

Double Bay Residents' Association Inc

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

20th January 2021

Dear Sir,

DA 450/2020/1 426-432 New South Head Road, Double Bay

On behalf of our 300 plus resident members living in and around the Double Bay Centre we would inform you that we have studied the drawings and reports filed on behalf of the Applicant in support of the above application. In our view the development seriously breaches Council's controls and should be rejected on the following grounds:

- 1 (a) Excessive Height – breaches the Height standard under cl 4.3 of the WLEP;**
- 1 (b) The cl 4.6 objection to compliance with the Height standard should be dismissed;**
- 2 (a) Excessive Bulk- breaches the Floor Space Ratio standard under cl 4.4 of the WLEP;**
- 2 (b) The cl 4.6 objection to compliance with the FSR standard should be dismissed;**
- 3 Breaches of the Woollahra Development Control Plan;**
- 4 Overshadowing impact on the public domain and local view impacts;**
- 5 Inadequate car parking;**
- 6 Non-compliance with cl 6.1 of the WLEP – Acid Sulphate Soils.**

1(a) Excessive Height – breach of the Height standard under cl 4.3 of the WLEP

Under clause 4.3 of the LEP and the accompanying Height map the maximum height of a building on this site is 14.7m. If one refers to DA drawing DA 09 (Cross Lane elevation) the building has a maximum height measured in accordance with the LEP at RL 19.8 with a ground level at RL 2.51 – giving a height of 17.29m or **18%** over the maximum allowable. It follows that without a successful request under cl. 4.6 the development cannot be approved.

1(b)

The first enquiry in relation to the cl 4.6 request lodged by the Applicant is whether, notwithstanding the non-compliance, the objectives of the Height standard are fulfilled.

Objective (a) is:

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

That “desired future character” for New South Head Road is set out in D5.4.3 of the Woollahra DCP and particularly in the lower right section drawing under “Figure 13” in that section. We also refer to Control

drawing 2 in D5.5.6. The latter drawing shows the building height along New South Head Road as limited to 13.5m with which the development's height is hopelessly inconsistent. Equally it is inconsistent with the 2.4m setback required for the third floor (or "level 2" in the DA plans) and the 3.5m setback required for the fourth floor (or "level 3" in the DA plans). The purpose or one of the purposes of these setbacks is to reduce overshadowing of the public domain which this proposal utterly fails to achieve.

This last point brings us to the inconsistency with objective (c) of the Height control:

"to minimise the loss of solar access to existing buildings and open space"

The proposed development will cast the pavement and part of the Coopers Corner building on the opposite side of New South Head Road into shadow in the winter afternoon, something that would not be true of a complying development. It breaches also control C1 of D5.6.6 of the DCP which specifically requires solar access to the footpath on the south side of New South Head Road to be maintained between noon and 2pm on 21 June.

The development is also inconsistent with objective (d) of the Height standard which is:

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

Both loss of views and overshadowing will be suffered by the buildings opposite whilst there will be further loss of views from the residential flat building and other properties to the south-east.

In our view the development is inconsistent with the objectives of the Height standard and is furthermore inconsistent with the zone objectives for Zone B2 (see cl 4.6 (4)(a)(ii)) in that it does absolutely nothing to provide retail, business, entertainment or community uses (compared to what is there now) or to encourage employment opportunities.

2(a) Excessive bulk – breaches the Floor Space Ratio standard under cl 4.4 of the WLEP

Under cl 4.4 with its associated map the maximum FSR for the site is 2.5:1 or 485.25m² of building area (2.5 x land area 194.1m²). Even taking the Applicant's area calculations the gross floor area is 580.3m² (see drawing DA14) or **20%** over the maximum allowable.

2(b) The cl 4.6 objection to compliance with the FSR standard should be dismissed

We submit that the development is inconsistent with the objective of the control in this zone (see cl 4.4(1)(b));

"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 "desired future character" under section 1(b) above and to the prescription of that desired future character in the WDCP D5.4.3 and control drawing 2 in D5.5.6. The development in its bulk and scale is inconsistent with the setback and articulation requirements there set out.

In addition to failing the test of consistency with the FSR objective we repeat that the development is also inconsistent with the zone objectives under cl 4.6 (4)(a)(ii). In that regard we repeat what we have said in the last sentence of section 1(b) above. We note that the floor to ceiling height of the business space on Cross Lane fails to meet the DCP requirement reducing its economic viability.

Accordingly, the request under cl 4.6 relating to FSR should likewise be rejected.

3 Breaches of the Apartment Design Guide (SEPP 65) and Woollahra Development Control Plan 2015

Ceiling Height

ADG Objective 4C-1

The ADG 4C-1 Design Criteria for a floor to ceiling height on ground and first floor is required to be at least 3.3m to promote flexibility of use. The height of 3.1m on the ground floor commercial space along Cross Lane fails to meet the ADG design criteria. In addition, the applicant has failed to provide a section drawing of this space making this issue easily overlooked by stakeholders.

Communal Open Space

ADG Objective 3D-1

Communal open space enhances residential amenity and provides landscaping opportunities. The ADG design criteria for communal open space requires a minimum of 25% of the site dedicated to this cause. With a site area of 194.1m² this would amount to a minimum of 48.53m² given to communal open space. If the development is unable to provide this design criteria such as a business zone, communal spaces should be provided elsewhere, such as a landscaped terrace or common room. Neither of these options have been considered by the applicant.

Deep Soil Zones

ADG Objective 3E-1

The ADG requires developers provide a minimum 7% of the site area towards deep soil zones. Deep soil zones improve residential amenity, providing infiltration of rain water to the water table and reducing stormwater runoff. This development fails to provide any deep soil zones.

Floor to Ceiling Height and Active Frontages

Woollahra DCP D5.6.3.2 and D5.6.4.6

The floor to ceiling height of ground floor retail spaces is required to be 4m under Control 4 of 5.6.3.2. The applicant has proposed a ceiling height of 3.1 m along Cross Lane. It thus fails to achieve objective 2 of the control: 'Provide floor to floor heights that provide amenity to building users and allow adaptable reuse of levels.' The height of this commercial space limits its potential future use and economic viability. The development also does not achieve frontage to Cross Lane. 'A minimum of 75% active frontage to lanes' is required under C1 of 5.6.4.6 Ground floor active lane frontage – instead the frontage is dominated by the car stacker entrance.

Building Envelopes and Setbacks

Woollahra DCP D5.5.6,5.6.3.2

5.6.3.1 Building envelopes of the DCP explains 'building envelopes illustrate the limits of permissible building height, depth and location and are described on the control drawings, Section 5.5.5—5.5.11'. In accordance with D5.5.6 – control drawing 2 the maximum height for the site is 14.7m (4 levels) and a maximum height of 13.5m along New South Head Road. The proposed development has a height of 17.29m and therefore fails to meet these controls. While the chimney should not be included in the height assessment, there is a curve in the frontage which has no specified height in either of the architectural drawings and sits above the lift runoff. Control 3 of 5.6.3.2 Height requires the lift runoffs be included within the building envelope height. The uppermost habitable storey is required to be at least 3.5m below the maximum permissible building height (Control 2 of the 5.6.3.2), as the height of building goes beyond the permissible height along Cross Lane and New South Head Rd, the applicant fails this control.

Setbacks

ADG Woollahra DCP D5.6.3.4

Along New South Head Road there is zero setback yet the applicant has considered it appropriate to build beyond the building line. While awnings are allowed to encroach over the building line as they provide public benefit, the plans show other encroachments including:

- A chimney fronting New South Head Road;
- Brickwork, balconies and roofing along Cross Lane.

None of these elements provide any public benefit to the community, there is no authority for landowners to build on or above public land. These encroachments are permanent elements which can ultimately impede on public footpath, public safety and impact storm water drainage.

Unsatisfactory cross ventilation

5.6.6.2 Cross ventilation

The unit on the ground floor (unit one) is unable to achieve cross ventilation. The Applicant has indicated that lobby is being used to achieve cross ventilation within this unit, however an internal lobby cannot be used to ventilate and the unit has a 0.85m higher (see Applicant's Section AA) floor level than the lobby. Only three of the four apartments or 75% can achieve cross ventilation. The applicant is therefore unable to achieve the required 80% of dwellings facilitating cross ventilation specified in C4 requiring 'windows that can be opened and /or doors in walls with differing orientations'.

4 Overshadowing impact on the public domain and local view impacts

While the applicant has only provided three solar access diagrams (9am, 12pm and 3pm) for June 21st, rather than hourly between 9am and 3pm it is evident shadow will impact the public domain. Solar access preservation along the footpath on the south side of New South Head Rd is decreased by this development, failing Control 1 of 5.6.6.1 Solar access preservation. The control requires that between 12 noon and 2pm on 21 June solar access is preserved, however between 1.30pm and 3pm additional shadow will fall on the footpath along the southside of New South Head Rd.

The proposed development will impact the views of residents on the other side of New South Head Road including but not limited to 481 New South Head Road and the character building at 475-479 New South Head Road, Double Bay. Property owners and residents at 177 Bellevue Road, Double Bay who enjoy ocean and city views will have their views partially obstructed.

5 Inadequate car parking

It is not intended to provide any car parking for the non-residential parts of the development.

Residents living in and around the Double Bay Centre put up with an ever-worsening nightmare in terms of the unavailability of on-street parking for themselves, their visitors and tradesmen. It has reached the point where the writer's partner will only go shopping on Sundays because that is the only day when she can with any confidence hope to find a parking spot on her return.

One of the causes of this nightmare is failure to enforce those of the Council's controls that relate to the provision of sufficient on-site parking spaces to cater for the parking demand that the particular development generates. The controls in the DCP were fixed on the basis of realistic parking generation data and should be followed. The nearby parking station is heavily used and anyway is not intended for other than short term parking. To make matters worse the Council is currently seeking expressions of interest for its demolition and redevelopment.

The lower ground floor retail premises of 33m² are shown on DA04A as a café with extensive outdoor seating on Cross Lane. Under Table 2 of E1.5.1 of the Woollahra DCP at footnote 6 "For restaurants or cafés, the calculation of 'gross floor area' includes any outdoor seating areas ... or other areas where patrons will be served". Conservatively we would suggest that that increases the gross floor area by at least 10%. Applying the DCP requirement of 3.3 spaces per 100m² with the 0.6 Double Bay Centre discount to an area grossed up for outdoor at 37m² produces the following requirement:

$$3.3 \times 37/100 \times 0.6 = .733 \text{ of a space.}$$

The ground floor retail premises of 52m² have been assessed by the Applicant's consultant with the lower ground floor not as retail but as business with its lower generation rate under the DCP of 2.5 spaces per 100m². We would question the appropriateness of that as the premises have a fully glazed shop window to the street. Applying the DCP requirement for retail produces the following:

$$3.3 \times 55/100 \times 0.6 = 1.1 \text{ spaces}$$

The on-site parking required by the DCP for the non-residential uses is thus **2 car parking spaces** since E1.5.3 requires rounding up to the nearest whole number.

In addition to that shortfall no motor cycle parking at all is provided and the bicycle parking that is provided is in a remote rear storeroom on the lower ground floor, doubtless intended to be kept locked and of no utility to customers of the businesses or visitors to the residences.

We note it would have been perfectly feasible to have redesigned the lower ground floor to bring the development into compliance (or to have included a basement parking floor).

The Applicant's consultant takes refuge in the alleged availability of public transport and the available off-street parking nearby. The public transport is not that good – the bus service really only offers a service to and from the City and then only along Park Street not to the heart of the City nearer Circular Quay and this site is a long way from the ferry wharf. The nearby parking station in Cross Street is frequently full and only is for short-term parking as stated above and not for day-long parking which the Proprietors and staff of the two retail areas would need.

6. Non-compliance with cl 6.1 of the WLEP – Acid Sulphate Soils

The subject site is classified under Woollahra Local Environmental Plan 2014 – Acid Sulfate Soils Map – Sheet ASS_003 as being within Class 2 Acid Sulphate soils hazard zone. Any works below natural ground surface or works by which the watertable is likely to be lowered require development consent under clause 6.1(2) of the LEP.

In this case the works involve both. There is to be bulk excavation up to approximately 5.50m depth for the basement level reducing to approximately 3.00m for the Lower Ground Floor (Crozier report page 2,

bottom). The author of the Crozier report also frankly acknowledges that the development will lower the water table.

The Crozier report also frankly acknowledges it has done no subsoil investigation (page 1). Its only previous subsoil investigations are almost laughably distant from the subject property, two being in Bellevue Hill and the other on the boundary of Double Bay with Darling Point (p9 and Photograph 8).

Clause 6.1 further provides:

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

(4) Despite subclause (3), development consent is not required under this clause for the carrying out of works if:

(a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and

(b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.”

The Crozier report is not and indeed does not purport to be an acid sulphate soils management plan under subclause (3) nor a preliminary assessment as defined under subclause 4(a). Indeed, at p14 the author admits that:

“a field investigation comprising laboratory testing into ASS and PASS is required. When laboratory testing identifies the presence of ASS and/or PASS then an ASS management plan will be required. Therefore the full geotechnical investigation must include soil and water laboratory testing into ASS and PASS.”

The consent authority has no power to approve this development absent the requisite management plan (or an assessment complying with cl 6.1(4)). The matter cannot properly be left to be dealt with by a deferred commencement type condition of consent that the developer provide one and that it be approved prior to the works commencing. We annex as Ann “A” an Advice by Peter McEwen SC to that effect obtained earlier in relation to developments in Cross Street. Council subsequently obtained its own advice from Lindsay Taylor Lawyers which agreed with Mr McEwen SC. Without such management plan having been provided any consent granted would be void and liable to be set aside by the Court.

Concluding

For the above reasons our members say the application should be rejected.

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