

Hunter's Hill Trust Journal

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HUNTER'S HILL IN THE COURTS **CASE 1: SUBSTANTIAL REDUCTION RECOMMENDED FOR PULPIT POINT MARINA**

The proposed Pulpit Point Marina was too large and environmentally detrimental, according to a Report issued by Commissioner Cleland and the Minister for Planning.

Vamiso (Comrealty & Nat/West) had applied to the Maritime Services Board (M.S.B.) for a 132 berth marina which would have occupied a substantial part of Fern Bay. The Trust, Hunter's Hill Council and C.R.U.S.H.H. strongly opposed the extent and density of the marina, and in response the Minister set up a Commission of Inquiry. In the Report, released on 20th June, the Commissioner accepted many of the arguments put forward by the community.

The Commissioner has made the following findings and recommendations:

- ☆ That the lease area for the marina should respect the conservation values and natural features of the locality.
- ☆ That the maximum number of berths within the lease area will be 112, provided certain conditions are met, and that the boats are restricted in size.
- ☆ That it be a private marina with no boat fuelling or service facilities.
- ☆ That 2 visitors' berths be provided within the marina.
- ☆ That the maximum length of any vessel not exceed 15 metres.
- ☆ That there be one entry/exit only, at the south end.
- ☆ That Vamiso agree to strict controls over sewerage, pumpout, noise, pollution and the like.

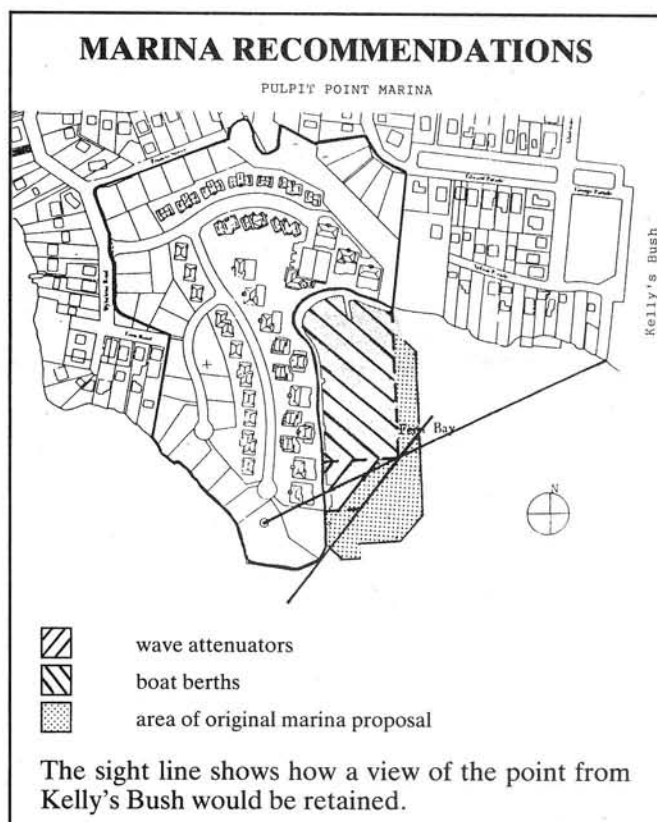
Based on the Commissioner's findings:

- ☆ the boat berthing area will be restricted to 54% of the original marina total area and contain up to 85% of the original 132 requested berths.
- ☆ the Commissioner's total marina area including all the wave attenuators is 65% of the original proposed marina area.

This indicates that the Commissioner's findings have produced a more efficient marina. 85% of the proposed number of boats can be accommodated in an area 35% smaller than the originally proposed marina.

If it is adopted as it stands, the Commissioner's Report could become a significant benchmark for the design of marinas in the future. The Trust sought to assess the significance of the visual impact of the marina by analysing the physical landform of Fern Bay and its immediate environs. This approach was upheld by the Commissioner.

(Continued on page 5)



CASE 2: DEMOLITION FOR "VILLA FLORIDIANA"

The Land and Environment Court has upheld a decision allowing the demolition of **Villa Floridiana**. Mr. Justice Hemmings did not support Hunter's Hill Council's appeal against the decision of an Assessor to allow demolition of this heritage listed property in Sea Street, Hunter's Hill.

Unfortunately an appeal can only be brought if the Assessor makes an error in law, not an error of fact. The Council argued that there was an error of law in that the Assessor had misdirected himself concerning the nature of old timber buildings and the need to replace timbers over time.

Council also argued that the vendor, Douglass Baglin, had been prevented by the Court from giving evidence about the circumstances of the sale being less than market value. This evidence would have put into perspective the evidence of the owner as to the cost of repairs.

Leave was sought to reopen the case by presenting fresh evidence showing that Jules Joubert was indeed the builder and first owner of the **Villa**.

This decision left three avenues open if the building was to be saved:

Firstly, the Heritage Council could have placed a conservation order over the property. It had already decided that the house was of State heritage significance.

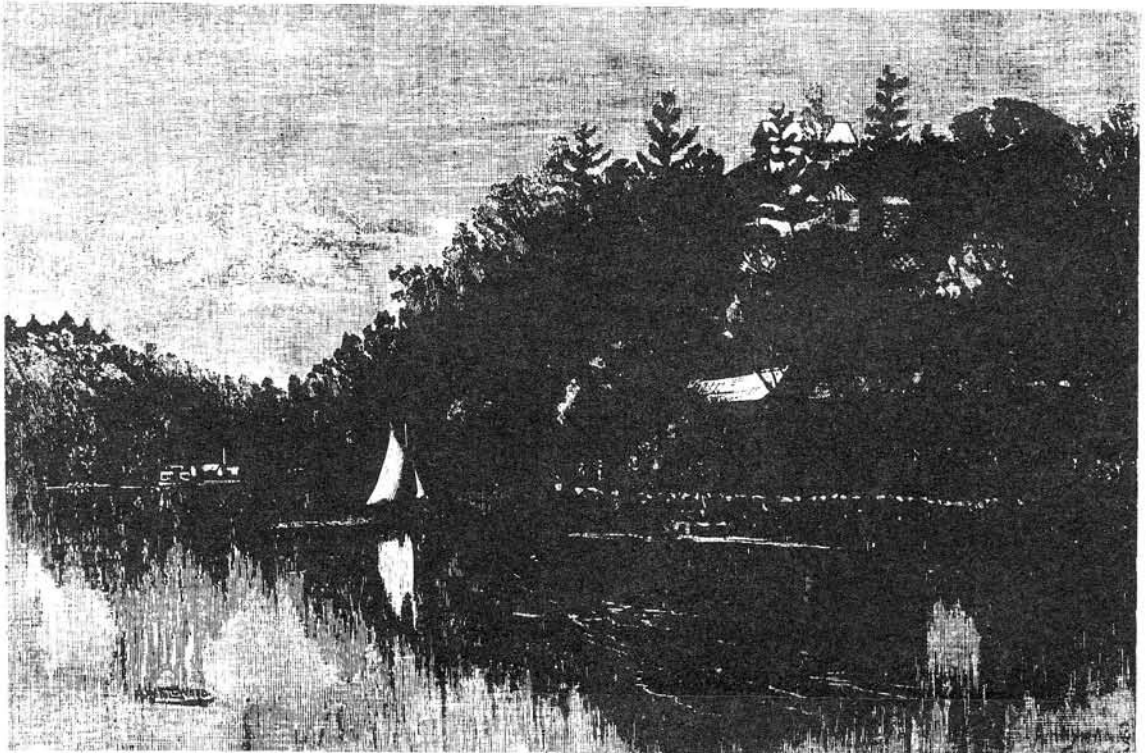
Secondly, the Hunter's Hill Council had the power, with the concurrence of the Minister, to resume the property. Council would have to pay present market value, but could then arrange for a conservation order to be placed over the property with restrictive covenants. At an appropriate time the protected property could have been resold. State Government and the Heritage Council could have been financially involved in this scheme.

The third and final avenue was direct action, a course called for by Douglass Baglin. This course would reflect sadly upon the inadequacies of the planning process.

Historian Dr. Beverley Sherry described **Villa Floridiana** as a "rare piece of Australia's past. It has special significance for Hunter's Hill because it has associations with three pioneering families. It was from this point that the suburb began."

Alderman Ross Williams, Mayor of Hunter's Hill, said, "I am upset by the fact that Council has not been able to control the destiny of the very valuable buildings in this municipality. It appears that many of these situations are now ending up in court, and the courts are making the decisions instead of the elected representatives."

Phillip Jenkyn.



Douglass Baglin speaks out on the demolition . . .

"I THINK THE ASSESSOR WAS WRONG"

Douglass Baglin told the Trust's Annual General Meeting that he thought the Assessor of the Land and Environment Court was wrong in deciding, late last year, to allow demolition of **Villa Floridiana**. Mr. Baglin, who had owned the house for thirty years, called for it to be resold to someone who would restore it.

Mr. Baglin said that History would remember one of two people: "the person who saves **Villa Floridiana**, or the person who pulls it down."

In coming to his decision to allow demolition, the Assessor had cast doubt on whether the house had actually been lived in by Jules Joubert. Mr. Baglin said that a 1938 letter from Jules' son Alfred L. Joubert left no doubt that Jules did indeed live in **Villa Floridiana**. Dr. Beverley Sherry examined this new evidence in the February **Journal**.

(Continued on page 5.)

VILLA FLORIDIANA: IN ANGER AND SORROW

On July 16th 1990, the demolition of Villa Floridiana, 130 years old, commenced. On that day, Barry Swayn, a Member of the Hunter's Hill Council's Environment and Heritage Advisory Committee wrote an open letter to David Hay, Minister for Local Government and Minister for Planning. The Minister's reply sought to deflect responsibility for the demolition onto Council. The Mayor responded, pointing to the failure of the Minister and the Heritage Council to use the protection provided by the Heritage Act to save heritage items. Their correspondence is important if lessons are to be learned from the affair.

BARRY SWAYN TO DAVID HAY AND THE HERITAGE COUNCIL: SO WHERE'S THE PROTECTION?

The commencement of demolition on *Villa Floridiana* today was the final chapter of inaction by the NSW Government and demonstrated a failure to accept responsibility for the heritage significance of this cottage and for the heritage of this State.

Villa Floridiana had great historical, social and cultural significance for Hunter's Hill through its association with the Jouberts, D'Apices and Baglins, and the site's earlier Aboriginal occupation.

The cottage had architectural significance, not as an imposing structure, but as an early example of a modest timber bungalow, whose base form and design had been added to, its timbers through necessity of repair, replaced periodically. This is the nature of timber, both as structure and fabric. As Beverley Sherry wrote: "No one has ever eradicated the essential character of this modest linear bungalow, such as it appeared in the 1886 *Picturesque Atlas of Australasia*".

A spokesman for Mr. Hay's office last Friday claimed that the Minister would not intervene as there had been two court cases and three meetings of the Heritage Council without support for the saving of the cottage.

In fact only the first court case was against the demolition of the cottage. The second case would not admit new evidence but only support an appeal if there had been an error of law in the first.

The Heritage Council apparently would not make a finding in their first two meetings because the case was before the courts on both occasions. Their third meeting ended with the conclusion that the courts had found nothing and concluded that they could not make a finding contrary to the courts.

The point is that additional conclusive information had been found after the first court case, and, along with many issues of merit not considered at that time, were presented to the Heritage Council in January for their consideration, seemingly to be ignored.

It seems that the Heritage Council which is established to oversee the protection of our State's heritage, has abdicated this responsibility, and the State Government has endorsed this action.

It now seems that NSW Heritage has very little protection!

THE MINISTER, DAVID HAY REPLIES:

The *Villa Floridiana* was recognised as having heritage significance by the Hunter's Hill Council. The Council successfully sought to place heritage protection on the property under its own local environment plan. This action was approved by the Heritage Council. This action also set the ground rules by which any owner of the property could seek to alter or demolish the dwelling. The Hunter's Hill Council knew this, proposed this form of protection and accepted the obligations which flowed from it.

The owner of the property applied to the Council to demolish the building. The Council did not make a decision on the application, that is, it did not even refuse consent in the required period. The property owner appealed to the Land and Environment Court, as was that owner's right, under the planning rules established by the Hunter's Hill Council.

The Heritage Council agreed to assistance being provided to Hunter's Hill Council when the case went to Court.

Subsequently, however, the Heritage Council took the view that as the matter had been dealt with according to the law on the basis of the rules established by Hunter's Hill Council, it would not recommend that action be taken which would have effectively frustrated the operation of due legal processes.

The inability of the Council to win the Court case may not be seen as a failure of the Heritage Council or the Minister. The fact that certain information may have come to light during or following the Court case may well reflect on the preparation of the Council in arguing for continuing protection of the building before the Court.

There is no question of any abdication of responsibility on behalf of the State Government or the Heritage Council. There was, however, a continued commitment to the system of decision making established by the Hunter's Hill Council itself.

Alderman Ross Williams, Mayor of Hunter's Hill, has the last word.

THE MAYOR TO THE MINISTER: IT'S ABOUT TIME THE STATE GOVERNMENT WORKED CLOSELY WITH COUNCIL AND STOPPED PASSING THE BUCK.

The Minister's letter demonstrates an attitude that places the full responsibility for heritage protection on the local council LEPs rather than making use of the Heritage Act. The Minister in my opinion cannot absolve himself nor the Heritage Council from their responsibilities or obligations concerning the protection of heritage items in this State, regardless of the alleged strengths of the local environmental plans. The State Government has the responsibility and power under the heritage Act to protect items of state significance.

In the case of heritage issues, two Acts by the State Parliament require consideration. These include the Environmental Planning and Assessment Act and the Heritage Act. The first is the one referred to by the Minister as being the ground rules set by Council. The LEP that the Minister is referring to provides a listing of those buildings deemed to be of significance and requiring special consideration. The significance of *Villa Floridiana* and its listing in the LEP was supported by the Government, Heritage Council, National Trust, Heritage Commission and the Hunter's Hill Trust. It does not provide any real protective mechanisms for those listed items. The purpose of the Heritage Act, however is twofold - to provide protection through direct powers to prevent demolition by the use of Conservation Orders (PCO or ICO) and to provide financial support to protect heritage. In the Hunter's Hill Municipality, of the 513 listed heritage items, only 4 or 5 have been given the status of Permanent Conservation Orders, among these are the Garibaldi Inn and Milthorpe both of which have previously been placed at significant risk and it was only at this time they gained protection under the Heritage Act. The Act provides protection for heritage items at risk and it is appropriate for the Heritage Council or the Minister to act when required. Recently the Hunter's Hill Council requested the Heritage Council to place an ICO on the Woolwich School Building due to the uncertainty surrounding the future use of the site and the potential risk of demolition, but it has been declined. There are consequently many items in Hunter's Hill and possibly hundreds throughout the State that are not included under the Act's protection even though they are recognised as having State significance. The intent is not to list every item but to swing into action when the need arises. If the Minister is not prepared to use these powers when the situation clearly requires it then the Act should be repealed so as not to provide a false sense of security in the community.

The Minister also seems to imply that Council has not been able to determine the matter within the 40 day period but as the Minister would know there is no obligation on Council to determine the matter within that period. The intent of the time period is not to constrain a council's decision making processes but to give the opportunity for an applicant to seek consideration of the

matter by the Land and Environment Court. It is becoming increasingly evident that on complex issues such as heritage matters where expert advice is often required before a responsible decision can be made 40 days does not give sufficient time to process the application.

I am satisfied that in this case council took appropriate and responsible action to ensure its decision was based on sufficient information to enable an ICO to be considered for the site, by the Heritage Council. It should be noted that applicants have unlimited time to prepare their case prior to lodging applications whereas the Minister is suggesting that Council only has 40 days. Council is required to advertise the proposed demolition for 14 days and consider objections. Council also took the responsible action of seeking expert advice from the National Trust and a highly respected and independent conservation consultant and finally consideration and advice from Council's Environmental and Heritage Advisory Committee. It has been my experience that heritage investigations take a considerable time particularly when you consider much of the information is locked away in obscure records in churches and personal files. It is necessary for these investigations to be carried out thoroughly, as once the building has been demolished it is lost forever, whereas to wait for a few months to be sure of the facts is a small price to pay. On receipt and consideration of the relevant reports and information provided by its advisors and the public, Council did resolve to refuse the application to demolish the building. The situation is further complicated by the fact that the Heritage Council only meets once a month and the day it met to consider Council's request for an ICO coincided with the commencement of the case in the Land and Environment Court.

One of the major points in Assessor Nott's decision was the lack of evidence to support the Joubert's association with the building. It took six months of investigation to find the appropriate documents and by this time a decision had been made by the Assessor to allow the demolition. This new evidence was subsequently not allowed to be introduced at the appeal hearing.

The Minister had the opportunity to intervene and save the building by exercising his powers under the Heritage Act but chose not to do so, and this decision was the Minister's alone. Hunter's Hill Council acted responsibly to satisfy itself that the building was of significance before refusing the demolition application. The responsibility for protecting heritage is a joint one and not solely vested in the local councils. The State Government should be working closely with council to ensure significant items at risk are adequately protected through the provisions of the Heritage Act, that it administers, and not pass the buck.



*A stained glass window at **Lugarno** (7 Futuna Street) from 1889. It was made by Goodlet and Smith of Sydney. The subject of Australian azure kingfishers reflects the nationalism at the time of the Australian centenary.*

Photo: Douglass Baglin.

Beverley Sherry throws light on Stained Glass ...

“A HIDDEN WORLD”

Dr. Beverley Sherry has described stained glass as a rich but little known area of Australia's heritage. Speaking at the Trust's Annual General Meeting, she said stained glass had gone into decline in the 18th Century. It became almost a lost art. Formulae were forgotten.

The revival of stained glass in the second half of the 19th Century coincided with the expansion of public and private architecture in Australia.

The industry was interrupted by World War I, then picked up, but was dealt a body blow by the Depression in 1930.

Yet Australia has a great deal of stained glass windows remaining. This contrasts with London and New York, Dr. Sherry said, which lost much of their stained glass through bombing in World War II or through the destruction of heritage buildings.

Beverley Sherry and Douglass Baglin are preparing a book which traces the development of stained glass in Australia, in churches and public buildings and also in private residences.

PULPIT POINT MARINA (Continued from page 1)

He found that the marina “would have an adverse visual impact on Fern Bay and the views in the locality and detract from the topographical significance of Fern Bay.”

“I consider that a position which respects the natural attributes of views to and from significant areas of public open space, both land and water ... is justified.”

The Commissioner's report has to be considered by the Minister and then goes to the M.S.B. which is the consent authority and makes the final decision on the marina. It is important that the Commissioner's recommendations are not watered down in this process.

Report by Philip Jenkyn and Barry Swayn.

*Philip Jenkyn is a barrister and was an Independent Alderman 1983-1987;
Barry Swayn is an architect and a Member of the Trust Committee.*

VILLA FLORIDIANA (Continued from page 2.)

Mr. Baglin noted that the house had undergone some change over time, but that this was the nature of timber houses. It did not justify pulling the house down. Some of the changes were improvements, he suggested, such as the Georgian fireplace and the verandah, which protects the house.

He estimated that it would only take \$175,000 to “put the house right”.

Mr. Baglin said that he and his wife Elaine intended

to direct a part of their estate to the Hunter's Hill Council to help pay legal expenses incurred in preserving historic buildings in the Municipality.

In 1861 the house was purchased by Charles d'Apice, and the family lived there for over 60 years. Charles d'Apice's uniform as a Knight of St. Sylvester was displayed when the Baglins opened the house for the Hunter's Hill Trust in 1968. In a poetic turn of fate, the Baglins have now engaged Richard d'Aspice, a descendant of Charles, as their lawyer.

ANNUAL GENERAL MEETING

With Hunter's Hill Trust President Ewan Cheyne-MacPherson overseas, Vice-President Sam Sheffer reported on the Trust's activities of the past year, at the A.G.M. on May 2nd. These issues included:

Advice that on March 3rd, Mr. Hay, the Minister for Planning, had declared that the provisions of **S.E.P.P. No. 28** (Town Houses and Villa Houses) will no longer apply to several local Government areas including the Municipality of Hunter's Hill.

Advice that the Anglican Parish of Hunter's Hill had made applications to the Council for the removal of their **St. John's Church Hall** from its present site to another location. The Council's Heritage Advisor, Ms Penny Pike, indicated that the building on this site is of such significance as to warrant refusal of the application to demolish or remove the Hall.

The Woolwich School site, rezoned for medium density housing, was up for tender from the Dept. of Supply. The Mayor, Ald. Ross Williams, added that it was Council's view that if the school site had to be lost for school purposes, it was preferable that it stay community property, becoming a housing facility for aged people. On principle, the Council had submitted a tender bid for the site for \$1.

(The subsequent successful tender was reportedly \$3.9 million from Mr. Parlbay of Woolwich.)

The temporary closure of **Valentia Street Wharf** was mentioned. Ald. Williams said that a new \$500,000 wharf was to be provided at no cost to ratepayers, and that its maintenance would also be at no cost to Council. This would include a pontoon which would "reflect the character of Hunter's Hill, hopefully".

NEW COMMITTEE

As nominations were within the number laid down by the Constitution, no election was necessary at the A.G.M. At a subsequent meeting of the Committee, the following office bearers were elected:

Ewan Cheyne-MacPherson	President
Sam Sheffer	Vice-President
Len Condon	Secretary
Kim Crestani	Assistant Secretary
Patti Mackenzie	Treasurer
Penny Daven	Membership
Rae Hensley) Foreshore Sub-Committee
Kevin Riggs	
Barry Swain	
Peter Pinson	Publications



Currently financial members of the Hunter's Hill Trust will receive with this **Journal** a free Trust car sticker. No water is required; it adheres by surface tension and can be removed and replaced as required.

This design, which incorporates the local wood pigeon of the former logo, was generously prepared for the Trust by Robert Palmer of Chiat/Day/Mojo.

AN INVITATION FOR MEMBERS OF THE HUNTER'S HILL TRUST

A Date for Your Diary!

The Trust invites you to a fascinating evening of two illustrated talks by leading architects **KIM CRESTANI** (from Order Architects and Interiors) and **ALAN CROCKER** (from Clive Lucas, Stapleton and Partners). They will speak about extending old houses and repairing rather than replacing parts of historic buildings.

Date: Wednesday, 22nd August, at 8.00 p.m.

Place: 1st Floor, Woolwich Pier Hotel.

Hunter's Hill Trust Members: Free. (Guests \$5).

Enquiries: Penny Daven 817 3386.

TRUST MEMBERSHIP 1990-91

MEMBERSHIP fees are due on March 1 each year. Types of membership:-

Single \$10.00; Family \$15.00;

Pensioner \$2.00; Student \$2.00);

Individual and Institutional Life Member \$100.00.

Please post to:

Hunter's Hill Trust, Box 85, Hunter's Hill, 2110.