

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA17/1238
Proposed development:	Outdoor Dining Area for Gelato Messina (Tenancy 60A)
Property address:	569 - 595 High Street, PENRITH NSW 2750
Property description:	Lot 1 DP 1137699
Date received:	5 December 2017
Assessing officer	Sufyan Nguyen
Zoning:	Zone B3 Commercial Core - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for an outdoor dining area and signage for Gelato Messina at 569 - 595 High Street, Penrith. The subject site is zoned B3 Commercial Core under *Penrith Local Environmental Plan 2010* and the proposed development is permissible with consent.

The proposed outdoor dining area is compatible with the approved Riley Street dining precinct upgrade works (DA15/0951) although the proposal includes moveable planter boxes instead of fixed planters. The planter boxes will maintain a consistent shoreline with the neighbouring tenancy and the proposed signage is consistent with recently approved signage for the premises and is compatible with the signage theme along Riley Street.

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

Site & Surrounds

The subject premises is known as Shop 60A, Westfield Penrith, 569 - 595 High Street, Penrith. The subject site is legally described as Lot 1 DP 1137699. The premises is situated on the western side of Riley Street, adjacent to a pedestrian walkway through to a mall entrance. The ground floor shop occupies Westfield Penrith (Penrith Plaza) shopping centre and is bounded by Henry Street (southwards) and Jane Street (northwards). Westfield Penrith accommodates a range of retail and commercial uses and makes provision for several hundred car parking spaces.

The broader road network includes the intersection of the Great Western Highway/High Street and Mulgoa Road 600m westwards and Jamison Road 1.15km southwards. Available public transport modes include the nearest bus stop 15m to the north and bus services and Penrith railway station 280m north-eastwards.

Proposal

The applicant seeks approval for an outdoor dining area for the approved Gelato Messina premises (DA17/0272) at Shop 60A, 569-595 High Street, Penrith.

The proposal involves the following aspects:

- Outdoor dining area of approximately 18.67m²
- 6 outdoor dining tables
- 2 dining seats per table
- Planter boxes to provide dining area edge
- 2 business identification signs along the eastern facing shopfront windows

Plans that apply

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

Planning Assessment

• Section 79C - Evaluation

The proposed development has been assessed in accordance with the matters for consideration under Section 4.15 (previously 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 proposal against relevant criteria within *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)* and the proposal is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies - See discussion
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.3 Height of buildings	N/A
Clause 4.4 Floor Space Ratio	N/A
Clause 5.10 Heritage conservation	N/A
Clause 7.8 Active street frontages	Complies - See discussion
Clause 8.1 Application of Part	Complies

Clause 1.2 Aims of the plan

The proposal is ancillary to the approved Gelato Messina ice-cream parlour. Given that socio-economic development is fundamental for the sustainability of the Penrith City Centre, the proposal therefore reflects the aims of *Penrith Local Environmental Plan 2010*, in particular:

- *to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,*
- *to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,*
- *to foster viable employment, transport, education, agricultural production and future investment opportunities and recreational activities that are suitable for the needs and skills of residents, the workforce and visitors, allowing Penrith to fulfil its role as a regional city in the Sydney Metropolitan Region, and*
- *ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.*

Clause 2.3 Permissibility

The proposed outdoor dining area is ancillary to a **food and drink premises**, which is a permissible land use with Council consent in the B3 zone under *Penrith Local Environmental Plan 2010*.

Clause 2.3 Zone objectives

The proposal is ancillary to an approved commercial land use and is therefore a suitable land use which will assist in strengthening the B3 Commercial Core zone. The proposal is therefore compatible with the following zone objectives:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of Penrith City Centre as the business, retail and cultural centre of the region.*

Clause 7.8 Active street frontages

The proposal will encourage pedestrian traffic in the Penrith CBD and therefore satisfies this clause.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	Complies - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	Complies - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	N/A
E11 Penrith	Complies

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

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, will be imposed as conditions of consent where applicable. Subject to the recommended conditions of consent, the proposed development complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

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

Context and Setting

The proposed outdoor dining area and signage is consistent with the approved Riley Street dining precinct upgrade works (DA15/0951).

Site Design

The proposal is of a minor scale whereby the proposed outdoor dining area is within the prescribed area for outdoor dining areas. Given that it is to be located behind existing columns and adjacent to the building, it is not considered likely that the proposal will result in any significant impacts on the public domain.

Access, Transport and Traffic

The proposal retains an adequate pedestrian walkway and is in proximity to on-site and off-street parking spaces and public transport links.

Noise and Vibration

The nature and scale of the proposal is not considered likely to adversely impact on neighbouring tenancies or pedestrians in terms of noise and vibration.

Environmental Impacts

The proposal is of a minor scale and will not result in any significant impacts on the surrounding natural environment.

Socio-Economic Impacts

The proposal aims to generate economic growth which will contribute to strengthening Penrith CBD. Given the minor scale of the proposal, it is not considered likely to result in any adverse impacts on surrounding businesses.

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

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

- The proposal is of a minor scale
- There will be negligible impacts on pedestrian traffic and the surrounding environment

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of *Penrith Development Control Plan 2014*, notification of the proposed development was not required.

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
Property Development	No objections

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

Given the nature and scale of the proposal, in addition to the proposal being compliant with the applicable development controls, the proposed development will not generate any significant issues of public interest.

Conclusion

In assessing this proposal against the relevant environmental planning policies, being *Penrith Local Environmental Plan 2010*, *Penrith Development Control Plan 2014* and *Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River*, the proposal satisfies the aims, objectives and provisions of these policies. The proposal does not contravene any development standards and is unlikely to have any significant impacts on the natural, social or economic environments. The site is suitable for the development and the proposal is in the public interest. Therefore, the application is worthy of support and is recommended for approval subject to recommended conditions.

Recommendation

That DA17/1238 for an outdoor dining area for Gelato Messina at 569 - 595 High Street, Penrith be approved subject to the attached conditions.

CONDITIONS

General

1 A001

The development must be implemented substantially in accordance with the following 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 stamped approved plans and by the following conditions.

Drawing Title	Prepared By	Reference No.	Dated	Revision
Site Plan	Vie Studio	17208-S (A-401)	13/03/2018	J
Outdoor Seating Plan	Vie Studio	17208-S (A-402)	13/03/2018	J
Outdoor Seating Elevation & Signage	Vie Studio	17208-S (A-403)	13/03/2013	J

2 A039 - Graffiti

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

3 A Special (BLANK)

The approved outdoor dining area shall comply with the following requirements at all times:

- The furniture shall be high quality in design and construction, and complement the existing streetscape. Lightweight plastic furniture, which may become airborne on windy days if not adequately weighted, is not permitted.
- The furniture is to be maintained in a clean and hygienic state at all times.
- The eating area is not to cause inconvenience or to disrupt pedestrian traffic along the footpath or thoroughfare.
- No food is to be prepared or stored outside. No hot food counters, boilers or urns shall be placed on public areas or areas external to the premises.
- All furniture must be put away inside the premises when it is closed. No furniture is to be left on the street at any time when the eating area is not operating.

BCA Issues

4 E006 - Disabled access and facilities

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

5 E01A - BCA compliance for Class 2-9

All aspects of the development's design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or

(c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/statement for the building.

Construction

6 H041 - Hours of work (other devt)

Any 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 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.

Certification

7 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 outdoor dining area.

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.

8 Q Special (BLANK)

Prior to the issue of an Occupation Certificate and use of the outdoor dining area, the Riley Street shoreline border paving shall be extended northwards and then westwards (with redundant paving reinstated) around the outside of the outdoor dining area, as marked in red on the stamped approved plans.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposal will generate economic activity in the heart of Penrith CBD which is vital for the viability of the Riley Street dining precinct. Given the minor scale of the proposal whereby it is unlikely to adversely impact on the surrounding area, the proposal is aligned with the key principles of sustainable development and therefore reflects the DCP principles, specifically:

- ***Principle 1: Provide a long term vision for cities, based on sustainability; intergenerational, social, economic and political equity; and their individuality.***
- ***Principle 2: Achieve long term economic and social security.***

Part C - City-wide Controls

C8 Public Domain

C8.4. Outdoor Dining and Trading Areas

Although the proposal does not satisfy the 2m minimum setback from the building line in accordance with the DCP controls, the proposed configuration is aligned with the outdoor dining areas of the adjoining restaurants.

In addition, Council's Property Officer advised that there are no objections to the use of the footpath for the purpose of outdoor dining. Given that the proposed outdoor dining area is situated on the corner of a pedestrian walkway and behind existing columns, it is unlikely that it will adversely impact on pedestrian traffic or the visual quality of the streetscape.

C9 Advertising and Signage

C9.4. Commercial, Mixed Use and Industrial Zones

Two (2) small-scale window business identification signs are proposed along the eastern facing shopfront windows. The signage design is consistent with previously approved signage for the premises and is consistent with neighbouring tenancies which have signage located in similar positions. The signage is minor in scale and is compatible with the signage theme along Riley Street.