

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA14/1143
Proposed development:	Demolition of Existing Shopfront (Shop 55), Erection of External Kitchen Exhaust System & Associated Works
Property address:	569 - 595 High Street, PENRITH NSW 2750
Property description:	Lot 1 DP 1137699
Date received:	9 September 2014
Assessing officer	Mathew Rawson
Zoning:	ZONE B3 COMMERCIAL CORE PCCLEP 2008 ZONE SP2 INFRASTRUCTURE PCCLEP 2008
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for the subject development for Westfield Penrith at 569-595 High Street, Penrith. Under the Penrith City Centre Local Environmental Plan (LEP) 2008 the subject site is zoned B3 - Commercial Core. The proposed works relate to an existing vacant tenancy. Business and retail premises (including restaurants) are permissible with consent in the B3 zone.

The key issue for the site and development relates to the implications resultant from the installation of the proposed kitchen exhaust fan. Its installation above the existing tenancies requires the relocation of the existing steel staircase which serves as an emergency exit for the Hoyts Cinemas. The stair's relocation conflicts with an existing car space. This is addressed by way of the creation of an additional car parking space by blocking off a current drive through space in the basement level of the carpark. The relocated stairs will be conditioned to ensure that the travel distances for an emergency exit comply with the requirements of the Building Code of Australia (BCA).

The second potential issue for the development is in relation to the proposed demolition of the existing tenancy's shopfronts, with no approval in place for the construction of replacement facades. This has been addressed by way of the erection of a hoarding along the section of Shop 54 to be demolished and the proposed demolition of Shop 55 has been removed from the development proposal.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The subject site is currently occupied by the Westfield Penrith Plaza shopping centre which contains a variety of retail tenancies and makes provision for several hundred car parking spaces. The surrounding area is characterised predominantly by retail and commercial development.

The current application relates to two vacant existing tenancies on the western side of Riley Street just north of the street's traffic lights.

Proposal

The proposed works relate to the installation of a kitchen exhaust riser to the external building facade and a roof fan and associated relocation of steel stairs. The works will include minor modifications to the stairs and ancillary works at Level 1 and removal of existing shopfronts. The steel stair relocation requires the removal of one car space that will be relocated to another location within the centre carpark as illustrated in the DA drawings.

There is no change to the floor space of the existing tenancies being:

- Shop No. 55 - 190.7 sqm

A separate development application or complying development certificate by the future lessee will be required for the fit out and new shopfronts. Any proposal to provide seating within the adjoining footpath area associated with the new restaurant tenancies will require separate approval from Council.

Plans that apply

- Penrith Local Environmental Plan 2008 (City Centre)
- Development Control Plan 2006
- Development Control Plan 2007 (City Centre)
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Penrith Local Environmental Plan 2008 (City Centre)

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

Clause 26 - Design Excellence	Complies
Clause 27 -Car parking	Complies
Clause 28 - Ground floor development within B3 and B4	Complies
Clause 29 - Building separation	N/A
Clause 30 - Ecologically sustainable development	Complies
Clause 31 - Serviced apartments	N/A
Clause 32 - Exceptions to development standards	N/A
Clause 33 - Land acquisition within certain zones	N/A
Clause 34 - Development on proposed classified roads	N/A
Clause 35 - Classification and reclassification of public land	N/A
Clause 36 - Community use of educational establishments	N/A
Clause 37 - Classified roads	N/A
Clause 38 - Development in proximity to a rail corridor	N/A
Clause 39 - Preservation of trees or vegetation	Complies
Clause 40 - Heritage conservation	Complies
Clause 41 - Bush fire hazard reduction	N/A
Clause 42 - Development for group homes	N/A
Clause 43 - Crown development and public utilities	N/A
Clause 44 - Location of sex services premises and restricted premises	N/A
Schedule 1 - Additional permitted uses	N/A
Clause 45 - Application of Part	N/A
Clause 46 - Interpretation	N/A
Clause 48 - Suspension of covenants, agreements and instruments	N/A
Clause 49 - Land use zones	N/A
Clause 50 - zone objectives and land use table	N/A
Clause 51 - Height of buildings	N/A
Clause 52 - Development near zone boundaries	N/A
Clause 53 - Architectural roof features	N/A
Clause 54 - Heritage Conservation	N/A
Clause 55 - Earthworks	N/A
Clause 56 - Savings provision relating to pending applications	N/A
Clause 47 - Certain planning instruments cease to apply to the land	N/A

This Plan applies to most of the area known as the Penrith City Centre and the aims relevant to the subject development proposal are:

- (a) to strengthen the regional position of the Penrith City Centre as a multifunctional and innovative centre that encourages employment and economic growth,*
- (c) to promote employment, residential, recreational and leisure, cultural, social and tourism opportunities within the Penrith city centre,*
- (d) to respond to the economic and social needs of the region by providing centrally located services and facilities,*
- (e) to facilitate new commercial and residential development in the Penrith city centre that is consistent with the desired future character of the area as described in the Penrith City Centre Development Control Plan 2007,*
- (g) to encourage development that contributes to the provision of alternative and sustainable access to the city centre,*
- (h) to enhance access to the city centre, particularly by public transport, walking and cycling,*
- (i) to facilitate the development of building design excellence appropriate for a regional city and improve the quality of urban design and ensure the public domain is safe and attractive,*
- (j) to encourage responsible management, development and conservation of resources and to ensure that the Penrith city centre achieves sustainable social, economic and environmental outcomes,*

The development proposal satisfies these relevant aims of the Plan. The proposal facilitates the future change of use for the current business premises to a food premises within the City Centre with easy access to transport networks. The proposal has been designed to minimise the visual prominence of its structure, facilities and fixtures whilst remaining compliant with the relevant Australian Standards (AS) and the BCA. It will eventually lead to an improved external appearance of the streetscape by allowing for the intended future development by improving the function of the internal area which will contribute to the economic and social needs of the region.

Under the provisions of PLEP 2008, the property is within Zone B3 Commercial Core, in which business and retail premises are permissible with Council consent. The proposed works are considered to be consistent with the aims and objectives of this zone.

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

The draft zoning of the allotment under Stage 2 of the Penrith Local Environmental Plan 2010 remains B3 - Commercial Core. The proposal remains consistent with the relevant aims and objectives of the Plan generally as well as the B3 zone. There are no clauses of the draft EPI which would have significant implications for the permissibility or design of the proposed development.

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

Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	N/A
Chapter 2.2 - Crime prevention through environmental design	Complies
Chapter 2.3 - Engineering works	N/A
Chapter 2.4 - Erosion and sediment control	Complies
Chapter 2.5 - Heritage management	Complies
Chapter 2.6 - Landscape	Complies
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	N/A
Chapter 2.9 - Waste planning	Complies
Chapter 2.10 - Flood liable land	N/A
Chapter 2.11 - Car parking	Complies
Chapter 2.12 - On-site sewage management	N/A
Chapter 2.13 - Tree preservation	Complies

Development Control Plan 2007 (City Centre)

Provision	Compliance
Part 2 - Building form	Complies
Part 3 - Pedestrian amenity	Complies
Part 4 - Accessing, parking and servicing	Complies

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

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

Fire Safety

Under Part 9 of the Environmental Planning and Assessment Regulation 2000 owners of buildings must provide the FRNSW Commissioner with a copy of the Fire Safety Certificate for the building (along with the current Fire Safety Schedule). The Fire Safety Certificate is issued when essential fire safety measures have been assessed by a qualified person as being capable of performing to the standard defined by the Schedule. A condition of consent has been imposed to ensure that this occurs on an annual basis.

Prescribed Conditions

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the BCA, will be imposed as conditions of consent where applicable.

As such subject to the recommended conditions of consent, the proposed development complies with the requirements of the Regulations.

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

The likely impacts of the proposed development are summarised as follows:

Context and Setting

As discussed previously, the proposed development will open up tenancies to the street by utilising the existing frontages facing the colonnade space for future tenancies providing improved activation of the Riley Street frontage.

There will be no significant impact on the natural or built environment of the surrounding locality. The site is close to public transport and is in a suitable location. In terms of the built environment, the minor works will not result in any significant change to the overall built form of the centre.

Social and Economic Impacts

The proposal poses no potential adverse social or economic impacts.

Traffic and Parking

The proposal will replace a single car space required to be removed for the proposed works with a new car space on site as indicated in the development application drawings.

BCA Compliance and Fire Safety

The works are not considered to result in any non-compliances with the BCA with respect to travel distance to and between exits. Therefore, the proposal is not expected to adversely affect the existing level of fire safety in the building. This matter is addressed by an appropriate condition of consent requiring appropriate BCA compliance.

Access and Mobility

The proposal will comply with the current Australian Standard 1428 (Part 2 - Design for Access and Mobility), in accordance with the DCP requirements. As with the existing tenancies the proposed future shops are accessible directly from the Riley Street frontage with easy level access to internal lifts and parking areas within the shopping centre.

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

The subject site is deemed suitable for the following reasons:

- The zone and draft zone permit the proposed use.
- The use is consistent and compatible with surrounding/adjoining land uses.
- The site is adequately serviced by access and parking infrastructure which has the capacity to cope with any changes in demand associated with the proposed development.
- Recommended conditions of consent will ensure that the proposal will have minimal effects on the surrounding environment during the construction stage.

Section 79C(1)(d) Any Submissions

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions

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

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

Conclusion

Subject to the recommended conditions of consent the proposal is considered to be consistent with the relevant sections of the Environmental Planning and Assessment Act 1979, the relevant Local Environmental Plan, relevant State Environmental Planning Policies and the Penrith City Centre Development Control Plan because it does not contravene any development standards and will not result in any significant impacts on the natural, social or economic environments.

The site is suitable for the proposed development, the proposal does not conflict with the public interest, and there is unlikely to be negative impacts arising from the proposed development. Accordingly, the application is worthy of support and recommended for approval, subject to recommended conditions.

Recommendation

1. That DA14/1143 for the subject development proposed for Westfield Penrith at 569-595 High Street, Penrith 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 approved plans and by the following conditions.

Description	Project No.	Drawing No.	Drawn by	Dated
Location Plan	C57452	DA-00	Scentre Design and Construction Pty. Ltd.	25.08.2014
Floor Plans and Roof Plan	C57452	DA-01	Scentre Design and Construction Pty. Ltd.	25.08.2014
Elevations and Sections	C57452	DA-02	Scentre Design and Construction Pty. Ltd.	25.08.2014
General Arrangement Plan	C57452	DA-03	Scentre Design and Construction Pty. Ltd.	25.08.2014
Photomontage	C57452	DA-04	Scentre Design and Construction Pty. Ltd.	17.10.2014

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

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

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

3 [A039 - Graffiti](#)

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

4 [A046 - Obtain Construction Certificate before commencement of works](#)

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

5 [A Special \(BLANK\)](#)

Demolition of the Shop 54 shopfront is not approved by this development consent.

Demolition

6 [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**.

7 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.

8 B004 - Dust

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

9 B006 - Hours of work

Demolition works will 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 demolition work is permitted on Sundays and Public Holidays.

In the event that the demolition relates to works inside the building and do not involve external walls or the roof, and do not involve the use of equipment that emits noise then the demolition works are not restricted to the hours stated above.

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

Environmental Matters

10 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.

11 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. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

12 D014 - Plant and equipment noise

The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

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 **F Special condition - Fitout general**

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 AS 4674-2004 *Design, Construction and Fitout of Food Premises*.

16 **F Special condition - Mechanical ventilation**

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 ventilated 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.

17 **F Special condition - Premises using charcoal for cooking**

If charcoal is used in the cooking process, the kitchen exhaust system must be fitted with carbon filters designed to prevent or minimise air pollution including the emission of odours, vapours and oils in accordance with the Protection of the Environment Operations Act 1997 and Regulations there under.

18 **F Special condition Mechanical ventilation 2**

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.

Construction

19 [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.

20 [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) 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, 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.

21 [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.

Engineering

22 [K027 - Car Parking](#)

The parking space dimensions and manoeuvring areas are to comply with AS 2890.1 and AS 2890.2, the Building Code of Australia and the Commonwealth Disability Discrimination Act.

Landscaping

23 [L012 - Existing landscaping \(for existing development\)](#)

Existing landscaping is to be retained and maintained at all times.

Certification

24 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.

25 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 occupation/use

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.