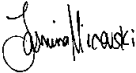



SUPPLEMENTARY Report SRPP No: 2018STH026

SUPPLEMENTARY MEMO SRPP No	2018STH026
DA Number	DA0331/2018
Local Government Area	Shellharbour
Proposed Development	Staged Subdivision of Lot 4003, DP 1235539 into 59 Lots Comprising of 42 Housing Lots, 2 Public Reserve Lots, 9 Future Residential Superlots and 6 Residual Lots. (Precincts F / G land subdivision)
Location	Shell Cove
Applicant / Owner	Australand Corporation (NSW) Pty Ltd (Frasers Property) / Shellharbour City Council
Recommendation	That SRPP No. 2018STH007 (DA No. #) be approved subject to the schedule of conditions contained in Attachment 1 of the SRPP No. 2018STH028 (DA No. 0331/2018) Planning Assessment Report dated 12 November 2018.
Memo prepared by	Jasmina Micevski – Manager, Planning 
Date of report	11 December 2019
Endorsed Grant Meredith – Group Manager – City Development	

Purpose of Supplementary Report

The Southan Regional Planning Panel at its meeting of 26 November 2019 resolved to defer development application number DA0331/2018, SRPP No. 2018STH026 subject to a number of items that need to be addressed to allow further consideration of the proposal.

Below is a summary of these matters have been addressed.

Table 1 SRPP Reasons for Deferral

Item	Reason	Response
1(i)	Details of the amendments to the originally submitted DA documentation	Refer to Section 1 below
1(ii)	Compliance with the relevant conditions and statement of commitments in the Concept Approval as modified	Compliance tables have been prepared which demonstrate the DA complies with the relevant conditions and commitments. Refer to Attachment A and Attachment B .
1(iii)	Compliance with the Urban Design Guidelines and the relevant date of adoption and details of the relevant provisions including minimum lot size	A compliance table has been prepared which demonstrates that the DA complies with the relevant sections of the Urban Design Guidelines. Refer to Attachment B and Section 3 below
1(iv)	History of relevant previous approvals affecting the site	Refer to Section 4 below

Item	Reason	Response
1(v)	Specific details of: Finished levels Running total of dwelling yields throughout Shell Cove Retaining walls and relative height Landscaping of swales	Refer to Section 5 below and Attachment C, C1 and C2 and Attachment D .
1(vi)	Further information on any biodiversity outcomes of the Concept Approval and how the current proposal meets them and how it satisfies Clause 6.5 of the LEP, including details of an updated on site visit by Council staff.	Refer to Section 6 below.
1(vii)	Cross sections to demonstrate the relationship of existing and finished levels including the boundary conditions and location of any retaining walls, swales, engineering structures etc for the interface with the existing residential development for each lot adjoining the northern edge of the site	Refer to Section 7 below and Attachment C2 and D .
1(viii)	A staging plan for the two stages	Refer to Section 8 below and Attachment E
1(ix)	An assessment according to SEPP 55 Remediation of Land for Stage 1	Refer to Section 9 below
1(x)	Evolution of the need to stage the application to deal with further contamination issues.	Refer to Section 10 below
1(vii)	Review of the conditions to remove duplications and inconsistencies; edit to remove ambiguities and clarify outcomes sought, and respond to additional information	Refer to Attachment J and Section 11 below.

1. Deferral matter 1(i) Details of the Amendments to the DA

The following changes have been made to the application since it was originally submitted to Council on 5 July 2018:

- a. Provision of an updated Construction Staging Plan showing the revised staging to allowed staged subdivision of residential land lots. It also stages Wetland 8 works allowing Council to condition remediation in this area before CC is granted (**Attachment E**);
- b. Updated draft subdivision plans in line with updated construction staging (**Attachment H**);
- c. Updated detached housing UDGs assessment based on comments from Council (**Attachment B**);
- d. Provision of an asbestos location survey (**Attachment I**);
- e. Updated Civil Subdivision Engineering Drawings showing amendment to Road 25 verge providing greater detail regarding retaining wall structures and inclusion of the bike path safety barrier (**Attachment C**);
- f. Updated landscape drawings aligning with updated civil drawings and clarity of fence types to align with detached housing UDGs (**Attachment D**).

2. Deferral matter 1(ii) Concept Approval

An assessment against the Concept Approval and Statement of Commitments is at **Attachment A**.

3. Deferral matter 1(iii) Urban Design Guidelines

In guiding future development within Precincts F and G, design guidelines have been prepared for detached housing, medium density housing and apartments. The Design Guidelines for Detached Housing (DGDH) were endorsed by Council on 28 August 2019, and the Design Guidelines Medium Density Housing and Apartments (DGMDHA) for Precinct F and G were endorsed by Council on 28 August 2019. They have been considered in terms of character and general design consistency for the Precinct (**Attachment B**).

4. Deferral matter 1(iv) Relevant Approvals

In November 1996, the former Minister for Urban Affairs and Planning approved DA 95/133 which included a boat harbour and marina to be located south-east of the Shellharbour City Centre. This was then followed by a Concept Plan Application in February 2010 for the Shell Cove Boat Harbour Precinct (MP07_0027) under Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The Concept Plan Application sought consent for the development of a 100-hectare precinct surrounding the Shell Cove Boat Harbour and Marina. The development is identified as the Shell Cove Boat Harbour Precinct and consists of residential, commercial and community development that includes retail, hotel accommodation, a business park, dry boat storage facilities, open space and wetlands. The subject precinct is located within the Boat Harbour Precinct and is identified for development of residential land uses.

On 18 March 2019 a modification to the Concept Plan (MP07_0027 MOD 1) was approved by the Independent Planning Commission.

The approval granted consent to the following modifications, including:

- a. increase to the maximum number of dwellings to 1,566;
- b. revised housing densities and typologies across the site;
- c. removal the maximum residential gross floor area limit of 150,000m²;
- d. reconfiguration of the town centre layout;
- e. increase to the maximum building heights in certain areas;
- f. provision of a maximum building height in metres;
- g. addition of 'serviced apartments' and 'residential accommodation' as permissible uses within the hotel building;
- h. the addition of 8,280m² of land to the site area;
- i. changes to the road pattern and layout;
- j. provision of acoustic walls in place of landscape moulds surrounding the marina commercial land use; and
- k. amendments to the Statement of Commitments.

In terms of planning assessment, the Ministerial Approval under Part 3A of the Concept Plan for The Shell Cove Boat Harbour Precinct takes precedence over Council's Planning Instruments and establishes the planning framework. The transitional arrangements introduced during the NSW Government's repeal of the former EP&A Act's Part 3A provisions states that a consent authority must not grant consent to development unless it is satisfied that the development is generally consistent with the terms of an approved concept plan (Schedule 2 clause 3B2(f) of the *Environmental Planning and Assessment (Savings*

Transitional and Other Provisions) Regulation 2017) (EP&A (Transitional) Reg). Therefore, the provisions of an Environmental Planning Instrument do not have effect if they are inconsistent with the terms of approval of the Concept Plan (Mod 1).

The relevant documents to assess the application include the Shell Cove Boat Harbour Precinct Concept Plan Application and Environmental Assessment 26 February 2010, together with the Preferred Project Report November 2010 as amended by the Section 75W Modification.

This DA seeks consent for the subdivision of Precincts F and G, and Wetland 8, and is generally consistent with the Concept Plan (Mod 1), reflecting the transition from broad concept design to precinct design.

The land is currently having earthworks occur on the site of the entire waterfront precinct. This work is approved by Notice of Determination DA0133/1995.

5. Deferral matter 1(v) Site Specific Details

The following site-specific details are provided in response to the deferral matters.

Deferral matter 1(v) Finished levels

Finished levels are shown on the Engineering Plans as extracted at **Attachment C1** and range from 1.5m AHD to approximately 5m AHD across the development footprint.

Deferral matter 1(v) Running total of dwelling yields throughout Shell Cove

The following table provides the current dwelling yields throughout Shell Cove. The table demonstrates that the distribution of dwelling yields are consistent with the Concept Approval distribution of dwelling yields within the precinct.

Table 2 Dwelling Yields in Shell Cove

Reduced visitor parking rate scheme			
Stage (SAP WBS)	Land	MD	Apt
R-0006-19 Stage 51 Precinct E housing			13
R-0006-20 Stage 52 Precinct E housing			5
R-0006-26 Stage 55 Precinct E housing			18
R-0006-27 Stage 56 Precinct E Apartments			64
R-0006-28 Stage 57 Precinct E housing			12
R-0006-29 Stage 58 Precinct E housing			10
R-0006-31 Stage 59 Precinct E housing			22
R-0006-32 Precinct A Housing			57
R-0006-35 Stage B2 Apartments			116
R-0006-53 Stage 95/96 Prec Housing C1			14
R-0006-56 Stage 101/102 Prec Housing C1			14
R-0006-69 Stage 97/98 Prec Housing B1			23
R-0006-70 Stage 89/91 Prec Housing B1			18
R-0006-71 Stage 90/92 Prec Housing B1			22
R-0006-72 Stage 93 Prec Housing B1			10
R-0006-73 Stage 94 Prec Housing B1			8
R-0006-74 Stage 99/100 Prec Housing C1			24
R-0006-90 Boat Harbour Precinct B2/C2		69	81
R-0006-91 Boatharbour Prec 1(Precinct A)	58		
R-0006-92 Boatharbour Prec 2(Precinct B)	62		
R-0006-93 Boatharbour Prec 3(Precinct C)	26		
R-0006-94 Boatharbour Prec 4(Precinct D)			146
R-0006-95 Boatharbour Prec 5(Precinct E)	58		
R-0006-96 Boatharbour Prec 6(Precinct F)	42	80	120
R-0006-97 Boatharbour Prec 7(Precinct G)			
R-0006-98 Boatharbour Prec 8(Precinct H)	70	20	119
Duplex Land Lots - second dwelling maximum	40		
Town Centre Hotel site			42
Aqua wholly owned			45
	356	454	733

Source: Frasers

Deferral matter 1(v) Retaining walls and relative height

Transitions feature sections of retaining walls of variable heights generally between 0.2m and 1.5m. A small section between Precinct G detached lots and future Wetland 8 varies between 2m to 3m in height. Further information can be found in dimensioned sections provided in engineering design documentation. Retaining wall heights are shown on the Engineering Plans at **Attachment C2**.

Deferral matter 1(v) Landscaping of Swales

The proposed swales will be landscaped as shown in the Landscaping Plans at **Attachment D**. The following figures show the typical sections of the swale and landscape design proposed within the interface areas of both Keith Hockey Oval as well as the existing residential properties abutting the Concept Approval area. This matter also relates to deferral matter 1(vii).

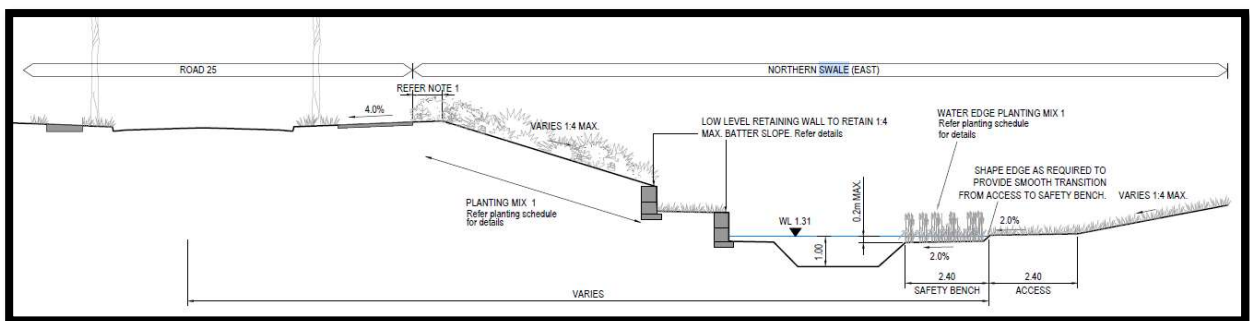


Figure 1 Northern Swale (East) adjacent to Keith Hockey Oval example of landscaping

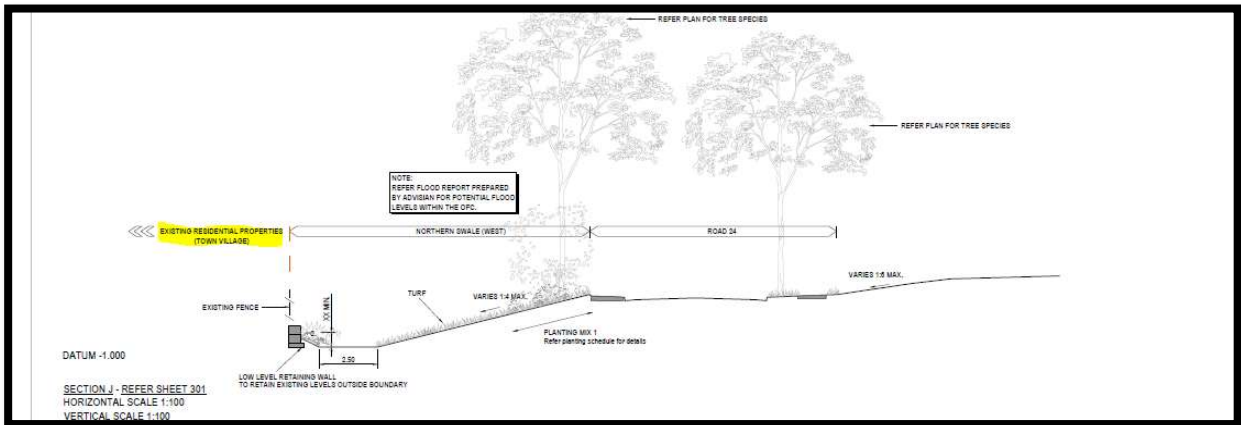


Figure 2 Northern Swale (West) adjacent to residential properties example of landscaping

6. Deferral 1(vi) Biodiversity Outcomes

Impacts to flora and fauna was considered under the Concept Approval and found that proposed impacts were acceptable. Work has since commenced under the approval. A Flora and Fauna assessment was undertaken by Kevin Mills & Associates as part of the Concept Approval Modification 1, which confirmed that the proposed development was not likely to have a significant impact upon threatened species, populations or communities. This was not raised as a significant issue as part of the DPIE's environmental assessment of the modification.

It is noted that the Concept Plan (Mod 1) Consent takes precedence over local government planning instruments, including the *Shellharbour Local Environmental Plan 2013* and *Shellharbour Development Control Plan 2013*. Accordingly, the assessment of each stage of the Shell Cove Boat Harbour Precinct will be required against the Section 75W (former Part 3A) conditions of consent.

The site is not mapped under the Terrestrial Biodiversity Mapping of the LEP, and therefore Clause 6.5 of the LEP does not apply.

6.5 Terrestrial biodiversity

(1) *The objective of this clause is to maintain terrestrial biodiversity by—*

- (a) *protecting native fauna and flora, and*
- (b) *protecting the ecological processes necessary for their continued existence, and*
- (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

(2) *This clause applies to land identified as “Environmentally Sensitive Land” on the Terrestrial Biodiversity Map.*

(3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider—*

- (a) *whether the development is likely to have—*
 - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

- (iv) any adverse impact on the habitat elements providing connectivity on the land, and
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—
 - (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
 - (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

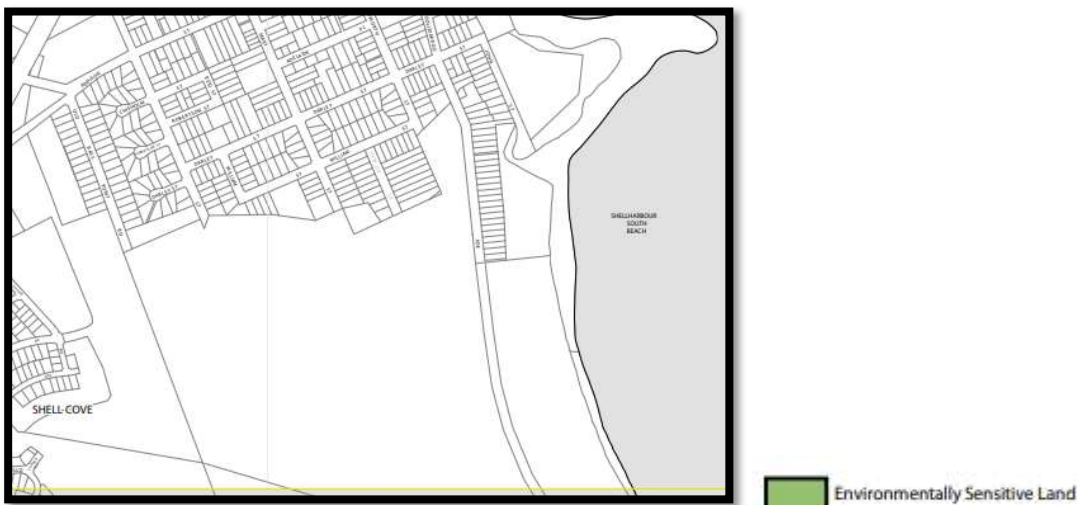


Figure 3 Terrestrial biodiversity mapping for Shell Cove (northern half)
 Source: Shellharbour LEP



Figure 4 Terrestrial biodiversity mapping for Shell Cove (southern half)
 Source: Shellharbour LEP

A further inspection occurred on the Thursday the 5th of December. It was observed that the site is an active development site with a lot of earth moving vehicles and a dynamic and changing environment, the water channels would be constantly changing depending on the weather patterns and earth moving on site.

There is limited opportunity for threatened species such as the Green and Golden Bell frog to inhabit such a disturbed site or any other vegetation or fauna. Hares were observed on site with shows the level of disturbance, construction staff also commented that foxes have been sighted, more than likely coming in from surrounding areas for short periods of time.

The below images demonstrate the extent of earth works currently taking place.

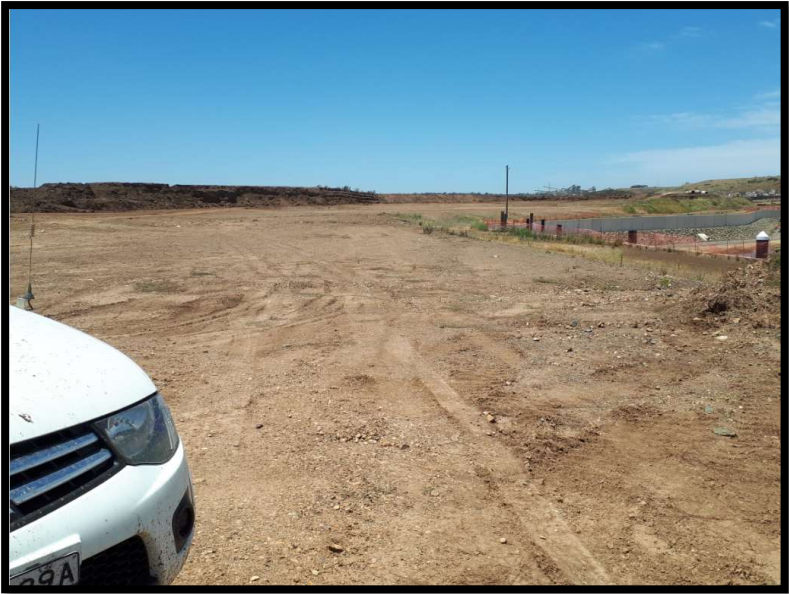


Figure 5: Site inspection photo dated 5 December 2019



Figure 5: Site inspection photo dated 5 December 2019

7. Deferral matter 1(vii) Cross Sections

Updated cross sections have been prepared by Arcadis (**Attachment C**). The typical cross sections along the boundaries are shown within Figure 1 and 2 above.

8. Deferral matter 1(viii) Staging

The development is intended to be delivered in two stages, allowing for seven construction and subdivision certification sub-stages, as described below and in the Staging Plan at **Attachment E**. It is therefore proposed to enable the staged delivery of the Precinct F and G site through permitting multiple subdivision certificates to be granted for each substage of the development by conditions of consent:

Stage 1: Construction and subdivision certificates for:

- a. Substage 1: Bulk earthworks across the site excluding Wetland 8;
- b. Substage 2: Roads and services to Precinct F North land lots, including the issue of a subdivision certificate;
- c. Substage 3: Roads and services to Precinct G North land lots, excluding Wetland 8, but including the issue of a subdivision certificate;
- d. Substage 4: Creation of three medium density superlots, embellishments and road dedications, including the issue of a subdivision certificate;
- e. Substage 5: Creation of the balance of the site in terms of four medium density superlots, remaining roads and issue of a subdivision certificate;
- f. Substage 6: Completion of Road 23 to connect to Boolwarroo Parade;

Stage 2:

- a. Substage 7: Management of Triangular Lot to Precinct G (contaminated land section – asbestos) and Construction of Wetland 8 and issue of subdivision certificate.

9. Deferral matter 1(ix) SEPP 55

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides for the management of contaminated land throughout NSW and requires a consent authority to consider whether the land is contaminated prior to consenting to a development application (Clause 7(1a)).

Clause 7(1b) and (1c) then require the consent authority to consider:

- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The broader Shell Cove site was assessed for contamination as part of the Concept Plan MP07_0027m with a Phase 2 site contamination assessment being prepared. This identified that no part of the Precinct F and G area required further investigation, with the same for the Wetland 8 area.

Furthermore, a Site Audit Statement (PWH_NSW_018, **Attachment F**) has been issued for the site, and identifies that the land is suitable for use of the site for residential purposes with accessible soil, amongst other uses.

Wetland 8 currently contains asbestos which has been stockpiled and appropriately cordoned off. This will be managed as part of the remediation of this part of the site. Details of the management of this asbestos has been detailed in the planning assessment report presented to the SRPP at its meeting of 26 November 2019.

10. Deferral matter 1(x) Contamination Management

As described above, the proposed development is intended to be staged to segregate currently contaminated parts of the site (asbestos in proposed Wetland 8). This area will form part of Stage 7 and be completed last in terms of delivery.

The aim of the staging is to enable the detailed assessment of a future DA pertaining to the management of existing contamination to the triangular shaped section of precinct G and also the future burial of it.

A meeting occurred with Council staff, Frasers and Site Auditor to commence planning for the remediation strategy of this land. It was agreed to stage the subject DA to allow further works to occur in respect of this strategy. A copy of the pre-DA advice notes are found in **Attachment K**.

11. Deferral matter 1(vii) – Review of conditions

The conditions have been reviewed with duplications removed and further conditions edited to provide clarity in the Staging approach. Refer **Attachment J**.

12. Recommendation

That conditional development consent is granted to SRPP No. 2018STH0 (DA No. 331/2018) for the subdivision of land to create Two Stage Subdivision of Lot 4003, DP 1235539 into 57 Lots Comprising of 42 Housing Lots, Five Public Reserve Lots, Nine Future Residential Superlots and One Residue Lot (Precincts F / G land subdivision) at Lot 4003, DP 1235539, Old Bass Point Road, Shell Cove for the following reasons:

- a. the subdivision development is in the public interest for the reasons provided in 4.1.9 Section 4.15(1)(e) – the public interest of the Council Planning assessment report dated 12 November 2019 and this supplementary report, and
- b. the proposal is generally consistent with the terms of the approval of the concept plan MP07_0027 as modified by MOD 1 and Statement of Commitments schedule.

The schedule of recommended conditions is included at **Attachment J**.