



**MAJOR PROJECT ASSESSMENT
LUNA PARK SITE C – RESTAURANT
*Proposed by Luna Park Sydney Pty Ltd***

Director-General's Environmental Assessment
Report
Section 75I of the
Environmental Planning and Assessment Act 1979

February 2007



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1 EXECUTIVE SUMMARY

1.1 The Proposal

This is a report on a project application pursuant to Part 3A of the *Environmental Planning and Assessment Act, 1979* ("the Act").

Luna Park Sydney Pty Ltd (the Proponent) is proposing to subdivide what is known as the 'Cliff Top Site' of Luna Park into three lots and to construct a two storey restaurant with basement car parking on the site on one of the new lots, known as Luna Park Site C. The site is on the corner of Glen and Northcliff Streets, Milsons Point. ("the proposal").

The proposal as submitted comprises:

- A 2 storey building with a gross floor area of 621.5m² (maximum of RL 31.50 AHD) for use as a restaurant with hours of operation between 7am and 3am the following day, 7 days a week;
- Excavation for one basement car parking level, accommodating 5 car spaces;
- provision of vehicle egress from Northcliff Street;
- provision of associated landscaping including public walkways and viewing platforms;
- provision of stormwater measures;
- subdivision of Lot 1 DP 1066900 (the entire cliff top area of Luna Park) into three lots. The proposed building is to be located on one of the newly created lots, proposed Lot 11.

The estimated project cost of the development is \$5.5 million. The proposal will create 20 full time equivalent construction jobs and 25 full time equivalent operational jobs.

During the exhibition period, the Department received a total of four (4) submissions from public authorities and fifteen (15) submissions from the public (including two petitions, one with 10 signatures and the other with 72 signatures). Key issues considered in the Department's assessment included:

- Amenity impacts including hours of operation and noise considerations
- Proposed Uses of the Building
- View impacts
- Built Form and Urban Design
- Traffic and Car Parking Impacts
- Heritage Impacts
- Archaeological Impacts
- Trees Impacts
- Geotechnical Impacts
- Subdivision

The Department has assessed the merits of the project and is satisfied that the impacts of the proposed development have been addressed via the Proponent's Statement of Commitments and the Department's recommended conditions of approval, and can be suitably mitigated and/or managed to ensure a satisfactory level of environmental outcome. On these grounds, the Department is satisfied that the site is suitable for the proposed development and that the project will provide environmental, social and economic benefits to the region. All statutory requirements have been met.

The Department recommends that the project be approved, subject to conditions.

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2 BACKGROUND

2.1 THE SITE

2.1.1 Site context and location

The site is located in Milsons Point and is bounded by Glen, Dind and Northcliff Streets to the east. The site is Lot 1 in DP 1066900, known as the "Cliff Top site" is located within the local government area of North Sydney. Luna Park is Crown Land and is under the care, control and management of the Luna Park Reserve Trust (LPRT).

The specific site the subject of the proposed restaurant development is located on what is known as Site C of the cliff top area of Luna Park. The cliff top area forms part of the larger 'Luna Park' site, however the majority of Luna Park sits below a large cliff face that separates it from predominantly high-rise mixed-use development of Milsons Point. The cliff top area is visually and functionally part of the Northcliff, Glen and Dind Street streetscapes, which form the western portion of the Milsons Point town centre. The cliff top area slopes from its northern boundary (RL 23m) to its southern tip (RL 13m).

The cliff top site has an area of 2,607m². The cliff top area previously comprised two small lots, formerly known as Lots 1259 (Site B) and 1260 (Site C) and part Lot 1248 in DP 48514. The former lot references are still used within the Luna Park Site Act 1990 and referred to in the Luna Park Plan of Management as 'Site B' and 'Site C' respectively. The broader site the subject of the proposed subdivision development is the entire cliff top area, whilst the location of the proposed building is on one future lot, 'Site C' (see Figures 1, 2 and 3).

The site is located within close proximity to the Bradfield Highway and Milsons Point train station, which provides excellent public transport access to the site.

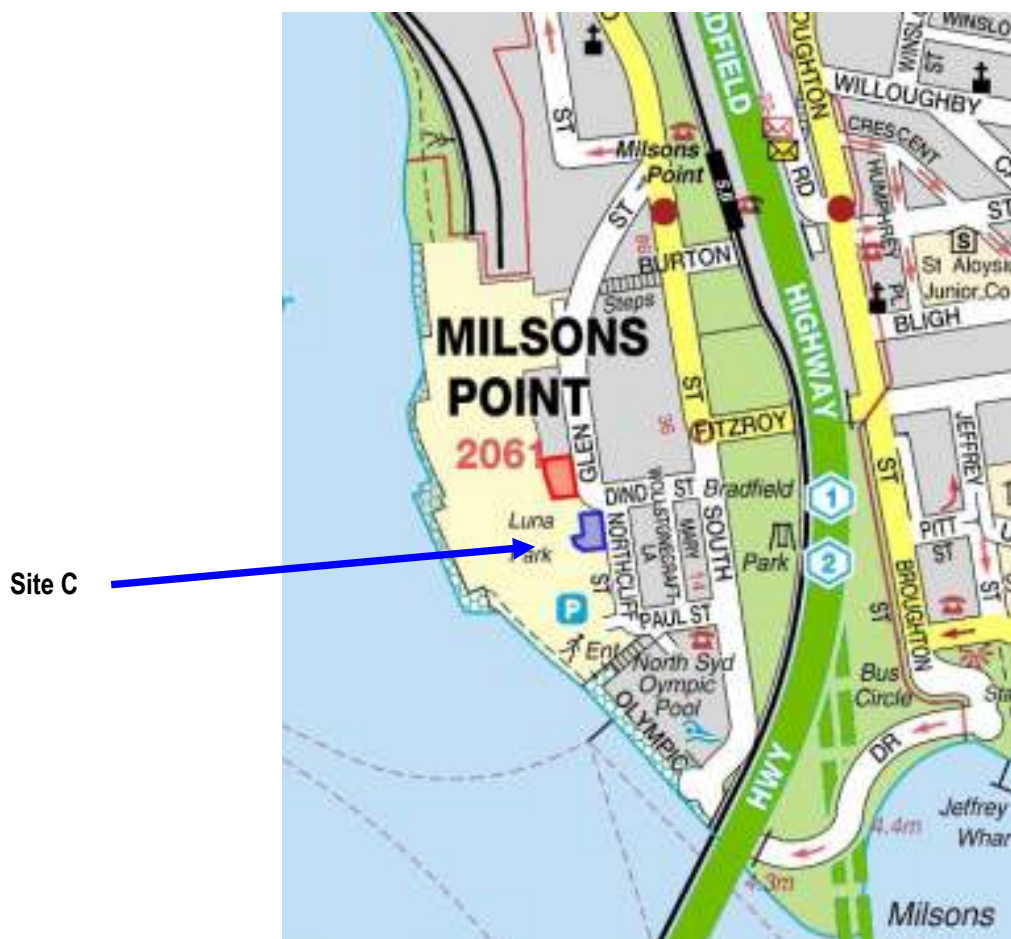


Figure 1 – Site Location

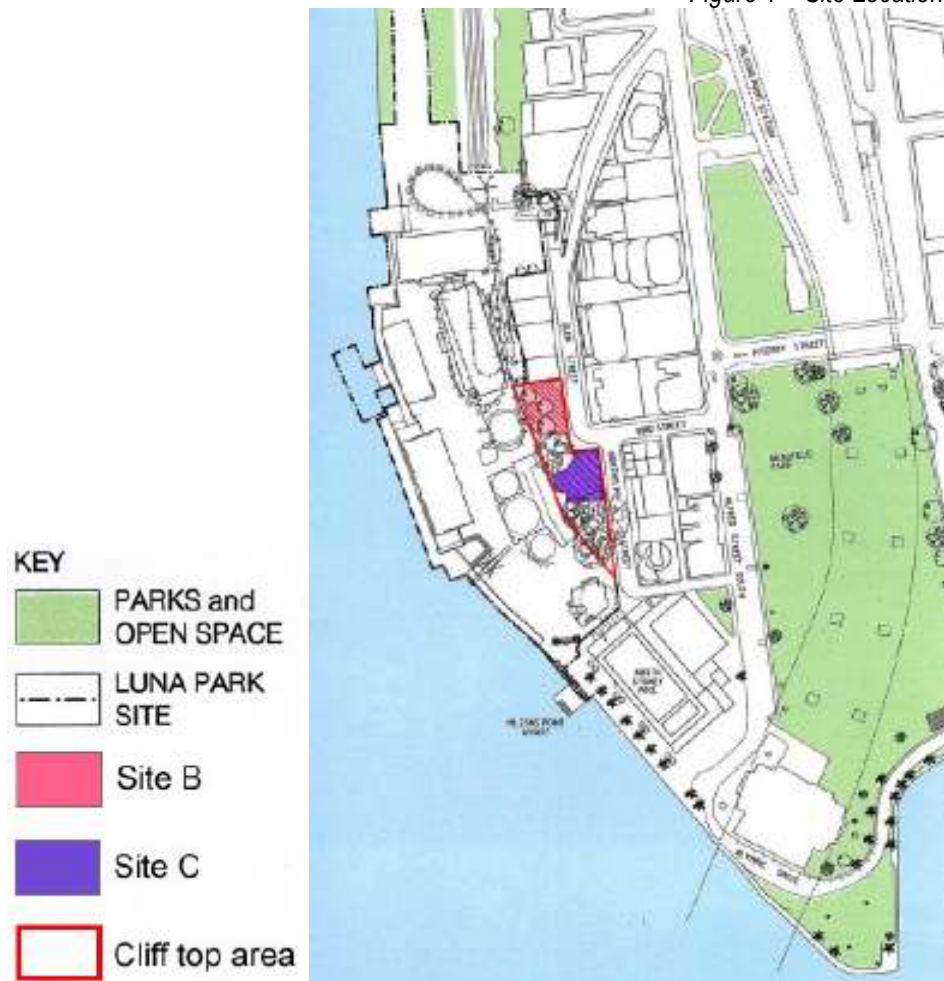


Figure 2 – Site context



Figure 3 – Photograph of site



Figure 4 - Site as
viewed from the north



Figure 5 - Site as viewed
from the north-east



Figure 6 - Site as viewed
from the east

2.1.2 Existing site features

Site C is currently a large hardstand area used as a temporary car park, and is generally overgrown with weeds. The site is fenced along the street frontage with two metre high 'colorbond' fencing, with a gate entrance from Northcliff Street. The larger cliff top area however contains four (4) large fig trees, three (3) of which (T5, T6 and T7) are included in the State Heritage Inventory.



Figure 7 – Location of Fig Trees



Figure 8 – Fig tree to the north (T4)



Figure 9 – Fig tree to the south (T5)

2.1.3 Surrounding development

Whilst the site itself does not directly adjoin any buildings, being located within the clifftop area, it is surrounded by a mix of land uses including Luna Park entertainment facilities, mixed use buildings of varying heights comprising of commercial ground floor and residential above, commercial buildings, and heritage listed terraces.

To the north of site C is a large Moreton Bay Fig Tree and Site B. Site B is located adjacent to a group of office and residence buildings designed and occupied by the late Harry Seidler, a prominent Australian architect. These buildings, No. 2-4 Glen Street, are listed as a heritage item of local significance under North Sydney

Council's LEP 2001 and are being considered for listing on the State Heritage Register by the NSW Heritage Office. The southern facade of the building at 2-4 Glen Street has filtered views to the site.

To the south of the site are a group of heritage listed fig trees. The southern part of the cliff top has a significant fall down Northcliff Street and is also covered by scrubby vegetation of limited significance. A small publicly accessible park that forms the roof top to the Luna Park car park is located to the southwest of the site.

Opposite the site to the northeast is a 26 storey residential apartment building known as the 'Pinnacle Apartments' located at the corner of Glen and Dind Streets, whilst opposite the site on the south east corner of Northcliff and Dind Streets are four 2 storey terrace dwellings which are heritage items under North Sydney LEP 2001. The terraces are currently used as commercial offices and are the subject of a current Development Application under assessment by North Sydney Council for the use of the ground floor for commercial purposes and the first floor for residential purposes, as well as alterations and additions to achieve a third level to both terraces. The first floor balconies currently enjoy a view over the site to Lavender Bay.



*Figure 10 -
Terrace
dwellings
opposite the site
to the west, and
southern
adjoining
residential and
commercial
buildings*

A number of residential and commercial buildings are located to the south of the terrace dwellings and range in height from eight to twelve storeys. Whilst some of these buildings have views over the site to Lavender Bay, the primary views are toward Sydney Harbour to the south of the subject site.

The remainder of the Luna Park entertainment precinct is located to the west of the site, beyond the cliff face. Several developments are to be commenced to the west, including the development of a four level Luna Park Cinema Complex.

2.1.4 Zoning

The Site is zoned 'Luna Park' pursuant to North Sydney LEP 2001. A 'refreshment room' is permissible with the area zoned Luna Park. A restaurant is defined as a refreshment room and therefore the proposal for a restaurant is permissible. The objectives of the Luna Park zone are as follows:

- a) ensure that development reflects and continues Luna Park's place in the social history of Sydney, and
- b) allow for development for the purpose of public recreation, amusement and entertainment, and
- c) minimise the impact of Luna Park's operation on the surrounding community.

The proposal provides a facility which is sympathetic to its context. The potential amenity impacts which may result from the use of the building are considered further in this report where it is concluded that subject to

conditions of approval being imposed the proposal will not result in undue impacts to the surrounding community. Accordingly, the proposal is considered to be generally satisfactory with respect to the objectives for the zone.

2.2 SITE HISTORY

2.2.1 Background

Luna Park Site Act 1990

The Luna Park Site Act 1990 was amended in 1997 to facilitate a broader range of uses within Luna Park, and to allow the commercial development of the cliff top area of Luna Park. The amendments also allowed for Luna Park to be operated by a private sector partner under a lease arrangement. Specifically, the object of the Act is to return the Luna Park site to the people of New South Wales and to ensure that Luna Park and the associated harbour foreshore remain available and accessible for the enjoyment of the people of New South Wales.

Luna Park is Crown Land and, as required by the Luna Park Site Act, is managed by the trustee Luna Park Reserve Trust (LPRT). The Act requires the LPRT to develop a Luna Park Plan of Management to manage the ongoing use of, and guide development within, Luna Park.

To develop the cliff top site Luna Park Sydney Pty Ltd have entered into agreement for a 99 year lease on the land with the LPRT.

Luna Park Plan of Management 1998

Further to the amendments to the Luna Park Site Act 1990, the New South Wales Government adopted the Luna Park Plan of Management in 1998. This plan aimed to improve the commercial viability of Luna Park by introducing additional uses in accordance with the amendments to the Luna Park Site Amendment Act 1997, including commercial development on the cliff top area.

Cliff Top Site Urban Design Study

In July 2004, a detailed design study of the cliff top area of Luna Park was undertaken by The Department and overseen by a panel of experts, including Mr Barrie Shelton (Co-ordinator, Urban Design Graduate Program, Faculty of Architecture, University of Sydney), Mr Phillip Thallis (Architect), Councillor Genia McCaffery (Mayor, North Sydney Council) and Ms Petula Samios (Department of Planning – chair of panel). The panel prepared a draft report, which included a detailed site analysis and recommended development standards for future development on the subject site. The draft report was publicly exhibited.

SEPP Major Projects 2005

The Minister of Planning declared certain development within the Luna Park site to be development to which Part 3A of the EP&A Act applies and the Luna Park site was designated a State Significant site under of Schedule 3 of State Environmental Planning Policy (Major Projects) 2005 (SEPP Major Projects), which was gazetted in August 2005.

Schedule 3 of SEPP Major Projects includes development controls guiding the development on the cliff top area. These controls closely resemble the final recommendations of the expert panel which undertook the Cliff Top Site Urban Design Study referred to above.

2.2.2 Previous Applications

Between 1999 and 2005, various approvals were granted for the redevelopment and restoration of Luna Park. The Luna Park cinema development was approved by the Minister for Planning on 10 October 2005.

Pursuant to State Environmental Planning Policy No. 56 (SEPP 56), LPS submitted a Development Application (DA) to the Sydney Harbour Foreshore Authority in January 2004 for the construction of a 14 storey commercial building on the cliff top area on Site B. The DA was withdrawn in February 2004.

3 PROPOSED DEVELOPMENT

3.1 The proposed development

This is an application for approval to carry out a project comprising of:

- A 2 storey building with a gross floor area of 621.5m² (maximum of RL 31.50) intended for use as a restaurant for 245 patrons with hours of operation between 7am and 3am the following day 7 days a week;
- Excavation of one basement car parking level accommodating 5 car spaces;
- provision of vehicle egress from Northcliff Street;
- provision of landscaping including public walkways and viewing platforms;
- provision of stormwater measures;
- subdivision of Lot 1 DP 1066900 (the entire cliff top area of Luna Park) into three lots. The proposed restaurant building is to be located on one of the newly created lots, proposed Lot 11.

Restaurant Floors

The proposed building on proposed lot 11 will accommodate a single café/restaurant tenant. The ground floor of the development generally comprises of the street entry from the corner of Dind and Northcliff Streets, a bar, kitchen and dining area. The first floor will comprise of dining area and amenities. A lift is to service all three floors of the development including the basement. An internal stairway connects the ground and first floor level of the restaurant (floor plans are illustrated in figures 14 and 15). The specific uses of each level is as follows:

<i>Basement Level</i>	<ul style="list-style-type: none">- 5 car parking spaces in total- 1 disabled car parking space- garbage storage- pump room- grease arrestor
<i>Ground Level</i>	<ul style="list-style-type: none">- pedestrian entry from Dind and Northcliff Streets- 310m² of internal dining area- 12.8m² of balcony area to the south of the building directly adjoining the dining area- bar area- kitchen- plantroom/storage area
<i>Level 1</i>	<ul style="list-style-type: none">- 260m² of internal dining area- 12.8m² of balcony area to the south of the building directly adjoining the dining area- bar area- toilet facilities

Use of Building

The restaurant has been designed for a maximum capacity of 245 seats and is proposed to operate between the hours of 7am to 3am, 7 days a week. No live *amplified* music is proposed to be played in or outside the restaurant. However, live music and non-amplified background music is proposed to be played during restaurant operating hours. The proponent has provided a seating layout plan which provides 100 seats internally and 9 on the terrace for the ground floor, and 130 seats internally and 8 on the terrace on the first floor.

Subdivision

The proposal also seeks approval for a 3 lot subdivision of the cliff top area, Lot 1 DP 1066900, into three separate lots. The proposal seeks to subdivide the land according to the previous lot pattern, dividing the cliff top site into lot areas similar to the former Lots 1259 and Lot 1260 (that is Sites B and C) with the remaining lot being for open space and public use, which is referred to as proposed Lot 12. The proponent suggests that a

Section 88B instrument will accompany the final plan of subdivision, which is to detail the obligations for ongoing maintenance and preservation of proposed Lot 12, including the fig trees and cliff face.

The subdivision provides for the definition of the subject restaurant site (formerly Site C) for the purposes of future leases of the site and restaurant. The subdivision also facilitates a covenant being placed on the title of proposed Lot 10 (formerly known as Site B) in accordance with a private commercial agreement to ensure that no building is erected on this site and it is converted to parkland in the future. Furthermore, the subdivision creates Lot 12 which contains the fig trees on the clifftop and provides an opportunity for the imposition of a covenant on title to ensure the fig trees are maintained and the area is used as a parkland for public recreation. All covenants are to be to the satisfaction of the Department.

Development Data

	Proposed	Permissible	Relevant Development Standard	Compliance
Site area	2,607m ²	N/A	N/A	N/A
Proposed building site (site C)	494m ²	N/A	N/A	N/A
Max Height (AHD)	RL 31.50m	RL31.50m	MP SEPP	Yes
GFA	621.5m ²	1729m ²	North Sydney LEP	Yes
FSR (for entire Site)	0.24:1	3.5:1	North Sydney LEP	Yes
FSR (for Site C)	1.26:1	3.5:1	North Sydney LEP	Yes
Carparking	5 spaces, including 1 disabled (1 space per 124m ²)	Max 1 space/50m ²	North Sydney DCP	Yes

External Appearance

The proposed building presents a two storey form at the northern end of the site fronting Glen Street and becomes a part three storey form at the southern end of the site in response to the land topography. The building frontage to Northcliff Street is part two storey and part 3 storey as the site falls away down Northcliff Street to the south. The primary two storey element has a flat roof and a glass façade comprising both fixed and openable components being clear, green and transparent panels. The basement part level appears as a recessed solid, dark coloured stone wall element below the primary glass façade, and is punctuated by a garage door an opening toward to southern portion of the site. Several balconies are located at the south western façade of the building, which are not visible from the surrounding streets. The building is located within the curtilage of the fig trees and is subservient within its setting as viewed in Figures 15, 16, 17, 18 and 19.

The proponent has provided the following design statement with respect to the external appearance and design intent of the building:

The exterior of the proposed development has been designed to camouflage itself within the existing green canopy of the fig trees. This is to be achieved through the use of a mixture of green coloured glass panels and louvres. Specifically the building's:

- *eastern elevation to the Northcliff Street will comprise of opaque glass panels and louvres;*
- *northern facade will comprise of transparent coloured glass panels and louvres; and*
- *southern facade will comprise of a mix of a opaque and glass panels and louvres.*

The basement wall that slopes along Northcliff Street will be finished in a dark coloured stone finish to provide depth and hide the entry to the car park.



Figure 11 – Photomontage view from the north-east



Figure 12 – Photomontage view from the north, looking down Glen Street



Figure 13 – Site Plan

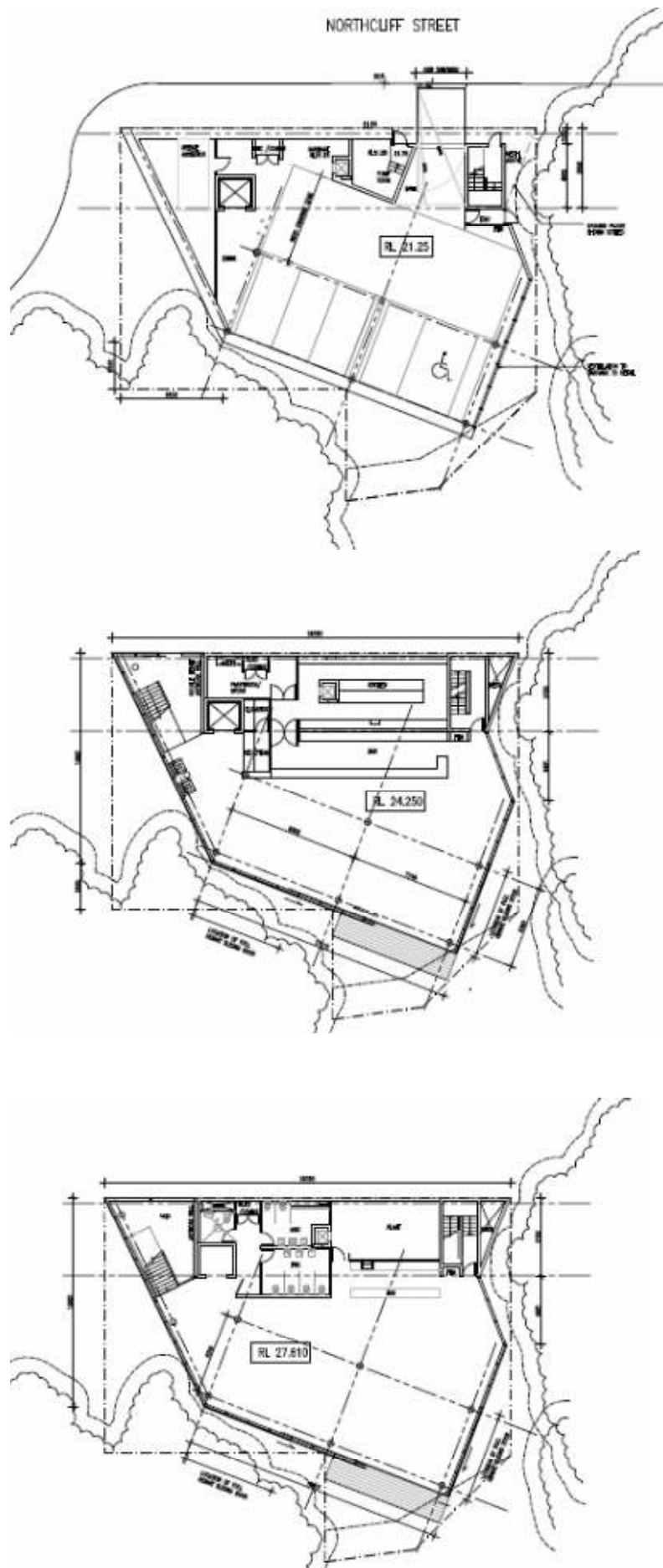
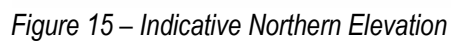


Figure 14 –
Basement Level,
Ground Level, First
Floor Level



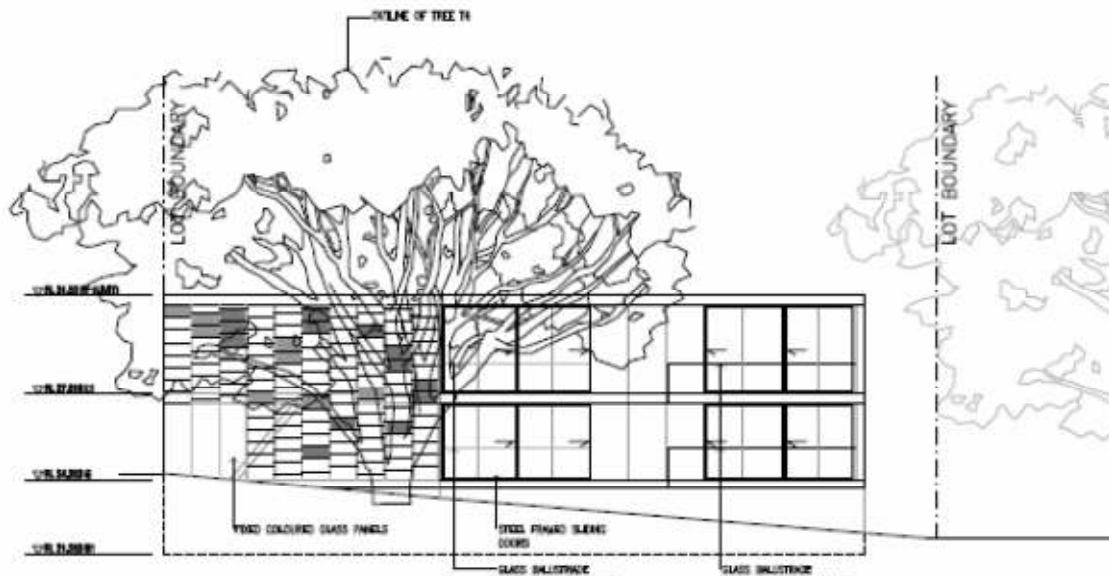


Figure 18 – Indicative Western Elevation

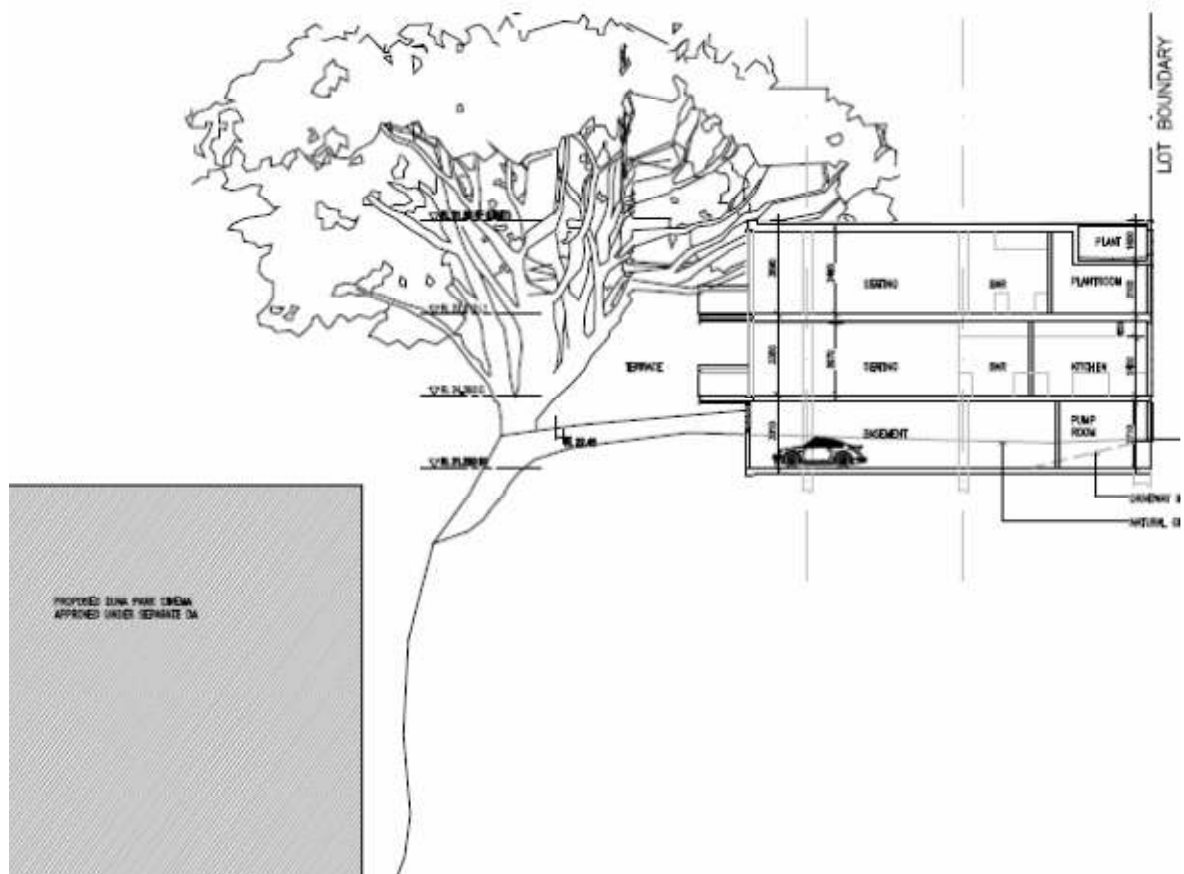


Figure 19 – Indicative Section

4 STATUTORY CONTEXT

4.1 MAJOR PROJECT DECLARATION

The project is a Major Project under *State Environmental Planning Policy (Major Projects) 2005* being development on land identified by Map 2 of Schedule 3 of the MP SEPP and has a capital investment value of more than \$5 million (Schedule 3, Part 2, Division 1, Clause 1). The opinion was formed by the Director-General, as delegate for the Minister, on 10 April 2006.

4.2 PERMISSIBILITY

As previously stated, the Site is zoned 'Luna Park' pursuant to North Sydney LEP 2001 and 'refreshment rooms' are permissible with consent. The proposed restaurant meets the definition of a refreshment room and therefore the proposal is permissible.

4.3 MINISTER'S POWER TO APPROVE

The Department has exhibited the Environmental Assessment (EA) in accordance with section 75H (3) of the Environmental Planning and Assessment Act, 1979, as described in section 5, below. The project is permissible and meets the criteria for Major Projects in the Major Projects SEPP. Therefore, the Department has met its legal obligations and the Minister has the power to determine this project.

4.4 DIRECTOR GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRS)

The DGRs issued on 31 July 2006 required the following issues to be addressed:

- Statutory and Other Requirements
- Design, Visual Impact and Design Quality Principles
- Proposed Uses
- Heritage Impacts
- Traffic impacts (Construction and Operational)
- Wind Impacts
- Drainage and flooding
- Noise impacts
- Rail Impacts
- Utilities
- Waste Management
- Remediation of site
- Provision for Public Services and Infrastructure.
- Economic Impacts
- Geotechnical and Subsidence

The DGRs are in **Appendix A**.

It is noted that the DGRs were issued for both the subject restaurant application and also for a proposed seven storey commercial office building to be constructed on 'Site B'. In this regard, several of the DGRs are not relevant to the subject restaurant application. Nonetheless, the EA lodged by the proponent on 8 November 2006 was inadequate for exhibition purposes. The proponent subsequently lodged a revised EA on 28 November 2006 which satisfactorily addressed the DGRs relevant to the subject proposal, and the EA was exhibited from 6 December 2006 to 7 February 2007.

4.5 RELEVANT LEGISLATION

4.5.1 Luna Park Site Act 1990

The object of the Luna Park Site Act 1990 was to return the Luna Park site to the people of New South Wales and to ensure that Luna Park and the associated harbour foreshore remain available and accessible for the enjoyment of the people of New South Wales. The Luna Park Site Act 1990 was amended in 1997 to facilitate a broader range of uses within Luna Park, and to allow the commercial development of the cliff top area of Luna Park. The amendments also allowed for Luna Park to be operated by a private sector partner under a lease arrangement. The proposed development is consistent with the intent of the Luna Park Site Act and will result in cliff top areas becoming available for the enjoyment of the public.

4.6 ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)

4.6.1 Application of EPIs to Part 3A projects

To satisfy the requirements of section 75(2)(d) and (e) of the Act, this report includes references to the provisions of the environmental planning instruments that govern the carrying out of the project and have been taken into consideration in the environmental assessment of the project. A summary of compliance with the relevant EPIs is in **Appendix B**.

The provisions, including development standards of local environmental plans, and development control plans are not required to be strictly applied in the assessment and determination of major projects under Part 3A of the Act. Notwithstanding, these standards and provisions are relevant considerations as the DGRs require the proponent to address such standards and provisions. Accordingly the objectives of a number of EPIs and the development standards therein and other plans and policies that substantially govern the carrying out of the project are appropriate for consideration in this assessment as follows:

4.6.2 State Environmental Planning Policy (Major Projects) 2005

The MP SEPP applies to the project as discussed in section 4.1 above. Schedule 3 of the MP SEPP also includes additional specific provisions that apply to the development of Sites B and C on the cliff top area (previously known as Lots 1259 (Site B) and 1260 (Site C) and part Lot 1248 in DP 48514. The proposal has been found to comply with these provisions, as discussed in detail in **Appendix B**.

4.6.3 State Environmental Planning Policy No. 55 – Remediation of Land

Under Clause 7(1) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration must be given as to whether or not the land is contaminated.

A Stage 1 Preliminary Environmental Site Assessment has been undertaken by Coffey Geosciences Pty Ltd (reference S22442/1-AF Rev 2) dated 21 October 2003, which outlines that there is a high likelihood that importation of contaminated fill to the site has occurred in the past. However, the report concludes that it is considered that the site is likely to be capable of being remediated to be suitable for the proposed commercial landuse. The report further advises that the extent of remediation required and the waste classification of soils for offsite disposal would need to be determined by a Stage 2 Environmental Site Assessment which should be undertaken prior to earthworks commencing on the site.

These findings are acceptable, subject to the imposition of a condition requiring the provision of a Phase 2 Detailed Investigation and a Remediation Action Plan as necessary which provides goals and a strategy for remediation, so that the site is suitable for the proposed commercial development. If remediation is required to occur, a requirement will be imposed for a Site Audit Statement and Verification to be provided to the Certifying Authority, prior to any construction works occurring on the site.

4.6.4 Sydney Regional Environmental Plan – Sydney Harbour Catchment (SREP)

The SREP provides planning controls and objectives for the Sydney Harbour catchment as a whole. The subject site is located within the 'foreshores and waterways area' and is zoned W8 – Scenic Waters: Passive

Use. The site is also located within a strategic foreshore site which requires the development of a master plan to guide development. However, in this instance the controls with the MP SEPP are specific to the subject site and provide an appropriate framework for consideration of a proposed development on the site.

The proposal is considered appropriate with respect of the objectives of the W8 – Scenic Waters:Passive Use zone as the proposal is of a modest scale which retains the visual continuity and significance of the landform, and does not result in a detrimental impact upon the natural and cultural scenic quality of the surrounding area, particularly when viewed from the waters.

The proposal will be partially obscured by the existing fig trees on either side of the building and in combination with its low key design and use of materials, will be minimally visible from the waterway and will be recessive in appearance within its landscape.

4.6.5 North Sydney Local Environmental Plan 2001 (LEP 2001)

As previously stated, the proposal is permissible pursuant to LEP 2001. The LEP 2001 provides objectives for the Luna Park zone, as well as controls relating to heritage impacts, excavation and contamination.

The proposed restaurant is considered satisfactory with respect to the objectives for the zone as it continues Luna Park's place in the social history of Sydney by providing an entertainment facility commensurate with the entertainment theme of the Park. Furthermore, the proposal is of a modest nature which sits below the canopy of the fig trees on the site and as such minimises visual impact upon the surrounding community. Issues regarding the amenity impacts resulting from the proposal and the manner in which they are to be appropriately mitigated are considered in Section 5.2 of this report.

4.6.6 Draft Amendment to North Sydney Local Environmental Plan 2001 (Amendment No. 17)

The Draft Amendment No. 17 to the North Sydney LEP 2001 seeks, amongst other proposed changes, to formally recognise the heritage significance of the Lavender Bay cliff face. The proposal retains the heritage listed fig trees surrounding the site and preserves the cliff face and accordingly is not inconsistent with the intent of Draft Amendment No. 17.

4.7 OTHER PLANS AND POLICIES

The Proposal has been considered against the following non-statutory documents:

4.7.1 North Sydney Development Control Plan (DCP) 2002

The North Sydney DCP 2002 provides development standards and provisions for development within North Sydney Local Government Area. The DCP provides standards for commercial development relating to function, environmental criteria, quality built form and urban environment, efficient use of resources and public domain. The proposal is generally consistent with these requirements.

The DCP contains controls in relation to car parking provision for refreshment rooms, as well as controls relating to special character areas, one of which is for Lavender Bay, which contains particular considerations for Luna Park. The proposal is generally in accordance with the DCP controls for Luna Park. The proposal complies with the carparking provisions of the DCP in relation to refreshment rooms.

4.7.2 Sydney Harbour Foreshores and Waterways Area Development Control Plan (DCP)

The Sydney Harbour Foreshores and Waterways Area DCP provides additional detailed provisions beyond the Sydney Regional Environmental Plan – Sydney Harbour Catchment. The DCP provides standards relating to ecological and landscape assessment, as well as controls relating to siting of buildings and built form to ensure that proposed buildings are sympathetic to their surroundings. The proposal retains the heritage listed fig trees on the site and is modest in scale such that it respects the surrounding context. In this regard, the proposal is generally consistent with the requirements of this DCP.

4.7.3 Luna Park Plan of Management 1998

The Luna Park Plan of Management establishes a preferred option for the vision, design and use of the Park, setting a strategic direction for management and operation of the Park.

The Plan includes details of the site and its history, a vision statement, design and land use guidelines and the future roles and responsibilities of the Luna Park Reserve Trust and future leaseholders.

The 1998 Luna Park Plan of Management is a guiding document to the overall development of Luna Park. The document is required by Section 8 of the Luna Park Site Act 1990, and aims to assist in guiding design outcomes which are objectives driven.

It states the goals for the area above the cliff as:

- a) To help financially support the Luna Park Reserve Trust through development of commercial facilities such as hotels, shops, office accommodation and car parking*
- b) To ensure all development proposals comply with planning requirements and reflect urban design frame so that the character of the area, and views between the Harbour Bridge and Park are maintained*
- c) To provide public access and view areas on the cliff top, and potential links to the amusement areas*
- d) To protect and manage the natural heritage values of the areas including the fig trees and cliff face".*

The proposed development provides a commercial facility in the form of a restaurant which is to assist in the financial support of the remainder of the Luna Park Entertainment Precinct. The proposal has been found to comply with the planning requirements for the site in a manner which provides public access to the cliff top as well as a public viewing platform to the Harbour and park, and also protects the heritage values of the fig trees and the cliff face surrounding the site. Therefore, the proposal is considered generally satisfactory with regard to the design guidelines and objectives of the Luna Park Plan of Management 1998.

5 ASSESSMENT OF ENVIRONMENTAL IMPACTS

Key issues considered in the Department's assessment of the Environmental Assessment and consideration of the proponent's draft Statement of Commitments include the following:

- Proposed Uses of the Building
- Amenity impacts including hours of operation and noise considerations
- View Impacts
- Built Form and Urban Design
- Traffic and Car Parking Impacts
- Heritage Impacts
- Archaeological Impacts
- Trees Impacts
- Geotechnical Impacts
- Subdivision

5.1 PROPOSED USES OF THE BUILDING

The specific description of the proposal as stated by the proponent is as follows:

The proposed development will only accommodate a single café/restaurant.

The restaurant has been designed for a maximum capacity of 245 seats and will operate between the hours of 7am to 3am, 7 days a week.

No live amplified music will be played in or outside the restaurant. Live music and non-amplified background music will be played during restaurant operating hours.

The provision for 'live music' creates some ambiguity as to the nature of the premises in terms of whether it may be potentially be used as a bar, nightclub or function centre. It is also noted that the Building Code of Australia Report prepared by CityPlan Services for the application refers to the building as a Class 9b PoPE (Place of Public Entertainment) assembly building (restaurants and functions). Accordingly, it appears that the building has been designed to the standards necessary to allow future application for the use of the premises as a place of public entertainment.

The proposed building is located within a high density residential and commercial area of Milsons Point, and a significant number of residential premises are located within close proximity. Consideration of the use of the building must have regard to the likely amenity impacts upon the surrounding properties. The use of the premises as a restaurant is unlikely to result in any significant adverse amenity impacts upon the surrounding residences which are unable to be adequately managed or mitigated. However, the use of the premises as a bar, nightclub or function centre would be likely to cause adverse amenity impacts.

Therefore, a condition of approval is recommended which limits the use of the premises for restaurant purposes only, with acoustic live music (non amplified) or ambient background music only, which is generally consistent with the statement in the EA in relation to the proposed use of the premises. Further, a condition is recommended requiring that there is to be no service of alcohol without availability of a meal. Any proposed future use of the premises as a place of public entertainment including use as a bar, nightclub or function centre must be subject to the lodgement of a separate development application, and this requirement has also been imposed as a condition.

The proponent has provided a seating layout plan which provides 100 seats internally and 9 on the terrace for the ground floor, and 130 seats internally and 8 on the terrace on the first floor. The seating layout and the amenity impact considerations in this report in relation to the proposal are based upon this number of patrons.

5.2 AMENITY IMPACTS INCLUDING HOURS OF OPERATION AND NOISE CONSIDERATIONS

Hours of Operation

The proposal is seeking hours of operation from 7am to 3am, 7 days a week. As previously discussed, the building is located within a high density residential and mixed use area. It is acknowledged that the subject site forms part of the Luna Park Entertainment Precinct and as such there is a reasonable expectation of some activity and noise resulting from the broader use of Luna Park which is unique to the area. Nonetheless, the hours of operation for the remainder of Luna Park generally do not extend beyond 1am for indoor activities and 12midnight for outdoor activities.

In order to limit potential amenity impacts of the restaurant upon the surrounding residential properties, it is appropriate to limit the hours of operation for the proposed restaurant to:

- 8am to 12midnight Monday to Thursday;
- 8 am to 12 midnight on Friday and Saturdays; and
- 8 am to 10 pm on Sundays.

With a provision that for a trial period of 3 months, the hours shall be:

- 8am to 12midnight Monday to Wednesday
- 8am to **1am** on Thursday, Friday and Saturday, and
- 8am to **12 midnight** on Sunday.

The trial period will be for 3 months, with an option for the Director General, after seeking the views of the Council, to grant an extension of the trial for a further period of 9 months to allow for the impacts on adjoining residences resulting from late Thursday, Friday, Saturday and Sunday operation of the restaurant to be monitored. Any consideration of continued extended hours after the trial period will be required to have consideration for compliance with conditions, the views of the local police, North Sydney Council and any substantiated complaints received resulting from the operation of the restaurant.

It is noted that North Sydney Council's submission recommended that the hours of operation be limited to 12 midnight Monday to Saturday and 10pm on Sundays. However, the implementation extended hours on a trial period basis provides the proponent or eventual operator of the restaurant the opportunity to demonstrate that the additional hours of operation does not result in a detrimental amenity impact upon the adjoining residences. Should the operator of the restaurant fail to demonstrate this, the use of the premises will revert to the restricted operating hours. On this basis, the minor extension of trading hours from the recommendation of North Sydney Council is considered reasonable.

Noise Considerations

Notwithstanding the restriction on use and also reduction in hours discussed above, both of which will assist significantly in reducing noise resulting from the use of the premises (particularly from patrons), consideration of the potential noise impacts is required.

The proponent has provided an Environment Noise Impact of Proposed Restaurant assessment undertaken by Acoustic Logic Consultancy – Noise and Vibration Consultants dated 26 September 2006. The assessment is based on the assumptions of 100 patrons of the ground floor, 128 patrons on the first floor, 17 patrons on the balconies, only pre-recorded background music playing at bar and seating areas and no music activities on terrace areas. It is noted that the acoustic report does not take live music into consideration. The assessment report concludes that the noise resulting from the use of the premises will not exceed the acceptable criteria (background noise + 5dB at any residential premises) as established by the Liquor Administration Board for people talking, functions and music, subject to the following controls:

- *Absorptive ceiling and walls adjacent entry as part of fitout to reduce reverberant internal noise levels.*
- *All windows and doors are to consist of minimum 6.38mm laminated glazing. Any openable windows should be fitted with acoustic seals to provide a minimum Rw 31 rating and be closed at after 10pm.*
- *No amplified music on outdoor deck areas and low level internal ambient music.*

- *Management controls should be utilised to manage patron departure particularly at night and at closing times to ensure that patrons leaving development in a prompt and orderly manner.*
- *Prominent notices shall be placed to remind patrons that a minimum amount of noise is to be generated when leaving the premises.*
- *All external doors and windows are to be closed during noise generating functions (except for the main entry doors when in use by patrons entering/leaving).*
- *All garbage shall be retained within the premises and removed after 7am on the following day via Northcliff Street.*
- *Close operable glass louvers after 8pm north/west corner if subsequent fitout does not have doors enclosing the foyer area to form an airlock.*

These controls are considered generally sound, however it is considered appropriate to ensure that operable glass louvers on the eastern side of the building are also closed at 8pm particularly given that the last recommendation contains an ambiguity in that the foyer is located on the north eastern side of the building. This has been included as a recommended condition. Furthermore, it is reiterated that it is appropriate to restrict the use of the premises such that no amplified music is approved to ensure that potential noise impacts to the surrounding area are limited. Subject to the recommended controls of the Environment Noise Impact assessment and the above additional restrictions, the operation of the development will not cause any unacceptable noise impacts upon the surrounding locality.

5.3 VIEW IMPACTS

The subject site is located within a sensitive location within Milsons Point and is prominent within its setting when viewed from Dind, Glen and Northcliff Streets. Further, the subject site is located within the curtilage of the fig trees on the site and as such is mostly obscured when viewed from the water or the southern shore of the Harbour. In this regard, the proposal is not considered to result in any detrimental impact upon the appearance of the Luna Park Entertainment Precinct when viewed from various vantage points in Sydney, including Sydney Harbour.

Therefore, the view impacts resulting from the building are assessed with regard to its immediate context. The proponent has provided a view analysis which asserts that the proposed building does not result in any unreasonable impacts upon views to and from Dind, Glen and Northcliff Street and the surrounding buildings, with respect to the well considered design of the building and the development controls applying to the site. The view analysis provided by the proponent is as follows:

View 1 – Glen Street Looking South

Views south toward the Sydney Harbour Bridge will remain uninterrupted. Current views are filtered through the existing foliage of the fig trees. This view clearly illustrated the proposed development envelope does not protrude above the canopy of the adjoining fig trees.

The combination of the tessellated louvre pattern glass facade, steel fascias, expressed vertical steel mullions and stone base is aimed at relating the proposed building with the landscape cliff top setting with the Harbour Bridge beyond. It is evident from the photomontage of this view that the proposed development will not detract from views of the fig trees and the Harbour Bridge.

View 2 – Pinnacle Apartments (2 Dind Street)

Views from street level along Dind Street will remain largely unaffected. Again, the building envelope sits well below the existing canopy of the fig trees and retains views of the Harbour Bridge along Northcliff Street.

The main entrance to the proposed building will be located at the corner of Dind and Northcliff Street. With the combination of translucent glass louvres and large clear glass panels the building allows for views to be obtained from the street through the foyer and restaurant dining areas across to the fig trees and beyond.

The photomontages illustrate that the proposed building is simple in volumetric form, having materiality that allows for translucency and transparency. The predominant scale and streetscape character of this building is simple and understated.

The building is angular in plan and will allow the south/west corner commercial suites and apartments on the lower two floors of the Pinnacle Apartments to capture views west between the building and the fig trees to harbour. Views to the harbour bridge will not be affected. Considering that the proposed two-storey building is at RL31.5, the 26 storey Pinnacle Apartments building will not be affected.

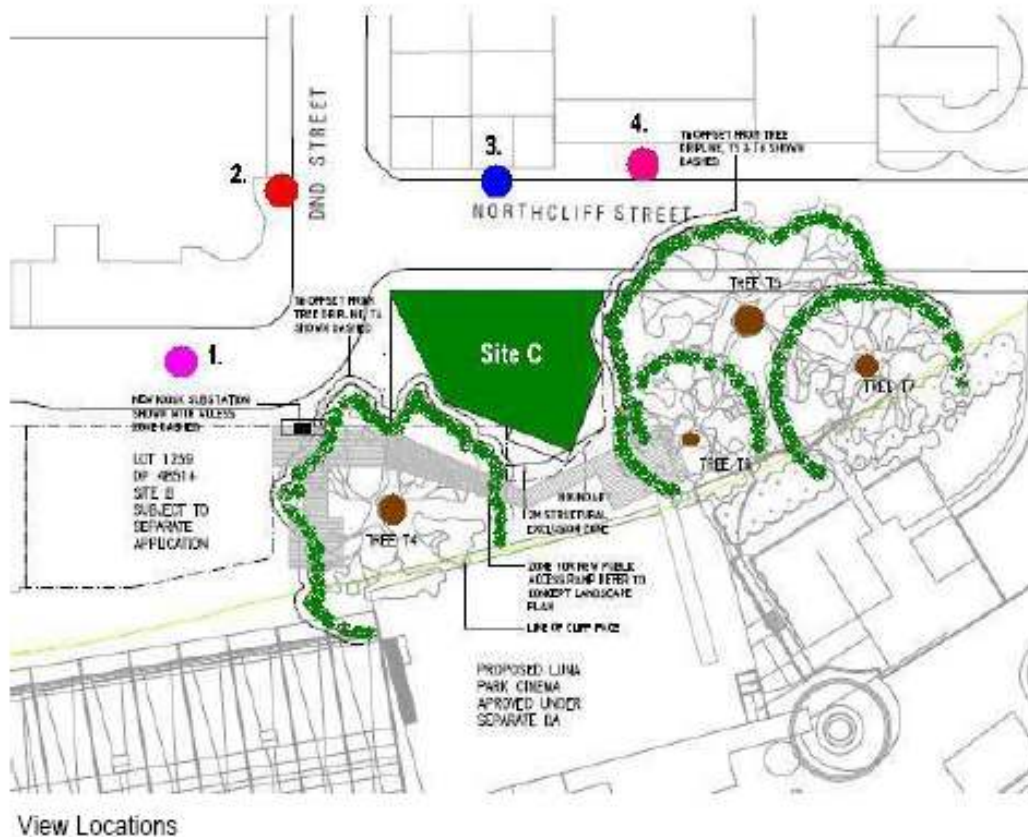


Figure 20 – Views surrounding the site

View 3 – Terrace Buildings (15-21 Northcliff Street)

The current views from the Northcliff Street terrace dwellings are obstructed by the security fence and overgrown woody weeds along the west & south embankment on Site C. At best the views obtained from the two-storey buildings across Site C are filtered through the canopy of the Fig trees (T4 & T5).

The view directly from the terrace buildings will be marginally affected by the proposed development, given the sites current state. Views will still be maintained either side of the proposed building envelope. Again, through the use of glass on the building façade and building form will allow views through the building to the fig trees and beyond from the terraces.

Compared to the existing improvements and appearance of the site, the proposed development is considered compatible with the scale of the adjoining fig trees and surrounding streetscape. The proposed use of colour glass panels on the Northcliff façade will camouflage the development into the green canopy of the existing fig trees (refer to photomontage above).

View 4 – Aquarelle Commercial Office & Apartment Building

Again views from Aquarelle building (further south along Northcliff Street) at the lower commercial office levels are obstructed by the security fence and overgrown woody weeds along the west & south embankment on Site C. Views from the southern end of Northcliff street will be unaffected. The illustrated view looks directly north/west and away from the harbour. The prominent views from Aquarelle which are directly west and south will be unaffected by the proposed development. It is envisaged that public views would be directed south toward the retained views of Sydney Harbour and North Sydney Pool (as opposed to this view).

The view analysis provided by the proponent is considered to be generally sound. Nonetheless, greater consideration of the view impacts upon the terrace dwellings in Northcliff Street directly opposite the site, particularly Nos, 19 and 21 was considered necessary.

The subject buildings are two storey terrace buildings (visible in Figure 21). The ground floors of the buildings are currently used for commercial purposes (the buildings are zoned Mixed Use under the North Sydney LEP 2001), whilst the first floors are currently vacant. The owner of the buildings has lodged a Development Application with North Sydney Council for the use of the first floor of each building for residential purposes, with living rooms located at the front adjacent to the balconies and for addition of a second floor level to each of the buildings which would have front dormer windows. Whilst the Development Application is yet to be determined, there is a reasonable expectation that residential living areas will occupy the first floor as proposed, if not by the subject application, some time in the future.



Figure 21 – No. 19 and
21 Northcliff Street

The NSW Land and Environment Court case *Tenacity Consulting v Warringah Council* established Planning Principles for the consideration and assessment of view impacts, view loss and view sharing. A planning principle is defined by the Court as a statement of a desirable outcome from, a chain of reasoning aimed at reaching or a list of appropriate matters to be considered, in making a planning decision. In *Tenacity Consulting v Warringah Council* Commissioner Roseth defines view sharing as follows: 'The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment'. To decide whether or not view sharing is reasonable, a four step assessment was adopted by Commissioner Roseth.

The consideration of view sharing must consider the assessment of views affected (i.e. whether or not they are iconic views, water views, obscured etc), from what part of the property are the views obtained, the extent of the impact, and the reasonableness of the proposal which is causing the impact.

In this regard, an assessment of the impact of the proposal upon views from 19 and 21 Northcliff in accordance with these principles is as follows:

Views Which Are Affected

No. 19 has existing views to the south where the Harbour Bridge can be seen, to the west across the subject site with partially obscured views of Lavender Bay and to the north-west also with partially obscured views of Lavender Bay. No. 21 has similar views to that of No. 19 but does not retain a view to the Harbour Bridge to the south. Photos of existing views are on Figures 22-26 inclusive immediately below.



*Figure 22 – View
looking south from first
floor balcony of No. 19*



*Figure 23 – View
looking west from first
floor balcony of No. 19
over Site C*



*Figure 24 – View looking
north-west from first floor
balcony of No. 19 over
Site B*



Figure 25 – View looking north-west from first floor balcony of No. 21 over Site B



Figure 26 – View looking west from the first floor balcony of No. 21 over Site C

In relation to the value of views, Commissioner Roseth states 'water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured'.

The views to the west from these two properties, which will be affected by the proposed development, are water views of the Sydney Harbour and specifically Lavender Bay and therefore are of a high level of value to No. 19 and 21 Northcliff Street. However, this view is currently obscured by the trees on the subject site and as such are filtered views, which detracts somewhat from their value. No. 19 Northcliff has a view of the Harbour Bridge to the south which is considered a highly valuable view, whilst both No. 19 and 21 have views to Lavender Bay to the north-west.

From what part of the property are the views obtained

In relation to the part of the property from which the views are obtained, Commissioner Roseth states: 'the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic'. The views are all obtained from the front balconies and to a lesser extent from the primary living areas of the proposed residential units on the first floor of each building. The quality of the view of

Lavender Bay to the west relies largely upon a standing position within the dwelling or from a sitting or standing position on the balcony.

The extent of the impact

In relation to the extent of impact, Commissioner Roseth states the following: *'this should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating'*.

The proposed development will result in a significant impact upon the views which are currently available directly to the west from No. 19 and 21 Northcliff Street, which on their own could be categorised as severe. However, these views are currently obtained over another site which is vacant and under developed and on this basis, having regard to the existing views retained by these properties; the view loss is assessed as being part way between moderate and severe.

Nonetheless, No. 19 retains a view south to the Harbour Bridge and also filtered water and land views of Lavender Bay to the north-west, whilst No. 21 also retains filtered water and land views to the north-west. The views to the north-west are currently inhibited by the existing fencing to Site B (or proposed Lot 10). This site is to become a public park in the future and the removal of the existing fencing around the site will considerably improve the north-western water views from 19 and 21 Northcliff Street.

The reasonableness of the proposal which is causing the impact

In relation to the reasonableness of the proposal, Commissioner Roseth states the following: *'A development that complies with all planning controls would be considered more reasonable than one that breaches them. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable'*.

The proposed development complies with the maximum permissible height of RL 31.5 metres AHD as specified within the Major Project SEPP. This height control was developed through exhaustive consultation with the local community and the findings of a *Cliff Top Site Urban Design Study* undertaken in 2004. Furthermore, the proposal has a floor space ratio far lower than permitted under the North Sydney LEP 2001. In this regard, there is a well documented expectation that a building will be erected on the subject site to a maximum height of RL 31.5 metres AHD. The proposed development is considered reasonable as it conforms with all relevant numerical planning controls and objectives which relate to the development of the site. It represents a positive outcome for the site by being distanced from the canopies of the existing fig trees hence ensuring their retention. The proposal presents as a well resolved scheme which is sympathetic to its location and the constraints of the site.

Therefore, whilst the proposal results in a loss of a view to the west of Lavender Bay from Nos. 19 and 21 Northcliff Street, this view loss is considered acceptable on the basis that other water views are retained by these buildings and also with respect of the reasonable nature of the proposed development. The proposal will ensure that both of the properties retain views consistent with the principle of view sharing and on this basis the Department considers that the proposed development does not result in any unreasonable or significantly adverse impacts upon views to and from the site and the surrounding properties.

5.4 BUILT FORM AND URBAN DESIGN

The Director General Environmental Assessment Requirements stated that the assessment of the building must consider the built form of the proposal having regard to the siting and design, bulk and scale relationships, choice of materials and finishes and the resultant architectural composition relative to the existing and surrounding built form and vegetation, including the broader Sydney Harbour Foreshore and any landmark

elements. Furthermore, an internal design layout that achieves transparency through the floor plate and improved views from the street down to the water is required.

Consideration must also be given to the urban design improvements to adjacent areas of public domain and links into Luna Park and other existing public facilities.

The siting and the footprint of the proposed building have been developed as a response to the site constraints. Specifically, the location of the fig trees, their canopies and drip lines, and respect of the cliff edge has defined this footprint. The height of the restaurant is limited to two storeys under the requirements of the Major Projects SEPP. As a result, the proposed building sits comfortably within the site and is largely below the canopy height of the trees, as illustrated in Figures 18 to 19.

The bulk and scale of the building is modest and respects both its natural and built context to achieve a form which is subservient and therefore compliments its surrounds. The choice of materials and finishes which includes varying shades of green opaque glass panels and also transparent glass panels and louvres, contributes to the ability of the development to correspond with its setting. These colours and finishes somewhat camouflage the building within its natural setting. Nonetheless, the building employs a strong angular design which provides an appropriate definition to the corner of Glen, Dind and Northcliffe Streets.

The Design Report prepared by Hassell Architects for the proposal further describes the design of the building:

The proposed building is built with a flat roof and a fascia datum that divides the building into an upper glazed translucent section with a more solid base. The solid base of the building is only expressed on the eastern and western elevations. To the Northcliff elevation, the upper sections of the façade consist of glass louvres in a coloured tessellated pattern. Some of these louvres are operable and correspond to the ventilation requirements of the building. The lower section of this façade, when not giving access to basement parking will be clad in dark coloured sandstone. Steel fascias define the top and bottom edges of the glazed curtain wall of the proposed development.

The transparent nature of the panels and louvres utilised in the elevations of the building provides filtered views through the building which reduces the apparent bulk and scale of the building and limits the interruption of a relationship between the land and the water in the context of the site. The Landscape Plan for the proposal (Figure 20) demonstrates the significant areas of open park and public domain including viewing decks, which are to be constructed and provided around the building.

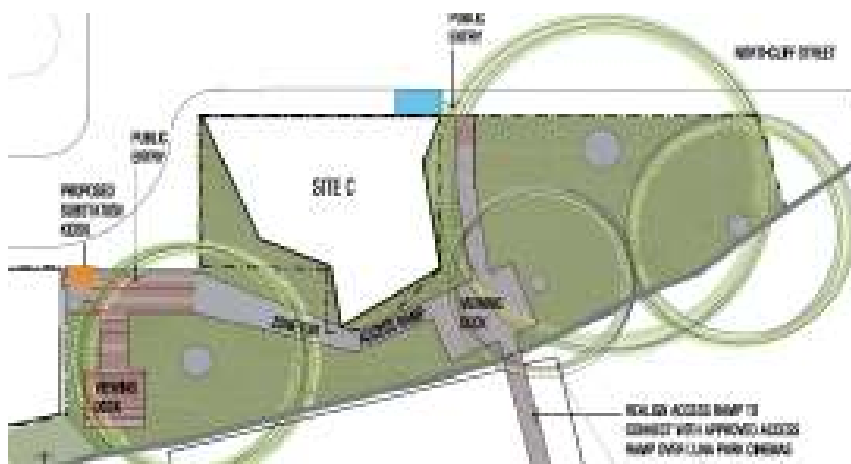


Figure 20 – Landscape Plan illustrating park areas and viewing platforms.

The building is considered to represent a highly resolved architectural form which provides an appropriate level of design excellence and sensitivity to its context. The built form and urban design of the building are well considered such that the proposal will contribute positively to the character of Milsons Point.

5.5 TRAFFIC AND CARPARKING IMPACTS

Traffic

The proponent provided an assessment of traffic and parking, prepared by Transport and Traffic Planning Associates (Reference 03214) dated September 2006.

The report states that the proposed restaurant is likely to result in a peak traffic generation of 10 to 20 vehicle trips per hour, the majority of which are anticipated to park within the existing Luna Park Entertainment Precinct car park. Traffic generation of this minor magnitude will be largely imperceptible (i.e. 1 car every 3 minutes) As such the projected traffic generation will not present any adverse road capacity, safety or traffic related environmental impacts.

Parking

The proposal provides a basement car park which provides 5 car parking spaces for the occupants of the building. North Sydney Council DCP 2002 limits car parking provision for a refreshment room to a maximum of 1 space per 50m². The subject proposal complies with this requirement with a generation of 1 space per 124m². The proposed car parking provision is modest and considered appropriate for the building with respect to its size and proximity to public transport facilities. It is envisaged that the basement parking will be used by staff (4) and disabled persons (1).

Luna Park has an existing car parking station that has a 389 car capacity and is used by people visiting the Entertainment Precinct. It is reasonable to assume that the carparking is intended to provide for demand generated by the entire Luna Park site including the approved and yet to be constructed cinema complex and also the subject proposed restaurant, based on the current capacity within the carpark. The Traffic Assessment prepared by Transport and Traffic Planning Associates provides the following in relation to the capacity of the car park to accommodate the additional car parking demand generated by the proposed restaurant:

The table below illustrates that the Luna Park car park is capable of accommodating the patrons from Luna Park, the Luna Park Cinema and proposed restaurant on Site C. This is illustrated by the table and assumptions outlined below.

Luna Park Car Park Analysis – Peak Parking Demand

	Seating Capacity	Daily Occupancy	Average No. Patrons	% Patrons drive	Patrons per vehicle	Total Vehicles
LPS						
Weekday	n/a	n/a	n/a	17%	3.5	85
Weekend	n/a	n/a	n/a	17%	3.5	224
CINEMAS						
Weekday	720	20%	144	50%	2.5	29
Weekend	720	65%	468	50%	2.5	94
SITE C						
Weekday	245	40%	98	50%	3.0	16
Weekend	245	70%	172	50%	3.0	29
Average Daily Peak Vehicles - Weekday						130
Average Daily Peak Vehicles - Weekend						346

Assumptions – peak parking demand table

1. LPS total vehicles are based on current average daily peak usage.

2. Site C venue seating capacity (245) is a design capacity only. The optimum seating capacity is expected to be less than 245.

3. Site C assumes lunch and dinner service 7 days a week.

4. Site C and Cinema assumes 50% of patrons will drive, however it is expected the actual percentage will be less due to the public transport accessibility to the site and patronage by local resident clientele. This fact is evidenced by only 17% of actual Luna Park patrons travelling by vehicle.

The total capacity of the Luna Park car park is 389 cars. It is evident from the above table that the Luna Park car park has the capacity to accommodate the average peak vehicles on weekdays (130 cars) and weekends (346 cars) when the proposed cinema and restaurant are in operation.

The findings of the Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates are considered to be sound and adequately demonstrate that the car parking demand generated by proposal can be comfortably accommodated within the existing Luna Park carpark. Further, the operating hours for the Luna Park car park are from 7am to 3am, therefore, patrons will be able to enter and exit the car park within the hours to be approved for the restaurant.

It is anticipated that car parking associated with the restaurant will take place primarily within the Luna Park carpark rather than on-street parking, due to the restrictions and metering of on-street car parking. Nonetheless, there is not a significant demand for on-street carparking from the surrounding buildings as the majority of these provide basement car parking for occupants and as such, any on-street car parking generated by the proposal can be accommodated and is unlikely to result in a detrimental impact upon the surrounding building occupants. Nonetheless, a condition is recommended requiring the future operator of the restaurant to advise patrons to park within the Luna Park car park when they make their booking to prevent unreasonable demand for on-street car parking surrounding the site.

It is also noted that given the location of the proposed restaurant, in close proximity to excellent public transport facilities, the provision of any additional car parking in association with a restaurant on the subject site, beyond the five spaces within the building, would be discouraged.

5.6 HERITAGE IMPACTS

The site is located on the Luna Park cliff top which, in association with the broader Luna Park precinct, is characterised by an individual and significant heritage character. Three of the fig trees surrounding the subject site are also listed in the State Heritage Inventory and the subject site is located immediately opposite to several locally listed terrace houses in Northcliffe Street, and in the vicinity of 2-4 Glen Street which is also a locally listed item.

Consideration of the impacts of the development upon the heritage significance of the broader Luna Park, the cliff, fig trees and the nearby heritage listed buildings is necessary to ensure that any such impacts are acceptable or appropriately mitigated. In this regard, the proponent has provided a Heritage Impact Statement prepared by Otto Cserhalmi + Partners Pty Ltd and dated October 2006. The Statement concludes that overall the proposal to construct a two storey restaurant building on Site C is not considered to have a detrimental impact on the endorsed heritage significance of the place. The proposed building fits comfortably within its site and does not impact upon any of the aspects of significance of the Glen Street Offices (Harry Seidler buildings) as set out in the draft State Heritage Register nomination prepared by the Royal Architects Institute of Australia (NSW Chapter). Furthermore, the report states that the heritage listed fig trees will still be visible from Luna Park, the Harbour and from vantage points on the southern shore.

The findings of the Heritage Impact Statement are considered sound. The proposal is modest in scale and design and is subservient to the natural setting that it proposes to occupy. The contemporary nature of the architecture also provides a clear distinction from the heritage items located within Northcliffe Streets which reinforces their unique characters and their contribution to the locality. Therefore, the proposal will not detract from the heritage significance of the subject and surrounding sites.

5.7 ARCHAEOLOGICAL IMPACTS

The proponent has provided an Archaeological Assessment of Site C prepared by Environmental Resources Management Australia and dated September 2006. The assessment concludes that Site C has the potential to

contain the remains of Northcliff House which once occupied the site and its associated out buildings, gardens well etc. The site has the potential to yield deposits, archaeological features and artefacts associated with different phases of the house, and its occupiers from at least the 1870's to the 1920's. Should such deposits be recovered from the site, they have the potential to provide considerable information about the development, habitation and eventual demolition of Northcliff House. The Archaeological Assessment recommends that archaeological investigations of the site be carried out prior to the commencement of any works by a qualified archaeologist. It is appropriate to impose a condition of approval requiring that such investigations are undertaken to ensure that any deposits, artefacts, or other archaeological features are recovered and appropriately dealt with prior to the development of the site.

5.8 TREE IMPACTS

The broader cliff top area within which the subject proposal is to be located, contains four (4) large fig trees, three (3) of which (T5, T6 and T7) are included in the State Heritage Inventory (Photographs of these trees are found at Figures 7, 8 and 9). The Major Project SEPP provides that any building on the cliff top sites must not encroach on land beneath the canopy of any heritage fig tree. The SEPP also states that any building erected on the cliff top sites, and the process of erecting any such building, must not threaten or damage any heritage fig tree and, in particular any land beneath the canopy of any heritage fig tree must not be used for any purpose in connection with the erection of any such building.

The proponent has provided an Arborist Report prepared by Tree Wise Men Australia Pty Ltd which has comprehensively assessed the proposal and its potential impacts upon the surrounding trees. The assessment states the only tree canopy which extends into the subject 'Site C' is T4 which is not a heritage item (See Figure 7):

The canopy of Tree 4 extends within the western boundary of Site C but the building footprint is restricted to a line 1 metre from the indicated canopy line.

The Arborist Report also analyses the proposal in relation to a Root Mapping Report prepared by Arborcraft in 2003 which dug several trenches around the fig trees to determine the location and nature of roots of the fig trees and the impact of the excavation for the proposed building upon the roots. In conclusion, the Arborist Report states:

The existing vigour and condition of the trees will not be altered by the construction works on proposed Site C. The stability (windfirmness) of the tree will not be significantly impacted, the longevity of the tree will not be significantly impacted. The ongoing management of the cliff face stability may require the removal of particular roots. This is not likely to lead to tree death or decline.

In the assessment of the trees on the site, the Arborist Report found that there is significant decay to three limbs on tree T4 which are recommended to be removed 'irrespective of the proposed development on the adjacent Sites B & C' for safety reasons, particularly given that the area under the canopy of the fig trees will be opened up for public use as parks in association with the proposed development. It is further stated that the removal of the three limbs will not have an impact on the long term health of the tree as the pruning comprises approximately 10% of the total leaf area of the tree.

It is noted that North Sydney Council's Landscape Development Officer, in relation to findings of the Arborist Report prepared by Tree Wise Men Pty Ltd stated - 'in conclusion I generally agree with the Arborists assessment, observations and recommendation in relation to the three Fig trees' (Source: Report of Stephen Beattie, Manager Development Services, to Council meeting held on 29/1/07).

The Department is satisfied that the assessment of the proposal by Tree Wise men Pty Ltd in relation to the fig trees surrounding the development site is sound and that the proposal satisfies the requirements of the Major Projects SEPP in relation to protection of the fig trees on the Luna Park Cliff Top.

5.9 GEOTECHNICAL IMPACTS

The site is located on the Luna Park cliff top and the proposal involves excavation to provide a basement car park. In this regard, the geotechnical implications of the proposal require consideration to ensure that the proposal does not compromise the structural integrity of the cliff face and cliff top area. A Preliminary

Geotechnical Assessment of Sites B & C Luna Park has been prepared by Coffey Geosciences Pty Ltd dated 28 July 2006 to provide advice on issues such as the stability of the existing sandstone cliff face, bulk excavations, foundations and excavation support.

The report determines that a minimum 2m exclusion zone from the cliff face is required to be observed to ensure that the proposed excavation will not result in a detrimental impact upon the stability of the cliff face. The proposed building has been designed accordingly and observes the 2m exclusion zone. The report also contains recommendations regarding construction methods and stabilisation and maintenance of the cliff face and a condition of approval is recommended to ensure that these recommendations and works are appropriately implemented.

5.10 SUBDIVISION

This proposal seeks approval for the subdivision of the cliff top area, that being Lot 1 DP 1066900, into three separate lots as shown in the Subdivision Plan prepared by Hill and Blume. The proposed lot pattern subdivides the lot areas formerly known as Lot 1259 and Lot 1260 (that is Sites B and C) into two lots, as proposed Lot 10 and 11, with the third remaining lot being for open space and public use, which is referred to as proposed Lot 12. Lot 10 formalises the area previously known as Site B, whilst Lot 11 formalises the area previously known as Site C, upon which the proposed restaurant is to be located. Proposed Lots 10, 11 and 12 have respective areas of 575.5m², 494.4m² and 1640m².

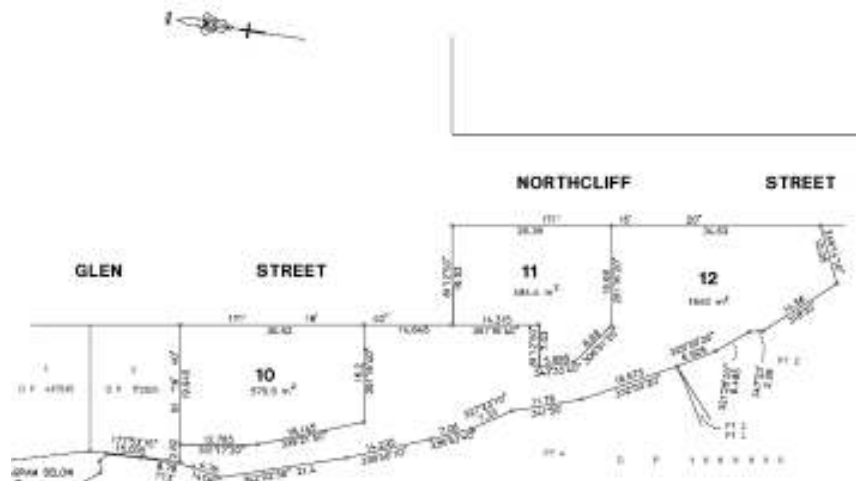


Figure 21 – Proposed Plan of Subdivision

The subdivision provides for the definition of the subject restaurant site (formerly Site C) for the purposes of future leases of the site and restaurant. The subdivision also facilitates surrender of a lease by Multiplex and creation of a covenant being placed on the title of proposed Lot 10 (formerly known as Site B) in accordance with a private commercial agreement to ensure that no building is erected on this site and it is converted to parkland in the future. Whilst this outcome for proposed Lot 10 is the result of a commercial agreement, it represents a sound planning and public interest outcome. Furthermore, the subdivision creates Lot 12 which contains the fig trees on the clifftop and provides an opportunity for the imposition of a covenant on title to ensure the fig trees are maintained and the area is used as a parkland for public recreation.

The Department raised concerns with the proponent that whilst a draft plan of Torrens title subdivision has been submitted with the application, a Section 88B Instrument detailing the obligations for ongoing maintenance and preservation of proposed Lot 12, including the fig trees and cliff face, had not been provided.

The proponent responded as follows:

The proposed Lot 12 on the draft plan of subdivision will remain Crown Land owned and managed by the Luna Park Reserve Trust (LRPT) on behalf of the state of New South Wales. LRPT and Luna Park Sydney (LPS) have agreed to document arrangements in the Luna Park Head Lease to provide for LPS, at its cost, for the duration of the Luna Park Head Lease:

- a) To undertake and maintain the Proposed Lot 12 landscaping;
- b) To undertake and maintain any cliff stabilization works required to ensure public safety; and
- c) To manage the ongoing use of Proposed Lot 12 in accordance with principles appropriate for its use as a public open space;

A Section 88B will not be required as the ongoing management and preservation of natural features on Lot 12 will be covered under amendments to the Luna Park Head Lease.

However, it is considered fundamental to the consideration of any proposed subdivision of the Luna park cliff top to ensure that the fig trees on the site are protected by an Instrument linked directly to the title of the newly created lot. Accordingly, a condition of approval shall be imposed, requiring a Section 88B Instrument to accompany a Plan of Subdivision creating the residual Lot 12, with terms which clearly define the obligations of the owner/lessee of the property in relation to the ongoing management and preservation of natural features on Lot 12.

Furthermore, another condition of approval shall also be imposed, requiring a Section 88B Instrument to accompany a Plan of Subdivision creating Lot 10, with terms which limit any prevent the construction of any building for habitable purposes on this lot. All covenants are to be to the satisfaction of the Department.

5.11 SECTION 94 CONTRIBUTION

The Section 94 Contributions are to be levied in accordance with the provisions of the North Sydney Council Section 94 Contributions Plan 2004. These provisions require a contribution rate of \$3,385.90 per 100m² of gross floor space. The proposal provides 621.5m² of gross floor area, which requires a Section 94 Contribution of \$21,043.37. A condition of approval is accordingly recommended.

5.12 PUBLIC INTEREST

The proponent states that the proposal is in the public interest for the following reasons:

- This proposal will contribute to ensuring the long term viability of Luna Park and will carry out the vision for the cliff top area as illustrated in the Plan of Management.
- In the absence of development controls for the site the Minister has determined, after extensive debate and analysis over the last decade, the parameters for the scale and quantum of development over the cliff top area. The proposed development not only accords with these parameters, but also provides a development that complements the surrounding built context.
- The development enhances the built and natural heritage items to ensure these elements continue to be preserved and able to be publicly appreciated.
- The development will allow the site to be made publicly available, by providing safe egress through the site and offer areas to view Luna Park and the harbour.
- The development serves to secure the long term future of Luna Park, while providing development that is complementary to its built and natural environment and providing public open space.

It is considered that this assessment of the public interest benefits of the proposal are sound. The proposed building is in accordance with the development envisaged for the site under the controls of the Major Projects SEPP and the Luna Park Plan of Management 1998, and is considered an appropriate and well resolved architectural form which contributes positively to the locality and has minimal impacts upon the surrounds. The proposal provides an economic contribution to the remainder of the Luna Park Entertainment Precinct to ensure the long term viability of Luna Park. Furthermore, the proposal provides dedicated public domain and landscaped areas, including viewing decks, which allow public access to the site. Therefore, the proposal is considered to be within the public interest.

6 CONSULTATION AND ISSUES RAISED

6.1 PUBLIC EXHIBITION DETAILS

The major project application was exhibited from 6 December 2006 for 55 days until 29 January 2007 and was published in the Mosman Daily and the Sydney Morning Herald. The EA was made available to the public in the Department's Information Centre and at North Sydney Council. The period for making submissions was extended until 7 February 2007 in response to resident requests (total exhibition period of 64 days). Approximately 650 notification letters were posted to nearby properties.

6.2 SUBMISSIONS RECEIVED ON ENVIRONMENTAL ASSESSMENT

The Department received a total of nineteen (19) submissions comprising fifteen (15) submissions from the public (including two petitions, one with 10 signatures and the other with 72 signatures) and four (4) submissions from public authorities being Sydney Water, the NSW Heritage Office, the NSW Roads and Traffic Authority and North Sydney Council.

The fifteen (15) submissions from the public were letters of objection. Of the public authority submissions, the NSW Roads and Traffic Authority raised no objection to the proposal; Sydney Water provided comments in relation to their requirements; the NSW Heritage Council provided comments in predominantly relation to urban design; and North Sydney Council raised concerns regarding hours of operation and potential amenity impacts, view impacts, and protection of the fig trees adjacent to the site. These issues are further discussed below.

6.3 PUBLIC SUBMISSIONS

6.3.1 Summary of issues raised in public submissions

The following issues were raised in the public submissions:

- Amenity impacts including hours of operation, noise/music considerations, patron management and garbage collection;
- Proposed uses of the building i.e. as a bar and function centre as well as a restaurant;
- Disabled access;
- Impact on trees;
- Scale, design and streetscape;
- Economic viability and financial arrangements between Multiplex and the NSW State; Government/Public Interest;
- Traffic and Parking;
- View impacts;
- Loss of sunlight and privacy; and
- Access.

Discussion on the key issues which include those raised in submissions is in **Section 5** of this report.

A summary of all submissions received can be found in **Appendix C**. The proponent responded to the issues raised by North Sydney Council at its meeting on 29 January 2007 on 2 February 2007 and the proponent's response is in **Appendix D**.

6.3.2 Other issues raised in public submissions

Comments on other issues raised which are not addressed earlier in this report or in attachments, are as follows:

6.3.3 Disabled Access

A public concern has been raised regarding disabled access as the disabled carspace as the car space appears to be the greatest distance from the lift; and the accessible toilet does not appear to have the required

clear space on the basin side and toilet. A Building Code of Australia Report prepared by CityPlan Services for the building states that the building is capable of satisfying the BCA requirement with respect to access for people with disabilities and also the requirements of AS1428.1.

The location of the disabled car parking space provides for easier manoeuvrability and the potential for conflict within the basement car park is limited given the small volume of cars within the basement and the fact that the other car parking spaces are only to be used by staff. The Department is satisfied that the proposal provides appropriate access for people with disabilities.

6.3.4 Economic Viability and Financial Arrangements between Multiplex Pty Ltd and the NSW State Government

Several of the public submissions raise concerns regarding the economic viability of the restaurant with respect to the number of surrounding or nearby restaurants. The proponent has stated that:

It is acknowledged that there are existing restaurants in the locality of Milsons Point, however, the development is marketed at a different clientele and is not expected to provide an oversupply of this form of development.

The proponent has stated that the proposed development is to provide a high quality dining facility which is unlikely to detract from the existing restaurants and cafes in the area. The proposed restaurant is likely to contribute to the diversity of dining opportunities within the Milsons Point area which will add to the synergy created by the location of a number of dining facilities in the region. The demand for the restaurant will ultimately be determined by market forces. If there is an over-supply in the area, the building could readily be converted to another appropriate permissible commercial use, subject to obtaining relevant approval.

Several public submissions have also raised concern regarding the financial arrangements between Multiplex Pty Ltd and the NSW State Government. Such financial or other arrangements are not a planning matter for consideration in determining the appropriateness of the proposal as a built form within its context. Despite this the outcome of the site is in the public interest.

6.3.5 Loss of Sunlight and Privacy

Public concern has been raised regarding the potential overshadowing and privacy impacts resulting from the restaurant. The building is of a modest height within its setting, particularly with respect to the number of surrounding commercial and residential towers which cast significant shadows upon the area. The proposed restaurant casts a shadow over the park to the west during the morning period, over the park to the south of the building at noon, and over Northcliff Street to the west during the afternoon period. The proposed building does not generate any unreasonable additional overshadowing impacts which detrimentally impact upon surrounding properties beyond the shadows cast by the existing buildings within the locality.

Public concern has also been raised that the building will result in privacy impacts upon the surrounding residential buildings. The proposed building is oriented towards to Harbour views to the south-west, and whilst there are some transparent glass elements along the street frontages, it is unlikely that these would result in any significant privacy impacts to the surrounding properties. The proposed building affords some increase in views into the private open space areas and the windows of surrounding residential properties beyond what is visible from pedestrians walking along the street adjacent to the subject site. However, taking into consideration the internal layout of the restaurant which provides 'back-of house' operations along Northcliff Street, the loss of privacy to adjoining premises is minimal. In this regard, the proposal is not considered to result in any unreasonable privacy impacts upon the surrounding properties.

6.3.6 Pedestrian Access through the Site

A public concern has been raised that the access ramp illustrated on the Landscape Plan from the roof of the previously approved Luna Park Cinema Complex up to the viewing platform, will result in a main public thoroughfare developing past the northern corner of the restaurant and tree T4 down into Luna Park. There is concern that this may increase the pedestrian flows through Dind Street which may result in amenity impacts upon local residences.

The pedestrian access ramp from the roof of the cinema to Northcliff Street was approved as a component of the Cinema Complex application and does not form a part of this application. Nonetheless, it is acknowledged that the opening of the areas around the proposed building as public park and connection of proposed viewing platform with the existing approved ramp, will increase the ease of access through this park area to the lower portion of Luna Park and may result in increased pedestrian activity through Dind and the surrounding streets.

However, access through the subject site to Luna Park promenade requires using the subject ramp which leads down the rooftop of the cinema complex and then using a lift within the cinema complex to access the remainder of Luna Park. This access route is not a visually obvious from Dind Street, nor convenient. Entrance into the Luna Park precinct and the formal entry to Luna Park through the 'face' is an integral element of the Luna Park experience. In this regard, it is most likely that the majority of visitors to the precinct will continue to access the park through the 'face'. Therefore, the subject proposal is considered unlikely to generate a significant increase in pedestrian access through Dind or the surrounding streets which would result in a detrimental amenity impact upon the residences in the area.

6.4 SUBMISSIONS FROM PUBLIC AUTHORITIES

The following submissions were received from public authorities:

6.4.1 North Sydney Council

North Sydney Council have provided a submission to the proposal raising concerns in relation to the proposed operating hours and patron management, the intended use of the building, noise resulting from the use, view impacts, traffic impacts, restricting access to the roof, and whether or not the building encroaches under the canopy of the heritage listed fig trees.

These issues are addressed in Section 5 of this report. A number of conditions are recommended in order to address these specific issues raised including to restrict access to the roof.

6.4.2 NSW Roads and Traffic Authority

The NSW Roads and Traffic Authority raise no objection to the proposal.

6.4.3 Sydney Water

Sydney Water provided comments in relation to their requirements, specifically concerning water and wastewater servicing, Section 73 Compliance Certificate, trade waste and fire-fighting capacity.

6.4.4 NSW Heritage Council

The NSW Heritage Council provided comments stating that the Environmental Assessment satisfactorily addresses the degree of comprehensiveness required for the heritage assessment. However, concern was raised regarding the urban design of the restaurant. The issues of urban design are considered in Section 5 of this report where it was concluded that the proposal is acceptable and compatible in urban design terms. The building is considered to be a high quality contemporary building that would add character and vibrancy to the area.

7 CONCLUSION

The Department has assessed the EA and considered the submissions in response to the proposal. The key issues raised in submissions related to view impacts, amenity impacts including hours of operation and noise considerations, built form and urban design, traffic and car parking impacts, heritage impacts, trees impacts, geotechnical impacts, and subdivision. The Department has considered these issues and a number of conditions are recommended to ensure the satisfactory addressing of these issues and acceptable impacts as a result of the proposal.

The proposed building is generally in accordance with the development envisaged for the site pursuant to the controls of the Major Projects SEPP and the Luna Park Plan of Management 1998, and is considered a well resolved architectural response which contributes positively to the locality. The proposal provides an economic contribution to the remainder of the Luna Park Entertainment Precinct to ensure the long term viability of Luna Park. Furthermore, the proposal provides dedicated public domain and landscaped areas, including viewing decks, which allow public access to the site.

On these grounds, the Department considers the site to be suitable for the proposed development and that the project is in the public interest. Consequently, the Department recommends that the project be approved, subject to the conditions of approval.

8 RECOMMENDATION

It is recommended that the Minister:

- (A) consider the findings and recommendations of this Report; and
- (B) approve the carrying out of the project, under Section 75J *Environmental Planning and Assessment Act, 1979*; subject to conditions and sign the Determination of the Major Project (**tag A**).

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APPENDIX A. DIRECTOR GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS

Director-General's Requirements

Section 75F of the *Environmental Planning and Assessment Act 1979*

Application number	06_0106 and 06_0163
Project	Two project applications, the first being for a seven storey strata commercial office building with basement car parking to Site B at Luna Park and the second being for a two storey restaurant building with basement car parking to Site C at Luna Park.
Location	Luna Park, Lot 1 DP 1066900
Proponent	Luna Park Sydney Pty Ltd
Date issued	31 July 2006
Expiry date	2 years from date of issue
General requirements	<p>The Environmental Assessment (EA) must include:</p> <ol style="list-style-type: none"> 1. An executive summary; 2. A description of the proposal including: <ul style="list-style-type: none"> - description of the site and surrounds - suitability of the site for the proposed development; - likely environmental, social and economic impacts; - justification for undertaking the project; and - alternatives considered 3. Address the following: <ul style="list-style-type: none"> • consideration of any relevant statutory provisions; • overview of other environmental issues and any relevant provisions arising from environmental planning instruments; • an environmental risk analysis of the project which takes into consideration the issues raised during consultation; • a detailed assessment of the key issues specified below, which includes: description of the existing environment; an assessment of the potential impacts of the project; a description of the measures that would be implemented to avoid, minimise, mitigate, offset, manage, and/or monitor the impacts of the project; • a draft Statement of Commitments, outlining environmental management, mitigation and monitoring measures • a conclusion justifying the project, taking into consideration the environmental impacts of the proposal, the suitability of the site, and whether or not the project is in the public interest; • a signed statement from the author of the Environmental Assessment certifying that the information contained in the report is neither false nor misleading.
Key issues	<p>The Environmental Assessment must address the following key issues:</p> <ul style="list-style-type: none"> • Statutory and Other Requirements Consideration of all relevant legislation and planning provisions applying to the site including State Environmental Planning Policies, North Sydney LEP 2001, DCP 2002, Sydney Harbour Foreshores Area DCP, 'Luna Park Plan of Management'; nature, extent and justification for any non-compliance. Where non-compliance results in environmental

impacts, consideration of alternative/mitigatory works to address the impacts.

- **Design, Visual Impacts and Design Quality Principles**

- Assess the impacts of the proposals in particular having regard to the siting and design, bulk and scale relationships, choice of materials and finishes and the resultant architectural composition relative to the existing and surrounding built form and vegetation, including the broader Sydney Harbour Foreshore and any landmark elements. A design statement prepared by a registered architect is to be submitted.
- Consideration of: urban design improvements to adjacent areas of public domain, activation of ground level spaces and links into Luna Park and other existing public facilities; the architectural language of the buildings on Sites B and C to ensure an appropriate urban design link between them; an internal design layout that achieves transparency through the floor plate and improved views from the street down to the water.
- Provide a detailed view impact analysis and minimise view loss from adjoining and adjacent properties and any public views across the site including views and vistas to and from Sydney Harbour and night views.

- **Proposed Uses**

Details of proposed uses including patron management and hours / mode of operation of the restaurant.

- **Heritage impacts**

A Heritage Impact Statement (HIS) is to be prepared in accordance with the NSW Heritage Office's guidelines to address the impact of the proposed development on the heritage significance of the subject site and adjoining sites and measures to minimise and mitigate potential heritage impacts. It is noted that the site at 2 Glen Street is currently being considered by the Heritage Office for a listing on the State Heritage Register. If any impact is anticipated on any archaeological relics, a research design for the proposed excavation is to be provided.

- **Traffic Impacts (Construction and Operational)**

A Traffic Impact Study (TIS) prepared in accordance with the RTA's publication Guide to Traffic Generating Developments is to be submitted and is to include an assessment of any upgrading or road improvements required as a result of the development, and the proposed number of off street car parking spaces relative to past approvals for Luna Park.

- **Wind impacts**

The massing and design of buildings must minimise wind impacts on pedestrian amenity, having particular regard to adjacent pedestrian areas. A wind report which includes modelling and an assessment of existing and future wind conditions on the site is to be submitted.

- **Drainage and Flooding**

The environmental assessment is to address drainage issues associated with any changes in the hydrological regime of the catchment as a result of the development. This should include a drainage concept plan.

- **Noise Impacts**

Demonstrate that the proposal will be designed, constructed, operated and maintained so that there is no unacceptable level of noise impacts on amenity in the locality. The noise assessment must include an assessment of existing noise impacts at the site and must be undertaken in accordance with Industrial Noise Policy (EPA 1999) and Environmental Criteria for Road Traffic Noise (EPA, 1999).

- **Rail Impacts**

Address noise and vibration impacts from adjacent rail activities, including mitigation and monitoring measures where appropriate, consistent with guidance published by Rail Corp including *Interim Guidelines for Applicants – Consideration of Rail Noise and Vibration in the Planning Process* and *Interim Guidelines for Councils – Consideration of Rail Noise and Vibration in the Planning Process*. Submit a report, prepared by a suitably qualified Electrolysis expert, on the Electrolysis Risk to the development from stray currents, and the measures that will be taken to control the risk.

- **Utilities**

	<p>In consultation with relevant agencies, address the existing capacity and requirements of the development for water, electricity, waste disposal, telecommunications and gas. Address all relevant utility Codes regarding the design and compliance of the development. Identify staging, if any, of infrastructure works. Energy Australia have specifically advised that an electrical substation will be required for these developments. A kiosk type substation on the subject site will require an easement to Energy Australia for electricity purposes over the substation site.</p> <ul style="list-style-type: none"> • Waste Management Address demolition and construction wastes that may be generated - likely quantities, proposed disposal destinations and best practices for safe handling and disposal in accordance with WorkCover's Occupational Health and Safety requirements. • Remediation of Site Provide a risk assessment on acute and chronic health implications for construction workers, adjoining residents and final occupants of the site relative to any contamination of the site and required remediation. The risk assessment shall be conducted in accordance with DEC's <i>Approved Methods for the Modelling and Assessment of Air Pollutants in NSW</i>; WorkCover's <i>Occupational Health and Safety Requirements</i>; <i>SEPP 55</i> and <i>Managing Land Contamination: Planning Guidelines</i> (Department of Planning and EPA). • Provision of Public Services and Infrastructure Address provision of public services and infrastructure having regard to the Council's <i>Section 94 Contribution Plan</i>. • Economic Impacts An economic impact study is to be submitted with the environmental assessment which addresses the economic context, capacity and impact of the commercial and restaurant development in the North Sydney local government area. • Geotechnical and Subsidence Assess impacts on surface and groundwater resources, the cliff line and other geological formations, public access and infrastructure including roads, utilities, buildings and other structures. An assessment of necessary testing procedures to validate the structural adequacy of the cliff and recommended methodologies to be adopted is to be included in the Statement of Commitments.
Consultation	<p>During the preparation of the Environmental Assessment, you should undertake an appropriate and justified level of consultation with relevant government authorities and the following:</p> <ul style="list-style-type: none"> • Luna Park Reserve Trust; • Lavender Bay Precinct Committee; <p>In addition to the above consultation the proposal is to be presented to the Sydney Harbour Design Review Panel prior to submission. The application is to address any recommendations made by the Panel. The consultation process and the issues raised are to be described in the Environmental Assessment</p>
Deemed refusal period	<p>Under clause 8E(2) of the <i>Environmental Planning and Assessment Regulation 2000</i>, the applicable deemed refusal period is 60 days from the end of the proponent's Environment Assessment period for the project.</p>

APPENDIX B. COMPLIANCE WITH ENVIRONMENTAL PLANNING INSTRUMENTS INCLUDING STATE ENVIRONMENTAL PLANNING POLICIES THAT SUBSTANTIALLY GOVERN THE CARRYING OUT OF THE PROJECT

Environmental Planning Instrument	Consideration
State Environmental Planning Policy (Major Projects)	
Schedule 3 – State Significant Sites	
Part 2 The Luna Park Site	
Division 2 Provisions relating to development on Luna Park site	
(3) Development may be carried out on the cliff top sites with development consent for any purpose that is an authorised use under Section 6C of the Luna Park Site Act 1990.	The proposed use of the site as a refreshment room does not rely on Clause 6C for permissibility. It is permissible pursuant to North Sydney LEP and Clause 6B of the Luna Park Site Act.
(4) (ii) Any building must not exceed 31.5 metres in height above the Australian Height Datum.	The proposed development has a maximum height of RL 31.5 metres AHD.
(7) Any building must not interfere with the site lines along Glen and Northcliff Streets to such an extent as to be a traffic hazard	The bulk, scale and design of the building is such that it does not interfere with site lines along Glen and Northcliff Streets in a manner which would be a traffic hazard.
(8) Any building on the cliff top sites must not encroach on land beneath the canopy of any heritage fig tree. Any building erected on the cliff top sites, and the process of erecting any such building, must not threaten or damage any heritage fig tree and, in particular any land beneath the canopy of any heritage fig tree must not be used for any purpose in connection with the erection of any such building.	As comprehensively discussed in Section 5 of this report, the proposed building is located outside of the canopy of the heritage fig trees on the site. Furthermore, the land under the canopy of the trees is not proposed to be used during construction and a condition of approval is recommended to ensure that this does not occur.
(9) Appropriate arrangements must be made to give public access to the open spaces around any building on the cliff top sites	The proposal includes areas of parkland and viewing platforms which provide views of the harbour for the general public.

APPENDIX C. SUMMARY OF SUBMISSIONS

LUNA PARK SITE C – RESTAURANT MP06_0163

Summary of all submissions received for this application

ISSUES RAISED IN AGENCY SUBMISSIONS

Date	Stage of process	Agency comment
Sydney Water		
12/1/2007	Exhibition	Water and Wastewater Servicing – Sydney Water recommends a fire servicing connection should be made from Dind Street. Wastewater connections for the proposed development should occur through the Glen Street wastewater main.
		Section 73 Compliance Certificate – The develop will be required to obtain a Section 73 Compliance Certificate from Sydney Water.
		Trade Waste – All industrial and commercial customers discharging trade waste into Sydney Water's wastewater systems must obtain written permission from Sydney Water.
		Fire-fighting capacity – Sydney Water does not consider the fire-fighting capacity of the mains as part of the Section 73 Certificate application process. Assessment of fire-fighting capability is the responsibility of the applicant.
NSW Roads and Traffic Authority		
8/2/2007	Exhibition	The RTA reviewed the subject development and raises no objection, as the proposed development will not have a significant traffic impact on the local classified road network.
Heritage Council of NSW		
23/1/2007	Exhibition	The Heritage Council considers that the submitted Environmental Assessment Report satisfactorily addresses the degree of comprehensiveness (for Heritage assessment) required and the particular Director General's Requirements in relation to it.
		The design of the proposal has a similar slab-sided appearance to the proposed Cinema. It is accepted that Site C is somewhat more remote from Luna Park proper, than the site of the proposed Cinema. However, Site C is flanked by significant, large canopy trees and the site is currently an open, corner site on the Luna Park cliff top.
		The applicant is commended on the manner in which the proposed footprint allows for views of the harbour from the southern bend of Glen Street, but the general profile and sharp edge to Northcliff Street/Dind Street corner are considered to be inconsistent with the overall fantasy atmosphere of the Luna Park precinct.
		The Heritage Office considers that strict adherence to the full scope of the provisions of the Archaeological Strategy are required.
North Sydney Council		
29/1/2007	Exhibition	<p>The Department of Planning was requested by Council to consider the following matters:</p> <ul style="list-style-type: none">- view impacts from both the public and private property- patron management and hours/mode of operation of the restaurant, it being suggested that the proposed trading hours are likely to cause unreasonable disturbance and should be restricted to 12 midnight 6 days a week and 10pm on Sundays.- whether the proposed development encroaches under the canopy of the heritage listed fig trees.- No access to the roof should be permitted other than for maintenance purposes.- The Department should respond to the issues raised by the Sydney Harbour Design Review Panel in respect of landscaping opportunities on the roof of the restaurant.- Noise limits should be set for the live music and non-amplified background music.- The impacts on traffic and parking in the vicinity of the proposed restaurant should be addressed.

ISSUES RAISED IN PUBLIC SUBMISSIONS

Issue	Detail
Amenity Impacts	<p>Use of Building – Concern is raised that the building will not only be used as a restaurant, but as a function centre and also as a bar. It is observed that the BCA report for the proposal, identifies the premises as a Class 9b which would allow the premises to potentially be used as a Place of Public Entertainment.</p> <p>Noise/Music/Hours – Concern is raised regarding the potential noise impacts associated with the use of the premises. The open louvers will allow the transmission of excessive noise to the immediate locality and any music will result in unreasonable noise impacts to the neighbourhood. Furthermore, the proposed closing time of 3.00am is unreasonable and will contribute to noise impacts upon the area, particularly with patrons existing the premises at this time and creating a general disturbance.</p> <p>Patron Management – Patron management is unlikely to control the noise resulting from inebriated patrons exiting the premises at 3.00am</p> <p>Garbage Collection – Hours for the collection of garbage should ensure that this does not occur before a reasonable time in the morning.</p>
Disabled Access	The disabled carspace appears to be the greatest distance from the lift. The accessible toilet does not appear to have the required clear space on the basin side and toilet.
Impact on Trees	Concern is raised that the siting of the building will result in damage and detrimental impact upon the heritage listed fig trees on the site. Objection is also raised to the general clearing of remaining vegetation on the site.
Scale, Design and Streetscape	The scale of the proposal is considered excessive and imposing. The design of the building results in a detrimental impact upon the streetscape and generates a 'hemmed in' feeling to the area. The site is an inappropriate location for the proposal which is considered an overdevelopment of the site.
Economic viability	There is not sufficient demand for a restaurant in this location to warrant the proposal. There are a number of nearby restaurants, one of which is located within Luna Park which is not often full, and therefore the subject restaurant is not economically viable and as such is unnecessary.
Financial arrangements between Multiplex and the NSW State Government/Public Interest	The reasons provided by the Proponent that the project is to provide financial support for the ongoing maintenance and costs associated with Luna Park is questioned, it is claimed that financial gain as a result of the proposal will not benefit the broader Luna Park. The financial arrangements between Multiplex and the NSW State Government are questioned, as the arrangements are not considered to be serving the public interest. Reference is made to the 99 year lease of Luna Park for \$1 and how this benefits Luna Park and the community.
Traffic and Parking	Concern is raised that the proposal will generate a significant increase in traffic to the area and will result in a unreasonable increase in the demand for car parking in the streets surrounding the site, which will create difficulty for local residents or their guests attempting to park in the street.
View Impacts	The proposal is considered to result in an unreasonable view impact to the Harbour from the surrounding area and particularly from the heritage listed terrace dwellings which are located opposite the site. The assessment of view loss with respect to the Land and Environment Court case Tenacity Consulting Pty Ltd vs Warringah Council (2005) is requested.
Loss of sunlight	Concern is raised that the proposal will result in a unreasonable and further loss of sunlight to the heritage listed terrace houses opposite the site, which are currently significantly overshadowed by the surrounding multi-storey towers.
Loss of privacy	Concern is raised that the proposal will result in a unreasonable privacy impact to the heritage listed terrace houses opposite the site, due to the transparent nature of the street frontages of the restaurant.
Access	There should be no access through the site from Dind Street to the Cinemas as this will result in hundreds of patrons using this as the primary access to Luna Park, which will result in safety issues due to the narrow nature of Glen and Dind Streets.

APPENDIX D. RESPONSE TO SUBMISSIONS

Response from Proponent to North Sydney Council submission:

Firstly, it should be noted that the Independent Council Officers report (attached) concluded amongst other things that:

- The traffic impacts would not be noticed;
- No issues in regard to parking;
- No impacts on the Seidler building, which is the subject of a heritage application;
- That the arborist report was very thorough.

The Council and the individual Councillors were concerned that the restaurant could become a nightclub. They were concerned that the applicant's possible intention would be to operate a nightclub on the premises due to the proposed operating hours of 7.00am to 3.00am and seating capacity of 245 seats.

Response: Please refer to the Environmental Application – Section 3.4 'Land use and floor space by level and Section 3.5 'Operation of a restaurant'.

Section 3.4 states the use will be a café/restaurant, whilst section 3.5 states the restaurant has been designed for a maximum seating capacity of 245 seats. This is the design capacity only and will not necessarily be the optimum seating when trading at either lunch or dinner. Section 3.5 further states there will be no live amplified music played in or outside the restaurant. This by necessity, prevents its use as a nightclub.

However, if it assists the process we would accept a condition of approval that a "nightclub is not a permitted use".

In reference to operating hours please refer to Section 6.6 of our Environmental Application which addresses those issues in relation to the possible impacts of the restaurants operations. Further, that the restaurant is located in an entertainment and tourist zone.

However, as a compromise we would accept a restriction of the operating hours to 1.00am (the following day) not 3.00am Monday to Saturday and 12.00 midnight on Sunday. This reflects the current hours of operation of the Luna Park restaurants, brasseries, cafes and shops as approved in DA 154-06-01. It also reflects the hours of operation approved by North Sydney Council and the Mayor in DA 772/00, which was the original DA for the redevelopment of Luna Park. That DA, while approved, was never acted upon, but the hours of operation reflect the appropriate standards for such a use.

North Sydney Council recommended to the Department of Planning that conditions be imposed prohibiting use of the building's rooftop except for carrying out maintenance.

Response: Please refer to the Environmental Application – Annexure A, Drawing PSA7463-DA-07. This drawing shows the roof plan does not have access stairs or perimeter balustrades etc and is therefore unable to be used commercially. However, we would accept a condition preventing any use of the rooftop.

The Council raised concerns about adequate parking provisions for the proposed use. Some Councillors expressed an opinion that the Luna Park Car Park is always full.

Response: Please refer to the Environmental Application – Annexure 1, page 8 of the Report assessing Traffic and Parking implications. Consistent with similar uses, it is anticipated a significant number of patrons will be drawn from local residents, workers and visitors to the Luna Park precinct.

Supplementary Information provided to NSW Department of Planning dated 8th December 2006 analysed expected demand from both the proposed restaurant and DA Approved Cinemas against the current average daily demand. The analysis showed sufficient capacity to accommodate the car parking demand at peak periods.

Page 9 of a report dated 10th January 2007, prepared by North Sydney Council Manager of Development Services; Stephen Beattie does not consider any negative parking or traffic impacts associated with the proposed development.

Further, it is factually incorrect to state that the Luna Park Car Park with 389 spaces is "always full". It is rarely full. The peak car park periods coincides with the peak periods of the amusement park, namely during the day on Saturday and Sunday. Occasionally there will be a peak period when a major function is held. However, the peak periods for the restaurant will be the evening time slot when amusement park patronage is lower not the daytime weekend periods.

The Council also made mention of view impacts and whether the proposed development will impact on the canopies of the fig trees.

Response: We supplied the Department of Planning (at their request) a specialist View Analysis report. The North Sydney Council report also stated it would not impact on the Northcliff Street terrace houses.

The Environmental Application also contains a throughout analysis of the impact on the fig trees as a result of the proposed development. It concludes that with proper management there will be no adverse impact on the health of the fig trees including impacts on the root systems and the canopies.

It should be noted that the Minister's own Development Controls for the site took into consideration the impact of the development, both during construction and once completed, on the trees canopy. The development controls, which we are compliant with, ensure that the canopies are protected.