

Third Information Night

What is our Government planning for Lavender Bay?

REPORT – the presentation and input from our Federal and local representatives

Monday 6 March 2017 at 7.30pm

Chair:	Ms Joan Street
Elected Representatives	Mr T Zimmerman MP, Federal member Vacant, State member Mayor J Gibson, North Sydney Council
Presenter:	Mr Ian Mutton
In attendance:	236 residents 23 apologies

Venue: The Kirribilli Club, 11 Harbourview Crescent, Lavender Bay

Website: <https://www.sydneyharbourhighline.org.au/>

Meeting format

- Presentation from Mr Ian Mutton who shared the facts on important issues relating to the future of the Lavender Bay rail siding (facts obtained from various Government documents, correspondence, and the public domain).
- Federal and local representatives, Mr Zimmerman and Ms Gibson were then invited to share their views on the issues raised.
- Q&As from the floor.

Heritage train ride 12 February 2017

- very successful public event, held in conjunction with Transport Heritage NSW
- heritage train ride along the Milsons Point to Waverton rail siding,
- some 1200 people enjoyed the beauty of the area, as it passed through some of the most spectacular sights around Sydney Harbour
- many people joined the [Sydney Harbour High Line](#) Association and went into a draw to win a copy of the book on 'Wendy's Secret Garden'.
- Ms. Jackie J was announced as the winner.

Introduction

- Residents viewed an aerial video clip, taken by a drone, flying along the length of the proposed Sydney Harbour High Line, demonstrating the beauty of the area.

- The video clip formed a part of a new image library for the [Sydney Harbour High Line](#) (SHHL) website.
- Mr Mutton pointed out that the SHHL website and its attendant work required financial support.
- He acknowledged those who had joined the Association, and particularly expressed thanks to the Kirribilli Club for their donation of \$5,000, as well as the use of their premises for the meeting.

The Issue – the future of the rail line

Mr. Mutton traced the relevant recent history of the site, including the important place of Luna Park and its management. At stake was the vision of the future of the old (1890s) rail line that had nowadays diminished in usefulness to RailCorp as a place of parking of trains in readiness for peak services, but which RailCorp maintained was essential to rail services for both parking of trains and for training of railway personnel.

The future of the rail siding should be viewed in the context of population growth which would increase by some 37% over the next decade or so and thereby generate increased need for recreational space for residents.

Luna Park – history and concern

- In 2002, the Luna Park site was the subject of an agreement by the Government's Luna Park Reserve Trust to lease to Metro Edgley Pty Limited and Luna Park Sydney Pty Limited
 - part of the site used for amusement rides and the boardwalk for 40 years; and
 - parts of the site available to be used as a car park, restaurant and office block were leases with a right to be "sub-leased" for 99 years.
- It was a condition of the 2002 agreement that the amusement rides and associated facilities on the Luna Park site were to be refurbished, which they were.
- In 2004, the Government's Luna Park Reserve Trust entered into a lease with Luna Park Sydney – Metro Edgley Pty Limited had now become a member of the Brookfield Multiplex group.
- In 2010, Luna Park Sydney Pty Limited proposed changes to the lease that involved an extension of its term of 53 years.
- In 2011, the Luna Park Reserve Trust signed a memorandum of understanding (Umbrella Deed) that essentially accepted Luna Park Sydney's December 2010 proposal. The management of the Luna Park Reserve Trust supported the 2010 proposal.
- In 2013, Luna Park Sydney reported in its accounts that a new lease (referred to as the Umbrella Deed) had been documented and was waiting the requisite ministerial approval. This would allow Luna Park to develop the adjacent sites. What sites? The development sites have not been identified. The railway siding is the only Government "owned" adjacent land available for development.
- In 2016, the government reported that the Umbrella Deed would not go ahead.

More secret agreements

- In 2016, Luna Park Sydney Pty Limited's accounts to 30 June 2016 filed with ASIC reported:
 - *on 7 July 2016, the parties to Umbrella Deed agreed that it was at an end.*
 - *on 12 July 2016, it agreed to surrender its leasehold interest and development rights in respect of site "C" (Cliff top area next to Harry's Park) for \$3.2m*
- On 5th August 2016, the Hon Dominic Perrottet MP issued a press release in which he advised the Government had agreed with Luna Park Sydney to reacquire the Cliff Top area. In addition he said:

The agreement also confirms that a proposed restructure of the existing lease arrangements of Luna Park and adjacent sites, considered by the former NSW Government in 2011, will not proceed.
- Residents are curious that Luna Park Sydney reports two agreements and the Minister reports one agreement?
- Residents requested copies of the agreement(s) but these requests were declined.

On 11th November 2016, the Government advised:

- As with many commercial agreements, the detailed terms of the Deed are subject to a confidentiality clause.
- This advice is contrary to the advice given by Sir Laurence Street

In 2006 Mr Justice Street was engaged by the Legislative Council to evaluate claims for confidentiality in respect of the agreements with Luna Park Sydney. He ruled:

- *The public has a legitimate interest to have access to ... (Luna Park lease and other documents) ...*
- *The public interest in the disclosure of ... (the documents)...as part of the process is overwhelming*

Adjacent sites

Lots 1 to 4

Regarding Luna Park, there are four sites involved:

- lot 1 - the cliff top site,
- lot 2 – the car park site [the property of Multiplex],
- lot 3 – the restaurant site [also the property of Multiplex],
- lot 4 – the park site [the property of Luna Park].

The cliff top land

- In 2006 a company associated with Mrs Seidler paid \$5m for the right to build a memorial park on a section of the Cliff Top. This was done. But the contract also obliged the Luna Park Trust to carry out equivalent beautification works on the adjacent cliff top sites. This was not done.

- In October 2016, a public meeting was told by a representative of the NSW Government that the landscaping of the cliff top sites adjacent to that reclaimed by Ms. Seidler would now go ahead and the Government would be responsible.
- In addition the Government would pay \$3.2m and reacquire the Cliff Top site.

Remaining question

What, then, was the adjacent site that could be sold to repay the lease?

Was it the rail siding? This seems the only identifiable site.

Why worry?

Plan of Management DA process

The Luna Park Plan of Management requires that the Midway site (the pedestrian area) be free of buildings.

However, in 2013 the Hair Raiser ride was built on this site, unapproved.

In August 2014 residents queried the issue with Planning Minister Goward who replied:

- Luna Park will be served with “Notice of Intention to Give an Order”
 - To require the removal of the ride
- Future rides where development consent is required, the Department will exhibit any development application.

In November 2014 Luna Park made an Application to operate the unapproved ride.

Minister Goward approved the application to operate the ride.

Do Development conditions apply to Luna Park?

In 2003 the Development Consent required Luna Park to comply with Lighting Strategy and Australian Standards

In 2016 residents complained to the Department of Planning about light spill from rides in Luna Park (not the decorative lighting).

The Minister issued an order requiring Luna Park to submit a compliance report in respect of the Development Consent

In November 2016 Luna Park responded by taking the issue to the Land & Environment Court with the claim

- Consent conditions don't apply after construction”
- Minister's order oversteps the mark

In February 2017 the Minister withdrew the order.

In March 2017 we queried the position with the Department of Planning and we were advised

It is unfortunately not straightforward... there are:

a number of development consents that cover the site (some old and some more recent than are on our online system)

existing use rights that come from the original development that also overlay part of the site

(we are) looking through these consents to determine their compliance with them, and also what approval is being used to erect the temporary ride. This will enable us to determine if Luna Park is in compliance and if not what action can be taken

Removal of heritage classification

Mr. Mutton again raised the issue of the Luna Park reserve and its adjacent area. The New South Wales Government claimed that the railway line was needed for railway purposes forever. However, in 2011, in response to a rail corporation request, the heritage classification was removed for the Waverton underbridge, as it was no longer of state significance.

Why remove the heritage classification?

Wendy's Secret Garden – a garden with a use-by date

Wendy's Secret Garden is located on part of the rail siding in Lavender Bay. It is currently leased to North Sydney Council by RailCorp.

In 2016 the Government (Rail Corporation New South Wales) leased the site occupied by Wendy's Garden (a part of the rail siding) to North Sydney Council for 30 years with a 30-year option. At the time residents pondered why the garden was being leased for a limited time rather than proclaiming it a park.

Residents then became concerned when they read Clause 19.1 of the lease which states:

- i) The New South Wales Government has indicated that it will restructure the Lessor; and*
- ii) The restructure of the Lessor may result in the Lessor's assets, rights and liabilities being transferred to other government agencies.*

Hence the newly signed lease on Wendy's Garden can be transferred to any government agency, any external organisation, any developer etc.

Why not proclaim Wendy's Secret Garden a park?

Transport Administration Act 2016

The Transport Administration Act 2016 – now enables the Minister

- o to authorise the closure of any railway line
- o for the purposes of or in connection with development declared to be State significant infrastructure under the Environmental Planning and Assessment Act 1979.

How does this affect the future of the Lavender Bay rail siding?

Bottleneck

In 2012, the Minister for Transport referred to the bottlenecks on the railway system (including that at the Waverton rail siding) caused by intersections that slow the train movements.

In 2012 the Minister for Transport reported the Lavender Bay Siding:

As one of 12 key bottlenecks “on the western line” where trains have to merge tracks with other lines, wait for opposing trains to cross, or face delays due to slow boarding and alighting at key stations.

Taking trains off the main line to send them down to Lavender Bay is a time-consuming exercise taking some 11 minutes; it disrupts operations and thereby reduces the train carrying capacity of the main line. For this reason the utilisation of the siding is minimal – two trains each day being the minimum necessary to keep the track operational.

Commissioning the first section of the Metro Line will increase the number of passengers transferring from the Metro Line to North Shore Line trains at Chatswood. It is planned to increase the frequency of trains on the North Shore Line to three minute intervals (made possible with the completion of platform “0” at Hornsby to facilitate a 3-minute turnaround of trains).

Excavation of spoil from Blues Point Reserve

The next problem comes with the excavation of spoil at Blues Point Reserve for the new Metro rail line.

In particular, the issue comes from the removal of the spoil from the excavation site. This was originally slated to be removed by truck along Blues Point Road, but representation by the residents pressured the responsible authority to also consider removal by barge.

Residents pointed out that such spoil could be used to enhance landscaping of nearby parks, and in particular, it could be used for landscaping and enhancing the park area adjacent to the rail siding. It could be moved there by barge, and this would preclude the problems of removal of the spoil along Blues Point Road.

Post Meeting Note:

Since the meeting, the Government has:

- (a) announced two construction companies had tendered for the work; and
- (b) indicated that the decision on how the spoil is to be removed falls to the successful bidder.

The concern? The Government appears to be stepping back from taking responsibility. That concern will cause us to approach each bidder and seek to establish a dialogue with a view to influencing the decision on spoil removal.

We believe mobilising the community will cause the bidders to engage with residents.

Mr. Zimmerman then addressed the meeting. He gave unequivocal support for the work of the Chair and Mr. Mutton in bringing these issues to public attention, and stated that he completely supported the future of the Sydney Harbour HighLine. He pointed out the enormous potential of the HighLine for tourism in New South Wales, and said that he was supportive of the efforts of the organizing committee to work with the railway authorities in trying to secure the future of the rail siding to never be sold from public ownership.

Ms. Gibson then addressed the meeting. She said that she was impressed by the way that the community was coming out in support of this project. She congratulated Mr. Mutton on his assembly of the facts, and of the committee that had organized the commemorative train ride, noting that it would be a great tourist attraction.