

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0709
Proposed development:	Change of Use to a Neighbourhood Supermarket and Associated Cool Room
Property address:	30 - 32 Queen Street, ST MARYS NSW 2760
Property description:	Lot A DP 377645
Date received:	15 October 2019
Assessing officer	Jake Bentley
Zoning:	Zone B4 Mixed Use - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application seeking to legitimise an existing neighbourhood supermarket use and cool room at 30-32 Queen Street, St Marys. The proposed '*neighbourhood supermarket*' is a permissible with consent land use within the site's B4 Mixed Use zoning under Penrith Local Environmental Plan 2010 (PLEP).

In accordance with Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014 the application did not require notification to surrounding premises'. No submissions have been received.

An assessment 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 of consent.

Site & Surrounds

The subject site is legally identified as Lot A DP 377645 located on the eastern side of Queen Street and benefitted by rear access from East Lane. The site has an overall lot size of 489.1m² with a 13.4m front and rear boundary and a length of 36.5m. The site is currently occupied by a two storey building containing a neighbourhood supermarket at the ground floor accessible from Queen Street which includes cash registers, retail area (shelving and display of products) and a rear located storage area and cool room.

The surrounding sites are also zoned B4 Mixed Use and are typically occupied by commercial premises with the exception of a carpark located to the north-east of the site. The site is located roughly 85m south of St Marys Train Station which is identified as being a state heritage item. It is noted that the western portion of the site is identified as being land with scenic and landscape values and the site is impacted by active street frontage controls within the PLEP.

The Statement of Environmental Effects accompanying the proposal states that the site was previously used as a costume hire shop.

Proposal

The proposal seeks to legitimise the use of the site as a neighbourhood supermarket (Pacific Green Grocery) including a cool room to the rear of the premises with the following components:

- Cash registers
- Shelving
- Storage area
- 4 staff
- Operation from 9am - 7pm Monday to Tuesday and 8am - 7pm Wednesday to Sunday

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

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

State Environmental Planning Policy No 55—Remediation of Land

In accordance with Clause 7 Contamination and remediation to be considered in determining development application of State Environmental Planning Policy No. 55 - Remediation of Land "a consent authority must not consent to the carrying out of any development on land unless:

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."

The subject site is already developed and the proposal relates to the use of the existing floor area which has previously been utilised for commercial purposes. In this regard, there are no concerns regarding land contamination.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The proposal has been considered against the relevant criteria within Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 - 1997) and is considered to be 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	N/A
Clause 4.4 Floor Space Ratio	N/A
Clause 5.4 Controls relating to miscellaneous permissible uses	Complies - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies
Clause 7.8 Active street frontages	Complies - See discussion

Clause 2.3 Permissibility

The Statement of Environmental Effects (SEE) submitted in support of the proposal states that the operation involves the display of groceries and the cool room stores fruit, vegetables and drinks. In this regard, the proposal is appropriately defined as a '*neighbourhood supermarket*' which is defined within the PLEP as follows:

"neighbourhood supermarket means premises the principal purpose of which is the sale of groceries and foodstuffs to provide for the needs of people who live or work in the local area."

Neighborhood supermarkets are a type of shop, shops are a type of retail premises and retail premises are a type of commercial premises. It is noted that commercial premises are permitted with consent in the site's B4 zoning.

Clause 5.4 Controls relating to miscellaneous permissible uses

Sub-clause 7A states that the gross floor area for a neighbourhood supermarket must not exceed 1,000m². The gross floor area of the neighbourhood supermarket is 443.8m² and therefore complies with this control.

Clause 7.8 Active street frontages

As mentioned previously the use of the site is for a retail premises with the entrance to the shop located on the ground floor at Queen Street therefore, an active street frontage for the premises is provided.

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

Annual Update Amendment Planning Proposal

It is noted that an Annual Update Amendment Planning Proposal is in the process of being created by Council. The Annual Update Amendment Planning Proposal has no relevance to the proposed development.

Draft Environmental SEPP

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.*

It is noted that the amendments to Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

The proposed new land remediation SEPP will:

- provide a state-wide planning framework for the remediation of land,
- maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- clearly list the remediation works that require development consent, and
- introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the Draft SEPP will not alter or affect the findings in respect to contamination of the site.

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	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
E15 St Marys / St Marys North	Complies - see Appendix - Development Control Plan Compliance

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

The development application has been reviewed by Council's Building Surveying Department which raised no objections to the proposal subject to recommended conditions of consent. In this regard, the development is considered to comply with the requirements of the Building Code of Australia and the regulations subject to recommended conditions of consent.

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

The development will not generate any adverse parking impacts noting the location of St Marys train station and the nearby carpark. The proposed hours of operation are not considered to generate any adverse noise impacts noting the uses and zoning of the surrounding sites. The mechanical plant within East Lane will be suitably relocated and East Lane to the rear provides suitable access for deliveries and services. In light of the above, there are no adverse impacts envisioned as a result of the development.

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

The existing building on-site is of a suitable size to provide for the development noting the gross floor area restriction for neighbourhood supermarkets under Clause 5.4 of the PLEP. The existing carpark and train station service the development and the existing footpath within Queen Street provides suitable access to the development. In this regard, the site is suitable for the development.

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 did not require notification to surrounding premises'. No submissions have been received.

Referrals

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

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

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

There are no significant impacts relating to the public interest envisioned as a result of the development.

Section 94 - Developer Contributions Plans

The development application does not involve an increase in commercial floor space and in this regard, development contributions are not applicable as per Council's St Marys Town Centre Development Contributions Plan. It is noted that Council's Senior Contribution Officer has stated that development contributions are not applicable to the subject development application.

Conclusion

In assessing the development against the relevant environmental planning policies, being State Environmental Planning Policy No 55 Remediation of Land, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the development satisfies the aims, objectives and provisions of these policies. The site is suitable for the development and there are no negative impacts envisioned as a result of the development. Therefore, the application is worthy of support, subject to recommended conditions of consent.

Recommendation

That DA19/0709 to legitimise the use of the premises as a neighbourhood supermarket and cool room at 30-32 Queen Street, St Marys be approved subject to the attached recommended conditions of consent.

General

1 [A001 - Approved plans table](#)

The development must be implemented 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 stamped approved plans and by the following conditions.

Drawing Title	Prepared By	Date	Sheet No.	Revision
Site Plan	Corona Projects	August, 2019	00	-
Floor Plan	Corona Projects	August, 2019	01	-

2 [A012 - Food Act](#)

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

3 [A019 - Occupation Certificate](#)

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

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

4 [A021 - Business Registration](#)

The business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council **prior to the issue of an Occupation Certificate** and operation of the business.

5 [A026 - Advertising sign \(not for residential\)](#)

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

6 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)

The approved hours of operation are as follows:

- 8:00am to 7:00pm daily (Monday to Sunday)

7 [A032 - Goods in buildings](#)

All materials and goods associated with the use shall be contained within the building at all times.

8 [A039 - Graffiti](#)

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

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

Prior to the issue of an Occupation Certificate, a plan showing the location of the air conditioning plant to be within the confines of the premises is to be submitted to and approved by Council.

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.

Health Matters and OSSM installations

11 F001 - General Fitout

Prior to the issue of an Occupation Certificate, the construction, fit out and finishes of the food premises (supermarket) must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS4674-2004 *Design, Construction and Fitout of Food Premises*. Your attention is drawn to the following requirements:

- a) Recessed coving must be provided at all intersections of the floor with the walls within all food preparation, service, storage and scullery areas. All coving must have a minimum concave radius of 25mm and be installed so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface.
- b) The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other approved material to a height of 2 metres. The intersection of tiles and render must have a flush finish, or be splayed at a 45 degree angle to eliminate a ledge that would allow dust and grease to accumulate.
- c) The ceiling in the preparation, service and scullery areas must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.
- d) Service pipes, electrical conduits, refrigeration condensate pipes shall be enclosed or chased into walls, floors or plinths. Where it can be demonstrated that this is not feasible pipes and conduits fixed on brackets, providing a minimum of 25mm clearance from the adjacent wall and 100mm from the floor or adjacent horizontal surface, can be used. All openings in walls, floors and ceilings, through which service pipes and conduits pass, must be vermin proof.
- e) Shelves must be smooth and impervious; free from joints, cracks and crevices; and able to be easily cleaned. The lowest shelf must be at least 200mm off the floor to allow easy cleaning underneath. Approved materials must be used, such as galvanised piping, stainless steel or laminated plastic. Shelves are to be sealed to the wall or kept clear of walls to allow easy access for cleaning (>40mm).

12 F046 - Cleaners sink

Prior to the issue of an Occupation Certificate, the cleaners sink must be provided and supplied and serviced with hot and cold water through taps fitted with hose connectors. Cleaner's sinks must be located outside of areas where open food is handled.

13 F052 - Coolrooms

The coolroom and/or freezer room floor must be finished with a smooth even surface and graded to the door. A sanitary floor waste must be located outside the coolroom and freezer adjacent to the door. All metal work in the coolroom and freezer room must be treated to resist corrosion.

14 F053 - Coolrooms – condensation

Condensation from coolrooms and refrigeration motors must discharge to sewer via a tundish with air gap separation in accordance with Sydney Water requirements.

15 [F054 - Coolrooms – doors & alarms](#)

The coolroom and freezer room must be provided with:

- A door which can at all times be opened from inside without a key and
- An approved alarm device located outside the room, but controlled only from the inside.

16 [F Special BLANK](#)

No open food or food preparation is to be undertaken at the premises, all food must be pre-packaged.

Certification

17 [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 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

C10 Transport, Access and Parking

This chapter states that supermarkets are to provide 1 on-site car parking space per 10m² of floor area that is used for retailing activities. The area of the site to be used for retailing activities is 400m² therefore, 40 on-site car parking spaces are required to service the proposal.

The subject site is not provided with any parking spaces however, the site has been used previously for retail activities, the site directly to the north-east is occupied by a Council owned car park and the site is within close proximity to St Marys Train Station. It is noted that the nearby car park provides the following parking restrictions; 3 hour time limit between 8:30am - 6pm Monday to Friday and 8:30am - 4:30pm on Saturdays. In addition, an aerial view of the car park shows that the car park is not full with car parking spaces available. It is also noted that St Marys Train station will provide alternative access from a motor vehicle to the site.

In light of the above, there are no adverse impacts envisioned relating to car parking as a result of the operation.

The site is benefitted by a rear lane in which rubbish bins can be emptied and unloading activities can occur via the rear door of the development.

C12 Noise and Vibration

The use and scale of the operation is not envisioned to generate any adverse noise impacts especially considering that properties used for residential purposes are distanced from the site.

E15 St Marys / St Marys North

The SEE accompanying the application shows that mechanical plant is located within East Lane. It is noted that the site is built to boundary therefore, the plant cannot be setback from the perimeter of the building. In this regard, the applicant was requested to relocate the mechanical plant to be within the confines of the premises. The applicant has responded stating that the plant will be moved inside the building. A recommended condition of consent will ensure a plan showing the relocated plant is provided to and approved by Council prior to the issue of an Occupation Certificate.