

**Item 9.****Development Application: 123 Pitt Street, Sydney – D/2018/1473****File No.:** D/2018/1473**Summary****Date of Submission:** 4 December, 2018.**Applicant:** Hemmes Trading Pty Limited**Owner:** City of Sydney Council.**Cost of Works:** \$7,000 (tables, heaters, umbrellas and chairs).**Zoning:** B8 Metropolitan Centre zone and the proposed use, defined as ancillary to a licensed small bar, is permissible with consent.**Proposal Summary:** Approval is sought for a 18.7sqm outdoor dining area associated with an approved small bar, Felix Bar, operating between 10.00am and 12.00 midnight, 7 days a week.

There are a number of similarly sized outdoor seating areas ancillary to restaurants and bars in Ash Street operating similar hours. The proposal is consistent with this established character and provides adequate pedestrian clearance subject to recommended conditions.

The application is reported to the Local Planning Panel as the proposal is located on a footway owned by the City of Sydney.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.**Development Controls:** Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended).

Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended).

**Attachments:**

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

## **Recommendation**

It is resolved that consent be granted to Development Application No. D/2018/1473 subject to the conditions set out in Attachment A to the subject report.

The application is recommended for approval for the following reasons:

- (A) The proposal is permissible with consent.
- (B) The proposal satisfies the relevant planning controls.
- (C) The proposal has acceptable heritage impacts.
- (D) The proposal is in the public interest subject to adherence of the conditions of consent.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by staff on 5 April 2019.
2. The site is located between Pitt and George Streets and is accessed via the Palings Lane/Ash Street/Angel Place laneway network. The area is predominantly commercial in nature, accommodating commercial office space, retail and hospitality uses. The nearest residential building to the site is approximately 105m to the west in Carrington Street which is separated by the buildings on either side of George Street.
3. The subject tenancy, known as shop 1, is located within the western portion of the building, which has frontages on Pitt Street, Angel Place and Ash Street and principally accommodates commercial office space. The tenancy is currently vacant and lies opposite the existing Ivy complex, and in particular the Ash Street Cellar.
4. A 18.7 sqm area Council's footway is proposed for outdoor dining adjacent and ancillary to the previously approved small bar (D/2018/973).
5. A concrete retaining wall with wall top planter and short stair case adjoins the site to the north. Three fire egress doors are positioned behind this wall. Two of these fire exits are for the building at 123 Pitt Street. The remaining fire exit serves 320 George Street.
6. Photos of the site and surrounds are provided below:



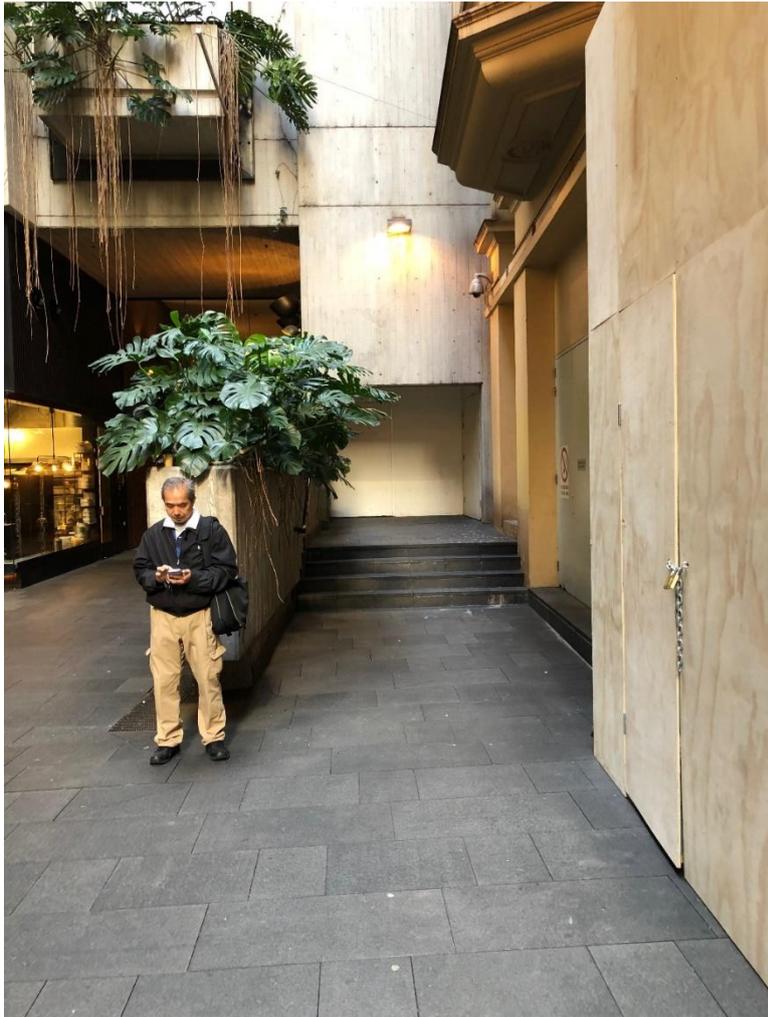
**Figure 1:** Aerial image of subject site and surrounding area.



**Figure 2:** Ash Street looking north.



**Figure 3:** Ash Street looking south with the proposed outdoor seating area in the foreground.



**Figure 4:** Looking north from proposed outdoor seating area. Two fire egress doors for 123 Pitt Street and one fire door for 320 George Street are located behind the concrete retaining wall and planter. All three fire egress doors open to Ash Street.

## Proposal

7. Approval is sought for the use of the public footway on Ash Street for outdoor seating comprising:
  - (a) 18.7sqm of public footway; and
  - (b) proposed hours of operations between 10.00am and 12.00 midnight, seven days a week;
8. The proposed outdoor seating area leaves a 2.3m wide clear path of pedestrian travel along Ash Street and clear path from the doorways to the north and the west of the subject premises.
9. Separate approval under section 125 of the Roads Act, 1993 for the continued use of the footway for outdoor dining is under concurrent assessment (FA/2018/223).
10. Plans of the proposed development are provided below.



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

14. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
15. 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.
16. 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.
17. The development is consistent with the controls contained with the deemed SEPP.

**Sydney LEP 2012**

18. The site is located within the B8 Metropolitan Centre zone. The proposed use is defined as ancillary to a small bar and is permissible.
19. The relevant matters under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

## Compliance Tables

Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	<p>Ash Street is a local heritage item (I1666) as it represents the Victorian subdivision pattern of the Tank Stream area. The facade of the former Angel House at 2-18 Ash Street forms a substantial portion of the eastern alignment of Ash Street and is of historical significance as a remnant of the Victorian development of the area. The facade has aesthetic significance as a good example of the flamboyant High Victorian period in a comparatively restrictive space.</p> <p>There are a number of outdoor seating areas associated with bars and restaurants of a similar scale in this precinct. The proposal is satisfactory from a heritage and urban design perspective.</p>
Division 4 Design excellence 6.21 Design Excellence	Yes	The proposed development satisfies the requirements of this provision subject to recommended conditions.

**Sydney DCP 2012**

20. The relevant matters for consideration under Sydney Development Control Plan 2012 for the proposed development are outlined below.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	The proposed outdoor dining aligns with existing outdoor dining along Ash Street and does not impede access to the public domain subject to recommended conditions. The proposal will activate the public domain and is acceptable subject to recommended operational management conditions.

3. General Provisions	Compliance	Comment
3.9 Heritage	Yes	Ash Street is identified as a local heritage item (I1666) and is significant for its ability to represent the Victorian subdivision pattern around the Tank Stream area. The proposed outdoor seating is satisfactory subject to recommended conditions.
3.12 Accessible Design	Yes	Ash Street is accessible and outdoor seating will not impede this accessibility subject to a condition recommending appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.14 Waste	Yes	A condition is recommended for compliance with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
3.15 Late Night Trading Management	Partial compliance	The subject premises is identified as a Category B premises located within the Late Night Management Area.  See further discussion under the heading titled 'Issues'.

## Issues

### Hours of Operation

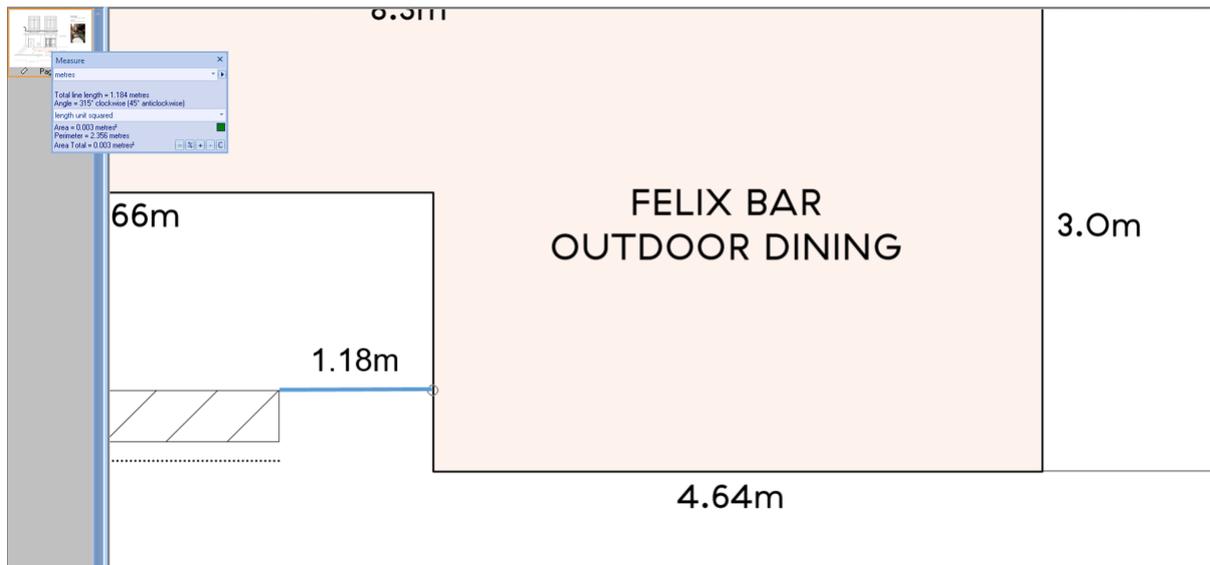
21. The outdoor dining area is ancillary to the approved Category B premises and is located within the Late Night Management Area.
22. The approved hours of operation for the bar under D/2018/973 are between 10.00am and 2.00am the following day Monday to Sunday, inclusive for indoor areas.
23. Approval is sought in the current application for use of the outdoor seating between 10.00am and 12.00 midnight, 7 days per week.
24. The recommended hours of a Category B premises within a Late Night Management Area as per the Sydney Development Control Plan 2012 are outlined in the following table:

Sydney DCP Recommended Trading Hours Cat B		
	Indoor Hours	Outdoor Hours
Base Hours	6am to 2am	7am to 10pm
Extended Hours	24 hours	7am to 1am

25. The proposed hours of operation of the outdoor seating until 12.00am for outdoor areas are outside of the recommended base hours and will be subject to a trial period.
26. An initial 12 month trial period is recommended for the extended hours to ensure the satisfactory management of the premises. The applicant is required to apply to Council to continue the extended trial period and will be subject to an assessment to ensure the premises is managed in accordance with the approved Plan of Management.
27. The application was discussed with Council's Licensed Premises team who conducted a review of the submitted Plan of Management and found it satisfactory subject to recommended conditions.

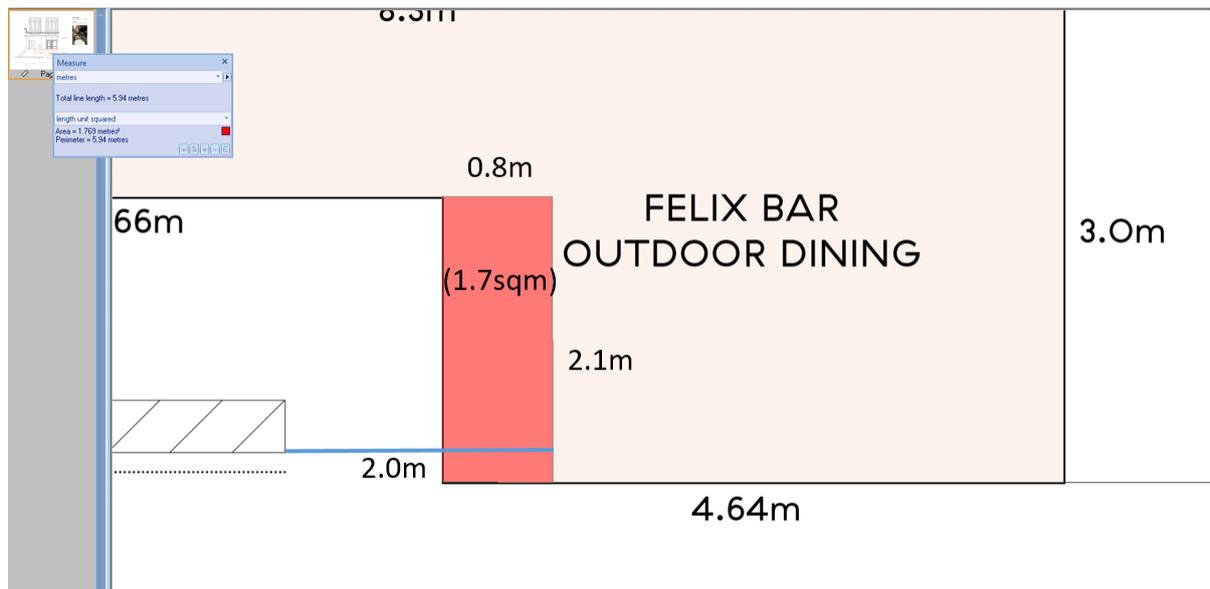
#### **Pedestrian Clearance**

28. The proposed footway dining area allows 2.3m of clearance for pedestrian circulation. Under nearby FA/2016/92, the footway dining area associated with a near-by food and drink premises on Ash Street known as Mercado was amended to ensure 2.75m of clearance between the outdoor dining area and the opposite restaurant. This was necessary due to excessive pedestrian traffic and queueing associated with the Ash street entrance to The Ivy.
29. In accordance with the Development Approval under D/2004/1759 (as amended), the queuing associated with The Ivy does not extend to the area adjacent to Felix Restaurant. As such, the clearance of 2.3m is acceptable to allow adequate pedestrian circulation for this section of Ash Street.
30. As identified above, the proposed outdoor dining area adjoins three fire escapes. Two are for 123 Pitt Street and the remaining one is for 320 George Street. The application makes some allowance for emergency egress from these buildings with a 1.18 metre pathway between the existing concrete retaining wall and the proposed outdoor dining area as shown in Figure 6. However a direct pathway to Ash Street is impeded by the concrete wall.



**Figure 6:** Applicant's 1.18 m corridor between the concrete retaining wall and proposed dining area for the three fire egress doors adjoining to the north to Ash Street.

- 31. The three nearby fire egress doors are for two adjoining high rise buildings. To acceptably reduce the risk of obstacles a 2.0 metre wide path of travel as shown in Figure 7 below is recommended by condition.



**Figure 7:** Recommended increase in pathway width to 2.0 metres between the concrete retaining wall and proposed dining area for the three fire egress doors adjoining to the north to Ash Street to improve safe access and circulation.

- 32. The recommended condition results in the reduction in the outdoor seating area by 1.7sqm. This reduction is on balance a reasonable compromise between the size of the outdoor dining area and a safe path of travel around a concrete retaining wall to Ash Street from existing fire doors in the event of an emergency.

### Food Service

33. Approval was granted in D/2018/973 for a small bar as defined in LEP 2012. A 'small bar' is defined as a type of 'food and drink premises', which is defined as a type of retail premises. The approved use includes a charcuterie / food preparation area. The use and its ancillary spaces such as the outdoor area must serve food in order to meet the defined and approved small bar use.

### Other Impacts of the Development

34. The proposed development is capable of complying with the BCA.
35. The proposal will have no significant detrimental environmental, social or economic impacts on the locality, subject to the imposition of appropriate conditions.

### Suitability of the site for the Development

36. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial surroundings and amongst similar uses to that proposed.

### Internal Referrals

37. The application was discussed with Council's Licensed Premises and Environmental Health Unit. They found the proposal acceptable subject to standard recommended conditions.
38. A review of the acoustic report submitted with the application confirms that the proposal is capable of complying with Council's noise requirements and it is not likely that the use will generate unacceptable noise impacts on surrounding uses.

### External Referrals

39. The application was referred to the Police. No response was received.

### Notification, Advertising and Delegation

40. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 14 days between 21 February 2019 and 8 March 2019. As a result of this notification a total of 919 properties were notified and there were no submissions received.

### Public Interest

41. The proposal will have no detrimental effect on the public interest, subject to appropriate recommended conditions.

### S61 Contribution

42. The cost of the development is under \$200,000. The development is therefore not subject to a levy under the Central Sydney Development Contributions Plan 2013.

**Conclusion**

43. Having regard to all of the above matters, the proposal for use of 18.7sqm of outdoor seating between 10:00am and 12:00 midnight, seven days per week associated with a small bar is acceptable.
44. The proposal generally satisfies the relevant strategy, objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012, and is recommended for approval subject to conditions as shown in the attached Decision Notice including a condition limiting the outdoor seating times for a trial period and reducing the size of the area by 1.7sqm to ensure safer emergency pedestrian egress from adjoining buildings.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Stan Fitzroy-Mendis, Area Coordinator