



14 March 2019

The General Manager
Port Stephens Council

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**DA 16-2018-386-1: 35-39 Donald St & 1 Yacaaba St, Nelson Bay – 56 unit apartment building
Objection to Second Revised DA, March 2019**

About TRRA

TRRA Inc. actively represents the Tomaree community on issues such as planning and development, protecting the built and natural environment, economic development, tourism, culture and other grass roots issues, and liaises with like minded groups in other areas of Port Stephens.

TRRA has no objection to this submission being made public in full, without any redaction.

Introduction

TRRA made a detailed submission, objecting to this proposed development, when it was first advertised in July 2018 and again in November 2018 when a revised plan was advertised.

Most of the points made in our previous submissions remain valid, please consider these and all other earlier submissions (over 60 the first time and 33 the second time), the vast majority of them objecting to the development, and mostly on grounds of excessive height and bulk.

In relation to consultation, we note that Council recently passed a rescission motion in relation to the planning proposal for Boomerang Park in Raymond Terrace, partly justified by the need to consult the recently formed Raymond Terrace Strategy Implementation Panel. Given that an Implementation Panel has also been formed for the Nelson Bay Strategy, with a first meeting scheduled for this month, we submit that to be consistent, the assessment report on this DA should not be finalised until the NB Panel has had the opportunity to comment.



The initial proposal was for a 10 storey building with a height of 33.49m, the second revised proposal and this third version is for a 9 storey building with a height of 30.6m. This remains over double the current LEP limit of 15m. The adoption of a revised Delivery Program (NBDP) for the Nelson Bay Town Centre and Foreshore Strategy by Council on 25 September 2018 proposed a height limit of 28m for this site, although the necessary changes to the LEP and DCP to give effect to the NBDP are yet to be implemented.

TRRA remains very disappointed that the applicant has again ignored the community submissions and critical comments by the Design Panel on the height, bulk and other aspects of the design. It is disappointing that the actual bulk has increased in this latest revision with the FSR increasing by 0.04.

Design Excellence

The applicant has made several references to the proposal having design excellence however they continue to ignore the important factor of design that it should not only include how the building actually looks but also how it is positioned within and relates to the surrounding environment.

One of the arguments to support a higher building at 11-13 Church St and quoted in the NBDP is the 'building height to street width' ratio as an example of design excellence:

"Building height should provide due consideration to human scale. That is, five storeys is between 15-20m building height, which is a 1:1 ratio with a street width of 20m." (NBDP, p12)

As the width of both Donald and Yacaaba Streets is only approximately 20m, any building on this site should not exceed five to six storeys such as the existing building at 3 Yacaaba St, if it is to comply with Council's own policy on Design Excellence.



The above perspective of the ground floor (from Appendix B. p2) illustrates what could be a suitable building for the site with commercial premises at street level *if the building did only extend another 3 or 4 levels above as shown*. The illustration is totally misleading as it fails to give the full perspective of how the human scale is totally dominated by the eight levels towering over the street level. We note also that the image of the entire building on page 1 of Appendix B is also misleading – it is clearly a ‘fish eye lens’ view and does not accurately portray what would be the true visual impact.



This illustration above (also from Appendix B, p26) better highlights the enormous bulk and scale which is totally out of keeping with environment. The proposed building may well be a suitable design for another site in a built-up metropolitan environment in Sydney adjacent to a train station, or even in Newcastle’s ‘revitalisation’ precincts, but is totally out character in the heart of the Nelson Bay with its unique ‘coastal village’ character.

The graphical illustration of the view corridors in the applicant’s documentation (reproduced below) clearly shows the extent of the proposal height and bulk from distant viewpoints. The view from the Bowling club is totally misleading with the proposed development shown as what appears to be a narrow red line, it is unrealistic to expect the public to believe that a 9-storey development half way between the bowling club and the water will only appear as a tiny speck. The applicant has not shown for comparison the effect of a building at 15 or 28m.





Overshadowing

On page 16 of the document *Clause 4.6 Assessment (Appendix I)*, the applicant states:

'The proposed additional height does not provide any additional significant impacts in relation to design impacts such solar access, overshadowing, ventilation, than would be the case if the building met the current LEP height limit. It is also noted that Council would have considered these issues in formulating the Nelson Bay Town Centre Strategy.'

The applicant has been very selective in quoting sections of the NBDP, stating the height of 28m has been considered as blanket value across all the areas labelled as such. But the NBDP also states the importance of the DCP being updated which would have strict conditions on overshadowing and the like which would place significant conditions on any building up to 28m. It is incorrect to state that Council 'would have considered these issues in formulating the Nelson Bay Town Centre strategy'. It is still considering these important factors hence the time delay in drafting a revised LEP and DCP.

TRRA submits that the comment that the additional height does not provide any additional **significant impacts**..., than would be the case if the building met the current LEP height limit is clearly not true given that the current height limit is still 15 metres.

The shadow diagrams shown on page 23 of Appendix B show shadows cast by a 28m compliant building in white and the extent of additional shadows from this proposal in orange. TRRA submit that the shadows from a 28m building are unacceptable and would not be acceptable to the affected residents or the general community. The additional shadowing extending from the building above 28m in our opinion is very significant when it extends into additional properties, over and above those that would be affected by the shadows from a 28m structure.

Once again, the applicant has misled by comparing the revised proposal with a 28m development and not the existing LEP height limit in the diagrams supplied, yet states in the Clause 4.6 assessment it compares with the *current* LEP height

limit. The diagrams are of limited value, only providing details of overshadowing at 9am, noon and 3pm. During winter the extent of shadowing will be much worse in the period before 9am and after 3pm when the sun is at a lower angle and residents more likely to be home and welcoming the last available piece of sunshine. Similarly during summer, the late afternoon and evening shadows will be significant with the longer daylight hours. Shadow diagrams for additional times should be supplied.

The diagrams on page 24 are confusing and only consider the effects at 3 Yacaaba St. TRRA submits that the effects are significantly more widespread than just 3 Yacaaba St.

On page 15 of the *Clause 4.6 Assessment (Appendix I)*, it is stated:

'In response to the abovementioned supplementary considerations, the proposal will result in some additional overshadowing to the adjoining buildings, though it is considered that this is a consequence of both the
This at least acknowledges 'some' overshadowing but we fail to understand how the orientation of the site can be blamed for casting shadows and not the building itself!

Additional Comments made in the Appendix Clause 4.6 Assessment (Appendix I).

(See also our earlier submissions for further details)

Future of Existing Donald Street east carpark site. (pp.9 and 17)

The applicant continues to falsely state that there is an EOI for a seventeen storey development, we stated in our previous submissions that this has been withdrawn. In any case if this was true why would it not be marked on the NBDP as an isolated spot location with a limit higher than 28m?

Need to increase population density in Nelson Bay (p.9)

Again the applicant misuses figures for the entire LGA. Official population growth estimates and consequential State government estimates of requirements for new dwellings within the central area of Nelson Bay could easily be met with new developments in the order of 5 to 6 stories in height.

Height exceeds 28m limit only near the corner (p.11)

'The Height Plane indicates that the proposal only exceeds the 28m height limit on a portion of the building located on the corner of Donald and Yacaaba Streets. The Height Plane shows that this exceedance is a result of the sloping site and the existing ground level.'

We submit that that any design excellence guidelines would suggest that a building should be lower at the front, and if necessary, have any higher sections well setback from the street. This proposal is for the reverse.

Future Development (p.14)

'With respect to the building height objective, we need to acknowledge that the subject site is located within part of the Nelson Bay town centre which is identified for renewal and intensification. Future development within the immediately vicinity of the subject site, will have a height commensurate with the height proposed as part of this development at Donald Street and Yacaaba Street. With the development being consistent with the FSR of other town centres in the Hunter Region.'

The existing unit development adjacent at 3 Yacaaba St is relatively modern and unlikely to be redeveloped for at least another 50 years, it is incorrect to state that the proposal will be commensurate with it.

The comparison with other unspecified town centres in the Hunter Region should be given no weight. Apart from Newcastle, which is a metropolitan centre, we are not aware of other comparable towns, and specifically no coastal towns with a comparable landscape character – Nelson Bay has a unique 'natural amphitheatre' setting.

Supplementary Considerations (p.14)

'Supplementary considerations are the availability of local infrastructure and current public transport services which all play a part in the consideration of the objectives of Clause 4.3.'

The proposed building height would reinforce the position of the subject site creating a development that reinforces the future urban design considerations of the area. The proposal has taken a nautical/oceanic theme (based on the sites location) in its design and has deliberately (deliberately?) activated a significant street corner in the town centre. It is therefore considered the proposal is in keeping with the locational attributes, consistent and in keeping with the surrounding established character of the area. It will be one of the first taller buildings in the area which has (missing words?) not been lost (meaning?) in the design of the building but also in its interior design with larger apartment sizes.'

We submit that (if grammatical) these statements *might* apply to a lower building but are clearly not true for the 9 storey high density proposal.

Council's precedents (p.16)

'The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable'

Past approvals should no longer be relevant now that the review of the Nelson Bay Strategy has been completed and the NBDP adopted. However, we note that Council has consistently and repeatedly argued, when approving major height variations in recent years, that those approvals DID NOT set a precedent and that each DA would continue to be assessed on its own merits. It is also worth noting that the four recent approvals to exceed the allowable heights have still failed to see any construction, despite Council's repeated insistence that increased height limits are essential to attract investment.

Newcastle Urban Design Consultative Group (UDCG) (p.18)

'In relation to point (g) the proposal has been through the Newcastle Urban Design Consultative Group (UDCG) who assessed the proposal under SEPP 65. The Newcastle UDCG advise on matters in Port Stephens. Changes were made to the original proposal in regards to the UDCG comments. The additional height has been identified to have no additional impacts than what would be interpreted from the design if it met the LEP height limit in the LEP, noting proposed height limits in the future will be higher than that proposed. That is, relevant design considerations (e.g. solar, ventilation) are still met by the additional height.'

This statement is totally untrue as discussed above.

The full report of the UDCG is unavailable to the public, which we understand is current Council policy (but one which we submit should be changed). At the very least the community deserves to know if the last set of design changes have been re-submitted to the UDCG and whether the Group is now satisfied. Council planners should not be making the subjective judgement as to whether the applicant has met the criticisms and recommendations of the UDCG. We note in particular that in the document *Design Changes* (Letter from ADG dated 18 February) the UDCG is cited as having made the following points:

Height & Density (p.3)

'The excess height of the development is likely to require a further moderate reduction in density.'

The density has actually increased 0.04 in this revision – it is clear that the UDCG was concerned about the **excess** height and related bulk – there is no evidence that it is now satisfied with the revised design.

Context and Neighbourhood Character (p.2)

'In relation to these principles the development proposes a mixed use building over the current LEP height limit. Higher density buildings are supported in this area, which is part of the Nelson Bay Town Centre. Some developments have already been built of similar size in the area. The building will not be out of character with the area, and will not look out of place in the future character and context of the town centre as outlined in the vision by Council in the Nelson Bay Town Centre and Foreshore Strategy.'

TRRA questions which developments of similar size have already been built. As discussed above the height and bulk will be totally out of character with existing buildings such as 3 Yacaaba St, and fails to satisfy the vision for the Nelson Bay Town Centre and Foreshore, i.e.: *'It is critical that the wooded ridge and headlands that surround the Bay be visible and not eclipsed by buildings'* (Strategy, p6), or to the numerous mentions in the Strategy to the need to protect the 'natural amphitheatre' character of the town centre.

Effect on adjacent residential block (p.3)

'The interface with 33 Donald Street has been softened with a stepped wall to reduce the impact of the development and the impact of the boundary wall. The stepped (wall?) has landscaping on top to soften the transition between the two properties.'

We understand that the owner of 33 Donald St still has major concerns about the effect of the proposed development on their property – these concerns, relating to the podium, which was also commented on by the UDCG, do not appear to have been adequately addressed

Parking

TRRA has major concerns about the parking spaces to be supplied, particularly the significant reduction in spaces in this revised application.

The applicant's document *Design Changes* - letter from ADG Architects lists the number of parking spaces as over the three applications as 148, then 107 and now 112. (table below, from pp1-2)

Comparative Table

Item	Previous Submission Oct 2018	Amended DA Nov 2018	Amended DA Jan 2019	Difference
Total Units	60	59	56	-3
1 Bedroom	6	7	5	-2
2 Bedroom	28	28	27	-1
3 Bedroom	24	24	24	0
4 Bedroom	1	0	0	0
Commercial Space	GFA 362m ²	GFA 68m ²	422m ²	+354m ²
Ground level Residential Units	0	3	0	-3
Park Spaces	148	107	112	+5

However when checking the SoEE for the three applications the figures are very different. First 143, second 148 and finally 109 spaces, see Attachment.

It appears that the first application had parking over three basement levels with a small area at ground level, the second application was only over 2 basement levels with a small area at ground level but using a stacked parking arrangement on the second basement level to achieve a better parking outcome whilst also reducing the amount of excavation required. But the third (current) application now has parking only on the 2 basement levels plus on a small ground level area but without a stacker and with overall a significantly reduced number of spaces.

The applicant may be trying to save money on not installing a stacker but this appears to have resulted in a short fall of 36 (or 39?) spaces with no justification. The removal of four units would reduce the car parking requirements by a few spaces, but not by this number – the reduction in parking needs to be explained and justified, particularly in relation to an acknowledged parking problem in Nelson Bay Town Centre.

Other matters

We question whether the proposed design meets all the requirements of the State Government Apartment Design Guidelines, and specifically the communal open space standards (Objective 3D-1) and the required minimum ceiling height for habitable rooms – we understand that another submission from a design professional has already detailed these and other respects in which the Apartment Design Guidelines are not met.

Conclusion

TRRA objects to this revised DA on the same grounds as our previous submissions – the minor design changes do not significantly mitigate the excessive height and bulk of the proposed building, and actually worsen the parking implications.

The proposed building is completely out of scale not only with the existing town centre but even with the vision proposed in the adopted Delivery Program for the Nelson Bay Town Centre and Foreshore Strategy.

Given that the revised Delivery Program has yet to be implemented in amendments to the LEP and DCP, the application for variation to development standards under Clause 4.6 of the LEP must be assessed against the existing LEP – which in this case includes the 15 metre height limit for the site.

The applicant needs to make the case '*that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*' and '*that there is sufficient environmental planning grounds to justify contravening the development standard*' (Clause 4.6(3)). We submit that the applicant has failed to satisfy these criteria.

While it is legitimate for the applicant to reference the revised (September 2018) Delivery Program, this should only be one consideration for the assessment.

Even if the revised (but yet to be formally implemented) height limits and associated FSR limits are given significant weight, this DA still exceeds even those limits, and in our submission does not meet many of the other elements and criteria in the 2018 Delivery Program.

This DA should be rejected.

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Attachment re Parking – lack of clarity

Original DA, SoEE dated 24/04/2018 page 21

3.4 Access and Parking

*The proposed mixed-use residential proposal will be serviced via convenient and safe access entry point from Donald Street and an exit point located on Yacaaba Street. A total of **143 carparking** spaces (including 12 accessible spaces) will be provided across **three levels of basement carparking with a small at-grade carpark at ground level** for staff parking only. Resident and visitor parking will be provided within the two lower basement levels with the upper level providing for commercial parking. 18 motorcycle parking spaces have also been provided.*

Second DA dated 24/09/2018 page 21

3.4 Access and Parking

*The proposed mixed-use residential proposal will be serviced via convenient and safe access entry point from Donald Street and an exit point located on Yacaaba Street. A total of **148 car parking** spaces (including 12 accessible spaces) will be provided **across two levels of basement car parking with a small at-grade carpark at ground level**. The proposal utilises a stacked parking arrangement on the second basement level to achieve a better parking outcome whilst also reducing the amount of excavation required for the overall development. 6 motorcycle parking spaces have also been provided.*

Final DA dated 17/01/2019 page 19

3.4 Access and Parking

*The proposed mixed-use residential proposal will be serviced via convenient and safe access entry point from Donald Street and an exit point located on Yacaaba Street. **A total of 109** car parking spaces (including 4 accessible spaces) will be provided across **two levels of basement car parking with a small at-grade carpark at ground level**. 7 motorcycle parking spaces have also been provided.*