

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0001
Proposed development:	Restoration Works to Fire Damaged Heritage Building
Property address:	74 Henry Street, PENRITH NSW 2750
Property description:	Lot 22 DP 586469
Date received:	29 December 2019
Assessing officer	Jacqueline Klincke
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 reinstatement works to a fire damaged heritage building (heritage item 179 - Methodist Church (former)) which is currently occupied by The Village Cafe at 74 Henry Street, Penrith. On 16 October 2019, a fire was reported at the rear section of the heritage building, resulting in internal and external damage.

The subject site is zoned B3 Commercial Core and the proposed development is defined as a '*food and drink premises*' which is a type of commercial premises that is a permissible land use in the B3 zone.

The key issues identified during the assessment of the proposal were in regards to the following:

- Further information and detail requested to ensure the original elements of the church are repaired, rather than replaced with new fabric,
- Structural engineering certification to review the rear gable wall, two adjacent trusses and rear skillion walls, and
- Amended schedule of colours and materials to include galvanised steel.

Additional information was provided by the applicant and subject to conditions of consent recommended by Council's Heritage Advisor, these matters are considered to be resolved.

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014* and due to the nature and scale of the proposal, notification of the application was not required.

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 conditions.

Site & Surrounds

The subject site is legally described as Lot 22 DP 586469 and is commonly known as 74 Henry Street, Penrith. The property is located on the southern side of Henry Street, approximately 180m west from the intersection of Henry Street and Evan Street, and is currently occupied by heritage item 179 - Methodist Church (former), which has been converted into a cafe (The Village Cafe) which was approved via development consent for DA980054. It is noted on 16 October 2019, a fire was reported at the rear section of the heritage building, resulting in internal and external damage.

The surrounding area is characterised by retail and commercial development.

The site is subject is located within the Penrith City Centre and therefore is subject to the Penrith City Centre controls outlined in the *Penrith Local Environmental Plan 2010* and the *Penrith Development Control Plan 2014*, and is also subject to flood related development controls.

Site History:

- 104/75 - Conversion of Church to Office Space - Approved 1/3/1976
- BA032381 - Industrial - Other Commercial - Approved 22/4/1992
- DA980054 - Coffee Shop/Cafe - Approved 3/3/1998
- DA980054 - Refreshment Room - Approved 3/3/1998
- BA980884 - Shop Fitout & Brick Fence - Approved 28/4/1998

Proposal

The application seeks approval for reinstatement works to a fire damaged heritage building and includes the following aspects:

- Ground Floor

- Retention and repair of the rear (southern) external brick wall,
- Removal and replacement of internal timber framed walls surrounding the store room,
- Reconstruction of the roof structure over the kitchen area, and
- Replacement of hot water unit.

- First Floor

- Retention and repair of the rear (southern) external brick wall,
- Retention and repair to two exposed timber trusses including rafters and ceiling joists to the rear of the main roof, and
- Removal of entire main roof and replacement with corrugated galvanised steel sheeting.

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 4.15 - Evaluation

The proposal has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration.

Section 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 proposed development against the relevant criteria within the 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 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	Complies
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.7 Servicing	Complies
Clause 7.8 Active street frontages	Complies

Clause 2.3 Permissibility

Under the *Penrith Local Environmental Plan 2010*, the subject site is zoned B3 Commercial Core. The proposal is defined as a 'food and drink premises' which is a land use that falls under the group term 'commercial premises' and is permissible in the B3 zone with consent.

Clause 5.10 Heritage conservation

Under Schedule 5 of the *Penrith Local Environmental Plan 2010*, the subject site contains local heritage item 179 - Methodist Church (former). In this regard, the application was accompanied with a Heritage Impact Statement and the proposal was referred to Council's Heritage Advisor. Following a site inspection, and submission of amended architectural plans and an amended Heritage Impact Statement, the overall fire repair strategy for the heritage building was considered acceptable, subject to conditions of consent. In this regard, the proposed development satisfies the provisions of Clause 5.10 of the *Penrith Local Environmental Plan 2010*.

Clause 7.2 Flood planning

The proposal does not involve an increase in gross floor area to the existing building and therefore will not disrupt existing flooding or drainage patterns or pose any greater flooding risk.

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

It is noted both the *Draft Remediation of Land SEPP* and *Draft Environment SEPP* apply to the subject site and proposal, 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	N/A
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	Complies - see Appendix - Development Control Plan Compliance
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
E11 Penrith	Complies

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

There are no planning agreements applying to the proposal.

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

The proposal is assessed as being capable of complying with the applicable provisions and requirements outlined within the Building Code of Australia, the relevant Australian Standards and the *Environmental Planning and Assessment Regulation 2000*. No concerns are raised in this regard and standard conditions of consent are recommended.

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

In accordance with Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

In this regard, the proposal is of a minor scale, noting the development consists of reinstatement works to an existing heritage building that was damaged by fire. Subject to recommended conditions of consent, the proposed works are considered satisfactory and will not adversely impact the heritage significance of the building.

Furthermore, the proposal does not pose any adverse environmental impacts.

In terms of socio-economic impacts, it is considered that the development will not adversely impact on adjoining or neighbouring property values or the local community.

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

The site is considered suitable for the proposed development as the proposal is minor in scale and will not cause any detrimental impacts to the natural and built environments. Furthermore, subject to recommended conditions of consent, the proposed reinstatement works are considered to not impact the heritage significance of the building. In addition, the existing use (i.e. a food and drink premises) will not change or be altered. In this regard, the site is suitable for the proposed development.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 - Notification and Advertising of the *Penrith Development Control Plan 2014* and due to the nature and scale of the proposed development, public notification was not warranted.

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
Heritage	No objections - subject to conditions

Heritage

It is noted Council's Heritage Advisor recommended two conditions relating to the preparation and registration on title of a 25 year Heritage Maintenance Plan for the building. However, after discussions with Council's Development Services Manager, on balance, it was deemed unreasonable to include such conditions based on the limited scope of works proposed (i.e. reinstatement works to a fire damaged building). In this regard, the recommended conditions relating to the preparation and registration on title of a 25 year Heritage Maintenance Plan will not be imposed.

Section 4.15(1)(e)The public interest

The proposed development will not generate any significant issues of public interest.

Section 94 - Developer Contributions Plans

There are no development contribution plans applicable to the proposal.

Conclusion

In assessing the proposed development against the relevant environmental planning policies, primarily being the *Penrith Local Environmental Plan 2010* and the *Penrith Development Control Plan 2014*, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposal and there are no significant negative impacts envisioned as a result of the proposal. Therefore, the application is worthy of support, subject to the recommended conditions of consent.

Recommendation

That DA20/0001 for reinstatement works to a fire damaged heritage building at 74 Henry Street, Penrith, be approved, subject to the attached conditions of consent.

General

1 [A001 - Approved plans table](#)

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

Drawing Title	Drawing No.	Revision	Prepared By	Dated
Site Plan	2019.138 - 1 of 7	B	SG Architectural & Heritage	Dec 2019
Ground Floor Plan	2019.138 - 2 of 7	B	SG Architectural & Heritage	Dec 2019
First Floor Plan	2019.138 - 3 of 7	B	SG Architectural & Heritage	Dec 2019
North Elevation	2019.138 - 4 of 7	B	SG Architectural & Heritage	Dec 2019
East Elevation	2019.138 - 5 of 7	B	SG Architectural & Heritage	Dec 2019
West Elevation	2019.138 - 6 of 7	B	SG Architectural & Heritage	Dec 2019
South Elevation	2019.138 - 7 of 7	B	SG Architectural & Heritage	Dec 2019
External Materials and Finishes	-	-	-	-

- Statement of Heritage Impact, Revision B, prepared by SG Architectural & Heritage, dated December 2019
 - Waste Management Plan, undated
- 2 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)
The development shall not be used or occupied until an Occupation Certificate has been issued.
- 3 [A046 - Obtain Construction Certificate before commencement of works](#)
A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 4 [A Special \(BLANK\)](#)
Prior to the issue of a Construction Certificate, the External Materials and Finishes Schedule shall be amended to reflect the materials and finishes outlined on the stamped approved architectural plans and be provided to the Principal Certifying Authority.

Demolition

5 [B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE](#)

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

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

6 B003 - ASBESTOS

You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" **before any demolition works commence on the site.**

Prior to commencement of demolition works on site, a portaloo with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environmental Protection Authority to receive asbestos wastes.

7 B004 - Dust

Dust suppression techniques are to be employed during demolition to reduce any potential nuisances to surrounding properties.

8 B005 - Mud/Soil

Mud and soil from vehicular movements to and from the site must not be deposited on the road.

Heritage/Archaeological relics

9 C Special BLANK

Prior to the issue of a Construction Certificate, the following documents shall be submitted to Penrith City Council's Development Services Department for review and endorsement:

- Structural Engineers Report and any related Certification for the repair/restoration of the rear gable brick wall and roof trusses to ensure the works are feasible and do not impact the structural integrity or heritage significance of the building;
- Roof framing details and specifications; and
- A Schedule of Works including additional heritage detail and specifications for all works to ensure the heritage significance of the building is respected and retained.

BCA Issues

10 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.

Construction

11 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.

12 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 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.

13 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 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

14 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

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

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

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

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

15 **Q05F - Occupation Certificate for Class10**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the use of the building.

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 subject site is identified as being flood affected, however, the proposal relates to repair work to an existing building. The proposed development does not involve an increase in the gross floor area of the existing building and therefore will not disrupt existing flooding or drainage patterns or pose any greater flooding risk. In this regard, there are no adverse flooding impacts envisioned as a result of the proposal.

C7 Culture and Heritage

As previously stated within this report, the subject site contains local heritage item 179 - Methodist Church (former) which is currently occupied by a food and drink premises (The Village Cafe). On 16 October 2019, a fire was reported at the rear section of the heritage building, resulting in internal and external damage. As a result, this development application seeks approval for reinstatement works to the fire damaged building.

Following a preliminary review of the application and site inspection of the property, the original proposal could not be supported by Council's Heritage Advisor. Subsequently, correspondence was sent to the applicant requesting additional information and amended plans.

This correspondence requested *repair* works instead of *demolition/removal* and *reconstruction/replacement* works be explored, particularly noting the original elements of the church including the rear gable wall, the two adjacent trusses and rear skillion walls were proposed to be removed and replaced. The originally proposed works did not reflect the principles of the Burra Charter or the objectives and controls outlined within Section C7 of the *Penrith Development Control Plan 2014* and therefore could not be supported. Subsequently, the following details/documents were requested:

- A Structural Engineering Report, prepared by a structural engineer with specialised heritage experience, to review the condition of the original elements of the church, and determine if heritage repair works are feasible, whilst also ensuring any proposed repair works will respect and retain the heritage significance of the building.
- A revised Heritage Impact Statement centred on *repair* works, to provide further detail and specifications in regards to the specific repair works that will be undertaken, and demonstrating how the proposed works will respect and retain the heritage significance of the building.
- Amended roof materials, noting zincalume or colourbond could not be supported as these materials are not appropriate to the heritage of the building.

In response, the applicant submitted amended architectural plans and a revised Heritage Impact Statement. It is noted that correspondence from the applicant dated 10 February 2020 confirmed further structural engineering investigations on the brick wall and trusses would be undertaken and appropriate structural detailing and certification would be sought. However, no such information was provided.

As marked on the amended plans and concluded in the amended Heritage Impact Statement, the following *repair* works are proposed:

- Retention and epoxy injection to any cracking to the rear brick wall, re-pointing of mortar joints using lime mortar, and re-bedding of any loose top course bricks, and
- Brushing down of roof framing timbers to remove loose charring and sealing with an encapsulating sealer.

However, further detail and heritage specifications regarding these works was not provided or outlined within the Heritage Impact Statement, as was requested. In this regard, it is unclear whether the repair works are viable, will not impact the structural integrity of the building, and will not impact its heritage significance.

The additional information provided was referred to Council's Heritage Advisor who supported the proposal, subject to a condition of consent requiring a Structural Engineering Report for the roof and wall installation, roof framing details, and a schedule of works which includes further heritage detail and specifications for the overall repair works to be provided to Council for review and endorsement prior to the issue of a Construction Certificate. This will ensure the works that are proposed to be undertaken are appropriate and will protect the heritage significance of the building.