



**Planning &
Infrastructure**

MODIFICATION REQUEST:

**Extension of Outdoor Dining Area
Overseas Passenger Terminal**

DA 34-09-98 MOD 4



Modification of Minister's Approval under Section 96(1A)
of the *Environmental Planning and Assessment Act*
1979

July 2012

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NSW Department of Planning & Infrastructure
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1. INTRODUCTION

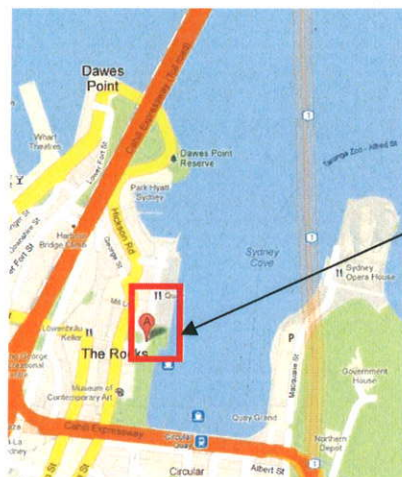
This report provides an assessment of a Section 96(1A) application by Sydney Ports Authority (SPA) which seeks to modify DA34-09-98 to allow the outdoor dining on the eastern side of the Overseas Passenger Terminal (OPT) to be widened by 2 metres.

The application is recommended for approval, subject to conditions as outlined in the Instrument of Modification (**Tag A**). The Director – Metropolitan and Regional Projects may use his delegations to determine the matter.

2. SITE AND SURROUNDING DEVELOPMENT

The OPT is located on the western shore of Circular Quay and is bounded by the street known as Circular Quay West. The OPT contains a number of uses including restaurants, bars and customs control. **Figure 1** shows the location of the site and **Figure 2** provides an aerial view of the site.

The site is legally described as Lot 1 in DP 876516.



Location of
the Overseas
Passenger
Terminal

Figure 1 – Site location



Figure 2 – Aerial View

3. BACKGROUND

Development application 34-09-98 for the refurbishment of the OPT was approved on the 15th October 1999. The approval granted consent to refurbish and remodel the terminal and to introduce new retail tenancies, with the aim of encouraging public use while retaining the function as a terminal for passenger ships.

The application was approved by the Minister under the provisions of State Environmental Planning Policy No 56 – Sydney Harbour Foreshores and Tributaries (SEPP 56 now repealed). A Master Plan was not required.



Figure 3 – View along the current outdoor dining areas of Tenancy 02/03 & 04

4. PROPOSED MODIFICATION

Approval is sought to modify development approval 34-09-98 to extend the outdoor dining areas in front of tenancies 01, 02, 03 & 04 on the eastern side of the OPT. Currently the outdoor dining areas of the tenancies extend 5 metres from the buildings edge and approval is sought to extend this by 2 metres.

The current and future capacity of the outdoor dining area for tenancies as a result of this extension will be:

Tenancy	Current operation	Additional seats	Future operation
Cruise Bar (Tenancy 01)	92 outdoor seats	30 more seats	122 outdoor seats
Wildfire (Tenancy 02 & 03)	66 outdoor seats	40 more seats	106 outdoor seats
Ocean Room (Tenancy 04)	56 outdoor seats	25 more seats	81 outdoor seats

5. STATUTORY CONTEXT

5.1 Modification of the Approval

The modification application has been lodged with the Director General pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act, 1979* (the EP&A Act). Section 96(1A) of the EP&A Act enables modifications to a development consent to be approved if the proposal meets the following criteria:

- *the proposed modification is of minimal environmental impact;*

The Department has formed the view that the proposal is of minimal environmental impact.

- *the development to which the consent as modified relates is substantially the same development;*

The original consent gave approval for the use of part of the forecourt for outdoor dining. The proposed modification is consistent with the nature of the approval and does not result in any substantial change in impact.

5.2 Consent Authority

The original application was determined by the then Minister for Planning, in accordance with the provisions of the Sydney Cove Redevelopment Authority Amendment Act 1998. The Minister remains the consent authority for subsequent modification requests.

The boundaries of the OPT are not within the City of Sydney Council LEP.

5.3 Environmental Planning Instruments

The following environmental planning instruments apply to the site:

Sydney Harbour Catchment Regional Environmental Plan

The modification triggers the Sydney Harbour Catchment Regional Environmental Plan being minor development, within the public domain (Schedule 3, 7 (1)).

The proposal is generally consistent with the aims and principles of the *Sydney Harbour Catchment Regional Environmental Plan* including the maintenance and enhancement of the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores. Clauses 22-26 of the Plan provide matters to be taken into consideration by consent authorities before granting consent to development. These are:

- | | |
|----|---|
| 22 | <i>Public access to, and use of, foreshores and waterways</i> |
| 23 | <i>Maintenance of a working harbour</i> |
| 24 | <i>Interrelationship of waterway and foreshore uses</i> |
| 25 | <i>Foreshore and waterways scenic quality</i> |
| 26 | <i>Maintenance, protection and enhancement of views</i> |

The application involves the expansion of the outdoor dining areas along the eastern side of the OPT. The OPT can still function as a working dock when a ship is berthed. The expansion does not impede public access in the area. There is no unreasonable impact on views.

State Environmental Planning Policy (State and Regional Development) 2011

The modification is within the boundaries of the SEPP State and Regional Development 2011, Schedule 2 State significant development—identified sites, cl 6 The Rocks.

5.4 SEPP 56 Sydney Harbour Foreshores and Tributaries

The original DA was assessed using SEPP 56 Sydney Harbour Foreshores and Tributaries. This legislation has since been repealed.

5.5 Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments or DCPs that apply to the site.

6. CONSULTATION AND SUBMISSIONS

The application was not advertised or publicly notified but was placed on the Department's website.

Referrals were sent to the following government agencies and City of Sydney Council for comment:

Agency	Comments
SHFA	Concerns there is still sufficient width for the public to use as this wharf forms part of the harbour foreshore promenade.
Sydney City Council	Reduction of pedestrian circulation space, there is limited information provided on the management of the space in large events.
NSW Police	No issues with modification, however, the retail tenancies must submit a "Change boundaries of Licensed Premises" application to the NSW Police and the "Independent Liquor & Gaming Authority"
Roads & Maritime	No issues with modification
Office of Environment & Heritage (EPA)	No issues with modification

The concerns raised by the agencies regarding public access are addressed in section 7. The NSW Police advised that a change in boundaries of Licensed Premises will require an application to the NSW Police and Independent Liquor & Gaming Authority, this is the responsibility of the individual tenants.

7. ASSESSMENT

The Department considers that the key issues to be the impact of the reduction in the width of the thoroughfare between the waters edge and OPT building on public access and potential amenity impacts from increased outdoor diners.

The proposed modification will reduce the width of the public thoroughfare which passes between the OPT building and the waters edge. At present the thoroughfare is 9 metres wide in front of tenancies 02, 03 and 04 and 11 metres wide in front of tenancy 1. These widths are proposed to be reduced by 2m by this modification.

The Department is of the view that the proposed minimum width (7m) is sufficient space to allow pedestrian movement in two directions (2 – 3m for either direction) whilst other pedestrians are stopped in the area (occupying 1 – 2m). This width of space will also allow for the movement of prams and mobility vehicles (prams, scooters). It is noted that other pedestrian routes are available around the western side of the OPT. SPA has advised that when large public events are held, the event organisers are required to prepare and

implement an operational management plan where crowd management and security are covered. SPA has further advised that the outdoor dining area will be marked by visually unobtrusive bollards or place markers (as shown in Figure 3), which will prevent further encroachment onto the thoroughfare.

There is the potential risk that noise will increase during the operational times of the restaurant. Existing condition 17h of the original consent provides a restriction to nuisance or offensive noise.

7.3 Additional matters under Section 79C

In determining a development application, a consent authority is to take into consideration the following additional matters under Section 79C:

- *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F;*

Comment: No agreements or draft agreements under section 93F are known to apply to the site.

- *the regulations;*

Comment: No matters prescribed by the Regulation are relevant to the site for the purposes of Section 79C(1)(a)(iv).

- *the suitability of the site for the development;*

Comment: The site is currently being used for the purposes of a café/restaurant outdoor dining and can adequately support the level of proposed development.

- *the public interest.*

Comment: The proposal is considered to be in the public interest as it will provide a positive economic and operational contribution to the OPT while impacts from the development on the locality will be minimal.

8. DELEGATION

Under the Instrument of Delegation dated 14 September 2011, the Minister for Planning and Infrastructure delegated his functions under Section 96(1A) of the EP&A Act to the Directors in the Major Projects Assessment Division where there are fewer than 10 public submissions in the nature of objections to the application and where the relevant council has not objected to the application. The above criteria apply to this application as the Sydney City Council did not object and no public submissions were received. The application can therefore be determined by the Director of Metropolitan and Regional Projects South under delegated authority.

9. CONCLUSION

The Department has assessed the application in accordance with the matters for consideration under Sections 96(1A) and 79C of the EP&A Act, and all relevant environmental planning instruments. The proposed modification is considered to comply with the relevant items and will not alter the sites suitability for the development. The expansion of the outdoor dining areas on the eastern side of the OPT and would have minimal environmental impact. The outdoor dining along the OPT is a good use of space providing an opportunity for patrons to enjoy the views of the harbour foreshore of a global city.

10. RECOMMENDATION

It is recommended that the Director, Metropolitan and Regional Projects South, as delegate for the Minister for Planning and Infrastructure:

- (A) **Consider** the findings and recommendations of this report; and
- (B) **Approve** the modification, under delegated authority, under Section 96(1A) of the EP&A Act, subject to conditions; and
- (C) **Sign** the attached Instrument of Modification at **Tag A**.



Nicola Chisholm
Assessment Officer



David Rohloff
A. Team Leader

Modification of Minister's Approval

Section 96(1A) of the Environmental Planning and Assessment Act 1979

As delegate of the Minister for Planning and Infrastructure under delegation dated 14 September, 2011, I approve the modification of the application referred to in Schedule 1, subject to conditions in Schedule 2.



Alan Bright

**A / Director - Metropolitan and Regional Projects South
Department of Planning and infrastructure**

Sydney

16 JULY

2012

SCHEDULE 1

Development Approval:

DA 34-09-98 granted under delegation by the then Minister for the Department of Urban Affairs and Planning on 15 October 1999.

For the following:

Extension of the outdoor dining area at the Overseas Passenger Terminal.

Proposed Modification:

DA 34-09-98 MOD 4

To extend the outdoor dining areas of tenancies 01, 02, 03, & 04 on the eastern side of the Overseas Passenger Terminal, by 2 metres.

SCHEDULE 2

SECTION 96(1A) MODIFICATION OF CONDITIONS OF DEVELOPMENT CONSENT No. 34-09-98

- a) Amend **Condition No. 1** to add the following drawing in the list of articles:

Plan No	Name	Date
SCQP197A	Overseas Passenger Terminal showing existing and proposed external licence area for wharf tenants	18/02/2012

End of Modification to DA 34-09-98

ASSESSMENT UNDER SEPP 56

SYDNEY HARBOUR FORESHORES AND TRIBUTARIES

S96(1A) – Sydney Cove Passenger Terminal, West Circular Quay

Modification to extend the outdoor dining area DA34-09-98 MOD 4

PRINCIPLES	COMMENT
a) <i>Increasing public access to and use of land on the foreshore.</i>	The actual public access area will be decreased by 2 metres.
b) <i>The retention, management and use of land made available for public access or the use of other appropriate tenure mechanisms where public ownership is not possible.</i>	N/A
c) <i>The retention and enhancement of public access links between existing foreshore open space areas.</i>	When a ship is not berthed, the eastern side of the OPT is open to the public to access open pace areas.
d) <i>The conservation of significant bushland and other natural features along the foreshore, where consistent with conservation principles, and their availability for public use and employment.</i>	N/A
e) <i>The suitability of the site or part of the site for significant open space that will enhance the open space network existing along the harbour foreshores.</i>	Yes the site does form part of the harbour foreshore promenade
f) <i>The protection of significant natural and cultural heritage values, including marine ecological values.</i>	N/A
g) <i>The protection and improvement of unique visual qualities of the Harbour, its foreshores and tributaries.</i>	The modification use is still the same as originally approved.
h) <i>The relationship between use of water and foreshore activities.</i>	The wharf apron is closed while a ship is berthed at the OPT allowing the space to be use for servicing the ship and is under customs control.
i) <i>The conservation of items of heritage significance identified in an environmental planning instrument or subject to an order under the Heritage Act 1977.</i>	N/A
j) <i>The scale and character of any development, derived from an analysis of the context of the site.</i>	The modification use is still the same as originally approved.
k) <i>The character of any development as viewed from the water and its compatibility and sympathy with the character of the surrounding foreshores.</i>	The modification use is still the same as originally approved, the dining area will be expanded.
l) <i>The application of ecologically sustainable development principles.</i>	N/A
m) <i>The maintenance of a working-harbour character and functions by the retention of key waterfront industrial sites or at a minimum, the integration of facilities for maritime activities into development and, wherever possible, the provision of public access through these sties to the foreshore.</i>	N/A
n) <i>The feasibility and compatibility of uses and, if necessary, appropriate measures to ensure</i>	N/A addressed under original DA assessment

<i>coexistence of different land uses.</i>	
<i>o) Increasing opportunities for water-based public transport.</i>	N/A

Assessment under Sydney Harbour Catchment Regional Environmental Plan

Matters for consideration	Comment
22 Public access to, and use of, foreshores and waterways The matters to be taken into consideration in relation to public access to, and use of, the foreshores and waterways are as follows: (c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land, (d) the undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided,	Public access is along the eastern side of the Overseas Passenger Terminal when a ship is not in port. This area is closed and under Customs control when a ship is in port. The area becomes a working area for provisioning and baggage handling for the ship.
23 Maintenance of a working harbour The matters to be taken into consideration in relation to the maintenance of a working harbour are as follows: (a) foreshore sites should be retained so as to preserve the character and functions of a working harbour, in relation to both current and future demand, (b) consideration should be given to integrating facilities for maritime activities in any development, (c) in the case of development on land that adjoins land used for industrial and commercial maritime purposes, development should be compatible with the use of the adjoining land for those purposes, (d) in the case of development for industrial and commercial maritime purposes, development should provide and maintain public access to and along the foreshore where such access does not interfere with the use of the land for those purposes.	The use of outdoor dining does not impact the site as a working wharf. This area is closed and under Customs control when a ship is in port.
24 Interrelationship of waterway and foreshore uses The matters to be taken into consideration in relation to the interrelationship of waterway and foreshore uses are as follows: (a) development should promote equitable use of the waterway, including use by passive recreation craft, (b) development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial and recreational uses, (c) development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore, (d) water-dependent land uses should have priority over other uses, (e) development should avoid conflict between the various	The Wharf apron forms part of the harbour foreshore promenade and access is allowed when a ship is not berthed at the OPT. Extension of the outdoor dining areas of Tenancy 01, 02, 03 & 04 will have minimal impact on this area.

uses in the waterways and along the foreshores	
25 Foreshore and waterways scenic quality 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: (a) the scale, form, design and siting of any building should be based on an analysis of: (i) the land on which it is to be erected, and (ii) the adjoining land, and (iii) the likely future character of the locality, (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries, (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.	There is minimal impact to the scenic quality of the area.
26 Maintenance, protection and enhancement of views The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows: (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.	There is minimal impact to the views.