

COUNCIL ASSESSMENT REPORT

SOUTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	[PPSSTH435] – [DA0237/2024]
PROPOSAL	Demolition of existing buildings, removal of five (5) trees, construction of shop top housing development comprising of one (1) commercial unit, nine (9) residential units with basement parking and associated works
ADDRESS	27 Addison Street, Shellharbour Lot 1 DP 1294313 29 Addison Street, Shellharbour Lot 5 DP 238804 Council owned car park to the rear of site Lots 11 to 15 DP 238004
APPLICANT	The Trustee for Indiegore Trust
OWNER	Mrs M and Mr J Pereira
DA LODGEMENT DATE	9 October 2024
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 3, Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i> in that the proposal is Council related development over \$5 million. The proposal is reliant on the creation of a Right of Way for vehicle access over the Council owned car park to the rear of the site and the EDC is more than \$5 million
ESTIMATED DEVELOPMENT COST (EDC)	\$8,351,283 (excluding GST)
CLAUSE 4.6 REQUESTS	Not Applicable
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> • <i>State Environmental Planning Policy (Housing) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>State Environmental Planning Policy (Planning Systems) 2021</i>

	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Industry and Employment) 2021</i> • Shellharbour Local Environmental Plan 2013 (SLEP 2013)
TOTAL AND UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>Notification period: 26 September 2024 to 24 October 2024</p> <p>Two written submissions received, one in support and one objecting to the proposal. Summary of key points provided below:</p> <ul style="list-style-type: none"> • non-compliant setbacks, including 4m at fourth level, adversely affecting appearance of building when viewed from public domain; • bulk and scale of proposal is not appropriate with regards surrounding buildings and heritage items; • general building appearance; • car parking deficit and effect on existing public car parking within vicinity of site; • potential use of development as Air BnB; • privacy and overlooking onto adjoining properties; and • heritage concerns.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Suite of Architectural Plans (as amended) Revision N • Landscape Plans (as amended) Revision C • Shadow Diagrams • Statement of Environmental Effects • Survey Plan • Waste Management Plan (as amended) • BCA Assessment Report • BCA Access Report – People with a Disability • Stormwater Concept Plan • Contamination Report/Preliminary Site Investigation • Design Verification Statement • Fire Engineering Letter • Traffic and Parking Assessment Report (amended to include Construction Traffic Management Plan) • Heritage Impact Report • Arboricultural Impact Assessment Report
HOUSING AND PRODUCTIVITY CONTRIBUTION (s7.24)	\$51,120.96
RECOMMENDATION	Deferred Commencement
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	25 March 2025
PLAN VERSION	5 February 2025 Version No. N
PREPARED BY	Kelly Grieve – Town Planner – Statutory Planning
DATE OF REPORT	14 March 2025

1. EXECUTIVE SUMMARY

1.1 Reason for consideration by the Southern Regional Planning Panel

The application is being referred to the Southern Regional Planning Panel (Panel) as the Determining Authority in accordance with section 2.19 and Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*. The proposed development is considered to be Council Related Development over \$5 million, as vehicle access to the development is proposed via a Council owned public car park (right of way access), works are proposed within the Council owned public car park and the estimated development cost is estimated at \$8,351,283 (excluding GST).

In this regard, the development is classed as Regionally Significant development under *State Environmental Planning Policy (Planning Systems) 2021*. 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.

1.2 Proposal

The proposal seeks consent for the demolition of the existing dwelling and ancillary structures, removal of five (5) trees, construction of a shop top housing development comprising of one retail premises, nine (9) residential units, ground and basement level parking, landscaping and associated site works. The proposal also includes the creation of an easement for vehicle access via a Council owned car park.

The key issues for consideration and assessment of the proposal include the following:

- car parking and vehicle access;
- traffic management – construction traffic management during works, traffic management within car park, traffic light operation and adequate sightlines provided to entry/exit door;
- waste management;
- interface between the proposed building and the public domain (Addison Street and the public car park);
- compatibility of the proposed building envelope within the site context. Specifically in relation to the heritage item located to the immediate west as the western façade will be highly visible; and
- residential amenity and Apartment Design Guideline (AGD) non-compliance, including building separation, communal open space, deep soil zone and apartment design & layout.

1.3 The Site

The site comprises of Lot 1 DP 1294313 and Lot 5 DP 238804, which are known as 27 and 29 Addison Street, Shellharbour. Additionally, the site affects Lots 11-15 of DP 238804, which is known as 'Allens Lane' carpark. Lot 1 DP 1294313 contains the proposed shop top housing development and Lot 5 DP 238804 contains an existing heritage item currently being used as a restaurant, on which tree removal is proposed. Lots 11-15 DP 238804 form part of Council's car park, over which access to the site and an associated Right of Carriageway is sought.

1.4 Exhibition

The proposal was notified in accordance with the Shellharbour Community Participation Plan 2021 and received a total of two (2) unique submissions; one (1) raising objections and one (1) in support of the proposal. The submissions received are further discussed at sections 5.3 below.

1.5 Evaluation

S4.15 matters have been considered and the main issues summarised as follows:

- consistency of the development with the streetscape;
- the likely impacts of the proposal are considered satisfactory;
- the site is considered suitable for the proposal in its current form;
- there were two (2) submissions received during the exhibition period, which are discussed at Section 5.3 of this report;
- external agency response has been received which provided; and
- the proposal is considered to be in the public interest.

1.6 Conclusion

The proposed development has been assessed in accordance with the relevant prescribed matters for consideration as outlined in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The proposed shop top housing development is permissible with consent in the E1 Local Centre zone, pursuant to the Shellharbour Local Environmental Plan 2013.

Generally, the proposal is consistent with the relevant Environmental Planning Instruments including the *SEPP (Housing) 2021*, *SEPP (Sustainable Buildings) 2022*, *SEPP (Resilience and Hazards) 2021* and *SEPP (Transport and Infrastructure) 2021*.

The proposal is generally consistent with the Apartment Design Guide (ADG) and Shellharbour Development Control Plan (DCP) 2013 with minor non-compliances supported by Council staff which are outlined in the Report below.

It is unlikely that the proposal would result in any undue adverse impacts in relation to the streetscape character, the wider Shellharbour Village locality or the amenity of the neighbouring properties.

Conditions are recommended to ensure that any potential impacts are appropriately addressed and managed. This includes a deferred commencement condition which requires the registration of an easement for Right of Carriageway via the Council owned car park (to the rear of the site) to provide vehicular access to the site.

1.7 Recommendation

DA0237/2024 be determined by way of deferred commencement, subject to the conditions provided in Attachment A.

2. THE SITE AND LOCALITY

2.1 The Site and Locality

The subject site comprises of two properties, known as Lot 1 DP 1294313, 27 Addison Street, and Lot 5 DP 238804, 29 Addison Street, which are located on the southern side of Addison Street within the Shellharbour Village locality. The primary site at 27 Addison Street is regular in shape and has a site area of 589m². The site at 29 Addison Street also relates to the proposal in that five (5) trees are proposed for removal along the boundary shared between the two properties.

The site has direct frontage to Addison Street to the north, comprises of an existing single storey retail unit, dwelling house and shed, and is situated between two local heritage items. The local heritage listed item to the immediate east (I040 - 'Thomas Bakery Scotch oven, bricks and façade') is located internally within the commercial component of the building, at ground floor. The local heritage item located to the immediate west is item I041 - 'Windradene' and pine tree',

There is a Council owned public carpark to the south of the site, which also forms part of the application site, in that the proposal relies on vehicle access via this car park.

Figure 1 and 2 below outline the subject site, adjoining heritage items and public car park.



Figure 1: The main subject site is outlined in blue, the heritage items in yellow and Council owned carpark in green, where the green allotments are subject to the creation of a Right of Way easement

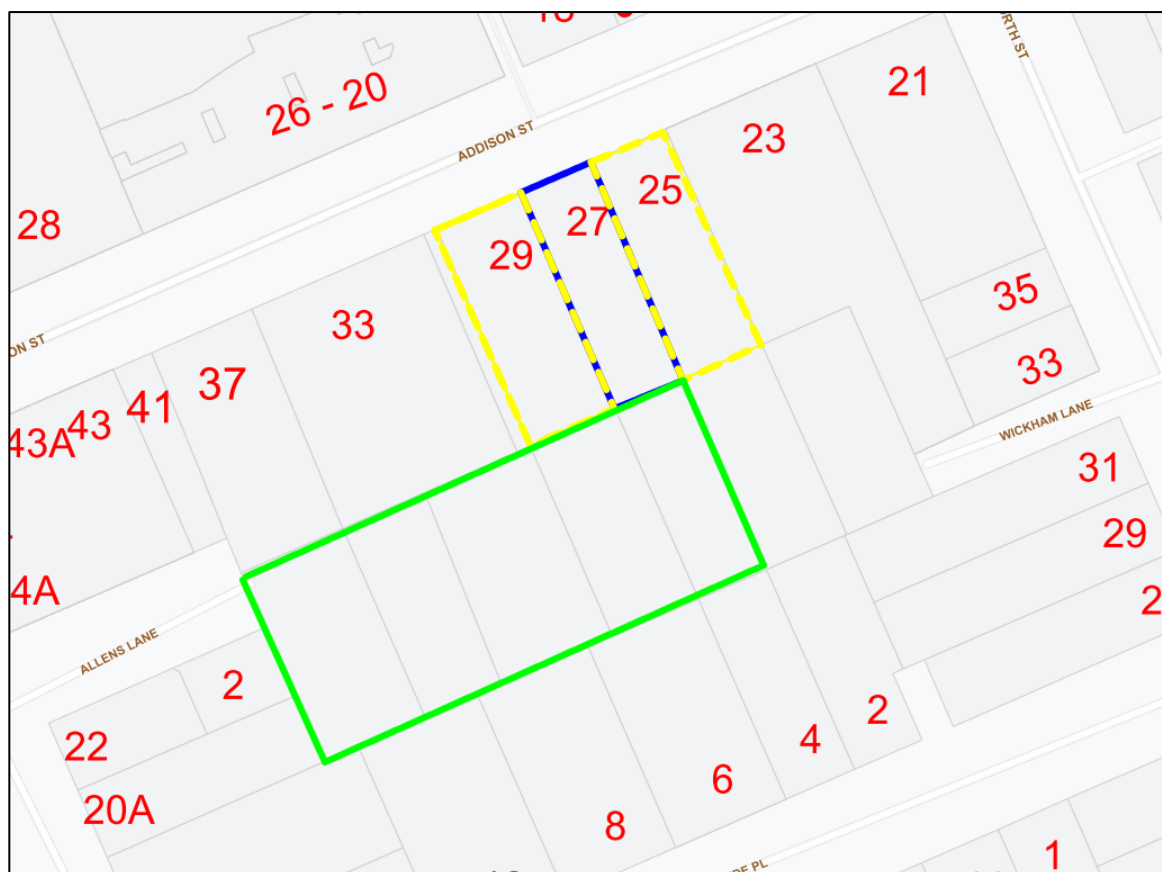


Figure 2: The subject site is outlined in blue, the heritage items in yellow and Council owned carpark in green, which are the allotments subject to the creation of a Right of Way easement

Building heights within Shellharbour Village vary from older single storey commercial buildings to more recently constructed three (3) and four (4) storey shop top housing developments at No. 20-26 Addison, 23 Addison Street and 43-45 Addison Street (recently constructed, as approved under DA0621/2017 (as modified)), and a five (5) storey shop top housing development recently approved to the west at No. 31-35 Addison St (approved under DA0616/2021 PPSSTH – 125). There is also an additional development to the west of the site, having been determined by way of deferred commencement, at 37-39 Addison Street. This is a shop top housing development, comprising of four (4) storeys, and was determined by Panel on 5 December 2022 (PPSSTH-160).

3. THE PROPOSAL AND BACKGROUND

3.1 The Proposal

The proposal seeks consent for the following development:

- demolition of existing buildings and structures;
- construction of a four (4) storey shop top housing development comprising one (1) commercial (retail) unit at ground floor and nine (9) residential apartments on the upper floors (see details below):

Level 1	Level 2	Level 3
2 x 2 bedroom apartments (fronting Addison Street)	2 x 2 bedroom apartments (fronting Addison Street)	2 x 2 bedroom apartments (fronting Addison Street)
1 x 3 bedroom apartment (fronting rear carpark)	1 x 3 bedroom apartment (fronting rear carpark)	1 x 3 bedroom apartment (fronting rear carpark)

- ground and basement level parking for 18 x cars, 1 x motorbike space and bicycle racks;
- provision of communal open space and associated landscaping;
- public domain works;
- stormwater drainage is proposed to drain to the kerb and includes a pump out pit within the basement; and
- removal of 5 x trees on the neighbouring site of 29 Addison Street.

The key development data is provided in **Table 1** below. Indicative perspectives of the development are shown in **Figures 3-5** further below:

Table 1 : Key Development Data

Table 1	Development Data			
Control	Proposal			
Site area	589m ² (27 Addison Street only)			
GFA	Proposed – 879m ²			
FSR (retail/residential)	Proposed - 1.49:1/879m ² Retail component: 70m ² Residential component: 809m ² Ground Floor: 6.5m ² Level 1: 268m ² Level 2: 268m ² Level 3: 266.5m ²			
Clause 4.6 Requests	No			
No of apartments	Nine (9)			
		Level 1	Level 2	Level 3
	2 x bed	Unit 1.01: 78m ²	Unit 2.01: 78m ²	Unit 3.01: 77m ²
		Unit 1.02: 81m ²	Unit 2.02: 81m ²	Unit 3.02: 80.5m ²
	3 x bed	Unit 1.03: 109m ²	Unit 2.03: 109m ²	Unit 3.03: 109m ²
Max Height	Proposed: 14.3m plus roof top screening			

Landscaped area	Communal Open Space: 83m2								
	Deep Soil Zone:								
	Rear of site adjacent garage door		5m²						
	General Landscaping in the form of planter areas/boxes:								
	Level 1	43.3m², inclusive of planter boxes within main COS, and small planters on balconies of Units which face Addison Street							
	Level 2	16m2 planter box within breezeway							
	Level 3	2m² planter on breezeway, outside of rear Unit							
Car Parking spaces	<table><tr><td rowspan="2">Retail premises:</td><td>Provided</td></tr><tr><td>None – Applicant proposes required spaces be levied under S 7.11 contributions within the public car park to the rear of site.</td></tr><tr><td>Residential:</td><td><ul style="list-style-type: none">• 14 residential• 4 visitor spaces<p>Total = 18</p></td></tr></table>				Retail premises:	Provided	None – Applicant proposes required spaces be levied under S 7.11 contributions within the public car park to the rear of site.	Residential:	<ul style="list-style-type: none">• 14 residential• 4 visitor spaces <p>Total = 18</p>
						Retail premises:	Provided		
					None – Applicant proposes required spaces be levied under S 7.11 contributions within the public car park to the rear of site.				
Residential:	<ul style="list-style-type: none">• 14 residential• 4 visitor spaces <p>Total = 18</p>								
Setbacks	Ground	Level 1	Level 2	Level 3					
	Retail component: Nil setback	Balconies: extend over pedestrian footpath by 2.9m	Balconies: Nil setback	Balconies: minimum 2m					
	Residential entry: 2.4m to western wall & 4.8m to residential entry gate.	Main building line: 4.7m	Main building line: 4.7m	Main building line: 4.7m					



Figure 3: Indicative picture of completed development, viewed from Addison Street



Figure 4: 3D perspective imagery, viewed from Addison Street

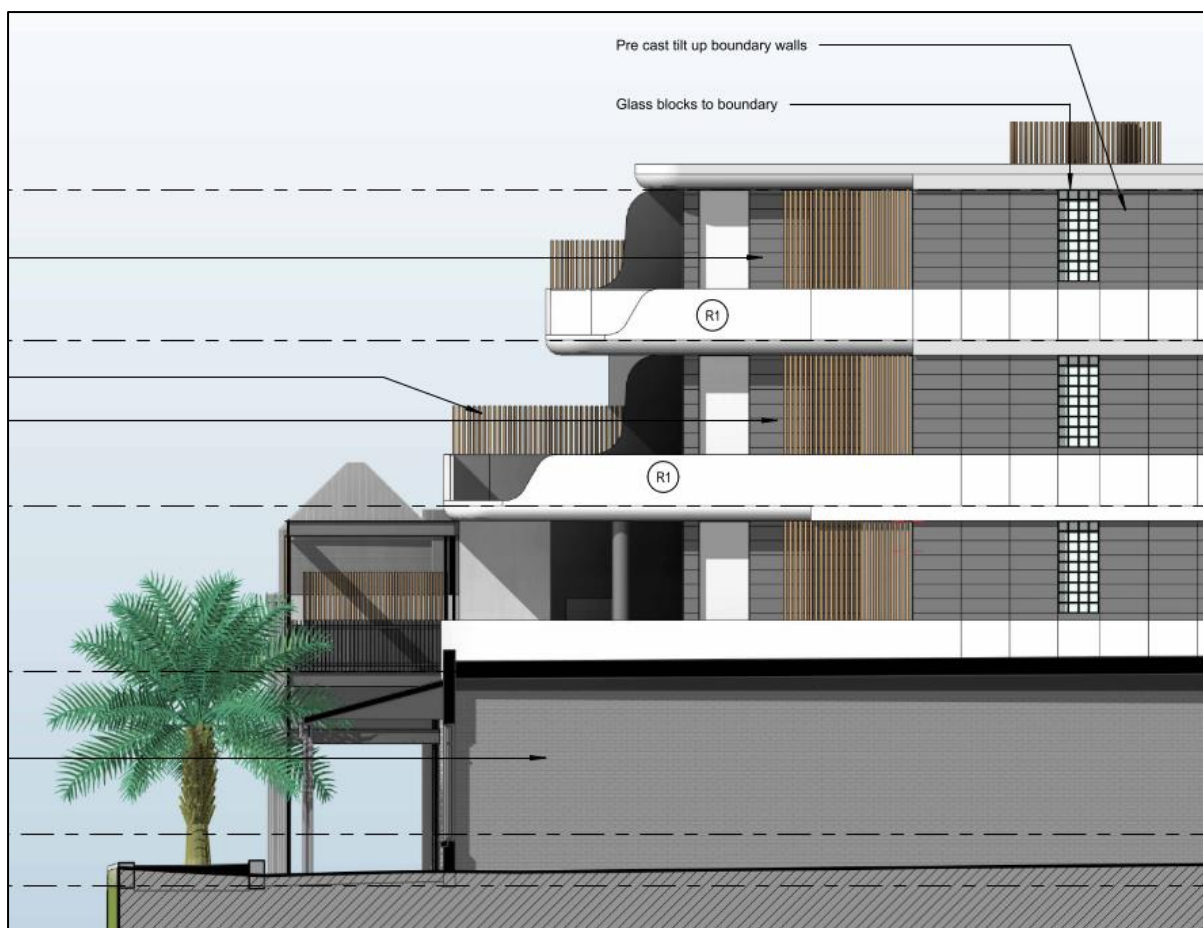


Figure 5: Western elevation, showing stepping of upper-level balconies

3.2 Background

The development was introduced to Council prior to lodgement through a Design Review Panel (DRP) meeting on 17 May 2024. Details of the advice provided is included in **Attachment F** of this report. The development application was lodged on 11 September 2024. A chronology of the development application since lodgement is outlined in **Table 2** below.

Table 1: Chronology of the DA

Date	Event
26 September 2024 – 24 October 2024	Exhibition of the application Two submissions received (1 x in support and 1 x objecting). Details provided in 5.3 of this report.
23 September 2024	DA referred to external agencies: <ul style="list-style-type: none"> • Endeavour Energy
1 November 2024	Request for additional information from Council to applicant for the following: <ul style="list-style-type: none"> • Fourth level setback: Not supported and required to demonstrate consistency with desired outcome for

	<p>Shellharbour Village infill sites. Setback required on fourth level.</p> <ul style="list-style-type: none"> • Car Parking Deficit: Advised that the utilisation of the car park to the rear for the purpose of visitor car parking is not supported. • Construction Traffic Management Plan: Requested prior to determination in order to address potential impacts on the public carpark of the development. • Indicative Access/Right of Carriageway Plan: Indicative plan required of right of carriageway and any other proposed works within the public carpark to the rear of the site. • Existing Trees: Requested Arborist Report addressing investigation and protection of neighbouring trees. • Public Domain/Material Finishes: Updated landscape plan requested, which was to include footpath and material finishes and planter on Addison Street consistent with the Shellharbour Village Plan. • Signage Plans: Requested further detail and signage plans • Waste Management Requested that re-design occur in order to ensure waste managed in appropriate manner.
22 November 2024	<p>Amended plans and cover letter provided to Council to address Council's earlier concerns. Details included:</p> <ul style="list-style-type: none"> • fourth level setback to main building line revised and increased to 4.7m from front boundary (originally 2.7m); • car parking revised to include 18 car spaces (14 residential and 4 visitor spaces). Originally proposed at 14 residential and 2 commercial; • construction traffic management plan provided within revised Traffic and Parking Assessment Report in response to RAI; • indicative access/right of carriageway plan provided in response to required access via Council carpark to rear of site; • arboricultural impact assessment report provided in response to RAI on existing neighbouring trees; • landscape plan provided in response to RAI regarding material finishes; • signage details provided in response to RAI; • revised waste management plan in response to RAI and with regards amended architectural plans; • response regarding initial ADG matters of communal open space, solar access and storage; • response re A/C screening on roof; • demolition plan provided; • fire hydrant/services shown to be provided behind frosted glass doors; and • response to submission matters raised.
13 December 2024	<u>Southern Regional Planning Panel briefing</u>

	<p>The briefing meeting was held with the Southern Regional Planning Panel on 13 December 2024, where the following issues were discussed:</p> <ul style="list-style-type: none"> • architectural response to heritage context and nearby heritage items; • design Review Panel comments including 2 storey veranda elements, DCP setbacks, no support for rooftop communal open space, building alignments, circulation and internal amenity refinements, front infill landscaping, and support for face brick and steel material design elements; • operation of basement car park and arrangements to secure a right of way over the council car park; • regulation of accommodation for short term rental; • proposed tree removal; • solar access; • request for further information – setbacks and DCP compliance, Construction Traffic Management Plan, Right of Carriageway Plan, existing tree impacts, public domain finishes, signage plans, waste management plans, ADG clarifications, hydrant booster, A/C screening on roof, and demolition plan; • use of the adjoining site to the west (site of heritage item, Windradene) as a restaurant, and requested Council consider any noise impacts and the need or otherwise for noise attenuation. • exhibition completed – 1 submission in support and 1 x submission objecting to the proposal
14 March 2025	<p>Draft conditions provided to applicant for review and comment. Minor comments addressed in draft conditions. Final NatHERS stamped plans also requested.</p> <p>BASIX Certificate provided. NatHERS plans reflecting latest BASIX Certificate have not yet been received (19 March 2025).</p>

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.

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 (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Housing) 2021*
- *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 (Transport and Infrastructure) 2021*
- *Shellharbour Local Environmental Plan 2013*
- *Shellharbour Development Control Plan 2013*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 2** and considered in more detail below.

Table 2: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
SEPP (Sustainable Buildings) 2022	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Housing) 2021	Chapter 4: Design of residential apartment development This chapter is applicable to development for the purpose of residential flat buildings. An assessment of the Apartment Design Guidelines has been conducted	Non-compliances identified, however considered

	<p>and the principles specified under schedule 9 have generally been met (detailed assessment provided in Attachment C), with the non-compliances listed below, further detailed discussion included in this report:</p> <ul style="list-style-type: none"> Objective 2F Building Separation <p>Zero lot line proposed along both boundaries with recessed component included to centre of building to allow light and solar into middle of building. Boundary setbacks are in line with existing and desired future character of the area.</p> <p>Internal building separation complies.</p> Objective 3D.1 Communal Open Space (COS) – minimum 25% required <p>Provided at 83m² (14%) on Level 1 in the form of paved area with bench and table seating, BBQ and planter beds. Considered appropriate given the larger balconies provided to Units across the development; in particular Unit 1.01 and 1.02 are provided with balconies of 38m².</p> Objective 3E-1 Deep Soil Zones – 7% required <p>Required – 41m² Provided - 4m² (<1%)</p> <p>Considered appropriate, given the location of the site, as well as alterations to the landscaped area within the Council verge on Addison Street which removes the existing vehicle access and extends the landscaped area. Landscaping is also proposed across the site in the form of planter boxes in non-deep soil areas, with depth profiles suitable for the plant species. Final assessment includes comparison with surrounding developments and further justification.</p> Objective 4D-2 Apartment Size and Layout <p>Open plan layouts slightly exceed depths of 8m for kitchen/living rooms, where the measurement is taken from the back of the kitchen cupboards to the window at the main balcony (Units which face Addison St). This is considered minor and acceptable, particularly as these windows are north-west facing.</p> 	acceptable on merit.
State Environmental	Chapter 3: Advertising and Signage	Y

Planning Policy (Industry and Employment) 2021	<ul style="list-style-type: none"> • Section 3.6 – granting consent to signage • The proposal includes signage which fronts Addison Street. • Signage is of suitable scale in relation to the development and no objection is raised. Detailed review of signage under schedule 5 has been undertaken as part of this assessment report. • Section 3.11(1) – Signage assessment has been undertaken as part of this assessment and is considered appropriate (Attachment G) 	
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 3 of Schedule 6. • The proposal has an estimated development cost of \$8,351,283 (excluding GST) and relies on access via the car park to the rear of the site which is Council land. 	Y
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management <ul style="list-style-type: none"> • Section 2.11(1) - Development on land within the coastal use area • Section 2.13 – Development in coastal zone generally – coastal management programs considered • Section 2.15 – Development in coastal zone generally – development not to increase risk of coastal hazards Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation has been considered in the submitted contamination report and the proposal is satisfactory subject to conditions. 	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. 	Y

Proposed Instruments	There are no proposed instruments relevant	N/A
Shellharbour Local Environmental Plan 2013 (SLEP)	<p>No SLEP variations are identified. Relevant clauses included below:</p> <ul style="list-style-type: none"> • Clause 4.3 - Height of Buildings – Maximum height of 15m, which complies with the requirements of the LEP. A condition is recommended requiring the screening surrounding the air conditioning units to be reduced to ensure height compliance. • Clause 4.4 – Floor Space Ratio – A FSR of 1.5:1 is specified for the site. An FSR of 0.49:1 is proposed and as such demonstrates compliance. • Clause 5.10 – Heritage Conservation – Site is adjacent to heritage items on both sides. A comprehensive assessment has been undertaken to ensure no undue heritage implications to the items. • Clause 6.2 – Earthworks – Significant earthworks are proposed to form a multi - level basement car park (approx. 5m – 6m in depth). Conditions are recommended to limit the impact on the adjoining properties, especially given their heritage status. • Clause 6.6 – Active Street frontages – Complies, a commercial premises is provided at street level. • Clause 6.9 – Essential Services - vehicle access relies on right of way over Council owned car park to rear (under negotiation) 	Y
Shellharbour Development Control Plan 2013 (DCP)	<p>No significant SDGP variations identified (Detailed assessment provided in Attachment E)</p> <p>Relevant Chapters listed below:</p> <ul style="list-style-type: none"> • Chapter 3 - Residential Development • Chapter 6 – Commercial Development • Chapter 10 – Advertising and Signage • Chapter 15 – Waste Management • Chapter 13 – Parking, Traffic and Transport • Chapter 16 – Access for People with a disability • Chapter 17 – CPTED • Chapter 20 – Landscaping • Chapter 21 – Preservation and Removal of Trees and Vegetation • Chapter 23 – Cutting, Filling and Retaining Walls 	No – DCP variations discussed below.

	<ul style="list-style-type: none"> • Chapter 25 – Stormwater Management • Chapter 28 – European Heritage 	
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State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)

Table 6: Schedule 6 – Regionally Significant Development

Schedule 6 Regionally Significant Development	
<p><i>(3) Council related development over \$5 million.</i></p> <p><i>Development that has a capital investment value of more than \$5 million if:</i></p> <ul style="list-style-type: none"> <i>a) A Council for the area in which the development is to be carried out is the applicant for development consent, or</i> <i>b) The Council is the owner of any land on which the development is to be carried out, or</i> <i>c) The development is to be carried out by the council, or</i> <i>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).</i> 	<p>Vehicle access to the proposed development will be via a Council owned public car park (right of way access) and the EDC is more than \$5million. Therefore, the development is classed as regionally significant Under Section 4.5 (b) of the <i>Environmental Planning and Assessment Act 1979</i>, where the Regional Planning Panel for the area (Southern) is designated as the consent authority.</p>

State Environmental Planning Policy (Resilience and Hazards) 2021

Table 7: Coastal Management and Contamination

Division 3 Coastal Environment Area 2.10 Development on land within the coastal environment area	
<p><i>1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered</i></p>	<p>Not applicable</p>

<p><i>whether the proposed development is likely to cause an adverse impact on the following—</i></p> <ul style="list-style-type: none"> <i>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</i> <i>(b) coastal environmental values and natural coastal processes,</i> <i>(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</i> <i>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</i> <i>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i> <i>(f) Aboriginal cultural heritage, practices and places,</i> <i>(g) the use of the surf zone.</i> <p><i>(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—</i></p> <ul style="list-style-type: none"> <i>(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or</i> <i>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i> <i>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</i> 	
<p>Division 4 Coastal Use Area</p> <p>2.11 Development on land within the coastal use area</p>	
<p><i>(1) Development consent must not be granted to development on land that is</i></p>	<p><u>Comment:</u> The development is not considered to cause an adverse impact on access to the foreshore, overshadowing, wind funnelling and</p>

<p>within the coastal use area unless the consent authority—</p> <p>(a) has considered whether the proposed development is likely to cause an adverse impact on the following—</p> <p>(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</p> <p>(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,</p> <p>(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,</p> <p>(iv) Aboriginal cultural heritage, practices and places,</p> <p>(v) cultural and built environment heritage, and</p> <p>(b) is satisfied that—</p> <p>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</p> <p>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</p> <p>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p>	<p>the loss of views from public places to foreshore, impacts on the visual amenity and scenic qualities of the coast, Aboriginal cultural heritage or cultural or built environmental heritage. Additionally, Council staff considered that the development has been designed, sited and will be managed to avoid adverse impacts and have taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p> <div data-bbox="817 568 1362 1025" data-label="Image"> </div> <p>Figure 6: SEPP (Resilience and Hazards) 2021 Coastal Use Area mapping</p>
<p>Division 5 General</p>	
<p>2.12 Development in coastal zone generally—development not to increase risk of coastal hazards</p> <p><i>Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is</i></p>	<p><u>Comment:</u> Council is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the subject land or any other land and conditions of consent have been imposed.</p>

<i>not likely to cause increased risk of coastal hazards on that land or other land.</i>	
2.13 Development in coastal zone generally—coastal management programs to be considered	
<i>Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.</i>	<u>Comment:</u> The Shellharbour Coastal Zone Management Plan does not recommend any works that would affect or which relate to the subject site.
2.14 Other development controls not affected	
<i>Subject to section 2.5, for the avoidance of doubt, nothing in this Part— (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.</i>	<u>Comment:</u> Noted
2.15 Hierarchy of development controls if overlapping	
<i>If a single parcel of land is identified by this Chapter as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency— (a) the coastal wetlands and littoral rainforests area, (b) the coastal vulnerability area, (c) the coastal environment area, (d) the coastal use area.</i>	<u>Comment:</u> The subject site is not located within the overlapping Coastal Use and Coastal Environment areas.
4.6 Contamination and remediation to be considered in determining development application	

<p>(1) <i>A consent authority must not consent to the carrying out of any development on land unless—</i></p> <ul style="list-style-type: none"> (a) <i>it has considered whether the land is contaminated, and</i> (b) <i>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</i> (c) <i>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.</i> <p>(2) <i>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.</i></p> <p>(3) <i>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.</i></p> <p>(4) <i>The land concerned is—</i></p> <ul style="list-style-type: none"> (a) <i>land that is within an investigation area,</i> (b) <i>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,</i> (c) <i>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> (i) <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</i> 	<p>Comment: Council records do not indicate any historic use that would contribute to the contamination of the site and the land is not identified as being contaminated on Council mapping. A Preliminary Site Investigation report, prepared by JBS & G, dated 21 July 2024, accompanied the application concluding that information and data presented therein indicated that contaminating activities presented in planning guidelines to <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> have not occurred at the site, and there is low potential for gross or widespread contamination across the site.</p> <p>The site was considered to be suitable for the proposed development and use without further investigation; and an appropriate environmental and safety controls including unexpected finds protocols were recommended to be implemented during development-related demolition and ground disturbance works. Accordingly, subject to the imposition of the above recommendations contained in the Preliminary Site Investigation, which includes an unexpected finds condition relating to contamination, the provisions of Chapter 4 are considered to have been satisfied.</p>
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<p><i>contaminated land planning guidelines has been carried out, and</i></p> <p><i>(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).</i></p>	
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State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy – Sustainable Buildings 2022 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.1756763M_02 prepared by Evergreen Energy Consultants Pty Ltd dated 22 July 2024 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy (Housing) 2021

• Chapter 4 Design of Residential Apartment Development

Chapter 4 applies to the subject development application as the proposal is for the purposes of shop top housing comprising of four storeys with one commercial premises and 9 x residential units above. A comprehensive assessment of the proposal against these design principles are contained in **Attachment C**. Assessment concludes that the proposal is generally consistent with these principles.

Additionally, under s145 of Chapter 4 also applies to the site is relation to referral of the application to the DRP as outlined below:

'Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development'

Council comment: Prior to lodgement, the development was reviewed by the Shellharbour Design Review Panel (DRP). The development was of a similar bulk, scale, mass and design as the current proposal.

The DRP advice provided is summarised as follows:

- recommended provision of a two storey verandah overhanging the street;
- importance of streetscape character and a sensitive approach to the existing heritage items on the street;
- require compliance with relevant DCP setbacks, i.e., Shellharbour Village setbacks as noted in figure 6.16 of the DCP;
- highlighted amenity issues with regards ground level circulation being too tight, garbage storage being small and compromised, lobbies being cramped, constrained courtyard and limited open space, openings to courtyard inadequately addressing acoustic and visual privacy requirements;

- recommended redesign of the courtyard and core in order to respond to the heritage item (Windradene) and maximise amenity;
- required more strategic location of windows and screening, as well as resolving of planting and fencing in order to minimise privacy impacts;
- consideration of provision of a communal lounge;
- redesign ground floor parking layout, vehicular movement and bin storage which appears tight; and
- recommended refinements to the built form, including front and rear setbacks, realignment of courtyard and relocation of bin storage.

The proposed development is considered to have satisfactorily addressed the advice of the DRP and was not referred back to the DRP for further consideration. **Attachment F** of this report provides detailed comments from the DRP, how these have been addressed by the applicant and further Council assessment.

• **Key Variations to Apartment Design Guidelines**

A detailed assessment of ADG is provided in **Attachment C** noting that the proposal is generally compliant with the aims of chapter 4 of *SEPP (Housing) 2021*. Key variations to the ADG outlined below:

- **Objective 2F Building Separation**

Requirement

Up to four storeys (approximately 12m):

- 12m between habitable rooms/balconies
- 9m between habitable and non-habitable rooms
- 6m between non-habitable rooms
- No building separation is necessary where building types incorporate blank party walls

Council Comment: Zero lot line proposed along both side boundaries and internal building separation complies.

The eastern and western side of the residential units on all Levels (1-3) include zero lot lines, and glazing is provided. There is a break within the centre of the building, which allows light and solar into the middle of the site, between the two main upper-apartment 'blocks'.

Glazing is provided along side and zero lot lines as glass blocks, which is considered to provide privacy and a degree of solar access, and is provided in the most-part along the western elevation. The western elevation adjoins centralised open setbacks above ground level, as it adjoins the heritage site where single storey heritage item 'Windradene' is found. There is an additional building (1980s shopfront building) on the site of 'Windradene', which provides separation at ground level between Windradene and the subject site. For the purpose of assessment, the separation between the proposed development and the existing heritage item of 'Windradene' has been measured at 4.7m (main roof of Windradene to the east). Predominantly blank walls are proposed along the western elevation, with the exception of a portion of screening to the open walkway which provides entry to the residential component of the development; as well as timber look screening along the balconies to the west. Screening visible from the Windradene site will be approximately 10m² and face the courtyard area of what is a commercial premises.

There are 2 glass block windows which are included along the eastern elevation and within the kitchens of Unit 2.01 and 3.01. The adjoining site to the east includes a 2 storey mixed

use building (commercial and residential), which presents with a zero lot line, and blank walls along its western elevation. The glass block kitchen windows facing east will not present any overlooking concerns due to its outlook across the roof of the existing development, the obscured glazing provided as part of the glass block windows themselves, and the 15m separation to the next again property at 23 Addison Street.

There are separated distances of at least 12m between habitable rooms within the site and at least 12.5m between non-habitable spaces, i.e. hallways and entryways. To the rear of the site, where the building adjoins the carpark, there is separation between the proposed development and adjacent residences along Adelaide Place by at least 35m.

Overall, building setbacks are considered in line with the existing and desired future character of the area.

- Objective 3D.1 Communal Open Space (COS) – minimum 25% required

Council Comment: Assessment notes that 87m² (14%) is provided.

Provided at 83m² (14%) on Level 1 in the form of paved area with bench and table seating, BBQ and planter beds. This is considered appropriate given the larger balconies provided to Units across the development; in particular Units 1.01 and 1.02 are provided with balconies of 38m² and 36m². Units 2.01 and 2.02 also have good-sized balconies, with 23m² and 31m² respectively. It should also be noted that units to the rear of the site (3 units) are provided with generous balcony space of 19m².

Solar diagrams of 15-minute increments between 10am-1pm mid-winter have been provided, demonstrating that 50% of the COS receives solar access for 2 hours during this time. Additionally, balconies on level 2 and 3 facing the street receive good solar access throughout this entire period.

DA0274/2022, a shop top housing development at 37 Addison Street, Shellharbour, was determined by the Southern Regional Planning Panel by way of deferred commencement on 5 December 2022. The proposal included a variation to the communal open space, where a site with an area of 864.9m² proposed 119m² of COS (13.75%).

While the above did not achieve 25% of the site for the purpose of COS, it was noted that the area was acceptable, given the number of units (10), balcony sizes, proximity of the site to the beach, public park and swimming pools.

DA0616/2021, another shop top housing development comprising of 17 units, determined by way of deferred commencement included compliant COS (373m² for a site of 1,475m²). Notwithstanding the above, it must also be noted that the located within close proximity the nearby amenities, including a number of beaches, public parks and swimming pools.

Furthermore, at least 50% of the principal usable part of the communal open space will receive 2 hours of sunlight at mid-winter.

- Objective 3E-1 Deep Soil Zones – 7% required

Council Comment:

- *Required – 41m²*
- *Provided - 4m² (<1%)*

Landscaping is proposed at the rear of the site between the rear property boundary and the building. Given the location of the site in a local centre and car parking requirements, in conjunction with the rear public car park, the variation is supported. It is considered that the parking benefits provided with the inclusion of a basement area, are well balanced with various areas of considered landscaping across the remainder of the development. This includes climbing plants and shrubbery to the rear where the carpark entry is provided, as well as raised planter boxes within the front elevation and western elevation, as well as the communal open space area. Landscaping in the form of planter boxes in non-deep soil areas are proposed with depth profiles which are considered generally suitable or able to be accommodated for the plant species.

It is also noted that the proposed deep soil zone is considered compliant with design guidance offered within the ADG. The design guidance highlights where site location and building typology, such as higher-density builds in a town centre, restricts the practicality of achieving deep soil zone requirements, a reduced deep soil zone with acceptable stormwater management and alternative planting (i.e., planting on structures) is considered satisfactory. The proposal aligns with this guidance on both topics of stormwater and alternative planting such as planting on structures.

It should be further noted that similar developments and such variations have been considered acceptable along Addison Street. For example, D0274/2022 (PPSSTH-160) at 37 Addison Street, which is a site of area size 864.9m², provided no deep soil landscaping, and was subsequently recommended for approval by way of deferred commencement. It was considered that proposed landscaping in the form of planter boxes in non-deep soil areas with adequate depth profiles for their plant species were appropriate.

Recommended landscape conditions are considered appropriate in order to ensure adequate species and depth profiles are provided, however, as it is not expressly clear as to the depths of planter boxes provided, and the adequacy of deep soil zones for all plant species. While some planter boxes appear at approximate heights of 900mm, some of the mature tree species may require depths of 1m, for example.

- Objective 4D-2 Apartment Size and Layout

Council Comment: The objective notes that in open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. Open plan layouts as proposed slightly exceed depths of 8m for kitchen/living rooms, at 8.7m depth. The measurement is taken from the back of the kitchen cupboards to the window at the main balcony (all units which face Addison St). As there are large north-west facing windows which allow for sense of space and light serving these open plan rooms, and the minor variation is attributed to the location of kitchen cabinetry, this is considered acceptable.

State Environmental Planning Policy (Industry and Employment) 2021

Signage is proposed comprising of three wall signs on the front fascia of the verandah, which is assessed as future business identification signage. Signage details were included with the application submission and form part of the approved plans and specifications. As such *State Environmental Planning Policy (Industry & Employment) 2021* is applicable.

Council Comment: See Schedule 5 Assessment, referenced **Attachment G** of this report. Recommended conditions of consent are to be imposed, where no other signage is to be approved except for the signage on approved plans, unless otherwise able to be carried out

under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Division 5 Electricity transmission or distribution Subdivision 2 Development likely to affect an electricity transmission or distribution network

2.48 Determination of development applications—other development

- (1) *This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—*
 - (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
 - (b) *development carried out—*
 - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) *immediately adjacent to an electricity substation, or*
 - (iii) *within 5m of an exposed overhead electricity power line,*
 - (c) *installation of a swimming pool any part of which is—*
 - (i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
 - (ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
 - (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
- (2) *Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must—*
 - (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
 - (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*

Council comment: The subject site is located within 5m of an exposed overhead electricity power line. The proposal was referred to Endeavour Energy in accordance with the requirements of this clause. A response was received on 23 September 2024 raising no objections, and subject to the recommended conditions which have been included within the draft consent.

Shellharbour Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Shellharbour Local Environmental Plan 2013* ('the LEP'). The aims of the LEP include encouraging 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, as well as enhancing the amenity and characteristics of

established residential areas. Aims of the LEP also include ensuring the conservation, protection and enhancement of the heritage values of Shellharbour. The proposal is consistent/inconsistent with these aims as the proposal provides a diverse range of housing types, as well as creates employment opportunities and services within the community, for existing and future residents, visitors and the like. Further, the proposal is considered sympathetic to the existing heritage context of the site and surrounding heritage significance of Shellharbour Village.

The site is located within the E1 Local Centre Zone pursuant to Clause 2.2 of the LEP. Detailed assessment against the relevant clauses of the LEP 2013 are provided within **Attachment D** of this report.

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of shop top housing which is a permissible use with consent in the Land Use Table in Clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- retail and business use included that serve the needs of the people who live in, work in or visit the area are met;
- investment in local commercial development and employment opportunities which support economic growth are created;
- residential development is provided which contributes to a vibrant and active local centre, and is consistent with the Shellharbour Village Centre Plan is provided; and
- retail, business and non-residential land uses on the ground floor of the development is provided.

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Attachment D** of this report.

The proposal is considered to be generally consistent with the LEP.

3.3 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 applicable.

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

The following Development Control Plan is relevant to this application:

- *Shellharbour Development Control Plan 2013 (SDCP 2013)*

The development generally complies with the relevant clauses of the SDCP 2013, as detailed in the compliance table included as **Attachment E**. The proposal seeks variations to the following DCP Chapters and associated controls:

Chapter 13 Parking, Traffic & Transport

- Part 13.1.1 Car Parking Requirements

Car parking requirements are:

- 13.5 x residential
- 4.5 x visitor residential
- 2 x retail/commercial

A total of 18 x residential/visitor are provided, comprising of 14 x residential and 4 x residential visitor spaces. Zero retail car parking spaces are proposed. Car parking is provided on the ground floor and basement levels. While the application has a 2 x retail car parking space shortfall, there is a Council owned public car park immediately adjoining the site to the south, whereby in accordance with the SCC Local Infrastructure Plan, a contribution can be paid in lieu of shortfalls of car parking serving commercial units on the subject site. A car parking contribution has been included in the condition of consent relating to section 7.11 contributions as below:

A contribution of \$125,308.60, subject to annual indexation, must be paid to Council towards the provision of public amenities and public services prior to the issue of the Construction Certificate. This amount has been calculated in accordance with Shellharbour City Council's Local Infrastructure Contributions Plan 2019 9th Review (Amendment 1) 6 June 2022 in the following manner:

- *Residential contribution – Precinct 2, Shellharbour - \$109,273.28*
- *Payment In Lieu of 2 Car Parking Spaces - \$16,035.32*

<i>Open Space contribution</i>	<i>\$ 25,474.19</i>
<i>Community Infrastructure contribution</i>	<i>\$ 73,365.29</i>
<i>Roads & Traffic Infrastructure contribution</i>	<i>\$ 1,878.89</i>
<i>Drainage contribution</i>	<i>\$ -</i>
<i>Administration contribution</i>	<i>\$ 8,554.89</i>
<i>Car Parking contribution</i>	<i>\$ 16,035.34</i>
<i>Total contribution payable</i>	<i>\$ 125,308.60</i>

The contribution amount contained in this condition is the base rate indexed to the date the consent is issued. The contribution amount will be adjusted in accordance with the indexation methods detailed in the Contributions Plan. Current indexed rates are available from Council.

The Contributions Plan may be inspected or a copy purchased at the Customer Service Counter at Council's offices, or downloaded from www.shellharbour.nsw.gov.au

Furthermore, Addison Street has 1 hour on-street car parking spaces on both the northern and southern side, which is considered an appropriate provision of car parking given the shorter time periods expected for customers visiting the retail premises.

Chapter 28 European Heritage

- Part 28.5.12 Context Advice – Waterfront Suburbs – Development in the vicinity of heritage items

It is noted that part 28.5.12 states that *'the two storey elements of buildings adjacent to single storey heritage dwellings must be located a minimum of 2 metres from the boundary adjoining the heritage property.'* This control does not reference as to the positioning of the heritage item in the application of this control, where it can be left open to interpretation as to the wording 'adjoining heritage property'.

Nil setbacks are proposed along the first-floor boundary, as well as on upper floors. However, there is also a centrally-located 'break' in the main built form of the development where the breezeway, planter boxes, stairwell and lift shaft can be seen, with the main breezeway being located and setback 2.6m from the western boundary that adjoins 29 Addison Street. The central break begins at approximately 18.5m from the front boundary, whereas 'Windradene' is located approximately 13.5m from the front boundary, separated by the 1980s shop addition between the proposal and 'Windradene' itself.

The heritage item of 'Windradene' is located 4.8m from the boundary shared between the heritage item and subject site. Whilst nil side setbacks are proposed, the articulation of elements and separation between the proposed building and heritage item is deemed appropriate. This is further supported by the above-mentioned 'break' of the main building elements central to the development, where the breezeway, central stairwell, lift shaft and communal open space is found; where this allows for a visual sense of further separation and reduced bulk of the development site. Landscaping in the form of planter boxes along the western elevation, offer further opportunity to soften the visuals of the proposed development within the backdrop of the heritage item, 'Windradene'. Further, the building form has incorporated a number of articulated elements on upper levels above ground, and contains sympathetic, yet varied external finishes which present in an attractive manner as set within the streetscape. The variation is supported on merit.



Figure 7: 1980s shop and Windradene – 29 Addison Street, viewed from northern side of Addison Street

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Shellharbour City Council's Local Infrastructure Plan 2019 9th Review (Amendment 1) 6 June 2022*

This Contributions Plan has been considered recommended condition is included in the consent; this includes a contribution for two (2) car parking spaces to offset the shortfall in retail car parking spaces proposed, as permitted by the Contributions Plan.

(c) Section 4.15(1)(a)(iia) – 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.

(d) 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, with the following matters being relevant to the proposal:

30B Council-related development applications

The subject application is considered as council-related development as the proposal seeks to utilise the Council owned car park at Lots 9 to 14 DP 238004 for an ancillary right of carriageway. The development application was accompanied by a statement (Management

Strategy Statement) specifying how Council will manage the conflicts of interest that may arise in connection with the application because the Council is the consent authority.

61 Additional matters that consent authority must consider

The proposal involves demolition and relevant conditions have been recommended in this regard.

The proposal does not relate to land which is the subject of a subdivision order under Schedule 7 of the EP&A Act 1979.

The subject development application does not relate to a manor house or multi dwelling housing (terraces).

62 Consideration of fire safety

The proposal does not relate to a change of use.

63 Considerations for erection of temporary structures

The consent does not relate to a temporary structure.

64 Consent authority may require upgrade of buildings

The proposal relates to a new building and as such, no upgrade works are required.

66A Council-related development applications – the Act, s4.16(11)

On 9 May 2023, at the Ordinary Council Meeting, the Council Related Development Application – Conflict of Interest Policy was adopted. The subject application is considered as council-related development as the proposal seeks to utilise the Council owned car park (Lots 11 to 15 DP 238004) for an ancillary right of carriageway. In accordance with the Policy, as the development is proposing to utilise Council land for an ancillary right of carriage way, the management strategy is that no management controls need to be applied. The development application was publicly notified for 28 days pursuant to Schedule 1, Clause 9B of the *Environmental Planning and Assessment Act 1979* and the Management Strategy Statement was available to view during this exhibition period.

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, Heritage**

The proposal is considered to be generally consistent with the context of the site, in that the proposed shop top housing development is appropriate as a permitted land use for the site, as well as in terms of the existing and future desired character of the area. The proposal results in increased amenity of the locality, and contributes to the character of the area, both with a view to providing modern, well-articulated architecture, but with an element of linkage to the site's heritage significance.

The proposal responds to the growth and transition occurring within the Shellharbour Village from the site's previous single storey shop-use into a more prominent development which is reflective of the site's zoning. The proposal reflects the surrounding evolution of built form, as well as the café, retail and tourism culture that the Village has exuded for some time.

The scale of buildings within the Shellharbour Village streetscape varies and includes a mix of single storey residential, commercial buildings and up to four storey shop top housing buildings of various ages. A four storey shop top housing development is currently under construction at 33 Addison Street, and a similar development was recently completed on the corner of Mary Street and Addison Street. The changes in streetscape as buildings are constructed larger in scale than the existing low scale buildings is evident and is reflective of the development standards and land use zoning in the SLEP 2013, as well as the Chapter 6 - Shellharbour Village of the Shellharbour Development Control Plan. The submitted streetscape of the entire southern side of Addison Street highlights how the proposal will integrate with the ongoing and transforming streetscape.



Figure 8: Desired Outcome for Shellharbour Village

The unique site context requires a site-specific design approach, whereby strict numerical compliance with the SDCP 2013 setbacks and ADG would not result in a positive urban design outcome. The front setbacks are sympathetic to the heritage item to the east, and west in particular, without creating a stark contrast between the proposal and the buildings to the east. The western elevation and the central stairwell area where a break within the built form can be seen, is considered to create a sense of space from the heritage item of 'Windradene'. The proposed design has incorporated increased front and rear setbacks, and the design generally incorporates appropriately varied colour tones, with textured materials and landscaping elements to soften the built form.

As the proposal includes a basement level, and due to the proximity of the site to the heritage item at No. 29 Addison St, conditions requiring the preparation and implementation of a Vibration Control Plan is recommended as below:

Vibration Control Plan

A Vibration Control Plan that ensures vibration remains within acceptable levels and minimises the potential effects of vibration must be submitted to the Principal Certifier for approval, prior to the release of the Construction Certificate.

The plan must detail monitoring to be implemented and alarm levels selected in accordance with the type of structures present within the zone of influence of the proposed excavation.

- **Commercial/ Residential separation**

The proposal includes one commercial unit which will be located on Addison Street with pedestrian access from this main street. The commercial unit will not include any staff or customer parking, with the proposal utilising the public car park to the rear of the development via payment of a levy. The commercial unit access will be completely separate to the residential access lobby and separate staff/customer toilet facilities.

There is a separate commercial waste storage area shown on the proposed plans adjoining the residential waste storage area.

Given the commercial area is relatively small and is separated from the residential use it is considered that the likely impacts on future residents will be limited. Conditions have been recommended (as below) to ensure the use of the premises is suitably considered. This includes recommending condition in relation to the operating hours for the commercial - retail unit consistent with 'Subdivision 23B Hours of Operation and Trading', Division 1, Part 2 of State Environment Planning Policy (Exempt and Complying Development Codes) 2008.

Use of Ground Floor Level Tenancy

This approval grants consent for the use of one (1) ground floor tenancy as commercial – retail space, as defined in as defined in Shellharbour Local Environmental Plan 2013. The definition is as follows:

commercial premises means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a), (b) (Repealed)
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,

(k) rural supplies,
(l) shops,
(la) specialised retail premises,
(m) timber yards,
(n) vehicle sales or hire premises,
but does not include farm gate premises, highway service centres, service stations, industrial retail outlets or restricted premises.

Hours of Operation

The hours of operation and trading requirements of the retail tenancy unit on the ground floor must be in accordance with Clause 2.46C(2)(a) and 2.46D of Subdivision 28, Division 1, Part 2 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Amenity – Retail Tenancy

The approved development shall be conducted at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations or residential/business premises.

Music and/or Amplifiers – Retail Tenancy

Music and other amplified sound, including recorded or broadcast programmes or the like, played on the premises, shall be controlled so as not to cause any distraction or disturbance to nearby or adjacent residents, pedestrians or motorists, and shall only be audible within the property boundaries.

• **Impact on future residents and existing commercial use at adjoining site**

The proposal adjoins heritage item to the west, 'Windradene', located at 29 Addison Street. The heritage item is currently being used as a restaurant, with operating hours spanning across 7 days per week, from 11am – 3pm, then 5pm – 9pm. It is considered that there will be minimal noise impact on future residents due to a combination of factors, including the closing time being relatively early evening; as well as the consideration of residential units being located on upper levels. There is also the provision of separation between the outdoor eating area of the restaurant along the Addison Street frontage, and the development itself, due to the 1980s shop front addition to 29 Addison Street along its eastern elevations.

Further, there are glass blocks proposed along the side elevations of the development, and this is particularly relevant with regards the residential component of the western elevation. The glass blocks which service the bedrooms of units along the western elevation are considered an appropriate noise attenuation method both during and outside of the opening hours of the restaurant, due to the reduction in transmission of sound associated with their material composition.

The combination of factors as detailed above, are considered to provide sufficient noise attenuation for future residents.

• **Access and traffic**

Proposed Works within Council Owned Land

Vehicle access to the existing residential dwelling and shop at 27 Addison Street is provided via Addison Street. The application proposes vehicle access to the development from the rear

via the Council car park to/from Mary Street with the existing vehicle access being made redundant and reinstated as kerb and gutter. This is considered appropriate given the high pedestrian activity along Addison Street. Vehicle access via the car park is consistent with other shop top housing developments along Addison Street.

The land owner of the public car park is Council and therefore easements granting right of carriageway for vehicle access are to be registered on the corresponding property title. Council's Property Officer has reviewed the proposal and has recommended conditions, which are in line with similar neighbouring development. A deferred commencement condition has been recommended requiring the registration of the ROW with Land Registry NSW, prior to the release of any operational consent as below:

Deferred Commencement

Under section 4.16 (3) of the Act, this development application shall be determined by granting of Deferred Commencement consent, subject to the following matter(s):

i. The Development Consent shall not operate until Council has been satisfied as to the following matters:

a. Registration of Right of Carriageway and Easement for Electricity Purposes

The developer, at no cost to Council, must obtain an easement Lots 11, 12, 13, 14 & 15 DP 238804 for the purpose of a Right of Carriageway.

The Right of Carriageway should be a minimum of 6 metres wide or wider where necessary to allow for adequate access and vehicle circulation.

The easement must be registered with Land Registry NSW.

ii. The developer must satisfy Council, within 24 months of the date shown on the top of this consent that the matters specified in condition number (i) have been complied with.

iii. If compliance with the matters contained in condition number (i) necessitate a substantial variation to the development approved by this deferred commencement consent, a new development application must be submitted.

• **Traffic Management and Signal Operation**

The application has been supported by a Traffic Management Plan (including Construction Traffic Management Plan), Traffic Operation document and accompanying plans showing detail of proposed traffic signal operations within the carpark.

The Construction Traffic Management Plan (CTMP) notes that the duration of the construction program is approximately 14 months as follows:

Stage	Work	Approximate Duration of Work
1	Demolition/site establishment	2 weeks
2	Earth Works	6 weeks
3	Construction	12 months

Construction vehicles are proposed to access the site via the existing access driveway located off the rear public carpark, where a 6m wide gate with inward swinging doors is to be installed securing the construction site.

During demolition and excavation phases, it is anticipated that 8.8m long rigid trucks (MRVs) will access the site in a forward direction. The CTMP notes that 'at this stage, it appears a 'WORK ZONE' will be required in the rear public carpark for the construction phase', where an application for said 'WORK ZONE' will be made to Council.

During construction Stage 1, the CTMP notes that works are likely to involve the removal of approximately 300m³ of material from the site, where this will include approximately 20 truck loads over a 2 week period. The CTMP states that it is unlikely that more than 2 trucks will access the site on given day during the demolition phase of works.

During Stage 2, the CTMP notes that works are likely to involve the extraction of approximately 2000m² of material from the site, where this process is likely to involve approximately 130 truck loads over a 6 week period. This should equate to around 5 trucks to the site per day.

Stage 3 involves construction and fit-out works, where the CTMP states that vehicular activity during said phase may vary from 'occasional delivery of machinery, to the concentrated delivery of concrete during major pour'. This type of works has potential to generate up to 15 concrete trucks per day to the site. It is stated within the CTMP that 'at no time will cement trucks queue in the public carpark as drivers will be radioed to the site from the batching plant when required'.

In terms of construction truck routes, it is proposed that during the construction phase, the delivery vehicles will approach the 'WORK ZONE' in the carpark. Approach and departure will be via Shellharbour Road/Addison Street intersection, as well as along Wentworth Street.

In terms of tradesmen vehicles and parking, the CTMP notes that it is likely that employees and tradespersons will park in the rear public carpark until the basement carpark is constructed. No specifics were provided as to the number of car spaces likely to be used within the carpark until such time as the basement carpark is constructed.

Council is satisfied that the proposal is capable of providing adequate traffic management and pedestrian safety through recommended conditions of consent and Council approval. The proposal is not considered to adversely impact the internal manoeuvrability of the carpark or the external traffic manoeuvrability within the Council owned carpark to the rear.

Recommended conditions as follows:

Demolition and Construction Management Plan (DCMP)

Before the issue of any Construction Certificate, a Demolition and Construction Management Plan must be submitted for approval by the Principal Certifier, and must include the following measures:

- a. dedicated construction site entrances and exits, controlled by a traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways;*
- b. turning areas within the site for construction and spoil removal vehicles, allowing a forward entry and egress for all construction vehicles on the site;*
- c. the location of proposed Work Zones in the egress frontage roadways;*
- d. location of any proposed crane standing areas;*
- e. a dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;*

- f. material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- g. the provisions of an on-site parking area for employees, tradesperson and construction vehicles as far as possible, or other arrangements to ensure that employees, tradesperson and construction vehicles are not parking within the adjoining car parking area;
- h. a detailed description and route map of the proposed route for vehicles involved in spoil removal and demolition material removal material delivery and a copy of this route is to be made available to all contractors;
- i. a detailed description of locations that will be used for layover for trucks waiting to access the construction site;
- j. construction program that references peak construction activities and proposed construction;
- k. any potential impact to general traffic, cyclists, pedestrians and bus services within the vicinity of the site from construction vehicles during the construction of the proposed works;
- l. alignment with the approved waste management plan and any requirements for the disposal of contaminated waste materials;
- m. location of protective site fencing, including tree protection methods;
- n. location of site storage areas/offices/equipment;
- o. management of Fuels and Chemicals;
- p. unexpected contamination finds and stop work protocols;
- q. cultural heritage stop work protocol;
- r. location of building materials for construction, e.g. stockpiles;
- s. provisions for public safety;
- t. provisions for temporary sanitary facilities;
- u. location and size of waste containers/skip bins;
- v. method used to provide construction noise and vibration management;
- w. methodology utilised for the protection of the Heritage item on adjoining sites;
- x. construction traffic management details consistent with other required amendments.

The site management measures are to be implemented prior to the commencement of any works including demolition and excavation. The site management measures are to be maintained throughout the works, to maintain reasonable levels of public health, safety and amenity. A copy of the Construction Management Plan must be retained on site and is to be made available upon request.

It is the developer's responsibility to adequately inform all construction workers, sub-contractors and supervisors to ensure that the Construction Traffic Management procedures are adhered to at all times.

- **Public Domain**

The proposal will impact on the public domain to both the front and rear of the site, where it is noted that the proposal will result in asset changes along Addison Street. This is due to the removal of the driveway which provides access to the existing dwelling and shop on the subject site. Linkage with the main street will be provided via the residential and retail entry points provided, and a covered verandah is proposed along the main retail element, also.

Landscaping works were initially discussed in the form of extending the existing raised planter which is found to the front of the site, the following condition is recommended to be imposed in order to fully consider appropriate works within the Addison Street public domain:

Public Domain Plan

Before the issue of any construction certificate, a Public Domain Plan is to be prepared, submitted to and approved by Council.

The Plan must generally align with the stamped approved plans and include details of the proposed finishes and specifications for the public domain areas around the perimeter of the site.

The Public Domain Plan must show landscaping between the property boundary and kerb including hardstand specifications, location, number and species of street trees to be installed.

The agreed Public Domain Plan must accompany any Section 138 Roads Act application for the encroachment into Council's Road reserve.

This will ensure that works along Addison Street improve and lift the pedestrian experience, providing functional and social aspects to the street, i.e., seating, planting and enhanced comfort levels. It will also ensure that Council's Assets Team has the chance to review the proposed design and materials, working with the applicant at such time to discuss finer details. In any event, the purpose of the condition is to enhance the streetscape and enhance the pedestrian experience in line with the future desired character of Shellharbour Village.

- **Flora and Fauna Impacts**

Tree removal has been proposed as part of this application. The proposed development includes significant excavation works due to the inclusion of a basement, and the narrow nature of the site means that excavations of such nature are highly likely to impact in neighbouring trees and their roots. In this regard, five (5) trees on 29 Addison Street will require to be removed.

An Arboricultural Impact Assessment Report, prepared by Green Earth Tree Consultancy, dated November 2024, has been provided, and details the trees in question which have significant concerns (Trees 1-4 and 7). The trees are non-native species, found in close proximity to the boundary line between 27 & 29 Addison Street. These trees were noted as being subject to significant encroachment and their survival unlikely should works be undertaken. These trees were also noted to be in significant decline. The applicant was asked to address the matter of neighbouring trees.

Owner's consent was obtained from the owners of 29 Addison Street, and a supportive referral response was received by Council's Environment Team, where the removal of five (5) trees was considered a necessary course of action. As such, tree removal conditions form part of the draft consent. Additionally, tree protection conditions are relevant with regards existing trees/vegetation within the public domain frontage of the site.

- **Natural Environment:**

While there are significant excavation works, the general topography of the site does not necessarily change at ground level, where a ground level retail unit is proposed to provide access to Addison Street, and the car park is accessed from the rear.

Conditions of consent have been recommended with regards to geotechnical requirements and engineering matters, to ensure excavations are carried out in accordance with the relevant requirements, and in order to mitigate adverse impacts.

- **Construction, Noise and vibration:**

There is significant excavation proposed as part of basement works. In this regard, it is expected that there will be some construction disturbance in order to facilitate such excavation. In order to address the sensitive nature of this in close proximity to neighbouring heritage items, it is considered that further details or the provision of a vibration management plan is necessary, in an effort to mitigate potential adverse impacts of the development on neighbouring properties.

The below condition has already been recommended as per comments under 'Context and Heritage, Setting'

Vibration Control Plan

A Vibration Control Plan that ensures vibration remains within acceptable levels and minimises the potential effects of vibration must be submitted to the Principal Certifier for approval, prior to the release of the Construction Certificate.

The plan must detail monitoring to be implemented and alarm levels selected in accordance with the type of structures present within the zone of influence of the proposed excavation.

As an additional mitigation measure, and due to the proximity of works to the heritage item 'Windradene' on 29 Addison Street, it is considered appropriate to recommend the following condition of consent during the demolition/building work stage:

Protection of Property

The structural integrity of adjoining properties and structures must be protected at all times during construction. All costs associated to any ramification works are strictly borne on the developer.

- **Contamination and Preliminary Site Investigations:**

The application was supported by a Preliminary Site Investigation report, prepared by JBS & G, dated 31 July 2024. This report concluded that an assessment of the site history had identified there was low risk of potential contamination, and there was limited potential to encounter shallow groundwater beneath the site, other than for perched water at the soil rock interface, likely driven by rainfall recharge and likely to flow in the direction of local topography.

In this regard, an 'unexpected finds' condition is considered appropriate, as well as a condition pertaining to the provision of a Dewatering Management Plan, should groundwater be encountered, where necessary:

Dewatering Management Plan

A Dewatering Management Plan (DMP), where relevant, and subject to geotechnical investigations and encountering of groundwater, is to be developed in accordance with NSW Gov Bluebook - Managing Urban Stormwater: Soils and construction - Volume 1 and approved by Council before the issue of a construction certificate.

The Dewatering Management Plan must include the following:

- a. quality and quantity of water to be released
- b. location of water discharge and at what rate
- c. Monitoring locations and monitoring procedure of the dewatering
- d. any impacts on downstream biodiversity
- e. sediment and erosion controls
- f. relocation of displaced fauna
- g. treatment of weed species prior to dewatering (if applicable)
- h. testing, treatment and disposal of sediment removed from dam
- i. risk assessment including ameliorative measures for problems encountered during dewatering.

Any dewatering must be carried out in accordance with the approval management plan and other relevant conditions related to dewatering.

- **Safety, security and crime prevention (CPTED)**

The proposed development is considered to be generally consistent with the CPTED design principles, where territorial reinforcement, passive surveillance, access control, maintenance and management, social cohesion and connectivity are apparent in the design.

It is recommended that a lighting plan be prepared in order to ensure appropriate lighting is provided across the development and within the carpark levels, with relevant conditions as follows:

Lighting Plan

Before the issue of a construction certificate, a lighting plan must be prepared and provided to Council for approval. The following details must be included in the lighting plan:

- a. Design details of low level lighting for the pedestrian pathways, communal open space and entryways for each unit, including within the alcove which is provided for the main residential entry on Addison Street;
- b. Lighting within the carpark area.

Lighting should meet minimum Australian and New Zealand Lighting Standards. Lighting objectives relevant to crime and fear reduction are outlined in Australian lighting standard AS 1158 and should be adhered to.

All lighting must use white lights, not yellow or orange. Lighting must also be provided so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby

roads, where AS 4282-1997 is to be considered for any lighting provided to the Addison Street frontage and facing the rear carpark entrance.

Any lighting of the premises shall be installed and maintained in accordance with Australian Standard AS 4282-1997: Control of the Obtrusive Effects of Outdoor Lighting so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads.

Outdoor Lighting

#Outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminaire must not exceed the Level 1 control relevant under Table 2.2 of AS 4282. The maximum illuminance and the threshold limits must be in accordance with Table 2.1 of AS 4282.

Additionally, intercom/secure access to all external access points is required. The following condition is recommended, to ensure the intercom for parking levels has been provided:

Intercom for Parking Levels

The ground level parking level must be accessible to residential visitors and residents by the location of an intercom (or card controller system) at the car park entry and wired to all units. The intercom must comply with Australian Standards AS1428.2-1992: Design for access and mobility - Enhance and additional requirements - Building and facilities Sections 22 and 23.

Such access control must be installed prior to the issue of the Occupation Certificate.

Recommended design changes include the following in relation to the provision of suitable intercom/security measures, where said design changes are to be incorporated into revised plans and provided prior to issue of the construction certificate:

Intercom/security access to be provided for residents and visitors to the residential entry from Addison Street, as well as to the rear-accessed carpark.

- **Social Impact**

The proposal is considered to provide a healthy and safe living environment for both future residents and for the existing community. Sense of place is provided in the overall design, with its large open balconies providing access to outdoor living, and the retail component at ground level providing a high street feel within the beach village. An overall connection with the community is considered to be achieved through the proposed development, which is considered to respond to its beach-side setting.

- **Economic Impact:**

Employment opportunities are created through the inclusion of the ground level retail unit, which emulates a long-standing history and ongoing operational nature of Shellharbour Village. Specifically, the high street of Addison Street is continuing to embark on a transitional period, growing to become more and more known as a popular local hub and tourist centre, where the proposal supports this vision.

- **Site Design and Internal Design:**

As discussed in this report, the proposal is considered to be set out in an appropriate manner, given the constraints of the narrow site. Ground level and basement car parking is proposed, and conditions of consent shall ensure adequate mitigation efforts in this regard.

Internal design is considered favourable, offering generous-sized residential and retail components, with adequate residential car parking and open space amenity.

- **Cumulative Impacts**

The proposal is considered generally consistent with the relevant planning controls, and will not result in an adverse cumulative impact.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

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

The proposed development has been appropriately designed with regard to the constraints of the site, its zoning and topography. The development in the form of shop top housing is permissible with consent in the land use zone and is located within close proximity to existing retail and commercial services which will support the residents, visitors and employees of the subject site. The development would not be considered to result in unreasonable adverse impacts on the amenity of nearby properties. Accordingly, the site is considered suitable for the development.

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

Submissions are considered in Section 5 of this report.

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

The proposed development has been appropriately designed with regard to the constraints of the site, its zoning and topography. The development in the form of shop top housing is permissible with consent in the land use zone and is located within close proximity to existing retail and commercial services which will support the residents, visitors and employees of the subject site. The development would not be considered to result in unreasonable adverse impacts on the amenity of nearby properties. Accordingly, the site is considered suitable for the development.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The development application has been referred to agencies for referral comment as required by the EP&A Act and outlined below in Table 5.

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

Table 8: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Endeavour Energy	S2.48 (Transport and Infrastructure) 2021: works within proximity to overhead power lines (low voltage)	No objection, subject to conditions provided.	Y

5.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 9**.

Table 9: Consideration of Council Referrals

Officer	Comments	Resolved
Heritage	<p>Council's Heritage Officer reviewed the proposal and provided a supportive response. While it is noted that the proposal will have some visual impact to the adjoining heritage item at 29 Addison Street at 'Windradene', it was also noted that the development would adjoin the single level shopfront on the same lot as Windradene. The presence of this existing shopfront building was considered to enhance the overall street frontage and provide a suitable transition from the proposed setback of 27 Addison Street (subject site, and including recessed residential entryway) and the existing setback of Windradene itself. The proposal was noted to have proposed balconies and pedestrian awnings, as well as vertical units, which were consistent with the adjoining building the east, and with the 'traditional order' of the street.</p> <p>It was recommended that emphasis be placed on the standard condition of consent which requires a dilapidation report be prepared for adjoining buildings. For 29 Addison Street (Windradene), it was recommended that the dilapidation report be provided to Council prior to the commencement of works. It was noted that, should any changes to the heritage fabric of Windradene occur throughout the development, consultation and input should be sought from Council's Heritage Advisor to inform remediation works.</p>	Y
Engineering	Council's Engineering Officer reviewed the proposal, including the stormwater concept plan, earthworks, parking and accessed and considered the proposed development satisfactory subject to conditions. It is noted that Council's Engineering Officer recommended the requirement of signage and line markings, and made mention of consideration of an intercom/security access location at the access gates.	Y

	<p>Council's Town Planner sent a RAI on 1 November 2024 which required proposed car parking and waste management be reviewed and reconsidered. This has resulted in revised plans and documentation being provided, such as revised car parking and a Traffic and Parking Assessment Report being provided. The revised documentation and further plans were received on 6 February 2025. Council's Development Engineers reviewed plans and supports the proposal and has provided recommended conditions of consent.</p>	
Traffic	<p>Council's Traffic Engineering Officer provided initial referral comments which raised concerns with the roller door access to the car park, where a splay or similar treatment was required to be provided to as to provide pedestrians with adequate sight distances to vehicles existing the site. Further, plans were required which showed detail of the traffic light signal operations, vehicle manoeuvring during operation of the traffic light system and any waiting or holding bays/holding lines where necessary, across all carparking levels. A request for additional information was put to the applicant on 22 January seeking addressing of the matter, where an approximate 1.2m splay was recommended to be provided.</p> <p>The applicant provided further information, including a revised Traffic Management Plan (Construction Traffic Management Plan (CTMP) included), Traffic Light Operation document and accompanying plans referencing traffic signals and their location/purpose. Amended architectural plans detailed that the roller door entry had been set back 1.2m from the rear boundary, as suggested. A 1.2m sight triangle was also indicated on plans.</p> <p>With regard to the traffic light operation document, further comments were received from Council's Traffic Engineer which asked for further clarification as to the overall operation and required a clearly defined splay was provided at the car park entry/exit point.</p> <p>It is considered that the above matters are capable of being addressed by way of conditions of consent.</p> <p>With regard to the Construction Traffic Management Plan provided, in order to facilitate the appropriate management protocols are in place within the public car park and surrounds, it is recommended that a detailed CTMP be provided to Council for approval prior to CC, as an additional mitigation effort.</p>	Y
Business & Investment (Council Property Issues)	<p>The proposal requires a right of access to be obtained over Council owned land to enable vehicle access to the subject site. Adjoining approved developments have followed a similar pathway, where a right of access has been required in order to provide access. As such, there are rights of access which are currently in place and benefit properties within the Council owned car park; for example, in relation to numbers 33-39 Addison Street</p>	Y

	<p>west of the subject site, and 23 Addison Street east of the subject site.</p> <p>Council's Property Officer provided referral comments which acknowledged that vehicle entry for the proposed development will require establishment of a Right of Carriageway over Lot 11, 12, 13, 14 & 15 of DP 238804, allowing for both entry and exit. Preparation of a survey plan, Section 88B Instrument and compensation in relation to the easement will be required, and in this regard, consultation with Council's Property team would be required.</p> <p>A deferred commencement condition is recommended which would require that the easement is endorsed at a Council meeting and registered over the subject lot prior to the issue of any operational consent.</p>	
Waste	<p>The application proposes on-site waste management, where a waste truck is proposed to collect waste from the ground floor.</p> <p>This matter has been raised with the applicant, particularly with regards the proposal being potentially problematic, in that swept paths initially showed blocking of the basement ramp and some parking. The applicant provided a revised waste management plan which includes a 'traffic light system' in order to manage traffic flow.</p> <p>Swept paths show that the waste vehicle (small ridge vehicle) can enter and exit the carpark in a forward manner, and traffic light operations have been provided for the waste vehicle manoeuvring. As per recommended traffic management conditions, it is considered that traffic light operations and further detail in this regard can be suitably conditioned, so that Council's Traffic Engineers can review prior to issue of a construction certificate.</p> <p>In terms of the general waste management proposal, Council's technical Waste Officers provided a supportive referral response; however, it was noted as to the lack of appropriate FOGO bins in order to service the residential component of the development. This is recommended to be resolved by way of recommended conditions of consent.</p>	Y
Environment	<p>The application has been referred to Council's Environment Team regarding the review of the Arboricultural Impact Assessment Report and assessment of removal of neighbouring trees at 29 Addison Street.</p> <p>Five (5) trees are supported for removal on the neighbouring property, within proximity to the boundary between 27 & 29 Addison Street. Owner's consent has been obtained from the owners of 29 Addison Street for this purpose.</p>	Y

	Recommended conditions are provided in the draft consent.	
Contributions	The application was referred to Council's Development Contributions Team, who provided a satisfactory referral response, including details of payment in lieu of 2 car parking spaces (variation proposed to retail component, where 2 retail spaces are not provided as part of proposed development).	Y
Public Domain/ Assets	<p>The application was referred to Council's Assets team regarding the proposed landscaping works within the Council verge.</p> <p>Initially, landscaping was proposed within the front Council domain, and included the removal of the existing driveway crossover on Addison Street, as well as the extension of an existing planter bed. However, on receipt of referral comments from Assets, Council's Town Planner was made aware of Addison Street upgrade works, where such upgrade works may veer more towards seating looking towards the street, small scale pavers and consideration as to planting of new trees for shade. It was therefore recommended that a condition of consent be imposed in order to request a Public Domain Plan is provided to Council for approval prior to the issue of a construction certificate. This will ensure appropriate works within the public domain to the front of the site are discussed and agreed and are in line with the future desired character of Addison Street.</p>	Y

5.3 Community Consultation

The proposal was notified in accordance with Council's Community Participation Plan from 23 September 2024 until 24 October 2024. The notification included the following:

- a sign placed on the site;
- notification letters sent to adjoining and adjacent properties, and
- notification on the Council's website.

The Council received a total of 2 unique submissions, comprising 1 objection and 1 submission in favour of the proposal. The issues raised in these submissions are considered in **Table 10**

Table 10: Community Submissions

Issue	No of submissions	Council Comments
Non-compliant setbacks, including 4m at fourth level, adversely affecting aesthetics of building when	1	The application proposes a fourth level setback of 4.72m to the building line. This has been increased throughout assessment and is now considered compliant. A setback of 4.72m minimum, is also provided for level three.

viewed from public domain		The proposal is considered suitably compliant in terms of setbacks, providing a further 'stepping back' of the façade from the Addison Street boundary.
Bulk and scale of proposal is not appropriate with regards surrounding buildings and heritage items	1	<p>While the proposed development is considered to have some visual impact on the adjoining heritage item, 'Windradene is also noted that the development would adjoin the single level shopfront on the same lot as Windradene. The presence of this existing shopfront building is considered to enhance the overall street frontage and provide a suitable transition from the proposed setback of 27 Addison Street (subject site, and including recessed residential entryway) and the existing setback of Windradene itself.</p> <p>Additionally, the proposal is considered to provide suitable setbacks from the primary Addison Street frontage, and a two storey verandah which includes a break towards the residential entry point. This is considered to provide adequate transition between the heritage item and proposed development.</p> <p>The proposal was also referred to Council's Heritage Officer, who reviewed the proposal in terms of impact on the adjoining heritage items and provided a supportive referral response.</p>
General building aesthetics	1	<p>The proposed development was initially referred to the Design Review Panel for consideration, prior to development application lodgement, on 17 May 2024, in accordance with the State Environmental Planning Policy (Housing) 2021.</p> <p>The Design Review Panel encouraged the applicant to provide a design which included a contemporary two level verandah, as well as level three (fourth and upper-most level when viewing architectural plans) setback, in order to result in an expression that was more responsive to the streetscape and heritage generally. The use of face brick and steel materiality was supported.</p> <p>Additionally, and on formal lodgement of the development application, the applicant provided a design which included the above details, as well as a Design Verification Statement. The Design Verification Statement noted that the proposed development included a 'contemporary building', with a two storey steel framed awning, consistent with adjoining street verandah. White brickwork was also noted as being included at the base of the building, aiming to provide 'material connection' to the site of</p>

		<p>'Windradene' to the west. A colours/materials schedule is provided within the architectural suite of plans, which form part of the approved documentation.</p> <p>The general aesthetics, colour and material choices are considered appropriate for the site in context to the local and wider area.</p>
Car parking deficit and effect on existing public car parking within vicinity of site	1	<p>The proposal includes provision of 18 car spaces overall. Of the 18 spaces provided, 14 are proposed for the residential component of the development, and 4 spaces are reserved as residential visitor spaces. This is considered compliant when assessing against the Shellharbour Development Control Plan and the requirements of residential car parking.</p> <p>The retail unit proposed at ground level requires 2 car spaces be provided under the Shellharbour Development Control Plan. However, as the proposal includes one retail unit, which is generally considered to be a use which attracts limited time periods for parking, there is considered to be adequate public car parking within the vicinity of the site in order to accommodate the shortfall in car parking provision. There is a Council owned public car park immediately to the rear of the site, as well as 1 hour on-street parking along the main Addison Street frontage is available on both the northern and southern sides of the street.</p> <p>Shortfalls in provision of parking are also capable of being levied under section 7.11 contributions, in line with the Shellharbour Local Infrastructure Contributions Plan 2019.</p>
Potential use of development as Air BnB	1	<p>The proposed development is for residential apartments and does not include short-term rental accommodation.</p> <p>All lawfully constructed dwellings that are permitted to be used as residential accommodation in all land-use zones can use the exempt development pathway for short-term rental accommodation, with some exceptions. Council cannot impose a condition prohibiting short term rental accommodation, where it may be lawfully carried out in some circumstances.</p>
Privacy and overlooking onto adjoining properties, where windows with increased	1	<p>The proposed development is considered to be appropriately designed to allow for reduced privacy and overlooking impacts.</p> <p>The proposal is adjoined by a Council owned public car park to the rear which provides approximately 38m</p>

<p>sill height and screening may allow for increased acoustic and visual privacy</p>		<p>of car park space between the rear of the site and the nearest neighbours found along Adelaide Place. Further, mature trees are also found to the southern boundary of the car park and within the car park generally; this is also considered to provide a level of screening between the proposed development and residential properties across the carpark.</p> <p>In terms of balcony areas, where it is considered necessary, screening of balcony areas is capable of being conditioned. In terms of windows to the rear of the site, some of the windows which face into the car park are considered to serve low use rooms, presenting in minimal overlooking generally. Where windows serve high use rooms or main living areas, these are considered to be appropriately setback from neighbouring properties beyond the carpark (approximately 37m away), or offer limited overlooking from internal seated positions. Screening of parts of the eastern facing sides of rear balconies is provided in the form of walls. Screening to the sides of balconies which face Addison Street has been provided in the form of timber look dividing screens.</p> <p>The orientation of windows and balconies serving principal living areas are to the street and rear car park and will not have a significant detrimental impact on neighbouring properties. There are secondary windows included on the side elevation (western) which include timber screening and glass blocks to limit views. Views between balconies within the development are limited by the inclusion of screening. No additional mitigation measures are required.</p>
<p>Heritage - provisions for development adjoining heritage sites, as listed in the DCP, and the proposed development 'overwhelming' adjoining development</p>	<p>1</p>	<p>The proposal was referred to Council's Heritage Officer, where a supportive referral response was received. The proposal has been assessed against all relevant chapters of the Shellharbour Development Control Plan, which includes Chapters 6 - Shellharbour Village Town Centre and 28 - European Heritage, and it is considered consistent with the objectives of said chapters.</p> <p>Further, the proposed development is considered to include design elements, such as a two-storey veranda and recessive setbacks on upper levels, as well as a central stairwell and void which are considered to offer visual relief and respond to neighbouring heritage items.</p> <p>Recommended conditions are to be included on any consent, which specify the requirement for a dilapidation report to be prepared; with specific reference made to 29 Addison Street (site of</p>

		<p>'Windradene'). This is in order to ensure that, should any changes occur to the heritage fabric of Windradene, Council's Heritage Officer would require to be consulted so to inform remediation works.</p>
<p>Social Impact – meaningful engagement with the community to inform social impacts, where no footpaths for pedestrian links to Shell Cove and South Beach.</p> <p>Local Infrastructure Contribution should remain in the Village.</p> <p>Oversupply of 'luxury boutique' housing stock in Addison Street and Shell Cove.</p> <p>Council requested to prohibit short term letting e.g. Air BnB and others.</p>	1	<p>The proposal has been notified in accordance with the Shellharbour Community Participation Plan 2021, where shop top housing development is advertised (public exhibition) development. The proposal was advertised for a period of 28 days due to the scope of works, and the development involving Council-owned land. In line with the Community Participation Plan,</p> <p>The proposal is for shop top housing with nine (9) residential units and one (1) retail space. The development is not proposed for short term rental accommodation and shop top housing is permissible in the E1 zone under the Shellharbour Local Environmental Plan 2013. The proposal provides a permitted land use on the subject site, and is considered to support development within the Shellharbour LGA that is conducive to good health, fosters social cohesion/connectivity and contributes to a safe environment.</p> <p>Social impacts have been considered as part of the assessment and community notification has been undertaken in accordance with the Shellharbour Community Participation Plan.</p> <p>The proposal is also considered to be consistent with the Shellharbour Village Centre Plan's principles, by promoting economic vibrancy, community heart through a 'high street' sense and active frontage along Addison Street. Urban composition is provided through the articulation of the proposed development's-built form and providing heritage character via the two storey verandah within the street frontage and public domain. Access and movement are also encouraged through the covered verandah providing weather shelter and encouraging outdoor living and social interactions. Hard and soft landscaping is provided within the frontage of the site, and the proposal has been designed to achieve compliance with the State Environmental Planning Policy (Sustainable Buildings) 2022, which includes sustainable features such as on-site reuse of rainwater for irrigation of landscaping, and air conditioning throughout.</p> <p>Local Infrastructure Contributions are required from developers of certain developments towards provision of a wide range of community, recreation and sporting</p>

		<p>infrastructure, where a summary of infrastructure items, cost apportionment and contribution rates are provided in the Shellharbour Local Infrastructure Contributions Plan 2019 (as amended). Contribution's payments are apportioned in accordance with the above-mentioned Contributions Plan.</p> <p>All lawfully constructed dwelling that are permitted to be used as residential accommodation in all land-use zones can use the exempt development pathway for short-term rental accommodation, with some exceptions. Council cannot impose a condition prohibiting short term rental accommodation, where it may be lawfully carried out in some circumstances.</p>
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6. KEY ISSUES

The following key issues are relevant to the assessment of this application. The following matters have been considered at length during the assessment and are now suitably addressed:

- car parking - consideration of number of parking spaces provided in relation to uses proposed and the maximum vehicle size accessing the site;
- traffic Management – construction traffic management during works, traffic management within car park level, traffic light operation and adequate sightlines provided to entry/exit door;
- waste Management – access and manoeuvring for waste vehicles;
- urban design – details of work to public domain;
- streetscape compatibility and existing heritage item at 29 Addison Street; and
- residential amenity, consistency with DCP and ADG.

7. 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, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The issues identified and discussed throughout the report surrounding car parking, traffic (and waste) management, streetscape and design, heritage, ADG non-compliances, are considered to have reached satisfactory solutions, whether this be by way of amended design or recommended conditions of consent.

The site is considered suitable for the proposed shop top housing and associated car parking, as permitted within the zone. The proposal is considered compatible with the locality and is considered consistent with relevant planning controls and the character of the area. It is considered that any likely adverse impacts are appropriately addressed and managed.

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**.

8. RECOMMENDATION

That the Development Application DA0237/2024 (PPSSTH-435) for shop top housing and associated works at 27 Addison Street, Shellharbour be determined by way of deferred commencement pursuant to Section 4.16(1) 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 (i-xvi):
 - (i) *Architectural plans incl. Right of Carriageway Plan*
 - (ii) *Landscape plan*
 - (iii) *Stormwater plan*
 - (iv) *Statement of Compliance – Access for People with a Disability*, prepared by Accessible Building Solutions, dated 27 June 2024
 - (v) *Arborist Report*, prepared by Green Earth Tree Consultancy, dated November 2024
 - (vi) *BASIX Certificate*, referenced 1756763M_03, dated 19 March 2025
 - (vii) *BCA Assessment Report*, referenced Report 20224/0668 R1.1, dated July 2024
 - (viii) *Preliminary Site Investigation*, prepared by JBS & G, dated 31 July 2024
 - (ix) *Statement of Heritage Impact*, prepared by Heritage Solutions, dated August 2024
 - (x) *Fire Engineering Letter*, prepared by Holmes Australia, dated 23 July 2024
 - (xi) *SEPP (Housing) 2021 Design Statement*, prepared by Couvaras Architects, dated 1 February 2024
 - (xii) *Traffic Signal Operation Document*, prepared by AGD Australasia, dated 5 February 2025
 - (xiii) ADG Drawing – Basement Traffic Signal Plan, Sheet DA20
 - (xiv) ADG Drawing – Ground Floor Traffic Signal Plan, Sheet DA21
 - (xv) *Traffic and Parking Assessment Report and Construction Traffic Management Plan*, prepared by Terrafic Pty Ltd, dated 21 November 2024
 - (xvi) *Waste Management Plan*, prepared by MRA Consulting Group, dated 20 January 2025
- Attachment C: Apartment Design Guidelines Compliance Table
- Attachment D: Shellharbour Local Environmental Plan 2013 Table
- Attachment E: Shellharbour Development Control Plan 2013 Table
- Attachment F: Design Review Panel (DRP), Applicant and Council Response
- Attachment G: Schedule 5 Assessment