

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

<b>Panel Reference</b>	<b>PPSSTH-125</b>
<b>DA Number</b>	<b>DA0616/2021</b>
<b>LGA</b>	<b>Shellharbour City Council</b>
<b>Proposed Development</b>	Demolition of existing commercial building and retention of one heritage building, consolidation of Lot 2 and 3 and construction of shop top housing development comprising of four (4) commercial and 17 residential units with basement parking (shop top housing).
<b>Development Characterisation</b>	Shop top housing
<b>Location</b>	Lots 2 & 3 DP 23880 Lot B DP 162686 Lot 4 DP 238804 Lot 9 DP 238804 Lot 10 DP 238804 Lot 11 DP 238804 Lot 12 DP 238804 Lot 13 DP 238804 Lot 14 DP 238804 Lot 15 DP 238804
<b>Applicant/Owner</b>	J. Cain (Applicant) Harbour Cove Developments Pty Ltd (Owner) Shellharbour City Council (Owner of Car Park)
<b>Date of DA lodgement</b>	14 October 2021
<b>Public Notification Period</b>	First Round: 3 November 2021 to 19 October 2021 Submissions: Nine (9)
<b>No. of Submissions</b>	Second Round: 29 April 2022 to 13 May 2022 Submissions: Seven (7) of which five (5) were from individuals who had lodged a submission in the first round of notification.
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	<u>Clause 3 – Council related development over \$5 million</u> The development has a capital investment value of more than \$5 million and Council is the owner of the car park which forms part of the land on which the development is to be carried out, being the required property access over Lots Lot B DP 162686, Lots 13, 14 and 15 DP 238804. The proposal is also reliant on the creation of a Right of Way for vehicle access purposes and an easement for underground electricity cables over Council owned land. The proposed development has a CIV of \$10,585,429.
<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 (Transport and Infrastructure) 2021</li> <li>• SEPP 65 – Design Quality of Residential Apartment Development.</li> <li>• SEPP (Building Sustainability Index – BASIX) 2004</li> <li>• Shellharbour Local Environmental Plan 2013</li> <li>• Shellharbour Development Control Plan 2013 <ul style="list-style-type: none"> <li>- Chapter 6.3 Shellharbour Village Centre</li> <li>- Chapter 13 Parking, Traffic and Transport</li> <li>- Chapter 15 Waste Minimisation and Management</li> <li>- Chapter 28 European Heritage</li> </ul> </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>	2.1 Architectural Plans 2.2 Landscape Plans 2.3 Easement Plan 2.4 Stormwater Plan
	<b>Attachment 3</b>	3.1 Visual Impact Study 3.2 Applicant Response to SRPP Briefing
	<b>Attachment 4</b>	Shellharbour Design Review Advisory Panel Meeting Minutes
	<b>Attachment 5</b>	Applicant and Council Response to DRP Meeting Minutes
	<b>Attachment 6</b>	ADG Compliance Table
	<b>Attachment 7</b>	Shellharbour Local Environmental Plan 2013 Compliance Table
	<b>Attachment 8</b>	Shellharbour Development Control Plan 2013 Compliance Table
	<b>Attachment 9</b>	Site Photos
	<b>Attachment 10</b>	Clause 4.6 Variation Request
	<b>Attachment 11</b>	In-Principal Agreement
<b>Clause 4.6 requests</b>	Yes – Shellharbour Local Environmental Plan 2013 Clause 4.3 Building Height.	
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Exceedance of building height development standard</li> <li>• Streetscape Incompatibility</li> <li>• Visual Privacy Impacts</li> <li>• Traffic Impacts</li> <li>• Overshadowing</li> <li>• Non-compliances with ADG</li> <li>• Non-compliances with Shellharbour Development Control Plan 2013</li> </ul>	
<b>Recommendation of Officer</b>	<b>Deferred Commencement</b>	
<b>Report prepared by</b>	Nicole Doughty – Senior Development Assessment Officer	
<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>	23 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

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#### 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

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#### 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?

Yes

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#### 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*

No

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#### 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

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

The application is being referred to the Southern Regional Planning Panel as the Determining Authority in accordance with Schedule 7 Clause 3 of the State Environmental Planning Policy (State and Regional Development 2011). Vehicle access to the proposed development will be via a Council owned public car park (right of way access) and an electricity easement (Figure 5). The CIV is more than \$5million.

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 demolition of existing commercial building and retention of one heritage building, consolidation of Lot 2 and 3 and construction of shop top housing development comprising of four (4) commercial and 17 residential units with basement parking. The proposal includes the creation of an easement for vehicle access via a Council owned car park.

#### 1.3 The site

The land the subject of this report is as follows:

Lots 2 & 3 DP 23880  
Lot B DP 162686  
Lot 4 DP 238804  
Lot 9 DP 238804  
Lot 10 DP 238804  
Lot 11 DP 238804  
Lot 12 DP 238804  
Lot 13 DP 238804  
Lot 14 DP 238804  
Lot 15 DP 238804

Lots 2 and 3 DP 23880 contain the shop top housing development. The remaining lots form part of Councils car park, over which access to the site and an associated Right of Carriageway and Easement for Electricity Purposes is sought.

#### 1.4 Exhibition

The proposal was notified in accordance with the Shellharbour Community Participation Plan 2019 and received a total of 15 unique submissions. The submissions received are further discussed at sections 2.4.3 and 3.8 below.

#### 1.5 Evaluation

S4.15 matters have been considered and the main issues summarised as follows:

- Exception to the maximum building height permitted pursuant to the Shellharbour Local Environmental Plan 2013.

- Impacts on and ongoing maintenance of the Allens Store Local Heritage Item.
- Consistency of the development with the streetscape.
- The likely impacts of the proposal are considered satisfactory.
- The site is considered suitable for the proposal in its current form.
- There were 16 submissions received during the exhibition periods which are discussed at sections 2.4.3 and 3.8 of this report. Three external agency responses have been received which provide satisfactory responses as discussed at section 2.4.2 of this report.
- The proposal is considered to be in the public interest.

## **1.6 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 shop top housing development is permissible with consent in the B2 Local Centre zone, pursuant to the Shellharbour Local Environmental Plan 2013.

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. This includes a deferred commencement condition which requires the registration of an easement for Right of Carriageway and Electricity Supply.

## **1.7 Recommendation**

DA0616/2021 be determined by way of deferred commencement, subject to the conditions provided at Attachment 1.

## **2. APPLICATION AND SITE OVERVIEW**

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### **2.1 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 (Transport and Infrastructure) 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 (as amended) seeks approval for the demolition of the existing commercial building, retention of the main heritage building and demolition of rear addition, consolidation of the two lots and the construction of a five (5) storey shop-top housing development comprising of four (4) commercial tenancies, 17 residential units and basement car parking and associated works. The key details of the development include:

- Demolition works
  - Commercial building at 31-33 Addison Street
  - Various components of heritage listed building at 35 Addison Street including rear addition
- Four (4) commercial tenancies on ground floor including two within the existing heritage item
- 17 units comprising:
  - 2 x 1 bedroom including one as adaptable
  - 10 x 2 bedroom including one as adaptable
  - 5 x 3 bedroom
- Off-street parking including two basement levels for residents and loading and staff parking on ground level – comprising:
  - Two (2) staff car spaces
  - Eight (8) residential visitor car spaces
  - 34 residential car spaces
  - Seven (7) bicycle spaces

- Loading area for SRV vehicle (garbage collection and servicing for the commercial)
- Communal open space = 373m<sup>2</sup> (25.28%)
  - Ground level – 297m<sup>2</sup>
  - Roof top – 76m<sup>2</sup>

#### Other works

- Paving within the Council owned public laneway (Lot 4 DP 238804).
- Restoration and replacement works to heritage listed building at No. 35 Addison Street
- Registration of an easement for maintenance over Lot 4 DP 238804 being the adjoining public laneway due to the proposed building to the property boundary

#### Works within Council owned car park

- Creation of easement for underground electricity cables and provision of services (Lot 9, 10, 11 and 12 DP 238804)
- Creation of Right of Way for vehicle access from the subject site to Mary Street (Lot B DP 162686 and Lot 13, 14 and 15 DP 238804)
- Pedestrian footpath
- Upgrade to existing driveway crossover at the intersection of Mary Street and Allen's Lane
- Line marking to provide a loading zone



**Figure 1** – Photomontage of proposed development



## 2.3 Subject Site and Locality

### 2.3.1 Site Description

The primary subject site is comprised of two allotments 31-33 (Lot 2 DP 238804) and 35 Addison Street (Lot 3 DP 238804). Combined, the two lots have a total area of 1,475m<sup>2</sup> (Figure 2). The site is located on the southern side of Addison Street and within the Shellharbour Village Centre. Figure 2 demonstrates the location of the site in the context of Shellharbour Village. The site has direct frontage to Addison Street to the north, directly adjoins a public walkway to the east and a Council owned public carpark to the south (see Attachment 9 for site photos). To the immediate west is a single storey residential dwelling and attached commercial premises, and a four storey shop top housing development is currently under construction on the corner of Addison and Mary Streets.



**Figure 2** – Location map. The subject site is outlined in yellow

No. 35 Addison Street contains Heritage Item No. I042 known as ‘Allen’s Store (Former) and Pine Tree’ and the site is located within the curtilage of Heritage Item No. I041 ‘Windradene and Pine Tree’ at No. 29 Addison Street and Heritage Item No. I040 ‘Thomas Bakery Scotch oven, bricks and façade at No. 25 Addison Street (Figure 4). The public car park immediately to the south of the site is comprised of multiple allotments. Figure 3 below provides a demonstration of the location of the primary site in red and the lots within the car park in red. The car park is owned by Shellharbour City Council and contains a number of Moreton Bay Fig trees which are listed as Heritage Item No. I220. It is noted that the pine tree referenced in the heritage listing of both Allens Store and Windradene properties (numbers 35 and 29 Addison Street) has been removed.





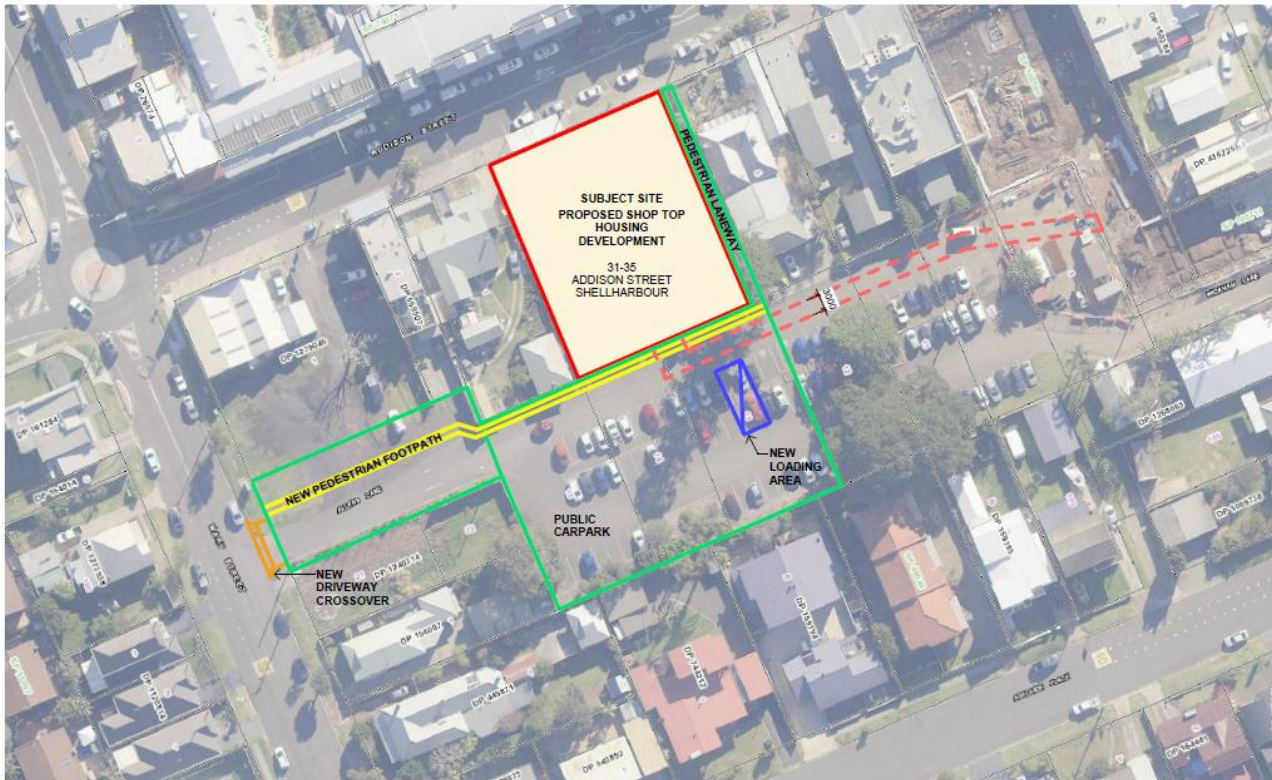
**Figure 3** - The subject site is outlined in yellow and the Council owned public car park in red.



**Figure 4** – Locality plan with heritage planning overlay. The subject site is outlined in red with heritage listed items in orange and green.







Building heights within Shellharbour Village Centre vary from older single storey commercial buildings to more recently constructed three (3) storey mixed use building at No. 20-26, four (4) storey mixed use building at No. 23 Addison Street. A four (4) storey mixed use building at No. 43-45 Addison Street is currently under construction.



1 PUBLIC CARPARK & LANEWAY - ROW, EASEMENT & PROPOSED WORKS  
 1: 500

**LEGEND:**

- |  |   |
|--|---|
|  SUBJECT SITE   |  NEW LOADING AREA (SHOWN APPROX.)        |
|  PROPOSED RIGHT OF WAY/ EASEMENT OVER THE BELOW MENTIONED LOTS:<br>LOT 4 DP 238804<br>LOT B DP 162686<br>LOT 13 DP 238804<br>LOT 14 DP 238804<br>LOT 15 DP 238804 |  NEW PEDESTRIAN FOOTPATH (SHOWN APPROX.) |
|  EASEMENT FOR UNDERGROUND CABLES 3m WIDE AND VARIABLE   |  NEW DRIVEWAY CROSSOVER (SHOWN APPROX.)  |

**Figure 5 – Proposed ROW and easements**

### 2.3.2 Property Constraints

Council records identify the land as being affected by the following constraints:

- Heritage Item
- Coastal Management – Coastal use area

See discussion throughout the report with regard to each constraint.

### 2.3.3 Restrictions on Title

There are restrictions on the title as per the below:

- Easement for overhanging eaves and access 0.15m wide

### Council Comment:

The proposed development includes the consolidation of Lots 2 and 3. As such, the easement will no longer be required.

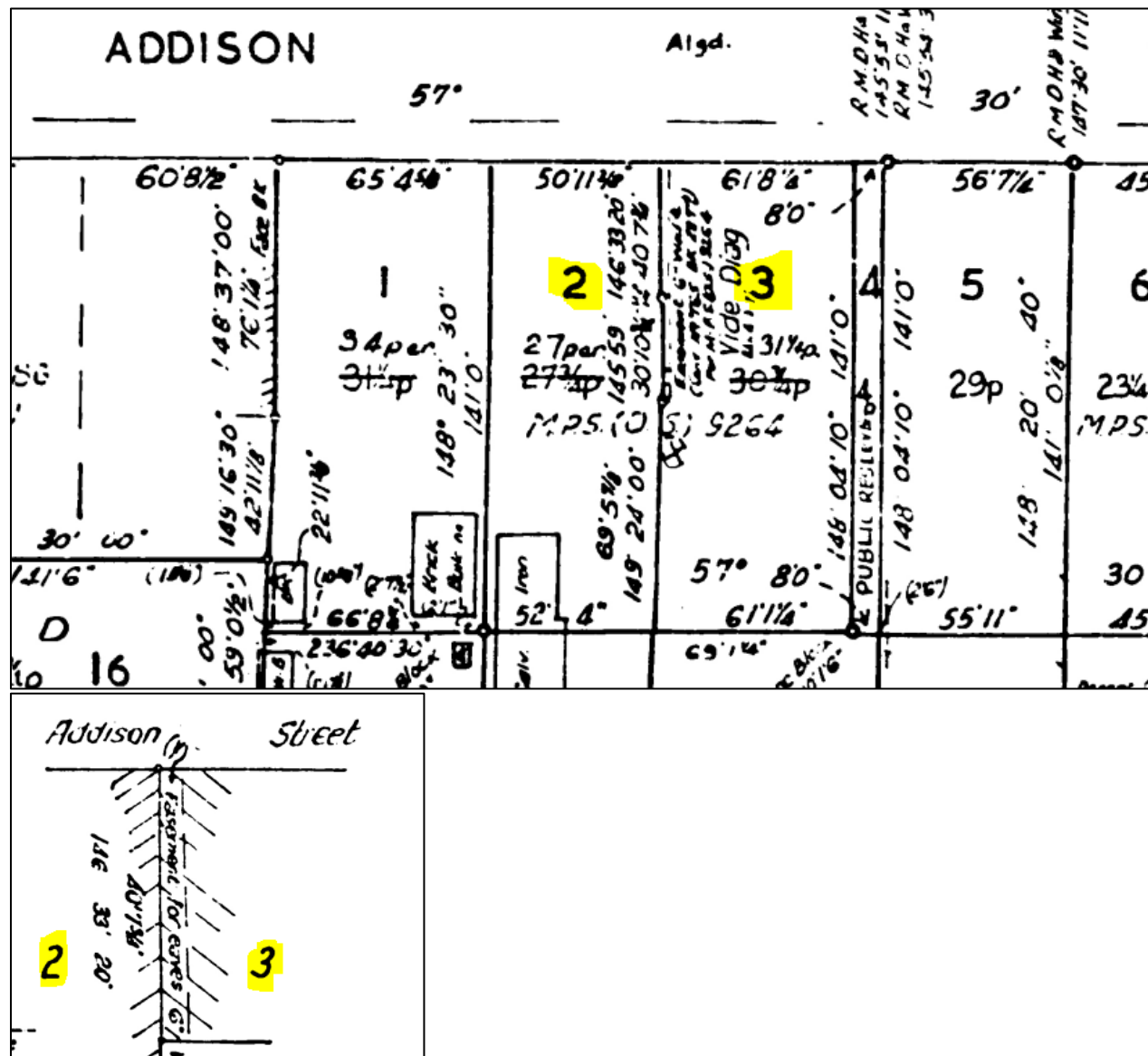


Figure 6 – Deposited Plan 238804 extract

## 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.

#### Contributions Officer

Councils Contributions Officer has reviewed the proposal and provided a conditionally satisfactory referral response. This includes the payment of contributions to address the shortfall in commercial parking. See

further discussion at Section 3.4.2 in this regard. 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.

### **Waste Officer**

Councils Waste Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Servicing of the site is to be undertaken by a small rigid vehicle which can safely manoeuvre within the site. 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.

### **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.

### **Heritage Officer**

Councils Heritage Officer reviewed the proposal on lodgement and identified concerns regarding the compatibility of the scale and bulk of the development with the heritage items at No. 29 and 35 Addison Street. Amended plans have been provided which result in a reduced bulk and scale. The submitted Conservation Management Plan and Temporary Protection Plan have been reviewed and are supported by Council's Heritage Officer. Recommended conditions have been included within the draft consent.

### **Property Management Officer**

Councils Property Officer has reviewed the proposal and provided an in principal agreement to the registration of a Right of Carriageway, Easement for Electricity Supply and Easement for Maintenance over the surrounding Council owned land. A deferred commencement condition is recommended which would require that these easements and restrictions be negotiated, agreed to by Council and registered over the subject lots prior to the issue of any operational consent.

### **Building Officer**

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

### **Traffic Officer**

Councils Traffic Officer has reviewed the proposal with regard to the proposed vehicle access to the site via a Right of Way through the Council owned public car park to Mary Street. No objections have been identified.

### **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.

### **Recreation Planning Officer**

Councils Recreation Planning Officer has reviewed the proposal with regard to the proposed works within the Council owned public laneway (Lot 4 DP 238804) 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 30 October 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 15 November raising no objections and recommended the imposition of conditions which have been included within the draft consent.

### **Heritage NSW**

The proposal was referred to Heritage NSW as the scope of works includes excavation in an area with potential for historical archaeological relics. A response was received on 9 December 2021 rejecting the referral stating *"this referral has not been accepted as the archaeological assessment provided demonstrates a low likelihood of historical archaeological relics within the project area."* The response included a recommendation that should Council approve the proposal, an unexpected finds condition be included. A condition as requested has been included as part of the draft consent.

### **Design Review Advisory Panel**

In line with the Shellharbour Design Review Advisory Panel Policy and the State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development), the development has been considered by the Shellharbour Design Review Advisory Panel (DRP).

The development application was referred to the DRP at the pre-lodgement stage and the originally submitted proposal was re-referred to the DRP Chair following lodgement. The comments provided following the original DRP meeting and as part of the subsequent review by the Panel Chair are provided at Attachment 4.

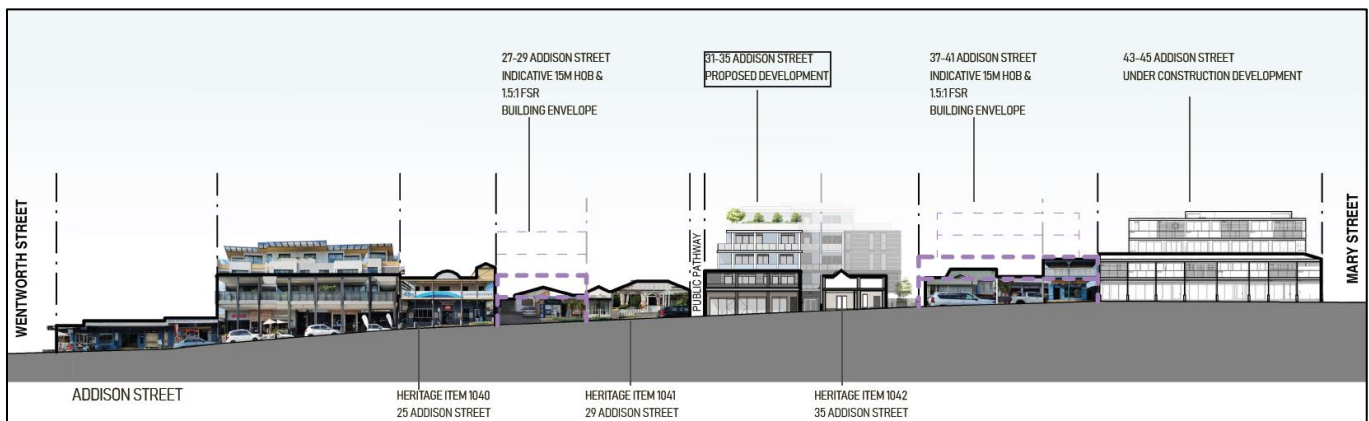
All comments from the DRP are considered to have been suitably addressed by the Applicant either through the submission of amended plans or additional information. The Applicants response to the DRP Chair comments is provided at Attachment 5.

### 2.4.3 Southern Regional Planning Panel Briefing Comments

A Southern Regional Planning Panel Briefing meeting was held on 16 March 2022. The following key issues were identified by the Panel and have been responded to accordingly:

#### Streetscape Compatibility

The Applicant has provided a Visual Impact Study which visually illustrates how the development will integrate from various view points in Shellharbour Village. The Study is provided at Attachment 3 and confirms that the scale of buildings within the Shellharbour Village streetscape varies from single storey residential and commercial buildings to four storey shop buildings of various ages (a four storey shop top housing development is currently under construction at the corner of Mary Street and Addison Street). Additionally a streetscape elevation of the southern side of Addison Street is included which outlines potential building envelopes adopting a 15m building height. The illustrations reflect that the future streetscape character of Shellharbour Village will be very different to the current streetscape character as re-development occurs that utilises the development standards in the SLEP 2013, and that the development as proposed would be considered reasonably compatible with both the existing and future potential streetscape of Addison Street.

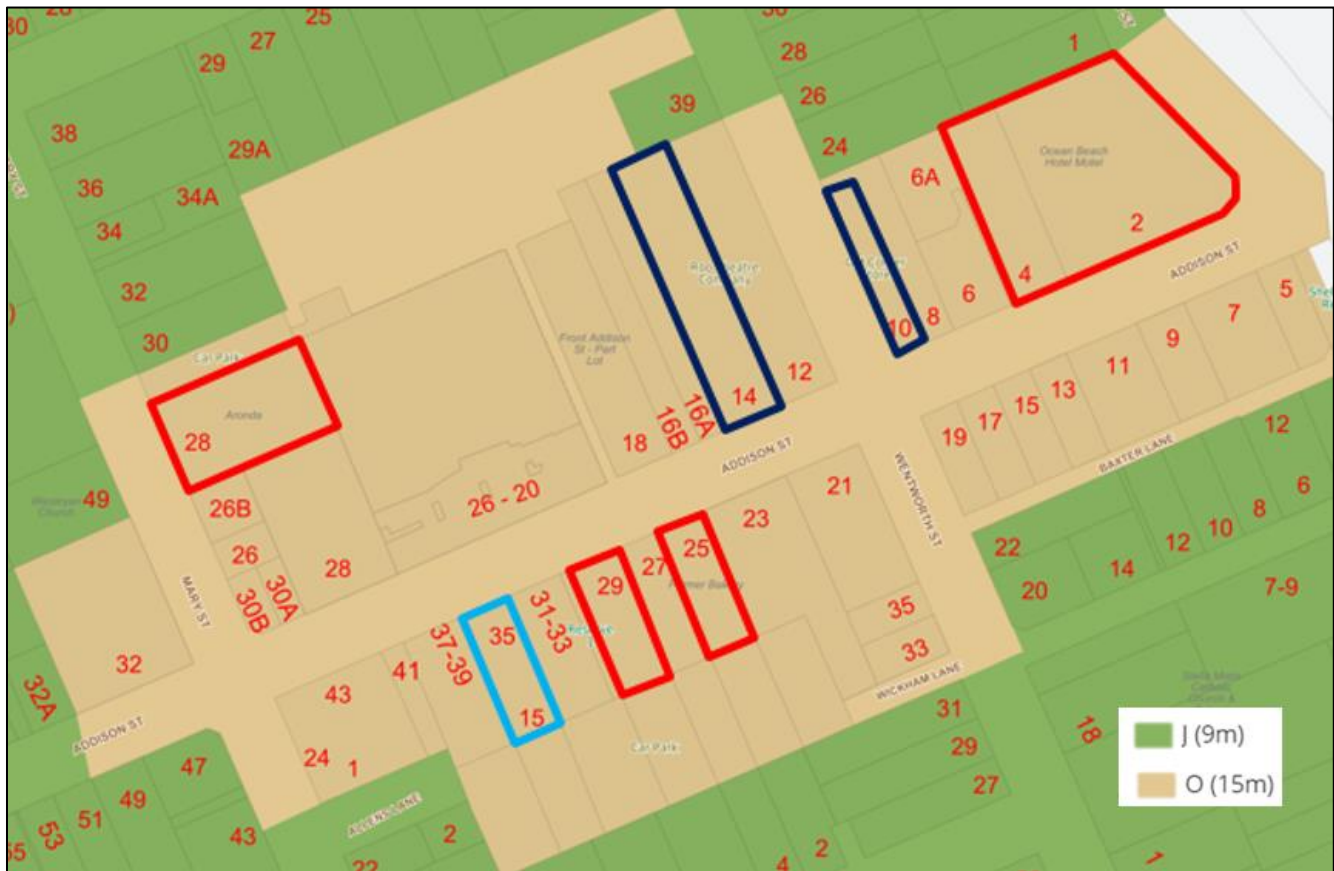


**Figure 7** – Southern side elevation of Addison Street with proposed development and potential re-development building envelopes at 27-29 Addison St and 37-41 Addison Street.

#### Building Height Exceedance

The Applicant has provided a Visual Impact Study and a statement in response to the concerns identified by the SRPP in relation to the potential of other re-developments seeking a height variation due to heritage retention. This Study is provided at Attachment 3.1 and statement at Attachment 3.2. Figure 8 below identifies the heritage items with a 15m building height development standard in Shellharbour Village.





**Figure 8** - SLEP 2013 Height of Buildings map extract. The subject site is outlined in light blue, Council owned heritage items in dark blue and privately owned heritage items in red.

Whilst multiple sites could lodge a development application to re-develop the sites with a height exceedance and retaining the heritage item, as stated in the Applicant's response, the positioning of the heritage items on those sites and the land size remaining for re-development are significant influences. With these factors in mind, there would be limited potential for other heritage listed sites on Addison Street to significantly redevelop without acquiring adjoining land. There may be potential for sites on Mary and Wollongong Streets to redevelop in the future, however is considered unlikely in the immediate future due to the existing uses and building configurations.

See Council's consideration of the requested 4.6 exception at Section 3.2.6 below.

### Departures from Apartment Design Guidelines

An assessment against the Apartment Design Guidelines is provided in Attachment 6. The proposal seeks variations to the following ADG components:

- Objective 3E – Deep Soil Zone
- Objective 3F – Visual Privacy
- Objective 3J – Bicycle and Car Parking
- Objective 4A-1 – Solar and Daylight Access
- Objective 4D-2 – Apartment Size and Layout

The compliance table identifies each of the above variations and identifies reasons for Council's support for each variation.

## **Vehicle Access**

Vehicle access to the basement car parking will be via a Council owned public carpark which is accessible from Allen's Lane and Mary Street. As the carpark is owned by Council, a right of way for vehicle access is to be registered on the corresponding properties titles. An in-principal agreement for the Right of Way (ROW) between Council and the owners of the subject site (31-33 and 35 Addison Street) has been obtained. A deferred commencement condition has been recommended requiring the registration of the ROW with Land Registry NSW prior to the release of any operational consent.

Council considers the proposed vehicle access to the site via the Council owned public car park as an appropriate outcome due to the high pedestrian activity along Addison Street, the mapping of the Addison Street frontage on the SLEP 2013 Active Street Frontage Map and the adverse traffic flow implications if vehicle access was permitted via Addison Street. Vehicle access via the car park is consistent with other shop top housing developments on the southern side of Addison Street.

## **Site Contamination**

A Preliminary Site Investigation prepared by Geosyntec dated September 2021 was submitted. The Report concluded that *"the site is considered to pose a low risk with respect to soil and groundwater contamination for the proposed mixed-use commercial and residential development."* The report has been reviewed by Councils Environment Officer and no objections to the conclusions have been identified. Accordingly, Council is satisfied that the provisions of SEPP No. 55 have been met.

## **Waste Management**

The Panel noted that the proposed waste collection arrangements from the buildings loading area and the requirement for a commercial waste storage room. Amended plans have been provided which provide a commercial waste room adjoining the loading area.

## **Notification of Revised Proposal**

Amended plans in response to matters raised by Council and the Southern Regional Planning Panel were uploaded to the NSW Planning Portal on 21<sup>st</sup> April 2022 and re-notified between the 29<sup>th</sup> April and 13<sup>th</sup> May 2022. The concerns raised in the submissions received during the re-notification process are discussed in Section 3.9.

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

In determining a development application, a consent authority is to take into consideration matters referred to in section 4.15(1) of the Act as are of relevance to the development the subject of the application:

### **3.1 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

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

### **3.2.1 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).*

Vehicle access to the proposed development will be via a Council owned public car park (right of way access) and the CIV is more than \$5million. 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.

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

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

The aim of this section of the 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 subject site is within the mapped Coastal Use Area (Figure 8).

#### **Division 4 Coastal Use Area**

##### **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 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.



**Figure 8 – SEPP Coastal Management 2018 mapping**

- (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**

### **2.15 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.

Council records do not indicate any historic use that would contribute to the contamination of the site and the land is not identified as being contaminated on Council mapping. As the proposal involves a change of use, a Preliminary Site Investigation (Geosyntec September 2021) was submitted as required pursuant to Section 4.6(2) of this SEPP. The Report concluded that *"the site is considered to pose a low risk with respect to soil and groundwater contamination for the proposed mixed-use commercial and residential development."* The report submitted has been reviewed by Councils Environment Officer and no objections to the conclusions of the report have been identified. Accordingly, subject to the imposition of conditions, the provisions of Chapter 4 are considered to have been satisfied.

### **3.2.3 State Environmental Planning Policy (Transport and Infrastructure) 2021**

#### **Division 5 Electricity transmission or distribution**

#### **Subdivision 2 Development likely to affect an electricity transmission or distribution network**

##### **2.48 Determination of development applications—other development**

- (1) *This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—*
  - (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
  - (b) *development carried out—*
    - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
    - (ii) *immediately adjacent to an electricity substation, or*
    - (iii) *within 5m of an exposed overhead electricity power line,*
  - (c) *installation of a swimming pool any part of which is—*
    - (i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
    - (ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
  - (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
- (2) *Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must—*
  - (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
  - (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*

**Comment:** The subject site is located within 5m of an exposed overhead electricity power line and involves the installation of an indoor substation. The proposal was referred to Endeavour Energy in accordance with the requirements of this clause. A response was received on 30 October 2021 raising no objections subject to the recommended conditions which have been included within the draft consent.



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

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the Environmental Planning and Assessment Regulation 2000, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets. An amended BASIX Certificate has been provided which reflects the amended architectural plans.

The BASIX certificate was issued no earlier than 3 months before the date on which the development application was lodged.

### 3.2.5 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 (one storey of commercial and four storeys of residential) and is proposed with 17 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 9 August 2021, prior to the lodgement of the application. Following lodgement, the application was referred to the DRP Chairman on 2 December 2021, as permitted by the Policy. A full panel DRP meeting was not required as the proposal had satisfactorily addressed the main issues raised in the pre-lodgement DRP meeting. The DRP Chairman comments on the design are provided as Attachment 4.

- (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 in Attachment 5.

- (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 subject site is located on the southern side of Addison Street situated in a B2 Local Centre land use zone. The area is known as Shellharbour Village which is identified as a 'Village Centre' in the Illawarra Regional Strategy. The site has direct road frontage to Addison Street which is the main street of the village. Addison Street is comprised of many street level cafes and shops (retail and commercial). The land use zoning permits a mixture of residential and commercial uses.

The subject site contains a heritage building which is to be retained as part of the development, as discussed throughout this report. The site is also located in close proximity to multiple heritage items. A laneway, linking Addison Street to a public carpark (south of the site) adjoins the site's eastern boundary.

The neighbourhood character includes varying architectural styles from the 19<sup>th</sup> and 20<sup>th</sup> Century and recently building higher density shop top housing. The area is in a state of transition, with development varying in scale from single storey residential dwellings to four storey shop top housing developments.

The proposal is considered to respond to the site context through the incorporation of building elements and a proposed colour palette in which reflects Part 6.3 Shellharbour Village Centre in the Shellharbour Development Control Plan 2013. Pedestrian activity along Addison Street is an important element of the neighbourhood character. The proposed development achieves an active frontage to Addison Street with an appropriate interface with the public domain on the northern (Addison Street), eastern (public laneway) and southern elevations (public car park). The existing two commercial tenancies within the heritage building are to be retained and an additional (2) commercial tenancies are proposed to Addison Street. A continuous awning for weather protection for pedestrians is also proposed on Addison Street.

The development is considered to respond and contribute to the context and neighbourhood character of the area.

## **Principle 2: Built Form and Scale**

The proposed shop top housing development is in the form of an L-shape that wraps around the heritage building on the site that is to be retained. The building setbacks provide an appropriate curtilage around the heritage building to be retained at the site and a transition to the heritage item at No. 29 Addison Street. The eastern and western setbacks are not less than the setbacks of the existing commercial building.

The proposed setbacks maintain the existing view line between No. 29 and 35 Addison Street.

The height and density is compatible with more recently constructed shop top housing developments along Addison Street and Wentworth Street and an approved development on the corner of Addison and Mary Streets. There are a number of other properties on Addison Street which have potential for redevelopment in the future, indicating that the streetscape is undergoing and will continue to transition into the future. The proposal is considered an appropriate response to the site as the building form and composition of architectural elements and external finishes that are sympathetic to the heritage items within the immediate context of the site, whilst also being compatible with the future desired streetscape.

The proposal seeks an exception to the 15m height development standard under the Shellharbour Local Environmental Plan 2013. The height variation is considered an appropriate response to the context of the site and satisfies the requirements of Clause 4.6 of the SLEP 2013, as further discussed at section xx below. The exception does not result any additional impacts and has been designed to be of a form that would read from Addison Street as a four storey building, comparable with other recent developments and other approvals in the area. 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 application proposes 17 residential units and four commercial tenancies which includes the retention of the two (2) commercial tenancies located within the heritage item to be retained. The proposal complies with the 1.5:1 Floor Space Ratio for the site, as discussed at Section 3.2.6 below. The final design exceeds the majority of the numerical based standards associated with amenity under the ADG such as cross flow ventilation, solar access, communal open space and apartment dimension requirements. The density proposed will provide a high level of amenity to future residents.

#### **Principle 4: Sustainability**

A BASIX Certificate meeting the energy, water and thermal requirements under SEPP BASIX 2004 was submitted with the revised design. The proposal meets the ADG requirement for cross-ventilation and solar access of apartments; 70% of apartments (12/17) will receive three hours of sunlight and 65% of apartments (11/17) achieve natural cross ventilation. Sustainability features have been incorporated into the building design such as photovoltaic cells on the roof and on-site capture of rainwater to use for the irrigation of common landscape areas. During the assessment process, skylights were incorporated into the western Level 1 balconies to increase solar access into the main living areas of the western elevation Level 1 apartments.

A Schedule of Conservation Works and a Conservation Management Plan has been submitted for the heritage building to be retained. Multiple additions that are unsympathetic to the heritage item are proposed to be demolished.

The proposal positively contributes to the environmental, social and economic outcomes of the site.

#### **Principle 5: Landscape**

The proposal provides communal open space areas on both the ground floor and roof. The communal area on the ground floor is partly covered. These characteristics optimises the usability of this component of the development as it provides an area for the residents to use regardless of the weather and temperature. Both areas are embellished with planting, furniture and a BBQ on the ground level to encourage social interaction. Both areas are accessible by lift and ramp for equitable access.

The subject site contains very little vegetation, being primarily comprised of hard stand paving or gravel. The proposed planting throughout the development is generally consistent with the landscaped character of the surrounding area and provides additional landscaped areas to other shop top housing developments in the area. The landscaping proposed has also been designed with regard to the environmental performance of the development, providing canopy trees, decking to allow water infiltration and native plantings where possible. The proposed design is considered to optimise useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

#### **Principle 6: Amenity**

The orientation of the apartments has sought to balance solar access requirements under the ADG and views of the ocean to the east and south. All apartments achieve/exceed the minimum areas requirements under the ADG for apartment and private open space sizes. The apartments have an open plan kitchen, living and dining rooms with built-in wardrobes in the bedrooms.

Residential amenity is enhanced through the provision of two communal open space areas that combined equate to 26.27% (388.7m<sup>2</sup>) of the site, meeting the 25% requirement of the ADG. Both communal open space areas are to be provided with appropriate fixed furniture and landscaping. Overall, the proposal has been designed to provide a high amenity to the future occupants and neighbours.

#### **Principle 7: Safety**

The proposed development has been designed with regard to safety and CPTED principals. The building has been designed with the main residential entrance being easily identifiable from the public domain. All four commercial tenancies have been designed to front Addison Street. Passive surveillance opportunities would also be provided to the adjoining public domain areas including Addison Street, the public laneway and the public car park through the orientation of balconies and windows. Security will be provided to the building by the restriction of access to residential/commercial only areas including the building entrance,

carpark, lifts and COS via a key/swipe key access. Every two (2) residential car parking space is provided with a garage door so the spaces are enclosed from the basement.

### **Principle 8: Housing Diversity and Social Interaction**

The proposal provides an acceptable mix of apartment types and sizes consisting of:

- 2 x 1-bedroom apartments, representing 12% of the total dwellings
- 10 x 2-bedroom apartments, representing 59% of the total dwellings
- 5 x 3-bedroom apartments representing 29% of the total dwellings

Two (2) apartments (11.76%) are compatible of complying with Australian Standard 4299-1995 Adaptable Housing with an additional four (4) (23.52%) of the total apartments also incorporate the Liveable Housing Design (LHD) Guidelines silver level universal design features. Part 4Q of the ADG requires that 20% of apartments meet silver level LHD Guidelines.

The proposal provides two (2) communal open space areas with furniture and a BBQ unit where residents would be provided with opportunities to meet with equitable access. Suitable ramped access is provided from the street into the main residential entrance and from the apartments to both communal open spaces.

### **Principle 9: Aesthetics**

The ground floor proposes face brick on the ground floor to identify the commercial component of the building in contrast to the weatherboard on the residential component. The approach of contrasting the external finishes between the commercial and residential components of the building has been adopted in other shop top housing developments along Addison Street, including No. 23 Addison Street. The building is well articulated and avoids large expanses of unbroken wall through modulated building form and balconies on all elevations.

The colour palette is consistent with Part 6.3.5 and Figure 6.18 of the Shellharbour Development Control Plan 2013 and include light blue, light grey and off-white colour tones. The colour tones can be described as passive in comparison to the bold primary colours of the heritage items. The aesthetics of the building can be described as a balanced composition of elements that provides high amenity outcomes for the future residents whilst responding to the heritage context of the site.

*(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 6. The proposal seeks variations to the following ADG components:

- Objective 3E – Deep Soil Zone
- Objective 3F – Visual Privacy
- Objective 3J – Bicycle and Car Parking
- Objective 4A-1 – Solar and Daylight Access
- Objective 4D-2 – Apartment Size and Layout

The compliance table identifies each of the above variations and identifies reasons for Council's support for each variation.

### **3.2.6 Shellharbour Local Environmental Plan 2013**

The proposal seeks an exception to clause 4.3 Building Height of the SLEP 2013. The Height of Buildings Map provides a maximum building height of 15m for the subject site and the development seeks consent for up to 18m. A clause 4.6 exception request has been provided and is supported in this regard. A detailed assessment against the SLEP 2013, including clause 4.6, is provided at Attachment 7 to this report.

### **3.3 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.

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

#### **3.4.1 Shellharbour Development Control Plan 2013**

The development complies with the relevant clauses of SDCP 2013 as detailed in the compliance tables included as Attachment 8.

#### **3.4.2 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. This includes a contribution for seven (7) car parking spaces to offset the shortfall in commercial car parking spaces proposed, as permitted by the Plan.

### **3.5. 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.

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

### **3.7 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;**

#### **Streetscape Compatibility and Heritage**

As discussed throughout this report, the scale of buildings within the Shellharbour Village streetscape varies and includes a mix of single storey residential, commercial buildings and up to four storey shop top housing buildings of various ages. A four storey shop top housing development is currently under

construction at the corner of Mary Street and Addison Street and another has been recently completed near the corner of Addison and Wentworth Streets. The changes in streetscape as buildings are constructed larger in scale than the existing low scale buildings is evident and is reflective of the development standards and land use zoning in the SLEP 2013. The Visual Impact Study submitted by the Applicant highlights both the existing varied built form along the southern side of Addison Street and potential future streetscape.

The unique site context requires a site-specific design approach, whereby strict numerical compliance with the SDCP 2013 and ADG would not result in a positive urban design outcome. The final development design has resulted in the building mass of the upper storey being pushed back from the heritage items with the setbacks increasing with height towards the rear south western corner. The articulation of elements on the elevations also softens the building form and creates a sense of space that is respectful of the heritage items.

During the assessment process a Conservation Management Plan, Temporary Protection Plan and Structural Adequacy Statement were submitted. These documents adequately demonstrate that the proposed development, including the associated earthworks, will not cause adverse damage to the heritage item through the implementation of specific construction methodologies and protection measures. Conditions of consent have been recommended to ensure that the construction methodologies and protection measures contained in these documents are implemented throughout all relevant phases of the development.

### **Proposed Works Within Council Owned Land**

Vehicle access to the existing commercial building at No. 31-33 Addison Street is provided from the rear car parking area to a Council owned public car park that connects to Mary and Wentworth Streets. Existing vehicle access to No. 35 Addison is provided via Addison Street and the Council car park. Part 6.1.28 of the Shellharbour Development Control Plan 2013 states that *“where legally available all vehicular access and servicing must be from a rear lane, car park or side street.”* The application proposes vehicle access to the development from the rear via the council car park to Mary Street. This is consistent with Part 6.1.28 of the SDCP 2013 and is appropriate given the high pedestrian activity along Addison Street and the objectives of Clause 6.6 Active Street Frontage to achieve active frontages on Addison Street. Vehicle access via the car park is consistent with other shop top housing developments on the southern side of Addison Street (No. 35 Wentworth Street, 23, 27, 29, 41 and 43 Addison Street) and the access to Mary Street would allow sufficient area for the manoeuvring of larger vehicles within the car parking area.

The land owner of the public car park is Council and therefore easements granting right of way for vehicle access are to be registered on the corresponding property titles. Accordingly, the Applicant has lodged an application for the creation of the following easement:

- Right of way for vehicle access from 31-35 Addison Street through the Council owned land to Mary Street; and
- Easement for underground electricity cables.

An in-principal agreement for the registration of the right of way and easement over Council's land has been provided from Council's Property Officers. A deferred commencement condition has been recommended requiring the registration of the ROW with Land Registry NSW, prior to the release of any operational consent.

In addition to the creation of easement, the development application seeks Council approval for the following works within the car park and the pedestrian laneway:

- paving upgrades to the adjoining pedestrian access way linking Addison Street to the Council car park;
- continuation of a pedestrian footpath to service the Council carpark; and,



- creation of a dedicated loading zone within the Council car park.

The subject application includes the installation of a substation on the rear elevation orientated to the car park. Whilst servicing of the substation by Endeavour Energy is rare, it is not feasible for the development to accommodate a loading zone on the site for the size of the Endeavour service vehicle. The proposed vehicle loading zone would accommodate the servicing vehicle without disrupting traffic flow within the car park for residents of the development and the community alike. Additionally, it is noted that there is no dedicated loading zone for existing tenancies on the southern side of Addison Street. As noted above, there are multiple shop top housing development with vehicle access from the car park and the loading area would also therefore service a broader public interest benefit.

Similarly to the creation of easement requests, as Council is the owner of the land an in-principal agreement between Council (as the land owners) and the owners of the development site (No. 31-33 and 35 Addison Street) has been obtained. A deferred commencement condition has been recommended requiring the specifications of the proposed works within the Council owned land to be finalised and approved by Council and registered at the NSW Land Registry prior to an operational consent.

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

The proposed development has been appropriately designed with regard to the constraints of the site, its zoning and topography. The development in the form of shop top housing is permissible with consent in the land use zone and is located within close proximity to existing retail and commercial services which will support the residents, visitors and employees of the subject site. The development would not be considered to result in unreasonable adverse impacts on the amenity of nearby properties. Accordingly, the site is considered suitable for the development.

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

The application was notified in accordance with Council's Community Participation Plan 2021.

#### First Round of Notification

A total of nine (9) submissions were received during the public exhibition period.

<b>Issue/Concern</b>		<b>Comments</b>
Building Height	Issue Raised	<p>The proposal exceeds the 15m building height development standard.</p> <p>The proposal is five storeys whereas the buildings directly opposite are three storeys.</p> <p>The building sits on the high section of Addison Street and the height exceedance will be more visible.</p> <p>The building height does not follow the gradient of Addison St.</p>
	Assessment Officer Response	<p>During the assessment process the proposal was modified, including the setbacks and the configuration of the uppermost level to reduce the bulk and scale. A Visual Impact Study was submitted and is provided at Attachment 3.1 which was included in the second notification period which demonstrates that the proposed development (as modified) will integrate appropriately within the streetscape.</p>

		<p>The streetscape within Shellharbour Village is currently in a state of transition whereby the existing single and two storey buildings are gradually being demolished and replaced with shop top housing developments. This is evident in the four storey shop top housing development under construction at the corner of Mary St and Addison St, the recently completed development near the corner of Addison and Wentworth Streets and the lodgement of the subject application.</p> <p>The development application was accompanied with a Clause 4.6 variation request for the building height. The variation has been assessed in accordance with the provisions of Clause 4.6 of the SLEP 2013 and is supported by Council. See further discussion in this regard at Attachment 7.</p>
Streetscape Compatibility and Heritage	Issue Raised	<p>The scale and character of the proposal is not consistent with Shellharbour Village.</p> <p>The scale of the development overwhelms the adjoining heritage buildings.</p> <p>Does not align with the present “village feel” of Shellharbour Village. The area will become a high density apartment living area.</p>
	Assessment Officer Response	<p>During the assessment process modifications were made to the building form including setbacks, apartment layouts and external finishes. The modified proposal is considered to be of an appropriate scale and a development that will integrate with both the existing and future desired streetscape.</p>
Views	Issue Raised	<p>The proposal will have unreasonable visual impact and disruption of existing views and the skyline.</p>
	Assessment Officer Response	<p>A Visual Impact Study was submitted and is provided at Attachment 3.1. The design of the development has also been amended throughout the assessment period which has resulted in a more appropriate design response. The proposal would not be considered to result in unreasonable visual impacts.</p>
Car Parking	Issue Raised	<p>The application does not comply with the car parking requirements of the Shellharbour Development Control Plan.</p> <p>The proposal has not considered the traffic generated by the potential future uses of the commercial tenancies.</p> <p>The Council car park will not be able to accommodate the car parking demand generated by the new commercial tenancies.</p>
	Assessment Officer Response	<p>Part 13.1.6 of the Shellharbour Development Control Plan 2013 states that a commercial development that</p>

		<p>cannot accommodate the required number of car parking spaces within the bounds of its development site may be levied a contribution in accordance with Council's Section 94 Contributions Plan if the development is located within a specific area where this charge applies.</p> <p>The subject site immediately adjoins a Council owned public car park to the south whereby Council's Section 94 Contribution Plan permits the payment of contributions in lieu of shortfalls of car parking. A condition of consent has been imposed for the contributions to account for the shortfall in commercial car parking. In excess of the required residential car parking is proposed.</p> <p>The development application was accompanied by a Parking and Traffic Impact Assessment. Council's Engineer has reviewed the proposal and the Impact Assessment and has raised no concerns. Conditions have been recommended in this regard.</p>
Visual and Acoustic Privacy	Issue Raised	The southern elevation balconies of the proposal will overlook into the rear yards of the dwellings along Adelaide Place.
	Assessment Officer Response	The southern elevation balconies are located approximately 38m from the rear property boundary of the dwelling of Adelaide Place. The distance exceeds the requirements for building separation under the ADG and there is existing vegetation both within the car park and on properties with frontage to Adelaide Place which would provide screening. It would be considered unreasonable for privacy mitigation measures to be imposed, given the distance.

### Second Round of Notification

During the assessment process revised plans were submitted proposing substantial changes to the application as originally publicly notified. In accordance with the Community Participation Plan, the Development Assessment Officer determined that the notification of the revised plans was required.

A total of seven (7) submissions were received during the second notification period, of which five (5) were from individuals who had lodged submission during the first notification period.

Issue/Concern		Comments
Traffic	Issue Raised	The proposal will result in an increase traffic in the immediate area.
	Assessment Officer Response	The development application was accompanied by a Parking and Traffic Impact Assessment. Council's Engineer has reviewed the proposal and the Impact Assessment and has raised no concerns. See discussion above.

Building Height	Issue Raised	<p>The proposal exceeds the 15m building height development standard.</p> <p>The approval of the height exceedance would set a precedent for future undeveloped sites.</p> <p>The proposed height does not complement the single storey and three storey buildings in the streetscape.</p> <p>The excess height results in unacceptable overshadowing of the adjoining site to the west.</p>
	Assessment Officer Response	<p>See discussion above. The proposed building height exceedance has been assessed against Clause 4.6 of the SLEP 2013. In this instance Council is satisfied that the requirements of the Clause have been met and the height variation is supported.</p> <p>Shadow diagrams have been submitted which illustrate the portion of shadow cast by the building height exceedance. Existing development to the west of the site will retain</p>
Streetscape Compatibility	Issue Raised	<p>The development is not respectful of the heritage item with pitched roof forms. The development is not respectful of the adjacent streetscape which includes pitched awnings over deep balconies.</p> <p>The proposed development will appear visually prominent in contrast to the surrounding buildings and character of the street.</p>
	Assessment Officer Response	<p>Due to the close proximity of the development to two heritage items with pitched roof forms, it was considered that the inclusion of a pitched roof in the proposed development would detract from the unique architectural characteristics of the heritage items. Councils Heritage Officer has considered the proposal and raised no objection to the roof form proposed.</p>
Overshadowing	Issue Raised	<p>The proposal will result in unacceptable overshadowing to the adjoining site to the west.</p>
	Assessment Officer Response	<p>Shadow diagrams accompanying the development application illustrate that the adjoining property to the west will receive three hours of solar access. See Attachment 2.2.</p>
ADG non-compliances	Issue Raised	<p>The proposal does not achieve the 7% deep soil requirement under the ADG.</p> <p>The development proposes a nil setback above street level.</p> <p>The roof form is horizontal and not varied in accordance with the streetscape.</p>

	Assessment Response	Officer	<p>Deep soil landscaping opportunities within the site are restricted by the provision of basement car parking and the retention of the heritage building. Given the location of the site in a local centre, site constraints to enable the provision of deep soil and minimal vegetation at the existing site, the variation is supported in this instance.</p> <p>The setback controls under 3F of the ADG relate to side and rear boundaries and not front setback.</p> <p>There are various buildings (recently constructed and older) along Addison Street that have flat roof forms. The most upper storey level consists of two residential units and an open communal open space area creating an articulated roof form.</p> <p>Each variation to the ADG is discussed at Attachment 6.</p>
Land use zone objectives	Issue Raised		The proposal disproportionally provides more residential units than commercial space. This is contrary to the objective of the B2 Local Centre zone <i>“to allow for a limited range of residential accommodation whilst maintaining retail, business or other non-residential active uses at street level”</i> .
	Assessment Response	Officer	The provision of commercial tenancies at street level only with residential apartments above is consistent with other forms of development in Shellharbour Village. It should be noted that the SLEP 2013 contains no interpretation for the term “limited range of residential accommodation.” The proposal is considered generally consistent with the objectives of the B2 zone, as discussed at Attachment 7.
Shellharbour Development Plan 2013 non-compliances	Issue Raised		The building design does not comply with the architectural elements prescribed in Chapter 6.3 Shellharbour Village Centre.
	Assessment Response	Officer	Whilst the application does not incorporate all of the elements in Figure 6.16, the provision states that <i>“design is encouraged to use”</i> inferring that inclusion of every element is not required. The composition of elements is appropriate and has taken into consideration the heritage context of the site.

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

The application is not expected to result in unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and is therefore considered to be in the public interest.

## **4. RECOMMENDATION**

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DA0616/2021 (PPSSTH-125119) be determined by way of Deferred Commencement pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, subject to the conditions provided at Attachment 1.