

**LAND AND ENVIRONMENT COURT HEARING  
231 WHALE BEACH ROAD APPEAL  
STATEMENT BY HAROLD SCRUBY  
TUESDAY 19 MARCH 2024**

1. My name is Harold Charles Scruby
2. My address is 20 Morella Road WHALE BEACH
3. I have owned this property since 1978 as a beach house and lived here permanently since January 2020
4. I walk, run and swim at Whale Beach practically every day
5. I was a Councillor and Deputy Mayor on Mosman Council for eight years and Chairman of the Traffic Committee for five years.
6. I have been the CEO of the Pedestrian Council of Australia (a registered ACNC Charity) since August 1996 whose primary objective is Pedestrian Safety
7. I have been a Justice of the Peace for over 50 years
8. I am a Committee Member and Secretary of the Friends of Whale Beach Inc
9. In 2002, I was asked by the NSW Coroner to appear as an expert witness into the death of Bethany Holder
10. Bethany was killed in the Pittwater House carpark when she was run over by a woman, driving a large 4WD, travelling at less than 5km/h in a forward direction.
11. Since then we have campaigned to make carparks safer.
12. The speed limit in most Council Carparks is the same as the adjacent road, unless otherwise sign-posted.
13. And motorists have right of way because it's a road-related area.

14. In a 10 km/h Shared Zone, pedestrians have absolute Right of Way. Motorists are not permitted to STOP anywhere and only permitted to PARK in Marked Bays.
15. In 2017 we (the PCA) formally recommended to Northern Beaches Council that all Council carparks be proclaimed 10 km/h Shared Zones. Their Traffic Manager Paul Davies replied: "Council will, now include the development of Council guidelines in its 2017/18 (10 km/h Shared Zones) Delivery Plan as a high priority project.
16. The Whale Beach Carpark (The Strand) was proclaimed a 10 km/h Shared Zone in 2018 and most Council Carparks on the Peninsula are now the same
17. In January 2020, I was also asked to do a presentation on the importance of 10 km/h Shared Zones in carparks, to the Mayor and CEO of the Northern Beaches Council.
18. The main issue regarding this proposed development is car parking. Whale Beach is quite unique inasmuch as there's no effective public transport. It means most people visiting Whale Beach will come by car. Even many of the residents come by car due to the very steep terrain and the distance from the carpark. We also have a significantly ageing population.
19. It is agreed by ALL parties that the majority of Patrons and Staff using the proposed restaurant, will park in the carpark.
20. The critical issue concerning parking is not generally on week-days, but on weekends during the hotter months of October through to April. It's all about PEAK-PARKING. I have conducted numerous surveys of the carpark (and surrounding streets) all

backed up with photos, since last September and one in February 2023.

21. I can state categorically, that on hot days (over 25 degrees) after 11AM on Saturdays and Sundays, it is almost impossible to find a vacant, legal Bay in which to park (see our Car Parking Study – attached).
22. The TEF Parking Survey (copy of excerpt attached) conducted on behalf of the Applicant on 19 Feb 23, when the temperature was between 28 and 32 degrees, showed in the Council Carpark (The Strand) there were 60 available spaces at 11 AM – 42 at 1PM – 65 at 3PM and 71 at 5PM
23. I found this impossible to believe so I requested a GIPA (FoI) from the NBC seeking to discover whether this data had been verified by anyone at NBC.
24. The reply: “I therefore have decided under section 58(1)(b) of the GIPA Act that the information sought is not held by Northern Beaches Council (copy attached)
25. Almost beyond belief, while no-one at NBC had bothered to verify the TEF Survey, the NBC still went ahead and granted the Applicant a 70 person (64 patrons and 6 staff) Approval for a Restaurant/Café, all based on this unverified and misleading Survey. Under the Applicants’ own formula “WDCP/RMS rate 1 car/3 seats”. This required an additional 23 carparking spaces at “peak times” when there are none.
26. Based on this fact alone, one would wonder why the NBC should not be required to review its original decision to approve a 70 person restaurant.
27. We also dispute this untested RMS formula (The RMS has not existed for over a decade). This might apply in inner city areas where there’s Public Transport and

Walkability. Anecdotally, we believe that the formula is more likely 2 persons per vehicle which significantly increases the demand on parking spaces, especially during Peak Periods. It means that even under the current Approval, an additional 35 parking spaces are required during Peak Periods.

28. People who are coming to Whale Beach, for what ever reasons, mostly come by car. When they arrive, some from significant distances, and the carpark is full, they do not generally turn around and go elsewhere. They usually park illegally. Our evidence proves this.
29. There are no Boom Gates, which are activated when the carpark is full. Nor are there any Council Employees there to stop motorists parking illegally and dangerously. Enforcement is always after the fact. It does not remove the Potential for Harm.
30. We have provided numerous photographs showing how they park in the No Stopping zones in the carpark, often completely blocking the turning circle. There are often more than 20 vehicles illegally parked in the No Stopping zones.
31. The NSW Office of Local Government defines No Stopping as a Public Safety Parking Offence
32. This results in a veritable traffic jam of drivers, often frustrated and hot, being forced to reverse up to 200 metres out of the northern section of the carpark, while there are literally scores of pedestrians, often children and people pushing prams, trying to dodge these vehicles, whose drivers have little effective line of site. It is a serious injury or death just waiting to happen.
33. The problem is exacerbated by the fact that the NBC has effectively stopped parking enforcement at Whale

- Beach, in particular The Strand. We haven't seen a Ranger or Parking Officer booking vehicles in a year
34. As such, I conducted another GIPA (FoI) (see results attached) which revealed that in 2021 they issued 188 tickets. In 2022 they issued 313 tickets and in all of 2023, they issued 14. 11 were for not displaying tickets. Only 3 were for No Stopping offences, in the entire year.
  35. If the NBC cannot properly enforce Dangerous Parking, where there is significant Potential for Harm, there is little if no chance that they will enforce restaurant breaches. And most of the NBC Rangers leave work at 5PM.
  36. In February 2024, I was successful in getting the NBC to arrange for their Traffic Consultant to conduct a Speed Survey in the Strand carpark. The results are staggering. The average speed was 21 km/h, over double the Speed Limit. The 85th percentile speed was 26 km/h and the 95th percentile was 30 km/h (three times the Speed Limit).
  37. We cannot agree with the recommendations of Council's Traffic Consultant for the following reasons:
    - a. The formula he used to assess available parking.  
When people go to the beach, they generally stay for hours. Motorists do not generally wait patiently on hot days, trying to guess when spaces will become available. They park illegally and risk a fine. And hence, risk the safety of those using the Carpark.
    - b. He only conducted two surveys: The first on Saturday 16 December which was an abnormally quiet day. The second on Australia Day which was on a Tuesday. We, on the other hand have provided

numerous surveys, all backed up with photographic proof. He never conducted any surveys on Sundays, especially on hot days, which is by far the time of greatest demand. And it could have been compared with the TEF study which was conducted on Sunday 19 Feb 2023.

- c. The Consultant who conducted the Speed Survey seems to have placed little importance on the results. Speed is the biggest killer on Australian roads, being responsible for over 40% of deaths and serious injuries. This is a Pedestrian Zone. Based on his evidence, he should have recommended that the Carpark is too unsafe to allow any additional parking until at least there was evidence of regular speed enforcement and physical traffic calming devices (eg speed bumps) installed. These are often required by Transport for NSW and Councils in Shared Zones.
38. As an example of the lack of available parking in Peak Periods, the NBC placed a Variable Message Sign on Barrenjoey Road opposite Whale Beach Road for many weeks during December 23 and January 24, with two alternating screens: "LIMITED CAPACITY AT PALM BEACH" and CONSIDER OTHER OPTIONS." This is unequivocal proof that the parking at Palm Beach and Whale Beach, on hot days at peak times, is inadequate.
39. A NBC Parking Officer told me the reason they were unable to come to Whale Beach during Peak Periods was that there were no available parking spaces. They are not permitted to park illegally. He said they often had to park a great distance away and walk down to the Carpark. He said they had requested special bays

for the Rangers and Parking Officers but the Council had refused their request.

40. The suggestion that there should be an increase in the number of patrons and staff, based on a variety of seasons and times is absurd. It cannot and will not be enforced.
41. The best and only way to effectively enforce the number of patrons, is by limiting the number of seats. That way it will be self-enforcing,
42. If the restaurant owner has an establishment where there are 150 seats available, even though he/she is limited to 80 during weekends, then the temptation will be to allow additional patrons. Restaurateurs and patrons do not like half empty restaurant. How on earth can this be enforced especially knowing the NBC's inability to even enforce dangerous parking. We have sent them numerous complaints, but they are ignored.
43. In July 2015, Land and Environment Court Commissioner Sue Dixon refused an Appeal by Scots College to increase its student cap by 30 per cent. (QUOTE): "Even if I did have jurisdiction, based on the traffic and parking evidence before me, I am unable to be satisfied that the proposed increase in student numbers would not have unacceptable impacts on traffic and parking in the vicinity of the school,"
44. There was no suggestion that motorists dropping off and picking up their children at Scots College were speeding.
45. That the AVERAGE speed of motorists in the carpark is double the Speed Limit must be a reason on its own that the Carpark is a very dangerous place for

pedestrians, especially children – and at night when many patrons have been drinking.

46. In my view, for all of the above-mentioned reasons, the risk to pedestrians, especially children, in the Carpark at The Strand at Whale Beach is far greater than that posed by parents dropping off their children in No Stopping zones at Scots College. While dangerous and illegal, they would usually be remaining with their vehicles and for a minute or two, only driving in a forward direction and not reversing.
47. “Scots College” is a vitally important and relevant precedent.
48. On the proven Road Safety issues of Speeding and Dangerous Parking alone, coupled with almost no enforcement, the Appeal must fail.