FOOTWAY (OUTDOOR DINING) ASSESSMENT

Footway Application No: FA/2018/160

Application Site: 612 CROWN STREET, SURRY HILLS NSW 2010

Proposal: Use public footway on Crown Street and perpendicular public laneway for outdoor seating in association with ‘Ardi’s Block to Grill’ (10.2m² of area used).

Proposed hours of use are 9.00am – 9.30pm, Mondays to Sundays inclusive.

SITE AND SURROUNDING DEVELOPMENT

The site has primary street frontage to Crown Street, and rear frontage to Wilshire Street. The site is bound to the north by a public pathway. City records indicate that this public pathway is owned by the City. Crown Street is characterised by a mix of restaurant and retail tenancies activating the area at street level. Surrounding land uses are both commercial and residential.

PROPOSAL

The application seeks approval for the provision of outdoor dining within an area of 10.2m² adjacent to the existing premises known as ‘Ardi’s Block to Grill’ at 612 Crown Street, Surry Hills.

The proposed hours of operation of the outdoor dining are 9.00am – 9.30pm, Mondays to Sundays inclusive.

Consent has previously been granted for outdoor dining for a previous operator with a different layout.

A site visit was carried out on 18 September 2018. Photographs of the site area included below:
Figure 1: Site viewed from Crown Street.

Figure 2: Public laneway on the northern elevation of the site.
This is an application made under:
- Section 125 of the Roads Act 1993
- Section 68 of the Local Government Act 1993
- Section 2.20 of the Crown Lands Management Act 2016

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<tr>
<th>Question</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
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<tbody>
<tr>
<td>Is the outdoor dining area exempt development?</td>
<td>✓</td>
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<td>If the outdoor dining area is not exempt development does it have development consent?</td>
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<td>✓</td>
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<td>If the outdoor dining area is on a Classified Road has the RMS given concurrence to the proposal?</td>
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<td>✓</td>
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<td>Is the outdoor dining area (e.g. proposed hours of use) consistent with conditions of development consent for the use of the premises and/or development consent for the outdoor dining?</td>
<td>✓</td>
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<td>Is the proposal consistent with the City of Sydney Outdoor Dining Policy and Guidelines 2016?</td>
<td></td>
<td>✓</td>
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<td>Will adequate clearance remain on the footpath for pedestrians?</td>
<td>✓</td>
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<td>Is the proposal consistent with the late night trading provisions of DCP 2012?</td>
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<td>✓</td>
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<td>Is the outdoor dining area in a Liquor Freeze area?</td>
<td>✓</td>
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<tr>
<td>Is the outdoor dining area in a footway freeze area?</td>
<td>✓</td>
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<td>Has the application been notified in accordance with the City of Sydney Outdoor Dining Policy and Guidelines 2016?</td>
<td>✓</td>
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<td>Have submissions been received?</td>
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<td>Has the application been referred to internal units of Council?</td>
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<td>Has the application been referred to the Police?</td>
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ISSUES

_State Environmental Planning Policy (Exempt and Complying Development Codes) 2008_

Subdivision 20A _Footpaths - outdoor dining_ of the SEPP allows for the use of the footway or public open space by a food and drink premises as exempt development.

To be exempt development, the use of the footway or public open space 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).

The application is consistent with the exemption provisions of the SEPP relating to footway dining. As such, the use of the footway does not require development consent.

LEGISLATION, DCPs and POLICIES

_Roads Act 1993_

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.

_City of Sydney Outdoor Dining Policy and Guidelines 2016_

The proposed outdoor dining area fronting Crown Street complies with the requirements of the outdoor dining policy and guidelines. The proposed outdoor dining area maintains a clear, consistent and predictable path of travel for pedestrians which is approximately 3.1m in width. The outdoor dining area is located a suitable distance from existing footpath services and furniture so as to not compromise pedestrian mobility.

The proposed outdoor dining located in the public laneway does not fully comply with the requirements of the outdoor dining policy and guidelines. The public laneway is approximately 2.5m in width. The northern wall of the public laneway currently hosts a wall suspended public artwork, with protrudes 0.29m over the laneway. It was originally proposed for the outdoor dining area in the public laneway to be 1.3m in width. Taking the protrusion of the public artwork into account, this would allow for a clearance of 1m for pedestrian movement. This was considered to be an insufficient clearance to allow for pedestrian circulation and movement.

As such, amended plans were received on 20 September 2018, which demonstrated the outdoor dining area located in the laneway to be reduced to 1m in width. This allows for a pedestrian clearance of 1.5m in the laneway, and 1.2m in the section affected by the existing public artwork.

In accordance with Clause 3.4 of the Outdoor Dining Guidelines, a clearance of less than 2m can be considered acceptable if Council is satisfied that pedestrian safety
will not be compromised and outdoor dining is a desirable activity. In this instance, a clearance of less than 2m is considered acceptable. As the outdoor dining area is located in a pedestrianised laneway, the usual safety concerns of vehicular traffic are negligible. Additionally, it is noted that Clause 3.2 of the Guidelines stipulates a clearance of 1.2m for Central Sydney Laneways. Whilst this lane is not categorised as a Central Sydney Laneway, it arguably embodies the character of a laneway and would positively benefit from activation.

Furthermore, the outdoor dining area will allow for the casual surveillance of the laneway until 9.30pm. This activation of the public laneway during evening hours is considered to be a positive CPTED outcome, and is consistent with Clause 3.13 Crime Prevention Through Environmental Design of the Sydney DCP 2012.

As such, in this instance a pedestrian clearance of less than 2m in the laneway is considered acceptable.

Sydney Development Control Plan 2012 – Late Night Trading

The site is located in a Local Centre trading area. The outdoor dining area is associated with an unlicensed restaurant, which is defined as a Category B – Low Impact Premises. The DCP 2012 stipulates base outdoor trading hours of 10.00am – 8.00pm, and extended outdoor trading hours of 10.00am – 10.00pm for Category B Premises in Local Centre Trading Areas.

It is noted that there is a discrepancy, in terms of the proposed hours of operation, between the application form and the submitted footway drawing. The applicant confirms the proposed hours of operation of the outdoor dining area are 9.00am – 9.30pm, Mondays to Sundays inclusive. These hours are within the hours of operation approved under D/2011/1777/A, however are outside of the outdoor trading hours stipulated in the DCP 2012.

It is noted the previous footway license for the premises (ref: FA/2017/177) approved outdoor dining for the hours of 10.00am – 10.00pm. A review of City records indicate that no noise complaints were received regarding the operation of the outdoor dining during the previous approval, suggesting that the operation of outdoor dining within these hours had no adverse impacts on surrounding residential amenity.

Furthermore, the proposed outdoor dining hours are relatively consistent with existing outdoor dining areas for nearby restaurant tenancies. The ‘Burman Kitchen’ restaurant at 614 – 618 Crown Street has approved outdoor dining hours of 11.00am – 10.00pm (ref: FA/2018/137). ‘Kurtosch’ at 604 Crown Street had approved outdoor dining hours of 7.00am – 10.00pm until June 2018 (ref: FA/2015/156).

In this respect, the proposed outdoor trading hours of 9.00am – 9.30pm are considered contextually acceptable.

Liquor Freeze

The proposal is not within a Liquor Freeze area.

Smoke-Free Environment Act 2000

Under the Smoke-Free Environment Act 2000 and associated regulations, smoking is not permitted in outdoor areas which are available to be used for dining. If an area is to be used for smoking signage must be provided to indicate that no food is allowed to be consumed in that area.
As approvals under S125 of the Roads Act 1993 relate specifically to the use of footways for restaurant purposes, footway dining areas approved under that legislation must be available for dining at all times and cannot be used for smoking.

NOTIFICATION/SUBMISSIONS

The application was notified in accordance with the Outdoor Dining Guidelines 2016. 2 submissions were received. One submission was supportive of the application, citing that the activation of the laneway would be a positive outcome. The second submission objected to the proposal, citing that the outdoor dining area in the laneway would be a hazard and raised concerns regarding the adjacent tenancy at 610 Crown Street applying to do the same.

As detailed earlier in this report, the proposed width of the laneway dining area has been reduced to allow for a pedestrian clearance of 1.5m in the laneway, and 1.2m in the section affected by the existing public artwork. In this instance, it is considered that these clearances are enough to allow for sufficient pedestrian circulation to still take place without presenting as a safety hazard to pedestrians. Additionally, the activation of the laneway will increase casual surveillance of the space which is considered a positive social outcome.

Secondly, the existing public artwork affixed to the northern wall of the laneway prevents additional outdoor dining to be located in the laneway. Any future applications for outdoor dining will be assessed against the City’s Outdoor Dining Guidelines 2016, to ensure that adequate pedestrian clearance is maintained.

REFERRALS

Internal Referrals

Comments from internal units of Council have been considered in the assessment of the application.

No significant issues have been raised.

CONCLUSION

The proposal is not fully consistent with the relevant controls however in this instance it can be supported.

RECOMMENDATION

The application be approved subject to the conditions contained in the attached decision notice.

Report Prepared by: Application determined by:

Marcella Hager Christopher Ashworth
Cadet Planner Area Coordinator