



## **DRAFT PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014**

### **SUBMISSION - 31 March 2015**

#### **General**

This submission is made by Tomaree Ratepayers and Residents Association Inc. (TRRA Inc.). We have reviewed the draft DCP and, along with other Tomaree community groups, attended a presentation and discussion with PSC Planning staff on Tuesday 17 March 2015. We appreciated the opportunity to engage in this discussion. The planners present agreed to consider a number of concerns raised in this discussion.

The issues raised at the 17 March presentation are documented in this submission along with other matters of concern.

The planners acknowledged the difficulty experienced by the Groups present to finalise their submissions by the advertised end of the exhibition period and indicated that late submissions could be considered. A subsequent email requested submissions by 2 April at the latest, and we are pleased to comply.

#### **Status and significance of the DCP**

TRRA Inc. acknowledges that the DCP itself is not a statutory instrument and that its purpose is to provide detailed guidance for assessment of Development Applications (DAs), in support of the Port Stephens Local Environment Plan (LEP) 2013.

However, we are aware that although the provisions of the DCP are not binding, Council is required to “provide consideration” to the DCP in determining a DA. Accordingly, TRRA Inc. recognizes the DCP as an important document which should be guiding developers in shaping their proposals, Council staff in assessing applications and Councillors when they are involved in DA approvals. The DCP, in our view, sets the standards which ensure developments which are acceptable to the community and which result in outcomes which are in accordance with the objectives of the LEP and other State level Planning Policies.

Against this background, TRRA Inc. (and other community groups attending the 17 March presentation) raised concern that the DCP makes it clear (in A.7 & A.80) that it actively supports “alternative **merit based approaches**” as exceptions to the requirements of the DCP. The glossary to the DCP, in E1, defines **merit based approach** as “the means of achieving an objective based on the desired outcome, rather than specific numerical standards”. In our view **this emphasis** sends entirely the wrong message to developers and DA assessors that desirable standards set out in the DCP as ‘requirements’ can in practice be ‘worked around’.

TRRA does not reject the merit based criterion outright, but our experience with Port Stephens Council is that this approach is too often used to approve questionable developments with potentially disastrous outcomes e.g. the Birubi Beach Resort in the Anna Bay sand hills, and many residences on flood prone land, or subject to aircraft noise. If applied sparingly and responsibly there is a place for the merit based approach, but TRRA recommends that it be given much less prominence in the final DCP, and is clearly presented as the exception rather than the rule.

### **A12 Development Notification**

The community at large is very much reliant on the various levels of notification of DAs to be informed of proposed developments which may impact on their own properties or on the neighborhood or on the wider locality.

TRRA Inc. therefore has closely examined the table in this section which details the level of notification proposed to be assigned to types of development. In general we are very concerned by the proposition that the requirement for notification be relaxed for many types of development thus reducing the opportunity for interested parties to be alerted to a potential impact.

We request clarification of whether **Level 2 – Neighbour Notification only** leaves notice to landholders “not immediately adjoining” entirely at the discretion of the applicant. If this is so, the reach of this provision is in our view inadequate.

In the case of **Level 3 Notification – Press Advertisement and Website Notification** this should be subject to minimum standards as to the information included as to the location and nature of the development. E.g. a major development such as the sub-division of land adjacent to a major shopping complex such as the Salamander Centre should be cited as such, rather than limited to a street address, which is often not recognized by the public. This concern has been acknowledged as legitimate on a number of occasions by Council’s planning staff, but we have yet to see a consistent improvement in Council notices.

In addition, TRRA Inc. recommends that the allocation of types of development to the various categories needs further consideration against the potential impacts on neighbours or the environment. Some detailed queries are listed below:

1. Boat building, ramps and sheds should all be advertised. Wharf and boating facilities are listed as category (3), jetties (2). These developments have major potential impacts on public foreshores and waterways and on views of surrounding landholders.
2. Boarding Houses. In section B11 Social Impact, boarding houses listed as “an impact study required” so they should be advertised.
3. Electricity generation works should be advertised. The potential impact is obvious.
4. Not sure about the justification for the different treatment of “Home based Child Care” and “Home Business” – both may have significant parking and noise impacts.
5. Advertising structures should be advertised, although there may be scope for a threshold to apply such as location and or the size and type of advertisement.
6. Subdivisions of at least 3 to 10 lots should be advertised
7. Tourist and visitor accommodation should be advertised if over say 2 rooms
8. Recreation areas should be advertised - could be scope for threshold depending on size and location and the nature of the proposal.

As noted in some of these items, impact thresholds, such as scale, may be more appropriate than simply relying on the ‘type’ of development to determine notification requirements.

### **B1 Tree Removal**

TRRA questions the proposal to allow removal without consent of any tree within 5 metres of a building, despite this being in the current Tree Preservation Order and Policy, on the grounds that it may not be in the best interests of protecting valuable specimens. We understand that the ‘requirements’ in this section of the DCP are in any case currently overridden by the Statewide 10/50 policy on vegetation removal. The DCP should not give a misleading impression of the controls applying to tree removal, although we can see merit in leaving in a statement of Council’s preferred policy, so that it would become the default in the event that the highly controversial 10/50 policy was repealed. At the very least there should be a mention of that policy in the DCP.

### **B2 Natural Resources**

TRRA generally supports the approach of the Draft DCP. Provisions could be strengthened are:

B3.1 – Bushfire prone land – could have more detail to address problem that has arisen of developers arguing that asset protection zones should be provided on Crown Land outside site boundaries instead of on-site (e.g. Salamander Haven, Deimars Rd and Fingal Bay DAs)

B3.2 – Acid sulfate soils – doesn’t say any more than ‘must comply with LEP’ – this seems inconsistent with stated objective of DCP to give further guidance?

## **B5 Flooding**

The general approach is supported, however TRRA queries whether the requirements are sufficiently strong to discourage developers from seeking to build on flood prone land.

As well as the disappointing overall promotion of the 'merits based alternative' option (see above) there are exceptions included to virtually every clause in this section! TRRA has noted many recent examples of Council overriding advice from the planning staff to allow developments on flood prone land. Given the projected increase in sea level and extreme weather events due to climate change, TRRA considers that this is a major threat to the safety of residents on the extensive areas of low lying land in Council's jurisdiction. We also have concerns relating to Council's exposure to future claims for compensation for damage to developments approved, contrary to professional advice, on the suitability of sites in flood prone land. We submit that the DCP provisions should set a higher hurdle for Council if it wishes to override professional planning advice.

### **B5.5 Coastal Hazard**

This section seems to take into account climate change and rising sea levels subject to the above comment on Flooding.

## **B7 Aircraft Noise**

TRAA notes that there are many exceptions to otherwise sensible general provisions. Again we have been concerned by a number of Council approvals for development which ignore professional and planning advice as to the potential impact of aircraft noise. Noise impacts are projected to increase with the Joint Strike Fighter and increased civilian aircraft activity. Again, we submit that the DCP provisions should set a higher hurdle for Council if it wishes to override professional planning advice.

### **B8.5 Aboriginal Heritage**

Statements of Environmental Effects will only require Aboriginal heritage to be addressed in respect developments involving cuts of greater than 2 metres. As it would seem that there are significant sites where aboriginal objects found on the surface or <2m below (e.g. middens), TRRA queries whether the limitation on this consideration to 'cuts of greater than 2m' is appropriate. We seek clarification of the basis for proposing this standard and question whether it has been discussed with local aboriginal representatives?

## **B9.2 Parking**

TRRA is concerned by the proposed scope for alternative provisions specified in B9.2. Of particular concern is the proposal to make an exception where "the current land use has been approved with a parking shortfall ....." In our view a new DA should trigger the new requirements rather than be permitted to perpetuate a shortfall.

Figure BH (page B.46) does not mention “funeral homes” as a land use requiring specific parking provisions. This use generates a significant demand for parking. This issue was the subject of a recent TRRA submission relating to a DA at Salamander Centre.

## **Chapter D – Specific Areas**

TRRA supports the inclusion of Specific Area requirements which reflect the special needs of localities or the content of existing Strategic Plans or adopted Planning Principles.

In particular, we note that there are no specific area provisions included in the listed “Parts” for Anna Bay (which has an adopted Strategic Plan) or Salamander Bay shopping centre precinct which has “Planning Principles” prepared following community consultations and which were adopted by Council.

Generally, this Chapter of the Draft DCP 2014 relies largely on a cross references to relevant area strategies to bring their recommended standards into the development control process. TRRA submits that more specific standards could be inserted to ensure implementation of the adopted Strategies through future developments.

### **Figure D1- Nelson Bay Centre Land Application Map and Nelson Bay Centre Locality Controls Map DJ. Page D.102**

Figure D1 shows a boundary which coincides with that for the **Nelson Bay Town Centre and Foreshore Strategy** adopted by Council in April 2012 and the **Nelson Bay Town Centre and Foreshore Improvement Programme 2012**.

These strategies were the result of several years of work by consultants and intensive consultations with the community and stakeholders.

The boundaries for these strategies were carefully selected to take in locations of significance to the future character and development of Nelson Bay and its foreshore. The map shown in Figure DJ does NOT include key segments to the north namely:

- most of the water based component of the marina complex and,
- open space associated with the Eastern Groyne and south of Victoria Parade which was identified as part of a green linking area extending between the foreshore and the built environment of the town centre. On page D 100, D1.F and D1.9 standards are detailed for the Desired Character - Green Link.

The Marina Complex, the site of the recently established fish restaurant west of the roundabout at the end of Teramby Road, the Eastern Groyne and the entire Green link zone were all a strong focus of attention in the course of the preparation of the Nelson Bay Town Centre and Foreshore Strategy and in a separate planning initiative relating to the foreshore initiated by the Crown Lands Department in conjunction with Council. But they are not included in the Locality Controls Map DJ.

Also excluded is an area to the south of Stockton and of Dowling Streets which was in part, identified as a Tourism and Leisure Precinct and as a possibility for buildings up to 7 stories in height.

TRRA asks that the boundaries of figure DJ be extended to include these areas which are of critical significance to the future success of Nelson Bay as a town centre. We also ask that the content of the Nelson Bay Town Centre and Foreshore Strategy and Improvement Programme be reflected in the extended map for Figure DJ and the associated preceding text.

The above mentioned Strategy and Improvement Programme recommended standards to enhance the ambience and function of the town centre in keeping with its role as the hub of a major tourist destination. These standards referred to matters such as streetscapes and landscaping, public open space allocations, building facades, signage controls, traffic calming, improved provision for pedestrians and cycle ways, way finding (directional signs and visitor information) and coach access and parking. Not all of these appear to have been incorporated into the Nelson Bay Centre section of the DCP, but should be.

The Nelson Bay Town Centre and Foreshore Strategy attached a high priority to protecting and where possible, enhancing view corridors especially towards the bay and the surrounding vegetated hills. The depiction of views in figure DJ (yellow dots and arrows) needs to be strengthened for the purpose of legibility and backed by more specific written standards.

The Nelson Bay Town Centre and Foreshore Strategy on pages 66 and 67 identifies several “Opportunity Sites” within the town Centre where it was considered appropriate to encourage larger scale and possibly slightly higher buildings in exchange for a DA which exhibits “design excellence” and or a strategic public benefit”. This trade-off was detailed as follows:

“Provided the opportunity sites meet the criteria for a variation in development standards as described above, (i.e. outstanding design excellence and a strategic public benefit), the Strategy recommends that these sites be permitted an additional floor space ratio of up to 0.5:1 over and above that available elsewhere in the Town Centre under the proposed variation provisions (i.e. a total FSR of 3.0:1”

No reference is made to this proposition in the Draft DCP 2014. We understand that the new DCP deliberately excludes FSR controls which are considered unnecessary given the combined effect of LEP Height limits and other controls. We further understand that in order for the ‘opportunity site’ concept in the Nelson Bay Town Centre and Foreshore Strategy to be implemented it would first be necessary to revise the LEP, which would be a relatively lengthy process and involve further public consultation. In the meantime, the height limits in the LEP, which reflect the controls in place before the Strategy, remain in force. We suggest that Council makes this clear, either in the DCP itself or in accompanying material, since there may be an expectation in the community that the LEP and DCP between them will reflect this key component of the adopted Nelson Bay Town Centre and Foreshore Strategy.

#### **D7 Seabreeze Estate**

These provisions appear to be directed at resolving a long-standing problem with stormwater run-off into the Lagoons Estate, and associated legal disputes which are ongoing.

TRRA doubts if these problems can be solved retrospectively by new provisions in the DCP.

#### **D14 Williamstown Defence and Airport Related Employment Zone (DAREZ)**

TRRA takes an interest in this zone because of its location on the primary approach road to the Tomaree Peninsula and the importance of the Airport and its surroundings as the gateway for many visitors to the Port Stephens destination area.

The Draft DCP addresses only the area within the DAREZ Strategic Planning Zone. TRRA is concerned about the creeping commercial development on rural zoned land adjoining DAREZ, particularly in the vicinity of the intersection of Nelson Bay Road and Cabbage Tree Road/ Lavis Lane. Commercial development in the vicinity of the airport can also potentially be in competition with businesses, and opportunities, in existing local centres, and if not carefully controlled could undermine the overall policy of strengthening designated local centres.

We submit that there should be some area specific provisions in the DCP aimed at better controls on this highly visible precinct pending further strategic planning to determine acceptable developments and controls in this locality.

#### **Glossary**

**“environmentally sensitive area”** means an area deemed to have significant environmental value by Council, including such areas as terrestrial biodiversity, riparian corridors or wildlife corridors”

How does Council so deem? We submit that this definition is too subjective. It is also unclear how the term **environmentally sensitive area** relates to the concept of **environmental significance** referenced in section B2.1 – ‘developments on land or in proximity to items of **environmental significance**. such as threatened species or communities, listed migratory species, wildlife corridors, wetlands or riparian corridors.’ )

We submit that the DCP needs to more clearly define these terms and explain how do they work together.

**“merit-based”** approach is the means of achieving an objective based on the desired outcome, rather than specific numerical standards”

There are frequent references to a ‘merit based’ approach throughout the Draft DCP. We have already commented on this above under the heading ‘Status and significance of the DCP’. We seek clarification as to whether ‘merit based approach’ is language that Council has chosen to include or if it is required/defined in the Act or another planning instrument?

## **Other matters**

### **Ground level calculations**

This has been a matter for contention in the past, with differing interpretations of where on a site height limits should be measured from. We submit that the DCP should be very clear about this matter.

### **Inappropriate uses on land zoned Rural**

We acknowledge some improvement in the LEP, but we submit that the DCP should make it more difficult to obtain approvals for developments which are clearly not consistent with the zone objective of maintaining the predominantly rural character of the area. We would hope that the clear intention of the LEP in this respect will override any 'exceptions' in the DCP, but seek re-assurance that the DCP will not facilitate the sort of 'abuses' of rural zoning that have been all too common in Port Stephens in the recent past.

### **Site Maintenance**

Nelson Bay has many sites with stalled or failed developments which are eyesores detracting from the ambience of our tourist destination. The half-built Birubi Beach Resort in the sand dunes at Anna Bay – now largely derelict and a major eyesore - is another example. We submit that the DCP should seek to address the issue of site maintenance - Council has previously advised that our suggestion of 'bonds' cannot be implemented, but we hope that DCP provisions could make it possible to impose maintenance/clean-up conditions in Development Consents.

Thank you in advance for your consideration of the above issues – we look forward to seeing them either addressed in the final DCP or justification provided for no change.

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