

**Item 4.****Development Application: 4 Macquarie Street, Sydney - D/2019/1427****File No.:** D/2019/1427**Summary****Date of Submission:** 12 December 2019**Applicant:** City of Sydney**Artist:** Judy Watson and Urban Art Projects**Owner:** Trustees of Royal Botanic Gardens & Domain Trust**Cost of Works:** \$1,375,000.00

**Zoning:** The site is zoned RE1 Public Recreation. The proposed development is defined as 'public art' which is permissible with consent pursuant to Clause 7.26 of Sydney Local Environmental Plan 2012 (SLEP 2012).

**Proposal Summary:** The proposal is for the construction of a public art sculpture known as the *bara* Monument for the Eora within the Tarpeian Lawn of the Royal Botanic Gardens. The proposed public artwork consists of a permanent installation of a *bara* shell hook (or fish hook) in an off-white marble and to a height of approximately 6.3m and 5.6m in length. The public artwork is proposed to be illuminated.

The public artwork is proposed to be delivered by the City of Sydney as part of the 'Eora Journey: Recognition in the Public Domain' program which was endorsed by the elected Council on 25 June 2012. The proposed public artwork is the fourth public art project from seven that are to be delivered by the City as part of the program.

The application is referred to the Local Planning Panel for determination as the City of Sydney is the applicant and more than one submission objecting to the application was received.

The application is Integrated Development requiring the approval of the Heritage Council of NSW under Section 58 of the Heritage Act 1977. The Heritage Council of NSW issued General Terms of Approval on 3 April 2020.

In accordance with the Environmental Planning and Assessment Regulation 2000 and the City's Community Participation Plan 2019, the application was advertised for a period of 28 days from 16 January to 14 February 2020. A total of eight submissions were received. Three submissions are in support of the application and were received from the Sydney Opera House, the Royal Botanic Gardens and a member of the community. The remaining five submissions object to the proposal and raise key concerns including visual impact, heritage impact, size of the monument, incorrect location for the public artwork, encroachment onto public open space used for passive recreation, costs, impact on trees and insufficient documentation. These issues have been addressed in this report and conditions recommended to address the issues raised where appropriate.

The proposal is consistent with the relevant objectives and provisions of the Heritage Act 1977, Sydney Harbour Regional Environmental Plan (Sydney Harbour Catchment) 2005, Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012, subject to conditions.

Overall the proposal will not result in unreasonable adverse environmental planning impacts and will make a positive contribution to the public domain.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) The Heritage Act 1977
- (iii) Sydney Harbour Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (iv) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (v) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
- (vi) Central Sydney Development Contributions Plan 2013

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Heritage Impact Statement
- D. Visual Impact Assessment
- E. Lighting Report

**Recommendation**

It is resolved that consent be granted to Development Application No. D/2019/1427 subject to the conditions set out in Attachment A to the subject report.

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

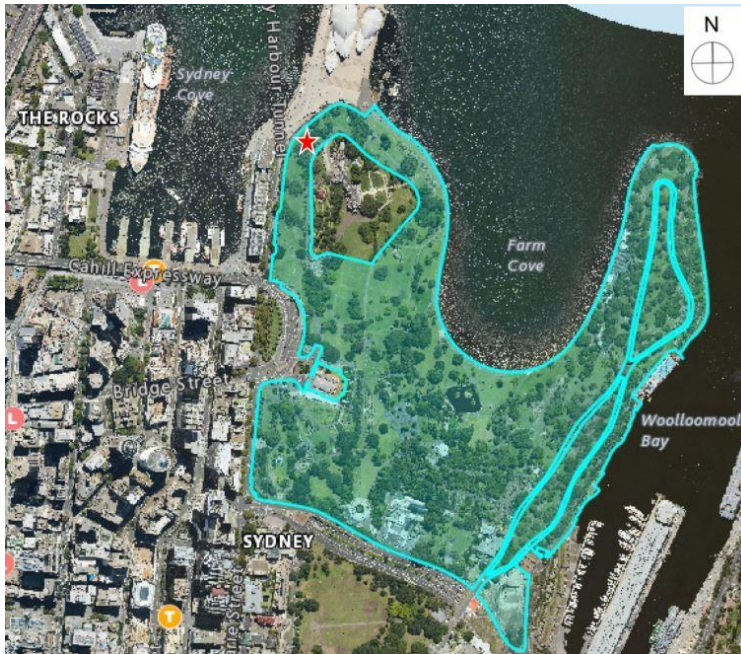
- (A) The proposed development is consistent with the objective of the RE1 Public recreation zone and Clause 7.26 'Public Art' of Sydney Local Environmental Plan 2012;
- (B) The proposed development will not have an adverse impact on the heritage significance of the Royal Botanic Gardens and the Sydney Opera House and is consistent with the relevant objectives and provisions of Heritage Act 1977, Sydney Harbour Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Clause 5.10 'Heritage Conservation' of Sydney Local Environmental Plan 2012.
- (C) Subject to conditions, the proposed development will not result in adverse amenity impacts on the surrounding area and will result in a positive contribution to the public domain.
- (D) For the reasons above and as outlined in this report, the proposed development is in the public interest.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by Council's planning assessment staff on 21 March 2020 and 1 May 2020.
2. The site selected for the proposed installation of the public artwork is the Tarpeian Lawn within the grounds of the Royal Botanic Gardens. The Royal Botanic Gardens is legally described as Lot 32 in Deposited Plan 39586 with a property address of 4 Macquarie Street, Sydney. The Tarpeian Lawn is located in the northern portion of the Royal Botanic Gardens. The specific area of the Tarpeian Lawn where the public artwork is proposed is located approximately 150m south of the Sydney Opera House and 100m west of the Botanic Gardens harbour foreshore (hereon referred to as the 'subject site').
3. The subject site is situated on top of a sandstone escarpment elevating the site above the Sydney Opera House promenade by approximately 7.1m. The stone escarpment wraps around the south-west continuing along Macquarie Street and is surmounted by a palisade fence with a bitumen footpath located inside the fence following the alignment of the escarpment fence. The base of the proposed public artwork is located approximately 6m from the footpath. The subject site is surrounded by a number of mature trees. The subject site can be directly accessed from the promenade via stairs known as the 'Tarpeian steps' which are located approximately 100m north-east of the site.
4. Located approximately 50m north-west and within the Sydney Opera House promenade is the entrance to an underground car park. Located approximately 55m south-west of the subject site is a 14 storey mixed use building (1 Macquarie Street) containing retail premises on the lower levels with residential apartments above commonly known as the Bennelong Apartments. Government House, a State heritage item, is located approximately 110m south-west of the subject site.

5. Photos of the site and surrounding area are provided in Figures 1 to 11 below.



**Figure 1:** Aerial image of subject site and surrounding area. The site is shaded blue and the approximate location of the proposed monument is indicated with a red star.



**Figure 2:** Closer aerial view of the site. The approximate location of the proposed monument is indicated with a red star.





**Figure 3:** View from the northern end of the Sydney Cove Passenger Terminal, looking east. Approximate location of monument indicated with arrow.



**Figure 4:** View from the southern end of the Sydney Cove Passenger Terminal, looking east.



**Figure 5:** telephoto view from the southern end of the Sydney Cove Passenger Terminal, looking east.

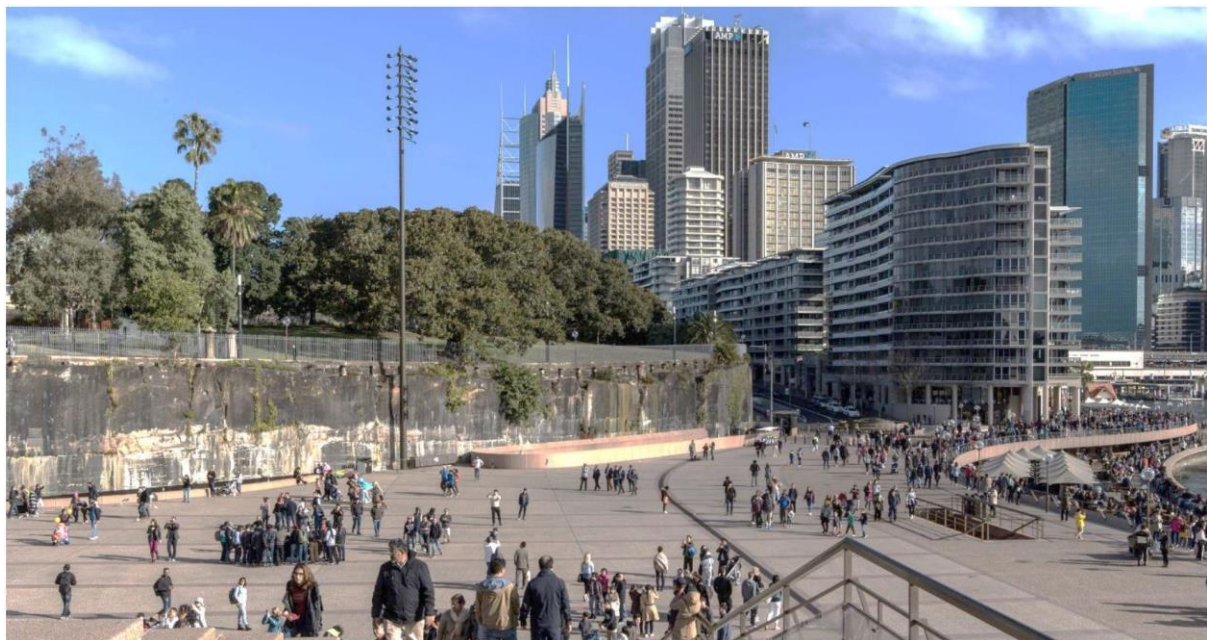


**Figure 6:** View from in front of the building at 1 Macquarie Street looking east (residential balconies seen on the right-hand side). Approximate location of monument indicated with arrow.





**Figure 7:** View from the western side of the Sydney Opera House steps, looking south. Approximate location of monument indicated with arrow.



**Figure 8:** View from the front steps of the Sydney Opera House, looking south (source: City Plan).





**Figure 9:** Location of the proposed monument viewed from the Tarpeian Lawn in The Royal Botanic Garden, looking north



**Figure 10:** Location of the proposed monument viewed from the Tarpeian Lawn in The Royal Botanic Garden, looking south-west. Bennelong Apartments can be seen from the subject site.





**Figure 11:** View of subject site, looking south

## Proposal

6. The application seeks consent for public artwork proposed to be delivered by the City of Sydney ("the City") as part of the 'Eora Journey: Recognition in the Public Domain' program ("the program") which was endorsed by the elected Council on 25 June 2012. The proposed artwork is designed by Australia artist Judy Watson and Urban Art Projects and is the fourth public art project from seven that are to be delivered by the City as part of the program.
7. The proposed public artwork is referred to as the '*bara* Monument of the Eora' and consists of:
  - (a) Permanent installation of a *bara* shell hook (or fish hook) to a height of approximately 6.3m and 5.6m in length;
  - (b) The artwork will comprise off-white Carrara marble and will include a mix of rough and smooth surfaces;
  - (c) The artwork will include in-ground support comprising a 1m concrete footing and a 3.5m in-ground strut;
  - (d) Mulch will surround the base of the artwork and extend 1.5m outwards around the sculpture; and

- (e) Installation of a lighting fixture at ground level in front of the artwork for illumination of the artwork and programmed to mirror the various phases of the moon.
8. Renders and drawings of the proposal are provided in Figures 12-16. A full set of drawings is provided at Attachment B.

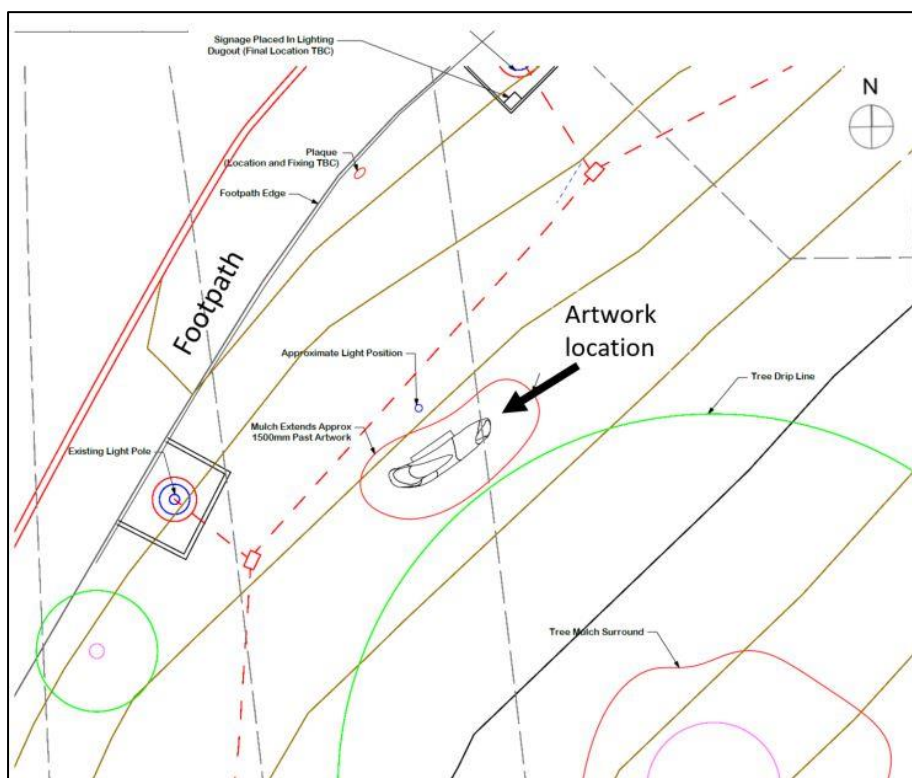


**Figure 12:** Render of the proposed Monument, northern view from the Tarpeian Lawn

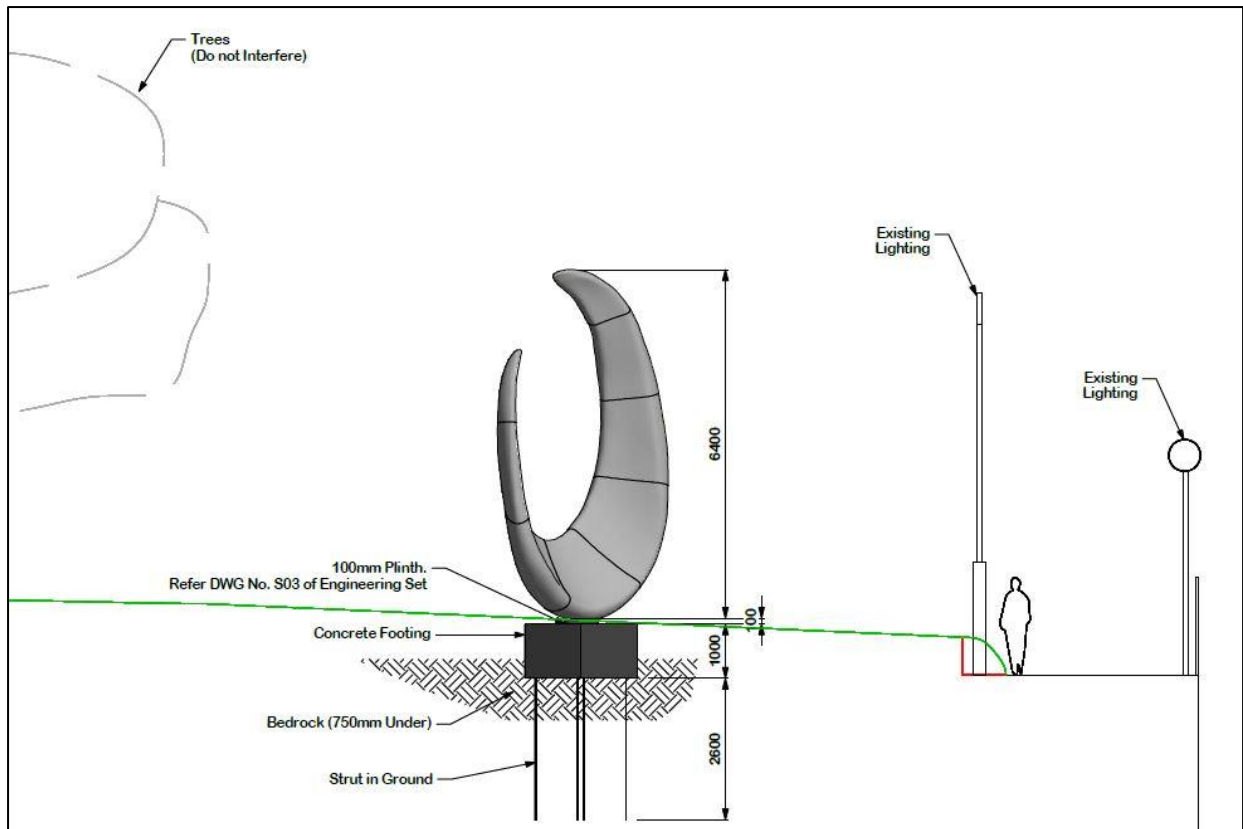




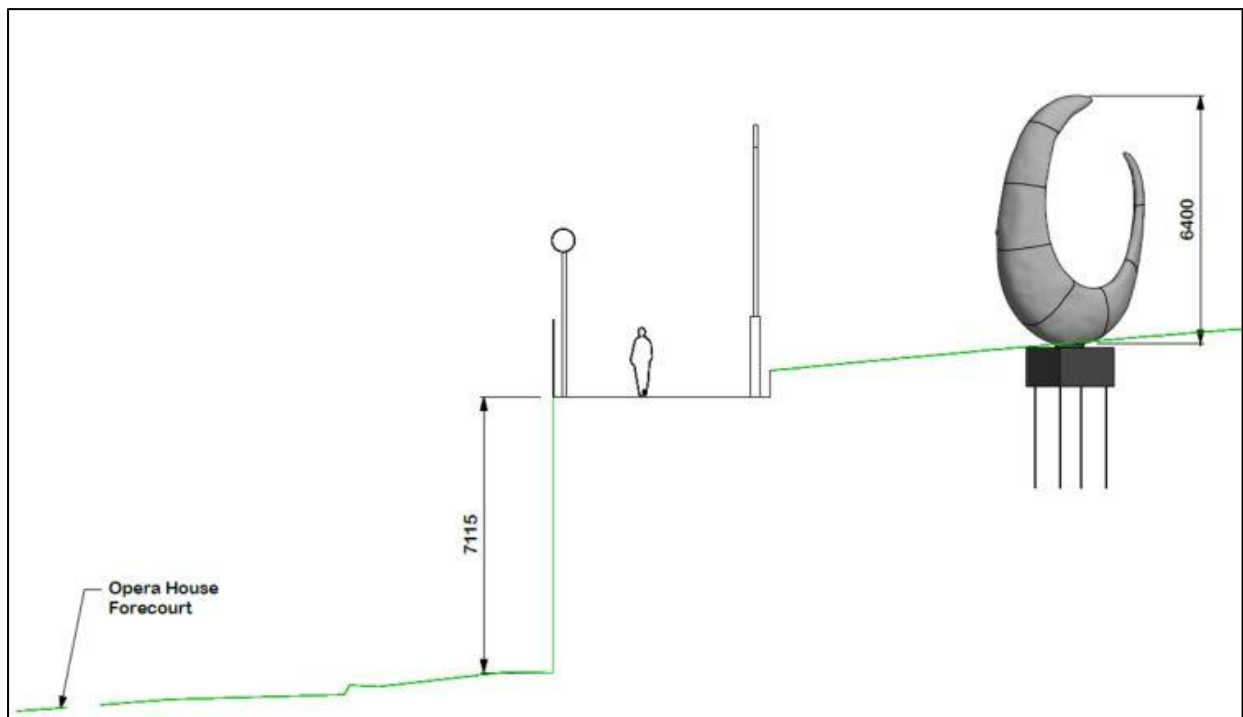
**Figure 13:** Render of the proposed Monument, southern view from the Tarpeian Lawn



**Figure 14:** Site plan



**Figure 15:** Southern elevation / section



**Figure 16:** Northern elevation / section

## History Relevant to the Development Application

9. The Eora Journey was endorsed by Council in June 2008 as one of the Ten Project Ideas in the Sustainable Sydney 2030 plan.
10. The Monument for the Eora project idea was first endorsed by Council as per the International Review of Interpretation Practice on 5 December 2011. An Eora Journey Public Art Working Group was established as part of the Council recommendations in 2011 and Hetti Perkins was appointed Eora Journey Curatorial Advisor as part of these recommendations. This Working Group included the Lord Mayor, a Councillor, relevant City staff and members of the City's Aboriginal and Torres Strait Islander Advisory Panel and the Public Art Advisory Panel.
11. The Working Group oversaw the development of the Eora Journey public art projects from 2012 until 2016. Since that time the Aboriginal and Torres Strait Islander Advisory Panel and Public Art Advisory Panel have regularly been updated on the progress of Eora Journey projects by the Eora Journey Curatorial Advisor Hetti Perkins.
12. Funding for the Monument for the Eora was endorsed by Council on 25 June 2012 as part of the Eora Journey Recognition in the Public Domain Implementation Plan.
13. The *bara* Monument for the Eora concept proposed by Judy Watson was selected after a two-stage competitive tender process and endorsed by Council on 15 August 2016.
14. On 14 June 2018, Council presented the concept design for the proposed *bara* monument to the Sydney Opera House and members of its Conservation Council, and the Eminent Architects Panel (EAP). The EAP subsequently provided written support for the proposal, with an expressed preference for white marble, in-ground lighting and 'the ambition to modelling moonlighting as its theme'. These features have been retained within the current design. The Sydney Opera House provided in-principle support for the design.
15. In August 2018, the Governor of NSW announced the artwork on-site at the Tarpeian Precinct Lawn. Following this announcement, Council received letters of support from a number of Indigenous community leaders, including Professor Dennis Foley (University of Canberra), Professor Larissa Behrendt (University of Technology, Sydney), Bronwyn Penrith (Chairperson, Mudgin-gal Aboriginal Corporation) and Beau James (Manager of Indigenous Programs, Australian Maritime Museum).
16. On 29 October 2019, the final design *bara* Monument for the Eora (as proposed under this application) was presented to the Public Art Advisory Panel where it was supported.
17. The final design was included in the Eora Journey - Harbour Walk Storytelling Report endorsed by Council in December 2019.

## Economic/Social/Environmental Impacts

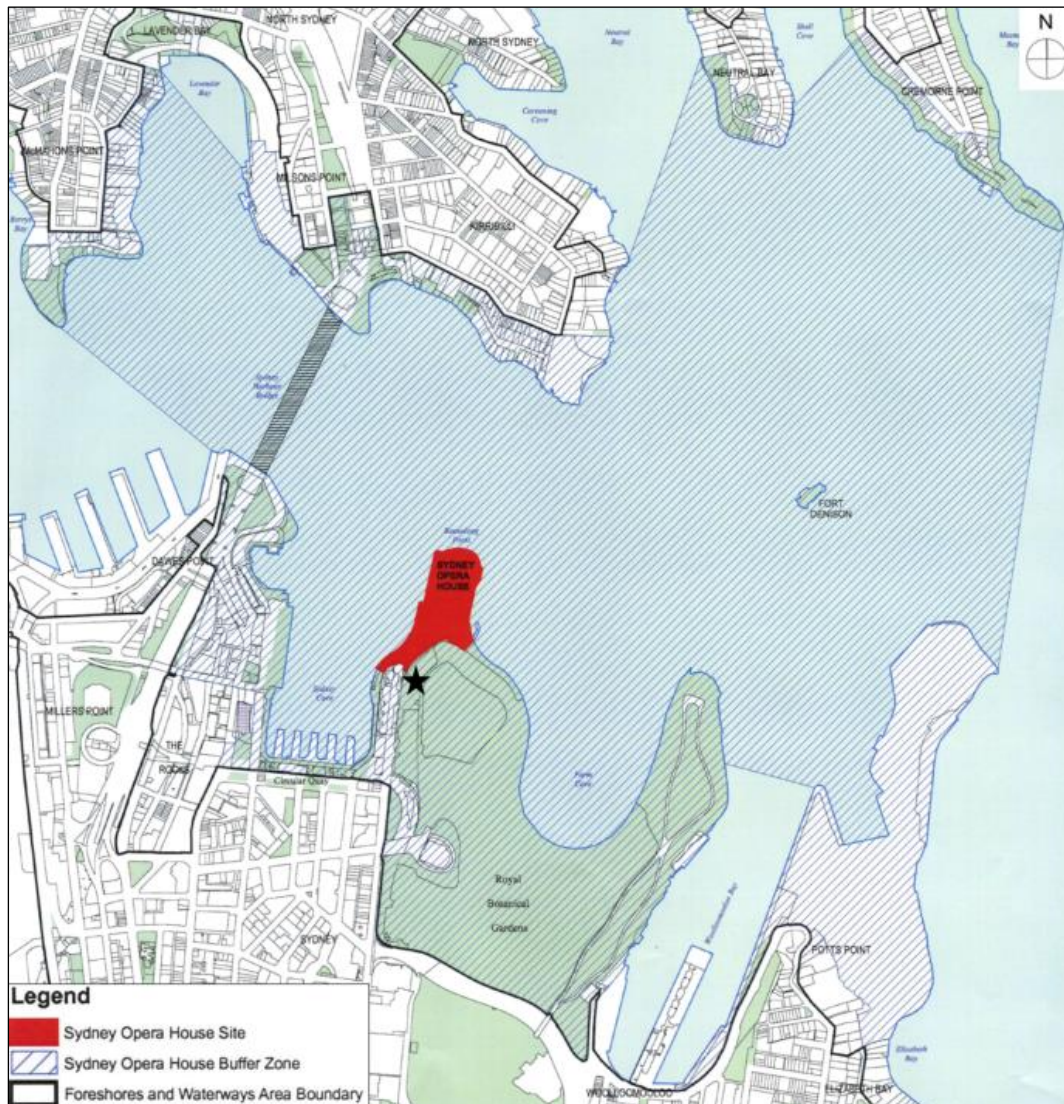
18. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
  - (a) Environmental Planning Instruments and DCPs.



## Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

### Division 3A Sydney Opera House

19. The location of the proposed artwork is located within the Sydney Opera House buffer zone to which Division 3A applies, as shown in Figure 17.



**Figure 17:** Sydney Opera House Buffer Zone Map (approximate location of proposed development indicated with a star).

20. This division requires matters to be taken into consideration for development within the buffer zone including preservation of views and vistas of the Sydney Opera House and its world value heritage value and the need for development to avoid any diminution of the visual prominence of the Sydney Opera House. However, section 58C 'Minor development' of this division states that these provisions do not apply for the installation of artwork in any open space. Notwithstanding, the proposed development is considered to respect the world heritage value of the Sydney Opera House and does not diminish views, vistas or visual prominence of the Sydney Opera House.
21. Overall, the proposed development is consistent with the relevant objectives and provisions contained within the deemed SEPP.



**Sydney Local Environmental Plan 2012**

22. The site is located within the RE1 Public Recreation zone. The proposed development is defined as 'public art' which is permitted with consent pursuant to Clause 7.26 of SLEP 2012.
23. The relevant matters to be considered under SLEP 2012 for the proposed development are outlined below.

## Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	Not applicable	<p>The site is not subject to a maximum permitted height control.</p> <p>The proposed height of the sculpture is approximately 6.4m. The appropriateness of the height is discussed further within this report.</p>
5.10 Heritage conservation	Yes	The subject site is a State listed heritage item and is located in close proximity to a number of State and Local heritage items including the Sydney Opera House which is also of national and world heritage value. Refer to the 'Issues' section of this report for discussion.
6.21 Design excellence	Yes	The proposal will make a positive contribution to the public domain. The artwork is constructed from high quality and durable materials suitable for an outdoor public artwork. The proposal respects the significance of the area which is detailed further in the 'Issues' section. The proposed development is considered to exhibit design excellence.
7.14 Acid Sulphate Soils	Yes	The site is mapped as containing class Class 5 Acid Sulphate Soil and is located less than 500m metres from adjacent Class 1 Acid Sulphate Soil. The works involve the disturbance of less than 1 tonne of soil and are not likely to lower the water table. Accordingly, the proposed development complies with this provision.

Development Control	Compliance	Comment
7.26 Public Art	Yes	<p>Clause 7.26 of SLEP 2012 permits public artwork in the RE1 Public Recreation zone subject to compliance with subclause (2). The proposed development complies with this provision in that it:</p> <p>(a) does not involve the display of an advertisement;</p> <p>(b) will not increase the gross floor area of any building;</p> <p>(c) will not have a significant adverse impact on any heritage conservation area, heritage item or place of heritage significance (as detailed in the 'Issues' section of this report);</p> <p>(d) will not have a significant adverse impact on the amenity of the public domain including overshadowing, wind or noise impacts; and</p> <p>(e) is not proposed to be carried out on land in which a plan of management applies (within the meaning of the Local Government Act 1993).</p> <p>The proposal therefore satisfies this provision and is permissible with consent.</p>

### Sydney Development Control Plan 2012

24. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

3. General Provisions	Compliance	Comment
<p>3.1 Public Domain Elements</p> <p>3.1.5 Public art</p>	Yes	<p>The proposed development will make a positive contribution to the public domain and is discussed further in the 'Issues' section of this report.</p>

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes - subject to conditions	The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology. Conditions are recommended during the construction phase to ensure the existing trees in close proximity to the location of the development are protected.
3.9 Heritage	Yes	Refer to the 'Issues' section for discussion.
3.14 Waste	Yes - subject to condition	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development in regard to construction waste.

## Issues

### Heritage and Visual Impact

25. The Royal Botanic Gardens and Domain is a heritage item of State Significance listed on the State Heritage Register (SHR) under the NSW *Heritage Act 1977* (SHR no. 01070) which includes the subject site (Tarpeian Lawn). The Tarpeian Lawn forms part of the Tarpeian Precinct. The Statement of Significance for the Tarpeian Precinct, as described in the subject site's Conservation Management Plan, is as follows:

*The Tarpeian Precinct as a whole is of Exceptional significance.*

*It forms part of the original Government House grounds and, later, the Inner Domain. It includes the dramatic sandstone cliff face called the Tarpeian Way, a major landscape element that is an important part of the setting of the Sydney Opera House.*

*Though compromised by the Cahill Expressway and the entrance to the Harbour Tunnel, the precinct retains the character of a consciously designed landscape, with rows of *Phoenix canariensis* its defining feature.*

26. The proposed development is consistent with the Conservation Management Plan (CMP) for the subject site. A Heritage Impact Statement (HIS) was submitted with the application and is provided at Attachment C. The detailed assessment provided against the relevant objectives of the CMP is provided within the HIS. Council officers agree with the assessment made and consider that the proposed development is consistent with the CMP.
27. In addition, the site is located in close proximity to the Sydney Opera House (SHR No. 01685) and Government House, Moveable Heritage Collection and Gardens (SHR No. 01872) located at Macquarie Street, Bennelong Street. These heritage items are also listed under Schedule 5 'Environmental Heritage of SLEP 2012.

28. The Sydney Opera House is included on the National Heritage List and is located within the World Heritage UNESCO buffer zone included as part of the listing. The Sydney Opera House is located approximately 150m north of the location of the proposed artwork with a clear line of sight of the Sydney Opera House from the subject site.
29. One of the reasons this particular site was selected for the proposed artwork was due to its visual prominence being located on the top of an escarpment and proximity to the Bennelong Point peninsula.
30. A Visual Impact Assessment was submitted with the application and is provided at Attachment D. Existing and proposed view points from the Visual Impact Assessment are provided in Figures 18 - 23:

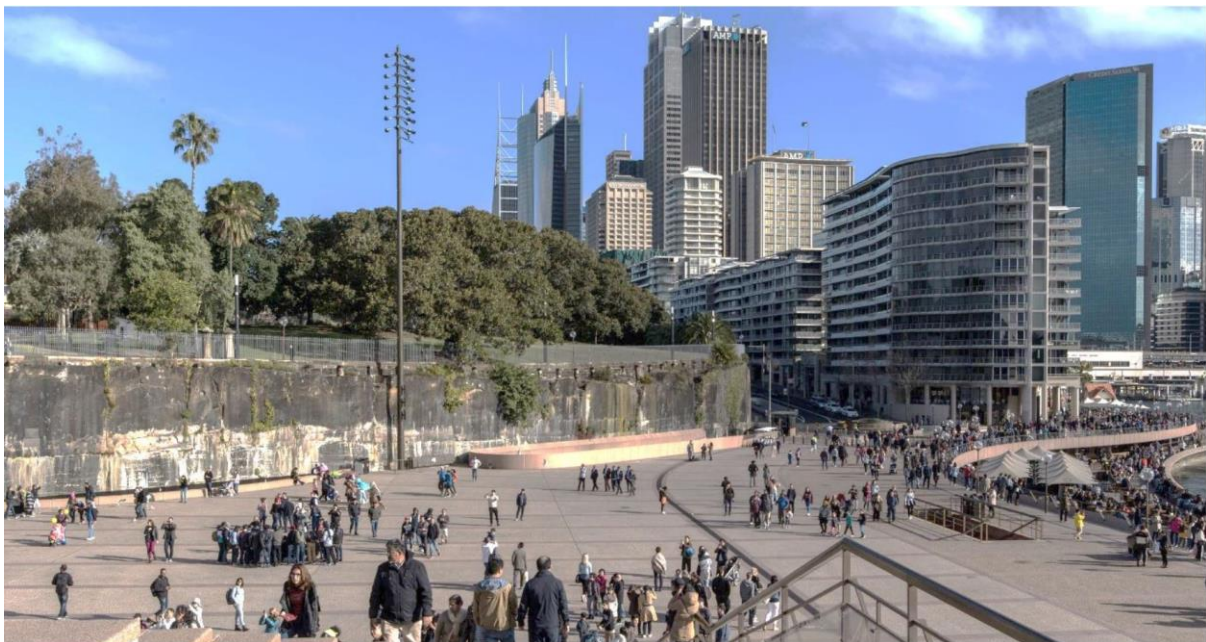


**Figure 18:** Existing view from the Overseas Passenger Terminal (looking east)



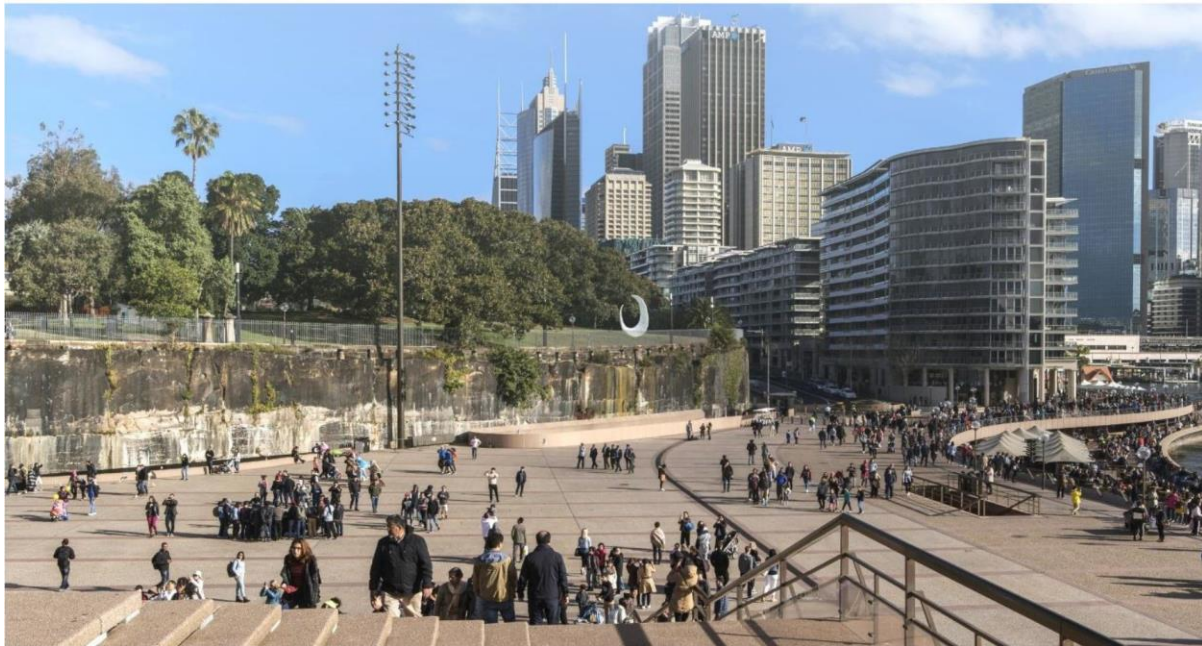


**Figure 19:** Proposed view from the Overseas Passenger Terminal (looking east)

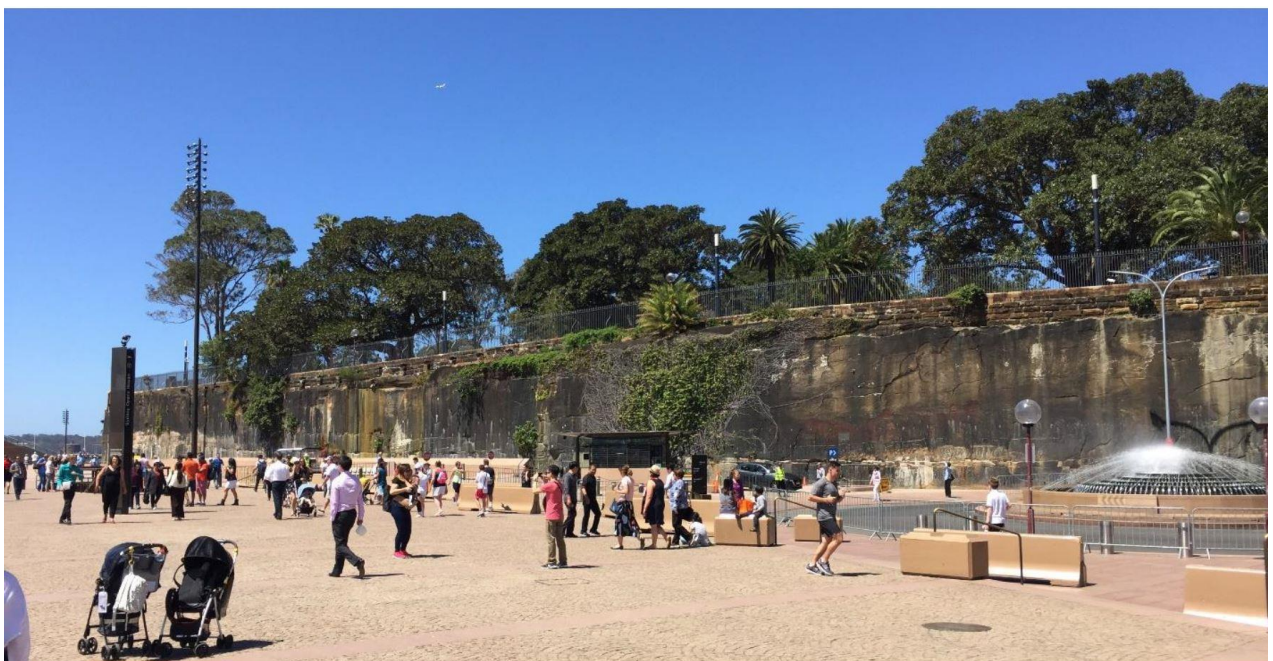


**Figure 20:** Existing view from the steps of the Sydney Opera House (looking south)





**Figure 21:** Proposed view from the steps of the Sydney Opera House (looking south)



**Figure 22:** Existing view from the Sydney Opera House promenade (looking east)



**Figure 23:** Proposed view from the Sydney Opera House promenade (looking east)

31. As seen in the images above, the proposed public artwork will be highly visible from the public domain. While the public artwork will be visually prominent as is the intention, it is appropriately setback from the escarpment and below the tree line so its' visual prominence will not be overbearing or appear out of character with the natural and built landscape. The height and scale of the public artwork and its level of visibility is considered to provide an appropriate balance between recognising the cultural significance and purpose of the *bara* Monument for the Eora while maintaining important views and vistas of the Sydney Opera House and its setting.
32. The proposed artwork is considered to be located in a suitable location of the Royal Botanic Gardens in that it is located far enough away from the other buildings, structures and monuments within the gardens to avoid visual clutter. The proposed use of marble, being a natural material, is considered to be sympathetic to the natural landscape setting. For these reasons the proposal is not considered to detract from the heritage significance of the Royal Botanic Gardens, and specifically the Tarpeian Precinct.
33. The application was referred to the NSW Heritage Branch and Council's Heritage Specialist and no objections were raised, subject to General Terms of Approval and conditions.
34. Overall the proposed development will not detract from the heritage significance of the site and surrounding heritage items, including the Sydney Opera House, and is consistent with the objectives and provisions contained in Section 62 of the *Heritage Act 1977* including the CMP for the site and Clause 5.10 of SLEP 2012.

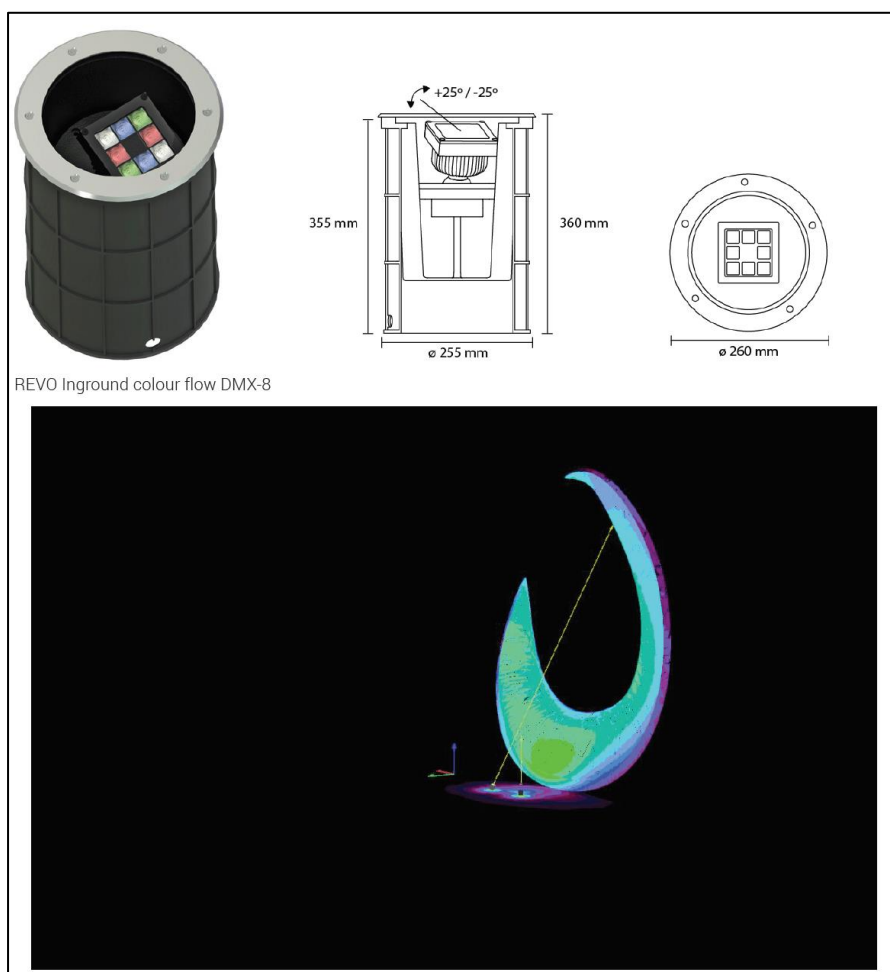


## Illumination

35. Installation of a lighting fixture at ground level in front of the artwork for illumination of the artwork is proposed. It is proposed that the lighting will be programmed to mirror the various phases of the moon. The Lighting Report submitted with the DA (Attachment E) states that:

*The artist's idea for the lighting of the artwork is to illuminate the bara as if by moonlight, this was Utzon's intention for the Opera House "to be lit as if by the light of the moon". The artist is honouring his legacy and reflecting upon this intent. The lighting system proposed is programmable soft, low lux-level lighting which can achieve this purpose. The lighting will be programmed with the level of illumination gradually and cyclically changing to mimic the phases of the moon, and tide, ebbing and flowing.*

36. A lighting visualisation from the report is provided below:



**Figure 24:** Visualisation of proposed illumination

37. The intensity of the proposed illumination will allow the public artwork to be seen and appreciated at night time however will be dimmed enough so that it will not detract from the lighting and significance of the Sydney Opera House.



38. The proposed up-lighting of the artwork is directly onto the monument and not in the direction of the residential apartments located at 1 Macquarie Street, approximately 55m from the subject site. Subject to conditions, it is not anticipated that the proposed illumination will result in obtrusive light spill which would give rise to unacceptable amenity impacts.
39. The application was referred to Council's Lighting Engineer who raised no objections subject to conditions including the provision of a dimming control to the luminaires and compliance with Australian Standard *AS4282:2019 Control of the obtrusive effects of outdoor lighting*.
40. A condition is also recommended stipulating that the intensity and hours of illumination may be varied by written notice from Council if required.

#### **Other Impacts of the Development**

41. The proposed development is capable of complying with the BCA.
42. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

#### **Suitability of the site for the Development**

43. The proposal is of a nature in keeping with the overall function of the site. The premises are in a mixed use surrounding and amongst similar uses to that proposed.

#### **Internal Referrals**

44. The application was discussed with the Heritage Specialist, Public Art Unit and Lighting Engineer who advised that the proposal is generally acceptable subject to the recommended conditions.
45. Where relevant, the conditions of other sections of Council have been included in the proposed conditions.

#### **External Referrals**

46. The application is Integrated Development requiring the approval of the Heritage Council of NSW under Section 58 of the Heritage Act 1977. The Heritage Council of NSW issued General Terms of Approval on 3 April 2020 which are included in the recommended conditions provided at Attachment A.
47. The application was referred to the Trustees of Royal Botanic Gardens and Domain Trust who raised no objection subject to conditions.

#### **Notification, Advertising and Delegation**

48. The application constitutes Integrated Development and as such the application was notified and advertised for 28 days from 16 January and 14 February 2020 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000 and City's Community Participation Plan 2019.

49. As a result of this notification a total of eight submissions were received. Three submissions are in support of the application and were received from the Sydney Opera House, the Royal Botanic Gardens and a member of the community.
50. The remaining five submissions object to the proposal and raise the following concerns:

**(a) *The location of the public artwork is not well thought out and should be put somewhere else. There has been no assessment of alternative locations.***

**Response** - The site has been selected following years of planning for the proposed public artwork which is part of a series of public artwork to be delivered across the City, as detailed in the *History Relevant to the Development Application* section of this report. Notwithstanding, the role from a planning assessment point of view is to assess the impacts of the current location proposed and not to explore alternative locations. In this regard, the proposed location is considered appropriate and is not considered to have adverse environmental planning impacts as detailed in the *Issues* section of this report.

**(b) *Heritage impacts***

**Response** - The proposal is not considered to detract from the heritage significance of the subject site or from the heritage value of the Sydney Opera House. Refer to the *Issues* section of this report for detailed discussion.

**(c) *Visual impacts on the natural landscape and views of the Sydney Opera House***

**Response** - While the public artwork is acknowledged as being visual prominent, it is not considered to be obtrusive and will not adversely impact on the natural landscape and view of the Sydney Opera House. Refer to the *Issues* section of this report for detailed discussion.

**(d) *The public artwork is too large***

**Response** - The size and scale of the public artwork is considered acceptable and serves its intended purpose. The size of the public artwork is not considered to result in adverse impacts by way of visual and heritage impacts as detailed in the *Issues* section of this report.

**(e) *Concerns with encroachments on public open space***

**Response** - The proposed public artwork occupies a very small part of the public open space of the Royal Botanic Gardens and is a part of a strategic approach to the delivery of a number of public artwork across the City, rather than in an ad-hoc or piecemeal manner. It is not considered the public artwork will adversely impact on the useability of the public open space for passive recreation.

**(f) *The application documents do not demonstrate community support***

**Response** - Refer to the *History Relevant to the Development Application* section of this report.

**(g) *Inadequate Heritage Impact Statement***

**Response** - The submitted Heritage Impact Statement (HIS) is satisfactory. Notwithstanding, the HIS has not solely been relied on to assess the heritage impacts of the proposal. The application was referred to the NSW Heritage Branch and Council's Heritage Specialist who raised no objections to the proposal.

**(h) *Impacts on trees***

**Response** - Conditions are recommended during the construction phase to ensure the existing trees in close proximity to the location of the development are protected.

**(i) *Insufficient information about maintenance of the public artwork***

**Response** - A condition is recommended requiring a Maintenance Plan to be endorsed prior to the issue of an Occupation Certificate.

**(j) *Did not see any notification of the DA in the newspaper***

**Response** - The DA was advertised in the Sydney Morning Herald on 29 January 2020 (page 11).

**(k) *Objects to the use of public money for the public artwork***

**Response** - The expenditure for the proposed development is not a planning consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Notwithstanding, the funding for the proposed public artwork was endorsed by the elected Council as detailed in the *History Relevant to the Development Application* section of this report.

## **Public Interest**

51. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

## **S61 Contribution**

52. The cost of the development is in excess of \$200,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2013 (Contributions Plan). On 5 May 2020, the applicant submitted a written request for an exemption from the need to pay this levy. The request was submitted on the basis that the development is a type specified in the Contributions Plan that may be exempted from the levy in accordance with the table in Section 2.2, specifically, item 15:

*15. City of Sydney development - development undertaken by or on behalf of the City of Sydney including but not limited to items listed in the Schedule of Works to this Plan*

53. Exemptions to the contribution are to be endorsed by Council's Chief Executive Officer. At the time of writing this report, the request for an exemption to the levy has not been endorsed by Council's Chief Executive Officer. Accordingly, a condition of consent is recommended requiring payment of a Section 61 contribution.

### Relevant Legislation

54. Environmental Planning and Assessment Act 1979.
55. Heritage Act 1977.

### Conclusion

56. The siting, height and scale of the public artwork and its level of visibility is considered to provide an appropriate balance between recognising the cultural significance and purpose of the *bara* Monument for the Eora while maintaining important views and vistas of the Sydney Opera House and its setting.
57. The visual prominence of the public artwork will not be overbearing or appear out of character with the natural and built landscape and heritage significance of the Royal Botanic Gardens.
58. The proposed illumination of the public artwork will not give rise to unacceptable amenity impacts on nearby residents, subject to conditions.
59. The proposed public artwork occupies a very small part of the public open space of the Royal Botanic Gardens and is a part of a strategic approach to the delivery of a number of public artwork across the City, rather than in an ad-hoc or piecemeal manner. The proposed public artwork is considered to make a positive contribution to the public domain and satisfied the design excellence criteria contained in Clause 6.21 of SLEP 2012.
60. Overall, the proposal is consistent with the relevant objectives and planning provisions contained in the Heritage Act 1977, SLEP 2012 and SDCP 2012.
61. For these reasons the proposed development is considered to be in the public interest and is recommended for approval subject to the recommended conditions of consent.

### GRAHAM JAHN, AM

Director City Planning, Development and Transport

Tahlia Alexander, Specialist Planner