

Double Bay Residents' Association

Protecting Sydney's Stylish Bayside Village

Late Correspondence from the Double Bay Residents' Association

16.2 Notice of Motion - Transparency and Confidence in Council Process around decision making in litigated Planning Matters - 21/158061

We are writing to support the above NoM.

The 2018 amendments to the Environmental Planning and Assessment Act 1979 (EP&A Act) were, according to the Government, designed to increase community input into the strategic planning process and to encourage the development of a robust set of planning controls that would guide future development decisions.

In this paper, we highlight four significant DAs where the Urban Design Officer recommended refusal because they deviated too far from the existing development controls. Nevertheless, the Assessment Reports for each of these DAs recommended approval, at least in the first instance.

We believe an audit of the Council's assessment processes is warranted for the following reasons:

- One of the [objectives](#) of the 2018 amendments to the EP&A Act was to "increase probity and accountability in decision-making."

The Double Bay Residents' Association (DBRA) objected to all of the DAs discussed below. In each case, we found the initial recommendations for approval confusing because of the extent to which all of them deviated from the development controls. In three of the four examples, either the Sydney Eastern City Planning Panel (SECPP) or the Woollahra Local Planning Panel (WLPP) agreed with the DBRA's opinion and refused the DAs.

- We worry that developers may be exploiting a perceived inconsistent application of the development controls, especially in Double Bay. Either they apply too readily for a Clause 4.6 Variation Request or immediately lodge an appeal in the Land & Environment Court (L&E Court) if the DA is refused by the SECPP or the WLPP.

Double Bay Residents Association Inc
P.O. Box 1684, Double Bay, NSW 1360
Tel: 0414 932 818 Email: dbrassoc@gmail.com

- Objectors have lost the right to a merits review of SECPP and WLPP decisions. Consequently, the residents of Woollahra need to feel confident that the planning controls are being consistently applied.

Re. 28 - 34 Cross Street, Double Bay

With respect to the DA for 28 - 34 Cross Street, Double Bay, the Council's [original Assessment Report](#) of 4 October 2018 recommended it be approved, contradicting the advice of the Urban Design Officer who recommended refusal for the following reasons:

The height of the proposal exceeds the 14.7m height appropriate to the existing or desired future character of the street and surrounding buildings as mapped in WLEP2014. The form and scale of the complying portion of the building (the lower 4 storeys) is appropriately aligned, proportioned and articulated. The proposal defines and forms public domain. However the top two levels which rise above the height limit do not conform to the desired future character of the location. Similarly the proposed building has an FSR of 3.5:1 which exceeds the control of 2.5:1. An exceedance that is equivalent to two levels.

The Panel's *Determination and Statement of Reasons* (4 October 2018), which recommended refusal, concurred with the Urban Design Officer's opinion. It was also remarkably prescient about the impact an approval would have on the Council's ability to uphold existing development standards in Double Bay:

While the Panel appreciates the reasons for which the planning assessment report recommends approval of this application, it is unable to make those reasons its own. The only grounds on which a variation in the FSR and building height standards of the order of 44% can be justified is that the recent approval of similar variations on two neighbouring sites have resulted in the abandonment of the development standards. The Panel does not accept that these approvals have led to the abandonment of those standards in the Double Bay Business Centre. Moreover, the Panel believes that an approval of this application would make it more difficult to uphold those standards for future applications on other sites in the Centre.

Even though the SECPP twice refused this DA, and a subsequent revised Assessment Report recommended refusal, Woollahra Council's [appeal](#) against the L&E Court's decision to approve the DA was dismissed.

Whilst we appreciate that the Court's decision was influenced by Council's previous approval of two neighbouring DAs, both of which exceeded the development controls by two storeys, the original Assessment Report recommending approval was noted in Acting Commissioner's Clay judgment upholding the developer's appeal.

Re. 351 & 353 NSH Road, Double Bay

The [Council's Assessment Report](#) for 351 & 353 New South Head Road, Double Bay recommending approval contradicted the advice of the Urban Design Officer. In this case, the Urban Design Officer was very critical of the DA's response to the surrounding area, noting that:

*Despite being numerically compliant with the front setback requirements, the proposed excessive 4-5 storey bulk and scale is still highly visible from the public domain. **It dominates the existing landscape setting of its immediate surrounding context. It disrupts the character of the existing landscape cluster at this location and creates a building with a more 'town centre' character.***

This DA was approved by the WLPP, but it's now being appealed because the developer doesn't want to abide by the conditions of consent, which include the removal of the top floor.

Re 10 and 14 Cross Street, Double Bay

The [Assessment Reports for 10 and 14 Cross Street](#), Double Bay also recommended approval despite separate recommendations from the Urban Design Officer that they should be refused. These DAs were refused by the WLPP on 22 April 2021 with the Panel's [reasoning](#) concurring with the opinion of the Council's Urban Design Officer:

The Panel recognised the importance of considering the recent 6 storey developments in the western end of Cross Street as well as the Inter-Continental Hotel as part of the existing and desired future character of the area. However, the majority of the Panel does not consider that this 6 storey character extends to the eastern end of Cross Street or that the controls in this area have been abandoned. If a six storey built form or different controls are sought for this part of Cross Street, this should be considered via the strategic planning process rather than through individual DAs.

The Urban Design Officer's reasoning for recommending the refusal of 10 and 14 Cross Street seems particularly relevant given that the Council had not yet approved the Draft Planning Strategy for Double Bay. In the [Council's Assessment Report](#) (22 April 2021) for 14 Cross Street, Double Bay, the Urban Planning Officer states:

I acknowledge the proposed amendments to the street wall height at Knox Lane and Cross Street, which mainly follow the articulation pattern of the recently constructed building at 16-18 Cross Street. However, this individual building does not demonstrate the desired future character of the centre in all aspects. Council staff are currently preparing a comprehensive urban design strategy for the Double Bay Centre. This strategy is being prepared on a detailed site by site and block by block

basis. The strategy has not been finalised. However, at this point Council staff's intention for Cross Street is to have a consistent four-storey street wall height.



Photomontage of the proposed shop top housing development (original proposal) as viewed from Cross Street
Note: A replacement application was submitted which included minor modifications to the Cross Street elevation, mainly to the upper two levels, by the incorporation of additional planter boxes to Apartment at Level 3 and a minor increase in the footprint of Apartments 3 and 4 towards Cross Street

Above: 14 Cross Street, Double Bay



Image 3: Photomontage from Cross Street (Source: Metropoint Group Architects)

Above: 10 Cross Street, Double Bay

The Urban Design officer similarly criticised the DA for 10 Cross Street for not properly responding to its immediate surroundings:

I acknowledge the evolving character of Knox Lane due to the recently constructed buildings at 16-26 Cross Street and Court approved DA at 28-34 Cross Street (617/2017/1). Whilst they respond to the existing 3-4 storey street wall height on the southern frontage of Knox Lane as shown in Image 1, they eliminate the intimate scale and spatial enclosure of the lane illustrated in WDCP D5.4.9. In addition, the eastern half of the lane has a predominant two-storey street wall height. The proposed street wall height/perceived bulk and scale at Knox Lane is similar to Cross Street. However, the two streets have different characteristics, width and sense of enclosure. Knox Lane is a narrow lane. A four-storey street wall height results in a high sense of enclosure (less than 1:1). This is not a good urban design outcome. The existing through site link on the western boundary of the subject site has an intimate, low scale streetscape. The proposal provides a six-storey height facing the link without applying any lower street wall height.

Nevertheless, the Council's Assessment Report for 10 Cross Street said that the DCPs for this part of Cross Street had been abandoned, citing the L&E Court's decision to dismiss Woollahra Council's appeal against the approval of 28 - 34 Cross Street as evidence:

While the proposal has been considered on its merits, it is reasonable to consider the three approved developments at No's 16-18, 20-26 and 28-34 Cross Street. In addition, the LEC's judgement of No's 28-34 Cross Street is of particular relevance in determining the desired future character of the Double Bay Centre. The subject site at 10 Cross Street is regarded as being part of the general Cross Street locality. Previous DA approvals on the above addresses by Council and by the LEC (including its judgement) carry significant weight in assessing the current DA.

The Acting Commissioner's judgment for the 28-34 Cross Street DA, which was upheld by the L&E Court's Chief Judge, Brian Preston, said that the desired future character of Cross Street could be defined quite discreetly, ie just for a small part of the street. Acting Commissioner Clay mentioned that the two recently constructed 6 storey buildings, which are to the east of 28-34 Cross Street, established the desired future character of the sites only to the west towards Bay Street. The current height control of 5 storeys for the corner block on Cross and Bay Street was cited as evidence that in the "immediate locality of this defined block on the southern side of Cross Street," the desired future character was defined by taller buildings.

The Assessment Reports for 10 and 14 Cross Street were issued three days after the Strategic & Corporate Planning Committee passed the following [motion](#) affirming the current planning controls for Double Bay:

THAT Council reviews and reaffirms the existing controls in the Woollahra LEP 2014 and the Woollahra DCP 2015 consistent with the desired future character, and that we make it clear to all approval authorities that tThese should remain in force.

Submitted on behalf of the Double Bay Residents' Association, 23 August 2021