

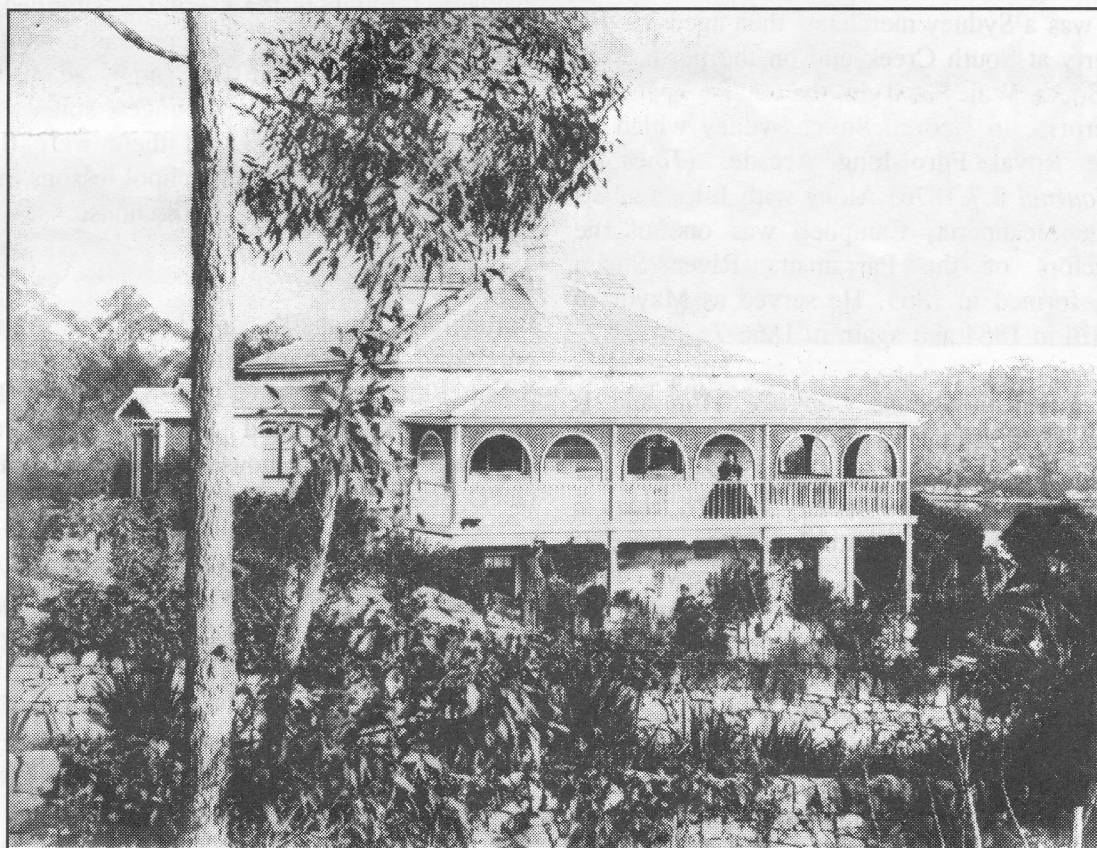
# THE HUNTER'S HILL TRUST JOURNAL

PRESERVING AUSTRALIA'S OLDEST GARDEN SUBURB

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*Richard & Sarah Ann Sim and children at Clarence Villa overlooking the Lane Cove River ◇ around 1870  
This house, no.1 McBride Avenue Hunters Hill, is now called **The Haven**  
photograph courtesy of Maritime Services Board.*

## "THE HAVEN" & ITS HISTORY

*Megan Martin*

*The Haven*, no.1 McBride Avenue Hunters Hill, forms part of the Hunters Hill Conservation Area. In 1994 it became the subject of a development application for subdivision. The application was subsequently considered by Council's Conservation Advisory Panel (CAP) on a number of occasions and was also brought before the NSW Heritage

Council. The Hunter's Hill Trust has consistently opposed the application. In this issue of the journal, Ros Maguire, Trust representative on the CAP, reviews the history of the development application for *The Haven* and speculates on the architect of the house. To provide a context for this report we begin with an outline history of the building and its site.

### **A Joubert house**

*The Haven* was built around 1859 by Jules Joubert on land owned and subdivided by his brother Didier Numa Joubert. It was one of a series of marine villas built by the Jouberts between 1855 and 1860 on elevated sites overlooking the Lane Cove River. (Alfred L Joubert, 1938)

### **The first occupant: William Branch Campbell**

The house was bought by William Branch Campbell in 1861 for £300. Campbell also purchased two adjoining lots of Joubert's subdivision, the total comprising more than two acres extending from the river to Madeline Street and bounded on the east by Ady Street. (LTO Book 82 nos.363, 364, 365) Campbell was a Sydney merchant, then aged 35. He had property at South Creek and on the north coast of New South Wales and in the 1870s opened a large enterprise in George Street Sydney which he called the Royal Furnishing Arcade. (*Town & Country Journal* 8.7.1876) Along with Jules Joubert and Charles Jeanneret, Campbell was one of the first directors of the Parramatta River Steam Company, formed in 1865. He served as Mayor of Hunters Hill in 1864 and again in 1866-7.

Campbell called the house *Clarence Villa* and is credited with creating its first garden. A later resident, Maybanke Anderson, told a meeting of the Royal Australian Historical Society in 1926, that, in a suburb remarkable for beautiful gardens, those of Campbell and his neighbour Henry Brown were "notable for their fertility". Brown was owner of *Ferncliffe* in Ady Street, another of the Joubert marine villas and now called *Innisfree*. Maybanke Anderson said that in developing their gardens Brown and Campbell "found an insufficient depth of soil for the cultivation they desired" and so bought an acre of land near the Field of Mars Common from Didier Joubert so that they could cart the surface soil from it to enrich their flower beds. It seems they were honourable gents since, according to Maybanke, "tradition says that a great many people with the same desire took the soil of the common without any preliminaries of purchase." (*Journal of the Royal Australian Historical Society* vol.XII part III 1926)

In August 1868 the "choice marine villa residence, well known as Clarence Villa, lately the residence of W B Campbell Esq" was offered for auction. (*SMH* 15.8.1868) The auctioneer's advertisement in the *Sydney Morning Herald* declared that the title to the property was "unquestionable" and described "this really unique family residence" as a two-storey house "most substantially built of stone", with verandah and balcony. As well as the entrance hall,

drawing-room, dining-room, breakfast room, library, five bedrooms and two dressing-rooms with baths and water laid on, there was a dairy, kitchen, pantry, laundry, wash-house, servants' bedroom and cellar. On the verandah, which was of "unusual width", there was a conservatory and aviary.

The grounds, said the *Herald*, had been laid out with the greatest care, "and without regard to expense". They were "terraced from the house to the river, and planted with choice flower shrubs and fruit trees". On the river frontage there was a stone wharf and a bathing house and the frontage to Madeline Street was trenched and planted with "choice vines and orange trees". Water was available throughout the grounds, "supplied from an inexhaustible reservoir". There was a stone stable, stone storeroom, and "a room adapted for a schoolroom." Campbell's youngest son was born at *Clarence Villa* in 1863 and there were five older Campbell children needing school lessons during the time that the family lived in the house.

### **Richard Sim the miller**

Following Campbell's departure the property was purchased by Richard Sim, owner of the National Steam Flour Mills in Goulburn Street. (LTO Book 110 no.224) He paid £1875 and shortly after purchase settled the house on his wife Sarah Ann. (LTO Book 112 no.162)

When they bought *Clarence Villa* Sim and his wife had four daughters and two sons ranging in age from 12 months to 15 years. Another daughter was born at the house in 1870. The earliest known photographs of the house date from around this time and show Richard and Sarah Ann and some of the children posed on the verandah or in the grounds.

The Sims lived in *Clarence Villa* until around 1872 when they moved to a new stone house which Richard Sim had built at the bottom of Ambrose Street, the house now known as *Milthorpe*. Dr William Hall Palmer, a former surgeon and squatter, rented *Clarence Villa* from Sim in these years. He had earlier been a tenant across the road at *Innisfree*. (Hunters Hill Municipality assessments)

In July 1875 Sim was declared insolvent and his estate sequestered. (AONSW 2/9572 no.12445) He was issued with a certificate of discharge from bankruptcy in December 1875 and began business again as a miller in Sussex Street with his father-in-law and "one or two other gentlemen" providing financial support. He sold *Milthorpe* around this time and in December 1876 bought two lots of Jeanneret's Wybalena Estate, on Woolwich Road.





*Richard & Sarah Ann Sim and family in front of their house Clarence Villa ◇ around 1870  
photograph courtesy of Maritime Services Board*

Sim began building a house on this land around March 1878. House and land were in his wife's name so that when he was once again declared insolvent in September 1878, the official assignee found little to sequester except office furniture at the mill, household furniture at Hunters Hill and Sim's life interest in *Clarence Villa*. This latter was auctioned in December 1878 and brought in only £100. (AONSW 2/9724 no.14296; LTO Book 187 no.645)

In January 1879 Sarah Ann Sim sold *Clarence Villa* for £1750 to a merchant from Newcastle named John Rayner Bingle. (Book 188 no.196) She had sold the other house a few months earlier and had used the money to set up her 22 year-old son in business in Parkes. By January 1879 both Richard and Sarah had removed to Parkes but retained a Hunters Hill connection through their son Richard jnr. In 1884 he married Garibaldina Tornaghi, daughter of Angelo Tornaghi, scientific instrument maker and mayor of Hunters Hill.

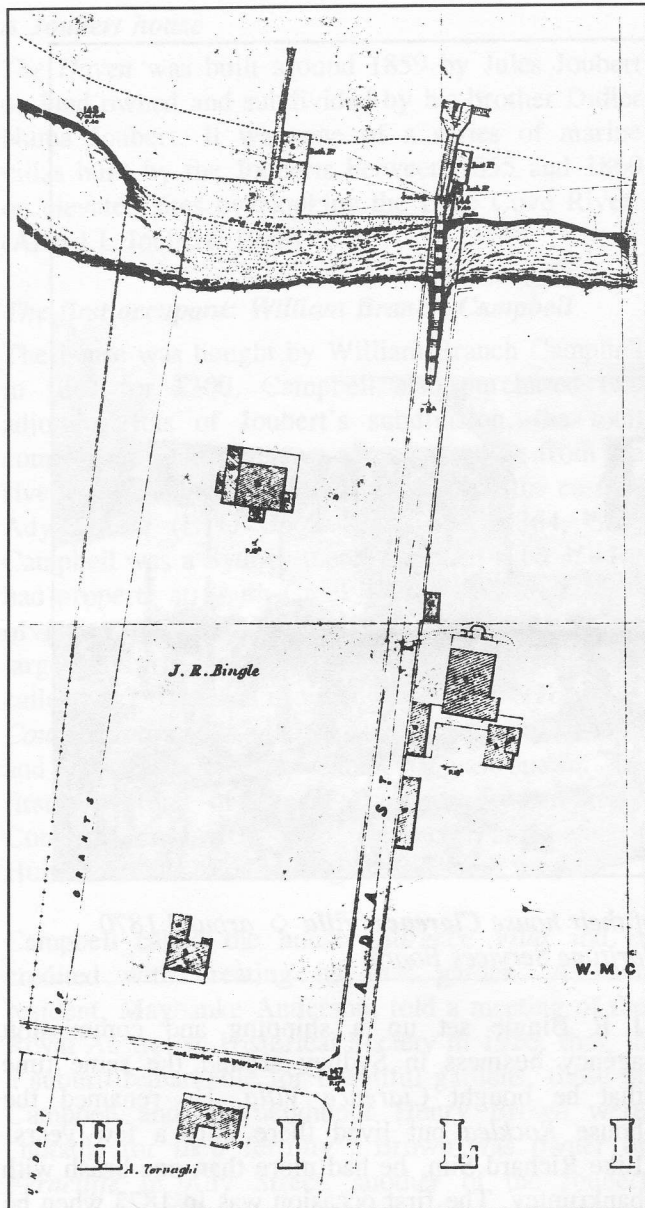
#### ***John Rayner Bingle, merchant***

John Rayner Bingle was the only son of John Bingle, merchant, landholder and prominent figure in the early European settlement of the upper Hunter district.

J R Bingle set up a shipping and commission agency business in Sydney around the same time that he bought *Clarence Villa*. He renamed the house *Rocklea* but lived there only a few years. Like Richard Sim, he had more than one brush with bankruptcy. The first occasion was in 1873 when he was a shipping agent in Newcastle. Amongst his personal property auctioned to meet his debts was a portrait of Garibaldi. (AONSW 2/9490 no.11484) In May 1884 Bingle was again declared insolvent. He and his family had recently moved to a house at Glebe Point and *Rocklea* was untenanted. The house was mortgaged for £2000 and valued at £2940. (AONSW 2/10067 no.18793)

The official assignee arranged to auction *Rocklea* and Richardson and Wrench accordingly sold the property to one Bernard McBride for £2990. But McBride's solicitor challenged the security of the title and the sale had to be abandoned. The mortgagee then sold the house to McBride for around £2100. McBride accepted the questionable title in return for a great reduction in price.

Like Sim, Bingle retained a connection with Hunters Hill through his son Harry who married Lucy Jeanneret, a member of one of Hunters Hill's most famous families.



Section of a survey map of Hunters Hill drawn in November 1884 ◇ The map shows J R Bingle's property bounded on the east by Ady Street and the house now known as *Innisfree*, and bounded on the south by Madeline Street. Bingle's house *Rocklea* (now *The Haven*) is shown with verandahs facing the Lane Cove River, and a smaller house on the same property is shown fronting Madeline Street. The map also shows a jetty and bath house attached to Bingle's property and steps leading down to a public jetty and bath house at the bottom of Ady Street. (LTO plan 12-440)

#### **Bernard & Hannah McBride: Assaroe**

Bernard McBride was a tailor in Oxford Street when he bought *Rocklea*. He became active in local politics in Hunter's Hill serving as an alderman for many years, including a term as mayor in 1892-3. He was also a director of the Mercantile Mutual Insurance Company.

McBride and his wife Hannah and their five children moved into the house sometime in 1886, renaming it *Assaroe*. Another daughter was born in the house in 1888 and a son in 1894. Hannah died at the house in 1902 at the age of 50. Beverley Sherry's *Hunter's Hill: Australia's oldest garden suburb* contains a photograph of Bernard McBride and his family at tea on the verandah of *Assaroe* following Hannah's funeral. (p.89)

The McBride family lived there until 1918 when the property was sold to Percy Allen, an accountant. Allen owned the property adjoining *Assaroe* on the north-west and lived in a house called *Waratah*. In 1919 he subdivided the McBride estate creating McBride Avenue. The land fronting the river north of the new street, which included the house *Assaroe*, was sold to Professor Francis Anderson and the land south of McBride Avenue was further subdivided. (LTO vol.2008 fol.220) This southern portion of the property included a five-room stone cottage (now no.26 Madeline Street) that had been let to tenants since at least 1885.

#### **Francis & Maybanke Anderson: The Haven**

Francis Anderson was the inaugural professor of philosophy at Sydney University. Maybanke was a founding member of the Womanhood Suffrage League of NSW and a founder of the Kindergarten Union of NSW. The Andersons had been active in educational reform in NSW and in 1908 Maybanke had started the Playground Association. They bought *Assaroe* on Francis Anderson's retirement and renamed it *The Haven*.

In 1925 *Country Life and Stock and Station Journal* published a profile of Maybanke in their 'Woman of the Week' column. *Country Life* explained that Maybanke's home overlooked the beautiful wooded upper reaches of the Lane Cove River with a garden sloping down to the water's edge and that gardening was one of the Andersons' hobbies. In the five years since they had been at *The Haven* Maybanke had "brought a wilderness under her sway" while Francis looked after the vegetable garden.

The *Country Life* reporter noted that there was a palm garden and told her readers that "through arches cut in the lattice of the spacious balcony" she looked down "over oranges in radiant bearing, a giant sugar banana laden with green fruit, stately camellias and feathery jacaranda". St Ignatius College Riverview could be seen through giant pines at the bottom of the garden. With dappled sunlight flickering through the lattice, *The Haven* was "truly a sunny spot for a warm heart to dream dreams of humanity." (*Country Life* 10.7.1925)



More pragmatically, Maybanke Anderson's biographer Jan Roberts explains that Maybanke was 80 in 1925 and that she did not bring the wilderness of *The Haven* under her sway unassisted. She had live-in domestic help and regular visits from grandchildren and nephews and nieces. Roberts says that "Uncle Frank's home-grown vegetables, invariably presented at the end of a visit and always found to be bug-ridden, were also invariably thrown over the side of the ferry on the way home." (Jan Roberts *Maybanke Anderson: Sex, suffrage and social reform* 1993 p.182)

Maybanke died in 1927. Francis remarried in 1928 and moved away from Hunters Hill, eventually selling *The Haven* in 1938. (LTO vol.2970 fol.46) The new owners of the property were Mr & Mrs E V Roberts from Wagga.

The Roberts "completely restored and modernised" the house after the war. Nesta Griffiths visited *The Haven* at that time and found "a lovely old-world garden leading down to the waters of Lane Cove". There were "terraces of orange and lemon trees, bananas and poinsettias" and "great pine trees blended their dark foliage with the feathery greens of jacarandas". Nesta Griffiths thought that the garden had a tropical look from its "enormous groves of bamboo and cabbage palms." (Nesta Griffiths *Some homes and people of New South Wales* 1949 p.197)

The Roberts family owned *The Haven* until 1968 when it was bought by its present owners. (Margaret Bergomi, conservation report on *The Haven* for Neustein & Associates 1994)

*Acknowledgements:* Diana Drake & Ros Maguire

## THE ARCHITECT OF "THE HAVEN"

Roslyn Maguire

William Weaver was an architect and civil engineer who lived and worked in New South Wales from 1851 to 1864. He succeeded Edmund Blackett as Colonial Architect for eighteen months from 1854-1856, and in April 1856 began private practice at 25 Pitt Street.

In 1857 he bought land in Hunters Hill and built himself a "marine villa" on the corner of Alexandra and Stanley Streets, with a view over the Parramatta River. When he offered this house for sale in 1860, the *Sydney Morning Herald* contained the useful piece of information that he had also designed many villas "on the Parramatta River and elsewhere".

Three years earlier Weaver had closely supervised construction of the new *Villa Maria* building (now the *Priory*) designed for the Marist Fathers missionaries, whose interests were overseen at that time by Didier Joubert. It seems highly likely that Weaver had already acted as Didier's architect for *Passy* (1 Passy Avenue, 1855), so similar in design to *Villa Maria*.

*The Haven* is almost certainly another example of William Weaver's marine villas, all of which exhibit similarities of design and form. The closely built group on Lane Cove River attributable to Weaver include *Walshale* (18 Ferdinand Street), *Windermere* (25 Ernest Street, previously called

*Potsdam*), the two-storey section of *Figtree House*, and *The Haven*.

External and internal features they have in common include two storeys, wide wrap-around verandahs, formal rear entrances, and two front reception rooms of roughly equal size facing north. All were built on land owned by either Didier or Jules Joubert and are found to have completion dates earlier than 1862. Jules, by the way, was appointed first mayor of Hunters Hill in 1861 and engaged Weaver to act as Hunters Hill's first assessor of rates.

As documented in a number of early plans and photographs, the elevated siting on large foreshore allotments meant that marine villa owners enjoyed access to the river through terraced gardens.

Although a number of the villas themselves survive, their river frontages do not. *The Haven* is the exception. From the river, surviving foreshore bushland reserves in front of *Walshale* and *Windermere* still provide an impression of original 'overgrown' gardens. But *The Haven* provides much more. Its privately owned, carefully maintained garden, remains the sole mid-nineteenth century reminder in this local conservation area of a traditional marine villa's garden-landscape treatment.

# Hunter's Hill Council & "The Haven"

Roslyn Maguire

*The Haven is the only house to retain its waterfrontage, stone boundary walls and garden terrace from the early period of development of Hunters Hill as a suburb (1845-1861).*

*[Criterion B2] It consequently makes a particularly important contribution to the Hunters Hill townscape. [Criterion F1]*

**Australian Heritage Commission**

So why, Hunters Hill residents should ask, if the nation's most august heritage body saw fit to record the significance of *The Haven's* garden setting in such definite terms, did a majority of Hunter's Hill councillors absolutely ignore that message and allow themselves to be persuaded to permit subdivision?

The first application for subdivision of *The Haven* presented to Council sought permission to subdivide the property into four allotments. The Hunter's Hill Trust wrote to Council in February 1995 deploring the proposal, noting that *The Haven* was a very significant place, one of the few Joubert properties surviving with its garden and curtilage relatively intact. Members of the Conservation Advisory Panel (CAP), meeting after a visit to the property at the invitation of the owner and applicant, also recommended rejection of the proposal, principally on the strength of the Australian Heritage Commission's statement of significance.

Soon afterwards amended plans were lodged with Council. The amended proposal reduced the number of allotments from four to three. Accepted, almost without question, was the proposal for a long narrow parcel of land on the western boundary extending to the river and giving an existing stone gatehouse on the lot separate title. Whereas the first subdivision proposal sought permission to construct two new houses on separate blocks of waterfront land (thereby eradicating the extensive northern terraced garden altogether), the new application showed only one allotment to the east requiring access through the old stone wall along Ady Street.

The initial recommendation of the CAP was to reject the application but a majority of members later changed their minds. The Hunter's Hill Trust committee, however, responded to the amended application by writing to the Heritage Council urging their support in preserving the gardens and curtilage of *The Haven*.

In December 1985 the Heritage Council wrote to General Manager Doig advising Council of its resolution "to request Hunter's Hill Council to define an adequate curtilage to the property using Council's own endorsed curtilage guidelines."

Council disregarded the advice received from the Heritage Council, claiming that it was received too late for consideration. Subdivision approval was granted in December 1995 in a decisive 6-3 vote.

The decision is not only as potentially disastrous as the demolition approval of *Villa Floridiana*, now replaced by a building roughly seven or eight times its size and bulk, but also has the potential to set local conservation practice back about 15 years. It highlights the fluid and unreliable nature of heritage decisions coming from this current council.

As observed at the crowded December meeting, the councillors who most blatantly ignored the Heritage Commission's statement of significance, and the NSW Heritage Council's and Hunter's Hill Trust recommendations of refusal, were councillors Hoopman and Phipson. Councillor Arthur Boyd, who chairs the CAP, also gave his support to the applicant. The ex-Mayors, Ross Williams and Ross Sheerin, along with a new councillor who showed a clear grasp of the importance of the issue, Marie O'Gorman, all voted against the subdivision application. This left the three No Aircraft Noise councillors, one of whom is Mayor Jane Waddell. None of them spoke for or against the application but voted together to grant subdivision approval, the Mayor's position becoming clear when a division was called, obliging her to show her hand.

Hunter's Hill once had a reputation for establishing conservation precedents and demonstrating heritage consistency. Now while councils like Woollahra tackle the controversial 'big' issue of curtilage, and newspapers every other day point to interest in the question of heritage spaces, this council couldn't even protect our most rare and remarkable surviving example of a nineteenth-century terraced garden.

The ramifications are alarming. Many Land and Environment Court battles have been fought over local subdivision applications of equal or less importance. With *The Haven's* garden at a narrow bend in the river directly opposite one of Sydney's main scenic landmarks, Riverview College, the matter deserved far more thorough consideration.



The Battlers contemplated with horror the thought of sitting in front of bulldozers, and instead contacted Union representatives, an unlikely step for Hunter's Hill ladies. The Builders Labourers' Federation, headed by Jack Munday, agreed to ban all building activities on the site. Thus began the world's first Green Ban, and it made world headlines.

Jack Munday emerged from Kelly's Bush as a hero, as did the women who comprised the "Battlers". It seemed that the battle was won. But there were years of tussles to come. Some Trust members were concerned that the saving of Kelly's Bush had resulted from the Battlers aligning themselves with a left-wing union. Hunter's Hill Council tried and failed in attempts to persuade the Federal Government to purchase the Bush for Public Open Space. It was zoned Open Space in the Town Plan, but Council again in 1974 voted that it be zoned residential.

After more pressure from residents and the National Trust, and following health scares about residential development because there had been radioactive dumping from the smelting works, the State Government bought the Bush in 1983. In 1993 the Department of Planning handed over control Kelly's Bush to Hunters' Hill Council to be maintained as public open space.

#### CELEBRATE ON SUNDAY 16 JUNE 1996!

On the edge of Kelly's Bush, where it joins Weil Park, a Silver Jubilee celebration of the Green Ban will be held on Sunday 16 June 1996. A simple ceremony is planned, to be addressed by Jack Munday, one of the Battler's for Kelly's Bush, and by government and council representatives. Morning tea will be served and all interested parties are welcome.

*by Diana Temple, with thanks to Monica Sheehan*

#### THE BATTLERS FOR KELLY'S BUSH WERE:

*Jo Bell, Joan Croll, Kathleen Chubb, Chris Dawson, Mary Farrell, Marjorie Fitzgerald, Miriam Hamilton, Betty James, Trudy Kallir, Kath Lehany, Monica Sheehan, Margaret Stobo, Judy Taplin*

## Residential Strategy for Hunters Hill

The Department of Urban Affairs and Planning has told the Hunter's Hill Council that it requires a statement of residential strategies to be in the Department's hands by the end of September 1996. The Department intends to prepare a State Environmental Planning Policy (SEPP) on urban consolidation. The SEPP will be ready by the end of the year and will replace other regulations now in force.

According to a background document, if the council has produced a strategy acceptable to the Department it may be exempted from the provisions of the proposed SEPP. The council is now trying to match its current policy to the sort of thing the Government is looking for. It seems that the Department intends to go much further than dual occupancy (integrated housing) to increase the numbers of people living in each hectare.

The council, and the residents, have to come up with arguments which show that consolidation initiatives are not suitable to Hunters Hill.

The council proposes to consult with Mosman, Lane Cove and Woollahra, councils which are presumed to share opposition to consolidation proposals. Trust members have heard this sort of thing before. Once upon a time we would have reworked a well known phrase as "When I hear the word consolidation I reach for my word processor." Use it.

*Gil Wahlquist*

## Sydney Harbour National Park

The draft plan of management for the proposed 393 hectare Sydney Harbour National Park shows that the park will not extend westwards beyond the confluence of the Parramatta and Lane Cove Rivers. Cockatoo Island is not included within the Park. Nor are the Gladesville Hospital grounds, thought to be an obvious candidate for inclusion.

The Hunters Hill Trust would like to hear from people who are prepared to form a working committee to keep tabs on this important topic.

September  
1993:

*Kelly's  
Bush is  
handed  
over to the  
people of  
Hunter's  
Hill. On  
the left is  
Jack  
Mundey &  
on the  
right two  
of the  
Battlers,  
Monica  
Sheehan &  
Kath  
Lehany.*



## *KELLY'S BUSH - THE GREEN BAN SILVER JUBILEE*

1996 marks the 25th anniversary of the world's first Green Ban. The story of the process leading up to the declaration of the Ban begins in 1970 when 13 local women (they called themselves housewives) formed a group named "The Battlers for Kelly's Bush" as an anti-development lobby, determined to save for public use the green open space of Kelly's Bush at Woolwich.

The story of Kelly's Bush itself begins, long after the early Aboriginal occupancy of the shores of the Parramatta River, with T H Kelly's purchase in 1892 of 20 acres of land fronting the river at Woolwich. Kelly established a smelting works on two acres of this land, west of the southern end of Margaret Street. These two acres were zoned industrial, and the remaining 18 acres were zoned open space, serving as a buffer zone.

Then in 1956 Hunter's Hill Council, assisted by the Cumberland County Council, purchased nearly seven acres of the open space to form Weil Park, which became a sports field and provided a venue for a scout clubhouse.

Problems arose after the closure of the smelting works in 1967. A firm of developers, A V Jennings, took an option to purchase twelve acres of

the open space, and proposed a substantial housing development - 500 home units in 8-storey blocks. Hunter's Hill Council, after some hesitation, approved the re-zoning of the twelve acres.

There was resistance from residents and from the Hunter's Hill Trust, as a result of which A V Jennings later modified the development proposal to 94 single houses. The "Battlers for Kelly's Bush" was formed, at the urging of Kath Lehany, Betty James and Monica Sheehan, because these dedicated women believed that the piece of foreshore still in an unspoiled state should be preserved intact.

The Battlers, energetic and full of initiative, were supported by the Hunter's Hill Trust, the National Trust, the Australian Conservation Foundation, National Parks and Wildlife, the Royal Institute of Architects and many others. But environmental protection was a totally new concept in the 1960s. Council was unable to raise the large sum of money required to buy the land for the people, and in any case some aldermen believed that a degree of development was inevitable and desirable.

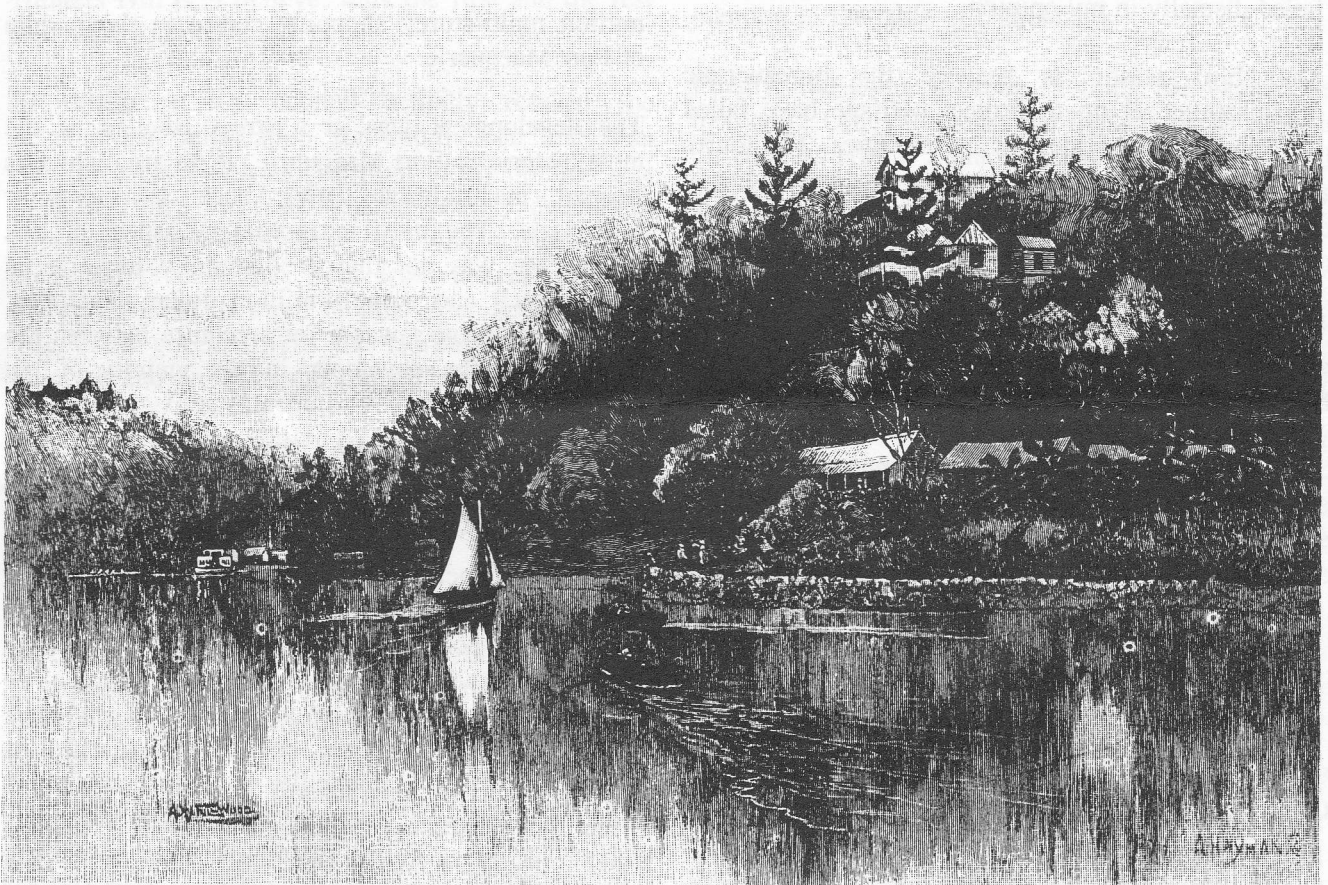
In June 1971 Premier Askin indicated that Kelly's Bush would be rezoned and the bulldozers would move in immediately.



# THE NEED FOR A TOUGHER STAND ON HERITAGE

Matthew Baird

*based on a talk to the Hunters Hill Trust on Thursday March 28 1996*



*An engraving of the Lane Cove River from the **Picturesque Atlas of Australasia** published in 1886, showing the now demolished **Villa Floridiana** close to the water's edge and behind it on the hill the house **Walshale**.*

I am warning you that I want to be controversial. I propose to make a number of sweeping generalisations that will allow some sweeping attacks and criticisms. I am doing that for two reasons. Firstly, I believe that in 1996 our heritage is under greater threat, greater than in the sixties and seventies, greater than the invasion of home units which led to the formation of the Hunter's Hill Trust. In some ways the threat is greater because the community is not ignorant and can no longer claim ignorance of some of the values of heritage. Despite that, despite the knowledge, despite the events of the past 30 years, certain elements within our society are still happy to see it destroyed. The second is that I believe that we have become complacent in our community and only controversy seems to stir people to action. This is unfortunate but I think that it is true.

I wrote the following in an article in May 1995: as a matter of fact in law, as of the 10th February

1995 when Justice Pearlman, Chief Judge of the Land and Environment Court, handed down her decision in "Friends of Hay Street Incorporated" and "Hastings Council", there is no such thing as heritage protection in New South Wales. In this case her honour dismissed the claim by a residents' action group that the council had failed to consider amongst other things the impact of the proposed development on a number of heritage sites and the heritage of the area in general.

This case followed the general trend of cases in the Land and Environment Court where valid concerns over heritage are either ignored or misunderstood by the assessors and judges. The net impact of these decisions is that no item of heritage in New South Wales has any measure of protection from developers. Why is this so?

I think there are five major reasons. The first is that heritage laws in New South Wales and Australia are

inadequate. More importantly, the courts and our legal system have failed to implement what shreds of protection those statutes provide. The second is because governments, both State and Federal, have failed to give adequate weight to heritage protection. All of them over the past 13 years have failed dismally in my opinion.

The third reason is because the bureaucratic organisations set up to protect heritage have failed in their legal and ethical or moral duties. The fourth is because even our local governments are caving in to unethical or outrageous pressure from those who would seek to profit from the despoliation of our heritage. And the final point is that as the result of those four factors indicated above, community groups, such as the National Trust and local trusts, are no longer able to effectively oppose the degradation of our environment and our cultural heritage.

I want to illustrate those five points by some case studies.

#### *Villa Floridiana*

It is still a matter that makes me angry that this community and our council lost that battle. But in 1990 we sought to preserve this unique dwelling nominated by Dr Beverly Sherry as one of the ten most important houses of significance in Hunters Hill. Within the context of a broad definition of heritage it represented one of the most significant dwellings in this community. Significant not only to Hunters Hill but to the state of New South Wales and to Australia.

Despite magnificent community support and council commitment, including support from the Hunter's Hill Trust and the National Trust, this battle was lost. In the end the assessor seemed to decide the case purely on evidence that the surviving fabric was not of the 1850s but perhaps 1880s or somewhat later. Furthermore financial considerations clearly played an important part, although after some discussion he said that it did not affect his decision.

The assessor heard the evidence of the dilapidation of the structure and the potential cost of restoration and rehabilitation. Clearly the cost of restoration was an important factor in his decision. He failed to realise, in my opinion, that the dwelling had significance beyond its fabric. It was important because of its associations. Now it's gone for good. No-one will ever know where the French school was and where Douglass Baglin prepared his magnificent pictorial chronicle of Hunters Hill.

#### *Friends of Hay Street*

This was decided in January 1995 after a court hearing that went for ten days in the Land and Environment Court. A group of friends, the Friends of Hay Street Incorporated, took on Hastings Council and a developer over a proposed \$70 million multi-storey shopping centre in the middle of Port Macquarie.

The development was in a street labelled as the most historic in Port Macquarie, in an area which is steeped in tradition dating back to Governor Macquarie. The most extraordinary aspect of this entire case was not that a community took on its own council and a multi-million dollar developer, but that the project was a joint venture between the council and the developer in the vicinity of ten significant items of environmental heritage including a number of churches. The council, in conjunction with the developer voted, as I recall, nine-nil to allow this development to proceed.

Thus the council acted as the umpire in its own decision. No wonder the residents in their anger took it to court. Their case turned upon the evidence of the adequacy of a heritage study. The only action open to the residents was to challenge the process by which the council had reached its decision. Because a councillor in open council had mentioned the word heritage, and because there was a report which said that the development would not affect heritage items in the vicinity, Her Honour held that the decision of the council was not manifestly unreasonable. The development was then approved. In reality there was no adequate assessment of merits of the project.

The only nice thing that happened was that Her Honour declined to award costs against the community group. This was a departure from the normal practice. For the community group costs would have been \$20,000 or \$40,000 and there was no way they could pay. Her Honour decided that the community group had brought a valid challenge and were genuinely concerned by the process.

It is an important decision in that regard because community groups are relying on that now to say that if they have a valid challenge then they don't have to bear the burden of costs.

I think the substantive issue is that the court failed to address the heritage issues. It failed to examine the heritage implications of the development. These heritage implications were abominable and the decision has destroyed the most significant precinct in Port Macquarie.



## *The Haven*

This case shows how even councils with a superb history of heritage protection have backed away from any direct confrontation with developers. This subdivision of one of the most significant estates in Hunters Hill is, I believe, only the first and the rest will soon follow.

In this case the council actually refused the development application for subdivision and then through a rescission motion (that in my opinion was probably ultra vires or beyond power) eventually approved the subdivision. It was a long and contorted process that went from council refusing the subdivision to three months later approving it. The Trust got involved, the Heritage Council got involved and wrote to the council requesting time to assess the significant impact of the subdivision of the Haven. The Trust asked the council on a number of occasions to delay its decision but in the final analysis the council did not give the Heritage Council time to assess this property.

The Trust has looked at this issue. I have prepared an opinion for the Trust on the potential illegalities of this decision and it may be that there is a legal flaw in the development consent. But the question is can we challenge it? If we go to court we will be going to court on a similar basis to the Friends of Hay Street. What happens if we finally lose and if the court awards the costs of the developer against us, the Trust and its members. That's a significant impediment to acting in a responsible way to preserve our environmental and planning laws in Hunters Hill.

So who should be legally responsible for heritage protection? Is it the community or is it the government? In all of the above matters it is also my submission that the Heritage Council's failure to act condemns it and its members.

In each of the instances, despite submissions, the Heritage Council failed to issue an interim conservation order or a permanent conservation order. There are a number of reasons for this and this is one of my controversial points. The failure of the Heritage Council to carry out its statutory function to protect the heritage of New South Wales by throwing all responsibility to local government has flagged for developers the reluctance of state government to protect Australia's past.

There are two other matters I wish to comment on. One is that the Federal Government has been prepared to leave heritage in the hands of a system that has failed. In relation to the effects of Sydney's

third runway and aircraft noise, for example, the EIS was virtually silent of the destructive potential of the third runway on the national estate. The Senate Inquiry completely ignored the effect of airport noise on heritage. The efforts of our community to preserve heritage do not even rate a mention in the table of contents.

Finally, the Optus cabling. Nothing has been done to require Optus to assess the impacts of its roll-out on Hunters Hill as a place registered in the National Estate. Of 60 councils which recently took Optus the court, Hunters Hill is unique in that it is the only area registered on the National Estate. But in the court case recently this matter was not raised.

My conclusion is that the battle for heritage protection is being lost at all levels. The question is can we win the war? My answer is yes. Community action can overcome even the most gigantic odds. The Franklin River is evidence of that. Perhaps when we get some amelioration of aircraft noise over Hunters Hill, community action will have achieved that.

## *Six points*

But there are other things we must do:

- i. We must amend the Heritage Act to make the Heritage Council and local councils better able to defend heritage.
- ii. We must find ways to allow community groups to act as heritage guardians by giving them an opportunity to oppose council decisions without exposing them to penalties if they lose.
- iii. We must make heritage education and information compulsory for real estate agents, local solicitors, architects and town planners.
- iv. We must devise better ways to spread the burden of heritage protection over the whole of the community.
- v. We must provide owners, developers and the general community with incentives to protect heritage.
- vi. Finally we must provide disincentives in the form of fines and sequestration orders if people abuse and destroy our heritage.

I was asked to stimulate discussion. I want the future people of Sydney and Australia to be able to take a tour on our rivers or through our streets and be able to look around and understand that while our Australia is a new nation, we have acknowledged a debt to our past and have kept trust with those who have gone before and those who may come after.

# Aircraft along the funnel

Gil Wahlquist

Aircraft noise continues to be a problem for most of the residents of Hunters Hill. Although, post elections, the outlook appears more optimistic for a reduction in the noise, the Hunter's Hill Trust continues its campaign to make our days and nights more peaceful.

Last December the president of the Trust wrote the following letter to the Federal Minister for Transport, Laurie Brereton: "The Hunters Hill Trust was formed in 1968 and since that time has been active in protecting the environment of Hunters Hill. The Trust conducted one of the earliest urban conservation battles in its successful fight to save Kelly's Bush. More recently, the Trust was active and involved, albeit unsuccessfully, in the fight to preserve the historic residence in Hunters Hill known as *Villa Floridiana*, which was ultimately demolished in 1991. The Trust is also active in the preservation of harbour foreshores, historical buildings, natural bushland and streetscapes.

We note that on the 12th of December, 1994 you, together with the Prime Minister, announced that the flight paths to the north of Sydney airport would be narrowed so that all aircraft landing from and departing to the north must travel six nautical miles in a straight line before altering course. This means that all aircraft taking off to the north fly over Hunters Hill, and all aircraft landing from the north fly over Hunters Hill.

These flight paths vary substantially from those described and assessed in the Environmental Impact Statement for the third runway. The result is a concentration of aircraft and therefore serious noise impacts over the residential area of Hunters Hill which were not predicted by or assessed in the E.I.S. for the construction of the third runway.

The nature of such impacts results in continuous aircraft noise for the residents of Hunters Hill without abatement from 6am to 11pm seven days a week and has resulted in a serious decline in the quality of life to the residents in that suburb eg. deprivation of sleep, stress, anxiety, and inability to converse on a normal level. These circumstances affect not only the individual residents of the suburb but also the schools, hospital, council chambers, recreational centres, etc.

Apart from the noise, the pollution created from the

aircraft emissions creates a very serious health risk and adversely affects the flora and fauna in the suburb.

The administrative procedures gazetted under the Environment Protection (Impact of Proposals) Act 1974 in force at the time, provided that the action Minister (the Minister responsible for a proposed action (a matter affecting the environment to a significant extent) designate a person as the proponent of the proposed action and shall ensure that the Department of Environment is informed of the proposed action and of the proponent. It is clear that:

- i. an initiative had been taken in relation to a "proposed action", namely the operation of Sydney Airport with your decision to vary the flight paths or the actual variation of the flight paths, and
- ii. that the proposed action is likely to have a significant impact on the environment and
- iii. that you are the "action minister" for this activity.

It appears that you have not designated a proponent in relation to the proposed action, as required by the Administrative Procedures. If you have designated a proponent, please provide us with a copy of the instrument of designation. If you have not designated a proponent, pursuant to Section 143 of the Administrative Decisions (Judicial Review) Act 1977 we request that you provide us with a statement in writing setting out the findings on material question of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for your decision not to designate a proponent...

Yours sincerely Dr J A Thompson, President."

A reply was received on December 20 1995 from Joanne Blackburn, Assistant Secretary, Legal and Coordination Branch. The reply was as follows:

"Dear Dr. Thompson, I refer to your letter of 6 December 1995 with respect to flight corridors north of Sydney Airport. As your letter raises issues of a legal nature, the Minister's office has asked that I handle this matter.

You referred to an announcement made by the Minister for Transport and the Prime Minister on 12 December 1994 relating to the narrowing of flight paths north of Sydney Airport and asked if a



proponent had been designated in relation to this matter in accordance with the Administrative Procedures under the Environment Protection (Impact of Proposals Act 1974). You sought a copy of the instrument of designation and, if a proponent had not been designated, you sought a statement of reasons pursuant to section 134 of the Administrative Decision (Judicial Review) Act 1977 (the Act).

On 16 March 1995, the Minister for Transport made a determination pursuant to subregulation 4(2) of the Air Navigation (Aerodrome Flight Corridors) Regulations (the Regulations) which defined the flight corridors for Sydney Airport.

The determination was published in the Aeronautical Information Publication on 16 March 1995 and in a Special Gazette on 21 March 1995. In accordance with paragraph (4)(3)(b) of the Regulations, the determination was tabled in Parliament on 28 March 1995 and was not disallowed. The Minister did not designate a proponent with respect to that determination.

In accordance with paragraph 13(5)(b)) of the Act, I decline to provide you with a statement of reasons in respect of this decision as I consider your request to not have been made within a reasonable time after the decision was made...."



## *Your suburb - like it? Fight for it.*

Bijoux sur mer, home unit or thirties cottage - wherever you lay your head you have an interest in keeping Hunters Hill like it is. The peaceful, uncluttered townscape of Hunters Hill has not survived until today by accident. For the past 30 years, two generations of residents have defended their lifestyle by making their views known to local and state governments.

Hunters Hill has standards which have been adopted and are enforced largely because of the lobbying activities of the Hunters Hill Trust and its members.

A new generation is needed to continue the work. The Trust needs the ideas and the input of the many new residents of Hunters Hill.

## *Public can speak to Council*

Hunter's Hill Council has started a 15-minute open forum for members of the public. People wanting to address council need to apply to the council offices on the Friday before council meetings. The council meets every second and fourth Monday at 7.30 p.m.

"We are asking that people give a short summary of topic when they apply to speak" said the mayor, Cllr Jane Waddell in announcing the move. "We can take three people at the start of each meeting. This will not eat into the time already allowed to people submitting building or development applications. We are prepared to take all comers, although personal attacks on any individual will not be tolerated." Cllr Waddell said the proposal was part of the move to open and democratic local government.

# The Trust Looks Ahead

## FORTHCOMING MEETINGS

The Hunters Hill Trust has a program for 1996 that looks to the future of our unique suburb. We are renewing the fight for the preservation of heritage buildings. We have already held two general meetings and scheduled others at which members will be invited to address issues impinging on our quality of life. Topics will include traffic, airport noise, our foreshores and parks. The Trust would like to hear from members who want community examination of current issues. Your concerns will be placed before the Hunter's Hill Council and relevant State and Federal authorities.

The Trust has taken a stand on the proposed Telstra Tower at Hunters Hill and the proposal to string Optus cables in the streets. The Trust wants more community consultation by the council on proposed building developments such as Huntley Park on the Riverglade site.

Our core responsibility is the preservation of all features of Hunters Hill which have architectural, historical and environmental value. The Trust seeks to limit the spread of home units, high density and commercial development within our municipality. The Trust encourages high architectural standards in new developments. We are maintaining our own historical records.

To do this we need your support and we invite you to renew your membership.

Thursday May 30  
**ANNUAL GENERAL MEETING**  
RSL Hall Alexandra St 8pm

Thursday June 13  
Committee meets at *Vienna* 8pm

Sunday June 16  
**Battlers for Kellys Bush**  
**GREEN BAN SILVER JUBILEE**  
near Weil Park Woolwich

Thursday July 11  
Committee meets at *Vienna* 8pm

Thursday July 25  
**Seminar on traffic**  
RSL Hall Alexandra St 7.30pm

Thursday August 8  
Committee meets at *Vienna* 8pm

Thursday September 12  
Committee meets at *Vienna* 8pm

Thursday September 26  
**Seminar on foreshores**  
RSL Hall Alexandra St 7.30pm

Thursday October 10  
Committee meets at *Vienna* 8pm

Thursday November 14  
Committee meets at *Vienna* 8pm

Thursday November 26  
**CHRISTMAS PARTY**  
venue to be announced

## HUNTER'S HILL TRUST COMMITTEE

The Hunter's Hill Trust Committee meets on the first Thursday of the month at *Vienna Cottage* 38 Alexandra Street Hunters Hill. Committee members include President Jenny Thompson, Secretary Len Condon, Treasurer Andrew Yew, Vice President Diana Temple, Minutes Secretary Moya Crane, Media Liaison Gil Wahlquist and Journal Editor, Megan Martin. The *Hunter's Hill Trust Journal* usually appears three times a year and contributions are welcome. Contact the editor Megan Martin on 9952-8340.