

PLANNING PANEL (SOUTH)
SUPPLEMENTARY REPORT

Panel Reference	PPSSTH-310
DA Number	DA0459/2023
LGA	Shellharbour City Council
Proposed Development	Boat storage and maintenance facility, office and cafe
Development Characterisation	Boat Building and Repair Facility Commercial Premises Food and Drink Premises Car Parking
Location	Lot 1061 DP 1253523 5 Maritime Drive, Shell Cove Alternative address 15 Maritime Drive, Shell Cove
Applicant/Owner	Australand Corp. (Frasers Australia) - Applicant Shellharbour City Council (landowner)
Date of DA lodgement	3.11.2023
Report prepared by	Madeline Cartwright, Principal Town Planner – Statutory Planning
Date of report	11 December 2024

Purpose of this report

The purpose of this report is to provide the Regional Planning Panel (South) (the Panel hereafter) with additional information as detailed in the email received from the Planning Panels, Panel and Housing Delivery Team dated 11.12.2023.

1. *Assessment of noise impacts*

The Panel noted that the assessment report relies almost solely on the EPA's GTAs in its consideration of noise impacts.

Please provide an addendum to the assessment report which demonstrates:

- a. Council has turned its mind to the acceptability of noise impacts on adjoining residential receivers and the adequacy of existing and proposed noise management measures (as required by the Environmental Planning and Assessment Act, 1979);*

Council Response:

- a. Council has conducted a thorough assessment of the acceptability of noise impacts on adjoining residential receivers. An external acoustic consultant has been utilised by Council during the assessment process to ensure that the technicalities of this issue are considered in full with advice received recommending support of the development and conditions as included in attachment A of this report. The subject development application (DA) is supported by a noise assessment report (version 7) which includes modelling results for all affected residential receivers. The report indicates that compliance with established noise criteria is achieved with the exception of lot 1021, 1022, 6604, Precinct H and the Nautilus apartments. Figure 1 below details the locations of these lots in relation to the subject site.

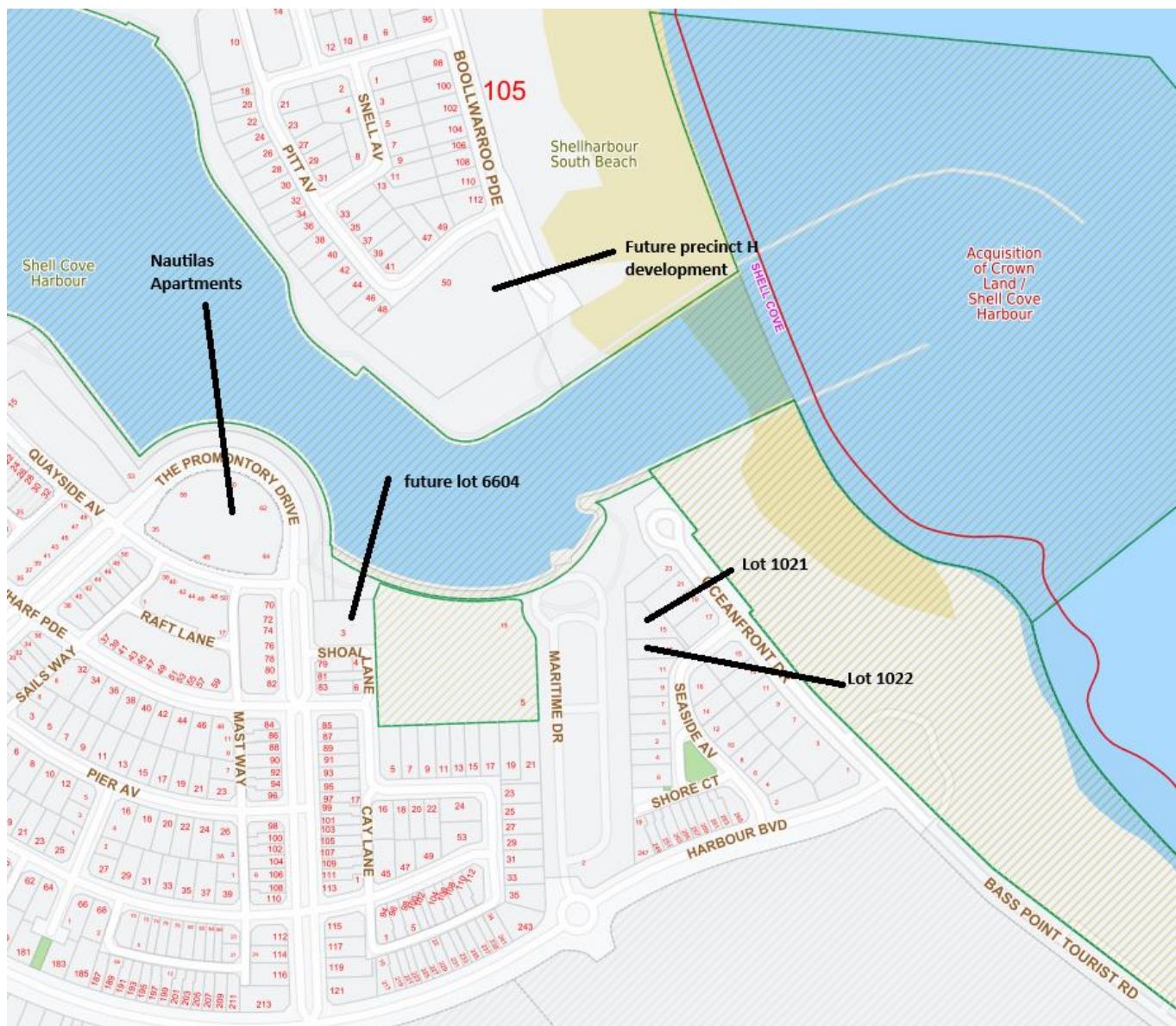


Figure 1 - location of lots which will exceed noise criteria

The noise impact of the Boat Maintenance Facility was considered during the assessment of the creation of lots 1021, 1022 and future lot 6604 and the Nautilus apartments and suitable restrictions on title were included to ensure noise mitigation is included on construction (including 6mm glazing and mechanical ventilation in certain rooms). The submitted noise assessment report states that the measures included on title will be sufficient to ensure that bedrooms and living areas in these dwellings will achieve the required internal noise criteria. For each lot the restrictions on title relating to acoustic mitigation have been conditioned within the relevant Notice of Determination.

The future development within precinct H across the marina has not yet been subject of a DA and will need to ensure that suitable acoustic measures are in place to meet any relevant internal noise criteria for all surrounding uses including the Boat Maintenance Facility.

The acoustic impact of the development will be mitigated by a combination of measures including the design of the built form proposed, operational controls and measures at the noise receivers as detailed. This approach is considered by Council as acceptable given the location of the site and the adjoining residential dwellings which is a layout pre-determined by the Concept Approval.

- b. Explain why the EPA's recommendation that Council impose an additional condition of consent for the preparation of a Noise Management Plan (which incorporates all the recommendations in condition 35 of the GTAs issued by the EPA) has not been adopted.**

Council Comment:

The EPA's recommendation to require a Noise Management Plan has now been adopted by Council and included as condition 56 of attachment A, as follows:

57. Noise Management Plan

Before the issue of an occupation certification a noise management plan is to be prepared in accordance with the requirements of condition 35 of the Environmental Protection Agency and submitted to the Executive Director Planning and Environment, Shellharbour City Council.

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

Condition 57 – Operational Plan of Management has also been amended to reflect the Noise Management Plan and ensure that the facility is operated in accordance with these documents as follows:

56. Operational Management Plan

Before the issue of an occupation certificate the approved Plan of Management is to be amended and submitted to Council for approval. The following requirements are to be included in the amended Plan of Management:

- a. Length of time per hour pedestrian pathway is to be closed in accordance with the relevant condition of this notice,*
- b. Process for reviewing plan of management 6 months after commencement of operation and submitting reviewed plan to Council for approval;*
- a. Graffiti removal is to occur within 48 hours of reporting,*
- c. Roles and responsibilities of the BMF operator and staff;*
- d. Noise Management Plan to be prepared in accordance with the relevant condition of this notice,*
- e. Community liaison and compliant procedure; and*
- f. Waste collection procedure (i.e. daytime collection only).*

The premises are to be managed in accordance with this plan of management in perpetuity.

- c. Provide confirmation that the statements in section 4.5 and 8 of the assessment report stating that noise impacts remain an outstanding issue can be struck out.***

Council Comment:

The sections noted have been amended in the assessment report. The noise impacts of the development have been resolved as discussed.

- d. Confirm that the project is in the public interest.***

Council Comment:

The approval of the DA is considered to be in the public interest and relevant wording has been included in section 4.5 of the report as follows:

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 and relevant conditions recommended to mitigate and manage these impacts as included in attachment A of this report.

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

- 2. Should the EPA's recommendation for the preparation of a NMP be adopted in full as a new condition, amend Condition 56 to remove any duplication in noise mitigation measures.**

Council Comment:

Condition 56 has been amended as detailed above.

- 3. To avoid any conflict of interest in the regulation of the development post approval, conditions which require endorsement/approval by Council (i.e. "to the satisfaction of Council") should instead refer to an appropriately nominated position (e.g. Director of Planning) throughout the draft instrument.**

Council Comment:

Conditions as detailed below have been amended to name the Executive Director Planning and Environment Shellharbour City Council to avoid future conflict of interest.

Conditions amended:

Condition 10 – Amendments to approved plans
Condition 13 – Acid Sulphate Soils Management Plan
Condition 56 – Operational Plan of Management
Condition 58 – Acoustic Verification Report
Condition 64 Operating Hours
Condition 65 – Closure of Public Boardwalk
Condition 70 Acoustic Compliance Assessment.

- 4. Could you please confirm that the criteria for referral to the Panel as a Regionally Significant Development Application under Schedule 6 of SEPP (Planning Systems) is:**
 - a. Council related development over \$5M (Clause 3); and/or**
 - b. General development >\$30M (Clause 2).**

Council Comment:

The DA is referred to the Regional Planning Panel for determination in accordance with section 2.19(1) and clause 2 of Schedule 6 of SEPP Planning Systems as the development has a capital investment value of over \$30 million. In addition to this Council has an interest in the DA as land owner of the site.

- 5. Confirm that the following statement on page 26 of the Council assessment report is not relevant and can be struck out.**
"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."

Council Comment:

This statement was included in error and has been removed and the following sentences relating to how the development is consistent with the aims of the Shellharbour Local Environmental Plan 2013 included:

The proposal is consistent with these aims as the proposal encourages employment, services and recreational opportunities and will support the existing marina development.

6. Further explain the following statement in section 7.6 of the Assessment report.

“the development: 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;”

Council Comment:

This statement was quoted from the conclusions of the Visual Impact Assessment (VIA) submitted by the applicant in support of the development. The visual impact assessment provided has considered impact on views as established by the Concept Approval and additional locations more local to the subject site. The proposed bulk and scale of the development is considered appropriate for the site and is consistent with the Concept Approval and the visual impact of the development will not have any additional impact beyond those already considered under the Concept Approval.

The statement relates to views of the ocean from residential dwellings located south of the subject site and the report concludes that there will be no additional view loss of the ocean as a result of the development beyond what was anticipated within the Concept Approval. The VIA considers the building envelope as included in the Concept Approval for the site and shows that the built form as proposed will not impede the views of the existing dwellings to the south beyond the acknowledged impact as part of the Concept Approval.

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 as amended and included as attachment A of this report.