

COUNCIL ASSESSMENT REPORT

Panel Reference	2016STH010
DA Number	DA0029/2016
LGA	Shellharbour City Council
Proposed Development	Shop Top Housing Development (Five Storeys High) - 157 Residential Apartments, Three Commercial Tenancies and Two Lot Subdivision (Staged Development)
Street Address	Lot 4212 DP 809265 Benson Avenue SHELLHARBOUR CITY CENTRE
Applicant/Owner	ADM Architects
Number of Submissions	Nil
Regional Development Criteria (Schd 4A of the Act)	Clause 3 General development over \$20 million The CIV for the proposed development is \$26.49M.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy No. 65 – Design Quality of RFB Development • State Environmental Planning Policy No. 71 – Coastal Protection • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • Shellharbour Local Environmental Plan 2013 • Shellharbour Development Control Plan 2013 • Shellharbour Section 94 Contributions Plan 2013.
Clause 4.6 variation?	Yes – 19.6% to the 15m Height Limit - SLEP 2013.
SIC (S94EF)?	No
List all documents submitted with this report for the Panel's consideration	<p>ATTACHMENT 1 - Schedule of Conditions</p> <p>ATTACHMENT 2 – Site Photos</p> <p>ATTACHMENT 3 – Planning Agreement Offer Letter</p> <p>ATTACHMENT 4 – CASA Response Letter</p> <p>ATTACHMENT 5 – Statement of Environmental Effects</p> <p>ATTACHMENT 6 – Application Plans</p> <p>ATTACHMENT 7 – Design Verification and ADG Table</p> <p>ATTACHMENT 8 – Access Audit Report</p>
Recommendation	Approve
Report prepared by	Anthony Randall - Team Leader Planning
Report endorsed by	Grant Meredith – Group Manager City Development
Report date	9 November 2016

EXECUTIVE SUMMARY

Joint Regional Planning Panel

The development application has been referred to the Joint Regional Planning Panel (JRPP) pursuant to Clause 3 of Schedule 4A of the *Environmental Planning & Assessment Act 1979* as the proposed development has a capital investment value that exceeds \$20M.

The Site

The vacant development site forms part of the emerging Shellharbour City Centre.

Proposal

The proposal is to construct Shop Top Housing Development (Five Storeys High) - 157 Residential Apartments, Three Commercial Tenancies and Two Lot Subdivision (Staged Development) as follows:

- Stage 1 - 64 Apartments, Two Commercial Tenancies, Basement Car park, Private Access Road and Two Lot Subdivision
- Stage 2 - 93 Apartments, Two Commercial Tenancy and Basement Car park.

Permissibility

The site is zoned B2 Local Centre under *Shellharbour Local Environmental Plan 2013* (SLEP 2013). Pursuant to SLEP 2013 clause 2.6, subdivision of land is permissible subject to development consent.

Public Exhibition

The application was publicly notified in accordance with statutory requirements. No submissions were made to Council.

Agency Consultation

External agency referrals have been initiated to:

- the Civil Aviation Safety Authority (CASA) for a breach to the 52m RL Obstacle Limitation Surface pursuant to clause 6.7 of the Shellharbour Local Environmental Plan 2013, and
- the Roads and Maritime Service pursuant to clause 104 of State Environmental Planning Policy (Infrastructure) 2007 as traffic generating development

The application was initially identified as nominated integrated pursuant to Section 91 of the Water Management Act 2000. However, the Department of Primary Industries – Water, have since advised that no referral is required due to the highly modified nature of the drainage line to the east of the site.

Recommendation

The proposal generally complies with the Apartment Design Guide along with relevant state and local statutory planning policies and controls therefore it is recommended that DA No. 0029/2016 be approved subject to the conditions contained in Attachment 1.

Attachments

ATTACHMENT 1 - Schedule of Conditions

ATTACHMENT 2 – Site Photos

ATTACHMENT 3 – Planning Agreement Offer Letter

ATTACHMENT 4 – CASA Response Letter

ATTACHMENT 5 – Statement of Environmental Effects

ATTACHMENT 6 – Application Plans

ATTACHMENT 7 – Design Verification Statement and ADG Table

ATTACHMENT 8 – Access Audit Report

TABLE OF CONTENTS

1	PURPOSE OF REPORT.....	4
2	SUMMARY OF RECOMMENDATION.....	4
3	BACKGROUND.....	4
3.1	Approval Body.....	4
3.2	Development Consent History.....	4
3.3	Development Application Chronology.....	4
3.4	Development Application Documents.....	4
3.5	Strategic Context.....	5
4	SURROUNDING LAND AND SITE CONTEXT.....	5
4.1	The Locality.....	5
4.2	Site Description.....	5
4.3	Existing Site Features.....	5
4.4	Site Constraints.....	7
5	THE PROPOSED DEVELOPMENT.....	7
5.2	Subdivision.....	8
5.3	Project Details.....	9
5.4	Site Planning.....	14
5.5	Adaptable Units.....	17
5.6	Solar Access.....	18
5.7	Parking and Access.....	18
5.8	Stormwater Management.....	20
5.9	Waste Management.....	21
5.10	Tree Removal & Landscape Treatment.....	21
5.11	Utility Services.....	22
6	CONSULTATION & DISCLOSURES.....	23
6.1	Political Donations/Disclosures.....	23
6.2	Public Exhibition.....	23
6.3	Consultation.....	23
7	ASSESSMENT.....	25
7.1	Environmental Planning Instruments [s.79C(1)(a)(i)].....	25
7.2	Draft Environmental Planning Instruments (EPI) [s.79C(1)(a)(ii)].....	48
7.3	Shellharbour Development Control Plan 2013 [s.79C(1)(a)(iii)].....	48
7.4	The Regulations [s.79C(1)(a)(iv)].....	52
7.5	Environmental Impacts [s.79C(1)(b)].....	52
7.6	Site Suitability [s.79C(1)(c)].....	53
7.7	Any Submissions [s.79C(1)(d)].....	54
7.8	The public interest [s.79C(1)(e)].....	54
8	CONCLUSION.....	57
9	RECOMMENDATION.....	58
	ATTACHMENT 1 - Schedule of Conditions.....	59
	ATTACHMENT 2 – Site Photos.....	78
	ATTACHMENT 3 – Planning Agreement Offer Letter.....	82
	ATTACHMENT 4 – CASA Response Letter.....	84
	ATTACHMENT 5 – Statement of Environmental Effects.....	85
	ATTACHMENT 6 – Application Plans.....	86
	ATTACHMENT 7 – Design Verification Statement and ADG Table.....	87
	ATTACHMENT 8 – Access Audit Report.....	88

ASSESSMENT REPORT AND RECOMMENDATION

1 PURPOSE OF REPORT

This report is presented to the Joint Regional Planning Panel (JRPP) for determination of a development application (DA) for construction of a Shop-top Housing Development (Five Storeys High) comprising 157 residential apartments, four commercial tenancies and two lot subdivision (staged development). The JRPP is the determining authority for this application as the development has a capital investment value of \$24.6M.

2 SUMMARY OF RECOMMENDATION

It is recommended that the JRPP grant approval to DA No. 32/2016 to construct Shop-Top housing development (five storeys high) comprising 157 residential apartments, three commercial tenancies and two lot subdivision (Staged Development) at Lot 4212 DP 809265 Benson Avenue, Shellharbour City Centre, subject to the schedule of conditions contained within Attachment 1 of this report.

3 BACKGROUND

3.1 Approval Body

Pursuant to State Environmental Planning Policy (State and Regional development) 2011, clause 20 the provisions of *Schedule 4A Development for which regional panels may be authorised to exercise consent authority functions of councils*, of the *Environmental Planning and Assessment Act 1979* (the Act), confers that the Panel is the determining authority for this DA as the development has a capital investment value of \$ 24,600,000.00.

Pursuant to Clause 3 of Schedule 4A, the Panel is the determining authority for applications with a capital investment values that exceeds \$20M.

3.2 Development Consent History

No prior land use consents have been granted on the land.

3.3 Development Application Chronology

- Development Application No. 0029/2016 lodged on 19 February 2016
- DA advertising / notification period from 25 February to 16 March 2016 (21 days)
- JRPP Site Inspection and preliminary briefing on 16 March 2016
- In Principle Voluntary Planning Agreement resolved by Council on 30 August 2016
- CASA Response to the Obstacle Limitation Surface breach on 20 September 2016

3.4 Development Application Documents

- Amended plans - incorporating a signalised intersection with access via a 30m long public road and associated revisions to the basement configuration in the building (lodged on 21 September 2016)
- Architectural Plans - Development Summary, Site Locality Plan & Street Sections, Plan, Site Analysis Plan, Contextual Streetscape Views, Site & Roof Plan, Floor Plans, Elevations and Sections, Pre and Post Adaptation Plan, Shadow Analysis and Colour and Materials Schedule prepared by ADM Architects Project (Drawing Nos. A00 to A24 Revision A dated January 2016);
- SEPP65 Assessment prepared by ADM Architects;
- Plan of Subdivision prepared by Masters and Associates Reference W15010 dated 22.12.15;
- Landscape Plan prepared by Captivate reference 15-1039/1 and 2 dated 20.1.16;
- Water Cycle Management Plan Reference CRPT-20151123.01A dated 21.12.15 prepared by Jones Nicholson;

- Water Cycle Management Plan Reference 20151123 dated 21.12.15 prepared by Jones Nicholson;
- Civil Design Plans reference 151123 Sheets C00P1- C07P1 dated 20.1.16 prepared by Jones Nicholson;
- Hydraulic Assessment prepared by Jones Nicholson Reference CLTR-20151123.01A dated 23.12.15;
- Statement of Compliance Access for People with a Disability prepared by Accessible Building Solutions Job No. 215413 dated 21.12.15;
- Carparking & Traffic Impact Assessment prepared by Aztec Design Reference T-085 dated January 2016;
- BASIX Certificate prepared by Greenview Consulting.

3.5 Strategic Context

The proposal is located within the Shellharbour City Centre which is an emerging regional centre.

Since the Shellharbour City Centre was initially placed on the Illawarra Urban Development Program (IUDP) as a greenfield release area, the role that this area would play in supplying residential housing has evolved over the last 20 years.

Shellharbour City Centre has developed into a major retail centre with planned multi-unit residential dwellings.

Accordingly, the individual sites generating multi-unit dwellings are now being monitored as individual 'major sites' that is, development sites generating more than 15 dwellings.

As a result Shellharbour City Centre has been removed as a greenfield site from the IUDP.

The Illawarra-Shoalhaven Regional Plan (IRP) identifies Shellharbour City Centre as Major Regional Centre and includes the following commentary:

Larger scale centre that service a number of districts, providing a wide range of business, retail and entertainment uses, including discount department stores, warehouses, and transport logistics and bulky goods operations. Includes higher density residential development in the centre. Focal points for subregional road and transport networks and servicing for a number of districts.

The proposal is consistent with the strategic context identified in both the IUDP and IRP by supplying dwellings units within multi-storey building in the City Centre.

4 SURROUNDING LAND AND SITE CONTEXT

4.1 The Locality

The site is located in the emerging Shellharbour City Centre.

4.2 Site Description

The subject site is known as Lot 4212 DP 809265 and is located at Benson Avenue, Shellharbour.

4.3 Existing Site Features

The site of the proposed development is currently vacant (see Figure 1) and is located in the south eastern fringe of the Shellharbour City Centre, with the residential estate of Blackbutt to the east, south, and west.

The site fronts Benson Avenue and is bounded by Nazareth Primary School to the south, existing commercial premises to the west, and a drainage reserve to the east.

The property is reasonably regular in shape and has frontage width to Benson Avenue of approximately 156m; a rear boundary length of 140m; a depth of 75m along its western boundary; and a depth of 76.9m along its eastern boundary.

The land has an area of 11,104sqm.

The site is generally level from the street front property boundary to the rear of the site, but has a significant cross fall from the western boundary down to the eastern boundary into an adjacent a drainage reserve. The site has a change in level of approximately 10 metres and approximately 13% cross-slope.

The least sloping parts of the land is within the western sector of the site, where the land is sited at approximately RL 48.3, rising gently to RL 49.9 at the rear of the site.

Towards the centre of the site the land slopes more steeply from approximately RL 47 in the centre of the site to approximately RL 40 adjacent to the eastern boundary. The land does not contain any significant vegetation.



Figure 1 – Aerial Photograph of Site (edged black)



Figure 2 - Cadastral Locality Plan

4.4 Site Constraints

The land does not contain an item of environmental heritage under the Heritage Act.

The land is not affected by any road widening or road realignment under the Roads Act, an environmental planning instrument or resolution of Council.

Council has no records that the land may be located within a flood hazard area.

The land is not identified as bushfire prone under the Rural Fires Act.

The land is not affected by section 38 or 39 of the Coastal Protection Act, 1979.

The land is not significantly contaminated, subject to a management order, subject to an approved management proposal, an ongoing maintenance order or a site audit statement within the meaning of the Contaminated Land Management Act.

5 THE PROPOSED DEVELOPMENT

The proposed development seeks to construct a mixed use commercial-residential development up to five storeys high containing 157 residential apartments, four commercial tenancies and two lot subdivision (two staged development) that aligns with the staging of the development comprising:

- Stage 1: Block A and B apartments over commercial tenancy 1 (1572 m² area) and 2 (141 m² area) and basement parking with access road
- Stage 2: Block C and D apartments over commercial tenancy 3 (1509 m² area) and 4 (156 m² area) and basement parking.

The development application seeks approval for a mixed use development constructed in two (2) stages, containing a total of four 'blocks', two in each stage; with Blocks A, B (Stage 1), C and D (Stage 2) sited over a podium level.

The development will be accessed from Benson Avenue via a new internal 30m deep public road access sited opposite the western arm of Lamerton Crescent.

The current round-a-bout is to be upgraded to a signalised intersection.

The development will contain a total of 3333sqm of commercial space and 157 residential apartments.

The side sloping site allows basements to be stepped down the site which minimizes the extent of excavation required.

Excavation to a depth of approximately 3 to 5 metres below the natural surface of the land is proposed to accommodate 2 levels of basement parking.

The proposal is to be constructed in 2 stages as follows: as follows:

- Stage 1 - 64 Apartments, Two Commercial Tenancies, Basement Car park, Private Access Road and Two Lot Subdivision
- Stage 2 - 93 Apartments, Two Commercial Tenancy and Basement Car park.

5.1.1 Stage 1: Block A and B (located in the eastern sector of the site)

- A total of 64 residential apartments sited over four residential levels, comprised of 18 x one bedroom, 39 x two bedroom, and 7 x 3 bedroom apartments.
- 10 of the apartments in this stage will be adaptable.
- One level of commercial space (1527sqm) fronting Benson Ave, with one commercial space (141sqm) fronting the internal access way at the ground floor level.
- 32 commercial parking spaces sited to the rear of the commercial tenancies, accessed from the internal access way.
- Two levels of basement parking, with Basement Level 1 containing 70 residential car parking spaces and 13 visitor spaces and Basement Level 2 containing 30 residential car parking spaces.

- Construction of central access way and ten (10) visitor spaces located parallel to the access way.
- 970sqm of communal open space sited at the podium level.
- A total of 40 bicycle spaces will be provided within this stage or the commercial tenancies, staff, residents and visitors and 10 motorcycle spaces will service the residential and commercial components of the development. □

5.1.2 Stage 2: Block C and D (located in the western sector of the site)

- A total of 93 residential apartments sited over four residential levels, comprised of 25 x one bedroom apartments, 62 x two bedroom apartments and 6 x 3 bedroom apartments.
- 12 of the apartments in this stage will be adaptable.
- One level of commercial space (1509sqm) fronting Benson Ave, with one commercial space (156sqm) fronting the internal access way at the ground floor level.
- Commercial/visitor parking (containing 42 commercial and 18 visitor spaces) to the rear of the retail premises, accessed from the internal access way.
- Two levels of basement parking, with Basement Level 1 containing 87 residential car parking spaces and Basement Level 2 containing 32 residential car parking spaces.
- 740sqm of communal open space sited at the podium level.

A total of 57 bicycle spaces will be provided within this stage for the commercial tenancies, staff, residents and visitors and 12 motorcycle spaces will service the residential and commercial components of the development.

5.2 Subdivision

The subdivision (Torrens Title) which is proposed will create two allotments, with Lot 1 having an area of 5246sqm and Lot 2 having an area of 5858sqm, as shown below

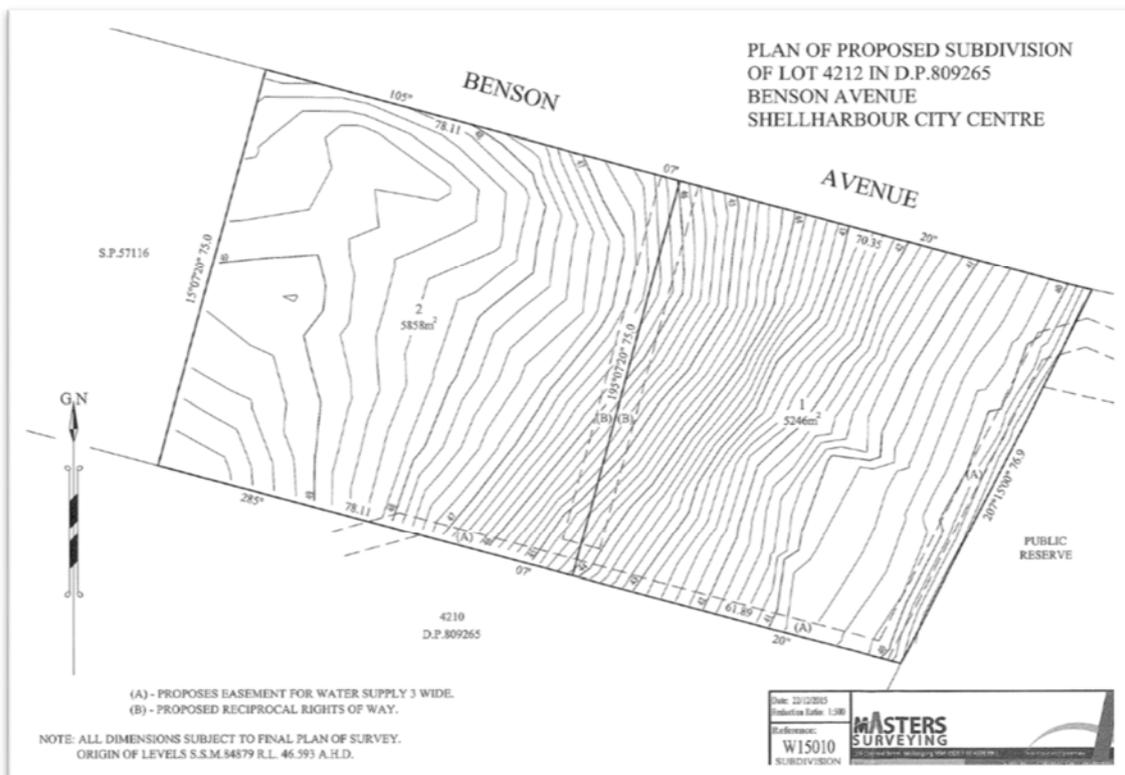


Figure 3 – Subdivision Plan

The subdivision is proposed to be undertaken prior to construction of the development to facilitate staging of construction. The strata subdivision of the development is not proposed in this application (see Attachment 6).

5.3 Project Details

The proposal comprises:

Core metrics	Controls	Proposed
Site Area		11104m ²
Characterisation	B3 Commercial Core	Mixed Use Development - Shop Top Housing and subdivision
Height	15m SLEP 2013 - 19.6% variation	Max at roof 17.95 Max at overrun 17.83
FSR	Nil	GFA 5788 - FSR 0.52:1
Site Coverage	Nil	86.13% (9564m ²)
Deep Soil	7% ADG	13.87% (1540m ²)

STAGE 1 – BLOCK A & B

Level	Commercial GFA	Residential GFA	1BR	2BR	3BR	Unit Totals
Basement 1	-					
Basement 2	-					
Ground	1668	13				
Level 1		1788	6	12	2	20
Level 2		1787	6	12	2	20
Level 3		1787	6	12	2	20
Level 4		413	0	3	1	4
Total	1668	5788	18	39	7	64
Unit Mix			28%	61%	11%	100%

STAGE 2 – BLOCK C & D

Level	Commercial GFA (m2)	Residential GFA (m2)	1BR (units)	2BR (units)	3BR (units)	Unit Totals
Basement 1	156					
Basement 2	-					
Ground	1509					
Level 1		2420	8	18	1	27
Level 2		2422	8	18	1	27
Level 3		2422	8	18	1	27
Level 4		1242	1	8	3	12
Total	1665	8850	25	62	6	93
Unit Mix			27%	66%	7%	100%

TOTALS	Commercial GFA (m²)	Residential GFA (m²)	1BR (units)	2BR (units)	3BR (units)	Unit Totals
Stage 1	1668	5788	18	39	7	64
Stage 2	1665	8850	25	62	6	93
Total	3333	14638	43	101	13	157
	18.5%	81.1%	27%	64%	9%	100%

Adaptable units	ADG Rate	ADG Required	DCP Rate	DCP Required	Proposed
Units	20%	32	20%	32	15% 22 units

CAR PARKING	RMS Rate	RMS Required	DCP Rate	DCP Required	Proposed
Commercial	1/40	83	1/40	83	84
1 Bedroom	0.6	26	1/unit	43	42
2 Bedroom	0.9	91	1.5/unit	151	150
3 Bedroom	1.4	18	1.5/unit	20	26
Sub-Total		218		297	302
Visitor	0.2	78	0.25/1&2BR + 0.5/3BR	66	31
Total		296		363	333

BIKE PARKING	Motorcycle	Bicycle	Proposed
Commercial	8	8	18
Staff		18	18
Residential	14	53	67
Visitor		18	18
TOTAL	22	97	119

5.3.1 Design Theme

The character of the proposal:

- is of a contemporary architectural style and character;
- is appropriately designed to respond to the microclimate including sun, shade, breeze and general weather;
- relates well to and forms a good interface with the overall subdivision, road and open space layout;
- incorporates appropriate durable and high quality materials, textures, forms and colours that will also complement the local landscape; and
- includes opportunities for indoor/ outdoor relationships.



Figure 4: Aerial Montage (south-east view)

5.3.2 Building Form

The Figure 5 -8 below show the proposed development building forms.



Figure 5 - Front and Rear Elevations

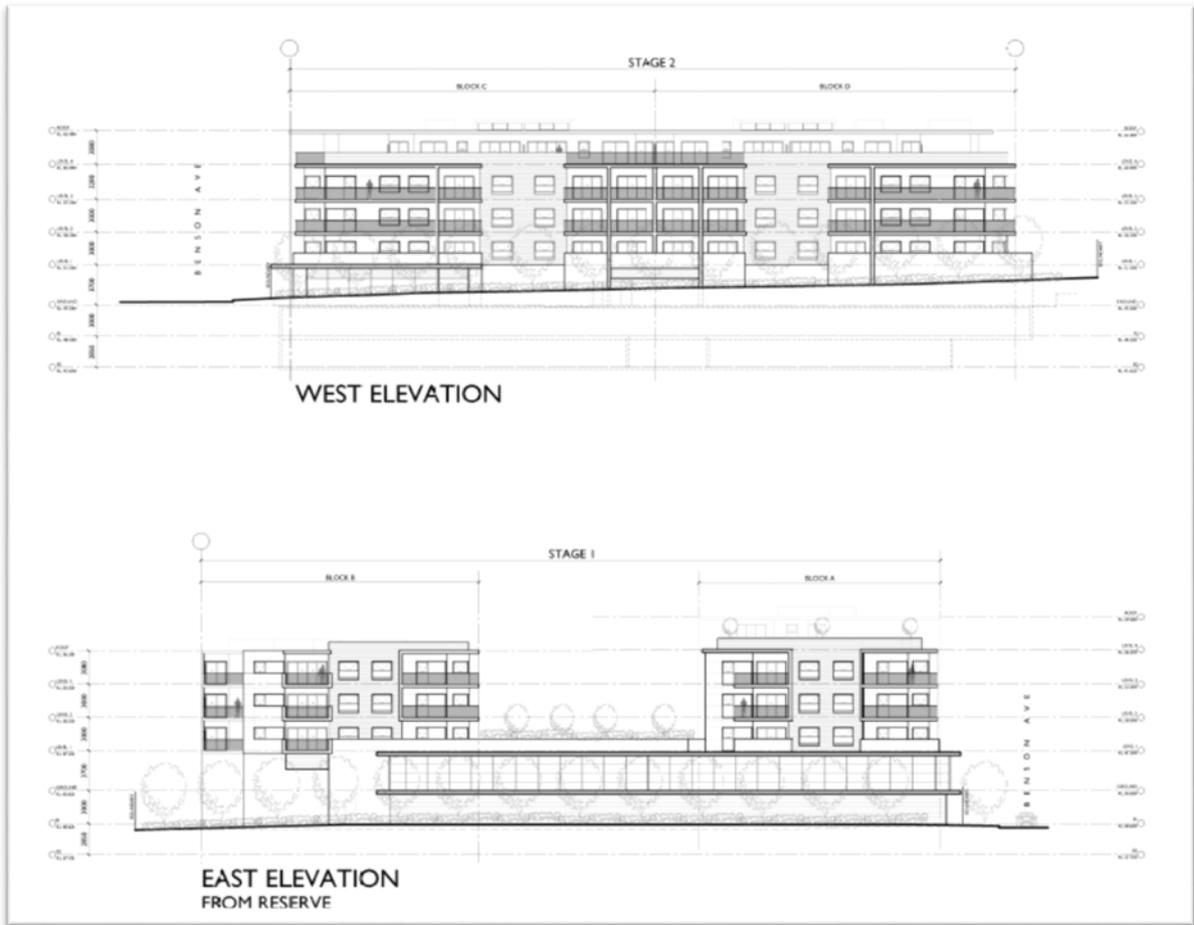


Figure 6 – East Elevation



Figure 7 – East and West Elevations

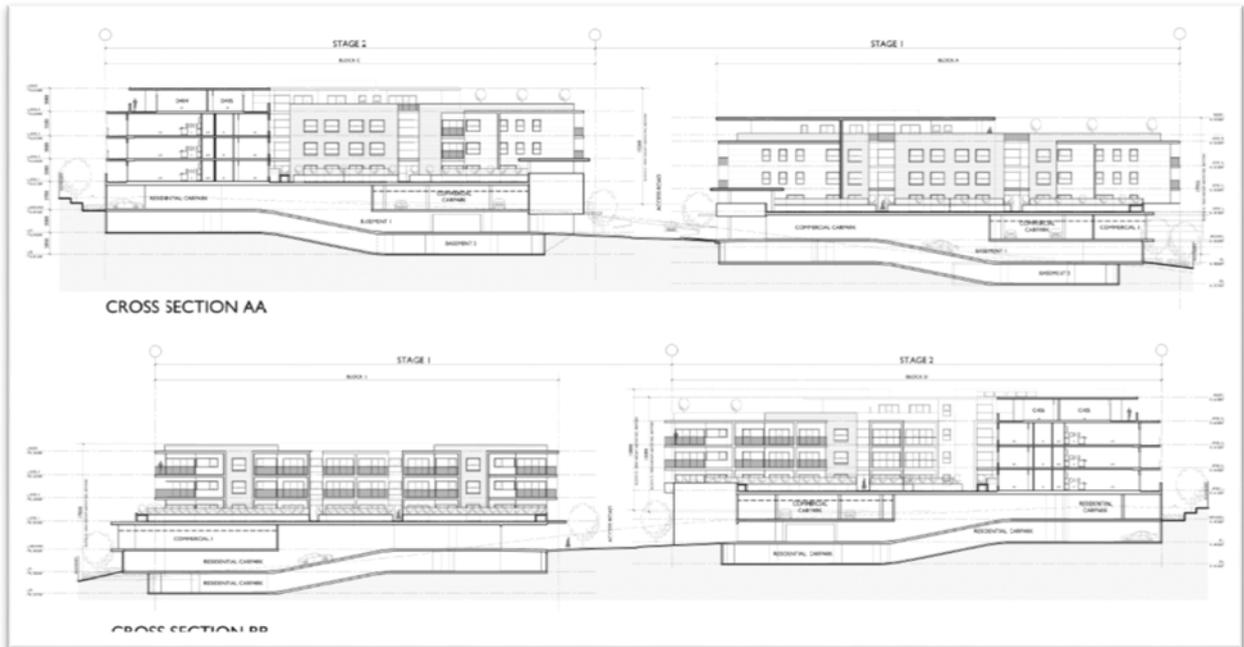


Figure 8 – Sections

5.3.3 Materials and Finishes

The proposed materials and finishes are of concrete super structure construction with glass balustrades, aluminium framed windows, face brick, textured blockwork, lightweight cladding and reflect a coastal pallet, with muted and natural tones and natural finishes, to ensure the proposed development is sympathetic with its environment.

Streetscape and External Colour details are shown in Figure 9 below.



Figure 9 – Artists Impression (south-east view)

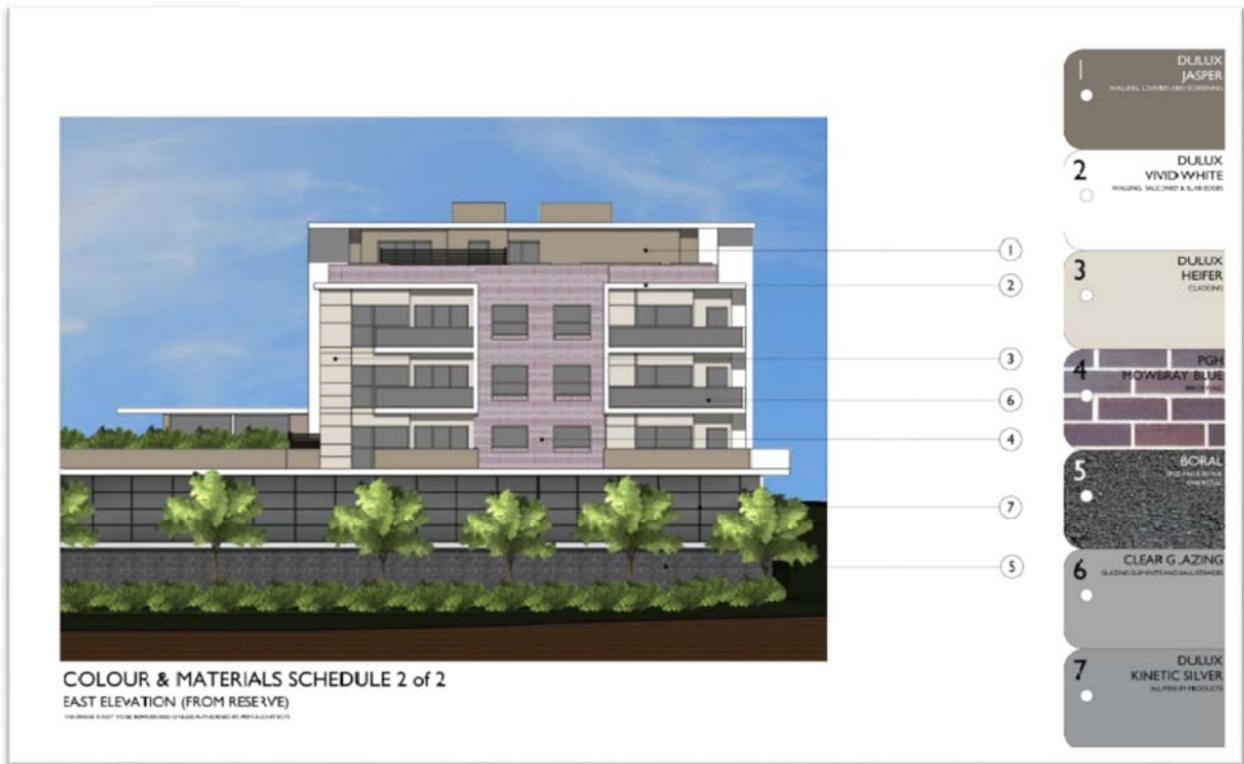


Figure 10 – Materials and Finishes Palette

5.4 Site Planning

The buildings are sited as shown below in Figures 11 - 16.

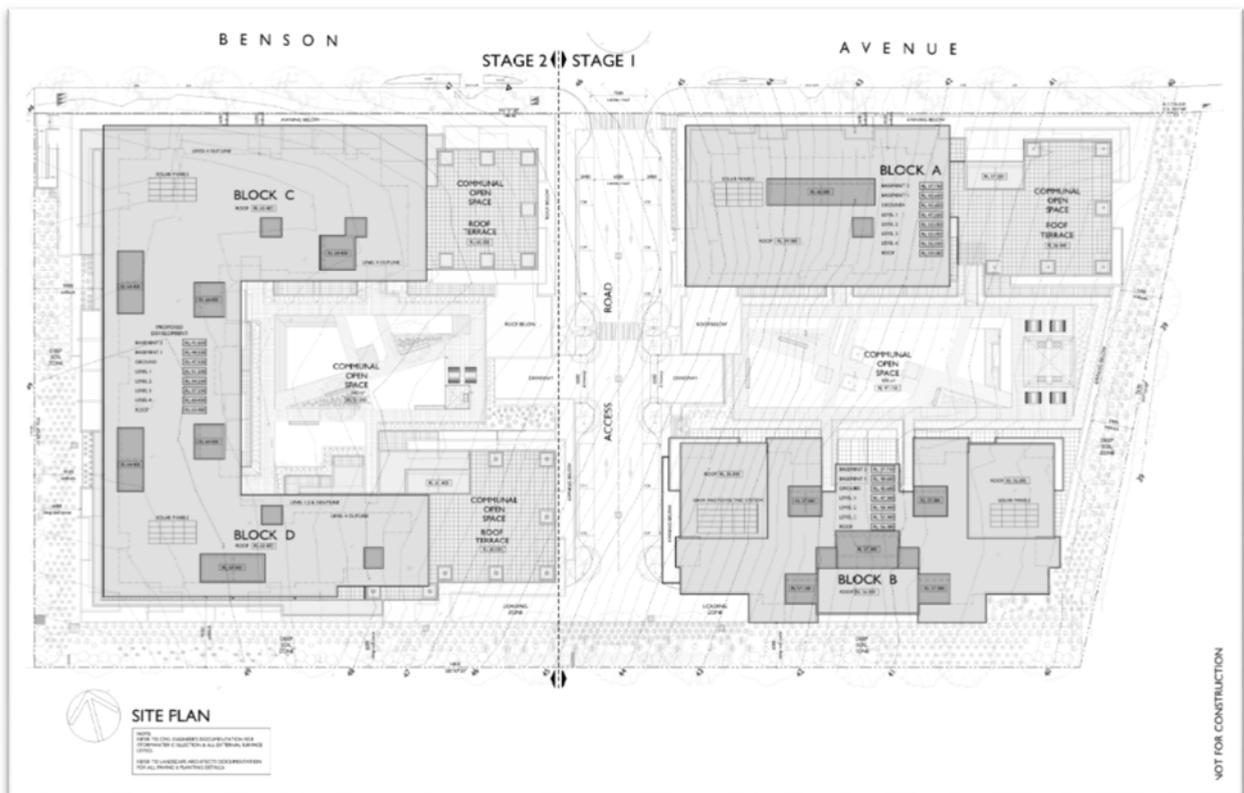


Figure 11 – Site Plan

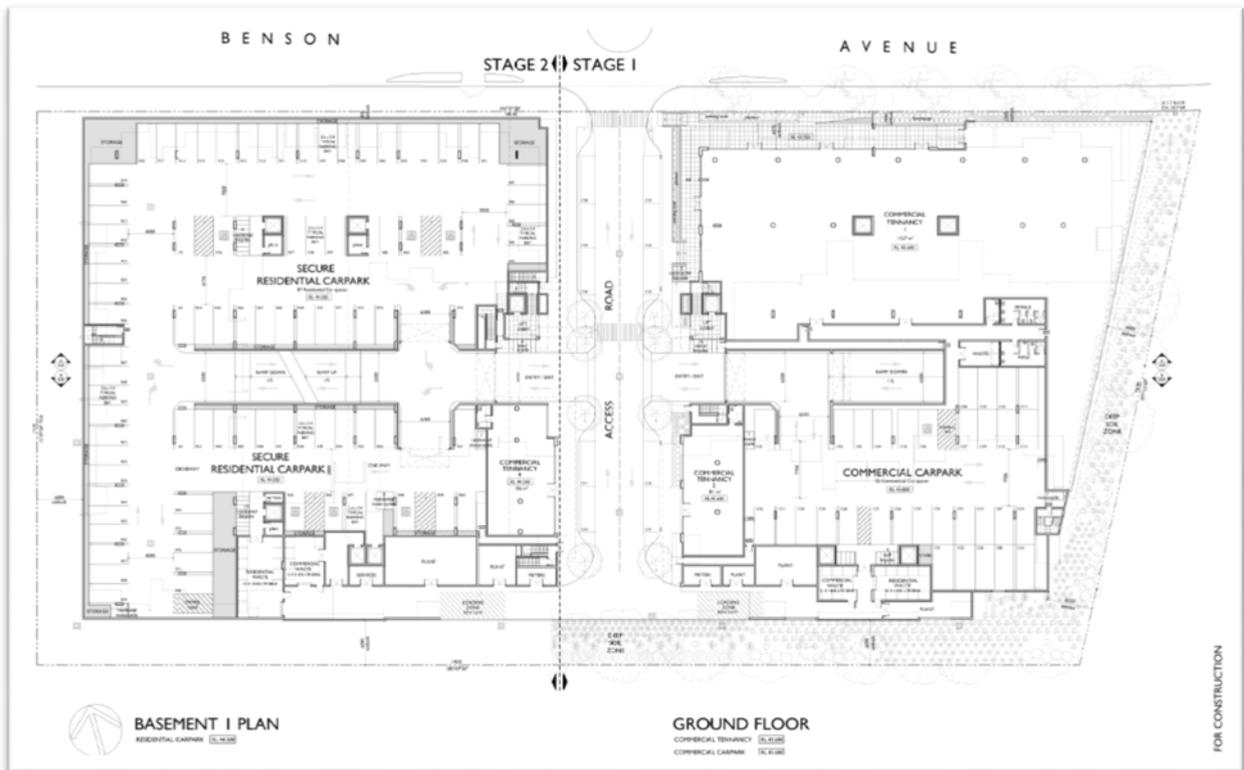


Figure 12 – Basement

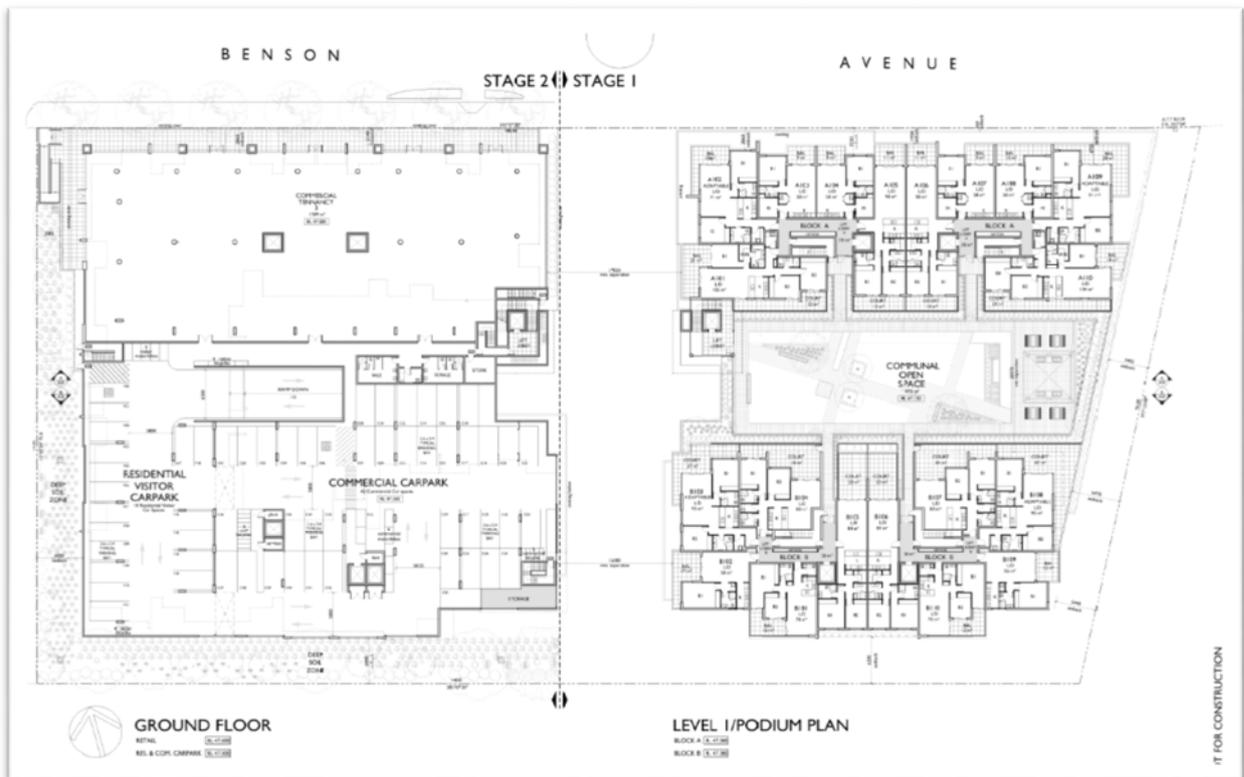


Figure 13 – Ground Level Plan



Figure 14 – Podium/Level 1-2 Plan



Figure 15 –Level 3-4 Plan

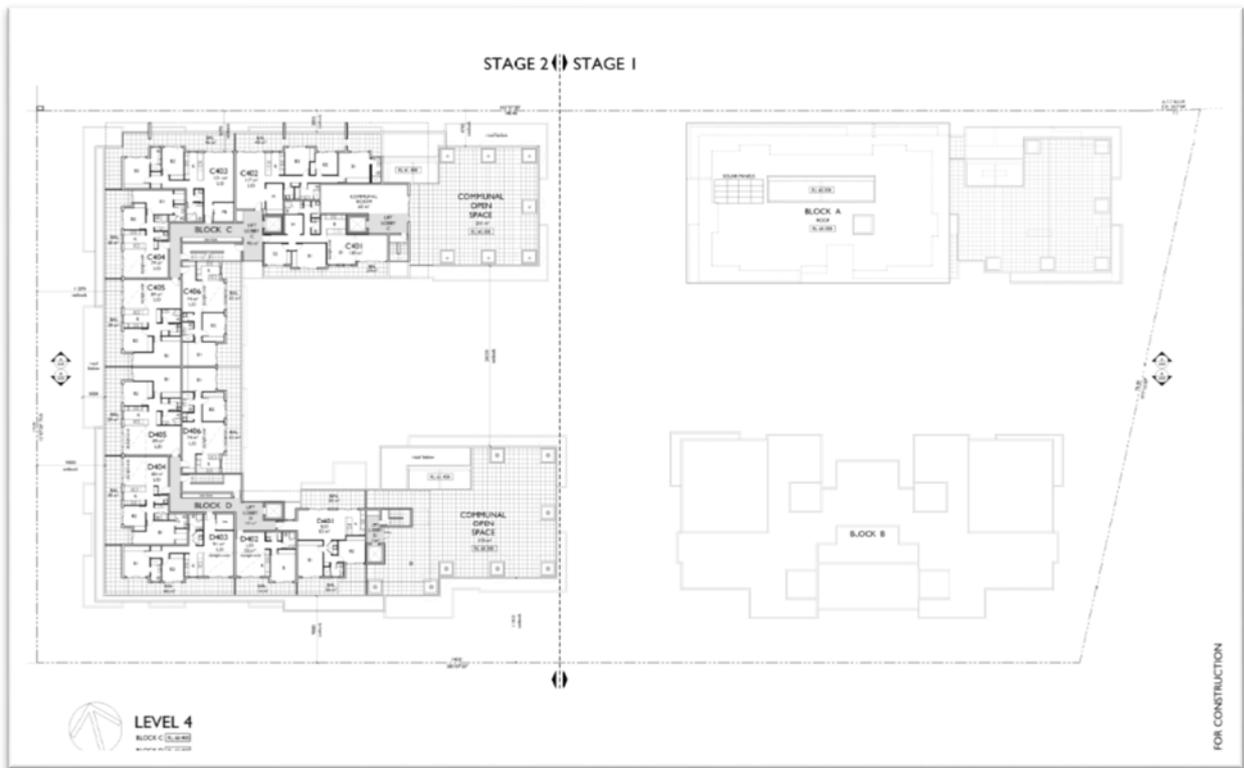


Figure 16 –Level 4 Plan

5.5 Adaptable Units

The table below outlines the current adaptable unit numbers proposed at the development, and the additional ones recommended to be introduced as a condition of the consent.

	Stage 1		Stage 2		TOTALS
	Current Adaptable	Adaptable no design changes needed	Current Adaptable	Adaptable no material design changes	
	A102	B303	C104	C109	
	A109	B308	C204	C209	
	A202		C304	C309	
	A209		D104	D110	
	A302		D204	D210	
	A309		D304	D310	
	B103				
	B108				
	B203				
	B208				
Total	10	2	6	6	24
	Total Apartments				157
	Percentages				15.29%

Figure 17 – Adaptable Unit Schedule

The following adaptable unit layout has been provided with the application:

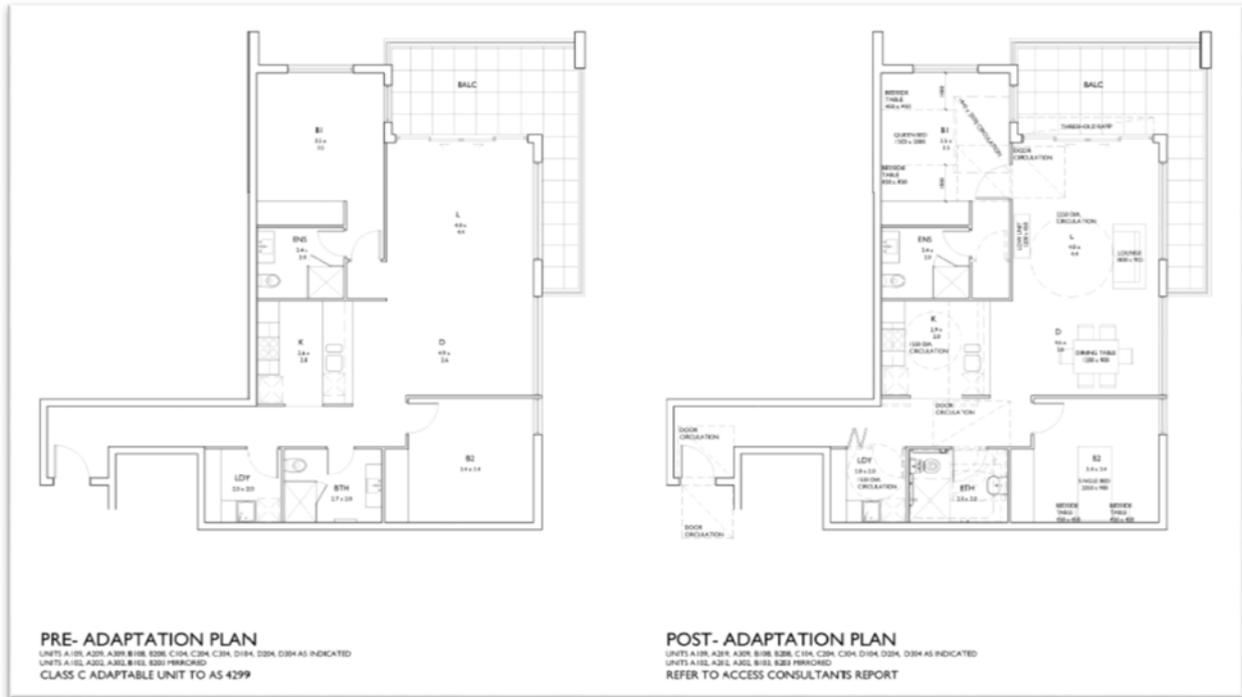


Figure 18 – Indicative Layout

5.6 Solar Access

The following shadow diagrams were submitted with the proposal:



Figure 19 – Solar Access Performance Plan

5.7 Parking and Access

5.7.1.1 Access

The existing road network has the following configuration which will require realignment of the laneways and verges to permit the installation of a signalised intersection:



Figure 20 – Intersection Alignment

Amended plans were submitted on 19 September 2016 to the upgrade the access to the site to a signalized intersection as the existing round-a-bout geometry does not adequately cater for the needs of the road network. The proposal is shown below at Figure 21.

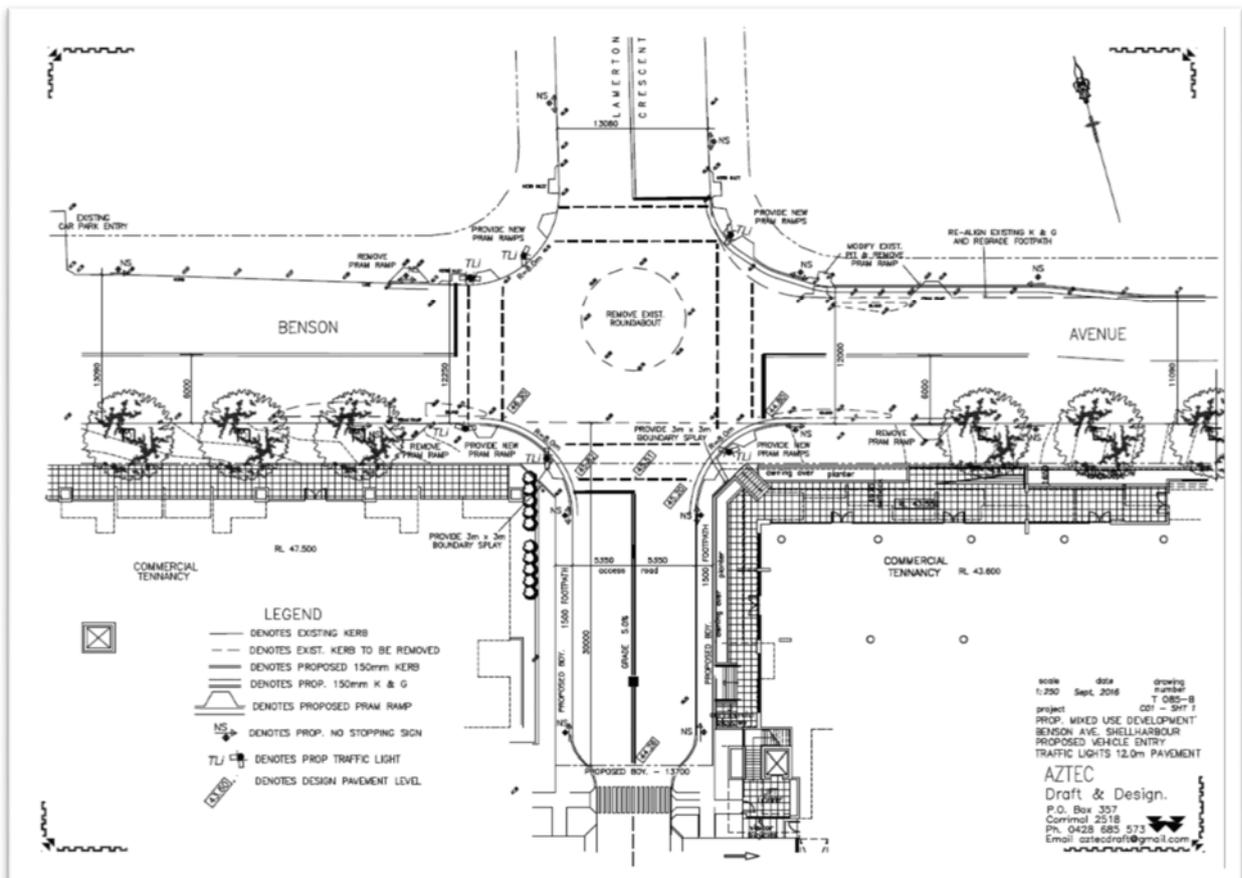


Figure 21 – Amended Intersection Plan

5.7.1.2 Parking

The following parking arrangements are proposed:

CAR PARKING	RMS Rate	RMS Required	DCP Rate	DCP Required	Proposed
Commercial	1/40	83	1/40	83	84
1 Bedroom	0.6	26	1/unit	43	42
2 Bedroom	0.9	91	1.5/unit	151	150
3 Bedroom	1.4	18	1.5/unit	20	26
Sub-Total		218		297	302
Visitor	0.2	78	0.25/1&2BR + 0.5/3BR	66	31
Total		296		363	333

BIKE PARKING	Motorcycle	Bicycle	Proposed
Commercial	8	8	18
Staff		18	18
Residential	14	53	67
Visitor		18	18
TOTAL	22	97	119

5.8 Stormwater Management

The stormwater arrangements shown below at Figure 22 and 23, and in more detail at Attachment 6 are proposed

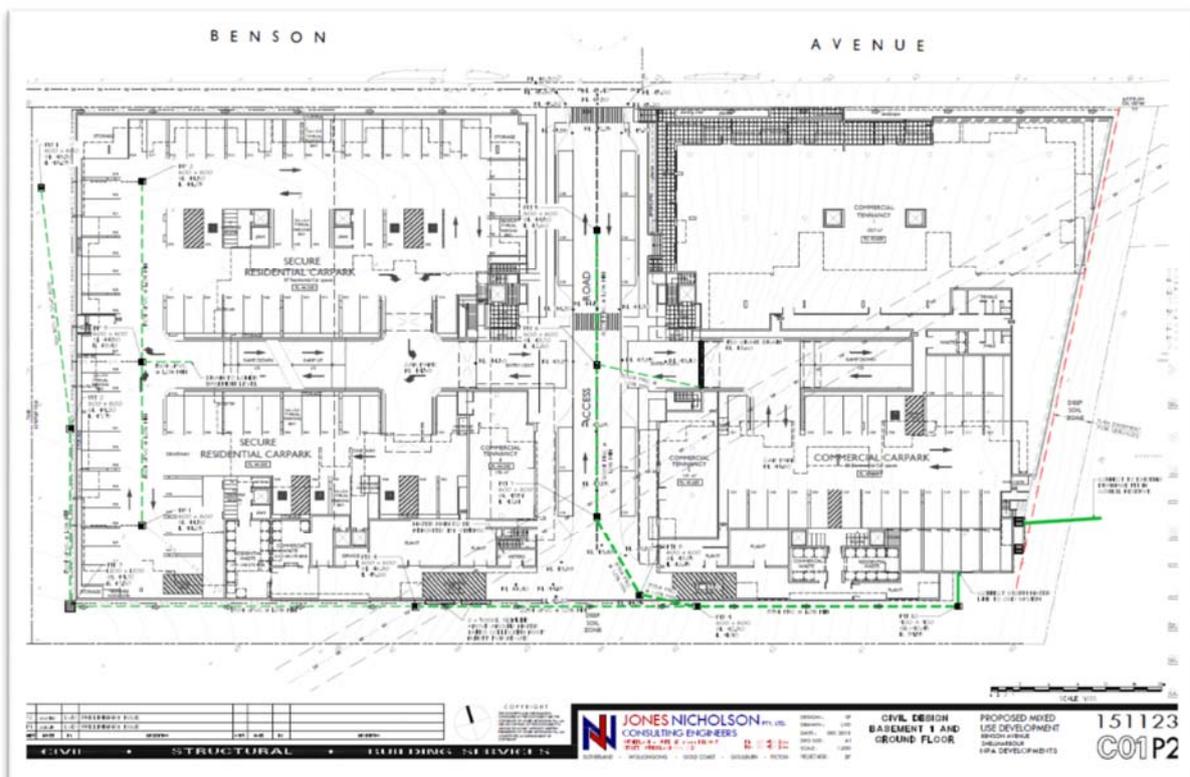


Figure 22 – Stormwater Concept Plan

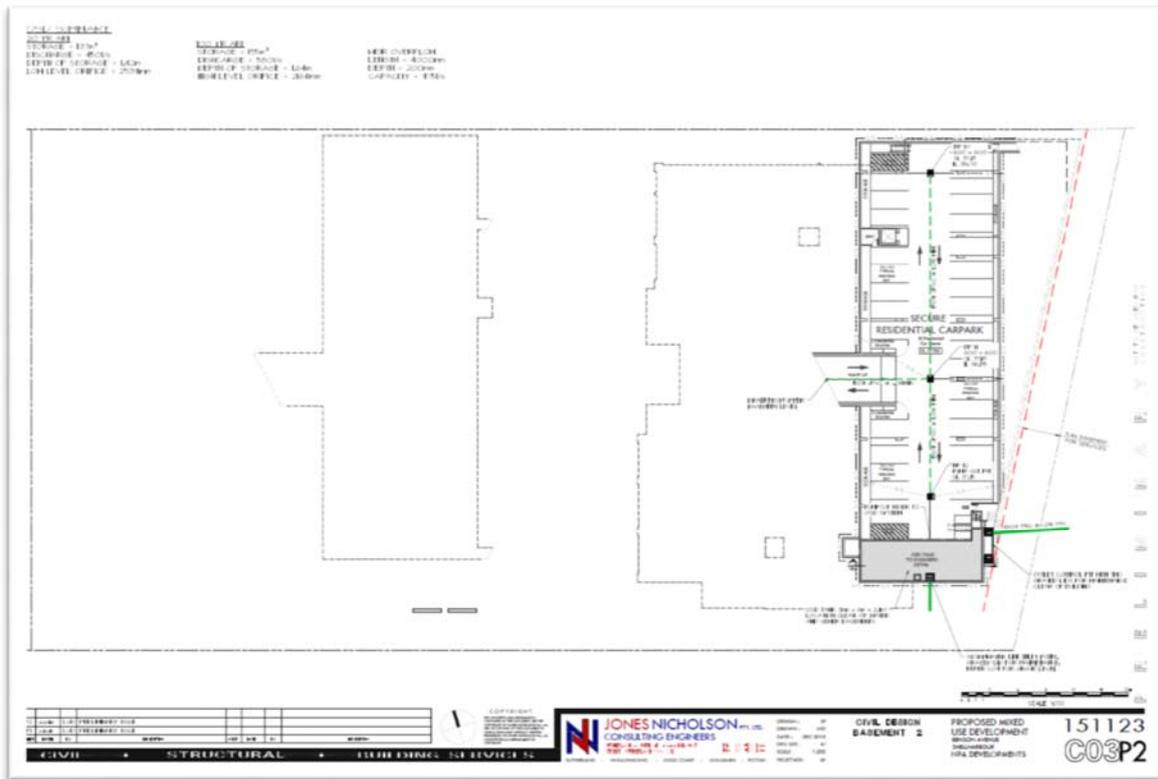


Figure 23 – Stormwater (Basement) Concept Plan

5.9 Waste Management

A Waste Management Plan was prepared to ensure the appropriate management of waste during the construction and operational phases of the proposed development and the construction and waste management of the subject DA can be conditioned to ensure appropriate compliance with waste management standards.

5.10 Tree Removal & Landscape Treatment

No tree clearing is proposed.

Private landscaping works are detailed in the landscape plan (see Figure 24 and 25). This plan outlines the proposed vegetation design and structure to ensure a satisfactory landscape outcome is achieved.

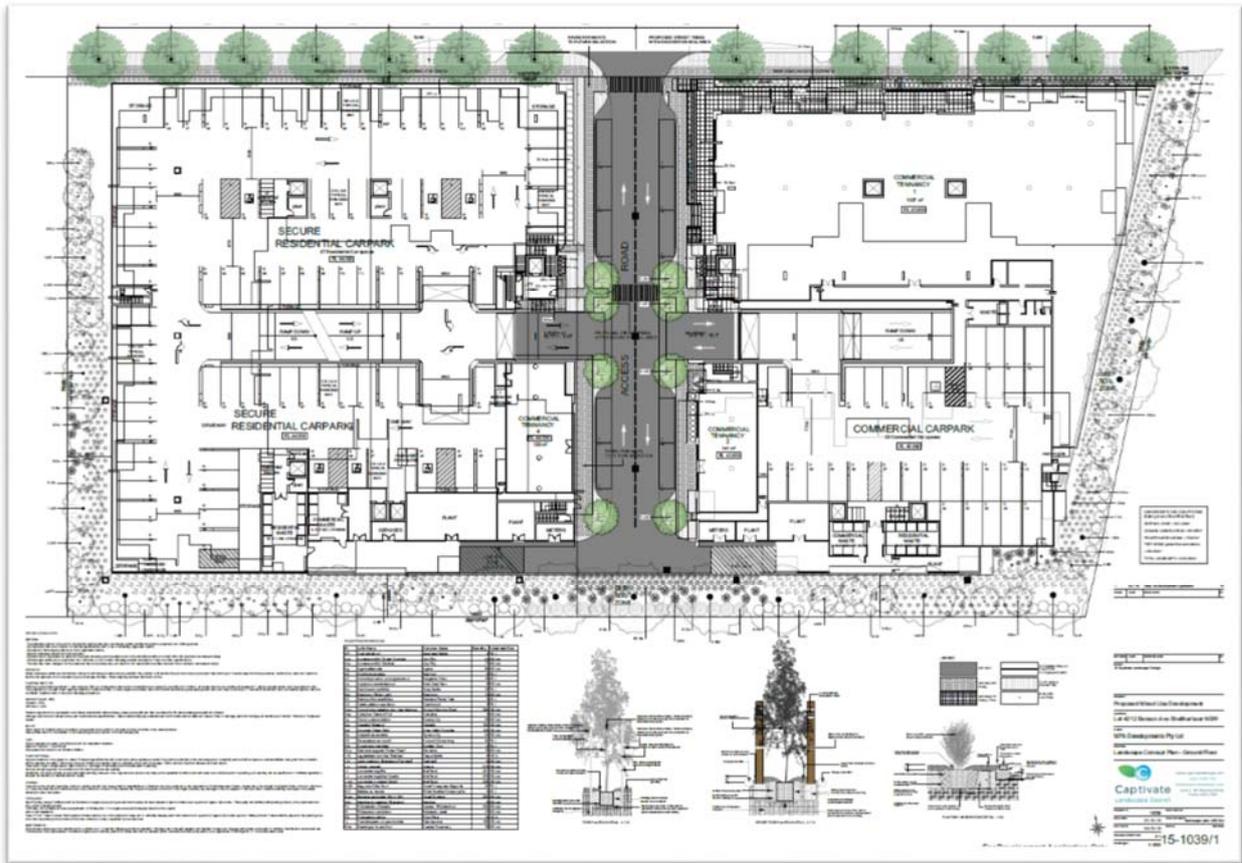


Figure 24 – Street Tree Concept Plan



Figure 25 – Landscape Concept Plan

5.11 Utility Services

Infrastructure and services including potable water, electricity, telecommunications and will be connected to the development.

The site is burdened by a 5m easement for water supply works. Relocation or modification will need to be arranged with Sydney Water at the proponents expense.



Figure 26 – SWC Easement

6 CONSULTATION & DISCLOSURES

This application has been assessed in accordance with Section 79C of the Act.

6.1 Political Donations/Disclosures

Nil public submissions were received, therefore no disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by any persons.

6.2 Public Exhibition

The DA was publicly notified for a period of 21 days in accordance with Council's Development Control Plan 2013 from 25 February to 16 March 2016.

No submissions were received.

6.3 Consultation

During the assessment of the DA a number of internal and external technical referrals were made seeking expert opinion on key issues. These are discussed later in the report and where relevant, conditions have been recommended and included at Attachment 1.

6.3.1 Referrals to External Agencies

External agency referrals have been initiated to:

- the Civil Aviation Safety Authority (CASA) for a breach to the 52m RL Obstacle Limitation Surface pursuant to clause 6.7 of the Shellharbour Local Environmental Plan 2013, and
- the Roads and Maritime Service pursuant to clause 104 of State Environmental Planning Policy (Infrastructure) 2007 as traffic generating development.

These are discussed later in the report and where relevant, conditions have been recommended and included at Attachment 1.

6.3.2 Council Internal Referrals

In summary internal referrals were made to the following officers:

- Airport Manager
- Section 94 Accountant
- Development & Subdivision Engineer
- Landscape Technical Officer
- Community Safety Officer & Community Planner
- Waste Management Officer

The following relevant referral advice was received:

6.3.2.1 Airport Manager

We have liaised with Air Services and the Civil Aviation Safety Authority (CASA) regarding the proposal.

Along with the assessment from CASA and recommended conditions, we have added conditions for beacon lighting as per our referral response notice for the following reasons:

- Council's Airport Future proofing Obstacle Limitation Surface (OLS) has the building penetrating into the layer requiring those conditions
- Other officers within CASA have assessed to support our future proofing OLS, including the civic centre.
- Conditions ensure consistency with conditions on the Civic Centre building currently under construction

6.3.2.2 Section 94 Accountant

The proposed development will be levied Section 94 contributions for both the residential and commercial components of the development. In accordance with the *Section 94 Contributions Plan 2013 (7th Review)* the development is levied toward the cost of City Wide and City East facilities (Precinct 3, Blackbutt), but is not levied a contribution toward Item C3.02 Shellharbour City Centre Traffic Management.

Section 94 Contribution payable: **\$1,470,234.45**

The development proposes access from Benson Avenue at the intersection with Lamerton Crescent. This is consistent with the City Centre Master Plan as contained in the Shellharbour Development Control Plan. The existing intersection treatment is a three-leg roundabout that is identified to be upgraded to three-way three-way traffic lights to facilitate development in the City Centre. As a result of the increased traffic volumes, the intersection will need to be upgraded to four-way traffic lights with an additional fourth leg proposed to provide access to the site of the development.

Council has planned for the future construction of three-way traffic lights, however, the development will require the upgrade to be redesigned to accommodate an additional leg, and the construction timeframe to be brought forward.

The applicant has provided a Letter of Offer to enter into a Planning Agreement under Section 93F of the *Environmental Planning and Assessment Act* (the Act) in conjunction with DA 29/2016 (see Attachment 3).

The applicant proposes to design and construct the four-way traffic lights on behalf of Council and seeks to be reimbursed the cost of the three-way traffic lights from the Section 94 Contributions Plan. This is considered a reasonable request and will result in a positive outcome for the developer, council and the community.

6.3.2.3 Development and Subdivision Engineer

The civil works and management thereof to minimise any environmental impacts, road design, drainage and traffic have been assessed as acceptable subject to conditions being imposed on any development consent.

Refer to the conditions of Attachment 1.

6.3.2.4 Landscape Technical Officer (LTO)

The submitted landscape plans for the development have been reviewed by Council's LTO and approval recommended. Recommended conditions are included in the attached conditions; refer to Attachment 1.

6.3.2.5 Community Safety Officer & Community Planner

The social impact of the proposal and an assessment of the proposal against the principles of the Crime Prevention Through Environmental Design has been undertaken. Relevant conditions have been included in the recommended conditions; refer to Attachment 1.

6.3.2.6 Waste Management

The waste management officer has assessed the proposal and noted that waste services will not be available from Benson Avenue.

The proposed will have the waste collected from the basement.

Privately contracted waste collection vehicles are required to service the site for commercial waste, which will also be required to extend to domestic waste collection because Council policy is to only collect waste kerbside from the public street, which is not achievable at this location due to the narrow road width at the street frontage.

Bulk collection of waste in 1100L bins a total of 23 residential and 10 commercial, which complies with Council's DCP.

No objection to the proposal is raised subject to conditions. Relevant conditions have been included in the recommended conditions; refer to Attachment 1.

7 ASSESSMENT

7.1 Environmental Planning Instruments [s.79C(1)(a)(i)]

7.1.1 Planning Controls

The following relevant planning controls have been considered in the assessment of this DA:

- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 65 – Design Quality of RFB Development
- State Environmental Planning Policy No. 71 – Coastal Protection
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- Shellharbour Local Environmental Plan 2013
- Shellharbour Development Control Plan 2013
- Shellharbour City Council Section 94 Contributions Plan 2013.

7.1.2 SEPP No 55 – Remediation of Land (SEPP 55)

The aim of SEPP 55 is to provide for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or environment and requiring that any remediation work meet certain standards and notification requirements.

The subject site is currently vacant and there is no evidence available to suggest that a potentially contaminating land use under the Contaminated Land Planning Guidelines has occurred on the site.

There are no matters listed under Section 59(2) of the Contaminated Land Management Act 1997 affecting the site.

Accordingly, the preparation of further investigations into site contamination is not considered warranted.

Based on the above the development satisfies the objectives of SEPP 55 and subject to conditions being imposed to ensure all works cease in the event of unexpected findings during development phase (see Attachment 1). The proposal is considered to satisfy the objectives of this Policy.

7.1.3 SEPP No 65 – Design Quality of Residential Flat Building Development

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65) prescribes nine design quality principles to guide architects designing residential flat buildings and to assist councils in assessing such developments.

The nine principles relate to key design issues including the context, scale, built form and building density, resource, energy and water efficiency, landscape design, amenity, safety/security, social impacts and aesthetics.

Details of that assessment are provided below, and conclude that the proposal maintains adequate solar access and privacy to adjoining properties, and provides adequate internal amenity in terms of solar access, private open space, apartment size and storage in accordance with SEPP 65.

7.1.3.1 Legislative Requirements

The State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component.

The policy applies to the erection of a new building that is at least 3 or more storeys and contains at least 4 or more dwellings.

The provisions of the SEPP apply to this development as it comprises the erection of a new building, which contains in 4 to 5 storeys incorporating 157 residential apartments.

The Environmental Planning and Assessment Regulations 2000 (Clause 50) require that these development applications must be accompanied by a design verification statement from a qualified designer. The statement is intended to certify that the qualified designer has directed the design and that the building achieves the design quality principles set out in SEPP 65 and the objectives of Parts 3 and 4 of the Apartment Design Guide (ADG) have been achieved.

A Design Verification Statement was submitted from ADM Architects with the application (see Attachment 7) indicating that a registered architect directed the design of the proposed apartment development and that the proposal generally satisfies the design quality principles set out in Part 2 of SEPP 65.

The Statement concludes that the proposal is generally considered acceptable having regard to the nine design quality principles. It is therefore considered that the proposal satisfies the Design Verification Statement requirement.

7.1.3.2 Standards That Cannot Be Used as Grounds To Refuse Development Consent

The SEPP includes provisions by which a development application or modification of consent cannot be refused.

These include:

- a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,

- c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Compliance with these requirements is met with the exception of 26 units (16.5%) which contains a unit depth of 9.2 metres whereby 8 metres is required. The variation is considered acceptable and is discussed later in this report.

7.1.3.3 Design Quality Principles

Principle 1: Context and neighbourhood character

Good design responds and contributes to its context.

Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

- The proposal responds and contributes to its context on the fringe of the planned Shellharbour City Centre.
- The proposal will contribute to the identity of the area.
- The proposal has been developed in relation to the desired future character of the area generally as set out in the SDCP2013.
- The proposal provides residential uses above commercial premises consistent with the objectives of the B3 zoning SLEP2013.
- The siting of the building responds to its emerging city location, its relationship to the specific topographic situation, and the varying environmental conditions of the site.
- The proposed building heights increase to responds to the site topography and associated levels to deliver the activated streetscapes and the access road integrated with the formalized pedestrian paths and access controls.
- These responses result in a building form and articulation that will contribute to the existing and future desired streetscape.

Principle 2: Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

- The proposal involves building heights ranging from 4 to 5 storeys.

- The proposed heights provide a distinct transition from the surrounding low density residential area up to the city edge.
- The transition of heights is generally consistent with what good apartment design requires for the area which sets the context for the desired future character of the locality
- the ADG recommends that the B3 zone and R2 zone interface should have a 9m metre setback. The intent is to provide a reasonable buffer to lower scale residential development. A deep soil setback of approximately 6 metres is proposed which is considered satisfactory next to a primary school that will not likely be redeveloped for residential accommodation.
- The proposed building is appropriate in terms of its bulk and height.
- Its overall height extends beyond what is identified as the maximum permissible height for the site as defined by the 2013 Local Environmental Plan, but is in keeping with the permissible height of the adjoining property.
- A Clause 4.6 'Exception to Development Standards' statement, which justifies this non-compliance, is contained in Section 10 of the Statement of Environmental Effects (see Attachment 5).

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population.

Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment .

Comment:

- The proposal has an FSR of 0.52:1.
- The development density is commensurate with the adjoining R2 Zone, but in a different building typology.
- The proposal meets the density objectives of the surrounding sites as defined by the SDCP2013 – Shellharbour City Centre.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.

Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Comment:

- The provision of up to 157 apartments on the site is consistent with local and regional planning strategies which seek to locate housing within centres with access to transport, jobs and services.
- Apartments have been designed having regard to thermal performance, provide reasonable amenity to occupants and reduce greenhouse emissions and therefore the cost of energy supply.
- The layouts generally promote cross ventilation and northern orientation.

- Extensive areas of deep soil planting have been provided to provide visual relief the massing of the building at the interfaces to the drainage reserve, primary school and the adjoining existing low-rise commercial development.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.

A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

Comment:

- The landscape design is integrated with the building design and arrangement of external public and communal spaces.
- The landscape elements reasonably define the key spaces within and around the site and enhance the occupants' privacy across public and private thresholds particularly for ground level apartments with courtyard privacy and security fences.
- The species proposed have been selected in consideration of the climatic conditions on the site, the existing ecosystem, water management on the site and their long term success in relation to these factors.
- There is no existing vegetation within the site to be maintained.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours.

Achieving good amenity contributes to positive living environments and resident well-being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Comment:

- The building has been designed based on satisfactory unit internal amenity.
- The proposal reasonably maintains the amenity of the adjoining properties and provides adequate open space between them.
- The site layout meets the requirements for accessibility and building separation.
- Appropriate room sizes and shapes are provided and supported by access to sunlight and ventilation, sufficient storage, efficient layouts and service areas.
- Access to sunlight, ventilation and views are reasonably provided.

Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose.

Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

- The proposal optimises safety and security both within the development and public domain through the effective design of entry locations, access controls, territorial reinforcement, passive surveillance and active frontages.
- Apartment layouts have been designed to provide overlooking of the public and communal spaces whilst providing privacy for the occupants.
- The public spaces are clearly defined and distinct from private and communal open space. They are well lit and avoid dark, dead end spaces that are not visible.
- The building entry points are clearly defined from the public domain.

Principle 9: Housing Diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Comment:

- The proposal includes opportunity for a range of commercial uses appropriate to the area and a range of apartment sizes, types (including 1, 2 and 3 bed and adaptable unit types), layouts that will contribute to the population diversity of the area.
- The proposal also includes communal space at both ground and roof levels, providing opportunities for a broad range of residents to interact.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure.

Good design uses a variety of materials, colours and textures.

The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

- The proposal contributes to both the existing streetscape and the desired future character of the area.
- The structure and architectural proportions of the building respond both to its internal uses and external environmental factors, resulting in a positive architectural aesthetic comprising of forms, materials and colours that distinctly contribute to the urban fabric of the City Centre.

7.1.3.4 Apartment Design Guide

The SEPP 65 policy requires that a consent authority take into consideration the Apartment Design Guide, prepared by the Department of Planning and Environment in 2015 with respect to the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide.

ADG COMPLIANCE SUMMARY	
Ceiling Heights	<p>The commercial levels have a minimum ceiling height of 3000mm</p> <p>All apartments have ceilings at 2700mm height.</p> <p>Kitchens which are open plan may have bulkheads for service co-ordination.</p> <p>Non-habitable rooms including wet areas, corridors and bulkheads over habitable rooms are to be a minimum of 2400mm height to allow for service co-ordination.</p>
Apartment Layouts	<p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>Every habitable room or open plan space has a window greater than 10% of the room area. In open plan layouts the maximum habitable room depth is generally 8m from a window.</p> <p>Where the open plan exceeds 8m in depth, the apartments are orientated directly to the north.</p> <p>Living rooms to units are a minimum 4m wide and bedrooms are a minimum of 3m (excluding the wardrobe).</p>
South Aspect Units	<p>The development proposes 1 x 1 bed and 8 x 2 bed single aspect apartments with a southerly aspect, representing less than the maximum permissible of 15%.</p>
Natural Ventilation to Kitchens (min 25%)	<p>The proposal meets the design guide requirement to provide natural ventilation to kitchens by proposing that 27% of kitchens have operable windows.</p>
Balcony Depths	<p>All balconies meet and exceed the minimum requirements of 2m depth.</p> <p>In accordance with the ADG, all primary living spaces have direct access to weather covered private open space allowing for external access, ventilation and daylight.</p>
Daylight Access to living rooms and private open space (min 70%)	<p>The proposal achieves more than 3 hours of direct sunlight access to 70% of all apartments between 9:00am and 3:00pm mid-winter.</p>
Cross Ventilation (min 60%)	<p>The proposal exceeds the design guide requirement achieving natural cross ventilation to more than 62% of all apartments.</p>
Common Circulation Space	<p>The maximum number of apartments off a common circulation core on a single level is 8. All residential lobby areas are provided with natural light and ventilation</p>
Accessibility (min 10%)	<p>Barrier free access is achieved to all apartments have lift access and paving gradients compatible with access requirements.</p> <p>Twenty-two (15%) of apartments will be designed in accordance with AS4299 Adaptable Housing; facilitating future adaptability.</p> <p>The DCP2013 encourages 20% be provided or 32 units.</p>

Deep Soil Zone	<p>Because of the sites mixed use nature, landscape spaces are located around the site perimeter for screening and on the 'podium', adjoining and around the POS and in deep raised planter boxes adding to the overall soft landscaping.</p> <p>More than 30% of the site is dedicated to landscaping.</p>
Communal/ Public Open Space	<p>The building provides a 3 roof top communal open spaces.</p> <p>Public Open space is provided in the form of a new access road and pedestrian footpaths and connectivity to commercial shop fronts.</p> <p>Open space is provided between the buildings at podium level and at roof levels orientated to the north.</p>

Apartment Design Guide Variations

The following minor variations are sought to the ADG:

Part 3D - Communal Open Space

ADG VARIATION		Primary Control	Variation	Compliance
3D	Communal Open Space	Achieve a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9am and 3pm on June 21.	<p>Sunlight access is required to 50% of the required 2248m² of communal open space, which equates to 1124m² of the COS being required to achieve 2 hours of sunlight.</p> <p>The Shadow Analysis prepared by ADM Architects shows that the roof terrace of Block A and C will receive sunlight in excess of the required 2 hours, with only a limited area of such terraces being overshadowed in the later afternoon period.</p> <p>Similarly, the roof terrace of Block D will receive sunlight through most of the day on June 21, with only a limited area shaded by 3pm.</p> <p>Hence, the 960m² of rooftop communal open space (ie. 42.7% of the total 2248m² required meets the 2 hour requirement for sunlight access on June 21.</p> <p>The communal open space at the podium level, being sited centrally within the development, will be overshadowed throughout the day however 67m² at the podium level (ie 6.0% of the total 2248m²) will achieve 2 hours of sunlight.</p>	Minor Variation

- The ADG recommends that 25% of the site be communal open space, with 25% of this space being a deep soil zone.

- The ADG recommends that a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9am and 3pm on June 21.
- The site has an area of 11,104m² and therefore requires 2776 m² of communal open space with deep soil planting of 694m².
- The proposal includes at least 24% of the 11,104m² site area as communal open space. comprising two ground level podiums incorporating communal open space of 740m² and 970m² in area, plus 3 roof-top terraces each with an area of 335m², 255m², and 370m² totaling 2670m² or 24% of the site as communal open space.
- Deep soil setbacks that contribute 1540m² (13.87%) providing a combined total of 4210m² or 38% of the site as publically accessible and communal open space.
- When combined with the communal open space at the rooftop a total of 48.7% of the communal open space achieves the required 2 hours of sunlight.
- This is only marginally below the required 50% and will not result in a loss of amenity for residents within the development given the minor extent of the variation

Given that all apartments have private open space in the form of balconies or courtyards, and future residents will have excellent access to a significant area of public open space, the proposal is considered to satisfy the provision of communal open space incorporating deep soil planting.

Part 3F – Visual Privacy

ADG VARIATION		Primary Control	Variation	Compliance
3F	Visual Privacy	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	<p>South-east & east:</p> <p><u>Up to 4 storeys (Basement 1, Ground Floor & Levels 1-2):</u></p> <p><u>Side (east):</u> Min 5.445m (with one corner of upper level balconies in Building A at 4.335m).</p> <p>Setback increases to a maximum of 9.5m for Building A.</p> <p><i>Variation sought to the required 6m setback.</i></p> <p><u>5th Storey (Level 3):</u></p> <p>Rear:</p> <p>6.0m. <i>Variation sought to the required 9m setback.</i></p> <p><u>Side (east):</u> Min 5.445m (with one corner of upper level balconies in Building A at 4.335m). Setback increases to a maximum of 9.5m for Building A. <i>Variation sought to the required 9m setback.</i></p>	Minor Variation

In general the proposal is considered to achieve suitable privacy between dwellings within the site and to provides reasonable relief to the adjoining primary school through the following:

- The separation distances between built elements complies with the requirements of the ADG

- the architecture of the buildings has used staggered and articulated building elements to alter the directional view of windows and/or orientated apartments away from each other ensuring direct lines of sight between habitable spaces are sufficiently off-set
- The buildings facing Benson Avenue (Building A and C) have been designed to activate the streetscape with ground level commercial tenancy opportunity and upper level apartments facing the street
- All other levels of the buildings have passive habitable living rooms orientated to ensure that existing residential premises are afforded greater privacy. This is strengthened through the 16 to 20 metres separation between the buildings
- The general design of building promotes positive ground level activation allowing for a defined building edge to encourage surveillance of the street and the centre of the development and promote casual surveillance without compromising privacy
- Semi-Public open space as a shared asset generally benefits from a sense of overlooking by dwellings
- the design and orientation of the development optimises the outlooks to the emerging city centre and adjoining public open space, and surrounding local streets
- the ADG recommends that the B3 zone and R2 zone interface should have a 9m metre setback. The intent is to provide a reasonable buffer to lower scale residential development. A deep soil setback of approximately 6 metres is proposed which is considered satisfactory next to a primary school that will not likely be redeveloped for residential accommodation.

This design response is considered to be positive in activating the street facing elevations as well as contributing to passive casual surveillance of public land promoting the principles of Crime Prevention Through Environmental Design (CPTED).

The development will not result in any unreasonable adverse privacy impacts.

Part 4D – Apartment Size and Layout

ADG VARIATION		Primary Control	Variation	Compliance
4D	4D Apartment Size and Layout	In open plan layouts (where the living dining and kitchen are combined) the maximum habitable room depth is 8m from a window	The majority of units comply however variation is sought for about 22 apartments which have a depth of 9.2m. Variation is sought to this requirement as 75% of units comply and other cross ventilation and sunlight requirements are met.	Minor Variation

The ADG recommends building depths be no greater than 18 metres (glass line to glass line). Should building depths be more than 18 metres, satisfactory daylight and natural ventilation are to be achieved. The aim of the control is to maintain residential amenity within the units and to reduce the bulk and visual appearance of buildings.

The proposed building depth varies from 19 metres to 22 metres.

The proposal complies with the proposed building separation and the apartment depths are acceptable, with the provision of 8 central lift cores and reasonably short circulation corridors within the buildings result in apartment depths of generally 8 metres or less ensuring that the units will receive satisfactory daylight and natural ventilation.

For this reason the variation is considered acceptable.

Part 4E – Private Open Space

ADG VARIATION		Primary Control	Variation	Compliance
4E	Private Open Space	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Provided for courtyards: Block A: 11m ² to 15m ² . Whilst width of courtyards are less than 2m (at min 1.5m ²), all courtyard units in Block A also have a primary balcony which meets minimum requirements). Block B: 23m ² to 47m ² ., with a min width of in excess of 2m. Block C: 12m ² to 36m ² ., with a min width of in excess of 2m. Variation sought only of Unit C113, with all other courtyards compliant with area requirement. The primary area for all courtyards in Block C exceeds 2m, with the exception of the northern units in Block C (Units C101, 105 and 106) which also have a primary balcony which meets minimum requirements). Block D: 23m ² to 47m ² ., with a min width of in excess of 2m.	Minor Variation

The ADG provides recommendations on the special treatment required for ground level apartments to contribute to streetscapes and increase residential amenity.

In particular the ADG recommends that where appropriate ground floor apartments are provided with individual entries and private courtyards.

Where apartments are provided with a zero setback, they are to be located 1.2 metres above the footpath level to maintain privacy.

- The proposal involves some apartments provided with private courtyards at the upper ground level on the podiums in the centre of the development, they are provided with private courtyards.
- The design, function, security and livability of the ground level courtyards is maintained, and for this reason the variation is accepted.

Part 4Q – Universal Design

ADG VARIATION		Primary Control	Variation	Compliance
4Q	Adaptable Housing	<p>A variety of apartments with adaptable designs are provided</p> <p>Adaptable housing should be provided in accordance with the relevant council policy</p>	<p>The Council DCP states:</p> <p>Developers of all residential developments including combined subdivision/dwellings, boarding houses, hostels need to consider applying the essential and desirable features identified in AS4299-1995 Adaptable Housing (or most recent version); to developments involving 4 or more dwellings, i.e:</p> <p>a. 25% for 4 dwellings, boarding house or hostel units or rooms</p> <p>b. 20% for more than 4 (to the nearest whole number).</p> <p>Of the 157 units proposed, 31 are to be adaptable units.</p> <p>The proponent seeks to provide 22 units of 15%</p>	5% Variation

Objective 4Q1, of SEPP 65, requires that 20% of the units are to incorporate the features of the Livable Housing Guidelines Silver level.

In addition to the adaptable units provided, the units A 101, A 105, A106, A 110, A 201, A 205, A 206, A 210, A 301, A 305, A 306, A 310, B 105, B 106, B 205, B 206 provide the features of Silver level of Livable Housing Guidelines as outlined in Attachment 8.

The table below outlines the current adaptable unit numbers proposed at the development, and the additional ones recommended to be introduced as a condition of the consent.

Stage 1			Stage 2		
	Current Adaptable	Adaptable no design changes needed	Current Adaptable	Adaptable no material design changes	TOTALS
	A102	B303	C104	C109	
	A109	B308	C204	C209	
	A202		C304	C309	
	A209		D104	D110	
	A302		D204	D210	
	A309		D304	D310	
	B103				
	B108				
	B203				
	B208				
Total	10	2	6	6	24
	Total Apartments				157
	Percentages				15.29%

Thirty (32) adaptable units, or 20% of the units are required by the Council’s DCP. The units designated as adaptable are units are reasonably adaptable. The applicant has provided 15% of units as adaptable. This variation is considered acceptable because in

combination with the Livable Housing Guidelines Silver level, and the barrier free access throughout all parts of the development, mean that the development is able to service the needs of the community in to the future.

Apartment Design Guide Requirements

The majority of the provisions contained in the ADG are not covered by Shellharbour Development Control Plan 2013 (SDCP 2013).

The ADG contains the following requirements which have not been adequately addressed in the application documentation but can be readily resolved through the imposition of a condition of consent.

Acoustic Privacy

The development has been designed to ensure residential amenity with respect to the implications of road noise and operation of the Stocklands loading dock. Benson Avenue carries steady traffic volumes likely to cause adverse residential acoustic amenity impacts associated with the road networks in the long terms.

Conditions are included in the recommendation in relation to the preparation of an acoustic report and recommended attenuation measures for dwellings as follows:

Prior to the issue of the Construction Certificate, an Noise Impact Assessment Report is to be prepared by a suitably qualified person included recommendations to the satisfaction of the Principal Certifying Authority.

The dwellings must be designed and constructed to ensure that the following LAeq levels are not exceeded:

- a. in any bedroom in the building - 35 dB(A) at any time between 10.00pm and 7.00am, and*
- b. anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.*

The above design and construction requirements must be detailed on the Construction Certificate drawings and/or specifications accompanying the construction drawings and approved by the Certifying Authority prior to the release of the Construction Certificate.

Mixed-use Developments Design Guide

Part 4 of the Apartment Design Guide also contains Design Guidance relative to mixed use developments.

The proposed development complies as:

- The development is sited within the Shellharbour City commercial precinct, immediately adjacent to the services and facilities offered within Stockland Shellharbour;
- Commercial tenancies are provided at the ground floor level immediately fronting Benson Ave, with two further commercial tenancies fronting the internal accessway at the ground floor level.
- The street frontages are activated and contain glazing and direct entries to the commercial spaces;
- The residential entries are secured and are separated from the retail entries.
- Entry to the retail premises is directly available from the footpath of Benson Ave and also from a rear door accessing the commercial/visitor parking area.
- Entry to the residential units is available directly via lift from the parking levels (Block B and D), or via a secure door access leading to the lifts for Block A and C.
- Entry is also available from the central accessway into a foyer and lift servicing each block,

which leads to the podium level.



Figure 25 – Locality Plan

Conclusion - Apartment Design Guide

The assessment of the plans reveals that information provided by the applicant is accurate with respect to showing the proposed development compliance with the Design Criteria contained in:

- Part 3 (Siting the Development - Visual Privacy) and
- Part 4 (Amenity) of the Apartment Design Guide (ADG) with the exception of the following controls:

The standards contained in the Apartment Design Guide take precedence over Shellharbour Development Control Plan 2013 in the event of an inconsistency.

The SEPP 65 Assessment prepared by ADM Architects addresses the manner in which the proposal has considered the Design Guidance of the Apartment Design Guide.

The proposal generally complies with the objectives and controls contained within the ADG.

The statements and the proposal were reviewed by Council staff as part of the merit assessment of the proposal.

The proposal satisfies the provisions of SEPP 65.

7.1.4 SEPP (Infrastructure) 20074

State Environmental Planning Policy (Infrastructure) 2007 aims to ensure the effective delivery of infrastructure across the State and that appropriate agencies are made aware of and are given an opportunity to make representations in respect of certain development, including traffic generating developments.

Division 17 relates to road infrastructure while Schedule 3 of the SEPP outlines traffic generating development which requires referral to Roads and Maritime Services (RMS).

The proposed development contains 157 residential units and is therefore not captured by the referral requirements of the SEPP (due to the number of dwellings), but the development contains parking for in excess of 200 cars and is therefore captured by Schedule 3 of the

SEPP, which specifies that a referral is required for development which comprises any other purpose with parking for 200 or more vehicles and access to any road.□

Accordingly, referral to the Roads and Maritime Services has been completed as part of the development application assessment process.

The RMS advise that they raise no objection to the development.

7.1.5 SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been issued for the development and relevant conditions requiring the fulfilment of commitments will form part of the development consent, and in this regard the aims of the Policy have been satisfied.

7.1.6 SEPP 71 – Coastal Protection

In broad terms, the aims of the SEPP seek to protect and manage the unique attributes of the NSW coast by encouraging sensitive and appropriate development. The SEPP 71 is a means of implementing the State's *Coastal Policy*.

SEPP 71 applies to land and development within the coastal zone as defined by the *Coastal Protection Act 1979*.

The site is located within the coastal zone.

SEPP 71 aims to protect the unique attributes of the NSW Coast by ensuring that flora and fauna are protected, heritage is conserved and that development is appropriate. In doing so it requires development to be assessed under a range of considerations (clause 8 and Part 4).

The proposed development is not considered inconsistent with the aims of the SEPP 71 as the heads of consideration listed in clause 8 and part 4 are satisfied by the development or have no relevance to the subject site.

7.1.7 Shellharbour Local Environmental Plan 2013 (SLEP 2013)

7.1.7.1 Zoning / Permissibility (Clause 2.3)

The land is zoned B3 – Commercial Core.

The B3 zone permits, with consent, a range of uses, including mixed use developments such as shop top housing.

The development also seeks to subdivide land.

By virtue of clause 2.6 of SLEP 2013, subdivision is permitted with consent.

The objectives of the B3 Commercial Core zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community;
- To encourage appropriate employment opportunities in accessible locations;
- To maximise public transport patronage and encourage walking and cycling;
- To strengthen the role of the Shellharbour City Centre to ensure that it continues to develop as □a major regional centre with retail, entertainment, commercial, cultural and residential uses;
- To allow for a limited range of residential accommodation while maintaining retail, business or □other non-residential active uses at street level.

Under clause 2.3(2) of SLEP 2013, the consent authority must have regard to the objectives for development in the zone.

Comment:

The proposed mixed use development is consistent with the objectives of the land use zone.

The proposal is permissible development in the land use zone subject to development consent (clause 2.6) and the proposal is considered to promote the objectives of the land use zone.

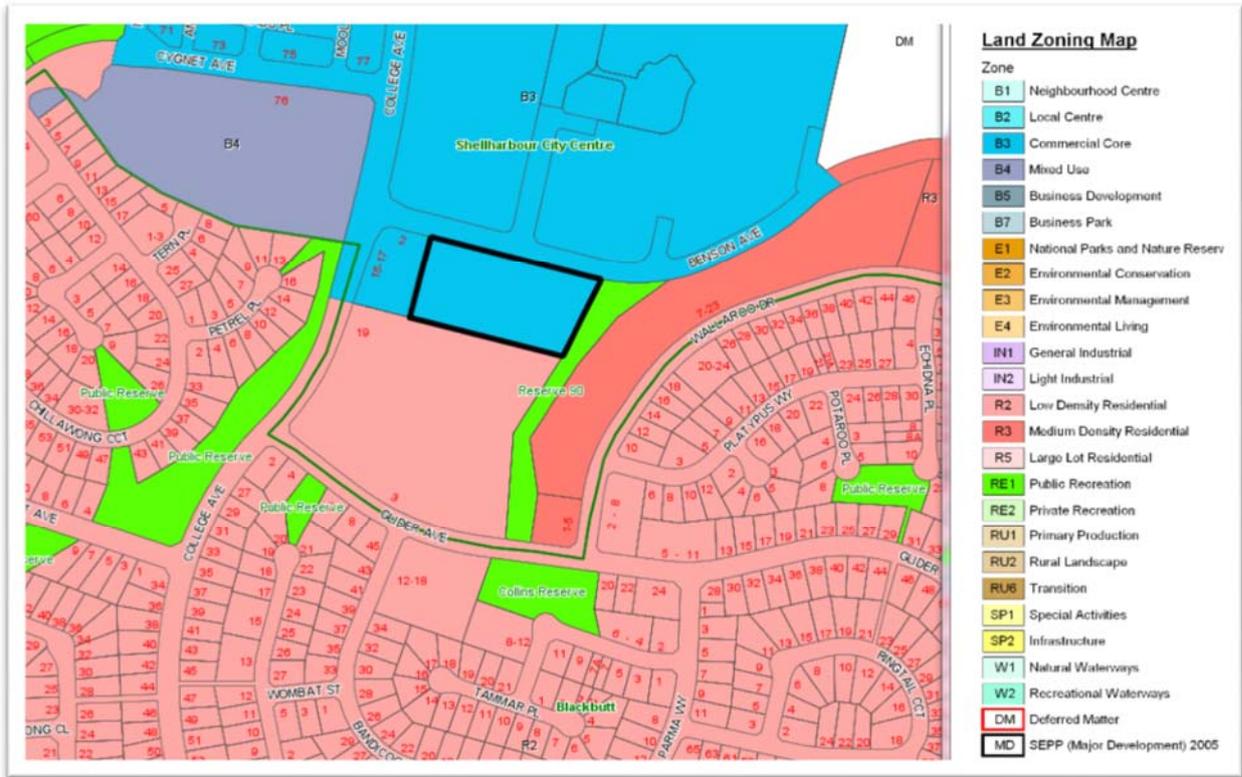


Figure 26 – SLEP 2013 Zoning Map

7.1.7.2 Minimum subdivision lot size (Clause 4.1)

Under this clause the minimum lot size to be created by subdivision in the B2 zone is zero. The propose 2 lot subdivision therefore complies.



Figure 27 – LEP 2013 Lot Size Map

7.1.7.3 Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings (Clause 4.1A)

The minimum lot size is 0sqm.

7.1.7.4 Building Height (Clause 4.3)

The SLEP 2013 provides a building height control of 15m for the subject site. The development does not comply with the height controls.

The 'Height of Buildings' map specified in Shellharbour LEP 2013, which is referenced in Clause 4.3(2), specifies that a maximum building height of fifteen (15) metres applies to the subject land.

The proposed building has the following maximum overall heights:

	Roof/Building	Maximum Building Height (m)
Block A	Roof height RL59.58m	17.95m (as viewed/measured at the inside of the site. The building height is lesser as viewed from Benson Ave (approx 16.5m))
Block B	Roof height RL58m	17.83m (as measured internally from the site. As viewed from the southern elevation (ie. adjacent school), the building height is lesser, approximately maximum 16m.
Block C	Roof height 63.4m	15.26m (minor variation)
Block D	Roof height	15.8m (complies)

As the height of Blocks A-D exceeds the maximum 15m height specified in clause 4.3 of SLEP 2013 a Clause 4.6 'Exception to Development Standards' statement has been submitted. The merits of the variation are discussed under the relevant heading below.



Figure 28 – LEP 2013 Height of Buildings Map

7.1.7.5 Floor Space Ratio (Clause 4.4)

Clause 4.4 of the SLEP 2013 provides no maximum floor space ratio (FSR). The proposal has an Floor Space Ratio (FSR) of 0.52:1.

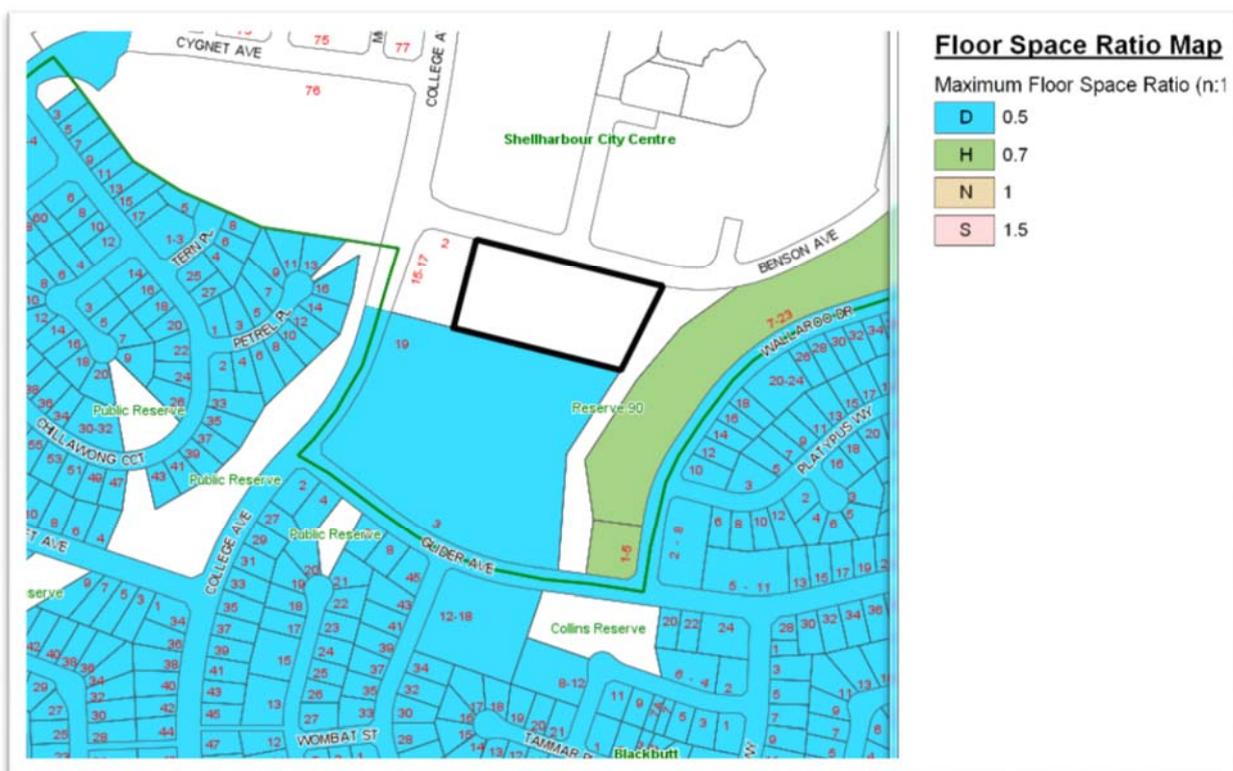


Figure 29 – LEP 2013 Floor Space Ratio Map

7.1.7.6 Exceptions to Development Standards (Clause 4.6)

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure.

Clause 4.6 states the following:

- 2) *Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...*
- 3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (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.*

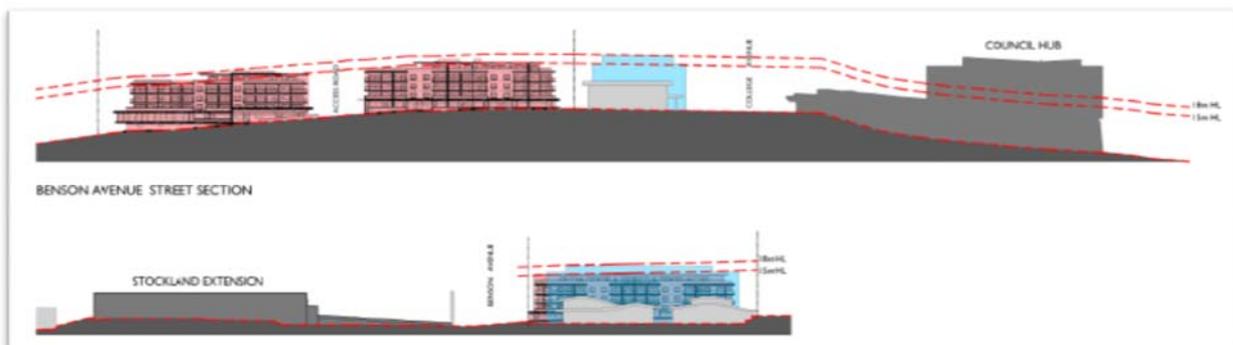


Figure 30 – Building Height Profile Plan



Figure 31 – Streetscape Montage (east view)



Figure 31 – Streetscape Montage (west view)



Figure 31 – Streetscape Montage (south view)

Accordingly, an assessment of the submitted Clause 4.6 request in regards to the departure to the height controls applicable under the LEP is below:

- The applicant's written statement has addressed the provisions of Clause 4.6 of Shellharbour LEP 2013 and demonstrates that the variation sought to the development standards of the LEP regarding building height is well founded and justified.
- The variation applies to minor portions of Blocks A and B [maximum exceedence approximately 2.95m (19.6% variation) and 2.83m (18.6% variation) respectively], and a minor part of Block C and Block D (maximum exceedence approximately 0.26m and 0.8m respectively).
- The increased building height is generally limited to the eastern portions of Blocks A and B (the lower part of the site), and the appearance of the building height is not considered unreasonable in the context of the development of the emerging city centre.
- There is overshadowing of the adjoining primary school and the drainage reserve as a result of the proposed height of the building during the winter solstice, but the impacts are not considered unreasonable in the circumstances of the use of the land concerned and the impacts that would otherwise arise from a height compliant development.
- The variation arises due to the site topography, including the accommodation of three buildings and a road access within a large rectangular site with a 9 to 10 metre cross-fall along the Benson Street frontage;
- Environmental planning outcomes will be met as the proposed development is generally consistent with Council's vision for the Shellharbour City Centre, and will provide a positive outcome for development on the site, including and importantly a clearly defined edge to the city centre with an aesthetically acceptable built form outcome, without causing unreasonably impacts on residential amenity of nearby property.
- The subject development in combination with the 5 storey Shellharbour Civic Centre (under construction) will strongly contribute to the civic scale of development anticipated in the city, and definition to the City Centre required by the urban form requirements of the DCP controls.

- The southern edge of the City Centre (including this precinct) is emerging and the proposal is a desirable and appropriate driver for future development.

The underlying intent of the standard in so far as it relates to State and Regional Planning objectives will not be undermined in the granting of the variation.

7.1.7.7 Development within Coastal Zones (Clause 5.5)

Clause 5.5 of the LEP details the provisions for assessing development's within the coastal zone. The requirements of this clause mirror those within SEPP 71. The proposal is consistent with the provisions of SEPP 71 and therefore complies with Clause 5.5 of SLEP 2013 because:

- a. the proposal does not adversely affect public access to the foreshore
- b. the proposal is suitable in its relationship with the surrounding area, and does not adversely impact the natural scenic quality due to the site proximity to the foreshore, and the low rise bulk, scale and character of the design
- c. the proposal does not overshadow the foreshore and does not cause an unreasonable loss of views from any public place to the foreshore
- d. the proposal does not cause any unreasonable impact on the visual amenity and sea view qualities of the coast
- e. bio-diversity and ecosystems are not affected by the proposal
- f. the proposal is acceptable having regard to the cumulative impact of the proposal in combination with other development on the coastal catchment
- g. the development proposal is sited in a manner that ensures it is not significantly affected by coastal hazards, such as foreshore erosion, or by the sea level rise, does not unreasonably impact on coastal hazards, or increase the risk of coastal hazards in relation to any other land.

7.1.7.8 Heritage Conservation (Clause 5.10)

The site does not contain any European heritage items, conservation areas or Indigenous places or objects.

Accordingly clause 5.10(1) heritage conservation objectives, are unlikely to be undermined by the proposal.

7.1.7.9 Earthworks (Clause 6.2)

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposed development involves some earthworks to create the basements. Impacts to surrounding developments are minor in nature and will not detrimentally impact environmental functions and process.

The basement excavation and shoring of walls will be designed by a structural engineer.

There are no anticipated impacts to adjoining properties, given the separation distances provided and the reduced depth of cut which is required for the western sections of Blocks C and D adjacent to the nearest properties to the west.

Excavated material during demolition phase will be stockpiled on site and used for landscaping of the development and other excavated material during the construction

phase will be transported to an approved landfill site as indicated in the SWMMP accompanying the development application.

Therefore the proposal is consistent with the objective of Clause 6.2 and the matters for consideration.

7.1.7.10 Stormwater Management (Clause 6.4)

- a. This clause applies to all land in residential, business and industrial zones and seeks to "minimise the impacts of urban stormwater on the land to which the development applies, adjoining properties, native bushland and receiving waters."

- b. This clause states that:

Development consent must not be granted unless the consent authority is satisfied that the development:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

- c. Civil Plans by Jones Nicholson accompany the application, which detail drainage and stormwater requirements.

The stormwater management plan includes a water sensitive urban design strategy so as to achieve the stormwater quality targets.

These targets include reducing post development pollutant to equal to and below pre-development loads, in addition to the water quality targets identified in the Development Control Plan.

The proposal is consistent with the objective of the clause and satisfies the matters listed in sub-clause 3.

The application was referred to Council's Development and Subdivision Engineer and conditions have been recommended (see Attachment 1) to ensure the stormwater management system is in accordance with Council's policies.

7.1.7.11 Airport Operations (Clause 6.7)

Drawings show building encroaches into mapped OLS and as no shadowing exists the application has been referred to CASA who have undertaken an assessment. The response can be viewed at Attachment 4.

Due to resource issues within CASA the referral was sent to an alternative officer. The officer has undertaken a new assessment of the future proof OLS where as our regular officer has used Councils' mapping.

The difference between the two mapping is in an interpretation of the MOS, advice we have received from our surveyors is similar to what has occurred in this area, that is, different officers interpret the standard differently and as such has recommended that we use our levels.

The Air Service division responded as follows:

AIR SERVICES

I refer to your request for an Airservices assessment of a building development and associated crane operation located on Benson Avenue, Wollongong.

Airspace Procedures

With respect to procedures promulgated by Airservices in accordance with ICAO PANS-OPS and Document 9905, at a maximum height of 65.5m (215ft) AHD and 85m (279ft) AHD respectively, the property development and the associated crane operation respectively will not affect any sector or circling altitude or any instrument approach or departure procedure at Wollongong Airport or the Wollongong Hospital Helipad.

Note that procedures not designed by Airservices at Wollongong Airport and the Wollongong Hospital Helipad were not considered in this assessment.

Communications/Navigation/Surveillance (CNS)

This proposed building development and associated crane operation will not adversely impact the performance of any Airservices Precision/Non-Precision Nav Aids, Anemometers, HF/VHF/UHF Comms, A-SMGCS, Radar, PRM, ADS-B, WAM or Satellite/Links.

As a result the conditions noted below consider all advice received by the airport and the follow the conditions to be applied to the application from an airport perspective.

Note the assessment is based on the information provided by the applicant.

1. *The proposed building is to be obstacle lit with two low intensity steady red obstacle lights installed at the highest points on the roof. For detailed obstacle lighting requirements refer to the subsections 9.4.2 and 9.4.6 of the Manual Of Standards Part 139 (MOS);*
2. *Obstacle lighting is to have a remote monitoring capability, in lieu of observation every 24 hours, to alert Wollongong Aerodrome reporting staff of any outage. For detailed requirements for obstacle monitoring, within the OLS of the aerodrome, refer to the subsection 9.4.10 of the Manual of Standards (MOS) – Part 139 Aerodromes;*
3. *Specification for the remote monitoring system shall be provided by the Airport Manager and final design shall be approved by the Airport Manager prior to commencement of works.*
4. *All lighting elements and roof materials on site shall comply with the Manual of Standards Part 139-Aerodromes, Lighting in the Vicinity of Aerodromes (currently Section 9.21) for Zone D requirements.*
5. *All plant during construction shall be below RL80m unless approved by Airport Manager. Fees and Charges may apply where flight operations are effected by works or a detailed assessment is required.*
6. *For plant during construction that will be greater than RL80m but less than RL85m approval for operation can be given with a minimum of 2 weeks' notification to the Airport Manager. Any items in this range shall be obstacle marked in alternating red and white bands of colour in accordance with subsection 8.10.2 of the Manual of Standards (MOS) – Part 139 Aerodromes, or alternatively be lit with flashing white obstacle lighting during daylight hours.*
7. *Request for plant during construction above RL85m are to be submitted to the Airport Manager for be referred to CASA. The process for assessment of these items will take a minimum of 2 months and no guarantee is available on approval.*
8. *All permanent structures on site including aerials shall be lower than RL64.4m, with the exemption of the obstacle lighting.*
9. *The proponent is to provide information to the aerodrome operator, i.e. Shellharbour City Council (the Council), that the lighting provisions are in accordance with the section 9.4 of the Manual of Standards (MOS) – Part 139 Aerodromes and the specification; and*
10. *Commissioning of the obstacle lighting shall be undertaken in consultation with the Airport Manager. Obstacle lighting shall be commissioned and operational prior to the issue of the occupation certificate.*
11. *The proponent is to inform the Council and CASA, upon completion, of the finished building heights for the inclusion in the Aeronautical Information Publication (AIP).*

7.1.7.12 Active Street Frontages (Clause 6.8)

The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in the B3 Commercial Core Zone.

This clause applies to land identified as "Active street frontage" on Council's Active Street Frontages map.

According to Council's mapping, the subject site is located in close proximity to several stretches of active street frontage.

However, the subject site is not on land identified as having an active street frontage and this clause is therefore not applicable.

Irrespective of this, the proposed development has been designed to provide an active street frontage to Benson Ave, through the placement of retail tenancies with direct street access for the full length of this frontage.

7.1.7.13 Essential services (Clause 6.9)

The development site is able to be serviced by the essential services.

7.2 Draft Environmental Planning Instruments (EPI) [s.79C(1)(a)(ii)]

There are no instruments applicable to this proposed modification.

7.3 Shellharbour Development Control Plan 2013 [s.79C(1)(a)(iii)]

The proposal generally complies with Council's Shellharbour DCP 2013 as it relates to shop top housing with matters of relevance outlined below:

The proposal has been assessed in regard to compliance with the following chapters:

Chapter 3: Residential Development

Chapter 4: Subdivision - Infill and Greenfield

Chapter 7: Shellharbour City Centre Commercial Development

Chapter 13: Parking, Traffic and Transport

Chapter 14: Shellharbour City Centre Vehicular Access, Parking and Servicing

Chapter 15: Waste Minimisation and Management

Chapter 17: Crime Prevention through Environmental Design

Chapter 20: Landscaping

Chapter 24: Floodplain Risk Management

Chapter 25: Stormwater Management

Chapter 29: Social Impact Assessment

A review of the controls concludes that the development does not comply with the following controls:

7.3.1 Residential Development (Chapter 3)

Section	Control	Proposal	Comply
Chapter 3: Residential Development			
<u>3.14 Adaptable housing</u>	The control states: <i>Developers of all residential</i>	This advisory note is provided within the DCP and is not a legislative	Variation Accepted

Section	Control	Proposal	Comply
	<i>developments including combined subdivision/dwellings, boarding houses, hostels should consider applying the essential and desirable features identified in AS4299-1995 Adaptable Housing; to developments involving 4 or more dwellings for 20% of the units.</i>	requirement. This proposal includes 22 adaptable housing units.	

7.3.2 Subdivision – Infill and Greenfield (Chapter 4)

This chapter relates only to those lots proposed to be subdivided into Torrens title allotments. The following controls apply to the development:

- each lot created has direct full frontage to a public road,
- the lot to be subdivided has a cross slope of 5% or less (due to the visual effect of excessive cut and fill on small sites - should be evident from assessment of building design), and
- a development application for subdivision must accompany or be part of the development application for the construction of the dwellings.

The proposed lots generally comply with the above requirements.

7.3.3 Shellharbour City Centre (Chapter 7)



Figure 32 – Shellharbour City Centre – Precinct I

Precinct I: Civic Video site (Chpt 7.17)

Precinct I is located on the corner of College Avenue and Benson Avenue. Part of the precinct contains a small commercial development with the remainder being undeveloped.

Objectives

- a) To support a mix of church and community facilities, retail, commercial and mixed commercial/retail/residential uses which will enliven the street.
- b) Buildings should front the street with car parking at the rear.
- c) Provide a sense of enclosure and definition to the street.
- d) Future access road to the eastern portion of the precinct should be opposite Lamerton Crescent.
- e) Consider future quasi-public space on N-W corner of the site with redevelopment.
- f) Create focal point on the vista south from Lamerton Crescent.

The proposal is considered to comply with these objectives.

7.3.4 Parking, Traffic and Transport (Chapter 13)

The following parking provision is required:

CAR PARKING	RMS Rate	RMS Required	DCP Rate	DCP Required	Proposed
Commercial	1/40	83	1/40	83	84
1 Bedroom	0.6	26	1/unit	43	42
2 Bedroom	0.9	91	1.5/unit	151	150
3 Bedroom	1.4	18	1.5/unit	20	26
Sub-Total		218		297	302
Visitor	0.2	78	0.25/1&2BR + 0.5/3BR	66	31
Total		296		363	333

Consequently, the a total of approximately 320 spaces in basement with 10 on-street parking in the access-way, and therefore does not comply with the Council DCP requirements but exceeds the RMS Guide to Traffic Generating Development requirements, and therefore cannot be refused on this grounds in accordance with the requirements of SEPP 65.

Stacked Parking

The architectural plans prepared by ADM Architects confirm that parking for the residential and commercial components of the development will be provided as follows:

Residential:

Independent spaces - 207 (94.5%)
 Stacked spaces - 12 stacked (5.5%)

Residential Visitor:

Independent spaces - 31 (100%)
 Stacked spaces - Nil

Commercial:

Independent spaces - 59 (75.6%)

Stacked spaces - 19 stacked (24.4%)

It is noted that there are no stacked spaces allocated to residential visitors, with all 31 visitor parking spaces being capable of unrestricted use.

For the residential parking the majority of parking spaces are also capable of unrestricted use (ie 94.5%), with only 12 spaces being behind another space in a stacked configuration.

Given the excess residential parking which has been provided (under both SDCP and the RMS Guide) it is intended that 12 of the two or three bedroom units will each be allocated two parking spaces, in a stacked format.

This is considered to be a reasonable outcome as there will still be 195 parking spaces to allocated towards the other 145 units within the development.

With respect to the commercial component of the development, 75.6% of the spaces are capable of unrestricted use, with the balance being provided in a stacked configuration.

It is intended that each set of stacked spaces will be allocated to a single commercial tenancy to minimise potential conflicts.

It is noted that Section 14.2 and Clause 14.2.5 of Chapter 14 of SDCP confirm that on site commercial parking is intended to be allocated to tenants only and is not intended to be used by visitors, who instead will use centralised public parking.

Further, as such spaces will be allocated to commercial tenants it is likely that they will be low turnover spaces, which would be accessed infrequently during the day.

Therefore, it is considered that the provision of stacked parking will not unreasonably impact on the efficient functioning of the car parking area.

7.3.5 Waste Minimisation and Management (Chapter 15)

The development satisfies the objectives and advices set out in this chapter.

Discussions have been held with Council's Waste Management Section with regard to domestic waste collection options. The collection will be by a private contractor.

7.3.6 Crime Prevention through Environmental Design (Chapter 17)

The development satisfies the objectives set out in this chapter.

7.3.7 Public Art (Chapter 18)

The development does not satisfy the objectives and development provisions set out in this chapter as not public art is proposed.

The objectives is to encourage and facilitate the creation of art works of different scales, forms and mediums in public places and spaces.

Advice

18.1. With each Precinct Development Strategy and Development Application for Shellharbour City Centre and for DAs in town centres, locations for public art works must be identified in consultation with Council's cultural development staff.

18.2 Any public art must be consistent with any Council Public Art Policy/Strategy.

This issue has been discussed with the applicant and a condition consent is included in the recommendation.

The following condition is included in the recommendation at Attachment 1:

In accordance with Chapter 18 of the Shellharbour Development Control Plan a public art strategy for the development must be prepared in consultation with Council's cultural developments staff, and must be consistent with any Council Public Art Policy/Strategy.

The art strategy is to be submitted to Council prior to the lodgement of any Construction Certificate, and must be approved by Council prior to the issue of any construction certificate by the Principal Certifying Authority.

The public art must be installed prior to the issue of any Occupation Certificate in Stage 2.

7.3.8 Landscaping (Chapter 20)

The development satisfies the objectives and development provisions set out in this chapter. The application was assessed by Councils Landscape Officer and appropriate landscaping conditions have been included as part of the draft conditions following this report.

7.3.9 Storm water Management (Chapter 25)

The development satisfies the objectives and development provisions set out in this chapter. The application was assessed by Councils Development Engineer and the appropriate conditions have been included as part of recommended draft conditions in this report.

7.4 The Regulations [s.79C(1)(a)(iv)]

The *Environmental Planning & Assessment Regulation 2000* prescribes certain development consent conditions that form part of the development consent conditions imposed. This includes compliance with the Building Code of Australia.

7.5 Environmental Impacts [s.79C(1)(b)]

Various impacts on the proposed development have been discussed throughout this report. Other impacts include:

7.5.1 Impacts during Construction

Given the size of the development, temporary impacts resulting from construction noise, dust and traffic are likely to bring inconveniences to the surrounding area.

The following strategies to reduce the impact during the construction phase are recommended. These strategies form part of the development consent conditions recommended in this report.

- a. *Use of silt fencing to ensure sediment laden runoff does not occur off site during earthworks,*
- b. *the hours of construction shall be in accordance with Council's standard construction hours unless prior arrangements are made,*
- c. *prior to works commencing advise adjoining landowners of the works program and provide the contractors details should any concerns need to be raised during works,*
- d. *building contractors are to implement the requirements of the Office of Environment "Interim Construction Noise Guideline (July 2009)" as far as practicable,*
- e. *all reasonable, practicable steps are to be undertaken to reduce noise and vibration from the site,*
- f. *construction noise is to be attenuated with the use of screening, acoustic enclosures, engine silencing and substitution by alternative processes to reduce noise emission levels from typical construction equipment, and*

- g. *plant and equipment is to be maintained, checked and calibrated in accordance with the appropriate design requirements and to ensure that maximum sound power levels are not exceeded.*

7.5.2 Streetscape

The streetscape of the development will be consistent with the emerging character as the site transitions into the city centre precinct. The combination of increased setbacks and incorporation of different building design elements will not negatively impact on the streetscape.

The development provides a commercial facade to the Benson Ave frontage and along the internal access-way, with residential apartments located at the upper levels of the building.

This form and mix of uses is consistent and/or compatible with existing and future development in this precinct of the Shellharbour City commercial centre, which includes the proposed Shellharbour Civic Centre ('The Hub') which has been approved (pursuant to DA 205/2104) on land to the west of the subject site.

The site forms the southern edge to the city centre and the built form and height is appropriate in this context and does not create any unreasonable impacts on adjoining sites in terms of visual impact, disruption of views or loss of privacy.

7.5.3 Traffic Impacts

A Traffic Report has been prepared by Aztec Draft and Design which provides a traffic impact study for the Lot 4212 DP 809265 Benson Ave, Shellharbour City Centre.

The report outlines that the overall precinct will be able to meet the traffic needs of both new and existing development as well as staff and visitors to the growing commercial area of the Shellharbour City Centre, while containing impacts on surrounding communities.

Councils Traffic Engineer has advised that:

The existing road networks have sufficient capacity to cater for anticipated loads from the proposed development. The implications for the upgrading of the access intersection are discussed elsewhere in this report.

7.5.4 Social Impacts

The creation of new lots will provide additional housing opportunities within the LGA. The additional population will provide additional demands on urban infrastructure, services and facilities.

Section 94 contributions will assist in supplying some services/facilities provided by Council, and appropriate conditions have been included in the draft conditions.

7.5.5 Economic Impacts

The introduction of multi-level housing forms, with a high level of amenity, will have positive economic impacts as it adds to the diversity of housing offered within the region and also adds variety into the market in terms of built form outcomes, and affordability.

The development is considered to have a positive economic impact by providing employment in housing construction, as well as increasing of population in close proximity to the town center to support its economic viability.

7.6 Site Suitability [s.79C(1)(c)]

The site suitability has been discussed throughout this report, however, the main externality arising for the proposal is the intersection upgrade at the proposed access intersection with the Benson Avenue.

The external interfaces of the site are well setback from open space around the drainage reserve to the south and the school yard to the west accommodating the proposed visual bulk and mass at the permitter to the city centre without unduly visually compromising the relatively low rise context of the residential area.

The development site does not appear to have any physical impediments to prevent development.

7.7 Any Submissions [s.79C(1)(d)]

No submissions were received during the exhibition of the applicaiton.

7.8 The public interest [s.79C(1)(e)]

7.8.1 Planning Agreements and Section 94 Contributions

7.8.1.1 Planning Agreement

The development proposes access from Benson Avenue at the intersection with Lamerton Crescent. This is consistent with the City Centre Master Plan as contained in the Shellharbour Development Control Plan 2013. The existing intersection treatment is a three-leg roundabout that is identified to be upgraded to three-way three-way traffic lights to facilitate development in the City Centre.

As a result of the increased traffic volumes, the intersection will need to be upgraded to four-way traffic lights with an additional fourth leg proposed to provide access to the site of the development.

Council has planned for the future construction of three-way traffic lights, however, the development will require the upgrade to be redesigned to accommodate an additional leg, and the construction timeframe to be brought forward.

An indicative concept design for the intersection is shown below:

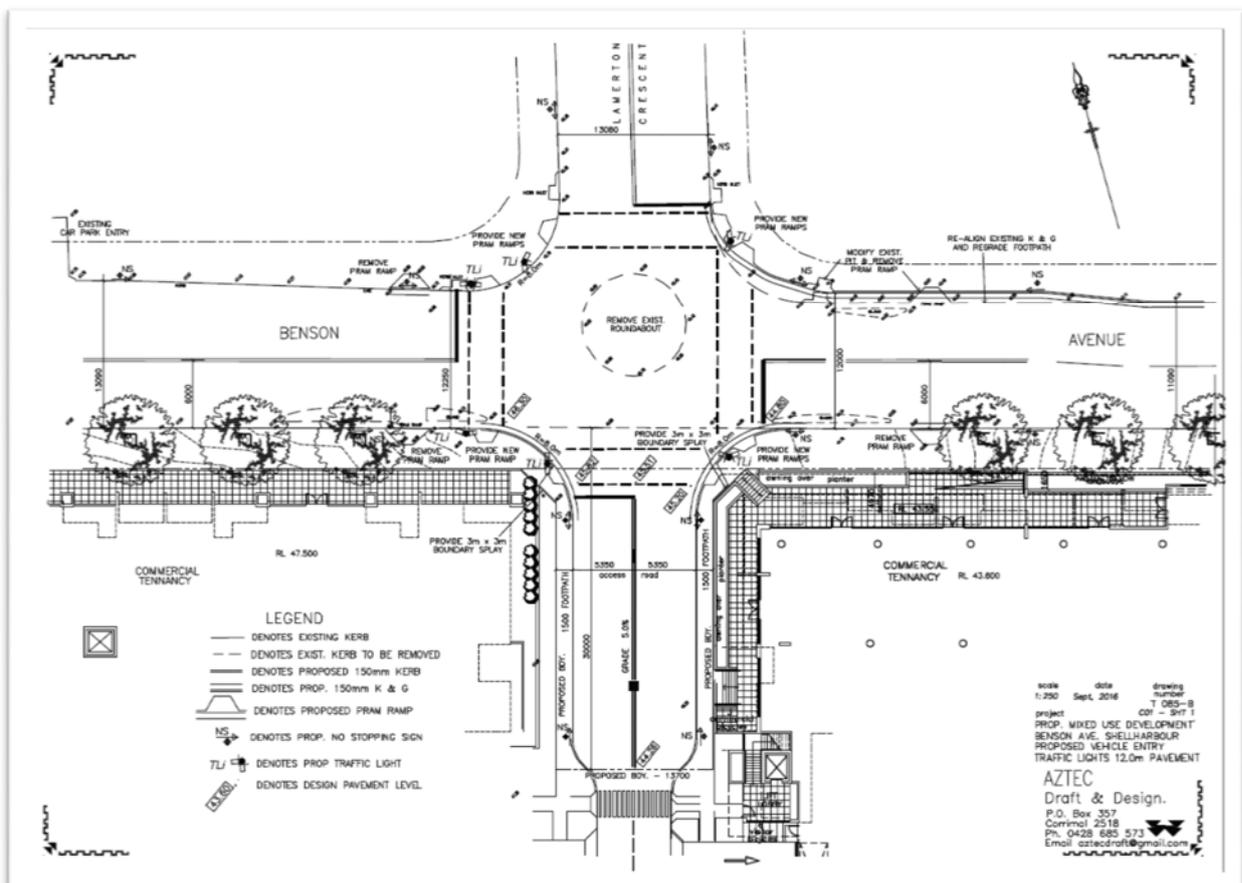


Figure 33 – Intersection Concept Design Plan

The applicant has provided a Letter of Offer to enter into a Planning Agreement under Section 93F of the *Environmental Planning and Assessment Act* (the Act) in conjunction with DA 29/2016.

The applicant proposes to design and construct the four-way traffic lights on behalf of Council and seeks to be reimbursed the cost of the three-way traffic lights from the Section 94 Contributions Plan. This is considered a reasonable request and will result in a positive outcome for the developer, council and the community.

A report has been presented to the Council to seek its 'in principle' support for a Planning Agreement to be entered into between Council and NPA Developments Pty Ltd for the construction of traffic lights at the intersection of Benson Avenue and Lamerton Crescent, Shellharbour City Centre, to be undertaken in association with Development Application 29/2016 (DA 29/2016).

The report was tabled As Council is not the approval body for the development application, and the Southern Joint Regional Planning Panel (JRPP) will be determining the application. Therefore in order to provide the JRPP with certainty (should the Development Application be approved) the JRPP can impose a requirement for the developer to enter into a Planning Agreement with Council for the provision of traffic lights.

The Council resolved to accept the "in principle" offer on 30 August 2016.

7.8.1.2 Benson Avenue / Lamerton Crescent Intersection Upgrade

Provision for the upgrade of this intersection is included in the *Draft Section 94 Contributions Plan 2016 (8th Review)* which identifies an upgrade to three-way traffic lights ("T" intersection). These works form part of the broader C3.02 Shellharbour City Centre Traffic Management and are not currently designed or scheduled for construction. The *Draft Section 94 Contributions Plan 2016 (8th Review)* identifies \$308,621 of developer funds to be allocated towards these works.

7.8.1.3 The proposed Planning Agreement

A planning agreement is a voluntary arrangement between a developer and Council under which the developer is required to dedicate land free of cost, pay a monetary contribution or provide any other material public benefit, or a combination of these, to be used for or applied towards the provision of public infrastructure or another public purpose.

In this instance the developer has proposed to provide a material public benefit, being the construction of the intersection upgrade at Benson Avenue and Lamerton Crescent.

The applicant has provided a Letter of Offer to enter into a Planning Agreement in association with DA 29/2016 (see Attachment 5).

The Letter of Offer proposes that the developer will undertake the design and construction of four-way signalised intersection (traffic lights).

All necessary post consent approvals will need to be obtained and the works will need to be completed to the satisfaction of Council and the Roads & Maritime Services (RMS). Upon satisfactory completion the developer will be reimbursed the cost of constructing three-way traffic lights from the Section 94 Contributions Plan, being \$308,621.00. The remaining design and construction costs and any variation will be at the expense of the developer.

It is considered reasonable that through the Planning Agreement the developer is reimbursed the amount allocated in the *Draft Section 94 Contributions Plan 2016 (8th Review)* for the three-way intersection as this component is required independent of the proposed development.

The amount to be reimbursed upon completion of the works will be funded through the Section 94 developer restriction and a budget adjustment will be made accordingly.

7.8.1.4 Legal/Policy Implications

The proposed Planning Agreement will be prepared in accordance with the relevant requirements of the of the *Environmental Planning and Assessment Act* and associated *Regulations*.

7.8.1.5 Council Decision Making During Merger Proposal Periods – Section 23A of the Local Government Act 1993

The Office of Local Government's (OLG) document *Council Decision Making During Merger Proposal Periods* includes general principles and a number of specific guidelines. The general principles and regulatory guidelines of relevance are:

Councils and council officials should not make decisions during a merger proposal period that seek to damage or impede the operational effectiveness of a new council including (but not limited to):

- Make significant and/or ongoing financial commitments that will be binding on a new council
- Make other significant undertakings or commitments that will be binding on a new council
- Make decisions that are designed to limit the flexibility or discretion of a new council
- Would not otherwise withstand legal challenge on the basis that the new council and not the outgoing one would need to defend any such challenge.

In the case of the proposed Planning Agreement for the provision of traffic lights at the intersection of Benson Avenue and Lamerton Crescent, Shellharbour City Centre this outcome has a public benefit because it facilitates the early construction of an infrastructure item that is included in Council's Long Term Financial Plan and that is required as a result of the proposed development.

In accordance with the OLG guidelines, it was considered that there are no adverse impacts on Council resolving on this matter.

7.8.1.6 Public/Social Benefit

The early construction of the intersection upgrade will have a positive public impact by improving traffic flow in this area of the City Centre.

7.8.2 **Section 94 Contributions**

The proposed development will be levied Section 94 contributions for both the residential and commercial components of the development. In accordance with the *Section 94 Contributions Plan 2013 (7th Review)* the development is levied toward the cost of City Wide and City East facilities (Precinct 3, Blackbutt), but is not levied a contribution toward Item C3.02 Shellharbour City Centre Traffic Management.

Section 94 Contribution payable: \$1,470,234.45

The following Section 94 contribution conditions are included in the recommendation:

Section 94 Contributions – Stage 1

A contribution of \$600,417.74, subject to annual indexation, must be paid to Council towards the provision of community infrastructure and services prior to the issue of the Construction Certificate for Stage 1. This amount has been calculated in accordance with Shellharbour City Council's *Section 94 Contributions Plan 2013* dated 18 December 2013 in the following manner:

- Precinct 3 Residential contribution - \$598,583.54
- Commercial Contribution - \$1,834.20

The contribution amount contained in this condition is the base rate indexed to the date the consent is issued. The contribution amount will be adjusted in accordance with the indexation methods detailed in the *Contributions Plan*. Current indexed rates are available from Council.

The *Contributions Plan* may be inspected or a copy purchased at the Customer Service Counter at Council's offices, or downloaded from www.shellharbour.nsw.gov.au

Section 94 Contributions – Stage 2

A contribution of \$869,816.70, subject to annual indexation, must be paid to Council towards the provision of community infrastructure and services prior to the issue of the Construction Certificate for Stage 2. This amount has been calculated in accordance with Shellharbour City Council's *Section 94 Contributions Plan 2013* dated 18 December 2013.

The contribution amount contained in this condition is the base rate indexed to the date the consent is issued. The contribution amount will be adjusted in accordance with the indexation methods detailed in the *Contributions Plan*. Current indexed rates are available from Council.

The *Contributions Plan* may be inspected or a copy purchased at the Customer Service Counter at Council's offices, or downloaded from www.shellharbour.nsw.gov.au

7.8.3 Public Interest

Subject to compliance with the conditions listed below, it is expected that the proposed development will not create any significant or negative impacts on the surrounding area or public interest.

The development positively contributes to the public interest for the following reasons:

- a. The development provides a housing need and type for the population within the Shellharbour community.
- b. The development will result in the levying of developer contributions towards community facilities and open space.

7.8.4 Political Donations Disclosure

Under Section 147(4) of the Environmental Planning and Assessment Act 1979 (the Act) a person who makes a relevant planning application to Council is required to disclose any reportable political donations and gifts made by any person with a financial interest in the application within the period commencing two years before the application is made and ending when the application is determined, including:

- a. all reportable political donations made to any Councillor of this Council
- b. all gifts made to any Councillor or employee of this Council.

Under Section 147(5) of the Act, these disclosure requirements also apply to a person, or any associate of a person, who makes a relevant public submission to Council in relation to a relevant planning application.

Note: Section 147(1) of the Act states: 'political donations or gifts are not relevant to the determination of any such planning application, and the making of political donations or gifts does not provide grounds for challenging the determination on any such planning application'.

The Disclosure Statement received by Council in the Development Application indicate that no reportable donations or gifts have been made.

8 CONCLUSION

The application to construct a shop-top housing development up to five storeys including 157 residential apartments, four commercial tenancies and two Lot Subdivision (Staged

Development on the land described Lot 4212 DP 809265 Benson Avenue, Shellharbour City Centre has been assessed in accordance with the provisions of the Environmental Planning and Assessment Act, 1979 as amended with all matters specified under Section 79C (1) Clauses (a) to (e) having been taken into consideration.

The provision of a mix of multi-dwelling housing units will contribute to the growth of and the realisation of Council's strategic vision for the City Centre, which is for a liveable city that is connected through places and spaces.

Furthermore, the proposal provides a responsive design in terms of its relationship with adjoining future development and establishes an appropriate human scale through the implementation of sound urban design principles, whilst ensuring that environmentally sustainable principles are incorporated.

As such, the proposed development is considered to be both reasonable and appropriate in the context of the site. The development will have positive social and economic benefits in terms of the employment and housing product diversity and will support local businesses and services.

Having regard to the merits of the proposal, it is considered that the development represents a well-conceived response to all the relevant planning controls and the constraints and opportunities presented by the site and is worthy of approval, subject to conditions.

It is recommended that the Panel approve the DA No. 29/2016 for Shop Top Housing Development (Five Storeys High) - 157 Residential Apartments, Three Commercial Tenancies and Two Lot Subdivision (Staged Development) at Lot 4212 DP 809265 Benson Ave, Shellharbour City Centre, subject to the recommended development consent conditions at Attachment 1.

9 RECOMMENDATION

Pursuant to Section 80 of the Environmental Planning and Assessment Act, 1979 the following is recommended:

- a. That the Southern Region Joint Regional Planning Panel grant the consent to Development Application No.29/2016 to construct a shop-top housing development up to five storeys including 157 residential apartments, four commercial tenancies and two Lot Subdivision (Staged Development on the land described Lot 4212 DP 809265 Benson Avenue, Shellharbour City Centre subject to the conditions of consent in Attachment 1 of this report.

ATTACHMENT 1 - Schedule of Conditions

PART A – ADMINISTRATIVE CONDITIONS

1. Construction Certificate & PCA Notification - Environmental Planning & Assessment Act 1979 Section 81A

Before any site works, building, demolition or use is commenced, the person having the benefit of the development consent must:

- a. obtain a Construction Certificate from Shellharbour City Council or other accredited certifier
- b. appoint a Principal Certifying Authority.

Note: For Torrens Title Subdivision, the appointed Principal Certifying Authority must be Shellharbour City Council.

2. Prescribed Conditions

This development consent is subject to the prescribed conditions made under the *Environmental Planning & Assessment Regulation 2000*. The prescribed conditions include compliance with the *Building Code of Australia*.

3. Development in Accordance with Plans and Documents

The development must be in accordance with the approved Development Application plans as endorsed by Council's stamp except as modified by conditions of this consent.

Name of Plan/Document	Prepared By	Drawing/Document No./Revision	Date
Architectural Plans Pre and Post Adaptation Plan Shadow Analysis Colour and Materials Schedule	ADM Architects Project	Drawing Nos. A00 to A24 Revision A	January 2016
Intersection Design Concept Plan	AZTEC Draft and Design	Dwg No. T 085-B - C01 SHT 1 – BENSON AVE SHELLHARBOUR PROPOSED VEHICLE ENTRY TRAFFIC LIGHTS 12.0M PAVEMENT	21/09/2016
Letter of Offer Dated 11/8/2016	NPA Development Pty Ltd		11/8/2016
SEPP65 Assessment	ADM Architects		
Plan of Subdivision	Masters and Associates	Reference W15010	22.12.15
Landscape Plan	Captivate	reference 15-1039/1 and 2	20.1.16
Water Cycle Management Plan	Jones Nicholson	Reference CRPT-20151123.01A	21.12.15
Water Cycle Management Plan	Jones Nicholson	Reference 20151123	21.12.15
Civil Design Plans	Jones Nicholson	reference 151123 Sheets C00P1- C07P1	20.1.16

Name of Plan/Document	Prepared By	Drawing/Document No./Revision	Date
Hydraulic Assessment	Jones Nicholson	Reference CLTR-20151123.01A	23.12.15
Statement of Compliance Access for People with a Disability	Accessible Building Solutions	Job No. 215413	21.12.15
Carparking & Traffic Impact Assessment	Aztec Design	T-085	January 2016
BASIX Certificate	Greenview Consulting		

4. Planning Agreement - Intersection Upgrading

Prior to the lodgement of any Construction Certificate application with the Principal Certifying Authority, the proponent must prepare and execute, at their cost, a Planning Agreement with Shellharbour City Council in accordance with:

1. The Letter of Offer Dated 11/8/2016 from NPA Development Pty Ltd to enter in to a Planning Agreement to undertake design and construction of traffic lights at the intersection of Benson Ave and Lamerton Crescent, Shellharbour City Centre; and
2. Council Resolution in relation to Item 10.2.2 from the Ordinary Council meeting of 30/8/2016; and
3. The Intersection Design Concept Plan prepared by AZTEC Draft and Design dated September 2016 Dwg No. T 085-B - C01 SHT 1 – BENSON AVE SHELLHARBOUR PROPOSED VEHICLE ENTRY TRAFFIC LIGHTS 12.0M PAVEMENT

The Planning Agreement must be prepared to reasonably address the design and construction of the intersection incorporating the following:

1. Preparation of detailed design plans by a suitably qualified engineer in accordance with Austroads and to the satisfaction of the RMS Traffic Committee and Council's Infrastructure Services Section
2. Any kerb and gutter, stormwater drainage, full road width pavement, traffic facilities (roundabouts, median islands etc.) and paved footpaths to be constructed shall be designed in consultation with the relevant requirements of Shellharbour Council and the Roads and Maritime Services (RMS) and AS1742. Final road design plans shall be prepared by a qualified practising Civil Engineer and submitted to the Certifying Authority prior to the issue of a Construction Certificate.
3. All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway shall be borne by the developer. The new road works must be designed and constructed in accordance with the City's "Development Specification for Civil Works Design and Construction".
4. Apply for and obtain a Section 138 Approval under the Roads Act
5. Construction of the Works to Council's satisfaction prior to the issue of any Occupation Certified
6. Preparation and submission of Works as Executed Plans to the satisfaction of the Council and RMS
7. Mechanism to reimburse the proponent funds collected by Council under Section 94 Plan for the works to the satisfaction of Council.

The cost of complying with this condition is to be borne by the person entitled to act on this consent.

5. Staging of Development

The development approved by this consent is to be constructed and subdivided in stages as follows:

- a. Stage 0 - Subdivision of Lot 4212 DP 809265 into Lot 1 and 2
- b. Stage 1 - Construction of a 64 Units each on proposed Lot 1
- c. Stage 2 - Construction of a 93 Units each on Lot 2

All conditions of this consent apply to each stage, unless otherwise specified.

Each stage must not be occupied or used until the Principal Certifying Authority issues an Occupation Certificate for that stage.

6. Utility Services

The developer must meet the full costs to adjust/repair/relocate any affected utility services. The developer must make the necessary arrangements with the service authorities.

7. Site Waste Minimisation and Management Plan

The Site Waste Minimisation and Management Plan submitted must be adhered to throughout all stages of the construction process. Source separation of materials and maximum reuse and recycling of materials are requirements of Shellharbour City Council's Waste Minimisation and Management DCP.

8. Records of Disposal

All records demonstrating the lawful disposal of construction waste and recycling must be retained and kept readily available for inspection by regulatory authorities such as Council, Department of Environment and Heritage or WorkCover NSW.

9. Development Consent Required for Use/Occupation

Occupation or use of the building/s is NOT permitted by the granting of this consent. Separate development consent must be obtained from Council for the initial use of each commercial tenancy unit.

PART B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. Amendments to Approved Plans

The amendments described below must be incorporated into the development and must be shown on the plans prepared for the purpose of obtaining a Construction Certificate:

- a. Dense screen landscaping must be planted and maintained between the building and the existing primary school common property boundary. The landscaping shall include species that will on maturity reasonably obscure a direct line of sight into the adjoining property.

Details of plant species that satisfy the above requirements must be provided to the Certifying Authority prior to the issue of a Construction Certificate and planted prior to the issue of any Occupation Certification by the PCA.

- b. In accordance with Chapter 18 of the Shellharbour Development Control Plan a public art strategy for the development must be prepared in consultation with Council's cultural developments staff, and must be consistent with any Council Public Art Policy/Strategy.

The art strategy is to be submitted to Council prior to the lodgement of any Construction Certificate, and must be approved by Council prior to the issue of any construction certificate by the Principal Certifying Authority.

The public art must be installed prior to the issue of any Occupation Certificate in Stage 2.

11. Section 94 Contributions – Stage 1

A contribution of \$600,417.74, subject to annual indexation, must be paid to Council towards the provision of community infrastructure and services prior to the issue of the Construction Certificate for Stage 1. This amount has been calculated in accordance with Shellharbour City

Council's *Section 94 Contributions Plan 2013* dated 18 December 2013 in the following manner:

- Precinct 3 Residential contribution - \$598,583.54
- Commercial Contribution - \$1,834.20

The contribution amount contained in this condition is the base rate indexed to the date the consent is issued. The contribution amount will be adjusted in accordance with the indexation methods detailed in the *Contributions Plan*. Current indexed rates are available from Council.

The *Contributions Plan* may be inspected or a copy purchased at the Customer Service Counter at Council's offices, or downloaded from www.shellharbour.nsw.gov.au

12. Section 94 Contributions – Stage 2

A contribution of \$869,816.70, subject to annual indexation, must be paid to Council towards the provision of community infrastructure and services prior to the issue of the Construction Certificate for Stage 2. This amount has been calculated in accordance with Shellharbour City Council's *Section 94 Contributions Plan 2013* dated 18 December 2013.

The contribution amount contained in this condition is the base rate indexed to the date the consent is issued. The contribution amount will be adjusted in accordance with the indexation methods detailed in the *Contributions Plan*. Current indexed rates are available from Council.

The *Contributions Plan* may be inspected or a copy purchased at the Customer Service Counter at Council's offices, or downloaded from www.shellharbour.nsw.gov.au

13. Long Service Levy

The Long Service Levy must be paid prior to the issue of the Construction Certificate.

Note: This is a levy imposed by the NSW Government and administered by the Long Service Payments Corporation for the purpose of long service payments to building and construction workers.

14. SEPP No. 65 - Design Quality Of Residential Flat Development

In accordance with clause 143A of the *Environmental Planning & Assessment Regulation 2000*, a Certifying Authority must not issue a Construction Certificate for residential flat development unless the Principal Certifying Authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

15. Crime Prevention Through Environmental Design

- a. The development must include security measures. These shall include the use of, signage, lighting, CCTV, fencing, alarms and the like or a combination thereof. Full details concerning security arrangements for the site must be provided on plan and/or written submission with the Construction Certificate application.
- b. Graffiti resistant surfaces and paint must be used at the ground level of the development. Details of such surfaces and paint are to be shown on plan or included in building specifications and are to be submitted with the Construction Certificate application to the satisfaction of the PCA.
- c. All landscaping must be designed to avoid creating concealment opportunities. In this regard, trees must have a growth habitat that allows visibility in and around the trunk to a minimum height of 2m. Details are to be shown on the Landscape Plan and submitted with the Construction Certificate application.
- d. Man-proof security gates are to be installed on each of the loading docks at the alignment of the corner of the building to ensure that these spaces are not available for anti-social behavior as crime prevention initiative. Details are to be submitted with the Construction Certificate application to the satisfaction of the PCA.

16. Vehicle Parking Spaces - Number & Allocation

Onsite parking spaces must be provided, as a minimum, as follows:

- a. 218 residential parking spaces
- b. 83 employee/customer parking spaces
- c. 78 visitor parking spaces

The visitor car parking spaces must be provided as open car parking spaces and must be suitably signed and marked to designate their use.

Note: Future uses of the building/site may require additional car parking. The number of car parking spaces for the development may not be adequate for some uses of the building/site.

Note: Where strata subdivision is proposed, the open car parking spaces allocated to each dwelling must be shown on the final strata subdivision plans.

17. Car Parking Spaces - Dimensions

All car parking spaces must have minimum dimensions of 2.6m x 5.5m adjacent to a 7.0m wide access aisle. A lesser aisle width is permitted provided that for every 0.4m reduction in the aisle width below 7m there is a corresponding increase in the car space width of 0.1m. The car spaces for people with a disability must be designed in accordance with AS 2890.6 (or subsequent amendments).

18. Bike Parking Spaces - Number & Allocation

Onsite bike parking spaces must be provided, as a minimum, as follows:

- a. 97 bicycle parking spaces
- b. 22 motor cycle parking spaces

19. Acoustic Attenuation

Prior to the issue of the Construction Certificate, an Noise Impact Assessment Report is to be prepared by a suitably qualified person, including recommendations, and submitted to the satisfaction of the Principal Certifying Authority for approval.

The dwellings must be designed and constructed to ensure that the following LAeq levels are not exceeded:

- a. in any bedroom in the building - 35 dB(A) at any time between 10.00pm and 7.00am, and
- b. anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.

The above design and construction requirements must be detailed on the Construction Certificate drawings and/or specifications accompanying the construction drawings and approved by the Certifying Authority prior to the release of the Construction Certificate.

20. Shoring and Adequacy of Adjoining Property EP & A Act s80A(11)/EP & A Regulation c198E

Where the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- a. protect and support the adjoining premises from possible damage from the excavation
- b. where necessary, underpin the adjoining premises to prevent any such damage.

The condition referred to above does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Details, where relevant, must be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

21. Soil and Water Management Plan (SWMP)

Prior to the issue of the Construction Certificate, the applicant must submit to and obtain the Certifying Authority approval of a Soil and Water Management Plan. The SWMP must clearly identify site features, constraints and soil types together with the nature of the proposed land disturbing activities and also specifies the type and location of erosion and sediment control measures. In addition rehabilitation techniques that are necessary to deal with such activities should be referred to.

The SWMP must take into account the requirements of Landcom's publication *Managing Urban Stormwater - Soils and Construction (2004)* thus ensuring the following objectives are achieved, namely:

- a. minimise the area of soils exposed at any one time,
- b. conserve topsoil for reuse on site,
- c. identify and protect proposed stockpile locations,
- d. preserve existing vegetation and identify revegetation techniques and materials.
- e. control surface water flows through the development construction site on a manner that:
 - i. diverts clean run-off around disturbed areas.
 - ii. minimises slope gradient and flow distance within disturbed areas.
 - iii. ensures surface run-off occurs at non-erodible velocities.
 - iv. ensures disturbed areas are promptly rehabilitated.
- f. trap sediment on site to prevent off site damage. Hay bales are not to be used as sediment control devices. To ensure regular monitoring and maintenance of erosion and sediment control measures and rehabilitation works until the site is stabilized (includes landscaping).
- g. specifies measures to control dust generated as a result of construction activities on site.
- h. temporary sediment ponds must be fenced where the batter slope exceeds 1 vertical to 5 horizontal,
- i. design scour protection for the 10 year ARI event at all inlet and outlet structures.
- j. including measures to prevent the tracking of sediment off the site.

22. Initial Geotechnical Report

A geotechnical report, prepared by a suitably qualified and experienced geotechnical engineer must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

The report must cover, but not be limited to the following:

- a. extent and stability of proposed embankments including those acting as retarding basins,
- b. recommended Geotechnical testing requirements,
- c. level of geotechnical supervision for each part of the works as defined under *AS 3798 - Guidelines on Earthworks for Commercial and Residential Developments*,
- d. an analysis of the level of risk to existing adjacent structures/buildings including the scenario of a construction contractor using vibratory rollers anywhere within the site the subject of these works. In the event that vibratory rollers could affect adjacent structures/buildings, high risk areas must be identified on a plan and indicate that no vibratory rollers shall be used within that zone,
- e. the impact of the installation of services on overall site stability and recommendations on short term drainage methods, shoring requirements and other remedial measures that may be appropriate during installation,
- f. the recommended treatment of any unstable areas within privately owned allotments;
- g. requirement for subsurface drainage lines,

- h. overall assessment of the engineering plans for the proposed development and their suitability in relation to the site's geotechnical characteristics.

23. Retaining Wall Structural Engineer

Where a retaining wall exceeds 600mm in height, the wall must be designed by a practising structural engineer and a Construction Certificate must be obtained prior to the commencement of work on the retaining wall.

All retaining walls must be located wholly within the property, including footings and agricultural drainage lines. Construction of retaining walls or associated drainage work along common boundaries must not compromise the structural integrity of any existing structures.

24. Detailed Drainage Design

A detailed drainage design of the site must be submitted and approved prior to the release of the Construction Certificate. The detailed plan must:

- a. be generally in accordance with Jones Nicholson Consulting Engineers Stormwater Study Letter CLTR-20121123.01A dated 2015,
- b. drain to the council pit,
- c. indicate the method of disposal of all stormwater and must include existing ground levels, finished surface levels on all paved areas, estimated flow rates, invert levels and sizes of all pipelines,
- d. be to the satisfaction of the Certifying Authority,
- e. be designed to cater for a 1 in 20 year Average Recurrence Interval storm event,
- f. overflow drainage paths are to be provided and be designed to cater for 1 in 100 year Average Recurrence Interval storm event,
- g. comply with Council's Shellharbour Development Control Plan (Chapter 25 & Appendix 12) unless variation is specifically noted and approved on DA concept drainage plan,
- h. include the rainwater tank, dimensions and point of discharge of overflow from the rainwater tank and details of any pump required to provide water to the toilets, clothes washer and/or any other fixture identified in the BASIX certificate.

25. Pit Grates

All pits must have flush fitting grates. All pits larger than 600mm x 600mm are to be grated galvanised steel grid hinged and be heavy duty type where traffic loading is expected.

26. Structural Design of Deep Pits

All pits deeper than 0.9 metres must be designed by a certified structural engineer and be in accordance with *AS3600-2009*.

Pits deeper than 1.2 metres must have **galvanised steel step irons (plastic coated black steel step irons will not be accepted)** and pits deeper than 1.8 metres are to be reinforced concrete. Step irons at 300mm interval spacing from bottom of pit. Top step minimum 500mm below top surface level.

Details to this effect shall be incorporated on the detailed drainage design that is submitted to the certifying authority for the Construction Certificate.

27. Access – Waste Management

Access driveways to be used by collection vehicles must be of sufficient strength to support waste collection vehicles.

The site must allow for the manoeuvring and height requirements of the waste collection vehicles accordance with AS 2890.2-2002 Parking Facilities – Off Street Commercial Vehicle Facilities.

All turning points shall exhibit "No parking" signs to ensure safety requirements. Typical waste collection vehicle dimensions are provided below.

28. Engineer Designed Pavement

All car parking areas, manoeuvring areas and the access aisle must be paved, drained and marked.

The pavement must be designed by a qualified civil engineer and certified to be satisfactory for the expected traffic loadings from a development of this size and type. *AUSTROADS Guide to Pavement Technology* can be used as the design guideline for the pavement design.

The laybacks and crossings must be designed to accommodate expected traffic loadings.

In this regard they must be constructed to an commercial/industrial standard with the work carried out by a Council approved contractor at the Developer's expense, including all alteration to public infrastructure where necessary.

29. Footpath

A footpath for the full width between the building alignment and the back of the kerb and gutter must be constructed along the road frontage of Benson Avenue adjacent to the site.

This work must be carried out by Council, or a Council approved contractor, at the developer's expense, including all alterations of public infrastructure where necessary.

The path must be constructed in accordance with the following requirements:

- a. 25Mpa concrete 100mm thick and steel reinforced,
- b. Connelly key joints are to be used every 3m with the appropriate plastic strip in place on top to ensure a good finish,
- c. an expansion joint is to be placed every 12m and must have the reinforcing pass through it and,
- d. all connections to existing paths and gutters must be dowelled
- e. allowing for tree planting in accordance with the approved landscape plan.

30. Garbage Storage Room

The applicant must supply a garbage storage room to be identified on the construction plans and shall be fully enclosed and be provided with a concrete floor, with concrete or cement rendered walls coved to the floor. The floor shall be graded to an approved sewer connection incorporating a sump and galvanised grate cover or basket. A hose cock shall be provided within the room. Garbage rooms shall be vented to the external air by natural or artificial means.

The waste/recycling storage area or room/s have been sized to meet the waste and recycling needs of all future tenants and designed so that the size and layout is capable of accommodating reasonable future changes in use of the development.

31. Bond - New Street Trees

A deposit of \$10000 must be lodged with Council prior to the issue of the Construction Certificate to ensure that the street trees are maintained for a six month period following the issue of the Occupation Certificate.

32. Screen Landscaping

Dense screen landscaping must be planted between the southern building facade of Block B and D and the southern property boundary with the school sufficient to obscure the view between the balconies and school site. The landscaping shall include species that will on maturity obscure a direct line of sight into the adjoining property.

Details of plant species that satisfy the above requirements must be provided to the Certifying Authority prior to the issue of a Construction Certificate.

33. Site Facilities - Australia Post

- a. Location points for mail delivery must satisfy the requirements of Australia Post.
- b. Street numbers must be obtained from Council's GIS Department during normal office

hours, prior to the issue of a Construction Certificate. The allocated street numbers must be clearly shown on the Construction Certificate drawing.

34. Air-Conditioner/Mechanical Ventilation Installation

No approval is given or implied to the installation of any external mechanical ventilation and/or air-conditioning systems that are visible from public roads, public places or adjoining properties.

External ventilation systems must be screened or enclosed with materials that complement the building and comply with schedule of material and colours approved by this consent.

A plan showing compliance with this condition must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Where screening/enclosure cannot be achieved, separate development consent must be obtained prior to the installation of any such units.

35. Utilities - Sydney Water

The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development will affect Sydney Water wastewater and water mains, stormwater drains and/or easements, and if any requirements need to be met. The new Tap in™ online self-service replaces QuickCheck agents as of 30 November 2015.

Please refer to the web site www.sydneywater.com.au for:

- Sydney Water Tap in™ www.sydneywater.com.au/SA/plumbing-building-developing/building/sydney-water-tap-in/index.htm and
- Guidelines for Building Over/Adjacent to Sydney Water assets - see Building & Developing then Building & Renovating

or telephone 13 20 92.

The Certifier must ensure that Sydney Water Tap in™ has issued appropriate electronic approval.

36. Engineer Design Pavement

All car parking areas, manoeuvring areas and the access aisle must be paved, drained and marked. The pavement must be designed by a qualified Civil Engineer and certified to be satisfactory for the expected traffic loadings from a development of this size and type. Australian Standard 'Guide to Residential Pavements' (AS 3727-1993 or subsequent amendments) can be used as the design guideline for the pavement design.

37. Pavement Grade

All paved areas must have a minimum grade of 1%.

38. Site Facilities - Clothes Drying Lines

Clothes hoists or clothes lines must be screened to a minimum height of 1.8m from the street and adjoining public places (in accordance with the approved plans/to the satisfaction of the Accredited Certifier. Clothes drying facilities must not be provide on any balcony of the development.

Details must be submitted with the Construction Certificate for this proposal.

39. Utilities - Sydney Water

The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development will affect Sydney Water wastewater and water mains, stormwater drains and/or easements, and if any requirements need to be met. The new Tap in™ online self-service replaces QuickCheck agents as of 30 November 2015.

Please refer to the web site www.sydneywater.com.au for:

- Sydney Water Tap in™ www.sydneywater.com.au/SA/plumbing-building-developing/building/sydney-water-tap-in/index.htm and
- Guidelines for Building Over/Adjacent to Sydney Water assets - see Building &

Developing then Building & Renovating

or telephone 13 20 92.

The Certifier must ensure that Sydney Water Tap in™ has issued appropriate electronic approval.

40. Electricity Substation & Visual Impact

Any substation installed must be screened from all street frontages and public places by the use of screen enclosures and landscaping. Screening measures must not compromise the requirements of the electricity supplier. Details must be submitted with the Construction Certificate Application.

PART C - PRIOR TO COMMENCEMENT OF WORKS

41. Dilapidation Report

It is the applicant's responsibility to notify Council of any existing damage to public areas in the vicinity of the development site through the submission of a Dilapidation Report. The report must be supported with suitable photographic records. This information must be submitted to Council prior to the commencement of work.

42. Structural Details

The following structural details must be provided to the Certifying Authority prior to commencing work:

- a. structural engineer's design for all reinforced concrete footings and slabs
- b. structural engineer's design for all structural steel beams, framing and connections
- c. roof truss and bracing details
- d. manufacturer's specifications for any patented construction systems.

43. Site Management Plan

Prior to the commencement of works, the applicant must submit to and obtain approval for a construction and site management plan from the Certifying Authority that clearly sets out the following:

- a. what actions are proposed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like,
- b. the proposed method of loading and unloading excavation machines, building materials and formwork within the site,
- c. the proposed areas within the site to be used for the storage of excavated material, construction materials and waste containers during the construction period,
- d. sediment and erosion control measures as per Landcom's publication 'Managing Urban Stormwater - Soils and Construction (2004)' also known as the 'Blue Book' or subsequent revisions.
- e. how it is proposed to ensure that soil/excavated materials are not transported on wheels or tracks of vehicles or plant and deposited on the roadway and,
- f. the proposed method of support to any excavation adjacent to adjoining buildings or the road reserve. The proposed method of support is to be certified by an appropriately qualified and experienced engineer.

44. Public Liability

Prior to the commencement of works, the owner or contractor must provide evidence to Council of a Public Risk Insurance Policy with a minimum cover of \$20M in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works. The Policy is to note Council as an interested party.

PART D - DURING CONSTRUCTION WORKS

45. Building Height - Survey Certification

The building must not exceed the height shown on the approved plans.

A report from a registered surveyor must be provided to the Certifying Authority on completion of the setting out of the basement levels, and again prior to covering the roof, certifying that the height of the building is in accordance with the approved plans.

46. Access Denied via Public Reserve

Vehicular access to the development site via the adjoining public reserve is NOT permitted at any time during construction/demolition/excavation works.

47. Storage of Materials

Building materials and equipment must not be stored on the road reserve/footpath area.

48. Hours of Work During Building Work

Noise generating activities, including demolition, excavation, construction and delivery of equipment and materials, must only be carried out between:

- 7am to 5pm Mondays to Fridays
- 8am to 1pm Saturdays

unless otherwise agreed to by Council in writing. Work must not be carried out on Sundays or public holidays

49. Maintenance of Soil and Water Management Plan (SWMP)

The soil and water management controls must be maintained at all times during each stage of the development and checked for adequacy daily. The controls must not be removed until the development is completed and the disturbed areas have been stabilised.

Maintenance must include but is not limited to ensuring:

- a. all sediment fences, sediment traps and socks are properly placed and are working effectively, and
- b. drains, gutters and roads are maintained clear of sediment at all times.

Note: It is an offence under the Protection of the Environment Operations Act 1997 to allow soil or other pollutants to fall or be washed into any waters or be placed where it is likely to fall or be washed into any waters. Substantial penalties may be issued for any offence.

50. Waste Management

The management of waste must comply with the approved Waste Management Plan. Any variations to the Waste Management Plan must have prior written approval of Council.

51. Retaining Walls

Any retaining walls must be located wholly within the property, including footings and agricultural drainage lines. This may require the retaining wall to have a minimum boundary setback of 200mm.

Construction of retaining walls or associated drainage work along common boundaries must not compromise the structural integrity of any existing structures.

52. Earthworks Cut, Fill and Grading

The maximum grading of cut or fill shall be 45 degrees (1:1) where there is no retaining wall or no other method of stabilising cut or fill during construction. The maximum depth of fill on any portion of the allotment shall be 1.0 metres. The maximum depth of cut on any portion of the allotment shall be 1.0 metres. Cut areas may exceed 1.0 metre provided the retained sections are located within the confines of the external walls of the buildings.

53. Connection to Council Pit and/or Pipe

Any connection to a Council pit and/or pipe must:

- a. be made at the pipe obvert (pipe only),
- b. be through a hole that is neatly made by cutting or drilling with any reinforcement encountered cut away,
- c. not protrude past the inner surface of the pit and/or pipe,
- d. have all junctions finished with 2:1 cement mortar,
- e. have a minimum pipe size of 150mm in diameter and either sewer grade PVC or concrete and
- f. when the diameter of the connection is more than 1/3 the diameter of the Council pipe, connection is to be made by construction of a standard pit.

All construction is to be carried out as per Council's Subdivision Code requirements.

The Certifying Authority must arrange for a satisfactory inspection by Shellharbour City Council prior to backfilling. At least one working day's notice is required for the inspection and is to be arranged through Council's Customer Services.

An inspection fee will apply in accordance with Council's Fees & Charges.

54. Open or Occupy a Roadway or Footpath (Section 138 Roads Act 1993)

Prior to any physical works within Council's road reserve such as (but not limited to) installing a driveway or connecting stormwater facilities you will need to apply for approval under Section 138 of the Roads Act. There is no additional cost as this is paid for at the time of development application.

To lodge your application you will need to submit the following information:

- a. detailed engineering drawings of the proposed works in the road and footpath area,
- b. traffic management plan,
- c. provision of public risk insurance and,
- d. details of timing and length of works.

55. Protection Fencing

The vegetation/street tree protection fencing must be maintained intact at all times throughout the period of building work on the site. Machinery, structures, storage/disposal of any building materials and the like, must not be located within the fenced area at any time.

56. Approved External Materials & Colours

The external treatment/appearance of the development must be in accordance with the approved plan prepared by ADM Architects dated 18.4.2016 titled "Colour and Materials Schedule).

57. Protection of Property

The structural integrity of adjoining properties and structures must be protected at all times during construction.

58. Pavement Materials of Footway Area

The footway area between the adopted building line and the kerb and gutter in Benson Avenue must be paved for its full width.

The developer shall provide this treatment to ensure a consistency of approach. This work must be carried out by Council, or a Council approved contractor, at the developer's expense.

PART E - PRIOR TO OCCUPATION

59. SEPP No. 65 - design quality of residential flat development

In accordance with clause 154A of the *Environmental Planning & Assessment Regulation 2000*, a Certifying Authority must not issue an Occupation Certificate to authorise a person to

commence occupation or use of residential flat development unless the Principal Certifying Authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the Construction Certificate was issued, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

60. Repairs to Public Infrastructure

Any damage to public infrastructure, other than that previously noted in the Dilapidation Report (refer Part C), shall be the responsibility of the owner of the property and must be repaired and reinstated prior to the issue of the Occupation Certificate. This work must be carried out by Council, or Council approved contractor, at the developer's expense.

61. BASIX

All commitments listed in the BASIX Certificate/s for the development must be carried out prior to the issue of an Occupation Certificate.

62. Occupation Certificate

All conditions in Parts A, B, C, D & E of this consent are preconditions for the purpose of section 109H of the Environmental Planning & Assessment Act 1979.

Compliance with all preconditions must be verified by the Principal Certifying Authority prior to issue of a final Occupation Certificate. The building must not be used until the Principal Certifying Authority issues an Occupation Certificate.

63. Sydney Water Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer www.sydneywater.com.au > Building and Developing > Developing your Land > Water Servicing Coordinator or telephone 13 2092 for assistance. Please make early application for the Certificate as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

64. Electricity Supply

Prior to the release of the Occupation Certificate for the development, the relevant electricity provider must provide written advice to the Principal Certifying Authority that all requirements for the supply of electricity to the proposed allotments have been satisfied.

65. Works As Executed Plans - Stormwater Drainage

Works As Executed plans (for the relevant stage) must be submitted to the Certifying Authority by a registered surveyor certifying compliance with the approved design plans in relation to all drainage works.

The Works As Executed dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans.

The plans must verify surface level of constructed paved areas, surface and invert levels on all pits, invert levels and sizes of all pipelines. All levels must relate to Australian Height Datum.

66. Waste Management Signage

Educational signage is to be provided to clearly identify garbage, recycling and organics bins/storage area and the materials accepted.

67. Completion of Landscape works

The unbuilt upon land, with the exception of the paving, must be landscaped in accordance with the approved Landscape Plan prior to the issue of an Occupation Certificate.

Landscape or turf areas must not be reduced or replaced with hard impermeable surface. Any variations to the design or species used must be authorised by Council in **writing before any changes are made.**

A report from a suitably qualified person must be provided to the Principal Certifying Authority on completion of the landscape works certifying that the landscape is in accordance with the approved landscape plan

68. Street Trees

Prior to the issue of an occupation certificate thirteen trees must be planted on the Council footpath reserve, as follows:

- a. *Elaeocarpus reticulatus* 100Lt
- b. planted, at least, 3m from the driveway and street light poles and 2m from services, stormwater outlets and signage
- c. trees must be set back a minimum 900mm from the back of the kerb or midway between the footpath and kerb. Where the tree is less than 900mm from the footpath, root barriers must be installed.
- d. 1m x 1.5m timber edging installed at the base of the tree constructed from the back of the kerb
- e. 2 x hardwood stakes with 50mm Hessian ties, fixed in a figure 8, to support each tree
- f. minimum 75mm depth of organic mulch applied a minimum 600mm diameter surrounding the base of the trunk

69. Street Tree Planting Distances

The following recommended clearances are to be taken into account prior to the installation of street trees:

- a. minimum three metres either side of a driveway or vehicular crossing
- b. minimum two metres from services and signage
- c. minimum one point five metres from a stormwater outlet/pit
- d. minimum three metres from street light posts
- e. minimum fifteen metres from pedestrian crossing and traffic signals

70. Street Tree Pre-Occupation Inspection

The street trees must be inspected by Council prior to the occupation of the development. It is the responsibility of the developer to notify Council for the street tree inspection.

71. Street Trees Maintenance Period

The **newly planted** street trees will be maintained for a period of 6 months from the date of the issue of the occupation certificate to ensure the health of the trees has not been jeopardised throughout the construction period.

72. Sign for Visitor Parking

A sign, legible from the street, must be permanently displayed to indicate the availability of visitor parking prior to the issue of the Occupation Certificate.

73. Intercom for Visitors

The visitor spaces must always be accessible to visitors by the location of an intercom, or the like, at the car park entry and connected to all units prior to the issue of the Occupation Certificate.

PART F - PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

TORRENS TITLE SUBDIVISION

74. Works As Executed Plans - Subdivision

Works As Executed plans (for the relevant stage) must be submitted to the Principal Certifying Authority by a Registered Surveyor with the Subdivision Certificate application. The Works As Executed dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans. As a minimum the plan must show:

- a. compliance with the approved design plans of all drainage works within council land, road reserve and drainage easements including connection into the subject lot/s, surface and invert levels of all pits, invert levels and sizes of all pipelines,
- b. certification from a registered surveyor that all storm water pipes and other services are wholly within an appropriate easement,
- c. compliance with the approved design plans of paved areas within rights of carriageway and road reserve,
- d. the extent, depth and final levels of filling,
- e. the location of all underground service conduits and
- f. all deviations from the approved Civil Engineering Plans.

All levels must relate to Australian Height Datum.

75. Final Plan of Subdivision

Prior to the release of the final plan of subdivision (for the relevant stage), it will be necessary to obtain a subdivision certificate. In this regard, it will be necessary to submit:

- a. an application for a Subdivision Certificate,
- b. five paper prints of the final plan of subdivision,
- c. the original and two paper copies of the 88B Instrument and Administration Sheet
- d. fees appropriate at the time of submission of the application.
- e. an electronic copy of the subdivision linework. The electronic copy should be in Map Grid of Australia 1994 Zone 56 (GDA94) coordinates and must contain closed linework of boundaries and easements. It must be submitted in DWG or DXF format on cd-rom or by email to traffic&subdivision@shellharbour.nsw.gov.au. The email and the electronic copy should be named "Subdivision Title & Stage DAno/Year Street Address Final Plan".

All sections of the plan, 88b Instrument and Administration Sheet including the original and copies, (except for the General Manager's date and signature) must be completed prior to lodging the plan.

76. Services & 88B Instrument

Lots affected by new or existing utility services must be burdened with easements and restrictions on the use of land to the satisfaction of the Principal Certifying Authority and the relevant utility provider.

Restrictions must be placed on title with respect to:

- a. access and maintenance for structures on the boundary or immediately adjacent to the boundary
- b. the provision of legal and practical access (e.g. reciprocal rights of carriageway)
- c. landscaping on boundaries
- d. drainage structures

PART G - AFTER ISSUE OF OCCUPATION CERTIFICATE/DURING OCCUPATION

77. BASIX Commitments

All commitments listed in the BASIX Certificate/s for the development must be maintained for the life of the development.

78. Protection of the Environment Operations Act 1997

Any activity including waste generation being carried out with this approval shall not give rise to offensive odour or pollution of land and/or water as defined under the Protection of the Environment Operations Act 1997.

79. Waste Management Operations

Premises which generate meat, seafood or poultry waste must have that waste collected on a daily basis or must store that waste in a dedicated refrigerated waste storage area until collection.

Provide safe and convenient access from each apartment/tenancy to the waste/recycling storage room.

Between collection periods, all waste/recycling materials generated onsite will be securely enclosed in bins and stored in the designated storage area.

80. Street Tree Bond Refund

The street tree bond will be returned following a six month maintenance period commencing from the date of the issue of the Occupation Certificate, provided the street trees remain in a satisfactory condition. In the event that any street trees are found damaged, dying or removed, Council will have the option to retain the whole or part of the bond. The developer/Principal Certifying Authority must notify Council for a reinspection of the street trees.

81. Public Reserve

Grass cuttings, vegetation and any other material or object must not be placed onto the adjoining public reserve.

PART H – OTHER APPROVALS

82. Separate Consent Required for Signage

This consent does not authorise the erection of any advertising/identification signage.

A separate development application for any proposed signage (other than exempt signs under Council's *Exempt Development Control Plan* or *State Environmental Planning Policy (Exempt & Complying Development Codes) 2008*) must be submitted to Council, and approval granted, prior to the erection or display of any such signs.

Regard must be given to Council's *Advertising and Identification Signs Development Control Plan* and *State Environmental Planning Policy No. 64 - Advertising & Signage* when preparing such an application.

83. Airport Operations

- a. The proposed building is to be obstacle lit with two low intensity steady red obstacle lights installed at the highest points on the roof. For detailed obstacle lighting requirements refer to the subsections 9.4.2 and 9.4.6 of the Manual Of Standards Part 139 (MOS);
- b. Obstacle lighting is to have a remote monitoring capability, in lieu of observation every 24 hours, to alert Wollongong Aerodrome reporting staff of any outage. For detailed requirements for obstacle monitoring, within the OLS of the aerodrome, refer to the subsection 9.4.10 of the Manual of Standards (MOS) – Part 139 Aerodromes;
- c. Specification for the remote monitoring system shall be provided by the Airport Manager and final design shall be approved by the Airport Manager prior to commencement of works.

- d. All lighting elements and roof materials on site shall comply with the Manual of Standards Part 139-Aerodromes, Lighting in the Vicinity of Aerodromes (currently Section 9.21) for Zone D requirements.
- e. All plant during construction shall be below RL80m unless approved by Airport Manager. Fees and Charges may apply where flight operations are effected by works or a detailed assessment is required.
- f. For plant during construction that will be greater than RL80m but less than RL85m approval for operation can be given with a minimum of 2 weeks' notification to the Airport Manager. Any items in this range shall be obstacle marked in alternating red and white bands of colour in accordance with subsection 8.10.2 of the Manual of Standards (MOS) – Part 139 Aerodromes, or alternatively be lit with flashing white obstacle lighting during daylight hours.
- g. Request for plant during construction above RL85m are to be submitted to the Airport Manager to be referred to CASA. The process for assessment of these items will take a minimum of 2 months and no guarantee is available on approval.
- h. All permanent structures on site including aerials shall be lower than RL64.4m, with the exemption of the obstacle lighting.
- i. The proponent is to provide information to the aerodrome operator, i.e. Shellharbour City Council (the Council), that the lighting provisions are in accordance with the section 9.4 of the Manual of Standards (MOS) – Part 139 Aerodromes and the specification; and
- j. Commissioning of the obstacle lighting shall be undertaken in consultation with the Airport Manager. Obstacle lighting shall be commissioned and operational prior to the issue of the occupation certificate.
- k. The proponent is to inform the Council and CASA, upon completion, of the finished building heights for the inclusion in the Aeronautical Information Publication (AIP).

REASONS FOR THE IMPOSITION OF CONDITIONS

- 1. To minimise any possible adverse environmental impacts of the proposed development.
- 2. To ensure that the amenity and character of the surrounding area is protected.
- 3. To ensure that the design and siting of the development complies with the provisions of Environmental Planning Instruments and Council's Codes and Policies.
- 4. To ensure that the development does not conflict with the public interest.

Advisory Notes – General

Critical Stage Mandatory Inspections

Mandatory inspections of the building work must be carried out by the Principal Certifying Authority at various stages of construction in accordance with clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

It is recommended that you discuss with your Principal Certifying Authority the occasions when the building work is to be inspected prior to work commencing.

Erection of Signs

The principal contractor and the Principal Certifying Authority will need to have a sign (or signs) erected and maintained on the development site that provides their name and contact telephone number (during and outside work hours for the principal contractor), and stating that unauthorised entry to the site is prohibited. The principal contractor and Principal Certifying Authority can have separate signs or they can both use one sign if they choose.

A maximum penalty of 10 penalty units applies for failure to erect and maintain sign(s) detailing principal contractor and Principal Certifying Authority identification.

WorkCover Authority

The requirements of WorkCover Authority must be satisfied at all times.

Obstacle Height Limitation - Airport

There are height limitations relating to the operation of the airport for developments/activities/construction that may involve cranes, plant or machinery in the Shellharbour Local Government Area. Further details can be obtained from Council concerning the obstacle height limitations.

Failure to Comply with Consent

Failure to comply with any of the conditions of consent may result in a Penalty Infringement Notice being issued against the owner/applicant/builder. Substantially greater penalties may be imposed by the Court for non compliance.

Lapsing of Development Consent

In accordance with section 95 of the *Environmental Planning & Assessment Act 1979*, the development approval lapses five years after the approval date unless building, engineering or construction work relating to the building has physically commenced.

Right to Appeal

If you are dissatisfied with this decision, section 97 of the *Environmental Planning & Assessment Act 1979* gives you the right to appeal to the Land & Environment Court within six months after the date on which you receive this notice.

Review of Determination

If you are dissatisfied with this decision, section 82A of the *Environmental Planning & Assessment Act 1979* provides that you may request Council to review its determination. The request cannot be made after the time limit for making of an appeal under section 97 expires.

Section 82A of the *Environmental Planning & Assessment Act 1979* does not apply to:

- a. a determination to issue or refuse to issue a complying development certificate
- b. a determination in respect of designated development
- c. a determination in respect of integrated development
- d. a determination made by the Council under Division 4 in respect of an application made by the Crown.

To Vary Development Consent

The plans and/or conditions of this consent are binding and may only be varied upon **application** to Council under section 96 of the *Environmental Planning & Assessment Act 1979*. The appropriate fee shall accompany the application and no action shall be taken on the requested variation **unless and until** the **written** authorisation of Council is received by way of an amended consent.

BASIX

Please note that the requirement for lodging a modification of development consent under section 96 of the *Environmental Planning & Assessment Act 1979* may result in the requirement for a revised BASIX certificate to be submitted for assessment.

Prescribed Payment System Tax Obligations

You may have a taxation obligation under the Prescribed Payment System. For more information, contact the Australian Taxation Office on telephone 132866.

Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in New South Wales). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Cth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact Telstra's Network Integrity Team on 1800810443.

Development within Vicinity of a High Pressure Gas Main

Contact Dial Before You Dig on 1100 or www.dialbeforeyoudig.com.au. Proposed works in the vicinity of any high pressure gas main must be directed to:

Jemena Asset Management Pty Ltd
PO Box 6507
SILVERWATER NSW 2128

Attention: Land Services Department

END OF RECOMMENDED CONDITIONS

ATTACHMENT 2 – Site Photos



Figure A2.1 – Site Access Location– Looking South



Figure A2.2 – Benson Avenue & Lamerton Crescent intersection– Looking East



Figure A2.3 – Street Front Boundary– Looking East



Figure A2.4 – School Boundary Fence– Looking East



Figure A2.5 – School Boundary Fence– Looking East



Figure A2.6 – Existing Development Adjacent– Looking South



Figure A2.7 – Existing Development Adjacent– Looking South



Figure A2.8 – Streetscape– Looking West

ATTACHMENT 3 – Planning Agreement Offer Letter

NPA DEVELOPMENTS PTY LTD

11 August 2016

The General Manager
Shellharbour City Council
Lamerton House
Lamerton Crescent
SHELLHARBOUR CITY CENTRE NSW 2529

Att: Anthony Randall
Team Leader Planning

RE: Lot 4212 Benson Ave, Shellharbour – DA0029/2016 Mixed use Development – Provision of Signalised Intersection

Dear Anthony,

In accordance with Section 93 of the EP&A Act (Act), As the owner and developer of the above mentioned site NPA Developments Pty Ltd (Developer) hereby offers to enter into a Voluntary Planning Agreement (VPA) with Shellharbour City Council (Council) to undertake design and construction of Traffic Lights at the intersection of Benson Avenue and Lamerton Crescent, Shellharbour City Centre.

Council currently has Traffic Lights for the existing 3 way intersection arrangement ("T" Intersection) as an Infrastructure item within the Draft Section 94 Development Contributions Plan 2016 (Plan). The estimated cost assigned to this Infrastructure item within the Plan is \$308,621. Whilst Council has advised they have the available funding the intersection is not yet design and there is no specific program set for construction of the Traffic Lights.

Council has advised that the current roundabout at the intersection is not considered to be operating effectively and does not provide the safest control for the intersection so is not suitable to provide for additional traffic from the development.

The Developers Traffic Impact assessment concludes that the roundabout is capable of the additional traffic proposed however the developer does not disagree that Traffic Lights would provide a superior outcome for existing and future traffic volumes.

As the proposed development would obtain direct access from this existing intersection via construction of a new 4th leg creating a 4 way signalised intersection. It is considered in the public interest to have the Traffic lights constructed in conjunction with the development.

Council would be required to provide the allocated funding of \$308,621 to the Developer or nominated contractor to undertake design and construction on the Traffic lights.

The VPA is not proposed to seek any offset of Development Contributions under Councils Plan or exclude the operation of Section 94 of the Act upon the site and proposed development.

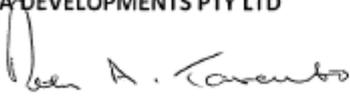
*PO Box 315 Wollongong East NSW 2520
Telephone: 02 4229 3693 Facsimile: 02 4226 3447
A.C.N. 600 387 666*

NPA DEVELOPMENTS PTY LTD

Should you have any queries or require anything further at this time please don't hesitate to contact me on 02 42293693.

Regards

NPA DEVELOPMENTS PTY LTD



PETER TARANTO
Director

ATTACHMENT 4 – CASA Response Letter



Australian Government
Civil Aviation Safety Authority

Airways and Aerodromes Regulation

File Ref: EF10/1816-12

Your Ref: DA0029_2016

20/09/2016

Mrs Rosemary Crowhurst
Shellharbour City Council
Locked Bag 155
SHELLHARBOUR CITY CENTRE NSW 2529

Dear Mrs. Crowhurst,

PROPERTY DEVELOPMENT, BENSON AVENUE, SHELLHARBOUR

CASA has assessed the proposed building development at Benson Avenue, Shellharbour City Centre in accordance with the current and Master Plan Obstacle Limitation Surface for Wollongong Airport (YWOL).

The height of the proposed building at this site will be below the OLS for Wollongong airport and thus CASA has determined that the building will not be a hazardous object under Regulation 139.370(1) of the Civil Aviation Safety Regulations 1998.

The height of the proposed tower crane at this site is 85 m AHD. At this height CASA has assessed that the proposed crane will be below the OLS for Wollongong Airport and will not be an obstacle. Therefore lighting is not required on the crane.

Runway 08/26 is a non-instrument runway available for daylight operations only, CASA recommends the tower crane:

- I. be obstacle marked in alternating red and white bands of colour in accordance with subsection 8.10.2 of the Manual of Standards (MOS) – Part 139 Aerodromes, or alternatively it should be lit with flashing white obstacle lighting during daylight hours.

Please do not hesitate to contact me if you require further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Windebank', written over a horizontal line.

Matthew Windebank
Aerodrome Engineer
CASA Canberra Office

ATTACHMENT 5 – Statement of Environmental Effects

ATTACHMENT 6 – Application Plans

ATTACHMENT 7 – Design Verification Statement and ADG Table

ATTACHMENT 8 – Access Audit Report