### Development Application Assessment

<table>
<thead>
<tr>
<th><strong>Application number</strong></th>
<th>D/2019/1318</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date of lodgement</strong></td>
<td>20 November 2019, amended 17 March 2020</td>
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<tr>
<td><strong>Applicant</strong></td>
<td>MOD Urban Pty Ltd</td>
</tr>
<tr>
<td><strong>Architect / designer</strong></td>
<td>Place Studio Au Pty Ltd</td>
</tr>
<tr>
<td><strong>Developer</strong></td>
<td>Pier One Developments Pty Ltd</td>
</tr>
<tr>
<td><strong>Application site</strong></td>
<td>11 Hickson Road, Dawes Point</td>
</tr>
<tr>
<td><strong>Proposal</strong></td>
<td>Use of part of the outdoor wharf area for outdoor dining in association with the licensed Pier One Hotel and installation of 3 removable bollards to the southern entry point of the wharf.</td>
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<tr>
<td><strong>Cost of works</strong></td>
<td>$22,000</td>
</tr>
<tr>
<td><strong>Development contribution required</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Zoning</strong></td>
<td>The site is located in the Walsh Bay Conservation Zone and the proposal is permissible with development consent.</td>
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</tbody>
</table>

### Site and surrounding development

A site visit was carried out on 28 January 2020.

The site is irregular in shape, with an area of approximately 5,166 square metres. The site is located on the eastern side of Walsh Bay and is one of five wharf structures projecting from Hickson Road into Walsh Bay. The site has a primary street frontage to Hickson Road and a frontage to the harbour along the western and northern boundaries.

The site contains a two storey Federation style timber longshore shed that is occupied as a hotel known as ‘Pier One’. The hotel contains 190 hotel rooms, restaurants and function rooms.

The Walsh Bay Wharves Precinct is listed on the State Heritage Register as a State Heritage Item (SHR Item Number 00559) and is also located within the Walsh Bay Conservation Zone under Sydney Regional Environmental Plan No 16 — Walsh Bay (SREP 16).

The subject outdoor dining area currently occupies part of the western apron of the wharf adjacent to the Pier One Hotel.
Photos of the site and surrounds are provided below:

Figure 1: Aerial image of subject site and surrounding area.

Figure 2: Western elevation of the site viewed from Hickson Road.
Figure 3: Existing fixed umbrellas, chairs, table and planters.

Figure 4: Existing seating units, fixed umbrellas, chairs, tables, artificial grass and planters.
Figure 5: Existing fixed umbrellas, chairs, tables, artificial grass and planters.

Figure 6: Approved food truck.
Figure 7: Existing tables, chairs and planters.

Figure 8: Existing tables, chairs, artificial grass and planters.
Proposal

The application seeks consent for use of part of the outdoor wharf area for outdoor dining in association with the licensed Pier One Hotel and installation of 3 removable bollards to the southern entry point of the wharf.

The proposed hours of operation of the outdoor dining area are between 11.00am and 10.00pm, Monday to Sunday, with a proposed maximum capacity for 100 patrons.

History relevant to the development application

Relevant application history

The following applications are relevant to the current proposal:

- Development consent D/2009/1421 was granted on 18 January 2010 for alterations and additions to the hotel to provide additional hotel suites, enhance meeting rooms, functions rooms and back of house areas. Approval was also granted for external alterations to the hotel;

- Development consent D/2014/212 was granted on 20 May 2014 for alterations to the existing hotel including the lobby area, reception, restaurant, lounge and bar, and outdoor seating area;

- Development consent D/2018/38 was granted on 29 March 2018 for the construction of an office space within the existing roof space of the hotel;

- Development consent D/2018/165 was granted on 1 June 2018 for use of a licensed food truck at Pier One Hotel;

- Building certificate application BC/2019/87 for an unauthorised fence along wharf frontage and fixed umbrellas to the wharf was refused on 24 February 2020, given that the application was not lodged with owner’s consent from Roads and Maritime Services; and

- Building certificate application BC/2020/20 for a fence along the wharf frontage and fixed umbrellas was refused on 3 April 2020, as the unauthorised works were deemed to have an unacceptable heritage impact on the significance of the subject heritage item.

Amended proposal

The application was amended by the applicant on 17 March 2020 in accordance with Clause 55 of the Environmental Planning and Assessment Regulation, 2000. This amendment was to clarify that the proposal does not seek consent for any existing works that have been undertaken on the site without development consent.

Compliance Action

The site is subject to an ongoing compliance action, summarised below, which is still under investigation and is relevant to the subject application.
A notice of intention to give an order pursuant to Division 9.3, Schedule 5, Clause 8 of the Environmental Planning and Assessment Act, 1979 was issued to the owner of the site, Roads and Maritime Services, on 4 September 2019.

It outlines that inspections of the site by a City of Sydney investigator on 19 July 2019 and 12 August 2019 identified the erection of the following structures on Pier One, to the rear of the subject address, without consent:

- Five large shade structures with associated seating;
- Two pergola structures with associated seating;
- Five igloos with associated seating, four located on the pier and the fifth located on the pontoon to the west of the pier;
- Five smaller shade structures to the south end of the pier;
- Two smaller shade structures with seating;
- Additional outdoor seating and artificial grass at the most northern end of the pier; and
- A metal fence that runs the length of the western edge of the pier adjacent to the above structures.

The notice is still active, however an order has not yet been given to Roads and Maritime Services.

**Environmental Planning and Assessment Act 1979**

**Economic, social and environmental impacts**

The application has been assessed under Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, including consideration of the following matters:

(a) **Legislation**

**Heritage Act 1977**

The NSW State Heritage Register identifies the Walsh Bay Wharves Precinct (SHR Item Number 00559), within which the site is located, as a State significant heritage item.

As an Integrated Development Application requiring approval under the *Heritage Act 1977*, a copy of the application was referred to the Heritage Council of New South Wales on 26 November 2019 on the New South Wales Planning Portal, in accordance with Clause 66 of the *Environmental Planning and Assessment Regulation, 2000.*
In correspondence dated 22 January 2020, the Heritage Council of New South Wales was advised that the public exhibition of the application had concluded and that four submissions had been received by the City, in accordance with Clause 69 of the Environmental Planning and Assessment Regulation, 2000.

A copy of the amended application received by the City on 17 March 2020 was referred to the Heritage Council of New South Wales on that date.

On 6 April 2020, correspondence was received by the City from Heritage New South Wales, acting as a delegate of the Heritage Council of New South Wales, refusing to grant terms of approval to the application.

Section 4.47(4) of the Environmental Planning and Assessment Act, 1979 states the following:

(4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.

Given that the relevant approval body (Heritage New South Wales, as delegate for the Heritage Council of New South Wales in this instance) has advised that they will not grant approval, Council must refuse the application.

The reasons for refusal cited by the Heritage New South Wales are reproduced below:

- The proposal (a mixture of existing unauthorised works and additional installation of three bollards) would result in detrimental impact upon the aesthetic significance of the Walsh Bay Wharves Precinct;
- Additionally, the proposal would significantly limit the ability of the public to access and use this public space;
- The Walsh Bay Wharves Precinct is a place of State heritage significance that is protected on the State Heritage Register for its historical, aesthetic, social, research, rarity and representative values;
- The proposed outdoor seating and associated elements will have a detrimental impact on its aesthetic values, by introducing visual clutter;
- Furthermore, the proposal would significantly limit the ability of members of the public to access the outdoor wharf area, which is a public space;
- It is not possible to mitigate or minimise these impacts through conditions of approval; and
- The application will result in a permanent detrimental impact to the overall significance of the SHR item.
(b) Environmental planning instruments and development control plans

**Sydney Regional Environmental Plan No 16—Walsh Bay (SREP 16)**

SREP 16 enables the adaptive re-use of existing wharves, shore sheds and bond stores not required for port uses and ensures the protection of the historic area by establishing a conservation zone.

Subclause 16(a) of SREP 16 requires the consent authority to consider any opinions of the Central Sydney Planning Committee (CSPC).

The CSPC raised no objection to the proposal at a briefing held on 5 March 2020, subject to ensuring the maintenance of a 2 metre clear publicly accessible path of travel along the entire western edge of the wharf.

Subclause 16(b) of SREP 16 also requires Council to take into consideration any conditions imposed by the Heritage Council under Section 63 of the *Heritage Act, 1977*.

As discussed under the *Heritage Act 1977* heading above, Heritage New South Wales, as delegate for the Heritage Council, have refused to grant approval to the proposal.

As such, the proposed use of the western apron of the wharf for outdoor seating associated with the existing hotel is not considered acceptable in relation to either:

- The objectives of the Walsh Bay Conservation Zone in Clause 12 of the SREP 16; or
- The special provisions set out in Clause 13 of SREP 16 relating to the heritage significance of the Walsh Bay Conservation Zone.

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

The site is located within the designated hydrological catchment of Sydney Harbour and the Foreshores and Waterways Area and is subject to the provisions of the SREP 2005.

The Sydney Harbour Catchment, Foreshores and Waterways and Heritage conservation Planning Principles in Clauses 13, 14 and 15 of the SREP 2005 must be considered in the carrying out of development within the catchment. The key relevant principles include the following:

The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:

- Protect and improve hydrological, ecological and geomorphologic processes;
• Consider cumulative impacts of development within the catchment;
• Improve water quality of urban runoff and reduce quantity and frequency of urban run-off;
• Protect and rehabilitate riparian corridors and remnant vegetation;
• Development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour;
• The use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes;
• The heritage significance of particular heritage items in and around Sydney Harbour should be recognised and conserved; and
• Significant fabric, settings, relics and views associated with the heritage significance of heritage items should be conserved.

The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. The site is also located within in the Foreshores Waterways Area.

The relevant matters to be considered under the SREP 2005 for the proposed development are outlined below.

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<tr>
<th>Compliance Table</th>
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<tbody>
<tr>
<td>Development Control</td>
</tr>
<tr>
<td>13 Sydney Harbour Catchment</td>
</tr>
<tr>
<td>14 Foreshores and Waterways Area</td>
</tr>
<tr>
<td>15 Heritage conservation</td>
</tr>
<tr>
<td>22 Public access to, and use of, foreshores and waterways</td>
</tr>
</tbody>
</table>
Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (SHFWA DCP 2005)

The site is located within the Foreshores and Waterways Area. The proposal is to be considered under Part 5 ‘Design Guidelines for Land–Based Developments’ in SHFWA DCP 2005 as outlined below.

The proposal is inconsistent with the following requirements of Part 5 of the SHFWA DCP 2005:

- The development does not maintain sufficient public access along the western apron of the wharf from the public domain; and

- The proposal is not acceptable on heritage grounds, as discussed above under the Heritage Act 1977 heading.

The proposed development is therefore unacceptable and does not comply with the relevant provisions of the SHFWA DCP 2005.

Sydney Local Environmental Plan 2012 (SLEP 2012)

The SLEP 2012 does not apply to the subject site.

Sydney Development Control Plan 2012 (SDCP 2012)

The relevant matters to be considered under the SDCP 2012 for the proposed development are outlined in the table provided below.

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### Compliance Table

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<thead>
<tr>
<th>Development Control</th>
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<tbody>
<tr>
<td>Division 3 Foreshores and Waterways Planning and Development Advisory Committee</td>
<td>Not applicable</td>
<td>The proposed development was not required to be referred to the Foreshores and Waterways Planning and Development Advisory Committee, as it does not comprise any development listed under Schedule 2 of the SREP 2005.</td>
</tr>
<tr>
<td>Part 5 Heritage provisions</td>
<td>No</td>
<td>The proposal is not acceptable on heritage grounds, as discussed above under the Heritage Act 1977 heading.</td>
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</table>
### 3. General Provisions

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<tr>
<th>Development Control</th>
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</tr>
</thead>
<tbody>
<tr>
<td>3.1 Public Domain Elements</td>
<td>No</td>
<td>The proposal does not maintain sufficient public pedestrian access along the western apron of the wharf from the public domain to Hickson Road.</td>
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<tr>
<td>3.2 Defining the Public Domain</td>
<td></td>
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<tr>
<td>3.5 Urban Ecology</td>
<td>Yes</td>
<td>The proposal does not involve the removal of any trees and would not adversely impact on the local urban ecology.</td>
</tr>
<tr>
<td>3.9 Heritage</td>
<td>No</td>
<td>The subject site is identified as being part of a State Heritage item listed on the State Heritage Register Walsh Bay Wharves Precinct (SHR Item Number 00559). Correspondence received on 6 April 2020 by the City from Heritage New South Wales, as delegate for the Heritage Council of New South Wales, refused the granting of terms of approval to the application. As a result, Council must refuse the application. Refer to the further discussion and assessment provided below under the Issues heading.</td>
</tr>
<tr>
<td>3.12 Accessible Design</td>
<td>Yes</td>
<td>If the proposal had been recommended for approval, a condition would have been recommended for the proposal to provide access and facilities for persons with disabilities in accordance with Section 3.12 of the SDCP 2012.</td>
</tr>
<tr>
<td>3.13 Social and Environmental Responsibilities</td>
<td>Yes</td>
<td>The proposal provides adequate passive surveillance and is generally designed in accordance with the ‘Crime Prevention Through Environmental Design’ principles.</td>
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</thead>
<tbody>
<tr>
<td>3.14 Waste</td>
<td>Yes</td>
<td>If the proposal had been recommended for approval, a condition would have been recommended for the proposal to comply with the relevant provisions of the City of Sydney Code for Guidelines for Waste Management in New Developments.</td>
</tr>
<tr>
<td>3.15 Late Night Trading Management</td>
<td>Yes</td>
<td>The site is identified as a ‘Category A High Impact Premises’ and being located within a Local Centre late night trading area in Section 3.15 of the SDCP 2012. The proposed hours of operation are within the extended hours permissible for late night outdoor trading. If the proposal had been recommended for approval, a condition would have been recommended for compliance with the submitted Plan of Management (PoM) and a trial trading period for the extended outdoor trading hours.</td>
</tr>
</tbody>
</table>

**Issues**

**Heritage conservation**

The application seeks consent for the use of part of the outdoor area of a State-listed heritage item.

As detailed elsewhere in this assessment report, Heritage New South Wales as delegate for the Heritage Council of New South Wales refused to grant terms of approval for the application on 6 April 2020, due to adverse heritage impacts on the significance of the item.

In accordance with Section 4.47(4) of the *Environmental Planning and Assessment Act 1979*, given that the relevant approval body has advised that they will not grant approval, Council must refuse the application.

**c) Other impacts of the development**

It is considered that the proposal will have a detrimental effect relating to adverse impacts on the significance of the subject State-listed heritage item and the heritage values of the site, for the reasons set out in the attached Notice of Determination.
(d) Suitability of the site for the development

The site is not considered to be suitable for the development for the reasons set out in the attached Notice of Determination.

(e) Consultation

External referrals

The application was referred to Heritage New South Wales, as discussed above under the Heritage Act 1977 heading.

Correspondence was received by the City from the Heritage Council on 6 April 2020 refused the granting of terms of approval to the application.

Internal referrals

The application was discussed with, or referred to, the City's:

- Central Sydney Planning Committee;
- Director, City Planning, Development & Transport;
- Health and Building Unit;
- Licensed Premises Unit;
- Manager, Planning Assessments;
- Senior Heritage Specialist; and
- Urban Design and Heritage Manager.

The Central Sydney Planning Committee and the above officers raised no objection to the proposal, subject to the imposition of conditions.

Notification, advertising and delegation

The application constitutes integrated development and, as such, the application was notified and advertised for 30 days in accordance with the relevant provisions of Environmental Planning and Assessment Regulations, 2000.

A total of 123 properties were notified as a part of this process.

The City received four submissions in relation to the application during the exhibition period. The content of the submissions is summarised and addressed below.

(a) Could construction hours be limited to 9.00am to 5.00pm, so that nearby residents can sleep at night?

Response – Had the application been recommended for approval, the City’s standard hours of work and noise condition would have been imposed to limit construction hours to between 7.30am and 5.30pm on Mondays to Fridays,
between 7.30am and 3.30pm on Saturdays, and with no work on Sundays or public holidays.

(b) It appears that there are plans to temporarily block access to the public walking around the northern end of Pier 1 from time to time. Access should be maintained at all times.

(c) Both the existing unapproved seating and the proposed additional seating limit access to the wharf for the general public.

Response – As discussed elsewhere in this assessment report, the proposal does not sufficiently maintain public access along the western apron of the wharf.

(d) The proposal seeks for a "flexible" seating plan which once again could potentially be used to convey the feeling that there is no public access to the area.

Response – Noted. Had the application been recommended for approval, conditions would have been imposed requiring the submission of a detailed seating plan.

(e) The proposed bollards serve no purpose other than to reinforce the notion that this private land and that the general public is not welcome, there has never been vehicle access to this area except when used by the hotel itself.

Response – Noted. While the proposed removable bollards are considered to be acceptable as a pedestrian safety solution, as they match the existing bollards to the adjacent pier, they are unacceptable on heritage grounds as a part of the overall proposal.

(f) No details have been provided in relation to the bulk and scale of the proposed umbrellas, will they overhang the proposed 2 meter setback?

Response – Noted. Had the application been recommended for approval, conditions would have been imposed requiring the submission of details of all outdoor furniture, and for the furniture to be provided in accordance with the Walsh Bay Precinct Architectural Code.

(g) Seating for one hundred outdoor patrons will cause additional noise in the area which is also amplified as it is a water front venue.

Response – Noted. Had the application been recommended for approval, conditions relating to noise and premises management would have been imposed, in accordance with the recommendations of the City’s Health and Building Unit and Licensed Premises Unit.

(h) Plans shown in the application are inaccurate and seriously misleading, including:

• The Food Truck being incorrectly located;
No uses are indicated for the space adjacent to the Hickson Road footpath although it is currently used as a staff / service car park;

The two heritage cranes are not shown on the plan, although their bases and the tracks require protection;

The pedestrian path is effectively removed from the food truck to the northern end of the pier as only a 300 mm space remains between an open hotel room door and the seating area;

There is no mention of the two areas of plastic grass which cover the north and south ends of the walkway;

The existing steps at the northern end of the walkway are not shown;

Is the recently constructed enclosure just south of the main entry to remain?;

The nominal “clearway” of 2 metres will not provide comfortable clearance for two way pedestrian movement considering that much of the flow is made up of dog walkers, joggers, and pram wheelers;

The non-approved “shed” at southern end of hotel building and associated open air gas bottle and beer keg storage;

The entire length of the path is through the middle of an outdoor restaurant.

Response – The following is noted in response to each of the dot points reproduced above:

Development consent D/2018/165 for use of a licensed food truck at Pier One Hotel did not approve a specific location for the truck on the western apron of the wharf;

The application does not seek consent for use of the space at the southern end of the wharf;

Had the application been recommended for approval, a condition requiring amended drawings showing the crane gantries and tracks would have been imposed;

Had the application been recommended for approval, conditions would have been imposed to require the public path of travel to be maintained clear of any obstructions including doors to the hotel and the proposed seating area;

The application does not seek consent for the installation of artificial grass, nor is such an installation supported on planning or heritage grounds;
- Had the application been recommended for approval, a condition requiring amended drawings showing the existing stair at the northern end of the wharf would have been imposed;

- The application does not seek consent for any physical development work beyond the installation of the three removable bollards adjacent to Hickson Road at the southern end of the site;

- A minimum two metre path of travel is required under the provisions of the lease between Roads and Maritime Services and the hotel operator, with no discretion available to Council to require that it be widened;

- The application does not seek consent for the use of the subject shed, which has been referred to the City’s Compliance Unit as potential unauthorised works; and

- Had the application been recommended for approval, conditions requiring effective management of the outdoor dining area and maintenance of a clear path of travel would have been imposed.

(i) No assessment has been made of existing and future pedestrian movements around Pier One, particularly allowing for additional pedestrian use arising from the Walsh Bay Arts Precinct, now under construction.

Response – Consideration of existing and future pedestrian movements within the precinct lie beyond the scope of the assessment of the subject application.

(j) The Heritage Impact Statement (HIS) by Mod Urban Pty Ltd. is seriously inadequate, considering the wharf is a State Listed Heritage Item. The HIS does not address any of the matters listed above.

Response – The HIS submitted with the application has been reviewed by City planning and heritage staff and is considered sufficient for assessment purposes.

(e) Public Interest

For the reasons discussed elsewhere in this report, the application is not considered to be in the public interest and is not supported.

Financial implications

Section 61 contributions

The cost of the development is under $200,000. The development is therefore not subject to a levy under the Central Sydney Development Contributions Plan 2013.

Conclusion

Having regard to all of the above matters, it is considered that the proposal does not satisfy the relevant strategy, objectives and provisions of the SREP 16, SREP 2005
and the SDCP 2012, is not acceptable and is recommended for refusal as shown in the attached Notice of Determination.

The application is refused under the delegated authority of Council.

The undersigned declare, to the best of their knowledge that they have no interest, pecuniary or otherwise, in this development application or persons associated with it and have provided an impartial assessment.

Report prepared by

[Signature]

David Reynolds
Senior Planner

Application determined by

[Signature]

Michael Soo
Senior Area Planning Manager