



11 January 2017

The General Manager  
Port Stephens Council

Attn: Sam Harvey

[council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

## **Subject: DA 2016-856 – 17 unit apartment building, 65-67 Donald St, Nelson Bay - Objection**

Tomaree Ratepayers and Residents Association Inc. (TRRA) submits that approval of this DA, which exceeds the applicable height limit by 4.2 metres, would be inappropriate given the current stage of strategic planning for the Nelson Bay town centre.

We hope that the applicant would be willing to defer their application until at least the conclusion of the current review of the Nelson Bay Strategy. We recommend deferral<sup>1</sup> rather than refusal, but if this is not possible, refusal is the only other acceptable outcome at this time.

A review of the 2012 Nelson Bay Strategy is currently under way with a Discussion Paper currently on public exhibition. We note that the current Strategy, adopted by Council in 2012, is non-binding guidance, and that Council declined the opportunity to implement many of its recommendations in the formal planning instruments which were revised after that date – the LEP in 2013 and the DCP in 2014.

Height limits in particular were not changed in the LEP, despite the Strategy concluding that some variation was appropriate. This DA must therefore be assessed primarily against the development standards set out in the LEP and DCP (and any relevant SEPP). The LEP height limit for this site is 15 metres and the proposed development reaches 19.2 metres in places with the entire roof top at 17.4 metres.

---

<sup>1</sup> We note that there appear to be precedents for deferring approval – we understand approval of the Tourist Facility at 21 Cabbage Tree Rd, Williamstown, opposite McDonalds (DA 16-2013-275) was held up until results from the Williamstown Flood Study were available - submissions closed 13/6/13, but the DA was not approved until 10/11/14 some 17 months later.



## ***Development is welcome in principle***

While we oppose approval of this DA at this time, TRRA welcomes proposals for development on any the vacant sites in the Nelson Bay Town Centre, provided it meets community expectations.

We accept that there is a long-standing need for property development investment in the Nelson Bay town centre, and that the numerous vacant sites, of which this is one, badly need development if the town is to emerge from a long period of under-activity. However, TRRA believes that the community should not accept developments that significantly depart from agreed development standards just because applicants assert that their proposals need to be of a particular size and character to be commercially viable.

We support the objective of achieving more permanent residential occupancy in the town centre, but note that there appear to be no 'levers' available to Council to ensure this outcome – most apartments are either holiday lets or remain vacant for most of the year, and occupancy rates for most apartment buildings remain very low.

The current review of the Nelson Bay Strategy provides an appropriate forum for evidence to be put forward to support changes from the current approved standards.

In the case of Nelson Bay, there appears to be a general consensus, expressed in the 2012 Strategy, that building height is a critical factor in the character of the town, set in a natural amphitheatre surrounded by wooded hills. This character contributes to its attraction as a tourist destination – its main economic base – as well as to the amenity enjoyed by permanent residents of the Tomaree peninsula.

## ***Detailed comments***

We are disappointed by the Statement of Environmental Effects (SEE) which in places reads more like a sales brochure than a professional justification.

In particular, we are surprised that the SEE makes no reference to the 2012 Strategy, and does not seek to use the height related content of that Strategy to support the case for exceeding the current LEP height limit. While not persuasive (it is only non-binding guidance) the proposal in the Strategy for extra height in exchange for 'outstanding design excellence' and 'strategic public benefit' would have been relevant.

We can only conclude either that the applicant does not see their development as meeting these criteria, or that they do not see any need to make a strong case for exceeding the height limit.

The SEE asserts (in 1.2) that 'There is nothing in the Port Stephens LEP (2013) or DCP (2014) that prohibits the proposed development.'

We challenge that assertion, which is disingenuous – it relies on the provision in clause 4.6 of the LEP that allows the consent authority to approve variations to development standards. In that sense *nothing* is 'prohibited' – but exceeding the very clear limits in the height of building maps is nevertheless 'prima facie' not permitted.

The SEE states that 'whilst the height exceeds the required height stated in the LEP, it too is suitable in the immediate context' (page 20), and asserts that 'there is no public benefit in upholding the maximum building height in this instance' (page 22)

We submit that these are subjective judgements. Once the review of the Nelson Bay Strategy is complete, and a community consensus arrived at in relation to height of buildings, we might well agree that height of more than 15 metres on this site is acceptable. However, we consider any such judgement to be premature pending the outcome of the Review.

The SEE also asserts that 'The proposed residential flat building is considered appropriate in density and in keeping with Council's vision for future residential growth in the area.' (page 11)

Again, this is a subjective judgment but we also find it odd that reference is made to Council's 'vision' without any reference to the adopted 2012 Nelson Bay Strategy. In relation to density, the SEE gives no figures (such as Floor space ratios (FSRs)) that would allow comparison with other existing or proposed buildings. While the current LEP does not contain FSR limits, they are a useful illustration of density, and are a governmental and planning assessment control that is widely used in higher density communities to ensure Council can protect continuing public amenity that can easily be lost without such a measure. The FSR for this development should be clearly stated, and we recommend also be assessed against similar local government standards.

We note that the SEE makes reference to an existing approval for development on this site, asserted to be 'of similar bulk and scale' (p.20) and seeks to make favourable comparisons between the current proposal and this prior approval. We can find no detail of prior approval (the DA Tracker normally shows any 'related applications' but does not do so in this case) and we are therefore unable to comment on the comparisons. This DA should in any case be judged against current development standards and the planning context of the town centre.

## ***Conclusion***

TRRA is not unsympathetic to the proposed development but submits that approval, exercising the discretion available under Clause 4.6 of the LEP to allow height well over the current limit, would be premature and inappropriate.

**Nigel Waters**  
**Convenor, Planning Committee**  
**Tomaree Ratepayers & Residents Association Inc.**

0407 230 342 [planning@trra.com.au](mailto:planning@trra.com.au)

