

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA13/1067
Proposed development:	Fit-Out & Use for Body Piercing (Shop 3, Allen Arcade)
Property address:	140 - 142 Henry Street, PENRITH NSW 2750
Property description:	Lot 11 DP 553665 Lot 10 DP 553665
Date received:	20 September 2013
Assessing officer	Jane Hetherington
Zoning:	ZONE B3 COMMERCIAL CORE PCCLEP 2008
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for a fit-out and use for body piercing (Shop 3, Allen Arcade) at 140 -142 Henry Street, Penrith. Under Penrith City Centre Local Environmental Plan 2008, the proposal is defined as a business premises. The subject site is zoned B3 Commercial Core and the proposal is a permissible land use in the zoning with Council consent. 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 located on the south side of Henry Street approximately 70m east of the Station Street intersection. To the rear of the site is the Allen Place carpark. The subject tenancy (shop 3) is located within the Allen Arcade. The surrounding area is characterised by commercial development.

History

Previous consents for the site include:

- BA001160 Additions - Other residential
- BA021385 Office Renovation
- BA942261 Shop fittings
- BA960496 Office Renovation
- BA972315 Shop fitout
- DA07/0919 Shop fitout
- DA960342 Restaurant and Entertainment facility

Proposal

The proposed development involves:

- Fit-out and use for body piercing (Shop 3, Allen Arcade).
- Operating hours from 11am to 5pm, Tuesdays to Saturdays.
- 1 employee.
- Associated signage.

Plans that apply

- Penrith Local Environmental Plan 2008 (City Centre)
- Development Control Plan 2006
- Development Control Plan 2007 (City Centre)
- 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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against 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.

Penrith Local Environmental Plan 2008 (City Centre)

Provision	Compliance
Clause 2 - Aims of the Plan	Complies
Clause 12 - Zoning of land to which this plan applies	Complies
Clause 13 - Zone objectives	Complies
Clause 15 - Additional permitted uses for particular land	N/A
Clause 16 - Subdivision consent requirements	N/A
Clause 17 - Temporary use of land	N/A
Clause 21 - Height of buildings	N/A
Clause 22 - Architectural roof features	N/A
Clause 23 - Sun Access	N/A
Clause 24 - Floor space ratio	N/A
Clause 25 - Minimum building street frontage	N/A
Clause 26 - Design Excellence	N/A
Clause 27 -Car parking	N/A

Clause 28 - Ground floor development within B3 and B4	Complies
Clause 29 - Building separation	N/A
Clause 30 - Ecologically sustainable development	N/A
Clause 31 - Serviced apartments	N/A
Clause 32 - Exceptions to development standards	N/A
Clause 33 - Land acquisition within certain zones	N/A
Clause 34 - Development on proposed classified roads	N/A
Clause 35 - Classification and reclassification of public land	N/A
Clause 36 - Community use of educational establishments	N/A
Clause 37 - Classified roads	N/A
Clause 38 - Development in proximity to a rail corridor	N/A
Clause 39 - Preservation of trees or vegetation	N/A
Clause 40 - Heritage conservation	N/A
Clause 41 - Bush fire hazard reduction	N/A
Clause 42 - Development for group homes	N/A
Clause 43 - Crown development and public utilities	N/A
Clause 44 - Location of sex services premises and restricted premises	N/A
Schedule 1 - Additional permitted uses	N/A
Clause 45 - Application of Part	N/A
Clause 46 - Interpretation	N/A
Clause 48 - Suspension of covenants, agreements and instruments	N/A
Clause 49 - Land use zones	N/A
Clause 50 - zone objectives and land use table	N/A
Clause 51 - Height of buildings	N/A
Clause 52 - Development near zone boundaries	N/A
Clause 53 - Architectural roof features	N/A
Clause 54 - Heritage Conservation	N/A
Clause 55 - Earthworks	N/A
Clause 56 - Savings provision relating to pending applications	N/A
Clause 47 - Certain planning instruments cease to apply to the land	N/A

Permissibility

Under the provisions of Penrith City Centre Local Environmental Plan 2008 the subject site is zoned B3 Commercial Core. The proposal is defined as a Business Premises which is permissible in the zone with Council consent.

LEP and Zone Objectives

The proposal is consistent with the LEP and zone objectives.

Development Standards

Clause 28 Ground floor development within Zones B3 and B4

In accordance with Clause 28 the proposal provides an active street frontage consistent with the City Centre Development Control Plan.

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

Planning Proposal - Penrith Local Environmental Plan 2010 (Stage 2)

The Stage 2 Planning Proposal was on public exhibition until July 2013. Under the planning proposal the subject site is to be remain zoned B3 Commercial Core. The proposal is defined as a business premises (type of commercial premises) which is a permissible land use in the zone with Council consent.

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

Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	N/A
Chapter 2.2 - Crime prevention through environmental design	Complies
Chapter 2.3 - Engineering works	N/A
Chapter 2.4 - Erosion and sediment control	N/A
Chapter 2.5 - Heritage management	N/A
Chapter 2.6 - Landscape	N/A
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	N/A
Chapter 2.9 - Waste planning	Complies
Chapter 2.10 - Flood liable land	N/A
Chapter 2.11 - Car parking	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.12 - On-site sewage management	N/A
Chapter 2.13 - Tree preservation	N/A
Chapter 3.1 - Advertising signs	Complies - see Appendix - Development Control Plan Compliance
Chapter 3.2 - Baby care rooms	N/A
Chapter 3.4 - Health care consulting rooms	N/A
Chapter 3.6 - Outdoor eating and trading areas - Penrith and St Marys CBD's	N/A
Chapter 3.3 - Child care centres	N/A
Chapter 3.5 - Siting and aesthetics of telecommunication facilities	N/A

Development Control Plan 2007 (City Centre)

Provision	Compliance
Part 3 - Pedestrian amenity	Complies

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

Council's Building Surveyor did not raise any objection to the proposal and recommended conditions be imposed in the consent.

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

Likely impacts of the proposed development as identified throughout the assessment process include:

Context and Setting

As the proposal is for the fit out of an existing building, the development is considered to have minimal impact to the amenity of the locality and streetscape.

Access, Transport & Traffic

Issues relating to parking will be discussed in the appendix of this report.

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

The site is suitable for the following reasons:

- The site is zoned B3 Commercial Core and the proposal is permissible with Council consent
- The use is compatible with surrounding/adjoining land uses

Section 79C(1)(d) Any Submissions

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.

Conclusion

In assessing this application against the relevant environmental planning policies, being Penrith City Centre Local Environmental Plan 2008 and Development Control Plan 2006, the proposal satisfies the aims, objectives and provisions of these policies. With the recommended conditions of consent, it is considered unlikely to have a negative impact on the surrounding properties and environment. The site is suitable for the development proposed and is considered to complement the existing surrounding developments.

Recommendation

1. That DA13/1067 for fit-out and use for body piercing at Allen Arcade, 140-142 Henry Street, Penrith, be approved subject to the attached conditions.

General

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

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.

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

The approved operating hours are from 11am to 5pm, Tuesdays to Saturdays.

3 [A02F - Approved Fast Light Das](#)

The development must be implemented substantially in accordance with the stamped-approved plans issued by Penrith City 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.

4 [A032 - Goods in buildings](#)

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

5 [A039 - Graffiti](#)

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

Environmental Matters

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

All wastes 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 Occupation 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

7 [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".

8 [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.

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.

9 **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

10 **F special condition - A021**

The skin penetration business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council prior to the issuing of the Occupation Certificate and commencement of the business

11 **F special condition - F006 - Operation**

The operator of the Body Piercing Shop shall ensure that the requirements of the Local Government Act 1993, Local Government (General) Regulation 2005, the Public Health Act 2010, Public Health Regulation 2012 and the current NSW Health Guidelines on Skin Penetration and Code of Practice are met at all times.

12 **F special condition - F008 - Operation**

Any person carrying out any of the following skin penetration procedures shall ensure that the requirements of the Public Health Act 2010, Public Health Regulation 2012 and the current NSW Health Guidelines on Skin Penetration and Code of Practice are met at all times:

- Tattooing
- Unregistered acupuncture and dry needling practitioners
- Ear/Body Piercing
- Hair Removal
- Colonic Lavage
- Cuticle cutting
- Microdermabrasion
- Any procedure (whether medical or not) that involves skin penetration and includes any procedure declared by the regulations to be a skin penetration procedure, but does not include:
 - (a) any procedure carried out by a health practitioner registered under the Health Practitioner Regulation National Law, or by a person acting under the direction or supervision of a registered health practitioner, in the course of providing a health service, or
 - (b) any procedure declared by the regulations not to be a skin penetration procedure (i.e. laser hair removal).

13 **F special condition - Operation**

All sharps generated from the operation of the business must be disposed of at a licensed waste facility. Receipts for disposal must be kept at the premises and available for inspection by an authorised officer upon request. Details of how sharps will be disposed (e.g. details of waste contractor, frequency of disposal etc) must be provided to Council prior to the issuing of the Occupation Certificate and commencement of the business.

14 **F special condition - Operation**

Staff belongings and other items not associated with the business shall be kept completely separate from skin penetration activities and equipment and maintained in a clean condition.

15 **F special condition - operation**

Adequate sterilization records, including the time and date the item was sterilized, the length of time the equipment was sterilised and the temperature and pressure of the autoclave must be kept on the premises. These records must be kept for at least 12 months.

16 **F Special condition - Premises construction**

The walls and floor of the treatment room/s are to be constructed of materials that are durable, smooth, impervious to moisture and capable of being easily cleaned. No exposed brickwork, timber or carpet is permitted.

17 [F Special condition - registration and notification](#)

The occupier of the skin penetration premises must notify Council using the NSW Ministry of Health Notification Form available from www.health.nsw.gov.au prior to the commencement of the business. The occupier of the premises must notify Council within 7 days of any change of details.

Construction

18 [H041 - Hours of work \(other devt\)](#)

Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

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

Certification

19 [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/use of the shop.

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 2006

Part 2 - City wide controls

2.11 Car Parking

Under the DCP commercial premises are required to provide 1 car space per 40m² of gross floor area. Given that the subject shop has a gross floor area of approximately 180m², 4.5 car spaces are required to be provided. Although the proposal does not provide any on-site parking, a Council car park is located directly south of the subject site and public transport is within close proximity. As a result the impacts from the lack of on-site parking at the subject site are considered to be minimal.

Part 3 - City wide specific land uses

3.1 Advertising Signs

The proposal includes three signs; Sign 1 measuring 3300mm long x 1250mm high which is to be located on the southern elevation of the building, Sign 2 measuring 3150mm long x 650mm high also to be located on the southern elevation and Sign 3 a double sided sign measuring 1300mm x 900mm but its location was not nominated in the application. It is recommended that Sign 1 be deleted given that it is to be located on the same elevation as Sign 2 and contains almost identical content. In addition, the door which it is proposed to be located above is not the main entrance to the shop and would not be utilised by patrons. Given that the location of Sign 3 has not been nominated and under the DCP A-frame signs are undesirable, it is recommended that sign 3 is also deleted.