



Australian Government

Department of the Environment, Water, Heritage and the Arts

RECOMMENDATION REPORT

Nobbys Lighthouse (EPBC 2006/3179)



Recommendation report

Recommendation

That the proposed redevelopment of Nobbys Lighthouse, Newcastle, NSW (EPBC 2006-3179) be approved, subject to the following conditions:

- (a) The person taking the action must provide interpretive materials on Nobbys Headland that explain the history and functioning of the lighthouse, its relationship to the ocean and headland, and to the other structures on the headland prior to the restaurant becoming operational.
- (b) The person taking the action must develop the interpretive materials in consultation with relevant local community and indigenous groups.
- (c) The person taking the action must adhere to those criteria for interpretive material and archival and archaeological recording as laid out by the NSW Heritage Office.
- (d) The person taking the action must remove the garages from Nobbys Headland prior to commencing construction of the restaurant on the site.

Material on which this recommendation report was based:

- i. **Referral Document (and the following attachments):**
- ii. NSW Heritage Council Section 60 Development Approval, dated 15 March 2006.
- iii. Newcastle City Council Development Consent, dated 31 August 2006.
- iv. A3 size set of Section 60 and Development Application architectural drawings, prepared by EJE Architecture and numbered as drawings A01 to A14.
- v. Statement of Heritage Impact for the Adaptive Re-use of Nobbys Signal Station, prepared by Sutera Architects, dated 10 March 2005.
- vi. Statement of Environmental Effects for the Nobbys Lighthouse Interpretive Centre and Tourist Accommodation, prepared by EJE Town Planning and dated February 2005.
- vii. Interpretive Strategy for the Adaptive Re-use of Nobbys Headland, prepared by EJE Architecture, dated February 2005.
- viii. Nobbys Lighthouse Proposal “Response to issues raised by Newcastle City Council in letter dated 17 March 2006”, prepared by EJE Town Planning, dated June 2006.
- ix. Geotechnical Cliff Stability Assessment report for the Proposed Restaurant at Nobbys Head, prepared by Douglas Partners, dated 11 April 2006.
- x. Hydraulic Services Concept Plan for the Nobbys Lighthouse Tourist Accommodation and Restaurant, prepared by McCallum Hydraulics and numbered as drawing H-01 Revision 2, dated 08 June 2006.
- xi. **Statement of Reasons on controlled action decision for the proposal – March 2007**

Preliminary Documentation provided for public comment:

- xii. Response to Request for Additional Information – EJE May 2007 (including i. – x. above).

Other Documents

- xiii. Submissions Report - Invitation for Public Comment – EJE September 2007 (including Appendix D – Response to “Advice on the Proposed Development of Nobby’s Lighthouse, Newcastle NSW”, prepared by EJE Architecture on behalf of the proponents).
- xiv. The Burra Charter: The Australian ICOMOS Charter for Places of Cultural Significance, 1999.
- xv. Clive Lucas Stapleton and Partners (2007) Advice on the proposed redevelopment of Nobby’s Lighthouse, Newcastle, NSW. Report prepared for the Department of the Environment and Water Resources.
- xvi. Australian Heritage Database Summary Statement of Significance for Nobbys Lighthouse, Nobbys Rd, Newcastle East, NSW (Place ID: 105373).
- xvii. Letter of 19 December 2007 – EJE Architecture

Background

1. On 4 December 2006, a proposal was received from Nobbys Lighthouse Pty Ltd and the Newcastle Port Corporation to redevelop Nobbys Headland in Newcastle, NSW. This proposal includes land immediately adjacent to Nobbys Lighthouse, a place included in the Commonwealth Heritage List. The lighthouse is owned by the NSW Government but is leased by the Australian Maritime Safety Authority (AMSA) and is therefore Commonwealth land within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).
2. Nobbys Headland contains Nobbys Lighthouse, a signal station, signal master and signalmen's cottages, a parapet wall, observation post, paved areas, storage sheds and garages (see [Attachment A](#)).
3. The proposal includes the demolition of garages, alteration and renovation of existing cottages for the purposes of tourist accommodation, construction of an observation deck and interpretive centre, and a 50 seat restaurant with kitchen and facilities (see [Attachment B](#)).
4. The proposal received approval from the Heritage Council of New South Wales under section 60 of the NSW *Heritage Act 1977* in March 2006. In August 2006 the Newcastle City Council gave consent to the proponents' development application under section 81 of the *Environmental Planning and Assessment Act 1979*. Both approvals were subject to conditions.
5. The assessments conducted by the State and local Government authorities differed in scope to the assessment undertaken by the Department. At the State level Nobbys Lighthouse is an element within a much broader listing known as the Coal River Precinct. This precinct has recently been nominated for inclusion in the National Heritage List of the EPBC Act.
6. On 4 June 2007 a delegate for the Minister, Ms Vicki Middleton, determined that the proposal would be assessed on preliminary documentation and instructed the proponents to provide their assessment documentation for public comment. The proponents made the documents available from 26 June 2007 until 24 July 2007, during which time 82 submissions were received. Sixty-five supported the proposal and seventeen were opposed.
7. The principal issues raised in submissions supporting the proposal were:
 - The positive economic and tourism benefits that would result;
 - The community's desire to establish safe public access to the headland;
 - The enhancement of interpretation and appreciation of the lighthouse and headland; and
 - The provision of on-site management and maintenance to protect the lighthouse and other buildings from vandalism.
8. The principal issues raised in submissions opposing the proposal were that:
 - It would adversely affect views to and from the lighthouse;
 - It would alter the character of the lighthouse;
 - The proposal does not consider the Commonwealth Heritage values;
 - It represents privatisation of public land;
 - There was no proper consideration given to interpretation of the lighthouse; and
 - Public access could be achieved by opening the gate, rather than through the proposed development.

A number of other issues were also raised relating to the control and management of the Nobbys Headland site.

9. The proponents have not presented any alternatives to the proposed redevelopment. The Newcastle Port Corporation has verbally advised the Department that if this proposal is not approved the site would remain closed to the public, and it would continue to be managed and maintained as in the past.

Environmental record

10. On the basis of information available, the proponents do not appear to be or have been, subject to proceedings in relation to a conviction for an offence or ordered to pay a pecuniary penalty, under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of resources.
11. The restaurateur behind Nobbys Lighthouse Pty Ltd has won an environmental achievement award for the implementation of recycling and energy efficient design and technology in another restaurant of his.

Assessment

Heritage Values of Nobbys Lighthouse

12. Nobbys Lighthouse was built in 1858 and is intact and operative. It is a free standing dressed sandstone tower, rendered and painted white, with an external gallery at lantern level. The lantern has a conical roof and the structure sits on Nobbys Headland amongst a number of other buildings, including a signal station. These other buildings were all built after 1941. The headland, lighthouse and signal station are visible from long range and short range vantage points, particularly from the seaward side, as demonstrated in the proponents' *Response to Request for Additional Project Information – EJE May 2007*.
13. Nobbys Lighthouse is a place included on the Commonwealth Heritage List for its historic values, and on the Register of the National Estate for its Indigenous values. The Commonwealth Heritage values of Nobbys Lighthouse are described in the Summary Statement of Significance for the site on the Australian Heritage Database (see Attachment C).
14. Nobbys Lighthouse meets four of nine possible criteria (a, b, f and g) used to assess the heritage value of a place for inclusion on the Commonwealth Heritage List. These are:
 - (a) the place's importance in the course, or pattern, of Australia's natural or cultural history (Processes);
 - (b) the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history (Rarity);
 - (f) the place's importance in demonstrating a high degree of creative or technical achievement at a particular period (Technical Achievement); and
 - (g) the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons (Social).The EPBC Act definition of *place*, in relation to its protection, maintenance, preservation or improvement, includes '... the immediate surroundings of a building or structure ...'.

Description of Proposed Redevelopment

15. The report named *Response to Request for Additional Project Information – EJE May 2007* provides photo studies and architectural design drawings that show

- how the proposed restaurant would sit in relation to Nobbys Lighthouse and the other buildings on the headland.
16. The proposed restaurant, which includes a kitchen, kiosk and observation deck, would be a glass and concrete structure that partly surrounds the lighthouse, joining the signal station on its northern side to an existing cottage on its southern side (see Attachment B). The observation deck would occupy the roof of the restaurant and includes S-shaped interpretive boards associated with clusters of seats.
 17. The floor of the proposed observation deck would appear to be level with the internal floor of the lighthouse lantern and slightly higher than the lantern cleaning and lightkeeper's lookout gallery level. The glass and metal balustrade of the observation deck would sit 400mm below the top of the stone structure of the lighthouse tower, but higher than the lookout gallery railing (see Attachment D).
 18. As well as building the restaurant and ancillary facilities, the proponents also propose to convert a number of the other buildings on the headland into tourist accommodation and a manager's residence. Those other buildings on the headland are not included in the Commonwealth Heritage List, or entered in the Register of the National Estate, but are in the vicinity of the lighthouse and within its immediate surroundings.

Assessment of Impacts

19. For the purposes of this assessment the Department considered the Commonwealth Heritage values, represented by the attributes of Nobbys Lighthouse, in accordance with appropriate standards for managing places of cultural significance as defined by the Burra Charter. The *Burra Charter* is the national professional standard for managing heritage places, which sets a standard of practice for those who provide advice, make decisions about, or undertake works to places of cultural significance. It is considered Australia's leading guide on best practice conservation and management of cultural heritage.
20. To assess the impacts of this proposal the Department considered a number of documents. The primary information sources used were:
 - (a) Response to Request for Additional Project Information (EJE 2007a);
 - (b) Independent advice sought from heritage consultants Clive Lucas Stapleton and Partners (CLS (2007)); and
 - (c) Submissions Report Invitation for Public Comment (EJE 2007b), including a response to the advice above from Clive Lucas Stapleton and Partners.Other documents consulted include the Coal River Precinct and Lumber Yard National Heritage List Nomination.
21. Independent advice regarding the impacts of the proposal on the Commonwealth Heritage values of the lighthouse was obtained from Clive Lucas Stapleton and Partners who are heritage consultants. The proponent has responded to the advice provided by Clive Lucas Stapleton and Partners (CLS) and this can be found in Appendix D of their submissions report (EJE 2007b).

Criterion A – Processes

22. The values recognised in the Commonwealth Heritage List that support the listing of Nobbys Lighthouse against criterion (a) (Processes), are its significance in terms of the establishment of navigational aids along the NSW coast, reflecting the economic development of the surrounding region; and its significance as the first example of a maritime light installed in conformity with the Trinity House Codes in Australia. These values are represented by all of the fabric, both internal and external, of the original lighthouse and its use as a navigational aid.

23. In their additional information report (EJE 2007a), the proponents stated that the proposal would not affect the values that represent the significance of the lighthouse against criterion (a), since the fabric of the lighthouse remains intact and the use remains unchanged. They conclude that the 'Processes' for which the lighthouse was listed remain readily interpretable. The proponents also consider that public access to the proposed observation deck provides better, close up opportunities for inspection and interpretation of the lighthouse.
24. Article 7 of the *Burra Charter* recommends retaining the use of a place if it is of cultural significance. Since the lighthouse continues to operate, the culturally significant use of the place as a navigational aid is retained. The explanatory notes provided for Article 7 of the *Burra Charter* state that new uses of a place should involve minimal change to significant fabric and use. While the fabric of the place would remain intact as a result of the proposal, it does introduce a significant new use to the setting and immediate surroundings of the place in a new and relatively large building. The size of the restaurant and its proximity to the lighthouse will dominate the site. In doing this it will interfere with the ability of the public to readily interpret the navigational uses of the place. In their additional information report (EJE 2007a), the proponents have assessed the impacts of the proposal against the *Burra Charter* principles. In relation to Article 7 they recognise the importance of maintaining the navigational use of the lighthouse, but do not address the impact of introducing a significant new use to the place.
25. Article 8 of the *Burra Charter* relates to the retention of appropriate visual settings and other relationships to conserve the cultural significance of heritage places. It recommends that new construction, intrusions or other changes that would adversely affect the setting of a place are not appropriate. In addition, Article 11 recommends retaining the contribution that related places and objects make to the cultural significance of a place. In assessing the impacts on the Commonwealth Heritage values associated with criterion (a), CLS (2007) found that although the historic fabric remains intact, the proposed new building would interfere with aspects of the historic, spatial, functional and visual relationships associated with the place. It would obscure the relationship between the lighthouse and the important and historic perimeter parapet wall, as well as obscuring the ground floor window. It would also intrude on, and partly obscure, the visual setting of the lighthouse, which is associated with its historical and ongoing use as a navigational aid.
26. In Appendix D of the Submissions Report (EJE 2007b), the proponents state that the historic visual/spatial relationship between the lighthouse and the parapet wall is "characterised historically as generally always having other buildings between them" and contends that the proposal should therefore be considered to be consistent with this historic relationship. However, the Department considers that the proposed new restaurant facility more than replaces the existing garage in its bulk and scale and is inconsistent with the functional and visual relationship of the lighthouse within the historic setting of the place. It thereby impacts significantly on the immediate surroundings of the place. In any case, the garage is a relatively recent addition to the site and the historic relationship between the lighthouse and the perimeter wall is still evident.
27. In conclusion, the extent, scale and bulk of the proposed restaurant facility will have a number of significant adverse impacts on the historic values of Nobbys Lighthouse, primarily because of its proximity. The impacts are the location of a major new hospitality and tourist building that is likely to intrude on the historic, spatial, functional and visual relationships of the place. The proposed use and

structure will confuse and diminish the public's ability to interpret the place and understand the historic processes and its navigational function that qualified it for satisfying Commonwealth Heritage criterion (a). The Department therefore concludes that the proposal would result in the significant degradation or loss of the site's importance in relation to criterion (a).

Criterion (b) – Rarity; and Criterion (f) – Technical Achievement

28. The Commonwealth Heritage values (b) (Rarity) and (f) (Technical Achievement) are represented by the attributes of the original fabric, internally and externally, of the lighthouse and the fact it is the earliest surviving example of a lighthouse in NSW. CLS (2007) also notes the rare, fully enclosed nature of the lighthouse site, where the parapet wall as an element of the lighthouse setting is inextricably linked directly with the lighthouse.
29. In their additional information report (EJE 2007a), the proponents argue that the proposal does not impact on the values for which Nobbys Lighthouse was listed against criteria (b) and (f), since it has no impact on the listed attributes of these values: the original fabric of the place.
30. Article 22 of the *Burra Charter* states that new work to a place may be acceptable where it does not distort or obscure the cultural significance of the place or detract from its interpretation and enjoyment. It also states that new work is less likely to distort or obscure significance, if both the new work and the existing forms and components of the place remain clearly recognisable. New work should be readily identifiable as such and should be similar in its siting, bulk, form, scale, colour, texture and material. If the bulk and extent of the new work is substantially larger than the heritage place then it can dominate it and diminish its appreciation.
31. In addressing Article 22 of the *Burra Charter* the proponents have stated that the use of a new style and material in the proposed restaurant was deliberate so that people visiting the place would not confuse old with new. The proponents state that the form and character of the proposed restaurant is based on the pressed lenses used in the light of the lighthouse, and the use of the colour white reflects the location and character of the site. However, the proponents do not address the impacts of the bulk and siting of the restaurant on the Commonwealth Heritage values of the building.
32. The proposed new work at the Nobbys Lighthouse site is obviously different to the existing forms and structures of the place. However, the bulk and siting of the restaurant and its ancillary facilities are very close to the lighthouse and will detract from the significance of the lighthouse and its distinctive design and setting. Consequently, the Commonwealth Heritage values ((b) rarity) and ((f) technical achievement), for which it was included in the Commonwealth Heritage List, are significantly impacted.
33. CLS (2007) found that the restaurant would "obscure and damage several aspects of the historic spatial, functional, and visual relationships within the lightstation" and that "the proposal will distort the form of the only fully enclosed free-standing lighthouse ever built on the NSW coast". In particular, CLS found that the proposal would have the following impacts on the rarity and technical values of Nobby's lighthouse:
 - the integrity of the lighthouse as a free-standing structure within a walled compound would be lost;
 - the historic visual form of the lighthouse and the lightstation overall would be lost; and
 - the understanding of the working lighthouse will be obscured by obstructing the ground floor window, eliminating the protection offered by the parapet

wall, and obscuring the historic visual form of the lightstation and its historic use as a daymarker.

34. In their Submissions Report (EJE 2007b), the proponents refute the argument that the proposal would result in the distortion of the freestanding form of the lighthouse. They claim that the construction of other lightstation buildings in the vicinity of the lighthouse has already distorted the freestanding form of the lighthouse, and that changes to the views of the lighthouse would be negligible. In addition, the proponents claim (Appendix D) that the ground floor window of the lighthouse would be more visible than it is now. They also claim that the description of the lighthouse as a daymarker would more accurately apply to the landform of Nobbys Headland, including the general built form on top, rather than the specific lighthouse structure. According to the proponents, the impacts on the integrity of the significant physical fabric of the lighthouse would be negligible, as it is not directly impacted by the proposal. They claim that the proposal would allow the public to more fully understand and interpret the technical significance of the building, aided by improved access to the place and enhanced public views to and from the lighthouse.
35. The Department concludes that the presence of the proposed restaurant would not impact on the physical fabric of the lighthouse, and that the use of new material may assist in distinguishing new work to aid interpretation of the lighthouse. However, unlike other buildings in the vicinity, the size and proximity of the proposed new building would have a significant negative and adverse impact on the significance of the place by interfering with the rare and original form and setting of the lighthouse, regardless of the use of glass curtain walls. The ability of the public to appreciate why the lighthouse met criterion ((b) rarity) and criterion ((f) technical achievement) would therefore be significantly degraded or lost.

Criterion G – Social

36. The values supporting the listing of Nobbys Lighthouse against criterion (g) (Social) include all of its historic fabric, the use of the lighthouse on the Coat of Arms for Newcastle City, and the visibility of its exterior from the public realm. The attributes of these values are the exterior of the lighthouse and its visibility from the public realm. The lighthouse is an icon of Newcastle and as such is drawn, painted and photographed a great deal.

Public views

37. The proponents' additional information report (EJE 2007a) concludes that while the proposed restaurant does change the appearance of the lighthouse, those changes are acceptable. This is based on the notion that there are currently no close-up views of the lighthouse, because of restricted public access. The proponents' report states that the only public views possible are long distance ones that would only be slightly altered. It goes on to state that, on balance, the proposal actually enhances the public views of the site, since it would open it up for safe public access and allow people to view the lighthouse close up and in the round as well as from the proposed observation deck.
38. The Department notes that Nobbys Headland is readily visible from fishing boats, yachts and shipping entering and leaving Newcastle harbour and passing the mouth of the Hunter River. Therefore distant views of Nobbys Lighthouse are readily available to the public. However, the Department acknowledges while the headland is open to the general public on occasion, close up views are not available on a regular basis.

39. Article 8 of the *Burra Charter* states that conservation requires the retention of an appropriate setting and other relationships that contribute to the cultural significance of a place. New construction, which adversely affects the setting or relationships, is not appropriate. Given the proximity and extent of the proposed building relative to the lighthouse and the other buildings around it, it is difficult to argue that the setting of the place would not be adversely affected. In particular the proposed restaurant and ancillary facilities would disconnect the lighthouse from the parapet wall, a significant element linked to and enhancing the setting of the place. In addressing the impacts of the proposal against the principles of the *Burra Charter*, the proponents concede that the setting of the place would be altered, but state that the alteration is not substantial.
40. The CLS (2007) report finds that the proposal will distort the image of the lighthouse and the way the lighthouse has always been seen and depicted. It also finds that erecting something adjacent to it will detract from its iconic identity. The proposed redevelopment would do this by:
 - (a) Challenging the freestanding status of the lighthouse by constructing a building connected to the buildings either side of it;
 - (b) Adding a level of luxury to a site that has been portrayed as rugged and remote, thereby diminishing the navigational character of the place; and
 - (c) Introducing an inappropriate level of interpretation that is inconsistent with the character of the place.
41. In their Submissions Report (EJE 2007b) the proponents disagree with the description of the lighthouse as being portrayed as remote, claiming it is actually one of the most accessible lighthouses on the east coast. They reject the claim that the proposal would introduce a new character of “luxury” as advised by CLS, stating that the place would remain rugged and functional. The proponents also dispute the assertion that the lighthouse has always been seen as a freestanding element, claiming that throughout its history Nobbys has always been seen and depicted from a long distance and that the long distance views have been of a cluster of buildings, rather than of a prominent lighthouse building.
42. In reviewing the above the Department concludes that the views of Nobbys Lighthouse to and from the public realm would be adversely impacted because the proposal would substantially alter the character, setting and visual amenity of the place by inserting a structure between the lighthouse, its perimeter wall and its seaward function. The proposal would alter the way the public view, perceive and interpret the lighthouse and so adversely impact on its social value, Commonwealth Heritage criterion (g). The Department does accept that opportunities for close up views are limited. However, it does not accept that the only views of the place are from a distance.

Public access

43. The Department notes that a number of submissions express support for increased public access to Nobbys Lighthouse. The proposal is endorsed by the Hunter Business Chamber and the Hunter Regional Tourism Organisation and the Newcastle East Residents Group.
44. In its submission, the Hunter Business Chamber states that ‘Increased public access to Nobbys lighthouse offers a significant opportunity for education of the public in the living history of Newcastle and the wider Hunter. This is particularly important for younger generations to have enhanced understanding and appreciation of the industrial and maritime heritage of Newcastle and the Hunter.’

45. The Department concludes that while public access to the site could be facilitated through other means, there is no indication that this is likely to occur in the foreseeable future. The proposed development would allow greater access to the site and therefore provide potential for increased community appreciation for the structure and its history and surroundings.

Interpretation strategy

46. The proponents indicate in their proposal that interpretive materials would be provided as part of the proposal to assist the community's understanding of the history and functioning of the lighthouse. The proponents believe that the creation of new highly significant public views as a result of the development will result in an even greater appreciation and understanding of the lighthouse, and enhance even further the social and cultural significance of the lighthouse and site more generally.
47. The proponents indicate that the interpretive strategy for the proposal will cover the following themes:
- (a) The natural environment;
 - (b) Geological timeline and characteristics;
 - (c) The ocean;
 - (d) Weather;
 - (e) Indigenous relationships;
 - (f) European discovery and settlement;
 - (g) Australia at War;
 - (h) The port/navigation; and
 - (i) The coal industry.
48. In relation to the interpretation strategy, the Department notes that the NSW Heritage Council's approval of the project requires, in addition to other aspects of the proposed development, that:
- (a) An archival record of the existing condition and layout of the signamlen's cottages is to be completed prior to the commencement of their adaptation, in accordance with Heritage Office guidelines, copies of which are to be provided to Newcastle Council and Library and incorporated within the interpretive strategy for the site;
 - (b) Details of interpretive signage, commercial advertising, and outdoor furniture for the observation deck and rest area be submitted to the Heritage Office for approval of the Director prior to its installation; and
 - (c) The interpretive strategy be broadened to cover Aboriginal heritage (following consultation with relevant traditional owners), historical archaeology and the broader context of the Coal River Precinct. Details are to be submitted for the Director's approval prior to installation and the implementation of the interpretive strategy is to occur prior to the commencement of the proposed uses on the site.
49. The Department notes that the NSW Heritage Council also requires that:
- (a) An Archaeological Research Design is to be submitted to the Council including a comprehensive mitigation strategy in relation to subsurface disturbance for the excavation of footings, the construction of water tanks, widening of the access road and trenching of services, landscaping and grading; and the use of heavy machinery so that the proposed works do not directly impact on the areas immediately adjacent to the areas of excavation;
 - (b) The approved excavation must be carried out in accordance with the approved Archaeological research Design;

- (c) And throughout the archaeological works, the proponent must ensure that:
 - appropriate signage to explain the history of the site and the excavation works is placed at the site during works;
 - a local public information program is implemented to ensure the public is informed about the project and its outcomes;
 - the services of a conservator must be used for conservation of significant artefacts;
 - provide monthly notification to the NSW Heritage Office;
 - (d) The results of the archaeological program are to be interpreted with the completed redevelopment of the site.
50. The Department notes that the Statement of Environmental Effect of Nobbys Lighthouse Interpretive Centre and Accommodation indicates that the local Awabakal Aboriginal people are happy to be involved with the use of the interpretive centre in enhancing the public awareness of the site's meaning and the significance to them.
51. The Department concludes that interpretation materials may help to portray the story of not only the lighthouse but also the role of the other buildings on the headland and the indigenous values of the site.
52. The Department also notes that any interpretation will need to effectively describe and illustrate the relationship of the lighthouse to the perimeter wall and the ocean/seaward aspect of the lighthouse before development of the restaurant.

Mitigation of Impacts

53. In the report (EJE 2007a) the proponents have listed a number of mitigation measures to minimise the impacts of the proposal. A number of these are designed to address the impacts on Commonwealth Heritage values, including:
- (a) External walls for the proposed restaurant to be in full height glass, to maintain the existing open views from the compound to the ocean, and as appropriate, a visually open built link from the signal station to the signalmen's cottage;
 - (b) The limitation of the roof level of the proposed restaurant to the level of the gallery floor of the lighthouse;
 - (c) The minimal detailing of the balustrade on the observation deck, to reduce visual barriers between the signal station and lighthouse; and
 - (d) The provision of interpretation material to assist the public in understanding the history of the lighthouse and how it relates to the other structures on the headland.
54. The Department concludes that those structural measures will partly ameliorate the significant degradation and loss of the Commonwealth Heritage values of the place. However, the proposal would still interfere with aspects of the historic, spatial, functional and visual relationships associated with it and:
- (a) introduce a significant new building in a location and proximity that is incompatible with the historic navigational function and processes of the place;
 - (b) result in the loss of the integrity of the significance of the place by distorting the form and setting of the only freestanding lighthouse within a fully enclosed perimeter wall on the NSW coast;
 - (c) diminish the significant values of rarity, technical achievement and representativeness in the building's design and function;
 - (d) cause the loss of and distort the visual form of the lighthouse within the historic setting of the lightstation;
 - (e) substantially alter the character and setting of the place; and

- (f) obscure the understanding of the working use of the lighthouse as a navigational aid and daymarker, within the historical and present contexts.

Consultation on proposed decision

55. On 13 December 2007, the Department met with the proponents to discuss the proposal. On 19 December 2007, EJE Architecture, on behalf of the proponents, provided a letter summarising their position in relation to the assessment of the proposal. They raised concerns about several matters, including, but not limited, to:
- the breadth of the values assessed under the Commonwealth Heritage Listing;
 - the assessment of the lighthouse as a stand alone element with iconic status; and
 - the Department's perceived lack of consideration for adaptive re-use and community support.
56. The Department has considered the proponents' concerns and believes that all of the relevant matters have been taken into consideration in this assessment of the proposal. In addressing the above points, the Department considers that:
- the statutory Commonwealth Heritage values of the place are the only values that can be considered in the Department's assessment of the proposal;
 - the listed values of the place, as represented by the attributes of all of the original fabric, including the exterior of the lighthouse and its visibility from the public realm, are important considerations in the assessment of the proposal; and
 - adaptive re-use of the lighthouse was considered in the assessment of the proposal, but the development was found to be in conflict with the listed values of the place.

Social and Economic matters

57. The proponents' additional information report (EJE 2007a) and their submissions report (EJE 2007a) conclude that the proposal would have the following positive economic benefits:
- (a) Create 30 jobs directly as well as 6-10 indirectly in associated service supplies; and
 - (b) Create facilities at the higher end of the tourism market that are currently lacking in Newcastle; and
 - (c) Generate income that would remain local.
58. During the public display of the proponents' assessment documentation 82 comments were received. Sixty five (79%) were in favour of the proposal. The primary grounds for that support were based on social or economic considerations.
59. The vast majority of those in support of the proposal cite the provision of public access as a reason.
60. Another reason cited for supporting the proposal has been the commitment of the proponents to provide for interpretation of the site. This material would include information on the European and Indigenous history of the place.
61. The Department acknowledges the potential contribution this proposal would make to the economy of the Newcastle region and the desire of many people to access, understand and enjoy the Nobbys Headland site. It recognises the commitment of the proponent to providing interpretation materials to portray the story of not only the lighthouse but also the role of the other buildings on the headland and the indigenous values of the site.

Ecologically sustainable development

62. In considering those matters, the Minister must take into account the principles of ecologically sustainable development (set out in Section 3A of the EPBC Act). The five principles of ecologically sustainable development have been accounted for as follows:

a. the integration principle;

The conservation of the Commonwealth Heritage values of Nobbys Lighthouse and the economic benefits of the proposal have been considered in this Recommendation Report.

b. the precautionary principle;

The precautionary principle has been considered in this Recommendation Report in assessing the likely long-term or permanent damage of the proposal to the heritage values of Nobbys Lighthouse. Expert advice was sought as part of the assessment process.

c. the intergenerational principle;

In making its recommendation the Department has considered the value of providing current and future generations with the opportunity to access and experience the site.

d. the biodiversity principle;

Not applicable to a heritage assessment.

e. the valuation principle.

Not applicable to this assessment of heritage impacts.

Other legal considerations

63. Not applicable.

Conclusion

64. The Department notes the acceptability of demolishing the garages and the use of the cottages for tourist accommodation. However the proposal to construct and operate a restaurant facility in very close proximity to the Commonwealth Heritage listed Nobbys Lighthouse will result in significant degradation or loss of Commonwealth Heritage values due to impacts on:

- (a) the historic, spatial, functional and visual relationships associated with the lighthouse and its setting;
- (b) the ability of the public to appreciate the significance of its design; and
- (c) the views to and from the lighthouse and its setting.

65. Nevertheless, the Department recognises the desire of many local residents to access the site and the ability of the proposal to provide this access in a financially viable way. The Department also accepts the potential positive economic benefits of the proposal to adapt the whole site for a commercial operation and delivery of additional employment and tourism opportunities, and the potential community benefit provided through clear and concise interpretation materials on the site and its significance. On balance the Department concludes that the social benefit outweighs the impacts on the Commonwealth heritage values and recommends the proposal be approved subject to the following conditions:

- a. The person taking the action must provide interpretive materials on Nobbys Headland that explain the history and functioning of the lighthouse, it's relationship to the ocean and headland, and to the other structures on the headland prior to the restaurant becoming operational.
- b. The person taking the action must develop the interpretive materials in consultation with relevant local community and indigenous groups.
- c. The person taking the action must adhere to those criteria for interpretive material and archival and archaeological recording as laid out by the NSW Heritage Office.
- d. The person taking the action must remove the garages from Nobbys Headland prior to commencing construction of the restaurant on the site.