



Planning

***ADDITIONS TO THE MUSEUM OF
CONTEMPORARY ART***

***Proposed by the Museum of
Contemporary Art***

MP 08_0064 (MOD 1)

Modification of Minister's Approval under section 75W
of the *Environmental Planning and Assessment Act*
1979

May 2010

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1. INTRODUCTION

This is a report on an application seeking to modify the project application approval (MP 08_0064) for additions to the Museum of Contemporary Art (MCA), 140 George Street, The Rocks.

The MCA site is bound by George Street to the west, Argyle Street to the north, Circular Quay to the east, and First Fleet Park and the Cahill Expressway to the south (Lots 20, 21, 22 and 24 in DP787906, Part Lot 1 in DP1052780, Part Lot 3 DP544167, Part Lot 4 DP787934 and Part Lot 25 in DP773812). The site also includes a portion of the adjoining site at 132 George Street, and a boundary adjustment between the MCA site and this adjoining site has previously been approved (see Figure 1).

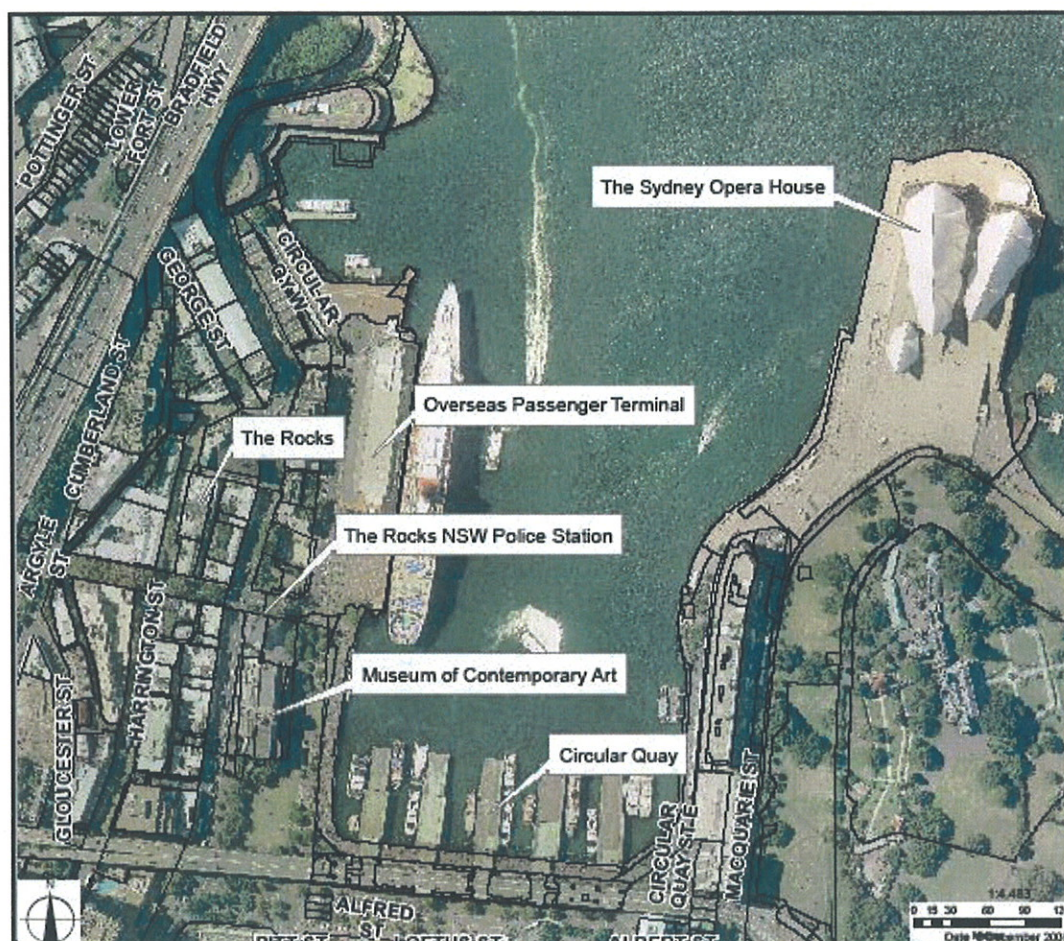


Figure 1 – Site and contextual location

On the 11 May 2008, the Director General as delegate for the Minister for Planning formed the opinion that the proposal was a project to which Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act), applied.

On the 26 June 2009, following an assessment of the proposal by Department, the then Minister for Planning approved the project application MP 08_0064, for the following:

- The removal of an existing café over the substation and the demolition of the 2 level south wing to the existing Police Building, and the partial reconstruction of the 'prisoner run' and van dock.
- Addition of a 6 storey building to the north of the existing MCA, for the following:
 - New foyer and entry areas linking George Street and West Circular Quay;
 - Additional gallery, educational and theatre spaces and a new café on Level 5; and

- Undercover loading dock and parking area.
- Alterations and addition to the existing MCA building, including:
 - Reorganisation and remodelling of internal public gallery and circulation spaces, and MCA and other office uses;
 - Extension to level 1 terraces for outdoor seating area to existing café;
 - Addition of rooftop venue space on Level 7; and
 - New retail tenancies along the George Street frontage.
- The redevelopment of the public domain around the existing and proposed building including the provision of archaeological interpretation for the former dockyards.

On 26 March 2010, Root Projects Australia Pty Ltd, acting on behalf of the Museum of Contemporary Art (the proponent), submitted an application under section 75W of the EP&A Act to modify the approval in relation to the sea-water heat exchange, beyond the West Circular Quay promenade to the waterfront on NSW Maritime land. While proposed under the project application, this component of the project application never received landowner's consent from NSW Maritime Authority. NSW Maritime has now provided landowner's consent and therefore the modification seeks to incorporate the area originally envisaged to accommodate the sea-water heat exchange.

2. STATUTORY CONTEXT

2.1 MODIFICATION OF A MINISTER'S APPROVAL

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify the approval of project. The Minister's approval is not required if the project as modified will be consistent with the original approval. As the application seeks to incorporate an area which did not have landowner's consent, the modification requires approval.

2.2 ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRs)

Section 75W(3) of the EP&A Act provides the Director General with scope to issue environmental assessment requirements (DGRs) that must be addressed with respect to the proposed modification. As the modification application largely relates to administrative amendments to incorporate NSW Maritime land into the project approval area, the Department considered it unnecessary to re-issue DGRs.

2.3 CONSULTATION AND EXHIBITION

While section 75W of the EP&A Act does not require a modification application to be publicly exhibited, the application was placed on the Department's website in accordance with section 75X(2)(f) of the EP&A Act and clause 8G of the Environmental Planning and Assessment Regulation 2000. The application was also referred to NSW Industry and Investment and the Department of Environment, Climate Change and Water (DECCW) were also consulted.

NSW Industry and Investment raised no objections to the modification, however noted that the application should comply with DECCW requirements regarding sea-water discharge and use of anti-fouling agents. The Department has imposed an additional condition which specifies the need to comply with these requirements. DECCW were consulted to confirm that previous advice DECCW sent to the proponent was still applicable with the minor modifications and regarding the draft conditions. DECCW raised no issues with the modifications or the conditions.

2.4 PERMISSIBILITY

The proposal is a permissible use on the land under the provisions of the Sydney Cove Redevelopment Authority (SCRA) Scheme applying to the site as shown on Building Site Control Drawings XXXIX – A(1) and XXXIX – B(2).

3. CONSIDERATION OF PROPOSED MODIFICATIONS

The proposed modification seeks to amend the approval to incorporate the sea-water heat exchange works that are located on NSW Maritime Land. Although the sea-water heat exchange was approved as part of the project application, the sea-water heat exchange works on NSW Maritime land did not form part of the project approval as landowner's consent had not been obtained (see Figure 2).

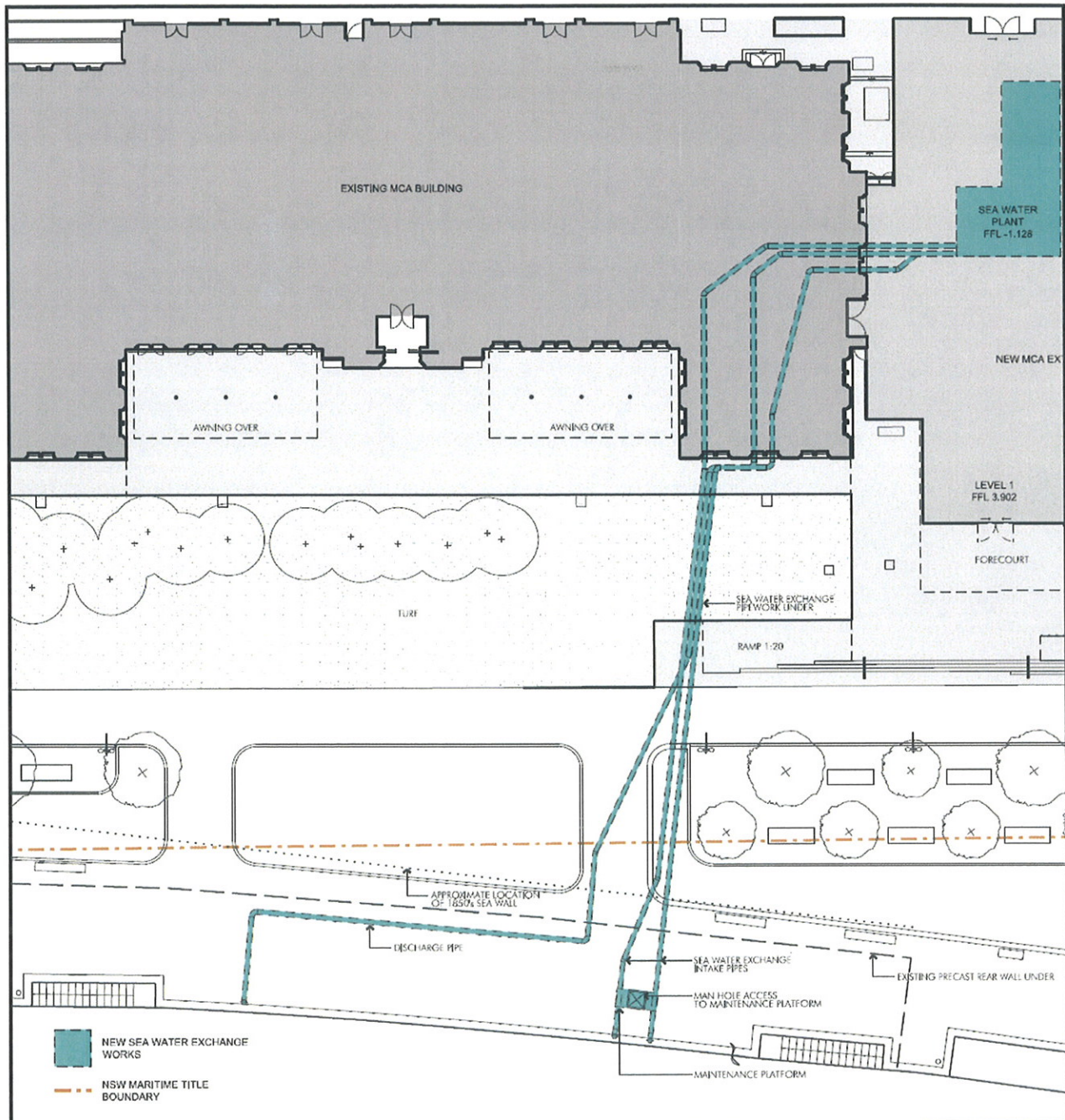


Figure 2 – Sea-water exchange works on NSW Maritime land – see red dotted line.

The sea-water intake pipes that would be located on NSW Maritime land incorporate angle mesh to protect the system from debris and marine life entering the pipes. The proponent has identified that the works would not have any adverse impact on the water quality in Sydney Harbour and subsequently no impact on marine vegetation or fauna. The proponent's mechanical engineer has previously sought advice from DECCW regarding the proposed sea-water heat exchange system and was informed by DECCW that the works do not require a licence, however would be required to operate in accordance with relevant legislation. This

includes discharging the water at appropriate temperatures and complying with regulatory requirements for use of any pesticides (anti-fouling agents).

The proponent's mechanical engineer has provided details that confirm that the sea-water heat exchange system can comply with maximum temperature differentials between intake and discharge of sea-water, and the proponent intends on using an anti-fouling agent that is approved for use nationally. A Preliminary Marine Risk Assessment was also undertaken and found that the installation and operation of the sea-water exchange would have no discernible impacts and no impacts to threatened fauna as none were likely to be present.

The Department has reviewed the modification and considers the modification will not have any additional environmental impacts to those already assessed under MP 08_0064. Furthermore, the Department has consulted NSW Industry and Investment who raised no issue with the modification, whilst the proponent has demonstrated that DECCW requirements can be satisfied and DECCW raised no issues with the modification.

4. CONCLUSION

The Department considers that the modification is appropriate given it will not result in any additional environmental impacts. As such, the modification is supported.

5. DELEGATION

Under the Instrument of Delegation dated 25 January 2010, the Minister delegated his functions under section 75W of the EP&A Act to the Director, Government Land and Social Projects, where there are fewer than 10 public submissions in the nature of objections in respect of the modification request. As there were no public submissions, the Director, Government Land and Social Projects can determine the modification.

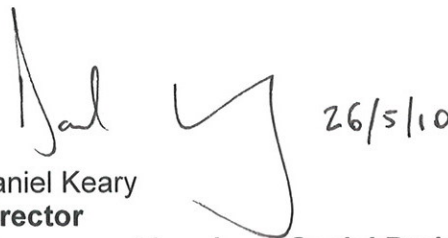
6. RECOMMENDATION

It is recommended that the Director, as delegate of the Minister for Planning:

- (a) **Consider** the findings and recommendations of this report; and
- (b) **Approve** the modification, under section 75W of the *Environmental Planning and Assessment Act 1979*; and
- (c) **Sign** the attached Instrument of Modification Approval (**TAG A**).



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