

Item 3.**Development Application: 92 Glebe Point Road, Glebe - D/2019/42**

File No.: D/2019/42

Summary

Date of Submission:	22 January 2019
Applicant:	Ms E. Boulougouris
Architect:	Stirling + Andie
Developer:	Ms E. Boulougouris
Owner:	Ms E. Boulougouris (subject site Lot 20 DP245405) and City of Sydney Council as the landowner of Glebe Point Road and Mitchell Street relating to the occupation of the footway for outdoor dining.
Cost of Works:	\$25,000.00
Zoning:	B2 Local Centre zone. The proposed use is defined as a food and drink premises and is permitted.
Proposal Summary:	<p>Proposed alterations and additions include replacement of the ground floor window presenting to Glebe Point Road, installation of fabric awnings and signage. The continued use of the premises as a licensed small bar/café with a proposed capacity of 120 persons. 30 patrons are proposed within the outdoor dining areas on Glebe Point Road & Mitchell Street.</p> <p>Proposed hours of operation:</p> <p>Monday to Sunday 8.00am -12 midnight (internal)</p> <p>Monday to Sunday 8.00am - 10.00pm (outdoor courtyard)</p> <p>Monday to Sunday 8.00am- 9.00pm (footway outdoor dining area)</p> <p>The seating area proposed for outdoor dining will include 11 tables, 22 chairs and two bench seats within three distinct areas.</p>

**Proposal Summary
(continued):**

The application is referred to the Local Planning Panel for determination as the City of Sydney is the land owner of the footway.

An Application for Outdoor Dining under Section 125 of the Roads Act (FA2019/10) has been lodged concurrently. Given the premises intends to operate under an existing General Hotel Licence development consent for the occupation of the footway is required and as such the proposed outdoor dining is included in this application.

Four submissions and one petition (with 23 signatures) were received raising concerns regarding the proposed use, noise impacts, hours of operation, garbage disposal, occupation of the footway, heritage impacts associated with the proposed works and management of the premises.

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 & Guidelines

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings

Recommendation

It is resolved that consent be granted to Development Application No. D/2019/42 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The application is consistent with the objectives of the B2 Local Centre zone applicable under the Sydney Local Environmental Plan 2012.
- (B) The proposed signage complies with the relevant aims, objectives and provisions of the State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64).
- (C) The proposed outdoor dining complies with the relevant aims, objectives and provisions of the Roads Act 1993 and the City's Policy and Guidelines for outdoor dining subject to recommended amendments addressing the amenity of neighbouring properties.
- (D) The proposal is within a Local Centre Area and the recommended hours of operation are consistent with the objectives and in accordance with the recommended hours for this area for Category B premises as identified in the Sydney Development Control Plan 2012.
- (E) The application achieves design excellence in accordance with Clause 6.21 (4) of the Sydney Local Environmental Plan 2012 in that the materials and detailing of the replacement window to Glebe Point Road and signage complements the heritage significance of the building as a local heritage item.
- (F) The effect on the public interest has been mitigated by reducing the capacity and extent of the outdoor dining area. A maximum capacity has been recommended for the rear courtyard and hours of operation consistent with the Sydney Development Control Plan 2012 provisions. Conditions addressing the public submissions have been recommended focusing on improved management practises.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 15 March 2019.
2. The site is rectangular with an area of approximately 191sqm. The site is located on a prominent corner on Glebe Point Road and Mitchell Street.
3. The site contains a two storey attached Victorian Georgian corner hotel building of rendered brickwork with a painted finish. The building is built to the street alignment with a splayed corner. The roof is hipped with a steep pitch, clad in corrugated steel and has boxed eaves. There are dormers to both street elevations and a chimney on the party wall with No. 94 Glebe Point Road.
4. The rear of the site contains a traditional rear wing addition with a skillion roof. There is a small rear courtyard with landscaping and gates to Mitchell Street.
5. Internally the building features timber flooring throughout with timber framed stairs providing circulation to the first floor and attic level. Early chimney pieces and timber joinery is present. The room layout has been altered at the ground floor level which includes the addition of a masonry arch which is not in keeping with the character of the building.
6. There is a basement space below the footprint of the ground floor front room which has sandstone walls and floor.
7. The building is currently vacant but was last occupied as a wine bar/café known as 'Mr Falcon's'.
8. The building is listed as a local heritage item being the Former Waratah Hotel including interiors (I708). The site is adjacent to two locally listed heritage buildings, Former Currency Lass Hotel (90 Glebe Point Road - I707) to the east on the other side of Mitchell Street and the shop and residence adjacent at 94 Glebe Point Road (I709). The site is within the Glebe Point Road Conservation Area (C29).
9. Surrounding land uses are commercial and residential. 115 Mitchell Street is a residential dwelling that has windows opening to the rear courtyard of the subject site.
10. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from the intersection of Glebe Point Road and Mitchell Street looking west



Figure 3: Looking south along Mitchell Street towards the rear courtyard and adjoining residential properties

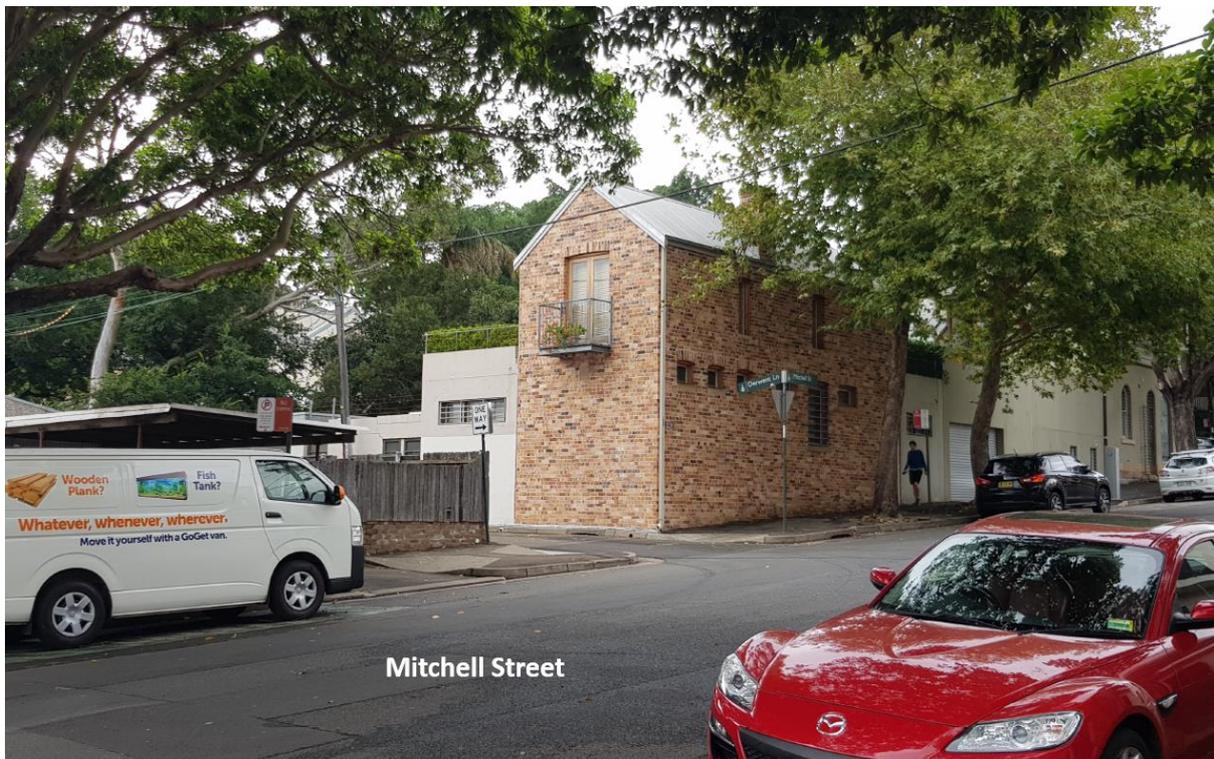


Figure 4: Residential development on the opposite side of Mitchell Street



Figure 5: Looking northeast towards Glebe Point Road and commercial development along the main street



Figure 6: View looking north along the proposed outdoor dining area along Mitchell Street. Note conditions recommended to remove the driveway crossing which is now redundant



Figure 7: View looking east on Glebe Point Road along the proposed outdoor dining area

Proposal

11. The application seeks consent for alterations and additions to a vacant small bar/cafe within the existing two storey plus attic heritage listed building. The use of the premises will be consistent with that previously granted under D/2011/787 on 10 August 2011 for use as a wine bar/cafe operating in conjunction with a General Hotel liquor licence.
12. The proposed capacity of 120 persons is consistent with the capacity previously approved under D/2011/787. A maximum of 30 patrons is proposed to occupy the outdoor dining areas however this will not increase the overall capacity but will allow for an additional space to accommodate the 120 patrons.
13. An application for Outdoor Dining under Section 125 of the Roads Act (FA2019/10) has been lodged concurrently for the occupation of the footway along Mitchell Street and Glebe Point Road immediately adjacent to the site. Given the premises intends to operate with a General Hotel Licence development consent for the occupation of the footway is required and as such the proposed outdoor dining is included in this application. Council consent as the landowner of the street has also been obtained. Following the determination of this development application the corresponding Outdoor Dining Application can be resolved.
14. The proposed works specifically include:

(a) Ground Floor

- (i) Replacement of the fixed ground floor window presenting to Glebe Point Road with a sashless double hung window.
- (ii) Three new fabric awnings over the existing entries.

(b) First Floor

- (i) No internal works.
- (ii) A single painted wall sign on the southern building facade centred between the first floor windows approximately 4.13m above the street level with an area of 2.15m (w) x 1.55m (h).

(c) Courtyard

- (i) No works proposed.
- (ii) Proposed hours of operation:
Monday to Sunday 8.00am - 12 midnight (internal); and
Monday to Sunday 8.00am - 10.00pm (outdoor courtyard).
- (iii) The applicant has submitted a Plan of Management to support the application.

(d) Outdoor Dining Area

- (i) The application proposes outdoor dining along Glebe Point Road and Mitchell Street. Two areas are proposed on Mitchell Street. A 9.3sqm area adjoining the kitchen/courtyard and a 3.75sqm area adjoining the splayed corner. A single area of 7.5sqm is proposed on Glebe Point Road. See Figure 10 below which identify the proposed outdoor dining areas.
- (ii) The seating area proposed for outdoor dining indicatively shows 11 tables, 22 chairs and two bench seats within three distinct areas. It is noted that the ground floor plan identifies an extra table and chairs along Mitchell Street in conflict with the proposed outdoor dining plan (this discrepancy has been resolved through the recommended removal of an outdoor dining area on Mitchell Street).
- (iii) The indicative capacity is 30 patrons, 14 patrons along Mitchell Street and 16 patrons on Glebe Point Road.
- (iv) The proposed hours of operation are Monday to Sunday 8.00am - 9.00pm.

15. Plans of the proposed development are provided below.

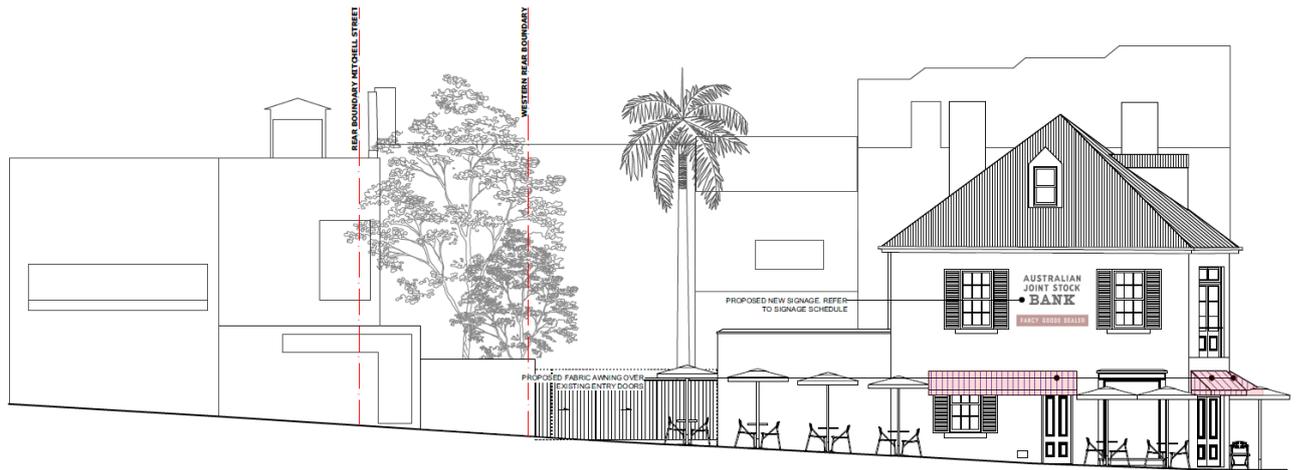


Figure 8: Proposed southern elevation presenting to Mitchell Street with fabric awnings (shaded pink), signage and outdoor dining.

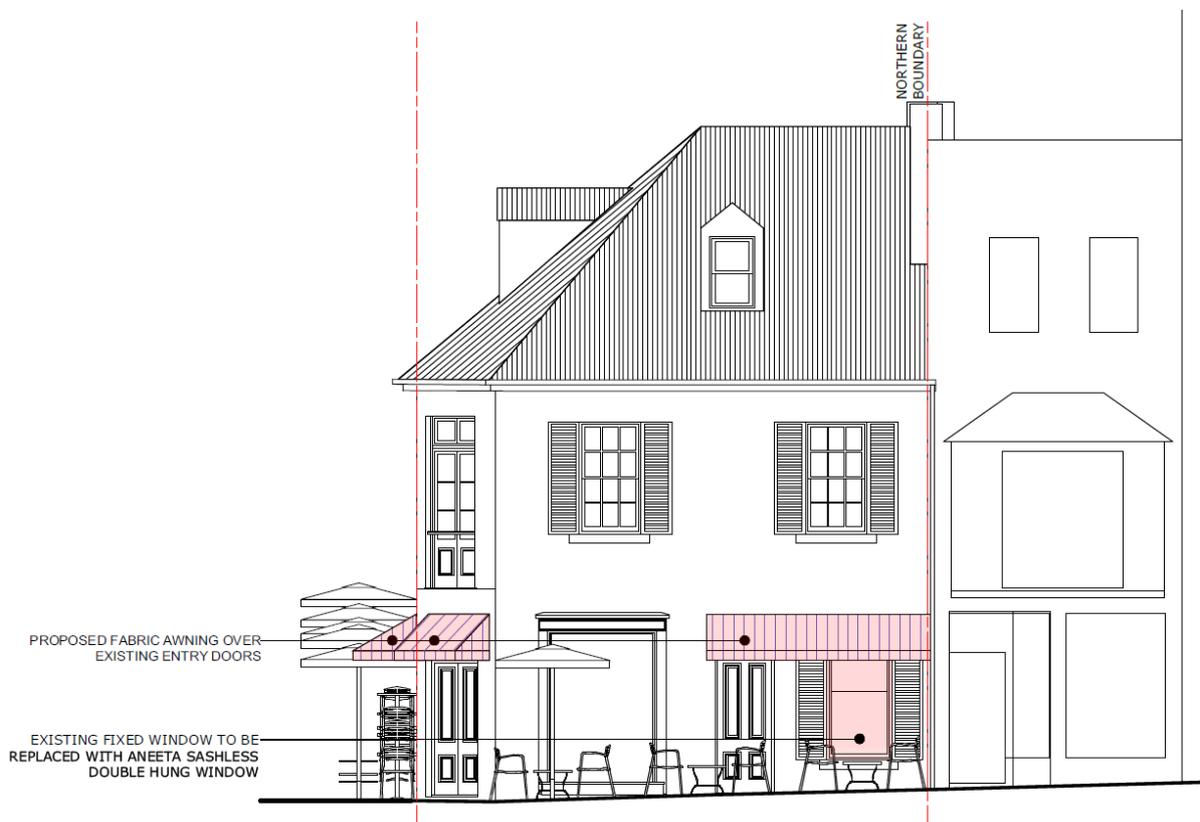


Figure 9: Proposed eastern elevation presenting to Glebe Point Road. Works (shaded pink) include the replacement of the front ground floor window, installation of fabric awnings and outdoor dining

History Relevant to the Development Application

16. The following applications are relevant to the current proposal:

- (a) TPR/2014/137 was refused on 17 February 2015 to remove the Cabbage Palm within the rear courtyard.

- (b) D/2011/787 – Change of use and fit-out of a wine/bar café with a general bar hotel licence (Approved 10 August 2011). Approved hours of operation 10am to 11pm seven days per week (internal) and 10am to 8pm seven days per week for the courtyard.
 - (c) D/2011/787/A – Modification of approved wine bar/café known as ‘Mr Falcon’s’ to continue the trial hours of operation being 10.00am to 12.00 midnight, 7 days for internal areas and 10.00am to 10.00pm for external areas. (Approved 12 September 2012 for a two year trial)
 - (d) D/2011/787/B – Modification of approved wine bar/café known as ‘Mr Falcon’s’ to continue the trial hours of operation being 10.00am to 12.00 midnight, 7 days for internal areas and 10.00am to 10.00pm, 7 days for external areas. (Approved 3 March 2015 for a one year trial) Trial hours have since lapsed.
 - (e) D/2017/1502 - Alterations, additions and refurbishment of the courtyard, new first floor verandah, addition of external serving window to Mitchell Street and internal refurbishment for a licensed bar and cafe. (Approved 22 May 2018). Approved hours of operation 10am and 10pm Monday to Sunday for internal areas. 8am and 12 midnight Monday to Sunday for a trial period of one year. 10am and 8pm Monday to Sunday for the balcony and rear courtyard. A one year trial was also approved for the external areas 8am and 10pm Monday to Sunday. Patron capacity increased to 165 persons. This consent had not been made operational at the time of preparing this Assessment Report.
 - (f) FA/2017/240 - Use public footway on Glebe Point Road for outdoor seating in association with the proposed licensed café and bar at 92 Glebe Point Road (6.4 sqm). Proposed hours of use are 8am to 9pm Monday to Sunday inclusive. (Application withdrawn on 21 May 2018)
 - (g) FA/2018/87 - Use public footway on Mitchell Street for outdoor seating in association with the proposed licensed café and bar at 92 Glebe Point Road (5 tables and 20 chairs) (Rejected 8 June 2018 as development consent had not been obtained)
17. There have been a number of HWC applications submitted for external and internal works to the building, these are detailed below:
- (a) HWC/2017/108 (Approved 8 May 2017) works included the reinstatement of internal archways and basement hatch from the ground floor to the basement.
 - (b) HWC/2017/185 (Approved 29 August 2017) works included repainting the interior and exterior of the building; replace dilapidated roof cladding and vehicular gate to Mitchell Street. Installation of timber shutters to double hung windows on the primary building envelope. Installation of a grease trap within the existing services zone in the rear courtyard. New fitout to dilapidated bathrooms and new bar joinery. Installation of double hung timber framed window to attic and new perimeter benches in the front ground floor rooms and new air conditioning.
 - (c) HWC/2018/254 (Approved 11 September 2018) works included retiling the kitchen and removing redundant services, infill doorway to servery, refurbishment of the hallways tiles and flooring, removal of hallway balustrade and new internal colour scheme.

- (d) HWC/2018/296 (Approved 8 October 2018) works included installation of subfloor vents to Mitchell Street.
18. D/2018/590 was lodged on 30 May 2018 for a mixed use development including a ground floor café and first floor residence. The application was rejected and advice provided. The advice addressed the need for works to retain the heritage fabric of the building, provide supporting documentation including a Heritage Impact Statement, BCA Report and Acoustic Assessment as part of a future application.

Economic/Social/Environmental Impacts

19. 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.

Roads Act 1993

20. The proposal seeks consent for outdoor dining on the Glebe Point Road and Mitchell Street frontages of the site. A 9.3sqm area adjoining the kitchen/courtyard and a 3.75sqm area adjoining the splayed corner are proposed on Mitchell Street. A single area of 7.5sqm is proposed on Glebe Point Road.
21. The proposed hours of operation of the outdoor dining area is Monday to Sunday 8.00am - 9.00pm.
22. The proposal is consistent with the requirements for footway restaurants under the Roads Act, 1993. Subject to conditions, the provision of outdoor dining will not result in unreasonable impacts on adjoining roadway uses or the public domain.
23. An assessment of the outdoor dining areas and their amenity impacts is provided in the Issues section of this report.
24. The application also seeks consent for projections beyond private property into the footpath being the fabric awning structures. A condition has been recommended that the proposed awnings extend no more than 450mm over the road/footpath alignment; are located above the doorways only and at least 800mm from the face of the kerb. These conditions will ensure that there is no obstruction or loss of safety for users of the street.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

25. Subdivision 20A Footpaths - outdoor dining of the SEPP allows for the use of the footway by a food and drink premises as exempt development.
26. To be exempt development, the use of the footway must:
- (a) not be associated with a pub or a small bar, and
 - (b) be carried out in accordance with an approval granted under section 125 of the Roads Act 1993 (if applicable), including in accordance with any hours of operation to which the approval is subject, and

- (c) be carried out in accordance with any approval granted under section 68 of the Local Government Act 1993 (if applicable).
27. The use of the footway is associated with a pub and therefore the use of the footway is not exempt, and this development application has been submitted.

State Environmental Planning Policy No 64—Advertising and Signage

28. The application proposes the following signage:
- (a) A single external painted wall sign on the southern elevation of the building centred between the first floor windows approximately 4.13m above the street level with an area of 2.15m (w) x 1.55m (h). Refer to Figure 8 identifying the southern elevation of the building.
29. SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
30. Clause 8 of SEPP64 states the following:
- A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:
- (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.

Assessment Criteria

31. The following table outlines the manner in which the proposed signage addresses the assessment criteria of SEPP64.

1. Character of the area	Comment
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The subject site is located within the Glebe Point Road locality. The signage complements the mix of commercial and retail uses along the main street. The painted finish will not detract from the heritage significance of the building or its presentation to the public domain.

1. Character of the area	Comment
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no particular theme for outdoor advertising along Glebe Point Road. In the immediate vicinity is roof mounted business identification signs and a third party advertising sign displayed as a static billboard on the opposite side of Glebe Point Road. Business identification signage is generally focused on the face or underneath existing awnings and within ground floor windows. The proposed signage is not for business identification purposes but rather as a visual reference to the historical use of the building by The Australian Joint Stock Bank from 1877-1884.
2. Special areas	Comment
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The painted wall sign is consistent with the heritage significance of the item and the conservation area in that the colour scheme complements the existing painted finish of the building and is a feature which is reversible without resulting in damage to the building. The signage will not require any new fixings to the building facade which would detract from the visual amenity of the built form.
3. Views and vistas	Comment
Does the proposal obscure or compromise important views?	The signage is a painted finish to the building facade and will not obscure views along Mitchell Street or Glebe Point Road.
Does the proposal dominate the skyline and reduce the quality of vistas?	No, the signage is located on the existing southern elevation of the building and does not impact on the streetscape vistas.
Does the proposal respect the viewing rights of other advertisers?	The proposed sign does not obscure sightlines to other advertisements within the locality.

4. Streetscape, setting or landscape	Comment
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale and proportion of the signage relates to the existing building form being set between the existing first floor windows aligning with the two openings.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The signage does add visual interest the painted brickwork by referencing the historical use of the building.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed sign is the only signage on the building and any future business identification signage would be the subject of a development application.
Does the proposal screen unsightliness?	The signage occupies a portion of painted brickwork which is not considered to be unsightly.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The signage does not protrude above the building or dominate existing landscaping within the area.
Does the proposal require ongoing vegetation management?	No vegetation requires maintenance as part of the proposed signage.

5. Site and building	Comment
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes, the proposed signage is compatible with the scale and proportion of signage in the vicinity. The proposed sign is smaller than the third party billboard which is mounted to the facade of the building on the opposite corner. The sign is of a similar scale to the window advertisements within adjoining buildings.
Does the proposal respect important features of the site or building, or both?	The location of the signage on the rendered brickwork does not cover or require the removal or alteration of any unique building features.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage responds to the historical use of the building.

6. Associated devices & logos with advertisements & advertising structures	Comment
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No, safety devices, platforms, lighting devices or logos have been designed as part of the signage.

7. Illumination	Comment
Would illumination result in unacceptable glare?	The signage is not illuminated
Would illumination affect safety for pedestrians, vehicles or aircraft?	No illumination proposed.
Would illumination detract from the amenity of any residence or other form of accommodation?	No illumination proposed.
Can the intensity of the illumination be adjusted, if necessary?	No illumination proposed.
Is the illumination subject to a curfew?	No illumination proposed.

8. Safety	Comment
Would the proposal reduce the safety for any public road?	No, the signage is a painted finish with no illumination or projecting features which would impact on road safety.
Would the proposal reduce the safety for pedestrians or bicyclists?	No, the signage is located above the pedestrian footpath and will not impact on sightlines along the footpath or roadway.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No, the signage is flush with the existing facade of the building and does not project into or obscure the public domain.

32. The proposed signage is consistent with the aims and objectives of Clause 3 of SEPP64 and as such, is supported.

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

33. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
34. 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.
35. 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

36. The site is located within the B2 Local Centre zone. The proposed use is defined as food and drink premises and is permissible.
37. 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
4.3 Height of Buildings	Yes	A maximum height of 9m is permitted. The application does not propose to increase the height of the building.
4.4 Floor Space Ratio	Yes	A maximum FSR of 1.5:1 is permitted. There is no change to the FSR.
5.9 Preservation of trees or vegetation	Yes	The proposal is acceptable in terms of tree preservation as the proposal will have no impact on any trees nor does the application seek any tree removal within the rear courtyard.

Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	The subject site is a heritage item and is located within a heritage conservation area. See discussion under the heading Issues.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	The proposed development satisfies the requirements of this provision subject to conditions of consent. The proposed fabric awnings, signage and replacement sashless window will enhance the presentation of the built form to the public domain. The awnings are an external feature which complements the heritage significance of the heritage item. The proposed outdoor dining areas will not detract from the significance of the conservation area.

Sydney DCP 2012

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

2. Locality Statements – Glebe Point Road

The subject site is located in the Glebe Point Road. The proposed works to the heritage listed hotel and use as a café / bar is considered to be in keeping with the unique character of the area and design principles in that it will retain the existing heritage building and provide for an active use at ground floor. The outdoor dining component supports the principle which encourage cafes and restaurants to offer outdoor dining where the footpath width permits.

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Yes	The proposed development will make a positive contribution to the public domain with outdoor dining areas activating the footway within the Local Centre zone.
3.2 Defining the Public Domain	Yes	<p>The proposed development including the fabric awnings on the external facades will maintain adequate sun access to publicly accessible spaces and not detract from public views.</p> <p>The signage proposed on the rendered facade adds visual interest to the built form. The outdoor dining area allows for direct surveillance of the adjacent streets contributing to an active street frontage.</p>
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	The existing building is a heritage item within a heritage conservation area, see discussion under the heading Issues.
3.10 Significant Architectural Building Types	Yes	The site is a Victorian Georgian style corner hotel, which is to be retained. This is discussed further below in the Issues section.
3.11 Transport and Parking	Yes	<p>No parking is proposed for the site, which is acceptable. Patrons will generally walk or take public transport to the site; alternatively there is time limited parking available in the surrounding streets.</p> <p>A condition is recommended requiring the removal of the existing vehicle crossing.</p>
3.12 Accessible Design	Yes	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.

3. General Provisions	Compliance	Comment
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	The proposal is a Category B premises within the Local Centre Trading area. This is discussed further in the Issues section.
3.16 Signage and Advertising	Yes	The proposed development includes signage. See discussion in the heading Issues.
3.16.1 Signage Strategy	Yes	A waiver to the signage strategy has been sought as it is considered the proposal is minor in nature, and satisfies the objectives of the DCP in relation to signage.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.1 Building height	Yes	There is no change to the building height.
4.2.2 Building setbacks	Yes	The building is to be retained.
4.2.3 Amenity	Yes	A Noise Impact Assessment was provided with the previous development application D/2017/1502, which has been reviewed by Council's Health unit. The proposal is considered to be acceptable, subject to conditions, which have been discussed further below in the Issues section.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.6 Waste minimisation	Yes	Suitable conditions are recommended regarding waste.

Issues

Heritage

39. The site is a local heritage item and is located within the Glebe Point Road Conservation Area and is therefore subject to the heritage provisions of the SDCP 2012.
40. 92 Glebe Point Road is of historical significance as the building provides evidence of the early development of the Bishopthorpe Estate and for its ability to evidence a historical association with hotel development in Glebe as the Waratah Hotel. It is representative of early Victorian hotel development along Glebe Point Road and is of aesthetic significance as a relatively intact example of a Victorian Georgian style corner hotel.
41. The works including the replacement of the fixed front window with a sashless double hung window and the installation of fabric awnings over the entries have been reviewed by the City's Heritage Specialist and these works are considered to be acceptable and will have a minor impact on the heritage significance of the building.
42. DCP Clause 3.2.4.2 makes provision for fabric canopies. In accordance with subsection 1(b) they may be acceptable on heritage buildings originally designed without awnings provided there is no impact on the significance of the building. It is noted that there are nearby fabric awnings above first floor openings at No 96 and 98 Glebe Point Road. The provisions also require a minimum height above the footpath of 3.2m. Schedule 4 of the Sydney DCP 2012 requires a height above the footpath of at least 3.0m. An awning height of 3.2m would impact on the alignment of the first floor door and Juliet balcony presenting to the splayed corner. A height of at least 3.0m above the footpath level would sit well above the doorway and present an alignment that is out of context with the openings to the building. The doorway heights are a minimum of 2.7m which would allow the awnings to project from the building facade above the doorways providing a minimum clearance of 2.1m from the footpath level which provides an acceptable clearance for patrons entering the premises and given the restriction in the scale of the proposed awnings to be over the doorways only and project no more than 450mm from the building face the amended location of the proposed awnings will not impact on pedestrian movements or restrict sightlines to vehicles within the roadway, therefore the amended location of the awnings is considered acceptable. To maintain consistency in the alignment of the proposed awnings a condition of consent has been recommended to amend the architectural plans to reduce the scale of the awnings and their alignment to be above the doorways only.

43. The following conditions are recommended for the proposed awnings and replacement window to retain the integrity of the item as discussed above:
- (a) The extent of the awning on the Mitchell Street elevation is to be reduced to the width of the door opening only.
 - (b) The extent of the awning on the Glebe Point Road elevation is to be reduced to the width of the door opening only.
 - (c) A typical section shall be submitted prior to the issuing of any Construction Certificate showing the awning to be cantilevered above the doorway and include details of the covering, framing, as well as fixing locations and details.
 - (d) A minimum 2.1m clearance above the footpath shall be provided to the underside of the awning structures.
 - (e) A colour schedule for the awning shall be provided that is appropriate for the style and period of the building to the satisfaction of the Area Planning Manager.
 - (f) No signage is permitted on the awnings or the umbrellas proposed for the outdoor seating area.
 - (g) The framing of the “Aneeta” sashless double hung sash window shall be timber and not aluminium.

Signage

44. Section 3.16.11 identifies controls relating to signage associated with heritage items and conservation areas. The proposed signage as discussed above is compatible with the existing heritage item without adversely impacting on significant features of the building.
45. The design, colours and painted finish are easily reversible and do not require the installation of any fixings to the existing brickwork.
46. The City's Heritage Specialists has noted that no historic evidence has been submitted indicating that there was signage at the first floor level, and that the upper level signage is not characteristic of the immediate area. The Heritage Specialist's recommendation is that the sign be moved lower to be located between the line of the base of the first floor window sills and above the proposed awning to the door to Mitchell Street.
47. The proposed signage has a height of 1.55m, the distance between the first floor window sill and proposed awning is only 1.2m, therefore the proposed signage would need to be reduced in scale. Whilst the Heritage Specialist's recommendation would normally be supported regarding the location of the signage the introduction of the awning above the doorway requires flexibility to the signage location. The proposed location of the signage centred between the two first floor windows is supported as the most appropriate location given the location of the proposed awning.
48. Whilst new signage is generally not supported between the first floor level and parapet on heritage items this may be varied where upper level signage is an important aspect of the heritage significance. Whilst there may be no historic evidence provided for the location of the proposed signage the traditional hand painted style, and the fact that the signage is not illuminated and references one of the historical uses of the building, means that the proposed location and signage content is supported.

Late Night Trading Hours of Operation and Amenity

Hours of Operation

49. The site has previously been the subject of a number of compliance actions relating to noise after hours and not complying with conditions of consent most notably during the operation under D/2011/787. The site is currently vacant. However a review of previous applications identifies a reduction in the trial hours approved since good management practices were not demonstrated. Whilst the new operator has not been nominated as part of this application good management practices should be demonstrated as required by the provisions of the DCP. On this basis the base hours identified within the DCP are recommended with trial periods supported for a maximum of 1 year.
50. A Noise Impact Assessment has not been submitted in support of this application however, an Acoustic Assessment Report prepared by Acoustic Dynamic dated 5 April 2018 was submitted and supported with development application D/2017/1502, approved on 22 May 2018. This consent included the refurbishment of the licensed premise with the following capacity and hours of operation:
- (a) Maximum 165 patrons. This included 133 internal patrons, 20 within the courtyard and 12 on a balcony to be constructed fronting Glebe Point Road.
- (b) Approved hours including a 1 year trial as shown in the table below which remain consistent with the DCP hours for a Category A premises.

DCP Hours- Category A Premises	Approved Base Hours	Trial Hours Approved (1 year)
10am to 10pm (indoor) possible trial until 12 midnight	10am to 10pm (indoor) Mondays to Sundays	8am to 12 midnight (internal areas) Mondays to Sundays
10am to 8pm (outdoor) possible trial until 10pm	10am to 8pm (external courtyard and balcony) Mondays to Sundays	8am to 10pm (external courtyard and balcony) Mondays to Sundays

51. Whilst the consent D/2017/1502 identified above did approve an increased patron capacity from 120 patrons to 165 patrons the operation of the premises with 165 patrons has not commenced. As such all previous compliance issues related to a maximum capacity of 120 patrons. Development Consent D/2017/1502 also included the construction of a first floor balcony presenting to Glebe Point Road which does not form part of this application. Therefore a maximum capacity for the site including staff, patrons and performers of 120 persons is considered to be appropriate given the proximity to residential receivers, most notably the location of the rear courtyard and footway dining along Mitchell Street and the specific nature of the premises being a café that will operate with a General Hotel Licence.

52. In accordance with Section 3.15 of the SDCP 2012, the current proposal is identified as a Category B premise with a maximum capacity of 120 patrons proposed. The site is located within a Local Centre Trading area. The DCP hours compared to the proposed hours are shown in the table below. For the reasons stated above consistency with the DCP hours is recommended.

	DCP Hours- Category B Premises	Proposed Hours	Recommended Hours
Indoor Hours	7am to 11pm (base) possible trial until 12 midnight	8am to 12 midnight (internal areas) Mondays to Sundays	8am to 11pm (base hours) 11pm to 12 midnight (1 year trial) Mondays to Sundays
Outdoor Hours	7am to 8pm (base) possible trial until 10pm	8am to 10pm (external courtyard) Mondays to Sundays	8am to 8pm (external courtyard) 8pm to 10pm (1 year trial) Mondays to Sundays
		8am to 9pm (outdoor dining area) Mondays to Sundays	8am to 9pm (outdoor dining area- 1 year trial) Mondays to Sundays

The table includes existing and amended controls that have recently been adopted by Council.

53. The proposed morning hours between 8am to 10am for the outdoor areas (rear courtyard and footway dining) are consistent with the amended DCP hours, and are considered to be reasonable and consistent for food and drink premises operations in the B2 Local Centre Zone. The recommended conditions limit the maximum capacity of the rear courtyard to 20 patrons and reduce the scale of the outdoor dining area along Mitchell Street in close proximity to residential receivers as discussed below. These recommendations consider the amenity impacts associated with an extension of the morning hours. It is recommended that the extended morning hours be included within the one year trial to address any potential amenity impacts that may arise during the trial period.
54. On 13 May 2018 Council endorsed amendments to the Late Night Trading provisions within the Sydney DCP 2012 aimed at encouraging more diverse forms of late night trading promoting a balanced night time economy. As illustrated in the table above the

amended hours have been considered. They are expected to be published on 17 June 2019. The following amendments to the DCP have been considered with respect to this application:

- (a) The premises remains a Category B -Low Impact Premises within a Local Centre Area.
- (b) Standard trading hours are identified between 7am and 10pm in business zones. The application is seeking consent to operate from 8am to 10pm. As stated above the commencement of trade at 8am would be in line with the standard trading hours.
- (c) Matters for consideration now include the contribution that late night trading proposals make to street activation and vibrancy of an area at night and the likely impacts arising from the closing times and patron dispersal of the proposed and existing late night uses, including consideration of unlicensed late night trading in an area, such as shops, businesses and food and drink premises.
- (d) The trading hours have been extended. As a result the key change is the standard hours commencing at 7am. The extended hours on a trial basis are still restricted to midnight for indoor areas and 10pm for outdoor areas. Following good management practises consideration could be given to the morning hours commencing at 7am. This amendment would need to be subject of a further application to Council.

Amenity

55. It is noted that the premises is located within a Local Centre Area with a mix of retail and commercial uses fronting Glebe Point Road however this site also adjoins residential uses which are in close proximity to the centre. The residential dwelling at 115 Mitchell Street adjoins the rear courtyard of the subject site. This dwelling has a number of windows that open towards the rear courtyard and may be directly affected by patrons within the courtyard. Council's Health Officer and Licensed Premises Coordinator have reviewed the proposal and the Acoustic Report prepared by Acoustic Dynamic previously submitted and recommend conditions (similar to those imposed on the previous consent) to ensure the amenity of this property and the surrounding locality is protected. These recommended conditions include:

- (a) seating and furniture in the rear courtyard to reflect a maximum capacity of 20 patrons;
- (b) the outdoor dining area along Mitchell Street to be significantly reduced by deleting the 9.3 sqm area as shown in the diagram below to provide for a maximum of 20 patrons within the footway overall (16 patrons on Glebe Point Road and 4 patrons on Mitchell Street). The Acoustic Report also recommended a maximum capacity for the footway of 20 patrons. The current application and associated footway application is seeking a maximum footway capacity of 30 patrons;
- (c) given that this is the first application supported for outdoor dining and the need for the premises to demonstrate good management practices the outdoor dining area has been limited to 8am to 9pm Mondays to Sundays for a 1 year trial even though the previously submitted Acoustic Report supported hours of 7am to 9pm. The associated Footway Application will reflect the recommended conditions identified for this development application.

- (d) The amendments to the Late Night Trading DCP provisions also allow extended indoor hours of Category B premises in Local Centre Areas up to 2am but only if Council is satisfied that entry and egress will be onto a main street and not onto a laneway which abuts residential properties, or into a predominantly residential area. When Council is assessing applications, it will consider whether a venue has demonstrated good management performance. Whilst an extension for the indoor area may be considered till 2am for the subject these extended hours have not been applied for as part of the subject application and in this instance would not be supported due to past operators being unable to demonstrate good management practices. A further application to Council following a successful trial period may consider an extension to the indoor trading hours;
 - (e) outdoor music and queuing not permitted;
 - (f) CCTV and security measures to be implemented to support good management practices;
 - (g) the Mitchell street gate be locked at 4.00pm to stop patrons using this entrance; and
 - (h) windows and doors are to be closed at 10pm to manage noise emissions from the site.
56. The Plan of Management has been reviewed by Council's Licensed Premises Coordinator. The plan is to be updated to reflect the amended hours, the maximum patron numbers and security measures to address amenity. This is to form a condition of consent to be approved prior to any Construction Certificate.

City of Sydney Outdoor Dining Policy and Guidelines 2016

57. The application proposes outdoor dining along Glebe Point Road and Mitchell Street. Two areas are proposed on Mitchell Street. A 9.3sqm area adjoining the kitchen/courtyard and a 3.75sqm area adjoining the splayed corner. A single area of 7.5sqm is proposed on Glebe Point Road. Figure 10 below identifies the proposed outdoor dining area.

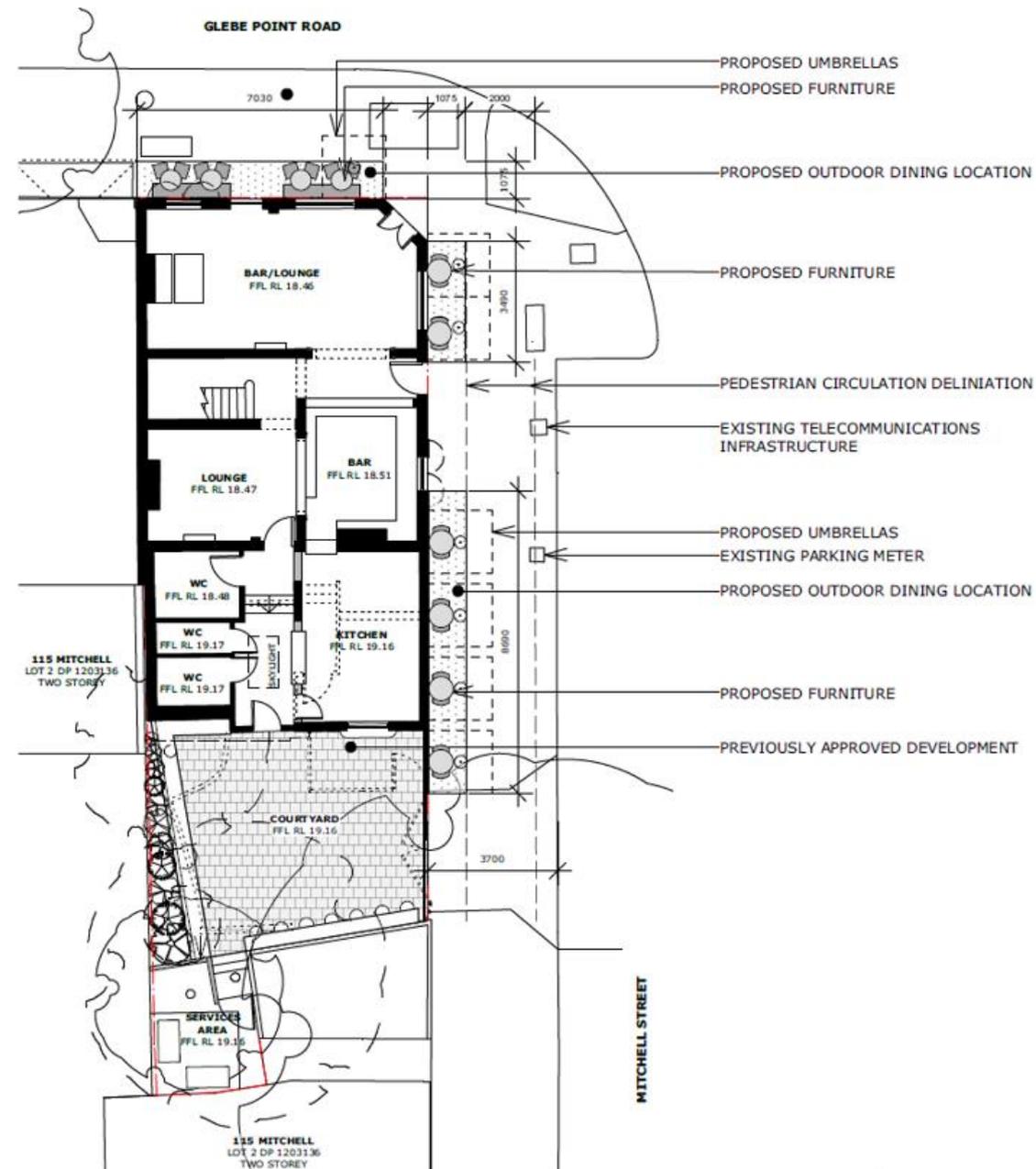


Figure 10: Proposed location of the outdoor dining areas

58. The proposed capacity is 30 patrons, 14 patrons along Mitchell Street and 16 patrons on Glebe Point Road. The proposed hours of operation are Monday to Sunday 8.00am to 9.00pm.
59. The aims of the Policy are to promote accessibility on the footway by maintaining a consistent and predictable clear path of travel for all users and manage neighbourhood amenity through minimising additional noise, visual, and other impacts.

60. As stated above the maximum capacity of the outdoor dining area is recommended to be 20 patrons. The recommended removal of a portion of outdoor dining on Mitchell Street (refer Figure 11 below) will reduce the amenity impacts to surrounding residential properties by significantly reducing the number of patrons within this residential street from 14 patrons to four patrons and locating those remaining patrons closer to the intersection with Glebe Point Road.

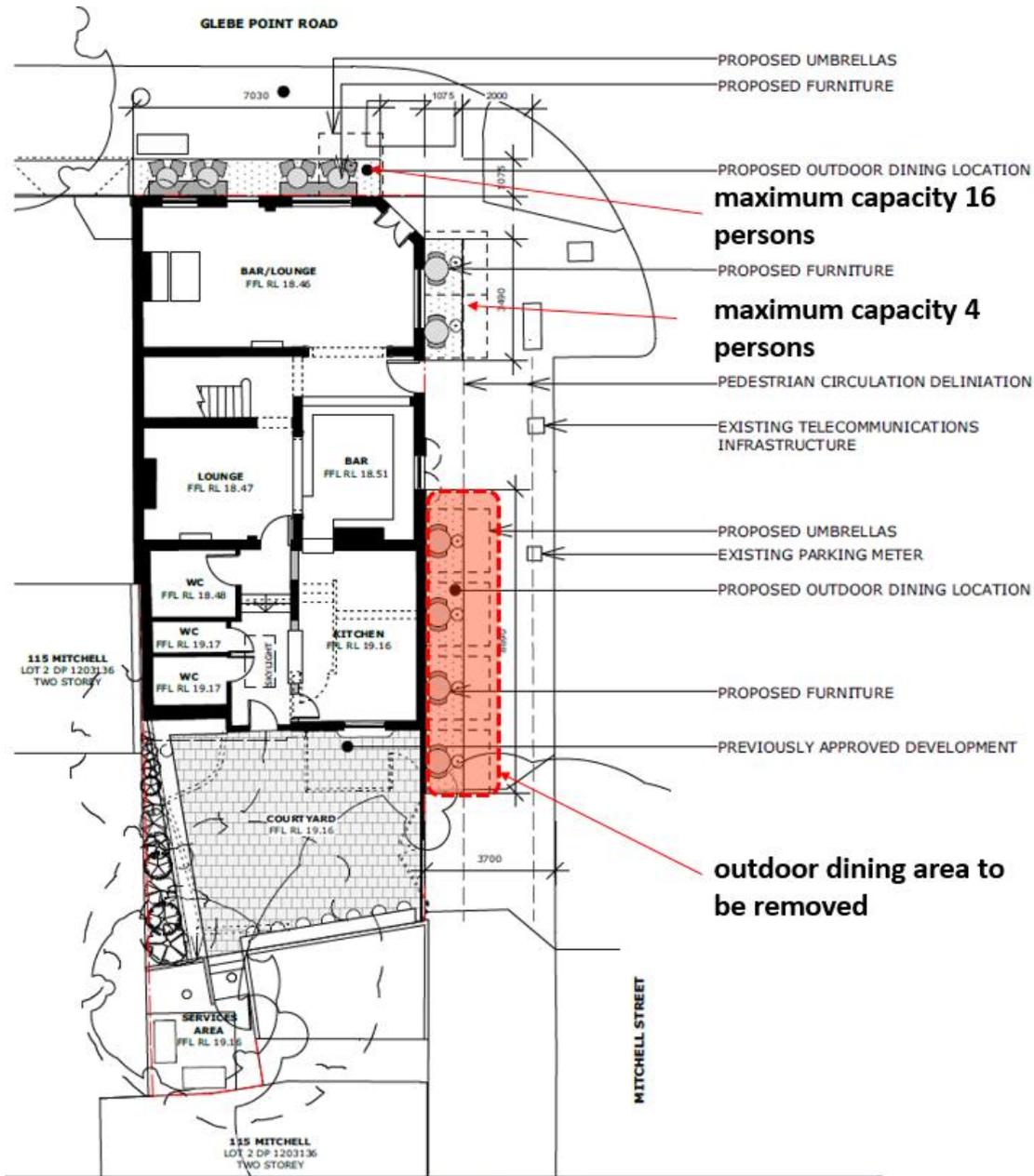


Figure 11: Recommended Reduction in outdoor dining area to accommodate a maximum of 20 patrons.

61. As stated above the operation of the outdoor dining area is recommended for a one year period. The hours of operation will be restricted to 8am to 9pm Mondays to Sundays. The conditions recommended within this application would be applied to the associated Footway Application. The provision of standard hours of operation for the outdoor dining area may be considered following a successful trial period.
62. The proposed dining areas are located immediately adjoining the building and do not impact on the building entries or public domain of adjoining properties.
63. The size of the recommended outdoor dining area on Mitchell Street is 3.75sqm with a width of 1.075m. A parking meter and utility node is located within Mitchell Street however the reduced location of the outdoor dining area achieves the required separation distance to these structures. A signage pole is located 3.0m from the building facade adjoining the reduced outdoor dining area. The width of the outdoor dining area being 1.075m means that around the signage pole a clear path of travel is reduced to 1.925m. The extended pathway around the splayed corner provides an acceptable area for pedestrians to stand without entering the roadway to navigate the outdoor dining area. A light pole and bicycle ring is also located within the splayed corner. The outdoor dining areas are located approximately 3.0m from this infrastructure.
64. The size of the outdoor dining area on Glebe Point Road is 7.5sqm with a minimum width of 1.075m along Glebe Point Road. A light pole and fixed garbage bin are located on Glebe Point Road adjoining the outdoor dining area. The path of travel is reduced where pedestrians are required to pass the light pole and the bin. Whilst this path of travel is reduced the splayed corner with the extended footpath area provides sufficient space for pedestrians to wait without entering the roadway. The proposed seating adjoins the building rather than the roadway thereby providing a clear and predictable path of travel for pedestrians.
65. To ensure the amenity of the neighbourhood and the orderly management of the proposed outdoor seating area a condition is recommended for the submitted Plan of Management (POM) be amended so that an area within the premises is nominated for the storage of the furniture from the footway seating area at the end of outdoor trading hours.
66. The outdoor dining furniture proposed includes tables, chairs, bench seating and three umbrellas consistent with the provisions under Section 5 of Council's Policy to not damage the footway or obstruct sightlines within the public domain. Specific conditions regarding the type of furniture will be address within conditions applied to the Outdoor Dining Application.

Access

67. It is recommended that disabled access be provided in accordance with the provisions of the DCP. An appropriate condition is recommended to ensure access. It is noted that the entries are level with the footpath alignment.

Other Impacts of the Development

68. The proposed development is capable of complying with the BCA.
69. 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

70. The proposal is of a nature in keeping with the overall function of the site. The premise is in a mixed use surrounding and amongst similar uses to that proposed.

Internal Referrals

71. The conditions of other sections of Council have been included in the proposed conditions.

The application was discussed with the Heritage; Environmental Health and Licenced Premises who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

72. The proposal was referred to the NSW Police (Leichardt Local Area Command), who stated they have no objection to the proposal subject to the imposition of a number of conditions including CCTV, capacity, security and closure of outdoor areas from 10pm and closure of the outdoor dining area at 9pm and removal of all furniture. These conditions are recommended to form part of the consent.

Notification, Advertising and Delegation (Submission(s) Received)

73. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 29 January 2019 and 20 February 2019.
74. 92 properties were notified of the application as shown below. As a result of this notification there were four submissions received and one petition with 23 signatures.

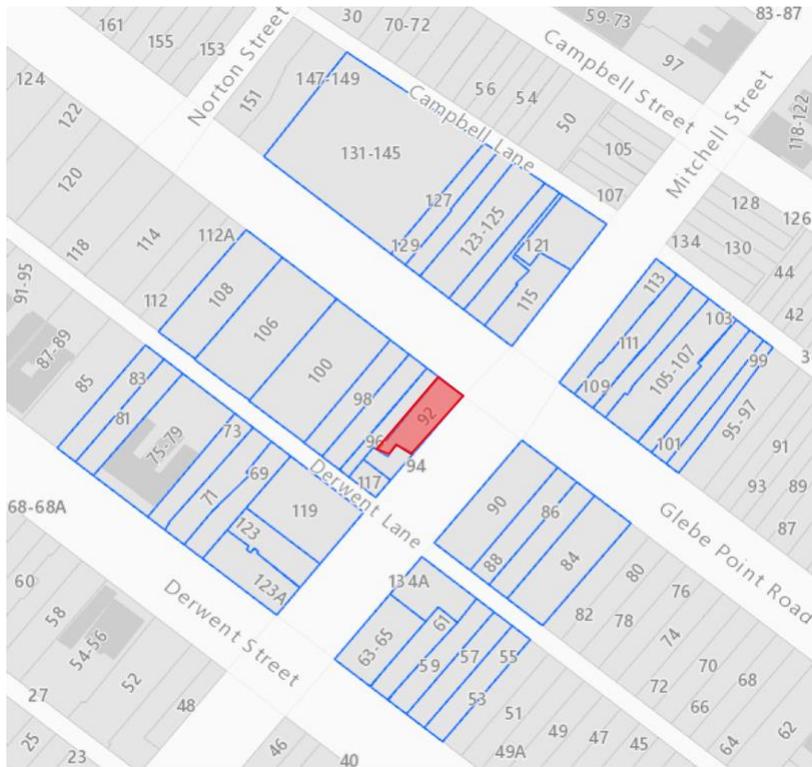


Figure 12: Map of properties notified of the application outlined in blue. The subject site marked in red.

- (a) The application is unclear about the proposed use.

Response - This assessment report and the notification has addressed the use being for purpose of a food and drink premises. Whilst the operator is not known the hours of operation, patron capacity and management requirements are clearly stipulated within this assessment report and Attachment A recommended conditions or consent.

- (b) Amenity Impacts - given the previous use and instances of amenity impacts and breaches to conditions of consent (e.g. hours of operation) concern is raised with proposed hours of operation especially the use of the courtyard and footway with unacceptable noise every night of the week. Given that almost 80% of the total of 120 patrons can be accommodated outdoors the hours should be reduced to respect the residents in Mitchell Street. Outdoor tables if approved should only be on Glebe Point Road due to the distinctive residential character of Mitchell Street. It does not appear that there has been any proper examination of the acoustic effects.

Response - This assessment report and recommended hours of operation for the courtyard and outdoor dining area has considered the previous operations and the DCP provisions resulting is base hours with a 1 year trial of extended hours. Good management practices need to be demonstrated for the trial hours to continue. To preserve the amenity of Mitchell Street the outdoor dining area has been reduced in scale and located closer to the intersection with Glebe Point Road.

Furthermore, the number of patrons recommended within the outdoor courtyard has been limited to 20 and the footway dining area reduced to 20 therefore a total of 40 patrons being 34% of the total number of patrons will be the maximum permitted at any one time within the outdoor areas.

- (c) No amplified music should be permitted in the outdoor areas (the courtyard and tables on street frontages). This requirement should be conditioned if the outdoor dining is supported.

Response - Conditions have been recommended regarding no amplified music to outdoor areas.

- (d) The toilet facilities and fire safety for the patron capacity of 120 persons is questionable.

Response - Conditions of consent have been recommended requiring compliance with the Building Code of Australia with respect to fire safety and the provision of sanitary facilities.

- (e) The application does not address where the rubbish will be kept and the issue of noise with empty bottles being put into bins etc. The previous DA they had approved had strict conditions for this and there seems to be no mention of any of this.

Response - conditions regarding the disposal of rubbish and noise from the removal of glass have been addressed in a similar fashion to the previous development application.

- (f) If they do obtain approval for outdoor dining and it closes at 9pm anyone would then fill up the courtyard until 10pm. They should both close at 8pm to avoid extra noise.

Response - The outdoor courtyard has a maximum capacity of 20 patrons. The outdoor dining area closes at 8pm and no access is permitted through the Mitchell Street gate directly into the courtyard, therefore any remaining patrons would need to move within the building or leave the premises. The trial till 10pm is for 1 year. If good management practices are not demonstrated the extended hours will not be supported.

- (g) The SEE incorrectly states that the courtyard adjoins a small vacant lot. This is not the case as the courtyard adjoins the ground floor outdoor area for the property at 115 Mitchell Street.

Response - A site inspection has been undertaken and the assessment has considered the current state of properties adjoining the subject site including the residential development at 115 Mitchell Street.

- (h) The outdoor dining area presents obstacles to foot traffic.

Response - The design and location of the outdoor dining areas has been considered appropriate with the DCP guidelines. The outdoor dining area has also been reduced in size.

- (i) An awning is not within the heritage footprint of the building and there is no evidence that fabric awnings existed on the building.

Response - The City's Heritage Specialist has considered the proposed awnings and supported their installation subject to specific conditions outlined in the Issues section of this report.

- (j) No doubt the outdoor seating if approved will become part of the licensed area of the premises. The proposed outdoor seating is situated within an alcohol free zone, given the amount of housing commission housing in the immediate vicinity of the shop premise, and would serve to be contrary to the well-meaning intentions of Council. That is of consuming alcohol along what is characterized as a residential street. Patron linger and even strict conditions gather to be antisocial.

Response - The footway area will be controlled and managed by the operator, and the ongoing approval of its use governed by their performance. The nominated outdoor dining area has been reduced in scale, closer to the intersection with Glebe Point Road. Conditions have been recommended to address the amenity of surrounding residential uses.

- (k) The combined effects of wining and dining on Mitchell St until 9pm and in the courtyard until 10pm for 50 patrons will be detrimental to the well-being of residents. The operation of both will be nightly seven days a week. How do we get the children ready for school, rise for a working day etc?

Response- the recommended conditions require the outdoor dining area on Mitchell Street to be reduced in scale and the maximum number of patrons in the outdoor area restricted. The hours of operation are only supported until 8pm. The impacts to neighbouring residential properties has been appropriately mitigated and trial hours of operation implemented in accordance with the Late Night Trading provisions of the Sydney DCP 2012.

- (l) There is no reference to music. Mitchell Street is very susceptible to noise. The total patron occupancy, the volume of patron noise together with music would be excessive. It impossible to sit outdoors. It would mean we have to lock doors and windows and install air conditioning. In any circumstance, amplified music should not be permitted in any outdoor area.

Response - The amenity impacts of the proposed development have been addressed in the Issues section with conditions recommended to mitigate impacts to residential receivers in line with the provisions of the relevant planning controls.

- (m) Patrons linger and even in strict conditions, gather in the lane to smoke and take other substances. This will be the situation over a significant part of the evening. A total of 120 is a lot of people to manoeuvre. Council appears to have watertight conditions for the operation of bars. The reality is these conditions are regularly breached and there is very little back up support for the residents.

Response - The conditions of any consent will need to be complied with during the operation of the premises. Any breach of these conditions would be a matter for the City's Compliance Unit which would investigate any reported incidents.

- (n) There is no commercial activity in Mitchell Street, it is residential. This has been overlooked in this DA and in the Late Night Trading applied by Council.

Response - The Late Night Trading provisions do acknowledge the need for the amenity of residential receivers to be considered in the assessment process and the application of extended hours of operation. Consideration has been given to measures mitigating amenity impacts such as noise. The assessment of this application has restricted the hours of operation, the number of patrons to occupy the outdoor areas, the extent of the footway dining along Mitchell Street and the use of amplified music all in consideration of the residential nature of Mitchell Street.

- (o) The greater number of outdoor dining seats are to be situated along Mitchell Street directly adjacent to residential terrace houses at 115 and 117 Mitchell Street, Glebe. Council has recognised the distinctive residential character of the street by approving this development and part of the desired character which Council supports and envisioned. To intensify trading along Mitchell Street is contrary to this established residential character. All outdoor seating should be restricted to the commercial strip of Glebe Point Road.

Response - The assessment report has considered the residential nature of Mitchell Street and recommended conditions with respect to the scale and functioning of the outdoor dining along Mitchell Street.

Public Interest

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

S7.11 Contribution

- 76. The development is not subject to a S7.11 development contribution as it is for development where contributions have previously been paid which is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution. A contribution is therefore not payable.

Relevant Legislation

- (a) The Environmental Planning and Assessment Act 1979.
- (b) The Roads Act 1993.
- (c) State Environmental Planning Policy 64- Advertising and Signage.
- (d) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- (e) Sydney Local Environmental Plan 2012.
- (f) Sydney Development Control Plan 2012.

Conclusion

77. The proposed development is generally consistent with the development standards and B2 Local Centre zone objectives and the desired future character by promoting the vibrant local centre along Glebe Point Road with an active ground floor and outdoor dining area.
78. The application is in the public interest and is recommended for approval subject to conditions addressing potential amenity impacts as a result of the use and occupation of the outdoor areas. Recommended conditions address a reduction in the capacity of the outdoor areas, a limiting of the hours of operation to maintain consistency with the DCP Late Night Trading provisions and a restriction on amplified music, use of CCTV surveillance and security.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Rene Hayes, Senior Planner