

Dangar Island League

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Bob Stephens
Acting General Manager
Hornsby Shire Council
PO BOX 37
HORNSBY NSW 1630

19 December 2016

Dear Bob,

Re: Dangar Island Waste Management Service

The Dangar Island League and residents of Riverview Ave would like to thank your officers, Steve Fedorow and Narelle Bowly, for taking the time to come to the island on 7 December to listen to residents' concerns about the new waste management service.

At the meeting I undertook to follow up with Council to document the numerous issues. These are outlined below. It is, in our view, Council's job to resolve these issues, with the primary focus from our perspective being on:

- **Safety** for residents in their use of the service
- Solutions that are **legal** and do not expose residents to personal liability either now or under future administrative regimes
- Minimising the amenity, in particular **visual, impacts** of the new service, consistent with the objectives of the Hornsby LEP and 2013 DCP, and
- Removing the risk of damage to communication cables.

Context

At the outset, it is important to point out that most of the issues outlined below were anticipated and discussed with Council prior to the introduction of the service. **Council chose to take a 'suck it and see' approach**, and indeed told the League that this was the intended approach. **The anticipated issues and risks have indeed transpired, perhaps even more acutely in reality.**

Further to this, there has been considerable criticism from residents of the Council's process thus far, with just a single one-on-one 'information session' for residents after the decision to change had been taken, and after significant investment had been made in the truck and other capital items. There appears to have been **no overarching waste management plan undertaken, including no 'risk assessment'**. The risks to residents of using the new service have not been considered. From a process perspective alone, this is substandard.

As previously indicated, we completely understand the need for Council to address contractor Work Health & Safety (WHS) issues, and **appreciate the services provided by the contractors** and the efforts they continue to make for the community.

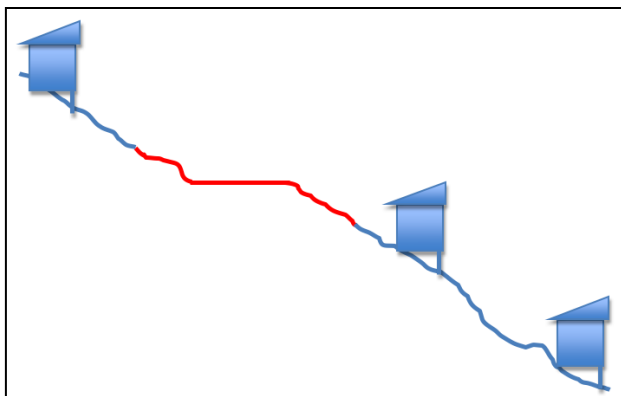
Island residents tend to be robust, appreciate the unique challenges associated with island living, and work within these if at all possible. The community members help those less able where possible. But the new system introduced by Council **impacts a major proportion of residents** irrespective of their abilities and, for many, is simply unworkable. Despite Council's assertions, we differ from other Hornsby Shire residential areas – **we are not special but we are different**. We have single track 'roads', no pavements, formed curbs or gutters, and no concrete drives or garages.

It is worth noting that there are two distinct areas of the island - the steeply sloping areas mainly around Riverview Ave and at the end of Grantham Crescent, as recognised in the DCP, and a relatively flat area. In general, residents on 'the flat' are happy with the new service. However, it is the residents on the steeply sloping areas of Riverview and the far end of Grantham that are struggling with the service. **This amounts to more than 50% of the island households.**

These affected residents can be further divided into 3 groups:

1. Those with direct access to the road from their property, who previously had their bins emptied from there. These houses are generally built closer to the road (within 50m). In all but 2 of these, access to the road is steep, and via stairs or a bush track.
2. Those on the waterfront, whose bins were previously collected from either a fixed wharf or a floating pontoon. These houses are a significant distance from Riverview Ave, some having access via stairs (as many as 200) others via a bush track. In all cases the slope from the waterfront to the road is very steep.
3. Those living where three different roads (parts of Riverview, Grantham and Neotsfield) converge, with access to one of these roads via paths and stairs. Here, residents have historically struggled, without complaint, to carry their bins up and down steep slopes from their properties to the nearest road to be emptied.

Finally, and importantly in terms of context, Council's road reserve extends from 3 to 6 metres either side of the 'formed' road. The steeply sloping road verges are Council land, and legally, **no structures can be built on this land without development approval**. It is also worth noting that Council does not maintain these verges, and in many places they are overgrown, weed infested, and have been colonized by large trees making access difficult.



This figure shows a typical cross section of the terrain on Riverview Ave, with the road and Council verges in red, and freehold land in blue. Houses are shown in typical positions on the upside of the road, on the riverside top of block, and on the waterfront.

Health and safety

The main problem for affected residents is first and foremost safety, in particular:

1. **Wheelie bins cannot be kept on properties and moved safely to the road verge for mechanical emptying then returned to the property.** Only two properties have paths that are less than the 20 degrees slope recommended as the maximum slope for safe moving of such bins. To achieve the mandatory requirement to store bins on the property, all others must either drag the bins up and down steep slopes, some of which have no path at all, or drag them up and down stairs. Neither of these options is consistent with the safety guidelines for wheelie bins (including AS 4123), and both pose significant risk to residents. These risks associated with use of wheelie bins in such environments (slopes and uneven land, and subsequent manual lifting up stairs and the like) have been documented in the literature. See attachment 1.
2. **Some waterfront properties have no safe access to the road,** and these residents are now required to carry bags of rubbish and recyclables up the entire block to deposit in bins, only to be faced with the challenges of 1. above when they get there.
3. Contractors by necessity leave the emptied bins on the road, where they are often knocked and fall down the steep verges, requiring residents to scramble down and retrieve them. In some instances, the full bins are being knocked down the slope **contaminating the environment with waste, increasing the potential for vermin issues,** and leaving residents to risk harm from retrieving them.
4. Bins are emptied on a Friday. This means that 'weekenders' have to put them on the road on a Sunday evening for collection later in the week. By Friday collection day, **the odour from the bins is unacceptable.**

Additionally, bins left permanently by the roadside are frequently **treated as "public bins" by passers-by.** So various kinds of waste, including general waste, green waste and dog excrement, are now being discarded in "private" bins – not necessarily according to designated use. This is unhygienic and a health hazard for residents (if they attempt to sort incorrectly discarded waste) and/or to collectors when collecting and sorting. The reduction in the number of public bins with the introduction of the new service, and the complete absence of any of these on Riverview Ave exacerbates this problem.

5. The green waste bin (collected fortnightly) is inadequate. Most of the blocks on Riverview Ave are large (up to 1000m²), steep 'bush blocks'. A large amount of green waste is generated in this bushland (including on the Council verges). The rural fire service constantly reminds residents of their obligations to reduce the 'fuel', and hence fire risk, on their blocks. During the winter months, subject to approval, favourable weather conditions, and other appropriate safeguards, landowners can undertake 'pile burning' of this fuel. In the summer months, this is generally not permitted. Previously, green waste was bundled, tied and carried in manageable quantities to the road or wharves. The new green bins obviously cannot be moved around properties to collect the green waste from areas where it falls. And in any event, they are too small to accommodate the amount, and nature of green waste generated in bushland. Green waste previously collected from wharves is simply not being taken to the roadside green bins.
6. **In some places, the contractors must lift the Telstra wires to enable the mechanical pick up of bins.** While this is an issue between Council and the contractors, it would seem at odds with WH&S principles, and creates a potential situation where third party owned assets, i.e. communication cables, could be damaged and essential services disrupted for residents.

The issues above are inconsistent with Council's DCP objectives for waste management, specifically to be accessible, clean and safe for users and collectors, to not generate bad odour or noise, and to encourage recycling. They have resulted in:

- **Bins being left on the road.** On a quick stroll around Riverview Ave, there were more than 50 bins on the road. Previously, there were only a handful of bins left on the road/in the gutter. Some residents have raised concerns that these bins on the road obstruct free passage of the fire truck and other vehicles.
- **Bins being left on the Council verge.** An additional 212 bins were counted on the road reserve, since residents are unable to manoeuvre them safely onto their properties. Almost all of these were previously stored between collections on residential properties.
- **Construction of non-approved platforms on the Council road reserve for bin storage.** See discussion below on legal issues associated with this. Some platforms have been in existence for some time, with residents using them for various purposes, including for bike and barrow storage, and a few for bins. Several decks have been built for bin storage since the introduction of the service, at substantial cost to the residents.
- A significant increase in the volume of combustible green waste left in situ – both on properties and on the Council road reserve – posing a greater **fire risk** in a sensitive and high risk bush setting.

Legal issues

As shown above, given the accessibility and safety issues, most bins of affected properties are now either kept on the road itself, or on Council's road reserve (including on platforms). The keeping of bins on Council land, either loose, or on a platform is illegal without formal approval.

Council has indicated they will 'turn a blind eye' to the building of platforms on their land. There are three unacceptable aspects to this:

1. **Council administrations change**, and today's 'blind eye' may not be so tomorrow, and in the absence of any written assurance, residents may well be asked to remove structures in the future. Council has indicated it will not give any such written assurance.
2. **Council is expecting individual householders to pay for such structures.** Quotes have been obtained for \$1500 - \$3,000. It is unreasonable to expect residents to bear this cost because of a change in Council policy and practice.
3. **Legal liability.** If there is an accident associated with a platform, Council (and/or their insurers) will assert that the structure is not authorised, and as such they are not liable for the damages. The householder's public liability insurance will not apply, as the structure is not on the insured property, and again is not authorised. Under these circumstances, the householder/s would be personally liable.

We are also of the opinion that Council has failed in its 'duty of care' to residents in its provision of services, in particular where residents are required, as a consequence of the changed waste management arrangements, to drag wheelie bins across the steep road reserve. There are several legal precedents to support this, including *ROADS AND TRAFFIC AUTHORITY v RYAN*; *BLUE MOUNTAINS CITY COUNCIL v RYAN* [2005] NSWCA 34). In this judgement, the court found that the 'duty which arises under the common law imposes on authorities having statutory powers ... is to take reasonable care that their exercise or failure to exercise those powers does not create a foreseeable risk of harm to a class of persons ...'.

In addition to this duty of care, the **Work Health and Safety Act 2011 and its regulation**, deals not only with the WHS of the contractors, but also of 'third parties'. In particular that they are not exposed to risks to their health and safety arising from the work activities of Council, and take reasonable steps to (amongst other things):

- Gain an understanding of the nature of operations and generally of the hazards and risks associated with those operations, and

- Ensure appropriate resources/systems of work are available for use, and used, to eliminate or minimise risks to health and safety from work carried out by Council.

Finally, waterfront residents now increasingly take their rubbish by boat across to Brooklyn and deposit it in the public bins there. There are very explicit signs on these bins prohibiting this. Again, Council has indicated they will turn a blind eye to this practice. However, this is not satisfactory, and legal options for disposal at Brooklyn should be made available in the absence of any better solution for waterfront properties.

Amenity impacts

Dangar Island is zoned **E4 (Environmental Living)**. The objectives of this zone include:

- To provide for low-impact residential development in areas with **special ecological, scientific or aesthetic values**
- To ensure that residential development does not have an adverse effect on those values
- To permit development that is compatible with the **character, infrastructure capacity and access limitations** of the area.

The road reserve of Riverview Avenue is also listed as an **'environmental heritage item'** under Schedule 5 of the LEP, with the objective, amongst others, of conserving the significance of heritage items and heritage conservation areas, including associated fabric, settings and views.

The 2013 DCP also recommends any new development on Dangar Island should protect and maintain the environmental and scenic qualities of the area, and that waste management services be located and designed to be compatible with the streetscape aesthetics.

It is difficult to see how the design and implementation of the new waste management services has taken these objectives into account.

As outlined above, the number of bins on the road and reserve has increased enormously. Previously, there were a total of about 200, 75L bins on Riverview Ave (100 odd houses, each with 2 bins), and despite Council assertions, most of these were taken to within property boundaries. About 20 were left out on the verge, and a very small number on the road (in the gutter). Now, as outlined, there are well over 250 bins left on the road or verge. Each lot has 2 bins of 240L and one of 140L. So not only has the number of bins left on the road or verge increased tenfold, but their bulk has increased significantly. **It is little wonder residents and visitors are appalled with the impact of the new arrangements on visual amenity.**

The way forward

Council staff have committed on numerous occasions to working with residents to iron out waste management issues on Dangar Island. We are well into the fourth month of implementation, and despite efforts by residents, **the current arrangements are simply unacceptable from safety, legal and amenity viewpoints as discussed.**

We fully respect and appreciate the WHS concerns of the contractors, and Council's responsibility to them. However, in meeting these, it appears the health and safety of residents has been overlooked. We are seeking resolution of these community issues sooner rather than later – they will not go away.

It is Council's responsibility to resolve the issues, preferably in consultation with residents. **We request in the first instance that a formal and independent risk assessment be undertaken and a Waste Management Plan prepared addressing these legal, health and safety risks.**

Sensible solutions will undoubtedly emerge from this. Residents have presented many solutions for

discussion and assessment, including:

- An option for residents to request smaller bins that are easier to manoeuvre (wheelie bins come in sizes as small as 60L)
- Reinstatement of waste collection from wharfs, based on agreed format and process that minimises the risks to the contractors
- Legal rubbish disposal at Brooklyn (for waterfront houses that use commuter boats)
- Legal disposal of rubbish near the public wharf (for waterfront residents that use the ferry)
- Increased periodic removal of green waste
- Introduction of a green waste bundling services (including commercial impact)
- Commercial community mulching and chipping on a period basis
- Legalising/formalising platforms on the road reserve, and issues of access across the reserve

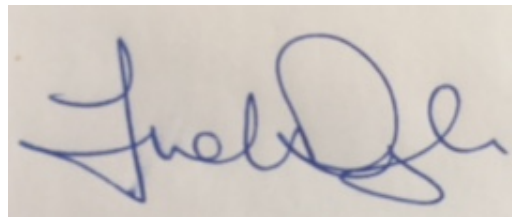
These solutions, and others, would need to be tested in the recommended risk assessment and planning process, and documented in a Waste Management Plan in consultation with Dangar Island Residents.

We sincerely hope that Council will move this important issue on as a matter of urgency, and before there is an accident or injury. If a satisfactory consultation and resolution process is not forthcoming, then Dangar Island Residents will seek resolution by all other available means. We look forward to a detailed response to this letter in the near future.

Yours sincerely,



Vanessa O'Keefe
Vice President Dangar Island League



Judith Doyle
Management Committee Member Dangar Island League

Cc:

Mayor Steve Russell
Stephen Fedorow, Environment and Human Services Manager
Narelle, Manager Waste Services
Cr Mick Gallagher
Cr Nathan Tilbury
Cr Antony Anisse
Matt Kean MP

Attachment 1 – Wheelie Bin Limitations

From the literature:

- Their small handles do not allow the user to get a secure grip.
- Their large capacity means that the total weight of bins will often exceed what a person can easily, and safely manage. (According to Australian Standards, a 240L mobile garbage bin is designed to hold a load of 96 kg, with a maximum pulling force of 60 newtons on a flat surface when the bin is tilted to an angle requiring a vertical lifting force of 20% extra of the load. The forces required to manoeuvre these bins increase considerably on slopes, steps, uneven ground and textured surfaces).
- They have no brakes, so it is extremely easy to lose control of a load on a slope with potentially disastrous consequences in terms of spinal injuries and tendon damage to the hands and forearms.
- To move a wheelie bin, even on the level, it has to be tilted backwards. The further the bin is tilted, the greater the proportion of the bin's all-up weight that is taken by the operator's back. As well as the tilt load, the operator must also propel the all-up weight. Consequently over-tilting is another common source of injury, the risk of injury increasing on increasingly adverse slopes and steps.
- They have narrow, small diameter wheels that are difficult to move across rough terrain or soft surfaces such as loose gravel, mud or lawn. To move them in these circumstances means tilting the bin further back, increasing the tilt load on the operator's back at a time when the effort required to propel them is increased.
- To facilitate emptying, the bins are wider at the top than at the bottom and their lids are designed to fall open when tipped. This makes them inherently unstable and likely to upset. Even when not being moved, bins are prone to tipping over, particularly when lids are left open and/or when they are stored on unstable or sloping ground or on the edge of a steep slope. This poses a risk of spillage of contents and subsequent environmental contamination, and/or of obstructing paths and roadways.
- Up-righting fallen bins can also pose hazards to users, particularly those who are small, frail and/or elderly. And retrieving bins that have fallen down slopes or steps is difficult and dangerous.

(Sources of above information include: Committee PL-047, Mobile waste containers, Part 5: Performance requirements and test methods. Australian Standard 4123.5-2008: 1-28; "Mobile garbage bins and hand injuries in older people," Rui Niu, Adam B Woodbridge, Belinda J Smith, Stephen J Ruff and Richard D Lawson, Medical Journal of Australia, August, 2013 199 (7): 491-492; Wheelie Safe White Paper 2013; <http://www.gaps.qld.edu.au/wp-content/uploads/2013/01/Manual-Handling-of-Wheelie-Bins.pdf>).