

**PLANNING PANEL (SOUTH)**  
**SUPPLEMENTARY REPORT**

<b>Panel Reference</b>	<b>PPSSTH-166</b>
<b>DA Number</b>	<b>DA0350/2022</b>
<b>LGA</b>	<b>Shellharbour City Council</b>
<b>Proposed Development</b>	Two residential flat buildings and one building with shop top housing comprising a total of 155 apartments and retail space (total 330sqm).
<b>Development Characterisation</b>	<b>Residential Flat Building</b> <b>Shop Top housing</b>
<b>Location</b>	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
<b>Applicant/Owner</b>	Australand Corp. (Frasers Australia) - Applicant Shellharbour City Council (landowner)
<b>Date of DA lodgement</b>	1 October 2021
<b>Report prepared by</b>	Madeline Cartwright, Principal Planner – Development Assessment
<b>Report Endorsed by</b>	Mathew Rawson, Manager – Planning and Urban Release
<b>Date of report</b>	15 June 2023

## **Purpose of this report**

The purpose of this report is to provide the Regional Planning Panel (South) (the Panel hereafter) with additional information regarding the following issues:

- Apartment Design Guidelines (ADG) non-compliance with solar access and direct sunlight to apartments within Building B.
- ADG non-compliance with deep soil zones throughout the development.
- ADG non-compliance with Communal Open Space (COS) and clarification regarding the through site link within lot 4204.
- Clarification of why the proposal was referred to the Shellharbour Design Review Panel (DRP) initially and why the proposal was not re-referred.
- Confirmation of conditions referred to in Council Assessment Report
- Draft conditions, amended as required.

### **1.1 ADG non-compliance with solar access and direct sunlight to apartments within proposed building B.**

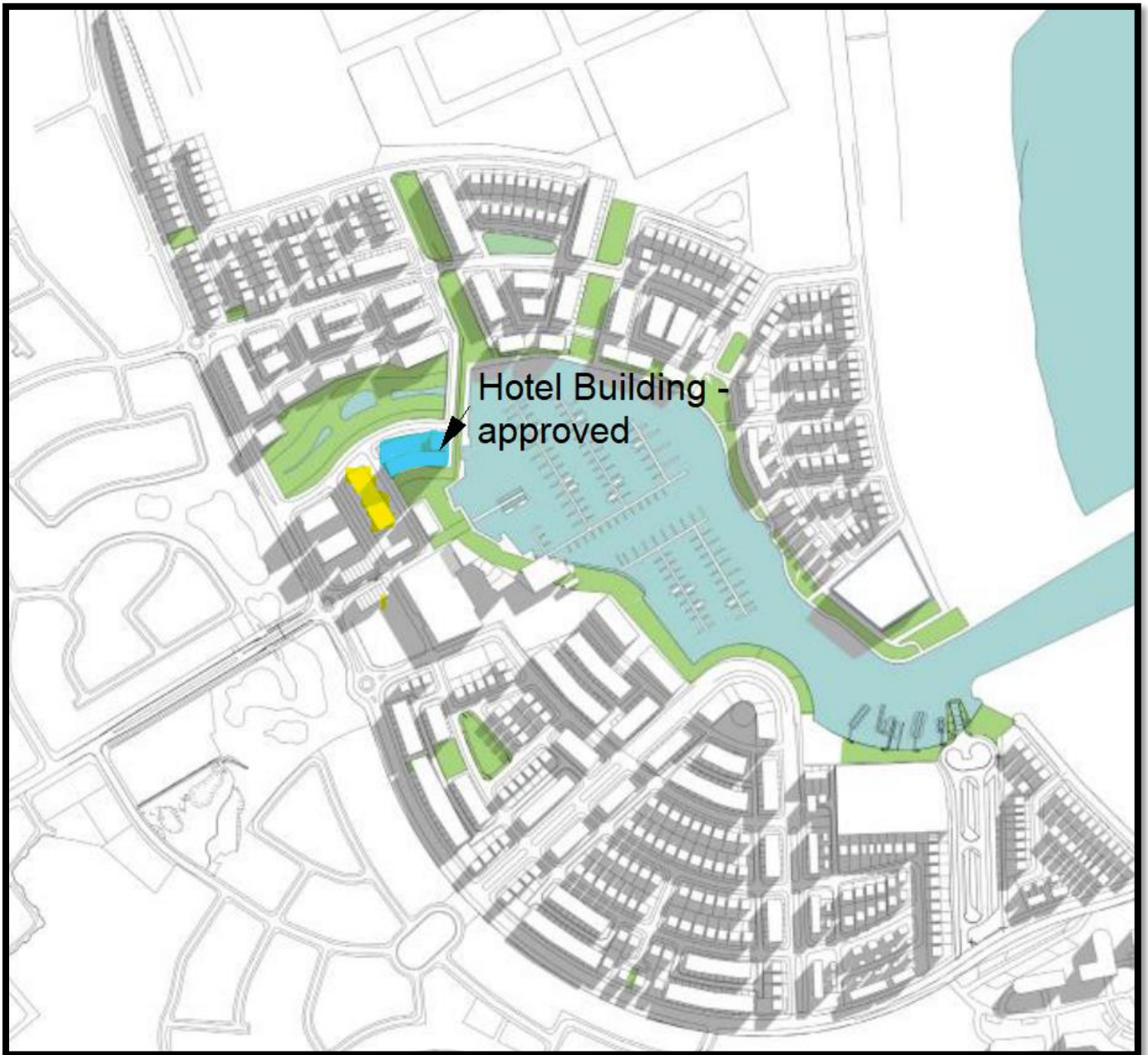
Objective 4.1A of the Apartment Design Guidelines requires that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours of direct sunlight between 9am and 3pm mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between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

The non-compliances occur within Building B with 25 apartments achieving the minimum of 3 hours of direct sunlight between 9am and 3pm mid-winter, this equates to 38% and 19 apartments receiving no direct sunlight which equates to 29%.

Lot 4204 is a narrow rectangular lot with north-west / south-east orientation resulting in the majority of the building's facade facing north-east and south-west, with public roads on the east, north and western sides. The location, shape and size of the lot has already been approved under previous subdivision DA's as detailed in Council's Assessment Report.

Building B to be located on lot 4204, has been designed within the parameters of the Shell Cove Boat Harbour Concept Plan 07\_0027 MOD 1 (Concept Approval) and Urban Design Guidelines applicable to the site. This relates to height, dwelling yield, number of storeys, setbacks and other detailed design features.

The Revised Concept Plan Design Report ([majorprojects.accelo.com/public/6fb24ccf626343aae48621c9c6e157f0/COX\\_20180731\\_ShellCove\\_RevCepPlan\\_DesReport\\_V33.pdf](https://majorprojects.accelo.com/public/6fb24ccf626343aae48621c9c6e157f0/COX_20180731_ShellCove_RevCepPlan_DesReport_V33.pdf)) which forms part of the approved documents of the Concept Approval mod 1 includes analysis of the overshadowing impact of the built form, with building envelopes shown as highlighted below in figure 1. The overshadowing impact of the approved hotel building (highlighted in blue) at 9am as shown in figure 1 can be seen as impacting lot 4204 (highlighted in yellow) and the future residential building.



*Figure 1 – overshadowing diagram*

The location of the non-compliant apartments is shown in more detail on the ADG solar compliance plans included as attachment 13 of the original Council Assessment Report and included below as figure 2 for building B only.



Figure 2 - solar compliance building B

The apartments highlighted in blue are ones that would be expected to receive morning sun were the hotel building not in the location approved. These apartments will also enjoy views to the east across the future park and of the Marina beyond. If these apartments were not overshadowed by the approved hotel development, then Building B would be entirely compliant with the solar access requirements of the ADG.

The submitted shadow diagrams included as attachment 11 of the Council Assessment Report and as figure 3 and 4 below for the more detailed overshadowing impact at 9am and 12pm mid-winter of the hotel building on the development, specifically building B. The approved hotel building is shown to overshadow the majority of lot 4204 in the early morning. Importantly the shadow diagrams also include the impact from the planned but not yet approved oval shaped library/community facility located to the south-east of the subject site.



*Figure 3 - shadow diagram 9 am mid-winter*



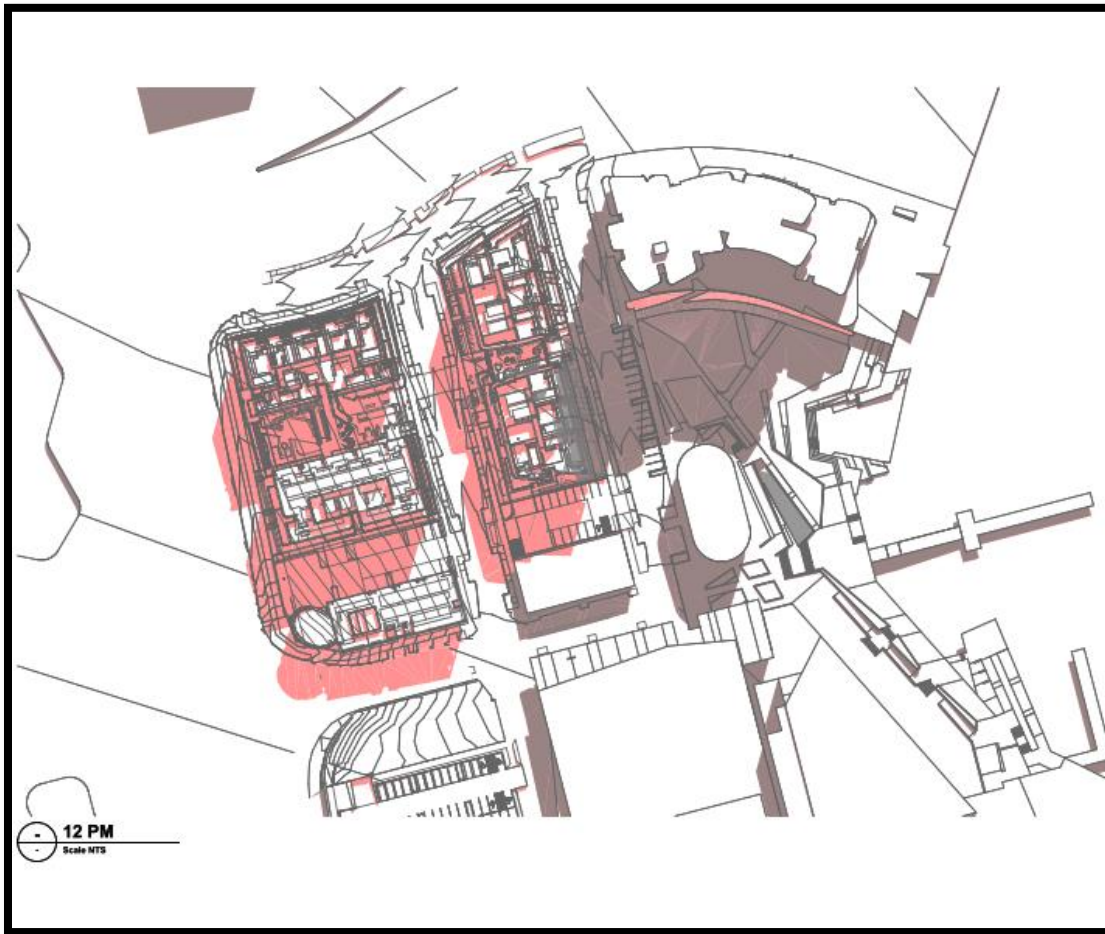


Figure 4 - shadow diagram 12noon mid-winter

Through the Shellharbour Design Review Panel process (DRP) discussions were had with the applicant to investigate how the design could be improved to increase the solar access compliance values within building B. These discussions concluded that a balance is required between compliance with the Concept Approval and the relevant Environmental Planning Instruments, in this case SEPP 65 and the ADGs.

The Concept Approval restricts the height of building B to 6 storeys and 22 metres. This limits the design solutions available to this site when taking into account the impact of surrounding buildings on solar access. Compliance with the ADG solar access requirements would be almost impossible for lot 4204 given the surrounding development and site constraints.

The apartments subject of the solar access non-compliance, as marked in blue in figure 2, are orientated to the eastern side of the building and will enjoy views of the public open space to the east and the Marina beyond. It is noted that the ADG states that “the design criteria may not be possible on some sites including where significant views are orientated away from the desired aspect for direct sunlight.

Each unit will benefit from floor to ceiling glass doors which open out onto balconies or Private Open Space (POS) for ground floor units. Each unit will also benefit from direct access via lift or stairs to the roof top Communal Open Space (COS) areas within building B or building A across Civic Avenue.

Council recommends that the non-compliance proposed is supported as a balance has been accepted between the requirements of the ADGs and the Concept Approval. It can be justified that the Concept Approval did consider overshadowing impacts on lot 4204 and some form of overshadowing was accepted by the Concept Approval. Taking into account the height and storey requirements, the proposed design is deemed to be the most appropriate for the site.

Building B also proposes a total of 19 apartments which will receive no solar access (29%). These apartments are located on the western side of the building as shown in figure 2.

Street activation along Civic Avenue is seen as an important outcome with balconies and ground floor private open space providing passive surveillance to the street. The building has been designed to limit the apartments that face west and south with vehicle ramps and access points on the ground floor and dual aspect apartments on each floor where possible. Additional balcony areas have been provided for 7 of the apartments with no solar access and all apartments have floor to ceiling glazing, 2.8 metre high ceilings and compliant apartment design to increase daylight access to each room.

The site constraints of the lot are considered to result in a numerical non-compliance with the ADGs for apartments with no solar access. The requirements of the Concept Approval in terms of yield have been taken into account when considering this non-compliance. The access to COS and the surrounding public open space within precinct D and across the entire Shell Cove Marina area is also a key factor in Council's recommendation to support this non-compliance.

## 1.2 ADG non compliances with deep soil zone

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%). The basement areas of the proposal extend across almost the entirety of Lots 4204, 4205 and lot 4006. These areas could be reduced to allow for additional deep soil within the development. This is likely to affect the building services which are included in the basement, parking access and manoeuvring and would reduce the amount of parking spaces provided by the development.

As discussed in the Council Assessment Report the parking provided exceeds the required parking numbers by approximately 42 spaces. Council's recommendation is that the excess parking is of higher benefit to the public interest than additional deep soil zone given the surrounding open space areas around the site and within the town centre precinct that provide abundant deep soil zones and suitable tree planting. Community concerns have been raised as part of submissions on the subject application and more generally regarding the Shell Cove project and parking provision. Providing additional parking is considered to be of higher utility than requiring compliant deep soil areas in this instance.

This non-compliance is considered acceptable given the amount of landscaping provided throughout the development at all levels and as residents will benefit from the surrounding open space areas which include significant and substantial planting on structure.

## 1.3 ADG non-compliance with COS requirements and clarification regarding the through site link proposed on lot 4204

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 breakdown of COS has been included below in table 1.

<b>Table 1 – Communal Space Breakdown</b>	
<b>Location</b>	<b>Area</b>
Building A – Ground floor	403sqm
Building A – level 1	77sqm
Building A – Roof top level 2	447sqm
Building A - internal	384sqm
Building B – Ground floor	552sqm

Building B – roof top level 5	171sqm
Building B – internal	34sqm
Building B – external kiosk area	59sqm
Total internal	418sqm
Total communal open space (external)	1709sqm
Total	2127sqm

Council has recommended by condition that the kiosk included on the ground floor of building B be used for communal space both indoor and outdoor, this will add 59sqm of external communal open space and 34sqm of internal communal open space.

The applicant has included COS areas on the ground floor of both buildings. Building A has a large landscaped and seating area as part of the entrance to the building as shown in figure 5 below, this area totals 403 sqm. The applicant has specified that this area will be for residents and visitors only and provide meeting spots and spaces to relax as well as an attractive entrance to the building.



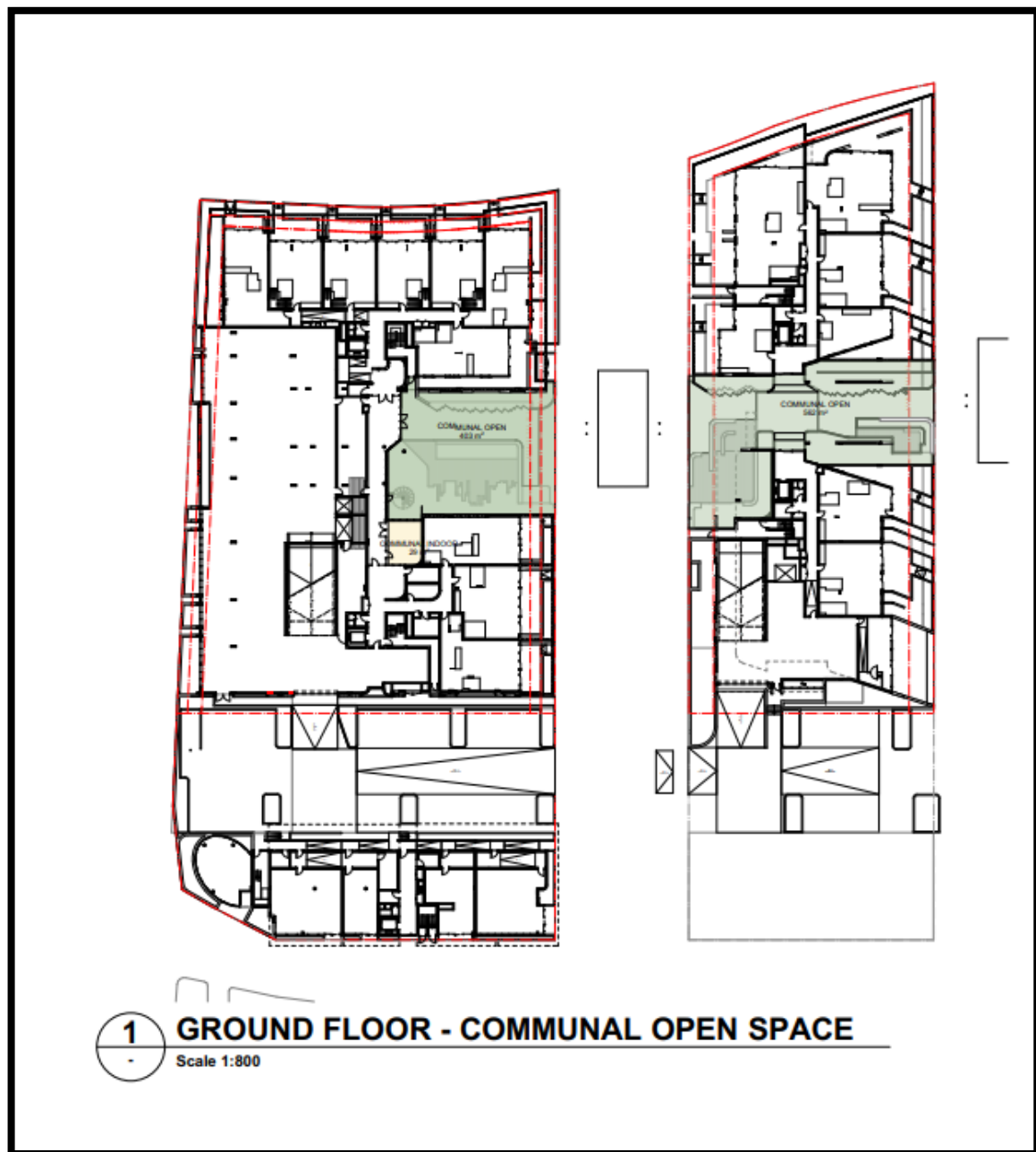


Figure 5 – COS for building A and B

The applicant has also included the area included as the through site link through lot 4204. This is shown in figure 5 above. The through site link provides public access from Civic Avenue to Waterfront Parade and to the public open space and marina beyond. The design also includes landscape beds and seating areas which the applicant envisages can be used for relaxing and as a meeting point.

Whilst Council has questioned the inclusion of this publicly accessible area as COS it is acknowledged that the design results in a positive 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 and provides a favourable outcome for such a long, narrow site.

The through site link has been designed to provide more usability than a simple walk through. The ADG states that some communal open space is accessible and usable by the general public. For these reasons

and in acknowledgment of the benefits to the public access that will be provided, Council recommends that the area of the through site link is included in the COS area.

Condition 82 relating to the Operational Plan of Management for the development has been amended to include the following:

*X. Public right of access must be maintained from Waterfront Promenade to Civic Avenue via the through site link in Building B in Lot 4204 DP1219051 in perpetuity.*

Council recommends that the range and scale of COS areas are appropriate for the development in the context of the site location.

#### **1.4 Clarification of why the proposal was referred to the Shellharbour Design Review Panel (DRP) initially and why the proposal was not re-referred.**

The proposal was referred to the DRP under Shellharbour Council Policy POL-0129-V01 – Shellharbour Design Review Advisory Panel Policy. This was done at pre lodgement stage as is preferred by Council and the DRP to ensure that any design changes are made early in the design process before developers become wedded to certain design. The decision was taken to not re-refer the proposal to the DRP as the changes made to the design were appropriate to the site constraints and the Concept Approval.

The DRP is a Shellharbour City Council Panel formed to provide independent design advice to applicants and Council planners to assist with lifting the bar of development within our LGA. The DRP is not constituted by the Minister under SEPP 65 and therefore there is no requirement for to refer the application to the DRP for advice concerning the design quality of the development after lodgement of the application.

#### **1.5 Confirmation of conditions referred to in Council Assessment Report.**

Council can confirm that the condition referred to in section 4.7 (ii) Parking, Access and Servicing in the Council Assessment Report is condition 29 – Parking Allocation Plan.

Council can confirm that the condition referred to in section 4.2.4 – SEPP 65 – Principle 3: Density, in the Council Assessment Report is condition 79 - Liveable Housing Design Guidelines.

#### **1.6 Draft conditions, amended as required.**

All conditions have been amended as required by the Panel. Draft conditions have been attached to this report with the changes marked in red.

## **1. RECOMMENDATION**

DA0350/2022 (PPSSTH-166) be determined by way of approval, subject to the recommended conditions as detailed in attachment 1.