

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA21/0016.02
Proposed development:	S4.55(1A) Modification to Amend Conditions of Consent
Property address:	137 Coreen Avenue, PENRITH NSW 2750
Property description:	Lot 301 DP 860777
Date received:	27 September 2021
Assessing officer	Jake Bentley
Zoning:	IN1 General Industrial - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a modification application to amend conditions relating to capacity, sale of items and noise generation from music associated with an approved microbrewery (artisan food and drink industry) at 137 Coreen Avenue, Penrith. The modified proposal remains a permissible land use in the sites IN1 General Industrial zoning under Penrith Local Environmental Plan 2010 (PLEP).

In accordance with Council's Community Engagement Strategy 2019 the modification application did not require notification to surrounding property owners.

An assessment under Section 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979 has been undertaken and the modification application is recommended for approval subject to recommended condition amendments.

Site & Surrounds

The site is a rectangular allotment with a 1.06 hectare lot size and is on the corner of Coreen Avenue and Coombes Drive. The site is occupied by multiple attached warehouse structures split into 5 working areas (tenancies). Vehicular access is available via one driveway on Coreen Avenue and two driveways via Coombes Drive. Car parking areas are located within the Coombes Drive setback and loading areas are available within the car parking areas as well as the western driveway. The eastern and southern street frontages are occupied by landscaping with mature trees and a small car yard occupies the southern street frontage including a small office structure.

The site is burdened by a right of carriageway within the north-eastern corner, easement for electricity purposes within the southern street frontage and is benefitted by an easement to drain water. The site is identified as having scenic and landscape values and is impacted by flood related development controls.

The subject area of works is the middle tenancy within the northern most structure. The area has southern and eastern roller door access with an approximate area of 1421m². The neighbouring tenancy to the west (area 3) is occupied by a waste transfer facility and the neighbouring tenancy area 5 to the east is occupied by a tyre and auto service centre.

The neighbouring properties to the north and west are also zoned IN1 and are occupied by industrial land uses. The neighbouring properties to the east are zoned IN2 Light Industrial whereas neighbouring southern properties are zoned IN2 and E3 Environmental Management. It is noted that local heritage item 'Combewood' is located to the south of the subject site.

History

The site is benefitted by an approval for an artisan food and drink industry (microbrewery) with an 80 person capacity which includes internal driveway works.

Proposal

The modified proposal seeks the following amendments;

- extend the capacity from 80 persons to 120 persons 5pm - 10pm Monday to Friday, Saturday 100 persons 6am - 4pm and 120 persons 4pm - 10pm and Sunday 120 persons 10am - 10pm, for a 12 month trial period,
- allow the retail sale of some ancillary goods (i.e. merchandise, soft drinks and supply kits from classes), and
- amend a condition to allow music to be played from a wireless speaker.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 4.55(1A) - Modifications involving minimal environmental impact**

In accordance with Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a consent if:

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

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

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

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

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

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

The proposed modification has been assessed in accordance with the above provisions as follows:

(a) The modified proposal is of minimal environmental impact considering the changes proposed.

(b) The modified proposal is substantially the same as that originally approved.

(c) In accordance with Council's Community Engagement Strategy 2019 the modification application did not require notification to surrounding property owners.

(d) No submissions were received.

The modification application has also been considered against the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act, 1979 that are of relevance to the application later within this report.

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

State Environmental Planning Policy No 55—Remediation of Land

In accordance with Clause 7 Contamination and remediation to be considered in determining development application *"a consent authority must not consent to the carrying out of any development on land unless:*

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."

The original application found the site to be suitable for the development in relation to land contamination. A review of Council's records and historical aerial images of the property do not indicate any potential land contamination activities occurring within the area subject to the modified proposal. The site remains suitable for the modified proposal in relation to land contamination.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The modified proposal remains in keeping with the requirements of SREP No. 20 and appropriate conditions of consent remain in place.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The modified proposal seeks to amend Condition 7 to allow the retail sale of ancillary items such as merchandise, soft drinks and brewing education supply kits. The modified proposal will retain the primary purpose being manufacturing of the craft product as required under the artisan food and drink definition. The retail sale of these additional components are ancillary to the primary use as the sale of soft drinks is associated with the restaurant or cafe component, the sale of kits relates to the workshop component and the merchandise relates to the craft product production. In light of the above, the modified proposal remains permissible with consent in the sites IN1 zoning.

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

It is noted both the Draft Environment SEPP and Draft Remediation of Land SEPP apply to the subject site, but while so, do not affect or alter the recommendation of this report.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	Complies
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - 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
D4.1. Key Precincts	Complies
D4.2. Building Height	N/A
D4.3. Building Setbacks and Landscape	N/A
D4.4. Building Design	N/A
D4.5. Storage of Materials and Chemicals	N/A
D4.6. Accessing and Servicing the Site	Complies
D4.7. Fencing	N/A
D4.8 Lighting	N/A

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

Conditions of consent relating to compliance with relevant provisions of the Building Code of Australia and the regulations will be retained.

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

The modified proposal has demonstrated that the increased capacity during certain operational hours is suitable as conflicts with parking associated with neighbouring operations is addressed. The increased capacity is not envisioned to generate any adverse noise impacts noting the industrial surrounds and distance from sensitive receivers. The capacity pursued (excluding staff) has been discussed with Council's Building Surveying Department which have raised no issues relating to the amenities provided. The additional sale of ancillary items will not impact permissibility and the modified condition relating to music being played will not generate any adverse noise impacts. In this regard, the modified proposal is not considered to generate any adverse likely impacts.

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

The site remains suitable for the modified proposal as existing operations have been considered with the proposed increased capacity.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Council's Community Engagement Strategy 2019 the modification application did not require notification to surrounding property owners

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
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	Awaiting additional information

Building Surveyor

The modified proposal was not referred to any internal departments. The above internal department decisions are appearing for the purposes of condition transfer from the original consent to the modified consent.

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

There are no significant issues relating to the public interest envisioned as a result of the modified proposal.

Conclusion

In assessing the modified development against relevant environmental planning instruments the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the modified development, the modified proposal is in the public interest and there is unlikely to be negative impacts arising from the modified development. Therefore, the modification application is worthy of support and is recommended for approval, subject to recommended condition amendments.

Recommendation

That DA21/0016.02 for a modification application to amend conditions relating to capacity, sale of items and noise generation from music associated with an approved microbrewery (artisan food and drink industry) at 137 Coreen Avenue, Penrith be approved subject to the attached recommended condition amendments.

CONDITIONS

General

1 [A001 - Approved plans table](#)

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

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

- Waste Management Plan, undated.

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

2 [A001b - Capacity – Venues, Function Centres, Pubs, Clubs, Restaurants](#)

The maximum patron capacity of the premises is as follows:

Monday to Friday

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

Saturday

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

Sunday

10am - 10pm - 120 patrons

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

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

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

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

3 [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.

4 [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.

5 **A026 - Advertising sign (not for residential)**

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

6 **A029 - HOURS OF OPERATION AND DELIVERY TIMES**

The approved operating hours are restricted as follows:

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

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

7 **A030 - No retail sales**

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

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

8 **A032 - Goods in buildings**

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

9 **A038 - LIGHTING LOCATIONS**

Exterior lighting shall be provided to the car parking and common areas of the site and located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

10 **A039 - Graffiti**

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

11 **A Special (BLANK)**

Prior to the issue of an Occupation Certificate, a baby change table shall be installed within the toilet facilities.

12 **A Special (BLANK)**

The flue pipe associated with the smokers shall not provide for an unsightly projection above the roof.

13 **A Special (BLANK)**

The operator must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard, the operator/management team are responsible for noise management and minimisation as well as litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council and the Licensing Authority.

14 **A Special (BLANK)**

A Plan of Management is to be prepared addressing the operational procedures and requirements of the development as well as any additional matters outlined within this determination by way of conditions of consent, including but not limited to;

- Patron Capacity
- Traffic and Car Parking Arrangements
- Hours of Operation
- Licensing Requirements
- Security
- Noise and Amenity
- Complaints

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

- 15 [A Special \(BLANK\)](#)
Tour groups and operators are to be arranged so that no more than one coach (at full capacity) is attending the premise at any one time.
- 16 [A Special \(BLANK\)](#)
At no times shall the car parking areas be used for any aspect of the development including the service or consumption of food and drink associated with the development.
- 17 [A Special \(BLANK\)](#)
The premise shall only offer for sale and tasting alcoholic beverages that have been produced on the site.
- 18 [A Special \(BLANK\)](#)
Food must be available to patrons, of a nature and quantity consistent with the responsible sale, at all times alcoholic beverages are available for consumption on the premises.
- 19 [A Special \(BLANK\)](#)
The activities are to operate so as to not interfere with the operation of other businesses in the complex
- 20 [A Special \(BLANK\)](#)
The approved use shall not commence until such time that the necessary liquor licence has been issued by Liquor & Gaming NSW.

Environmental Matters

- 21 [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 the areas are to be fully enclosed when the site is unattended.
- 22 [D010 – Appropriate disposal of excavated or other waste](#)
Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority.
- All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.
- 23 [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.
- 24 [D023 - Bunding](#)
All works and storage areas where spillages are likely to occur shall be bunded. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. All bunded areas shall be designed so as to facilitate emptying and cleaning.
- 25 [D024 - Pre-treatment](#)
Prior to the issue of an Occupation Certificate, details of any pre-treatment facilities as required by Sydney Water and, if required a Section 73 Certificate issued by Sydney Water for the said development, are to be submitted to the Certifying Authority.
- 26 [D026 - Liquid wastes](#)
Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.
- 27 [D029 - Manufacture use](#)
All manufacture associated with the use shall be conducted within the confines of the building at all times.
- 28 [D031 - Air discharges to the environment](#)
All air related discharges generated by the use of the premises including the BBQ smokers shall be collected into a flue-stack system with a suitable design and where required filter system for discharge to the atmosphere. The quality of the discharges from the stack system shall comply with the requirements of the *Protection of the Environment Operations Act, 1997*.
- 29 [D - Waste Management Plan](#)
The approved waste management plan and other waste associated information submitted by the applicant as part of the application must be implemented on-site and adhered to throughout all stages of the development including construction and operational phases of the development.

30 **D Intruder Alarm**

Where an intruder alarm is installed on the premises it shall be fitted with a timing device in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

31 **D Regulation of Air Quality Impacts**

In the event of Council receiving a complaint regarding odour and/or offensive air emissions, the person(s) in control of the premises from where the odour and/or offensive air emissions are emanating may be directed by Council to at their own cost arrange for an odour/air impact assessment and investigation to be carried out (by a suitably qualified person) and submit a report to Council specifying any need for proposed methods for the control of odour and/or offensive air emissions emanating from the premises. Any such report must be provided to Council within 30 days of being requested. The recommendations, if any, of the assessment report upon approval from Council are to be implemented within the timeframe specified by Council.

32 **D Regulation of Noise Impacts**

In the event of Council receiving a complaint regarding excessive noise, the person(s) in control of the premises from where the noise is emanating may be directed by Council to at their own cost arrange for an acoustic investigation to be carried out (by a suitably qualified person) and submit a report to Council specifying any need for proposed methods for the control of noise emanating from the premises. Any such report must be provided to Council within 30 days of being requested. The recommendations, if any, of the assessment report upon approval from Council are to be implemented within the timeframe specified by Council.

33 **D Special BLANK**

No music is to be played from the premises that exceeds 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the *Protection of the Environment Operations Act, 1997* apply to the development, in terms of regulating offensive noise.

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

34 **D Waste Storage**

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

BCA Issues

35 **E004 - Floor wastes**

In accordance with Clause 94 of the *Environmental Planning and Assessment Regulation 2000*, the following works are to be completed to ensure the safety of the occupants;

- Latching devices on the required exit doors are to comply with Clause D2.21 of the building Code of Australia (BCA).
- Exit travel distances are to comply with Clause D 1.4 (c) of the BCA. In this respect the travel distances from the amenities area will need to be checked for compliance.

36 **E006 - Disabled access and facilities**

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

37 **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.

38 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

39 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*.

Your attention is drawn to the following requirements:

- Hand basins must be serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands free operation. Where sensor taps are installed the basin must not be more than 6 metres from the hot water system. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.
- Hot water services must be positioned at least 75mm clear of the adjacent wall surfaces, and mounted at a minimum 150mm above the floor level on a non-corrosive metal stand. The hot water system must be sized to meet the demands of the food business during peak operating and cleaning periods and be able to provide sufficient hot water throughout the working day. Discharge from the hot water system must enter the sewer through a tongue dish in accordance with Sydney Water's requirements.
- The floor of the food premises must be finished in an approved non absorbent material, evenly laid, or graded and drained to a trapped floor waste. All floor wastes in the food preparation, service and brewery area must be fitted with a sump removable basket and grate, a minimum 200mm in diameter, and finished in all stainless steel.
- The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other approved material to a height of 2 metres. The intersection of tiles and render must have a flush finish, or be splayed at a 45 degree angle to eliminate a ledge that would allow dust and grease to accumulate.
- The ceiling in the preparation, service and brewery areas must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.
- Service pipes, electrical conduits, refrigeration condensate pipes shall be enclosed or chased into walls, floors or plinths. Where it can be demonstrated that this is not feasible pipes and conduits fixed on brackets, providing a minimum of 25 mm clearance from the adjacent wall and 100 mm from the floor or adjacent horizontal surface, can be used. All openings in walls, floors and ceilings, through which service pipes and conduits pass, must be vermin proof.
- Details of the dishwashing/glass washing machines must be submitted to Council and approved prior to installation. All utensils and equipment must undergo a washing, sanitising and rinsing cycle. The sanitising rinse cycle must achieve a water temperature of 80°C for 2 minutes or 75°C for 10 minutes.
- All wash sinks and food preparation sinks must be serviced with hot and cold water through a single outlet. Wash sinks must be supplied with water at a temperature of not less than 54 °C for washing.
- The cleaners sink must be serviced with hot and cold water through taps fitted with hose connectors. Cleaner's sinks must be located outside of areas where open food is handled.
- All food preparation benches must be constructed in stainless steel or finished in a smooth and non-absorbent approved material that is free of joints.
- All storage cabinets (internal and external surfaces) must be finished in a smooth and non-absorbent approved material that is free of joints.
- Light bulbs or tubes are to be shatterproof or fitted with approved light diffusers (covers or shields) to prevent contamination of food by glass from a broken light globe or tube. Light fittings must be free from any feature that would collect dirt or dust, harbour insects or make the fitting difficult to clean. Light fittings must be recessed into ceilings or equipment where possible. Heat lamps must be protected against breakage by a shield extending beyond the bulb.
- Shelves must be smooth and impervious; free from joints, cracks and crevices; and able to be easily cleaned. The lowest shelf must be at least 200mm off the floor to allow easy cleaning underneath. Approved materials must be used, such as galvanised piping, stainless steel or laminated plastic. Shelves are to be sealed to the wall or kept clear of walls to allow easy access for cleaning (>40 mm).
- The coolroom and/or freezer room floor must be finished with a smooth even surface and graded to the door. A sanitary floor waste must be located outside the coolroom and freezer adjacent to the door. All metal work in the coolroom and freezer room must be treated to resist corrosion.

40 [F022 - Commercial kitchen\(exhaust system\)](#)

Cooking appliances which exceed a total maximum power input of 8kw for electrical, or a total gas input of 29MJ/h for a gas appliance are required to have a kitchen exhaust system installed in accordance with Clause F4.12 of the Building Code of Australia and Australian Standard AS1668 Parts 1 & 2.

The exhaust hood must completely cover the equipment to be ventilated and extended at least 200mm beyond the perimeter of the equipment. The exhaust hood must be provided with a condensation gutter around its base. The gutter must be at least 50mm wide by 25mm deep. Where abutting walls are located the hood must be constructed so as to finish flat against the wall surface.

The low edge of a canopy type exhaust hood must be at least 2000mm above floor level.

Prior to the issue of an Occupational Certificate, and operation of the business, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and Australian Standard AS 1668 Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Department if Council is not the Principal Certifying Authority

41 [F026 - Kitchen bar & food prep area-certification](#)

Details of the kitchen, brewery, bar and food preparation and storage areas must be in accordance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code and AS 4674-2004 *Design, Construction and Fitout of Food Premises* and provided to Council for approval prior to works commencing.

42 [F053 - Coolrooms – condensation](#)

Condensation from coolrooms and refrigeration motors must discharge to sewer via a tundish with air gap separation in accordance with Sydney Water requirements.

43 [F054 - Coolrooms – doors & alarms](#)

The coolroom and freezer room must be provided with:

- A door which can at all times be opened from inside without a key and
- An approved alarm device located outside the room, but controlled only from the inside.

44 [F057 - Waste storage](#)

All garbage must be stored in accordance with the requirements of the Food Safety Standards of the Australian and New Zealand Food Standards Code and the *Protection of the Environment Operations Act 1997* to prevent the harbourage of vermin or generation of odours.

45 [F062 - Licensed premises](#)

The business is required to be licensed with the NSW Food Authority. The business shall meet licence and registration requirements prior to the commencement of operation. Details of this license shall be submitted to Council **prior to the commencement of the business**.

46 [F186 - Smoke Free Environment](#)

The construction and operation of the premises shall comply with the NSW Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2000.

Utility Services

47 [G002 - Section 73 \(not for](#)

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

Construction

48 H001 - Stamped plans and erection of site notice

Stamped plans, specifications, a copy of the development consent and any other Certificates to be relied upon shall be available on-site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details is to be erected:

- at the commencement of, and for the full length of the, construction works on-site, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

49 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.

50 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 that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Engineering

51 K222 - Access, Car Parking and Manoeuvring – General

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

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

52 K511 - Directional signage

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

53 K Special (BLANK)

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

54 K Special (BLANK)

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

55 K Special (BLANK)

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

56 **K Special (BLANK)**

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

Landscaping

57 **L008 - Tree Preservation**

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

Certification

58 **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 occupation of the development.

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

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C10 Transport, Access and Parking

The modified proposal seeks to increase the capacity of the premises based upon neighbouring hours of operation relating to increased parking on-site.

The premises is currently approved for a 80 person maximum capacity (including staff). The modified proposal seeks to increase the patron capacity during the following hours of operation;

- 120 persons Monday to Friday between 5pm - 10pm,
- 100 persons Saturdays between 6am - 4pm,
- 120 persons Saturdays between 4pm - 10pm, and
- 120 persons Sunday 10am - 10pm.

The neighbouring tenancies provide the following hours of operation (it is noted that Vinnies recycling located west of the subject tenancy does not have access from the main internal car park therefore, parking implications from this premises are negligible);

Bridgestone Tyres (east of tenancy) - Monday to Friday 8am - 5pm, Saturday and Sunday closed,

Beaumont Tiles (south of tenancy) - Monday to Friday 8:30am - 5pm, Saturdays 9am - 4pm

Based upon the above hours of operation the increase in patron capacity is suitable as additional parking will be available when hours of operation across the site are not conflicting. The modified proposal has indicated that staff will park within the tenancy therefore, additional parking will be available.

The previous parking assessment conducted for DA21/0016 found that suitable parking was on-site for the proposed activities being conducted. The modification application has detailed that capacity can be increased when operations are not conflicting noting more parking is available. In addition, the applicant has requested the capacity increases be trialed for a 12 month period to assess whether any adverse impacts would arise from the increase. The modified proposal recommends an 18 month trial period to ensure operations can be trialed over a period of consistent operation noting restricted capacity from lockdowns. In this regard, the modified proposal is suitable.

C12 Noise and Vibration

The modified proposal seeks to amend the condition which prohibits amplified music to be played. The applicant has suggested that music will be played through speakers and suggests that the required background noise level not exceeding 5dB(A) at the boundary of the premises will be achieved. In this regard, the condition will be modified to allow music to play at this sound level and no adverse noise impacts are envisioned.