



Mr Peter Gesling  
General Manager  
Port Stephens Council

Your reference: 16-2010-680-1

23 November 2010

Dear Sir,

**SUBMISSION: DA 2010/680 Marina Resort Development – Proposed  
Tourist Facility**

I attach a submission on the above DA.

Please acknowledge receipt.

Yours faithfully,

Robert Young  
Chairman  
Tomaree Ratepayers and Residents Association  
[chairman@tra.com.au](mailto:chairman@tra.com.au)



## **SUBMISSION: DA 2010/680 Marina Resort Development – Proposed Tourist Facility**

**23 November 2010**

In principle, TRRA welcomes the re-development of this site, as we agree with the applicant that the present building is not visually attractive. However, we are concerned that the proposal for three towers of 8 (x2) and 9 (x1) levels above a two level podium (i.e. a maximum 11 storey building) is an overdevelopment of the site and unacceptable in its visual impact on this ridge to the north east of the natural bowl or 'amphitheatre' housing the town centre – a ridge which has critical landscape value in the context of the Nelson Bay town as a whole.

We have reviewed the Statement of Environmental Effects (SEE) and Appendices, but find that they are highly selective, and inconsistent, in their citation of various planning instruments and other documents which need to be considered by the Council in its assessment and by the Panel in its decision on the DA.

The SEE asserts that the proposed development is 'not significantly different' in scale from the existing approval (p.33). We submit that this is incorrect and misleading – this DA allows for up to 155 units in one of the alternative configurations, compared to only 84 in the approved DA – nearly double – this obviously has significant implications, particularly for traffic and parking, which we address later. The SEE clearly states that the maximum height of the proposed development is RL 56.5 metres AHD compared to 37.6 metres under the approved DA (50% higher), and that the Floor Space ratio would be 1.867:1 (including the proposed hotel school) compared to 1.645:1 for the approved DA.

By any standard, the proposed development must be considered significantly different from the approved DA.

### **State Environmental Planning Policy (SEPP) (Major Developments) 2005**

The SEE contends that the DA does not fall under the provisions of Pt3A of the EPA Act 1979 because it does not meet the criteria set out in the Major Developments SEPP, Schedule 1, Clause 17, for 'Tourist, Convention and Entertainment Facilities' to be dealt with under Part 3A. We take as factually correct the assertion that the project does not meet any of the three criteria, although the subject site must be only marginally outside the definition of a 'sensitive coastal location' – we assume that Council has confirmed that this is the case.

The SEE concedes that the DA is subject to Part 3A because it has an investment value of more than \$10 million and is within the coastal zone (Major Developments SEPP, Schedule 1, Clause 13B(1)(a)) but then argues that Cl 13C(b) takes it out of Part 3A because even though it is within the coastal zone and is more than 13 m in height, it complies with all Council development standards. However this so-called compliance is only because there are *no* standards in the PS LEP 2000 applying to 'tourist facilities'.

This claim exposes a major loophole in the regulatory structure which this application seeks unreasonably to exploit. The absence of any reference to 'tourist facilities' in relevant parts of the PS LEP 2000 and in the PS DCP 2007 is used to argue that controls which would apply to other types of development are not applicable. We submit that those controls, where obviously relevant, should be applied 'by analogy'. It would for instance be negligent for a consent authority to ignore height or FSR controls that would apply to a residential apartment building simply because the development has been 'packaged' as a tourist development.

The application and SEE make it clear that most of the accommodation units in the proposed buildings have been designed either to be occupied on short stay holiday lets or for more permanent occupancy, depending on the market from time to time. While we have no objection in principle to this flexibility, it should mean that the DA is subject to the relevant controls for residential apartments.

Assessment as residential apartments would also be consistent with the zoning of the subject land as 2C Residential. The SEE argues that because the height and FSR limits in the PS LEP 2000 applicable to 2C Residential zones do not apply because the DA is for a 'tourist facility'. Clause 44 of the PS LEP 2000 imposes a height limit of 15 metres above ground level on residential flat buildings and this is supported by Development Control in section B8 of the PS DCP 2007. We are unclear as to the basis of the SEE's claim that these controls do not apply. We submit that the relevant height and FSR limits should apply to this DA, which is in effect providing residential apartments, albeit packaged with other elements as a commercial or mixed use tourist facility.

(see further under the DCP discussion below).

## **SEPP 71 – Coastal Protection**

The SEE argues that the only matters for consideration under Clause 8 of SEPP 71 are 'general suitability' and 'scenic qualities'. We submit that these are very significant considerations in this case. The SEE addresses them on page 21 where it asserts that the proposed buildings would 'sit below the surrounding treed hills'. We contest this assertion – the three towers would clearly protrude well above the level of the immediate surrounding topography. The SEE notes that the existing Landmark development (to the south of the Nelson Bay Town Centre) has a height of RL 60 metres, compared to the proposed central tower in this DA of RL 56.5. However, the Landmark sits against a higher treed hill, whereas the proposed towers on this site would protrude above the ridge and its natural tree canopy height.

The height issue is of particular concern in relation to the views to the south from the waters of Port Stephens (and from the Nelson Bay foreshore). The visual appearance of development on the southern shore of Port Stephens is a crucial importance to the unique character of the Tomaree Peninsula as a residential and tourist destination. The predominantly low rise built form and 'treed' skyline as viewed from the Port is an essential component of what distinguishes the area from most other NSW coastal towns. The Shoal Bay resort, approved and built within the last decade, pushed at the boundaries, but arguably retained the essential character of building heights that are subservient to the natural landscape. This critical local identity is also at issue in relation to the current DA for the redevelopment of the Salamander Shores hotel on Soldiers Point, and in the current process of concept planning for the Nelson Bay foreshore being conducted by the LPA and Ardent Leisure.

Allowing high rise development that breaches the skyline, as this proposal would do, would be incompatible with the vision for the future of the peninsula held by many in the community. It would also create an undesirable precedent which would make it more difficult to resist future DAs for high buildings. We note that the Minister only recently moved to limit the height of any redevelopment of the Nelson Bay Diggers Club, only a kilometre to the northeast of the subject site. Even though this was a less sensitive site in landscape terms, the Minister nevertheless responded robustly to community concerns about inappropriate building height.

While the views from the north and west are of widespread community concern, consideration should also be given to the visual impact of the proposal as seen from the east and south. Many of the residential properties both on the Lagoons estate and on the Seabreeze estate to the east would be significantly affected by the visual impact of the proposed towers. While some of these are already overlooked by the current ugly Marina resort building, many more would be able to see the proposed new towers.

We note that the photomontage of the view from the southeast in the Visual Analysis appendix to the SEE only shows the 'approved DA' and not the proposed towers (and is in any case incorrectly captioned (and referred to in paragraph 13) as from Donald St - it is in fact shown from Dowling St). This selective use of images can be expected to unfairly influence interested parties to prefer the un-shown towers to the illustrated alternative. It is arguably non-compliant with Development Control B4.C4 in the PS DCP 2007. We also note that the applicant has apparently provided scale models (SEE p.24) but that these were not put on public exhibition, even though they would have been invaluable to interested parties seeking to assess the visual impact of the DA.

## Port Stephens Local Environment Plan (LEP) 2000 and other Port Stephens specific planning instruments

The site is located in an area zoned as 2C Residential under the PS LEP 2000. We firstly question why the proposed combination of accommodation units, restaurant and bar, conference facilities and hotel school does not amount to either a 'hotel' or 'commercial premises', both of which are expressly prohibited in a 2C zone. The SEE argues that the proposed facility would not be a 'hotel' as defined in the PS LEP 2000 because it would not be subject to a hoteliers licence under the Liquor Act 1982. We question whether this is the only meaning of 'hotel' relevant to the LEP. Even if it is, can the categorisation reasonably be considered permanent, and guaranteed to be the case in future – what is to stop future applications for a hotelier's licence? If one was granted subsequently, would this not mean in effect that the express policy of excluding hotels from 2C Residential zones would have been circumvented? If the possibility exists of it obtaining such a licence, then it should be treated as a hotel for the purposes of assessment against the LEP.

We have already made submissions above in relation to the major problem created by the apparent failure of the LEP and DCPs to provide for tourist facilities within 2C Residential zones.

The SEE argues that the DA is not subject to either Part B4 (Commercial and Mixed Use Buildings) or Part 8 (Residential Flat Buildings) of the PS DCP 2007, even though it clearly includes elements of both. We submit that it surely cannot be the case that tourist facilities are inadvertently excluded from any of the DCP controls? Part B8 of the DCP clearly states that '**This part also applies to tourist facilities and the residential component of mixed-use buildings**', and we are therefore unclear why the controls in this Part, including on heights in B8.8, do not apply (This part of the SEE is poorly argued and confusing).

The SEE makes frequent reference to the *Draft Nelson Bay 2030 Strategy and Town Centre Urban Design Guidelines*. In this respect, we firstly note that this document has no formal status, being only a 2009 (Patrick Partners) consultant's report which contained many controversial recommendations, from some of which the Council has already publicly distanced itself – the planning process for Nelson Bay has moved on to another stage with the adoption by Council of planning principles for the town centre (strangely not referred to in the SEE).

We secondly note that the SEE refers selectively to those recommendations in the Patrick Partners' report which it considers supports the proposal, but also correctly points out that the applicant's site falls outside the area covered by the Draft Strategy (and also by the current Part C4 of the DCP applying to the Nelson Bay Town Centre) when it considers anything in those documents might conflict with the proposal.

We accept that some of the issues raised in the town centre planning process are directly relevant (although not formally binding). Specifically, the issue of building height in relation to the topography is particularly sensitive in Nelson Bay where most of the community want to see building heights contained to no higher than an average height of the tree canopy on surrounding hills and ridges, as viewed from the waters of Port Stephens to the north.

The SEE cites the Patrick Partner's report recommendation that taller buildings (than 5 storeys) be allowed 'higher up the slope to improve view sharing' (SEE page 16). We submit that even if this recommendation had formal status, it would not be relevant to the subject site, which is not within the natural bowl housing the town centre. Similarly, the SEE asserts, with reference to the Draft Strategy, that it would be 'quite reasonable to expect development (of greater than 5 storeys) along the ridge line' (p.7). We submit that again, even if the Strategy had formal status, this assertion does not logically follow.

The *Nelson Bay Policy for Future Development of the Town Centre and Foreshore Strategic Planning Principles* adopted by Port Stephens Council in August 2010 include, in relation to Building heights, Principle 10 – Action:

- Promote low to mid-rise buildings uniformly across the town centre with the potential for additional height if needed at the upper levels of the town centre so as not to block views.
- Additional height may be considered at the southern edge of town shielded by the backdrop of Kunara Hill.

To the extent that these Principles are relevant at all (they certainly have more formal status than the Patrick Partners report) they do not support arguments in the SEE for the increased height in the proposed

development. Rather they confirm the community's desire for buildings in and around the town centre to 'fit' into the natural landscape.

## **Traffic & Parking**

As already noted above, the DA would allow for up to 155 separate accommodation units, nearly double the number in the already approved DA, and many more than the current building. While the DA includes 299 car parking spaces in two basement levels, this is unlikely to meet the peak demand when the accommodation is full, the restaurant and bars open and the hotel school in operation, and there is likely to be an overspill of parking onto both sides of Magnus St.

The very significant difference in scale from the existing resort will clearly lead to a significant increase in traffic movements to and from the development. The site is close to a dangerous 'blind' corner towards the town centre and the intersection with Donald St.

Consideration should be given by the consent authority to the implications of the proposed development for traffic and off-site parking, in the context of the PS DCP 2007 Parts B3 and B8.19, and answers provided to how these implications will be addressed – either by the developer and/or by Council.

## **Advertising Signs**

The SEE states that a separate application will be made for advertising signage at a later stage (p.15). We submit that this is not good enough – assessment of proposed advertising on such a prominent structure must form part of the main DA process. This is particularly relevant as the existing marina resort building has a very large and visually intrusive illuminated sign on the roof. Interested parties need to be aware of what signage is proposed so that they can comment accordingly.