
Planning Report



File No	S01/01093/4
Development Application	MOD 32-05-2002, modifying DA154-06-2002
Property	Luna Park – 1 Olympic Drive Milsons Point DP48514, Lots 1247-1251, 1253-1258 and 1264
Date of Receipt	22 May 2002
State Electorate And Member	Jillian Skinner MP – North Shore
Applicant	Metro Edgely Pty Ltd
Applicant's Address	1 Olympic Drive Milsons Point
Owner's Name	The land is Crown Land managed by the Luna Park Reserve Trust, leased to Metro Edgely
Advertised	21 June to 19 July 2002 Advertised in the Sydney Morning Herald, Mosman Daily, mailed to 4725 addresses and 2 Site Notices.
Brief Description of Proposal	A modification application under s96(2) of the Act to adjust the timing of conditions, correct some misdescriptions and adjust the approved envelopes of the stage1 DA for Luna Park (DA154-06-2001) on which the Phase D application relies.
Attachments	A Notice of Determination & Conditions B Plans
Note	This application was notified and assessed concurrently with DA151-05-2002 (file S02/01104 Pt 1). Submissions, list of those notified and other details related to the public consultation are located in that file.
Recommendation	Approval (subject to conditions)

1.0 SUMMARY

On 31 January 2002 the Minister for Planning granted consent to a Stage 1 development application for redevelopment of the Luna Park Entertainment Complex, 1 Olympic Drive, Milsons Point (DA 154-06-01).

On 22 May 2002, Metro Edgley Pty Ltd submitted an application under section 96(2) of the EP&A Act to modify certain Stage 1 conditions of consent and building envelopes for DA 154-06-01.

The Minister for Planning is the consent authority under clause 10 of State Environmental Planning Policy No. 56 – Sydney Harbour Foreshores and Tributaries (SEPP 56).

The proposed development as modified is considered to be substantially the same development as that originally approved. The Waterways Authority (having issued general terms of approval as an integrated development approval body for the original application) has been consulted and raised no concerns relating to the proposed modification. The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered. The application has been considered with regard to the matters raised in s79C of the Act and is considered to be satisfactory. The modifications are considered to be generally minor and to have no major adverse impacts.

It is recommended that the section 96(2) modification application be **approved**, subject to consent conditions.

2.0 BACKGROUND

On 31 January 2002 the Minister for Planning granted consent to a Stage 1 development application for redevelopment of the Luna Park Entertainment Complex, 1 Olympic Drive, Milsons Point (DA 154-06-01).

The Luna Park site extends along the south-eastern tip of Milsons Point, between the higher slopes of Glen and Northcliff Streets and the waterways and foreshore of Lavender Bay. The site contains a foreshore boardwalk, pedestrian walkways, recreation space for amusements and rides, administration facilities, and plant. Surrounding land uses include: -

- the North Sydney Olympic Pool directly south of the site;
- Bradfield Park, southeast of the site, and under the Sydney Harbour Bridge northern gantry;
- a number of commercial and residential office buildings, directly east of the site, and significantly elevated to dominate the Milsons Point skyline; and
- land owned by the State Rail Authority, northeast of the site, used for the stabling of trains.

3.0 CONSENT BEING SOUGHT

The proposed modifications include: -

1. clarifying the timing of certain Stage 1 consent conditions that are required to be satisfied prior to, or at the time of determination, of “any” subsequent development application for the Luna Park Entertainment Complex;
2. rectifying two misdescriptions at Conditions 91(c) and 109 of the Stage 1 DA relating to the correct naming of streets adjoining the approved Luna Park car park building;
3. amending the approved basement envelope to provide a new basement below the approved Café/Restaurant buildings envelope;
4. amend the approved carpark envelope in section to correct the discrepancy between the approved carpark envelope plan and section;
5. amending the (excavated) basement envelope from RL -12.76 to RL -14.76, as a consequence of parking ramp arrangements (sought under a separate development application for Phase D works); and
6. amending the cafe/restaurant envelope to permit the protrusion of a lightweight deck on the northern elevation of the building and kitchen exhaust stacks on the roof.

The proposed modifications are detailed by two architectural plans, being MDA02/B and MDA05/B, prepared by Hassell Pty Ltd and dated June 2001. The proposed modifications are considered to constitute “substantially the same development” in accordance with s.115(g) of the Environmental Planning And Assessment Regulation 2000.

The applicant has amended the modification application in response to concerns raised by nearby residents, North Sydney Council, Sydney Harbour Design Review Panel and Planning NSW in relation to the detailed design application that relies on this modification. These amendments are considered to differ only in minor respects from the original application and are further considered not to give rise to any impacts beyond those in the original application. Accordingly, these amendments were accepted as a replacement application in accordance with s55 and s90 of the Regulations. In accordance with s90 of the Regulations further notification of the application was not undertaken, and the applicant was advised of the acceptance of the amended plans on 9 December 2002. The replacement application is detailed by two architectural plans, being MDA02/D and MDA05/C, prepared by Hassell Pty Ltd and also dated June 2001. (The plans of the amended “replacement application” are at tag B).

4.0 STATUTORY CONTEXT

The Minister for Urban Affairs and Planning is the consent authority under clause 10 of State Environmental Planning Policy No. 56 – Sydney Harbour Foreshores and Tributaries (SEPP 56). Other instruments applying to the land are Sydney Regional Environmental Plan No. 23 Sydney and Middle Harbours, North Sydney Local Environmental Plan 2001. The Luna Park Act 1990 also specifically applies to the site.

5.0 LOCAL MEMBER

The site is within the electorate of North Shore. The local member, Jillian Skinner, MP, did not provide any submission on these applications, but is understood to not support the application. Ms Skinner objected to the stage 1 application (DA 154-06-2001) and has written on 1 October to the Minister with concerns about the carpark entrance and tree removal.

6.0 CONSULTATION

The DA was advertised in accordance with Section 119 of the Regulations. An advertisement was placed in the Sydney Morning Herald and the Mosman Daily on 20 June 2002. Relevant public authorities and nearby landowners and occupants were notified by mail. The notification was carried out in accordance with the North Sydney DCP 2002, however, the exhibition period was 7 days longer than the minimum specified in the DCP. The notification mail-out was based on the same area PlanningNSW and North Sydney had earlier notified in previous consents for the site with addresses taken from the North Sydney Council rates database in accordance with the DCP to approximately 4725 properties. The mailout included 207 letters to original objectors of the Stage 1 DA (proposed to be modified). All North Sydney Council Councillors were individually notified as well as the Lavender Bay precinct committee (which Council nominated as the relevant precinct). The Waterways Authority was consulted, having issued General Terms of Approval for the original DA, being Integrated Development. The DA was placed on public exhibition at PlanningNSW's principal office and at North Sydney Council between 21 June 2002 and 19 July 2002. The application was notified concurrently with DA151-05-2002 for the detailed design of the Phase D works at Luna Park.

Submissions continued to be received and considered after the public exhibition period until the time of writing of this report, 8 November 2002.

6.1. Summary of Public Submissions

A total of 42 public submissions were received from surrounding residents, businesses, general public and government departments/relevant authorities addressing the combined Stage 2 DA for Phase D and the

subject S96 modification of the Stage 1 consent. Of these, a total of **7 submissions** raise issues in relation to the S96 application. Issues raised are dealt with under this report titled "Consideration".

6.2. Other submissions

6.2.1. North Sydney Council.

The application was referred to North Sydney Council in accordance with SEPP56. At its meeting of 19 August 2002, Council concurrently considered DA151-05-2002, MOD 32-05-2002, DA201-06-2002 and MOD 47-06-2002. Council did not make specific objections to any of the proposed elements under this S96 application. Its submission on DA151-05-2002 contained a recommendation that the carpark roof be extended to the east in order to better integrate with the landscaping of the cliff. A recommended rewording of condition 109 of the original consent is proposed in order to facilitate this outcome.

6.2.2. Sydney Harbour Foreshore Design Review Panel

The proposed modifications were presented to the Sydney Harbour Foreshore Design Review Panel (SHFDRP) on 21 June 2002. The SHFDRP commented: -

"The Panel supports the underground portion of the carpark, the activation of the midway and the activation of the waterfront."

It is noted that the comment in relation of the midway is relevant to the Stage 2 DA for Phase D and is not relevant to this subject modification.

7.0 CONSIDERATION

It is considered that the proposed modification is substantially the same as that for which consent was originally granted. The Waterways Authority, having issued General Terms of Approval for the original consent, was consulted and raised no further matters. The proposed application was notified in accordance with the regulations, and in accordance with North Sydney Council DCP. Submissions are considered below. The proposed modifications have been assessed against the matters for consideration under section 79C of the EP&A Act in the Department's planning report.

Detailed considerations: -

7.1. Luna Park Act 1990

The proposed variations are considered to be not inconsistent with the provisions of the Luna Park Act 1990.

7.2. Luna Park Plan of Management

The proposed variations are generally compliant with the provisions of the Luna Park Plan of Management, in particular the building envelopes contained under Figures E and F, by virtue that the proposed awning zones will contribute to the function and amenity of the Midway public domain. Furthermore, the extension of the basement envelopes are totally located underground and will not compromise the use and amenity of the Midway public domain.

7.3. SEPP 56 - Sydney Harbour Foreshores and Tributaries

The proposed variations do not alter the Stage 1 development compliance with the SEPP 56, Guiding Principles.

7.4. SREP 23 - Sydney & Middle Harbours

The proposed variations do not alter the Stage 1 development compliance with the provisions of SREP 23.

7.5. North Sydney LEP 2001

The proposed variations do not alter the Stage 1 development compliance with the provisions and controls of North Sydney LEP 2001.

On the basis of the assessment of the Stage 1 DA against relevant statutory considerations, the proposal was found to warrant approval. It is considered that the proposed changes are of a minor scale and do not alter this position.

7.6. Submissions

Issues raised by submissions are highlighted in *italics*, and the relevant conclusions of this assessment (comment), are discussed below:

7.6.1. *Noise and emissions will be generated by the café/restaurant exhaust stacks*

Comment: The Stage 2 DA for Phase D of Luna Park has submitted the following information, which assist in the consideration of this matter. By letter dated 14 August 2002, Acoustic Logic Consultancy Pty Ltd confirms compliance of the Café Restaurant complies with the following Stage 1 consent condition: -

"102. The LA₁₀, 1-hour noise level emanating from buildings and internal spaces shall not exceed 60dB(A) at any time, measured at the closest residential facade."

The Noise Impact Report by Acoustic Logic also concludes that the carpark will not produce adverse noise impact and will comply with the relevant criteria of 58 dB(A) during the night time period (based on monitored vicinity background noise levels).

The applicant has submitted a letter from Adamus Consulting Practice, dated 13 August 2002, which concludes: -

"The mechanical ventilation of the carpark is legislated by BCA.1996, clause F4.11, to comply with Australian Standard AS 1668.2 1991, Mechanical ventilation for acceptable indoor air quality.

The standard requires that "all exhaust air and spill air shall be discharged to atmosphere in such a manner as not to cause danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public."

The carpark ventilation system at Luna Park has been designed to meet all discharge requirements set out by the standard as noted below:

- Located not less than 6m from property boundary or outdoor intake
- Arranged vertically with a discharge of not less than 5m/s
- Situated 3m above a flat roof/trafficable thoroughfare."

Consequently noise and exhaust emissions are considered to be appropriately conditioned by existing Stage 1 conditions.

7.6.2. *The kitchen exhaust stacks are unattractive.*

Comment: The design of the exhaust stacks are dealt with separately under the Stage 2 DA for Phase D of Luna Park. Under this DA, the applicant has submitted a colour and materials scheme for the Café/Restaurant building, to emulate the fun and festival atmosphere of the Luna Park entertainment complex. Having regard to the Stage 2 application, it is considered that the extended envelope for the smoke stacks does not adversely impact upon the overall design quality of the proposed development.

7.6.3. *Excessive levels of noise will be generated from the upper level outdoor restaurant terraces*

Comment: It is considered that the 1st level outdoor terraces to the Café/Restaurant are appropriate having regard to the following, being that the terraces are : -

- orientated north and west towards the waterways, and away from the cliff top residential buildings;

- situated at RL 7.4 and will be screened by Café/Restaurant façade and rooftop at RL 12 (with minor projections to RL 15.3) and similar car park building rooftop heights to the east;
- conditioned to comply with acoustic emissions under Stage 1 consent condition 102 *“The LA₁₀, 1-hour noise level emanating from buildings and internal spaces shall not exceed 60dB(A) at any time, measured at the closest residential façade...”*
- conditioned to comply with stage 1 consent condition 101 Hours of Operation *“Monday to Saturday - 7.00 am to 1.00 am (the following morning); Sunday - 7.00 am to 12.00 midnight.”*

7.6.4. Objection to additional basement parking level

Comment: It is considered that the additional basement footprint area is appropriate for reasons including: -

- The subject area accommodates back of house facilities within a basement level;
- Deliveries and servicing will be facilitated within the basement parking structure rather than through the public domain of the Midway;
- An efficient engineering solution is concluded by avoiding a 3.5 metre separation of fill between the basements of the car park and Café/Restaurant buildings; and
- The additional floor area will be totally contained below ground level and not visible from the public domain.
- The additional floor does not result in any increased traffic movements that that already approved.

7.6.5. Exhaust stacks are not “minor building” elements

Note: The Stage 1 consent applies a RL 12 height limit to the car park and café/restaurant buildings, and applies the following condition of clarification: -

“91. (f) Height in general

The RL height limits quoted above may be exceeded by minor building elements including flagpoles, masts, performance structures and decorative features. Details are to be provided in any subsequent development application.”

Comment: The exhaust stacks are considered to comply with the definition provided under Stage 1 consent condition 91(f). Furthermore, the requirements of Australian Standard AS 1668.2 1991 requires external ventilation systems to be situated 3m above a flat roof/trafficable thoroughfare, and is therefore supported. Notwithstanding the view that they are already permitted, the amendment of the approved envelope to permit the localised increase in height for the exhausts is considered appropriate.

7.6.6. Additional 280m² of basement floorspace will add pressure for on-street parking.

Comment: The additional basement floorspace provides essential storage and service/delivery space to the Café/Restaurant facilities. This use will be directly serviced by basement service vehicle access, and accordingly is not considered to generate additional on-street parking. The basement floor does not alter the amount of parking already approved.

7.7. Consideration of proposed modifications

7.7.1. Deferment of satisfaction of Stage 1 consent conditions.

The applicant seeks to amend certain Stage 1 consent conditions that are required to be satisfied prior to, or at the time of determination of, “any” DA for the Luna Park Entertainment Complex. The S96 application addresses that the word “any” technically imposes unreasonable requirements in the satisfaction of the following conditions: -

- condition 94 (b) - *Wild Mouse*, (c) *markets, exhibitions or small-scale performance*, (d) *signage strategy for the whole site*, and (e) *lighting strategy* & (g) *children’s play area north of Coney Island*;
- condition 95 - *Pedestrian link from Glen Street*;
- condition 99 - *Public information signage at Glen Street and Luna Park Face locations*;
- condition 103 - *Acoustic Plan of Management*

- condition 121 - *Interpretation plan of Luna Park's heritage significance*
- condition 132 - *Patron Management Plan*
- condition 134 - *Safety fencing and the children's play area;*

Comment: The majority of conditions listed above relate to Phase E works, which are the subject of a separate development application that was lodged **after** the DA for Phase D works. Furthermore, the DA for Phase D does address acoustic compliance of the car park and café/restaurant buildings. Consequently the proposed variation to the staging of matters under Stage 1 consent conditions is supported in this instance.

7.7.2. Car Park and adjoining streets:

The applicant wishes to rectify two misdescriptions at Conditions 91(c) and 109 of the Stage 1 DA relating to the connection of the carpark to the street referred by consent conditions as "Dind Street".

Comment: The car park building and ramp adjoins Northcliff Street and Paul Streets, and **not** Dind Street. Consequently the redrafting of the condition is supported to reflect the accuracy of adjoining streets.

7.7.3. Amendment of basement car park:

The applicant wishes to amend the approved basement envelope to provide a new basement below the approved Café/Restaurant buildings envelope. The additional envelope will accommodate underground service and deliveries access to the Café/Restaurant building without affecting the use and amenity of the Midway public domain. The envelope variation also produces an improved engineering solution by removing the requirement for a 3.5 metre wide infill between the respective car park and café/restaurant building basements.

Comment: It is considered that notes that the variations will cause no visual impact on the public domain and will not result in any additional carparking. Based on the applicant's reasons for justification, the proposed amendments to the basement envelope are supported.

7.7.4. Amendment to Carpark building envelope:

The applicant wishes to amend the approved carpark envelope in section to correct the discrepancy between the approved carpark envelope plan and section. The variation is as a consequence of a proposed 3.5 metre high awning protruding from the western elevation of the car park building towards the Midway.

Comment: It is considered that the awning will provide general weather protection to the public, and users of the retail and ticketing booths fronting the car park building. Furthermore, the variation is consistent with the Stage 1 condition 94 (a) requiring the applicant to submit "*details of shelters against hot and inclement weather*". In consideration of the benefits to public amenity that will be created, the proposed envelope variation is supported.

7.7.5. Amendment to Café/Restaurant building envelope:

The applicant wishes to amend the Café/Restaurant envelope to permit the protrusion of a lightweight deck on the northern elevation of the building and kitchen exhaust stacks on the roof, both structures being outside the approved building envelope. The applicant notes that the lightweight deck serves the dual role of an outdoor dining area, and weather protection to public queuing for the Ferris Wheel below. The variation to the envelope also addresses the inclusion of two exhaust stacks which exceed the RL12.0 building height.

Comment: It is considered that the inclusion of an outdoor west facing balcony is consistent with the use of the café/restaurant building. In addition, the placement of exhaust vents need to comply with the requirements of AS 1668.2 1991. In consideration of the applicant's justification of departure from the approved envelope, issues raised by submissions and addressed under this report section 7 (i), (ii), (iii) and (v), the proposed variation is supported.

7.7.6. Subsequent amendments to car park basement envelope

The amendments relate solely to the shape of the car park building envelope below ground level, and seek to increase the (excavated) basement envelope from RL -12.76 to RL -14.76, as a consequence of parking ramp arrangements (sought under a separate development application for Phase D works);

Comment: It is considered that the amendment to the (excavated) building envelope variation is considered to be minor, produces no negative environmental impacts, and is supported.

8.0 CONCLUSION

The proposed development as modified is considered to be substantially the same development as that originally approved. The Waterways Authority has been consulted and raised no concerns relating to the proposed modification. The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered. The application has been considered with regard to the matters raised in s79C of the Act and is considered to be satisfactory. The modifications are considered to be generally minor and to have no major adverse impacts.

The Applicant has been consulted on the draft Instrument of Modification and has raised no issues of concern. On balance, it is considered that the section 96(2) application should be approved, with amended conditions of consent proposed accordingly.

9.0 RECOMMENDATION

It is recommended that the Minister for Planning:

1. Under section 96(2) of the EP&A Act and in accordance with clause 10 of SEPP 56, grant consent to the Modification of Application No. 154-06-2001 subject to conditions in accordance with the Notice of Determination of Development Application (tagged "A"); and
2. authorise the Director, Urban Assessments, to advise the applicant, Council and those who made submissions regarding the application of the determination.

Signed:



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