

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA17/1199.01
<b>Proposed development:</b>	Section 4:55(1A) Modification to Extend Trading Hours of Percy Plunkett Cafe to Daily Operations of 6am to 2am - External Building Alterations, Internal Fit-Out & Use of "Kentucky" Villa Heritage Item as a Cafe/Restaurant & Associated Signage
<b>Property address:</b>	146 Station Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 11 DP 715161
<b>Date received:</b>	29 January 2021
<b>Assessing officer</b>	Jacqueline Klincke
<b>Zoning:</b>	Zone B4 Mixed Use - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Approve

### Executive Summary

Council is in receipt of a Section 4.55(1A) modification application to extend the operating hours from 6am to 5pm to 6am to 2am, 7 days a week, for an existing cafe/restaurant (i.e. Percy Plunkett) at 146 Station Street, Penrith.

Under the *Penrith Local Environmental Plan 2010* (PLEP), the subject site is zoned B4 Mixed Use and a *restaurant or cafe* is a permissible use in the B4 zone, with Council consent. The development was approved under development consent DA17/1199 for the fit-out and use as a cafe/restaurant. It is also noted the subject site is listed under Schedule 5 'Environmental Heritage' of the PLEP as the 'Kentucky Villa'.

Due to the nature of the proposal, and in accordance with Appendix F4 of the *Penrith Development Control Plan 2014* and Council's adopted *Community Engagement Strategy and Community Participation Plan 2019*, the modified development did not require neighbour notification. In this regard, no submissions were received.

An assessment under Section 4.55(1A) and 4.15 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to modified conditions of consent.

## Site & Surrounds

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The site is located at 146 Station Street, Penrith and comprises of a single lot legally described as Lot 11 DP 715161. The site is regular in shape with a frontage of 23m, a depth of 51m and a total site area of approximately 1,150m<sup>2</sup>. The site is bound by Station Street to the north with Nepean Village car park to the south and east and is occupied by a local heritage item (i.e. "Kentucky" villa) under Schedule 5 of the *Penrith Local Environmental Plan 2010*.

### **Development Approval History:**

Approval was granted in 2018 for the fit-out and use of the heritage item as a cafe/restaurant (i.e. Percy Plunkett) under development consent DA17/1199, restricting the hours of operation to 6am-5pm, Mondays-Sundays. It is noted a new liquor license application (APP-0008399414) was submitted to NSW Liquor and Gaming in March 2021 seeking approval for the premise to serve liquor from 10am-10pm, Mondays to Sundays.

In 2020, approval was granted for the construction of an outdoor dining precinct at the site and adjoining properties under development consent DA19/0763. This approval restricted the use of the outdoor dining precinct to 8am to 10pm, Mondays-Sundays.

Furthermore, a development application (DA21/0295) is currently under assessment for the fit-out and use of the adjoining heritage item (i.e. Victorian House) as a restaurant, wine bar and gelato shop at 148 Station Street, Penrith, proposing similar operating hours to this subject modification application.

## Proposal

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This modification application seeks to extend the hours of operation of an existing cafe/restaurant (i.e. Percy Plunkett) from 6am to 5pm Mondays-Sundays to 6am to 2am Mondays to Sundays.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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

The proposed modifications have been assessed in accordance with the matters for consideration under Section 4.55(1A) and Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposed modifications satisfy the relevant provisions of the Act in this regard.

Under the provisions of Section 4.55(1A) Modifications involving minimal environmental impact of the *Environmental Planning and Assessment Act 1979*, Council may, in response to an application being made, modify a previously approved development if:

(a) *it is satisfied that the proposed modifications are 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, and*

(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.*

In this regard, the following is noted:

(a) The proposed modifications are considered to be of minimal environmental impact as the proposal involves modifying the approved operating hours of a restaurant. The modified development is therefore unlikely to result in any adverse impacts on the natural and built environments, parking, acoustic or privacy impacts on surrounding properties.

(b) In *Vacik Pty Ltd v Penrith City Council* (unreported 1992) the question of substantially the same development was considered by Stein J, and in particular the meaning of the word 'substantially'. In his opinion 'substantially' is taken in the context to mean 'essentially or materially or having the same essence'.

In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) the NSWCA recognised that a modified development must be different in some respect to the approved development and used the formulation that 'modify' meant 'to alter without radical transformation'.

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the modified development is of the same essence as only changes to the approved operating hours are proposed. Overall, the changes result in a development not too dissimilar to the original approval, nor do they change the essence of the development.

(c) The modified development was not required to be notified as per the requirements of the *Penrith Development Control Plan 2014*.

(d) No public submissions were received regarding the application.

### **Section 4.15(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 modified development against the relevant criteria within the *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
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	Complies
Clause 5.10 Heritage conservation	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.7 Servicing	Complies

### Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument

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

### Section 4.15(1)(a)(iii) The provisions of any development control plan

#### Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies
C8 Public Domain	Complies
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies

### Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

### Section 4.15(1)(a)(iv) The provisions of the regulations

The modified development remains compliant with the relevant Regulations, subject to the original conditions of consent.

### **Section 4.15(1)(b)The likely impacts of the development**

The likely impacts of the development as identified during the assessment of the original proposal remain unaltered. The modified operating hours of Percy Plunkett are suitable and are not considered likely to cause adverse noise impacts, noting that the nearest sensitive receivers are approximately 160m to the east and 200m to the north of the site.

### **Section 4.15(1)(c)The suitability of the site for the development**

The suitability of the site was assessed as part of the original application (DA17/1199) and the site remains suitable for the development.

### **Section 4.15(1)(d) Any Submissions**

#### **Community Consultation**

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014* and Council's adopted *Community Engagement Strategy and Participation Plan 2019*, the modified development did not require to be notified. In this regard, no submissions were received.

#### **Referrals**

The application was referred to the following stakeholders and their comments have formed part of the assessment:

<b>Referral Body</b>	<b>Comments Received</b>
Building Surveyor	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Community Safety Officer	No objections - subject to conditions

### **Section 4.15(1)(e)The public interest**

The modified operating hours remain in the public interest.

## **Conclusion**

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The modified proposal has been assessed against the relevant environmental planning instruments and the proposal is considered to satisfy the aims, objectives and provisions of these policies. The modified hours of operation are not considered likely to create any significant impacts on the natural, social or economic environments and in this regard, the application is considered worthy of support and is recommended for approval.

## **Recommendation**

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That DA17/1199.01 for extended hours of operation to an approved cafe/restaurant at 146 Station Street, Penrith, be approved, subject to the following amended conditions of consent.

# CONDITIONS

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## General

### 1 A001

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

<u>Plan</u>	<u>Numbered</u>	<u>Drawn By</u>	<u>Dated</u>
Site Plan	01 Issue D	-	20 December 2017
Demolition Floor Plan	03 Issue D	-	20 December 2017
Details Plan	09 Issue D	-	20 December 2017
Elevations Plan	11 Issue D	-	20 December 2017
Elevations Plan	12 Issue D	-	20 December 2017
Internal Elevations Plan	21 Issue D	-	20 December 2017
Signage Plan	31 Issue D	-	20 December 2017
Materials and Finishes Plan	91 Issue D	-	20 December 2017
Landscape Plan	-	A Greener Pathway	-
Heritage Impact Statement	-	Modern Heritage Matters	November 2017

### 2 A012 - Food Act

The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2010 and the Australian and New Zealand Food Standards Code are met at all times.

### 3 A019 - Occupation Certificate

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

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

### 4 A021 - Business Registration

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

### 5 A029 - HOURS OF OPERATION AND DELIVERY TIMES

The approved operating hours are from 6am to 2am, Mondays to Sundays.

***Amended on 21 May 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

### 6 A038 - LIGHTING LOCATIONS

**Prior to the issue of an Occupation Certificate**, a lighting system shall be installed for the development to provide uniform lighting across common areas and driveways. Exterior lighting shall be 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).

### 7 A046 - Obtain Construction Certificate before commencement of works

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

### 8 A Special (BLANK)

No shipping containers are permitted to be kept on the site.

## Demolition

### 9 B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE

All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition**.

## Heritage/Archaeological relics

### 10 C001 - Employment of conservation architect

Prior to the commencement of works on site:

- An appropriately qualified conservation architect shall be employed to oversee the construction of the approved development, including any approved demolition works.
- Details of the conservation architect employed to oversee the construction of the development shall be submitted to Penrith City Council with the 'Notification of Commencement' 2 days before works are to commence on site.

The conservation architect should have prior experience in the conservation of similar heritage items and shall ensure that the work is in accordance with the Heritage Impact Statement written by Modern Heritage Matters and dated November 2017

### 11 C002 - ARCHIVAL RECORDING

Two (2) complete copies of the archival recording are to be submitted to Penrith City Council, including a set of photographic negatives Prior to the Issue of a Construction Certificate. The archival recording shall be prepared by an experienced heritage consultant and is to be in accordance with the Archival Recording Standards described below:

- Title page (with subject, author, client, date and copyright).
- Statement of why the record was made.
- Outline history of the item and associated sites, structures and people.
- Statement of heritage significance of the items using the State Heritage Inventory criteria.
- Inventory of archival documents related to the item (eg. company records, original drawings) when available.
- Location plan (show relationship to surrounding geographical features, structures, roads, vegetation etc. Include a north point).
- Base plans, drafted or hand-drawn base plans including:
  - (i) cross references to photographs;
  - (ii) name the relevant features, structures and spaces;
  - (iii) a north point.
- Black and white photographic record, including one set of 35mm black and white negatives labelled and cross referenced to base plans and accompanied by informative catalogues, and two copies of proof sheets and select medium format prints showing important details. The images shall include:
  - (i) views to and from the site (possibly from four compass points);
  - (ii) views showing relationships to other relevant structures and landscape features;
  - (iii) all external elevations;
  - (iv) views of all external and internal spaces (eg. courtyards, rooms, roof spaces etc.); and
  - (v) external and internal details (eg. joinery, construction joints, decorative features, paving types etc.). All photographic images shall be mounted and labelled.
- Colour slides (two copies mounted in archivally stable slide pockets, clearly labelled and cross referenced to base plans). Images shall include:
  - (i) view to and from the site and/or the heritage item, and
  - (ii) views and details of external and internal colour schemes as appropriate.Selected colour prints may be required. They should be mounted and labelled.
- Measured drawings, with appropriately scaled drawings printed on archivally stable paper. For a built item, this may include:
  - (i) site plan (1:500 or 1:200),
  - (ii) floor plan(s) (1:100 or 1:50),
  - (iii) elevations and sections (1:100 or 1:50),
  - (iv) roof plan(s) (1:100 or 1:50),
  - (v) ceiling and joinery details (1:20 or 1:10), and
  - (vi) machinery and services details eg. drainage lineshafts.
- Presentation
- The archival recording shall be presented to Council as a single bound document preferably in A4 format. Large maps shall be folded and inserted as map pockets attached to the document. Similarly, all photographic images shall be fixed to the document and labelled.

Unbound documents or loose supporting materials such as maps, plans, slides, negatives or prints are not acceptable.

## Environmental Matters

## 12 D009 - Covering of waste storage area

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

## BCA Issues

### 13 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.

### 14 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

### 15 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*.



16 **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 AS 1668 Parts 1 & 2.

Detailed plans together with calculations for the system must be provided as part of the development application or as part of the Construction Certificate application.

The exhaust hood must completely cover the equipment to be ventilation 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 2000 mm above floor level.

Prior to the issuing 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.

17 **F025 - Food safety supervisor**

A Food Safety Supervisor, with a current Food Safety Supervisor Certificate recognised by the NSW Food Authority, must be appointed by the business prior to commencement of the business.

18 **F042 - Dishwasher**

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.

19 **F046 - Cleaners sink**

A cleaners/mop sink must be provided in addition to any wash up sinks, food preparation sinks and hand wash basins. The cleaners sink is to 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.

20 **F050 - Light bulbs & tubes**

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.

21 **F055 - Lockers**

Sufficient lockers must be provided in the food preparation area or store room specifically for the storage of cleaning materials, employees' clothing and personal belongings.

22 **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.

23 **F060 - Grease Arrestor**

The grease arrestor must not be installed in any kitchen, food preparation or food storage area. The grease arrestor shall be installed in accordance with Sydney Water's requirements.

## **Construction**

#### 24 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.

#### 25 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, 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.

## 26 [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.

## Landscaping

### 27 [L001 - General](#)

All landscape works are to be constructed in accordance with the stamped approved plan and Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plans, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity as the vegetation which died or was removed.

### 28 [L002 - Landscape construction](#)

The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional

### 29 [L003 - Report requirement](#)

The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a suitably qualified and experienced landscape professional.

#### i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by a suitably qualified and experienced landscape professional

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

#### ii. Maintenance Report

On the first anniversary of the date of the Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Penrith City Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.

This report is to be prepared by a suitably qualified and experienced landscape professional

### 30 [L005 - Planting of plant](#)

All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in Penrith Development Control Plan 2014.

### 31 L006 - Aust Standard

All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

### 32 L007 - Tree Protection Measures–No TMP with DA

All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards prescribed in section F5 of Penrith Development Control Plan 2014.

### 33 L008 - Tree Preservation Order

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

### 34 L009 - Tree Preservation Order (subdivision)

No trees are to be removed from within the subdivision without the prior consent of Penrith City Council. Any trees to be removed as part of the engineering work are to be shown on engineering plans submitted for Council's consideration and subsequent approval.

## Certification

### 35 Q006 - Occupation Certificate (Class 2 - 9)

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building/tenancy and commencement of the approved use. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

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

### 36 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:

- 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
- 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 81A of the Environmental Planning and Assessment Act 1979.

### 37 QZ1 special BLANK

In the event of ongoing noise complaints relating to the development being received by Council, the owner and/or occupier of the development may be required by Council to obtain the services of a suitably qualified acoustic consultant to undertake a noise impact assessment on the development to address the concerns of the community.

The noise impact assessment report is to be prepared and provided to Council within 45 days of being requested. Any mitigation works are to be undertaken within 30 days from the date of notice from Council, unless otherwise specified.

***Inserted on 21 May 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

38 **QZ2 special BLANK**

Amplified music and public address systems associated with the development are not to be audible at the location of the nearest sensitive receivers.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

***Inserted on 21 May 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

39 **QZ3 Special BLANK**

Prior to the commencement of the extended trading hours approved via modification application no. DA17/1199.01, the Plan of Management relating to the business shall be amended to reflect the revised operating hours. The plan shall also be amended to include:

- Provisions for patron egress from the venue during the evening;
- Information regarding patron noise minimisation on exit; and
- Information regarding deterring congregation in adjacent car parks.

***Inserted on 21 May 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part C - City-wide Controls

#### C12 Noise and Vibration

This modification application seeks to extend the hours of operation of an existing cafe/restaurant (i.e. Percy Plunkett) from 6am to 5pm Mondays-Sundays to 6am to 2am Mondays to Sundays. The application was therefore referred to Council's Environmental Management unit who raised no concerns in regards to any potential noise impacts, noting the nature of the development and that the nearest sensitive receivers are approximately 160m to the east, and 200m to the north of the development.

Conditions of consent have been recommended ensuring that any future noise concerns raised by nearby sensitive receivers as a result of the extended hours of operation can be addressed by Council to ensure that any noise impacts are mitigated.