

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA19/0001
<b>Proposed development:</b>	Occupation and Fitout for a Thai Massage Therapy Clinic
<b>Property address:</b>	71 Great Western Highway, EMU PLAINS NSW 2750
<b>Property description:</b>	Lot 1 DP 552614
<b>Date received:</b>	2 January 2019
<b>Assessing officer</b>	Jacqueline Klincke
<b>Zoning:</b>	Zone B2 Local Centre - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Approve

### Executive Summary

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Council is in receipt of a development application for the fit-out and use of a Thai Massage Therapy Clinic at Shop 4/71 Great Western Highway, Emu Plains. Under *Penrith Local Environmental Plan 2010*, the site is zoned B2 Local Centre. The development is considered to be a "business premises" which falls under the definition of being a *Commercial Premises* which is a permissible land use in the B2 zone.

In accordance with Appendix F4 of *Penrith Development Control Plan 2014*, the proposal was notified to seven (7) nearby and adjoining properties and exhibited between 2nd January and 1st February 2019. Two (2) submissions were received in response from the same property owner and the comments raised have formed part of this assessment. Correspondence was provided to this objector addressing concerns raised and in this regard the objection received is considered resolved.

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

### Site & Surrounds

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The subject site is located at the north-eastern corner of the intersection of the Great Western Highway and Billington Place in Emu Plains. The site is known as Shop 4/71 Great Western Highway, Emu Plains and is legally described as Lot 1 DP 552614 with an area of 49.56m<sup>2</sup>. The surrounding area is characterised by existing shop-top housing with commercial premises operating on the ground floor, car parking, and low to medium density residential development to the south.

#### Site History

The premises was previously occupied by a massage therapy, however no approval can be found from Council records.

## Proposal

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The applicant seeks approval for a fit-out and change of use to a Thai Massage Therapy Clinic at 4/71 Great Western Highway, Emu Plains.

The proposal as amended includes the following aspects:

- Fit-out and use as a Thai Massage premises, including two (2) treatment rooms, reception, waiting area, bathroom, storage room, and staff area;
- Construction of one (1) partition wall;
- Business operations specialising in: traditional Thai massage, Swedish massage, couple massage, and aromatherapy massage;
- One (1) window graphic business identification sign;
- Hours of operation between 10am and 7:30pm Monday to Sunday;
- Maximum of two (2) staff members on site at any one time; and
- Car parking spaces are to be provided via the existing 152 shared parking spaces servicing the subject complex and train station.

## Plans that apply

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- 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

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### • Section 4.15 - Evaluation

The proposal has been assessed in accordance with the matters for consideration under Section 4.15 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 proposed sign against the relevant criteria within the *State Environmental Planning Policy No. 64 - Advertising and Signage*. Noting the below, the proposed signage is considered to be an acceptable addition to the streetscape.

The proposed sign is consistent with the aims and objectives of SEPP 64. An assessment of the proposal under Schedule 1 has been undertaken below.

Criteria	Assessment
1. Character of the area	The proposed sign as amended is sympathetic to the building, general built environment and character of the area. The design and form will complement the building and is similar to other business signage on the street.
2. Special areas	The proposed sign does not detract from the amenity or visual quality of any heritage areas, environmentally sensitive areas, natural/conservative areas, open space areas, waterways, landscapes or residential areas.
3. Views and vistas	The proposed sign will not compromise or obscure important views or vistas. The new sign proposed will not dominate the skyline and is respectful to other business' viewing and advertising rights.
4. Streetscape, setting or landscape	The proposed sign has been designed with a suitable scale, proportion and form, and is in keeping with the character of other businesses on the street. The proposed sign will contribute to the visual interest of the building and the local area. The sign does not protrude above any buildings, structures or tree canopies in the area.
5. Site and building	The proposed sign is compatible in scale and proportion with the building and is appropriately located to complement the building and pedestrian/vehicular amenity.
6. Associated devices and logos with advertisements and advertising structures	The proposed sign will display the name of the business 'Jacaranda Massage', address, and phone number. A condition of consent is recommended to ensure the sign will not contain any advertising relating to a person/business who does not carry out business at the subject premises or place.
7. Illumination	The proposed sign is non-illuminated.
8. Safety	There will be no reduction in safety to public roads, pedestrians or cyclists due to the installation of the proposed sign.

## Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposal against the relevant criteria within *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 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	N/A
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.7 Servicing	Complies

### Clause 2.3 Permissibility

The proposal is defined as a "business premises" which is a permissible land use in the B2 Local Centre zone provisions under *Penrith Local Environmental Plan 2010*. In addition, the proposed business identification sign is also permissible with Council consent.

### Clause 2.3 Zone objectives

The B2 zone objectives are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in, and visit the local area*
- *To encourage employment opportunities in accessible locations*
- *To maximise public transport patronage and encourage walking and cycling*
- *To provide retail facilities for the local community commensurate with the centre's role in the local and regional retail hierarchy*
- *To ensure that future housing does not detract from the economic and employment functions of a centre*
- *To ensure that development reflects the desired future character and dwelling densities of the area*

The proposal seeks to establish a small scale business which will in turn create employment opportunities. The subject premises has access to parking, public transport, and is within reasonable walking distance for local residents. The proposal is not contrary to the B2 zone objectives.

### Clause 7.2 Flood planning

The subject site is identified as being on Low Flood Island. However, considering the proposal will be located within existing floor space and involves minor internal construction works, there are no adverse impacts from a flood planning perspective envisioned.

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

There are no draft environmental planning instruments applicable to the subject 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	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	Complies - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
E5 Emu Plains controls	Complies

## **Section 79C(1)(a)(iii) The provisions of any planning agreement**

There are no planning agreements applying to the proposal.

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

the proposal has been referred to Council's Building Surveyor and Public Health Department who have both recommended conditions of consent to ensure the development complies with the Building Code of Australia, the relevant Australian Standards, and the regulations.

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

### ***Context and Setting***

The proposal is for the occupation and fit-out of the premises for the purpose of a Thai Massage Therapy Clinic with associated signage. The development will have minimal impact on the amenity of the locality subject to conditions. The application proposes trading hours of 10:00am to 7:30pm Monday to Sunday. A condition of consent is recommended to ensure the business complies with these hours of operation.

The existing shop entry will provide for equitable access to the premises. In addition, to maintain the amenity of the surrounds, any development consent granted will be appropriately conditioned to not allow for skin penetration or sex services on site.

### ***Access, Transport and Traffic***

Given the proposal is for a small scale business, it is unlikely that there will be an adverse impacts on local traffic conditions. The existing access arrangements and car parking near the site will be adequate for the proposed Thai Massage premises.

### ***Utilities and Services***

The site has connections to utility services which will have the capacity to cope with the demand associated with the proposal.

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

It is considered that any noise generated by the use of the premises will not unreasonably impact on the amenity of the surrounding uses. To maintain acoustic privacy and amenity of the surrounding area, a standard condition restricting construction work hours is recommended.

### ***Environmental Impacts***

The proposal is for minor works only. there will be no major impacts on water resources or soil quality and the development does not require the removal of any significant biodiversity or threatened species. The amount of waste to be generated is considered to be manageable.

### ***Socio-Economic Impacts***

The proposal does not contravene any development standards and is unlikely to have any significant impacts on the natural, social or economic environments

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

The site is suitable for the following reasons:

- The site is zoned to permit the proposed use,
- The use is consistent and complementary to surrounding/adjoining land uses,
- The site is adequately serviced by access, water and sewerage infrastructure which have the capacity to cope with any increase in demand associated with the proposed development, and
- The proposed use is a suitable service in the locality.

## **Section 79C(1)(d) Any Submissions**

### **Community Consultation**

In accordance with Appendix F4 of *Penrith Development Control Plan 2014*, the proposed development was notified to seven (7) nearby and adjoining residents. Council received two (2) submissions in response from the same property owner and the issues raised have formed part of this assessment.

Key concerns raised in relation to the proposed development were as follows:

Issues Raised	Response
<i>Proposed commercial premises may not be a legitimate massage remedial premises and consequently cheapen or tarnish other health practices within the locality.</i>	Services offered at the proposed clinic include: traditional Thai massage, Swedish massage, couples massage, and aromatherapy massage. All services provided will be undertaken by experienced qualified staff in their respective modalities. In addition, there is no website associated with the proposed business and concerns for the business providing erotic services are irrelevant. In this regard, it is considered that the proposal is a legitimate remedial massage premises and therefore will not have an impact on the socio-economic environment of the locality. A condition of consent has also been imposed to ensure the site not be used for skin penetration or sex services.

Correspondence was provided to this objector addressing the concerns raised in each submission and in this regard the objection received is considered resolved.

### 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 - Public Health	No objections - subject to conditions

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

The proposed development will not generate any significant issues of public interest, and is considered subject to the provision of appropriate conditions with any determination granted to be an acceptable inclusion to the existing business premises located along Billington Place.

### Conclusion

Subject to the recommended conditions of consent, the proposal is considered to be consistent with the relevant sections of the *Environmental Planning and Assessment Act 1979*, and the relevant planning provisions as it does not contravene any development standards and will not result in any significant impacts on natural, social and economic environments. the proposal will not have any unacceptable impacts upon the amenity of the locality. The site is suitable for the proposed development and there is unlikely to be negative impacts arising from the proposed development. Accordingly, the application is worthy of support and recommended for approval, subject to the attached conditions.

### Recommendation

That DA19/0001 for fit-out and change of use to a business premises: Thai Massage Therapy Clinic at 4/71 Great Western Highway, Emu Plains, be approved subject to the attached conditions.

# CONDITIONS

## General

1 [A001](#)

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

Description	Plan No.	Prepared By	Date
Proposed Fit-out	-	Kritsana Inkham	22/2/2019
Proposed Signage	-	Kritsana Inkham	22/2/2019

- Waste Management Plan, dated 28/12/2018, accompanying the application.
- 2 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)  
**The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 3 [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 commencement of the business.**
- 4 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)  
The operating hours are from 10:00am to 7:30pm Mondays to Sundays.
- 5 [A030 - No retail sales](#)  
No retail sale of goods shall be conducted from the subject premises.
- 6 [A039 - Graffiti](#)  
The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 7 [A Special \(BLANK\)](#)  
The premises is not to be used as a sex service premises or for any skin penetration procedure as defined under the *Public Health Act 2010*.
- 8 [A Special \(BLANK\)](#)  
The sign shall not contain any advertising relating to a person/business who does not carry out business at the premises or place. The sign is limited to:
- (a) The name of the person or business, and
  - (b) The nature of the business carried on at the premises or place at which the sign is displayed, and
  - (c) May include the address of the premises and a logo or other symbol that identifies the business.
- 9 [A Special \(BLANK\)](#)  
A maximum of two (2) staff members shall be on site at any one time.
- 10 [A Special \(BLANK\)](#)  
In the event that Council receives a complain regarding excessive noise, the person(s) in control of the premises shall at their own cost arrange for an acoustic investigation to be carried out (by a suitably qualified person) and provide a report specifying proposed methods for control of noise emanating from the premises.
- 11 [A Special \(BLANK\)](#)  
Any intruder alarm installed at the premises shall be fitted with a timing device in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.
- 12 [A Special \(BLANK\)](#)  
The front of the premises is to be maintained in a neat and tidy manner at all times.
- 13 [A special BLANK](#)  
A separate hand wash basin supplied with warm water should be provided so each staff member has access to wash their hands thoroughly before and after performing a massage between clients.

## Environmental Matters

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

All waste materials stored onsite 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.

15 **D010 – Appropriate disposal of excavated or other waste**

All waste generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

## **BCA Issues**

16 **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**

17 **F Sspecial (BLANK)**

The following services are not permitted/approved as part of the Thai Massage Therapy Clinic business:

- Sex services or similar activities,
- Skin penetration procedures,
- Tattooing procedures,
- Food preparation and/or sale,
- Offer or sale of products be retail, and
- Procedures that involve the use of drugs or medications.

18 **F Sspecial (BLANK)**

The following operational aspects of the remedial massage business premises are to comply with:

- Massage booths and tables are to be constructed of durable, smooth and impervious materials that are able to be easily and effectively cleaned,
- Linen and towels are single use items and must be changed between each client,
- Disposable single use face hole covers, head pads and sheets are to be used where towels or linen are not in use, and
- Oils, creams and balms must be dispensed via pumps or single use dispensers so as not to contaminate the products.

## **Construction**

#### 19 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 are 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.

#### 20 H002 - All forms of construction

Prior to the commencement of construction works:

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

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

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) 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.

## 21 [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.

## **Certification**

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

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

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

(b) submit a Notice of Commencement to Penrith City Council.

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

#### Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

### 23 [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 premise.

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.

### 24 [Q Special \(BLANK\)](#)

A satisfactory inspection from an authorised officer of Council's Environmental Health team is required prior to the issue of an Occupation Certificate. the occupier is to contact the Environmental Health team to organise an appointment at least 72 hours prior to the requested inspection time.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part A - Introduction

The proposal provides for a commercial activity which will benefit the social well-being of the community. The business activities of the proposal will create employment opportunities and boost the local economy. Furthermore, given that construction works are for a fit-out and signage only, there will be no adverse impacts on the natural or built environments. the proposed development therefore satisfies the DCP principles.

### Part C - City-wide Controls

#### C9 Advertising and Signage

The proposal involves the installation signage on the front facade of the shop in the form of painted window panels. The signage is to be located within the two middle panels of the front window only. The proposed signage is considered to be consistent with and sympathetic to the existing signage and character of the neighbouring shops located along Billington Place. The signage is not illuminated, and a condition of consent is recommended to ensure the signage will not contain any advertising relating to a person/business who does not carry out business at the subject premises or place. In this regard, the proposed business identification signage is deemed satisfactory and recommended for approval.

#### C10 Transport, Access and Parking

Car parking spaces to be provided via the existing 152 shared parking spaces servicing the subject complex and train station. Street parking is also available. It is also envisioned that the proposal will not generate a significant increase in traffic volume or parking demand.