

Title	Supplementary Memo
JRPP No.	2013 - STH027
DA No.	411/2013
Development Site	Lot 206 DP 857030 Boolwarroo Parade & Lot 8422 DP 1169822 Shallows Drive, Shell Cove
Proposed Development	Residential Subdivision – Precincts B1 & C1, Shell Cove Boat Harbour Precinct
Date	3.11.2014
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Purpose of this supplementary memo to the Planning Report of DA 411/2013

This supplementary memo has been prepared in response to the following matters raised by the JRPP Panel:

- a. The minimum lot size map in the LEP indicates that a minimum of 450 sqm applies. Could you please confirm that the lots comply? If not, is there some kind of exemption that applies? (email from Regional Panels Secretariat sent 27.10.2014)
- b. Relevant section of Schedule 6A to be referenced (email from Regional Panels Secretariat sent 31.10.2014)

Reply

- a. The attached subdivision layout plan shows that of the proposed 88 residential lots, 38 lots have an area of less than 450m², with a minimum lot size of 370m². Of these 38 lots, 22 have an area in excess of 400m².
- b. The Boat Harbour Precinct (BHP) Concept Plan Approval (MP 07_0027) does not include a minimum lot size development standard. The Concept Plan Approval however provides indicative dwelling numbers and floor areas per precinct.
- c. The BHP Concept Approval predates *Shellharbour Local Environmental Plan 2013* (SLEP 2013). The applicant has noted that the minimum lot size and floor space ratio development standards of SLEP 2013 are inconsistent with the Concept Approval, and that the Concept Plan provides for upper densities that would not be achievable under the framework of the LEP.
- d. Schedule 6A of the *Environmental Planning & Assessment Act 1979* (the Act) is applicable to this development application as the BHP Concept Plan was approved under the repealed Part 3A of the Act. Under the transitional provisions of Schedule 6A, environmental planning instruments apply but only to the extent that they are consistent with the approved concept plan; refer extract from the Act below.

Schedule 6A Transitional arrangements—repeal of Part 3A

3B Provisions applying with respect to approval of concept plans

(1) This clause applies to development (other than an approved project) for which a concept plan has been approved under Part 3A, before or after the repeal of Part

3A, and so applies whether or not the project or any stage of the project is or was a transitional Part 3A project.

- (2) After the repeal of Part 3A, the following provisions apply (despite anything to the contrary in section 75P (2)) if approval to carry out any development to which this clause applies is subject to Part 4 or 5 of the Act:
- (a) if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
 - (b) if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
 - (c) any development standard that is within the terms of the approval of the concept plan has effect,
 - (d) a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,
 - (e) a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,
 - (f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,
 - (g) any order or direction made under section 75P (2) when the concept plan was approved continues to have effect.
- e. Notwithstanding the provisions of Schedule 6A, the proposed subdivision design, which includes lots less than 450m² in area, is not considered to undermine the objectives relating to minimum subdivision lot size of SLEP 2013. For example, having regard to the objective (d) *to enable urban lands to be developed to achieve a density suitable to the neighbourhood*, the proposed subdivision design and layout is consistent with the density as envisaged under the Concept Plan.
- f. The proposed subdivision design and layout will allow for diversity in housing choices in the locality. It is noted that previous subdivision stages in Shell Cove have also included similar smaller lots (eg Stage 8A), albeit at lower densities, which have been subsequently developed to provide housing capable of complying with relevant statutory and non-statutory planning provisions.

Attachment 1 – Subdivision Layout Plan

