

Wayne Middleton
Principal - Reliance Risk
29 May, 2019

I write in relation to concerns raised around a proposed mobility access pathway in Marks Park, Bondi. I have reviewed the scaled drawings of the proposed path authored by Waverley Council provided in an email to me today on 29 May 2019 titled: Detailed Marks Park Plan – C0359-MRKPK-C. Landscape Drawings.

Background

I note the current plan sets out an 1800mm wide concrete pathway installed around the perimeter of Marks Park leading to the stairway from the coastal walk below the eastern side of the Park. The proposed mobility impaired pathways shall be constructed around the eastern-most section of the Park adjacent grasslands and above a landscaped terrace garden bed. The drawings indicate a falling decline away from the path around much of the northeasterly, easterly, and southeasterly parts of the Park.

Disclaimer – Not Legal Advice

The following email does not purport to be legal advice, and all parties are encouraged to seek their own advice from a qualified legal practitioner on points of law raised in this email.

My Credentials

This advice is offered by me as a risk management professional of 30+yrs experience in public venues and events around the world. Over the last decade I have undertaken local public safety consultancy projects for:

- Infrastructure NSW
- Property NSW
- Events NSW
- Department of Premier and Cabinet
- Barangaroo Development Authority
- NSW Roads and Maritime Service
- City of Sydney
- Randwick Council; and indeed
- Waverley Council

I work across Australia and New Zealand on similar risk & safety projects and have held senior safety in-house and consultancy roles for three Olympic Games, Commonwealth Games, Asian Games and more. I'm also the current Chairman of the Asia Pacific Venue Management School.

My qualifications include:

- Masters in Risk Management
- Bachelor of Administration
- Diploma in Security Risk Management
- Security Consultants Licence – 2A in NSW
- Certified Venue Executive (CVE) designation awarded by the International Association of Venue Managers.

The Risk

It is my experience that positioning mobility impaired pathways adjacent to fall zones is not recommended. This is particularly so in areas likely to suffer from congestion during 'business as usual' &/or event periods. Based upon previous estimates, Sculpture by the Sea is likely to achieve crowds in the vicinity of 500,000 people over its 18 day event period; with heavy congestion along the coastal walk and in Marks Park, (particularly on weekends). This will increase congestion and crowd pressure on available pedestrian space along the path in the eastern parts of Marks Park. These areas are currently prime coastal and sculpture viewing locations for the Exhibition. This congestion will also therefore increase the likelihood of inadvertent pressure on wheelchairs and other persons in mobility impaired transportation devices (such as mobility scooters and prams). This will potentially result in falls and injury from the path, down the decline, and onto garden beds or onto solid structures amongst terraces.

Legal Context

The NSW Work Health and Safety Act 2011 imposes duties on Persons Conducting Business &/or Undertaking (PCBU) for managing risks associated with organised activities. Waverley Council and Sculpture by the Sea are both PCBU's with obligations to manage safety risks to as low as reasonably practicable. The law requires a consultative approach to the control of safety hazards taking into account the consequence of a risk scenario occurring, and the

likelihood of that consequence taking place. The Act absolutely applies during organised activities in the Park such as during events.

Common law duties also apply during and outside event times to both entities. This requires the mitigation of reasonably foreseeable risks likely to cause injury. The obviousness of risk is an important test as to the level of care required to be taken. It is Reliance's view that under congested conditions, the current proposed plan contains a risk of fall and injury for mobility impaired users in some locations adjacent to a decline.

The WHS Act can impose duties on parties associated with creating a hazardous situation, or with resolving the hazard; where it applies to that party's business or undertaking. The Act extends to other parties (other than workers), including members of the public; who are also affected by the activities of the PCBU.

Regulation 78 of the NSW WHS Regulation 2017, relates to the 'Management of risk of fall'. Under this Regulation a PCBU must manage risks to health and safety associated with a fall by a person (not necessarily a worker), from one level to another that is reasonably likely to cause injury to that person or any other person. This includes the risk of fall where the fall potential is in the vicinity of an edge over which a person could fall (R78.2.c).

The PCBU must ensure, so far as is reasonably practicable, that any work that involves the risk of a fall is carried out on the ground or on a solid construction. Solid construction means (amongst other things), an area that has even and readily negotiable surface and gradient. A legal opinion should be sought around what conditions constitute Council-related 'work' in the Park relating to a permanent structure such as this however, this would apply when organised activities are taking place, including during Sculpture by the Sea.

Reliance would argue that the eastern side and fall away from the path increases the risk of injury to a mobility impaired person during congested periods where the path is located on the ridgeline. In its current location adjacent to a fall zone, it is Reliance's view that a pathway dedicated to mobility impaired persons is not suitable in this location, (without suitable balustrading). If the current proposed location was moved away from the ridgeline and into the park itself, this will reduce publicly available space in the Park, and detract from the visual amenity that is one of Australia's most iconic views of Sydney's coastline. Installing temporary barricading around the fall risk during congested periods (such as during Sculpture by the Sea), would limit accessibility and largely defeat the purpose of installing such temporary infrastructure.

It is on this basis that Reliance considers that, while upgrades to facilities to improve accessibility in public space is important; the current proposed mobility impaired pathway design and location in Marks Park, is inappropriate from a safety and visual amenity perspective. Further consideration and stakeholder consultation is required to achieve a suitable outcome.

Yours sincerely

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