



DA 16-2018-386-1: 35-39 Donald St & 1 Yacaaba St, Nelson Bay – 60 unit apartment building - Objection to Revised DA, November 2018

Contents

Summary	1
Changes since original DA	1
Applicant's justification for major height variation	2
Design Panel.....	5
Other matters	6
Conclusion.....	6

Summary

Objection: TRRA Inc. (TRRA), on behalf of our members and the wider community, strongly objects to this DA on the grounds that the height and bulk of the proposed building are excessive and inconsistent with the planning framework and standards. The height (33.5 metres) is not only more than twice the current (15 metre) LEP height limit but is 20% higher than even the revised 28 metre height limit for the site recently adopted by Council (but not yet in force). Given the strength of opposition in the community to high rise development, it would be totally unacceptable for Council to approve a building significantly higher than 28 metres.

Changes since original DA

TRRA made a detailed submission, objecting to this proposed development, when it was first advertised in July 2018. We note that more than 60 other submissions were received, the vast majority of them objecting to the development, and mostly on grounds of excessive height and bulk.



We have been assured in writing that given the similarity of the revised and original proposals, Council will treat all earlier submissions as applying, where relevant, to the revised proposal on exhibition between 8 and 22/23 November (different closing dates in different communications).

Most of the points made in our July 2018 submission remain valid, and we therefore only comment in this objection on changes, and we expect Council to have regard to our previous detailed submissions to the extent that they remain relevant (and most do).

The proposed changes are relatively minor, but there has also been a significant change in the planning context following the adoption of a revised Delivery Program (DP) for the Nelson Bay Town Centre and Foreshore Strategy by Council on 25 September 2018. While the necessary changes to the LEP and DCP to give effect to the DP will not be put forward until sometime in 2019, TRRA accepts that the DP as adopted is a relevant consideration for the assessment, and we note that the applicant has referred to it in their revised Clause 4.6 (Variation) justification.

The applicant has proposed some minor modifications to the design of the proposed building, but the overall height and bulk remain largely unchanged. However, while the original application was made in the context of the then proposed 10 storey (35m) height limit and FSR of 3:1 for the entire town centre including the site in question, the new context is an adopted height limit for this site of 8 storeys, with sites on the opposite side of Yacaaba St now retaining a 5 storey limit and a reduced FSR of 2.5:1. This changed context is very significant in relation to the applicant's unchanged application for a 10 storey building, as we discuss in more detail below.

In our first submission we noted concern by the owners at 3 Yacaaba St in regard to the proposed excavation of what appears the entire site to the boundaries, coupled with the interference with the water table, possible Acid Sulfate Soils, and the sand profiles. We also commented:

'the volume of soil required to be extracted is highly significant as is the method of extraction, its disposal and the associated traffic management — these are all significant concerns to the community, given that the site is in the very heart of the CBD and the works will presumably take many months. More detail should be required prior to any decision of the Development Application.'

It is very disappointing that the applicant has not provided any more detail on these concerns in this revised application, despite the applicant asserting in the revised SoEE that they have considered submissions on the original DA.

Applicant's justification for major height variation

In several of the revised supporting documents, the applicant makes assertions about consistency with planning strategies and with existing character with which we submit no reasonable person could agree – in many cases it amounts to saying 'black is white'! Examples include (*with our comments in italics*):

'The height should ensure the development is responsive to the desired scale and character of the local area.' *Major departure from the height limit just adopted.* and 'The proposed height which is staggered along down the site will ensure no loss of privacy or amenity occurs to neighbouring buildings' (Appendix G p6) *Clearly not the case for owners and occupiers of no 3 Yacaaba St immediately to the south, and is also*

contradicted by the applicant on p15 'the proposal will result in some additional overshadowing to the adjoining buildings'

'ensures the development is consistent with the future build form' (Appendix G p7)

If height limits are enforced, this development would be a significant 'outlier'

'Future development within the immediately vicinity of the subject site, will have a height commensurate with the height proposed as part of this development', and 'The Nelson Bay Strategy proposes similar heights to the subject [site] along Yacaaba Street tapering off to 5 stories to the west' (Appendix H, p14) *Both assertions are false - heights neither commensurate nor similar*

(Appendix H, p15) '... the height of the building is considered appropriate to the context and character of the area. *Their opinion but clearly not one shared by the community or Council.* At just 33.5m the building is appropriate for its location within a sub-regional centre, which services the entire Tomaree Peninsula. *Irrelevant.* The Nelson Bay Town Centre and Foreshore Strategy also proposes up to 28m and 42m buildings in the area. *42 metres only 500 metres south in a totally different topographic context.* 'In the future the proposal will not be out of character with the area or the context of the building...' *Clearly not so.*

'This building in the Nelson Bay Town Centre is reflective of the hierarchy of centres in Port Stephens and the future desired character of the Nelson Bay Town Centre as envisioned by Council' (Appendix H, p15) *This is clearly untrue – Council has just adopted significantly lower building heights.*

We submit that the application would be more credible, and potentially persuasive, if it admitted that the proposed building departed significantly from the existing *and even the planned* context, and sought to justify this, rather than pretending that it is consistent.

The Clause 4.6 justification also introduces several highly contentious and/or spurious arguments (again, our comments in *italics*):

- Reference to 17 storey proposals for the Donald St East car park site to the north of this site:

'public information available at the time of writing has identified a joint venture between Council and another third party to provide a multi-storey car park across the road from this development, with residential units above the car park.' (Appendix H p16)

By the time this document was written it was public knowledge that Council had abandoned negotiations with this developer, which in any case was only a commercial section initiative and never included in any planning strategy. Council had also adopted the revised height limit of 8 storeys (28m) for the car park site.

- Reference to the existing (2017) approval for a 32 metre high apartment building at 11-13 Church St, cited as a relevant precedent:

'... the proposed development is in line with the future character and context of the Nelson Bay Town Centre and is not inconsistent with previous approvals in the area (i.e. 11-13 Church Street)' (Appendix H p16)

Council has repeatedly argued, not least in approving the DA for 11-13 Church St, that approval of major height variations does not create a precedent. This was never credible

and we have seen a succession of subsequent DAs citing the 11-13 Church St approval as a relevant precedent in support of their own variation applications. Council must now start to strictly enforce height limits, or else applicants for DAs will be able to claim, justifiably, that height controls have effectively been abandoned.

- Reference to a Council statement relating to the submissions on the 11-13 Church St DA in 2017:

'the application received 75 submissions and a petition containing 145 signatures in support of this development. Only two submissions objected. This is an indication of support for increased heights where good design outcomes can be achieved'. (cited in Appendix H p23)

As we have repeatedly stated, this characterisation by Council of these apparently favourable submissions as somehow balancing or outweighing the broad-based opposition to high rise, is a travesty, because:

- ***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. (from TRRA critique of the draft revised Delivery Program, December 2017)***

- Reference to the recommendation in the staff report on the Nelson Bay Strategy Delivery Program for a 10 storey, 35 metre height limit for this site, and for most of the rest of the town centre.

'It is noted that the proposal that was presented to Council (following public exhibition) by Council officers to have a height limit of 35m on the subject site. At the Council meeting, Councillors voted to reduce the 35m height limit to 28m.' and 'Thus, the subject site has been identified in the adopted Nelson Bay Town Centre strategy for a height limit of 28m, despite the fact Council staff recommended 35m. (Appendix H, p9)

While factually correct, the clear implication of these extracts is that the applicant thinks the planners' recommendation of 35 metres is somehow an equally or more significant factor than the decision subsequently taken by Council.

- Incorrect inference that regional plans necessarily support high-rise development

'the Greater Newcastle Metropolitan Plan recently released which identifies some 11,050 dwellings to be built in Port Stephens LGA between 2016 and 2036. Of these 6,630 will be required to be infill development. Council have, and will continue, to take a strategic approach to increase densities in the key centre of Nelson Bay to make development feasible but also address strategic planning considerations of increasing dwellings in existing centres outlined in plans prepared by the NSW government. A key point from the regional and local strategic planning documents is that Nelson Bay along with Raymond Terrace are key major town centres in the Port Stephens LGA.' (Appendix H, p10), and

'The proposal is thus consistent with the objective of providing a building commensurate with the hierarchy of centres in Port Stephens. In relation to character and context, the Nelson Bay town centre is identified for increasing residential densities and the proposal also address this objective. The future character of Nelson Bay is a major town centre of higher densities, and this proposal is consistent with that objective (Appendix H, p15)

Again as we have reminded Council in the past, these references confuse the regional plans' use of 'Nelson Bay' to encompass an entire area/suburb with the much more limited area of the 'town centre' as defined in the Nelson Bay Strategy. The regional plans call only for 'higher-density' not high-rise, and we have repeatedly drawn attention to the regular supply of new 'infill' dwellings from the process of subdivision and infill within all of the existing Tomaree built up areas, including the wider Nelson Bay area.

The Greater Newcastle Plan 'projections' of 6,630 infill dwellings by 2036 is for the whole of Port Stephens, with the emphasis of the Plan being on those parts of the LGA west of Salt Ash which are within the Plan's definition of 'Greater Newcastle'. Even if the increase was shared evenly across Port Stephens, a 'projection' of less than 400 infill dwellings per year on average for the entire LGA cannot possibly be used to justify a major increase in supply of high-rise apartments in the single location of Nelson Bay town centre.

- In relation to overshadowing and loss of amenity, the applicant claims that:

'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.' (Appendix H, p16)

This claim is not credible, and is not supported by shadow diagrams relating to either a 15m building (the current height limit) or a 28 m building (the recently adopted limit for the site).

- In relation to the adopted Nelson Bay Strategy (2012), the applicant claims that:

'The proposed development is consistent with the Nelson Bay Town Centre & Foreshore Strategy 2012. The proposed development aids in preserving the natural environment, helps facilitate the desired town centre character ...' (Appendix H, p26)

This claim is not credible – no reference is made to key elements of the Strategy: 'It is critical that the wooded ridge and headlands that surround the Bay be visible and not eclipsed by buildings' (p6), or to the numerous mentions in the Strategy to the need to protect the 'natural amphitheatre' character of the town centre. A 10 storey building on this site would clearly not be consistent with the Strategy, even with the revised Delivery Program.

Design Panel

The use of an independent Design Panel was an important feature of the adopted 2012 Nelson Bay Town Centre & Foreshore Strategy ('2012 Strategy'), carried over into the 2017 Draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: and now into the 'revised implementation and



delivery program' adopted in September 2018. TRRA has consistently supported the use of an independent design panel for major DAs including all those which involve a significant variation from development standards.

We understand that the original proposed development was referred to an independent Design Panel, which made comments on the proposal. The applicant has indicated in the revised documentation that it has responded to these comments, including by breaking up the balconies (articulated facades).

We assume, and expect, that the revised proposal will be sent back to the Design Panel for further consideration. We again request that both the original comments and any further comments received from the Panel be published on the DA Tracker so that the community can assess how the applicant responds to this important input.

We also call on Council to have more regard to the views of the Design Panel than it has in other recent DAs, which have been approved despite the Panel being unable to support them – their reasons in several cases including excessive height.

Other matters

Apart from the various contentious claims already examined and refuted above, we refer Council to our more detailed criticism of the original application, most points in which remain valid.

We draw particular attention to the fact that this proposal clearly does not meet the 'building height to street width' ratio put forward in the Delivery Program 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." (DP, p12)

As the width of both Donald and Yacaaba Streets is only approximately 20m, any building on this site should not exceed six storeys.

We also question whether the revised design complies with the setback requirements of the DCP (sections C2.B and C5.C), or with the 'significant vistas' provisions for Nelson Bay (D5.1).

We also draw Council's attention to the draft Guide *Urban Design for Regional NSW* currently on exhibition by the Department of Planning. We submit that this contains numerous provisions that would clearly be contravened by an overdevelopment of the site as proposed by the applicant in this case.

Conclusion

The applicant correctly identifies that the written request for an exception to development standards under Clause 4.6 of the LEP needs to demonstrate both:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a)) and
- that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).



TRRA submits that the applicant does not satisfy either of these tests, and that therefore the application for a very significant variation from the height standard should be rejected.

TRRA rejects the applicant's conclusion that 'strict compliance with the maximum building height is not necessary and that a better planning outcome is achieved for this development by allowing flexibility in the application' (Appendix H, p26)

We submit that a 20% height variation is much more than just 'flexibility' and that if a building of this size and bulk is allowed on this site, both the character of the built environment in Nelson Bay Town Centre and the overall character of the natural environment of Port Stephens will be seriously and irreversibly damaged.

