

# Double Bay Residents' Association Inc

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## VICE PRESIDENT'S REPORT TO THE ANNUAL GENERAL MEETING OF 7<sup>TH</sup> APRIL 2020

This report usually delivered out loud is, in the unusual circumstances of a Covid 19 induced teleconference meeting, being circulated to members in written form. It will give members a chance to consider any questions they might like to ask over the teleconference and shorten the length of the meeting.

As is usual, although the report is meant to be strictly a report in respect of the 2019 year, I am covering matters in the 2020 year to date.

It has been, in my experience, the busiest year ever for this Association and its Committee. We strive to protect our members amenity wherever it is threatened and whatever be the character of that threat be it to our views, our light, our privacy, our peace and quiet, our safety, or any other aspect of amenity.

One way of categorising these issues is to distinguish between:

- Development Applications for larger developments which affect the amenity of a number of our members;
- Other matters including changes or threatened changes to our planning controls, planning proposals for individual sites, Council proposals for redevelopment of public land etc.

I propose to survey our activities this year in that order.

### Major Development Applications

#### 28-34 Cross Street

This is the property immediately west of the two 6 storey buildings currently under construction on the south side of the street. In March of last year we managed again to persuade the Sydney Eastern City Planning Panel ("SECPP") to refuse this 6 storey proposal when it reviewed its decision of the year before. Sadly, we have recently received a great blow in that an Acting Commissioner of the Land and Environment Court has recently upheld the developer's appeal from those two refusals. I have written to the four councillors who sat on one or other of those panels urging them to seek counsel's advice on appeal prospects. I have suggested some grounds. There is little more we can do than hope the Council takes the hint and runs with it. It is going to be very hard to stop 6 storey development elsewhere in the Centre if this decision stands.

#### 30-36 Bay Street and 2, Guilfoyle Avenue

Once again our successes before the planning panels have been dashed by subsequent events. Here the developer appealed the win we had before the SECPP to the L & E Court. Under the s34 machinery whereby the developer and Council negotiate on a "without prejudice" basis – a process from which we objectors were excluded – the Council staff agreed to a compromise proposal (one storey less than the original). We only found out the matter was before Court to approve this development on the eve of the

hearing. On arrival the lawyers for both parties asked us to leave the Court, and but for the Commissioner allowing me alone to speak for a very few minutes outside Court in the lift lobby, that was it.

So far that development has not gone ahead. In September we were notified of a DA by a different applicant for just 30-36 Bay Street (not the 2, Guilfoyle Avenue part) involving adding additional floors to the current structure. We have lodged an objection but have heard nothing more.

#### 49-53 Bay Street

This DA for a 7 storey building came before the Woollahra Local Planning Panel (“WLPP”) on 15 August. We spoke against it and the Panel unanimously refused the application.

#### 351-353 New South Head Road

Not strictly in the Centre but adjoining it. This site presently occupied by two houses lies to the immediate north-east of Overthorpe and Bibaringa and very much impacts on the adjoining Sir John Hay heritage listed gardens. We lodged an objection to the first DA (5 storeys in an area with a 3 storey height limit) notified to us last year. The DA was subsequently substituted with another not substantially different but this time relying on the Affordable Housing SEPP. We objected again in February of this year. We wish our many members in Overthorpe and Bibaringa the best of luck on this one.

#### 16 Manning Road Child Care Centre

This was another win before the WLPP. The developer has appealed to the L & E Court and may be negotiating with Council staff.

#### Rose Bay Cycle path

We had two parts to our opposition to this. The first related to the section between William Street and the western end of the Rose Bay Promenade where it is proposed to make a footpath which is in sections only 1.7m wide a shared zone between cyclists and pedestrians on the grounds it was unsafe. The second ground was to what came before the WLPP which was the proposal to divide the existing heritage promenade along Rose Bay into separate pedestrian and cyclists’ strips. We won before the first WLPP who deferred the matter to allow Council to make amendments. A second WLPP in November allowed Council (who had not made any amendments) to have consent.

The general picture has been a good deal of success before the two planning panels but less luck with the Court processes. Whilst on the subject of the Planning Panels I resigned as the Cooper Ward alternate member of the WLPP in August. I had not been required to sit as a member of a Panel for over a year and with the State Government’s change to allowing only one community member to sit on the panel per meeting that situation was likely to continue. Resignation has freed me up to represent you before the Panel, removing possible conflicts of interest.

### **Other matters**

#### The Cross Street Car Park and the threat of another parking floor on Kiaora Place

As most of you know we have been frustrated by the secrecy with which this matter has been pursued – the Council meeting in closed session from 2015 up to and including its entry into a Heads of Agreement with Axiom Properties and Built Corporation in December 2018. Faced with this refusal to consult with residents we used the only real tool available to us – an application for plans and documents (including

the Heads of Agreement) under the GIPA Act. At first Council refused to produce virtually any of the documents sought. We appealed to the Information and Privacy Commissioner. After submissions he found that the Council's refusal to produce the documents was wholly unjustified. We then called on Council to produce them. It then appointed an Internal Review with an allegedly independent reviewer who just accidentally seemed to be working at the Council, using its email etc. Eventually (this took the best part of 6 months) a lot more documents, including the plans for a building the equivalent of 8 storeys high (most of which to be leased for 99 years to the developers) with up to 6 basement floors, were produced. The copy of the Heads of Agreement redacted or blacked out all references to dollar amounts and time!

Things then came to a head on 29<sup>th</sup> April last year when Residents First councillors unsuccessfully moved the Council for community consultation to take place on 3 alternatives:

- \* Leave the car park as is;
- \* Council retaining 100% ownership redevelop the car park to include a cinema;
- \* The Heads of Agreement proposal.

They were defeated by the votes of the Liberal councillors with whom Cr McEwin (Greens) voted. Those Liberals and Cr McEwin passed a motion which included investigation of adding a floor to the Kiaora Place car park. Council had by this time abandoned its hugely unpopular proposal to use Steyne Park for parking during construction.

On 17<sup>th</sup> June Axiom/Built signalled that they were withdrawing from the scheme the subject of the Heads of Agreement as no longer financially viable in view of the downturn in the residential market. The latest we hear is that Built may have signalled they are out of the scheme altogether.

Meanwhile of course we were very concerned about the proposal to add a floor to the Kiaora Place which would have breached the original DBRA supported consensus reached with adjoining residents to the south. A team of us noted over 6 days the number of vacant spaces as recorded each half hour of the day on the illuminated boards. The survey with its accompanying boards showed there was ample parking available. We provided it to Council who replied to the effect that the survey was of no use because their own indicator boards were showing wrong vacancy numbers! In August we did a further count for a number of days of the actual free spaces on the rooftop level, while simultaneously two Indian gentlemen were doing the same thing as consultants to the Council. We again supplied a report (again showing that at almost all times there were free spaces at that level) and our counts to the relevant Council officer. He failed to respond until we received a one sentence response 3 months later. We have heard nothing further.

Council ignores our parking petition signed by 500 local residents

Many of you will have signed this petition which asked Council to amend its controls so as to require developers of residential flat buildings to provide realistic *minimum* numbers of on-site parking places (the controls currently only providing *maximum* numbers). Our proposal was prompted by a ruling of the WLPP which had allowed 11 apartments and 4 shops on the corner of Manning Road/ NSH Road with no parking relying on this absence of any parking requirement in the controls. Other councils all have minimum rates.

On 29 April our petition was presented to Council and, to our dismay, a motion that staff prepare a report into what our petition proposed was defeated 8-5 with all Liberals but one and a Green voting against us and all but one Residents First councillors voting our way.

#### The night-time economy – alcohol service on footpath

When Council opened up this issue we sought no alcohol alone to be served to patrons on the footpaths (excepting the Royal Oak to 10pm) with alcohol allowed to be served with meals to 10pm. In the end Council decided to allow alcohol service without meals to 11pm on Friday and Saturdays and 10pm otherwise (the Liberals and Greens defeating the Residents First attempt to have Friday and Saturday limited to 10pm).

As a subset of this issue we and many resident members in the Centre were successful in opposing the extension of the Cosmopolitan Café's attempt to amend their liquor licence to permit the service of alcohol without a meal to 2am. The application was eventually withdrawn in the face of resident opposition.

#### Woollahra's adoption of a Voluntary Planning Agreement Policy

Voluntary Planning Agreements are an insidious blow to the integrity of our planning controls. They permit a developer to pay money or provide land to a Council in return for the Council allowing a planning proposal or a development application which would otherwise be in breach of its controls. We had vigorously and successfully opposed Council entering into a policy for the making of them in 2016 when a strong majority of councillors opposed them.

When Council reintroduced the policy we wrote in October vigorously opposing it. I am sorry to say that in February this year the Council adopted the policy. A particularly disturbing feature of the debate was the evident relish with which some Liberal councillors greeted the prospect of such VPA's being entered into. It can hardly have been any shortage of cash that inspired them – Council having over \$90 m in investments, mainly term deposits. The voting to enter into the policy was 7-7, but it passed on the Mayor's casting vote: 7 Liberals in favour and RFW and Greens councillors plus one Liberal against.

#### Woollahra Local Strategic Planning Statement

Council was required by State Government to prepare this overarching planning document which is intended to set the framework for Woollahra's planning controls. It went through numerous, muddling rewrites by staff. Our objections to it fell into three categories:

- Repeated references to the redevelopment of the Cross Street Car Park when there has been no consultation with residents whatsoever – see above;
- Repeated references to a planning review of height and bulk controls in the Double Bay Centre when these have yet to go before Council, let alone be the subject of consultation with residents;
- Trumpeting of the availability of Voluntary Planning Agreements.

On this too we lost in February with 8 Liberals voting against us and the Residents First and Greens councillors voting for us. The WLSPS has since been approved by the Greater Sydney Commission and comes into effect on 31<sup>st</sup> March.

FSR controls for Low Density Residential areas

Here at least the Council has agreed with our position, namely to introduce a maximum FSR control of 0.5:1 into our LEP. We are waiting to hear whether this has received Departmental approval.

The Residents Associations meet with Gabrielle Upton

On 20<sup>th</sup> September Mr Tregoning and I, together with representatives of the Rose Bay Residents, the Darling Point Society and the Vacluse West Association, met with Gabrielle Upton, our State member, to discuss principally our frustration with the Council over a number of matters. For DBRA we particularly highlighted our frustrations over the 500 strong parking petition and the Cross Street Car Park sagas (see above). We understand she subsequently conveyed these frustrations to the Mayor. Despite being promised a meeting this year with the Mayor to discuss the issues we have heard nothing further.

## **Conclusion**

We will very shortly face possibly our biggest battle for several years. The staff have been preparing a Review of the Double Bay Centre planning controls with a view to increasing the permitted maxima in the Height and Floor Space Ratio/Bulk development standards. It remains to be seen whether they will honour their resolution of May 2016 and have a public forum by way of community consultation. We will be calling on all of you to defend our existing controls and to let your feelings on the proposed new controls be known to both councillors and staff.

Finally, on a not altogether unrelated topic, municipal elections are presently slated for next September. It remains to be seen whether Covid 19 may cause some postponement. This Association is apolitical but it can hardly have escaped the reader of this report (not to mention my emails to members over the past year) that there is one party on Council which has constantly supported the positions we have taken on your behalf and one party which has generally opposed us. If we are to be heard post-election it will only come about if the complexion of the whole Council is changed and that can only come about through the ballot box.

It remains for me only to thank our hard-working Committee members and all of you for your support over the past year. We have never, I think, been numerically stronger and our financial position is sound. I hope you all stay safe through these threatening times.

Malcolm Young  
Vice President  
29 March 2020.