



***Section 96(1A) Modification Application
Assessment Report***

Modification to the retractable awnings

***Mandarin Club Ltd, 1 Dixon Street, Darling
Harbour***

DA 063-04-2009 MOD 1



Director-General's
Environmental Assessment Report
Section 96(1A) of the
Environmental Planning and Assessment Act 1979

November 2012

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1. BACKGROUND

1.1 The site

Shan Yan Chen (applicant) of Mandarin Club Limited has lodged a section 96(1A) application seeking to modify development consent DA 063-04-2009, to change the two retractable awnings to fixed awnings at the Mandarin Club, at 1 Dixon Street, Darling Harbour. The subject site is bounded by the Chinatown precinct to the south; Harbour Street and the Chinese Garden of Friendship to the west; Dixon Street and retail/residential complexes to the east and Liverpool Street to the north (see **Figure 1**).

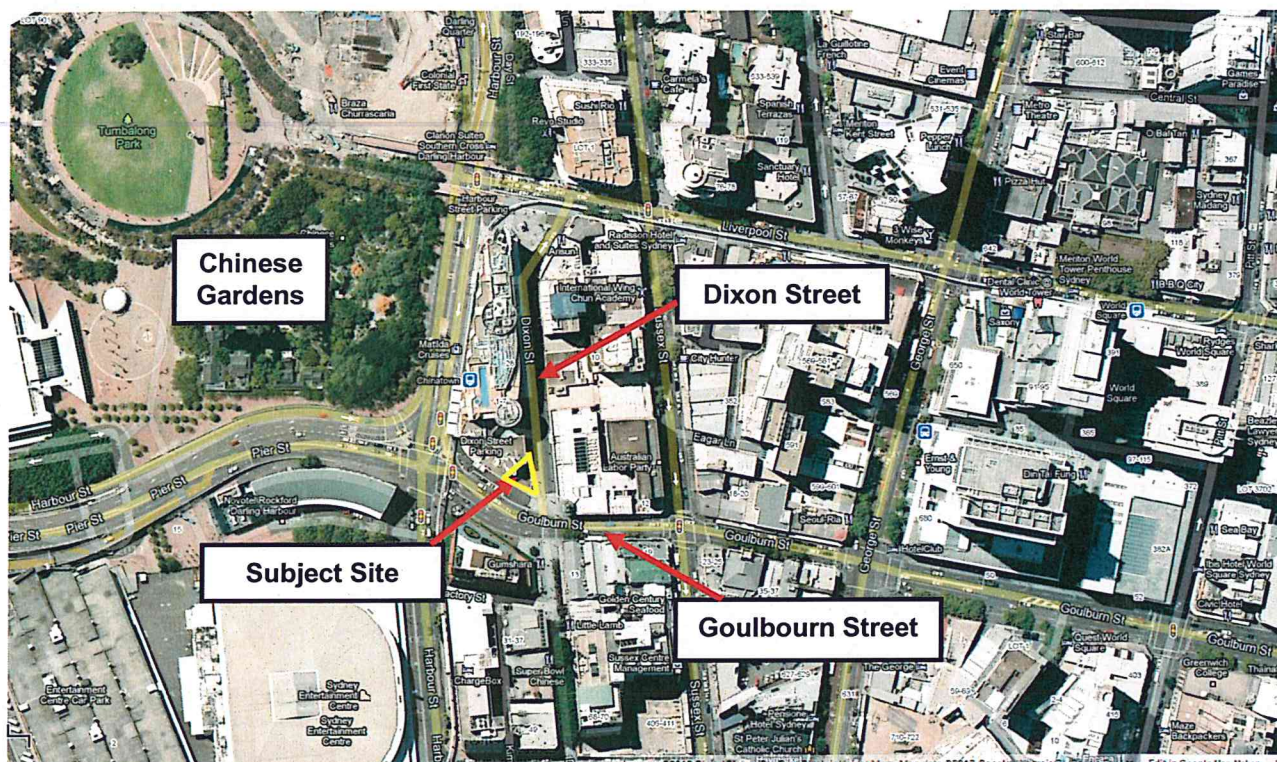


Figure 1: Site Location

1.2 Background

On 20 May 2009, a development application (DA 063-04-2009) was approved by the Planning Assessment Manager, as delegate for the then Minister for Planning, for the installation of two retractable awnings in the outdoor seating area of the Mandarin Club.

2. PROPOSED MODIFICATION

2.1 Modification Description

The modification application (DA 063-04-2009 MOD 1) lodged under section 96(1A) of the *Environmental Planning & Assessment Act 1979* (EP&A Act) seeks approval to modify the design of two retractable awnings that are located along the south and eastern boundary of the site within the outdoor seating area. The applicant proposes to change the design from retractable canvas awnings to fixed canvas awnings (see **Figure 2**). The modification is sought because there is no room to accommodate the motors for the approved awnings, and therefore the proposed fixed awnings will allow more room for customers in the outdoor seating area.

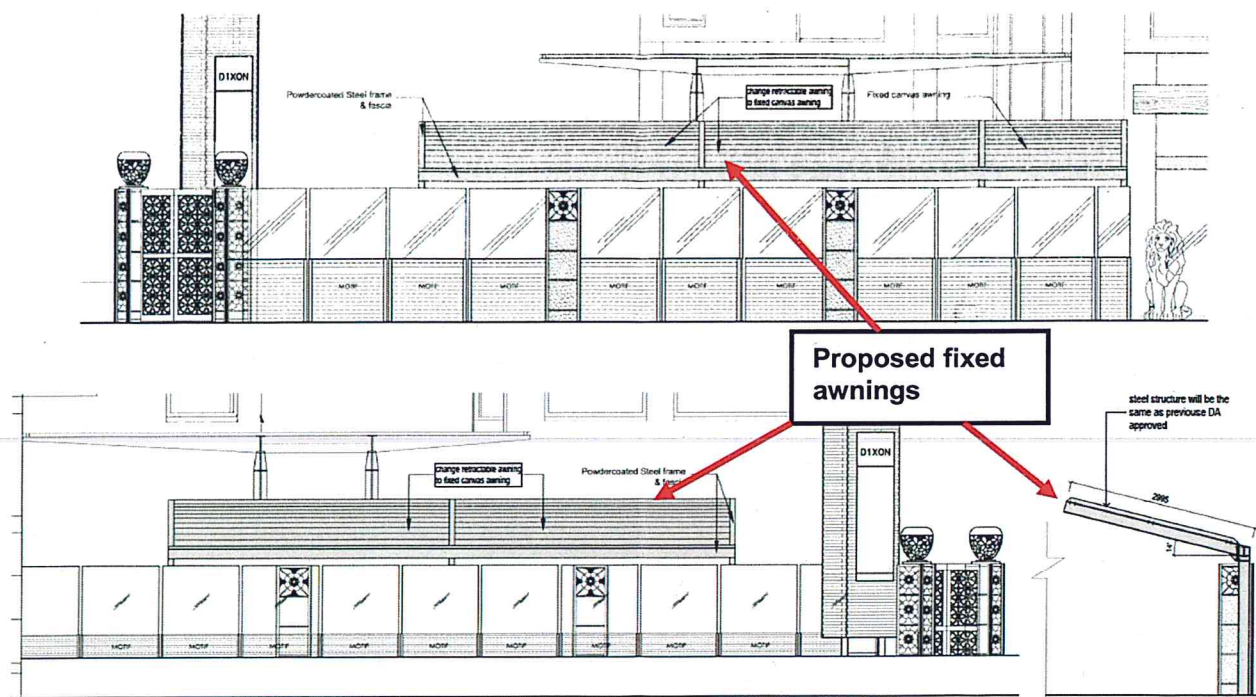


Figure 2: Proposed Fixed Awnings

3. STATUTORY CONTEXT

3.1 Modification of approval

Section 96(1A) of the EP&A Act provides that 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 a consent that is deemed to be substantially the same development.

Section 96(1A) of the EP&A Act identifies a number of matters which need to be considered in respect of modification applications, which are identified in Table 1:

Table 1: Matters to be considered under section 96(1A) of the EP&A Act

Matter	Consideration
Whether the proposed modification is of minimal environmental impact	The proposed modification to change the design from a retractable to fixed awning will involve minor work and is considered of minimal environmental impact.
Whether the development to which the consent as modified relates is substantially the same development	The proposed awning is of the same shape and size of the approved awning. In addition, the proposed canvas material is the same as the approved DA. Therefore, the modification is substantially the same development.
Whether notification has occurred and any submissions have been considered	The modification request is not required to be notified the under EP&A Act and the EP&A Regulation, however, the department referred the application to the City of Sydney Council (council) for comment. Council provided no comment to the modification application.
Any relevant provisions of section 79C(1) of the EP&A Act	The relevant provisions of section 79C(1) of the EP&A Act have been considered in sections 3, 4 and 5 of this report.

3.2 Environmental Planning Instruments

In accordance with section 79C(1)(a)(i) and (iii) of the EP&A Act, the department's consideration of relevant Environmental Planning Instruments (EPIs) is provided in Table 2.

Table 2: Environmental Planning Instruments

EPI or DCP	Consideration
<i>State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP)</i>	The site is included within Schedule 6 of the Sydney Harbour Port and Related Employment Lands Map in the Major Development SEPP. While council is the consent authority for all redevelopments under \$10 million, as the Minister was the consent authority for the original development application, the Minister remains the consent authority for any subsequent modifications under Part 4 of the EP&A Act.
<i>State Environmental Planning Policy No 55—Remediation of Land (SEPP 55)</i>	Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. No works are proposed that will affect the ground level or soil of the site and no further assessment of contamination is therefore required.
<i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Harbour REP)</i>	The site is within the 'Foreshores and Waterways Area', as defined in the Sydney Harbour Catchment SREP. Clause 20 of the Sydney Harbour Catchment SREP requires matters to be considered in the assessment of the application. The site is within an area far removed from the foreshore the matters for consideration are not relevant to the subject application.
<i>Sydney Harbour Foreshores and Waterway Area DCP 2055</i>	As the site is not within the foreshore area, the controls of the DCP are not applicable to the subject application.

3.3 Delegated Authority

Under the instrument of delegation signed 14 September 2011, and effective as of 1 October 2011, the Minister delegated his functions under section 96(1A) of the EP&A Act to Directors in the Major Project Assessment Division where:

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

As council does not object, no disclosure of a political donation has been made, and no public submissions were received, the Director, Metropolitan and Regional Projects North may determine the modification request under delegated authority.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibitions

Pursuant to section 117 of the EP&A Act, the modification of development consents involving minimal environmental effects and which are lodged under section 96(1A) of the Act, are not required to be advertised. However, the application was referred to the City of Sydney Council for comment. The modification request was also made available on the department's website.

4.2 Public Authority Submissions

Council provided no comment on the modification.

4.3 Public Submissions

No submissions were received from the public.

5. ASSESSMENT

5.1 Awning Design

The proposed modification seeks to modify the design of the two approved retractable awnings to fixed awnings. The awnings project towards the outdoor seating area of the Mandarin Club and not onto Dixon Street and Goulbourn Street (see **Figure 3**).

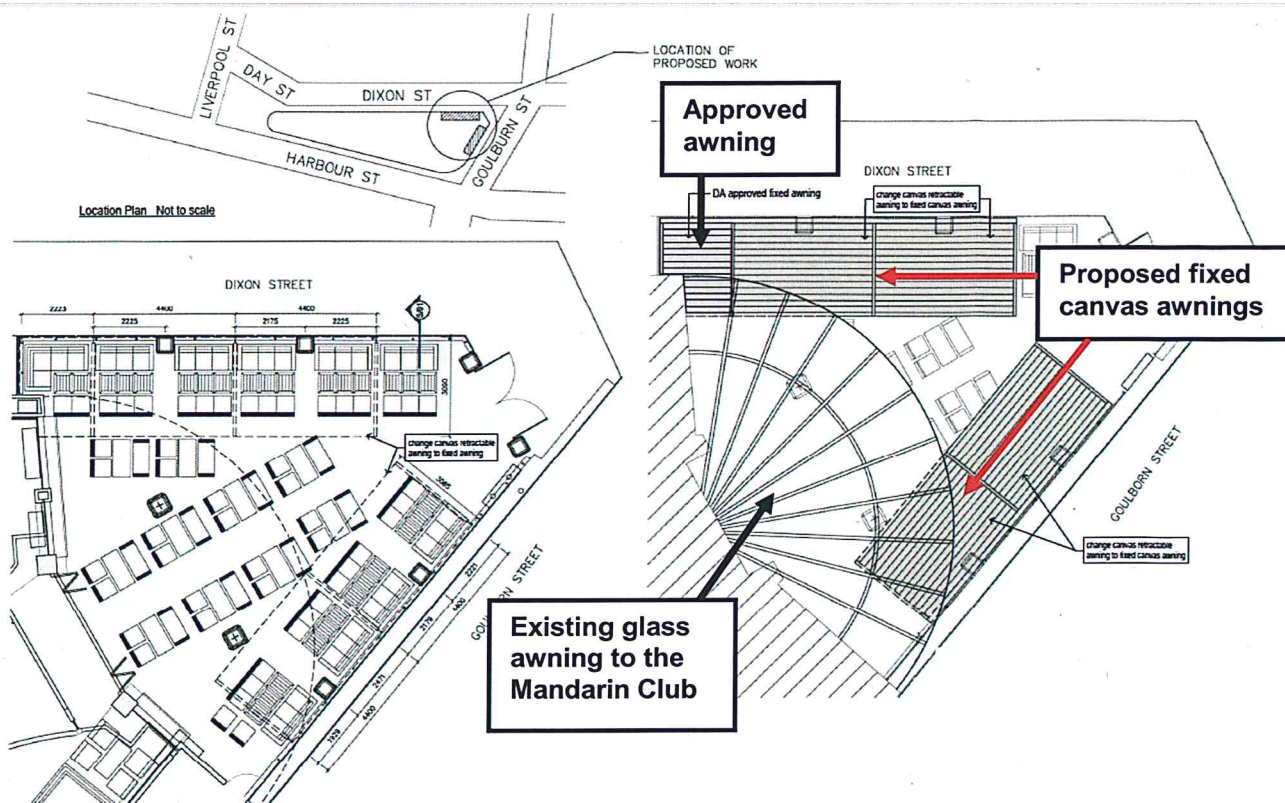


Figure 3: Proposed Plan

Upon lodgement of the modification request, the applicant also sought to change the material of the approved awning from canvas to polycarbonate. Section 2.9 of the City of Sydney Awnings Policy 2000 (awnings policy) states that polycarbonate awnings are not acceptable, as they are not sufficiently durable. As a result of the non-compliance, the applicant submitted revised plans that highlighted the material of the awnings will consist of canvas. This will also be consistent to the original approval.

The department considers the proposed modification acceptable as there will be no significant environmental impact. The awnings will remain the same shape and size, and the material is the same as the original canvas material. The canvas awnings are consistent with the council's awnings policy, and appropriate for the outdoor seating area of the Mandarin Club restaurant. The proposed awnings will provide greater weather protection to customers when in a fixed position. In addition, the awnings will have a minimal visual impact, as surrounding awnings in the area are not consistent in colour, material or style. The department therefore considers modification request appropriate.

6. CONCLUSION

The modification application has been assessed in accordance with the matters for consideration under section 96(1A) and section 79C of the EP&A Act, the Regulation, and all relevant environmental planning instruments, and is considered to comply with all relevant items.

The department considers the modification to the development consent for DA 063-04-2009 acceptable as the changes are minor in nature and consistent with council's awnings policy. The proposed awnings do not change in shape and size, and will provide greater weather protection for customers in the outdoor seating area of the Mandarin Club.

Accordingly, the department recommends that the modification application be approved, and the conditions of the consent amended accordingly.

7. RECOMMENDATION

It is recommended that the Director, Metropolitan and Regional Projects North:

- (a) **Consider** all relevant matters prescribed in section 79(C) of the *Environmental Planning and Assessment Act 1979*, including the findings and recommendations of this report; and
- (b) **Approve** the modification application, subject to conditions, under section 96(1A) of the *Environmental Planning and Assessment Act 1979*, and sign the Modification of Development Consent (**TAG A**).

Endorsed by:

 21/11/12

Cameron Sargent
Team Leader
Metropolitan and Regional Projects North

Endorsed by:

 21/11/12

Heather Warton
Director
Metropolitan and Regional Projects North

APPENDIX A MODIFICATION REQUEST

See the Department's website at <http://majorprojects.planning.nsw.gov.au/>

APPENDIX B SUBMISSIONS

No submissions received.

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT