

**PLANNING PANEL (SOUTH)**  
**ASSESSMENT REPORT SUMMARY AND RECOMMENDATION COVER SHEET**

<b>Panel Reference</b>	<b>PPSSTH-119</b>	
<b>DA Number</b>	<b>DA0606/2021</b>	
<b>LGA</b>	<b>Shellharbour City Council</b>	
<b>Proposed Development</b>	Construction Of Two Residential Flat Buildings containing 52 apartments, with basement parking and landscaping.	
<b>Development Characterisation</b>	<b>Residential Flat Building</b>	
<b>Location</b>	Lot 3007 and Lot 3000 DP1258171 (Formerly Lot 9009 DP1254656) The Promontory Drive Shell Cove 2529	
<b>Applicant/Owner</b>	Australand Corp. (Frasers Australia) - Applicant Shellharbour City Council (landowner)	
<b>Date of DA lodgement</b>	1 October 2021	
<b>Public Notification Period</b>	14 October 2021 – 27 October 2021	
<b>No. of Submissions</b>	Nil	
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	<b>Clause 3 – Council related development over \$5 million</b> Development that has a capital investment value of more than \$5 million as the council is the owner of any land on which the development is to be carried out. The proposed development has a CIV of \$44,983,325.00.	
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• SEPP - (State and Regional Development) 2011 – Council related Development over \$5 million</li> <li>• SEPP (Resilience and Hazards) 2021</li> <li>• SEPP 65 – Design Quality of Residential Apartment Development.</li> <li>• SEPP (Building Sustainability Index – BASIX) 2004</li> <li>• Shell Cove Boat Harbour Concept Plan 07_0027 MOD 1</li> <li>• Shellharbour Local Environmental Plan 2013</li> <li>• Shell Cove Medium Density Housing Design Guidelines Precinct B2 and C2.</li> <li>• Shellharbour Development Control Plan 2013</li> <li>• Likely impacts;</li> <li>• Site suitability;</li> <li>• Any submissions;</li> <li>• Public Interest.</li> </ul>	
<b>List all documents submitted with this report for the Panel's consideration</b>	<b>Attachment 1</b>	Draft Conditions of Consent
	<b>Attachment 2</b>	Architectural Plans
	<b>Attachment 3</b>	Photo montages
	<b>Attachment 4</b>	Background to the Planning Framework for Shell Cove Boat Harbour and Marina Precinct
	<b>Attachment 5</b>	Approved Plans for DA0501/2019
	<b>Attachment 6</b>	Concept Approval Compliance Table
	<b>Attachment 7</b>	Apartment Design Guide Compliance Table
	<b>Attachment 8</b>	Shellharbour Local Environmental Plan 2013 Compliance Table
	<b>Attachment 9</b>	Shell Cove Design Guidelines Compliance Table
	<b>Attachment 10</b>	Shellharbour Development Control Plan Compliance Table

	<b>Attachment 11</b>	Shadow Studies
	<b>Attachment 12</b>	Cross Ventilation Plan
	<b>Attachment 13</b>	Storage Plan
	<b>Attachment 14</b>	Concept Plan Application and Environmental Assessment Appendix F Flood Management Assessment
	<b>Attachment 15</b>	Internal Path for COS Access
<b>Report prepared by</b>	Madeline Cartwright, Principal Planner – Development Assessment	
<b>Report Endorsed by</b>	Jasmina Micevski, Acting Group Manager - City Development	
<b>Report endorsed by</b>	Marcello Chiodo, Acting Director Community and Customers	
<b>Date of report</b>	16 May 2022	

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

Yes

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not applicable

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

Not applicable

#### Conditions

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

Yes

## ASSESSMENT REPORT AND RECOMMENDATION

### 1. Executive Summary

#### 1.1 Reason for consideration by the Southern Regional Planning Panel

The application is being referred to the Panel due to the proposal having a capital investment value of \$44,983,325. Council is the owner of the land on which the development is to be carried out and the Shell Cove Project is a collaboration between Shellharbour City Council and Frasers Property Australia.

In this regard, the development is classed as Regionally Significant development under State Environmental Planning Policy (State and Regional Development) 2011. Under Part 4, Division 4.2, Section 4.5 (b) of the *Environmental Planning and Assessment Act 1979* (the Act hereafter) the Regional Planning Panel for the area (Southern) is designated as the Determining Authority.

#### 1.2 Proposal

The proposal seeks consent for the construction of two Residential Flat Buildings (RFB) containing 52 apartments and basement parking. Proposal includes associated landscaping, earthworks and temporary stockpiling.

#### 1.3 Exhibition

The proposal was notified in accordance with the Shellharbour Community Participation Plan 2021. No submissions were received.

#### 1.4 Conclusion

The proposed development has been assessed in accordance with the relevant prescribed matters for consideration as outlined in Section 4.15 of the Environmental Planning and Assessment Act 1979.

The proposed residential flat building is permissible with consent in the R3 Medium Density Residential Zone, pursuant to the Shellharbour Local Environmental Plan 2013. The proposal is generally consistent with the Shell Cove Boat Harbour Concept Plan 07\_0027 MOD 1 (Concept Approval) and Urban Design Guidelines applicable to the site.

Generally, the proposal is consistent with the relevant Environmental Planning Instruments including the SEPP No. 65 Design Quality of Residential Apartment Development, SEPP BASIX 2004, SEPP (Resilience and Hazards) 2021 and SEPP (Transport and Infrastructure) 2021.

It is considered unlikely that the proposal would result in adverse impacts on the character of the area or the amenity of the surrounding area, environment and adjoining properties.

A range of conditions are recommended to ensure that any potential impacts are appropriately addressed and managed.

#### Recommendation

DA0606/2021 be determined by way of approval, subject to the conditions provided at Attachment 1.

## **1. APPLICATION AND SITE OVERVIEW**

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### **1.1 Planning Controls**

The following planning controls apply to the development:

State Environmental Planning Policies:

- SEPP - (State and Regional Development) 2011
- SEPP (Resilience and Hazards) 2021
- SEPP 65 – Design Quality of Residential Apartment Development.
- SEPP (Building Sustainability Index – BASIX) 2004

Local Environmental Planning Policies:

- Shellharbour Local Environmental Plan 2013

Development Control Plans:

- Shellharbour Development Control Plan 2013

Other Policies:

- Biodiversity Conservation Act 2016
- Shellharbour Local Infrastructure Contributions Plan 2019

### **2.2 Proposal Details**

The Development Application seeks approval for two five (5) storey residential flat buildings with two level basement parking providing a total of 52 apartments. Vehicle and pedestrian access from Quayside Avenue with pedestrian access only from the Marina foreshore. The proposed development consists of:

- Two level basement including 117 parking spaces:
  - 91 residential spaces and 26 visitor spaces (including 24 stacked spaces and 6 accessible spaces).
  - Five (5) waste storage rooms.
  - Bicycle racks.
  - Storage cages are included and service areas.
- Building 1 including:
  - 22 residential apartments spread across five floors
  - Basement vehicle access
  - Two pedestrian access points from Quayside Avenue
  - Waste collection vehicle access point
  - Communal gym, pool, dining room, kitchen and lounge room
  - Bulk waste storage room and temporary bin holding room
- Building 2 including:
  - 30 residential apartments spread across five floors.
  - Two pedestrian access points from Quayside Avenue
- Landscaping on adjoining foreshore site
- Temporary stockpiling on adjoining residential future lot.

The site area has a total of 3,482sqm. The proposal does not include subdivision. The subject site is currently vacant.

**Figure 1** shows the location of the site in relation to the surrounding precinct.



Figure 1 - - Location Plan - site highlighted in black

The proposed landscaping on the adjoining foreshore site will be along the boundary with the subject lot between the public boardwalk area and the proposed development within lot 3000 DP 1258171. **Figure 2** below shows the affected lot shown as site B in blue.

The proposed temporary stockpiling to facilitate the proposed development will be located on the adjoining approved lot (not yet registered) as shown as site C in **Figure 2** below. This land is identified as residential under the Concept Plan.

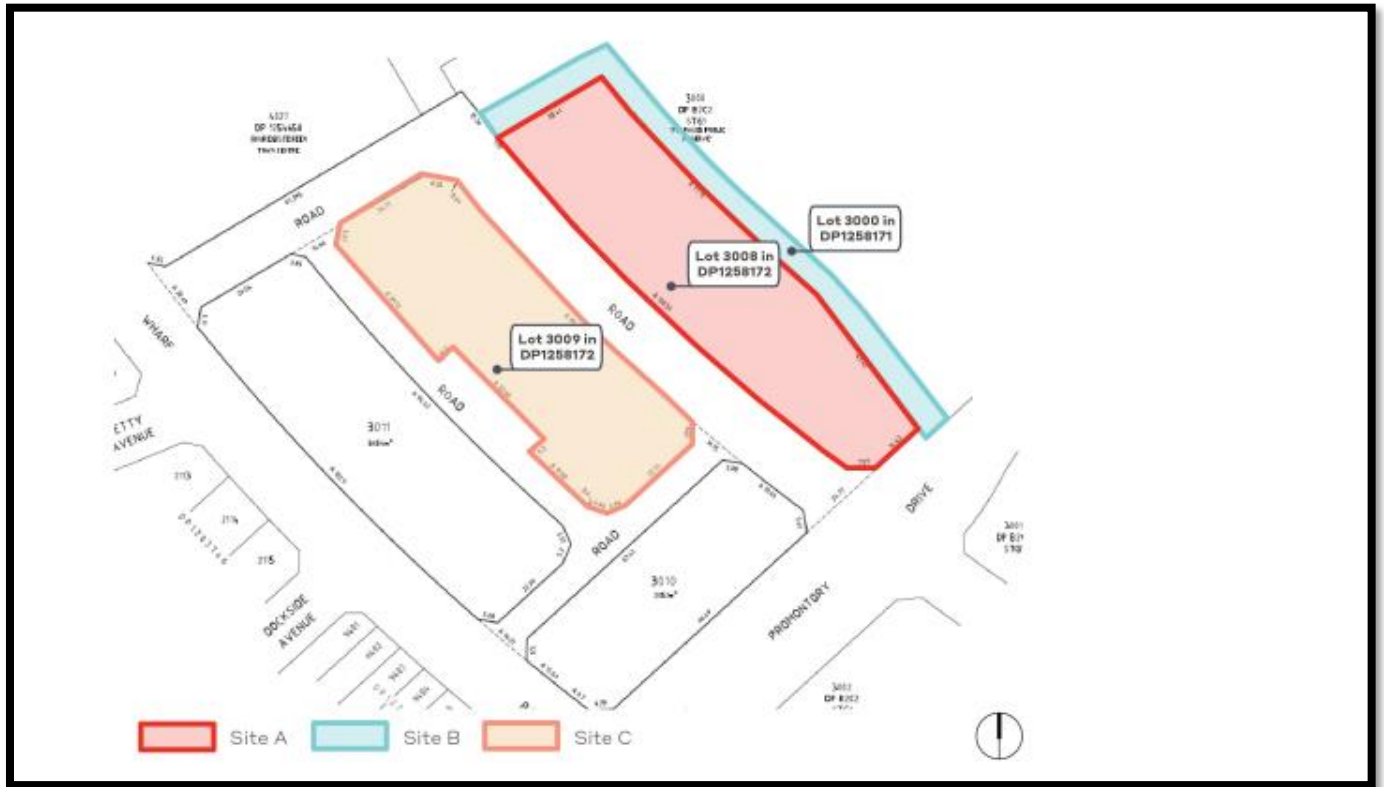


Figure 2 - Location of proposed landscaping and temporary stockpiling

### 2.3 Subject Site and Locality

The proposed building will be sited to the south of the Shell Cove Town Centre, with the marina to the east and wetlands to the north. **Figure 3** below details the location of the site in the context of the Shell Cove area.





Figure 3 - Location Map

The site forms part of a larger master planned area of Shell Cove. This application represents part of the gradual development of land within the Shell Cove area within the remit of the approved Shell Cove Boat Harbour Concept Plan 07\_0027 MOD 1 (Concept Approval).

**Attachment 4** details the background of this area and provides context for the history of the Shell Cove area and the application site.

As discussed in **Attachment 4**, a modification to the Concept Approval (formally known as s75W) was submitted and approved by the Independent Planning Commission on 18 March 2019 (MP07\_0027 MOD 1). This modification resulted in some fundamental changes to the layout, built form and floor space proposed. For Precinct C2 specifically:

- Increased apartment density along the waterfront. Two storey townhouses to the south west of the apartment site.
- Apartments in Precinct C increased from four storeys to up to five storeys.

The site sits to the south of the Town Centre within Precinct C2. Residential Precinct B2 to the south and Precinct C2 to the west. The site has frontage to Quayside Avenue to the south western boundary and public foreshore and water to the eastern boundary. **Attachment 3** includes site photos.

The application site was created by subdivision DA0287/2018 approved by the Panel in December 2019, this consent included roads and relevant drainage.

**Figure 4** below details approved subdivision plan with proposed site marked in red.

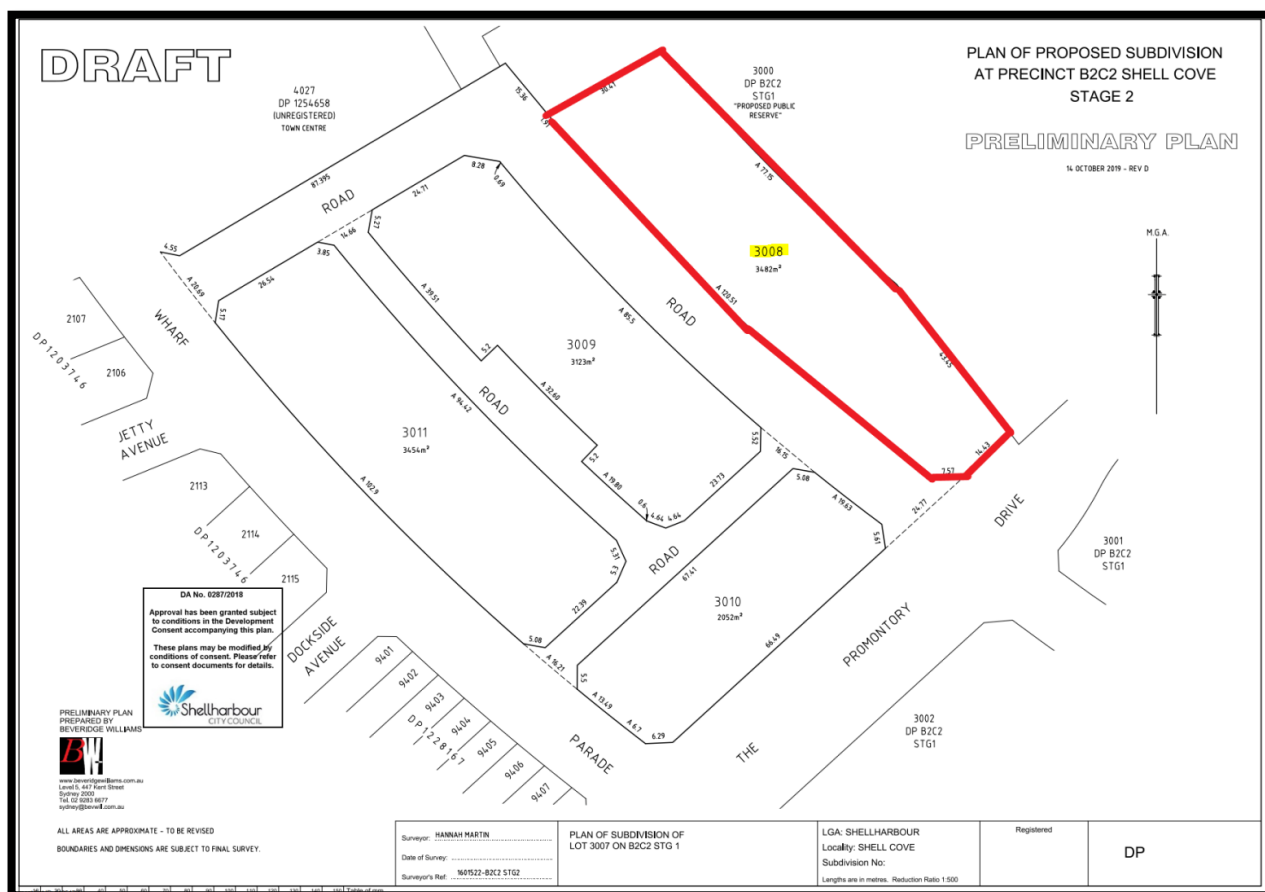


Figure 4 - Approved subdivision plan DA0287/2018

An extract from DP1258171 is included below in **Figure 5** with relevant lots highlighted.



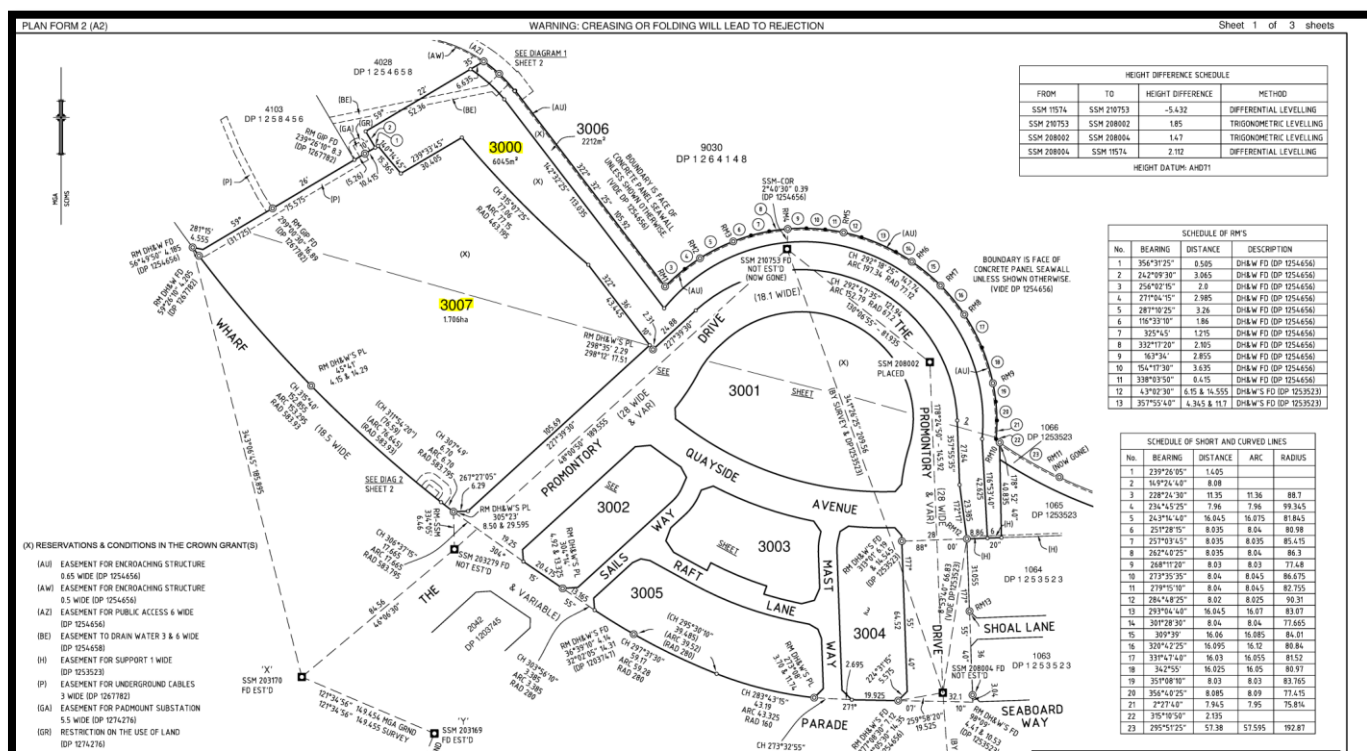


Figure 5 - DP 1258171 extract

## 2.3.2 Property Constraints

Council's records indicate that the land is affected by the following constraints:

- Aboriginal Heritage
- Flooding

## 2.3.3 Restrictions on Title

There are restrictions on the title as per the below:

- Easement for padmount substation 5.54 wide (A)
- Restriction on the Use of land (R) relating to the area surrounding padmount station
- Restriction on the Use of land (S) relating to the area surrounding padmount station.

## Council comment:

Development will not encroach into easement. Advice received from Endeavour Energy including conditions as detailed in Part H of **Attachment 1**.

## 2.4 Referrals

### 2.4.1 Internal Referrals

### Engineering Officer

Councils Engineering Officer has reviewed the proposal with regard to internal vehicle access, car parking provision and stormwater drainage and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

### **Floodplain Officer**

Councils Floodplain Engineering Officer has reviewed the proposal with regard to potential flood affectation and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

### **Community Life Officer**

Councils Community Life Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

### **Contributions Officer**

Councils Contributions Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

### **Waste Officer**

Councils Waste Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Amended plans were provided throughout the assessment period which allows for waste servicing on site, in a similar arrangement to that approved for the Tavern Building within Precinct D Town Centre. A plan of management has also been provided which demonstrates how the servicing is to occur. A number of conditions have been recommended in this regard, and have been included within the draft consent.

### **GIS Officer**

Councils GIS Officer has reviewed the proposal with regard to road numbering and addressing and provided recommended conditions which have been included within the draft consent.

### **Building Officer**

Councils Building Officer has reviewed the proposal with regard to the works compliance with the National Construction Code and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

### **Environment Officer**

Councils Environment Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

### **Landscape Officer**

Councils Landscape Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

## **2.4.2 External Referrals**

### **Endeavour Energy**

The proposal was referred to Endeavour Energy as the subject site is located within 5m of an exposed overhead electricity power line and the installation of an indoor substation is proposed. A response was received on 28.10.2021 raising no objections and recommended the imposition of conditions which have been included within the draft consent.

## Sydney Water

The proposal was notified to Sydney Water in accordance with Clause 78 of the *Sydney Water Act 1994* as the development application would increase the demand for water supplied by the Corporation. A response was received on 3.10.2021 raising no objections and recommended the imposition of conditions which have been included within the draft consent.

## Shellharbour Design Review Advisory Panel

In line with the Shellharbour Design Review Advisory Panel Policy and Part 3 of *State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)* the development has been considered by the Shellharbour Design Review Advisory Panel (DRP).

This development has been considered by the DRP at pre lodgement stage. The DRP concluded that the proposal was generally consistent with the Concept Approval and has the potential to provide a positive contribution to this precinct. Points raised in the advice and Council comment is included in **Table 1** below.

Table 1 - Design Review Panel Advice

DRP Comment	Council Comment
Further development of the building's interface with the foreshore	The interface between the public foreshore/boardwalk and the proposed development has been suitably considered and developed. This is discussed in detail in section 2.4.3 of this report.
Further development of the building's interface with the street (Quayside Avenue)	The interface with Quayside Avenue has been amended for the proposed development and the proposed retaining wall reduced to a maximum height of 1 metre. This was as per the advice from DRP and with the planting on top of the retaining wall and the sandstone utilised for the wall, the wall is considered a suitable interface with Quayside Avenue and the adjacent pedestrian walkway.
Increase the extent of communal open space	<p>The proposed development has increased the amount of COS by approx. 828.35sqm. The COS provided includes a mixture of gardens, BBQ and seating areas, lawn and a swimming pool. Internally there is also a gym and associated facilities.</p> <p>The DRP also raised that due to the design of the corridors within each building many of the residents will be required to leave the building in order to access the COS. The applicant has amended the design to include an identified walkway within the basement parking area, which could easily be utilised for residents who required an internal access arrangement to the COS. Plans detailing this pathway have been included in attachment 15 of this report. A condition of consent has also been recommended as follows:</p>

DRP Comment	Council Comment
	<i>Prior to the issue of a Construction Certificate, the pedestrian pathway as shown on drawing reference DA1809 issue C dated 20.05.2022 must be highlighted for users by the use of paving materials or coloured concrete. Details of these materials and colours are to be submitted to the Certifying Authority for approval and installed prior to the issue of an Occupation Certificate.</i>
Further detail refinements to improve amenity	Considerable amendments have been made to the proposal to increase the amenity of the residents. This includes internally for apartment layouts that had bathrooms opening into dining areas, which have been altered, and communal entrances across both buildings improved to increase area and accessibility.
Further development of the landscape plan to improve sustainability, functionality, amenity and relationships with adjoining landscapes/streetscapes.	The landscape plan submitted has been refined and provides suitable detail to allow Council's Landscape Officer to assess. A full assessment has been undertaken by Council's Landscape Officer and conditions recommended as included in Attachment 1 of this report.

The advice provided from the DRP at pre-lodgement stage has suitably shaped the design of the development. The applicant has suitably addressed the comments raised by the DRP and this has subsequently led to a more successful design. It was not considered necessary to send the proposed development back to the DRP during the assessment process as the issues raised have been suitably dealt with by the applicant, as permitted by the Policy.

### 2.4.3 Southern Regional Planning Panel Briefing Comments

A briefing statement was submitted to Panel on 16 March 2022. The following key issues were identified by the Panel and have been responded to accordingly:

#### Public/private interface between foreshore area and proposed development

The site adjoins public open space on the eastern side which is a public foreshore including a boardwalk and associated landscaping, Lot 3000 DP1258171. The public foreshore and associated landscaping has been approved under DA0402/2019. The application site is on higher ground than the public foreshore and retaining walls are proposed within the application site's boundary. No retaining walls are proposed within the public areas adjoining the site. These retaining walls have a maximum height of 0.9 metres with the land sloping up to the bottom of the retaining walls with landscaping and pedestrian access to the development proposed within this area. This difference in height changes from a minimum of approximately 1.4 metres to a maximum of approximately 2.45 metres.

The proposed landscape plans include details of the pedestrian access points through this area with **figures 6 and 7** showing the stepped access to the Communal Open Space, Pedestrian access way through the site (between building 1 and 2) and apartments 1-7.

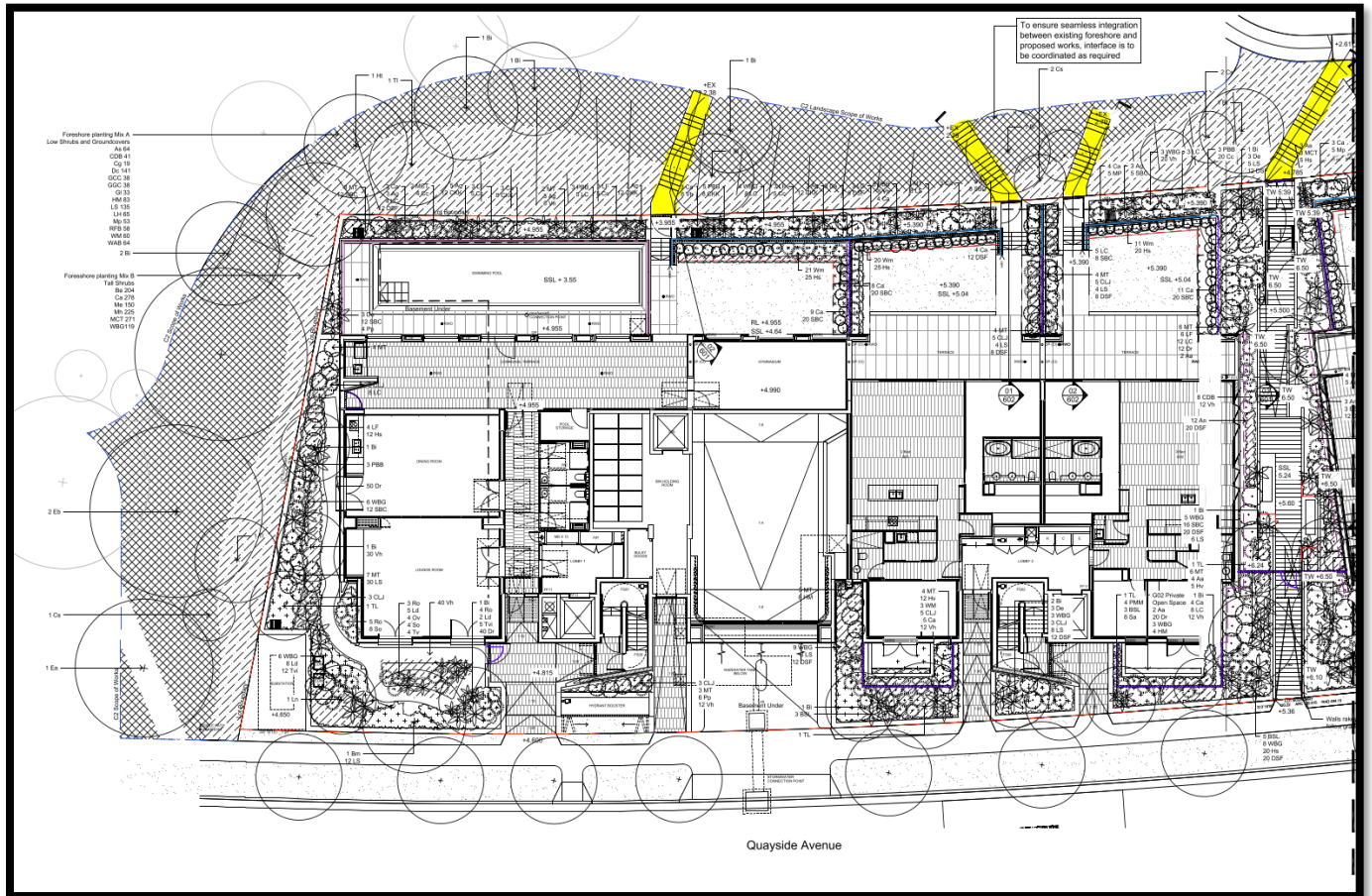


Figure 6 - Stepped access to COS, Pedestrian walkthrough and apartments 1 and 2



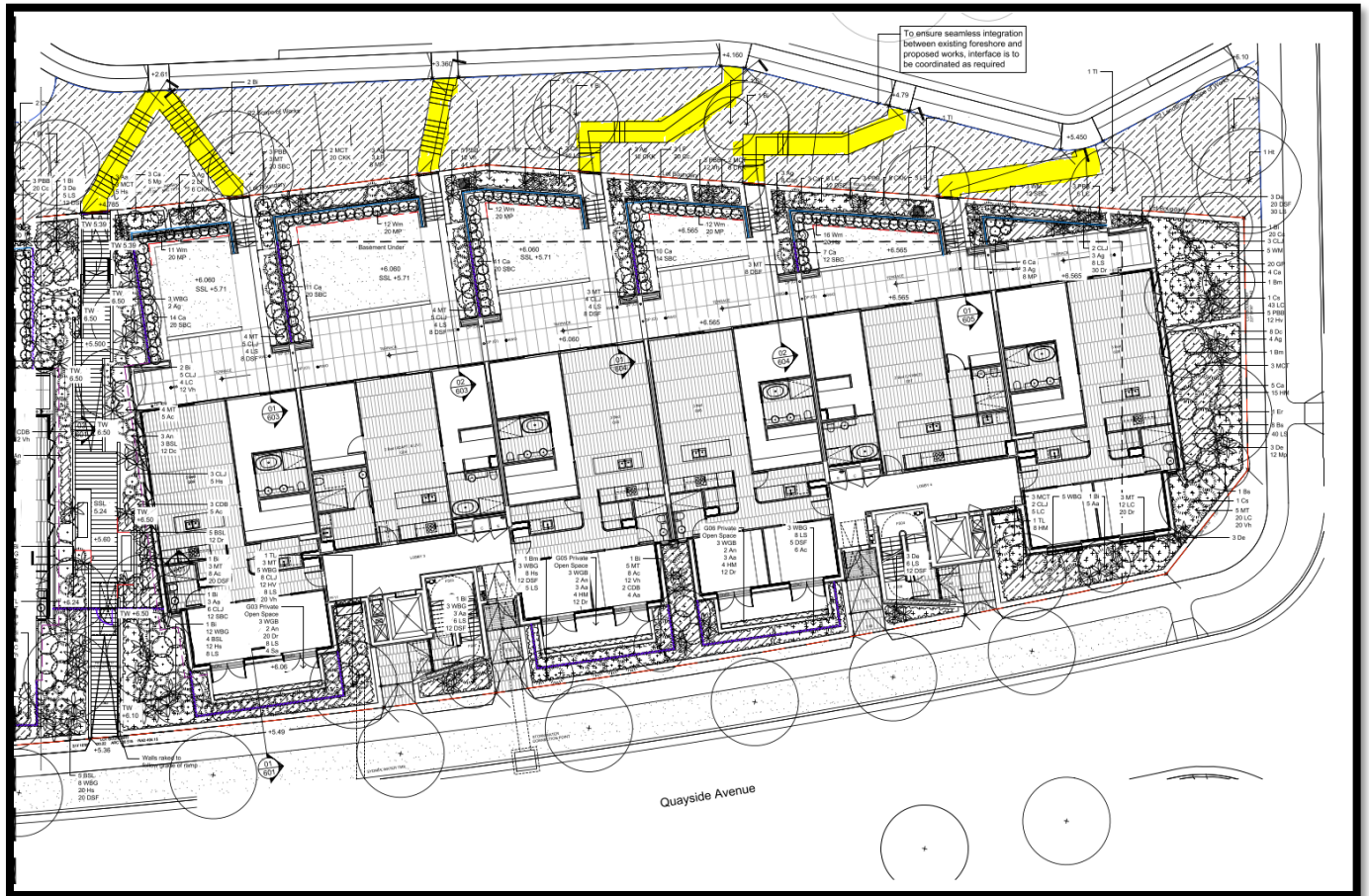


Figure 7 - Stepped access to apartments 3-7

The stepped access are located off the existing landings in the public foreshore ramp which provides a step free access from The Promontory Drive down to the public boardwalk.

**Figure 8** shows a section of the sloped area with details of the sandstone paving stairs to the private communal access way between Building 1 and 2.

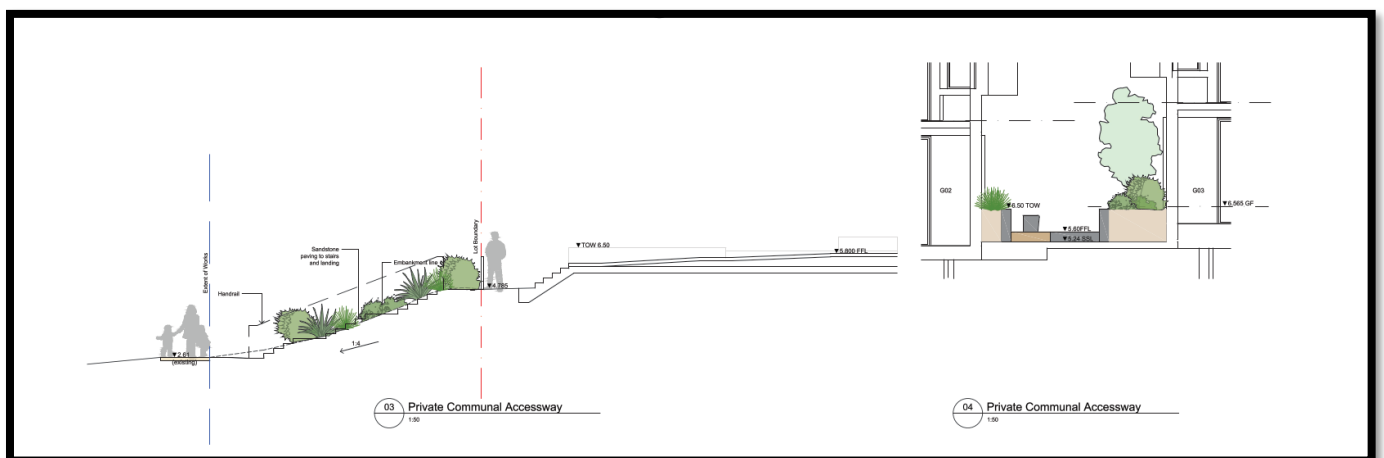


Figure 8 - Section detailing private pedestrian communal access way



**Figure 9** details a section of the access way to the Communal Open Space for the development from the eastern side of the site.

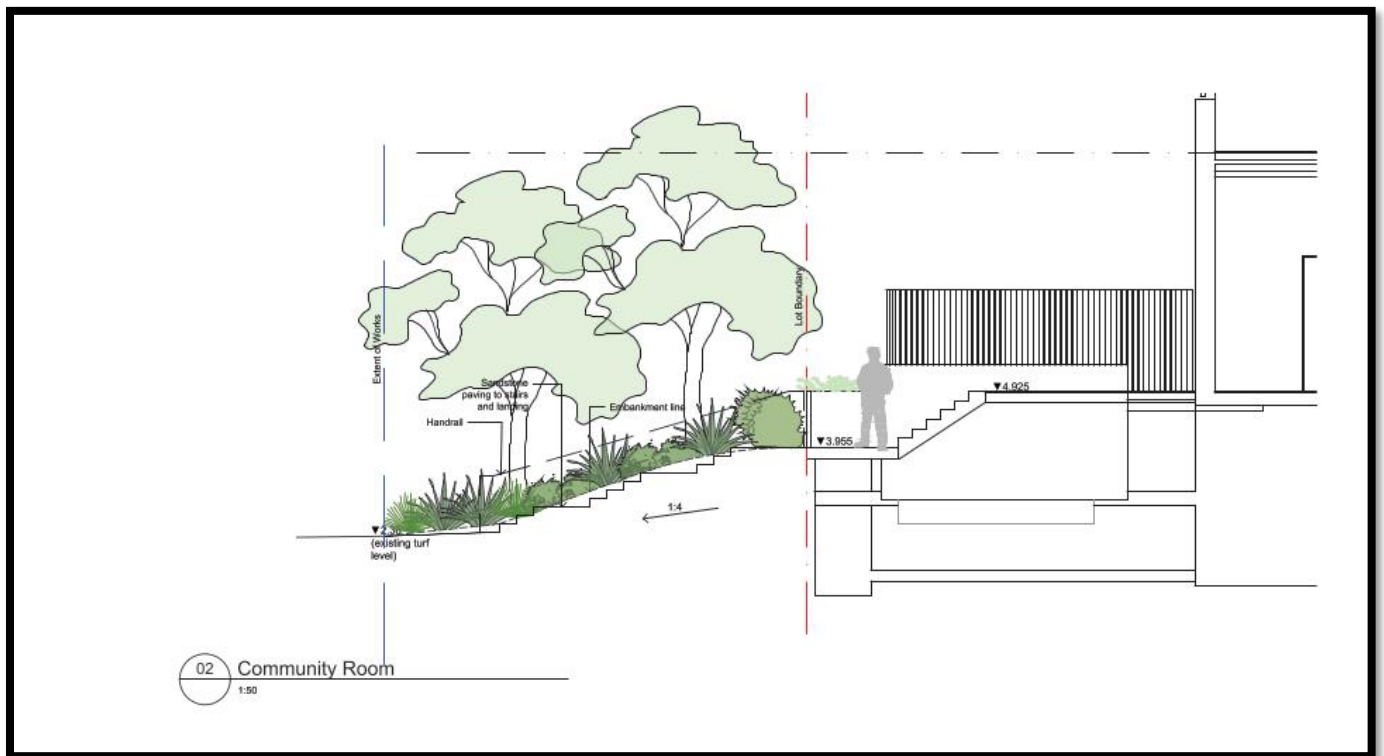


Figure 9 - Communal Open Space Pedestrian Access from public foreshore

There are also access points proposed for the ground floor apartments 1 – 7 which are shown in sections in **Figures 10 – 13**.

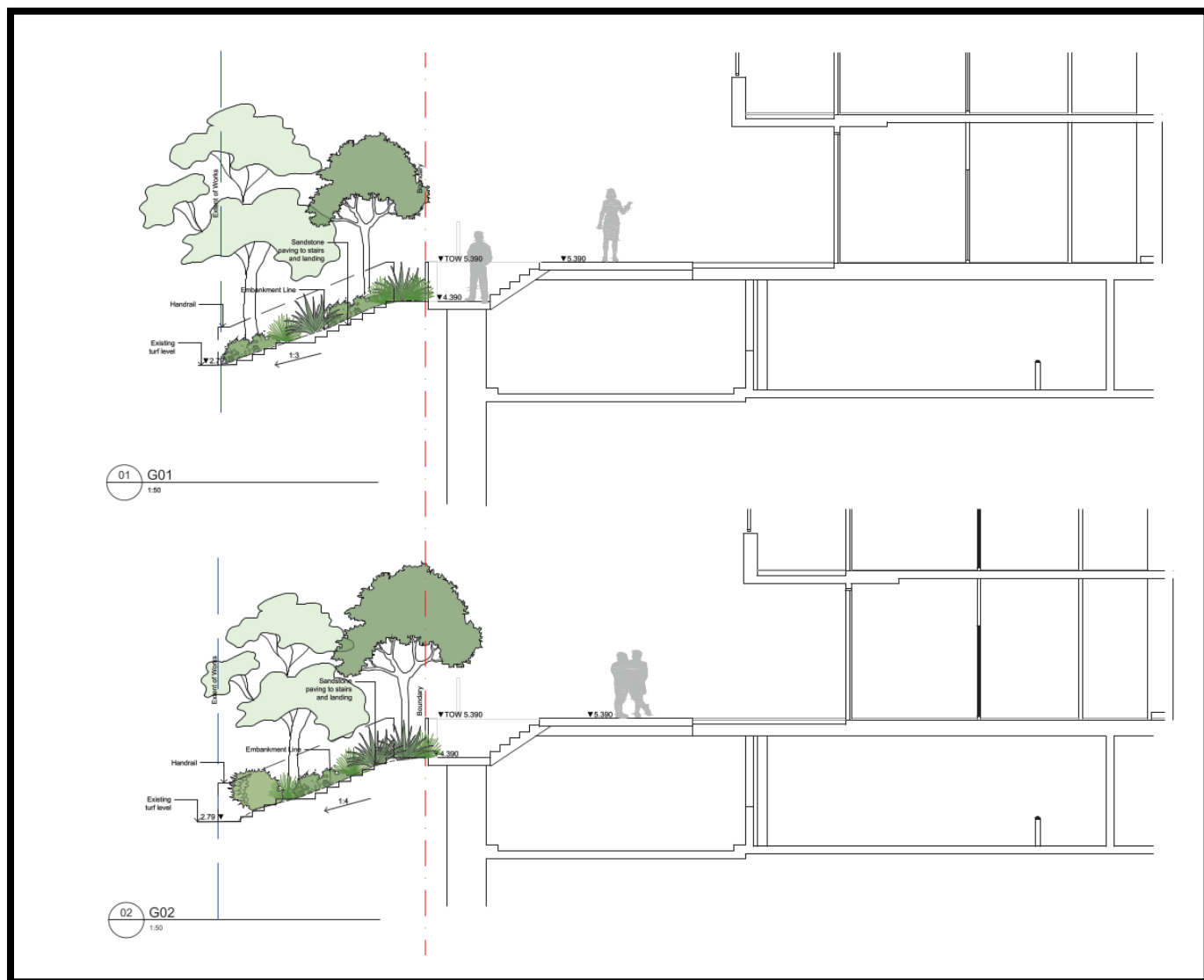


Figure 20 - Section detailing pedestrian access for apartments 1 and 2 from public foreshore



Figure 31 - Section detailing pedestrian access to apartments 3 and 4 from public foreshore

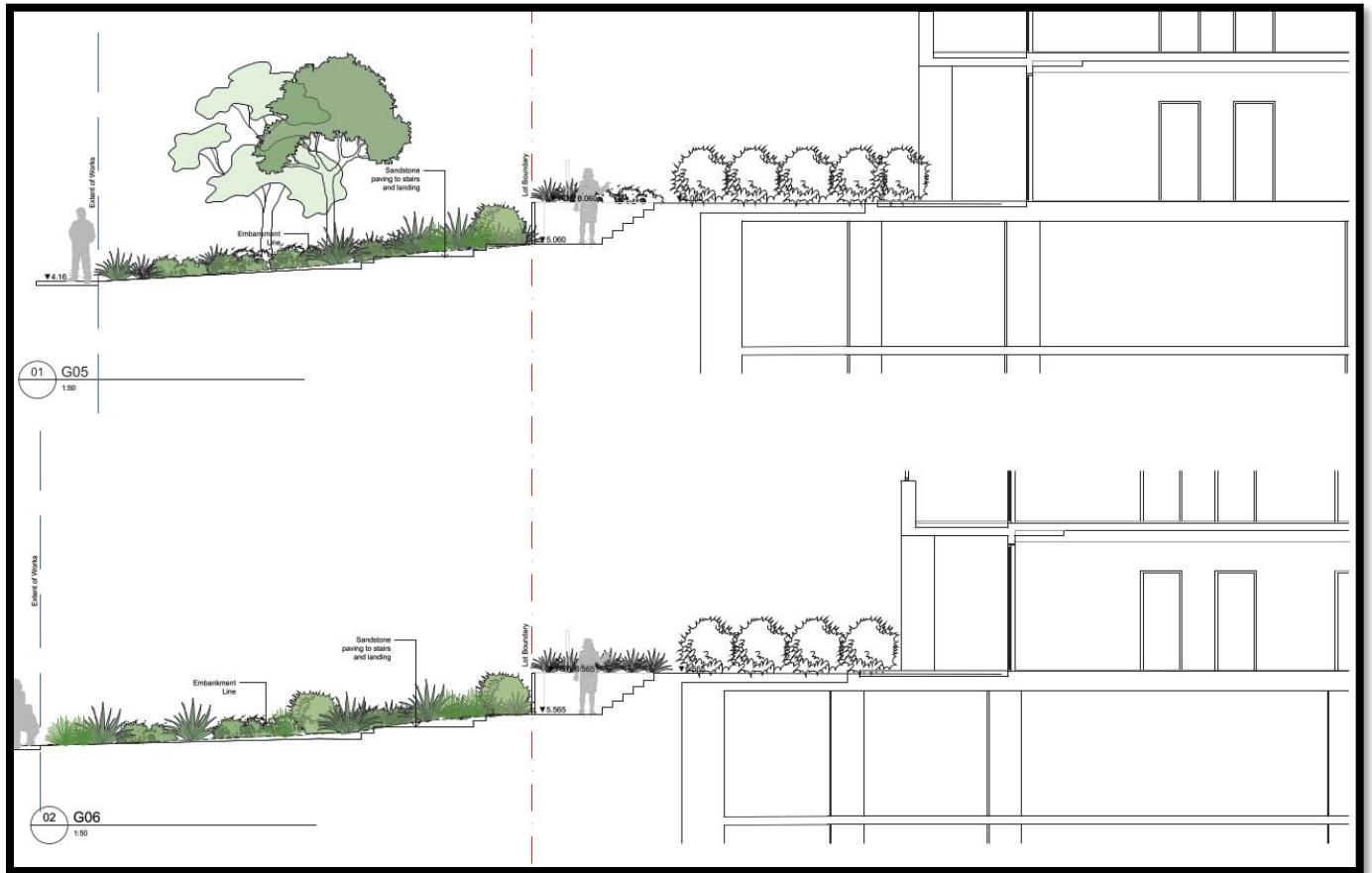


Figure 42 - Section detailing pedestrian access to apartments 5 and 6 from public foreshore

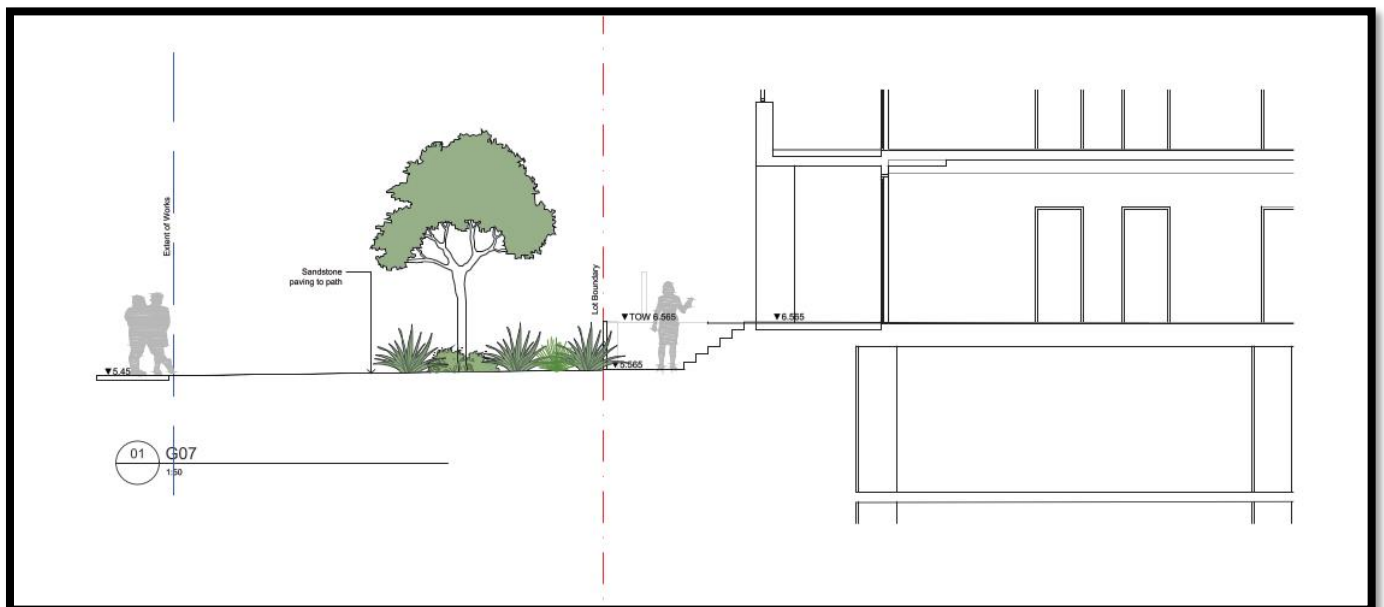


Figure 53 - Section detailing pedestrian access to apartment 7 from public foreshore

The retaining walls proposed will be sandstone in line with the proposed materials for the development. The planting proposed has been reviewed by Council's Landscape Officer and is supported. The sloping landscaped beds results in a reduced the overall height of retaining walls when viewed from the public



Lot 3007 DP1258171 (the application site) was created under DA0287/2018, which was approved by the Southern Regional Planning Panel in December 2019. **Figure 4** of this report shows the approved subdivision plan for DA0287/2018.

The landscaped area that is proposed on the public foreshore area (lot 3000 DP1258171) is shaded in the landscape plan included in **Figure 15** below.



Figure 75 - landscaped area on public foreshore lot included in dark green area.

### Future sea level rises in relation to site levels.

The Concept Approval required a number of further environmental assessment requirements as included in Schedule 3 Part C (addressed in **Attachment 7**). Condition C7 required the following:

*A detailed Flood Assessment, prepared by a suitably qualified person identifying flood affected parts of the land and showing how the proposed project at each stage will comply with Shellharbour City Council Floodplain Risk Management Development Control Plan (April 2006), (except where it is inconsistent with NSW State Government policy and guidelines), and comply with and the government's sea level rise and climate change benchmarks, current at the time of preparation of the Flood Assessment.*

A Flood Management Assessment was submitted and assessed under the Concept Approval and forms part of the approved documents and has been included as **Attachment 14** for information. This report included the assessment against the likely impacts of climate change, including sea level rises.

Flood modelling has been provided throughout the Shell Cove Project including for the proposed development. The subsequent development levels are taken from this with additional updated flood modelling informing the proposed levels.

### Waste servicing



The servicing of waste was originally proposed to be an on street collection. This was questioned by the Panel and not supported by Council. The applicant has since amended the operational waste management plan and now proposes an internal waste collection process. Further details of this have been included in section 4.7.ii of this report.

#### **ADG non compliances.**

Detailed discussion of compliance with the ADGs has been included in **Attachment 7** and section 4.2.4 of this report.

#### **Visual Impact assessment.**

Condition 19 of the Concept Approval requires a Visual Impact Assessment to be submitted with all stages of development for the Shell Cove Development Area. A Visual Impact Assessment has been submitted with the application and discussion of this assessment is included in section 4.7.i of this report.

#### **Temporary Stockpiling on adjacent land**

Addressed within section 4.7.ii of this report.

#### **Parking**

Addressed within section 4.7.iv of this report and **Attachment 10** - SDCP Compliance Table.

## **3. ASSESSMENT AGAINST CONCEPT APPROVAL**

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The Concept Approval was accompanied by a masterplan that sought to establish the characteristics for development within each precinct.

### **3.1 Land Uses**

The proposed development is consistent with the Concept Plan Land Uses by providing apartments/townhouses in this section of Precinct C2 as identified in the indicative housing typologies plan taken from page 19 of the Shell Cove Boat Harbour Precinct Section 75W Modification dated 8.8.2017 prepared by Ethos Urban, **Figure 16** below.

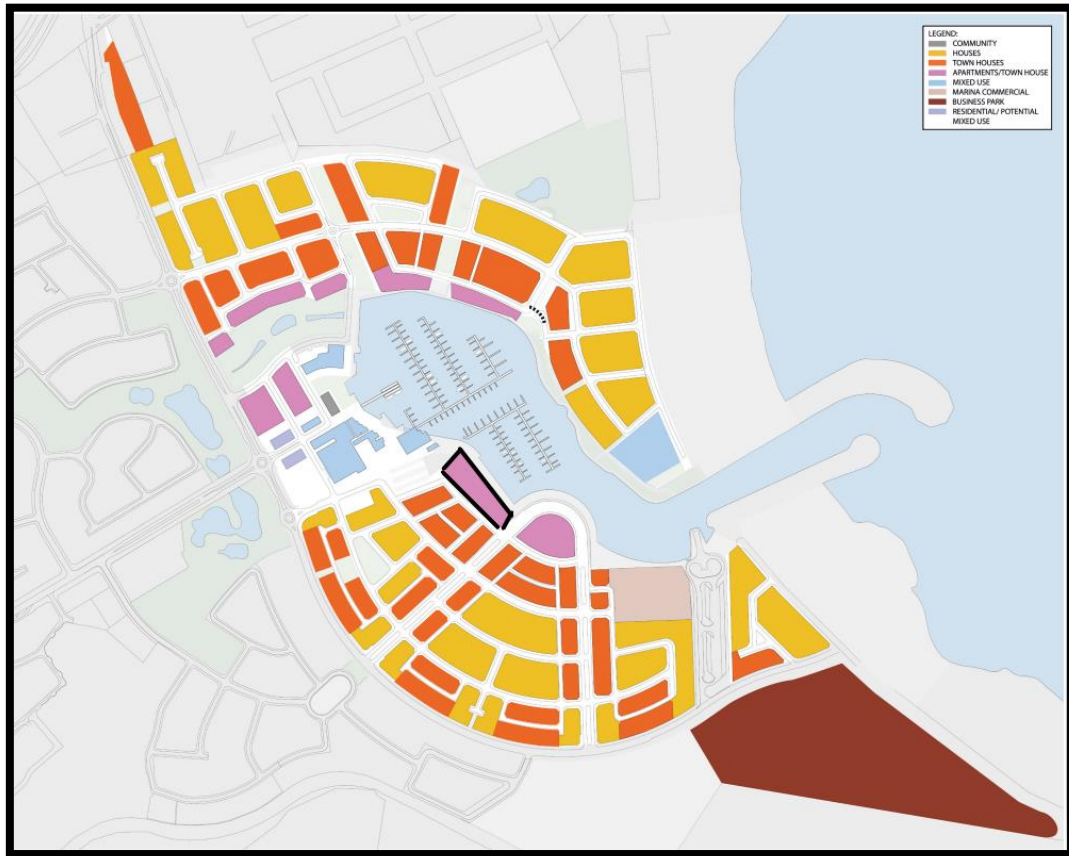


Figure 86 - Indicative Housing Typologies (application site outlined in black)

### 3.2 Dwelling Yield

This proposal is the first apartment development within Precinct C2 that has a residential component and proposes 52 residential apartments. The maximum dwelling yield for Precinct C2 is 100 - 150 dwellings.

The remaining lots within Precinct C2 are currently vacant with DA approval on for a total of 26 dwellings. These existing approvals and the proposed development leave a maximum of 72 dwellings for the remainder of Precinct C2, which is identified in the Indicative Housing Typologies Plan as townhouses (orange in **Figure 16**). The remaining lot yield will be suitably delivered over the remaining lots within Precinct C2.

For clarity, the remaining residential lots are shown in **Figure 17**.

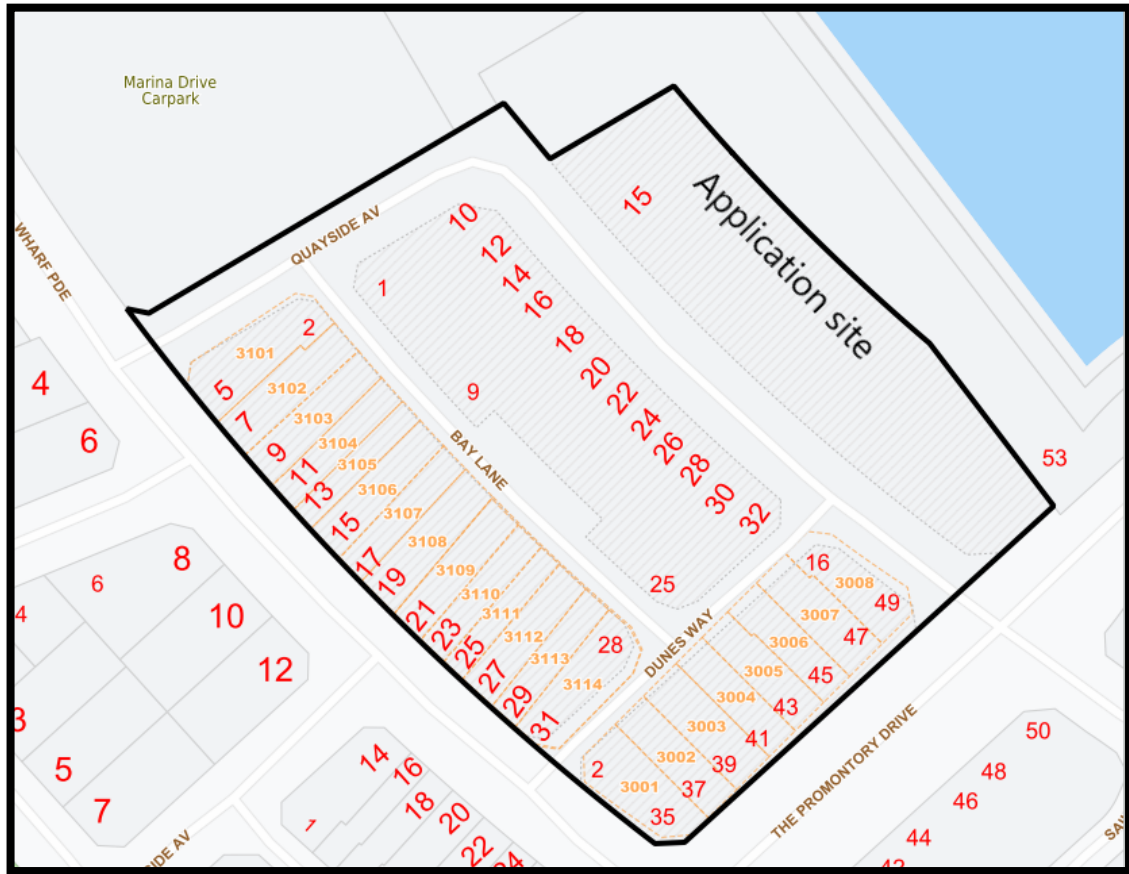


Figure 97 - Vacant residential remaining residential lots within Precinct C2

### 3.3 Height and number of storeys

The indicative height plan included in the Shell Cove Boat harbour Precinct Section 75W Modification on page 20 indicates that the indicative height in the portion of Precinct C2 to which this proposal relates permits a maximum of 5 storeys in height (19 metres). **Figure 18** below shows the indicative height plan.



Figure 108 - Indicative Height Plan (application site outlined in black)

The proposed development will have a maximum height of approximately 16 metres. The proposal includes two five storey buildings.

Based on the above, the proposal is suitably consistent with the Concept Approval for the following reasons:

- the development is within the 5 storey, 19 metre height limit,
- The number of dwellings proposed is within the dwelling yield for Precinct C2,
- The development will provide apartments which is consistent with the type of accommodation indicated by the Concept Approval.

In addition to the main points discussed above, **Attachment 6** contains a compliance table reviewing this proposal against the Terms of Approval, Further Assessment Requirements and Statement of Commitments. Overall, the development is generally in compliance with the Concept Approval.

The proposed development includes two five (5) storey buildings. The proposed materials are consistent with the Design Guidelines for Precinct C2 and offer a contemporary interpretation of the coastal palette. The proposed materials and colours have been used to differentiate building elements and articulate the façade. The design's consistency with the Concept Approval is demonstrated within the Architectural Drawings included within **Attachment 2**.

#### **4. SECTION 4.15 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

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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:

##### **4.1 Biodiversity Conservation Act 2016**

Section 1.7 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides that the Act has effect subject to the provisions of Part 7 of the [Biodiversity Conservation Act 2016](#) (BC Act).

Part 7 of the BC Act relates to Biodiversity assessment and approvals under the EP&A Act where it contains additional requirements with respect to assessments, consents and approvals under this Act. In this instance, no native vegetation is proposed to be removed and therefore the proposal does not trigger the requirement for a biodiversity offset scheme

##### **4.2 Section 4.15 (1) (a)(i) - environmental planning instruments**

###### **4.2.1 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 \$44,983.00 and is on land owned by Council. The area is also part of the Shell Cove Project as a collaboration between Shellharbour City Council and the developer, Frasers Property Australia. Therefore, the development is classed as regionally significant Under Part 4, Division 4.2, Section 4.5 (b) of the *Environmental Planning and Assessment Act 1979* the Regional Planning Panel for the area (Southern) is designated as the consent authority.

###### **4.2.2 State Environmental Planning Policy (Resilience and Hazards) 2021**

##### **Chapter 2 Coastal Management**

The aim of this Policy is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- a) managing development in the coastal zone and protecting the environmental assets of the coast, and
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.



Section 5 of the Coastal Management Act 2016 provides that the coastal zone means the area of land comprised of the following coastal management areas—

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

The lot is not included in the coastal use area as shown in **Figure 19**, however part of the lot including the landscaping proposed along the public foreshore is included in the Coastal Use Area and therefore this SEPP has been addressed.

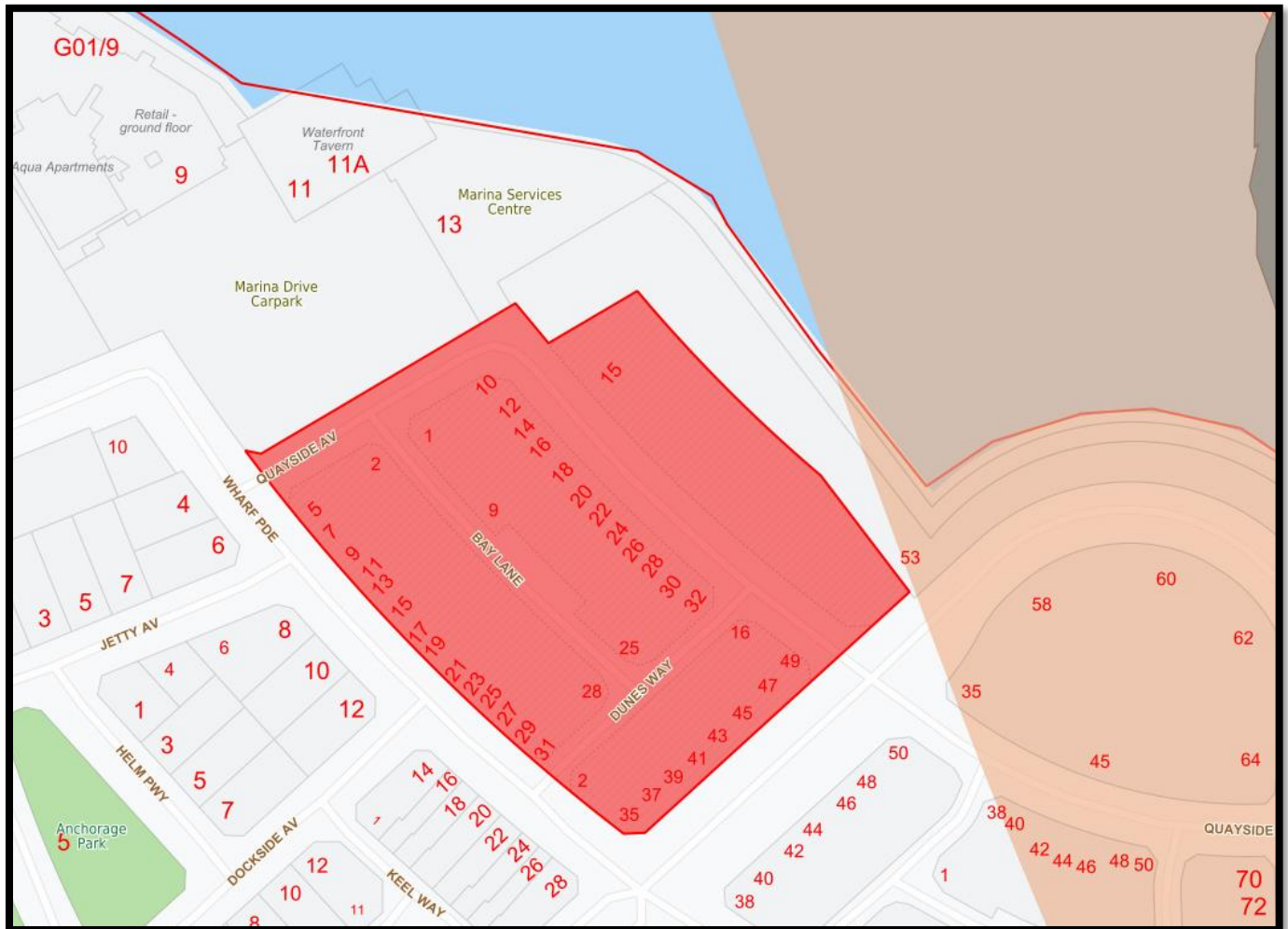


Figure 19 - Coastal Use Area Map - Coastal Use Area shown in peach

## 2.11 Development on land within the coastal use area

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
  - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*



- (iv) *Aboriginal cultural heritage, practices and places,*
    - (v) *cultural and built environment heritage, and*
  - (b) *is satisfied that:*
    - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

**Comment:** The proposed development adjoins the public foreshore area and includes resident only access from the site directly into the foreshore/boardwalk area. The development will not restrict public access in anyway and proposed landscaping between the development site and the public walkway has been included to compliment the public areas. The development will not result in significant overshadowing of the foreshore area, impacts on the visual amenity of the coast, Aboriginal cultural heritage or cultural or built environmental heritage.

(2) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

**Comment:** The subject site is not located within the Foreshores and Waterways Area.

## **Division 5 General**

### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

**Comment:** Council is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the subject land or any other land.

### **2.13 Development in coastal zone generally—coastal management programs to be considered**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.*

**Comment:** The Shellharbour Coastal Zone Management Plan does not recommend any works that would affect or which relate to the subject site.

### **2.14 Other development controls not affected**

*Subject to clause 7, for the avoidance of doubt, nothing in this Part:*

- (a) *permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
- (b) *permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*

**Comment:** noted.

## **2.15 Hierarchy of development controls if overlapping**

*If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:*

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

**Comment:** The subject lot is located within the Coastal Use area only.

## **Chapter 4 Remediation of Land**

The aim of this Chapter of the SEPP 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 policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated.

Clause 4.6 requires a consent authority to consider whether the land is contaminated and if it is contaminated it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out.

The former Council Landfill on the Shell Cove site (3.7 ha) was remediated in 2009 and the Site Audit Statement by Environ (03/11/2009) confirmed that the remediation was successful and the land is suitable for low to medium residential use.

The site of proposed development is not mapped within contaminated land, and the Contaminated Land Comment (Douglas Partners, 2018) prepared as part of DA0287/2018 and submitted along with this application confirms that no further assessment is required on the site. Council has considered whether the land is contaminated as detailed and is satisfied that the land has no contamination issues and the proposed use is suitable on this site.

A Contamination Unexpected Finds protocol will be included as a recommended condition as follows:

### ***Contamination - Unexpected Finds Contingency***

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

*In the event that contamination remediation is required, all works must cease and the Council must be notified immediately. The contamination assessment must be submitted to Council for Approval.*

*All recommendations provided in the contamination assessment must be followed as stipulated.*

## **4.2.3 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate has been issued for the relevant sections of the development and relevant conditions requiring the fulfilment of commitments have been recommended, and in this regard, the aims of the Policy have been satisfied. Suitable conditions recommended to ensure compliance.

#### **4.2.4 State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development**

This Policy applies to development for the purposes of a residential flat building which has at least 3 storeys and more than 4 dwellings. The proposed development comprises five storeys and is proposed with 52 residential units.

Part 4 of the Policy relates to the Application of design principals to development applications.

Clause 28 of the SEPP provides controls for the determination of development applications. Please see below for comments in response to each part of Clause 28.

- (1) *After receipt of a development application for consent to carry out development to which this Policy applies (other than State significant development) and before it determines the application, the consent authority is to refer the application to the relevant design review panel (if any) for advice concerning the design quality of the development.*

Comment: Shellharbour City Council has formed a Design Review Advisory Review Panel which provides advice on applications made under SEPP 65 and other certain application types. The proposal was referred to the DRP on 09.08.2021, prior to the lodgement of the application. The application as lodged has adequately responded to the matters identified by the DRP and therefore was not required to be referred back to the Panel, as discussed at **Section 2.4.2** above.

- (2) *In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

- (a) *the advice (if any) obtained from the design review panel, and*

Comment: All comments from the DRP have been suitably addressed by the Applicant and are discussed in detail at Section 2.4.2 above.

- (b) *the design quality of the development when evaluated in accordance with the design quality principles, and*

Comment: The proposal has been assessed against the Design Quality Principles for residential apartment development. The consistency of the proposal against these principles are discussed below:

#### **Principle 1: Context and Neighbourhood Character**

The context for the proposal is a master planned urban area identified as Shell Cove Urban Release Area. The site is surrounded by a road to the west, with the Shell Cove Marina Services Building and public open space to the north and public foreshore adjoining to the east. The superlots to the west of the application site are currently vacant. The Concept Approval highlights these lots as residential housing with a maximum height of 12 metres and two storeys. The development is part of key views from the water and public foreshore.

The contextual benefits for residents including views of the Marina/Ocean area and public boardwalk area around the Marina, views onto the public open space and surrounding residential areas will outweigh any potential conflicts relating to strict non-compliances with the ADGs. The development is considered to respond and contribute to the context and neighbourhood character of the area.

## Principle 2: Built Form and Scale

The built form will provide for apartments that meet the needs of residents in this location, without negatively impacting on the surrounding locality. In addition, the built form is capable of responding to the coastal setting of the area. The height and density of the development is compliant with the Concept Plan with a maximum of five storeys.

The proposal has benefited from a rigorous assessment process, including pre-lodgement advice from the Design Review Advisory Panel. This process has helped shaped the design of the development and has led to a more successful design. The bulk and scale of the development is considered to be appropriate to the existing and future desired character of the street and surrounding built form.

## Principle 3: Density

The density proposed includes a mix of apartment types with 2 or 3 bedrooms with suitable facilities. The dwelling yield proposed complies with the maximum limit for Precinct C and the mix within the building as outlined within the Concept Approval.

Of the 52 apartments, it is noted in the supporting information that 6 apartments (11.5%) are proposed to be designed in accordance with *Australian Standard 4299-1995 Adaptable housing*, these apartments and an additional 5 of the total apartments also incorporate the Liveable Housing Design (LHD) Guidelines silver level universal design features.

SEPP 65, Part 4Q requires 20% of apartments to meet Silver level LHD Guidelines. These guidelines require apartments to meet performance statements for the following categories:

- Dwelling access,
- Dwelling entrance,
- Internal doors and corridors,
- Toilet,
- Shower,
- Reinforcement of bathroom and toilet walls, and
- Internal stairways.

The nominated 11 apartments (21%) are required to meet the Silver level LHD Guidelines as required by condition (below) included in **Attachment 1**.

### ***Liveable Housing Design Guidelines***

*Prior to the issue of an Occupation Certificate, certification from an appropriately qualified person must be provided to the Principal Certifier certifying that eleven (11) of the residential apartments have been constructed to meet the performance requirements of Silver Level Liveable Housing Design Guidelines (or updated standards).*

## Principle 4: Sustainability

The provision of 52 apartments on the site is consistent with the Concept Approval, leaving a maximum of 88 dwellings for development within the remaining lots of Precinct C, as shown in **Figure 6**.

The apartments have been designed having regard to thermal performance, provision of reasonable amenity to occupants and therefore an efficient use of energy supply. The provision of sun screening devices and compliance with cross ventilation requirements will minimise use of air conditioning.

The design and orientation of the apartments will maximise access to natural light and views across the Shell Cove locality.

The BASIX and NatHERS assessments detail that the development will achieve the required water targets and thermal comfort. The energy usage of the proposed apartments exceeds BASIX limit of 30%, this level is calculated on the efficiency of fixed appliances that will be used.

All apartments also have solar control such as overhangs, balconies and screening to provide shading in summer. Landscape spaces throughout the development have been designed to maximise solar access, watering and plant management.

### **Principle 5: Landscape**

The landscape design provides for a variety of uses for residents to enjoy the Communal Open Space (COS) areas, swimming pool, and paved areas. The non –compliance of deep soil zones has been considered and accepted as satisfactory as discussed in section 4.2.4.2 below.

The COS will be available for all residents to use and will include a gym, lounge area, swimming pool, indoor kitchen and dining room. Whilst these areas do not include any deep soil area it is noted that residents can access the wider development and public domain provided in Shell Cove development. This includes public open space within the public foreshore running along the east of the site, which provides a walking trail around the whole of the Marina edge. In this context the residents will generally be reliant upon the COS located in this development and supplement this with the wider public domain context for their exercise and enjoyment which overall will provide a high level of amenity.

### **Principle 6: Amenity**

The wider context of Shell Cove includes a range of opportunities for connectivity to desired services and amenities. This will be successfully combined with the size and scale of secure and accessible COS provided within the site to provide suitable amenity for future residents.

The proposed apartments are open plan design with appropriate room dimensions (see discussion in section 4.2.4.4 below). Solar access to the apartments is satisfactory (see discussion in section 4.2.4.5 below) and cross ventilation achieves the required levels.

Residential parking is secure and all provided within the basement parking areas. Bulky storage provision is included in the basement parking areas with secure cages for each apartment provided. In addition to this, each apartment will have compliant internal storage.

### **Principle 7: Safety**

The pedestrian residential entry points are clearly defined from the public domain and include secure glass sliding doors facing the street which allows for passive surveillance. Vehicle access is separate to the pedestrian entrances provided and access to all COS will be restricted from general public access. Secure access to building entries, carpark, basement lifts and COS is to be controlled via swipe key access for residents.

Externally the design provides a site-specific design resulting with appropriate pedestrian consideration and movement.

### Principle 8: Housing Diversity and Social Interaction

The mix of apartment's types and sizes is reasonable. The design adequately considers the promotion of social interaction, having appropriate COS and reasonable sized lobbies.

As discussed above of the 52 apartments, 6 apartments (11.5%) are proposed to be designed in accordance with *Australian Standard 4299-1995 Adaptable housing*, these apartments and an additional 5 (21%) of the total apartments also incorporate the Liveable Housing Design (LHD) Guidelines silver level universal design features.

### Principle 9: Aesthetics

The proposed treatments and finishes are of a high quality and suited to the coastal location and will provide for consistency with existing and approved developments within Precinct B to the south and D to the north. The proposal contributes to the desired future character of the area as controlled by the Design Guidelines Precinct B2 and C2.

#### *(c) the Apartment Design Guide.*

Comment: An assessment of the proposal against the Apartment Design Guidelines (ADGs) is detailed in the compliance table included as **Attachment 7**. The proposal seeks variations to the following ADG components:

**4.2.4.1-Objective 3D-1** requires an area of Communal Open Space (COS) which has a minimum area equal to 25% of the site. The site area is 3,482sqm requiring a minimum of 870.5sqm of COS.

The proposal provides 596sqm (17.1% of the total site area). The development also includes 149sqm (4.3% of the total site area) of communal internal space including a lounge room, dining room and gymnasium. The total communal open space (internal and external) equates to 745sqm (21.4% of the total site area), shown in **figure 20** below.



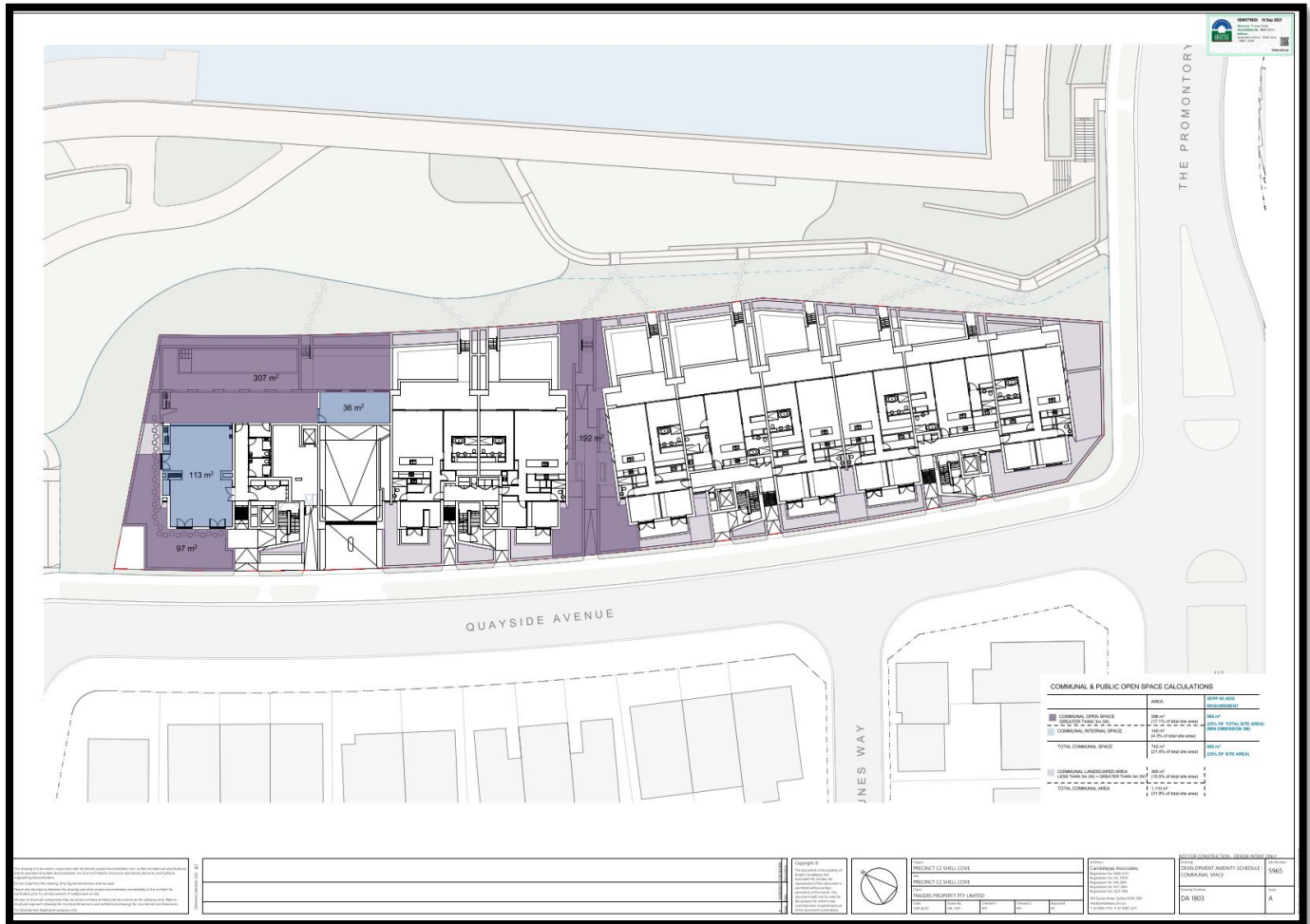


Figure 110 - Communal Open Space

In addition, 365sqm (10.5% of the total site area) communal landscaped area is provided and surrounds the perimeter of the built form. These areas will provide visual amenity and aesthetically pleasing outlooks when viewed from apartments and other communal open spaces. As shown in **Figure 21** below not all of these areas are accessible for residents.

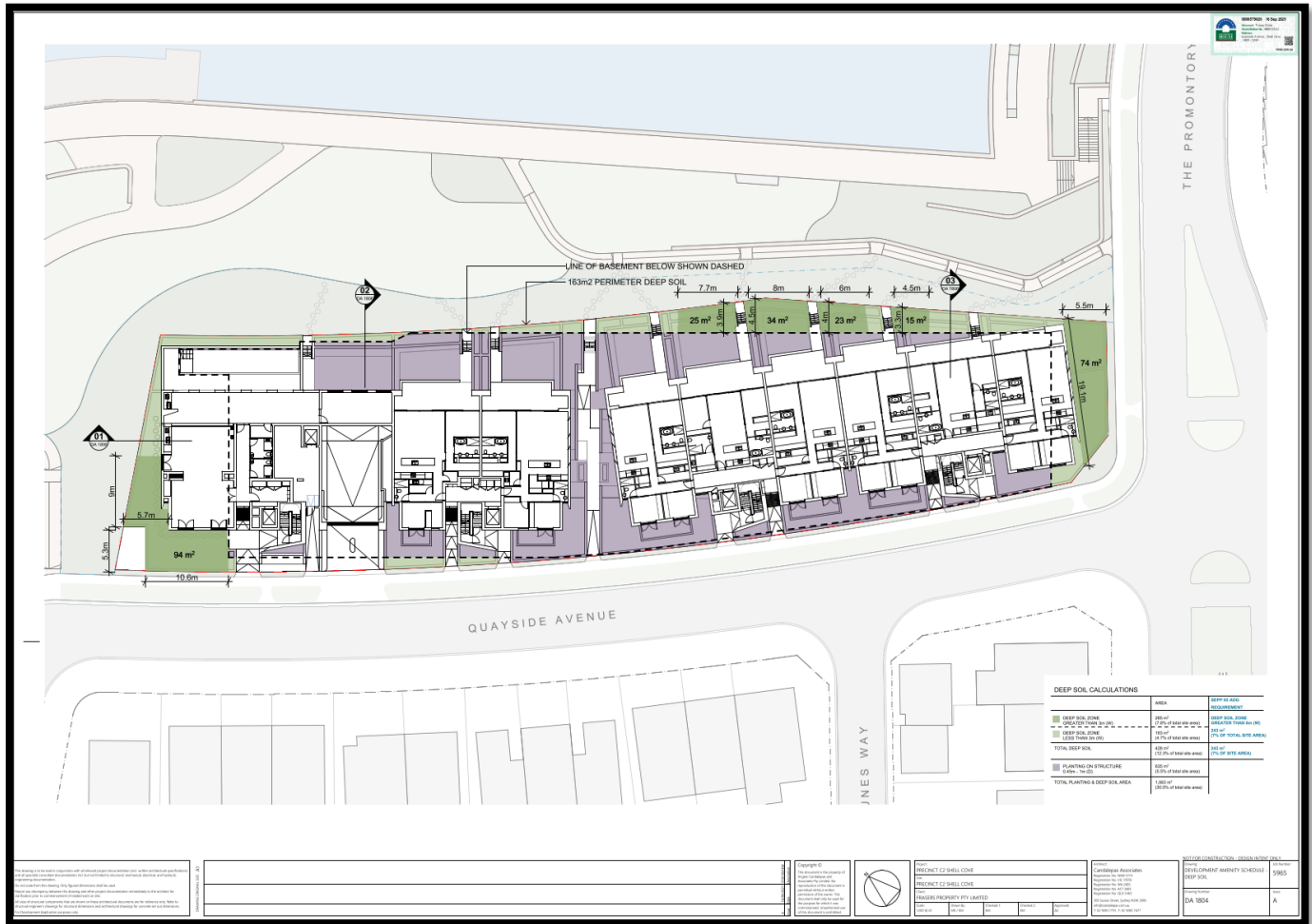


Figure 121 - Landscaped Communal Open Space areas

Including all these areas the total communal space and communal landscaped area proposed on the site is 1,110sqm, 31.9% of the total site area.

Council is satisfied with the amount and level of COS provided for the development for the following reasons:

- The proposal is consistent with Objective 3D-1 as it enhances residential amenity and provides opportunities for landscaping.
- The COS has suitable solar access as required by part 2 of objective 3D-1. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).
- The COS areas allow for a range of activities and are suitably mixed in use, providing a swimming pool, outdoor kitchen/BBQ area and communal garden.
- The development site is located within the Master Planned Shell Cove area which includes a variety of public open spaces. The adjoining public foreshore/boardwalk is a 2.5km walk around the entire marina development with public parks and seating areas included.
- The COS has been suitably designed to maximise safety through location, private access, suitable planting and the well lit design.

**4.2.4.2 Objective 3E-1** requires 7% of the site area with a minimum dimension of 6 metres to be a deep soil zone. The development does not include any areas of deep soil zones that have a minimum dimension of 6 metres. The proposal does provides 7.6% (265sqm ) of deep soil that is between 3m and 5.7m, and 4.7% (163sqm ) of deep soil that is less than 3m, see **Figure 22**.

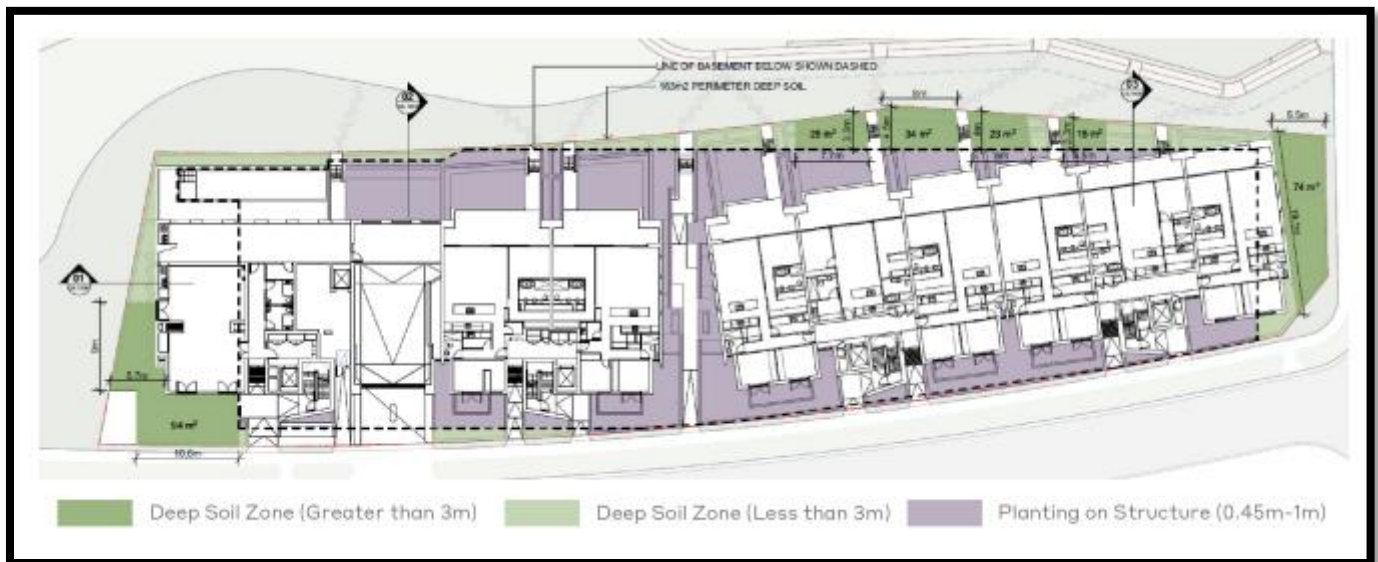


Figure 132 - Deep Soil Zones

Council is satisfied with the amount of deep soil zone provided for the following reasons:

- i. The landscaping provided will allow healthy plant and tree growth and is considered suitable for the development.
- ii. The benefits of the basement level, both to residents and the impact of the development on the streetscape, are considered to outweigh the requirement for deep soil zones over 6 metres in dimension.
- iii. The development site is part of a larger master planned project which includes significant and substantial planting. Whilst this does not replace the requirement for deep soil zones it puts the development into the context of its surroundings. Residents will benefit from the landscaping surrounding as well as within the development.

**4.2.4.3 Objective 3F-2** requires separation between windows and balconies to ensure visual privacy is achieved. Minimum required separation distances for building heights up to 25 m (5-8 Storeys)

- habitable rooms and balconies - 9 metres
- non-habitable rooms: 4.5 metres.

The proposal includes two buildings which are separated by a minimum distance of 3.8 metres widening to a maximum distance of 8.8 metres, detailed in **figures 23 and 24** below.

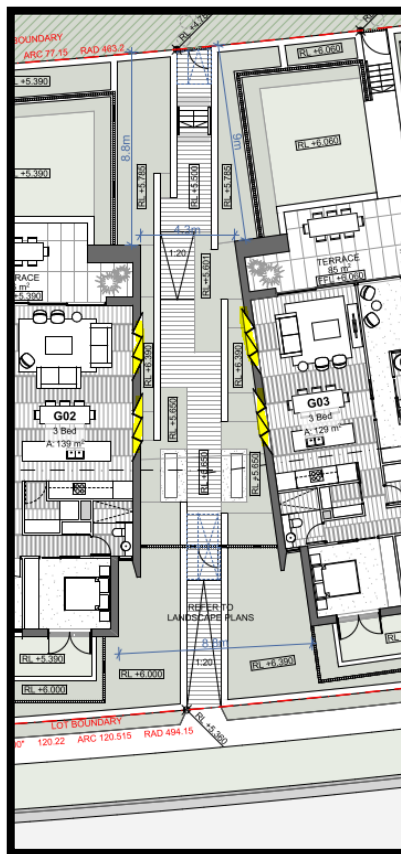


Figure 23 - Building separation (ground floor)

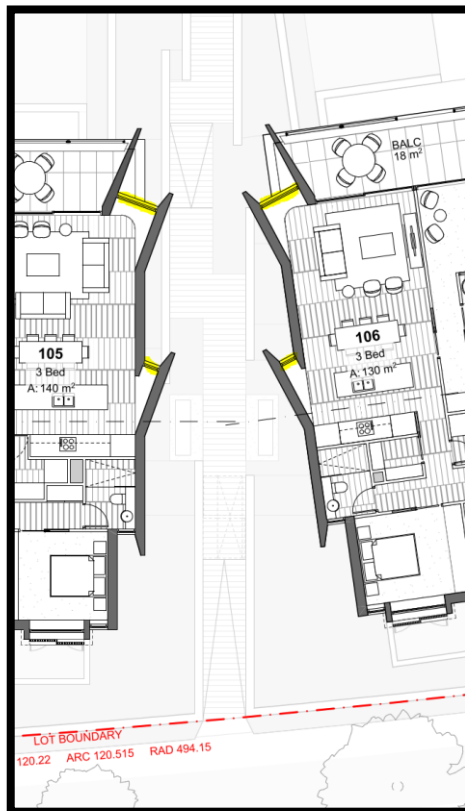


Figure 24 - Building separation (first floor and above)

The habitable room windows for the apartments adjoining the area between the buildings will be angled to ensure that views between the windows are not possible. These windows will serve the open plan living/dining/kitchen area in the apartments affected but these are secondary windows, the primary window being floor to ceiling glazing with doors to balconies.

The objectives of 3F-2 are met in that visual privacy is achieved between the two buildings for the following reasons:

- i. angles of the windows,
- ii. design of the blade walls that extend past the windows to prevent views across to the opposite elevation,
- iii. secondary windows which are not main source of view or light to room.

#### 4.2.4.4 Apartment Size and Layout

**Objective 4D-2** requires that environmental performance of the apartment is maximised. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

The proposed development includes a total of 12 apartments that exceed the 8 metre room depth by a maximum of 0.8 metres.

The affected apartments include additional amenity to alleviate non-compliance through a wider habitable room of 4.3 metres, and over sized, east facing balconies which have water views. Therefore the exceedance is acceptable.

#### 4.2.4.5 Solar access

**Objective 4.1A (2)** requires that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours of direct sunlight between 9am and 3pm mid-winter.

Direct solar access is achieved for a minimum of three hours within the 9am-3pm time period, mid winter, for 30/52 apartments (58%). Direct solar access is achieved for a minimum of three hours to the private open space of 100% of apartments between 9am and 3pm mid winter.

Justification for this variation has been submitted by the applicant within the Statement of Environmental Effects. A summary of this justification is provided below.

- i. The proposed design includes living rooms for all apartments set back behind balconies which will result in reduced solar access mid winter for apartments identified in **Table 2** below. This design will provide suitable privacy for the living rooms and will maximises shading in summer to these rooms. In addition a desired floor layout is achieved with the private open space directly accessed from the living rooms.
- ii. The easterly aspect for all apartments maximises water views.
- iii. The applicant has identified key amenity categories within the ADG required for each apartment and provided a compliance table (Table 2). It is shown that the majority of the apartments with non-compliant solar access achieve compliance in the key areas of.
  - Natural ventilation
  - Ceiling heights
  - Apartment size and layout
  - Larger private open space and balconies
  - Common circulation and spaces
  - Storage



- Acoustic privacy.

Table 2 - Summary of apartment performance against key ADG amenity criteria

Apartment (beds)	4A Solar Hours (9am-3pm)	4B Natural Ventilation	4C Ceiling Heights	4D Apartment Size (m <sup>2</sup> )	4E Private Open Space (m <sup>2</sup> )	4F Common Circulation	4G Storage (m <sup>3</sup> )	Criteria Satisfied
102 (2B)	2.25	x	✓	95 (+20m <sup>2</sup> )	24 (+14m <sup>2</sup> )	✓	✓ (+1m <sup>3</sup> )	7/9
103 (3B)	2.25	✓	✓	128 (+33m <sup>2</sup> )	20 (+8m <sup>2</sup> )	✓	✓	8/9
104 (3B)	2.25	✓	✓	139 (+44m <sup>2</sup> )	25 (+13m <sup>2</sup> )	✓	✓	8/9
105 (3B)	2.25	✓	✓	140 (+45m <sup>2</sup> )	23 (+11m <sup>2</sup> )	✓	✓	8/9
202 (2B)	2.25	x	✓	95 (+20m <sup>2</sup> )	28 (+18m <sup>2</sup> )	✓	✓ (+1m <sup>3</sup> )	7/9
203 (3B)	2.25	✓	✓	128 (+33m <sup>2</sup> )	24 (+12m <sup>2</sup> )	✓	✓	8/9
204 (3B)	2.25	✓	✓	139 (+44m <sup>2</sup> )	29 (+117m <sup>2</sup> )	✓	✓	8/9
205 (3B)	2.25	✓	✓	140 (+45m <sup>2</sup> )	27 (+15m <sup>2</sup> )	✓	✓	8/9
207 (2B)	2.50	x	✓	95 (+20m <sup>2</sup> )	28 (+18m <sup>2</sup> )	✓	✓ (+1m <sup>3</sup> )	7/9
208 (3B)	2.50	✓	✓	128 (+33m <sup>2</sup> )	24 (+12m <sup>2</sup> )	✓	✓	8/9
209 (3B)	2.50	✓	✓	128 (+33m <sup>2</sup> )	24 (+12m <sup>2</sup> )	✓	✓	8/9
210 (2B)	2.50	x	✓	95 (+20m <sup>2</sup> )	28 (+18m <sup>2</sup> )	✓	✓ (+1m <sup>3</sup> )	7/9
211 (3B)	2.50	✓	✓	132 (+37m <sup>2</sup> )	19 (+7m <sup>2</sup> )	✓	✓	8/9
302 (2B)	2.25	x	✓	95 (+20m <sup>2</sup> )	32 (+22m <sup>2</sup> )	✓	✓ (+1m <sup>3</sup> )	7/9
303 (3B)	2.25	✓	✓	128 (+33m <sup>2</sup> )	27 (+15m <sup>2</sup> )	✓	✓	8/9
304 (3B)	2.25	✓	✓	139 (+44m <sup>2</sup> )	33 (+21m <sup>2</sup> )	✓	✓	8/9
305 (3B)	2.25	✓	✓	140 (+45m <sup>2</sup> )	31 (+19m <sup>2</sup> )	✓	✓	8/9
307 (2B)	2.50	x	✓	95 (+20m <sup>2</sup> )	32 (+22m <sup>2</sup> )	✓	✓ (+1m <sup>3</sup> )	7/9
308 (3B)	2.50	✓	✓	128 (+33m <sup>2</sup> )	27 (+15m <sup>2</sup> )	✓	✓	8/9
309 (3B)	2.50	✓	✓	128 (+33m <sup>2</sup> )	27 (+15m <sup>2</sup> )	✓	✓	8/9
310 (2B)	2.50	x	✓	95 (+20m <sup>2</sup> )	32 (+22m <sup>2</sup> )	✓	✓ (+1m <sup>3</sup> )	7/9
311 (3B)	2.50	✓	✓	132 (+37m <sup>2</sup> )	22 (+10m <sup>2</sup> )	✓	✓	8/9

Note: ADG control exceedance shown in brackets where applicable.

Table 2 shows that the level of amenity for all of the solar access non-compliant apartments achieve suitable amenity in terms of the key areas listed above.

The proposed level of solar access is acceptable for the following reasons:

- The living areas are located on the external face of the development to maximise daylight access and views over the Shell Cove Marina and beyond to the ocean to the east. The apartment layouts are functional and well organised to provide a high level of internal comfort.
- High levels of controlled daylight are provided directly through generously sized windows and glass doors.
- The ADGs outline that achieving the design criteria may not be possible where significant views are oriented away from the desired aspect for direct sunlight. The site's shape, orientation, context and access to high quality vista have informed the siting and orientation of the built form.

The solar access study submitted in support of the variation is provided at **Attachment 11** to this report.



#### **4.2.5 Shellharbour Local Environmental Plan 2013 (SLEP 2013)**

Pursuant to Schedule 2 clause 3B, Environmental Planning Instruments will apply but only to the extent that they are consistent with the Concept Plan. With regard to the proposed permitted use within the land zone, height and FSR, the concept approval prevails. The development complies with the relevant clauses of SLEP 2013 as detailed in the compliance tables included as **Attachment 8**.

**4.3 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 applicable.

#### **4.4 Section 4.15 (1) (a)(iii) – and development control plan**

The Urban Design Guidelines for Medium Density Housing Precinct B2/C2 (Design Guidelines) provides specific built form and structure controls within Precinct C2 of the Shell Cove Concept Plan area. These guidelines were prepared in accordance with the requirements of the Part 3A Concept Plan and were endorsed by Council on the 17 June 2019.

The development is to be consistent with the Design Guidelines and an assessment of consistency is provided in **Attachment 9**

##### **4.4.1 Shellharbour Development Control Plan 2013 (SDCP 2013)**

*Pursuant to the Environmental Planning and Assessment Act (Savings, Transitional and Other Provisions) Regulations 2017*, 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 has been assessed under the design guidelines developed for Precinct C2 as required by the Concept Approval. Development objectives and provisions of SDCP 2013 will only apply where the Design Guidelines are silent.

The development is considered to be suitably consistent with the SDCP 2013 and a full assessment of consistency is provided in **Attachment 10**.

##### **4.4.2 Shellharbour Local Infrastructure Contributions Plan 2019**

Development Contributions are applicable to the subject development. A condition has been recommended by Councils Contributions Planner in this regard which has been included as part of the draft consent.

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

92 What additional matters must a consent authority take into consideration in determining a development application?

The proposal includes demolition. Relevant conditions have been recommended in this regard.

### 93 Fire safety and other considerations

The proposal relates to a change of use. Councils BCA Officers have reviewed the proposal and provided recommended conditions in relation to fire safety.

### 94 Consent authority may require buildings to be upgraded

The proposal relates to alterations and additions. Councils BCA Officers have reviewed the proposal and provided recommended conditions in relation to required upgrades of the heritage item to be retained.

## **4.6 Section 4.15 (1) (a)(v) – (Repealed)**

## **4.7 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:

### i. Visual Impact

A Visual Impact Assessment (VIA) has been submitted as part of the DA in line with the requirements of the Concept Plan condition 19. The VIA provides analysis of the visibility, visual exposure, and visual effects on views and streetscapes that would be caused by the built form proposed. The analysis uses four indicative perspectives (as mapped in **figure 25**) and uses block model photomontages to illustrate how the proposed building will impact on these viewpoints.

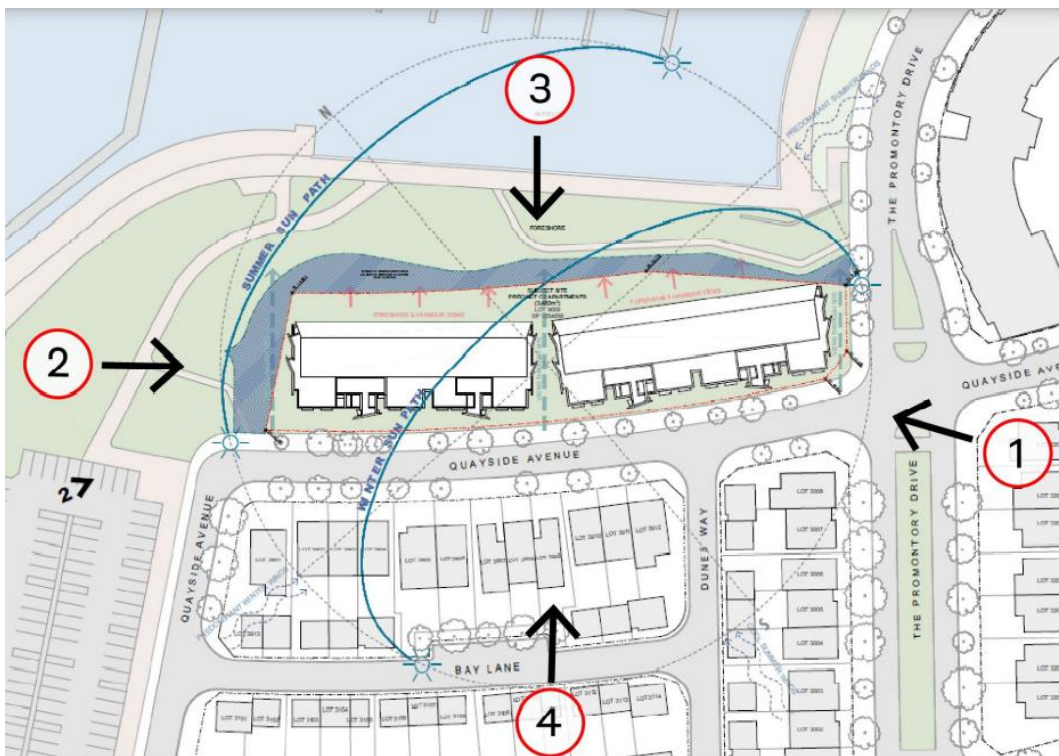


Figure 145 - Indicative Perspective Locations

**Figures 26 – 29** below are taken from the submitted Visual Impact Assessment to illustrate how the proposed buildings fit within the Concept Approval building envelope and also how the surrounding future

development will relate to the proposed development.



Figure 156 - Indicative Perspective 1



Figure 167 - Indicative Perspective 2



Figure 178 - Indicative Perspective 3



Figure 29 - Indicative Perspectives 4

The visual impact of the proposed development is suitably consistent with the intended built form as identified in the Concept Approval. The assessment provided shows that the building will not result in an unreasonable visual impact when viewed from the public foreshore or from the surrounding residential areas

## ii. Operational Waste Management

The operational waste management plan (WMP) has been amended during the assessment of the proposal to change waste collection from on street to within the building. This internal waste collection has required amendments to the proposed development including widening of the driveway to incorporate a bin carting pathway. The waste collection truck will reverse into the bin holding area where the bins will be collected. This area will have a separate roller door to the main driveway access for cars. **Figure 30** below shows the separate water collection vehicle entrance highlighted.

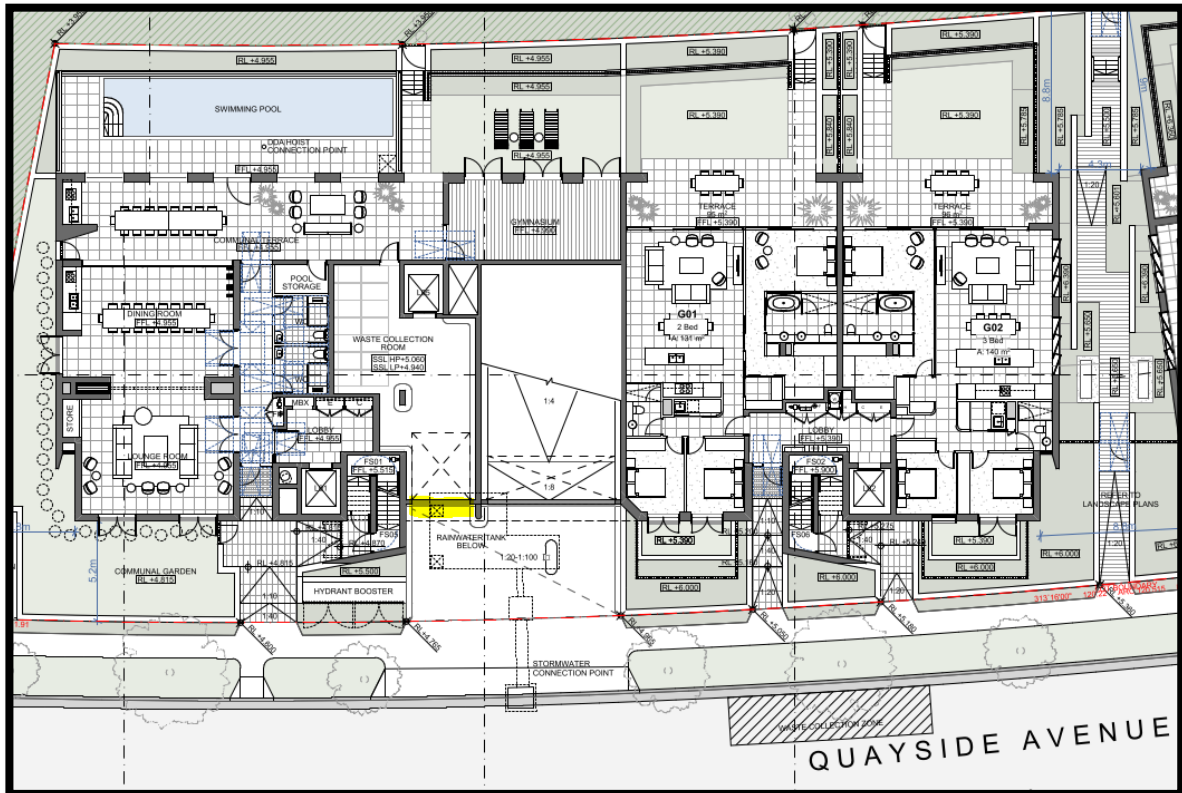


Figure 180 - Waste Collection Vehicle Access Highlighted

The internal collection system proposed will reduce the impact on the surrounding area and local roads and is favoured from the on street collection originally proposed.

The amended WMP has been reviewed by Councils Waste Management Officer and is supported. The internal waste collection proposed will require the Building Manager to bring the waste bins up to the loading area and return them on collection day, this will be included in the Operational Plan of Management as required by condition included in **Attachment 1**, as follows:

### **Operational Plan of Management**

*The developer shall prepare an Operational Management Plan which addresses all operational and management procedures to be employed, to ensure that the Common Open Space (COS), can operate safely and without disturbance to the surrounding locality.*

*Matters to be addressed include (but are not limited to):*

- a. *management of deliveries, all loading and unloading operations associated with servicing the site must be carried out within the confines of the site, at all times and must not obstruct other properties/units or the public way,*
- b. *maintenance regime - graffiti removal etc,*
- c. *security management - lighting, CCTV, access etc, and*
- d. *the necessary operational and maintenance requirements of all landscaped areas. Such requirements must ensure that the landscaping is maintained in perpetuity and in accordance with the Landscaping Plans by Group GSA.*
- e. *operating hours for pool.*
- f. *building manager available to move waste bins from basement to ground floor waste collection area when required.*

iii. Temporary Stockpiling

As part of the construction process for the development, excavation for the two level basement is anticipated to generate approximately 10,000m<sup>3</sup> of cut, resulting in approximately 9,300m<sup>3</sup> (net) once fill is removed.

The excavated material is proposed to be stored in temporary stockpiles on site C as detailed in **Figure.5**

In accordance with the submitted SEE the materials will be either be re-used on-site, elsewhere in the Shell Cove development area, or disposed of at a site that can legally accept the material.

Suitable condition applied as included in **Attachment 1** as follows:

**Excavation Material**

*Any Excavated Natural Material (ENM) and Virgin Excavated Natural Material (VENM) that has been confirmed and documented not to include any acid sulfate soil (not from the alluvial layer) may be reused on site.*

*Excavated material to be disposed of must be tested for waste classification prior to disposal.*

The stockpile will be temporary with the land identified for housing under the Concept Approval. A condition has been included to ensure the removal of this material prior to the issue of an occupation certificate.

**Stockpile Removal**

*Prior to the issue of an Occupation Certificate the stockpile resulting from excavation of the subject site is to be removed and land returned to previous state.*

The stockpile will have a visual impact on the surrounding area for the temporary period it is located on the site. This is an expected impact within a development of the size of the Shell Cove project and is not considered to have a significant long term effect on the surrounding area or residents. The area will be fenced off to ensure safety and will be restored to its original state as per condition. The nearest existing residential dwellings, currently occupied are approximately 58 metres to the west on Wharf Parade.

iv. Parking

Proposed development includes a total of 117 parking spaces within the two level basement car park.

This figure includes:

- 26 visitor spaces,
- 6 accessible spaces,
- 24 stacked spaces.

The development includes:

- 14 two bedroom units
- 38 three bedroom units.

Therefore according to the DCP numerical standards the development requires a minimum of:

78 residential car parking spaces.

26 visitor parking spaces.



The development will exceed the numerical parking requirement. The stacked spaces are to be allocated to units with two bedrooms or more subject to condition and the visitor parking spaces are not to be allocated to individual units in the event of future subdivision. Condition recommended as follows:

### **Car Parking Provision**

*At all times the number of private parking spaces for the residential apartments must be 117 spaces.*

*The following proportional mix must be complied with at the very minimum:*

*a. minimum 1-2 spaces per 2 and/or 3 bedroom units.*

*Pairs of stacked parking spaces must be allocated together to the same apartment.*

*The number of visitor car parking spaces must be 26 vehicle spaces.*

*The visitor car parking spaces must always be available for visitor parking and must not at any time be allocated, sold or leased to an individual owner/occupier. In this regard, the visitor car parking spaces must form part of the common property in any future strata subdivision.*

Council's Engineers have reviewed the proposal and confirmed that the parking spaces and access aisles comply with Australian Standard – Parking Facilities 2890.1.

Scaled plans submitted indicate 2.4m/2.5m x 5.4m wide parking spaces, with access aisles of approx. 6m. This is compliant with AS2890.1. Swept paths provided indicate a B99 vehicle can manoeuvre into all spaces within the two basement car parks. No additional turning head is required.

### **v. Wind Conditions**

A qualitative wind assessment has been provided by the applicant to demonstrate the impact of the proposed development on the wind conditions in the surrounding areas and within the development.

The results of this assessment indicate that the subject development is relatively exposed to the three predominant wind directions, affecting the site with focus being on ground level areas and pedestrian footpaths and private balconies and terraces.

A number of recommendations have been made in the report relating to treatment strategies for each of the key areas identified. These recommendations are in line with the proposed balcony treatments included in the plans. The recommendations of this report are to be secured by condition as recommended in **Attachment 1** as follows;

*Prior to issue of a Construction Certificate detailed plans of the treatments recommended in the approved Pedestrian Wind Environment Statement reference WG154-01CF02(REV2)- WS REPORT (C2) dated 21.09.2021, are to be submitted to the Principal Certifier for approval.*

*The treatments and landscaping recommended in the Pedestrian Wind Environment Statement reference WG154-01CF02(REV2)- WS REPORT (C2) dated 21.09.2021 are to be in place prior to issue of an Occupation Certificate and retained in perpetuity.*

## **4.8 Section 4.15 (1)(c)- the suitability of the site for development;**

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

- a) The Concept Plan envisages a residential development within this location;

- b) The building proposed is of an appropriate scale and design adjoining the waterfront;
- c) There are no contamination issues that would preclude residential development on this site subject to compliance with submitted Acid Sulphate Soil Management Plan;
- d) An assessment of the Social Impact has demonstrated that the development proposed would be suitable for the site and the surrounding Shell Cove Concept Plan area, and;
- e) The proposal is consistent with the provisions of the Concept Plan and the Design Guidelines for Precinct C.

The development site is a key location adjacent to the Marina. The building design is to be suitable for this location and the proposed use. The development benefits from internal parking and loading provision. The site is suitable for the development

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

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 Community Consultation Plan 2021*.

The DA was publicly notified for a period of 14 days commencing 14 October 2021 and closing 27 October 2021. The notification included a DA notification sign on the land, letters to property owners/occupiers within 25m 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 exhibition period. No submissions were received.

#### **4.10 Section 4.15 (1)(e)- the public interest.**

The proposal is consistent with the Concept Plan Approval. The proposal will provide a residential development with suitable facilities including basement parking and landscaping.

Potential impacts of the development have been identified and addressed subject to the recommended conditions included in **Attachment 1**.

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

#### **4.11 Conclusion**

The proposed development:

- a. Is suitably consistent with the relevant statutory requirements, development controls and planning objectives, and
- b. is suitably consistent with the applicable provisions of the relevant state planning policies including SEPP 65 and the Apartment Design Guide;
- c. is able to contribute to the overall vehicle parking requirements that will service the subject DA;
- d. has been designed to respect and enhance the coastal character of the Shell Cove Concept Approval area and the specific character of Precinct C.

Based on the assessment undertaken by Council there are no outstanding issues.

## 5. RECOMMENDATION

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DA0606/2021 (**PPSSTH-119**) be determined by way of approval, subject to the recommended conditions as detailed in **Attachment 1**.