



NSW Legislative Council Hansard (Proof)

Luna Park Site Amendment (Noise Control) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 18 October 2005 (Proof).

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.06 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The amendments in this Bill arise from the need to secure the ongoing operation of Luna Park.

Parliament has already legislated twice to ensure the survival of Luna Park:

In 1990 by adopting the Luna Park Site Act to provide for its future management by the establishment of the Luna Park Reserve Trust. Luna Park was vested in the Crown and dedicated for public recreation, public amusement and public entertainment, and

In 1997 by amending the Luna Park Site Act to broaden the range of land uses permissible at Luna Park and to allow use of the cliff top sites for commercial activities.

Both sides of the House supported the need for legislation to protect Luna Park and I trust these further amendments will also be supported. Luna Park first opened in 1935. It was built on the construction site for the Harbour Bridge to honour and thank the workers involved in the Bridge construction.

It provided a much needed playground for Sydneysiders during the Great Depression years.

At various times the famous lights of the Luna Park Face, Coney Island and Crystal Palace have been in darkness— sometimes for years. But Luna Park has survived against, at times, seemingly hopeless odds.

It says much about the nature of Sydney as a city that an amusement park can be established, thrive and be revived on such an important and valuable harbour site.

The Park has had a successful reopening in April 2004, and the Park is now in its 70th year.

On 5 April 2005, four plaintiffs commenced action in the Supreme Court alleging that the operation of Luna Park constitutes a "nuisance". The plaintiffs have sought orders to stop the operation of three permanent and two temporary outdoor rides at Luna Park and to seek damages from the operation of the rides.

The core of the current action is directed at noise created by the patrons at Luna Park—the thrill and pleasure screams fundamental to a fun park.

I am advised that Luna Park is operating within its conditions of development consent.

No one has claimed they are in breach of their development consent.

The current action claims that the noise being made by Luna Park is a "nuisance", notwithstanding the Park has been operating in accordance with its development consent.

Luna Park is authorised to operate as a place of public entertainment by an Act of Parliament and it is the subject of a number of development consents which dealt with the emission of noise from the premises.

Despite these specific authorisations which allow it to operate as an amusement park there remains a risk that Luna Park could be the subject of successful legal action as a result of the noise which is emitted.

Although there is a good argument that such authorisations and the development consents will provide a defence to any action, this is by no means certain.

This ongoing uncertainty, however, is affecting the operation of Luna Park.

What is at threat here is not the operation of the modern facilities at Luna Park like the Big Top or the cafe brasserie; what is at risk is the fundamental operation of Luna Park as a fun park.

Already, those seeking to use Luna Park's facilities for functions and other events are expressing concern about the future operation of the Park as a result of the ongoing uncertainty around noise issues.

The aim of this Bill is to provide certainty for the future in relation to the emission of noise so that the operations of the Park will be protected.

This Bill creates legislative certainty for the operators of Luna Park and the residents in the area by providing that legal proceedings may not be brought in respect of noise levels being emitted from the Park, provided that the noise being emitted is within the prescribed maximum noise level.

This level provides that noise from any activity cannot exceed 85dB(A).

I am advised that since its reopening in 2004 Luna Park has been operating below this level, however a buffer is required to take into account peaks in noise levels (such as screams from people on rides or weather conditions).

It is anticipated that if levels reach 85dB(A) these will be momentary—that is the maximum permissible noise level will not be sustained for extended periods of time. The maximum permissible noise level is only likely to be reached as a result of screams from patrons on rides and not by the mechanical operation of the ride. To ensure that this is the case, the Bill stipulates that the maximum permissible noise level of 85dB(A) must not occur for longer than 15 minutes.

The Bill also specifies how and where noise will be measured.

In addition, the Bill provides that noise from the Luna Park site that does not exceed the maximum permissible noise does not constitute a public or private nuisance. This provision protects the ongoing operation of Luna Park and has precedents in the Olympics Arrangements Act 2000 and the Mount Panorama Racing Act 1998.

So long as Luna Park is operating within the specified noise levels, no criminal, civil proceedings or noise abatement action may be taken with respect to noise emissions at Luna Park.

If noise levels from Luna Park exceed the maximum noise level, complainants may still be able to take action against the Park.

I should also point out that where the development consent for Luna Park deals with the issue of noise, those standards will continue to apply and action can be taken under the Environmental Planning and Assessment Act to enforce those standards. For example, this means that noise emanating from internal spaces must not exceed 60dBA.

The Bill also includes provisions which deal with the emission of noise from the Park since its reopening on 4 April 2004.

These provisions address the existing uncertainty in the law as to whether Luna Park is protected from an action in nuisance in respect of noise emitted from the Park, even though to date it has been operating as authorised by its development consent as an amusement park which necessarily involves the emission of noise.

These provisions will apply to proceedings which have already been commenced but which have not yet been determined. It will also ensure that any injunction granted prior to the commencement of the Bill does not affect the operation of the Park if the noise level is within the maximum prescribed noise level.

This aspect of the legislation is necessary to ensure that the past operations of Luna Park and the uncertain state of the law does not jeopardise the Park's future viability. As I have said before, I am advised that Luna Park has been operating in accordance with its development consent.

This Bill is consistent with action taken in March 2005 under the Protection of the Environment Operations Act 1997 which protected the operations of Luna Park against noise actions if the Park was complying with its conditions of development consent.

The Bill goes one step further than that Regulation by effectively specifying a maximum noise level for the outdoor areas of Luna Park rather than relying on the provisions of the Luna Park Acoustic Plan of Management.

The Bill is also consistent with the Government's commitment and actions to return a viable Luna Park to the people of Sydney for their ongoing enjoyment and at no cost to the NSW taxpayer.

I trust Honourable Members will support the preservation of Luna Park as a Sydney Harbour icon along with the Harbour Bridge and the Opera House and as an ongoing heritage funfair for Sydney's children and for the adults who remain children at heart.

I commend the Bill to the House.