

HUGO'S

DA 233/2013

Application for seating on the deck at Manly Wharf

The application is to construct banquet seating and a waiters station, and install shade umbrellas on the triangular portion of the existing deck. The proposal requires the adjustment of the existing timber steps from the main deck, and blocking off (but not altering) the timber steps to the lower level. It also includes the installation of a batten screen on the eastern side as a back to the banquet seating. There does not appear to be any "enclosure" as such, the reference to enclosure appears to be the backing to the banquet seats. It is unclear from the photomontages whether the backing is all around the deck or just at the existing lower steps.

Note : Hugo's already has a sub lease over the space, but cannot use it without consent from the consent authority.

Manly Wharf falls under the Sydney Regional Environment Plan (SREP) not the Manly Local Environment Plan (Manly LEP). Manly Council is the consent authority, but must deal with it under the SREP and not the LEP. Local controls such as Manly Late Night Venue DCP, Parking DCP and other local DCPs , although briefly discussed in the SEE, do not formally apply.

Manly Wharf is listed under the Heritage Act on the State Heritage Register, as well as on the Manly Heritage Map. It will depend on the reasons for heritage listing as to how the application will be considered. It is likely that the wharf is listed because of its social/public use rather than for architectural merit. If this is the case, it could be argued that the proposal is for an intensification of that use and therefore positive. The physical improvements can be "made good" to restore the deck to its original condition should it be so required, so rejection on architectural heritage grounds would be unlikely. The SEE states no impact!

Current signage on this deck prohibits alcohol. Hugo's is a licenced restaurant and expectations will be that the new area would serve alcohol and therefore application will need to be made to licence the area.

Current signage prohibits diving from the deck. The application includes a number of photographs of teenagers jumping/diving from the deck, to support the argument that by taking possession of the deck, the activity would cease.

The site is adjacent to a sea grass bed. It is unlikely that the proposal would impact the sea grass any more than the existing. The umbrellas are on the north side of the building so shading is not likely to be an issue.

The SEE does not address any of the following issues:

Further alienation of existing public space.

As an outdoor area, it will be used by smokers.

Smokers drop cigarette butts into the water which can injure penguins.

Safety concerns with passers by having to dodge waiters with hot food and glasses of wine.

Congestion with people waiting to be seated, and with people going through "staged departure"

The discomfort of ferry passengers having to walk between two noisy venues (as with the Wharf Bar) - hardly a family friendly environment.

Because of the large number of objections it is likely that the application will go before the MIAP. It is also possible because of the large number of objections, that MIAP will reject the application on the grounds that is not in the public interest. An appeal to the Land and Environment Court will in all likelihood be upheld because the SEE concludes that there are no issues with the SREP.

I make the following comments on the SEE:

**Clause 18(2) of the SREP** provides that development may only be carried out if the consent authority is satisfied that the development:

*c) will not otherwise have any adverse impacts.*

There are several serious impacts that the proposal will have as follows :

- Safety concerns with passers by having to dodge waiters with hot food and glasses of wine
- Congestion with people waiting to be seated, and with people going through "staged departure"

- Further alienation of existing public space
- As an outdoor area it will be used by smokers
- Smokers drop cigarette butts into the water which can injure/kill penguins.
- The discomfort of ferry passengers having to walk between two noisy venues (as with the Wharf Bar)
- further deterioration of a family friendly environment
- no provision of additional parking for additional diners. Diners in Manly DO NOT all travel by ferry or bus

**The aims and objectives of the Harbour SREP are as follows:-**

*(f) to ensure accessibility to and along Sydney Harbour and its foreshores,*

The proposal clearly does not ensure public accessibility to Sydney Harbour Foreshores, but rather ensures that accessibility is blocked to the general public, and is therefore inconsistent with this aim and objective. This is confirmed in the SEE "consideration" of the late night trading venue DCP under "Access to Public Spaces" which states :

*The outdoor dining area is at a different level to and contains balustrading around the perimeter of the area to delineate the private dining area and the pedestrian circulation space. This helps define the public and private areas.*

Clearly the intention of the proponent is to establish "private areas" not available to the public

**The SREP adopts the following principles :**

*"(a) Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*

*. (b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*

*. (c) protection of the natural assets of Sydney Harbour has precedence over all other interests."*

The proposal is inconsistent with the above principles. It does not protect for the public good but rather is intended for use by other than the general public. The proposal gives precedence to the private good over the public good, and the interests of the proponent will take precedence over the natural assets of Sydney Harbour.

**Clause 22 of the SREP 2005 states as follows:-**

*"The matters to be taken into consideration in relation to public access to, and use of, the foreshores and waterways are as follows:-*

*(a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,*

and....

*(c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land,*

The proposal does not maintain and improve public access to the foreshore but to the contrary restricts access to private use, and does not provide appropriate tenure and management mechanisms to safeguard public access and public use of that land.

**Clause 25 of the SREP 2005 states as follows:**

*"The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows:*

*(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores."*

The proposal clearly detracts from the existing open, freely accessible areas that are used by visiting and local families that cannot afford to eat at an expensive restaurant. This is a diminution of the existing character of the waterway and adjoining beachside foreshores.

**Clause 26 of the Harbour SREP states as follows:-**

*"The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows:*

*(c) the cumulative impact of development on views should be minimised."*

The shade structures, including heating devices for winter warming, and seating will have an adverse impact on the views of everybody walking along this section of the boardwalk. At present the feeling is one of openness and freedom. After a hard day at the office, it is a wonderful experience to walk along the boardwalk adjacent the waters of the harbour on the way home. This proposal will completely change that feeling by restricting the views of the water, creating a funnel through which one must walk surrounded by noisy drinkers, diners and umbrellas. The proposal will have a significant impact.

Many of the assessments in the SEE on the Sydney Harbour Foreshores DCP are correspondingly incorrect.

The SEE under clause 5.6 states:

#### **5.6.2 Circulation, safety and convenience**

*Pedestrians will still be able to circulate on the concrete paved promenade, which will remain unobstructed.*

The promenade will experience considerable obstruction with conflict between servers with plates of hot food, trays of wine glasses and handfulls of dirty plates. There will be conflict with diners waiting for a table and with diners departing in groups.  
and...

#### **5.6.3 Barriers**

*The outdoor dining area is separated from the concrete paved promenade by a metal balustrade and by a level difference. There will be no conflict between diners and pedestrians.*

Of course there will be no conflict (physical) between diners and pedestrians, the conflict will be between servers and departing/arriving patrons as above. The conflict will be with a noisy occupied environment as opposed to an unrestricted low occupation environment.

The SEE under section 6.5 states :

#### **6.5 Section 79C(1)(e) - Public Interest**

*Section 79C(1)(e) requires the consent authority to consider:*

*"(e) the public interest."*

This proposal is in the interests of the proponent and clearly not in the best interests of the general public.

In my opinion, regardless of the holes in the SEE, if Hugos is prepared to go through the process, they will get approval through the LEC unless the best lawyer in Sydney is appointed to represent Manly Council.

Roger James 20/12/2013

