

PLANNING PANEL (SOUTH)
Assessment Report

Panel Reference	PPSSTH-176		
DA Number	DA0276/2021		
LGA	Shellharbour City Council		
Proposed Development	70 Lot Staged Subdivision Of Lots 9001, 9004, 9005 Consisting Of 66 Residential Lots, Two Future Residential Lots, One Future Mixed Use Lot, One Lot For Sewerage Infrastructure and associated landscaping and embellishment		
Development Characterisation	Subdivision		
Location	Lots 9001, 9004 and 9005 DP1254656 Boollwarroo Parade, Shell Cove 2529		
Applicant/Owner	Australand Corp. (Frasers Australia) - Applicant Shellharbour City Council (landowner)		
Date of DA lodgement	19.05.2021		
Public Notification Period	03.06.2021 – 17.06.2021		
No. of Submissions	Nil		
Reason for determination by SRPP	Planning Panel has accepted Council's delegations to determine the development application under section 377 of the Local Government Act 1993		
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 • SEPP (Transport and Infrastructure) 2021 • Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1 • Shellharbour Local Environmental Plan 2013 • Shell Cove Housing Design Guidelines Precinct H – Medium Density and Detached Housing. • 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	Civil Plans	
	Attachment 3	Landscape Plans	
	Attachment 4	Background to the Planning Framework for Shell Cove Boat Harbour and Marina Precinct	
	Attachment 5	Works as executed survey plans – dune	
	Attachment 6	Concept Approval Compliance Table	
	Attachment 7	Shellharbour Local Environmental Plan 2013 Compliance Table	
	Attachment 8	Design Guidelines for Precinct H – Compliance Table	
	Attachment 9	Shellharbour Development Control Plan Compliance Table	
	Attachment 10	SRPP s377 LG Act delegation Shellharbour	
	Attachment 11	Response to comments from Southern Regional Planning Panel - 8.12.2022	

	Attachment 12	Addendum to response to comments from Southern Regional Planning Panel – dated 6.02.2023
	Attachment 13	Indicative extent of sheet flow – intermediate scenario
	Attachment 14	Indicative extent of sheet flow – high scenario
	Attachment 15	Precinct H Detached housing Urban Design Guidelines
	Attachment 16	Precinct H Medium density housing and mixed use site.
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	17 February 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 as Council considers it has a conflict of interest given the context of the proposed development and its proposed outcomes. 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. The Capital Investment Value (CIV) of the proposal is \$4,960,967.

In this regard, the development is not classed as Regionally Significant Development under State Environmental Planning Policy (State and Regional Development) 2011 as the CIV is under the \$5 million threshold.

Council has requested that the Planning Panel accept Council's delegations under section 377 of the Local Government Act 1993 to be the determining authority. This request was made because Council considers it has a conflict of interest given the context of the proposed development and its proposed outcomes.

Confirmation was received from the Panel Chair by letter dated 12 September 2022 (attachment 3) that the Regional Planning Panel (Southern) would accept delegations to determine the subject application.

1.2 Proposal

The proposal seeks consent for 70 Lot Staged Subdivision Of Lots 9001, 9004, 9005 Consisting Of 66 Residential Lots, Two Future Residential Lots, One Future Mixed Use Lot, One Lot For Sewerage Infrastructure. Landscaping and embellishments of public land. Proposed plans are included as attachment 2 and 3 of this report. The number of lots has reduced from the initial proposal of 73 lots due to the submission of amended plans throughout the assessment process.

The proposal lodged was identified as Integrated Development pursuant to the Rural Fires Act 1997 as the proposal includes subdivision of land identified as Bushfire Prone.

1.3 Exhibition

The proposal was notified in accordance with the Shellharbour Community Participation Plan 2021. No submissions were received.

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 subdivision is permissible with consent in the R3 Medium Density Residential Zone, B2 Local Centre Zone and RE1 Public Recreation 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 Instrument SEPP (Resilience and Hazards) 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.

Council has requested additional information relating to coastal inundation from the applicant. The applicant was unable to provide this information to meet the tight timeframe required by Panel to enable the determination meeting date and therefore this information will be provided as an addendum to this report prior to the determination meeting. This additional information is not considered to alter Council's recommendations but potentially will remove the recommended condition relating to site levels.

1.5 Recommendation

DA0276/2021 be determined by way of approval, subject to the conditions provided in attachment 1.

2. APPLICATION AND SITE OVERVIEW

2.1 Planning Controls

The following planning controls apply to the development:

State Environmental Planning Policies:

- SEPP (Resilience and Hazards) 2021
- SEPP (Transport and Infrastructure) 2021

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 subdivision of the site (known as precinct H under the Concept Approval) into a 70 lot staged subdivision of lots 9001, 9004, 9005 consisting of 66 residential lots, two future residential lots, one future mixed use lot, one lot for sewerage infrastructure and embellishment works within the open space lands.

The development has been proposed in three stages as follows:

- Stage 1 –Subdivision of the three parent lost (lots 9001, 9004 and 9005) to create two lots as shown in figure 1 below.

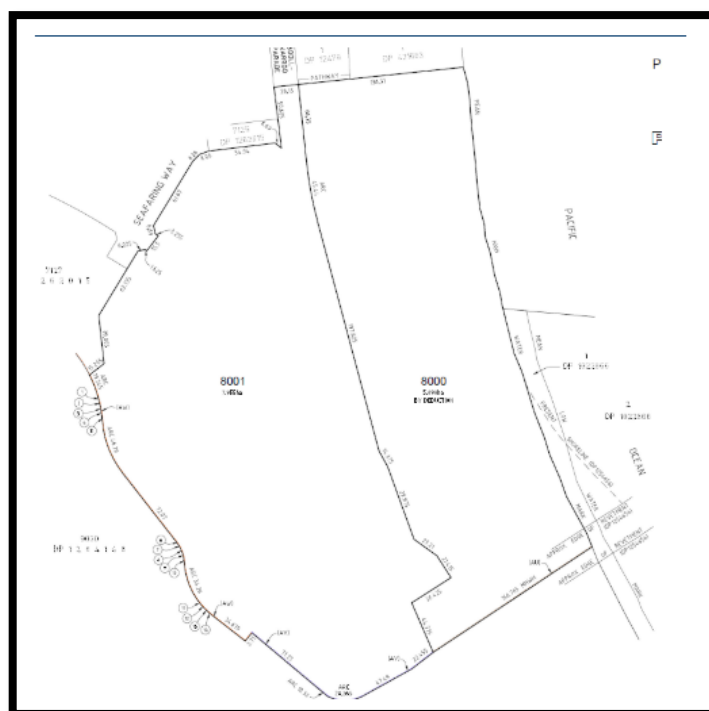


Figure 1 - Stage 1 subdivision layout

- Stage 2 – subdivision of 50 residential lots, associated roads, Sydney Water Pump Station lot and one superlot. Show in in figure 2 below.

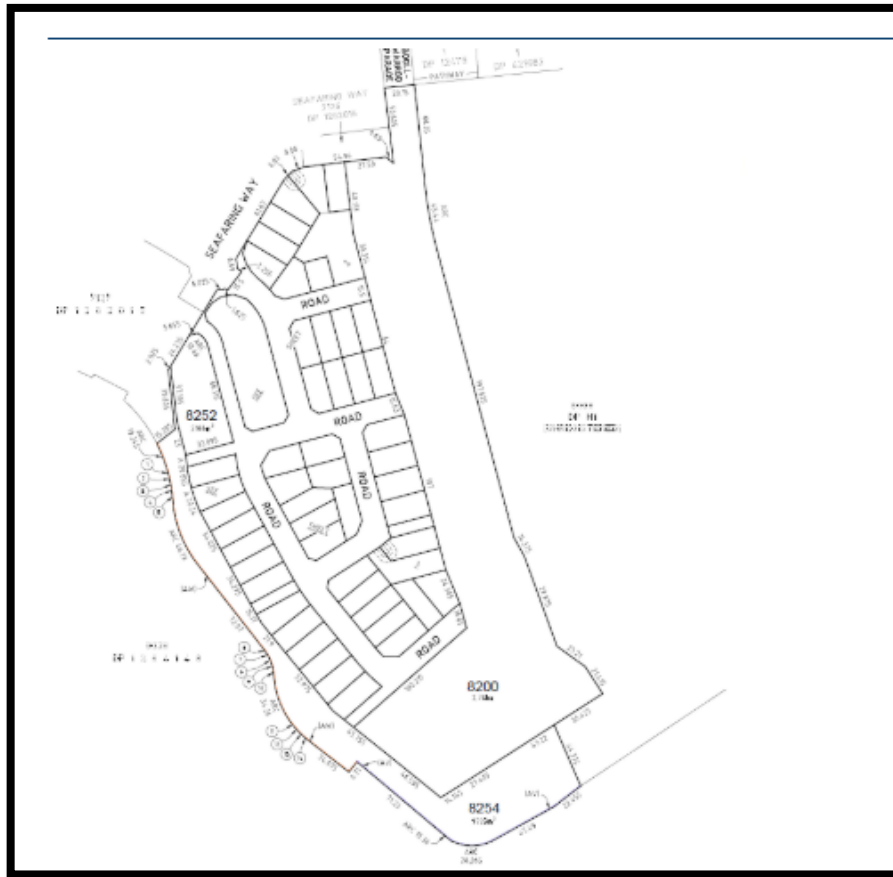


Figure 2 - stage 2 subdivision

- Stage 3 – Subdivision of 16 low density residential lots, associated roads and works to existing car park and public reserve embellishments/landscaping and creation of three super lots. Shown in figure 3.

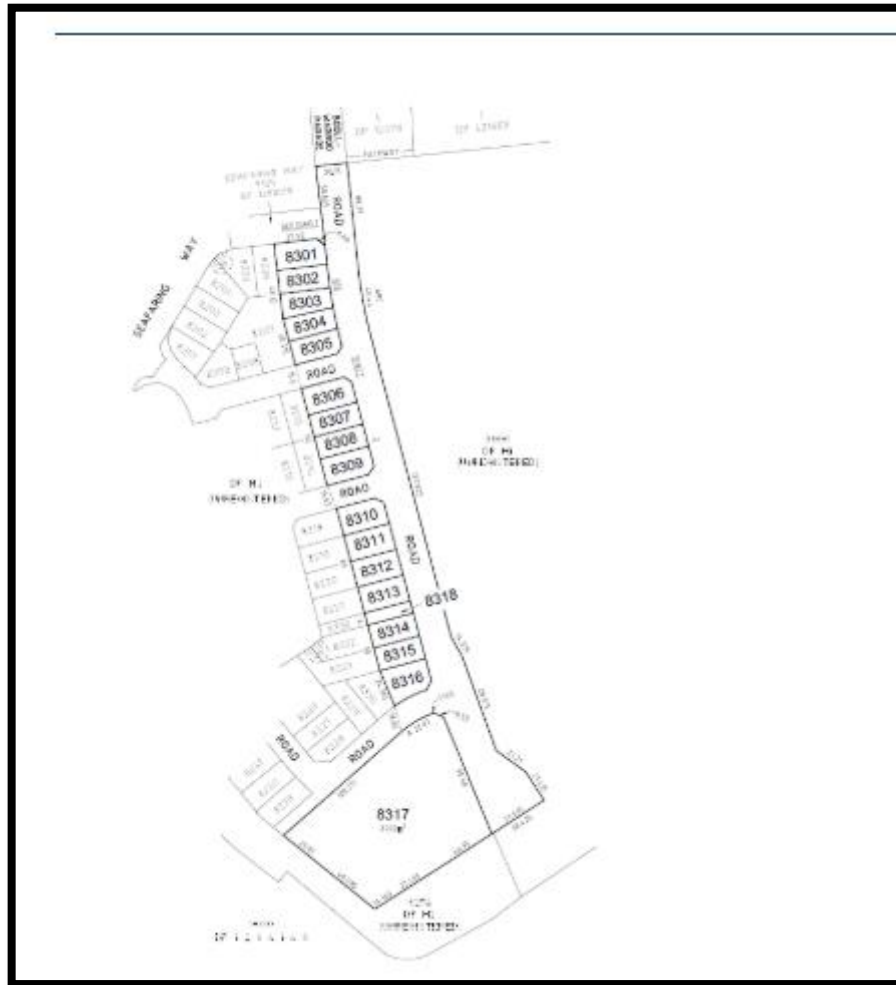


Figure 3 - Stage 3 subdivision

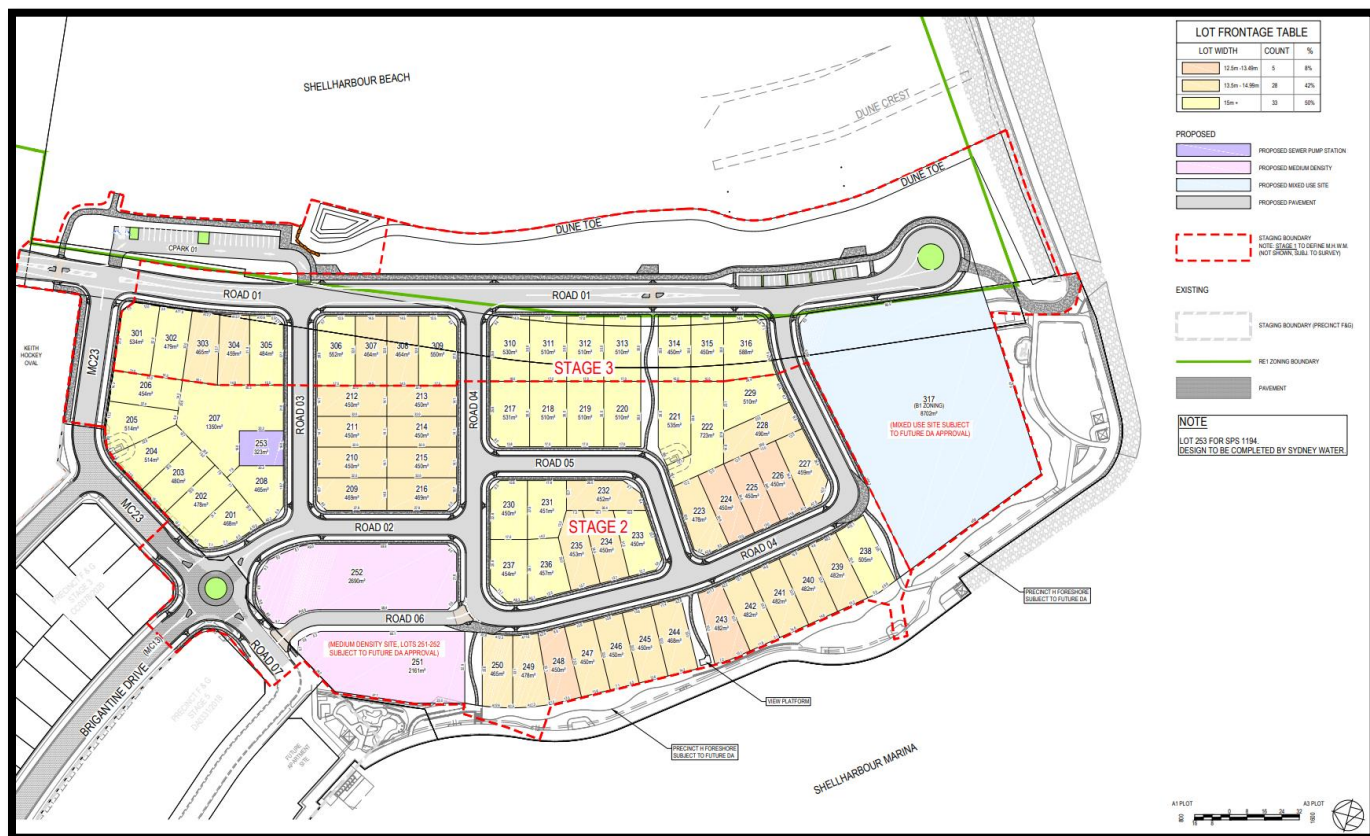


Figure 4 – Final Plan of Subdivision

2.3 Subject Site and Locality

The proposed subdivision will be sited to the north east of the Shell Cove Marina, on the eastern edge of the Shell Cove Project area, connecting with the existing Shellharbour Village through Boolwarroo Parade. There are existing residential dwellings to the north sited along Boolwarroo Parade and residential precinct G adjoining to the north west which is currently under construction.

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 4 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 4, 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 H specifically:

- Increasing the number of dwellings across the whole project area to 1,566
- Revision of housing densities, typologies and building heights throughout the precinct
- Relocating hotel building from the mixed use lot included to the southern end of precinct H to the northern edge of the Town Centre (precinct D)



Figure 5 - - Aerial Photo

2.3.1 Relevant Background

The development history of the site as relevant to the subject application is as follows:

Application Number	Description	Date	Decision
DA0735/2018	Staged Torrens Title Subdivision from 3 lots into 21 lots	03.05.2019	Approved
DA0200/2021	Bulk earthworks and surcharge pre loading – Shell Cove Precinct H	19.05.2022	Approved
DA0400/2019	Shell Cove Marina – foreshore works north – including public open space adjoining the subject site to the south.	2.06.2020	Approved

The subject lots were created by subdivision DA0735/2018 approved by Council in May 2019.

An extract from DP1254656 is included below in figure 6 with relevant lots highlighted.

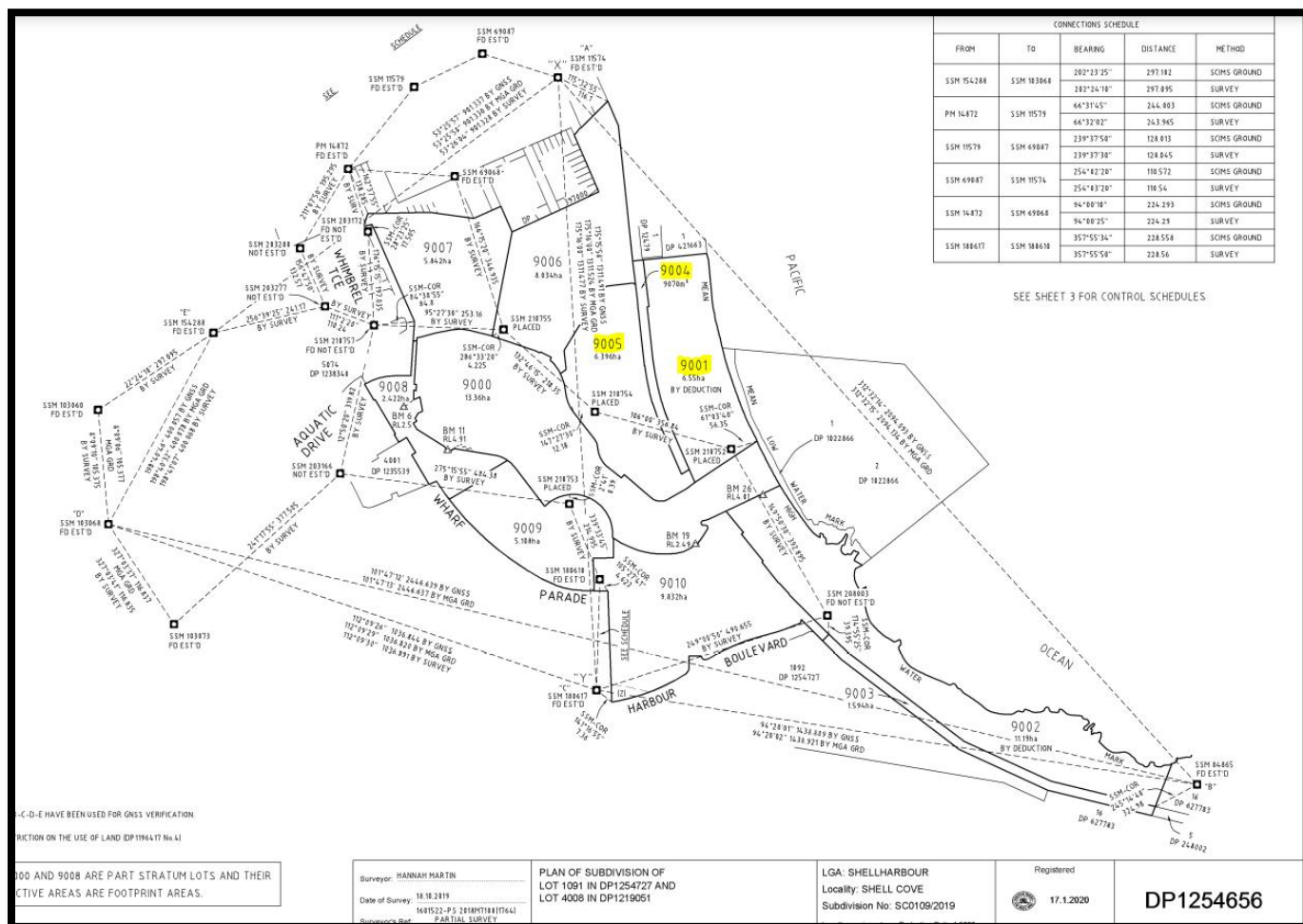


Figure 6 - DP1258171 extract

2.3.2 Property Constraints

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

- Bush Fire – Part affected Buffer/Category 3
- Aboriginal Heritage
- Flooding
- Acid Sulphate Soil – Class 2 and 3

2.3.3 Restrictions on Title

There are restrictions on the title as per the below:

Lot 9001

- Easement for encroaching structure 0.65 wide

Lot 9005

- Easement for encroaching structure 0.5 wide
- Easement for encroaching structure variable width

Lot 9004

- No restrictions on title

Council comment:

Encroaching structure for each lot relates to seawall. Proposed subdivision development will not impact on these easements.

2.4 Referrals

2.4.1 Internal Referrals

GIS Officer

Council's GIS Officer has reviewed the proposal with regard to road numbering and provided recommended conditions which have been included with the draft consent.

Community Life Officer

Council's Community Life Officer has reviewed the proposal and provided a satisfactory referral response.

Flood Engineer

Council's Senior Civil Engineer has reviewed the proposal with regard to flooding and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

As noted above, Council has requested additional information relating to coastal inundation from the applicant. The applicant was unable to provide this information to meet the tight timeframe required by Panel to enable the determination meeting date and therefore this information will be provided as an addendum to this report prior to the determination meeting. This additional information is not considered to alter Council's recommendations but potentially will remove the recommended condition relating to site levels.

Development Engineers

Council's Development Engineers have reviewed the proposal and raised concern with regard to stormwater drainage, driveway location, road design and layout, sight distances at access driveways. Additional information was requested and provided. The additional information has been referred back to the officer for review, and a conditionally satisfactory response provided.

Environment Officer

Council's Environment Officer has reviewed the proposal and raised concern with regard to, Coastal hazards report. Additional information was requested and provided. The additional information has been referred back to the officer for review, and a conditionally satisfactory response provided. Further detail is provided within the planning assessment report.

Landscape Officer

Council's Landscape Officer has reviewed the proposal and raised concern with regard to landscape plan requirements, species proposed and street tree requirement. Additional information was requested and provided. The additional information has been referred back to the officer for review, and a conditionally satisfactory response provided.

Recreation Planning

Council's Recreation Planner has reviewed the proposal and raised concern with regard to the interface between the foreshore and future development, fences and level changes, requirement of landscape plans. Additional information was requested and provided. The additional information has been referred back to the officer for review, and a conditionally satisfactory response provided.

Contributions

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

Assets Officer

Councils Assets Officer has reviewed the proposal and raised concern with regard to the public beach access and stormwater drainage proposed. Additional information was requested and provided. The additional information has been referred back to the officer for review, and a conditionally satisfactory response provided.

Flood Engineer

Councils Senior Civil Engineer has reviewed the proposal with regard to flooding and provided a conditionally satisfactory referral response. Recommended conditions have been included within the draft consent.

Traffic Officer

Councils Traffic 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 in accordance with subdivision 2.48 of SEPP (Transport and Infrastructure) 2021 due to *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*. A response was received on 27.05.2021 advising that no objections are raised subject to conditions recommended. The advice received has been included in Part H of the draft consent.

Sydney Water

The proposal was referred to Sydney Water due to the additional lots being created, increased demand on the infrastructure and the Sydney Water pump station proposed as part of the subdivision. A response was received on 23.06.2021 advising no objection raised and recommended conditions have been included within the draft consent relating to a requirement for a section 73 Certificate.

NSW Rural Fire Service

The proposal was referred to the NSW RFS as Integrated Development pursuant to the Rural Fires Act 1997. A response was received on 1 November 2021 providing a 100B authorisation including General Terms of Approval. The GTAs have been attached to the draft consent.

2.4.3 Southern Regional Planning Panel Briefing Comments

A briefing and site visit was undertaken with Panel on 28 September 2022. The following key issues were identified by the Panel and have been responded to accordingly:

a. Zoning abnormalities regarding residential development proposed within the B2 Zone

Council Comment:

Areas of lot 9004 which are to be subdivided to provide residential lots are sited within the B2 (Local Centre) zone and RE1 (Public Recreation) under Shellharbour Local Environmental Plan 2013 (SLEP 2013). Figure 7 below shows these areas with B2 zoning shown in blue and RE1 zoning shown in green.

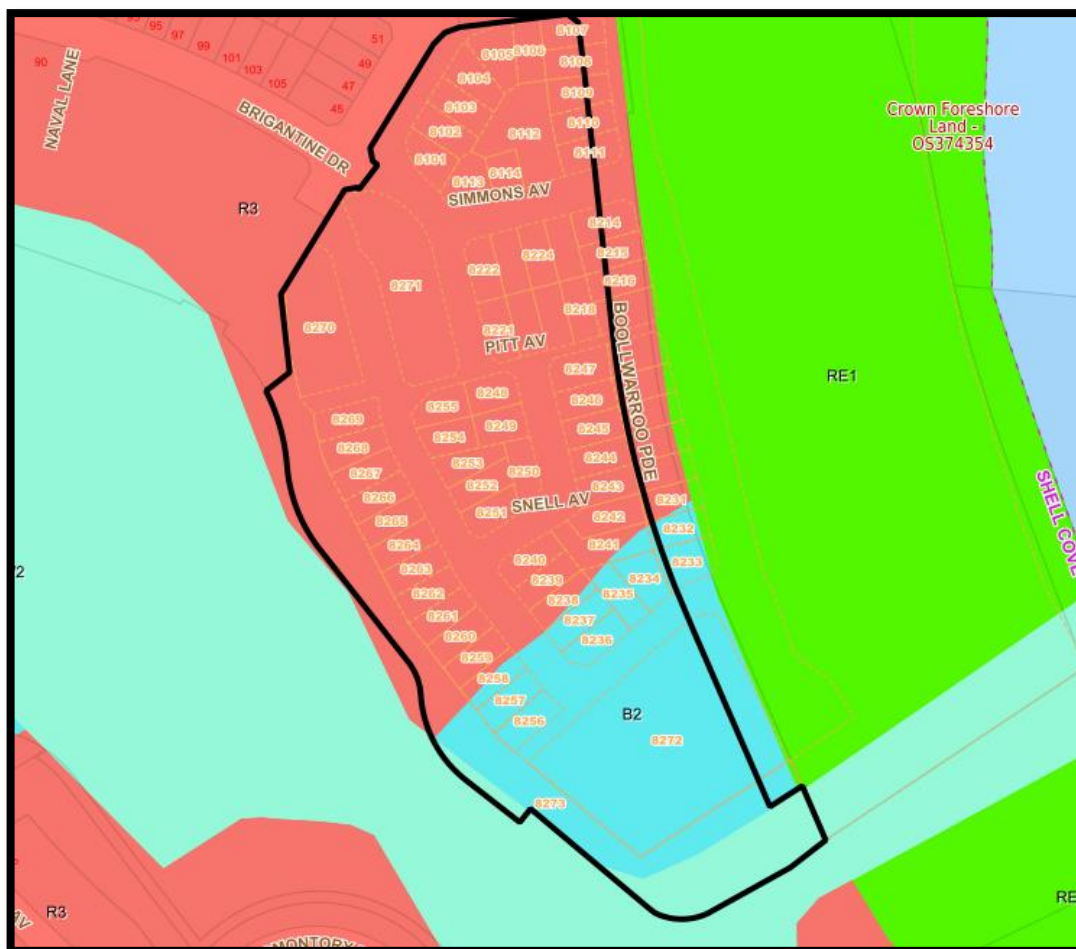


Figure 7 - SLEP 2013 zoning map extract

The proposed development relates to subdivision of land. Subdivision is permissible with consent under clause 2.6 of the SLEP 2013 across all relevant zones identified in figure 7.

The identified use for the subdivided lots under the Concept Approval is residential for the lots on the north eastern edge (proposed lots 8256-8258, 8236-8238, 8232-8234 and 8241) of the B2 zoning and the lots with areas of RE1 land (proposed lots 8231 – 8233) included. The larger lot to the south of the proposed site is identified as mixed use under the concept approval. Details of identified typologies can be seen in figure 25 of this Assessment Report.

The supporting information submitted with the application relies on the savings and transitional provisions for concept plans under Schedule 2, clause 3B of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017. Section (2) of this clause states

After the repeal of Part 3A, the following provisions apply to any such development (whether or not a determination was made under section 75P(1)(b) when the concept plan was approved) —

- (a) if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),*
- (b) if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),*
- (c) any development standard that is within the terms of the approval of the concept plan has effect,*
- (d) a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,*
- (e) a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,*
- (f) the provisions of any environmental planning instrument or 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,*
- (g) this clause applies instead of section 75P(2), but any direction, order or determination made under section 75P(2) in connection with the concept plan continues to have effect.*

The proposed subdivision and future residential development will constitute development under Part 4 of the EP&A Act. Therefore it is not necessary to demonstrate that the Concept Approval is inconsistent with the SLEP 2013 as the clauses of schedule 2, clause 3B (above) are relied upon. In order to disregard any prohibition under SLEP 2013 it is required to establish that the Development Application is development for which the Concept Approval has been approved.

b. Intention in approved concept plan for land to be used for residential purposes

Council Comment: Figure 25 of this report details the typologies of built form for each precinct of the Shell Cove project. The areas proposed for residential lots are identified houses, townhouses and residential/potential mixed use. An overlay of the approved typologies plan from the concept approval on the submitted civil plans shows that the extent of residential lots aligns the with the extent of that shown in the typologies plan



Figure 8 – Overlay of typologies plan from Concept Approval and proposed civil plans.

c. Finalisation of Urban Design Guidelines.

Council Comment: The Urban Design Guidelines for Detached dwellings and medium density housing have been finalised and endorsed by Council. An assessment of the proposed subdivision has been undertaken in accordance with these Guidelines and included as attachment 8.

d. Council endorsement of UDGs required prior to determination.

Council Comment: As above.

e. Consistency with 3A Concept Approval

Council Comment: Council is satisfied that the positioning of Boollwarroo Parade, the minor changes to the layout of local roads and the extent of the residential development is suitably consistent with the Concept Approval. Additional information provided from the applicant relating to coastal hazards and future impact on the proposed road, future burden on Council included as Section 2.4.3 (h) of this report.

The construction and evaluation of “*generally consistent with*” as required by clause 3B(2)(d) is taken from the legal analysis having regard to various case law that evaluates this threshold. This includes:

Stevens Holdings Pty Limited trading as Stevens Group v Newcastle City Council (No 2) [2020] NSWLEC 1287 – allowing a consideration of ‘*natural consequence*’ that is resulted from further detailed investigations of the Concept Approval outcomes which typically are not apparent at the stage of the Concept Approval application process.

Ulan Coal Mines Ltd v Minster for Planning [2008] NSWLEC; Elite Construction NSW Pty Limited v Coffs Harbour City Council [2018] NSWLEC 201 - The ‘inherent’, ‘appropriate and inevitable’ flexibility applied

to projects of 'a scale that are complex', 'extensive' and 'multi-staged' in the approval framework under clause 3B needs to be considered.

Condition 2 under Schedule 2 of the final modifying instrument for the Concept Approval provides that

The project shall be generally in accordance with the following plans and documentation:

- (a) Shell Cove Boat Harbour Precinct Concept Plan Application and Environmental Assessment, dated 26 February 2010, prepared by LFA (Pacific) Pty Ltd, including Volumes 1 and 2 and Appendices A to P;*
- (b) Shell Cove Boat Harbour Precinct Preferred Project Report, dated November 2010 prepared by LFA (Pacific) Pty Ltd, including Appendices 1 and 2; and*
- (c) Statement of Commitments (Schedule 4), as amended by the updated Statement of Commitments provided in Appendix C of the Section 75W Modification, dated 8 August 2017, prepared by Ethos Urban; and*
- (d) Section 75W Modification, dated 8 August 2017, prepared by Ethos Urban, and Response to Submissions, prepared by Ethos Urban, dated 7 February 2018, 31 May 2018 and 31 July 2018.*

except as otherwise provided by the terms of this approval

The case law providing the framework to this instruction includes:

Grace Bros Pty Ltd v Willoughby City Council (1980) 44 LGRA 400 and Katoomba Gospel Trust v Blue Mountain City Council [1994] NSWLEC 107 – here the court held that the phrase of “generally in accordance” suggests a degree of flexibility in the interpretation of the terms of the Modified Concept Approval and that the consent authority must look at whether any proposed change is “significant in the overall context of the development” (Grace Bros).

In doing so, the conceptual understanding of the subject Concept Approval is inherently evident within the supporting documents outlined in Condition 2 of the Concept Approval. In addition Condition 9 under Schedule 2 of the final modifying instrument for the Concept Approval provides that:

The indicative design / layouts for open space, foreshore areas, works within the water, the boat maintenance/storage facility and buildings as shown in the approved plans and documentation submitted with MOD 1 are not approved as part of the Concept Approval. These matters shall be assessed and determined by Council as part of any future development applications and as part of precinct Urban Design Guidelines, where relevant.

Opinion supporting this approach directly relating to the positioning of Boollwarroo Parade has been submitted by the applicant and details the following points:

- The indicative Street Network plan (page 13 of the Revised Concept Plan Design Report, dated July 2018 prepared by Cox Architecture) included as figure 9 below shows the subject road to be along the eastern edge of Precinct H. The figure is not scaled and does not include any dimensions beyond street width requirements. Notes accompanying this figure in the Revised Concept Plan Design Report state that

The street network diagram is conceptual and may be subject to minor change as design development progresses.

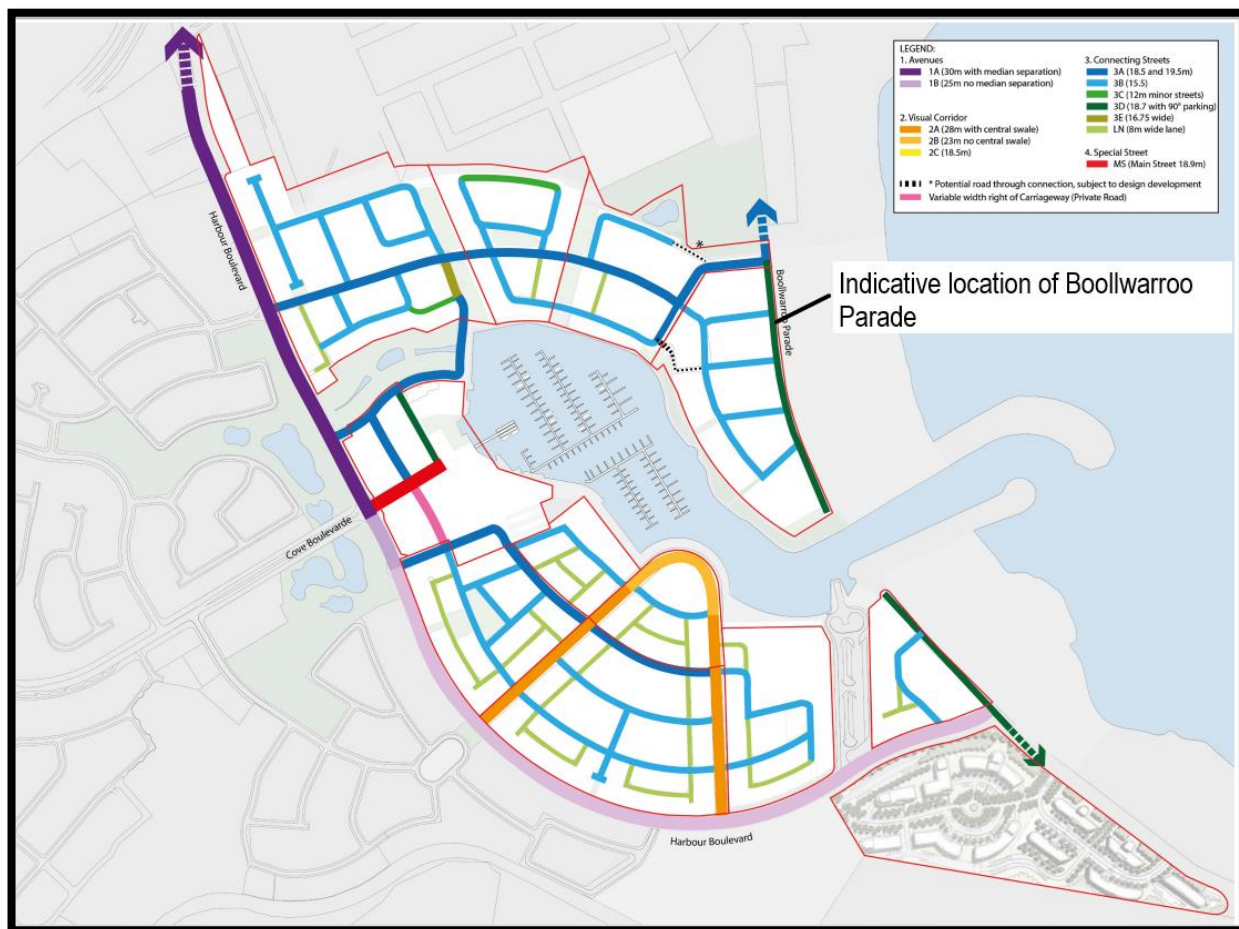


Figure 9 - Indicative Street Network from Concept Approval

- *The express terms of the Concept Approval granted consent to the carrying out of listed development within the approved Concept Plan area – including development for roads and public open space. The conditions did not require that any of the roads (including Boollwarroo Parade) be constructed in a precise location. Further, the overall area of public open space to be provided was not specified as a requirement of the conditions, and its Proposed location of Boollwarroo Parade indicative layout was not approved as part of the Concept Approval (having regard to Condition 9 above). Conversely, capped gross floor areas required for other kinds of land uses were specified. This is an important distinction going to the indicative nature of the proposed road network and the open space areas, which would be subject to further detailed design at a later stage.*

The measure of flexibility to assessing a Concept Approval and whether the proposed is 'generally in accordance' with the Concept Approval together with the assessment of 'generally consistent with' can be derived from the above and as noted within section 3 of this report Council is satisfied that the proposal meets these thresholds.

g. Anticipated life span of infrastructure and residential development

Council Comment: Additional information received from applicant regarding future coastal hazards modelled until 2125 and potential impact to the infrastructure, details included in section 2.4.3 (h). This period is above the best practice for modelling coastal hazards and the 80 years required by the Shellharbour Coastal Management Plan.

h. Potential impacts of current and future coastal hazards on the proposed development, particularly in relation to the positioning of Boollwarroo Pde closer to the ocean.

Council Comment: Additional information received from applicant regarding current and future coastal hazards on the proposed development.

The aerial photo included in figure 10 below shows the 'original' position of Boollwarroo Parade. This section of road was never gazetted as a public road and therefore no road closures are required as part of this proposal. This section of Boollwarroo Parade was blocked due to the construction of the breakwater and groyne and the opening of the marina to the ocean.



Figure 10 - Aerial photo of original Boollwarroo Parade dated 2010

The public car park to the north of the site is not being moved and the proposed road at this point will remain in the same position. Further south the position of Boollwarroo Parade will move eastwards.

In indicative plan showing the original location of Boollwarroo Parade is shown in Figure 11 below. The section of road which will be re-located east is highlighted in yellow. As this road was never gazetted the actual position is difficult to map and reliance on old aerial photos is required.

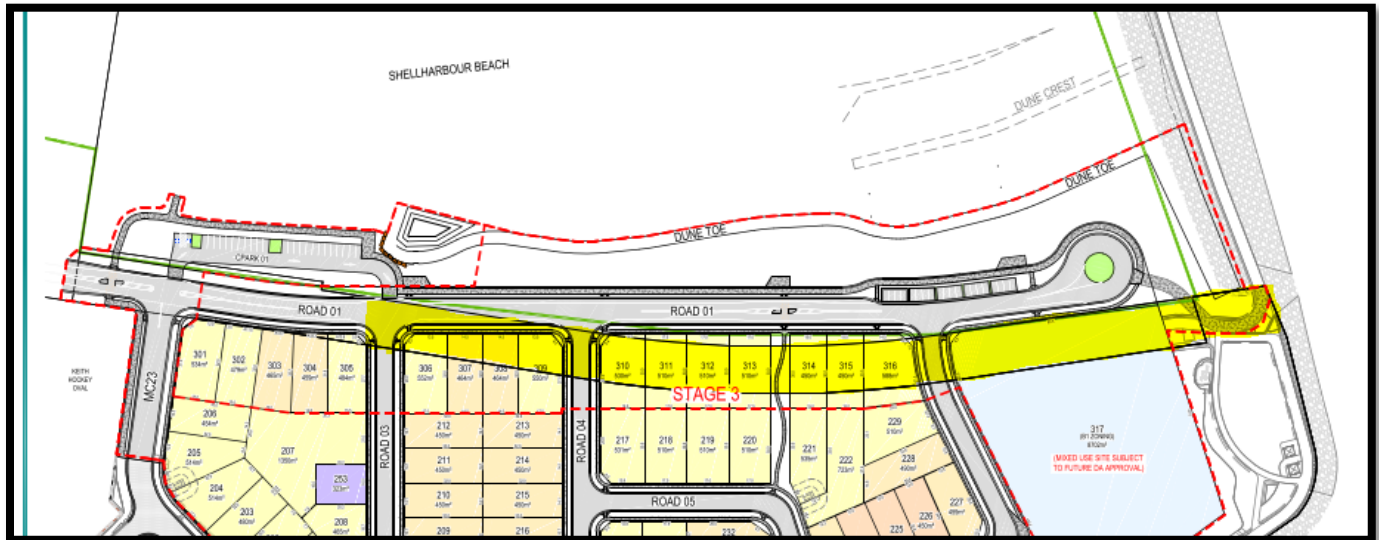


Figure 11 - Original position of Boolwarroo Parade (section of road moving eastwards highlighted in yellow)

The Panel agreed that to conduct a thorough and informed consideration of the coastal impacts on the development, further assessment of coastal hazards was required to be undertaken in line with industry best practice.

The following elements have been considered as part of a revised coastal risk assessment:

1. The potential extent of coastal hazards over a minimum 100-year timeframe (i.e., to 2123) is consistent with the NSW Coastal Management Manual 2018, as referenced by the Coastal Management Act 2016.
2. The likeliness of erosion and recession due to sea level rise including inundation, wave overtopping and sea level rise over the minimum 100-year timeframe.
3. The effects of the recently constructed breakwaters on wave transformation and sediment transport processes particularly regarding the likely location of coastal risk zones at current and future timeframes.
4. The effects of beach stormwater outlets on potential coastal erosion and inundation risk zones.
5. The calculation of the expected zone of reduced foundation capacity (extending landward) taken from the proposed dune height of 5.5m.
6. The revised mapping of coastal hazard extents at appropriate time intervals.
7. Long term mitigation options for managing coastal risks to the development (Boolwarroo Pde in its proposed location, and residences), noting that coastal hazard impacts will continue to occur beyond 100 years' time.
8. A description of proposed dune management including the maintenance requirements for the dunes, and discussion of the limitations of dune management as a long term risk management solution.

Additional information was received, dated 8 December 2022, reference 8A0132_L005.F01 (see attachment 11)– response. Council's technical officers reviewed the additional information received and have been taken through the information by the author Greg Britton in a meeting with the applicants.

The additional information provided by the applicant was the subject of detailed discussion from Council's technical experts during the second briefing meeting held on 16 December 2022. The key issues discussed by the Panel following this second briefing as follows:

Second Council Briefing

- a. The Council assessment staff provided a summary of the additional information provided by the applicant in relation to the coastal hazards and the future potential impact on the proposed location of Boollwarroo Parade and the adjacent development site.
- b. Council confirmed the additional information provided by the applicant and its coastal consultant satisfies the concerns raised by Council staff regarding coastal hazards in the earlier briefing of 28 September 2022.

Council Comment: Following the briefing Council requested Works as Executed Plans and is included as attachment 5 of this report, detailing the height of the existing dune crest level and the section of dune that has been rehabilitated under DA0095/1993 (Boat Harbour Consent). These plans were received by Council and showed that the dune did not have a consistent dune crest height of 5.5 metres as assumed by the additional Coastal Hazard report submitted.

As a result an addendum to the Coastal Hazard report has been submitted and provided to the Panel as attachment 11 of this report. The addendum report has been reviewed by Council Technical Officers. The changes to the modelling are as follows:

The lower dune crest level heights provides a re-determined position of the 2125 Zone of Slope Adjustment (ZSA) – eastern line and Zone of Reduced Foundation Capacity (ZRFC) – western line. Figures have been submitted on the revised hazard lines with notations added by the applicant how they have moved from their previous positions. These figures are included as figures 12 – 14 including the ZSA and ZRFC lines for each of the scenarios, intermediate, high and very high as explained in the submitted Coastal Hazard information dated 8 December 2022 and included as attachment 10.



Figure 12 - 2125 coastal hazard zones (ZSA and ZRFC) for SSP2.4.5 (Intermediate)



Figure 13 - 2125 Coastal Hazard zones (ZSA and ZRFC) for SSP3-7.0 (High)



Figure 14 - 2125 coastal hazard zones (ZRA and ZRFC) for SSP5-8.5 (Very High)

The response concludes that the overtopping flow would travel *as a sheet flow or bore at shallow depth, spreading out and infiltrating into the sandy profile*. Proposed vegetation would also provide frictional resistance to the flow.

The information provided details that the travel distance of the sheet flow or bore beyond the dune crest would be approximately 10-12 metres. Attachments 12 and 13 include an indicative extent of sheetflow showing where 12 metres would sit in proximity to the existing and proposed infrastructure. These have been provided for the intermediate and high scenarios which is accepted as being the most likely. The changes to the dunes and dune crest height over the modelling period have not been detailed and assumptions have been made that the dune crest height will be retained. This would be a requirement of Council to engage in dune nourishment/defence under the Shellharbour Coastal Management Plan.

Further clarification has been sought on the modelling data with a view to understand the potential impact on future dwellings and is to include section plans which detail how far water will travel reflecting the actual site level differences. This is to confirm that the coastal inundation will not reach proposed residential lots.

The applicant was unable to provide this information at the time of writing this report and will be provided as an addendum to this report prior to the determination meeting.

This additional information is not considered to alter Council's recommendations but potentially will remove the recommended condition relating to site levels as highlighted in subclause f below.

Amendments to Approved Plans

Amendment of Design - Extension of Hind Dune Area

The Landscape design plans shall be amended to reduce the grassed open space areas with an increase in planted areas to reinforce the hind dune plant community with plant species installed as outlined in condition 8. Details of this design amendment are to be submitted to Council for approval prior to issue of Subdivision Works Certificate.

The information provided relating to predicated sea level rises to the year 2125 is consistent with guidance in the NSW Coastal Management Manual 2018. The modelling shows that providing the existing dune is maintained/nourished to retain its current surveyed height the impact of coastal inundation within 100 years will be manageable and is unlikely to impact the residential lots within the subdivision. Advice received by Council's Environment Team from the NSW Department of Planning and Environment that the most conservative sea level rise (SLR) projections should be considered as specified in the draft NSW Coastal Design Guidelines (July 2022). However these guidelines are still in draft form and yet to be formalised. Additionally they will not be required to be considered by Council's as part of a DA assessment but are instead intended to be a consideration of Planning Proposals. The SLR predictions provided by the applicant are the median value and not the most conservative however Council is not mandated to adopt benchmark levels.

It is acknowledged that there is a range of levels that can be used when considering sea level rises. Different parts of Shell Cove have been designed using different predicted sea level rises using the best available levels rather than the most conservative. There is no specific benchmarks provided from NSW Government that are mandatory for Council's to adopt and Council as not adopted benchmark levels, this is something that will be investigated while developing the Coastal Management Plan. The figures provided have ranged from intermediate to very high and Council considers this is acceptable in this instance.

3. ASSESSMENT AGAINST CONCEPT APPROVAL

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

3.1 Site Access, Street and Public Domain Framework

3.1.1 Road Layout/Position

The proposed subdivision layout includes the positioning of road 01 (Boollwarroo Parade) to the east of the site. This is a location further east than shown for the road under approved subdivision DA0735/2018 as detailed in figure 6 of this report.

Figure 14 below details the Public Domain Framework for precinct H, this figure is an extract from the Revised Concept Plan Design Report (page 12).



Figure 56 - Public Domain Framework

To compare figure 16 above with the proposed access, street and public domain shown in the lot layout plan included below, figure 17 (and part of the proposed plans as per attachment 2 of this report) comparisons can be made as follows:

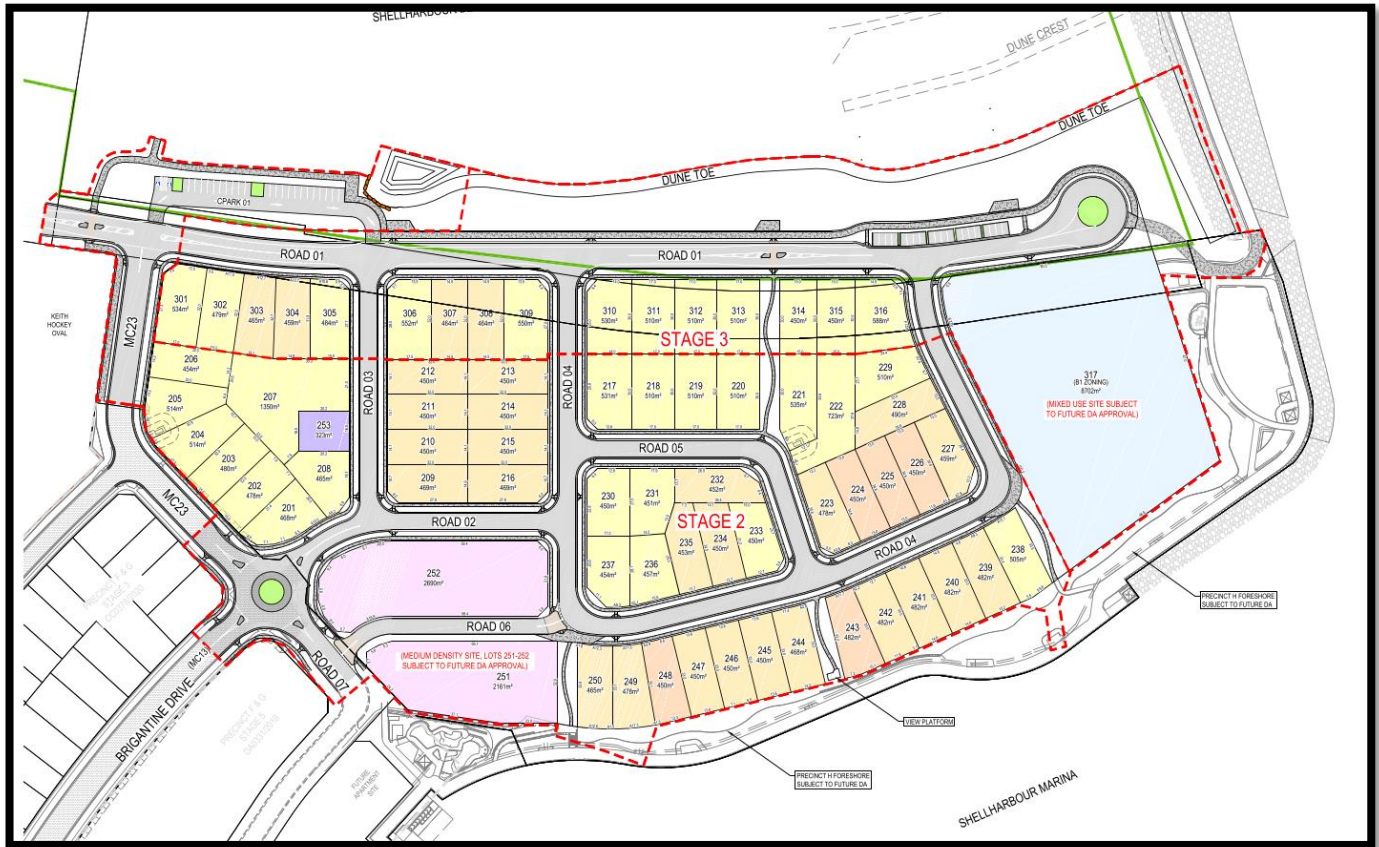


Figure 67 - Proposed Lot layout plan

- Positioning of road 01 (Boolwarroo Parade is located on the eastern edge of the precinct.
- Access points are included at Brigantine Drive and Catamaran Avenue with a third access point off Seafaring Way to the south which is noted in the Concept Approval document as a potential through road.
- Parkland/open space (marked in green within figure 16) is shown in the same places with the exception of an additional public walkthrough providing pedestrian access from road 05 to road 01.
- Internal road layout is similar to the Concept Approval with minor changes to local roads. Access to all lots is provided.

As discussed in section 2.4.3 (a) the location of Boolwarroo Parade is informed by the assessment of whether the proposed location is generally consistent with the Concept Approval.

The positioning of access points, street and public domain framework as shown in plan reference C005 rev. 5 is further considered in the framing of this assessment and Council is satisfied that the proposal – in its totality - is generally in consistent with the terms and approved documents of the Concept Approval.

3.1.2 Harbour Edge Park/Open Spaces

The proposed four public open spaces running through the residential lots is generally consistent with the intention of the Concept Approval as shown in figure 18 and figure 19 below.



Figure 18 - Concept Approval Public Domain Framework Map - Cox Report

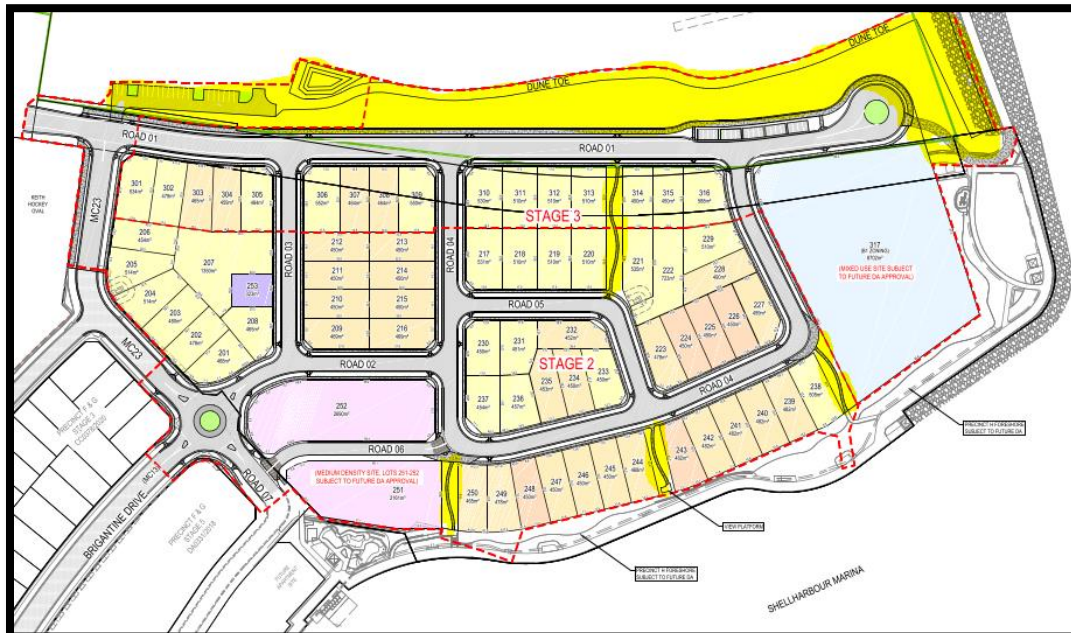


Figure 19 - Proposed subdivision plan with public domain highlighted

3.2 Street Network and Types

The Concept Approval provides requirements for road types as shown in Figure 20 below.

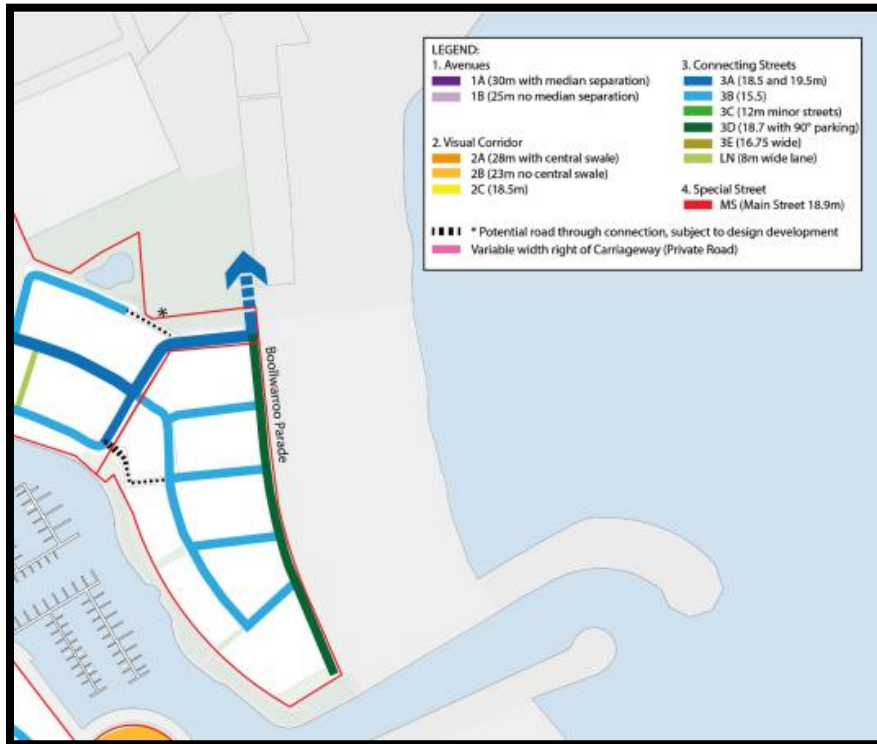


Figure 20 - Street Network - Cox Report

The extension of Boolwarroo Parade along the eastern edge of the site is identified as a connector street, 18.7 metres wide with 90 degree parking in select locations. The requirements break down into the following widths:

- 6.7 metre wide road,
- Where 90 degree parking is proposed (adjacent to public reserve)
 - 5.4 metre wide parking spaces
 - 1 metre wide footpath
- Where parallel parking is proposed
 - 2.1 metre wide parking
 - 1.2 metres wide footpath
 - 0.6 metre verge

Figure 21 below shows a section of Boolwarroo Parade with the width exceeding 18.7 metres to a maximum of 22.9 metres. A total of 20 parking spaces have been provided at 90 degrees along the south eastern side of Boolwarroo Parade. Parallel parking spaces provided along the western side of Boolwarroo Parade.

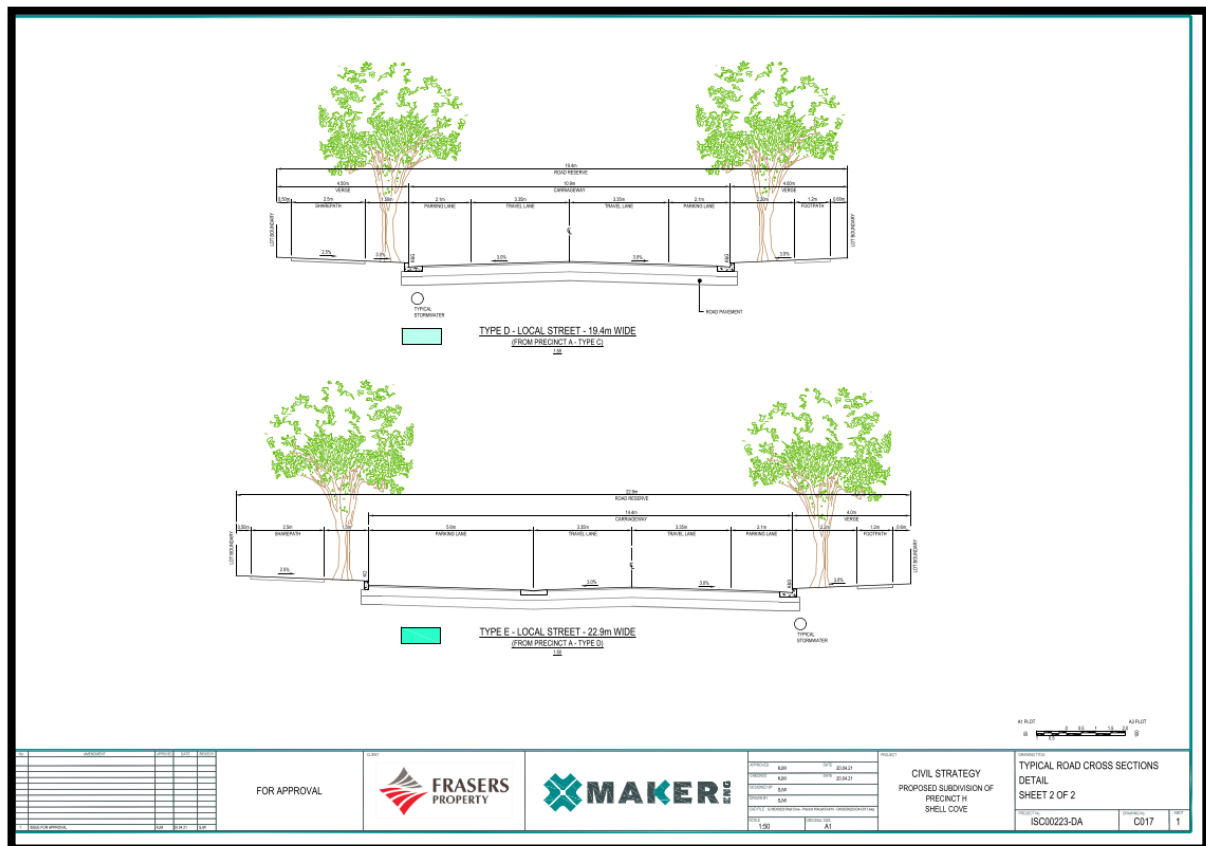


Figure 21 - Road Section for Boolwarroo Parade

The extension of MC23 to the north of the site is identified by the Concept Approval as a Connecting Street with a total reservation width of 19.5 metres. The requirements break down into the following widths:

- 10.6 metre wide road,
- 2.65 metre grass verges on each side of road,
- 1.2 metre wide footpath on each side of road and
- 0.6 metre verge adjacent to footpath on each side of road. .

The proposed plans show this road to be 19.5 metres and part of a bus capable route. Section plans of this road are included in Figure 22 below and all widths are compliant.

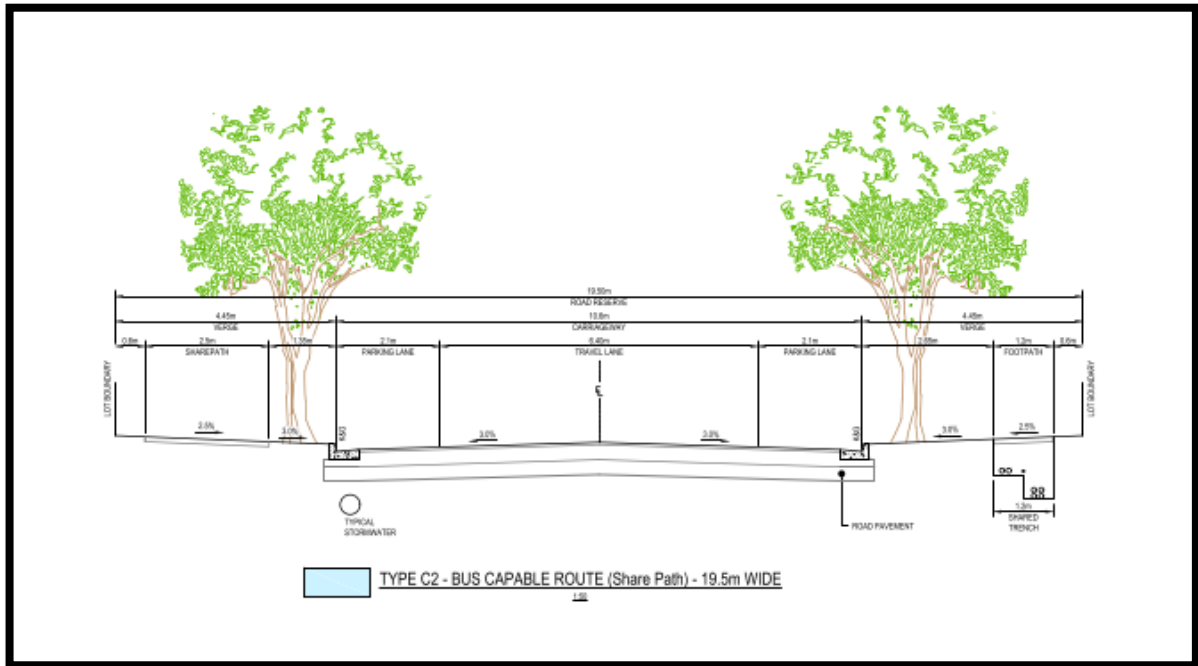


Figure 22 - Road Section for MC23

The internal roads within the precinct are all identified as being Connecting Streets with a minimum width of 15.5 metres. The requirements break down into the following widths:

- 7.5 metre wide road,
- 2.2 metre grass verges on each side of road,
- 1.2 metre wide footpath on each side of road and
- 0.6 metre verge adjacent to footpath on each side of road.

Figure 23 below shows a section of this type of road which has a width of 15.5 metres.



Figure 73 - Road section for internal roads

The roads provided within the Precinct H subdivision are all compliant with the requirements of the Concept Approval in terms of width, gradient, camber, grass verge and footpath provision.

3.3 Views and Vistas

The Concept Approval provides proposed vistas, generally providing lines of site from the edges of the precinct to the Marina. Figure 24 below identify these vistas.



Figure 84 - Views and Vistas - Cox Report

3.4 Accommodation Types

The Concept Approval identifies houses, townhouses and mixed use across Precinct H, see Figure 25 below.



Figure 95 - Accommodation Types - Cox Report

The proposal does not include construction of any accommodation. This will be subject to separate Development Applications. The lots provided are suitably sized for the type of accommodation identified in the Concept Approval for Precinct H. The roads proposed are suitable for the type of accommodation that will be serviced by them.

3.5 Dwelling Yield

This proposal will create a total of 66 residential lots, two future residential superlots (outlined for townhouses) and one mixed use lot which potentially will include residential apartments. The maximum dwelling yield for Precinct H is 100 - 200 dwellings. The subdivision layout will provide for a housing yield consistent with 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 \(Transport and Infrastructure\) 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 proposal involves development within 5 metres of an overhead power line and within an easement for electricity purposes and development requiring the placement of power lines underground. The proposal was referred to Endeavour Energy in accordance with the requirements of this section. A response was received on 26.05.2021 advising no objection raised and providing recommended conditions. Conditions as recommended have been included as part of the consent.

4.2.2 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

Part 2.2 Development controls for coastal Management areas

Division 3 Coastal Environment Area

2.10 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*

(g) the use of the surf zone.

Comment: The subject site is located within the Coastal Environment area as demonstrated by Figure 26 below.

The impact of the proposal has been considered as follows:

- (a) The works will be subject to WSUD controls as required by the proposed report Shell Cove Harbour - Precinct H stormwater and water cycle management plan reference 301015-03163. Subject to condition the ecological environment will be rehabilitated as proposed to the west of the proposed Boollwarroo Parade. The previous 'road' within this area was unsealed and did not include kerb and gutter which potentially had more impact on the coastal environment than the proposed road which includes suitable drainage and materials.
- (b) The proposed development will not impact on the natural coastal processes with the entire development being behind the dunal system.
- (c) The water quality of the Marine Estate will be protected by the proposed WSUD recommendations as per Shell Cove Harbour - Precinct H stormwater and water cycle management plan reference 301015-03163 and stormwater drainage system proposed as part of the road design. The road runoff will be directed away from the dune and therefore impact is reduced from the current arrangement.
- (d) There has been clearing approved for this site as part of previous DA0200/2021 for earthworks to this area approved by Council in May 2022. This clearing was subject to BDAR requirements and suitably offset as required by the Biodiversity Act 2016.

The area to the west of the proposed road which forms the main part of the proposed subdivision was previously a large wetland/swamp which was drained and cleared under the Concept Approval and for the Marina under DA0095/1993.

The current proposal will not include any additional clearing or impacts on any marine vegetation, native vegetation, undeveloped headlands or rock platforms.

- (e) The proposed subdivision will include the extension of Boollwarroo Parade into the RE1 – Public Recreation Zone which is a public open space and forms part of the public beach access.

The proposal includes an upgrade to the existing public car to the north east of the site and a 1 metre wide footpath along the eastern side of the road. The proposal also includes three public beach access points, one from the car park on the northern end of the site, one from the parking areas on the southern end of the site and one in the middle which can be accessed via a bridge from the footpath. There is also significant embellishment to the public open space area to the west of the dunes with planting, shade shelters, seating, footwash points and bike parking areas proposed.

The section of public open space that will be occupied by the new road is minimal, extending a maximum of 36 metres into the RE1 zone at the widest point. The encroachment is restricted to the western edge of the public open space to the west of the dunes. This area has not been maintained and is currently unusable by the public. Previously to the commencement of the Shell Cove Project this area was scrubland with no footpaths or easy public access.

The proposed development will improve public access to the foreshore and beach area. For people with a disability the inclusion of timber board pathways onto the sand will allow access to this part of South Beach where there has been no access previously.

- (f) The Concept Approval included Archaeological and Heritage Protection Plans which provided information relating to a number of sites across the Shell Cove project area. The applicant has confirmed that the sites were identified as low or no archaeological significance with permit No. 2534 issued under National Parks and Wildlife Act allowing collection and or excavation of the sites. A stop work protocol has been recommended by the Archaeological and Heritage Protection Plan for the Shell Cove Boat harbor Marina lodged with the application and included in the recommended conditions as follows:

#Unexpected Finds Protocol

If any Aboriginal archaeological artefacts are encountered during construction works, all ground disturbance in the area of the find must cease and the Department of Industry and Environment (DPIE) be contacted immediately to determine an appropriate course of action in line of relevant legislation.

- (g) The proposed development does not impact on the surf zone.

The development is not expected to result in adverse impacts on the integrity and resilience of the ecological environment, the coastal environmental values, natural processes, water quality, marine vegetation, habitats or headlands or rock platforms, public open space and access to that public open space, aboriginal cultural heritage or the use of the surf zone.

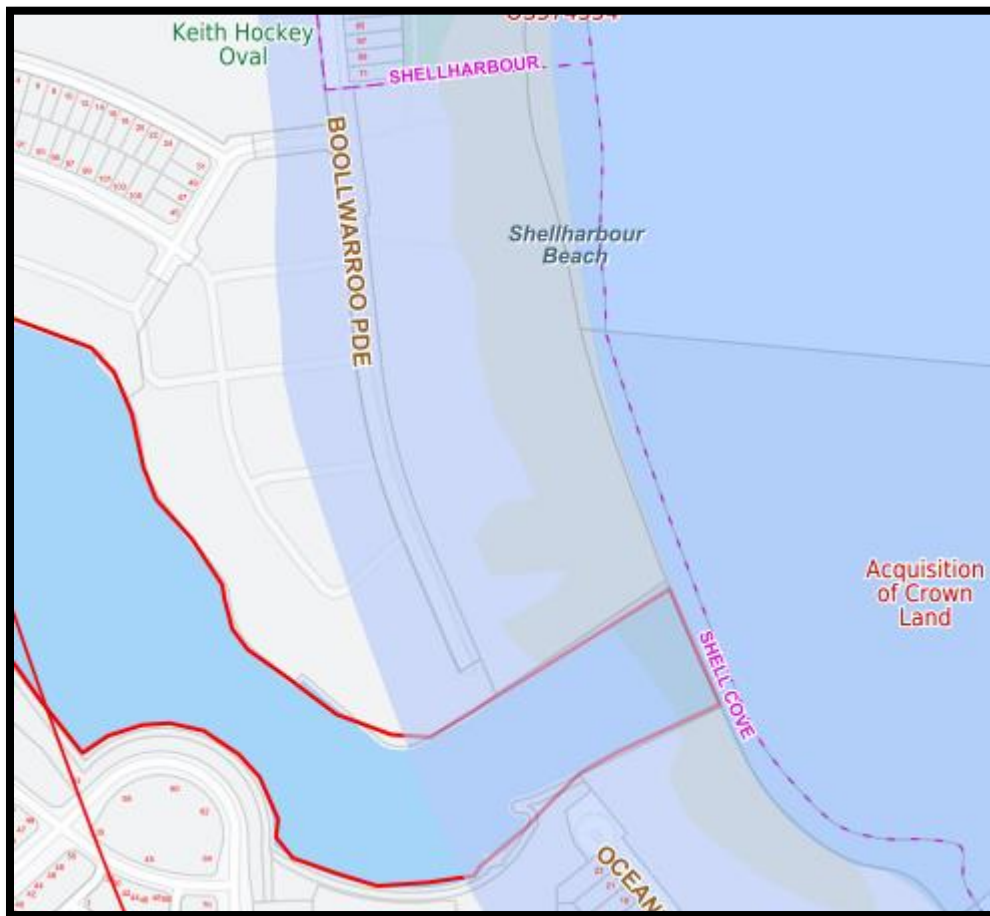


Figure 26 - Coastal Environment Areas mapping extract.

Division 3 Coastal Environment Area

2.10 Development on land within the coastal environment area ctd.

- (2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: Generally, the proposal has been designed and sited to manage to minimise the impact on the public open space. It is considered that the potential impact resulting from the proximity to the coast is able to be managed, subject to conditions which will be included as part of any consent granted.

- (3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

Comment: The subject site is not located within the Foreshores and Waterways Area.

Division 4 Coastal Use Area

2.11 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(a) has considered whether the proposed development is likely to cause an adverse impact on the following—

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

(b) is satisfied that—

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

(a) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment: The subject site is located within the Coastal Use area as demonstrated by Figure 27 below.

(a) (i) the proposal includes embellishments that will improve the safe access to and along the foreshore, beach for the public including people with a disability as discussed above.

(ii) the proposal will not result in any overshadowing or wind funneling to the foreshore as the future development will be a significant distance and separated by Boollwarroo Parade from the foreshore. The proposal will not result in any loss of views of the public foreshore from public place

(iii) the proposed embellishments to the public recreation area are considered to enhance the visual amenity of the coast. The proposed subdivision of land is in accordance with the Concept Approval and was not considered to have an adverse impact on the visual amenity or scenic quality of the coast. Coastal headlands will not be affected by this proposal.

(iv) The Concept Approval included Archaeological and Heritage Protection Plans which provided information relating to a number of sites across the Shell Cove project area. The applicant has confirmed that the sites were identified as low or no archaeological significance with permit No. 2534 issued under National Parks and Wildlife Act allowing collection and or excavation of the sites. A stop work protocol has been recommended as discussed above.

(v) The site does not include or is within proximity of a heritage item.

(a) Council is satisfied that subject to recommended conditions the development will avoid an adverse impact as included in paragraph a.

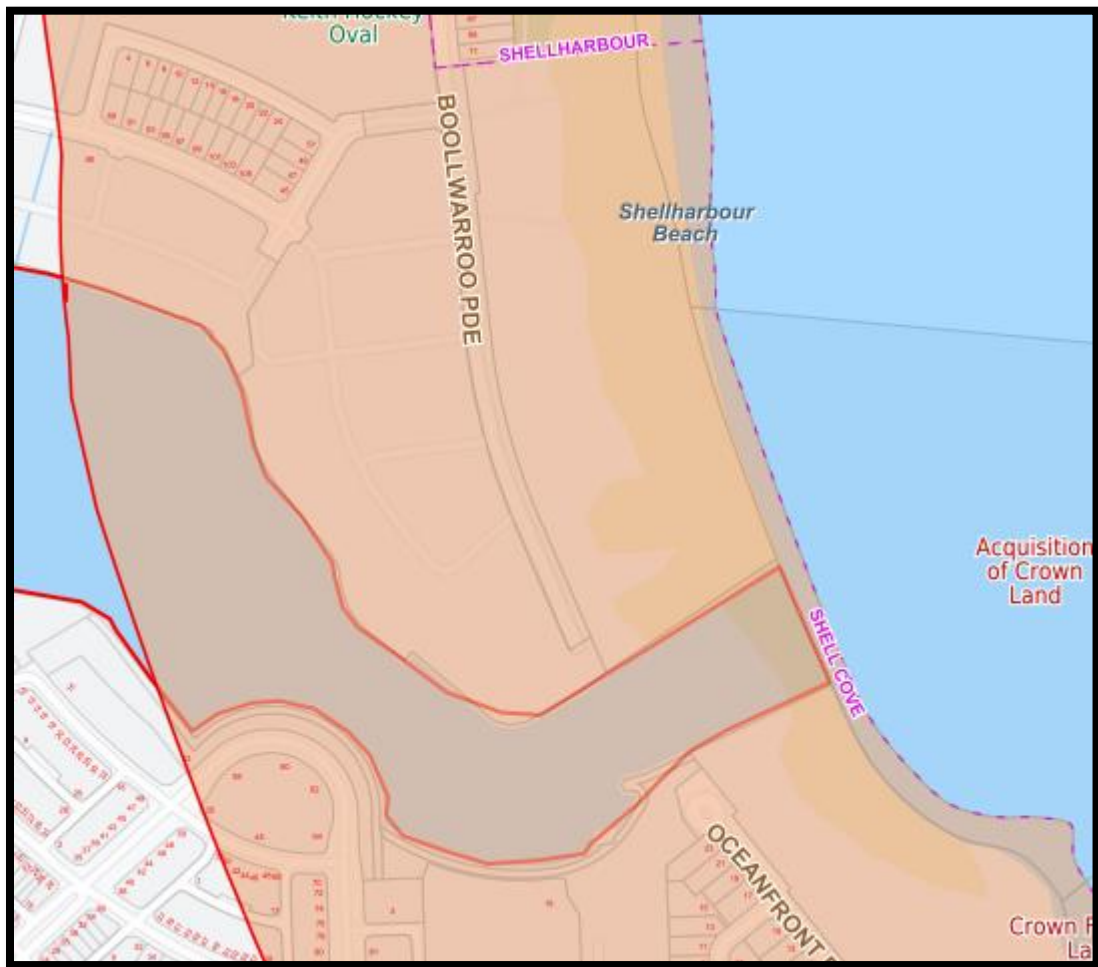


Figure 27 - Coastal Use Area mapping extract

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment: Coastal hazard lines have been mapped in accordance with three climate change scenarios to the year 2125. Discussion of this has been included in section 2.4.3(h) and providing the dune height is maintained, Council is satisfied that the increased risk of Coastal Hazards on the land and other land is not likely to be increased as a result of this development.

The Coastal Management Act 2016 defines Coastal Hazards as follows:

coastal hazard means the following—

- (a) beach erosion,
- (b) shoreline recession,
- (c) coastal lake or watercourse entrance instability,
- (d) coastal inundation,
- (e) coastal cliff or slope instability,
- (f) tidal inundation,

- (g) erosion and inundation of foreshores caused by tidal waters and the action of waves, including the interaction of those waters with catchment floodwaters.

In accordance with this definition the development is not likely to increase the risk of Coastal Hazards on the land within the Coastal Zone or any other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment: The Shellharbour Coastal Zone Management Plan does not recommend any works that would affect or which relate to the subject site. As discussed in section 2.4.3 (h) of this report the dune adjacent to the application site will require monitoring and potentially nourishment to retain the existing crest height. This area will be included in the Coastal Zone Management Plan.

2.14 Other development controls not affected

Subject to section 2.5, for the avoidance of doubt, nothing in this Part—

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*

Comment: noted

2.15 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Chapter as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency—

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

Comment: The subject site is located within the overlapping Coastal Use and Coastal Environment areas. There is no inconsistency between the controls as discussed above.

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless—*
 - (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is—

- (a) land that is within an investigation area,*
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—*
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Comment: Historic records and the Geotechnical Investigation (Golder Associates, 1987) indicate that the site is underlain by waste fill due to former use of the site as a landfill area from 1972- 1975, see figure 26.

Council's Environment Officer has provided comment that the contaminated land on this site has since been remediated in accordance with the Statement of Commitments under the Concept Plan Approval and no further action in this regard is needed in Precinct H.

This is verified in the Site Audit Report (Environ Australia, 2009), which states that the site is suitable for low-medium density residential use, specifically "Residential with accessible soil, including garden (minimal home-grown produce contributing less than 10% fruit and vegetable intake, excluding poultry); Day care centre, preschool and primary school; residential with minimal opportunity for soil access, including units; Secondary school; Park, recreational open space, playing field; and Commercial / industrial."

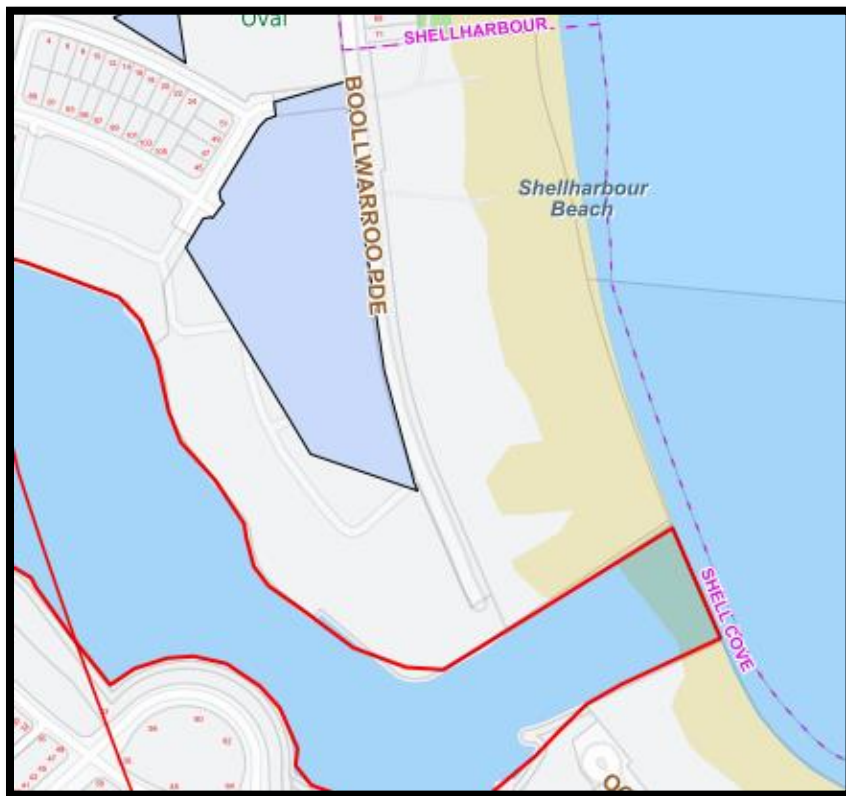


Figure 108 - Contamination mapping extract

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

Contamination - Unexpected Finds Contingency

Should any contamination or suspect material be encountered during site preparation, earth works, construction or any other stage of the development, then works must cease immediately and a suitably qualified consultant engaged to conduct a thorough contamination assessment.

In the event that contamination remediation is required, all works must cease and the Council must be notified immediately. The contamination assessment must be submitted to Council for Approval.

All recommendations provided in the contamination assessment must be followed as stipulated.

4.2.3 Shellharbour Local Environmental Plan 2013 (SLEP 2013)

Schedule 2, clause 3B of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017, states that Local Environmental Plans 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, the concept approval prevails. The development complies with the relevant clauses of SLEP 2013 as detailed in the compliance tables included as attachment 8.

4.3Section 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

The Urban Design Guidelines for Medium Density Housing Precinct H and Detached Dwellings (Design Guidelines) provides specific built form and structure controls within Precinct H of the Shell Cove Concept Plan area. These guidelines were prepared in accordance with the requirements of the Concept Approval and are included in attachments 15 and 16.

The development is generally consistent with the Design Guidelines as per the Concept Approval and an assessment of consistency is provided in attachment 8.

4.4.1 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 H 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 generally consistent with the SDCP 2013 and a full assessment of consistency is provided in attachment 9.

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 recommended conditions.

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

92 What additional matters must a consent authority take into consideration in determining a development application?

The proposal does not include demolition.

93 Fire safety and other considerations

The proposal does not relate to a change of use.

94 Consent authority may require buildings to be upgraded

The proposal does not relate to alterations and additions.

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;

- a. Environmental impacts on the natural environment

i. Impacts on the dune/coastal foreshore

The proposal does not include clearing of any existing trees or vegetation. There has been clearing approved under DA0200/2021 which was for bulk earthworks. The proposed planting both along the eastern side of Road 01/Boollwarroo Parade and throughout the precinct has been reviewed and conditions recommended where improvements could be made to the species choice.

b. Environmental impacts on the built environment

i. Interface with public domain

Precinct H abuts the public boardwalk to the west which runs around the whole marina. The land slopes up from the water to the application site by a maximum of 1 metre. The proposed subdivision has included details of the retaining walls that will be required as part of the subdivision work. These walls vary in height from 0.4 metres to 0.9 metres at the highest point. The walls heights and materials proposed are considered suitable with similar retaining structures existing along the boardwalk to the west adjoining precinct F and G.

ii. The road layout proposed including access to existing roads have been reviewed in addition to access for service vehicles with detailed plans provided showing swept paths for relevant sized vehicles. As detailed in section 3.1.1 above the road layout is generally consistent with the Concept Approval and will also meet the requirements of Council for access and servicing.

iii. The existing public car park to the north of the site will be re-surfaced and parking layout reworked as part of the proposal. The car park is currently in a poor condition with faint line marking and cumbersome access and egress. The proposed layout is considered by Council to be an improvement on the existing and will result in additional number of spaces provided.

c. Social impacts on the locality

i.A noise impact assessment has been submitted as part of the proposed subdivision as required by the Concept Approval. This assessment concludes that no acoustic treatment is required on any land or subsequent built form.

The proposal includes creation of a lot for a Sydney Water pumping station (lot 253). This infrastructure is required by Sydney Water to pump waste water from the subdivision back up into the main system. Equipment required will be located underground with access points and hardstanding on the surface. Sydney Water has provided the following information relating to potential noise impact from the pumping station:

The proposal will result in some temporary and localised construction noise. Construction will be undertaken prior to any residents being present in the development area, and other existing receivers are an estimated 150m away. Construction will be within standard work hours and therefore noise impacts due to the construction will be minor.

Throughout operation of the wastewater pump station post construction, the asset will generate some noise due to the operation of pumps however these will be below ground, so noise will be minor or negligible. The pump station will occasionally require maintenance or emergency work, which may generate minor noise which would be localised and short term

Sydney Water have confirmed that no acoustic treatment is required on adjoining residential lots as a result of the pumping station. An existing Sydney Water pumping station is located adjoining residential dwellings in precinct C1 to the west of the application site. This infrastructure has not resulted in any noise issues reported to Council since it came online.

ii. Embellishments of public open space will increase the access points to the beach within this part of Shellharbour and encourage users of all abilities and ages to access and use the beach with provision of accessible access points, bike parking, vehicle parking and amenities.

- iii. Social Impact assessment submitted with proposal and reviewed by Council's Social Planner. Considerations received as a result of this review have been addressed by the applicant and all pedestrian routes will be constructed to Australian Standards to comply with recommendations.
- d. Economic impacts on the locality
 - i. The proposal is for residential lots providing future homes and a mixed use site which will include commercial uses as well as residential (subject to future Development Application), with additional embellishment of existing public reserve and car park. The economic impacts of the proposal are considered to benefit the local area and add to the existing

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;

- a) The Concept Plan envisages a residential subdivision within this location;
- b) The number of lots proposed is within the range as specified within the Concept Approval;
- c) There are no contamination issues that would preclude residential development on this site subject to compliance with submitted Acid Sulphate Soil Management Plan and;
- d) The proposal is consistent with the provisions of the Concept Plan and the Design Guidelines for Precinct H.

The application site is a key location along the beach and links the Shell Cove Project Area with the existing residential dwellings within Shellharbour Village. The subdivision layout is considered suitable for this location and the future use. 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 days commencing 3 June 2021 and closing 17 June 2021. The notification included a DA notification sign adjacent to the land, letters to property owners/occupiers within 200m 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. No submissions were received.

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

The proposal is consistent with the Concept Plan Approval. The proposal will provide a residential subdivision with suitable road layout, public open space, on street 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;
- c. has been designed to respect and enhance the coastal character of the Shell Cove Concept Approval area and develop the specific character of Precinct H.

Based on the assessment undertaken by Council the outstanding issues relate as follows:

- a. Further clarification has been sought on the modelling data with a view to understand the potential impact on future dwellings and is to include section plans which detail how far water will travel reflecting the actual site level differences. This is to confirm that the coastal inundation will not reach proposed residential lots.

The applicant was unable to provide this information at the time of writing this report and will be provided as an addendum to this report prior to the determination meeting.

This additional information is not considered to alter Council's recommendations but potentially will remove the recommended condition relating to site levels.

5. RECOMMENDATION

DA0276/2021 (PPSSTH-176) be determined by way of approval, subject to the recommended conditions as detailed in attachment 1.