

# SOUTHERN REGIONAL PLANNING PANEL

## Supplementary Memo

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
Recommendation	That DA No. 385/2017 (JRPP Ref No. 2017STH025) be approved subject to the schedule of conditions contained in <b>Attachment 1</b> .
Report prepared by	<p>Jasmina Micevski, Manager – Planning</p>  <p>Madeline Cartwright, Senior Development Assessment Officer</p> 
Date of report	08/05/2019
Attachments	Attachment 1 Revised Draft Development Consent Conditions Attachment 2 Amended Urban Design Guidelines

## **PURPOSE OF SUPPLEMENTARY REPORT**

The purpose of this report is to address the requirements of the recommendation put by the Southern Regional Planning Panel at its meeting of 16 April 2019.

Relevantly, the recommendation was:

### **The Panel resolved as follows:**

1. The panel agreed to defer the determination of the matter until a supplementary report is produced that provides:
  - (a) An assessment of the applicant's Visual Impact Assessment received by Council on 15 April 2019, including a Tenacity assessment of the submissions that raised potential view impacts;
  - (b) Details of the number of carparking spaces required to meet residential carparking requirements of the development;
  - (c) Revise Condition 77 to require ongoing maintenance of the landscaping within the communal open space;
2. That on receipt of the supplementary report the Panel will determine the matter electronically;
3. That the carparking assessment strategy be included in the Urban Design Guidelines applying to Precinct D to ensure future development applications are assessed against the strategy, noting that all visitor spaces of residential and mixed use development must be provided on site.

This report responds to the above matters and is discussed below.

## **Deferment matter 1(a)**

Deferment condition:

*An Assessment of the applicants Visual Impact Assessment received by Council on 15 April 2019, including a Tenacity assessment of the submissions that raised potential view impacts:*

### **VISUAL IMPACT ASSESSMENT - CONCEPT APPROVAL MP 07\_0027 MOD 1**

The Concept Plan was modified (Mod 1) by the Independent Planning Commission on 18 March 2019.

Condition 19 states:

*All future stages of development are to include a Visual Impact Assessment (VIA) as part of the application, prepared by a suitably qualified person. The VIA is required to provide representative 3-dimensional computer models of any built form structures and prepared based on the approved Reduced Levels (RLs) of the land subject to the application.*

Advice has been received from the NSW Department of Planning & Environment stating that the Department considers that any development application within the Shell Cove Concept Plan site must be generally consistent with the requirements of the Concept Plan approval, as modified by MOD 1. As there are no saving or transitional provisions related to the commencement of the modification application the amended Concept Plan for Shell Cove applies to the site from 18/03/2019 (the day MOD 1 was approved).

In this regard, a Visual Impact Assessment (VIA) written by Ethos Urban dated 12 April 2019 was submitted by the applicant. This VIA includes a qualitative assessment against the Concept Plan and the specific views as located in **Figure 1** below.

Concept Plan View Location	Analysis
Location 1, Shallows Drive	The development will not be visible from this location.
Location 2, James Cook Parkway	Only small parts of the building will be visible as it sits between future three storey development along Marina Drive and 3-4 development behind within Precinct H.
Location 3, Beakys Reserve Bass Point	The development will not be visible from this location as it will be blocked by the future 5-6 storey development in Precincts A, B and C.
Location 4, Cowies Reserve, Shellharbour boat harbour	The development will not be visible from this location.
Location 5, the northern end of Shellharbour South Beach	The development will not be visible from this location.
Location 6, 27 Ragamuffin Circuit	The development will not be visible from this location as it will be blocked by the future 6 storey development in Precincts D.
Location 7, 18 Tasman Drive	Only small parts of the building will be visible as it sits between future three storey development along Marina Drive and 3-4 development behind within Precinct H.
Location 8, 26 Mystics Drive	Only small parts of the building will be visible as it sits slightly above the ridgeline of existing rooves.



**Figure 1 -Concept Plan VIA Assessment Locations**

The analysis included in the VIA concludes that the proposed development will be visible from location 2, 7 and 8. These views will include small parts of the proposed building as included in the analysis above.

The VIA considers the proposed development from three indicative public domain locations. **Figure 2** below shows the view from Cove Boulevard, labelled indicative viewpoint 1.



**Figure 2 - Indicative Viewpoint 1 looking east towards the proposed development**

The VIA analysis provided with this indicative viewpoint is as follows:

- Category of view – public domain, Town Centre road;
- View composition type – The existing Shell Cove shopping mall forms the primary view in the foreground. The background view includes a partial view of the proposed development and the Marina behind the shopping centre;
- Relative Viewing Level – Street level – slightly elevated;
- Viewing period – Temporary;
- Viewing distance – Close to medium, and
- View loss or blocking – The proposed development sites entirely within the Concept Plan (Mod 1) envelope. The proposed development does not use the entire envelope which increases public views to the Marina and to the sky.

**Figure 3** below shows the view from the waterfront promenade, labelled indicative viewpoint 2.





**Figure 3 - Indicative Viewpoint 2 looking south - east towards the proposed mixed use development**

The VIA analysis provided with this indicative viewpoint is as follows:

- Category of view – Public domain, waterfront promenade;
- View of composition type – The proposed development is a prominent feature in the foreground;
- Relative viewing level – Waterfront promenade level;
- Viewing period – Long;
- Viewing distance – Close to medium, and
- View loss or blocking – The proposed development sits entirely within the Concept Plan (Mod 1) envelope.

**Figure 4** below shows the indicative view from the Marina looking west towards the proposed development, shown as indicative viewpoint 3.



**Figure 4 - Indicative viewpoint 3 - looking west towards the proposed development**

The VIA analysis provided with this indicative viewpoint is as follows:

- Category of view – from the water;
- View of composition type – The proposed development is a prominent feature in the middle ground;
- Relative viewing level – elevated from the waterway;
- Viewing period – Long;
- Viewing distance – Medium, and
- View loss or blocking – The proposed development sits entirely within the Concept Plan (Mod 1) envelope.

In conclusion, the submitted Visual Impact Assessment provides analysis of views towards and of the proposed Mixed Use Development. The proposed development is within the Concept Plan (Mod 1) envelopes. The Mixed Use Development will not result in an unreasonable impact on the public domain. The conclusions drawn from the VIA show that the development is consistent with the approved Concept Plan (Mod 1) and do not contradict the conclusions drawn from the assessment undertaken within the previous report.

The recommendation made in the Assessment Report dated 29/03/2019 remains the same having regard to the submitted Visual Impact Assessment. Further, this assessment does not require the addition and/or modification of the schedule of recommended conditions provided as Attachment 1.

#### **VISUAL IMPACT ASSESSMENT – RESPONSE TO SUBMISSION**

During the exhibition period submissions were received regarding the impact on view loss as a result of the development. Of the nine (9) submissions received, two raised the matter of view impact and view loss.

The first submission was submitted and written by a resident who owns and occupies a dwelling **more** than 700m away from the subject site. The submission also refers to two other investment properties owned by the objector and are within the vicinity of the primary address of the resident.

One of the investment properties shares a boundary to the north of the objector's place of residence and the second investment property is located across the road to the south of the primary address.

Floor plans were obtained for all three properties and only one of these properties had principal living areas on the first floor which given its high use room, a site visit occurred to respond to the view impact and view loss.

For the purpose of this assessment, the property to which this submission relates to is referred to as property 1.

The property of the second submission about view loss and impact sits approximately 600m away from the development land area.

For the purpose of this assessment, the property to which this submission relates to is referred to as property 2.

An Assessment of proposed development is made under Planning Principle - *Principles of view sharing: the impact on neighbours* – (*Tenacity Consulting v Warringah [2004] NSWLEC 140*), which considers an assessment against four key steps.

Step one: *'The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued*

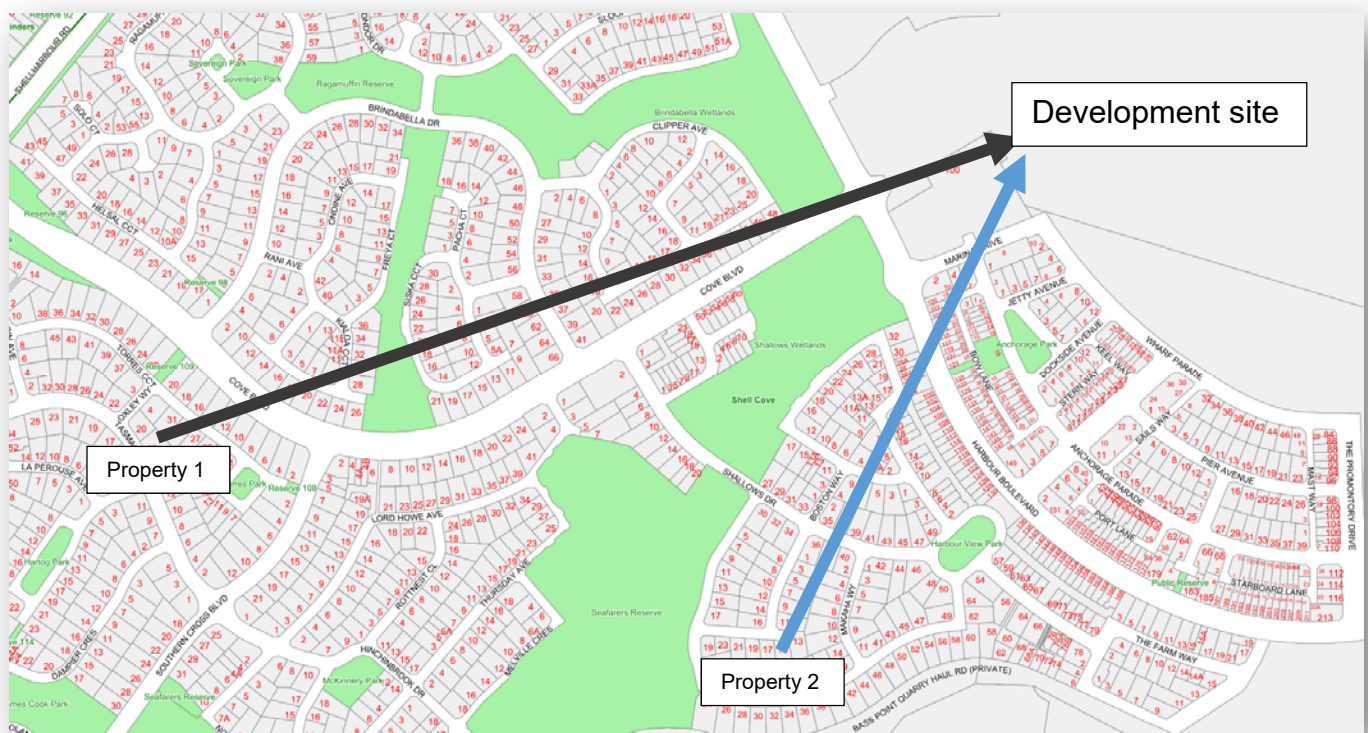
*more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.'*

### Consideration:

The visual impact assessment lodged as part of the response to submissions for the recently approved 75W for Concept Approval MP 07\_0027 MOD 1 (Shell Cove Boat Harbour Precinct Section 75W modification application, Prepared by Dr Richard Lamp and Jane Maze-Riley, dated January 2018), describes the existing view from property 1 as below:

*This view is from a mid-slope location approximately 700m west of the nearest part of the subject site. The view is constrained on the right and left by roofs of buildings in the foreground. The view is accessible from the rear first floor balcony of the residence, between and above the roofs of residential development that predominantly forms the foreground and mid-ground composition of the view. The view includes some existing, new buildings on the edges of the site but most of the site is unoccupied by any existing buildings. Vegetation along the hind dunes of the beach and on the southern fringes of Shellharbour, is visible on the left side of the view, forming an intermediate horizon, with an ocean horizon beyond.*

To conceptualise the distance and the context of the view composition from both property 1 and 2, a map is provided below:



**Figure 5: View composition and distance from objector's property to development property**

In this circumstance the highly valued view is the water and horizon in the foreground. Both of which are predominantly maintained and not unreasonably affected.

Step two: *'The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may*

*also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.'*

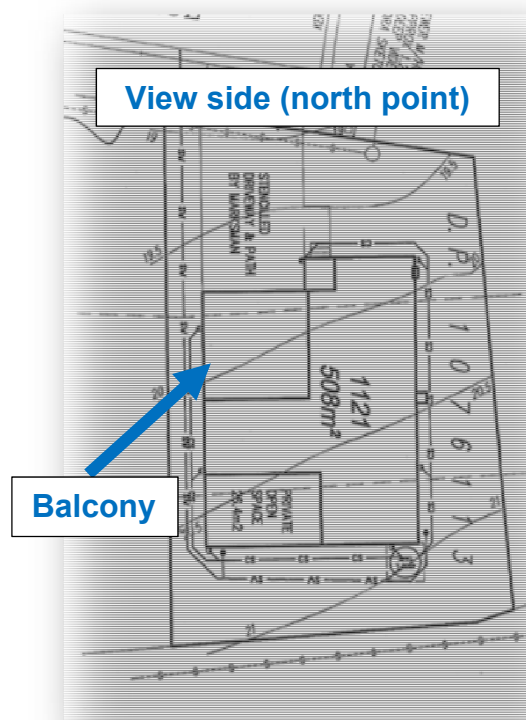
#### Consideration:

For property 1, views are obtained from the rear boundary and from the balcony and principal living areas on the first floor. The view from the balcony is expansive and provides a continuous view of the stretched coastline.

The approved plans for the objector's dwelling include an of RL 22 (first floor) while the overall RL of the building of the subject DA is predominately RL 22.745.

Given the distance between the objector's property and the development site together with the expansiveness of the current view, the primary water view in the foreground continues to be predominately maintained from the back boundary.

For property 2, the north and east elevation of the dwelling provides opportunities for views to the development site from the dwelling as shown in **Figure 6** below. The north elevation is the front of the dwelling (**see Figure 7**) and has a small balcony connected to the main bedroom and bedroom 4 on the first floor however views. This is a small balcony and does not serve as a high use room such as a lounge or kitchen. **Figure 8** demonstrates the east side elevation having only windows from utility rooms.

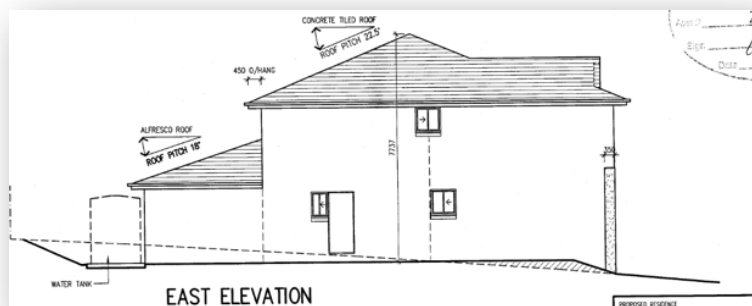


**Figure 6: Site plan of Property 2**





**Figure 7: Front elevation of Property 2**



**Figure 8: East elevation for Property 2**

Step three: *'The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.'*

#### Consideration:

The view being considered is from both a first-floor balcony that connects into principal internal living areas. **Figure 9** illustrates the view of the subject development from the objector's balcony. The photo has an overlay included that illustrates the built form of the future buildings within the Concept Approval in the background of the photo.



**Figure 9: View from Balcony**  
**Source: Lamb and Maze-Riley, January 2018**



Uninterrupted beach view (Port Kembla)



Uninterrupted beach view



**Figure 10: Different views from the same balcony**

The level of view loss that will result from the Concept Approval is outside the scope of this assessment however for the subject DA, it is considered that the remaining expansive and panoramic views will continue to be maintained as shown within the photos contained in **Figure 10**. Therefore, the extent of the impact – as a result of the subject DA – is negligible.

For property 2, as noted above, there are no principal areas within the floor plan of the dwelling that provides opportunity for enjoying the view from a lounge room or balcony. Therefore, there is no measurable element to assess the impact on view impact or view loss from the subject site.

*Step four: 'The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.'*

#### Consideration:

As noted within the VIA (Lamb and Maze-Riley, 2018) the level of view loss that will result from the Concept Approval is reasonable, as it reflects a deliberate and approved intention to transform the existing environment into an urban and maritime setting with a variety of built forms and attributes that are fundamentally different from the existing situation. View loss will occur as a consequence of that transformation and has to be accepted as not only reasonable but also the intended outcome of implementation of the Concept Approval.

In this regard, the subject DA sits within the Concept Approval and therefore the reasonableness of the proposal – against the objectives of the Concept Approval – has been the desired character of the Marina precinct since its original approval in 2007 and therefore reasonable to accept.

#### **CONCLUSION**

The visual impact assessment against the requirements of the Concept Approval together with the submission received demonstrates that the subject DA does not qualitatively contribute significantly or substantially to view loss and is able to be approved.

#### **Deferment matter 1(b)**

*Deferment matter: Details of the number of car parking spaces required to meet residential car parking requirements for the development.*

The car parking rate for the portion of the residential apartments is taken from the Urban Design Guidelines (UDG's). The parking assessment is shown below:

Rate Required	Proposal Yield	Requirement
1 space / 1 bedroom	6 x 1 bedrooms	6
1.5 spaces / 2+ bedrooms	39 x 2+ bedrooms	58.5
	Total	64.5

A total of 66 spaces have been provided and therefore complies with requirements of the UDG's.

### **Deferment matter 1(c)**

*Deferment matter: Revise Condition 77 to require ongoing maintenance of the landscaping within the communal open space.*

The condition has been revised to include the following and forms part of the amended draft development consent conditions found in attachment 1 of the Supplementary report:

Condition 77(i) the provision of landscaping within the communal open space must be maintained in perpetuity.

### **Deferment matter 3**

*Deferment matter: That the car parking assessment strategy be included in the Urban Design Guidelines applying to Precinct D to ensure future development applications are assessed against the strategy, noting that all visitor spaces of residential and mixed-use development must be provided on site.*

The Parking Assessment Strategy used for the assessment and justification of the parking numbers included within the Shell Cove Town Centre area has been included as part of the Urban Design Guidelines (UDGs) for Precinct D as Amendment No. 2 – effective from 8 May 2019.

The Urban Design Guidelines have been updated and a copy is found at **Attachment 2**. The Car Parking Assessment Strategy was included as an appendix to the UDG's and specific notations made at section 4.1 Street Network and Public Domain to link the Strategy to the guidelines.

### **Post Determination meeting**

1. Subsequent to the Panel meeting it was determined that a matter of deferment was not officially noted within the minutes of the meeting. This matter related to changes to condition No: 80 Acoustic Noise Testing.

During deliberation, it was determined at the Panel meeting that the condition should also include the words 'and Tavern operation'. The condition has been partially reproduced below for clarify with the emphasis added indicating the new words included in the condition.

*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 **subject premises and Tavern premises** and based on the following:*

This is to ensure that noise monitoring is undertaken within the ultimate build form environment and to that which the acoustic assessment was made. The condition has been modified and included as part of the draft condition at **Attachment 1**.

2. In addition, it is requested that existing condition No.78 Release of Strata Certificate is to be amended to reflect legal ability for applicant to gain certification for strata plan through privately accredited certifier. The current condition noted the following:

*The Strata Certificate must not be released until the Final Occupation Certificate for the development has been issued by the Principal Certifying Authority.*

The revised condition now reads:



*Where the certification of the Strata Plan is undertaken by an Accredited Certifier, a copy of the Certified Strata Plan with details of the issuing Certifier is to be provided to Council for recording purposes.*

*Where Council acts as the Certifier for the Strata Plan, the final occupation certificate for the development must be lodged with Council prior to the issuing of any such Certification.*

## **Conclusion**

In conclusion, this supplementary report has been provided in response to the deferred matters made by the Southern Regional Planning Panel at its meeting of 16 April 2019. The matters have now been addressed and it is recommended that the development be approved electronically subject to the amended development consent conditions contained within **Attachment 1** of this supplementary report.