

DA 2021-703 for revised 'Ascent Apartments' proposal for consolidated sites at 11-15 Church St

<http://datracker.portstephens.nsw.gov.au/Application/ApplicationDetails/016-2021-00000703-001/>

TRRA Submission Guide 13 September 2021

Main objection

TRRA submits that the proposed building is simply too high – exceeding the only recently agreed new height limits by nearly a third.

Submissions should be sent to council@portstephens.nsw.gov.au with DA 2021-703 in the subject line, by 21 September.

The proposal

This new proposal is for an 80 unit apartment building with a shop and café. While the new design has some attractive features, TRRA believes it is unacceptably high. At 11 storeys, it reaches a maximum height of 36.157 metres, which is +8 metres = **+29% over the new 8 storey height limit** for the site adopted only last year after a lengthy and vigorous community debate.



Image 5: Proposed development site (existing crane included).



Figure 2 - 3D image of proposed development (GHD Woodhead, 2021)

Process

The DA is only on exhibition for 2 weeks, with submissions due by 21 September – send to council@portstephens.nsw.gov.au with DA 2021-703 in the subject line.

Council has agreed to accept submissions up until 28 September but only on individual request.

There are 15 documents online, but 5 key ones – the Statement of Environmental Effects (SoEE), a Visual impact assessment, a Variation to Development Standard (Clause 4.6) Report, and Architectural Plans. Regrettably, Council will remove most of the documents from the DA Tracker after 21 September - you can download them beforehand but beware large file sizes (Plans are 55MB).

Council has confirmed that this DA will go to Council for determination because it is for a variation >10% and so will not be decided by staff under delegated authority. There is no need for it to be called up by 3 Councillors.

Key issue: Height variation

The proposed building is almost one-third higher than the new height limit for this site finalised less than a year ago. The developer's claim reported in the Examiner (9 September) that the height variation is only 'approximately 10% over the height limit' is incorrect. Both the SoEE and the Variation Report include the following statement:

'The site contains a prescribed maximum height of building of 28m. The highest point of the proposed development measures 36.157m above the natural ground level (top part of the 'wing' on the north-eastern corner), representing a 8.157m or 29% variation, requiring a variation request and associated assessment against Clause 4.6 of the PSLEP.' (p26)

Council is required to assess this DA against the current Local Environmental Plan (LEP), which includes the recent new height limits for the site. The applicant argues that it has approval for a building nearly the same height, but that was on a smaller site, and was assessed against the *previous* height limit, and the argument should carry little weight under planning law.

To justify an exception to the height limit, the applicant is required by planning law to show why compliance with the limit would be '*unreasonable or unnecessary*'. TRRA does not believe they have done so.

Community opinion

The previous approval for the Ascent Apartments was granted in the midst of a fierce community debate about height limits for the entire Nelson Bay Town Centre. Hundreds of individual citizens made clear their opposition to Council's proposals to allow buildings of 10 or more storeys throughout the town centre. In the end, a compromise was reached with new height limits of 5 and 8 storeys, and these were confirmed in changes to the Local Environmental Plan less than 9 months ago.

Councillors spoke of the new height limits giving certainty to landowners to encourage investment. Approval of a building nearly one-third over the limit for this site would completely undermine this objective, and create a precedent – once again development in the town centre would become a lottery.

Conclusion

TRRA has consistently welcomed the prospect of any developer prepared to invest in the town within the applicable rules. We would particularly welcome a good new development to replace the unsightly hole on this vacant site that has blighted the town for too long.

But we do not welcome defiance of Council's clearly expressed new rules for development in the town centre. Granting a variation from standards such as building height limits amounts to a free gift of extra value to landowners and/or developers. It should not be done lightly.

In this case, TRRA submits that the applicant should be asked to reduce the height of the building so that it complies with the recently adopted limits and meets community expectations. There is no evidence that a building that complies with the height limit could not be commercially viable.

Council staff and Councillors should follow through on their commitment to the Nelson Bay Strategy, as implemented in the recent amendments to the Local Environmental Plan, and refuse this DA, unless the design is changed to comply with height limit.

To discuss TRRA's position on this DA, please contact us at planning@trra.com.au or 0407 230 342

13 September 2021