

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

Panel Reference	PPSSTH-166	
DA Number	DA0350/2022	
LGA	Shellharbour City Council	
Proposed Development	Two residential flat buildings and one building with shop top housing comprising a total of 155 apartments and retail space (total 330sqm).	
Development Characterisation	Residential Flat Building Shop Top housing	
Location	Lots 4204 and 4205 DP 1254978 and lot 4006 DP1219051 5 and 6 Civic Avenue and 5 Waterfront Promenade, Shell Cove Alternative address – 9 Waterfront Parade, Shell Cove	
Applicant/Owner	Australand Corp. (Frasers Australia) - Applicant Shellharbour City Council (landowner)	
Date of DA lodgement	1 October 2021	
Public Notification Period	04.08.2022 - 17.08.2022	
No. of Submissions	Two submissions	
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Clause 3 – Council related development over \$5 million Development that has a capital investment value of more than \$5 million as the council is the owner of any land on which the development is to be carried out. The proposed development has a CIV of \$93, 330, 886	
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP (Planning Systems) 2021 • SEPP (Resilience and Hazards) 2021 • SEPP 65 – Design Quality of Residential Apartment Development. • SEPP (Building Sustainability Index – BASIX) 2004 • SEPP (Transport and Infrastructure) 2021 • Shell Cove Boat Harbour Concept Plan 07_0027 MOD 1 • Shellharbour Local Environmental Plan 2013 • Shell Cove Urban Design Guidelines Precinct D. • Shellharbour Development Control Plan 2013 • Likely impacts; • Site suitability; • Any submissions; • Public Interest. 	
List all documents submitted with this report for the Panel's consideration	Attachment 1	Draft Conditions of Consent
	Attachment 2	Architectural Plans
	Attachment 3	Landscape Plans
	Attachment 4	Civil Plans
	Attachment 5	Background to the Planning Framework for Shell Cove Boat Harbour and Marina Precinct
	Attachment 6	Concept Approval Compliance Table
	Attachment 7	Apartment Design Guide Compliance Table
	Attachment 8	Shellharbour Local Environmental Plan 2013 Compliance Table
	Attachment 9	Shell Cove Design Guidelines Compliance Table

	Attachment 10	Shellharbour Development Control Plan Compliance Table
	Attachment 11	Shadow Studies
	Attachment 12	Cross Ventilation Plan
	Attachment 13	Solar Compliance Diagrams
Report prepared by	Madeline Cartwright, Principal Planner – Development Assessment	
Report Endorsed by	Mathew Rawson, Manager – Planning and Urban Release	
Report endorsed by	Jasmina Micevski – Group Manager City Development	
Date of report	30 May 2023	

Summary of s4.15 matters

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

Yes

Legislative clauses requiring consent authority satisfaction

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

Yes

Clause 4.6 Exceptions to development standards

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

Not applicable

Special Infrastructure Contributions

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

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

Not applicable

Conditions

Have draft conditions been provided to the applicant for comment?

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

Yes

ASSESSMENT REPORT AND RECOMMENDATION

1. Executive Summary

1.1 Reason for consideration by the Southern Regional Planning Panel

The application is being referred to the Panel due to the proposal having a capital investment value of \$93,330,886. Council is the owner of the land on which the development is to be carried out and the Shell Cove Project is a collaboration between Shellharbour City Council and Frasers Property Australia.

In this regard, the development is classed as Regionally Significant development under State Environmental Planning Policy (Planning Systems) 2021, under Schedule 6, Section 3(b). Under Part 2, Division 2.4, Section 2.15 (a) of the *Environmental Planning and Assessment Act 1979* (the Act hereafter) the functions of the consent authority are conferred on the Regional Planning Panel for the area (Southern).

1.2 Proposal

The proposal seeks consent for the construction of two residential flat buildings and one building with shop top housing, comprising a total of 155 apartments and 330 sqm of retail space.

1.3 Exhibition

The proposal was notified in accordance with the Shellharbour Community Participation Plan 2021. Two submissions were received.

Key points raised:

- Parking impact on Town Centre
- Requirement for Parking Study within the Shell Cove area
- Lack of communal open space
- Lack on compliant solar access to apartments

The issues raised in the submission letter have been suitably addressed in relevant section of this Report and do not require a re-design or refusal of the proposed development.

1.4 Conclusion

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

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

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

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

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

Recommendation

DA0350/2022 be determined by way of approval, subject to the conditions provided at Attachment 1.

Draft conditions have been sent to the applicant prior to submission of this report.

The applicant has raised issue with the following conditions:

Condition	Applicant Comment	Council Comment
<p>13. Amended Plans</p> <p>Prior to the issue of a Construction Certificate for Stage 2 plans are to be submitted to, and approved by, Council which show the following:</p> <p>a. Deletion to references to a café on plan reference DA-0100 Rev13 dated 23.5.2022. This space must instead be revised to serve as an additional internal and external communal space areas for residents.</p> <p>b. Details of the raised pedestrian crossing across Waterfront Parade (in particular height and gradient of height change) to ensure the raised aspect of the crossing will not conflict with vehicles exiting the approved hotel development's porte cochere.</p>	<p>Suggested alternative wording</p> <p>Deletion to references to a café on plan reference DA-0100 Rev13 dated 23.5.2022. <i>The space must instead propose a suitable alternative use for approval by Council.</i></p>	<p>It is Council's preference that the area is used as additional internal and external communal space areas for residents.</p> <p>Council consider that this condition should be as detailed as possible to ensure compliance is achieved.</p>

1. APPLICATION AND SITE OVERVIEW

1.1 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 No 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 proposal seeks consent for the following:

- Site preparation works including bulk excavation;
- Construction of two residential flat buildings comprising of the following:
 - Building A: Six storeys with basement parking comprising 77 residential apartments with a mix of:
 - 11 one-bedroom apartments
 - 33 two-bedroom apartments
 - 33 three-bedroom apartments
 - Building B: Six storeys including two level basement parking, ground floor café¹ and 65 residential apartments with a mix of:
 - 12 one-bedroom apartments
 - 21 two-bedroom apartments
 - 29 three-bedroom apartments
 - 3 four-bedroom apartments
 - Building C -Construction of one three storey shop top housing comprising five retail ground floor tenancies (totalling 330sqm) and 13 residential apartments and one level of basement parking with a mix of:
 - 4 one-bedroom apartments
 - 6 two-bedroom apartments
 - 3 three-bedroom apartments

Communal open space (internal and external) for each building and landscaping.

¹ Café not an identified land use within the Concept Approval for building B. Recommended removal of use by condition.

Figure 1 shows the location of the site in relation to the surrounding precinct. Figure 2 below identifies Building A, B and C and the two stages that are proposed.



Figure 1 - application site in the context of the Shell Cove Project area.



Figure 2 - Staging Plan

2.3 Subject Site and Locality

The application site is made up of three lots located within the Town Centre (Precinct D) of Shell Cove, shown in figure 3. The sites include the main entranceway to the Shell Cove Marina Development along Cove Boulevard. All three sites are highly visible within the local area with existing wetlands and public open space to the north and west.



Figure 3 - Lot location map

The sites are on the edge of the town centre precinct with an open air car park to the south adjoining lot 4005 and the Woolworths retail development to the east. Lot 4204 has a small open air car park to the south with existing single storey retail units adjoining this parking area. The future Town Centre Park and Library/Community Centre will be sited to the east on the opposite side of Waterfront Promenade. The hotel/mixed use development approved under DA0610/2019 is sited to the north east of lot 4204. Each of these lots are currently vacant.

Lot 4006 is bordered by Harbour Boulevard to the west, the main road into and through Shell Cove, and Aquatic Drive to the north. The site currently has a community garden which is to be re-located to Sophia Park to the north of the application site (approximately 350 metres north) prior to construction commencing.

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

Attachment 5 details the background of this area and provides context for the history of the Shell Cove area and the application site.

As discussed in Attachment 5, a modification to the Concept Approval (formally known as s75W) was submitted and approved by the Independent Planning Commission on 18 March 2019 (MP07_0027 MOD 1). This modification resulted in some fundamental changes to the layout, built form and floor space proposed. For Precinct D specifically:

- i. Increasing the maximum number of dwellings to 250;
- ii. Revising housing densities and typologies across the site; and
- iii. Removing the maximum residential gross floor area limit of 150,000sqm
- iv. Increasing the maximum building heights,

v. Amendments to the Statement of Commitments.

The application site was created by subdivision DA0143/2016 approved by Council in March 2019, this consent included roads and relevant drainage.

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

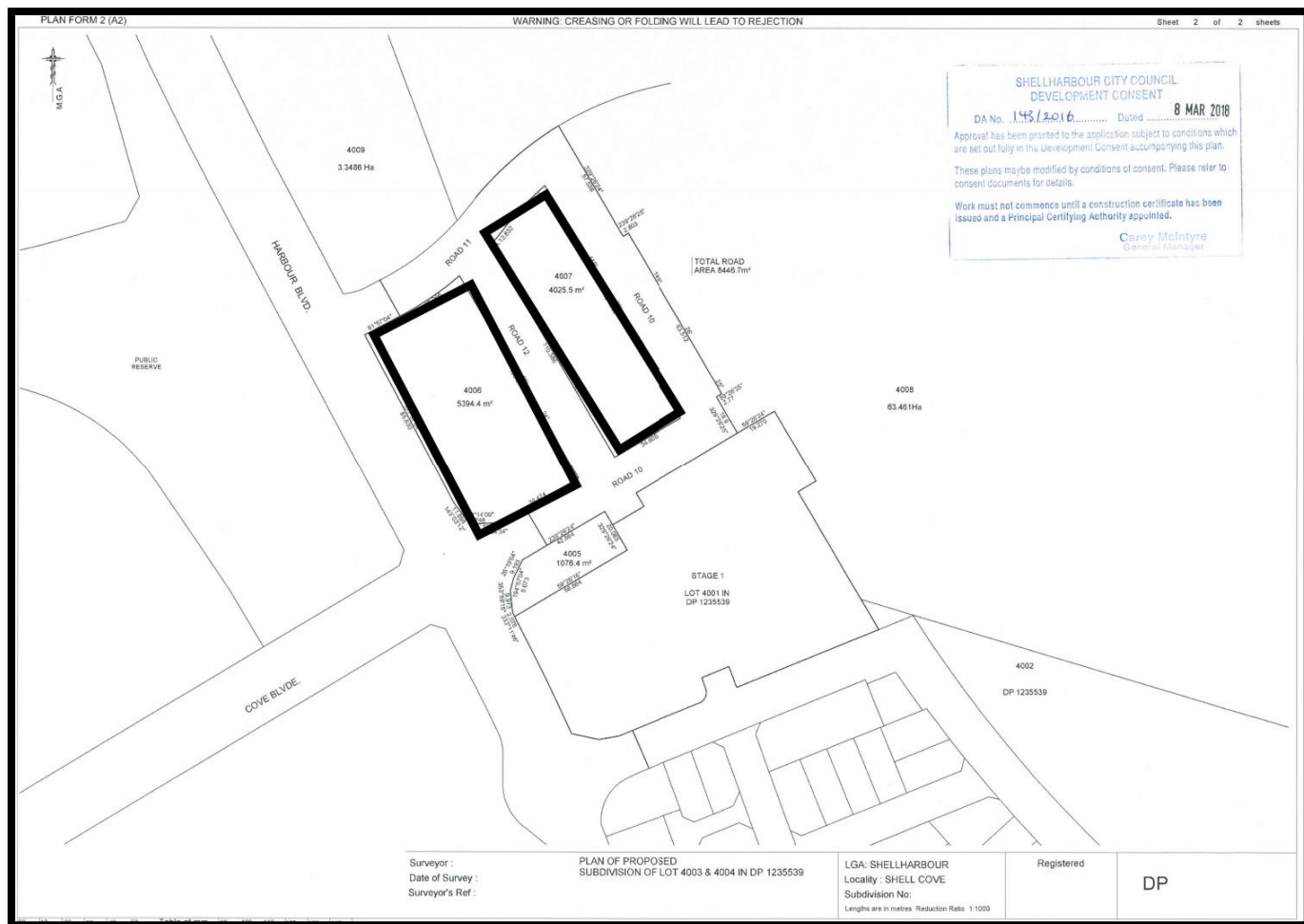


Figure 4 - Approved subdivision plan DA0143/2016

A further subdivision approved under DA0496/2018 created lots 4204 and 4205.

An extract from DP1219051 and DP 1254978 is included below in Figures 5 and 6 with relevant lots highlighted.

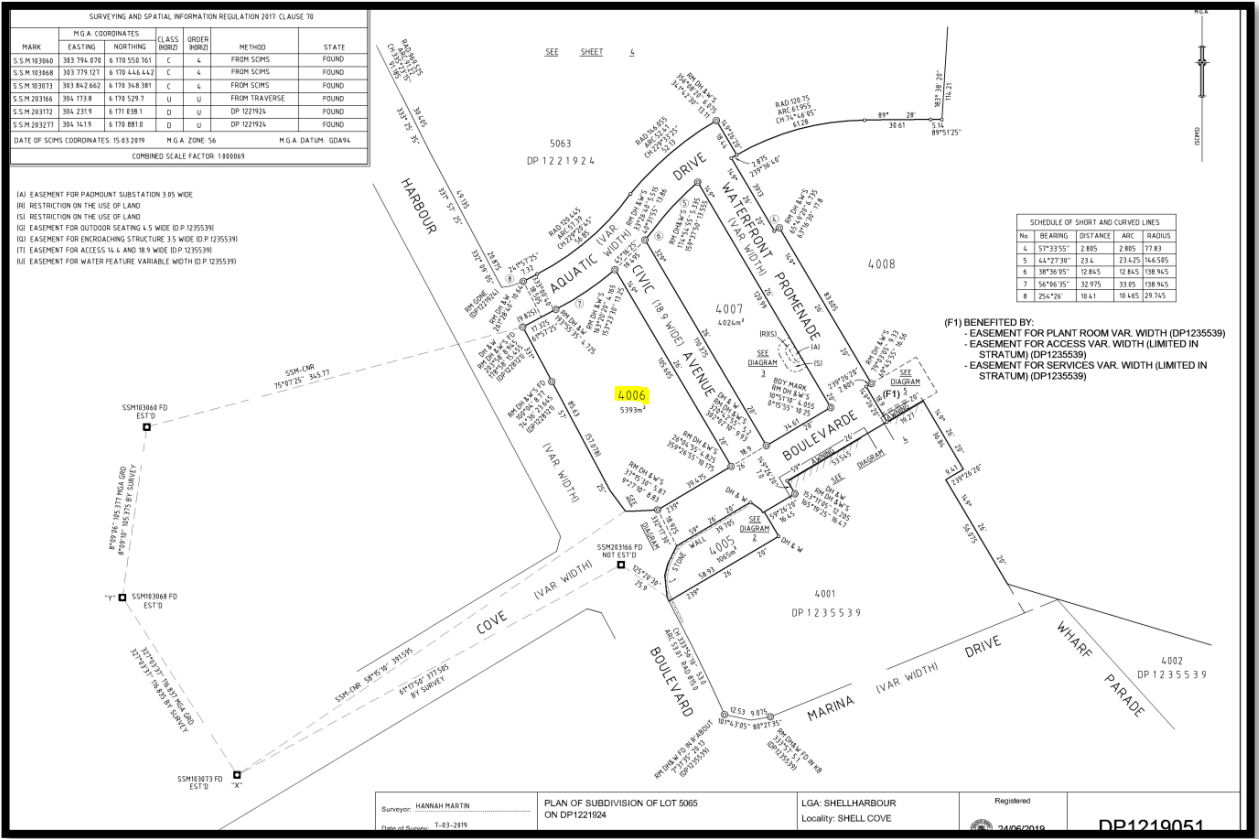


Figure 5 - DP extract for Lot 4006 DP 1219051

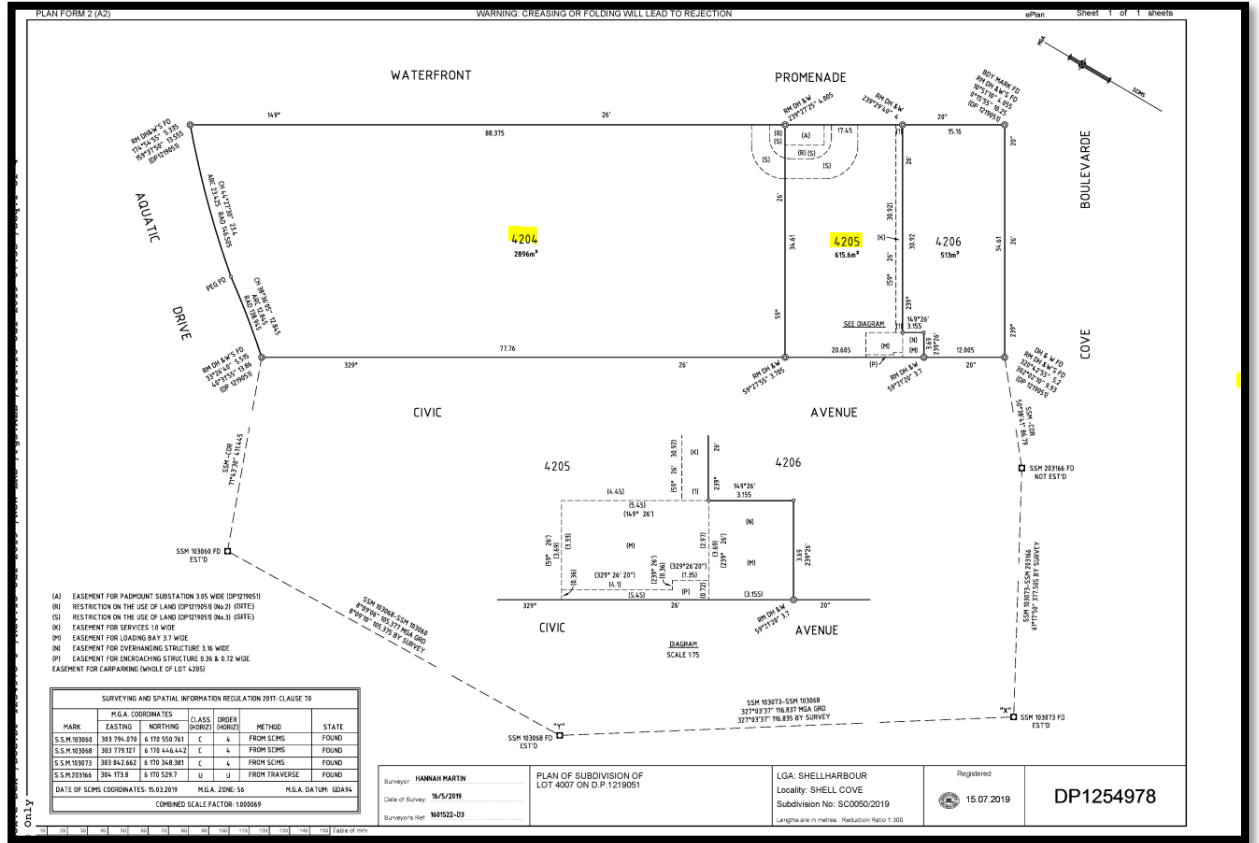


Figure 6 - DP extract for lots 4204 and 4205 DP 1254978

2.3.2 Property Constraints

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

- Aboriginal Heritage

Council comment: Aboriginal Heritage reports have been submitted and reviewed throughout the Concept Approval and subdivision approval process. Aboriginal heritage significance was investigated as part of the Concept Approval application and the archaeological sensitivity of the area was considered low. Recommended to include an unexpected finds protocol condition.

- Flooding

Council comment: Council's flooding engineer has reviewed the proposal and provided advice and recommended conditions.

2.3.3 Restrictions on Title

There are restrictions on the title DP1254978 burdening lot 4204 and 4205 as per the below:

- Easement for padmount substation 5.54 wide (A) – lot 4205
- Restriction on the Use of land (R) relating to the area surrounding padmount station lots 4204 and 4205
- Restriction on the Use of land (S) relating to the area surrounding padmount station lots 4204 and 4205
- Easement for services 1 wide (K) – lot 4205
- Easement for loading bay 3.7 wide (M) – lot 4205
- Easement for overhanging structure 3.16 wide (N) – lot 4205
- Easement for encroaching structure 0.36 and 0.72 (P) – lot 4205
- Easement for car parking across whole of lot 4205.

Council comment:

Development will not encroach into easements. Restrictions on title will not need to be altered as a result of proposed development to allow for access into basement car park on lot 4204 over lot 4205. However additional right of carriageway, easement for services and other requirements to allow access over Lot 4205 are recommended to be conditioned prior to Occupation Certificate.

Advice received from Endeavour Energy including conditions as detailed in Part H of Attachment 1.

There are restrictions on DP 1219051 but none that affect lot 4006.

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.

Flood Officer

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

Community Life Officer

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

Contributions Officer

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

Waste Officer

Councils Waste Officer has reviewed the proposal and provided a conditionally satisfactory referral response. A plan of management has also been provided which demonstrates how the servicing is to occur. A number of conditions have been recommended in this regard, and have been included within the draft consent.

GIS Officer

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

Environment Officer

Councils Environment Officer has reviewed the proposal and raised issue with the communal water tank not being included in the DA plans as required by the submitted BASIX certificate. This issue was raised with the applicant and amended plans were submitted which included the communal water tank. It was not necessary to re-refer the amended information to the Environment Team and suitable conditions have been recommended within Attachment 1.

Landscape Officer

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

2.4.2 External Referrals

Endeavour Energy

The proposal was referred to Endeavour Energy as the installation of a substation is proposed. A response was received on 22.08.2022 raising no objections and recommended the imposition of conditions which have been included within the draft consent.

Shellharbour Design Review Advisory Panel

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

This development has been considered by the DRP at pre lodgement stage. The DRP concluded that the proposal was generally consistent with the Concept Approval and has the potential to provide a positive contribution to this precinct. Points raised in the advice and Council comment is included in Table 1 below. The proposal has been amended by the removal of an additional building (D4) containing shop top housing on the southern side of Cove Boulevard.

Table 1 - Design Review Panel Advice

DRP Comment	Council Comment
Further development of building D3 (now identified as Building C) interface with public car park	Pockets of landscaping have been added to the parking area adjoining the retail units within building. These landscaped areas will sit adjacent to the two access points to the car park leading to steps and a ramp which provides access to the rear of the retail units, apartment lobby and the main pedestrian footpath along Civic Avenue.
Improved communal open space to be provided throughout development.	The details of communal open space provided with the application have been assessed. The communal open space is of a standard to be expected for the development including a variety of facilities and areas for residents.
Detail development of undercroft for building D2 (now known as Building B).	Details of the undercroft area within Building B have been provided within the floor plans and landscape plans. The undercroft area will provide a pedestrian link through the site to the marina, public park and future community centre/library.
Further development of building D2 (now known as Building B) to meet ADG solar access and cross ventilation requirements	Non-compliance for solar access within Building B has been proposed and assessed as part of the application. During the pre-lodgement discussions the applicant has presented different options for the development of Building B, however due to the limits in height and number of storeys as required by the Concept Approval and the limitations of the future development to the north east of the site (hotel) the proposed design was considered the most appropriate and had the highest compliance rate in terms of solar access. Building B as proposed complies with cross ventilation requirements.
Building D3 (now identified as Building C) to be development to provide a retail presence to the adjoining public car park	The retail units included in Building C successfully turn the corners of the site at both the western and eastern ends. The back of house areas address the public car park which is reasonable for such small retail units. There is suitable pedestrian access from the car park to the Cove Boulevards elevation of Building C. This is compliant with the Design Guidelines as required by the Concept Approval.

DRP Comment	Council Comment
Detail refinement to improve amenity	Provided and considered acceptable
Further detail information to document building materials/aesthetic resolution.	Provided and considered acceptable.

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

2.4.3 Southern Regional Planning Panel Briefing Comments

A briefing statement was submitted to Panel on 28.09.2022. The following matters raised by the Panel are addressed below for the Panel's consideration:

- Concept Approval Consistency - Height exceedance**

The proposed plans identify the following height exceedance:

- Building A –Maximum exceedance of 200mm.
- Building B – Maximum exceedance of 150mm
- Building C – Maximum exceedance of 100mm.

For each of the buildings the height exceedance is require to accommodate lift overrun, partition walls and plant equipment. Figure 7 below identifies the sections of each roof structure that exceed the Concept Approval height for each building.



Figure 7 - Building Heights

The height exceedance is considered minor and limited to ancillary structures that do not form part of the main bulk of the development. The buildings are compliant with the maximum number of storeys approved in the Concept Approval. The exceedance will not have detrimental impacts on the surrounding development and the submitted visual impact assessment shows that the height exceedance will be imperceptible from the surrounding viewpoints. Visual impact is also addressed within section 4.7 (i) of this report.

The heights of the buildings are considered to be generally in accordance with the Concept Approval as required by condition 2 of the Terms of Approval.

- **Concept Approval Consistency - Inclusion of café within Building B**

Council has reviewed the justification provided by the applicant regarding the inclusion of a commercial unit (café) within the ground floor of Building B and considered its consistency with the Concept Approval. Council did not support the inclusion of a commercial unit within Building B as the applicant had failed to justify suitable compliance with the Concept Approval. The Concept Approval clearly identifies the development types for each section of the master-planned areas. Council staff recommend a condition of consent be imposed to remove the cafe.

- **Compliance with SEPP-65**

Three non-compliances have been identified with Apartment Design Guideline requirements as follows:

- Communal open space
- Deep soil requirements
- Solar and daylight access

Each of these non-compliances have been addressed in detail within section 4.2.4 (c) of this report. Each of the non-compliances have been considered reasonable by Council.

- **Public car parking and servicing arrangements**

The Panel noted the potential for conflict between public users and service vehicles with the proposed carparking arrangements. Consideration to minimise user conflict by the restriction of hours for service vehicle use set through a management plan.

Potential for conflict between residential use and adjacent commercial, hotel and public open space

Building A includes at grade parking and one basement level that will be used by residents, visitors and public parking. This combination of uses will be managed by a management plan, suitable signage and strata bylaws. Suitable conditions have been recommended to address this issue.

The design of the parking areas also assists in managing the potential conflict between the differing users. The public parking will be limited to the open air car park between Building A and C and the at-grade, under cover, parking spaces within Building A. These spaces are the most convenient for access to the Town Centre and retail units within Building C and therefore human nature suggests that the most convenient option is reasonably expected to be used by public users. There will also be gates and swipe card access only to the lower level of parking for residents only.

Residential parking will be allocated as per strata management arrangements. The majority of residential parking will be within the basement level of building A/C. The design of the parking area will encourage

residents to use these spaces due to the design of the lifts and lobbies as it will give more convenient access to their apartments.

The combination of effective management and suitable design provides confidence that the potential for conflict between the different users of the parking area is reduced to a manageable level.

Further details of parking provision and access arrangements have been provided in section 4.7 (ii) within this report.

3. ASSESSMENT AGAINST CONCEPT APPROVAL

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

3.1 Land Uses

The proposed development is consistent with the Concept Plan Land Uses by providing apartments/townhouses for the area identified as Building A and B. It is noted that the plans for Building B will be amended by condition to remove the ground floor cafe originally included.

Building C proposes five retail units on the ground floor and residential apartments above. Council is satisfied that the retail units comply with the Concept Approval term of *mixed use* which is not defined within the Concept Approval or the Shellharbour Local Environmental Plan 2013. This approach has been taken across the Shell Cove project area and is supported by legal advice obtained by Council.

Figure 8 shows an enlarged section of the *indicative housing typologies plan* taken from page 19 of the Shell Cove Boat Harbour Precinct Section 75W Modification dated 8.8.2017 prepared by Ethos Urban.

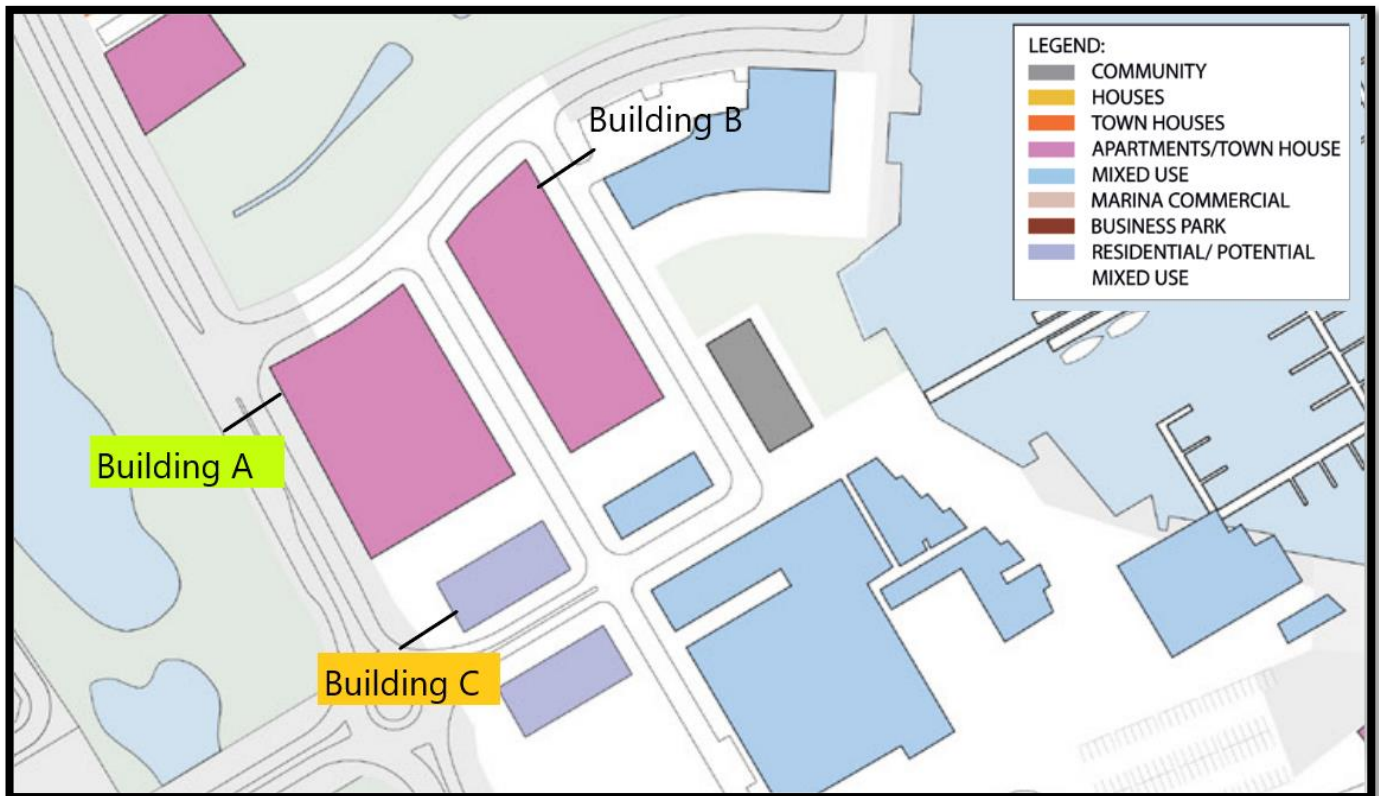


Figure 8 - Indicative Housing Typologies

3.2 Dwelling Yield

The maximum dwelling yield for Precinct D is 200-250 dwellings made up of apartments.

The completed and approved development in the Precinct to date totals 87 apartments. The proposed development proposes 155 apartments. There will be one remaining lot (lot 4005 to the south of Cove Boulevard) which remains un-developed and there will be a total of 8 dwellings for this single lot. .

For clarity, the remaining lot to be development is shown in figure 9 below. This remaining lot is considered a suitable size for a maximum of eight dwellings.



Figure 9 - vacant residential/mixed use lot within Precinct D

3.3 Height and number of storeys

The indicative height plan included in the Shell Cove Boat harbour Precinct Section 75W Modification on page 20 indicates that the indicative height in the portion of Precinct D to which this proposal relates permits the following maximum heights:

- (i) Building A – Up to 6 storeys (22 metres)
- (ii) Building B – Up to 6 storeys (22 metres)
- (iii) Building C – Up to 3 storeys (12 metres)

The proposed development includes 6 storeys for Building A and B and 3 storeys for Building C. The main bulk of the roof height for each building will comply with the heights provided above with the exception of minor exceedance as discussed in section 2.4.3 above. These exceedances are minimal and do not result in the proposal being inconsistent with the Concept Approval.

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

- a. the development is within a suitable height limit, in terms of the number of storeys,
- b. The number of dwellings proposed is within the dwelling yield for Precinct D,
- c. The development will provide apartments and retail units which is consistent with the type of accommodation indicated by the Concept Approval.

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

4. 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:

4.1 Biodiversity Conservation Act 2016

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

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

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

4.2.1 State Environmental Planning Policy (Planning Systems) 2021

Schedule 7 Regionally significant development
(3) Council related development over \$5 million.

Development that has a capital investment value of more than \$5 million if:

- (a) A Council for the area in which the development is to be carried out is the applicant for development consent, or
- (b) The Council is the owner of any land on which the development is to be carried out, or
- (c) The development is to be carried out by the council, or
- (d) The council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purpose of the payment or contributions by a person other than the council).

The proposal has a construction value of \$93,330,886 and is on land owned by Council. The area is also part of the Shell Cove Project as a collaboration between Shellharbour City Council and the developer, Frasers Property Australia. Therefore, the development is classed as regionally significant Under Part 4, Division 4.2, Section 4.5 (b) of the *Environmental Planning and Assessment Act 1979* the Regional Planning Panel for the area (Southern) is designated as the consent authority.

4.2.State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of Land

The aim of this Chapter of the SEPP is to provide for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or environment and requiring that any remediation work meet certain standards and notification requirements. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated.

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

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

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

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

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

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

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

This Policy applies to development for the purposes of a residential flat building which has at least 3 storeys and more than 4 dwellings. The proposed development comprises a maximum of six storeys and is proposed with 155 residential units.

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

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

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

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

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

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

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

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

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

Principle 1: Context and Neighbourhood Character

The context for the proposal is a master planned urban area identified as Shell Cove Urban Release Area. The site is made up of two separate blocks divided by Civic Avenue and with roads on each side. The site is within the Town Centre Precinct for Shell Cove and an eleven storey hotel with serviced apartments and residential apartments included is currently under construction to the north east. Future public open space is located to the east with the public foreshore beyond this open space. The lots to the east of the application site is currently vacant, this lot is identified as having a community centre and library. To the west of the development is the main road through Shell Cove, Harbour Boulevard, with existing wetlands and residential dwellings beyond this. The development is part of key views from Harbour Boulevard, along Aquatic Drive and Cove Boulevard when entering the Town Centre.

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

Principle 2: Built Form and Scale

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

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

Principle 3: Density

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

Of the 155 apartments, it is noted in the supporting information that 15 apartments (10%) are proposed to be designed in accordance with *Australian Standard 4299-1995 Adaptable housing*, these apartments and an additional 18 (11.6%) of the total apartments also incorporate the Liveable Housing Design (LHD) Guidelines silver level universal design features.

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

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

The nominated 28 apartments (21%) are required to meet the Silver level LHD Guidelines as required by condition (below) included in **Attachment 1**.

Principle 4: Sustainability

The provision of 155 apartments on the site is consistent with the Concept Approval, leaving a maximum of 8 dwellings for development within the remaining lots of Precinct D, as discussed in section 3.2 above.

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

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

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

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

Principle 5: Landscape

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

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

Principle 6: Amenity

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

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

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

Principle 7: Safety

The pedestrian residential entry points are clearly defined from the public domain and include secure glass sliding doors facing the street which allows for passive surveillance. Vehicle access is separate to

the pedestrian entrances provided and access to all residential elements of the buildings will be restricted from general public access. Secure access to building entries, carpark, basement lifts and roof top COS is to be controlled via swipe key access for residents.

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

Principle 8: Housing Diversity and Social Interaction

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

As discussed above of the 155 apartments, 10 apartments (10%) are proposed to be designed in accordance with *Australian Standard 4299-1995 Adaptable housing*, these apartments and an additional 18 (11.6%) of the total apartments also incorporate the Liveable Housing Design (LHD) Guidelines silver level universal design features.

Principle 9: Aesthetics

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

(c) *the Apartment Design Guide.*

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

4.2.4.1 - Objective 3D-1 requires an area of Communal Open Space (COS) which has a minimum area equal to 25% of the site. The site area is 8,289 sqm requiring a minimum of 2,072 sqm of COS. The Design Criteria also requires that *developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).*

The proposal provides 1,660sqm (22.6% of the total site area). The development also includes 384 sqm (4.6% of the total site area) of communal internal space including a swimming pool and wellness centre (gym), communal kitchen and dining area all located within Building A. The total communal open space (internal and external) equates to 2,044 sqm (24.6% of the total site area).

It is highlighted by the supporting information that part of the COS is publicly accessible as it is located on the ground floors of Buildings A and B. Council has previously raised concern that these areas are open to the public and so therefore have the potential to create CPTED issues and also cannot be counted towards the COS total unless restricted to residents only. The applicant has proposed that these areas remain public as it is justified that this is the best urban design outcome and also allows permeability to the future public open space to the east of Building B and towards the Marina. This is in-keeping with the Urban Design Guidelines for the precinct.

The ADG also outlines that where development is unable to achieve the design criteria it 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.”

The proposed development is considered to achieve all 3 of these alternate outcomes.

Given the areas include suitable landscaping and various seating options it is considered reasonable to include them in the calculation for the COS as these areas are justifiably more than an entrance to the buildings. The public access is supported as the private residential areas are easily sectioned off via swipe card access doors and gates. The design allows practical pedestrian access through the site to the public open space areas and the Marina.

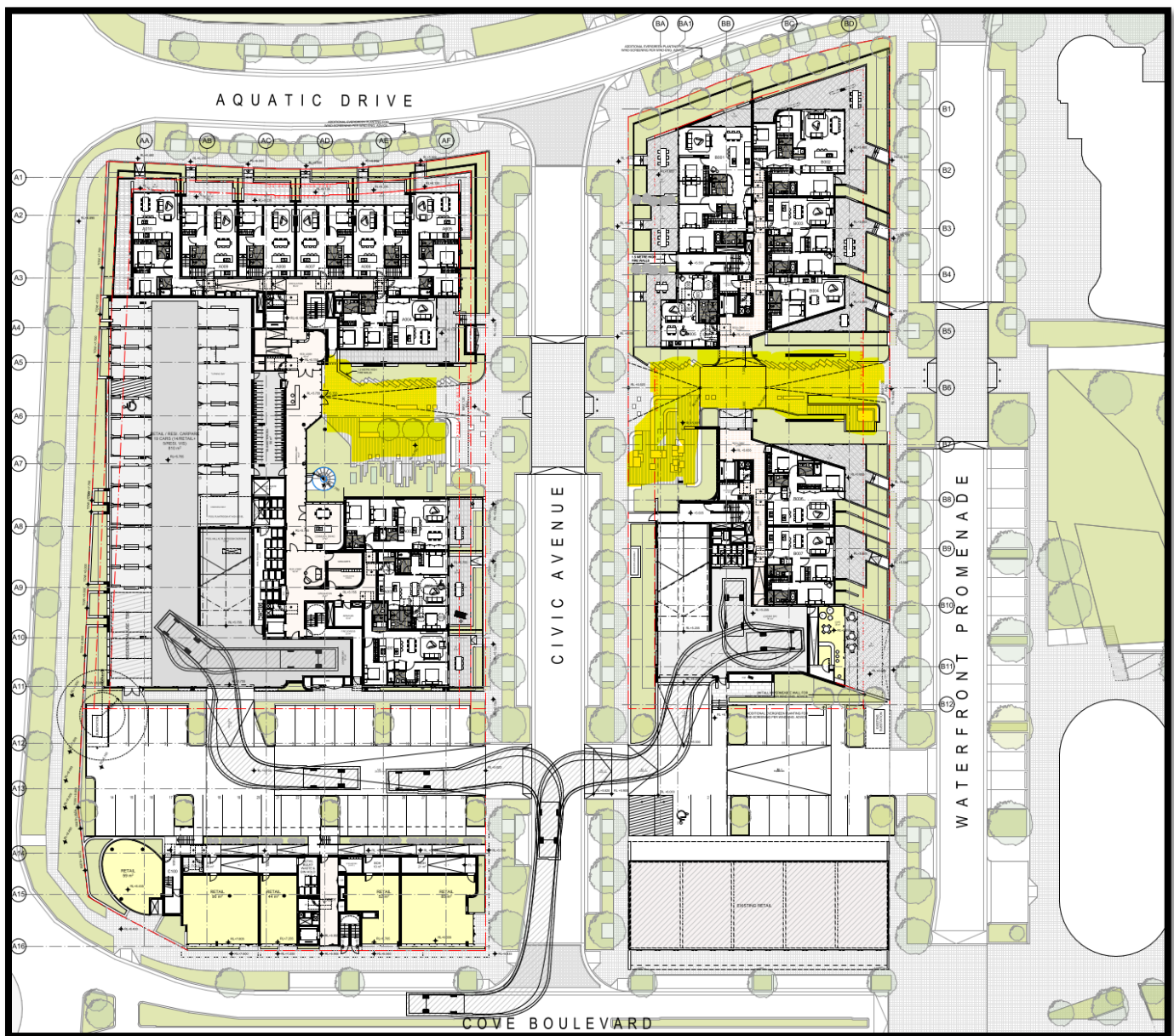


Figure 10 - Ground Floor Communal Open Space (highlighted)

In addition, significant communal landscaped areas are proposed and surround the perimeter of the built form. These areas will provide visual amenity and aesthetically pleasing outlooks when viewed from apartments and other communal open spaces.

The applicant has provided shadow diagrams that show the communal open spaces located on Level 2 of Building A and Level 5 of Building B achieve a minimum of 50% of direct sunlight for 2.5 hours which complies with the ADG. Communal open space on Level 5 of Building B will achieve direct sunlight to 50% of the area for approximately 1.5 hours on 21 June between 9am and 3pm. Given residents will have a variety of COS areas to use where they can enjoy shade or sun this is not considered to be a significant variation. Suitable plant species have been chosen to suit the various areas and the solar access received.

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

- i. The proposal is consistent with Objective 3D-1 as it enhances residential amenity and provides opportunities for landscaping.
- ii. The COS areas allow for a range of activities and are suitably mixed in use with a range of facilities available externally on ground floor and roof top levels and internally on a variety of levels.
- iii. The development site is located within the Master Planned Shell Cove area which includes a variety of public open spaces, including a future public park directly opposite Building B and the adjoining public foreshore/boardwalk is a 2.5km walk around the entire marina development with public parks and seating areas included.
- iv. Whilst the variation to solar access is acknowledged this is considered minor and given the variety of areas provided for all residents this is acceptable.

4.2.4.2 Objective 3E-1 requires 7% of the site area with a minimum dimension of 6 metres to be a deep soil zone. The development includes compliant deep soil zones totalling 301 sqm (3.6%). In addition, the proposal provides 722sqm (8.7%) of landscaped areas on structure, figure 11 below highlights these areas.

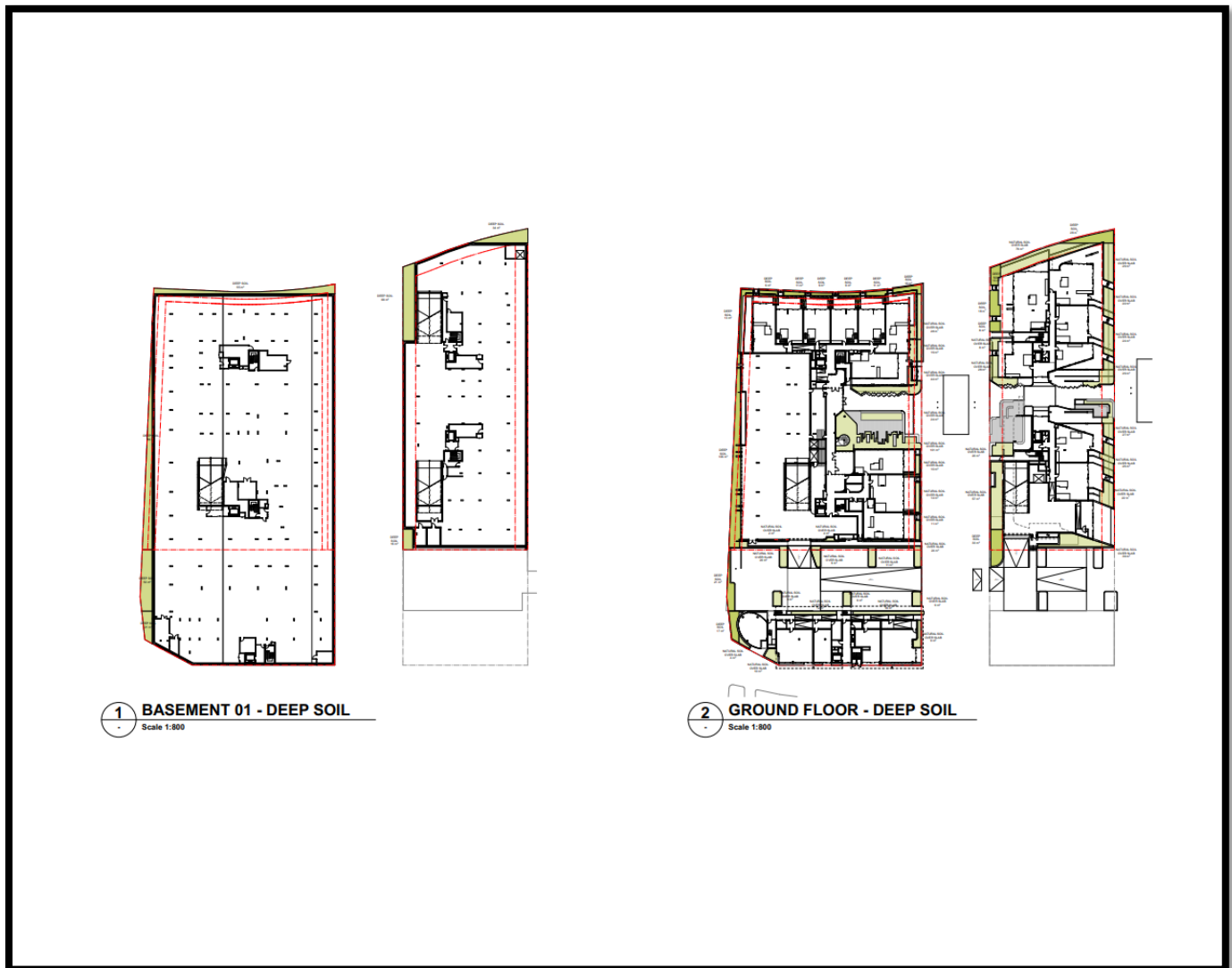


Figure 11 - Deep Soil Zone

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

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

4.2.4.3 Solar access

Objective 4.1A requires that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours of direct sunlight between 9am and 3pm mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter

A total of 93 apartments across the development comply which equates to 60%. A maximum of 32 apartments receive no direct sunlight which equates to 21%. Each building's compliance is summarised below:

- 56 apartments in Building A comply which equates to 73%. A maximum of 12 apartments receive no direct sunlight which equates to 16%.
- 25 apartments in Building B comply which equates to 38%. A maximum of 19 apartments receive no direct sunlight which equates to 29%.
- 12 apartments in Building C comply which equates to 92%. One (1) apartment receives no direct sunlight which equates to 8%

Building B is the section of the development which does not comply and justification for this variation has been submitted by the applicant within the Statement of Environmental Effects. A summary of this justification is provided below.

- i. There is an approved 11 storey hotel building currently under construction to the north east of the proposed site of Building B. This hotel building has been approved in height and location in accordance with the Concept Approval and will have an overshadowing impact on a section of Lot 4204 (Building B) between 9am and 12 noon mid-winter. The shadow diagrams and suns eye diagrams have been included as attachment 11 of this report.

The height, number of storeys and location of the proposed building and the surrounding approved developments are in accordance with the Concept Approval giving Council confidence that the non-compliance with objective 4.1 A for Building B is reasonable.

- ii. In addition to the impact of the hotel, Building B is designed to define the streetscape in accordance with the Urban Design Guidelines and provides a high-quality urban outcome to Waterfront Promenade and Civic Avenue including apartments that address and address Civic Avenue, Aquatic Drive and Waterfront Parade. The applicant justifies that the design intentionally maximises access to sunlight from the north and east, however, a number of apartments that address Civic Avenue have a south-western aspect which limits direct sunlight in mid-winter.
- iii. The applicant has identified key amenity categories within the ADG required for each apartment and provided a compliance table (Table 2). It is shown that the majority of the apartments with non-compliant solar access achieve compliance in the key areas of.
 - Natural ventilation
 - Ceiling heights
 - Apartment size and layout
 - Larger private open space and balconies
 - Common circulation and spaces
 - Storage
 - Acoustic privacy.

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

Apartment (beds)	4A Solar Hours (9am-3pm)	4B Natural Ventilation	4C Ceiling Heights	4D Apartment Size (m ²)	4E Private Open Space (m ²)	4F Common Circulation	4G Storage (m ²)	Criteria Satisfied
Building B								
B003 (2B+2)	0.25	x	✓	90 (+20m ²)	37 (+27m ²)	✓	10 (+2m ²)	7/9
B004 (1B)	0.5	✓	✓	55 (+5m ²)	35 (+27m ²)	✓	13 (+9m ²)	8/9
B005 (1B)	-	✓	✓	63 (+13m ²)	26 (+18m ²)	✓	8 (+2m ²)	8/9
B006 (2B+2)	0.75	✓	✓	85 (+15m ²)	37 (+27m ²)	✓	9 (+1m ²)	8/9
B007 (2B+2)	1.25	x	✓	90 (+20m ²)	28 (+18m ²)	✓	10 (+2m ²)	7/9
B101 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
B104 (2B+2)	0.75	x	✓	90 (+20m ²)	23 (+13m ²)	✓	10 (+2m ²)	7/9
B105 (2B+2)	0.25	✓	✓	90 (+20m ²)	24 (+14m ²)	✓	10 (+2m ²)	8/9
B106 (3B)	-	✓	✓	126 (+36m ²)	15 (+3m ²)	✓	13 (+3m ²)	8/9
B107 (3B)	0.25	✓	✓	126 (+36m ²)	15 (+3m ²)	✓	13 (+3m ²)	8/9
B108 (2B+2)	0.75	✓	✓	90 (+20m ²)	25 (+15m ²)	✓	10 (+2m ²)	8/9
B109 (2B+2)	2.5	x	✓	90 (+20m ²)	23 (+13m ²)	✓	10 (+2m ²)	7/9
B111 (3B)	-	✓	✓	103 (+13m ²)	50 (+38m ²)	✓	11 (+1m ²)	8/9
Apartment (beds)	4A Solar Hours (9am-3pm)	4B Natural Ventilation	4C Ceiling Heights	4D Apartment Size (m ²)	4E Private Open Space (m ²)	4F Common Circulation	4G Storage (m ²)	Criteria Satisfied
B112 (1B)	-	x	✓	53 (+3m ²)	13 (+5m ²)	✓	9 (+3m ²)	7/9
B201 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
B204 (2B+2)	0.25	x	✓	90 (+20m ²)	20 (+10m ²)	✓	10 (+2m ²)	7/9
B205 (2B+2)	0.25	✓	✓	90 (+20m ²)	20 (+10m ²)	✓	10 (+2m ²)	8/9
B206 (3B)	-	✓	✓	126 (+36m ²)	15 (+3m ²)	✓	13 (+3m ²)	8/9
B207 (3B)	0.25	✓	✓	126 (+36m ²)	15 (+3m ²)	✓	13 (+3m ²)	8/9
B208 (2B+2)	0.75	✓	✓	90 (+20m ²)	19 (+9m ²)	✓	10 (+2m ²)	8/9
B211 (3B)	-	✓	✓	103 (+13m ²)	21 (+9m ²)	✓	11 (+1m ²)	8/9
B212 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
B301 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
B304 (2B+2)	0.25	x	✓	90 (+20m ²)	20 (+10m ²)	✓	10 (+2m ²)	7/9
B305 (2B+2)	0.25	✓	✓	90 (+20m ²)	20 (+10m ²)	✓	10 (+2m ²)	8/9
B306 (3B)	-	✓	✓	126 (+36m ²)	15 (+3m ²)	✓	13 (+3m ²)	8/9
B307 (3B)	0.25	✓	✓	126 (+36m ²)	15 (+3m ²)	✓	13 (+3m ²)	8/9
B308 (2B+2)	0.75	✓	✓	90 (+20m ²)	19 (+9m ²)	✓	10 (+2m ²)	8/9
B311 (3B)	-	✓	✓	103 (+13m ²)	21 (+9m ²)	✓	11 (+1m ²)	8/9
B312 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
B401 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
B404 (2B+2)	0.25	x	✓	90 (+20m ²)	20 (+10m ²)	✓	10 (+2m ²)	7/9
B405 (2B+2)	0.25	✓	✓	90 (+20m ²)	20 (+10m ²)	✓	10 (+2m ²)	8/9
B406 (3B)	-	✓	✓	126 (+36m ²)	15 (+3m ²)	✓	13 (+3m ²)	8/9
B407 (3B)	0.25	✓	✓	126 (+36m ²)	15 (+3m ²)	✓	13 (+3m ²)	8/9
B408 (2B+2)	1.5	✓	✓	90 (+20m ²)	19 (+9m ²)	✓	10 (+2m ²)	8/9
B411 (3B)	-	✓	✓	103 (+13m ²)	21 (+9m ²)	✓	11 (+1m ²)	8/9
B412 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
B501 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
B510 (1B)	-	x	✓	53 (+3m ²)	8	✓	9 (+3m ²)	7/9
Note: ADG control exceedance shown in brackets where applicable.								

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

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

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

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

4.2.5 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 section 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 section 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 development involves development immediately adjacent to an electricity substation. The proposal was referred to Endeavour Energy in accordance with the requirements of this section. A response was received on 22 August 2022 advising no objection and recommending conditions. Conditions as recommended have been included as part of the consent.

4.2.6 Shellharbour Local Environmental Plan 2013 (SLEP 2013)

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

4.3 Section 4.15 (1) (a)(ii) – any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved).

None applicable.

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

4.4.1 Urban Design Guidelines for Precinct D - Amendment 2 (Design Guidelines)

The Design Guidelines provide specific built form and structure controls within Precinct D of the Shell Cove Concept Plan area. These guidelines were prepared in accordance with the requirements of the Part 3A Concept Plan and were endorsed by Council on the 8 May 2019.

Two variations identified to the Design Guidelines as follows:

4.2 Land use Mix

Proposed development is for a two residential flat buildings with a retail unit proposed on the ground floor of Building B. The inclusion of a retail unit (café) within this development does not comply with the land use as detailed in the Design Guidelines. Council staff recommend a condition of consent be imposed to remove the café.

4.3.6 Parking and Access

Building B basement carpark will be accessed via the existing car park from Waterfront Parade and Civic Avenue. The Design Guidelines identify this site to be accessed via Civic Avenue and not share the access with the existing car park as proposed. The alternative solution proposed has been reviewed by Council's Senior Traffic Engineer and is supported.

Building A basement car park will be accessed via the proposed car park from Civic Avenue. The Design Guidelines identify this site to be accessed via Civic Avenue by two separate accessways. The alternative solution proposed has been reviewed by Council's Senior Traffic Engineer and is supported.

The proposed alternative solutions for Buildings A and B will reduce the impact on the existing roads and pedestrian pathways, reducing the driveways onto the relatively short (approximately 120 metres) roads and retaining a continuous roadway and on-street car parking. The loss of off-street car parking in the existing at-grade car parking is off-set by replacement public parking provided by the subject development.

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

4.4.3 Shellharbour Development Control Plan 2013 (SDCP 2013)

Pursuant to the Environmental Planning and Assessment Act (Savings, Transitional and Other Provisions) Regulations 2017, the provisions of any development control plan do not have effect to the extent to which

they are inconsistent with the terms of the approval of the Concept Plan. The DA has been assessed under the design guidelines developed for Precinct D as required by the Concept Approval. Development objectives and provisions of SDCP 2013 will only apply where the Design Guidelines are silent.

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

4.4.2 Shellharbour Local Infrastructure Contributions Plan 2019

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

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

None applicable.

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

4.7 Section 4.15 (1)(b)- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality;

The proposal has the potential to result in adverse impacts as follows:

i. Visual Impact

A Visual Impact Assessment (VIA) has been submitted as part of the DA in line with the requirements of the Concept Approval condition 19. The VIA provides analysis of the visibility, visual exposure, and visual effects on views and streetscapes that would be caused by the built form proposed. The analysis uses four indicative perspectives (as mapped in figure 12) and uses block model photomontages to illustrate how the proposed building will impact from these viewpoints.

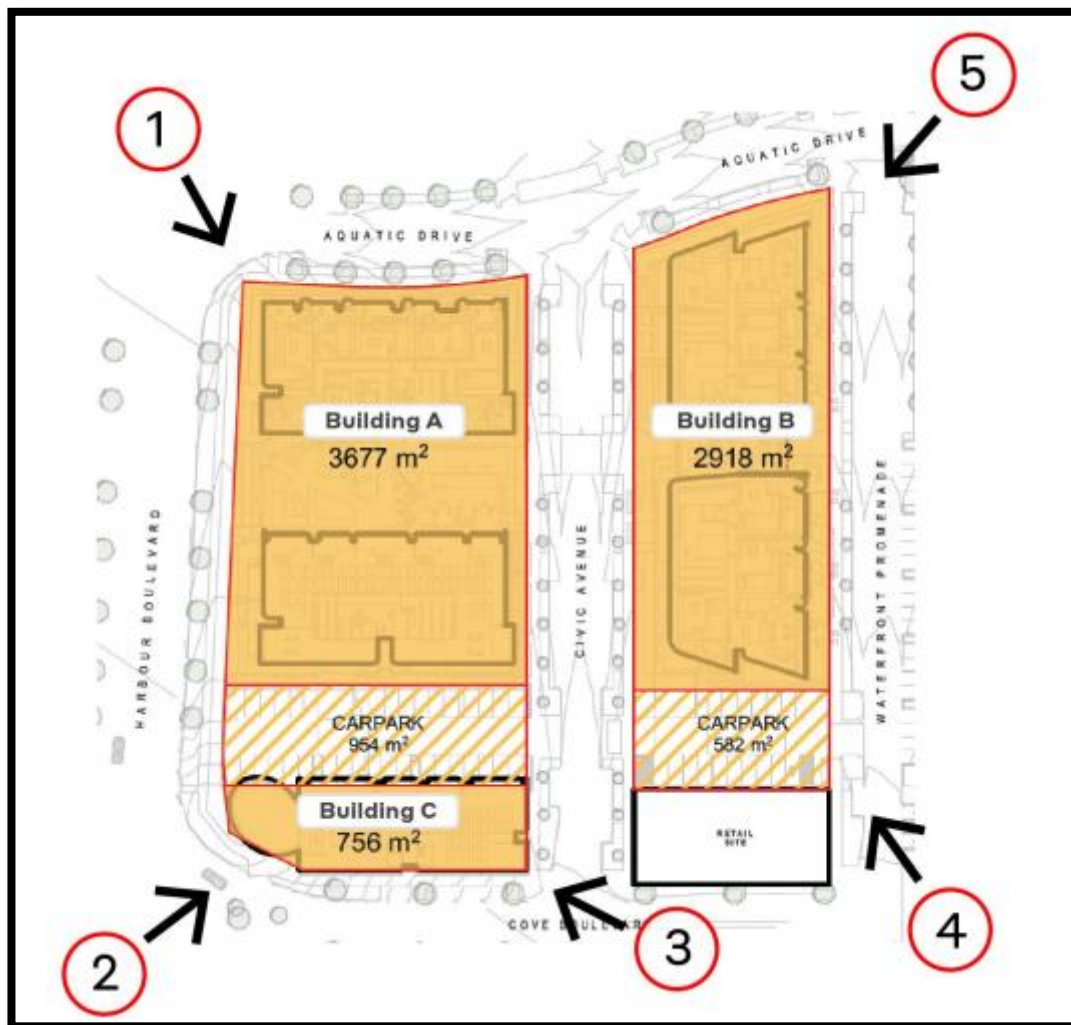


Figure 12 - Indicative Perspective Locations

Figures below are taken from the submitted Visual Impact Assessment to illustrate how the proposed buildings fit within the Concept Approval building envelope and also how the surrounding existing and future development will relate to the proposed development.



Figure 13 - Indicative Perspective 1



Figure 14 – Indicative Perspective 2



Figure 15 - Indicative Perspective 3



Figure 16 - Indicative Perspective 4



Figure 17 - Indicative Perspective 5

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

ii. Parking, Access and Servicing

Parking provision

Parking requirements as per Urban Design Guidelines are as follows:

Residential parking

- 1 space per 1 bedroom apartment (27) = 27 spaces
- 1.5 spaces per two+ bedroom apartments (128) = 192 spaces

Visitor parking

- 0.25 spaces per one bedroom apartments (27) = 6.75 spaces

- 0.5 spaces per two + bedroom apartments (128) = 64 spaces.
Total residential + visitor = 289.75 spaces.

Retail units requirements 1 space per 35sqm.

Total retail 330 sqm = 9.4 spaces required

Plus additional 19 spaces re-located from on street parking and public car park.
Overall total required – 299.15 spaces – rounded up to 300 spaces

Parking provision is as follows:

Building A

Open air car park – 29 spaces (retail and public)

Ground floor parking area – 23 vehicle spaces (10 retail, 8 public and 5 residential visitor), plus turning bay and car wash bay,

Basement 1 – 164 spaces (residential and visitor)

Building B

Basement 1 – 62 spaces (residential and visitor)

Basement 2 – 64 spaces (residential and visitor)

Basement parking includes 51 pairs of stacked parking spaces.

Total spaces provided 342

The development will exceed the numerical parking requirement. Each unit must be allocated a minimum of 1 car parking space. The stacked spaces are to be allocated to units with two bedrooms or more subject to condition and the visitor parking spaces are not to be allocated to individual units in the event of future subdivision. Condition recommended as follows:

Council's Engineers have reviewed the proposal and confirmed that the parking spaces and access aisles comply with Australian Standard – Parking Facilities 2890.1. Scaled plans submitted indicate 2.4m/2.5m x 5.4m wide parking spaces, with access aisles of approx. 6m. This is compliant with AS2890.1.

Swept paths provided indicate a B99 vehicle can manoeuvre into all spaces within the two basement car parks.

Access and Servicing

Buildings A and B both have vehicle access from at grade open car parks.

For Building A this will be from a new access from Civic Avenue through the proposed car park between Building A and C. Swept paths have been provided to show that vehicles can access the building without encroaching on the parking spaces within the open air car park. Service vehicles can enter and exit in a forward direction and will not need to encroach into the open air parking spaces to gain access to the building. All waste servicing will be internal.

For Building B the access will be from the existing open air car park located between the proposed Building B and the existing commercial units fronting Cove Boulevard. This will involve the re-location of 9 existing spaces (23 spaces existing, 14 spaces proposed) into the at grade parking area within Building A. This car park has existing access points from Waterfront Parade and Civic Avenue, these will not be altered.

The access to Building B will be from the western point of the existing car park, swept paths have been provided to show that vehicles can enter and exit Building B in a forward direction and will not encroach into any of the existing car parking spaces. Service vehicles can enter and exit in a forward direction and

will not need to encroach into the existing parking spaces to gain access to the building. All waste servicing will be internal.

Council can recommend the vehicle layout for approval with a recommended condition to minimise user conflict by the restriction of hours for service vehicle use set through a management plan.

iii. Wind Conditions

A qualitative wind assessment has been provided by the applicant to demonstrate the impact of the proposed development on the wind conditions in the surrounding areas and within the development. The report has identified that wind tunnelling assessment has not been undertaken at the DA stage.

The results of this assessment indicate that the subject development is relatively exposed to the three predominant wind directions affecting the site.

A number of recommendations have been made in the report relating to treatment strategies for each of the key areas identified. The report concludes that

With the inclusion of the recommendations in the final design, it is expected that wind conditions for the various trafficable outdoor areas within and around the development will be suitable for their intended uses, and that the wind speeds will satisfy the applicable criteria for pedestrian comfort and safety. Nonetheless, due to the exposure of the site, wind tunnel testing is recommended to be undertaken at a more detailed design to quantitatively assess the wind conditions and to optimise the size and extent of the treatments required.

These recommendations are mainly in line with the proposed balcony and landscape treatments included in the plans. Additional recommendations are made within the report as follows:

- Inclusion of additional landscaping on the ground floor of Building B at the pedestrian entrance to the pedestrian walk through area.
- Inclusion of additional screening along the side boundaries of first floor balconies on the northern elevation within Building A.
- Inclusion of screens to protect staircases on roof top terraces for Building A.
- Inclusion of screens to protect staircases for roof top terraces for Building B.

The recommendations of this report are considered reasonable and can be supported. It is noted that further wind tunnelling testing is recommended prior to issue of a Construction Certificate. These recommendations are to be secured by condition as recommended in Attachment 1 as follows;

iv. Noise

Acoustic Logic prepared a Precinct D Noise Impact Assessment submitted as part of the supporting documentation for the application. The assessment considered the following:

- Noise intrusion to project site from adjacent roadways and marina,
- Noise emissions from mechanical plant to service the project site (in principle)
- Noise impacts from retail areas
- Noise impact from outdoor communal areas
- Noise impact from indoor communal areas
- Noise impact from basement car park and entries
- Waste collection and loading bay deliveries

The report provides a number of recommendations which have been accepted by Council as reasonable.

- Construction for windows and doors for all facades and all apartments with 6mm toughened glazing and acoustic seals.
- External roof construction from concrete elements and acoustic sealant used to minimise any gaps resulting from penetrations of the roof.
- External walls to be constructed of concrete/masonry elements with no vents on the internal skin of external walls. Any penetrations are to be treated with acoustic sealant to minimize all gaps.
- Plant required to meet noise levels required by the report ,
- Indicative treatments to control structure borne noise impacts to areas within Building A to ensure the gym and other communal internal areas are compliant, this includes hours of operation,
- Specific recommendations for the materials and finishes of the basement car park and entry
- Hours of operation for waste collection and deliveries.

Concluding Comments

The acoustic requirements as outlined above are considered to offer a suitable balance between the use of the retail units within Building C as part of the commercial centre whilst still respecting the requirements of the residential receivers within the same development.

It is acceptable to require on going management of the retail units in terms of hours of operation and waste and delivery time restrictions to ensure that the residential apartments above and adjoining and not significant impacted.

v. Interface with street

The subject site is relatively flat and surrounded on all four sides with roads. The interface for each key point have been discussed below.

Cove Boulevard

Figure 18 below details the south elevation of Building C onto Cove Boulevard.



Figure 18 - South elevation Building C

The interface between Building C and Cove Boulevard is at grade, providing public access to the proposed

retail units along this frontage. The storeys above will provide balconies and habitable room windows which overlook the street. To the rear, fronting the car park, Building C will include pedestrian access for the public and residents, both steps and ramps. There will also be first and second floor balconies fronting onto the car park and around the corners of the development onto Civic Avenue and Harbour Boulevard which will provide passive surveillance into this area.

Waterfront Parade

Figure 19 details the east elevation for Building B. The main pedestrian entrance to Building B and cut through to Civic Avenue will provide pedestrian access through the site and sits directly opposite the future public park along Waterfront Parade. On either side of this pedestrian access the ground floor apartments within Building B will address the street. These areas will have suitable masonry walls with railings above to provide security to the future residents but would still allow passive surveillance to the street. The principle private open space (PPOS) area for these ground floor apartments will be setback behind landscaped areas, approximately 3.4 metres from the front boundary fencing which step down from street level.



Figure 19 - east elevation Building B

Aquatic Drive

Figure 20 details the northern elevation of Buildings A and B fronting Aquatic Drive. Building A includes masonry walls with railing above set behind at grade landscaping to soften the masonry walls.

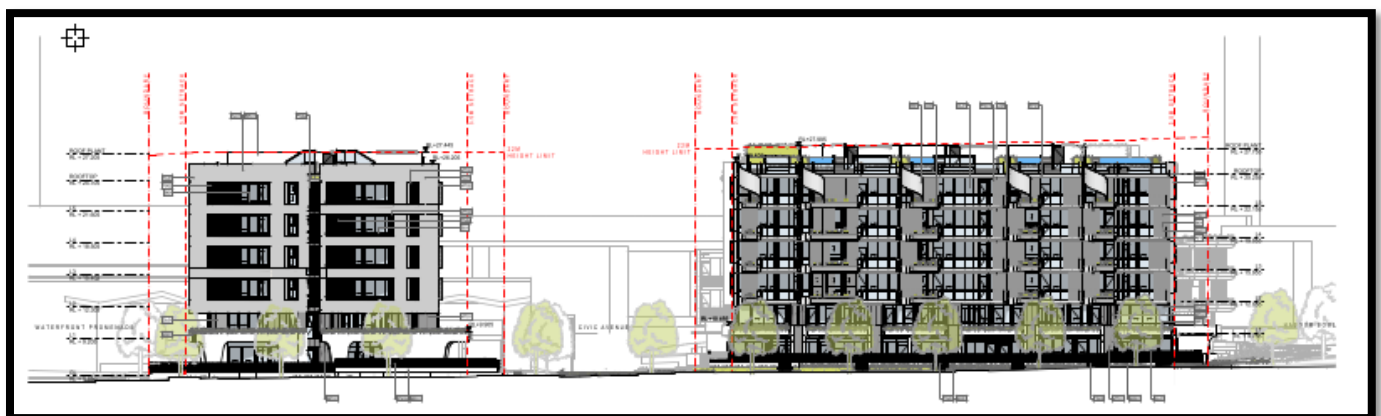


Figure 20 - north elevation Buildings A and B

Building B interface with Aquatic Drive is suitably staggered with landscaping beds between the street and the PPOS areas for the ground floor apartments. Figure 21 below details the section of Building B showing this interface. Landscaping beds are no more than 1 metre high and suitably landscaped to soften the interface. Suitable masonry walls and railings above are provided along the boundaries of the PPOS areas for the apartments to provide suitable security whilst maintaining passive surveillance.

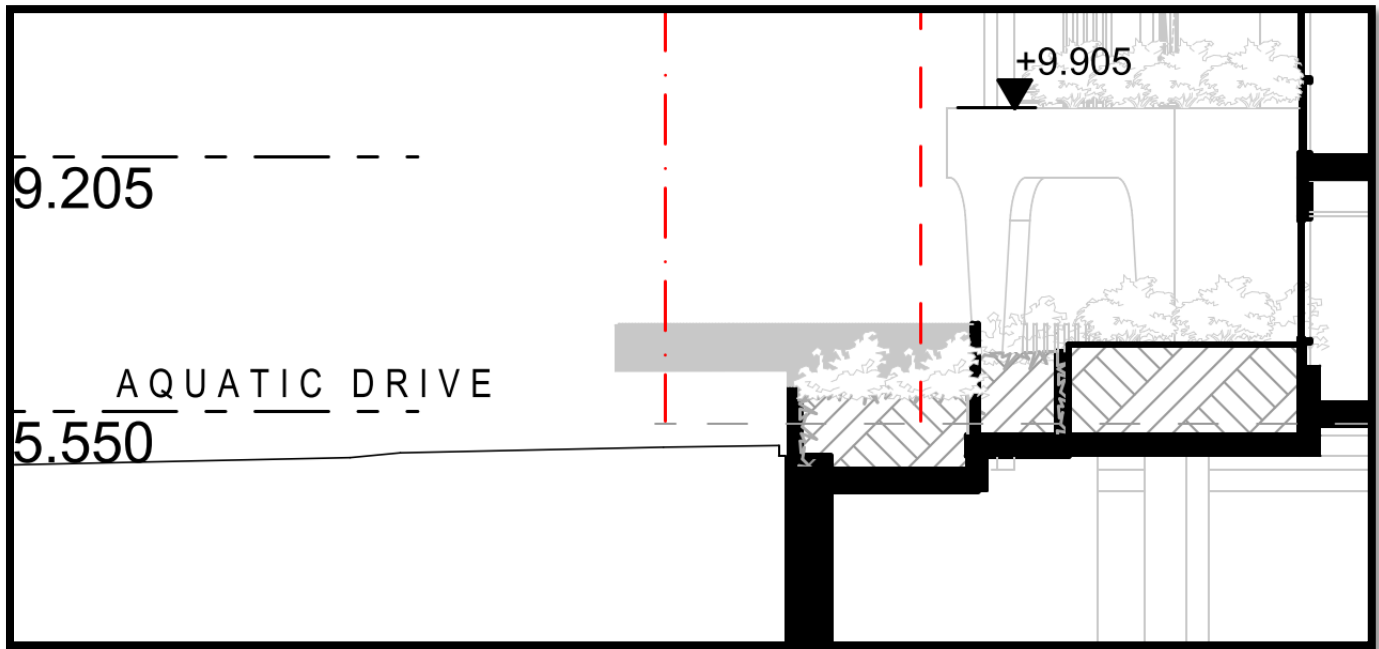


Figure 21 - section of Building B interface with Aquatic Drive

Harbour Boulevard

The interface between Building A and Harbour Boulevard includes PPOS areas with suitable wall and railings above as with other elevations and a louvered façade along the undercover at grade parking area. These louvres will be set back from the boundary with Harbour Boulevard with landscaping in front to soften. The storeys above will include windows and balconies to allow passive surveillance to the street. Harbour Boulevard is the main road through Shell Cove and is considered the suitable elevation to have these passive areas at ground level. Pedestrian movement along this section of Harbour Boulevard whilst still possible is less than the other elevations for the site. The louvred sections of this elevation of Building A are broken up by terraced landscaped beds with a maximum height of 1 metre. This section softens the concrete and metal along the façade and leads up to the first floor apartments within Building A. Figure 22 below details the section of the staggered landscaping referred to above.

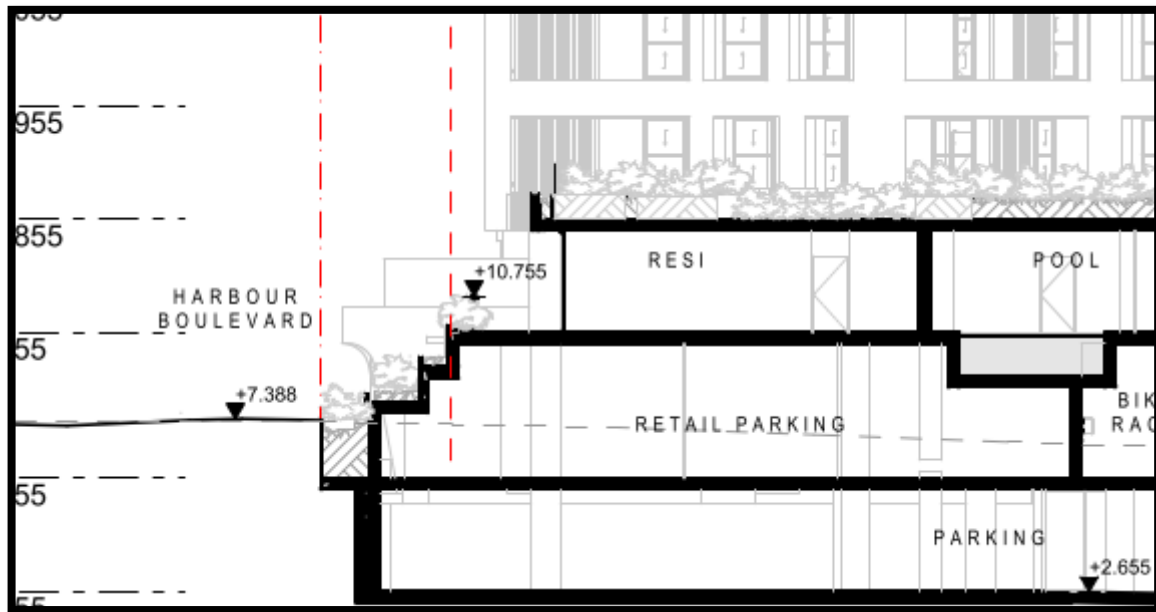


Figure 22 - Section of Building A

Civic Avenue

Buildings A and B front onto Civic Avenue including a break in built form to provide a cut through for pedestrians towards the Marina. Both these buildings have ground floor apartments that address Civic Avenue and include suitable masonry walls with railings above. For each building these boundary treatments are set back from the street behind landscape beds.

Concluding Comments

Each street and the open air car park area is suitably addressed by the development with a suitable balance between landscaping and pedestrian access. The level differences are staggered keeping to a maximum height of 1 metre. Pedestrian access is maintained through the centre of the site and suitable passive surveillance is provided from ground floor and upper floor apartments.

The likely impacts of the development have been suitably addressed and have been suitably mediated through design and/or conditions.

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

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

- The Concept Plan envisages a residential and shop top housing development within this location;
- The buildings proposed are of an appropriate scale and design within the Town Centre precinct;
- There are no contamination issues that would preclude residential development on this site subject to compliance with submitted Acid Sulphate Soil Management Plan;
- The proposal is consistent with the provisions of the Concept Plan and the Design Guidelines for Precinct D.

The development site is a key location within the Town Centre. The buildings design are suitable for this location and the proposed use. The development benefits from internal parking and loading provision. The site is suitable for the development.

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

Pursuant to s2.22 of the *Environmental Planning & Assessment Act 1979* (the Act), the DA was publicly notified as required by the provisions of the *Shellharbour Community Consultation Plan 2021*.

The DA was publicly notified for a period of 14 days commencing 14 October 2021 and closing 27 October 2021. The notification included a DA notification sign on the land, letters to property owners/occupiers within 25m of the site and an advertisement notice in the local newspaper seeking representations regarding the proposal to be submitted for Council's consideration within the exhibition period. Two submissions were received.

Issue/Concern	Assessment Officer Response	Comments
<p>Lack of public car parking spaces within the Shell Cove Waterfront Area resulting in difficulties with parking on weekends and during events.</p> <p>Independent investigation required to allow decision makers to look at parking needs of the entire precinct.</p> <p>DA0350/2022 should not be determined until this is addressed.</p> <p>A two level basement parking area should be constructed for public parking only.</p>	<p>The development proposes 8 public parking spaces within Building A and an open air car park for public parking which provides 29 spaces. There will also be an additional 10 vehicle spaces within Building A for the proposed retail units within Building C.</p> <p>These spaces are to provide parking areas for the retail units proposed and to replace the on-street parking removed as part of the development.</p> <p>A parking strategy has been undertaken by Council as part of the Precinct D Urban Design Guidelines. This strategy looks at the Town Centre (precinct D) as a whole and all the different uses that add to the parking needs. This document provides Council with the numbers of on-street and public off street parking spaces required. This document was undertaken by an independent traffic engineer and focuses on the needs of the entire precinct.</p> <p>All developments proposed within Precinct D are required to comply with the parking needs strategy as they form part of the Urban Design Guidelines.</p> <p>A parking needs has been undertaken and forms part of the Council endorsed Urban Design</p>	<p>The issue of parking has been suitably addressed and the development exceeds the parking requirements. No re-design required.</p>

	<p>Guidelines for Precinct D. The development complies with the parking requirements as laid out in the Design Guidelines and additional parking provided to make up for lost on street parking as a result of driveway access. Council is satisfied that DA0350/2022 can be determined.</p> <p>The raised pavement areas proposed within Civic Avenue and Waterfront Parade will result in the loss of 10 on street parking spaces. These parking spaces will be re-located to the public section of the car park within Building A and the open air car park on the site. The raised pavement areas are acknowledged to encourage pedestrian access through the site to the public open space and town centre retail areas. This is seen as a reasonable compromise with the provision of the additional spaces within Building A.</p> <p>The Design Guidelines for Precinct D provide parking rates required for all developments and requirements for on street public parking. The development exceeds these parking rates and there is no requirement for additional public parking beyond what has been proposed.</p> <p>It is acknowledged that the area has a large number of developments currently under construction which adds to existing parking issues by workers and construction staff using on-street and public car parking. Other factors include residents not using their off street parking spaces for parking vehicles and instead utilizing on street and public parking which could be used for visitors and tourists. Council is taking a</p>	
--	---	--

	holistic approach which has been informed by the parking strategy which forms part of the Design Guidelines for Precinct D.	
<p>Building C does not include its own on site parking.</p> <p>The SEE page 20 Public Parking fails to demonstrate how the inclusion of the western carpark reasonably caters for the reduction in car parking spaces in the eastern carpark, customer and staff retail premises requirements for Building C, alongside the common uses required to meet existing and future development needs.</p>	<p>On site parking for building C is provided by the open air car park adjoining to the north and for residents within the basement car park which spans between Building and C.</p> <p>The existing parking spaces that will be re-located due to the access into the basement car park for Building B are to be included in the at grade car park for Building A. This is considered acceptable.</p>	<p>The parking provision for Building C is compliant with the required rates and access requirements. No re-design required.</p>
<p>The inclusion of a ground floor café in Building B, whilst in itself not unwelcome, changes the nature of the building and parking requirements. It is problematic, given the reduction of parking spaces to serve this in the eastern at-grade carpark and the effects on public parking are not addressed, nor the calculation of the minimum parking requirements for customers and staff explained in the Statement of Environmental Effects (SEE).</p>	<p>The inclusion of a ground floor café within Building B is not supported by Council and a suitable condition has been recommended to remove this proposed use.</p>	<p>Suitably addressed by condition.</p>
<p>How will parking spaces within Building A be delineated and enforced to ensure any parking is left for retail customer use and not quickly consumed by residents and their visitors given the inadequacies of minimum parking requirements in Council's DCP in relation to the reality of car ownership and use in the LGA?</p>	<p>The public parking spaces for Building A are at grade and to be delineated by suitable signage. Each apartment will have allocated parking spaces which will be enforced by condition and strata management plan. The design of the basement car parks makes it much more convenient for residents to use the allocated spaces, with lift access directly to lobbies, rather than using the public spaces.</p> <p>Shellharbour Council has reviewed car parking rates in the Shell Cove area prior to endorsement of the Urban Design Guidelines for each</p>	<p>Issue to be addressed by condition of consent regarding strata management plan. Council are satisfied that the residential parking areas will be used as allocated and the strata management plan is a typical way to enforce this.</p>

	precinct and the rates required, whilst higher than other LGA's are considered reasonable for the area.	
Car parking generated by any development should be accommodated within the development site and cannot be accommodated as on-street parking, especially where it potentially creates adverse impacts on surrounding uses and future development	All parking requirements generated by the development are accommodated within the development site.	Development suitably complies.
Communal open space requirements are not met aside the need to create a community heart amongst Buildings A and B, and a publicly accessible through-site link alongside no communal open space provided in building C.	The communal open space for the development is combined between buildings A,B and C. This is to be enforced by condition. The deficit of communal open space has been considered as a variation to the Apartment Design Guidelines and justification provided by the applicant. Council has recommended that this variation be supported and addressed the deficit in section 4.2.4.1 of this report.	Variation to ADGs supported and communal open space considered suitable for development.
Adequate and compliant solar access is not established in Buildings A and B, and amenity is further reduced with the lack of natural ventilation in many residences. It is not acceptable for new development in our LGA to forgo sustainability or any other design principles that ensure positive environmental, social, and economic outcomes.	Solar access is compliant in Building A with 56 apartments complying with solar access requirements which equates to 73%. A maximum of 12 apartments receive no direct sunlight which equates to 16%. Building B does have a deficit of apartments that comply with the solar access requirements with 25 apartments complying which equates to 38%. A maximum of 19 apartments receive no direct sunlight which equates to 29%. This variation has been addressed in section 4.2.4.3 of this report and is supported by Council. A full assessment has been undertaken and the development satisfies sustainability requirements and the relevant design principles according to the relevant State legislation.	Variation to ADGs supported and solar access considered suitable for development.

--	--	--

The issues raised in the submission letters have been suitably addressed and do not require a re-design or refusal of the proposed development.

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

The proposal is generally consistent with the Concept Plan Approval, subject to conditions of consent. The proposal will provide a residential development with suitable facilities including basement parking and landscaping.

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

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

4.11 Conclusion

The proposed development:

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

The submissions received have been suitably addressed and do not require a re-design of the proposal or refusal of the development, therefore based on the assessment undertaken by Council there are no outstanding issues.

5. RECOMMENDATION

DA**0350/2022 (PPSSTH-166)** be determined by way of approval, subject to the recommended conditions as detailed in **Attachment 1**.