

ASSESSMENT REPORT

Luna Park MP 06_0163 MOD 1

1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval for the redevelopment of land at Luna Park, at the corner of Glen and Northcliff Streets, Milsons Point.

The request has been lodged by JBA Urban Planning Consultants on behalf of Luna Park Sydney Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend the consent to enable landscaping works to be brought forward as the first stage of works (rather than the last stage of works).

2. SUBJECT SITE

The subject site is located at Milsons Point and is bounded by Glen, Dind and Northcliff Streets to the east (**Figure 1**). At the time of the original approval, the site was described as Lot 1 in DP 1066900 and is known as the “Cliff Top site”. The site is currently described as Lots 10, 11 and 12 in DP 1113743 (**Figure 2**).



Figure 1: Project location (source: Original report, 2007)

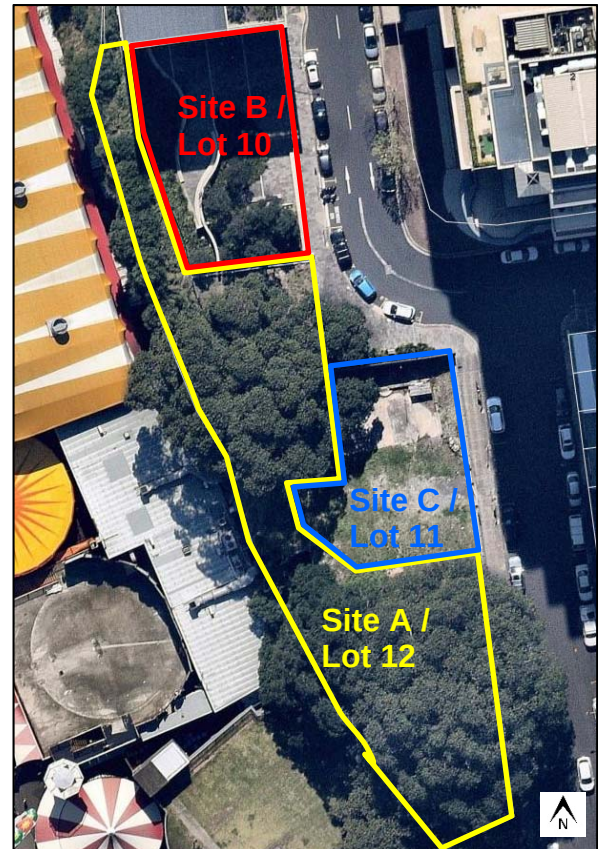


Figure 2: Clifftop layout (source: Nearmaps, 2016)

The location of each lot is described below:

- Lot 11 (Site C) includes a large hardstand area used as a temporary carpark which is currently overgrown with weeds;
- Lot 12 (Site A) is the larger clifftop area which is undeveloped and contains four large fig trees, three of which are included in the State Heritage Inventory; and
- Lot 10 (Site B) was included in the approval to allow for subdivision / creation of the lot. The approval did not include any development on this lot. Harry Seidler Park has now been created on the lot.

Luna Park is Crown Land and is under the care, control and management of the Luna Park Reserve Trust.

3. APPROVAL HISTORY

3.1 Major Project Approval

On 27 February 2007, the then Minister approved a Project application (MP06_0163) for:

- a two storey building (maximum of RL 31.50 AHD) intended for use as a restaurant to be located on Site C (Lot 11);
- excavation of one basement car parking level accommodating five car spaces;
- provision of vehicle egress from Northcliff Street;
- provision of associated landscaping including public walkways and viewing platforms;
- provision of stormwater measures; and
- subdivision of Lot 1 DP 1066900 (the entire cliff top area of Luna Park) into three lots. Lots 10, 11 and 12 have respective areas of 575.5 m², 494.4 m² and 1,640 m².

The development was to be carried out in two stages:

- Stage 1: Early works including remediation, excavation, archaeological investigation; and
- Stage 2: Construction of the building structure and all remaining works.

The approved landscaping works would have formed part of Stage 2 and relate to parts of sites C and A as shown in **Figure 3**.

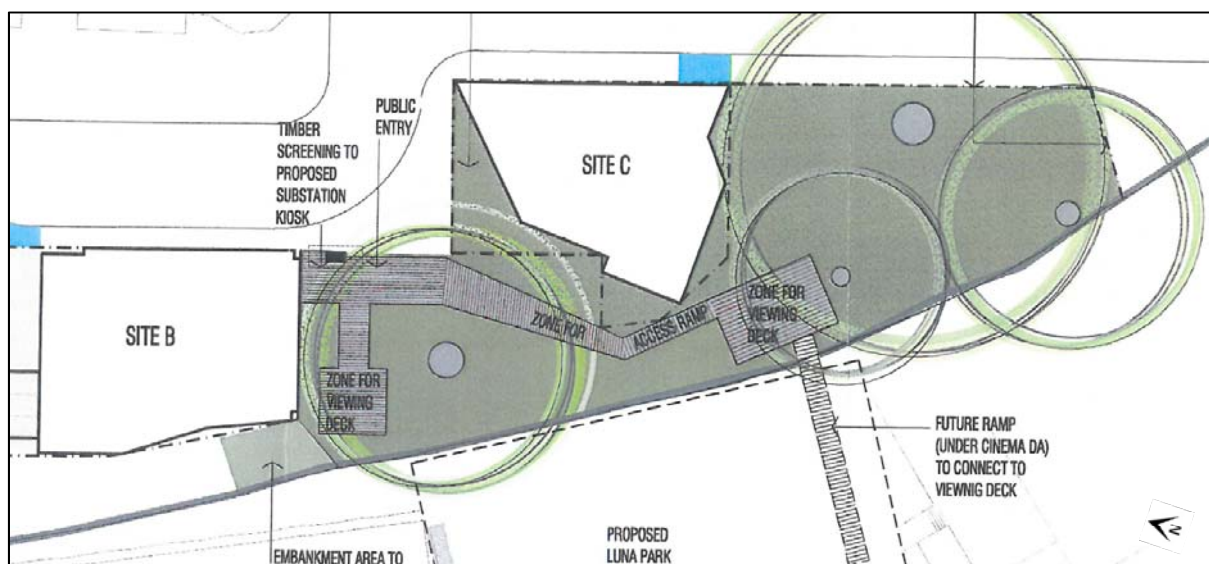


Figure 3: Extract from approved Draft Concept Landscaping Plans (source: EA to original application)

3.2 Modification

On 27 August 2016, a modification (MP06_0163 MOD 2) was approved to incorporate a condition specifying a lapsing date of 1 October 2017 for the approval.

4. PROPOSED MODIFICATION

On 26 July 2016, the Proponent lodged a section 75W modification application (MP 06_0163 MOD 1) seeking to amend the approval to enable landscaping works on Site A (the wider clifftop area – Figure 3) to be brought forward as the first stage of works, prior to the early works stage of remediation, excavation and archaeological investigation.

It is proposed to amend a number of conditions to clarify that the landscaping of Site A may be carried out prior to:

- approval of stormwater management and disposal details;
- a Stage 2 contamination investigation and any remediation works or site audit required as a result of that investigation;
- an archaeological investigation; and
- a survey of utility services and where necessary, negotiation with utility providers about relocation of services.

The modification seeks to enable the works to be carried out prior to:

- obtaining a section 73 Certificate from Sydney Water;
- a noise and vibration management plan;
- provision of a bank guarantee for footpath damage;
- payment of the long service levy;
- payment of S94 contributions; and
- a waste management plan.

The modification is requested on the basis that the public benefit associated with the landscape works can be realised upfront.

5. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former section 75W of the Act.

The Department of Planning and Environment (the Department) is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and do not constitute a new application.

5.2 Approval Authority

The Minister for Planning is the approval authority for the application. However, the Executive Director, Key Sites and Industry Assessments may determine the application under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are less than 25 public submissions in the nature of objections.

6. CONSULTATION

The Department made the modification application publicly available on its website, consulted with North Sydney Council (Council), the Office of Environment and Heritage (OEH) and wrote to surrounding landowners about the proposed modification. Given the minor nature of the proposed modification, it was not notified by any other means.

6.1 Submissions

Council and **OEH** raised no objection to the proposal.

One **public** submission received on the proposal. It made comments about whether the site would be developed for a restaurant or a public park.

6.2 Response to Submissions

The Proponent submitted a Response to Submissions on 6 September 2016 to address the matters raised in the public submission.

The Proponent confirmed that following a recent agreement with the NSW Government, Luna Park's interests in Site C have been extinguished and it will no longer be proceeding with the restaurant element of the approval. However, in accordance with the agreement, Luna Park still intends to undertake landscaping works on Site A. It is understood Property NSW is currently progressing the detailed landscape design work for Site C which is to be used as a public park and will be the subject of a separate Development Application.

7. ASSESSMENT

The purpose of the modification is to enable a recent agreement between the Proponent and the NSW Government to be carried out, which will assist with realising the Government's long term strategic intention for the site to be used as a public park.

To achieve this, the Government reacquired the lease of Site C from Luna Park. As part of the agreement in handing back the site to the Government, Luna Park is required to carry out the landscape works for Site A as approved under this Project Approval. The effect of the proposed modification is to identify the landscaping works as a separate element (and the subject of a separate Construction Certificate). This would enable the works to be undertaken independently of the release of the Stage 1 and Stage 2 Construction Certificates. No other changes are proposed.

The Department is generally supportive of allowing the landscape works to be carried out at the first stage, however, in bringing the landscaping works forward, the Proponent is also seeking to allow the works to be carried out prior to certain requirements being met. In particular, the modification would impact on conditions and requirements relating to:

- contamination investigation and remediation;
- archaeological investigation;
- stormwater design and consideration of utility services;
- details to manage noise and waste during construction; and
- payments relating to footpath damage bonds, long service levy and developer contributions.

The Department has therefore considered the impacts of these changes as set out in **Table 1**.

Table 1: Assessment

Issue	Consideration	Recommendation
Contamination	• The Proponent seeks to delay existing requirements for a Stage 2 Environmental Site Assessment and any potential remediation works until after the landscaping works. The Proponent advises this would be consistent with the Preliminary Site Investigation submitted with the original application which notes any contaminated material is likely to be located outside Site A where the landscaping works are proposed.	Conditions B15 and C1 are amended to require a Stage 2 Assessment for Site A, and where necessary, a remedial action plan, remediation works, and site

Issue	Consideration	Recommendation
	• However, the Department has reviewed the Preliminary Site Investigation and notes the investigation found filling has occurred across the site, including on the land now known as Site A. The report found that while the extent and contamination status of the fill is not known, there is a likelihood it could contain contaminated materials. The report also found there was some potential for spills or disposal of chemicals across the entire site from past industrial uses. • Based on the findings of the Preliminary Site Investigation, the Department is of the opinion that further investigation is required in order to confirm if there is any contamination on the site and if remediation is required. Further, if it is confirmed that Site A does contain contaminated material, the Department considers the site should be remediated prior to the landscaping works being carried out, otherwise remediation works could potentially be required retrospectively. • The Department therefore considers it is not appropriate to delay the investigation and potential remediation works on Site A. However, any investigation and potential remediation works for the remaining parts of Site C can be delayed until those parts of the site are developed. It is also noted that the proposed park on Site C would be subject to a future development application and contamination/remediation would be considered further at that stage. • The Department recommends Conditions B15 and C1 be amended to require a Stage 2 Assessment for each stage of works. Where necessary, a remedial action plan, remediation works, a site audit and validation should be completed on each relevant stage prior to a construction certificate being issued for that stage (including the landscaping works stage). • An advisory note has also been included recommending the Stage 2 site investigation and any remediation works consider the future intended use of the site integrating with the proposed and existing public parks on Sites B and C.	audit and validation all be completed on Site A, prior to a construction certificate being issued for landscaping works on Site A. An advisory note is included recommending that any Stage 2 site investigation and any remediation work take into consideration the future intended use of the site integrating with Site B and C.
Archaeological Impacts	• The Proponent is seeking to delay a requirement for an Archaeological Investigation to be carried out until after the landscaping works. The Proponent advises that in the absence of any significant previous building works on Site A, there is little need for archaeological works to be undertaken on this part of the site (as previously identified by the Archaeological Assessment submitted with the original application). • The Department has reviewed the Archaeological Assessment and notes the assessment recommends further archaeological investigation of Site C only. This is because Site C is most likely to contain any archaeological relics (having previously included Northcliff House) and is the area most impacted by the proposed development (the approved basement excavation on Site C would impact on the archaeological materials). • The Department considers that an archaeological investigation is not required prior to the landscape works being carried out, as Site A does not have a history of significant previous building works and the proposed works on Site A are unlikely to materially disturb any archaeological relics (being limited to elevated public viewing decks and understorey planting with no significant excavation). The Department therefore recommends an amended condition, requiring the investigation be carried out prior to any works commencing on Site C only. • Subject to the recommended condition, the Department's assessment concludes the proposal would not result in adverse impacts on the archaeological values of the site.	The Department has recommended an amended condition, requiring the investigation be carried out prior to any works commencing on Site C.

Issue	Consideration	Recommendation
<i>Construction Management</i>	- The conditions of approval require a Construction Management Plan (CMP), a Noise and Vibration Management Plan (NVMP), and a Waste Management Plan (WMP) to be provided prior to the commencement of Stage 1 works. As the proposed new landscaping stage precedes Stage 1, there would be no requirement for a CMP, NVMP or WMP prior to those works. - The Department considers a CMP and WMP should be provided for the landscaping stage, to ensure construction works and waste are appropriately managed on site. The conditions are therefore recommended to be amended to require a CMP and WMP prior to the landscape works being carried out. - However, as the scope of the landscape works is relatively minor, and unlikely to result in significant noise impacts, a specific NVMP is not considered necessary. The Department considers noise can be appropriately managed by the existing conditions of approval which set construction noise limits, construction hours, and construction noise management and vibration controls.	Conditions B6 and B14 are recommended to be amended to require a CMP and WMP prior to the landscape works.
<i>Payment of Bonds, Developer Contributions and Long Service Levy</i>	- As the proposed new landscaping works would precede Stage 1, existing requirements relating to the payment of section 94 Contributions, the provision of a bank guarantee for footpath and road damage and the payment of the Long Service Levy would not be required for the landscaping works. - The Department notes that contributions are not payable for landscape works under Council's section 94 plan. As such the proposed delay in payment is considered appropriate. - The Department considers delaying the provision of a bank guarantee for footpath and road damage is acceptable as the proposed landscaping works are minor and Council have raised no objection. - However, the Department notes there is a legal requirement to pay the long service levy. An amended condition is therefore recommended requiring payment of the levy for the landscaping works, prior to commencement.	Conditions B11 is recommended to be amended to require payment of the relevant long service levy prior to the landscape works.
<i>Stormwater and Utility Services</i>	- The proponent seeks to delay the requirement for: - a Sydney Water Section 73 Certificate; - provision of stormwater disposal and drainage details; and - investigation of utility services and the need to relocate services affected by the proposal. - The Department considers that as the landscape works do not involve significant excavation, connection to utility services, or large impervious building forms it is appropriate to delay these requirements until a later stage as it would not impact on stormwater or utility requirements.	Conditions are recommended to be amended where required, to allow these requirements to be delayed to a later stage.

8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate on the basis that:

- the landscaping works can be undertaken upfront and independently of any development on Site C, thereby realising the NSW Government's long term strategic intention for the site to be used as a public park; and
- subject to appropriate conditions, there is unlikely to be any substantive environmental impacts associated with the proposed landscape works.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.

9. RECOMMENDATION

It is RECOMMENDED that the Executive Director, Key Sites and Industry Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **approves** the application under section 75W, subject to conditions; and
- **signs** the notice of modification (**Appendix A**).

Anthony Witherdin
Director
Modification Assessments

Anthea Sergeant
Executive Director
Key Sites and Industry Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7764

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7764

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7764

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7764