

# THE SORRY SECRET SAGA OF THE CROSS STREET CAR PARK REDEVELOPMENT

## Background

The Council owns a multi-storey carpark in Cross Street, Double Bay, providing car parking for 396 vehicles.

Over the last four years the Council has made a series of decisions in sessions closed to the public for what started out as a proposal to redevelop the carpark so as to include one or more cinemas.

Because of the consistent closed session approach the ratepayers knew no more than what was revealed by the following matters of public record:

- On 8 September 2015 the Council resolved to shortlist 3 unidentified proposals for what was then termed the “Cross Street Carpark Cinema Proposal” (the “Cinema” has lately and ominously been dropped from the description).
- On 25 July 2016 the Council resolved to select the Palace Cinemas/ Built/ Axiom Corporation as the preferred proponent for the Proposal.
- On 14 August 2017 the Council agreed to proceed with a Public Private Partnership (PPP) with Built/ axiom for the redevelopment of the carpark in accordance with terms not publicly disclosed. The papers for that meeting disclose only that the consortium’s proposal is for a mixed-use development with:

Residential dwellings with associated private parking

A Palace cinema complex

Public parking

Ground floor retail/ commercial/ and community space.

- On 26 November 2018 the councillors received a confidential secret briefing.
- On 10 December 2018 the Council resolved to enter into Heads of Agreement with Built and Axiom Group for the “Cross Street Carpark Development Project”.

Our Association was not necessarily averse to the original idea of redeveloping the car park with a cinema added, but it became increasingly frustrated by the secrecy with which Council was dealing with the matter. As at the end of 2018 no member of the public had ever seen a single plan or drawing of what the proposed development was to look like. We were concerned by rumours it was to include 80-100 residential units and that the public parking would not be fully replaced. We were concerned about the height, bulk and scale of what might be proposed and its impact on views (private and public), amenity, streetscape, traffic and parking.

## **DBRA’s Access Application under the Government Information (Public Access) Act 2009**

By letter dated 30<sup>th</sup> November 2018 this Association sought access to the following:

1. All drawings and plans (including sections, elevations and floor plans) for the redevelopment of Council's carpark in Cross Street, Double Bay (hereinafter "the carpark site"), excluding only superceded drawings and plans.
2. All agreements and/or memoranda of understanding entered into by Council with Palace Cinemas and/or builder or developer relating to the redevelopment of the carpark site.
3. All staff reports relating to the redevelopment of the carpark site, being reports dated within or coming into existence within the last two years.
4. All consultants' reports relating to the redevelopment of the carpark site, being reports dated within or coming into existence within the last two years.

**The storm over Council's resolution of 10 December involving the shared use of Steyne Park for parking during the estimated construction period of 36 months.**

At the same meeting at which Council resolved to enter into Heads of Agreement with Built and Axiom Corporation (see "Background" above) it had made this additional resolution. Once the public became aware of it, this caused a storm of protest from local residents and DBRA. A public meeting was held on the 4<sup>th</sup> February 2019, an on-line petition opposing the resolution was signed by thousands and Federal and State members expressed their opposition to the idea. Councillors quickly backtracked and resolved on 11 February not to use any public park for parking associated with the redevelopment.

**Council refuses Resident First councillors' motion on 11 February 2019 that Council consult with the community including residents on their scheme as well as alternatives.**

Resident First councillors moved that Council consult with residents on three alternatives for the Cross Street site:

- Council retains the existing car park;
- Council itself redevelops the car park with the incorporation of a cinema and maintaining the existing number of public parking spaces; and
- Council's Heads of Agreement proposal for up to 100 apartments, and underground public parking.

Our Association filed as "Late Correspondence" a letter supporting this motion as well as another Residents First motion urging release of the documents DBRA sought under the GIPA Act application.

The motion was defeated 7-6 with the Residents First and Greens councillors present voting in favour and the seven Liberal councillors voting against.

**The Council's refusal of access to the documents sought by DBRA**

Meanwhile by its letter to this Association of 15<sup>th</sup> January 2019 the Council had stated that: "Weighing up the public interest considerations in favour of disclosure, being a general right to access government information, and the public interest consideration against disclosure, being commercial in confidence information of a third party..." they determined not to provide the information.

On the same page 3 they said that they had determined not to provide staff reports considered commercial in confidence.

**DBRA successfully appeal to the NSW Information and Privacy Commissioner against the Council's refusal of access**

On 29 January 2019 DBRA lodged an Application for External Review by the Information Commissioner of Council's decision to refuse access (see attached). Both the Association and Council were given the chance to make submissions and the documents to which access had been denied had to be made available to the Information Commissioner.

The Information Commissioner published his review on 5 March 2019 finding in favour of DBRA on all four categories of documents it had sought. To quote from his "Conclusions" at page 8:

"60 On the information available, I am satisfied that the (Council's) decision under review is not justified in relation to considerations 4(a), 4(b), 4(c), 4(d) and 4( e).

61 In addition I am not satisfied that the (Council) has justified it's consideration of section 17 of the PPIP Act"

One might have thought that the Council in view of this damning review might have immediately released the documents sought. Instead of that it chose to have an internal review of its original decision. On 17 April 2019 a Mr Patrick Brown wrote to DBRA with his internal review and released some but all of the documents sought. (Click here to see the letter and appended documents). Other documents are heavily redacted by blacking out parts of them. All financial elements of the Heads of Agreement or earlier reports and the like – all the financial benefits that are said to flow from giving Built and Axiom Group a 99 year lease of most of the proposed development have been redacted. All time references to things like rent review periods have been similarly blacked out.

*In short over four and a half months after the documents were sought and over 4 months after Council entered into Heads of Agreement with the two developers Council is still not telling us the details of the deal it has done with our land!*

### **What does the proposed development look like?**

As you will see the "Draft Preliminary Concept Only" plans show a building that is the equivalent of 8 storeys high above ground (it is actually only 7 levels but as elsewhere admitted in the documents the cinema level is 2 storeys high). It has up to 6 basement levels of parking.

This colossus of course is several storeys higher than the maximum height limit for this site under Woollahra LEP 2014 and manifestly in breach of the Floor Space Ratio control in the LEP. Such a development would render it impossible for Council to maintain those Height and FSR controls when challenged by developers before Planning Panels and the Land & Environment Court ("Don't look at what we do, look at what we say.") It would affect views (including harbour views from the surrounding residential amphitheatre). It would destroy the village atmosphere of the Centre.

At a time when some 30+ homes in the Court Road/ Forest Road/ Epping Road have suffered cracking attributed by the owners of perhaps the worst affected home to dewatering carried by excavating developers, it seems inconceivable that Council would consider excavating in high water table/ acid sulphate soils to the extent of 6 storeys.

The traffic consequences of introducing 86 new apartments to the difficult junction of Cross Street and Jamberoo Lane with its close proximity to the five-way junction at New South Head Road are frightening.

## **Council meeting of 29 April 2019**

We expressed our concerns about the issues raised at the end of page 3 above in our letter of 26 April 2019, sent in as “Late Correspondence” for the meeting on 29<sup>th</sup> April. In that letter we also raised our objections to the proposal to add a further parking level to the Kiaora Place (Woolworths) car park. This is dealt with separately on this website. Our letter can be accessed [here](#).

At the 29<sup>th</sup> April meeting Council resolved:

- \* to note a staff report;
- \* to prepare an information package including the drawings that it had fought for four and a half months to keep from public access “for use at community engagement briefings with the community and stakeholders before 30<sup>th</sup> June”; and
- \* that its investigation of alternate parking arrangements include a feasibility assessment of an additional level of parking at Kiaora Place.

The Residents First councillors (opposed by the Liberals and Greens) unsuccessfully moved an amendment deleting the third element relating to Kiaora Place.

### **Subsequent backtracking by the developers**

No information package was ever received by DBRA nor were we invited to any “community engagement briefings”. Signs were that an individualised selective approach rather than a public forum (at which DBRA might have a chance to present public opposition) was being pursued.

At all events before this can have got very far the matter was relisted before the Finance, Community and Services Committee of Council on 17<sup>th</sup> June 2019. (See Agenda pp 37-39). The developers had written to Council on the 4<sup>th</sup> June saying that the scheme was no longer viable. They cited increased costs, an increase in the development programme and an increase in the in-ground risk premium as well as downward pressures on the residential market. They indicated they were working on a revised design which would be more commercial in character.

Council noted these matters and resolved to defer “stakeholder briefings”.

The developers then apparently provided Council with a revised scheme which according to a staff report the following year “featured a significant reduction in the number of residential apartments, the addition of a large amount of commercial floor space and elimination of the Development Right Payment to Council.” The drawings for this revised scheme have never been made available to the public.

### **DBRA obtains its own structural engineers report into the existing car park structure**

One of the oft repeated shibboleths by Council staff was and is that the existing building was reaching or nearing the end of its life. Last year we made a GIPA Act application for the original construction drawings including piling drawings and files relating thereto. These were duly produced by Council and inspected by our Malcolm Young and a structural engineer, Mr Douglas Knox of KPH Consulting Engineers. We found nothing to suggest that the 40 year-old structure was designed only to have such a limited life. We then went down to the car park and Mr Knox inspected in minute detail all floors of the

car park, taking some hours. Mr Knox was briefed “to provide an independent engineering assessment of the car park structure, in terms of the structural integrity of its built form, and the likely future life, based on the structural documentation review and visual observation”. To quote from part of his report of 10 September 2019:

“a) This forty two year old car park building structure consists of a combination of insitu and precast concrete construction, placed on concrete pile caps over steel piles, driven to a set or required load carrying capacity.

b) The building was constructed with concrete strengths specified of F’c+25 & 40 Mpa, with results of the placed material higher than specified, as previously noted. *The completed structure is considered in good condition for its age and in our opinion based on our observations would perform satisfactory, for another forty two years or more provided sensible maintenance is carried out, in a normal manner to protect building assets such as this.*

c) We understand that there is a consideration to develop this site, by demolition of the existing structure and replacement with a taller building that contains a six level basement. Based on our experience of effects of deep excavations and associated construction activities, including de-watering, where the water table may be between 2.0 metres below ground level to near ground in peak wet rain periods, considerable distress can occur to neighbouring building structures as a result of these proposed developments. Our experience on an insurance claim of distress to the Golden Sheaf Hotel in Double Bay and numerous sites on the Northern beaches of Sydney, indicate significant problems to surrounding building structures, of settlements and cracking, despite the assurances of geotechnical and structural engineers associated with these types of proposed developments.” (our italicised emphasis)

### **Built then back out of the scheme**

We then provided the Council with Mr Knox’s subsequent report of 10 September 2019

On the 5<sup>th</sup> March 2020 the Council was told that one of the developers, Built, was withdrawing from the scheme.

### **Council decides to go out to expressions of interest all over again**

The matter then came before Council’s Finance, Community and Services Committee on 14 September 2020 which we addressed. We wrote to Council and councillors prior to the meeting providing them with a copy of the Knox report and pointing out the significance of it and referring to the history of Council frustrating our attempts to find out what was happening (see above). We asked that Council consider three options for the site:

- A. Retain the existing car park pointing to the trauma that the loss of 396 car parking spaces for a number of years would cause to traders and the public alike:
- B. Council proceed with its own scheme keeping the existing number of public car parking spaces with the addition of a cinema or two. (The current value of Council’s investment

portfolio of term deposits was \$76.4m). We raised the possibility of retaining the existing structure and adding a cinema or two at roof level;

- C. That suggested by staff but opposed by us, namely a public private partnership for a building of similar size to that previously proposed involving commercial space, apartments, a cinema complex and public and private parking with the developer getting a 99 year ground lease over much of the development.

We then provided the Council with Mr Knox's subsequent report of 10 September 2019 in good time for the meeting.

At the meeting all Liberal councillors voted for Option 2 put forward by staff, namely Inviting fresh expressions of interest from developers for a public private partnership for a major scheme to include a boutique cinema complex with no mention of any community consultation. (A confidential report was distributed to councillors which apparently raised doubts over Axiom's capacity to fund the previous scheme without Built who had quit). Residents First and Green councillors, supporting our submissions, unsuccessfully moved a rival motion to retain the existing car park and to consult with the community to determine the preferred future for the site. The Liberal majority carried the day as it did two weeks later when the same motions were put before full Council.

In the past month advertisements seeking EOI's for this major redevelopment have appeared in the press (see copy attached).

### **What does DBRA say should happen?**

The most recent figures presented to Council show that Council has term deposits in excess of \$75 million. That would well exceed the \$40 million plus cost of redeveloping the car park with a cinema or two. Alternatively, loans are available from State Government at most attractive rates. Council would own it freehold in perpetuity and would enjoy 100% of the income from both the car park and cinemas. We do not need a 10 cinema complex nor more retail, commercial or apartments in that location and we do not need Council alienating most of a public asset for 99 years (effectively alienating it in perpetuity – is Council really going to kick residents or commercial tenants out in 99 years' time?)

That would avoid breaching the Height and FSR controls and, with no need for any substantial excavation, all the dangers attendant on excavation in Double Bay.

Alternatively, as we have seen from the Knox report, there is no evidence to suggest there is anything wrong with the existing car park structure, we can simply keep the car park as is.