

21st April, 2022

The General Manager
Shellharbour City Council
Locked Bag 155
Shellharbour City Centre, NSW 2529



Attention: Senior Development Assessment Officer, Nicole Doughty

Dear Ms. Doughty,

PREMISES: Lots 2 & 3, DP 238804, 31-33 Addison Street SHELLHARBOUR NSW 2529

PROPOSAL: Development Application No. DA0616/2021

Demolition Of Existing Commercial Building & Retention Of One Heritage Building,
Consolidation Of Lot 2 & Lot 3 & Construction Of Mixed Use Development Comprising
Of Four Commercial & 17 Residential Units With Basement Parking

Reference is made to the above proposal and to Council's correspondence dated 6th April, 2022. Council's letter summarised matters raised by the Southern Regional Planning Panel and sought the submission of additional information comprising:

- A visual impact study consisting of a series of perspectives taken from various viewpoints (see attachment) illustrating the existing and future streetscape (with the proposed development).
- An elevation plan for the full frontage of Addison Street from Wentworth Street to Mary Street including existing built form and approved / under construction development at 43 Addison Street and including the proposed development.
- Re-development potential of allotments with heritage items and 15m building height standard. This is to demonstrate where Clause 4.6 for building height development standard and using heritage as justification could occur. **(addressed in this correspondence)**

Amended plans were also requested:

- demonstrating improved waste management facilities;
- showing an alteration to awning design along Addison Street; and,
- showing location of business identification signage.

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Furthermore, additional information was requested in relation to:

- heritage conservation;
- creation of a right of way (**addressed in this correspondence**);
- scope of works along Mary Street and Council owned land; and,
- formalisation of a loading area at Lot 13 DP 238804 to accommodate at least a medium rigid vehicle

This correspondence seeks to address:

- the potential for the use of clause 4.6 to exceed the permitted building height of 15 metres and where a heritage item exists; and,
- creation of a right of way.

The other matters are provided with a response by way of plan amendments, visual assessment and street level elevations and further traffic advice and separately submitted.

The use of clause 4.6 with heritage as justification for exceedance in height

Council's correspondence seems to suggest that the applicant should be required to conduct an assessment of heritage items located within areas with a 15 metre HOB standard to determine if there is potential for the use of clause 4.6 to exceed the HOB standard. It is assumed that Council's reasons for such a request is to establish if permitting an exceedance in height in relation to the subject site, in this particular circumstance would establish a precedent for other proposals where heritage items exist. In this regard, it is argued that the consideration of precedent does not rely on an audit or assessment of all other sites, but to properly consider the particular circumstance the subject of this application. In particular, one should consider the specifics of the subject site which makes the site unique and worthy of application of cl. 4.6 - *Exceptions to development standards* and use of cl. 5.10(10)-*Conservation Incentives*.

It should be acknowledged that clauses 4.6 and 5.10(10) is available to any applicant in relevant circumstances. However, whether suitable justification is provided is the central matter for consideration. In this regard, Council has already been provided with a comprehensive clause 4.6 request for variation and detailed heritage justification for the use of clause 5.10(10). Hence, replicating these arguments here is not required. However, the question seems to be if the arguments provided in the submitted clause 4.6 could be equally applied elsewhere. To assist Council in its consideration of this matter the following is offered in support of the uniqueness of the subject site.

Site Ownership

While not strictly a planning matter, site ownership is worthy of consideration when exploring redevelopment potential of a site that contains an item of heritage significance. The subject site is not owned by Council, community trust or organisation or the like. Being in private ownership facilitates private sector consideration of future land use and development feasibility. This opportunity is considerably more challenging in cases where a site is in Council or community ownership. In this regard it is noted that a number of sites within the Shellharbour Town Centre may be affected by such ownership issues.

Site Proportions

The subject site at 1,479.5 sqm is of considerable proportions within a town centre context. Allowing for the approximate sterilisation of 370 sqm of the site for heritage conservation, a significant portion of the site remains available for redevelopment. While the resulting available site area results in an awkward building footprint/envelope, the area of the site remaining is of suitable proportions to enable a feasible shop top housing development to occur while preserving the item of heritage significance. Furthermore, the available site area enables a shop top housing development that is generally consistent with objectives of the relevant development controls. This situation is unique to the subject site.

The nature of the item and its positioning on the site

The item of heritage significance is a single building occupying only a portion of the site. The item of significance is not the entire site, nor is the item of significance centrally located or occupying the vast majority of the site. Therefore, as noted above this leaves a sizable portion of the site for redevelopment with sufficient space around the item of significance to facilitate retention of the structure and preservation of the item of significance. The heritage advice confirms the adequacy and appropriateness of the nominated curtilage that will be retained for the heritage building on the subject property. Therefore, the subject site is considered to be significantly different to others in the locality. For instance, the heritage listed site immediately to the north east of the subject site contains a centrally located dwelling occupying the majority of the site, hence redevelopment potential is essentially nil as redevelopment would require the demolition of the item of significance.

Site locational context

The subject site is bordered by a Council laneway to the north east and a Council car park to the south providing sufficient separation distance between the proposed development. Furthermore, the most significant shadow impact caused by the proposed development is experienced over the Council carpark and not over other more sensitive residential development. The existence of the Council laneway and heritage item to the north east also provides for retained building separation. That is, as noted above, development of the adjoining heritage listed site would require the demolition of the building.

Creation of right of carriageway

The existing development over the subject site is provided with vehicular access off the Council car park at the rear. The Council's development control plan prohibits vehicular access off Addison Street, hence this proposal has been designed to maintain access off the existing Council car park at the rear via a single vehicular access point. It is argued that this form of access is appropriate and compliant. However, Council has advised that such access requires the creation of a right of way over Council owned land. In this regard, enclosed is a sketch plan showing the location of the proposed right of way providing vehicular access to the proposed shop top housing development.

The Right of Carriageway sought is to be six (6) metres wide to enable two way traffic and is to be created over the allotments shown in Figures 1 and 2 on the following page.



Figure 1: Allotments requiring Right of Carriageway for vehicle access purposes.

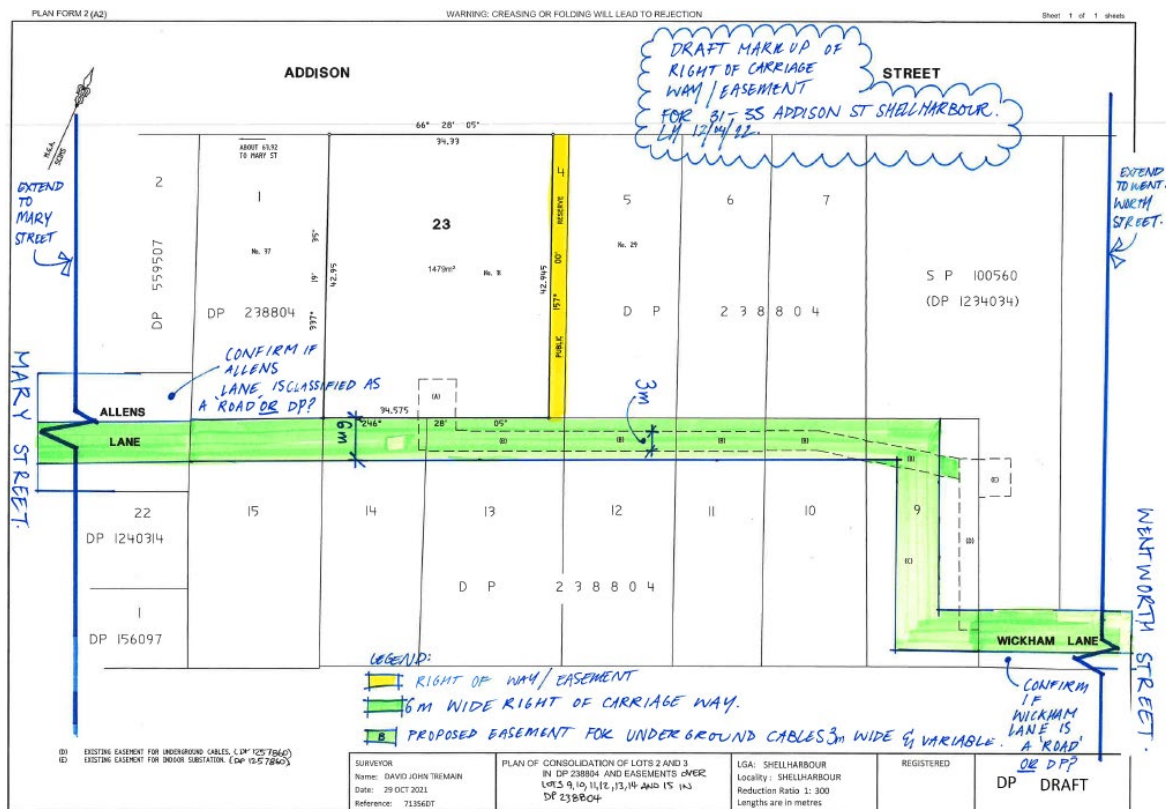


Figure 2: Mark up showing actual right of carriageway (original sketch enclosed)

It is assumed that the creation of the right of carriageway can be considered as part of the current development application and that its formalisation can be made a condition of development consent.

We trust that this correspondence, along with the attached sketch and separately submitted plan amendments and documentation satisfies Council's request for further information. Should you have any further enquiries, please don't hesitate to contact me on 0417 253 416.

Yours sincerely,

HDC Planning

A handwritten signature in blue ink, appearing to read 'Gilbert de Chalain', with a long horizontal stroke extending to the right.

Gilbert de Chalain MPA

Partner