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Overseas Passenger Terminal Circular Quay (Tenancy 5)

Request for Secretary's Environmental Assessment Requirements



Prepared for Jimmys on the Mall

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Front Cover Image courtesy of Collins and Turner

Attachments

1. Request to vary SCRA Scheme

1 Introduction

The purpose of this report is to provide a preliminary environmental assessment of a development application (DA) for the erection of solar shading structures at Tenancy 5 of the Overseas Passenger Terminal (OPT). It has been prepared in support of a request for Secretary's Environmental Assessment Requirements (SEARs).

On 25 August 2017, the Department of Planning and Environment (DP&E) approved a State significant development (SSD) for the use of Tenancy 5 of the OPT as a restaurant (SSD 7683), including:

- external alterations to the OPT building
- new elevated micro-brewery pod to the north of the OPT
- outdoor dining area to the north of the site
- business identification signage.

Condition A5(d) of the consent states that no approval is granted for shading devices or awnings in the outdoor dining area or new deck in the tower drum.

It is now proposed to install the following to provide essential patron amenity for the approved restaurant:

- two shade structures within the outdoor dining area
- a folding arm awning on the northern façade and western façade of Tenancy 5

The proposed works are classified as State significant development (SSD) under the provisions of the *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) as they comprise development on land identified as being within the Rocks which does not comply with the *Sydney Cove Redevelopment Authority Scheme* (SCRA Scheme).

It is therefore proposed to lodge a development application for the works under section 4.38 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

A separate request to vary the SCRA Scheme to enable the erection of the shade structures in the outdoor dining area was lodged with DP&E on 29 March 2018 (Attachment 1).

It is requested that DP&E issue SEARs under Section 4.12 (8) of the EP&A Act and Clause 3 of Schedule 2 of the *Environmental Planning and Assessment Regulation 2000* (EPAR) to enable the preparation of an Environmental Impact Statement (EIS) for the project.

2 The site and locality

2.1 Site description

The subject site is known as Tenancy 5 and is located within the OPT, Circular Quay West, The Rocks (Figure 1). The legal description of the site is Lot 1 DP 876516.

The OPT is a long rectangular four storey building located on the western side of Circular Quay, southern side of Campbell's Cove and directly opposite the Sydney Opera House across Sydney Cove. The OPT fronts Circular Quay West, which is a dual carriageway private road that terminates in a roundabout at Campbell's Cove.

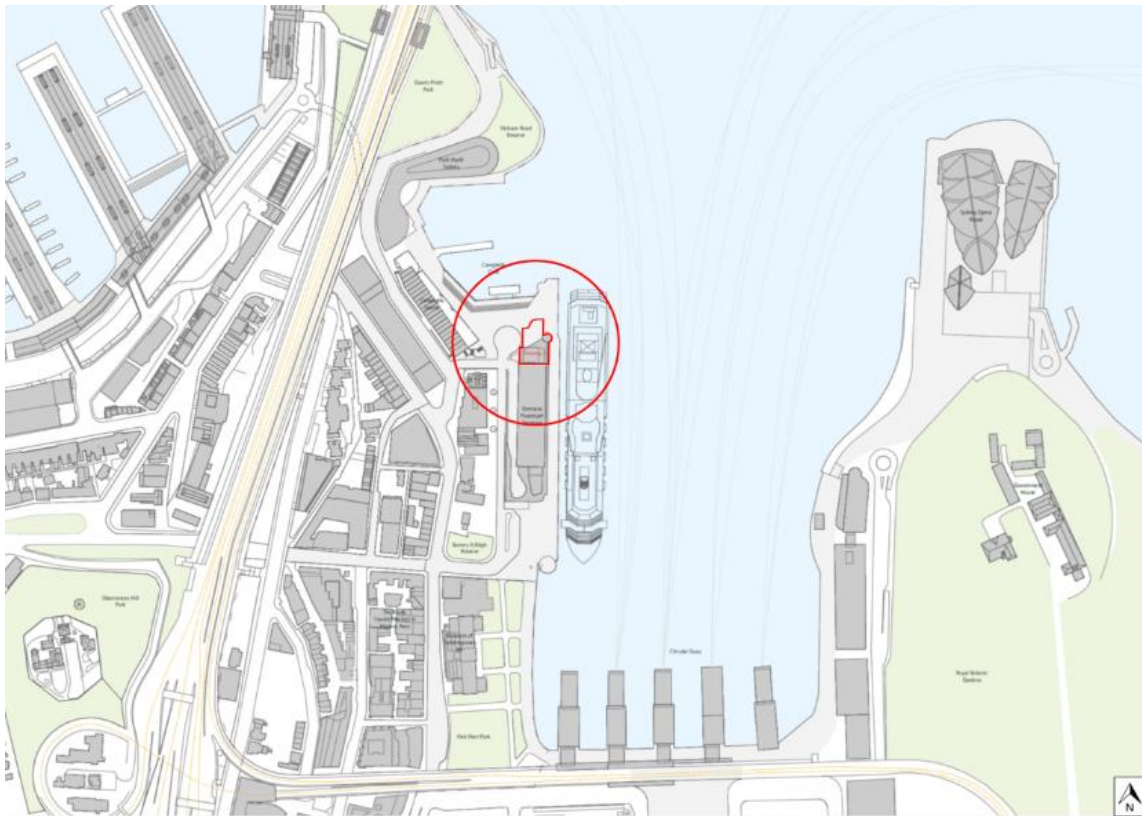


Figure 1 Site Location (Source: Collins and Turner)

The OPT plays a significant role as an international and domestic Port for cruise ships as well as activating the Harbour and Circular Quay with a range of restaurants and temporary private and state endorsed events. In addition, the OPT provides essential public access along the foreshore linking Circular Quay to Campbell's Cove. It adjoins significant areas of public domain acting as passive gathering spaces as well as facilitating public events such as the Sydney Vivid Festival.

Tenancy 5 is located at the northernmost end of the OPT and is approximately 1,080m² in size. It occupies the ground and first floor levels and includes an adjoining 405m² formalised outdoor seating area (Figures 3 - 8). Tenancy 5 was previously occupied by *Doyles Restaurant*, which operated at the site between 1987 and 2014. As discussed at **Section 3** the site has approval for the construction and use of a new restaurant and micro-brewery. Construction works on the site have commenced in accordance with this approval.

2.2 Site location and context

The OPT building is located on a prominent site within The Rocks overlooking Circular Quay. The immediate area surrounding Tenancy 5 is characterised by a variety of buildings of differing ages and architectural designs and public spaces, including:

- to the west of the site is the Australian Steam Navigation Company (ASN Co) building, Campbell's Stores buildings and Metcalf Bond Store building
- a hard-paved area is located to the north and north west of the site together with the Campbell Cove waterfront promenade (Figure 5)
- to the east of the site is Sydney Cove and the OPT ship berth and promenade, the Sydney Opera House is located on the opposite side of Sydney Cove to the OPT.

There are a number of Heritage Items within the vicinity of the site, including the:

- Sydney Opera House (World Heritage List, National Heritage List and State Heritage Register and Sydney Local Environmental Plan);
- Sydney Harbour Bridge (National Heritage List and State Heritage Register and Sydney and North Sydney Local Environmental Plans);
- ASN Co building (State Heritage Register);
- Campbell's Stores (State Heritage Register); and
- Metcalfe Bond Stores (State Heritage Register).

The OPT building is identified as a heritage item on the Sydney Ports Corporation section 170 register. *The Rocks Heritage Conservation Area* is identified as heritage item on the Sydney Harbour Foreshore Authority's (SHFA) section 170 register. The site is also located within the buffer zone of the World Heritage listed Sydney Opera House for views and vistas.



Figure 2: View north west across the hard-paved area, promenade and Campbell's Cove towards Campbell's Stores and the Metcalf Bond Store building to the left and the Park Hyatt and Sydney Harbour Bridge to the right

3 Relevant Planning History

On 25 August 2017, the DP&E Acting Executive Director, Key Sites and Industry Assessments granted SSD approval for the redevelopment of the OPT (Tenancy 5) for a restaurant and micro-brewery, including:

- external alterations to the OPT building
- new elevated micro-brewery pod to the north of the OPT
- outdoor dining area to the north of the site
- 5 business identification signs location on the northern, eastern and western elevations.

Condition A5(d) of the consent states that no approval is granted for shading devices or awnings in the outdoor dining area or new deck in the tower drum:

Limits on Consent

A5. This consent in no way implies or grants approval for the following:

- a) internal building works*
- b) removal of any palm trees (note: the relocation of the three existing palm trees is permitted by this consent)*
- c) subdivision of the site*
- d) drop-down blinds, shading devices, awnings, umbrellas or the like in the outdoor seating and in the new deck within the double height space in the tower drum.*

4 The Project

4.1 Project description

The proposal involves the construction of the following structures to the northern side of the approved Tenancy 5 restaurant:

- two operable (retractable) solar shade structures within the outdoor dining area of the approved Tenancy 5 restaurant. These are column mounted steel structure with extendable fabric awnings
- an operable (folding arm) awning on the northern façade and operable (folding arm) awning on the western façade of Tenancy 5.

The proposed shading structures and awnings are required to provide appropriate amenity to patrons of the approved restaurant, given its northern aspect. The approval and subsequent operation of the restaurant (once opened) will provide much needed reactivation of this currently underutilised area of the Sydney Harbour foreshore. The works will improve the quality of the restaurant experience and therefore foster the economic and cultural contribution to the surrounding tourist precinct and Sydney as a global city.

The proposed works will be designed to sensitively integrate with the OPT building and to read as minor, low impact structures that will not create visual clutter or lead to impacts on key views, including to and from the Sydney Opera House.



Figure 3: Proposed shade structures in outdoor dining area and awning on northern building facade – west elevation (Source: Collins and Turner)



Figure 4: Proposed shade structures in outdoor dining area and awning on northern façade – north elevation (Source: Collins and Turner)

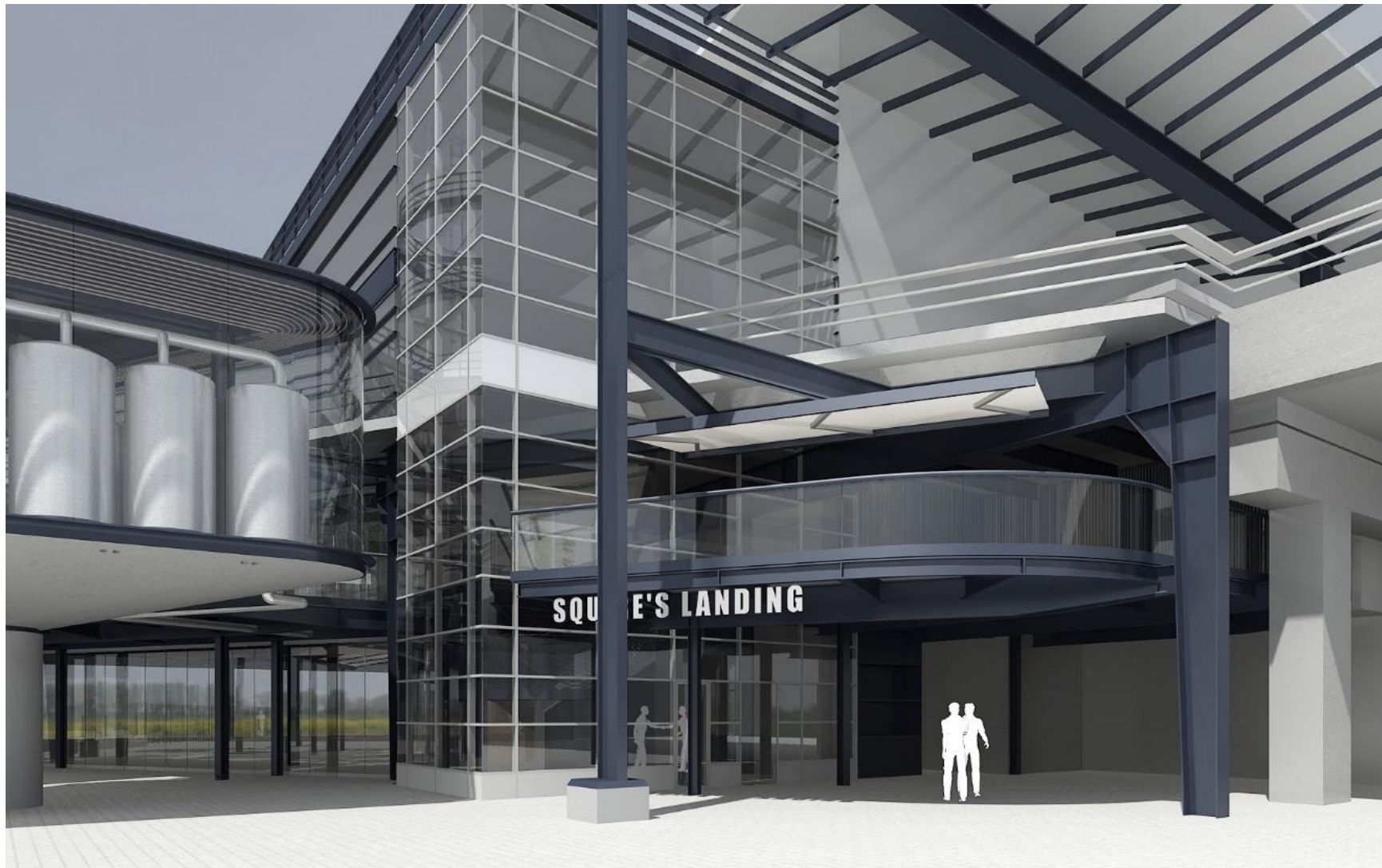


Figure 5: Proposed awning on western façade (Source: Collins and Turner)



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5 Relevant Legislation

5.1 Environmental Planning and Assessment Act 1979

The EP&A Act provides the statutory framework for planning in NSW. Section 4.36 of the EP&A Act enables certain developments to be declared SSD by means of a State Environmental Planning Policy (SEPP) or by order of the Minister for Planning.

The project is SSD under the provisions of the *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) as it comprises development on land identified as being within the Rocks.

The project will be assessed under Part 4 Division 4.1 of the EP&A Act. The Minister for Planning is the consent authority for SSD.

This report requests the issue of the SEARs for the project under section 4.12(8) of the EP&A Act and Clause 3 of Schedule 2 of the EPAR.

The Minister (or the Minister's delegate) is required to take into consideration the matters listed under section 79C of the EP&A Act when determining the development application.

5.2 Heritage Act 1977

The *Heritage Act 1977* makes provisions to conserve the State's environmental heritage. It provides for the identification, registration and protection of items of State heritage significance and constitutes the Heritage Council of New South Wales.

The OPT is not listed on the State Heritage Register. It is listed as a heritage item under Sydney Ports Corporation's heritage and conservation register under section 170 of the Heritage Act. *The Rocks Conservation Area* is listed as a heritage item under SHFA's section 170 register.

There are a number of listed State Heritage Register Items in The Rocks in the vicinity of the OPT, including the Sydney Opera House, Sydney Harbour Bridge, ASN Co Building, ASN Co. Building, Campbell's Stores and Metcalf Bond Stores.

The SSD will include a Heritage Impact Statement which will analyse the proposal's potential heritage impacts.

5.3 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (BC Act) commenced on 25 August 2017, changing the way in which biodiversity impacts are assessed and addressed in the development and use of land throughout the State.

Under the new BC Act (Section 7.3 and 7.9), State significant development proposals require an accredited ecologist to prepare a biodiversity development assessment report (BDAR).

The BDAR reflects the current 7-part test in section 5A of the EP&A Act and the assessment must include the following:

- *assesses the biodiversity values (as defined in s1.5 of the BC Act) of the land the subject of the proposed DA, in accordance with the BAM*
- *assesses the impact of the proposed DA, proposed activity or proposed clearing on the biodiversity values of that land*
- *sets out the measures the proponent proposes to take to avoid or minimise the impact*
- *specifies the number and class of biodiversity credits that are required to be retired to offset the residual impacts on biodiversity values of actions to which the BOS applies.*

The consent authority must consider if the proposed development is likely to have serious and irreversible biodiversity impacts when assessing SSD or SSI and determine any additional and appropriate measures that would minimise the impacts, if a consent or approval was to be granted.

Notwithstanding, under section 7.9(2) *“the Planning Agency Head and the Environment Agency Head [may] determine that the proposed development is not likely to have any significant impact on biodiversity values”*. If this determination is made, a BDAR is not required.

The site has no biodiversity values and the proposed development relates to minor works which will have no biodiversity impacts. Accordingly, we request that under section 7.9(2) of the BC Act, the Planning and Environment Agency Heads (or their delegates) determine that the proposed development is not likely to have any significant impact on “biodiversity values” and that a “biodiversity development assessment report” is not required in relation to the proposal.

5.4 Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999

The *Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999* sets out the process for varying the Sydney Cove Redevelopment Authority (SCRA) Scheme.

The proposal requires a variation to the SCRA scheme as described in Section 5.5.4. A separate application to vary the SCRA scheme in relation to the proposal was submitted to DP&E on 29 March 2018.

5.5 Environmental Planning Instruments

5.5.1 State Environmental Planning Policy (State and Regional Development) 2011

The SRD SEPP declares certain types of development and infrastructure to be of State and regional significance.

Clause 8 of SRD SEPP declares development to be SSD where a development is not permitted without consent and is listed in Schedule 1 or 2 of the SRD SEPP. The proposal is SSD in accordance with Clause 6 of Schedule 2 of the SRD SEPP, which states:

6 Development in The Rocks

Development on land identified as being within The Rocks Site on the State Significant Development Sites Map if:

- (a) it has a capital investment value of more than \$10 million, or
- (b) **it does not comply with the approved scheme within the meaning of clause 27 of Schedule 6 to the Act.**

5.5.2 State Environmental Planning Policy (State Significant Precincts) 2005

The SSP SEPP seeks to broadly facilitate the development, redevelopment and protection of State significant precincts and to ensure the service delivery outcomes for a range of public purposes. The SSP SEPP identifies a number of State significant precincts and provides planning controls relating to the carrying out of development in these precincts.

The SPP SEPP identifies The Rocks as being within the Sydney Harbour and Foreshores Sites and states that the consent authority for development that is not SSD within this area is the City of Sydney Council. As stated above, the proposal is SSD and the Minister for Planning is the consent authority.

5.5.3 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Harbour SREP) sets out objectives and planning principles for the Sydney Harbour Catchment. The site is within the Sydney Harbour Catchment Area designated in the SREP. It is within the Foreshores and Waterways Area and City Foreshore Area designated as a Strategic Foreshore Site.

The following provisions will be relevant to this project and be addressed in the EIS:

- *Clause 13 – Planning principles for the Sydney Harbour Catchment.* These principles generally relate to the protection of the natural environmental qualities and scenic character of the harbour and its catchment.
- *Clause 14 – Planning principles for the Foreshores and Waterways Area.* These principles generally relate to the protection of the natural environment and scenic character of the harbor and its catchment, the enhancement of public access to and along the foreshore, and opportunities for maritime related uses of the foreshore.
- *Clause 15 – Planning principles for heritage conservation.* These principles relate to the protection of heritage items and places and views associated with heritage items in and around Sydney Harbour.
- *Part 3, Division 2 – Matters for consideration in the Foreshores and Waterways Area.* These are matters to be addressed by consent authorities prior to granting consent. Relevant matters include public access to and use of the foreshores, scenic quality, and protection of views.
- *Part 5 – Heritage provisions.* These provisions relate to the protection of heritage items and include specific provisions (Division 3A) relating to the Opera House. They establish a buffer zone around the Opera House which is based on the views and vistas between the Opera House and other public places around the harbour foreshore. It also includes specific matters relating to the protection of the World Heritage values of the Opera House to be considered in relation to development within the buffer zone. As the site is located within this buffer zone, these matters will be specifically addressed in the EIS.

5.5.4 State Environmental Planning Policy No. 55 – Remediation of Land

The EIS for SSD 7683 includes a preliminary contamination investigation which identified contaminated sites in the surrounding which were of a distance unlikely to impact on or be impacted by the proposed development. It concluded that as the proposal includes only minor excavations (for the microbrewery pod) the site is considered suitable for the proposed use in accordance with SEPP 55. The minor, localised excavation required for the shade structures in the outdoor dining would not alter this conclusion.

5.5.5 Draft State Environmental Planning Policy (Environment) 2017

The draft State Environmental Planning Policy (Environment) proposes to:

- consolidate seven existing SEPPs relating to the environment (including the Harbour SREP) into one SEPP
- simplify the planning rules for a number of water catchments, waterways and urban bushland
- update planning rules to reflect changes that have occurred since the creation of the original policies.

Amendments relevant to the Harbour SREP and the proposed development include:

- the aims of the plan will be updated to better reflect recent development in the harbour.
- planning principles will be replaced with two Ministerial Directions.
- provisions unique to the Sydney Harbour catchment and those that can be more broadly applies to other catchments will be identified.
- definitions will be aligned with Standard Instrument definitions.
- matters for consideration when assessing DAs will be updated by grouping them into clear themes.
- heritage provisions will be updated and aligned to the Standard Instrument LEP.
- Sydney Opera House provisions and related maps will be transferred to the State Significant Precincts SEPP.

The draft SEPP was exhibited from 31 October 2017 to 31 January 2018 and is yet to be made. The draft or final SEPP, as relevant, will be addressed in the EIS.

5.5.6 Sydney Cove Redevelopment Authority Scheme (SCRA Scheme)

The OPT is located on land identified on Building Site Control Drawing XLV1A–1B in the SCRA Scheme. The SCRA Scheme establishes a building envelope on the site, generally reflective of the existing OPT structure, and in relation to permitted uses states:

The only elements in respect to Open Space and Public Domain that will be permitted to exceed the envelope include: memorials, monuments, fountains, lighting, kiosks, flagpoles and the like.

As shade structures are not specifically identified as elements that are permitted to exceed the building envelope on Drawing XLV1A–1B, an application to vary the SCRA Scheme was lodged with DP&E under separate cover on 29 March 2018 (Attachment 1).

5.5.7 Sydney Local Environmental Plan 2012 and Development Control Plan 2012

The Sydney Local Environmental Plan (SLEP) 2012 does not apply to the site.

In relation to the Sydney Development Control Plan (DCP) 2012, which supplements the SLEP 2012 and provides more detailed guidance, clause 11 of the SRD SEPP states that DCPs do not apply SSD and therefore does not apply to the proposal.

6 Potential Environmental Issues

6.1 Heritage

The OPT is not listed on the State Heritage Register. However, the site is located within the *The Rocks Heritage Conservation Area* and listed on SHFA's section 170 Heritage and Conservation Register under the *Heritage Act NSW 1977* and listed as 'Sydney Cove Passenger Terminal' on the Sydney Ports Corporation Section 170 Heritage and Conservation Register.

The site is located in the vicinity of a number of items listed on the State Heritage Register and within the designated buffer zone for the Sydney Opera House which is inscribed on the World Heritage list.

The proposed structures are minor in nature and will be designed to integrate with the OPT building.

A Heritage Impact Statement will be prepared to support the EIS to address any potential heritage impacts, in addition to an analysis of critical view lines to and from the Sydney Opera House and other relevant items.

6.2 Built form and visual impact

The proposed solar shade structures and awnings will be subject to detailed design analysis that carefully considers the relationship of the proposed structures to the OPT building and the surrounding public domain. The structures will be designed to sensitively integrate with the OPT building and to read as lightweight, low impact structures. They will not create visual clutter that arises from the use of shade structures such as umbrellas and will not impact on key views, including to and from the Sydney Opera House.

The proposal will be subject to a detailed view analysis in terms of heritage items as well as surrounding buildings. In particular, the structures will be designed to maintain and/or enhance existing view lines within the locality, in particular from key areas of public domain and other relevant public places.

The EIS will be supported by architectural drawings and a view impact analysis.

6.3 Public domain

The OPT plays a key role in the successful activation of this area of The Rocks. The location of Tenancy 5 and the existing outdoor seating area provides a unique opportunity to create a catalyst development consistent with broader urban renewal plans for Circular Quay.

The SSD approval is consistent with the principles of the *Rocks Public Domain Strategy* (prepared by Property NSW, March 2016) by activating this space to complement upgrades the adjoining public domain for enhanced multi-uses spaces. The proposal promotes the broader principle of a multipurpose waterfront as well as providing a stronger identity for this part of the OPT by improving patron comfort, enhancing the activation of this area and providing for new structures that complement the OPT building.

The proposed structures will be contained entirely within the lease area of OPT Tenancy 5 and therefore will not impact on the adjoining public domain under the care and control of Property NSW and Port Authority of NSW.

6.4 Amenity

A detailed assessment of the proposed solar shade structures and awnings will demonstrate that they will not result in any adverse amenity impacts to surrounding land uses.

6.5 Biodiversity

The site is devoid of vegetation except for six existing palm trees located within the outdoor dining area. The SSD approval allows for the relocation of three of the existing trees and the proposal does not seek any amendments to the approved relocation plans.

As outlined in Section 5.3, as the site has no biodiversity values and the proposed development relates to minor works which will have no biodiversity impacts, it is requested that the Planning and Environment Agency Heads (or their delegates) determine that a “biodiversity development assessment report” is not required in relation to the proposal under section 7.9(2) of the BC Act.

7 Conclusion

This request for SEARs describes the proposed works, an overview of relevant legislative requirements and key strategic plans and documents and a preliminary assessment of potential environmental issues.

The proposed works are proposed to further refine the SSD approval (SSD 6734) for the use of Tenancy 5 of the OPT as a restaurant to improve patron comfort and the usability of the outdoor dining area. The works will improve the quality of the restaurant experience and therefore fosters the economic and cultural contribution to the surrounding tourist precinct and Sydney as a global city.

The proposed works will be designed to sensitively integrate with the OPT building and to read as minor, low impact structures with no impacts on key views, including to and from the Sydney Opera House.

The key issue associated with the proposed works is consideration of heritage impacts, particularly views towards the Sydney Opera House, which will be comprehensively addressed in the EIS, in accordance with relevant legislation, guidelines and the SEARs.