for public access across Lot 702 DP 731251 which connects Queen Street to Council's public car park off Carsons Lane.

Site constraints

- Heritage sites nearby to the north
- Easement (3.5m wide variable) for right of carriageway benefiting Lot 1 & 2 DP 807365
- Easement for water supply over existing line of pipes benefiting Lot 2 DP 807365
- Easement for drainage over existing line of pipes benefiting Lot 2 DP 807365

Proposal

The proposed development involves:

- Fit out and use of the site for the purposes of a gymnasium for fitness classes.
 - Fit out includes partition walls to create new bathrooms and the installation of fixtures being lighting, televisions and gym equipment
- Replacement of existing business identification signage

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 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

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

State Environmental Planning Policy No 64—Advertising and Signage

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy No 64—Advertising and Signage. The proposed signage is of high quality and compatible with the desired amenity and visual character of the area. Signage will replace existing building signage and will not obscure views across the site nor reduce amenity or streetscape quality in the locality. There are no particular safety risks associated with the proposed signage and as such the application is consistent with the provisions of the SEPP and considered satisfactory subject to recommended conditions of consent.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 7.7 Servicing	Complies - See discussion
Clause 7.8 Active street frontages	Complies - See discussion

Clause 2.3 Permissibility

The subject site is zoned B4 Mixed Use under Local Environmental Plan 2010. The proposed fitness studio (recreation facility(indoor)) is a permissible form of development in the B4 Mixed Use zone with the consent of Council.

Clause 2.3 Zone objectives

The proposal is consistent with the objectives of the zone, specifically:

- To provide a mixture of compatible land uses.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To provide a wide range of retail, business, office, residential, community and other suitable land uses.

The proposal is for the occupation and fitout of an existing building for the purposes of a fitness studio. The proposal is supportive of the aims of the zone by adding to the variety of uses in the St Marys town mixed use precinct

Clause 7.7 Servicing

Adequate services are available to the existing building.

Clause 7.8 Active street frontages

The subject site is land identified as "Active Street Frontage" on the Active Street Frontage Map of Penrith LEP 2010. The proposal is for the change of use of an existing building from retail to the use of the premises as a fitness studio. The proposal does not involve any structural work or alteration to the external façade of the building, except for the replacement of business identification signs and it is considered that the use will attract pedestrian traffic along the frontage. As such, the building and proposed use is considered to have and continue as an active street frontage.

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

There are no draft Environmental Planning Instruments that apply to the proposal.

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	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies - see Appendix - Development Control Plan Compliance
C8 Public Domain	Complies - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	Complies - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
E15 St Marys / St Marys North	Complies - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

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

In accordance with Section 143 of the Environmental Planning and Assessment Regulation 2000, an assessment of the fire protection and structural capacity of the proposed building is necessary.

The proposal ensures compliance with the fire safety requirements within the BCA and Regulations subject to conditions of consent.

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

Context and setting

The subject site is located on the north-eastern corner of the intersection of Queen Street and the Great Western Highway and as is considered an important gateway site into the St Marys town centre. Penrith City Council's Arts and Community Centre is located on the opposite side of the Great Western Highway and it is identified that enhanced landscaping and angled facades should be encouraged to give this prominent intersection a unique character. The proposal maintains the angled façade and entrance way on the corner of the building and exterior colouring, ground floor commercial "activation" and business identification signage is appropriate in the locality and add to the character of the immediate area. The proposal is compatible with and supportive of the mixed use commercial character of the surrounding area and St Marys town centre.

Access, traffic and transportation impacts

No parking is provided onsite and the proposal relies on the public car park to the north-east of the site for customer parking.

As per the provided SEE the proposal involves the use of the fitness studio by classes of up to 20 people within the hours:

<i>Weekdays</i>	<i>Saturdays</i>	<i>Sundays & Public Holidays</i>
5:00am - 8:30am and 5:00pm - 7:30pm	6:00am - 10:30am	Closed

As classes will run outside of normal business trading hours, there is no proposed increase in existing GFA of the building, and there is no option for onsite parking, the proposed parking arrangement and reliance on public Council owned car parking is considered satisfactory.

The existing right of footway for public access across Lot 702 DP 731251 which connects Queen Street to Council's public car park off Carsons Lane will provide appropriate access to public parking areas.

Utilities

Adequate services are already available.

Noise and vibration

The proposal will not generate an significant noise impacts and is compatible with other mixed use developments in the locality.

Waste Management

As per the SEE waste generation from the operation of the facility will be minimal and will be managed by licenced contractors.

Socioeconomic impacts

The proposal supports commercial activity within the area and also provides employment opportunities. CPTED principles including passive surveillance and access to the premises from parking areas via the public footway have been considered. In this regard, extended sightlines and street lighting in public areas and along public walkways are appropriate and contribute to overall safety and security.

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

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

- The site is zoned B4 Mixed Use and the proposal is permissible with Council consent
- The proposal is consistent with the objectives of Penrith DCP 2014.
- The proposal complies with the majority of the DCP controls.
- Hours of operation and class sessions times are appropriate and satisfactory parking can be provided in public car park areas.
- The use is compatible with surrounding/adjoining land uses.
- The proposal would have a negligible impact on the amenity of the surrounding properties.

Section 79C(1)(d) Any Submissions

Community Consultation

Under Appendix F4 of Penrith Development Control Plan 2014 required notification is not specified in *Table F4.1: Public notification and advertising* and notification of the development application is at the discretion of the responsible officer. As the proposal does not involve external alteration to the existing building, except for the replacement of signage, the subject site is located within the town centre and also on a classified road, public notification of the development was not required. No submissions were received.

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
Environmental - Environmental management	No objections - subject to conditions
Community Safety Officer	No objections

Section 79C(1)(e)The public interest

The proposed development will not generate any significant issues of public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2010, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest, and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

That DA16/0508 for Occupation and Fit out for a Fitness Studio at 249 Queen Street, St Marys, be approved subject to the attached conditions.

CONDITIONS

General

1 [A001](#)

The development must be implemented substantially in accordance with the following stamped approved plans, the application form and any supporting information issued by Penrith City Council, except as may be amended in red on the attached plans and by the following conditions.

Drawing Title	Plan No.	Issue	Prepared By	Date
Site Plan & Location Plan	A01-01	1	Functional 45 Training	30/5/2016
Floor Layout	A01-02	1	Functional 45 Training	30/5/2016
Exterior building details	-	-	Unknown	31/5/2016
Exterior Signage – Window Decals	-	-	Unknown	n.d.
Paint Colours	-	-	Unknown	n.d.

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

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

3 [A026 - Advertising sign \(not for residential\)](#)

A separate development application for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan-Advertising Signs.

4 [A039 - Graffiti](#)

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

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

No group training or timetabled classes are permitted to operate from the premise between the hours of 8.30am to 5.30pm Monday to Friday due to restricted access to suitable car parking provision.

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 [D014 - Plant and equipment noise](#)

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.

8 [D special BLANK](#)

The hours of operation are:

Weekdays: 5am - 8.30am and 5pm - 7.30pm

Saturdays: 6am - 10.30am

Sundays and Public Holidays: Closed

9 [D special BLANK](#)

Appropriate mitigation measures are to be incorporated into the construction of the development to ensure noise and vibration from the development does not impact on other adjoining occupancies and premises, in accordance with relevant Australian Standards, including AS2107:2000 Acoustics - Recommended design sound levels and reverberation times for building interiors, and the "Assessing Vibration: A Technical Guideline" published by the Department of Environment and Conservation, 2006.

BCA Issues

10 [E006 - Disabled access and facilities](#)

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility".

11 [E010 - Fire safety statement - critical fire safety \(Class 2-9 buildings\)](#)

A supplementary fire safety statement is to be given to Penrith City Council where a critical fire safety measure is implemented. A supplementary fire safety statement for a critical fire safety measure must be given at such intervals (being intervals of less than 12 months) as is specified in respect of that measure in the current fire safety schedule for the building. As soon as practicable after the supplementary 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.

12 [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

13 [H002 - All forms of construction](#)

If the work involved 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.

14 **H006 - Submission of and implement waste management plan**

A completed waste management plan shall be submitted to Penrith City Council for consideration and approval. Council must approve the plan before works can commence on site.

The waste management plan shall be prepared in accordance with the Waste Planning Development Control Plan (2004), and shall address all waste materials likely to result from the proposed development, with details of the estimated waste volumes, onsite storage and management, proposed re-use of materials, designated waste contractors, recycling outlet and / or landfill site.

The approved waste management plan must be implemented on-site and adhered to throughout all stages of the development with supporting documentation / receipts retained in order to verify the recycling and disposal of materials in accordance with the approved plan.

15 **H041 - Hours of work (other devt)**

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 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.

16 **H041 - Hours of work (other devt)**

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 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.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

Waste Management

No construction or building works are proposed. As per the provided SEE waste generation from the ongoing operation of the premises will be minimal and will be managed by licenced contractors and as such waste management for the proposed development is satisfactory.

Culture and Heritage

Some heritage sites are identified approximately 20m to north of the subject site along Queen Street and heritage item 806 - Shop (373 Great Western Highway) listed in Schedule 5 of Penrith LEP 2010 is locate 45m to the east along the Great Western Highway. The proposal does not involve any structural work or changes to the external façade, with the exception of the replacement of business identification signage and the external colour scheme. The building façade is currently coloured purple/violet and the application proposes to change colours to dark blue along the top parapet, with a white awning and ground floor façade. Horizontal decals will be painted across ground floor windows.

Proposed replacement signage is coloured blue, white and red and will not exceed the dimensions of current signage. As such, it is viewed that the proposed development and colour scheme will not detract from nearby heritage items and is considered appropriate within the locality.

Public Domain

The proposed development is for internal fit out and use of an existing building for the purposes of a fitness studio. It is considered that this use will continue or increase the amount of pedestrian traffic around the site.

The site is located on a corner block and the existing building continues glazing across both building frontages with the entrance on the corner. Proposed window decals and signage will provide points of visual interest and contribute to activation of both façade frontages. As such, the proposed use and updated building colour scheme promotes an interesting and safe pedestrian environment, and also positively contributes to the streetscape.

Advertising and Signage

The proposal involves the replacement of business identification signs including the replacement of the existing above awning sign, as well as decals and stickers fixed to ground storey windows and glass doors. Although it is noted that above awning signage is considered undesirable under the guidelines of the DCP, as the new signage will replace existing, will not be of greater size than the existing, and also the fact that similar signs are observed on adjoining buildings, the proposed above awning replacement sign is considered satisfactory. Replacement signage will be coloured dark blue, red and white which is compatible with the proposed building colouring and appropriate in the locality.

Dark blue, red and white horizontal decals with a height of 25cm along ground storey windows and white logo decals will be fixed to entry doors. New signage will be durable and of high quality, and does not obscure or interfere with road traffic signage and such is considered appropriate.

Transport, Access and Parking

No parking is provided onsite and the proposal relies on the public car park to the north-east of the site for customer parking.

As per the provided SEE the proposal involves the use of the fitness studio by classes of up to 20 people within the hours:

<i>Weekdays</i>	<i>Saturdays</i>	<i>Sundays</i>
5:00am - 8:30am and 5:00pm - 7:30pm	6:00am - 10:30am	Closed

As classes will run outside of normal business trading hours and there is no option for onsite parking, the proposed parking arrangement and the reliance on public car parking is considered satisfactory.

As opposed to other public parking areas within St Marys which may be subject to future redevelopment, the public car park accessed from Carsons Lane provides parking for retail and mixed use premises along the southern end of Queen Street which are not able to provide on site parking because of existing development and which are also restricted by the Great Western Highway to the south. As such, the public car park is unlikely to be redeveloped in the foreseeable future.

There is an existing right of footway for public access across Lot 702 DP 731251 which connects Queen Street to Council's public car park off Carsons Lane. As a result, customers of will need to travel approximately 120m from parking areas to the entrance of the premises. This is typical of development in the St Marys town centre and is considered appropriate.

Noise and Vibration

The proposal will not generate an significant noise impacts and will is compatible with other mixed use developments in the locality.

E15 St Marys / St Marys North

The subject site is located within the 'Southern Mixed Use' area of the St Marys town centre on the north-eastern corner of the intersection of Queen Street and the Great Western Highway.

15.1.2 Mixed use development controls

The proposal is for occupation of an existing building for the purposes of a gymnasium to be used for fitness classes and does not involve any structural or external building work, with the exception of exterior painting and the replacement of existing business identification signage.

The proposal is keeping with the retail and commercial use of buildings in the locality and provides an "activated" commercial frontage to both Queen Street and the Great Western Highway along the ground floor of the building, with the clearly marked and identifiable entrance on the corner of the building. The proposed external colouring, logos/decals and replacement signage create a clear separate commercial entity and maintains a high level of amenity suitable for the locality.

Glazing along both frontages of the existing building and proposed decals provide points of visual interest, avoiding the appearance of blank building walls.

15.2 Built form controls

Replacement business identification signage is flush with the building and will not impact upon regional views to the mountains along the Great Western Highway or local views within the town centre.

The subject site is located on the north-eastern corner of the intersection of Queen Street and the Great Western Highway and as is considered an important gateway site into the St Marys town centre. Penrith City Council's Arts and Community Centre is located on the opposite side of the Great Western Highway and it is identified that enhanced landscaping and angled facades should be encouraged to give this prominent intersection a unique character. The proposal maintains the angled façade and entrance way on the corner of the building and exterior colouring, ground floor commercial "activation" and business identification signage are appropriate in the locality and add to the character of the immediate area.

15.3.1 Pedestrian amenity

The proposal maintains active commercial and retail street frontages to both Queen Street and the Great Western Highway. Furthermore, as the proposal relies on public car parking to the north-west of the subject site and entrance to the building is only gained from Queen Street/the Great Western Highway, customers will utilise the existing right of footway across Lot 702 DP 731251 which will also encourage pedestrian activity within the locality and around the site.

Consideration has been given to CPTED principles, and by maintaining the existing glazing of the building along Queen Street and the Great Western highway, the proposal encourages passive surveillance of the street and contributes to the safety of the public domain. It is noted that to gain access to parking areas from the premises customers must use the right of footway across Lot 702 DP 731251. The public footway is already established, is approximately 35m long and is bounded by brick walls on either side and open car barriers on either end. The foot way is 6 metres wide and provides clear sightlines with no obstructions from both ends. There is also an existing street light along the footway and additional lighting within the public car park. For these reasons and because of the class based nature of the proposed use, which will result in a number of people accessing the site and using the footway at particular times (beginning and end of classes), in terms of safety and security of the proposed use of the building is considered satisfactory.

Glazing along the ground floor and the fixing of decals and stickers to windows will provide suitable articulation, as well as points of visual interest. Replacement signage will not exceed the dimensions of existing business identification signs and the proposed exterior colouring of the building is compatible with neighbouring and other buildings in the locality.