



21 January 2022

The General Manager
Port Stephens Council

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Second Objection: DA 2021-781 – 17-19 Yacaaba St, Nelson Bay: 9 storey 24 unit apartment building – re- advertised December 2021

Introduction

The Tomaree Ratepayers and Residents Association Inc (TRRA) represents the community on a range of issues which affects the Tomaree Peninsula in Port Stephens LGA, including planning and development, economic development, cultural infrastructure and resources, the built and natural environment, tourism and other grass roots issues.

This is TRRA's second objection to this DA, taking into account the 5 new or revised documents provided by the applicant, including their response to submissions on the DA made when it was first on public exhibition in October 2021.

While a Visual Impact Assessment has been provided, it appears that no significant changes are proposed. The applicant has in effect dismissed all objections raised in the more than 30 submissions on the original DA, and has only made token efforts to address concerns expressed by Council's Design Review Panel.

Council has confirmed that previous objections will be re-considered as part of the DA assessment where they have not been adequately addressed. We confirm that none of the concerns raised in our October 2021 objection have in our view been satisfied. In this second objection we draw attention to some specific issues.

Height of building.

Council's Design Panel meeting with the applicant on 15 October commented on the proposed building being between 1.5 and 2.8 metres higher than the only



recently revised height limit for the site (3.1m for the lift shaft). It recommended that any approval of this variation be conditional on a visual impact assessment (VIA) being able to 'demonstrate limited view impacts of the exceedance from more elevated locations to the south'.

The VIA now provided clearly states that the visual impact from a number of viewpoints will be moderate to high, and that from close proximity the building will be visually dominant.

We note that the VIA has carefully chosen some viewpoints that do not illustrate the true visual impact. In particular, the view from the Landmark/Bowling Club site to the south is taken from the middle of the access road, which is not a common 'viewpoint' and conveniently happens to show the proposed apartment building partly obscured by a large tree.

A far more common view from the south will be from the Bowling Club – both the premises (lounge and dining areas) and from the heavily used main bowling greens overlooking the town. From any of these areas, the proposed apartment building will be extremely prominent, with no screening trees. While this would be true even of a building that met the height limit, the additional storey (2 metres) proposed would severely compound the effect on this view.

The applicant continues to argue that: '*The height of this proposal is in accordance with Council's desired future scale of Nelson Bay*'. This is clearly incorrect – in only recently lifting LEP height limits for parts of the town centre to 28 metres (8 storeys), after a vigorous community debate, Council made a very clear decision.

The 'variation' clause in the LEP should not in TRRA's view be used to so blatantly subvert the Council policy with the sole purpose of allowing a developer an extra floor of apartments. To satisfy Clause 4.6, the applicant must satisfy Council:

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

We submit that the applicant has provided no convincing justification for a variation from the only recently set height limit.

Traffic

The applicant has failed to even address the implications of Yacaaba St now being one-way, with heavily used angled parking immediately opposite the proposed garage entrance. Vehicles turning north into Yacaaba St are directed by the new kerb extension into the single carriageway on the eastern side – the

same side as the proposed garage entrance. The applicant is relying on the previous approval having the car access in this position, but that was when Yacaaba St was two way with only parallel parking. TRRA submits that the garage access in this location causes a major traffic (and safety) problem now that parked cars will be reversing across the road just round the corner from Tomaree St.

If Council has not yet consulted the Local Traffic Committee on this aspect of the design, we submit that it must do so, as well as taking the advice of its own traffic engineers. The Design Review Panel may also have an opinion on this issue.

Street activation

The applicant has failed to address the objection that the design does not present an activated street frontage to Yacaaba St, as now required by the LEP. This issue was also raised by the Design Review Panel.

The original Design Statement addressing the principles in SEPP 65 states:

'The Yacaaba Street frontage of the site has been identified as Active Street Frontage by Council. Being located at the very Southern extremity of the town centre and with the large number of vacant commercial spaces in the centre it is not considered beneficial to include another potentially empty tenancy in this development. There is little pedestrian traffic in this location. This proposal provides an attractive landscape treatment to the Yacaaba and Tomaree street corner which is a more positive contribution to the streetscape.'

TRRA rejects this assessment – there is in fact a very high level of pedestrian traffic in this location which is immediately opposite the Service NSW, close to the Commonwealth Government Centrelink/Medicare office and nearby two heavily frequented charity shops. We submit that it is not for the applicant to so flippantly dismiss Council's policy objective.

While it is not clear from the revised documentation, we understand that the applicant has, subsequent to its response quoted above, made a concession on this issue, providing for a small (37m²) commercial tenancy in the SW corner of the ground floor. This despite the recommendation of the Design Review Panel that a commercial tenancy be provided at the NW corner at the same level as the car park (effectively street level on Yacaaba St) – the panel also expressed concern about the aesthetics of the NW corner:

'The panel is concerned about the interface of the basement parking wall and podium with the pedestrian path on Yacaaba Street in the north-west corner of the proposal. Consideration should be given to either articulating this corner, so that it does not present as a tall blank wall to the street or, introducing public artwork to the building façade.'

The small commercial space appears to be elevated above street level set back behind a deck. While this may provide for an attractive small retail outlet or café (which would be well positioned for trade from the nearby government offices) it does little to 'activate' the frontage of the development on Yacaaba St, which would remain mostly either a blank wall or the garage door, with the same aesthetic problem already pointed out by the Design Review Panel.

Design Review Panel

We understand that the revised documentation will be assessed at a further meeting of Council's Design Review Panel in February.

We submit that as well as reviewing the new Visual Impact Report and the applicant's minor change to address street activation (both in response to the Panel's recommendations) Council should expressly request the Panel to consider the issue of the location of the garage access and its relationship to the one-way carriageway and angled parking immediately opposite.

As well as these key issues, we refer to the other objections we raised in our October 2021 submission.

Overall, we see no reason to change the conclusion of our initial submission, which we repeat below.

Conclusion

TRRA submits that the proposed apartment building is too high, and would have an adverse impact on the natural and built environments.

The case made by the applicant for a Clause 4.6 height variation is not convincing.

The proposed design raises some serious traffic and parking issues, and also fails to comply with the LEP and DCP requirements in relation to street activation and protection of vistas.

The DA should be refused, or at least conditioned to address these issues through design changes.

We have no objection to this submission being published, in full and unredacted.

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