

1 June 2015

**PAC Determination – Ongoing use of the ‘Hair Raiser’ ride
Luna Park Sydney, Milsons Point (DA 6800)**

1. Background

Luna Park is located at 1 Olympic Drive, Milsons Point within the North Sydney Local Government Area. The Luna Park site comprises an amusement area with rides, amusements, buildings, administration areas and amenities, a public foreshore boardwalk along the western boundary, and a cliff top area in the east of the site. The Luna Park Precinct is also listed as a heritage item on the State Heritage Register and in the *North Sydney Local Environmental Plan 2013*.

Luna Park is subject to a number of development consents. On 31 January 2002, the then Minister for Urban Affairs and Planning approved a staged development application (DA 154-06-01) for the redevelopment of Luna Park. The approved development comprises a number of building envelopes, land uses, general master-planning for the site, as well as a strata office commercial office building. This approval also incorporates the implementation of the *Luna Park Acoustic Plan of Management 2002* which includes annual noise reporting requirements for the operation of Luna Park. The Luna Park Reserve Trust also operates the park under the provisions of the Luna Park Plan of Management 1998.

The ‘Hair Raiser’ ride was erected and became operational in late 2013. The proponent (Luna Park Sydney Pty Ltd) is of the view that the ride was legally erected and is legally operating under existing development consent at Luna Park (DA 154-06-01). A Construction Certificate has been issued in respect to the ride and provided to the Department of Planning and Environment. The Department of Planning and Environment does not agree with the proponent and has advised that the ‘Hair Raiser’ ride required appropriate development consent prior to its construction. In August 2014 the Department of Planning & Environment issued Luna Park Sydney with a ‘Notice of Intention to Give an Order’ under section 121B of the *Environmental Planning and Assessment Act 1979* (EP&A Act) seeking the demolition and removal of the ride and its associated structure, fixtures and fittings.

Subsequently, on 10 November 2014 the proponent submitted an application for Development Consent for the ongoing use of the ‘Hair Raiser’ ride.

2. Project Description

The development application seeks approval for the ongoing use of the ‘Hair Raiser’ ride at Luna Park. The ride is proposed to operate under the existing approved operational hours for external rides at Luna Park under DA 154-06-01, as follows:

- Sunday to Thursday: 10am to 10pm;
- Friday and Saturday: 10am to 12 midnight;
- Public Holidays and days preceding Public Holidays, except for Good Friday and Easter Monday: 10am to 12 midnight; and
- New Year’s Eve, Australia Day and not more than 4 other occasions per year, such occasions to be in conjunction with public events or festivals (but not Good Friday or Easter Monday) and to be approved by the Luna Park Reserve Trust and notified to Council not less than 7 days prior: 10am to 2am (the following morning).

The development application is an integrated development as the Luna Park Precinct is listed on the State Heritage Register and development within the precinct requires approval under the *Heritage Act 1977*.

The 'Hair Raiser' ride comprises a square/rectangular white metal truss tower, approximately 38m high, surmounted by a sculptural metal globe. A seating module is mounted around the truss and provides seating for 12 patrons, all facing outwards and secured with over-shoulder bars and seatbelts. The ride operates by hoisting the seating module (with patrons), to approximately 35m high (approximately 3m below the top of the metal globe), before descending rapidly and braking suddenly approximately 4m from the ground. There are also barriers, entryways, stairs, ramps and sun shelters at ground level that accompany the ride.

3. Delegation to the Commission

On 28 April 2015, the project (DA 6800) was referred to the Planning Assessment Commission for determination under Ministerial delegation of 14 September 2011, as more than 25 objections from members of the public were received.

Ms Lynelle Briggs AO, Chair of the Planning Assessment Commission, nominated Mr Joe Woodward PSM to constitute the Commission with her for this project, with Ms Briggs AO chairing the Commission.

4. Department's Assessment Report

The Secretary's Assessment Report provided an assessment of the following key issues:

- Structure, siting and design (including visual impacts); and
- Impacts of operations.

Other issues considered include suitability of the site and the public interest.

The Department's recommendation is that the Commission approve the application under section 79(C) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) with conditions.

5. Commission's Meetings

The Commission met with the Proponent for a briefing on Wednesday 20 May 2015. The briefing included a demonstration of how the ride operates, and how it corresponds with the ongoing evolution of Luna Park. A summary of the briefing is provided in **Appendix 1**. Commission members also inspected the Luna Park site from surrounding locations including the cliff top area overlooking the Park.

The Commission met with a representative of the North Sydney Council on Wednesday 20 May 2015. North Sydney Council raised a number of points in this meeting about its concern with the ride, including the impact of the lighting. Council suggested that the top 10m of lights of the structure, could be switched off, when the ride is not operational. A summary of the meeting is provided in **Appendix 1**.

A Public Meeting was held on Wednesday 20 May 2015, at the Kirribilli Club, 11 Harbourview Crescent, Lavender Bay. A total of 5 verbal submissions were made to the Commission at the meeting, comprising North Sydney Council, one special interest group and three individuals. All those seeking to be heard were heard. A variety of views were expressed by those presenting, mostly expressing some concerns or objecting to the proposal with one public submission supporting the development on behalf of a number of local residents. Three written submissions

were also made to the Commission. A summary of the Public Meeting verbal submissions and the written submissions are presented in **Appendix 2**.

6. Commission's Consideration

6.1. Legality of the ride

The issue of the legality of the structure was raised in a number of submissions, and was also raised at the public meeting. While the Commission acknowledges arguments for and against the need for prior development consent for the Hair Raiser, this is not a matter for determination by the Commission. If the ride was established without necessary statutory approval this is appropriately a compliance matter for the Department. The Commission's role is to determine the application before it, that is for the ongoing use of the 'Hair Raiser' ride.

6.2. Legal Definition of a Building versus Structure

The definition of what constitutes a building was one of the key issues raised at the public meeting. Those opposing the development contend that the 'Hair Raiser' ride is a building as defined under the *EP&A Act*.¹ They further contend that as a building it is in breach of the Luna Park Plan of Management 1998, which has guidelines for the height of building envelopes, and the maximum height of the building envelope in this section of Luna Park is 16m. The 'Hair Raiser' ride is 37m, i.e. more than twice the specified maximum building height.

The Luna Park Plan of Management 1998 (Plan of Management) was adopted under Section 114 of the Crown Lands Act 1989, by the then Minister for Land and Water on 12 March 1998. Section 114 (2) states

If a Plan of Management is adopted;

(a) the reserve trust shall carry out and give effect to it, and

(b) no operations may be undertaken on or in relation to the reserve unless they are in accordance with the plan.

Importantly, however the Plan of Management states;

The plan is unusual in that it does not detail all of the management and other actions on the site. Instead it is a largely strategic document establishing the direction for Luna Park through a framework of vision statement, goals and guidelines.

Therefore, although the Plan of Management is required to be implemented, the wording in the Plan provides for guidance and flexibility, rather than strict requirements. Nevertheless, it is necessary to ensure that the proposal is not inconsistent with the broad provisions of the Plan.

The Plan of Management set out the vision for Luna Park *"to operate a viable and successful amusement park which remains as public land and conserves the site's special identity and heritage features, while providing a wide range of entertainment and social facilities for the people of Sydney and its visitors"*. To achieve this vision a number of goals were established to guide the development of Luna Park. These goals cover three main areas being: the boardwalk and foreshore area; the amusement area; and the area above the cliff. The goals for the amusement area are described below.

"Goals for the amusement area:

¹ EP&A Act definition of building: includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not including a manufactured home, moveable dwelling or associated structure or part of a manufactured home, moveable dwelling or associated structure.

- *To re-open the Park and successfully operate amusement activities.*
- *To widen the range of services and facilities while maintaining the identity and character of Luna Park – new uses may include restaurants, functions, exhibitions, conventions, markets, theatres, meeting places and entertainment venues.*
- *To protect and manage features of heritage significance.*
- *To ensure any potentially adverse impacts on surrounding areas meet regulatory requirements.*
- *To provide for multiple use of facilities, so the community benefits as much as possible.*
- *To ensure suitable public facilities are provided such as shelter, landscaping and seating in the amusement park.”*

The Department of Planning & Environment concluded in its Assessment Report that the ride is *“generally consistent with the relevant provisions of the Luna Park Plan of Management”*.

Given the genuine concerns raised regarding the definition of the ride as a ‘building’ and not a ‘structure’, the Commission sought formal advice from the Department of Planning & Environment, as to whether the ‘Hair Raiser’ ride is or is not a building, as this is critical to the determination of this application.

The Department of Planning & Environment has provided the Commission with further advice, (attached in **Appendix 3**) and it acknowledges that while the definition of a ‘building’ in the EP&A Act *“includes part of a building, and also any structure or part of a structure..”* the Luna Park Plan of Management, has a distinction between ‘buildings’ and ‘structures’. In the Design and Land use Guidelines section of the Luna Park Plan of Management, it refers to amusement rides as ‘structures’. The Commission has accepted this advice that the ‘Hair Raiser’ ride is a ‘structure’ and not a ‘building’ and is therefore not subject to the building height restrictions in the Plan.

Further, the 2001 DA (154-06-01) specified a Public Domain/Ride and Amusement Zones, which were set out on plan MDA06. This zone does not have established height restriction, and the ‘Hair Raiser’ ride is located within this zone. The Commission notes that in addition to the ride being a ‘structure’, rather than a ‘building’ and located in a zone with no height restriction, the ride is compatible with the overall vision and goals of Luna Park.

Another objection that was raised was that the ride impedes on the pedestrian ‘Midway’ that has a specified width in the Plan of Management. The Department addressed this in its Assessment Report. The Commission visited the site, and notes that the ride is located between the Chrystal Palace and the Wild Mouse ride, and is offset towards Lavender Bay. The Commission considers that the ‘Hair Raiser’ ride is not impeding for either pedestrians’ or emergency vehicles’ access along the ‘Midway’.

In order to meet these goals and the overall vision for Luna Park as an amusement park, the operator needs to be able to update the park, excepting those heritage listed elements within Luna Park. The Commission understands that over time attractions and rides need to be updated and replaced, to continue to attract patrons. The Commission considers therefore, that the ‘Hair Raiser’ ride is consistent with the ongoing evolution of the park. Given that the ride is not a building, and is located outside the building envelope, it is not bound by the building envelopes that restrict the height of buildings.

6.3. Visual and Lighting Issues

The other key issue raised in the submissions and at the public meeting was the lighting installed on the structure and the obtrusive nature of the structure and the lighting of the structure.

The 'Hair Raiser' ride is approximately 38m tall, and is significantly taller than the surrounding buildings and rides within Luna Park. The ride, while narrow and open, has a negative visual impact for those residents that are adjacent to the park. The obtrusive nature of the ride increases at night time, when it becomes illuminated. The lighting differs from the static 'white' lights installed on the buildings, the face and other rides within Luna Park. The lighting regime for the 'Hair Raiser' ride includes a number of 'cues' for the lights to change colour and to move up and down the structure, in a seemingly random pattern. This 'strobing' of lights is disturbing to some residents. The lighting regime on the 'Hair Raiser' ride continues until the park is closed (though it was contended in some submissions that this ride remains illuminated well after the rest of the lights of the park have been switched off).

A number of submissions considered that if the lighting regime of the 'Hair Raiser' ride was consistent with the lighting regime for the rest of the park, that is with a static white light, this would be less obtrusive, as it would blend in more with the white 'glow' of the park. It was also suggested that consideration be given to turning off the top 10m of lights when the ride was not in use.

The Proponent has conducted a lighting impact assessment and concluded that the lighting variations do not fit the definition of 'strobe' based on the number of changes per second and that the light intensity of the tower is below the allowable level of 4 Lux. The objectors on the other hand have argued that it is not the lighting intensity that is offensive but the LED lights changing colours that are not in keeping with the heritage theme of the park. The Department has concluded that the lighting is acceptable and consistent with other rides in the park.

The Department has recommended a condition that the lighting be turned off outside the approved operating hours. The Proponent has objected to the Department's recommended condition and requested Condition B2 be deleted. The Commission had considered the proponent's request to remove *Condition B2 – Lighting*, and agrees with the Department that the proposed Condition is a reasonable requirement that would not interfere unreasonably with the attraction of the park while it is operating and would provide some relief to the residents.

The Commission has considered additional options for reducing the visual impact to nearby residents, through the addition on a Condition. This Condition states that:

"The Applicant is to engage a suitable qualified landscape architect or urban designer to recommend measures to reduce visual impacts of the ride on surrounding residential properties, such as changes to the colour and/or finish of the ride and lighting arrangements. The recommended measures must not compromise the functional operation or safety of the ride. The recommended measures must be submitted to and approved by the Secretary within 3 months from the date of consent. Upon approval from the Secretary, the Applicant must complete the approved measures within 3 months (unless agreed by the Secretary), and provide the Secretary with evidence of completion of the approved measures."

The Commission considers that the lighting of the ride is consistent with the lighting regime of Luna Park, and that the visual impact from the ride to residents is minor, given the existing impact from Luna Park in general.

6.4. Consideration of 2A Glen Street

A number of commercial and residential properties are located on the eastern boundary of Luna Park, and are directed impacted by the operations of the park. The Department of Planning & Environment assessed the visual impacts of the ride from four properties; being 2 Dind Street, 4 Glen Street, 8 Glen Street and 6 Cliff Street. The Department of Planning & Environment determined that these properties would be the worst effected properties visually, including impacts from the lighting of the ride.

A speaker at the public meeting raised their concern that the property 2A Glen Street was not considered in the Department of Planning & Environment’s Assessment Report. This property is noted as having a mix of commercial and residential aspects, similar to that of 4 Glen Street. The visual impact due to the lights on the ride has been assessed by the Proponent’s consultant ARUP, and is reported in its advice to the Proponent, dated 13 March 2015. Table 1 below details the impact at four impacted properties. The Commission notes that the lighting impacts to 2A Glen Street are greater than that assessed for 4 Glen Street. The Commission notes that while the impact is greater at 2A Glen Street, it is considerably below the Australian Standard *AS/NZS4282 1997 Control of the obtrusive effects of outdoor lighting*.

Table 1: Lighting impact on properties compared with the applicable standards

AS4282 Technical parameter	AS4282 recommendation for commercial area or at the boundary of commercial and residential areas with light surrounds	Preliminary guide at 8 Glen Street 140m distance	Preliminary guide at 104m distance	Preliminary guide at 6 Glen Street 82 m distance	Preliminary guide at 4 Glen Street 74m distance	Preliminary guide at 2A Glen Street 64m distance
Illuminance on vertical plane pre-curfew	25 lux	0.07 lux	0.13 lux	0.21 lux	0.36 lux	0.35 lux
Illuminance on vertical plan curfewed hours	4 lux	0.07 lux	0.13 lux	0.21 lux	0.36 lux	0.35 lux
Luminous intensity emitted by single luminaire pre-curfew	25,000 cd	3.5 cd	3.5 cd	3.5 cd	3.5 cd	3.5 cd
Luminous intensity emitted by single luminaire curfewed hours	2,500 cd	3.5 cd	3.5 cd	3.5 cd	3.5 cd	3.5 cd

The Commission sought clarification from the Department of Planning & Environment as to why the property 2A Glen Street was not considered in its Assessment Report. The Department of Planning & Environment responded that it visited a number of spaces within the single building with the address 2, 2A and 4 Glen Street, Milson’s Point. The spaces shown by a representative of the building included commercial areas, a board room and a residential apartment (this apartment was identified as 4 Glen Street within the Department of Planning & Environment’s Assessment Report). This was

the only residential apartment in the complex. The Department of Planning & Environment determined that the visual impacts from a range of vantage points within the building complex were assessed to be minor/negligible, and that the visual impact assessment undertaken by the Department of Planning & Environment's staff was comprehensive.

The Commission notes with the Department of Planning & Environment's assessment of the properties visually affected by the 'Hair Raiser' ride and accept the findings that are provided within the Department of Planning & Environment's Assessment Report.

The Commission considers that while the visual impact from the lighting at 2A Glen Street, is the greatest level of impact, this is well below the standards provided in *AS/NZS4282 1997 Control of the obtrusive effects of outdoor lighting*.

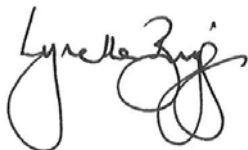
6.5. Noise

Noise was raised in a number of the submissions. It is agreed by most submitters that the greatest noise is from the ride patrons rather than the mechanical noise of the structure and this is confirmed in the acoustic report. The 'Hair Raiser' ride is no noisier than other rides and meets the specified noise limits in the Luna Park Act. Therefore, noise impact is acceptable.

7. Commission's Determination

The Commission determines that the ongoing use of the 'Hair Raiser' ride be approved as recommended, with the inclusion of the following condition:

"The Applicant is to engage a suitable qualified landscape architect or urban designer to recommend measures to reduce visual impact of the ride on surrounding residential properties, such as changes to the colour and/or finish of the ride and lighting arrangements. The recommended measures must not compromise the functional operation or safety of the ride. The recommended measures must be submitted to and approved by the Secretary within 3 months from the date of consent. Upon approval from the Secretary, the Applicant must complete the approved measures within 3 months (unless agreed by the Secretary), and provide the Secretary with evidence of completion of the approved measures."



Lynelle Briggs AO
Chair of the Commission



Joe Woodward PSM
Member of the Commission

**APPENDIX 1
SUMMARY OF MEETINGS**

MEETING NOTE

Briefing from Luna Park Sydney Pty Ltd		
Meeting note taken by Naomi Cleaves	Date: Wednesday, 20 May 2015	Time: 2:40pm
Project: Ongoing use of the 'Hair Raiser' ride at Luna Park, Milsons Point		
Meeting place: Luna Park, Milsons Point		
Attendees: PAC Members: Ms Lynelle Briggs AO, & Mr Joe Woodward PSM PAC Secretariat: Naomi Cleaves Peter Hearne – Managing Director Luna Park Philip Naylor – Development Manager Brookfield Andrew Duggan – Director JBA Kim Shmuel – Associated JBA		
The purpose of the briefing is to have a briefing from the proponent and to view the ride		
A summary of the topics discussed are provided below.		
<u>Operation of the ride and park</u>		
<ul style="list-style-type: none"> • Briefing on how the ride operates, including the timing sequence of loading patrons, raising the ride, the drop and breaking mechanism. • Briefing on the operation of the park in general, including trading hours, and how the park management operates the park throughout the year, i.e. shorter trading hours during the winter school holidays, than during the summer school holidays, within the permitted trading hours 		
<u>Lighting issues</u>		
<ul style="list-style-type: none"> • The lighting assessment undertaken by ARUP was based on everyone being able to see all the lights from both sides of the ride (this would be the worst case scenario) • The white lights are brighter than the coloured lights • Lighting complies with Australian Standards for lighting • The placement of the lights on the north and south faces of the ride, instead on the east and west faces, to reduce the impact to local residents (as the residents are located to the east and west of the park) • Question regarding coloured lighting being inconsistent with the Park (the static white lights of the other features of the Park) – Coloured lights are a part of Luna Park's history and are therefore consistent for the Park. • The lights are coloured during the operation of the ride, when the ride is not operational, the control of the lights reverts to the lighting regime for the Park (white light only) • When the park closes the lights on the rides and the building are turned off, this will remain the same 		
<u>Luna Park Plan of Management 1998</u>		
<ul style="list-style-type: none"> • Question has been raised that the height of the ride is inconsistent with the Luna Park Plan of Management • The Luna Park Plan of Management, is not a legislative document, it is a non-prescriptive guideline document for the management of the park. • The height description is for physical buildings and rides that contained within the buildings (inside rides – these have height restrictions) • Outside rides, such as the 'Hair Raiser' are not restricted to the building height 		

Building Envelopes

- Building envelopes only apply to internal ride, not external rides (as noted above)
- Rides have been in this location before – examples including ‘The Speed’ and ‘The Slingshot’ – but these were only temporary rides

Acoustic Plan of Management

- Daily noise monitoring takes place at 9 sites throughout the park, 7 times a day
- Luna Park has a complaints register and mechanism for dealing with complaints, which includes: investigating the complaint; determining whether the noise was generated by Luna Park or not; taking a reading of the noise; reduce the noise if possible; and respond to the complainant where possible (not all complainants provide contact details).

Other comments

- Luna Park management believe that constructing the ‘Hair Raiser’ ride was legal, that they had approval under the Stage 1 & 2 DAs
- Have applied for the ride now, to work with the Department, even though they believe the construction was legal
- Luna Park management have the legal ability and right to move and bring in new rides, and over the past 11 years have had some 160 different rides in the park, as part of the ongoing evolution of the park
- Some rides and the heritage rides are not allowed to be moved
- Luna Park management discussed a legal case of the Luna Park misleading the public regarding the Big Dipper ride. This case was regarding noise, the noise of the ride as compared to the noise of the patrons, the Luna Park was cleared of misleading the public in the judgement (this judgement is to be provided to the Commission)
- The Notice issued by the Department, was that the Department considered that the ride did not have the necessary DA approval

Documents to be provided: The Luna Park Plan of Management 1998 & Street and Others Vs Luna Park Sydney Pty Ltd and Others (Brereton J) 2009

Meeting closed at 3:30pm

MEETING NOTE

Meeting with North Sydney Council		
Meeting note taken by Naomi Cleaves	Date: Wednesday, 20 May 2015	Time: 4:15pm
Project: Ongoing use of the 'Hair Raiser' ride at Luna Park, Milsons Point		
Meeting place: Kirribilli Club, 11 Harbourview Crescent, Lavender Bay		
Attendees: PAC Members: Ms Lynelle Briggs AO, & Mr Joe Woodward PSM PAC Secretariat: Naomi Cleaves & Kate Wedgwood Gavin McConnell – Executive Planning Advisor North Sydney Council		
The purpose of the meeting is to discuss Council's concerns regarding the proposal		
A summary of the topics discussed are provided below.		
<u>Lighting/visual issue</u>		
<ul style="list-style-type: none"> • The height of the ride which extends above the height of other rides and buildings within the park, makes the ride a visual issue for some in the community, as it is very present within the vista • The lighting transition is slow with regard to the colour changes and vertical movement of the lights up and down the structure • Council considers that an option for reducing the visual impact of the ride particularly at night time would be to turn off the top 10m worth of lights when the ride is not operating, this would reduce the instructive nature of the ride to the local residents 		
<u>Noise issue</u>		
<ul style="list-style-type: none"> • Noise management is an issue, and Council wants the complaints mechanism to be maintained and be robust and responsive to noise complaints 		
<u>General comments</u>		
<ul style="list-style-type: none"> • Luna Park is run professionally, the Council hears very few complaints about the park • Council wants the park to be run sensitively and properly with respect to the local community • Council noted that the views of the whole community are important • Council had concerns regarding the construction of the ride under the 2001 approval, though Council does not believe that this was done with malice. They think that Luna Park Sydney Pty Ltd were poorly advised regarding the DA and, since an application has been made to seek approval, Council has decided against further commenting on the legitimacy of the ride. 		
Documents tabled at meeting/to be provided: NIL		
Meeting closed at 4:30pm		

APPENDIX 2 LIST OF SPEAKERS

Planning Assessment Commission Meeting

Date & time: Wednesday 20 May 2015, 5pm

Place: Kirribilli Club; Harbourview Crescent, Lavender Bay

1. Gavin McConnell – North Sydney Council
2. Ian Curdie – Lavender Bay Precinct
3. Peter Lees
4. Ross Smith
5. Polly Seidler – Contec Properties Pty Ltd

The Member for North Shore, the Hon. Jillian Skinner MP, was an apology for the meeting.

SUMMARY OF SUBMISSIONS AND PRESENTATIONS

Opposing the Development

- Luna Park Plan of Management 1998 governs the land use of the site
 - Building height limit is 16m for this area, the height limit should be enforced
 - While the Luna Park Plan of Management is not prescriptive, it should be held up as if it was prescriptive
 - Should have to argue the case for going outside the Luna Park Plan of Management
 - No definition of a ride in the Luna Park Plan of Management, therefore the definition of a building should be used, as defined under the EP&A Act
- Laws are not be applied equally to all, and the law should be upheld
- How can the ride have approval under a DA that was granted in 2002. Section 95 of the EP&A Act states that a *development consent lapses 5 years after the date from which it operates*.
- Approving ongoing use of an illegal structure would set a precedent for retrospective approval
- Lighting is out of context with the Luna Park lighting scheme in the Park.
- Department's Assessment Report
 - Harry's Park, a public amenity, was not considered
 - The property 2A Glen Street, a mix of commercial and residential uses was not considered

Supporting the Development

- The silent majority support the ride and Luna Park
- The noise and lighting impacts are a small price to pay for living near Luna Park
- The residents have largely moved in after Luna Park was established

Neutral Comments

- The company should maintain its complaint mechanism, and this should be robust in response to noise complaints
- Heritage and aesthetics need to be valued and considered
- The interchangeable lighting of the ride is somewhat out of context with the rest of Luna Park
- Suggestion that the top 10m of the lighting on the ride could be turned off when the ride is not operating

APPENDIX 3
ADVICE FROM THE DEPARTMENT OF PLANNING & ENVIRONMENT

From: [Ben Eveleigh](#)
To: [Naomi Cleaves](#)
Cc: [Cameron Sargent](#); [Ben Lusher](#)
Subject: RE: Luna Park - questions from Public Meeting
Date: Thursday, 28 May 2015 10:03:14 AM
Attachments: [image001.png](#)

Hi Naomi,

Please see response to the PAC's questions below:

1. The Luna Park Plan of Management (LPPOM) was required to be prepared in accordance with Section 8 of the *Luna Park Act 1990* and Section 112 of the *Crown Lands Act 1989*. The LPPOM is the responsibility of the Luna Park Reserve Trust and the plan states: *"It will play an important role in assisting the Luna Park Reserve Trust to oversee the activities of the leaseholders operating the park. The plan will also guide the Trust in relation to its duties in managing those parts of Luna Park which are not covered by lease agreements. The plan is unusual in that it does not detail all of the management and other actions on the site. Instead it is a largely strategic document establishing the direction for Luna Park through a framework of vision statement, goals and guidelines"*. The Department is of the view that the LPPOM is a guideline document and it does not retain the status of an Environmental Planning Instrument or a DCP.
2. Firstly, as above the LLPOM provides a guideline document setting a framework of vision statement, goals and guidelines which are intended to be applied as a guideline only. The Department acknowledges that the definition of 'Building' in the EP&A Act *"includes part of a building, and also includes any structure or part of a structure...."*. However, the Design and Land use Guidelines section of the LPPOM makes a clear distinction between 'building' and 'structure' and specifically refers to 'amusement rides' as structures. Given this framework, the Department does not characterize the Hair Raiser as a building. Whilst the Hair Raiser amusement ride sits outside the notional building envelopes provided in the LLPOM guidelines, the "Design and Land Use Guidelines" are explained in the LLPOM as being *"intended to provide design flexibility for prospective operators, architects and engineers."* The Department's merit assessment of the proposal has considered the provisions of the LLPOM and has found that the presence of the ride and its operation does not impinge upon the amenity of the area when considered against well accepted and established environmental amenity parameters. It is therefore considered to be consistent with the provisions of the LLPOM.
3. The Department wrote to all people who raised submissions regarding view impacts to arrange a site visit and to assess view impact issues as a result of the Hair Raiser ride. This included a site visit to a single building with the address of 2, 2a and 4 Glen Street, Milsons Point, which contained commercial and residential uses. The Department met with Ms Penelope Seidler's representative on site who provided access to various parts of the building. Assessment staff inspected a number of spaces within the building, including commercial areas, a board room and a residential apartment (this apartment was identified as 4 Glen Street in the Department's assessment report and we are confident that this is one and the same, as it was shown to us as the only residential

apartment in the complex). All view impacts from a range of vantage points in this building were assessed and are considered minor/negligible. The Department is confident that its assessment of view impacts has been comprehensive. If the Department were to consider view impacts from any additional nearby apartment(s), (should they exist) the impacts are likely to be similar, and therefore minor to negligible.

Additional Matters for Response:

PAC: *I have had a quick chat with Lynelle on Friday, and they don't need legal advice on the Brereton ruling. What the PAC is requesting is advice from the Department that exceeding the height limit (building envelope) is not a breach of any plan. The proponent was citing this ruling that they can go to any height, so long as it is a 'ride' and not a building.*

Response: See response above. The Department considers that the ride is not located within a defined 'building envelope area' (it is located in the amusement area) and there is no height limit for buildings or structures where the ride is located. However, should the PAC seek further advice on the implications of the Brereton ruling in respect of this application the Department can refer this to the legal services team for advice.

PAC: *Also the PAC is considering requiring the proponent to have a landscape architect undertake an assessment of potential ways to further reduce the visual impact of the ride, including painting the ride a more benign colour. The PAC would like some advice on how this could be conditioned.*

Response: The Department is of the view that design details, materials, colours and finishes of the ride are appropriate and generally consistent and comparable with the structural/architectural character of other structures and rides within Luna Park. Further, it would be difficult to identify any single recessive colour for the structure given the range of backgrounds and contexts that the ride can be seen in. On this, the existing colour blends in well with the other ride structures nearby such as the Ferris Wheel. Notwithstanding, the Department has drafted the following new condition for the PAC's consideration:

Landscape Architect/Urban Designer

The Applicant is to engage a suitably qualified landscape architect or urban designer to recommend measures to reduce visual impacts of the ride on surrounding residential properties, such as changes to the colour and/or finish of the ride. The recommend measures must not compromise the functional operation or safety of the ride. The recommended measures must be submitted to and approved by the Secretary within 3 months from the date of consent. Upon approval from the Secretary, the Applicant must complete the approved measures within 3 months (unless agreed by the Secretary), and provide the Secretary with evidence of completion of the approved measures.

Naturally we would be happy to discuss this matter further with the PAC should it wish to have the Department clarify or expand on any of the above points. Additionally, as requested, I will

send through copies of the plans for the DA154-06-01 and DA201-6-2002 in separate emails (due to PDF file sizes).

Kind regards

Ben

Ben Eveleigh

Senior Planner

Key Site Assessments

Infrastructure and Industry Assessments

Department of Planning and Environment

GPO Box 39 | Sydney NSW 2001 | T 02 9228 6391 | E ben.eveleigh@planning.nsw.gov.au



From: Naomi Cleaves
Sent: Friday, 22 May 2015 3:42 PM
To: Cameron Sargent; Ben Eveleigh
Cc: Kate Wedgwood
Subject: Luna Park - questions from Public Meeting

Hi Cameron and Ben,

On Wednesday evening, the PAC held a public meeting on the ongoing use of the 'Hair Raiser' ride at Luna Park.

A couple of issues were raised, that the PAC would like to seek clarification on. These are provided below.

- 1) The PAC notes that the LLPOM is approved under S114 of the Crown Land Act, 1989. The LPPOM states that *"these design and land use guidelines set the physical, urban design and land use framework for achieving the vision and meeting the goals for Luna Park. They reflect the preferred option for Luna Park as an amusement park supported by a range of other uses and as such are not prescriptive of development on the site. The framework is based on extensive stakeholder consultation and is aimed at meeting stakeholder needs, gaining their support and achieving viability. It is intended to provide design flexibility for prospective operators, architects and designers. Rather than constraining creativity, the design and land use framework aims to assist in focussing design efforts."* It is the PAC's understanding that the LLPOM is a guideline and does not have any legal standing, is this the Department's view?
- 2) The 'Hair Raiser' ride is much taller than the maximum height of the building envelopes for the Luna Park site. It was raised that the ride is a building and should be therefore limited to the height limit set out in the Luna Park Plan of Management. A number of speakers referred to the EP&A Act definition of a building, and that the ride would be a building under the Act and therefore it is inconsistent with the Luna Park Plan of

Management (LPPOM). Can the Department please provide the PAC with the Department's formal advice as to whether the 'Hair Raiser' ride is or is not a building?

- 3) It was raised at the meeting by one speaker that building 2A Glen Street (which is a mix of commercial and residential) was not considered in the Department's Assessment Report. The building at 4 Glen Street is also a mix use of commercial and residential was assessed. Can the Department please advise the PAC as to why this property (2A Glen Street) was not considered in the Department's Assessment Report?

Please find attached a judgement made by J Brereton regarding 'misleading and deceptive' trade practices by Luna Park. Luna Park management raised this judgement with the PAC, as part of their belief that the ride was approved under the 2001 DA (stages 1 and 2), and the siting/height of rides within the park. Can the Department please provide the PAC with the Department's view of this document and its ruling? (I have highlighted the paragraphs that the Proponent has directed the PAC to, for your convenience: these are para 85 and onwards (P/268 - 272) in regards to the Plan of Management and paras 49,113, 130 & 142 regarding the issues of the rides.

Also the PAC is considering requiring the proponent to have a landscape architect undertake an assessment of potential ways to further reduce the visual impact of the ride, including painting the ride a more benign colour. The PAC would like some advice on how this could be conditioned.

If you could please provide the PAC with advice on these issues quickly that will assist the PAC to complete its determination of this project by the end of next week.

Kind regards,

Naomi

Naomi Cleaves

NSW Planning Assessment Commission

Level 13, 301 George Street Sydney NSW 2000

GPO Box 3415 | SYDNEY NSW 2001

P: 02 9383 2105 | F: 02 9299 9835

E: naomi.cleaves@planning.nsw.gov.au