

COUNCIL ASSESSMENT REPORT

SOUTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSTH310 – DA0459/2023
PROPOSAL	Boat storage and maintenance facility, office and cafe
ADDRESS	Lot 1061 DP 1253523 5 Maritime Drive, Shell Cove Alternative address 15 Maritime Drive, Shell Cove
APPLICANT	Australand Corporation (NSW) Pty Ltd
OWNER	Shellharbour City Council
DA LODGEMENT DATE	3.11.2023
APPLICATION TYPE	Nominate Integrated Designated Development
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal regionally significant development as the development has a capital investment value of over \$30 million.
CIV	\$32,323,622 (excluding GST)
CLAUSE 4.6 REQUESTS	None
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	<ul style="list-style-type: none"> • State Environmental Planning Policy (Industry and Employment) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Resources and Energy) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Concept Approval MP07_0027 Mod 1 • Shellharbour Local Environmental Plan 2013; • Shell Cove Precinct A Urban Design Guidelines • Shellharbour Development Control Plan 2017 • Local Infrastructure Contributions Plan 2019 (9th Review – Amendment 1)
AGENCY REFERRALS	Endeavour Energy NSW Environmental Protection Agency
TOTAL & UNIQUE SUBMISSIONS	None
DOCUMENTS SUBMITTED FOR CONSIDERATION	EPA General Terms of Approval dated 05.12.2024

SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.11)	\$2,209.27
RECOMMENDATION	Approval subject to recommended conditions
DRAFT CONDITIONS TO APPLICANT	Yes – all agreed
SCHEDULED MEETING DATE	Panel confirmed that determination should be finalised by circulation of papers at assessment briefing 16.07.2023
PLAN VERSION	10814_DA011 issue 19 – Lower ground floor plan – 13.06.2024 10814_DA012 issue 15 – Upper ground floor plan – 13.06.2024 10814_DA013 issue 11 – Level 1 floor plan – 19.03.2024 10814_DA-021 issue 11 – Elevations sheet 1 – 15.03.2024 13294-L-BMF-2000 issue D – landscape Site plan ground floor 21.03.2024 13294-L-BMF-2001 issue B – landscape level 1 plan – 30.06.2023 13294-L-BMF-2002 issue D – landscape zoom in plan – 21.03.2024
PREPARED BY	Madeline Cartwright
DATE OF REPORT	5 December 2024

1. THE SITE AND LOCALITY

1.1 The Site

The site is located at 5 Maritime Drive, Shell Cove NSW 2529 (secondary address 15 Maritime Drive) and the title reference is Lot 1061 DP 1253523. The site is irregular in shape and falls from south to north by approximately 0.3m. The site currently contains a 7 metre high acoustic wall along the southern and western boundaries which is to be retained for the life of the development.

There is currently a temporary office within the site which services the re-fuelling facility operating to the north of the site on the existing pontoon. The temporary office will be removed prior to construction. The remainder of the site is currently fenced off and used for informal boat storage. The site has a total area of 1.12 hectares with vehicle access and road frontage to Maritime Drive to the east of the site with a secondary frontage to the north with the existing pedestrian boardwalk which surrounds the Marina. The site is flood affected under the Shell Cove Flood Study.

A location map is included at figure 1 below and an aerial photograph of the site is provided at figure 2 below.

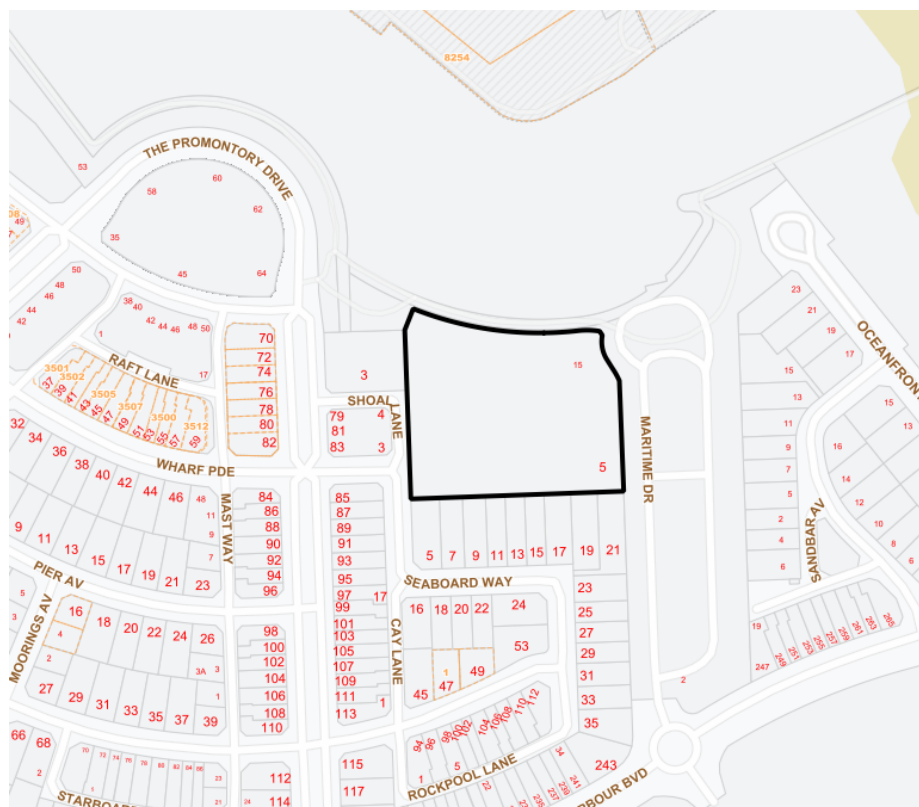


Figure 1 - Location Map (site marked in black)



Figure 2 - Aerial Photo (site outlined in red)

1.2 The Locality

The site is located within Precinct A, adjoining development includes the public boat ramp and car park to the east, residential dwellings to the south and west and a future residential lot to the west with four dwellings approved but not yet commenced. The public boardwalk and marina are located to the north.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for a boat storage and maintenance facility (boat building and repair facility), five workshops with retail spaces, four offices (commercial premises) and one café (food and drink premises), car parking and landscaping. Specifically the proposal includes:

- Construction of a 120-vessel dry boat storage facility
- Construction of a boat maintenance facility consisting of:
 - Three (3) Undercover work/wash bays
 - Maintenance workshop
 - Wash Bay for dry boat storage.
 - Recycled/Waste/First Flush infrastructure.
- Construction of a three-storey Workshop Building consisting of:
 - Five (5) workshops located on the lower ground.
 - Five (5) retail spaces located on the upper ground.

- Office space located on Level 1 (with associated Lobby)
- Amenities and back of house space
- Construction of two-storey ancillary office building consisting of:
 - Facility management reception and office on lower ground
 - Office on upper ground (with a lower ground lobby)
 - Café – Amenities
- Provision of 75 car parking spaces

Hours of Operation

Monday to Saturday – 7am till 6 pm.

Sunday and public holidays – 8am till 6pm.

Table 1: Development Data

Control	Proposal
Site area	1,1200 sqm
GFA	5,628sqm
FSR	0.52:1
Clause 4.6 Requests	Not applicable.
Max Height	15.2 metres
Landscaped area	461.94sqm (4.13% of site)
Car Parking spaces	75 spaces provided on site
Setbacks	0.7 metres on southern and western boundary 0.8 metres on eastern boundary 5.7 metres on northern boundary

2.2 Background

The development site falls within the Shell Cove Boat Harbour Precinct, a master planned estate approved under the Major Project Approval Shell Cove Boat Harbour Precinct Concept Plan, Concept Approval No. 07_0027 mod 1 (Concept Approval).

The masterplan comprises of residential, commercial, community facilities, retail, hotel, business park, dry boat storage facility, open space and wetlands. The Concept Approval was accompanied by a masterplan that sought to establish the characteristics for development within each precinct. Further detail regarding the background of the Shell Cove Boat Harbour Precinct Concept Plan is included as attachment F of this report.

Lot 1061 was created under DA0619/2017 approved by the Southern Regional Planning Panel in December 2018. Figure 3 below shows the approved subdivision plan with the lot subject of this application highlighted.

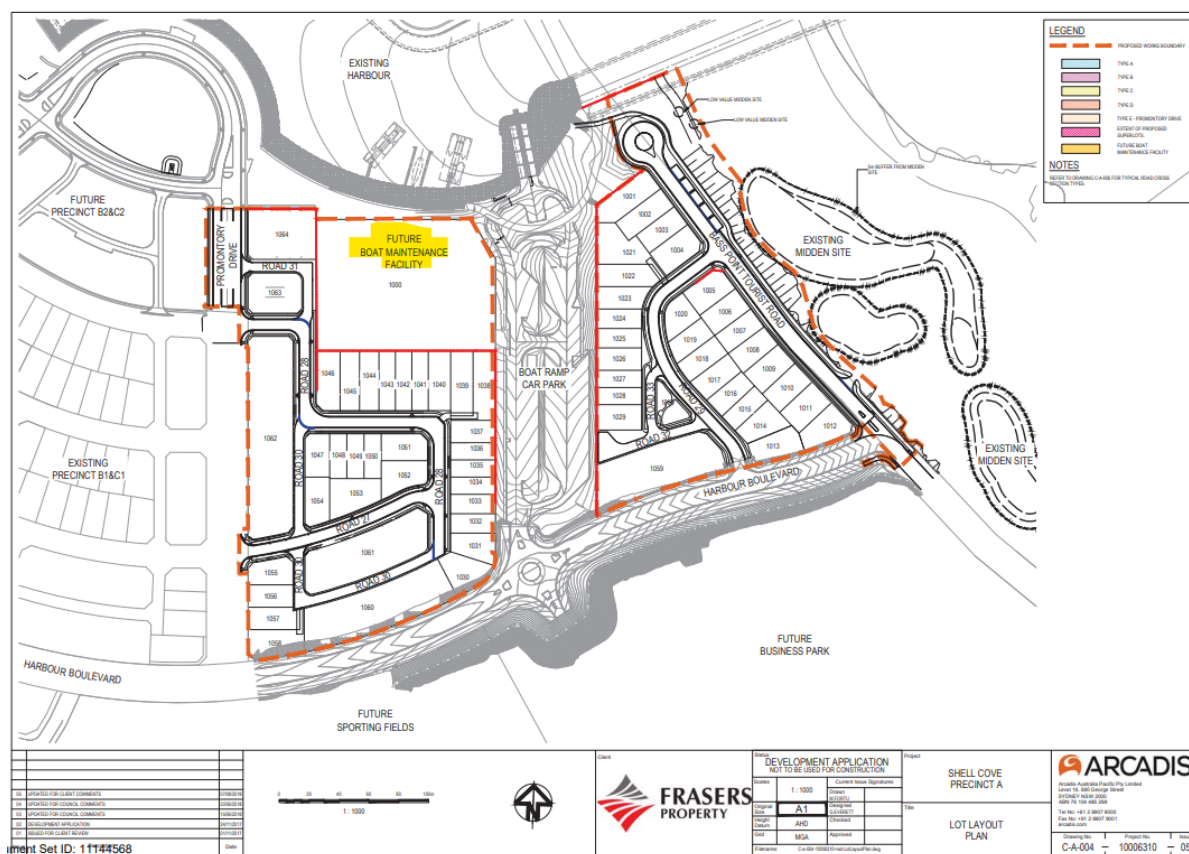


Figure 3 – DA0619/2017 Approved Subdivision Plan (relevant lot highlighted)

The current boat re-fuelling facility which is operating on the site and adjacent (to the north) was approved in July 2020 by Council under DA0128/2020. This consent included the driveway access to the site, underground fuel storage and a temporary office which is located on the application site. The temporary office is to be removed prior to commencement of the proposed development.

The development application was lodged on 3 November 2023. A chronology of the development application since lodgement is outlined below in table 2 including the Panel's involvement (briefings, site visit etc) with the application:

Table 2: Chronology of the DA

Date	Event
13 November 2023	Exhibition of the application
13 November 2023	DA referred to external agencies
28 November 2023	Panel Briefing Key Issues discussed <ul style="list-style-type: none"> Notification of the application finishes on the 18th December 2023. The applicant gave a presentation of the proposed development, site context, views, and schedule of finishes. The facility, when complete, will be leased to a Marine Operator. The site slopes from the rear towards the board walk/waterfront. The site will accommodate 120 boats and include 75 car spaces. The workshop has been configured to enable the larger boats to be lifted out of the water, across the boardwalk and into the workshop. The roof angle design aims to minimise impact on the solar plane.

	<p>The Panel asked the following questions of the applicant:</p> <ul style="list-style-type: none"> · Size and type of boats to be stored on site. The applicant advised boats stored would mostly comprise motorboats ranging from 4-8 metres. · Difference between the concept plan and LEP height limits. · Frequency, timing, and operation of the boatlift. · Landscaping opportunities along the promenade to soften the interface. The applicant advised that due to the frequency of movement of the boatlift, the practicality of landscaping in this location would be problematic. · Pedestrian wayfinding within site and into the building. The applicant identified several entries including from the main carpark entry, carpark, and front lobby on the right-hand side. The building to the front is accessed from the footpath closer to the waterfront. · The visual impact assessment from the immediate neighbourhood. The applicant indicated that the findings of the Visual Impact Analysis were consistent with the Master Plan. <p>Next Steps</p> <ul style="list-style-type: none"> · A date is to be scheduled for the Panel to carry out a site visit. · A second briefing in not required at this stage. · A determination date will be set following the Panel site visit.
7 December 2023	<p>Request for additional information letter issued from NSW Environmental Protection Agency (EPA)</p> <p>Additional information required relating to water management and noise impacts and the associated adequacy of the stormwater drainage and water quality report and the acoustic report.</p> <p>Request forwarded to applicant for response.</p>
8 December 2023	<p>Design Review Panel meeting</p> <p>Advice has been provided from that meeting with a number of key points that need to be addressed. Key points that need to be addressed through design amendments and additional information are as follows:</p> <p>a. A comprehensive site and context analysis is required, including an analysis of pedestrian and vehicular networks around the site, landscape, levels, adjacent built form and surrounding approved development yet to be built.</p> <p>Of particular importance is the alternative pedestrian route that will be used when boats are being taken from the facility to the water and the promenade is closed. The distance and changes in levels will allow the Panel to have a clear idea what the alternative routes are for pedestrians when the boats are being transported.</p> <p>b. A clear description of operational requirements is required, with movements of all cranes, vessels and vehicles clearly described within the site and berth areas. A revised assessment of boat movement across the pedestrian promenade is also required with clear descriptions of frequency, wait and movement times, boat movements required and closed gate periods etc. This information is to be used to provide more landscaping and planting within the site.</p> <p>c. Concern has been raised regarding the boats crossing the pedestrian promenade from the application site to the marina. A suitable operational management plan as detailed in point 8 and 9 of this letter, is required to be submitted for assessment. If this interface with the public areas cannot be managed to the satisfaction of the assessing officer, the DRP Panel have recommend that the proposal is to be redesigned to incorporate an activated, safe and comfortable east -west cross site link; which will not be impacted by the transferring of boats to the Marina.</p> <p>d. Sustainability measures</p> <p>The design has been noted as omitting certain sustainability measures that will futureproof the development and improve the environment for workers within the development. The measures identified to be included as follows:</p> <ol style="list-style-type: none"> a suitably sized battery, for the solar panels; fans to enhance air movement and ventilation; increased landscape areas and planting;

	<p>iv. water collection and reuse</p> <p>v. EV charging facilities;</p> <p>vi. Permeable paving where possible;</p> <p>vii. Shade structures and other solutions to limit heat gain;</p> <p>viii. A demonstrably better alignment with adjacent landscape and public domain networks.</p> <p>e. Landscaping</p> <p>The Panel have noted that the site lacks any significant landscaping and have made the following recommendations:</p> <p>i. Design the fences along the pedestrian promenade to allow for trees along the northern frontage;</p> <p>ii. Rearranging facilities to allow for larger pockets of landscape within the development, for example in the west where several facilities could be rationalised to allow for a better interface with the adjacent park and residences.</p> <p>iii. Integrate tree planting within or beside the carpark to provide natural shade;</p> <p>iv. Expanding the landscape in the NE along the entire pedestrian promenade, especially focussing on the addition of new trees;</p> <p>v. Once swept paths are determined, create areas of landscape – especially with shade trees – within the facility to both beautify, but also provide pockets of relief and amenity for works and patrons as they wait for service. It appears, for example, if workshop entries were better rationalised, pockets of landscape could be included fronting each of these.</p> <p>vi. Introduce WSUD across the site to best utilise water for proposed landscaping.</p> <p>f. Retail units</p> <p>The proposed retail units are arranged along a detached walkway that is isolated from adjacent pedestrian networks and leads to a dead end at its northern end. This will create units that do not benefit from any passing trade and could result in a poor design outcome. There is no justification of this design or information supporting this choice for the retail units.</p> <p>The covered walkways for workshops and retail are completely detached from street networks, thereby isolating commercial activity from the public domain. Please address these concerns and provide justification of why the car park and publicly accessible commercial areas have been designed in this way.</p> <p>g. Bulk and Scale of the development</p> <p>The bulk and scale of the proposal appears excessive, insufficiently refined, and uninformed by a thorough understanding of adjacent context.</p> <p>Whilst it is acknowledged that the development is of an industrial nature there is little evidence that the design has considered the residential context of the surrounding area.</p>
20 December 2023	<p>Request for information issued from Council to applicant:</p> <p>i. DRP comments as above to be addressed</p> <p>ii. Building height and number of storeys relating to compliance with the Concept Approval and submitted visual impact assessment.</p> <p>iii. Retails units – how these areas will be linked to the workshops and how the use complies with the Concept Approval.</p> <p>iv. Proposed uses – permissibility of proposed uses has not been suitably satisfied.</p> <p>v. Light spillage - Consideration of measures to prevent light spillage to surrounding residential dwellings.</p> <p>vi. Landscaping – Inconsistency between plans regarding landscaping and hydrant booster location. Increase in landscaped areas.</p> <p>vii. Fencing – confirmation of boundary treatment required.</p> <p>viii. Conflict between boat lifting from the water and pedestrian boardwalk. Further information required regarding forecast frequency and times that boat related activity will intersect the pedestrian pathway.</p> <p>ix. Plan of management required</p> <p>x. Acoustic impact assessment – additional information regarding sensitive receivers within Precinct H required.</p>

	<ul style="list-style-type: none"> xi. Waste storage – waste storage areas need to be identified on the plans. xii. Vehicle access – Confirmation regarding requirement of access for semi-trailers. xiii. Comments from briefing as follows: <ul style="list-style-type: none"> a. Size and type of boats to be stored on site. b. Difference between the concept plan and LEP height limits c. Frequency, timing, and operation of the boatlift d. Landscaping opportunities along the promenade to soften the interface. e. Pedestrian wayfinding within site and into the building. f. The visual impact assessment from the immediate neighbourhood. xiv. SEARS comments - Further detail on the following SEARS required: <ul style="list-style-type: none"> c. detail of construction works over public promenade both permanent and temporary i. number of staff for proposed development m. boat transport movements between water and storage shed/apron, including maximum number of boats moved per day, frequency and hours. o. construction management measures to protect adjoining public domain including protection to the public whilst construction works are being carried out, and alternate public throughfare around the site where necessary. xv. Additional information request from the NSW Environmental Protection Agency.
7 February 2024	Panel site visit
25 March 2024	Additional information uploaded to Planning Portal by applicant
	Re-referrals undertaken (internal and external)
17 May 2024	Second Design Review Panel Meeting Held
23 May 2024	<p>Second request for additional information from NSW EPA</p> <p>Revised Noise Impact Assessment does not adequately address the potential noise impacts. The construction and operation of the BMF will situate a potentially noisy industrial operation immediately adjacent to a residential zone.</p> <p>Request forwarded to applicant for response.</p>
30 May 2024	<p>DRP advice received and sent to applicant with request for additional information as follows:</p> <ul style="list-style-type: none"> a. further details of measures to reduce the impact on the public during the closure are required which may include provision of signage, seating with shade provision and directions for alternate travel routes. b. The interface between Shoal Lane and the application site is a key point and needs additional consideration. It is expected that more detail around this section is included in the application including footpath consolidation and landscaping. c. Additional landscaping throughout the site has not been adequately addressed and the architectural plans and landscape plans are not consistent. Whilst Council acknowledge this is an industrial site, it is also visually prominent and located in a mixed use area with high quality urban design. The nature of the design requires significant landscaping to soften the appearance of the development at its interface with public areas. The fencing and landscaped area between the promenade and hardstand area must be further improved to create a more pleasing interface. Additional tree planting is needed within this interface area and/or improved fencing with a higher degree of architectural interest. The planting of 9 trees for a site of the size reflects the lack of landscaped area proposed. d. Please provide details of screening for the waste area and confirm if all units are to use this waste area? It does not appear feasible that the café for example will use the waste area only accessed by crossing the site. If this is not the case please provide details of waste storage areas for each unit.

	e. Please indicate through the design amendments how access is to be restricted to the lower ground car park as per the submitted supporting information (CPTED report)
01 July 2024	Additional information uploaded to the Planning Portal by applicant
16 July 2024	Panel Assessment Briefing Key issues discussed <ul style="list-style-type: none"> · The EPA is seeking further information, which was provided by the applicant on 15 July 2024 and is being referred to the EPA for review/comment. · The panel advised that it was unlikely that a determination briefing would be required and the matter should be finalised by circulation of papers. · The panel is generally satisfied with the application subject to the remaining issues raised by the EPA being resolved and the EPA's GTAs being issued. · Council advised that the promenade would only be closed for a maximum of 10 minutes at any one time for boats to be moved in and out of the facility. There is an alternative route for people to walk around during this time if need be. · However, it was noted that the location of the facility at that point of the promenade was not a key pedestrian focal point. · Council advised the promenade would be closed at random and not at set times throughout the day. · Council advised that the operation of the facility in relation to the closure of the promenade could be reviewed. · The panel advised there may be utility in having a review mechanism in the plan of management to make necessary improvements (if any) once operation had commenced.
16 July 2024	Draft conditions sent to applicant for comment
30 July 2024	Comments received from applicant on draft conditions Reviewed by Council
7 August 2024	Third request for additional information NSW EPA The EPA has reviewed the additional information and considers the potential noise impacts of the proposed development have not been sufficiently addressed. The EPA has attached the areas that the Proponent should address as follows: <ol style="list-style-type: none"> 1. The Proponent should amend the NIA to assess all noise impacts against the NPfl. 2. The Proponent should include details with regard to the planning process to balance mitigation requirements between noise generating developments and receivers. 3. All noise sources and receivers associated with the site should be modelled with the noise impacts predicted at the reasonably most-affected façade (including multiple storeys). No receivers should be excluded from the assessment of noise levels on the basis of at-receiver mitigation already being installed. <ol style="list-style-type: none"> a. This includes Lot 6503 DP1262090 and SP107399 which are currently excluded from the NIA. Where at-receiver treatment has been considered/implemented (including as part of a masterplan), noise levels still need to be predicted at these receivers. b. These predicted levels must be compared against project noise trigger levels (PNTLs) for each period in which they occur. Section 3.3 of the NPfl outlines the requirements for predicting noise and determining impacts. 4. The Proponent should provide specific detail on what, when, and where mitigation will be applied with sufficient detail for the EPA to be satisfied that the mitigation outcomes outlined in Sections 3 and 4 of the NPfl are being met. 5. The Proponent should provide a written account of all at-receiver noise mitigation measures that have already been applied. 6. In addition to the above recommendations, the following details should be included in the NIA: <ul style="list-style-type: none"> • All activities occurring within the night period (e.g. use of the carpark, maintenance activities) should be assessed against the night-time PNTLs. • All noise sources associated with the site must be assessed, including mechanical plant and waste collection. • The Operator of the BMF needs to ensure that the duty cycles applied in Table 22 of the NIA are representative of the worst-case scenario. For example, boat

	<p>engine flushing is proposed to occur for only 1 minute in a 15-minute period. Were this to occur for the full 15 minutes, the noise impacts could be underestimated by up to 11dB. The Proponent should consider whether they would be able to comply if these duty cycles were conditioned to be operational limits.</p> <ul style="list-style-type: none"> Presenting sound power levels as LAeq(15min) rather than LAeq(15min) / metre is preferred. <p>Request forwarded to applicant for response</p>
16.08.2024	Amended draft conditions provided to applicant
29.08.2024	<p>Additional information request from EPA regarding relevant DA's for surrounding sites.</p> <p>Provided by Council same day</p>
17.10.2024	Amended acoustic report (version 7) provided by Applicant and forwarded to EPA for comment
20.11.2024	Draft conditions provided to applicant again to ensure agreement prior to determination meeting
25.11.2024	Meeting held between Council, applicant and EPA
05.12.2024	GTA's provided from Environmental Protection Agency

Shellharbour Design Review Panel

The proposal was initially sent to the Shellharbour Design Review Advisory Panel (DRP) on the 8 December 2023 and then for a second time on 17 May 2024 upon receipt of additional information. The following advice summary was received from the DRP:

Table 3: Design Review Panel Comments

DRP Advice Key Points	Additional information submitted by applicant	Council comments
<p>a. A comprehensive site and context analysis is required, including an analysis of pedestrian and vehicular networks around the site, landscape, levels, adjacent built form and surrounding approved development yet to be built.</p> <p>Of particular importance is the alternative pedestrian route that will be used when boats are being taken from the facility to the water and the promenade is closed. The distance and changes in levels will allow the Panel to have a clear idea what the alternative routes are for pedestrians when the boats are being transported.</p>	<p><i>A comprehensive site and context analysis is not considered necessary given the Concept Plan Approval envisages a Boat Maintenance Facility comprising the bulk and scale proposed adjacent to medium density residential development. This is discussed throughout the Response. A plan showing an alternative pedestrian route has been prepared by Nettleton Tribe and is provided at Figure 1 below. This alternate path of travel will be available to pedestrians looking for an alternate path in the event they are unable to wait for boats to be transported from the Marina to the Boat Maintenance</i></p>	<p>Diagram provided showing approximately 800m alternative route included as figure12 of this report. No level information provided however knowledge of area identifies that land rises slightly to the south.</p>

	<p><i>Facility. It should be noted that access will be restricted temporarily for approximately 2 minutes when the forklift operations are required and approximately 5 to 7 minutes when the travel lift operations are required (which will be less frequent than the forklift movements) and so it is expected pedestrians will wait rather than taking the alternate route.</i></p>	
<p>b. A clear description of operational requirements is required, with movements of all cranes, vessels and vehicles clearly described within the site and berth areas. A revised assessment of boat movement across the pedestrian promenade is also required with clear descriptions of frequency, wait and movement times, boat movements required and closed gate periods etc. This information is to be used to provide more landscaping and planting within the site.</p>		<p>Diagrams provided showing forklift and travel lift movement provided as attachment E - Preliminary Plan of Management.</p>
<p>c. Concern has been raised regarding the boats crossing the pedestrian promenade from the application site to the marina. A suitable operational management plan as detailed in point 8 and 9 of this letter, is required to be submitted for assessment. If this interface with the public areas cannot be managed to the satisfaction of the assessing officer, the DRP Panel have recommend that the proposal is to be redesigned to incorporate an activated, safe and comfortable east -west cross site link; which will not be impacted by the transferring of boats to the Marina.</p>	<p><i>An alternate path of travel internally on the site was explored however given the nature of the development and the activities that will occur within the hardstand area located centrally within the site, the only path of travel for pedestrians would be around the built form which would result in a path completely concealed with no passive surveillance and therefore would not be satisfactory when considering the crime prevention through environmental design criteria. An alternate path of travel is available to pedestrians in the event they do not wish to wait for the operations to be completed and the Promenade to be accessible again</i></p>	<p>Preliminary Plan of Management (included as attachment E of this report) provides range of movements for each day the maximum timeframe for boats to be transferred is 9 minutes and the minimum is 3.2 minutes. The differences in times will be reviewed as the detailed design is developed. Frequency of movements will range from 6-28 times depending on the day. It is noted that the Concept Approval included the proposed layout with the boat maintenance facility site to the south of the pedestrian boardwalk. It is recommended that a condition of consent is included restricting the closure of the pedestrian boardwalk to a maximum of 10 minutes and that each closure is followed by a minimum period of 10 mins for the boardwalk being open.</p>

		In accordance with the preliminary plan of management provided by the applicant this is seen as a suitable response to the commercial viability of the facility and the required public access along the boardwalk. Further detailed discussed included on this issue in section 4.2 of this report.
<p>d. Sustainability measures</p> <p>The design has been noted as omitting certain sustainability measures that will futureproof the development and improve the environment for workers within the development. The measures identified to be included as follows:</p> <ul style="list-style-type: none"> i. a suitably sized battery, for the solar panels; ii. fans to enhance air movement and ventilation; iii. increased landscape areas and planting; iv. water collection and reuse v. EV charging facilities; vi. Permeable paving where possible; vii. Shade structures and other solutions to limit heat gain; viii. A demonstrably better alignment with adjacent landscape and public domain networks. 	<p><i>A suitably sized battery will be provided to accommodate the inclusion of solar panels.</i></p> <p><i>The inclusion of fans will be explored once a Section J report is prepared as part of the detailed design. It should be noted the current design already incorporates measures to aid ventilation</i></p> <p><i>Landscaping and planting has been increased where possible on the site.;</i></p> <p><i>A 5,000 kilolitre rainwater tank is specified on the lodged Civil Engineering Plan and will assist with the collection and reuse of water;</i></p> <p><i>Electrical infrastructure will be provided to enable the inclusion of EV charging facilities on the site</i></p> <p><i>Permeable paving has not been provided due to the hardstand that is required for the operations of the facility</i></p> <p><i>A trellis structure is proposed on the eastern boundary of the carpark which will provide shading to some of the car spaces. Awnings are proposed on the northern elevation of the Dry Boat Storage built form and on the northern elevation of the work bays; and</i></p> <p><i>Landscaping has been provided along the northern boundary to soften the interface with the Public Promenade.</i></p>	<p>The Ecological sustainable development report submitted does not provide any recommendations for the building just general statements. Recommendation of suitable conditions relating to:</p> <ul style="list-style-type: none"> - EV charging facilities - Water tanks - Landscaping provision and maintenance.

<p>e. Landscaping</p> <p>The Panel have noted that the site lacks any significant landscaping and have made the following recommendations:</p> <ul style="list-style-type: none"> i. Design the fences along the pedestrian promenade to allow for trees along the northern frontage; ii. Rearranging facilities to allow for larger pockets of landscape within the development, for example in the west where several facilities could be rationalised to allow for a better interface with the adjacent park and residences. iii. Integrate tree planting within or beside the carpark to provide natural shade; iv. Expanding the landscape in the NE along the entire pedestrian promenade, especially focussing on the addition of new trees; v. Once swept paths are determined, create areas of landscape – especially with shade trees – within the facility to both beautify, but also provide pockets of relief and amenity for works and patrons as they wait for service. It appears, for example, if workshop entries were better rationalised, pockets of landscape could be included fronting each of these. vi. Introduce WSUD across the site to best utilise water for proposed landscaping. 	<p><i>The Landscaping Drawings have been updated to include additional areas of landscaping along the northern frontage where fencing is also proposed. It should be noted that the positioning of the necessary facilities along with the required hardstand on the site has restricted where landscaping can thrive on the site.</i></p> <p><i>Additional landscaping areas have been provided within the north western corner of the site which will tie into the neighbouring green space. Additional planters have also been provided adjacent to the BMF office to introduce more greenery on the site. It should be noted that additional areas of landscaping were explored outside of the workshop areas but not considered appropriate due to the clearance areas required between the workshop frontages and the central hardstand area.</i></p> <p><i>The Landscaping Drawings have been updated to include an architectural trellis structure which will accommodate climbers along the eastern boundary of the carpark, providing shading to the carpark. It should be noted there is a nature strip (outside of the site boundary) which separates the site from the adjacent carpark and which has the potential to accommodate additional tree planting that can be provided by Frasers with Council's agreement</i></p> <p><i>The updated landscape plan proposes two (2) Araucaria Columnaris (Cook Pine) trees along the northern boundary which will create additional shading for pedestrians walking along the Promenade as well as workers and patrons visiting the site.</i></p>	<p>The additional landscaping is minimal however is seen as an improvement along the northern interface with the public boardwalk.</p>
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	<p><i>Due to the highly industrial nature of the site, pockets of relief and amenity for workers and patrons are concentrated within the sites north eastern corner of the site where the BMF office and café are proposed.</i></p> <p><i>A 5,000 kilolitre rainwater tank is specified on the lodged Civil Engineering Plan and will assist with the collection and reuse of water</i></p>	
<p>f. Retail units</p> <p>The proposed retail units are arranged along a detached walkway that is isolated from adjacent pedestrian networks and leads to a dead end at its northern end. This will create units that do not benefit from any passing trade and could result in a poor design outcome. There is no justification of this design or information supporting this choice for the retail units.</p> <p>The covered walkways for workshops and retail are completely detached from street networks, thereby isolating commercial activity from the public domain. Please address these concerns and provide justification of why the car park and publicly accessible commercial areas have been designed in this way.</p>	<p><i>The proposed retail units will directly relate to the workshop spaces located beneath. The Lower Ground Floor Plan has been updated to show internal stairwells between the workshops and retail spaces. As a result, the units do not need to benefit from any passing trade as the units will be 'destination stores' and will attract trade by those purposely planning their visit to the site for marina and boat-related goods and services. The Architectural Plans have been updated to include signage zones at the entry of the carpark on Maritime Drive and on the eastern elevation of the café and office building to assist pedestrians and motorists with wayfinding.</i></p> <p><i>The undercover walkway adjacent to the offices and retail units is primarily open on the eastern elevation which will provide for passive surveillance from the carpark and from Maritime Drive. Whilst views to the walkway that provides access to the workshop spaces will mostly be provided from the carpark due to the change in level across the site, CCTV will be provided along the walkway to ensure surveillance of the partially enclosed area. It is likely the passageway will be frequently activated with visitors and workers entering and exiting the workshop space.</i></p>	<p>The retail units will be linked internally with the ground floor workshops and via a recommended condition. These facilities will likely be attractive to businesses specialised in chandlery and it is seen as reasonable to assume this type of business will be a destination store and not relying on passing trade. Whilst Council acknowledge that the design could be improved by the suggestions of the DRP it is not seen as a significant detail in the design of the development.</p>
g. Bulk and Scale of the development	<i>The Concept Plan Approval and Section 4.10 of the Precinct</i>	Whilst the applicant is accurate that the building envelope does

<p>The bulk and scale of the proposal appears excessive, insufficiently refined, and uninformed by a thorough understanding of adjacent context.</p> <p>Whilst it is acknowledged that the development is of an industrial nature there is little evidence that the design has considered the residential context of the surrounding area.</p>	<p><i>A Design Guidelines determines the built form parameters which the proposal is generally in accordance with. It is noted that informing the Concept Plan Approval was a broad array of urban design and adjoining context analysis, including a thorough assessment carried out by the Department of Planning and Environment completed as part of the Concept Plan Modification 1 (as determined by the Independent Planning Commission).</i></p> <p><i>The work carried out through that process identified the appropriate building envelope for the BMF including its location within the Boat Harbour Precinct, which is further informed by details of setbacks for adjoining residential built form, stepping of envelope height of the BMF, and the relationship with the foreshore area. As such, the proposal has considered, and is entirely consistent with, the intentions of the Concept Plan Approval that considered the surrounding context of the site and the location of the BMF as it sits within the Boat Harbour Precinct</i></p> <p><i>Any built form on the site is to comprise a height of 5-6.5 metre structure from the ground level of the adjoining residences and a 10 metre setback is to be provided on the southern boundary with a total height of 15 metres. As the proposal is generally compliant with the guidelines, which were endorsed by Council and found to be acceptable considering the adjoining residential land uses for Precinct A, amendments to the bulk and scale are not considered necessary nor appropriate. The minor height variations are discussed further below. A comparison of the Precinct A Design Guideline cross section</i></p>	<p>comply with the requirements of the Concept Approval, there is no justification provided of the design proposed.</p> <p>Council acknowledges that this is an industrial building and that the design is practical for the intended use.</p> <p>The interface with the surrounding development has been addressed in detail in section 4.2 of this report and is subject to recommended conditions.</p>
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	<i>for the site and the proposed elevation is provided.</i>	
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3. PLANNING CONTROLS

3.1 Biodiversity Conservation Act 2016

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

Part 7 of the BC Act relates to Biodiversity assessment and approvals under the EP&A Act where it contains additional requirements with respect to assessments, consents and approvals under this Act.

In this instance, no native vegetation is proposed to be removed and therefore the proposal does not trigger the requirement for a biodiversity offset scheme

3.2 Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (Savings and Transitional Regulations) relates to transferred transitional arrangements on repeal of Part 3A—former Schedule 6A to the Act. The Savings and Transitional Regulations apply to this development application as site is within the Shell Cove Boat Harbour Precinct Concept Plan (MP07_0027 mod 1) which was determined under the repealed Part 3A Major Projects provisions.

Under the transitional provisions, environmental planning instruments will apply but only to the extent that they are consistent with the approved Concept Plan. 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.

The Regulations also requires that a Consent Authority must not grant consent under Part 4 of the Act for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan.

3.3 Concept Approval – MP07_0027 Mod 1

In accordance with the Concept Approval the application site is identified as Marina Commercial, with a maximum height of 15 metres, up to two storeys. A full assessment against the Concept Approval is included as attachment G of this report. The proposal is generally consistent with Concept Approval as required by the Savings and Transitional Regulations. Figure 4 below shows the subject site outlined in black within the Housing Typologies Plan from the Section 75W modification revised Concept Plan design report response to submissions dated July 2018. This figure identifies the site use as Marina Commercial.

This development typology is further defined in the Design Guidelines as:

- Dry Boat Storage Facility and Wash down area
- Boat Maintenance Work Bays
- Workshops

- Hardstand
- Office, club lounge and amenities
- Carpark
- Access
- Fuelling Facilities

The uses within the proposed BMF are considered to suitably reflect the land assets as detailed in the Design Guidelines (discussed further in attachment I of this report) and therefore development typology is considered to be suitably compliant with the Concept Approval.

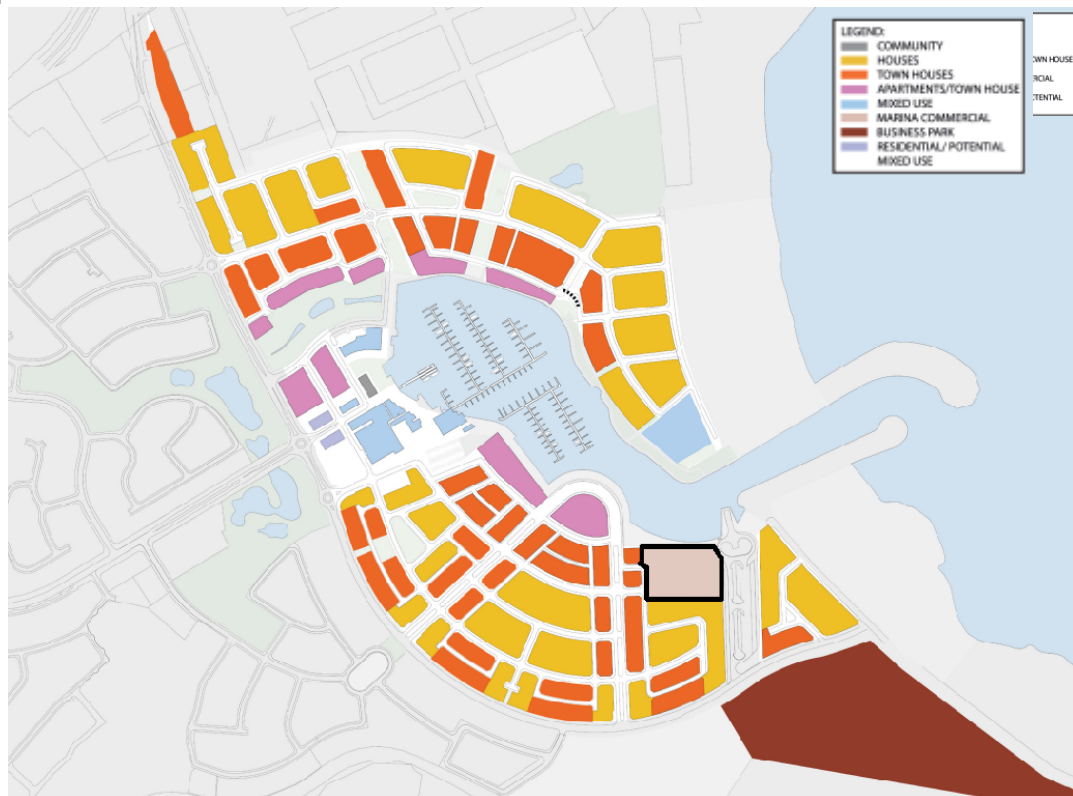


Figure 4 - Housing Typologies Plan from Section 75W modification revised Concept Plan design report response to submissions dated July 2018.

Figure 5 below is an extract from the Height Plan from the revised Concept Plan report as detailed above with the subject site outlined in black, the site is identified as a maximum of 15 metres in height and two storeys. Note: The Design Guidelines relevant to the development site include a 10 metres height limit for a 10 metre setback from the southern boundary of the site.

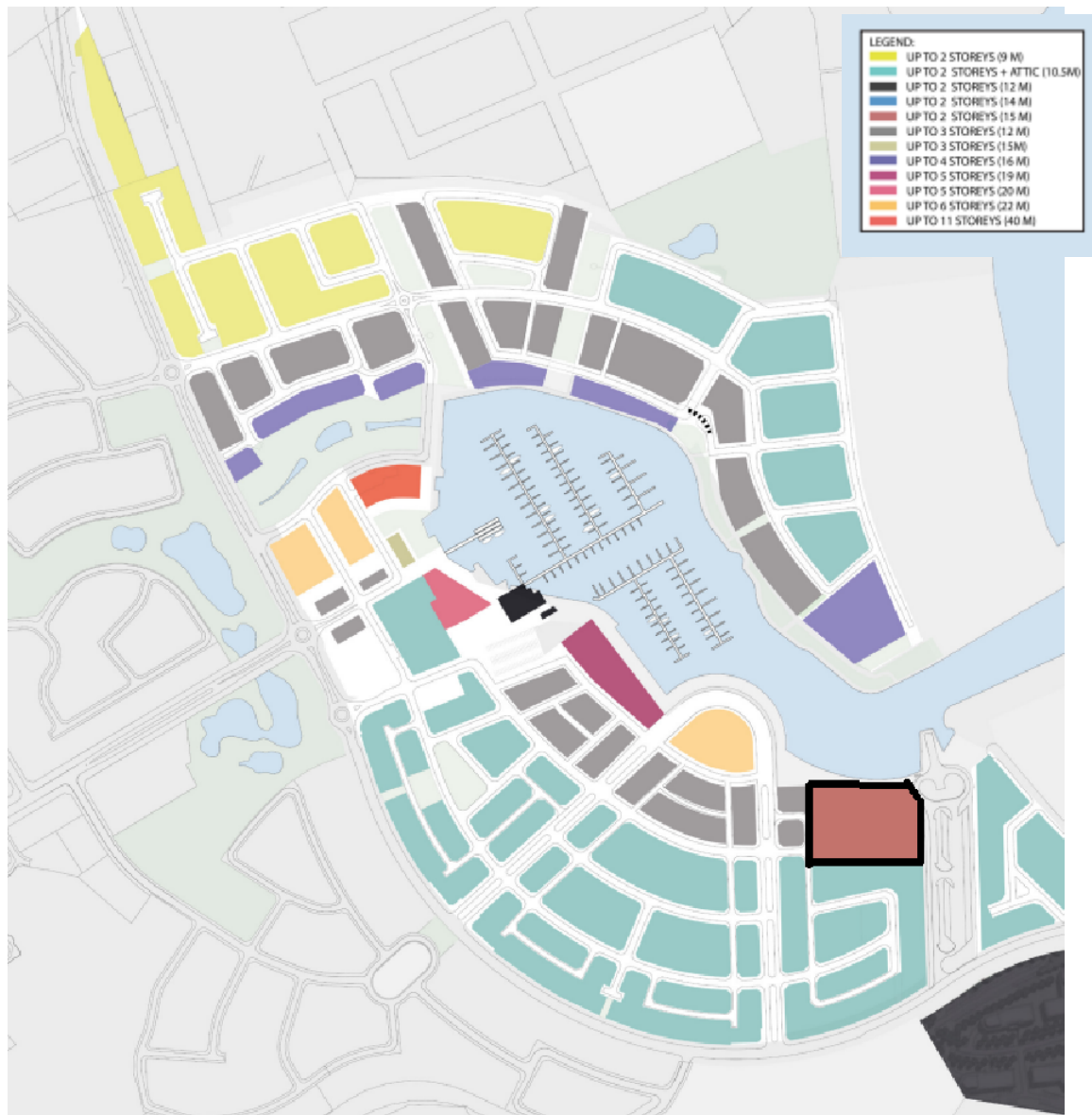


Figure 5 - Extract of Height Plan from Section 75W modification revised Concept Plan design report response to submissions dated July 2018

The proposed development will have a maximum height of 15.2 metres. The sections that will exceed the maximum height limit are within the central areas of the site as shown on figure 6 below in red. The applicant has provided a Visual Impact Assessment (VIA) in support of the development that the height breaches will be minor and imperceptible from key locations as identified in the VIA and from the surrounding public domain. Council concurs that the height

variation to the highest points of the will not be noticeable and does not raise objection to this minor breach nor considers that they are inconsistent with the concept approval.

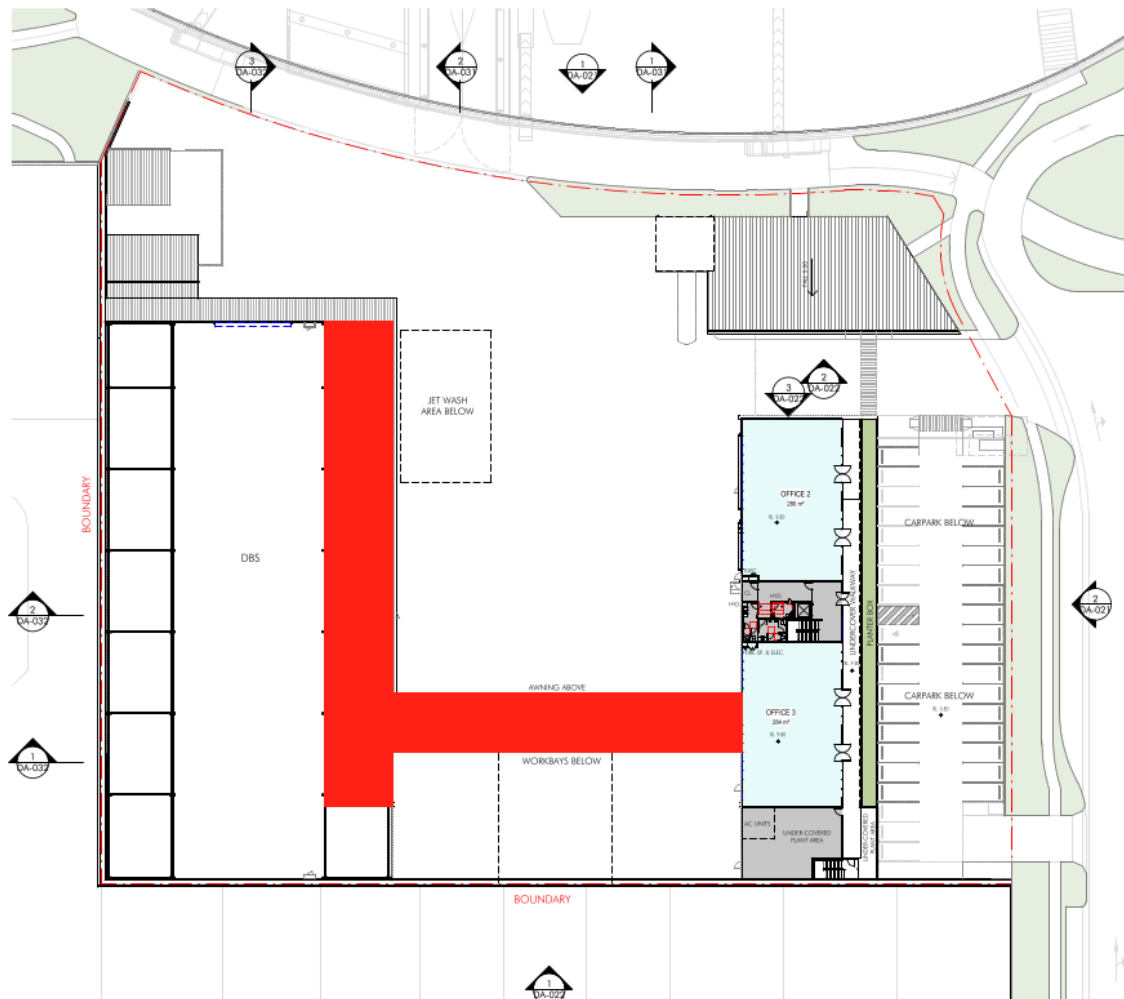


Figure 6 - Areas of height exceedance (shown in red)

It is noted that the southern setback requirement of 10 metres in height is an important element of the development due to the close proximity to the adjoining dwellings fronting Seaboard Way. The scale of the elevational plans does not suitably satisfy Council that the 10-metre height is maintained for the entire length of the 10 metres setback. A condition of consent is recommended to ensure the height of this section of the development does not exceed 10 metres.

~Amendments to Approved Plans

Before the issue of a Construction Certificate the following design changes must be incorporated into the plans prepared for the Construction Certificate and to the Principal Certifier's satisfaction:

- a. The maximum height of the development within 10 metres of the southern setback of the site is to not exceed 10 metres.**
- b. Suitable areas for pedestrians to wait whilst the pedestrian boardwalk is closed are to be identified and embellished accordingly with suitable seating and shade.*
- c. Signage plans detailing suitable wayfinding signs for the alternative pedestrian route.*
- d. Suitable waste storage areas within the footprint of the development for each unit.*

Condition Reason: To minimise any possible adverse environmental impacts of the proposed development.

The area of the development along the eastern side of the site, adjacent to the car park, includes a total of two storeys with a mezzanine section between the lower ground workshops and the upper floor offices. The mezzanine floors will be linked internally with the workshops below and it is recommended that a condition of consent is applied ensuring that the retail areas and workshops are linked in operation.

~Retail units

The five retail units located on the upper ground floor and approved as part of this development are to be operated in conjunction with the lower ground floor workshops adjoining and not operated independently.

Condition Reason: To ensure the facility is operated in accordance with the relevant legislation and controls.

These facilities will likely be attractive to businesses specialised in marine chandlery. The types of uses will need to be ancillary to the industrial nature of the workshops below making these retail areas more akin to an industrial retail outlet than a traditional retail premises.

As defined in SLEP 2013 a mezzanine is not included as a storey. The mezzanine section will be connected both physically and operationally to the workshops on the lower ground level and therefore this section does not represent an additional storey. The proposal is considered to be a two-storey development and therefore compliant with the Concept Approval requirements.

The Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (Savings and Transitional Regulations) requires that a Consent Authority must not grant consent under Part 4 of the Act for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan. Attachment G of this report includes a detailed compliance table against each of the terms of approval. Council considers that the development is suitably compliant with the Concept Approval as discussed above and the Panel can be satisfied that the development is generally consistent with the Concept Approval.

4. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (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), and*
- (iii) any development control plan, and*
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
 - (c) the suitability of the site for the development,*
 - (d) any submissions made in accordance with this Act or the regulations,*
 - (e) the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be a Designated Development Application under section 32 of Schedule 3 of the EP&A Regulations 2021 as the proposal relates to development for the purposes of a boat repair or maintenance facility that has an intended capacity of 120 vessels. Therefore approval has been sort for an Environmental Protection Licence from the NSW Environmental Protection Agency (EPA) in accordance with clause 43 (d) of the Protection of the Environment Operations Act 1997.

The EPA have provided General Terms of Approval (GTAs) after several requests for additional information and in depth discussions between Council and the applicant. These GTAs are included In the recommended conditions included as attachment A.

4.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Shellharbour Local Environmental Plan 2013*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in table 4 and considered in more detail below.

Table4: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
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State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage <ul style="list-style-type: none"> Section 3.6 – granting consent to signage Section 3.11(1) – matters for consideration Schedule 5 assessment included as attachment K of this report. 	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development Section 2.19(1) and Clause 2 of Schedule 6 declares the proposal regionally significant development as: development constitutes development over \$30 million. Council is also the land owner.	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Y
Proposed Instruments	None relevant	N/A
Shellharbour LEP 2013	Compliance table included as attachment H of this report. No variations sought or identified.	Y
Shell Cove Precinct A Design Guidelines	Compliance Table included as attachment I of this report. No variations sought or identified.	Y
Shellharbour DCP	Chapter 15 – Waste Mitigation and management Chapter 24 – Floodplain Management Chapter 25 – Stormwater Management Chapter 27 – Aboriginal Heritage Chapter 29 – Social Impact Assessment Compliance table included as attachment J of this report. No variations sought or identified.	Y

State Environmental Planning Policy (Industry and Employment) 2021

Signage is proposed comprising of three signage zones, one located on the northern elevation, one on the southern elevation and one on the eastern elevation and one pylon sign located beside the entry to the upper level car park on Maritime Drive. Signage details were included with the application submission (figure 7 below) and form part of the approved plans and specifications. As such *State Environmental Planning Policy (Industry & Employment) 2021* is applicable.

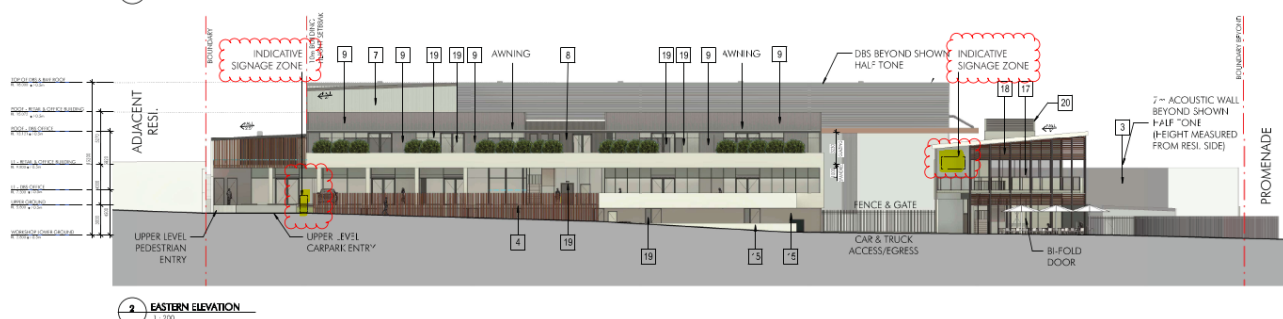


Figure 7 - eastern elevation with signage envelope and pylon sign highlighted

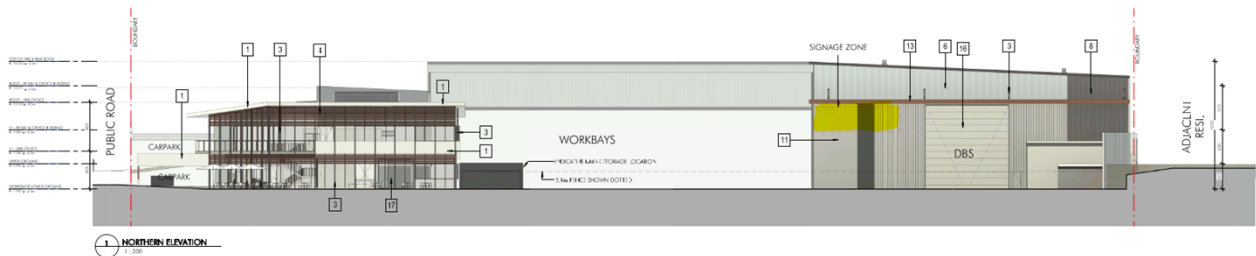


Figure 8 - northern elevation with signage envelope highlighted

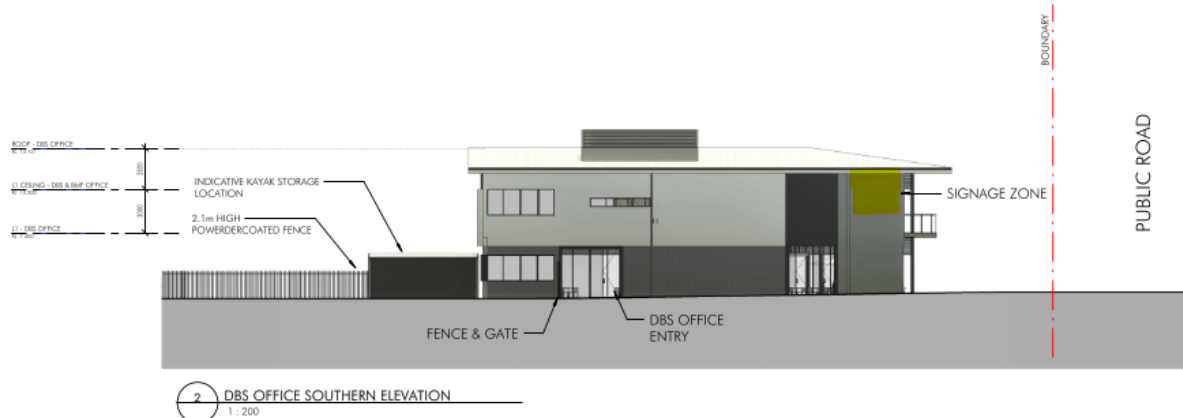


Figure 9 - southern elevation with signage envelope highlighted

Part 1 Preliminary

Section 3.1 Aims, objectives etc.

Comment: The signage proposed is consistent with the aims and objectives of this SEPP, as outlined at section 3.1.

Part 3.2 Signage generally

Section 3.6 Granting of consent to signage

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied—

- b. that the signage is consistent with the objectives of this Policy as set out in section 3 (1) (a), and*

Comment: The signage is consistent with the aims and objectives of this SEPP, as outlined at section 3.1.

(b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.

Comment: The signage proposed satisfies the assessment criteria as specified in Schedule 5, a detailed assessment against Schedule 5 included as attachment K of this report. It is noted that the signs proposed have not been identified as illuminated.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

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: A Phase 2 Site contamination assessment of the Boat Harbour Precinct was submitted with the Preferred Planning Report for the Concept Approval. This concluded that no remediation was required for the subject site.

The assessment already undertaken is sufficient to allow the determination of this DA subject to an unexpected finds condition recommended within attachment A of this report.

Shellharbour Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Shellharbour Local Environmental Plan 2013* (SLEP 2013). The aims of the LEP include:

- *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*

- to encourage development that balances ecological sustainability, social justice principles of equality, access, rights and participation and economic viability,
- to encourage a range of development, including diversity of housing types, employment, services and recreational opportunities that meet the needs of existing and future residents, visitors, business owners and workers of Shellharbour,
- to encourage development that has considered safer by design principles so that potential impacts to life and property from crime is minimised,
- to improve connectivity and accessibility in Shellharbour and encourage development that enables walking, cycling and public transport usage,
- to minimise risk to the community in areas subject to environmental hazards, particularly flooding, coastal inundation, bush fires, acid sulfate soils and unstable land.

The proposal is consistent with these aims as the proposal will provide a community facility which will allow uses for arts and cultural activities, provide recreational opportunities for existing and future residents and visitors.

Zoning and Permissibility (Part 2)

The site is located within the R3 Zone (Medium Density Residential) pursuant to Clause 2.2 of the SLEP 2013, see figure 10 below.



instruments will apply but only to the extent that they are consistent with the approved Concept Plan. As discussed in section 3.3 above the Concept Approval identifies this site as Marina Commercial and the proposed development is deemed to be compliant with this use.

General Controls and Development Standards (Part 2, 4, 5 and 6)

SLEP 2013 also contains controls relating to development standards, miscellaneous provisions and local provisions. Only relevant controls are considered in table 5 below, pursuant to Schedule 2 clause 3B of the Environmental Planning and Assessment Act (Savings, Transitional and Other Provisions) Regulation 2017 environmental planning instruments will apply but only to the extent that they are consistent with the approved Concept Plan.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Flood planning (CI 5.21)	The objectives of this clause are as follows— to minimise the flood risk to life and property associated with the use of land, to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change, to avoid adverse or cumulative impacts on flood behaviour and the environment, to enable the safe occupation and efficient evacuation of people in the event of a flood.	The site is not impacted by the 1%AEP flood event, and exhibits negligible affection during the PMF event to the northern alignment. A site-specific Flood Report provided by Advisian Worley Group dated 26 July 2023, titled Shell Cove Boat Harbour Precinct: The Boatyard – Boat Maintenance Facility (BMF) Flood Assessment provides a FPL of 2.8 m AHD.	Yes (conditions)
Stormwater Management (CI 6.4)	The objective of this clause is to minimise the impacts of urban stormwater on the land to which the development applies, adjoining properties, native bushland and receiving waters.	Stormwater drainage plans submitted and reviewed by Council Engineers. Objectives of the clause are met.	Yes (conditions)
Essential Services	(a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.	The site has suitable water and electricity supply and infrastructure for sewage management and stormwater drainage as per previous DA0619/2017. Site has vehicle access onto Maritime Drive.	Yes

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The proposal is considered to be generally consistent with the relevant clauses of SLEP 2013. A full compliance table has been included as attachment H of this report. No variations to SLEP 2013 sought or identified.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

No proposed instruments relevant to the development.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Shell Cove Design Guidelines for Medium Density Housing - Precinct A (Design Guidelines)*

No Variations have been sought or identified. The site is within the Marina Commercial area as identified within the Design Guidelines and the relevant chapters have been addressed as a compliance table included as attachment I of this report. The development is suitably compliant with the Design Guidelines.

- *Shellharbour Development Control Plan 2013 ('the DCP')*

No variations have been sought or identified, relevant chapters as follows:

- Chapter 10 – Advertising and Signage
- Chapter 15 – Waste Mitigation and Management
- Chapter 16 – Access for People with a Disability
- Chapter 17 – Crime Prevention Through Environmental Design
- Chapter 23 – Contamination
- Chapter 27 – Aboriginal Heritage
- Chapter 29 – Social Impact Assessment

The proposed development is suitably compliant with the SDCP, a compliance table has been included as attachment J of this report.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions:

- *Local Infrastructure Contributions Plan 2019*

Contributions are relevant under the Local Infrastructure Contributions Plan 2019 as new commercial floor area is proposed as part of this development. A contribution has been calculated and a condition of consent recommended to be payable before issue of a construction certificate.

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, no matters relevant to the proposal.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

4.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- **Context and setting**

The proposal is considered to be appropriate within the existing and future context of the site. The surrounding development (existing and future) is mainly residential dwellings, (two storey and single storey) with a public boat ramp and parking adjoining to the east. The building typologies is as identified in the Concept Approval which dictates land uses, heights and number of storeys.

The proposed building is an industrial design within the residential precinct A. The design, materials and finishes are seen as reflective of the use.

The development creates a U-shape within the site which will act as a barrier to noise and the activities from the surrounding residential buildings. The office and café on the corner addresses the pedestrian walkway which surrounds the Marina and brings the development down to a more human scale.

- **Access and traffic**

The site has suitable road access and pedestrian access from Maritime Drive. The site provides suitable on site parking and vehicle access.

Traffic impact assessment, swept path diagrams and construction management plan submitted and reviewed as part of this assessment is satisfactory.

- **Public Domain**

The proposed development has an interface with the public domain on the northern, eastern and part of the western boundaries.

- Boats traversing public boardwalk

The Shell Cove Marina project has always envisaged an interface between the BMF and the public boardwalk. The Concept Approval identifies the BMF site to be on the southern side of the public boardwalk, thus resulting in a requirement for boats to traverse the walkway in order to utilise the BMF. In addition the Boat Harbour Consent (DA95/133) included approval of a boat lift and pontoons required to allow boats to be lifted from the water and carried to the BMF. These manoeuvres will require the temporary closure of a section of the public walkway (approximately 30 metres) while the boat(s) are being moved into or out of the water. Figure 11 below indicates the routes for getting vessels from the facility to the water.



Figure 11 - Management of vessel loading/unloading from Plan of Management

The site is located approximately 160 metres from the eastern end of the public boardwalk, and this area is significantly quieter than the areas of boardwalk adjacent to the Town Centre and residential areas.

- Pedestrian Safety/Comfort

The closure will occur by opening existing gates across the public boardwalk, allowing the forklift and/or travel lift to traverse the footpath with the boat. The applicant has provided details of signage, early warning alert systems and procedures for this process which will be conditioned as part of the Plan of Management.

In addition it is recommended to condition that suitable areas are added along the pedestrian boardwalk where pedestrians can wait to watch the boats be moved with seating proposed and shade. Condition recommended as below:

~Amendments to Approved Plans

Before the issue of a Construction Certificate the following design changes must be incorporated into the plans prepared for the Construction Certificate and to the Principal Certifier's satisfaction:

- a. *The maximum height of the development within 10 metres of the southern setback of the site is to not exceed 10 metres.*
- b. ***Suitable areas for pedestrians to wait whilst the pedestrian boardwalk is closed are to be identified and embellished accordingly with suitable seating and shade.***
- c. *Signage plans detailing suitable wayfinding signs for the alternative pedestrian route.*
- d. *Suitable waste storage areas within the footprint of the development for each unit.*

- Length of time for closure and frequency

Detailed information has been provided in the preliminary Plan of Management (Attachment E) to clarify how long the public boardwalk will be closed. Table 6 below provides the minimum and maximum times for closure. It is noted that the information is as accurate as possible and as with any commercial operation this is subject to change based on detailed mechanical design, customer requirements and usage.

There will be two different ways to transport boats to and from the water, via forklift which is anticipated as being the most used method and via boat lift. The minimum amount of time the public boardwalk will be closed is 10 minutes and the maximum is 9 minutes.

Table 6 below includes the total time the public boardwalk has to be closed whichever method is used. It is noted that there may be opportunities to take two boats at a time (i.e. using both the forklift and the boat lift) which would reduce the number of times the public boardwalk is blocked.

Table 6: Minimum and maximum time Boardwalk will need to be closed

Day	Movements	Total minimum*	Total Maximum*
Monday	21-28	Just over 1 hour	4.2 hours
Tuesday	10-17	30 minutes	2.55 hours
Wednesday	10-17	30 minutes	2.55 hours
Thursday	10-17	30 minutes	2.55 hours
Friday	21-28	Just over 1 hour	4.2 hours
Saturday	16-20	51 minutes	Just over 3 hours
Sunday	10-15	32 minutes	2.25 hours

*It is important to note that boats are to be moved as required by the boat owners and it is unlikely that this will be all at the same time so the total times are to give an indication of the total time throughout the day the walkway will be closed.

It is considered crucial that there is a balance between the two different uses to ensure the BMF can be commercially viable and that the public boardwalk is

maintained for the community and visitors use. It is recommended that a condition of consent is included restricting the closure of the pedestrian boardwalk to a maximum of 10 minutes with a requirement that the boardwalk must remain open for at least the same length of time that it was closed. This is seen as a suitable response to the commercial viability of the facility and the required public access along the boardwalk. This condition has been amended following discussions with the applicant and Marina Operator.

~Closure of public boardwalk

The public boardwalk can be closed to allow the lifting and transport of boats and other marine related activities to and from the approved facility only.

The public boardwalk can be closed for a maximum of 10 minutes at any one time. The boardwalk must remain open for at least the same length of time that it was closed following any closure unless this requirement is changed by the reviewed Operational Plan of Management approved by Council assessment staff.

Condition Reason: To minimise any possible adverse environmental impacts of the proposed development.

Additionally it is noted that Council will be the owners of the BMF and the pathway so can monitor impact and review operational constraints as required.

- Alternative Routes

The issue of a viable alternative pedestrian route was raised by the Shellharbour Design Review Panel (DRP).

The applicant has provided Council with an alternative route in response to the DRP advice, see figure 12 below.



Figure 12 - alternative path of travel

This alternative route is approximately 800m with the land sloping slightly to the south. There are established footpaths along the entire alternative route and suitable places to cross roads. The roads that are required to be crossed are minor residential roads and are seen as suitable for pedestrians. Council has recommended by Condition of consent that suitable wayfinding signage is provided along the route.

~Amendments to Approved Plans

Before the issue of a Construction Certificate the following design changes must be incorporated into the plans prepared for the Construction Certificate and to the Principal Certifier's satisfaction:

- a. *The maximum height of the development within 10 metres of the southern setback of the site is to not exceed 10 metres.*
- b. *Suitable areas for pedestrians to wait whilst the pedestrian boardwalk is closed are to be identified and embellished accordingly with suitable seating and shade.*
- c. **Signage plans detailing suitable wayfinding signs for the alternative pedestrian route.**
- d. *Suitable waste storage areas within the footprint of the development for each unit.*

Condition reason: To minimise any possible adverse environmental impacts of the proposed development.

~Signage

Before issue of an occupation certificate the signage identifying the alternative route for pedestrians whilst the public boardwalk is closed is to be installed.

Condition reason: To ensure pedestrians can utilise the alternative route proposed.

It is not anticipated that a significant amount of people will utilise the alternative route, particularly with the restrictions in place for closure of the boardwalk. However it is important that an alternative route is provided.

- **Private Domain**

The proposed development adjoins private residential lots on the southern and part of the western boundaries, shown in figure 13 below. This interface is as approved under DA0619/2017 included construction of acoustic walls and restrictions on title relating to built form.



Figure 13 - Location Map Indicating Private Domain (highlighted in green)

As part of this subdivision DA restrictions on title have been included for acoustic treatment of future dwellings as follows:

13. TERMS OF RESTRICTION ON THE USE OF LAND (B) NUMBERED 14 IN THE PLAN

No dwelling can be erected or permitted to remain on that part of a lot burdened by this restriction on the use of land unless that dwelling is designed and constructed with the Minimum Acoustic Attenuation Measures specified in the following table:

Item	Minimum Acoustic Attenuation Measures
Windows and glazed doors on the facades facing Harbour Boulevard and on the facades which intersect with the facades facing Harbour Boulevard	6mm glazing fitted with full perimeter acoustic seals (to achieve minimum Rw29) and mechanical ventilation or air conditioned.

Figure 14 - restriction 14 on DP1253523

14. TERMS OF RESTRICTION ON THE USE OF LAND (WHOLE OF LOT) NUMBERED 15 IN THE PLAN

No dwelling can be erected or permitted to remain on that part of a lot burdened by this restriction on the use of land unless that dwelling is designed and constructed with the Minimum Acoustic Attenuation Measures specified in the following table:

Lot burdened	Minimum Acoustic Attenuation Measures
1031, 1032, 1033, 1034, 1035, 1036, 1037	Ground floor: not applicable. First floor: mechanical ventilation or air conditioned so that windows and doors can be shut for noise control purposes. 6mm glazing on windows and glazed doors on eastern facades.

Figure 15 - restriction 15 on DP1253523

15. TERMS OF RESTRICTION ON THE USE OF LAND (WHOLE OF LOT) NUMBERED 16 IN THE PLAN

No dwelling can be erected or permitted to remain on that part of a lot burdened by this restriction on the use of land unless that dwelling is designed and constructed with the Minimum Acoustic Attenuation Measures specified in the following table:

Lot burdened	Minimum Acoustic Attenuation Measures
1038	<p>Ground floor: mechanical ventilation or air conditioned so that windows and doors can be shut for noise control purposes 6mm glazing on windows and glazed doors on northern façade</p> <p>First floor: mechanical ventilation or air conditioned so that windows and doors can be shut for noise control purposes 6mm glazing on windows and glazed doors on northern and eastern facades</p>
1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046	<p>Ground floor: mechanical ventilation or air conditioned so that windows and doors can be shut for noise control purposes 6mm glazing on windows and glazed doors on northern facade</p> <p>First floor: mechanical ventilation or air conditioned so that windows and doors can be shut for noise control purposes 6mm glazing on windows and glazed doors on northern facade</p>
1063, 1064	<p>Ground floor: mechanical ventilation or air conditioned so that windows and doors can be shut for noise control purposes 6mm glazing on windows and glazed doors on eastern facade</p> <p>First floor: mechanical ventilation or air conditioned so that windows and doors can be shut for noise control purposes 6mm glazing on windows and glazed doors on eastern facade</p>

Figure 16 - restriction 16 on DP1253523

16. TERMS OF RESTRICTION ON THE USE OF LAND (F) NUMBERED 17 IN THE PLAN

No dwelling can be erected or permitted to remain on that part of a lot burdened by this restriction on the use of land unless that dwelling is designed and constructed with the Minimum Acoustic Attenuation Measures specified in the following table:

Item	Minimum Acoustic Attenuation Measures
Windows and glazed doors on the facades facing Harbour Boulevard and on the facades which intersect with the facades facing Harbour Boulevard	6mm glazing fitted with full perimeter acoustic seals (to achieve minimum Rw29) and mechanical ventilation
First floor (but not the ground floor) entrance doors on the facades facing Harbour Boulevard	35mm thick solid core timber doors, acoustically sealed around the full perimeter

Figure 17 - restriction 17 on DP1253523

The acoustic mitigation was informed by an acoustic report (prepared by Wilkinson Murray, reference 05135-BR version D dated June 1028) which was approved as part of DA0619/2017. These measures were included to protect dwellings from noise impact from the BMF and the public boat ramp and car park along Maritime Drive. A further site/development specific acoustic report (reference 256688_AC_v7-0) has been prepared and submitted in support of the application. This has been done following extensive discussions between the Environmental Protection Agency (EPA), Council and the applicant. The EPA have issued their General Terms of Approval (GTAs) with a number of conditions attached. These GTAs have been included in the recommended condition included as attachment A of this report.

- **Lighting Spill**

A light spill assessment has been submitted in support of the application and reviewed by Council assessment officers. The report identifies the external areas of the facility to be lot as shown in figure 18 below.

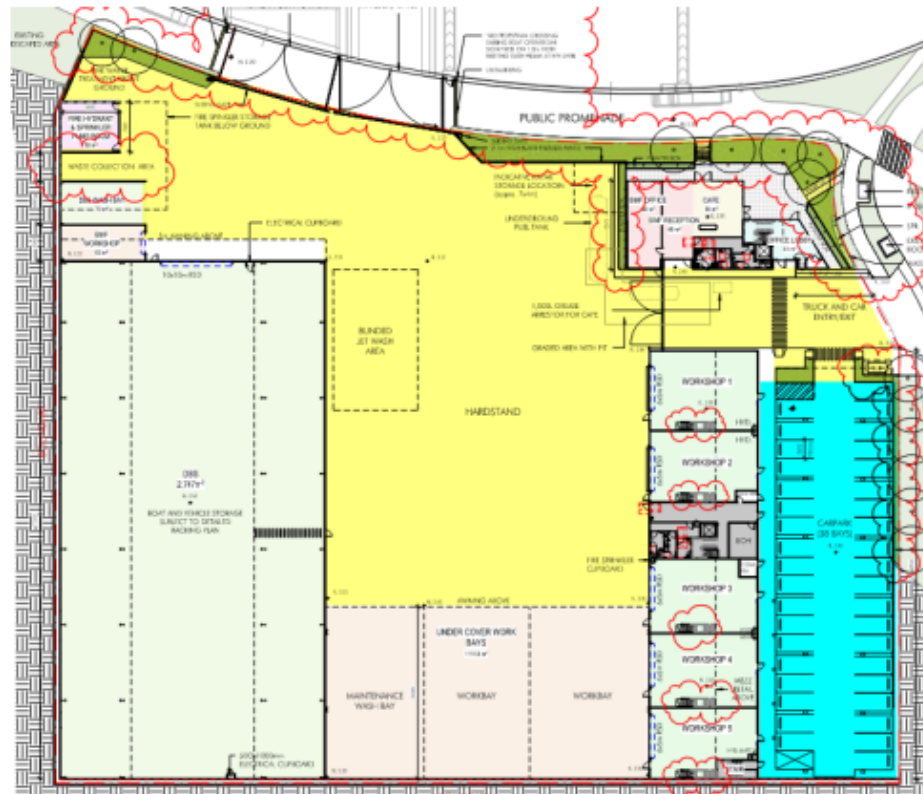


Figure 18 - External areas of BMF to be lit highlighted in yellow and blue

For the car park lighting the report identifies that lighting will not have an upward lighting component with a *cut-off below the horizon of 20-25 degrees that will inhibit lighting spill over the acoustic wall*. This is shown in figure 19 below.

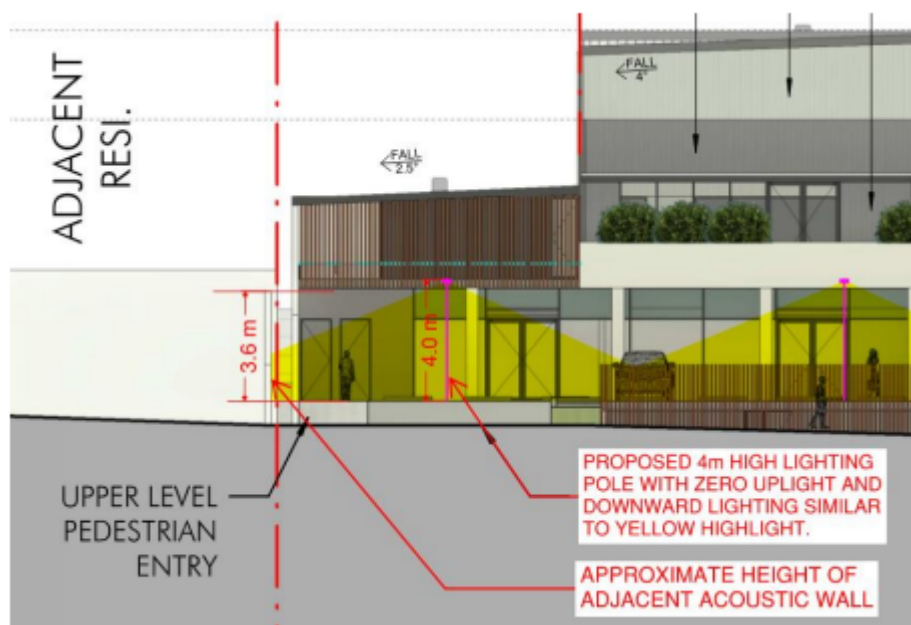


Figure 19 part elevation showing where car park adjoins residential boundary

The hard standing area is to have lighting that does not include an upward lighting output and as specified in the report *be primarily directed away from the residential areas per yellow arrows*. Figure 20 below details this.

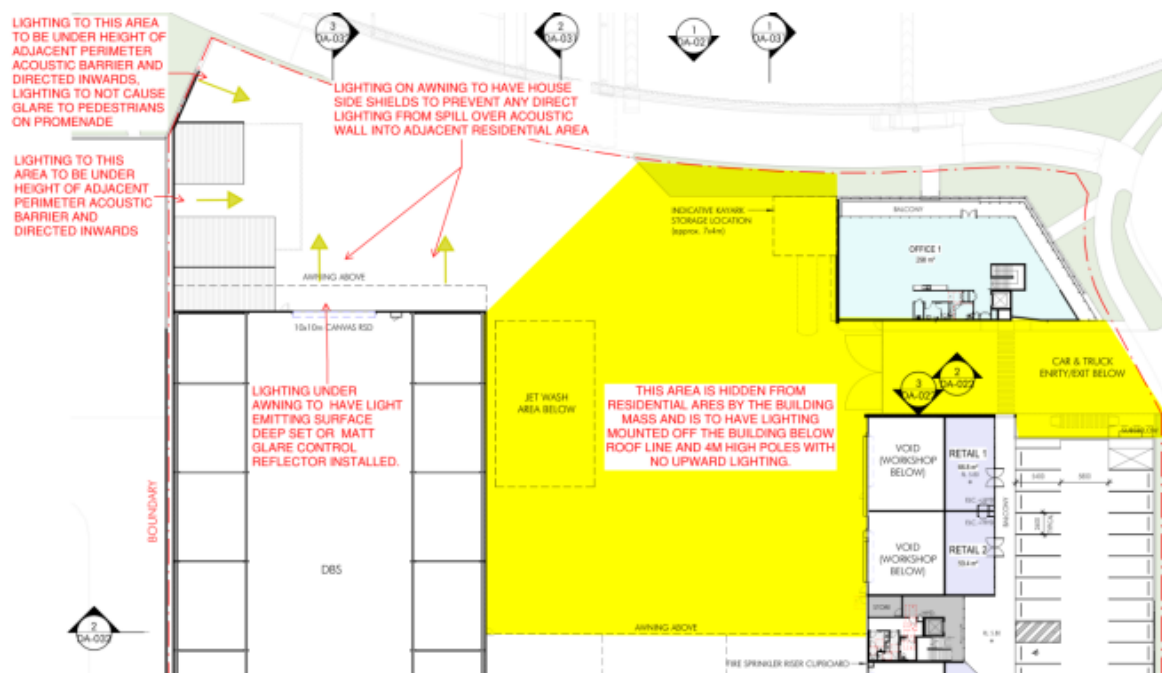


Figure 20 - Hard standing external lighting

For all lighting the report concludes that compliance with Australian Standard 4282.1 – Control of the obtrusive effects of outdoor lighting can be achieved. A condition of consent has been recommended to ensure the detailed lighting schedule complies with the Light Spill Assessment

~ Lighting Design

Before the issue of a Construction Certificate, details of external lighting design is to be submitted to Shellharbour City Council for approval. The lighting design is to be prepared in accordance with the approved Light Spill Assessment prepared by Stantec dated 13.03.2024 and the following provisions to be included:

- a. *Ensure there are no lighting concealment spots adjacent to public space.*
- b. *Leave a limited amount of internal lighting on at night to enable Police, security guards and people passing by to monitor activities within the building.*
- c. *Ensure entry and exit points are adequately lit.*
- d. *Pedestrian pathways and access routes should be lit.*
- e. *Areas should enable users to identify a face 15 metres away.*

Condition reason: To minimise any possible adverse environmental impacts of the proposed development.

• Utilities

All essential services are available at the site. Suitable conditions recommended by Sydney Water have been included as part of the recommended conditions (attachment A).

- **Economic Impact**

The application has been accompanied by an Economic Impact Statement which provides detail in addition to the previous economic impact assessments that accompanied the boat harbour application and Concept Approval.

The Economic Impact Statement concludes that the economic impact of the proposed facility is likely to be positive, with a direct increase of full time equivalent jobs of 26 (operational phase) and value add to the economy of \$2.8 million.

The statement also concludes that there is significant demand for the proposal which has been summarised as follows:

- Strong population growth within the Local and Regional catchment areas.
- Continued and growing visitation to the regional catchment will result in an increase in recreational boating activities within the sector.
- The proposed facility is identified in the TfNSW document *South Coast Boating Network Plan* and is shown to be the only one in the regional area that can receive larger vessels.

The proposal has been shown to enhance the local economy and will facilitate the success of the marina as a whole. The development will be managed on behalf of Council under a lease arrangement.

- **Air Quality**

The proposal has been supported by an air quality impact assessment which utilised data from the nearest air quality monitoring station (Albion Park South approximately 8.5km to the west of the site) and construction air quality monitoring data collected during construction of the marina and breakwater.

The report recognises the existing environment to be '*influenced from industrial and commercial operations, motor vehicles and residential activities*'. With sensitive receivers identified as dwellings to the south-west, south and east of the site.

The report breaks down impact on air quality into construction and operation as detailed:

- i. Construction
During construction the report identifies minor and short term impacts on air quality from '*minor generation of particles and dust from plant and construction vehicles*,'.

The report acknowledges that grading of the site and construction of the acoustic wall was undertaken during the initial subdivision and installation of the fuel tank has already been completed following approval of the re-fuelling facility.

Therefore there is minimal measures recommended for during the construction phase of the development.

- ii. Operation
During operation of the facility the report identifies emission sources as detailed in figure 21 below:

- Combustion emissions from the operation of boats, maintenance plant and equipment and vehicles using the car parking facility.
- Generation of dust when removing antifouling and paints from boats.
- Air emissions from applying paints, respraying and fibreglassing to boats.
- Air emissions associated with refuelling of the underground fuel tank.

Figure 21 - emission sources as identified in the Air quality impact assessment page 5

The report concludes that *‘the operational impacts are expected to be able to be managed without causing adverse off-site impacts through the identified mitigation measures’*. These measures are included below in figure 22 as taken from page 6 of the report.

Impact	Environmental Safeguards	Responsibility	Timing
Construction air quality	At all times, the Contractor is to seek to minimise the potential for the generation of dust, odours and any noxious vapours. Further, no burning of any material at site is to be permitted at any time.	Contractor	Construction
	Material and waste transported to and from the site are to be appropriately covered and transported in a manner that avoids the material or waste to be spilled, leak or otherwise escape.	Contractor	Construction
	Dust suppression measures are to be employed by the Contractor during both dry and windy periods, or as required. Water sprays for dust suppression are to be minimised where practicable to conserve water.	Contractor	Construction
Operational air quality	Operating air quality is to be managed in accordance with industry best management practice including <i>Environmental Action for Marinas, Boatsheds and Slipways</i> (DECC, 2007). It is recommended that site operational management plans include provisions for: <ul style="list-style-type: none"> • Educating operators and users on the proper operation of the facilities; • Developing appropriate incident response procedures including for spills and equipment malfunction; and • A complaints register and response process. 	Operator	Operation

Figure 22 - Air quality impacts mitigation measures.

A condition has been recommended to ensure that the construction and operation of the facility is carried out in accordance with these mitigation measures as below:

During works:

~Air Quality Mitigation Measures

All construction works are to be carried out in accordance with the approved Air Quality Impact Assessment prepared by Advisian dated 10.08.2023.

Condition reason: *To minimise any possible adverse environmental impacts of the development.*

Occupation and ongoing use:

~Air Quality Mitigation Measures

The facility is to be managed and operated in accordance with the recommendations of the approved Air Quality Impact Assessment prepared by Advisian dated 10.08.2023.

Condition reason: *To minimise any possible adverse environmental impacts of the development.*

- **Noise and vibration**

Construction - Noise and vibration during construction is to be managed by suitable conditions regarding hours of work and site management.

Operation - Discussed in key issues section 6.1 of this report.

- **Natural hazards**

The site is within the Probable Maximum Flood (PMF) area as identified in the latest version of the Shell Cove Flood Study. Flood impact has been identified in the Key Issues section of this report (section 6.2) with detailed discussion included in this section.

- **Social impact**

The proposed development will provide a valuable economic resource. The Concept Approval envisaged a boat maintenance facility with a range of supportive uses. The facilities within the development will allow the storage and maintenance of boats to occur, with other proposed uses that will support the facility and encourage custom.

The Social Impact Assessment submitted as part of the Concept Approval identified a need for the uses proposed to serve the Shell Cove marina and the local and regional area.

- **Site design and internal design**

The external design of the building is suitably compliant with the Concept Approval in terms of height and number of storeys.

The café and upper floor office on the north eastern corner of the site successfully addresses Maritime Drive and the pedestrian boardwalk that surrounds the marina. This section of the development is a reduced height of 10.4 metres (maximum) which brings the building down to a more appropriate human scale where it meets the

boundary. The design of this section also includes glass doors and balconies which soften the industrial buildings behind.

The building design includes a reduced height along the southern section of the site adjoining dwellings fronting Seaboard Way in accordance with the Design Guidelines.

The internal design is divided into different uses which are separated as required. Pedestrian access is suitably restricted to the retail areas and offices, café and BMF reception with the dry boat storage and hard standing areas fenced off for safety.

The proposal will provide shared amenities for the workshops and offices on each floor. The café and BMF reception will also include amenities for customers and visitors.

The on site car parking arrangement maintains a separate area for visitor and staff vehicles and the hard standing areas where machinery and boats will be transported. The public parking area will be visible from Maritime Drive so people will be able to see if there are free spaces without having to access the site. The car park location also allows passive surveillance from the street and surrounding dwellings.

- Construction

The site is within the Master planned area of Shell Cove Marina with various construction work happening in a relatively small area. The site is located adjacent to an existing boat ramp and car park which is required to continue operating unencumbered during construction. The site will have independent road access. Construction management plans have been submitted as part of the traffic impact assessment in support of the application, shown in figure 23 below:



Figure 23 - construction management plan

The construction works will be fenced off with the public promenade, footpaths along Maritime Drive and boat ramp car park still accessible to the public.

Standard working hours and construction traffic management plan conditions have been recommended as included in attachment A.

- **Visual Impact**

The application is supported by a Visual Impact Assessment (VIA) as required by condition 19 of the Concept Approval. The VIA summarises the development as follows:

- *is generally within the Concept Plan (Mod 1) envelopes and achieves a compatible and consistent form with the intended future character for the site and Precinct A established by the Concept Plan (Mod 1);*
- *will not result in any unreasonable visual impact on the public domain;*
- *will not increase view loss to undifferentiated ocean in parts of the views looking north across the site from existing residential areas that are sufficiently elevated to have views over and through the site; and*
- *will not create significant changes in the composition of views relative to the built forms that have been approved in the Concept Plan (Mod 1).*
- *The visual and view impacts of the proposed development are consistent with those considered during the assessment of the Concept Plan (Mod 1).*

The facility has been designed to restrict views into the workbays and workshops with the bulk of the building acting as a shield from the activities undertaken within the BMF.

The minor height breach will not be significant and is unlikely to be discernible from street view or even from the upper floors of surrounding dwellings.

The design is acknowledged as industrial which reflects the proposed use. This juxtaposition with existing residential dwellings surrounding is not typically seen, however the facility is a vital piece of infrastructure within a functioning Marina. It has been widely acknowledged that this facility is to be located in this area under the Concept Approval and the Marina consent. Notwithstanding the industrial nature of this development the visual impact on surrounding views is acceptable and consistent with the Concept Approval.

4.3 Section 4.15(1)(c) - Suitability of the site

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

- a. The Concept Plan identifies the site as a marina commercial use;
- b. The buildings proposed are of an appropriate scale and design within the precinct A for the uses proposed;
- c. There are no contamination issues that would preclude the proposed land use on this site subject;
- d. The flooding hazard to the land is appropriately managed.
- d. The proposal is consistent with the provisions of the Concept Plan and the Design Guidelines for Precinct A.

The development site is a key location within the marina. The building design is suitable for this location and the proposed uses. The issue of acoustic impact is still outstanding however

Council considers that this can be managed by suitable construction and management plans, this issue is not seen as fatal to the suitability of the site and therefore the site is suitable for the development.

4.4 Section 4.15(1)(d) - Public Submissions

No submissions received.

4.5 Section 4.15(1)(e) - Public interest

The proposal is generally consistent with the Concept Plan Approval and all other relevant policies, subject to conditions of consent. The proposal will provide a development with suitable facilities to service the Shell Cove Marina.

Potential impacts of the development have been identified and addressed with the exception of noise impact.

A recommendation regarding the public interest will be put to the Panel upon satisfactory conclusion of the outstanding issues.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment as required by the EP&A Act and outlined below in table 6.

There are no outstanding issues arising from these referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) N/A			
Referral/Consultation Agencies			
Endeavour Energy	SEPP (Transport and Infrastructure) 2021 S2.48	Endeavour Energy have reviewed the application and provided conditions.	Yes (conditions recommended)
Sydney water	Classification of development triggers requirement for Sydney Water advice to be sought.	Sydney Water has reviewed the application based on the information supplied and has provided conditions to assist in planning the servicing needs of the proposed development.	Yes (conditions recommended)
Integrated Development (S 4.46 of the EP&A Act)			
NSW Environmental Protection Agency	Clause 42 of the Protection of Environment Act 1997	The EPA has requested additional information on the proposal on several occasions, with the most recent EPA request dated 2 August 2024. In response to that request, the applicant	Yes (General Terms of Approval provided)

		provided updated information on 17 October 2024. Considering the extended process to date, the EPA provided draft conditions to the applicant on 11 November 2024 and subsequently met with the applicant, Council and the licensee on 25 November to discuss those draft conditions. The EPA has considered all the updated information and determined that it is able to issue General Terms of Approval for the proposed application. The General Terms of Approval for the proposal are provided in the recommended conditions included as attachment A of this report.	
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5.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined table 7.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Recommended conditions have been included within attachment A.	Yes (conditions)
Public Food and Health	Council's Public Health Officer has reviewed the proposal and has provided a conditionally satisfactory referral response. Conditions included within attachment A.	Yes (Conditions)
Waste	Council's Waste officer has reviewed the proposal and raised no objection.	Yes (conditions)
GIS	Council's GIS Officer has reviewed the proposal and has raised no objection.	Yes
Contributions	Council's Contributions Officer has reviewed the proposal and has provided a conditionally satisfactory referral response. Condition included within attachment A.	Yes (condition)
Community Life	Council's Community Life Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Recommended conditions have been included within attachment A.	Yes (conditions)
Assets	Council's Assets Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Recommended conditions have been included within attachment A.	Yes (Conditions)
Environment	An acoustic consultant has reviewed the application and provided advice regarding noise mitigation. Recommended conditions have been included within attachment A. Council's Environment Officer has reviewed the application and provided advice regarding acid sulphate soils management, de-	Yes (conditions)

	watering, contamination. Recommended conditions have been included within attachment A.	
Flooding	Councils 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.	Yes (Conditions)

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

5.3 Community Consultation

The proposal was notified in accordance with the Shellharbour Community Participation Plan 2021 from 17 November 2023 until 18 December 2023. The notification included the following:

- Site notice placed on the site;
- Notification letters sent to adjoining and adjacent properties within a 100 metre radius – 179 letters in total sent;
- Notification on the Council's website.

The Council received no submissions.

6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

6.1 Noise Assessment

The proposed development adjoins existing dwellings to the south and west of the site and approximately 68 metres from dwellings to the east, across the existing boat ramp car park. The application has been supported with an Acoustic Report and Plan of Management which has been reviewed by an external acoustic consultant on behalf of Council with advice as follows:

The acoustic report has correctly identified sensitive receiver buildings located to the west, south and east. In lieu of conducting noise monitoring to establish noise emission criteria for the project, the acoustic report has adopted internal design levels, and external targets for the assessment of operational and mechanical noise to the neighbouring sensitive receivers.

The adopted internal and external noise objectives align with the approved noise generating criteria as determined within the Shell Cove Waterfront Precinct Acoustic Management Plan. It is our opinion that the criteria contained within the Shell Cove Waterfront Precinct Acoustic Management Plan are higher than would be expected for an area such as this.

The noise criteria used have also been questioned by the Environmental Protection Agency (EPA) and additional information requested from the applicant. An amended noise assessment has been submitted by the applicant which has been reviewed and forwarded for assessment to the EPA.

The acoustic assessment recommends suitable acoustic mitigation measures and management measures for the operation and the EPA has issued General Terms of Approval, as included in the recommended conditions included as attachment A of this report. .

Resolution: Subject to the General Terms of Approval as issued by the Environmental Protection Agency dated 05 December 2024 no objections raised.

6.2 Flood Impact

The land-use is categorised as “commercial”. The site is not impacted by the 1%AEP flood event, and exhibits negligible affection during the Probable Maximum Flood (PMF) event to the northern alignment. A site-specific Flood Report provided by Advisian Worley Group dated 26 July 2023, titled Shell Cove Boat Harbour Precinct: The Boatyard – Boat Maintenance Facility Flood Assessment provides a Flood Planning Level (FPL) of 2.8 m AHD.

Equipment located below this level should be flood proofed accordingly as per A9.8 – Flood Compatible Materials from the Shellharbour Development Control Plan. It is noted that habitable floor areas are situated above the FPL. Evacuation and carparking requirements are satisfied as per the Shellharbour Development Control Plan – Appendix 9.

Resolution: Subject to recommended conditions (as below) no objections raised.

~Flooding Planning Level

*The Flood Planning Level (FPL) (1% AEP + 500mm Freeboard) for this site is RL 2.8m AHD
The development shall comply with the following restrictions:*

- a. All habitable floor levels shall be equal to or greater than the FPL,*
- b. Floor levels of lower workshop, wash bays and storage areas to be as close to the FPL as practical. Where they are below the FPL, all structures to have flood compatible components up to and including the FPL in accordance with Appendix 9 of Shellharbour City Council’s Development Control Plan,*
- c. An IEAust NER Structural Engineer’s certificate certifying that structures are designed to withstand forces of floodwaters, debris and buoyancy up to and including the FPL is to be submitted with the Construction Certificate Application.*

Condition reason: *To minimise any possible adverse environmental impacts of the proposed development.*

~Flooding Survey Certification

A survey certificate, signed by a Registered Surveyor, shall be submitted for approval when the formwork for the main floor area is completed. This certificate shall certify that the main floor and any habitable floor levels shall be constructed at or above the Flood Planning Level R.L 2.8m AHD.

Condition reason: *To minimise any possible adverse environmental impacts of the proposed development.*

~Flood Emergency Response Plan

Before the issue of an Occupation Certificate a Flood Emergency Response Plan is to be prepared by a practicing engineer with experience in Floodplain Risk Management, that details;

- a. local flood levels, depths, duration, timing, extents, building floor levels and their relationship to local flood levels,*
- b. closest PMF refuge areas and safe evacuation routes (both internal and external to site),*
- c. possibility of over floor flooding and expected depths,*
- d. possibility of local roads being closed due to flooding,*
- e. the need and capability for occupants to wade out or use a vehicle to escape rising flood water,*
- f. access and egress availability for emergency services,*
- g. consideration of local Emergency Plans and Council adopted Flood Study recommendations,*
- h. Emergency service contact information (SES, Police, Ambulance, Hospital etc.).*

The plan is to be submitted to the Certifier for approval and kept on site at all times.

Condition reason: *To minimise any possible adverse environmental impacts of the proposed development.*

7. Points Raised During Panel Briefings

The following points were raised during the Panel briefing held on 28 November 2023 with Council comments below as follows:

7.1 Size and type of boats to be stored on site

Council comment: The facility will hold a maximum of 120 vessels. The boats stored would mostly comprise motorboats ranging from 4-8 metres.

7.2 Difference between the Concept Approval and LEP permitted heights

Council Comment: Under the transitional provisions, environmental planning instruments will apply but only to the extent that they are consistent with the approved Concept Plan. The permitted height under the Concept Approval is a maximum of 15 metres, with a section to the south of the site including a maximum of 10 metres. The Shellharbour Local Environmental Plan 2013 identified the maximum height limit for part of the site as 18 metres with part of the site as 11 metres.

7.3 Frequency, timing, and operation of the boatlift

Council Comment: Council has considered this issue in detail in section 4.2 of this report.

7.4 Landscaping opportunities along the promenade to soften the interface

Council comment: The applicant advised that due to the frequency of movement of the boatlift, the practicality of landscaping in this location would be problematic. Additional sections of landscaping have been added to the north west corner of the site, sections of the northern boundary and around the car park areas. It is acknowledged that the industrial nature of the use reduces the areas that can be sacrificed to landscaping and the small improvements included in the amended landscape plan are seen as an improvement on the original plans.

7.5 Pedestrian wayfinding within site and into the building.

Council comment: In addition to this suitable signage has been required by recommended condition to ensure that pedestrians can move safely and efficiently around the site and immediate area.

7.6 The visual impact assessment from the immediate neighbourhood.

Council comment: A visual impact assessment has been submitted in support of the application which includes the following conclusions:

the proposed development:

- *is generally within the Concept Plan (Mod 1) envelopes and achieves a compatible and consistent form with the intended future character for the site and Precinct A established by the Concept Plan (Mod 1);*
- *will not result in any unreasonable visual impact on the public domain;*
- *will not increase view loss to undifferentiated ocean in parts of the views looking north across the site from existing residential areas that are sufficiently elevated to have views over and through the site; and*
- *will not create significant changes in the composition of views relative to the built forms that have been approved in the Concept Plan (Mod 1).*

The visual and view impacts of the proposed development are consistent with those considered during the assessment of the Concept Plan (Mod 1) and are acceptable

Further discussion of the visual impact of the development has been included in section 4.2 of this report.

The following points were raised during the Panel briefing held on 16 July 2024 with Council comments below as follows:

7.7 The EPA is seeking further information, which was provided by the applicant on 15 July 2024 and is being referred to the EPA for review/comment.

Council Comment: The applicant provided updated information on 17 October 2024 in the form of a noise assessment report reference 256688 AC42 version 7. The EPA provided draft conditions to the applicant on 11 November 2024 and subsequently met with the applicant and Council to discuss these draft conditions. The EPA has considered all the updated information and determined that it is able to issue General Terms of Approval for the proposed application. The GTA's have been included in the recommended conditions included as attachment A of this report.

7.8 The panel advised that it was unlikely that a determination briefing would be required and the matter should be finalised by circulation of papers.

Council Comment: Council submit this assessment report and associated attachments for Panel to enable a determination of this application.

7.9 The panel is generally satisfied with the application subject to the remaining issues raised by the EPA being resolved and the EPA's GTAs being issued.

Council Comment: Comments are noted and as detailed above GTAs from the EPA have been included in the recommended condition as attachment A.

7.10 Council advised that the promenade would only be closed for a maximum of 10 minutes at any one time for boats to be moved in and out of the facility. There is an alternative route for people to walk around during this time if need be. However, it was noted that the location of the facility at that point of the promenade was not a key pedestrian focal point. Council advised the promenade would be closed at random and not at set times throughout the day. Council advised that the operation of the facility in relation to the closure of the promenade could be reviewed. The panel advised there may be utility in having a review mechanism in the plan of management to make necessary improvements (if any) once operation had commenced.

Council Comment: The closure of the public boardwalk has been addressed in section 4.2 of this report. Suitable condition recommended which will be open to review once operation of the facility is underway.

8. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, and the key issues identified in this report, it is considered that the application can be supported.

The proposed development will enhance the Shell Cove Marina for visitors and residents with facilities for boat owners, café and employment opportunities. The development has been designed to respect and enhance the coastal character of the area.

It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at attachment A. The one outstanding issue relating to noise impact has been addressed and resolved with the receipt of General Terms of Approval from the EPA.

9. RECOMMENDATION

That the Development Application PPSSTH – 310, DA0459/2023 for the Boat Maintenance Facility at 5 Maritime Drive, Shell Cove be approved pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at attachment A.

The following attachments are provided:

Attachment A:	Draft Conditions of consent
Attachment B:	Architectural Plans
Attachment C:	Landscape Plans
Attachment D	Noise assessment report version 7 dated 17.10.2024
Attachment E	Plan of Management
Attachment F	Background to planning framework to Shell Cove Boat Harbour
Attachment G	Concept approval compliance table
Attachment H	SLEP 2013 Compliance table
Attachment I	Design Guidelines Compliance table
Attachment J	SDCP compliance table

Attachment K	SEPP (Industry and Employment) 2021 Schedule 5 compliance table
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