

STATEMENT OF ENVIRONMENTAL EFFECTS

S4.55(2) MODIFICATION TO REVISE THE SHAPE OF THE OUTDOOR SEATING

DECK ASSOCIATED TO HUGOS MANLY

MANLY WHARF, EAST ESPLANADE, MANLY



Report Prepared by: Planning Lab

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Summary

This Statement of Environmental Effects (SEE) accompanies an S4.55(2) modification for DA/2020/0962. DA/2020/0962 approved part of a deck extension to the Manly Wharf that was intended to increase the outdoor seating of Hugos Manly. Part of the deck extension was not approved based on the General Terms of Approval issued by Heritage NSW. This modification submits revised plans for the subject deck area. Prior to its lodgement, the revised design has been the subject of close consultation with both Northern Beaches Council and Heritage NSW. It requires amendment of consent conditions 1 and 28 and deletion of condition 9.

Manly Wharf is a State listed heritage item (01434) and this modification requires approval by the Heritage Council of NSW. The heritage impacts of the proposal have been considered in the HIS supplied with DA/2020/0962 and in the supplemental Heritage Impact Statement by City Plan that is submitted with this modification. It demonstrates that the proposal relates to an area of the wharf constructed in the 1990s and does not impact the original 1941 building fabric. The proposed design is noted to have been developed with guidance from Heritage NSW. The curvature of the deck is maintained as per their advice.

DA/2020/0962 had sought a maximum occupancy of 80 persons on the subject deck area, however, due to the size reduction this was revised downwards to 64 in the consent. This modification seeks the same maximum occupancy of 80 persons on the deck that was sought under DA/2020/0962. The findings of the Acoustic Report submitted with DA/2020/0962 remains valid and supports the proposed increase from 64 to 80 patrons on the modified deck area.

The proposal is accompanied by an Amended Biodiversity Assessment conducted by Environmental Resources Management Australia. The Assessment demonstrates that the proposal has a low risk of impacts upon seagrass and the little penguin colony with the recommended management measures put in place.

A Preliminary Site Investigation has been undertaken by JK Environments. No history of potentially contaminating uses was identified at the site however, due to the general history of sediment impacts in Sydney Harbour, the sediment is identified as an area of environmental concern. Due to the use of the site above the water, the sediments are not found to pose any risk. Recommendations have been made for managing risk during the construction phase.

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 and Manly Development Control Policy for Manly Cove, 1996. This SEE demonstrates that the proposal is not inconsistent with any environmental planning instrument.

The proposed development does not meet the criteria for consideration as state or regionally significant development under State Environmental Planning Policy (State and Regional Development) 2011. The Northern Beaches Council is the consent authority for the application. The proposal will support the ongoing operation of the Manly Wharf as an iconic part of Manly's cultural history and will support the local tourism and night-time economies. The proposal is recommended for approval by Northern Beaches Council.

Site Location and Context

The Manly Wharf is located on the southern end of the Manly Town Centre. It is the primary point of public transport between Manly and the Sydney CBD and forms a gateway through which residents, tourists and daily commuters all pass-through travelling to or from Manly.

The subject tenancy Shop 1 Lot 1 of the Manly Wharf, East Esplanade, Manly, is located at the westernmost point of the Ground Level of the Manly Wharf. Hugos currently has indoor seating for 150 customers and outdoor seating along the western edge of the wharf for 50 customers. The Manly Wharf contains multiple restaurants, bars and cafes. On the western side of the wharf, Hugos and the Bavarian have outdoor seating on the wharf and on the east Manly Wharf Hotel provides outdoor seating.

The Manly Ferry Wharf is a listed heritage item under both the Heritage Act 1977 and the Manly LEP 2013. Designed by Sydney Modernist Architect Arthur Baldwinson, the timber wharf is significant because of its age and association with the historic development and continuation of Manly as a seaside resort of Sydney and because of its contribution to the context of the sweeping beach and line of the trees which is now an integral part of this mainland view of Manly. It is a rare surviving working example of a maritime architecture, designed in the Modernist style of the mid-Twentieth Century. A major extension was undertaken in the 1990s to add retail shops, bars and cafes to the arcade. Hugos is located within an area that was constructed as part of the 1990s extension.

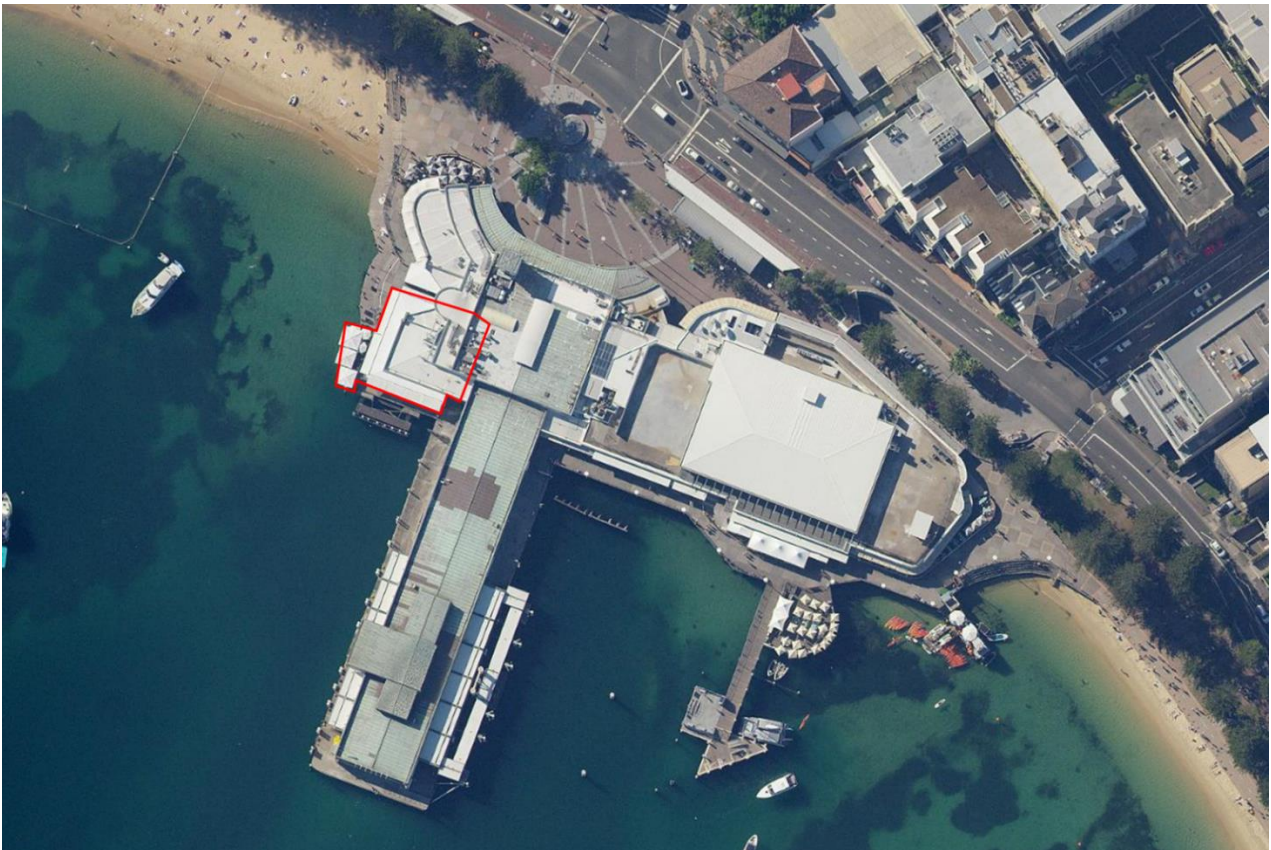


Figure 1 - The site's approximate location within Manly Wharf (Six Maps)

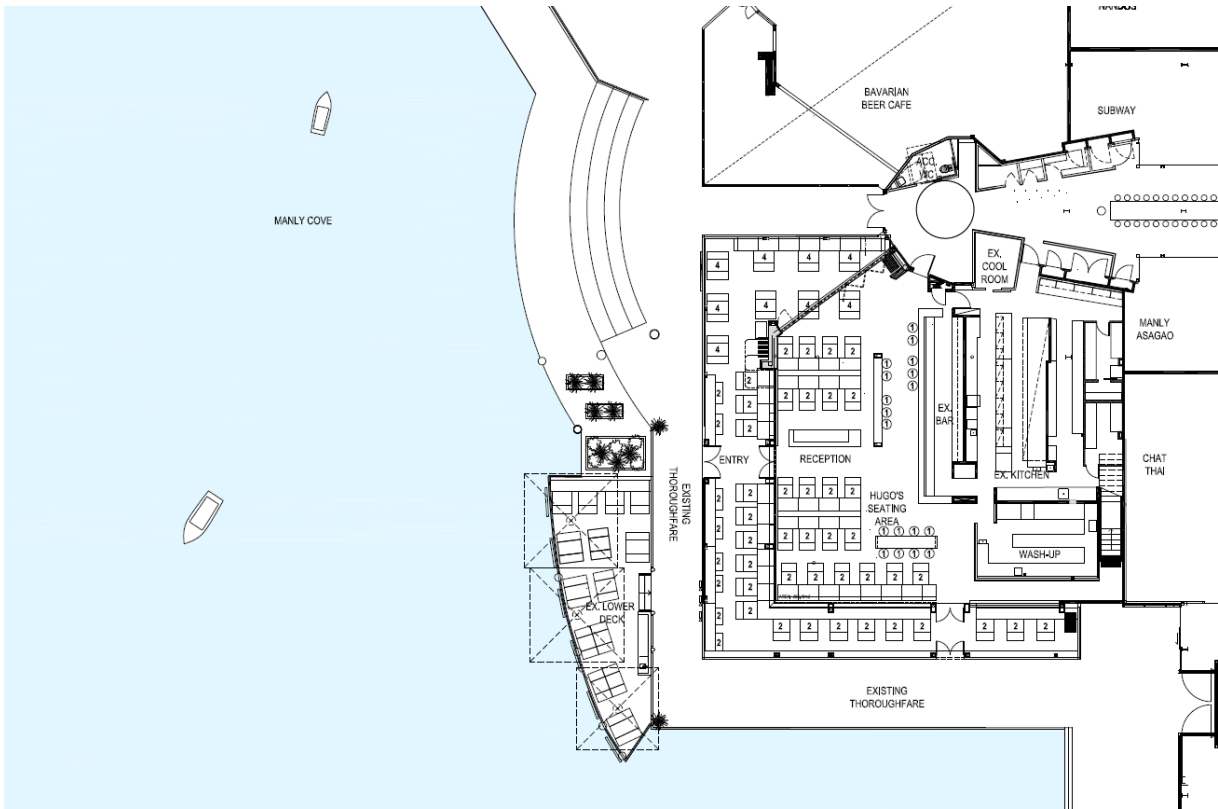


Figure 2 - Existing site plan



Figure 3 - Photo of the existing site (Squillace Architects)



Figure 4 - Photo of the existing site (Squillace Architects)



Figure 5 - Photo of the current seating area (Squillace Architects)

Site History

DA 267/2007

On the 15th of November 2007, Manly Council approved the fitout and use of the restaurant tenancy described as:

“Alterations and Additions - Fitout to Shop 210 for use as a Restaurant including proposed outdoor dining area and new awning - Hugos restaurant”

DA 7/2008

On the 3rd of April 2008, Manly Council approved the extension of the timber framed pergola with bifold windows to create an additional outdoor seating area to the south of the restaurant.

DA 233/2013

On 21/08/2014 the Manly Independent Assessment Panel approved:

Alterations and Additions - Outdoor seating for Hugos Restaurant to the existing public wharf along the south-western side area including three (3) umbrella's, thirty-six (36) seats, alterations and additions to the stairs and enclosure of area

Condition ANS01(2) required “that the new outdoor seating, the subject of this application, is to remain on site for a period of no longer than 3 years”.

Condition ANS03 provide the currently approved hours of operation stating:

*“The hours of operation for the outdoor dining area are 11.00am to 11.30pm on all days.
Upon expiration of the permitted hours of operation, all restaurant service shall immediately cease and all customers on premises shall be required to leave within the following half hour.”*

S96 233/2013

On the 23rd of May 2018 Council approved an application to delete condition ANS01(2) as quoted above.

DA/2020/0962

On 9 December 2020, Northern Beaches Local Planning Panel approved a proposal to modify the shape and size of the outdoor seating deck. While the application was approved, the consent applied several amendments under condition 9 which are:

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. (indicated in red in figure 6).

c) Deletion of all proposed planter boxes.

d) Deletion of fixed heaters.

The approved plans permitted part of the proposed increase in deck size. This increased the outdoor seating by a total of 50 seats with 36 new seats on the western frontage and 14 new seats on the northern deck area. The amendments made under condition 9 were part of the General Terms of Approval by Heritage NSW and they removed 16 seats from the approval and maintained a visual separation between the upper and lower decks.

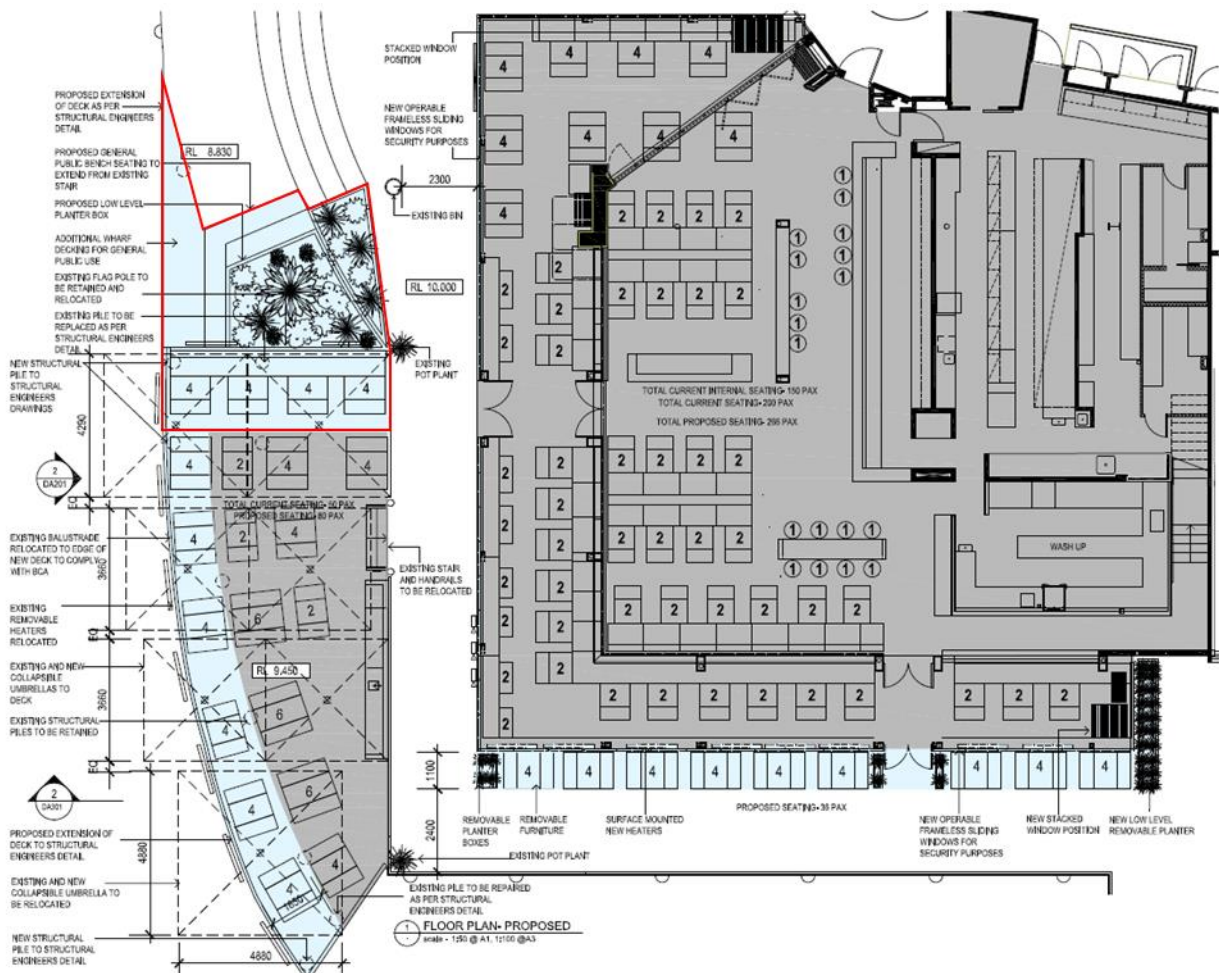


Figure 6 - DA2020/0962 proposed plan with non-approved area shown in red

Proposal Summary

This S4.55(2) application seeks to modify DA/2020/0962 to permit an extended outdoor deck that will provide seating for a total of 80 people by amending conditions 1, 9 and 28. The modifications are detailed in the Architectural Plans by Squillace Architects but include the following aspects:

- Extension of the deck to the north and north west largely retaining the existing shape.
- 10 new piles.
- Seating increased from 64 (as approved) to 80.
- New 1m wide heaters around the deck’s perimeter (smaller than the 1.5m previously proposed).
- New collapsible umbrellas.
- A single planter box on the lower deck to be removed.

The proposed amendments have been developed with guidance from Heritage NSW and retain the existing curvature of the deck keeping the upper and lower decks visually distinct.

The following amendments are proposed to the consent:

| Condition | Proposal |
|--|--|
| 1 - Approved Plans and Supporting Documentation | Condition 1 be modified to replace the approved plans with those provided in this application. |
| 9 - Amendments to the Approved Plans | Condition 9 be deleted as this modification addresses the amendments. |
| 28 – Plan of Management | A Plan of Management dated 16 April 2021 is submitted with this application. Condition 28 be amended accordingly to state: “The outdoor areas associated with Hugos are to operate in accordance with the approved Plan of Management dated 16 April 2021.” |

Submission under S4.55(2) of the EPAA 1979

Clause 4.55(2) of the *Environmental Planning and Assessment Act 1979* states:

(2) Other modifications 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—

(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 ...

The development first granted consent under DA/2020/0962 permitted the extension of the Hugos northern seating deck and an increase to its occupancy. This proposal modifies the size and shape of the deck in response to advice from Heritage NSW. The development will remain substantially the same under the modification and may be assessed under S4.55(2) of the *Environmental Planning and Assessment Act 1979*.

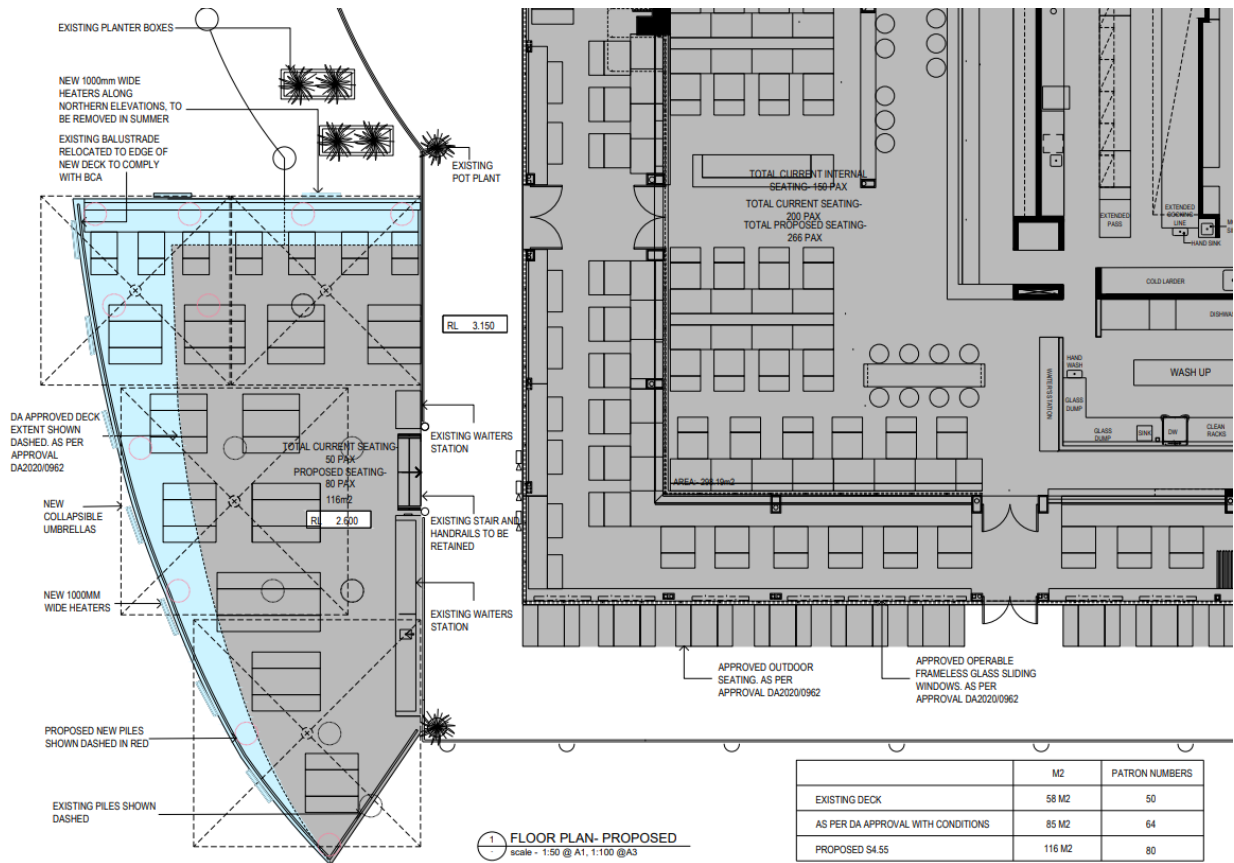


Figure 7 - Proposed floor plan

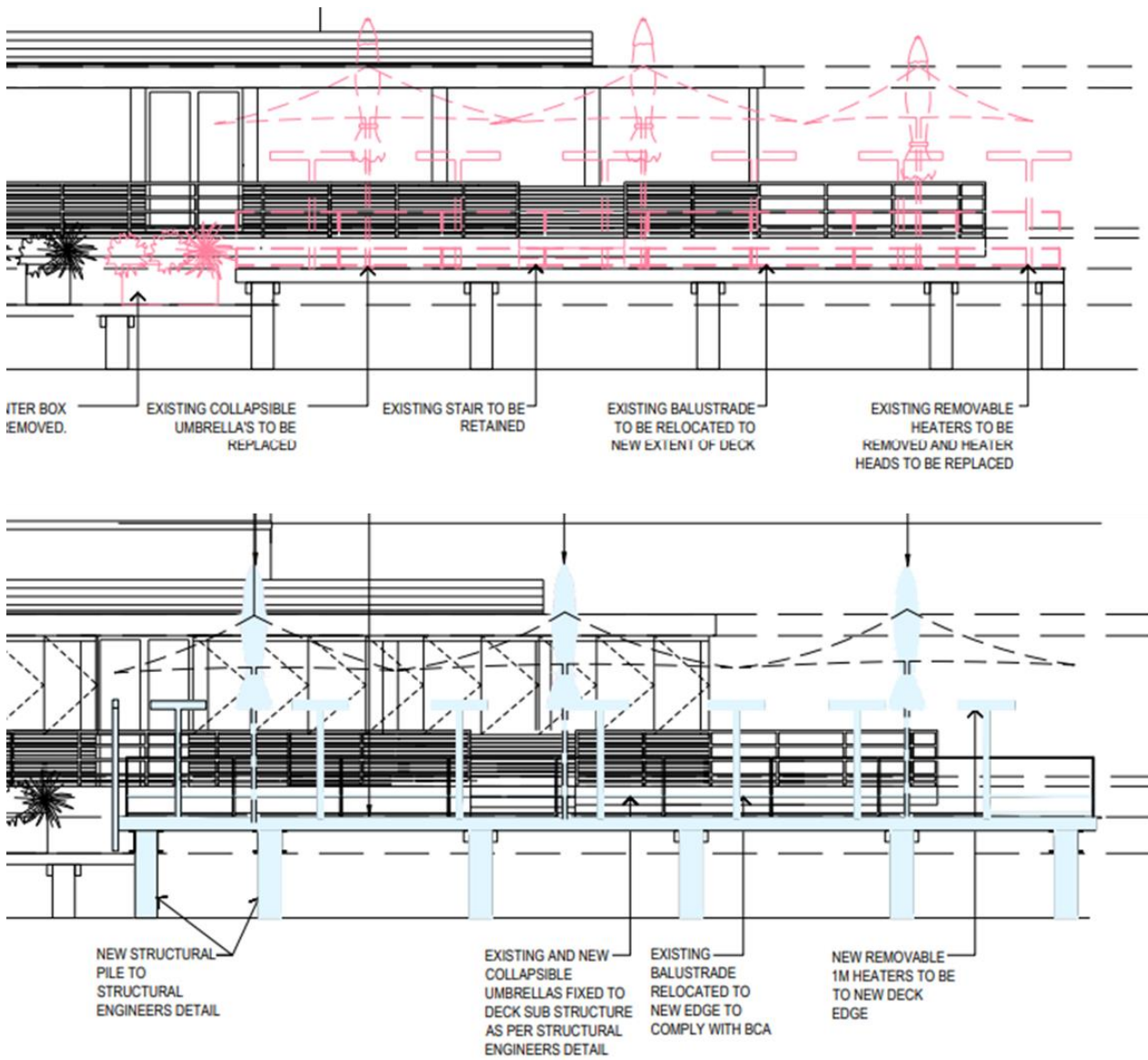


Figure 8 - Northern elevation: demolition (above) & proposed (below).

Environmental Planning and Assessment Act 1979 S4.15 Assessment

Section 4.15(A) Relevant Planning Instruments

The site is located in the former Manly Council area which has now been amalgamated with the Northern Beaches Council. The Manly Wharf is listed as a heritage item in the Manly Local Environmental Plan 2013 (Item I145) and the Plan also identifies the foreshore building line across part of the site.

Nonetheless, the building is shown as outside of the Land Application Map and the relevant statutory planning instrument for the site is the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The Sydney Harbour Foreshores and Waterways Area Development Control Plan is also applicable. There are no relevant draft planning instruments.

The site is identified as a State Heritage Item 01434 and the provisions of the *Heritage Act 1977* applies to the proposal making it an integrated development. The proposal's heritage impact is considered in the attached Supplementary Heritage Impact Statement by City Plan which is considered in greater detail in the Consultant Reports section of this SEE.

Section 4.15(B) Other Impacts of the Development

The proposal extends the south western corner of the Manly Wharf's decking. This includes extensions to an area used for seating by Hugos restaurant which will extend slightly over a publicly accessible section on the lower deck necessitating removal of one planter box from the public area. The planter box had made this area of the deck generally inaccessible to the public and there is no loss of accessible public space as a result.

The amended design has been developed with guidance from Heritage NSW. It maintains the existing curved shape and sustains a visual separation between the upper and lower decks. The proposal has also utilised smaller bar heaters with a width of 1m (instead of 1.5m as previously proposed) to minimise their visual impact. The heaters are removable and fully reversible.

The other relevant development impacts are addressed throughout this report and in the supporting consultant reports where they are shown to be acceptable and manageable.

Section 4.15(C) Suitability of the Site for the Development

The proposal will support the ongoing use and conservation of the Manly Wharf. The proposal will expand an existing use that is compatible with the site's associated cultural uses. The site is suitable for the proposed development.

Section 4.15(E) Public Interest

The proposal is in the public interest as:

- The proposal is consistent with the relevant zone objectives.
- The proposal supports the ongoing viable commercial operation of the wharf in support of its historical use as a place of cultural and social significance.

State Environmental Planning Policy (State and Regional Development) 2011

SEPP (State and Regional Development) 2011 identifies development that is state significant. It doesn't identify Manly Wharf in Schedule 2 as an 'identified site'.

The proposal involves the extension of a wharf and the relevant references in the SEPP are:

Clause 18 under Schedule 1 "State Significant Development general" which lists:

"18 Port facilities and wharf or boating facilities

Development for the purpose of port facilities or wharf or boating facilities (not including marinas) that has a capital investment value of more than \$30 million."

And Clause 5 of Schedule 7 "Regionally Significant Development" which states

5 Private infrastructure and community facilities over \$5 million

Development that has a capital investment value of more than \$5 million for any of the following purposes—

(a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,

The proposal has a capital investment value of less than \$5 million and therefore does not meet the criteria for consideration as either State Significant Development or Regionally Significant Development. The consent authority for this application will be the Northern Beaches Council.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP 2005. The site is located within a Foreshores Waterways Area and the objectives of the SREP apply to the proposed development. The relevant Clauses of the SREP 2005 are considered below and the proposal is shown to be compliant.

CI 16-17 - Zones

The site is located within a W2 – Environment protection zone. 'General restoration works' and 'recreational or club facilities' are permissible in the W2 zone.

'Recreational or club facilities' are defined under the SREP 2005 as *"a building or place used exclusively for sporting or leisure activities, whether operated for the purpose of gain or not"*. This is an apt description of the approved restaurant use.

The proposed use is permissible in the W2 zone and the proposed works are consistent with the zone objectives which are considered in the table below:

| OBJECTIVE | RESPONSE |
|--|---|
| <i>(a) to protect the natural and cultural values of waters in this zone,</i> | <p>Subject to recommendations of the Amended Biodiversity Assessment and the Preliminary Site Investigation, the development will have a low impact on the natural value of the area.</p> <p>The cultural value of the Manly Wharf is maintained under the proposal with its existing use as an area of entertainment (supported by restaurants and bars) is supported with additional seating.</p> |
| <i>(b) to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,</i> | See (a). |
| <i>(c) to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,</i> | As above, the proposal has low environmental impacts which can be managed. The proposal will support the cultural use of Manly Wharf. |
| <i>(d) to provide for the long-term management of the natural and cultural values of waters in this zone and adjoining foreshores.</i> | See (a). |

Division 2 - Matters for consideration

Part 3, Division 2 of the SREP applies nine matters for consideration in the assessment of applications under Part 4 of the *EPAA 1979* involving development within a Foreshores Waterways Area. These are:

| MATTER FOR CONSIDERATION | COMPLIANCE |
|---|---|
| CI 21 - Biodiversity, ecology and environment protection | <p>Complies.</p> <p>An Amended Biodiversity Assessment has been prepared by Environmental Resources Management Australia to accompany this application. It is summarised in greater detail in the Consultant Reports section of this SEE.</p> |
| CI 22 - Public access to, and use of, foreshores and waterways | <p>Complies.</p> <p>The proposal will allow additional people to enjoy the foreshore area from the Hugos Manly seating. The proposal extends slightly over a public portion of the lower deck which is currently occupied by a planter box. The proposal does not restrict public movement around the wharf as the planter box currently restricts access.</p> |

| | |
|---|---|
| <p>CI 23 - Maintenance of a working harbour</p> | <p>Complies.</p> <p>The proposal has no impact on the working harbour.</p> |
| <p>CI 24 - Interrelationship of waterway and foreshore uses</p> | <p>Complies.</p> <p>The proposal does not interfere with the use of any waterway, does not generate water borne traffic and does not create any conflict in land use.</p> |
| <p>CI 25 - Foreshore and waterways scenic quality</p> <p><i>The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows—</i></p> <p><i>(a) the scale, form, design and siting of any building should be based on an analysis of—</i></p> <p style="padding-left: 40px;"><i>(i) the land on which it is to be erected, and</i></p> <p style="padding-left: 40px;"><i>(ii) the adjoining land, and</i></p> <p style="padding-left: 40px;"><i>(iii) the likely future character of the locality,</i></p> <p><i>(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,</i></p> <p><i>(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.</i></p> | <p>Complies.</p> <p>The proposal involves works to the outdoor seating area on the deck area along with minor elevational modifications. It does not involve any internal or external intervention, structural changes, additions, or alterations to the significant fabric of the 1941 Wharf building. The scale of the modifications is relatively minor and will not adversely impact the scenic quality of Manly Cove.</p> |
| <p>CI 26 - Maintenance, protection and enhancement of views</p> | <p>Complies.</p> <p>The proposal includes a minor extension of the Manly Wharf deck but will not have any significant impact on views as it is located on the lowest level of the wharf.</p> |
| <p>CI 27 - Boat storage facilities</p> | <p>Complies.</p> <p>The proposal has no impact on boat storage facilities.</p> |
| <p>CI 27A - Floating boat platforms</p> | <p>Complies.</p> <p>The proposal has no impact on floating boat platforms.</p> |
| <p>CI 27B – Mooring pens</p> | <p>Complies.</p> <p>The proposal has no impact on mooring pens.</p> |

Sydney Harbour Foreshores and Waterways Development Control Plan 2005

| SHFWDCP 2005 | SPECIFIC PROVISIONS | PROPOSAL |
|--|---|---|
| <p>2. Ecological Assessment</p> | <p>The General aims of this Section are:</p> <ul style="list-style-type: none"> • <i>ecological communities, particularly those which form wildlife habitats, are protected and where feasible enhanced;</i> • <i>development is sited to retain native vegetation, wetlands and natural foreshores;</i> • <i>development is accompanied by revegetation and rehabilitation of degraded foreshores, where appropriate; and</i> • <i>development does not impact adversely on water quality</i> | <p>Complies.</p> <p>An Amended Biodiversity Assessment has been prepared by Environmental Resources Management Australia which addresses the aims of this section and which accompanies this application. It is summarised in greater detail in the Consultant Reports section of this SEE.</p> |
| <p>3. Landscape Assessment</p> | <p>The site is located in Landscape Character Area 8.</p> <p><i>Any development within this landscape is to satisfy the following criteria:</i></p> <ul style="list-style-type: none"> • <i>vegetation is integrated with land-based development to minimise the contrast between natural and built elements;</i> • <i>design and mitigation measures are provided to minimise noise and amenity impacts between incompatible land uses;</i> • <i>the maritime uses on the Harbour are preserved. Pressure for these uses to relocate is minimised. New developments adjoining maritime uses are designed and sited to maintain compatibility with existing maritime uses; and</i> • <i>remaining natural features that are significant</i> | <p>Complies.</p> <ul style="list-style-type: none"> • The proposal is located on a wharf where it cannot minimise contrast. • A Noise Impact Assessment was prepared by Acoustic Logic to accompany the original DA. It considered to noise impact of the proposal including 80 patrons on the subject deck area which it demonstrated to be acceptable. The findings of that report remain applicable to this modification as the numbers of customers on the deck and hours of operation are the same as previously proposed. The Noise Impact Assessment is summarised in the consultant Reports section of this SEE. • The proposal will have no negative impact on maritime uses of the wharf. |

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| | <p><i>along the foreshore are preserved and views of these features are maintained.</i></p> | <ul style="list-style-type: none"> • The proposal does not visually impact upon any natural feature of the foreshore. |
| <p>4. Design Guidelines for Land/Water Interface Developments</p> | | |
| <p>4.2 General Requirements</p> | <ul style="list-style-type: none"> • public access to waterways and public land is maintained and enhanced; • congestion of the waterway and foreshore is minimised; • conflicts on the waterway and foreshore are avoided; • the development warrants a foreshore location; • the development does not interfere with navigation, swimming or other recreational activities; • the demand for the development has been established; • the structure does not obstruct or affect the natural flow of tides and currents; • development does not dominate its landscape setting; • the extent of development is kept to the absolute minimum necessary to provide access to the waterway; • shared usage of facilities is encouraged to minimise the number of structures and their cumulative impact on the environment of the Harbour and its tributaries; and • development is setback at least 2.5 metres from the division of the waterway as established by the NSW Maritime Authority and illustrated in Figure 4. | <p>Complies.</p> <ul style="list-style-type: none"> • Public access to the Wharf is maintained. • n/a • n/a • n/a • n/a • Hugos restaurant has been in operation since 2008 and has established a strong reputation for quality. There is a demand from customers for additional seating and a general demand for additional restaurant services at the Manly Wharf and surrounding areas. • The structure will not obstruct tides or currents. • The proposal is a minor modification to the existing wharf and does not dominate the existing structure. • The proposal will have no detrimental impact on access to the waterway. • n/a • n/a |

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| <p>4.3</p> <p>Foreshore access</p> | <p>Foreshore access is to be encouraged and promoted.</p> | <p>Complies.</p> <p>The proposal continues to allow pedestrian access along Manly Wharf. A small area of public deck will be covered under the proposal. This area is currently occupied by a planter box which restricts physical access to this area. There is no loss of publicly accessible area under the proposal.</p> |
| <p>4.4</p> <p>Siting of buildings and structures</p> | <p>Provides guidance to the location of structures.</p> | <p>Complies.</p> <p>The proposal relates to a minor extension of the existing wharf. It positively addresses the waterway by maintaining the existing shape and does not obstruct views to, or from, the Wharf.</p> |
| <p>4.5</p> <p>Built Form</p> | <ul style="list-style-type: none"> • <i>where buildings would be of a contrasting scale or design to existing buildings, care will be needed to ensure that this contrast would enhance the setting;</i> • <i>while no shapes are intrinsically unacceptable, rectangular boxy shapes with flat or skillion roofs usually do not harmonise with their surroundings. It is preferable to break up facades and roof lines into smaller elements and to use pitched roofs;</i> • <i>bright lighting and especially floodlighting which reflects on the water, can cause problems with night navigation and should be avoided. External lights should be directed downward, away from the water. Australian Standards (AS4282–1997) Guidelines for Outdoor Lighting and Pedestrian Area (Category P) Lighting (AS/NZ 1158.3 – 1999) should be observed;</i> | <p>Complies.</p> <ul style="list-style-type: none"> • The proposal is a minor addition to the Manly Wharf and is compatible with its scale and design. • n/a • n/a • Noted. The proposal is capable of compliance. • The proposal continues to use the existing materiality of the deck. • The wharf’s irregular shape, dual deck levels, deck level furniture and the form of existing development provide articulation and visual interest. • The expansion of the deck is relatively minor and will have little additional visual impact on the existing form of the wharf. |

| | | |
|--------------------|--|---------------------------------------|
| | <ul style="list-style-type: none"> • <i>except where otherwise required for navigation purposes, all lights on structures shall be shielded seawards and positioned to avoid disturbance to neighbouring properties;</i> • <i>use of reflective materials is minimised and the relevant provisions of the Building Code of Australia are satisfied;</i> • <i>colours should be sympathetic with their surrounds and consistent with the colour criteria, where specified, for particular landscape character types in Part 3;</i> • <i>the cumulative visual impact of a number of built elements on a single lot should be mitigated through bands of vegetation and by articulating walls and using smaller elements; and</i> • <i>the cumulative impact of development along the shoreline is considered having regard to preserving views of special natural features, landmarks or heritage items.</i> | |
| 4.6 Signage | Governs signage. | N/A No signage is proposed. |

Manly Development Control Policy for Manly Cove, 1996

The relevant controls to this application within the Manly Development Control Policy for Manly Cove, 1996 are in Section 3 – Building Design. The following character statement is provided under section 3.1:

“Irrespective of whether a building is listed as an item of environmental heritage, Council must be satisfied that the design of any new development has given due attention to the site’s position within and contribution to the overall and existing future townscape and landscape quality of Manly Cove.

The townscape is seen to be the total appearance of a locality and the way in which individual items contribute to its character. A high level of townscape quality will result in an area being experienced, not as a number of disconnected parts, but as a whole, with one recognisable area leading into another. For the purpose of this planning control it is considered that Manly Cove still maintains an essentially unified townscape giving rise to a particular individual and unique character which should be maintained and reinforced.”

The Manly Wharf is characterised by outdoor seating and active uses. Extension of the outdoor dining will enliven the public domain through activation of the walkway. The works, once completed, will appear visually similar to the existing presentation of that area of the wharf and relate to a contemporary portion of the area. The proposal is in keeping with the existing character of the townscape and will complement the area’s existing vibrancy.

Consultant Reports

Supplemental Heritage Impact Statement

A Supplemental Heritage Impact Statement has been prepared by City Plan to accompany this application. It is supplemental to the HIS submitted with DA/2020/0962 which contains historical analysis of the site.

Manly Wharf is listed as a Heritage Item in SREP 2005 and is listed on the State Heritage Register as item 01434. Accordingly, the development application will be an integrated DA requiring approval by the Heritage Council of NSW.

The HIS submitted with DA/2020/0962 noted that the 1941 Wharf building is of medium heritage significance. The later 1990s and beyond additions hold little heritage significance but do contribute to the overall significance of the space. The area of the Wharf accommodating Hugos restaurant is from the 1990s additions. The HIS provides the following commentary on the additions:

The proposal involves works to the outdoor seating area and deck only, and do not involve any internal or external intervention, structural changes, additions, or alterations to the significant fabric of the 1941 Wharf building. There will be no adverse impact to the significant original Wharf building, to its significant facades or to views or vistas to or from the site. Further, the extension of the deck has been designed to minimally impact the overall look of the waterfront area, thereby preserving the existing relationship between the 1941 Wharf building with its surrounding context and its heritage values.

The Supplemental Heritage Impact Statement notes that the proposed amended design has been developed in consultation with Heritage NSW who are supportive in principle of the proposal. It demonstrates that there will be no additional heritage impacts as a result of the minor amendments proposed in this application.

Biodiversity Assessment

An Updated Biodiversity Assessment has been prepared by Environmental Resources Management Australia to accompany this application. The updated assessment has been prepared based on a review of an earlier 2010 Study by ERM Australia and involved desktop review and aerial photo interpretation. The assessment considers the requirements of the *Biodiversity Conservation Act 2016* and identifies two ecologically sensitive receptors that the proposal has the potential to impact upon:

- *“Seagrass beds within the area, inclusive of the Commonwealth listed Threatened Ecological Community of ‘Posidonia australis seagrass meadows of the Manning-Hawkesbury Ecoregion’, which have the potential to be overshadowed by the proposed development and the potential to be disturbed during the construction phase of the redevelopment project.*
- *A NSW listed endangered population of Little Penguin (*Eudyptula minor*) in the Manly Point area. This population is known to utilise areas underneath and surrounding the Manly Wharf. Noise, vibration, light and other pollution from the development area were identified as having the potential to impact this endangered population.”*

Concerning seagrass, the Assessment finds that the proposed deck will not overshadow any known area of seagrass. It recommends that a Construction Environmental Management Plan (CEMP) be developed with specific aquatic habitat protections. This recommendation will be incorporated into the construction certificate (CC) stage of development.

Concerning the little penguin population, the Assessment recommends that no intrusive construction works should occur during the peak times of use of the area by penguins which is between June to February. Additional mitigation measures are recommended for inclusion into the CEMP. The construction timing can be arranged to be outside of June – February and the required mitigation measures will be considered in the CEMP to be prepared as part of the CC stage of development.

The Amended Biodiversity Assessment concludes that the proposal can be undertaken with a low risk of impact to seagrass and little penguins subject to the recommended mitigation measures.

It also identifies that a permit under Section 205 of the *Fisheries Management Act 1994* will be required from the Department of Primary Industries (DPI). DPI have confirmed (shown in Appendix E of the Biodiversity Assessment) that this permit application can be made post DA determination.

Preliminary Site Investigation

A Preliminary Site Investigation has been prepared by JK Environments to support this application. No history of potentially contaminating uses was identified at the site, however, due to the general history of sediment impacts in Sydney Harbour, the sediment is identified as an area of environmental concern. Due to the use of the site above the water, the sediments are not found to pose any risk. Recommendations have been made for managing risk during the construction phase.

Noise Impact Assessment

A Noise Impact Assessment was prepared by Acoustic Logic to accompany DA/2020/0962. That report considered the same outdoor occupancy levels and hours of operation that are proposed within this modification and its findings remain relevant. The unedited report has been resubmitted with this modification.

The report concluded that the development is capable of achieving compliance with the relevant acoustic guidelines and policies subject to several managerial conditions being observed. All recommendations of the report will be operationalised. They include the following:

1. A maximum of 80 patrons to be in the western outdoor area.
2. A maximum of 36 patrons to be in the southern outdoor area.
3. No amplified music in the southern or western outdoor areas.
4. The outdoor areas are not to be used between 12am and 7am.
5. Management should encourage patrons to leave quietly, especially after 10pm.
6. Garbage and bottle disposal to be undertaken before 10pm and after 7am.

Hugos seats all customers and will comply with the stated maximum occupancies. No music will be played in the outdoor areas. The existing hours of operation are 11:30am-11:30pm with customers having until 12am (midnight) to vacate. These hours are not proposed to be changed under the proposal and have been considered in the acoustic assessment.

Hugos existing management practices will continue to be employed to ensure that customers leave quietly and to ensure that waste is disposed of appropriately and with minimal noise impacts.

The proposal is capable of compliance with these recommendations which have been included in the amended Plan of Management dated 16 April 2021.

Substructure Concept Design

A Substructure Concept Design has been prepared by Consult Marine to accompany this application. The concept design shows the installation of 10 new piles, the repair or replacement of one pile to facilitate the extended deck.

Conclusion

This SEE has assessed the environmental impacts associated with the proposed modifications to DA/2020/0962 for the extension of part of the Manly Wharf deck. The amended design has been guided by the advice of Heritage NSW and retains the existing curved shape and visual separation between it and the lower public deck area.

The S4.55(2) modification will increase the available seating at Hugos restaurant contributing to the tourism and night-time economies of Manly. Impacts arising from the development were assessed throughout this SEE and have been shown to be minor and manageable. The relevant planning instruments have been considered and the proposal is demonstrated to be compliant. The modification is recommended for approval by Northern Beaches Council.