

Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program, December 2017 - an initial critique

Tomaree Ratepayers and Residents Association Inc. December 2017

The document *Draft Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program* – a.k.a. ‘the draft delivery program’ and endorsed by Council on 12 December (vote 6:3) to be placed on exhibition, is in our considered view, **incoherent, not fit for purpose, and contains inaccurate and misleading material**. We will demonstrate in the following commentary on the report as tabled that its public exhibition has potential to damage the reputation of Port Stephens Council. We urge Council to read our critique carefully and to engage with TRRA and other stakeholders in discussions on what action is necessary to rectify the situation.

What is being changed?

It is unclear what parts of the document are ‘content’ as opposed to ‘commentary’ and what relationship the content parts bear to the adopted 2012 Strategy. It appears (although it is not clear) that no change is proposed to the adopted Strategy itself, although this would mean major inconsistencies.

The ‘content’ appears to be mostly in Part 2 – the table on page 8 compares it with equivalent content in the adopted Strategy. ie. **To what extent is the new content supposed to *replace* parts of the Strategy and if so how?**

Large sections of the adopted 2012 Strategy are not mentioned in the ‘draft delivery program’ – are they to remain unchanged?

What happens to the Recommendations chapter, with its 10 Principles, each with recommendations and proposed implementation actions, when many of these are affected by the radical new Strategy of the ‘draft delivery program’?

Overall, it is unclear what will emerge from the end of this Review Process other than some amendments to the LEP and DCP, an Implementation Plan (draft at Attachment 1), an Implementation Panel and a citizens jury on traffic and parking. Will there still be a ‘Strategy’ document and what will be its status?

Part One of the ‘draft delivery program’ explains the Review and states (at p10) that the entire document ‘represents’ (or is?) a revised implementation and delivery program whose role is to ‘update and set the implementation program for the Strategy’ It states that ‘It replaces the ‘... [2012] Improvement Program, and overrides the Strategy where any inconsistencies occur’.

Given that there would be major inconsistencies, it is unclear whether there would any longer be ‘a Strategy’, as illustrated in the diagram on p11, in any meaningful sense or useful form.

Inaccurate or misleading content

In the 'draft delivery program' document, there are some significant inaccuracies, and material which is misleading and/or biased/selective. There are at least 10 major false assertions:

False assertion 1. The assertion in various places that the 2012 Strategy is unchanged, and that only a revised implementation and delivery program is proposed: '*...just a few minor, yet significant changes ...*' (p5)

This is NOT true:

The 2012 strategy included the following statements and recommendations:

- Limitation of building heights is clearly a key element of the 2012 Strategy
 - *'It is critical that the wooded ridge and headlands that surround the Bay be visible and not eclipsed by buildings'* (p6)
 - *'A significant factor in managing perceptions of the intensity of development is building height'* (p60)
 - The Strategy retained a default 5 storey (17.5m) height limit for the town centre, with provision for up to 2 extra storeys (to 24.5m) but only where a developer could demonstrate **outstanding design excellence AND strategic public benefit**
- The 'delivery program' proposes lifting the default height limit from 7 to 10 storeys (35m) with a variation policy that allows 10% increase without even internal review, and places **no maximum** heights and **no criteria for approval of variations** other than a vague reference to 'achieving the environmental planning objectives'. **(The default limit in the 2012 Strategy was 5, not 7 storeys-see detailed comment in Assertion 3 below)**
- Any objective assessment would conclude that the proposal is for a **radically different new Strategy**

False assertion 2. The repeated assertion that the proposals are a response to submissions received and consistent with community views.

This is NOT true:

- The document itself confirms continued support in submissions for the revised height limits adopted, by consensus, in 2012:
 - *'The desire to keep the unique coastal village and 'natural amphitheatre' character was also reinforced'* (p9)
 - *'.. the vast majority was against any significant increase [in height]'* (p9)
 - *'.. clear consensus that building heights should follow the natural slope of the land and view corridors should be preserved'* (p9)
 - *'...continually reinforced that they supported the existing Strategy'* (p10)
- No reference is made to the public forum organised by TRRA on 21 February 2017, attended by over 200 people, at which Council's strategic planners presented on the Strategy Review and took questions. The overwhelming view of that forum was opposition to significant increases in height
- No reference is made to the Tomaree Business Chamber meeting also in February, and also addressed by a Council strategic planner, where the prevailing view was again opposed to high rise in the town centre.
- Instead, the document cites submissions received in support of a single DA, for a 32m apartment building at 11-13 Church St, as *'an extraordinary indication for support for increased heights where good design outcomes can be achieved'*. It is a travesty to put this forward as an 'equivalent' to the broad-based opposition to high rise, for several reasons:
 - Council knows very well that most of these 'submissions' were solicited by the developer at a stall offering 'virtual reality' tours of the building.
 - Many of the individuals filling in the proforma submissions would not have been aware of the height of the proposed building or the context, and it is not known how many were even local residents. They were expressing a view on the apartments as presented to them, not on an overall height limit for Nelson Bay.
 - Council ignored the opinion of an independent design panel which criticised the design.
- The 71 page Submissions Table presented to Council on 12 December does not clearly convey the overwhelming sentiment of opposition to high rise buildings. It is not until a close reading of the 'summaries' of the 82 submissions that the full strength of this opposition becomes clear, and the 'Council responses' are unconvincing, often not even addressing the substance of the submissions.
- The document cites the results of the 2012 survey (of residents, businesses and visitors) which identified that: **'managing building heights was one of the most pressing issues facing the town and that there was a clear consensus that building heights should follow the natural slope of the land and view corridors should be preserved'** (Hunter Valley Research Foundation 2012) (p19).
- No new evidence has been presented to doubt that there remains the clear consensus in favour of revised, but still strict height limits as adopted in the 2012 Strategy (but not implemented by Council).

False assertion 3. The assertion in various places that the proposed 35m (10 storey) height limit throughout most of the town centre is only a 3 storey (10.5m) increase over the heights adopted in the current Strategy (e.g. p25, and Summary of Submissions Table - Council response 1b).

This is NOT true:

- The 2012 Strategy only allowed for up to 2 extra storeys (7m) in exceptional cases, subject to strict criteria – see False assertion 7. below.
- It is wholly inaccurate to claim, as Council planners have been doing throughout the review, that the community has already accepted 7 storeys (24.5m) as a ‘default’ height limit.
- A 7-storey default height limit **has definitely not yet been agreed.**

False assertion 4. The assertion that the proposed floor space ratio (FSR) of 3.0:1 for the whole of Areas C & D is only an increase from an already agreed FSR of 2.5:1 (Figure 12 p26)

This is NOT true:

- As with heights, this is an attempt to ‘verbal’ the community into accepting that an FSR of 2.5:1 has already been accepted for the entire town centre, when it has not
- The 2012 Strategy allowed for up to 2.5:1 FSR only for developments that could demonstrate ‘outstanding design excellence’ *and* ‘significant public benefit’, as part of an agreed variation policy (p65) + the possibility of an additional 0.5:1 (an FSR of 3.0:1) for 4 specific designated ‘opportunity sites’
- Moreover the Strategy stated that ‘*Urban design analysis ... confirmed that [a maximum FSR of 1.8:1, already in the DCP] is an appropriate level of building bulk for the Nelson Bay Town Centre*’ (p64) (although the final draft slipped in 2.0:1 for ‘simplification’).
- Whichever way the 2012 Strategy is read, the agreed and adopted ‘default’ FSR was no more than 2.1:1, and Figure 12 is clearly incorrect in stating 2.5:1

False assertion 5. The repeated assertion that economic modelling supports the new height limits.

This is NOT true:

- Council planners have drawn highly selective and self-serving conclusions from the consultants’ report
- The assumptions and inputs to the modelling are questionable (see the attachment ‘Comments on Hill PDA and EPS Reports’ to our submission dated 13 March 2017)
- Despite the limitations of the feasibility assessment, the graph on p24 clearly shows the maximum profit margin for development on 4 of the 5 identified sites at a height of 8 storeys, with the fifth site requiring 17 stores to achieve more than 10% profit
- The draft delivery program reports that ‘a minimum of eight storeys was required to provide confidence for investment’ (p26) and that ‘the feasibility analysis has indicated the need for a minimum of 8 storeys to see redevelopment occur’ (p30)
- Given these findings, what is the basis for a recommendation of a default 10 storey height limit (but then allowance for unlimited variation) throughout the town centre that includes these 5 sites?
- Given Council’s acknowledgement that ‘*construction costs significantly increase from a level of eight storeys due to the need for increased structural materials and regulations, such as*

fire sprinklers...' (p23), setting a height limit *above* 8 storeys will necessarily result in developers seeking significantly higher buildings to recoup the extra costs.

False assertion 6. The assertion that the current height limits are the reason for the lack of investment in the town centre (p24)

This is unsupported and arguable

- The comparison with other towns is selective and has been misinterpreted – the graph on p24 shows median unit prices in Nelson Bay trending overall on a par with Forster (which **has** allowed high rise) over the last 20 years with Kiama (which **has not** – it has an 11m limit) following a similar trend over the same period from a higher base.
- The lack of investment is largely the result of the overall economic cycle in many coastal towns – Council has not pointed to any comparable town that has allowed high rise buildings that has performed significantly better
- The lack of investment may also have been influenced by Nelson Bay's unfortunate reputation for a high mortgage default rate – a legacy of the last round of approvals by Council of sub-standard apartments
- Developers will have understandably held off in anticipation of Council relaxing height and bulk controls, as it is now attempting to do
- There is recent evidence of renewed interest in town centre development in Nelson Bay town centre ***at heights in line with community expectations and the 2012 Strategy***: approvals for a 6 storey apartment building at 65-67 Donald St (6 storey) 64 Dowling St (5 storey) 53 Magnus St (5 storey) and 90 Magnus St (4 storey), and applications pending for 16 Church St (3 storey), 20 Government Road (4 storey) and the former Bunnings site
- In contrast, the development approved for the Marina Resort, 29-33 Magnus St in 2014/15 has ***not commenced despite having obtained a +46% height variation***, and we have yet to see the commencement of work on the much vaunted 'flagship' for the 'lift the lid' strategy at 11-13 Church St, which will be 32.5 m high - equivalent to 10 storeys – a 100% variation.
- We understand that sales of units in buildings that have exceeded the current height limits (including several in Nelson Bay and at Bullecourt Avenue Shoal Bay) remain very slow.

False assertion 7. The claim that the proposed new LEP Clause 4.6 Variation Policy incorporates the safeguards for variations in the 2012 Strategy, or otherwise provides safeguards against excessive height (pp7, 31), and that it is all that is permitted under the State planning law (public statements by the Mayor and Council staff).

This is NOT true:

- The variation policy does not even attempt to limit the extent of any variation (e.g. by percentage, or significance criteria). Far from being an 'innovative solution to mitigate perceived impacts' (p28) it is in effect an open licence for increased height and bulk
- The criteria of 'outstanding design excellence' and 'significant public benefit' have been abandoned and are not even mentioned (except to incorrectly state that they were *alternative* criteria in the 2012 Strategy (p29) when they were in fact cumulative; i.e. both criteria had to be met).

- While an independent urban design panel is still proposed, it is not linked to variation applications, and in any case Council has already shown in the 2017 approvals of 11-13 Church St and 65-67 Donald St that it can and does ignore the opinions of such a panel.
- Variations of up to 10% are virtually assured with not even peer review within Council for any variation less than 10%
- Versions of Clause 4.6 and supporting policies adopted by other Councils in NSW are much stricter, and while developers can and do appeal against implementation of strict height and bulk limits, those that have been successful are generally in the range of 20-30% variations (c.f. Port Stephens Council precedent setting 2017 approval of a 100% variation at 11-13 Church St)
- The proposed policy is so weak that it invites unlimited variation applications, and it would be very difficult to defend any refusals.
- The paper (and Council spokespersons) have been critical of predictions of up to 21 storey buildings as alarmist and unhelpful, yet Council has admitted discussing such heights with potential developers of the Council owned car park sites, and Council has not denied that the proposed variation policy would potentially allow such heights.

False assertion 8. The assumption that the Hunter Regional Plan's identification of Nelson Bay as a 'strategic centre' with opportunities for high-density development necessarily involves a significant increase in new dwellings in the town centre, and that allowing higher buildings is the only alternative to greenfield development (p26, and public statements by the Mayor, some Councillors and Council staff).

This is NOT true:

- No figures for expected population growth are provided to support the radical intensification of apartment building
- The modest predicted growth for the *entire* Tomaree peninsula can be readily accommodated by infill in existing residential areas (a clear market trend) and the substantial increase in town centre density that would be allowed by the 5-7 storey consensus already adopted in 2012 but never actively promoted or implemented by Council

False assertion 9. The assumption that tower apartments buildings will lead to an increase in permanent residency

This is unsupported and arguable

- Council appears to have no control levers to ensure that approved apartments are permanently occupied rather than rented short term
- Census statistics (ABS 2011) and local market surveys suggest that up to 75% of most existing apartments are not permanently occupied
- Local real estate agents report that there is limited demand for the sort of units being proposed, and that mostly from out of town investors intending to put them on the holiday rental market
- The proposed lifting of height and FSR limits represents a wishful thinking 'build it and they will come' approach which relies on hope rather than any evidence or sound strategy

False assertion 10. The repeated assertion that the revised delivery program will deliver quality design (pp 13-17, 29, 31)

This is unsupported and highly contestable, based on Council's track record

- References to design quality are mostly to existing or well established contemporary standards which should be a 'best practice' requirement of any new development
- The document is highly negative about the prospect of securing buildings that are of architectural significance (p30) – while no-one realistically expects to secure a Sydney Opera House or Federation Square in Nelson Bay, the lengthy dismissal of any aspiration is indicative of a defeatist attitude that will settle for second rate design
- The Tomaree Peninsula has outstanding natural attributes which are recognised as having significant potential to further develop its tourist destination status. Such locations have the capacity to attract quality design in resorts and other tourist related facilities such as convention and interpretive centres and galleries
- The '... commitment to the Lower Hunter Urban Design Awards' (p29) is worthless without some mandatory quality requirements
- Council has referred some recent DAs to an independent design panel, but in the recent 'precedent setting' case of 11-13 Church St, and in relation to 65-67 Donald St, the panel's criticism of the designs was largely ignored, with only a few minor design changes negotiated
- Given the admission that reference to a design panel costs applicants \$3000 and adds an estimated 30 days to processing times (p16), it must be questioned why Council is making these referrals but then largely dismissing the panels' views
- The community can have no confidence that Council is serious about requiring design excellence, especially as a condition of any variation approval – as the words 'design' and 'quality' do not even appear in the proposed LEP Clause 4.6 Policy

Basic factual errors

There are a number of factual errors in the 'draft delivery program'. There is presumably an opportunity to fix these before the document is formally put on exhibition and we look forward to this being done.

- Figure 12 on page 26 states that Area E (the area to the NE of the town centre extending out along the Magnus St ridgeline) currently has a 2 storey (8m) height limit. This is incorrect – the Height of Building map 005D in the PSLEP 2013 shows this area, along with the rest of the town centre (Area C in the new delivery program) having a height limit of 15m (the 'old' 5 storey height)
- We have already noted above that the document incorrectly states that the two criteria for 'extra height' in the 2012 Strategy were *alternative* criteria (p29) when they were in fact cumulative; i.e. *both* criteria had to be met. The word 'or' should be replaced by 'and'
- We suggest that it is inaccurate and misleading to refer on page 5 to the {Review Discussion} Paper as having 'recently' come off public exhibition when the consultation period closed in March 2017, which will be nearly 12 months prior to the formal release of this document

Conclusion

The document *Draft Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program* – a.k.a. ‘the draft delivery program’ and endorsed by Council to be placed on exhibition is not fit for that purpose and cannot form the basis of further consultation on the Strategy without major changes.

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December 2017

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	Draft Delivery Program, December 2017	Adopted Strategy, 2012
Design Excellence	Section 2.1	Analysis p64 + Principles 1.1, 5.2, 6.4, 8.1
Building Heights	Section 2.2	Analysis pp 60-61 + Principles 8.1-8.3 & 10
Development Incentives	Section 2.3	Analysis p64-67 + Principles 1.1 & 8.1
Public Domain	Section 2.4	Analysis pp 56-57 + Principles 6.1-6.2 & 7, 8.4
Transport and Parking	Section 2.5	Analysis pp 34-38 + Principles 2 & 3
Implementation and Delivery	Section 2.6 + Attachment 1	Section 10, pp 87-89 + Appendix 3
Providing for Variation	Separate proposed policy attached to Council report	Analysis p65 + ‘Opportunity sites’ pp 66-67 + Appendix 2 1.4 (pp 98c-98d)
Next Steps	Part 3	Section 10, p 87-90 + Appendix 3 Table pp 99-116
Implementation Plan	Attachment 1	Separate document ‘Improvement Program’