



Submission: Amendments to Planning Provisions and Controls for Nelson Bay

August 2020



The future of Nelson Bay?

Introduction

This is the final stage that Council has to go through to implement all of the changes to the Nelson Bay Town Centre and Foreshore Strategy (*Strategy*) which it adopted in a *Delivery Program* in September 2018, including the new height and floor space ratio (FSR) limits.

Most changes to planning controls have the effect of creating value for (mostly private) property owners. The test for acceptability of any changes should always be whether overall they are in the wider public interest.

We submit that the main proposed changes to the LEP – increases in height and FSR limits – are not in the public interest.

Most of the other proposed LEP and DCP amendments are welcome as ways of implementing the many aspects of the *Strategy and Delivery Program* which TRRA, and most other stakeholders, have always supported.

The revised building height and FSR limits remain the primary reason for our continued objection, as in our view they are:

- fundamentally inconsistent with the declared vision for the character of Nelson Bay,
- clearly contrary to the overwhelming majority of the views expressed by community members in all rounds of consultation, and
- unlikely to achieve the desired objective of revitalisation – Council's assertion that the changes are necessary are speculative and unsubstantiated.

These specific changes may be in the private interests of affected property owners, but they are not, in our view, in the overall wider public interest.

Failure to acknowledge community opposition to major building height increases

Council continues to wilfully and stubbornly impose on the Nelson Bay community a 'high rise' vision for which there has been very little documented support. Moreover, it consistently refuses to acknowledge either the weight of community opposition to the proposed building height increases, or recognise the legitimacy of that opposition.

In the revised Planning Proposal, Council claims to have responded to requirements imposed in March 2020 by the Department of Planning, but in our view has not done so adequately, in several respects, including and particularly in reporting publicly on the outcome of previous public consultations.

The revised Planning Proposal contains a section (Part 5) on Community Consultation. It fails to report on the substance of the input received in both 2017 and 2018, and in the case of the 2018 consultation does not even mention the numbers of submissions.

The Report to the Council meeting on 25 September 2018 included the following (on page 55 of the Agenda papers):

'During the public exhibition period, 151 submitters made individual written submissions. Submissions were also received from peak organisations, such as Destination Port Stephens and the Tomaree Business Chamber, community groups such as EcoNetwork and the Tomaree Residents and Ratepayers Association (sic), and a submission was received from the NSW Department of Planning and Environment. There were also 1674 pro forma submissions and one petition with 813 signatures.' and

'Overall the key issues raised in submissions related to the proposed increase in building height controls in the town centre. Over 90% of submissions expressed

concern over a proposed height increase, however some submitters supported a modest increase in height from the existing five (5) storey height limit.’

From our observations, a majority of submissions from developers, architects and planners also opposed the proposed height and FSR limits, while the local business community is divided.

The failure of the revised Planning Proposal to even hint at the overwhelming opposition to the proposed building heights means that it is significantly misleading.

The Department’s second condition included a requirement that:

‘Council is to prepare a summary document (plain English guide) of community consultation to date within the study area ...’

The *Community Guide* published by Council to support the revised Planning Proposal does not meet this condition. Council claims in the Introduction :

‘The community has told us what they want in a reinvigorated centre and the vision for Nelson Bay has been prepared to enhance local character, attract investment, and create vibrant streets to revitalise Nelson Bay.

This guide sets out how proposed changes to the Port Stephens Local Environmental Plan 2013 and Port Stephens Development Control Plan 2014 The community has told us what they want in a reinvigorated centre and the vision for Nelson Bay has been prepared to enhance local character, attract investment, and create vibrant streets to revitalise Nelson Bay. This guide sets out how proposed changes to the Port Stephens Local Environmental Plan 2013 and Port Stephens Development Control Plan 2014 **will combine with other actions and initiatives to achieve the community vision for Nelson Bay’ (our emphasis)** (paragraphs 3 & 4 on page 3)

TRRA contends that in relation to proposed building height and density proposals in the amendments to the LEP, these claims are entirely fallacious and should be publicly withdrawn. **If the Community Guide is to survive as a permanent explanatory document, these false and unsubstantiated claims should be removed.**

Specific references to community consultation in the Guide also include:

‘The community vision for the Bay has not changed over the years – you’ve told us that the character of the town centre is what makes Nelson bay a great place to be.’ (p.4), and

‘The community has told us that the focus for the future of Nelson Bay Town Centre is to make changes ...’ (p.8) (despite no suggestion that the desired changes include increases in building heights)

We submit that the failure of the Community Guide to even acknowledge the weight of community opposition to proposed increases in building heights, consistent over many years, means that it fails to satisfy the Department’s condition.

Regrettably, in making its Gateway Determination, the Department appears to have only assessed the 'form' of the Community Guide and not its content or substance. Their letter (29 June 2020) did however state: 'The veracity of the level of detail in the planning proposal will be tested during public exhibition'.

We continue to argue that the Council has failed to provide adequate or accurate detail of community views – and that it is unreasonable to expect the community to repeatedly express its views when those views are repeatedly dismissed and go unreported.

New documents

Apart from the Community Guide, the material on exhibition includes several new documents and some revised versions of already public ones:

- The Community Guide (new)
- Appendix 16 – Cross sections (revised¹)
- Appendix 17 – Urban Design Analysis (new)
- The draft DCP changes (new)
- The explanation of the DCP changes (new)
- The revised Planning Proposal (Revision 3) – relatively minor changes, partly to meet the conditions imposed by the Department of Planning in March 2020
- Appendix 4 – Proposed PSLEP Maps (revised, but only to include extended boundaries of NB Town Centre and Foreshore Strategy area already announced)

The **Planning Proposal**, was originally submitted by Council in April 2019, and while it has been in the public domain since then, it has not previously been exhibited for formal consultation. It has recently been revised in response to conditions imposed by the Department of Planning in March 2020.

It is difficult to tell without the benefit of 'mark-up' but it appears that the revisions are to be found at pages 9-10 (new LEP clause 7.22); pp.11-12 (new LEP clause 7.23 and text on Design Excellence); p.17 & 29 (new text on the PS Local Infrastructure Contributions Plans); p.28 (2 new paragraphs about urban design analysis); and p.29 (a new paragraph on traffic and parking). There is also re-numbering of Figures following the insertion of a new Figure 6 on page 11.

Appendix 4 to the Planning Proposal contains the new Height of Building Map (HOB_005D) which will replace the existing map in the LEP, a revised Permitted Uses Map (CL1_005) and two new Maps – FSR_005D (floor space ratios) and ASF_005D (activated street frontages).

Before we address these proposed amendments to the LEP, we have a few comments on other contextual content in the Planning Proposal.

¹ Unclear if these cross sections have been changed since the original Planning Proposal dated May 2019

Coastal Management (pp.19 & 20, and Flood prone land (pp. 24-25))

The Planning Proposal could usefully have included a map showing the Coastal Zone (for the purposes of the *SEPP (Coastal Management) 2018*) in relation to the Strategy area.

The proposed changes to height limits allow for a significant intensification of development at the western end of Teramby Road in the Foreshore precinct. We are surprised that there is not more acknowledgement of the risks to access to this area from anticipated sea level rise.

The discussion of flood prone land includes the following:

‘However the impacts of any flood experienced in the locality will be minimal given the small footprint of the land benefitting from this increase in building height. The increased development potential of this land is not a significant consideration with regard to flooding’ (p24)

This seems inconsistent with professional advice that is regularly given to Council when considering DAs in flood prone areas in the western parts of the LGA, particularly in relation to risk to occupiers and emergency services workers in the event of flood events.

Bushfire prone land (pp 25-26) and High Environmental Value land (pp 27-28)

We note that the mapping shown in Figures 11 & 12 respectively is out of date, particularly in relation to the Lagoons Estate adjacent to the eastern boundary of the Strategy area. We understand that this mapping is under the control of State Government agencies, and Council is not able to update the maps through this Planning Proposal. We are re-assured however that the current factual situation would be addressed in assessment of any DAs affected by these factors.

LEP Clause 4.6 Policy (p.28)

The Planning Proposal mentions the introduction in 2018 of a new Policy on assessment of proposed exceptions to development standards under Clause 4.6 of the LEP and asserts that it makes a positive contribution to future urban design. We strongly disagree and repeat our consistent criticism of the Clause 4.6 Policy as signalling a highly permissive approach by Council to variation applications within the whole LGA. We further note that Council has in the last four years accepted huge variations from existing height controls for two major apartment developments in the Nelson Bay town centre (at 11-13 Church St and 1 Yacaaba St).

We contend that far from being a positive innovation, the Clause 4.6 Policy undermines the effectiveness of all the other controls that are included in the Delivery Program, including the new height and FSR controls which are the subject of this Planning Proposal.

Local infrastructure (p. 29-30)

The Planning Proposal refers to:

‘further consultation [with service providers and relevant State and Commonwealth agencies] following issue of a Gateway determination’.

We submit that this implies that Council doesn’t know at this stage if there will be service or infrastructure constraints on the level of development that the LEP changes would allow.

We would have expected any such constraints to have been established before decisions were made on changes to controls which will allow significantly denser development in the town centre.

LEP amendments

The actual proposed amendments to the LEP currently on exhibition are confined to the 4 Maps and 2 additional clauses.

We object to some aspects of the HOB and FSR maps, but support the CL1 and ASF maps and the two new LEP clauses. (subject to confirmation that there is no substantive effect of the CL1 map revision, but only a boundary change).

Our **objection to the HOB map** reflects our longstanding opposition to the proposed increases in building heights – in this case to the 28 metre and 42 metre zones which we consider excessive and incompatible with the objectives and ‘character’ statements in the *Strategy* and *Delivery Program*.

TRRA has consistently been willing to concede that some modest increase in building heights may be appropriate and acceptable. We were party to the consensus arrived at in the 2012 Strategy which was to retain a default 5 storey (now 17.5m rather than 15m) throughout the bulk of the town centre, but to make provision for up to a further 2 storeys (+7m) in exceptional circumstances, where an applicant could demonstrate that their DA **both** ‘*Exhibits outstanding design excellence*’ and ‘*Provides a strategic public benefit*’ (*Strategy*, p65).

We consider it a tragedy that Council never implemented this consensus in LEP and DCP changes, preferring instead to pursue a pre-determined agenda of greater height increases in the face of overwhelming public opposition.

Recent history disproves Council’s repeated contention that higher buildings are essential to attract investment and revitalise the town centre. If anything, approval of major height limit increases simply paralyses the market, as landowners hold out for unrealistic prices either for sites or for approved units. The failure to even commence construction of the 32m apartment building at 11-13 Church St, approved in 2016, is a stark reminder of this reality – see the cover photo of this submission.

We submit that the height of building limits should remain those agreed in the 2012 Strategy; i.e. 17.5m throughout most of the town centre with provision for up to 24.5m where a proposal exhibits both outstanding design excellence and strategic public benefit.

Our **objection to the FSR map** is to the 3.0:1 zone and to the extent of the 2.5:1 zone. We consider these to be excessive and incompatible with the objectives and 'character' statements in the *Strategy* and *Delivery Program*. We do not object to the introduction of FSR limits which we agree can be a valuable control on the built form of any future developments. The *2012 Strategy* proposed a default limit of 2.0:1 throughout the town², supported by previous urban design analysis

Even the newer supporting studies clearly indicate that developments in the areas where a 28 metre height limit is proposed would be commercially viable with an FSR of 2.5:1. We can therefore see no justification for allowing a 3.0:1 FSR in any part of the *Strategy* area, and strong arguments against – it would allow buildings of a bulk which would both further reduce solar access and be more visually intrusive. We are not aware of the 3.0:1 FSR being supported in any public submissions.

We note that any increase in FSR limits on a site increases its commercial value. The only reason for Council choosing a 3.0:1 FSR for the 28m and 42m height zones would seem to be to increase the potential profit margin as an incentive for investment in development.

Even a 2.5:1 FSR is higher than the limits typically found in similar coastal tourist towns and would result in excessive and unnecessary bulk in the permitted built form in the large areas proposed for a 17.5m height limit. This is particularly inappropriate in the primarily residential areas along part of Thurlow Avenue and along Magnus St east of its intersection with Donald Street.

FSRs of 3.0:1 are rarely found outside of very high density metropolitan areas. The FAQs (Appendix 15) cite one example of a Forster development with a 3.0:1 FSR – many of us see Forster as having very poor built form outcomes, and we also note that the major town centre development under construction was recently reported to be in financial trouble³.

We submit that the FSR limits be reduced – to no more than 2:1 in the lower height zones (17.5m or less) and no more than 2.5:1 in any zones allowing higher buildings.

New documents supporting the LEP changes

The **Cross Sections** at Appendix 16 are not particularly helpful – the north-south section having no vertical axis scale, choosing to show the uncontroversial 5 storey zone rather than the contentious 28 m areas, and not showing the profile of Kurrara Hill to the south which is critical to the issue of heights in Nelson Bay.

Nevertheless, the cross sections do show starkly what a major difference the new height limits could make to the profile and character of the town centre, with buildings allowed of nearly double (and on one site nearly treble) the existing limits.

² With provision for additional FSR in exceptional circumstances on specific sites

³ Newcastle Herald, 13 June 2020 <https://www.newcastleherald.com.au/story/6778226/public-funds-12m-of-stalled-redevelopment-project>

Had these and other relevant cross sections been made available earlier in the Review process, we believe there would have been even more objections.

We have consistently called for better graphics and visual images (photo-montages) of likely outcomes from the proposed changes. Superimposition of some existing buildings (and approved DAs) on the cross sections would have been helpful contribution to an informed debate. We also question what happened to the 'fly-around' 3D modelling that that was being trialled in 2018 and included in the *Delivery Program* Implementation Plan (Item 6) – there has been no mention of this since then.

The **Urban Design Analysis** (Appendix 17) was required by the Department of Planning in March 2020 as a condition of Gateway approval. In its final Determination dated 29 June, the Department imposed two further conditions described as 'required minor updates'.

Council explained to the Department how it claims to have met the March 2020 conditions in a covering letter dated 17 June, and in respect of the two June 2020 requirements has stated:

'Changes were made to the Appendix 17 Urban Design analysis to test proposed building envelopes, and changes were made to the Planning Proposal commentary on planning controls relating to community land.' (email to TRRA dated 15 July):

Much of Appendix 17 is simply extracts from previous studies and familiar 'assertions' that we continue to contest. There is little new analysis to support the Planning Proposal. Our detailed comments on Appendix 17 are attached (Attachment 1).

We challenge the statement on page 3 of Appendix 17 that:

'This urban design analysis demonstrates how proposed changes to PSLEP will deliver the community vision and enhance the character of Nelson Bay.'

As with the *Strategy* itself and most of the other supporting documents, Appendix 17 contains excellent and unobjectionable statements of objectives and intent, including the Community Vision on page 3. This emphasises the importance of maintaining village feel, views and solar access.

We contend that there is a fundamental inconsistency and conflict between this vision (also clear in the *2012 Strategy* itself) and the height and FSR proposals, which are not credibly justified by the analysis.

DCP amendments

The **DCP amendments** are largely technical in nature and facilitate the implementation of those aspects of the Delivery Program for which there is broad community support. Some changes to the DCP do however have potentially significant implications.

The extended Study/Strategy area now includes land to the north west along Thurlow Avenue and to the east along Magnus Street and Donald Street East. The former and the northern part of the latter have been classified in the revised DCP Chapter 5 as 'Foreshore' precinct, with the southern part of the latter (south and east of Donald St E) included in the 'Town Living and Commercial' precinct.

The land north of Thurlow Avenue now included has been transferred from Chapter 6 of the DCP (Nelson Bay West) which has also lost, unannounced, a precinct named 'Town Centre Edge' which has now been included in the 'Foreshore' precinct. The new part of the Strategy area south of Dowling Street is mostly classified as 'Leisure and Tourism' with the cemetery unclassified (but we assume still subject to the 'General Precinct Provisions' in D5.A?)

The character objective and requirement for the Foreshore precinct – which characterise it as a 'destination' development and favour public art - would not seem appropriate for the predominant land use in the areas along Thurlow Avenue and Magnus Street which is residential and tourist accommodation.

We submit that these areas should be classified instead as 'Town Living' (but without the 'Commercial' element of the 'Town Living and Commercial' precinct.

Conclusion

Recent policy changes and directions by the State planning authorities have emphasised the importance of strong community consultation when developing planning strategies and controls such as those included in this Planning Proposal.

The underlying premise is that proper consultation, involving not just listening but actually hearing and engaging with concerns raised, results in a better overall policy and allows more efficient processing of subsequent development applications which comply with the community endorsed policy. This ensures that the community, developers and Council staff all have clear understanding of the rationale for agreed controls which reduces the risk of DAs ending up in the Land and Environment Court.⁴

⁴ As an example, TRRA notes that the Land and Environment Court will hear a challenge next February to Newcastle City Council's approval of a 172-unit development proposed for the NBN studios site in Mosbri Crescent near St Edwards Park on the City foreshore. Sections of the development will have a nine storey building when the recently amended LEP only allowed 7 storeys. A local community group's reaction is reported: "It's most disappointing that we've been forced to go to court to ensure the public voice can be directly heard over such a proposed massive development"

Newcastle Herald 29 July 2020 <https://www.newcastleherald.com.au/story/6853151/court-sets-date-for-nbn-site-hearing/?cs=13294>

These objectives, which we share, can only be met if Council displays a willingness to hear and engage constructively with well-informed community input.

There is a broad consensus on most elements of the *Nelson Bay Town Centre and Foreshore Strategy, Delivery Program and Implementation Plan*, and on the subsequent *Public Domain Plan* and other initiatives that are already under way. On these issues, Council has heard the Community and taken it along on the journey towards revitalisation of Nelson Bay.

However, we submit that Council has continually ignored the community on the critical issue of increased height and FSRs in the Nelson Bay centre, throughout the four-year process of reviewing the Strategy.

We submit that none of the other agreed elements of the *Strategy and Delivery Program* are contingent on the proposed increases in height and FSR limits. As we have detailed above and in the attached comments on Appendix 17, TRRA believes that there is not enough technical or other evidence to support the proposed height and FSR limits, which are excessive and inconsistent with the Community Vision for the town..

We call on Council to reject these changes and instead amend the LEP to implement the more modest increases in height and FSR limits already adopted in the 2012 Strategy, which enjoyed broad community support.

It is not too late for Council to finally listen to the Community on this very significant issue, as it is the very character of Nelson Bay, on which its prosperity depends, that is at stake.

We have no objection to this submission being made public, in full and unredacted. We also call on Council to respond in detail to the points raised in this and all other submissions.

Attachment

Critique of Appendix 17 – Urban Design Analysis

Attachment to TRRA submission on Amendments to Planning Provisions and Controls for Nelson Bay, August 2020

Detailed comments on Appendix 17: Urban Design Analysis – 30 June 2020

Introduction:

This document states that : *The Delivery Program includes a number of actions to amend the Port Stephens Local Environmental Plan 2013 (PSLEP) to both encourage new development and reinforce the key components of character identified in the community vision: (p.3)*

We note the repeated emphasis on local character and village feel. This is why we object so strongly to the proposed height and FSR increases, which are in our view wholly inconsistent with that character, as it is perceived by the majority of the local community.

Determining Proposed Provisions (p.4)

Building Heights and FSR

The proposed amendments to the LEP implement the final outcome of the adopted *Delivery Program* adopted in September 2018 – specifically the Proposed Height of Building and FSR limits in columns 4 & 7 of the table below, reproduced on page 4 of the Appendix

FIGURE 12– Proposed HoB and FSR

No.	Existing HoB	Strategy HoB	Proposed HoB	Strategy FSR	Existing FSR	Proposed FSR
A	2 Storey (8m)	Not in Strategy	2 Storey (8m) (No change)	Not in Strategy	No FSR	No FSR (No change)
B	2 Storey (8m)	3 Storey (10.5m)	4 Storey (14m)	2.5:1	No FSR	2.0:1
C	2 Storey (8m)	4 Storey (14m)		2.5:1	No FSR	
D	5 Storey (15m)	7 Storey (24.5m)	8 Storey (28m)	2.5:1	No FSR	3.0:1
E	5 Storey (15m)	7 Storey (24.5m)	5 Storey (17.5m)	2.5:1	No FSR	2.5:1
F	No HOB	9 Storey (31.5m)	12 Storey (42m)	2.5:1	No FSR	3.0:1
G	5 Storey (15m)	Not in Strategy	5 Storey (17.5m)	Not in Strategy	No FSR	2.5:1

Note: The Strategy (and this Delivery Program) makes allowance for a minimum 3.5 metres per storey.

Figure 1 - Proposed Height of Building Provisions in the Delivery Program

Building Heights (Page 5)

The table above shows that the non-contentious increase in 'per storey' height from 3m to 3.5m results in an additional 16% height increase in all height zones even without any change to the number of storeys allowed.

Page 5 reproduces the justification for the proposed height limits from the *Delivery Program*.

We stand by our detailed critique of this 'justification' in our submission dated 4 April 2018 on the *Draft Delivery Program*.

The justification includes the following: *The development application for an eight storey apartment building at 11-13 Church Street was considered by Council on 11 April 2017, and received 75 submissions and a petition containing 145 signatures in support of this development. Only two submissions objected to the development application. This is an indication of support for increased heights where good design outcomes can be achieved.*

We particularly objected to this selective reporting of submissions without explaining that those in support were 'pro-forma' or petition signatories generated by the developer. The conclusion drawn is clearly at odds with prevailing community views on building heights.

This statement has not been corrected nor amended to include the more recent evidence that most submissions about a similar scale unit development at 1 Yacaaba St approved in 2018 also objected to the 30m height.

The justification also invokes previous approvals: *'A number of existing buildings and approved development consents already exceed the existing five storey maximum height of building limit, being:'*

However, the list of approved developments in this extract has not been updated to include more recent approvals, with dates, and an indication of which ones have been commenced.

At least 4 approvals exceeding the existing building height limit that Council pushed through even before finalising the Strategy or proposed LEP amendments have not commenced and, when placed on the market as approved DA sites, have not been sold.

We submit that this recent history disproves Council's repeated contention that higher buildings are essential to attract investment and revitalise the town centre. If anything, approval of major height limit increases simply paralyses the market, as landowners hold out for unrealistic prices either for sites or for planned units.

Also on page 6 of Appendix 17, the last bullet point is formatted as though it was in the *Delivery Program* justification along with the preceding points - it was not and has been added subsequently as a further justification (along with the next).

We submit that in these two paragraphs Council is attempting to 'verbal' the community by implying that concerns raised about heights were confined to the 'central core' and related primarily to view sharing. This misrepresents the substance of most of the 2000+ objections in 2018 (and previous objections) which object to the proposed height increases *anywhere* in the town centre and relate to overall character and feel - not just views.

Floor Space Ratios (Page 7)

On page 7 of the Appendix, Council states: *'A key matter in this regard is floor space ratio (FSR). Feasibility testing of development bulk and scale has shown that FSR provisions resulting in site cover average of 38% provides an acceptable level of feasibility for new development, whilst also providing ability to meet the design requirements outlined in the SEPP 65 Apartment Design Guidelines (Nelson Bay Town Centre: Feasibility Testing of Residential Development Sites, Hill PDA Consulting, 2017).'*

We submit that this is very selective and biased reporting to try and justify a 3.0:1 FSR. The 2017 study cited also concluded that an FSR of 2.5:1 (giving an even more favourable 33% site cover average) **was also viable** in conjunction with an 8 storey height.

In the same 2017 study, consultants Hill PDA commented that they typically find the following height and FSR combinations to be common:

3 to 4 storeys are often compatible with an FSR of 1.6:1 to 1.8:1;

5 to 6 storeys are often compatible with an FSR of 1.8:1 to 2:1; and

7 to 8 storeys are often compatible with an FSR of 2.2:1 to 2.5:1. (p.34)

The 2012 Strategy adopted a default FSR of 2.0:1 for the entire town centre, with 2.5:1 potentially considered in exceptional cases and 3.0:1 only for exceptional developments on 4 specific sites (two of them Council owned car parks and a third the supermarket site which has subsequently been developed as a low-rise replacement store).

The Draft *Delivery Program* advertised in 2017 proposed 10 Storeys throughout with FSR of 3.0:1. While the height limits were reduced to 8 storeys at the last minute at the September 2018 Council meeting, the FSR for these zones was not changed, as would have been logical, and consistent with the expert advice.

No justification has been provided for the current proposal for additional FSR increases of between 0.5 and 1.0 across entire height zones (i.e. 2.5:1 for all 17.5m zones and 3.0:1 for all 28m and 42m zones). It appears the only reason for these increases is to increase potential profit margins as an incentive for investment in development. We repeat our previous arguments that FSRs of 3.0:1 are typically found in high density urban developments e.g. along public transport corridors in metropolitan areas, where they may be justified.

Active Street Frontages (Page 9)

TRRA supports the proposed new LEP Clause on activated street frontages. However, we consider the Woolworths case study a poor example - much of both street frontages is blank wall in addition to the necessary vehicle entrance ramps.

Minimum Street Frontage (Page 10)

The DCP already includes an LGA wide requirement (Section c2.6) for a minimum of 20m street frontage for commercial developments over 10.5m in height (implementing a recommendation in the 2012 Strategy) and we assume this will still apply, as well as the new LEP clause 7.23. We acknowledge that many sites in the town centre are under 15m wide, which justifies the inclusion of sub-clause 7.23(3) to allow exceptions; i.e. commercial buildings of up to 10.5 metres (3 storeys) on such sites. We support the intention of the LEP and DCP controls working together to encourage site consolidation and better design.

Testing the controls (Page 9)

The new examples presented on pages 9 & 10 are helpful.

The illustrative development of hypothetical Test Site 1 in the '5 storey' central zone, which we support, would produce a reasonable outcome consistent with Community expectations, although the reduced FSR of 2.0:1 which we favour would further improve the outcome. We note however that the 2017 Feasibility Testing Study which Council elsewhere relies on suggests that such a development would not be viable. Council's use of the testing findings appears selective.

The illustrative development of hypothetical Test Site 2 in one of the '8 storey' zones, which we oppose, in our view confirms that it would produce an undesirable outcome. While it might be commercially viable (according to the 2017 Study) it would result in a 28 metre high building with the 6 upper levels occupying 30% of the site area, and only 6 metre setbacks from the side boundaries. The scenario admits that this would 'provide potential 12 metre building separation

between similarly designed buildings⁵. While other controls may prevent such an outcome, even flagging the possibility of two 28 metre high apartment buildings only 12m or less apart is in our view a telling illustration of how the proposed changes would allow for developments that would have an unacceptable impact on the character of Nelson Bay.

Nelson Bay Development Controls (Page 11)

We support the proposed changes to the DCP, which will strengthen the existing provisions of chapter D5 and align the DCP with the Delivery Program. Active street frontage provisions are deleted from D5 as they will now be in the LEP.

Visual Impact Analysis (p12)

Most of this section (pp12-16) is not new urban design analysis - it is simply extracts from much earlier (2008 and 2011) reports. We note that the figures refer to the Draft Nelson Bay 2030 Strategy (2008 and 2011) which has not been placed on exhibition as a supporting document. The 2012 Strategy has some, but not all of these figures in an Appendix.

We would have expected this critical analysis to have been updated rather than using 10 to 12-year-old photographs, especially given significant changes affecting views such as the Yacaaba St extension and new Woolworths supermarket.

View 2 looking south from the Western Groyne shows the natural 'amphitheatre' and Kurrara Hill as a backdrop to the town centre. We would have expected that a photomontage would have been presented to allow the community to gain an impression of the impact of any 42m development at the southern end of the town and of any 28m buildings in the proposed '8 storey' zones to the Western and Eastern sides of the town centre.

Figures 7&8, illustrating views 6&7, have a darkened overlay which we assume indicates a building envelope, however there is no indication of what height the shading represents, is it 5, 7 or 8 storeys and does it assume 3 or 3.5m per storey?

We note that in a letter (29 June 2020) regarding the Gateway Determination, the Department noted that: *'The veracity of the level of detail in the planning proposal will be tested during public exhibition'*. While it is not entirely clear what this means, it may suggest that the Department has reservations about the adequacy of the material being presented to the public.

We also question what happened to the 'fly-around' 3D modelling that that was being trialled in 2018 by consultants in discussion with Council, and was identified in the Delivery Program Implementation Plan as a future action (item 6) – there has been no mention of this valuable tool since then.

Building height Transitions (Page 17)

There are general comments on the transitions between the lower building heights in the lower 'bowl' with taller building around the edges, although there is no discussion on the effects of sunlight and human scale considerations, particularly of the effects of 28 metre buildings along one side of the relatively narrow Yacaaba and Stockton Streets.

There is no consideration of the transition to the adjoining residential areas outside the Strategy area on the eastern and western boundaries. The Urban Design Panel expressed concerns about the effects of the 1 Yacaaba St development (approved in 2018) on the adjoining property in Donald

⁵ Separation would potentially be much less as balconies can protrude beyond the 'setback' line of upper storeys

street. In the Northern east-west cross-section (Appendix 16) an enormous discontinuity is clearly shown across Church Street which could potentially leap from 9m on the west to 28m on the east - in contrast to the existing modest step up from 9m to 15m.

Photomontages and shadow diagrams before and after the proposed changes need to be supplied before a meaningful review of these changes can be undertaken. The 3D modelling already mentioned above would also assist.

Solar Access (Page 18)

We support the importance of trees and awnings to provide shade particularly during the warmer months, although the importance of direct sunlight during winter cannot be underestimated. The importance of maintaining the shade trees documented in the Public Domain Plan needs to be re-enforced.

The passive control of sunlight is highlighted in Figure 12, however once again this diagram has not been updated. The illustration of 5 storey buildings are presumably 15m high and not the proposed 17.5m or 28m heights and with consideration of the actual distance across the roadway.

As setbacks are measured to the actual wall of the upper storeys and not the edge of any balcony or awning, the diagram should take this into account, as there doesn't appear to be any actual control over the depth of the balcony apart from an engineering issue.

Figures 13 & 14 showing the effects of FSR, show some additional sunshine on the road and footpaths, however if the traditional values for a village setting of 2.0:1 and 2.5:1 were used this would provide an even better outcome. We note that the Figures show the maximum benefit when the sun is directly north - at any other time the benefit would be reduced due to the depth of the buildings' shadows.

Desired Future Character (Page 21)

We agree that change will be incremental and can be used to enhance the experience of the area, however it is the proposed extent of the change that we continue to believe is excessive.

Sunny and Inviting Public Spaces (Page 21)

See previous comments on proposed FSR being excessive and unnecessary. It is misleading to state that 'Proposed FSR controls will reduce the scale and bulk of development ...'. That would only be true for future development if there was not a simultaneous increase in building height limits.

Views of the Blue Sky and Vistas to the Bay (Page 21)

The proposed heights have not been thoroughly tested to ensure that they will not extend above the tree canopy on surrounding ridgelines or reduce existing views. There does not appear to be a specific control to ensure this does not occur.

A Friendly Village Feel (Page 22)

The 'village feel' extends much further than just the commercial core and extends to the Town living and Commercial precinct as defined in the DCP. This will be a key consideration for any prospective resident looking to live in any new development. Council's own argument in support of (the last minute concession of) retaining a five storey limit in the main commercial area - that it will retain its village feel' is in our view equally applicable to the adjoining areas where it will be just as important to those shops, services and residents.

The *Delivery Program* (2018) section 2.1 states one of key feature of design excellence is:

'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.'

Council now appears to have abandoned this Guideline. We referred to it in our April 2018 submission (4/4/2018) and continue to submit that as Donald, Yacaaba, Magnus and Stockton streets are all approximately 20m wide, then in order to achieve the human scale or village feel which has been so strongly demanded by the community the building height east of Yacaaba St and west of Stockton St should not generally exceed 20m or 5 storeys, as provided in the 2012 Strategy.

The Department in their Gateway Planning and Assessment report 2020 (Page 12) state:

For instance, it is unclear why a north-south strip along Yacaaba Street is higher than the surrounding land uses and why some of the largest increases in height (i.e. around the bowling club site) have been placed on a higher topography. Further justification needs to be provided in the proposal.

If the Planning Proposal is genuine about Design Excellence, we have to agree with the Department that there is no justification to have a 28m height limit along Yacaaba and parts of Donald Streets. We also share their concern about the merits of the proposed 42m zone south of Dowling St, as we suspect buildings of this height would exceed the tree line on Kurrara Hill when viewed from some points to the north. Council has not addressed this specific request for further justification.

[Planning Changes to Enhance the Character of Nelson Bay \(Page 22\)](#)

We assert that the new controls cannot 'improve' solar access compared to existing (and currently permissible) buildings - some new controls may limit *further* losses but will inevitably allow a loss of solar access.

[Consistency with Better Placed Guidelines \(Page 23\)](#)

We challenge the assertion that the proposed changes meet the objectives of these State government Guidelines.

Objective 1: Better Fit

We continue to submit that the proposed height and FSR controls do not respect the valued low-rise character.

Objective 2: Better performance

Highly contested - see our previous critique of the Feasibility Testing study and of conclusions drawn.

Objective 3: Better for Community

Misleading – the changes cannot increase solar access, only reduce loss.

Objective 4: Better for People

Proposed heights above 5 storeys do not take into account the human scale.

Objective 5: Better Working

We support the increase in floor-ceiling height which was recommended and accepted in 2012. However, we challenge the conclusion of the analysis that the proposed increases in heights and FSR are a necessary condition for new investment in development.

Objective 7: Better Look and Feel

Highly contested re solar access - see comments above.

Conclusion

The Urban Design Analysis has consistently been slanted and selectively presented to support Council's pre-determined preference for high rise development in the town centre. It continues to ignore and devalue a key component of the community vision which is strong opposition to the proposed height and FSR limits. It also ignores the strong possibility that the market for residential property in Nelson Bay does not have a preference for dense high rise apartments, as indicated by the fact that the last two approvals for such developments have not even commenced construction.



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