

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

<b>Panel Reference</b>	<b>PPSSTH-160</b>	
<b>DA Number</b>	<b>DA0274/2022</b>	
<b>LGA</b>	<b>Shellharbour City Council</b>	
<b>Proposed Development</b>	Demolition of existing dwelling and ancillary structures, construction of shop top housing development comprising of one retail premises, ten residential units, ground level parking and associated landscaping.	
<b>Development Characterisation</b>	Shop top housing	
<b>Location</b>	37 Addison Street Shellharbour - Lot 1 DP 238804 Allens Lane Carpark - Lot 15 DP 238804	
<b>Applicant/Owner</b>	Couvaras Architects (Applicant) Demir Nominees Pty Limited (Owner) Shellharbour City Council (Owner of Car Park)	
<b>Date of DA lodgement</b>	17 June 2022	
<b>Public Notification Period</b>	30 June 2022 to 13 July 2022	
<b>No. of Submissions</b>	Submissions: Two (2) written submission received.	
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	<p><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 Lot 15 DP 238804.</p> <p>The proposal is also reliant on the creation of a Right of Way for vehicle access purposes over Council owned land.</p> <p>The proposed development has a CIV of \$5,415,075 (excl GST)</p>	
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• SEPP - (Planning Systems) 2021 – 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 Stormwater Plans 2.4 No. 41 Addison Street Feasibility Plan
	<b>Attachment 3</b>	3.1 Applicant Response to DRP Meeting Minutes 3.2 Applicant & Council Response to DRP Meeting Minutes
	<b>Attachment 4</b>	ADG Compliance Table
	<b>Attachment 5</b>	Shellharbour Local Environmental Plan 2013 Compliance Table

	<b>Attachment 6</b>	Shellharbour Development Control Plan 2013 Compliance Table
	<b>Attachment 7</b>	In-Principal Agreement
<b>Clause 4.6 requests</b>	No	
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Impacts to vehicle access and structural integrity of western adjoining development</li> <li>• Waste room access on western elevation</li> <li>• Vehicle traffic and pedestrian safety within Allen's Lane and carpark</li> </ul>	
<b>Recommendation of Officer</b>	<b>Deferred Commencement</b>	
<b>Report prepared by</b>	Nicole Doughty – Senior Development Assessment Officer	
Report Endorsed by	Madeline Cartwright – Acting Manager Planning - City Development	
Date of report	10.11.2022	

**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 (Panel) as the Determining Authority in accordance with section 2.19 and Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. The proposed development is considered to be Council Related Development over \$5 million as vehicle access to the proposed development will be via a Council owned public car park (right of way access), works are proposed within the Council owned public car park and the CIV is \$5,415,075.

In this regard, the development is classed as Regionally Significant development under State Environmental Planning Policy (Planning Systems) 2021. 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 dwelling and ancillary structures, construction of shop top housing development comprising of one retail premises, ten residential units, ground level parking and associated landscaping. The proposal includes the creation of an easement for vehicle access via a Council owned car park.

#### 1.3 The site

The site comprises of Lots 1 and 15 DP 238804 which is known as 37 Addison Street Shellharbour and the Allens Lane Carpark, respectively. Lot 1 DP 238804 contains the shop top housing development and Lot 15 DP 238804 forms part of Councils car park, over which access to the site and an associated Right of Carriageway is sought.

#### 1.4 Exhibition

The proposal was notified in accordance with the Shellharbour Community Participation Plan 2021 and received a total of two (2) 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:

- 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 two (2) submissions received during the exhibition periods which are discussed at Section 3.9 of this report. External agency response has 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.

The proposal is generally consistent with the Apartment Design Guide (ADG) and Shellharbour Development Control Plan (DCP) 2013 with minor variations supported by Council staff which are outlined in the Report below.

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.

## **1.7 Recommendation**

DA0274/2022 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 - (Planning Systems) 2021
- 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 existing dwelling and ancillary structures, construction of shop top housing development comprising of one retail premises, ten residential units, ground level parking and associated landscaping.

The key details of the development include:

- Demolition works
  - Dwelling and ancillary structures at 37 Addison Street
  - Commercial building at 37 Addison Street
- One retail tenancy on ground floor
- 10 residential units comprising:
  - 2 x 2 bedroom
  - 8 x 3 bedroom including two as adaptable
- Ground floor off-street parking – comprising:
  - Five (5) residential visitor car spaces
  - 15 residential car spaces
  - No bicycle spaces
  - Loading area for SRV vehicle (garbage collection and servicing for the commercial)
- Communal open space (Level 1) = 119m<sup>2</sup> (13.75% of site area)

#### Works within Council owned car park

- Creation of Right of Way for vehicle access from the subject site to Allen's Lane (Lot 15 DP 238804)
- Driveway crossover for car park access via Allens Lane Carpark



*Figure 1 – Photomontage of proposed development*

## **2.3 Subject Site and Locality**

### **2.3.1 Site Description**

The subject site is primarily comprised of one property, known as 37 Addison Street with a site area of 864.9m<sup>2</sup> and is located on the southern side of Addison Street within Shellharbour Village. The Site has direct frontage to Addison Street to the north, is attached to a two storey shop top housing building to the west, a local heritage listed item to the immediate east ('Allen's Store') and a Council owned public carpark to the south.

Building heights within Shellharbour Village vary from older single storey commercial buildings to more recently constructed three (3) and four (4) storey shop top housing developments at No. 20-26 Addison, 23 Addison Street and 43-45 Addison Street (under construction approved under DA0621/2017 (as modified)) and a five (5) storey shop top housing development recently approved to the east at No. 31-35 Addison St (approved under DA0616/2021 PPSSTH – 125).



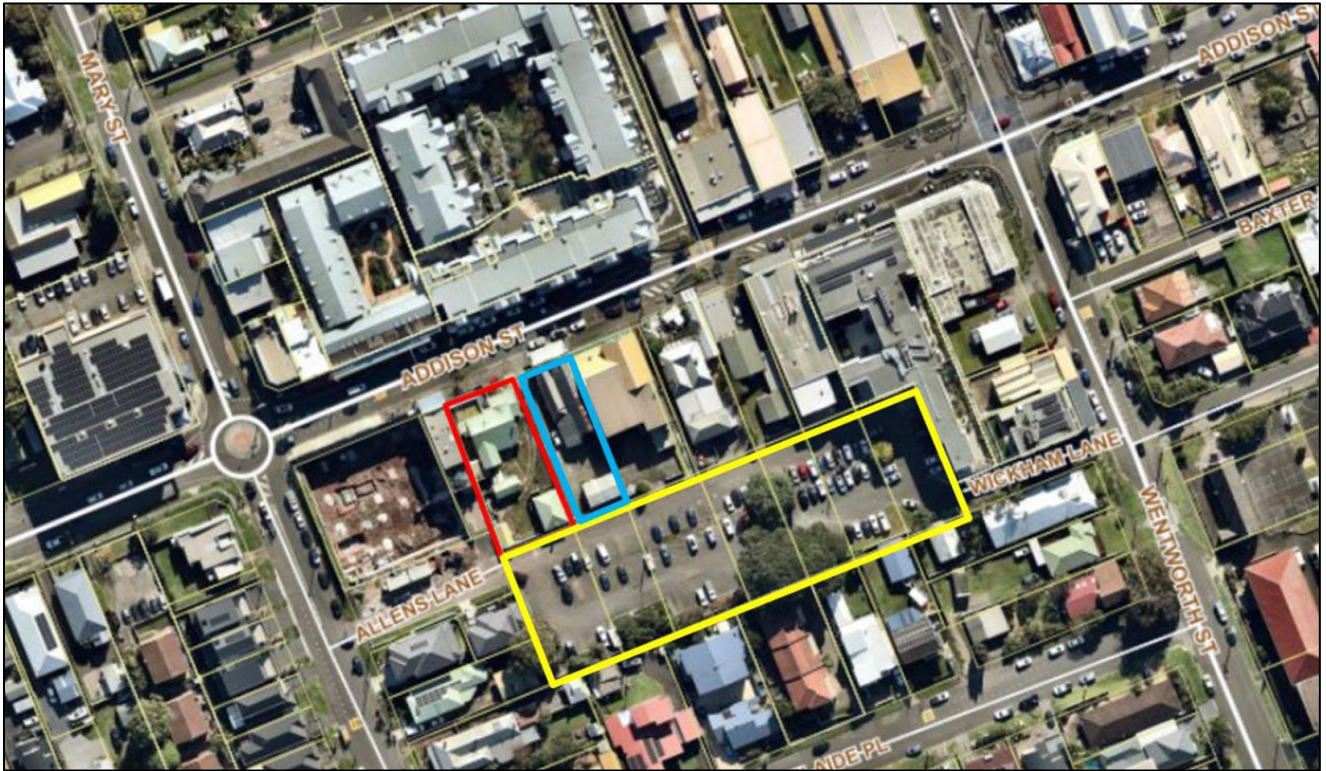


Figure 2 – Location map. The subject site is outlined in red, heritage item in blue and Council owned carpark in yellow.



Figure 3 – Proposed location of the Right of Way for vehicle access



### 2.3.2 Property Constraints

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

- Coastal Management – Coastal use area

See discussion throughout the report with regard to each constraint.

### 2.3.3 Restrictions on Title

There are no restrictions on the title.

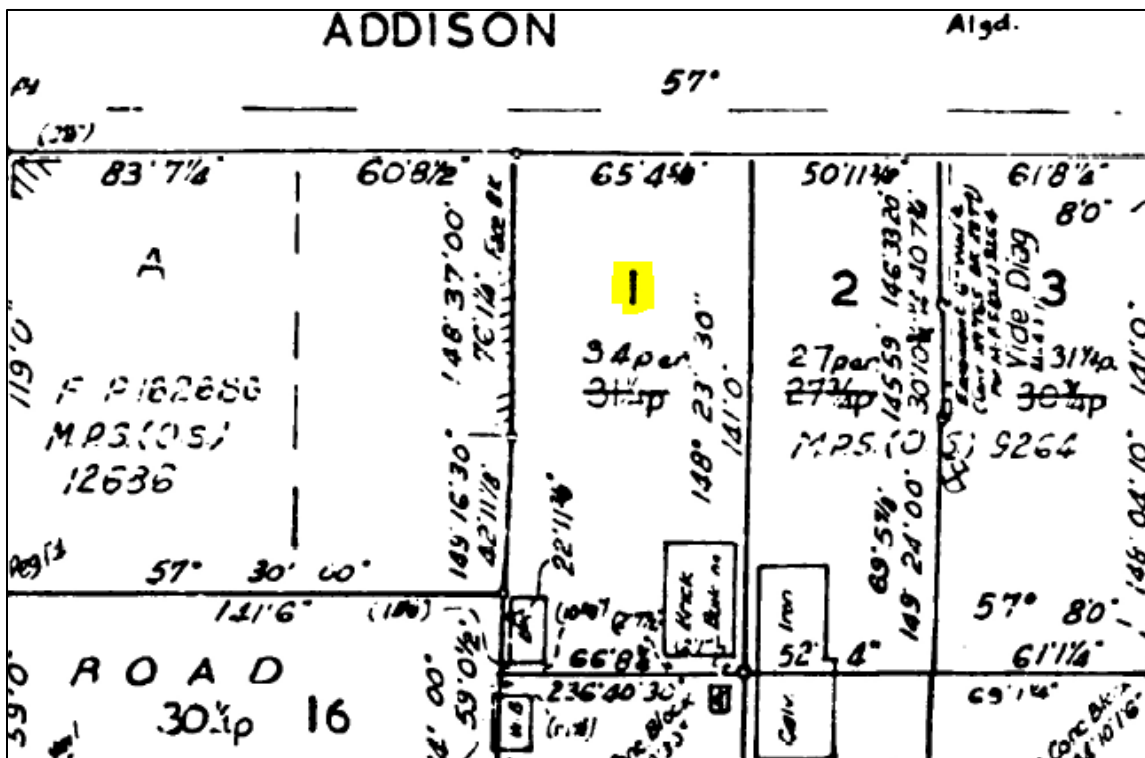


Figure 4 – Deposited Plan 238804 extract

## 2.4. Referrals

### 2.4.1 Internal Referrals

#### Engineering Officer

Council’s 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

Council’s 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 assessment against Shellharbour Development Control Plan 2013 in this regard. Recommended conditions have been included within the draft consent.

#### Landscape Officer

Council’s Landscape Officer has reviewed the proposal and provided a conditionally satisfactory referral response. This includes the substitution of various plant species suitable to the coastal conditions of the site.

#### Waste Officer

Council's 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.

### **GIS Officer**

Council's 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**

Council's 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. 35 Addison Street. Amended plans reducing the bulk and scale have been provided.

### **Property Management Officer**

Council's Property Officer has reviewed the proposal and provided an in principal agreement to the registration of a Right of Way over Lot 15 DP 238804. A deferred commencement condition is recommended which would require that the easement is endorsed at a Council meeting and registered over the subject lot prior to the issue of any operational consent.

### **Community Life Officer**

Council's Community Life Officer has reviewed the proposal and provided a conditionally satisfactory referral response. This includes recommending the provision of bicycle racks to promote active transport and the provision of acoustic treatment between the communal courtyard and the adjacent apartment to minimise noise.

## **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 24 October 2022 raising no objections and recommended the imposition of conditions which have been included within 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 following lodgement. 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 Applicant's response to the DRP Chair comments is provided at Attachment 4.1.

## **2.4.3 Southern Regional Planning Panel Briefing Comments**

A Southern Regional Planning Panel Briefing meeting was held on 28 September 2022. The following key issues were identified by the Panel and have been responded to accordingly:

### **Departures from Apartment Design Guidelines**

Whilst the proposed development has been further revised to reduce the extent of departures from the ADG, the proposal still seeks variations to the following ADG components:

- Objective 3D – Communal and Public Open Space
- Objective 3E – Deep Soil Zone
- Objective 3F – Visual Privacy
- Objective 4A-1 – Solar and Daylight Access
- Objective 4D-2 – Apartment Size and Layout

Discussion in relation to each of these variations is outlined in the body of this Report and attached compliance table provides a complete assessment of the ADG.

### **Bulk, Scale, Setbacks and Heritage Impacts**

The applicant has provided streetscape elevations and which visually illustrates how the development will integrate with its immediately surrounding context and compatibility along the southern side of Addison Street. The elevation study highlights that the scale of buildings within Shellharbour Village varies from single storey to four storey shop top 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 five storey recently approved at 31-35 Addison Street). The illustrations reflect that Shellharbour Village is undergoing a state of transition and will be very different to the current streetscape character as re-development occurs that utilises the development standards in the SLEP 2013. The development as proposed is considered reasonably compatible with the existing and future potential streetscape of Addison Street.

The proposed design has undergone multiple amendments during the assessment process in response to feedback from Council, the Design Review Panel and the Southern Regional Planning Panel.

The proposed design includes a two storey verandah addressing Addison Street which wraps around the eastern elevation. This architectural element is consistent along Addison Street and is sympathetic to the adjoining heritage item.

The unique site context requires a site-specific design approach, whereby strict numerical compliance with the SDCP 2013 setbacks and ADG would not result in a positive urban design outcome. The front and eastern side setbacks have been re-configured to create an articulated building envelope with a defined recess at the north-eastern corner to in response to the heritage item. The heritage item is located 5.07m from the subject site's eastern boundary. The proposed ground floor tenancy is setback 1.65m from the heritage item awning, the north-eastern corner of the building is consistently setback and has balconies to visually soften the proposed development. The setbacks and balconies achieve a balance between creating space around the heritage item and transitioning to buildings to the west of the site which are reflective of the DCP controls.

The external finishes and colour palette of the building are consistent with those detailed in Part 6.3 Shellharbour Village Centre in the Shellharbour Development Control Plan 2013. The light colour tones on the upper storeys soften the building form.



Figure 5: Addison Street elevation as presented at the SRPP Briefing.



Figure 5: Amended Addison Street elevation

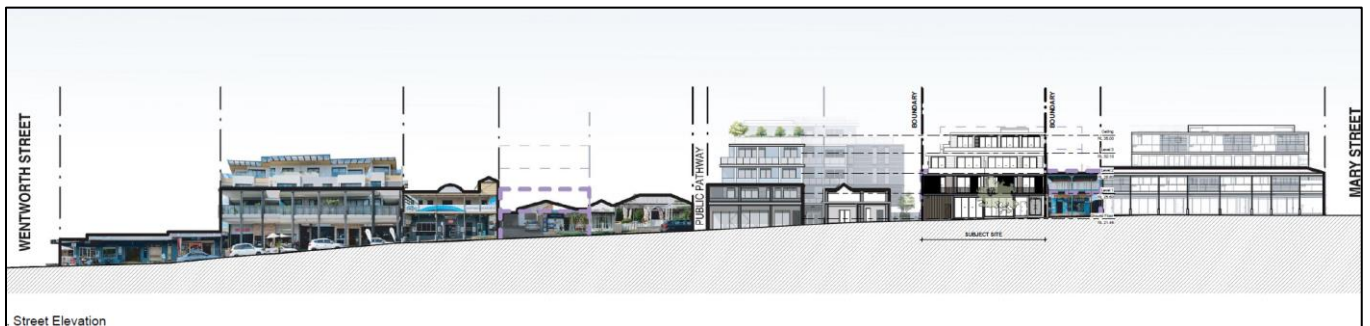


Figure 6: Amended southern side Addison Street elevation

### Servicing Arrangements for Commercial Space

The Panel noted that the design of the retail space was not conducive for transferring waste from the tenancy to the waste storage area. Amended plans have been provided with a door from the rear of the retail tenancy to the on-site car parking area thereby providing access to the waste storage area.

## **Potential Isolation of Adjoining Lot**

The proposed development will result in the existing two storey shop top housing development located to the immediate west (No. 41 Addison St) being located either side of re-developed four storey shop top housing developments. Under the Shellharbour Local Environment Plan 2013, there is no minimum lot size requirement for the erection of a shop top housing development in the B2 Local Centre zone. Accordingly, the planning principles for site isolation, established by the NSW Land and Environment Court proceedings of *Kara v Sutherland Shire Council* [2004] NSWLEC 251, do not strictly apply. Nonetheless, the implications of the subject proposal application in terms of re-development potential at No. 41 Addison are of relevance.

The Applicant has submitted plans illustrating a potential shop top housing re-development at No. 41 Addison Street that realises the intent of Council's controls (building height and FSR development standards) and capable of achieving the ADG objectives (Attachment 2.4).

Council is satisfied that the proposed building envelope is an appropriate response to the western adjoining site which will not unacceptably impede on the re-development potential of the site. Additionally, the proposed development adequately responds to the existing built form on the neighbouring site.

## **Amended Plans Design Outcomes**

The Panel noted that the applicant had indicated an intention to submit amended plans to address Council's outstanding concerns. In addressing these concerns the Panel noted that the amended plans were to achieve the following outcomes:

- Re-instatement of the original verandah treatment to Addison Street elevation
- Compliance with the building height development standard
- Compliance with ADG objectives regarding residential amenity

Council is satisfied that the amended plans have adequately reinstated the two storey verandah treatment and now complies with the building height development standard. Whilst the extent of ADG variations has been reduced, there remains outstanding variations which Council staff have assessed and are recommend be supported.



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

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

#### **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 (Planning Systems) 2021**

###### **Schedule 6 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 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.

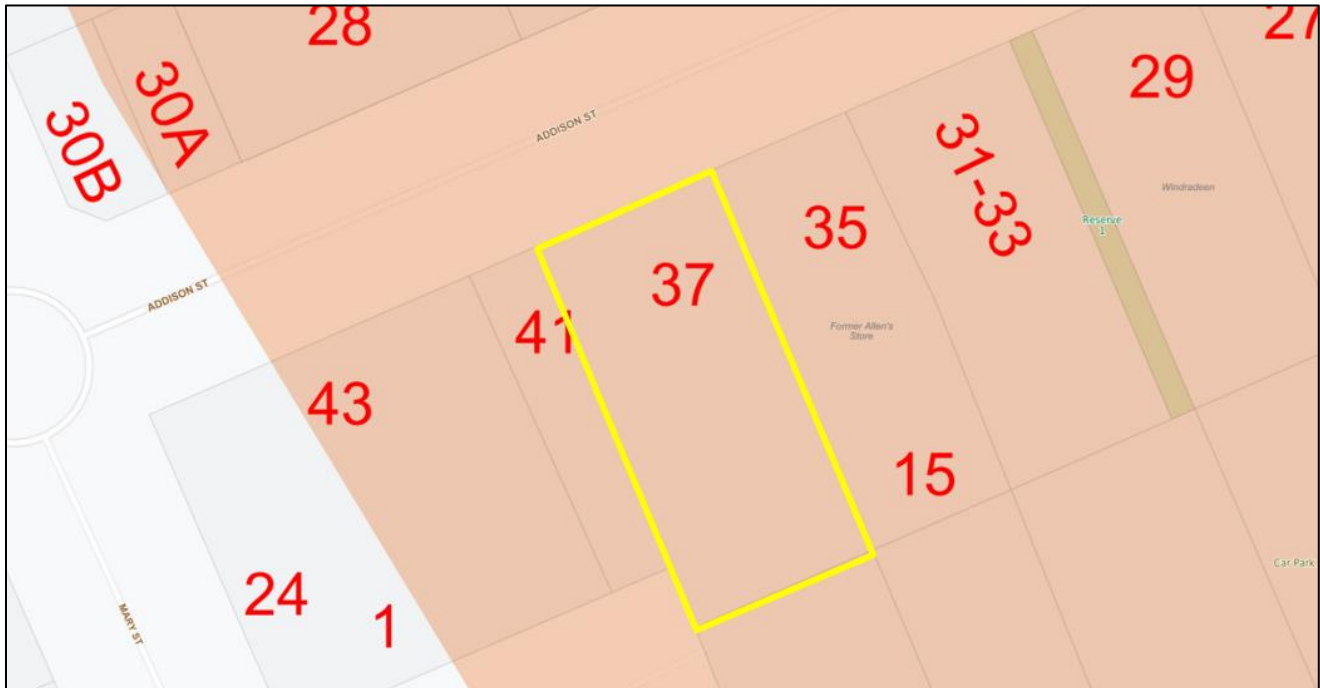
The subject site is within the mapped Coastal Use Area (Figure 8).

## **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 is not considered to cause an adverse impact on access to the foreshore, overshadowing, wind funnelling and the loss of views from public places to foreshore, impacts on the visual amenity and scenic qualities of the coast, Aboriginal cultural heritage or cultural or built environmental heritage. Additionally staff considered that the development has been designed, sited and will be managed to avoid adverse impacts and have taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.



**Figure 8** – SEPP (Resilience and Hazards) 2021 Coastal Use Area 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.

## **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. A Preliminary Site Investigation accompanied the application concluding that the site was suitable for the proposed shop top housing development subject to the following recommendations.

- *A hazardous building materials survey should be undertaken by and occupational hygienist to identify potential presence of hazardous materials and provide guidance for management of subsequent works; and*
- *A program of soil sampling targeting the identified PAECs should be completed following demolition of existing site buildings and prior to issue of a construction certificate.*

Accordingly, subject to the imposition of the above recommendations contained in the Preliminary Site Investigation and an unexpected finds condition, 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 24 June 2022 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 Panel (DRP) which provides advice on applications made under SEPP 65 and other certain application types. The proposal was referred to the DRP on 2 September 2022 as per Council's Policy.

- (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 3.2.

- (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 is located to the immediate west of a local heritage item. A public carpark adjoins the site's southern 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 storey shop top housing. The area is in a state of transition, with development varying in scale from single storey residential dwellings to three and 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 that is consistent with the desirable architectural elements and colour palette of 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) and southern elevations (public car park). The Addison Street elevation includes a ground floor retail tenancy. An awning for weather protection for pedestrians is also proposed on the Addison Street frontage.

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

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

The subject site is located to the immediate west of a local heritage item at No. 35 Addison Street. During the assessment process the building setbacks and external finishes were amended to provide an appropriate curtilage around the heritage item and maintain the visibility of the heritage item from various points of view. The building and awning over the ground floor are not less than the setbacks of the heritage item.

The building 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 (currently under construction). 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 building form has incorporated common open breezeways linking the northern and southern orientated units achieve cross ventilation and southerly cool breezes.

The proposal is compliant in terms of the building height and FSR development standards under the Shellharbour Local Environmental Plan 2013. 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 one (1) retail tenancy on the ground floor and 10 residential units located above. 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 solar access, private 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. The proposal meets the ADG requirement for cross-ventilation and solar access of apartments; 70% of apartments (7/10) will receive three hours of sunlight and 70% of apartments (7/10) achieve natural cross ventilation. The location of openings and windows have taken into consideration the implications on solar access and cross-ventilation in the event that the adjoining western site is re-developed. The proposal positively contributes to the environmental, social and economic outcomes of the site.

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

The proposal provides a communal open space area on Level 1 and is embellished with planting, seating, table and a BBQ. The communal area is partly covered by the building footprint above. 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.

Planting is proposed along the southern property boundary (deep soil landscaping), the communal open space and between Units 1.1 and 1.04. The proposed planting throughout the development is generally consistent with other shop top housing development in Shellharbour Village and will be visible from the public domain. The building design and site area has constrained landscape opportunities. As such, conditions of consent have been recommended to replace nominated plant species with native trees species that are suitable for the coastal conditions and solar access.

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

The orientation of the apartments has sought to balance solar access requirements under the ADG and views of the ocean and cool southerly sea breezes. 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 a 119m<sup>2</sup> (13.75% of site area) communal open space area located on Level 1. Whilst this does not achieve the 25% (216.22m<sup>2</sup>) requirement of the ADG, the area is acceptable given the number of units, balcony sizes, proximity of the site to the beach (350m), public park (Little Park 400m) and swimming pools (550m). The communal open space is embellished with landscaping, undercover table and chairs and a BBQ. To achieve a balance between the enjoyment of the communal open space and resident amenity, conditions are recommended regarding use times and the furniture to be fixed in place.

#### **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. The retail tenancy is orientated to Addison Street. Passive surveillance opportunities would also be provided to the adjoining public domain areas including Addison Street and the public car park through the orientation of balconies and windows.

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

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

- 2 x 2-bedroom apartments, representing 20% of the total dwellings
- 8 x 3-bedroom apartments representing 80% of the total dwellings

Two (2) apartments (20.00%) are compatible of complying with Australian Standard 4299-1995 Adaptable Housing and 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. Suitable ramped access is provided from the street into the main residential entrance and the communal open space is located within close proximity to the lift.

### **Principle 9: Aesthetics**

The building design and external finishes as modified incorporates a double height detailed verandah on the Addison Street ground and first floor façade that wraps around a portion of the eastern side elevation. The verandah design and reclaimed facebricks are elements that characterise Addison Street. The colour palette is consistent with Part 6.3.5 and Figure 6.18 of the Shellharbour Development Control Plan 2013 and include off-white colour tones, timber looking screens and reclaimed bricks.

The building is well articulated and avoids large expanses of unbroken wall through modulated building form and balconies on all elevations. 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 4. The proposal seeks variations to the following ADG components:

- Objective 3D1 – Communal and Public Open Space

One communal open area is provided totalling 13.75% (119m<sup>2</sup>) of the site. Whilst this does not achieve the 25% (216.22m<sup>2</sup>) requirement of the ADG, the area is acceptable for the following reasons:

- the design, layout and embellishment proposed makes the area usable and functional,
- the number of units proposed (10) means the number of residents using the area is limited,
- each unit has a private balcony that exceeds the ADG minimum and provides suitable areas for residents to have tables and chairs etc. on their own balconies,
- the proximity of the site to the beach (350m), public park (400m) and swimming pools (550m) means that residents will be able to access suitable public open spaces easily.
- At least 50% of the principal usable part of the communal open space will receive 2hours of sunlight at mid-winter.

This is consistent with the ADG's design guidance that (emphasis added):

*"Where developments are unable to achieve the design criteria, such as on small lots, **sites within business zones**, or in a dense urban area, they should:*

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room*
- *provide larger balconies or increased private open space for apartments*
- *demonstrate good proximity to public open space and facilities and/or provide contributions to public open space"*

- Objective 3E – Deep Soil Zone

The proposal does not achieve the 7% deep soil requirement. No deep soil zone is proposed. Given the location of the site in a local centre and car parking requirements, the variation is supported. Landscaping in the form of planter boxes in non-deep soil areas are proposed with depth profiles suitable for the plant species.

This is consistent with the ADG's design guidance that (emphasis added):

*"Achieving the design criteria may not be possible on some sites including where:*

- *the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)*
- **there is 100% site coverage or non-residential uses at ground floor level**

*Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure”*

- Objective 3F – Visual Privacy

The proposal seeks a variation to the rear setbacks prescribed in the ADG. The site adjoins a Council owned public car park to the rear. The southern elevation balconies are located approximately 15m and 38m from the rear property boundary of the nearest residential properties, achieving the building separation requirements. Therefore the variation is acceptable within the site context and achieving the building separation requirements of the ADG.

The location of the Unit 3.02 rear eastern facing balcony is located approximately 5.83m from the adjoining building balcony. To mitigate overlooking opportunities a condition of consent is recommended for a 1.7m privacy screen to be installed.

Windows and openings between apartments on the same site either achieve the required building separation distances or privacy measures have been incorporated such as highlight windows.

- Objective 3J-2 Bicycle and Car Parking

The proposal does not provide any bicycle racks. Whilst the ADG and the Shellharbour DCP 2013 does not prescribe a bicycle space rate, Objective 3J-2 encourages parking facilities for other modes of transport. As the proposal comprises of ten residential apartments, the provision of bicycle racks capable of storing five (5) bicycles is considered adequate. There is sufficient space within the car parking level near the lift to provide the bicycle racks. A condition of consent to this effect has been recommended.

- Objective 4E Private Open Space and Balconies

Design Guidance under 4E-3 states *“where clothes drying, storage or air conditioning units are located on balconies, they should be screened and integrated in the building design.”* Each apartment is provided with a clothes line that is 1m from the finished floor level. Contrary to the Design Guidance, the location of various clothes line will be visible from the public domain. To achieve an acceptable interface between the public domain and the residents private open a condition requiring *“All clothes lines are to be appropriately located to minimise view from the public domain. To achieve this the clothes line can be either re-located or a screen installed to minimise visibility whilst permitting air and sunlight”* has been recommended.”

- Objective 4A-1 – Solar and Daylight Access

30% (3/10) of the units will not receive direct sunlight to the main living areas and private open space between 9am and 3pm at mid-winter. The non-compliance is considered acceptable in this instance as the southern facing balconies have been designed to take advantage of the cool southerly breezes and ocean views. It is noted that all three of the non-compliant apartments have north facing bedrooms or living rooms.

- Objective 4D-2 – Apartment Size and Layout

All units are proposed as open plan. Units 1.02 (10.2m), 2.02 (10.2m) exceed the 8m depth control. The variation is considered minor and acceptable.

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

The development complies with the relevant clauses of SLEP 2013 as detailed in the compliance table included as Attachment 5.

**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 table included as Attachment 6. The proposal seeks variations to the following DCP components:

Chapter 6 Commercial Development

- Figure 6.16 Shellharbour Village Centre

Figure 6.16 shows a suggested desired four level outcome for a generic infill site in Shellharbour Village Centre. Whilst the application does not incorporate all of the elements in Figure 6.16, the provision states that “design is encouraged to use” inferring that inclusion of every element is not required. The verandah post does not have a stone base and is consistent with the adjoining heritage item. It is noted that a stone base verandah post is not an element that is consistently found along Addison Street.

- Part 6.3.16 Post-supported verandahs and awnings

An awning is proposed on the ground floor with exposed beams aligning with the level 1 verandah to give to appearance a post-supported verandah. The awning extends 1.95m from the front property boundary, providing sufficient weather protection. This is contrary to Part 6.3.16 which states that “*post-supported verandahs should extend 2.7 - 3.0m from the front boundary over the existing footpath and be setback at least 600mm from the vertical face of Council's kerb and gutter.*” A condition of consent has been recommended for the length and depth of the awning to be amended achieving compliance with the control and achieve continuous weather protection for pedestrians along Addison Street. The awning as amended by the condition will still have a greater setback from the kerb and gutter compared to the awning of the adjoining heritage item.

Chapter 13 Parking Traffic & Transport

- Part 13.1.1 Car Parking Requirements

A total of 15 residential visitor, 5 visitor, 0 retail car parking spaces are proposed on-site car parking is provided on the ground floor. Whilst the application has a 2 retail car parking space shortfall, Council owned public car park immediately adjoins the site to the south, whereby a contribution can be paid in lieu of shortfalls of car parking on the subject site. Addison Street has 1 hour on-street car parking spaces on both the northern and southern side.

- Part 13.2.34 Car Park Design and Layout

The proposed development includes one level of car parking with an on-site waste storage and collection area. The waste collection area could also be utilised by the retail tenancy for deliveries as there is direct access from the car park into the retail tenancy. There is currently no dedicated loading zone on the southern side of Addison Street. This is contrary to Part 13.2.34 which states “*that access and parking areas for service vehicles should be separated from the access and parking for employees and customers and must be designed to accommodate the largest service vehicle likely to service the site.*” Council's Waste Officer reviewed the dimensions for the waste storage and collection area and raised no concerns. It is considered reasonable that the waste collection area is located within the residential/visitor car parking area given the site area and total number of car parking spaces required.



## Chapter 28 European Heritage

- Part 28.5.12 Context Advice – Waterfront Suburbs Development in the vicinity of heritage items

The development site is located to the immediate west of a single storey local heritage item. The heritage item is setback 5.07m from the shared property with the development site. Part 28.5.12 of the DCP states that *“the Two storey elements of building adjacent to single storey heritage dwellings must be located a minimum of 2 metres from the boundary adjoining the heritage property.”* The first two storeys of the eastern elevation of the proposed building have a nil side setback. However, it is noted that this control does not reference as to the positioning of the heritage item in the application of this control. As that the heritage item is setback 5.07m from the property boundary, the building form has incorporated articulated elements (balcony and common open space on Level 1) and sympathetic external finishes, the variation is supported in this instance.



**Figure 9:** View of the heritage item and the dwelling to be demolished. Common boundary is shown by green dividing fence.

### 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 recommended conditions (Attachment 1). This includes a contribution for two (2) car parking spaces to offset the shortfall in retail car parking spaces proposed, as permitted by the Contributions Plan.

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

#### 61 Additional matters that consent authority must consider

The proposal does involve demolition. Conditions of consent have been recommended in this regard.

The proposal does not relate to land which is the subject of a subdivision order under Schedule 7 of the EP&A Act 1979.

The subject development application does not relate to a manor house or multi dwelling housing (terraces).

#### 62 Consideration of fire safety

The proposal does not relate to a change of use.

### 63 Considerations for erection of temporary structures

The consent does not relate to a temporary structure.

### 64 Consent authority may require upgrade of buildings

The proposal relates to a new building and as such, no upgrade works are required.

## **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;**

### **Commercial/ Residential separation**

The proposal includes one commercial unit which will be located on Addison Street with pedestrian access from this main street. The commercial unit will not include any staff or customer parking, with the proposal utilising the public car park to the rear of the development and on street timed parking. The commercial unit access will be completely separate to the residential access lobby and separate staff/customer toilet facilities.

There is a separate commercial waste storage area shown on the proposed plans adjoining the residential waste storage area.

Given the commercial area is relatively small and is separated from the residential use it is considered that the likely impacts on future residents will be limited. A first use condition has been recommended (as below) to ensure the use of the premises is suitably considered. The assessment of this first use will suitably condition operating hours for the commercial unit to ensure minimal impact on the residents above.

#### *# Use of Ground Floor Level Tenancy*

*This approval grants consent for the use of one (1) ground floor tenancy as shop top housing as defined in as defined in Shellharbour Local Environmental Plan 2013. The definition is as follows:*

**“Shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.”**

*The first use of the tenancy is to be the subject of a separate development application to Council. The use of the tenancy is not to be used for a purpose which would require significant or intensive servicing.*

### **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. 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 submitted streetscape of the entire southern side of Addison Street highlights how the proposal will integrate with the transforming streetscape.

The unique site context requires a site-specific design approach, whereby strict numerical compliance with the SDCP 2013 setbacks and ADG would not result in a positive urban design outcome. The front setbacks are sympathetic to the heritage item to the east without creating a jarring contrast to the buildings to the

west. The eastern side setbacks are also setback to create a sense of space from the heritage item. The modified design has incorporated lighter colour tones with textured material to soften the building form.

Whilst the proposal does not include a basement level, due to the proximity of the site to the heritage item at No. 35 Addison St, conditions requiring the preparation and implementation of a Vibration Control Plan and a Temporary Protection Plan are recommended as below:

*# Vibration Control Plan*

*A Vibration Control Plan that ensures vibration remains within acceptable levels and minimises the potential effects of vibration must be submitted to the Principal Certifier for approval, prior to the release of the Construction Certificate.*

*The plan must detail monitoring to be implemented and alarm levels selected in accordance with the type of structures present within the zone of influence of the proposed excavation.*

*#Temporary Protection Plan*

*A Temporary Protection Plan shall be prepared by a suitably qualified person to ensure the protection of the heritage item at No. 35 Addison Street. The implementation of the protection measures recommended in the Temporary Protection Plan must be supervised by the project Heritage Consultant. Details of compliance must be demonstrated to the satisfaction of the Principal Certifier prior to the commencement of any works.*

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

Vehicle access to the existing residential dwelling at 37 Addison Street is provided via Addison Street. 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.*” As such, 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).

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 title. Accordingly, the Applicant has lodged an application for the creation a right of way for vehicle access on Lot 15 in DP 238804. An in-principal agreement for the registration of the right of way over the Council land has been provided from Councils Property Officers and included as Attachment 7. 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 as below:

*i. The Development Consent shall not operate until Council has been satisfied as to the following matters:*

*a. Registration of Right of Carriageway and Easement for Electricity Purposes*

*The developer, at no cost to Council, must obtain an easement Lot 15 DP 238804 for the purpose of a Right of Carriageway.*

*The Right of Carriageway should be a minimum of 6 metres wide or wider where necessary to allow for adequate access and vehicle circulation.*

*The easement must be registered with Land Registry NSW.*

- ii. *The developer must satisfy Council, within 12 months of the date shown on the top of this consent, that the matters specified in condition number (i) have been complied with.*
- iii. *If compliance with the matters contained in condition number (i) necessitate a substantial variation to the development approved by this deferred commencement consent, a new development application must be submitted.*

**Potential Isolation of Adjoining Lot**

The proposed development will result in the existing two storey shop top housing development located to the immediate west (No. 41 Addison St) being located either side of re-development four storey shop top housing developments. Under the Shellharbour Local Environment Plan 2013, there is no minimum lot size requirement for the erection of a shop top housing development in the B2 Local Centre zone. Accordingly, the planning principles for site isolation, established by the NSW Land and Environment Court proceedings of Kara v Sutherland Shire Council [2004] NSWLEC 251, do not strictly apply. Nonetheless, the implications of the subject proposal application in terms of re-development potential at No. 41 Addison are of relevance.

The Applicant has submitted plans illustrating a potential shop top housing re-development at No. 41 Addison Street that realises the intent of Council’s controls (building height and FSR development standards) and capable of achieving the ADG objectives (Attachment 2.4).

Council is satisfied that the proposed building envelope is an appropriate response to the western adjoining site and which will not adversely unacceptably impede on the re-development potential of the site. Additionally, the proposed development adequately responds to the existing built form on the neighbouring site.

**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 and two (2) submission were received during the public exhibition period.

Issue/Concern		Comments
Pedestrian and vehicle traffic	Issue Raised	The proposal will add significant pedestrian activity and vehicle traffic on Allen’s Lane, the car park and at the intersection of Mary Street and Allen’s Lane. Council should consider upgrading the intersection of Allen’s Lane and Mary Street and include pedestrian footpaths.
	Assessment Officer Response	The crossover intersection of Allen’s Lane and Mary Street is required to be upgraded and foot paths provided under development consent DA0616/2021.
Demolition and Construction Impacts	Issue Raised	The current restaurant building is attached to No. 41 Addison St. The proposed demolition works would impact on the structural integrity of the building. The

		proposed development should not be attached to the existing building at No. 41 Addison Street.
	Assessment Officer Response	During the assessment process a Structural Design Statement was submitted outlining recommendations to protect the structural integrity of No. 41 Addison Street during the demolition and construction phases. Conditions have been included to ensure the recommendations are complied with.
Encroachment	Issue Raised	The existing garage at No. 37 Addison Street encroaches into the property boundary of No. 41 Addison Street. The encroachment should be rectified during the construction of the development.
	Assessment Officer Response	Standard conditions of consent are imposed requiring the development to be constructed in accordance with the approved plans. The proposed plans show that the development will be built entirely within the subject site..
External access to waste storage area	Issue Raised	The plans show access from the western side of the building to the waste storage area. The access conflicts with the vehicle access to No. 41 Addison Street.
	Assessment Officer Response	Amended plans deleting the western access have been submitted. There is direct access from the site to the vehicle access area behind No. 41 Addison Street.

### 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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That the Panel determine DA0274/2022 (PPSSTH-160) by way of approval subject to Deferred Commencement pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, subject to the conditions provided at Attachment 1.