

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	Wednesday, 8 June 2022
DATE OF PANEL DECISION	Tuesday, 7 June 2022
DATE OF PANEL MEETING	Tuesday, 31 May 2022
PANEL MEMBERS	Chris Wilson (Acting Chair), Renata Brooks and Tim Fletcher
APOLOGIES	Graham Rollinson
DECLARATIONS OF INTEREST	Chris Homer: Shellharbour Council has an ownership stake

Public meeting held by teleconference on 31 May 2022, opened at 3:03pm and closed at 3:37pm.

MATTER DETERMINED

PPSSTH-125 – Shellharbour – DA0616/2021 at 31-33 ADDISON STREET SHELLHARBOUR 2529, DA0616/2021 at 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 – Demolition of existing commercial building (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at the site inspection listed at item 8 in Schedule 1.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Shellharbour Local Environmental Plan 2013 (LEP), which has demonstrated that:

- compliance with cl. 4.3 Building Height is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

the Panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP;
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 Building Height of the LEP and the objectives for development in the B2 Local Centre zone; and
- the concurrence of the Secretary has been assumed.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to uphold the cl 4.6 variation to building height and approve the application for the reasons outlined in the Council's Assessment Report. The Panel was satisfied that the impacts associated with the non-compliance were minimal and justified given the public benefits that would arise from the development including the retention and refurbishment of a locally listed heritage item. The Panel was further satisfied that, subject to conditions, the development is consistent with the desired future character of the streetscape and town as established by the existing planning framework.

CONDITIONS

The Development Application was approved subject to the recommended conditions in the Council's Assessment Report with minor amendments as follows:

- Condition 26 L) was amended to ensure contaminated waste materials are disposed of appropriately;
- Condition 28 was amended to ensure that the public car park is used by the public and not by construction workers;
- Condition 43 was amended to require the recommendations of the approved Preliminary Site Investigation to be complied with including the preparation of a hazardous materials survey and appropriate disposal of excavated materials;
- Condition 58 was amended to include reference to the hazardous materials survey;
- Condition 84 was amended to include limits on the use of communal open space and a requirement for an Operational Management Plan to be included in the bylaws of any future strata subdivision plan;
- Condition 95 (previously 94) was amended to ensure that the future uses of the ground floor tenancies are compatible with the service capabilities of the site.




Note: The Panel requested that the Preliminary Site Investigation report be uploaded to the planning portal.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition of the application and heard from all those who addressed the Panel at the Public Meeting. The Panel notes that issues of concern included:

- Exceedance of building height development standard;
- Streetscape Incompatibility;
- Visual Privacy Impacts;
- Traffic Impacts;
- Overshadowing;
- Non-compliances with ADG; and
- Non-compliances with Shellharbour Development Control Plan 2013

The Panel considered that concerns raised by the community were adequately addressed in the Council's Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel did however look closely at concerns raised regarding overshadowing impacts to residential properties to the south of the development and was satisfied that these impacts were acceptable having regard to applicable guidelines.

PANEL MEMBERS	
 Chris Wilson (Acting Chair)	 Renata Brooks
 Tim Fletcher	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-125 – Shellharbour – DA0616/2021
2	PROPOSED DEVELOPMENT	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).
3	STREET ADDRESS	31-33 ADDISON STREET SHELLHARBOUR 2529 DA0616/2021 at 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
4	APPLICANT/OWNER	J. Cain (Applicant) Harbour Cove Developments Pty Ltd (Owner) Shellharbour City Council (Owner of Car Park)
5	TYPE OF REGIONAL DEVELOPMENT	Crown development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> SEPP - (State and Regional Development) 2011 – Council related Development over \$5 million SEPP (Resilience and Hazards) 2021 SEPP (Transport and Infrastructure) 2021 SEPP 65 – Design Quality of Residential Apartment Development. SEPP (Building Sustainability Index – BASIX) 2004 Shellharbour Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Shellharbour Development Control Plan 2013 <ul style="list-style-type: none"> Chapter 6.3 Shellharbour Village Centre Chapter 13 Parking, Traffic and Transport Chapter 15 Waste Minimisation and Management Chapter 28 European Heritage Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 23 May 2022 Clause 4.6 variation request for the building height Written submissions during public exhibition:

		<p>First Round: 3 November 2021 to 19 October 2021</p> <p>Submissions: Nine (9)</p> <p>Second Round: 29 April 2022 to 13 May 2022</p> <p>Submissions: Seven (7) of which five (5) were from individuals who had lodged a submission in the first round of notification.</p> <ul style="list-style-type: none"> • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Janet Hall and Rodney Fitzgerald ○ Council assessment officer – Nicole Doughty ○ On behalf of the applicant – Lauren Honey, Hon Diec and Gilbert B. de Chalain
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: 21 February 2022 <ul style="list-style-type: none"> • <u>Panel member:</u> Renata Brooks • Briefing: 16 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members:</u> Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Graham Rollinson ○ <u>Council assessment staff:</u> Madeline Cartwright, Jessica Saunders, Nicole Doughty, Jennifer Southan, Andrew McIntosh, Jasmina Micevski ○ <u>DPE staff:</u> Verity Rollason, Holly McCann • Site inspection: 31 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members:</u> Chris Wilson (Acting Chair), Renata Brooks and Tim Fletcher ○ <u>Council assessment staff:</u> Nicole Doughty, Madeline Cartwright, Jessica Saunders ○ <u>DPE:</u> Sung Pak • Final briefing to discuss council's recommendation: 31 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members:</u> Chris Wilson (Acting Chair), Renata Brooks and Tim Fletcher ○ <u>Council assessment staff:</u> Nicole Doughty, Jessica Saunders, Jasmina Micevski ○ <u>DPE:</u> Sung Pak
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report

