



***SECTION 96 MODIFICATION REQUEST:
Outdoor Footpath Seating – George Street, The
Rocks***

DA 166-11-2006 MOD 7

Additional Outdoor Seating on George Street

Director-General's
Environmental Assessment Report
Section 96 of the
Environmental Planning and Assessment Act 1979

October 2013

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1. BACKGROUND

1.1 The site

This application seeks to modify the consent DA 166-11-06 (determined by the Sydney Harbour Foreshore Authority, acting under delegation from the then Minister for Planning) that approved outdoor seating locations along George Street and Argyle Street, The Rocks.

The outdoor seating is located on the western side of George Street between Surgeons Walk and Jack Munday Place (numbers 119, 123 and 127, Lot 25 DP 773812), Jack Munday Place and Mill Lane (numbers 75 to 79 Lot 13 DP 599563) and between Atherden Street and the Harbour Bridge (numbers 29 and 39 Lot 11 DP 599573). The seating is located on the footpath adjoining these properties.



Figure 1: George Street, The Rocks

1.2 Previous Approvals

On 3 January 2007, Sydney Harbour Foreshore Authority (SHFA), acting under delegation from the then Minister for Planning approved DA 166-11-06 for 11 outdoor seating areas along George Street (from Globe Street to Lower Fort Street) as well as part of Argyle Street (now Jack Munday Place).

There has been four previous modifications made to the consent by SHFA, acting under delegation, as outlined below:

- MOD 166-11-06(1) – to include an outdoor seating area for the Fortune of War (139-141 George Street);
- MOD 166-11-06(2) – to include an outdoor seating area for the Royal Copenhagen (113-115 George Street);
- MOD 166-11-06(3) – to add 12 new additional and/or outdoor seating areas along the western side of George Street as well as minor condition changes;
- MOD 166-11-06(4) – to include an outdoor seating area for Guylian Café (91 George Street);

There has also been two previous modifications made to the consent by the Department of Planning & Infrastructure, acting under delegation, as outlined below:

- DA 166-11-2006 MOD 5 – to modify the outdoor seating area at The Orient Hotel (89 George Street), to provide additional outdoor seating at The Observer Hotel (69 George Street) and include a new outdoor seating area at the Russell Hotel (143a George Street); and
- DA 166-11-2006 MOD 6 – to include outdoor seating at 100 George Street consisting of 5 tables, 16 chairs, four barriers and three umbrellas.

2. PROPOSED MODIFICATION

On 9 August 2013, SHFA lodged a modification application (DA 166-11-2006 MOD 7) with the Department of Planning and Infrastructure, under section 96(1A) of the EP&A Act to incorporate additional outdoor seating areas at 5 locations along George Street. Comprising a maximum of 32 tables, 110 chairs and 16 umbrellas, the specific locations are as follows:

- 29 George Street (**Figure 3**);
- 39 George Street (**Figure 2**);
- 75, 75 ½, 77, 77 ½ and 79 George Street (**Figure 5**);
- 117-119 George Street (**Figure 7**); and
- 123-127 George Street (**Figure 8**).

No additional seating is proposed on Argyle Street.

Plans of the proposal is provided at **Appendix A**.

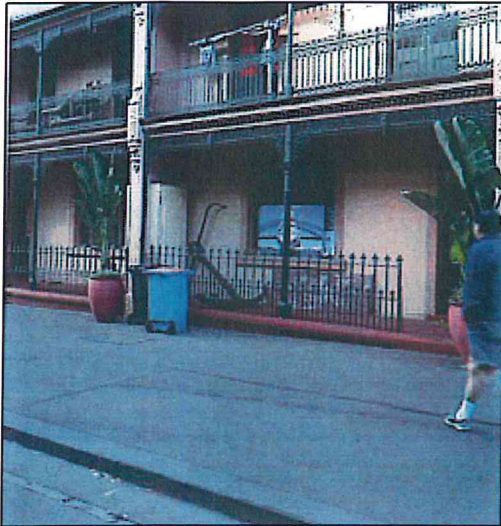


Figure 2: 39 George Street
2 Tables and 8 Chairs and 2 umbrellas are proposed.

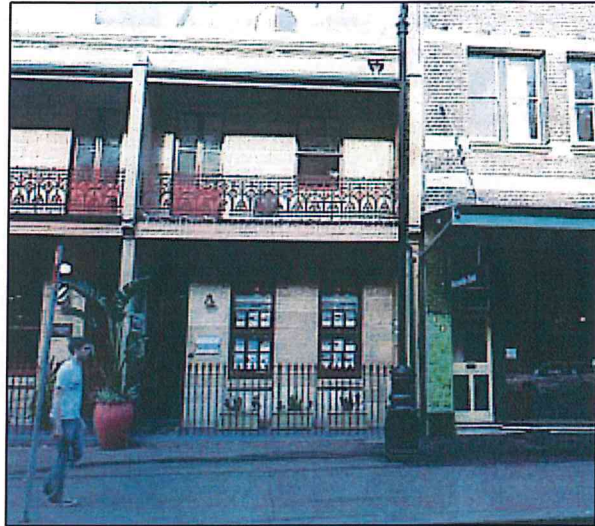


Figure 3: 29 George Street
2 Tables and 8 Chairs and 2 umbrellas are proposed.

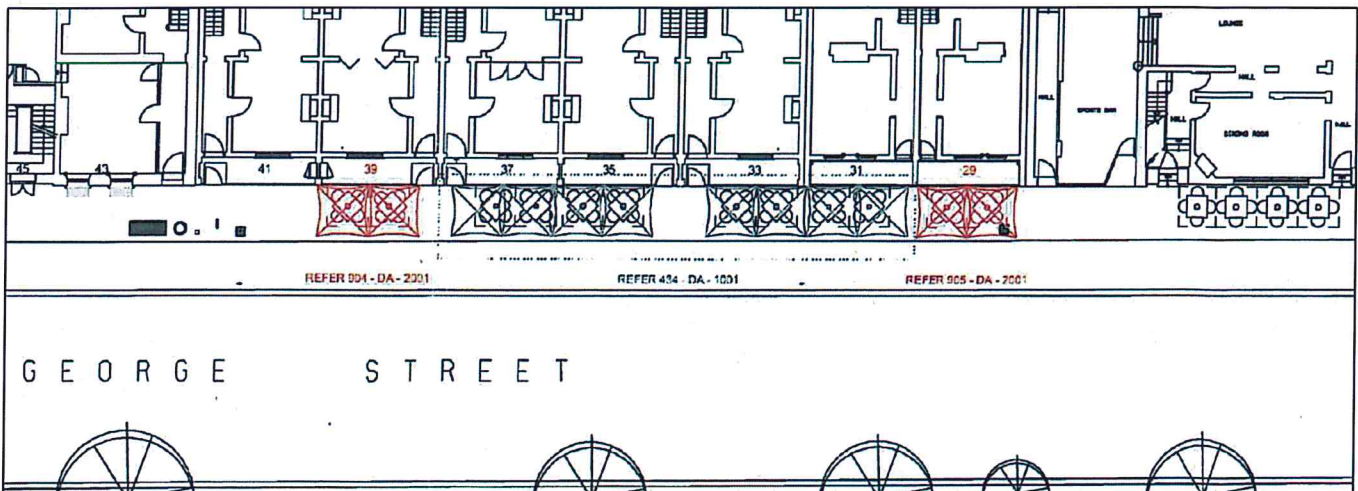


Figure 4: Proposed seating (shown red) and pre existing seating (black) 29 and 39 George St.



Figure 5: 75 – 79½ George Street 10 tables, 40 chairs and 7 umbrellas are proposed

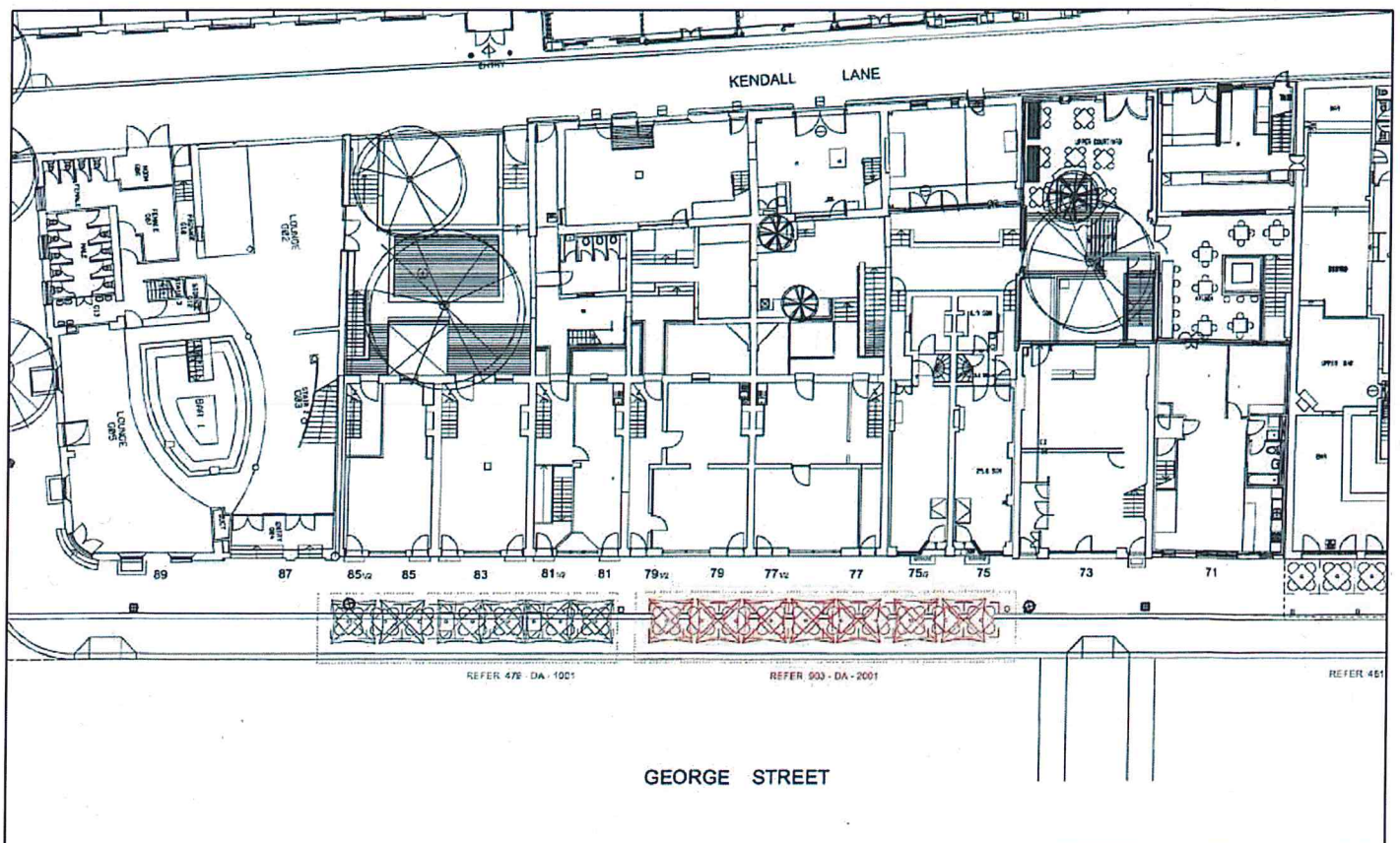


Figure 6: Proposed seating (shown red) and pre existing seating (black) 75 to 79½ George St.



Figure 7 and 8: 123-127 George Street (left) and 117-119 George Street (right) 18 tables, 54 chairs and 5 umbrellas proposed

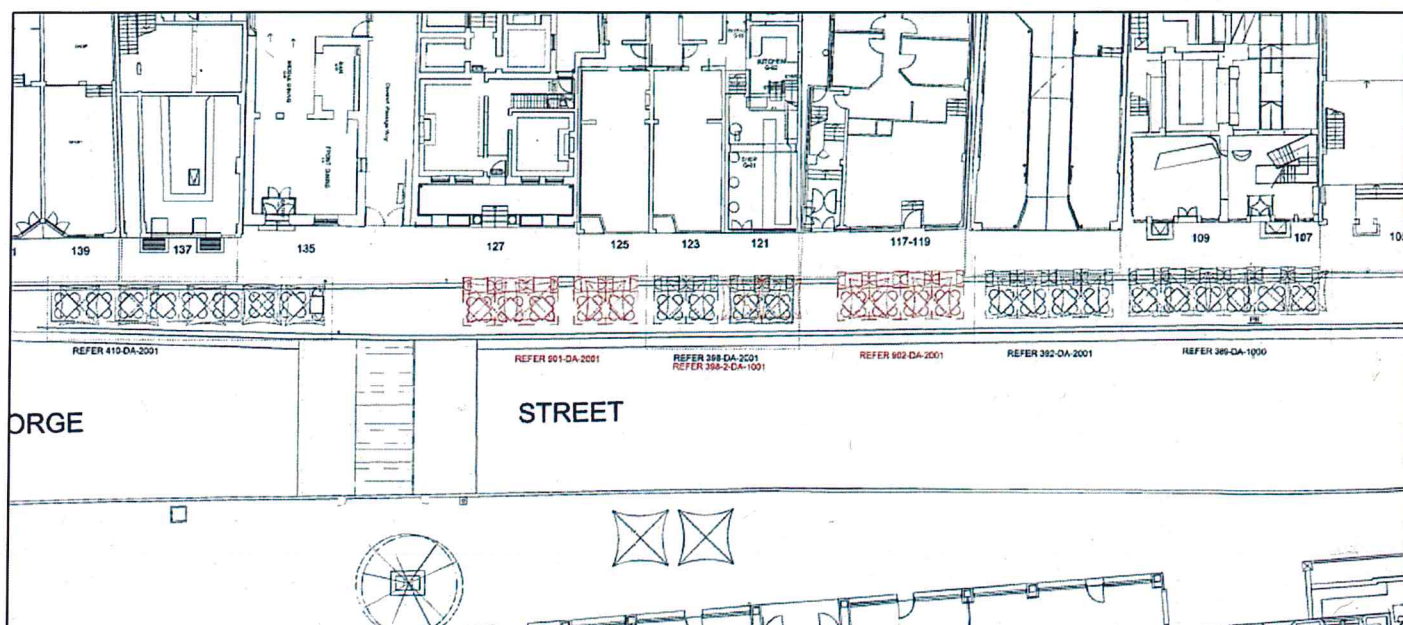


Figure 9: Proposed seating (shown red) and pre existing seating (black) 117-119 & 123-127 George St.

The proposed modification requires amendments to Condition A1 – Approved Development, to include the additional plans. The modification is considered minor and any possible impacts of the development can be mitigated through existing conditions of consent.

3. STATUTORY CONTEXT

3.1 MODIFICATION OF CONSENT

Section 961(A) of the EP&A Act requires the following matters to be assessed:

- *Whether the proposed modification is of minimal environmental impact;*
The proposed additional outdoor seating areas along George Street are considered to be of minimal environmental impact. As many tenancies in The Rocks have outdoor seating, the cumulative impact of additional outdoor seating areas is considered negligible.
- *Whether the development to which the consent as modified relates is substantially the same development;*
Although the modification request does seek to include additional outdoor seating areas, they do not extend outside of the approved northern and southern boundaries of George Street (**Figure 1**) that have been dedicated for outdoor seating purposes. For this reason, the development to which the consent as modified relates is considered substantially the same development.
- *Whether notification has occurred and any submissions have been considered; and*
Notification of the application was not required. Council was notified of the application, but no submission from them was received.
- *Any relevant provisions of section 79C(1).*
See Section 5

3.2 DELEGATED AUTHORITY

As the original consent authority was the then Minister for Planning, the Minister continues to be the consent authority for all modifications.

Under the instrument of delegation effective 1 October 2011, the Minister delegated his functions under section 96(1A) of the EP&A Act to Directors in the Major Projects Assessment Division where;

- the relevant council has not made an objection; and
- there are less than 10 public submissions in the nature of objections; and
- a political disclosure statement has not been made.

As there are no public submissions, council did not object and no political disclosure statement has been made, the Director of Industry, Social Projects and Key Sites can determine the application.

3.3 ENVIRONMENTAL PLANNING INSTRUMENTS

The following EPIs apply to the site;

Sydney Cove Redevelopment Authority Scheme (SCRA Scheme) 1970

The SCRA is an unusual EPI insofar as it does not zone The Rocks, or contain any aims, objectives or detailed development controls. Instead its controls extend only to building site control drawings which identify building height limits and permissible uses. There are three control drawings relevant to the modification application, which are outlined separately below.

Building Site Control Drawing XXXVIII, was approved by the Minister of Planning Environment on 6 August 1984. This map applies to the section of George Street between Globe Street and Argyle Street, which includes the sections of additional seating at 117-119 & 123-127 George Street. This map allows for commercial and special uses, and permits outdoor seating.

Building Site Control Drawing XXXI, was approved by the Minister of Planning Environment on 6 August 1984. This map applies to the section of George Street between Argyle Street and Atherden Street which includes the section of seating between 75 and 79½ George Street. This map allows commercial and special uses, ancillary shops and restaurants, and permits outdoor seating.

Building Site Control Drawing XXX, was approved by the Minister of Planning Environment on 6 August 1984. This map applies to the section of George Street between Atherden Street and The Sydney Harbour Bridge undercroft which includes sections at 29 and 39 George Street. This map allows for commercial and special uses, and permits outdoor seating.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Although the SREP applies to the area, it contains no specific controls for outdoor seating. However, the sites are within the 'Foreshores and Waterways Area' defined in the SREP. In accordance with clause 20 of the SREP the following matters are required to be considered.

Clause 21 – Biodiversity, ecology and environmental protection

The modification would have no adverse impact on water quality, ecological communities, or aquatic or native vegetation. Relevant matters concerning environmental protection during the proposed works could be addressed by standard conditions of consent.

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

The modification is restricted to minor works and removable furniture items, and would not affect public access to, or use of, the foreshore area. This is considered further in this report.

Clause 23 – Maintenance of a working harbour

Clause 24 – Interrelationship of waterway and foreshore uses

Not relevant to this application.

Clause 25 – Foreshore and waterways scenic quality

The modification involves minor works and the placement of removable furniture items within the footpath area along the western side of George Street. The proposed furniture is of lightweight construction, and would maintain the scenic qualities of the foreshore and waterways.

Clause 26 – Maintenance, protection and enhancement of views

Whilst in use, the proposed furniture would partially restrict ground level views along George Street. The proposed furniture complements the treatment of existing buildings on both sides of George Street, and would encourage activity within the widened footpath area. Although there are a number of sites where umbrellas are proposed adjacent to existing awnings, umbrellas will sit well clear of the awnings, avoiding too much visual clutter within the footpath area. It is also noted that purpose of providing umbrellas is to provide shade. As all furniture must be removed off the footpath each day, views will not be affected.

Clause 27 – Boat storage facilities

Not relevant to this application

Foreshore and Waterways Planning and Development Advisory Committee

The proposal is not of a type referred to in Schedule 2 of the SREP and no referral to the Committee was required.

Strategic foreshore sites

The site is nominated as a 'Strategic Foreshore Site' on Sheet 1 of the SREP. Clause 41 of the SREP states development consent must not be granted unless there is a Master Plan for the site, and the consent authority has taken the Master Plan into consideration. Clause 41(5) states that these provisions do not apply to minor development specified in Schedule 3 of the SREP. Part 7 of Schedule 3 includes *'the provision and use of outdoor seating or tables or street furniture on a footpath, or in a plaza or other public place'*. Therefore a Master Plan is not required.

Heritage provisions

The sites are not the subject of any heritage items listed under Schedule 4 of the SREP. However the sites are located within the vicinity of heritage items listed under the SREP, being the Sydney Harbour Bridge and the Circular Quay Ferry Wharves.

Clause 59 of the SREP requires the consent authority to assess the impact on the heritage significance of a heritage item before granting development consent. It also states the consent authority may refuse to grant consent unless it has considered a heritage impact statement.

The potential impacts of the proposal are limited to impacts on the setting of the heritage items, specifically views to or from the items. It is considered the proposed placement of furniture along the western side of George Street would not impact on the setting or significance of the Sydney Harbour Bridge or the Circular Quay Ferry Wharves.

4. CONSULTATION AND SUBMISSIONS

In accordance with clause 50(5) of the Environmental Planning & Assessment Regulation 2000 (the Regulations) the application was referred to City of Sydney Council. Council did not make a submission on the subject modification.

5. ASSESSMENT

Uses

SHFA advised on the 24 September 2013 that the additional areas will be used by restaurants or cafe premises only. Although some tenancies are currently commercial in nature (77-79 George Street), the seating areas (if approved) will only be used if a future restaurant or cafe tenancy occupies one of the proposed locations. To ensure that the additional outdoor seating areas are consistent with the proposal by SHFA, and to ensure that the seating areas have minimal effect on the public domain and amenity of the surrounding area, no outdoor seating areas will be permitted to be occupied if they are used by patrons or workers of pubs or bars. A new condition (A8) is recommended as follows:

A8 Additional outdoor seating areas approved under DA 166-11-2006 MOD 7 are not permitted to be used or occupied by patrons or workers of pubs or bars (including pop-up pubs or bars) at any time.

Streetscape

The streetscape of The Rocks precinct is characterised by its cafés, bars and restaurants, all of which have extensive outdoor dining. The proposed additional outdoor seating areas are co-located beside or in between previously approved seating and are consistent with the alignments and location of the surrounding dining areas.

The proposed furniture for the outdoor seating area is of removable, lightweight design, and is complementary to the treatment and finishes of adjacent and neighbouring buildings. As required by conditions of consent when not in use, furniture will be located within the buildings. The proposed barriers that will barricade and define the areas will be 2000mm wide x 900mm high and of a standard colour and design with limited graphics.

As the applicant is SHFA, the proposed areas and furniture, have been carefully chosen and designed to ensure they are compliant with SHFA's policy and technical manual for *Commercial Outdoor Seating Areas in The Rocks*. The application is supported by an assessment against the manual, which confirms compliance.

Pedestrian Access

The footpath ranges from 3.5m to 10m in width, with the smallest distance from the building line to the outdoor seating area being 2.6m. Adequate clearance from the kerb will be maintained (800mm), and the proposed dining areas do not obstruct or impede on the safety of the designated level crossings or bus or taxi set-down or pick-up zones.

Heritage

The proposed works (i.e. umbrella footings) are removable and consistent with pre existing seating areas. The works are external to the buildings on the footpath and thus will have no direct or indirect impact on the heritage fabric of any of the buildings they service.

6. CONCLUSION

The department has assessed the application on its merits and the proposed modification is considered reasonable on the basis that:

- The proposed seating is consistent with pre-existing seating in terms of design and footpath alignment;
- The proposal will not adversely impact on pedestrian flows and safety and will not obstruct pedestrian crossings, bus stops or taxi ranks;
- Council has raised no objection; and
- The proposed modification will not affect the heritage value of the area or detract from the streetscape

7. RECOMMENDATION

It is recommended that the Director, Industry, Social Projects and Key Sites, as delegate of the Minister for Planning and Infrastructure:

- Consider the findings and recommendations of this report;
- Approve the modification under delegated authority, under section 96 of the *Environmental Planning and Assessment Act 1979*; and
- Sign the attached Instrument of Modification for DA 166-11-2006 (MOD 7).

Endorsed by:



1/16/13

Cameron Sargent
Team Leader
Industry, Social Projects and Key Sites

Approved by:



Heather Warton
Director
Industry, Social Projects and Key Sites
2/16/13

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6150

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT
