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30 November 2020

Executive Manager Development Assessment
Northern Beaches Council
lillian.warnes@northernbeaches.nsw.gov.au

Attention: Mr Peter Robinson

Dear Mr Robinson,

DA 2020/0661 – TELECOMMUNICATIONS FACILITY

Thank you for your response of 16 November to our previous letter on this subject.

Local Planning Panel - Operating Procedures

While we understand and accept all the points made in your response, your reply has not addressed our chief complaint, namely the failure of the Local Planning Panel process to provide a Community Representative at the hearing of DA2020/0661. For clarity, may we restate our concerns as follows:

- this DA threatens a major natural asset (i.e. Curl Curl Lagoon) set aside for community use and nurtured by CCLF, Council and others for over 40 years
- the community has vigorously objected to two DA's for this contentious proposal for a telco tower / raised platform / enclosure, including 390 individual submissions made re this 2020 application
- Local Planning Panels are required to include a Community Representative member at each meeting *"to bring local knowledge and experience"* to all steps in the decision making process
- no Community Representative was present on the panel during the public hearing, deliberation, and determination / voting of this DA
- the Community Representative member of the panel excluded themselves from consideration of this DA declaring a *"reasonably perceived conflict of interest"* on their [Declaration of Interest form](#) but failed to provide details of that *"reasonably perceived conflict"* as the form requires
- the Panel Chair has a responsibility under [Operational Procedures](#) (refer extract below) not only to maintain a quorum at a meeting but also to manage conflicts of interest, including arranging alternates for community representatives

We believe the Community's interests have suffered from a lack of procedural fairness due to the Chair's failure to . . .

- properly ascertain the reason for the Community Representative's self-declared conflict of interest (i.e. failed to complete their Declaration of Interest form correctly) and to attempt to resolve that perceived conflict so that a Community Representative could participate in the first hearing
- use the seven days that elapsed between the first and second meetings to obtain an alternate Community Representative that could participate in the second meeting

For the community to maintain confidence and trust in the panel process we believe Council needs to respond to the following questions:

1. What reasonable steps did the Chair take to ensure that the Local Planning Panel convened on 7 October 2020 included a Community Representative member able to participate in the hearing of DA2020/0661?
2. Once the Panel had decided to extend the hearing and determination of DA2020/0661 to a final meeting on 14 October at which this matter was to be the only item of business, what reasonable steps did the Chair take in the intervening 7 days to arrange an alternate for the conflicted Community Representative member for the final, and determinative meeting?

Furthermore, CCLF is surprised to read the following statement in your response of 16 November:

“The Panel were informed of local issues by the significant number of submissions and representations made during the public meeting.”

. . . suggesting that, had there been a Community Representative on the panel, they would not have added any significant value to the decision-making process anyway. What this suggestion overlooks is the personal contribution the Community Representative can make in providing context for and interpretation of those submissions and representations to fellow panellists during the deliberations, leading hopefully to the best and fairest outcome.

Of the total 390 submissions received for this DA, 376 were in opposition. Oddly, the Assessment Report that informed the Panel’s deliberations did not report the for / against split of submissions, as the 2017 Assessment Report did. Had Chair been aware of the extent of this split they might have seen the need for - and benefit of - having a Community Representative participating in the process.

Your Offer To Discuss Council’s Decision Making Process

Thank you for your offer to meet with our Executive to discuss the decision-making process of the two Optus applications.

In addition to our stated concerns about the Panel process, we have identified several irregularities and inconsistencies with the preparation of the Assessment Report. Consequently, we have lodged a formal GIPA application (11/11) to obtain information about aspects of the assessment process we feel are flawed.

Once we have received and reviewed that information we will contact your office to arrange a meeting. We would like Curl Curl Ward councillors to attend this meeting as well and have copied them in here accordingly.

Yours sincerely, on behalf of the Executive Committee

Mark Stack
Treasurer



cc: Cr. David Walton
Cr. Natalie Warren

Mayor Michael Regan

ADDENDUM - Local Planning Panels Operational Procedures – Extract

SCHEDULE 1 – OPERATIONAL PROCEDURES

PART 1 – Panel composition

1.3 Community representatives for wards and use of alternates

1. A community representative member can be interchanged as needed by the chair or alternate chairs for reasons including:
 - a. a member has a conflict of interest,

PART 3 – Meeting and other business procedures

3.1 Role of chair

1. The chair is responsible for the management of the panel's functions and operations, including managing conflicts of interest.

5. The chair is to determine which alternative chair, independent expert members or alternates, and which community representative or alternates are to hear a matter prior to consideration of the matter commencing. The chair may make arrangements with the general manager (or delegate) to determine independent expert members or alternates, and which community representatives or alternates are to hear a matter.