

PLANNING PANEL (SOUTH)

ASSESSMENT REPORT SUMMARY AND RECOMMENDATION COVER SHEET

Panel Reference	PPSSTH-34
DA Number	DA0058/2020
LGA	Shellharbour City Council
Proposed Development	Residential Flat Building containing 64 apartments and basement parking, swimming pool and landscaping works.
Development Characterisation	Residential Flat Building
Location	Lot 5071 DP 1238340 15 Cormorant Way SHELL COVE NSW 2529 (Precinct E2).
Applicant/Owner	Australand Corporation (NSW) Pty Ltd & Shellharbour City Council (landowner)
Date of DA lodgement	27 February 2020
Public Notification Period	13 March 2020 – 13 April 2020
No. of Submissions	Nil
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Clause 3 – Council related development over \$5 million Development that has a capital investment value of more than \$5 million. Council is the owner of any land on which the development is to be carried out. The proposed development has a CIV of \$ 37,622,254.
List of all relevant s4.15(1)(a) matters	• SEPP (State and Regional Development) 2011 • SEPP 55 – Remediation of land • SEPP 65 – Design Quality of Residential Apartment Development. • SEPP (Building Sustainability Index – BASIX) 2004 • Shell Cove Boat Harbour Concept Plan 07_0027 MOD 1 • Shellharbour Local Environmental Plan 2013 • Shell Cove Design Guidelines for Medium Density Housing and Apartments – Precinct E2 • Shellharbour Development Control Plan 2013 • Likely impacts • Site suitability • Any submissions • Public Interest.
Report prepared by	Madeline Cartwright, Principal Planner – Development Assessment
Signature	
Report Endorsed by	Grant Meredith, Group Manager City Development
Signature	
Report endorsed by	Melissa Boxall, Director Community and Customers
Signature	
Date of report	21 September 2020

Attachment 1 – Recommended Conditions

Attachment 2 – Proposed Plans

Attachment 3 – Site Photos

Attachment 4 – Background to Planning Framework for Shell Cove Boat Harbour and Marina Precinct

Attachment 5 – Design Review Advisory Panel Comments

Attachment 6 – Concept Approval Compliance Table

Attachment 7 – Apartment Design Guidelines Compliance Table

Attachment 8 – Local Environmental Plan 2013 Compliance Table

Attachment 9 – Guidelines for Medium Density Housing and Apartments - Precinct E2 Compliance Table

Attachment 10 - Development Control Plan Compliance Table

Attachment 11 – Shadow Diagrams and Cross Ventilation Plans

Attachment 12 – Storage Plans

Attachment 13 – Referrals Undertaken

1. Purpose of this report

The purpose of this report is to seek the determination from the Planning Panel (Panel hereafter) for a Development Application (DA) submitted to Shellharbour City Council (Council) for the construction of a residential flat building consisting of three buildings.

Building A (most easterly tower) will be four (4) storeys high, building B (middle tower) will be three (3) storeys high and building C (most westerly building) will be three (3) storeys high. The towers will contain a total of 64 residential apartments and associated amenities including swimming pool, landscaping and basement parking, **figure 1** below details the building layout proposed.



Figure 1 – Building Layout

The application is being referred to the Panel due to the proposal having a capital investment value of \$37,622,254. Council is the owner of the land on which the development is to be carried out and the Shell Cove Project is a venture between Shellharbour City Council and the developer, Frasers Property Australia.

In this regard, the development is classed as Regionally Significant development under State Environmental Planning Policy (State and Regional Development) 2011. Under Part 4, Division 4.2, Section 4.5 (b) of the *Environmental Planning and Assessment Act 1979* (the Act hereafter) the Regional Planning Panel for the area (Southern) is designated as the Determining Authority.

The application was lodged as Integrated Development under section 4.8 of the Act as requiring a controlled activity approval under the *Water Management Act 2000*. The application was referred to the Natural Resources Access Regulator (NRAR) and confirmation was received that a controlled activity approval was not required and no further assessment by NRAR necessary.

2. Background to the Development Site

The site was created by DA0118/2017 which was approved by the Panel in March 2018. This DA also included relevant road and drainage infrastructure. **Figure 2** below details the approved subdivision plan with proposed site subject to this DA highlighted in yellow.

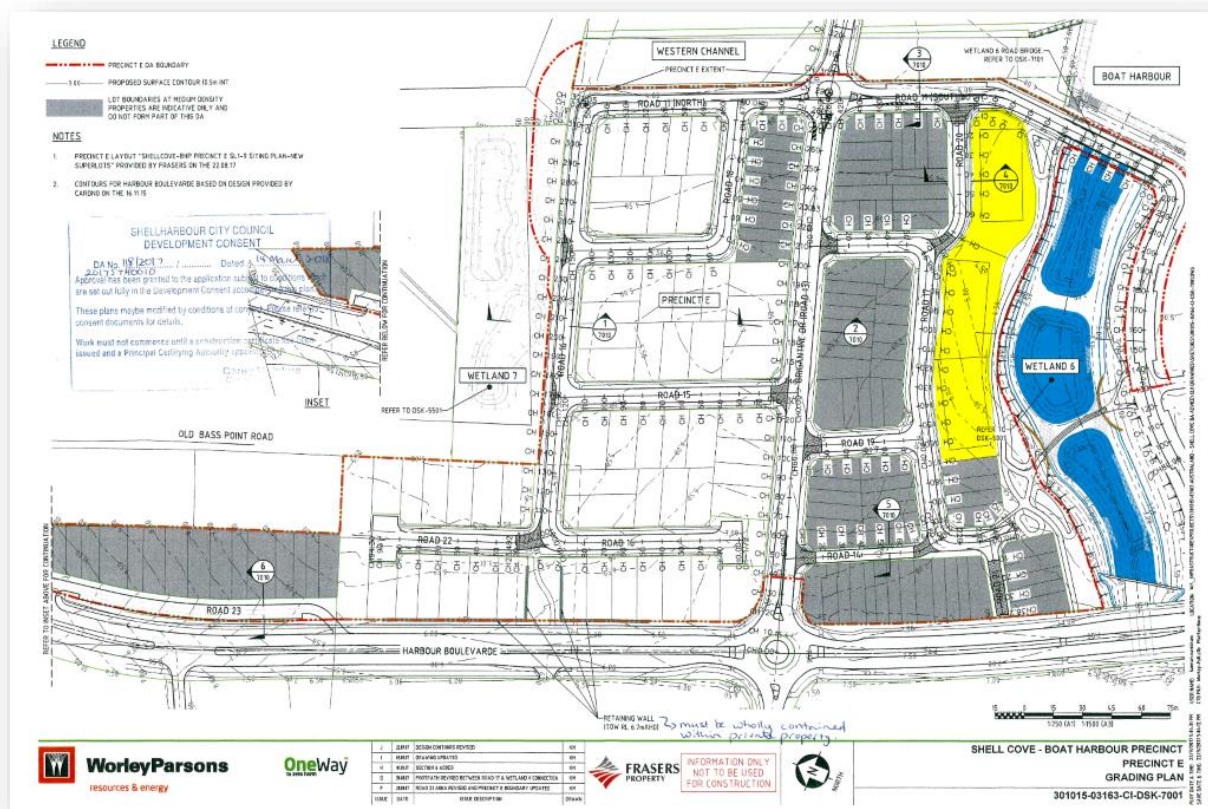


Figure 2 – DA0118/2017 – approved subdivision plan

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

Attachment 4 details the background of this area and provides context for the history of the Shell Cove area and the application site.

3. Description of Development

The proposed development comprises of:

- Site preparation works including bulk excavation;
- Construction and use of two (2) three storey and one (1) four storey residential flat building, over a shared basement, comprising:
 - 64 apartments with the following mix:
 - 6 x one bedroom apartments;
 - 33 x two bedroom apartments; and
 - 25 x three bedroom apartments.
- Construction and use of one residential basement level of car parking with a single access point from Cormorant Way, providing for:
 - 124 spaces comprising:
 - 93 resident car spaces, including:
 - 21 stacked car spaces;
 - 13 adaptable car spaces;
 - 31 visitor spaces.
- Construction of one waste collection loading dock with turning circle;
- Landscaping works including ground level communal open space landscaping;
- Extension/augmentation of services and utilities to the development, and
- Retaining walls on southern boundary adjoining wetlands, with a maximum of 2.25 metres and a minimum height of 0.5 metres.

The site area for the apartment building is a total of 5,354sqm. The proposal does not include subdivision. The subject site is currently vacant.

Figure 3 outlines Precinct E in relation to the wider Shell Cove Concept Approval area.



Figure 3 - location plan

The site lies to the north of the Town Centre (Precinct D) of the Shell Cove development with residential Precinct F to the east. The site has frontage to Cormorant Way and Lapwing Avenue to the northern boundary and Aquatic Drive on the eastern boundary. The site borders the wetlands to the south which includes public pathways. **Attachment 3** includes aerial, site and sales model photos.

To the east of the development site is an approved future public open space with Precinct F (subdivision approved under DA. The Council endorsed Design Guidelines for Precinct F show the area directly adjacent to the future park to be medium density housing.

Precinct E2 is shown below in **Figure 4**.

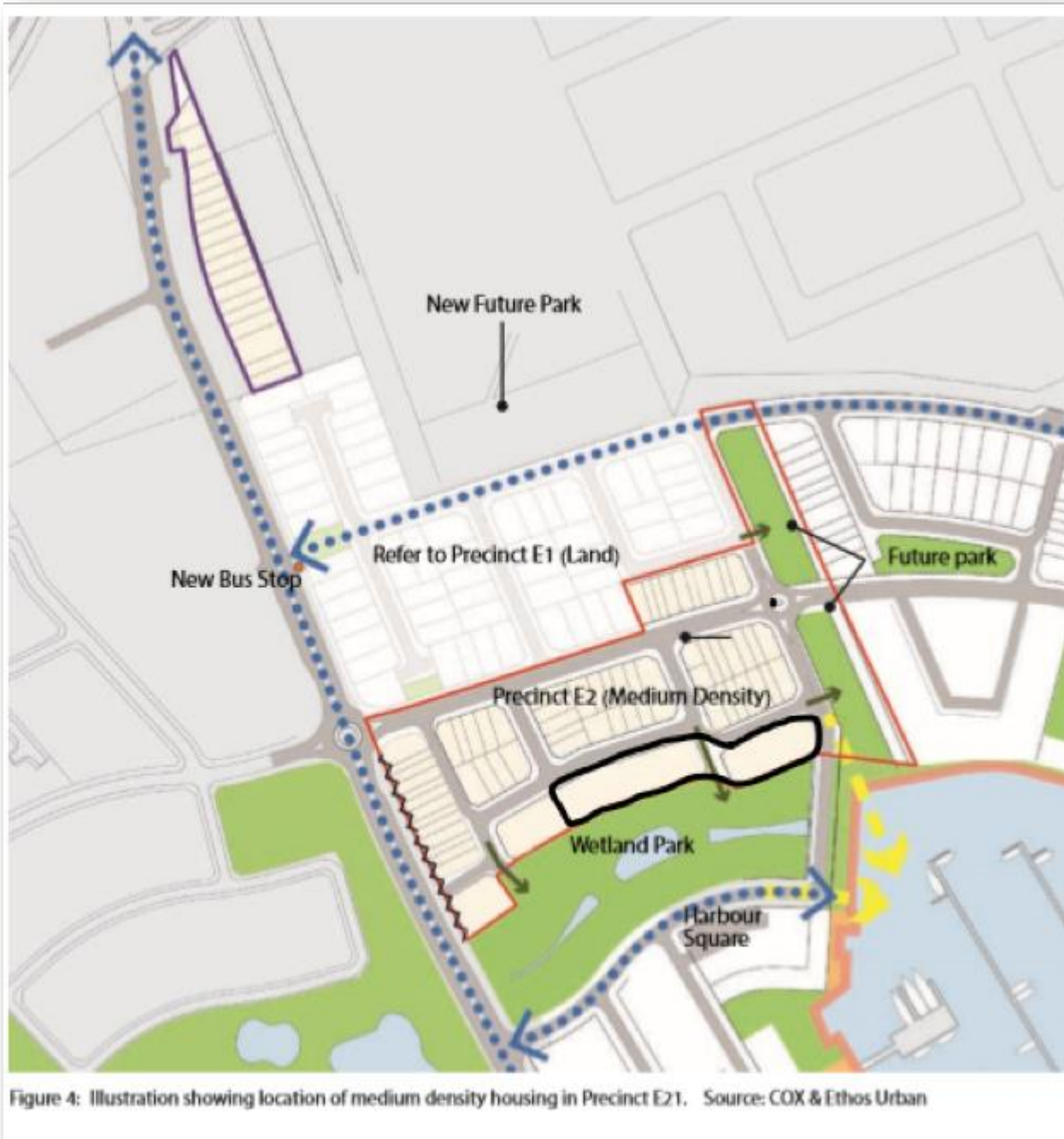


Figure 4 – Location map of Precinct E2 with application site outlined in black.

4. Concept Approval

The Concept Approval was accompanied by a masterplan that sought to establish the characteristics for development within each precinct. The proposed development of apartments is consistent with the Concept Plan Indicative Typologies Plan taken from page 19 of the Shell Cove Boat Harbour Precinct Section 74W Modification dated 8 August 2017 prepared by Ethos Urban, **Figure 5** below.



Figure 5 – Indicative Housing Typologies Plan (application site outlined in red)

In Precinct E the Concept Approval yields are 250-300 dwellings as shown in **Figure 6** below. Precinct E is almost at completion and the total dwellings within the precinct is 226 comprising:

- 58 land lots,
- 9 duplex lots,
- 95 medium density lots, and
- 64 apartments (subject of this application).

The proposed total of 226 dwellings will not exceed the indicative Precinct E maximum of 300 dwellings identified in the yield figure from page 18 of the Shell Cove Boat Harbour Precinct Section 74W Modification, dated 8 August 2017, prepared by Ethos Urban, **Figure 6** below.

The proposed dwelling yield for Precinct E is below the minimum figure provided within **Figure 6**.

In accordance with Schedule 2 Part A – Terms of Approval, Condition 1 the dwelling yield is referred to as up to 1,566 dwellings, there is no requirement for a minimum dwelling yield. The applicant has provided the following justification to address this issue:

There is no requirement in the Concept Approval (Mod 1) to achieve a minimum dwelling target. The dwelling mix and yield nominated for each precinct in the Cox Architecture Urban Design Report (July 2017) is indicative. As stated in the Report (pg.32):

“The analysis undertaken by Cox Architecture has identified the potential for each precinct to accommodate minimum and maximum dwelling targets depending on the dwelling types delivered, consistent with the overall target.”

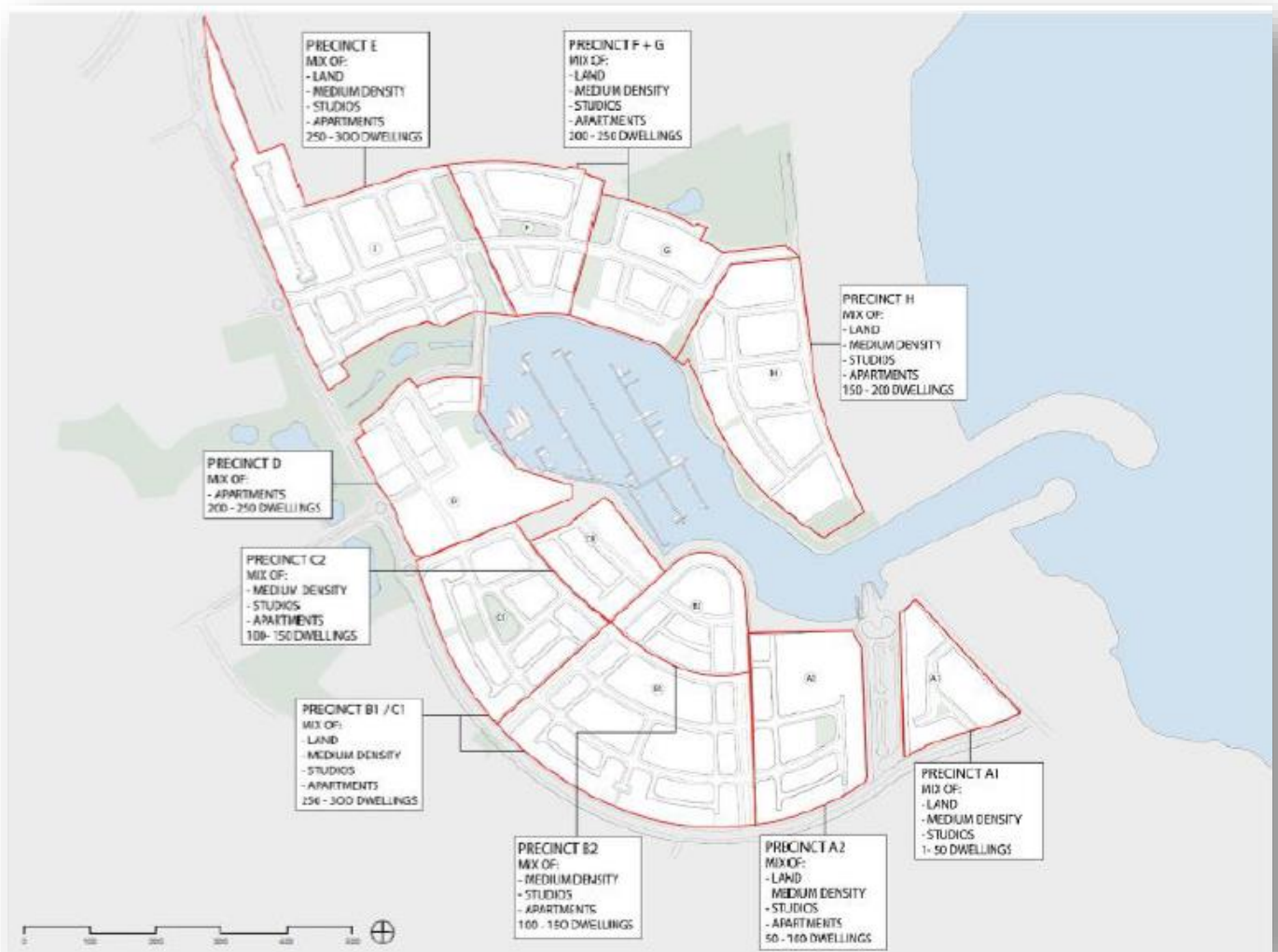


Figure 6 – Dwelling yield figure for Shell Cove Concept Approval Area.

The applicant has provided an updated yield table for each precinct within the Shell Cove Concept Approval area, this is included as **Figure 7** below. The figure of 226 dwellings for precinct E includes the 64 apartments proposed as part of this application.

Precinct	Concept Plan (Mod 1)	Approved Dwelling Numbers	Balance remaining
	Dwelling Range (total maximum 1566)	Dwellings	Maximum Quantity of Dwellings
A1	1 – 50	39	1 – 11
A2	50 – 100	78	1 – 22
B1 – C1	250 – 300	235	15 – 65
B2	100 – 150	116	1 – 34
C2	100 – 150	0	100 – 150
D	200 – 250	45	155 – 205
E	250 – 300	226	24 – 74
F + G	250 – 300	0	250 – 300
H	150 – 200	0	150 – 200
Total	1,566	739	827

Figure 7 – Dwelling Yield Table

The building height plan included in the Shell Cove Boat Harbour Precinct Section 75W Modification (page 20) illustrates the indicative heights for specific Precinct areas. In regard to the portion of E2 (circled) to which this proposal relates permits up to a maximum of 4 storeys in height (16 metres). The proposed development will comply with these height restrictions. **Figure 8** below shows the indicative height plan with heights added to the legend for clarity.



Figure 8 - Approved Building heights in Storeys (application site outlined in black)

Attachment 6 contains a compliance table reviewing this proposal against the Terms of Approval, 'Further Assessment Requirements' and Statement of Commitments. Overall, the development is considered to be generally in compliance with the current Concept Approval.

The proposed development includes one four storey building and two 3 storey buildings. The proposed materials are consistent with the Design Guidelines for Medium Density Housing & Apartments - Precinct E2 (Design Guidelines) and offer a satisfactory interpretation of the coastal palette. The proposed materials and colours have been used to differentiate building elements and articulate the façade. The developments consistency with the Concept Plan is demonstrated within the Architectural Drawings included within **Attachment 2**.

5. Briefing Comments

Briefing advice was sort from the Panel and provided via email on 12 May 2020. The following key issues were discussed by the Panel and responded to accordingly by the applicant:

i. Design quality (response to DRP comments) and justification for departures from Apartment Design Guidelines,

The applicant has provided an Urban Design Report to accompany the application and explain how the design of the development responds to the site context and surrounding area. The development is considered to provide a suitable connection between the low density and medium density dwellings within Precinct E and the higher density development of Precinct D to the south within the Town Centre.

The separation of the development into three buildings allows views through the development site to the Wetlands to the south and from the wetlands to the street. The separation also allows solar access to these areas and the Communal Open Space (COS) for the development.

A detailed response has been provided addressing each comment received as part of the Design Review Panel advice. This is discussed in further detail in section 6 of this report and **Attachment 5**.

The development includes departures from the Apartment Design Guidelines. These departures have been discussed in detail in section 8 of this report, and suitable justification for each departure discussed.

ii. Public Access to underground visitor parking,

Visitors to residents within the development will be permitted access to the basement car park by utilising the intercom located beside the roller door or calling from mobile phones and requesting the resident remotely open the roller door. On-site parking will be restricted to residents or visitors of residents only.

Council considers this to be a reasonable solution to visitor access which is common practice within apartment buildings such as this.

6. Shellharbour Design Review Advisory Panel

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

All comments from the DRP have been suitably addressed by the applicant and area discussed in detail in **Attachment 5**.

7. Section 4.15 *Environmental Planning & Assessment Act 1979*

In determining a development application, a consent authority is to take into consideration matters referred to in section 4.15(1) of the Act as are of relevance to the development the subject of the application:

8. Section 4.15 (1) (a)(i) - environmental planning instruments

i. State Environmental Planning Policy (State and Regional Development) 2011

Schedule 7 Regionally significant development

(3) Council related development over \$5 million.

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

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

The proposal has a Construction Investment Value (CIV) of \$37,622,254 and is on land owned by Council. The area is also part of the Shell Cove Project as a venture between Shellharbour City Council and the developer, Frasers Property Australia. Therefore, the development is classed as Regionally Significant Development. Under Part 4, Division 4.2, Section 4.5 (b) of the *Environmental Planning and Assessment Act 1979* the Regional Planning Panel for the area (Southern) is designated as the determining authority.

ii. State Environmental Planning Policy (Coastal Management) 2018

The aim of this Policy is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- a. managing development in the coastal zone and protecting the environmental assets of the coast, and
- b. establishing a framework for land use planning to guide decision-making in the coastal zone, and
- c. mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.

The application site is not included in the NSW Coastal zone **Figure 9** below indicates this.



Figure 9 – NSW Coastal Zone shown in peach.

iii. State Environmental Planning Policy No. 55 – Remediation of Land

The aim of SEPP 55 is to provide for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or environment and requiring that any remediation work meet certain standards and notification requirements. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated.

A Phase 2 Contamination Assessment by Douglas Partners (2010) was conducted across the entire the Shell Cove Site. The study found some exceedances of the provisional phyto-toxicity based investigation levels (PPILs) of cadmium, mercury, copper and zinc. Also detected but in levels beneath the Health Investigation Levels (HILs) were the OCPs Aldrin, dieldrin, chlordane, DDD, DDE, DDT and heptachlor. These traces were associated with the former golf course. Given these results further targeted site investigations were warranted for specific developments.

Douglas Partners conducted a Targeted Site Investigation on land including the former golf course - Boat Harbour Precinct (Precincts D and E, and Wetland 6), Shell Cove in February 2016. This study characterised the site of the proposed development. The report concluded that the site was suitable for residential development and needed no further investigation or remediation.

Clause 7 of SEPP 55 requires a consent authority to consider whether the land is contaminated and if it is contaminated it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out.

Council has considered whether the land is contaminated and is satisfied that the site is suitable for residential development and no further investigation or remediation is necessary. As a precaution an unexpected finds protocol condition has been included in the recommended conditions in **Attachment 1**.

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

A BASIX Certificate has been issued for the development and relevant conditions requiring the fulfilment of commitments have been recommended, and in this regard, the aims of the Policy have been satisfied. Suitable conditions recommended in **Attachment 1** to ensure compliance.

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

The proposed has been assessed against the nine principles and the Apartment Design Guidelines (ADGs) as detailed in the compliance table included as **Attachment 7**.

a) Principle 1: Context and Neighbourhood Character

The context for the proposal is a master planned urban area identified as Shell Cove Urban Release Area. The site located at the southern edge of Precinct E and acts as a transition between the medium density residential to the north and west to the higher density development of Precinct D – Town Centre, to the south.

The development includes three buildings with adequate separation to allow views from Cormorant Way and Lapwing Avenue through to the public wetland area to the south of the site. Primary views from the site are to the south across the wetlands towards the marina and Town Centre.

The contextual benefits for residents include views of the Marina/Ocean area and the adjoining wetlands to the south and east, the site will benefit from an abundance of Communal Open Space (COS).

b) Principle 2: Built Form and Scale

The built form will provide for apartments that meet the needs of residents in this location, without negatively impacting on the surrounding locality. In addition, the built form is capable of responding to the coastal setting of the area. The height and density of the development is compliant with the Concept Plan with four (4) storeys for Building A, three (3) storeys for Building B and Building C.

Building A (four storeys) will be to the north of the site in the most prominent corner with Buildings B and C (three storeys) to the west of the site stepping down to the medium density residential dwellings (two storeys and low density residential (two and single storey).

The rectangular shape of the site allows the south facing apartments of all buildings to have views of the wetlands adjacent to the site. Building A apartments on the southern and eastern side will also have views of the marina. The building separation will provide areas for communal open space within the development and views through the development.

The proposal has benefited from a rigorous assessment process, including pre-lodgement advice and Design Review Panel. This process resolved that the bulk and scale of the development was suitable for the site and the prominent position of the site within the context.

c) Principle 3: Density

The density proposed includes a mix of apartment types ranging from 1, 2 and 3 bedrooms with a variety of sizes and amenities including the number of bathrooms in each apartment. The dwelling yield proposed does not exceed the maximum limit for Precinct E as outlined within the Concept Plan.

The development breaks down into

- 6 x 1-bedroom apartments, representing 9% of the total dwelling type
- 33 x 2-bedroom apartments, representing 52% of the total dwelling type
- 25 x 3-bedroom apartments, representing 39% of the total dwelling type

Of the 64 apartments, 7 apartments (10.9%) are proposed to be designed in accordance with *Australian Standard 4299-1995 Adaptable housing*, these apartments and an additional 7 (10.9%) of the total apartments also incorporate the Liveable Housing Design (LHD) Guidelines silver level universal design features.

The submitted adaptable floor plans and details of the COS have been assessed within the submitted Disability Access Report reference J000353 dated 29/01/2020. This report concludes that plans have the capacity to meet the performance requirement of the Disability (Access to Premises-Buildings) Standards 2010 and relevant parts of the Building Code of Australia (BCA) 2019 through the deemed-to-satisfy provisions, and that 10% of the dwellings meet Class C essential Australian Standard 4299 Adaptable housing (1995) and 10% of all dwellings will achieve the Silver Standards of the Liveable Housing Design Guidelines (Liveable Housing Australia 2015).

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

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

The nominated 14 apartments have been shown to meet the Silver level LHD Guidelines in the submitted Disability Access Statement.

d) Principle 4: Sustainability

The provision of 64 apartments on the site is consistent with the Concept Plan, **Figure 6** above details the dwelling yields for each precinct. Precinct E has a maximum dwelling yield of 300. The development of Precinct E is almost complete and the yield totals 226 dwellings, including the 64 apartments proposed. This is below the maximum dwelling yield for the precinct. Notwithstanding the Concept Approval does not mandate the requirement to achieve the minimum dwelling yield for each precinct.

The apartments have been designed having regard to thermal performance, provision of reasonable amenity to occupants and therefore an efficient use of energy supply. The inclusion of a break between the buildings provides visual relief to the massing of the development from views from the wetlands to the south and from Cormorant Way to the north and provides solar access to the COS.

The submitted BASIX and NatHERS assessments detail that development will achieve the water target of 40% and thermal comfort achieves BASIX limit. The energy usage of the proposed apartments exceeds BASIX limit of 25%, this level is calculated on the efficiency of fixed appliances that will be used.

All apartments also have solar control such as overhangs, balconies and blade walls to provide shading in summer. The proposal exceeds the ADG requirement of apartments which will be naturally cross ventilated, a total of 42 apartments (65%) will be naturally cross ventilated.

The use of low maintenance materials will be suitable for the coastal location of the development. Roof mounted PV panels will provide sustainable energy. Internally, low energy and low water use plant,

appliances, lights and fittings have been selected. The proposed landscaping includes dense planting to provide micro-climates for local wildlife and insects.

e) *Principle 5: Landscape*

The landscape design provides a variety of areas for residents, with abundant planting and a swimming pool, shade structures and paved areas.

The COS areas provide access to the public wetlands to the south and public open space within the wider Shell Cove development.

This includes a 5km waterfront boardwalk, the Town Centre Park, approximately 120 metres to the south of the site, additional wetlands with pedestrian and cycle ways, to the west of the site across Harbour Boulevard (approximately 130 metres). The Shell Cove area includes outstanding pedestrian walkways throughout the entire concept approval area which facilitates access to the public open spaces throughout the area

In this regard, the COS internal of the site does not meet the required minimum area equal to 25% of the site. The proposal provides 1,065sqm which equates to 23.7%.

The proposed variation is considered minimal and is acceptable as follows:

- (i) The COS areas are consolidated into usable, accessible and attractive areas, well positioned between each building,
- (ii) The minimum dimensions of the COS areas (3 metres) are compliant with Objective 3D-1 of the Design Guidelines,
- (iii) Deep soil areas are included within the COS and suitable planting has been proposed to enhance and hard landscaped areas, and
- (iv) The wider precinct of the water front development provides a high level of varied public open space that supplements the 1.3% variation.

A deep soil zone of 445m² (8% of site area) has been provided as shown in **Figure 10** below.

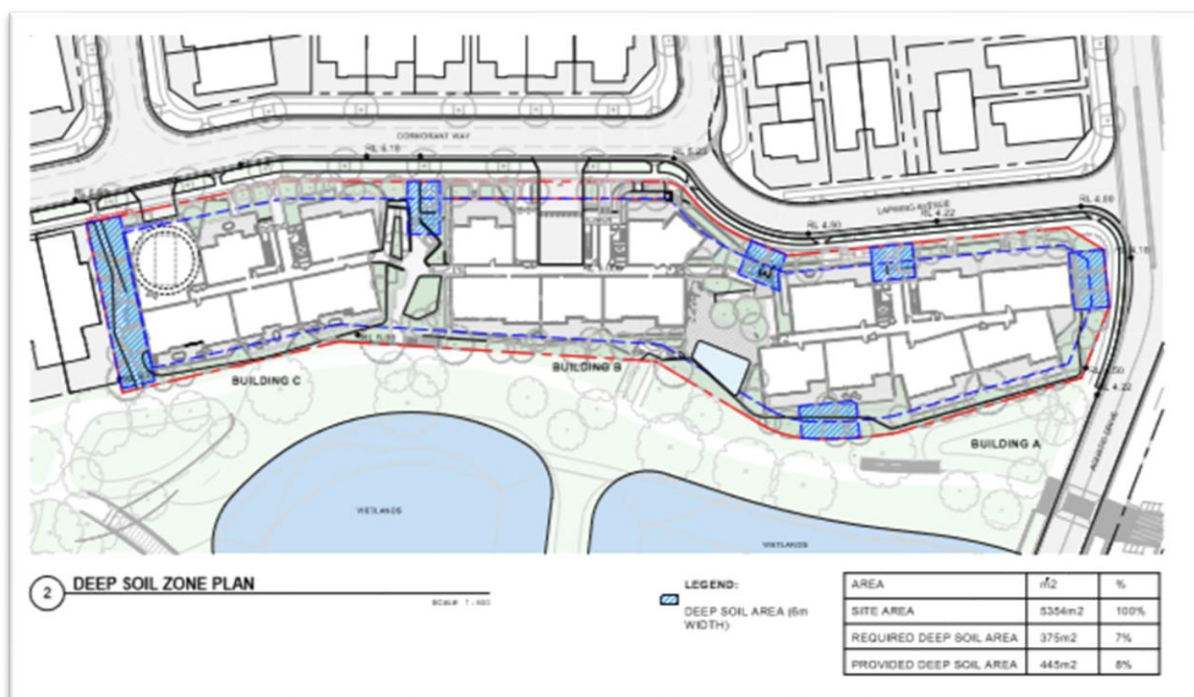


Figure 10 - Deep Soil Zone (shown in blue)

This deep soil zone meets the required minimum dimensions of 6 metres and is distributed proportionally around the development to provide areas of significant planting throughout the COS.

The COS area will have sufficient soil depth to allow for the planting of large trees that will improve residential amenity outlook from the apartments and encourage use of the COS areas in summer months.

f) Principle 6: Amenity

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

The applicant has undertaken a solar access analysis of the proposed development on 21 June. Direct solar access is achieved for a minimum of three hours to the living rooms and private open spaces of 41 apartments (64%) between 9am – 3pm on 21 June, the ADG requirement is 70% of apartments.

The proposed development also includes 17 apartments (26.5%) that receive no direct sunlight mid-winter. These south facing apartments will be oriented with views over the wetlands and towards the marina and Shell Cove Town Centre. The ADGs outline that achieving the design criteria may not be possible where significant views are oriented away from the desired aspect for direct sunlight. The site's shape, orientation, context and access to high quality vistas have informed the siting and orientation of the built form. This has reduced the number of apartments that receive a minimum of three hours direct solar access.

This level of solar access is considered acceptable for the following reasons:

- The living areas are predominantly located on the external face of each building to maximise daylight access and views over the wetlands to the south and the unit layouts are functional and well organised to provide a high level of internal comfort.
- High levels of controlled daylight are provided directly through generously sized windows. This is in addition to the top floor apartments which have been provided with additional skylights in the floor plans.
- The orientation of the site means that whilst the apartments on the east and the west fall outside of the 9am-3pm window they still receive either morning or afternoon sun. Between 8.30am-4.30pm on June 21 an addition 4 apartments (total of 70%) will receive a minimum of 3 hours solar access;

g) Principle 7: Safety

All building entry points are clearly defined from the public domain and include secure glass sliding doors facing the street which allows for passive surveillance. Each building has a ground level entry, contributing to the activation of the street and delineation of spaces are clear and legible. Vehicle access is completely separate to the pedestrian entrances provided and access to all COS will be restricted from general public access. Secure access to building entries, carpark, basement lifts & COS is to be controlled via swipe key access for residents.

COS areas are directly accessed from lobbies in each building and are overlooked from adjacent apartments providing passive surveillance. The ground floor apartments have Private Open Space (POS) areas that are suitably separated from the street and COS areas. The proposed landscaping and solid fencing with palisade rails above will allow for privacy and security whilst also allowing connection and passive surveillance to the street and COS generally. The apartments on the ground floor of each building on the northern side of the development (street facing) will have private pedestrian access from the POS areas.

The development includes a pedestrian walkway connecting Cormorant Way to the wetlands running along the southern boundary of the application site. This walkway will be made up of a relatively straight

path with no blind corners included. There will be planting and benches and suitable lighting is proposed. This walkway benefits from passive surveillance from the windows and balconies which overlook this area from apartments on the western side of Building C. Legal public access to this part of the site will be facilitated by the imposition of a condition of development consent. The condition will require that an easement for a pedestrian right of way is registered on title prior to issue of an Occupation Certificate.

h) Principle 8: Housing Diversity and Social Interaction

The mix of apartment types and sizes is reasonable. The design adequately considers the promotion of social interaction, having appropriate COS and generously sized lobbies for each pedestrian access point. The design allows many of the apartments to have views into the COS areas which allows for passive surveillance and improves social interaction.

As discussed above 7 apartments are proposed to be designed in accordance with *Australian Standard 4299-1995 Adaptable housing*, these apartments and an additional 7 of the total apartments also incorporate the Liveable Housing Design (LHD) Guidelines silver level universal design features. These units reflect a variety of unit sizes, layouts and outlooks.

The parking area includes 13 disabled spaces including 4 visitor disabled spaces, located within close proximity to the lift core for each building. Suitable ramped access is provided from the street, into the COS areas and into the wetlands public open space.

i) Principle 9: Aesthetics

The treatments and finishes are of a high quality and suited to the coastal location and will provide for consistency with surrounding developments within Precinct E. The proposal contributes to the desired future character of the area as controlled by the Design Guidelines for Medium Density Housing and Apartments within Precinct E2.

The retaining walls proposed are terraced where possible to minimise height with suitable planting to soften the walls.

vi. Shellharbour Local Environmental Plan 2013 (SLEP 2013)

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 Concept Plan. With regard to the proposed height and Floor Space Ratio (FSR), the concept approval prevails. The development complies with the relevant clauses of SLEP 2013 as detailed in the compliance tables included as **Attachment 8**.

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

None.

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

The Design Guidelines for Medium Density Housing and Apartments for Precinct E2 (Design Guidelines) provides specific built form and structure controls for the medium density housing included within Precinct E2 of the Shell Cove Concept Plan area. These guidelines were prepared in accordance with the requirements of the Part 3A Concept Plan and were endorsed by Council on the 2 March 2018.

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

vii. Shellharbour Development Control Plan 2013 (SDCP 2013)

Pursuant to the *Environmental Planning and Assessment Act (Savings, Transitional and Other Provisions) Regulations 2017*, the provisions of any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the Concept Plan. The DA is assessed under the design guidelines developed for the Precinct E2 as required by the Concept Approval. Development objectives and provisions of SDCP 2013 will only apply where the Design Guidelines are silent.

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

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

The necessary conditions have been recommended as part of the draft development consent conditions.

12. Section 4.15 (1) (a)(v) – (Repealed)

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

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

i. Noise impact

Acoustic Logic (2020) prepared the Shell Cove, Precinct E Apartments Noise Impact Assessment. The assessment addresses noise impacts associated with the following:

- a) Noise intrusion to project site from adjacent roadways, marina;
- b) Noise emissions from mechanical plant to service the project site (in principle).

Additional information was requested by Council following a preliminary assessment in regard to further information of the following matters:

- a) The noise impact on the apartments in particular the bedrooms directly adjacent to the communal pool and COS located between Building A and B and the COS between Building B and C, and;
- b) The bedroom walls adjoining balcony walls for neighbouring apartments and the potential noise nuisance.

A response to Council was provided as follows:

- a) *Acoustically rated glazing is recommended for all facades of the development to mitigate external noise intrusion.*
- b) *Noise from the two outdoor common areas include the communal pool between Buildings A and B is regarded as neighbourhood noise which is not required to be assessed based on NSW EPA Noise Policy for Industry. It is considered that this noise will be managed appropriately through management controls including clear signage. It is not intended that the space be used for large functions.*
- c) *A total of seven (7) apartments across the development will have bedrooms that have shared walls with the adjoining apartment's balcony. These shared walls do not constitute the entire wall, however acoustically rated materials are recommended for these walls. Applicant has confirmed that 'the external walls will be constructed from concrete and masonry and will be acceptable from a noise mitigation perspective without any further treatment. The building will be constructed in*

accordance with the requirements of the National Construction Code'. Council is satisfied that the proposed masonry wall between the bedrooms and adjoining balconies for these 7 apartments will be sufficient to minimise the noise transition path between these conflicting uses.

The Acoustic Assessment (Acoustic Logic 2020) and additional information provided in a letter to Council (Acoustic Logic 2020) recommends that further detailed acoustic review should be undertaken at Construction Certificate stage to determine acoustic treatments to control noise emissions from mechanical plant within the development, to satisfy appropriate levels. This is considered reasonable and has been suitably conditioned.

ii. Parking and Access

The proposed development will achieve the required on-site parking spaces for residents and their visitors. The layout and access to the basement parking level is considered acceptable and suitably compliant with relevant Australian Standards.

The access ramp is suitably sized to allow service vehicles to enter the development including the waste storage area. The provision of a 9.5 metre turntable within the ground level service vehicle access will allow service vehicles to enter and exit the site in a forward direction.

Pedestrian access to each building is separate to vehicle access and will be suitably secure.

iii. Social Impact

- a) A Social Impact Assessment (SIA) has been prepared to accompany the subject DA. The findings of the SIA have been suitably assessed by Council's Social Planner and negative impacts identified as follows; *Some existing residents of Shellharbour LGA may be concerned about the impact of the proposed development on the local character of the area, and the composition of the community. As identified above, existing residents of Shell Cove have a different demographic profile compared with residents of Shellharbour LGA*

Proposed mitigation: Negative potential impacts to community risks and fears can be addressed through proactive engagement with the surrounding Shellharbour LGA community.

- b) *The construction of the proposed development may result in impacts to amenity if not appropriately managed.*

Proposed mitigation: Construction impacts will be managed in line with the construction management plan for the proposed development. With mitigation measures it is likely the impact will become neutral.

The submitted SIA has demonstrated that the potential positive and negative impacts of the development have been suitably mitigated and/or managed through relevant conditions relating to construction as included in **Attachment 1**.

iv. Interface with Public Open Space

The site adjoins a public open space on the southern side which has been approved as a wetlands under DA0118/2017. The application site is on higher ground than the wetlands and a series of retaining walls are proposed within the application site's boundary and will form part of the application site and not be within public ownership. An example of the retaining walls proposed is shown in **figures 11 and 12** below, provides an accurate representation of the location of the proposed retaining walls for the site. Plans detailing the retaining walls for the entire development can be found in **Attachment 2**.

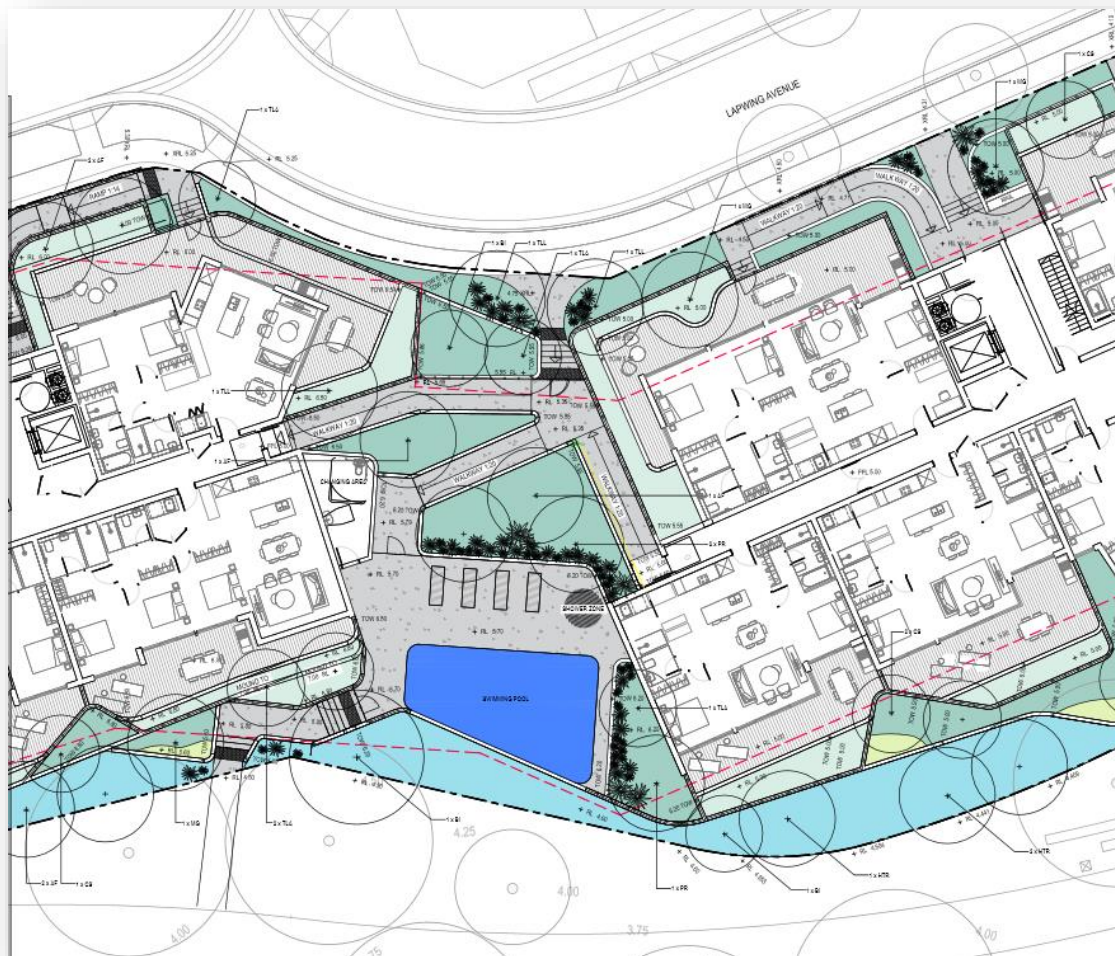


Figure 11 – landscape plan detailing retaining walls between Building A and Building B.

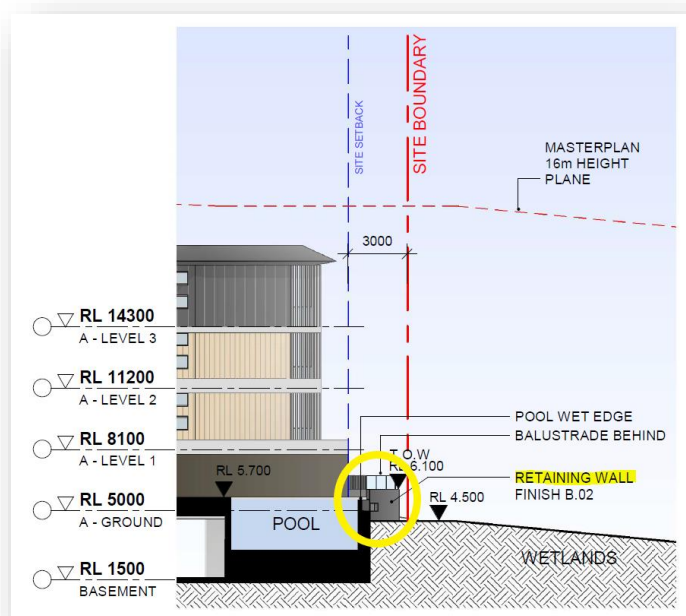
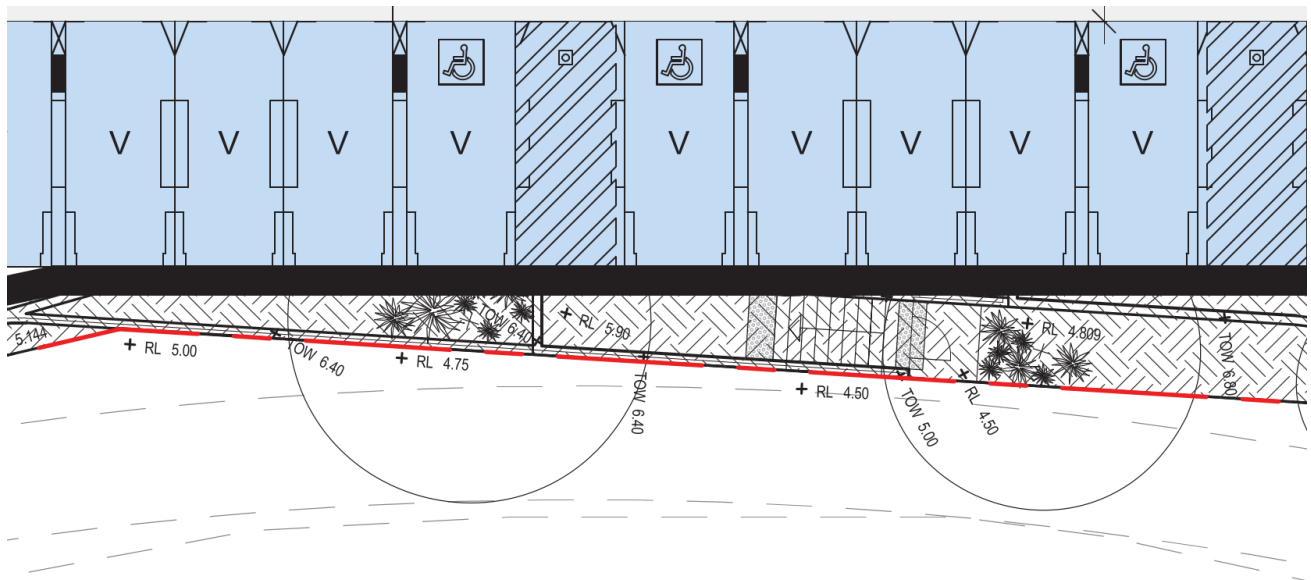


Figure 12 – Section detailing retaining wall adjacent to Building A



The highest portion of the retaining walls (2 metres) will be adjacent to Building C and approximately 11 metres in length. This section of wall will be approximately 2 metres from the pedestrian walkway within the wetlands area and will be softened by landscaping within the application site and the wetlands area.

The design of the retaining walls is considered acceptable and the interface with the public open space is satisfactory subject to conditions relating to management of graffiti and treatment of walls with anti-graffiti paint.

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

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The development site is appropriately zoned being located within a residential area and benefit from internal parking provision. The site is considered suitable for the development

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

Pursuant to s2.22 of the *Environmental Planning & Assessment Act 1979* (the Act), the DA was publicly notified as required by the provisions of the *Shellharbour Community Participation Plan 2019*.

The DA was publicly notified for a period of 21 days commencing 13 March 2020 and closing 13 April 2020. The notification included a DA notification sign on the land, letters to property owners/occupiers within 50m of the site and an advertisement notice in the local newspaper seeking representations regarding the proposal to be submitted for Council's consideration within the exhibition period. Nil submissions were received.

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

The proposal is consistent with the Concept Plan Approval. The proposal will provide a mixture of variable sized apartments within the Shell Cove Marina development. The site is considered suitable for the development. Potential impacts of the development have been identified and addressed subject to the recommended conditions included in **Attachment 1**.

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

17. Conclusion

The proposed development:

- Suitably complies with the Concept Approval,
- is consistent with the relevant statutory requirements, development controls and planning objectives, and
- is consistent with the applicable provisions of the relevant state planning policies including SEPP 65 and the Apartment Design Guide;
- is able to contribute to the overall vehicle parking requirements that will service the subject DA;
- has been designed to respect and enhance the coastal character of the Shell Cove Development and the specific character of Precinct E2.

Based on the assessment undertaken by Council there are no outstanding issues.

18. Recommendation

That conditional development consent is granted to Development Application No. 0058/2020 (PPSSTH-34) to construct a residential flat building comprising 64 apartments and basement parking at Lot 5071 DP1238340, 15 Cormorant Avenue, Shell Cove. The recommended conditions are detailed in **Attachment 1**.