

Double Bay Residents' Association Inc

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The General Manager,
Woollahra Municipal Council,
PO Box 61,
DOUBLE BAY NSW 1360.

15th February 2021

Dear Sir,

DA 355/2019/1 14, Cross Street, Double Bay

We have inspected the drawings and reports filed for the Applicant in support of this DA for a five storey shop top housing development on the above site. Our Association and its over 300 resident members oppose the grant of consent to this DA. If approved it would create a gross overdevelopment in breach of Council's LEP 2014 development standards and the fine-grained set of controls in its DCP 2015. We submit it should be rejected on the following grounds:

1. **Inadequate/incomplete documentation;**
2. **Excessive Height;**
3. **No sustainable clause 4.6 request in respect of the breach of the Height standard;**
4. **Excessive Bulk/FSR;**
5. **No sustainable clause 4.6 request in respect of the breach of the FSR standard;**
6. **Breaches of SEPP 65/ the Apartment Design Guide;**
7. **Breaches of the Woollahra DCP 2015;**
8. **Inadequate and dangerous parking provision;**
9. **Rooftop patio issues;**
10. **Non-compliance with WLEP cl 6.1 – Acid Sulphate Soils.**

We address the above issues in turn below.

1. Inadequate/incomplete documentation

We are conscious that there was communicated to Council at an earlier stage a different design for the subject site which never reached the stage of public notification to our records. However, the present development application as reflected in the drawings entitled "Replacement Application - Amended Architectural Drawings" of 20 November 2020 as exhibited on the Council's website should be a complete set of drawings such as could be the subject of a valid development consent. We have the following difficulties with them:

- (a) They still bear the date "11/06/19" without clear revision letters;
- (b) There are three section drawings entitled respectively Proposed Sections D-D, C-C and A-A but on none of the floor or roof plans is there any indication of those section locations;
- (c) There are no shadow diagram drawings;

- (d) The drawings do not show the existing ground level from which height is to be measured for cl 4.3 purposes.
- (e) There are no drawings or specifications of the building's proposed finishes.

In addition, the building as shown in those drawings clearly breaches the Height standard for the site under cl 4.3 of the Woollahra LEP and the FSR standard under cl 4.4. Accordingly, the development as reflected in those Amended Architectural Drawings requires, to be capable of the grant of consent, clause 4.6 written requests relating to the building as shown in those drawings. Yet no such requests, according to the Council's website, appear to have been filed. The fact that requests may have been filed in relation to a now abandoned design back in 2019 is not sufficient.

2. Excessive Height

As already noted under "(d) in section 1 above, the drawings do not disclose the natural existing ground level from which height is to be measured for cl 4.3 purposes. It is clearly lower than the proposed ground floor finished height which is raised presumably for flood purposes. Assuming it approximates to the kerb level of RL 2.98 shown on Cross St on drawing DA 3.102.04 and the top of the roof structures is at RL 20.95 as shown on the same drawing the height is 18m.

Under Clause 4.3 of the LEP with its accompanying height map the maximum allowable height on this site is 14.7m. The proposed height of 18m is in excess of 22% over the LEP's maximum height limit. Absent a successful clause 4.6 request it cannot be approved.

3. No sustainable clause 4.6 request in respect of the breach of the Height standard

Our first submission has already been made in the last paragraph under section 1 above, namely that no clause 4.6 written request has been filed in respect of the development shown in the "Replacement Application – Amended Architectural Drawings" exhibited on Council's website. Clause 4.6(3) provides that development consent "must not be granted" unless the consent authority has considered a written request from the applicant seeking to justify the contravention by demonstrating the matters set out in sub-paragraphs (a) and (b). Since no such request has been filed in respect of this development, consent must not be granted.

The following submissions are made only if the Panel were against our primary submission made in the previous paragraph.

The decisions in *Four2Five P/L* and *Initial Action* have made it clear that an Applicant has to satisfy the consent authority:

- (a) That compliance with the four storey height limit is unreasonable or unnecessary in the circumstances of the case. The first and most commonly invoked way is to prove that notwithstanding the non-compliance the objectives of the development standard are achieved.

This is a double hurdle as explained by the Chief Judge at *Initial Action* at 26. Firstly, the consent authority must be satisfied the applicant has adequately addressed this issue (cl 4.6(3)(a)). Secondly the consent authority must itself be satisfied that the objectives of the height standard are achieved notwithstanding the non-compliance (cl 4.6(4)(a)(ii)). AND

- (b) That there are sufficient environmental planning grounds to justify the contravention – again a double test (cl 4.6 (3)(b) and cl 4.6 (4)(a)(ii)). AND
- (c) That the development is consistent with the objectives for development within the relevant zone (cl 4.6(4)(a)(ii)). Again, the focus is on the element of the development which contravenes the standard (*Initial Action* at 24).

Accordingly, we will address each of these points starting with the whether the applicant meets objectives of the height standard (cl 4.6(4)(a)(ii)).

The first Objective of the 4.3 Height of Buildings in the Woollahra LEP is:

“(a) to establish building heights that are consistent with the desired future character of the neighbourhood”.

The desired future character of Cross Street is specifically set out in words at D5.4.7 of the Woollahra DCP, along with associated diagrams from the same section, and D5.5.8 Control drawing 4, to be read with 5.6.3 Urban Character on the same page. The desired future character of Knox Lane is set out in words with accompanying section drawing in D5.4.9, together with the same Control drawing 4 as referenced above. The desired future character of “The Lanes” as specified in D5.4.8 is also relevant to this development. In *Zhang v Canterbury Council* (2001) NSWCA 167 in NSW Court of Appeal held that a DCP has “to be considered as a “fundamental element” in or a “focal point of the decision-making process”” (Spigelman CJ at 75) in assessing development applications.

First, in terms of height along Cross Street the maximum building height is limited to 4 storeys or 14.7m. There is a height limit of two storeys along the Knox Lane frontage with the qualification that: “Each development site may be permitted to build to 4 storeys on 50% of the Knox Lane frontage if it is interspersed with 2 storey development” (as indicated on the D5.4.9 Knox Lane section drawing). The proposed top floor is inconsistent with the desired future character of both Cross Street and Knox Lane and should not be there. The additional height decreases the visual connections between Knox and Cross Street, oppressing not enhancing pedestrian connectivity. The development is inconsistent with the desired future character height-wise on both street frontages.

Next, in regards to setback, the Cross Street frontage requires a 3.5m setback on the fourth floor (D5.5.8 Control drawing 4), but the Applicant proposes a zero setback at this level. The Knox Lane frontage requires under the DCP a 2m setback (D5.5.8 Control drawing 4) on the ground and first floors so as to “expand the public domain at street level and improve pedestrian amenity” (D5.4.9 Knox Lane). The application provides no such amenity with the setback on ground and first floors varying between nil and 1m. This 2m setback along Knox Lane should be continued through floors 2-4 to further improve the amenity to the public domain. However, the Applicant has failed to provide any such setback developing along the site boundary.

Thirdly, a building articulation zone depth of 2.5m has been established by the control drawing 4 along Cross Street, with all levels above ground floor allowed to have “up to 40% of the articulation zone may be internal or external space”. According to the modified DA drawings (DA 3.100.05 and DA 3.101.05) 79% of the articulation zone is either internal or external space on floors 1-4. Only on the impermissible fifth floor has the articulation requirement has been observed.

In relation to The Lanes desired future character, D5.4.8 says it is to “*Improve pedestrian amenity by providing adequate footpaths, limiting the width and numbers of vehicle crossovers, setting buildings*

back on one side and preserving natural daylight to the lanes.” However, the proposed development breaches each of these desired characteristics listed within this part of the DCP. The proposed development is within a high pedestrian activity area in terms of Knox Lane and Goldman Lane being situated 4m from a pedestrian crossing. Rather than increasing the footpath with the designated setbacks as discussed above, the proposed development has utilised a wide garage entry 10.3m (see drawing DA 1.100_08) disguised as an art piece, which will risk cars reversing out into Knox Lane at multiple points. Particularly in the case of cars reversing out from the extreme western and eastern parking spots there is a serious risk of cars reversing into pedestrians walking along Knox Lane or colliding with vehicles driving down that lane.

Whilst it is true that the building is lower than its neighbour to the west (16-18 Cross Street) which was approved under the earlier 1995 LEP which had no Height standard (and in the teeth of a staff recommendation for refusal and the opposition of this Association), the predominant development around this property to the east and opposite is two storey. Moreover, unlike its neighbours to the west, this is a tiny site with a site area of only 335.4m², barely half the size of a house block. In such circumstances the desired future character requirements of the DCP should be upheld and the development as we have seen is profoundly inconsistent with those requirements.

Objective (c) of the Height standard is:

“to minimise the loss of solar access to existing buildings and open space.”

As noted under section 1 above, the applicant has not provided shadow diagrams for the development for which consent is now sought. The only shadow diagrams provided on the Council website are for an earlier proposed development and are for 9.00AM, 12.00PM and 3.00PM for June 21st and the equinox. It is clear from those earlier shadow diagrams that new shadow will cast over the following properties and areas of the public domain:

- 9-11 Knox St will lose morning sun to north facing windows and entrance;
- 7 Knox St will lose winter morning sunlight to north facing windows and will also lose morning sunlight to entry at the equinox;
- 5 Knox St will lose winter morning sunlight from north facing windows
- 3 Knox St will be impacted by a decrease in solar access in winter between 12.30-3PM;
- 10 Cross St will lose afternoon solar access enjoyed by its occupants and patrons;
- Knox Lane will lose morning and afternoon solar access impacting the ability to activate the laneway;
- The northern entry to Goldman Lane will be impacted by overshadowing midday in winter;
- The southern side of Cross Street will lose solar access at the equinox between 2.00PM-3.30PM;
- The frontage of 12 Cross St be impacted by a loss of solar access between 2.00PM-3.30PM at the equinox.

The proposed development is accordingly inconsistent with objective (c) of the Height standard whereas a building complying with the Height standard and the DCP set back requirements would not have the overshadowing impacts we have identified.

Objective (d) of the Height standard is:

“to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion.”

There will be significant visual intrusion and view impacts to 3 Knox Street’s private open space (balconies) and habitable rooms (bedroom/living).

In relation to overshadowing, properties along Cross Street, Knox Lane and Goldman Lane will be impacted. The proposed development will remove morning sun from the retail frontages along Goldman Lane and the afternoon sun to the front of 12 Cross Street. The following nearby properties will be affected by overshadowing:

- 9-11 Knox St
- 7 Knox St
- 5 Knox St
- 3 Knox St
- 10 Cross St
- 8 Cross St
- 12 Cross St

Harbour views enjoyed by the homes on the "amphitheatre" surrounding Double Bay, particularly those on the foot-slopes of Edgecliff in the area of "Bibaringa", will be impacted by this proposed development.

Accordingly, the proposed development is inconsistent with objective (d) of the Height standard.

We submit that there are no sufficient environmental planning grounds (cl 4.6 (3)(b) to justify approving a building 18m in height rather than a 14.7m one. Part of the charm of this end of Cross Street, Knox Lane and Goldman Lane is the honeycomb of small, sunlit arcades, surrounded by 1 and 2 storey buildings attracting shoppers. This development will by its height and bulk destroy that very quality. Supplying additional apartments is no environmental planning ground since there are dozens of sites in the Centre where these could be built within the development standard. A 14.7m building would fit nicely within the neighbouring area, transitioning from the higher buildings to the west of the site and transitioning down to the surrounding 1-2 storey buildings.

Under cl 4.6 (4)(a)(ii) we submit that the proposed development is not consistent with the objectives of the zone. The development application proposes a development reducing both the retail and commercial spaces provided to the community. Consequently, the development is inconsistent with the following B2 zone objectives:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations*
- *To attract new business and commercial opportunities*

As discussed above the Applicant has made no effort to activate Knox Lane designating the façade as a garage. The modification seeks to disguise the garage frontage as a piece of art in an attempt to activate it, however the garage is still a garage and does not comply with the DCP definition of an active use (see below). The development thus further fails the following B2 zone objective:

- *To provide active ground floor uses to create vibrant centres*

The proposed development is at odds with the scale and height of buildings to the north, east and south of the site. It is therefore inconsistent with the following B2 zone objective:

- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood*

Therefore, the clause 4.6 request should be rejected.

4. Excessive Bulk/FSR

The proposed FSR is 2.82:1 or a GFA of 947m² (see drawing DA 1.140_02) on a site area of 335.4m².

Part 4.4 of the Woollahra Local Environmental Plan and accompanying Floor Space Ratio Map (Sheet FSR 003) allows a maximum permissible floor space of buildings on the site as 2.5:1 or a GFA of 838.5m². The development therefore exceeds the standard by 108.5m² or 13%. It follows that absent a successful request under cl 4.6 it cannot be approved.

5. No sustainable clause 4.6 request in respect of the breach of the FSR standard;

Our first submission mirrors our first submission in relation to the clause 4.6 issue relating to the Height standard under section 3 above. No clause 4.6 written request has been filed in respect of the development shown in the “Replacement Application – Amended Architectural Drawings” exhibited on Council’s website. (We note that a cl 4.6 objection was filed in relation to a less bulky building of 906m² on this site on a design apparently subsequently abandoned by the Applicant, but that can surely not be accepted as a cl 4.6 objection for the subject application). Clause 4.6(3) provides that development consent “must not be granted” unless the consent authority has considered a written request from the applicant seeking to justify the contravention by demonstrating the matters set out in sub-paragraphs (a) and (b). Since no such request has been filed in respect of this development consent must not be granted.

Once again the following submissions only become relevant in the event that the Panel is against the Association on the submission in the paragraph above.

We repeat the analysis of what an applicant has to prove to sustain a request under clause 4.6 as set out in “(a)”, “(b)” and “(c)” at the foot of page 2 and top of page 3 above following the reference to the decisions in *Four2Five* and *Initial Action*.

The objective of the FSR standard for this zone is:

‘for buildings in Zone B1 Neighbourhood Centre, Zone B2 Local Centre, and Zone B4 Mixed Use - to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.’

We repeat what we have said about the “desired future character” of Cross Street, Knox Lane and The Lanes generally in section 3 above dealing with the Height issue. The proposed building is not only non-compliant with the desired height but completely breaches the setbacks and articulation zones as there noted, these being matters going to bulk and perceived bulk. It is out of character with its largely two storey neighbours to both the east and south as well as with the charm of the Transvaal Avenue Heritage Conservation Area diagonally opposite.

As to the second question of whether there are sufficient environmental planning grounds (cl 4.6 (3)(b)) justifying the 108.5m exceedance over the FSR standard, we submit that the development does not has sufficient planning grounds to justify exceedance. The proposed development does not provide acceptable/safe parking and provides a poor urban design outcome. The development fails to meet ADG objectives and standards on ventilation/layout/daylight access (discussed further below).

Finally, on the question of whether the development is consistent with the objectives for development within the relevant zone (cl 4.6(4)(a)(ii)), we repeat our submission in section 3 that the proposed development is inconsistent with the following objectives:

- "To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations
- To attract new business and commercial opportunities"

The ground floor retail is greatly reduced in area and the first floor commercial space is lost and with it the employment and service to the public's needs that goes with it.

No clause 4.6 objection to the breach of the FSR standard could possibly be sustained.

6. Breaches of SEPP 65/ the Apartment Design Guide

Insufficient natural ventilation, solar and daylight access

One of the 4 bedrooms in each of the residential apartments provides inadequate lighting and natural ventilation. The ADG provides both guidance and design criteria setting out the requirements for access to both natural lighting and ventilation. The development application has utilised a light well as the primary light source and ventilation for a bedroom within each of their apartments. Under *Objective 4A-2 Solar and daylight access* this type of light source should only be used as a secondary light source in habitable rooms. Under *Objective 4B-1 Natural ventilation* "All habitable rooms are naturally ventilated" and under the design guidance it specifies that "Light wells are not the primary air source for habitable rooms. The natural ventilation of the internal bedroom on each floor is therefore inadequate, receiving its primary ventilation from the shared light well.

These issues are again stressed in *Objective 4D Apartment Size and Layout*. The proposed development fails Objective 4D-1 "the layout of rooms within an apartment is functional, well organised and provides a high standard of amenity". Design criteria 2 of the same objective requires that:

"Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms."

Given that there is an internal bedroom with the primary access to light and air provided through a light well, the Applicant's proposal fails this design criteria.

Whilst on the light well this seems to be founded at first floor level in the middle of an apartment with no clear access for cleaning out of accumulated rubbish nor indication of how it is to be drained (it appears open at roof level).

It is worth reflecting that had the Applicant complied with the setback and articulation requirements of the DCP and its desired future character, much of the above design problems might have been avoided.

Objective 4C-1 Ceiling Heights

Habitable rooms must be 2.7m in clear height. However, according to our calculations and subject to Council's check, the floor to ceiling heights are short of the 2.7m requirement.

Apartment size and layout

4D-2 Maximum room depths

Maximum room depths within the ADG are set to enhance maximum environmental performance of apartments. Master bedrooms on each level surpass the maximum habitable room depth within the Design Criteria 1 of *4D-2 Apartment size and layout*. Under the design criteria habitable room depths are limited to a maximum 2.5 x the ceiling height (or an estimated 6.63m²), yet the depth of the master bedrooms range between a depth of 8m-12m. The proposed design also fails the maximum room depth of open layout designs which include a combined kitchen/living/dining. Design criteria 2 of *Objective 4D-2* requires open layouts have a maximum habitable room depth of 8m from a window. The applicants combined living/dining/kitchen rooms range from a maximum 10m-10.2m in depth and are therefore 2m over the prescribed design criteria.

Storage

The applicant has not sufficiently demonstrated that they have included adequate storage. Under Design Criteria 1 for *Objective 4G-1 Storage* in addition to kitchen, bedroom and bathroom storage 10m³ of storage is to be provided, with at least 5m³ of internal storage within the apartment. Under design guidance storage should be accessible from either the circulation or living areas.

7. Breaches of the Woollahra DCP 2015

A number of breaches of the Woollahra DCP building envelope controls relating to height, setbacks and articulation have already been mentioned under sections 3 and 5 above dealing with the desired future character of the neighbourhood. The conflict with the DCP parking provisions will be dealt with under the section below.

D5.6.4.6 Ground floor active lane frontage

Objective 1 of 5.6.4.6 Ground floor active lane frontage is to “Provide an active frontage at the ground level of buildings facing lanes to add to the vitality, and usefulness of both lane and building”. Active frontage is defined as one or a combination of the following: entrance to retail, retail shopfront, entrance to residential/commercial above, café or restaurant if accompanied by an entry. The Applicant has made no attempt to provide an active frontage along Knox Lane. Painting the garage doors with some form of artwork does not make it active frontage. All but some 1.19m is occupied by garage doors. The 1.19m is a fire escape door. In the Applicant’s amended application cover letter it is claimed that there is currently no active frontage, but there is a retail frontage facing Knox Lane with the ability easily to activate this frontage. If the Applicant were to apply the DCP 2m prescribed setback it would enable more versatile usage. There is a minimum 75% active frontage to lanes designated by control 1 of 5.6.4.6. Likewise, the Knox Lane façade fails Control 2 - “Vehicle access points and building entrances must be separate and clearly defined to avoid pedestrian and vehicular conflicts” - of the same section. The garage does not provide an easily defined access point for pedestrians to avoid.

The development which by its height, bulk and failure to provide either at ground or upper floor levels the required setbacks which would allow sunlight into Knox Lane then further condemns the passer-by to a grim view of garage doors or, if left open, parked vehicles. A double planning disaster!

DCP 5.6.8.4 Site facilities

Where is the garbage storage located for the retail component of the proposed development?

D5.6.8.4 requires that development should provide appropriate site facilities for retail, commercial and residential uses. Site facilities are defined to include “loading facilities” and “garbage areas”. According to the architectural drawings the proposed development plans includes neither.

A further cognate problem is that there is no garbage bin enclosure on Knox Lane for bins (retail or residential) awaiting Council’s garbage collection services. Inevitably bins would have to be placed

on the public street blocking one or more of the garages (it would be an outrageous safety risk that otherwise they might block the fire egress door) and, worse still, both blocking the narrow footpath and presenting a smelly eyesore on public land.

8. Inadequate and dangerous parking provision

Under the ADG's *Objective 3J-3 Bicycle and car parking* it is required that "car parking design and access is safe and secure". Under the WDCP D5.6.8.1 Objective O2 provides:

"Ensure that the design of on-site car parking is safe and efficient".

In our submission the car parking arrangement satisfies neither objective.

WDCP's D5.6.8.2 *Vehicular access - Control 3* requires driveway widths be kept to minimum dimensions with crossings generally kept to a 3m width with 6m an absolute maximum. In this case the driveway width is 10.3m (see drawing DA 1.100_08) covering virtually the whole rear frontage to Knox Lane. The consequence is firstly the extreme danger to pedestrians particularly when vehicles either reverse or drive out into the Lane. The sight lines are extremely poor. Similarly, there is equal danger of collision with vehicles passing along Knox Lane. It is to be remembered that there will shortly be a substantial addition to the commercial vehicle traffic passing along the lane as the new developments at 16/18 and 20/26 Cross Street with their two storey basement car parks become occupied. The forthcoming development at 28/34 Cross Street will similarly have two basement parking floors accessing off the lane.

Furthermore, both entry and exit from the proposed car park requires the car to straddle right across the Knox Lane's slender carriageway width at a 90 degree angle to the rear frontage – virtually impossible if a vehicle is parked on the lane opposite. Furthermore, cars are required to be parked one behind the other, essentially parking another car in. When another car is parked in, it will require the external car to reverse out to let out the internal car reverse out. This would further decrease pedestrian safety and create more hazardous street/traffic conditions. The design of this car parking arrangement is contrary to Control 4 of 5.6.8.2 *Vehicular access*:

"Driveways to car parking should be designed with minimal visual impact on the street, and maximum pedestrian safety."

A further problem is that access and egress to and from the residential garbage and bicycle storage requires the occupant to cross the car parking spaces. This would require significant manoeuvring especially if the car spaces were filled, with the alternative of steering the garbage bins through the fire exit which would surely be a breach of BCA and fire safety provisions.

The Applicant has provided no retail parking, worsening an already dire parking problem in and around the Double Bay Centre and limiting the future economic viability of the retail component of the development. Accepting the retail measurements provided by the Applicant for 94m² of retail area the minimum number of spaces required under Woollahra DCP E1.5 is 3.3 spaces per 100m² = 3.102 spaces. After applying the Double Bay B2 0.6 discount = 1.86 spaces, rounded up as required under E1.5.3 to the nearest whole number totals a minimum 2 car spaces.

Motorcycle parking has also not been provided. As designated under DCP E1.7.1 one motorcycle parking space is required for every 10 car parking spaces required. Given that 10 car spaces are required (8 for the apartments and 2 for the retail), 1 motorcycle space should be provided. No motorcycle space has been provided.

The proposed parking provision is unsafe, inefficient and inadequate.

9. Rooftop patio issues

One has to assume that the Knox Street sites on the opposite side of Knox Lane will be eventually developed with shop top residences to the permissible four storey limit. Knox Lane is narrow and one of the many unfortunate impacts of the impermissible fifth level of the proposed development is that it will look down directly into these future residences destroying their privacy. This problem is made even worse if the proposed rooftop patio is permitted with those standing at the southern end of the patio able to look down straight into Knox Street residences.

The other problems are that such patios inevitably become a noise source at night as well as a de facto further floor with all the clutter of barbecues, umbrellas, tables, chairs and the like.

10. Non-compliance with WLEP cl 6.1 – Acid Sulphate Soils

The land is wholly situated in the Class 2 zone on the Council's Acid Sulphate Soils Map. Accordingly, development consent is required under clause 6.1 of the LEP for any excavation beneath natural ground. It surely cannot be doubted that the columns to support the new five floors of above ground level accommodation will require excavation beneath natural ground level. There would have to be some substantial footings.

Clause 6.1 (3) of the LEP provides that:

“Development consent must not be granted under this clause for the carrying out of works unless an acid sulphate soils management plan has been prepared for the proposed works in accordance with the Acid Sulphate Soils Manual and has been provided to the consent authority.”

Clause 6.1(4) provides an exception to cl 6.1(3) where ‘a preliminary assessment of the proposed works prepared in accordance with the Acid Sulphate Soils Manual indicates that an acid sulphate soils management plan is not required for the works.

A report by Mr Parra of LG Consult was filed by the Applicant in 2019 relating to a different development on the site. In it the author expresses the opinion that such a plan is not required for the top 1.5m of the soils but would be likely required if soils below the 3m of the soil profile were to be excavated. We would have thought it likely that soil would have to be excavated to at least 3m depth for the footings of a five storey building.

If that is the case, the consent authority has no power to approve this development absent the requisite acid sulphate soils management plan. We annex as Ann “A” an Advice by Peter McEwen SC obtained earlier in relation to an earlier development in Cross Street to that effect. Without such plan any consent granted would be void and liable to be set aside by the Court.

Conclusion

For all the above reasons our Association says that the subject application should be refused.

We would ask to be given reasonable advance notice of the meeting of the consent authority at which the DA will be considered and the opportunity to address such meeting. We would also ask for the courtesy of an early supply of Council's staff report.

Yours faithfully,

DOUBLE BAY RESIDENTS ASSOCIATION INC

Per Malcolm Young, President

Michelle Palmer M Urb & Regional Planning