

# Double Bay Residents' Association Inc

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The General Manager,

Woollahra Municipal Council,

PO Box 61, Double Bay NSW 1360

7th February 2021

Dear Sir,

## **Re DA 289/2019/5 30-36 Bay Street, Double Bay**

We have inspected the drawings and reports filed in support of this s4.55 application to modify the existing consent for this development. Our 300 plus members include many who will be affected by the changes if this modification is approved. Accordingly, we oppose consent being granted for so much of the application that increases the building envelope at the fifth and sixth levels of the building on its south western side. In other words we oppose the filling in with office space of what was originally an external terrace on the fifth level (as shown on DA05E) and the construction of more office space and a terrace on the sixth level (as shown on DA06E) in what was previously open air.

The issues that we raise include the following:

- (a) The changes are such as to make this not "substantially the same development";
- (b) Height – more built space infringing still further the LEP's height limit (cl 4.3);
- (c) Excessive bulk/FSR infringing still further the LEP's FSR limit (cl 4.4);
- (d) Breaches of the Woollahra DCP;
- (e) Oppressiveness/View/Privacy impacts of the external modification;
- (f) Inadequate parking – further worsened.

Our Association and several affected residents including Mr Nicholas Gazal, Mr Bill Karras and Mr Zeke Solomon opposed the grant of consent at the WLPP hearing on 7 May 2020. In our view the applicant was extremely fortunate to persuade the Panel on that occasion to grant approval notwithstanding that the building was over 3 metres in excess of the clause 4.3 maximum height limit and well over the FSR limit. Nevertheless, one can see from the conditions of consent C2a and C2b that were added that day by the Panel that they were very concerned about the apparent bulk of the building's fifth and sixth levels. These added conditions deepening the planter troughs on the terraces and adding a planter along the fifth level's eastern frontage were intended to mitigate the impact of the top two levels of on neighbours' views and privacy. Now the applicant seeks to replace the terrace on the western side of the building at the fifth floor level with more unscreened building bulk as well as adding more offices and a terrace to the sixth floor level where there is presently undeveloped air space.

On **issue (a)**, we take issue in those circumstances with the assertion in the SEE that this is "substantially the same development" so as to fall within the scope of a s4.55 modification. In our view it is not and a

fresh DA with fresh clause 4.6 requests should be required. Essentially, viewed from anywhere to the south and west including Bay Street, South Avenue and Cooper Street (and the public domain in those streets) the building with these changes will appear as a six storey building looming over the adjoining two storey hotel and adjoining residences. With the original DA it gave the impression of a four storey building with the upper two floors recessed behind planters/terraces. To use Bignold J's wording in *Moto Projects No 2 P/L v North Sydney Council (1999) NSWLEC 280*, this change in appearance and impact prevents the modified development being "essentially or materially" the same as the current approved development (paragraph 55). As the judge said it is not a "quantitative" but rather a "qualitative" matter (paragraph 56).

On **issue (b)**, the additional office space to the top floor clearly breaches the Height limit under cl 4.3 of 18.1m. In a development application a clause 4.6 request would be required to be satisfied. The setback of the proposed additional space from the western side boundary of the site is a derisory 1.825m (see DA05E). That space is clearly at odds with the first objective of the Height standard which requires consistency with the 'desired future character of the neighbourhood' (cl 4.3(1)). That desired future character is set out expressly in words and drawings in the Woollahra DCP at D5.4.5 and in D5.5.9 Control Drawing 5. According to both D5.4.5 and D5.5.9 Control drawing 5 the sixth floor should not exist and the area occupied by the 5<sup>th</sup> floor extension should be landscaping and not built on at all! Instead of properties to the south west in South Avenue getting that landscaped area in this part of the site to which they are entitled, they will be overlooked by the new office space the subject of this application, looming over them and oppressive to their light, outlook and views.

The other objective of the Height standard with which this application is entirely inconsistent is that in cl 4.3(1)(b):

*"to establish a transition in scale between zones to protect local amenity".*

This is a transitional site being on the border between Zone B2 Local Centre and the adjoining Residential zone. Ordinarily the building's height should transition down towards the 3 storey limit of the adjoining residential zone. Hence, no doubt, that is why D5.5.9 Control drawing 5 in section 1.6.5 says that this property "**must** include landscaped areas as indicated" referring to the area of landscaping in the Control drawing on which this extension is proposed. It is totally contrary to the transitional principle to put over height limits space right on the boundary between zones.

On **issue (c)**, the building already breached the FSR control in its approved form. Now it seeks to add a further 64m<sup>2</sup> of gross floor area (on the Applicant's figures) taking the FSR up from 3.33:1 to 3.42:1 against a clause 4.4 maximum of 3:1 with bonus on this house-sized block of land. The objective of the FSR standard for this zone under cl 4.4(1)(b) is;

*"To ensure that buildings are compatible with the desired future character of the zone in terms of bulk and scale."*

We repeat what we have said two paragraphs above of the "desired future character" as set out in the WDCP. The sixth floor bulk should not exist and the fifth floor space and mass is put over land which should be left free of buildings for landscaped area.

**Issue (d)** – we have already referred to the building envelope provisions of the DCP in D5.5.9. It says something for the greed of the applicant that it seeks to build at fifth and sixth storey level something that it is not allowed to build even at ground level. In D5.6.3 Control C1 provides:

*“Development must occur within the building envelopes shown on the Built Form Envelopes: Control Drawings, Section 5.5.5 – 5.5.11”*

This development has already been allowed to build both in a vertical and horizontal direction outside Control drawing 5 in Section 5.5.9’s envelope and enough should be enough. The absence of adequate setback to the proposed extension directly conflicts with D5.6.3.4 Control C4 relating to rear setbacks:

*“Rear setbacks must:*

- (a) where required .... provide consolidated deep soil landscaped areas where blocks adjoin residential areas; and*
- (b) protect privacy and facilitate solar access to adjoining buildings and gardens.”*

This extension trespasses on an area which the DCP requires to be landscaped that adjoins a residential area and destroys the privacy and solar access of those residential neighbours (1,3 and 5 South Avenue). It also sacrifices an attractive and shaded terrace for those who will work in the adjoining offices in the subject development.

As to **Issue (e)**, we have referred under issue (d) immediately above to the particular oppressiveness, privacy, solar access and view impacts on the adjoining low-rise properties at the eastern end of South Avenue. As well as impacts on the private domain, the junction of Bay Street with Cooper Street and South Avenue is a busy and popular meeting place in the Centre in part because of the popularity of the adjoining hotel. The increase in bulk will increase overshadowing and oppressive bulk to this formerly attractive part of the public domain.

**Issue (f) – “inadequate parking – further worsened”**. In our objection letter of 3<sup>rd</sup> September 2019 (re DA 289/2019/1) and that of 11<sup>th</sup> August 2020 (re DA 289/2019/3) (copy extracts annexed as annexure “A”) we drew attention inter alia to the shortfall of some 26 car parking spaces. The addition of a further 64m<sup>2</sup> of office space would require to our calculation a further two spaces leading to an on-site parking shortfall of **28 spaces**. A fortiori we repeat the dire consequences of this shortfall as set out in annexure “A’.

For the above reasons we say that that part of this application which relates to the proposed increase in office space on the fifth and sixth levels should be refused.

We would ask that we be given notice of the staff report when available and also reasonable notice of any panel meeting to consider the application.

Yours faithfully,

DOUBLE BAY RESIDENTS ASSOCIATION INC

Per Malcolm Young, President.

