

CONCILITATION CONFERENCE

MONDAY 7 SEPTEMBER 2009

- PROPOSAL:** A high wire rope adventure course
- PROPERTIES:** Lot 45 DP 748695, Lots 836 & 910 DP 752028, Lot 7063 DP 1070983 and Lot 7062 DP 1070987
Bidjigal, Excelsior and Ted Horwood Reserves, Cnr Park and Renown Roads, Baulkham Hills
- FILE NO:** DA 36/2010/HA
- ATTENDEES:** Councillor Justin Taunton (Chairperson)
Councillor Barbara Burton
Councillor Andrew Jefferies
Mr Cameron McKenzie (Group Manager Environment and Planning – THSC)
Mr Paul Osborne
(Manager Development Assessment – THSC)
Mr Adam Dean (Senior Town Planner – THSC)
Mr Michael Ledzion (Applicant)
Mr Ian Glendinning
(Consultant planner on behalf of applicant)
Mr Mark Couston
(Flora & fauna consultant on behalf of applicant)
Mr Rodney Stevens
(Noise consultant on behalf of applicant)
Residents
- APOLOGIES:** Councillor Larry Bolitho (Mayor)
Councillor Peter Dimbrowsky (Deputy Mayor)
Councillor Tony Hay
Councillor David Bentham
- START:** 7:00pm **FINISH:** 9:45pm

COMMENTS

Following a welcome and introduction by the Chairperson, a brief explanation of the proposal was provided by Council's Group Manager Environment and Planning.

The Chairperson invited the residents to comment on the proposal and the following issues were raised:-

BUSHLAND IMPACTS

- The Bidjigal Reserve Trust has recently gone to tender for consultants to provide a plan of management for the Bidjigal Reserve. The tender closed on the 4th September 2009 and must be evaluated. The management plan must then be written and approved. This proposal should not be considered by the Trust or Council, until this plan is completed. The objectives in point 3d of the tender call for the plan to identify opportunities for, and constraints on future development of the Reserve based on the outcomes achieved.
- 77 trees will be removed and will not be replaced.

- The developer advised at a site meeting on 22.8.09 that a large elevated platform is proposed on the western side of Darling Mills Creek as a landing area for the twin zip wires. The zip wires will be anchored by bolts to a large cliff on the eastern side of the creek. The zip wire will impact upon trees and plants. Details relating to construction of platforms, bolting damage to rock cliffs, additional tracks for safety and maintenance access and safety handrails are not set out in the application.
- Palisade fencing should not be put around mature trees.
- In other Go Ape courses *over 70% of the course has been relocated*. Given that 77 trees and more than 1700m² of habitat have to be removed for the course how many more will go when the course has to be relocated?
- The application also states that 'branch pruning of trees will be required at various locations' – this is a totally inadequate statement, what does this actually mean and what impacts will it have? What trees will be pruned?
- The plans do not clearly depict the location of new walking tracks. A track layout should therefore be developed for approval.
- The Statement of Environmental Effects states, "Bidjigal Reserve is undeveloped and will be retained in its natural state. All of the proposed structures are reversible – that is they can be readily removed if required". This should be a requirement, including removal of tracks and restoration and planting local provenance trees and plants. A bond or surety sum of money should be held by the Trust Board for such remedial work.
- The proposal fails to comply with SEPP 19 Bushland in Urban Areas which states "*A consent authority shall not consent to the carrying out of development unless, (b) It is satisfied that the disturbance of the bushland is essential for the purpose in the public interest and no reasonable alternative is available to the disturbance of that bushland.*"
- Council's leaflet, *The Great Outdoors* states, "Bushland Reserves are managed by Council for the protection of native flora and fauna and for recreation activities such as bushwalking, picnics and environmental education". Does the Go Ape proposal meet the above?
- Council's leaflet, *Bush Neighbours – Do you live next to a reserve?* states "Tread gently in the bush – It's great that people want to visit and enjoy our reserves, but too much "people traffic" can cause soil compaction, erosion and damage to regenerative plants. By keeping to formed tracks, you can avoid most of this damage". Observers of participants will wander over the site looking for the best photo opportunities of the climbers, they will want to walk under the entire course with their friends/ family. Destruction of native plants is therefore inevitable.
- Where will rehabilitation works be undertaken?
- What is stopping visitors who aren't allowed to go beyond the 'visitor area' going around to Larra Crescent and filming from the eastern side of the Reserve?

The applicant responded that:

- The proposal is not dissimilar to a bushwalk, just up in the trees. That it attracts people to the bush who aren't necessarily people who spend much time in the outdoors. It will allow them to appreciate nature and have an adventure.
- 30,000 people are expected each year which is 80 per day. About 4 people will be in each car which equates to 20 cars per day. School groups are expected during the week, families on weekends.
- School holidays and weekends are the busiest times.
- The cabin will be the meeting point. Here an explanation will be provided to the participants regarding where they are, the significance of the area and aboriginal heritage.
- Customers will go around the course in groups. Maximum 1-3 people per group will be in the air at anyone time.

- The bush is for everyone not just residents adjoining the site.
- The walking tracks proposed total about 1km.
- Go Ape is committed to net environmental gain, the proposal is environmentally positive.
- An ecologist and arborist were engaged before the site was selected.
- 77 trees does sound like a lot and that he would prefer not to remove any trees. The figure of 77 is misleading, only 3 have a diameter greater than 50cm and 15 are dead.
- The 2:1 rehabilitation works proposed will mitigate damage to the bushland.

Mr McKenzie responded:

- The area to be rehabilitated hasn't been identified. This is one of the many issues that is required to be addressed.

Councillor Taunton responded:

- If the development is approved the area to be rehabilitated will be clearly identified.

FLORA & FAUNA

- The Flora & Fauna Assessment acknowledges that the loss of hollow tree branches is a key threatening process. Further it states that the scope of the development will not be a significant process providing that roosting boxes are provided. A minimum of 8 roosting boxes are nominated, no maximum is set. What species box designs are allowed? What controlled study confirms this assessment? What study has determined the effect on nocturnal habitat and breeding given the close proximity of possible screaming and loud calling by participants?
- The Flora & Fauna Assessment findings that the Powerful Owl foraging habitat will remain does not consider the fact that at best only one or possibly two pairs remain in Bidjigal/Excelsior Reserves areas. Any loss of foraging is therefore a threatening process.
- The Flora & Fauna Assessment report states that *Epacris purpurascens* was not recorded in the subject area. This has subsequently been found to be incorrect. The plants will be under direct threat from the course.
- The application acknowledges the limitations of short term fauna surveys and also describes the methods used as opportunistic with obvious shortcomings. The threatened plant species purple heath is within the area to be cleared. This was not identified in the application.

The applicant responded:

- When the application was lodged he wasn't aware of the presence of *Epacris purpurascens*. He will look into this matter further and "work around" the plant(s).

TRAFFIC & PARKING

- Appendix 1 of the Statement of Environmental Effects states there will be an additional 30,000 visitors per annum to Ted Horwood Reserve, this will cause an unacceptable increase in local traffic and parking problems to Ted Horwood Reserve and the surrounding area.
- The traffic and parking assessment report is flawed. The report contains a count of available parking places on Saturday 20 June 2009 and states that for a significant part of that Saturday there was plenty of available parking in the Ted Horwood parking area. A check with Baulkham Hills Football Club show most games were washed out that day due to rain, hence the parking figures are skewed.

- There are no spare parking places on most weekends, the parking is currently insufficient for current users.
- Access to parking at Ted Horwood is from two locations. One is off Renown Rd for the southern car park. This part of Renown Rd is a Federally recognised Traffic Black Spot. A high concrete median strip in the centre of Renown Rd finishes just short of the car park entrance. Due to the steep hill and bend westbound on Renown Rd, cars stationary waiting to turn right into the southern car park are not visible to other westbound traffic until the last moment. Most visitors to the development will access the site via Renown Rd as it is a main road, and will significantly add to the danger of serious accidents as they attempt to turn right into the car park.
- Both sides of Renown Rd adjacent to Ted Horwood is either No Stopping or No Parking.
- The northern car park is accessed off Park Rd. Due to traffic problems at this access point, a median strip has been installed adjacent to the driveway so cars cannot make a right hand turn into the car park. The whole of Park Rd adjacent to Ted Horwood is signposted either No Stopping or No Parking.
- Residents to the west of Ted Horwood in Park Rd, Reppan Ave and Witonga Crescent know how busy their local streets are every weekend with parents bringing children to sport. This proposal will only add to the difficulties in these streets as more people are forced into the local streets with the influx of vehicles into the Go Ape development.
- Barclay / Renown Rd is a very busy road. Every morning and afternoon the traffic in Barclay Rd is bumper to bumper. Thousands of additional vehicle movements to this already congested road is inappropriate and just plain dangerous.
- The report contains traffic figures for Barclay Rd that are over 4 years out of date.
- The developer stated during a site visit he expected occasions where the car park would be full and people would be told to park off site and be bussed in. There is very limited bus access to the site.
- Only recently there was a Hills bus stuck on the driveway to the southern car park and Renown Rd was blocked for hours while a retriever was brought in to move the bus, causing traffic chaos.
- Similarly there will be problems for buses accessing the northern car park as the width of the entrance track from Park Rd near the tennis courts is barely wide enough for cars, let alone buses.

The applicant responded:

- The car parks are empty during the week.
- A 15 seater bus is an option.

NOISE

- The noise assessment report is flawed, both in the methodology followed and in the assumptions it uses. Its numerous flaws systematically bias the result in a way that allows the report to reach a conclusion which is incorrect.
- The report sets out to follow the methodology recommended in the NSW Industrial Noise Policy (INP). This is an appropriate methodology. However, in practice the report departs from this methodology at numerous points.
- The report's flaws fall into three main categories. The first relate to establishing the level of background noise, which is systematically overestimated. The second relate to the predicted noise from the proposed facility, which is systematically underestimated. The result is

that the two estimates coincide in the range 43-55 dB(A), allowing the conclusion that there will be no noise impact. Finally, the report also fails to properly identify and consider all of the nearby sensitive receivers of noise from the proposed development.

- The background noise logger was located in completely the wrong position. It should be located to measure the background noise at the most sensitive receivers (in this case, either in the valley or at the nearest houses on either side of the valley).
- The INP provides detailed instructions about trying to make sure extraneous noise sources are excluded from the background assessment mentioning things as noise from sporting events, traffic noise, wind and rain. Why was the background noise logger placed in a location where all of these noises are certainly included in the measured background noise. During the assessment period it was windy and rainy, there was a full weekend of soccer on and the logger was located in the centre of a clump of trees (all against the recommendation of the policy).
- The report identifies the nearest affected residences as being located in McGee Place. However, the Policy requires that it is not the nearest residences but the *most affected locations* which should be assessed. McGee Place residences are screened from the proposed facility by the hill and the intervening forest. The houses across the valley in Larra Crescent – which will have the main zipline 100 metres from the backyards, are ignored.
- Also ignored is the sound environment in the valley itself, even though it is regularly used by many people and such environments are recognised by the INP as being sensitive.
- In assessing the predicted noise from the proposed facility, the noise assessment study contains further systematic flaws. The only noise sources considered were shouted conversations of participants and car movements in the carpark. There is no mention of screaming, or the noise of the zipline. Yet these are the dominant feature of the noise in the YouTube videos showing Go Ape facilities operating in the UK.
- The noise report assessment has overlooked chapter 4 of the Policy – “Modifying Factor Adjustments”. These aren’t mentioned anywhere in the noise report. These modifying factors consider the nature of the noise – tonality, impulsiveness, intermittence and so forth. The chapter sets out the adjustments to be made to the predicted noise levels at the receiver. The recommended corrections for tonal and impulsive noise are each 5 dB, so 10 decibels can, and should, be added to the predicted noise levels at nearby residences.
- Bushwalking is very popular along the Murra Yanni track which follows the Darling Mills Creek. This peaceful walk will be interrupted by screaming and yelling participants on the zip wires overhead.
- Residents in Larra Crescent can hear a tennis ball hit on the tennis courts in Ted Horwood Reserve.
- One resident who has been taking school aged girls on outdoor activities for over 25 years indicated that they make a lot of noise when they are outdoors.
- Why wasn’t the noise logger placed in the bottom of the valley? It is quiet down there and noise echoes through there.
- The hours of operation are too long.

Councillor Taunton asked why the logger was positioned where it was.

The applicant responded that:

- Youtube videos are taken with a microphone directed at the noise. This noise will not be heard away from the zip wire.
- The hours of operation will be generally 8am – 5pm.

Mr Stevens responded:

- That he didn't write the Noise Assessment Report however he did sign it.
- The report is based on the worst case scenario.
- "The noise generated will be well below background noise. I'm not saying that you won't hear it, just that it will be below the background noise."
- The zip wire is below a 35m high barrier.
- That the location selected for the noise logger was the correct location as is "typical of everybody" that it is "relevant to all residential areas". The logger is used to measure the average lowest minimum noise levels. The background noise level was found to be 42dBA which is quieter than normal background residential noise.

Mr McKenzie responded:

- If Council were of a mind to approve the application, noise could be conditioned to a certain level with a further review/ report being undertaken within three months, and separately within 12 months from the issue of an occupation certificate. The review would include details verifying that the noise control measures as recommended in the acoustic report submitted with the application are effective in attenuating noise to an acceptable noise and also specify any further noise attenuation measures that may be required in the case that offensive noise is being caused in order to mitigate impacts. The operator would be required to implement these measures within a timeframe specified by Council.

GENERAL

- The application is flawed, containing incomplete information and it should be refused.
- The Bidjigal Reserve is zoned 6(a). open space under the Baulkham Hills Local Environmental Plan. The plan defines an amusement park as a place where mechanical entertainments are permanently situated. This development is an amusement park under the definition and amusement parks are prohibited in land zoned 6(a). This development application should be refused.
- Public assets should not be used for a private operator to reap rewards.
- The development application does not provide enough information on how the development will be planned and managed.
- The application does not document the boundaries of the development or course. This can allow the course to be moved further into surrounding bushland. The reception cabin is only shown approximately. On different drawings it is shown in different locations.
- Why didn't Go Ape select a site away from residential properties?
- Who takes responsibility if some trespasses onto the Go Ape facility and is hurt?
- Why weren't more residents notified?
- Can the following be banned from the Reserve? - buck's parties, backpackers, alcohol and large buses.
- How will participants be contained/ restricted?
- Is Go Ape an Australian owned company? If not where will the profits be going?
- Will there be lighting installed on the trees?
- Where does the community benefit come from?
- This development is an adventure course not a naturalist tree top walk.
- A risk assessment should be done to determine the viability of the course.
- The impact of the development on future generations should be considered.

Mr McKenzie responded:

- Regarding the issue of liability, the cabin and course are not on Council land. The land is Crown land. The Crown and the operator would need to sort out issues relating to liability.
- Forty one adjoining residents and relevant interest groups such as 355 committees were notified of the proposal. Council is trying to avoid neighbour input, we embrace it. The Hills Shire Council is the only Council which holds Conciliation Conferences.
- If coaches were found to be inappropriate they could be banned. Attendee numbers can be restricted by way of condition of consent and requiring the applicant to keep a log of attendees.

The applicant responded:

- Regarding trespass and injury, we will take out an insurance policy. We go to extreme lengths to secure the course including taking the ladders up at night.
- We are encouraging people to get outdoors. There is a huge community benefit.

Councillor Taunton responded:

- Regarding notification, Council can't notify every everyone. We are always revisiting and reworking our policies.
- Regarding bans, we can't ban/ discriminate against certain groups of people such as backpackers.

Mr Cameron responded:

- Regarding notification Council cannot notify the whole Shire. The system does work, we have over 200 people here tonight.

BENEFITS OF PROPOSAL

- High ropes adventure courses are fantastic, kids will love them. We should try to find some way of approving this.

CONCLUSION

The meeting concluded with:

Councillor Burton:-

- Thanking everyone for attending and making submissions to Council.
- Recognising the residents are very concerned about the application.
- Asking the applicant if he was willing to amend the application having heard the residents' concerns.

The applicant responded that he would address the concerns raised by Council.

Councillor Jefferies:

- Advising he has an open mind and a number of concerns and will reserve his decision on the application until such time as a report has been prepared by Council staff addressing all the issues.
- Thanking everyone for attending the Conciliation Conference.

The Chairperson thanked the attendees and advised that:

- The concerns raised by residents at the conference and in their individual submissions would be addressed in a report prepared by Council's Senior Town Planner.

- The report would be referred to Council's Development Assessment Unit for consideration. Three Councillors are required to have the report considered at a full Council Meeting.
- Notes of the meeting will be provided to all attendees who signed the Attendees Register.