

Item 8.**Development Application: 35-37 Bettington Street, Millers Point**

File No.: D/2017/1748

Summary

- Date of Submission:** 15 December 2017, Amended information received 13 March 2018, further amended information and amended site plan received 12 April 2018.
- Applicant:** Paulina Soto
- Owner:** City of Sydney
- Cost of Works:** \$0
- Proposal Summary:** Use 12.5sqm of footway on a daily basis between 11.00am and 6.00pm for footway seating in association with the Palisade Hotel.
- Use a total of 85sqm of footway split into two areas between 10.00am and 5.00pm on 4 days/year, being New Year's Day, Australia Day, ANZAC Day, and Melbourne Cup day with a total capacity of 20-30 standing patrons and associated temporary barriers in association with the Palisade Hotel.
- The application is reported to the Local Planning Panel as the proposal is located on footway owned by the City of Sydney.
- Summary Recommendation:** The development application is recommended for approval, subject to conditions.
- Development Controls:**
- (i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
 - (ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
 - (iii) City of Sydney Outdoor Dining Policy and Guidelines
- Attachments:**
- A. Recommended Conditions of Consent
 - B. Proposed Footway Area Use Plan

Recommendation

It is resolved that consent be granted to Development Application No. D/2017/1748 subject to the conditions set out in Attachment A to this report.

Reasons for Recommendation

The reasons for the recommendation are as follows:

- (A) The proposed development is consistent with section 4.15 of the Environmental Planning and Assessment Act 1979, in that it satisfies the provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 and for the reasons outlined in the report submitted to the local Planning Panel.
- (B) The proposal has been amended (changing barrels to tables and chairs) to address concerns raised by Council staff in regards to the daily use of the footway only being possible in association with the consumption of food.
- (C) The event component to use a total of 85sqm of footway split into two areas between 10.00am and 5.00pm will only occur on four days per year, being New Year's Day, Australia Day, ANZAC Day, and Melbourne Cup day; with a total capacity of 20-30 standing patrons which are a redistribution of existing patron numbers, rather than additional patron numbers.
- (D)

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 5 April 2018.
2. The site is an irregular shape with an area of 205.1sqm with primary street frontages to Bettington Street and Dalgety Road to the north and east. Adjoining the site to the south is Munn Reserve. A public staircase exists to the south-east of the site, connecting Dalgety Road to the reserve. The footway area between Hotel Palisade and the sand stone retaining wall (adjoining the public staircase and Munn Reserve) is part of the subject site.
3. The licenced 'Hotel Palisade' is contained within the site. The building consists of a basement level with a commercial kitchen and cool rooms/storage areas, the ground floor public bar area, upper levels of hotel accommodation and a roof top bar/restaurant.
4. The subject site is listed on the State Heritage Register (SHR: 00510). The site is also located within the State Heritage listed Millers Point and Dawes Point Village Precinct Conservation Area (SHR: 01682) and the Millers Point Conservation Area (SHR: 00884). The site is also heritage listed under Sydney LEP 2012 (I874) and is located within the Millers Point Conservation Area (C35).

5. Surrounding the site are residential dwellings. To the west is the Barangaroo redevelopment site including the Barangaroo Reserve.
6. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Looking west towards the Palisade Hotel



Figure 3: Looking west towards the Palisade Hotel and subject footway



Figure 4: Looking north-west towards the Palisade Hotel and subject footway



Figure 5: The eastern portion of the strip of land to the south of the hotel is owned by the hotel



Figure 6: Looking west along Bettington Street to the north of the hotel



Figure 7: Northern elevation of the hotel viewed from across Bettington Street

Proposal

7. The amended application seeks consent for the use of two sections of the footway adjacent and to the south-east of the Palisade Hotel for use by patrons of the hotel. The total area of footway to be utilised is 85sqm.
8. The footway areas are to be utilised for two separate uses. The area coloured purple in Figure 8 below with an area of approximately 12.5sqm, is proposed to be used on a daily basis from 11.00am until 6.00pm for footway dining (Four tables, 12 seats). At 6.00pm each day, all patrons will be moved inside and the outdoor furniture will be stored inside in the parlour area (see figure 9 below). The area will be licensed and the hotel's Liquor Licence modified accordingly.
9. The two areas coloured pink in Figure 8 below (the larger area adjacent the hotel is 61sqm including the purple area, and the smaller area is 24sqm) will be used between 10.00am - 5.00pm on four days per year, being New Year's Day, Australia Day, ANZAC Day, and Melbourne Cup day "event use". These areas will have a total capacity of 20-30 standing patrons, which the applicant advises are not additional patrons, but redistribution of existing patron numbers. Patrons will be moved inside at 5.00pm and the area returned to its previous state including the removal of water filled barriers, temporary fencing, rubbish, and loitering patrons. The temporary barriers and fences will be stored in the basement of the hotel when not in use.
10. It is noted that the strip of land to the south of the hotel proposed to be used as part of the larger event areas is not public land, but is owned by the hotel. Development consent is required to use this portion of land as proposed, however, it will not form part of any subsequent footway approval.

11. The Plan of Management submitted with the application indicates that the hotel consists of a "Public House" with a capacity of 150 patrons; an accommodation section with eight rooms; and a multi-level lounge with a capacity of 150 patrons.
12. Plans of the proposed development are provided below.

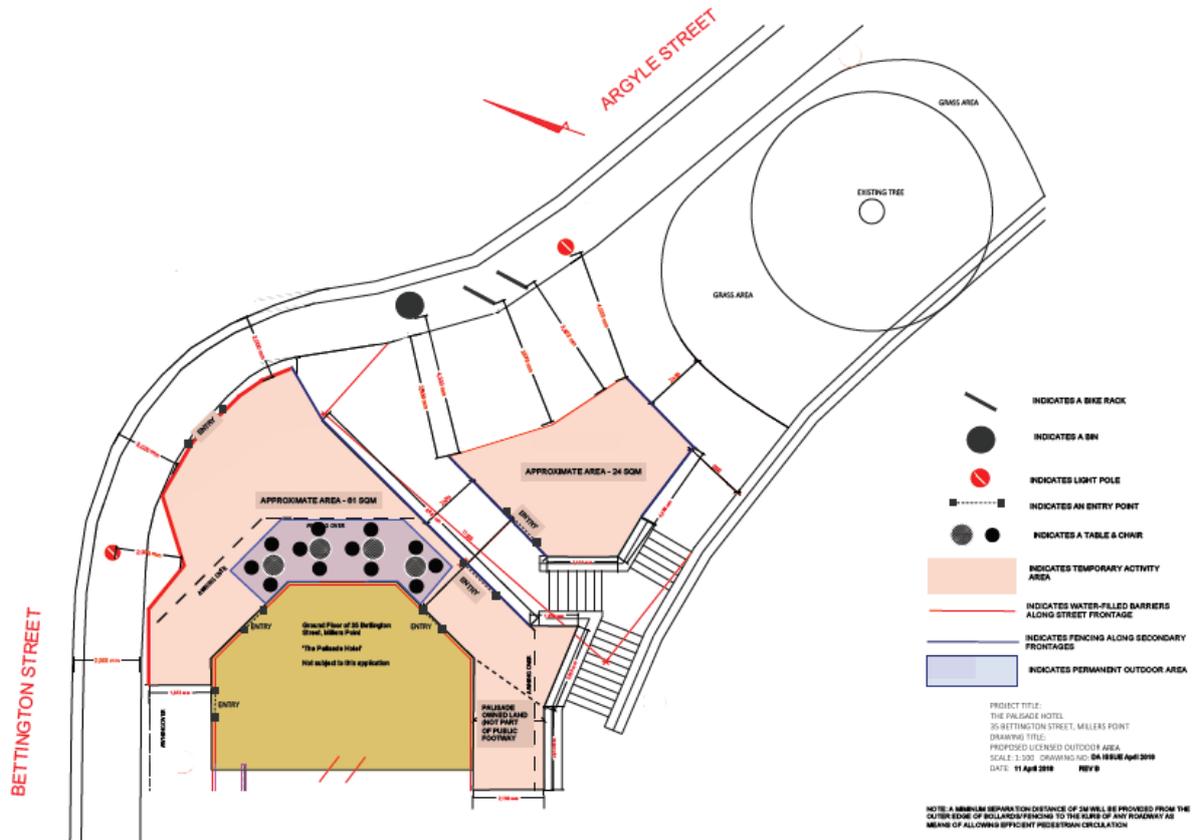


Figure 8: Proposed footway areas to be used

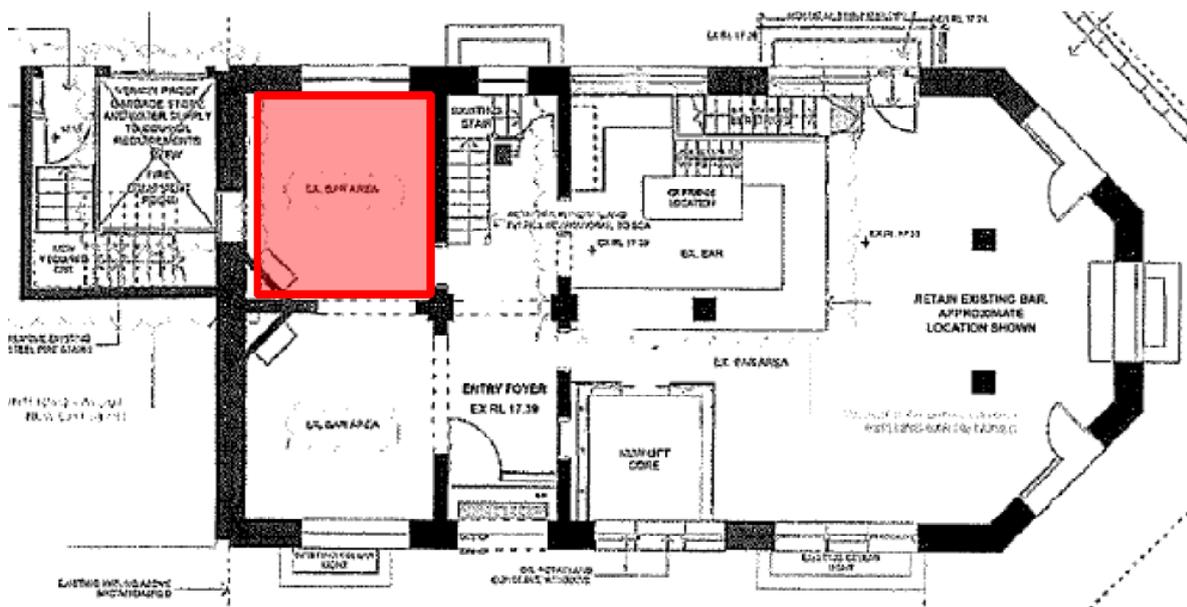


Figure 9: Tables and chairs to be stored in the ground floor parlour area (marked in red)

Heritage Act 1977

13. The proposal is integrated development under the Heritage Act 1977, as the subject site is listed on the State Heritage Register (SHR: 00510). The site is also located within the State Heritage listed Millers Point and Dawes Point Village Precinct Conservation Area (SHR: 01682) and the Millers Point Conservation Area (SHR: 00884).
14. The Heritage Council has provided Terms of Approval.

History Relevant to the Development Application

15. The current application initially proposed the permanent placement of four barrels on the footway adjacent the hotel for daily use by standing patrons. The applicant was advised that this would not be supported. The application was subsequently amended for the barrels to be stored inside in the ground floor parlour area when the footway is not in use. The application has subsequently been further amended to replace the barrels with tables and chairs following advice from Council that the daily use of the footway can only be considered in association with seated dining which is not possible around barrels.
16. On 1 July 2005, development consent D/2004/418 was granted for the refurbishment of the Palisade Hotel, western addition, new roof top addition and restaurant. Condition 2 of D/2004/418 permitted base indoor trading hours between 9.00am and 11.00pm Mondays to Sundays inclusive with a first 12 month trial of extended daily indoor trading until midnight. The first trial period commenced on 1 July 2015.
17. Modifications D/2004/418/A - D/2004/418/E relate to works to the hotel.
18. D/2004/418/F was approved on 9 January 2017 to continue the trial indoor trading hours for another year and to correct an error in the trial hours which restricted the Sunday trial hours to between 9.00am and 12.00pm (midday).
19. D/2004/418/G was approved on 12 February 2018 to continue the trial indoor trading hours for a further two year period.
20. D/2016/387 for alterations to the Palisade Hotel consisting of a basement commercial kitchen, and kitchen exhaust discharge point passing underneath the footpath and exiting out of the sandstone retaining wall below approved on 11 July 2016.
21. D/2015/1809 (related to FA/2015/377) for use of public footway at corner of Bettington Street, Dalgety Road and Argyle Place for outdoor seating in association with the licensed 'Palisade Hotel' (12 tables, 40 seats and eight umbrellas), with proposed hours of use of 11.00am to 10.00pm, Mondays to Sundays inclusive was refused on 16 May 2016 for the following reasons:
 - (a) The NSW Heritage Council has refused to grant its approval to the proposed integrated development.
 - (b) The proposed outdoor seating in its current form will adversely affect the setting of the heritage listed Palisade Hotel and the historic streetscape within the Millers Point / Dawes Point Heritage Conservation Area. As such, the proposal in its current form does not satisfy Clause 5.10 of the Sydney Local Environmental Plan 2012 and Section 3.9 of the Sydney Development Control Plan 2012.

- (c) The proposal does not satisfy the design principles set out in the Millers Point Locality Statement under Section 2.8 of the Sydney Development Control Plan 2012.
 - (d) The proposal does not satisfy the requirements of the City of Sydney Outdoor Cafe Policy, in that it will obstruct pedestrian access and circulation in the footpath areas and that the seating layout does not have adequate dimensions.
 - (e) The proposal in its current form will result in adverse environmental and social impacts on the locality, and does not satisfy the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979.
 - (f) The site is not considered to be suitable for the proposed development, and does not satisfy the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979.
 - (g) The proposed development is not within the public interest, and does not satisfy the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979.
22. FA/2015/377 (related to D/2015/1809) for use of the public footway at the corner of Bettington Street, Dalgety Road and Argyle Place for outdoor seating in association with the Palisade Hotel (12 tables, 40 seats and eight umbrellas) with hours of operation of 11.00am to 10.00pm Mondays to Sundays inclusive was refused on 16 May 2016 for the following reasons:
- (a) The seating requires development consent. As an integrated development, it requires approved from the NSW Heritage Council. The NSW Heritage Council refused to grant its approval, and the City of Sydney refused the development application (D/2015/1809). As such, the subject footway application cannot be approved under the Roads Act 1993.
 - (b) The form of the proposal does not satisfy the requirements of the City of Sydney Outdoor Cafe Policy in that it would obstruct pedestrian access and circulation in public footpath areas, and the seating layout does not have adequate dimensions.
23. D/2015/1385 (related to FA/2015/309) for the use of the public footway at the corner of Bettington Street, Dalgety Road and Argyle Place for outdoor seating in association with the Palisade Hotel with hours of operation between 8.00am and 10.00pm Mondays to Saturdays inclusive, and between 10.00am and 10.00pm Sundays was rejected on 9 October 2015 for the following reasons:
- (1) The application is illegible or unclear as to the development consent sought for the following reasons:
- (a) The submitted application does not clearly identify the maximum patron capacity of the hotel with regard to internal and external patron numbers.
 - (b) The submitted application form does not clearly identify what parcel of land the outdoor seating is located in. The application does not include plans that detail the property boundaries of the parcel of land on which the seating is to be located on.

- (c) The submitted plans do not clearly identify the setback of the seating from Argyle Place.
 - (d) A plan is required identifying where the outdoor seating will be stored when not in use.
 - (e) Photos are required of the proposed seats, tables and planter boxes.
 - (f) The "pedestrian flow" identified on the submitted seating plan leads pedestrians onto a grassed portion of the footpath. The space identified for "pedestrian flow" purposes should lead pedestrians to the hard surfaced footpath.
 - (g) Given that public domain works have been completed to the east of the hotel, photos of the current footpath condition should be included with the application and not photos of the footpath half finished.
- (2) The application does not contain information and documents required as follows:
- A Statement of Environmental Effects including a site description; proposal description; assessment against SLEP 2012, SDCP 2012 and the City of Sydney Outdoor Cafe Policy; operational details; storage of outdoor seating when not in use; a Plan of Management addressing indoor and outdoor operations.
24. FA/2015/309 (related to D/2015/1385) for the use of the public footway at the corner of Bettington Street, Dalgety Road and Argyle Place for outdoor seating in association with the Palisade Hotel (10 tables, 40 seats) with hours of operation between 8.00am and 10.00pm Mondays to Saturdays inclusive, and between 10.00am and 10.00pm Sundays was rejected on 15 October 2015 for the following reasons:
- (a) Development consent is required for the use of the footway for the purposes of outdoor dining. A valid development application has not been lodged with Council. (It is noted that the most recent development application (D/2015/1385) for the outdoor seating use was rejected on 9 October 2015).
 - (b) A Plan of Management has not been submitted with the application.
 - (c) Given that public domain works have been completed to the east of the hotel, photos of the current footpath condition should be included with the application and not photos of the footpath half finished.
 - (d) The number of seats shown on the submitted plan are less than the number of seats proposed in the application form.
25. D/2015/1126 (related to FA/2015/231) for new commercial kitchen with associated services for mechanical ventilation and grease trap; and outdoor seating was rejected on 21 October 2015 for the following reasons:
- (1) The application is illegible or unclear as to the development consent sought for the following reasons:
- (a) the submitted application form does not clearly identify what sites form part of the development application/owners' consent;
 - (b) the submitted plan does not clearly identify what outdoor seating is proposed.

- (2) As the building is a state listed heritage building, the application needs to be lodged as integrated development.
26. FA/2015/231 (related to D/2015/1126) for use of the public footway on the corner of Bettington Street and Argyle Place for outdoor seating in association with the Palisade Hotel for 24 tables and 76 seats with hours of operation between 5.00am and 12.00 midnight Mondays to Saturdays, and between 10.00am and 10.00pm Sundays was refused on 2 September 2015 for the following reasons:
- (a) The proposal does not comply with Clause 127 of the Roads Act 2003, as no approval for outdoor seating exists or is currently applied for under the Environmental Planning and Assessment Act 1979.
 - (b) The proposal does not comply with Clause 127 of the Roads Act 2003, as the submitted application will constitute a public nuisance.
 - (c) The proposal does not comply with section 3.15 (Late Night Management) of Sydney Development Control Plan 2012 as the proposed number of seats and the proposed hours of operation are considered excessive and will have an adverse impact on the amenity of the surrounding area, particularly residential properties.
 - (d) The proposal does not comply with the City of Sydney Cafe Policy 2001 as the proposed seating is excessive in size, adversely impacting on the public domain, the amenity of the area and pedestrian egress.
 - (e) The development application does not include sufficient information for Council to accurately assess the potential impact of the outdoor seating, in particular, a Plan of Management and Acoustic Impact Assessment have not been submitted.
27. D/2015/1236 for alterations to the Palisade Hotel including basement commercial kitchen, mechanical ventilation and grease trap refused on 5 November 2015.
28. D/2016/387/A to demolish internal walls and reinstate wall and toilet facilities to allow installation of services for the basement commercial kitchen is currently under assessment.
29. FA/2017/273 for the same footway use/configuration as proposed under D/2017/1748 (the application subject of this report) is currently under assessment.

Compliance Action

30. CSM1841974 - Removal of glass/garbage outside approved times. Courtesy letter to hotel regarding appropriate collection times. 1 February 2018.
31. CSM1839477 - Hotel conducted BBQ and sold food on public footpath. 26 January 2018.
32. CSM1651538 - Warning letter sent regarding early morning garbage collection. 21 December 2016.
33. CSM 1527359 - Works not in accordance with development consent D/2004/418/E as there is no waste storage area. 17 March 2016.
34. CSM1522784 - Noise from hotel audible inside nearby dwelling. Hotel will now close windows at 8.00pm. 27 April 2016.

35. CSM1508702 - Installation of acoustic panels without consent. 9 February 2016.
36. CSM1448024 - Amplified noise audible on Council footpath from music inside hotel. 18 October 2015.
37. CSM1446266 - Mechanical ventilation system installed to basement kitchen without consent. 13 October 2015.

Economic/Social/Environmental Impacts

38. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

39. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
40. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
41. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

Sydney LEP 2012

42. The site is located within the R1 - General Residential zone. The proposed use is defined as ancillary to the pub use and is permissible.
43. The proposed use is consistent with the objectives of the R1 - General Residential zone in that it provides a small scale, daily outdoor dining facility available to residents of the area, whilst maintaining surrounding residential land use and amenity.
44. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
5.9 Preservation of trees or vegetation	Yes	There are no trees affected by the proposal.
5.10 Heritage conservation	Yes	<p>The subject site is listed on the State Heritage Register (SHR:00510) and is also located within the State Heritage listed Millers Point and Dawes Point Village Precinct Conservation Area (SHR:01682) and the Millers Point Conservation Area (SHR:00884). It is also listed as a heritage item (1874 - Palisade Hotel including interiors)) under Sydney LEP 2012.</p> <p>The Heritage Council has provided General Terms of Approval subject to conditions specifying that the previously proposed four timber barrels may not be permanently installed, and that only temporary bollards without fixings and requiring no excavation may be used for the event days.</p> <p>Council's Heritage Officer generally supports the proposal subject to the above requirements and that the barrels are stored inside the building at 6.00pm each day. The application has subsequently been further amended to replace the barrels with tables and chairs.</p>

Sydney DCP 2012

45. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Millers Point

The subject site is located in the Millers Point locality. The proposed use is considered to be in keeping with the unique character of the area and design principles in that it retains and conserves the heritage significance of the area, and building, and maintains existing views and vistas into and out of the precinct.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology.
3.9 Heritage	Yes	As above.

Issues

Daily Footway Use and Event Use

Daily Footway Use

46. The subject site holds a Hotel Licence and is located outside the Sydney CBD Entertainment Liquor Freeze precinct.
47. The approved indoor hours of operation are between 9.00am and 11.00pm Mondays to Sundays inclusive with trial extended daily indoor trading until midnight. The proposed daily outdoor hours of operation of 11.00am until 6.00pm for footway dining are consistent with the approved indoor hours.
48. The Plan of Management and Security Management Plan (POM) indicates that the hotel consists of a "Public House" with a capacity of 150 patrons; an accommodation section with 8 rooms; and a multi-level lounge with a capacity of 150 patrons.
49. There are toilet facilities located within the basement and upper level of the hotel accessible by stairs or lift.
50. Council's Health Officer advises that the number of people proposed to occupy the outdoor area and the timeframe proposed are reasonable.
51. Council's Licensed Premises Officer supports the footway dining component of the application and advises that the amended Plan of Management is considered acceptable.
52. Council's Heritage Officer generally supports the proposal subject to the barrels being stored inside the building at 6.00pm each day (the application has subsequently been further amended to replace the barrels with tables and chairs).
53. The Heritage Council has provided General Terms of Approval subject to conditions specifying that the four timber barrels may not be permanently installed.
54. A response from the Police has not been received.
55. In addition to the substantiated noise complaints listed above under *Compliance Action*, it is noted that additional unsubstantiated noise complaints regarding the operation of the hotel are registered on Council's system.

56. Given the daytime hours of 11.00am - 6.00pm proposed, adequate clearance for pedestrian movement around the outdoor area, and the use of tables and chairs instead of the originally proposed barrels and the numbers of patrons to be accommodated within the area; the proposed footway use is considered appropriate for a one year trial period. This is addressed by a condition of consent.
57. A condition of consent requires the POM to be amended to specify that patrons must be seated and dining when utilising the 12.5sqm outdoor area available on a daily basis, and not to describe this area as a permanent outdoor standing area as it is neither permanent nor a standing area.

Event Use

58. The two areas coloured pink in Figure 8 above will be used between 10.00am and 5.00pm on four "event" days per year, being New Year's Day, Australia Day, ANZAC Day, and Melbourne Cup day. These areas will have a total capacity of 20-30 standing patrons, which are a redistribution of existing patron numbers. Patrons will be moved inside at 5.00pm and the area returned to its previous state including the removal of water filled barriers, temporary fencing, rubbish, and loitering patrons. The temporary barriers and fences will be stored in the basement of the hotel when not in use.
59. The proposed outdoor event hours of operation are consistent with the approved indoor hours.
60. Council's Health Officer advises that the number of people proposed to occupy the outdoor area and the timeframe proposed are reasonable
61. Council's Licensed Premises Officer supports the use of land for events provided event approvals are lodged and approved for specific events.
62. Council's Heritage Officer generally supports the proposal subject to only temporary barriers being placed for the limited number of events as proposed without any fixings. These should be able to be removed easily and shall not require any excavation to be installed.
63. The Heritage Council has provided General Terms of Approval subject to conditions specifying that only temporary bollards without fixings and requiring no excavation may be used for the event days.
64. Council's Venue Management Unit advises that the Local Police Licensing Unit should be notified prior to each event. It is also advised that either a lease/licence agreement is sought through the City's Properties Unit for the use of the external space with associated fees paid; or a condition placed on a consent for the current application requiring a temporary event approval to be obtained prior to each of the four annual event days through Council's Outdoor Venue Management Team via a section 68 Approval.
65. In addition to the substantiated noise complaints listed above under Compliance Action, it is noted that additional unsubstantiated noise complaints regarding the operation of the hotel are registered on Council's system.
66. Given the daytime hours of 10.00am to 5.00pm proposed four times a year, limited patron number of 20 to 30 people utilising the outdoor area at any one time, and adequate clearance for pedestrian movement around the outdoor area, the event use is considered appropriate, subject to conditions, for a one year trial period.

67. A condition of consent requires a temporary event approval to be obtained prior to each of the four annual event days through Council's Outdoor Venue Management Team via a section 68 Approval.
68. A condition is also recommended requiring the Local Police Licensing Unit to be notified prior to each of the four annual event days.

Other Impacts of the Development

69. The proposed development is capable of complying with the BCA.
70. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

71. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding.

Internal Referrals

72. The conditions of other sections of Council have been included in the proposed conditions. The application was discussed with the Heritage Specialist; Environmental Health; Licenced Premises; and Events and Filming Venue Management who advised that the proposal is acceptable subject to the recommended conditions.

Notification, Advertising and Delegation (Submissions Received)

73. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 2 January 2018 and 2 February 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification three submissions (two from the same address) were received raising the following issues:
 - (a) The barrels will encourage patrons to stand and drink on the footpath. The Hotel is close to residential buildings. The noise from the hotel already travels to the adjacent park, and encouraging patrons to be outside will make it worse. The general community should not have to walk past often intoxicated patrons. The Palisade is in a quiet residential enclave and street drinking just does not make sense.

Response - The proposal has been amended to replace the barrels with tables and seats. A condition of consent specifies that the tables and seats may only be used in associated with the consumption of food from the Hotel.
 - (b) The Hotel currently does not comply with its Plan of Management and Security Management Plan. Requirements to facilitate and monitor orderly egress and dispersal of patrons at closing time; and closing windows and doors at 8.00pm daily are not being adhered to.
 - (c) A very noisy generator has been used at the Hotel for weeks, often operating past midnight.

- (d) The noise from the Hotel is currently excessive due to loud music, patrons shouting, windows open until midnight, balcony doors open. Therefore, we have to keep our own doors/windows closed until midnight which affects airflow.
- (e) Customers spill out at midnight and can take more than an hour to disperse.
- (f) Customers make noise outside the premises including whilst smoking and making phone calls.
- (g) Patrons of the Hotel sit on our verandah and smoke just outside our doors.
- (h) The Palisade currently has multiple balconies and a roof top area which are already being used and are creating a great deal of noise. There should be no need for further outdoor spaces.
- (i) The noise generated by the Hotel has often made our front lounge and main bedroom facing the Hotel unusable.

Response - The current proposal relates to utilising 12.5sqm of the footway outside the hotel on a daily basis between 11.00am and 6.00pm; and 85sqm of the footway between 10.00am and 5.00pm four days per year.

Should any of the issues mentioned in the submissions above continue to occur, Council's Compliance Officers/Rangers as appropriate should be called at the time to investigate the issue.

- (j) The acoustic assessment attached to the application was conducted in September 2015 soon after the Hotel opened and before the upper floors opened. Therefore, it has failed to take into account the much greater level of patronage over the summer months as well as the much greater level of noise since the upper floors opened. The report also assumes that all doors and windows on the northern side of the Hotel are closed which is never the case.

Response - Council's Health Officer has found the information provided in the "Outdoor Seating Acoustic Assessment" relevant to the current consideration, particularly in relation to the relative background noise level, numbers of patrons and the projected noise on the nearest receivers.

- (k) The timing of this DA looks like the Hotel is taking advantage of currently vacant nearby properties, the future residents of which will be badly affected by the Hotel operations.

Response - The vacancy of surrounding properties is not a matter for consideration in this assessment report.

- (l) The Hotel continuously violates the restrictions placed on it without Council taking any action such as:
 - (i) The Hotel served and sold food outdoors on Australia Day.
 - (ii) Parking vehicles on the north side footpath without being fined.
 - (iii) Keeping all doors and windows open.

- (iv) Placing multiple large waste disposal bins and kegs of beer on the northern footpath partially occupying it.
- (v) Washing their bins and other equipment and furniture on the footpath in an area where residents are not permitted to wash their cars.
- (vi) Their garbage truck picks up rubbish including glass bottles at all hours including 2.00am multiple times a week.
- (vii) Staying open beyond permitted hours.

Response - The current proposal relates to utilising 12.5sqm of the footway outside the hotel on a daily basis between 11.00am and 6.00pm; and 85sqm of the footway between 10.00am and 5.00pm four days per year.

Should any of the issues mentioned in the submissions above continue to occur, Council's Compliance Officers/Rangers as appropriate should be called at the time to investigate the issue.

- (m) The SEE assumes that there are no problems with noise because the Council does not have any records of complaints being made by residents to the Council. A number of residents had complained previously about noise when the Palisade had previously applied for use of the outdoor space. These should be treated the same as a complaint.

Response - The compliance history of the premises is discussed above and has been taken into consideration in the assessment of this application.

Public Interest

- 74. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S61 Contribution

- 75. The cost of the development is under \$200,000 and the development is therefore not subject to a levy pursuant to the Central Sydney (Section 61) Contributions Plan 2013.

Relevant Legislation

- 76. The Environmental Planning and Assessment Act 1979.
- 77. The Heritage Act 1977.

Conclusion

78. The proposal is to use 12.5sqm of footway on a daily basis between 11.00am and 6.00pm for footway seating in association with the Palisade Hotel; and to use a total of 85sqm of footway split into two areas between 10.00am and 5.00pm four days per year, being New Year's Day, Australia Day, ANZAC Day, and Melbourne Cup day with a total capacity of 20 to 30 standing patrons and associated temporary barriers in association with the Palisade Hotel.
79. The proposal was amended (changing barrels to tables and chairs) to address concerns raised by Council staff in regards to the daily use of the footway only being possible in association with the consumption of food.
80. The amended proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls. Conditions of consent are recommended to address any potential impact from the uses on surrounding residential amenity.
81. Accordingly, the development application is recommended for approval, subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Claire Elek, Specialist Planner