




SOUTHERN REGIONAL PLANNING PANEL

ASSESSMENT REPORT SUMMARY AND RECOMMENDATION COVER SHEET

SRPP No	2018STH006
DA Number	DA0005/2018
Local Government Area	Shellharbour City Council
Proposed Development	Staged construction of a single storey building to be used as a food and drink premises (Tavern) with associated basement, loading dock and signage.
Location	Lot 4003 DP1235539 Marina Drive, Shell Cove. (Old Bass Point Road, Shellharbour.)
Applicant	Australand Corporation (NSW) Pty Ltd Holdings Ltd. Part of Frasers Property Australia.
Owner	Shellharbour City Council
Number of Submissions	Nil
List of All Relevant s4.15(1)(a) Matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No. 71- Coastal Protection • State Environmental Planning Policy (SEPP) No 55 – Remediation of Land • State Environmental Planning Policy No. 64 – Advertising and Signage • Concept Plan Approval MP07_0027 • Environmental Planning and Assessment Regulation 2000 - Schedule 3A Entertainment venues. • Shellharbour Local Environmental Plan 2013 • Shellharbour Development Control Plan 2013 • Shell Cove Precinct D Urban Design Guidelines (June 2017) • Shellharbour City Council Section 94 Contributions Plan 2016 Amendment 1 • Shellharbour Council Procedure Determination of Development Applications Where Council has an interest, & Criteria Associated with Development Applications Where Council has an Interest . • The likely impacts of the development, • Any submissions received. • The suitability of the site for the development. • The public interest.
List all documents submitted with this report for the panel's consideration	<p>Attachment 1 – Proposed Conditions for Development Consent</p> <p>Attachment 2 – Concept Plan</p> <p>Attachment 3 – Architectural Plans</p> <p>Attachment 4 - Precinct D – Urban Design Guidelines Compliance table</p> <p>Attachment 5 – Operational Plan of Management</p> <p>Attachment 6 – SEPP 71 Compliance table</p> <p>Attachment 7 – SEPP 64 Compliance table</p> <p>Attachment 8 – Aerial site photos</p>

SRPP No. 2018/STH006
 Development Application No. 0005/2018
 Lot 4003 DP1235539 Old Bass Point Road, Shellharbour

	Attachment 9 – ARUP Acoustic Report and Supplementary Report. Attachment 10 – Shellharbour Development Control Plan 2013 Compliance Table Attachment 11 - Shadow Diagrams Attachment 12 – Landscape Plans
Recommendation	Deferred commencement consent subject to conditions.
Report prepared by	Madeline Cartwright, Senior Development Assessment Officer
Signature	
Report Endorsed by	Grant Meredith, Group Manager City Development
Signature	
Report endorsed by	Melissa Boxall, Director Community and Customers
Signature	
Date of report	27/11/2018

1. Purpose of this report

The purpose of this report is to seek Southern Regional Planning Panel's (SRPP hereafter) determination of a development application to construct a building to be used for the purpose of a Food and Drink Premises (Tavern hereafter) with associated facilities. The works will also include the construction of the pilings, footings and ground floor slab as part of the initial construction stage to allow for development to occur in the marina prior to it being flooded.

The proposal is being referred to the SRPP as the proposal has a construction value of \$6,393,000 and 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 determining authority.

As the site forms part of a larger master planned area there are a number of different Development Applications (DAs) that are relevant to this proposal. **Table 1** below includes a list of all the DAs referred to in this report and gives details of status and description.

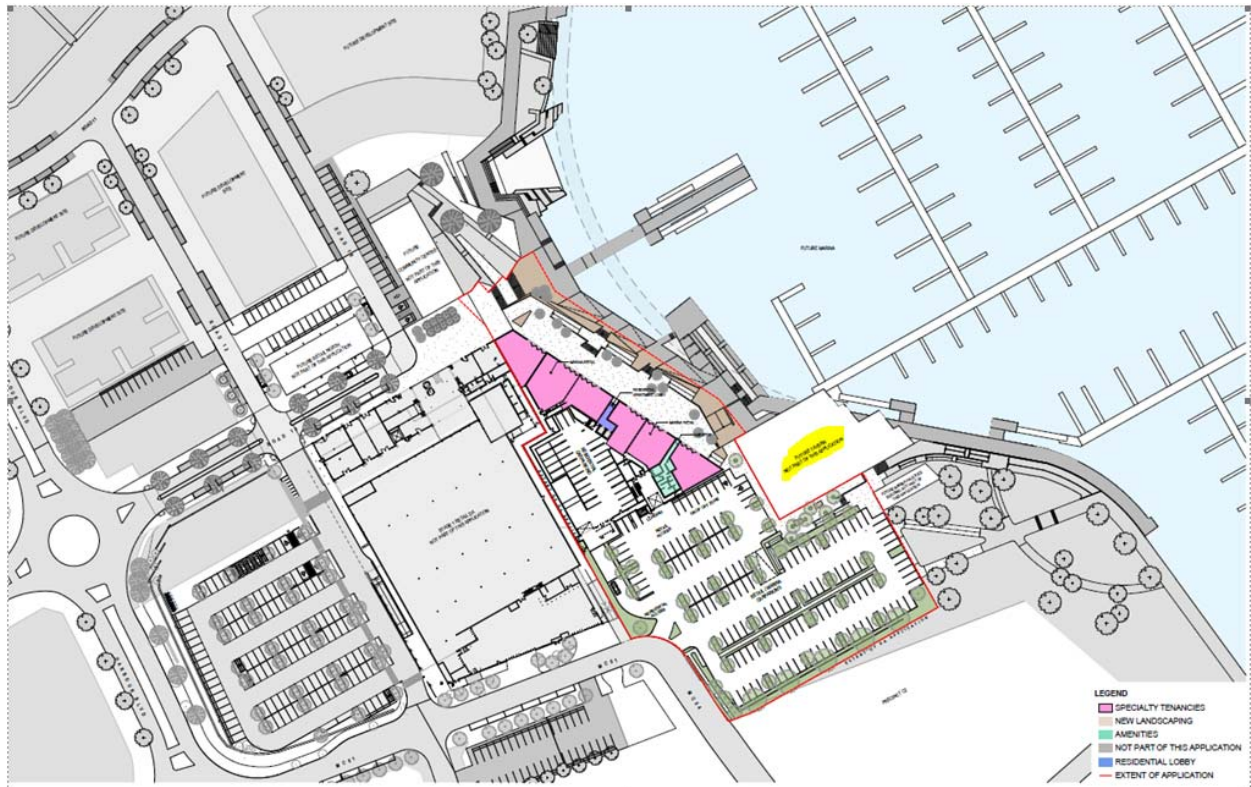
Table 1 – List of relevant Applications referred to in this report.

Development Application reference	Southern Regional Planning Panel Reference	Description	Status	Date Determined
DA095/133	N/A	Boat Harbour Marina	Determined	26/11/1996
MP07_0027	N/A	Boat harbour Precinct Concept Plan Approval	Determined	15/2/2011
DA0143/2016	N/A	Subdivision to Create Three Lots (Lots 2,3 & 4), Three Residual Lots (Lots 5,6 & 7), Create Public Roads 10, 11 and 12 & Construction of Landscape and Public Square	Determined	09/03/2018
DA0012/2016	2016STH007	Retail Component of Shell Cove Boat Harbour Precinct Comprising of Supermarket, Liquor Tenancy, Speciality Stores, Retail Plaza, Carpark & Signage	Being delivered	13/07/2017
DA0385/2017	2017STH0025	Shop Top Housing Comprising of 45 Residential Apartments, 6 Retail Units & 2 Lot Stratum Subdivision and Mixed Use Development Comprising of Carpark & Public Domain Works (Precinct D)	Under Assessment	N/A
DA0357/2018	N/A	Construction And Embellishment Of Boardwalk With Future Marina Area	Under Assessment	N/A

2. Site Description

The Shell Cove Boat Harbour Precinct is located at Boollwarroo Parade, Shell Cove in the Shellharbour Local Government Area. The proposed Food and Drink premises (Tavern hereafter) is situated within Precinct D, commonly known as the Shell Cove Town Centre. **Figure 1** below shows the proposed location of the Tavern building.

Figure 1 – Proposed location of Tavern Building (Highlighted)



The proposed site for the Tavern is at the south-eastern end of the Shell Cove Town Centre, adjacent to the marina and boardwalk. It is located within a larger allotment that is legally described as Lot 4003 DP1235539. The Tavern site has predominantly been excavated as part of works on the Shell Cove Marina and ongoing surrounding subdivision works (approved under DA0143/2016).

The Tavern site is largely cleared, the land is generally low lying, no buildings exist on the site. The Tavern will be sited on the edge of the marina waterfront with the water to the east of the building. The main pedestrian walkway will be sited to the north with retail units and residential above, this area is subject to current DA0385/2017 SRPP ref:2017STH025. To the south east of the building there will be a marina services building and an area of open space. To the west of the site a public car park is proposed, this will adjoin the Tavern and provide vehicle access to the loading dock within the building. Photos provided by the applicant have been provided as **Attachment 8** of this report.

3. Background to Development Site

3.1 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 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 SEPP 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.

3.2 Major Project Declaration

Surrounding the Boat Harbour and Marina is the Boat Harbour Precinct. 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' 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.

3.3 Boat Harbour Precinct (BHP) Concept Approval (MP07_0027)

On the 15 February 2011 the Boat Harbour Precinct Concept Plan Approval No. MP07_0027 was approved by the Deputy Director General of the then Department of Planning.

The Concept Plan approval is for a mixed development comprising residential, commercial, community, retail, hotel, business park, dry boat storage facility, open space and wetlands.

The project has a capital investment value of \$463.4 million and would employ about 1,075 people during construction and around 2,800 people once operational.

The Concept Plan comprises the following key elements to guide future development:

- building height in terms of number of storeys
- indicative floor areas
- number of dwellings
- land uses
- indicative street alignments and pedestrian networks
- location of open space and wetlands.

The proposed Tavern makes up part of the commercial area within the south eastern end of the town centre, the site is within Precinct D that forms part of an approved subdivision approved

as part of the Shell Cove Boat Harbour Concept Plan (MP07_0027) The approved Concept Plan showing the Boat Harbour has been included as **Attachment 2** of this report.

The Boat Harbour Project is a joint venture between Australand Holdings and Shellharbour City Council.

3.4 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 Environmental Planning & Assessment Act 1979 (the Act Hereafter). Part 3A of the Act has since been repealed.

Schedule 6A of the Act 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. [subclause 3B(2)(d)].

4. Concept Approval

4.1 Part A – Concept Approval.

The Concept Approval at Schedule 2 Part A – Terms of Approval, condition 2 states that:

“The project shall be generally in accordance with the following plans and documentation:

- (a) Shell Cove Boat Harbour Precinct Concept Plan Application and Environmental Assessment, dated 26 February 2010, prepared by LFA (Pacific) Pty Ltd, including Volumes 1 and 2 and Appendices A to P;*
- (b) Shell Cove Boat Harbour Precinct Preferred Project Report, dated November 2010 prepared by LFA (Pacific) Pty Ltd, including Appendices 1 and 2; and*
- (c) Statement of Commitments (Schedule 4).”*

This section of the report reviews the DA against the relevant conditions of the Concept Plan, and the relevant plans and sections of the documents identified under Part A – condition 2 of the Concept Plan.

A copy of the Concept Approval Plan has been included in **Attachment 2** of this report. This plan shows the layout of the Shell Cove Town Centre and highlights the approved location of the Tavern building. The proposed location of the Tavern Building is as shown on the approved plan and is therefore considered consistent with the Concept Approval.

Compliance with the Environmental Assessment Report (the EA) is outlined in Table 2 below.

Table 2 – Compliance with the Environmental Assessment Report			
Element	Environmental Assessment (EA) Report	Subject Development Application	Comments
Land Uses	The site is located within the Precinct identified as the Commercial Precinct (Precinct D) The EA indicates that the land uses in the Commercial Precinct are to include tourist retail (i.e. Tavern)	The DA proposes a Tavern which is included under the group term of Commercial/Retail premises.	The proposed land use in the DA is consistent with the land uses envisaged in the EA.
Indicative Height	The EA indicates that the indicative height in Precinct D is up to 4 storeys excluding a hotel of 8 to 9 storeys.	The DA proposes a single storey Tavern with basement.	The proposed height of the Tavern is well within the height limit envisaged in the EA.
Indicative Floor Space Area	The EA indicates that the indicative floor space area for future development in Precinct D is 1,370sqm for tourist retail (i.e. Tavern)	The proposed Tavern has a maximum Gross Floor Area of 1,085square metres.	The proposed floor space of the Tavern is within the floor area stipulated in the EA for tourist retail (i.e. Tavern).
Tavern Location	The EA states that “Tourist facilities will be clustered around the hotel, near to the boardwalk and marina, with some provided along the Main Street.”	The Tavern has been located at the south-eastern end of Precinct D adjacent to the waterfront promenade.	The location of the Tavern is consistent with the location envisaged within the EA.
Hotel location	The specific location of the hotel is not established in the Concept Plan Terms of approval. The plans and diagrams contained within EA are clearly labelled as ‘indicative’ and were not intended to be used as detailed envelope plans. The EA states that: “the preferred hotel site is near to the water’s edge to the south east of Main Street (Cove Boulevard) the site is able to	The parking for the DA is provided as part of the Stage 2 Mixed Use DA (DA 385/2017 SRPP ref:2017STH025), which includes an at grade car park in this general location. The location of the hotel has not yet been proposed however there is a modification application submitted to the Concept Approval to modify the location of the hotel. This	The Tavern DA does not preclude the development of the hotel in the indicative location identified in the EA in the event that the modification application to the Concept Approval is not supported.

Table 2 – Compliance with the Environmental Assessment Report			
Element	Environmental Assessment (EA) Report	Subject Development Application	Comments
	accommodate a 140 – 150 suite hotel over 8 to 9 storeys. A basement carpark will be provided together with on-street car parking.'	application is currently under assessment.	
Built form principles	The EA includes a series of principles for the urban design of the Shell Cove Boat Harbour Precinct.	Principles are included in table 3 below.	The Tavern DA is consistent with these principles as detailed in Table 3 below.

Table 3 below details the Urban Design Principles for the Shell Cove Boat Harbour Precinct.

Table 3 – Compliance with the Shell Cove Principles for Urban Design as outlined in the Environmental Assessment (EA)	
Principle	Compliance
Building heights will generally be a maximum of 4 storeys and will generally decrease the greater the distance from the Town Centre and/or Boat Harbour.	The proposed building is single storey with a basement. Complies
The proposed hotel, of 8 to 9 storeys, will provide a visual landmark. The hotel's location is slightly removed from Main Street where building heights are less, and the site enhances views to the Marina. The hotel is narrow in width and the architectural language complements the coastal condition of the surrounding built form.	The Taverns location does not preclude the future construction of the hotel and basement parking in the indicative location. The DA's location will not prevent views from a future hotel to the marina. The DA is consistent with this principle.
Key anchor points and/or street corners will be reinforced with higher built form, vertical elements and/or distinctive architectural features.	The DA is located away from any key anchor point or street corners. The tavern has been located in a prominent location overhanging the marina. In this key location, the low rise tavern provides an appropriate built form with minimal visual impact. The slatted timber façade combined with large windows provide for a richness of design which minimises the visual bulk of the building.
Civic buildings will be of distinctive form and architectural quality.	The proposed development is not a civic building. Notwithstanding, the development of the tavern will not preclude the achievement of this principle.
A supermarket will be located in close proximity to Main Street and Harbour	The supermarket was approved as part of the Stage 1 Retail DA (DA 12/2016 SRPP ref: 2016STH007).

Table 3 – Compliance with the Shell Cove Principles for Urban Design as outlined in the Environmental Assessment (EA)	
Principle	Compliance
Boulevards but will be sleeved by retail activities which have direct street frontage.	
Basement carparking will be provided to buildings with frontage to active streets, such as Main Street, to permit retail frontage at street level. Other buildings may have basement carparking which is 'half in half out' to achieve natural ventilation of the carpark and contribute to ESD principles.	The Tavern does not address an active street frontage such as Main Street. The design of the Tavern ensures that the Tavern is accessed directly from the main pedestrian walkway along the Marina edge.
Apartments will be provided with private open spaces, courtyards, useable balconies and deck spaces in accordance with SEPP 65.	The Tavern DA will not preclude the achievement of this principle.
Residential development on medium density and standard lots will adopt a housing typology consistent with the coastal condition of the Precinct.	The Tavern DA will not preclude the achievement of this principle.
The articulation of residential and commercial facades will be achieved by the use of mixed external cladding materials and sun-screening elements.	The proposed façade will be comprised of timber cladding, metal roof sheeting, metal balustrades and concrete columns and beams. The slatted timber cladding proposed as vertical elements helps to articulate the façade and ensure the tavern sits comfortably within the landscape.

In conclusion, the DA is considered to be consistent with the relevant components of the Environmental Assessment in that;

- The proposed Tavern is consistent with the tourist retail (i.e. Tavern) land use envisaged in Precinct D;
- The proposed total floor area is within the indicative maximum 1,370sqm for tourist retail (i.e. Tavern);
- The Tavern is within the maximum height limit for Precinct D;
- The DA will not preclude the future construction of the hotel in the indicative location identified in the EA if the current modification application to the Concept Approval is not supported.

The Preferred Project Report

The Preferred Project Report (PPR) was prepared in response to the submissions received during the exhibition of the Concept Application. The PRP does not provide any further clarity or detail on the following matters relevant to the Tavern regarding;

- Land uses;
- Building height;
- Building location and typology;
- Dwelling numbers; or
- Hotel Location.

The summary of submissions received during the exhibition of the Concept Application does not include issues that affect the Tavern development, therefore there are no relevant points to discuss as raised in the PPR.

Statement of Commitments

The Statement of Commitments outlines the management, mitigation and monitoring measures that will be implemented to minimise any potential environmental impacts during the detailed design, construction and operational phases of the Shell Cove Boat Harbour Precinct. The Commitments respond to the key issues addressed by the Environmental Assessment and issues raised during the public exhibition process.

Table 4 below details the commitments raised and provides comments relevant to the Tavern proposed.

Table 4 – Statement of Commitments	
Commitment	Comment
General Commitment	
The Proponent undertakes to pursue the development in accordance with the Concept Plan and Preferred Project Report, which reflects the Shell Cove Masterplan, the Shellharbour Local Environmental Plan and the appropriate State Environmental Planning Policies.	<p>Compliance with the Concept Plan has been discussed and detailed in tables 2 - 5 of this report.</p> <p>Compliance with the Preferred Project Report is not considered relevant to this development.</p> <p>The relevant State Environmental Planning Policies are discussed in section 9 of this report.</p>
Strategic Planning	
The Proponent undertakes to consider the recommendations of the Shellharbour Local Government Area Retail/Commercial Study and Employment Study, which includes: <ul style="list-style-type: none"> •Enhancing public domains in support of Shell Cove as a creative and cultural hub. •Establishing a retail centre and operating a supermarket. 	The Tavern will contribute to the activation of the public domain through the provision of an eating/drinking establishment within Shell Cove Town Centre and add to the retail centre.
The Proponent undertakes to demonstrate consistency with the Sustainability Criteria set out in Appendix 1 of the Illawarra Regional Strategy, which includes: <ul style="list-style-type: none"> •Providing infrastructure. •Enhancing access to and within the Boat Harbour Precinct. •Providing employment opportunities. •Encouraging both conservation and enjoyment of the natural resources and coastal environment of Shell Cove. 	The Tavern will provide additional employment opportunities in the Shell Cove Town Centre. The location and design of the Tavern will enhance access to the Town Centre and the waterfront promenade and boardwalk. The design of the building will encourage enjoyment of the coastal environment of Shell Cove.
Urban Design, Visual Impact and Sustainability	
The Proponent undertakes to respond to the surrounding area by addressing bulk, scale amenity (including noise) and visual amenity, with regards to the NSW Coastal Policy (1997), which includes: <ul style="list-style-type: none"> – Implementing maximum building heights of 4 storeys (excluding the landmark hotel which is proposed to have a maximum height of 8 to 9 storeys). 	<p>The tavern is a maximum of 1 storey, being well within the maximum height limit for the site.</p> <p>The materials palette has been designed in accordance with the Precinct D Urban Design Guidelines and is sympathetic to the coastal setting.</p>

Table 4 – Statement of Commitments	
Commitment	Comment
<ul style="list-style-type: none"> – Adopting a contemporary coastal village materials palette. – Providing parks and boardwalks which establish public access to the harbour perimeter. – Establishing visual connections between streets and open spaces and the harbour. <p>The Proponent undertakes to respond to the surrounding area by addressing bulk, scale, amenity (including noise) and visual amenity, with regards to the Coastal Design Guidelines of NSW (2003), which includes:</p> <ul style="list-style-type: none"> – Incorporating visual and physical links to the natural environment, such as integrating wetlands. – Providing an open space network. – Maintaining the Shell Cove Town Centre as a visual landmark. – Managing increased local population and visitor access to the foreshore. 	<p>The tavern cantilevers over the boardwalk, ensuring continuous public access around the harbour perimeter.</p> <p>The design and location of the Tavern will enhance the open space network.</p>
Noise, Odour and Air Quality	
The proponent undertakes to mitigate any excessive noise impacts by implementing appropriate measures such as low noise pavements or incorporating noise reduction features on residential facades, which will be detailed in each Project Application.	Noise mitigation measures have been included in the proposed DA and secured by condition. Also recommendations have been made for adjoining residential units currently being assessed under DA0385/2017 SRPP ref: 2017STH025 to ensure excessive noise impacts are suitably mitigated.
Socio-Economic Impacts	
The proponent undertakes to respond to social and economic impacts through increased numbers of new jobs during construction, increased local job opportunities as a result of the Business Park, increased visitor expenditure, and new expenditure and employment in retail, conferencing, restaurants and tourism.	The Tavern is expected to result in an increase in number of jobs and is expected to bring people to the area to use the Tavern facilities. It is also expected that local people will walk to the Tavern for lunch/dinner etc.

Table 5 below includes details of how the proposed Tavern complies with Part A Terms of Approval.

Table 5 – Concept Plan Approval		
Assessment of Compliance with Concept Approval MP07_0027		
Part A Terms of Approval	Proposed	Compliance
(a) Up to 1,238 dwellings with a total gross floor area of approximately 150,000square metres (sqm) comprising single	Proposal does not included or affect any residential dwellings	Not applicable

Table 5 – Concept Plan Approval		
Assessment of Compliance with Concept Approval MP07_0027		
dwellings, medium density and apartments		
(b) A business park with a maximum gross floor area of 30,000sqm	Proposal does not include or affect the provision of a retail park	Not applicable
(c) Retail/commercial/hotel/community development with a maximum gross floor area of 22,000sqm	The Tavern will be included in the retail/commercial precinct and will form part of the 22,000sqm. The Tavern Gross Floor Area (GFA) is 1,085sqm.	Complies retail/commercial/hotel/community area currently being delivered 4,623sqm. Current retail/commercial/hotel/community area under assessment including Tavern – 2,071sqm.
(d) Public open space and wetlands	Proposal does not include or affect the provision of public open space and wetlands. The Tavern design and location will support and take advantage of the public open space and access provisions.	Complies.
(e) Associated drainage, stormwater infrastructure and roads.	Concept stormwater plan provided. The proposed development drains to a council pit, it will drain into the pit network of the nearby carpark. Infrastructure and roads not included or affected by the proposed development.	Complies subject to condition – suitable conditions recommended by Council engineers.

4.2 Part B – Modifications to the Concept Approval

Changes to the design of the Concept Approval has resulted in some fundamental changes to the layout, built form and floor space proposed.

A modification application (75W) was lodged with the Department of Planning and Environment in August 2017. The proposed modification includes:

- i. An increase to the maximum number of dwellings from 1,238 to 1,566;

- ii. Revised housing densities, typologies and building heights in certain areas of the Boat Harbour Precinct;
- iii. Amendments to the hotel building, including relocation to the northern edge of the Town Centre and an increase to the maximum building height; and
- iv. A revised road pattern and layout.

The 75W modification application is currently being assessed with the Department of Planning and Environment. As the modification proposed does not include any changes from the approval concept plan regarding the Tavern site it is considered that the Southern Regional Planning Panel (SRPP) is able to determine this application without the current modification application being determined.

4.3 Part D of the Concept Approval – Further Environmental Assessment Requirements

The Shell Cove – Precinct D Urban Design Guidelines have been prepared as required by Schedule 3 Part D Further Environmental Assessment Requirements No. 1 under the Concept Approval which states that:

“The proponent must submit detailed urban design guidelines for the project prepared by a suitably qualified architect or urban designer, for each stage.”

The Guidelines were endorsed by Shellharbour City Council (SCC) as part of the assessment of DA0012/2016 (2016STH007) Retail component of Shell Cove Boat Harbour Precinct comprising of supermarket, liquor tenancy, speciality stores, retail plaza, carpark and signage. Endorsement date 19/06/2017.

A detailed assessment of how the proposed development complies with the Urban Design Guidelines has been included in **Attachment 4** of this report.

5. Description of Development

The Development Application (DA) seeks approval for the construction of a single storey tavern with associated basement, loading dock and signage.

The building will be a stand alone structure which will include a cantilevered section a maximum of 12 metres over the Marina waterfront.

Whilst the land to which the Tavern applies has not been officially subdivided as approved by DA 0143/2016 approved on 8/03/2018, the site for the Tavern is shown to have an area of approximately 1,380sqm.

The tavern will include a bistro/ bar area, tables and outdoor seating, a sports bar and a gaming room. The maximum capacity proposed is 800 persons (this includes customers and staff).

The main entrance will be located on the northern elevation with outdoor seating and part of the wrap around balcony also included along this elevation. A separate entrance will be located on the western elevation with a food takeaway window (kiosk) opening onto the main pedestrian route for the Marina waterfront, this elevation will back onto the car park and will include a vehicle crossover providing access to the internal loading dock. Waste storage facilities will be included in the back room area and entirely internal. An additional entrance (labelled discreet VIP entry) and a staff entrance will be located on the southern elevation. A wrap around balcony has been design around the northern and eastern elevation, with a separate balcony area on the eastern elevation which cantilevers over the marina boardwalk. The balcony areas will be enclosed, with large opening glass walls, the applicant has proposed that these glass walls will be closed after

10:00pm to mitigate noise impacts on nearby residential units. More details of noise mitigation has been included in section 14.1 of this report.

The basement is approximately 69 sqm in size and will include associated backroom facilities such as the keg storage room and staff amenities. There will be an undercroft area which will be accessible for maintenance only. Currently, this undercroft area is open and will expose the beams and pillars supporting the Tavern Building footprint.

Proposed operating hours for the Tavern premises are:

Monday – Saturday – 10.00 am – Midnight.

Sunday – 10.00 am – 10.00 pm.

Proposed kiosk operating hours – 7am – 8pm Monday to Sunday

Signage proposed

Three internally illuminated signs are proposed as follows:

- Two (2) 2.8 metres x 1.01 metres with illuminated font to be located on the Northern elevation adjacent to the main entrance and on the Southern elevation adjacent to the discreet entrance.
- One (1) 0.638 metres x 2.8 metres with illuminated font to be located on the western elevation adjoining the takeaway window.

An Operational Plan of Management has been submitted and has been included as **Attachment 5** of this report. There is no current operator for the proposed premises.

The Tavern DA does not include any parking to be constructed as part of the subject DA. The Tavern will utilise public car parking proposed within three off-street publically accessible car parks within the Shell Cove Town Centre.

The Marina parking area directly adjoining the site to the south and west will provide access to waste collection trucks and supply trucks via the internal loading bay within the premises. This car park and the associated landscaping is currently being assessed under DA0385/2017 SRPP ref:2017STH025).

6. Recommendation

It is recommended by Council that the subject DA be approved as a deferred commencement consent in accordance with Environmental Planning and Assessment Act 1979 Part 4, division 4.3, Section 4.16 (3):

“Deferred commencement” consent. A development consent may be granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority, in accordance with the regulations, as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.

A list of recommended conditions has been included within **Attachment 1** of this report. It is recommended that the consent is not to operate until the applicant satisfies the Determining Authority that parking has been provided.

The Tavern DA does not include any parking to be constructed as part of the subject DA.

It is proposed that the parking is to be provided within the central public parking areas within the Town Centre and as part of works proposed within DA0385/2017SRPP ref.2017STH025 which is currently being assessed. This DA includes the construction of a Mixed Use Development

compromising retail and a residential flat building as well as the public parking spaces. It is anticipated that there will be 146 parking spaces and will contribute to the overall quantum of available public parking spaces for the entire Town Centre.

Overall, there will be three public car parking stations within the Shell Cove Town Centre. **Figure 2** below highlights the location of the car parks as included in the Precinct D – Urban Design Guidelines and details which are delivered and which are under assessment.

Figure 2 – Location of public car parks



The car parks support a variety of uses within the Town Centre including the Tavern, Mixed Use development, Community Facility, Marina and Supermarket. Upon Council's request, the Fraser's Group have commissioned a parking strategy assessment for the entire precinct D and relies on peak parking demands of a Saturday afternoon together with a multi-trip generation logic to determine the number of spaces required for the precinct. Council has engaged an external consultant to peer review the assessment with a view to determine the adequacy of spaces and the appropriateness of the variations that were applied in the provision of car parking space calculations. This work is being managed through the above mentioned DA0385/2017 SRPP ref: 2017STH025 and a detail discussion of the outcome to that assessment will be made within this DA.

The applicant has submitted information relating to the proposed parking for the Tavern. This parking area will provide spaces for customers and staff of the Tavern and access for the loading dock within the Tavern. The loading bay is located on the south western corner of the Tavern building and through the public car park. Further information on how deliveries will be made are discussed further in section 14.3 of this report.

The Tavern DA relies on the public carpark and to facilitate a determination of the subject DA, it is recommended that a Deferred Commencement approval be granted to allow the parking

strategy to be finalised with the approval of DA0385/2017 SRPP ref: 2017STH025. At the time of writing this report the external peer review assessment had been completed and discussion with Fraser's are continuing. This approach will ensure that Council would retain control over the parking provisions when the consent would become operable

In the event that DA0385/2017 SRPP ref: 2017STH025 is not approved, the conditions within the Deferred Commencement requirements will provide opportunities to deliver car parking for the exclusive use of the Tavern.

The proposed condition would be as follows:

Part A – Deferred Commencement Condition

This development consent shall not operate until such time as the following matters are completed to the satisfaction of the Council:

- a) A car parking area that will provide a shared use arrangement for the purpose of a public carpark to service Precinct D and as shown in the Precinct D – Urban Design Guidelines; or
- b) A parking area to be constructed to service the car parking needs for the exclusive use of the Tavern and generally in accordance with the UDG's. In the event that option b is undertaken, matters that need to be included in the design of the carpark are location of loading dock access, bus and taxi pick-up and set-down areas. A separate development application is required for this option.

The evidence must be submitted to, and be considered satisfactory by Council

7. Public notice of application

Pursuant to s2.22 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 DA was publicly notified for a period of 21 days commencing 1/02/2018 and closing 07/03/2018. The notification included three DA notification signs on the land, 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. Nil submissions were received.

8. Section 4.15 *Environmental Planning & Assessment Act 1979*

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:

9. Section 4.15 (1) (a)(i) - environmental planning instruments

9.1 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) A Council for the area in which the development is to be carried out is the applicant for development consent, or

- (b) 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 proposal has a construction value of \$6,393,000 and 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 determining authority.

9.2 State Environmental Planning Policy Coastal Management 2018

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

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.

The clause goes on to state in (4) that former planning provisions includes State Planning Policy No. 71 – Coastal Protection. As this development application was lodged on the 8/01/2018, immediately before the commencement of the Coastal Management SEPP 2018 (3/4/2018), SEPP No. 71 applies.

9.3 State Environmental Planning Policy No. 71 – Coastal Protection

*State Environmental Planning Policy No. 71 (SEPP 71) applies to land and development within the coastal zone as defined by the Coastal Protection Act 1979. SEPP 71 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 it requires development to be assessed under a range of considerations. Including the aims of the policy in Clause 2, clause 8 and Part 4. The relevant clauses have been discussed in **Attachment 6**.*

9.4 State Environmental Planning Policy No. 55 – Remediation of Land

The land was formerly used as farmland and grazing. Considerable earthworks have been undertaken as part of the subdivision works approved under DA0143/2016.

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

The majority of Precinct D was previously a golf course as well as farmland. A Targeted Site Investigation (TSI) was conducted by Douglas Partners (2016) for the DA covering Precinct D for DA0143/2016. This was following previous investigations by Douglas Partners (2010) which concluded that former golf course areas of the site required further investigation. This TSI stated that the site is compatible with the proposed residential development. Based on the results of the TSI it has been reported that no further assessment of the site is required from a contaminated land perspective and that the preparation of a remediation action plan (RAP) is not required. In accordance with the recommendations of that report an unexpected finds protocol be included as part of the site management plan during earthworks detailing the process by which any unexpected finds of potential environmental concern will be managed.

Based on the above, the proposal will not undermine the objectives of this Policy and the site is fit for purpose.

SRPP No. 2018/STH006
Development Application No. 0005/2018
Lot 4003 DP1235539 Old Bass Point Road, Shellharbour

SEPP 64 - Schedule 1 - Advertising and Signage

Figure 3 - Signage Details



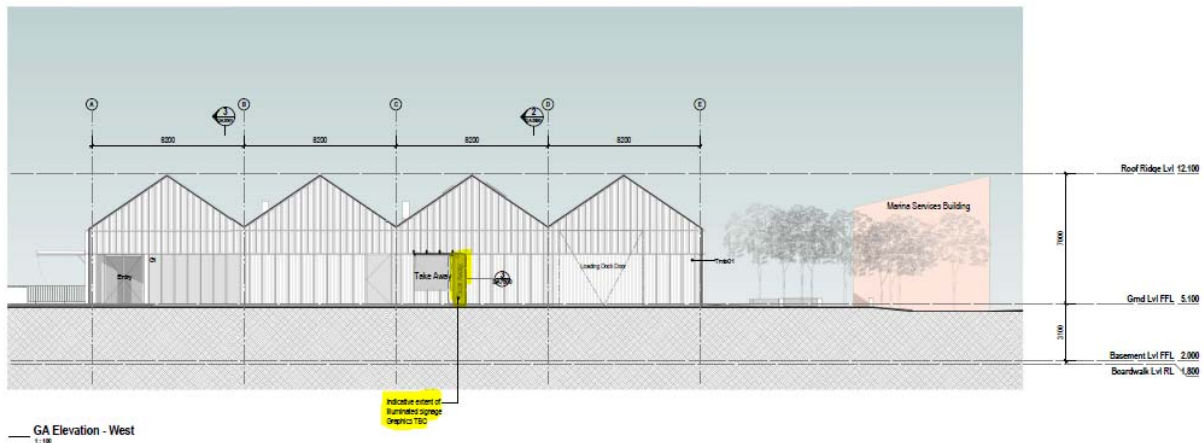
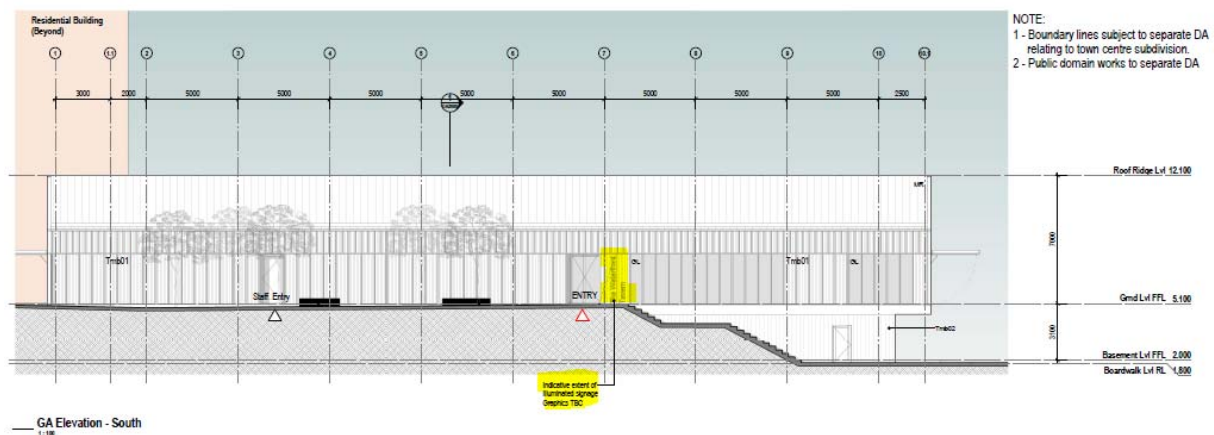


Figure 6 – South Elevation Signage Location



Pursuant to clause 8 a consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) That the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and
- (b) That the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.

Clause 3 (1) (a) as follows:

- i. The proposed signage is all wall mounted and therefore is wholly contained within the building footprint. The signage is simple and modern and is considered to be compatible with the desired amenity and visual character of the Shell Cove Town Centre area, and
- ii. The signage will be used to highlight entrances to the premises and the take away kiosk and will be sited adjacent to these areas and therefore is considered to provide effective communication in suitable locations, and
- iii. The details of the signage provided is considered to be of high quality design and finish.

- (c) the proposed signage satisfies the assessment criteria specified in Schedule 1, **Attachment 7** details the assessment criteria and discusses compliance.

9.6 Shellharbour Local Environmental Plan 2013 (SLEP 2013)

Permissibility

Under this Instrument, the land is zoned B2 Local Centre.

Pursuant to the Dictionary of SLEP 2013, the proposal is characterised as food and drink premises. The Dictionary defines food and drink premises as:

Food and drink premises means premises that are used for the preparation and retail of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or café,*
- (b) takeaway food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

Within the SLEP 2013 a food and drink premises is a type of retail premises. A retail premise is a form of Commercial Premises which is permissible within the B2 Local Centre zone. Therefore the proposed tavern is permitted with consent.

Development standards

The development standards that apply to the land and development are:

- a. a building height development standard of 36m.
- b. a floor space ratio development standard of 1.5:1.

As earlier stated, the Concept Approval refers to:

- a. building height as number of storeys. For this site, the building height is characterised as low rise. The proposal, single storey with a basement, is consistent with the Concept Approval. The height of the tavern has a maximum height of 7.1 metres and so does not exceed the height development standard of SLEP 2013 (36 metres).
- b. The premises proposes a maximum GFA of 1,081sqm. When considered against the built form footprint of 1,380sqm the proposed FSR of the development is 0.79:1 and is compliant with the 1.5:1 development standard.

Zone objectives

The B2 zone objectives as provided in the Land Use Table are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in, and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow for a limited range of residential accommodation while maintaining retail, business or other non-residential active uses at street level.

Under clause 2.3(2) of SLEP 2013, the consent authority must have regard to the objectives for development in the zone. The proposed Tavern development is consistent with the objectives of the zone in that this land use will serve the needs of the people who live in, work in and visit the local area. The location of the site will ensure encouragement of employment opportunities in accessible locations, due to the provision of bus services and pedestrian and cycle access provided on adjoining sites. The proposed Tavern will allow for a limited range of residential accommodation within close proximity by virtue of the plan of management proposed which responds to noise impact for nearby residential units currently under consideration as part of concurrent DAs being assessed.

Clause 5.10 Heritage conservation

Aboriginal heritage significance was investigated as part of the Part 3A Concept Plan application and the archaeological sensitivity of the area was considered low. The proposal is not likely then to undermine the heritage conservation objectives of this clause. A suitable unexpected finds condition has been recommended.

Clause 6.1 Acid sulphate soils

No Acid Sulphate Soil Assessment submitted for this proposal. For other areas of Precinct D Worley Parsons conducted the *Shell Cove Precinct D stage 1 Roads DA Earthworks Strategy, Road Design, Acid Sulphate Soils, Erosion and Sediment Control* (2017) and concluded no risk of acid sulphate soils (ASS). Council mapping system shows Class 2 ASS mapped 140m to the north east of the proposed tavern. As the area is not mapped as ASS and the area has already been subject to bulk earthworks to reach required levels, the risk of encountering ASS is low. No further assessment is required.

Clause 6.3 Flooding

The site is not captured by current Council adopted Flood Study. A site specific flood study has been submitted as part of this DA. No significant loss of flood storage will occur from proposed development. No flood affectation issues anticipated. Clear vehicle access along internal roads leading to Harbour Boulevard will allow for safe evacuation from the Tavern. Standard conditions recommended in accordance with the referral response from Council Flood Engineers.

Clause 6.4 Stormwater Management

The concept stormwater plan proposes to drain to a Council pit. Council engineers have recommended a standard condition.

Clause 6.4 (3) of the SLEP 2013 states;

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) Is designed to maximise the use of water permeable surfaces on the land having regard to soil characteristics affecting on-site infiltration of water, and
- (b) Includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river waters, and
- (c) Avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or is that impact cannot be reasonably avoided, minimises and mitigates the impact.

The proposal will not compromise the objective of the clause. Council is satisfied, where relevant, that the matters listed in sub-clause 3 are suitably addressed. The stormwater system has been previously assessed and approved under DA0143/2016.

Clause 6.7 Airspace Operations

The proposed development will not penetrate the Limitation or Operations Surface for the Illawarra Regional Airport.

Clause 6.9 Essential Services

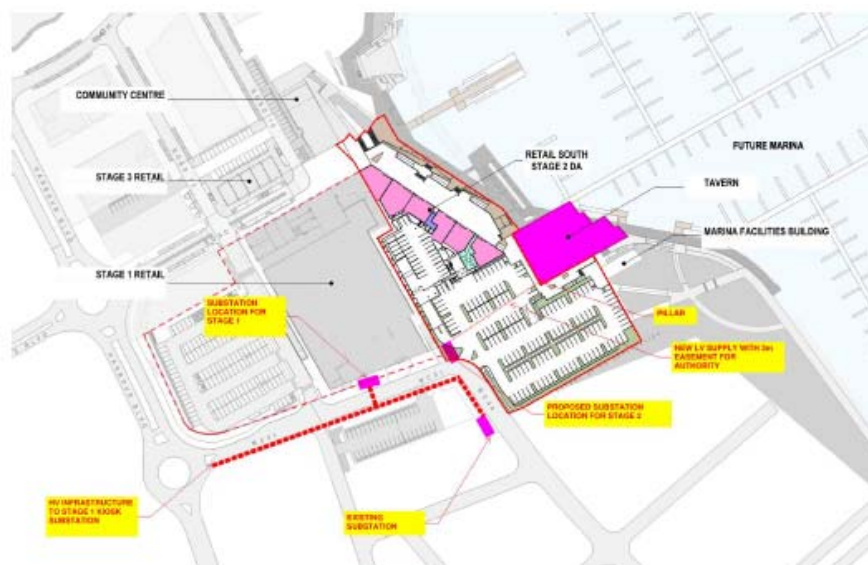
Council is satisfied that the essential services included in this clause can be arranged to be available when required. A services infrastructure report has been submitted by the applicant outlining infrastructure provisions for the site. The infrastructure provisions included in this report are:

(i) Electrical

An estimate has been provided for the estimated electrical demand of the proposed premises. It has been proposed that a kiosk substation included in the adjacent mixed use development (DA0385/2017 SRPP ref: 2017STH0025) will be utilised to supply the Tavern. The supporting documentation supports that this substation will have capacity to supply the Tavern. This was assessed and approved as part of DA0143/2016.

Figure 7 below shows the proposed authority network plan.

Figure 7 – Proposed Authority Network Plan



(ii) Telecommunications

Information has been provided that states the National Broadband Network has commenced construction of services in the vicinity of the development site. An application has not yet been submitted to the NBN for the telecommunication service to the development site. Council is satisfied that this can be achieved in the proposed location.

(iii) Water and Sewer

Suitably conditioned to require a section 73 application to confirm water and sewer connection points and if any amplifications would be required.

(iv) Gas

Information regarding current plans for the development area indicate new pipework to be installed. The report provided by the application states that the works proposed are typical to all developments and present little risk. More details to be determined at Construction Certificate stage.

- 10. 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).**

None.

- 11. Section 4.15 (1) (a)(iii) – and development control plan**

11.1 Precinct D – Urban Design Guidelines

The Shell Cove Precinct D - Urban Design Guidelines (UDGs) provides specific built form and structure controls for the Shell Cove Town Centre. These guidelines were prepared in accordance with the requirements of the Part 3A Concept Plan and were submitted with DA0012/2016 and endorsed by Council on the 19/06/2017.

Assessment of consistency with Precinct D - Urban Design Guidelines are provided in **Attachment 4**.

11.2 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. The DA is assessed under the design guidelines developed for the precinct as required by the Concept Approval. Development objectives and provisions of SDCP 2013 will only apply where the *Shell Cove - Precinct D Urban Development Guidelines* are silent. **Attachment 10** includes the relevant provisions of the SDCP 2013 and provides compliance assessment.

The table of compliance included in **Attachment 10** shows that the proposed Tavern will comply with the relevant sections of the SDCP 2013.

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

Environmental Planning and Assessment Regulation 2000, Division 8A Prescribed conditions of development consent.

98C – Conditions relating to maximum capacity signage

- (1) *For the purposes of section 4.17 (11) of the Act, the requirements set out in subclause (2) is prescribed as a condition of development consent (including an existing development consent) for the following uses of a building, if the development consent for the use contains a condition specifying the maximum number of persons permitted in the building:*
- (a) *entertainment venue,*
 - (b) *function centre,*
 - (c) *pub,*
 - (d) *registered club,*
 - (e) *restaurant.*

- (2) *From 26 January 2010, a sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted in the building.*
- (3) *Words and expressions used in this clause have the same meanings as they have in the Standard Instrument.*

The relevant prescribed conditions have been attached, a full list of recommended conditions can be found in **Attachment 1** of this report.

13. Section 4.15 (1) (a)(v) – (Repealed)

14. 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;

The proposal has the potential to result in adverse impacts as follows:

14.1 Noise

ARUP have prepared a Development Application Acoustic Report for the proposal in 2017 and a supplementary report in 2018, these reports have been included as **Attachment 9** of this report. The reports deal with noise emissions potentially affecting;

- Existing (or approved) residences within precinct C which is currently being delivered; and,
- The future proposed mixed use building to the north west of the Tavern including 45 apartments and 6 ground floor retail outlets (currently under assessment as DA0385/2017 SRPP ref: 2017STH025).

For existing residences the Environmental Protection Authority's (EPA) Industry Noise Policy 'Intrusiveness' method has been applied where noise emissions are ideally kept to within 5dBA of existing background levels. Arup have used a predicted background level residential areas from Australian Standard 1055.2-1997 (Plan limit gauges (metric series)) rather than measured background noise as the predicted level is more reflective of the urban scenario rather than the undeveloped greenfield site. Using this criteria the assessment finds the predicted noise levels at the façade of the nearest existing residence is within the 'intrusiveness noise level' which indicates no additional attenuation measures are required.

For the proposed residential apartments to the north west ARUP recommend maximum internal noise levels as prescribed by Australian Standard 2107-2016 (Acoustics – Recommended design sound levels and reverberation times for building interiors) be used to assess an acceptable noise level emitted from the Tavern rather than the 'intrusiveness' noise level measure from the EPA Industry Noise Policy. This approach puts some of the responsibility for managing noise onto the residential development requiring noise mitigation treatments to be incorporated. This would allow for higher noise levels to be generated by the Tavern but limits noise emissions to levels that can reasonably be mitigated with building measures. DA0385/2017 SRPP ref:STH025 includes residential apartments to the NW of the tavern and it has been recommended that conditions for this DA take this approach and require an acoustic consultant to verify compliance with AS2017:2016 prior to occupation.

The ARUP 2018 assessment sets criteria for tavern noise (including patrons, music and building services) for specific time periods at the various residential façades for new and existing residential dwellings. This information is included in the Supplementary acoustic report ARUP assessment 2018 (**Attachment 9**).

Predicted noise levels from ARUP noise modelling were demonstrated to council staff at the ARUP sound lab and are detailed in the 2018 supplementary report (included in **Attachment 9**).

In summary the highest noise level at the nearest façade of the apartments proposed as part of DA0385/2017 SRPP ref: 2017STH025 is predicted to be;

- 56dBA (Table 5, ARUP 2018) as demonstrated at the sound lab session.

This is with the Tavern operating at its fullest capacity with all outdoor areas and entertainment services being provided. This predicted noise level combined with the adjacent Stage 2 retail noise (Table 4; ARUP 2018 page 7) is within the 60dBA criteria set for the nearest residential receivers from 7am – 8pm. Table 4 (page 7) of the 2018 report indicates noise levels for all residential receivers are within the given criteria for all time periods.

Conclusion

Using this criteria the assessment finds the predicted noise levels at the façade of the nearest existing residencies is within the 'intrusiveness noise level' which indicates no additional attenuation measures are required.

It has been recommended that the conditions for the mixed use development to the north and west of the Tavern site (DA0385/2017 SRPP ref: 2017STH025 take this approach and require an acoustic consultant to verify compliance with Australian Standards 2017:2016 (Acoustics – Recommended design sound levels and reverberation times for building interiors), prior to occupation.

14.2 Parking and access

The proposed tavern will utilise public car parking proposed within off street publically accessible car parks as described above. These car parks are subject to separate applications. A parking strategy has been submitted by the proponent and is being peer reviewed by an independent consultant engaged by Council.

Total Gross Floor Area (GFA as defined under SLEP 2013) = 1034.8sqm.

The Urban Design Guidelines for Precinct D state:

Design Guideline 1

Car parking is to be provided with consideration of the following rates:

- Commercial premises – 1 space/40m²
- Retail shop – 1 space/35m²
- Supermarket – 1 space/20m²
- Food and drink Premises – 15 spaces/100m² GFA
- Hotel – 0.8 spaces/hotel room
- Serviced apartments – 0.6 spaces/1 bedroom apartments & 0.9 spaces/2&3 bedroom apartments
- Residential apartments – 1 space/1 bedroom & 1.5 spaces/2+ bedrooms
- Residential visitors – 0.25 spaces/1 bedroom & 0.5 spaces/2+ bedrooms.

Note: alternative rates may be provided where justified. Consideration shall be applied to peak demand analysis where shared trips may occur and where uses have different peak demands.

Therefore the number of car parking spaces required in accordance with the Precinct D - UDGs is– 68.9 spaces.

As noted previously development objectives and provisions of SDCP 2013 will only apply where the *Shell Cove - Precinct D Urban Development Guidelines* are silent. The UDGs are silent on

provision of staff parking and therefore the SDCP 2013 requirements for a Licensed Club area are relevant and are as follows:

- + 1 space/staff
- + whichever the greater for any auditorium/function/conference room of 1 space/3 seats or 1 space per 4sqm patron area
- + provision for service/delivery vehicles
- + provision for taxi/bus/coach set down/ pick up facilities where applicable
- + overflow parking area where applicable.

As noted above this application seeks to be determined as a Deferred Commencement, due to the car parking strategy still being finalised. As indicated above there are opportunities to provide either a private car parking area in accordance with the UDG or alternatively as a shared use arrangement for Precinct D (DA0385/2017 SRPP ref: 2017STH0025.) These figures will be used as assessment of the parking required as part of the Deferred Commencement condition.

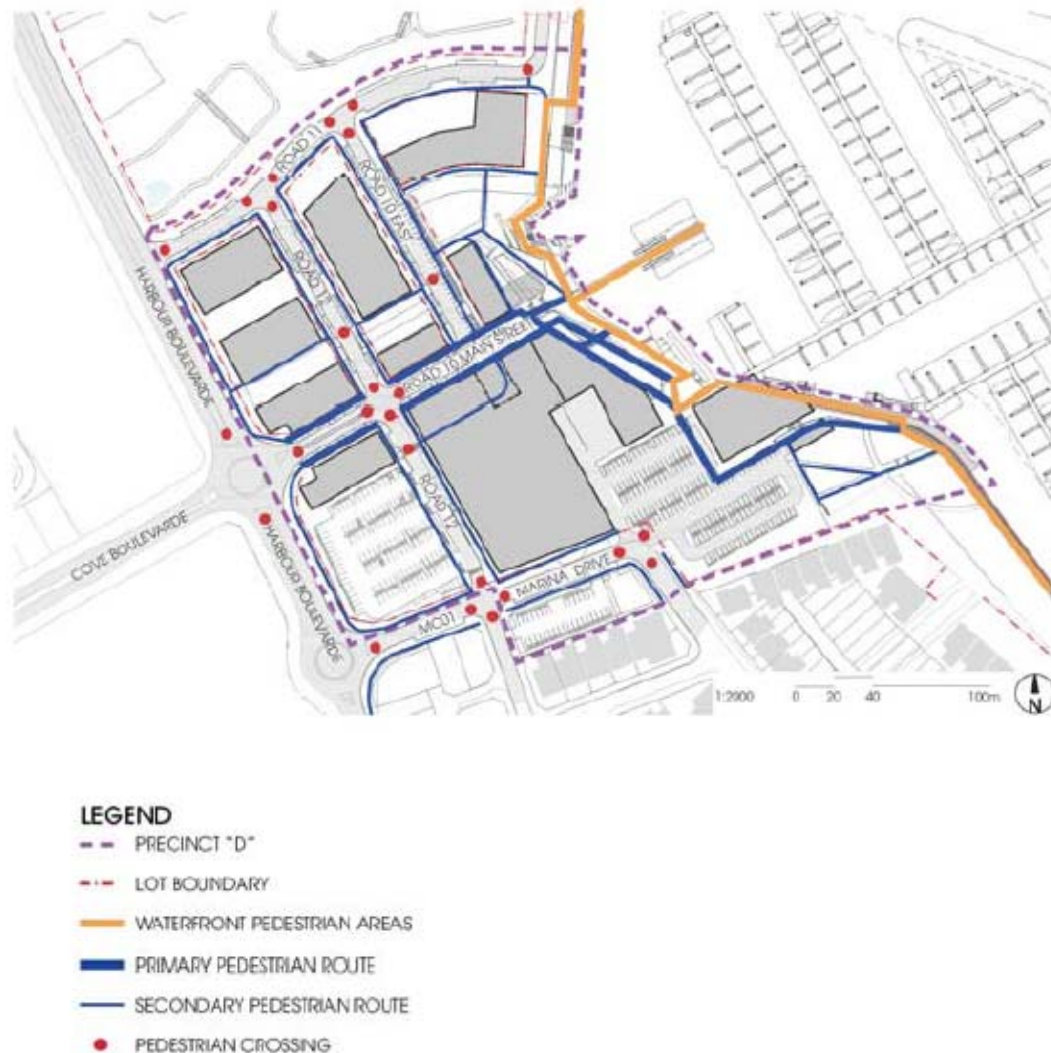
These options provide opportunities to facilitate the determination of the subject DA in an Urban Release environment that is at an early stages of delivery. It is important to note that the endorsed UDGS have always contemplated a car parking area within direct vicinity of the Tavern although the guidelines are flexible on how that car park is constructed or its intended use (i.e. shared arrangement or exclusive use).

The applicant's Traffic and Parking Assessment shows that a truck (8.8m & 10.2m) can enter and exit the loading bay of the tavern in a satisfactory manner, this has been reviewed and confirmed by Council Traffic Engineers.

14.3 Public Movement

The Urban Design Guidelines highlight the route around the southern and western elevations of the building as a primary pedestrian route. This is shown in **Figure 8** – Indicative Pedestrian Network below.

Figure 8 – Indicative Pedestrian Network



The loading dock access between the car park area and the internal loading bay within the premises will traverse this route on the south western corner of the building . There is potential for this loading dock to conflict with the primary pedestrian route during deliveries and waste pickup.

To minimise this conflict, conditions will be imposed to ensure deliveries do not occur within the peak patron times as inferred in the parking strategy being Saturday midday. The condition will specifically note no deliveries between 9am-3pm Saturdays and Sundays.

The applicant has also proposed an alarm system, a raised, coloured pavement to highlight the 'shared zone' and a barrier which would obstruct the path of the pedestrians while a truck is accessing the dock. In any instance, the internal loading dock is of sufficient size so that the truck will not obstruct the route whilst the delivery is taking place.

These strategies will also be specified in the Operational Plan of Management which forms part of the recommended draft development consent conditions attached to this report.

Conclusion

It is considered that the mitigation measures detailed above will mitigate a significant impact on the primary pedestrian route and will also maintain the successful operations of the premises.

14.4 Crime Prevention Through Environmental Design.

Section 4.4 of the Precinct D Urban Design Guidelines addresses Crime Prevention Through Environmental Design (CPTED) with the performance criteria that provides a safe and welcoming environment that discourages antisocial behaviour. This is done through the design guideline that Development Applications are to demonstrate that CPTED principles have been achieved. The applicant has submitted a CPTED Assessment which has been included in the documents submitted to the SRPP.

The Tavern proposed will activate a major part of the new marina waterfront which will enhance passive surveillance and territorial reinforcement of the area by bringing people into the area particularly after usual business hours.

The layout of the Tavern appears to provide maximum opportunity for surveillance from the Tavern to the main pedestrian areas (to the north). One concern has been raised regarding the cantilevered design of the building and the covered boardwalk area below. This boardwalk is part of a separate application (DA0357/2018) and suitable lighting and management is recommended for this area of the boardwalk as part of this separate DA.

The Southern elevation of the premises is also highlighted as a potential problem area, with a section of elevation not including any windows to allow for passive surveillance of the car park area. It is recommended that this section include suitable lighting and CCTV to discourage crime, this has been suitably addressed in the proposed Operational Plan of Management included as **Attachment 5** of this report.

The Operational Plan of Management addresses many issues in access control, however, there is a concern regarding the number of entry points on the Southern side which may increase the risk of crime such as break and enters, theft and smash and grabs from gambling machines. On the Southern side of the development there is a staff entrance and "Discreet VIP" entrance to the sports bar and gaming areas. Unauthorised access to the staff entrance could increase the risk to staff and allow access to the lower floors and storage. It is recommended that the Operational Plan Of Management include a requirement for the staff entry door to be suitably signed for staff only and be accessed by key or keypad only.

There are two areas within this development that have an increased risk of graffiti, they include the boardwalk area below the premises and the stairs on the southern side of the development. These areas appear to have large blank walls with little opportunity for surveillance. This will attract graffiti, antisocial behaviour and loitering. It has been recommended by condition that graffiti prevention techniques are included into the Operational Plan of Management.

Advice has been received from Council's Community Safety Officer in addition to advice from Lake Illawarra Police District supporting the proposal and recommending conditions.

14.5 Social Impact Assessment

A Social Impact Assessment (SIA) has been prepared to accompany the subject DA. The purpose of the SIA is to satisfy that the social impacts of the proposed Tavern have been considered and where appropriate, mitigation measures have been recommended to limit the potential for social impact to within acceptable parameters.

The SIA has been prepared independently from other consultants and has informed the submitted Plan of Management, CPTED Report and the architectural design of the proposed Tavern.

The report details two components which are accepted as having the potential to generate adverse social impact:

A review of demographic data has been undertaken by the applicant. This review reveals that the local community is within the top 10% of NSW in terms of measured advantage, has higher levels of household income and tertiary education and comparable levels of at-risk demographics. The conclusion drawn by the applicant is that the local community is therefore less prone to alcohol related harm.

Neither the local or broader community are affected by unacceptable levels of crime, or the levels of crime that would be exacerbated by the granting of consent for an additional licensed premises. The SIA notes that the local community levels of assault (including domestic and alcohol related) and malicious damage fall within the lowest nominated rate.

The SIA has identified two objectives to minimise harm associated with the misuse and abuse of liquor through;

- Appropriate regulation on the sale, supply and consumption of liquor, so far as it is possible, so that it does not detract from the amenity of community life; and
- Balance that against the development of the hospitality industry by encouraging responsible attitudes and practices toward sale, supply and consumption of liquor.

The SIA identifies that the Tavern seeks to provide a full sized commercial kitchen which indicates a genuine focus on substantial food offering. This is further reflected in internal and external dining areas which are more extensive than the proposed bar areas. The Tavern will also offer TAB racing, sports and gambling.

The Tavern does not include a dance floor, stage or entertainment areas. The report notes that any entertainment provided will be for the purpose of background music and entertainment.

Hours of Operation

The SIA notes that the hours of operation proposed (10am – midnight Monday to Saturday and 10am to 10pm Sundays) are standard trading hours for the majority of licenced premises, particularly of this size.

Through compliance with the Acoustic Report recommendations (as discussed above in section 12.1) and appropriate management practices with respect to customer dispersal it is concluded that the hours proposed are appropriate. This conclusion is supported by the assessing officer.

Capacity

The Tavern has a proposed capacity of 800 persons. A Building Code of Australia (BCA) Assessment Report has been submitted and assessed separately from the SIA and concludes that the facilities proposed can comply with the relevant sections of the BCA.

The Tavern is broken down into smaller areas;

- Dining area
- Sports bar
- Balconies
- Gaming rooms

Each of the areas is considered to be a manageable capacity which can be monitored by floor staff. This will help to ensure Responsible Service of Alcohol for all customers.

The SIA notes that the risk associated with the capacity is considered to be between moderate to high. This depends on the operation, discussed as follows:

- During the day to day operation it is considered moderate risk. This is due to the majority of the floor area being available for dining which is considered to be a low risk even with higher patron numbers.
- During special events such as public holidays or popular sporting events the Tavern would be a high risk operation. This is due to the premises having larger numbers of standing patrons who generally consume alcohol at a faster rate than those sitting and dining. It has been noted that no operator has been identified within the DA, the applicant is not proposing to operate the Tavern themselves. However, it has been assumed by the SIA that due to the size of the premises and the expense of buying or leasing the land on such a key site, the operator would be significantly experienced in running licensed premises. The SIA concludes that an experienced operator would account for the higher risk operation by increasing the security presence during these events.

The SIA notes that the floor area, bar area, seating and toilets are of suitable number for the capacity of persons proposed (800), in addition to the design of the premises and the placing of the furniture. This will reduce overcrowding and queues, which in turn will reduce irritant factors and the premises is more likely to elicit non-aggressive responses from its customers and thereby contribute to a lower potential for adverse social impact.

Conclusion

The SIA recommends a number of provisions which have been included in the submitted Operational Plan of Management to mitigate the potential for adverse impact arising from the proposed use or its customers. Subject of the adherence to the Operational Plan of Management the benefits of the proposed Tavern would accrue through the provision of a food and drinks premises and a destination for visitors to the Town Centre. These benefits will outweigh the potential for adverse impacts on the local and broader community.

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

The site is considered suitable for the development for the reasons as follows;

- i. The Concept Plan envisages a mixture of commercial and retail within this precinct and in this location;
- ii. The site is zoned to accommodate this form of development;
- iii. The Tavern is of an appropriate scale adjoining the waterfront;
- iv. The use responds to a need for this type of premises within the development suburb of Shell Cove;
- v. There are no major contamination issues that would preclude the development of the Tavern on this site;
- vi. An assessment of the Social Impact has demonstrated that the Tavern will be a safe place, which would contribute to an be compatible with, the surrounding mix of land uses;
- vii. The proposal is consistent with the provisions of the Concept Plan Approval and the Urban Design Guidelines for Precinct D; and
- viii. Has been provided with car parking in accordance with the Deferred Commencement recommendation as proposed under DA0385/2017 SRPP ref: 2017STH025.

The development site is appropriately zoned and will be located within an area of commercial uses and centralised parking provision. Notwithstanding the mixed use development which incorporates residential units above retail and commercial uses, the development site is located away from the main residential parts of Shell Cove. The site is considered suitable for the development

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

The application was advertised for the period of 1/02/2018 – 07/03/2018 in accordance with the requirements of Chapter 2.2 of the Shellharbour Development Control Plan. No submissions were made to Council.

17. Section 4.15 (1)(e)- the public interest.

The proposal is consistent with the Concept Plan Approval. The proposal will provide employment and economic benefits to the area in addition to providing an entertainment, food and drink venue within the Shell Cove marina development.

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

18. Conclusion

Having regard to *Environmental Planning & Assessment Act 1979* the proposal is generally consistent with the Concept Approval. The proposal is consistent with relevant state and local statutory planning policies and controls. Thus, it is recommended that DA No. 0005/2018 (SRPP Ref 2018STH006) for the construction of a single storey tavern (food and drinks premises) with basement, loading dock and storage, be a Deferred Commencement approval subject to the schedule of conditions in **Attachment 1**.

Attachments

Attachment 1 – Draft Schedule of Conditions

Attachment 2 – Approved Concept Plan

Attachment 3 – Architectural Plans

Attachment 4 - Precinct D – Urban Design Guidelines Compliance Table

Attachment 5 – Operational Plan of Management

Attachment 6 – SEPP 71 Compliance Table

Attachment 7 – SEPP 64 Compliance Table

Attachment 8 – SDCP 2013 Compliance Table

Attachment 8 – Aerial Site Photos

Attachment 9 – ARUP Acoustic Reports

Attachment 10 – SDCP Compliance Table

Attachment 11 - Landscape Plans

Attachment 12 – Shadow Diagrams

Attachment 1 – Schedule of draft conditions

DEFERRED COMMENCEMENT

Under section 80(3) of the Act, this development application has been determined by granting of Deferred Commencement. This Consent does not operate until the applicant/proponent has, to the satisfaction of the Council of the City of Shellharbour, resolved the following matter(s):

A – Deferred Commencement Condition

This development consent shall not operate until such time as the following matters are completed to the satisfaction of the Council:

- a) A car parking area that will provide a shared use arrangement for the purpose of a public carpark to service Precinct D and as shown in the Precinct D – Urban Design Guidelines; or
- b) A parking area to be constructed to service the car parking needs for the exclusive use of the Tavern and generally in accordance with the UDG's. In the event that option b is undertaken, matters that need to be included in the design of the carpark are location of loading dock access, bus and taxi pick-up and set-down areas. A separate development application is required for this option.

The evidence must be submitted to, and be considered satisfactory by Council

This development consent has been divided into different parts according to where, during the development process, each condition may be most relevant. Some conditions may be appropriate to more than one part. All conditions must be complied with.

PART A - ADMINISTRATIVE CONDITIONS

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

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

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

2. Prescribed Conditions

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

3. Development in Accordance with Plans and Documents

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

Name of Plan/Document	Prepared By	Drawing/Document No./Revision	Drawing/Document Date
Site analysis	H & E Architects	DA0010 03	15/12/2017
Site Plan	H & E Architects	DA0025 03	15/12/2017
Basement Plan	H & E Architects	DA1100 08	15/12/2017

Name of Plan/Document	Prepared By	Drawing/Document No./Revision	Drawing/Document Date
Ground Plan	H & E Architects	DA1101 07	29/11/2018
Roof Plan	H & E Architects	DA1102 04	15/12/2017
Section	H & E Architects	DA3000 06 & DA3001 05	15/12/2017
Elevations	H & E Architects	DA4000 04 & DA4001 04	15/12/2017
Exterior Finishes	H & E Architects	DA8011 01	15/12/2017
Signage Details	H & E Architects	DA7500 02	15/12/2017
Operational Plan of Management	Fraser's Property Australia	Attachment 5 of Council report	Un-dated
Acoustic Strategy	ARUP	Development Application Acoustic Report. Issue 4, Issue 5	17/11/2017 15/12/2017
Stormwater Management Plan	Henry & Hymas	17A83_DA_C100	Oct 2017
Waste Strategy Report	Wasteless Consulting	Shell Cove Town Centre Waste Strategy Report	10/11/2016

PART B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. Section 94 Contributions

A contribution of \$1,879.53, subject to annual indexation, must be paid to Council towards the provision of public amenities and public services prior to the issue of the Construction Certificate. This amount has been calculated in accordance with Shellharbour City Council's *Section 94 Contributions Plan 2016 Amendment 1 dated 8 March 2017* in the following manner:

- Non-residential contribution – \$1,879.53

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

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

5. Initial Geotechnical Report

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

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

- extent and stability of proposed embankments including those acting as retarding basins,
- recommended Geotechnical testing requirements,

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

6. Pedestrian barrier and alarm System

A detailed plan including operating details of the proposed barrier and alarm system to be used during vehicle entry and exit of the loading dock must be submitted for approval to the Principal Certifying Authority prior to issue of the Construction Certificate. The barriers must ensure that pedestrians cannot walk in front of the loading bay access point when a vehicle is entering or exiting.

7. Detailed Drainage Design

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

- a. be generally in accordance with Stormwater Management Plan 17A83_DA_C100 prepared by Henry & Hyams on Oct 2017,
- b. drain to the council pit,
- c. indicate the method of disposal of all stormwater and must include rainwater tanks, existing ground levels, finished surface levels on all paved areas, estimated flow rates, invert levels and sizes of all pipelines,
- d. be to the satisfaction of the Certifying Authority,
- e. be designed to cater for a 1 in 20 year Average Recurrence Interval storm event,
- f. overflow drainage paths are to be provided and be designed to cater for 1 in 100 year Average Recurrence Interval storm event,
- g. comply with Council's *Shellharbour Development Control Plan (Chapter 25 & Appendix 10)* unless variation is specifically noted and approved on DA concept drainage plan,
- h. evidence must be provided to demonstrate that all stormwater run off from the site will be captured and treated in accordance with Water Sensitive Urban Design principles.

The treatment goals for removal of pollutants and nutrients are: Gross Pollutants – 90%; Total Suspended Solids - 80%; Total Phosphorus – 45%; Total Nitrogen – 45%.

8. Noise Management Plan

A Noise Management Plan that incorporates the recommendations from 4.3.2 *Shell Cove Waterfront Tavern Development Application Acoustic Report* (Arup December 2017) - is required to be prepared and submitted to council.

9. Structural Capacity of Stormwater Pipes

Pipes under buildings shall be structurally designed to withstand all applied forces. Pipes with a grade of greater than 12% require anchor blocks at the top and bottom of the inclined section and at a maximum interval of 3 metres. Details to this effect shall be incorporated on the detailed drainage design that is submitted to the certifying authority for the Construction Certificate.

10. Construction Environmental Management Plan

A Construction Environmental Management Plan (CEMP) must be prepared and submitted to the Principal Certifying Authority for approval prior to issue of the Construction Certificate. The CEMP must include but not be limited to:

- Sediment and erosion controls;
- Management of fuels and chemicals.
- Construction noise controls;
- Dust control measures;
- Cultural Heritage stop work protocol;
- Native fauna protection measures;
- Acid sulfate soil unexpected finds protocol; and,
- Contaminated lands unexpected finds protocol.

11. Flooding Commercial Development

The Flood Planning Level (FPL)(100yr ARI + 500mm Freeboard) for this site is RL 2.8m AHD
The 100yr Average Recurrence Interval (ARI) flood level for this site is RL 2.3m AHD
The Probable Maximum Flood (PMF) Level for this site is RL 2.4m AHD

The development shall comply with the following restrictions:

- a. Floor levels: All floor levels (with the exception of the basement level which will be waterproofed up to the FPL) shall be equal to or greater than the FPL,
- b. Building components and method: All structures to have flood compatible components up to and including the FPL in accordance with Appendix 9 of Shellharbour City Councils Development Control Plan,

Structural soundness and engineers certificate: An engineer's certificate certifying that structures are designed to withstand forces of floodwaters, debris and buoyancy up to and including the FPL is to be submitted with the Construction Certificate Application

12. Kitchen Exhaust Design

The kitchen exhaust and any mechanical ventilation must discharge through the roof of the building. The kitchen exhaust and any mechanical ventilation and associated ductwork must not discharge through, or be attached to, the outside wall or outside face of the building. Detailed plans showing the location, ducting, pipework of the proposed exhaust system, manufacturers details of the proposed exhaust system and documentation verifying the proposed exhaust system will comply with AS 1668.2 - Part 2 (Ventilation Design for Indoor Air Contaminant Control) must be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

13. Sydney Water Trade Waste Agreement

Provide written approval from Sydney Water that indicates that a trade waste agreement has been entered into for the grease trap that will be utilised for the food business operations. This information must be provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

14. Floor Waste

Plans showing the location of the floor waste(s) must be provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

15. Health - Food Premises - Plans & Specifications

Details of the construction and fit out of food premises (including associated store rooms) must be submitted to Principal Certifying Authority for approval prior to the issue of the Construction Certificate. The plans and specifications must demonstrate compliance with the:

- *Food Act 2003* (as amended),
- Food Regulation 2015 (as amended);
- *Food Standards Code* as published by Food Standards Australia;
- New Zealand and Australian Standard AS4674:2004 Design, Construction and fit out of food premises (as amended);
- Sydney Water - trade Waste Section.

16. Health – Food Premises – Waste Facility

Details of the construction and fit out of the waste facility of the food premises must be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate. Such details must demonstrate compliance with the *Food Act 2003* (as amended), Food Regulation 2010 (as amended); the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674:2004 Design, construction and fit out of food premises (as amended.) and must be:

- a. provided with a hose tap connected to the water supply;
- b. paved with impervious floor materials;
- c. coved at the intersection of the floor and the walls;
- d. graded and drained to a waste disposal system in accordance with the requirements of the relevant regulatory authority (Sydney Water);
- e. adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour as defined by the *Protection of the Environment Operations Act 1997*.

17. Fire Resistance

The *Type of Construction* proposed for the building must comply with Section C of the *Building Code of Australia*. Details of the proposed *Type of Construction* for the building must be submitted with the Construction Certificate for assessment.

18. Noise Mitigation Treatments

Plans detailing the noise mitigation treatments to be included within the construction of the Tavern must be submitted to and approved by the Principal Certifying Authority prior to issue of the Construction Certificate. These measures must include;

- Lockable imperforate shutters / panels along the northern perimeter of the Tavern that can be opened and closed to adequately control noise emission to the nearby receivers.
- Acoustically absorptive finishes incorporated in the underside of external roof areas and internal finishes;
- Noise monitors and/or limiters to sound systems used throughout the venue; and,
- Noise mitigation treatments for building services considering recommended measures from 4.3.3 of ARUP *Shell Cove Waterfront Tavern Development Application Supplement Acoustic Report* (2018).

19. Long Service Levy

The Long Service Levy must be paid prior to the issue of the Construction Certificate for work exceeding a value of \$25,000.00.

PART C - PRIOR TO COMMENCEMENT OF WORKS

20. Structural Details

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

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

Council records indicate that fill may be present in this area. The engineer's design must make specific reference to fill as a consideration.

21. Building Plan Approval - Sydney Water

The approved plans must be submitted to a Sydney Water TapIn™ to determine whether the development will affect Sydney Water wastewater and water mains, stormwater drains and/or easements, and if any requirements need to be met. Sydney Water's Tap in™ online service is available at:
<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

The Certifier must ensure that Sydney Water TapIn™ has issued appropriate electronic approval prior to the commencement of any works.

22. Site Management Plan

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

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

23. Dilapidation Report

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

24. Public Liability

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

25. Erosion and Sediment Control

Erosion and sediment control measures must be installed prior to the commencement of any demolition, excavation or construction works upon the site. These measures must be maintained throughout the entire excavation and construction phases of the development.

PART D - DURING & CONSTRUCTION WORKS

26. Hours of Work During Construction Work

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

- 7am to 6pm Mondays to Fridays
- 8am to 1pm Saturdays

Work must not be carried out on Sundays or public holidays.

27. Construction Environmental Management Plan

The approved Construction Environmental Management Plan required by condition 10 of this consent must be adhered to at all times during construction.

28. Construction Noise

Construction noise levels must be managed according to the EPA *Interim Construction Noise Guidelines*.

29. Sediment and Erosion Controls

Sediment and erosion controls must be maintained at all times and checked for adequacy daily. The controls must remain until the construction phase of the proposal is completed and disturbed areas have been stabilised.

30. Management of Fuels and Chemicals

Fuels and chemicals must be stored safely onsite. Refuelling and mixing chemicals must be conducted in a designated bunded areas specified in the Construction Environmental Management Plan.

31. Dust Control

Protocols to control dust leaving the site during construction must be implemented and must include but not be limited to: monitoring and regular water carters wetting any dry areas of exposed ground.

32. Cultural Heritage

A stop work protocol must be included in the Construction Environmental Management Plan and implemented for any potential heritage items found during excavation including ceasing work immediately if any Aboriginal objects are found/uncovered, secure the site and inform Office of Environment and Heritage and Shellharbour Council's Aboriginal Liaison Officer immediately.

33. Protection of Native Fauna

Measures to minimise risk of harm to native fauna must include;

- Inspect in an around all vehicles and machines to ensure no native fauna is present prior to turning on or recommencing work;
- Cover trenches when possible to avoid trapping native fauna such as frogs and reptiles;
- Inspect trenches prior to filling; and,
- Contact WIRES or South Coast Wildlife Rescue on 0418 427 214 immediately in the event of injury to native fauna.

34. Acid Sulphate Soil Unexpected Finds Protocol

Stockpiles and excavations must be observed for obvious signs of Acid Sulphate Soil (ASS) oxidation, such as rotten egg smell or jarosite staining. If signs are evident, works must cease and a suitably qualified consultant engaged to prepare an Acid Sulphate Soils Management Plan to guide the management of ASS onsite.

35. Contaminated Land Unexpected Finds Protocol

Should any contamination or suspect material be encountered during site preparation, earth works, construction or any other stage of the development, works must cease immediately and a suitably qualified consultant engaged to conduct a thorough contamination assessment and provide recommended

management actions to guide the management of any contamination onsite. Council must be notified if this protocol is required to be enacted.

36. Aboriginal Heritage Induction

The applicant must ensure that the construction/project supervisors are fully informed and briefed with respect to the consent and Aboriginal Heritage Permit (AHIP) No. 2534.

Prior to any works commencing on the land all staff, contractors and sub-contractors working on site must be inducted on Aboriginal Heritage implications and must sign acknowledgement of having received and understood this induction. This induction record must be retained on site for the duration of the construction works.

37. Earthworks Cut, Fill and Grading

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

38. Connection to Council Pit and/or Pipe

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

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

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

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

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

39. Commercial Flooding Survey Certification

A survey certificate, signed by a Registered Surveyor, shall be submitted for approval when the formwork for the main floor area is completed. This certificate shall certify that the main floor and any habitable floor levels shall be constructed at or above the Flood Planning Level R.L 2.8m AHD.

40. Waste Management

The management of waste must comply with the approved Waste Management Plan. All receipts such as waste disposal dockets must be retained (refer Part E). Any variations to the Waste Management Plan must have prior written approval of Council.

41. Storage of Materials

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

42. Survey Certification

A report from a registered surveyor must be provided to the Certifying Authority prior to external walls being raised above ground floor level OR on completion of the ground floor slab formwork prior to the concrete being poured.

The report must certify all of the following:

- a. the distance of the structure to all boundaries of the allotment are in accordance with the approved plans,
- b. the height of the floor level/s in relation to the natural ground level are in accordance with the approved plans, and
- c. the garage floor level complies with the garage floor level shown on the approved plans and grades comply with Council's gradient standards.

PART E - PRIOR TO OCCUPATION

43. Occupation Certificate

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

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

44. Sydney Water Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

45. Health - Noise from Mechanical Plant & Equipment

Noise from the operation of mechanical, equipment, ancillary fittings, machinery, mechanical ventilation system and / or refrigeration systems should comply with the noise intrusion criteria as defined under the NSW Noise Policy for Industry published by the Environment Protection Authority.

A professional acoustic engineer shall be engaged to certify that the design and construction of all sound producing plants and equipment associated with the building complies with the above requirements. Certification shall be submitted To the Principal Certifying Authority prior to the issue of any Occupation Certificate.

46. Works As Executed - Stormwater Drainage

Prior to the issue of an Occupation Certificate, Works As Executed Plans must be submitted the Principal Certifying Authority by a registered surveyor certifying compliance of all drainage works with the approved design plans. The Works As Executed dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans. This plan must verify surface and invert levels on all pits, invert levels and sizes of all pipelines, and finished surface levels on all paved areas. All levels must relate to Australian Height Datum.

47. Verification of Waste Management

Documentation verifying that all waste streams were managed in accordance with the Waste Management Plan must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate. All records, such as waste disposal dockets or photographic evidence, must be retained by the Principal Certifying Authority.

48. Issue of Subdivision Certificate for DA0143/2016

Prior to the release of the Occupation Certificate, the land to which this approval relates is to be identifiable with a Lot and Deposited Plan number and lodged with the NSW Department of Land and Property Information as required by DA0143/2016.

49. Repairs to Public Infrastructure

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

50. Health - Food Premises - Inspection & Registration

Prior to the issue of any Occupation Certificate or occupation or use of any food premises:

- (a) a satisfactory final inspection must have been undertaken by the Principal Certifying Authority certifying that the use of the premises for the preparation, display and storage of food has been carried out in accordance with the development consent; and
- (b) the food premises must submit to Shellharbour City Council a *'Food Business Registration Form'*. The form can be found on Council's website by visiting:
<http://www.shellharbour.nsw.gov.au/Documents/Forms-and-Application/Compliance/Food-business-registration-form.aspx>

51. Sydney Water Requirements

Written approval from Sydney Water that indicates that a trade waste agreement has been entered into for the grease trap that will be utilised for the food business operations must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

52. Litter Control

A Plan of Management for litter control must be produced and implemented for the operation of the premises. In particular, the plan must identify how litter will be controlled and managed in and around the building and property.

This section of the plan must address:

- (a) The scheduling for the litter management and
- (b) A map illustrating the area that will be managed. In this regard, the area must include areas outside of the property boundary (including areas adjacent to the boundary and public footpath areas).

53. Operational Plan of Management to be Submitted and Approved

The Operational Plan of Management approved as part of this consent must be amended to include the following:

- i. Removal of Graffiti – The operator of the site must be responsible for the removal of all graffiti from the building within 48 hours of its application;
- ii. Removal of Glass - Patrons must be prevented from removing glasses, opened cans, bottles or alcohol from the premises;
- iii. Litter Management Control requirements as required in condition 52;
- iv. Lockers - Lockers must be provided for employees to lock away their valuables during the time they are working;
- v. Access and Security - Access control should be set in place to exclude unauthorized access to restricted areas. Signage should be placed in areas that are restricted to employees only;
- vi. Delivery times included in the plan are to reflect those specified in condition 58 of the consent;
- vii. The required barriers as specified in condition 6 of the consent are to be used when a vehicle is entering or exiting the loading dock;
- viii. Off premises sales of alcohol are to be over the bar only, no alcohol is to be sold via the kiosk window.
- ix. All loading and unloading including glass and other waste collection shall take place wholly within the premises.
- x. Operational Noise Management Plan as required by condition 8.

The amended plan signed by the premises operator/licensee must be submitted to and approved by Council prior to an Occupation Certificate being issued.

54. Food premises – Garbage Odour

A waste contractor shall be engaged to remove all waste from the garbage storage area on a regular basis so that no overflow of rubbish will occur. Practical measures are also to be taken to ensure that odour emission from the garbage storage area does not cause offensive odour as defined under the provision of the *Protection of the Environment Operations Act, 1997* (as amended).

55. Health - Food premises - Storage of Waste - Used Cooking Oil

Used oil shall be contained in a leak proof container and stored in a covered and bunded area prior to off-site disposal. Copies of receipts for the disposal of used cooking oil shall be kept on-site and made available to Council Officers upon request.

56. Noise Mitigation Treatments

A compliance report written by a suitably qualified acoustic consultant, detailing the noise mitigation treatments required as per condition 18 of this consent must be submitted to the Principal Certifying Authority prior to issue of an Occupation Certificate.

57. Health - Lighting - General Nuisance

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads. The design must ensure no adverse impact on the amenity of the surrounding area by light overspill

PART F - AFTER ISSUE OF OCCUPATION CERTIFICATE/DURING OCCUPATION

58. Hours of Operation and Delivery times

The hours of operation are restricted to:

- (a) for the food and drink (Tavern) premises between 10 am and midnight Monday to Saturday and 10am and 10pm on Sundays.
- (b) Kiosk (takeaway food) operating hours are to be restricted to between 7am to 8pm Monday – Sunday.
- (c) All commercial vehicles movements including deliveries and waste collection are restricted to the hours of 7am and 10pm Monday to Friday,
- (d) No vehicles are to access or exit the loading dock between 9am and 3pm on Saturdays, Sundays and Public Holidays.

59. Operational Management Plan Implementation

The Tavern must be operated in compliance with the approved Operational and Noise Management Plan.

60. Maximum Number of Persons Signage

The maximum number of people (including staff and customers) in the premises shall be no more than 800 people at any one time.

61. Prescribed condition for maximum patronage signage

A sign must be displayed at the main entry point to the building in a prominent position stating the maximum number of persons, as specified in condition 60 of this consent, that are permitted in the building.

Note: Clause 98D of the Environmental Planning and Assessment Regulation 2000 requires a sign specifying maximum number of persons permitted in the building to be displayed in a prominent position for the following types of premises:

- i. Entertainment venue;
- ii. Function centre;
- iii. Pub;
- iv. Registered club
- v. Restaurant

62. Copies of Consents and Management Plans

A full and current copy of all current development consents for the operation of the premises and the approved Plan of Management must be kept on-site and made available to Police or Council Officers, or Special Investigator upon request.

The use must always be operated / managed in accordance with the Plan of Management, signed and dated by the premises operator.

63. Neighbourhood Amenity

- (a) Signs must be placed in clearly visible positions within the premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area.
- (b) The management must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard, the management must be responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council and the Licensing Authority.

64. Flooding Storage of Materials

The Probable Maximum Flood (PMF) for this site is RL 2.4m.

Australian Height Datum during Occupation at no time shall materials be stored which may cause pollution or be potentially hazardous during a Probable Maximum Flood event.

65. Waste Streams

In accordance with Wasteless Consulting, Shell Cove Town Centre, Waste Strategy Report dated 10 November 2016, the following waste streams shall be collected and disposed at a suitable licensed facility.

- a) General Waste
- b) Paper and Cardboard
- c) Mixed recycling (plastics, glass, steel and aluminium)
- d) Organic Waste
- e) Oil and grease trap service to food retailers.

66. Waste Receipts

A permanent record of receipts for the removal of both liquid and solid waste from the site shall be kept and maintained up to date at all times. Such records to be made available to Council's Officers, upon request.

67. Waste Management Plan

The development shall adhere to the design elements and operational functions in accordance with the Wasteless Consulting, Shell Cove Town Centre, Waste Strategy Report, 10 November 2016.

68. Signage – illumination

The approved signs must only be illuminated during the approved business hours of operation.

The intensity of illumination of the signage must not cause objectionable glare, affect the safety for motorists or detract from the amenity of the neighbourhood.

69. Separate Consent Required for Additional Signage

Additional signage, including window signage, must not be erected or displayed without first gaining development consent from Shellharbour City Council unless the sign is in accordance with the requirements of *State Environmental Planning Policy (Exempt & Complying Development Codes) 2008*.

Note: Window signage includes paint, vinyl strips and the like.

END OF RECOMMENDED CONDITIONS