

Memo

Northern Beaches Local Planning Panel

To: Peter Biscoe, Chairman

From: Rebecca Englund, Principal Planner

Date: 8 December 2020

Subject: Item 3.6 – DA2020-0962 - Alterations and Additions to Manly Wharf in association with Hugos restaurant

Outstanding Integrated Referral Response

At the time of finalising the assessment report, a referral response from Heritage NSW had not been received. As the response timeframe stipulated by the EP&A Regulation lapsed on 5 November 2020, the assessment was able to proceed for determination, despite the lack of a response.

On 4 December 2020, Heritage NSW issued general terms of approval in relation to the subject application (**attached**). In accordance with clause 70(3) of the EP&A Regulation, nothing prevents a consent authority from having regard to an approval body's general terms of approval that have been notified to the consent authority after the expiration of the relevant period.

Heritage NSW are not supportive of the northern extension of the existing western outdoor dining area associated with Hugos, or any changes to the existing public area to the north of this space. The area in question was confirmed by Heritage NSW in the sketch below (Figure 1). The amendments required by Heritage NSW will result in the deletion of 16 seats within the western seating area, reducing the total capacity of this outdoor seating area to 64 patrons.

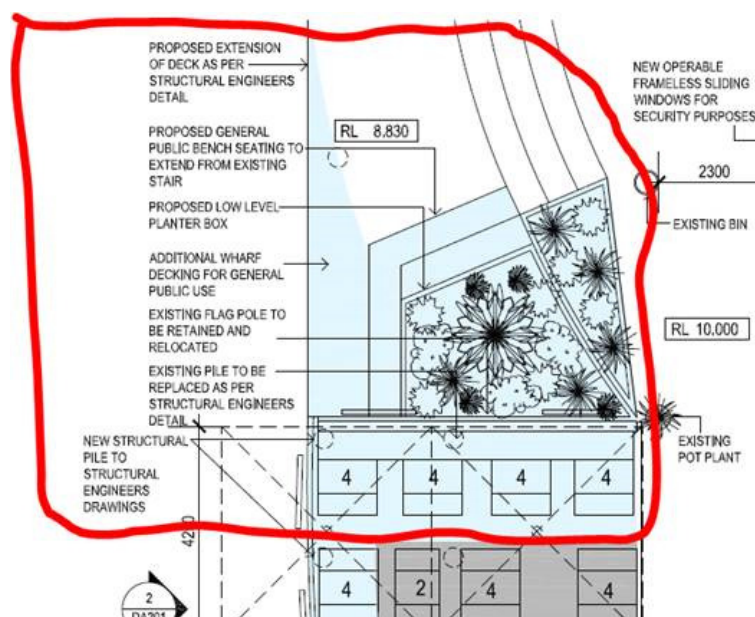


Figure 1 - Sketch provided by Heritage NSW, dated 8 December 2020

As a result of the proposed deletion of these works, the area in question will remain in its current form, as shown in Figure 2, below.

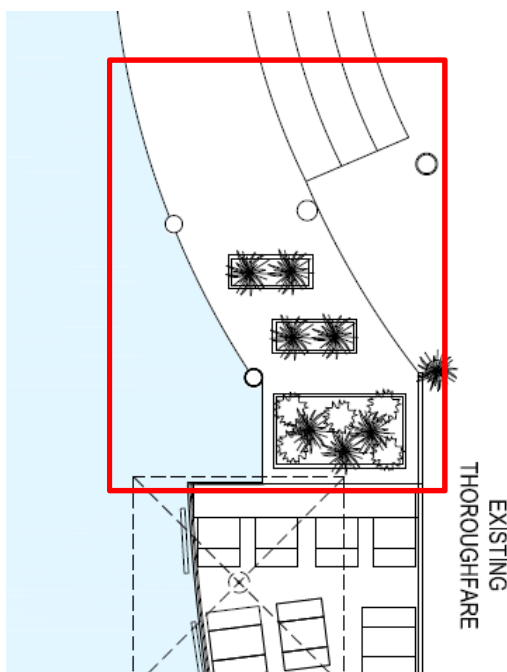


Figure 2 – Existing configuration of the area in question (outlined in red).

Irrespective of whether general terms of approval were issued prior to determination of this matter, the applicant will be required to obtain Section 60 Approval from Heritage NSW prior to construction. At this stage, Heritage NSW can impose the same conditions and require the same amendments to the approved development.

The applicant has been advised of the correspondence from NSW Heritage and are likely to make representations to the Panel at the meeting tomorrow.

Should the panel be of a mind to endorse the general terms of approval from Heritage NSW within any consent issued, the following amendments will be required to the draft consent:

1. Additional Condition 6A 'Compliance with requirements of Heritage NSW' to read as follows under the heading 'Development Consent Operational Conditions':

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.

Heritage Consultant

- d) 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

- e) 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

- f) 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

- g) 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

- h) 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

- i) 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.

2. Amend Condition 8 'Amendments to the Approved Plans' to read as follows:

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.

3. Amend Condition 27 '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 in accordance with the following:

- a) A maximum of **64** 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.

Clarifications

The referral response from DPI Fisheries on Page 409 of the Agenda should read:

Concurrence – DPI Fisheries	<p>Supported, general terms of approval issued.</p> <p>DPI Fisheries has no objections, subject to the following general terms of approval:</p> <ol style="list-style-type: none"> 1. <i>The proponent must apply for and obtain a Part 7 permit for dredging and reclamation under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: https://www.dpi.nsw.gov.au/fishing/habitat/help/permit; and</i> 2. <i>Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.</i>
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