

STATEMENT OF ENVIRONMENTAL EFFECTS

S96(2) APPLICATION – D/166-11-06 (MOD 7)
Outdoor Footpath Seating - George Street, The Rocks
August 2013



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Condition: This SEE report should be read in conjunction with all plans and documents prepared by the Sydney Harbour Foreshore Authority accompanying this S96(2) Application.

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1. EXECUTIVE SUMMARY

This Section 96(2) application seeks the Minister for Planning and Infrastructure's consent for modification of Development Consent DA 166-11-06 for "*Outdoor Seating on George Street and part of Argyle Street*" (as modified).

The Authority has completed a strategic review of outdoor seating/dining locations along George Street to cater for existing and future tenancies. This strategic approach will therefore allow for a collective and consistent flow of outdoor activation seating and dining locations to cater for the changing nature of retail/dining tenancy occupation along George Street. This strategy is consistent with the intended commercial/retail use and character of George Street under the SCRA Scheme. This S96 application pursues a consistent design and layout of outdoor seating areas, tenancy containment, furniture, and operational management, consistent with the Authority's Policy for Commercial Outdoor Seating 2013 in The Rocks and the associated Technical Manual 2013.

This Section 96(2) Application seeks consent for five (5) additional street sections along George Street for outdoor seating/dining, comprising a maximum total of 32 tables, 110 chairs, and 16 umbrellas at the following locations:

- 123-127 George Street - 10 tables, 30 chairs, and 3 umbrellas
- 117-119 George Street - 8 tables, 24 chairs, and 2 umbrellas
- 79½, 79, 77½, 77, & 75 George Street - 10 tables, 40 chairs, and 7 umbrellas
- 39 George - 2 tables, 8 chairs, and 2 umbrellas
- 29 George Street - 2 tables, 8 chairs, and 2 umbrellas

The proposed additional outdoor seating locations will complete and complement The Authority's intention to promote The Rocks as a welcome outdoor dining environment. The S96(2) application will encourage existing and new outdoor areas to trade out under established operational conditions that reflect current commercial practice for outdoor dining hours and conditions.

In all aspects of consideration of the relevant EPA Act S79C(1) 'Matters for Consideration', this S96(2) modification of Development Consent DA 166-11-06 is of minimal environmental impact and is substantially the same development as the development for which the consent was originally granted. The proposal complies with relevant site and precinct requirements including the Authority's Policy and Technical Manual for *Commercial Outdoor Seating Areas in the Rocks and Circular Quay 2012*, and with the *City of Sydney Outdoor Cafe Policy 1997*.

This report therefore concludes that this proposed S96(2) modification of development consent DA 166-11-06 is worthy of development consent.

2. EXISTING CONSENT & MODIFICATIONS

The following Notice of Determination under DA 166-11-06 for "*Outdoor Seating on George Street and part of Argyle Street*", and subsequent consent modifications, apply to outdoor seating along George Street:

DA 166-11-06 approved by SHFA (as delegate of the Minister for Planning) on 3 January 2007 for *Outdoor footpath seating on George Street and part of Argyle Street*.

Mod 2 approved by SHFA (as delegate of the Minister for Planning) on 30 April 2007 for *The inclusion of the Royal Copenhagen in the approved George Street outdoor licensed area scheme*.

Mod 3 approved by SHFA (as delegate of the Minister for Planning) on 23 January 2008 for *the inclusion of additional outdoor seating locations and screens in addition to the approved George Street outdoor licensed area scheme*. This included outdoor spaces to 33-41, 55, 83, 87-89, 93, 99, 105-7, 113-5, 121, and 131-5 George Street.

Mod 4 approved by SHFA (as delegate of the Minister for Planning) on 4 September 2008 for *The addition of 4 tables, 14 chairs, 3 umbrellas and 5 partitions to approved outdoor licensed area scheme to 91 George Street*.

Mod 5 approved by DPI (as delegate of the Minister for Planning) on 29 October 2008 for *New outdoor seating areas for The Observer Hotel, the Russell Hotel and The Orient Hotel and minor conditional challenges*.

Mod 6 approved by DPI (as delegate of the Minister for Planning) on 26 June 2009 for *Additional outdoor seating area at 100 George Street, The Rocks*.

3. S 96 APPLICATION DETAILS

3.1 S96(2) Proposed Additional Sites

This Section 96(2) Application seeks consent to amend condition A1 *Approved Development* by the addition of five (5) street sections along George Street for outdoor seating, comprising a total of **32 tables, 110 chairs, and 16 umbrellas**, at the following locations:

1. North of Surgeons Court and south of Jack Munday Place:

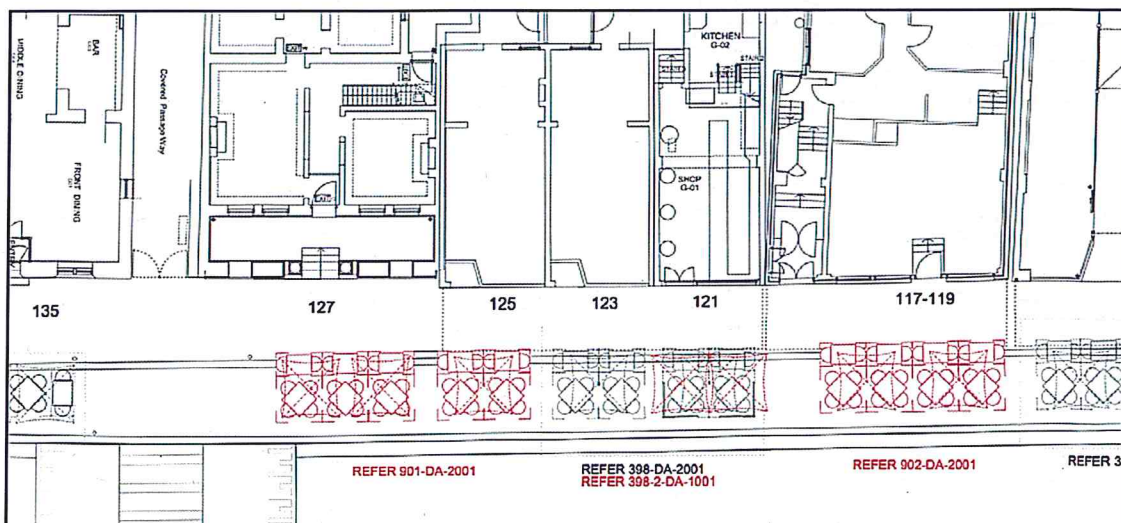
- 123 George Street (existing pop-up store) – 127 George Street (new restaurant tenant)
- 117-119 George Street (Opal Fields)
- **Total section proposal for 18 tables, 54 chairs, and 5 umbrellas**



Outside 123-129 George



Outside 119 George



Plan: Layout of tables, chairs and umbrellas (in red)

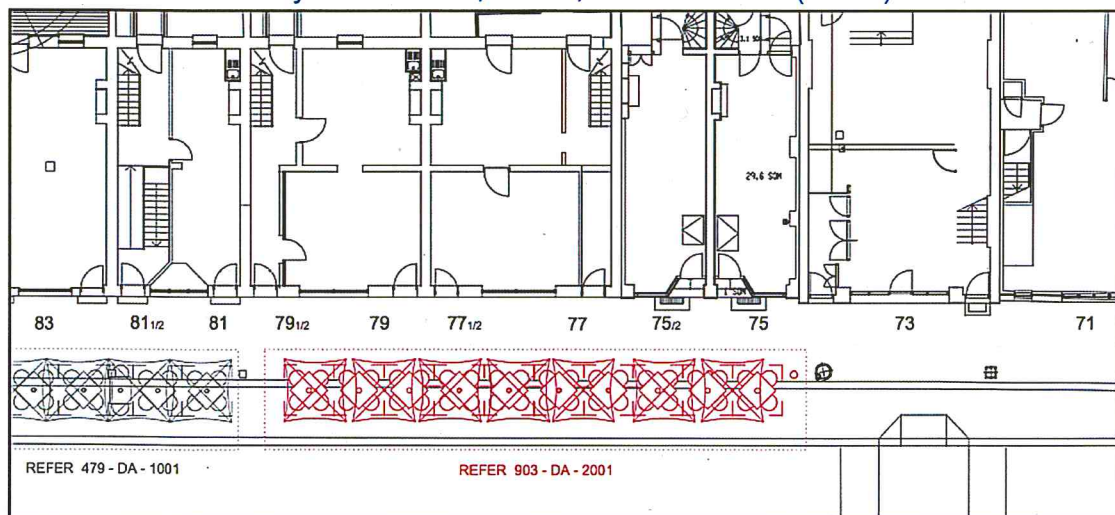
2. 75-79½ George Street north of Jack Munday Place & south of Mill Lane

- 75 George Street (Chocol'Arts)
- 77 (pop-up store) & 77 ½ George Street (Rocks Chamber of Commerce),
- 79 (pop-up store) and 79 ½ George Street (Louis Cardini)
- **Total section proposal for 10 tables, 40 chairs, and 7 umbrellas**



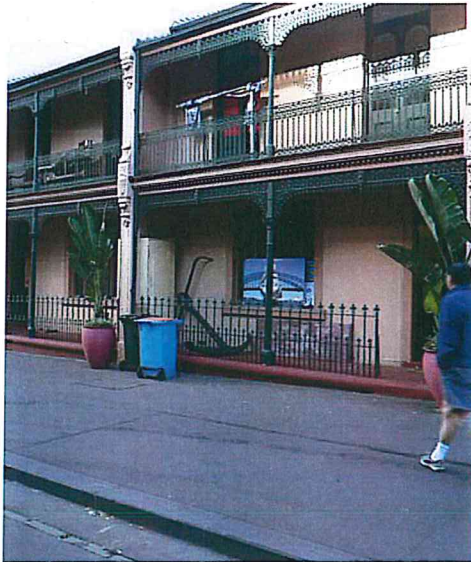
Outside 75, 77 & 79 George Street

Plan: Layout of tables, chairs, and umbrellas (in red)



3. 29 & 39 George Street north of Atherden Street

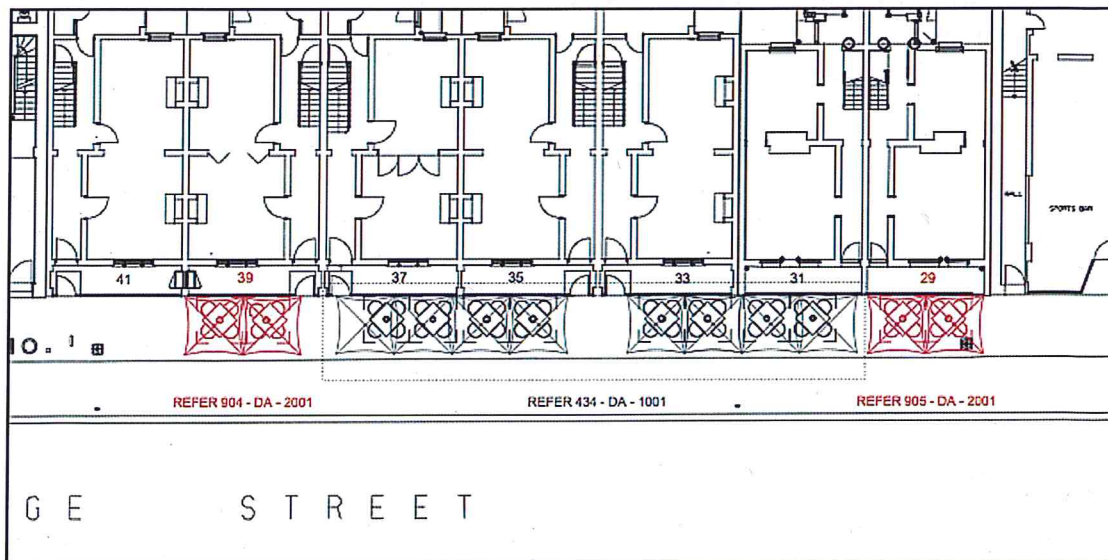
- 39 George - 2 tables and 8 chairs
- 29 George Street - 2 tables and 8 chairs
- **Total section proposal for 4 tables, 16 chairs, and 4 umbrellas**



Outside 39 George Street



Outside 29 George Street



Plan: Layout of tables, chairs, and umbrellas (in red)

3.2 Modification of Consent Conditions:

This S96(2) Application seeks modification of the Notice of Determination condition *A1 Approved Development* by the inclusion of the additional outdoor seating sites and associated plans submitted by this S96(2) application, for:

- 123-127 George Street
- 119 George Street
- 95, 95½, 97, 97½, and 99 George Street
- 39 George Street
- 29 George Street

3.3 Property Title

The Land Titles Office identifies the land affected by this S96(2) proposal as follows:

1. George Street between Surgeons Walk and Jack Munday Place (for No's 119, 123 and 127 George Street) lie within Lot 25 DP 773812;
2. George Street between Jack Munday Place and Mill Lane (for No's 75 to 79) George Street) lie within Lot 13 DP 599563 (GG 12.12.69);
3. George Street between Atherden Street and the Harbour Bridge undercroft (for No's 29 and 39 George Street) lie within Lot 11, DP 599573 (GG 12.12.69).

4. Statutory Planning Considerations

4.1 Compliance with Environmental Planning & Assessment Act 1979

The S96(2) proposal complies with relevant provisions and requirements contained in the *EP&A Act 1979* as follows: -

- (a) The amendment of consent condition A1 is substantially the same development as the original Development Application and will not introduce new or unreasonable environmental impacts (*section 96 (1A) (a) and (2)(a)*);
- (b) The development is substantially the same development as was submitted and granted consent (*section 96 (1A)(b) and (2)(a)*).

Furthermore, this S96(2) application accords with the existing consent conditions A4 and A5, which allow for additional outdoor seating areas to be considered as a S96 application:

- A4** Any outdoor seating areas along George Street may subsequently be approved by way of a modification application to this consent.
- A5** The conditions of this consent do not prevent or limit additional trade out areas or times from being approved for 'special event' days such Australia Day and New Year's Eve or for any other occasion that may be the subject of a separate development consent.

4.2 Compliance with relevant EPI's:

Section 79C of the Environmental Planning & Assessment Act 1979, addresses the matters to be assessed in respect of all development applications. Section 79c(1)(a) requires the consent authority to take into consideration: -

"(a) the provision of:

- (i) any environmental planning instrument; and*
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority; and*
- (iii) any development control plan; and*
- (iv) any matters prescribed by the regulations that apply to the land to which the development application relates."*

The original DA and subsequent modifications were assessed against the following *EPI's* (as amended) and concluded to be compliant: -

- a) State Environmental Planning Policy – Major Development
- b) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- c) Sydney Cove Redevelopment Authority Planning Scheme
- d) SHFA Policy/Technical Manual: Commercial Outdoor Seating Areas

Consent Authority: This proposal is permissible with the consent of the

"Accordingly, it would benefit SHFA if it could turn its mind to adopting a more strategic approach (i.e. identifying all future tenancy outdoor seating areas) so that no further modifications to the consent will be required in the future."

Minister for Planning and Infrastructure. This position was qualified by DoPI Team Leader Metropolitan & Regional Projects North by email on 14 March 2013, and who requested that the Authority satisfy the following strategic requirement:

Outdoor Seating: The outdoor seating plans accompanying this S96(2) application have been prepared by the Authority and designed compliant to the Authority's Policy and Technical Manual for "commercial outdoor seating areas in The Rocks and Circular Quay" (addressed in further detail overleaf).

Heritage: The proposed additional outdoor seating areas will not introduce any penetration into any heritage building fabric or roadwork. Consequently the proposed modification will not cause any adverse heritage impact.

4.3 Sydney Cove Redevelopment Authority Scheme

The sites comply with the following SCRA maps:

- *Building Site Control Drawing XXXVIII*, approved by the Minister for Planning Environment on 6 August 1984. This map applies to the section of George Street between Globe Street and Argyle Street (Jack Munday Place), and allows for commercial and special uses.
- *Building Site Control Drawing XXXI*, approved by the Minister for Planning Environment on 6 August 1984. This map applies to the section of George Street between Argyle Street (Jack Munday Place) and Atherden Street, and allows for commercial and special uses, ancillary shops, and restaurants.
- *Building Site Control Drawing XXX*, approved by the Minister for Planning Environment on 6 August 1984. This map applies to the section of George Street between Atherden Street and the Sydney Harbour Bridge undercroft, and allows for commercial and special uses.

The proposed areas for outdoor seating along George Street qualify as being ancillary to a commercial use (retail including cafes, restaurants and catering shops) and therefore comply with all of the abovementioned SCRA maps.

Conclusion: The proposed modification of consent is concluded to comply with the environmental planning instruments listed above.

4.4 Policy for Commercial Outdoor Seating Areas in The Rocks & Circular Quay, and Technical Manual

The *Policy* and accompanying *Technical Manual* were adopted in 2000 and recently amended in 2012. The policy addresses the following requirements relevant to this proposal:

Policy Provisions specific to licensed areas in The Rocks	S96 response
1. Outdoor seating will provide a 'dining' experience utilising waiter table service in a controlled and managed way. Patrons are to remain seated within the licensed area. Dining must include the provision of non-disposable tableware.	✓ The proposal will activate, complement and promote the outdoor dining experience sought by the Authority along residual sections of George Street, compliant with this policy provision.
2. Outdoor seating elements are to be completely removed at the end of each day of trading to leave a clear and unencumbered public domain. Trading may continue until one hour after the close of kitchen or midnight, whichever is the earlier or as stated in the conditions of consent. Furniture can remain in the public domain until close of business. The application for outdoor seating is to include information that confirms a suitable storage location is available within the tenant's lease area.	Note: Consent modification 5 (approved 29 Oct 2009) permits outdoor seating trading to continue up to and including midnight on any day. ✓ Outdoor seating/furniture will be removed and stored within 1 hour of the termination of the business trading hours.
3. Licensed areas will be fully contained within an area defined by permanent in-ground markers. The markers will be established by the Foreshore Authority.	✓ The additional outdoor seating areas will be contained by in ground markers installed by the Authority.
4. Where deemed to be appropriate, licensed areas will be defined by using partitions on the two ends with a return partition along the roadside edge. The partitions, with tenant's business name and Foreshore Authority brand, will be designed and supplied by the Foreshore Authority at cost and under the terms of the licence. No third party advertising or promotions are permitted.	✓ The additional outdoor seating areas will be further defined by the standard partition screens/ edges supplied by The Authority. No 3 rd party advertising will be used.
5. The Foreshore Authority will permit within a licensed area: • removable umbrellas if shade is required;	✓ The additional seating areas incorporate removable umbrellas to provide patron shade.
6. The Foreshore Authority will not permit within a licensed area: • solid drop down screens • 3rd party advertising • video or television screens	✓ The proposed outdoor seating areas will not incorporate any of the prohibited items.

Policy Provisions specific to licensed areas in The Rocks	S96 response
• food vending equipment • planter boxes • waiter stations • electric/gas table lights • music amplification equipment	

Technical Manual: Tables, chairs and associated furniture used in the additional outdoor seating licence areas will comply with the specifications of the technical manual, and will complement the established George Street outdoor seating character. Tenants of additional seating areas will be required to comply with the following technical manual requirements: -

A1 – Tables in licensed areas in The Rocks and Circular Quay

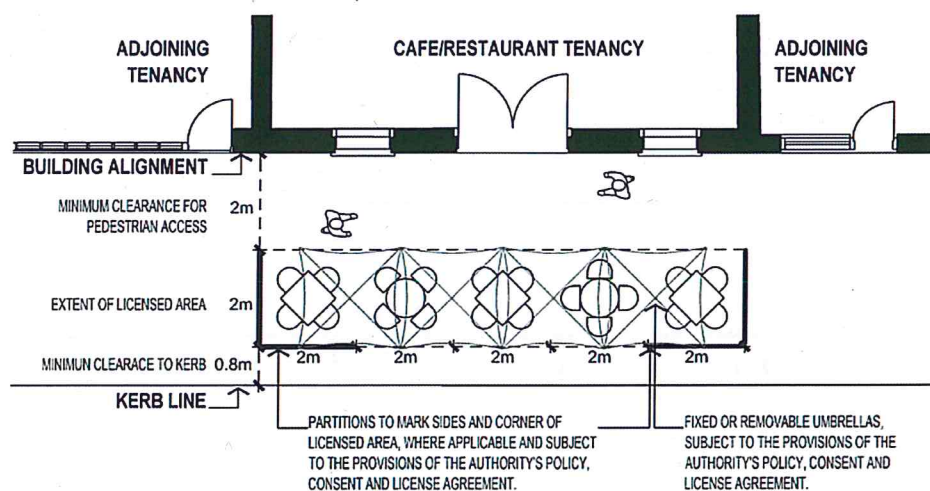
1. Uniformity with adjoining outdoor seating areas within the public domain is essential for a consistent presentation.
2. Tables are not to be fixed to the ground or any structure, and should be stackable so they can be stored outside of business hours.
3. Tables are to be of a simple design for presentation and, where they are located on asphalt, units with broad feet should be selected to minimise indentation and instability.
4. Table frames are to be of steel, aluminium or other metallic type material. No plastic materials or timber will be permitted.
5. Tables tops are to be weather resistant with non-permeable surfaces that can be readily kept in a clean hygienic condition and made from steel, aluminium, other metallic type material or imitation stone.
No plastic or timber materials will be permitted.
6. Finishes are to be natural metal, polished, finished or painted in a dark or metallic colour. No bright colours are permitted.
7. Only tables 700–750mm height are permitted
8. Tables accommodating 2–4 persons are preferable.

B1 – Seats in licensed areas in The Rocks

1. Tables should be selected to enhance the character of the tenancy, but should be of a simple design and, where located on asphalt or irregular surfaces, units with broad feet should be selected to minimise indentation and instability.
2. Tables can be fixed to the ground or other structure, depending on circumstances, and legs may be adjustable to accommodate uneven grades.
3. Table structure is to be of steel, aluminium, other metallic type material or quality finished timber. No plastic materials will be permitted.
4. Table tops are to be weather-resistant with non-permeable surfaces that can be readily kept in a clean hygienic condition and made from steel, aluminium, other metallic type material or imitation stone or quality finished timber. No plastic materials will be permitted.
5. Tables are to be finished in natural metal, polished, finished or painted in a dark or metallic colour. Muted colours are recommended, but alternatives may be permitted on merit.

6. Tables over 700–750mm height will be considered on merit.
7. Tables should accommodate 2–4 persons. Larger table styles and configurations will be individually assessed on their merits.

Outdoor Seating for the proposed additional seating layouts for 119, 123-27, and 75-79 ½ George Street: The rationale and design criteria for the siting of outdoor seating setback from building facades and sited against kerb lines complies with the Authority's Technical Manual for "*commercial outdoor seating areas in The Rocks and Circular Quay*" which provides layout option *Configuration A* as demonstrated below:



Configuration A

FOUR SEAT TABLES, PARTITIONS AND UMBRELLA CONFIGURATION

Source: SHFA Technical Manual '*Commercial outdoor seating areas in The Rocks and Circular Quay*' – Section J1 Table and chair configurations

Outdoor Seating for 29 and 39 George Street: The rationale and design criteria for the siting of outdoor seating hard up against the front property palisade fences of 29 and 39 George Street, complies with the existing siting of tables along this section of George Street as already approved outside the Mercantile Hotel and adjoining terraces 31-37 George Street. Furthermore, this siting layout complies with the Authority's Technical Manual for 5. *Table performance specification* which states:

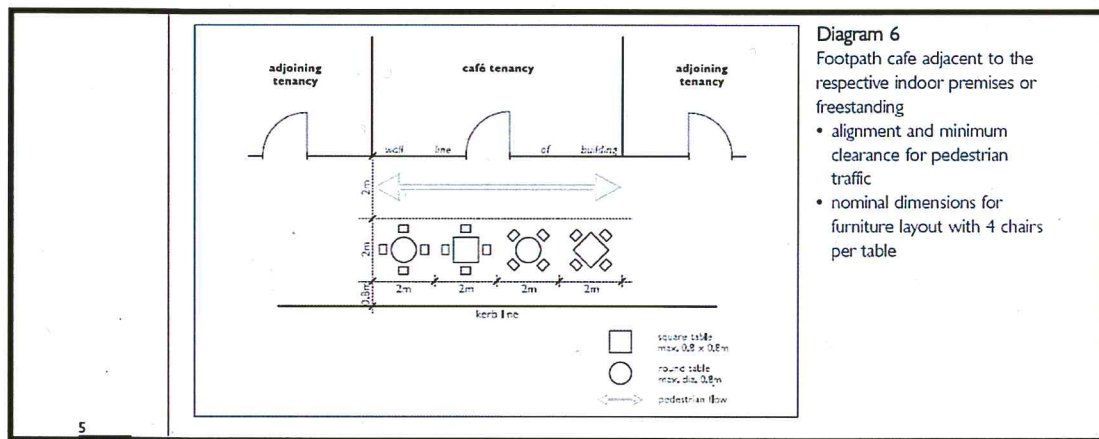
A1 – Tables in licensed areas in The Rocks and Circular Quay

1. Uniformity with adjoining outdoor seating areas within the public domain is essential for a consistent presentation.

4.5 City of Sydney Outdoor Cafe Policy

This policy is specifically referred to the proposed additional seating layouts for 119, 123-27, and 75-79 ½ George Street.

The City of Sydney adopted this policy on 12 November 2001. The rationale and design criteria for the siting of outdoor seating outside comply with the established outdoor seating areas elsewhere along George Street and with the City of Sydney's Outdoor Cafe Policy layout for outdoor seating diagram illustrated below:



Source: The City of Sydney Outdoor Cafe Policy

5. Environmental, Social or Economic Impacts

Section 79c(1)(b) requires the consent authority to consider:

“(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”

The proposed S96(2) application will not result in any negative environmental, social or economic impacts. The proposed modification of consent will allow greater flexibility in: -

- permitting a strategic application of outdoor seating to the entire length of George Street in The Rocks;
- encouraging new outdoor seating areas to benefit from the operational and layout conditions for existing outdoor seating areas that reflect current commercial practice in outdoor dining operating hours and conditions;
- providing a consistent approach for outdoor seating areas compliant with those existing/permitted by the City of Sydney Council within the City of Sydney jurisdiction; and
- promoting the Rocks as a significant State, inter-State and international visitor destination for retail and dining experiences.

6. The Suitability of the Site for Development

The additional sites along George Street are all suitable for outdoor seating areas for reasons including:

- The George Street footpath has been widened and already operates as a successful outdoor dining street, and is complemented by weekend markets at Jack Munday Place, Playfair Street and George Street north.
- The proposed additional outdoor seating areas complement the intended use of all streets under the Sydney Cove Redevelopment Authority Planning Scheme.
- The proposed expanded outdoor seating areas and proposed modification of consent conditions are all in accordance with approved and established guidelines under the Authority's *Commercial Outdoor Seating Areas in The Rocks & Circular Quay 2013*, and associated *Technical Manual 2013*.

7. The Public Interest

Section 79c(1)(e) requires the consent authority to consider:

“(e) the public interest”.

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and predominantly in accordance with the prevailing planning controls.

The proposed additional outdoor seating areas will provide a full complement of outdoor dining locations along the entire length of George Street in The Rocks, and consequently will promote a unique and rich variety of outdoor dining experiences within The Rocks precinct. This strategic approach will promote The Rocks as a significant State, inter-State and international visitor destination for retail and dining experiences.

8. Conclusion

The proposed additional outdoor seating locations will complete and complement The Authority's intention to promote The Rocks as a welcome outdoor dining environment. The S96(2) application will encourage existing and new outdoor areas to trade out under established operational conditions that reflect current commercial practice for outdoor dining hours and conditions.

In all aspects of consideration of the relevant EPA Act S79C(1) 'Matters for Consideration', this proposed S96(2) modification to DA 166-11-06 is of minimal environmental impact and is substantially the same development as the development for which the consent was originally granted. The proposal complies with relevant site and precinct requirements including the Authority's Policy for Commercial Outdoor Seating Areas in the Rocks and Circular Quay 2012, the Technical Manual for Commercial Outdoor Seating Areas in the Rocks and Circular Quay 2012, and with the City of Sydney Outdoor Cafe Policy 1997.

This report therefore concludes that this proposed S96(2) modification of development consent DA 166-11-06 is worthy of development consent.