

DEVELOPMENT APPLICATION ASSESSMENT

Application No: D/2013/1816

Date of Lodgement 25-Nov-2013

Applicant RIVERDALE SQUARE PTY LTD

Application Site: 12-16 CHALLIS AVENUE, POTTS POINT

Proposal: Use of the footway on Challis Avenue adjacent to Fratelli Paradiso for the following:

- 14 chairs and 9 tables;
- 2 gas heaters and 2 barriers; and
- Operating hours of between 7:00am and 11:00pm Monday to Saturday and 7:00am to 10:00pm Sunday.

Concurrent footway application FA/2013/379.

SITE AND SURROUNDING DEVELOPMENT

The site has a single street frontage to Challis Avenue. It is occupied by a 5 storey mixed use building. The subject restaurant 'Fratelli Paradiso' occupies the ground floor with residential units above.

Surrounding land uses are residential and commercial, including several other cafes and restaurants on Challis Avenue.

The subject site is located within a heritage conservation area and in the vicinity of a number of heritage items.

A site visit was carried out on 24 January 2014. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: The subject footway area as viewed from Challis Avenue looking west.



Figure 3: The subject footway area looking east along Challis Avenue.

PROPOSAL

The application seeks consent for use of the footway on Challis Avenue adjacent to 'Fratelli Paradiso' for the following:

- 14 chairs and 9 tables;
- 2 gas heaters and 2 barriers; and
- Operating hours of between 7:00am and 11:00pm Monday to Saturday and 7:00am to 10:00pm Sunday.

The proposed operating hours are consistent with the approved indoor hours of operation.

A concurrent Footway Application FA/2013/379 for the proposed outdoor seating has been lodged with Council.

HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

Development Applications

On 15 January 2001, U00-1071 was granted for the ground floor fit out of a shop including a deli, fruit and vegetable sales, bakery, café and restaurant. The hours of operation permitted were between 6:00am and 12:00 midnight daily.

D/2012/1732 for a new shopfront at the premise was approved by Council on 1 December 2012.

Footway Applications

On 19 July 2011, Council granted approval for FA/2011/65 providing 14 chairs, 6 tables and barriers in an area of 10.6sqm with hours between 7.00am and 10.00pm daily.

On 12 December 2011, Council refused FA/2011/287 for a footway licence at the premise providing 22 chairs, 11 tables, 3 heaters and barriers. The proposed hours were between 7.00am and 10.00pm every day. The application was refused on the grounds that the footway dining will impede pedestrian use of the footpath, and the hours were excessive with regard to the recommended hours of the then Late Night Trading Premises DCP.

On 21 May 2013, Council granted approval for FA/2013/104 allowing 8 tables and 12 chairs in an area of 10.6sqm with hours between 7:00am and 10:00pm daily. This is a two year licence which expires on 21 May 2015.

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

(a) Environmental Planning Instruments and DCPs.

Sydney LEP 2012

The site is located within the B4 Mixed Use zone. Schedule 2 Exempt Development sets the requirements for the use of a footpath by a food and drink premises without development consent.

The proposed outdoor seating is ancillary to the approved food and drink premises but is proposed for use until 11:00pm Monday to Saturday and until 10:00pm on Sunday. The previous footway approval permitted hours for outdoor seating to be between 7.00am to 10:00pm, daily. As proposed of hours of operation on Monday to Saturday is after 10:00pm, development consent is now required.

Sydney DCP 2012

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

2. Locality Statements – Potts Point

The subject site is located in the Potts Point locality. The use of the footway for outdoor dining contributes to the unique dining opportunities within Challis Avenue. The use is considered to be in keeping with the unique character of the area and design principles specified in the locality statement.

3.15 Late Night Trading Management

Proposal – Late Night Trading Management Controls

The proposed hours of operation of the outdoor seating area are between 7:00am and 11:00pm Monday to Saturday and between 7:00am and 10:00pm on Sunday.

The subject site is located within a local centre area within the late night trading management provisions and is a category B premises.

DCP Local Centre Trading Area Outdoor Controls	Existing approved footway hours (outdoor)	Proposed outdoor hours	Recommendation
<p>Base hours 10:00am – 8:00pm.</p> <p>Extended hours 10:00am – 10:00pm.</p>	7:00am – 10:00pm daily.	<p>7:00am – 11:00pm Monday to Saturday.</p> <p>7:00am – 10:00pm Sunday.</p>	<p>Refusal:</p> <ul style="list-style-type: none"> - Non-compliance with DCP late night trading hours; - Unsatisfactory management of outdoor seating; - Number of tables and chairs is non-complaint with Café Policy; and - The owner may use the existing footway consent (expires 21 May 2015) which allows operation of the footway until 10:00pm daily.

The maximum permissible outdoor area trading hours for a category B premises in a local centre trading area are base hours of 10:00am to 8:00pm with the possibility of extended trading hours until 10:00pm subject to a trial period. The proposed hours of operation of the outdoor seating area until 11:00pm Monday to Saturday is non-complaint with the control.

Surrounding Restaurants in Challis Avenue

Three restaurants within Challis Avenue have outdoor dining approvals past 10:00pm. These approvals were granted prior to the commencement of the Late Night Trading DCP 2007 which commenced on 1 January 2008.

Management of the Premises

Premises seeking extended trading hours must demonstrate good ongoing management performance. Within the last 12 months, 4 incidents have been recorded by Council officers in relation to the operation of the outdoor seating outside of the approved hours. Details of these incidents are as follows:

- On 13 October 2013, a complaint was received regarding the restaurant trading past 11:00pm. Rangers attended the site at approximately 12:17am and witnessed 4 patrons seated in the outdoor seating area but were not consuming food or drinks. The restaurant appeared to be closed and staff were cleaning and packing up. Rangers spoke with the manager who said they had stopped serving an hour prior and the patrons were regular customers. A caution was issued.
- On 19 October 2013, Rangers attended Fratelli Paradiso at approximately 10:34pm and witnessed 11 patrons seated in the outdoor seating area consuming food and drinks. Another caution was issued. When issuing the caution, the Ranger spoke with the manager about the incident and he understood that outdoor trading must cease at 10:00pm and all footway furniture was to be brought inside.
- On 22 November 2013, Rangers conducted a follow up inspection at the premises. At approximately 10:33pm, Rangers witnessed 11 patrons seated in the outdoor seating area with food and drinks and it did not appear that staff were trying to move the patrons inside. Rangers did not speak to the manager regarding the incident. A penalty infringement notice was issued.
- On 30 November 2013, Rangers attended the premises at approximately 11:23pm. Chairs and tables were still placed in the outdoor seating area and 2 patrons were seated outside smoking (no food or drink). The Ranger spoke with the manager regarding the incident. A penalty infringement notice was issued.

The recorded incidents demonstrate that the ongoing management performance of the premise has been unsatisfactory.

Given the non-compliance with the late night trading provisions and the poor management performance of the premise, the application is not supported.

City of Sydney Café Policy 2001

Layout

Under this policy, a minimum pedestrian clearance of 2 metres is to be provided to maximise pedestrian useability, provide clearance from existing streetscape elements, and accommodate for those with various levels of mobility. Further, a minimum 0.8 metre clearance from the kerb is to be provided for the safety of patrons.

The policy also recommends that there be at least 1sqm of seating area for each seat/person. The seating layout proposed by the applicant is illustrated below under Figure 4.

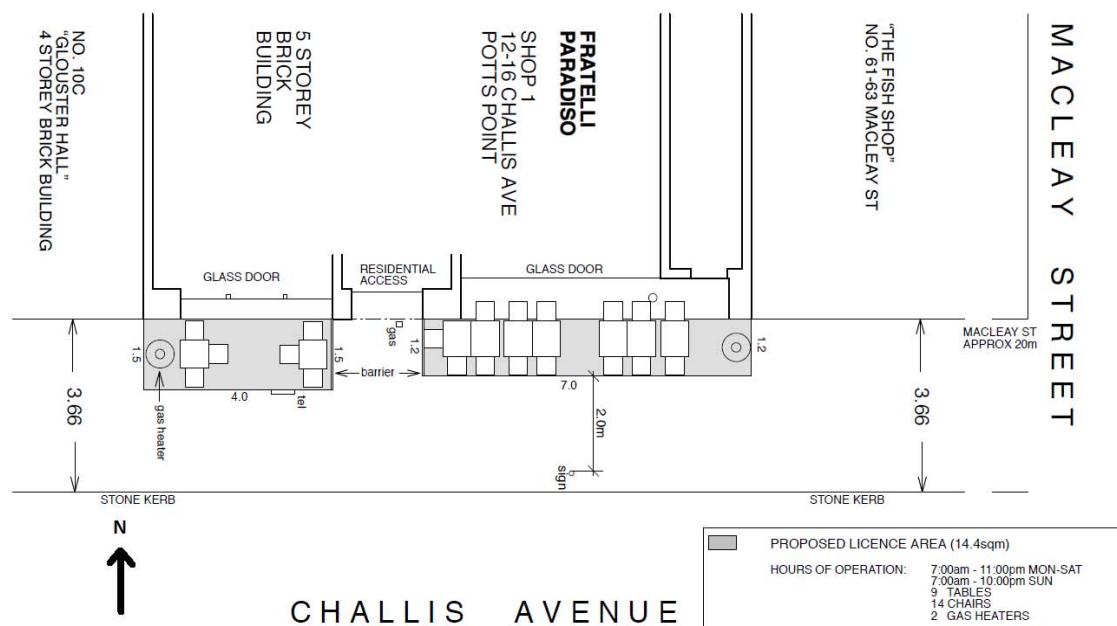


Figure 4. The footway seating plan proposing 9 tables and 14 chairs. The current footway licence allows 8 tables and 12 chairs.

The seating layout proposes 9 tables and 14 chairs on the footway in an area of 14.4sqm. It is noted on the plans that 6 chairs will be located within the property boundary of the building, and not on the footpath.

The seating layout plan includes the space in front of both entrances to the restaurant and in front of the fire exit door on the eastern side of the building in their seating area calculation. The seating area not including these entrance areas is approximately 11sqm.

The proposed seating plan in the footway is inconsistent with the requirements of the Policy. The number of tables and chairs along with 2 barriers and 2 gas heaters will result in an over congested outdoor seating area and is likely to adversely impact upon the safety and convenience of both patrons and pedestrians. Subsequently, the proposal is not supported.

(b) Other Impacts of the Development

The proposed development is capable of complying with the BCA.

It is considered that consent for the proposed additional chairs and table as well as the hours outside of that specified within the late night trading provisions would result in an adverse impact on the amenity of the locality. The application is not supported.

(c) Suitability of the site for the Development

While the premises are in a commercial/residential surrounding and amongst similar uses to that proposed, the proposed footway use is inconsistent with the late night

trading provisions and outdoor café policy. The proposed footway use is not considered suitable for the site.

(d) CONSULTATION

Internal Referrals

The application was referred to Council's Properties Unit, Licenced Premises Unit and City Rangers.

The Licensed Premises Unit and City Rangers raises concern regarding the prior mismanagement of the footway and does not support the application. This has been discussed earlier in the report.

External Referrals

The application was referred to the NSW Police. No objection was raised.

NOTIFICATION, ADVERTISING AND DELEGATION (Submissions received)

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 21 days. As a result of this notification there were 5 submissions received.

Additional hours and patrons seated outside will add to the cumulative noise impact as a result of a number of nearby restaurants operating in the area

Response – The proposed additional operating hours and patrons has been addressed within the report and is not supported.

Noise impact from restaurant staff during clean up

Response – Should adverse noise be occurring during restaurant clean up, the affected persons should contact Council's Rangers for the issue to be investigated.

Noise impact from restaurant rubbish removal by a number of garbage removal contractors.

Response - The affected persons should contact Council's Rangers for the issue to be investigated.

The footpath is currently overcrowded due to people queuing for tables outside 'Fratelli Paradiso' and adjoining restaurant 'The Fish Shop'.

Response – Should the subject and adjoining restaurant not be adequately managing the footway and patrons queuing for tables, the affected persons should contact Council's Rangers for the issue to be investigated.

It is unfair and inconsistent that this restaurant's viability is affected due to the closure of its outdoor dining at 10:00pm when other neighbouring restaurants are permitted to trade outdoors til 11:00pm and 12:00 midnight.

Response – This issue has been addressed in the report.

Recent café closures in Potts Point were a result of the requirements imposed by Council.

Response – The application has been considered against the relevant planning controls and is not supportable.

There is no noise issue resultant of Fratelli Paradiso's operations.

Response – The operation of the restaurant may not impact upon the amenity of the submitter. Notwithstanding, the proposal has been considered within the report and is not supported.

(e) Public Interest

The proposed development is inconsistent with the late night trading management provisions within Sydney DCP 2012 and the City of Sydney Café Policy. The proposal is not considered to be in the public interest and is not supported.

FINANCIAL IMPLICATIONS/S94 CONTRIBUTION

Section 94 Contributions

The development is not subject to a Section 94 Contribution.

CONCLUSION

Having regard to all of the above matters, it is considered that the proposal for use of the footway for outdoor seating does not satisfy the relevant strategy, objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012, is not acceptable and it is recommended for refusal for the reasons shown in the attached Decision Notice.

The application is refused under delegated authority of Council.

The undersigned declare, to the best of their knowledge that they have no interest, pecuniary or otherwise, in this development application or persons associated with it and have provided an impartial assessment.

Report Prepared by:

Application determined by:

Eleanor Robertson
Planner

Sue McMahon
Area Planning Manager