

Double Bay Residents' Association

Protecting Sydney's Stylish Bayside Village

31 August 2021

Dear Member,

During the past month, in addition to responding to development applications, your committee has been working on several major issues which affect our residents. We are a small team of volunteers committed to trying to ensure that Double Bay remains an attractive place to live, and increasingly our resources are being stretched by the number of issues requiring action.

If you share our determination to try to maintain what is left of Double Bay's village ambience and are prepared to devote a little time to help us, please consider joining one of our working parties. To find out more, please contact us, as below.

NSW Planning Panel system

In our last letter, we highlighted the Sydney Eastern City Planning Panel's approval of a six-storey development on the corner of Transvaal Avenue and Cross Street, despite a Council report and two Woollahra councillors on the panel recommending against it. As a result, we are adding our voice to many others who are trying to persuade the NSW State Government to change its present panel system which reduces the power of local councils on development applications, favours property developers and disenfranchises residents.

Following the SECPP's decision, we emailed letters to Gabrielle Upton and Rob Stokes, the Minister for Planning, requesting meetings to allow us to explain why the present planning process was unjust and should be changed. Gabrielle Upton replied promptly and, during a telephone call, agreed to forward to Rob Stokes a detailed paper on the subject written by Merrill Witt on behalf of the Association (see below). To date, more than a month later, our letter to Rob Stokes has not been acknowledged.

Merrill suggested that panel decisions could be subject to judicial review in the form of Class 4 proceedings based on due process. The association agreed to fund an opinion by a senior counsel on the likelihood of an appeal succeeding provided the Council would take action if the advice was encouraging. Malcolm Young drafted a potential brief, but regrettably the Council decided there were insufficient grounds to pursue the Class 4 proceedings and declined our offer.

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The Council was as disappointed as we were that the Panel had over-ruled its resolution and controls and passed a resolution unanimously asking the Mayor, Councillor Susan Wynne, to write to Rob Stokes and other stakeholders requesting reconsideration of the decision.

As you may have read, the Sydney Morning Herald published an article on 15 August in which Liberal, Labor and Greens councillors criticised the state's planning system and Susan Wynne was quoted as saying that the democratic process was significantly reduced when it was introduced by the NSW Government. 'As a councillor, it is frustrating to not be able to support our community and advocate on their behalf with regards to concerns related to development applications,' she said. 'As locals, we understand our community better than anyone and we are acutely aware of the impact of poor planning outcomes.'

Unfortunately, Rob Stokes seems to have a 'tin ear' as he was quoted in the Sydney Morning Herald article as saying that the planning panels 'have proven to be a great success, with independent experts providing invaluable guidance on thousands of development applications.' No doubt his comments were applauded by property developers, but what about us residents?

If you would like to read Merrill's detailed critique of the planning panel system, let us know and we will email it to you.

We will battle on! Meanwhile, please help by emailing Gabrielle Upton (ElectorateOffice.Vaucluse@parliament.nsw.gov.au) and asking her to raise the issue with Rob Stokes.

Development Applications

Developers have identified Double Bay as one of Sydney's most profitable development opportunities and continue to lodge development applications which exceed current planning regulations, relying on previous breaches as precedents. During the past month, your association has made submissions on three proposed developments.

We are pleased to report that the Woollahra Local Planning Panel supported the Council's rejection of a substantial development on the corner of New South Head Road and Bay Street on several grounds, including excessive height and inadequate parking. Unfortunately, this is not the end of the matter as the developer has appealed to the Land & Environment Court, the third stage in the current planning process which favours developers and is unfair to residents.

We also submitted an objection to a new development application for the site on the corner of New South Head and Manning Roads. This development would block views from adjacent buildings and, extraordinarily, the developer is proposing an entrance to a nine-space carpark through traffic at one of the most congested junctions in the eastern suburbs.

Third, we opposed an amended application for 351-353 New South Head Road which was subject to appeal in the Land & Environment Court. The amended proposal was for a 14.3 metre high building while the permitted height in the LEP is 10.5 metres.

Meetings with the Mayor and General Manager

The Mayor, Councillor Susan Wynne, kindly agreed to a meeting with your committee to discuss some of our concerns as residents of Double Bay. Much of the time was spent agreeing on the need for the Government to change its planning process and we also covered other ways we could work together more constructively. A further meeting has been promised for later in the year.

Craig Swift-McNair, who joined Woollahra Council as General Manager in July 2020, was also at the meeting with three of his senior executives. He has invited us to get together again in mid-September when he will introduce us to Scott Pedder, whom he recruited as Director, Planning and Place in July 2021 and Patricia Ocelli, whom he recruited as Director, Community Service and Customer Service in June 2021. We hope to work closely with them to protect what is left of Double Bay's village ambience.

Heritage

As mentioned in our letter, last month, Merrill Witt recently made a submission on behalf of the association to the NSW Upper House Inquiry reviewing the Heritage Act. During August, a summary of her recommendations was submitted to Council in connection with its consideration of its delivery program and operational plan. This emphasised the need to strengthen planning controls to protect the urban interface between heritage conservation areas and surrounding new development.

Transparency and confidence in Council process around decision-making in litigated planning matters

The association submitted late correspondence in support of a motion calling for an independent review of inconsistency between Land & Environment Court proceedings and recommendations of the Council or decisions of a planning panel. In this, we referred to several instances of Council recommendations contradicting the advice of its urban design officer. The motion was carried unanimously and we shall watch the outcome of the review with interest.

Hydrology and excavation issues

In August, your association made a submission to Council, written by Mary Fisher, on its proposed hydrology amendments to the Woollahra Development Control Plan (Amendment No 18). These amendments stem from hydrology work done for Council by hydrology consultants GDH over the last 18 months. If you would like to receive a copy of the submission, send us an email.

Excavation and groundwater drawn down

Many of our members have grave concerns about the extent of excavation in particularly vulnerable areas and dewatering in recent years and associated damage to surrounding properties.

Members have also expressed concerns about the inadequate, misleading, incomplete, hydrogeological and geotechnical reports provided to, and accepted by, Council with DA applications and their failure to meet the minimum requirements of Council's guidelines for these reports.

The stated aims of proposed hydrology Amendment No 18 are to strengthen the objectives and controls; to minimise the impacts of groundwater drawdown; and to ensure there are no adverse hydrogeological impacts on surrounding properties during and after construction.

However, for reasons given in our submission, we cannot see that the proposed amendments actually meet these aims given they do not go much further than existing provisions and they do not address the following issues which go to the heart of our members' concerns. These are:

- the failure of Council's DA assessment reports to adequately scrutinise the hydrogeological and geotechnical reports and the failure to reject inadequate, misleading, incomplete, non-complying reports;
- the failure of Council's DA assessment reports to accurately identify the adverse environmental impacts due in part to the flawed nature of the hydrogeological and geotechnical reports;
- Council's practice of simply referring the hydrogeological and geotechnical aspects of a DA on to the developer's certifier or the relevant water authority as conditions of DA consent. This prevents residents likely to be adversely affected from having access to the hydrogeological and geotechnical information they would have had if Council had required the developer to submit proper documentation at the DA stage.

In the past, our members have been told by Council that it does not have engineering staff with the precise technical expertise to rigorously scrutinise these reports or conduct the investigations into the likely adverse excavation and dewatering impacts of a DA.

Groundwater discharge into Council's stormwater network

The proposed amendments prohibit groundwater being discharged into Council's stormwater network. However, as Council can, and does, permit this discharge by developers to occur under its EPA Act powers applying to construction for residential purposes, it is unlikely this provision will achieve anything new.

As you are probably aware, members and other residents have complained to Council and to the Environment Protection Authority about Council's apparent lack of enforcement of the current comparable DCP and EPA requirements prohibiting discharge into the stormwater network -

particularly groundwater containing sludge discharged from identified acid sulphate sites. The EPA has advised complainants of their concerns about this practice.

New requirements for the Double Bay settlement area

We support the new requirement that temporary changes to ground water level must not exceed 0.2 from the average monitored pre-construction level unless the change will not induce settlement greater than the characteristic surface movement of a Class S site. But, again, we are not confident that Council will be presented with accurate and complete field tests. Nor are we confident that Council would be in a position to rigorously assess the accuracy and integrity of these 'developer-paid' field tests – or whether they would leave the matter to be dealt with by referring it to the water authority.

Outstanding matters

The association will continue to monitor carefully two outstanding matters:

The first is the further work that Council has said it is doing on the requirement for developer insurance. We would prefer some form of surety bond being required from developers.

The second is the further work that Council has said it is doing on prohibiting excavation and dewatering in the 'most impacted zones' in Double Bay which include much of the commercial centre. We urge Council to proceed with the prohibition as a matter of priority but question why it does not, as far as we can see, appear to cover the Council's Cross Street carpark site.

Friends of Cooper Park

The present lockdown has given us more time to appreciate the parks and open spaces in or close to Double Bay. In particular, we are fortunate to live close to Cooper Park with its 15 hectares of bushland, largely unspoilt for decades. Many of our members have fond memories of the park: concerts in the natural amphitheatre near Victoria Road, cardboard surfing down its slopes, fitness training on the steps, tennis, the childrens' playground and enjoying bushwalks so close to home.

You may be interested to learn that there is a local group called Friends of Cooper Park who have been working with Woollahra Council since 2011 on landscaping, maintenance and infrastructure improvements. In 2020, Cooper Park received local heritage listing and currently it is being considered for inclusion in the state heritage register. If you would like to receive occasional updates on this local treasure, you can become a Friend of Cooper Park – simply send your email address to friendsofcooperpark2020@gmail.com.

Jamberoo Lane

Jamberoo Lane, between William and Cross Streets, has been embellished recently with plants on its western side, as you can see in this photograph by Michele Wearn. Congratulations to Nola Urquhart, the Council's Co-ordinator of Assets and Parks Management, and Deborah Geary, the

Council's horticulturist. It is good to see the Council taking steps to landscape our streets and laneways.

Deadlines for draft planning strategies on public exhibition

The Council currently has two major draft planning strategies on public exhibition. The deadline for public comment on the Draft Edgecliff Commercial Centre Planning and Urban Design Strategy has been extended to Friday 17 September 2021, and the deadline for the Draft Woollahra Housing Strategy, Affordable Housing Policy and Local Character Discussion Paper is Friday 1 October 2021.

The Council is inviting residents to share their ideas on local character by pinpointing areas that should be protected on its interactive map. Your association will submit comments on the latter strategy and we would welcome members' thoughts and ideas for inclusion.

Anthony Tregoning
President

