

'Jeremy Bingham' in Margaret Park (Editor). *Voices of a landscape: planning North Sydney*. North Sydney Council, 2001, pages 14-17.

Jeremy Bingham is a lawyer at Deacons. In his legal career he worked with Hall and Hall, Council's solicitors during the Sabemo affair. Jeremy Bingham was also Lord Mayor of the City of Sydney and has extensive experience in local government policy and planning. In an interview with Roslyn Burge [c 2000] he responds to a question about his part in the North Sydney Civic Centre debate and the way in which Council later developed the site through the use of floor space transfer rights. Jeremy Bingham connects the issue to the current North Sydney CBD and its heartless environment as he see it.

"At that time I briefly acted for North Sydney Council, for a couple of years I think. For the rest of my legal career I've constantly acted against North Sydney Council, both before and since. At that time I acted for the Council and the Council of the day had entered into negotiations with Sabemo for the redevelopment of the Civic Centre site with a highrise type development that was to include highrise office buildings. I think it was to include highrise residential and it was also to include new Civic Centre buildings for the Council. It was part of the deal. So Sabemo were to get the development rights for the whole site in return for handing back to the Council some developed property for the Council to occupy. But there was a local government election. the constitution of the Council changed and new councillors were elected. At its first meeting after the elections Council resolved to withdraw from all negotiations with Sabemo. Now as they hadn't finalised the deal with Sabemo the conventional legal wisdom was it was just bad luck for Sabemo. They sued in the Supreme Court. successfully claimed there was an implied agreement between the parties that neither party would withdraw from the negotiations just through a change of mind and that the Council had breached that understanding and that the Council had required Sabemo to spend a lot of money in developing changing development proposals. The Supreme Court held that the Council had behaved unreasonably and had withdrawn without proper justification and Sabemo recovered a sum which in my memory was in the order of about \$80,000 for wasted expenditure as a result of the Council's change of mind. So that Sabemo lost out, of course, on all the millions of dollars of profit that allegedly were in the deal.

Interestingly, at that time and for years later the Civic Centre retained its own Special Uses - Civic Centre zoning... When Ted Mack was mayor of North Sydney he got the idea of rezoning the Civic Centre as a commercial zone with a 5:1 floor space ratio on the whole of the site - even though there was no intention of redeveloping it - and then he sold off that floor space ratio to developers who wanted to carry out development in the CBD of North Sydney, where there was a floor space ratio limit of 5:1 down to 3:1, depending on different parts. And for money, he got the Council to give developers greater floor space ratios than that, commonly from 5:1 to 8:1 - 7:1 - I think the highest density building there is 15:1 - in return for money. On the one hand it was very good for North Sydney Council because they got a lot of money. Developers were prepared to pay it because they couldn't get the development rights any other way. But it was also illegal because central to our planning system is that you can't buy development consents. You have to get a development consent on the merits, on the planning controls that apply and on the merits of your application. Ted Mack put that to one side completely and sold off, notionally, floor space ratio. No other council ever did that. Here in Sydney City Council, when I was Lord Mayor of Sydney, we developed a system of transfer of floor space ratio from heritage sites as a means of preserving heritage buildings. But Ted Mack's scheme was nothing about preserving heritage buildings, or preserving the environment. It was all about raising money for the Council... And from the point of view of the ratepayers, it was very successful.

Interestingly, nobody ever challenged it. Nobody ever took him to court about it. The Minister never intervened. But there was one appeal I had in Blue Street, adjacent to the railway station, where the floor space ratio limit was 5:1. The Council had negotiated with the developer to let them build at 7:1 if they paid a couple of million dollars for the extra floor space ratio. Then the thing went sour and we took it on appeal on the basis that there was obviously no planning objection to a 7:1 building and there was no legal justification for demanding \$2,000,000. And Justice Stein in the Land and Environment Court upheld our argument and the developer got an approval for a building at 7:1 without paying the \$2,000,000 and in spite of the Council's planning controls. And the judge, in fact, said that the Council's conduct had in effect abandoned their floor space ratio controls for North Sydney. So you've got a very odd situation in North Sydney CBD now where there are a number of buildings that are well in excess of the permitted FSR (Floor Space Ratio), simply because the developers paid money. Something that is quite appalling in terms of planning principle. But the ratepayers did well out of it. I don't think the North Sydney CBD is the better for it.

In fact it's a very unsatisfactory CBD in my opinion. But Mack was very good at politics and much loved by his ratepayers and certainly what he did benefited the North Sydney municipality...

I don't think the state government of the day felt it had to intervene. The developers weren't screaming about this because they were getting extra development rights, albeit they had to pay hundreds of thousands or millions of dollars... It wasn't costing the ratepayers anything, so they weren't complaining. To the extent that it was causing buildings which were disproportionately large in the North Sydney CBD, nobody has ever cared much about the North Sydney CBD and it's always been a very deficient CBD in terms of public amenities and open space, public facilities, out-of-hours activities. It's a very sorry area and nobody's taken responsibility for it so nobody was critical of that. So there was really nobody to complain. In other words, to use the expression we've heard before, what was happening was in effect a victimless crime. Not that it was against the criminal law, because it wasn't. But it certainly wasn't in accordance with the planning law. But who was the victim? The only victim was the poor old North Sydney CBD and it didn't have any champion in those days. It still doesn't ... No! It's a very unfortunate area. A most unpleasant area to work in. Ted Mack can take credit for the fact that the residential areas of North Sydney are pretty good. They're a lot better than they'd have been without his period in office. He did a lot for the residential areas but he didn't do anything for the CBD, in my view...

It all comes back to the reality of politics. In local government elections, under the current voting system, commercial voters have no say. A commercial voter has to re-register to vote at each election. They're not automatically on the roll. No matter how much property you own, you get only one vote, the same as one resident. So although the business properties pay much higher rates because it's a differential rate, although the business owners pay a huge proportion of the Council's rates, they have effectively no vote. What they think doesn't matter. If you're a councillor - and I'm not talking about North Sydney, I'm talking about all local government areas - it's the resident vote that counts, it's what the residents think that counts. You may say all sorts of nice things about making the CBD more pleasant for people to work in because that's a nice thing to say, but you don't in fact have to worry about what the owners or tenants of the commercial buildings think or want because they don't effectively have any vote. What you're hearing about improving the North Sydney CBD is basically just spin, and it's minor, fiddly little improvements to what is basically a pretty appalling CBD...

It has no heart. It has no central point. It has no civic spaces. It has no style. It's a mish-mash. It's a conglomerate of all sorts of things. You've got the proposed widening of Miller Street that didn't go ahead so the little corner pub could be kept... you've got a whole series of half-baked things. And the flow of morning and evening peak hour traffic through there makes it a very difficult area ... It just hasn't had anything remotely like the level of planning and care and attention over the decades that it should have had... Well, it's had planning thought invested in it and that is why they said we have to limit the amount of office development in the CBD because otherwise the traffic congestion is going to become impossible. So they imposed floor space ratio limits. Then Ted Mack proceeded to ignore them totally and, in return for money, approve buildings grossly in excess of its floor space ratios, thereby demolishing the basic planning for North Sydney CBD...

North Sydney, as far as Milsons Point and the CBD are concerned, is an excellent example of a total failure of planning. Total failure... Ted Mack, and his successors who followed him in the same mould, significantly changed how North Sydney operated, gave a great deal more power back to the people themselves, to the residents, and I think he was politically very astute and very capable and I think overall what he did was good for the residents of North Sydney. But he did it, in my view, at the expense of the planning law, both in abandoning the controls that were important for the commercial part of North Sydney and in blatantly selling town planning approvals which was contrary to law but nobody was going to interfere. So I admire him as a consummate politician. I think the residents have done well out of it. But I think the commercial interests of North Sydney have done very badly out of it... Mayors that have followed since tend to follow in his mould... There's been no swing back away from the resident focus in favour of any kind of commercial centre focus... North Sydney CBD is, in its own right, the fourth largest city in Australia - after Sydney, Melbourne, Brisbane - North Sydney. It has a role in metropolitan Sydney, in New South Wales and in Australia, which is of significance... It's not as significant as Sydney City. Sydney City has a role which is of significance in the world. But it is a strange mindset that just ignores that completely and deals with the North Sydney CBD as though it was just a little suburban shopping centre! And just ignores all proper planning controls. I don't see the concern for the proper growth of a city, commercially, as being contrary to a concern for the residents as well. I think they go hand in hand."