

Annexure 5 (Item R1) Environmental Planning Committee



Annexure

Monday 2 July 2018

6.00pm

Under Separate Cover Annexures Meeting Agenda

Item	Subject	Page
R1	Dunara Reserve, Point Piper - Public Exhibition and Public Hearing into the Proposed Changes to the Land Management Controls	
	5. Annexure 5: Chairpersons' Public Hearing Report	6

Item No. R1

Dunara Reserve, Point Piper - Public Exhibition and Public Hearing into the Proposed Changes to the Land Management Controls

Annexure 5

Annexure 5: Chairpersons' Public Hearing Report

SJB Planning



Planning Proposal for Reclassification of Council owned land Dunara Reserve Point Piper

Public Hearing Report

Final | June 2018

Contact Details:

SJB Planning
Level 2, 490 Crown Street
Surry Hills NSW 2010
Australia

T: 61 2 9380 9911
planning@sjb.com.au
www.sjb.com.au

SJB Planning (NSW) Pty Ltd
ABN 47 927 618 527
ACN 112 509 501

Table of Contents



	Executive Summary	5
1.0	The Site	7
1.1	Recent History of the Site and "Dunara"	8
2.0	Background to Planning Proposal	10
3.0	The Public Hearing	12
3.1	Information Relied Upon	12
3.2	Terms of Reference for Preparing, Conducting and Reporting on the Public Hearing	12
3.3	Overview of the Proceedings	13
4.0	Summary and Discussion of Submissions	15
4.1	Overview	15
4.2	Residents and Other Submissions and Key Issues Discussion	15
4.2.1	Concern regarding the land reclassification and other procedural/legal issues	15
4.2.2	Loss of public open space, community owned land, community value of the land and trees, and public access and use of the site	16
4.2.3	Protection of trees	18
4.2.4	Heritage significance of the heritage listed tree on the site and the nearby State heritage item "Dunara";	19
4.2.5	Ongoing Council maintenance will not be significant expenditure of public money	20
4.2.6	Public access	21
4.2.7	Ecological value	21
5.0	LEP Practice Note – Classification and reclassification of public land through a local environmental plan	22
6.0	Conclusion	23
7.0	Recommendation	25

Table of Contents

List of Figures

Figure 1: Local Area Map

Figure 2: Site Map

Figure 3: Site Aerial

Figure 4: Extent of notification area for the public exhibition of the Planning Proposal

Figure 5: The subject site is shown in red shading above. The narrow 2.7m access to Wentworth Street can be seen, as can the private road to the north of the site.

Figure 6: Photograph of the 2.7m wide Council and public access to the site from Wentworth Street. This is the only legal access to the site.

Figure 7: Extract of survey identifying trees on the site.

Figure 8: History of residential zoning

List of Tables

Table 1: List of representatives at public hearing held 14 March 2018

List of Attachments

Attachment 1: Copies of the Notification Letter

Attachment 2: Planners Report

Attachment 3: List of Speakers and Summary of Submissions

Attachment 4: Written Submissions

Attachment 5: Material Handed up at Public Hearing

Attachment 6: NSW Department of Planning and Environment LEP Practice Note – Classification and reclassification of public land through a local environmental plan, 5 October 2016

Executive Summary

The Planning Proposal applies to Lot 11 in DP 27451 which is known as Dunara Reserve Point Piper (the site). The site is approximately 400m² in area.

The site is owned by Woollahra Municipal Council and is classified as community land under the *Local Government Act (LG Act) 1993*. The site is dedicated as a public reserve under Section 50(5) of the *LG Act 1993* and is zoned R2 Low Density Residential under Woollahra Local Environmental Plan 2014 (WLEP).

On 24 August 2015, Woollahra Municipal Council resolved:

- A. *THAT Council prepare a planning proposal to amend Schedule 4: Classification and reclassification of public land in Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) to reclassify the land known as Dunara Gardens from "community land" to "operational land" with the intention of disposing of the land.*
- B. *THAT a further report be brought forward to Council on the findings of the public consultation including the public hearing and submissions."*

The Planning Proposal received a Gateway Determination from the NSW Department of Planning and Environment (DP&E) to proceed on 20 July 2017.

The Planning Proposal was publicly exhibited from 9 August 2017 to 8 September 2017 and re-exhibited from 25 October 2018 to 24 November 2017. According to the Council's records 125 property owners were individually notified during both public exhibitions.

The reclassification of the site from "community land" to "operational land" requires the holding of a Public Hearing, in accordance with the *Environmental Planning and Assessment Act (EP&A Act) 1979* and the *LG Act 1993*.

Notification of the Public Hearing occurred in the *Wentworth Courier* on 14 February 2018 and those people who had made submissions to the Planning Proposal were notified in writing by the Council.

Stuart McDonald, Director of SJB Planning, was appointed as an independent Chair to undertake the Public Hearing. This document comprises the report of the Public Hearing in accordance with Section 29 of the *LG Act 1993* and Section 57 of the *EP&A Act*.

The terms of reference for preparing, conducting and reporting on the Public Hearing are as follows:

- (1) *Examine the Planning Proposal and exhibition documentation.*
- (2) *Consider submissions made to the exhibition.*
- (3) *Conduct a public hearing under section 57 of the EP&A Act.*
- (4) *Provide a report to Council on the appropriateness of the reclassification in the planning proposal. The report is to include—*
 - *a copy of all written submissions made to the hearing;*
 - *a summary of all oral submissions made to the public hearing;*
 - *an assessment of the written and verbal submissions made to the public hearing;*
 - *specific comments to adequately inform the Council when it makes a decision under section 58 of the EP&A Act in relation to the Planning Proposal; and*
 - *recommendations, based on considering issues raised in submissions, on whether—*

8378_11.2_Public Hearing Report_Final_180601

1. *further investigations should be undertaken and, if so, their nature and scope;*
2. *the Planning Proposal should proceed:*
 - (i) *in the exhibited version; or*
 - (ii) *subject to alterations;*
3. *the Planning Proposal should not proceed."*

The Public hearing was conducted from 2:00pm – 5:30pm on 14 March 2018 at the Woollahra Council Chambers.

The key issues arising from both the verbal and written submissions made to the Public Hearing are generally the same as those raised in submissions to the exhibition (and re-exhibition). These are:

- Concerns regarding the land classification process and procedural/legal issues, including existence of a "Trust";
- Status of the land having been dedicated to the Council as a result of the 1956 subdivision of the "Dunara" Estate;
- Heritage status of the land both in the context of the State Heritage Item at nearby 10 Dunara Gardens and a local heritage item (tree) on the land;
- Loss of public open space and public access and use of the site;
- The land is not adequately presented as a public reserve;
- Ecological value of the land and the substantial trees located thereon;
- Ongoing maintenance costs not onerous to the Council;
- Benefits of the land extend beyond just the adjoining neighbours;
- Land should stay in public ownership in order to protect the trees; and
- There is no Plan of Management (PoM) for Dunara Reserve.

All issues raised are discussed in more detail in later sections of this report.

This report records the matters raised during the course of the Public Hearing, it is not a word for word account or verbatim minutes. A summary of the verbal submissions made is included as Attachment 3 to this report. Included at Attachment 4 are the written submissions received during the exhibition period prior to the Public Hearing sessions at the Council Chambers.

The report notes that during the public exhibition and the re-exhibition of the Planning Proposal there occurred a technical omission with the exhibition material. In short any public exhibition of a planning proposal should occur in accordance with the *NSW Department of Planning and Environment LEP Practice Note – Classification and reclassification of public land through a local environmental plan*, 5 October 2016. The Practice Note requires that a copy of the practice note is to be included in the public exhibition material, but this did not occur. This procedural issue is discussed in Section 5. This technical omission was brought to the Council's attention, with the Council subsequently obtaining legal advice as to whether that failure "invalidates the public exhibition process" and whether further public exhibition (and potentially a second public hearing) is required. The Council's legal advice is that the Council's failure to include the Practice Note in the publicly exhibited materials does not invalidate the public exhibition process. Accordingly, the advice is that a further public exhibition period or public hearing is not required.

The recommendation of this Report is that the Planning Proposal for the reclassification of the site from "community land" to "operational land" proceed.

8378_11.2_Public Hearing Report_Final_180601

1.0 The Site

Details of the site, reproduced from the Planning Proposal documentation prepared by the Council, is included below:

"The site is located at the intersection of Wentworth Road and Dunara Gardens in Point Piper as shown in Figure 1, Figure 2 and Figure 3 below. Irregular in shape, the site area is approximately 402m² and falls approximately 4m to the southeast.

To the west, the site has a narrow access of approximately 2.7m to Wentworth Road, which provides limited pedestrian access. To the north the site adjoins Dunara Gardens, the private road to the former Dunara estate. To the east the site adjoins No.9 Dunara Gardens and to the south the site adjoins No. 1 Wentworth Street."



Figure 1: Local Area Map

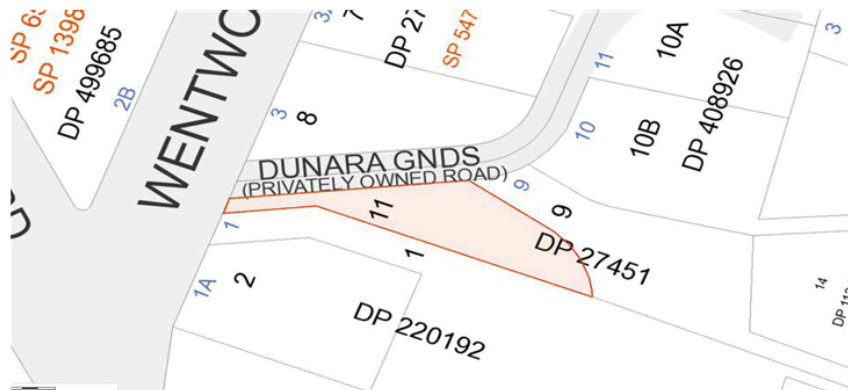


Figure 2: Site Map

8378_11.2_Public Hearing Report_Final_180601

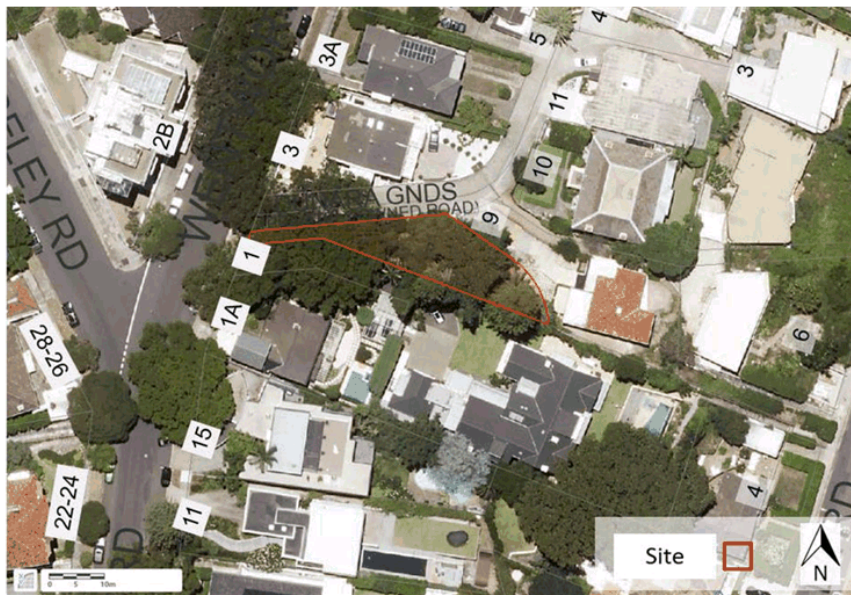


Figure 3: Site Aerial

"The site contains a range of exotic and native trees including a mature Cook Pine which is local heritage item No 277 in Woollahra LEP 2014 (see Figure 4 & 5). There are no threatened species, populations or ecological communities.

The site contains no structures, and the size, shape and topography of the land restricts the construction of a building for community use. The small frontage to Wentworth Road (see Figure 7) provides limited access, and from the public domain it does not visually present as a piece of public land."

1.1 Recent History of the Site and "Dunara"

Dunara Reserve located on Lot 11 is a residue of the previously existing Dunara Estate, being both the house "Dunara" and the associated gardens.

On 25 June 1956, Dunara Estate was subdivided into 11 lots. Lot 11 is noted on the deposited plan as, "Public Garden and Recreation Space". The site was transferred unencumbered to Council on 15 July 1957 pursuant to Section 340A of the *LG Act 1919* as part of the subdivision of the Dunara Estate.

The heritage listing included in WLEP is:

Cook Pine	Dunara Gardens	Lot 11, DP 27451	Local Item	Item number 277
-----------	----------------	------------------	------------	-----------------

The heritage listing for the nearby "Dunara" included in WLEP is:

"Dunara"—house and interiors	10 Dunara Gardens	Lot 10B, DP 408926	State Item	Item number 276
------------------------------	-------------------	--------------------	------------	-----------------

8376_11.2_Public Hearing Report_Final_180601

The State Heritage listing of "Dunara" includes:

"Statement of Significance

Dunara is the oldest remaining house in Point Piper. It is historically significant particularly for its associations with Dorothea McKellar - as her birthplace and for its association with the influences on her artistic development, including her education, cultural environment and the surrounding landscape. Architecturally the house is an excellent example of a well-crafted Victorian residence of the period (built c 1883). It is a two-storey stuccoed brick house with slate roof and fine cast iron verandah and balcony, retaining much of its original detail intact and which past and present owners have maintained in a sympathetic manner. (Heritage Branch report, 1987).

The stables have been partially demolished and the servants' wing likewise has been separated from the house and converted into another dwelling. The entrance hall is particularly fine, having delicately carved shell motif cedar door head trims to doors opening off it and with Minton tiles."

Due to the narrow and restricted frontage to Wentworth Street, including the location of significant vegetation fronting Wentworth Street there exists limited opportunities for active use of the space. Some perimeter hedge planting fronting Dunara Gardens, a private road bordering the northern boundary of the Reserve, has been, as advised by Council officers, undertaken without Council approval or support.

8376_11.2_Public Hearing Report_Final_180601

2.0 Background to Planning Proposal

On 10 June, 2014 the Council adopted the following Notice of Motion:

"That a report be brought to Council within the next three months assessing the land known as Dunara Reserve Point Piper, with a view to rezone the land in order for it to be put up for sale."

The Council's Community and Environment Committee considered a report on "Dunara Reserve Point Piper" at its meeting on 10 August 2015. The Council officers report to the Committee included the following assessment:

"Dunara Gardens provides little to no recreation value for the community. The reclassification of the site would allow Council to dispose of the land, removing the economic burden of managing the site and the potential public safety risk. The funds from the disposal can be used to provide or upgrade other Council services and infrastructure which will benefit the broader community....."

Dunara Gardens is currently classified as community land. Restrictions on community land prevent the site from being disposed of. However, these restrictions do not apply to operational land therefore we propose to recommend the site is reclassified as 'operational land'.

Should the planning proposal be approved, the Council would then have the opportunity to dispose of the site through Expressions of Interest or Tenders."

On 24 August 2015, Woollahra Municipal Council resolved:

- "A. THAT Council prepare a planning proposal to amend Schedule 4: Classification and reclassification of public land in Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) to reclassify the land known as Dunara Gardens from "community land" to "operational land" with the intention of disposing of the land.*
- B. THAT a further report be brought forward to Council on the findings of the public consultation including the public hearing and submissions."*

The Planning Proposal received a Gateway determination from the NSW DP&E to proceed on 20 July 2017.

The Planning Proposal was publicly exhibited from 9 August 2017 to 8 September 2017 and re-exhibited from 25 October 2018 to 24 November 2017. According to the Council's records 125 property owners were individually notified during both public exhibitions. An extract of the location of the properties notified is included below in Figure 4.

8378_11.2_Public Hearing Report_Final_180601

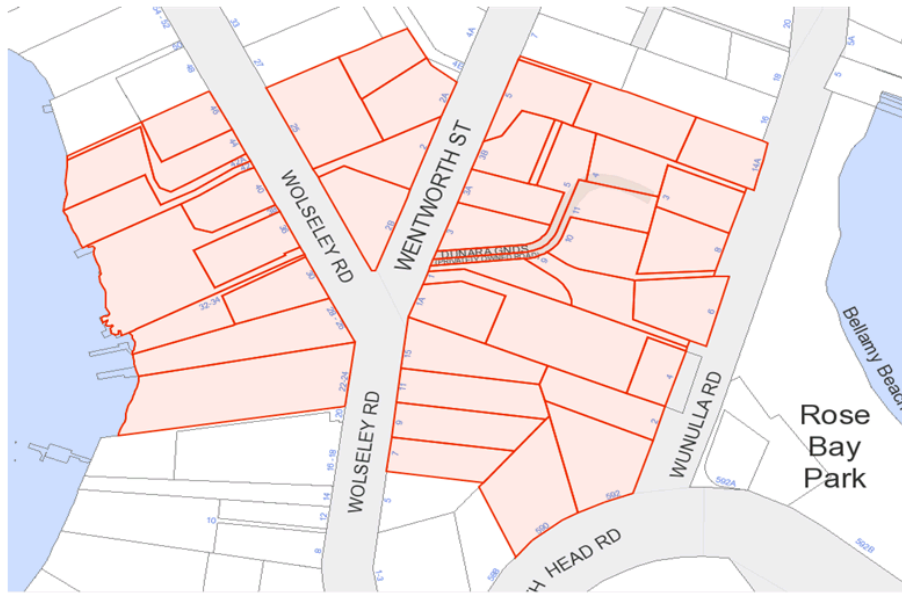


Figure 4: Extent of notification area for the public exhibition of the Planning Proposal

The exhibitions occurred at the Council Customer Services Area. A copy of the Planning Proposal and supporting material was also available on the Council's website.

Council received 25 submissions during the first exhibition period, 32 new submissions during the re-exhibition period as well as 11 submissions from people who commented during the original exhibition. A late written submission was received after the Public Hearing.

Copies of the submissions to the Planning Proposal were provided to the Chair for information and have been read and considered in the preparation of this report.

8378_11.2_Public Hearing Report_Final_180601

3.0 The Public Hearing

3.1 Information Relied Upon

- Report to the Community and Environment Committee 10 August 2015 – Dunara Reserve Point Piper;
- Council Resolution of 24 August 2015 regarding Dunara Reserve Point Piper;
- Planning Proposal Dunara Reserve Point Piper;
- Public exhibition material, including Planning Proposal, appendices etc.;
- Certificate of Title Lot 11 DP 26451;
- Site Survey, S.J. Dixon Surveyors Pty Ltd, date 06/07/2018 (sic);
- Gateway Determination 20 July 2017;
- Woollahra Municipal Council "Significant Trees in Public Parks" heritage inventory sheet – Cook Pine, Dunara Gardens, Point Piper;
- NSW Office of Environment and Heritage, heritage inventory sheet – "Dunara", 10 Dunara Gardens;
- NSW Office of Environment and Heritage, heritage inventory sheet – Cook Pine and Morton Bay Fig, 1 Wentworth Avenue Point Piper;
- Extract of Council Meeting Minutes 9 July 1956 – subdivision approval 3 Wentworth Street Point Piper;
- Engineer's Report 30 May 1956 - Subdivision Application No 3 Wentworth Street Point Piper;
- Extract of residential land zoning of Dunara Reserve 1951-2018;
- All written submissions to both exhibitions of the Planning Proposal;
- Verbal submissions made to the public hearing;
- Material handed up by submitters at the public hearing;
- Planner's Report – Reclassification of Dunara Reserve, February 2018;
- Plan of Management 1996 - Local Parks;
- Woollahra Local Environmental Plan 2014 (WLEP);
- *NSW Department of Planning and Environment LEP Practice Note – Classification and reclassification of public land through a local environmental plan*, 5 October 2016; and
- *NSW Department of Local Government Practice Note No. 1 – Public Land Management, 2000.*

Dunara Reserve was inspected on 27 February 2018.

3.2 Terms of Reference for Preparing, Conducting and Reporting on the Public Hearing

The terms of reference for preparing, conducting and reporting on the public hearing are as follows:

- (1) *Examine the Planning Proposal and exhibition documentation.*
- (2) *Consider submissions made to the exhibition.*
- (3) *Conduct a public hearing under section 57 of the EP&A Act.*
- (4) *Provide a report to Council on the appropriateness of the reclassification in the planning proposal.*
The report is to include—

8376_11.2_Public Hearing Report_Final_180601

- a copy of all written submissions made to the hearing;
- a summary of all oral submissions made to the public hearing;
- an assessment of the written and verbal submissions made to the public hearing;
- specific comments to adequately inform the Council when it makes a decision under section 58 of the EP&A Act in relation to the Planning Proposal; and
- recommendations, based on considering issues raised in submissions, on whether –
 1. further investigations should be undertaken and, if so, their nature and scope;
 2. the Planning Proposal should proceed:
 - (i) in the exhibited version; or
 - (ii) subject to alterations;
 3. the Planning Proposal should not proceed."

3.3 Overview of the Proceedings

Under section 29 (public hearing into reclassification) of the *LG Act 1993*:

- (1) A council must arrange a public hearing under section 57 of the *EP&A Act* in respect of a Planning Proposal under Part 3 of that *EP&A Act* to reclassify community land as operational land, unless a public hearing has already been held in respect of the same matter as a result of a determination under Section 56 (2) (e) of that *EP&A Act*.
- (2) A council must, before making any resolution under Section 32, arrange a public hearing in respect of any proposal to reclassify land as operational land by such a resolution.

Council is required to hold a Public Hearing for the reclassification of Dunara Reserve as a Public Hearing into this matter has not previously been held. The Public Hearing is required to be held before the Council makes any final decision regarding the land reclassification.

The general administration of the Public Hearing was undertaken by Council officers. Notice was given in the *Wentworth Courier* on 14 February 2018. Those people that had made written submissions to the Planning Proposal were individually notified of the Public Hearing and invited to make written submissions to the Public Hearing and/or register to speak. Copies of the letter are included as Attachment 1 to this report. Further, the notification letter invited recipients to access the Council's website to view a Council "Planner's Report" detailing submissions received in relation to the exhibited Planning Proposal. The Planners Report is included at Attachment 2.

The Chair of the Public Hearing undertook a site inspection, including the surrounding area, accompanied by Council officers on 27 February 2018.

The public session of the Public Hearing was held between 2:00pm – 5:30pm at the Woollahra Municipal Council Chambers. The Hearing was chaired by Stuart McDonald, a person independent of the Council as required under the *LG Act 1993*. The Chair's role was to ensure that every interested person had an opportunity to present their views and to document these views, as well as provide a report to the Council with recommendations.

At the outset of each session of the Public Hearing the following comments and explanations were made by the Chair:

- Introduction and outline of the format of the hearing.
- Explanation of the role of the Chair – to listen to the issues, comments and concerns raised – the role was not to provide an opinion on the merits or otherwise of the reclassification during the course of the public sessions.
- The Chair is independent of Council and has no personal or professional interest in the outcome.

8376_11.2_Public Hearing Report_Final_180601

- Notes would be taken to assist the Chair to ensure on accurate representation of views expressed but formal minutes would not be taken and the proceedings would not be recorded in any form. Council officers would be assisting with the administration of the proceedings and preparation of notes.
- The Chair had inspected the site and the surrounding area and reviewed the written submissions received to both the Hearing and to the Planning Proposal, as well as the background material prepared by the Council for the exhibition.
- The importance of allowing each person to express their opinion without interruption.
- Any person who was present who had not previously registered was also given the opportunity to speak and requested to provide their names to staff.
- An overview of the area under consideration for planning change and broadly what was being proposed.

Details of Council officers present are listed below in Table 1.

Attachment 3 details the 11 speakers who attended the hearing.

Presenters were requested to keep submissions to a maximum of 10 minutes and requested that only one (1) person speak at one (1) point in time. By and large the 10 minute limit was observed.

Details of the verbal submissions including the presenters are included at Attachment 3.

At the close of each session participants were thanked for their time and advised that:

- A report would be prepared;
- The report is a public document and would be available as soon as practicable after Council receiving it;
- This matter will be reported back to Council and the Council officers would further advise of the timeframe; and
- Participants would be advised in writing when the matter was to be reported and the availability of the report.

All submissions made at the Public Hearing oppose the reclassification. All written submissions, with the exception of one (1) in support, oppose the reclassification.

The following representatives of the Council and SJB Planning were present:

Name	Role/Position	Company
Stuart McDonald	Chair	SJB Planning
Kelly McKellar	Strategic Planner	Woollahra Municipal Council
Anne White	Team Leader Strategic Planning	Woollahra Municipal Council

Table 1: List of representatives at public hearing held 14 March 2018

8376_11.2_Public Hearing Report_Final_180601

4.0 Summary and Discussion of Submissions

4.1 Overview

A total of 11 people made submissions in person at the Hearing. The list of speakers and the matters raised is provided at Attachment 3.

The submissions, all of which opposed the reclassification, are summarised below:

- Concern regarding the land classification process and procedural issues, including legal questions regarding the process and the existence of a trust;
- Significance of the land dedication as part of the 1956 subdivision;
- Loss of public open space, community owned land, and public access and use of the site;
- Value as open space is not only for active or passive use but includes the visual prominence of the site and trees viewed from surrounding area;
- Intended or potential removal of trees, with trees more likely to be protected if land is maintained in public ownership;
- Heritage significance of the heritage listed tree on the site and the nearby State heritage item "Dunara"; and
- Ongoing Council maintenance will not be significant expenditure of public money.

Each of the above issues is discussed below.

4.2 Residents and Other Submissions and Key Issues Discussion

4.2.1 Concern regarding the land reclassification and other procedural/legal issues

- The land was dedicated as public open space as a requirement at the time of the 1956 subdivision approval and should not be reclassified and sold.
- The land is held in trust by the Council and while it may be legally possible to discharge the trust, morally the Council should not discharge the trust.
- There are legal flaws in the preparation and reporting of the Planning Proposal that invalidates the matter as reported to the Minister and the Minister's decision to proceed to Gateway.
- There is no valid PoM for Dunara Reserve as it is referred to as "Dunara Gardens" in the *Plan of Management 1996 - Local Parks*. A valid PoM is a pre-requisite for changing the nature and use of land under the *LG Act 1993*.

Discussion in response

- The Council has obtained legal advice dated 25 September 2017, summarised below:
 - The Reserve is likely to be held in trust for a public purpose given the circumstances of its dedication to Council. This does not prevent the reclassification of the land by way of a Local Environmental Plan (LEP), via a Planning Proposal process.
 - The LEP which reclassifies the Reserve can provide that, upon the reclassification of the Reserve is freed from trusts. The Planning Proposal currently does this.

8376_11.2_Public Hearing Report_Final_180601

- There is no impediment to the reclassification of the reserve and whether or not there is a PoM is not relevant.
 - In my opinion it is open to the Council to reclassify the previously dedicated land via the planning proposal process. If the land is reclassified to operational land, then the Council has identified that it may be sold.
 - Subsequent to the legal advice, and as a result of the public hearing process, I have identified a technical omission associated with the exhibition material associated with the Planning Proposal. This issue is further discussed in Section 5 of this report.
- 4.2.2 Loss of public open space, community owned land, community value of the land and trees, and public access and use of the site**
- The land is a community asset and should not be reclassified and sold.
 - There is limited public open space in the highly urbanised area of Point Piper.
 - Increasing population in the Woollahra local government area will need access to more open space, not less.
 - The site should be better available to the public and could be improved with signage.
 - The large and significant trees on the site that are visible from Rose Bay and other areas results in a wider public benefit. It is not correct to state that the only beneficiaries of the land are the immediate neighbours.
 - While not highly accessible or used for active recreation the site is still valuable as public open space.
 - Provides trees and substantial planting whereas the private residential properties within Dunara Gardens do not have capacity for substantial planting.

Discussion in response

A number of the written submissions and some of the verbal submissions emphasised that, contrary to the information contained in the report to the Community and Environment Committee on 10 August 2015 and the Planning Proposal, the site is used by, and provide a benefit to, the wider community, and is not limited to the immediate neighbours.

As summarised above, submitters advised that the land is used by some children for play; is used by some walkers for shade and protection; provides trees and substantial planting whereas the private residential properties within Dunara Gardens do not have capacity for substantial planting; and that some of the trees are visible from a wide area including Rose Bay.

Having inspected the site and noting the lack of accessibility I would question the extent of and availability for use for general play and activity, including passive use. As shown in the figures below the site has a very narrow and restricted public access of approximately 2.7m to Wentworth Street. Physical access is also restricted by vegetation, to the point of being obstructed. Even allowing for the potential removal of the low palm tree shown in Figure 6 below, access is then restricted by more substantial vegetation and uneven and sloping land.

There is no alternative public access to the site, other than the narrow Wentworth Street frontage. The road bordering the site fronting Dunara Gardens estate is a private road. There is no Council or public access from the privately owned road. Following a request by me to the Council's Strategic Planning section, I am advised that the Council's Property Section commissioned a land title search in April 2018 to establish whether there is any right-of-way over the private road that benefits the Council/public, thereby allowing more practical access to the site. The advice provided to me by the Council's Strategic Planning section is that the title search that was undertaken confirmed that there is no right of access across/from the private road. If members of the public are accessing the subject site via Dunara Gardens private road then they are doing so by trespassing on private land.

88378_11.2_Public Hearing Report_Final_180601



Figure 5: The subject site is shown in red shading above. The narrow 2.7m access to Wentworth Street can be seen, as can the private road to the north of the site.

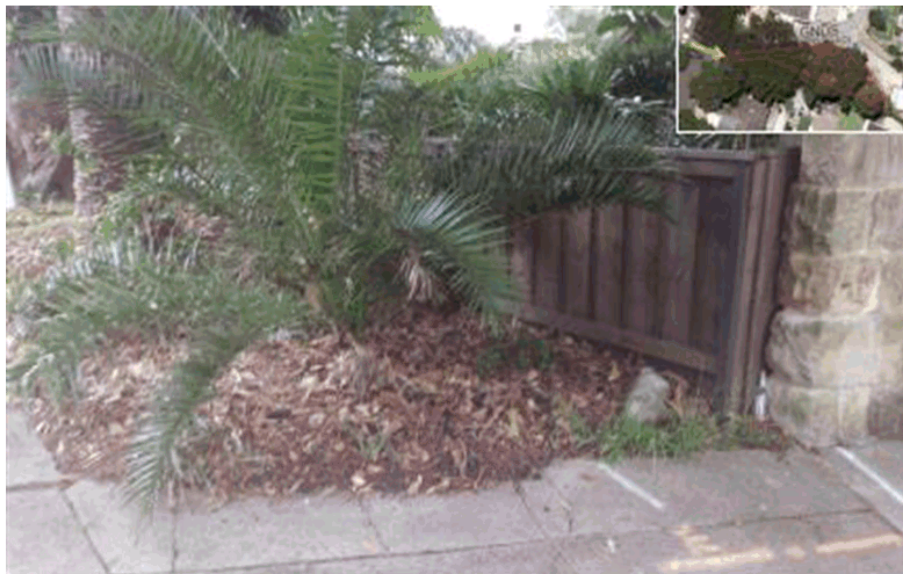


Figure 6: Photograph of the 2.7m wide Council and public access to the site from Wentworth Street. This is the only legal access to the site.

In my opinion there is very limited if any opportunity for any active use of the site, including children's play or even passive use. The site, including the very substantial trees, among them the heritage listed Cook Pine, does provide a visible parcel of passive green space – landscaping containing some substantial trees and vegetation. I also note that this landscape character may exist regardless of public or private ownership.

I also acknowledge that the Council's expert technical officers, including the Team Leader Open Space and Recreation Planning, Manager of Open Space Trees and Director of Technical Services have advised the

8376_11.2_Public Hearing Report_Final_180601

elected Council (report to the Council's Community and Environment Committee 10 August 2015) that the site:

- Is unsuitable for use as public open space due its position amongst private dwellings and its topography.
- Has a small frontage to Wentworth Road of approximately three metres (2.7m) and does not provide appropriate access or passive surveillance into the site.
- Presents as part of a private estate rather than public land and members of the public would be hard pressed to recognise it as a public asset, let alone be inclined to enter and use the site for public recreation.
- Currently only offers benefits to the properties immediately adjoining the site.

Further to the above comments, the opinions expressed in submissions regarding the lack of substantial landscaping and trees in private properties within the private Dunara Gardens estate is not a matter that should be given any weight in assessing the strategic planning merit of the Planning Proposal. Property owners have made decisions to purchase and live in the location. If they desire more generous private gardens and tree cover then alternative property options are available to them.

4.2.3 Protection of trees

- The protection of the trees, including the Cook Pine heritage item is served by maintaining Council ownership and community land classification.
- The protection of the trees cannot be guaranteed if the land is sold.

Discussion in response

An extract of the site survey is included below in Figure 7 and which identifies 11 trees on the site (T3 and T6 are located on No 1 Wentworth Street), confirming that it is heavily vegetated, particularly through the widest section of the site.

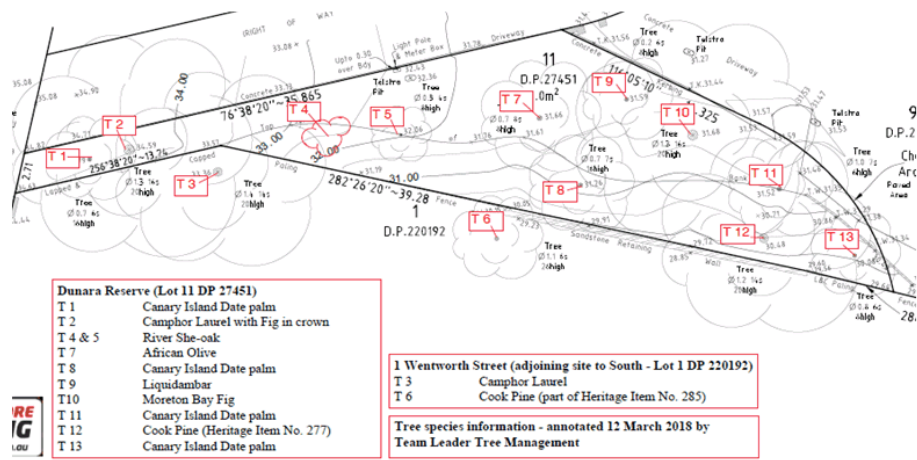


Figure 7: Extract of survey identifying trees on the site.

The Cook Pine (T12 in Figure 7 above) is a heritage item and is protected by the heritage provisions contained within WLEP regardless of land ownership. The Cook Pine and indeed all relevant trees within the

88376_11.2_Public Hearing Report_Final_180601

reserve are also protected by the Council's tree preservation order. These controls are in place regardless of the land classification and ownership.

There are two (2) trees, a Cook Pine and a Moreton Bay Fig, located on private land adjoining at No 1 Wentworth Street that are also local heritage items. The status and protection of these trees on private land is no different to the status and protection on Dunara Reserve.

The subject site is zoned R2 Residential Low Density, and has been zoned for residential purposes since the 1950s as identified in the table included in Figure 8 below.

Land zoning 1951-2018

Dunara Reserve, Point Piper (Lot 11 in DP 2741)

Instrument	Zoning	Status
Woollahra LEP 2014	R2 Low density residential	Current
Woollahra LEP 1995	Zone No 2 (a)—(Residential "A" Zone)	Past
Woollahra Planning Scheme Ordinance (1972)	Zone No 2 (a)—(Residential "A" Zone)	Past
County of Cumberland Planning Scheme Ordinance (1951)	Living Areas	Past

Figure 8: History of residential zoning

If the site were to be reclassified and sold then there may be that some future application for some form of residential development on the land and this may include the proposed removal of some trees. Any future use and works on the land would require development consent. As is the case with the adjoining property at No. 1 Wentworth Street, the residential use of the property could occur in conjunction with the retention and protection of the Cook Pine and other trees.

Because of the constrained access to the site in particular and the awkward and unusual shape and configuration, together with the existence of a number of substantial trees, it will be a challenging prospect as a stand-alone residential development site, although many challenging sites in inner Sydney have proven capable of being developed.

4.2.4 Heritage significance of the heritage listed tree on the site and the nearby State heritage item "Dunara";

Discussion in response

The proposed reclassification does not alter the heritage status of the heritage listed Cook Pine or the relationship of the site to 10 Dunara Gardens. The existing relationship was established as a result of the 1956 subdivision and subsequent residential development of Dunara Gardens. If the site were to be sold and some form of residential development were to be proposed, including alteration to the existing landscape character and tree removal, then the heritage impact and acceptability would be determined at that time. In my opinion it is not reasonable or rational to assume the acceptability or otherwise of possible heritage impact.

The Heritage Council of NSW wrote to the Council on 4 September 2017 and the Chair, Stephen Davies, presented to the public hearing. The Heritage Council notes that the reserve may have local heritage value as well as a contributory value to the Dunara State heritage item. The 4 September 2017 letter includes:

"I would welcome discussion with Council over its consideration for additional Local Environmental Plan listing of the Reserve as a landscape heritage item and consideration of possible State Heritage Register listing as an extension of Dunara's existing, limited SHR curtilage."

8376_11.2_Public Hearing Report_Final_180601

Some submissions suggested that in order to protect the trees and the heritage status of the land then it should remain in public ownership. At the public hearing Mr Davies expressed the opinion that, if in private ownership, there would be significant pressure on the site and that the best way to protect the heritage of the site would be to keep it in public ownership, rather than have a private owner looking to do something with the land. In addition, Mr Davies expressed the opinion that the opportunities for development of the site are very low so questioned the potential disposal.

In my opinion a property does not have to be in public ownership in order to for its heritage significance to be recognised and protected. No 10 Dunara Gardens is a State heritage items in private ownership. The Cook Pine and Moreton Bay Fig trees at 1 Wentworth Street are local heritage items on private property. Having said this, it is also acknowledged that the residential development of both of these sites occurred prior to any heritage listing, i.e. the residential potential was realised free of any contemporary heritage controls, which have been imposed more recently.

Separately to the Planning Proposal and Public Hearing process, the Council at its meeting on 12 March 2018 resolved:

"THAT Council requests staff to prepare and submit a report including a heritage assessment and draft heritage inventory sheet for Dunara Reserve to Urban Planning Committee to facilitate consideration of Dunara Reserve (and its elements) being:

- 1. Included in the Woollahra Local Environmental Plan as a heritage item; and*
- 2. Listed as a heritage item of state significance on the NSW Heritage Register."*

The above investigations and consideration by the Council will proceed separately to the process being followed with the Planning Proposal and Public Hearing.

Whatever the outcome of the analysis arising from the Council resolution of 12 March, I am of the opinion that the subject site does not have to remain classified as community land in order that its heritage status is recognised and protected but do accept that protection may be more readily achieved whilst the land is in public ownership without any expectation of some form of residential development on the land.

4.2.5 Ongoing Council maintenance will not be significant expenditure of public money

Discussion in response

A number of submissions questioned that justification put forward by Council officers that the ongoing maintenance of the reserve is a poor use of Council's resources as there is no tangible and obvious community benefit. Submitters suggested that, in any event, the expenditure is minimal in the context of the Council's discretionary annual expenditure.

It is apparent that many residents who have made submissions have difficulty in accepting that a public reserve that has been in existence for more than 60 years and was established for the express purpose of public open space, is now considered to provide no obvious community benefit and that Council officers have formed the opinion that ongoing public expenditure is not justified. In short, it is not clear to the local community why the Council considers that the ongoing responsibility for, and stewardship of, the public land is no longer a focus for the Council.

I note that the exhibited Planning Proposal identifies that, should the site be sold or leased long-term, the revenue generated could be used for public open space upgrades in the local government area such as the Redleaf foreshore upgrade, Rose Bay Pedestrian Trail and Guilfoyle Park upgrade and that these facilities are in proximity to the residents of the whole of Point Piper.

As mentioned earlier in this Report, the Council's expert technical officers have recommended that there is a case for a different focus for the expenditure of Council's resources and while public representations to the

8376_11.2_Public Hearing Report_Final_180601

Planning Proposal exhibitions and the Public Hearing suggest that this case has not been adequately made, the current stage of the Council's consideration is whether or not to reclassify the land. Consideration of whether or not Council sells or leases the land and invests the return in other programs will be a consideration at a later stage and in the context of the whole of the Council's expenditure program.

4.2.6 Public access

- The land is not adequately presented as a public reserve

Discussion in response

As detailed above, the site has extremely limited accessibility and usefulness for active or even passive recreation. Changes to the planting at the Wentworth Street frontage would be required in order to accommodate a pedestrian access point and some form of signage, in the event that the Council wishes to change the presentation of the reserve.

4.2.7 Ecological value

- Ecological value of the land and the substantial trees located thereon.
- The site provides habitat for flora and fauna and is important in the Woollahra Biodiversity Conservation Strategy.
- May be within the flight corridor of the endangered powerful owl

Discussion in response

The Planning Proposal documentation does not place any emphasis on the site having inherent ecological value. Notwithstanding, as with the heritage status/value of the site, any ecological value does not change as a result of the reclassification and potential disposal.

8378_11.2_Public Hearing Report_Final_180601

5.0 LEP Practice Note – Classification and reclassification of public land through a local environmental plan

The NSW Department of Planning and Environment LEP Practice Note – Classification and reclassification of public land through a local environmental plan, 5 October 2016, provides guidance on classifying and reclassifying public land through a local environmental plan (LEP). This practice note emphasises the need for councils to demonstrate strategic and site specific merit, includes a comprehensive information checklist and clarifies issues arising for public reserves and interests in land. A copy is included at Attachment 6.

The practice note identifies (among other things) that the classification and reclassification of public land is fundamental to transparency in relation to a council's strategic asset management; and that a Planning Proposal to classify or reclassify public land will need to be prepared in accordance with the practice note.

Under the heading Community Consultation the practice note states:

*“Community Consultation
Planning proposals to reclassify public land are to be publicly exhibited for at least 28 days.
A copy of this practice note is to be included in the public exhibition materials”*

Council's officers have advised that a copy of the practice note was not included in the public exhibition materials during the two (2) exhibition periods.

During the public exhibitions the Council did provide the following information to the community with regard to the Practice Note:

- Appendix 1 - information checklist for proposals to classify or reclassify public land through an LEP taken from practice note 16-001' references the Practice Note in the title and addresses the matters to be considered for reclassification.
- A public notice explaining each step of the reclassification process in correspondence to residents and submitters, on Council's public website and in the local newspaper.
- A link to the DP&E website for further information. The Practice Note is also located on that website.

It is also noted that a copy of the Practice Note was provided as part of advertising the Public Hearing.

In summary, there has been a technical omission from the Planning Proposal exhibition. It is not possible to be certain regarding the impact of this omission on the public understanding of the proposal or how it may have impacted/influenced the submissions, however having considered all of the written submissions arising from the exhibitions as well as the submissions to the Public Hearing it is my opinion that the public had a clear understanding of the proposal and the process.

This technical omission was brought to the Council's attention, with the Council subsequently obtaining legal advice as to whether that failure "invalidates the public exhibition process" and whether further public exhibition (and potentially a second public hearing) is required. The Council's legal advice is that the Council's failure to include the Practice Note in the publicly exhibited materials does not invalidate the public exhibition process. Accordingly, the advice is that a further public exhibition period or public hearing is not required.

8376_11.2_Public Hearing Report_Final_180601

6.0 Conclusion

In accordance with the terms of reference for conducting and reporting on the Public Hearing, the Planning Proposal and exhibition material has been examined and all submissions made to the exhibition and the staff report on submissions have been considered in preparing this report.

The Public Hearing session provided the opportunity for 11 speakers to present. There was some material handed up at the Public Hearing supporting the verbal presentations.

The matters raised in the submissions were consistent with community comments provided during public consultation.

My summary of the circumstances relating to Dunara Reserve include:

- The site, having been dedicated to the Council in 1957 as *Public Garden and Recreation Space* has functioned to some extent for that purpose for approximately 60 years.
- Council officers responsible for the management of public open space have formed the opinion that the site is an underutilised piece of public land that does not benefit the wider community; that the site currently offers benefits only to the immediately adjoining properties; and that the ongoing maintenance of the site is a poor use of Council's resources.
- Council officers have recommended the reclassification of the land. The possible sale or long term lease may provide the opportunity for the Council to use the funds to improve services and infrastructure in the local government area, including useable open space in the vicinity.
- The site does not present to the general public as a public reserve, has restricted access and has very limited if any opportunity for any active use of the site, including children's play or even passive use.
- Further constraints associated with the site include a lack of access from the adjoining private road, an awkward and unusual shape and heavy vegetation.
- The heavy vegetation includes some large and prominent trees, including a local heritage item in the form of a Cook Pine.
- The heritage and ecological value of the land would not change as a result of reclassification.

The written submissions, with one (1) exception, and the speakers at the public hearing, are opposed to the reclassification and disposal of the land for a wide range of reasons as detailed in the report. With regard to the heritage issues raised I have noted in this Report that the Council at its meeting on 12 March 2018 resolved:

"THAT Council requests staff to prepare and submit a report including a heritage assessment and draft heritage inventory sheet for Dunara Reserve to Urban Planning Committee to facilitate consideration of Dunara Reserve (and its elements) being:

1. *Included in the Woollahra Local Environmental Plan as a heritage item; and*
2. *Listed as a heritage item of state significance on the NSW Heritage Register."*

The above investigations and consideration by the Council will proceed separately to the process being followed with the Planning Proposal and Public Hearing.

Whatever the outcome of the analysis arising from the Council resolution of 12 March I am of the opinion that the subject site does not have to remain classified as community land in order that its heritage status is

8376_11.2_Public Hearing Report_Final_180601

recognised and protected but do accept that protection may be more readily achieved whilst the land is in public ownership without any expectation of some form of residential development on the land.

In my opinion, and based on the information available to me through the Public Hearing process, the Council's expert technical officers have given consideration of the community value and usefulness of the site and, on balance, the officers have concluded that the land has limited capacity to be useful as a public asset and that it is not in the broader public interest to maintain the community classification of the land. In my opinion this is a reasonable position to have reached and there are no matters raised during the public hearing process that would prevent the Council from proceeding with the reclassification to operational land.

The various procedural and legal issues raised in submissions and at the Public Hearing have been referred by the Council for legal advice and based in this advice I understand that there is no procedural or legal barrier to the Council proceeding with the Planning Proposal.

As identified in Section 5 of this Report there has been a technical omission from the Planning Proposal exhibition. It is not possible to be certain regarding the impact of this omission on the public understanding of the proposal or how it may have impacted/influenced the submissions, however having considered all of the written submissions arising from the exhibitions as well as the submissions to the Public Hearing it is my opinion that the public had a clear understanding of the proposal and the process.

Given the technical omission this matter was brought to the Council's attention and the Council then sought legal advice regarding the statutory process. The Council's legal advice is that the Council's failure to include the Practice Note in the publicly exhibited materials does not invalidate the public exhibition process. Accordingly, the advice is that a further public exhibition period or public hearing is not required.

8378_11.2_Public Hearing Report_Final_180601

7.0 Recommendation

The recommendation of the report is that the Planning Proposal for the reclassification of the site from "community land" to "operational land" proceed as exhibited.

8376_11.2_Public Hearing Report_Final_180601



Attachment 1: Copies of the Notification Letter

SJB Planning

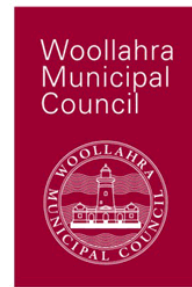
SJB Planning (NSW) Pty Ltd ACN 112 509 501

Council Ref: SC3794

13 February 2018

□
□

Chris Kalowski
10 Greycliffe Avenue
Vaucluse NSW 2030



ABN 32 218 483 245

Redleaf Council Chambers
536 New South Head Road
Double Bay NSW 2028
Correspondence to
General Manager
PO Box 61
Double Bay NSW 1360
DX 3607 Double Bay
records@woollahra.nsw.gov.au
www.woollahra.nsw.gov.au
Telephone: 61 2 9391 7000
Facsimile: 61 2 9391 7044

Dear Chris Kalowski

**Notice of public hearing into the reclassification of land at
Dunara Reserve, Point Piper**

You recently made a submission to the planning proposal to reclassify Dunara Reserve which is located between 1 Wentworth Street and 9 Dunara Gardens, Point Piper and comprises Lot 11 in DP 27451.

The planning proposal seeks to amend the *Woollahra Local Environmental Plan (LEP) 2014* by reclassifying the land from 'community' to 'operational' land. If the amendment is approved Dunara Reserve will cease to be a public reserve and all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land are discharged.

As outlined in previous correspondence, the process to reclassify land involves various steps and occurs over a number of months.

Now that the public exhibition and re-exhibition of the planning proposal have been completed, the next step is to hold a public hearing.

The hearing will be carried out in accordance with the provisions of the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*, and will be conducted by an independent chairperson.

The public hearing is a consultation process where parties can put forward their view about the proposed reclassification of the land.

Details of the public hearing:

When: Wednesday 14 March 2018 – from 2pm

Where: Woollahra Council Chambers, 536 New South Head Road, Double Bay

If you wish to speak at the public hearing, **you must register by 4.30pm Friday 9 March 2018**. Please register by contacting our Strategic Planning team on 02 9391 7087. You will be notified of your allocated time slot, prior to the commencement of the public hearing.

18/6649



Page 1 of 2

After the public hearing the chairperson will prepare a report on the proceedings and this report will be made publicly available in April 2018. Submissions that were made during the original exhibition and the re-exhibition periods will be provided to the chairperson.

For more information contact the Strategic Planning team on 02 9391 7087 or visit the 'Have your say' section of the Council's homepage at www.woollahra.nsw.gov.au.

Yours faithfully



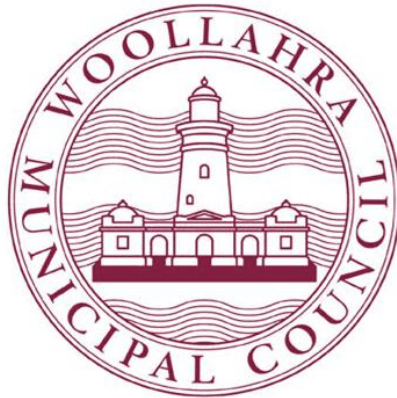
Chris Bluett
Manager - Strategic Planning



Attachment 2: Planners Report

SJB Planning

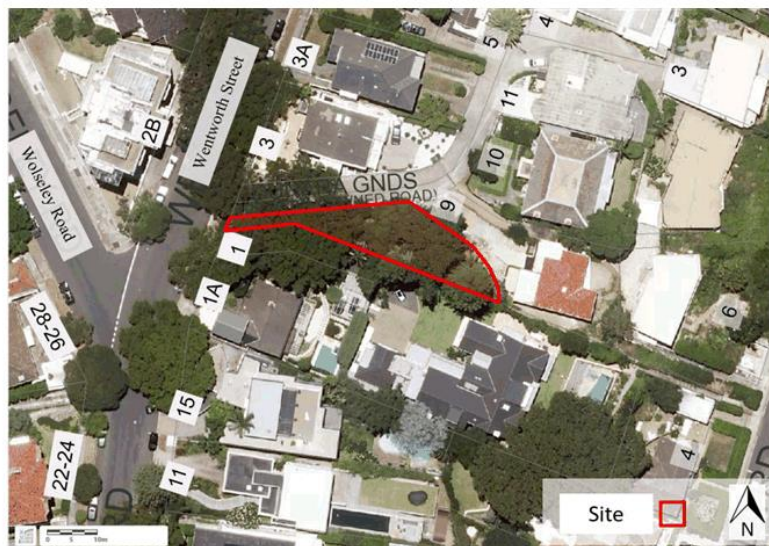
SJB Planning (NSW) Pty Ltd ACN 112 509 501



PLANNER'S REPORT

Reclassification of Dunara Reserve

Prepared February 2018



TRIM: 17/161389

TABLE OF CONTENTS

Part 1 – The planning proposal	1
1.1 Background.....	1
1.2 Purpose of the planning proposal.....	1
1.3 The site.....	2
Part 2 – Gateway determination	4
Part 3 – Public exhibition of the planning proposal	5
3.1 Original Exhibition	5
3.2 Exhibition material.....	6
3.3 Public re-exhibition of the planning proposal	6
Part 4 – Submissions	7
4.1 Summary of submissions	7
Part 5 – Conclusion	11

ANNEXURES:

1. **Redacted copies of submissions received in response to exhibition and re-exhibition**

Part 1 – The planning proposal

1.1 Background

The planning proposal applies to Lot 11 in DP 27451 which is known as Dunara Reserve (the site). The site was transferred to Council on 15 July 1957 pursuant to Section 340A of the Local Government Act 1919 as part of the subdivision of the Dunara Estate.

The site is public land owned by Council and is classified as Community Land under the Local Government Act 1993 (LG Act).

The site is dedicated as a public reserve under Section 50(5) of the LG Act.

The land is zoned R2 Low Density Residential under Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014). It is not proposed to change the zoning of the land.

In 2010 staff identified a partial encroachment into the site. In response, Council adopted the following Notice of Motion on 10 June 2014:

That a report be brought to council within the next three months assessing the land known as Dunara Reserve Point Piper, with a view to rezoning the land in order for it to be put up for sale.

On 10 August 2015 the Community and Environment Committee (C&E Committee) considered a report on options for the future use of the site. The report provided the history of the site, identified the extent of the encroachment from No. 9 Dunara Gardens and recommended the reclassification of the site to allow its sale. Having considered the recommendation from the C&E Committee, on 24 August 2015 Council resolved (see Appendix 3):

- A. THAT Council prepare a planning proposal to amend Schedule 4: Classification and reclassification of public land in Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) to reclassify the land known as Dunara Gardens from 'community land' to 'operational land' with the intention of disposing of the land.
- B. THAT a further report be brought to Council on the findings of the public consultation including the public hearing and submissions.

1.2 Purpose of the planning proposal

A planning proposal is a document that explains the intended effect of and the justification for a proposed local environmental plan (LEP). An LEP is a legal instrument that zones land and includes standards and controls to regulate the use and nature of development and the management of land.

The site is public land, owned by Council. For management purposes, public land is classified as either community land or operational land under the *Local Government Act 1993* (LG Act).

The planning proposal seeks to reclassify the site from community land to operational land. Section 27(1) of the LG Act requires that the reclassification of public land is made by an LEP. Reclassifying the land to operational will provide various options for its management. This will include an option to sell the land.

As this matter relates to the reclassification of public land, Council did not seek authorisation to use its delegation under section 59 of the *Environmental Planning and Assessment Act 1979* from the Greater Sydney Commission.

The land is a public reserve under the LG Act. Should the reclassification proceed, it is intended that under Section 30(1) of the LG Act the local environmental plan will include a provision to the effect that the land will cease to be a public reserve on the commencement of the plan. If the LEP is approved and published, all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land are discharged.

1.3 The site

The site known as 'Dunara Reserve' comprises Lot 11 in DP 27451, and is located between 1 Wentworth Street and 9 Dunara Gardens in Point Piper. The private road known as 'Dunara Gardens' adjoins the Northern boundary of the site (see **Figure 1** and **Figure 2** below).

The site has an area of approximately 402m² and is irregular in shape with a slope which falls approximately 4m to the southeast. It contains no structures, and the size, shape and topography of the land restricts the construction of a building for community use.

The site contains a range of exotic and native trees including a mature Cook Pine which is a local heritage item No 277 in Woollahra LEP 2014. There are no threatened species, populations or ecological communities.

The small frontage to Wentworth Street (see **Figure 2**) provides limited access, and from the public domain it does not visually present as a piece of public land.

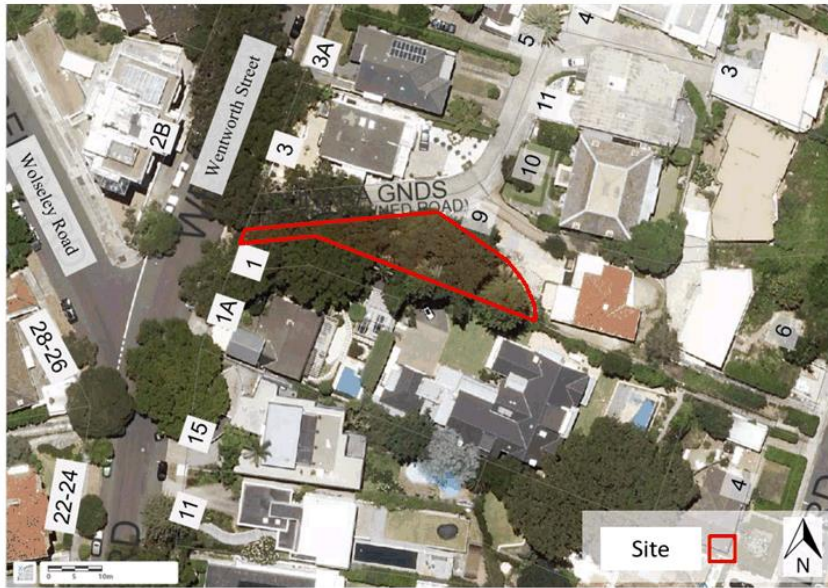


Figure 1: Aerial photograph of Dunara Reserve (Lot 11, DP 27451)



Figure 2: Photograph of Dunara Reserve taken from its entrance at Wentworth Street (looking east)

Part 2 – Gateway determination

On 5 July 2017 the Dunara Reserve planning proposal was submitted to the Department of Planning and Environment (DPE) requesting a gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act).

The DPE (as delegate of the Greater Sydney Commission) approved public exhibition of the planning proposal and issued a gateway determination dated 20 July 2017. The determination identified that the planning proposal could proceed subject to the following conditions:

1. *Community consultation is required under Sections 56(2)(c) and 57 of the Act as follows:*
 - a. *the planning proposal must be made publicly available for a minimum of **28 days**; and*
 - b. *the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment 2016).*
2. *No consultation is required with public authorities/organisations under Section 56(2)(d) of the Act.*
3. *A public hearing is not required to be held into the matter by any person or body under Section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).*
4. *The timeframe for completing the LEP is to be **9 months** following the date of the Gateway determination.*

Part 3 – Public exhibition of the planning proposal

3.1 Original Exhibition

Public exhibition of the planning proposal was held from *Wednesday 9 August 2017 to Friday 8 September 2017*.

Details of the exhibition were notified in the *Wentworth Courier* editions of 9 August, 16 August, 23 August, 30 August and 6 September 2017. We notified 125 property owners about the proposal (see **Figure 3**).

The exhibition took place at Woollahra Council Chambers in Double Bay, in the Customer Service area during business hours.

A copy of the planning proposal and associated documentation were placed on Council's website for the duration of the exhibition period. During the exhibition, the website page was visited by 64 external customers.

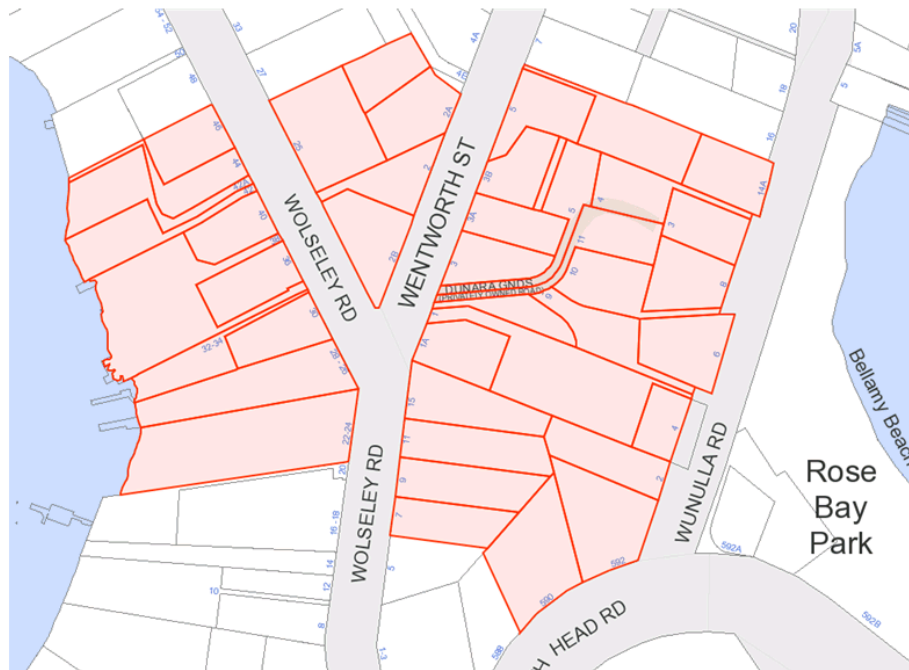


Figure 3: Extent of notification area for the public exhibition of the planning proposal

3.2 Exhibition material

The exhibition material comprised of two parts:

Part 1 - Planning proposal and information required by the gateway determination

- Correspondence from the Department of Planning and Environment including the Gateway Determination
- Planning proposal
 - Appendix 1 - Information checklist for proposals to classify or reclassify public land through an LEP taken from practice note 16-001
 - Appendix 2 – Report to the Community and Environment Committee of 10 August 2015
 - Appendix 3 – Council resolution of 24 August 2015

Part 2 – Reference material

- A guide to preparing local environmental plans (DPE 2016)
- Woollahra LEP 2014 (written instrument & maps)
- List of state environmental planning policies (SEPPs) and regional environmental plans (REPs)
- Directions under section 117 of the Act

3.3 Public re-exhibition of the planning proposal

Having considered the matters raised in submissions, re-exhibition of the planning proposal was held from *Wednesday 25 October 2017 – Friday 24 November 2017*.

Re-exhibition occurred to clarify the location and description of the site and the fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds.

Details of the re-exhibition were notified in the *Wentworth Courier* editions of 25 October, 1 November, 8 November, 15 November and 22 November 2017.

The re-exhibition took place at Woollahra Council Chambers in Double Bay in the Customer Service area during business hours.

A copy of the planning proposal and associated documentation were placed on Council's website for the duration of the re-exhibition period. During the re-exhibition, the website page was visited by 58 external customers.

Part 4 – Submissions

Council received a total of 68 submissions from 56 individual submitters during the original exhibition and the re-exhibition period. This includes submissions from the:

- Darling Point Society, and
- Heritage Council of NSW.

One submission raised no objection. The remaining submissions were objections.

Figure 4 below identifies the location of 18 residents who made submissions who live within 500m of Dunara Reserve.

A redacted copy of all the submissions is in Annexure 1 (17/208494).



Figure 4: Map identifying the location of submitters in Point Piper

4.1 Summary of submissions

A summary of the issues raised in the submissions is provided below. The issues are grouped into the following categories:

- Provision of easily accessible green space
- Impacts of potential future development of the site
- Merit of the proposed sale of public land
- Process information and process
- Process for discharging any trusts, estates, interests, dedications, conditions, restrictions and covenants that may affect the land
- Preservation of local heritage
- Site is not presented as a public reserve
- Other matters

A. Provision of easily accessible public green space

Fifty-two submitters object to the proposed closure of the park and the resulting reduction in local public open space. On general principle, any potential reduction in community land or public open space was objected to by 55 of the 56 submitters.

Submitters identified that the Point Piper area has an insufficient amount of public open space, compared to the residential density. The importance of providing easily accessible open space for both current and future residents was highlighted in submissions.

The reserve

Submitters report that the reserve is enjoyed by:

- residents and visitors walking around the area, noting that it provides shade and protection from wind and traffic noise,
- children who play in the reserve, noting that a swing has been set up,
- residents of surrounding properties who have views of the trees in the reserve,
- elderly and less-mobile residents who find it difficult to walk up and down the steep slope to larger open spaces in Rose Bay,
- residents of surrounding properties who have little or no private backyard garden space.

Many submitters feel a strong sense of community ownership toward the reserve and report that residents help to maintain the reserve.

Trees

Submitters identified that there are a lack of trees in the Point Piper area, and that Dunara Reserve provides trees and vegetation that are significant for contributing to:

- the leafy and highly desirable visual character of the Point Piper area,
- the view of the area from public spaces, vehicles on the water, and buildings that look towards Point Piper,
- local biodiversity and providing habitat for wildlife such as local birds.

B. Impacts of potential future development of the site

Thirty-two submitters object to any future development on the land for private use (including a dwelling house, driveway or fencing) because this will:

- increase density in an already densely developed and overcrowded residential area,
- impact on the privacy, views and amenity of surrounding residential properties,
- impact on local traffic, parking, and road safety,
- reduce local green space,
- result in the removal of mature trees and other vegetation on the site. In this regard, submitters noted the number of trees in the area has been reduced in recent years due to development, tree poisonings and inappropriate tree lopping.

C. Merit of the proposed sale of public land

Fifty-five submitters object to the sale of Council land, on principle. Concerns were raised that there is insufficient strategic merit and justification for the proposal, particularly with regard to the following:

- the misuse of the reserve and the encroachment are unresolved and not a suitable reason for sale,
- the site can be accessed for maintenance and maintenance costs are minimal,
- the sale will not result in a significant financial benefit or public benefit and will not result in sufficient funding to provide replacement open space in Point Piper,
- the value and purpose for dedicating the reserve to Council as part of the 'Dunara Gardens' subdivision has not changed and the open space it provides is still needed for the amenity of surrounding property and local residents,
- the reserve currently provides community value both aesthetically and as passive open space.

Additionally, submitters were concerned that the proposal will set a precedent for the future sale of other parcels of community land.

D. Exhibition information and process

Sixteen submitters raised concerns querying the adequacy of the exhibition documentation and questioned whether Council has complied with relevant legal requirements for the reclassification of community land.

Concerns included:

- that insufficient information was provided about the financial benefit to the potential private owner, which could be much higher the land value that Council could sell the reserve for,
- the planning proposal is inconsistent with planning strategies, State Environmental Planning Policies (SEPPs), and other legislative planning requirements applicable to managing public land,
- the reasons for the re-exhibition were unclear. Specifically, information about a trust applying to the reserve was confusing,
- due to intermittent receipt of the Wentworth Courier, some submitters were unaware of the proposal until re-exhibition.

Several submissions queried the exhibition process including:

- was a public notice placed on the reserve?
- were notification letters sent to all residents of Point Piper?

E. Process for discharging any trusts, estates, interests, dedications, conditions, restrictions and covenants that may affect the land

Twenty-four submitters object to the removal of a trust applying to Dunara Reserve and seek its retention so that Council is required to maintain the reserve for community use.

Concerns were raised that:

- information relating to applicable trusts and their removal was inadequate,
- the proper process to discharge a trust has not been followed given that it was only brought to public attention at re-exhibition,
- the proposed reclassification will set a precedent for the future discharge of other trusts to facilitate development or sale of public land.

F. Preservation of local heritage

Eleven submitters object to potential adverse impacts on items of local heritage significance. It was also noted in several submissions that the reserve is a point of interest for local heritage tours.

The site contains a mature Cook Pine which is local heritage item No 277 in Woollahra LEP 2014. Other nearby items of heritage significance include:

- Cook Pine and Moreton Bay Fig at 1 Wentworth Street - local heritage item No. 285 in Woollahra LEP 2014
- House, interiors and grounds at 4 Dunara Gardens - local heritage item No. 275 in Woollahra LEP 2014
- "Dunara" house and interiors at 10 Dunara Gardens - heritage item No. 276 in Woollahra LEP 2014, which is also listed on the Heritage Act - State Heritage Register.

Submitters are concerned that the private sale of the land will adversely impact on the protection of the heritage listed Cook Pine tree. Concerns were also raised about the potential detrimental impact on nearby Dunara House which submitters state derives some of its heritage benefit from the reserve [the subdivision 'Dunara Gardens' being named for the gardens that historically surrounded the estate].

The Heritage Council of NSW recognises the heritage value of Dunara Reserve because of the heritage listed tree on the land and for its contribution to the heritage significance of Dunara House. Additionally, the NSW Heritage Council has suggested that the entire reserve may be of heritage significance as a remnant of the gardens of Dunara House.

G. Site is not clearly identified as a public reserve

Six submissions object to Council not clearly identifying the site as a reserve.

Submitters report that:

- 'Dunara Reserve' is not included on Council's website in the list of public reserves in the LGA,
- signage on the reserve is inadequate to clearly identify it as a public reserve to pedestrians on Wentworth Street.

H. Other matters

One submitter expressed an interest in purchasing the property if the proposed reclassification proceeds.

One submitter raised concerns that there is no Point Piper community or residents group.

Part 5 – Conclusion

The planning proposal was prepared and exhibited in the manner required by the Act, and the gateway determination. In response to both the original and re-exhibition, we received submissions from 56 submitters; 18 of which live within 500m of the reserve. The submissions raised a number of issues which have been grouped into eight themes being:

- A. Provision of easily accessible green space
- B. Impacts of potential future development of the site
- C. Merit of the proposed sale of public land
- D. Process information and process
- E. Process for discharging any trusts, estates, interests, dedications, conditions, restrictions and covenants that may affect the land
- F. Preservation of local heritage
- G. Site is not presented as a public reserve
- H. Other matters

ANNEXURE 1:
**Redacted copies of submissions received in response to exhibition
and re-exhibition**

CID001

The General Manager
Woollahra Municipal Council

records@woollahra.nsw.gov.au

Dear Sir,

SC3794 Submissions: Proposed changes to land management controls of Dunara Reserve, Point Piper

With the formal mechanism for disposal of the Dunara Gardens reserve land parcel now in train, a note of caution seems well warranted. I mention two issues that (belatedly) occur to me:

- I attach a high degree of relevance to the ***purpose*** of the original reservation for *public garden and recreation* space, and the vision that it presumably entailed. It is hard to imagine that it was reserved carelessly, without recognition of its landform and accessibility. Sixty-odd years later, it may still be a valid and feasible vision. I'd like to see it explored and re-visited.
- Similarly, the (later) classification of the Reserve as ***community land*** was, I imagine, not done carelessly either. That classification has stood for some time now. I wonder whether – and, if so how and why – its rationale is now seen to be deficient. That, too, could use some explanation.

The background thinking on those two matters seems especially important given the ultimate aim of the Council to sell the land. I note that I never was impressed by the notion that its continued upkeep would involve expenditure; that is not unusual for any or all public land, whether held under community classification or otherwise. It's one – entirely valid - reason why we pay our rates!

So, might we have some information and analysis to address the two matters in the next round of documentation, please?

Yours sincerely,

Hylde Rolfe

■ Cove Street Watsons Bay NSW 2030

13 August 2017

CID002

From: [Richard Manning](#)
To: [Records](#)
Cc: [Richard Manning](#)
Subject: Dunara Reserve, Point Piper. Change of Use. Adjoining Owner EOI to purchase and keep in close communication
Date: Monday, 14 August 2017 5:17:04 PM
Attachments: [Change of Council Land adjoining my property. 2bWentworth St Point Piper 14.08.17 Council Notice.pdf](#)
Importance: High

**Re: Dunara Reserve, Point Piper. Change of Use.
Adjoining Owner EOI to purchase and keep in close communication**

I refer to the attached correspondence.

1. I have no objection to the change of use.
2. I am interested to be kept in close communication with this process and the potential direction of this property. I would like council and any other relevant authority to please communicate with me on this.
3. I express my interest to purchase this property should it be re- classified and zoned for new development.

Thank you

Regards

Richard Manning

[Redacted]
[Redacted]
Post: [Redacted] Balmain 2041

CID003 - PART 1

From: [Virginia Rundle](#)
To: [Records](#)
Subject: SC3794 Submissions
Date: Tuesday, 22 August 2017 9:54:24 AM

The General Manager
Mr Gary James

Dear Gary,

I note that there is a proposal to rezone the area known as Dunara Reserve. I live in Point Piper and regard the entire area as over developed and crowded with very few trees left in public spaces apart from Rose Bay Park, Duff Reserve and the grassy verges that line some parts of the roads.

I object whole heartedly to this proposal, which will mean it will be sold off for more housing and concrete.

If only more areas in Point Piper had a treed area to give some respite to the concrete and brick area it has become.

I am interested to know if the residents of Point Piper are being written to, as this would be probably the only democratic way that they could be informed.

Is there a sign going up at Dunara Reserve?

I would appreciate an answer to these questions. Thanks.

It is also concerning that Point Piper has no residents association that can be helpful in times like these. I will be calling on Darling Point Society and the Double Bay Residents Association to represent the residents of Point Piper.

Yours sincerely,
Virginia Rundle

From: [Virginia Rundle](#)
To: [Records](#)
Subject: Fwd: SC3794 Submissions
Date: Friday, 17 November 2017 10:49:43 AM

CID003 - PART 2
RE-EXHIBITION

Dear Gary,

I see that there is a "Re-exhibition of Dunara Gardens" on page 10 of this week's Wentworth Courier. I was filled in about the "error" and whilst amusing, it is very annoying to have to write again. I wondered if all the other residents who wrote before can have their submissions included, like my own, below, and used as "unchanged" ? My opposition to this proposal to sell off precious Council Land is unchanged, no matter if it is regarded as a small and unkept parcel of land that could be turned into \$\$ for WMC, to benefit one resident.

I am extremely worried about mature trees on this Reserve, and worry about the potential for illegal lopping or poisoning - not an unusual worry in Point Piper at all, I should add.

Please see my opposition letter below. Can you please submit this as my objection to the "new" proposal, now that the roadway has been excluded from sale.

Kind regards
Virginia Rundle

Begin forwarded message:

From: Virginia Rundle [REDACTED]
Subject: SC3794 Submissions
Date: 22 August 2017 at 9:54:14 am AEST
To: records@woollahra.nsw.gov.au

The General Manager
Mr Gary James

Dear Gary,

I note that there is a proposal to rezone the area known as Dunara Reserve. I live in Point Piper and regard the entire area as over developed and crowded with very few trees left in public spaces apart from Rose Bay Park, Duff Reserve and the grassy verges that line some parts of the roads.

I object whole heartedly to this proposal, which will mean it will be sold off for more housing and concrete.

If only more areas in Point Piper had a treed area to give some respite to the concrete and brick area it has become.

I am interested to know if the residents of Point Piper are being written to, as this would be probably the only democratic way that they could be informed.

Is there a sign going up at Dunara Reserve?

I would appreciate an answer to these questions. Thanks.

It is also concerning that Point Piper has no residents association that can be helpful in times like these. I will be calling on Darling Point Society and the Double Bay Residents Association to represent the residents of Point Piper.

Yours sincerely,
Virginia Rundle

CID004

From: [lawrence mike](#)
To: [Records](#)
Subject: SC3794 Submission - Reclassification of Dunara Reserve Point Piper
Date: Friday, 1 September 2017 3:00:15 PM

Dear Sir/Madam:

My wife and I write to strongly oppose the reclassification and sale of Dunara Reserve. Small parcels of land like this may look unused but that is a reflection of Council's lack of attention to defining the best use of the land and its development for the defined purpose.

With the escalating price of land and strained Council budgets, purchasing land for a new reserve will be next to impossible. Once sold off the Reserve is lost forever. Thus we maintain that no Reserve should ever be sold off but treasured as a wonderful legacy from our past community minded men and women.

With increasing numbers of people living in apartments, the need for reserves for children play areas is ever more vital.

Michael and Sarah Lawrence
■ Wiston Gardens
Double Bay 2028

Phone ■■■■■

CID005

From: [Patty](#)
To: [Records](#)
Subject: Reference SC3794
Date: Monday, 4 September 2017 3:20:15 PM

To whom it may concern

The Dunara so called Gardens area but there is no longer a garden area it is just a concrete jungle of houses has no other Green area apart from the little patch of land you are now wanting to sell.

I am appalled at the idea that council wants to do this .

This will mean there will be absolutely no greenery in this area .

This means that those magnificent trees will be cut down .

At present I utilise this area I enjoy walking down and being amongst the greenery.

I see some children play in there as well.

I see those magnificent trees from New South Head Rd driving up to Vaucluse from down in Double Bay beautiful green foliage amongst the sky they are visible from many points .

But yet council would rather see concrete structures ??

Fencing and concrete structures all the way down the driveway then where it widens another huge concrete building all those trees cut down to make way for more concrete.

Please council this would be detrimental for the area.

Please rethink this.

Warm Regards

Patty Bloom

Sent from my iPad

CID006

From: [Ili Pelletier](#)
To: [Records](#)
Subject: Dunara reserve
Date: Monday, 4 September 2017 6:10:46 PM

Re: SC3794 Dundara Reserve

Dear council,

I have only recently purchased my home in Wolseley Road Point Piper. The Dunara reserve located close to my home is significantly one of the only reserves within an easy walk of my home that does not form the watery fringe around our peninsula. It is in fact the only reserve that would service the needs of an increasingly elderly community that cannot walk the down hill and consequently uphill walk to Rose Bay or Double Bay to access green space suitable for sitting outside away from Harbourside winds.

Could the council seriously reconsider the rezoning and consequent sale of this property.

As a former resident of Woollahra, it is noticeable how few green spaces are retained in comparison to other suburbs. I appreciate the value of land is a serious attraction for councils, but this is the last area, and once it is sold it will never be return. Outside space is essential for quality of life. The many apartments within the walk to the Dunara reserve NEED this space.

Please reconsider,

Ili Pelletier

Sent from my iPad



Level 6, 10 Valentine Avenue
Parramatta NSW 2150
Locked Bag 5020
Parramatta NSW 2124
DX 8225 PARRAMATTA

Telephone: [REDACTED]
Facsimile: [REDACTED]
www.heritage.nsw.gov.au

CID007

File No: EF14/5899

Mr Gary James
General Manager
Woollahra Municipal Council
P.O. Box 61
Double Bay NSW 1360

By email: records@woollahra.nsw.gov.au

Dear Mr James

RE: SC3794: Dunara Reserve, Lot 11 DP 27351, land between 1 Wentworth Street and 9 Dunara Gardens– Planning Proposal: objection to proposed reclassification.

I write regarding the proposal to reclassify this reserve as 'operational' and whether there is potential for future impacts on this State Heritage Register item.

I note that the Heritage Council of New South Wales has received representation on this matter, and I would welcome the opportunity to discuss this matter with Woollahra Municipal Council.

Woollahra Municipal Council would know that Dunara, 10 Dunara Gardens is listed on the NSW State Heritage Register (SHR). Its statement of significance notes:

Dunara is the oldest remaining house in Point Piper. It is historically significant particularly for its associations with Dorothea McKellar - as her birthplace and for its association with the influences on her artistic development, including her education, cultural environment and the surrounding landscape. Architecturally the house is an excellent example of a well-crafted Victorian residence of the period (built c 1883). It is a two-storey stuccoed brick house with slate roof and fine cast iron verandah and balcony, retaining much of its original detail intact and which past and present owners have maintained in a sympathetic manner. (Heritage Branch report, 1987).

The stables have been partially demolished and the servants' wing likewise has been separated from the house and converted into another dwelling. The entrance hall is particularly fine, having delicately carved shell motif cedar door head trims to doors opening off it and with Minton tiles.

The SHR listing derived from gazettal of a permanent conservation order over Dunara on 10 July 1987. Dunara House was built by Dorothea's father, Sir Charles Kinnaird Mackellar, physician and parliamentarian, on then five acres of land in c1883. The estate in its day was known for its magnificent gardens. Even its name, *Dunara* is an Aboriginal word meaning *gunyah on the slope of a hill*, suggesting some of the site's former character. A 1987 (then) Heritage Branch report noted the estate was subdivided in 1954, alienating most of its grounds, adding that bushland used to lead to the (Rose Bay) foreshores. Such estates once graced many of the peninsulae in Sydney Harbour's east and are now very rare indeed.

[Helping the community conserve our heritage](#)

Dunara Reserve is almost directly adjacent to, and forms the southern 'edge' of the post-1950s street approach to, Dunara house. I understand that the reserve was vested in Council in 1957 as part of the subdivision of the original Dunara estate, in which Dunara was the only house. I gather this open space was marked in the subdivision Deposited Plan as Public Garden & Recreation Space and on vesting in Council became a Public Reserve.

I understand that the five acre Dunara Estate was subdivided into 11 tightly knit properties, many with little or no gardens, with the public reserve created to ensure green space with trees and vegetation for all. The Reserve continues to have that function, providing a sympathetic vegetated frame to the entrance to Dunara Gardens and the approach to Dunara House.

I note the large mature trees in and near the Reserve, including a Moreton Bay fig (*Ficus macrophylla*) and Cook's pine (*Araucaria columnaris*) individually heritage-listed (item 285) at 1 Wentworth Street and another Cook pine (item 277) individually-listed on Woollahra Local Environment Plan 2014, the pines being visible from Rose Bay. These and its vegetated character suggest Dunara Reserve may have local heritage value as well as contributory value to the Dunara SHR item.

I would welcome discussion with Council over its consideration for additional Local Environmental Plan listing of the Reserve as a landscape heritage item and consideration of possible State Heritage Register listing as an extension of Dunara's existing, limited SHR curtilage.

Dunara once had five acres of magnificent gardens as a Victorian gentry estate (cf a 1950s-suburban house, hemmed in by other such houses, with little or no gardens). Given the reduction of this estate to Dunara Reserve in 1957, a more positive outcome such as heritage listing and ongoing conservation seems more appropriate than reclassification, sale, possible tree removals, infill and loss of this last, small estate remnant.

I note the objectives for Heritage Conservation in section 5.10(1) of Woollahra LEP include:

- (a) to conserve the environmental heritage of Woollahra;
- (b) to conserve the heritage significance of heritage items ... including associated fabric, settings and views.

If you have any questions regarding the above matter please contact Mr Tim Smith, Director, Operations at the Heritage Division, Office of Environment and Heritage on telephone [REDACTED] or by e-mail at [REDACTED].

Yours sincerely



Mr Stephen Davies
Chair
Heritage Council of NSW
4 September 2017

[Helping the community conserve our heritage](#)

CID008

From: [Tom O'Connor](#)
To: [Records](#)
Subject: SC3794 Dunara Reserve
Date: Tuesday, 5 September 2017 1:40:45 PM

I note with grave concern the proposal to reclassify Dunara Reserve , publicly owned park land, and sell it off for development. I have resided in Woollahra for 40 years and as our Mayor said she "respects the natural beauty, heritage and leafy character of Woollahra" and so do I and Dunara Reserve meets all these characters. Having recently moved to Point Piper I recognised there is very little open green space. Dunara Reserve has some magnificent mature trees and these should be preserved.
I would like to attend any public meeting on this proposal. My details are Thomas John O'Connor of [REDACTED] Wolseley Rd, Point Piper 2027. Mobile [REDACTED]

Sent from my iPhone

CID009

From: [Nina Calvisi](#)
To: [Records](#)
Subject: Dunara Reserve - Reference SC3794
Date: Tuesday, 5 September 2017 1:57:15 PM

Objection to Woollahra Council proposal to reclassify Dunara Reserve Point Piper in order to sell the land.
Point Piper loses too many mature trees due to poisoning, construction sites, etc.
It is a precious public asset and should remain available for all to enjoy.

Nina Calvisi
[REDACTED] Wentworth Street Point Piper 2027



Dr Shane Connolly Dr Caitlin Kapoor 1300 MDIMAGING
P [REDACTED] F [REDACTED] E [REDACTED]
[REDACTED]
mdimaging.com.au

CID010

5/9/2017

Dr Shane Connolly
Dunara Gardens, Wunulla Rd
Ph: [REDACTED]
email: [REDACTED]

ATTENTION: WOOLLAHRA COUNCIL

RE: REFERENCE SC3794

I note that the council are proposing to sell off a section of land in relation to the subdivision of Dunara Estate.

This area functions as a green space with an open garden that myself and neighbours regularly enjoy.

I feel that this would be a completely inappropriate thing to do, for the council to decrease green space in the area where there is limited green space already available.

I note that this area is enjoyed by neighbours and people walking around the area and I also think development there would be detrimental to the impact of the houses in the area, particularly Dunara House.

All the residents in Dunara Gardens do and are happy to help maintain this area and I have seen council workers in there maintaining the site.

I would be most distressed if the trees in the reserve were cut down in the future and feel that if the council lost control of the site, this would not be able to be controlled.

I would feel it would be completely inappropriate for the council to sell a public reserve and would call on the council not to proceed further with this option.

Yours sincerely,


Shane Connolly

CID011

Woollahra Municipal Council
Customer Service Department

7 SEP 2017

Received

Walsheep Rd
Poerit Pipit

7/9/17

General Manager
Woollahra Council

SC3794 Submission

Dear Sir

I have lived in Poerit Pipit for 45 years. In that time I have watched a suburb of homes with trees + gardens sacrificed to overdeveloped massive concrete mansions devoid of almost all that is nature.

Danara "Gardens" - has not been so for many years - a sample of overdevelopment permitted by Council. Its last saving grace is Danara Reserve - a tiny sample of what must have been - giving pleasure to us all from both intimate + distant views. NO financial gain can be worth this sacrifice.

Yours Faithfully,

(Mr) *[Signature]*

P.S. What about dome change k. etc. etc.

Elections in two days

— NO!

CID012

■ Wentworth Place
Point Piper
6/9/2017

Submission to Woollahra Council in relation to Dunara Reserve Point Piper . Reference: SC3794.

We write to object to the removal of these trees from the Dunara Reserve. The trees are large, old and precious. They were planted very close to my great uncles home Woniora, which was demolished and was downhill from No 1 Wentworth Street . Similar trees might have been in their garden also.

The Cook pine of the Araucaria family would have been planted at the same time as other members of that family of plants at other family properties such as Elaine and Fairwater on New South Head Road. These remain.

Please do not denude this little patch of remaining history to be replaced with building and concrete, which prevents healthy plants producing oxygen and soil to absorb rain, rather than overloaded drains and floods.

From:

Mrs S.White

and


Mr. G. White



**Submission: Woollahra Council Proposed Changes to the Land
Management Controls of Dunara Reserve, Point Piper**

Reference SC3794 Submissions

By email to: The General Manager, Woollahra Council
records@woollahra.nsw.gov.au

Submission Made By: Penny Broekhuizen
Address: Wentworth Street, Point Piper, NSW 2027
Email: [REDACTED]
Telephone: [REDACTED]
Date: Thursday 7 September 2017

The Planning Proposal

In August 2017 Woollahra Council published a planning proposal (the **Planning Proposal**) to reclassify Lot 11, DP 27451, which it identifies as “*known as Dunara Reserve*” from Community to Operational land in order to sell the land. Submissions have been invited during the period 9 August 2017 – 8 September 2017.

My Interest in the Planning Proposal

I am the owner of [REDACTED] Wentworth Street, Point Piper (an Arts and Craft style house built in approximately 1910) where I live with my husband and three teenage children. My property adjoins the entire southern boundary of Dunara Reserve (approximately 60 metres).

This Submission

I disagree strongly with Council’s justification of the need for the Planning Proposal and submit, for the reasons set out below, that Dunara Reserve should not be reclassified from Community to Operational Land to allow for its sale. (Extracts quoted in this submission in italics are extracts from the Planning Proposal unless otherwise stated, references to sections, parts or appendices are to sections etc of the Planning Proposal, and the *Local Government Act 1993* is referred to as the *LG Act*.)

Executive Summary

Dunara Reserve is a much loved pocket of vegetation and significant mature trees within a suburb which is increasingly denuded of vegetation and has suffered the devastating loss of a number of mature trees recently to poisoning. It was created as part of the Dunara Estate subdivision and remains an important

amenity to the residents of Dunara Gardens and members of the wider public. A sale and enclosure of the Reserve would have substantial impact on the two heritage listed houses found on Dunara Gardens. A sale also raises the possibility of the future redevelopment of at least part of the Reserve, and the potential loss of trees and vegetation on it.

1. Dunara Reserve's creation as part of, and continuing importance to, the subdivision of the Dunara Estate

Dunara Reserve was transferred to Council in 1957 as "*public garden and recreation space*" (Appendix 1: *Reason Council acquired an interest in the land*) as part of the subdivision of the Dunara Estate, and as a condition of Council's approval to the subdivision. It is easy to see why designation of this space for public garden and recreation was made a condition of Council's approval of the subdivision. Dunara Gardens comprises 11 separate residential properties accommodating (at present) approximately 30 residents. These properties are substantial in size but have very little outdoor space and garden, and the Reserve presents a counter-balance to this, providing a garden, trees and greenery for the enjoyment and benefit of (amongst others) the entire Dunara community. Dunara Reserve occupies a prominent position at the entrance to Dunara Gardens (adjoining 36 metres of its access road), and all residents pass by and enjoy its open aspect every time they enter and leave their properties. I understand from one of the residents of Dunara Gardens who has lived there since the original subdivision in the 1950s that there was originally a public bench on the Reserve which was used by both the residents of Dunara Gardens and the wider public, but that this fell into disrepair a number of years ago and was removed (and never replaced) by Council. Some of my neighbours have young children who play on the Reserve: an inspection will reveal their tracks. In the absence of gardens of their own this is a safe place, close to home, where they can play outdoors.

If the Reserve is sold and enclosed this would represent a substantial loss of amenity to all residents of Dunara Gardens. Rather than an open garden running the length of the main section of the access road to Dunara Gardens, Dunara residents face the prospect of a 1.8 metre high fence, which any subsequent purchaser of the land would be entitled to erect without Development Approval. Given that there has been no change to the original subdivision since the 1950s, and creation of a public garden was at that time a condition of the subdivision for very understandable reasons, I see no justification for the current proposal which would take this amenity away from the residents of Dunara Gardens and the wider public.

2. Impact on heritage and unique local characteristics

- "*Reclassification of the land will not impact on the significance of [heritage items in the immediate vicinity]*" (schedule 1, Liveability priority 7)

Dunara Reserve presents as an open garden on the road leading into Dunara Gardens where 2 of the 11 homes are heritage listed: the magnificent Dunara House (state heritage listed) and McGrath House at 4 Dunara Gardens built in 1957 by Peter Muller. As noted at paragraph 1 above, the Reserve is an important amenity to all homes on Dunara Gardens, including these two heritage items, and provides them with an open, leafy aspect. If this land is reclassified and sold, its purchaser would be entitled to erect a 1.8 metre high fence for the 36 metres along which the Reserve adjoins Dunara Gardens. Contrary to Council's assertion in the Planning Proposal, this would have a very significant impact on the heritage properties in Dunara Gardens. Rather than enjoying views over, and access to, an open public garden they will be looking at a long fence. In addition, at present any member of the public pausing on Wentworth Street to look into Dunara Gardens at historic Dunara House is met with a lovely view of this heritage building, framed on the right by the greenery of Dunara Reserve. A fence (should the land be sold and enclosed) would present a dramatically different aspect. The impact, contrary to Council's assertion in the Planning Proposal, is direct and significant.

There is a heritage listed Cook Pine on the Reserve and at least one other tree worthy of heritage listing. At present these trees are available to the public to visit and enjoy. Sale and enclosure of the land would remove public access to these important trees (see paragraph 8 below). There is also the potential impact of the land being developed following a sale, which would have a significant and immediate impact on both the heritage tree and Dunara House.

3. The Planning Proposal asserts that site is not used as a "public open space" and is not "accessible open space".

- *"The site is a public reserve, but it is not used as public open space or as a public facility. Visually, it appears as a heavily vegetated space".* (section 2.1)
- *"The site is a public reserve, yet it does not function as accessible open space due to its configuration, topography and heavy vegetation"* (schedule 1, sustainability priority 5)
- *"Dunara Gardens provides little or no recreational value for the community."* (Appendix 2, paragraph 2).
- *"The remaining portion of the site is unsuitable for use as public open space due to its position amongst private dwellings and its topography. It has a small frontage to Wentworth [Street] of approximately three metres which does not provide appropriate access or passive surveillance into the site."* (Appendix 2, paragraph 1)

These statements in the Planning Proposal suggest that in order to be considered of public benefit (and therefore justify classification as community land) public land must be open space and readily accessible. This argument is not supported by the *LG Act*, which makes it clear that community land can take many forms including *"natural area, sports ground, park or for general community use"* (section (4)(a)-(d) *LG Act*), nor by the

Department of Local Government's Practice Note No 1 (Public Land Management) which states as an overarching principle that "*classification as community land reflects the importance of the land to the community because of its use or special features*" (paragraph 2.2).

Whilst Dunara Reserve is not large (albeit 402 square metres) and contains many trees and shrubs, this does not detract from its value to the community, nor preclude its enjoyment and use by members of the public for all the reasons set out elsewhere in this submission. Indeed, one of the "*special features*" of Dunara Reserve is its trees, dense vegetation and shady peaceful environment and Council is not justified in suggesting that this is inconsistent with classification as Community land. There is a strong argument for diversity in public spaces and Dunara Reserve has a valuable contribution to make to this within the Woollahra municipality.

4. The Planning Proposal asserts that the site does not present as a public reserve

- "*The site presents as part of a private estate rather than public land and member of the public would be hard pressed to recognize it as a public asset, let alone be inclined to enter and use the site for public recreation.*" (Appendix 2, paragraph 1).

I accept that there is nothing to let passing members of the public know that the site is public land and that members of the public who are not aware that it is public land may therefore be reluctant to enter and enjoy the Reserve. However this is entirely due to the inactivity of Council in failing to make it clear to the general public that the Reserve exists, and this should not be used as a means of justifying reclassification and sale of the land.

The Planning Proposal states "*the site is dedicated as a public reserve under section 50(5) of the LG Act*" (Appendix 1: Public Reserve status). However, it is not included in the list on Woollahra Council's website of "*Parks, reserves and playgrounds listed by suburb*" (which lists only Duff Reserve in Point Piper) and there is no public signage on the site to indicate that it is a public reserve. Council could easily remedy this by erecting a "Dunara Reserve" sign at the entrance to the Reserve on Wentworth Street, and by amending its website to include Dunara Reserve on the list of reserves in Point Piper.

5. The Planning proposal asserts that the site is underutilized, does not benefit the wider community, and only benefits the immediately adjoining properties

- "*The site is an underutilized piece of public land that does not benefit the wider community*" (section 6.1)
- "*The site currently only offers benefits to the immediately adjoining properties.*" (section 2.1)

Dunara Reserve is not underutilized. There are 11 houses on Dunara Gardens, home to approximately 30 residents. These residents, and their guests, pass and enjoy the Reserve every time they enter or leave their homes. Add to that the fact that many of the houses on Dunara Gardens enjoy views directly into the Reserve, and the sense of space and openness that this brings to an otherwise dense residential development.

Other neighbouring properties directly benefitting from an open aspect into Dunara Reserve include my property (1 Wentworth Street), 1A Wentworth Street, 15 Wolseley Road and the large block of apartments opposite at 2A Wolseley Road (comprising 11 apartments), which has no garden of its own. As noted at paragraph 1 above, local children play on the Reserve. It is also noted that Council is currently considering a development application to demolish an existing dwelling at 2 Wentworth Street (opposite the Reserve) and replace it with a 6 storey building containing 5 large units (DA 369/2017/1). The proposed development has no garden of its own but, if approved, will enjoy views over, and access to, Dunara Reserve.

In addition to the benefit that the Reserve brings to residents in its immediate vicinity, it is also visited regularly by other members of the public, including walking tours of the area and people interested in the history and heritage of the properties in Dunara Gardens and the heritage listed trees on and in the immediate vicinity of the Reserve (see paragraph 8 below).

It is simply not correct to say that the Reserve *"only offers benefits to the immediately adjoining properties"* (section 2.1). The immediately adjoining properties are: 9 Dunara Gardens, my property at 1 Wentworth Street, and 11 Dunara Gardens which owns the portion of the private road in Dunara Gardens which adjoins the Reserve. There is no doubt that the Reserve offers benefits to all of these properties, but, for the reasons given above and elsewhere in this submission, it also benefits other neighbouring residents, as well as members of the wider community.

It is also noted that, as referred to in paragraph 4 above, Council has failed to advertise the existence of the Reserve to the wider community, and there is no doubt that it would enjoy more visitors if its existence were more widely known, or if Council took better care of the Reserve and visited it more regularly for maintenance (see paragraph 6 below).

6. The Planning Proposal asserts historical problems managing the site

- *"Despite numerous attempts to manage the site, its inaccessibility and lack of passive surveillance have resulted in the build up of vegetation and debris over time."* (section 2.1)
- *"The inaccessibility of the site has resulted in a build-up of vegetation and debris over time, which combined with the slope of the land and the lack of passive surveillance, represents a potential public safety risk and hazard. In addition to this, it has been the location for illegal dumping of domestic*

waste. Site maintenance to clear the debris and vegetation is a resource burden to Council and is undertaken twice a year. Numerous attempts to replant the site have been unsuccessful." (Appendix 2, paragraph 1)

Dunara Reserve is no less accessible than many other public reserves in the Woollahra Municipality, including Duff Reserve in Point Piper (accessed via 98 steep steps) and many parts of Cooper Park (which are steep and heavily vegetated). By its own admission Council only undertakes site maintenance at Dunara Reserve twice a year, and from my own observance as an adjoining property owner, time spent by the Council conducting this maintenance is brief. As a consequence, some neighbouring residents, at our own expense, regularly undertake maintenance of the Reserve (including removal of accumulated dead branches, leaves and other vegetation) and have (with knowledge of Council) undertaken planting on the Reserve in keeping with its current vegetation.

The Planning Proposal attributes the "*build up of vegetation and debris over time*" on the Reserve to the site's "*inaccessibility and lack of passive surveillance*" (section 2.1). I disagree. The Reserve is heavily vegetated, but is not difficult to access, and no part is inaccessible. When neighbours have conducted our own maintenance of the Reserve (see above) we have had no difficulties accessing it. If debris and vegetation has accumulated on the site this is, in part, a natural consequence of it being heavily vegetated and the fact that Council only visits twice a year to clear up (but see paragraph 11 below about misuse of the Reserve which is, in fact, the bigger issue.).

7. The Planning Proposal is made with the intention of a sale of the site, and raises the possibility of future development on the site

- "*Reclassifying the land to operational would allow the sale of the site*" (section 1.2)
- "*As at July 2015 the Valuer General placed a value of \$245,000 on the land. The estimated financial gain from the land being appended to an adjoining owner's lot would be between \$2000 and \$5000 per square metre (based on comparable land sale values in the area)*" (Appendix 1: *potential financial gain to Council through reclassification*)

If the site is reclassified and offered for sale it does not present as a stand-alone development opportunity because of its shape, topography and the fact that it is heavily vegetated with substantial trees, including a heritage listed Cook Pine and at least one other tree which is worthy of heritage listing (see paragraph 8 below). For this reason it is likely that if Council proceeds to reclassify the land and offer it for sale, the only interest in purchasing this land will be from adjoining landowners (of which I am one). Two factors may motivate an adjoining landowner to make an offer to buy the land either:

- an interest in preserving this important pocket of vegetation and trees as a garden; or

- in order to increase the potential FSR of any future redevelopment of the existing home on an adjoining site, or with a view to the development of at least part of the land formerly comprising the Reserve.

Given that only the second option is likely to deliver the kind of “*financial gain*” to a purchaser referred to in the Planning Proposal (amounting to, on Council’s estimation, a financial gain of between \$804,000 and \$2,010,000 for this 402 square metres piece of land), a prospective buyer of the Reserve who is attracted by the development potential of the site is likely to be motivated to pay a higher price (and therefore be successful) in any competitive sale process involving a competing buyer simply interested in preserving the space as a garden. I have no interest in the development potential of the site and believe, as a point of principle, that its value to the community as a public garden far outweighs its potential value to a prospective private developer. In any event I have been advised that, given my large parcel of land, acquisition of this site will not (contrary to assertions in the Planning Proposal) add to the value of my property, but that it could add significantly to the value of the other developed property adjoining the Reserve.

Despite what Council has said in the Planning Proposal about the proposal not altering the development potential or tree preservation on the site, the estimated “*financial gain*” to a prospective purchaser it refers to could not be achieved without some development on or in the immediate vicinity of the Reserve, and I am deeply concerned that in referring to such large potential financial gains to a purchaser, Council is foreshadowing the possibility of future development on the aggregated site. As referred to elsewhere in this submission, this part of Point Piper is already densely developed and any additional development in this area would be to the detriment of everyone in its vicinity, especially if this were to involve the loss of vegetation or trees from the land comprising the Reserve.

8. Concerns about the preservation of trees on Dunara Reserve and tree poisonings in the area

- *“The reclassification does not alter the development potential of the site. Should the site be sold, any future development would need to address chapter E3 Tree Management in the Woollahra Development Control Plan 2015. One of the key objectives is to promote, maintain and conserve the leafy character of Woollahra Municipality. Woollahra Council’s Street Tree Master Plan (2014) also applies. One of the key objectives of the Street Tree Master Plan is to maintain and increase the number of trees and overall canopy coverage.”* (schedule 1, Sustainability Priority 7: Protect, enhance and extend the urban canopy).
- *“Although the site is located on a ridgeline, the planning proposal does not alter the development potential of the site. Any development on the site would need to address the controls identified in Sustainability Priority 7*

above." (schedule 1, sustainability Priority 8: Improve protection of ridgelines and scenic areas)

As noted at paragraph 7 above, I am very concerned that reclassification and sale of the land will result in a future application to Council for approval to develop at least part of the site, and for approval to prune and/or remove trees on the site. I am also concerned that some of the vegetation on the Reserve is not covered by Council's *Tree Management Development Control Plan* and could therefore be removed by a purchaser of the land without the need for approval.

Dunara Reserve is home to a number of substantial and significant trees. William Home, Level 5 Arborist, conducted a survey of trees on the Reserve on 4 September 2017, and a copy of his report is attached in the Schedule to this Submission. This report identifies 10 mature trees, 4 semi-mature trees, and 2 large mature shrubs on Dunara Reserve, including:

- a 28 metre high heritage listed Cook Pine
- two 14 metre high Moreton Bay Fig trees
- a 14 metre high Camphor Laurel tree; and
- four Canary Island Date Palms, which are particularly noteworthy as all are pest and virus free (this species being prone to pest and virus).

I have been advised by two of Woollahra Council's tree officers that the tallest of the four Canary Island Date Palms on the Reserve (which dates back to approximately 1890) is of heritage significance and should be considered for inclusion as a heritage item on Council's LEP. On 7 February 2017 I was advised by Ms Anne White (Strategic Planning, Woollahra Council) that Council is proposing to commence a Council-wide project to assess significant trees to add to its register in 2017/2018 and that it will consider the largest Canary Island Date Palm on Dunara Reserve as part of that process. As noted at the end of this paragraph, I believe that an assessment of the heritage significance of the Canary Island Date Palms and other trees on Dunara Reserve should be carried out immediately and taken into account as part of this Planning Proposal.

Point Piper is increasingly denuded of vegetation, and especially mature trees, as development and views of the harbor are valued more highly than preservation of our arboreal heritage. In particular, we have suffered the devastating loss of a number of substantial trees in the immediate vicinity of Dunara Reserve to poisoning in recent years. This includes the poisoning of a very large (20.5 metres) and significant Sydney Blue Gum adjacent to the Reserve in 2006, which resulted in its death and removal, and the poisoning of a large camphor laurel tree on a private property adjoining the Reserve in 2008, which also resulted in the tree's death and removal. Council recorded this latter poisoning as constituting a breach of the Tree Preservation Order (breach reference 379/2008/1) and wrote to the owner of the land concerned on 24 December 2008 requiring that a replacement canopy tree

be planted within that property with a minimum size of 10 x 8 metres. No replacement tree has been planted, and despite Council advising in its letter of 24/12/2008 that an inspection would be made in early 2009 to ensure that a replacement tree had been planted, Council has taken no enforcement action in relation to this matter.

A magnificent heritage listed Moreton Bay Fig tree on my own property has also been poisoned twice within the last 12 years. Both attacks were severe and have required substantial and sustained treatment to save the tree, which, although it has survived is still showing signs of trauma

This prolific history of tree poisoning in the area makes Dunara Reserve and its trees all the more precious. Because of its prominent position on a ridgeline, some of the trees on the Reserve can be seen from Rose Bay and beyond. There are only four heritage-listed trees in the whole of Point Piper. Two are on my property and one is on the Reserve. The fact that three of the four trees deemed worthy of heritage listing in Point Piper are found within the immediate vicinity of, or on, Dunara Reserve, highlights the importance of this small pocket of land both within Point Piper and as part of what Woollahra Council recognizes as the "important contribution" that "our rich heritage" of trees makes "to the beauty, character and history that continues to make our area such a desirable place to live." (Council's website: Trees).

I believe that the significance of the trees on Dunara Reserve, and the counter-balance that the Reserve's vegetation offers to the over-development of Point Piper, make it a precious public asset that should be preserved as such. I also believe that given the high risk of trees in Point Piper being unlawfully pruned, removed or poisoned (based on the alarming increase in such incidents in this part of Point Piper in recent years, including in the direct vicinity of the Reserve) it is imperative that the trees on Dunara Reserve are immediately assessed to determine whether further heritage listings should be made on the Reserve (including, but not limited to, the Canary Island Date Palms) and that these important trees are afforded the extra layer of protection that remaining in public hands provides. I acknowledge that public ownership does not preclude a tree from being poisoned. However, the transfer of land containing important trees from public to private ownership increases the risk of those trees being poisoned if the land was acquired with a view to its redevelopment. I would also note that no one has been prosecuted in relation to any of the recent tree poisonings in Point Piper. This drastically undermines the effectiveness of tree preservation legislation in operating as a deterrent to prevent the unlawful treatment of trees by a determined individual.

9. Financial burden of site maintenance and risk of managing the site

- *"The ongoing site maintenance to clear the debris and vegetation is a poor use of Council's resources, particularly as there is no tangible and obvious community benefit" (section 2.1)*

- The Planning proposal has the effect of “removing the risk of maintaining, managing and making the site safe for public use” (section 6.3)

By its own admission Council only conducts maintenance at the Reserve twice a year, and from my own observations any such maintenance is brief and conducted within one day only, or part of a day. The financial burden this involves can only be relatively small and, given the importance of Dunara Reserve to this community and its enjoyment by the wider public, it is inaccurate for Council to assert that there is no tangible and obvious benefit to this use of Council’s resources.

10. Use by the Council of the sale proceeds

- “The sale of the site would allow Council to use the funds to improve services and infrastructure in the LGA, including existing usable open space in the vicinity.” (section 2.1)
- “Should the site be sold or leased long-term, the revenue generated could be used for public open space upgrades in the LGA such as the Redleaf foreshore upgrade, Rose Bay Pedestrian Trail and Guilfoyle Park upgrade. These facilities are in proximity to the residents of the whole of Point Piper.” (schedule 1, Liveability Priority 5)

The Planning Proposal states that the proceeds of a sale of Dunara Reserve could be used to improve “public open space” and “useable open space” in the vicinity. As noted at paragraph 3 above, the fact that Dunara Reserve is heavily vegetated does not diminish its worth as a public asset and there is no justification for Council determining that space which is “open” is a more worthy recipient of public funds. Furthermore, there are a number of residents in Dunara Gardens who, because of their age, mobility, or other circumstances (as to which see their individual submissions) are not in a position to easily enjoy the alternative public spaces suggested in the Planning Proposal, and who would suffer a significant loss of amenity if their local public space is taken away.

Rather than selling Dunara Reserve, and inflicting a significant loss on both the community in its immediate vicinity and the wider public, Council should consider investing the modest amount of funds it would take to make sure that all members of public are aware that this beautiful space is available, and are able to enjoy it safely. This could be achieved by Council’s maintenance visiting the Reserve a little more regularly than twice a year and by erecting signage so that the public knows the Reserve exists.

11. Reasons for Council making the Planning Proposal: Misuse of Dunara Reserve

- “In 2010 staff identified a partial encroachment into the site. In response, Council adopted the following Notice of Motion...That a report be brought to council...assessing the land known as Dunara Reserve Point Piper, with a

view to rezoning the land in order for it to be put up for sale.” (section 1.1 Planning Proposal).

- *[The site] has been the location for illegal dumping of domestic waste” (para 1, Report 10 August 2015)*
- *“Numerous attempts to replant the site have been unsuccessful” (para 1, Report 10 August 2015)*

Despite justifications based on lack of public benefit put forward in the Planning Proposal, it seems that Council’s real motivation in proposing to reclassify and sell the Reserve is the protracted history of its misuse. Council and neighbours in the vicinity of Dunara Reserve are very familiar with the details of this history. This has been discussed in public meeting at Council on a number of occasions, including a DCC meeting on 17 August 2009 at which Council heard concerns from a number of residents about an encroachment onto the Reserve, the use of the Reserve to store household items and garbage bins, the dumping of household and garden rubbish on the Reserve, the unlawful removal of vegetation and the poisoning of a mature and very substantial camphor laurel tree on the boundary of the Reserve and an adjoining property (see paragraph 8 above).

Wherever possible, neighbouring residents have promptly provided Council with information about incidents of misuse of the Reserve, and have sought, at their own expense, to ameliorate its effects. This has included neighbours removing unlawfully deposited garden debris, domestic and building waste from the Reserve and planting to replace unlawfully removed vegetation at their own expense (and with Council’s knowledge). On two occasions this replanting has been deliberately vandalized: Council was informed and inspected the damage. Council has also inspected garden waste (including tree branches) unlawfully dumped on the Reserve, and was able to clearly identify its source.

In these circumstances, and given that by Council’s own admission it adopted the Notice of Motion to investigate a possible reclassification and sale of the Reserve *“in response”* to an encroachment into the site by an adjoining landowner, it is hard not to see this decision as, in effect, Council “washing its hands” of a difficult situation brought about by one resident’s refusal to respect the Reserve as public property. Whilst it is possible to understand Council’s frustration at the fact that its staff has spent many hours in recent years dealing with complaints about the ongoing misuse of Dunara Reserve, it is also manifestly unfair to members of the public that the unlawful behavior of one individual threatens to remove this much loved garden from public enjoyment. Making a proposal to sell public land in these circumstances (through a process which will inevitably involve inviting the individual who has misused the Reserve for so many years to participate) also sets an extremely worrying precedent, the consequences of which I do not need to spell out. Frustrating as it must be for Council to deal with the misuse of a public asset by one individual, this does not warrant Council selling this asset as a means of removing the problem.

Schedule

Dunara Reserve Tree Report by William Home, Level 5 Arborist, 4 September 2017

Client: Penny & Neil Broekhuizen
Quotation Number: 61936
Page number: 1/2

1.0 Tree Assessment Survey Sheet

Location : Dunara Reserve, Point Piper Weather : Fine 4 / 9 / 2017

Tree #	Species Botanical name Common name	Trunk Diameter @1.4m	Height	Width	Age (SUE)	Health 1 = Poor 5 = Excellent	Structure 1 = Poor 5 = Excellent	Canopy Cover %	Crown Class	Tree Surgery	Suitability for Preservation	Comments
1	Phoenix canariensis Date Palm	60	7	8	M	5	5	95%	C	1	High	Group of 4 mature palms which are post and virus free
2	Araucaria columnaris Cook Pine	110	28	8	M	5	5	95%	D		High	Heritage listed
3	Phoenix canariensis Date Palm	90	8	8	M	5	5	70%	C	1, 9	High	Group of 4 mature palms which are post and virus free
4	Ficus microcarpa Merlot Bay Fig	130	14	10	M	5	5	70%	C		High	Root has been cut along private driveway to 9 Dunara Gardens by unknown person
5	Sheelitea nicotii Bird of Paradise	74.12	6.5	5	M	5	5	70%	I		High	Good understory planting
6	Phoenix canariensis Date Palm	70	12	8	M	5	5	95%	C	1	High	Group of 4 mature palms which are post and virus free
7	Liquidambar styraciflua Sweetgum	30	10	6	SM	5	4	50%	I		High	Semi-mature
8	Olea africana Wild Olive	20	40	9	M	5	4	60%	C		Moderate	Mature tree with unusual shape and interesting trunk configuration
9	Elaeocarpus reticulatus Blueberry Ash	15	6	4	SM	5	5	85%	C		High	
10	Cassia glauca Gambaia	20	12	6	M	5	4	75%	C		Moderate	Has inclusion at 4m mark

Tree surgery:
1. Deadwood. 2. Reshape crown. 3. Wound repair. 4. Insect control. 5. Improve soil conditions (mulch, fertility, aeration etc).
6. Investigate cavities. 7. Thin crown, consider installation of cabling/bracing and or retain and fence off for public safety.
8. Line clearance of structures or services wires. 9. Remove attached palm fronds/girdling. 11. Remove. 12. No tree surgery required.
13. Requires tree protection measures. Refer to accompanying report. 14. Bare damage. 15. Bare damage. 16. Fungal or bacterial damage. 16. Monitor.

Age classification:	Crown Class
Y = Young	C = Compact
SM = Semi-mature	C-CO = Compact
M = Mature	I = Intermediate
OM = Over-mature	S = Suppressed

Size Useful Life Expectancy	Size Useful Life Expectancy
L = Long	Remaining life span greater than 40 years
M = Medium	Remaining life span from 20 to 40 years
SM = Short	Remaining life span from 5 to 15 years
R = Remove	Should be removed within 5 years
U = Unstable	Unstable in the ground or have significant trunk damage rendering them structurally hazardous



FOR FURTHER ENQUIRIES, PLEASE CONTACT WILLIAM HOME 0418 979 922

Client: Penny & Neil Broekhuizen
Quotation Number: 61936
Page number: 2 / 2

1.0 Tree Assessment Survey Sheet

Location : Dunara Reserve, Point Piper

Weather : Fine 4 / 19 / 2017

Tree #	Species Botanical name Common name	Trunk Diameter @1.4m	Height	Width	Age	SULE		Health 1 = Poor 5 = Excellent	Structure 1 = Poor 5 = Excellent	Canopy Cover %	Crown Class	Tree Surgery	Suitability for Preservation	Comments
						1 = Poor 5 = Excellent	1 = Poor 5 = Excellent							
11	<i>Alnus</i> <i>heterophylla</i> Norfolk Island Pine	15	6	5	SM			5	5	100%	C		High	Young tree
12	<i>Hibiscus</i> Tropical Hibiscus	Multi 5 to 10	6	6	M			5	4	100%	C		High	Gives screening along road to all houses
13	<i>Casuarina glauca</i> Swamp She-oak	15	8	3	SM			5	5	90%	C		Moderate	
14	<i>Cinnamomum camphora</i> Camphor Laurel	150	14	10	M			5	4	70%	C		High	
15	<i>Ficus microcarpa</i> Mentor Bay Fig	40	14	10	M			5	4	30%	C		Moderate	Growing with tree 14
16	<i>Phoenix canariensis</i> Date Palm	80	10	4	M			5	5	70%	C		High	Group of 4 mature palms which are post and virus free



DR. TREGOOD
WILLIAM HOME
Tree Surgeon / Transplantation Garden Design & Maintenance

Tree surgery:
1. Diebackwood, 2. Realign Crown, 3. Wound repair, 4. Insect control, 5. Improve soil conditions (mulch, fertility, aeration etc).
6. Investigate cavities, 7. Thin crown, consider installation of cabling/bracing and or retain and fence off for public safety.
8. Line clearance of structures or service wires, 9. Remove attached part, 10. Root grinding, 11. Removal, 12. No tree surgery required.
13. Requires tree protection measures, 14. Root damage, 15. Root damage, 16. Root damage, 17. Root damage, 18. Member.

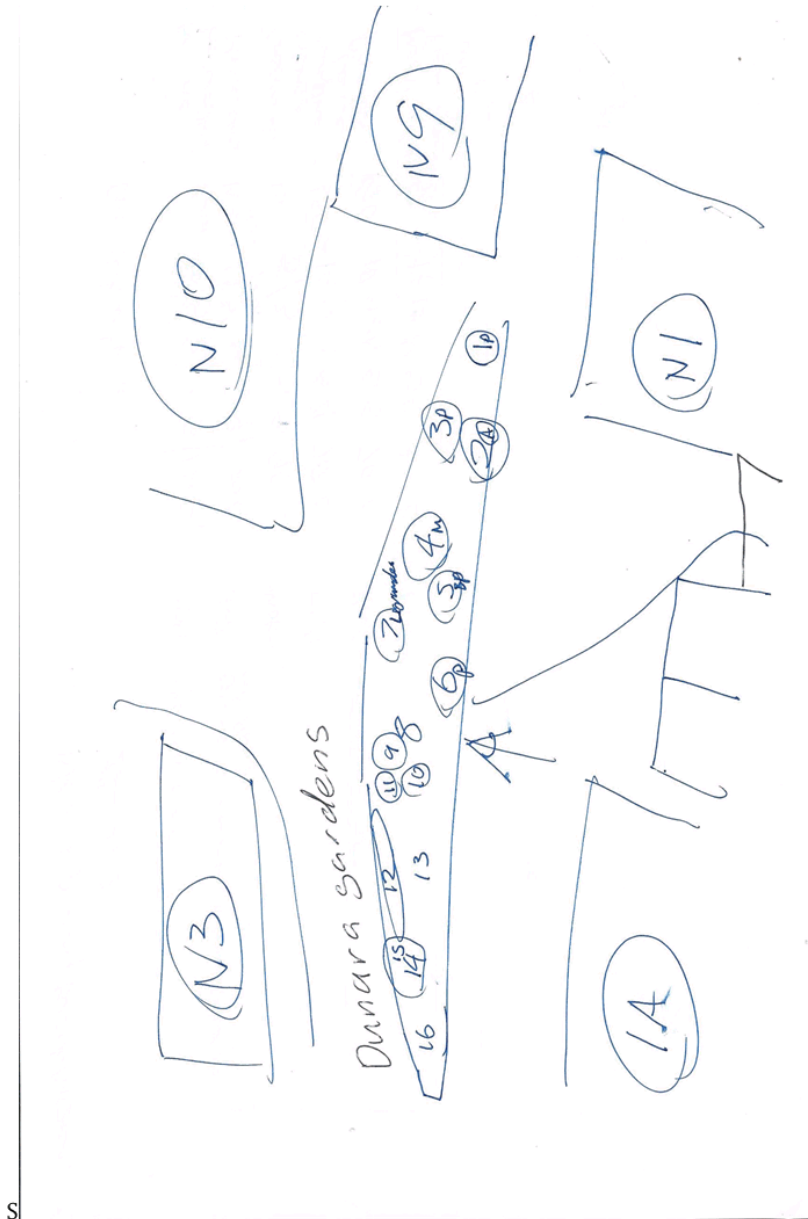
Tree Classification:
L = Long term
SM = Short term
M = Mature
IM = Intermediate
S = Suppressed

Crown Class:
C = Dominant
C-DO = Dominant Over
I = Intermediate
S = Suppressed

SULE
1 = Long term
2 = Short term
3 = Short term
4 = Short term
5 = Short term
U = Unstable

Safe Useful Life Expectancy
1 = Long term
2 = Short term
3 = Short term
4 = Short term
5 = Short term
U = Unstable

FOR FURTHER ENQUIRIES, PLEASE CONTACT WILLIAM HOME 0418 979 922



Site plan of trees on Dunara Reserve
William Home, 4 September 2017

CID013 - PART 2

RE-EXHIBITION

From: [penny broekhuizen](#)
To: [Records](#)
Subject: SC3794 Submissions
Date: Monday, 6 November 2017 11:23:54 PM

To: The General Manager, Woollahra Council,
From: Penny Broekhuizen, █ Wentworth Street, Point Piper

I have received notification of Woollahra Council's re-exhibition of proposed changes to the land management controls of Dunara Reserve, Point Piper.

I made a submission on 7 September 2017 raising a number of very serious concerns I have about this proposal, and wish that my submission of 7 September be taken into account in its entirety in relation to this re-exhibition.

However, I would also like to note that I am extremely perturbed that Council has decided to re-exhibit this proposal without giving a clear explanation as to why it has made this decision. The only explanation given by Council in the notice of re-exhibition is that it is occurring to **"clarify the location and description of the site and the fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds."**

From what I can see in the public exhibition material no further explanation is given as to either:

- why clarification of the location and description of the site was necessary, and how this clarification has been made; and
- what the **"trust affecting the site"** may be, who the beneficiaries of the trust are, and how they will be affected by its discharge.

The latter point about the trust is particularly significant. Council cannot satisfy its legal obligation to consult with the public about this proposal if it does not disclose sufficient details about the proposal and its potential legal consequences so as to enable the public to make an informed view. What is this potential trust? To what does the trust relate? How was the trust created? When was it created and why was it created? Who are its beneficiaries? What are the potential consequences to those beneficiaries of the discharge of that trust? Why does Council consider it appropriate to discharge that trust?

There is a gaping void in the planning proposal and public exhibition material as to the answers to every one of these questions, and without this information both are incomplete and cannot constitute either a planning proposal or a valid community consultation pursuant to the *Environmental Planning and Assessment Act 1979*. In particular, section 55 of that act requires that the planning proposal must include a statement of the objectives or intended outcomes of the proposed instrument, an explanation of the provisions that are to be included in the proposed instrument, the justification for those objectives, outcomes and provisions and the process for their implementation. As none of these requirements have been met as regards the **"trust affecting the site"** Council has failed to meet the legal requirements for a valid planning proposal and the current process is thereby invalidated.

Yours Faithfully
Penny Broekhuizen

CID014 - PART 1

Drs Peter and Victoria Papadakis

█ Dunara Gardens Point Piper

Postal Address: █

7 September 2017

To General Manager

Woollahra Council

Reference : SC3794 Submissions: Dunara Reserve Point Piper

We strongly oppose the proposed changes to land management controls of Dunara Reserve Point Piper outlined in your letter dated 8 August 2017.

We are very upset and angry that Woollahra Council is seeking to destroy what little open space and recreational reserve we have left through their plan to reclassify and sell Dunara Reserve.

In 1956 Woollahra Council showed great foresight when in approving the subdivision of Dunara Estate, it insisted on part of the land (lot 11 - 402 sq meters) being classified as "Public Garden and Recreation Space" and required this land to be transferred to Council in 1957 – as a trustworthy owner - to ensure that the area was retained as a reserve for future generations to enjoy. The transfer of the land to Council was to prevent any development on this area and ensure that it was retained as "Public Garden and Recreational Space" for the future with no intention that this public piece of land would be later sold off.

Now, over 60 years later society is demanding more open space and greenery as a necessity to promote relaxation, peace and tranquillity in today's concrete jungle. In 2017 life is anxiety provoking and stressful with too many demands placed on individuals from the need to keep up with our fast paced world.

Dunara Reserve is part of the relief that is necessary to provide a retreat and calm from today's stressful life, a place where reflection and meditation can take place. For some time, approvals for Development Applications in the Woollahra Council area have included stipulations for the need to provide areas for open space and greenery. Yet by reclassifying and selling off Dunara Reserve Council is doing the exact opposite of what it wants everyone else to do.

Our family lives in Dunara Gardens. One of the reasons we purchased our property in Dunara Gardens was because of the open space provided by Dunara Reserve. On driving into Dunara Gardens there is a sense of greenery and openness in an area where there is dense residential development including the presence of high density units across the road. The Dunara Reserve is the garden referred to in Dunara Gardens and this is the reason that the area is called Dunara Gardens. If this reserve were to be sold the garden of Dunara Gardens would be lost – you could say that the heart and soul of Dunara Gardens would be lost. The purchaser of the 402 sqm area would be entitled to build and likely would build a 1.8 meter high fence along the edge of the property including the 3 metres section abutting the footpath which would be unsightly and undesirable both from inside Dunara Gardens and from outside Dunara Gardens.

Certainly Dunara Reserve is enjoyed by the residents of Dunara Gardens and their visitors. Children living in Dunara Gardens regularly play in Dunara Reserve. However Dunara Reserve is also enjoyed by residents living outside Dunara Gardens.

Children living outside of Dunara Gardens regularly come to play at Dunara Reserve. In some of the unit developments nearby there are no back yards and Dunara Reserve is the only outdoor space available for these children to play. There is only one other reserve in Point Piper and this is some distance away.

In addition historical groups come to look at the two Heritage listed properties in Dunara Gardens, particularly the property “Dunara” which was the original home on the Dunara Estate. The house “Dunara” is directly opposite the Dunara Reserve. These groups of people coming to look at significant historical houses are able to enjoy the amenity of the open space offered by Dunara Reserve - rather than looking at a 1.8 Brick wall fence - and they often stop and enter Dunara Reserve on their way to or from the heritage homes.

Further there are residents of Point Piper (outside of Dunara Gardens) and surrounding suburbs who themselves walk or walk their dogs as exercise along the streets nearby – these people also enjoy the amenity of Dunara Reserve and often come into the reserve to enjoy the pocket of greenery and open space.

Dunara Reserve is a very important area of open space and greenery in an area of high development. There are a number of mature trees in the reserve including a heritage listed Cook Pine and a Date Palm – both over 110 years old. This reserve is an area we now have because of the foresight of the Council in 1956 and an area that should be cherished and protected – definitely not an area to be reclassified with a view to selling it off resulting in the loss for ever of an important area of public open space.

The Council argues that there is a burden on Council finances by having to come to Dunara Reserve two times a year – probably both visits would not even add to one

full day per year. With an annual income of over \$115 million the cost of attending to the reserve results in no burden on Council's finances.

Instead of Council trying to sell this reserve which will then not be enjoyed by all generations to come it should be helping Dunara Gardens residents to promote its use. Better prominent signage is needed on Wolseley Rd as well as small sign under the Wolseley street sign on the corner of New South Head Road and Wolseley Rd.

In conclusion we strongly oppose the sale of Dunara Reserve, it is not a burden on Woollahra Council and would result in loss open space and greenery for all generations to come in an age when such recreational areas are becoming extinct.

P+V Papadakis

Drs Peter and Victoria Papadakis

CID014 - PART 2

RE-EXHIBITION

Drs Peter and Victoria Papadakis

■ Dunara Gardens Point Piper

Postal Address: ■■■■■■■■■■

11 November 2017

To General Manager

Woollahra Council

Reference : SC3794 Submissions: Dunara Reserve Point Piper

We strongly oppose the proposed changes to land management controls of Dunara Reserve Point Piper outlined in your letter dated 8 August 2017.

We are very upset and angry that Woollahra Council is seeking to destroy what little open space and recreational reserve we have left through their plan to reclassify and sell Dunara Reserve.

In 1956 Woollahra Council showed great foresight when in approving the subdivision of Dunara Estate, it insisted on part of the land (lot 11 - 402 sq meters) being classified as "Public Garden and Recreation Space" and required this land to be transferred to Council in 1957 – as a trustworthy owner - to ensure that the area was retained as a reserve for future generations to enjoy. The transfer of the land to Council was to prevent any development on this area and ensure that it was retained as "Public Garden and Recreational Space" for the future with no intention that this public piece of land would be later sold off.

Now, over 60 years later society is demanding more open space and greenery as a necessity to promote relaxation, peace and tranquillity in today's concrete jungle. In 2017 life is anxiety provoking and stressful with too many demands placed on individuals from the need to keep up with our fast paced world.

Dunara Reserve is part of the relief that is necessary to provide a retreat and calm from today's stressful life, a place where reflection and meditation can take place. For some time, approvals for Development Applications in the Woollahra Council area have included stipulations for the need to provide areas for open space and greenery. Yet by reclassifying and selling off Dunara Reserve Council is doing the exact opposite of what it wants everyone else to do.

Our family lives in Dunara Gardens. One of the reasons we purchased our property in Dunara Gardens was because of the open space provided by Dunara Reserve. On driving into Dunara Gardens there is a sense of greenery and openness in an area where there is dense residential development including the presence of high density units across the road. The Dunara Reserve is the garden referred to in Dunara Gardens and this is the reason that the area is called Dunara Gardens. If this reserve were to be sold the garden of Dunara Gardens would be lost – you could say that the heart and soul of Dunara Gardens would be lost. The purchaser of the 402 sqm area would be entitled to build and likely would build a 1.8 meter high fence along the edge of the property including the 3 metres section abutting the footpath which would be unsightly and undesirable both from inside Dunara Gardens and from outside Dunara Gardens.

Certainly Dunara Reserve is enjoyed by the residents of Dunara Gardens and their visitors. Children living in Dunara Gardens regularly play in Dunara Reserve. However Dunara Reserve is also enjoyed by residents living outside Dunara Gardens.

Children living outside of Dunara Gardens regularly come to play at Dunara Reserve. In some of the unit developments nearby there are no back yards and Dunara Reserve is the only outdoor space available for these children to play. There is only one other reserve in Point Piper and this is some distance away.

In addition historical groups come to look at the two Heritage listed properties in Dunara Gardens, particularly the property "Dunara" which was the original home on the Dunara Estate. The house "Dunara" is directly opposite the Dunara Reserve. These groups of people coming to look at significant historical houses are able to enjoy the amenity of the open space offered by Dunara Reserve - rather than looking at a 1.8 Brick wall fence - and they often stop and enter Dunara Reserve on their way to or from the heritage homes.

Further there are residents of Point Piper (outside of Dunara Gardens) and surrounding suburbs who themselves walk or walk their dogs as exercise along the streets nearby – these people also enjoy the amenity of Dunara Reserve and often come into the reserve to enjoy the pocket of greenery and open space.

Dunara Reserve is a very important area of open space and greenery in an area of high development. There are a number of mature trees in the reserve including a heritage listed Cook Pine and a Date Palm – both over 110 years old. This reserve is an area we now have because of the foresight of the Council in 1956 and an area that should be cherished and protected – definitely not an area to be reclassified with a view to selling it off resulting in the loss for ever of an important area of public open space.

The Council argues that there is a burden on Council finances by having to come to Dunara Reserve two times a year – probably both visits would not even add to one

full day per year. With an annual income of over \$115 million the cost of attending to the reserve results in no burden on Council's finances.

Instead of Council trying to sell this reserve which will then not be enjoyed by all generations to come it should be helping Dunara Gardens residents to promote its use. Better prominent signage is needed on Wolseley Rd as well as small sign under the Wolseley street sign on the corner of New South Head Road and Wolseley Rd.

In conclusion we strongly oppose the sale of Dunara Reserve, it is not a burden on Woollahra Council and would result in loss open space and greenery for all generations to come in an age when such recreational areas are becoming extinct.

Peter Papadakis

Drs Peter and Victoria Papadakis

From: papadakis@westnet.com.au
To: [Records](#)
Cc: [papadakis](#)
Subject: SC374 Submissions: Dunara Reserve Point Piper
Date: Tuesday, 21 November 2017 7:10:05 AM

CID014 - PART 3

RE-EXHIBITION

To General Manager, Woollahra Council

Reference: SC374 Submissions: Dunara Reserve Point Piper

On 11 November 2017 we made a submission objecting to the proposed Dunara Reserve reclassification and sale

Please find following a further submission -

We note in your letter to us dated 25 October 2017 you state that "Re-exhibition is occurringthe fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds"

That there may be a trust affecting the site is further evidence that the creation of Dunara Reserve when subdivision occurred was a forward thinking idea of the then Council to preserve this area of public land – for the benefit of the public and Dunara Gardens residents. Having a trust for the site was a way of ensuring that this land continued as public land

In our opinion it would be a breach of trust for Council to now have it cease as public land and we strongly object to the proposal to reclassify Dunara Reserve and then sell the land

Drs Peter and Victoria Papadakis

■ Dunara Gardens Point Piper

Postal Address: [REDACTED]

PS Please confirm receipt of this email

CID015

From: [Justin Richmond](#)
To: [Records](#)
Cc: [Nikki Richmond](#)
Subject: Public Reserve - Dunara Gardens - SC3794 Submissions
Date: Friday, 8 September 2017 9:42:49 AM

Woollahra Municipal Council

By email records@woollahra.nsw.gov.au

Reference: SC3794 Submission

This email is a formal submission on behalf of Justin, Nikki, Sarah Rose (16 years old) and Daniel Richmond (15 years old) of [REDACTED] Wentworth St, Point Piper, and it relates to the Council's consideration of whether to sell the public reserve at Dunara Gardens and Wentworth St, Point Piper.

We object to the proposal in the strongest of terms. We request that the Council leave the public reserve in the ownership and control of Council.

As background, our family home is within Dunara Gardens (but also has frontage to Wentworth St) and is located near to the public reserve which you are currently considering selling. Our reasons for our objection are as follows:

1. The public reserve is beautiful and adds significantly to the amenity of Wentworth St and Dunara Gardens. The trees within the public reserve are a pleasant green space that constitute a historic part of the area. These are best left in the ownership and control of the Council, and not in private ownership and control where they may be poisoned or destroyed as private property.
2. The properties within Dunara have limited gardens and open space and so the public reserve is particularly precious.
3. The Council is considering a (multi-level) development across Wentworth St (from Dunara Gardens), so with a significant increase in the number of people in the area, maintaining existing green space is important.
4. When the Council, permitted the subdivision to form Dunara Gardens, it decided to do so, on the basis that this land should be public reserve. It made that decision having considered the needs of the area for public space and those reasons have not changed other than the increase in the number of people, which makes the original reasons all the more prescient.
5. We have seen Councils over the years sell off public reserves in different parts of Sydney, only to regret it later.
6. In applications for development in the municipality, Council looks at open space and setbacks as part of enabling development but maintaining the amenity of an area. A decision to sell the public reserve is at odds with the Council's own policies and conditions it imposes on developments to ensure open space.
7. When we go on walks in the morning and on weekends, we stop to look at the public reserve and its trees. We do not want this greenery replaced with a garage, wall or fence. When we go on walks with our parents and friends, they often comment that the public reserve is so pleasant, and it provides an open entry into Dunara Gardens.

8. Our daughter, Sarah Rose, is interested in green conservation and enjoys the public reserve with its huge trees and greenery. We told her that the Council was considering selling the public reserve and she was disappointed as she enjoys the public space. She considers any such decision as a "sell-out" to development rather than maintaining Point Piper as a "cool" place to live and for people to visit.

9. Our son, Daniel is autistic but really enjoys the public reserve. He likes to look at the greenery and play in it. We request that if you are considering progressing the proposal of a sale of the public reserve that you first observe him playing in it, so that you properly consider the benefit of the public reserve to him.

10. The public reserve is on the southern part of Dunara Gardens and provides protection from winds coming from the south, and given the proximity of busy New South Head Road, it provides an excellent natural noise break for properties on Wentworth St and the northern parts of Point Piper.

11. The Council has expressed concern that the benefit of the public reserve is limited to a small number of adjoining land owners. We have lived in Dunara Gardens for over 6 years, and we observe many people in the area enjoying the public reserve particularly as part of walks. We request that you consider how many people will benefit from the public reserve if it is sold to one private land owner.

12. We do not believe that the projected financial proceeds justifies the significant public detriment of selling the property. If the Council is considering progressing the proposal, it is important for the decision makers to spend time at the public reserve to see its beauty. We request that you project into the future and consider the growing importance of the public reserve as there is further development in the area, and more people. We believe that a sale will be viewed as short sighted in the future given the historic importance of some of the trees.

We are available to meet at the public reserve, and if you wish to observe Daniel playing in the public reserve, please call us on [REDACTED]

Yours sincerely

Justin and Nikki Richmond

CID016 - PART 1

Freda Cassen
[REDACTED] **Wentworth Street**
Point Piper
NSW 2027
Ph: [REDACTED]

Woollahra Municipal Council
Customer Service Department
8 SEP 2017
Received

The General Manager
Woollahra Council
PO Box 61
Double Bay
NSW 1360

8 September 2017

Dear Sir/Madam,

SC3794 Submissions
Proposed Changes to Dunara Reserve Point Piper

I have am the owner of [REDACTED] Wentworth Street, Point Piper, and have lived here for 30 years. Whilst my address is Wentworth Street, the main access that I use to my property, both pedestrian and vehicular, is via Dunara Gardens. My property was part of the original subdivision of the Dunara Estate in the 1950s, and is as affected by the proposed changes to Dunara Reserve as all the other properties in Dunara Gardens.

I strongly object to Woollahra Council's proposal to reclassify Dunara Reserve from Community to Operational land in order to allow a sale of the land.

Dunara Reserve is an extremely precious amenity to all of us who live in its vicinity. It was designated as pubic garden and recreation space when the original Dunara Estate was subdivided in the 1950s because this is a tightly packed subdivision and most Dunara properties have only small outdoor spaces of their own. Dunara Reserve is a shared garden which compensates for this, and which we can all enjoy. It is home to some beautiful and significant trees: not only the magnificent heritage listed Cook Pine, but also four Canary Island Date Palms, and a large Moreton Bay fig tree. A closer look will also reveal a number of beautiful shrubs and bushes, including a lovely large hibiscus on the boundary of the Reserve and the road leading into Dunara Gardens. These trees and plants give me huge pleasure every time I access or leave my property, and when I am home I can hear birds singing in the Reserve through my open windows. Kookaburras and lorikeets have made that their home.

Dunara Reserve a very important amenity to me, and all residents of Dunara Gardens and it is not accurate for Council to suggest otherwise. It is our beautiful green space in an otherwise increasingly over-developed Point Piper. It is also not accurate for Council to suggest that the Reserve does not benefit the wider

community. I regularly see members of the public stop by and admire the sweep of its trees and shrubbery as they lead down to the lovely and historic Dunara House, which is state heritage listed.

Council has suggested in its Planning Proposal that if Dunara Reserve is sold it could use the funds on other public space elsewhere in the Woollahra Municipality, including Redleaf, Rose Bay Pedestrian Trail and Guilfoyle Park. However, because of my age these are not public spaces that I can readily enjoy in the same way as I enjoy Dunara Reserve, which I do every day. I also disagree with Woollahra Council's assessment that public places like peaceful, leafy, quiet Dunara Reserve are somehow less worthy of recognition and protection than playing fields and open space.

As to Council saying its maintenance is a drain on resources, the fact is that Council for years have neglected it and have rarely maintained it.

If Dunara Reserve is sold a buyer will fence it in and Dunara Residents will lose their view into the Reserve. This would have a dramatic impact on all Dunara Residents, and the impact on Dunara House would be particularly devastating. I am also extremely concerned that a buyer will seek to remove shrubs and trees on the Reserve to make way for development. I have been horrified to see two beautiful large mature trees poisoned in Dunara Gardens in recent years. Tree preservation laws are simply not enough to protect our important trees when someone is intent on getting rid of them, and it is pertinent to note that no one was ever prosecuted for the recent Dunara tree poisonings. Clearly this sends a message to anyone contemplating buying the Reserve: the trees are protected, but if they are poisoned punishment is unlikely to follow. For this reason, and in order to keep our neighbourhood trees safe and out of the hands of private landowners who may want their removal, I believe in the strongest possible terms that Council should not reclassify Dunara Reserve. Indeed I feel that in these circumstances, and given the known history of tree poisonings in this area, it would be irresponsible of Council to countenance a sale which would put our surviving trees at risk.

Yours Faithfully



Freda Cassen

CID016 - PART 2
RE-EXHIBITION

Freda Cassen

█ **Wentworth Street**

Point Piper

NSW 2027

Ph: █

Mobile: █

The General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360
18 November 2007

Dear Sir/Madam

SC 3794 Submissions

Proposed Changes to Dunara Reserve Point Piper

I am horrified to see that Council is re-exhibiting this disgraceful proposal, especially as it seems to be an attempt to rectify its mistakes in the original exhibition. I do not understand why Council is so hell bent on proceeding with it.

I draw your attention to my previous submission dated 8 September which you should take into account again.

It seems that Council now acknowledges the correctness of my neighbour Mr Farkas' submission about the fact that Council holds that land in trust for the public, and in particular the residents of Dunara Gardens. It is appalling that Council should even consider breaking that trust, both in a legal and a moral sense. If we can't trust Council to honour that legal trust, then

what faith can we place in Council to do the right thing in other respects.

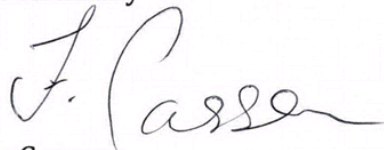
Council is supposed to look after the interests of ratepayers, not act against their interests.

Council set that land aside as part of the original subdivision , to provide a leafy green space with numerous large trees , especially given the density of the subdivision and the lack of trees in it, and the lack of gardens in the houses. It is Council's duty to retain and maintain that land as a public reserve in accord with its original creation.

I have already described its value to me personally as well as the other residents. I and others will be extremely upset if this proposal proceeds. I expect there will be a court case challenging it if Council proceeds to a reclassification.

I regard this proposal as irresponsible and a breach of faith with the public

Yours faithfully

A handwritten signature in cursive script, appearing to read 'F. Cassen', written in black ink.

Freda Cassen

CID017 - PART 1

Charles Handler
Dunara Gardens,
Point Piper, NSW 2027

6/09/17

Woollahra Council
PO Box 61
Double Bay NSW 1360

TO WHOM IT MAY CONCERN

Woollahra Council Ref: SC3794 Submissions-Proposed changes to the land management controls of Dunara Reserve, Point Piper

We are one of the residences at Dunara Gardens. We are disappointed to hear that the Council is planning to reclassify Lot 11, DP 27451 which also known as Dunara Reserve from Community to Operational land in order to sell the land.

My wife and I who are both in our 70s and decreasing in our physical ability for more active activities have been walking our dog and strolling in the Dunara Reserve as our daily routine since it is the closest outdoor space from our home that offers trees and greenery for our enjoyment. As we have very limited outdoor garden space in our house that is part of the already overcrowded Dunara Gardens, the Reserve provides a stress relief space for our daily health routine. The Reserve also serves as a meeting place and common venue for us to socially catching up with our neighbours and friends in the Community who are co-using the space like us.

The reclassification of the Reserve that may consequence to the potential of private ownership of the land will result in the loss of our daily recreational and social venue hence our limited physical and social activities as well. Therefore, we would like Council to reconsider the proposal of the reclassification.

Thanking you in advance.

Yours sincerely,



Charles Handler

CID017 - PART 2

RE-EXHIBITION

Charles Handler
Dunara Gardens,
Point Piper, NSW 2027

23/11/17

Woollahra Council
PO Box 61
Double Bay NSW 1360

TO WHOM IT MAY CONCERN

Woollahra Council Ref: SC3794 Further Submissions-Proposed changes to the land management controls of Dunara Reserve, Point Piper

We refer to the above mention reclassification of Dunara reserve and our submission dated 6/9/17, we are hereby writing to re-iterate our previous submission.

We understand the Council's statement that there may be a trust affecting the site which is proposed to be discharged. We are disappointed with the decision as the trust is to preserve the reserve as public land for the benefit of Dunara Gardens' residents in particular and the public generally and it is a breach of trust for Council to have it cease as public land. We would like to emphasise our strong desire for the reserve to remain as it is and continuing serving the adjacent residents and benefit the general public in its original form.

Thanking you in advance.



Yours sincerely,



Charles Handler

1

CID018 - PART 1

GEORGE FARKAS
B.A LL.B
Dunara Gardens
POINT PIPER NSW 2027
Ph: [REDACTED]
M: [REDACTED]
Email: [REDACTED]

7 September 2017
The General Manager
Woollahra Council
536 New South Head Rd
DOUBLE BAY NSW 2028

Dear Sir

**SC 3794 SUBMISSION RE PROPOSED RECLASSIFICATION OF DUNARA
RESERVE, POINT PIPER**

I am the owner of “ Dunara” Dunara Gardens , Point Piper , which is Heritage Listed on the State Register, being the birthplace of the famous Australian poet, Dorothea McKellar and the oldest standing house in Point Piper. This was the original house in the original Dunara Estate which comprised all of what is currently Dunara Gardens , before its subdivision in 1956.

I strongly object to the proposed reclassification of the subject land and submit that it should remain as community land owned by Council.

My Submissions are set out as follows:

- EXECUTIVE SUMMARY
- DETAILED SUBMISSIONS

EXECUTIVE SUMMARY:

- 1A. The Council Resolution authorizing the Planning proposal is invalid.
See Paragraph 64 and succeeding paragraphs.
1. The expressed rationale for selling the land is both scandalous and reflects appallingly on Council and further is no longer relevant.
2. The alleged reasons advanced in support of doing so are manifestly incorrect. In particular, the land does provide a community amenity and the public do use the land.
3. Any proposal to sell the land is also based on a fundamental misconception of the reasons and circumstances of its creation and its continuance. The setting aside of that land as Public Garden & Recreation Space was part of the conditions of consent to the subdivision of the Dunara Estate into 11 small lots , many without any gardens and was transferred to Council as part of the subdivision to ensure that it remained garden & recreation space in perpetuity.

4. The proposal is misconceived both in law and in fact.
5. Appendix 1 to the Planning Proposal (Required Information checklist for proposals to classify or reclassify public land through an LEP in accordance with the Dept of Planning & Environment's LEP Practice Note PN 16-001) contains incorrect information and thus does not contain the information required by that document and the Dept of Planning.
6. The information supplied to NSW Planning & Environment resulting in a Gateway determination was incorrect and thus the Gateway determination is based on incorrect information.
7. The Planning Proposal contains incorrect information and accordingly the recommendation contained therein cannot validly stand.
8. The original Council Notice of Motion of 10.6.14, on Council's own admission, was a response to its failure to legally enforce a legally binding condition of consent to No 9 Dunara Gardens' DA as imposed by the Land & Environment Court to remove the significant encroachment by No 9 on the subject land and should never have been passed, being an abrogation of Council's duty to enforce Court Orders.
9. The proposal sets a bad example of public policy.
10. Council's Resolution of 10.8.15 to prepare a Planning Proposal was based on incorrect information in a Report provided to it and further is similarly an abrogation of its duty and constitutes bad public policy.
11. The Proposal fails to meet Goals of and is inconsistent with the relevant requirements of " A Plan for Growing Sydney (2014) and the Draft Central District Plan (2016) in material respects.
12. The Proposal is inconsistent with State environmental planning policies.
13. The Planning Department's agreement to the reduction of land for public purposes was based on incorrect information put forward by Council as a justification for the proposal. Further the proposal is inconsistent with s.117 Direction 62 (Reserving Land for Public Purposes).
14. There is such little public garden space in Point Piper, which is already overdeveloped, that the land should remain community land, rather than being sold for potential further development, especially in such a confined area as Dunara Gardens.
15. Further there is a towering Heritage listed Cook Pine on the land, which is prominent from both the Rose Bay foreshore and as far away as Darling Point, whose survival can only be ensured if the land remains in Council's hands, especially given tree death by poisoning on private property in Dunara Gardens .
16. The Proposal is detrimental to my Heritage Listed property as well as the Heritage Listed No 4 Dunara Gardens.

DETAILED SUBMISSIONS:

- 1A. After para 12 hereafter, please read paras 64 onwards re invalidity.
1. In 1955, the original Dunara Estate (comprising the whole of the land in the current subdivision which is Dunara Gardens) was subdivided into 11 lots.
 2. The subject land , being Lot 11 in the subdivision , was marked as and dedicated on the subdivision deposited plan as “ Public Garden and Recreation Space”.
(See Annexure 1 hereto , being Plan of Subdivision DP 27451)
 3. Council acquired the land by transfer under s. 340A LGA 1919
(now s 50(2)(a) LGA 1993) as part of the subdivision, which provided:
“Where in the subdivision of land provision is made for public garden and recreation space, such space shall be conveyed or transferred to the council if the council at any time so requires”.
 4. The land became a Public Reserve under the LGA 1993, but it is interesting to note that the only listing in Point Piper on Council’s website of public reserves is Duff Reserve, with Dunara Reserve not included.
 5. It is instructive to note the requirements imposed on Council for a subdivision (as it applied to Dunara Gardens) under LGA 1919, eg
 - (1) Under s 326, in fixing the number of lots, ie in ascertaining the area for the purpose of fixing the number of houses permitted in the subdivision, Council had to “ *embrace public reserves, open spaces and the like*” .
 - (2) Under s 327(2), where the subdivision did not provide for the opening of a public road (as is the case with Dunara Gardens, the actual road being a private road) , Council had to have regard to the plan of subdivision (which had to embrace the other sections relating to garden and open space).
 - (3) Under s 333(g) Council had to take into consideration in respect of the application for approval of the subdivision “ *the amount of public garden and recreation space to be provided in the land to be subdivided*”.
 6. It is therefore clear that inherent in the approval by Council of the subdivision and in particular the determination of the number of lots , and as a condition of the subdivision . the subject land (Dunara Reserve) was an essential pre-requisite. It is easy to see why, given the tight knit and closely adjoining houses provided, leaving little or no room for gardens.
 7. The name “ Dunara Gardens” itself embodies that essential element of trees, gardens and open space.
 8. The fact that Council directed in 1957 as part of the subdivision, pursuant to s. 340A LGA 1919, that the garden space be transferred to it (at a time when there was no provision for such to be vested in it , purely on registration of a Deposited Plan) is indicative of the

importance Council placed on there being such garden and recreation space as part of the subdivision of the Dunara Estate, realizing as it did that the subdivision made little or no provision for garden and trees, given the tight allocation of numerous houses, each on a small parcel of land.

9. That is further reinforced by the fact that the entity seeking the subdivision originally sought to provide a smaller garden & recreation space and Council required that a larger space be allocated
10. The acquisition of the land and the requirement for a minimum area, was Council's way of guaranteeing in perpetuity the preservation of that space as open land with gardens and foliage **as part of Dunara Gardens**. Nothing has changed since. It is submitted that its inclusion as part of Dunara Gardens is the proper yardstick of evaluating its continuance, not the extent to which the public at large utilize it (putting aside the fact that the public in fact do so).
11. Council are in effect the Trustees of that land, as part of the subdivision of the Dunara Estate and under a duty to keep its classification as Community land as is and to ensure its preservation as such and not to deal with it in a manner inconsistent with its current classification.
12. It is further submitted that the land is subject to a "trust for public purpose" as explained by the High Court in Bathurst City Council v PWC Properties Pty Ltd (1998) HCA 59, (1998) 195 CLR 566

At [48] of the Judgment, the Court stated "*In relation to the obligations imposed on local government authorities with respect to land vested in them, the phrase has had a lengthy history. This involves the use of "trust" in a (broad) sense*".

At [67] : "*The term "trust" in 6(2)(b) of Schedule 7 (LGA) is apt to include those governmental responsibilities which.... may fairly be described as a "statutory trust" which bound the land and controlled what otherwise would have been the freedom of disposition enjoyed by the registered proprietor of an estate in fee simple. The trust was "not a trust for persons but for statutory purposes"*.

In PWC the trust for a public purpose arose from the terms of a condition of a development consent.

Whilst Council, under s 30 can discharge the land from a trust, there has to be a very cogent reason for it to do so, and it is submitted that Council has not met that very high bar in this case.

13. Council is in error in using the inability to construct a building for community use on the land or its ability to be used by the community as the yardstick for its existence and continuance. It was never intended as a potential site for construction of a community building or indeed community use, but as an essential component of the subdivision.

14. There is no guarantee that if that land is sold , as is Council's expressed intention in its reclassification, it will remain as garden space with trees and extensive foliage , some of it providing a beautiful canopy over the entrance to Dunara Gardens.
15. In fact the opposite is likely. The only real party who would have an interest in purchasing it is No 9 Dunara Gardens, immediately adjoining it which would result in their
 - (A) Increasing by 2/3rds their landholding, such acquisition thereby increasing its value and development potential. In fact Council notes the Valuer General has stated that the estimated gain from the land being sold to an adjoining landholder would be between \$800,000 and \$2 Million.
 - (B) By consolidating it with their current land, increasing its FSR , thereby enabling a s96 Application to their currently approved gross overdevelopment DA , resulting in increase in building bulk etc
 - (C) Even without consolidation, developing it , especially in light of the fact that Council, after years of inaction, finally took legal action to force No 9 to remove their carport , the majority of which encroached on Council land, which they refused to do contrary to Orders of the Land & Environment Court.
16. No 9 had already indicated a wish to buy that Council land in 2008.
17. It is further submitted , that given the history of No 9 cutting down trees on its property , illegally poisoning the largest gumtree in the Woollahra LGA on my property, and denuding the vegetation on the subject land, there is a concern and fear that , once purchased, the trees and vegetation will not remain (to be dealt with hereafter in greater detail) noting in particular that there is a towering heritage listed Cook Pine on the subject land which is prominent from both the Rose Bay foreshore and as far away as Darling Point.
18. It is trite for Council to state that there are enforceable tree preservation orders to prevent such, given Council's complete lack of enforcement in this regard, in spite of repeated complaints to it by Dunara Gardens residents.
19. There is such little public garden space in Point Piper , which is already overdeveloped, that the land should remain Community land, especially in such a confined area as Dunara Gardens.
20. It is instructive to examine Council's purported reasons for this Proposal, which it clearly states is for the sole purpose of selling the land.
21. It is hugely significant to note the principal reason advanced for the initiation of the reclassification, as stated on p.1 in "1.1 Background " of the Planning Proposal being :
*" In 2010 staff identified a partial encroachment into the site. **In response** , Council adopted the following Notice of Motion on 10 June 2014:
That a report be brought to Council... assessing the land known as Dunara Reserve, Point Piper, with a view to rezoning the land in order for it to be put up for sale".*

22. It is incorrect for Council to state that the encroachment was identified in 2010. On 14.6.2005, Condition of Consent 46 to No 9's, DA Approval noted that " *The survey has identified a significant encroachment of the existing carport on Council's property on the SW side of the development. This is to be removed with the proposed development not encroaching beyond the boundaries of the site. Following removal of the carport and parking platform the disturbed areas of Council's property are to be restored to match the existing to the Council's satisfaction*".
23. The encroachment referred to was that 2/3rds of No 9's carport was on the subject Council land. Council failed to take any action to obtain its removal, in spite of repeated complaints by neighbours and residents of Dunara Gardens. (See Annexure 2 hereto).
24. On 10 January 2008, the Land & Environment Court confirmed and reiterated by Order that requirement (See Annexure 3 hereto).
25. In spite of the Court's Order, Council, still repeatedly neglected and failed to enforce that legal requirement, in spite of repeated representations by myself and others for it to do so.
26. Council then, abrogated its legal obligations, and on its own admission, " ***in response to the encroachment*** " decided to wash its hands of the subject land by commissioning a report with the expressed purpose of selling the land ie if No 9 (identified by Council in the Planning Proposal as a likely purchaser) purchased it, the encroachment would remain, and if someone else purchased it, it would be their problem to remove the illegal encroachment.
27. Council's attempt to reclassify the land to sell it for this principal reason is absolutely scandalous and reflects poorly on Council. Council has identified No 9 and the other adjoining property, No 1 Wentworth St as the only real likely purchasers. As No 1 Wentworth has indicated it has no real interest in doing so, that leaves No 9 as the only likely purchaser, thereby rewarding it for its own longstanding illegal refusal to demolish its encroaching carport, (in fact repairing it, further in breach of the Court Order) thereby profiting by its own breach.
28. That sets an appalling and unacceptable precedent for other landholders adjoining Council land to make life difficult for Council in the proven expectation that Council will cave in and they will benefit from their behaviour.
29. That and the matters mentioned below constitutes bad and unacceptable public policy.

Council also seeks to nullify its failure to meet the Objectives and Performance Targets set out in 3.4 of its Plan of Management applicable to Dunara Reserve (Plan of Management 1996 – Local Parks) ie " *Encroachment : To discourage private property boundaries extending into public open space and the dumping of rubbish*" (see later submission re dumping of rubbish) by its sale. S. 35 LGA states that community land is required to be used and managed in accordance with the plan of management applying to the land. Council seeks to nullify its non compliance with that section of the Act, by its sale.

30. Further, that ground is no longer valid, as once Council finally very recently took legal enforcement proceedings, No 9 finally demolished the encroachment.
31. A further reason advanced by Council for the proposed sale is: “ the debris and rubbish left on the site” (which is illustrated in Figures 6 & 8), inter alia, “ owing to its inaccessibility” “ with the potential public safety risks and hazards”.
32. The fact is that it is not its inaccessibility that has led to “a build -up of vegetation and debris over time” but No 9 Dunara Gardens who has regularly dumped debris and rubbish from its land onto the Council land and Council has done nothing to either penalize such or prevent future recurrence, despite numerous complaints to it and it being shown evidence of such taking place on numerous occasions.
33. Annexure 4 hereto contains photographs of Mr Wang (the husband of Yan P Gu, the owner of No 9).
 - (A) Dragging a huge branch which fell from the huge camphor laurel tree on that property (before its death by poisoning) onto and dumping it on the Council land ; and
 - (B) Sweeping a large amount of vegetation and debris which had accumulated on the roof of the (illegally encroaching) carport , onto the Council land.Annexure 4 also shows a large dead branch originally on No 9’s property, having been dumped on Council’s land.
34. I have also personally observed Mr Wang dumping large palm fronds (of the type pictured in Figures 6 & 8) on that Council land.
35. Again Council . in justifying the reclassification in order to sell the land, washes its hands of the problem, and is likely to knowingly reward No 9 for its dumping of debris, rubbish and vegetation on Council land, setting an appalling precedent and principle and such constituting appalling public policy.
36. There would not be any such “ public safety risks and hazards” were Council to fulfill its responsibilities, in prosecuting the perpetrator, with the full knowledge of their identity and having been presented with evidence of such.
37. Further, Council states, as a further justification for the sale of the land, the necessity for it to “ undertake site maintenance to clear the debris and vegetation twice a year” and that such attendance “ is a resource burden to Council” (See ‘ Present Situation’ , on p.16 of Appendix 2 to the Planning Proposal , being the Report to Council dated 10.8.15 commissioned in order to reclassify the land).

38. It is submitted that
- (A) Twice yearly is neither an onerous or financial burden on Council ;
 - (B) Had Council taken any action over many years against No 9 in respect of the dumping, the necessity to clear the debris would not occur;
 - (C) Twice yearly maintenance is insignificant in Council's Expenses on Community land in 15/16 of \$ 121,422.000 (Council having an asset maintenance ratio of 0.99, as against the target of greater than 1.00).
 - (D) Since Council finally, after years of failing to do so, demarcated its boundary with No 9 by planting bushes, the dumping has ceased, so that ground is no longer valid.
 - (E) Council has not made numerous attempts to manage the site. To the contrary, it has consistently neglected the site, even when complaints have been made by Dunara Gardens residents as to its state, principally caused by No 9.
39. Council also seeks to justify the proposed reclassification and sale of the land on the basis that it is not used as public open space and that the site currently only offers benefits to the immediately adjoining properties (being no 9 and No 1 Wentworth).
40. Council, on its own admission only attending the site twice a year, is in no position to make any statements as to its usage.
41. It is submitted that:
- (A) Irrespective of usage , the land provides a general public amenity in Point Piper by reason of its foliage, vegetation, large trees, canopy and garden, in an already overdeveloped suburb, which has only one other public reserve, some distance away.
 - (B) It provides a significant amenity to all the residents of Dunara Gardens, enhancing the ambiance of Dunara Gardens, a small cul de sac, such being the original raison d'etre for its creation in the original subdivision.
 - (C) It provides significant amenity to my Heritage Listed property, in its immediate vicinity.
42. Further, it is in fact used by the public
- (A) Children of a number of the properties in Dunara Gardens, in particular those without garden space, use the land to play and have picnics. Swings have been erected thereon (precisely the purpose of its original creation in the subdivision)
 - (B) Non resident children also use the land to play on.
 - (C) Walkers in Point Piper take advantage of its space and shade provided by the tree canopy to rest , before continuing their walk

- (D) Point Piper residents walking their dogs have taken advantage of the space for their dogs to relieve themselves, instead of in the street
- (E) The regular organized local heritage walks ,comprising a significant number of people, which come to Dunara Gardens , by reason of its 2 Heritage Listed properties, take advantage of the land's amenity and its shade, garden & canopy.
- (F) Those heritage walks also go onto the land to view at close hand the significant Heritage Listed Cook Pine dating from the 1890s.

43. The land therefore does benefit the wider community and should not be reclassified.

44. The note to Part 2 of the LGA states that:

- (A) Community land must not be sold (except in the limited circumstances referred to in s 45(4)) (which do not here apply); and
- (B) Operational land (the category to which the land is sought to be reclassified) would ordinarily comprise land held as a temporary asset or as an investment, land which facilitates the carrying out by a Council of its functions or land which may not be open to the general public, such as a works depot or a Council garage.

Clearly the land does not fall into any of those categories which the Act itself contemplates as comprising Operational land. It is clear that the sole purpose of reclassifying it as Operational, notwithstanding that it does not qualify for that category, is its sale.

The stated reasons for its sale are both wrong and in many instances, no longer valid.

45. The Plan of Management 1996 - Local Parks, which applies to Dunara Gardens, Cl 29 states that:
“ Open space is essential for the general health and vitality of the community through the provision of natural elements in a built environment. In higher density residential areas, parks also provide a release from city living, a sense of place and are also a vital resource ”

That is why the land was originally created, it has been specifically included and named in Council's Local Parks Plan of Management , and is still relevant and essential.

46. Further 2.10 of that Plan “ Heritage Significance” states:
“ There are few items of heritage significance in the local parks any item of significance should be conserved, maintained and enhanced in an appropriate manner ”.

The only way in which the towering significant heritage listed Cook Pine on the Land can be conserved and maintained with certainty, is for it to remain in public ownership.

47. The land has been valued at \$245,000. Council contends that the sale proceeds can be better expended elsewhere. It is submitted that

- (A) \$245,000 is insignificant, given Council's total assets in 15/16 being \$901 Million.

- (B) Is insignificant, given Council's gross income in 15/16 being \$115.36 Million and Net Profit of \$14.3 Million.
- (C) Council is unlikely to realise even that, given there being only realistically 1 potential purchaser, being No 9 Dunara Gardens.
- (D) Accordingly there will not be any maximum or real financial benefit to the general ratepayers, contrary to the valuation and assertions by Council, and therefore such sale will not fulfill the objectives of Council's "Policy for Sale of Council Land".
- (E) It is insignificant, given that Council had cash reserves in 15/16 of \$19.49 Million.
- (F) The sale proceeds cannot compensate for the permanent loss of public community amenity of gardens and trees, of which there is a dearth in Point Piper.
48. The reclassification and subsequent sale will have severe detrimental consequences to "Dunara" my significant State Heritage listed property, the birthplace of Dorothea McKellar and the oldest standing house in Point Piper, which was the sole house of the original Dunara Estate, which it owned.
49. I understand that the NSW Heritage Council intends submitting its strong opposition to the reclassification and advocating the land's retention in public ownership. It is submitted that its views carry considerable weight and cannot lightly be dismissed.
50. Council's own Heritage Officer, Kate Higgins, in the Development Application Assessment Report to the DCC on 7.2.05 (re No 9's DA) reviewed the historical basis for the Dunara Gardens subdivision, referring to it as "*the breaking up of a larger lot into a subdivision pattern allowing for relatively close suburban development*", and stated that "*the creation of the special lot for public garden and recreation should be preserved*".
51. Accordingly Council's assertion in Schedule 1 "Consistency with A Plan for Growing Sydney and the Draft Central District Plan" of the Planning Proposal, (Liveability Priority 7: Conserve heritage and unique local characteristics) that reclassification of the land will not impact on the significance of the listed heritage items (Dunara, No 4 and the Cook Pine) is not correct.
52. The Council Resolutions for the reclassification to accommodate the sale of the land was based on incorrect and/or insufficient information ie:
- That the public didn't use it
 - That the site doesn't benefit the wider community
 - That the site only offers benefits to the immediately adjoining properties
 - That the site provides no public amenity
 - That the Planning Proposal does not impact on heritage and unique local characteristics and will have no impact on the heritage items in Dunara Gardens and on the land
 - The Planning Proposal is minor in nature
 - That the site's maintenance is a resource burden on Council
 - In failing to mention that the principal reason for the Proposal ie "in response" to the encroachment by No 9 was no longer relevant, the encroachment having been finally

removed and/or that the proper manner of dealing with the site was the enforcement of the Court's Order , rather than a sale.

- In failing to state that the buildup of debris and rubbish was because of the dumping thereof by No 9 (the likely purchaser)
- That the proposed classification reflects the use of the site
- That the site requires ongoing maintenance , when in reality at most Council attend twice a year
- That there are no likely negative environmental effects associated with the planning proposal.

It is submitted that had full Council had the full and correct picture, it is unlikely that it would have considered selling the land and accordingly there would have been no need for a Planning Proposal to reclassify it for that purpose.

53. Appendix 1 to the Planning Proposal (Information checklist for proposals to classify or reclassify public land through an LEP taken from practice note 16-001) contains similar errors.
54. Similarly the Gateway determination by the Dept of Planning & Environment, being based on documents containing incorrect information cannot stand, nor can its conclusion, based on that information, " that the planning proposal's inconsistency with S 117 Direction 6.2 Reserving Land for Public Purposes is of minor significance".
55. The Proposal is also inconsistent with the Aims of the LEP 2014 ie
 - 1.2(2)(c) to provide for an appropriate balance and distribution of land for recreation and open space;
 - (g) to protect amenity and the natural environment
 - (f) to conserve natural environmental heritage
56. In Paragraph 17, I submitted that there is a concern and fear that, should no. 9 purchase the land, the trees and vegetation will not remain . This is a legitimate matter to be taken into account, ie the possible and/or likely consequences of a sale, given that Council has identified no 9 as one of only 2 adjoining properties likely to have such an interest , and particularly as the other (1 Wentworth) has indicated it will not improve their land value).

That concern is based on the following:

(1) The poisoning of a large bluegum tree exclusively on my property by Mr Wang (the husband of Yan P Gu, the registered owner of No 9) on 18 May 2006 and its death:

1. Council's approval of No 9's DA contained a number of Conditions to protect this tree, which was the largest gum tree in the Municipality eg
The necessity for hand excavation within the 6m tree root zone; conditions on footings for any structure within 6m of the tree; existing tree roots with a diameter of 50mm (or larger) had to be bridged; piers to be constructed so that they are not severed .
2. Thereafter, on 18 May 2006, the roots were hacked into and poisoned, resulting in the death of the tree and its necessary removal. The estimated value of the tree by an Arborist was \$ 140,000.

3. In Farkas v James Wang & Y Ping Gu (2006) , His Honour Magistrate Bartley in the Local Court Downing Centre , delivered a Judgment on 11.6.2010 in which he accepted the following:
 - (1) Mr Wang said the gum tree would “go” (p. 16.36).
 - (2) Mr Wang said “ I make things happen, We are builders. We’ve done this before” (p. 16.8).
 - (3) Woollahra Council imposed numerous onerous conditions on the DA to protect that tree and that once the tree died and was removed, Mr Wang benefited from his development not having to comply with such conditions (p. 17.22-25).
 - (4) Mr Wang had a motive to have it killed (p.17.28) and that he wanted the Bluegum gone and he would procure its elimination (p.17.30).
 - (5) Mr Wang admitted to Ms Moreland [a neighbour] that he procures the elimination of trees that impede a development (p. 17.30).
 - (6) Mr Wang had the opportunity to procure a fatal attack on the Bluegum (p. 17.31). That opportunity (Mr Farkas’ absence at court) was known, on the evidence, only to Mr Wang (and Ms Gu) (p. 17.32).
 4. His Honour , at p. 17.38-42 stated:

“ I find that it is more probable than not that Mr Wang procured the attack on the tree and it’s consequence death. The conduct is criminal ”.
 5. Mr Wang & Ms Gu appealed that Judgment. On appeal, His Honour Judge North of the NSW District Court delivered Judgment on 20.5.11 , in which , at p. 14.7 he stated:

“ I am satisfied on the balance of probabilities that the magistrate was correct in finding that Mr Wang procured the attack on the tree and its consequent death “.
 6. Copies of the Judgments can be supplied, if required.
 7. Annexure 5 hereto shows photographs of
 - (A) The gum tree when alive
 - (B) The dead gum tree
 - (C) Its removal, requiring numerous workmen, over a number of days and the necessity to use a crane
 8. The NSW Heritage Council required that a replacement blue gum be planted, “ to ensure compatibility with the existing heritage qualities of the (heritage) item (being No 10 Dunara).
- (2) The cutting down of trees in No 9’s rear garden in contravention of the Land & Environment Court’s imposed Conditions of DA Consent:

1. Council determined, contrary to no 9's request in their DA, that approval was not granted to the removal of 2 Willow Myrtle trees in their rear yard, which were referred to in the Assessment Report of 6.6.05 to be significant landscape elements.
 2. In a 2nd s.96 Application in 2006, No 9 sought removal of the condition requiring their retention on the ground that they "are not in good condition and are slightly deformed".
 3. The reason they were not in good condition and deformed, is that No 9 had illegally hacked at those trees, in breach of Council's refusal and in breach of Council's Tree Preservation Orders, resulting in their disfiguration.
 4. That removal was refused in 2007
 5. In an appeal to the Land & Environment Court, the Court on 10.1.08 allowed their removal but specified that they had to be retained until 2 weeks prior to the construction of the rear wall
 6. Those trees were completely cut down in contravention of the Court's condition (the rear wall not having been built to date)
 7. Annexure 6 hereto shows photographs of
 - (A) The trees in their original condition in April 2006
 - (B) After their partial mutilation (April 2006)
 - (C) The stumps left after they had been cut down (Nov 2008)
- (3) Mr Wang hacking at the vegetation and trees on Council Land:

Mr Wang has on a number of occasions gone onto that land and hacked at the vegetation and trees and left the cuttings there

Annexure 7 hereto shows photographs of him doing so. In particular, it shows him on 7.1.14 cutting down a tall tree on Council's land with a saw and dumping it elsewhere on Council's land.

The Poisoning & death of a large Camphor Laurel on No9's property

1. No 9's DA in 2003 sought approval for the removal of a large Camphor Laurel at the front of their property to facilitate the development.
2. The DA Approval denied approval for its removal and imposed numerous Conditions to ensure its survival, including no excavation within tree root zones, paving in its vicinity, protective fences, mulch and irrigation, and protection barricades for earthworks
3. The tree subsequently died and was removed
4. Council's tree officer, on inspection on 18.7.08, determined that the tree had been poisoned after having up to 40 holes drilled into its base.
5. Whilst there is no evidence as to the perpetrator, what can be said is that its death advantaged the proposed development.
6. Annexure 8 shows photographs of
 - (A) The live Camphor Laurel
 - (B) The dead Camphor Laurel
7. Council by letter dated 24.12.08 to No 9 required replacement tree planting pursuant to s. 6 of Council's Tree Preservation Order, such replanting required within 3 months ie by 31.3.09.
(See Annexure 9 hereto).

To date, ie 8 ½ years later, no replacement tree planting has been done by No 9 in contravention of Council's Tree Preservation Order.

57. " Sustainability Priority 7: Protect, enhance and extend the urban canopy" in Schedule 1 " Consistency with a Plan for Growing Sydney and the Draft Central District Plan" to the Proposal under the " Comment on Consistency" states that

" Should the site be sold, any future development would need to address Chapter E3 Tree Management in the Woollahra Development Control Plan 2015. One of the key objectives is to promote, maintain and conserve the leafy character of the Woollahra Municipality".
58. It is submitted that should the site be sold to No 9, the probabilities are that this key objective would not only not be met, but that it would be defeated , given two Court Judgments having found that Mr Wang is prepared to and did procure the death of a significant tree that impeded his development . Added to this is the evidence that the 2 Willow Myrtles sought to be removed for their proposed development, were removed in contravention of the Land & Environment Court's imposed Condition of Consent, and the non compliance with Council's Tree Preservation Order requiring replanting of the dead Camphor Laurel.
59. There is no point in imposing Conditions of Consent (eg to preserve trees) to any development of the Council land, if a purchaser has a track record of flouting (with impunity) such Conditions.

60. Council has over the years failed to take any action in regard to such matters as regards No 9 and one could have little confidence that such would change.
61. Once trees have gone, they are gone, and penalties (if even imposed) cannot bring them back.
62. Accordingly it is a legitimate matter for Council to take into consideration, the consequences of a sale.
63. For all of the above reasons, the land should under no circumstances be reclassified as Operational land and should remain Community land to fulfill its original purpose which is still as operative and relevant today as it was at its original creation.
64. Council's Resolution authorizing the Planning Proposal is Invalid:
 - (1) As can be seen from the original DP, and Figure 1 : Local Area Map (p.2 of the Proposal) the public reserve is only 1 lot (Lot 11) in the subdivision known as " Dunara Gardens ".
 - (2) Dunara Gardens is all, with the exception of Lot 11 , privately owned property ie 11 houses , the roadway and the public reserve.
 - (3) Figure 1 referred to correctly notes the road into and part of Dunara Gardens is a " Privately Owned Road".
 - (4) The street sign says " Dunara Gardens" being a reference to the enclave/cul de sac of all of the abovementioned houses. The houses have a (street) number by reference to Dunara Gardens .
 - (5) The Planning Proposal purports to be authorized by
 - (A) The recommendation on 10.8.15 of the Community & Environment Committee ; and
 - (B) The resolution of Council on 24.8.15.
 - (6) The Recommendation to Council of the C&E Committee of 10.8.15 is as follows:
*" That Council prepare a planning proposal to Amend Schedule 4 : Classification and reclassification of public land in Woollahra LEP 2014 , to reclassify **THE LAND KNOWN AS DUNARA GARDENS [emphasis is mine]** from community land to operational land with the intention of disposing of the land"*
 - (7) The Council Resolution of 24.8.15 (which it is also noted was passed without debate on the basis of incorrect and/or inadequate information in the Report to the Committee) was in identical terms ie to reclassify **THE LAND KNOWN AS DUNARA GARDENS with the intention of disposing of the land**".
 - (8) As Dunara Gardens is private land, neither the Committee , nor Council had the power to respectively make the Recommendation or pass its Resolution and accordingly acted without authority ie it purported to exercise powers it did not have ie acted ultra vires to

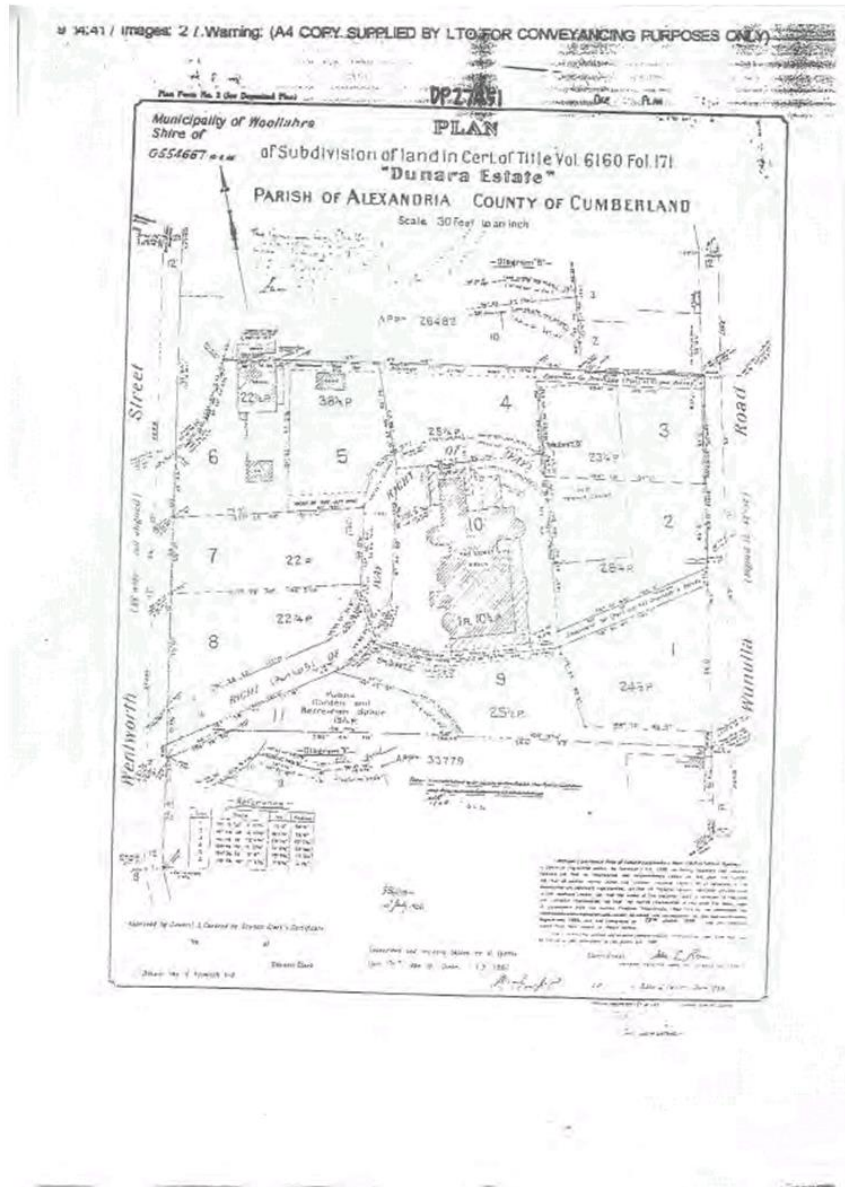
16

- (A) Prepare a planning proposal to amend Schedule 4 of the Woollahra LEP to reclassify the land known as Dunara Gardens;
 - (B) Reclassify Dunara Gardens, as it is not capable of reclassification
 - (C) Have the intent to dispose of the land known as Dunara Gardens
 - (D) Dispose of the land
 - (E) Regard it as community land
 - (F) Deal with the land at all.
- (9) This is not simply a matter of semantics or a typographical error. It is one of significant legal substance, in that the Resolution authorizing the Planning Proposal purports to authorize a Proposal for the reclassification of private land , as well as its ultimate disposal. The Planning Proposal accordingly has been brought into existence pursuant to an invalid Council Resolution and therefore can neither stand nor proceed.
- There is numerous case law dealing with Council resolutions purporting to classify and/or deal with land, declared by the Courts to be invalid.
- (10) Equally the Planning Proposal purporting to deal with the public reserve has been brought into existence without valid authorization or Resolution by Council.
- (11) Similarly the Gateway Determination cannot stand for the same reasons.

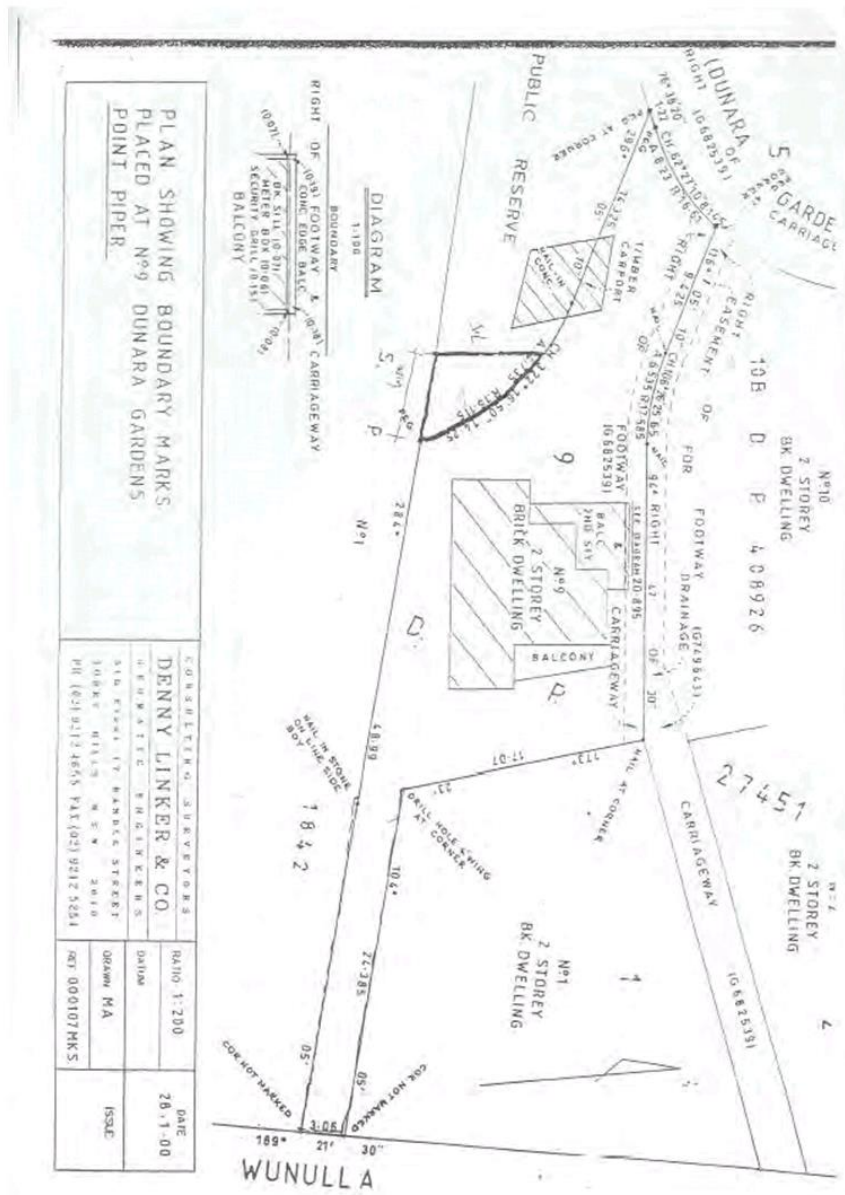


GEORGE FARKAS

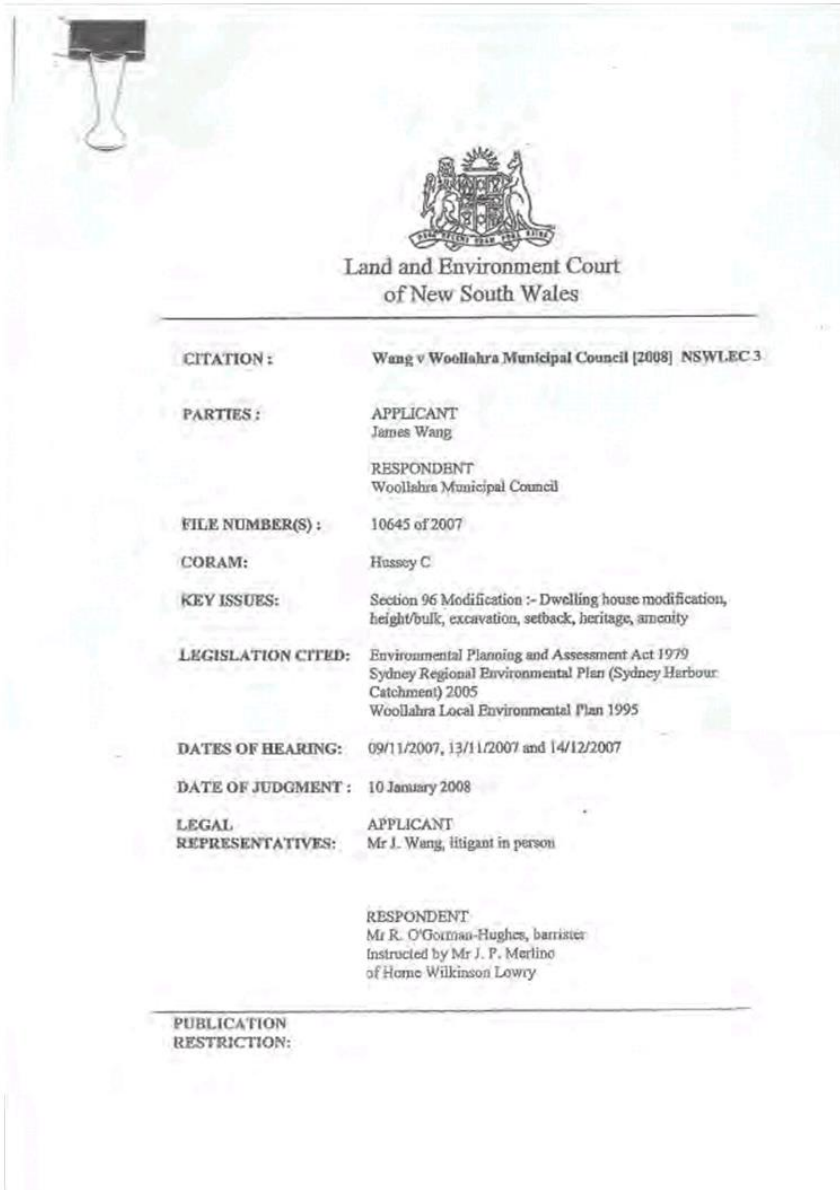
Annexure 1




Annexure 2



Annexure 3




Land and Environment Court
of New South Wales

CITATION : Wang v Woollahra Municipal Council [2008] NSWLEC 3

PARTIES : APPLICANT
James Wang

RESPONDENT
Woollahra Municipal Council

FILE NUMBER(S) : 10645 of 2007

CORAM: Hussey C

KEY ISSUES: Section 96 Modification :- Dwelling house modification,
height/bulk, excavation, setback, heritage, amenity

LEGISLATION CITED: Environmental Planning and Assessment Act 1979
Sydney Regional Environmental Plan (Sydney Harbour
Catchment) 2005
Woollahra Local Environmental Plan 1995

DATES OF HEARING: 09/11/2007, 13/11/2007 and 14/12/2007

DATE OF JUDGMENT : 10 January 2008

LEGAL REPRESENTATIVES: APPLICANT
Mr J. Wang, litigant in person

RESPONDENT
Mr R. O'Gorman-Hughes, barrister
Instructed by Mr J. P. Merlino
of Home Wilkinson Lowry

PUBLICATION RESTRICTION:

Appeal No: 10645 of 2007

43. Public footpaths

A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards must be maintained at all times on or adjacent to the public footpaths fronting the construction site. Where the footpath is damaged, repair works must be carried when directed by Council officers and in accordance with the relevant clauses of the current edition of AUS-SPEC.

Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1998 "Traffic Control Devices for Work on Roads".

If pedestrian circulation is not satisfactorily maintained, and action is not taken promptly to rectify the defects, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

44. Completion of infrastructure work

All infrastructure works must be completed and be certified by the accredited certifier as meeting all Council requirements and as-built drawings are to be submitted to Council's Development Engineer, prior to the release of the Infrastructure Works Bond. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

45. Repair of Damaged Infrastructure

If Council's infrastructure is damaged during the course of works, Council's Development Engineer must be notified and necessary repairs must be undertaken within the time stipulated by Council, to Council's specifications, and at no cost to Council. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

If work is not undertaken to the satisfaction of the Development Engineer with regard to time or quality, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

46. Encroachments

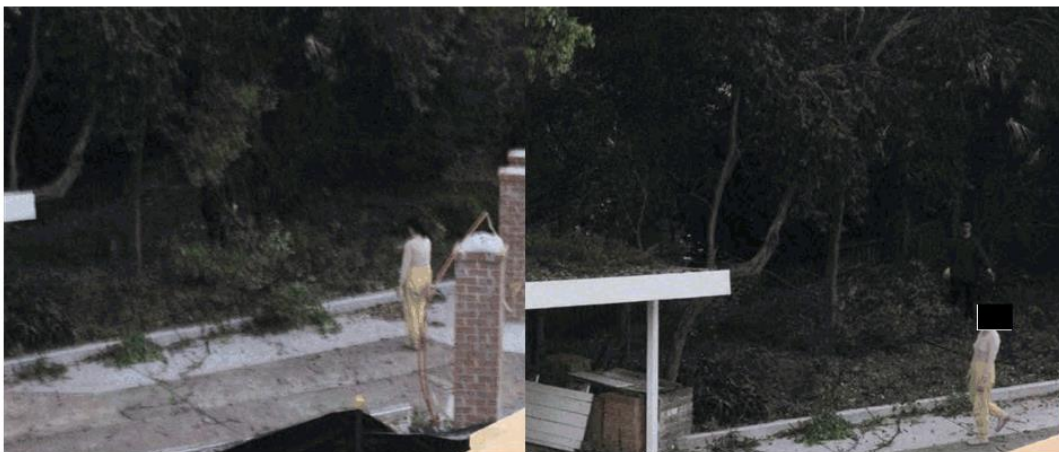
The survey plan has identified a significant encroachment of the existing large carport on Council's property at the SW side of the development. This encroachment is to be removed with the proposed development not encroaching beyond the boundaries of the site. Following removal of the carport and parking platform the disturbed areas of Council's property are to be restored to match the existing asset to Council's satisfaction.

Annexure 4 (para 33)

Large dead branch originally on No.9's property having been dumped on reserve 10/08



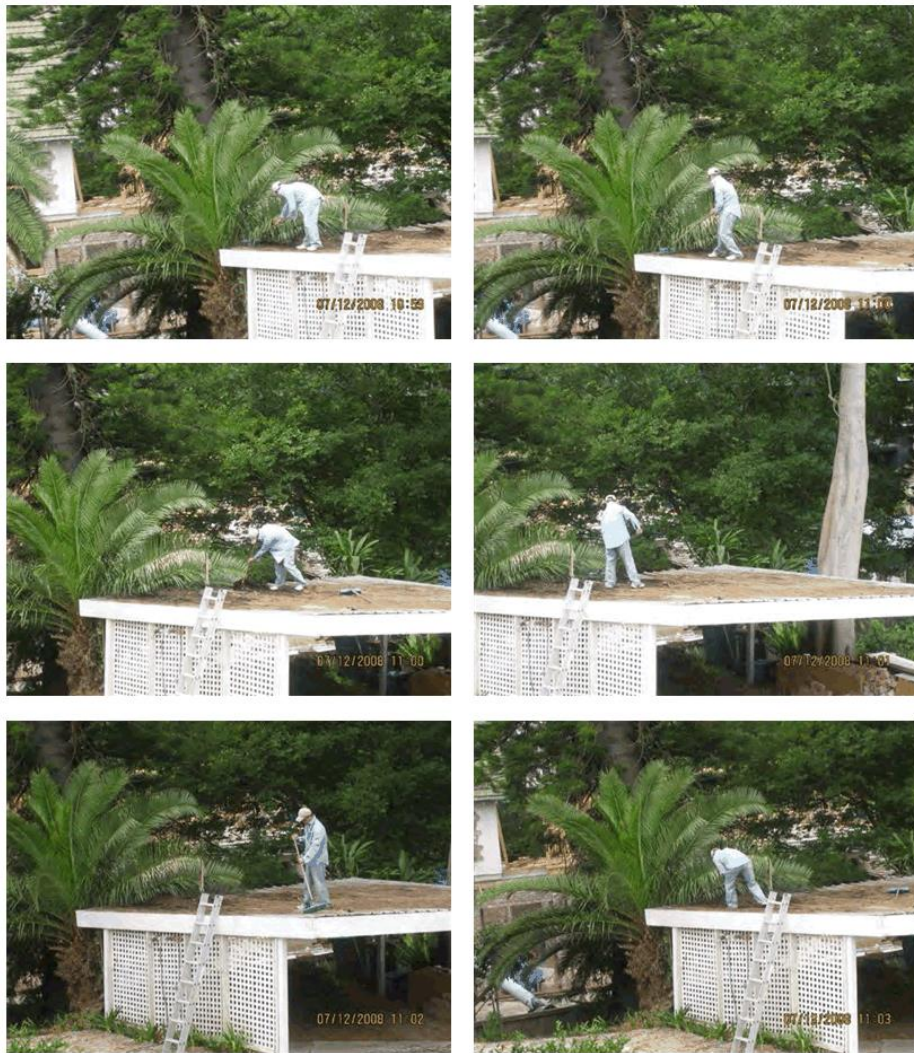
Mr Wang dragging large branch onto reserve 02/09/06



Mr Wang sweeping carport roof debris onto reserve 07/12/08





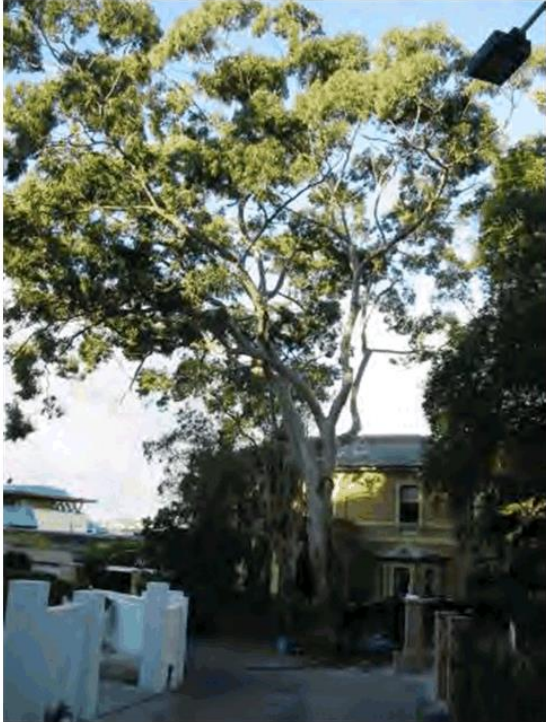






Annexure 5 (para 56)

Live Gum Tree



Dead Gum Tree



Removal of Dead gum tree 09/03/07



Annexure 6 (para 56)

Willow myrtles in no. 9's rear garden in original condition 04/06



After their partial mutilation 04/06





The stumps after they had been cut down 11/08



Annexure 7 (para 56)

Mr Wang hacking at vegetation on reserve 30/04/06



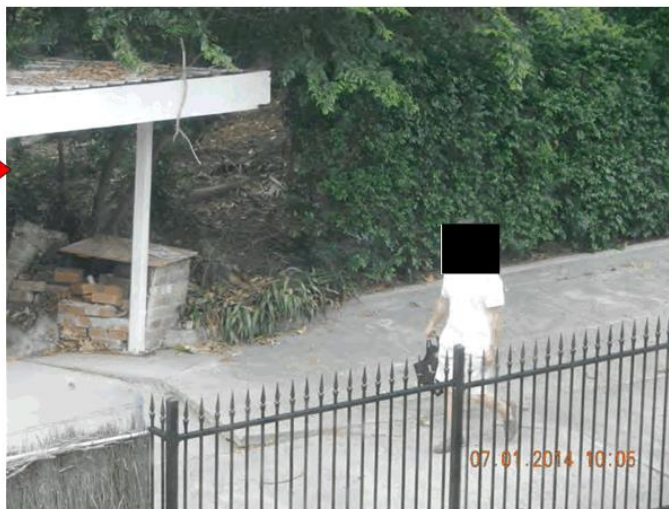
Mr Wang cut down tree on reserve with a saw and then dumped it on Reserve 07/01/14







Picture of original tree 12/13 and 01/14



Annexure 8 (para 56)

Live camphor laurel 04/06



Dead Camphor Laurel 08/08



Annexure 9

Council Ref: TPO Breach 379/2008/1: 516.9
Public Open Space, Technical Services Division

24 December, 2008

FILE

Mrs Gu & Mr Wang
9 Dunara Gardens
Point Piper NSW 2027



ABN 32 216 483 245

Redleaf Council Chambers
536 New South Head Road
Double Bay NSW 2028

Correspondence to
General Manager
PO Box 61
Double Bay NSW 1360
DX 3907 Double Bay
records@woollahra.nsw.gov.au
www.woollahra.nsw.gov.au
Telephone: 81 2 9391 7000
Facsimile: 81 2 9391 7044

TPO Breach: 379/2008/1
Property: 9 Dunara Gardens POINT PIPER 2027

I confirm that the *Cinnamomum camphora* Camphor Laurel tree located on your property and subject to an investigation of alleged poisoning under Council's Tree Preservation Order has now been removed. As per my correspondence to you dated 22nd October 2008 removal of dead trees is exempt works under section 6.1(a) of Council's Tree Preservation Order.

Further, section 6 of Council's Tree Preservation Order requires replacement planting be undertaken. Following are the specification and conditions that Council requires you to meet in regard to replanting.

Replacement Planting

Replanting is to be undertaken within the boundary of the subject site and completed within three (3) months, being 31 March 2009, in accordance with the specifications below.

Replacement Tree Species	Location	Minimum container size at purchase	Minimum Size at Maturity
1 x suitable canopy trees	Within the property	75 litres	10 metres x 8 metres

- Any replacement plant is to be maintained in a healthy and vigorous condition until it attains a height of 5 metres or spread of 3 metres, whereby it will be protected by Council's Tree Preservation Order.
- If the replacement plant is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it shall be replaced with another of the same species which complies with the criteria outlined above.

A Council tree officer will organise to inspect the site after 31st March 2009 to ensure the replacement planting has been installed. If you have any questions regarding this matter I can be contact on 9391 7192 from Monday 5th January 2009.

Yours sincerely,

Nick Williams
Tree Officer



GEORGE FARKAS
B.A LL.B
[REDACTED] Dunara Gardens
POINT PIPER NSW 2027
Ph: [REDACTED]
Fax: [REDACTED]
M: [REDACTED]
Email: [REDACTED]

8 September 2017

The General Manager
Woollahra Council,
records@woollahra.nsw.gov.au

Dear Sir,

**SC 3794 - FURTHER SUBMISSION RE PROPOSED
RECLASSIFICATION OF DUNARA RESERVE, POINT PIPER**

I refer to my Submission dated 7 September, and wish to make the further following Submissions:

1. The Plan of Management 1996 – Local Parks , being the only Plan of Management purporting to be applicable to Dunara Reserve, in
 - (A) “Appendix A - Parks (Local) “ identifies and includes “ Dunara Gardens” (which is to be compared to 26 “Reserves” therein named) ; and
 - (B) “ Local Parks Area Key” identifies “ Dunara Gardens” as L53
2. It cannot do so , as “ Dunara Gardens” is all private property (except Lot 11) and its inclusion is invalid.
3. Thus there is no Plan of Management in existence for “ Dunara Reserve”

2

4. This is not a matter of semantics or typographical error, but one of significant legal substance
5. S 35 LGA states that “ *community land is required to be used and managed in accordance with ...the plan of management applying to the land*”
6. Council, in having no Plan of Management for “ Dunara Reserve” is in breach of ss. 35, 36 and 43 of the Act
7. Further and most importantly, s 44 LGA states that

“ Pending the adoption of a plan of management for community land , the nature and use of the land must not be changed”.
8. As there is no Plan of Management for “ Dunara Reserve” , it is submitted that Council is legally prohibited from reclassifying the land from Community to Operational land.

Yours faithfully,



GEORGE FARKAS

1

CID018 - PART 3

RE-EXHIBITION

GEORGE FARKAS

B.A LL.B

█ Dunara Gardens

POINT PIPER NSW 2027

Ph: █

M: █

Email: █

17 November 2017

The General Manager
Woollahra Council,
records@woollahra.nsw.gov.au

Dear Sir,

**SC 3794 - FURTHER SUBMISSION RE PROPOSED
RECLASSIFICATION OF DUNARA RESERVE, POINT PIPER**

Inexplicably , in spite of

- (A) Numerous submissions against the proposal received to its recent public exhibition
- (B) Council now admitting that there may currently be a trust affecting the land (obliging it to retain it as public land) which Council now proposes be discharged by the land's reclassification
- (C) Receiving a submission from the Chair of the Heritage Council of NSW against the proposal
- (D) Receiving submissions that there are legal impediments to it proceeding with the reclassification, with the process legally flawed from its inception

Council seems determined on ultimately selling this public reserve by re-exhibiting its flawed proposal, with the re-exhibition not only failing to cure the legal invalidity but resulting in new additional legal impediments to any reclassification.

I accordingly make the following further submissions:

1. I re-iterate my previous submissions contained in my letters dated 7 September and 8 September 2017.
2. In particular, the legal impediments stated in
 - (A) Paragraph 64 of my letter of 7 September; and
 - (B) My letter of 8 Septemberstill apply rendering the process invalid and legally prohibiting the reclassification of the land from Community to Operational.
3. One of the purported justifications for the re-exhibition is “ to clarify the location and description of the site”.
4. If Council considers such clarification as being required so as to justify re-exhibition, it has failed to do so.
5. I have carefully compared line by line the documents exhibited in both the original and re-exhibition and they are identical in all respects with no change whatsoever as regards the location or description of the site. If Council considers the description and location of the site as having been defective and/or needing clarification, that same defect remains in the public exhibition material re-exhibited.
6. Further Council has completely misunderstood the issue and legal defects as regards the description of the site to be purportedly reclassified. One of the legal defects was Council’s misdescription of the site to be reclassified in Council’s Resolution authorizing the Planning Proposal which rendered both the process and the Planning Proposal invalid and which still renders it invalid, which a re-exhibition cannot cure. It is worth setting out that submission again (as set out in Para 64 of my letter of 7 September):

“ 64. Council’s Resolution authorizing the Planning Proposal is Invalid :

- (1) As can be seen from the original DP, and Figure 1 : Local Area Map (p.2 of the Proposal) the public reserve is only 1 lot (Lot 11) in the subdivision known as “ Dunara Gardens “
- (2) Dunara Gardens is all, with the exception of Lot 11 , privately owned property ie 11 houses , the roadway and the public reserve.
- (3) Figure 1 referred to correctly notes the road into and part of Dunara Gardens is a “ Privately Owned Road”
- (4) The street sign says “ Dunara Gardens” being a reference to the enclave/cul de sac of all of the abovementioned houses. The houses have a (street) number by reference to Dunara Gardens .
- (5) The Planning Proposal purports to be authorized by
 - (A) The recommendation on 10.8.15 of the Community & Environment Committee ; and
 - (B) The resolution of Council on 24.8.15.
- (6) The Recommendation to Council of the C&E Committee of 10.8.15 is as follows:
*“ That Council prepare a planning proposal to Amend Schedule 4 : Classification and reclassification of public land in Woollahra LEP 2014 , to reclassify **THE LAND KNOWN AS DUNARA GARDENS [emphasis is mine]** from community land to operational land with the intention of disposing of the land”*
- (7) The Council Resolution of 24.8.15 (which it is also noted was passed without debate on the basis of incorrect and/or inadequate information in the Report to the Committee) was in identical terms ie to reclassify **THE LAND KNOWN AS DUNARA GARDENS with the intention of disposing of the land”**
- (8) As Dunara Gardens is private land, neither the Committee , nor Council had the power to respectively make the Recommendation or

4

pass its Resolution and accordingly acted without authority ie it purported to exercise powers it did not have ie acted ultra vires to

- (A) Prepare a planning proposal to amend Schedule 4 of the Woollahra LEP to reclassify the land known as Dunara Gardens;
- (B) Reclassify Dunara Gardens, as it is not capable of reclassification
- (C) Have the intent to dispose of the land known as Dunara Gardens
- (D) Dispose of the land
- (E) Regard it as community land .
- (F) Deal with the land at all.

- (9) This is not simply a matter of semantics or a typographical error. It is one of significant legal substance, in that the Resolution authorizing the Planning Proposal purports to authorize a Proposal for the reclassification of private land , as well as its ultimate disposal. The Planning Proposal accordingly has been brought into existence pursuant to an invalid Council Resolution and therefore can neither stand nor proceed.

There is numerous case law dealing with Council resolutions purporting to classify and/or deal with land, declared by the Courts to be invalid.

- (10) Equally the Planning Proposal purporting to deal with the public reserve has been brought into existence without valid authorization or Resolution by Council.
- (11) Similarly the Gateway Determination cannot stand for the same reasons.”

7. No public exhibition or re-exhibition can cure that invalidity .

8. The second legal defect legally prohibiting the reclassification , which the re-exhibition cannot cure , was set out in my submission dated 8 September, which again bears repeating:
- (1) “The Plan of Management 1996 – Local Parks , being the only Plan of Management purporting to be applicable to Dunara Reserve, in
 - (A) “Appendix A - Parks (Local) “ identifies and includes “ Dunara Gardens” (which is to be compared to 26 “Reserves” therein named) ; and
 - (B) “ Local Parks Area Key” identifies “ Dunara Gardens” as L53
 - (2) It cannot do so , as “ Dunara Gardens” is private property and its inclusion is invalid.
 - (3) Thus there is no Plan of Management in existence for “ Dunara Reserve”
 - (4) This is not a matter of semantics or typographical error, but one of significant legal substance
 - (5) S 35 LGA states that “ *community land is required to be used and managed in accordance with ...the plan of management applying to the land*”
 - (6) Council, in having no Plan of Management for “ Dunara Reserve” is in breach of ss. 35, 36 and 43 of the Act
 - (7) Further and most importantly, **s 44 LGA** states that
“ Pending the adoption of a plan of management for community land , the nature and use of the land must not be changed”.
 - (8) As there is no Plan of Management for “ Dunara Reserve” , it is submitted that Council is legally prohibited from reclassifying the land from Community to Operational land.”

9. Thus, in spite of the re-exhibition, the same legal impediments remain, preventing the proposed reclassification and the Planning Proposal proceeding
10. The other purported justification for the re-exhibition has raised what I submit is a further fatal legal issue invalidating the entire process from the Report to the Community & Environment Committee dated 10 August 2015 (Appendix 2 to the Planning Proposal) and that Committee's recommendation, to the Gateway Determination and the Planning Proposal.
11. That is Council's concession that it is a "**fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds.**" (no doubt an acknowledgement of the validity of my previous submission that Council are the Trustees of the subject land and that the land is subject to a "trust for public purpose" as explained by the High Court in the Bathurst City Council case , in similar circumstances to the creation of the Dunara Reserve - see paras 1 – 12 on pp 3 & 4 of my submission dated 7.9.17).
12. Notwithstanding Council's acknowledgement regarding the possibility of a trust in the notice in the Wentworth Courier and in it's renotification by letter dated 25 October 2017, Council has failed to comply with the essential requirements regarding the contents of the Planning Proposal as required by s. 55 of the EP&A Act.
13. S. 55 is as follows:

*RELEVANT PLANNING AUTHORITY TO PREPARE
EXPLANATION OF AND JUSTIFICATION FOR PROPOSED
INSTRUMENT – THE PLANNING PROPOSAL*

- (1) *Before an environmental planning instrument is made under this Division, the relevant planning authority is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the "**planning proposal**")*
- (2) *The planning proposal is to include the following:*

7

- (a) a statement of the objectives or intended outcomes of the proposed instrument,*
- (b) an explanation of the provisions that are to be included in the proposed instrument,*
- (c) the justification for those objectives , outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117)*

14. The fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds is an essential matter under s.55 that must be stated as part of the Minister's [now Greater Sydney Commission] consideration under s 56 .
15. Under s.56 EPA the Minister is to review the Planning Proposal and determine, inter alia, whether the matter should proceed.
16. The necessary s.56 Gateway determination, without which the process simply cannot commence or proceed, is defective and invalid as the Planning Proposal submitted to the Commission did not contain a statement that
 - (A) There may currently be a trust affecting the site and further that it is proposed that it be discharged if the reclassification proceeds ; and
 - (B) If the LEP is approved , all trusts , estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land are discharged (in accordance with s.30 Local Govt Act 1993 which deals with the reclassification of community land as operational)
17. The above is not simply a desirable inclusion but a necessary inclusion under the Acts.

18. It is submitted that the Greater Sydney Commission (which stands in the place of the Minister) was in the absence of the inclusion of this highly relevant, significant and necessarily required statement
 - (a) Unable to review the Planning Proposal ; nor
 - (b) Properly make its determinationunder s. 56

19. It is accordingly submitted that there has not been the appropriate valid Gateway determination under s.56 and the purported Gateway determination dated 20.7.17 is therefore ineffective and invalid. Everything that followed pursuant to that determination is therefore similarly invalid.

20. The determination under that Gateway “ that the matter should proceed” (as per s.56) is equally invalid.

21. S 55(2)(c) EPA requires, inter alia , that the planning proposal must include “ *whether the proposed instrument will comply with relevant directions under s.117*”

22. In the absence of the necessary required information of the possible existence of a trust which will be discharged if the planning proposal is implemented, it is submitted that the delegate’s conclusion that “ *the planning proposal’s inconsistency with s. 117 Direction 6.2 Reserving Land for Public Purpose, is of minor significance* “ cannot stand and is invalid . The delegate may have and it is submitted undoubtedly would have come to a different conclusion in this regard. A determination made in the absence of required information under the Act is not legally valid. Courts have repeatedly so held.

23. Given that s.55 requires the inclusion of the statement about the trust and its discharge on re-classification in the Planning Proposal , it is instructive to review the material re-exhibited .

24. The necessary trust information has not been included in any of the material . As previously observed, the re-exhibited material is identical in every respect with the originally exhibited material.

(A) The Planning Proposal :

(1) Page 1: 1.2. Description of this planning proposal

The 3rd para states : “ *The land is a public reserve under the LG Act. Should the reclassification proceed, it is intended that under s. 30(1) of the LG Act the local environment plan will include a provision to the effect that the land will cease to be a public reserve on the commencement of the plan*”.

There is no mention, as is required of “ *the fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds*” and that under s.30(1) the LEP will include a provision to the effect that the trust will be discharged on the commencement of the plan. - a clear breach of s.55 EPA.

(2) Page 6: Part 5 Explanation of Provisions:

That states that the proposed amendments to Schedule 4 , Part 2 of the Woollahra LEP 2014 are identified in Column 3 as

“ *Any trusts etc **not discharged*** “

That is not only an incorrect statement , but a positively misleading and false statement, given that it is Council’s intention that any existing trust will be discharged - a further clear breach of s.55

- (3) It is incorrect to state at p.7 , 6.2.6 that the Planning Proposal is consistent with applicable Ministerial Directions (s. 117 directions) , given that such direction is invalid for the reasons previously submitted

- (4) P.25: Compliance with s. 117 directions: 6.2 . All that is stated is that the land is a public reserve and should the reclassification **proceed , it is intended under s. 30(1) of the LG Act the LEP**

will include a provision to the effect that the land will cease to be a public reserve on the commencement of the plan.

There is similarly no mention that there may be a trust affecting the site which is proposed to be discharged if the reclassification proceeds and that under s.30(1) LG Act the LEP will include a provision that the trust will be discharged on commencement of the plan.

This a further breach of s 55

(B) Appendix 1 - Information Checklist for proposals to classify or reclassify public land through an LEP taken from practice note 16-001

(1) Page 1: Para 4: “ Reasons for the planning proposal” :

Again the reason is confined to the fact that the land is a public reserve and that should the reclassification proceed, it is intended that under s.30 (1) LG Act the LEP will include a provision that the land will cease to be a public reserve on the commencement of the plan

There is no mention of the required information about the possible existence of a trust affecting the land which it is proposed be discharged if the reclassification proceeds - a further breach of s.55.

(2) Page 2: “ **Details of interest in the land proposed to be extinguished** “:

This is confined to the cessation of the land as a public reserve

There is no mention whatsoever of the fact that there may be a trust affecting the land which will be extinguished .

This is not only a clear breach of s 55 but a false and misleading statement .

(3) Page 2: “ Reasons why such interests are to be extinguished”

The reason advanced is “ *The public reserve status restricts the future sale and use of the site*”.

Not only is it confined to the extinguishing of the public reserve, but there is the omission of the fact that the possible trust status also restricts the future sale and use of the site.

This constitutes a further breach of s.55

25. Accordingly the Planning Proposal neither

- (A) Validly explains the intended effect of the proposed Planning Proposal , nor sets out the justification for making it, as required by s. 55(1) ;
- (B) Includes a statement of the objectives or intended outcomes of the Proposal as required by s. 55(2)(a) ;
- (C) Provides an explanation of the provisions that are to be included in the proposed LEP as required by s.55(2) (b) ;
- (D) Provides the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the Planning Proposal will comply with relevant directions under s 117) as required by s.55(2)(c).

26. Further the bland statement that there may currently be a trust affecting the site is completely insufficient to fulfill either the requirements of s 55 or , even if made to the Greater Sydney Commission, the necessary information required to be submitted under s 56.

27. There is no information supplied as to this possible trust : ie
- (A) The nature of the trust
 - (B) The date of its creation
 - (C) The manner of its creation
 - (D) The reason for the trust
 - (E) The terms of the trust
 - (F) The identity of the Trustee
 - (G) The identities of the beneficiaries
 - (H) The likely and/or potential consequences to the beneficiaries upon the discharge of the trust
 - (I) The reasons Council considers it appropriate to discharge the trust.
28. Given the gross legal deficiencies in the Planning Proposal, the consequent public exhibition and re-exhibition are incomplete and incorrect and in a number of respects misleading and cannot constitute valid community consultations as required by s. 57 EPA and the purported Gateway determination.
29. In fact the whole process is invalid ab initio.
30. Council should also bear in mind that a Trust imposes heavy fiduciary duties on the Trustee to act strictly in accordance with the provisions of the trust and the reasons for its creation and should not be discharged without compelling cogent reasons. No such reasons have been advanced .
31. As Council is a public authority it must fulfill the high and indeed onerous moral and legal standards imposed on such authorities. As the land the subject of the trust is a public reserve and was so set aside at the express requirement of Council and as part of the conditions of consent to the subdivision of the Dunara Estate , Council , as the Trustee, is under an obligation to maintain it as a public reserve.
32. None of the above legal defects can be retrospectively cured. The whole process is legally void and will be held to be so void by the Court

33. Accordingly Council has the following options:

- (1) Persist with its legally flawed invalid Planning Proposal, legally flawed invalid Gateway determination and flawed invalid public exhibition with the cost of appointing the independent person to conduct the public hearing similarly consequentially invalid, all of which will ultimately be held to be invalid in the inevitable legal challenge to any reclassification, the costs of which will far outweigh the illusory financial gain Council thinks it will achieve in a non competitive sale market, which will really constitute an unnecessary waste of ratepayers' funds, with the inherent consequential publicity regarding such waste;

- (2) Start the process all over again ab initio by
 - (A) Placing the correct information before the C&E Committee and describing the property to be reclassified correctly;
 - (B) Obtaining the legally valid recommendation from that committee
 - (C) Council passing the necessary legally valid resolution to authorize a correct Planning Proposal
 - (D) Prepare a legally valid Planning Proposal which not only satisfies the legislative requirements under the LG Act and the EPA, but also corrects the information currently contained therein, now proven to be factually incorrect by numerous submissions received by Council;
 - (E) Seek the proper valid necessary prerequisite Gateway determination from the Greater Sydney Commission, by
 - (a) Redrafting the Planning Proposal to comply with all legislation;
 - (b) Resubmitting the Planning Proposal all over again to the Commission

14

- (F) Re-exhibiting the Planning Proposal via a legally valid public exhibition (for the 3rd time), including the necessary repeated notifications in the Wentworth Courier over the 4 week exhibition period together with letters to numerous residents;

This will involve

- (a) Staff time ;
- (b) Financial cost
- (c) Substantial delay

It is submitted that the above would further be a substantial waste of ratepayers' funds, together with Council having to explain why it got it so legally wrong , in spite of two public exhibitions, which as it transpired were a waste of taxpayers resources, with the inherent publicity that such will attract. To put it mildly, the whole flawed process is an embarrassment to Council

- (3) Abandon the Proposal immediately under s. 58 EPA

Section 58 (4) provides that

“ The relevant planning authority [ie Council] may , at any time, request the Minister to determine that the matter not proceed “.

34. It is submitted , that in all the circumstances, the proper prudent and fiscal course of action that Council should follow , indeed the only course reasonable and prudently open to it, especially in light of the volume of submissions received, is for it to now request the Greater Sydney Commission to determine that the matter not proceed

Yours faithfully,



GEORGE FARKAS

1

CID018 - PART 4

RE-EXHIBITION

GEORGE FARKAS

B.A LL.B

■ Dunara Gardens

POINT PIPER NSW 2027

Ph: ■

Fax: ■

M: ■

Email: ■

24 November 2017

The General Manager
Woollahra Council,
records@woollahra.nsw.gov.au

Dear Sir,

**SC 3794 - FURTHER SUBMISSION RE PROPOSED
RECLASSIFICATION OF DUNARA RESERVE, POINT PIPER**

I refer to my previous Submissions dated 7 September, 8 September and 17 November and wish to make the further following Submissions:

1. Council states that on a reclassification , the land would be subject to its current zoning (R2) and development controls.
2. The subject land is 400 m2
3. I have just become aware of 2 properties in Edgecliff :
 - (1) One is 157 m2 (ie only 39% of Dunara Reserve) and currently has a Development Approval to build a 3 bedroom house with a garage; and
 - (2) The other is 350 m2 and has Development Approval for a 3 bedroom house

4. Should the land be sold, it is highly likely that the purchaser would do so in order to build on it and in view of the above, would most likely obtain approval for a 3 bedroom house with a garage.
5. That would be incredibly detrimental to the whole of Dunara Gardens, which is currently overdeveloped with closely adjoining properties by reason of the original subdivision in the mid 1950s with complicated Rights of Way .
6. That would be entirely in conflict with the legislative requirements imposed on Council for the subdivision under LGA 1919 and the trust for public purposes to which the land is subject .
7. In particular I draw attention to paragraphs 5, 6 & 8 of my Submission dated 7 September ie
 - (A) That under s. 326 , in **fixing the number of lots, ie in ascertaining the area for the purpose of fixing the number of houses permitted in the subdivision**, Council had to embrace public reserves, open spaces and the like” ;
 - (B) Under s. 327(2) Council had to have regard to the plan of subdivision (which had to embrace the other sections relating to garden and open space); and
 - (C) Under s. 333(g) **Council had to take into consideration in respect of the application for approval of the subdivision** the amount of public garden and recreation space to be provided in the land to be subdivided
8. Clearly under the legislation applying to the subdivision and the respective requirements imposed thereby on Council , approval would not and could not have been given to the subdivision had that lot been available to build a 3 bedroom house with or without a garage (or any development at all).
9. The same principle still applies and in this regard , attention is drawn to paragraph 50 of my Submission of 7 September ie Council’s own Heritage Officer’s description of the historical basis of the Dunara

3

Gardens subdivision and her conclusion that the creation of the special lot for public garden and recreation should be preserved.

10. In other words, the sale of the land would have consequences that were both never envisaged, indeed were prevented, then and indeed now .

Yours faithfully,



GEORGE FARKAS

CID019

Alan Murray

█ Dunara Gardens,

POINT PIPER

NSW 2027

M: █ Email: █

7 September 2017

The General Manager

Woollahra Council

536 New South Head Rd

DOUBLE BAY NSW 2028

Dear Sir

SC 3794 SUBMISSION RE PROPOSED RECLASSIFICATION OF DUNARA RESERVE, POINT PIPER

I live at █ Dunara Gardens, Point Piper, with my wife Sally and our two schoolage daughters.

I was very disturbed to hear about the proposed reclassification by council of the reserve at the end of the street.

We are very fortunate to live in such a beautiful area as Point Piper however we are not fortunate enough to have any trees on our own property. It seems that the lack of green area was one of the reasons why the land in question was originally reserved way back when the subdivision was effected in 1957.

The reserve is used by a number of children in the neighbourhood, including ours. Indeed my daughters have both used the magnificent trees in the reserve in their school projects.

There are also a number of other children who live in the high rise on the other side of the road (Wentworth St) – and I notice that there is a DA pending for another high rise opposite as well.

Green areas are so important to local communities and once they are lost they are seldom ever reclaimed. Point Piper has a number of large houses but not much public land and as such this reserve at Dunara Gardens is extra special.

A number of the local residents participate periodically in maintaining the reserve as best we can (with our limited green bins!). A bit of gardening never did anybody any harm!

On the reserve are a number of exceptional, unique and beautiful trees; I assume that you have pictures of them. I understand that some of these are amongst the oldest in Point Piper and are heritage listed.

I also understand that there have been some issues with the preservation of trees in Point Piper and particularly around Dunara Gardens in the past. I cannot see how the council transferring the ownership of this land and these special trees away from their safe custody can possibly help this situation.

I strongly object to the proposed reclassification of this green area and submit that it should remain as community land owned by Council.

On a more positive note I think that it would really be of interest and appreciated by the community if the reserve was signposted from Wentworth St by the council to make it more welcoming to the local community.

Yours Sincerely

Alan and Sally Murray

Appendix – a couple of photos of the local kids playing in the park.



CID020 - PART 1

Proposed reclassification of Dunara Reserve to allow sale of the site

Reference SC3794 Submissions

Submission by: Professor Kei Lui and Mrs Ellen Lui
Address: ■ Dunara Gardens Point Piper NSW 2027
Email: ■■■■■■■■■■
Mobile: ■■■■■■■■■■ (Ellen Lui)
Date: 8 September 2017

To The General Manager, Woollahra Council,

Planning Proposal exhibited by Woollahra Council in August 2017 seeks to reclassify Dunara Reserve from community to operational land in order to allow the sale of the site.

As owners of ■ Dunara Gardens Point Piper, we have serious concerns about the sale and possible future redevelopment on the site. The Dunara Reserve has provided open space and greenery for the Dunara residents as well as the public at large to enjoy.

Creation of Dunara Reserve

We have been living here for over 17 years. There are 11 properties subdivided in the Dunara Estate back in the 1950's. Each of these properties have limited outdoor space and gardens. The Dunara Reserve was created as a condition of the Council's approval to the subdivision. The purpose of this was to create a relaxing garden space with trees and substantial greenery for the enjoyment of the Dunara community.

Community amenity

Dunara Reserve is an open garden for the enjoyment of Dunara community as well as the wider public. Neighbouring kids often play around on the site after school. It is a public garden which is safe and away from the traffic that made it ideal for children. I have seen walking groups trekking around the site to take photos of the heritage trees.

Preservation of heritage listed trees

There are a number of significant trees on the reserve including the heritage listed Canary Island Date Palm. With the proposed reclassification and potential

redevelopment of the site, this precious greenery will no longer be enjoyed by the community. We have experienced numerous incidents of tree poisoning in the area.

The Council has a duty to protect and preserve these greenery in our community, rather than focusing on wiping their hand off the minimal maintenance work they perform and making a windfall from the sale of the site.

Importance of Signage for the Dunara Reserve

The Planning Proposal asserts that the site provides little or no recreational value for the community and it is under-utilised because it is hardly recognisable as a public reserve. As pointed out before this reserve is playground for neighbouring kids. All is needed is a replacement bench for the public to have a rest under the dense greenery. The Council can easily set up a sign “Dunara Public Reserve” at the entrance of the Dunara driveway to indicate it is a public reserve.

Site Maintenance

The Planning Proposal argues that the cost of cleaning up the site is a misuse of public funds. The council conducts minimal maintenance twice a year. Most of the time our Dunara residents clean up the reserve by removing build-up vegetation on the site. As well, some of the residents planted beautiful flowering shrubs (hibiscus), agapanthus and ferns along the strip making it really appealing as we stroll along the driveway. The Dunara residents paid tens of thousands of council rates every year. We deserve this piece of reserve and the rates we paid would definitely cover the insignificant cost of maintenance of this site.

Proceed from Sale of the site

The Council is looking at a one-off sale proceed from the site versus the permanent loss of this community amenity to Dunara residents and the wider public. Whilst the Council may get a windfall from the sale thus making their books look good for the year, we the Dunara Community suffer a huge loss of open space and heritage tree and greenery. Where is the Fairness?

Over-Development of Dunara Gardens

If the proposed reclassification and subsequent sale of Dunara Reserve were to go ahead, we could potentially see a new construction on the reserve. We already have 11 properties on the subdivision. Cramming in another property by cutting down open public space will devalue all Dunara Gardens properties.

We sincerely hope the Council will consider our serious concerns as above in reviewing the Proposed changes to Dunara Reserve.

Professor Kei Lui and Mrs Ellen Lui

Owners of ■ Dunara Gardens Point Piper NSW 2027

CID020 - PART 2

RE-EXHIBITION

From: [Ellen Lui](#)
To: [Records](#)
Cc: [Kira Green](#)
Subject: Submission re Proposed changes to Dunara Reserve, Point Piper
Date: Friday, 24 November 2017 10:19:45 AM
Attachments: [Proposed reclassification of Dunara Reserve to allow sale of the site - SC3794 Submissions.pdf](#)

To the General Manager

Referring to Woollahra Council's re-exhibition of the proposed re-classification of the Dunara Reserve, we hereby reiterate our submission dated 8 September 2017 as attached.

We strongly oppose Council's move to re-classify then sell the land at Dunara Reserve for a small windfall, in doing so totally ignore the voice of all residents concerned.

We sincerely hope that our concerns are taken into consideration by the Council in reviewing the proposal.

Professor Kei Lui and Mrs Ellen Lui
Owners, ■ Dunara Gardens Point Piper

CID021

Peter and Edith Ryba
■ Dunara Gardens
POINT PIPER NSW 2027
PHONE: ■■■■■■■■■■
PETER MOBILE: ■■■■■■■■■■

Your ref: SC3794 Submissions

7th September 2017

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

Dear Sir or Madam

RE: Proposed changes to the land management controls of Dunara Reserve, Point Piper

As a long standing resident of Dunara Gardens I have been offered the opportunity to make a submission on the above noted proposal by 8th September 2017. Having carefully reviewed the council's proposal my wife, Edith, and I strongly oppose it and offer the following comments.

Council approved the subdivision of the heritage listed Dunara Estate in 1954 to 1955, including the demolition of the north wing of Dunara House, which housed a garage and servants quarters. The property was divided into the present eleven (11) residential lots. The subdivision included an irregular shaped 380 metre squared plot of land on the southern boundary which was dedicated to council as a green strip for use of the future residents (possibly 40-50 adults and children) as well as the general public and named Dunara Reserve.

My wife and I bought lot 3 some months after the auction of the 11 lots at which lots number 2 and 3 did not sell. We have lived in the home we built since 1958, some 59 years. Our original postal address council originally designated as 12 Wunulla Road. Unfortunately we did not have access to Wunulla Road as council kept a three metre wide frontage to Wunulla Road, for a proposed road widening which was abandoned some years ago. When part of the old stone wall collapsed into Wunulla Road, council built a four metre high concrete wall at the western side of the pavement to prevent our land slipping. We contributed to the construction cost of the steps in this wall. Our address remained as Lot 3 Dunara Gardens.

We were originally attracted to the land by the number of very old trees and shrubs in Dunara Reserve and the heritage listed Dunara House with its open, formal front garden. Whilst heritage listed Dunara House now has a brush fence obscuring the full view of the gardens we are at least still able to enjoy the greenery and openness afforded by the Dunara Reserve. Covenants allowed only 2 bar fences on all properties have not been insisted on by council resulting in some houses or brick fences being built right to the edge of Dunara Gardens Road.

We visualised with the help of our architect we would create a modest home with a small flat garden and a great view and that our children would be able to play in the council's nature reserve and the secluded cul-de-sac Dunara roadway and enjoy the ambience and position of Point Piper. As time passed there were some 20 school age children playing in this area. Children who live there or will be residents in the future in Dunara Gardens should also be provided the same opportunities.

The strip with its heritage listed old trees accentuates the green appearance of Dunara Gardens and the Dunara heritage listed home. The council placed one park bench on this green strip which was frequently used and the council until recently periodically cut back, cleaned and maintained the area. Some years ago a number of the residents arranged for one light pole to be erected with the power bills and maintenance being paid by residents.

The Dunara Gardens concrete roadway is now about 65 years old. It has suffered many cuts to improve inadequate services and drainage and requires an upgrade. The road slopes down from Wentworth Street and in heavy rain fall water just flows down to an inadequate and damaged grated drain. The original subdivision did not allow for car parking of residents, visitors or tradesman and there is no provision for turning on the private road. The responsibility for the upkeep and maintenance falls to only two owners of property within Dunara Gardens who pay rates and taxes on land used by neighbours and visitors without any help from the council.

We submit that the Dunara Gardens development was poorly planned and executed by the developers and approved by council in 1954. Having insisted on the Dunara Reserve (Lot 11) being dedicated to council as a green strip for the benefit of the community, the council proposes to sell it for financial benefit and create further problems for the residents of Dunara Gardens by increasing the already extensive density of the area and reducing the green ambience. We strongly object to the proposal and will do everything we can to prevent it going ahead.

Yours Sincerely



Peter Ryba

Via mail: records@woollahra.nsw.gov.au

Hard copy to be delivered.

CID022

Michael J. Crouch AC



6th September 2017

Cr Toni Zeltzer
Mayor of Woollahra
Woollahra Municipal Council
PO Box 61
DOUBLE BAY NSW 1360

A handwritten signature in blue ink that reads "Dear Mayor".

I write to express my dismay, and serious concern, at what, I understand, is an intentional proposal by Council to destroy the public garden known as 'Dunara Reserve'.

Obviously your Council should be increasing green areas, not diminish them.

Yours respectfully,

A handwritten signature in blue ink that reads "Michael Crouch".

MICHAEL CROUCH

CID023

8 September 2017

Ms Anne White
Team Leader – Strategic Planning
Woollahra Municipal Council
DOUBLE BAY NSW 2028

Dear Ms White

Council Ref: SC3794 Submissions

Proposed conversion of public land at Dunara Reserve, Point Piper, for sale to the public


Thank you for notifying us of the proposed change of land management of Dunara Reserve.

We note that Council's intention is to eventually sell the Reserve.

While Council appears to have a rough estimate of the Reserve's value, the eventual buyer will enjoy an overall increase in the value of their own property, when the Reserve becomes part of their existing property.

We would be grateful if you would advise us how this increased value, through the purchase of formerly public land, will be brought to account in the final sale price of the Reserve.

Thanks and regards


Capt & Mrs G Mathias
Wentworth Street
POINT PIPER NSW 2027

Received
8 SEP 2017
Customer Service Department
Woollahra Municipal Council

CID024 - PART 1

The General Manager
Woollahra Council
PO Box 61
Double Bay
NSW 1360

Albert Morini

Wentworth st
POINT PIPER NSW 2027
Tel [REDACTED]
Email [REDACTED].au

8 September 2017

Dear Sir/Madam,

**SC3794 Submissions
Proposed Changes to Dunara Reserve, Point Piper**

I am the owner of [REDACTED] Wentworth Street, Point Piper.
I refer to the Recent proposal from Council RE Dunara Gardens

I strongly object to Woollahra Council's proposal to reclassify Dunara Reserve from Community to Operational land in order to allow a sale of the land.

I Have Live Directly opposite the Reserve for the last 6 Years and proud of the area we live in .
I therefore have always made it my personal business to maintain the reserve clean and clear any fallen branches and pick up any rubbish spread by wind or others
We absolutely love living close to nature and the spirit of neighbourly friendship it brings
It is the very reason we chose to buy here in contrast with living in a Waterfront property
With no trees and a true sense of nature

This part of Point Piper is densely developed. There are many apartment blocks, and the houses in the vicinity of Dunara Reserve generally have small gardens and little outdoor space. Its stunning trees and shrubbery provide an important oasis of vegetation in this otherwise tightly developed area.
Therefore it is very important that Dunara Reserve remains a public garden for us all to enjoy.

I am particularly concerned that if Dunara Reserve is reclassified and sold its new owner will fence it in. We will lose access to this lovely public space, and our views into the Reserve will be impeded by a fence. I am also concerned that a sale will inevitably lead to an application to Woollahra Council to develop the land, and the loss of trees and vegetation that will result from this. There have been a number of serious tree poisoning incidents in this part of Point Piper recently, including within Dunara Gardens itself. Council should be taking measures to protect our remaining trees (from which the whole community benefits), rather than selling land like Dunara Reserve which is home to a number of important trees, and putting them at risk of poisoning from a private landowner who may wish to maximize the value of the site by development.

In summary, Dunara Reserve is a very important public amenity to all of us who live nearby, and I very strongly urge Council to ensure that it remains in public ownership and available for us all to enjoy.

Yours Faithfully

Albert Morini



CID024 - PART 2
RE-EXHIBITION

Albert Morini

The General Manager
Woollahra Council
PO Box 61
Double Bay
NSW 1360

■ Wentworth st
POINT PIPER NSW 2027
Tel ■■■■■■■■■■
Email ■■■■■■■■■■

23.11.2017

Dear Sir/Madam,

SC3794 Submissions
Proposed Changes to Dunara Reserve, Point Piper

I am the owner of ■ Wentworth Street, Point Piper.
I refer to the Recent proposal from Council RE Dunara Gardens

I again wish strongly object to Woollahra Council's proposal to reclassify Dunara Reserve from Community to Operational land in order to allow a sale of the land.

I Have Lived Directly opposite the Reserve for the last 6 Years and proud of the area we live in .
I therefore have always made it my personal business to maintain the reserve clean and clear any fallen branches and pick up any rubbish spread by wind or others
We absolutely love living close to nature and the spirit of neighbourly friendship it brings
It is the very reason we chose to buy here in contrast with living in a Waterfront property
With no trees and a true sense of nature

I totally disagree with Councils attempt to try and sell off a beautiful a natural reserve loved and enjoyed by many

This part of Point Piper is densely developed. There are many apartment blocks, and the houses in the vicinity of Dunara Reserve generally have small gardens and little outdoor space. Its stunning trees and shrubbery provide an important oasis of vegetation in this otherwise tightly developed area.
Therefore it is very important that Dunara Reserve remains a public garden for us all to enjoy.

It has always been my understanding that Councils role is to encourage green and maintain nature as much as possible

I am particularly concerned that if Dunara Reserve is reclassified and sold its new owner will fence it in. We will lose access to this lovely public space, and our views into the Reserve will be impeded by a fence. I am also concerned that a sale will inevitably lead to an application to Woollahra Council to develop the land, and the loss of trees and vegetation that will result from this. There have been a number of serious tree poisoning incidents in this part of Point Piper recently, including within Dunara Gardens itself. Council should be taking measures to protect our remaining trees (from which the whole community benefits), rather than selling land like Dunara Reserve which is home to a number of important trees, and putting them at risk of poisoning from a private landowner who may wish to maximize the value of the site by development.

In summary, Dunara Reserve is a very important public amenity to all of us who live nearby, and I very strongly urge Council to ensure that it remains in public ownership and available for us all to enjoy.

Yours Faithfully

Albert Morini



CID025

Mr Said ElKhouri
[REDACTED] **Wentworth Street**
Point Piper
NSW 2027

The General Manager
Woollahra Council
PO Box 61
Double Bay
NSW 1360

8 September 2017

Dear Sir/Madam,

SC3794 Submissions
Proposed Changes to Dunara Reserve, Point Piper

I am the owner of, and live at, [REDACTED] Wentworth Street, Point Piper. [REDACTED] is a six storey apartment block containing 11 apartments which is located directly opposite Dunara Reserve, and is home to [x number] residents. All apartments in this block enjoy views directly into Dunara Reserve.

I strongly object to Woollahra Council's proposal to reclassify Dunara Reserve from Community to Operational land in order to allow a sale of the land.

This part of Point Piper is densely developed. There are many apartment blocks, and the houses in the vicinity of Dunara Reserve generally have small gardens and little outdoor space. My apartment block has only a small paved outdoor space, and no garden. Dunara Reserve is a particularly important shared garden space which everyone in its vicinity can enjoy in the absence of gardens of our own. Its stunning trees and shrubbery provide an important oasis of vegetation in this otherwise tightly developed area. I note that Woollahra Council is currently considering a Development Application to demolish 2 Wentworth Street (next door to this apartment block) and replace it with a six storey apartment block containing five apartments (DA 369/2017/1). If approved this will further increase the density of development in this area, and make it all the more important that Dunara Reserve remains a public garden for us all to enjoy.

All residents in this building benefit from open views into the Reserve, and the opportunity to use it as a public space. If Dunara Reserve is sold and enclosed, the nearest public reserve to us in Point Piper will be Duff Reserve, which is on the other side of the Point Piper peninsular, and because of its numerous steep steps is difficult to access, particularly for the elderly or for residents with small children.

I am particularly concerned that if Dunara Reserve is reclassified and sold its new owner will fence it in. We will lose access to this lovely public space, and our views into the Reserve will be impeded by a fence. I am also concerned that a

sale will inevitably lead to an application to Woollahra Council to develop the land, and the loss of trees and vegetation that will result from this. There have been a number of serious tree poisoning incidents in this part of Point Piper recently, including within Dunara Gardens itself. Council should be taking measures to protect our remaining trees (from which the whole community benefits), rather than selling land like Dunara Reserve which is home to a number of important trees, and putting them at risk of poisoning from a private landowner who may wish to maximize the value of the site by development.

In summary, Dunara Reserve is a very important public amenity to all of us who live nearby, and I very strongly urge Council to ensure that it remains in public ownership and available for us all to enjoy. I also ask that Council give very serious consideration to the fact that this locality has already lost a number of substantial trees to poisoning in recent years. These trees cannot be replaced in our lifetime, and it is imperative that Council does not put further trees at risk by transferring Dunara Reserve into private ownership.

Yours Faithfully

Said ElKhouri

CID026
RE-EXHIBITION

Nigel Corne
Benelong Crescent Bellevue Hill
NSW 2023

9th November 2017

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

Dear Sir

SC 3794 Submissions (Dunara Reserve)

This is the first I have been aware of the proposed reclassification from community to operational to allow its sale and wish Council to note my objection in the strongest terms.

This is land owned by Council as against privately owned for a reason ie to ensure it remains available to the public and it is Council's responsibility and obligation to continue to own it for that purpose. It is alarming that Council wants to reclassify it solely for the admitted purpose of monetary gain .

The public backlash by those ratepayers who become aware of it , noting that I and nearly everyone I know don't regularly get the Wentworth Courier, will be enormous and Council will not be portrayed in a favourable light . In fact the adverse publicity will severely damage Council, and rightly so, when Council is supposed to look after public land for ratepayers rather than selling it off.

There is not enough public land with trees in Point Piper and I am very familiar with the suburb. What little there is should be preserved and not sold

I also note the reference to a trust. Whilst I am not a lawyer, that must mean that Council holds it in trust for the rate payers, which is a very high obligation, which should not be discharged which would be the stated result of the proposal.

I request that his proposal should be terminated immediately

Your faithfully



Nigel Corne

CID027
RE-EXHIBITION

Brian Topper
■ Chamberlain Ave
Rose Bay NSW 2029

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

8th November 2017

SC 3794 Submission - Dunara Reserve

I read about the proposed reclassification of this public land so that Council can sell it.

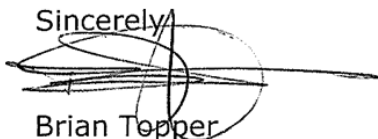
That is objectionable. Public community land has been so designated to preserve it for use by the public and not available to be in private hands to be developed.

Council is in breach of its responsibility to ratepayers by attempting to sell it.

Council's unconscionable action is further compounded by its public admission of the possible existence of a trust, which can only mean that the land is held by Council on trust for the public for its use by the public.

It therefore should legally and morally remain that way

Sincerely,

A handwritten signature in black ink, appearing to be 'Brian Topper', written over a circular stamp or seal.

Brian Topper

CID028
RE-EXHIBITION

ROBERT M. LOWY
[REDACTED] Thornton St
Darling Point NSW 2027
Ph: [REDACTED]

9 November 2017

The General Manager

Woollahra Council

records@woollahra.nsw.gov.au

Dear Sirs,

**SC 3794 PROPOSED CHANGES TO THE LAND MANAGEMENT
CONTROLS OF DUNARA RESERVE, POINT PIPER**

I write in response to the notification in the Wentworth Courier of 25 October. I note this is a re-exhibition, although I was not aware of the previous exhibition.

I am concerned at this proposal to sell a public reserve and wish council to note my objection to this course of action.

A public reserve under the stewardship of council should remain so as a facility open to residents of Woollahra, in accordance with the original rationale of its existence.

I have particular disquiet in noting council's statement that there may be a trust affecting the site which is proposed to be discharged. I am a Chartered Accountant and am very familiar with the obligations of a trust. A trust is a fiduciary relationship which imposes heavy responsibilities on the Trustee to act strictly in accordance with the terms of the trust and its creation. As council is a public authority and the land the subject of the trust is a public reserve, the trust must have been created to preserve and maintain that land as a public reserve.

Given my disquiet, I have taken the time to peruse all the accompanying documentation regarding this matter on council's website. I am unable

to find any compelling reason, indeed unable to find any adequate reason which would justify council discharging the trust and discharging its heavy public obligation to preserve that trust. Should council proceed in doing so, it would face heavy public approbrium, not to speak of possible legal action. I am frankly amazed that council would even contemplate the re-classification, given its admission that there may be such a trust.

It also seems to me that the anticipated sale price is both inflated and illusory given that there is no market for its purchase, with at best only two potential purchasers identified and no market at all, should only one be interested

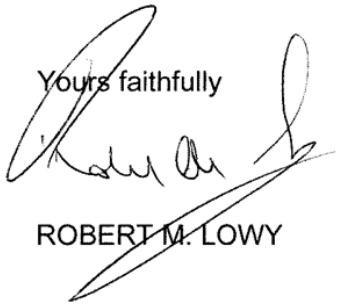
When I look at council's financial accounts, I am staggered, given council's assets and income and expenditure, that this possibly illusory financial gain should be put forward as a purported rationale for the sale of a public reserve.

To suggest that twice yearly maintenance visits is a drain on its resources is laughable. Not only cannot such infrequent visits be onerous, but maintenance of public reserves forms part of the rates levied by council and paid by ratepayers. It cannot be the basis to justify its sale.

The proposal to re-classify is misconceived and flawed and simply does not withstand scrutiny.

Council is not a private organisation or private incorporated company free to act in its own interests. It is a public authority subject to public scrutiny and has an onerous responsibility to act in the public interest. To terminate a public reserve as is here proposed without justification is a breach of its moral and legal responsibility to ratepayers

Yours faithfully

A handwritten signature in black ink, appearing to read 'Robert M. Lowy', written over a horizontal line.

ROBERT M. LOWY

CID029
RE-EXHIBITION

9 November 2017

The General Manager

Woollahra Council

records@ Woollahra.nsw.gov.au

RE: SC 3794 Submissions

I submit that a public reserve should remain a public reserve

I am against Council changing its classification so it can sell it ,
making it possible for future development, rather than it staying as
a valuable public asset.

It was created as a public reserve for a reason . There are too few
in our municipality and it should be preserved.



Barry Joseph

■ Olphert Avenue, Vaucluse 2030

CID030

RE-EXHIBITION

From: [Jaku Family](#)
To: [Records](#)
Subject: SC: 3794: Proposed Changes to Dunara Reserve
Date: Friday, 10 November 2017 11:27:57 AM

The General Manager Woollahra Council

Dear Sir,

We are Woollahra ratepayers owning and residing at [REDACTED] Court Road, Double Bay.

It has been brought to our attention that Council proposes to sell Dunara Reserve currently and historically a public reserve. We believe that transferring this public reserve to private hands would be a retrograde step and are opposed to such action as it would further diminish the public space in an already highly developed part of the eastern suburbs.

Michael and Linda Jaku

[REDACTED] Court Road, Double Bay NSW 2028
Mob.: [REDACTED]



Virus-free. www.avast.com

CID031
RE-EXHIBITION

Stephen Baer

██████ New South Head Road
Rose Bay NSW 2029

10 November 2017

The General Manager

Woollahra Council

records@woollahra.nsw.gov.au

RE: SC 3794 PROPOSED CHANGES TO DUNARA RESERVE

I read with alarm council's notification in the Wentworth Courier of its intention to reclassify the reserve to facilitate its sale.

It is clearly public land owned by council and designated as a public reserve. Under no circumstances should such public land be sold or such land be in private ownership. It is council's responsibility to keep it as land available to the public

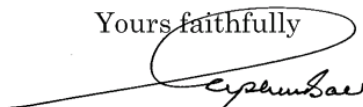
Surely council cannot be so cash strapped so as to necessitate its sale.

I am further alarmed to read that it is council's view that "there may be a trust affecting the site which is proposed to be discharged if the reclassification proceeds".

I would think that the site is kept in trust by council for the public, which makes sense .

While it would appear from the statement in the paper that the trust would be discharged by the reclassification, council should not discharge that trust and should honour that trust and maintain it in public ownership

Yours faithfully



STEPHEN BAER

CID032
RE-EXHIBITION

■ Kambala Road
Bellevue Hill NSW 2023
13 November 201

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

Re: SC 3794 PROPOSED CHANGES TO THE LAND MANAGEMENT
CONTROLS OF DUNARA RESERVE POINT PIPER

Dear Sir

Even though I am not a resident of Point Piper and not immediately affected by what is proposed, I am nevertheless a ratepayer in the Woollahra Municipality and therefore entitled to make a submission.

Council should note my strong objection in principle to what is proposed.

I note the land is public land owned by Council and a public reserve. It has obviously been declared a public reserve by Council for the benefit of the public and in particular residents in its immediate surrounds as well as those in Point Piper .

It is a public amenity and should remain that way. It ill behoves Council to deprive those residents of such specially earmarked land. It should never be sold to private interests, with the potential for it to possibly be developed.

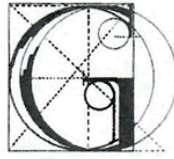
I am troubled by Council's admission that there may be a trust affecting the site which will be discharged. The likelihood of a trust existing reinforces my point about preserving it for the public, as that trust would have been created to ensure that that occurred. For Council to consider discharging that trust is a dereliction of its duty and a breach of trust , which is a serious matter. It sets a very bad example. It is bad governance.

The proposal should be abandoned as against the interest of ratepayers and the community generally



Paul Blanket

CID033
RE-EXHIBITION



Lesley & Alan Goulburn

Moncur Street
Woollahra 2025
Sydney, Australia

Tele phone: [REDACTED]

13 November 2017

The General Manager
Woollahra Council

records@woollahra.nsw.gov.au

RE SC 3794 SUBMISSION RE DUNARA RESERVE POINT PIPER 2027

Dear Sir,

I wish to strongly express my opposition to Council's proposal to reclassify the above public reserve so that it ceases to be a public reserve which I understand will be ceased as such for the purpose of selling the land.

That land has been categorised by Council as a public reserve for the use of the public and there are no valid reasons put forward to alter that situation, not to mention selling the land to private interests by Council to alter that, not to speak of selling it to private interests.

What Council proposes is the opposite of good public governance.

I also understand that the Council has stated there may be a trust affecting the site which will be discharged if the reclassification proceeds. Given Council's ownership of the land, surely it must be the trustee that should ensure that the land remains in public ownership. To discharge that trust is a further dereliction of good Governance.

The proposed reclassification should be terminated immediately.

I am strongly against the sale of any public property.

Yours Sincerely

Alan Goulburn
Moncur Street
Woollahra 2025

CID034
RE-EXHIBITION

13 November 2007

The General Manager Woollahra Council
records@woollahra.nsw.gov.au

SC 3794 SUBMISSION: DUNARA RESERVE

I note the re-exhibition, not having known of the previous exhibition.

I am not in favour of what is proposed. Indeed I oppose it.

A public reserve is a site that has been set aside by Council specifically for the use by the public and should stay like that. In fact there are not enough reserves.

I don't understand the reference to a trust but can only conclude that council holds it in trust for Woollahra residents. If that be the case, which seems to be acknowledged by council, then that is even more reason not to interfere with its classification, and for it to remain as was intended.

I am surprised that council is even considering changing its status, in view of the above.

Council should not waste ratepayers funds on a public hearing and should discontinue this process immediately.



Peter Hammerman

Clarence Place
Double Bay NSW 2028

CID035
RE-EXHIBITION

Isaac and Robin Arbib

■ Rosslyn St Bellevue Hill NSW 2023

General Manager Woollahra Council

records@woollahra.nsw.gov.au

Submission : SC 3794 Dunara Reserve


We were not aware of this until we read the Wentworth Courier of 25 October

We do not agree with what council intends , indeed we are against it.

There is not enough green space available to the public in Woollahra and council should not be divesting itself of ownership. If anything, it should be attempting to acquire more such space and dedicate it to public use.

We are aware of Dunara Reserve's existence and regard it as a beautiful space with large trees amongst the density of Point Piper. It should continue to be owned by Council dedicated as a public reserve.

Yours sincerely



R. Arbib

Isaac and Robin Arbib

CID036
RE-EXHIBITION

10 November 2017
The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

Re: SC 3794 Submission

I have become aware of Council's proposed reclassification of Dunara Reserve to sell it.

I am against selling public land .

Public land owned by Council should continue to be owned by Council and not sold to private interests .

The reclassification should not proceed



Liza Evans

■ Balfour Rd

Rose Bay NSW 2029

CID037
RE-EXHIBITION

DR. BRIAN CHURNIN

[REDACTED] Banksia Rd
Bellevue Hill NSW 2023

12 November 2017

The General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir

SC 3794 DUNARA RESERVE

I refer to the advice in the paper about the proposed re-classification of Dunara Reserve

I am against what is proposed

Firstly , in principle, I am against the disposal of public land as I regard it as not in the interests of Woollahra ratepayers, who are entitled to expect council to keep that type of land and to keep it in good order.

Secondly , I am against changing the status of that particular site. I am very familiar with it , having visited a patient living in Dunara Gardens frequently over many years. It adds to the amenity and character of Dunara Gardens , noting that it was probably named Dunara Gardens, because of it.

I frequently observed children playing there , which is no doubt what it was intended for, given the density of the houses in Dunara Gardens. It is too dangerous for children to play in the Dunara Gardens driveway .

I also occasionally noted groups of people in the reserve. I was informed they were heritage walking tours.



It was clearly being used by residents and others , in keeping with what a public reserve should be

It also provided a leafy canopy to the entrance of Dunara Gardens, which was impressive.

I feel that not only Dunara Gardens, but the area generally would be all the poorer if Council disposed of it . It should remain a public reserve available to all , rather than a privately owned site, with no guarantee that it would remain with its trees and vegetation.

Regards
Ben Hill

Dr. B. J. Churnin
021 [redacted] 3
[redacted]
[redacted]

CID038
RE-EXHIBITION

David and Anna Finkelstein
█ Glendon Road, Double Bay NSW 2028
10 November 2017

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

BY HAND

Dear Sir

SC 3794 - Submission re Dunara Reserve

I note Council's proposed re-classification from the Wentworth Courier.

I should comment that I seem to not receive the Courier more than I receive it, and it is purely by chance that I have become aware of this matter. Given that, you should be aware that it is likely that many ratepayers are entirely unaware of this proposal. I mention this, not as a criticism of council, but merely to note that the number of submissions objecting to it, is not necessarily representative of the level of opposition to it. Everyone to whom I have mentioned the matter were not only unaware of it, but were opposed to it.

The land in question is public land and the reserve will cease to be a public reserve, should the re-classification occur. That is an outcome with which I am not in agreement.

If the land has been set aside as a public reserve it should remain that way and council should not facilitate a situation where that changes, especially when the rationale seems to be to gain the proceeds of such sale.

Public reserves add to the ambience of a neighbourhood, especially one as highly developed as Point Piper. They add greenery and trees as well, irrespective of their level of usage.

It sets a very bad precedent for council to dispose of public land and it should not do so. This appears to be reinforced by the possibility of there

W

being a trust affecting the land. That trust was probably created to ensure it remained as public land in council's possession and not sold.

Council should not proceed with the proposed changes.



David Finkelstein

CID039
RE-EXHIBITION

Associate Professor George Pal

■ Boronia Road

Bellevue Hill NSW 2023

The General Manager

Woollahra Council

records@woollahra.nsw.gov.au

RE SC 3794 RECLASSIFICATION OF DUNARA RESERVE

Dear Sir,

I am dismayed by Council's reclassification proposal in order to sell valuable and important public space.

The land is a public reserve dedicated for the use of the public. That is obviously the reason Council owns it ie to preserve it for such use. Whatever the price that could be obtained, it cannot be worth it if the result is to permanently alienate the land to public use.

This is obviously a re-exhibition . As I only seem to get the Wentworth Courier intermittently, I was not aware of the original exhibition, otherwise I would have lodged an objection then.

Public community land should remain public community land, consistent with its original creation and purpose. It is improper of Council to act inconsistently with that charter. Even more so, when there is a dearth of such space in Point Piper.

The fact that there may be or is a trust to which the land may be subject, simply reinforces the point . It is alarming that Council would consider discharging that trust.

This proposal should not proceed

Yours faithfully



Assoc/Prof G Pal

CID040
RE-EXHIBITION

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

15 November 2017

Dear Sir

Re SC 3794 Proposed changes to the land management controls of
Dunara Reserve , Point Piper

I wish to register my strong protest and opposition to the proposed changes, notified in last week's Courier.

Firstly I am opposed to the sale of public land to private interests. There are too few reserves and those that exist have been entrusted to council precisely to ensure that they remain as public reserves .

That is proven by council referring to the existence of a trust affecting the site. In other words, council holds that reserve on trust for residents, ratepayers and the general public. I am dismayed that council intends discharging that trust at all . Even more so, for financial gain. To sell that land , is a breach of that trust.

I am very familiar with Dunara Reserve as I have friends there and visit regularly.

It is a beautiful leafy area with wonderful trees which adds immensely to the character not only of Dunara Gardens but the neighbourhood generally. It is vital to preserve that vegetation. There is no guarantee that this will be preserved in private hands as regrettably council has a dismal record of enforcing its own tree preservation laws.

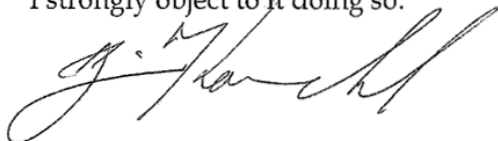
I have also , on my visits noted that it is used , particularly by children who play there, have picnics there and by members of the public. I have seen walking groups on the reserve looking at particular trees.

The tree canopy of the reserve provides a very nice entrance to Dunara Gardens, which to my observation has only 2 trees in a very densely housed cul de sac.

The whole of Dunara Gardens would feel denuded of green if that reserve were developed in any way.

Council would be very ill advised to divest itself of that reserve as it would be detrimental to residents and ratepayers.

I strongly object to it doing so.



Jim Kornmehl

█ O'Sullivan Rd

Rose Bay NSW 2029

CID041
RE-EXHIBITION

From: [Victoria Taylor](#)
To: [Records](#)
Subject: SC3794 DUNARA RESERVE POINT PIPER
Date: Friday, 17 November 2017 12:49:07 PM
Attachments: [ATT00001.jpg](#)

Dear General Manager, Woollahra Council: PO Box 61 Double Bay,

We write to you to object to the reclassification of Dunara Reserve Point Piper SC3794.

The site is public land, owned by Council. We understand that for management purposes, public land is classified as either **community land** or operational land under the *Local Government Act 1993* (LG Act). The planning proposal seeks to reclassify the site (Lot 11, DP 27451) from community land to operational land under the LG Act. We object! Section 27(1) of the LG Act requires that the reclassification of public land is made by an LEP which we wish to object.

Reclassifying the land and disabling an existing trust would allow the sale of the site of which we strongly object!

As this matter relates to the reclassification of public land, Council did not seek authorisation to use its delegation under section 59 of the *Environmental Planning and Assessment Act 1979* from the Greater Sydney Commission.

If the LEP is approved and published, Dunara Reserve will cease to be a public reserve and all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land are discharged. THIS IS BAD PLANNING and POOR FORM. THE GARDENS AND OPEN PUBLIC LAND IN WOOLLAHRA COUNCIL AND ARE WHAT MAKE IT OUR AREA VERY SPECIAL AND SO BEAUTIFUL TO LIVE IN. The reserve includes a HERITAGE LISTED COOK PINE and Mature Date Palm from the 1890s. We vigorously object to SC3794.



Sincerely, The Taylor Family of ■ Yarranabbe
Rd Darling Point and of Vacluse and Rose Bay.

X

CID042
RE-EXHIBITION

Adrian Skurnik

██████████ New South Head Rd
Rose Bay NSW 2029

The General Manager
Woollahra Council
536 New South Head Rd Double Bay NSW 2028

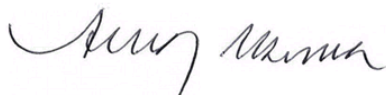
SC 3794 Dunara Reserve Submission

I have just read of what council proposes in relation to the abovementioned land and wish to record my objection

That reserve is a very beautiful public amenity. I regularly run from my place to the city and back , including around Point Piper on the way. Amongst other spots , I have a short rest in the shade of the reserve , which I find very beneficial. In fact, I suggest that Council puts a bench in that small reserve.

There is too little public space generally, but in particular in Point Piper.

That reserve should remain in Council's hands in perpetuity so that it remains open to the public



Adrian Skurnik

CID043
RE-EXHIBITION

P.O. BOX 1131 EDGECLIFF NSW 2027
PHONE [REDACTED]
[REDACTED]
ABN 88 141 102 701

23 November 2017

Mr Gary James
General Manager
Woollahra Municipal Council
By email

Dear Mr James,


Re: Dunara Reserve sub-division – Point Piper

I write on behalf of the Darling Point Society to object to the proposed development of this valuable reserve in the Woollahra municipality on the following grounds:

- 1. Dunara Estate Sub-division** The Reserve provides valuable green space in a densely built area and is enjoyed and used by the public and particularly by residents in its immediate vicinity. Children living in Dunara Gardens have made a swing on the Reserve and play there most days.
- 2. Tree Protection:** The Reserve, although small, is home to 10 substantial and significant mature trees. Point Piper is becoming increasingly bare of vegetation as development continues at an alarming pace. We believe that the Reserve is a precious public asset which should be kept in public hands in order to best safeguard its trees. A private sale means that a buyer may seek removal of vegetation on the Reserve to make way for development. Council has asserted that reclassification and sale of the land does not alter the development potential of the site, but we believe that it is inevitable that a prospective buyer will seek to maximise its value, and that this puts the trees and other vegetation on the site at risk - including the risk of unlawful removal.
- 3. Heritage Impact:** Dunara Gardens is home to two heritage listed properties: the historic and State heritage listed Dunara House, and the more contemporary McGrath House. A private sale would entitle a buyer to erect a fence depriving residents and visitors from the lovely bushy and woody view and aspect.

3. **Public Benefit:** Council has stated that the Reserve is underutilised and only benefits the immediately adjoining properties (of which there are two) . It is an important amenity to at least 30 residents who live in its immediate vicinity for whom it is a shared garden. It is also of significance to the wider community as a precious pocket of greenery and significant trees, and for providing an open garden setting for the heritage items in its immediate vicinity.
4. **Precedent:** so many "reserves" in Woollahra are being spotted for potential development that granting this DA would create a dangerous precedent to all reserves in the area including the harbour foreshore which is increasingly coveted by hungry developers.
5. **Clarification:** there has been no public disclosure regarding the beneficiaries, or the nature of the trusts and this should be made public.

Regards


Charlotte Feldman
President
Darling Point Society Inc.

CID044
RE-EXHIBITION

David Corrick

■ Carlisle St Rose Bay NSW 2029

10 November 2017

The General Manager Woollahra Council

records@woollahra.nsw.gov.au

Dear Sirs

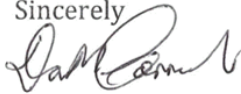
SC 3794 DUNARA

I read that council wants to alter the classification of the reserve to ultimately sell it

The land is a public reserve for the residents of Woollahra and in particular for those in Point Piper

It should remain as a reserve for the enjoyment of those residents and not be changed. It is inconceivable that council would even consider abolishing that reserve, let alone selling it.

Sincerely





CID045
RE-EXHIBITION

The Appropriate Officer
Woollahra Council
By email to records@woollahra.nsw.gov.au

Dear Sir,

**SC 3794 PROPOSED CHANGES TO THE LAND MANAGEMENT CONTROLS OF
DUNARA RESERVE, POINT PIPER**

I am writing in regard to the notification in the Wentworth Courier of 25 October, 2017. I note that this is a re-exhibition, although I was not aware of the previous exhibition. I am concerned at this proposal to sell a public reserve and wish Council to note my objection to this course of action.

A public reserve under the stewardship of Council should remain so as a facility open to all residents of the municipality of Woollahra and the public generally, in accordance with the original rationale of its existence.

I have particular concern in noting Council's statement that there may be a Trust affecting the site which is proposed to be discharged. I am a Chartered Accountant and am very familiar with the obligations of a Trust and its Trustee(s). A trust is a fiduciary relationship which imposes heavy responsibilities on the Trustee to act strictly in accordance with the terms of the trust and its Deed of creation. As Council is a public authority and the land the subject of the Trust is a public reserve, it is reasonable to assume that the Trust must have been created to preserve and maintain that land as a public reserve.

Given my concern, I have taken the time to peruse all the accompanying documentation regarding this matter on Council's website. I am unable to find any compelling reason, indeed unable to find any adequate reason which would justify Council discharging the Trust and discharging its heavy public obligation to preserve that Trust.

Should council proceed in doing so, it would face heavy public condemnation, not to speak of possible legal action. I am frankly amazed that Council would even contemplate the re-classification, given its admission that there may be such a trust.

It also seems to me that the anticipated sale price is both inflated and illusory given that there is no market for its purchase, with at best only two potential purchasers identified and no market at all, should only one be interested

Email [REDACTED]
[REDACTED] Bellevue Hill NSW 2023
T [REDACTED] F [REDACTED] M [REDACTED]
Liability limited by a scheme approved under Professional Standards Legislation.

A H Krochmalik

When I look at Council's financial accounts, I am most surprised , given Council's assets and income and expenditure, that this possibly illusory financial gain should be put forward as a purported rationale for the sale of a public reserve.

To suggest that twice yearly maintenance visits is a drain on its resources is quite ridiculous.. Not only cannot such infrequent visits be onerous, but maintenance of public reserves forms part of the rates levied by council and paid by ratepayers. It cannot be the basis to justify its sale.

The proposal to re-classify is misconceived and flawed and simply does not withstand scrutiny.

Council is not a private organisation or private incorporated company free to act in its own interests. It is a public authority subject to public scrutiny and has an onerous responsibility to act in the public interest . To terminate a public reserve as is here proposed without justification is a breach of its moral and legal responsibility to ratepayers

Yours faithfully



A H Krochmalik

23 November, 2017

Ahk-Woollahra Council 20171123

CID046
RE-EXHIBITION

Bianca Maserow
■ Newcastle St.
ROSE BAY NSW 2029

The General Manager

Woollahra Council
records@woollahra.nsw.gov.au

SC 3794 SUBMISSIONS

I wish to register my strong objections to Council's intention to reclassify Dunara Reserve to allow its sale.

I believe there are too few public reserves which are a public amenity and should not be sold, especially if making them liable to potential development, as this land would be.

I also note from the Courier that Council states there may be a trust affecting that land which would be abolished by the reclassification. Presumably that must be a trust for residents and the public and for the purpose of keeping it as a public reserve.

The fact that Council intends to both ignore that trust and further to abolish it is a breach of its duty to ratepayers and puts Council in a very bad light.

I believe it will do Council no credit to proceed with the reclassification. It should remain as public land and remain as community land to preserve it as is.

I would appreciate if you could kindly advise that you have received this submission.

Yours sincerely,



Bianca Maserow

Laurence Bergman CID047

The Stables RE-EXHIBITION

██████████ Wentworth St

Point Piper NSW 2027

Woollahra Council

records@woollahra.nsw.gov.au

SC 3794 DUNARA RESERVE

My attention has been drawn to page 10 of the Wentworth Courier dated 22 November.

As I live literally around the corner, I pass Dunara Reserve daily, either on foot or by car. It has always struck me as being a beautiful addition to the Point Piper landscape with its leafy area and tall trees and a wonderful addition to Dunara Gardens.

It is a used amenity. I have often seen children playing there as well as walkers stopping there.

Point Piper has too little reserves and this piece of land should stay as such.

I am also confused about the statement about the fact there may be a trust affecting the land, without any explanation about it, such as what the trust is for, who is in charge of it, who benefits from it etc. Without such information, the public exhibition is not complete and I regard this as a serious deficiency in the information provided by council.

I very much object to the council proposal and the land should continue as a public reserve.

Yours sincerely,



CID048
RE-EXHIBITION

From: [David Solomons](#)
To: [Records](#)
Date: Friday, 24 November 2017 12:32:58 PM

23 November 2017

The General Manager ,
Woollahra Council

Re: SC 3794 SUBMISSION RE RECLASSIFICATION OF DUNARA
RESERVE

Dear Sir,

I wish to convey my objection to the proposed reclassification on a number of grounds:

Firstly, in principle, Council should not alienate public land because there are too few public reserves which once sold, are forever alienated from the public. In particular , the only reserve in Point Piper that I am aware of is Duff Reserve. Dunara reserve should remain as a public reserve. Such land has no doubt been classified as community land precisely to prevent it being sold and so classified so as to preserve it as a public amenity. Clearly the Council is obligated to explore the use and potential use of the land by the ratepayers prior to any reclassification.

Secondly, I am concerned at a possible trust being discharged by the reclassification. I am familiar with the concept of a trust and the heavy obligations imposed on the appointed trustee vis a vis the beneficiaries. Whilst the public notification contains no details in this regard, which calls into question the supposed public exhibition, one must conclude, given council's ownership of that land, that it is the Trustee and the ratepayers the beneficiaries. In parallel with my first point it seems therefore clear that this trust has been set up to preserve the land as community land. A Trustee has a duty, which cannot simply be discharged lightly to adhere strictly to the terms of the trust and to honour its intent.

Council should abide and adhere to the trust's intent and its terms. Ratepayers are entitled to expect that it do so. Therefore the land should remain as community land in council's ownership.

Given the Council's financial position any disposal of this land would make only an immaterial and transitory financial impact versus the permanent loss of an important amenity and thus this proposal is inimical to ratepayers' interests and should not progress any further.

Sincerely

David Solomons

Dr David Solomons
■ Clairvaux Road,
Vaucluse 2030
NSW Australia

CID049
RE-EXHIBITION

Dr Alex Selby
[REDACTED] Wentworth St
Point Piper 2027

24 November 2017

The General Manager
Woollahra Council records@woollahra.nsw.gov.au

Re: SC 3794 Submission reclassification of Dunara Reserve

I am very concerned at Council's proposed reclassification in order to sell it and am against it.

As you can see from my address, I live not far up Wentworth Street from it and am familiar with it. It is a very nice area, used by walkers who stop there and children who play there.

It would be wrong to deprive local residents of that space which has obviously been set aside for the public's use; and is being enjoyed by the public. The towering pine tree on the reserve can be seen from far away and is impressive. With trees disappearing, especially in Point Piper, it is absolutely essential for the reserve to remain owned by Council to preserve the land and trees from development.

Yours faithfully



CID050
RE-EXHIBITION

Mervyn and Thelma Levin
[REDACTED] Annandale Street
Darling Point NSW 2027
24th November 2017

The General Manager
Woollahra Council
PO Box 61 Double Bay NSW 1360
records@woollahra.nsw.gov.au
SC 3794 Submissions

I wish Council to note my objection to its proposal regarding Dunara Reserve. I am an avid walker and often walk around Point Piper. I know the land in question and admire its trees, canopy, foliage and garden. I, together with my walking group sometimes take respite during a long walk and take advantage of its cool shade, as do other walkers I have observed. It is a beautiful peaceful oasis in a densely populated and developed area. I am horrified that its status would be changed by Council. I am very much of the view that it should always remain as public community land.

I have on my walks often seen children playing there, so it provides a leafy space for childrens' recreation, which is very important.

Open recreation space is vital in our municipality, and should be preserved in Council's hands to ensure it stays that way. I should emphasise that I am not a "Greenie", but strongly believe in the importance of such open spaces in the municipality.

It also provides a wonderful ambience to Dunara Gardens, which apart from that has not many trees.

I am surprised that Council would even consider selling it. The loss of public amenity cannot be undone irrespective of the price obtained.


MERVYN LEVIN

24/11/2017

CID051
RE-EXHIBITION

From: [Renee Ferster Levy](#)
To: [Records](#)
Subject: SC3794 Submissions Dunara Gardens
Date: Monday, 27 November 2017 2:19:44 PM
Attachments: [Woollahra Council wildlife corridors.png](#)
[Powerful Owl flight path near Dunara Reserve.docx](#)
[Brush Turkey mound, Dunara reserve.jpg](#)
[Wildlife corridors \(from Woollahra Council's Biodiversity Conservation Strategy\).png](#)

To the General Manager, Woollahra Council.

I am writing in concern about the proposed sale of Dunara Reserve, Lot 11, DP 27451, and I wish to object in the most strenuous terms.

This is an abysmal and irresponsible plan, showing a complete lack of commitment by Woollahra Council to the importance of open space, of Biodiversity, of habitat connectivity, of natural water holding capacity and of carbon storage. Woollahra Council would be abrogating its responsibility if it sells off this valuable remnant habitat.

Council's own strategy, the Woollahra Biodiversity Conservation Strategy 2015-2025, which, by a glaring omission was not referred to in the papers, clearly states the importance of conserving and maintaining remnant habitats. (Section 11.1).

In its maps of wildlife corridor connectivity, corridors are marked right over this part of Point Piper showing the important linkage with the City of Sydney, as well as within Woollahra itself (Fig. 8-2 see attached and explanation 8-3).

Flora

The site has majestic, mature trees including the listed Cook Pine as well as huge Figs and others. These provide beauty, shade, soil and water retention properties, and are needed for their air quality and carbon storage functions as well as sculptural bark with many nooks and crannies important for small creatures to shelter in.

The Blueberry Ash is at its peak of flowering, with masses of beautiful fringed downward-facing flowers, which would attract tiny insects, a crucial part of the food chain, and later provide abundant berries, important to the diet of several birds and flying foxes.

Fauna

The Park has a thick layer of leaf litter, which would be rich in invertebrates and probably lizards and geckos. It seems that no proper study has been carried out to check which species are present, which is a grave oversight.

It may turn out to be vital habitat for remnant populations for example the Pale-lipped Shade skink, which has a limited and disjointed distribution recorded in the Woollahra Council area.

The site would be important for many species, including Flying Foxes, which would feed on the figs and other fruits; and Powerful Owls, Australia's largest owl, which is a threatened species, having "vulnerable" status in NSW.

Satellite tracking from 2016 has shown that they range far, for example a Botanical

Gardens Powerful Owl flew right over this area on its way to Vacluse and Nielsen Park, stopping in tall trees along the way, just like in this remnant site (see attached image, courtesy of BirdLife Australia's Powerful Owl Project).

Excitingly, a native Brush Turkey has been seen at the Dunara Reserve site this year. The first known record in a hundred years or more in the Woollahra Council area was in December last year, in Bellevue Hill (Charles Darwin had observed one in Rushcutter's Bay on his visit to Sydney in 1836). A Brush Turkey has not only been seen at the site, but built a mound right in the Dunara Gardens Reserve (see photo), showing its importance to this species which needs adequate leaf litter for the mound, and to provide its food of invertebrates, fallen berries and seeds.

I will now respond to specific statements in Council's submission:

Page 3. "its inaccessibility and lack of passive surveillance have resulted in the build-up of vegetation and debris over time"

A build-up of debris is a key natural process, and one of the features which makes the site so important - rich leaf litter is not a negative feature, rather it is nature's recycling, and providing habitat for invertebrates and reptiles, and as mentioned above, material for a Brush Turkey mound.

"The ongoing site maintenance to clear the debris and vegetation ..."

The residents say that Council rarely does anything at the site, and the residents clear rubbish themselves.

"... is a poor use of Council's resources, particularly as there is no tangible and obvious community benefit."

It is obvious that children use the area to play, and that this is a natural area with beauty and natural processes, all of which bring the community benefits. In addition there are important tangible benefits in the roots of vegetation holding the soil and, and absorbing and using rainwater, preventing erosion of the slope and flooding.

"The site is a public reserve, but it is not used as public open space"

Incorrect. Children play here, and opportunities for free play in a natural area are extremely limited. There is much greater value in this sort of experience than in an expensive metal and plastic playground in a bare grassy park.

Not all public open space needs to be walked on, in order to bring the community benefit.

"Visually, it appears as a heavily vegetated space."

Yes, and this is exactly part of its importance. Such vistas are rare in our area, and should be retained at all costs.

"The sale of the site would allow Council to use the funds to improve services and infrastructure in the LGA, including existing usable open space in the vicinity."

There is no commitment to using the funds to retain or enhance the very important values this reserve provides.

“to improve services and infrastructure” could mean anything, and it would be irresponsible to use any funds for any purpose other than those values which would be lost by Council’s selling this site off, potentially leading to its being cleared and built on.

“including existing usable open space”

Council does not only have a responsibility to look after places which are “usable” in the sense of people running around in them, or building a structure, it has a vital responsibility to protect remnant habitat sites for their intrinsic natural values, including being part of wildlife corridors as shown in Woollahra Council’s own map (see above).

“Usable” is also how people benefit from green vistas, important in positive mental health.

Page 7.

6.1

“The site is an underutilised piece of public land that does not benefit the wider community.”

Incorrect, as shown above.

6.2

4. “Is the planning proposal consistent with a council’s local strategy or other local strategic plan?”

NO. It is inconsistent with Woollahra Council's own strategy, the Woollahra Biodiversity Conservation Strategy 2015-2025, which, by a glaring omission was not referred to in the papers, and which clearly states the importance of **conserving and maintaining remnant habitats**. (Section 11.1).

In its maps of wildlife corridor connectivity, **a corridor is marked right over this part of Point Piper** showing the important linkage with the City of Sydney, as well as within Woollahra itself (Fig. 8-2 see attached).

This strategy states:

“Update ... Plans of Management for all parks and reserves to include biodiversity conservation provisions ... to align with the objectives and actions within this Biodiversity Conservation Strategy”. Selling this piece of land does not align with these objectives.

6.3

7. “The site does not contain threatened species, populations or ecological communities.”

On what basis is this statement made? There is no reference to any field study to check. On the contrary, the very fact that this is a healthy remnant patch of habitat makes it likely to have important populations which would be threatened if the site is sold and developed. As shown above, an important wildlife corridor passes directly over the site, and the endangered Powerful Owl has been shown by satellite tracking to pass very close and uses tall trees to stop in just like those in this site.

8. "Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?"

No. There are no likely negative environmental effects associated with the planning proposal."

Incorrect for the reasons stated above, including soil and water holding capabilities which would otherwise cost many times more than the site would bring, to replicate artificially.

Page 10. 3.

"Should the site be sold the revenue generated could be used for public open space upgrades throughout the LGA such as the Redleaf foreshore upgrade, Rose Bay Pedestrian Trail and Guilfoyle Park upgrade."

None of these potential uses for the funds would in any way remotely compensate for the loss of natural habitats, soil and water holding capabilities, wildlife corridors, aesthetics and intrinsic benefits, which would ensue from development of the site.

4. "The site is a liability for Council as it is not used for recreational or other public purposes or is it discernible as a public space, yet, it requires ongoing maintenance and rubbish removal. The site is not suitable for active or passive recreation, due to the slope, dimensions, size and extensive vegetation."

These statements are clearly wrong, as shown above, the site is used for active and passive recreation. Hence the very premise of this application is misleading and incorrect, and any approval given has been given on the basis of false information and should be rescinded.

Page 11.

Direction 3.2 Create a network of interlinked, multipurpose open and green spaces across Sydney

"The planning proposal will enable Council to take a strategic approach by broadening the options for the management of the site. Should the site be sold, improvements to other recreation areas can be carried out which will benefit a broader section of the community."

This is blatantly incorrect. One cannot respond to a directive to create an interlinked network of green spaces by selling off (and potentially decimating most of) part of that very network - a remnant and rare site with potential habitat and other values as stated above.

Central subregion priorities

Protect the natural environment and promote its sustainability and resilience

"There are no specific priorities for the Central sub-region identified for this site."

This is no response to the priority it addresses. The proposed sale of the site would NOT protect the natural environment, would NOT promote its sustainability NOR its resilience. ON the contrary, it would threaten all of these important priorities.

Page 18

Sustainability Priority 4: Avoid and minimise impacts on biodiversity. Efforts to protect biodiversity values should be based on avoiding and minimising adverse impacts to biodiversity, as far as practicable. Only when impacts cannot be avoided or minimised, should consideration be given to offsetting those impacts.

“The site does not contain any critical habitat areas, threatened species, populations or ecological communities or their habitats. Accordingly, the proposal will not have any impact in this regard.”

This has not been correctly addressed. Priority 4 talks about protecting biodiversity values, not only threatened species. This proposal would achieve the opposite to the stated priority **Avoid and minimise impacts on biodiversity.**

An additional question is:

Page 1 “identified the extent of the encroachment from No. 9 Dunara Gardens and recommended the reclassification of the site to allow its sale”

What penalties, if any, were given to the owners of number 9 Dunara gardens for constructing a carpark and garage on public land? Will they be prevented from purchasing the remainder, and hence potentially benefitting from their own non-permitted activity?

In summary, please do not proceed with this sale.

The land has many important values which would be lost in case of development, and Council is obliged by its own policies, as well as regional ones, to protect these values.

Thank you,

Yours sincerely,

Renée Ferster Levy

■ Drimalbyn Rd, Bellevue Hill

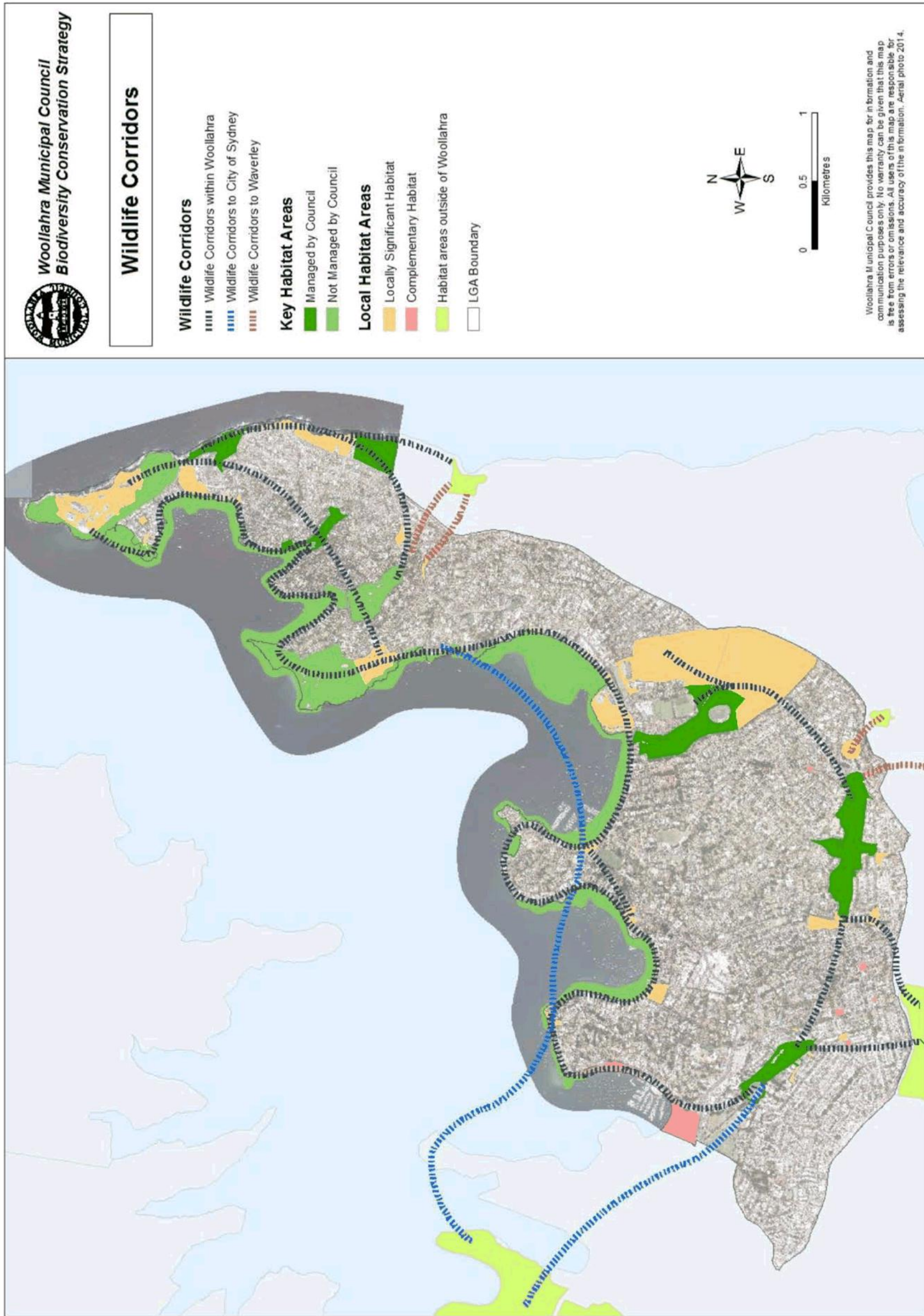


Figure 8-2. Habitat Areas and Wildlife Corridors



Satellite track of Powerful Owl from Botanical Gardens 31 May 2016
from BirdLife Australia's Powerful Owl Project

This is one of many examples of the Botanical Gardens Owl passing over the relevant area, and other individuals may use this site as well. Note that readings were made only hourly, sometimes half-hourly, hence there are likely to have been more stopping-off points in the area.



CID052
RE-EXHIBITION

Chris Kalowski
[REDACTED] Greycliffe Ave
Vaucluse NSW 2030
10 November 2017

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

Dear Sir,
SC 3794 Submission (Dunara Reserve)

I am very concerned to read of the proposed changes to Dunara Reserve, currently not available for sale, but so available consequent upon the proposed re-classification.

The site is public land owned by Council.

Council should not be selling public land as it has been set aside for the benefit of the public and there are too few public reserves.

Surely whatever price council could obtain cannot justify depriving the municipality of such a reserve. Council is under a duty to keep and maintain it.

I also note that there may be a trust affecting the site. I can only assume that Council as owner, holds it in trust for the public, which is a responsibility that it should not and I submit it cannot simply discharge.

The proposed changes should not be implemented

Chris Kalowski



CID053

RE-EXHIBITION

From: [Tony Ryba](#)
To: [Records](#)
Subject: SC 3794 -- Proposed Dunara Reserve Reclassification
Date: Sunday, 3 December 2017 2:36:38 PM

To whom it may concern,

Re: reference SC 3794 -- Proposed Dunara Reserve Reclassification.

I have become aware of the intended changes to Dunara Reserve, Point Piper.

I would like to **strongly oppose** the proposed changes to the land management control of Dunara Reserve, Point Piper.

The Dunara Gardens subdivision was divided into 11 residential lots in 1954/55 with a plot of land on the southern boundary dedicated, at no cost, to council as a green strip for use by all future residents and the general public.

My parents Peter and Edith Ryba bought Lot 3 and built our family home in 1958. My parents are still living in the family home they built almost 59 years later. I was born and brought up in Dunara Gardens and was able to make good use of Dunara Reserve playing in a safe environment with siblings and friends over the years.

The Dunara Gardens community has a relatively narrow driveway with almost no parking for visitors for any of the homes within. If Dunara reserve was developed, more traffic would result limiting parking further and potentially resulting in a more dangerous traffic environment and pedestrian access.

With a significant lack of dedicated green space in built up areas and crowded residential areas I therefore strongly object to any land being converted to housing. Dunara Reserve should still serve as a dedicated green strip for all future residents of Dunara Gardens and the general public.

Yours Sincerely

Tony Ryba
■ Village High Road,
Vaucluse, 2010.

CID054
RE-EXHIBITION

From: [Vicky Ryba](#)
To: [Records](#)
Subject: Reference to SC3794
Date: Monday, 4 December 2017 9:22:55 PM

I would like to strongly oppose the proposed changes to the land management control of Dunara Reserve, Point Piper.

The Dunara Gardens subdivision was divided into 11 residential lots in 1954/55 with a plot of land on the southern boundary dedicated, at no cost, to council as a green strip for use by all future residents and the general public.

My parents Peter and Edith Ryba bought Lot 3 and built our family home in 1958. My parents are still living in the family home they built almost 59 years later. I was therefore brought up in Dunara Gardens and was able to make good use of Dunara Reserve playing with siblings and friends over the years.

With a significant lack of dedicated green space in built up, crowded residential areas I therefore strongly object to any land being converted to housing. Dunara Reserve should still serve as a dedicated green strip for all future residents of Dunara Gardens and the general public.

Yours Sincerely

--
Vicky Ryba

A black rectangular redaction box covering the signature area.

CID055

RE-EXHIBITION

9th December 2017

Dear Council,

Reference – SC3794

I would like to strongly oppose the proposed changes to the land management control of Dunara Reserve, Point Piper.

The Dunara Gardens subdivision was divided into 11 residential lots in 1954/55 with a plot of land on the southern boundary dedicated, at no cost, to council as a green strip for use by all future residents and the general public.

My parents Peter and Edith Ryba bought Lot 3 and built our family home in 1958. My parents are still living in the family home they built almost 59 years later. I was therefore brought up in Dunara Gardens and was able to make good use of Dunara Reserve playing with siblings and friends over the years.

With a significant lack of dedicated green space in built up, crowded residential areas I therefore strongly object to any land being converted to housing. Dunara Reserve should still serve as a dedicated green strip for all future residents of Dunara Gardens and the general public.

Yours Sincerely


Jackie Ryba Hayes

████████████████████
████████████████

CID056
RE-EXHIBITION

15th December 2017

General Manager,

Re: Vacant land in Dunara Gardens – SC3794

I oppose the proposed changes to the land management control of Dunara Reserve, Point Piper. The Dunara Gardens subdivision was divided into 11 residential lots in 1954/55 with a plot of land on the southern boundary dedicated, at no cost, to council as a green strip for use by all future residents and the public.

My parents Peter and Edith Ryba bought Lot 3 in 1958 built their home which they continue to live in. I was therefore brought up in Dunara Gardens. The vacant parcel of land was used as a playground then, and now its enjoyed as the landscaped gateway into the estate.

With a significant lack of green space in Point Piper I object to the land being used for housing or fenced off and used for private use. Dunara Reserve should still serve as a dedicated green strip for all the residents of Dunara Gardens.

Yours sincerely



John Ryba

[Redacted]
[Redacted]

Attachment 3: List of Speakers and Summary of Submissions

SJB Planning

SJB Planning (NSW) Pty Ltd ACN 112 509 501

Public hearing into the reclassification of land at Dunara Reserve, Point Piper
Public hearing minutes of registered speakers

ID #	Time	Minutes
-	2.00pm – 2.05pm	Chair Intro
1	2.05pm – 2:20pm Name: Hylda Rolfe	<p>I live in Watsons Bay, not near the site, but at 41 Cove Street, Watsons Bay.</p> <p>I did make a submission to the exhibition. I will provide a copy which is brief.</p> <p>I am here because it is 61 years since the site was handed to the Council.</p> <p>My original submission asked why the reserve was dedicated in the first place. What is the answer? And why has the reserve been carried forward since that time? Are the reasons for the reserve still valid?</p> <p>Why was the reserve originally dedicated as community land? Are those reasons still valid? The archive should provide the information.</p> <p>I found no response in the documentation.</p> <p>Those matters need to be explored and explained. [2.11 minutes]</p>
2	2.20pm – 2.35pm Name: Robert Krochmalik	<p>I live at 38 Kambala Road, Bellevue Hill.</p> <p>I am going to talk to my written submissions.</p> <p>What concerns me is that this proposal is to sell a public reserve.</p> <p>I want Council to note my objections to this decision.</p> <p>A public reserve under the stewardship of the Council should remain open to all of the residents of the LGA, in accordance with the original rationale of this reserves existence.</p> <p>I have particular concern noting Councils statement that there may be a trust affecting the site, and there is a proposal to discharge this trust.</p> <p>I was a chartered accountant, and am familiar with the obligations of a trust and its trustee. It poses heavy responsibilities to act in accordance with the terms of the trust. The land that is the subject of the trust must have been created to reserve and maintain as a public reserve.</p> <p>Given this concern, I could not find any reasons which would justify the Council discharging this trust.</p> <p>Should council do so, it will receive heavy community action, and possibly legal action. I am surprised that Council would wish to discharge any such trust.</p> <p>Also, the proposed sale price is inflated given its limitations, and only 2 potential purchasers.</p> <p>Given Councils assets and liability, I am most surprised that any financial gain would be put forward as the rationale for the sale of the reserve.</p> <p>To suggest that the biannual maintenance are a drain on resources is ridiculous. Not only can these not be onerous, but maintenance of public reserves forms part of our rates. It can't be the basis to justify sale.</p> <p>The reclassification is misconceived, flawed, and does not stand any reasonable scrutiny.</p> <p>Woollahra Council is not a private organisation, or company free to act on its interests, subject to public scrutiny. It must act in the public interest.</p> <p>To terminate the reserve without justification is a breach of its legal and moral responsibility. [6.16 minutes]</p>

ID #	Time	Minutes
3	2.35pm – 2.50pm Name: Victoria Papadakis	<p>Address: 2 Dunara Gardens, Point Piper.</p> <p>I am a concerned resident, not just of Dunara Gardens, but of Point Piper and of the Woollahra Municipal Council area. The proposal will result in a loss of 402m² of open space in a highly densely populated area.</p> <p>The creation of the reserve was a forward thinking idea of the Council to preserve green open space for the residents and in determining whether or not the proposal is in the public interest, both the wider public interest and the local public interest must be taken into consideration.</p> <p>It would be a complete distrust to reclassify and sell.</p> <p>Council showed foresight at the time to classify land as public space. Council were a trustworthy owner, for future generations to enjoy.</p> <p>Councils must retain the land as public gardens, with no intentions that this public land should be sold off.</p> <p>Now 60 years later, the public want more open space in today's concrete jungle.</p> <p>Dunara Reserve is part of the relief to provide calm in today's stressful life.</p> <p>Approvals for DA in the areas often include stipulation to provide open space and greenery. Yet reclassifying the land, Council is doing the opposite of what it is requesting everyone else to do.</p> <p>One of the reasons we bought our property, is because of the reserve in a very dense area.</p> <p>The reserve is the garden, referred to in Dunara Gardens, which is why it is called Dunara Gardens.</p> <p>If this is to be sold, the gardens and the heart and soul of Dunara Gardens will be lost.</p> <p>The purchaser would be allowed to build a 1.8m high fence. Unightly and undesirable both inside and outside the reserve.</p> <p>The reserve is enjoyed by people outside the area, with children regularly coming to play from outside, including children that don't currently have a back garden.</p> <p>There is only 1 other reserve in the area, which is far away.</p> <p>Historical groups come to look at the reserve and Dunara House. The groups can enjoy the amenity of the space, rather than looking at a 1.8m brick fence.</p> <p>There are residents of Point Piper who enjoy the reserve for fitness/dog walking.</p> <p>There are a number of mature trees, including 2 heritage listed trees. This area should be cherished and protected, not reclassified to be sold off.</p> <p>The financial burden would not be 1 full days work a year. The cost of attending is not a burden to Council's finances.</p> <p>Instead of selling the reserve, Council should be helping to preserve the reserve, as per the original dedication.</p> <p>I note the motion from Councils meeting for the reserve to be heritage listed. This is a step towards what was envisaged in 1956.</p> <p>But it must remain as public land. Not be heritage listed and then sold off. Keep the reserve as it is, if anything improve the reserve. [7.44 minutes]</p> <p>Stuart then spoke regarding the Notice of Motion from Monday night. He stated that it will follow its own course.</p> <p>But the reclassification will continue on its own, the Notice of Motion won't influence today's discussion.</p>

ID #	Time	Minutes
4	<p>2.50pm – 3:05pm Name: Robert Lowy</p>	<p>Address: 16a/23 Thornton Street, Darling Point. Prior address: 2/4 Marathon Road, Darling Point.</p> <p>Here regarding Councils approach to a parcel of land in Darling Point. Some of the circumstances are similar.</p> <p>A block of land which ultimately became a case in the Supreme Court. Largely, due to the inability of Woollahra Council and a claim of adverse possession.</p> <p>A block of land which for 200 years was property of Woollahra Council, and after certain representations were made to staff, Woollahra Council decided that Council had no fee simple title, and made no claim to the land.</p> <p>As a result, it went to court, hundreds of thousands of dollars were spent. The judge was scathing in his response to Woollahra Council.</p> <p>The property officer maintained his view. Unaware that the strip was dedicated as public land. His letter dated July 2012 applied to the wrong land.</p> <p>This reserve is similar to that block of land which had a land value of \$800,000 to \$1,000,000.</p> <p>The notion that Woollahra Council is now concerned with its finances, and maintenance costs is ridiculous</p> <p>No proper explanation has been provided. You must protect the trust, and cant' pretend that it doesn't exist. Council shouldn't be abandoning a trust for monetary benefit.</p> <p>[4.26 minutes]</p>
5	<p>3.05pm – 3.20pm Name: Peter Ryba</p>	<p>Address: 3 Dunara Gardens, Point Piper.</p> <p>I object to the proposal.</p> <p>First objection is that a long time ago, Woollahra Council adopted a policy to have 2.86ha per 1000 residents. My understanding is that we now have less than a 3rd of that.</p> <p>Now Woollahra Council has one of the highest population densities/against green space.</p> <p>There was a problem with Duff Reserve and other small reserves. I appreciate these are costly to maintain.</p> <p>Second objection – Council obtained the land from the developer by dedication, free of charge, in exchange for granting approval. Which was poorly planned and executed. It is overcrowded and there are problems.</p> <p>Third objection – Council acquired the land to protect the trees and the land, and the amenity to Dunara Estate, and the heritage listed Dunara House and to provide some minimum play area for children, and resting area for older residents. Woollahra Council claim there are no children on the estate.</p> <p>There were more than 20 small children on the estate at 1 time. Children have now grown up, but may come back.</p> <p>There are 2 disabled adult children on the estate, who welcome the green area for them to sit in as they can't get far.</p> <p>No one can remember what the estate looked like before it was subdivided. I was introduced to it in the 50s when it was called the <i>Wise Centre?</i> (<i>Young Mens' Hebrew Association</i>) and run by a not-for-profit group. It was rented out for weddings etc.</p>

ID #	Time	Minutes
		<p>I was impressed by the architecture of the house, and the green aspect of the gardens. It was a wonderful place and a good spot.</p> <p>When I found out it was subdivided I bought my lot 3, which didn't sell at the auction. I can only assume the only reason it didn't sell is the concrete Dunara Gardens 4m retaining wall which is the boundary of the land.</p> <p>My land has no access to Wunulla Road, because there was a reservation for road widening on the land. I am now in negotiation with Council to get a frontage to Wunulla Road. My property was called 12 Wunulla Road originally.</p> <p>Dunara roadway is on land which has been attached to 2 properties, the advantage of this is that Council completely denies any responsibility for the road, and never maintained it.</p> <p>For 3 years we have to drag dust bins up to Wentworth Street. Why did they divide the road like that?</p> <p>I came to the conclusion that it enhanced those 2 properties for FSR, so the houses could be made bigger.</p> <p>Whilst there were covenants on the property, including height limits to avoid views, Council has permitted masonry walls along the edge of the concrete wall with no greenery in front.</p> <p>There is now a covenant that there is no parking along Dunara Gardens anywhere.</p> <p>Subdivision was done for the developer, with no regard to the consequence. Now, for Council to reclassify and rezone to sell the property for additional residences is immoral.</p> <p>[11.46 minutes]</p>
6	3.50pm – 4:05pm Name: Alan Murray	<p>11 Dunara Gardens, Point Piper.</p> <p>My family have been here for 3 or 4 years, with 2 daughters who play in the gardens with their bikes.</p> <p>They are often in and around the trees. The trees are very important as we have no trees on our land. The Mayor went to the land yesterday to see the trees.</p> <p>It is as much about the trees as it is the land. They can be seen from afar.</p> <p>We can make that land accessible to the public.</p> <p>It would be useful to have plaques, as the trees are heritage listed and very important – perhaps an information board?</p> <p>Reclassification is okay in principle, as they will still be heritage listed, however, there will be less ability to protect them when it is private land.</p> <p>There are too many examples of heritage listed trees being damaged on private land.</p> <p>We don't support losing the protection of the trees, which will put them at risk. Once it is private land, and we lose those trees we will never get them back.</p> <p><i>Stuart asked</i> – you mention your children using the land. The reserve has a narrow access, do members of the public use the private road way to access the reserve?</p> <p><i>Alan Murray</i> – yes they do, but that's not a problem. No other way as it's so narrow. Which is why a plaque explaining what the trees are would help.</p> <p>[3.39 minutes]</p>

ID #	Time	Minutes
7	4:05pm – 4:20pm Name: Freda Cassen	<p>I live at 3a Wentworth Street, Point Piper - which goes down to Dunara Gardens. I have lived there for 30 years.</p> <p>It is wonderful living so close to the city, as I can hear birds singing.</p> <p>I love the trees in Dunara Gardens, I can see them from my kitchen.</p> <p>It is much nicer to look at trees. They are so tall – they are probably well over 100 years old.</p> <p>The person who wants to buy this land, has already poisoned 1 tree.</p> <p>I worry about the trees if someone should buy the land – as there isn't much that can be done with the land. It is beautiful, green and in a place like Point Piper with hardly any trees, as the pieces of land are so small. You can have a few shrubs, but trees are better.</p> <p>Woollahra Council has said Dunara is a drain on the resources. I am sure that the houses in the area bring in enough money for two times a year to fix up the land.</p> <p>If someone bought the land then they can cut down the trees, and we don't want them to do that. My friends have asked me to appeal on behalf of the piece of land, because they enjoy it so much.</p> <p>Public land should not be sold off, otherwise the public wont be able to use it.</p> <p>You can see all those trees from Rose Bay and from the water on the ferry.</p> <p>Once something has been made for people to use, you shouldn't take it away from them. I remember seeing it in 1959 when it was bulldozed. Years later, we ended up living there.</p> <p>We all get on well – mostly – and hope that nothing will be done to destroy this land. It is wild, and not something you see much around Sydney. It is small but beautiful.</p> <p>We hope that the Council does something really nice with it and save Dunara Gardens.</p> <p>[7.05 minutes]</p>
8	4.20pm – 4:35pm Name: Penny Broekhuizen	<p>I live at 1 Wentworth street with my husband and 3 children.</p> <p>My north boundary is along the wall of the reserve.</p> <p>I have made detailed submissions on a number of grounds. Including fundamental flaws in the justification to the reclassification e.g. it only benefits the immediately adjoining properties.</p> <p>My concern is the consequence of the reserve, and the impacts on the trees.</p> <p>I want to restate 3 important points:</p> <ul style="list-style-type: none"> • the original reasons for the reserve, • the trees, and • what is reclassification of the reserve. <p>The reserve was created in 1957 acquired by Woollahra Council when the estate was subdivided. Since then Point Piper has become even more developed. We need a buffer against that development.</p> <p>Woollahra Council doesn't address why we don't need that balance against development. It's because there is no reasonable reason.</p> <p>I have a serious concern for what this means for the trees. We have a serious problem with tree preservation in this suburb, especially in this area.</p> <p>In recent years we have lost a 20m high Sydney Blue Gum and Camphor Laurel within the vicinity. 3 significant trees lost in Wunulla Road.</p> <p>On my property we have a significant Moreton Bay Fig tree which has been poisoned twice in the last 10 years, and severely lopped within the last 6 months by trespassers.</p>

ID #	Time	Minutes
		<p>The pocket is therefore particularly important. I have attached an arborist report which summarises the trees on the reserve. An additional tree that probably justifies listing.</p> <p>This pocket of trees is unique and make a considerable contribution to the site and the neighbourhood.</p> <p>I believe we have something which deserves protection, not abandonment via a private sale.</p> <p>Taken advice from Robert Gough on the cost of the land – the only way that buying the land for those kind of financial gains – is if the land is redeveloped.</p> <p>Accordingly, Council is envisaging partial redevelopment. This is not possible without the removal of trees. This alarms me.</p> <p>The TPO is regularly flouted - so it wouldn't protect the trees. Redevelopment will ignore the trees, and if Council doesn't give permission for the removal of trees, the trees will be removed anyway. People are willing to take the risk.</p> <p>Whilst keeping it in public hands doesn't guarantee the trees, it stops them taking their own action as they would if they wanted to develop the land.</p> <p>The third point is that much of the justification to reclassify the land, is that the reserve is not public open space or accessible. To suggest this somehow negates a public benefit is misunderstood.</p> <p>Land doesn't have to be "open" or publicly accessible to be classified as community land.</p> <p>Classification of public land must reflect its use and or special features. This land has historic trees, green space in urbanity, original remnants and its importance as shared community gardens. This public benefit justifies its retention as community land.</p> <p>If open and accessible is the only justification, our local environment will lose its diversity. Playing fields are important, but so are pockets of trees.</p> <p>Council has missed this in its planning proposal.</p> <p>[10.11 minutes]</p> <p>Stuart clarified that Council hasn't resolved to sell the land. But it is an option. Council hasn't made that decision.</p>
9	4.35pm – 4:50pm Name: George Farkas	<p>Address is 10 Dunara Gardens, Point Piper.</p> <p>The Councillors who in 2015 voted on the planning proposal, did so with incorrect information.</p> <p>I will concentrate on 5 specific areas.</p> <p>History of the site and the subdivision:</p> <p>It wasn't foresight of Council, it was a requirement under the <i>Local Government Act 1919</i>. Under the <i>Local Government Act</i>, specific sections required the provision of public space. Council had to embrace public reserves and spaces – it had to take into account the amount of public open space and recreational space.</p> <p>Council not only insisted on a larger public space, but insisted it was entrusted to Council for perpetuity. Which is held in the high court, in similar cases.</p> <p>The residents and the rate payers are the beneficiaries.</p> <p>Whilst Council can legally discharge the trust, it shouldn't morally do so.</p> <p>It works similarly to the S94 contributions.</p> <p>Heritage:</p>

ID #	Time	Minutes
		<p>The heritage Council has recommended that Council investigates the state listing of the site.</p> <p>Councils own heritage officer in 2005 reviewed the site, and recommended listings of the trees on the site.</p> <p>Dunara Gardens has my state listed house, and an additionally listed house. Justification is appalling public policy.</p> <p>A neighbouring carport encroaches onto the site, and Council took no action. Council failed to enforce the action. Council decided to "wash its hands" with the express intention of selling the land. Result is to reward the offender with the purchase of the land.</p> <p>The other justification was the dumping on the land.</p> <p>Instead of taking legal action, Woollahra Council is looking to sell the land to the offender. This is an appalling precedent.</p> <p>Lastly, public usage:</p> <p>The evidence is clear that the land is well used by a number of different groups and various other people.</p> <p>The whole process is invalid as the minister was provided with a report which was legally invalid. There are a number of cases where inaccuracies can result in a Ministers decision being challenged.</p> <p>Submitter then listed the "inaccuracies" in the planning proposal.</p> <p>Had the minister been provided with accurate information, there is no way the gateway would have been issued in the first place. Everything that followed is therefore legally invalid.</p> <p>It is in breach of Section 55 of the <i>Environmental Planning and Assessment Act</i> and section 56.</p> <p>In particular the identification of the trust, and that the planning proposal would discharge the trust. This is an omission.</p> <p>The Council resolution which proposes the planning proposal is invalid.</p> <p>The resolution is to reclassify Dunara Gardens – which is private property. Not Dunara Reserve.</p> <p>These matters can't be rectified. The whole process would need to be started again, a waste of rate payer's funds.</p> <p>This process is prohibited by section 44 of the <i>Local Government Act</i>.</p> <p>If there is no plan of management for community land, you cannot change its usage. There is no plan of management – but a local plan of management for the area. Dunara Reserve is not listed. Dunara Gardens is listed in the document.</p> <p>[9.40 minutes]</p>
10	4.50pm – 5.05pm Name: Renee Ferster Levy	<p>Address - 72A Drumalbyn Road, Bellevue Hill</p> <p>I am a Zoologist, Ecologist and long term resident. I bring a different perspective based on my background and speciality.</p> <p>With continued habitat loss, it isn't all lost with some healthy habitats still here.</p> <p>Woollahra Council have created the visionary Biodiversity Conservation strategy.</p> <p>Surprise of no mention of the strategy in the planning proposal, omission which invalidates the whole process.</p> <p>Value of the space and flora/fauna of natural areas, including Dunara Reserve which has significant value e.g. regulating flood, noise abatements, and educational values.</p>

ID #	Time	Minutes
		<p>In the strategy there are maps of wildlife corridors, which include corridors over Point Piper and the reserve.</p> <p>There is an endangered species, the powerful owl, it flies over this area. It is a threatened species and has a limited distribution across the east coast of Australia. It has limited roosting opportunities.</p> <p>Possums and birds also use this reserve.</p> <p>Satellite tracking of owls shows the actual track of one powerful owl on the 21st May 2016, and whose flight path was within 100m of Dunara Reserve. There is a very good chance though, that it potentially landed at the reserve.</p> <p>Retaining random patches of vegetation in urban areas is vital to retain, as illustrated by the biodiversity conservation strategy.</p> <p>There is an isolated population of fairy wrens at the tip of Point Piper. No connectivity of patches further on. Getting rid of patches which are providing opportunities, is not the way to do it.</p> <p>Submitted then identified a series of "issues"/errors with the contents of the planning proposal.</p> <p>Woollahra Council fails to address biodiversity values.</p> <p>The land has many important values which will be lost, which Council under its own strategy must protect.</p> <p>[10.45 minutes]</p>
11	<p>5.05pm – 5.20pm Name: Stephen Davies (NSW Heritage Council)</p>	<p>I am hear as Chair of the NSW Heritage Council – not in a consultant role. Not here on any financial basis other than individual interest.</p> <p>Also as a former Councillor of Woollahra Council, and previous employee.</p> <p>Dunara House had a permanent conservation order from 1987 – it is important aesthetically and socially.</p> <p>Two key issues which come out of the submission.</p> <p>The vegetation was associated with the original estate.</p> <p>Remnant vegetation marked major estates, and their location and importance. The vegetation isn't just a reserve nearby, but an important remnant of the estate with a strong social and historical connection to Dunara House.</p> <p>Heritage is often associated with curtilage. It can be the original curtilage, or the curtilage of the house estate – but there is also a broader curtilage. Where you see significance – not just on the site – but in the context of that place. This reinforces the context of Dunara House.</p> <p>The landscaping associated with the house is still part of the curtilage of the property. Which all reinforces the appreciation of the house, notwithstanding the subdivision which was in many ways unsympathetic.</p> <p>I don't think that selling this land, and putting something on it is realistic, it will diminish this site.</p> <p>I don't think that associating it with another lot and hoping it will be retained is a sensible option when Woollahra Council currently owns the site and it has such historic associations.</p> <p>This reserve is a piece of open space which relates specifically to the site. Both the trees, and the vegetation, and the way that you view the site.</p> <p>[8.43 minutes] (including additional questions from Stuart)</p> <p><i>Stuart</i> – the Moreton Bay Fig and the Cook Pine collectively on the site are on 1 Wentworth. There are significant trees in heritage terms that already exist on private property. Is your concern that the heritage significance – would be or may be diminished if the land was not owned publicly?</p>

ID #	Time	Minutes
		<p><i>Stephen</i> – The pressures would be very significant on it, if it was in private ownership. The opportunities to develop it would be very low considering the trees on it. So the best way to keep it is as public land for the community, and Point Piper, rather than a private owner looking to do something with the land.</p> <p>It is quite rare. It is an opportunity – the reserve shouldn't be reduced any further.</p>
-	5:20pm – 5:30pm	<i>Chair close</i>

Attachment 4: Written Submissions

SJB Planning

SJB Planning (NSW) Pty Ltd ACN 112 509 501

The General Manager
Woollahra Municipal Council

records@woollahra.nsw.gov.au

Dear Sir,

SC3794 Submissions: Proposed changes to land management controls of Dunara Reserve, Point Piper

With the formal mechanism for disposal of the Dunara Gardens reserve land parcel now in train, a note of caution seems well warranted. I mention two issues that (belatedly) occur to me:

- I attach a high degree of relevance to the ***purpose*** of the original reservation for *public garden and recreation* space, and the vision that it presumably entailed. It is hard to imagine that it was reserved carelessly, without recognition of its landform and accessibility. Sixty-odd years later, it may still be a valid and feasible vision. I'd like to see it explored and re-visited.
- Similarly, the (later) classification of the Reserve as ***community land*** was, I imagine, not done carelessly either. That classification has stood for some time now. I wonder whether – and, if so how and why – its rationale is now seen to be deficient. That, too, could use some explanation.

The background thinking on those two matters seems especially important given the ultimate aim of the Council to sell the land. I note that I never was impressed by the notion that its continued upkeep would involve expenditure; that is not unusual for any or all public land, whether held under community classification or otherwise. It's one – entirely valid - reason why we pay our rates!

So, might we have some information and analysis to address the two matters in the next round of documentation, please?

Yours sincerely,

Hylde Rolfe

■ Cove Street Watsons Bay NSW 2030

13 August 2017

From: [Richard Manning](#)
To: [Records](#)
Cc: [Richard Manning](#)
Subject: Dunara Reserve, Point Piper. Change of Use. Adjoining Owner EOI to purchase and keep in close communication
Date: Monday, 14 August 2017 5:17:04 PM
Attachments: [Change of Council Land adjoining my property. 2bWentworth St Point Piper 14.08.17 Council Notice.pdf](#)
Importance: High

**Re: Dunara Reserve, Point Piper. Change of Use.
Adjoining Owner EOI to purchase and keep in close communication**

I refer to the attached correspondence.

1. I have no objection to the change of use.
2. I am interested to be kept in close communication with this process and the potential direction of this property. I would like council and any other relevant authority to please communicate with me on this.
3. I express my interest to purchase this property should it be re- classified and zoned for new development.

Thank you

Regards

Richard Manning

[Redacted]
[Redacted]

Post: [Redacted] Balmain 2041

From: [Virginia Rundle](#)
To: [Records](#)
Subject: SC3794 Submissions
Date: Tuesday, 22 August 2017 9:54:24 AM

The General Manager
Mr Gary James

Dear Gary,

I note that there is a proposal to rezone the area known as Dunara Reserve. I live in Point Piper and regard the entire area as over developed and crowded with very few trees left in public spaces apart from Rose Bay Park, Duff Reserve and the grassy verges that line some parts of the roads.

I object whole heartedly to this proposal, which will mean it will be sold off for more housing and concrete.

If only more areas in Point Piper had a treed area to give some respite to the concrete and brick area it has become.

I am interested to know if the residents of Point Piper are being written to, as this would be probably the only democratic way that they could be informed.

Is there a sign going up at Dunara Reserve?

I would appreciate an answer to these questions. Thanks.

It is also concerning that Point Piper has no residents association that can be helpful in times like these. I will be calling on Darling Point Society and the Double Bay Residents Association to represent the residents of Point Piper.

Yours sincerely,
Virginia Rundle

From: [Virginia Rundle](#)
To: [Records](#)
Subject: Fwd: SC3794 Submissions
Date: Friday, 17 November 2017 10:49:43 AM

Dear Gary,

I see that there is a "Re-exhibition of Dunara Gardens" on page 10 of this week's Wentworth Courier. I was filled in about the "error" and whilst amusing, it is very annoying to have to write again. I wondered if all the other residents who wrote before can have their submissions included, like my own, below, and used as "unchanged" ? My opposition to this proposal to sell off precious Council Land is unchanged, no matter if it is regarded as a small and unkept parcel of land that could be turned into \$\$ for WMC, to benefit one resident.

I am extremely worried about mature trees on this Reserve, and worry about the potential for illegal lopping or poisoning - not an unusual worry in Point Piper at all, I should add.

Please see my opposition letter below. Can you please submit this as my objection to the "new" proposal, now that the roadway has been excluded from sale.

Kind regards
Virginia Rundle

Begin forwarded message:

From: Virginia Rundle [REDACTED]
Subject: SC3794 Submissions
Date: 22 August 2017 at 9:54:14 am AEST
To: records@woollahra.nsw.gov.au

The General Manager
Mr Gary James

Dear Gary,

I note that there is a proposal to rezone the area known as Dunara Reserve. I live in Point Piper and regard the entire area as over developed and crowded with very few trees left in public spaces apart from Rose Bay Park, Duff Reserve and the grassy verges that line some parts of the roads.

I object whole heartedly to this proposal, which will mean it will be sold off for more housing and concrete.

If only more areas in Point Piper had a treed area to give some respite to the concrete and brick area it has become.

I am interested to know if the residents of Point Piper are being written to, as this would be probably the only democratic way that they could be informed.

Is there a sign going up at Dunara Reserve?

I would appreciate an answer to these questions. Thanks.

It is also concerning that Point Piper has no residents association that can be helpful in times like these. I will be calling on Darling Point Society and the Double Bay Residents Association to represent the residents of Point Piper.

Yours sincerely,
Virginia Rundle

From: [lawrence mike](#)
To: [Records](#)
Subject: SC3794 Submission - Reclassification of Dunara Reserve Point Piper
Date: Friday, 1 September 2017 3:00:15 PM

Dear Sir/Madam:

My wife and I write to strongly oppose the reclassification and sale of Dunara Reserve. Small parcels of land like this may look unused but that is a reflection of Council's lack of attention to defining the best use of the land and its development for the defined purpose.

With the escalating price of land and strained Council budgets, purchasing land for a new reserve will be next to impossible. Once sold off the Reserve is lost forever. Thus we maintain that no Reserve should ever be sold off but treasured as a wonderful legacy from our past community minded men and women.

With increasing numbers of people living in apartments, the need for reserves for children play areas is ever more vital.

Michael and Sarah Lawrence
■ Wiston Gardens
Double Bay 2028

Phone ■■■■■

From: [Patty](#)
To: [Records](#)
Subject: Reference SC3794
Date: Monday, 4 September 2017 3:20:15 PM

To whom it may concern

The Dunara so called Gardens area but there is no longer a garden area it is just a concrete jungle of houses has no other Green area apart from the little patch of land you are now wanting to sell.

I am appalled at the idea that council wants to do this .

This will mean there will be absolutely no greenery in this area .

This means that those magnificent trees will be cut down .

At present I utilise this area I enjoy walking down and being amongst the greenery.

I see some children play in there as well.

I see those magnificent trees from New South Head Rd driving up to Vaucluse from down in Double Bay beautiful green foliage amongst the sky they are visible from many points .

But yet council would rather see concrete structures ??

Fencing and concrete structures all the way down the driveway then where it widens another huge concrete building all those trees cut down to make way for more concrete.

Please council this would be detrimental for the area.

Please rethink this.

Warm Regards

Patty Bloom

Sent from my iPad

From: [Ili Pelletier](#)
To: [Records](#)
Subject: Dunara reserve
Date: Monday, 4 September 2017 6:10:46 PM

Re: SC3794 Dundara Reserve

Dear council,

I have only recently purchased my home in Wolseley Road Point Piper. The Dunara reserve located close to my home is significantly one of the only reserves within an easy walk of my home that does not form the watery fringe around our peninsula. It is in fact the only reserve that would service the needs of an increasingly elderly community that cannot walk the down hill and consequently uphill walk to Rose Bay or Double Bay to access green space suitable for sitting outside away from Harbourside winds.

Could the council seriously reconsider the rezoning and consequent sale of this property.

As a former resident of Woollahra, it is noticeable how few green spaces are retained in comparison to other suburbs. I appreciate the value of land is a serious attraction for councils, but this is the last area, and once it is sold it will never be return. Outside space is essential for quality of life. The many apartments within the walk to the Dunara reserve NEED this space.

Please reconsider,

Ili Pelletier

Sent from my iPad



Level 6, 10 Valentine Avenue
Parramatta NSW 2150
Locked Bag 5020
Parramatta NSW 2124
DX 8225 PARRAMATTA

Telephone: [REDACTED]
Facsimile: [REDACTED]
www.heritage.nsw.gov.au

File No: EF14/5899

Mr Gary James
General Manager
Woollahra Municipal Council
P.O. Box 61
Double Bay NSW 1360

By email: records@woollahra.nsw.gov.au

Dear Mr James

RE: SC3794: Dunara Reserve, Lot 11 DP 27351, land between 1 Wentworth Street and 9 Dunara Gardens– Planning Proposal: objection to proposed reclassification.

I write regarding the proposal to reclassify this reserve as 'operational' and whether there is potential for future impacts on this State Heritage Register item.

I note that the Heritage Council of New South Wales has received representation on this matter, and I would welcome the opportunity to discuss this matter with Woollahra Municipal Council.

Woollahra Municipal Council would know that Dunara, 10 Dunara Gardens is listed on the NSW State Heritage Register (SHR). Its statement of significance notes:

Dunara is the oldest remaining house in Point Piper. It is historically significant particularly for its associations with Dorothea McKellar - as her birthplace and for its association with the influences on her artistic development, including her education, cultural environment and the surrounding landscape. Architecturally the house is an excellent example of a well-crafted Victorian residence of the period (built c 1883). It is a two-storey stuccoed brick house with slate roof and fine cast iron verandah and balcony, retaining much of its original detail intact and which past and present owners have maintained in a sympathetic manner. (Heritage Branch report, 1987).

The stables have been partially demolished and the servants' wing likewise has been separated from the house and converted into another dwelling. The entrance hall is particularly fine, having delicately carved shell motif cedar door head trims to doors opening off it and with Minton tiles.

The SHR listing derived from gazettal of a permanent conservation order over Dunara on 10 July 1987. Dunara House was built by Dorothea's father, Sir Charles Kinnaird Mackellar, physician and parliamentarian, on then five acres of land in c1883. The estate in its day was known for its magnificent gardens. Even its name, *Dunara* is an Aboriginal word meaning *gunyah on the slope of a hill*, suggesting some of the site's former character. A 1987 (then) Heritage Branch report noted the estate was subdivided in 1954, alienating most of its grounds, adding that bushland used to lead to the (Rose Bay) foreshores. Such estates once graced many of the peninsulae in Sydney Harbour's east and are now very rare indeed.

[Helping the community conserve our heritage](#)

Dunara Reserve is almost directly adjacent to, and forms the southern 'edge' of the post-1950s street approach to, Dunara house. I understand that the reserve was vested in Council in 1957 as part of the subdivision of the original Dunara estate, in which Dunara was the only house. I gather this open space was marked in the subdivision Deposited Plan as Public Garden & Recreation Space and on vesting in Council became a Public Reserve.

I understand that the five acre Dunara Estate was subdivided into 11 tightly knit properties, many with little or no gardens, with the public reserve created to ensure green space with trees and vegetation for all. The Reserve continues to have that function, providing a sympathetic vegetated frame to the entrance to Dunara Gardens and the approach to Dunara House.

I note the large mature trees in and near the Reserve, including a Moreton Bay fig (*Ficus macrophylla*) and Cook's pine (*Araucaria columnaris*) individually heritage-listed (item 285) at 1 Wentworth Street and another Cook pine (item 277) individually-listed on Woollahra Local Environment Plan 2014, the pines being visible from Rose Bay. These and its vegetated character suggest Dunara Reserve may have local heritage value as well as contributory value to the Dunara SHR item.

I would welcome discussion with Council over its consideration for additional Local Environmental Plan listing of the Reserve as a landscape heritage item and consideration of possible State Heritage Register listing as an extension of Dunara's existing, limited SHR curtilage.

Dunara once had five acres of magnificent gardens as a Victorian gentry estate (cf a 1950s-suburban house, hemmed in by other such houses, with little or no gardens). Given the reduction of this estate to Dunara Reserve in 1957, a more positive outcome such as heritage listing and ongoing conservation seems more appropriate than reclassification, sale, possible tree removals, infill and loss of this last, small estate remnant.

I note the objectives for Heritage Conservation in section 5.10(1) of Woollahra LEP include:

- (a) to conserve the environmental heritage of Woollahra;
- (b) to conserve the heritage significance of heritage items ... including associated fabric, settings and views.

If you have any questions regarding the above matter please contact Mr Tim Smith, Director, Operations at the Heritage Division, Office of Environment and Heritage on telephone [REDACTED] or by e-mail at [REDACTED]

Yours sincerely



Mr Stephen Davies
Chair
Heritage Council of NSW
4 September 2017

[Helping the community conserve our heritage](#)

From: [Tom O'Connor](#)
To: [Records](#)
Subject: SC3794 Dunara Reserve
Date: Tuesday, 5 September 2017 1:40:45 PM

I note with grave concern the proposal to reclassify Dunara Reserve , publicly owned park land, and sell it off for development. I have resided in Woollahra for 40 years and as our Mayor said she "respects the natural beauty, heritage and leafy character of Woollahra" and so do I and Dunara Reserve meets all these characters. Having recently moved to Point Piper I recognised there is very little open green space. Dunara Reserve has some magnificent mature trees and these should be preserved.
I would like to attend any public meeting on this proposal. My details are Thomas John O'Connor of [REDACTED] Wolseley Rd, Point Piper 2027. Mobile [REDACTED]

Sent from my iPhone

From: [Nina Calvisi](#)
To: [Records](#)
Subject: Dunara Reserve - Reference SC3794
Date: Tuesday, 5 September 2017 1:57:15 PM

Objection to Woollahra Council proposal to reclassify Dunara Reserve Point Piper in order to sell the land.
Point Piper loses too many mature trees due to poisoning, construction sites, etc.
It is a precious public asset and should remain available for all to enjoy.

Nina Calvisi
[REDACTED] Wentworth Street Point Piper 2027



Dr Shane Connolly Dr Caitlin Kapoor 1300 MDIMAGING
P [REDACTED] F [REDACTED] E [REDACTED]
Shop MB2, Cnr Luxford Rd & Carlisle Ave, Westfield Mt Druitt, NSW 2770
mdimaging.com.au

5/9/2017

Dr Shane Connolly
[REDACTED] Dunara Gardens, [REDACTED] Wunulla Rd
Ph: [REDACTED]
email: [REDACTED]

ATTENTION: WOOLLAHRA COUNCIL

RE: REFERENCE SC3794

I note that the council are proposing to sell off a section of land in relation to the subdivision of Dunara Estate.

This area functions as a green space with an open garden that myself and neighbours regularly enjoy.

I feel that this would be a completely inappropriate thing to do, for the council to decrease green space in the area where there is limited green space already available.

I note that this area is enjoyed by neighbours and people walking around the area and I also think development there would be detrimental to the impact of the houses in the area, particularly Dunara House.

All the residents in Dunara Gardens do and are happy to help maintain this area and I have seen council workers in there maintaining the site.

I would be most distressed if the trees in the reserve were cut down in the future and feel that if the council lost control of the site, this would not be able to be controlled.

I would feel it would be completely inappropriate for the council to sell a public reserve and would call on the council not to proceed further with this option.

Yours sincerely,

Shane Connolly

Woollahra Municipal Council
Customer Service Department

7 SEP 2017

Received

Walsley Rd
Point Piper

7/9/17

General Manager
Woollahra Council

SC3794 Submission

Dear Sir

I have lived in Point Piper for 45 years. In that time I have watched a suburb of homes with trees + gardens sacrificed to overdeveloped massive concrete mansions devoid of almost all that is nature.

Danara "Gardens" - has not been so for many years - a sample of overdevelopment permitted by Council. Its last saving grace is Danara Reserve - a tiny sample of what must have been - giving pleasure to us all from both intimate + distant views. NO financial gain can be worth this sacrifice.

Yours Faithfully.

(Mrs) *[Signature]*

P.S. What about double change k. etc. etc.

Elections in two days

— NO!

■ Wentworth Place
Point Piper
6/9/2017

Submission to Woollahra Council in relation to Dunara Reserve Point Piper . Reference: SC3794.

We write to object to the removal of these trees from the Dunara Reserve. The trees are large, old and precious. They were planted very close to my great uncles home Woniora, which was demolished and was downhill from No 1 Wentworth Street . Similar trees might have been in their garden also.

The Cook pine of the Araucaria family would have been planted at the same time as other members of that family of plants at other family properties such as Elaine and Fairwater on New South Head Road. These remain.

Please do not denude this little patch of remaining history to be replaced with building and concrete, which prevents healthy plants producing oxygen and soil to absorb rain, rather than overloaded drains and floods.

From:

Mrs S.White

and


Mr. G. White



**Submission: Woollahra Council Proposed Changes to the Land
Management Controls of Dunara Reserve, Point Piper**

Reference SC3794 Submissions

By email to: The General Manager, Woollahra Council
records@woollahra.nsw.gov.au

Submission Made By: Penny Broekhuizen
Address: Wentworth Street, Point Piper, NSW 2027
Email: [REDACTED]
Telephone: [REDACTED]
Date: Thursday 7 September 2017

The Planning Proposal

In August 2017 Woollahra Council published a planning proposal (the **Planning Proposal**) to reclassify Lot 11, DP 27451, which it identifies as “*known as Dunara Reserve*” from Community to Operational land in order to sell the land. Submissions have been invited during the period 9 August 2017 – 8 September 2017.

My Interest in the Planning Proposal

I am the owner of [REDACTED] Wentworth Street, Point Piper (an Arts and Craft style house built in approximately 1910) where I live with my husband and three teenage children. My property adjoins the entire southern boundary of Dunara Reserve (approximately 60 metres).

This Submission

I disagree strongly with Council’s justification of the need for the Planning Proposal and submit, for the reasons set out below, that Dunara Reserve should not be reclassified from Community to Operational Land to allow for its sale. (Extracts quoted in this submission in italics are extracts from the Planning Proposal unless otherwise stated, references to sections, parts or appendices are to sections etc of the Planning Proposal, and the *Local Government Act 1993* is referred to as the *LG Act*.)

Executive Summary

Dunara Reserve is a much loved pocket of vegetation and significant mature trees within a suburb which is increasingly denuded of vegetation and has suffered the devastating loss of a number of mature trees recently to poisoning. It was created as part of the Dunara Estate subdivision and remains an important

amenity to the residents of Dunara Gardens and members of the wider public. A sale and enclosure of the Reserve would have substantial impact on the two heritage listed houses found on Dunara Gardens. A sale also raises the possibility of the future redevelopment of at least part of the Reserve, and the potential loss of trees and vegetation on it.

1. Dunara Reserve's creation as part of, and continuing importance to, the subdivision of the Dunara Estate

Dunara Reserve was transferred to Council in 1957 as "*public garden and recreation space*" (Appendix 1: *Reason Council acquired an interest in the land*) as part of the subdivision of the Dunara Estate, and as a condition of Council's approval to the subdivision. It is easy to see why designation of this space for public garden and recreation was made a condition of Council's approval of the subdivision. Dunara Gardens comprises 11 separate residential properties accommodating (at present) approximately 30 residents. These properties are substantial in size but have very little outdoor space and garden, and the Reserve presents a counter-balance to this, providing a garden, trees and greenery for the enjoyment and benefit of (amongst others) the entire Dunara community. Dunara Reserve occupies a prominent position at the entrance to Dunara Gardens (adjoining 36 metres of its access road), and all residents pass by and enjoy its open aspect every time they enter and leave their properties. I understand from one of the residents of Dunara Gardens who has lived there since the original subdivision in the 1950s that there was originally a public bench on the Reserve which was used by both the residents of Dunara Gardens and the wider public, but that this fell into disrepair a number of years ago and was removed (and never replaced) by Council. Some of my neighbours have young children who play on the Reserve: an inspection will reveal their tracks. In the absence of gardens of their own this is a safe place, close to home, where they can play outdoors.

If the Reserve is sold and enclosed this would represent a substantial loss of amenity to all residents of Dunara Gardens. Rather than an open garden running the length of the main section of the access road to Dunara Gardens, Dunara residents face the prospect of a 1.8 metre high fence, which any subsequent purchaser of the land would be entitled to erect without Development Approval. Given that there has been no change to the original subdivision since the 1950s, and creation of a public garden was at that time a condition of the subdivision for very understandable reasons, I see no justification for the current proposal which would take this amenity away from the residents of Dunara Gardens and the wider public.

2. Impact on heritage and unique local characteristics

- "*Reclassification of the land will not impact on the significance of [heritage items in the immediate vicinity]*" (schedule 1, Liveability priority 7)

Dunara Reserve presents as an open garden on the road leading into Dunara Gardens where 2 of the 11 homes are heritage listed: the magnificent Dunara House (state heritage listed) and McGrath House at 4 Dunara Gardens built in 1957 by Peter Muller. As noted at paragraph 1 above, the Reserve is an important amenity to all homes on Dunara Gardens, including these two heritage items, and provides them with an open, leafy aspect. If this land is reclassified and sold, its purchaser would be entitled to erect a 1.8 metre high fence for the 36 metres along which the Reserve adjoins Dunara Gardens. Contrary to Council's assertion in the Planning Proposal, this would have a very significant impact on the heritage properties in Dunara Gardens. Rather than enjoying views over, and access to, an open public garden they will be looking at a long fence. In addition, at present any member of the public pausing on Wentworth Street to look into Dunara Gardens at historic Dunara House is met with a lovely view of this heritage building, framed on the right by the greenery of Dunara Reserve. A fence (should the land be sold and enclosed) would present a dramatically different aspect. The impact, contrary to Council's assertion in the Planning Proposal, is direct and significant.

There is a heritage listed Cook Pine on the Reserve and at least one other tree worthy of heritage listing. At present these trees are available to the public to visit and enjoy. Sale and enclosure of the land would remove public access to these important trees (see paragraph 8 below). There is also the potential impact of the land being developed following a sale, which would have a significant and immediate impact on both the heritage tree and Dunara House.

3. The Planning Proposal asserts that site is not used as a "public open space" and is not "accessible open space".

- *"The site is a public reserve, but it is not used as public open space or as a public facility. Visually, it appears as a heavily vegetated space".* (section 2.1)
- *"The site is a public reserve, yet it does not function as accessible open space due to its configuration, topography and heavy vegetation"* (schedule 1, sustainability priority 5)
- *"Dunara Gardens provides little or no recreational value for the community."* (Appendix 2, paragraph 2).
- *"The remaining portion of the site is unsuitable for use as public open space due to its position amongst private dwellings and its topography. It has a small frontage to Wentworth [Street] of approximately three metres which does not provide appropriate access or passive surveillance into the site."* (Appendix 2, paragraph 1)

These statements in the Planning Proposal suggest that in order to be considered of public benefit (and therefore justify classification as community land) public land must be open space and readily accessible. This argument is not supported by the *LG Act*, which makes it clear that community land can take many forms including *"natural area, sports ground, park or for general community use"* (section (4)(a)-(d) *LG Act*), nor by the

Department of Local Government's Practice Note No 1 (Public Land Management) which states as an overarching principle that "*classification as community land reflects the importance of the land to the community because of its use or special features*" (paragraph 2.2).

Whilst Dunara Reserve is not large (albeit 402 square metres) and contains many trees and shrubs, this does not detract from its value to the community, nor preclude its enjoyment and use by members of the public for all the reasons set out elsewhere in this submission. Indeed, one of the "*special features*" of Dunara Reserve is its trees, dense vegetation and shady peaceful environment and Council is not justified in suggesting that this is inconsistent with classification as Community land. There is a strong argument for diversity in public spaces and Dunara Reserve has a valuable contribution to make to this within the Woollahra municipality.

4. The Planning Proposal asserts that the site does not present as a public reserve

- "*The site presents as part of a private estate rather than public land and member of the public would be hard pressed to recognize it as a public asset, let alone be inclined to enter and use the site for public recreation.*" (Appendix 2, paragraph 1).

I accept that there is nothing to let passing members of the public know that the site is public land and that members of the public who are not aware that it is public land may therefore be reluctant to enter and enjoy the Reserve. However this is entirely due to the inactivity of Council in failing to make it clear to the general public that the Reserve exists, and this should not be used as a means of justifying reclassification and sale of the land.

The Planning Proposal states "*the site is dedicated as a public reserve under section 50(5) of the LG Act*" (Appendix 1: Public Reserve status). However, it is not included in the list on Woollahra Council's website of "*Parks, reserves and playgrounds listed by suburb*" (which lists only Duff Reserve in Point Piper) and there is no public signage on the site to indicate that it is a public reserve. Council could easily remedy this by erecting a "Dunara Reserve" sign at the entrance to the Reserve on Wentworth Street, and by amending its website to include Dunara Reserve on the list of reserves in Point Piper.

5. The Planning proposal asserts that the site is underutilized, does not benefit the wider community, and only benefits the immediately adjoining properties

- "*The site is an underutilized piece of public land that does not benefit the wider community*" (section 6.1)
- "*The site currently only offers benefits to the immediately adjoining properties.*" (section 2.1)

Dunara Reserve is not underutilized. There are 11 houses on Dunara Gardens, home to approximately 30 residents. These residents, and their guests, pass and enjoy the Reserve every time they enter or leave their homes. Add to that the fact that many of the houses on Dunara Gardens enjoy views directly into the Reserve, and the sense of space and openness that this brings to an otherwise dense residential development.

Other neighbouring properties directly benefitting from an open aspect into Dunara Reserve include my property (█ Wentworth Street), 1A Wentworth Street, 15 Wolseley Road and the large block of apartments opposite at 2A Wolseley Road (comprising 11 apartments), which has no garden of its own. As noted at paragraph 1 above, local children play on the Reserve. It is also noted that Council is currently considering a development application to demolish an existing dwelling at 2 Wentworth Street (opposite the Reserve) and replace it with a 6 storey building containing 5 large units (DA 369/2017/1). The proposed development has no garden of its own but, if approved, will enjoy views over, and access to, Dunara Reserve.

In addition to the benefit that the Reserve brings to residents in its immediate vicinity, it is also visited regularly by other members of the public, including walking tours of the area and people interested in the history and heritage of the properties in Dunara Gardens and the heritage listed trees on and in the immediate vicinity of the Reserve (see paragraph 8 below).

It is simply not correct to say that the Reserve *“only offers benefits to the immediately adjoining properties”* (section 2.1). The immediately adjoining properties are: 9 Dunara Gardens, my property at █ Wentworth Street, and 11 Dunara Gardens which owns the portion of the private road in Dunara Gardens which adjoins the Reserve. There is no doubt that the Reserve offers benefits to all of these properties, but, for the reasons given above and elsewhere in this submission, it also benefits other neighbouring residents, as well as members of the wider community.

It is also noted that, as referred to in paragraph 4 above, Council has failed to advertise the existence of the Reserve to the wider community, and there is no doubt that it would enjoy more visitors if its existence were more widely known, or if Council took better care of the Reserve and visited it more regularly for maintenance (see paragraph 6 below).

6. The Planning Proposal asserts historical problems managing the site

- *“Despite numerous attempts to manage the site, its inaccessibility and lack of passive surveillance have resulted in the build up of vegetation and debris over time.”* (section 2.1)
- *“The inaccessibility of the site has resulted in a build-up of vegetation and debris over time, which combined with the slope of the land and the lack of passive surveillance, represents a potential public safety risk and hazard. In addition to this, it has been the location for illegal dumping of domestic*

waste. Site maintenance to clear the debris and vegetation is a resource burden to Council and is undertaken twice a year. Numerous attempts to replant the site have been unsuccessful." (Appendix 2, paragraph 1)

Dunara Reserve is no less accessible than many other public reserves in the Woollahra Municipality, including Duff Reserve in Point Piper (accessed via 98 steep steps) and many parts of Cooper Park (which are steep and heavily vegetated). By its own admission Council only undertakes site maintenance at Dunara Reserve twice a year, and from my own observance as an adjoining property owner, time spent by the Council conducting this maintenance is brief. As a consequence, some neighbouring residents, at our own expense, regularly undertake maintenance of the Reserve (including removal of accumulated dead branches, leaves and other vegetation) and have (with knowledge of Council) undertaken planting on the Reserve in keeping with its current vegetation.

The Planning Proposal attributes the "*build up of vegetation and debris over time*" on the Reserve to the site's "*inaccessibility and lack of passive surveillance*" (section 2.1). I disagree. The Reserve is heavily vegetated, but is not difficult to access, and no part is inaccessible. When neighbours have conducted our own maintenance of the Reserve (see above) we have had no difficulties accessing it. If debris and vegetation has accumulated on the site this is, in part, a natural consequence of it being heavily vegetated and the fact that Council only visits twice a year to clear up (but see paragraph 11 below about misuse of the Reserve which is, in fact, the bigger issue.).

7. The Planning Proposal is made with the intention of a sale of the site, and raises the possibility of future development on the site

- "*Reclassifying the land to operational would allow the sale of the site*" (section 1.2)
- "*As at July 2015 the Valuer General placed a value of \$245,000 on the land. The estimated financial gain from the land being appended to an adjoining owner's lot would be between \$2000 and \$5000 per square metre (based on comparable land sale values in the area)*" (Appendix 1: *potential financial gain to Council through reclassification*)

If the site is reclassified and offered for sale it does not present as a stand-alone development opportunity because of its shape, topography and the fact that it is heavily vegetated with substantial trees, including a heritage listed Cook Pine and at least one other tree which is worthy of heritage listing (see paragraph 8 below). For this reason it is likely that if Council proceeds to reclassify the land and offer it for sale, the only interest in purchasing this land will be from adjoining landowners (of which I am one). Two factors may motivate an adjoining landowner to make an offer to buy the land either:

- an interest in preserving this important pocket of vegetation and trees as a garden; or

- in order to increase the potential FSR of any future redevelopment of the existing home on an adjoining site, or with a view to the development of at least part of the land formerly comprising the Reserve.

Given that only the second option is likely to deliver the kind of “*financial gain*” to a purchaser referred to in the Planning Proposal (amounting to, on Council’s estimation, a financial gain of between \$804,000 and \$2,010,000 for this 402 square metres piece of land), a prospective buyer of the Reserve who is attracted by the development potential of the site is likely to be motivated to pay a higher price (and therefore be successful) in any competitive sale process involving a competing buyer simply interested in preserving the space as a garden. I have no interest in the development potential of the site and believe, as a point of principle, that its value to the community as a public garden far outweighs its potential value to a prospective private developer. In any event I have been advised that, given my large parcel of land, acquisition of this site will not (contrary to assertions in the Planning Proposal) add to the value of my property, but that it could add significantly to the value of the other developed property adjoining the Reserve.

Despite what Council has said in the Planning Proposal about the proposal not altering the development potential or tree preservation on the site, the estimated “*financial gain*” to a prospective purchaser it refers to could not be achieved without some development on or in the immediate vicinity of the Reserve, and I am deeply concerned that in referring to such large potential financial gains to a purchaser, Council is foreshadowing the possibility of future development on the aggregated site. As referred to elsewhere in this submission, this part of Point Piper is already densely developed and any additional development in this area would be to the detriment of everyone in its vicinity, especially if this were to involve the loss of vegetation or trees from the land comprising the Reserve.

8. Concerns about the preservation of trees on Dunara Reserve and tree poisonings in the area

- *“The reclassification does not alter the development potential of the site. Should the site be sold, any future development would need to address chapter E3 Tree Management in the Woollahra Development Control Plan 2015. One of the key objectives is to promote, maintain and conserve the leafy character of Woollahra Municipality. Woollahra Council’s Street Tree Master Plan (2014) also applies. One of the key objectives of the Street Tree Master Plan is to maintain and increase the number of trees and overall canopy coverage.”* (schedule 1, Sustainability Priority 7: Protect, enhance and extend the urban canopy).
- *“Although the site is located on a ridgeline, the planning proposal does not alter the development potential of the site. Any development on the site would need to address the controls identified in Sustainability Priority 7*

above." (schedule 1, sustainability Priority 8: Improve protection of ridgelines and scenic areas)

As noted at paragraph 7 above, I am very concerned that reclassification and sale of the land will result in a future application to Council for approval to develop at least part of the site, and for approval to prune and/or remove trees on the site. I am also concerned that some of the vegetation on the Reserve is not covered by Council's *Tree Management Development Control Plan* and could therefore be removed by a purchaser of the land without the need for approval.

Dunara Reserve is home to a number of substantial and significant trees. William Home, Level 5 Arborist, conducted a survey of trees on the Reserve on 4 September 2017, and a copy of his report is attached in the Schedule to this Submission. This report identifies 10 mature trees, 4 semi-mature trees, and 2 large mature shrubs on Dunara Reserve, including:

- a 28 metre high heritage listed Cook Pine
- two 14 metre high Moreton Bay Fig trees
- a 14 metre high Camphor Laurel tree; and
- four Canary Island Date Palms, which are particularly noteworthy as all are pest and virus free (this species being prone to pest and virus).

I have been advised by two of Woollahra Council's tree officers that the tallest of the four Canary Island Date Palms on the Reserve (which dates back to approximately 1890) is of heritage significance and should be considered for inclusion as a heritage item on Council's LEP. On 7 February 2017 I was advised by Ms Anne White (Strategic Planning, Woollahra Council) that Council is proposing to commence a Council-wide project to assess significant trees to add to its register in 2017/2018 and that it will consider the largest Canary Island Date Palm on Dunara Reserve as part of that process. As noted at the end of this paragraph, I believe that an assessment of the heritage significance of the Canary Island Date Palms and other trees on Dunara Reserve should be carried out immediately and taken into account as part of this Planning Proposal.

Point Piper is increasingly denuded of vegetation, and especially mature trees, as development and views of the harbor are valued more highly than preservation of our arboreal heritage. In particular, we have suffered the devastating loss of a number of substantial trees in the immediate vicinity of Dunara Reserve to poisoning in recent years. This includes the poisoning of a very large (20.5 metres) and significant Sydney Blue Gum adjacent to the Reserve in 2006, which resulted in its death and removal, and the poisoning of a large camphor laurel tree on a private property adjoining the Reserve in 2008, which also resulted in the tree's death and removal. Council recorded this latter poisoning as constituting a breach of the Tree Preservation Order (breach reference 379/2008/1) and wrote to the owner of the land concerned on 24 December 2008 requiring that a replacement canopy tree

be planted within that property with a minimum size of 10 x 8 metres. No replacement tree has been planted, and despite Council advising in its letter of 24/12/2008 that an inspection would be made in early 2009 to ensure that a replacement tree had been planted, Council has taken no enforcement action in relation to this matter.

A magnificent heritage listed Moreton Bay Fig tree on my own property has also been poisoned twice within the last 12 years. Both attacks were severe and have required substantial and sustained treatment to save the tree, which, although it has survived is still showing signs of trauma

This prolific history of tree poisoning in the area makes Dunara Reserve and its trees all the more precious. Because of its prominent position on a ridgeline, some of the trees on the Reserve can be seen from Rose Bay and beyond. There are only four heritage-listed trees in the whole of Point Piper. Two are on my property and one is on the Reserve. The fact that three of the four trees deemed worthy of heritage listing in Point Piper are found within the immediate vicinity of, or on, Dunara Reserve, highlights the importance of this small pocket of land both within Point Piper and as part of what Woollahra Council recognizes as the "important contribution" that "our rich heritage" of trees makes "to the beauty, character and history that continues to make our area such a desirable place to live." (Council's website: Trees).

I believe that the significance of the trees on Dunara Reserve, and the counter-balance that the Reserve's vegetation offers to the over-development of Point Piper, make it a precious public asset that should be preserved as such. I also believe that given the high risk of trees in Point Piper being unlawfully pruned, removed or poisoned (based on the alarming increase in such incidents in this part of Point Piper in recent years, including in the direct vicinity of the Reserve) it is imperative that the trees on Dunara Reserve are immediately assessed to determine whether further heritage listings should be made on the Reserve (including, but not limited to, the Canary Island Date Palms) and that these important trees are afforded the extra layer of protection that remaining in public hands provides. I acknowledge that public ownership does not preclude a tree from being poisoned. However, the transfer of land containing important trees from public to private ownership increases the risk of those trees being poisoned if the land was acquired with a view to its redevelopment. I would also note that no one has been prosecuted in relation to any of the recent tree poisonings in Point Piper. This drastically undermines the effectiveness of tree preservation legislation in operating as a deterrent to prevent the unlawful treatment of trees by a determined individual.

9. Financial burden of site maintenance and risk of managing the site

- *"The ongoing site maintenance to clear the debris and vegetation is a poor use of Council's resources, particularly as there is no tangible and obvious community benefit" (section 2.1)*

- The Planning proposal has the effect of “*removing the risk of maintaining, managing and making the site safe for public use*” (section 6.3)

By its own admission Council only conducts maintenance at the Reserve twice a year, and from my own observations any such maintenance is brief and conducted within one day only, or part of a day. The financial burden this involves can only be relatively small and, given the importance of Dunara Reserve to this community and its enjoyment by the wider public, it is inaccurate for Council to assert that there is no tangible and obvious benefit to this use of Council’s resources.

10. Use by the Council of the sale proceeds

- “*The sale of the site would allow Council to use the funds to improve services and infrastructure in the LGA, including existing usable open space in the vicinity.*” (section 2.1)
- “*Should the site be sold or leased long-term, the revenue generated could be used for public open space upgrades in the LGA such as the Redleaf foreshore upgrade, Rose Bay Pedestrian Trail and Guilfoyle Park upgrade. These facilities are in proximity to the residents of the whole of Point Piper.*” (schedule 1, Liveability Priority 5)

The Planning Proposal states that the proceeds of a sale of Dunara Reserve could be used to improve “*public open space*” and “*useable open space*” in the vicinity. As noted at paragraph 3 above, the fact that Dunara Reserve is heavily vegetated does not diminish its worth as a public asset and there is no justification for Council determining that space which is “*open*” is a more worthy recipient of public funds. Furthermore, there are a number of residents in Dunara Gardens who, because of their age, mobility, or other circumstances (as to which see their individual submissions) are not in a position to easily enjoy the alternative public spaces suggested in the Planning Proposal, and who would suffer a significant loss of amenity if their local public space is taken away.

Rather than selling Dunara Reserve, and inflicting a significant loss on both the community in its immediate vicinity and the wider public, Council should consider investing the modest amount of funds it would take to make sure that all members of public are aware that this beautiful space is available, and are able to enjoy it safely. This could be achieved by Council’s maintenance visiting the Reserve a little more regularly than twice a year and by erecting signage so that the public knows the Reserve exists.

11. Reasons for Council making the Planning Proposal: Misuse of Dunara Reserve

- “*In 2010 staff identified a partial encroachment into the site. In response, Council adopted the following Notice of Motion...That a report be brought to council...assessing the land known as Dunara Reserve Point Piper, with a*

view to rezoning the land in order for it to be put up for sale.” (section 1.1 Planning Proposal).

- *[The site] has been the location for illegal dumping of domestic waste” (para 1, Report 10 August 2015)*
- *“Numerous attempts to replant the site have been unsuccessful” (para 1, Report 10 August 2015)*

Despite justifications based on lack of public benefit put forward in the Planning Proposal, it seems that Council’s real motivation in proposing to reclassify and sell the Reserve is the protracted history of its misuse. Council and neighbours in the vicinity of Dunara Reserve are very familiar with the details of this history. This has been discussed in public meeting at Council on a number of occasions, including a DCC meeting on 17 August 2009 at which Council heard concerns from a number of residents about an encroachment onto the Reserve, the use of the Reserve to store household items and garbage bins, the dumping of household and garden rubbish on the Reserve, the unlawful removal of vegetation and the poisoning of a mature and very substantial camphor laurel tree on the boundary of the Reserve and an adjoining property (see paragraph 8 above).

Wherever possible, neighbouring residents have promptly provided Council with information about incidents of misuse of the Reserve, and have sought, at their own expense, to ameliorate its effects. This has included neighbours removing unlawfully deposited garden debris, domestic and building waste from the Reserve and planting to replace unlawfully removed vegetation at their own expense (and with Council’s knowledge). On two occasions this replanting has been deliberately vandalized: Council was informed and inspected the damage. Council has also inspected garden waste (including tree branches) unlawfully dumped on the Reserve, and was able to clearly identify its source.

In these circumstances, and given that by Council’s own admission it adopted the Notice of Motion to investigate a possible reclassification and sale of the Reserve *“in response”* to an encroachment into the site by an adjoining landowner, it is hard not to see this decision as, in effect, Council “washing its hands” of a difficult situation brought about by one resident’s refusal to respect the Reserve as public property. Whilst it is possible to understand Council’s frustration at the fact that its staff has spent many hours in recent years dealing with complaints about the ongoing misuse of Dunara Reserve, it is also manifestly unfair to members of the public that the unlawful behavior of one individual threatens to remove this much loved garden from public enjoyment. Making a proposal to sell public land in these circumstances (through a process which will inevitably involve inviting the individual who has misused the Reserve for so many years to participate) also sets an extremely worrying precedent, the consequences of which I do not need to spell out. Frustrating as it must be for Council to deal with the misuse of a public asset by one individual, this does not warrant Council selling this asset as a means of removing the problem.

Schedule

Dunara Reserve Tree Report by William Home, Level 5 Arborist, 4 September 2017

Client: Penny & Neil Broekhuizen
Quotation Number: 61936
Page number: 1/2

1.0 Tree Assessment Survey Sheet

Location : Dunara Reserve, Point Piper Weather : Fine 4 / 9 / 2017

Tree #	Species Botanical name Common name	Trunk Diameter @1.4m	Height	Width	Age (SUE)	Health 1 = Poor 5 = Excellent	Structure 1 = Poor 5 = Excellent	Canopy Cover %	Crown Class	Tree Surgery	Suitability for Preservation	Comments
1	Phoenix canariensis Date Palm	60	7	8	M	5	5	95%	C	1	High	Group of 4 mature palms which are post and virus free
2	Araucaria columnaris Cook Pine	110	28	8	M	5	5	95%	D		High	Heritage listed
3	Phoenix canariensis Date Palm	90	8	8	M	5	5	70%	C	1, 9	High	Group of 4 mature palms which are post and virus free
4	Ficus macrocarpa Merlot Bay Fig	130	14	10	M	5	5	70%	C		High	Root has been cut along private driveway to 9 Dunara Gardens by unknown person
5	Sheelitea nicotii Bird of Paradise	74.12	6.5	5	M	5	5	70%	I		High	Good understory planting
6	Phoenix canariensis Date Palm	70	12	8	M	5	5	95%	C	1	High	Group of 4 mature palms which are post and virus free
7	Liquidambar styraciflua Sweetgum	30	10	6	SM	5	4	50%	I		High	Semi-mature
8	Olea africana Wild Olive	20	40	9	M	5	4	60%	C		Moderate	Mature tree with unusual shape and interesting trunk configuration
9	Elaeocarpus reticulatus Blueberry Ash	15	6	4	SM	5	5	85%	C		High	
10	Cassia glauca Gamba	20	12	6	M	5	4	75%	C		Moderate	Has inclusion at 4m mark

Tree surgery:
 1. Deadwood, 2. Reshape Crown, 3. Wound repair, 4. Insect control, 5. Improve soil conditions (mulch, fertility, aeration etc),
 6. Investigate cavities, 7. Thin crown, consider installation of cabling/bracing and or retain and fence off for public safety,
 8. Line clearance of structures or services wires, 9. Remove attached plant 10. Root gridding, 11. Remove, 12. No tree surgery required,
 13. Requires tree protection measures, 14. Refer to accompanying report, 15. Bare damage, 16. Bare damage, 17. Bare damage, 18. Monitor.

Age classification:
 Y - Young
 SM - Semi-mature
 M - Mature
 IM - Intermediate
 C - Overmature
 S - Suppressed

Crown Class
 I - Immature
 C - Codominant
 I - Intermediate
 S - Suppressed

Size Useful Life Expectancy
 L = Long Remaining life span greater than 40 years
 M = Medium Remaining life span from 20 to 40 years
 SM = Short Remaining life span from 5 to 15 years
 R = Remove Should be removed within 5 years
 U = Unstable Unstable in the ground or have significant trunk damage rendering them structurally hazardous

DR. TREEGOOD
 WILLIAM HOME
 Level 5 Arborist
 Tree Surgery / Transplantation Garden Design & Maintenance

FOR FURTHER ENQUIRIES, PLEASE CONTACT WILLIAM HOME 0418 979 922

Client: Penny & Neil Broekhuizen
Quotation Number: 61936
Page number: 2 / 2

1.0 Tree Assessment Survey Sheet

Location : Dunara Reserve, Point Piper

Weather : Fine 4 / 19 / 2017

Tree #	Species Botanical name Common name	Trunk Diameter @1.4m	Height	Width	Age	SULE		Health 1 = Poor 5 = Excellent	Structure 1 = Poor 5 = Excellent	Canopy Cover %	Crown Class	Tree Surgery	Suitability for Preservation	Comments
						1 = Poor 5 = Excellent	1 = Poor 5 = Excellent							
11	<i>Alnus</i> <i>heterophylla</i> Norfolk Island Pine	15	6	5	SM			5	5	100%	C		High	Young tree
12	<i>Hibiscus</i> Tropical Hibiscus	Multi 5 to 10	6	6	M			5	4	100%	C		High	Gives screening along road to all houses
13	<i>Casuarina glauca</i> Swamp She-oak	15	8	3	SM			5	5	90%	C		Moderate	
14	<i>Cinnamomum camphora</i> Camphor Laurel	150	14	10	M			5	4	70%	C		High	
15	<i>Ficus microcarpa</i> Mentor Bay Fig	40	14	10	M			5	4	30%	C		Moderate	Growing with tree 14
16	<i>Phoenix canariensis</i> Date Palm	80	10	4	M			5	5	70%	C		High	Group of 4 mature palms which are post and virus free



DR. TREGOOD
WILLIAM HOME
Landscape Architects & Arborists
Tree Surgeon / Transplantation Garden Design & Maintenance

Tree surgery:
1. Diebackwood, 2. Release Crown, 3. Wound repair, 4. Insect control, 5. Improve soil conditions (mulch, fertility, aeration etc).
6. Investigate cavities, 7. Thin crown, consider installation of cabling/bracing and or retain and fence off for public safety.
8. Line clearance of structures or services wires, 9. Remove attached part, 10. Root grinding, 11. Removal, 12. No tree surgery required.
13. Requires tree protection measures, 14. Root damage, 15. Root damage, 16. Root damage, 17. Root damage, 18. Member.

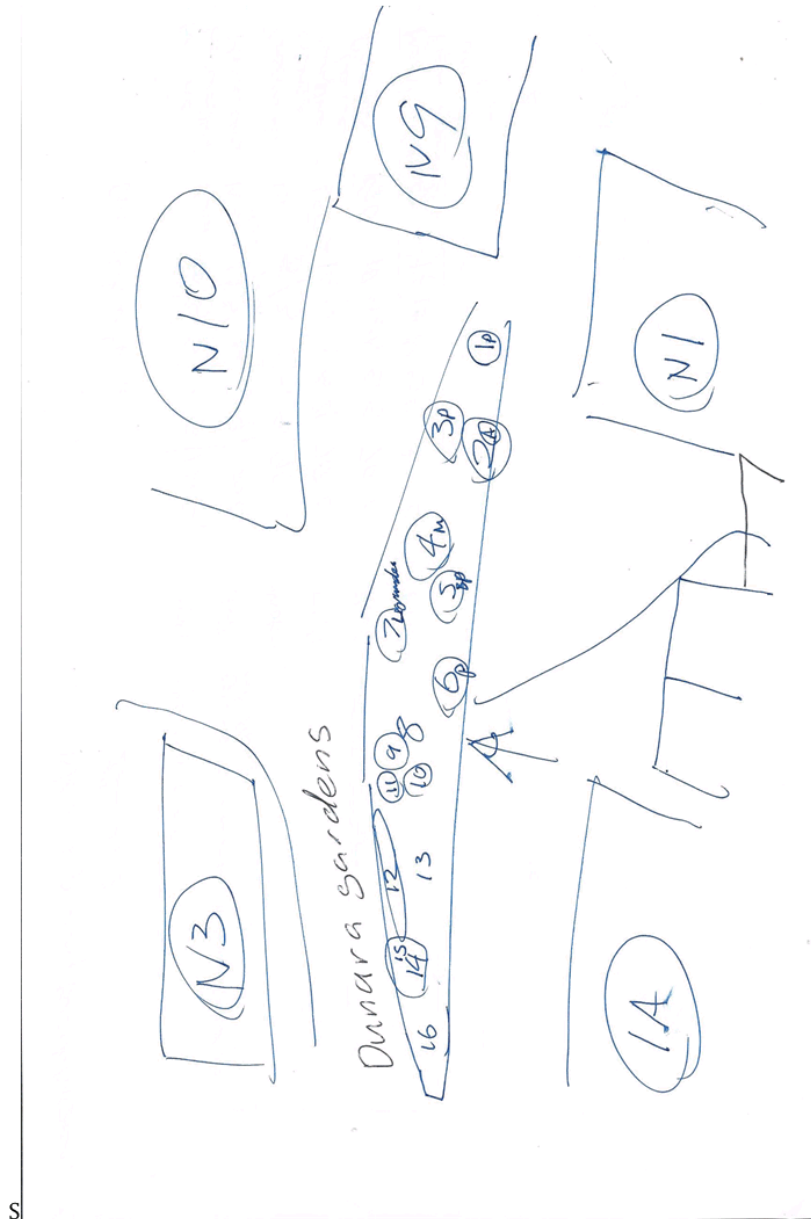
Tree Status:
L = Long Remaining life span greater than 40 years
M = Medium Remaining life span 20 to 40 years
SH = Short Remaining life span from 5 to 15 years
R = Remove Should be removed within 5 years
U = Unstable Unstable in the ground or have significant trunk damage rendering them structurally hazardous

Safe Useful Life Expectancy (SULE):
L = Long Remaining life span greater than 40 years
M = Medium Remaining life span 20 to 40 years
SH = Short Remaining life span from 5 to 15 years
R = Remove Should be removed within 5 years
U = Unstable Unstable in the ground or have significant trunk damage rendering them structurally hazardous

Crown Class:
C - Dominant
C-D - Dominant
I - Intermediate
S - Suppressed

Age Classification:
F - Young
SM - Semi Mature
M - Mature
OM - Overmature

FOR FURTHER ENQUIRIES, PLEASE CONTACT WILLIAM HOME 0418 979 922



Site plan of trees on Dunara Reserve
William Home, 4 September 2017

From: [penny broekhuizen](#)
To: [Records](#)
Subject: SC3794 Submissions
Date: Monday, 6 November 2017 11:23:54 PM

To: The General Manager, Woollahra Council,
From: Penny Broekhuizen, ■ Wentworth Street, Point Piper

I have received notification of Woollahra Council's re-exhibition of proposed changes to the land management controls of Dunara Reserve, Point Piper.

I made a submission on 7 September 2017 raising a number of very serious concerns I have about this proposal, and wish that my submission of 7 September be taken into account in its entirety in relation to this re-exhibition.

However, I would also like to note that I am extremely perturbed that Council has decided to re-exhibit this proposal without giving a clear explanation as to why it has made this decision. The only explanation given by Council in the notice of re-exhibition is that it is occurring to **"clarify the location and description of the site and the fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds."**

From what I can see in the public exhibition material no further explanation is given as to either:

- why clarification of the location and description of the site was necessary, and how this clarification has been made; and
- what the **"trust affecting the site"** may be, who the beneficiaries of the trust are, and how they will be affected by its discharge.

The latter point about the trust is particularly significant. Council cannot satisfy its legal obligation to consult with the public about this proposal if it does not disclose sufficient details about the proposal and its potential legal consequences so as to enable the public to make an informed view. What is this potential trust? To what does the trust relate? How was the trust created? When was it created and why was it created? Who are its beneficiaries? What are the potential consequences to those beneficiaries of the discharge of that trust? Why does Council consider it appropriate to discharge that trust?

There is a gaping void in the planning proposal and public exhibition material as to the answers to every one of these questions, and without this information both are incomplete and cannot constitute either a planning proposal or a valid community consultation pursuant to the *Environmental Planning and Assessment Act 1979*. In particular, section 55 of that act requires that the planning proposal must include a statement of the objectives or intended outcomes of the proposed instrument, an explanation of the provisions that are to be included in the proposed instrument, the justification for those objectives, outcomes and provisions and the process for their implementation. As none of these requirements have been met as regards the **"trust affecting the site"** Council has failed to meet the legal requirements for a valid planning proposal and the current process is thereby invalidated.

Yours Faithfully
Penny Broekhuizen

Drs Peter and Victoria Papadakis

■ Dunara Gardens Point Piper

Postal Address: ■■■■■■■■■■

7 September 2017

To General Manager

Woollahra Council

Reference : SC3794 Submissions: Dunara Reserve Point Piper

We strongly oppose the proposed changes to land management controls of Dunara Reserve Point Piper outlined in your letter dated 8 August 2017.

We are very upset and angry that Woollahra Council is seeking to destroy what little open space and recreational reserve we have left through their plan to reclassify and sell Dunara Reserve.

In 1956 Woollahra Council showed great foresight when in approving the subdivision of Dunara Estate, it insisted on part of the land (lot 11 - 402 sq meters) being classified as "Public Garden and Recreation Space" and required this land to be transferred to Council in 1957 – as a trustworthy owner - to ensure that the area was retained as a reserve for future generations to enjoy. The transfer of the land to Council was to prevent any development on this area and ensure that it was retained as "Public Garden and Recreational Space" for the future with no intention that this public piece of land would be later sold off.

Now, over 60 years later society is demanding more open space and greenery as a necessity to promote relaxation, peace and tranquillity in today's concrete jungle. In 2017 life is anxiety provoking and stressful with too many demands placed on individuals from the need to keep up with our fast paced world.

Dunara Reserve is part of the relief that is necessary to provide a retreat and calm from today's stressful life, a place where reflection and meditation can take place. For some time, approvals for Development Applications in the Woollahra Council area have included stipulations for the need to provide areas for open space and greenery. Yet by reclassifying and selling off Dunara Reserve Council is doing the exact opposite of what it wants everyone else to do.

Our family lives in Dunara Gardens. One of the reasons we purchased our property in Dunara Gardens was because of the open space provided by Dunara Reserve. On driving into Dunara Gardens there is a sense of greenery and openness in an area where there is dense residential development including the presence of high density units across the road. The Dunara Reserve is the garden referred to in Dunara Gardens and this is the reason that the area is called Dunara Gardens. If this reserve were to be sold the garden of Dunara Gardens would be lost – you could say that the heart and soul of Dunara Gardens would be lost. The purchaser of the 402 sqm area would be entitled to build and likely would build a 1.8 meter high fence along the edge of the property including the 3 metres section abutting the footpath which would be unsightly and undesirable both from inside Dunara Gardens and from outside Dunara Gardens.

Certainly Dunara Reserve is enjoyed by the residents of Dunara Gardens and their visitors. Children living in Dunara Gardens regularly play in Dunara Reserve. However Dunara Reserve is also enjoyed by residents living outside Dunara Gardens.

Children living outside of Dunara Gardens regularly come to play at Dunara Reserve. In some of the unit developments nearby there are no back yards and Dunara Reserve is the only outdoor space available for these children to play. There is only one other reserve in Point Piper and this is some distance away.

In addition historical groups come to look at the two Heritage listed properties in Dunara Gardens, particularly the property “Dunara” which was the original home on the Dunara Estate. The house “Dunara” is directly opposite the Dunara Reserve. These groups of people coming to look at significant historical houses are able to enjoy the amenity of the open space offered by Dunara Reserve - rather than looking at a 1.8 Brick wall fence - and they often stop and enter Dunara Reserve on their way to or from the heritage homes.

Further there are residents of Point Piper (outside of Dunara Gardens) and surrounding suburbs who themselves walk or walk their dogs as exercise along the streets nearby – these people also enjoy the amenity of Dunara Reserve and often come into the reserve to enjoy the pocket of greenery and open space.

Dunara Reserve is a very important area of open space and greenery in an area of high development. There are a number of mature trees in the reserve including a heritage listed Cook Pine and a Date Palm – both over 110 years old. This reserve is an area we now have because of the foresight of the Council in 1956 and an area that should be cherished and protected – definitely not an area to be reclassified with a view to selling it off resulting in the loss for ever of an important area of public open space.

The Council argues that there is a burden on Council finances by having to come to Dunara Reserve two times a year – probably both visits would not even add to one

full day per year. With an annual income of over \$115 million the cost of attending to the reserve results in no burden on Council's finances.

Instead of Council trying to sell this reserve which will then not be enjoyed by all generations to come it should be helping Dunara Gardens residents to promote its use. Better prominent signage is needed on Wolseley Rd as well as small sign under the Wolseley street sign on the corner of New South Head Road and Wolseley Rd.

In conclusion we strongly oppose the sale of Dunara Reserve, it is not a burden on Woollahra Council and would result in loss open space and greenery for all generations to come in an age when such recreational areas are becoming extinct.

P+V Papadakis

Drs Peter and Victoria Papadakis

Drs Peter and Victoria Papadakis

█ Dunara Gardens Point Piper

Postal Address: █

11 November 2017

To General Manager

Woollahra Council

Reference : SC3794 Submissions: Dunara Reserve Point Piper

We strongly oppose the proposed changes to land management controls of Dunara Reserve Point Piper outlined in your letter dated 8 August 2017.

We are very upset and angry that Woollahra Council is seeking to destroy what little open space and recreational reserve we have left through their plan to reclassify and sell Dunara Reserve.

In 1956 Woollahra Council showed great foresight when in approving the subdivision of Dunara Estate, it insisted on part of the land (lot 11 - 402 sq meters) being classified as "Public Garden and Recreation Space" and required this land to be transferred to Council in 1957 – as a trustworthy owner - to ensure that the area was retained as a reserve for future generations to enjoy. The transfer of the land to Council was to prevent any development on this area and ensure that it was retained as "Public Garden and Recreational Space" for the future with no intention that this public piece of land would be later sold off.

Now, over 60 years later society is demanding more open space and greenery as a necessity to promote relaxation, peace and tranquillity in today's concrete jungle. In 2017 life is anxiety provoking and stressful with too many demands placed on individuals from the need to keep up with our fast paced world.

Dunara Reserve is part of the relief that is necessary to provide a retreat and calm from today's stressful life, a place where reflection and meditation can take place. For some time, approvals for Development Applications in the Woollahra Council area have included stipulations for the need to provide areas for open space and greenery. Yet by reclassifying and selling off Dunara Reserve Council is doing the exact opposite of what it wants everyone else to do.

Our family lives in Dunara Gardens. One of the reasons we purchased our property in Dunara Gardens was because of the open space provided by Dunara Reserve. On driving into Dunara Gardens there is a sense of greenery and openness in an area where there is dense residential development including the presence of high density units across the road. The Dunara Reserve is the garden referred to in Dunara Gardens and this is the reason that the area is called Dunara Gardens. If this reserve were to be sold the garden of Dunara Gardens would be lost – you could say that the heart and soul of Dunara Gardens would be lost. The purchaser of the 402 sqm area would be entitled to build and likely would build a 1.8 meter high fence along the edge of the property including the 3 metres section abutting the footpath which would be unsightly and undesirable both from inside Dunara Gardens and from outside Dunara Gardens.

Certainly Dunara Reserve is enjoyed by the residents of Dunara Gardens and their visitors. Children living in Dunara Gardens regularly play in Dunara Reserve. However Dunara Reserve is also enjoyed by residents living outside Dunara Gardens.

Children living outside of Dunara Gardens regularly come to play at Dunara Reserve. In some of the unit developments nearby there are no back yards and Dunara Reserve is the only outdoor space available for these children to play. There is only one other reserve in Point Piper and this is some distance away.

In addition historical groups come to look at the two Heritage listed properties in Dunara Gardens, particularly the property "Dunara" which was the original home on the Dunara Estate. The house "Dunara" is directly opposite the Dunara Reserve. These groups of people coming to look at significant historical houses are able to enjoy the amenity of the open space offered by Dunara Reserve - rather than looking at a 1.8 Brick wall fence - and they often stop and enter Dunara Reserve on their way to or from the heritage homes.

Further there are residents of Point Piper (outside of Dunara Gardens) and surrounding suburbs who themselves walk or walk their dogs as exercise along the streets nearby – these people also enjoy the amenity of Dunara Reserve and often come into the reserve to enjoy the pocket of greenery and open space.

Dunara Reserve is a very important area of open space and greenery in an area of high development. There are a number of mature trees in the reserve including a heritage listed Cook Pine and a Date Palm – both over 110 years old. This reserve is an area we now have because of the foresight of the Council in 1956 and an area that should be cherished and protected – definitely not an area to be reclassified with a view to selling it off resulting in the loss for ever of an important area of public open space.

The Council argues that there is a burden on Council finances by having to come to Dunara Reserve two times a year – probably both visits would not even add to one

full day per year. With an annual income of over \$115 million the cost of attending to the reserve results in no burden on Council's finances.

Instead of Council trying to sell this reserve which will then not be enjoyed by all generations to come it should be helping Dunara Gardens residents to promote its use. Better prominent signage is needed on Wolseley Rd as well as small sign under the Wolseley street sign on the corner of New South Head Road and Wolseley Rd.

In conclusion we strongly oppose the sale of Dunara Reserve, it is not a burden on Woollahra Council and would result in loss open space and greenery for all generations to come in an age when such recreational areas are becoming extinct.

Peter Papadakis

Drs Peter and Victoria Papadakis

From: [REDACTED]
To: [Records](#)
Cc: [papadakis](#)
Subject: SC374 Submissions: Dunara Reserve Point Piper
Date: Tuesday, 21 November 2017 7:10:05 AM

To General Manager, Woollahra Council

Reference: SC374 Submissions: Dunara Reserve Point Piper

On 11 November 2017 we made a submission objecting to the proposed Dunara Reserve reclassification and sale

Please find following a further submission -

We note in your letter to us dated 25 October 2017 you state that "Re-exhibition is occurringthe fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds"

That there may be a trust affecting the site is further evidence that the creation of Dunara Reserve when subdivision occurred was a forward thinking idea of the then Council to preserve this area of public land – for the benefit of the public and Dunara Gardens residents. Having a trust for the site was a way of ensuring that this land continued as public land

In our opinion it would be a breach of trust for Council to now have it cease as public land and we strongly object to the proposal to reclassify Dunara Reserve and then sell the land

Drs Peter and Victoria Papadakis

■ Dunara Gardens Point Piper

Postal Address: [REDACTED]

PS Please confirm receipt of this email

From: [Justin Richmond](#)
To: [Records](#)
Cc: [Nikki Richmond](#)
Subject: Public Reserve - Dunara Gardens - SC3794 Submissions
Date: Friday, 8 September 2017 9:42:49 AM

Woollahra Municipal Council

By email records@woollahra.nsw.gov.au

Reference: SC3794 Submission

This email is a formal submission on behalf of Justin, Nikki, Sarah Rose (16 years old) and Daniel Richmond (15 years old) of [REDACTED] Wentworth St, Point Piper, and it relates to the Council's consideration of whether to sell the public reserve at Dunara Gardens and Wentworth St, Point Piper.

We object to the proposal in the strongest of terms. We request that the Council leave the public reserve in the ownership and control of Council.

As background, our family home is within Dunara Gardens (but also has frontage to Wentworth St) and is located near to the public reserve which you are currently considering selling. Our reasons for our objection are as follows:

1. The public reserve is beautiful and adds significantly to the amenity of Wentworth St and Dunara Gardens. The trees within the public reserve are a pleasant green space that constitute a historic part of the area. These are best left in the ownership and control of the Council, and not in private ownership and control where they may be poisoned or destroyed as private property.
2. The properties within Dunara have limited gardens and open space and so the public reserve is particularly precious.
3. The Council is considering a (multi-level) development across Wentworth St (from Dunara Gardens), so with a significant increase in the number of people in the area, maintaining existing green space is important.
4. When the Council, permitted the subdivision to form Dunara Gardens, it decided to do so, on the basis that this land should be public reserve. It made that decision having considered the needs of the area for public space and those reasons have not changed other than the increase in the number of people, which makes the original reasons all the more prescient.
5. We have seen Councils over the years sell off public reserves in different parts of Sydney, only to regret it later.
6. In applications for development in the municipality, Council looks at open space and setbacks as part of enabling development but maintaining the amenity of an area. A decision to sell the public reserve is at odds with the Council's own policies and conditions it imposes on developments to ensure open space.
7. When we go on walks in the morning and on weekends, we stop to look at the public reserve and its trees. We do not want this greenery replaced with a garage, wall or fence. When we go on walks with our parents and friends, they often comment that the public reserve is so pleasant, and it provides an open entry into Dunara Gardens.

8. Our daughter, Sarah Rose, is interested in green conservation and enjoys the public reserve with its huge trees and greenery. We told her that the Council was considering selling the public reserve and she was disappointed as she enjoys the public space. She considers any such decision as a "sell-out" to development rather than maintaining Point Piper as a "cool" place to live and for people to visit.

9. Our son, Daniel is autistic but really enjoys the public reserve. He likes to look at the greenery and play in it. We request that if you are considering progressing the proposal of a sale of the public reserve that you first observe him playing in it, so that you properly consider the benefit of the public reserve to him.

10. The public reserve is on the southern part of Dunara Gardens and provides protection from winds coming from the south, and given the proximity of busy New South Head Road, it provides an excellent natural noise break for properties on Wentworth St and the northern parts of Point Piper.

11. The Council has expressed concern that the benefit of the public reserve is limited to a small number of adjoining land owners. We have lived in Dunara Gardens for over 6 years, and we observe many people in the area enjoying the public reserve particularly as part of walks. We request that you consider how many people will benefit from the public reserve if it is sold to one private land owner.

12. We do not believe that the projected financial proceeds justifies the significant public detriment of selling the property. If the Council is considering progressing the proposal, it is important for the decision makers to spend time at the public reserve to see its beauty. We request that you project into the future and consider the growing importance of the public reserve as there is further development in the area, and more people. We believe that a sale will be viewed as short sighted in the future given the historic importance of some of the trees.

We are available to meet at the public reserve, and if you wish to observe Daniel playing in the public reserve, please call us on [REDACTED]

Yours sincerely

Justin and Nikki Richmond

Freda Cassen
[REDACTED] **Wentworth Street**
Point Piper
NSW 2027
[REDACTED] 8
[REDACTED] 2

The General Manager
Woollahra Council
PO Box 61
Double Bay
NSW 1360

Woollahra Municipal Council
Customer Service Department

8 SEP 2017

Received

8 September 2017

Dear Sir/Madam,

SC3794 Submissions
Proposed Changes to Dunara Reserve Point Piper

I have am the owner of [REDACTED] Wentworth Street, Point Piper, and have lived here for 30 years. Whilst my address is Wentworth Street, the main access that I use to my property, both pedestrian and vehicular, is via Dunara Gardens. My property was part of the original subdivision of the Dunara Estate in the 1950s, and is as affected by the proposed changes to Dunara Reserve as all the other properties in Dunara Gardens.

I strongly object to Woollahra Council's proposal to reclassify Dunara Reserve from Community to Operational land in order to allow a sale of the land.

Dunara Reserve is an extremely precious amenity to all of us who live in its vicinity. It was designated as public garden and recreation space when the original Dunara Estate was subdivided in the 1950s because this is a tightly packed subdivision and most Dunara properties have only small outdoor spaces of their own. Dunara Reserve is a shared garden which compensates for this, and which we can all enjoy. It is home to some beautiful and significant trees: not only the magnificent heritage listed Cook Pine, but also four Canary Island Date Palms, and a large Moreton Bay fig tree. A closer look will also reveal a number of beautiful shrubs and bushes, including a lovely large hibiscus on the boundary of the Reserve and the road leading into Dunara Gardens. These trees and plants give me huge pleasure every time I access or leave my property, and when I am home I can hear birds singing in the Reserve through my open windows. Kookaburras and lorikeets have made that their home.

Dunara Reserve a very important amenity to me, and all residents of Dunara Gardens and it is not accurate for Council to suggest otherwise. It is our beautiful green space in an otherwise increasingly over-developed Point Piper. It is also not accurate for Council to suggest that the Reserve does not benefit the wider

community. I regularly see members of the public stop by and admire the sweep of its trees and shrubbery as they lead down to the lovely and historic Dunara House, which is state heritage listed.

Council has suggested in its Planning Proposal that if Dunara Reserve is sold it could use the funds on other public space elsewhere in the Woollahra Municipality, including Redleaf, Rose Bay Pedestrian Trail and Guilfoyle Park. However, because of my age these are not public spaces that I can readily enjoy in the same way as I enjoy Dunara Reserve, which I do every day. I also disagree with Woollahra Council's assessment that public places like peaceful, leafy, quiet Dunara Reserve are somehow less worthy of recognition and protection than playing fields and open space.

As to Council saying its maintenance is a drain on resources, the fact is that Council for years have neglected it and have rarely maintained it.

If Dunara Reserve is sold a buyer will fence it in and Dunara Residents will lose their view into the Reserve. This would have a dramatic impact on all Dunara Residents, and the impact on Dunara House would be particularly devastating. I am also extremely concerned that a buyer will seek to remove shrubs and trees on the Reserve to make way for development. I have been horrified to see two beautiful large mature trees poisoned in Dunara Gardens in recent years. Tree preservation laws are simply not enough to protect our important trees when someone is intent on getting rid of them, and it is pertinent to note that no one was ever prosecuted for the recent Dunara tree poisonings. Clearly this sends a message to anyone contemplating buying the Reserve: the trees are protected, but if they are poisoned punishment is unlikely to follow. For this reason, and in order to keep our neighbourhood trees safe and out of the hands of private landowners who may want their removal, I believe in the strongest possible terms that Council should not reclassify Dunara Reserve. Indeed I feel that in these circumstances, and given the known history of tree poisonings in this area, it would be irresponsible of Council to countenance a sale which would put our surviving trees at risk.

Yours Faithfully



Freda Cassen

Freda Cassen

█ Wentworth Street

Point Piper

NSW 2027

█ 8

█ 2

The General Manager

Woollahra Council

PO Box 61

Double Bay NSW 1360

18 November 2007

Dear Sir/Madam

SC 3794 Submissions

Proposed Changes to Dunara Reserve Point Piper

I am horrified to see that Council is re-exhibiting this disgraceful proposal, especially as it seems to be an attempt to rectify its mistakes in the original exhibition. I do not understand why Council is so hell bent on proceeding with it.

I draw your attention to my previous submission dated 8 September which you should take into account again.

It seems that Council now acknowledges the correctness of my neighbour Mr Farkas' submission about the fact that Council holds that land in trust for the public, and in particular the residents of Dunara Gardens. It is appalling that Council should even consider breaking that trust, both in a legal and a moral sense. If we can't trust Council to honour that legal trust, then

what faith can we place in Council to do the right thing in other respects.

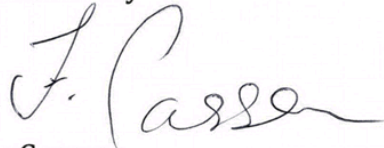
Council is supposed to look after the interests of ratepayers, not act against their interests.

Council set that land aside as part of the original subdivision , to provide a leafy green space with numerous large trees , especially given the density of the subdivision and the lack of trees in it, and the lack of gardens in the houses. It is Council's duty to retain and maintain that land as a public reserve in accord with its original creation.

I have already described its value to me personally as well as the other residents. I and others will be extremely upset if this proposal proceeds. I expect there will be a court case challenging it if Council proceeds to a reclassification.

I regard this proposal as irresponsible and a breach of faith with the public

Yours faithfully

A handwritten signature in cursive script, appearing to read 'F. Cassen', written in black ink.

Freda Cassen

Charles Handler
■ Dunara Gardens,
Point Piper, NSW 2027

6/09/17

Woollahra Council
PO Box 61
Double Bay NSW 1360

TO WHOM IT MAY CONCERN

Woollahra Council Ref: SC3794 Submissions-Proposed changes to the land management controls of Dunara Reserve, Point Piper

We are one of the residences at Dunara Gardens. We are disappointed to hear that the Council is planning to reclassify Lot 11, DP 27451 which also known as Dunara Reserve from Community to Operational land in order to sell the land.

My wife and I who are both in our 70s and decreasing in our physical ability for more active activities have been walking our dog and strolling in the Dunara Reserve as our daily routine since it is the closest outdoor space from our home that offers trees and greenery for our enjoyment. As we have very limited outdoor garden space in our house that is part of the already overcrowded Dunara Gardens, the Reserve provides a stress relief space for our daily health routine. The Reserve also serves as a meeting place and common venue for us to socially catching up with our neighbours and friends in the Community who are co-using the space like us.

The reclassification of the Reserve that may consequence to the potential of private ownership of the land will result in the loss of our daily recreational and social venue hence our limited physical and social activities as well. Therefore, we would like Council to reconsider the proposal of the reclassification.

Thanking you in advance.

Yours sincerely,



Charles Handler

Charles Handler
■ Dunara Gardens,
Point Piper, NSW 2027

23/11/17

Woollahra Council
PO Box 61
Double Bay NSW 1360

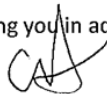
TO WHOM IT MAY CONCERN

Woollahra Council Ref: SC3794 Further Submissions-Proposed changes to the land management controls of Dunara Reserve, Point Piper

We refer to the above mention reclassification of Dunara reserve and our submission dated 6/9/17, we are hereby writing to re-iterate our previous submission.

We understand the Council's statement that there may be a trust affecting the site which is proposed to be discharged. We are disappointed with the decision as the trust is to preserve the reserve as public land for the benefit of Dunara Gardens' residents in particular and the public generally and it is a breach of trust for Council to have it cease as public land. We would like to emphasise our strong desire for the reserve to remain as it is and continuing serving the adjacent residents and benefit the general public in its original form.

Thanking you in advance.



Yours sincerely,



Charles Handler

1

GEORGE FARKAS
B.A LL.B
Dunara Gardens
POINT PIPER NSW 2027
Ph: [REDACTED]
M: [REDACTED]
Email: [REDACTED]

7 September 2017
The General Manager
Woollahra Council
536 New South Head Rd
DOUBLE BAY NSW 2028

Dear Sir

**SC 3794 SUBMISSION RE PROPOSED RECLASSIFICATION OF DUNARA
RESERVE, POINT PIPER**

I am the owner of “ Dunara” [REDACTED] Dunara Gardens , Point Piper , which is Heritage Listed on the State Register, being the birthplace of the famous Australian poet, Dorothea McKellar and the oldest standing house in Point Piper. This was the original house in the original Dunara Estate which comprised all of what is currently Dunara Gardens , before its subdivision in 1956.

I strongly object to the proposed reclassification of the subject land and submit that it should remain as community land owned by Council.

My Submissions are set out as follows:

- EXECUTIVE SUMMARY
- DETAILED SUBMISSIONS

EXECUTIVE SUMMARY:

- 1A. The Council Resolution authorizing the Planning proposal is invalid.
See Paragraph 64 and succeeding paragraphs.
1. The expressed rationale for selling the land is both scandalous and reflects appallingly on Council and further is no longer relevant.
2. The alleged reasons advanced in support of doing so are manifestly incorrect. In particular, the land does provide a community amenity and the public do use the land.
3. Any proposal to sell the land is also based on a fundamental misconception of the reasons and circumstances of its creation and its continuance. The setting aside of that land as Public Garden & Recreation Space was part of the conditions of consent to the subdivision of the Dunara Estate into 11 small lots , many without any gardens and was transferred to Council as part of the subdivision to ensure that it remained garden & recreation space in perpetuity.

4. The proposal is misconceived both in law and in fact.
5. Appendix 1 to the Planning Proposal (Required Information checklist for proposals to classify or reclassify public land through an LEP in accordance with the Dept of Planning & Environment's LEP Practice Note PN 16-001) contains incorrect information and thus does not contain the information required by that document and the Dept of Planning.
6. The information supplied to NSW Planning & Environment resulting in a Gateway determination was incorrect and thus the Gateway determination is based on incorrect information.
7. The Planning Proposal contains incorrect information and accordingly the recommendation contained therein cannot validly stand.
8. The original Council Notice of Motion of 10.6.14, on Council's own admission, was a response to its failure to legally enforce a legally binding condition of consent to No 9 Dunara Gardens' DA as imposed by the Land & Environment Court to remove the significant encroachment by No 9 on the subject land and should never have been passed, being an abrogation of Council's duty to enforce Court Orders.
9. The proposal sets a bad example of public policy.
10. Council's Resolution of 10.8.15 to prepare a Planning Proposal was based on incorrect information in a Report provided to it and further is similarly an abrogation of its duty and constitutes bad public policy.
11. The Proposal fails to meet Goals of and is inconsistent with the relevant requirements of " A Plan for Growing Sydney (2014) and the Draft Central District Plan (2016) in material respects.
12. The Proposal is inconsistent with State environmental planning policies.
13. The Planning Department's agreement to the reduction of land for public purposes was based on incorrect information put forward by Council as a justification for the proposal. Further the proposal is inconsistent with s.117 Direction 62 (Reserving Land for Public Purposes).
14. There is such little public garden space in Point Piper, which is already overdeveloped, that the land should remain community land, rather than being sold for potential further development, especially in such a confined area as Dunara Gardens.
15. Further there is a towering Heritage listed Cook Pine on the land, which is prominent from both the Rose Bay foreshore and as far away as Darling Point, whose survival can only be ensured if the land remains in Council's hands, especially given tree death by poisoning on private property in Dunara Gardens .
16. The Proposal is detrimental to my Heritage Listed property as well as the Heritage Listed No 4 Dunara Gardens.

DETAILED SUBMISSIONS:

- 1A. After para 12 hereafter, please read paras 64 onwards re invalidity.
1. In 1955, the original Dunara Estate (comprising the whole of the land in the current subdivision which is Dunara Gardens) was subdivided into 11 lots.
 2. The subject land , being Lot 11 in the subdivision , was marked as and dedicated on the subdivision deposited plan as “ Public Garden and Recreation Space”.
(See Annexure 1 hereto , being Plan of Subdivision DP 27451)
 3. Council acquired the land by transfer under s. 340A LGA 1919
(now s 50(2)(a) LGA 1993) as part of the subdivision, which provided:
“Where in the subdivision of land provision is made for public garden and recreation space, such space shall be conveyed or transferred to the council if the council at any time so requires”.
 4. The land became a Public Reserve under the LGA 1993, but it is interesting to note that the only listing in Point Piper on Council’s website of public reserves is Duff Reserve, with Dunara Reserve not included.
 5. It is instructive to note the requirements imposed on Council for a subdivision (as it applied to Dunara Gardens) under LGA 1919, eg
 - (1) Under s 326, in fixing the number of lots, ie in ascertaining the area for the purpose of fixing the number of houses permitted in the subdivision, Council had to “ *embrace public reserves, open spaces and the like*”.
 - (2) Under s 327(2), where the subdivision did not provide for the opening of a public road (as is the case with Dunara Gardens, the actual road being a private road) , Council had to have regard to the plan of subdivision (which had to embrace the other sections relating to garden and open space).
 - (3) Under s 333(g) Council had to take into consideration in respect of the application for approval of the subdivision “ *the amount of public garden and recreation space to be provided in the land to be subdivided*”.
 6. It is therefore clear that inherent in the approval by Council of the subdivision and in particular the determination of the number of lots , and as a condition of the subdivision . the subject land (Dunara Reserve) was an essential pre-requisite. It is easy to see why, given the tight knit and closely adjoining houses provided, leaving little or no room for gardens.
 7. The name “ Dunara Gardens” itself embodies that essential element of trees, gardens and open space.
 8. The fact that Council directed in 1957 as part of the subdivision, pursuant to s. 340A LGA 1919, that the garden space be transferred to it (at a time when there was no provision for such to be vested in it , purely on registration of a Deposited Plan) is indicative of the

importance Council placed on there being such garden and recreation space as part of the subdivision of the Dunara Estate, realizing as it did that the subdivision made little or no provision for garden and trees, given the tight allocation of numerous houses, each on a small parcel of land.

9. That is further reinforced by the fact that the entity seeking the subdivision originally sought to provide a smaller garden & recreation space and Council required that a larger space be allocated
10. The acquisition of the land and the requirement for a minimum area, was Council's way of guaranteeing in perpetuity the preservation of that space as open land with gardens and foliage **as part of Dunara Gardens**. Nothing has changed since. It is submitted that its inclusion as part of Dunara Gardens is the proper yardstick of evaluating its continuance, not the extent to which the public at large utilize it (putting aside the fact that the public in fact do so).
11. Council are in effect the Trustees of that land, as part of the subdivision of the Dunara Estate and under a duty to keep its classification as Community land as is and to ensure its preservation as such and not to deal with it in a manner inconsistent with its current classification.
12. It is further submitted that the land is subject to a "trust for public purpose" as explained by the High Court in Bathurst City Council v PWC Properties Pty Ltd (1998) HCA 59, (1998) 195 CLR 566

At [48] of the Judgment, the Court stated "*In relation to the obligations imposed on local government authorities with respect to land vested in them, the phrase has had a lengthy history. This involves the use of "trust" in a (broad) sense*".

At [67] : "*The term "trust" in 6(2)(b) of Schedule 7 (LGA) is apt to include those governmental responsibilities which.... may fairly be described as a "statutory trust" which bound the land and controlled what otherwise would have been the freedom of disposition enjoyed by the registered proprietor of an estate in fee simple. The trust was "not a trust for persons but for statutory purposes"*.

In PWC the trust for a public purpose arose from the terms of a condition of a development consent.

Whilst Council, under s 30 can discharge the land from a trust, there has to be a very cogent reason for it to do so, and it is submitted that Council has not met that very high bar in this case.

13. Council is in error in using the inability to construct a building for community use on the land or its ability to be used by the community as the yardstick for its existence and continuance. It was never intended as a potential site for construction of a community building or indeed community use, but as an essential component of the subdivision.

14. There is no guarantee that if that land is sold , as is Council's expressed intention in its reclassification, it will remain as garden space with trees and extensive foliage , some of it providing a beautiful canopy over the entrance to Dunara Gardens.
15. In fact the opposite is likely. The only real party who would have an interest in purchasing it is No 9 Dunara Gardens, immediately adjoining it which would result in their
 - (A) Increasing by 2/3rds their landholding, such acquisition thereby increasing its value and development potential. In fact Council notes the Valuer General has stated that the estimated gain from the land being sold to an adjoining landholder would be between \$800,000 and \$2 Million.
 - (B) By consolidating it with their current land, increasing its FSR , thereby enabling a s96 Application to their currently approved gross overdevelopment DA , resulting in increase in building bulk etc
 - (C) Even without consolidation, developing it , especially in light of the fact that Council, after years of inaction, finally took legal action to force No 9 to remove their carport , the majority of which encroached on Council land, which they refused to do contrary to Orders of the Land & Environment Court.
16. No 9 had already indicated a wish to buy that Council land in 2008.
17. It is further submitted , that given the history of No 9 cutting down trees on its property , illegally poisoning the largest gumtree in the Woollahra LGA on my property, and denuding the vegetation on the subject land, there is a concern and fear that , once purchased, the trees and vegetation will not remain (to be dealt with hereafter in greater detail) noting in particular that there is a towering heritage listed Cook Pine on the subject land which is prominent from both the Rose Bay foreshore and as far away as Darling Point.
18. It is trite for Council to state that there are enforceable tree preservation orders to prevent such, given Council's complete lack of enforcement in this regard, in spite of repeated complaints to it by Dunara Gardens residents.
19. There is such little public garden space in Point Piper , which is already overdeveloped, that the land should remain Community land, especially in such a confined area as Dunara Gardens.
20. It is instructive to examine Council's purported reasons for this Proposal, which it clearly states is for the sole purpose of selling the land.
21. It is hugely significant to note the principal reason advanced for the initiation of the reclassification, as stated on p.1 in "1.1 Background " of the Planning Proposal being :
*" In 2010 staff identified a partial encroachment into the site. **In response** , Council adopted the following Notice of Motion on 10 June 2014:
That a report be brought to Council... assessing the land known as Dunara Reserve, Point Piper, with a view to rezoning the land in order for it to be put up for sale".*

22. It is incorrect for Council to state that the encroachment was identified in 2010. On 14.6.2005, Condition of Consent 46 to No 9's, DA Approval noted that "*The survey has identified a significant encroachment of the existing carport on Council's property on the SW side of the development. This is to be removed with the proposed development not encroaching beyond the boundaries of the site. Following removal of the carport and parking platform the disturbed areas of Council's property are to be restored to match the existing to the Council's satisfaction*".
23. The encroachment referred to was that 2/3rds of No 9's carport was on the subject Council land. Council failed to take any action to obtain its removal, in spite of repeated complaints by neighbours and residents of Dunara Gardens. (See Annexure 2 hereto).
24. On 10 January 2008, the Land & Environment Court confirmed and reiterated by Order that requirement (See Annexure 3 hereto).
25. In spite of the Court's Order, Council, still repeatedly neglected and failed to enforce that legal requirement, in spite of repeated representations by myself and others for it to do so.
26. Council then, abrogated its legal obligations, and on its own admission, "*in response to the encroachment*" decided to wash its hands of the subject land by commissioning a report with the expressed purpose of selling the land ie if No 9 (identified by Council in the Planning Proposal as a likely purchaser) purchased it, the encroachment would remain, and if someone else purchased it, it would be their problem to remove the illegal encroachment.
27. Council's attempt to reclassify the land to sell it for this principal reason is absolutely scandalous and reflects poorly on Council. Council has identified No 9 and the other adjoining property, No 1 Wentworth St as the only real likely purchasers. As No 1 Wentworth has indicated it has no real interest in doing so, that leaves No 9 as the only likely purchaser, thereby rewarding it for its own longstanding illegal refusal to demolish its encroaching carport, (in fact repairing it, further in breach of the Court Order) thereby profiting by its own breach.
28. That sets an appalling and unacceptable precedent for other landholders adjoining Council land to make life difficult for Council in the proven expectation that Council will cave in and they will benefit from their behaviour.
29. That and the matters mentioned below constitutes bad and unacceptable public policy.

Council also seeks to nullify its failure to meet the Objectives and Performance Targets set out in 3.4 of its Plan of Management applicable to Dunara Reserve (Plan of Management 1996 – Local Parks) ie "*Encroachment : To discourage private property boundaries extending into public open space and the dumping of rubbish*" (see later submission re dumping of rubbish) by its sale. S. 35 LGA states that community land is required to be used and managed in accordance with the plan of management applying to the land. Council seeks to nullify its non compliance with that section of the Act, by its sale.

30. Further, that ground is no longer valid, as once Council finally very recently took legal enforcement proceedings, No 9 finally demolished the encroachment.
31. A further reason advanced by Council for the proposed sale is: “ the debris and rubbish left on the site” (which is illustrated in Figures 6 & 8), inter alia, “ owing to its inaccessibility” “ with the potential public safety risks and hazards”.
32. The fact is that it is not its inaccessibility that has led to “a build -up of vegetation and debris over time” but No 9 Dunara Gardens who has regularly dumped debris and rubbish from its land onto the Council land and Council has done nothing to either penalize such or prevent future recurrence, despite numerous complaints to it and it being shown evidence of such taking place on numerous occasions.
33. Annexure 4 hereto contains photographs of Mr Wang (the husband of Yan P Gu, the owner of No 9).
 - (A) Dragging a huge branch which fell from the huge camphor laurel tree on that property (before its death by poisoning) onto and dumping it on the Council land ; and
 - (B) Sweeping a large amount of vegetation and debris which had accumulated on the roof of the (illegally encroaching) carport , onto the Council land.Annexure 4 also shows a large dead branch originally on No 9’s property, having been dumped on Council’s land.
34. I have also personally observed Mr Wang dumping large palm fronds (of the type pictured in Figures 6 & 8) on that Council land.
35. Again Council . in justifying the reclassification in order to sell the land, washes its hands of the problem, and is likely to knowingly reward No 9 for its dumping of debris, rubbish and vegetation on Council land, setting an appalling precedent and principle and such constituting appalling public policy.
36. There would not be any such “ public safety risks and hazards” were Council to fulfill its responsibilities, in prosecuting the perpetrator, with the full knowledge of their identity and having been presented with evidence of such.
37. Further, Council states, as a further justification for the sale of the land, the necessity for it to “ undertake site maintenance to clear the debris and vegetation twice a year” and that such attendance “ is a resource burden to Council” (See ‘ Present Situation’ , on p.16 of Appendix 2 to the Planning Proposal , being the Report to Council dated 10.8.15 commissioned in order to reclassify the land).

38. It is submitted that
- (A) Twice yearly is neither an onerous or financial burden on Council ;
 - (B) Had Council taken any action over many years against No 9 in respect of the dumping, the necessity to clear the debris would not occur;
 - (C) Twice yearly maintenance is insignificant in Council's Expenses on Community land in 15/16 of \$ 121,422.000 (Council having an asset maintenance ratio of 0.99, as against the target of greater than 1.00).
 - (D) Since Council finally, after years of failing to do so, demarcated its boundary with No 9 by planting bushes, the dumping has ceased, so that ground is no longer valid.
 - (E) Council has not made numerous attempts to manage the site. To the contrary, it has consistently neglected the site, even when complaints have been made by Dunara Gardens residents as to its state, principally caused by No 9.
39. Council also seeks to justify the proposed reclassification and sale of the land on the basis that it is not used as public open space and that the site currently only offers benefits to the immediately adjoining properties (being no 9 and No 1 Wentworth).
40. Council, on its own admission only attending the site twice a year, is in no position to make any statements as to its usage.
41. It is submitted that:
- (A) Irrespective of usage , the land provides a general public amenity in Point Piper by reason of its foliage, vegetation, large trees, canopy and garden, in an already overdeveloped suburb, which has only one other public reserve, some distance away.
 - (B) It provides a significant amenity to all the residents of Dunara Gardens, enhancing the ambiance of Dunara Gardens, a small cul de sac, such being the original raison d'etre for its creation in the original subdivision.
 - (C) It provides significant amenity to my Heritage Listed property, in its immediate vicinity.
42. Further, it is in fact used by the public
- (A) Children of a number of the properties in Dunara Gardens, in particular those without garden space, use the land to play and have picnics. Swings have been erected thereon (precisely the purpose of its original creation in the subdivision)
 - (B) Non resident children also use the land to play on.
 - (C) Walkers in Point Piper take advantage of its space and shade provided by the tree canopy to rest , before continuing their walk

- (D) Point Piper residents walking their dogs have taken advantage of the space for their dogs to relieve themselves, instead of in the street
- (E) The regular organized local heritage walks ,comprising a significant number of people, which come to Dunara Gardens , by reason of its 2 Heritage Listed properties, take advantage of the land's amenity and its shade, garden & canopy.
- (F) Those heritage walks also go onto the land to view at close hand the significant Heritage Listed Cook Pine dating from the 1890s.

43. The land therefore does benefit the wider community and should not be reclassified.

44. The note to Part 2 of the LGA states that:

- (A) Community land must not be sold (except in the limited circumstances referred to in s 45(4)) (which do not here apply); and
- (B) Operational land (the category to which the land is sought to be reclassified) would ordinarily comprise land held as a temporary asset or as an investment, land which facilitates the carrying out by a Council of its functions or land which may not be open to the general public, such as a works depot or a Council garage.

Clearly the land does not fall into any of those categories which the Act itself contemplates as comprising Operational land. It is clear that the sole purpose of reclassifying it as Operational, notwithstanding that it does not qualify for that category, is its sale.

The stated reasons for its sale are both wrong and in many instances, no longer valid.

45. The Plan of Management 1996 - Local Parks, which applies to Dunara Gardens, Cl 29 states that:
“ Open space is essential for the general health and vitality of the community through the provision of natural elements in a built environment. In higher density residential areas, parks also provide a release from city living, a sense of place and are also a vital resource ”

That is why the land was originally created, it has been specifically included and named in Council's Local Parks Plan of Management , and is still relevant and essential.

46. Further 2.10 of that Plan “ Heritage Significance” states:
“ There are few items of heritage significance in the local parks any item of significance should be conserved, maintained and enhanced in an appropriate manner”.

The only way in which the towering significant heritage listed Cook Pine on the Land can be conserved and maintained with certainty, is for it to remain in public ownership.

47. The land has been valued at \$245,000. Council contends that the sale proceeds can be better expended elsewhere. It is submitted that

- (A) \$245,000 is insignificant, given Council's total assets in 15/16 being \$901 Million.

- (B) Is insignificant, given Council's gross income in 15/16 being \$115.36 Million and Net Profit of \$14.3 Million.
- (C) Council is unlikely to realise even that, given there being only realistically 1 potential purchaser, being No 9 Dunara Gardens.
- (D) Accordingly there will not be any maximum or real financial benefit to the general ratepayers, contrary to the valuation and assertions by Council, and therefore such sale will not fulfill the objectives of Council's "Policy for Sale of Council Land".
- (E) It is insignificant, given that Council had cash reserves in 15/16 of \$19.49 Million.
- (F) The sale proceeds cannot compensate for the permanent loss of public community amenity of gardens and trees, of which there is a dearth in Point Piper.
48. The reclassification and subsequent sale will have severe detrimental consequences to "Dunara" my significant State Heritage listed property, the birthplace of Dorothea McKellar and the oldest standing house in Point Piper, which was the sole house of the original Dunara Estate, which it owned.
49. I understand that the NSW Heritage Council intends submitting its strong opposition to the reclassification and advocating the land's retention in public ownership. It is submitted that its views carry considerable weight and cannot lightly be dismissed.
50. Council's own Heritage Officer, Kate Higgins, in the Development Application Assessment Report to the DCC on 7.2.05 (re No 9's DA) reviewed the historical basis for the Dunara Gardens subdivision, referring to it as "*the breaking up of a larger lot into a subdivision pattern allowing for relatively close suburban development*", and stated that "*the creation of the special lot for public garden and recreation should be preserved*".
51. Accordingly Council's assertion in Schedule 1 "Consistency with A Plan for Growing Sydney and the Draft Central District Plan" of the Planning Proposal, (Liveability Priority 7: Conserve heritage and unique local characteristics) that reclassification of the land will not impact on the significance of the listed heritage items (Dunara, No 4 and the Cook Pine) is not correct.
52. The Council Resolutions for the reclassification to accommodate the sale of the land was based on incorrect and/or insufficient information ie:
- That the public didn't use it
 - That the site doesn't benefit the wider community
 - That the site only offers benefits to the immediately adjoining properties
 - That the site provides no public amenity
 - That the Planning Proposal does not impact on heritage and unique local characteristics and will have no impact on the heritage items in Dunara Gardens and on the land
 - The Planning Proposal is minor in nature
 - That the site's maintenance is a resource burden on Council
 - In failing to mention that the principal reason for the Proposal ie "in response" to the encroachment by No 9 was no longer relevant, the encroachment having been finally

removed and/or that the proper manner of dealing with the site was the enforcement of the Court's Order , rather than a sale.

- In failing to state that the buildup of debris and rubbish was because of the dumping thereof by No 9 (the likely purchaser)
- That the proposed classification reflects the use of the site
- That the site requires ongoing maintenance , when in reality at most Council attend twice a year
- That there are no likely negative environmental effects associated with the planning proposal.

It is submitted that had full Council had the full and correct picture, it is unlikely that it would have considered selling the land and accordingly there would have been no need for a Planning Proposal to reclassify it for that purpose.

53. Appendix 1 to the Planning Proposal (Information checklist for proposals to classify or reclassify public land through an LEP taken from practice note 16-001) contains similar errors.
54. Similarly the Gateway determination by the Dept of Planning & Environment, being based on documents containing incorrect information cannot stand, nor can its conclusion, based on that information, " that the planning proposal's inconsistency with S 117 Direction 6.2 Reserving Land for Public Purposes is of minor significance".
55. The Proposal is also inconsistent with the Aims of the LEP 2014 ie
 - 1.2(2)(c) to provide for an appropriate balance and distribution of land for recreation and open space;
 - (g) to protect amenity and the natural environment
 - (f) to conserve natural environmental heritage

56. In Paragraph 17, I submitted that there is a concern and fear that, should no. 9 purchase the land, the trees and vegetation will not remain . This is a legitimate matter to be taken into account, ie the possible and/or likely consequences of a sale, given that Council has identified no 9 as one of only 2 adjoining properties likely to have such an interest , and particularly as the other (1 Wentworth) has indicated it will not improve their land value).

That concern is based on the following:

- (1) The poisoning of a large bluegum tree exclusively on my property by Mr Wang (the husband of Yan P Gu, the registered owner of No 9) on 18 May 2006 and its death:

1. Council's approval of No 9's DA contained a number of Conditions to protect this tree, which was the largest gum tree in the Municipality eg
The necessity for hand excavation within the 6m tree root zone; conditions on footings for any structure within 6m of the tree; existing tree roots with a diameter of 50mm (or larger) had to be bridged; piers to be constructed so that they are not severed .
2. Thereafter, on 18 May 2006, the roots were hacked into and poisoned, resulting in the death of the tree and its necessary removal. The estimated value of the tree by an Arborist was \$ 140,000.

3. In Farkas v James Wang & Y Ping Gu (2006) , His Honour Magistrate Bartley in the Local Court Downing Centre , delivered a Judgment on 11.6.2010 in which he accepted the following:
 - (1) Mr Wang said the gum tree would “go” (p. 16.36).
 - (2) Mr Wang said “ I make things happen, We are builders. We’ve done this before” (p. 16.8).
 - (3) Woollahra Council imposed numerous onerous conditions on the DA to protect that tree and that once the tree died and was removed, Mr Wang benefited from his development not having to comply with such conditions (p. 17.22-25).
 - (4) Mr Wang had a motive to have it killed (p.17.28) and that he wanted the Bluegum gone and he would procure its elimination (p.17.30).
 - (5) Mr Wang admitted to Ms Moreland [a neighbour] that he procures the elimination of trees that impede a development (p. 17.30).
 - (6) Mr Wang had the opportunity to procure a fatal attack on the Bluegum (p. 17.31). That opportunity (Mr Farkas’ absence at court) was known, on the evidence, only to Mr Wang (and Ms Gu) (p. 17.32).
4. His Honour , at p. 17.38-42 stated:

“ I find that it is more probable than not that Mr Wang procured the attack on the tree and it’s consequence death. The conduct is criminal ”.
5. Mr Wang & Ms Gu appealed that Judgment. On appeal, His Honour Judge North of the NSW District Court delivered Judgment on 20.5.11 , in which , at p. 14.7 he stated:

“ I am satisfied on the balance of probabilities that the magistrate was correct in finding that Mr Wang procured the attack on the tree and its consequent death “.
6. Copies of the Judgments can be supplied, if required.
7. Annexure 5 hereto shows photographs of
 - (A) The gum tree when alive
 - (B) The dead gum tree
 - (C) Its removal, requiring numerous workmen, over a number of days and the necessity to use a crane
8. The NSW Heritage Council required that a replacement blue gum be planted, “ to ensure compatibility with the existing heritage qualities of the (heritage) item (being No 10 Dunara).
- (2) The cutting down of trees in No 9’s rear garden in contravention of the Land & Environment Court’s imposed Conditions of DA Consent:

1. Council determined, contrary to no 9's request in their DA, that approval was not granted to the removal of 2 Willow Myrtle trees in their rear yard, which were referred to in the Assessment Report of 6.6.05 to be significant landscape elements.
 2. In a 2nd s.96 Application in 2006, No 9 sought removal of the condition requiring their retention on the ground that they "are not in good condition and are slightly deformed".
 3. The reason they were not in good condition and deformed, is that No 9 had illegally hacked at those trees, in breach of Council's refusal and in breach of Council's Tree Preservation Orders, resulting in their disfiguration.
 4. That removal was refused in 2007
 5. In an appeal to the Land & Environment Court, the Court on 10.1.08 allowed their removal but specified that they had to be retained until 2 weeks prior to the construction of the rear wall
 6. Those trees were completely cut down in contravention of the Court's condition (the rear wall not having been built to date)
 7. Annexure 6 hereto shows photographs of
 - (A) The trees in their original condition in April 2006
 - (B) After their partial mutilation (April 2006)
 - (C) The stumps left after they had been cut down (Nov 2008)
- (3) Mr Wang hacking at the vegetation and trees on Council Land:

Mr Wang has on a number of occasions gone onto that land and hacked at the vegetation and trees and left the cuttings there

Annexure 7 hereto shows photographs of him doing so. In particular, it shows him on 7.1.14 cutting down a tall tree on Council's land with a saw and dumping it elsewhere on Council's land.

The Poisoning & death of a large Camphor Laurel on No9's property

1. No 9's DA in 2003 sought approval for the removal of a large Camphor Laurel at the front of their property to facilitate the development.
2. The DA Approval denied approval for its removal and imposed numerous Conditions to ensure its survival, including no excavation within tree root zones, paving in its vicinity, protective fences, mulch and irrigation, and protection barricades for earthworks
3. The tree subsequently died and was removed
4. Council's tree officer, on inspection on 18.7.08, determined that the tree had been poisoned after having up to 40 holes drilled into its base.
5. Whilst there is no evidence as to the perpetrator, what can be said is that its death advantaged the proposed development.
6. Annexure 8 shows photographs of
 - (A) The live Camphor Laurel
 - (B) The dead Camphor Laurel
7. Council by letter dated 24.12.08 to No 9 required replacement tree planting pursuant to s. 6 of Council's Tree Preservation Order, such replanting required within 3 months ie by 31.3.09.
(See Annexure 9 hereto).

To date, ie 8 ½ years later, no replacement tree planting has been done by No 9 in contravention of Council's Tree Preservation Order.

57. " Sustainability Priority 7: Protect, enhance and extend the urban canopy" in Schedule 1 " Consistency with a Plan for Growing Sydney and the Draft Central District Plan" to the Proposal under the " Comment on Consistency" states that

" Should the site be sold, any future development would need to address Chapter E3 Tree Management in the Woollahra Development Control Plan 2015. One of the key objectives is to promote, maintain and conserve the leafy character of the Woollahra Municipality".
58. It is submitted that should the site be sold to No 9, the probabilities are that this key objective would not only not be met, but that it would be defeated , given two Court Judgments having found that Mr Wang is prepared to and did procure the death of a significant tree that impeded his development . Added to this is the evidence that the 2 Willow Myrtles sought to be removed for their proposed development, were removed in contravention of the Land & Environment Court's imposed Condition of Consent, and the non compliance with Council's Tree Preservation Order requiring replanting of the dead Camphor Laurel.
59. There is no point in imposing Conditions of Consent (eg to preserve trees) to any development of the Council land, if a purchaser has a track record of flouting (with impunity) such Conditions.

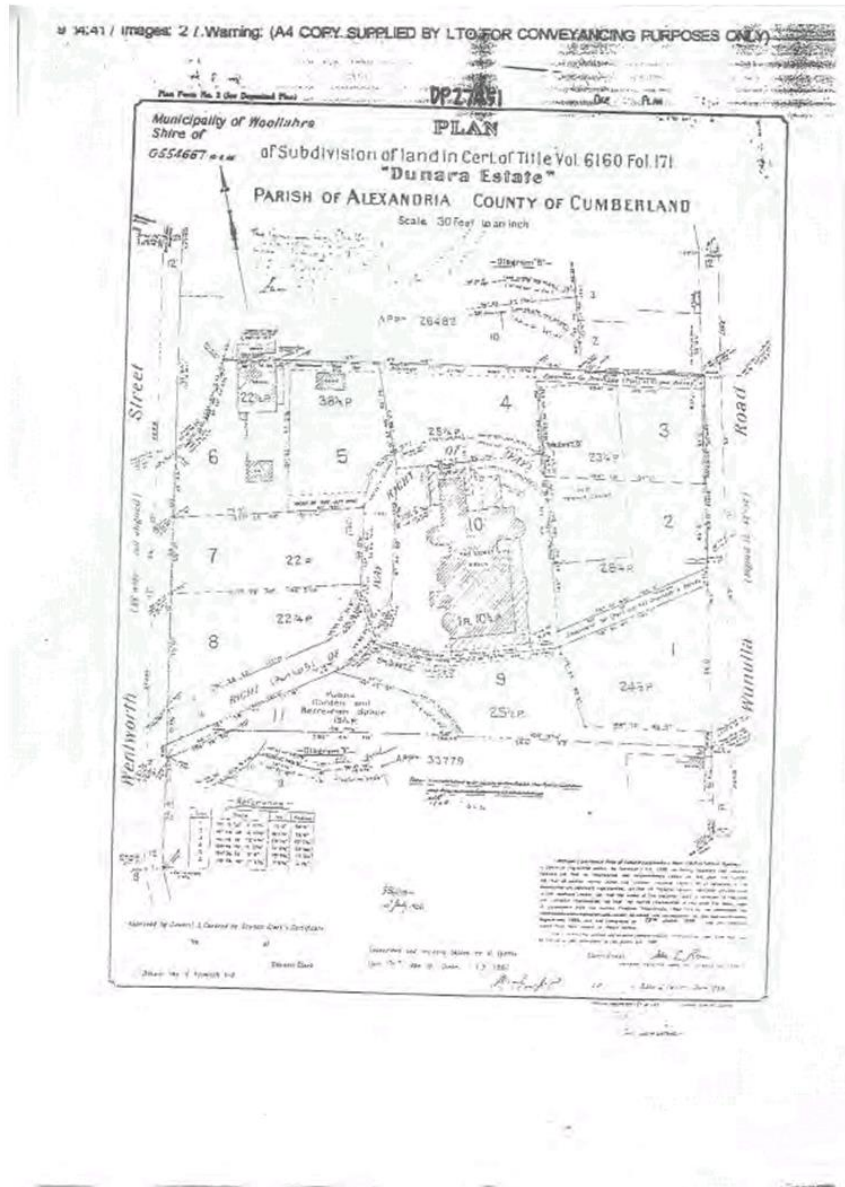
60. Council has over the years failed to take any action in regard to such matters as regards No 9 and one could have little confidence that such would change.
61. Once trees have gone, they are gone, and penalties (if even imposed) cannot bring them back.
62. Accordingly it is a legitimate matter for Council to take into consideration, the consequences of a sale.
63. For all of the above reasons, the land should under no circumstances be reclassified as Operational land and should remain Community land to fulfill its original purpose which is still as operative and relevant today as it was at its original creation.
64. Council's Resolution authorizing the Planning Proposal is Invalid:
 - (1) As can be seen from the original DP, and Figure 1 : Local Area Map (p.2 of the Proposal) the public reserve is only 1 lot (Lot 11) in the subdivision known as " Dunara Gardens ".
 - (2) Dunara Gardens is all, with the exception of Lot 11 , privately owned property ie 11 houses , the roadway and the public reserve.
 - (3) Figure 1 referred to correctly notes the road into and part of Dunara Gardens is a " Privately Owned Road".
 - (4) The street sign says " Dunara Gardens" being a reference to the enclave/cul de sac of all of the abovementioned houses. The houses have a (street) number by reference to Dunara Gardens .
 - (5) The Planning Proposal purports to be authorized by
 - (A) The recommendation on 10.8.15 of the Community & Environment Committee ; and
 - (B) The resolution of Council on 24.8.15.
 - (6) The Recommendation to Council of the C&E Committee of 10.8.15 is as follows:
*" That Council prepare a planning proposal to Amend Schedule 4 : Classification and reclassification of public land in Woollahra LEP 2014 , to reclassify **THE LAND KNOWN AS DUNARA GARDENS [emphasis is mine]** from community land to operational land with the intention of disposing of the land"*
 - (7) The Council Resolution of 24.8.15 (which it is also noted was passed without debate on the basis of incorrect and/or inadequate information in the Report to the Committee) was in identical terms ie to reclassify **THE LAND KNOWN AS DUNARA GARDENS with the intention of disposing of the land**".
 - (8) As Dunara Gardens is private land, neither the Committee , nor Council had the power to respectively make the Recommendation or pass its Resolution and accordingly acted without authority ie it purported to exercise powers it did not have ie acted ultra vires to

- (A) Prepare a planning proposal to amend Schedule 4 of the Woollahra LEP to reclassify the land known as Dunara Gardens;
 - (B) Reclassify Dunara Gardens, as it is not capable of reclassification
 - (C) Have the intent to dispose of the land known as Dunara Gardens
 - (D) Dispose of the land
 - (E) Regard it as community land
 - (F) Deal with the land at all.
- (9) This is not simply a matter of semantics or a typographical error. It is one of significant legal substance, in that the Resolution authorizing the Planning Proposal purports to authorize a Proposal for the reclassification of private land , as well as its ultimate disposal. The Planning Proposal accordingly has been brought into existence pursuant to an invalid Council Resolution and therefore can neither stand nor proceed.
- There is numerous case law dealing with Council resolutions purporting to classify and/or deal with land, declared by the Courts to be invalid.
- (10) Equally the Planning Proposal purporting to deal with the public reserve has been brought into existence without valid authorization or Resolution by Council.
- (11) Similarly the Gateway Determination cannot stand for the same reasons.

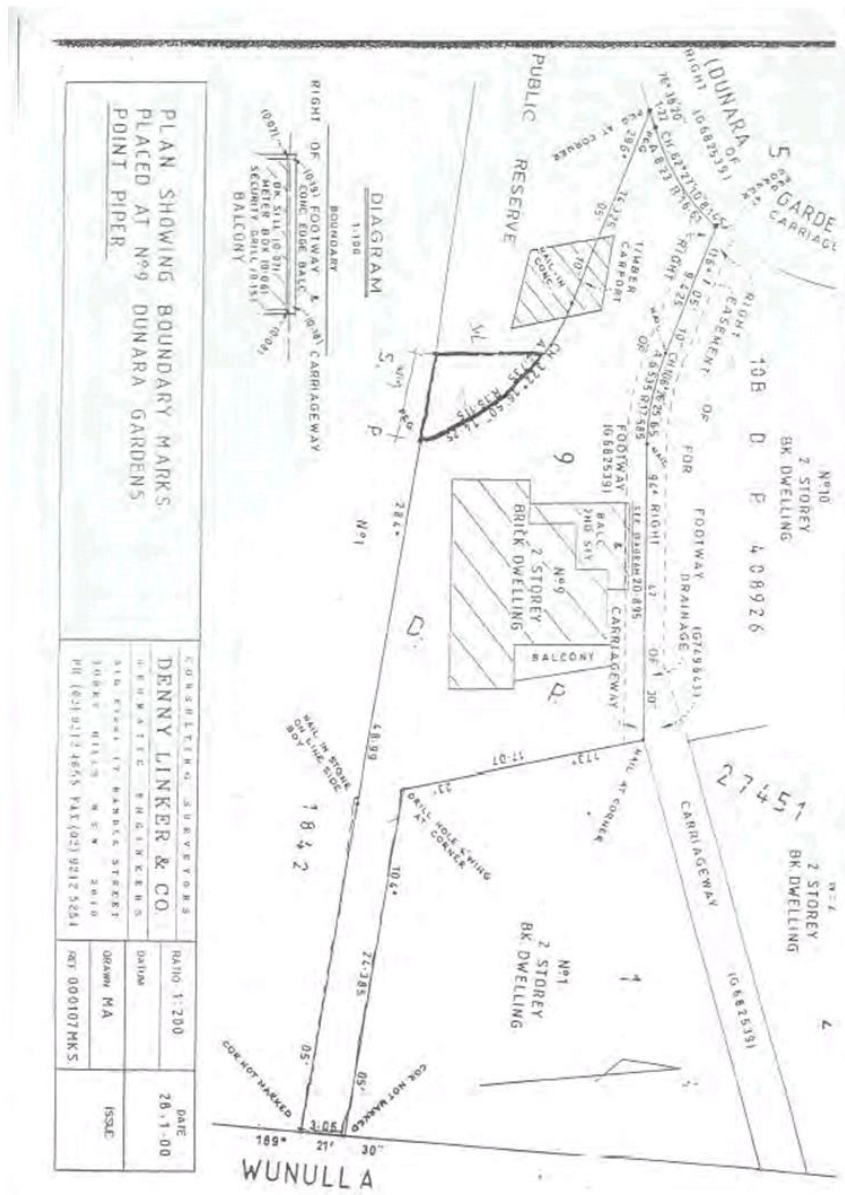


GEORGE FARKAS

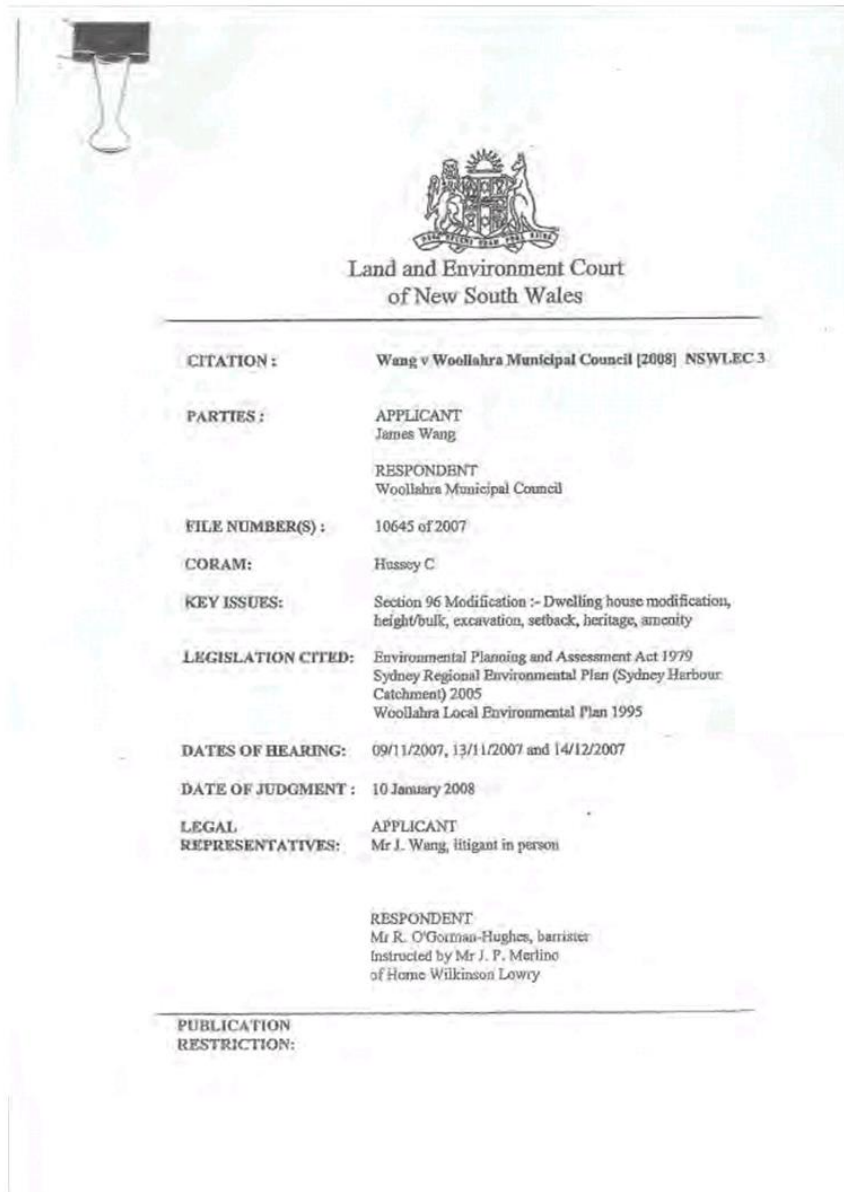
Annexure 1




Annexure 2



Annexure 3




Land and Environment Court
of New South Wales

CITATION : Wang v Woollahra Municipal Council [2008] NSWLEC 3

PARTIES : APPLICANT
James Wang

RESPONDENT
Woollahra Municipal Council

FILE NUMBER(S) : 10645 of 2007

CORAM: Hussey C

KEY ISSUES: Section 96 Modification :- Dwelling house modification,
height/bulk, excavation, setback, heritage, amenity

LEGISLATION CITED: Environmental Planning and Assessment Act 1979
Sydney Regional Environmental Plan (Sydney Harbour
Catchment) 2005
Woollahra Local Environmental Plan 1995

DATES OF HEARING: 09/11/2007, 13/11/2007 and 14/12/2007

DATE OF JUDGMENT : 10 January 2008

LEGAL REPRESENTATIVES: APPLICANT
Mr J. Wang, litigant in person

RESPONDENT
Mr R. O'Gorman-Hughes, barrister
Instructed by Mr J. P. Merlino
of Home Wilkinson Lowry

PUBLICATION RESTRICTION:

Appeal No: 10645 of 2007

43. Public footpaths

A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards must be maintained at all times on or adjacent to the public footpaths fronting the construction site. Where the footpath is damaged, repair works must be carried when directed by Council officers and in accordance with the relevant clauses of the current edition of AUS-SPEC.

Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1998 "Traffic Control Devices for Work on Roads".

If pedestrian circulation is not satisfactorily maintained, and action is not taken promptly to rectify the defects, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

44. Completion of infrastructure work

All infrastructure works must be completed and be certified by the accredited certifier as meeting all Council requirements and as-built drawings are to be submitted to Council's Development Engineer, prior to the release of the Infrastructure Works Bond. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

45. Repair of Damaged Infrastructure

If Council's infrastructure is damaged during the course of works, Council's Development Engineer must be notified and necessary repairs must be undertaken within the time stipulated by Council, to Council's specifications, and at no cost to Council. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

If work is not undertaken to the satisfaction of the Development Engineer with regard to time or quality, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

46. Encroachments

The survey plan has identified a significant encroachment of the existing large carport on Council's property at the SW side of the development. This encroachment is to be removed with the proposed development not encroaching beyond the boundaries of the site. Following removal of the carport and parking platform the disturbed areas of Council's property are to be restored to match the existing asset to Council's satisfaction.

Annexure 4 (para 33)

Large dead branch originally on No.9's property having been dumped on reserve 10/08



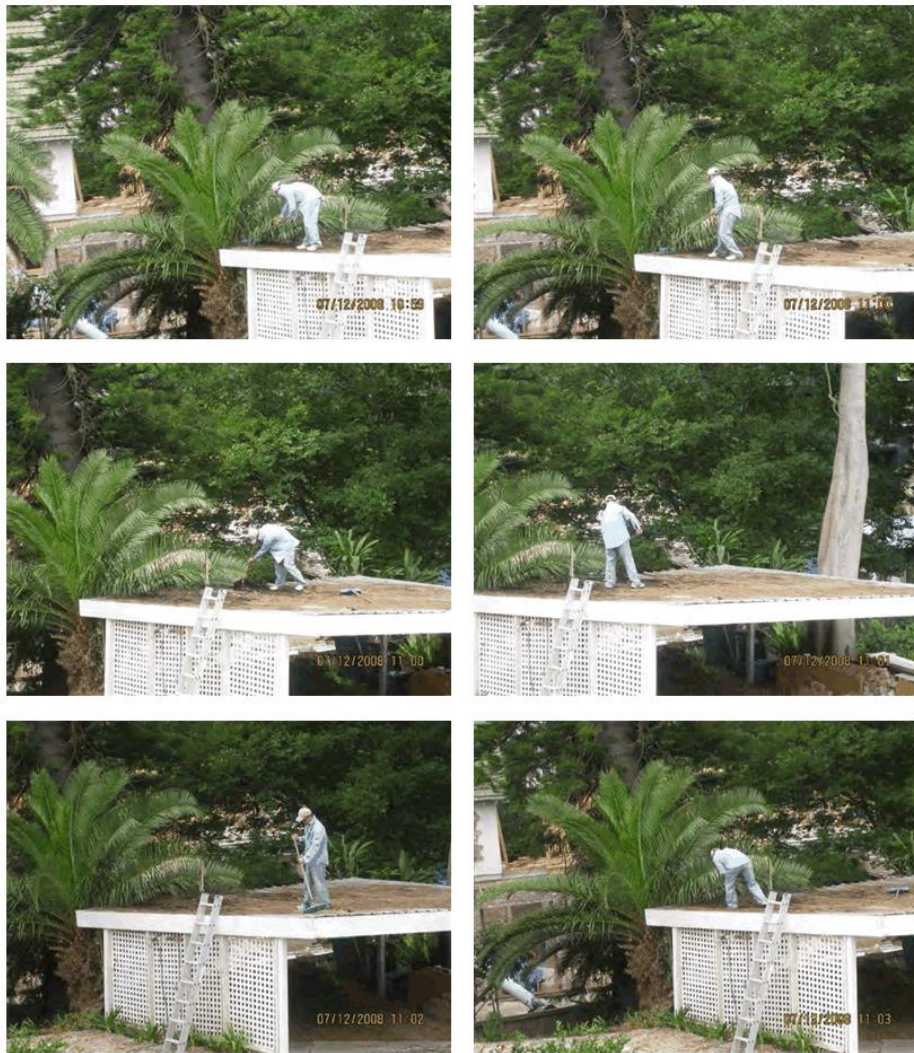
Mr Wang dragging large branch onto reserve 02/09/06



Mr Wang sweeping carport roof debris onto reserve 07/12/08





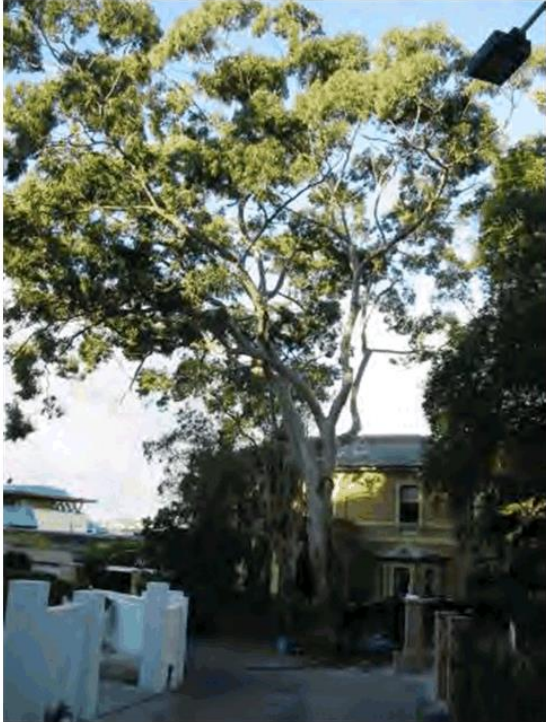






Annexure 5 (para 56)

Live Gum Tree



Dead Gum Tree



Removal of Dead gum tree 09/03/07



Annexure 6 (para 56)

Willow myrtles in no. 9's rear garden in original condition 04/06



After their partial mutilation 04/06





The stumps after they had been cut down 11/08



Annexure 7 (para 56)

Mr Wang hacking at vegetation on reserve 30/04/06



Mr Wang cut down tree on reserve with a saw and then dumped it on Reserve 07/01/14







Picture of original tree 12/13 and 01/14



Annexure 8 (para 56)

Live camphor laurel 04/06



Dead Camphor Laurel 08/08



Annexure 9

Council Ref: TPO Breach 379/2008/1: 516.9
Public Open Space, Technical Services Division

24 December, 2008

FILE

Mrs Gu & Mr Wang
9 Dunara Gardens
Point Piper NSW 2027



ABN 32 216 483 245

Redleaf Council Chambers
536 New South Head Road
Double Bay NSW 2028

Correspondence to
General Manager
PO Box 61
Double Bay NSW 1360
DX 3907 Double Bay
records@woollahra.nsw.gov.au
www.woollahra.nsw.gov.au
Telephone: 81 2 9391 7000
Facsimile: 81 2 9391 7044

TPO Breach: 379/2008/1
Property: 9 Dunara Gardens POINT PIPER 2027

I confirm that the *Cinnamomum camphora* Camphor Laurel tree located on your property and subject to an investigation of alleged poisoning under Council's Tree Preservation Order has now been removed. As per my correspondence to you dated 22nd October 2008 removal of dead trees is exempt works under section 6.1(a) of Council's Tree Preservation Order.

Further, section 6 of Council's Tree Preservation Order requires replacement planting be undertaken. Following are the specification and conditions that Council requires you to meet in regard to replanting.

Replacement Planting

Replanting is to be undertaken within the boundary of the subject site and completed within three (3) months, being 31 March 2009, in accordance with the specifications below.

Replacement Tree Species	Location	Minimum container size at purchase	Minimum Size at Maturity
1 x suitable canopy trees	Within the property	75 litres	10 metres x 8 metres

- Any replacement plant is to be maintained in a healthy and vigorous condition until it attains a height of 5 metres or spread of 3 metres, whereby it will be protected by Council's Tree Preservation Order.
- If the replacement plant is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it shall be replaced with another of the same species which complies with the criteria outlined above.

A Council tree officer will organise to inspect the site after 31st March 2009 to ensure the replacement planting has been installed. If you have any questions regarding this matter I can be contact on 9391 7192 from Monday 5th January 2009.

Yours sincerely,

Nick Williams
Tree Officer



1

GEORGE FARKAS
B.A LL.B
[REDACTED] Dunara Gardens
POINT PIPER NSW 2027
Ph: [REDACTED]
Fax: [REDACTED]
M: [REDACTED]
Email: [REDACTED]

8 September 2017

The General Manager
Woollahra Council,
records@woollahra.nsw.gov.au

Dear Sir,

**SC 3794 - FURTHER SUBMISSION RE PROPOSED
RECLASSIFICATION OF DUNARA RESERVE, POINT PIPER**

I refer to my Submission dated 7 September, and wish to make the further following Submissions:

1. The Plan of Management 1996 – Local Parks , being the only Plan of Management purporting to be applicable to Dunara Reserve, in
 - (A) “Appendix A - Parks (Local) “ identifies and includes “ Dunara Gardens” (which is to be compared to 26 “Reserves” therein named) ; and
 - (B) “ Local Parks Area Key” identifies “ Dunara Gardens” as L53
2. It cannot do so , as “ Dunara Gardens” is all private property (except Lot 11) and its inclusion is invalid.
3. Thus there is no Plan of Management in existence for “ Dunara Reserve”

4. This is not a matter of semantics or typographical error, but one of significant legal substance
5. S 35 LGA states that “ *community land is required to be used and managed in accordance with ...the plan of management applying to the land*”
6. Council, in having no Plan of Management for “ Dunara Reserve” is in breach of ss. 35, 36 and 43 of the Act
7. Further and most importantly, s 44 LGA states that

“ Pending the adoption of a plan of management for community land , the nature and use of the land must not be changed”.
8. As there is no Plan of Management for “ Dunara Reserve” , it is submitted that Council is legally prohibited from reclassifying the land from Community to Operational land.

Yours faithfully,



GEORGE FARKAS

1

GEORGE FARKAS
B.A LL.B
Dunara Gardens
POINT PIPER NSW 2027

17 November 2017

The General Manager
Woollahra Council,
records@woollahra.nsw.gov.au

Dear Sir,

**SC 3794 - FURTHER SUBMISSION RE PROPOSED
RECLASSIFICATION OF DUNARA RESERVE, POINT PIPER**

Inexplicably , in spite of

- (A) Numerous submissions against the proposal received to its recent public exhibition
- (B) Council now admitting that there may currently be a trust affecting the land (obliging it to retain it as public land) which Council now proposes be discharged by the land's reclassification
- (C) Receiving a submission from the Chair of the Heritage Council of NSW against the proposal
- (D) Receiving submissions that there are legal impediments to it proceeding with the reclassification, with the process legally flawed from its inception

Council seems determined on ultimately selling this public reserve by re-exhibiting its flawed proposal, with the re-exhibition not only failing to cure the legal invalidity but resulting in new additional legal impediments to any reclassification.

I accordingly make the following further submissions:

1. I re-iterate my previous submissions contained in my letters dated 7 September and 8 September 2017.
2. In particular, the legal impediments stated in
 - (A) Paragraph 64 of my letter of 7 September; and
 - (B) My letter of 8 Septemberstill apply rendering the process invalid and legally prohibiting the reclassification of the land from Community to Operational.
3. One of the purported justifications for the re-exhibition is “ to clarify the location and description of the site”.
4. If Council considers such clarification as being required so as to justify re-exhibition, it has failed to do so.
5. I have carefully compared line by line the documents exhibited in both the original and re-exhibition and they are identical in all respects with no change whatsoever as regards the location or description of the site. If Council considers the description and location of the site as having been defective and/or needing clarification, that same defect remains in the public exhibition material re-exhibited.
6. Further Council has completely misunderstood the issue and legal defects as regards the description of the site to be purportedly reclassified. One of the legal defects was Council’s misdescription of the site to be reclassified in Council’s Resolution authorizing the Planning Proposal which rendered both the process and the Planning Proposal invalid and which still renders it invalid, which a re-exhibition cannot cure. It is worth setting out that submission again (as set out in Para 64 of my letter of 7 September):

“ 64. Council’s Resolution authorizing the Planning Proposal is Invalid :

- (1) As can be seen from the original DP, and Figure 1 : Local Area Map (p.2 of the Proposal) the public reserve is only 1 lot (Lot 11) in the subdivision known as “ Dunara Gardens “
- (2) Dunara Gardens is all, with the exception of Lot 11 , privately owned property ie 11 houses , the roadway and the public reserve.
- (3) Figure 1 referred to correctly notes the road into and part of Dunara Gardens is a “ Privately Owned Road”
- (4) The street sign says “ Dunara Gardens” being a reference to the enclave/cul de sac of all of the abovementioned houses. The houses have a (street) number by reference to Dunara Gardens .
- (5) The Planning Proposal purports to be authorized by
 - (A) The recommendation on 10.8.15 of the Community & Environment Committee ; and
 - (B) The resolution of Council on 24.8.15.
- (6) The Recommendation to Council of the C&E Committee of 10.8.15 is as follows:
*“ That Council prepare a planning proposal to Amend Schedule 4 : Classification and reclassification of public land in Woollahra LEP 2014 , to reclassify **THE LAND KNOWN AS DUNARA GARDENS [emphasis is mine]** from community land to operational land with the intention of disposing of the land”*
- (7) The Council Resolution of 24.8.15 (which it is also noted was passed without debate on the basis of incorrect and/or inadequate information in the Report to the Committee) was in identical terms ie to reclassify **THE LAND KNOWN AS DUNARA GARDENS with the intention of disposing of the land”**
- (8) As Dunara Gardens is private land, neither the Committee , nor Council had the power to respectively make the Recommendation or

pass its Resolution and accordingly acted without authority ie it purported to exercise powers it did not have ie acted ultra vires to

- (A) Prepare a planning proposal to amend Schedule 4 of the Woollahra LEP to reclassify the land known as Dunara Gardens;
- (B) Reclassify Dunara Gardens, as it is not capable of reclassification
- (C) Have the intent to dispose of the land known as Dunara Gardens
- (D) Dispose of the land
- (E) Regard it as community land .
- (F) Deal with the land at all.

- (9) This is not simply a matter of semantics or a typographical error. It is one of significant legal substance, in that the Resolution authorizing the Planning Proposal purports to authorize a Proposal for the reclassification of private land , as well as its ultimate disposal. The Planning Proposal accordingly has been brought into existence pursuant to an invalid Council Resolution and therefore can neither stand nor proceed.

There is numerous case law dealing with Council resolutions purporting to classify and/or deal with land, declared by the Courts to be invalid.

- (10) Equally the Planning Proposal purporting to deal with the public reserve has been brought into existence without valid authorization or Resolution by Council.
- (11) Similarly the Gateway Determination cannot stand for the same reasons.”

7. No public exhibition or re-exhibition can cure that invalidity .

8. The second legal defect legally prohibiting the reclassification , which the re-exhibition cannot cure , was set out in my submission dated 8 September, which again bears repeating:
- (1) “The Plan of Management 1996 – Local Parks , being the only Plan of Management purporting to be applicable to Dunara Reserve, in
 - (A) “Appendix A - Parks (Local) “ identifies and includes “ Dunara Gardens” (which is to be compared to 26 “Reserves” therein named) ; and
 - (B) “ Local Parks Area Key” identifies “ Dunara Gardens” as L53
 - (2) It cannot do so , as “ Dunara Gardens” is private property and its inclusion is invalid.
 - (3) Thus there is no Plan of Management in existence for “ Dunara Reserve”
 - (4) This is not a matter of semantics or typographical error, but one of significant legal substance
 - (5) S 35 LGA states that “ *community land is required to be used and managed in accordance with ...the plan of management applying to the land*”
 - (6) Council, in having no Plan of Management for “ Dunara Reserve” is in breach of ss. 35, 36 and 43 of the Act
 - (7) Further and most importantly, **s 44 LGA** states that
“ Pending the adoption of a plan of management for community land , the nature and use of the land must not be changed”.
 - (8) As there is no Plan of Management for “ Dunara Reserve” , it is submitted that Council is legally prohibited from reclassifying the land from Community to Operational land.”

9. Thus, in spite of the re-exhibition, the same legal impediments remain, preventing the proposed reclassification and the Planning Proposal proceeding
10. The other purported justification for the re-exhibition has raised what I submit is a further fatal legal issue invalidating the entire process from the Report to the Community & Environment Committee dated 10 August 2015 (Appendix 2 to the Planning Proposal) and that Committee's recommendation, to the Gateway Determination and the Planning Proposal.
11. That is Council's concession that it is a "**fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds.**" (no doubt an acknowledgement of the validity of my previous submission that Council are the Trustees of the subject land and that the land is subject to a "trust for public purpose" as explained by the High Court in the Bathurst City Council case , in similar circumstances to the creation of the Dunara Reserve - see paras 1 – 12 on pp 3 & 4 of my submission dated 7.9.17).
12. Notwithstanding Council's acknowledgement regarding the possibility of a trust in the notice in the Wentworth Courier and in it's renotification by letter dated 25 October 2017, Council has failed to comply with the essential requirements regarding the contents of the Planning Proposal as required by s. 55 of the EP&A Act.
13. S. 55 is as follows:

*RELEVANT PLANNING AUTHORITY TO PREPARE
EXPLANATION OF AND JUSTIFICATION FOR PROPOSED
INSTRUMENT – THE PLANNING PROPOSAL*

- (1) *Before an environmental planning instrument is made under this Division, the relevant planning authority is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the "**planning proposal**")*
- (2) *The planning proposal is to include the following:*

- (a) a statement of the objectives or intended outcomes of the proposed instrument,*
- (b) an explanation of the provisions that are to be included in the proposed instrument,*
- (c) the justification for those objectives , outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117)*

14. The fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds is an essential matter under s.55 that must be stated as part of the Minister's [now Greater Sydney Commission] consideration under s 56 .
15. Under s.56 EPA the Minister is to review the Planning Proposal and determine, inter alia, whether the matter should proceed.
16. The necessary s.56 Gateway determination, without which the process simply cannot commence or proceed, is defective and invalid as the Planning Proposal submitted to the Commission did not contain a statement that
 - (A) There may currently be a trust affecting the site and further that it is proposed that it be discharged if the reclassification proceeds ; and
 - (B) If the LEP is approved , all trusts , estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land are discharged (in accordance with s.30 Local Govt Act 1993 which deals with the reclassification of community land as operational)
17. The above is not simply a desirable inclusion but a necessary inclusion under the Acts.

18. It is submitted that the Greater Sydney Commission (which stands in the place of the Minister) was in the absence of the inclusion of this highly relevant, significant and necessarily required statement
 - (a) Unable to review the Planning Proposal ; nor
 - (b) Properly make its determinationunder s. 56

19. It is accordingly submitted that there has not been the appropriate valid Gateway determination under s.56 and the purported Gateway determination dated 20.7.17 is therefore ineffective and invalid. Everything that followed pursuant to that determination is therefore similarly invalid.

20. The determination under that Gateway “ that the matter should proceed” (as per s.56) is equally invalid.

21. S 55(2)(c) EPA requires, inter alia , that the planning proposal must include “ *whether the proposed instrument will comply with relevant directions under s.117*”

22. In the absence of the necessary required information of the possible existence of a trust which will be discharged if the planning proposal is implemented, it is submitted that the delegate’s conclusion that “ *the planning proposal’s inconsistency with s. 117 Direction 6.2 Reserving Land for Public Purpose, is of minor significance* “ cannot stand and is invalid . The delegate may have and it is submitted undoubtedly would have come to a different conclusion in this regard. A determination made in the absence of required information under the Act is not legally valid. Courts have repeatedly so held.

23. Given that s.55 requires the inclusion of the statement about the trust and its discharge on re-classification in the Planning Proposal , it is instructive to review the material re-exhibited .

24. The necessary trust information has not been included in any of the material . As previously observed, the re-exhibited material is identical in every respect with the originally exhibited material.

(A) The Planning Proposal :

(1) Page 1: 1.2. Description of this planning proposal

The 3rd para states : “ *The land is a public reserve under the LG Act. Should the reclassification proceed, it is intended that under s. 30(1) of the LG Act the local environment plan will include a provision to the effect that the land will cease to be a public reserve on the commencement of the plan*”.

There is no mention, as is required of “ *the fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds*” and that under s.30(1) the LEP will include a provision to the effect that the trust will be discharged on the commencement of the plan. - a clear breach of s.55 EPA.

(2) Page 6: Part 5 Explanation of Provisions:

That states that the proposed amendments to Schedule 4 , Part 2 of the Woollahra LEP 2014 are identified in Column 3 as

“ *Any trusts etc **not discharged*** “

That is not only an incorrect statement , but a positively misleading and false statement, given that it is Council’s intention that any existing trust will be discharged - a further clear breach of s.55

- (3) It is incorrect to state at p.7 , 6.2.6 that the Planning Proposal is consistent with applicable Ministerial Directions (s. 117 directions) , given that such direction is invalid for the reasons previously submitted

- (4) P.25: Compliance with s. 117 directions: 6.2 . All that is stated is that the land is a public reserve and should the reclassification **proceed , it is intended under s. 30(1) of the LG Act the LEP**

will include a provision to the effect that the land will cease to be a public reserve on the commencement of the plan.

There is similarly no mention that there may be a trust affecting the site which is proposed to be discharged if the reclassification proceeds and that under s.30(1) LG Act the LEP will include a provision that the trust will be discharged on commencement of the plan.

This a further breach of s 55

(B) Appendix 1 - Information Checklist for proposals to classify or reclassify public land through an LEP taken from practice note 16-001

(1) Page 1: Para 4: “ Reasons for the planning proposal” :

Again the reason is confined to the fact that the land is a public reserve and that should the reclassification proceed, it is intended that under s.30 (1) LG Act the LEP will include a provision that the land will cease to be a public reserve on the commencement of the plan

There is no mention of the required information about the possible existence of a trust affecting the land which it is proposed be discharged if the reclassification proceeds - a further breach of s.55.

(2) Page 2: “ **Details of interest in the land proposed to be extinguished** “:

This is confined to the cessation of the land as a public reserve

There is no mention whatsoever of the fact that there may be a trust affecting the land which will be extinguished .

This is not only a clear breach of s 55 but a false and misleading statement .

(3) Page 2: “ Reasons why such interests are to be extinguished”

The reason advanced is “ *The public reserve status restricts the future sale and use of the site*”.

Not only is it confined to the extinguishing of the public reserve, but there is the omission of the fact that the possible trust status also restricts the future sale and use of the site.

This constitutes a further breach of s.55

25. Accordingly the Planning Proposal neither

- (A) Validly explains the intended effect of the proposed Planning Proposal , nor sets out the justification for making it, as required by s. 55(1) ;
- (B) Includes a statement of the objectives or intended outcomes of the Proposal as required by s. 55(2)(a) ;
- (C) Provides an explanation of the provisions that are to be included in the proposed LEP as required by s.55(2) (b) ;
- (D) Provides the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the Planning Proposal will comply with relevant directions under s 117) as required by s.55(2)(c).

26. Further the bland statement that there may currently be a trust affecting the site is completely insufficient to fulfill either the requirements of s 55 or , even if made to the Greater Sydney Commission, the necessary information required to be submitted under s 56.

27. There is no information supplied as to this possible trust : ie
- (A) The nature of the trust
 - (B) The date of its creation
 - (C) The manner of its creation
 - (D) The reason for the trust
 - (E) The terms of the trust
 - (F) The identity of the Trustee
 - (G) The identities of the beneficiaries
 - (H) The likely and/or potential consequences to the beneficiaries upon the discharge of the trust
 - (I) The reasons Council considers it appropriate to discharge the trust.
28. Given the gross legal deficiencies in the Planning Proposal, the consequent public exhibition and re-exhibition are incomplete and incorrect and in a number of respects misleading and cannot constitute valid community consultations as required by s. 57 EPA and the purported Gateway determination.
29. In fact the whole process is invalid ab initio.
30. Council should also bear in mind that a Trust imposes heavy fiduciary duties on the Trustee to act strictly in accordance with the provisions of the trust and the reasons for its creation and should not be discharged without compelling cogent reasons. No such reasons have been advanced .
31. As Council is a public authority it must fulfill the high and indeed onerous moral and legal standards imposed on such authorities. As the land the subject of the trust is a public reserve and was so set aside at the express requirement of Council and as part of the conditions of consent to the subdivision of the Dunara Estate , Council , as the Trustee, is under an obligation to maintain it as a public reserve.
32. None of the above legal defects can be retrospectively cured. The whole process is legally void and will be held to be so void by the Court

33. Accordingly Council has the following options:

- (1) Persist with its legally flawed invalid Planning Proposal, legally flawed invalid Gateway determination and flawed invalid public exhibition with the cost of appointing the independent person to conduct the public hearing similarly consequentially invalid, all of which will ultimately be held to be invalid in the inevitable legal challenge to any reclassification, the costs of which will far outweigh the illusory financial gain Council thinks it will achieve in a non competitive sale market, which will really constitute an unnecessary waste of ratepayers' funds, with the inherent consequential publicity regarding such waste;

- (2) Start the process all over again ab initio by
 - (A) Placing the correct information before the C&E Committee and describing the property to be reclassified correctly;
 - (B) Obtaining the legally valid recommendation from that committee
 - (C) Council passing the necessary legally valid resolution to authorize a correct Planning Proposal
 - (D) Prepare a legally valid Planning Proposal which not only satisfies the legislative requirements under the LG Act and the EPA, but also corrects the information currently contained therein, now proven to be factually incorrect by numerous submissions received by Council;
 - (E) Seek the proper valid necessary prerequisite Gateway determination from the Greater Sydney Commission, by
 - (a) Redrafting the Planning Proposal to comply with all legislation;
 - (b) Resubmitting the Planning Proposal all over again to the Commission

14

- (F) Re-exhibiting the Planning Proposal via a legally valid public exhibition (for the 3rd time), including the necessary repeated notifications in the Wentworth Courier over the 4 week exhibition period together with letters to numerous residents;

This will involve

- (a) Staff time ;
- (b) Financial cost
- (c) Substantial delay

It is submitted that the above would further be a substantial waste of ratepayers' funds, together with Council having to explain why it got it so legally wrong , in spite of two public exhibitions, which as it transpired were a waste of taxpayers resources, with the inherent publicity that such will attract. To put it mildly, the whole flawed process is an embarrassment to Council

- (3) Abandon the Proposal immediately under s. 58 EPA

Section 58 (4) provides that

“ The relevant planning authority [ie Council] may , at any time, request the Minister to determine that the matter not proceed “.

34. It is submitted , that in all the circumstances, the proper prudent and fiscal course of action that Council should follow , indeed the only course reasonable and prudently open to it, especially in light of the volume of submissions received, is for it to now request the Greater Sydney Commission to determine that the matter not proceed

Yours faithfully,



GEORGE FARKAS

1

GEORGE FARKAS
B.A LL.B
[REDACTED] Dunara Gardens
POINT PIPER NSW 2027
[REDACTED]
[REDACTED]
[REDACTED]

24 November 2017

The General Manager
Woollahra Council,
records@woollahra.nsw.gov.au

Dear Sir,

**SC 3794 - FURTHER SUBMISSION RE PROPOSED
RECLASSIFICATION OF DUNARA RESERVE, POINT PIPER**

I refer to my previous Submissions dated 7 September, 8 September and 17 November and wish to make the further following Submissions:

1. Council states that on a reclassification , the land would be subject to its current zoning (R2) and development controls.
2. The subject land is 400 m2
3. I have just become aware of 2 properties in Edgecliff :
 - (1) One is 157 m2 (ie only 39% of Dunara Reserve) and currently has a Development Approval to build a 3 bedroom house with a garage; and
 - (2) The other is 350 m2 and has Development Approval for a 3 bedroom house

4. Should the land be sold, it is highly likely that the purchaser would do so in order to build on it and in view of the above, would most likely obtain approval for a 3 bedroom house with a garage.
5. That would be incredibly detrimental to the whole of Dunara Gardens, which is currently overdeveloped with closely adjoining properties by reason of the original subdivision in the mid 1950s with complicated Rights of Way .
6. That would be entirely in conflict with the legislative requirements imposed on Council for the subdivision under LGA 1919 and the trust for public purposes to which the land is subject .
7. In particular I draw attention to paragraphs 5, 6 & 8 of my Submission dated 7 September ie
 - (A) That under s. 326 , in **fixing the number of lots, ie in ascertaining the area for the purpose of fixing the number of houses permitted in the subdivision**, Council had to embrace public reserves, open spaces and the like” ;
 - (B) Under s. 327(2) Council had to have regard to the plan of subdivision (which had to embrace the other sections relating to garden and open space); and
 - (C) Under s. 333(g) **Council had to take into consideration in respect of the application for approval of the subdivision** the amount of public garden and recreation space to be provided in the land to be subdivided
8. Clearly under the legislation applying to the subdivision and the respective requirements imposed thereby on Council , approval would not and could not have been given to the subdivision had that lot been available to build a 3 bedroom house with or without a garage (or any development at all).
9. The same principle still applies and in this regard , attention is drawn to paragraph 50 of my Submission of 7 September ie Council’s own Heritage Officer’s description of the historical basis of the Dunara

3

Gardens subdivision and her conclusion that the creation of the special lot for public garden and recreation should be preserved.

10. In other words, the sale of the land would have consequences that were both never envisaged, indeed were prevented, then and indeed now .

Yours faithfully,



GEORGE FARKAS

Alan Murray

█ Dunara Gardens,

POINT PIPER

NSW 2027

M: █ Email: █

7 September 2017

The General Manager

Woollahra Council

536 New South Head Rd

DOUBLE BAY NSW 2028

Dear Sir

SC 3794 SUBMISSION RE PROPOSED RECLASSIFICATION OF DUNARA RESERVE, POINT PIPER

I live at █ Dunara Gardens, Point Piper, with my wife Sally and our two schoolage daughters.

I was very disturbed to hear about the proposed reclassification by council of the reserve at the end of the street.

We are very fortunate to live in such a beautiful area as Point Piper however we are not fortunate enough to have any trees on our own property. It seems that the lack of green area was one of the reasons why the land in question was originally reserved way back when the subdivision was effected in 1957.

The reserve is used by a number of children in the neighbourhood, including ours. Indeed my daughters have both used the magnificent trees in the reserve in their school projects.

There are also a number of other children who live in the high rise on the other side of the road (Wentworth St) – and I notice that there is a DA pending for another high rise opposite as well.

Green areas are so important to local communities and once they are lost they are seldom ever reclaimed. Point Piper has a number of large houses but not much public land and as such this reserve at Dunara Gardens is extra special.

A number of the local residents participate periodically in maintaining the reserve as best we can (with our limited green bins!). A bit of gardening never did anybody any harm!

On the reserve are a number of exceptional, unique and beautiful trees; I assume that you have pictures of them. I understand that some of these are amongst the oldest in Point Piper and are heritage listed.

I also understand that there have been some issues with the preservation of trees in Point Piper and particularly around Dunara Gardens in the past. I cannot see how the council transferring the ownership of this land and these special trees away from their safe custody can possibly help this situation.

I strongly object to the proposed reclassification of this green area and submit that it should remain as community land owned by Council.

On a more positive note I think that it would really be of interest and appreciated by the community if the reserve was signposted from Wentworth St by the council to make it more welcoming to the local community.

Yours Sincerely

Alan and Sally Murray

Appendix – a couple of photos of the local kids playing in the park.



redevelopment of the site, this precious greenery will no longer be enjoyed by the community. We have experienced numerous incidents of tree poisoning in the area.

The Council has a duty to protect and preserve these greenery in our community, rather than focusing on wiping their hand off the minimal maintenance work they perform and making a windfall from the sale of the site.

Importance of Signage for the Dunara Reserve

The Planning Proposal asserts that the site provides little or no recreational value for the community and it is under-utilised because it is hardly recognisable as a public reserve. As pointed out before this reserve is playground for neighbouring kids. All is needed is a replacement bench for the public to have a rest under the dense greenery. The Council can easily set up a sign “Dunara Public Reserve” at the entrance of the Dunara driveway to indicate it is a public reserve.

Site Maintenance

The Planning Proposal argues that the cost of cleaning up the site is a misuse of public funds. The council conducts minimal maintenance twice a year. Most of the time our Dunara residents clean up the reserve by removing build-up vegetation on the site. As well, some of the residents planted beautiful flowering shrubs (hibiscus), agapanthus and ferns along the strip making it really appealing as we stroll along the driveway. The Dunara residents paid tens of thousands of council rates every year. We deserve this piece of reserve and the rates we paid would definitely cover the insignificant cost of maintenance of this site.

Proceed from Sale of the site

The Council is looking at a one-off sale proceed from the site versus the permanent loss of this community amenity to Dunara residents and the wider public. Whilst the Council may get a windfall from the sale thus making their books look good for the year, we the Dunara Community suffer a huge loss of open space and heritage tree and greenery. Where is the Fairness?

Over-Development of Dunara Gardens

If the proposed reclassification and subsequent sale of Dunara Reserve were to go ahead, we could potentially see a new construction on the reserve. We already have 11 properties on the subdivision. Cramming in another property by cutting down open public space will devalue all Dunara Gardens properties.

We sincerely hope the Council will consider our serious concerns as above in reviewing the Proposed changes to Dunara Reserve.

Professor Kei Lui and Mrs Ellen Lui

Owners of ■ Dunara Gardens Point Piper NSW 2027

From: [Ellen Lui](#)
To: [Records](#)
Cc: [Kira Green](#)
Subject: Submission re Proposed changes to Dunara Reserve, Point Piper
Date: Friday, 24 November 2017 10:19:45 AM
Attachments: [Proposed reclassification of Dunara Reserve to allow sale of the site - SC3794 Submissions.pdf](#)

To the General Manager

Referring to Woollahra Council's re-exhibition of the proposed re-classification of the Dunara Reserve, we hereby reiterate our submission dated 8 September 2017 as attached.

We strongly oppose Council's move to re-classify then sell the land at Dunara Reserve for a small windfall, in doing so totally ignore the voice of all residents concerned.

We sincerely hope that our concerns are taken into consideration by the Council in reviewing the proposal.

Professor Kei Lui and Mrs Ellen Lui
Owners, ■ Dunara Gardens Point Piper

Peter and Edith Ryba
Dunara Gardens
POINT PIPER NSW 2027
PHONE: [REDACTED]
PETER MOBILE: [REDACTED]

Your ref: SC3794 Submissions

7th September 2017

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

Dear Sir or Madam

RE: Proposed changes to the land management controls of Dunara Reserve, Point Piper

As a long standing resident of Dunara Gardens I have been offered the opportunity to make a submission on the above noted proposal by 8th September 2017. Having carefully reviewed the council's proposal my wife, Edith, and I strongly oppose it and offer the following comments.

Council approved the subdivision of the heritage listed Dunara Estate in 1954 to 1955, including the demolition of the north wing of Dunara House, which housed a garage and servants quarters. The property was divided into the present eleven (11) residential lots. The subdivision included an irregular shaped 380 metre squared plot of land on the southern boundary which was dedicated to council as a green strip for use of the future residents (possibly 40-50 adults and children) as well as the general public and named Dunara Reserve.

My wife and I bought lot 3 some months after the auction of the 11 lots at which lots number 2 and 3 did not sell. We have lived in the home we built since 1958, some 59 years. Our original postal address council originally designated as 12 Wunulla Road. Unfortunately we did not have access to Wunulla Road as council kept a three metre wide frontage to Wunulla Road, for a proposed road widening which was abandoned some years ago. When part of the old stone wall collapsed into Wunulla Road, council built a four metre high concrete wall at the western side of the pavement to prevent our land slipping. We contributed to the construction cost of the steps in this wall. Our address remained as Lot 3 Dunara Gardens.

We were originally attracted to the land by the number of very old trees and shrubs in Dunara Reserve and the heritage listed Dunara House with its open, formal front garden. Whilst heritage listed Dunara House now has a brush fence obscuring the full view of the gardens we are at least still able to enjoy the greenery and openness afforded by the Dunara Reserve. Covenants allowed only 2 bar fences on all properties have not been insisted on by council resulting in some houses or brick fences being built right to the edge of Dunara Gardens Road.

We visualised with the help of our architect we would create a modest home with a small flat garden and a great view and that our children would be able to play in the council's nature reserve and the secluded cul-de-sac Dunara roadway and enjoy the ambience and position of Point Piper. As time passed there were some 20 school age children playing in this area. Children who live there or will be residents in the future in Dunara Gardens should also be provided the same opportunities.

The strip with its heritage listed old trees accentuates the green appearance of Dunara Gardens and the Dunara heritage listed home. The council placed one park bench on this green strip which was frequently used and the council until recently periodically cut back, cleaned and maintained the area. Some years ago a number of the residents arranged for one light pole to be erected with the power bills and maintenance being paid by residents.

The Dunara Gardens concrete roadway is now about 65 years old. It has suffered many cuts to improve inadequate services and drainage and requires an upgrade. The road slopes down from Wentworth Street and in heavy rain fall water just flows down to an inadequate and damaged grated drain. The original subdivision did not allow for car parking of residents, visitors or tradesman and there is no provision for turning on the private road. The responsibility for the upkeep and maintenance falls to only two owners of property within Dunara Gardens who pay rates and taxes on land used by neighbours and visitors without any help from the council.

We submit that the Dunara Gardens development was poorly planned and executed by the developers and approved by council in 1954. Having insisted on the Dunara Reserve (Lot 11) being dedicated to council as a green strip for the benefit of the community, the council proposes to sell it for financial benefit and create further problems for the residents of Dunara Gardens by increasing the already extensive density of the area and reducing the green ambience. We strongly object to the proposal and will do everything we can to prevent it going ahead.

Yours Sincerely



Peter Ryba

Via mail: records@woollahra.nsw.gov.au

Hard copy to be delivered.

Donna Blackburn

From: Peter Ryba [REDACTED]
Sent: Tuesday, 5 December 2017 3:14 PM
To: ElectorateOffice Vaucluse
Subject: Proposed Changes to Land Management Control of Dunara Reserve
Attachments: 051217 Letter to the Hon Gabrielle Upton, MP - Dunara Reserve.pdf; 251017 Letter from Council re proposed changes to Dunara Reserve.pdf

Dear Minister Upton

Please find attached letter and supporting documents from Mr Peter Ryba, who is a long standing resident of Dunara Gardens in Point Piper with regard to the proposed land management changes to Dunara Reserve.

Yours sincerely

Allison

Allison DeMarchi
Executive Assistant to Peter Ryba Executive Chairman
52-60 Ashford Avenue
MILPERRA NSW 2214

P: [REDACTED]
E: [REDACTED]
W: www.whiteint.com.au



Peter and Edith Ryba
Dunara Gardens
POINT PIPER NSW 2027

5th December 2017

The Hon Gabrielle Upton, MP
Minister for Environment, Local Government and Heritage
PO Box 560
DOUBLE BAY NSW 1360

Dear Minister Upton

RE: Proposed changes to the land management controls of Dunara Reserve, Point Piper

I am a long standing resident of Woollahra and wanted to bring to your attention current plans by council to rezone the parkland, Dunara Reserve, at Dunara Gardens. The council acquired Dunara Reserve as part of the subdivision in 1954/55 for the purpose of creating a small recreation area for the use of the owners and the local community in and around the subdivision. The council acquired the land without payment at the time of the subdivision.

The council is now planning to make a substantial profit by selling the parcel of land for the purpose of housing with little regard for the original purpose of the land. I consider it immoral that the council should acquire land without payment to be used as parkland and then decide to change its zoning and sell as a housing lot.

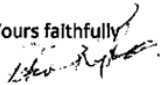
I have lived in Dunara Gardens for close on 60 years, being one of the first to buy one of the subdivided lots. My wife and I raised four children in the home and our children plus their friends and others in the neighbourhood played extensively in Dunara Reserve.

Dunara Reserve with its heritage listed old trees accentuates the green appearance of Dunara Gardens. The council placed one park bench on this green strip which was frequently used and the council until recently periodically cut back, cleaned and maintained the area. Rezoning the land for the purpose of housing will mean the decimation of the heritage listed trees and the loss of the green space.

I have indirectly heard from a close friend, who is a biologist and lives in Woollahra, that the NSW Government has given planning permission to the council, subject to completion of some missing formalities. All being done despite numerous objections from surrounding residents, including my four children, now adults, who all still live in the Vaucluse electorate.

I would be grateful if you could investigate this matter and help to stop this land from being swallowed into housing.

Yours faithfully



Peter Ryba

Enc: Letter from Council, reference SC3794 Submissions

Council Ref: SC3794 Submissions

25 October 2017

Mr P & Mrs E L Ryba
Dunara Gardens
POINT PIPER NSW 2027

Dear Mr P & Mrs E L Ryba

**Re-exhibition of proposed changes to the land management controls of
Dunara Reserve, Point Piper**

Having considered the matters raised in submissions, Woollahra Council is re-exhibiting a planning proposal in relation to the reclassification of Dunara Reserve, Point Piper (the site). The site is located between 1 Wentworth Street and 9 Dunara Gardens, Point Piper and comprises Lot 11 in DP 27451.

Re-exhibition is occurring to clarify the location and description of the site and the fact that there may currently be a trust affecting the site which is proposed to be discharged if the reclassification proceeds.

Submissions already made will be taken into account. Further submissions will also be taken into account.



Aerial photograph of Dunara Reserve - (Lot 11, DP 27451)



ABN 32 218 483 246

Redleaf Council Chambers
536 New South Head Road
Double Bay NSW 2028

Correspondence to
General Manager
PO Box 61
Double Bay NSW 1360
DX 3807 Double Bay
records@woollahra.nsw.gov.au
www.woollahra.nsw.gov.au
Telephone: 61 2 9391 7000
Facsimile: 61 2 9391 7044

A planning proposal is a document that explains the intended effect of and the justification for a proposed local environmental plan (LEP). An LEP is a legal instrument that zones land and includes standards and controls to regulate the use and nature of development and the management of land.

The site is public land, owned by Council. For management purposes, public land is classified as either community land or operational land under the *Local Government Act 1993* (LG Act).

The planning proposal seeks to reclassify the site from community land to operational land. Section 27(1) of the LG Act requires that the reclassification of public land is made by an LEP.

Reclassifying the land would allow the sale of the site.

As this matter relates to the reclassification of public land, Council did not seek authorisation to use its delegation under section 59 of the *Environmental Planning and Assessment Act 1979* from the Greater Sydney Commission.

If the LEP is approved and published, Dunara Reserve will cease to be a public reserve and all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land are discharged.

It is anticipated that the public hearing will take place in February 2018.

Public exhibition

Details of the re-exhibition of the planning proposal and supporting material are:

Exhibition period: Wednesday 25 October 2017 to Friday 24 November 2017
Location: Woollahra Council Customer Service area, 536 New South Head Road, Double Bay - 8am to 4.30pm, Monday to Friday
Online: www.woollahra.nsw.gov.au in the 'Have Your Say' section
Submissions: Quote reference **SC3794 Submissions** and address to the General Manager at Woollahra Council, PO Box 61, Double Bay NSW 1360 or email to records@woollahra.nsw.gov.au

Submissions can be made in writing during the period Wednesday 25 October 2017 to Friday 24 November 2017.

If making a submission, please provide your contact telephone number, email address and postal address. If you do not receive an acknowledgement of your submission, please contact Council's Strategic Planners on 02 9391 7087.

Public hearing

After the re-exhibition, a public hearing relating to the reclassification of the land will be held. The hearing will be conducted by an independent chairperson and will allow people to make further comments about the proposed reclassification of the land. Details of the public hearing, including the date and times, will be advertised. If you make a submission to the planning proposal we will also notify you about the date and time of the public hearing. You may make a presentation at the hearing.



Photograph of Dunara Reserve taken from its entrance at Wentworth Street (looking East)

After the public hearing

After the re-exhibition and public hearing, reports and recommendations will be presented to a meeting of Council's Urban Planning Committee. Anyone who made a submission during the original exhibition or re-exhibition, or a presentation at the hearing, will be given notice of the Committee meeting. The meeting is open to the public and people may make a presentation to the Committee.

The Committee's recommendation will then be considered at a full Council meeting. The public may attend the Council meeting to watch proceedings.

If Council decides to proceed with the planning proposal, with or without variations, it will be sent to the Greater Sydney Commission and the NSW Government Parliamentary Counsel Office where amendments to *Woollahra Local Environmental Plan 2014* will be drafted. The Draft LEP will then be submitted to the Planning Minister (or delegate) for approval. If the Minister's approval is given, the LEP will be notified on the NSW legislation website and will take effect.

For more information contact Council's Strategic Planners on 02 9391 7087.

Yours faithfully

Anne White
Team Leader - Strategic Planning

Privacy notification

The supply of personal information is voluntary. If personal information is not provided, Council may be limited in dealing with a submission. Submissions, summaries of submissions, and or/names and addresses of people making submissions may be included in publicly available reports to Council or Committee meetings. Please note that, in accordance section 18(1)(b) of the *Privacy and Personal Information Protection Act 1998* (NSW), you are advised that all submissions received by Council in relation to any matter will be placed on the appropriate Council file and may be disclosed to Councillors, Council Officers, consultants to Council or members of the public. Pursuant to the *Government Information (Public Access) Act 2009* (NSW) the Council may be obliged to allow inspection of its documents, including any submissions you may make.

Michael J. Crouch AC

[REDACTED] .com
[REDACTED]

6th September 2017

Cr Toni Zeltzer
Mayor of Woollahra
Woollahra Municipal Council
PO Box 61
DOUBLE BAY NSW 1360

Dear Mayor

I write to express my dismay, and serious concern, at what, I understand, is an intentional proposal by Council to destroy the public garden known as 'Dunara Reserve'.

Obviously your Council should be increasing green areas, not diminish them.

Yours respectfully,

Michael Crouch

MICHAEL CROUCH

8 September 2017

Ms Anne White
Team Leader – Strategic Planning
Woollahra Municipal Council
DOUBLE BAY NSW 2028

Dear Ms White

Council Ref: SC3794 Submissions

Proposed conversion of public land at Dunara Reserve, Point Piper, for sale to the public


Thank you for notifying us of the proposed change of land management of Dunara Reserve.

We note that Council's intention is to eventually sell the Reserve.

While Council appears to have a rough estimate of the Reserve's value, the eventual buyer will enjoy an overall increase in the value of their own property, when the Reserve becomes part of their existing property.

We would be grateful if you would advise us how this increased value, through the purchase of formerly public land, will be brought to account in the final sale price of the Reserve.

Thanks and regards


Capt & Mrs G Mathias
Wentworth Street
POINT PIPER NSW 2027

Received
8 SEP 2017
Customer Service Department
Woollahra Municipal Council

Woollahra Municipal Council
Customer Service Department
8 SEP 2017
Received

Woollahra Council

Re: SC 3794 submissions

□ □ □ □ □ □

The General Manager
Woollahra Council
PO Box 61
Double Bay
NSW 1360

Albert Morini

Wentworth st
POINT PIPER NSW 2027
Tel [REDACTED]
Email [REDACTED] au

8 September 2017

Dear Sir/Madam,

SC3794 Submissions
Proposed Changes to Dunara Reserve, Point Piper

I am the owner of [REDACTED] Wentworth Street, Point Piper.
I refer to the Recent proposal from Council RE Dunara Gardens

I strongly object to Woollahra Council's proposal to reclassify Dunara Reserve from Community to Operational land in order to allow a sale of the land.

I Have Live Directly opposite the Reserve for the last 6 Years and proud of the area we live in .
I therefore have always made it my personal business to maintain the reserve clean and clear any fallen branches and pick up any rubbish spread by wind or others
We absolutely love living close to nature and the spirit of neighbourly friendship it brings
It is the very reason we chose to buy here in contrast with living in a Waterfront property
With no trees and a true sense of nature

This part of Point Piper is densely developed. There are many apartment blocks, and the houses in the vicinity of Dunara Reserve generally have small gardens and little outdoor space. Its stunning trees and shrubbery provide an important oasis of vegetation in this otherwise tightly developed area. Therefore it is very important that Dunara Reserve remains a public garden for us all to enjoy.

I am particularly concerned that if Dunara Reserve is reclassified and sold its new owner will fence it in. We will lose access to this lovely public space, and our views into the Reserve will be impeded by a fence. I am also concerned that a sale will inevitably lead to an application to Woollahra Council to develop the land, and the loss of trees and vegetation that will result from this. There have been a number of serious tree poisoning incidents in this part of Point Piper recently, including within Dunara Gardens itself. Council should be taking measures to protect our remaining trees (from which the whole community benefits), rather than selling land like Dunara Reserve which is home to a number of important trees, and putting them at risk of poisoning from a private landowner who may wish to maximize the value of the site by development.

In summary, Dunara Reserve is a very important public amenity to all of us who live nearby, and I very strongly urge Council to ensure that it remains in public ownership and available for us all to enjoy.

Yours Faithfully

Albert Morini



The General Manager
Woollahra Council
PO Box 61
Double Bay
NSW 1360

Albert Morini

■ Wentworth st
POINT PIPER NSW 2027
Tel ■■■■■■■■■■
Email ■■■■■■■■■■

23.11.2017

Dear Sir/Madam,

**SC3794 Submissions
Proposed Changes to Dunara Reserve, Point Piper**

I am the owner of ■ Wentworth Street, Point Piper.
I refer to the Recent proposal from Council RE Dunara Gardens

I again wish strongly object to Woollahra Council's proposal to reclassify Dunara Reserve from Community to Operational land in order to allow a sale of the land.

I Have Lived Directly opposite the Reserve for the last 6 Years and proud of the area we live in .
I therefore have always made it my personal business to maintain the reserve clean and clear any fallen branches and pick up any rubbish spread by wind or others
We absolutely love living close to nature and the spirit of neighbourly friendship it brings
It is the very reason we chose to buy here in contrast with living in a Waterfront property
With no trees and a true sense of nature

I totally disagree with Councils attempt to try and sell off a beautiful a natural reserve loved and enjoyed by many

This part of Point Piper is densely developed. There are many apartment blocks, and the houses in the vicinity of Dunara Reserve generally have small gardens and little outdoor space. Its stunning trees and shrubbery provide an important oasis of vegetation in this otherwise tightly developed area.
Therefore it is very important that Dunara Reserve remains a public garden for us all to enjoy.

It has always been my understanding that Councils role is to encourage green and maintain nature as much as possible

I am particularly concerned that if Dunara Reserve is reclassified and sold its new owner will fence it in. We will lose access to this lovely public space, and our views into the Reserve will be impeded by a fence. I am also concerned that a sale will inevitably lead to an application to Woollahra Council to develop the land, and the loss of trees and vegetation that will result from this. There have been a number of serious tree poisoning incidents in this part of Point Piper recently, including within Dunara Gardens itself. Council should be taking measures to protect our remaining trees (from which the whole community benefits), rather than selling land like Dunara Reserve which is home to a number of important trees, and putting them at risk of poisoning from a private landowner who may wish to maximize the value of the site by development.

In summary, Dunara Reserve is a very important public amenity to all of us who live nearby, and I very strongly urge Council to ensure that it remains in public ownership and available for us all to enjoy.

Yours Faithfully

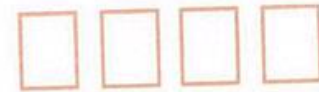
Albert Morini



Woollahra Municipal Council
Community Services Department
8 SEP 2017
Received

WOOLLAHRA COUNCIL

RE: SC 3794 SUBMISSIONS.



Mr Said ElKhouri

**Wentworth Street
Point Piper
NSW 2027**

The General Manager
Woollahra Council
PO Box 61
Double Bay
NSW 1360

8 September 2017

Dear Sir/Madam,

**SC3794 Submissions
Proposed Changes to Dunara Reserve, Point Piper**

I am the owner of, and live at, [redacted] Wentworth Street, Point Piper. 2B is a six storey apartment block containing 11 apartments which is located directly opposite Dunara Reserve, and is home to [x number] residents. All apartments in this block enjoy views directly into Dunara Reserve.

I strongly object to Woollahra Council's proposal to reclassify Dunara Reserve from Community to Operational land in order to allow a sale of the land.

This part of Point Piper is densely developed. There are many apartment blocks, and the houses in the vicinity of Dunara Reserve generally have small gardens and little outdoor space. My apartment block has only a small paved outdoor space, and no garden. Dunara Reserve is a particularly important shared garden space which everyone in its vicinity can enjoy in the absence of gardens of our own. Its stunning trees and shrubbery provide an important oasis of vegetation in this otherwise tightly developed area. I note that Woollahra Council is currently considering a Development Application to demolish 2 Wentworth Street (next door to this apartment block) and replace it with a six storey apartment block containing five apartments (DA 369/2017/1). If approved this will further increase the density of development in this area, and make it all the more important that Dunara Reserve remains a public garden for us all to enjoy.

All residents in this building benefit from open views into the Reserve, and the opportunity to use it as a public space. If Dunara Reserve is sold and enclosed, the nearest public reserve to us in Point Piper will be Duff Reserve, which is on the other side of the Point Piper peninsular, and because of its numerous steep steps is difficult to access, particularly for the elderly or for residents with small children.

I am particularly concerned that if Dunara Reserve is reclassified and sold its new owner will fence it in. We will lose access to this lovely public space, and our views into the Reserve will be impeded by a fence. I am also concerned that a

sale will inevitably lead to an application to Woollahra Council to develop the land, and the loss of trees and vegetation that will result from this. There have been a number of serious tree poisoning incidents in this part of Point Piper recently, including within Dunara Gardens itself. Council should be taking measures to protect our remaining trees (from which the whole community benefits), rather than selling land like Dunara Reserve which is home to a number of important trees, and putting them at risk of poisoning from a private landowner who may wish to maximize the value of the site by development.

In summary, Dunara Reserve is a very important public amenity to all of us who live nearby, and I very strongly urge Council to ensure that it remains in public ownership and available for us all to enjoy. I also ask that Council give very serious consideration to the fact that this locality has already lost a number of substantial trees to poisoning in recent years. These trees cannot be replaced in our lifetime, and it is imperative that Council does not put further trees at risk by transferring Dunara Reserve into private ownership.

Yours Faithfully

Said ElKhouri

Nigel Corne

Benelong Crescent Bellevue Hill

NSW 2023

9th November 2017

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

Dear Sir

SC 3794 Submissions (Dunara Reserve)

This is the first I have been aware of the proposed reclassification from community to operational to allow its sale and wish Council to note my objection in the strongest terms.

This is land owned by Council as against privately owned for a reason ie to ensure it remains available to the public and it is Council's responsibility and obligation to continue to own it for that purpose. It is alarming that Council wants to reclassify it solely for the admitted purpose of monetary gain .

The public backlash by those ratepayers who become aware of it , noting that I and nearly everyone I know don't regularly get the Wentworth Courier, will be enormous and Council will not be portrayed in a favourable light . In fact the adverse publicity will severely damage Council, and rightly so, when Council is supposed to look after public land for ratepayers rather than selling it off.

There is not enough public land with trees in Point Piper and I am very familiar with the suburb. What little there is should be preserved and not sold

I also note the reference to a trust. Whilst I am not a lawyer, that must mean that Council holds it in trust for the rate payers, which is a very high obligation, which should not be discharged which would be the stated result of the proposal.

I request that his proposal should be terminated immediately

Your faithfully



Nigel Corne

Brian Topper
■ Chamberlain Ave
Rose Bay NSW 2029

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

8th November 2017

SC 3794 Submission - Dunara Reserve

I read about the proposed reclassification of this public land so that Council can sell it.

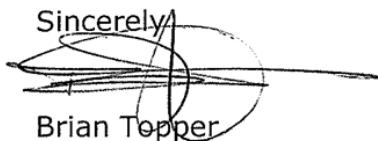
That is objectionable. Public community land has been so designated to preserve it for use by the public and not available to be in private hands to be developed.

Council is in breach of its responsibility to ratepayers by attempting to sell it.

Council's unconscionable action is further compounded by its public admission of the possible existence of a trust, which can only mean that the land is held by Council on trust for the public for its use by the public.

It therefore should legally and morally remain that way

Sincerely,

A handwritten signature in black ink, appearing to be 'Brian Topper', written over a circular stamp or seal.

Brian Topper

ROBERT M. LOWY
[REDACTED] Thornton St
Darling Point NSW 2027
Ph: [REDACTED]

9 November 2017

The General Manager

Woollahra Council

records@woollahra.nsw.gov.au

Dear Sirs,

SC 3794 PROPOSED CHANGES TO THE LAND MANAGEMENT CONTROLS OF DUNARA RESERVE, POINT PIPER

I write in response to the notification in the Wentworth Courier of 25 October. I note this is a re-exhibition, although I was not aware of the previous exhibition.

I am concerned at this proposal to sell a public reserve and wish council to note my objection to this course of action.

A public reserve under the stewardship of council should remain so as a facility open to residents of Woollahra, in accordance with the original rationale of its existence.

I have particular disquiet in noting council's statement that there may be a trust affecting the site which is proposed to be discharged. I am a Chartered Accountant and am very familiar with the obligations of a trust. A trust is a fiduciary relationship which imposes heavy responsibilities on the Trustee to act strictly in accordance with the terms of the trust and its creation. As council is a public authority and the land the subject of the trust is a public reserve, the trust must have been created to preserve and maintain that land as a public reserve.

Given my disquiet, I have taken the time to peruse all the accompanying documentation regarding this matter on council's website. I am unable

to find any compelling reason, indeed unable to find any adequate reason which would justify council discharging the trust and discharging its heavy public obligation to preserve that trust. Should council proceed in doing so, it would face heavy public approbrium , not to speak of possible legal action . I am frankly amazed that council would even contemplate the re-classification , given its admission that there may be such a trust.

It also seems to me that the anticipated sale price is both inflated and illusory given that there is no market for its purchase, with at best only two potential purchasers identified and no market at all, should only one be interested

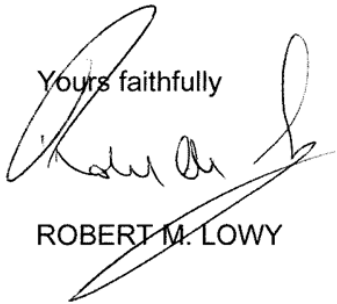
When I look at council's financial accounts, I am staggered , given council's assets and income and expenditure, that this possibly illusory financial gain should be put forward as a purported rationale for the sale of a public reserve.

To suggest that twice yearly maintenance visits is a drain on its resources is laughable. Not only cannot such infrequent visits be onerous, but maintenance of public reserves forms part of the rates levied by council and paid by ratepayers. It cannot be the basis to justify its sale.

The proposal to re-classify is misconceived and flawed and simply does not withstand scrutiny.

Council is not a private organisation or private incorporated company free to act in its own interests. It is a public authority subject to public scrutiny and has an onerous responsibility to act in the public interest . To terminate a public reserve as is here proposed without justification is a breach of its moral and legal responsibility to ratepayers

Yours faithfully

A handwritten signature in black ink, appearing to read 'Robert M. Lowy', written over a horizontal line.

ROBERT M. LOWY

9 November 2017

The General Manager

Woollahra Council

records@ Woollahra.nsw.gov.au

RE: SC 3794 Submissions

I submit that a public reserve should remain a public reserve

I am against Council changing its classification so it can sell it ,
making it possible for future development, rather than it staying as
a valuable public asset.

It was created as a public reserve for a reason . There are too few
in our municipality and it should be preserved.



Barry Joseph

■ Olphert Avenue, Vaucluse 2030

From: [Jaku Family](#)
To: [Records](#)
Subject: SC: 3794: Proposed Changes to Dunara Reserve
Date: Friday, 10 November 2017 11:27:57 AM

The General Manager Woollahra Council

Dear Sir,

We are Woollahra ratepayers owning and residing at 4A Court Road, Double Bay.

It has been brought to our attention that Council proposes to sell Dunara Reserve currently and historically a public reserve. We believe that transferring this public reserve to private hands would be a retrograde step and are opposed to such action as it would further diminish the public space in an already highly developed part of the eastern suburbs.

Michael and Linda Jaku

█ Court Road, Double Bay NSW 2028
Mob.: █ 9



Virus-free. www.avast.com

Stephen Baer

██████ New South Head Road
Rose Bay NSW 2029

10 November 2017

The General Manager

Woollahra Council

records@woollahra.nsw.gov.au

RE: SC 3794 PROPOSED CHANGES TO DUNARA RESERVE

I read with alarm council's notification in the Wentworth Courier of its intention to reclassify the reserve to facilitate its sale.

It is clearly public land owned by council and designated as a public reserve. Under no circumstances should such public land be sold or such land be in private ownership. It is council's responsibility to keep it as land available to the public

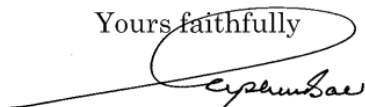
Surely council cannot be so cash strapped so as to necessitate its sale.

I am further alarmed to read that it is council's view that "there may be a trust affecting the site which is proposed to be discharged if the reclassification proceeds".

I would think that the site is kept in trust by council for the public, which makes sense .

While it would appear from the statement in the paper that the trust would be discharged by the reclassification, council should not discharge that trust and should honour that trust and maintain it in public ownership

Yours faithfully



STEPHEN BAER

■ Kambala Road
Bellevue Hill NSW 2023
13 November 201

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

Re: SC 3794 PROPOSED CHANGES TO THE LAND MANAGEMENT
CONTROLS OF DUNARA RESERVE POINT PIPER

Dear Sir

Even though I am not a resident of Point Piper and not immediately affected by what is proposed, I am nevertheless a ratepayer in the Woollahra Municipality and therefore entitled to make a submission.

Council should note my strong objection in principle to what is proposed.

I note the land is public land owned by Council and a public reserve. It has obviously been declared a public reserve by Council for the benefit of the public and in particular residents in its immediate surrounds as well as those in Point Piper .

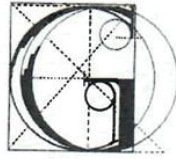
It is a public amenity and should remain that way. It ill behoves Council to deprive those residents of such specially earmarked land. It should never be sold to private interests, with the potential for it to possibly be developed.

I am troubled by Council's admission that there may be a trust affecting the site which will be discharged. The likelihood of a trust existing reinforces my point about preserving it for the public, as that trust would have been created to ensure that that occurred. For Council to consider discharging that trust is a dereliction of its duty and a breach of trust , which is a serious matter. It sets a very bad example. It is bad governance.

The proposal should be abandoned as against the interest of ratepayers and the community generally



Paul Blanket



Lesley & Alan Goulburn

Woollahra 2025
Sydney, Australia
Telephone: [REDACTED]

13 November 2017

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

RE SC 3794 SUBMISSION RE DUNARA RESERVE POINT PIPER 2027

Dear Sir,

I wish to strongly express my opposition to Council's proposal to reclassify the above public reserve so that it ceases to be a public reserve which I understand will be ceased as such for the purpose of selling the land.

That land has been categorised by Council as a public reserve for the use of the public and there are no valid reasons put forward to alter that situation, not to mention selling the land to private interests by Council to alter that, not to speak of selling it to private interests.

What Council proposes is the opposite of good public governance.

I also understand that the Council has stated there may be a trust affecting the site which will be discharged if the reclassification proceeds. Given Council's ownership of the land, surely it must be the trustee that should ensure that the land remains in public ownership. To discharge that trust is a further dereliction of good Governance.

The proposed reclassification should be terminated immediately.

I am strongly against the sale of any public property.

Yours Sincerely

Alan Goulburn
[REDACTED] Moncur Street
Woollahra 2025
[REDACTED]

13 November 2007

The General Manager Woollahra Council
records@woollahra.nsw.gov.au

SC 3794 SUBMISSION: DUNARA RESERVE

I note the re-exhibition, not having known of the previous exhibition.

I am not in favour of what is proposed. Indeed I oppose it.

A public reserve is a site that has been set aside by Council specifically for the use by the public and should stay like that . In fact there are not enough reserves .

I don't understand the reference to a trust but can only conclude that council holds it in trust for Woollahra residents. If that be the case, which seems to be acknowledged by council, then that is even more reason not to interfere with its classification, and for it to remain as was intended .

I am surprised that council is even considering changing its status, in view of the above.

Council should not waste ratepayers funds on a public hearing and should discontinue this process immediately.



Peter Hammerman

Clarence Place

Double Bay NSW 2028

Isaac and Robin Arbib

■ Rosslyn St Bellevue Hill NSW 2023

General Manager Woollahra Council

records@woollahra.nsw.gov.au

Submission : SC 3794 Dunara Reserve

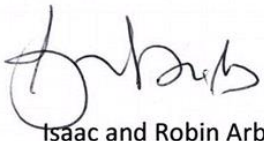
We were not aware of this until we read the Wentworth Courier of 25 October

We do not agree with what council intends , indeed we are against it.

There is not enough green space available to the public in Woollahra and council should not be divesting itself of ownership. If anything, it should be attempting to acquire more such space and dedicate it to public use.

We are aware of Dunara Reserve's existence and regard it as a beautiful space with large trees amongst the density of Point Piper. It should continue to be owned by Council dedicated as a public reserve.

Yours sincerely



R. Arbib

Isaac and Robin Arbib

10 November 2017

The General Manager

Woollahra Council

records@woollahra.nsw.gov.au

Re: SC 3794 Submission

I have become aware of Council's proposed reclassification of Dunara Reserve to sell it.

I am against selling public land .

Public land owned by Council should continue to be owned by Council and not sold to private interests .

The reclassification should not proceed



Liza Evans

■ Balfour Rd

Rose Bay NSW 2029



DR. BRIAN CHURNIN

[REDACTED] Banksia Rd
Bellevue Hill NSW 2023

12 November 2017

The General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir

SC 3794 DUNARA RESERVE

I refer to the advice in the paper about the proposed re-classification of Dunara Reserve


I am against what is proposed

Firstly , in principle, I am against the disposal of public land as I regard it as not in the interests of Woollahra ratepayers, who are entitled to expect council to keep that type of land and to keep it in good order.

Secondly , I am against changing the status of that particular site. I am very familiar with it , having visited a patient living in Dunara Gardens frequently over many years. It adds to the amenity and character of Dunara Gardens , noting that it was probably named Dunara Gardens, because of it.

I frequently observed children playing there , which is no doubt what it was intended for, given the density of the houses in Dunara Gardens. It is too dangerous for children to play in the Dunara Gardens driveway .

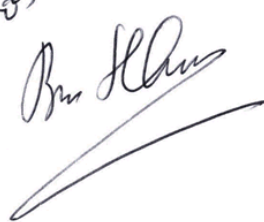
I also occasionally noted groups of people in the reserve. I was informed they were heritage walking tours.



It was clearly being used by residents and others , in keeping with what a public reserve should be

It also provided a leafy canopy to the entrance of Dunara Gardens, which was impressive.

I feel that not only Dunara Gardens, but the area generally would be all the poorer if Council disposed of it . It should remain a public reserve available to all , rather than a privately owned site, with no guarantee that it would remain with its trees and vegetation.

Regards



Dr. B. J. Churnin
021 951 1133
2023

David and Anna Finkelstein

█ Glendon Road, Double Bay NSW 2028

10 November 2017

The General Manager

Woollahra Council

records@woollahra.nsw.gov.au

BY HAND

Dear Sir

SC 3794 - Submission re Dunara Reserve

I note Council's proposed re-classification from the Wentworth Courier.

I should comment that I seem to not receive the Courier more than I receive it, and it is purely by chance that I have become aware of this matter. Given that, you should be aware that it is likely that many ratepayers are entirely unaware of this proposal. I mention this, not as a criticism of council, but merely to note that the number of submissions objecting to it, is not necessarily representative of the level of opposition to it. Everyone to whom I have mentioned the matter were not only unaware of it, but were opposed to it.

The land in question is public land and the reserve will cease to be a public reserve, should the re-classification occur. That is an outcome with which I am not in agreement.

If the land has been set aside as a public reserve it should remain that way and council should not facilitate a situation where that changes, especially when the rationale seems to be to gain the proceeds of such sale.

Public reserves add to the ambience of a neighbourhood, especially one as highly developed as Point Piper. They add greenery and trees as well, irrespective of their level of usage.

It sets a very bad precedent for council to dispose of public land and it should not do so. This appears to be reinforced by the possibility of there

W

being a trust affecting the land. That trust was probably created to ensure it remained as public land in council's possession and not sold.

Council should not proceed with the proposed changes.



David Finkelstein

Associate Professor George Pal

■ Boronia Road

Bellevue Hill NSW 2023

The General Manager

Woollahra Council

records@woollahra.nsw.gov.au

RE SC 3794 RECLASSIFICATION OF DUNARA RESERVE

Dear Sir,

I am dismayed by Council's reclassification proposal in order to sell valuable and important public space.

The land is a public reserve dedicated for the use of the public. That is obviously the reason Council owns it ie to preserve it for such use. Whatever the price that could be obtained, it cannot be worth it if the result is to permanently alienate the land to public use.

This is obviously a re-exhibition . As I only seem to get the Wentworth Courier intermittently, I was not aware of the original exhibition, otherwise I would have lodged an objection then.

Public community land should remain public community land, consistent with its original creation and purpose. It is improper of Council to act inconsistently with that charter. Even more so, when there is a dearth of such space in Point Piper.

The fact that there may be or is a trust to which the land may be subject, simply reinforces the point . It is alarming that Council would consider discharging that trust.

This proposal should not proceed

Yours faithfully



Assoc/Prof G Pal

The General Manager

15 November 2017

Woollahra Council

records@woollahra.nsw.gov.au

Dear Sir

Re SC 3794 Proposed changes to the land management controls of
Dunara Reserve , Point Piper

I wish to register my strong protest and opposition to the proposed changes, notified in last week's Courier.

Firstly I am opposed to the sale of public land to private interests. There are too few reserves and those that exist have been entrusted to council precisely to ensure that they remain as public reserves .

That is proven by council referring to the existence of a trust affecting the site. In other words, council holds that reserve on trust for residents, ratepayers and the general public. I am dismayed that council intends discharging that trust at all . Even more so, for financial gain. To sell that land , is a breach of that trust.

I am very familiar with Dunara Reserve as I have friends there and visit regularly.

It is a beautiful leafy area with wonderful trees which adds immensely to the character not only of Dunara Gardens but the neighbourhood generally. It is vital to preserve that vegetation. There is no guarantee that this will be preserved in private hands as regrettably council has a dismal record of enforcing its own tree preservation laws.

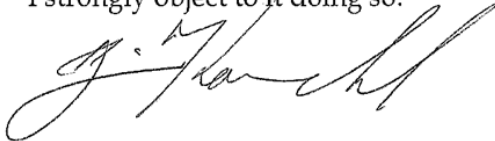
I have also , on my visits noted that it is used , particularly by children who play there, have picnics there and by members of the public. I have seen walking groups on the reserve looking at particular trees.

The tree canopy of the reserve provides a very nice entrance to Dunara Gardens, which to my observation has only 2 trees in a very densely housed cul de sac.

The whole of Dunara Gardens would feel denuded of green if that reserve were developed in any way.

Council would be very ill advised to divest itself of that reserve as it would be detrimental to residents and ratepayers.

I strongly object to it doing so.



Jim Kornmehl

█ O'Sullivan Rd

Rose Bay NSW 2029

From: [Victoria Taylor](#)
To: [Records](#)
Subject: SC3794 DUNARA RESERVE POINT PIPER
Date: Friday, 17 November 2017 12:49:07 PM
Attachments: [ATT00001.jpg](#)

Dear General Manager, Woollahra Council: PO Box 61 Double Bay,

We write to you to object to the reclassification of Dunara Reserve Point Piper SC3794.

The site is public land, owned by Council. We understand that for management purposes, public land is classified as either **community land** or operational land under the *Local Government Act 1993* (LG Act). The planning proposal seeks to reclassify the site (Lot 11, DP 27451) from community land to operational land under the LG Act. We object! Section 27(1) of the LG Act requires that the reclassification of public land is made by an LEP which we wish to object.

Reclassifying the land and disabling an existing trust would allow the sale of the site of which we strongly object!

As this matter relates to the reclassification of public land, Council did not seek authorisation to use its delegation under section 59 of the *Environmental Planning and Assessment Act 1979* from the Greater Sydney Commission.

If the LEP is approved and published, Dunara Reserve will cease to be a public reserve and all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land are discharged. THIS IS BAD PLANNING and POOR FORM. THE GARDENS AND OPEN PUBLIC LAND IN WOOLLAHRA COUNCIL AND ARE WHAT MAKE IT OUR AREA VERY SPECIAL AND SO BEAUTIFUL TO LIVE IN. The reserve includes a HERITAGE LISTED COOK PINE and Mature Date Palm from the 1890s. We vigorously object to SC3794.



Sincerely, The Taylor Family of ■ Yarranabbe
Rd Darling Point and of Vacluse and Rose Bay.

X

Adrian Skurnik

██████ New South Head Rd
Rose Bay NSW 2029

The General Manager
Woollahra Council
536 New South Head Rd Double Bay NSW 2028

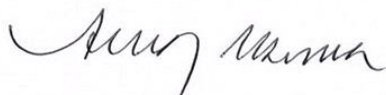
SC 3794 Dunara Reserve Submission

I have just read of what council proposes in relation to the abovementioned land and wish to record my objection

That reserve is a very beautiful public amenity. I regularly run from my place to the city and back , including around Point Piper on the way. Amongst other spots , I have a short rest in the shade of the reserve , which I find very beneficial. In fact, I suggest that Council puts a bench in that small reserve.

There is too little public space generally, but in particular in Point Piper.

That reserve should remain in Council's hands in perpetuity so that it remains open to the public



Adrian Skurnik

P.O. BOX 1131 EDGECLIFF NSW 2027

PHONE [REDACTED]

ABN 88 141 102 701

23 November 2017

Mr Gary James
General Manager
Woollahra Municipal Council
By email

Dear Mr James,

Re: Dunara Reserve sub-division – Point Piper

I write on behalf of the Darling Point Society to object to the proposed development of this valuable reserve in the Woollahra municipality on the following grounds:

- 1. Dunara Estate Sub-division** The Reserve provides valuable green space in a densely built area and is enjoyed and used by the public and particularly by residents in its immediate vicinity. Children living in Dunara Gardens have made a swing on the Reserve and play there most days.
- 2. Tree Protection:** The Reserve, although small, is home to 10 substantial and significant mature trees. Point Piper is becoming increasingly bare of vegetation as development continues at an alarming pace. We believe that the Reserve is a precious public asset which should be kept in public hands in order to best safeguard its trees. A private sale means that a buyer may seek removal of vegetation on the Reserve to make way for development. Council has asserted that reclassification and sale of the land does not alter the development potential of the site, but we believe that it is inevitable that a prospective buyer will seek to maximise its value, and that this puts the trees and other vegetation on the site at risk - including the risk of unlawful removal.
- 3. Heritage Impact:** Dunara Gardens is home to two heritage listed properties: the historic and State heritage listed Dunara House, and the more contemporary McGrath House. A private sale would entitle a buyer to erect a fence depriving residents and visitors from the lovely bushy and woody view and aspect.

3. **Public Benefit:** Council has stated that the Reserve is underutilised and only benefits the immediately adjoining properties (of which there are two) . It is an important amenity to at least 30 residents who live in its immediate vicinity for whom it is a shared garden. It is also of significance to the wider community as a precious pocket of greenery and significant trees, and for providing an open garden setting for the heritage items in its immediate vicinity.
4. **Precedent:** so many "reserves" in Woollahra are being spotted for potential development that granting this DA would create a dangerous precedent to all reserves in the area including the harbour foreshore which is increasingly coveted by hungry developers.
5. **Clarification:** there has been no public disclosure regarding the beneficiaries, or the nature of the trusts and this should be made public.

Regards


Charlotte Feldman
President
Darling Point Society Inc.

David Corrick

██████████ Carlisle St Rose Bay NSW 2029

10 November 2017

The General Manager Woollahra Council

records@woollahra.nsw.gov.au

Dear Sirs

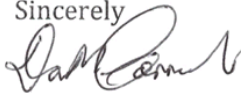
SC 3794 DUNARA

I read that council wants to alter the classification of the reserve to ultimately sell it

The land is a public reserve for the residents of Woollahra and in particular for those in Point Piper

It should remain as a reserve for the enjoyment of those residents and not be changed. It is inconceivable that council would even consider abolishing that reserve, let alone selling it.

Sincerely



A H Krochmalik FCA

ABN 14 029 421 183



The Appropriate Officer
Woollahra Council
By email to records@woollahra.nsw.gov.au

Dear Sir,

**SC 3794 PROPOSED CHANGES TO THE LAND MANAGEMENT CONTROLS OF
DUNARA RESERVE, POINT PIPER**

I am writing in regard to the notification in the Wentworth Courier of 25 October, 2017. I note that this is a re-exhibition, although I was not aware of the previous exhibition. I am concerned at this proposal to sell a public reserve and wish Council to note my objection to this course of action.

A public reserve under the stewardship of Council should remain so as a facility open to all residents of the municipality of Woollahra and the public generally, in accordance with the original rationale of its existence.

I have particular concern in noting Council's statement that there may be a Trust affecting the site which is proposed to be discharged. I am a Chartered Accountant and am very familiar with the obligations of a Trust and its Trustee(s). A trust is a fiduciary relationship which imposes heavy responsibilities on the Trustee to act strictly in accordance with the terms of the trust and its Deed of creation. As Council is a public authority and the land the subject of the Trust is a public reserve, it is reasonable to assume that the Trust must have been created to preserve and maintain that land as a public reserve.

Given my concern, I have taken the time to peruse all the accompanying documentation regarding this matter on Council's website. I am unable to find any compelling reason, indeed unable to find any adequate reason which would justify Council discharging the Trust and discharging its heavy public obligation to preserve that Trust.

Should council proceed in doing so, it would face heavy public condemnation, not to speak of possible legal action. I am frankly amazed that Council would even contemplate the re-classification, given its admission that there may be such a trust.

It also seems to me that the anticipated sale price is both inflated and illusory given that there is no market for its purchase, with at best only two potential purchasers identified and no market at all, should only one be interested

Email [REDACTED]

Tel [REDACTED]

Liability limited by a scheme approved under Professional Standards Legislation.

A H Krochmalik

When I look at Council's financial accounts, I am most surprised , given Council's assets and income and expenditure, that this possibly illusory financial gain should be put forward as a purported rationale for the sale of a public reserve.

To suggest that twice yearly maintenance visits is a drain on its resources is quite ridiculous.. Not only cannot such infrequent visits be onerous, but maintenance of public reserves forms part of the rates levied by council and paid by ratepayers. It cannot be the basis to justify its sale.

The proposal to re-classify is misconceived and flawed and simply does not withstand scrutiny.

Council is not a private organisation or private incorporated company free to act in its own interests. It is a public authority subject to public scrutiny and has an onerous responsibility to act in the public interest . To terminate a public reserve as is here proposed without justification is a breach of its moral and legal responsibility to ratepayers

Yours faithfully



A H Krochmalik

23 November, 2017

Ahk-Woollahra Council 20171123

Bianca Maserow
■ Newcastle St.
ROSE BAY NSW 2029

The General Manager

Woollahra Council
records@woollahra.nsw.gov.au

SC 3794 SUBMISSIONS

I wish to register my strong objections to Council's intention to reclassify Dunara Reserve to allow its sale.

I believe there are too few public reserves which are a public amenity and should not be sold, especially if making them liable to potential development, as this land would be.

I also note from the Courier that Council states there may be a trust affecting that land which would be abolished by the reclassification. Presumably that must be a trust for residents and the public and for the purpose of keeping it as a public reserve.

The fact that Council intends to both ignore that trust and further to abolish it is a breach of its duty to ratepayers and puts Council in a very bad light.

I believe it will do Council no credit to proceed with the reclassification. It should remain as public land and remain as community land to preserve it as is.

I would appreciate if you could kindly advise that you have received this submission.

Yours sincerely,



Bianca Maserow

Laurence Bergman

The Stables

██████████ Wentworth St

Point Piper NSW 2027

Woollahra Council

records@woollahra.nsw.gov.au

SC 3794 DUNARA RESERVE

My attention has been drawn to page 10 of the Wentworth Courier dated 22 November.

As I live literally around the corner, I pass Dunara Reserve daily, either on foot or by car. It has always struck me as being a beautiful addition to the Point Piper landscape with its leafy area and tall trees and a wonderful addition to Dunara Gardens.

It is a used amenity. I have often seen children playing there as well as walkers stopping there.

Point Piper has too little reserves and this piece of land should stay as such.

I am also confused about the statement about the fact there may be a trust affecting the land, without any explanation about it, such as what the trust is for, who is in charge of it, who benefits from it etc. Without such information, the public exhibition is not complete and I regard this as a serious deficiency in the information provided by council.

I very much object to the council proposal and the land should continue as a public reserve.

Yours sincerely,



From: [David Solomons](#)
To: [Records](#)
Date: Friday, 24 November 2017 12:32:58 PM

23 November 2017

The General Manager ,
Woollahra Council

Re: SC 3794 SUBMISSION RE RECLASSIFICATION OF DUNARA
RESERVE

Dear Sir,

I wish to convey my objection to the proposed reclassification on a number of grounds:

Firstly, in principle, Council should not alienate public land because there are too few public reserves which once sold, are forever alienated from the public. In particular , the only reserve in Point Piper that I am aware of is Duff Reserve. Dunara reserve should remain as a public reserve. Such land has no doubt been classified as community land precisely to prevent it being sold and so classified so as to preserve it as a public amenity. Clearly the Council is obligated to explore the use and potential use of the land by the ratepayers prior to any reclassification.

Secondly, I am concerned at a possible trust being discharged by the reclassification. I am familiar with the concept of a trust and the heavy obligations imposed on the appointed trustee vis a vis the beneficiaries. Whilst the public notification contains no details in this regard, which calls into question the supposed public exhibition, one must conclude, given council's ownership of that land, that it is the Trustee and the ratepayers the beneficiaries. In parallel with my first point it seems therefore clear that this trust has been set up to preserve the land as community land. A Trustee has a duty, which cannot simply be discharged lightly to adhere strictly to the terms of the trust and to honour its intent.

Council should abide and adhere to the trust's intent and its terms. Ratepayers are entitled to expect that it do so. Therefore the land should remain as community land in council's ownership.

Given the Council's financial position any disposal of this land would make only an immaterial and transitory financial impact versus the permanent loss of an important amenity and thus this proposal is inimical to ratepayers' interests and should not progress any further.

Sincerely

David Solomons

Dr David Solomons
[REDACTED]
Vaucluse 2030
NSW Australia

Dr Alex Selby
[REDACTED] Wentworth St
Point Piper 2027

24 November 2017

The General Manager
Woollahra Council records@woollahra.nsw.gov.au

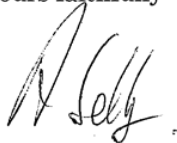
Re: SC 3794 Submission reclassification of Dunara Reserve

I am very concerned at Council's proposed reclassification in order to sell it and am against it.

As you can see from my address, I live not far up Wentworth Street from it and am familiar with it. It is a very nice area, used by walkers who stop there and children who play there.

It would be wrong to deprive local residents of that space which has obviously been set aside for the public's use; and is being enjoyed by the public. The towering pine tree on the reserve can be seen from far away and is impressive. With trees disappearing, especially in Point Piper, it is absolutely essential for the reserve to remain owned by Council to preserve the land and trees from development.

Yours faithfully



Mervyn and Thelma Levin
[REDACTED] Annandale Street
Darling Point NSW 2027
24th November 2017

The General Manager
Woollahra Council
PO Box 61 Double Bay NSW 1360
records@woollahra.nsw.gov.au
SC 3794 Submissions

I wish Council to note my objection to its proposal regarding Dunara Reserve. I am an avid walker and often walk around Point Piper. I know the land in question and admire its trees, canopy, foliage and garden. I, together with my walking group sometimes take respite during a long walk and take advantage of its cool shade, as do other walkers I have observed. It is a beautiful peaceful oasis in a densely populated and developed area. I am horrified that its status would be changed by Council. I am very much of the view that it should always remain as public community land.

I have on my walks often seen children playing there, so it provides a leafy space for childrens' recreation, which is very important.

Open recreation space is vital in our municipality, and should be preserved in Council's hands to ensure it stays that way. I should emphasise that I am not a "Greenie", but strongly believe in the importance of such open spaces in the municipality.

It also provides a wonderful ambience to Dunara Gardens, which apart from that has not many trees.

I am surprised that Council would even consider selling it. The loss of public amenity cannot be undone irrespective of the price obtained.


MERVYN LEVIN

24/11/2017

From: [Renee Ferster Levy](#)
To: [Records](#)
Subject: SC3794 Submissions Dunara Gardens
Date: Monday, 27 November 2017 2:19:44 PM
Attachments: [Woollahra Council wildlife corridors.png](#)
[Powerful Owl flight path near Dunara Reserve.docx](#)
[Brush Turkey mound, Dunara reserve.jpg](#)
[Wildlife corridors \(from Woollahra Council's Biodiversity Conservation Strategy\).png](#)

To the General Manager, Woollahra Council.

I am writing in concern about the proposed sale of Dunara Reserve, Lot 11, DP 27451, and I wish to object in the most strenuous terms.

This is an abysmal and irresponsible plan, showing a complete lack of commitment by Woollahra Council to the importance of open space, of Biodiversity, of habitat connectivity, of natural water holding capacity and of carbon storage. Woollahra Council would be abrogating its responsibility if it sells off this valuable remnant habitat.

Council's own strategy, the Woollahra Biodiversity Conservation Strategy 2015-2025, which, by a glaring omission was not referred to in the papers, clearly states the importance of conserving and maintaining remnant habitats. (Section 11.1). In its maps of wildlife corridor connectivity, corridors are marked right over this part of Point Piper showing the important linkage with the City of Sydney, as well as within Woollahra itself (Fig. 8-2 see attached and explanation 8-3).

Flora

The site has majestic, mature trees including the listed Cook Pine as well as huge Figs and others. These provide beauty, shade, soil and water retention properties, and are needed for their air quality and carbon storage functions as well as sculptural bark with many nooks and crannies important for small creatures to shelter in.

The Blueberry Ash is at its peak of flowering, with masses of beautiful fringed downward-facing flowers, which would attract tiny insects, a crucial part of the food chain, and later provide abundant berries, important to the diet of several birds and flying foxes.

Fauna

The Park has a thick layer of leaf litter, which would be rich in invertebrates and probably lizards and geckos. It seems that no proper study has been carried out to check which species are present, which is a grave oversight.

It may turn out to be vital habitat for remnant populations for example the Pale-lipped Shade skink, which has a limited and disjointed distribution recorded in the Woollahra Council area.

The site would be important for many species, including Flying Foxes, which would feed on the figs and other fruits; and Powerful Owls, Australia's largest owl, which is a threatened species, having "vulnerable" status in NSW.

Satellite tracking from 2016 has shown that they range far, for example a Botanical

Gardens Powerful Owl flew right over this area on its way to Vacluse and Nielsen Park, stopping in tall trees along the way, just like in this remnant site (see attached image, courtesy of BirdLife Australia's Powerful Owl Project).

Excitingly, a native Brush Turkey has been seen at the Dunara Reserve site this year. The first known record in a hundred years or more in the Woollahra Council area was in December last year, in Bellevue Hill (Charles Darwin had observed one in Rushcutter's Bay on his visit to Sydney in 1836). A Brush Turkey has not only been seen at the site, but built a mound right in the Dunara Gardens Reserve (see photo), showing its importance to this species which needs adequate leaf litter for the mound, and to provide its food of invertebrates, fallen berries and seeds.

I will now respond to specific statements in Council's submission:

Page 3. "its inaccessibility and lack of passive surveillance have resulted in the build-up of vegetation and debris over time"

A build-up of debris is a key natural process, and one of the features which makes the site so important - rich leaf litter is not a negative feature, rather it is nature's recycling, and providing habitat for invertebrates and reptiles, and as mentioned above, material for a Brush Turkey mound.

"The ongoing site maintenance to clear the debris and vegetation ..."

The residents say that Council rarely does anything at the site, and the residents clear rubbish themselves.

"... is a poor use of Council's resources, particularly as there is no tangible and obvious community benefit."

It is obvious that children use the area to play, and that this is a natural area with beauty and natural processes, all of which bring the community benefits. In addition there are important tangible benefits in the roots of vegetation holding the soil and, and absorbing and using rainwater, preventing erosion of the slope and flooding.

"The site is a public reserve, but it is not used as public open space"

Incorrect. Children play here, and opportunities for free play in a natural area are extremely limited. There is much greater value in this sort of experience than in an expensive metal and plastic playground in a bare grassy park.

Not all public open space needs to be walked on, in order to bring the community benefit.

"Visually, it appears as a heavily vegetated space."

Yes, and this is exactly part of its importance. Such vistas are rare in our area, and should be retained at all costs.

"The sale of the site would allow Council to use the funds to improve services and infrastructure in the LGA, including existing usable open space in the vicinity."

There is no commitment to using the funds to retain or enhance the very important values this reserve provides.

“to improve services and infrastructure” could mean anything, and it would be irresponsible to use any funds for any purpose other than those values which would be lost by Council’s selling this site off, potentially leading to its being cleared and built on.

“including existing usable open space”

Council does not only have a responsibility to look after places which are “usable” in the sense of people running around in them, or building a structure, it has a vital responsibility to protect remnant habitat sites for their intrinsic natural values, including being part of wildlife corridors as shown in Woollahra Council’s own map (see above).

“Usable” is also how people benefit from green vistas, important in positive mental health.

Page 7.

6.1

“The site is an underutilised piece of public land that does not benefit the wider community.”

Incorrect, as shown above.

6.2

4. “Is the planning proposal consistent with a council’s local strategy or other local strategic plan?”

NO. It is inconsistent with Woollahra Council's own strategy, the Woollahra Biodiversity Conservation Strategy 2015-2025, which, by a glaring omission was not referred to in the papers, and which clearly states the importance of **conserving and maintaining remnant habitats**. (Section 11.1).

In its maps of wildlife corridor connectivity, **a corridor is marked right over this part of Point Piper** showing the important linkage with the City of Sydney, as well as within Woollahra itself (Fig. 8-2 see attached).

This strategy states:

“Update ... Plans of Management for all parks and reserves to include biodiversity conservation provisions ... to align with the objectives and actions within this Biodiversity Conservation Strategy”. Selling this piece of land does not align with these objectives.

6.3

7. “The site does not contain threatened species, populations or ecological communities.”

On what basis is this statement made? There is no reference to any field study to check. On the contrary, the very fact that this is a healthy remnant patch of habitat makes it likely to have important populations which would be threatened if the site is sold and developed. As shown above, an important wildlife corridor passes directly over the site, and the endangered Powerful Owl has been shown by satellite tracking to pass very close and uses tall trees to stop in just like those in this site.

8. "Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?"

No. There are no likely negative environmental effects associated with the planning proposal."

Incorrect for the reasons stated above, including soil and water holding capabilities which would otherwise cost many times more than the site would bring, to replicate artificially.

Page 10. 3.

"Should the site be sold the revenue generated could be used for public open space upgrades throughout the LGA such as the Redleaf foreshore upgrade, Rose Bay Pedestrian Trail and Guilfoyle Park upgrade."

None of these potential uses for the funds would in any way remotely compensate for the loss of natural habitats, soil and water holding capabilities, wildlife corridors, aesthetics and intrinsic benefits, which would ensue from development of the site.

4. "The site is a liability for Council as it is not used for recreational or other public purposes or is it discernible as a public space, yet, it requires ongoing maintenance and rubbish removal. The site is not suitable for active or passive recreation, due to the slope, dimensions, size and extensive vegetation."

These statements are clearly wrong, as shown above, the site is used for active and passive recreation. Hence the very premise of this application is misleading and incorrect, and any approval given has been given on the basis of false information and should be rescinded.

Page 11.

Direction 3.2 Create a network of interlinked, multipurpose open and green spaces across Sydney

"The planning proposal will enable Council to take a strategic approach by broadening the options for the management of the site. Should the site be sold, improvements to other recreation areas can be carried out which will benefit a broader section of the community."

This is blatantly incorrect. One cannot respond to a directive to create an interlinked network of green spaces by selling off (and potentially decimating most of) part of that very network - a remnant and rare site with potential habitat and other values as stated above.

Central subregion priorities

Protect the natural environment and promote its sustainability and resilience

"There are no specific priorities for the Central sub-region identified for this site."

This is no response to the priority it addresses. The proposed sale of the site would NOT protect the natural environment, would NOT promote its sustainability NOR its resilience. ON the contrary, it would threaten all of these important priorities.

Page 18

Sustainability Priority 4: Avoid and minimise impacts on biodiversity. Efforts to protect biodiversity values should be based on avoiding and minimising adverse impacts to biodiversity, as far as practicable. Only when impacts cannot be avoided or minimised, should consideration be given to offsetting those impacts.

“The site does not contain any critical habitat areas, threatened species, populations or ecological communities or their habitats. Accordingly, the proposal will not have any impact in this regard.”

This has not been correctly addressed. Priority 4 talks about protecting biodiversity values, not only threatened species. This proposal would achieve the opposite to the stated priority **Avoid and minimise impacts on biodiversity.**

An additional question is:

Page 1 “identified the extent of the encroachment from No. 9 Dunara Gardens and recommended the reclassification of the site to allow its sale”

What penalties, if any, were given to the owners of number 9 Dunara gardens for constructing a carpark and garage on public land? Will they be prevented from purchasing the remainder, and hence potentially benefitting from their own non-permitted activity?

In summary, please do not proceed with this sale.

The land has many important values which would be lost in case of development, and Council is obliged by its own policies, as well as regional ones, to protect these values.

Thank you,

Yours sincerely,

Renée Ferster Levy

■ Drimalbyn Rd, Bellevue Hill

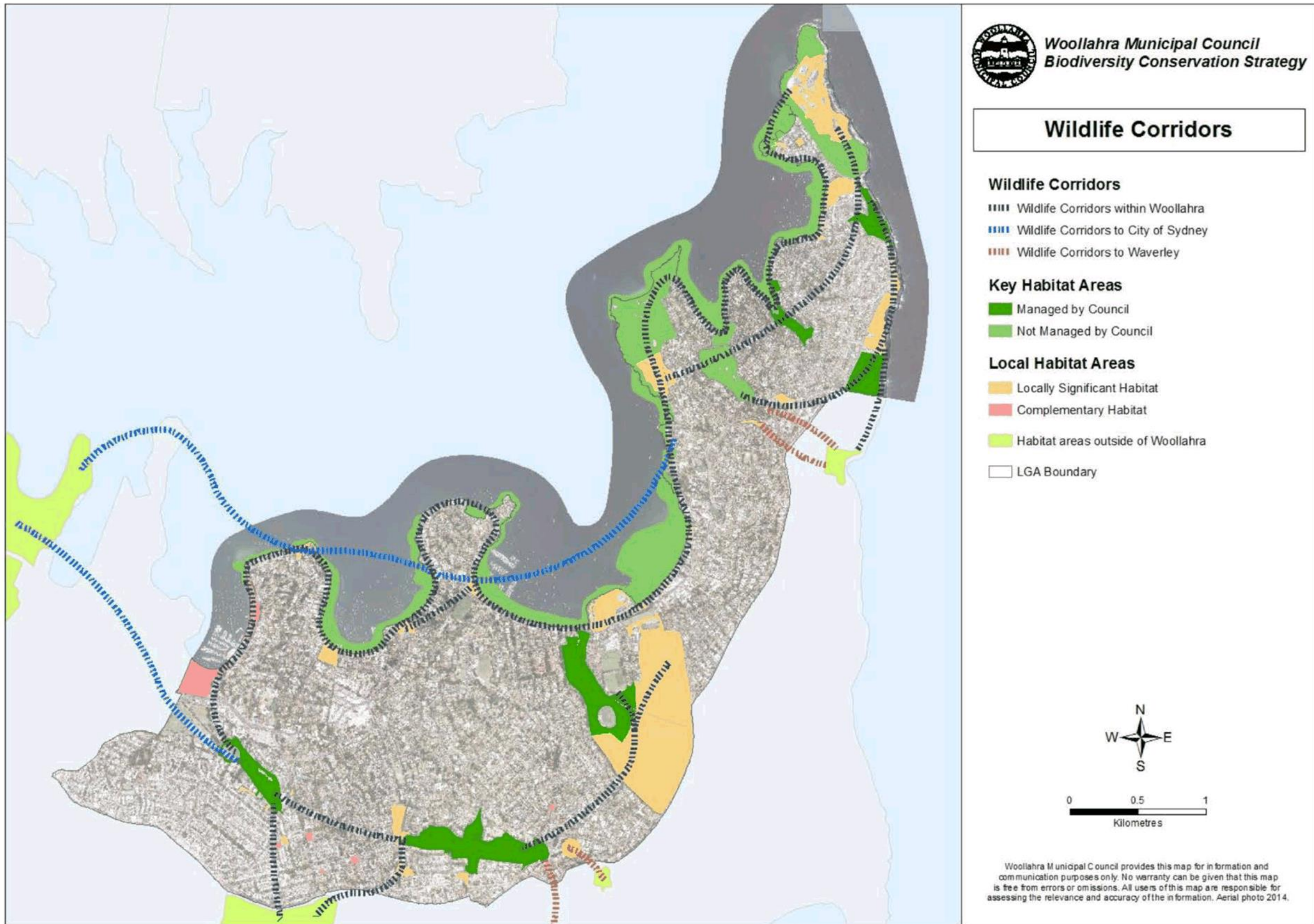
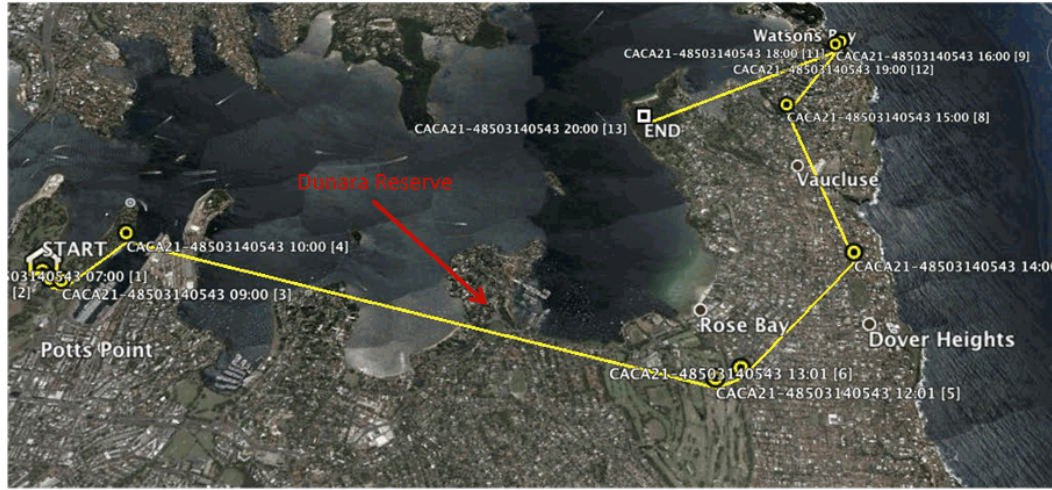


Figure 8-2. Habitat Areas and Wildlife Corridors



Satellite track of Powerful Owl from Botanical Gardens 31 May 2016
from BirdLife Australia's Powerful Owl Project

This is one of many examples of the Botanical Gardens Owl passing over the relevant area, and other individuals may use this site as well. Note that readings were made only hourly, sometimes half-hourly, hence there are likely to have been more stopping-off points in the area.



Chris Kalowski
Greycliffe Ave
Vaucluse NSW 2030
10 November 2017

The General Manager
Woollahra Council
records@woollahra.nsw.gov.au

Dear Sir,
SC 3794 Submission (Dunara Reserve)

I am very concerned to read of the proposed changes to Dunara Reserve, currently not available for sale, but so available consequent upon the proposed re-classification. The site is public land owned by Council.

Council should not be selling public land as it has been set aside for the benefit of the public and there are too few public reserves.

Surely whatever price council could obtain cannot justify depriving the municipality of such a reserve. Council is under a duty to keep and maintain it.

I also note that there may be a trust affecting the site. I can only assume that Council as owner, holds it in trust for the public, which is a responsibility that it should not and I submit it cannot simply discharge.

The proposed changes should not be implemented

Chris Kalowski



From: [Tony Ryba](#)
To: [Records](#)
Subject: SC 3794 -- Proposed Dunara Reserve Reclassification
Date: Sunday, 3 December 2017 2:36:38 PM

To whom it may concern,

Re: reference SC 3794 -- Proposed Dunara Reserve Reclassification.

I have become aware of the intended changes to Dunara Reserve, Point Piper.

I would like to **strongly oppose** the proposed changes to the land management control of Dunara Reserve, Point Piper.

The Dunara Gardens subdivision was divided into 11 residential lots in 1954/55 with a plot of land on the southern boundary dedicated, at no cost, to council as a green strip for use by all future residents and the general public.

My parents Peter and Edith Ryba bought Lot 3 and built our family home in 1958. My parents are still living in the family home they built almost 59 years later. I was born and brought up in Dunara Gardens and was able to make good use of Dunara Reserve playing in a safe environment with siblings and friends over the years.

The Dunara Gardens community has a relatively narrow driveway with almost no parking for visitors for any of the homes within. If Dunara reserve was developed, more traffic would result limiting parking further and potentially resulting in a more dangerous traffic environment and pedestrian access.

With a significant lack of dedicated green space in built up areas and crowded residential areas I therefore strongly object to any land being converted to housing. Dunara Reserve should still serve as a dedicated green strip for all future residents of Dunara Gardens and the general public.

Yours Sincerely

Tony Ryba
■ Village High Road,
Vaucluse, 2010.

From: [Vicky Ryba](#)
To: [Records](#)
Subject: Reference to SC3794
Date: Monday, 4 December 2017 9:22:55 PM

I would like to strongly oppose the proposed changes to the land management control of Dunara Reserve, Point Piper.

The Dunara Gardens subdivision was divided into 11 residential lots in 1954/55 with a plot of land on the southern boundary dedicated, at no cost, to council as a green strip for use by all future residents and the general public.

My parents Peter and Edith Ryba bought Lot 3 and built our family home in 1958. My parents are still living in the family home they built almost 59 years later. I was therefore brought up in Dunara Gardens and was able to make good use of Dunara Reserve playing with siblings and friends over the years.

With a significant lack of dedicated green space in built up, crowded residential areas I therefore strongly object to any land being converted to housing. Dunara Reserve should still serve as a dedicated green strip for all future residents of Dunara Gardens and the general public.

Yours Sincerely

--

Vicky Ryba

[REDACTED]

9th December 2017

Dear Council,

Reference – SC3794

I would like to strongly oppose the proposed changes to the land management control of Dunara Reserve, Point Piper.

The Dunara Gardens subdivision was divided into 11 residential lots in 1954/55 with a plot of land on the southern boundary dedicated, at no cost, to council as a green strip for use by all future residents and the general public.

My parents Peter and Edith Ryba bought Lot 3 and built our family home in 1958. My parents are still living in the family home they built almost 59 years later. I was therefore brought up in Dunara Gardens and was able to make good use of Dunara Reserve playing with siblings and friends over the years.

With a significant lack of dedicated green space in built up, crowded residential areas I therefore strongly object to any land being converted to housing. Dunara Reserve should still serve as a dedicated green strip for all future residents of Dunara Gardens and the general public.

Yours Sincerely


Jackie Ryba Hayes



15th December 2017

General Manager,

Re: Vacant land in Dunara Gardens – SC3794

I oppose the proposed changes to the land management control of Dunara Reserve, Point Piper. The Dunara Gardens subdivision was divided into 11 residential lots in 1954/55 with a plot of land on the southern boundary dedicated, at no cost, to council as a green strip for use by all future residents and the public.

My parents Peter and Edith Ryba bought Lot 3 in 1958 built their home which they continue to live in. I was therefore brought up in Dunara Gardens. The vacant parcel of land was used as a playground then, and now its enjoyed as the landscaped gateway into the estate.

With a significant lack of green space in Point Piper I object to the land being used for housing or fenced off and used for private use. Dunara Reserve should still serve as a dedicated green strip for all the residents of Dunara Gardens.

Yours sincerely



John Ryba



From: Evelyn Klopfer [REDACTED]
Sent: Monday, 26 March 2018 5:24 PM
To: Records <Records@woollahra.nsw.gov.au>
Subject: Late correspondence regarding Dunara Reserve

Dear Sirs and Mesdames,

This may be late but is so important I have to write to you. I have been in hospital with very bad lungs for two months and have been unable to do the things one really wants to or NEEDS to do. But now I am writing to you about Dunara in Point Piper. Is it a reserve? I do not think this is the right title but...

I have written before to the Wentworth Courier on this but remain unpublished in this VERY important issue, and since I have come home from hospital a day ago I hasten to let you know what really has to be done to this VERY SPECIAL garden which is important as it is, but even more important historically and for Australia forever.

I have written before to the Wentworth Courier on this but remain unpublished in this VERY important issue hence I write to you!

We are speaking of a very small plot of garden which WAS part of the Dunara Estate and was built as a special garden for them. Whether in the 1880's or later makes no difference. It is PART of the Estate.

The Estate is also the birthplace of Dorothea Mackellar who will NEVER be forgotten for her poem My Country which is a part of Australian history forever! Even Malcolm Turnbull two days ago in the horrors of the Tathra fires which raised that small town so quickly, stood with total shock amongst the ruins, NOT saying 'I am sorry' but feeling that horror and speaking of it openly and then quoting "I love a sunburnt country, a land of sweeping plains, a land of mountain ranges of droughts and flooding rains.....Even for Turnbull this is PART OF OUR COUNTRY AND OUR AUSTRALIA He quoted Dorothea Mackellar's poem. And this is part of Dunara and its history too.

EVERYBODY knows those lines either taught at school or remembered by seeing them and reading them. My Country is as important a poem as those of Banjo Paterson. (Somehow I feel sorry that our National Anthem has not the same power as this poem has.)

The lovely garden with its special trees should be kept forever and named the Dunara **garden** or whatever they called it then) and it should be there for those today to be there and enjoy it for what it was meant to be. And IN IT, there should be a large stone and on that stone should be the first lines of Dorothea Mackellar's poem engraved... I love a sunburnt country... etc. and below her name and that she was born here. THAT IS WHAT IT IS IMPORTANT!

THIS IS PART OF OUR COUNTRY AND TOO SMALL TO BE TAKEN AWAY BY YOUR COUNCIL AS YOU MAY FEEL THAT IT HAS NO USE! Please look at this again not as a few feet to build on, but a small piece of our HISTORY Publicise it for what it is and it will become also a part of OUR history today as Dorothea Mackellar was and is - and her poem. It may be visited by school children, or those who remember the first time they heard My Country, or just people who remember that it is PART OF US and is still there to

remember always. Thank you Dorothea Mackellar and thank you Woollahra Council if you let this little important garden stay.

It is not just 400 sq metres of land with trees. IT IS A HISTORY THAT HAS TO BE TAKEN INTO ACCOUNT FOR EVERYBODY WHO REMEMBERS AUSTRALIA.

Sorry to be so adamant, but it IS IMPORTANT

I have lived in the Eastern suburbs most of my life,, but AM ADAMANT THAT THIS LITTLE PORTION OF DUNARA MUST STAY AS A HISTORY TO ALL OF US FOREVER.

You can email me or if necessary call me on [REDACTED]. It is not just ONE person but AUSTRALIA that needs to keep this little park for Dunara and Dorothea Mackellar

Thanks for listening and I look forward to our bit of HISTORY at Point Piper!

EVELYN KLOPFER

East Sydney

(Tel: [REDACTED] [REDACTED] Riley Street East Sydney 2010)

Attachment 5: Material Handed up at Public Hearing

SJB Planning

SJB Planning (NSW) Pty Ltd ACN 112 509 501

Speaker 1
Hylda Rolfe

The General Manager
Woollahra Municipal Council

records@woollahra.nsw.gov.au

Dear Sir,

SC3794 Submissions: Proposed changes to land management controls of Dunara Reserve, Point Piper

With the formal mechanism for disposal of the Dunara Gardens reserve land parcel now in train, a note of caution seems well warranted. I mention two issues that (belatedly) occur to me:

- I attach a high degree of relevance to the *purpose* of the original reservation for *public garden and recreation* space, and the vision that it presumably entailed. It is hard to imagine that it was reserved carelessly, without recognition of its landform and accessibility. Sixty-odd years later, it may still be a valid and feasible vision. I'd like to see it explored and re-visited.
- Similarly, the (later) classification of the Reserve as *community land* was, I imagine, not done carelessly either. That classification has stood for some time now. I wonder whether – and, if so how and why – its rationale is now seen to be deficient. That, too, could use some explanation.

The background thinking on those two matters seems especially important given the ultimate aim of the Council to sell the land. I note that I never was impressed by the notion that its continued upkeep would involve expenditure; that is not unusual for any or all public land, whether held under community classification or otherwise. It's one – entirely valid - reason why we pay our rates!

So, might we have some information and analysis to address the two matters in the next round of documentation, please?

Yours sincerely,
Hylda Rolfe
41 Cove Street Watsons Bay NSW 2030
13 August 2017

DUNARA RESERVE

HERITAGE:

1. The Heritage Council of NSW has objected to its sale and recommended consideration of it being listed as both a State Heritage Item (because of its connection to State Listed “Dunara “) and a landscape Local Heritage item. Its Chair wishes to consult with Council re this.
2. Council’s own heritage officer in 2005 reviewed the historical basis for the Dunara Gardens subdivision and stated “ *the creation of the special lot for public garden & recreation should be preserved*”.
3. There is a 28m high heritage listed Cook Pine, visible from Darling Pt. on the Reserve (as well as two 14m high Moreton Bay figs and 4 Canary Island Date Palms)
4. Dunara Gardens has the State Heritage Listed “ Dunara” (birthplace of Dorothea MacKellar) as well as a locally heritage listed house
5. The Reserve was part of the original gardens of the Dunara Estate
6. The proposal is inconsistent with Council’s own Heritage Conservation objectives in its LEP
7. The full Council on 12 March unanimously adopted a motion that staff prepare a report for consideration of the Reserve being listed as a heritage item of state significance on the NSW State Heritage Register as well as a heritage item in the LEP (corresponding to the Heritage Council’s submission).

HISTORY OF THE SITE:

1. It was all originally the grounds of Dunara
2. In the mid 1950’s the Dunara Estate was subdivided
3. Under the then LGA , Council in fixing the number of lots, had to “ *embrace public reserves & open spaces*” and in respect of the application for approval of the subdivision had to take into consideration “*the amount of public garden & recreation space to be provided in the land to be subdivided*”
4. It was part of the conditions of consent that the Reserve be specifically set aside as “ Public Garden & Recreation Space”
5. Further Council not only insisted on a larger public space being created, but directed that it be transferred to Council to ensure it remained so in perpetuity.

6. That made the land subject to a “trust for public purposes” as held by the High Court in similar circumstances, with the residents & ratepayers the beneficiaries and Council the Trustee
7. Whilst Council by reclassifying can discharge the Trust, it should not morally do so.

USAGE BY THE PUBLIC;

1. Existence of green space & tree canopy provides a public amenity by its addition to the streetscape, irrespective of usage
2. The Reserve is used by
 - residents,
 - visitors,
 - walking groups resting in the shade
 - children playing,
 - the elderly & less mobile residents who find it difficult to walk up & down the steep slope to Rose Bay
3. Heritage groups come onto it to admire the heritage listed Cook Pine
4. Pt Piper has insufficient open green space
5. Development of the Reserve is likely to result in the death and removal of trees

THE EXPRESSED JUSTIFICATION FOR THE RECLASSIFICATION BEING BAD PUBLIC POLICY:

1. An adjoining neighbour’s car port encroached significantly for years on the Reserve and refused to remove it and Council took no action.
2. In Jan 2008 the Land & Environment court confirmed by Order a 2005 requirement that the owner remove the encroachment and that the disturbed areas of Council’s property be restored to match the existing. Council failed to enforce that.
3. Council then abrogated its legal obligations, and on its own admission, “*in response to the encroachment*” decided to wash its hands of the land by commissioning a report with the express purpose of selling the land
4. The offending owner was identified in the Planning Proposal as one of only 2 adjoining owners as a likely purchaser, the other subsequently indicating no interest.

5. The result would be to reward the offender for its own longstanding refusal to demolish the encroachment , thereby profiting by its own breach.
6. That ground is now irrelevant as it was finally removed in 2017.
7. Similarly another principal justification for the sale of the Reserve was the dumping of garden waste on the Reserve. Council had evidence for years that it was that same owner who was doing that dumping , yet took no action. Instead of taking legal action, Council again seeks to abrogate its responsibilities by selling the land, most likely to the offender
8. This sends an appalling message and sets an appalling precedent ie ignore Council & Court orders , dump rubbish on Council land , cut the vegetation & make life difficult for Council & you can be guaranteed that Council will abandon its obligation to do anything about it and sell the land to you.

THE WHOLE PROCESS IS LEGALLY VOID AB INITIO:

1. The Gateway determination is invalid by reason of the Minister being provided with a report which was factually inaccurate and omitted to reveal the existence of the trust, all material aspects to the Minister's decision. There are numerous court cases setting a Minister's decision aside based on incorrect and/or omitted information
2. Everything that follows thereafter is therefore invalid
3. The planning proposal is in breach of s 55 EPA in a number of respects, which also affected the Minister's decision under s 56
4. The Council Resolution authorising the planning proposal is invalid as it purports to reclassify " Dunara Gardens" which is private land and not " Dunara Reserve". Council has no power to reclassify private land
5. The planning proposal is therefore legally unauthorised
6. These matters cannot be retrospectively validated and the whole process has to begin all over again, which is a further waste of ratepayers funds.
7. As there is no Plan of Management for Dunara Reserve, s 44 LGA states that therefore re community land, "*the nature & use of the land must not be changed*"
The proposal is therefore prohibited by the LGA.

74

EXTRACT FROM ENGINEER'S

REPORT (WMC) # 1552/88

ATTACHED. WMC # 1552/88

This Option could include extension of the right-of-way along the frontages of the site as suggested in Option 3.

In order to maximize the usefulness of the dedication to the public, I consider that the following objectives should be realised:

- (a) Extending the existing beach area on the foreshore of the road reserve so as to permit legal public access to a larger beach area for generally passive recreation use;
- (b) Upgrading and embellishing the existing road reserve adjacent to the beach area, (perhaps in a form comparable to Duff Reserve) in order to make better use of the outlook and the peaceful character of the location.
- (c) Enabling legal access by the public to the area fronting the site so as to allow access along the foreshore. (At present this is only legally achieved below Mean High Water Mark).

vii) Probable Demand: The Council's Residential D.C.P. identified this area as a Priority Zone for the demand for Public Open Space. The Point Piper precinct has a provision, according to the D.C.P., of 0.96 ha/1000 persons compared with the adopted standard of 2.83 ha/1000 persons.

I consider that the additional population generated by the subdivision, in addition to the existing shortfall of public open space in the precinct, does justify the provision of the open space to be dedicated. I have not obtained any data on the frequency of public use of the Wingadal Place beach area.

In my opinion, the use and attractiveness of the existing road reserve at the foreshore, in conjunction with the land to be dedicated would be significantly enhanced by landscaping and other treatment by way of terracing, paving, clearing of weeds and provision of seating.

The Council resolved (1/7/88) to adopt the following objective in regard to Open Space along the harbour foreshore.

"To preserve existing public open space along the harbour foreshores, and to promote the dedication, acquisition, lease or occupation of additional usable areas so as to provide further public pedestrian access to and along the harbour foreshore in appropriate locations."

I believe this objective can be achieved, in this instance, by requiring the following:

- (1) The dedication of 40m² as offered by the applicant;
- (2) The monetary contribution of \$35,430 in lieu of the 59.05m² shortfall in required dedication; and

BUILDING AND DEVELOPMENT COMMITTEE 20/2/1989

MUNICIPAL ENGINEER'S REPORT DENNIS CAFE

- D 13
1. REFERENCE NO: \$1552/88
 2. ADDRESS: 2 WINGADAL PLACE, POINT PIPER
 3. APPLICANT: M. ROSE
 4. PROPOSAL: SUBDIVISION INTO 3 LOTS
 5. DATE OF LODGEMENT: 12/12/1988

6. PROPOSAL:

Subdivision of property comprising 2590m² into three allotments -

Lot 1	930m ²
Lot 2	1000m ²
Lot 3	660m ²

Proposed Lots 2 and 3 are to obtain vehicular access off the existing concrete ramp which provides access to the adjoining residence to the north across the unmade portion of Wingadal Place.

Lot 1 is to make use of the existing driveway to 2 Wingadal Place, however. No accurate survey has been provided to demonstrate this.

Drawings Numbered SD2, dated 9/12/88, prepared by Warren Firkin Pty Ltd indicate a proposal for a dwelling to be erected on each new allotment. The proposed dwellings require lodgement of development applications. The proposals for the dwellings should, in no manner, be endorsed or otherwise approved as part of the proposed subdivision. Their sole purpose is to demonstrate the potential for development of the allotments.

The layout of the proposed lots is attached as Annexure 1.

7. DESCRIPTION OF THE SITE

The site is generally triangular in shape with frontages to Double Bay and the unmade portion of Wingadal Place.

Wingadal Place is unmade from a point approximately adjacent to the existing driveway of the site down to Mean High Water Mark. A pathway provides pedestrian access to the waterfront and the Scots College boatshed.

The site contains dense vegetation which includes several mature fig trees as well as several species of noxious plants. I consider the dense vegetation to be an important component of the Point Piper foreshore in this location. The significant trees on the site should be protected and preserved.









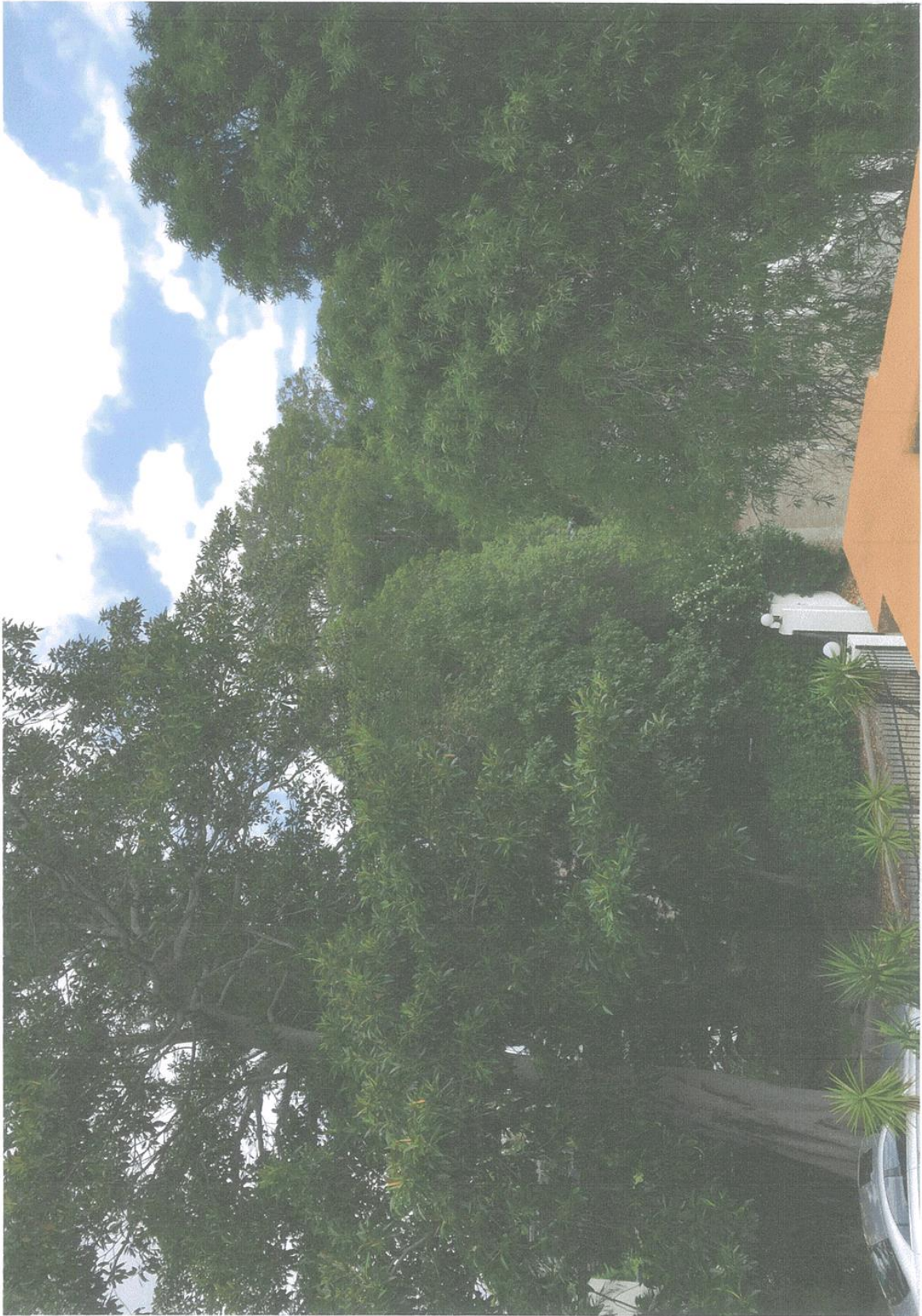


















Woollahra Municipal Council

Biodiversity Conservation Strategy

2015 - 2025



2. What is Biodiversity?

Biodiversity or biological diversity is defined as:

“The variety of all living things, including plants, animals and micro-organisms, the genes they contain, and the ecosystems of which they form a part. It is not static, but is constantly changing. It is increased by genetic change and evolutionary processes and reduced by processes such as habitat degradation, population decline, and extinction.”

(Taken from National Strategy for the Conservation of Australia’s Biological Diversity (Department of Environment (then DEST) 1996)

The concept of biodiversity emphasises the interconnectedness and interdependence of all life on earth and can be considered at three levels:

- Genetic diversity - the variety of genetic information that is contained in all living things and that varies within and between the populations of organisms making up single species or wider groups
- Species diversity - the variety of species on earth
- Ecosystem diversity - the variety of the earth’s habitats, ecosystems and ecological processes

2.1 Ecosystem Services

Urban biodiversity contributes significantly to the quality of life for urban dwellers by providing a range of ecosystem services. Ecosystem services are defined as the physical, cultural, spiritual and economic benefits people derive from ecosystems. Examples of how urban biodiversity can provide ecosystem services to the residents of Woollahra include (Pearson et al 2007):

- **Carbon sequestration:** urban trees remove carbon dioxide from the air and act as a sink by storing carbon in their biomass
- **Air pollution removal:** in particular ozone, nitrogen dioxide and sulphur dioxide by large street trees and other vegetation
- **Microclimate regulation:** vegetation and waterway areas reduce the heat island effect; trees also keep cities warmer in winter by blocking wind and reducing wind speed
- **Flood regulation:** vegetated areas can store large quantities of water and slow water movement, thus reducing flood damage
- **Noise abatement:** vegetation belts act as barriers for traffic noise along roads
- **Recreational values:** natural areas are highly valued for opportunities to play and exercise
- **Aesthetic values:** natural areas provide attractive surroundings, increase property values, promote tourism, and may even shape the cultural identity of urban localities
- **Educational values:** easily accessible natural areas provide numerous opportunities for nature study, research and environmental education through field trips and excursions.

Superb Fairy-wren occurrence Eastern Suburbs, Sydney

Renée Ferster Levy
(work in progress)

- Superb Fairy-wren observation (individual or group)
- ✗ Location surveyed with no Superb Fairy-wrens



Superb Fairy-wrens



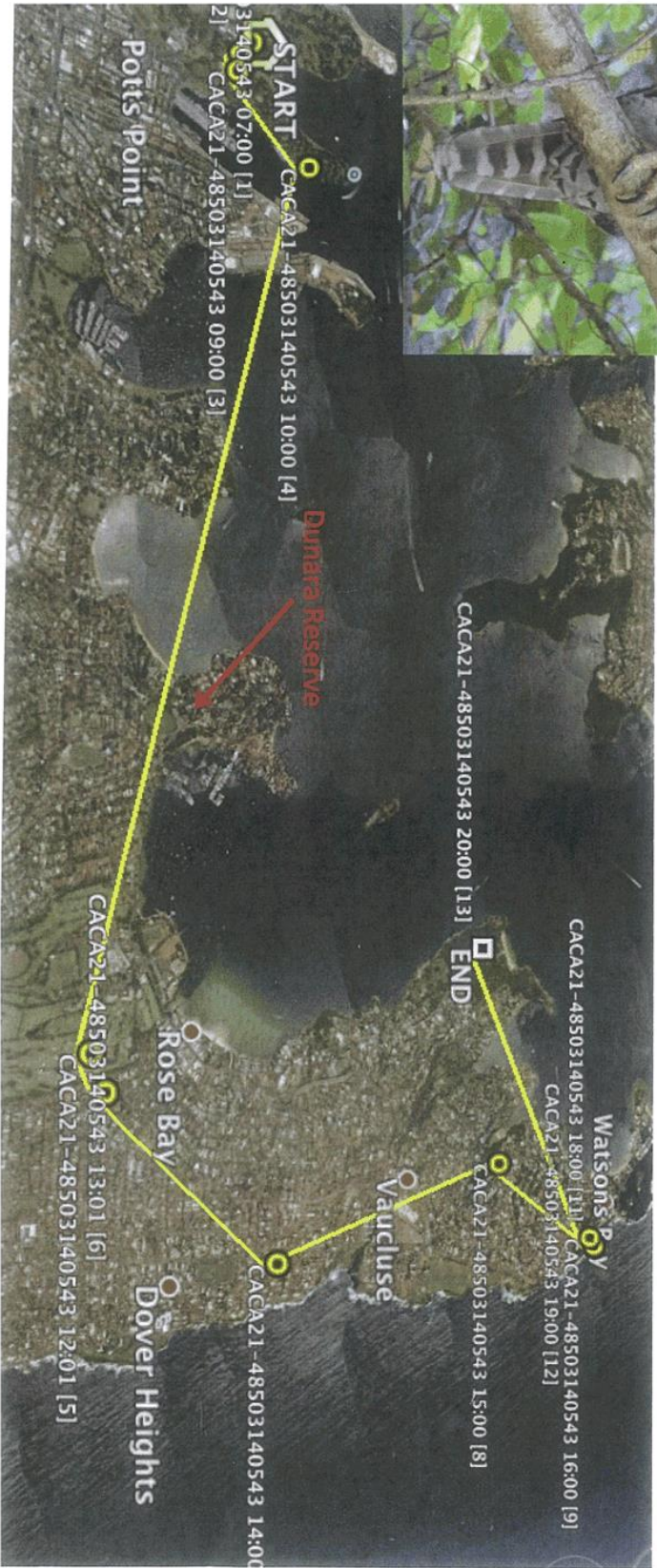


Powerful Owl *Ninox strenua* - a Threatened Species

This is Australia's largest owl, with a wingspan of 1.35m, which has a limited distribution along the east coast. It is dependent on mature trees for roosting in by day, and trees with large hollows to nest in; and to provide habitat for its food - large species, like Brushtail and Ringtail Possums, Flying Foxes and birds. The Powerful Owl is listed as Vulnerable in NSW.

A research project of BirdLife Australia included the satellite tracking of a few individual Owls, and the map below shows the actual track of one Powerful Owl on 31 May 2016 which roosted in the Botanical Gardens, and whose flight path passed within ~100m of Dunara Reserve. Please note that there was a 2 hour period between the nearest points, so it would likely have landed at other spots in between, and sites with suitable landing and hunting spots are limited. There were other journeys with a similar flight path recorded by the satellite tracking.

Retaining remnant patches of mature vegetation is crucial in an otherwise built-up area, for species like the Powerful Owl and its prey, without which it would not survive. Wollahra Council has a responsibility to ensure it retains this important habitat, as clearly shown in its own Biodiversity Conservation Strategy 2015-2025.



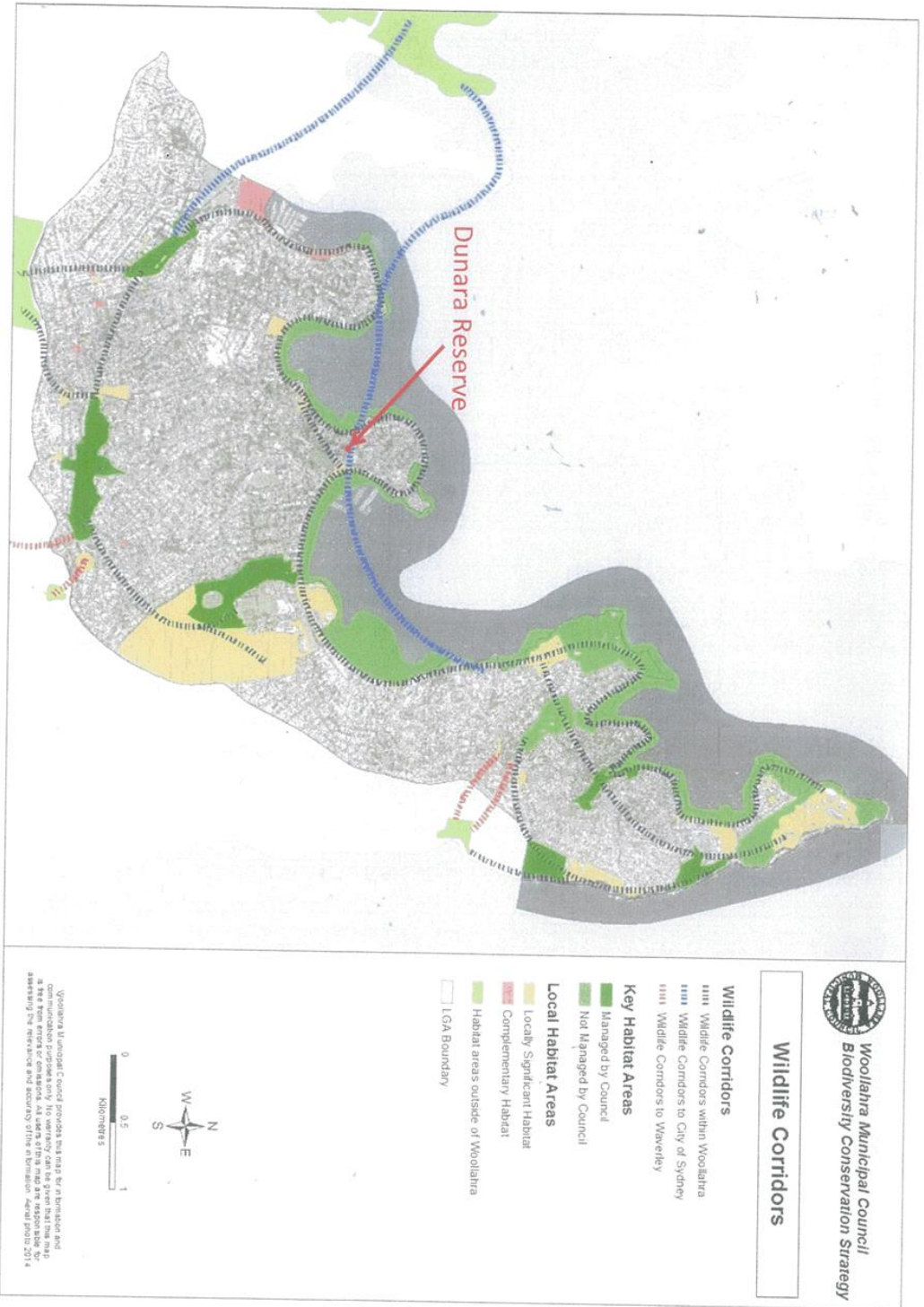


Figure 8-2. Habitat Areas and Wildlife Corridors
Woollahra Biodiversity Conservation Strategy

From Woollahra Council's Biodiversity Conservation Strategy 2015-2025, Map of Wildlife Corridors, with Dunara Reserve superimposed showing it is clearly in a defined corridor between Woollahra Council and the City of Sydney (see over).

Habitat - Wildlife Corridors 8-9

8.3 Wildlife Corridors

The term “Wildlife Corridor” refers to connections between habitat areas across a landscape allowing the movement of animals and the transfer of plants through seeds and pollen. Ecological connectivity is vital to the long-term viability of native fauna species and remnant vegetation, and is recognised as one of the most effective tools available for conserving biodiversity and preparing landscapes for the impacts of climate change (Department of Environment (then DSEWPaC), 2012).

The important functions of wildlife corridors include (Smith and Smith 2009):

- Ensuring outbreeding and genetic exchange between flora and fauna populations that may otherwise become extinct in the long-term
- Allowing re-colonisation of habitat areas by fauna and flora that have become locally extinct from events such as fire, disease or poor breeding success
- Providing a route for the dispersal of young animals and a guiding pathway across an alien habitat for birds and bats including migratory and nomadic species.

Although much of Woollahra is comprised of fragmented patches of habitat isolated by a highly urbanised environment, some connectivity between Key Habitat Areas remains and there is potential to improve and progressively restore connectivity between them by establishing wildlife corridors through selective revegetation of public open space, and changing work practices. Landscape elements that contribute to wildlife corridors in urban environments include parks, golf courses, street trees and gardens that provide habitat.

The wildlife corridors within Woollahra are mapped using the presence of open space and to a lesser extent, street trees as “stepping stones” between Key Habitat Areas (shown in Figure 8-1 and Figure 8-2).

Due to the presence of barriers such as busy roads and developed infrastructure generally only birds and bats are likely to use these wildlife corridors to move between Key Habitat Areas. A number of these species are threatened and perform important ecological functions such as cross-pollination, seed dispersal and insect control.

Attachment 6: NSW Department of Planning and Environment LEP
Practice Note – Classification and reclassification of
public land through a local environmental plan, 5
October 2016

SJB Planning

SJB Planning (NSW) Pty Ltd ACN 112 509 501

Ref No.	PN 16-001
Issued	5 October 2016
Related	Supersedes PN 09-003

Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update guidance on classifying and reclassifying public land through a local environmental plan (LEP). This practice note emphasises the need for councils to demonstrate strategic and site specific merit, includes a comprehensive information checklist and clarifies issues arising for public reserves and interests in land. It should be read in conjunction with *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Classification of public land

Public land is managed under the *Local Government Act 1993* (LG Act) based on its classification. All public land must be classified as either community land or operational land (LG Act ss.25, 26).

- *Community* land – is land council makes available for use by the general public, for example, parks, reserves or sports grounds.
- *Operational* land – is land which facilitates the functions of council, and may not be open to the general public, for example, a works depot or council garage.

What is public land?

Public land is defined in the LG Act as any land (including a *public reserve*) vested in, or under council control. Exceptions include a public road, land to which the *Crown Lands Act 1989* applies, a common, land subject to the *Trustees of Schools of Arts Enabling Act 1902* or a regional park under the *National Parks and Wildlife Act 1974*.

Why classify public land?

The purpose of classification is to identify clearly that land made available for use by the general public (community) and that land which need not (operational). How public land is classified determines the ease or difficulty a council can have dealings in public land, including its sale, leasing or licensing. It also provides for transparency in council's strategic asset management or disposal of public land.

Community land must not be sold, exchanged or otherwise disposed of by a council. It can be leased,

but there are restrictions on the grant of leases and licences, and also on the way community land can be used. A plan of management (PoM), adopted by council, is required for all community land, and details the specific uses and management of the land.

There are no special restrictions on council powers to manage, develop, dispose, or change the nature and use of operational land.

How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- council resolution under ss.31, 32, or 33 (through LG Act s.27(2)), or
- an LEP under the *Environmental Planning and Assessment Act* (through LG Act s.27(1)).

Councils are encouraged to classify or reclassify land by council resolution where suitable.

Classification of public land occurs when it is first acquired by a council and classified as either community or operational.

Reclassification of public land occurs when its classification is changed from community to operational, or from operational to community.

Reclassification through an LEP

Classification and reclassification of public land through an LEP is subject to both the local plan-making process in the EP&A Act and the public land management requirements of the LG Act.

A planning proposal to classify or reclassify public land, will need to be prepared in accordance with this practice note and the additional matters specified in Attachment 1 to this practice note.

Reclassification through an LEP is the mechanism with which council can remove any public reserve status applying to land, as well as any interests affecting all or part of public land (LG Act s.30).

It is critical that all interests are identified upfront as part of any planning proposal. If public land is reclassified from community to operational, without relevant interests being identified and discharged, then the land will need to be reclassified back to community (usually by council resolution under LG Act s.33¹) before being reclassified in a new planning proposal to operational, to explicitly discharge any interests.

While a reclassification proposal to remove the public reserve status of land and/or discharge interests may not necessarily result in the immediate sale or disposal of the land, the community should be aware the public land in question is no longer protected under the LG Act from potential future sale once it has been reclassified to operational.

Councils should obtain their own advice when proposing to discharge any interests and be aware that this may attract a claim for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Where land has been dedicated to council by a State agency for a particular purpose and a trust exists, it is advisable for council to seek the views of that agency prior to council commencing any planning proposal affecting the land.

Public reserve is defined in the LG Act and includes a public park and land declared or dedicated as a public reserve.

Land can be dedicated as a public reserve by either:

- registering a deposited plan with a statement creating a lot(s) as 'public reserve', or
- publishing a notification in the Government Gazette for an existing parcel.

Interests in land refers to property ownership as well as rights and privileges affecting land, such as leasehold, easements, covenants and mortgages.

For the purpose of reclassification through an LEP, 'interests' means trusts, estates, dedications, conditions, restrictions and covenants affecting the land.

A legal owner of land may not be the only person with an interest in the land. For example, one person may have the benefit of an easement for services, such as water, electricity or sewerage over someone else's land.

Certain interests are registered on title to ensure they are on record and cannot be disregarded if sold to a new owner. An electronic title search is generally conducted to determine the land owner, correct land description and the type of interests which may affect the land.

Standard Instrument LEP requirements

Clause 5.2—Classification and reclassification of public land in Standard Instrument LEPs enables councils to classify or reclassify public land as operational land or community land in accordance with the LG Act. The land to be reclassified or classified is described in Schedule 4 of the LEP.

Schedule 4 is not to refer to any land already classified or reclassified.

Where there is no public land to be classified, or reclassified, through a principal LEP (i.e. the LEP applies to the whole of a local government area), Schedule 4 will appear blank.

Note: At a later stage council may lodge a planning proposal to remove previous listings in Schedule 4. This will not affect the classification status of these parcels of land.

Department assessment

A proposal to classify or reclassify public land through an LEP must have planning merit. The Department will undertake an assessment to determine whether the proposal demonstrates strategic and site specific merit.

Community consultation

Planning proposals to reclassify public land are to be publicly exhibited for at least 28 days.

A copy of this practice note is to be included in the public exhibition materials.

¹ Note: Council is required to give public notice of the proposed resolution and provide a period of at least 28 days during which submissions may be made (LG Act s.34).

Public hearings

Councils must hold a public hearing when reclassifying public land from community to operational (EP&A Act s.57 & LG Act s.29). This gives the community an opportunity to expand on written submissions and discuss issues with an independent person in a public forum.

After the exhibition period has ended, at least 21 days public notice is to be given before the hearing. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised.

There are specific requirements for the independence of the person chairing the hearing, their preparation of a public hearing report and council making the report publicly available (LG Act s.47G).

Governor's approval

The Governor's approval is required when a reclassification proposal seeks to remove any public reserve status and/or discharge any interests affecting public land (s.30).

When a council reports back to the Department on the community consultation undertaken and requests the Department make the LEP, the Department will arrange legal drafting of the LEP, including recommending the Governor approve the provisions before the LEP can be legally made.

Where the Governor's approval is required, the council's report accompanying the final planning proposal must address:

- council's interests in the land;
- whether the land is a 'public reserve';
- the effect of the reclassification, including loss of open space, any discharge of interests, and/or removal of public reserve status;
- the strategic and site specific merits of the reclassification and evidence to support this;
- any current use of the land, and whether uses are authorised or unauthorised;
- how funds obtained from any future sale of the land will be used;
- the dates the planning proposal was publicly exhibited and when the public hearing was held;
- issues raised in any relevant submissions made by public authorities and the community;
- an explanation of how written and verbal submissions were addressed or resolved; and
- the public hearing report and council resolution.

Authorisation of delegation

Local plan making functions are now largely delegated to councils.

A Written Authorisation to Exercise Delegation is issued to a council as part of the Gateway determination. However, where an LEP requires the Governor's approval, this council delegation cannot be issued. In this instance, the council must request the Department make the LEP.

A decision to classify or reclassify public land cannot be sub-delegated by council to the general manager or any other person or body (LG Act s.377(1)(l)).

Background

On July 1, 1993 when the LG Act commenced, the following land under council ownership or control, was automatically classified as *community* land:

- land comprising a public reserve,
- land subject to a trust for a public purpose,
- land dedicated as a condition of consent under s.94 of the EP&A Act,
- land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space,
- land controlled by council and vested in Corporation Sole - Minister administering the EP&A Act.

Councils must keep a register of land under their ownership or control (LG Act s.53) and anybody can apply to a council to obtain a certificate of classification (LG Act s.54).

Further information

A copy of this practice note, *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* is available at: <http://www.planning.nsw.gov.au>

For further information, please contact the Department of Planning and Environment's Information Centre by one of the following:

Post: GPO Box 39, Sydney NSW 2001.

Tel: 1300 305 695

Email: information@planning.nsw.gov.au

Authorised by:
Carolyn McNally
Secretary

Important note: This practice note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this practice note.

© State of New South Wales through the Department of Planning and Environment
www.planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

ATTACHMENT 1 – INFORMATION CHECKLIST FOR PROPOSALS TO CLASSIFY OR RECLASSIFY PUBLIC LAND THROUGH AN LEP

The process for plan-making under the EP&A Act is detailed in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*.

Importantly, *A guide to preparing local environmental plans* contains the Secretary's requirements for matters that must be addressed in the justification of all planning proposals to reclassify public land. Councils must ensure the Secretary's requirements are addressed.

Councils must also comply with any obligations under the LG Act when classifying or reclassifying public land. More information on this can be found in *Practice Note No. 1 - Public Land Management* (Department of Local Government, 2000).

All planning proposals classifying or reclassifying public land must address the following matters for Gateway consideration. These are in addition to the requirements for all planning proposals under section 55(a) – (e) of the EP&A Act (and further explained in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*).

- the current and proposed classification of the land;
- whether the land is a 'public reserve' (defined in the LG Act);
- the strategic and site specific merits of the reclassification and evidence to support this;
- whether the planning proposal is the result of a strategic study or report;
- whether the planning proposal is consistent with council's community plan or other local strategic plan;
- a summary of council's interests in the land, including:
 - how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution)
 - if council does not own the land, the land owner's consent;
 - the nature of any trusts, dedications etc;
- whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why;
- the effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged);
- evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents);
- current use(s) of the land, and whether uses are authorised or unauthorised;
- current or proposed lease or agreements applying to the land, together with their duration, terms and controls;
- current or proposed business dealings (e.g. agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time);
- any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy);
- how council may or will benefit financially, and how these funds will be used;
- how council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal;
- a Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot; and
- preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.