

# Double Bay Residents' Association

Protecting Sydney's Stylish Bayside Village

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

19 August 2022

Dear Sir,

**DA 280/2022/1 294-296, 298 New South Head Road, 2, 4-10 Bay Street, Double Bay**

We have inspected the drawings and reports filed for the Applicant in support of this DA for this five storey commercial development. Our Association and its over 300 resident members oppose the grant of consent to this DA. If approved it would create a gross overdevelopment in breach of Council's LEP 2014 development standards and the fine-grained set of controls in its DCP 2015.

In the supporting material filed by the applicant, reference and comparisons are made to the approval granted by the L & E Court following the s34 process to a principally residential development on this site (DA 69/2021). About that we would make three points:

- (a) This is a totally different development, being entirely commercial whereas DA 69/2021 was for an apartment building above ground floor retail. It has to be independently assessed.
- (b) Opposed to that development as this Association was, we had to concede that that Tzannes design had architectural merit with a high degree of building articulation and a stepped design down Bay Street which at least echoed the desired future character of Bay Street (South). This design has none of those virtues.
- (c) In particular the Tzannes design had a mixture of setbacks and open balconies to both Bay Street and NSH Road which greatly reduced the building's bulk and oppressiveness. In comparison this design replaces those with enclosed space and has a much higher FSR (3.2:1 compared to a complying 2.5:1 – see SEE Table 1).

We submit the application should be rejected on the following grounds:

- 1(a) Excessive Height in breach of clause 4.3 of the Woollahra LEP;**
- 1(b) The cl 4.6 request in relation to the breach of the Height standard should be rejected;**
- 2 (a) Excessive Bulk/FSR in breach of clause 4.4 of the Woollahra LEP;**

**2(b) The clause 4.6 objection in relation to the breach of the FSR standard should be rejected;**

**3 Breaches of the Woollahra DCP;**

**4 The Draft Double Bay Centre – Planning and Urban Design Strategy is an irrelevance;**

**5 Overshadowing, loss of privacy and view impacts;**

**6 Impact on the Heritage item;**

**7 Parking issues;**

**8 Acid Sulphate Soils issues.**

We will deal with those grounds in the above sequence.

**1(a) Excessive Height in breach of clause 4.3 of the Woollahra LEP**

The development application is excessive in height and fails to comply with the Woollahra LEP Height standard. Under Clause 4.3 of the Woollahra Local Environmental Plan with its accompanying height map (HOB\_003) the maximum allowable height on this site is 14.7m. The proposed height of this development is at least 20.3m, measured from the existing basement level (RL 3.3) to the plant equipment overrun (approx. RL 23.6) in accordance with the LEP. This results in an exceedance of 38% over the maximum permissible height.

As a result, absent a successful request under clause 4.6, the building cannot be lawfully approved.

**1(b) The cl 4.6 request in relation to the breach of the Height standard should be rejected**

Much play is made in the Applicant's request on the fact that a five storey development was approved at 294-296, 298 New South Head Road and 2, 4-10 Bay Street Double Bay (DA 69/2021/1). However, DA 69/2021/1 was completely different in nature being shop-top housing with a lower bulk and scale than this proposed commercial building. This development involves more bulk at height. We refer to our introductory comments in the second paragraph on page 1 above.

The applicant's material also lays stress on a number of recent developments constructed or approved in the Double Bay Centre which are either 5 or 6 storeys in height. However, with one exception, those developments are not in this Bay Street (South) precinct which has a distinct existing and desired future character as laid down in the WDCP. The one exception is 2A Cooper Street (referred to as 20-24 Bay Street) where a two storey addition to the existing three storey building was permitted as a trade-off for the renovation and restoration of this heritage listed building. Significantly the WLPP recently refused consent to a five storey commercial building at 19-27 Bay Street diagonally opposite the subject site, the cl 4.6 request not being accepted.

We submit that this DA is to be determined by the principles relating to clause 4.6 objections as stipulated by the Court in *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 90* and *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118*. These judgments have made clear an Applicant must satisfy the consent authority:

- (a) That compliance, (in this case) with the 14.7m (four level) height limit, is unreasonable or unnecessary in the circumstances of the case. The first and most commonly invoked way is to prove that notwithstanding the non-compliance the objectives of the development standard are achieved.

This is a double hurdle as explained by the Chief Judge in *Initial Action* at 26. Firstly, the consent authority must be satisfied the applicant has adequately addressed this issue (cl 4.6(3)(a)). Secondly the consent authority must itself be satisfied that the objectives of the height standard are achieved notwithstanding the non-compliance (cl 4.6(4)(a)(ii)). AND

- (b) That there are sufficient environmental planning grounds to justify the contravention – again a double test (cl 4.6 (3)(b) and cl 4.6 (4)(a)(ii)). AND

- (c) That the development is consistent with the objectives for development within the relevant zone (cl 4.6(4)(a)(ii)). Again, the focus is on the element of the development which contravenes the standard (*Initial Action* at 24).

The objectives of the Height standard are set out in clause 4.3 (1) of the LEP.

Objective (a) is:

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

The desired future character for this site is set out in words and diagrams in the Woollahra DCP at D5.4.4 Bay St (South) which sets out the “desired future character” for Bay Street (South), along with D5.5.9 Control drawing 5 (to be read with 5.6.3 Urban Character on the same page).

The DCP has specifically outlined the “Desired future character” of Bay Street (South) in D5.4.4. The Applicant has failed to:

- a) *“Retain the existing modest, lot related building widths and retail frontages”.*

The development presents as one monolith (or perhaps two with the step-down half way down Bay Street). The mere inclusion of vertical fenestration elements in the first four storeys does not change this monolithic appearance.

The sections in Figure 15 in D5.4.4 and D5.5.9 Control drawing 5 provide the desired building envelope for the site, including the height, setbacks and articulation. Most importantly, the building envelope is to be restricted to 4 storeys defined as a maximum overall height of 14.7m consistent with the LEP. Along Bay Street the Applicant has proposed a street wall ranging from 12m-16.3m with the higher end (16.3m) in the approximate centre of the development. The proposed development has 5 storeys and a

maximum height of 20.8m as mentioned in 1(a). The proposed 5<sup>th</sup> storey should not exist and is inconsistent with the desired future character of the site. It has disastrous impacts on the surrounding character, views from “Overthorpe” and other properties on the Edgecliff slope opposite, as well as other neighbours including 290 New South Head Road. It is significant that whilst other corner sites in the Centre have a 5 storey height limit (18.1m), the LEP does not include this corner.

The applicant has argued that the non-compliance in height will not be “discernible when viewed from the public domain” (Clause 4.6 Exceptions to Development Standards – Height of Buildings, p. 4). In actuality, the additional height will be very obvious when viewed from one of Double Bay’s most charming streets - Bay Street.

Most critically of all, D5.5.9 Control drawing 5 requires the fourth storey of the building along Bay Street to be set back by 3.5m. This corresponds to what is described as Level 3 of the building which contrary to the desired future character is built right to the Bay Street boundary with a mixture of internal space and balconies. This significantly reduces afternoon sunlight to Bay Street and creates a feeling of oppressiveness to the public and those opposite. It is quite out of character with the lovely free-standing terrace at no 14 (a listed “character building” under the DCP) and the prevailing upper floor setbacks in Bay Street (South).

Articulation – we entirely reject the assertion at SEE p35 that the articulation requirements of the desired future character in the WDCP are not relevant to commercial development. Not only is there nothing in the DCP to support such an exception but it defies common sense. Articulation requirements are there to protect those in the public street from the oppression of buildings towering over them built flush to the street frontage. In this regard an office building oppresses just as much as a residential building of similar envelope if it lacks articulation. WDCP D5.5.9 Control drawing 5 – Bay Street (south) and Figure 15 in D5.4.4 provide the future desired setbacks and articulation for the site, requiring a 2.4m articulation zone along Bay St (12m back from New South Head Rd) for levels above ground floor. For those upper floor levels a maximum of 40% of the articulation zone may be internal or external space (see “Articulation” under 5.6.3 on that page). The proposed development is in breach of this as almost 100% of upper levels 1 to 3 (see drawings DA05 - DA07) is internal or external space.

There is a 1.8m side setback required for all levels above ground floor at 294-296 New South Head Road between adjoining building at 290 New South Head Road. The applicant has provided a 0m setback for those levels with unacceptable consequences for the ventilation, light, views, openness and freedom from oppression for the neighbouring residential flat building.

For these reasons the development as designed fails objective (a) of the Height standard.

Objective (b) of the Height standard is:

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

This is a transitional site, the buildings directly adjacent to the site along Brooklyn Lane and immediately west of the site are zoned R3 Medium Density Residential. The buildings adjacent to 4-10 Bay Street along Brooklyn Lane (7 Brooklyn Lane, 10 Henrietta Street and 6 Henrietta Street) have a maximum height limit of 10.5m, and that zone has the following zone objectives:

- *“To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood."*

Given the adjacent R3 zone, the transitional principle enshrined in objective (b) of the Height standard means that the height limit set out in the LEP and DCP should be strictly followed. The 5 storey height of this building, exceeding the Height limit by up to one and a half floors, does not appropriately transition from the neighbouring residential zone. The consequence is unacceptable impacts on the amenity of the neighbouring area. Again, the development fails to fulfil objective (b) of the Height standard.

Objective (c) of the Height standard is:

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

The proposed development will overshadow the properties at 337-347 New South Head Road ('Overthorpe'), 13 Bay Street and 351 New South Head Road and their private open spaces during winter. The Bay Street facing windows of 13 Bay Street, 306-310 New South Head Road and 302 New South Head Road will have a reduction to afternoon winter solar access.

The afternoon winter sun access will be reduced to the balcony (private open space) of 351 New South Head Road. While not so obvious in the shadow diagrams produced by the applicant, it is evident that afternoon solar access will be reduced to its sun filled balcony.

The Victorian terrace at 13 Bay Street, identified in the WDCP as a character building, will lose solar access. The front of the building, which is setback from the street will lose solar access to its west facing windows and private open space in the afternoon.

The garden at 337-347 New South Head Road is both a State and Local listed heritage site and will be overshadowed in winter by the proposed development. The garden, known as Sir John Hay's garden, is part of a collection of significant botanical Australian rainforest species both rare and exotic. The Overthorpe entrance is historically a milk-carter's track with convict markings on the stonework and has been found to have "archaeological potential". The vegetation along the frontage to New South Head Road and the track will be overshadowed by the development to a much greater extent than the approved Tzannes design which had a mixture of setbacks and balconies where this has a sheer four storey street wall. The overshadowing produced by the proposed development will reduce the trees' and plants' already limited access to sunlight. See section 6 below.

DA19 demonstrates vividly how much worse the loss of midwinter sunlight is from this development compared to the Tzannes design. There is a loss of sunlight to the southside footpath along New South Head Road right through the day and the eastern side of Bay Street will be overshadowed all afternoon.

Consequently, the proposed development fails to meet objective (c).

Objective (d) of the Height standard is:

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

Significant view loss will impact the north and some north-west facing apartments of Overthorpe (337-347 New South Head Road). The proposed development will increase both the bulk and scale of the current buildings along New South Head Road. In particular the 298 New South Head Road part of the development will go from a 2 storey commercial building with a generous setback to a 5 storey development. This additional height, and in particular the noncompliant 5<sup>th</sup> storey, will obstruct harbour views to residents of Overthorpe. The attached photograph taken from one of the units in “Overthorpe” shows clearly the likely loss of harbour views to many of the units in that building when a five storey building replaces the existing two storey one. Units in “Overthorpe” to the west of the unit from which our annexed photograph was taken will suffer an even more complete loss of view. It is a nonsense to suggest that trees in the Sir John Hay gardens block harbour views from these units. In the January 2021 judgment of the L & E Court (*Ricola Pty Ltd v Woollahra MC [2021]*) a six storey DA at 49-53 Bay Street was rejected due to measurable view loss. The proposed development will cause a measurable loss of harbour views to many apartments in Overthorpe. While vegetation does obstruct some views, the filtered and clear views currently enjoyed by residents will be greatly reduced.



View of the site from Overthorpe, 337-347 New South Head Road.

In regards to privacy and visual intrusion, the proposed development will impact 290 New South Head Road, 10 Henrietta Street and 7 Brooklyn Road considerably. 7 Brooklyn Road will have the proposed development looking directly into their private open space and east facing windows. The backyard of 10 Henrietta Street will have balconies and terraces looking into their backyard. The most substantial impact will be felt by residents of 290 New South Head Road, with a disastrous impact on north easterly and easterly views from that building, as well as oppressiveness caused by the proposed height and bulk of the development and its closeness.

View, overlooking and visual intrusion are therefore not minimised by the height aspects of the development and accordingly it fails to meet objective (d) of the Height standard.

We submit there are no sufficient environmental planning grounds to justify the contravention from the height limit – again a double test (cl 4.6 (3)(b) and cl 4.6 (4)(a)(ii)).

Accordingly, the request under clause 4.6 should be refused. As the Court held in *Ricola*, the Applicant has failed to reduce or minimise neighbourhood impacts and thus to justify breaches to the standard.

## **2 (a) Excessive Bulk/FSR in breach of clause 4.4 of the Woollahra LEP;**

The site has a maximum FSR of 2.5:1 for the corner property known as 298 NSH Road which under cl 4.4A(3) may be increased to a maximum of 3:1 “if the consent authority is satisfied that the development will be compatible with the desired future character of the zone in terms of bulk and scale”. For the reasons covered in sections 1(b) and 2(b) below we say the consent authority would not be so satisfied.

The balance of the site has a maximum FSR of 2.5:1 as set out in clause 4.4 of the WLEP Plan and accompanying FSR Map.

On no 298 the developer has proposed a FSR of 3.24:1 or a GFA of 1342m<sup>2</sup> (see drawing DA18) on a site area of 414m<sup>2</sup>. The proposal exceeds the standard by 30% ( or 8% if, contrary to our submission, it is held entitled under 4.4A(3) to 3:1) .

For the remainder of the site at 294-296 NSH Road and 2, 4-10 Bay Street, which has a site area of 1448.3m<sup>2</sup>, the applicant proposes a GFA of 4597m<sup>2</sup> (see drawing DA18) equivalent to an FSR of over 3.17:1. The proposal accordingly for that major part of the site exceeds the standard by 976m<sup>2</sup> over the required 3621m<sup>2</sup> or 27%. It follows that, absent a successful request under cl 4.6, it cannot be approved.

## **2(b) The cl 4.6 request in relation to the breach of the FSR standard should be rejected**

The proposed development has considerably greater bulk than the approved DA 69/2021 which had a FSR of 2.43:1 for 2, 4-10 Bay Street and 294-296 New South Head Road, and 3.23:1 for the corner site at 298 New South Head Road – overall a complying 2.5:1. It cannot be argued on the bulk issue that the approval of that DA should lead to the approval of this non-compliant DA.

The problem with this proposal is that the additional bulk is built into the design *at height* in locations where the bulk has the greatest impact on neighbours and the public domain. Setbacks, voids, articulation and the architectural charm of the Tzannes design are all swept away.

We repeat what we said about the tests to be applied to a clause 4.6 objection under section 1(b) above.

The question then is whether the bulk and scale of this DA fulfils the objective of the development standard.

Under clause 4.4 (1)(b) the objective of the B2 zone in regards to bulk and scale is as follows:

*“to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale”.*

As noted the WDCP’s desired future character of the site requires development to *“Retain the existing modest, lot related building widths and retail frontages”*. Unlike the previous approved design by Alex Tzannes, which consisted of curved lines and small distinct frontages, the applicant’s design is a singular bulky building along three lots on Bay Street, rather than the restrained lot related frontages established along Bay Street. The proposed development sits out of place with the surrounding development, particularly its northern neighbours at 12 and 14 Bay Street (the latter a character building) and nos 9 – 15 Bay Street opposite, which are also period terraces converted to commercial use and all listed character buildings. This is important because “( c)” of the WDCP definition of desired future character is *“Retain the character buildings along Bay Street”*. The monolithic nature of the development obliterates the former building widths and, with its four storey street wall, fails to harmonise with these (to be preserved) two storey terrace neighbours.

Likewise, it does not comply with the section sketch under “Desired future character” under D5.4.4 Bay Street (south) read with Control drawing 5.5.9. We repeat all we have said under section 1 (b) above at page 4 above in the three paragraphs commencing “Most critically of all...” on the issues of failure to comply with DCP setback and articulation requirements. Indeed, the issues of non-compliance we there raise are perhaps even more relevant to the bulk and scale issue arising under this cl 4.6 request than they are to that pertaining to the Height issue.

The Applicant’s clause 4.6 objection fails to meet or be consistent with the desired future character of Bay Street (south). This five storey monolith would loom over two storey neighbours at 12 and 14 Bay Street and ruin the fine grained streetscape.

The clause 4.6 request in relation to the FSR breach must be dismissed.

### **3 Breaches of the Woollahra DCP**

In dealing with the issue of the proposal’s non-compliance with the “desired future character” objective of the Height and FSR standards, we have already covered the building’s non-compliance with the envelope controls in the Woollahra DCP – see above. In short it does not comply with:

- The modest, lot related building widths and retail frontages as per required future character of Bay St and its incongruence with the neighbouring character buildings which are to be retained;
- The DCP’s height limit of 4 storeys;
- The DCP’s 3.5m setback along Bay Street for level 4;
- The DCP’s articulation controls along Bay Street (2.4m);
- The DCP’s 1.8m side setback between the development and 290 New South Head Road;
- The DCP’s articulation controls requiring maximum 40% internal or external space in the articulated zones.

In addition, there is the non-compliance with the DCP’s car parking requirements. This is dealt with under a specific heading below.



#### 4 The Draft Double Bay Centre – Planning and Urban Design Strategy is an irrelevance

This is prayed in aid of the DA at pages 26/27 of the SEE. What the reader is not told is that this Strategy has not been adopted by Council and is only at the stage of being a draft put out for community consultation. Council has informed this Association in writing that a report into that community consultation is not expected until the end of the calendar year. We are aware that, as well as this Association's detailed objection to it (including with specific reference to this precinct of the Centre), Council has received dozens of objections from residents both within and near the Centre. There must be great doubt as to whether it will be adopted in its present form by Council.

It is manifestly not a valid head of consideration under s 4.15 and should be ignored by the Panel.

#### 5 Overshadowing, loss of privacy and view impacts

As to overshadowing impacts on nearby properties and the public domain, we repeat what we have said on that issue under Objective (c) in section **1(b)** on pages 5/6 above.

The proposed development in short will create unsatisfactory overshadowing impacts along Bay Street and New South Head Road.

In relation to view impacts we refer to our submissions on p6 above where we dealt with the views lost to "Overthorpe" and 290 New South Head Road. There will also be a loss of views to 351-353 NSH Road and other properties on the lower parts of the Edgecliff slopes and the upper parts of Henrietta Street as well of course to properties opposite on Bay Street itself. To a very considerable extent these problems are caused by the contravening aspects of the development – the 5th floor (particularly the sections breaching the height limit) and the failure to observe the setbacks of upper floors required by the DCP.

In regards to privacy impacts we repeat our comments under Objective (d) of **1(b)** above and particularly the penultimate paragraph on p6.

All of these issues would be improved by requiring the building to comply with the development standards and building envelope controls.

#### 6 Impact on the Heritage item

A section of the State Heritage Register Inventory Sheet relating to "Overthorpe" is quoted here to show the significance of these gardens:

*"The gardens of Overthorpe are part of a large and significant botanical collection of rare and exotic Australian rainforest species. The collection of mature trees with their massive canopies has created a micro-environment indistinguishable from a natural sub-tropical rain forest and a truly unique environment unmatched in the Municipality of Woollahra. In spite of the relatively small size of the site, it contains an historic collection of rain forest trees and palms of regional significance and importance second only to the collection in the Sydney Royal Botanical Gardens."*

*The site was Sir John Hay's "garden" .... The magnificent specimens of great age and scale are testament to the 19<sup>th</sup> century passion for collecting and displaying rare and exotic trees.*

.....

*From New South Head Road, Double Bay, near the intersection with Manning Road, the dominant canopy is from an exceptional holm oak (*Quercus ilex*) and one, massive and rare fig, possibly the small-leaved fig (*Ficus obliqua*). This fig, typical of the lush Australian rain forest plantings on this site, is botanically of great significance in being one of only a few specimens of this species in the Municipality. All but one of these occurs on this site."*

These gardens and the adjacent gardens adjoining the "Bibaringa" driveway to no 349 NSH Road will be overshadowed by the development. The risk thereby caused to these heritage listed gardens (both State and locally listed) could be ameliorated by setting back the upper floors in that part of the development fronting NSH Road thus helping reduce its oppressiveness and bring its bulk closer to compliance with the FSR standard.

## **7 Parking Issues**

The parking around the Double Bay Centre has become increasingly difficult to a point that residents cannot find adequate parking near their own homes, let alone parking for Centre visitors and customers. The failure to provide the parking required as a minimum by the WDCP would no doubt worsen the problem and increase the frustration felt by residents. Public car parking is limited to Cross Street Car Park (which the Council has plans to demolish), a tiny quantity of public parking in the Cosmopolitan Centre and the less accessible Kiaora Lands Car Park. All three provide the short term parking required by shoppers and do not cater for commercial or retail long term parking such as that required for whole day employee usage.

Public transportation to and from the site is not that good. Issues include the steep terrain to and from Edgecliff train station. The bus service only links to Watsons Bay in one direction and Park Street/Walsh Bay in the other. The Bondi Junction service which is half hourly is so circuitous and slow that it is hardly patronised. Double Bay wharf again only links to the City in one direction and occasionally Rose Bay in the other.

As to the Applicant's reliance on the availability of public transport to justify the shortfall in parking from the WDCP minima, we say:

- (a) The public transport is not good;
- (b) The DCP minimum parking rates were set having regard to that public transport anyway;
- (c) The rates derived from state and national parking data for the various types of use and included in Part E of the WDCP (as referred to in the table below) are then dangerously discounted by a multiplier of 0.6 for the Double Bay Centre (E1.5.3).

We therefore say that there should be no departure from the required minimum parking rates set out in the DCP.

Minimum commercial parking rates for the proposal are set out in the DCP's E1.5.2 Non-residential parking generation rates. These have been calculated below:

Type	Rate per 100m	Proposed metres (m <sup>2</sup> )	Total	Multiplier	Total plus multiplier
Retail	3.3	392	12.9	0.6	7.8
Business	2.5	5088	127.2	0.6	76.3
Food and drink premises	7	459	32.1	0.6	19.3
		5480			103.4

Therefore, according to E1.5.2 of the DCP the proposed development should provide a minimum of 103 car spaces for the proposed commercial development, consisting of 8 for the retail, 76 for business premises and 19 for the food and drink premises. The Applicant has proposed a total of 76 for the business/commercial portion and only 7 car spaces to be shared between the retail and food and drink premises. Therefore, the proposed development has a shortage of 20 car parking spaces.

## 8 Acid Sulphate Soils issues

It is not in issue that this site is partly within Class 2 of land affected by cl 6.1 of the Woollahra LEP (Acid Sulphate Soils) and that consent is required for any works involving excavation below natural ground surface. The rest is Class 5 where excavation will be to a depth triggering the same requirement.

Cl.6.1(3) of the LEP provides that:

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

Clause 6.1 (4)(a) indicates an exception where an assessment in accordance with the Acid Sulfate (sic) Soils Manual indicates a management plan is not required.

We have read the Douglas Partners Preliminary Site Investigation report 86253.03 of June 2022 and the additional email from that firm posted on the Council website in the past day or so. We note that there have only been a total of three boreholes dug – one in the extreme SE corner of the site, one approximately half way along its western boundary and one in the extreme NW corner of the site and then only to the limited depths described in the report.

The report at 9.9 states that:

“These screening test results were considered to be possibly indicative of potential acid sulphate soils. .... Further confirmation testing for ASS should be carried out across the site once access for drilling rigs is available.”

The latest email suggests that an Acid Sulphate Soil Management Plan is not necessary, but qualifies this by adding:

“Further confirmation testing for ASS should be carried out across the site once access for drilling rigs is available”.

Given the vast extent of the proposed basement and footings excavation involved, the tiny extent to which there has been site investigation of the subsoils for PASS and the acknowledged need for further investigation, the Panel could not be satisfied that an Acid Sulphate Soils Management Plan will not be required.

If that is the case, the consent authority has no power to approve this development absent the requisite acid sulphate soils management plan. We annex as Ann “A” an Advice by Peter McEwen SC obtained earlier in relation to an earlier development in Cross Street to that effect. Without such plan any consent granted would be void and liable to be set aside by the Court. The matter cannot, he advises, be dealt with by a deferred commencement condition.

### **Conclusion**

For all the above reasons our Association says that the subject application should be refused.

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

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### **References**

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