

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA18/0605
<b>Proposed development:</b>	Conversion of Four (4) Existing Car Parking Spaces to Outdoor Seating Area
<b>Property address:</b>	301 - 335 Mulgoa Road, JAMISONTOWN NSW 2750
<b>Property description:</b>	Lot SP 72448
<b>Date received:</b>	18 June 2018
<b>Assessing officer</b>	Jake Bentley
<b>Zoning:</b>	SEE MEMO(S) AND/OR SEPPS CODE FOR ZONING DETAILS Zone B5 Business Development - LEP 2010
<b>Class of building:</b>	Class 10b
<b>Recommendations:</b>	Approve

### Executive Summary

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Council is in receipt of a development application for the conversion of four (4) existing car parking spaces to an outdoor seating area at 301-335 Mulgoa Road, Jamisontown. The subject site is zoned B5 Business Development and the proposed outdoor seating area is ancillary to existing bulky goods tenancies located within adjacent buildings.

In accordance with Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014 the application was notified to surrounding property owners and exhibited between 22 June and 6 July 2018. No submissions were received in response.

An assessment under Section 4.15 (previously 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

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The subject site is located in Jamisontown on the north-western side of Mulgoa Road and the north-eastern side of the M4 Motorway. The site and neighbouring property to the north-east (Lot 10 DP 1046110) make up the "Penrith Home Maker Centre". The Penrith Home Maker Centre includes a number of tenancies located within buildings surrounding a large internal car parking area with access from both Mulgoa Road (via Wolseley Street) and Pattys Place. A development application (DA18/0339) is currently under assessment for the site which proposes to alter and expand the Domayne building and reconfigure Wolseley Street, the existing roundabout and car park.

### Proposal

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The proposed development includes the removal of 4 parking spaces, construction of an additional paved area and the installation of outdoor seating to create an outdoor seating area.

### 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 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 (formerly 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
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 7.2 Flood planning	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion

#### **Clause 2.3 Permissibility**

The proposed outdoor seating area is ancillary to existing bulky goods tenancies of the Penrith Home Maker Centre. The closest premises is occupied by Domayne. The proposed outdoor seating area provides opportunities for staff and customers to sit outside.

#### **Clause 7.5 Protection of scenic character and landscape values**

The proposed development will be located internally within the site and will not generate any adverse visual impacts from Mulgoa Road or the M4 Motorway.

## 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	Complies
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	Complies - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
E13 Riverlink Precinct controls	Complies

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

Recommended conditions of consent will ensure the proposed development complies with the Building Code of Australia and the regulations.

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

The proposed development will provide safe outdoor seating opportunities for customers and staff of the Penrith Home Maker Centre. The proposed development will not significantly impact parking requirements and will only produce a 45m<sup>2</sup> increase in impervious area. The proposed development will likely have a negligible impact.

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

The subject site is suitable for the proposed development considering the proposal will be used in association with existing bulky goods tenancies on the site. The proposed development fits in with the existing character of the area considering the site is occupied by large buildings with an internal car parking area which includes landscaping features.

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

### Community Consultation

In accordance with Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014 the application was notified to surrounding property owners and exhibited between 22 June and 6 July 2018. No submissions were received in response.

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

There are no significant issues relating to the public interest associated with the proposed development.

## **Conclusion**

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In assessing this proposal against the relevant environmental planning policies, primarily being Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support, subject to recommended conditions.

## **Recommendation**

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That DA18/0605 for the conversion of four (4) existing car parking spaces to an outdoor seating area at 301-335 Mulgoa Road, Jamisontown be approved subject to the attached 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	Drawing No.	Dated	Issue
Site Plan	Leffler Simes Architects	ID101	14/6/2018	P5
Cover Sheet, Drawing Schedule and Locality Sketch	Henry & Hymas	17691_D1_C000	22/5/2018	01
Sediment and Erosion Control Details	Henry & Hymas	17691_D1_SE02	22/5/2018	01
Waste Management Plan	-	-	-	-

### 2 A008 - Works to BCA requirements (Always apply to building works)

The work must be carried out in accordance with the requirements of the Building Code of Australia.

### 3 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

### 4 A039 - Graffiti

The finishes of the outdoor seating area are to be maintained at all times and any graffiti or vandalism immediately removed.

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

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

### 6 A Special (BLANK)

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

### 7 A Special (BLANK)

The proposed outdoor seating is to be of metal frame construction in order to prevent the outdoor seating from blowing away during strong winds.

### 8 A Special (BLANK)

The 600mm high blockwork rendered wall is to be extended along the south-western side of the outdoor seating area as shown in red on the stamped approved Site Plan.

### 9 A Special (BLANK)

An open style 1.2m high fence, or the like is to be installed along the south-eastern side of the outdoor seating area as shown in red on the approved Site Plan.

Should in the future there be no ability for vehicles to flow in and out of the area located directly to the south-east of the outdoor seating area, the abovementioned fence (or the like) can be removed.

### 10 A Special (BLANK)

Stormwater drainage for the outdoor seating area shall be conveyed and/or connected to the site's existing stormwater drainage system.

### 11 A Special (BLANK)

The outdoor seating area shall be provided with appropriate lighting to ensure the safety of users and to reduce the likelihood of anti-social behaviour.

### 12 A Special (BLANK)

Adequate bin facilities shall be provided for the outdoor seating area and the area shall be regularly inspected by centre management to ensure it is kept in a neat and tidy condition.

## Environmental Matters

### 13 D001 - Implement approved sediment& erosion control measures

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

14 **D007 - Cut and fill of land requiring Validation Certificate –limited to footprint**

Before any fill material is imported to site, a validation certificate issued by an appropriately qualified person is to be provided to the Principal Certifying Authority. The validation certificate must demonstrate that the fill material is free from contaminants and weeds, that it is suitable for its intended purpose and land use, and that it will not pose an unacceptable risk to human health or the environment.

If Penrith City Council is not the Principal Certifying Authority, a copy of the validation certificate is to be submitted to Council for their reference.

[Note: Penrith Development Control Plan 2014 defines an appropriately qualified person as “a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.”}

15 **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.

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

All excavated material and other 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.

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**

17 **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).

## **Construction**

## 18 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 is to be erected:

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

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

## 19 H002 - All forms of construction

Prior to the commencement of construction works:

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

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

(b) If the works are 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.

## 20 H041 - Hours of work (other devt)

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

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

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

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

## Landscaping

### 21 L012 - Existing landscaping (for existing development)

Existing landscaping that is not impacted by the proposal is to be retained and maintained at all times.

## 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 6.6 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 occupation of the development.

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

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



# **Appendix - Development Control Plan Compliance**

## **Development Control Plan 2014**

### **Part C - City-wide Controls**

#### **C3 Water Management**

The proposed outdoor seating area will create an additional 45m<sup>2</sup> of impervious area and therefore does not trigger water sensitive urban design (WSUD) requirements in accordance with Council's WSUD Policy. The proposed additional impervious area can drain via the site's existing stormwater management system and the landscaped area to be retained creates an opportunity for stormwater to infiltrate the ground.

The subject site is identified as being flood affected and therefore flood related development controls apply to the proposal. There are no adverse flooding impacts associated with the proposal considering its minor nature.

#### **C8 Public Domain**

The proposed outdoor seating area is located adjacent to an existing driveway which provides two way vehicle movements to an internal parking area. In order to enhance pedestrian safety a condition of consent is to be imposed requiring the proposed 600mm wall to be extended along the western side of the seating area to provide separation between the outdoor seating area and the internal car park.

A condition of consent is also to be imposed requiring an open style fence or similar along the south-eastern side of the proposed outdoor eating area to separate the proposal from the existing driveway. The fence (or similar) can be removed if the current development application (DA18/0339) is approved and the works completed such that there will be no vehicle movements adjacent to the south-eastern side of the proposed outdoor seating area.

A condition of consent is to be imposed requiring the proposed seating be of metal frame construction to ensure the seating will not be blown away during strong winds and can be easily cleaned.

#### **C10 Transport, Access and Parking**

The Statement of Environmental Effects submitted in support of the proposal indicates that there are currently 1,633 car parking spaces servicing the Penrith Home Maker Centre. The proposed development will reduce the parking spaces by four, bringing the parking spaces to a total of 1,629. The existing gross floor area of the subject site is 66,577m<sup>2</sup>, therefore the proposed car parking ratio is 1 space per 40.86m<sup>2</sup> of gross floor area.

The proposed number of car parking spaces is suitable for the Penrith Home Maker Centre considering the majority of tenants are bulky goods premises. Penrith Development Control Plan 2014 states that bulky goods premises shall have a parking ratio of at least 1 space per 50m<sup>2</sup> of gross floor area.