

SOUTHERN REGIONAL PLANNING PANEL

ASSESSMENT REPORT SUMMARY AND RECOMMENDATION COVER SHEET

JRPP No.	2017STH025
DA Number	385/2017
Local Government Area	Shellharbour
Proposed Development	Mixed use development comprising (8) eight food and drink/business premises and 45 residential apartments
Location	Lot 4003, DP 1235539 Boolwarroo Parade (formally Lot 8032 in DP 1072187, Cove Boulevard), Shell Cove
Applicant/Owner	Frasers Property Australia Pty Ltd/Shellharbour City Council
Number of Submissions	Nine (9)
Regional Development Criteria (Schedule 4A of the Act)	Clause 4 'Council related development with a CIV over \$5 million' Development that has a capital investment value of more than \$5 million as the council is the owner of any land on which the development is to be carried out. The proposed development has a CIV of \$25.7M.
List of All Relevant s79C(1)(a) Matters	• <i>State Environmental Planning Policy No. 71 – Coastal Protection;</i> • <i>State Environmental Planning Policy Coastal Management 2018;</i> • <i>State Environmental Planning Policy (State and Regional Development) 2011;</i> • <i>State Environmental Planning Policy No. 55 – Remediation of Land;</i> • <i>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;</i> • <i>State Environmental Planning Policy No. 64 – Advertising and Signage;</i> • <i>State Environmental Planning policy (Building Sustainability Index: BASIX) 2004;</i> • <i>Shellharbour Local Environmental Plan 2013;</i> • <i>Shellharbour Development Control Plan 2013;</i> • <i>Precinct D Urban Design Guidelines;</i> • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality; • The suitability of the site for the development; • Any submissions, and • The public interest.

List all documents submitted with this report for the panel's consideration	- Attachment 1 – Draft Schedule of Conditions - Attachment 2 – Assessment of Compliance – Boat Harbour Precinct Concept Approval MP07_0027 and Statement of Commitments - Attachment 3 – Assessment of Compliance – Urban Design Guidelines, Precinct D - Attachment 4 – Precinct D – Car Parking Assessment Strategy - Attachment 5 – Design Review Panel response (as submitted by applicant) - Attachment 6 – State Environmental Planning Policy 71 (Coastal Protection) compliance table - Attachment 7 – Assessment of Compliance Apartment Design Guidelines - Attachment 8 – Development Plans - Attachment 9 – Design Review Panel Review
Recommendation	That DA No. 385/2017 (JRPP Ref No. 2017STH025) be approved subject to the schedule of conditions contained in Attachment 1 .
Report prepared by	Jasmina Micevski, Manager – Planning 
Report endorsed by	Grant Meredith, Group Manager – City Development 
Report endorsed by	Melissa Boxall, Director – Community and Customer 
Date of report	29 March 2019

PLANNING REPORT

Purpose of Report

The purpose of this report is to seek a determination from the Southern Regional Planning Panel's (SRPP hereafter) of a development application for the construction and use of a building with a gross floor area of 5748m² comprising of a Mixed Use Development with eight speciality tenancies at ground level and 45 residential apartments.

Additional works also include Public domain, including the retail forecourt, part of the boardwalk and stairs connecting the two pedestrian links and a future public car park.

The development is known as Stage 2 within Precinct D of the Shell Cove Boat Harbour Waterfront Precinct.

Please note that this report should be read in conjunction with the report presented to the SRPP for the Tavern 2018STH006. The subject DA is linked to the Tavern DA in so far as considerations relating to car parking and its loading dock.

Background

Precinct D – Land Description

The land description is Lot 4003, DP 1235539 Boolwarroo Parade (formally Lot 8032, DP 1072187, Cove Boulevard), Shell Cove. The development site sits within Precinct D of a Concept Approval and is among 8 Precincts within the Concept Plan development land. A map showing all the precincts are shown in Figure 1.



Figure 1 - Extract from Boat Harbour Precinct Staging Plan (Note: this figure is to be used for staging purposes only)

The land to which this DA applies is within Precinct D which is coloured blue.

Planning History

Boat Harbour Marina Consent (DA95/133)

Shellharbour City Council received Development Consent No. 95/133 from the then Minister for Urban Affairs and Planning on 26 November 1996 for the construction of the following:

- a 350 berth boat harbour/marina at South Shellharbour Beach
- enhancing and enlarging a wetland at Shadforth land
- the removal of land fill material from the boat harbour site and placement of treated contaminated landfill in a series of mounds used for acoustic mitigation adjacent to a realigned haul road to the Bass Point quarry operated by (then) Pioneer Construction Materials Pty Ltd.

The boat harbour/marina proposal was the subject of a 1996 Commission of Inquiry. The Commission examined matters, including the environmental aspects of the proposal and the significance of a State Environmental Planning Policy 14 wetland proposed to be removed, and the effectiveness of related compensatory measures. The then Minister for Urban Affairs and Planning subsequently approved the application.

Section 96 Modifications to DA 95/133

There have been several modifications to the Boat Harbour Marina consent. MOD 8 is currently active with the Department of Planning and Environment. The MOD was lodged with the Department early 2018 and the proposed modifications seek to amend and relocate the outer harbour structures within the marina area. The structures proposed as part of the outer harbour include:

- Maintenance berths;
- Fuel and pump out pontoon;
- A travel lift;
- Holding areas;
- A heavy-duty Platform and associated pontoons, and
- Multi-purpose pontoons.

Major Project Declaration

Surrounding the Boat Harbour and Marina is the Boat Harbour Precinct (BHP). On 2 April 2007, the Boat Harbour Precinct project was declared a major project under Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act, hereafter) because it met Schedule 2 criteria of the (then) *State Environmental Planning Policy (Major Projects) 2005* being:

- a development for marina facilities that stores more than 80 vessels, and
- a tourist, convention and entertainment facility with a CIV more than \$100M or that employs more than 100 people.

The opinion was formed by the Director-General, as the Minister for Planning's delegate.

Schedule 6A Transitional Arrangements – Repeal of Part 3A

The Concept Plan for the Shell Cove Boat Harbour Precinct (MP07_0027) was approved under Part 3A of the Act. Part 3A of the Act has since been repealed.

Schedule 6A of the Act now includes reference to the Shell Cove development project and is therefore applicable to this development application as the Shell Cove Boat Harbour Precinct Concept Plan. Under the transitional provisions of Schedule 6A clause 3B, environmental planning instruments will apply but only to the extent that they are consistent with the approved Concept Plan. The provisions of any

environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan.

Schedule 6A also requires that a consent authority must not grant consent under Part 4 of the Act for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan.

Boat Harbour Precinct (BHP) Concept Approval (MP07_0027 MOD 1)

The development site falls within the Shell Cove Boat Harbour Precinct, a master planned estate approved under the Major Project Approval *Shell Cove Boat Harbour Precinct Concept Plan*, Concept Approval No. 07_0027 MOD 1 on 18 March 2019.

During the assessment process Council is required to be satisfied that the development is “generally consistent with the terms of approval of the concept plan” (cl. 3B(2)(d) and (g) of the *Environmental Planning and Assessment (Saving, Transitional and Other Provision) Regulation 2017*).

MOD 1 continues to provide Precinct D with opportunities for commercial and mixed use outcomes (see Figure 2 – Approved Concept Approval below).

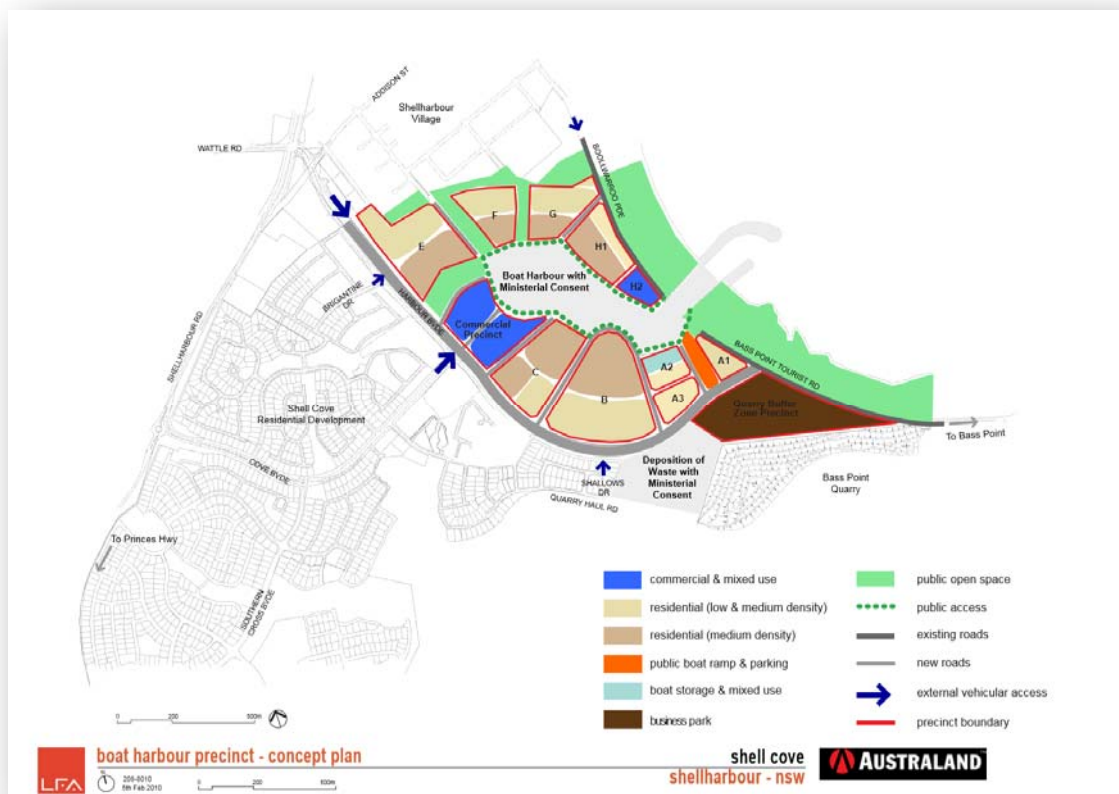


Figure 2 – Extract from Concept Approval. Source: Department of Planning and Environment

The modifying instrument amended the definition of the project to the following the development as described in the EA and as amended by the Section 75W Modification, dated 8 August 2017, prepared by Ethos Urban, and Response to Submissions, prepared by Ethos Urban, dated 7 February 2018, 31

May 2018 and 31 July 2018 (see schedule 1, condition b). Within the suite of documentation *Figure 14* illustrates the Amended Indicative Town Centre and is replicated in Figure 3 below.



Figure 3 – Amended Indicative Town Centre – MP07_0027MOD 1 Concept Approval

The above figure illustrates a reference on the subject site as area 2 and marked as a mixed use development, making it consistent with the Concept Approval.

Further, the Indicative Dwelling Numbers Plan show as Figure 7 within the Ethos Urban 8 August 2017 report (shown as Figure 4 below) provides a dwelling density of 200-250 apartments within Precinct D. The subject DA does not exceed this number within the Precinct.

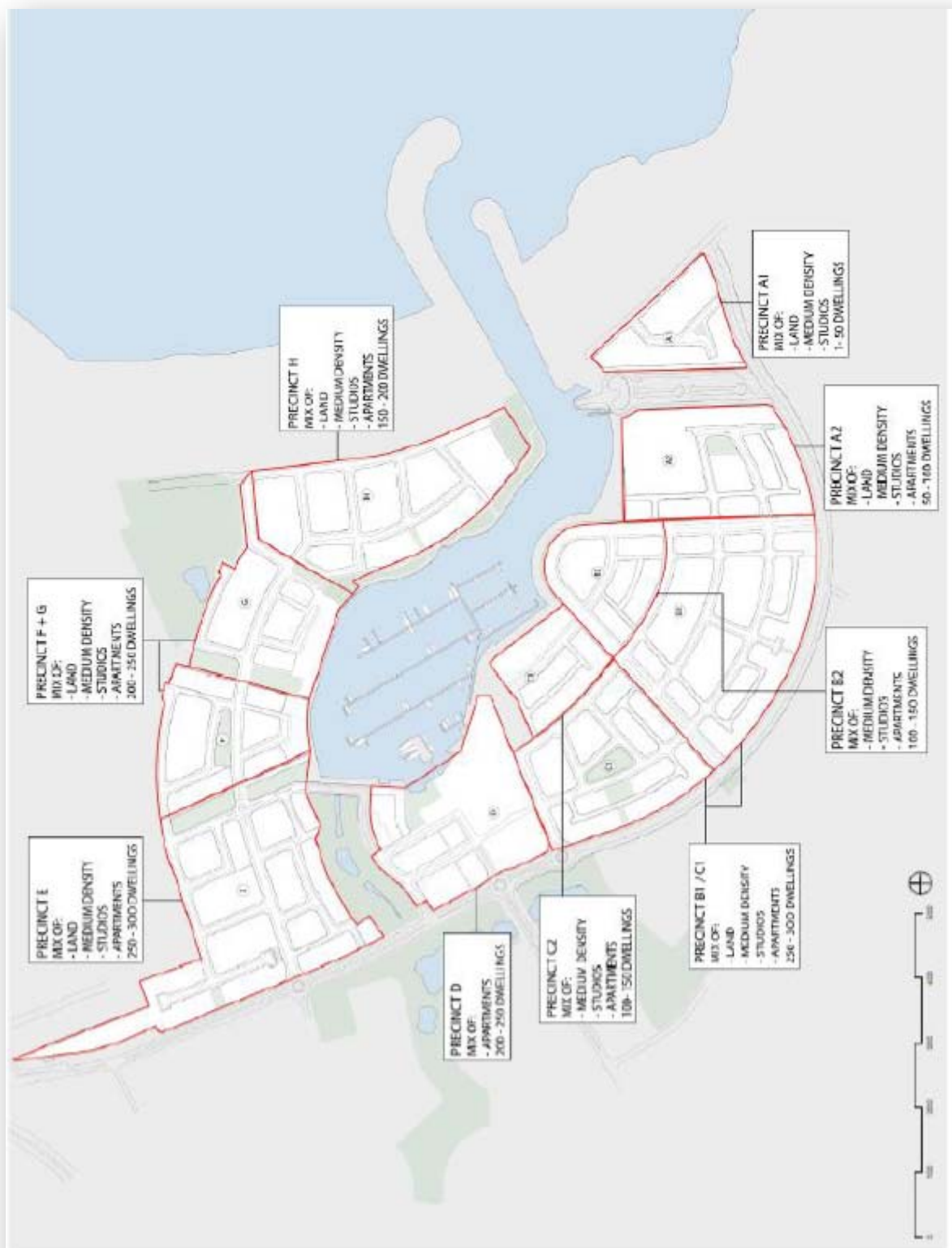


Figure 7 – Indicative Dwelling Numbers Plan
 Source: Cox

Figure 4 –Indicative Dwelling Numbers Plan - MP07_0027MOD 1 Concept Approval

The Ethos Urban report provides Indicative Housing Typologies and is shown within Figure 5 below. This plan further illustrates the placement of a mixed use development in the same location of the subject DA, validating that the DA is consistent with the MOD 1 approval.

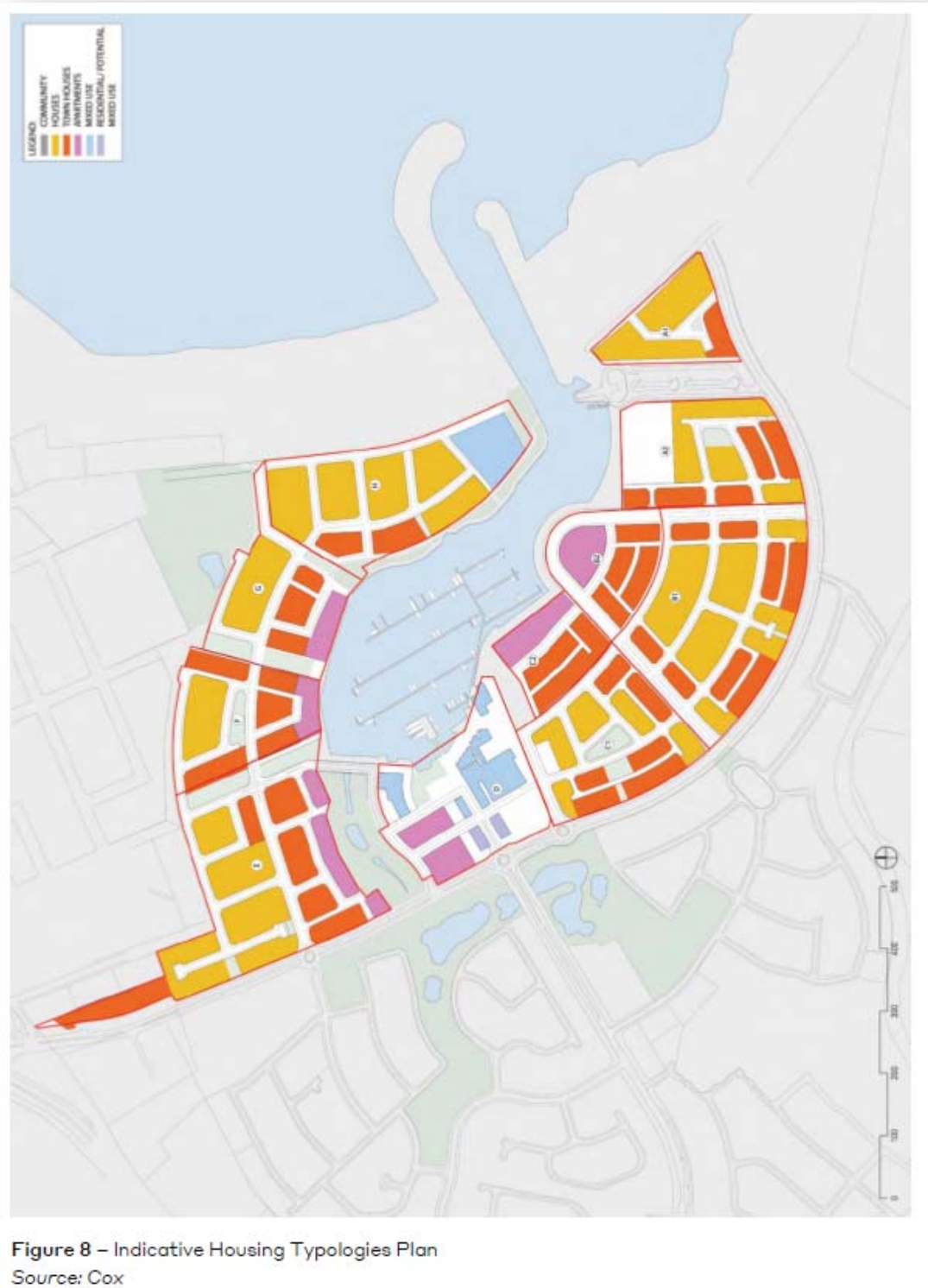


Figure 5 – Indicative Housing Typologies Plan - MP07_0027MOD 1 Concept Approval

With regard to building height, the Final Modifying Instrument (MP 07_0027 MOD 1) illustrates that the building must be five (5) storeys and 20 meters in height. This is illustrated in Figure 6 below. The development complies with the building height.

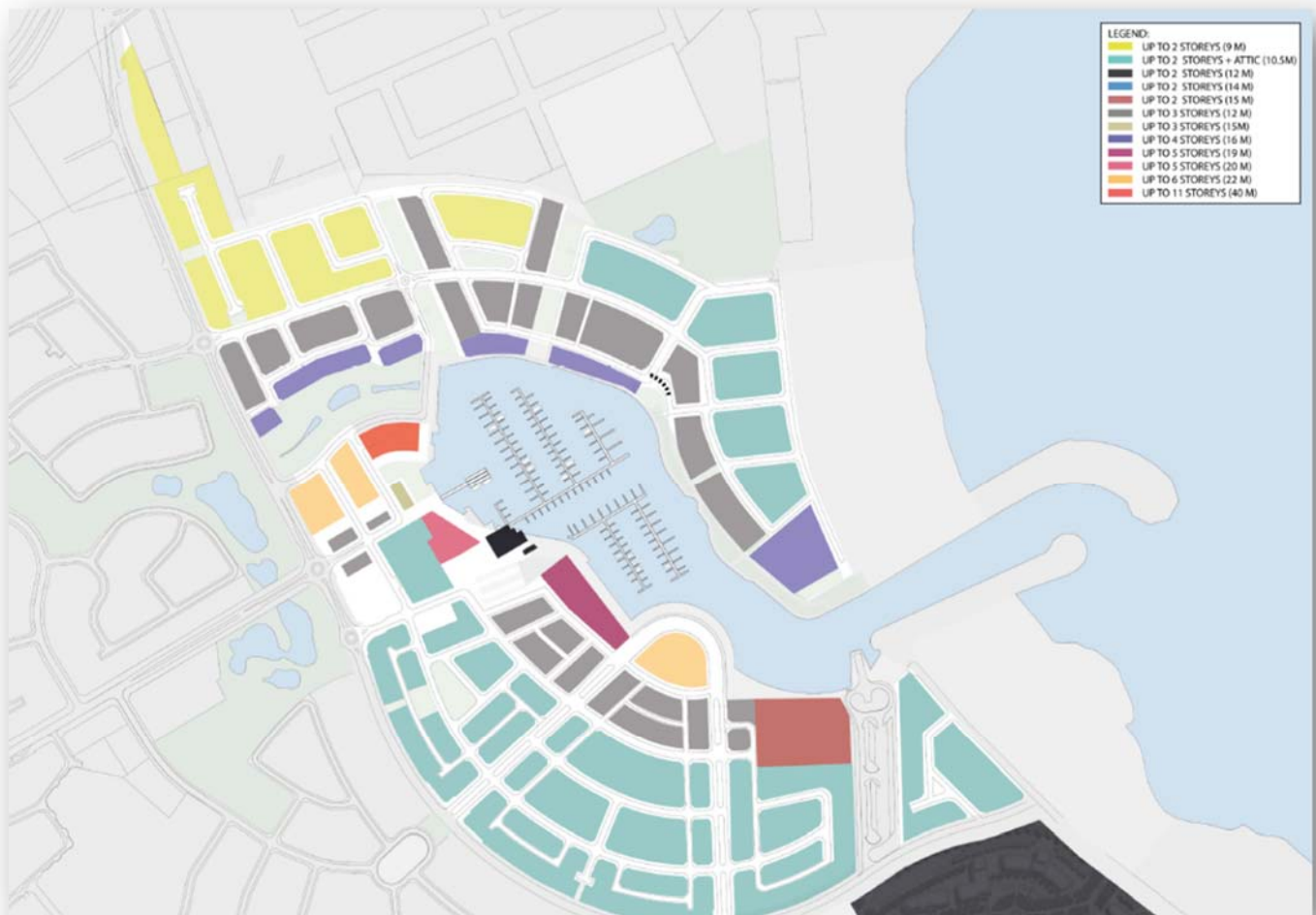


Figure 6 – Building Height Concept Approval.

In conclusion and for the purpose of the subject DA, Council is of the view that the proposal is consistent with the current Concept Approval and is further confirmed by the assessment against the following:

- Assessment of Compliance against the Part 3A Ministerial Consent (MP07_007MOD 1),
- Assessment of Compliance against the Statement of Commitments,
- Assessment of Compliance against the Shell Cove – Precinct D Urban Design Guidelines, Amendment 1,

The assessment against the above documents can be found in **Attachment 2 and 3**.

Southern Regional Planning Panel (SRPP) Briefing Response

At its briefing meeting of 28 June 2018, the SRPP noted the following key matters to be addressed during the assessment process:

Land Use

This matter relates to how the development is consistent with the Concept Approval. This is discussed above. It is now confirmed that the land use is consistent with the terms of approval.

Building Heights

The development presents as a four storey building from all façades however internally provides another storey by way of an internal floor. Concern was raised if such an element contributes to a non-compliance against the Concept Plan and Urban Design Guidelines (UDG's) however it can now be demonstrated that the development presents as a four and five storey building.

The building height control of five storeys is further reflected within the UDG's built form characteristics which refers to '*up to five storey built form overlooking the water*'. This is achieved by the ground floor tenancies and upper three levels of residential apartments and can be seen within Figure 7 below.



Figure 7 - Extract from plans/design package showing the Front Façade of Mixed Use Development

Figure 8 – Extract from Section plans as submitted

Based on the above, it is contended that the development is consistent with the Concept Approval and UDG's.

Tavern Loading Bay and Carpark Design

The Tavern is located to the south-eastern end of the Shell Cove Town Centre and is accessed via the public car park included as part of the subject DA and is shown within the Figure 8 below.

The proposed placement of the Tavern building requires access across a pedestrian pathway to access its loading dock. This is not considered unusual within an urban setting. The management of potential conflicts (e.g. pedestrian / vehicle) due to access requirements have been considered as part of this assessment. The situation in this case is demonstrated in the extract below.



Figure 8 – Extract from plans indicating proposed location of Tavern Dock and pedestrian pathway

The matter of conflict has been discussed within the report for the Tavern DA (2018STH006) presented to the SRPP concurrently with the subject DA. Mitigation measures have been proposed for both the operational requirements for the Tavern and threshold treatments. Relevantly, the pedestrian footpath treatment, where it intersects with the loading dock, will be materially different to increase awareness for pedestrians. Conditions have been recommended within the draft conditions attached to this report.

Car Spaces

The site for the subject DA is within land currently being developed to deliver the desired future character for a Waterfront precinct to complement a 268-berth marina to be supported by both public and private car parking arrangements.

Attachment 4 of this report presents the assessment of the proposed car parking strategy and demonstrates that the quantum of spaces provided is considered satisfactory for the precinct.

Urban Design Guidelines

The Urban Design Compliance table has been provided at **Attachment 3** of this report.

View Impact

The view loss potentially caused by a development of this height and scale was considered as part of the Concept Plan Approval and considered appropriate within the Town Centre area. As such, the development is considered to be consistent with the building height and built form as approved under the Concept Approval.

Design Review Panel

The application was considered by Council's independent Design Review Panel (DRP) on 24 August 2018. A copy of the DRP review is found within **Attachment 9**.

The review of the application was undertaken 12 months after the DA was lodged and at the request of the SRPP. The summary and recommendations of the DRP were as follows:

'A well-considered, competent building aesthetic has been developed. Unit layouts are functional and, in most cases, provide good amenity. However, further consideration / development is required address the following issues:

- *Articulation of south western edge of building. To improve natural lighting and cross ventilation and articulate the building façade.*
- *Further development to provide cross ventilation compliant with ADG requirements.*
- *Demonstration of compliance with ADG solar access requirements,*
- *Poor amenity of internal corner unit, unit type D.*
- *Excessive corridor length, more vertical circulation core / residential entries are required.*
- *Further refinement of building façade.*
- *Clear delineation of residential entries.*
- *Clarification buildings interface with the public domain, the interface between outdoor seating areas, circulation paths, public domain.*
- *Provision of communal open space for residents' use.'*

The detailed considerations of the DRP review and the applicant's design response are included in this report as **Attachment 5**. Council has reviewed the response and the assessment of the overall proposal and is satisfied that the development will be consistent with the desired future character of the Waterfront Precinct as per the Concept Approval and the relevant provisions within State Environmental Planning Policy No. 65.

Description of Development Proposal

The development comprises of the following:

- Eight double-height retail tenancies at ground level with commercial gross floor area (GFA) of 976m² (the separate tenancy floor areas range from 77m² – 161m² in area).
- 45 residential apartments, having GFA of 4,919m², with a mix of:
 - 6 x 1-bedroom apartments (13.3%);

- 18 x 2-bedroom apartments (40%), and
- 21 x 3-bedroom apartments (46.7%).
- 212 car parking spaces comprising:
 - 66 residential car parking spaces, and
 - 146 publicly accessible car parking spaces (retail, marina and tavern carpark).
- Public domain, including the retail forecourt area, adjoining section of the harbour boardwalk and stairways connecting the two pedestrian links.

Speciality tenancies are likely to include food and drink premises and others but could, however, extend to business premises that complement the retail and tourist precinct such as a day spa. These tenancies all front onto the retail forecourt, boardwalk and marina, providing a northern aspect with good solar access.

These premises will be supported by the inclusion of alfresco furniture (tables and chairs) located under the proposed front awning and activated through the use of the pedestrian pathway and other seating areas.

The publicly accessible car parking spaces will be constructed as part of the subject DA and ownership will be transferred to Council for future management as a public car park.

The maximum height of the building will be 19.345m.

The area of the development site is 9,467m².

The footprint of the development site is shown in red on the site plan of Figure 9 below.

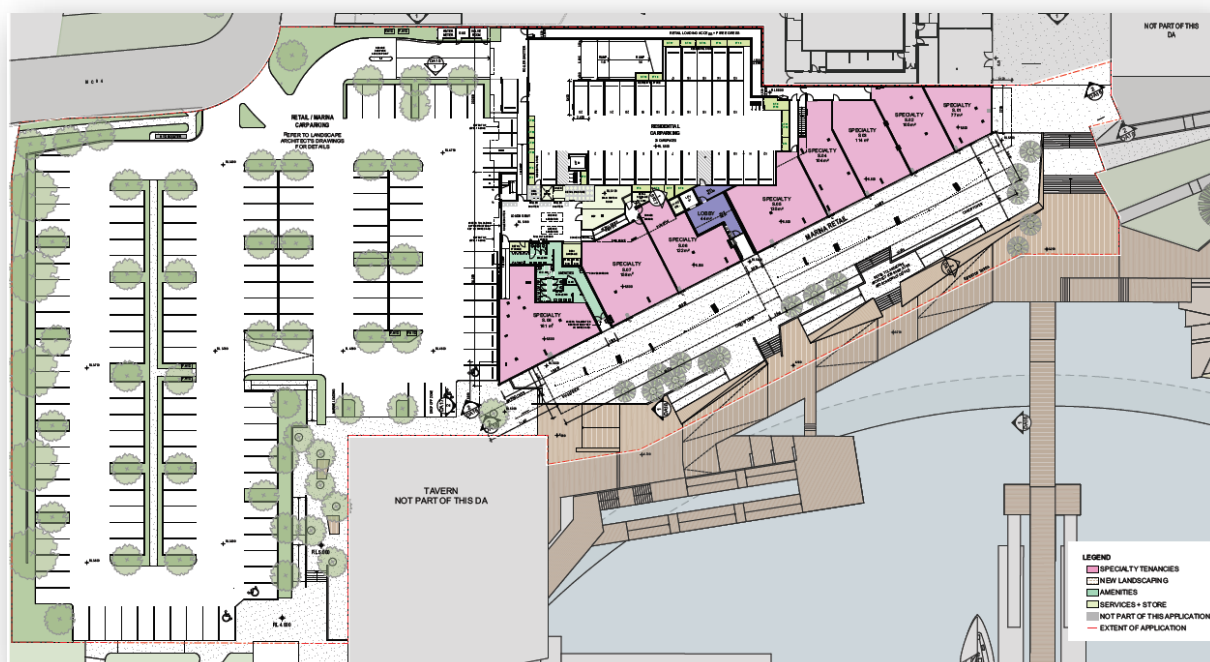


Figure 9 – Extract from Site Plan – indicates development footprint (red dashed line)

Figure 10 below illustrates how the development footprint of the subject DA connects with other public domain areas that are subject to other DA's under assessment.

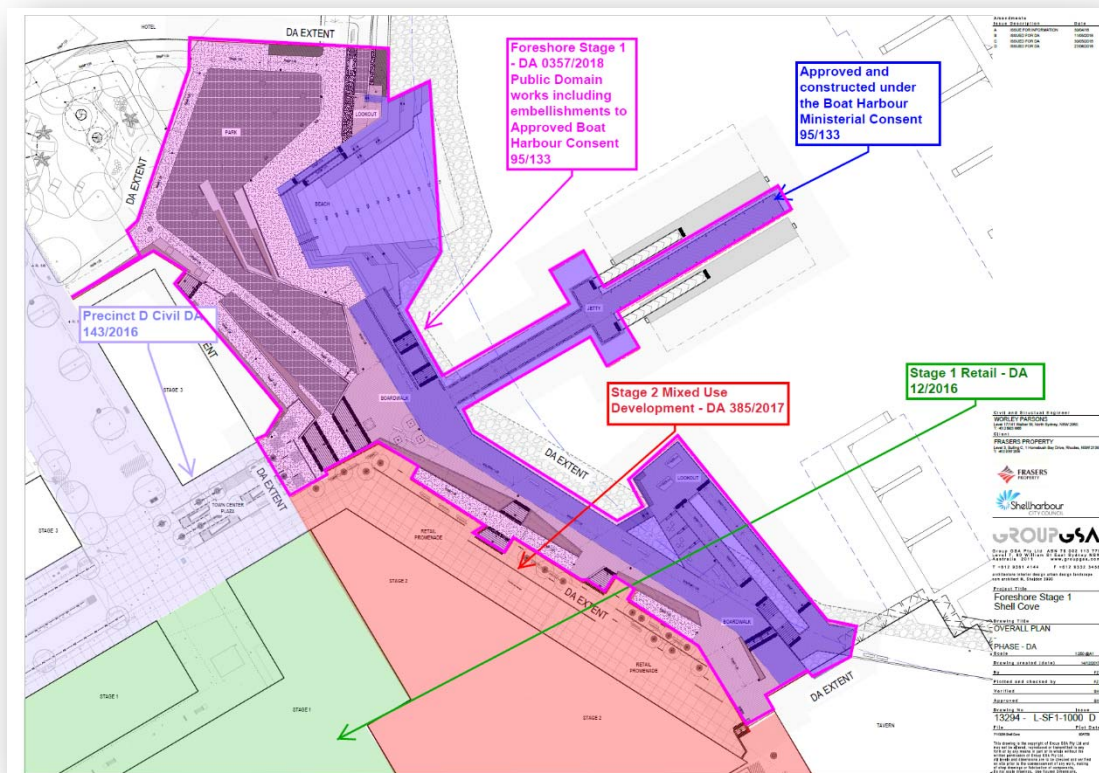


Figure 10 – Extract from plans submitted – Indicates scope of works under separate DA's and relationship between areas.

Car Parking

The proposed external car parking area to be constructed as part of this DA provides spaces for patrons who will be visiting the Waterfront Precinct. Consideration of the car parking assessment is found at **Attachment 4** of this report.

Pedestrian Access Strategy

Pedestrian access around the site is via the footpaths proposed within the Shell Cove Town Centre area and via the retail forecourt and marina boardwalk. The substructure (piers, main structural elements and overall shaping) to the marina boardwalk has previously been approved by the Shell Cove Boat Harbour and Marina DA (DA95/133) and subsequent modifications. The Stage 1 Foreshore DA including the detailing (embellishments including boardwalk detailing and outdoor furniture) to that area is currently under assessment by Council.

The retail forecourt proposed to be constructed within the scope of this DA will deliver the pedestrian routes required by the Concept Plan in addition to areas for (covered) outdoor dining. Figure 11 is an extract from the pedestrian strategy for the Waterfront precinct.

The proposed footpath through the car park will provide a safe path of travel for pedestrians. This element will be an extension of the same surface material leading from the forecourt area to provide for an identifiable visual and physical flow path. The walkway fronting the loading bay of the tavern will be further treated to provide for a differentiation in surface material to ensure that pedestrians are alerted to the potential conflict with trucks using this driveway/access way into the tavern loading dock. Signage /

ground signage will also be implemented to prevent potential accidents as part of the overall pedestrian management strategy.

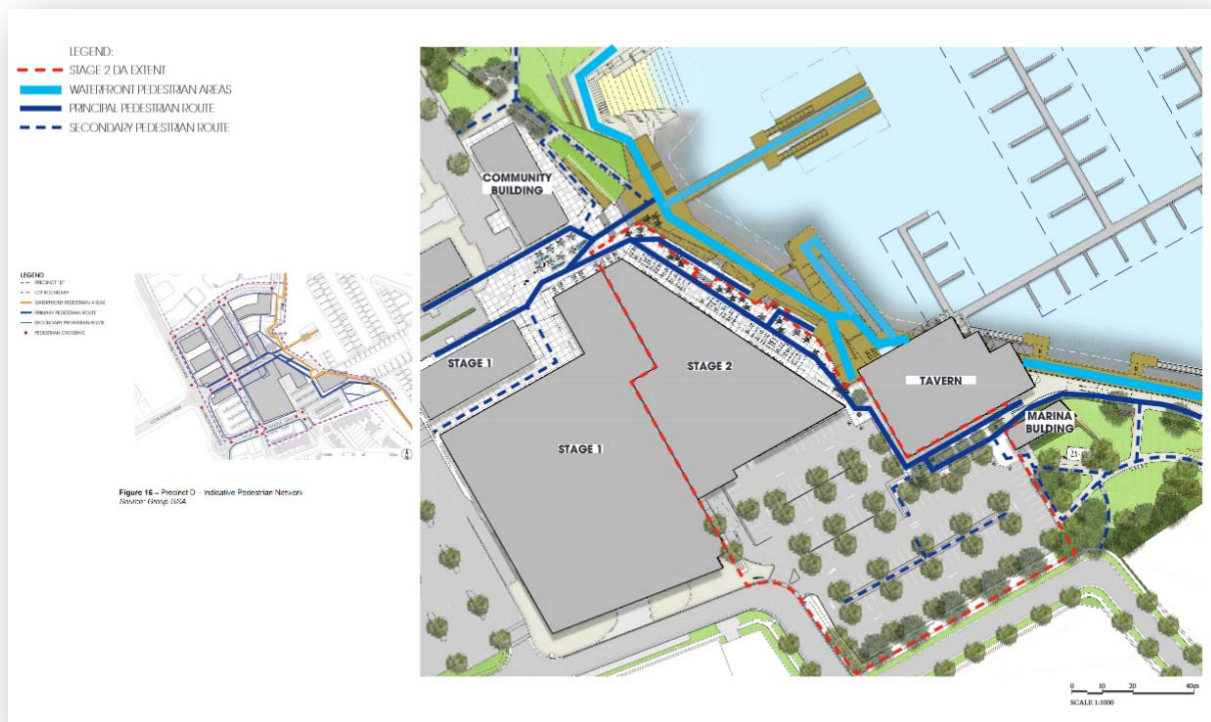


Figure 11 – Extract from proposed Pedestrian Access Strategy

Waste Management

A privately engaged waste contractor will be engaged to collect the waste from the site. To align with the holistic waste strategy for the Shell Cove Town Centre, the intention is to appoint a single waste contractor to service the entire development.

Separate waste rooms will be provided for the residential and retail uses. Residents of the apartments will transfer waste via separate waste chutes for general and recycling waste. Retail tenants will dispose of their waste directly into the bins located in the retail waste room.

Matters including the acoustic and operational management requirements for waste servicing have been discussed within this report and conditions recommended where appropriate.

Description of Land and Locality

The land is described as Lot 4003, DP 1235539 Boolwarroo Parade (formally Lot 8032 in DP 1072187, Cove Boulevard, Shell Cove) and is located at the south-eastern end of Precinct D, adjoining the marina and boardwalk to the east (see Figure 12). The site is largely cleared.



Figure 12 – Location View

The site has no direct public road access to the site which is surrounded by car parking, foreshore marina development and the stage 1 building as shown in Figure 13 below.



Figure 13 – Extract from plans indicating Building Placement within Precinct D

Site Attributes

- The land is mapped as flood prone land;
- The Office of Environment and Heritage has mapped the land as having acid sulfate soils;
- The land is mapped as coastal zone but is not mapped as sensitive coastal zone;

- The land does not contain an item of environmental heritage under the *Heritage Act 1977*. There are no locally listed heritage items identified in *Shellharbour Local Environmental Plan 2013* within vicinity of the site;
- The land is not mapped as having ecological value having regard to the relevant NSW State and Commonwealth legislation;
- The land is not known to be 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 1997*.

Statutory Development Assessment Framework

The consent authority is required to take into consideration the matters referred to in section 4.15 of the *Environmental Planning and Assessment Act 1979* as are of relevance to the development the subject of the application.

Relevant matters for consideration under s4.15(1)(a) are:

- *State Environmental Planning Policy (State and Regional Development) 2011*;
- *State Environmental Planning Policy No. 71 – Coastal Protection (as amended and updated)*;
- *State Environmental Planning Policy No. 55 – Remediation of Land*;
- *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*;
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*;
- *Shellharbour Local Environmental Plan 2013*;
- *Shellharbour Development Control Plan 2013*;
- Shell Cove Precinct D Urban Design Guidelines;
- The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality;
- The suitability of the site for the development;
- Any submissions made in accordance with the *Environmental Planning and Assessment Act & Environmental Planning and Assessment Regulation (the Regulation)*, and
- The public interest.

Environmental Planning & Assessment Act 1979 (the Act)

In determining a development application, a consent authority is to take into consideration matters referred to in section 4.15(1) of the Act as are of relevance to the development the subject of the application:

Section 4.15 (1) (a)(i) - Environmental Planning Instruments

State Environmental Planning Policy (State and Regional Development) 2011:

Schedule 7- Regionally significant development - (3) Council related development over \$5 million.

'Development that has a capital investment value of more than \$5 million if:

- A Council for the area in which the development is to be carried out is the applicant for development consent, or*
- The Council is the owner of any land on which the development is to be carried out, or*

- c. *The development is to be carried out by the council, or*
- d. *The council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purpose of the payment or contributions by a person other than the council).'*

The CIV submitted with this DA includes a construction value of \$25.7M and the site is on land owned by Council. Therefore, the development is classed as Regionally Significant Development. Under Part 4, Division 4.2, Section 4.5 (b) of the Act the Regional Planning Panel for the area (Southern) is designated as the Consent Authority.

State Environmental Planning Policy Coastal Management 2018 (SEPP Coastal Management)

Part 3, clause 21 (1) of SEPP Coastal Management states that:

'the former planning provisions continue to apply (and this Policy does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this Policy in relation to land to which this Policy applies.'

Clause 21 (4) goes to the fact that former planning provisions includes *State Planning Policy No. 71 – Coastal Protection*. As this development application was lodged on the 23/08/2017, immediately before the commencement of the *Coastal Management SEPP 2018* (3/4/2018), State Environmental Planning Policy No. 71 still applies.

State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)

Having regard to the recent gazettal of *State Environmental Planning Policy (Coastal Management) 2018*, the former planning provisions of SEPP 71 continue to apply to the DA pursuant to clause 21(1) Savings and transitional provisions.

SEPP 71 applies to land and development within the coastal zone as defined by the *Coastal Protection Act 1979*. The Policy aims to protect and manage the natural, cultural, recreational and economic attributes, vegetation and visual amenity of the NSW Coast as it applies to the site. In doing so, the development is required to be assessed under a range of considerations, including coastal foreshore access, amenity and scenic qualities, coastal hazards, cultural heritage and values, and stormwater quality.

The subject DA is located within the Coastal Zone. The development site has frontage or access to the coastal foreshore. The site is not located within the Sensitive Coastal Zone as defined under this SEPP. The proposal is considered to be consistent with the aims and provisions of SEPP 71 as the applicable heads of consideration listed in Clause 8 and matters of Part 4 are satisfied by the development either conditionally or unconditionally, and because the design and layout is generally consistent with the terms of the Concept Plan Approval.

An assessment of the proposal against the relevant clauses is found at **Attachment 6**.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

The land was formerly used as farmland and for grazing and subsequently a gold course. Considerable bulk earthworks have been undertaken as part of the approved subdivision works.

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.

A Phase 2 site contamination assessment of the Boat Harbour Precinct was submitted with the referred Planning Report for the Concept Plan Approval. This concluded that a Remedial Action Plan was required for the former golf course at the location of a former farm. However, no remediation was required for the subject site under the requirements of the *Contaminated Land Management Act 1997*.

Further investigations were conducted as part of the Mixed Use development and was undertaken by Douglas and Partners. The supplementary investigations and findings noted that based upon the more recent results, *'it was considered that Precinct D and E and Wetlands are suitable for the proposed development and that no further assessment of the former golf course land was required from a contamination perspective'*. To this end, conditions are recommended to be imposed to implement an unexpected finds protocol in the event any contaminants are discovered during future earthworks.

Based upon the above, the proposal will not undermine the Objectives of this Policy.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)

The development has been assessed against the nine principles (below) and the Apartment Design Guidelines (ADG's) which are found at **Attachment 7**.

Principle 1: Context and Neighbourhood character

The context for the proposal is a master planned development known as Shell Cove. This site has been earmarked through that planning process as a mixed use development site. The site is somewhat constrained by its shape, location and orientation. The uneven shape of the site with one side accessing north and the waterfront has resulted in a design that seeks to maximise solar access to the northern side for the apartments located above the retail spaces included. The building has been designed to fit the site and despite the lack of a compliant level of Communal Open Space (COS) and no deep soil available, the contextual benefits for residents i.e. waterfront property with views and public domain (including boardwalk, kids beach and play areas) will outweigh the potential disbenefits relating to strict non-compliances with the ADG. .

Principle 2: Built form and scale

The built form will provide for apartments that meet the needs of residents in this coastal location with a density commensurate with such a location. The buildings two-armed form includes varying building depths reaching over 21m. While the design does not comply fully with the requirement for natural cross ventilation, information provided by the applicant has demonstrated openable vents throughout the design that will achieve compliance with the objectives and a condition to effect these updates has been included. The building will benefit from full solar access to its longest (northern) façade, which includes various balconies and sunrooms that can be opened out via sliding doors with sunscreen detailing. These apartments will include a compliant level of solar access.

Principle 3: Density

The density proposed includes a mix of apartment types ranging from 1 to 3 bedrooms with a variety of bathroom numbers. However, the detailed design work shows that some of the apartments have not been located appropriately within the development. Apartments 114/212/314 are the three apartments that most clearly represent this concern insofar as they include balconies located in close proximity to others which is a non-compliant outcome under the ADG requirements. This has the potential for negative acoustic and visual privacy outcomes for residents. However, these issues have been considered and can be mitigated where necessary through the imposition of suitable conditions.

Principle 4: Sustainability

Two areas for solar panels have been nominated on the roofscape design. This is a measure that would assist the sustainable credentials of this design. It is preferable that details of the extent of reliance upon solar energy is detailed to DA stage so that such reliance is in place further to occupation.

It is noted that a Section J report has been commissioned and that it includes a variety of requirements in regard to the environmental management and monitoring of the building.

Principle 5: Landscape

The landscape design provides for an outdoor setting for residents to enjoy. While this area includes limited deep soil area it is noted that residents can access the wider development and public domain provided to Shell Cove including park areas, wetlands and an extensive waterfront area. In context, therefore, residents will not be reliant upon the COS located in this development, but the wider public domain context for their exercise and enjoyment which will provide a high level of amenity.

Principle 6: Amenity

As stated previously, the wider context of Shell Cove includes a wide range of opportunities for leisure and relaxation, despite the scale of COS provided 'internally' to this site. This approach is not uncommon where the site is dominated by the built form to maximise use of the northern aspect i.e. solar access for apartments.

In terms of acoustic amenity it is noted that a garbage chute is included in this design and that acoustic information supporting its design not provided. This is an important internal noise generating element that should be addressed. It is recommended that a condition be imposed that goes to this matter to prevent unreasonable noise impacts throughout the structure from any chutes.

Principle 7: Safety

The design includes corridors that are long, being 61.35m (northern arm of building), however, plans include windows to the southern side of that corridor that will provide for light throughout the day and could also be adapted for improved natural cross ventilation throughout the building.

Principle 8: Housing Diversity and Social Interaction

The mix of apartment types and sizes is reasonable in context including one-bedroom apartments. The design has not adequately considered the promotion of social interaction, having a small lobby area and undersized COS to the rear. However as discussed above, the contextual benefits (public domain) for residents are of greater benefit for social interaction.

Principle 9: Aesthetics

The treatments and finishes are consistent with coastal theme and suited to the location and will provide for consistency with adjoining developments.

State Environmental Planning policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)

A BASIX Certificate has been submitted with the DA 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.

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64)

The proposed signage is visible from a public place and therefore requires assessment under SEPP 64. Figure 14 and 15 below shows the signage detail and location proposed. Conditions have been recommended to ensure that the signage zones are limited to the area illustrated within the figures below.

The signage is minimal and of a reasonable size and scale and does not, therefore, conflict with any considerations outlined within Schedule 1 of the above SEPP.

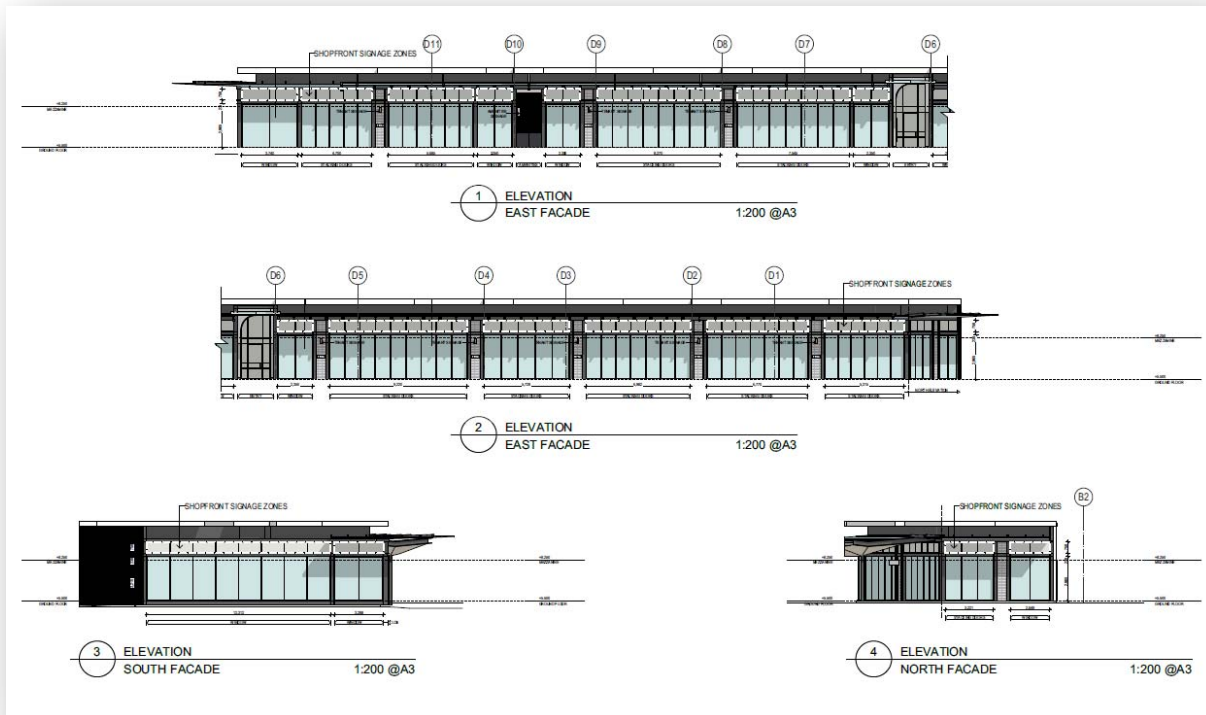


Figure 14 – Extract from plans - Proposed Signage

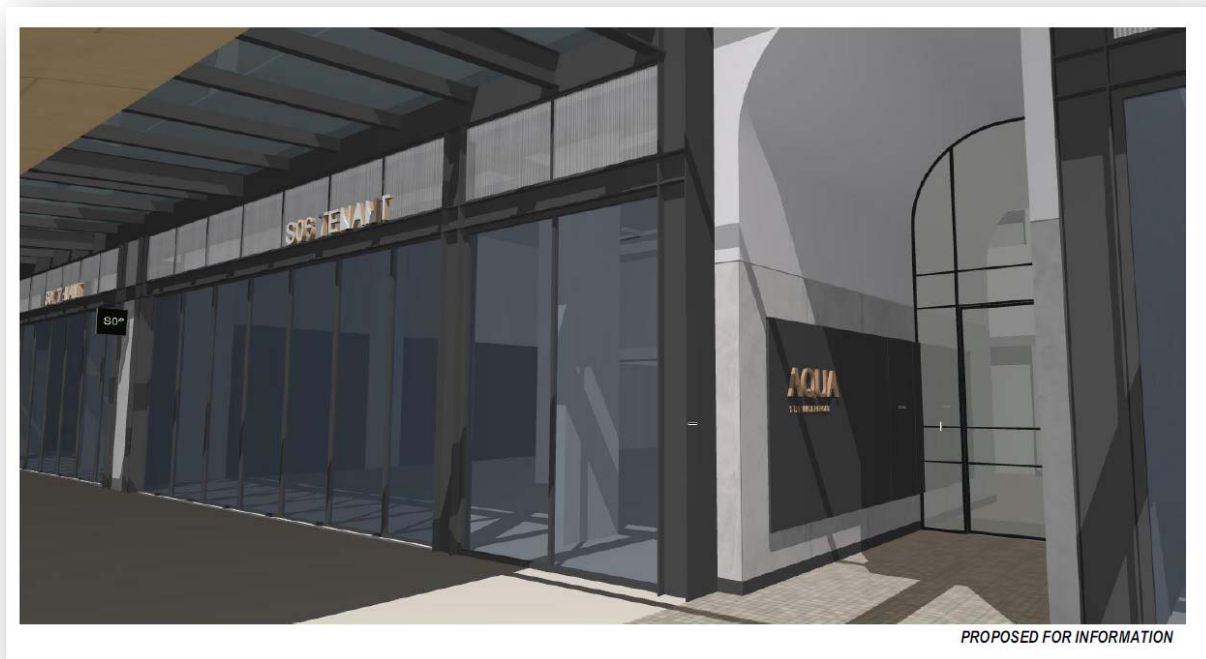


Figure 15 – Extract from submitted information - Proposed Signage Image

Shellharbour Local Environmental Plan 2013 (SLEP 2013)

Part 2 Permitted or prohibited development & Land Use Table

Development Characterisation	Shop Top Housing means one or more dwellings located above ground floor retail premises or business premises.
Land Use Zone	B2 Local Centre
Zone Objectives	• To enable land to be used for public open space or recreational purposes. • To provide a range of recreational settings and activities and compatible land uses. • To protect and enhance the natural environment for recreational purposes.
Is Proposal Permissible In Zone?	Shop Top Housing is permissible development in the B2 Local Centre land use zone subject to consent.
Is Proposal Consistent With Zone Objectives? (Clause 2.3(2))	The consent authority must have regard to the objectives for development in the zone in the determination of a development application. The proposed development will be consistent with the objectives in so far as offering compatible residential uses together with retail and business premises. It is considered therefore that the proposal is consistent with the objectives of the land use zone.

Principal Development Standards (Part 4)

Development Standards Applicable To The Development And/Or Site		
Part 4	Development Standards	How Does The Development Comply (Where Applicable)
4.3	Height Of Buildings Height of Buildings Map.	Development Standard maximum height 36m. The maximum building height is 19.345m. The building height does not exceed the building height development standard. Complies.
4.4	Floor Space Ratio Floor Space Ratio Map	Development standard – FSR = 1.5:1 (14,200m ²) Gross Floor Area: - Retail Floor Area 976 m² - Residential Floor Area 4,919 m² - Total GFA = 5,895 m² - site area = 9,467 m² Proposed GFA = 5,895 m ² Proposed FSR = 0.62:1 Complies.
4.6	Does The Development Exceed Relevant Development Standards?	Height of Building – Complies. FSR – Complies. Clause 4.6 however is not applicable having regard to Schedule 6A. The Boat Harbour Precinct Concept Plan provides indicative dwelling numbers and gross floor areas for each Precinct rather than stipulating development standards for minimum lot size and floor space ratio. The Concept Plan also refers to number of storeys of a building rather than maximum building heights. Pursuant to Schedule 6A clause 3B, environmental planning instruments will apply but only to the extent that they are consistent with the approved Concept Plan. With regard to the proposed GFA, the latter prevails.

Miscellaneous Provisions (Part 5)

Part 5	Local Provisions Applicable To The Development And/Or Site	How Does The Development Comply (Where Applicable)
5.5	Development within the coastal zone. The objectives of this clause are: - to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development, and - to implement the principles in the NSW Coastal Policy,	Clause 5.5 of the <i>Standard Instrument – Principal Local Environmental Plan</i> was repealed as part of the new coastal management framework realised with the gazettal of <i>State Environmental Planning Policy (Coastal Management) 2018</i>. SLEP 2013 clause 5.5 however, continues to form part of the matters for consideration under section 4.15 of the <i>Environmental Planning & Assessment Act 1979</i> (EP&A Act) pursuant to the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> clause 8. This clause details the provisions for assessing development applications within the coastal zone. The requirements of this clause mirror those within SEPP 71. Refer to the SEPP 71 section earlier in this report. The proposal is consistent with the objectives of this clause.

Additional Local Provisions (Part 6)

Part 6	Local Provisions Applicable To The Development And/Or Site	How Does The Development Comply (Where Applicable)
6.1	Acid Sulfate Soils The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The deepest excavation required for the construction of the building will be for the footings of the building	No Acid Sulfate Soil Management Plan has been submitted for this DA. The subject site is a Class 2 ASS 130 - 160 metres to the east and north east of the subject site. Bulk earthworks will have already been completed as part of the Precinct D subdivision therefore it is not expected there is a high risk of exposure of ASS during construction works. An unexpected finds protocol for acid sulfate required to be included in the Construction Environmental Management Plan. Accordingly, the objectives of clause 6.1 are satisfied.
6.2	Earthworks 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 development proposes minor ancillary earthworks. Impacts to surrounding developments will be minor, if any, in nature and will not detrimentally impact environmental functions and process. Accordingly, the proposal is consistent with the objective of Clause 6.2 and the matters for consideration.
6.3	Flood planning The objectives of this clause are:	This clause applies to land at or below the flood planning level. <u>Flood Risk/Hazard Category</u>

Part 6	Local Provisions Applicable To The Development And/Or Site	How Does The Development Comply (Where Applicable)
	a. to minimise the flood risk to life and property associated with the use of land, b. to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, c. to avoid significant adverse impacts on flood behaviour and the environment	The flood study that applies to the land is 'Shell Cove Boat Harbour Precinct – Tavern Carpark at Precinct D Flood Assessment' authored by Advisian, 27 July 2017. The provisional Flood Hazard is low hazard and the Hydraulic Category is Flood Fringe/Flood Storage. <u>Flood Evacuation</u> The strategy for flood evacuation is to stay in place during a flood as the building will be structurally designed to withstand the forces of flood water in all events up and including the Probable Maximum Flood (PMF). Occupants will be able to leave safely following a flood event, which would be no more than a few hours. In this regard, the evacuation strategy satisfies Council's requirements. <u>Flood affectation to retail / business premises</u> The ground floor 'specialty' unit 01 on the corner of road 10 has a VD of around 1.0m in the 5yr ARI & 100yr ARI. Due to small depths and proposed layout of the frontage of this unit, it may be impractical to raise the floor level to set a FPL. A condition will be placed for the applicant to grade the area around specialty unit 1 to ensure all water (both overland flow and flooding up to the PMF) in the area in question) is directed away from the unit The objectives of this clause can be satisfied subject to conditions to being imposed on the development consent.
6.4	Stormwater Management The objective of this clause is to minimise the impacts of urban stormwater on the land to which the development applies, adjoining properties, native bushland and receiving waters.	A conceptual drainage design (for onsite detention) was provided and is capable of meeting the objectives of the clause and Council's <i>Development Control Plan</i> subject to a detailed drainage design submitted as part of the construction certificate application. Relevant conditions form part of the recommended condition.
6.9	Essential Services Development consent must not be granted for development unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required:	The development site can be serviced by all required Essential Services. An estimate has been provided for the estimated electrical demand of the proposed premises. A kiosk substation has been included as part of the application.

Section 4.15 (1) (a)(ii) – any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved).

Nil.

Section 4.15 (1) (A)(lii) – And Development Control Plan

Urban Design Guidelines, Precinct D, June 2017, Amendment No. 1.

The Urban Design Guidelines have been amended to delete any references to terms within the UDG's that relate to the application of the UDG's subject to any 75W being determined.

An assessment of this compliance table is found within **Attachment 3**.

Shellharbour Development Control Plan 2013 (SDCP 2013)

Pursuant to schedule 6A of the Act, the provisions of any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan. Therefore, the DA is assessed under the precinct design guidelines developed for the proposed form of development as required by the Concept Approval. Development objectives and provisions of SDCP 2013 will only apply where the *Design Guidelines for Precinct D* are silent regarding a development control/requirement. The relevant chapters are considered below:

The Development Process: 2.2 Development Application, Notification and Submission

The application was exhibited between 14 September 2017 and 4 October 2017 and subsequently readvertised due to an administrative error. The re-notification occurred between 14 September 2017 and 10 November 2017. A total of nine submissions were received in response.

Consideration of the public submissions received is included below in the following sections of this report.

Advertising and Signage – Chapter 10

The signage is of such a minor nature that it does not conflict with any considerations outlined in Chapter 10. A Condition has also been recommended to ensure that the proposed signage is limited to the extent proposed.

Waste Minimisation and Management – Chapter 15

A private waste contractor will be engaged to collect the waste from the site. To align with the holistic waste strategy for the Shell Cove Town Centre, the intention is to appoint a single waste contractor to service the entire development.

Separate waste rooms will be provided for the residential and retail uses. Residents of the apartments will transfer waste via separate waste chutes for general and recycling waste. Retail tenants will dispose of their waste directly into the bins located in the retail waste room.

The back-of-house area has been refined during the DA process. An organic waste room has been incorporated off the loading bay. Residents will have access to deposit organic waste into bins provided in the dedicated organic waste room. Residents can also directly access the dedicated organic waste room off the residential car park.

The supporting Waste Management Report has been updated to incorporate an operational waste management plan and the design changes to be implemented to enable the servicing of the site.

Floodplain Risk Management – Chapter 24

The objectives of this chapter can be satisfied through the imposition of conditions as recommended.

Stormwater Management – Chapter 25

The objectives of this chapter can be satisfied through the imposition of conditions as recommended.

Outdoor Dining - Appendix 2

The outdoor dining areas to this development are contained wholly within private land and therefore the provisions within this appendix do not apply.

Section 4.15 (1) (a)(iv) – the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

The necessary conditions have been recommended as part of the draft development consent conditions.

Section 4.15 (1)(b)- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality

Building Height, Bulk and Scale

The maximum building height was set by the Concept Plan Approval which limits the site's development to include a five-storey building. In this way, the commercial precinct, adjoining the marina, has always been recognised as an area for an appropriate level of high density, being an area with a high level of amenity. The proposed building will include four storey and will therefore be consistent with the Concept Plan Approval.

Within the Design Verification Statement, the architect establishes the basis upon which the built form has been designed to meet the future context of the site. An extract from their report is reproduced below:

'At four storeys tall, the proposed building is a considered, well-articulated and suitably sized building to be situated within the heart of a town centre precinct.'

The proposed bulk and scale of the building and scale of the building has been designed to complement the future character of the surrounding area, and sits perfectly within the surrounding medium density building forms'

The application was considered by the Design Review Panel (DRP) on 24 August 2018. **Attachment 5** provides the outcomes of the DRP review together with the applicant's design response. Council has reviewed the outcome and the assessment of the proposal and is satisfied that the development achieves the desired future character of Waterfront Precinct and the relevant provisions of SEPP 65.

Acoustic Noise Impact

The mixed use development includes both noise generating activities of food and drink premises as well as sensitive noise receivers such as the residential apartments. Contributing to this is that the site sits within a greenfield development that is within a planned waterfront entertainment and retail precinct.

Therefore, the current NSW acoustic policy and criteria does not provide the necessary framework to allow the development of a green field site into a vibrant mixed-use precinct. This is because the current policy is based on assessing new/proposed noise generating development upon existing noise sensitive receivers, with noise limits established from the existing background noise levels.

To respond to this the applicant states *'the approach for the Waterfront Precinct is to provide a more balanced approach between operators and receivers, while also taking into account potential activity in the public realm. Conceptually, this involves noise sensitive development around the vibrant centre to incorporate a level of acoustic mitigation to respond to the future environment, to enable greater flexibility and opportunities for businesses. It was critical however to determine the appropriate balance between the operation of venues and the mitigation requirements and amenity outcomes for noise sensitive development'*.

Frasers commissioned Arup Pty Ltd to undertake a specific acoustic study model for the precinct and included assessments for the Stage 2 Mixed Use Development and Tavern. The most recent reports include the:

- *Shell Cove Waterfront – Stage 2, DA Supplementary Acoustic Report, Issue 2, dated 8 May 2018 (subject DA)*
- *Shell Cove Waterfront – Tavern, DA Supplementary Acoustic Report, Issue 2, dated 8 May 2018*

In addition and subsequently, Arup produced a Precinct Acoustic Management Plan (report date, 29 November 2018). This report provides a precinct wide approach that supports the site specific reports and demonstrates that the proposed mitigation measures of the two uses will allow the built form outcomes as well as the operational requirements to function together within the precinct in context of noise emission and management. The assessment was separated in two main areas and considers firstly the existing and new residential uses and secondly the retail and operational uses.

For assessing noise mitigation on the new residential uses the method adopted means that rather than applying the *NSW EPA Noise Policy for Industry, Intrusiveness Noise Criteria of background noise plus 5dBA to retail operations*, noise limits have been set by aiming to achieve internal noise criteria within the residential apartments. This is proposed to be achieved through a balance of limiting noise emissions from the retail operations to a level which is measured at the residential façade and that can be attenuated with reasonable building treatments.

In this regard, the approach has been taken in setting the condition for the new residential component to comply with internal noise criteria using guidelines set by the World Health Organisation. These are detailed in Table 1 of the Arup (2018) Supplementary Acoustic Report and summarised below;

Time	Bedrooms dB(A)	Living dB(A)
7am – 10pm	35	40
10pm – 7am	30	35

The above noise levels are to be achieved with windows and doors closed. The report continues to say that where internal noise levels are exceeded by more than 10dBA with windows open alternative ventilation shall be provided. It is recommended that these design solutions are satisfied by imposing criteria based conditions to allow the design solution to be determined at the construction certificate stage.

For the retail and operational uses it is considered that the noise emissions will be created by the following:

- Adjacent Tavern building,
- 5 ground floor retail premises with the majority of the noise generated by outdoor seating for patrons,
- Loading dock (Stage 2 Mixed Use), and,
- Building services equipment (Stage 2 Mixed Use).

The noise acoustic measures for the Tavern are discussed within its own planning report and adopts the approach that the use must ensure that noise emission must not exceed the required criteria at the façade of the residential building component. For the stage 2 retail premises, Table 7 of the Arup (2018) Supplementary Acoustic Report sets noise level criteria (measured at the residential façade) that is required to be achieved by the ground floor retail uses.

Receiver location	Criteria, LAEQ(15 Minutes)			
	7am – 6pm	6pm – 8pm	8pm – 10pm	10pm – 7am
Mixed use residential, L1 south end of east façade – room 106	60	60	55	50
Mixed use residential, L1 centre of east façade – room 103	60	60	55	50
Existing residential, external boundary, south of mixed use development	50	45	45	40

The noise criteria for existing residencies has been determined by applying the EPA Industry Noise Policy ‘Intrusiveness’ method where noise emissions are ideally kept to within 5dBA of existing background levels. Arup have used a predicted background level for residential areas from Australian Standard 1055.2-1997 rather than measured background noise as the predicted level is more reflective of the urban scenario rather than a measured sound level from the undeveloped greenfield site.

Mitigation and management measures for the Stage 2 Mixed Use include:

- background music shall generally be limited to internal areas and speakers not directed out to external areas to reduce subsequent need for patrons to further raise voices in conversation,
- noise limiters should be installed on all sound systems,
- speakers shall be mounted to limit potential structure borne noise and vibration transfer to residential apartments, and
- close operable façade at the primary building alignment, with exception of primary entry doors, at 10 pm.

In this regard, conditions are recommended to require the building operator to ensure that the noise mitigation requirements are achieved for each retail tenancy and forms part of the plan of management for the building.

In addition, other noise mitigation condition for the operational requirements for the building include the following:

- restriction on use of the loading dock will include requirements listed in section 5.2 of Arup (2018) Supplementary Acoustic Report which restricts operation from 10pm – 7am, and
- conditions for the building services equipment will require the final design specifications to consider noise mitigation treatments listed in 5.3 of Arup (2018) Supplementary Acoustic Report. Conditions have been recommended to ensure that an acoustic assessment be provided prior to construction certificate to verify that the proposed building services and acoustic mitigation measures will be adequate to ensure internal sound criteria’s listed in Table 1 of the Arup (2018) Supplementary Acoustic Report, will be achieved for mixed use residential premises.

The assessment concludes that the proposed acoustic strategy and the associated modelling and recommendations can deliver a vibrant mixed use precinct that provides desired internal acoustic amenity for residential premises, operational opportunities and flexibility for noise generating development that is performance based.

In this regard and to further ensure that the precinct delivers activation of the different uses, it is also recommended that a condition be imposed that requires the operator of the premises to undertake acoustic testing 12 months after the building commences operation. This will ensure that real-time data is used and that such testing is undertaken at during key seasonal times in a 12 month period. This will ensure that the assumptions in the modelling used with the reports are achieved on the ground and in perpetuity. The condition will read as follows:

The operator of the premises is required to undertake relevant acoustic testing to demonstrate that the noise criteria is being achieved as required by Table 7: Predicted noise levels in report Frasers Property Australia Shell Cove Waterfront – Stage 2 DA – Supplementary acoustic report, Issue 2, Ref AC09, dated 8 May 2018 prepared by ARUP. The testing must occur during the first 12 months of the operation of the premises and based on the following:

- *at least 5 times during the 12 month period, with two samples taken during the summer period, and,*
- *at peak times, including Saturday mid-afternoon and evening.*

Where the testing has shown non-compliances with noise criteria detailed in Table 7: Predicted noise levels in report Frasers Property Australia Shell Cove Waterfront – Stage 2 DA – Supplementary acoustic report, Issue 2, Ref AC09, dated 8 May 2018 prepared by ARUP , appropriate operational mitigation measures must be implemented in the plan of management and noise management plan for the site. Such mitigation strategies must be implemented immediately.

Documentary evidence must be provided to Shellharbour City Council. The evidence must demonstrate the above and lodged with Council not more than 3 months after the testing period. This must include any revised operational and noise management plans.

Based on the above assessment and relevant conditions of development consent being imposed, it is considered that the precinct noise acoustic strategy is able to be supported for the subject development application.

Car Parking

This matter is considered within **Attachment 4** of this report.

Impacts On Other Uses Within Vicinity

The Tavern loading dock is accessed via the public car park that will be constructed as part of the subject DA. The loading facility will allow access to service vehicles including waste collection and deliveries to load and unload within the Tavern premises. The waste storage room for the Tavern will be located adjacent to the loading dock to allow for waste collection to be carried out within the dedicated loading dock area.

Service vehicles will enter and exit the facility in a forward direction and reverse into the loading dock from the car park.

Considerations regarding the conflict between the users of the car park, the pedestrian network and operation of the Tavern has been considered in report for 2018STH006 – Tavern. As part of the recommendations to provide for mitigating measures to minimise unreasonable conflicts, the subject DA will need to ensure that conditions are imposed to require the pedestrian zones (to be constructed as part of this DA) at the crossover with the loading dock, will require additional surface treatments to increase awareness for pedestrians.

Water

The site is presently serviced by Sydney Water's reticulated water and sewerage services. It is expected that these services can be extended/ augmented to meet the requirements of the proposed development.

Construction

Conditions of consent are recommended in relation to construction impacts such as hours of work, erosion and sedimentation controls, works in the road reserve, excavation and use of any crane, hoist, plant and/or scaffolding.

Crime Prevention Through Environmental Design

The mixed use development will provide good passive surveillance for the users of the marina, boardwalk and retail tenancies. The shopfronts and residential units located above will also provide for surveillance to the surroundings via their windows and balconies.

The development includes a highly effective transition between public, semi-private, and private areas through the use of physical and visual barriers and cues, as well as clarity of ownership.

Private areas will be secured by roller shutters to the garage and loading bay and doors to the lobby and fire exits. Locks on roller shutters, doors and windows would be required to achieve appropriate security standards to prevent unwanted access into the building. In this regard, appropriate conditions have been recommended.

The access to the public amenities is via a long corridor, which does not allow for supervision from nearby areas. Further to this issue being raised, the proponent responded by reconfiguring the area by reducing the length of the corridor. The redesign included the female restrooms being brought forward and having both entrances to male and female restrooms separated. Other mitigating measures included the addition of convex mirrors to allow for improved visual surveillance of on-coming pedestrian traffic within the corridor.

The configuration of parking bays within the external public carpark includes a grid layout which increases passive surveillance to the area. The lighting and landscape plan for the carpark shows that lighting will be spread through the carpark enhancing visual surveillance at night. Conditions have been recommended to ensure that the lux of the lighting is of a level that will enable users to identify a face from within 15 metres radius to improve personal safety. Other measures included as part of the suite of conditions include:

- a. plants should be lower than 1 metre or thin trunked with high canopy;
- b. use low plantings to prevent access to walls etc. and to prevent graffiti, and
- c. ensure landscaping does not obstruct sight lines by selecting appropriate plants and adopting an adequate maintenance schedule.

Cumulative Impacts

The proposal is not expected to have any negative cumulative impacts.

Economic Impact

It is anticipated that the proposal will have a positive economic impact throughout the construction phase of the development and beyond. It will further contribute to the local economy due to the increased population density to the locality, thereby activating commercial activity within the locality.

Section 4.15 (1)(c)- the suitability of the site for development

The site's suitability has been discussed throughout this report. The development site does not appear to include any physical impediments that would preclude the development as proposed and the proposal is supported by relevant information to enable an assessment.

Three primary considerations that demonstrate the sites suitability include the outcomes relating to car parking, acoustic and built form design. These matters have been discussed in detail within this report which demonstrates that the context, setting, character of area and importantly building placement lends itself to the site being suitable for the proposed development.

In this regard, the site is suitable for the proposed development subject to the imposition of conditions as recommended at **Attachment 1**.

Section 4.15 (1)(d)- any submissions made in accordance with the Act or the Regulations

Pursuant to s79A of the *Environmental Planning & Assessment Act 1979* (the Act), the DA was publicly notified as required by the provisions of the *Shellharbour Development Control Plan* (SDCP).

The application was exhibited between 14 September 2017 and 4 October 2017 and subsequently re-advertised due to an administrative error. The re-notification occurred between 14 September 2017 and 10 November 2017. A total of nine submissions were received. The notification process included a DA notification sign attached to the curtilage of the site, letters to property owners/occupiers within 50m of the site and an advertisement notice in the local newspaper seeking representations regarding the proposal to be submitted for Council's consideration within the 21-day period.

Objection	Officer Comment
Design and Built Form	
The architectural plans submitted appear to propose a building vastly different from that presented to the public and purchasers of „The Waterfront“ properties in marketing materials, websites and social media.	The Architectural Plans submitted with the DA have been prepared for development assessment by Council. The assessment must demonstrate that the development is consistent with the Concept Approval and statutory framework. In this regard, sale and advertising material is not in the scope of assessment requirements.
The plans and 3D models of this building show a structure that is more aligned to cheap, bulk, housing, or inner-city apartment blocks, rather than that of a feature building that will define the architecture of the Shell Cove Marina Precinct, and become the main structure visible from the marina berths.	The plans have been designed with regard to the Precinct D Urban Design Guidelines with a built form that provides for a variety of form and materials that reflect the coastal vernacular. The DA was also referred to a Design Review Panel consisting of independent and qualified architects. A discussion on the way in which the development responds to the considerations made by the Panel are discussed above.
The boardwalk width has been significantly reduced and thus impeded to allow for widening of the apartment blocks.	The marina boardwalk does not form part of the subject DA. It was approved as part of the Shell Cove Boat Harbour and Marina (DA 95/133) (refer to previous comments).
Earlier designs for the nominated site had three separate buildings spread over the area, placed in a staggered saw tooth pattern. This design worked to reduce the imposition the building(s) placed on the surrounding area, while also providing multiple public access points from adjacent car parks to the boardwalk area and retail outlets. This has been lost in the current proposed design.	The envelope and design for the Stage 2 Mixed Use Development were informed by the Urban Design Guidelines. This envisages a single building with a consistent activated frontage to the public realm. The design allows for multiple points of access through to the retail promenade and marina.
The proposed apartment and retail building complex is lacking in architectural character, diminished public views to the marina and is designed in such a way that the two levels of apartments do not meet solar access requirements	The mixed use development has been located and designed to capitalise on its key water views to the east. It is noted that the design guidance for Objective 4A-1 acknowledges that the design criteria may not be possible on sites where significant views are oriented away from the desired aspect. Plans provided to Council indicate that the proposal does comply with the requirement for solar access.

Traffic and Parking	
Proposed parking allocations at the apartment sites are inadequate to cope with the potential increase in population.	The development proposes 212 car parking spaces across the retail and residential car parks. This includes a total of 66 parking spaces dedicated to the residential apartments and 146 spaces available to the public with the visitor spaces for the apartments to be absorb within the public domain. This matter is discussed in more detail within Attachment 4 of this report.
The feeder streets to the Boat Harbour and surrounds are already unpleasantly busy during weekends and holiday periods. An increase in population and resulting traffic to the precinct will transform once quiet back streets into busy thoroughfares and rat-runs. We believe the traffic modelling in the proposal documents was based on out of date information from as far back as 2009.	The Shell Cove Boat Harbour Precinct Concept Plan was supported by a Traffic Study by Maunsell dated 24 March 2009. Further analysis was undertaken as part of the precinct wide carparking strategy that supported the adoption of the Urban Design Guidelines as well as the recent assessment as discussed within Attachment 4 of this report.
The proposed parking spaces do not provide sufficient capacity for overflow or visitor parking. With the marina area being a tourist destination, it is not unreasonable to expect that residents in the apartment building will have a higher than average number of visitors, particularly during peak times.	This matter is discussed within Attachment 4 of this report.
The Application should be deferred until such time as the traffic implications of the proposed modifications have been properly considered.	The proposed development is consistent with the approved Concept Plan and, as such, the traffic implications of the current Section 75W Modification will not impact on the outcomes for this DA.
View Loss	
The increased height of the new design will block our views of the ocean. We purchased our house (and paid a premium for it), because of these views, in the belief they would be permanent. To lose these views would be extremely distressing.	The height of the proposed development is lower than that envisaged within the Concept Plan Approval for this site.
A view loss assessment has not been undertaken as part of the development application.	The view loss of a development of this height and scale was considered as part of the Concept Plan Approval and considered appropriate within the Town Centre in a location offering a high level of amenity. The important view corridors identified within the Concept Plan have been maintained as part of the proposal.
Bulk And Scale	

The bulk and scale of the proposed building is extremely imposing on the neighbouring area.	The Stage 2 Mixed Use Development is located within the Shell Cove Town Centre and is located more than 70 metres from the nearest residential dwellings. The architectural composition of the built form breaks down the massing to reduce the visual and physical impact of the building on the public domain.
Environmental Impact	
There are insufficient trees, gardens and green areas allocated for public amenity around the apartment sites to soften the commercial look of the apartment blocks.	The site is within close proximity to the following public open space: • Harbourside West park south of the future Tavern; • The Marina boardwalk and waterfront promenade; and • Shell Cove Civic Plaza and community open space. These spaces will offer a high level of amenity to the public, being publicly accessible open space adjacent to the marina. These spaces will be vegetated and ensure a high level of amenity is provided to the future residents of the apartments. In addition, suitable landscaping will be provided around the development including within the landscape podium roof, the retail car park and along the marina promenade and boardwalk to soften the development.
Social Infrastructure	
Local hospitals and schools are already under strain because of increases in the number of families in the area and the existing Marina plans will add more than enough extra strain without these changes to dwelling density.	The development is consistent with the approved Concept Plan and will not impact on social infrastructure (i.e. local hospitals and schools) and considered appropriate within the approved Concept Plan.
Urban Design Guidelines	

We do not believe that the proposed new residential multi-unit meets the requisite urban design guidelines, its vision or principles.	The proposed development has been assessed and considered consistent with the provisions of the Urban Design Guidelines. It is noted that the development is in accordance with the vision: • <i>Provide the Shell Cove coastal community with a cultural and commercial heart – a wonderfully open, natural place to discover, shop, eat, relax, live and play.</i> The development will contribute to the commercial heart of Shell Cove through a high-quality mixed use development. It will provide a range of uses along an activated frontage. Additionally, the mixed use development is considered to meet the following principles: • Maintain identified public view corridors to the ocean and boat harbour and define key street and water edges; • Provide a range of uses including supermarket retail, tourist (i.e. tavern and hotel), commercial, community facilities and residential components in the form of apartments and serviced apartments; • Deliver high quality architectural elements and spaces that contribute to a human scale of development and provide active ground floor uses, where appropriate, to generate a vibrant street environment; • Provide a mix of apartment types and sizes designed in accordance with the principles of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development and the Apartment Design Guide.
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Impacts Of And To Bass Point Quarry	
Council must ensure that planning and approvals in the vicinity of the Bass Point Quarry do not unduly jeopardise the operation of the quarry	The development is consistent with the Concept Approval and the development does not impact on any haul roads, supply or function relating to the quarry operations.
Application of the Shellharbour City Council Local Environmental Plan 2013 (SLEP 2013), clause 6.11, Mineral Resource and Transition Area	The land to which the DA applies is outside the mineral resources and transition area map contained within SLEP 2013.

Section 4.15 (1)(e)- The Public Interest

The construction and operational stages of the development will provide employment and economic benefits to the Illawarra.

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and is therefore considered to be in the public interest.

The contribution of lifestyle choice and tourism facility the development will bring to the community will further enhance and contribute to the public and overall masterplan in a positive way.

Accordingly, development consent of this proposal will not undermine the public interest subject to appropriate conditions being imposed on any development consent.

CONCLUSION

The proposed development:

- is consistent with the relevant statutory requirements, development controls and planning objectives, and
- having regard to *Environmental Planning & Assessment Act 1979* Schedule 6A clause 3B (2)(d), the proposal is generally consistent with the Concept Approval through its general compliance with the Precinct D Urban Design Guidelines;
- is consistent with the applicable provisions of the relevant state planning policies including SEPP 65 and the Apartment Design Guide;
- is able to contribute to the overall carparking requirements that will service the subject DA as well as the immediate uses around the subject site;
- has been designed to respect and not conflict with the interaction of other uses within the precinct such as the tavern and supermarket, and
- Submissions have been addressed satisfactorily.

Based on the assessment above, where there are no outstanding issues, it is recommended that DA385/2017 be approved.

Recommendation

That conditional development consent is granted to Development Application No. 385/2017 (2017STH025) to construct the mixed use development comprising of retail, residential, carparking and public domain works at Lot 8032 in DP 1072187, Cove Boulevard, Shell Cove.

The recommended conditions are detailed in **Attachment 1**.

Attachments

- Attachment 1 – Draft Schedule of Conditions
- Attachment 2 – Assessment of Compliance – Boat Harbour Precinct Concept Approval MP07_0027 and Statement of Commitments
- Attachment 3 – Assessment of Compliance – Urban Design Guidelines, Precinct D
- Attachment 4 – Precinct D – Car Parking Assessment Strategy
- Attachment 5 – Design Review Panel response
- Attachment 6 – State Environmental Planning Policy 71 (Coastal Protection) compliance table
- Attachment 7 – Assessment of Compliance Apartment Design Guidelines
- Attachment 8 – Development Plans
- Attachment 9 – Design Review Panel review