

Item 3.**Development Application: 52 Waterloo St, Surry Hills - D/2021/242****File No.:** D/2021/242**Summary**

Date of Submission:	17 March 2021
Applicant:	Con Haralambis
Architect/Designer:	Candalepas Associates
Owner:	Con and Antonia Haralambis
Planning Consultant:	SJB Planning
Heritage Consultant:	GBA Heritage Consultants
Cost of Works:	\$141,900.00
Zoning:	B4 - Mixed Use Zone, proposal permitted with consent
Proposal Summary:	Alterations and additions to an existing restaurant (tenancy G07) including a new seating enclosure within the approved outdoor dining area and the installation of an indoor pizza oven. The application seeks to exceed the floor space ratio development standard by more than 10 per cent and is therefore referred to the Local Planning Panel for determination.
Summary Recommendation:	The development application is recommended for approval, subject to conditions.
Development Controls:	(i) Sydney Local Environmental Plan 2012 (ii) Sydney Development Control Plan 2012
Attachments:	A. Recommended Conditions of Consent B. Selected Drawings C. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that:

- (A) the variation requested to clause 4.4 'Floor space ratio' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld in this instance; and
- (B) consent be granted to Development Application No. D/2021/242 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 proposal is consistent with the objectives of the B4 Mixed Use Zone.
- (B) The proposal generally satisfies the relevant controls relating to food and drink premises.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012;
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the floor space ratio development standard.
 - (iii) The proposal is considered to address the design excellence provisions at Clause 6.21(4) of SLEP 2012 in that it is to be comprised of contemporary materials and detailing that are consistent with the existing building and maintains a high degree of architectural design quality appropriate to the surrounding locality and streetscape.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 11, DP 1149697, known as 52 Waterloo Street, Surry Hills. It is irregular in shape with an area of approximately 1,672sqm. It has a primary street frontage of 36.5m to Waterloo Street and a 52m frontage to Adelaide Street. The site is located close at the intersection of Waterloo and Adelaide Street. The topography has a slight fall from east to west.
2. The site contains a four to five storey mixed use building with ground floor retail commercial lots (G01 to G09) and 52 residential apartments at the upper floors. Three of the ground level tenancies are currently occupied by Orto Trading Co. (G07), Mark and Vinny's Spaghetti and Spritz (G08), and Izakaya Fujiyama (G09). The building facade is composed of glazed bi-fold doors and off-form concrete finishes. Outdoor seating is provided at ground level along both Waterloo Street and Adelaide Street. The subject Development Application (DA) relates exclusively to Tenancy G07.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial and residential. The locally listed heritage item I1488 known as the former "Readers Digest" building is located opposite the site to the north on Adelaide Street. To the south is located the locally listed heritage item I1518 former Clarendon Hotel, now known as the Dove and Olive. To the west is located a row of two storey Victorian terrace dwellings and to the east is a 5 storey mixed use development with a ground floor showroom and residential units above.
4. The site is not a heritage item but is located within the Little Riley Street heritage conservation area C65. The site is identified as a neutral building.
5. The site is located within the Surry Hills Central locality and is not identified as being subject to flooding.
6. A site visit was carried out on 13 May 2021. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: View of existing outdoor seating area at intersection of Adelaide St and Waterloo St



Figure 3: Site viewed from opposite side of Waterloo Street looking south



Figure 4: View of north elevation of existing ground floor outdoor area



Figure 5: View of site in an east direction on Adelaide Street



Figure 6: view of site in a west direction on Adelaide Street



Figure 7: Reader's Digest building to north of site on Waterloo Street



Figure 8: View south on Waterloo Street

History Relevant to the Development Application

Appeal

7. The proposal is subject to a Class 1 appeal against the deemed refusal (non-determination) of the application.

Development Applications

8. The following applications are relevant to the current proposal:
 - **D/2006/1083** - A stage 2 consent was approved on the 28 May 2007 for the demolition of the existing building and construction of a part 5 and part 6 level mixed use building with 9 commercial units at ground level and 54 residential units on the upper floors and 62 car parking spaces in 3 levels of basement.
 - The Development Consent has subsequently been modified (modifications A-G), however, the modifications are not relevant to the application that is the subject of this report.
 - **D/2010/1716** – Development consent was granted on 1 December 2011 for the fitout and use of tenancies G07, G08 and G09 fronting Adelaide and Waterloo Streets as licensed cafes/restaurants.
 - **D/2010/1716/A** - Modification of development consent was granted on 28 May 2012 to amend Condition 2 (Hours of Operation) to extend the trial hours for a further two years and divide the different tenancies into separate conditions.
 - **D/2010/1716/B** - Modification of development consent was granted on 13 June 2013 to amend Conditions 2A, 2B and 2C (Hours of Operation) regarding the extended hours of operation on a further trial period for each tenancy.
 - **D/2010/1716/C** - Modification of development consent was granted on 11 August 2015 to amend condition 2A, 2B and 2C to continue the extended trial trading hours.
 - **D/2010/1716/D** - Modification of development consent was granted on 11 August 2020 to amend condition 2A, 2B and 2C to continue the extended trial trading hours.
 - **D/2012/278** – Development consent was granted on 28 February 2012 for the partial enclosure of the outdoor area fronting Adelaide Street associated with retail tenancy G07 Orto Restaurant. The consent was not implemented and lapsed in 2017. The consent granted approval for the enclosure of the same area as that proposed in the current application.

Compliance Action

9. The site is not subject to current compliance action.

Proposed Development

10. The application seeks consent for the following:

- The partial enclosure of the existing outdoor seating area fronting Adelaide Street.
- The proposed new seating enclosure would include bi-fold doors to the Waterloo Street facade, pre-finished zinc cladding and sliding glazed windows to Adelaide Street facade and a solid metal roof with operable glazed skylights.
- The proposal includes a change of operator from the existing Orto restaurant to Mark and Vinny's restaurant who are relocating from the adjacent tenancy G08. The application also includes the installation of a new pizza oven within the existing restaurant G07.
- It is not proposed to change the approved indoor/outdoor hours and patron capacity of the existing restaurant as approved under the operational consent D/2010/1716 with the latest modification approved on 11 August 2020 under modification application D/2010/1716/D.
- Application D/2010/1716/D which was approved on the 11 August 2020 includes operational conditions for all three existing tenancies - G07, G08 and G09. The current application relates to tenancy G07 only. Consequently, the operational conditions of consent of D/2010/1716/D applicable to retail unit G07 shall continue to apply together with the conditions for the proposed new seating enclosure.

11. Plans and elevations of the proposed development are provided below.

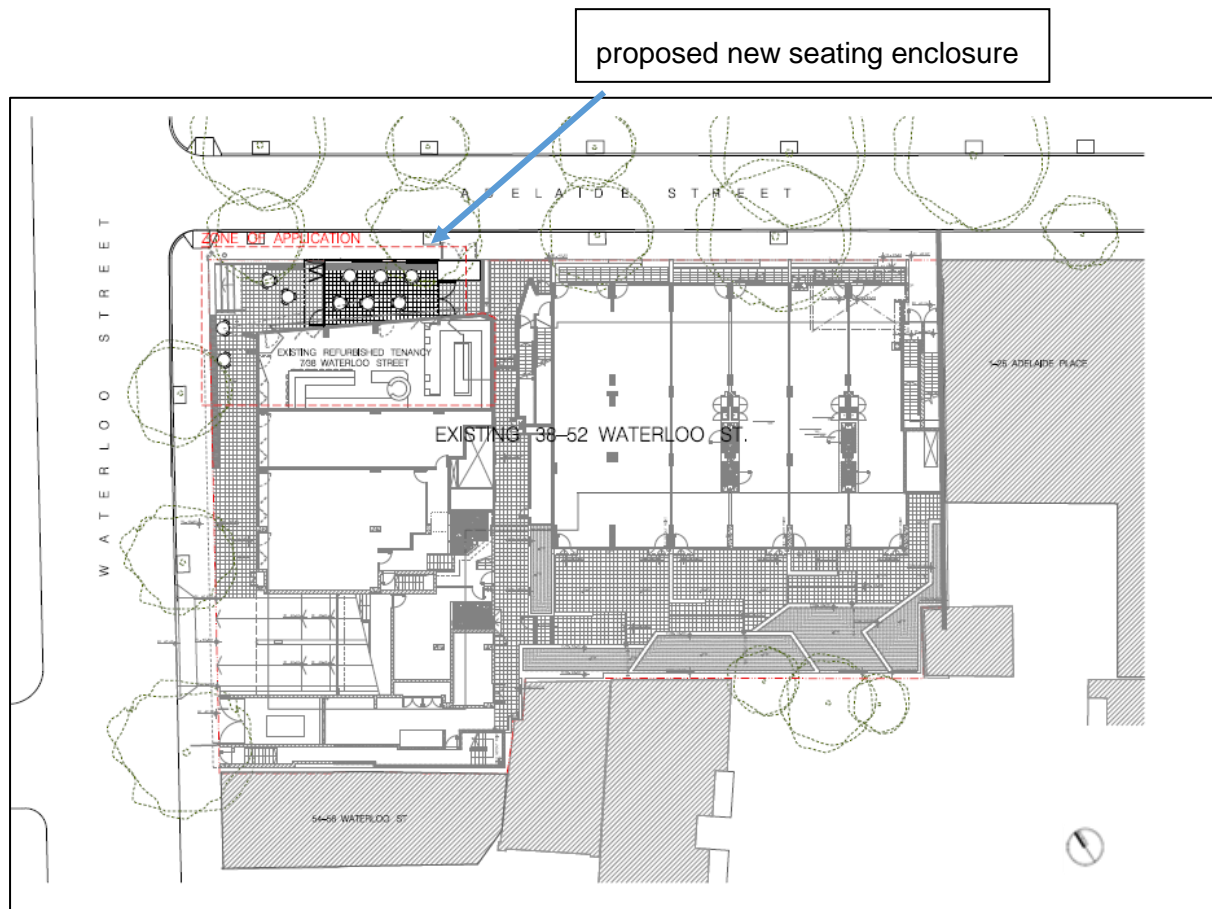


Figure 9: Proposed site and floor plan with application site outlined in red

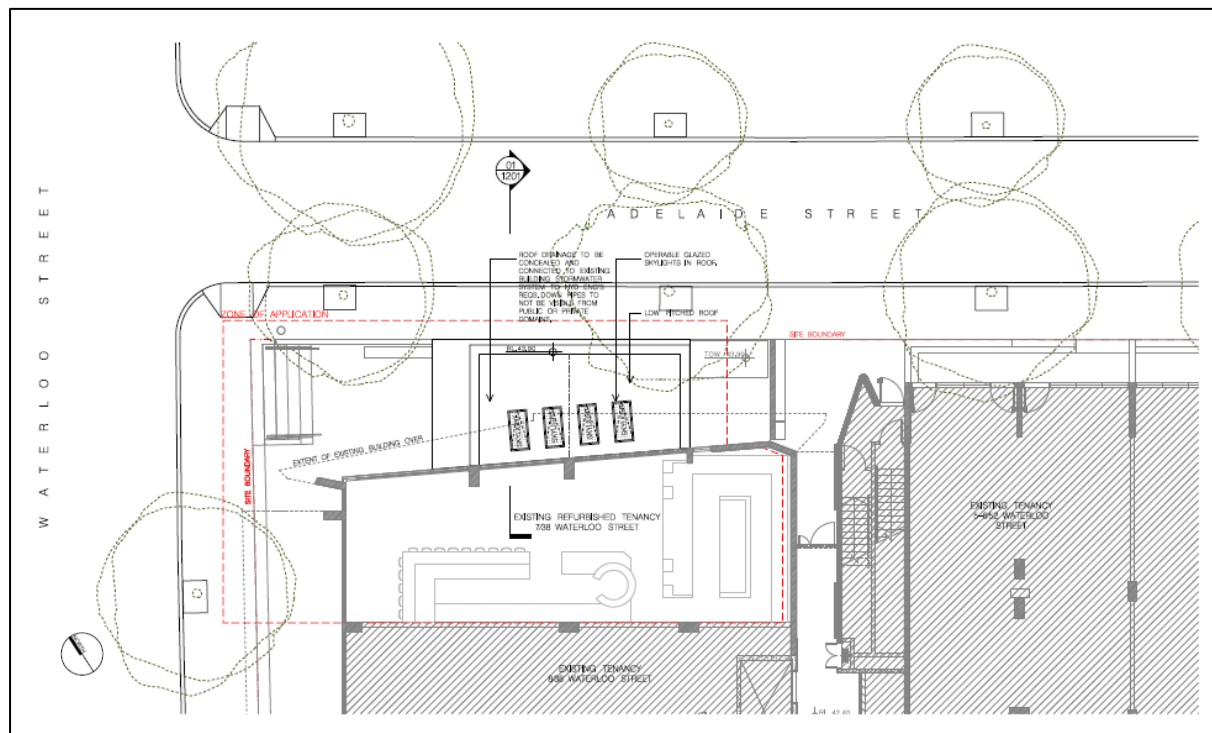


Figure 10: Proposed roof plan



Figure 11: Proposed west elevation to Waterloo Street with enclosure outlined in red

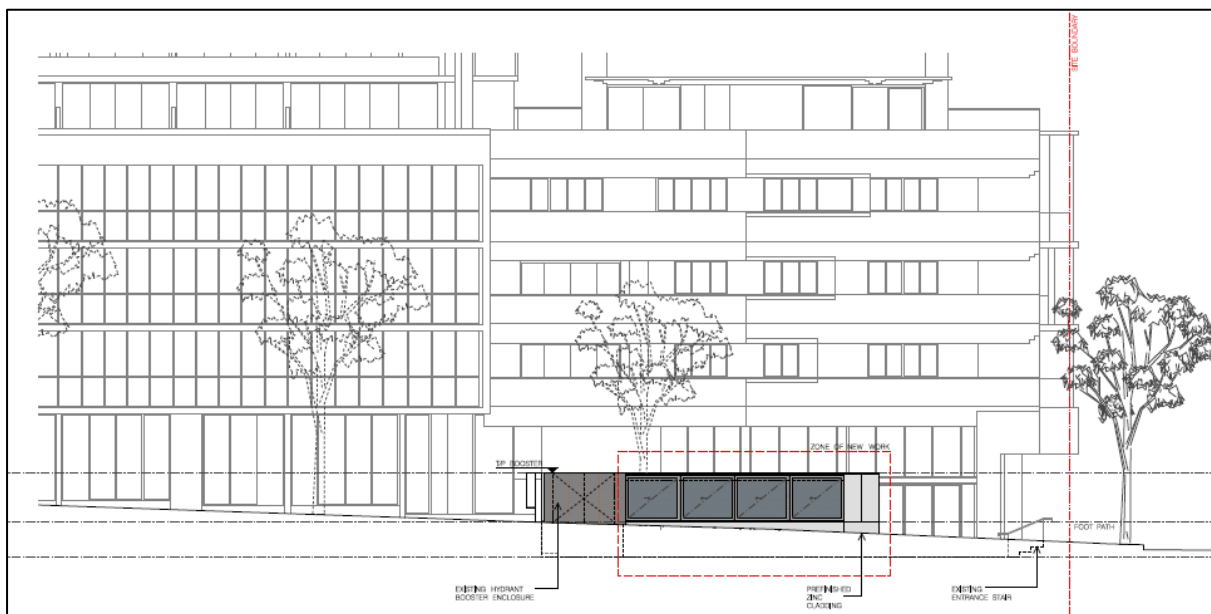


Figure 12: Proposed north elevation to Adelaide Street

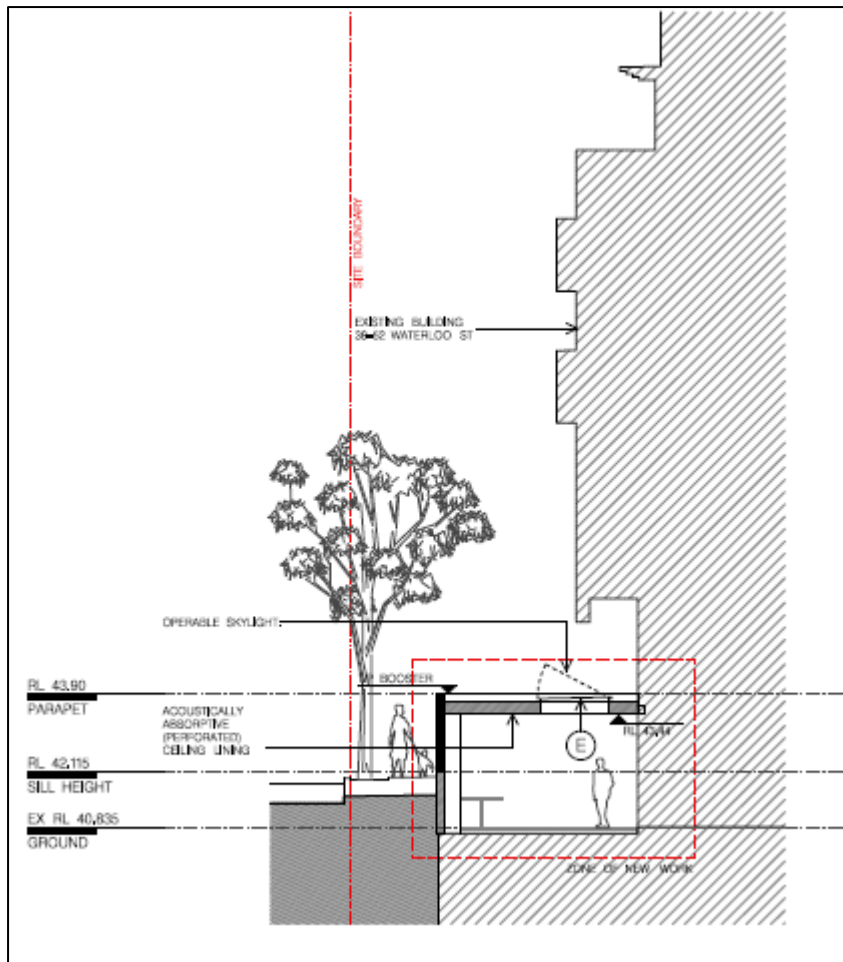


Figure 13: Proposed short section

Assessment

12. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

13. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
14. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 within the deemed SEPP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

15. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use zone. The proposed development is associated with an existing food and drink premises and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 15m is permitted. The proposal is at ground floor level only and will not increase the height of the existing building.
4.4 Floor space ratio	No	A maximum floor space ratio of 2.5:1 is permitted. A floor space ratio of 3.05:1 is proposed. The existing building already exceeds the floor space ratio control. A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.
4.6 Exceptions to development standards	No	The proposed development seeks to vary the development standard prescribed under Clause 4.4. A Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not a heritage item.</p> <p>The site is located within the Little Riley Street Heritage Conservation Area (C65) and is identified as a neutral item. A Heritage Impact Statement has been submitted with the application. The proposed new seating enclosure will not have a detrimental impact on the conservation area or nearby heritage items including the Readers Digest building opposite the site. The proposed development has been reviewed and is supported by the Council's Heritage Specialist.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
Other land uses	Yes	<p>The proposed development does not include the provision of additional parking or lead to an intensification of the site.</p>

Development Control Plans**Sydney Development Control Plan 2012**

16. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

17. The site is located within the Surry Hills Central locality. The proposed development is in keeping with the unique character and the design principles of the locality in that the development responds to and complements existing heritage items including streetscapes and lanes and responds to the mixed-use character of the area. In addition, the proposal supports the commercial precinct around Waterloo Street between Kippax and Devonshire Streets, defined by remnant commercial warehouses, and landmarks such as the Reader's Digest building.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	The proposed development is contained within the boundaries of the site and does not include works within the public domain. Appropriate conditions are recommended to ensure there is no encroachment of adjoining properties.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.9 Heritage	Yes	The site is not a heritage item. The site is located within the Little Riley Street Heritage Conservation Area (C65) and is identified as a neutral building. A Heritage Impact Statement has been submitted which details that the proposed new seating enclosure would not have a detrimental impact on the conservation area together with the surrounding heritage items including the Readers Digest building opposite the site. The proposed development is supported by the Council's Heritage Specialist.
3.14 Waste	Yes	A condition is recommended by the Council's Health unit to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	The premises is not located within a late night trading area and the use is defined as a category B premises.

Provision	Compliance	Comment
		<p>Indoor base trading hours are permitted between 7am-10pm with extended hours permitted until 12 midnight.</p> <p>Outdoor trading hours are permitted between 7am-8pm with extended hours permitted between 8-10pm.</p> <p>The proposed trading hours of the new seating enclosure are between 8.00am to 10.00pm.</p> <p>In accordance with the recommendations included within the Acoustic Report prepared by Koikas Acoustics, the enclosed outdoor dining area will operate in 'open mode' (i.e. bi-fold doors, windows, and skylights open) until 9pm. The enclosed area will operate in 'closed mode' (i.e. bi-fold doors and sliding windows closed) from 9pm to 10pm. Additionally, the internal bi-fold doors to the main restaurant will be 75 per cent closed from 9pm to 10pm.</p> <p>The proposed trading hours and patron capacity (112 indoors/30 external) is retained as approved under D/2010/1716/D. The patron capacity of the new seating enclosure would be restricted to a maximum of 18 persons at any one time.</p> <p>The proposed hours are supported by the Council's Licensing Unit subject to the Plan of Management dated March 2021 for the proposed new seating enclosure. The Plan of Management approved for the operational consent D/2010/1716/D of the restaurant dated 18 August 2020 would continue to apply.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	The site is permitted a maximum building height of 4 storeys The proposal would not increase the height of the existing building.
4.2.2 Building setbacks	Yes	There are no setbacks applicable to the application site. See further details in the 'Design' section below.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The proposed ground floor enclosure would not lead to overshadowing of surrounding sites.
4.2.3.10 Outlook	Yes	The proposed ground floor enclosure is surrounded by significantly larger buildings and consequently would not adversely affect outlook.
4.2.3.11 Acoustic privacy	Yes	The partial enclosure of the existing outdoor seating area would reduce the level of noise/disturbance associated with the existing outdoor area. An acoustic report has been submitted which contains noise mitigation measures and is supported by the City's Health Unit.

Provision	Compliance	Comment
		In accordance with the recommendations included within the Acoustic Report prepared by Koikas Acoustics, the enclosed outdoor dining area will operate in 'open mode' (i.e. bi-fold doors, windows, and skylights open) until 9pm. The enclosed area will operate in 'closed mode' (i.e. bi-fold doors and sliding windows closed) from 9pm to 10pm. See further details in the 'Discussion' section below.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.

Discussion

Clause 4.6 Request to Vary a Development Standard

18. The site is subject to a maximum floor space ratio (FSR) control of 2.5:1. The development resulting from the proposed enclosure of part of the existing outdoor seating area will have a FSR of 3.05:1
19. The existing building has a gross floor area (GFA) of 5,064.1sqm and a FSR of 3.03:1, which equates to a variation of 21.29 per cent.
20. The proposal involves a minor addition of 36sqm of GFA resulting in a new FSR of 3.05:1 and a total variation of 22 per cent to the FSR development standard.
21. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard.
 - (c) The proposed development will be consistent with the objectives of the zone.
 - (d) The proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

22. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) the development is consistent with the standard and zone objectives, even with the proposed variation: Yes, the proposal remains consistent with the objectives of the FSR standard in that despite the non-compliance, the proposal does not involve any change to the existing retail use and ensures the use and viability of the existing restaurant
 - (ii) there are no additional significant adverse impacts arising from the proposed non-compliance: Yes, the proposal does not include a change to the existing operating hours of the restaurant or an increase in patron numbers. Consequently, the proposal will not lead to an intensification of the site. The proposed partial enclosure of the existing outdoor seating area together with the minor nature of the enclosure will not significantly affect the existing building form; and
 - (iii) important planning goals are achieved by the approval of the variation. Yes, the minor nature of the proposal would not harm the visual amenities of the area. In addition, the proposed new seating area would enclose part of the existing outdoor which would lessen the level of noise and consequently would not have an adverse impact on residential amenities.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The existing building on the site has a GFA of 5,064.1 sqm and resultant FSR of 3.03:1, which exceeds the FSR standard by 21.2 per cent (as approved under DA/2006/1083/G).
 - (ii) The proposed increase to GFA of 36 sqm is a direct result of the proposed alterations and additions to an area that was previously excluded from GFA (i.e. outdoor dining area).
 - (iii) The proposed new structure is a minor addition to the site and is consistent with the bulk and scale of the existing building. The single storey structure is in part nestled below the street level and is similar in height and scale to the existing hydrant booster enclosure located adjacent to the proposed works.
 - (iv) The proposed structure includes a flat roof and will appear 'sunken' when viewed from Adelaide Street (to the north) and Waterloo Street (to the north-west) due to the significantly lower finished floor level of the existing outdoor dining area compared to the level of the Adelaide Street footpath. Further, the proposed materials provide a high level of transparency to the structure, which will minimise its perceived bulk.

- (v) The external materials and finishes (i.e. glazed bi-fold doors, aluminium framing, sliding glazed windows, prefinished zinc cladding, and metal finishes) of the proposed structure are consistent with that of the existing building and are sympathetic to the architectural design and character of the locality;
 - (vi) Noting that no change is proposed to the operating hours or patron capacity of Tenancy G07, the proposal will not result in any intensification of uses at the site or any change to existing traffic and parking arrangements.
 - (vii) The proposal maintains the significance of the Little Riley Street Heritage Conservation Area. The proposed works involve minor alterations to an existing contemporary building and will have no adverse impact on the fabric, setting, or view corridors of nearby Heritage Items.
 - (viii) Noting the minor scale of proposed works, the proposal does not give rise to any significant adverse amenity impacts to surrounding commercial and residential properties with regard to overshadowing, visual and acoustic privacy, bulk and scale, or view loss.
 - (ix) The proposed development is similar to the development approved under D/2012/278 for an enclosure to part of the outdoor dining area of Tenancy G07 (i.e. the same structure in the same location), but which was not constructed. Specifically, the resultant GFA of the proposal is commensurate with the GFA as approved under DA/2012/278; and
 - (x) The proposed development is consistent with the existing and desired scale, design, and character of surrounding development and the streetscape.
- (c) The proposed development will be consistent with the objectives of the zone:
- (i) The site is located in the B4 Mixed use zone. The objectives of this zone are:
 - to provide a mixture of compatible land uses.
 - to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling; and
 - to ensure uses support the viability of centres.
 - (ii) The proposal is consistent with the objectives of the zone.
- (d) The proposed development will be consistent with the objectives of the standard in that the proposal seeks to improve the amenity of the outdoor dining area of an existing restaurant in terms of climate control, weather protection and noise mitigation. This will assist in the ongoing economic success of the restaurant, which in turn, will support the viability of the wider Surry Hills mixed use centre.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

23. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

24. The applicant has correctly referred to the test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Specifically, the applicant has satisfactorily demonstrated that the proposal meets the objectives of the development standard, notwithstanding the non-compliance with the standard.

Does the written request adequately address those issues at clause 4.6(3)(b)?

25. The applicant has adequately demonstrated that there are sufficient environmental planning grounds that justify contravention of the floor space ratio development standard. In this instance, the proposal generally complies with other LEP and DCP controls relating to the bulk and scale of the site and does not result in adverse visual privacy, acoustic privacy or overshadowing impacts to neighbouring properties. In addition, there is no intensification in density, as the structure facilitates part of the existing patron capacity to be accommodated indoors.

Is the development in the public interest?

26. With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied.
27. The development is consistent with the objectives of the floor space ratio development standard. The development reflects the desired character of the locality and the proposal has been designed to minimise adverse impacts on surrounding amenity. In addition, the proposal is consistent with the objectives of the B4 Mixed Use zone which are:
- to provide a mixture of compatible land uses: The proposal does not include a change to the approved retail use;
 - to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling: The proposal does not involve a change to the existing use which is in close proximity to public transport links;

- ensures uses support the viability of centres: The partial enclosure of the existing outdoor area includes a minor addition to GFA of 36sq and does not include a change to the existing operating hours of the restaurant or an increase in patron numbers. Consequently, the proposal will not lead to an intensification of the site and therefore will have no impact on the viability of nearby centres.

Conclusion

28. For the reasons provided above the requested variation to the floor space ratio standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the floor space ratio development standard and the B4 Mixed Use zone.

Design

29. The proposal has been reviewed by the Heritage and Urban Design Specialists Panel and is supported for the following reasons:
- The proposed new structure is a minor addition and is consistent with the bulk and scale of the existing building and similar in bulk to the existing hydrant enclosure. Although the proposed structure projects slightly from the existing north elevation, there is no established setback prescribed for the area and the projection is relatively minor within its setting and would not be harmful to the character of the area or the appearance of the building.
 - The proposed structure includes a flat roof and will appear 'sunken' when viewed from Adelaide Street (to the north) and Waterloo Street (to the north-west) due to the significantly lower finished floor level of the existing outdoor dining area compared to the level of the Adelaide Street footpath. In addition, the proposed materials provide a high level of transparency to the structure, which will minimise its perceived bulk.
 - The external materials and finishes (i.e. glazed bi-fold doors, aluminium framing, sliding glazed windows, prefinished zinc cladding, and metal finishes) of the proposed structure are consistent with that of the existing building on the site and are sympathetic to the architectural design and character of the locality.
 - the structure will have no environmental impacts by way of overshadowing, privacy, view loss or loss of vegetation/landscaping.
 - the structure has been designed with materials to complement the existing building.
 - the proposal will not have a detrimental impact on surrounding heritage buildings including the Readers Digest building opposite.
 - Council's Heritage and Urban Design Specialist recommended conditions of consent, including full details of drainage to be provided prior to the issue of a Construction Certificate. These are included in the recommended conditions of consent.

- In addition, although assessed under the South Sydney LEP 1998 (with draft Sydney LEP 2012 being a matter for consideration), a very similar enclosure in terms of design, bulk and massing was approved in 2012 under application D/2012/278. The consent was not acted upon and lapsed in 2017.

Noise/Impact on Amenity

30. The proposed partial enclosure of the outdoor seating will help reduce the level of noise and disturbance as noise would be contained within the structure. An acoustic report has been submitted which includes a range of noise mitigation measures including the closure of windows and doors of the new seating area between 9pm and 10pm, the laminated glazing to be a minimum of 6.38mm thick with acoustic seals and the installation of acoustic panels below the ceiling. The report has been reviewed and is supported by the Council's Health Specialist subject to conditions.

Hours of Operation

31. The premises is not located within a late night trading area and the use is defined as a category B premises. Indoor trading hours are permitted between 7.00am to 10.00pm base hours with an extension to midnight. Outdoor trading hours are permitted between 7.00am to 8.00pm with extended hours permitted between 8.00pm to 10.00pm.
32. The proposed trading hours of the new seating enclosure are between 8.00am to 10.00pm Monday to Sundays which comply with the permissible base indoor hours and are within the approved "outdoor" trading hours of the restaurant approved under D/2010/1716/D.
33. The proposed trading hours and patron capacity (142) is retained as approved under D/2010/1716/D. The patron capacity of the new seating enclosure would be restricted to a maximum of 18 persons at any one time. The proposed hours are supported by the Council's Licensing Unit subject to conditions.
34. The Health and Building unit have requested a condition be applied requesting additional mechanical ventilation requirements for the proposed pizza oven as no details have been provided with the application. The condition requires that details of the proposed system be submitted to and approved in writing prior to the issue of a Construction Certificate.

Consultation

Internal Referrals

35. The application was discussed with Council's Building Services Unit; Environmental Health Unit, Licensed Premises Unit and Heritage and Urban Design Unit who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

Advertising and Notification

36. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 22 March 2021 and 6 April 2021. A total of 181 properties were notified and one submission was received.

37. The submission raised the following issues:

Issue: The approved DA should make it clear that the current/prior conditions of operation still apply whereby the existing bifold doors and windows be closed to the outdoor structure by 10pm as is currently required. Regular communication with all units of 38-52 Waterloo Street should be maintained and not just individual units.

Response: The proposed new seating area is only intended to operate between 8.00am to 10.00pm consistent with the existing approved hours of operation for the outdoor area.

The submitted Plan of Management, which is required to be complied with under the recommended conditions of consent, requires regular communication (every 2 months at a minimum) with the nearest affected residential property above the restaurant, together with residential properties opposite the restaurant on Waterloo Street. This is considered sufficient to allow Council to monitor the operation of the premises. In addition, the proposal does not increase the patron numbers for the restaurant and subsequently would not intensify the use of the site. Furthermore, conditions of consent require the bi-fold door and windows to be closed by 9pm which is consistent with the submitted acoustic report which includes a range of additional noise mitigation measures including:

- 6.38mm laminated glass with acoustic seals on all glazed windows and doors
- Windows and doors of the new seating enclosure to be closed between 9pm to 10pm
- Insulated roof framing

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

38. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

Contribution	Total
Open space	\$2,273.40
Community facilities	\$2,142.10
Traffic and transport	\$356.39
Stormwater and drainage	\$0.00
	\$4,771.89

39. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Relevant Legislation

40. Environmental Planning and Assessment Act 1979.

Conclusion

41. It is considered that the proposed enclosure of the existing outdoor seating area fronting Adelaide Street is modest in terms of its bulk and scale, and, being situated within an existing outdoor dining area the floor level for which is below street level, the proposal will have no environmental impacts by way of overshadowing, privacy, view loss or loss of vegetation/landscaping.
42. The structure has been designed with materials to complement the existing building and the Council's Urban Designers consider the new structure to be acceptable from a streetscape point of view.
43. The structure will result in no additional seating / patron capacity and as such will not lead to an intensification of use of the site. It will also result in reduced noise impacts from the restaurant.
44. The proposed development will not result in any adverse heritage impacts.
45. The application is recommended for approval subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Derek Smyth, Planner