

ITEM 11. DEVELOPMENT APPLICATION: 39 GLEBE POINT ROAD GLEBE

FILE NO: D/2009/1928

SUMMARY

Date of Submission: 18 November 2010

Applicant: Shapiya Pty Ltd

Architect: Rachen Muangkaew

Site: 39 Glebe Point Road, Glebe

Summary: The proposal is for the installation of seating within a public park, adjacent to an existing restaurant. The seating consists of 7 tables and 26 chairs. The proposed hours of operation for the seating are 7:30am to 11:00pm, 7 days.

The proposal also includes the installation of two fixed umbrellas within the park, a retractable awning, fixed planter boxes and the construction of two doorways to provide access between the restaurant and the park. A new non-projecting wall sign is also proposed.

Four submissions were received during the notification period. Main objections raised were the loss of space within the park and the potential traffic and parking impacts.

The application has been called to Committee by three or more Councillors.

Summary Recommendation: The application is considered generally acceptable and is recommended for approval, subject to the fixed furniture within the park and the signage being deleted. It is also recommended that the hours be restricted in accordance with the Late Night Trading Premises DCP.

- Development Controls:**
- (i) Leichhardt Local Environmental Plan 2000
 - (ii) Leichhardt Development Control Plan 2000
 - (iii) City of Sydney Notification of Planning and Development Applications Development Control Plan 2005
 - (iv) City of Sydney Heritage Development Control Plan 2006
 - (v) City of Sydney Signage and Advertising Structures Development Control Plan 2005
 - (vi) City of Sydney Outdoor Café Policy

Attachments: A - Selected Drawings

RECOMMENDATION:

It is resolved that consent be granted subject to the following conditions:

SCHEDULE 1A

Approved Development/Design Modifications/Covenants and Contributions/Use and Operation

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2009/1928 dated 18/11/2010 and the following drawings:

Drawing Number	Architect	Date
1123 - 01	Rachen Muangkaew	1/4/2009
1123 - 02	Rachen Muangkaew	1/4/2009
1123 - 03	Rachen Muangkaew	1/4/2009
1123 - 04	Rachen Muangkaew	1/4/2009

and as amended by the conditions of this consent:

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

(2) DESIGN MODIFICATIONS

The design of the proposal must be modified as follows:

- (a) The non-projecting wall sign is deleted and does not form part of this consent.
- (b) The fixed planter boxes within the park are deleted and do not form part of this consent.
- (c) The fixed umbrellas within the park are deleted and do not form part of this consent.
- (d) The retractable awning is to project a maximum of 1.5m from the facade of the restaurant.

The modifications are to be submitted to and approved by Council prior to a Construction Certificate being issued.

(3) HOURS OF OPERATION

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 10.00am and 10.00pm Monday to Sunday.

(4) CONSENT TO LAPSE

- (a) The period during which the seating is approved to operate will cease on 20 July 2011. The use must cease after that time. A further development application may be lodged before the end of that period for Council's consideration of the continuation of the use.
- (b) Council's consideration of this further application will take into account the compliance of the use by reference to matters including, but not limited to, the following: conditions of consent; number and nature of substantiated complaints regarding the operation of the premises; and any views expressed by the NSW Police Service.

(5) MAXIMUM POPULATION

- (a) The maximum number of patrons within the seating area is not to exceed 26 persons.
- (b) Patrons are to be seated within the seating area and are not to be permitted to stand to consume food or alcohol.

(6) SEATING

The following conditions apply to seating:

- (a) The use of the subject area for outdoor seating is only allowed in conjunction with the provision of a simultaneous food service from the associated approved 'Roxanne' restaurant use.
- (b) The management/licensee/owner of the property must enter into a licence with Council for the use of the subject area of the public domain with all legal costs associated with the preparation of the licence being borne by the management/licensee/owner. The licence must be executed prior to the use of the park for seating.

Note: Should the operator of the premises change at any time, the licence is required to be renewed under the name of the new operator.

- (c) The use of the public domain may be suspended to facilitate Council approved special events to be held in the street or for road and services works. No claim for compensation is entitled under such circumstances.
- (d) In addition to Council's daily street sweeping and cleansing operations, the operator of the outdoor seating must ensure that the surrounds of the building including pavements and gutters are to be kept clean and free of litter at all times.

- (e) A maximum of 7 tables and 26 chairs are approved to be located within the footway area.
- (f) All outdoor furniture and planting must be maintained at all times in a physically sound condition and of an appearance that is deemed to be acceptable by Council.
- (g) No furniture or other structure is to be fixed to the pavement, without the consent of Council.
- (h) The chairs should be able to be stacked or folded for storage when not in use with a furniture storage area being provided within the premises.
- (i) The use of disposable tableware at the footway cafe is not permitted at any time.
- (j) Portable signs or goods for sale or display must not be placed on the footway or other public areas.
- (k) All outdoor furniture and the pavement are to be kept clean and free of food scraps.
- (l) Ash trays used within the footway licensed area are to be covered to prevent ash and cigarette butts from polluting the street gutters and the stormwater system.
- (m) A separate development application for any proposed signs which are either externally fitted or applied must be submitted to and approved by Council prior to the erection or display of any such signs.

(7) PLAN OF MANAGEMENT

- (a) A Plan of Management must be prepared to address all operational and management procedures to be employed, to ensure that the seating can operate without disturbance to the surrounding locality.
- (b) The plan must include but not restricted to; compliance with all other operational conditions of this consent; hours of operation; noise; security management; and handling complaints.
- (c) The Plan of Management must be submitted to and approved by Council prior to the use commencing.

(8) NO SPEAKERS OR MUSIC OUTSIDE

(9) NO SPRUICKING/AMPLIFIED NOISE

(10) COPIES OF CONSENTS AND MANAGEMENT PLANS

(11) WASTE AND RECYCLING COLLECTION

(12) NOISE – GENERAL

SCHEDULE 1B

**PRIOR TO CONSTRUCTION CERTIFICATE/COMMENCEMENT OF WORK/HEALTH
AND BUILDING**

- (13) NO DEMOLITION PRIOR TO A CONSTRUCTION CERTIFICATE**
- (14) BARRICADE PERMIT**
- (15) STRUCTURAL CERTIFICATION FOR DESIGN - BCA (ALL BUILDING CLASSES)**
- (16) GLAZING - COMPLIANCE WITH AUSTRALIAN STANDARD**
- (17) COMPLIANCE WITH BUILDING CODE OF AUSTRALIA**

SCHEDULE 1C

DURING CONSTRUCTION/PRIOR TO OCCUPATION/COMPLETION

- (18) OCCUPATION CERTIFICATE TO BE SUBMITTED**
- (19) HOURS OF WORK AND NOISE – OUTSIDE CBD**
- (20) NO OBSTRUCTION OF PUBLIC WAY**
- (21) LOADING AND UNLOADING DURING CONSTRUCTION**

SCHEDULE 2

The prescribed conditions in accordance with Clause 98 of the Environmental Planning and Assessment Regulation 2000 apply to the development.

- Clause 98 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 98A Erection of signs
- Clause 98B Notification of *Home Building Act 1989* requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Conditions relating to maximum capacity signage
- Clause 98E Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at: <http://www.legislation.nsw.gov.au>

BACKGROUND

The Site and Surrounding Development

1. The site is located on the intersection of Glebe Point Road and Francis Street. The site consists of a two storey building which has been converted to a restaurant on the ground floor and an adjacent area of an unnamed public park. The site is centrally located within Glebe Point Road. The site is also in close proximity to the pedestrian ramp which leads to the car park and entry of the Broadway Shopping Centre.
2. A site location plan and photos of the site are provided below.



Figure 1: Location Plan



Figure 2: Site viewed from Glebe Point Road

History of Development Applications Relevant to this Site

3. The following development application is considered relevant to the proposed development:
4. Development application D/2005/1384 was approved under delegation of for the fit out and use of the ground floor of the site as a café. The approved hours of operation are 8.00am to 10:30pm, Monday to Saturday and 8.00am to 10.00pm on Sunday.

PROPOSAL

5. The proposal is for the installation of outdoor seating within a public park, adjacent to an existing restaurant. The seating consists of 7 tables and 26 chairs. The proposed hours of operation for the seating are 7:30am to 11:00pm, 7 days.
6. The proposal also includes the installation of two fixed umbrellas, a retractable awning attached to the side elevation of the restaurant, fixed planter boxes within the park and the construction of two doorways along the façade to provide access between the restaurant and the park. A waiter station will be installed between the two new doorways. A new non-projecting wall sign is also proposed along the park elevation.
7. A plan of the development is provided below. Further plans are provided at **Attachment B**.

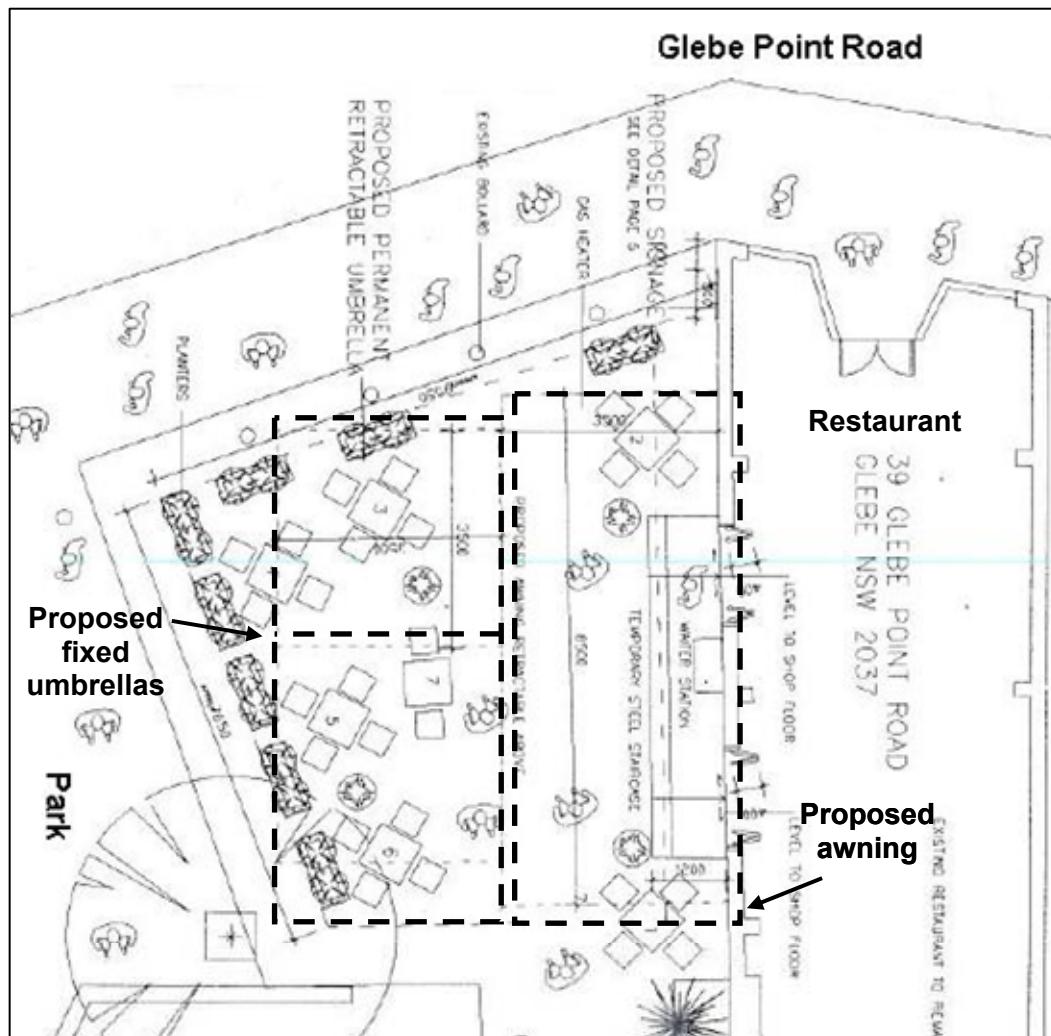


Figure 3: Plan of proposed seating, umbrellas and awning

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

8. An assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:

Section 79C(1)(a) Environmental Planning Instruments, DCPs and Draft Instruments

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs) and REGIONAL ENVIRONMENTAL PLANS (REPs)

9. The proposed development is not subject to any State or Regional Environmental Planning Policies.

LEPs and DCPs

Leichhardt Local Environmental Plan 2000

10. The site is zoned Open Space by the LEP. Clause 25(5) allows for consent to be granted to the carrying out of development that is permissible with or without consent in the adjoining zone, provided the development takes places with 10m of the zone boundary.
11. The adjoining zone is Business; the proposed development is not prohibited within the zone and is therefore permissible. The proposal activates a currently under utilised area of open space and results in greater connectivity between the park and the surrounding development
12. The site is a heritage item and is located within the Glebe Conservation Area. Subject to design modifications, the proposed development does not adversely affect the heritage significance of the item or the conservation area.
13. The proposal is consistent with the provisions of the Leichhardt LEP 2000.

COMPLIANCE WITH THE LEICHARDT DCP 2000

Part A - Suburb Profile

14. The site is located within the Glebe Commercial Neighbourhood. The proposed outdoor seating will help to provide a vibrant public environment and is consistent with the desired future character of the neighbourhood.

Part C – Non-Residential

15. Compliance of the proposal with DCP Part C is summarised below:

Matter to be Considered	Compliance	Comment
Elevations and Materials Part C1.4	✓	Complies The proposed enlargement of the openings along the park elevation will result in further activation of the frontage.
Public Domain Part C4.5	✓*	Able to Comply By deleting the proposed fixed umbrellas and reducing the size of the proposed retractable awning, the proposal is capable of complying with the DCP by not providing obstacles for pedestrians and not providing clutter. See Issues section.

Heritage DCP 2006

16. The site is a heritage item and is located within the Glebe heritage conservation area and therefore subject to the provisions of the DCP.
17. The scale of the proposed retractable awning and non-projecting wall sign are inappropriate and not supported. It is recommended that the awning be significantly reduced in scale and the signage be deleted.
18. The proposed conversion of two existing windows along the park elevation into doorways is considered appropriate and consistent with the controls of the DCP, in particular section 3 – *Heritage Items* of the DCP. The proposal maintains the existing built form, massing and general appearance of the existing building.

Late Night Trading Premises DCP 2007

19. The site of the proposed seating is not identified as being within any of the late night precincts (a white area) identified by the DCP; however the restaurant is located within a 'Local Centre' area. The proposal has been assessed against the provisions of the 'Local Centre' area. The site is centrally located within Glebe Point Road and is in close proximity to Broadway Shopping Centre which has tenants that trade late into the evening.
20. The table below identifies the proposed hours of operation, the approved hours of operation for the restaurant, the DCP control hours and the recommended hours for the outdoor seating. It is noted that the proposed hours for the seating area exceed the approved hours of the restaurant.

Proposed	Approved restaurant hours	DCP Control (Outdoor – Local Centre)	Recommended
7:30am to 11.00pm, 7 days	8.00am to 10:30pm, Monday to Saturday 8.00am to 10.00pm on Sunday.	Base – 10am to 8.00pm Extended – 10.00am to 10.00pm	10.00am to 10.00pm, 7 days

21. It is recommended that the approved hours of operation be 10.00am to 10.00pm 7 days. As the use of the seating is recommended to be limited to a one year consent, it is unnecessary to limit the hours of operation to a separate trial period.

Signage and Advertising Structures DCP 2005

22. A non-projecting wall sign is proposed along the park elevation of the building and is located at a similar height to an existing projecting wall sign along the Glebe Point Road frontage of the same tenancy. The site also has a hamper sign over the restaurant entry.

23. The number of signs exceeds that recommended by the DCP. The proposed signage is considered excessive and will result in unnecessary visual clutter. It is recommended that the proposed non-projecting wall sign be deleted.

Outdoor Cafe Policy

24. The policy generally focuses on the provision of seating within public footways. Notwithstanding this, the general provisions of the policy are relevant.
25. The proposed location of the seating will not impact on the movement of pedestrians around the area of the site, particularly the path from the Broadway Shopping Centre towards Glebe Point Road. Additionally, a clear area with a minimum width of 2m is to be maintained so that pedestrians are able to move through the seating area from Glebe Point Road towards Campbell Lane and the children's play area within the park.
26. The proposed use of planter boxes to separate the seating area from the footpath is not supported by the Policy. The area is sufficiently delineated by the existing bollards along the boundary of the reserve and the footpath and by the existing pavers within the footpath. It is recommended that the planter boxes be deleted.
27. The proposal also includes the provision of two fixed umbrellas within the reserve; again this is not supported by the Policy. Seating within the public domain is not dependant on the provision of fixed umbrellas, a suitable level of shading and weather protection could be provided by moveable umbrellas. A condition of consent requires that the seating area be cleared of all seats and furniture when not in use.
28. The proposal includes a retractable awning along the park elevation of the building. When extended, the awning would project from the facade of the building across to the proposed fixed umbrellas. The proposed awning has dimensions of 3.5m x 8.5m, the size of the proposed awning is considered excessive and inconsistent with the Policy. It is recommended that the size of the awning be reduced so that it projects a maximum of 1.5m from the façade of the building.
29. By conditioning the deletion of the planter boxes and fixed umbrellas, as well as reducing the scale of the proposed retractable awning, the proposal is generally consistent with the provisions of the Policy.

Issues

30. The issues identified in the above instruments/policies as non-complying or requiring further discussion in the abovementioned tables are discussed in detail below:

Use of the Public Domain

31. The park has a total area of approximately 2500m²; the proposed seating occupies an area of approximately 90m². This equates to 3.2% of the total area of the park. The location of the proposed seating is directly adjacent to the Glebe Point Road footpath and is separated from the remainder of the reserve area by a small brick wall and a substantial tree.

32. The location of the proposed seating currently provides little functionality for public recreation other than as a pedestrian thoroughfare with a number of more suitable, alternate locations within the reserve. It is not considered that the proposal results in the significant "privatisation" of the public domain, given the deletion of the proposed fixed furniture as discussed previously. The proposed seating also provides an opportunity for passive surveillance of the reserve by restaurant patrons.
33. Additionally, a condition of consent requires that the restaurant operators clear the space for community events if directed to do so by the City.

Section 79C(1)(b) Other Impacts of the Development

34. The proposed development will not result in any additional impacts other than those already identified and discussed above.

BCA Matters

35. The proposal is capable of satisfying the requirements of the BCA without significant modification.

Section 79C(1)(c) Suitability of the site for the development

36. The site is suitable for the proposed development.

Section 79C(1)(e) Public Interest

37. It is considered that approval of the application, as modified, would be in the public interest.

POLICY IMPLICATIONS

38. Not applicable to this report.

FINANCIAL IMPLICATIONS/SECTION 94 CONTRIBUTIONS

Section 94 Contributions

39. The development is not subject to a Section 94 Contribution.

PUBLIC CONSULTATION

Section 79C(1)(d)

Notification and Advertising

40. Adjoining and nearby owners and occupiers of buildings were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications Development Control Plan 2005.
41. Four (4) submissions were received. The grounds for objection are summarised as follows:

- (a) **The proposal will result in additional traffic and parking impacts on the surrounding area.**

Comment: It is anticipated that the proposal would attract existing patronage within the area rather than encourage a significant increase vehicle traffic. Additionally, the surrounding area is generally the subject of time limited parking restrictions. It is anticipated that those patrons that choose to drive to the site will be subject to these time restrictions which will help to ensure a reasonable of turnover of parked vehicles.

- (b) **The proposal results in the privatisation of a public park. Use of the park for seating will reduce the area of the park available for residents.**

Comment: As discussed above, the area of the park to be occupied for the seating is approximately 3.2% of the park area. The location of the seating is covered with bitumen and is directly adjacent to the Glebe Point Road footpath. The use of a small area of the park for outdoor seating will not significantly reduce the area available for passive and active recreation in the park. The proposal also activates a currently under-utilised space.

EXTERNAL REFERRALS

NSW Police

42. NSW Police were notified of the proposed development, no objection was received.

INTERNAL REFERRALS

43. The application was referred to Council's:
- (a) Specialist Surveyor;
 - (b) Specialist Health Surveyor;
 - (c) Heritage Architect;
 - (d) Urban Designer;
 - (e) Building Services Unit;
 - (f) City Projects;
 - (g) Properties Unit; and
 - (h) Transport and Access Unit.
44. No objection to the proposed development was raised, subject to the imposition of appropriate conditions. Council's City Projects Unit which objected to the proposed fixed furniture within the park. All of the proposed fixed furniture has been deleted be condition of consent and the retractable awning significantly reduced in scale.

CONCLUSION

45. The proposal utilises only a small percentage of the total area of the park, the remainder of which will remain publicly accessible.

46. By deleting the proposed fixed furniture, the proposal will have a significantly reduced impact on the public domain and still allow for the space to be utilised for community events when required.
47. The proposal will result in the activation of a small area of public open space and add to the vibrancy of Glebe Point Road.
48. The application is recommended for approval.

GRAHAM JAHN

Director City Planning and Regulatory Services

(Patrick Quinn, Planner)