

SOUTHERN REGIONAL PLANNING PANEL

SUPPLEMENTARY REPORT

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	Fraser's Property Australia formerly Australand Corporation (NSW) Pty Ltd Holdings Ltd.
Owner	Shellharbour City Council
Attachments	Attachment 1 – Recommended Conditions Attachment 2 – Urban Design Guidelines for Precinct D as amended.
Supplementary Report prepared by	Madeline Cartwright, Senior Development Assessment Officer
Signature	
Report endorsed by	Jasmina Micevski - Planning Manager, City Development
Signature	
Date of report	08/05/2019

Purpose of Supplementary Report

The Development Application (DA) 0005/2018 was reported for a second time to the Southern Regional Planning Panel (SRPP) on the 16 April 2019. The decision was deferred as detailed in **Figure 1** below.

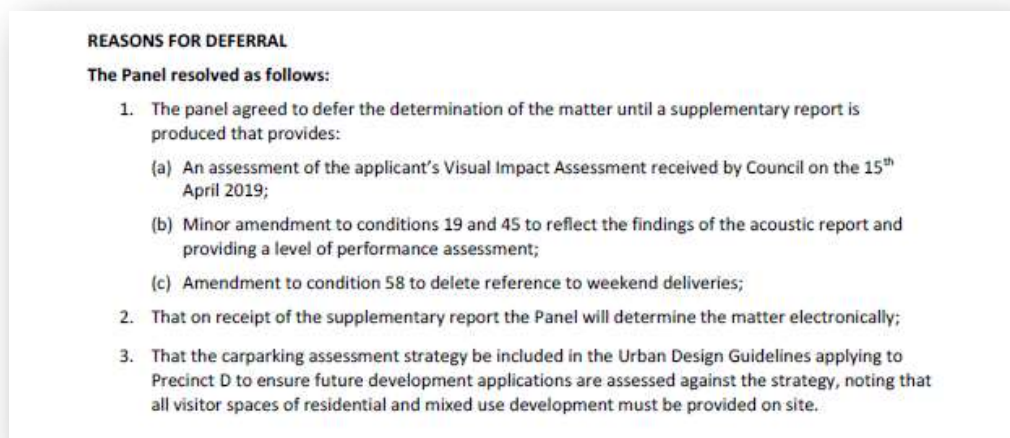


Figure 1 - Reasons for Deferral meeting 16 April 2019.

This supplementary report will address each of these reasons.

1a. Visual Impact Assessment

The Concept Plan was modified (Mod 1) by the Independent Planning Commission on 18 March 2019. The modification included a number of new conditions including condition 19 which states as follows:

19. Visual Impact

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

A Visual Impact Assessment (VIA) has been submitted by the applicant and is included as attachment 2 of this supplementary report. The submitted VIA uses the key locations identified in the Visual Impact Assessment submitted as part of the modification (written by Dr Richard Lamb and Jane Maze-Riley dated January 2018). The assessment of the proposed Tavern building from these key eight (8) locations is consistent with the previous assessment that has been undertaken as part of the modification of the concept plan. **Figure 2** below includes a qualitative assessment of the views from these 8 locations.

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



Figure 2 - Concept Plan VIA Assessment Locations

The analysis included by the applicant concludes that the key views, view corridors and vistas internal to the site, as established by the approved Concept Plan (Mod 1) will not be impacted upon by the Tavern building.

In accordance with condition 19 of the Concept Plan the VIA goes on to provide representative 3-dimensional computer models of the proposed built form structure. **Figure 3** below provides an indicative viewpoint from the Marina looking west towards the Tavern building.



Figure 3 - Indicative Viewpoint 1 from the Marina

The proposed building is shown to be well within the envelope of the Concept Plan. There is no significant loss of valuable views of landscape features as a result of the design or scale of the proposed tavern.

Figure 4 below shows the view from the public car park looking east towards the Tavern.

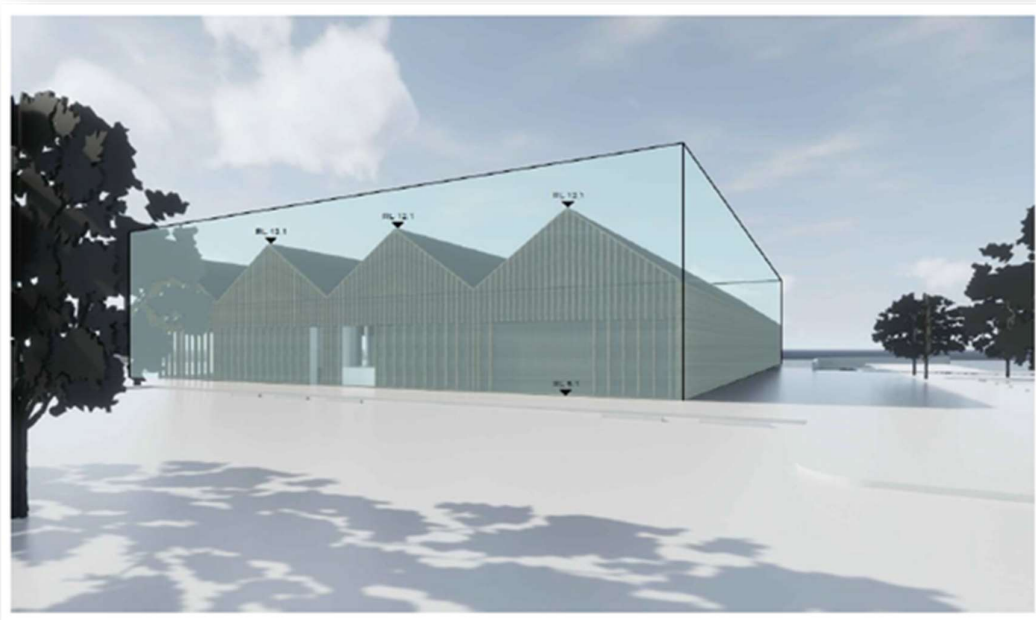


Figure 4 - Indicative Viewpoint 2 looking east towards the Tavern development

The proposed building is shown to be well within the concept approval envelope. The proposed building form and location is considered acceptable and consistent with the Concept Plan, there would be no significant unacceptable impacts for the area.

Conclusion

The submitted VIA provides a suitable analysis of views towards and of the proposed Tavern development. The proposed development is within the Concept Plan (Mod 1) envelopes. The Tavern building will not result in any unreasonable impact on the public domain and the conclusions drawn from the VIA show that the development is consistent with the approved Concept Plan (Mod 1) and do not contradict the conclusions drawn from the assessment undertaken within the previous reports.

1b. Amendments to acoustic conditions

Conditions 19 and 45 as included in **attachment 1** of this supplementary report have been amended to reflect the findings of the acoustic report and providing a level of performance assessment. Amended conditions included below, deleted text shown in red, additional text shown in bold.

Condition 19. Noise Management Plan

A Noise Management Plan is required to be prepared and submitted for approval to Council prior to issue of a Construction Certificate. The plan must ensure the operation of the Tavern meets the noise criteria detailed in *Table 4: Predicted noise levels in report Fraser Property Group Shell Cove Waterfront Tavern DA – Supplementary acoustic report, Issue 2, Ref: AC11, dated 21 May 2018 by ARUP.*

The management plan must reflect the recommendations detailed in section 4.3.2 of the *Fraser Property Group Shell Cove Waterfront Tavern DA – Supplementary acoustic report, Issue 2,*

Ref: AC11, dated 21 May 2018 by ARUP, unless it is otherwise demonstrated that the noise criteria can be met.

Condition 45 - 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 Environmental Protection Authority~~ criteria detailed in Table 5: Tavern noise emission criteria at new residential premises in report Fraser Property Group Shell Cove Waterfront Tavern DA- Supplementary acoustic report, Issue 2, Ref: AC11, dates 21 May 2018 by ARUP.

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.

1c. Amendment to condition relating to delivery times

Condition 58 as included in **attachment 1** of this supplementary report has been amended to clarify that commercial vehicle movements are to be restricted to the hours between 7am and 10pm Monday to Friday and the reference to access on Saturdays, Sundays and Public Holidays have been removed. Amended condition included below, deleted text shown in red.

Condition 58 – Hours of Operation and Delivery Times

The hours of operation are restricted to:

- a. for the food and drink (Tavern) premises between 10am 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, and
- c. All commercial vehicles movements including deliveries and waste collection are restricted to the hours between 7am and 10pm Monday to Friday, ~~and~~
- ~~d. No vehicles are to access or exit the loading dock between 9am and 3pm on Saturdays, Sundays and Public Holidays.~~

2. E -Determination

Having regard to *Environmental Planning & Assessment Act 1979* the proposal is generally consistent with the Concept Approval as modified. The proposal is consistent with relevant State and local statutory planning policies and controls. 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 approved under an e-determination subject to the schedule of conditions in **Attachment 1**

3. Adoption of Parking Strategy as part of the Urban Design Guideliness for Precinct D

The Parking Strategy used for the assessment and justification of the parking numbers included within the Shell Cove Town Centre area has been included as part of the Urban Design Guidelines (UDGs) for Precinct D as Amendment No. 2 – endorsed on 8/05/2019 -

changes to parking requirements resulting from Southern Regional Planning Panel meeting 16th April 2019. The amended UDGs have been included for information as **attachment 2** of this supplementary report.

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

Attachment 1 – Schedule of draft conditions

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
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	The Waterfront Tavern at Shell Cove version 2	Un-dated
Acoustic Strategy	ARUP	Fraser's Property Group Shell Cove Waterfront – Tavern DA – Supplement Acoustic report AC11 Issue 2	21/05/2018

Name of Plan/Document	Prepared By	Drawing/Document No./Revision	Drawing/Document Date
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

4. Relevant Leases, Licences and Easements

Prior to issue of the Occupation Certificate the necessary leases, licences or easements as relevant need to be obtained from the appropriate authorities including Shellharbour City Council. This includes but is not limited to the undercroft area and the use of the airspace above Council Operational Land (I.e. Boardwalk).

PART B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. 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

6. 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,
- level of geotechnical supervision for each part of the works as defined under AS 3798 - *Guidelines on Earthworks for Commercial and Residential Developments*,
- 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,

- d. 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,
- e. the recommended treatment of any unstable areas within privately owned allotments;
- f. requirement for subsurface drainage lines, and
- g. overall assessment of the engineering plans for the proposed development and their suitability in relation to the site's geotechnical characteristics.

7. 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.

8. 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, October 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, and
- 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%.

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 a Construction Certificate. The CEMP must include but not be limited to:

- a. sediment and erosion controls,
- b. management of fuels and chemicals,
- c. construction noise controls,
- d. dust control measures,
- e. cultural Heritage stop work protocol,
- f. native fauna protection measures,
- g. acid sulfate soil unexpected finds protocol, and
- h. 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, and
- c. structural soundness and engineer's 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:

- a. *food Act 2003* (as amended),
- b. food Regulation 2015 (as amended),
- c. *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), and
- d. 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), and
- 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 a Construction Certificate.

These treatments must include:

- a. 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,
- b. acoustically absorptive finishes incorporated in the underside of external roof areas and internal finishes,
- c. noise monitors and/or limiters to sound systems used throughout the venue, and
- d. 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).

These plans must be accompanied by a verification report from a suitably qualified acoustic consultant to certify that the noise criteria detailed in *Table 4: Predicted noise levels in report Fraser Property Group Shell Cove Waterfront Tavern DA – Supplementary acoustic report, Issue 2, Ref: AC11, dated 21 May 2018 by ARUP* will be achieved.

19. Noise Management Plan

A Noise Management Plan is required to be prepared and submitted for approval to Council prior to issue of a Construction Certificate. The plan must ensure the operation of the Tavern meets the noise criteria detailed in *Table 4: Predicted noise levels in report Fraser Property Group Shell Cove Waterfront Tavern DA – Supplementary acoustic report, Issue 2, Ref: AC11, dated 21 May 2018 by ARUP*.

The management plan must reflect the recommendations detailed in section 4.3.2 of the *Fraser Property Group Shell Cove Waterfront Tavern DA – Supplementary acoustic report, Issue 2, Ref: AC11, dated 21 May 2018 by ARUP*, unless it is otherwise demonstrated that the noise criteria can be met.

20. 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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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

27. 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, and
- 8am to 1pm Saturdays

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

28. 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.

29. Construction Noise

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

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. Protection of Native Fauna

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

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

36. 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.

37. 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.

38. 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.

39. 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. 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 criteria detailed in Table 5: Tavern noise emission criteria at new residential premises in report Fraser Property Group Shell Cove Waterfront Tavern DA-Supplementary acoustic report, Issue 2, Ref: AC11, dates 21 May 2018 by ARUP.

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. 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.

47. Subdivision Certificate

Prior to the release of the Occupation Certificate, evidence of the registration of the relevant subdivision is to be provided to Council.

48. Operational Car Park

Prior to issue of the Occupation Certificate, documentation certifying:

- a. an Occupation Certificate has been issued for the car park included within the adjoining mixed use development DA0385/2017, and
- b. any required right of way is in place to allow suitable servicing of the Tavern premises,

must be provided to the Principal Certifying Authority.

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. Food Premises - Inspection & Registration

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

- 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:

- a. 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,
- b. removal of glass - Patrons must be prevented from removing glasses, opened cans, bottles or alcohol from the premises,
- c. litter Management Control requirements as required in condition 52,
- d. lockers must be provided for employees to lock away their valuables during the time they are working,
- e. access and security - access control should be set in place to exclude unauthorised access to restricted areas. Signage should be placed in areas that are restricted to employees only,
- f. delivery times included in the plan are to reflect those specified in condition 58 of the consent,
- g. the required barriers and alarm system as specified in condition 7 of the consent are to be used when a vehicle is entering or exiting the loading dock,
- h. off premises sales of alcohol are to be over the bar only, no alcohol is to be sold via the kiosk window,
- i. all loading and unloading including glass and other waste collection shall take place wholly within the premises, and
- j. operational Noise Management Plan as required by condition 19.

The amended plan signed by the premise's 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. 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

Prior to issue of an Occupation Certificate written certification must be provided to the Principal Certifying Authority by a suitably qualified acoustic consultant detailing that the noise mitigation treatments required as per condition 18 of this consent have been achieved.

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:

- e. for the food and drink (Tavern) premises between 10am and midnight Monday to Saturday and 10am and 10pm on Sundays,
- f. Kiosk (takeaway food) operating hours are to be restricted to between 7am to 8pm Monday – Sunday, and
- g. All commercial vehicles movements including deliveries and waste collection are restricted to the hours between 7am and 10pm Monday to Friday.

59. On Site Loading Areas and Operation

All loading and unloading operations associated with servicing the site must be carried out within the confines of the site with the loading dock doors closed, at all times and must not obstruct other properties/units or the public way.

At all times the service vehicle docks, car parking spaces and access driveways must be kept clear of goods and must not be used for storage purposes, including garbage storage.

60. Operational Management Plan Implementation

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

61. 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.

62. 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 61 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, and
- V. Restaurant

63. Acoustic Testing

The operator of the premises is required to undertake relevant acoustic testing to demonstrate that the noise criteria is being achieved as required by *Table 4: Predicted noise levels in report Fraser Property Group Shell Cove Waterfront Tavern DA – Supplementary acoustic report, Issue 2, Ref: AC11, dated 21 May 2018* prepared by ARUP. The testing must occur during the first 12 months of the operation of the premises and based on the following:

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

Where the testing has shown non-compliances with noise criteria detailed in *Table 4: Predicted noise levels in report Fraser Property Group Shell Cove Waterfront Tavern DA – Supplementary acoustic report, Issue 2, Ref: AC11, dated 21 May 2018* prepared by ARUP, appropriate operational mitigation measures must be implemented in the plan of management and noise management plan for the site. Such mitigation strategies must be implemented immediately.

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

64. 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 premise's operator.

65. 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.

66. Flooding Storage of Materials

The Probable Maximum Flood (PMF) for this site is RL 2.4m Australian Height Datum. At no time during occupation shall materials be stored which may cause pollution or be potentially hazardous during a Probable Maximum Flood event.

67. 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, and
- e. Oil and grease trap service to food retailers.

68. 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.

69. 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.

70. 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.

71. 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