

Erection of Shade Structures at Tenancy 5 of the Overseas Passenger Terminal



*State Significant
Development Assessment
(SSD 9334)*



September 2019

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Glossary

Abbreviation	Definition
Applicant	Jimmy's on the Mall Pty Ltd
BCA	Building Code of Australia
CIV	Capital Investment Value
Council	City of Sydney
Department	Department of Planning, Industry and Environment
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
Heritage Division	Heritage Division of the Department of Premier and Cabinet
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
OPT	Overseas Passenger Terminal
RMS	Roads and Maritime Services
RtS	Response to Submissions
SCRA Scheme	Sydney Cove Re-development Authority Scheme
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
SSI	State Significant Infrastructure
TfNSW	Transport for NSW
Transport for NSW (RMS)	Transport for NSW (Roads and Maritime Services)



Executive Summary

This report provides an assessment of a State significant development (SSD) application (SSD 9334) seeking approval for the construction of four retractable shade structures to the outdoor dining area of Tenancy 5 of the Overseas Passenger Terminal (OPT) building, at Circular Quay, The Rocks. The SSD application has been lodged by Jimmy's on the Mall Pty Ltd (the Applicant).

The proposal is classified as SSD under clause 6 of Schedule 2 of State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP), as it is development on land identified as being within The Rocks and which does not comply with the Sydney Cove Re-development Authority (SCRA) Scheme. Therefore, the Minister for Planning and Public Spaces is the consent authority for the application.

A SCRA Scheme variation is also being concurrently sought to enable development consent to be granted for the development.

Engagement

The Department of Planning, Industry and Environment (the Department) exhibited the application and the SCRA Scheme variation between 9 May to 7 June 2019.

The Department received a total of eight submissions, comprising a submission from City of Sydney (Council), six submissions from government agencies and one submission of objection from the public. Key issues raised in the submissions included view and heritage impacts, and visual clutter.

In August 2019, the Applicant provided a Response to Submissions (RtS). In response to Council and Heritage Division of the Department of Premier and Cabinet (Heritage Division) comments regarding minimising visual impact to the Sydney Opera House, shade structures A1 and A2 were reduced in length on the northern side by one bay. The RtS was made publicly available on the Department's website. No further public submissions were received.

Assessment

The Department considers that the built form of the proposed shade structures are light-weight in appearance and have been designed to sensitively integrate with the OPT building and would not have adverse impacts on key views, including to and from the Sydney Opera House. The Department considers the proposal and SCRA Scheme variation would have an acceptable impact on the foreshore character of the site and would not give rise to heritage impacts.

Conclusion

The Department is satisfied the proposal is consistent with the strategic objectives of the area, as outlined in the Greater Sydney Region Plan and Eastern City District Plan.

The Department considers the proposed works to be minor in nature and will complement the use of Tenancy 5 of the OPT as a restaurant by improving patron comfort and the usability of the outdoor dining area.

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



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1. Introduction

This report provides an assessment of a State significant development application (SSD 9334) seeking approval for the construction of four retractable shade structures to the outdoor dining area of Tenancy 5 of the OPT building, at Circular Quay, The Rocks. The SSD application has been lodged by Jimmy's on the Mall Pty Ltd (the Applicant).

1.1 Site Description

The subject site is known as Tenancy 5 and is located within the OPT building at Circular Quay West, The Rocks. The OPT is a long rectangular four-storey building located on the western side of Circular Quay, the southern side of Campbell's Cove and directly opposite the Sydney Opera House, which is located to the east of Sydney Cove. The site is adjacent to the foreshore of Sydney Harbour to the east and commercial and residential development on Hickson Road to the west.

The OPT was opened in 1960 and has undergone major additions and changes in 1988, 2001 and 2015. The OPT was originally designed for commercial shipping operations and used primarily for the purpose of servicing passenger ships, enabling them to berth and for passengers to board and disembark. The OPT now also accommodates several restaurants, bars and a publicly accessible viewing platform. Loading bays, offices and other ancillary facilities occupy the central portion of the OPT with a raised vehicle roadway with controlled access along the western side of the building.

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 seating area (**Figure 1**). Tenancy 5 was previously occupied by 'Doyles Restaurant' which operated at the site between 1987 and 2014. In August 2017, development consent was granted (SSD 7683) for a restaurant including a micro-brewery. In accordance with the consent, the site now operates as the 'Squire's Landing Restaurant and Brewhouse' (**Figure 2**).

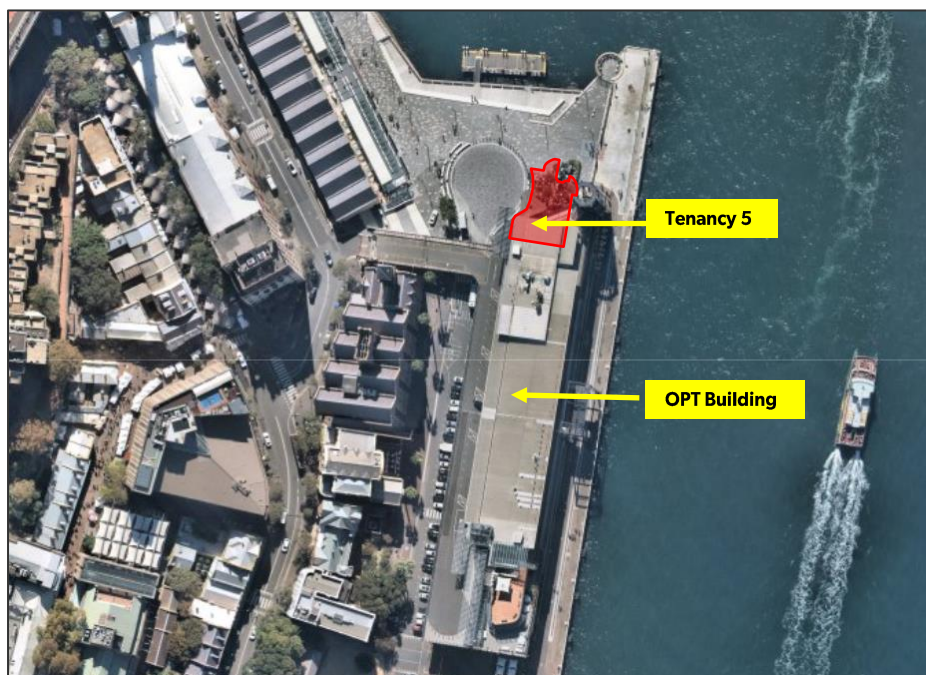


Figure 1: | Site location map (Base source: Nearmap)



Figure 2: | Photograph of Tenancy 5 - Squire's Landing Restaurant and Brewhouse (Source: Department photograph)

As shown above in **Figure 2**, several free standing umbrellas are currently being utilised to provide protection from the weather to patrons of the outdoor dining area.

1.2 Site Context

The OPT is in a prominent foreshore position and has a high visibility to, and is visible from, Circular Quay, Sydney Harbour (including the Sydney Opera House) and Sydney's central business district. The eastern and northern edges of the OPT contain a foreshore promenade which links the site with Walsh Bay, Circular Quay and the Sydney Opera House. The foreshore promenade is not accessible when passenger vessels are berthed. The OPT is located within the City of Sydney Council Local Government Area and within The Rocks heritage precinct and its surrounds are illustrated in **Figure 3**.

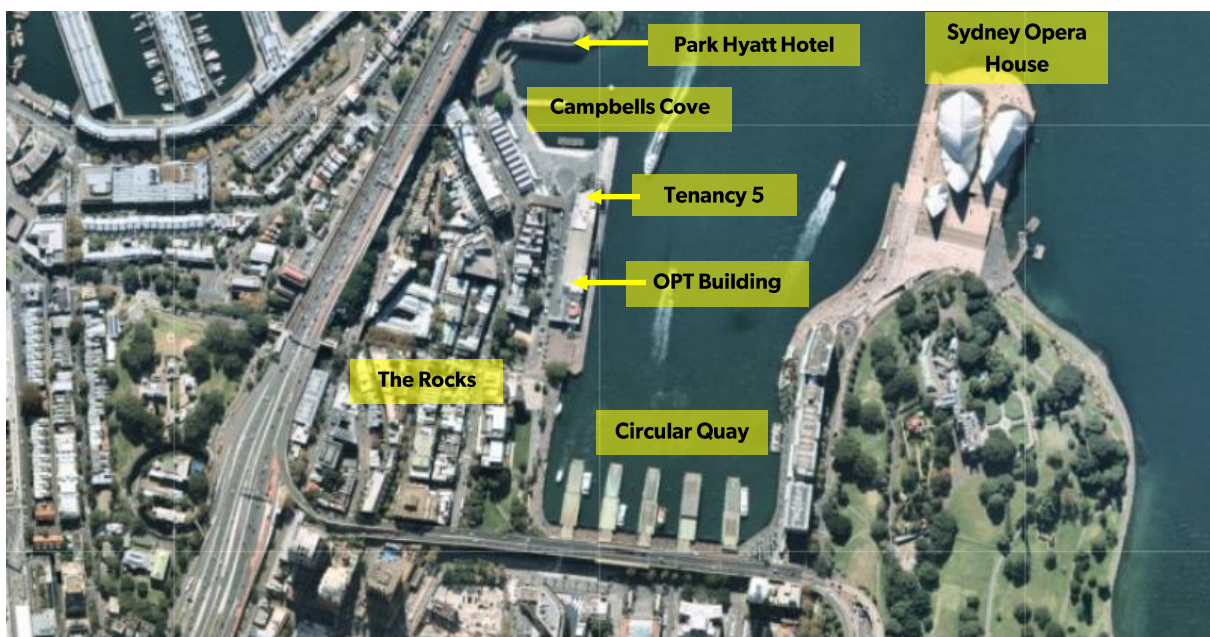


Figure 3: | Tenancy 5 and its surrounds (Base source: Nearmap)

The surrounding area is characterised by a mix of buildings and uses, including:

- the Park Hyatt Hotel (five storeys) north of the site
- the Metcalfe Bond Stores (five to six storeys in height) to the west which accommodates a range of retail, commercial and residential uses
- the ASN Co Building to the west which houses a range of commercial and educational uses
- Campbell's Stores to the north-west of the site
- Museum of Contemporary Art to the south-west of the site.

The site is well serviced by a range of public transport modes, including Circular Quay Railway Station, ferry wharves, a range of bus services, and a light rail stop currently under construction.

1.3 Related Approvals

SSD 7683

On 25 August 2017, the Acting Executive Director, Key Sites and Industry Assessments (as delegate of the Minister for Planning) granted approval to SSD 7683 for the use of Tenancy 5 of the OPT as a restaurant, 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.

2. Project

The proposal involves the construction of four retractable shade structures to the outdoor dining area of Tenancy 5 of the OPT building. The major components of the development, as refined in the RtS are further described at **Table 1**.

Table 1 | Main Components of the Project

Aspect	Description
Shade Structure A1	- Column mounted steel shade structure with retractable fabric awnings located within the outdoor dining area. - The shade structure is 32.5m² and measures 5m x 6.5m with a height of 4.15m.
Shade Structure A2	- Column mounted steel shade structure with retractable fabric awnings located within the outdoor dining area. - The shade structure is 35m² and measures 5m x 7m with a height of 4.15m.
Shade Structure A3	- Retractable shade awning mounted to the existing first floor deck on the northern façade. - The shade structure is 42.4m² and measures 10.6m x 4m.
Shade Structure A4	- Retractable shade awning mounted to the second floor deck of the northern façade and covering the first floor balcony below. - The shade structure is 19.2m² and measures 8m x 2.4m.

The two freestanding shade structures (A1 and A2) located in the Tenancy 5 forecourt will be steel framed with retractable shading fabric, resulting in a butterfly roof form. The retractable shade structures (A3 and A4) will be fixed to a vertical surface, A3 to the edge of the level 1 deck and A4 to the level 2 building structure. When open, each awning will cantilever from the support surface without columns. The location of each shade structure is shown at **Figures 4** to **6**.

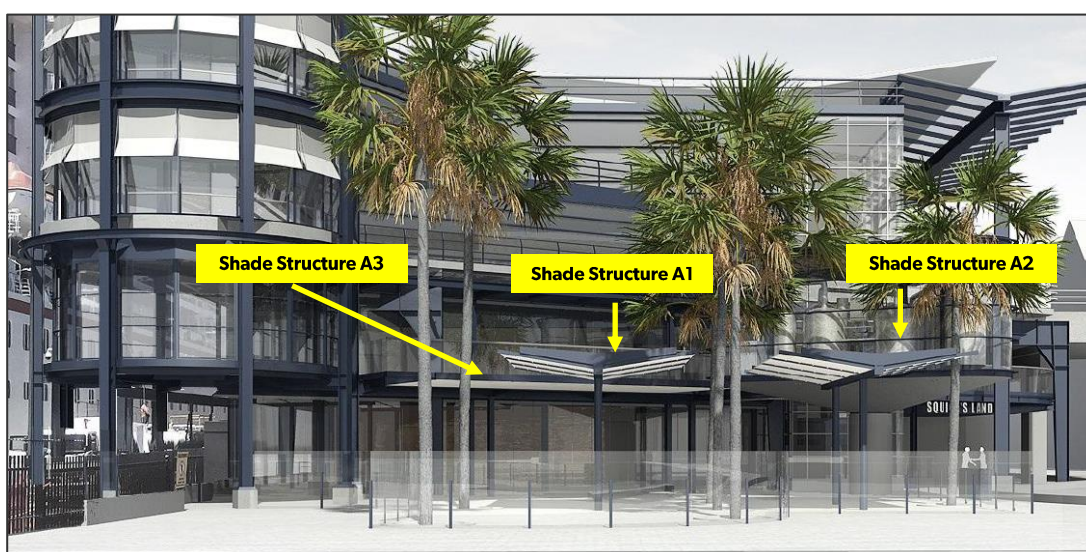


Figure 4: | Location of proposed shade structures – view to the south (Base source: Applicant's RtS)

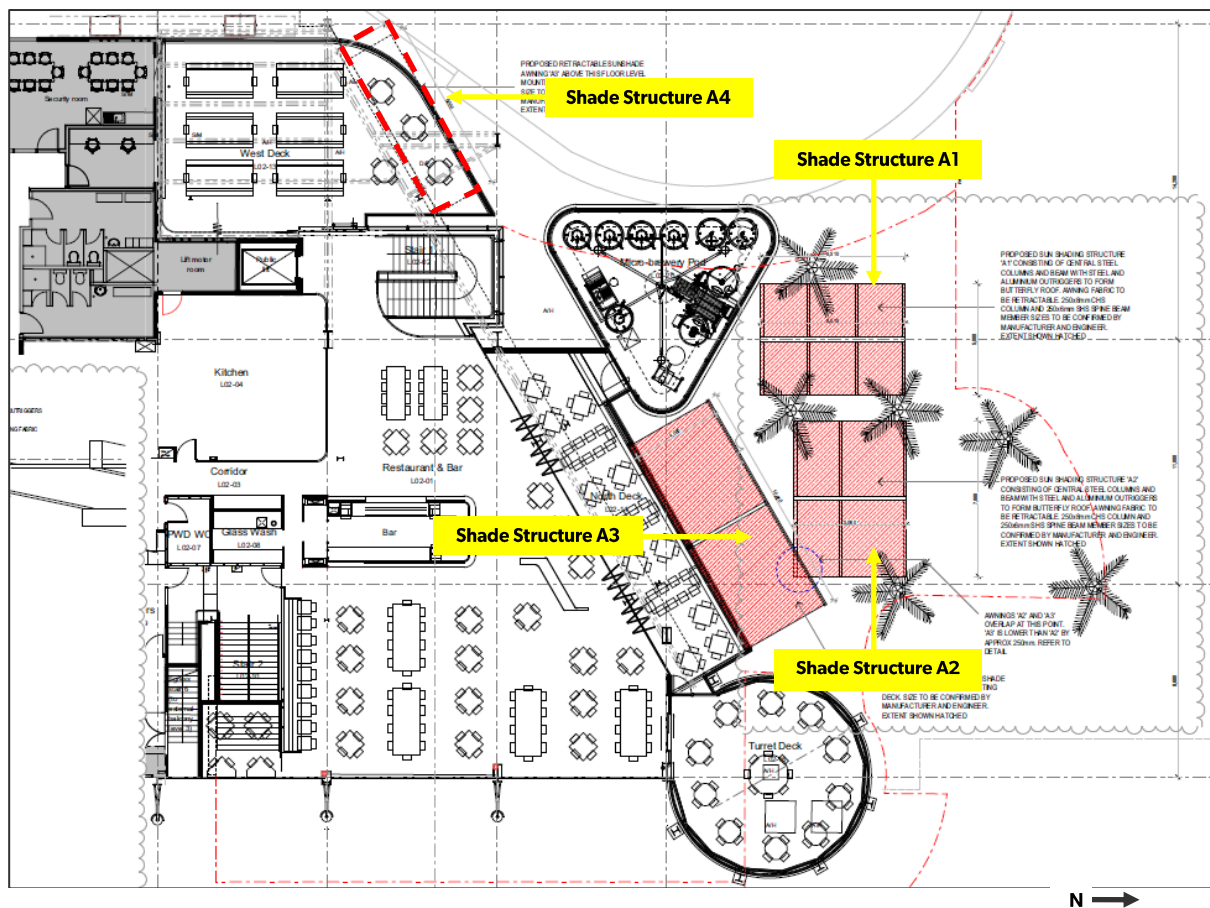


Figure 5: | First floor plan of Tenancy 5 showing the location of the proposed shade structures (Base source: Applicant's RtS)



Figure 6: | Location of proposed shade structure A4 – view to the south-east (Base source: Applicant's RtS)

The application also proposes a variation to the SCRA Scheme to enable development consent to be granted to the proposal. The SCRA Scheme establishes a building envelope on the site, generally reflective of the existing OPT structure. It is proposed to amend the supporting text relating to permitted uses to include shade structures.



3. Strategic Context

3.1 Greater Sydney Region Plan and Eastern City District Plan

The Greater Sydney Commission's role is to coordinate and align planning to shape the future of Metropolitan Sydney. In March 2018, the Greater Sydney Commission published the Greater Sydney Region Plan (the Region Plan) and the associated District Plans.

The Region Plan outlines how Greater Sydney would manage growth and change and guide infrastructure delivery. It describes the Sydney metropolis (or Greater Sydney) as comprising three cities: an Eastern Harbour City in which the site is located, a Central River City, and a Western Parklands City.

The proposal is consistent with the objectives of the Region Plan, in that the proposed shade structures will contribute to the activation of the outdoor dining space into a usable space for patrons. This is consistent with the strategic justification of the restaurant, which contributes to Sydney's entertainment, cultural and tourist assets, supporting the Harbour central business district's global role (Objective 24).

The Region Plan also sets the vision and strategy for Greater Sydney, to be implemented at a local level through District Plans. The proposal is consistent with the objectives of the Eastern City District plan, in that the proposal will contribute to the usability of the restaurant, further activating the public domain area surrounding the OPT building. The further activation of the restaurant will contribute to growing a stronger and more competitive Harbour central business district (Planning Priority E7).

3.2 Sustainable Sydney 2030

Sustainable Sydney 2030 sets out City of Sydney's vision to make Sydney a more global, green and connected metropolis by 2030. The proposal is not inconsistent with the plan's strategic directions. The shade structures will contribute to the activation of Sydney's entertainment and tourism sector.



4. Statutory Context

4.1 State Significant Development

The proposal is classified as SSD under section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as it comprises development on land identified as being within The Rocks and which does not comply with the SCRA Scheme under clause 6 of Schedule 2 of State Environmental Planning Policy (State Significant Development) 2011.

A SCRA Scheme variation is therefore being concurrently sought to enable development consent to be granted for the development.

4.2 Permissibility

The SCRA Scheme is the relevant EPI regulating development in The Rocks and prescribes building height limits, envelopes and permitted uses. Development within The Rocks area must be consistent with the relevant controls of the SCRA Scheme.

The site is located within Site XLV1 under the provisions of the SCRA Scheme, which includes 'Commercial' land uses as permissible on the site. The shade structures will facilitate the use of an approved outdoor space within an existing tenancy lease area that is consistent with the approved use of the building as a restaurant which is considered a 'Commercial' use and permissible under the SCRA Scheme.

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

The *Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999* is the regulatory mechanism that outlines the process for amending the SCRA Scheme and the mandatory matters the Minister (or delegate) must consider to make a proposed variation to the SCRA Scheme.

It provides for the Applicant to apply to the Minister for a variation to the approved scheme that is considered necessary to be made to enable development consent to be granted to the proposed development. The application to the Minister must describe the elements of the development which does not comply with the approved scheme, set out the reasons for the variation to the scheme and address the matters for consideration the Minister must consider.

The proposed shade structures are not specifically identified as elements that are permitted to exceed the building envelope as established in the SCRA Scheme. The Applicant has therefore concurrently applied to vary the SCRA Scheme to enable development consent to be granted to the proposed development.

The proposed variation to the SCRA Scheme is considered in more detail in **Appendix D**.

4.4 Consent Authority

Determination of Application

In accordance with the Minister's delegations, signed on 11 October 2017, the Executive Director, Compliance, Industry and Key Sites may determine the application under delegation as Council has not made an objection, a political disclosure statement has not been made and less than 25 public submissions in the nature of objections have been made.

SCRA Scheme Variation

On 28 February 2016, the Minister delegated the functions under clause 9 of the Sydney Cove Regulation in relation to a draft variation to the SCRA Scheme, to the delegate also determining the development application in relation to which the variation was submitted.

As the Executive Director, Compliance, Industry and Key Sites is determining the development application in relation to which the variation was submitted, the variation to the SCRA Scheme can also be made by the Executive Director, under delegation.

4.5 Secretary's Environmental Assessment Requirements

On 4 June 2018, the Department notified the Applicant of the Secretary's Environmental Assessment Requirements (SEARs) for SSD 9334. The Department is satisfied the EIS has adequately addressed compliance with the SEARs to enable the assessment and determination of the application.

4.6 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*
- 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** and **Appendix D**.



5. Engagement

5.1 Department's Engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the application for a period of 30 days from 9 May to 7 June 2019. The application was exhibited on the Department's website, at the NSW Service Centre and at Council's office. The Department concurrently exhibited the SCRA Scheme variation during this period, at the same locations, consistent with the EP&A Regulation.

The Department placed a public exhibition notice in the Daily Telegraph and Sydney Morning Herald on 8 May 2019, and notified adjoining landholders and relevant State and local government authorities in writing.

The Department has considered the comments raised in the government agency and public submissions during the assessment of the application (**Section 6**) and/or by way of recommended conditions in the instrument of consent at **Appendix E**.

5.2 Summary of Submissions

The Department received a total of eight submissions, comprising a submission from Council, six submissions from government agencies and one submission of objection from the community. A summary of the submissions is provided at **Table 2** and a summary of the issues raised in the submissions is provide at **Table 3** and **Section 5.4.1** below.

Table 2 | Summary of submissions

Submitters	Number	Position
Government Agencies	6	
• Port Authority NSW		Comment
• NSW Environment Protection Authority		Comment
• Heritage Division of the Department of Premier and Cabinet		Comment
• Transport for NSW (Roads and Maritime Services)		Comment
• Transport for NSW		Comment
• Place Management NSW		Comment
City of Sydney Council	1	Comment
Community	1	Object
TOTAL	8	

5.3 Key Issues – Government Agencies

A total of six government agency submissions were received in response to the exhibition of the application, all of which provided comments. The key issues raised in the submissions are summarised in **Table 3**.

Table 3 | Government Agency Submissions

Heritage Division of the Department of Premier and Cabinet

Heritage Division did not object to the proposal and provided the following comments and recommended consent conditions:

- the addition of shade structures A1 and A2 will increase visual clutter within this area and will partially obscure views to the surrounding buildings. It is also considered that the shade structures will have a larger impact on views to the Sydney Opera House than what is suggested within the EIS. This includes views towards the Opera House from the public stairs adjacent to the Campbell's Stores.
- to minimise the visual impact to the Sydney Opera House, it is recommended that shade structures A1 and A2 are reduced in length on the northern side by one bay. To further minimise impacts, it is recommended that no pull-down blinds are connected to the shade structures to assist in the retention of views and vistas to the Sydney Opera House.
- the proposed works are located within an area of low archaeological potential and will be confined to the piling and pad footings for the shade structure columns. It is recommended that if unexpected archaeological deposits or relics are discovered, works must cease and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing.

Transport for NSW

TfNSW provided a recommended condition of consent requiring the consideration of traffic management and vehicular and pedestrian safety during construction.

Transport for NSW (Roads and Maritime Services)

Transport for NSW (RMS) provided a recommended consent condition requiring the consideration of pedestrian traffic management during construction.

Environment Protection Authority

EPA advised that it is not the appropriate regulatory authority for this proposal, as the proposal does not constitute a Scheduled Activity and would therefore not require an Environment Protection Licence.

Port Authority NSW

Port Authority NSW being the landowner for the site, provided landowner's consent, subject to conditions.

Place Management NSW

Place Management provided the following recommended consent conditions:

- the existing black umbrellas in the outdoor dining area are to be removed once the shade structures are constructed
- the shade structures are to be painted in a sympathetic colour that matches the rest of the OPT building
- no third part advertising is permitted on the shade structures

-
- drop down blinds are to not to be installed on the shade structures.

5.4 Key Issues – Council/Community

5.4.1 Council key issues

Council did not object to the proposal and provided the following comments:

- the proposed operable awnings (A3 and A4) that extend from the building façade are considered to be suitably integrated with the existing building resulting in minimal visual impacts
- shade structures A2 and A3 overlap, which contradicts the elevation where they appear to be at the same height
- the application indicates that the shade fabric material will be an off-white colour. This shall be properly reflected in the view analysis image levelled 'View 1 – Proposed'
- column and steel member sizes should be provided in order to fully understand the overall appearance of the shade structures
- shade structures A3 and A4 will likely contribute to visual clutter especially if left unrestricted for prolonged periods
- if approved, the recommendations of the Heritage Impact Statement shall be imposed as conditions of consent.

5.4.2 Community issues

The Department received one submission from Tallawoladah Pty Ltd who is the developer of the Campbell's Stores, objecting to the proposal. The submission raised the following concerns:

- the shade structures utilise fabric which will be prone to soiling by wildlife, thereby creating a health hazard for the public
- the shade structures will create visual clutter and impede pedestrian thoroughfare
- the shade structures will adversely impact the current views enjoyed by Campbell's Stores in particular the views from the southern and eastern bays
- the variation to the SCRA Scheme would be prejudicial to Tallawoladah Pty Ltd now that it has concluded redevelopment of Campbell's Stores without the benefit of such variation to increase its own outdoor dining area with shade structures
- if approved, the development will be at the commercial advantage of the Applicant
- the existing umbrellas are considered practical and efficient
- the supporting reports (CEMP, TMP, Wind Report, Contamination Preliminary Report) are outdated and not reflective of current site conditions.

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 1 August 2019, the Applicant provided a Response to Submissions (RtS). The following key changes were made:

- in response to Council's and Heritage Division's comments regarding minimising visual impact to the Sydney Opera House, shade structures A1 and A2 were reduced in length on the northern side by one bay
- column and steel member sizes provided in order to fully understand the overall appearance of the shade structures
- provision of further supplementary information addressing the concerns raised in the submissions.

The RtS was made publicly available on the Department's website. No submissions were received.



6. Assessment

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 views and heritage impacts. This issue is discussed in the following section of the report. The Department's consideration regarding other issues relating to this application are addressed in **Section 6.2** of this report.

6.1 View and Heritage Impacts

The site is located within the vicinity of several heritage listed items (**Figure 7**) and is located within the Sydney Opera House buffer zone (**Figure 8**), as identified in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Council and the Heritage Division did not object to the proposed development, however raised concerns that shade structures A1 and A2 would contribute to visual clutter and impact views to the Sydney Opera House. As such, they recommended shade structures A1 and A2 be reduced in length by removing one bay in order to minimise visual impacts. A public submission, objecting to the development raised similar concerns in relation to impacts on views to the Sydney Opera House from the southern and eastern bays of Campbell's Stores.

In response to the submissions, the Applicant reduced the length of shade structures A1 and A2 by one bay (**Figure 9**).

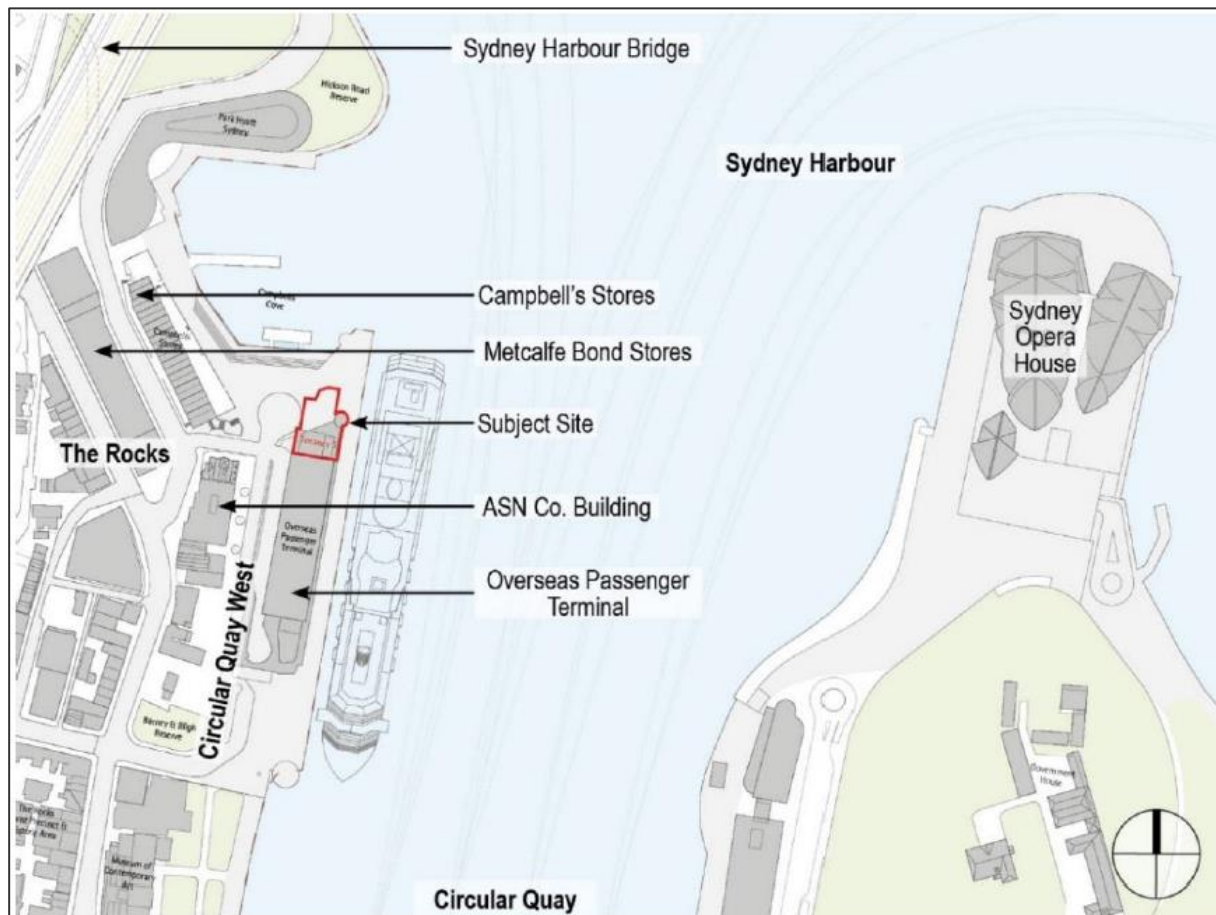


Figure 7: | Location of the site in relation to heritage items (Base source: Applicant's EIS)

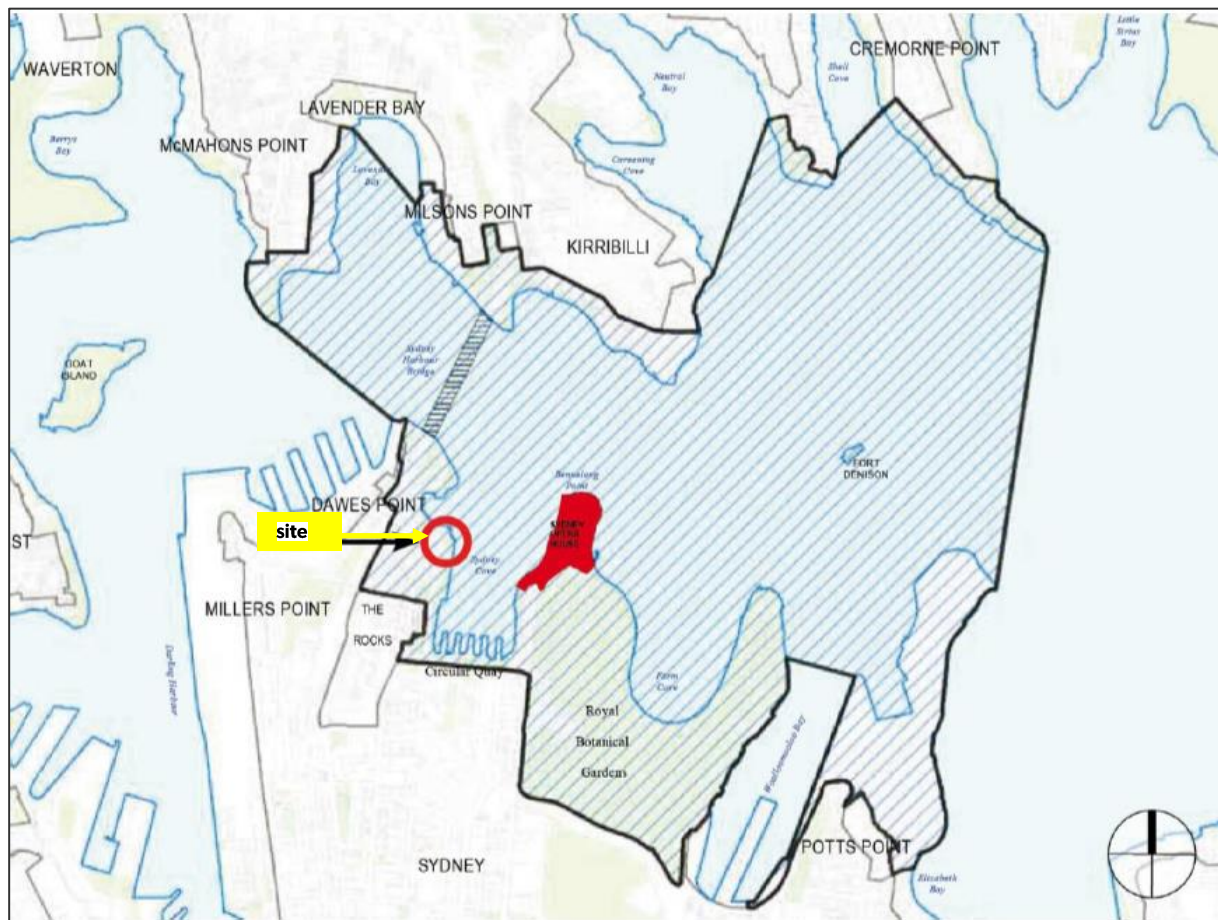


Figure 8: | Location of the site (circled in red) in relation to the Sydney Opera House buffer zone. Buffer zone is shown in grey and hatched diagonal blue lines (Base source: Applicant's EIS)

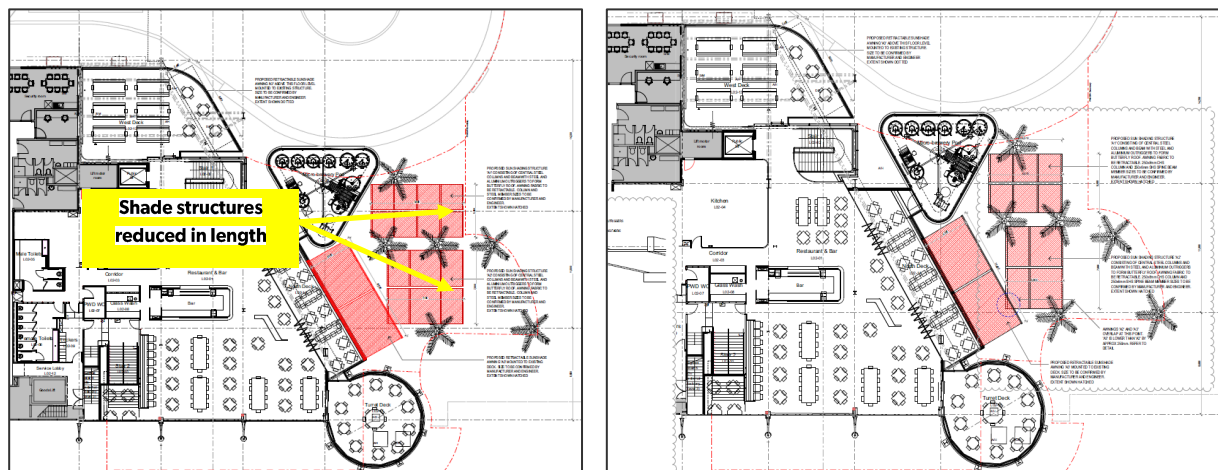


Figure 9: | Comparison of original proposal (left) and amended proposal (right) (Base source: Applicant's EIS and RtS)

Figure 10 and **Figure 11** below provide a photomontage of the existing and proposed view of the development from Campbell's Stores to the Sydney Opera House. The Department considers the view impacts to be negligible as the shade structures only marginally extend past the turret deck of Tenancy 5, and therefore will not adversely detract from the views currently enjoyed from Campbell's Stores or surrounding public domain to the Sydney Opera House.



Figure 10: | Photomontage showing existing views to the Sydney Opera House from the public walkway near the eastern end of Campbell's Stores (Base source: Applicant's RtS)



Figure 11: | Photomontage showing proposed views to the Sydney opera House from the public walkway near the eastern end of Campbell's Stores (Base source: Applicant's RtS)

The Department considers that the overall design of the shade structures will mitigate any potential visual and heritage impact as they have been designed to integrate with the existing built form of the OPT building and read as a lightweight, slim profile and low impact structure. The shade structures will also be finished to match the structure of the OPT building in colour and will therefore be visually compatible with the building.

To further minimise any visual impacts and minimise visual clutter, conditions of consent have been recommended to ensure that no pull-down blinds, lighting, heating, signage or the like are attached the shade

structures and the that shade structures are left in a retracted position outside of the approved hours of operation.

In consideration of the above, the Department concludes that the proposed development will not result in any adverse visual and heritage impacts.

6.2 Other Issues

Other relevant issues for consideration are addressed in **Table 4**.

Table 4 Summary of other issues raised

Issue	Findings	Recommended Condition
Wind	- The EIS includes a Wind Assessment Statement which confirms that the proposed shade structures when either in an open or retracted position would have negligible impacts on local wind conditions. - The Department considers that the findings of the Wind Assessment Statement acceptable.	The Department considers no additional conditions or amendments are necessary.
Contamination	- A Preliminary Contamination Investigation was previously undertaken by EMM as part of SSD 7683. The investigation found there to be a range of potential contaminants at the site. However, as only minor excavations were proposed, the site was considered suitable for the proposed development and in accordance with the requirements of SEPP 55. - The EIS is supported by a Contamination Statement prepared by EMM. As only minor excavations works are required for the footings of Shade Structure A1 and A2, EMM confirmed that the previous investigations and conclusions made in relation to SSD 7683 remain applicable. - The site is therefore considered suitable for the proposed development and complies with the requirements of SEPP 55.	The Department considers no additional conditions or amendments are necessary.
Construction Noise Impact	- The EIS is supported by a Construction Noise Statement, which confirms that previous investigations and conclusions made in relation to SSD 7683 remain applicable. It is expected that construction noise generated from works associated with the construction of the shade structures would be no greater than the works assessed in the previous acoustic assessment under SSD 7683. - The Department considers the risk of significant construction noise impacts to be low as the proposed noise generating works are very minimal and relate to minor excavation works and erection of pre-fabricated shade structures.	The Department considers no additional conditions or amendments are necessary.



7. *Evaluation*

The Department has reviewed the EIS, RtS, SCRA Scheme variation and assessed the merits of the proposal, taking into consideration the public submission and advice from key agencies, including Council and Heritage Division. All environmental issues associated with the proposal have been thoroughly considered.

The Department considers the proposed works to be minor in nature and will complement the use of Tenancy 5 of the OPT as a restaurant by improving patron comfort and the usability of the outdoor dining area. The works will improve the quality of the restaurant experience and therefore will provide a positive economic and cultural contribution to the surrounding tourist precinct.

The Department finds that the built form of the proposed shade structures have been designed to sensitively integrate with the OPT building and will have minimal impact on key views from surrounding areas, including to and from Sydney Opera House.

The Department considers the heritage and visual impacts of the development are minimal and can be appropriately managed through the implementation of the recommended conditions of consent.

The Department concludes the development is in the public interest, and is recommended to be approved, subject to making of the SCRA Scheme variation and the recommended conditions.



8. Recommendation

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

- **considers** the findings and recommendations of this report
- **agrees** to make the proposed variation to the SCRA Scheme
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **approve** the development application subject to conditions in accordance with section 4.4 of the *Environmental Planning and Assessment Act 1979*
- **agrees** with the key reasons for approval listed in the draft notice of decision
- **signs** the attached development consent and recommended conditions of consent (**Appendix E**)

Prepared by:

Rodger Roppolo
Planning Officer
Key Sites Assessments

Endorsed by:

David McNamara
Director
Key Sites Assessments



9. *Determination*

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

Anthea Sargeant

Executive Director

Compliance, Industry and Key Sites



Appendices

Appendix A – List of 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/11466>

Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/11466>

Applicant's Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/11466>

Appendix B – Community Views for Draft Notice of Decision

Issue raised	Consideration
Health hazard (public issue) The fabric of the shade structures will be soiled by wildlife	<i>Assessment</i> - The Applicant commits to regular cleaning and maintenance of the shade structures. <i>Recommended Conditions/Response</i> - Impose a condition to ensure regular cleaning and maintenance of the shade structures is undertaken.
Visual impact (Council, Heritage Division and public issue). The shade structures will create unnecessary clutter	<i>Assessment</i> - The Department considers the visual impact to be minimal, as the shade structures are designed to integrate with the OPT building and read as a minor, low impact structure. The shade structures are also of a slender and simple design with few columns. This matter is discussed in Section 6. <i>Recommended Conditions/Response</i> - Conditions are recommended to minimise the potential for visual clutter including prohibiting any pull-down blinds, signage, lighting heaters or the like to be attached to the shade structures.
The shades structures will impede pedestrian thoroughfare (public issue)	<i>Assessment</i> - The shade structures are located within the outdoor dining area of Tenancy 5 of the OPT building. It is noted that this dining area forms part of the lease area for Tenancy 5. As such, the development will have a negligible impact on the existing pedestrian thoroughfare or public domain areas surrounding the site. <i>Recommended Conditions/Response</i> - No conditions recommended.
The umbrellas currently in use within the outdoor dining area are practical and efficient (public issue)	<i>Assessment</i> - The Department considers the shade structures will provide a more contemporary solution for the site rather than the existing black umbrellas. Further, the umbrellas are considered to be more visually intrusive than the shade structures. <i>Recommended Conditions/Response</i> - No conditions recommended.
Construction work impact (public issue)	<i>Assessment</i> - The Department considers that any impact arising from the construction of the shade structures will be minimal, as the overall works are minor in nature. <i>Recommended Conditions/Response</i> - Conditions are recommended to minimise construction work impact on surrounding properties including the provision of a construction pedestrian and traffic management plan and construction noise and vibration management measures.
View impacts (Council, Heritage Division and public issue). Impact on views for the southern and eastern bays of Campbell's Stores	<i>Assessment</i> - The Department considers the development will result in minimal view loss for the southern and eastern bays of Campbell's Stores. As part of the RtS, the length of shade structures A1 and A2 were reduced, resulting in a lesser impact. This matter is discussed in Section 6. <i>Recommended Conditions/Response</i> - No conditions recommended.

SCRA Scheme variation (public issue)	<i>Assessment</i> - The request to vary the SCRA Scheme has been prepared in accordance with clause 4 of the Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999. Specifically, allows for an application to the Minister for a variation of the proposed SCRA Scheme to enable development consent to be granted to a proposed development. The Department considers the variation to the SCRA Scheme acceptable as discussed in Appendix D. <i>Recommended Conditions/Response</i> - No conditions recommended.
Economic impact (public issue)	<i>Assessment</i> - The approval of the shade structures will be at the commercial advantage of the Applicant <i>Recommended Conditions/Response</i> - No conditions recommended.
Technical reports (public issue)	<i>Assessment</i> - Most of the reports are stale, unhelpful, provide narrative and editorialise issues rather than dealing with the substantive issues and facts relevant to the application <i>Recommended Conditions/Response</i> - No conditions recommended.
Design details (Council issue)	<i>Assessment</i> - The Applicant confirmed that there is a small overlap for shade structures A3 and A2. Shade structure A3 will be positioned approximately 250mm lower than shade structure A2. As such, there will no impact on the operability of either structure. - The Applicant has provided further detail on the sizes of steel columns and beams. The Department considers the overall design of the shade structures acceptable as discussed in Section 6. <i>Conditions</i> - No conditions recommended.

Appendix C – Statutory Considerations

Section 4.15 (1) Matters for Consideration

The matters for consideration under section 4.15(1) that apply to SSD in accordance with section 4.40 of the EP&A Act have been considered in **Table 1** below. The table represents a summary for which additional information and consideration is provided for in **Section 6** of this report and relevant appendices or other sections of this report, referenced in this table.

Table 1 | Section 4.15(1) Matters for Consideration

Section 4.15(1) Matters for consideration	Department's consideration
(a)(i) any environmental planning instrument	Satisfactorily complies. The Department's consideration of the relevant EPIs is provided in Appendix C below.
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, development control plans (DCPs) do not apply to SSD.
(a)(iia) any planning agreement	Not applicable.
(a)(iv) the regulations Refer Division 8 of the EP&A Regulation	The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications (Part 6), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EIS.
(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, including visual and heritage impacts, and considers they have been appropriately managed by recommended conditions (see Section 6).
(c) the suitability of the site for the development	The site is suitable for the development as addressed in Sections 4 and 6 of this report.
(d) any submissions	Consideration has been given to the submissions received during the exhibition period. See Sections 5 and 6 of this report.
(e) the public interest	Refer to Sections 5 and 6 of this report.
The likely impact of the proposed development on	Not applicable.

biodiversity development assessment report (Section 7.14 of the *Biodiversity Conservation Act 2016*).

Objects of the EP&A Act

The objects of the EP&A Act are the underpinning principles upon which the assessment is conducted. The statutory powers in the EP&A Act (such as the power to grant consent/ approval) are to be understood as powers to advance the objects of the legislation, and limits on those powers are set by reference to those objects. Therefore in making an assessment the objects should be considered to the extent they are relevant. A response to the Objects of the EP&A Act is provided at **Table 2**.

Table 2 | Response to the objects of section 1.3 of the EP&A Act

Objects of the EP&A Act	Consideration
(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	The proposal does not impact on natural and artificial resources, as it involves the development within an already disturbed urban area. The proposal would improve the amenity and use of the outdoor dining area which would enhance economic and social welfare.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposal delivers ecologically sustainable development.
(c) to promote the orderly and economic use and development of land	The proposal maximises the efficient use of the site by improving the amenity and comfort for patrons of the restaurant.
(d) to promote the delivery and maintenance of affordable housing	The proposal relates to an existing restaurant use and is not required to provide or maintain affordable housing.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal involves the construction of four shade structures to an existing restaurant which would not adversely impact any native animals and plants, including threatened species, populations and ecological communities, and their habitats.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The Department's assessment carefully considers any impacts of the proposal on the built and cultural heritage (Section 6). Relevant State and local authorities have also been consulted in relation to heritage matters.
(g) to promote good design and amenity	The design quality of the proposal is addressed in Section 6 .

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The Department considers the proposed development to be of a high designs standard and will be constructed to meet the relevant requirements of the BCA.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	The Department publicly exhibited the application, which included consultation with Council and other public authorities and consideration of their responses (Section 5).
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department publicly exhibited the application as outlined in Section 5 , which included notifying adjoining landowners, placing a notice in the paper and displaying the application on the Department's website and at Council's office.

Environmental Planning and Assessment Regulation 2000

Subject to any other references to compliance with the EP&A Regulation cited in this report, the requirements for Notification (Part 6, Division 6) and Fees (Part 15, Division 1AA) have been complied with.

Environmental Planning Instruments (EPIs)

In line with the requirements of section 4.15(a)(i) of the EP&A Act, this report includes references to the provisions of the EPIs that govern the carrying out of the project and have been taken into consideration in the Department's environmental assessment.

The Department has undertaken a detailed assessment of these EPIs and is satisfied the application is consistent with the requirements of the EPIs.

- State Environmental Planning Policy (State & Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No. 55 – Remediation of Land
- Draft Remediation of Land State Environmental Planning Policy
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Consideration of the proposed variation to the SCRA Scheme is provided at **Appendix D**.

State Environmental Planning Policy (State and Regional Development) 2011

The aims of the SRD SEPP are to identify SSD, State significant infrastructure, critical SSI and to confer functions on regional planning panels to determine development applications. The proposal is SSD as summarised at **Table 3**.

Table 3 | SRD SEPP compliance table

Relevant Sections	Department's Consideration	Compliance
3 Aims of Policy		
The aims of this Policy are as follows:	The proposed development is	Yes
(a) to identify development that is State significant development,	identified as SSD.	
8 Declaration of State significant development: section 4.36		
(1) Development is declared to be State significant development for the purposes of the Act if:	The proposed development is	Yes
(a) the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and	permissible with development consent. The site is specified in Schedule 1.	
(b) the development is specified in Schedule 1 or 2.		
Schedule 2 State significant development — identified sites		
Clause 6 Development in the Rocks		
Development on land identified as being within The Rocks Site on the State Significant Development Sites Map if:	The proposal is SSD under	Yes
(a) has a capital investment value of more than \$100 million, or	clause 6(b) of Schedule 2 of	
(b) it does not comply with the approved scheme within the meaning of clause 27 of Schedule 1 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017	State Environmental Planning Policy (State and Regional Development) 2011, as the development does not comply with the SCRA Scheme.	

State Environmental Planning Policy (Infrastructure) 2007

The ISEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant public authorities about certain development during the assessment process.

Clause 104 of the ISEPP requires traffic generating development to be referred to Transport for NSW (RMS) for comment. Although the development does not constitute traffic generating development in accordance with clause 104 of the ISEPP, the Department considered it appropriate to refer the proposal to Transport for NSW (RMS) for its consideration.

As summarised at **Section 5**, Transport for NSW (RMS) confirmed it had no objection to the proposal.

State Environmental Planning Policy No. 55 - Remediation of Land

SEPP 55 aims to ensure that potential contamination issues are considered in the determination of a development application. SEPP 55 prevents a consent authority from issuing development consent unless it has considered whether the subject site is contaminated and whether a contaminated site is suitable for its proposed use in its current state, or would be suitable following remediation.

As discussed in **Section 6**, the site is considered suitable for the proposed use (being for shade structures) and in compliance with the requirements of SEPP 55.

Draft Remediation of Land State Environmental Planning Policy

The Department is reviewing all State Environmental Planning Policies to ensure they remain effective and relevant and SEPP 55 has been reviewed as part of that program. The Department recently published the draft Remediation of Land State Environmental Planning Policy (Remediation SEPP).

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Consideration of the key relevant clauses of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 are addressed in **Table 4** below.

Table 4 | Consideration of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Clause	Criteria	Department's Consideration	Compliance
Part 1, clause 3 (2) Land to which the plan applies	The site is located within an area to which the plan applies as shown on the City Foreshores Area Map	The proposed works are located within the Sydney Opera House Buffer Zone as identified on the relevant map	Yes
Part 3, clause 17 Zoning W1 Maritime Waters	Land is divided into a number of zones as shown on the zoning map. However, the SCRA Scheme does not zone the land.	Although, the W1 Maritime Waters zone is adjacent to the site, no works would be carried out in the zone.	
Part 3, clause 20 Matters for Consideration	The matters referred to in Division 3 must be considered by the consent authority.	The Department has considered the relevant matters below.	Yes
Part 3, clause 21 Biodiversity, ecology & environmental protection	The consent authority must take into consideration the matters listed in the clause in relation to biodiversity, ecology and environmental protection.	The proposal would have a negligible impact on biodiversity, ecology or the natural environment.	Yes
Part 3, Clause 22 Public access to, and use of, foreshores and	The consent authority must take into consideration the matters listed in this clause in relation to public access to, and use of, the foreshores and waterways.	Public access along the foreshore and to the waterway would remain unchanged.	Yes

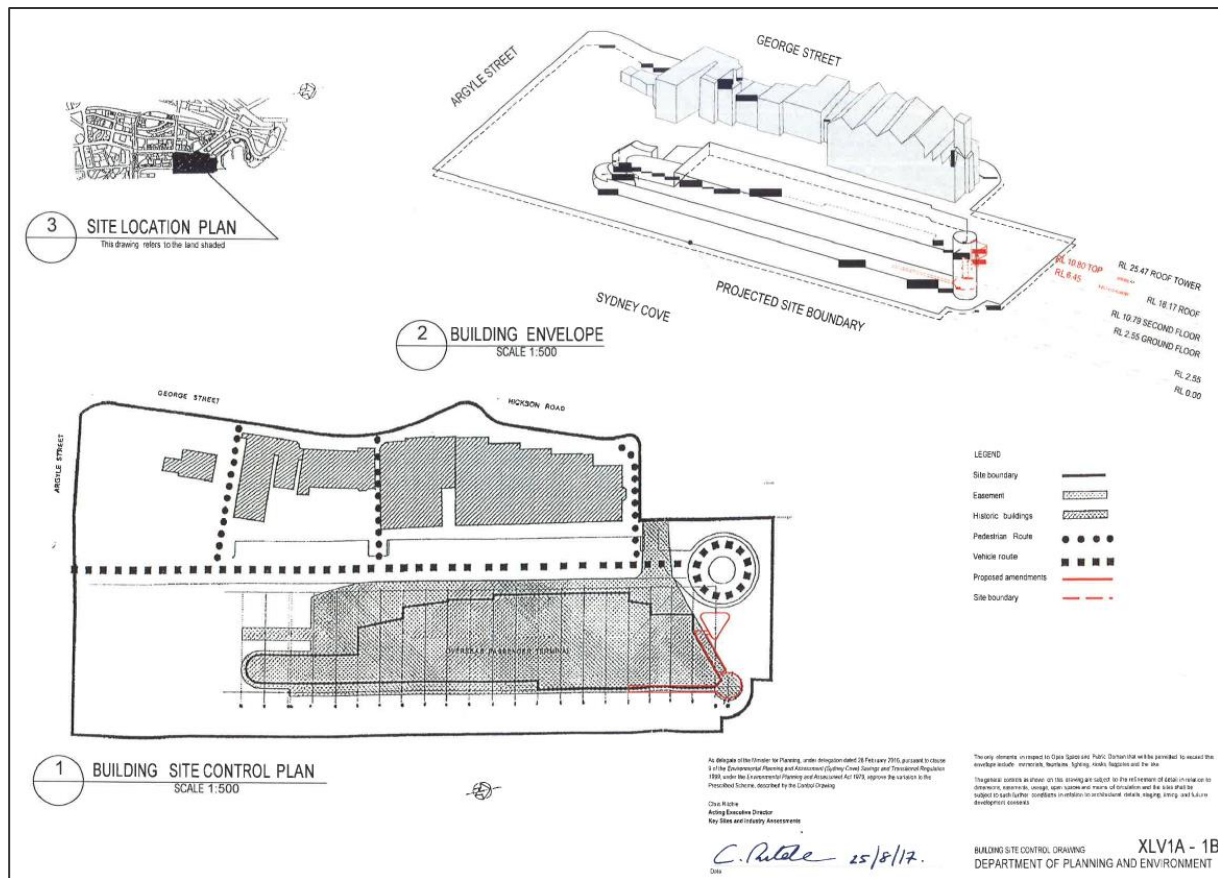
waterways

Part 3, Clause 23 Maintenance of a working harbour	The consent authority must take into consideration the matters listed in relation to the maintenance of a working harbour.	The proposal would not impact on the ability to maintain a working harbour.	N/A
Part 3, Clause 24 Interrelationship of waterway and foreshore uses	The consent authority must take into consideration the matters listed in this clause in relation to the interrelationship of waterway and foreshore uses.	The proposal would not adversely impact the waterway or waterway uses.	N/A
Part 3, Clause 25 Foreshore and waterways scenic quality	The consent authority must take into consideration the matters listed in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterway.	As discussed in Section 6 , the built form of the shade structures are considered acceptable and will maintain the scenic quality of the foreshores and waterways of Sydney Harbour.	Yes
Part 3, clause 29 Foreshores & Waterways Development Advisory Committee	A consent authority must not grant consent to a DA unless it has referred and considered the views of the Advisory Committee.	The proposal is not a type referred to in Schedule 2 of the SREP.	N/A
Part 4, clause 40 Strategic Foreshores Areas	- Division 1- Requirements for Masterplans - This Division applies to development that is carried out on a strategic foreshore site.	The site is identified as a strategic foreshore site on Sheet 3 (City Foreshore Area). The Minister has not directed a master plan for the land be prepared.	N/A
Part 4, clause 41 Requirement for Master Plans	Sub-clause 4 identifies that a Master Plan does not have to be prepared for the City Foreshores Areas, as shown on the Strategic Foreshores Sites Map, unless the Minister so directs.	The Minister has not directed that a new Master Plan be prepared. Therefore, the provisions of Part 4 are not applicable to the development.	N/A
Part 3, clause 59 Development in vicinity of heritage items	Before granting development consent to development in the vicinity of a heritage item, the consent authority must assess the impact of proposed development on the heritage significance of the heritage item.	The Department's assessment in Section 6 concluded the proposal would not adversely impact on heritage items within the vicinity of the site.	Yes
Part 5 Division 3A Sydney Opera House	Clause 58A outlines this division applies to the Sydney Opera House buffer zone, as outlined on the Sydney Opera House Buffer Zone Map.	The Department's assessment in Section 6 concluded the proposal would not adversely impact on the world heritage	

- Clause 58B outlines matters taken into consideration for development in the Sydney Opera House buffer zone to protect the World Heritage Value of the site.
- Clause 58C outlines parameters for minor development in which this division does not apply.

Appendix D – SCRA Scheme Variation

The site is located on Drawing XLV1A-1B of the SCRA Scheme (**Drawing A**).



Drawing A | Current SCRA Scheme Drawing XLV1A-1B

The proposed variation seeks to amend Drawing XLV1A-1B of the SCRA Scheme to enable development consent to be granted to the proposal. The shade structures are located outside the building envelope shown in Drawing XLV1A-1B of the SCRA Scheme, in an area the Department considers to be open space and public domain. Drawing XLV1A-1B restricts permitted uses outside of the envelope as follows:

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

It is proposed to amend the supporting text relating to permitted uses to include shade structures as follows (insertion of the bold and underlined text):

*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, **shade structures** and the like.*

The Department has undertaken an assessment of the proposed variation of the SCRA Scheme against the matters outlined in the *Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999*(Regulation) in **Table 1** below.

Table 1 | Consideration of Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999

Relevant Sections	Department's Consideration
Clause 4 - Application for variation to approved scheme	On the 28 November 2018, the Applicant applied to make the draft SCRA Scheme variation.
Clause 5 - Decision as to preparation of draft variation	On 31 January 2019, the Secretary agreed to make the draft SCRA Scheme variation and notified the Applicant in writing.
Clause 6 - Public notice and exhibition of draft variation	A summarised in Section 5.1 , the Department publicly exhibited the application and the SCRA Scheme variation.
Clause 7 - Inspection of and submissions concerning the draft variation	During the exhibition period for, the draft variation to the approved SCRA Scheme was publicly available for any person to inspect and make extracts of the draft variation and make a written submission concerning the draft variation.
Clause 8 - Public notice of development that is not designated or advertised development	The proposal and SCRA Scheme variation were concurrently exhibited for a period of 30 days from 9 May to 7 June 2019.
Clause 9 - Variation of approved SCRA Scheme	
(1) Minister is to consider all submissions	All submissions have been considered in this report, as detailed in Sections 5, 6 and Appendix B .
(2) If after considering those submissions, the Minister is of the opinion that the draft SCRA variation, if made:	The Department considers there would not be adverse heritage impacts, as discussed in Section 6 .
(a) Will not permit development that will adversely affect:	
i. development on adjoining land, or	The Department does not consider the works will have an adverse impact on the natural or built environment or social or economic impact in the locality.
ii. the heritage significance of buildings, structures or sites in the locality, or	
iii. the quality of public domain in the locality, and	
(b) Will not permit development that will have an adverse impact on the natural or built environment or an adverse social or economic impact in the locality, and	
(c) Will conform with the general planning and design principles for the Sydney Cove Redevelopment Area.	

The Department is satisfied the proposal is consistent with the aims and objectives of the SCRA Scheme and recommends the Minister's delegate make the SCRA Scheme variation.

Appendix E – Conditions of Consent

The Conditions of Consent can be found on the Department's website as follows:

<https://www.planningportal.nsw.gov.au/major-projects/project/11466>