

**Report to General Manager**

Attachments:

1. DA Plans and Statement of Environmental Effects for Luna Park Development

SUBJECT: Luna Park - Development Application for Temporary Uses and Facilities at 'Lavender Green' Site

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ENDORSED BY: Marcelo Occhiuzzi, Acting Director City Strategy

EXECUTIVE SUMMARY:

Luna Park Sydney Pty Ltd has lodged a Development Application for the use of the northern portion (Lavender Green) of the Luna Park site for temporary rides, amusements and facilities. The consent authority is the NSW Department of Planning Industry and Environment (the Department).

This report describes the background of the approvals for this area, describes the proposed uses and identifies issues of concern which should be addressed in the assessment and determination of the application by the Department. It identifies that the application lacks detail in the description of the proposal thereby undermining certainty that may be gained with regard to its potential impacts or intensity of uses. The proposal is broad and open ended thereby undermining confidence or predictability of impacts.

The Department is inviting submissions from interested parties until 7 May 2020.

FINANCIAL IMPLICATIONS:

There are no direct costs to North Sydney Council resulting from the proposed development.

RECOMMENDATION:

1. **THAT** Council make a submission in response to Development Application 10196 (Luna Park) identifying the matters addressed in this report.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

- Direction: 1. Our Living Environment
Outcome: 1.2 North Sydney is sustainable and resilient
- Direction: 4. Our Social Vitality
4.4 North Sydney's history is preserved and recognised

BACKGROUND

Luna Park has been operating at its present site since 1935 and during this time has undergone many changes including closure, redevelopment and changes of lessee. The current version of Luna Park opened in 2004. Since that time, the park has been subject to over 20 development applications regarding specific buildings, rides and uses.

The current development and use of the site are primarily guided by the Luna Park Site Act (1990), Luna Park Plan of Management (adopted 1998) and DA 154-06-01 (2001) which approved the staged development of Luna Park. Part 2 of the staged development included a masterplan which identifies "Lavender Green" as being within an 'entertainment precinct' for the hosting of temporary structures associated with temporary uses.

DA 151-6-02 (2002) identified Lavender Green as a location for marquees.

In 2018, the Department of Planning amended the State Significant Precincts SEPP (2005) to facilitate the installation of temporary rides/uses as either Exempt Development (where the ride was no higher than RL 20) or Complying Development where the ride is no higher than RL 40. Certain other criteria also apply. This provision does not extend to the northern section of the park which is known as Lavender Green.

It is noted that the changes currently proposed to the Precincts SEPP originally applied to the Lavender Green site, however, this area was not included in the approved amendments. The changes to the SEPP did not remove the historical use of the site for a variety of temporary uses such as picnics.

CONSULTATION REQUIREMENTS

The Department of Planning has placed the recently lodged development application on public exhibition from 10 April 2020 to 7 May 2020.

The Department of Planning is currently undertaking community consultation. Community engagement by Council is therefore not required. At the time of writing, no submissions have been made to Council regarding the proposal.

SUSTAINABILITY STATEMENT

This report deals with (draft) State Government Legislation/Policy which may have a substantial effect on sustainability. This report is for information purposes only; a sustainability assessment was not undertaken.

DETAIL

The Site

The area subject of the development application has an area of approximately 1015m² (72m x 14m) and is the northern most portion of the Luna Park site. The site is level and is at AHD RL 4.0, and is grassed with several trees on the eastern and northern sides. The only structure on the site at present is a large marquee located in the centre of the area.

The site is shown on Figure 1 below:

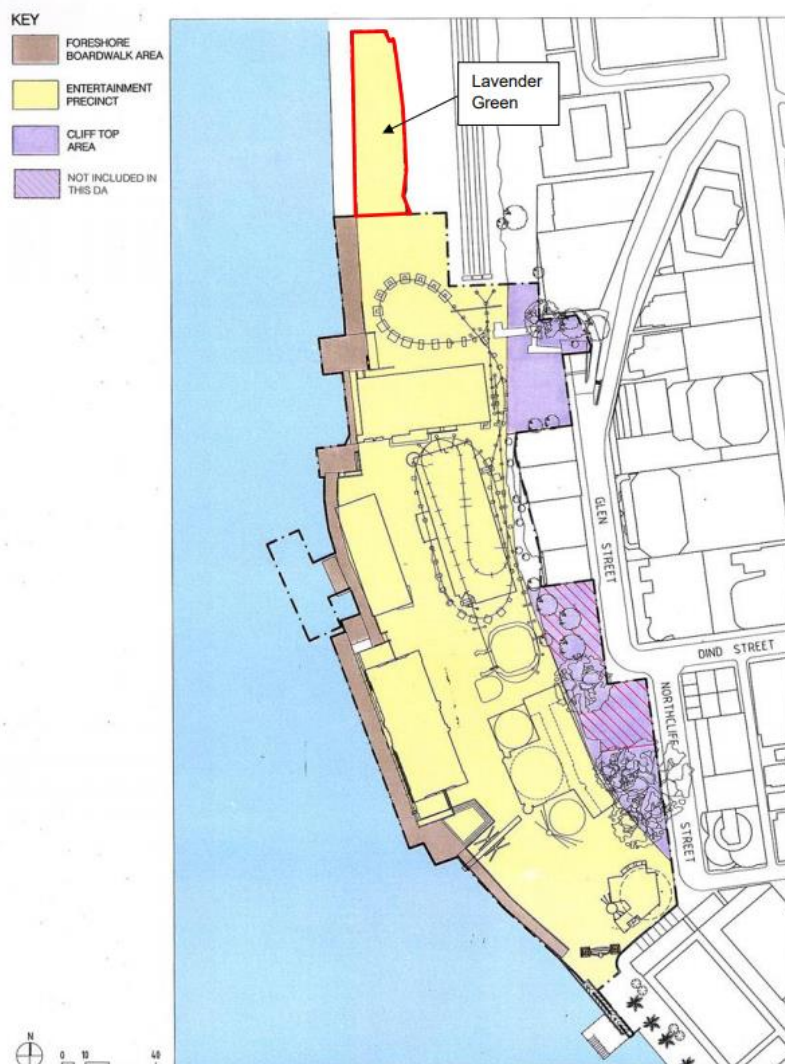


Figure 1 – Site Location

The Proposal

The application seeks consent for the use of the area known as Lavender Green (to a height of 10m above ground level or AHD RL 14) for the installation of temporary rides, amusements and facilities that can be installed, modified and removed without further approval. The application seeks that the site would include, *but not be limited to*, the following uses:

- Petting zoos
- Children's ice-skating rinks
- Inflatables
- Street performances
- Mobile food stalls
- Portable toilets
- Fencing & wayfinding signage
- Marquees
- Small rides and amusement devices

Full details of the application can be found at the link below:

<http://www.majorprojects.planning.nsw.gov.au/page/on-exhibition/>

Below is an illustration showing indicative envelopes of various uses sought relative to the envelope sought (RL 14m). It should be noted that the RL 40 envelope shown in Figure 2 was approved as part of the changes to Precincts SEPP in 2018.

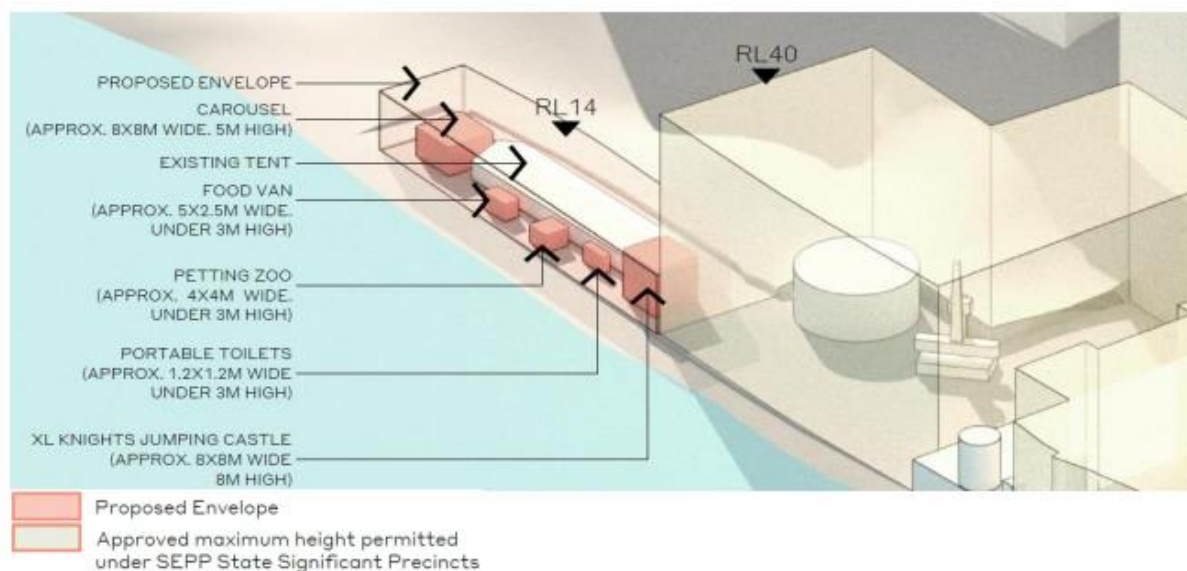


Figure 2 – Proposed Envelope

It is the stated intent of the applicant to retain all trees around the eastern and northern edge of the site. There are no trees located elsewhere on the site.

The application also proposes a framework of criteria which is to be adhered to if approval is granted. The proposed framework is shown below.

Table 2 Proposed framework for the ongoing installation/modification/removal of rides and facilities and use of Lavender Green

Framework	Parameter
Location	All works must be contained within the building envelope detailed in the plans prepared by Ethos Urban and dated 28 June 2019 at Appendix A (discussed further below).
Time Period	The ride or amusement device must not be installed for more than 16 weeks in any 26-week period. Minor facilities such as marquees and the like may operate for longer periods of time but must be removable and not installed as permanent structures.
Heritage	The works must: <ul style="list-style-type: none"> • be consistent with a conservation management plan endorsed by the Heritage Council under section 38A of the <i>Heritage Act 1977</i>, or • have been granted an exemption under section 57 (2) of that Act or be subject to an exemption under section 57 (1A) or (3) of that Act, or • be consistent with an approval granted under section 63 of that Act.
Ground treatment	The development must not involve any permanent footings or foundations.
Design standards	<ul style="list-style-type: none"> • The development must meet the relevant deemed-to-satisfy provisions of the Building Code of Australia, or if there are no such relevant provisions, must be structurally adequate. • The amusement device must be installed in accordance with the manufacturer's specifications, if applicable. • The development must comply with the relevant provisions of AS 3533.1-2009, <i>Amusement rides and devices—Design and construction</i>.
Acoustic	<ul style="list-style-type: none"> • The amusement device must not emit noise that exceeds the maximum permissible noise level (within the meaning of section 19A (5) of the <i>Luna Park Site Act 1990</i>). • The development must be consistent with the <i>Luna Park Acoustic Plan of Management</i> adopted on 4 June 2002.
Illumination	The development must be consistent with: <ul style="list-style-type: none"> • The <i>Luna Park Lighting Strategy</i> adopted on 28 May 2002, and • AS 4282—1997, <i>Control of the obtrusive effects of outdoor lighting</i>, and • AS/NZS 1158.3.1:1999, <i>Road lighting, Part 3.1: Pedestrian area (Category P) lighting—Performance and installation design requirements</i>.
Landscaping	All works on the site will protect and retain existing site landscaping, including the mature trees that form the eastern boundary of the site shared with the rail line.

Intent of the Proposal

It is noted that available information implies that the use of the site for temporary low impact activities associated with Luna Park has been established for some time. Under the existing approvals regime, the applicant would need to obtain development consent each time they sought to install different rides.

The current application is seeking to create a planning framework that is consistent with the most recent changes to the Precincts SEPP (which introduced the concept of envelopes and blanket approval for temporary rides by way of Exempt Development or Complying Development).

The proposal also seeks to intensify the levels of activity permitted beyond that which has been apparent to date.

Summary of the Planning Framework

The site is deemed a State Significant Precinct and the consent authority is the Minister for Planning. As the works have a Capital Investment Value less than \$10 Million, the matter is

not State Significant Development and the DA will be determined by the Minister under Part 4 of the EPA Act 1979.

The site is also identified as an item of State Heritage Significance. However, the proposal is consistent with the site specific exemptions contained in S.7.3 of the Luna Park Conservation Management Plan (adopted 29 January 2020). The works and uses proposed in the DA do not, therefore, require any further approval under Part 4 of the Heritage Act, 1977 and the development is not integrated development for the purposes of Division 4.8 of the EPA Act 1979.

Comments regarding Heritage Matters

The Luna Park Site is listed as a State Heritage Item under the Heritage Act 1977 and recognised as such in the North Sydney LEP 2013. See above for comment regarding integrated development requirements.

The DA is accompanied by a Heritage Impact Statement which concludes that the site is of moderate heritage significance and the temporary nature of the rides and activities is consistent since Luna Park was opened.

The proposal has been considered in terms of heritage impacts. It is considered that the temporary nature of proposed uses and retention of landscaping features as well as the absence of permanent structures will avoid any adverse impacts on the heritage values of the site.

Comments regarding Building Code of Australia

The proposal has been reviewed by Council's Building and Compliance team. No concerns have been raised with respect to the Building Code of Australia. Due to the nature of the proposal, there are no apparent fire or other safety issues. Installation of rides and other temporary devices are matters for Safe Work NSW.

Comments regarding Acoustic Matters

The proposal has been reviewed by Council's Environmental Health Team. Based on the general description provided, of family and children-oriented activities, there are no specific acoustic issues apparent. See below for comments regarding potential impacts if adult themed events/ concerts are proposed.

Other Environmental Concerns

The site has an industrial history prior to the opening of Luna Park, these uses include rail yards and tram yards as well as a construction yard for the Harbour Bridge. It is likely that some contaminants remain. Any works which include excavation below 200 mm should only be conducted after a consideration under SEPP 55 Remediation of Land is undertaken by a qualified person.

Other Matters for Consideration

The following matters have been identified as being of material interest with respect of the proposed development:

Issue	Comment
Permissibility of the proposed use	<p>This is ultimately a matter for the Department to determine, however, the consistent use of this parcel over numerous decades and reference to entertainment precinct in DA 154-06-01 implies that the uses described in the application are consistent with the existing approvals subject to development consent.</p> <p>It is noted, however, that the uses described in the application are prefaced by the words “<i>including but not limited to...</i>”. In this regard, there is potential to use the site for functions, concerts or private events at an intensity greatly exceeding the suggested ‘family scale’.</p>
View loss	<p>The maximum height of the envelope sought does not exceed RL 14. The nearest/ lowest residential units are located at an elevation exceeding RL 20. This provides for limited impact on views and is consistent with approved standards for view sharing. According to the submitted information, the envelope does not impede any views to the middle of Lavender Bay.</p>
Noise impact	<p>The application proposes to be consistent with the acoustic limits set in the Luna Park Acoustic Plan of Management (2002) and the Luna Park Site Act (1991).</p> <p>The difficulty with this is that rides and amusements will be able to be installed in the proposed envelope without further review by the regulatory authority. This relies on the good intent of the Park’s operator to ensure that such rides and amusements meet appropriate guidelines. Noisy rides may result in the need for compliance investigations, it being noted that the DPIE has its own compliance unit.</p>
Intensity of use	<p>The site has an area of approximately 1000m² and it is reasonable to suppose crowds exceeding 500 patrons could potentially fill that space. There are no details of the maximum intensity of proposed uses. Nor is there any available information regarding the types of uses beyond an open-ended list of children and family uses.</p> <p>Concern is raised at the potential to have adult themed events including parties or concerts. These concerns should be raised with the Department of Planning.</p>

Issue	Comment
Lighting impact	No lighting details have been provided, however, it is noted that any lighting will remain consistent with The Luna Park lighting Strategy (2002) relevant Australian Standards AS 4282-1997 and AS/NZ 1158.3.1.1999.
Future potential licensed premises	No indication of future licensing considerations has been provided. It is appropriate to seek a requirement that any future proposal to seek a liquor license be subject to development consent prior to seeking a liquor license.

Conclusion

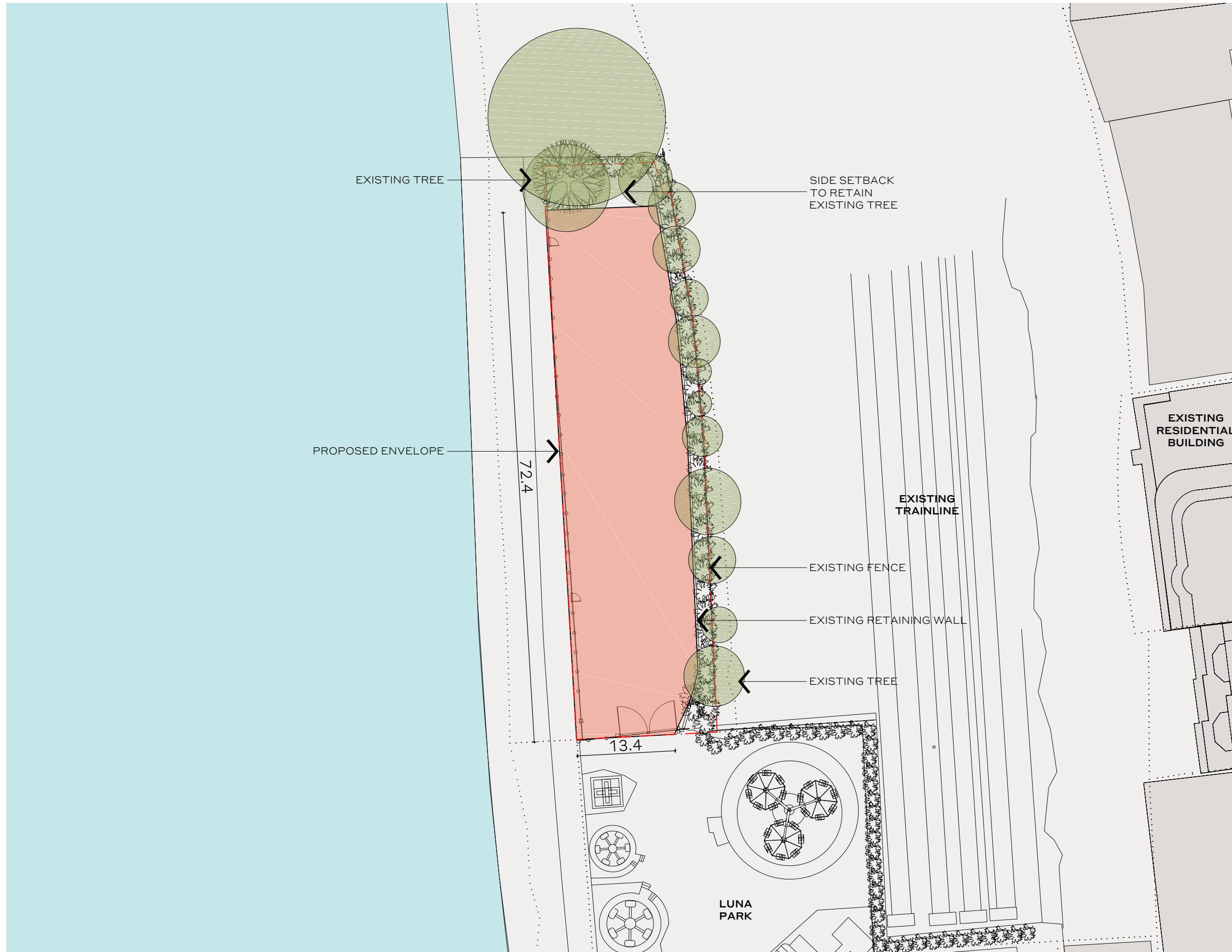
The proposed development appears to be generally in keeping with the established uses occurring in the space over several decades.

The apparent difference between the established uses of the area and the proposed uses is the intensification of activities through the installation of various temporary rides and a broader range of activities. There appears to be no legal impediment to the approval of this application.

Concern is raised that the proposed use has the potential to adversely impact local amenity.

Given the lack of detail regarding the specific types of uses proposed, it is not possible to establish the precise nature of any such impact. This is a significant issue for this application.

It is therefore important to seek to provide clarity in the nature and intensity of uses if an approval were to be granted. It is also important to avoid granting consent for poorly defined uses that may evolve into ongoing issues of community conflict.



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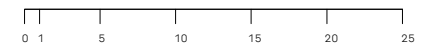
ISSUE

ISSUE	DATE	DESCRIPTION	CHECKED BY
B	11.07.19	Proposed envelope plan	-

LEGEND

- Site Boundary
- Proposed Envelope

SCALE 1:500



DRAWING

PROPOSED ENVELOPE PLAN

DRAWING NO.	ISSUE	JOB	DRAWN BY
01	B	2190150	CT

PROJECT

LAVENDER GREEN DEVELOPMENT APPLICATION

Milsons Point NSW 2061
 LOT 1247 DP 48514
 Prepared for Luna Park Sydney

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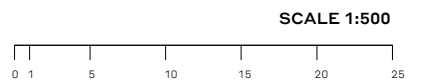
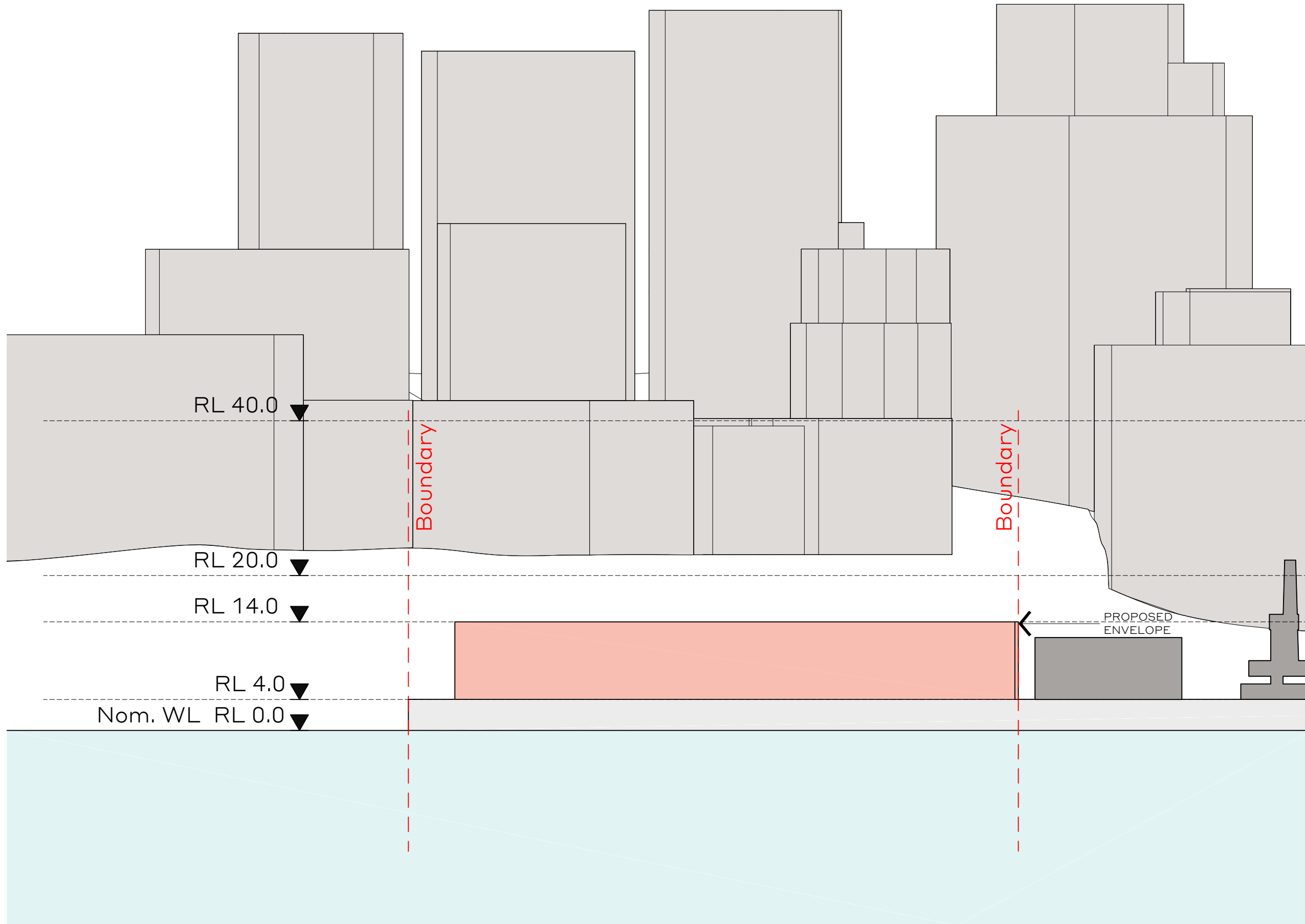
DRAFT

ISSUE

ISSUE	DATE	DESCRIPTION	CHECKED BY
B	11.07.19	Elevation illustrating proposed envelope	-

LEGEND

-  Site Boundary
-  Proposed Envelope



DRAWING

PROPOSED ENVELOPE PLAN

DRAWING NO.	ISSUE	JOB	DRAWN BY
02	B	2190150	CT

PROJECT

LAVENDER GREEN DEVELOPMENT APPLICATION

Milsons Point NSW 2061
 LOT 1247 DP 48514
 Prepared for **Luna Park Sydney**

1 FORESHORE ELEVATION

ETHOS URBAN

Statement of Environmental Effects

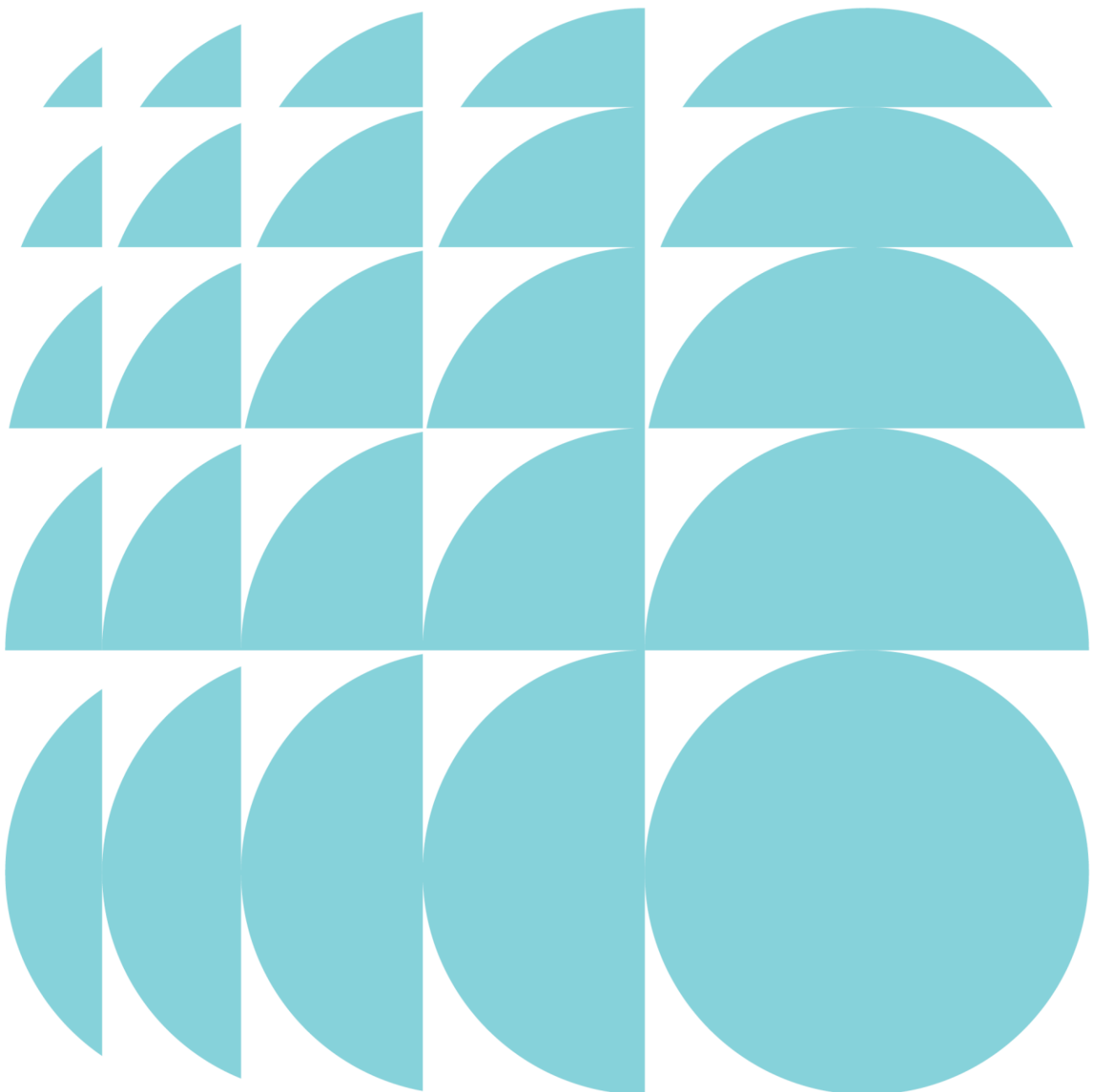
Development Application

Lavender Green - Olympic Drive, Milsons Point
Temporary Rides, Amusements and Facilities

Submitted to Department of Planning, Industry and
Environment

On behalf of Luna Park Sydney Pty Ltd

31 January 2020 | 2190150



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- C** Heritage Impact Statement
GML Heritage
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Adamus Associates

1.0 Introduction

This Statement of Environmental Effects (SEE) is submitted to the Department of Planning, Industry and Environment (the Department) in support of a Development Application (DA) for the framework to install, relocate, remove and operate temporary rides and amusements and facilities on Lavender Green as part of Luna Park. This framework builds on the historic use of this component of Luna Park as an entertainment and picnic area for children and families.

The DA specifically seeks approval for a building envelope within which temporary rides, amusements and facilities might be installed, modified and removed consistent with the framework and operation of the remaining Luna Park site. This defines a planning framework for the ongoing operation and use of this space, and importantly enables routine temporary works to occur on Lavender Green, which are important to the ongoing viability of the Park.

This SEE has been prepared by Ethos Urban on behalf of Luna Park Sydney Pty Ltd (Luna Park) and is supported by technical information appended to the report (see the Table of Contents).

This report describes the site, its environs and the proposed development, and provides an assessment of the environmental impacts and identifies the steps to be taken to protect or lessen the potential impacts on the environment.

2.0 Background

Luna Park has been a recreation and amusement attraction for Sydney residents and visitors since 1935. Many Sydney residents have strong associations with Luna Park and its landmark location on Sydney Harbour together with its recognisable character give it an iconic status.

Over the course of more than 80 years since Luna Park first began its operation, the main elements, characteristics, built form and scale of Luna Park have remained consistently the same - that is the Face, Crystal Palace, and Coney Island.

However, at key periods of the year, Luna Park has also routinely installed temporary rides and facilities to cater for additional demand (such as in school holidays) and to provide new attractions for visitors. These temporary facilities are essential to attracting visitors to the park and have been routinely installed and dismantled on more than 200 occasions over the past 12 years. These temporary rides and facilities occur across Luna Park including on Lavender Green, which in past years has been used for the following:

- giant chess games;
- hula hoops;
- badminton;
- quoits;
- a dunk tank;
- petting zoo;
- pony rides;
- sack races;
- inflatables, such as jumping castles; and
- rides and amusements specifically for young children.

This long-standing process of installing, modifying and removing temporary rides within Luna Park was subject to increased scrutiny in 2017/2018, which resulted in a subsequent amendment to the *State Environmental Planning Policy (State Significant Precincts) 2005* (Precincts SEPP) to enable these temporary works to continue to occur within Luna Park.

- March 2017 – an application for a Construction Certificate to install footings for a temporary ride was rejected by the Principal Certifying Authority (PCA). Luna Park subsequently challenged this outcome in the NSW Land and Environment Court (*Luna Park Sydney Pty Ltd v Minister for Planning* [2018] NSWLEC 89).
- July 2018 – the Court agreed with the determination of the PCA, on the grounds that these works were inconsistent with the existing Masterplan for the site that did not specifically provide for the temporary works. As a result, it was determined that development consent would be required for the temporary ride and, by extension, development consent would be required for all routine works that had been regularly pursued by Luna Park over the years.
- October 2018 – The Department prepared and exhibited a site-specific mechanism that would support minor and temporary works, and enable the routine installation and dismantling of rides and facilities to occur within Luna Park again. This included an urban design report detailing the visual impact of various exempt and complying development scenarios relating to two significant height planes; RL 20m which is the approximate level of the cliff line, and RL 40m which is the maximum height of the Ferris Wheel.
- January 2019 – the NSW Government introduced a streamlined approval pathway for low impact rides and amusements at Luna Park. These works can now be undertaken as either exempt or complying development if they achieve certain criteria pertaining to the maximum height, period of operation, location, notification procedures, and lighting and acoustic thresholds for the installation/modification and operation of rides. Whilst this pathway was originally proposed to apply to Lavender Green, this component was removed post-exhibition. The FAQs document prepared by the Department notes that any rides or amusements on Lavender Green would require a Development Application – which this DA fulfils. This is further discussed in **Section 2.3** below,

In view of the above, this DA seeks to establish the overarching framework for the temporary installation and operation of temporary rides and structures on Lavender Green. This framework will enable the ongoing operation of temporary attractions and facilities where consistent with the terms of the framework and any conditions of consent. This is essential to the ongoing functionality of this space within Luna Park that is primarily used as a children's and family area and accommodates minor rides, marquees, and activities such as a petting zoo and inflatables. A detailed description of works is provided in **Section 4**.

2.1 Planning context

Development within the Luna Park Site with a capital investment value (CIV) of less than \$10 million will require the Minister's consent under Part 4 of the EP&A Act. Whereas, development within the Luna Park Site with a CIV of more than \$10 million is declared as State significant development (SSD) and must follow the planning pathway for SSD (*State Environmental Planning Policy (State and Regional Development) 2011* cl 8(1)(b)). The proposed development has a CIV of less than \$10 million, and as such the applicable planning pathway for this DA is under Part 4 of the EP&A Act.

Luna Park is also identified as a State heritage item, however, the proposal is consistent with the site-specific exemptions nominated in Section 7.3 of the *Luna Park Conservation Management Plan* endorsed by the Heritage Council on 29 January 2020. Accordingly, no further approval is required under Part 4 of the *Heritage Act 1977* and the development is not integrated development in the meaning of Division 4.8 of the EP&A Act. This is discussed further in **Sections 5.1** and **5.3** of the SEE.

2.2 Development history

Luna Park has been the subject of several historic DAs and a Plan of Management that establish the form, extent and intended operation of building, landscaping, rides and facilities within the site, and are summarised as follows:

- **Luna Park Plan of Management** – the Plan of Management (POM) was adopted in 1998 to guide the ongoing development and management of the Luna Park site. The POM is a non-statutory guideline for Luna Park, which provides for the Luna Park Reserve Trust's management of the Luna Park site as required under the *Crown Land Management Act 2016* and the *Luna Park Site Act 1990*. Whilst the POM did not incorporate a formal building envelope for ride locations on Lavender Green, then known as being part of the 'area north of

Coney Island', it did identify that this area could provide temporary structures for outdoor events and incorporate a landscaped setting for Coney Island.

- **DA154-06-01** – this DA was approved by the Minister in 2001 and granted consent for the staged development of Luna Park comprising the following:
 - Part 1 – Detailed design of a strata office building constructed on the cliff top of the Glen Street frontage of the site.
 - Part 2 – Masterplan for the site including the proposed land uses, building envelopes, parking numbers, vehicular and pedestrian access arrangements, public domain plan, hours of operation and an external pedestrian link between Glen Street and the Luna Park Entertainment Complex. Lavender Green is within the 'Entertainment Precinct' (see **Figure 1** below) which is identified as being the location for temporary structures associated with events including stalls, awnings, tents, and marquees, and the location for the replacement, removal or movement of existing rides and facilities. No specific building envelope was nominated for Lavender Green as no permanent works were proposed in this area. Whilst it is considered that the Masterplan is not a Concept Proposal for the purposes of Division 4.4 of the EP&A Act, this subsequent future DA is not inconsistent with the Masterplan as discussed further in **Section 5**.
- **DA151-5-02** – this DA, also known as 'Phase D', sought consent for a detailed DA relating to the car park and café/brasserie buildings. Consent was also sought under this DA for the temporary removal and storage of specific rides, while works were undertaken at the northern portion of the Entertainment Precinct. This DA did not materially affect Lavender Green.
- **DA151-6-02** – this DA, also known as 'Phase E', sought consent for a detailed DA relating to the design of the southern portion of the Entertainment Precinct, comprising detailed works regarding the Luna Circus, Dodgems, Wild Mouse and Administration building. This DA marked Lavender Green as a location for marquees.

2.3 Consultation

The Department prepared and exhibited between 14 October and 9 November 2018 a site-specific amendment to the Precincts SEPP that would support minor and temporary works, and enable the routine installation and dismantling of rides and facilities to occur within Luna Park. The amendment originally sought to enable rides and amusements on Lavender Green to a maximum stationary height of RL 20m.

During the exhibition of this amendment, which also included a community meeting and letters issued to local residents, the Department received 1,438 formal submissions. Of these submissions an overwhelming 1,273 (89%) were positive, 35 (2%) were comments, and 130 (9%) were negative. The positive implications of enabling the modification, installation, and removal of rides and amusements were identified as follows:

- The amendment will help maintain an iconic landmark destination with significant cultural heritage value
- The amendment will help maintain a diversity of experience for visitors to Luna Park
- The amendment will encourage the replacement of aging rides and amusements
- The amendment will help ensure Luna Park can continue to be a part of Sydney for future generations
- Support for proposed provisions and Luna Park

The development proposed under this application remains consistent with and seeks to build on each of these identified positive impacts for allowing the relocation, removal and operation of temporary rides and amusements.

Accordingly, this application has sought to respond to the issues and comments raised in the submissions in relation to Lavender Green in the public submissions. This also includes the Department's Submissions Report which identified the reasoning for removing Lavender Green from the amendment to the Precincts SEPP. The key issues as they relate to Lavender Green and a response to each has been summarised in the table below.

The issues identified as being from public submissions have been selected as representative of the themes of comments raised in relation to the SEPP Amendment and are not direct responses to all individual submissions.

Table 1 Summary of key issues raised by the Department and in public submissions

Summary of issue	Response
Issues raised by the Department	
<p><u>Exclusion of Lavender Green from the rides and amusements zone</u> <i>The Department is has excluded Lavender Green from the exempt and complying rides and amusement zone. The exclusion of Lavender Green from the rides and amusements zone prohibits the erection of any rides or amusements under the exempt or complying pathway in SEPP (State Significant Precincts).</i></p> <p><i>The Luna Park Site Act 1990 (Part 2, clause 6, subclause 2) requires the Plan of Management prohibit the placement of rides on Lavender Green but does not explicitly prohibit this activity itself. While the Plan of Management does not directly deal with this issue, Appendix 2 of the Plan attaches the Luna Park Site Amendment Bill 1997 which notes this intention.</i></p>	<p>The proposed development remains consistent with the <i>Luna Park Site Act 1990</i>, and specifically Section 6(2)(c)(ii) which prohibits the erection of permanent structures on Lavender Green. The proposed development does not seek to install any permanent structures, rather, the framework only allows for rides or amusement devices to be installed for no more than 16 weeks in a 26 week period, and for all works on the site not to involve any permanent footings or foundations.</p> <p>The proposed development is also not inconsistent with the POM. Lavender Green specifically is identified as an area for providing temporary structures for outdoor events and to incorporate a landscaped setting for Coney Island. The proposed works remain consistent with this vision, by protecting the existing landscape features of the site and formalising the historic use of this land for temporary structures and events.</p>
<p><i>The 2001 and 2002 Master Plan development applications for Luna Park do not specifically deal with the placement of rides on Lavender Green. However, in the drawings included with the Stage 2, Phase E consent (DA 201-6-2002), the area now known as Lavender Green is marked as a 'Marquee Area', with possible placement of temporary marquees shown in a concept drawing.</i></p>	<p>It is the ongoing opinion that the 'Stage 1' DA is not a Concept Proposal in the meaning of Division 4.4 of the EP&A Act as it was never identified as such in accordance with Section 4.22(3), however, if adopting the Masterplan as a Concept Proposal the proposed development would remain not inconsistent. This is detailed in Section 5.2 below.</p>
<p><i>This exclusion was introduced because:</i></p> <ul style="list-style-type: none"> <i>Lavender Green has not frequently been used as a location for rides and amusements in the past and the impact of installing rides and amusements here is relatively untested. Installing rides and amusements on Lavender Green warrants detailed consideration through a development application process;</i> 	<p>This Development Application fulfils this requirement and demonstrates that temporary rides, amusements and facilities installed on Lavender Green will not result in any significant or otherwise adverse environmental impacts. It is consistent with the historic use of this space and the remainder of Luna Park and will directly contribute to the ongoing viability and enjoyment of the Park.</p>
<ul style="list-style-type: none"> <i>It aligns the provisions of SEPP (State Significant Precincts) with other parts of the Luna Park regulatory framework.</i> 	<p>The proposed framework for Lavender Green, as described in Section 4 below, draws from the exempt and complying provisions within the Precincts SEPP that enables temporary works to occur across the remainder of the Luna Park site. The proposed framework provides restrictions and controls to ensure there is no deviation from what are usual and routine operations associated with the amusement park.</p>
<ul style="list-style-type: none"> <i>It will not likely have an adverse impact on the usual operations of the amusement park.</i> 	<p>This application further demonstrates that the temporary use of Lavender Green will not adversely impact on the operation of the park or the surrounding area.</p>
Issues raised in public submissions	
<p><i>'a full DA process must be adhered to for the proposed permanent rides, especially those that impact existing views and height limits and current noise constraints'</i></p>	<p>This Development Application provides an assessment of the environmental, economic, and social impacts associated with the use of Lavender Green for temporary rides, amusements, and facilities. No works will be permanent.</p> <p>It seeks to establish a framework to ensure all temporary works occurring on this site will adhere to the current noise constraints, and result in minimal view and visual impacts. Key aspects of the proposed development include:</p> <ul style="list-style-type: none"> Reducing the maximum height of rides, amusements and facilities on the site from RL 20m to RL 14m, which is 6m lower than the building envelope proposed under the SEPP Amendment, ensuring there is minimal to no impact on views. Adopting a similar framework to the SEPP Amendment to appropriately control environmental impacts and to be consistent with the works occurring elsewhere in the precinct.

Summary of issue	Response
<i>'height limits should be restricted to the height of the cliff tops behind the park'</i>	A building envelope establishes the maximum height of rides, amusements and facilities temporarily installed, modified and removed on Lavender Green. This building envelope has been significantly reduced from what was originally proposed under the SEPP Amendment, ensuring the maximum extent of the building envelope does not exceed the height of the cliff top.
<i>'not being held to account for new developments, excessive noise, light and other disturbances'</i>	Impacts from noise and lighting are already controlled by existing restrictions (discussed in more detail in the below sections dealing specifically with noise and lighting). These existing restrictions will be maintained for rides installed as exempt or complying development and no additional impact is envisaged.
<i>'preserving green space is the hallmark of a liveable city' 'reducing valuable green space'</i>	The proposed development protects the existing landscape features of the site and formalises the historic use of this land for temporary structures and events. The proposed development does not seek to permanently remove or undermine the available green space. It is also emphasised that Lavender Green forms part of Luna Park, and specifically the nominated Entertainment Precinct, and as such it does not comprise publicly accessible land rather it is an area that is used for providing temporary structures and outdoor events.
<i>'proposal is fundamentally changing the nature of the space and its visual, physical and acoustic impact'</i>	The proposed development does not alter the historic use of the site or its relationship to the broader areas of Luna Park. At key periods of the year, Lavender Green and other areas of Luna Park have housed temporary rides and facilities to cater for additional demand (such as in school holidays) and to provide new attractions for visitors, being routinely installed and dismantled on more than 200 occasions over the past 12 years. The nature of this space and Luna Park has been to provide a wide range of entertainment and social facilities for the people of Sydney and its visitors. The acoustic impacts of Luna Park are also managed by existing restrictions, the works are temporary, and the scale of works on Lavender Green have been reduced ensuring the overall visual impact is minimal to none.
<i>'Lavender Green is a refuge for families and school groups'</i>	It is the intention of this DA to support and build on the historic use of Lavender Green within Luna Park as an entertainment and picnic area for children and families. It is emphasised that all proposed works will be temporary, and whilst there may be a few larger structures such as inflatables, the vast majority of the space will be used for minor supporting structures such as kiosks, petting zoos, seating and the like and activities such as sack races, badminton etc – commensurate with the primary intended use of this area for children and families.

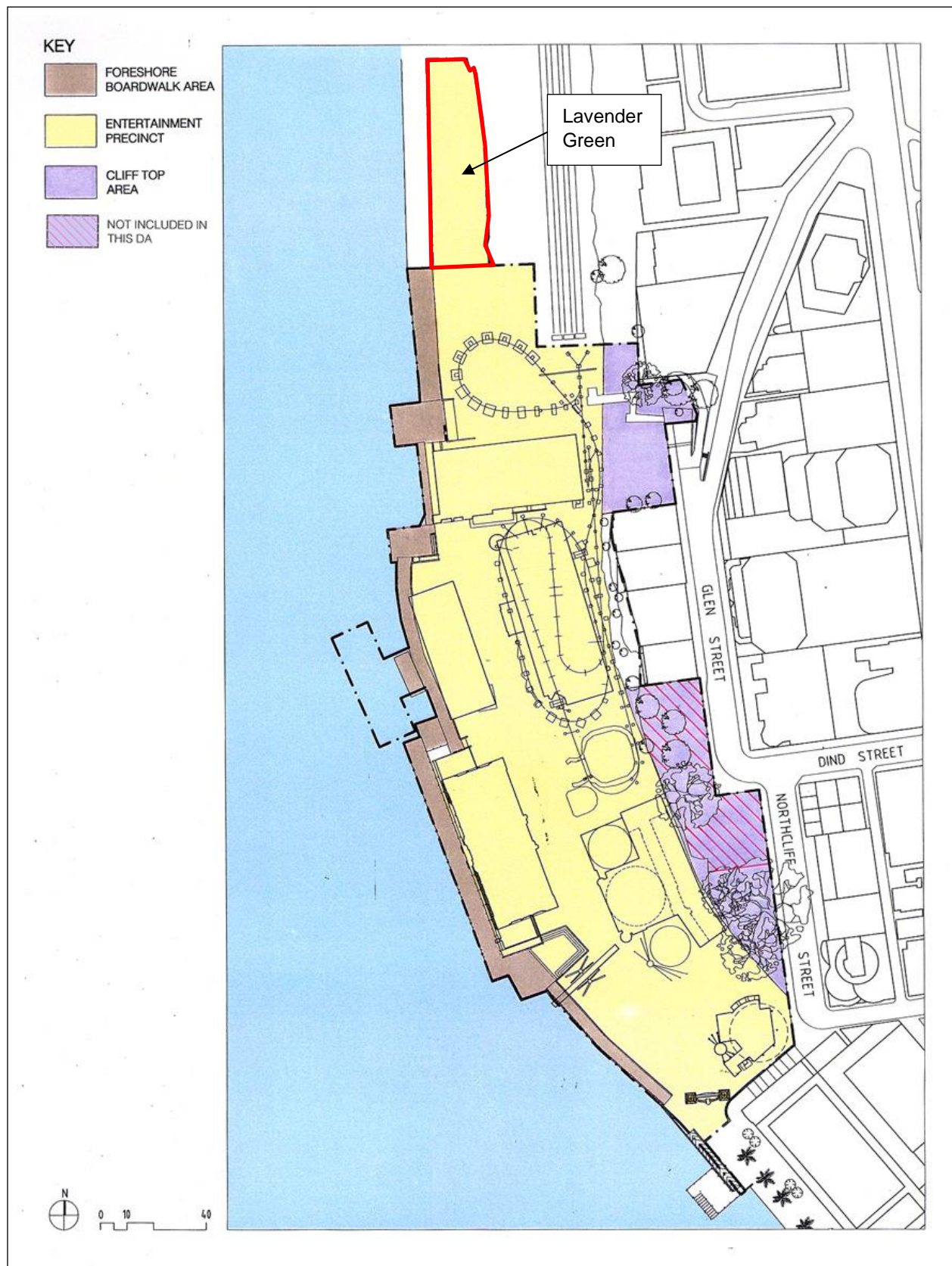


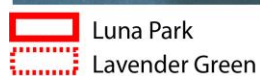
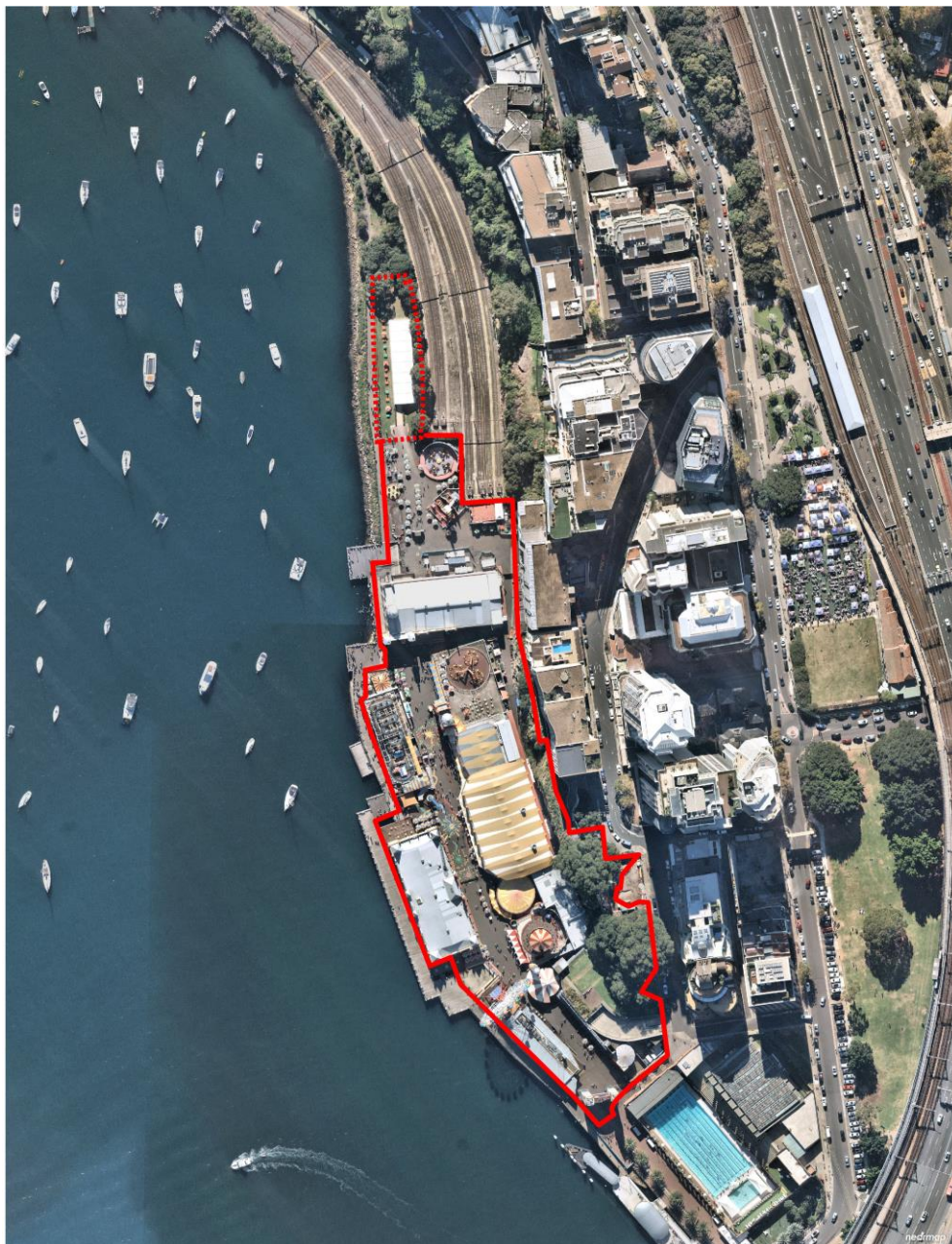
Figure 1 Plan denoting the 'Entertainment Precinct'

Source: Statement of Environmental Effects for DA154-06-01

3.0 Site description

Luna Park is located within the suburb of Milsons Point, and is located along the northern Sydney Harbour foreshore to the north of the Sydney Harbour Bridge, and North Sydney Olympic Pool. The site also sits below a large cliff face that separates it from higher density office and residential development to the east. To the north of the site comprises railway storage which connects to the North Shore Train Line.

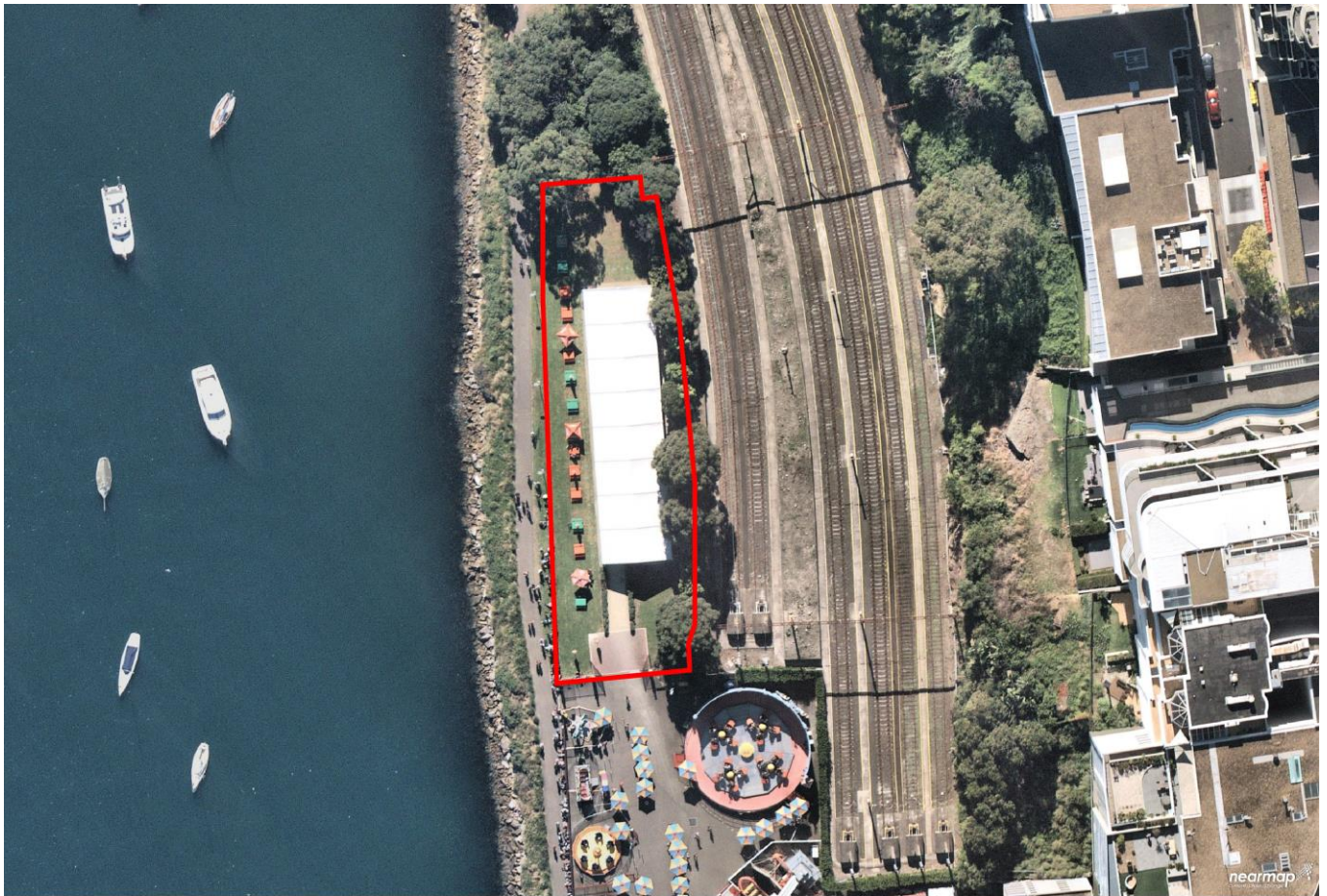
The site comprises Lavender Green which forms the northernmost extent of Luna Park, and is legally described as Lot 1247 in DP 48514¹. The address for this land is 1 Olympic Drive, Milsons Point. The locational context of Luna Park and specifically Lavender Green is shown in **Figure 2** and **Figure 3**.



**all boundaries are approximate – please refer to the plans at Appendix A*

Figure 2 Aerial photograph of the greater Luna Park site

¹ Formerly known as Lot 1186 in DP 48335



 Lavender Green

**all boundaries are approximate – please refer to the plans at Appendix A*

Figure 3 Aerial photograph of Lavender Green

Source: Nearmap + Ethos Urban

4.0 Description of proposed development

The proposed development seeks consent for an envelope and associated framework to apply to Lavender Green in which temporary rides, amusements and facilities can be installed, modified, and removed without further approval if in accordance with the identified framework. This will formalise the existing and historic seasonal use of this space.

Proposed framework for installation, replacement and removal of temporary rides and amusements

It is proposed to apply a framework for the installation/modification/removal of future rides, amusements and facilities and the use of Lavender Green. If works are consistent with the proposed framework; they will not require future and separate development consent.

The proposed framework provides restrictions and controls to ensure there is no deviation from what are usual and routine operations associated with the amusement park. It draws from existing exempt and complying provisions within the Precincts SEPP that enables temporary works to occur across the remainder of the Luna Park site.

Table 2 Proposed framework for the ongoing installation/modification/removal of rides and facilities and use of Lavender Green

Framework	Parameter
Location	All works must be contained within the building envelope detailed in the plans prepared by Ethos Urban and dated 28 June 2019 at Appendix A (discussed further below).
Time Period	The ride or amusement device must not be installed for more than 16 weeks in any 26-week period. Minor facilities such as marquees and the like may operate for longer periods of time but must be removable and not installed as permanent structures.
Heritage	The works must: <ul style="list-style-type: none"> • be consistent with a conservation management plan endorsed by the Heritage Council under section 38A of the <i>Heritage Act 1977</i>, or • have been granted an exemption under section 57 (2) of that Act or be subject to an exemption under section 57 (1A) or (3) of that Act, or • be consistent with an approval granted under section 63 of that Act.
Ground treatment	The development must not involve any permanent footings or foundations.
Design standards	<ul style="list-style-type: none"> • The development must meet the relevant deemed-to-satisfy provisions of the Building Code of Australia, or if there are no such relevant provisions, must be structurally adequate. • The amusement device must be installed in accordance with the manufacturer's specifications, if applicable. • The development must comply with the relevant provisions of AS 3533.1–2009, <i>Amusement rides and devices—Design and construction</i>.
Acoustic	<ul style="list-style-type: none"> • The amusement device must not emit noise that exceeds the maximum permissible noise level (within the meaning of section 19A (5) of the <i>Luna Park Site Act 1990</i>). • The development must be consistent with the <i>Luna Park Acoustic Plan of Management</i> adopted on 4 June 2002.
Illumination	The development must be consistent with: <ul style="list-style-type: none"> • The <i>Luna Park Lighting Strategy</i> adopted on 28 May 2002, and • AS 4282—1997, <i>Control of the obtrusive effects of outdoor lighting</i>, and • AS/NZS 1158.3.1:1999, <i>Road lighting, Part 3.1: Pedestrian area (Category P) lighting—Performance and installation design requirements</i>.
Landscaping	All works on the site will protect and retain existing site landscaping, including the mature trees that form the eastern boundary of the site shared with the rail line.

If the Department were minded to impose a condition of consent, in the event that a consent were issued, the following would give effect to the proposed framework:

1. *The installation, modification, replacement, relocation or operation of a ride, amusement device, or facility within the building envelope identified on Drawing No. 1 and No. 2 prepared by Ethos Urban and dated 11 July 2019, is granted consent if it complies with the following requirements:*

- a) *The ride or amusement device must not be installed for more than 16 weeks in any 26 week period. Minor facilities such as marquees and the like may operate for longer periods of time but must be removable and not installed as permanent structures.*
- b) *The development must not involve any permanent footings or foundations.*
- c) *The development must meet the relevant deemed to satisfy provisions of the Building Code of Australia, or if there are no such relevant provisions, must be structurally adequate.*
- d) *The ride, amusement and/or facility must be installed in accordance with the manufacturer's specifications, if applicable.*
- e) *The development must not damage, or otherwise negatively impact existing mature trees on the site.*
- f) *The development must:*
 - i) *be consistent with the Conservation Management Plan endorsed by the Heritage Council under Section 38A of the Heritage Act 1997, or*
 - ii) *have been granted an exemption under Section 57(2) of that Act or be subject to an exemption under Section 57(1a) or (3) of that Act, or*
 - iii) *be consistent with an approval granted under Section 63 of the Act.*
- g) *The ride, amusement and/or facility must be fully enclosed within the building envelope (in the meaning of Condition 1).*
- h) *The ride, amusement and/or facility must not exceed the maximum permissible noise level (within the meaning of Section 19A (5) of the Luna Park Site Act 1990)*
- i) *The ride, amusement and/or facility must not involve strobe lighting.*
- j) *The development must be consistent with:*
 - i) *The Luna Park Acoustic Management Plan adopted 4 June 2002, and*
 - ii) *The Luna Park Lighting Strategy adopted 28 May 2002, and*
 - iii) *AS 4282-1997, Control of obtrusive effects of outdoor lighting, and*
 - iv) *AS/NZS 1158.3.1:1999, Road lighting, Part 3.1: Pedestrian area (Category P) lighting – performance and installation design requirements,*
- k) *The development must comply with the relevant provisions of AS 3533.1-2009, Amusement rides and devices – Design and construction.*

Building envelope

The footprint of the building envelope comprises Lavender Green, excluding the foreshore and boardwalk area. The proposed envelope has a maximum height of RL 14m, which aligns with the height of existing mature trees that form the eastern boundary of the site that is shared with the rail line. Envelope plans are provided at **Appendix A** and replicated at **Figure 4** and **Figure 5** below.

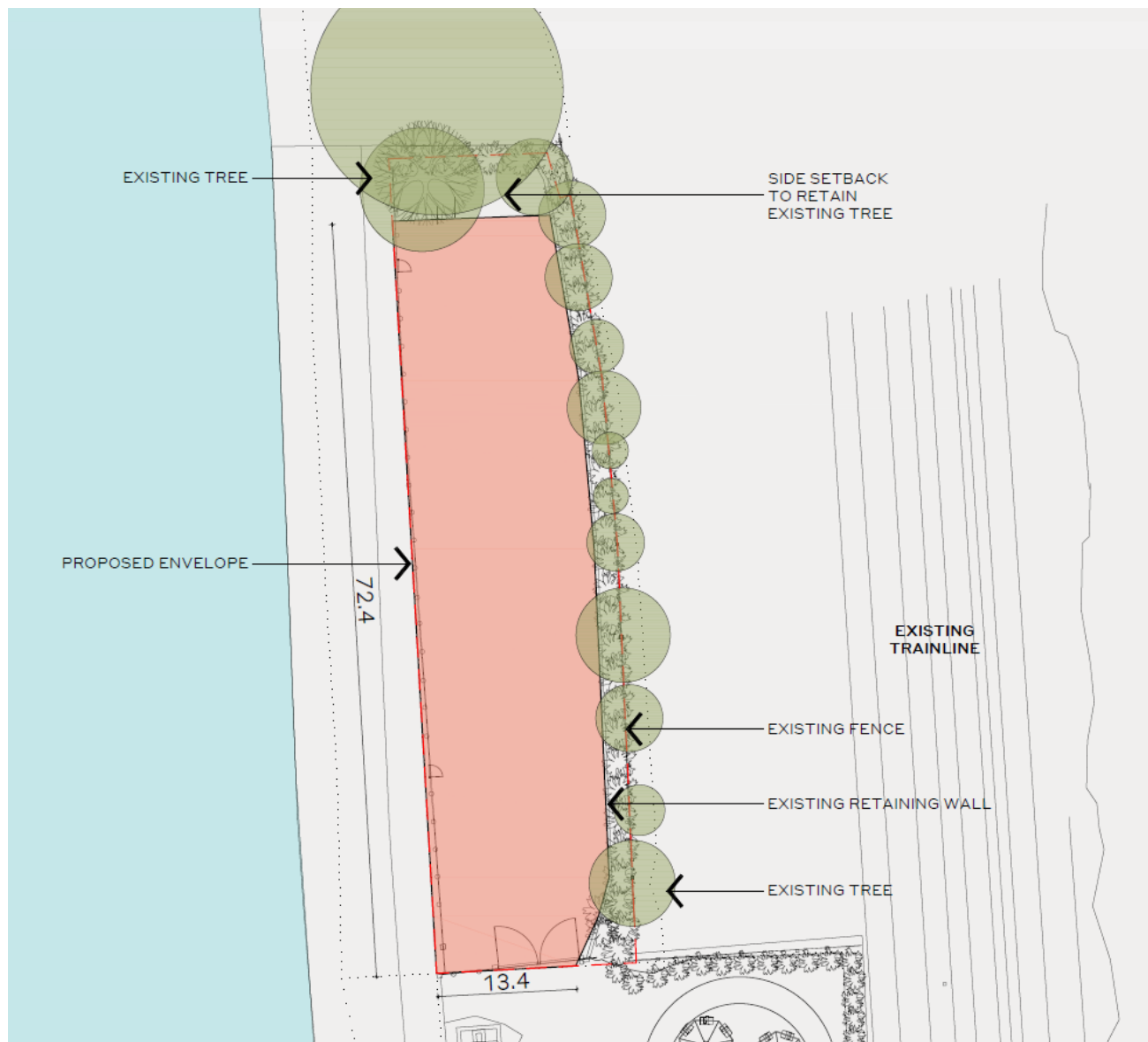


Figure 4 Floorplan of the proposed building envelope

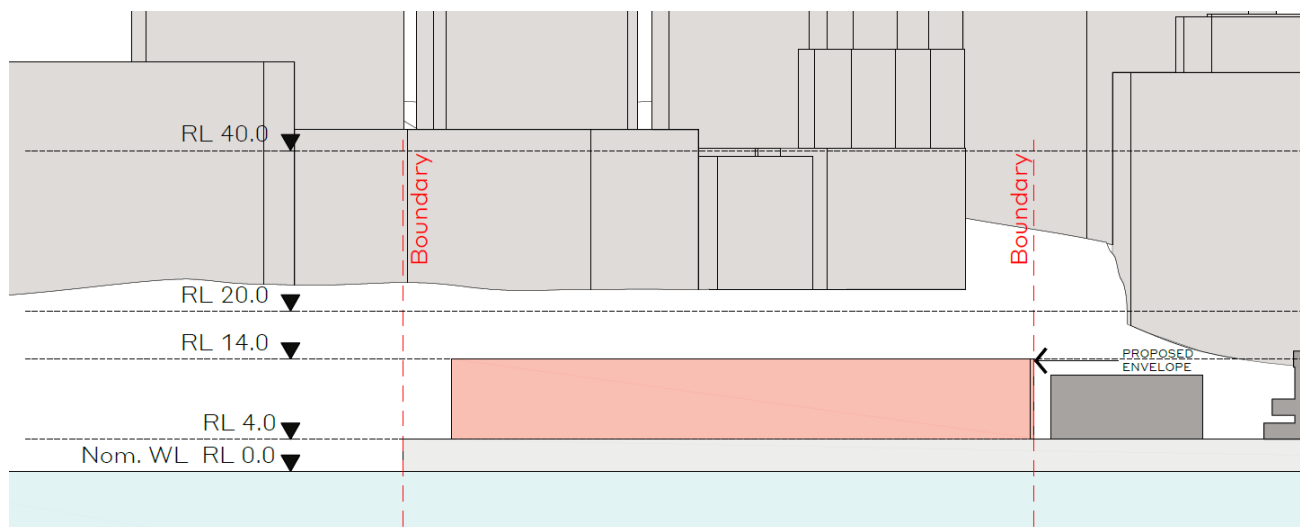


Figure 5 Elevation of the proposed building envelope

Temporary rides and amusements

The land within the building envelope will be used for installing, modifying and removing temporary rides, amusements and facilities to cater for additional demand (such as in school holidays) and to provide new attractions for visitors on an ongoing basis. These rides, amusements and facilities will be wholly located within the building envelope and include, but not be limited to:

- petting zoos;
- children's ice-skating rinks;
- inflatables;
- street performances / entertainers;
- mobile food stalls;
- portable toilets;
- fencing/wayfinding;
- marquees; and
- small rides and amusement devices of a type that a child of 130cm tall could ride.

Refer to **Figure 6** below.



Figure 6 Indicative types of rides, amusements and facilities

5.0 Planning assessment

This section considers the planning issues relevant to the proposed development and provides an assessment of the relevant matters prescribed in Section 4.15(1) of the EP&A Act.

5.1 Compliance with relevant strategic and statutory plans and policies

The DA's consistency and compliance with the relevant statutory plans and policies is located in **Table 3** below. Variations to, and non-compliance with, the key standards and guidelines highlighted in the table are discussed in the following sections of this environmental assessment.

Table 3 Summary of compliance

Control	Comment	Consistency
EP&A Act	<p>The proposed development is consistent with the objects of the EP&A Act contained in Section 1.3 as follows:</p> <ul style="list-style-type: none"> • The proposed development promotes the economic and social welfare of the community through safeguarding the ongoing economic viability of the park which fulfils a unique and important social function within Sydney. The proposed works will not impact the proper management and conservation of natural resources. • The proposed development will not have any notable implications in terms of the precautionary principal, intergenerational equity, or the conservation of biodiversity and ecological integrity of the site and surrounds. The existing trees on the site will be protected. • The proposed framework builds on the historic use Lavender Green within Luna Park as an entertainment and picnic area for children and families, promoting the orderly and economic development of land. • As discussed in Section 5.3 below and the statement at Appendix C, the proposed works will not impact or otherwise undermine the management of surrounding heritage items. The proposed works will actually serve to support the values of Luna Park as an amusement park and its continued use by patrons. • The proposed framework enables the ongoing temporary installation, modification and removal of rides, amusements and facilities on the site where such works will comply with the terms of the framework which includes necessary provisions to safeguard the amenity of the surrounding environment. • The Framework incorporates necessary safeguards to ensure the proper construction and maintenance of rides, amusements and facilities commensurate with the existing exempt and complying provisions within the Precincts SEPP. • Public consultation will be carried out for the submitted DA and accompanying documentation during the standard exhibition process. 	✓
Biodiversity Conservation Act 2016	The site is not subject to a private land conservation agreement under the Biodiversity Conservation Act 2016 and does not require assessment under a biodiversity development assessment report.	N/A
Luna Park Site Act 1990		
3. Object of this Act	The object of the Luna Park Act is to return the Luna Park site to the people of NSW and to ensure that Luna Park remains available and accessible for the enjoyment of the people of NSW. The proposed application is wholly consistent with this in enabling Luna Park to flexibility replace, remove, relocate or introduce new temporary rides, amusements and facilities in such a manner which ensures the ongoing economic viability of the park, and maintains the relevance of the park over time for the people of NSW. It ensures that the park remains an attraction and source of entertainment into the future.	✓
6. Plan of Management	Section 6 requires the preparation of a Plan of Management, as well as noted uses which are prohibited on the site. The proposed temporary rides, amusements and facilities is consistent with the Plan of Management, as discussed in Section 2 above and the discussion below. Further, the proposal does not seek to install any permanent structures on Lavender Green and as such remains consistent with Section 6(2)(c)(ii).	✓

Control	Comment	Consistency
19A Legal Proceedings and Other Noise Abatement Action	The proposal includes a requirement within the framework in Table 1 that the noise level from the operation of temporary rides or replacement rides not exceed the maximum permissible noise level at the park, which in accordance with Clause 19A(5)(a) is 85dB(A). Additionally, acoustic impact from the proposal has been further discussed at Section 5.4 below, and assessed for consistency against the acoustic requirements at Appendix B .	✓
Crown Lands Act 1989		
Division 6 Plans of Management	<p>The site is Crown Land, and as such is consistent with the adopted Plan of Management prepared for the site. The <i>Luna Park Plan of Management</i> Vision Statement notes that "Luna Park is to operate as 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."</p> <p>The POM includes design and land use guidelines providing the strategic framework for current and future development of the park. The proposed works will be consistent with the intended use for the Luna Park site as described in the POM. It will also contribute to the fulfillment of the vision for Luna Park as outlined above.</p> <p>Lavender Green specifically is identified as an area for providing temporary structures for outdoor events and to incorporate a landscaped setting for Coney Island. The proposed works remains consistent with this vision, by protecting the existing landscape features of the site and formalising the historic use of this land for temporary structures and events.</p>	✓
Heritage Act 1977		
Part 4, Division 3, Subdivision 1	<p>The Luna Park site is a State-listed heritage item. In accordance with Part 4, Division 2 of the Heritage Act, approval from the Heritage Council is required to carry out any development on land which a State-listed heritage item is located unless the works are exempted by a Conservation Management Plan that has been endorsed by the Heritage Council (Section 57, Subsection 1D).</p> <p>The <i>Luna Park Conservation Management Plan</i> (December 2019) was endorsed by the Heritage Council on 29 January 2020. This CMP provides a site-specific exemption for the installation, modification, removal, replacement or relocation of rides on Lavender Green and as such no further approval is required from the Heritage Council for the proposed works. This is discussed further in Section 5.3 below.</p> <p>This DA is also accompanied by a Heritage Impact Statement (Appendix C) which confirms that the proposed temporary rides and ride replacement will not have an adverse impact on the heritage significance of the Luna Park precinct. It continues an established tradition of introducing new temporary rides, amusements and facilities, provides for future elements in an ongoing sequence of changing amusements, and contributes to the continuing attractiveness of Luna Park to new generations of amusement park patrons. The proposed works directly enable the ongoing appreciation and connection with Luna Park.</p>	✓
State Environmental Planning Policy (State Significant Precincts) 2005		
9A. Development for which Minister is consent authority under Part 4	As the Luna Park site is listed under Schedule 6 of the State Significant Precincts SEPP and the proposal has a CIV of less than \$10 million, the Minister is the consent authority under Part 4 of the EP&A Act.	✓
Schedule 3, Part 2, Division 2. Provisions relating to development on Luna Park site	The provisions contained in Schedule 3, Part 2, Division 2 of the SEPP enable certain works to be undertaken within the Luna Park site as exempt or complying development, subject to achieving certain development standards. This includes the installation, modification, and removal of amusement devices. Whilst this pathway was originally proposed to apply to Lavender Green, this component was removed post-exhibition. The Department's stated reasons for removing Lavender Green and a response to each is discussed in Section 2 .	✓

Control	Comment	Consistency
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 + Draft State Environmental Planning Policy (Environment) 2017		
The Draft SEPP Environment was released for public exhibition in October 2017 and aims to repeal and replace a number of SEPPs and SREPs that currently apply in NSW. This Draft SEPP will also encompass the provisions of the Sydney Harbour Catchment REP.		
13. Sydney Harbour Catchment	The proposal is consistent with the planning principles for land within the Sydney Harbour Catchment by way of the following: <ul style="list-style-type: none"> the proposal will not affect the hydrological, ecological and geomorphological processes of the catchment; the proposal will not affect natural features in the catchment; and the proposal will formalise the long standing use of the site, and will not detract from the visual qualities of Sydney Harbour. Luna Park itself is an iconic and historic feature within Sydney Harbour. 	✓
14. Foreshores and Waterways Area	The proposal is consistent with the planning principles for land within the Foreshores and Waterways area by way of the following: <ul style="list-style-type: none"> the proposal will not adversely impact on the natural assets of Sydney Harbour; there will be no impact on public access along the foreshore of Sydney Harbour, retaining the existing boardwalk and foreshore; and development will contribute to the unique visual qualities of Sydney Harbour (further discussed at Section 5.6). 	✓
15. Heritage Conservation	The proposal is consistent with the heritage principles contained under the Sydney Harbour REP, as discussed at Section 5.6 .	✓
20. General Matters for Consideration	The relevant matters for consideration have been considered below.	✓
21. Biodiversity, Ecology and Environment Protection	The proposal comprises only temporary and / or replacement works, and will not affect the biodiversity, ecology and environmental protection around the site.	✓
22. Public Access	The proposal will maintain public access along the waterfront.	✓
25. Foreshores and Waterways Scenic Quality	The proposal will maintain the scenic quality of the harbour foreshore. This has been further discussed at Section 5.6 below.	✓
26. Views	The proposal will maintain views to and from Sydney Harbour. This has been further discussed in Section 5.6 below.	✓
Part 4 – Strategic Foreshore Sites	As discussed previously in this table, the proposal has been undertaken in accordance with the Luna Park Site Masterplan.	✓
Part 5 – Heritage Provisions	The heritage impact of the proposal has been assessed at Section 5.3 .	✓
North Sydney Local Environment Plan 2013		
2.1 Land Use Zones	The site is located within the SP1 Special Activities zone, where development for the purpose of 'Luna Park', including ancillary development is permissible with consent. Given the strong history of the site as a theme park, the proposed rides, amusements and facilities fall under development for this purpose.	✓
4.3 Height of Buildings	No maximum building height for the site is specified within the North Sydney LEP. The height of temporary rides and facilities on the site will be controlled through the proposed building envelope.	N/A
4.4 Floor Space Ratio	No maximum floor space ratio for the site is specified within the North Sydney LEP. The footprint of temporary works on the site will be controlled through the proposed building envelope.	N/A
5.10 Heritage Conservation	The site is listed as State Heritage Item and is within close proximity to a number of other nearby heritage items. Lavender Green is also specifically included in the Lavender Bay Heritage Conservation Area (CA12). The heritage impact of the proposal on the site has been further discussed at Section 5.3 below.	✓
6.19 Luna Park Site	This clause notes that development permissible under the Luna Park Act is also permissible under the North Sydney LEP.	✓

Control	Comment	Consistency
North Sydney Development Control Plan 2013		
9.9 Lavender Bay Conservation Area Character Statement	<p>Under the DCP, Lavender Green is not included within the 'Luna Park Neighbourhood' but instead is mapped as being within the 'Lavender Bay Conservation Area'. The proposed development is consistent with the character statement in the DCP for this Conservation Area where relevant as:</p> <ul style="list-style-type: none"> • The proposed works are consistent with the character of Luna Park as a theme park, and will contribute to the operation of Luna Park as such. • The proposed building envelope excludes the foreshore and boardwalk areas, retaining constant public access along the foreshore, which is identified as significant to the area. • The proposal does not seek consent for any permanent structures, does not remove any significant fabric on the site, and does not impact the quality of the collective significance of buildings in the area (refer to the discussion in Section 5.3 below). • The proposal is consistent with the historic use of Lavender Green and does not adversely or significantly impact views to Sydney Harbour from Watt Park and Clark Park (refer to the discussion in Section 5.6 below). • All existing landscaping on the site will be retained and protected. 	✓

5.2 Consistency with the Masterplan

Consent for the Masterplan (DA154-06-01) was granted at a time prior to the introduction of staged applications (now known as Concept Proposals) into the EP&A Act. While there are arguments that the Masterplan could now be taken to be a Concept Proposal, it is also apparent that the Masterplan is not a Concept Proposal for the purposes of Division 4.4 of the EP&A Act because Section 4.22(3) operates to specifically exclude any DA where the proponent did not "request it to be treated as a concept development application". Our understanding is that no such request was made.

Notwithstanding this, if the Masterplan were to be taken to be an approved Concept Proposal for the purposes of Division 4.4 of the EP&A Act, it is considered that the proposed development would not be inconsistent with this Masterplan. Ultimately, although the consent does not allow for the temporary operation or replacement of rides and amusements in their own right, it does make provision for these to be enabled as part of a later application. This application comprises such an application, and provides a building envelope on Lavender Green that specifies the location and framework for works in this part of Luna Park.

Compliance is also generally achieved with the following key conditions of consent concerning land uses.

Table 4 Compliance with conditions of consent

Condition No.	Condition	Comment
85	<i>The Stage 1 development consent must be in accordance with Development Application No 154-06-01, submitted by Metro Edgley Pty Ltd, and "Development Application Statement of Environmental Effects to Minister for Urban Affairs and Planning", including consultant reports, prepared by JBA Urban Planning Consultants Pty Ltd dated June 2001, drawings numbered MDA02 – MDA08 dated June 2001, and amended drawings numbered SK27 6715A dated 20 September 2001, prepared by Hassell Pty Ltd, as amended by the following conditions</i>	As discussed above, the proposed temporary rides, amusements and facilities are consistent with the 'Entertainment Precinct' as described in the Statement of Environment Effects for this application dated June 2001. This SEE contemplates that "[t]emporary structures may, from time to time, be erected within the amusement park Entertainment Precinct (associated with a particular function or event)".
86	<i>This consent is a staged consent in accordance with Section 80(4) of the Environmental Planning and Assessment Act 1979. Development consent is granted to: - (a) Proposed land uses; (b) Building envelopes (note: modified by condition 91); (c) Parking numbers (note: modified by condition 105); (d) Vehicular and pedestrian access; (e) The public domain plan; (f) Hours of operation (note: modified by Condition 101); and (g) An external pedestrian link between Glen Street and the Luna Park Entertainment Complex.</i>	The propose works are consistent with the proposed land uses considered under the DA.

Condition No.	Condition	Comment
90	No excavation, demolition or construction or the carrying out of any development (including all buildings, light-weight structures, rides and amusements, and landscaping) shall commence in relation to this Stage 1 development consent until a further development application(s) is approved and a construction certificate issued in respect of the buildings and works.	This application fulfils this requirement and seeks consent for the construction, modification and removal of temporary light-weight facilities, rides and amusements.
91	<p>The following requirements apply in respect to the nominated building and site elements:</p> <p>(a) Luna Circus Building - The awning level of this building shall not exceed RL 12.50 in height; the maximum height of the building shall not exceed RL 20.00. Details are to be provided in any subsequent development application.</p> <p>(b) Restaurant/Café Complex - The restaurant/café complex located between the Ferris wheel and the Luna Park face shall be designed to preserve views from the midway to the Luna Park entry gate. The building shall not exceed RL 12.00 in height. Details are to be provided any subsequent development application. The complex shall not encroach upon the curtilage of the "Face" as identified within Figure E "Building Envelopes" of the Luna Park Plan of Management.</p> <p>(c) On-Site Parking - The carpark shall not exceed RL12 in height, excluding the vehicle connecting ramp from Dind Street, lift overruns, plant and stair access. The carpark shall not encroach upon the curtilage of the "Face" as identified within Figure E "Building Envelopes" of the Luna Park Plan of Management. (Note: Conditions 105 through 116 in relation to the carparking and the carpark building).</p> <p>(d) Luna Circus Foyer & Bars - The Luna Circus Foyer and bars shall not exceed RL 16.00. Details are to be provided in any subsequent development application.</p> <p>(e) Service corridor - A average 6-metre wide building setback shall be established at the base of the cliff, for buildings north of the existing Administration Centre. The building setback area may incorporate a service lane. Details of the type of service vehicles using this space shall be provided in any subsequent development application.</p> <p>(f) Height in general - The RL height limits quoted above may be exceeded by minor building elements including flagpoles, masts, performance structures and decorative features. Details are to be provided in any subsequent development application.</p>	These provisions do not apply to Lavender Green and as such the proposed works are not inconsistent.
92	<p>The maximum height for any building shall not exceed that given in the Luna Park Plan of Management (Figure E). New buildings and structures shall not fully occupy the approved envelopes and shall be designed to meet the following objectives:</p> <p>(a) to retain the cliff top as the maximum height of buildings in the amusement area;</p> <p>(b) to ensure that views to the cliff face from the waterways are achieved;</p> <p>(c) to ensure that rooftops and additions are designed in a manner that achieves a high degree of compatibility with the heritage significance and scale of the cliff face; and</p> <p>(d) to establish the Wild Mouse as the tallest structure on the water's edge.</p>	Lavender Green is nominated as being part of the 'Entertainment Precinct' but is not provided with a building envelope. As such the proposed works are not inconsistent with this condition or the approved Masterplan. This DA proposes a new building envelope on the site to this effect.
93	All buildings and structures are to achieve a high degree of compatibility with the architectural character of the existing buildings and rides within Luna Park, with regard to design details, architectural materials, colours and finishes.	The proposed temporary rides, amusements, and facilities are wholly consistent with the character of existing buildings and rides within Luna Park.
98	The foreshore boardwalk shall be available for public access, 24 hours per day, 365 days a year. The boardwalk may be temporarily closed only on occasions where there is a serious public safety issue such as for major maintenance works or in association with special public events where there are crowd management issues (such as New Years Eve celebrations). Any such temporary closure must be approved by the Luna Park Reserve Trust, must be notified to Council giving not less than seven (7) days notice, and a sign stating the period of closure and displaying a copy of the approval from the Trust	The proposed building envelope excludes the foreshore walkway/boardwalk that will remain publicly accessible.

Condition No.	Condition	Comment
	<i>must be erected at each entrance of the boardwalk not less than 24hours prior the closure until it is reopened.</i>	
101	<p><i>The hours of operation shall be as follows – External rides, amusements and external entertainment:</i></p> <ul style="list-style-type: none"> • <i>Sunday to Thursday: 10.00 am to 10.00 pm</i> • <i>Friday and Saturday: 10.00am to 12.00 midnight</i> • <i>Public Holidays and days preceding Public Holidays, except for Good Friday and Easter Monday: 10.00am to 12.00 midnight on New Years 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: 10.00am to 2.00am (the following morning)</i> 	All uses of Lavender Green will comply with the nominated operational hours.

5.3 Heritage impact

Luna Park is a place of outstanding heritage value and is listed as a State Heritage Item (no. 01811), as well Property NSW's Section 170 Heritage and Conservation Register. Lavender Green is separately identified as being part of the Lavender Bay Heritage Conservation Area and is identified in the *Luna Park Conservation Management Plan*.

A Heritage Impact Statement (HIS) accompanies this SEE at **Appendix C** and notes that the erection of temporary rides, amusements and facilities has been a feature of the Luna Park landscape since its inception, with these fixtures being regularly exchanged over the course of the park's operation. Lavender Green is identified in the CMP as being of moderate heritage significance for its history of being used as part of Luna Park for rides, amusements, organised events and passive recreation.

The HIS confirms that the framework at **Table 1** of this SEE is appropriate and will mitigate any potential heritage impact from the erection of such rides, amusements and facilities.

- The proposed framework for the use of Lavender Green maintains the temporary nature of any installation and the landscape setting of the area, and precludes any permanent impacts on the site.
- The proposal is consistent with the values of Luna Park as an amusement park and its continued use by patrons. Lavender Green will function as an extension of Maloneys Corner, which allows for seasonal rides and amusements.
- The continued operation of rides, amusements and facilities on Lavender Green will not have any adverse impact on the heritage values of the nearby Coney Island or on the Luna Park site more generally. There will be no impacts on the heritage values of the State Heritage listed Luna Park Precinct.
- The proposed framework generally complies with the heritage conservation provisions of the North Sydney LEP, which allows for the continuing and historic use of a heritage item, and is consistent with the aims, objectives and controls of the North Sydney DCP. The ongoing use of the site for temporary rides, facilities and entertainment is consistent with the long standard character of the site and as such will not alter how this site relates visually or physically to the remaining Conservation Area.
- The proposal complies with the CMP and is in accordance with the proposed Site Specific Exemption no. 2 as the proposal replates to Lavender Green, is not adjacent to the cliff, does not affect significant fabric, landscape or archaeology features, and does not obstruct primary views.
- There will be no visual impact on the vista between the Sydney Opera House and Luna Park. The proposed framework relates to a building envelope at Lavender Green, which is located behind Coney Island and blocked by the building.

The HIS concludes that the proposed framework, and any resultant development, would not have an adverse impact on the heritage significance of the Luna Park Precinct or any individual elements of heritage significance on the site, the Outstanding Universal Value of the Sydney Opera House in its harbourside setting, or the Heritage

Conservation Area. The framework for Lavender Green is acceptable in the context of the heritage values of the site and its continuing operation as an amusement park.

In addition, the proposed framework and resultant development remains consistent with the site-specific exemptions contained in Section 7.3 of the endorsed Luna Park CMP. The exemptions permit the installation of amusement devices including their modification, removal, replacement or relocation in all areas shaded blue in the site plan (replicated at **Figure 7**) provided that such works meet the following criteria:

- a) Any structure adjacent to the cliff must be a minimum of 1 metre from the cliff face;
- b) No intervention into Significant Fabric, including landscape or archaeological features, or obstruct Primary Views as identified in Section 3.7 of the Luna Park Conservation Management Plan 2019);
- c) Any required excavation is endorsed under Standard Exemption 4: Excavation (pursuant to statutory requirements) or is consistent with the Archaeological Research Design contained in Appendix E of the Luna Park Conservation Management Plan 2019.

The proposal is consistent with the terms of this exemption, and as such no further approval is required under the Heritage Act 1977.

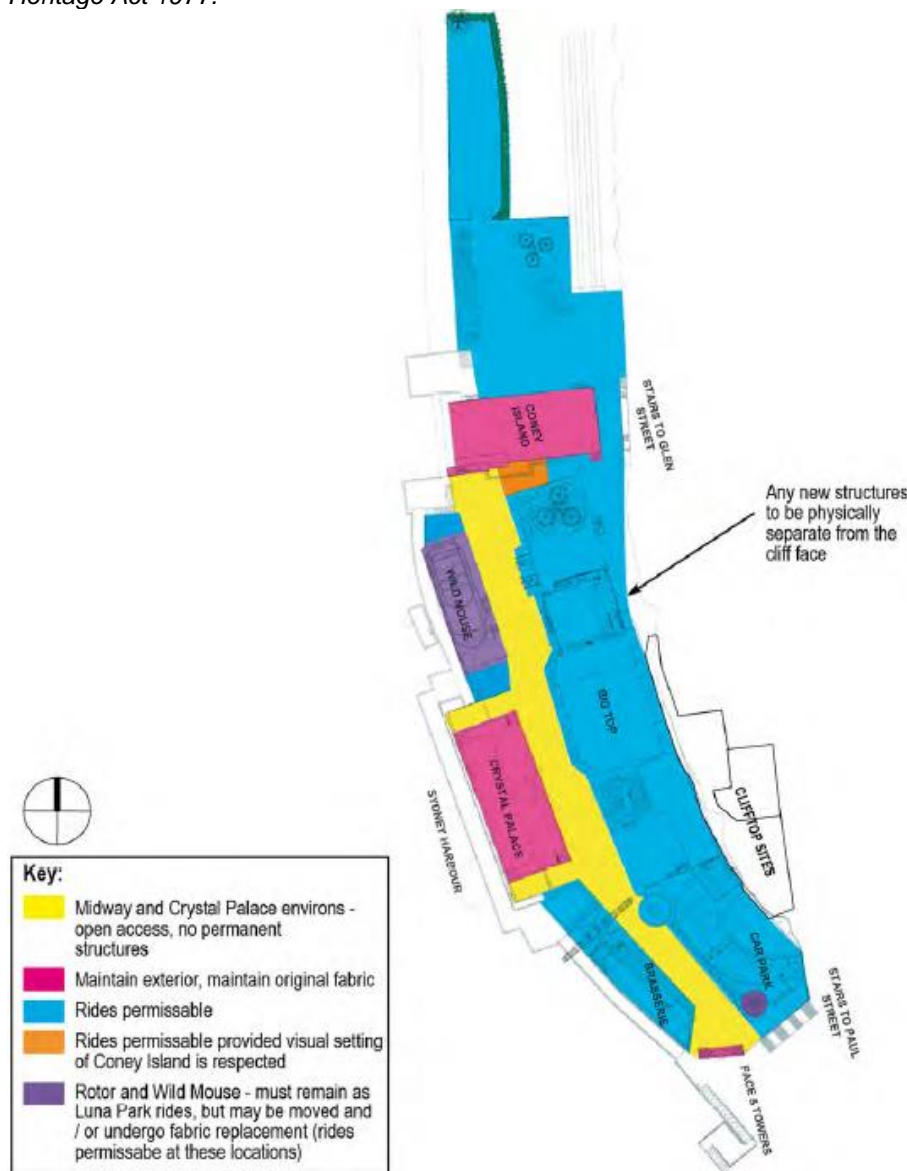


Figure 7 Site-specific heritage exemption

Source: Luna Park CMP

5.4 Acoustic impact

The Acoustic Plan of Management (prepared for the Phase E Consent, and provided for reference at **Appendix B**) establishes the broad framework for the management of noise within the Park, as well as the requirements for an annual noise review that is forwarded to the Department, North Sydney Council, and the Luna Park Reserve Trust for consideration. The Acoustic Plan of Management sets out a range of predicted noise levels from noise sources within the Park which range from 85dBA up to 125dBA.

The primary sources of noise associated with the proposed temporary rides are the occupants of the ride followed by potential mechanical noise from the operation of rides. As detailed in the Lavender Green Noise Impact Assessment at **Appendix B**, the noise emitted from the erection of temporary rides, amusement and facilities will be limited to the criteria under the Acoustic Plan of Management, which has been reaffirmed in the nominated criteria at **Table 1** of the SEE.

The use of Lavender Green will be relatively quiet when considering other existing noise sources within the park and surrounding area. The Aggregate voice sound power levels likely to emanate from the marquee, when fully occupied, are predicted to be lower than those estimated for the Ferris Wheel, while the outdoor activities are expected to be consistent with levels for the kiddies rides identified in Table 4 of the Acoustic Plan of Management.

Thus, even without the presence of the temporary rides, the noise generation from the park would still occur and the addition of the temporary rides will not result in any change in predicted noise levels for the site or locality conditions as identified in the Acoustic Plan of Management. The operational management procedures required for the operator will remain relevant to the use of Lavender Green.

5.5 Visual impact

5.5.1 Private views

The proposal has been designed in such a manner which will reduce visual impact to existing residences in Milsons Point as much as practicable. The four-step process outlined in the planning principle in *Tenacity Consulting Pty Ltd v Warringah Council* (2004) 134 LGERA 23 at 28 [25]–[29] per Roseth SC has been used as the basis for assessing the view impact. The planning principles set out in *Tenacity Consulting v Warringah* require the consideration of:

- What views are to be affected by the proposal?
- From what part of the property the views available from?
- What is the extent of the impact?
- What is the reasonableness of the proposal?

What views are affected

Lavender Green fronts Lavender Bay and as such forms part of the interface between development and views to the water. Views that could be affected include partial views to the centre of the bay from residences to the east of the site, over the rail line, within Milsons Point. No views from these residences of iconic features such as the Opera House or Harbour Bridge, located further to the south, are entirely reliant on a corridor through the site.



Figure 8 Visual impact context diagram

From what areas are the view available

From a visual inspection of the property, it is considered that the identified view corridor is available from balconies and living areas within apartments facing west. These views may be available from a standing and sitting position. An indication of the type of view available from Level 5 is shown in **Figure 9** below.



Figure 9 View looking west towards Lavender Bay from the Cliff Street apartments

The extent of impact

The extent of impact on existing views is negligible to minor.

- The majority of the building envelope that establishes the maximum extent of possible temporary rides and facilities on the site is obscured by the existing cliff line and mature trees bordering both sides of the rail line. This means that a significant portion of the building envelope is screened and will result in no visual impact to a very minor visual impact (depending on the location of trees) as shown in **Figure 11** and **Figure 12** Page 24 below). Existing mature trees that form the eastern boundary of the site will continue to grow, providing a natural landscaped buffer to the proposed works.
- The proposed rides, amusement and facilities are non-permanent, and as such any minor changes within the view corridor will be entirely reversible. Further, any rides, amusements or facilities will not occupy the full building envelope volume. There may be a few larger structures such as inflatables, whilst the vast majority of the space will be used for minor supporting structures such as kiosks, petting zoos, seating and the like and activities such as sack races, badminton etc – commensurate with the primary intended use of this area for children and families. An indicative image of how facilities might fit within the building envelope (including the existing marquee for reference) is shown at **Figure 10** below.
- The maximum height of the proposed building envelope is significantly lower than what has been applied to the remaining Luna Park site, noting that areas immediately to the south were assessed and deemed appropriate for rides up to RL 20m (6m taller) without any further assessment, and rides up to RL 40m (26m taller) through a Complying Development Certificate. The moderate proposed building envelope relative to the maximum permissible height of rides in the south of Luna Park is shown at **Figure 10** below.
- The proposed rides and facilities will also contribute to the vibrancy and overall appearance of Luna Park as a theme park, contributing to the visual interest of the site as viewed from Sydney Harbour. It supports to the existing visual character of the site – being full of colour, activity, and people. Luna Park itself is considered to be an iconic feature of views across Sydney Harbour.

Reasonableness of the proposal

The proposed works are consistent with the vision for Luna Park as a centre for rides, amusement and entertainment. Lavender Green forms part of the 'Entertainment Precinct' and is appropriate for this ongoing temporary use that is commensurate with the remainder of Luna Park. No permanent structure or changes are proposed to site, including site landscaping, ensuring its visual relationship to surrounding areas remains largely unchanged, especially when consider Lavender Green has historically been used for this purpose and the DA merely seeks to formalise this arrangement. Further, the proposed development is consistent with the relevant planning controls. The view impact is considered acceptable and the view sharing reasonable.

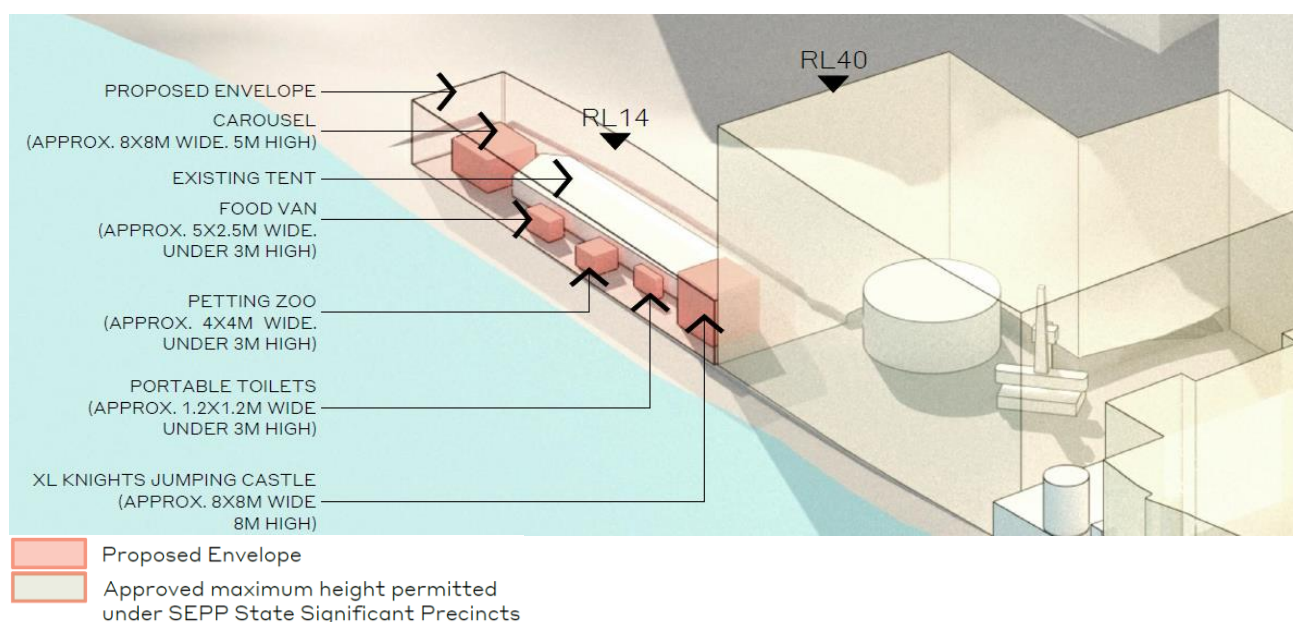


Figure 10 Proposed building envelope relative to the approved maximum height of rides across the remainder of Luna Park

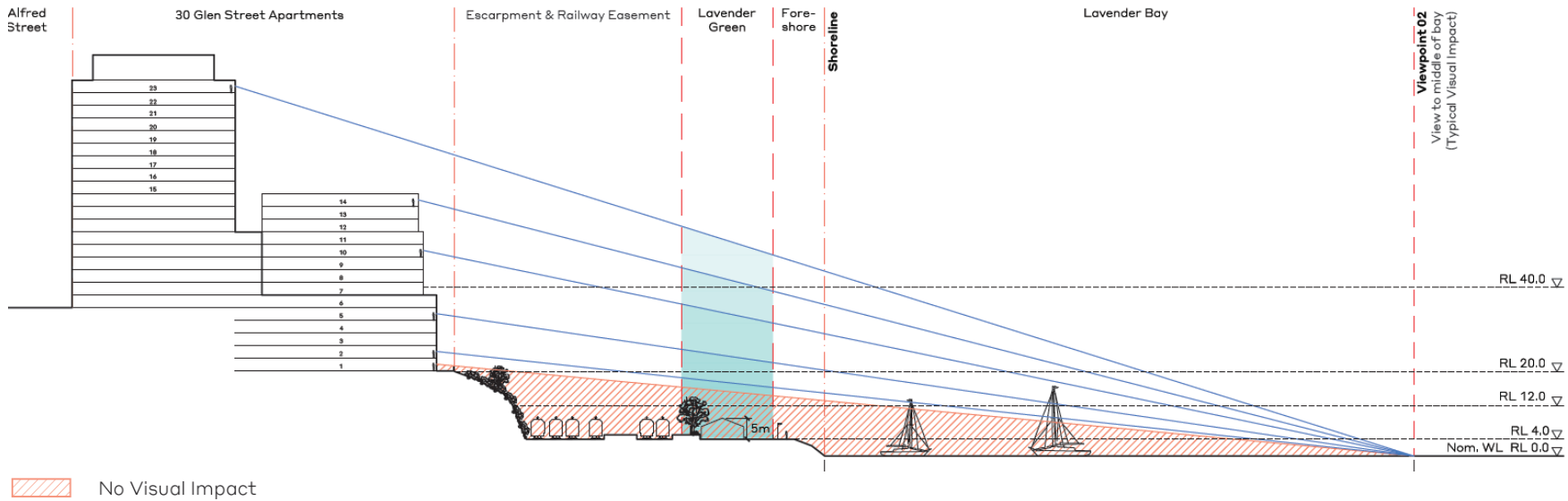


Figure 11 View corridor through Lavender Green to the centre of Lavender Bay, showing the existing marquee

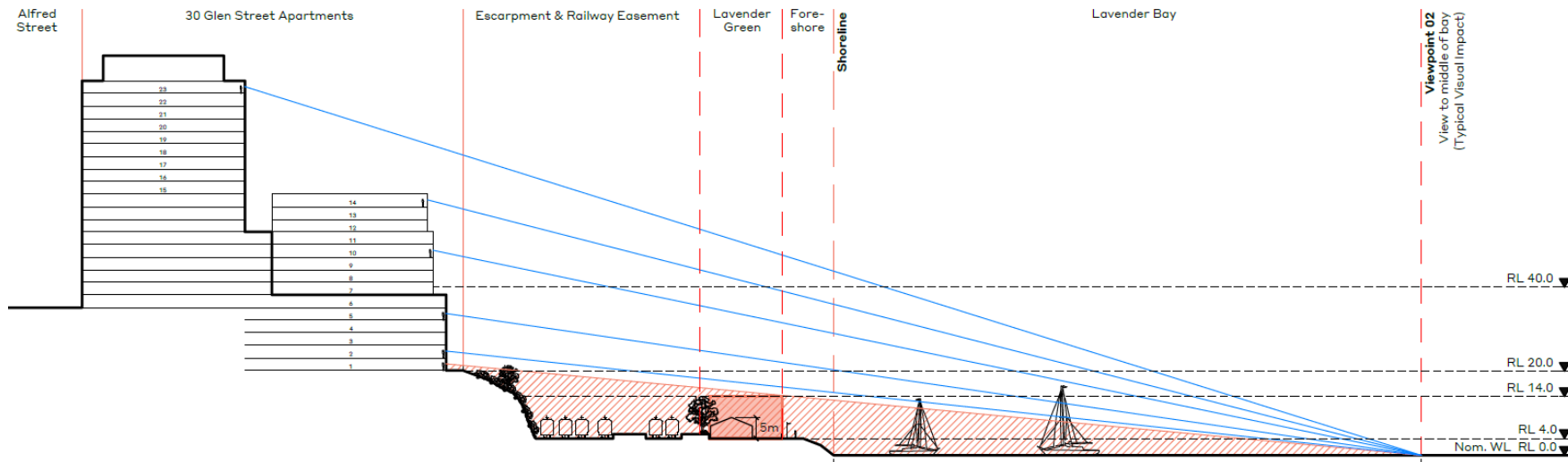


Figure 12 View corridor through Lavender Green to the centre of Lavender Bay, showing the proposed building envelope

5.5.2 Public views

The proposal also does not adversely or significantly impact views to Sydney Harbour from Watt Park and Clark Park. Views from these open space areas are influenced by changes in topography, existing vegetation, and other existing introduced elements such as boats.

The view from Clark Park (also known as Wendy's Secret Garden) is elevated above the Luna Park site and characterised by landscaping in the foreground to midground and directly screening with site, with the Harbour Bridge visible in the background. Southern portions of Luna Park and the more significant rides, such as the Ferris Wheel and Hair Raiser, form part of these views. The site is largely obscured from Clark Park, and as such the level of impact is considered to be negligible (see **Figure 13**).

The view from the Watt Park foreshore is panoramic of Lavender Bay to the Sydney Harbour Bridge, with Luna Park forming part the edge of this view. The building envelope will not obscure the Harbour Bridge, being the iconic feature within this view, and will not remove any existing site landscaping that contributes to this view. Further, it is considered that the proposed rides, amusement and facilities will contribute to the overall appearance of Luna Park as a theme park, as they support the overall existing visual character of the site (see **Figure 14**).

In addition to this, the HIS at **Appendix C** confirms that there will be no visual impact on the vista between the Sydney Opera House and Luna Park. The proposed framework relates to a building envelope at Lavender Green, which is located behind Coney Island and blocked by the building. The distance and angle from the Sydney Opera House renders any view of Lavender Green difficult, if not impossible. In addition, the amusements, rides or structures are temporary, limited in height and any potential visual impact would be reversible.



Figure 13 Indicative view from Clark Park



Figure 14 Indicative view from the foreshore of Watt Park

5.6 Lighting

The Luna Park Lighting Strategy was adopted in 2002 to inform the ongoing design and management of Luna Park, and has been observed by the operators of Luna Park since this time. The statement at **Appendix D** confirms that the installation of any additional rides, amusements and facilities can comply with the Strategy where relevant, including the key Australian Standards for which the Strategy was originally developed to address. No permanent lighting or strobe lighting is to be installed.

5.7 Traffic and parking

The works envisaged under this proposal will not affect the traffic generation of the site, over and above that already accounted for. Traffic to assemble temporary rides will be limited to one truck to transport the ride to the site, and then the removal of that truck at the completion of the period that the temporary ride is erected for. No change is proposed to existing parking and access arrangements.

5.8 Social and economic

This DA will have an overall positive social and economic impact.

- The proposed temporary works are essential to attracting visitors to the park and have been routinely installed and dismantled on more than 200 occasions over the past 12 years. This operational model supports the longevity and viability of Luna Park as a business and as a desirable destination. This DA seeks to continue this long-standing arrangement, and ensures Luna Park will be able to continue operating into the future.
- Enhancing the form and function of Lavender Green ensures more Sydney-siders can enjoy this historic amusement park, which fulfils a unique and important social function within Sydney. Many have strong associations with Luna Park that has been a destination for residents and visitors alike since 1935.
- Lavender Green is also intended to be used primarily as a children and family area, providing a new area for younger generations to experience the Park. This application contributes to and adds diversity to the traditional entertainment operations of the Luna Park site.

5.9 Site suitability

The intensification of development and changing typologies outside of Luna Park since the 1930s has resulted in a continually evolving frame of reference for development in, and the operation of, the Park. Accordingly, whilst external factors are placing increasing pressure on the operation of the Park, there has been minimal physical change to the form and function of Luna Park itself. The nature and type of development and rides at Luna Park remain largely the same. The Luna Park site has been used as an amusement park for nearly a century.

The continued use of the site for temporary rides and amusements and facilities to accommodate additional demand and attract new visitors is, therefore, consistent with this historic character and use of the site. The proposed works also do not propose any permanent change. No ride or amusement is to be installed for more than 16 weeks in any 26-week period, and no temporary footings and ground penetrations are to be installed. Rides, facilities and entertainment will operate in a consistent manner to the remainder of Luna Park.

5.10 Public interest

The proposed development is considered to be wholly in the public interest:

- The proposed framework provides certainty and direction for development, protecting the interests of all Sydney-siders as well as the operators of the Park. Any development on the site that is not deemed to be minor or as having minimal impact, would have to be considered through a separate development assessment process to ensure the ongoing protection of the Park, the Harbour Foreshore and the surrounding residents and land-uses.
- The DA provides for the ongoing economic viability of the park, which is essential to the future of this outstanding Sydney landmark. Without the proposed framework, the viability of Luna Park would be in doubt, and the loss of such a significant and unique Sydney asset would not be in the public interest.
- Further, in accordance with the object of the Luna Park Act, it is within the interest of the public for Luna Park to remain accessible and available for public use. Luna Park serves an important social function as a landmark destination within Sydney.
- There are no environmental planning grounds on which to preclude the proposed works.

6.0 Conclusion

This SEE has provided a detailed assessment of the proposal against the relevant matters under section 4.15(1) and the objects of the EP&A Act. The application is recommended for approval.

The proposed development ensures the ongoing viability of the park as a destination for the current and future people of NSW in accordance with the object of the *Luna Park Act 1990*. It provides an appropriate framework for the ongoing operation of land that is consistent with the parameters governing the use of the remainder of Luna Park, with a site-specific building envelope that defines the maximum possible extent of works. The assessment in this report and supporting technical studies confirm that the environmental impacts associate with the proposal are generally positive and will not give rise to any adverse impacts. Overall, the proposed development is suitable for the site and is in the public interest.