

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0314
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/0962 granted for alterations and additions to Manly Wharf in association with Hugos restaurant
Zoning:	SREP(Sydney Harbour Catchment)2005 - Land Zoned W2 Environmental Protection
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Transport for NSW TMG Developments Pty Ltd
Applicant:	Giovanni Cirillo

Application Lodged:	02/06/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	09/06/2021 to 09/07/2021
Advertised:	09/06/2021
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The modification application has been lodged under the provisions of s4.55(2) of the EP&A Act, seeking consent to modify DA2020/0962 to provide for an extension to an outdoor deck and additional outdoor seating in association with Hugos Restaurant at Manly Wharf.

The size and capacity of the deck was restricted via conditions imposed in the original consent due to concerns raised by Heritage NSW. The applicant has since consulted with Heritage NSW to develop a scheme with the same patron capacity as that previously proposed, albeit in an altered configuration. Heritage NSW has no objection to the modified scheme and modified general terms of approval have been issued.

Four submissions have been received in objection to the proposed modified development, primarily in relation to the increase size of the outdoor deck. As a result of the assessment of the proposal, the consent authority can be satisfied that the proposal is consistent with all relevant plans/policies, and that any environmental impacts associated with the enlarged deck and additional outdoor seating can be reasonably mitigated/managed with conditions of consent, as modified.

PROPOSED DEVELOPMENT IN DETAIL

Development Application DA2020/0962 was conditionally approved to facilitate additional outdoor dining associated with Hugos Restaurant at Manly Wharf, including extensions to the western deck area to accommodate 64 patrons and outdoor seating along the southern boardwalk for 36 patrons.

The primary focus of the subject application relates to the design and patronage of the western outdoor deck.

During the assessment of DA2020/0962, Heritage NSW raised concerns regarding the shape of the deck extension, and the interface with the adjacent public boardwalk. In issuing general terms of approval, Heritage NSW limited the scope of the approved works by virtue of the following conditions:

6. Compliance with requirements of Heritage NSW

Works Not Approved

- a. *The proposed extension of the existing (triangular) upper deck to the north which incorporates a section of the lower western deck and the proposed straightening of the curvilinear lower deck is not approved.*

Reason: To ensure that the proposed northern extension does not reduce the publicly accessible area of the lower deck and does not introduce insensitive additions to compensate for this loss.

The proposed lower deck extension is unsympathetic to the curvilinear characteristic of Baldwinson design of the public space around the wharf.

- b. *The new planters, both on the western lower deck and the southern promenade are recommended not to be approved.*

Reason: The proposed lower deck planter box contributes to the visual separation between the lower deck and the upper triangular deck. It unnecessarily takes up the public space and highlights the physical and visual separation between the public and private space and are in contrast to the Baldwinson design that encouraged visual and physical openness along the promenade. The proposed planters to the south add to the clutter and unnecessarily divide the public promenade.

- c. *The heaters as proposed are not approved. Heaters that can be removed and stored must be used.*

Reason: The proposed heaters fixed to the deck are visually distracting and add significantly to the visual clutter.

The general terms of approval issued by Heritage NSW were also reinforced in Condition 9 of DA2020/0962, which reads as follows:

9. Amendments to the Approved Plans

The following amendments are to be made to the Approved Plans:

- a. *The proposed deck extension is to be a cantilevered structure, supported by existing piles. No new piles are permitted by this development consent.*
- b. *The proposed northern extension of the existing outdoor seating area, shown to comprise four x four seat tables, and all proposed works to the north of this area are not approved by this consent and are to be removed from the plans.*

c. Deletion of all proposed planter boxes.

d. Deletion of fixed heaters.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises environmental impacts.

The amendments required by Conditions 6(a), 6(b) and 9(b) relate to the areas bordered in red in Image 1, below.

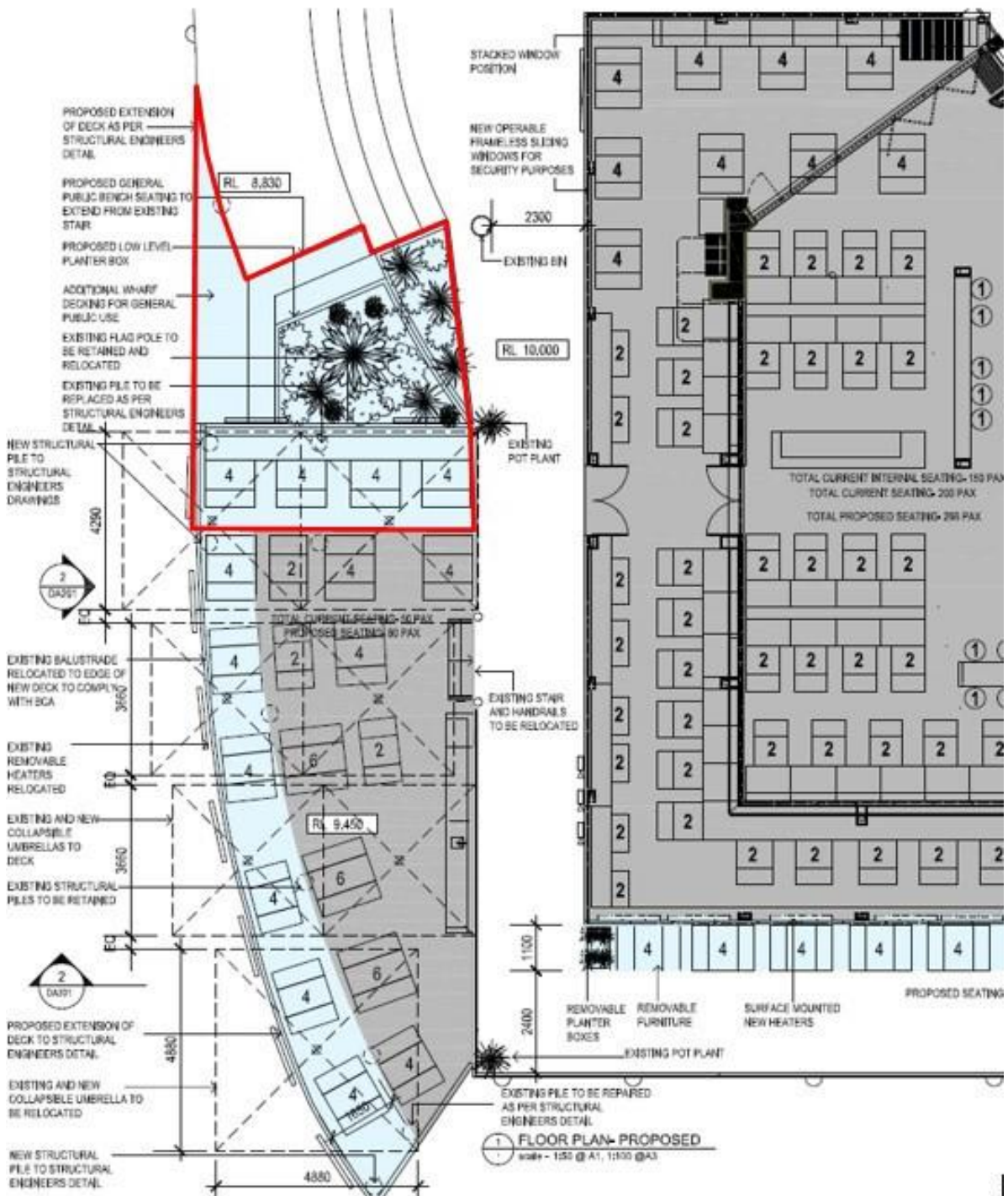


Image 1 - Approved Plans with area conditioned for removal bordered in red

The reduction to the size of the western deck impacted upon potential patronage/capacity, reducing the capacity of the western deck from 80 patrons to 64 patrons. As such, the reduction to the proposed capacity was prescribed in Condition 28(a) of DA2020/0962, which reads as follows:

28. Plan of Management

A Plan of Management is to be prepared for the use of the outdoor areas associated with Hugos in accordance with the following:

- a. A maximum of 64 patrons are allowed within the western outdoor dining area at any given time.

...

The applicant has since engaged with Heritage NSW and now seeks to modify DA2020/0962 to facilitate a revised design and configuration of the western deck to accommodate 80 patrons, as shown in Image 2, below.

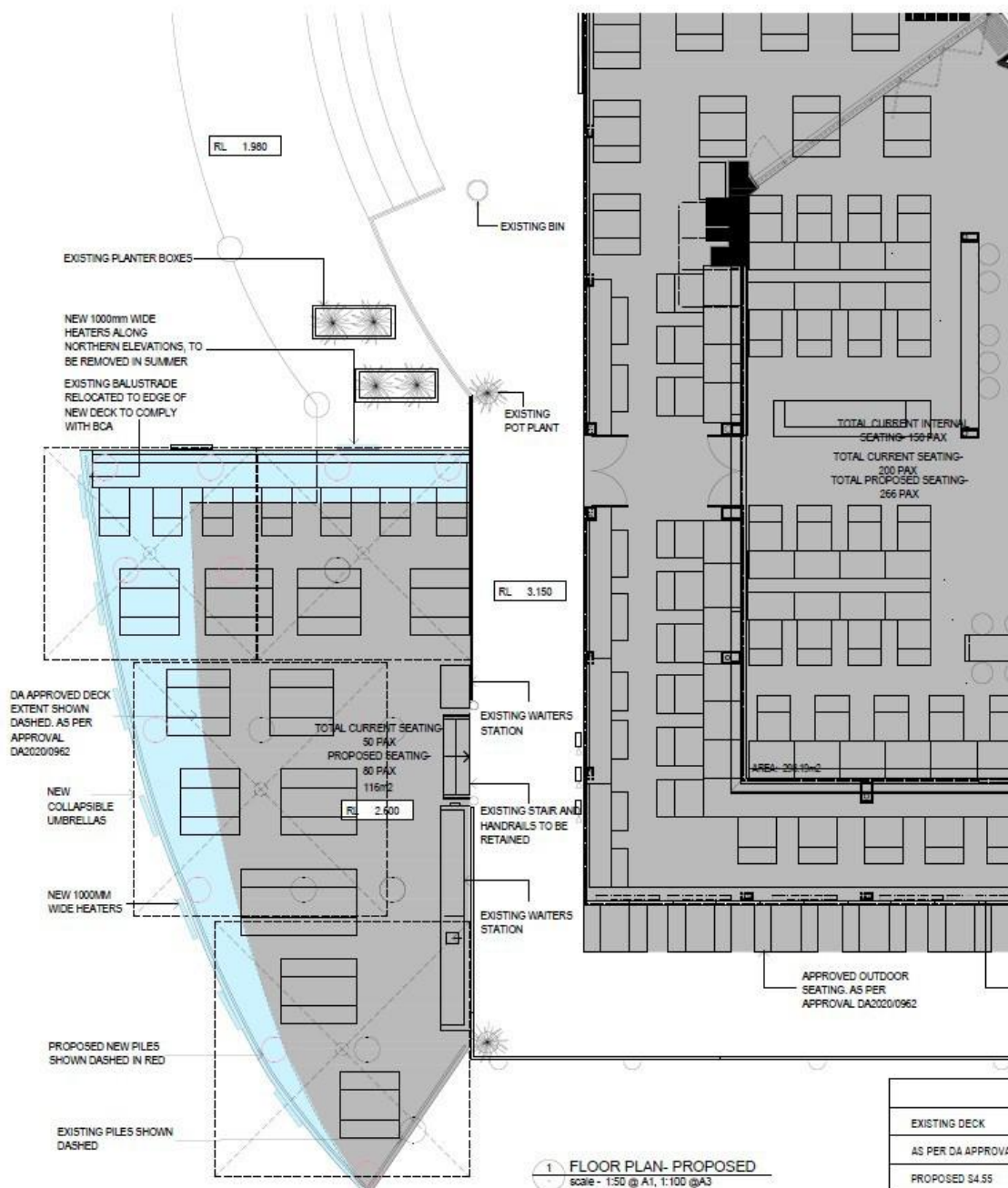


Image 2 - Modified Plans with extended area shown in blue

The comparison of the existing deck, the approved extended deck (blue outline) and the proposed extension (red outline) is shown in Image 3, below.

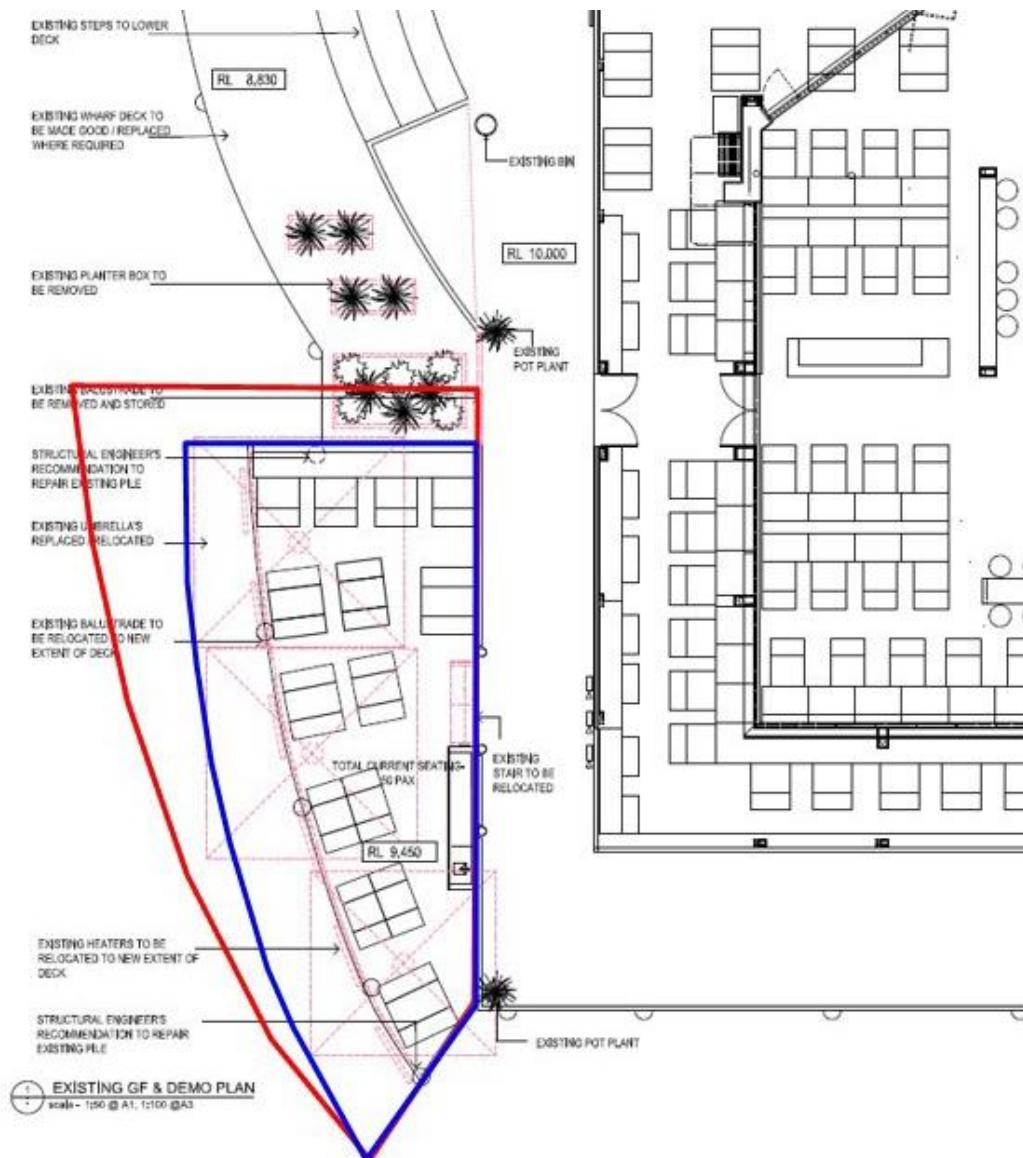


Image 3 - Comparison of existing, approved and modified deck arrangements.

Specifically, the Modified Plans demonstrate the following amendments to the approved development:

- Extension of the western deck to the north and north-west,
- Increased patronage of the western deck from 64 (approved) to 80,
- Installation of 10 new piles (the enlarged structure was previously proposed to be cantilevered)
- New 1m wide heaters around the perimeter of the western deck,
- New collapsible umbrellas, and
- Removal of a planter box on the lower deck.

The modification proposes amendments to Condition 9 and 28 to align with the Modified Plans. If approved, further amendments will also be required in relation to Condition 1, being the list of approved plans, and Condition 6, being the general terms of approval issued by Heritage NSW.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SITE DESCRIPTION

Property Description:	Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095
Detailed Site Description:	<p>The application relates to Manly Wharf and the waterway adjacent to the western side of the existing structure. Manly Wharf is located on the southern side of East Esplanade and West Esplanade, Manly, and is located at the southern end of Manly Corso. Manly Wharf comprises two separate lots, which generally align with the primary functions of the structure; Lot 1 being primarily commercial tenancies and Lot 2 being the ferry terminals. Manly Wharf is identified as an item of State Heritage significance.</p> <p>The works proposed are limited to the south-western most corner of Manly Wharf and the adjacent waterway and are associated with an existing tenancy, 'Hugos'. The works are proposed both within and beyond the existing lease boundary of Lot 1 and extend over the waterway. Hugos currently comprises both internal and external seating, with a portion of existing outdoor seating (existing deck area) separated from the main restaurant area by a pedestrian thoroughfare.</p> <p>The site is zoned W2 Environmental Protection under the provisions of the SREP. The surrounding waters and nearby harbour foreshore are known to provide habitat for Little Penguins, and seagrass has been identified within the vicinity of the site.</p>



Image 4: Aerial image of site

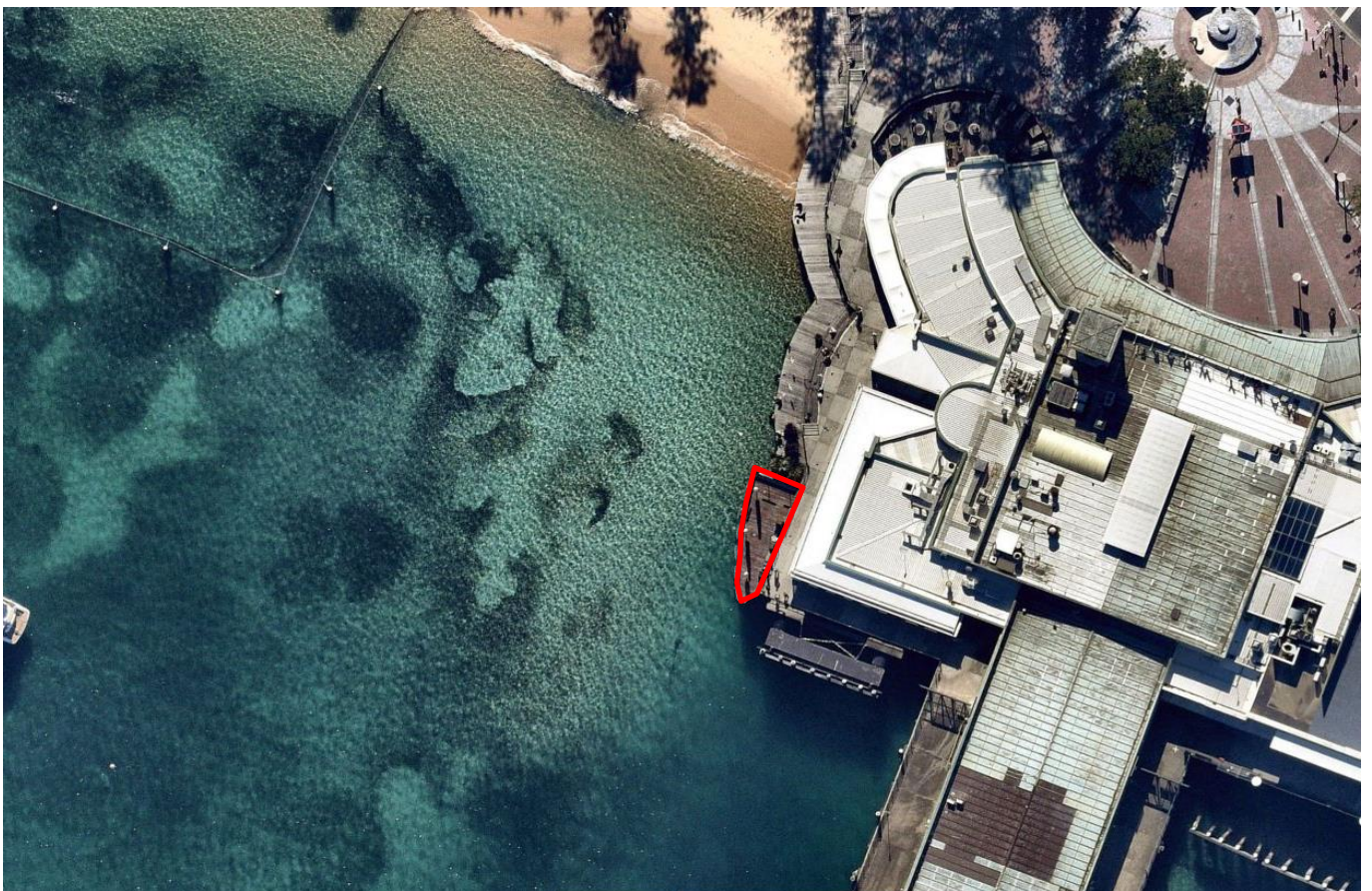


Image 5: Deck area the subject of this application.

SITE HISTORY

On 21 August 2014, Development Application 233/2013 for outdoor seating associated with Hugos Restaurant was approved by Council. The application provided for:

- the use of a portion of the existing wharf for the purpose of outdoor dining for 50 seats/people,
- the erection of four umbrellas, and
- alterations and additions to facilitate new access stairs, balustrades and the enclosure of the area from the public domain.

Of relevance, Development Consent 233/2013:

- restricted the hours of operation for the outdoor seating area to 11:00am to 11:30pm on all days, with patrons to leave within the following 30mins,
- limited the consent to 3 years, and
- prohibited the use of outdoor lighting to candlelight only.

On 23 May 2018, Development Consent 233/2013 was modified to remove the 3 year limitation initially imposed.

On 21 August 2020, Development Application DA2020/0962 was lodged with Council.

On 2 December 2020, a report was prepared and presented to the NBLPP recommending approval of DA2020/0962 as proposed.

On 7 December 2020, general terms of approval were issued by Heritage NSW limiting the scope of the works proposed by DA2020/0962. A memo was subsequently prepared and presented to the NBLPP outlining the position of Heritage NSW.

On 9 December 2020, the NBLPP approved DA2020/0962, inclusive of the general terms of approval issued by Heritage NSW.

On 2 June 2021, the subject modification application was lodged with Council.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 Assessment

The subject modification application has been lodged under the provisions of s4.55(2) of the EP&A Act, and the relevant matters for consideration are addressed, as follows:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	

<p>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>Council can be satisfied that the modified development will result in a development that is substantially the same as that already approved under DA2020/0962 for the following reasons:</p> <ol style="list-style-type: none"> 1. The proposed modified design and increase to capacity will not result in a development that is radically different to that originally approved. 2. Whilst the additional capacity, being 16 patrons, is a 25% increase to the approved capacity of the western deck, it is only a 6.4% increase to the total patronage of the venue. 3. The additional capacity is consistent with that previously sought in DA2020/0962, which was reduced via conditions as a consequence of concerns relating to the design of the western deck and not the capacity/patronage of the area in question. 4. The additional patronage does not give rise to any unreasonable impacts upon the amenity of the locality. 5. The redesign of the western deck has been prepared in consultation with Heritage NSW to ensure that the enlarged structure does not detrimentally impact upon the heritage significance of Manly Wharf. 6. Further, the redesigned structure does not unreasonably impact upon the surrounding natural environment or the function of the public wharf.
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>Development Application DA2020/0962 constituted integrated development with respect to s58 of the <i>Heritage Act 1997</i> (Heritage NSW) and s205 of the <i>Fisheries Management Act 1994</i> (DPI Fisheries).</p> <p>Heritage NSW and DPI Fisheries were consulted following the lodgement of the subject modification, with responses received confirming that there are no objections to the modified proposal, subject to existing and modified general terms of approval. See detailed discussion in relation to each individual referral further in the report.</p>

<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and Council's Community Participation Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as The case may be.</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>

Section 4.15 Assessment

In accordance with Section 4.55(3) of the EP&A Act, in determining a modification application made under Section 4.55, the consent authority must take into consideration such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the EP&A Act are:

Section 4.15 'Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p>	<p>See discussion on "Environmental Planning Instruments" in this report.</p> <p>Note: Manly Local Environmental Plan 2013 does not apply.</p>
<p>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</p>	<p>Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The modified application proposes new piles into the sea bed. The application was supported by a Preliminary (Stage 1) Site Investigation in this regard and Council is satisfied that, subject to conditions, the proposal can be constructed to minimise contamination risks.</p>
<p>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</p>	<p>Sydney Harbour Foreshores and Waterways Area Development Control Plan and Manly Development Control Policy for Manly Cove 1996 applies to the proposal.</p> <p>Note: Manly Development Control Plan 2011 does not apply.</p>
<p>Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement</p>	<p>None applicable.</p>
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)</p>	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of</p>

	Structures. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/06/2021 to 09/07/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Caroline Bussell	6 / 36 East Esplanade MANLY NSW 2095
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
Mrs Denise Mary Keen	29 / 80 Evans Street FRESHWATER NSW 2096
Greater Manly Residents Forum	29 / 80 Evans Street FRESHWATER NSW 2096

Four submissions were received in objection to the development, inclusive of one submission from a community group (Greater Manly Residents Forum). The concerns raised in the submissions are addressed, as follows:

- **Loss of public area**

The submissions received object to the loss of a portion of the public wharf associated with the proposed modifications. The submissions suggest that the area in question is currently used as an area for relaxation and outdoor recreation, to observe marine life and to appreciate the views across the harbour. The proposed extension of the deck will partially encroach within an area currently occupied by an existing planter bed. The entirety of the planter bed is to be removed, resulting in a minor increase in usable public space in this area. Further, as a result of the advice of Heritage NSW, the two smaller planter boxes to the north are also to be removed.

- **Inconsistency with intended use**

Submissions received object to the proposed expansion of the western deck on the basis that the use of the area for a restaurant is inconsistent with the intended use of the ferry wharf. The proposed development, being a 'land/water interface development' is permitted and anticipated within the W2 zone and is consistent with the objectives of the zone and the provisions of the SREP.

- **Loss of public views**

Submissions have been received in objection to the resultant impact upon views from the public domain. The proposal will result in the obstruction of a comparably minor portion of views available from specific vantage points. As discussed in detail within this report, the impact upon public views is not significant and does not warrant the refusal of the application in this regard.

- **Encroachment of the boardwalk**

Submissions have been received in objection to the proposal and the impact of seating along the southern boardwalk. The seating along the southern boardwalk was approved pursuant to DA2020/0962 and no changes are proposed in this regard.

- **Reinstatement of aspects previously rejected**

Submissions have been received in objection to the proposed reinstatement of aspects of the development that were removed via condition when the original consent was granted. The submissions state that these elements were refused on reasonable grounds, and their reintroduction warrants the refusal of the subject modification application. The three key areas raised are addressed, as follows:

1. The addition of 10 new piles, despite a condition restricting new piles.

The original application sought consent for the installation of new piles to support the proposed deck extension. Whilst the concept of additional piles was not of concern, the proposal lacked sufficient information in relation to the substrate of the seabed or any consideration of potential contamination. To avoid delays associated with the procurement of this information, the application was amended to allow for the structure to be cantilevered from the existing structure and conditions were imposed in this regard.

The applicant has since procured and presented the necessary information relating to the seabed and potential contamination, and no objection is raised in relation to the installation of additional piles. The cantilevered structure was not an intrinsic or fundamental aspect of the original grant of consent, and the altered structural design of the deck extension does not result in any unreasonable or unmanageable environmental impacts.

2. The extension of the deck to the north, despite a condition to delete the northern extension.

The northern extension of the deck was not supported by Heritage NSW on heritage grounds, and as such, conditions of consent were imposed to remove this aspect of the development. The applicant has since engaged with Heritage NSW and has developed a scheme that is now supported by Heritage NSW. It appears that the primary area of concern was the previously proposed straightening of the public area to the north of the proposed deck, which is now no longer proposed.

3. The deletion of one planter box, despite a condition requiring the removal of all proposed planters.

The original application proposed new planters throughout the development area. Conditions 6(b) and 9(c) were imposed to restrict the introduction of these newly proposed planters and did not relate to existing planters.

The subject application proposes the deletion of one large existing planter box to the north of the western deck area and in response to comments from Heritage NSW, the two smaller existing planter boxes are also required to be removed.

Nothing prevents an applicant from seeking consent to modify aspects of a development that were amended or removed by virtue of conditions imposed in the original consent, so long as the development remains substantially the same as that which was originally approved. As discussed with regard to s4.55 of the EP&A Act, the proposed modifications do not radically alter the development such that it could be suggested that the modified development is not essentially or materially the same as that which was originally approved.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p>No objection - no conditions.</p> <p><i>Environmental Health have reviewed the provided documentation and are of the opinion that the modification does not change any of the existing comments and proposed conditions provided through the initial development application. The conditions proposed to be amended do not affect contamination. Environmental Health does note that a phase 1 Preliminary contamination report was provided with the proposed modification which included measures to be included into the CEMP (Construction Environmental Management Plan) in line with condition 10, 22 & 25 of the initial DA, the report and its findings appear to have been developed in accordance with standard practice including a search of relevant databases and historical uses. Environmental Health have no objections to the modification in regards to contamination.</i></p>

Environmental Health (Industrial)	<p>No objection - no conditions.</p> <p><i>Environmental Health have reviewed the provided documentation and are of the opinion that the modification does not change any of the existing comments and proposed conditions provided through the initial development application. The conditions proposed to be amended do not affect the determination surrounding noise and the previous acoustic report. The previous report was modelled on 80 patrons and the inclusion of a plan of management controls any concerns surrounding acoustics.</i></p>
Environmental Health (Food Premises, Skin Pen.)	<p>No objection - no conditions.</p> <p><i>Environmental Health have reviewed the provided documentation and are of the opinion that the modification does not change any of the existing comments and proposed conditions provided through the initial development application. The conditions proposed to be amended do not affect food premise fit out as it relates to the outdoor dining area.</i></p>
NECC (Bushland and Biodiversity)	<p>No objection - no conditions.</p> <p><i>This referral is based upon previous reports submitted in support of the original DA and an additional biodiversity assessment (ERM, 27 May 2021) submitted with the modification proposal.</i></p> <p><i>Existing conditions of consent applied to the original DA will serve to mitigate impacts to the endangered population of Little Penguin. It is assumed that impacts associated with overshadowing and disturbance of seagrass adjoining the subject site will be assessed by Council's riparian referrals body.</i></p>
NECC (Coast and Catchments)	<p>No objection - no conditions.</p> <p><i>The modification application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. The Manly Wharf is excluded from the Manly LEP 2013 and Manly DCP 2013 and the applicable controls are from the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, the Sydney Harbour Foreshores and Waterways Area Development Control Plan. It has also been assessed against requirements of the Manly Development Control Policy for Manly Cove, 1996</i></p> <p><i>The application has been assessed using Northern Beaches SREP assessment template.</i></p> <p><u>Coastal Management Act 2016</u> <i>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed modifications are in line with the objects, as set out under Clause 3 of the Coastal Management Act2016.</i></p>

	<p><u>State Environmental Planning Policy (Coastal Management) 2018</u> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13(coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><u>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</u> The subject site is located within/adjacent to the W2 (Environmental Protection) Zone.</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Planning Lab Pty. Ltd. dated April 2021 and Council accepts the assessment that it will not have any adverse impact on the waters and adjoining foreshores, it is determined that the objectives and assessment criteria of the zone have been met.</p>
NECC (Development Engineering)	<p>No objection - no conditions.</p> <p>No objection to the application which has no impact on stormwater, vehicle access and Council's infrastructures.</p>
NECC (Riparian Lands and Creeks)	<p>No objection - no conditions.</p> <p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>The site sits within Sydney Harbour which supports a diverse range of environmentally sensitive aquatic flora and fauna. The development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters. The environmental protection controls and mitigation measures recommended in the Biodiversity Assessment Report prepared by ERM must be installed and maintained until all work is complete.</p> <p>This application is recommended for approval, subject to existing conditions, as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment around Manly Wharf in Sydney Harbour if conditions are adhered to. The proposal is therefore supported.</p>
Strategic and Place Planning (Heritage Officer)	<p>No objection - with conditions.</p> <p>The proposal has been referred to Heritage as it is contained within a State heritage item, being Item I145 - Manly Wharf, listed in Schedule 5 of Manly Local Environmental Plan 2013 and also listed in the State Heritage Register. It is also in the vicinity of a number of heritage items:</p>

- *Item I248 - Governor Phillip Monument - West Esplanade Reserve*
- *Item I251 - Park - West Esplanade*
- *Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour*
- *C2 - Manly Town Centre Conservation Area*

Item I145 - Manly Wharf

Statement of Significance: Of environmental significance as a visually prominent man-made feature. Of historical significance for its association with the maritime activities at Manly as a tourist destination and suburb of Sydney, dependent on the ferry link to the CBD. (Anglin 1990:2033) Together with Circular Quay, the wharf is the only substantial older style ferry wharf surviving in Port Jackson: association with Manly's history as a recreational centre. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike 1985)

Physical Description: A broad wharf supported on timber piers and with a concrete platform. The superstructure is constructed of steel and timber. The facade and side walls form an important architectural design, similar to the Circular Quay ferry terminals. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike, 1985).

The original part of the wharf was built in a modernistic transport idiom, with typical stylistic features of era including play of circular and rectangular geometric terms, bayed facade to the water (marine connotations), wide arc plan at entrance, clock tower with "fins", flat roofing marked by wide fascia board. The current entrance was originally designed as a tram terminus and turning area. Timber clad framed structure opening and large internal spaces, concrete deck to west enclosed by "ship" railing. Some original shop fittings, signage etc. Subjected to major alterations to the wharf wings involving a T-shaped clerestory (Stapleton, 1981).

Assessment

Heritage Council of NSW (the Heritage Council) have considered the modification (Mod2021/0314) to the integrated development application (IDA2020/113) and in accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, the approval has been granted.

It is noted in the approval that, "the two existing planters shown on the lower deck on the plans are not part of this development application and therefore they are not a part of this consent. The planter boxes must be removed from the drawings to be submitted with the section 60 application".

Therefore, no objections are raised on heritage grounds, subject to all terms of approval (conditions) required by Heritage NSW being included in any consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>No objection - no conditions.</p> <p>The modification application was referred to Ausgrid, who provided conditions of consent in relation to the original application. On 16 June 2021, Ausgrid advised that no response was necessary.</p>
Foreshore and Waterways Planning and Development Advisory Committee	<p>No objection - no conditions.</p> <p><i>The Foreshores and Waterways Planning and Development Advisory Committee (the Committee) has reviewed the referral in accordance with Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP), and given that it is considered a regionally significant development, considers it to be a 'Category 1' matter.</i></p> <p><i>The advisory committee recommends that the following be taken into consideration during the assessment of the development application:</i></p> <ul style="list-style-type: none"> <i>a. the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 specifically</i> <ul style="list-style-type: none"> <i>- Part 3, Division 1, Clause 17 Zone objectives of the W8 Scenic Waters: Passive Use Zone</i> <i>- Part 3, Division 2 Matters for consideration</i> <i>- Part 5 Heritage provisions</i> <i>b. the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005</i> <p><i>In referring the proposal to the Committee, Mosman Council [sic] has satisfied its statutory obligation as required under the SREP. The committee has no additional matters it wishes to raise with respect to the proposed development.</i></p> <p><i>Please Note: For the Committee's purposes, 'Category 1' matters are those which are of regional or state planning significance, in the public's interest, ora matter for which the Committee can offer technical or expert advice.</i></p>
NSW Police – Licensing (Clubs, Hotels, Pubs)	<p>No objection - no conditions.</p> <p><i>No objection is raised as to the redesign to the deck and increase capacity as a result of the increase in deck size.</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated. The application was supported by a Preliminary Site Investigation, prepared by JK Environments, as the installation of new piles will disturb the substrate of the seabed.

In its conclusion, the investigation states:

The historical assessment did not identify any potentially contaminating activities (as listed in Table 1 of the SEPP55 Planning Guidelines) at the site or in the immediate vicinity.

The sediment has been identified as an AEC due to the general history of sediment impact throughout Sydney Harbour. However, as the site is located over water and there is/will be no complete Source-Pathway- Receptor (SPR) linkage to the sediment during the current or proposed use of the site, the sediments do not pose a risk in the context of the current or proposed land use.

The potential for exposure to sediments (i.e. to construction workers and ecological receptors) will increase during the construction phase of the proposed development. Contamination-related risks during these works are likely to be low as the extent of sediment disturbance should be minimal. Nevertheless, JKE recommend that suitable measures be integrated into the CEMP to mitigate risks associated with the minor disturbance of sediment that will occur. These measures should include (but not necessarily be limited to):

- *Use of construction methods that minimise disturbance of the sediments (e.g. driven piles);*
- *Use of a floating boom with a silt curtain around the work area;*
- *Mooring to the existing wharf during construction and eliminating (where possible) the use of anchors that disturb the seabed;*
- *Development of procedures for handling waste, including construction waste any residual sediment that may come to the surface on construction equipment or during demolition/removal of existing piles; and*
- *Completion of works during favourable weather conditions for tide, wind and waves.*

We are of the opinion that contamination poses a low risk in the context of the proposed development. The site is therefore considered to be suitable for the proposed development from a contamination viewpoint and remediation is not required, subject to the implementation of the above recommendations.

In accordance with clause 7(1)(b) of SEPP 55, the consent authority can be satisfied that the land is in a suitable state for the purpose for which the development is proposed to be carried out. It is recommended that Condition 10, which requires the preparation of a CEMP, be amended to include the recommendations of the Detailed Site Investigation.

Clause 7(1)(c) stipulates that "if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose". No remediation is required or proposed as part of subject modification application.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area and the provisions of the SREP are applicable to this development.

In accordance with clause 5(1) of the SREP, Council remains the consent authority for the proposed modified development.

The site is zoned W2 Environmental Protection under the provisions of the SREP. The modified proposal remains consistent with the objectives of the zone, and in accordance with the provisions of clause 18(2), the proposed modified development remains permitted with consent.

The consent authority can be satisfied that the assessment has considered all necessary matters prescribed by the SREP, as follows:

21 Biodiversity, ecology and environmental protection

The application was supported by an amended Biodiversity Report, confirming that the modified development will not result in any unreasonable impacts upon surrounding and nearby flora or fauna, including nearby seagrass and the Little Penguin population that is known to nest and forage beneath the wharf. The proposed modifications have been reviewed by Council's Biodiversity Officers who raise no objection in this regard.

22 Public access to, and use of, foreshores and waterways

The proposed modified development does not restrict access to or along the foreshore.

24 Interrelationship of waterway and foreshore uses

The proposed modified development does not cause conflict between land and water uses and does not create excessive congestion in the waterway or along the foreshore.

25 Foreshore and waterways scenic quality

The form, scale, design and siting of the proposed modified development is appropriate with regard to the scenic quality of the locality.

26 Maintenance, protection and enhancement of views

Clause 26 of the SREP prescribes the following matters to be taken into consideration in relation to the maintenance, protection and enhancement of views:

- a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*
- b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*
- c) the cumulative impact of development on views should be minimised.*

As addressed in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046* ("Rose Bay Marina"), it is noted that the provisions of clause 26(a) are "in tension" with the provisions of clauses 26(b) and (c), in so far as the requirement to maintain, protect and conserve views does not align with the requirement to minimise impacts upon views. Clause 26(a) acts to prevent development that will impact upon views, irrespective of the level of impact, whereas clauses 26(b) and (c) seemingly acknowledge some level of impact, as long as it is minor in nature.

The proposed modified development will result in the obstruction of minor elements of views available from limited vantage points along the wharf. The reasonableness of this impact is considered with regard to the planning principle for public domain views developed by the NSW LEC in Rose Bay Marina.

Identification Stage

Views of Sydney Harbour are available from Manly Cove, the boardwalk surrounding Manly Wharf and the promenade that extends around Manly Cove from Manly Wharf (east) to the old aquarium site (west). The view is both static and dynamic: with the movement of people and boats interrelating with fixed land massings and buildings. The view is also both proximate and distant: with immediate views of the water and closer land/water interfaces, and distant views of the eastern suburbs and city skyline.

The proposed modified development has the potential to impact a portion of the views available from the boardwalk immediately to the north of the proposed development. The level of impact is generally consistent whether in a seated or standing position. The area in question is predominantly used for fishing, for observing marine life below/around the wharf, for basking in the sunshine, and for taking in the available views. In consideration of the public area as a whole, the intensity of public use of the location affected by the development is low.

The need to consider the maintenance, preservation and enhancement of the views in question is outlined in the SREP (as above). The cumulative impact upon views is also identified as a matter of consideration in the Sydney Harbour Development Control Plan.

Analysis

The impact associated with the modified proposal is generally limited to views obtained from the area of the wharf immediately to the north of the proposed deck, as demonstrated in the images below.



Image 6 - Approximate extent of view corridor impacted by proposal

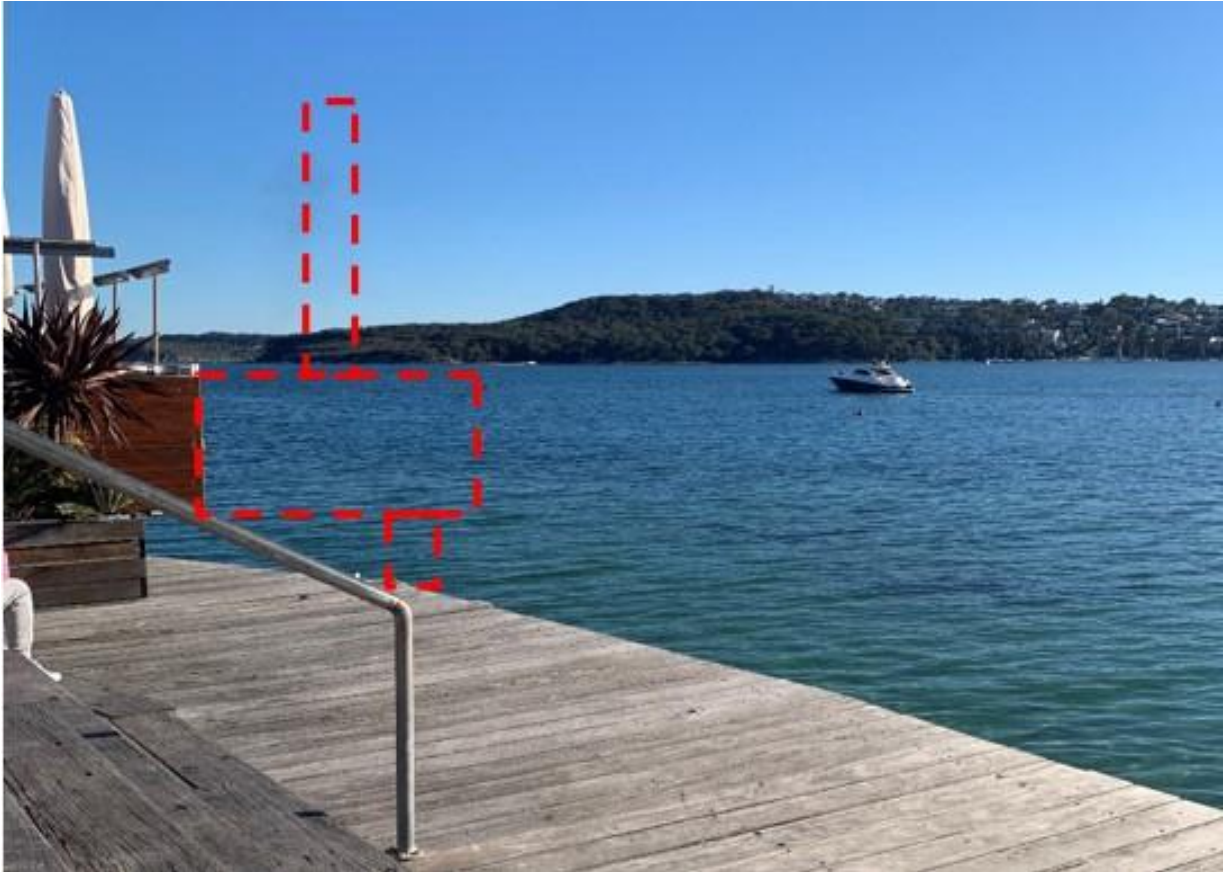


Image 7 - Approximate outline of proposed modified deck extension

The views from this area are reduced in a south-westerly direction, however the primary view across the cove to the west remains. The portion of the view affected does not contain any iconic elements and is not known to be significant to any organisation or person. Further, if it was of particular significance, the view is reclaimed by moving only a few steps further along the boardwalk to the north and from the wider public area to the north-west.

The unaffected portion of the view remains expansive and the proposed modified development will not detrimentally impact upon the amenity of the area of the wharf in question. The level of impact associated with the proposed modified development is considered to be reasonably minimised.

The proposal was referred to the Foreshores and Waterways Planning and Development Advisory Committee in accordance with clause 29 of the SREP.

Manly Wharf is nominated as a heritage item under the provisions of the SREP. Heritage NSW has provided general terms of approval for the proposed modified development, and as such, the consent authority can be satisfied that an assessment of any potential impact of the heritage item has been undertaken.

Overall, the proposal is consistent with the relevant provisions of the SREP.

SEPP (Coastal Management) 2018

The site is identified as being within both the Coastal Use Area and Coastal Environment Area under the provisions of SEPP (Coastal Management) ('CM SEPP'). Noting that the site is also within the Foreshores and Waterways Area under the provisions of the SREP, a number of the provisions of the CM SEPP do not apply.

Clause 15 remains the only provision relevant to the proposal. Clause 15 of the CM SEPP prescribes that 'development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land'. The application has been reviewed by Council's Coast and Catchments team who are satisfied that the proposal will not cause increased risk of coastal hazards at the site or surrounding land.

As such, the proposal is consistent with the relevant provisions of the CM SEPP.

Development Control Plans & Other Policies/Plans

Sydney Harbour Development Control Plan

The proposed development, being a 'land/water interface development' as defined by the SREP, is subject to the provisions of the Sydney Harbour Development Control Plan ('the DCP'). The proposed modified development remains consistent with the relevant provisions of the DCP.

Manly Development Control Policy for Manly Cove

The proposed modified development has been assessed with respect to the provisions of the Manly Development Control Policy for Manly Cove, as follows:

Clause	Control	Compliance	Comment
2.1	Building Location	On merit	Clause 2.1 states that no new building work is anticipated beyond the location of existing buildings. The modification application proposes a minor extension of the existing approved deck structure, that will not unreasonably impact upon public waterfront access or the provision of open space.
2.2	Building Height	Yes	
2.3	Building Scale	Yes	
3.1	Design for Townscape	Yes	
3.2	Design Principles	Yes	
3.3	Design Considerations	Yes	
4.1	General	N/A	The monetary requirement to offset any parking shortfall prescribed by clause 4.1 is no longer applicable, and is not a requirement of Council's current Contributions Plan.
4.2	Access	N/A	
4.3	Loading Facilities	N/A	
4.4	Vehicular Parking	On merit	The proposed development does not provide any additional parking. Nonetheless, the proposal is supported by Council's Traffic Engineer, noting that the site is located at a public transport hub.
5	Drainage/Water Quality	N/A	
6	Waste Management	Yes	

Manly West Esplanade Heritage Activation Plan

The subject site is located within the area considered by the Manly West Esplanade Heritage Activation Plan. The proposed works do not conflict with any of the recommendations of this plan and will not impact upon the implementation of this plan.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be consistent with the objectives of all relevant planning instruments.

Development Consent DA2020/0962 includes conditions of consent that restrict the size and capacity of the western deck compared to that initially proposed. These conditions were imposed due to concerns raised by Heritage NSW in relation to the shape of the deck and the way it relates to the greater wharf structure. The applicant has worked with Heritage NSW to address these concerns and has developed a modified scheme that is now supported by Heritage NSW.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0314 for Modification of Development Consent DA2020/0962 granted for alterations and additions to Manly Wharf in association with Hugos restaurant on land at Lot 1 DP 1170245,0 Wharves And Jetties, MANLY, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance in accordance with the plans and documents listed in Condition 1, except as amended by any other condition of consent or the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 100, Floor Plan - Proposed, issue P13	31 March 2021	Squillace
DA 201, Proposed West Elevation, issue C	31 March 2021	Squillace
DA 301, Proposed South Elevation / Section AA, issue C	31 March 2021	Squillace

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary (Stage 1) Site Investigation, reference E33925rpt	6 April 2021	JK Environments
Biodiversity Assessment, reference 0148219	27 May 2021	Environmental Resources Management Australia Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Modify Condition 6 'Compliance with requirements of Heritage NSW' to read as follows:

Heritage Consultant

- a) A suitably qualified and experienced heritage consultant must be nominated for this project. The nominated heritage consultant must provide input into the detailed design, provide heritage information to be imparted to all tradespeople during site inductions, and oversee the works to minimise impacts to heritage values. The nominated heritage consultant must be involved in the selection of appropriate tradespersons and must be satisfied that all work has been carried out in accordance with the conditions of this consent.

Reason: So that appropriate heritage advice is provided to support best practice conservation and ensure works are undertaken in accordance with this approval.

Site Protection

- b) Significant built and landscape elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric, including landscape elements, is not damaged or removed.

Reason: To ensure significant fabric including vegetation is protected during construction.

Photographic Archival Recording

- c) A photographic archival recording of the areas proposed to be modified must be prepared prior to the commencement of works and at the completion of works. This recording must be in accordance with the Heritage NSW publication 'Photographic Recording of Heritage Items using Film or Digital Capture' (2006). The digital copy of the archival record must be provided to Heritage NSW, Department of Premier and Cabinet.

Reason: To capture the condition and appearance of the place prior to, and during, modification of the site which impacts significant fabric.

Unexpected Historical Archaeological Relics

- d) The applicant must ensure that if unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area (s) based on the nature of the discovery.

Reason: This is a standard condition to identify to the applicant how to proceed if historical archaeological deposits or relics are unexpectedly identified during works.

Compliance

- e) If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

Section 60 Application

- f) An application under section 60 of the Heritage Act 1977 must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

C. Modify Condition 9 'Amended to the Approved Plans' to read as follows:

The following amendments are to be made to the Approved Modified Plans:

- a) Deleted.
- b) Deleted.
- c) Deleted.
- d) Deleted.
- e) **The two 'existing planter boxes' to the north of the extended western deck are to be removed.**

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: Consistency with requirements of Heritage NSW.

D. Modify Condition 10 'Construction Environment Management Plan' to read as follows:

A Construction Environmental Management Plan (CEMP) must be prepared with respect to the approved development. The CEMP is to be prepared by a suitably qualified person and must address:

- a) all measures for the protection of native flora and fauna during construction,
- b) the requirements and general terms of approval of DPI Fisheries,
- c) a risk assessment of all environmental aspects and impacts to the site and surrounding properties or waterbodies associated with:
 - i. hazardous substances
 - ii. water
 - iii. air
 - iv. noise
 - v. vibration
 - vi. waste and litter
 - vii. environmental protection objectives and control strategies
 - viii. environmental conditions using measurable indicators and standards
 - ix. emergency response plan
 - x. environmental monitoring and reporting plan
- d) Any other matters specifically highlighted in conditions of this consent.
- e) Use of construction methods that minimise disturbance of the sediments (e.g. driven piles).**
- f) Use of a floating boom with a silt curtain around the work area.**
- g) Mooring to the existing wharf during construction and eliminating (where possible) the use of anchors that disturb the seabed.**
- h) Development of procedures for handling waste, including construction waste any residual sediment that may come to the surface on construction equipment or during demolition/removal of existing piles.**
- i) Completion of works during favourable weather conditions for tide, wind and waves.**

An induction plan for site personnel must be prepared that addresses the CEMP.

The CEMP and site induction plan must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure the appropriate operation and management of the site and to protect native vegetation, wildlife, habitats and receiving waterways.

E. Modify Condition 28 'Plan of Management' to read as follows:

A Plan of Management is to be prepared for the use of the outdoor areas associated with Hugos Restaurant in accordance with the following:

- a) A maximum of **80** patrons are allowed within the western outdoor dining area at any given time.
- b) A maximum of 36 patrons are allowed within the southern outdoor dining area at any given time.
- c) All patrons within the western outdoor dining area and the southern outdoor dining area are to be seated.
- d) No amplified music or live entertainment is permitted at either the western or southern outdoor dining area.
- e) The outdoor areas are not to be used between the hours of 12am midnight to 11am.
- f) Management is to ensure that patrons departing the premises do so in an orderly manner to minimise noise impacts (especially after 10pm)
- g) Garbage and bottle disposal should be undertaken prior to 10pm and not before 7am.
- h) A register of any complaints and any actions made in response to such complaints is to be maintained on site and produced upon request from Council.

- i) Tables must be cleared in a timely manner so items are not blown into the waterway.
- j) Disposable items such as plastic or polystyrene cups, containers and straws are not to be used in outdoor dining areas.
- k) With the exception of candles, no external lighting is permitted.
- l) Hours of operation for the outdoor dining areas are limited to 11:00am to 11:30pm on all days, with all restaurant services to cease and all customers to vacate within 30 minutes.
- m) A 1m wide service area is to be outlined on the ground immediately adjacent to the southern outdoor dining area, with staff servicing the southern outdoor dining area to be generally limited to this area.

The Plan of Management is to be submitted to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure appropriate management of outdoor areas to minimise impacts upon the surrounding environment.