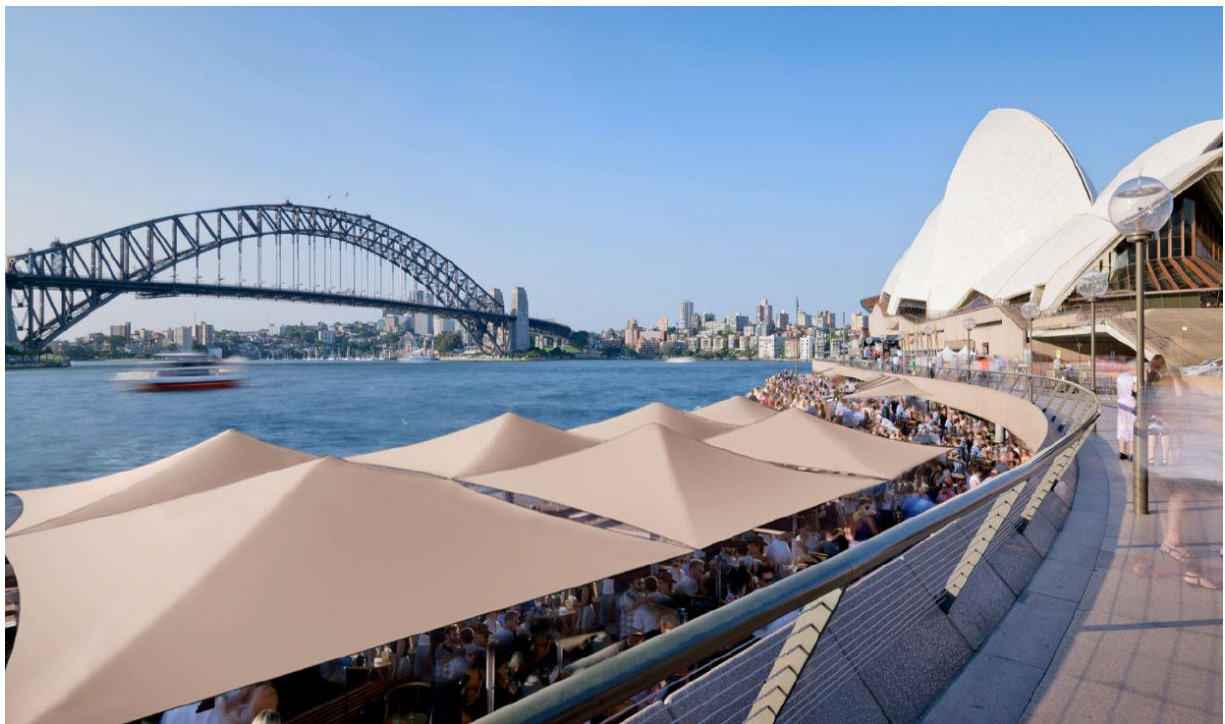




Sydney Opera House Lower Concourse Minor Works and Uses

State Significant Development
Assessment SSD 9794

May 2020



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Cover image: Visualisation of proposed lower concourse shade structures (Source: Applicant's Architectural Design Statement)

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Glossary

Abbreviation	Definition
Applicant	Sydney Opera House Trust
Application	SSD 9794
Consent	Development Consent
Council	City of Sydney Council
Department	Department of Planning, Industry and Environment
EESG	Environment, Energy and Science Group
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
Heritage NSW	Heritage NSW, Department of Premier and Cabinet
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
RMS	Roads and Maritime Services, TfNSW
SEARs	Planning Secretary's Environmental Assessment Requirements
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
TfNSW	Transport for NSW

Executive Summary

This report provides an assessment of a State Significant Development (SSD 9794) application for minor works and uses at the lower concourse of the Sydney Opera House (SOH).

The application proposes to consolidate all lower concourse uses into a single approval, including the restaurant and bar areas (currently trading as Opera Bar and Opera Kitchen), and the Visitor Information and Interpretation Centre. The proposal also seeks approval to extend and re-align the glazing line of the Opera Bar, replace shade structures, convert the Meat and Cheese Room and an existing back-of-house area into a new office and cool room.

The Applicant is the Sydney Opera House Trust and the site is located within the Sydney local government area.

Engagement

The application was publicly exhibited between 14 November 2019 and Wednesday 11 December 2019. The Department received 10 submissions, comprising a submission making comments from Council, four submissions from government agencies (one supporting and three commenting), and five public objections.

To address issues raised in submissions the Applicant submitted a Response to Submissions (RTS) report. The RTS provided further clarification on noise and heritage impacts and the existing operations of the premises.

Additional submissions from Heritage NSW, Council and the EPA were received in response to the Applicant's RTS.

Council did not object to the proposal, but it made recommendations in relation to heritage, design and noise. Public objections raised concerns about noise impacts, public access and safety, and monitoring of compliance with conditions.

Heritage NSW advised the proposal would not have a significant heritage impact on the SOH, as it is consistent with the original intent for the use of the lower concourse. Heritage NSW also advised the proposed shade structures would result in an improved design outcome compared to the existing structures, and the realignment of the glazing line would improve pedestrian circulation.

The EPA recommended conditions requiring the existing lower concourse restrictions be applied to this consent regarding operating hours, music and noise limits and the preparation of an Operational Noise and Vibration Management Plan.

Assessment

The key assessment issues for the proposed development are the use of the lower concourse, design, heritage, visual, and noise impacts.

The Department has carefully considered the proposal as well as the issues raised in submissions and is satisfied the proposal is acceptable for the following reasons:

- the consolidation of the existing uses into a single approval is supported because no changes to the current uses or operations are proposed. It would also improve the operational management of the lower concourse as well as monitoring and compliance with the conditions of approval
- while there is some uncertainty about whether the current use of the bar is authorised, the Department considers the bar is acceptable because it is appropriately located, it would meet the relevant noise criteria and no changes to its current operation with regards to patron numbers, noise management and hours of operations are proposed
- no additional noise impacts are anticipated, given there are no additional uses or changes proposed to the operation of the existing facilities. Further, the Department notes the predicted noise levels would comply with relevant criteria
- the proposed shade structures would result in an improved design outcome compared to the existing shade structures as they are simpler in form, have a shallower profile, and are complementary in colour to the surrounding area. Further, the design of the shade structures would not detract from the scenic landscape quality of the Sydney Opera House
- the realignment of Opera Bar glazing line would improve pedestrian circulation, ensuring there will be less encroachment onto public walkways and therefore better pedestrian flow
- the amendments to the back-of-house area will not have a significant impact on the heritage significance of the SOH because the works are minor, do not alter any significant fabric and will not be visible from the public domain
- a suite of conditions is recommended to appropriately mitigate and manage the potential operational impacts of the proposal including hours of operation, noise limits, noise monitoring and the preparation of an Operational Noise and Vibration Management Plan
- all other issues associated with the proposal have been assessed, and appropriate conditions recommended, where necessary, to ensure the impacts of the development are appropriately mitigated and/or managed.

Conclusion

The Department considers the proposal is acceptable as it would consolidate the existing uses and operational requirements into a single approval and it would not result in any significant noise, visual, amenity or heritage impacts beyond the existing development.

The Department concludes the proposal is in the public interest and recommends the application be approved, subject to the recommended conditions.

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1 Introduction

The Sydney Opera House Trust (the Applicant) seeks approval for minor works and consolidation of the existing uses on the lower concourse of the Sydney Opera House (SOH).

The application proposes to consolidate all lower concourse uses into a single approval, including the restaurant and bar areas (currently trading as Opera Bar and Opera Kitchen), and the Visitor Information and Interpretation Centre. The proposal also seeks approval to extend and re-align the glazing line of the Opera Bar, replace shade structures, convert the Meat and Cheese Room and an existing back-of-house area into a new office and cool room.

This application is an amalgamation of two previously withdrawn applications that included improvements to shade structures and pedestrian circulation on the SOH lower concourse.

1.1 Site context

The SOH is situated at the north-eastern edge of the Sydney CBD within the Sydney local government area. The SOH is one of the world's most distinctive and renowned buildings and is internationally recognised as a symbol of Sydney and Australia. The SOH building is also of State, National and World Heritage significance as a 20th century architectural masterpiece. It is one of Sydney's premier entertainment and tourist destinations, attracting approximately 8.2 million visitors per year.

The SOH building sits above a large forecourt area and is serviced by an underground loading dock below which is accessed via Macquarie Street. Access from the forecourt to the south of the main buildings is provided via the main podium steps (the monumental steps).

The site is bounded by Sydney Harbour to the north, east and west, Circular Quay to the south-west, and the Royal Botanic Gardens and Government House to the south and south-east. A mixed-use residential apartment building (Bennelong Apartments) is located south-west of the site at 1 Macquarie Street. The site and its surroundings are shown at **Figure 1**.

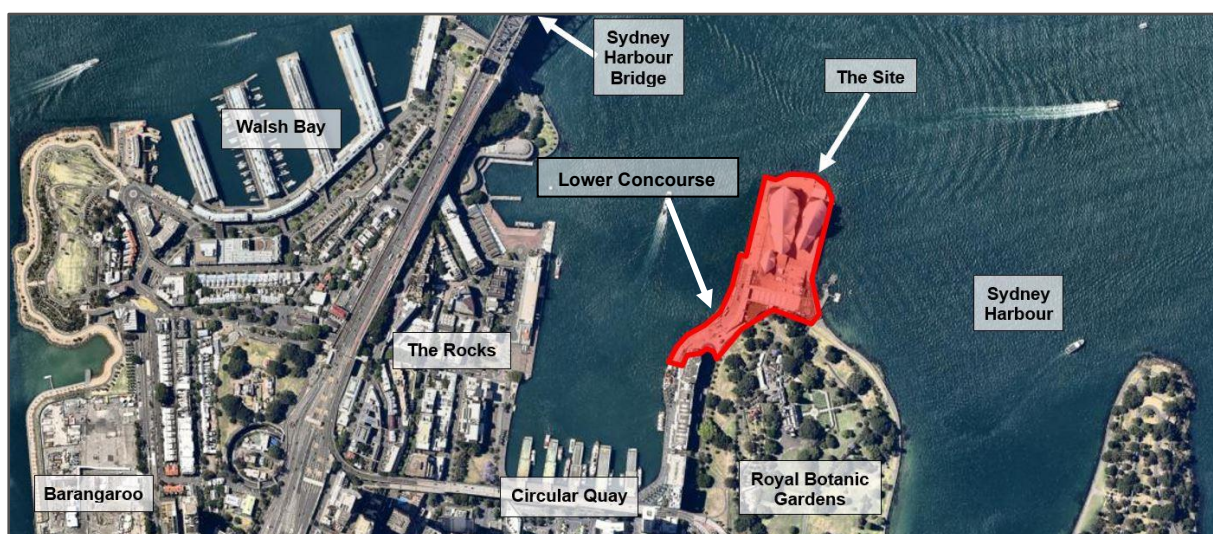


Figure 1 | Site Location Plan (Base source: Nearmap)

1.2 The site (Lower Concourse)

The lower concourse of the SOH is located along the western side of the site (**Figure 2**) and provides amenities and services to visitors and staff, including restaurant and bar areas leased to Opera Bar and Opera Kitchen (**Figure 3**), the Visitor Information and Interpretation Centre (**Figure 4**) at its northern end, and an underground car park. Opera Bar and Opera Kitchen are both licensed premises, with capacities of 1800 and 570 respectively.

Pedestrian access is provided to the lower concourse area via a series of stairs and escalators located at the northern and southern ends of the site. The lower concourse forms part of the pedestrian access from the SOH to Circular Quay.



Figure 2 | Site Location (Source: Applicant's Architectural Design Statement)

1.3 Related Applications

This application is an amalgamation of two applications that were withdrawn on 14 February 2019:

- SSD 7430: Lower Concourse Shade Cover Improvements
- SSD 7431: Lower Concourse Visitor Flow and Amenity Improvements

The proposed consolidation of all uses on the lower concourse was not included in the withdrawn applications. If the current application is approved, the Applicant intends to surrender the existing consent for the Visitor Information and Interpretation Centre (SSD 6353). SSD 6353 was approved on 22 July 2015, for a new Visitor Information and Interpretation Centre on the lower concourse and new welcome sign at the southern entry to the SOH forecourt, including replacement of the existing ticket office, a new retail gift shop, interpretative wall panels and signage.



Figure 3 | Lower concourse, showing existing shade structures (Source: Department photograph)



Figure 4 | Visitor Information and Interpretation Centre (Source: Department photograph)

2 Project

2.1 Description of proposal

The Applicant seeks approval for minor works and consolidation of the existing uses on the lower concourse of the Sydney Opera House (SOH). The key components of the application are outlined in **Table 1**. The proposed works are shown at **Figures 5** and **6**.

Table 1 | Main Components of the Project

Aspect	Description
Use	<ul style="list-style-type: none">Consolidation of existing uses of the lower concourse with a single consent, including the restaurant and bar areas (currently trading as Opera Bar and Opera Kitchen), and the Visitor Information and Interpretation Centre.The Applicant states no approval is sought for new uses, or changes to the overall capacity of the lower concourse (2700), including: Opera Bar (1800 – 400 internal and 1400 in the remaining area), Opera Kitchen (570) and the Visitor Information and Interpretation Centre (330).
Hours of operation	<p>No changes are sought to existing hours of operation for bar and restaurant areas, which are as follows:</p> <ul style="list-style-type: none">Sunday to Thursday: 7.30 am – 12 midnight.Friday and Saturday: 7.30 am – 1.30 am.New Year's Eve: 7.30 am to 2.30 am New Year's Day (for the area currently trading as Opera Bar), and 7.30 am – 2.00 am New Year's Day (for the area currently trading as Opera Kitchen). <p>No changes are sought to existing hours of operation for the Visitor Information and Interpretation Centre, which are seven-days-per-week: 7 am to 11 pm.</p>
Shade structures	<ul style="list-style-type: none">Removal of the 16 existing shade structures and replacement and realignment with 16 new shade structures which include:<ul style="list-style-type: none">heaters, speakers and LED lightingcolour and materials consistent with the existing shade structuresno logosReplacement of the existing shade structures at the outdoor bar.Removal of the acoustic barrier at the southern end of the Opera Bar stage.
Glazing line	<ul style="list-style-type: none">Demolition of the existing Opera Bar glazing line, and extension and realignment to enclose the area between the main bar and restaurant and the Meat and Cheese Room.
Back-of-house works	<ul style="list-style-type: none">Conversion of the Meat and Cheese Room and an existing back-of-house area into a new office and cool room for the Opera Bar, and associated fire egress amendments.
Construction details	<ul style="list-style-type: none">Standard construction hours (7 am to 6 pm Monday to Friday and 8 am to 1 pm on Saturday)

- Some works would be undertaken outside standard construction hours, including the glazing, new office and cool room, and new egress from back-of-house

Employment • 465 operational jobs, comprised of 250 for Opera Bar, 90 for Opera Kitchen, and 125 for the Visitor Information and Interpretation Centre.

• 60 construction jobs.

Capital CIV • \$1,795,473.00.

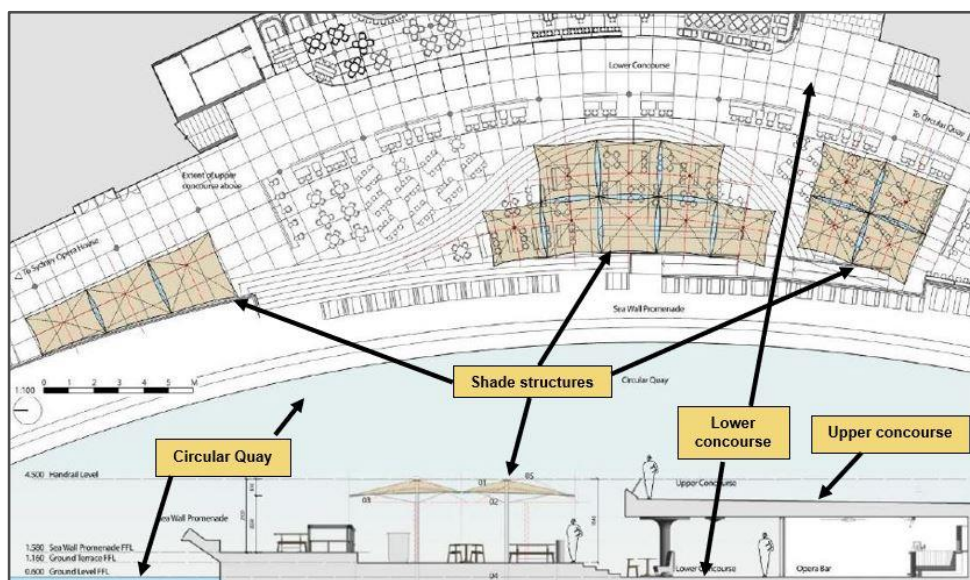


Figure 5 | Proposed shade structures (Source: Applicant's Architectural Design Statement)

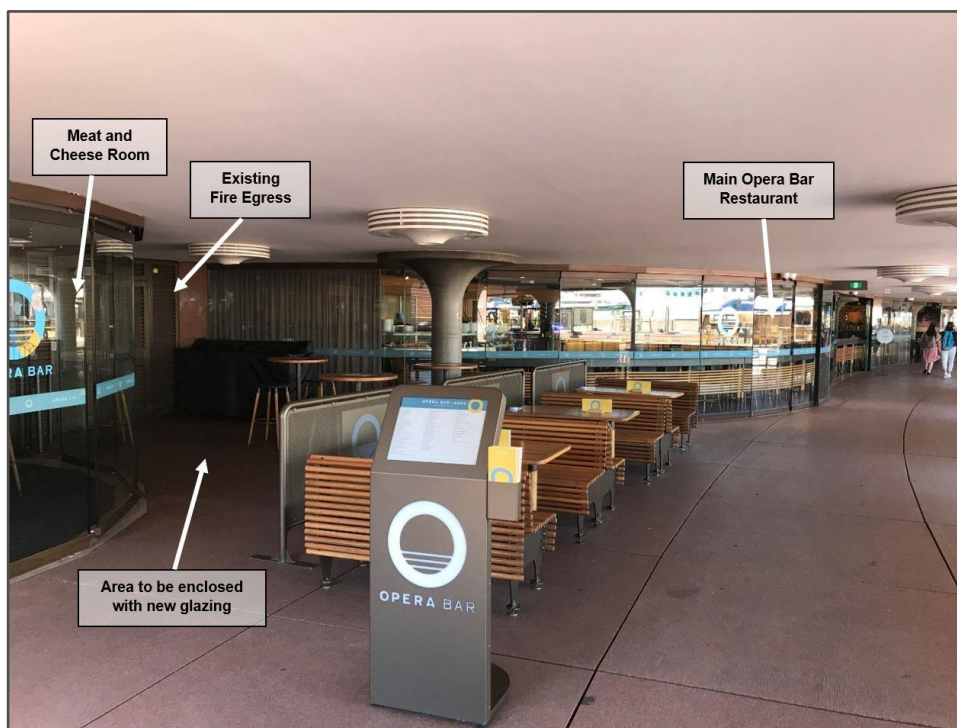


Figure 6 | Proposed glazing realignment area (Base source: Department photograph)

3 Strategic context

3.1 Greater Sydney Region Plan and Eastern City District Plan

The Greater Sydney Region Plan (GSRP) supports a 40-year vision for a metropolis of three cities that will rebalance growth and deliver its benefits more equally and equitably to residents across Greater Sydney. The site is located within the Harbour CBD.

The GSRP outlines how Greater Sydney will manage growth and guide infrastructure delivery. It sets the vision and strategy for Greater Sydney, to be implemented at local level through District Plans. The site is located in the Eastern City District.

The proposal is consistent with the GSRP and Eastern City District Plan as it would preserve a tourism and cultural asset by revitalising part of an iconic Sydney building. This would be facilitated through upgrades to the existing design and facilities and would support the diversity of activities in Greater Sydney's visitor economy whilst promoting its heritage. The proposal would not have an adverse impact on the heritage character or scenic landscape of the Opera House.

4 Statutory Context

4.1 State Significant Development

The project is classified as State significant development (SSD) under section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), as it comprises development on land within the SOH site under clause 1 of Schedule 2 of State Environmental Planning Policy (State and Regional Development) 2011.

4.2 Consent authority

The application can be determined by the Executive Director, Regions, Industry and Key Sites under delegation as:

- it has not already been referred to the Independent Planning Commission for determination
- a political disclosure statement has not been made
- there are less than 50 public submissions (other than Council) in the nature of objections
- the Council of the area in which the development is to be carried out has not made an objection.

4.3 Permissibility

Under the Sydney Local Environmental Plan 2012 (SLEP 2012) the site is zoned B8 Metropolitan Centre and the proposed development is permissible with consent.

4.4 Secretary's Environmental Assessment Requirements

On 21 December 2018, the Department notified the Applicant of the Secretary's Environmental Assessment Requirements (SEARs) for the proposal.

The Department is satisfied the EIS had adequately addressed compliance with the SEARs to enable the assessment and determination of the application.

4.5 Environment Protection and Biodiversity Conservation Act 1999

The SOH site is declared a World Heritage property and a National Heritage place under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Clauses 12 and 15B (Chapter 2, Part 3, Division 1, Subdivision A) of the EPBC Act outlines the requirements for approval of actions that result in a significant impact (controlled action) on a declared World Heritage property or a National Heritage place. Under the EPBC Act, a controlled action requires approval by the Commonwealth Department of Agriculture, Water and the Environment under the bilateral agreement between the Commonwealth and NSW governments.

The obligation to obtain further approval under the EPBC Act rests with the Applicant. However, the Department does not consider the proposal constitutes a controlled action under the EPBC Act and therefore referral to the relevant Commonwealth Minister with regard to impacts on World and National heritage values is not required.

4.6 The Heritage Act 1977

Section 4.41 of the EP&A Act states that approval under Part 4 of the *Heritage Act 1977* (Heritage Act) is not required for SSD proposals that have been granted development consent.

However, in the case of the SOH, the Applicant is still required to obtain a separate approval under Part 4 of the Heritage Act following the granting of planning consent. This requirement is identified in the SOH Management Plan and Schedule 1 and clause 16 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

The Department has recommended a condition requiring the Applicant to seek approval under the Heritage Act following the granting of any consent for this application.

The Department has considered heritage issues in its assessment of the proposal in **Section 6** of this report. The Department's assessment concludes the proposal would not adversely affect the local, State, National or World Heritage values of the SOH, and would comply with the relevant provisions of the SOH Management Plan.

4.7 Sydney Opera House Management Plan 2005

Clause 288 of the EP&A Regulation requires consent authorities to consider the Sydney Opera House Management Plan (2005) (SOH Management Plan) when determining development applications on the SOH site.

Section 6 of the SOH Management Plan specifies that the provisions of A Plan for the Conservation of the Sydney Opera House and its Site (Third Edition) 2003 (the 2003 CMP) and the Sydney Opera House Utzon Design Principles 2002 (Utzon Design Principles), should be relied upon to determine the impact of a project on the heritage values of the SOH. The 2003 CMP has now been superseded by *Respecting the Vision: Sydney Opera House – A Conservation Management Plan* (4th Edition) 2017 (the CMP). The CMP and Utzon Design Principles are guiding policy documents for the on-going conservation and management of proposals to change the SOH.

The Department has considered the relevant provisions of these documents in its assessment of the proposal in **Section 6** of this report. The Department's assessment concludes the proposal would comply with the relevant provisions of the SOH Management Plan, the CMP and the Utzon Design Principles.

4.8 Mandatory Matters for Consideration

Section 4.15 of the EP&A Act outlines the matters that a consent authority must take into consideration when determining development applications. These matters could be summarised as:

- the provisions of environmental planning instruments (including draft instruments), development control plans, planning agreements, and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation)
- the environmental, social and economic impacts of the development
- the suitability of the site
- any submissions, and
- the public interest, including the objects in the EP&A Act and the encouragement of ecologically sustainable development (ESD).

The Department has considered all of these matters in its assessment of the project, as well as the Applicant's consideration of environmental planning instruments in its EIS, as summarised in **Section 6** of this report. The Department has also given consideration to the relevant provisions of the EP&A Act, including environmental planning instruments in **Appendix C**.

4.9 Biodiversity Development Assessment Report

Section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all applications for SSD to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values.

The Department waived the requirement for a BDAR following confirmation from the delegate of the Environment Agency Head that the proposal is not likely to have any significant impact on biodiversity values.

5 Engagement

5.1 Department's Engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the application from Thursday 14 November 2019 until Wednesday 11 December 2019 (28 days). The application was made publicly available on the Department's website and at NSW Service Centres, and exhibited at Council.

The Department placed a public exhibition notice in the Sydney Morning Herald and Daily Telegraph on Wednesday 13 November 2019, and notified adjoining landholders, Council and relevant government agencies in writing.

The Department undertook a site visit on 27 November 2019. All notification and public participation statutory obligations have been satisfied.

The Department has considered the comments raised in Council, government agencies and public submissions during the assessment of the applications (**Section 6** and **Appendix B**) and by recommended conditions in the consent at **Appendix D**.

5.2 Summary of Submissions

The Department received 10 submissions on the proposal, comprising a submission making comments from Council, four submissions from government agencies (one supporting and three commenting), and five public objections.

A link to the full copy of the submissions is provided in **Appendix A**.

5.3 Key Issues – Government Agencies

The Department received four submissions from government agencies, one supporting and three commenting. The key issues raised are summarised in **Table 2** below.

Table 2 | Summary of Government Agency Submissions

Transport for NSW (TfNSW) and Roads and Maritime Services (RMS)

TfNSW and **RMS** stated consideration should be given to cumulative construction impacts associated with other developments in the surrounding area, and requested a condition of consent require the preparation of a Construction Pedestrian and Traffic Management Plan to address this.

Environment Protection Authority (EPA)

EPA requested the following:

- confirmation of the extent and nature of background noise monitoring undertaken, or relied upon, for the proposal

- amendments to the Noise Impact Assessment (NIA) to include project noise trigger levels (PNTLs) for mechanical plant and equipment
- consideration of the application of existing restrictions on bar and restaurant uses in consents and liquor licences to this application
- a condition of consent requiring both a Construction and Operational Noise Management Plan
- conditions of consent for management of waste, water, and air quality.

Heritage NSW, Department of Premier and Cabinet

Heritage NSW made the following comments:

- the proposal is consistent with the original intent for the use of the lower concourse
- the realignment of the glazing line improves the width and clarity of pedestrian circulation in that area. These changes and those within the back-of-house area will not have a significant impact on the heritage significance of the SOH
- the proposed shade structures are an improvement on the existing design, as they are simpler in form, have a shallower profile, complementary in colour with the surrounding area, and act to minimise visual clutter through incorporation of services within the structures

Heritage NSW also recommended conditions of consent requiring the following:

- testing of the opacity of the translucent infill sections between the shade structures
- further details of the freestanding pull-up shade screens proposed behind the outdoor bar to be provided during detailed design development
- the existing louvred disc light proposed for removal to be salvaged for re-use
- lighting of the concrete column to be consistent with that of other columns along this alignment
- involvement of a nominated heritage architect in the detailed design,
- new granite wall and paving panels to match the existing,
- significant fabric to be protected during construction,
- archival photographic record of affected areas be undertaken prior to commencement of works.

5.4 Key Issues – Council/Community

Council key issues

Council made the following comments:

- as recommended in the Heritage Impact Statement, a review of the current furniture and infrastructure layout should be conducted to ensure to minimise encroachments onto public walkways
- clarification is required on the number of umbrellas in the northern part of the site
- the proposed shade structure colour should match the existing concrete panels as closely as possible and not include logos or signage, to reduce visual impact
- implementation of the work should be monitored by a suitably qualified heritage consultant
- lighting installations that will impact on the public domain must comply with the requirements of AS 4282, light spill from upward directed umbrella lighting must be fully captured by umbrella fabric, and diffused light spill from the fabric must be and a lighting report submitted for Council review and acceptance

- consideration should be given to the environmental sustainability of the shade structures, and alignment with the SOH Environmental Sustainability Policy and Environmental Action Plan 2020-2023
- predicted noise levels at receivers should be assessed externally, as required by NSW Liquor and Gaming, rather than internally
- a Waste Management Plan should be prepared
- a Construction Traffic Management Plan should be prepared in consultation with Council.

Community issues

The Department received five unique public objections, all from within 1 km of the site, raising the following issues:

- impacts on the amenity of surrounding residents from noise, increased hours of operation and traffic
- public safety risks associated with increased pedestrian activity, including public access through the site and to the SOH car park
- monitoring of compliance with conditions
- the potential for property to be devalued.

5.5 Response to Submissions

Following exhibition of the application, the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised.

On 12 February 2020, the Applicant provided a Response to Submissions (RtS) on the comments raised during the exhibition of the proposal. The Applicant also provided further clarification on noise and heritage impacts and the existing operations of the premises. The RtS was made publicly available on the Department's website and referred to Council and relevant government agencies.

The Department received three submissions making comments on the proposal, from Heritage NSW, Council and the EPA.

Heritage NSW advised it was satisfied that the detailed design of elements such as the shade structures could be resolved as part of the application under Section 60 the Heritage Act, following determination of this application.

The EPA advised the RtS had adequately responded to the issues it raised, and requested conditions to apply hours of operation consistent with existing consents at the site, and require the Public Address (PA) system to be designed, constructed, commissioned and operated substantially in accordance with the design objectives and operational performance level outlined in the Applicant's Noise Impact Assessment.

Council did not raise any further comments or concerns, subject to the commitments in the RtS being undertaken accordingly by the Applicant.

A link to all submissions is provided at **Appendix A**.

6 Assessment

6.1 Key issues

The Department has considered the proposal, the issues raised in submissions and the Applicant's RtS in the assessment of the application. The Department considers the key issues associated with the proposal are:

- the use of the lower concourse
- design, heritage and visual impact
- noise impacts.

Each of these key issues is discussed in the following sections of the report. The Department's consideration of other issues relating to this application are addressed in **Section 6.5** of this report.

6.2 Use

The proposal includes the consolidation of existing uses of the lower concourse with a single consent, including the restaurant and bar areas (currently trading as Opera Bar and Opera Kitchen), and the Visitor Information and Interpretation Centre.

The Applicant states the construction and use of the lower concourse are authorised by the combined powers and approvals under:

- *Sydney Opera House Act 1960* (repealed in 2006)
- *Sydney Opera House Trust Act 1961* (SOHT Act)
- Development consent granted by the Council of the City of Sydney in 1985 (DA 44/85/0511) for the "Opera House Forecourt Refurbishment" (1985 consent)
- Development consent (SSD 6353) granted in 2015 for the Visitor Information and Interpretation Centre (retail, ticketing etc.).

The Applicant states the proposal does not seek approval for any:

- new uses
- changes to existing hours of operation for the restaurant and bar areas, which are:
 - 7.30 am – 12 midnight Sunday to Thursday
 - 7.30 am – 1.30 am Friday and Saturday
 - 7.30 am – 2.30 am on New Year's Eve (7.30 am – 2.00 am for the area currently trading as Opera Kitchen).
- changes to existing hours of operation for the Visitor Information and Interpretation Centre, which are 7 am to 11 pm, seven-days-per-week
- increase in the overall capacity of Opera Bar (1800, comprising of 400 for the internal and 1400 for the remaining area), Opera Kitchen (570) or Visitor Information and Interpretation Centre (330)

- changes to music arrangements – the Opera Bar currently hosts live music and Opera Kitchen plays background music through a PA system. No music is played at the Visitor Information and Interpretation Centre.

Heritage NSW advised the proposal is consistent with the original intent for the use of the lower concourse. Council and public submissions did not make any comment relating to the use of the premises.

While the Applicant has advised the current use of Opera Bar and Opera Kitchen has development consent granted by City of Sydney Council (DA 44/85/0511), the Department considers there is uncertainty about whether the consent can be relied on for its use. The Department does however consider the ongoing use of the premises is acceptable and supports its continued operations because it is appropriately located, would not have adverse amenity impacts, noise from the site would not exceed liquor licensing noise criteria, and no changes to its current operation are proposed with regards to patron numbers, noise management and hours of operation.

The Department considers the consolidation of all existing uses is acceptable because the changes are primarily administrative in nature and would provide for more effective operation of this space. The location is appropriate for the ongoing uses, being a public bar and restaurant area, and retail, ticketing and tours. The uses are also consistent with the existing use of the space, and no additional uses or changes to the operation of the existing facilities (such as patron numbers, noise management and hours of operations) are proposed. The Department therefore does not anticipate any increased amenity impacts associated with continued operations on the site. The Department has assessed noise impacts in **Section 6.4** of this report.

The Department also considers the consolidation of uses under a single approval would improve the ability to manage operational requirements, including monitoring and compliance. Further, the Department considers the Applicant's Plan of Management adequately address operational management issues, including responsible service of alcohol, security and signage.

The Department recommends a condition requiring the surrender of the consent for the Visitor Information and Interpretation Centre (SSD 6353) upon commencement of the uses permitted in this consent. The Department also recommends conditions restricting the hours of operation and capacity of the premises to reflect the current use of the premises.

The Department concludes the consolidation and continued use of the lower concourse is acceptable, subject to the recommended conditions.

6.3 Design, heritage and visual impact

External works and visual impact

The external works included in the proposal include new shade structures and amendments to the existing glazing at Opera Bar. These are discussed separately below. The Applicant advises the design has been subject to review by the Conservation Council and Design Advisory Panel which support the new shade structures.

Shade structures

The proposal includes the removal of all 16 existing shade structures and their replacement with 16 new structures, which contain heaters, speakers and LED lighting (**Figures 7 to 9**).

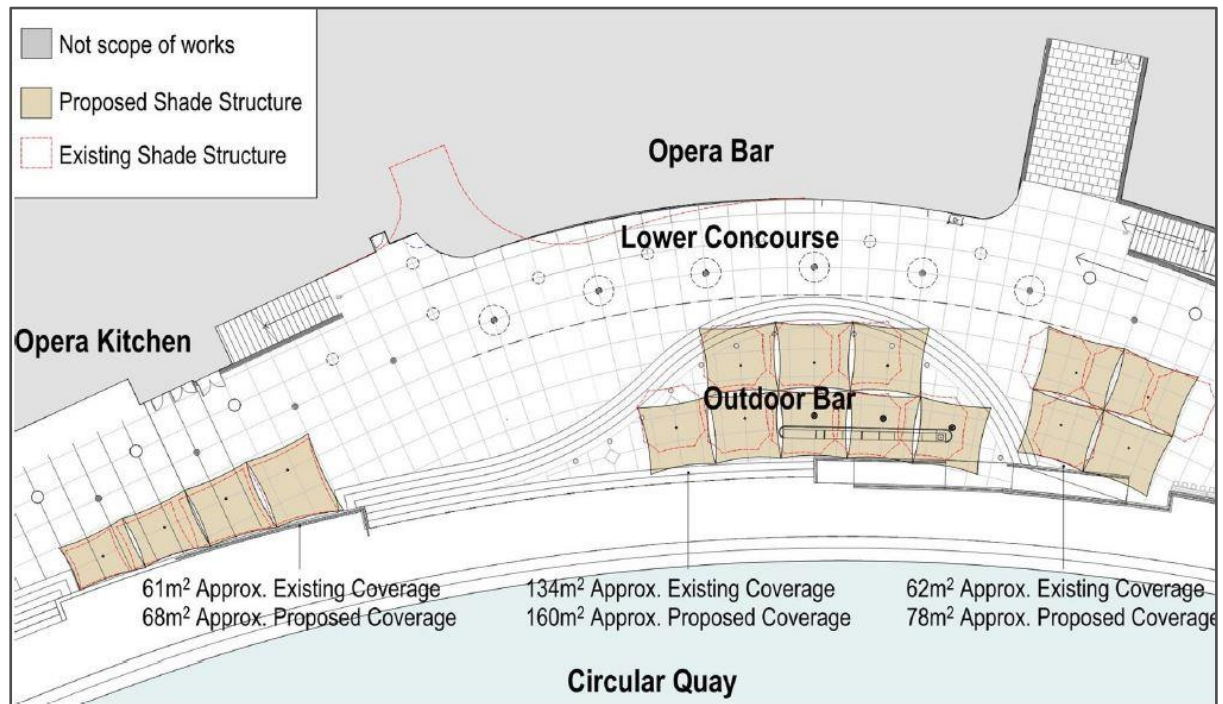


Figure 7 | Existing and Proposed Shade Structures (Source: Applicant's Architectural Design Statement)

Heritage NSW advised the proposed shade structures are an improvement on the existing design and will minimise visual clutter.

Council stated that the proposed shade structure colour should match the existing concrete panels as closely as possible and not include logos or signage. Council also stated consideration should be given to the environmental sustainability of the shade structures.

As part of its RtS, the Applicant provided clarification on the design of the proposed shade structures and confirmed the structures would align with the SOH Environmental Sustainability Policy and Environmental Action Plan 2020-2023.

The Department supports the proposed shade structures because they would result in an improved design outcome compared to the existing shade structures, as they are simpler in form, have a shallower profile, and are complementary in colour to the surrounding area.

The Department also supports the structures as they are non-reflective, do not include logos or signage. The proposed shade structures would also minimise visual clutter through incorporation of services (including speakers) which would also improve noise attenuation. The structures are also in a similar location to the existing shade structures, and are removable, therefore minimising any permanent heritage impacts on the SOH.

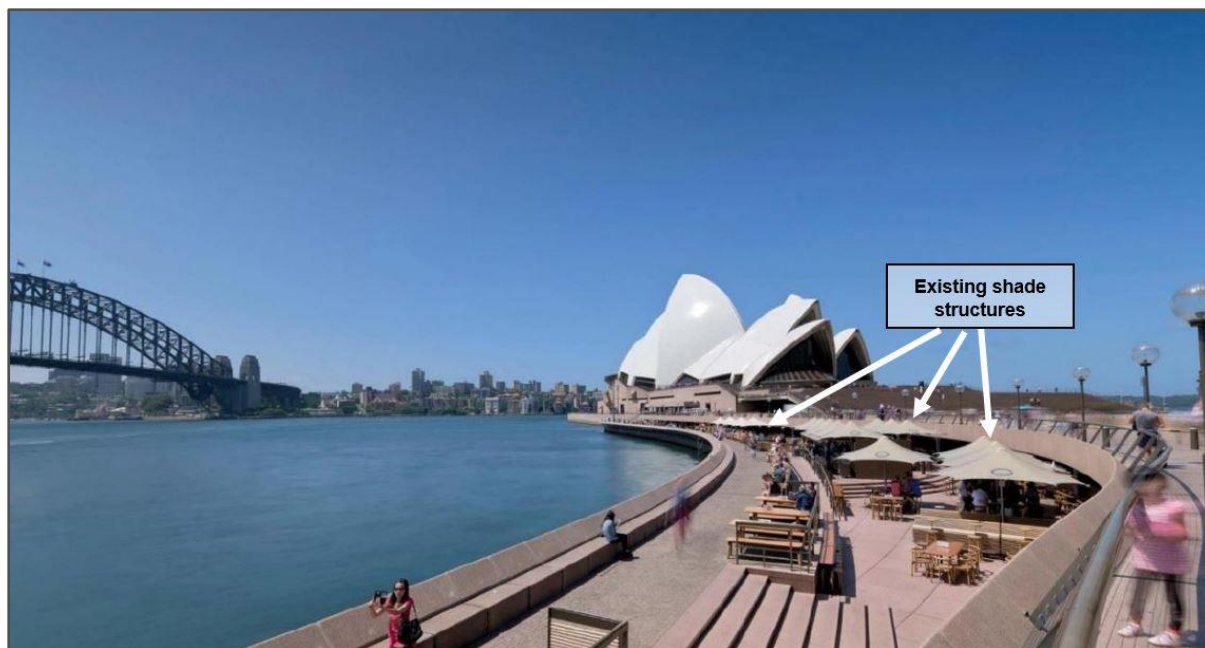


Figure 8 | Existing Shade Structures (Source: Applicant's Architectural Design Statement)



Figure 9 | Proposed Shade Structures (Source: Applicant's Architectural Design Statement)

The Department considers the translucent infill sections that join the shade structures will minimise the appearance of a continuous roof structure, maximise weather protection, and through further testing required by a condition of consent, can ensure adequate light and vision can pass through.

The Department supports the replacement of the shade structures at the outdoor bar as they will be fitted to the back of bar structure and therefore less visible than at present, where the blinds are rolled up against the edge of the umbrellas when not in use. The Department considers these shade structures are acceptable, subject to a condition requiring further design details to be provided.

The Department further considers there will be minimal obstruction of views of the harbour for pedestrians using the forecourt above, as the proposed shade covers will not protrude above the balustrade along the western edge of the Forecourt, with the exception of a minor 8 cm protrusion in the Opera Bar area of the lower concourse. The Department considers this is negligible and unlikely to have adverse visual impacts. Views from within the lower concourse will be improved, as there is slightly more clearance between the ground and shade structures. The Department also considers the proposal would not have an adverse impact on the scenic landscape of the Opera House.

The Department notes the shade structures would be consistent with ESD policies as the proposal includes the recycling a minimum of 80% of the existing shade structures, and use of new recyclable shade structures with a lifespan of 25-30 years.

The Department recommends conditions to manage the heritage impacts of the works, including a requirement for the work to be monitored by a suitably qualified heritage consultant, and testing of the opacity of the translucent infill sections between the shade structures, to ensure they allow adequate light and vision to pass through. Further details of the freestanding pull-up shade screens proposed behind the outdoor bar are also to be provided during detailed design development.

The Department concludes the external works associated with the proposal are acceptable, subject to the recommended conditions, as they would improve design and noise attenuation, would not have adverse heritage or visual impacts, and are consistent with ESD principles.

Glazing

The proposal includes the demolition of the existing Opera Bar glazing line, and extension and realignment to enclose the area between the main bar and restaurant and a food outlet, known as the Meat and Cheese Room (**Figures 10 to 12**). There would be a net increase in enclosed space of 24 m².

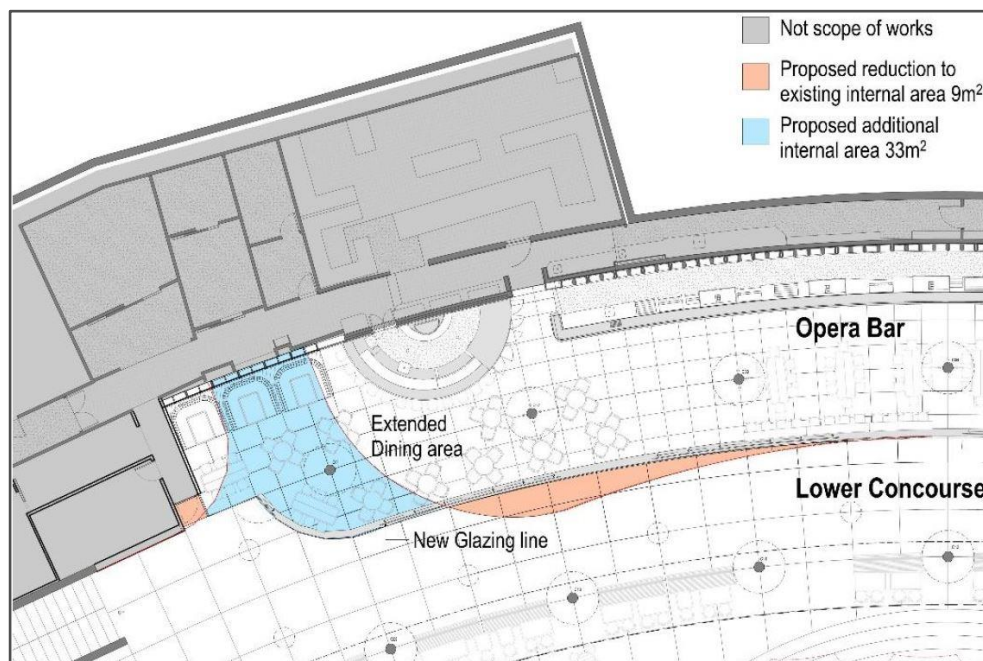


Figure 10 | Proposed Glazing Re-alignment (Source: Applicant's Architectural Design Statement)



Figure 11 | Existing Glazing Alignment (Source: Applicant's Architectural Design Statement)



Figure 12 | Proposed Glazing Re-alignment (Source: Applicant's Architectural Design Statement)

The Department received public submissions raising concerns about public safety, including public access through the site and to the SOH car park.

Heritage NSW did not raise any objection to these works, stating the realignment of the glazing line will improve the width and clarity of pedestrian circulation, and will not have a significant impact on the heritage significance of the SOH.

Council did not raise any objection to the proposed glazing realignment, and stated that as recommended in the Heritage Impact Statement, a review of the current furniture and infrastructure layout should be conducted to ensure to minimise encroachments onto public walkways.

The Department considers the works are acceptable because they comprise a limited extension to the north of the existing dining area and will enclose a currently under-utilised space that is not part of the primary pedestrian corridor through this area.

The realignment of the glazing line also improves the width and clarity of pedestrian circulation, ensuring there will be less encroachment onto public walkways and therefore improved pedestrian flow and accessibility along the primary pedestrian corridor through this area.

The Department considers the glazing works would be consistent with ESD principles, as existing floor panels, doors and light fittings will be salvaged and re-used.

The Department recommends conditions of consent to ensure there are no adverse heritage impacts, including requirements for:

- a review of the current furniture and infrastructure layout should be conducted to minimise encroachments onto public walkways
- the existing louvred disc light proposed for removal to be salvaged for re-use
- lighting of the concrete column that is proposed to be enclosed by the realigned glazing wall to be consistent with that of other columns along this alignment
- new granite wall and paving panels to match the existing.

The Department concludes the proposed glazing realignment is acceptable, subject to the recommended conditions.

Internal works

The proposal includes the refurbishment of the Meat and Cheese Room and an existing back-of-house area to create a new office and cool room for the Opera Bar, and associated fire egress amendments (**Figures 6, 11 and 12**).

Heritage NSW advised these works will not have a significant impact on the heritage values of the SOH.

The Department agrees that the amendments to the Meat and Cheese Room and back-of-house area will not have a significant impact on the heritage significance of the SOH because the works are minor, do not alter any significant fabric and will not be visible from the public domain.

The Department notes the fire egress works would have minimal heritage impact, as they include the re-use of one of the doors to be replaced between the existing Meat and Cheese Room, with the other door to be placed in storage for re-use.

The Department recommends conditions to manage the heritage impacts of the works, including a requirement for significant fabric to be protected during construction, and an archival photographic record of affected areas be undertaken prior to commencement of works.

The Department concludes the internal works associated with the proposal are acceptable, subject to the recommended conditions.

6.4 Noise impacts

The Department has assessed noise impacts associated with the proposal on surrounding sensitive receivers.

The Department received public objections raising concerns about impacts on the amenity of surrounding residents from noise and increased hours of operation, non-compliance with existing noise limits, and monitoring of noise limits.

Council did not raise any concerns about noise impacts, however stated the predicted noise levels at sensitive receivers should be assessed externally, as required by NSW Liquor and Gaming, rather than internally.

As part of its RtS, the Applicant updated its NIA to address the concerns raised in submissions, including confirmation that noise monitoring was undertaken at the nearest residential receivers.

The Department considers the Applicant's Noise Impact Assessment (NIA) provides an accurate and robust assessment of the noise impacts associated with the proposal. The Department notes Council's comment that predicted noise levels at receivers should be assessed externally. However, it considers the NIA assesses noise impacts correctly because the liquor licence requires the noise conditions to be applied inside the Bennelong Apartments.

The NIA found that there are several background noise sources in the surrounding area, including ferries, pedestrians, outdoor restaurants and buskers, the Cahill Expressway, and the Harbour Bridge, and concluded the proposal would comply with the internal noise criteria at the nearest sensitive receivers, being the Bennelong Apartments.

The Department notes the consent for the nearest residential receiver at 1 Macquarie Street acknowledged the high ambient noise catchment of the area, required the apartments to be designed to meet acceptable internal noise levels, and established the expectation that any management of intrusive noise needs to be shared by the residents.

Given there are no proposed additional uses or changes to the operation of the existing facilities (such as patron numbers, noise management and hours of operations), the Department does not anticipate any increased noise impacts associated with continued operations on the site. Noise impacts are managed by the application of standard liquor licence conditions, which the Department recommends being included as conditions of consent, along with restrictions in existing consents on hours of operation, live and amplified music, and noise limits.

Live entertainment in the form of amplified music (usually consisting of two or three musicians, including a singer) is proposed at Opera Bar until 10 pm. The proposal also includes the removal of the acoustic

barrier at the southern end of the Opera Bar live music stage. The Department considers its removal acceptable as it has an adverse impact on the heritage values of the SOH, and is not necessary for the proposal to meet the applicable noise criteria, as the NIA has demonstrated it provides a negligible noise reduction of less than 1 dB.

The Department also notes the new shade structures will be constructed of a heavier material than the existing and as such would be marginally better at controlling noise spread from sounds generated below them. The Department also considers the new loudspeakers will be aligned to optimise the sound distribution over the patrons.

In response to concerns raised in public submissions, the Department notes there is no nightclub or formal dance floor proposed. Any dancing would therefore be on an informal basis, as is the case with the existing operations. The Department therefore considers this is unlikely to result in any adverse noise impacts.

The Department also notes the EPA did not raise any objection to the proposal, and recommended conditions requiring the application of existing restrictions in consents and liquor licences, and the preparation of an Operational Noise and Vibration Management Plan.

The Department recommends conditions of consent requiring noise monitoring for a minimum of two occasions during the busy Summer period, and an Operational Noise and Vibration Management Plan (ONVMP). The ONVMP will include a requirement for all amplified music equipment (including the proposed speaker system within the shade structures) to be designed, constructed and operated to satisfy the requirements of Liquor and Gaming NSW, and to be prepared in consultation with Liquor and Gaming NSW.

The Department considers the existing Plan of Management and proposed conditions would adequately ensure there are no impacts from any potential anti-social behaviour associated with use of the premises.

The Department concludes noise impacts associated with the proposal are acceptable as noise levels would comply with relevant criteria and would be appropriately managed by the recommended conditions.

6.5 Other issues

The Department's consideration of other issues is provided at **Table 3**.

Table 3 | Summary of other issues raised

Issue	Findings	Recommendations
Construction impacts	<ul style="list-style-type: none"> The Department has assessed construction impacts associated with the proposal, including in relation to noise, traffic, waste, water and air quality. Council, TfNSW and the EPA did not raise concerns regarding construction management. 	<ul style="list-style-type: none"> Prepare a CEMP to address management of noise, traffic, waste, water, and air quality

	<ul style="list-style-type: none"> • The works are minor and include replacement of the shade structures, glazing, new office and cool room, and provision of new egress from the back-of-house area. • The Department concludes construction impacts are minor, temporary and can be adequately managed, subject to the recommended standard conditions. 	<ul style="list-style-type: none"> • Compliance with standard Sydney CBD construction hours.
Lighting impacts	<ul style="list-style-type: none"> • The Department has assessed the lighting impact associated with the proposal, including those associated with the replacement of lighting in the existing shade structures with new LED lighting. • Council stated a condition should be included to manage light spill. • The Department did not receive any public objections in relation to lighting impacts. • The proposal includes a Lighting Design Statement, which concludes the lighting impacts associated with the proposal are acceptable. • The Department considers the surrounding context contains a substantial amount of lighting, including from flood lighting on the SOH forecourt and street lighting on the SOH upper concourse. • The Department considers the proposed lighting would not have an adverse impact on the public domain, as it will comply with the requirements of <i>Australian Standard 4282 – Control of the obtrusive Effects of outdoor lighting</i> (AS 4282), light spill is mostly reflected downwards, and where not, will be fully captured by umbrella fabric. • To ensure there are no adverse impacts, the Department recommends a condition requiring diffused light spill to be quantified by a suitably qualified practicing lighting engineer as part of a Lighting Management Strategy. • The Department concludes lighting impacts are acceptable, subject to the proposed conditions. 	<ul style="list-style-type: none"> • Conditions requiring compliance with AS 4282 • Preparation of a Lighting Management Strategy, to be approved by Council and a copy submitted to the Department.
Construction Access and pedestrian safety	<ul style="list-style-type: none"> • The majority of deliveries and removal of materials would be via the underground loading dock (accessed from Macquarie Street). • Public areas affected by the works would be enclosed by construction hoardings and sealed off from public access. • Public access would be maintained along Macquarie Street and the entire SOH public perimeter, including the southern forecourt. • The Department concludes there will be no adverse impacts on access and pedestrian safety due to maintenance of existing public access, the use of hoardings and the underground loading dock. 	<ul style="list-style-type: none"> • No conditions necessary.
Operational traffic	<ul style="list-style-type: none"> • The Department received public objections raising concerns about traffic impacts. 	<ul style="list-style-type: none"> • No conditions necessary.

- The Applicant states no changes are proposed to the existing traffic and accessibility arrangements including service vehicle access, delivery and loading/unloading via the underground car park.
 - The Department considers the proposal is unlikely to result in adverse traffic impacts as there is no proposed changes to the current operation or servicing arrangements.
-

7 Evaluation

The Department has reviewed the EIS and all additional information, and assessed the merits of the proposal, taking into consideration advice from Council and government agencies. Issues raised in public submissions have been considered (as outlined in **Appendix B**) and all environmental issues associated with the proposal have been thoroughly addressed.

The Department has carefully considered the impacts associated with the proposal, and considers it should be approved for following reasons:

- the consolidation of the existing uses into a single approval is supported because no changes to the current uses or operations are proposed. It would also improve the operational management of the lower concourse as well as monitoring and compliance with the conditions of approval
- while there is some uncertainty about whether the current use of the bar is authorised, the Department considers the bar is acceptable because it is appropriately located, it would meet the relevant noise criteria and no changes to its current operation with regards to patron numbers, noise management and hours of operations are proposed
- no increased noise impacts are anticipated in association with continued operations on the site, given there are no additional uses or changes proposed to the operation of the existing facilities
- the proposed shade structures are an improvement and there will be minimal obstruction of views of the harbour and views from within the lower concourse will be improved
- the works would not result in adverse impacts on the heritage and scenic landscape of the Sydney Opera House
- the realignment of the Opera Bar glazing line ensures there will be less encroachment onto public walkways and therefore better pedestrian flow
- conditions are recommended to appropriately mitigate and manage the potential heritage and operational impacts associated with the proposal
- all other issues associated with the proposal have been assessed, and appropriate conditions recommended, where necessary, to ensure the impacts of the development are appropriately mitigated and/or managed.

The Department also notes the Applicant will be required to obtain further approval for the proposed works from the Heritage Council under Part 4 of the *Heritage Act 1977*.

The Department's assessment therefore concludes the proposal is in the public interest and recommends the application be approved, subject to the recommended conditions.

8 Recommendation

It is recommended that the Executive Director, Regions, Industry & Key Sites, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant consent to the application
- **agrees** with the key reasons for approval listed in the notice of decision
- **grants consent** for the application in respect of SSD 9794, subject to the conditions in the attached development consent
- **signs** the attached development consent and recommended conditions of consent (see **Appendix D**).

Prepared by:

Karl Fetterplace
Senior Planning Officer
Key Sites Assessments

Recommended by:



Cameron Sargent
Team Leader
Key Sites Assessments

Recommended by:



Anthony Witherdin
Director
Key Sites Assessments

9 Determination

The recommendation is **adopted / not adopted** by:

Anthea Sargeant

Executive Director

Regions, Industry & Key Sites

Appendices

Appendix A – List of referenced documents

The following supporting documents and supporting information to this assessment report can be found on the Department's website as follows:

Environmental Impact Statement

<https://www.planningportal.nsw.gov.au/major-projects/project/9861>

Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/9861>

Applicant's Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/9861>

Submissions on Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/9861>

Appendix B – Community Views for Draft Notice of Decision

Issue	Consideration
<p>Operational noise (public issue)</p> <ul style="list-style-type: none"> patron and music noise impacts associated with increased hours. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The consolidation of the existing uses into a single approval is supported because no changes to the current uses or operations are proposed. It would also improve the operational management of the lower concourse as well as monitoring and compliance with the conditions of approval. While there is some uncertainty about whether the current use of the bar is authorised, the Department considers the bar is acceptable because it is appropriately located, it would meet the relevant noise criteria and no changes to its current operation with regards to patron numbers, noise management and hours of operations are proposed. The Department notes that these conditions would be regulated by the existing liquor licences. These matters are further discussed in Section 6. <p><i>Recommended Conditions/Response</i></p> <ul style="list-style-type: none"> Conditions include requirements consistent with the current operation of the premises, in terms of hours of operation, restrictions on live and amplified music, and noise limits. The Department also proposes conditions requiring an Operational Noise and Vibration Management Plan and noise monitoring.
<p>Heritage, design and visual impact (Council issue)</p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers the proposed shade structures are acceptable because they are an improvement on the existing design, as they are simpler in form, have a shallower profile, and are complementary in colour to the surrounding area and existing shade structures. The Department considers there will be minimal obstruction of views of the harbour for pedestrians using the forecourt above, views from within the lower concourse will be improved, and there would be no adverse impact on the scenic landscape of the Sydney Opera House. The Department considers the amendments to the back-of-house area will not have a significant impact on the heritage significance of the SOH because the works are minor, do not alter any significant fabric and will not be visible from the public domain. These matters are further discussed in Section 6. <p><i>Recommended Conditions/Response</i></p> <ul style="list-style-type: none"> Conditions include a requirement for works to be monitored by a suitably qualified heritage consultant, new granite wall and paving panels materials to match the existing, archival recording, and protection of significant fabric during construction.
<p>Lighting impacts (Council issue)</p> <ul style="list-style-type: none"> light spill from shade structures. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The proposal includes a Lighting Design Statement, which concludes the lighting impacts associated with the proposal are acceptable. The Department considers the proposed lighting would not have an adverse impact on the public domain, as it will comply with the requirements of <i>Australian Standard 4282 – Control of the obtrusive Effects of outdoor lighting</i>

(AS 4282), light spill is mostly reflected downwards, and where not, will be fully captured by umbrella fabric.

- These matters are further discussed in **Section 6**.

Recommended Conditions/Response

- Conditions include requiring compliance with AS 4282 and diffused light spill to be quantified by a suitably qualified practicing lighting engineer as part of a Lighting Management Strategy.

Public access and safety (Council and public issue)

- through the site and to the SOH car park due to increased pedestrian traffic.

Assessment

- The Department considers the proposed works are acceptable because the realignment of the glazing line improves the width and clarity of pedestrian circulation, ensuring there will be less encroachment onto public walkways and therefore better pedestrian flow.
- The Department considers the development would not have an adverse impact on pedestrian movement and access to/from the SOH during construction due to the use of the underground loading dock, construction hoardings and maintenance of public access along the SOH perimeter.
- These matters are further discussed in **Section 6**.

Recommended Conditions/Response

- Conditions include the requirement for preparation of a CEMP, and a review of the current furniture and infrastructure layout, to minimise encroachments onto public walkways.

Environmental sustainability (Council issue)

Assessment

- The Department considers the proposal is environmentally sustainable because the disposal of the existing shade structures will include recycling a minimum of 80% of their material, and the new shade structures have a lifespan of 25-30 years and are recyclable. Further, salvaged floor panels will be used where the glazing is proposed to be re-aligned, and existing doors and light fittings will be salvaged and re-used.
- These matters are further discussed in **Section 6**.

Recommended Conditions/Response

- Conditions include the requirement for waste management to be addressed during construction and operation.

Construction management (Council issue)

Assessment

- The Department considers construction impacts, including in relation to noise, traffic, waste, water, and air quality can be adequately managed in accordance with standard conditions and procedures, given the works are relatively minor in nature.
- These matters are further discussed in **Section 6**.

Recommended Conditions/Response

- Conditions include a requirement for preparation of a detailed CEMP to address management of noise, traffic, waste, water, and air quality.

Operational traffic (public issue)

Assessment

- The Applicant states the existing traffic and accessibility arrangements are proposed to remain, including for service vehicle access, delivery and loading/unloading via the underground car park.
- The Department considers the site benefits from excellent public transport access and the traffic generated will be minimal and therefore unlikely to result in adverse impacts, particularly considering there is no proposed increase to the current operating hours or capacity.
- These matters are further discussed in **Section 6**.

Recommended Conditions/Response

- No conditions recommended.

Monitoring of compliance with conditions (public issue)

Assessment

- The Department considers the conditions will adequately protect the amenity of surrounding occupiers. Notwithstanding, the Department's compliance team can monitor the Applicant's adherence to the proposed conditions, if required .
- These matters are further discussed in **Section 6**.

Recommended Conditions/Response

- Conditions include requirements for preparation of an Operational Plan of Management and noise monitoring.

Loss of property value (public issue)

Assessment

- Outside the scope of this application.

Recommended Conditions/Response

- No conditions recommended.

Appendix C – Statutory Considerations

In line with the requirements of section 4.15 of the EP&A Act, the Department's assessment of the project has provided a detailed consideration to a number of statutory requirements. These include:

- the objects found in section 1.3 of the EP&A Act
- the matters listed under section 4.15(1) of the EP&A Act, including applicable environmental planning instruments and regulations.

The Department has considered all of these matters in its assessment of the project and has provided a summary of this assessment in **Tables 1** and **2**.

Table 1 | Consideration of objects of the EP&A Act

Objects of the EP&A Act	Summary
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	<p>The proposal proposes to provide social and economic benefit to the community without adverse impacts on the heritage significance of the SOH.</p> <p>The proposed works would not result in an adverse impacts on natural or other resources.</p>
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	<p>The Department considers the proposal is consistent with the principles of ecologically sustainable development, which are considered following Table 2.</p>
(c) to promote the orderly and economic use and development of land	<p>The proposal promotes the orderly and economic use of land through ensuring the ongoing commercial viability of a World Heritage listed item, and maximising its economic contribution to NSW. The merits of the proposal are considered in Section 6 of this report.</p>
(d) to promote the delivery and maintenance of affordable housing	Not applicable
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	<p>The proposed development would not have an adverse impact on the natural environment.</p>

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	<p>As noted, the proposal would facilitate the ongoing cultural benefit of a World Heritage listed item, without having adverse impacts.</p> <p>The Department consulted Heritage NSW, who raised no objection to the proposal, subject to conditions. Heritage issues are considered in detail in Section 6.</p> <p>The Department considers the proposal would not have an adverse impact on Aboriginal cultural heritage.</p>
(g) to promote good design and amenity of the built environment	The Department considers the proposal would exhibit good design quality and amenity. The proposed design and amenity impacts on the surrounding environment are considered in Section 6 .
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	Recommended conditions would ensure the proposed development would be constructed in compliance with all relevant building codes and health and safety requirements.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	The proposal is SSD and therefore the Minister is the consent authority. The Department consulted with Council and relevant government agencies on the proposal.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	Section 5 of this report sets out details of the Department's engagement on the proposal.

Table 2 | Consideration of section 4.15(1) of the EP&A Act

Section 4.15(1) Evaluation	Summary
(a)(i) any environmental planning instrument	The proposed development complies with the relevant legislation, as addressed in Section 4 of this report. The consideration of other relevant EPIs is provided below.
(a)(ii) any proposed instrument	See below.
(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, development control plans (DCPs) do not apply to SSD. Notwithstanding, consideration has been given to the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 where relevant.
(a)(iiia) any planning agreement	Not applicable.

(a)(iv) the regulations <i>Refer Division 8 of the EP&A Regulation</i>	The application satisfactorily meets the relevant requirements of the Regulation, including clause 288, which requires the consent authority to consider the provisions of the SOH Management Plan. The procedures relating to applications (Part 6), fees (Part 15), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EISs have been satisfied.
(a)(v) any coastal zone management plan	Not applicable.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has assessed the likely impacts of the development and considers they are acceptable and/or have been appropriately managed by recommended conditions (refer to Section 6 and Appendix D of this report).
(c) the suitability of the site for the development	The site is suitable for the development as discussed in Sections 4 and 6 of this report.
(d) any submissions	Consideration has been given to all submissions received. See Sections 5 and 6 of this report.
(e) the public interest	The Department considers the proposal to be in the public interest as it would provide social and economic benefits by ensuring the SOH's ongoing commercial viability and maximising its economic contribution to NSW, without having adverse heritage impacts.
Biodiversity values exempt if: (a) On biodiversity certified land (b) Biobanking Statement exists	Not applicable.
The likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report. (section 7.14 of the <i>Biodiversity Conservation Act 2016</i>)	The Department waived the requirement for a BDAR following confirmation from the delegate of the Environment Agency Head that the proposal is not likely to have any significant impact on biodiversity values.

Ecologically Sustainable Development

The Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 1.3(b) of that Act states that ESD requires the effective integration of economic, environmental and social considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) the precautionary principle
- (b) inter-generational equity
- (c) conservation of biological diversity and ecological integrity
- (d) improved valuation, pricing and incentive mechanisms.

The Department has assessed the proposed development in relation to the ESD principles and has made the following conclusions:

- **Precautionary Principle** – the works would not result in any serious or irreversible environmental damage.
- **Inter-Generational Equity** – the proposal would ensure the ongoing commercial viability of this World Heritage listed heritage item, maintaining its economic contribution to NSW and allowing for its continued enjoyment by future generations.
- **Biodiversity Principle** – the proposal would not have any adverse impacts on biodiversity.
- **Valuation Principle** – the proposal includes a number of measures to limit the ongoing cost, resource and energy requirements of the development, including recycling a minimum of 80% of the existing shade structures, and use of new recyclable shade structures with a lifespan of 25-30 years. Further, salvaged floor panels will be used where the glazing is proposed to be re-aligned, and existing doors and light fittings will be salvaged and re-used.

ENVIRONMENTAL PLANNING INSTRUMENTS

Controls considered as part of the assessment of the proposal are:

- State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)
- State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)
- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- Draft State Environmental Planning Policy for the Remediation of Land (draft Remediation SEPP)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SHC SREP)
- Draft State Environmental Planning Policy (Environment) (draft Environment SEPP)
- State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)
- Sydney Local Environmental Plan LEP 2012 (SLEP 2012)
- Other Plans and Policies:
 - Sydney Harbour Foreshores and Waterways Area DCP 2005.

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The SRD SEPP aims to identify development that is of State significance due to its size, economic value or potential impact. The proposed development constitutes State significant development under clause 1 of Schedule 2 of the SRD SEPP as it is development on land within the Sydney Opera House site.

State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)

The SSP SEPP seeks to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State (State Significant Precincts) for the benefit of the State.

The SOH is listed as a State Significant Precinct under Part 1 of Schedule 3 of the SSP SEPP, which lists a range of exempt development provisions which apply to the SOH.

As the proposal involves works and uses that do not fall within the exempt development provisions, the proposal therefore requires development consent.

The Department's assessment concludes the proposed works will not result in an adverse heritage impacts to the SOH and that the proposal is consistent with the key aims of the SSP SEPP.

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)

SEPP 55 aims to ensure that potential contamination issues are considered in the determination of a development application. SEPP 55 requires the consent authority to consider whether the land is contaminated, and if so, whether the land is suitable for the proposed development.

No contamination issues have been identified and no remediation works are proposed as part of the application. The proposed works are located within the existing SOH site, and the site is considered suitable for the proposed ongoing uses outlined in the application. The Department therefore concludes the proposal is consistent with the requirements of SEPP 55.

Draft Remediation of Land State Environmental Planning Policy (draft Remediation SEPP)

The Explanation of Intended Effect for a new Remediation of Land SEPP was exhibited until 13 April 2018. The draft Remediation SEPP proposes to better manage remediation works by aligning the need for development consent with the scale, complexity and risks associated with the proposed works.

The key operational framework of SEPP 55 is to be maintained in the new SEPP and new provisions are unlikely to significantly affect this application. As such, the Department considers the proposed development would be consistent with the intent of the draft Remediation SEPP.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SHC SREP)

The SHC SREP provides planning principles for development within the Sydney Harbour catchment. The site is located within the Sydney Harbour Catchment area, is in the foreshores and waterways area and is also defined as a Strategic Foreshore Site (Sheet 1 of the City Foreshore Area Map).

Aims of the plan

The proposal is consistent with the aims of the plan as it would:

- not adversely affect the catchment, foreshores and waterways of Sydney Harbour
- not have adverse environmental impacts, subject to the Department's recommended conditions
- improve the existing commercial use of the site and contribute to the culture and vibrancy of the area.

Matters for consideration

The proposal is consistent with the relevant matters for consideration for land within the foreshores and waterways area as it would not:

- have any adverse impacts on the biodiversity or ecology of the area
- impact on public access, and use of, the foreshore
- reduce the capacity of Sydney Harbour to function as a working harbour
- have adverse impacts on the use of the waterways
- detract from the scenic quality of the foreshore and waterway, or views to and from Sydney Harbour.

Foreshores and Waterways Planning and Development Advisory Committee

Under clause 29(3) of the SHC SREP, the Department is not required to refer the proposal to the Foreshores and Waterways Planning and Development Advisory Committee, as the proposed works consists of alterations or additions to the existing SOH building.

Strategic Foreshore Sites

The site is identified as a 'Strategic Foreshore Site' on 'Sheet 1 - City Foreshores Area' of the Strategic Foreshore Sites Map. Clause 41 of the SHC SREP states that development consent must not be granted for the carrying out of development on a strategic foreshore site unless there is a master plan for the site, and the consent authority has taken the master plan into consideration. The Department considers that the proposal is generally consistent with the relevant land use and general master planning provisions contained within SOH Management Plan, the CMP and the Utzon Design Principles, as identified in **Section 4** of this report.

Heritage provisions

The Department has considered the proposal in relation to heritage impacts in accordance with Part 5 of the SHC SREP, and finds the proposal would not have unacceptable impacts in relation to any items of environmental heritage in the locality.

The site is located within the Sydney Opera House Buffer Zone. Clause 58B of the SHC SREP outlines the matters to be taken into consideration for development within the Sydney Opera House Buffer Zone to protect the World Heritage Values of the site. The proposal would not result in any significant impacts on external views of the SOH. Heritage and design are further discussed in **Section 6** of this report.

Draft State Environmental Planning Policy (draft Environment SEPP)

The Explanation of Intended Effect for the Environment SEPP was exhibited until 31 January 2018. The Environment SEPP proposes to simplify the planning rules for the protection and management of the natural environment by consolidating seven existing SEPPs, including the SHC SREP.

The relevant matters for consideration and the general provisions relating to Sydney Harbour are proposed to remain in accordance with those in the current SEPP and therefore the proposed development would be consistent with the intended effect of the draft Environment SEPP.

The Sydney Harbour Foreshores and Waterway Area DCP 2005 is proposed to be transitioned into one or more guidelines that would cover the current content and provide updated guidance to consent authorities based on design principles and landscape character, however these guidelines are not currently in draft form.

Sydney Harbour Foreshores and Waterways Area DCP 2005

The Sydney Harbour Foreshore and Waterways Area Development Control Plan (the DCP) complements the SHC SREP and provides more detailed design parameters for development within the foreshore area of Sydney Harbour.

The site is within the defined Foreshores and Waterways Area under the SHC SREP and is therefore subject to the controls in the DCP. The DCP includes aims and performance criteria in relation to ecological assessment, landscape assessment, and design guidelines for development within the area.

The site is identified as a landmark on Map 11 of the Ecological Communities and Landscape Characters, and whilst the site does not contain any terrestrial or aquatic ecological communities, the Map indicates the site adjoins grassland and woodland terrestrial ecological communities within the Royal Botanic Gardens. The Department is satisfied that the proposal would not result in any impacts to these adjoining terrestrial ecological communities, given the works are located on the lower concourse, which is on the opposite side of the SOH to the Royal Botanic Gardens. The proposal is therefore consistent with these criteria.

Under Parts 2 and 3 of the DCP, the site is identified as a landmark on Map 11 of the Ecological Communities and Landscape Characters, and the Map indicates that the site adjoins landscape character area No. 9, which applies to the natural foreshores of Sydney Harbour. The proposal is consistent with the performance criteria for this landscape character area because it would not impact on any major points and entrances to the harbour.

The Department considers the proposal would enhance public access along the foreshore, by enhancing pedestrian flow through the replacement of the existing glazing. Accordingly, the Department is satisfied that the proposal is consistent with relevant provisions of the DCP regarding the interface between land-based development and the water.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)

The Coastal SEPP consolidates and replaces SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The Coastal Management SEPP gives effect to the objectives of the *Coastal Management Act 2016* (NSW) from a land use planning perspective. It defines four coastal management areas and provides assessment criteria tailored for each coastal management area. The consent authority must apply those criteria when assessing proposals for development that fall within one or more of the mapped areas.

The Coastal SEPP identifies the site as being located within the coastal environment area and coastal use area. Land within these areas are subject to clause 13 and 14, however as the site is located on land within the Foreshores and Waterways Area of the SHC SREP, clauses 13 and 14 of the Coastal SEPP do not apply.

Sydney Local Environmental Plan 2012 (SLEP 2012)

Consideration of the relevant provisions of the SLEP 2012 is provided below:

Zoning

Under the SLEP 2012, the site is zoned B8 Metropolitan Centre. The objective of the zone is to recognise and provide business, office, retail, entertainment and tourist premises.

As the proposed works relate to development for the purposes of an entertainment facility (the Sydney Opera House), they are permissible with consent in the B8 Metropolitan Zone.

Heritage

Clause 5.10 of SLEP 2012 relates to heritage conservation, and includes an objective to conserve the heritage significance of heritage items, including associated fabric, settings and views.

The Department is satisfied the proposal is consistent with relevant provisions in clause 5.10 of SLEP 2012, and has assessed the heritage impacts of the proposal in **Section 6** of this report. The Department's assessment concludes the proposal would have an acceptable level of heritage impact on the SOH and would continue to comply with the relevant provisions of the SOH Management Plan, the CMP and the Utzon Design Principles.

Foreshore Access

Clause 7.11 of SLEP 2012 relates to foreshore access, and requires consideration of whether development would encourage public access along the foreshore and links with existing and proposed open space.

The Department is satisfied that the proposal would retain continuous public access along the foreshore and to the Royal Botanic Gardens.

Appendix D – Recommended Instrument of Consent

The recommended conditions of consent can be found on the Department of Planning, Industry and Environment's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/9861>