

Attachment 3: Shellharbour Local Environmental Plan 2013 Compliance Assessment

The relevant local environmental plan applying to the site is the *Shellharbour Local Environmental Plan 2013*.

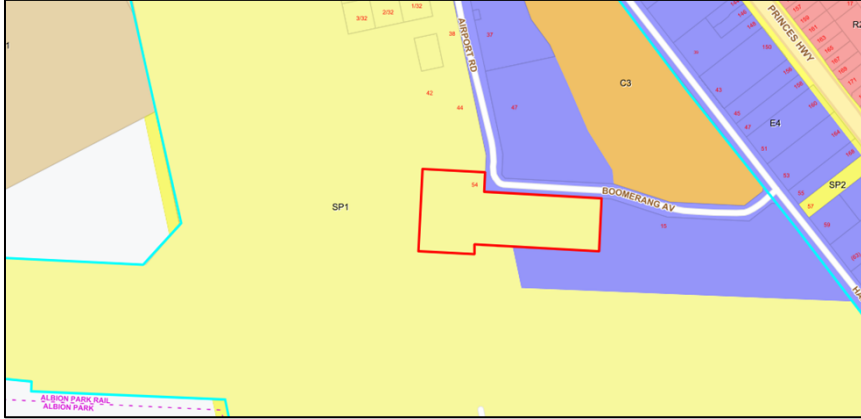
1.2 Aims of Plan	
(2) <i>The particular aims of this Plan are as follows—</i> (aa) <i>to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,</i> (a) <i>to encourage development that balances ecological sustainability, social justice principles of equality, access, rights and participation and economic viability,</i> (b) <i>to encourage a range of development, including diversity of housing types, employment, services and recreational opportunities that meet the needs of existing and future residents, visitors, business owners and workers of Shellharbour,</i> (c) <i>to enhance the amenity and characteristics of established residential areas,</i> (d) <i>to retain affordable housing opportunities as a way of ensuring a sustainable and inclusive community,</i> (e) <i>to encourage development that has considered safer by design principles so that potential impacts to life and property from crime is minimised,</i> (f) <i>to ensure development facilitates the economic and social vitality of Shellharbour City Centre as a major regional centre,</i> (g) <i>to improve connectivity and accessibility in Shellharbour and encourage development that enables walking, cycling and public transport usage,</i> (h) <i>to conserve, protect and enhance the heritage values of Shellharbour,</i>	The development application is consistent with these aims as the proposal as follows: • Supports the expanding needs of the subject site (the HARS museum) which is a tourist attraction located within the Shellharbour Local Government Area; • The hangar is to be used for the storage and maintenance of aircraft which is compatible with the broader land use of the site as an aircraft transport facility; • The proposed development provides a storage and maintenance area for the historical conservation of aircraft; • The proposal conserves, protect and enhances the heritage significance of the airport as the hangars will be used for aircraft that utilize the airport's runways for take-offs and landings.

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(i) <i>to protect, enhance and maintain significant landscapes with visual, scenic, historic, ecological or conservation value, including the Illawarra Escarpment, Lake Illawarra and the coastline, for the benefit of present and future generations,</i> (j) <i>to protect and conserve—</i> (i) <i>remnant native vegetation, and</i> (ii) <i>soil stability by controlling development in accordance with land capability, and</i> (iii) <i>water resources, water quality and wetland areas, natural flow patterns and their catchments and buffer areas,</i> (k) <i>to conserve the scenic and environmental resources of the land, including the protection of environmental assets such as native vegetation, waterways and wetlands and habitats for threatened species, populations and endangered ecological communities,</i> (l) <i>to recognise the importance of, and to retain the productive capacity of, agricultural land that contributes to the local economy,</i> (m) <i>to minimise risk to the community in areas subject to environmental hazards, particularly flooding, coastal inundation, bush fires, acid sulfate soils and unstable land.</i>	
Part 1 Preliminary	
1.4	Definitions <i>air transport facility</i> means an airport or a heliport that is not part of an airport, and includes associated communication and air traffic control facilities or structures. <i>airport</i> means a place that is used for the landing, taking off, parking, maintenance or repair of aeroplanes, and includes associated buildings, installations, facilities and movement areas and any heliport that is part of the airport. Note.

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		<i>Airports are a type of air transport facility—see the definition of that term in this Dictionary.</i>
1.9A	Suspension of covenants, agreements and instruments	Nil.
Part 2 Permitted or prohibited development		
2.2 & 2.3	Zoning of land and Zone objectives and land use table	The development footprint is located within the SP1 Special Activities (Air Transport Facility) and E4 General Industrial zone as shown in Figure 1 below.  Figure 1: Land use map of the subject site and its surrounds. 42 Airport Road is outlined in blue and 54 Airport Road in red. The proposal can be defined as an ancillary structures (hangar and aircraft movement area) to the existing air transport facility. Under SP1 Special Activities, any development that is ordinarily incidental or ancillary to development for that purpose is permitted with consent. The proposed hangar and aircraft movement area that is located within the SP1 zone is permitted with consent. The proposed development is prohibited in the E4 General Industrial zone, but is permitted with consent under Section 2.25 of the <i>SEPP (Transport and Infrastructure) 2021</i>.
2.6	Subdivision – consent requirements	Subdivision is permissible on land to which the SLEP 2013 applies.

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		Consent for the subdivision of the land is sought as part of the subject application. Specifically, the application seeks to adjust the boundaries and lot sizes of 42 and 54 Airport Road.																		
2.7	Demolition requires development consent	No demolition works are proposed.																		
2.8	Temporary use of land	Not Applicable.																		
Part 4 Principal development standards																				
4.1	Minimum subdivision lot size	The Minimum Subdivision Lot Size Map identifies that a minimum lot size of 2.7ha applies to the E4 zoned land and there is no minimum lot size development standard on the SP1 zoned land. <table><tr><td></td><td>Existing Site Area</td><td>Proposed Area</td><td>Site</td><td>Zoning</td></tr><tr><td>54 Airport Road</td><td>1.58ha</td><td>1.769ha</td><td></td><td>SP1 and E4</td></tr><tr><td>42 Airport Road</td><td>104ha</td><td>103.8</td><td></td><td>SP1 only</td></tr></table> The proposed boundary adjustment will result in 34.48% (0.931ha) shortfall of the development standard for 54 Airport Road. A Clause 4.6 variation request for the building height accompanied the development application.					Existing Site Area	Proposed Area	Site	Zoning	54 Airport Road	1.58ha	1.769ha		SP1 and E4	42 Airport Road	104ha	103.8		SP1 only
	Existing Site Area	Proposed Area	Site	Zoning																
54 Airport Road	1.58ha	1.769ha		SP1 and E4																
42 Airport Road	104ha	103.8		SP1 only																
4.1A	Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Not Applicable.																		
4.1B	Exceptions to minimum lot sizes for certain residential development.	Not Applicable.																		
4.3	Height of buildings	The Height of Buildings Map identified a maximum building height of 11m for the E4 zoned land. There is no maximum building height for the SP1 zoned land. In the E4 zoned land, the proposed maximum building height is 14.17m and therefore the development exceeds the 11m maximum permitted by 28.81% (3.17m). A Clause 4.6 variation request for the building height accompanied the development application.																		
4.4	Floor Space Ratio	The Floor Space Ratio Map identified a maximum floor space ratio of 1:1 for the subject site. There is no maximum floor space ratio for the SP1 zoned land.																		

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		The proposed FSR is as follows: <table><tr><td>Site Area</td><td>17,690m²</td></tr><tr><td>Existing</td><td>12,802.1</td></tr><tr><td>Proposed Development</td><td>1,899.06</td></tr><tr><td>GFA</td><td>14,701.16</td></tr><tr><td>FSR</td><td>0.83:1</td></tr></table>	Site Area	17,690m ²	Existing	12,802.1	Proposed Development	1,899.06	GFA	14,701.16	FSR	0.83:1
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4.5	Calculation of floor space ratio and site area	The FSR and site area have been calculated in accordance with the provisions of this clause. As the proposed development is permitted within the SP1 zone, the site area within the SP1 zone has been included in the site area for the purposes of calculating the floor space ratio.										
4.6	Exceptions to development standards	The proposal does not comply with the building height development standard in Clause 4.3 in the E4 zoned land. A Clause 4.6 variation request accompanied the development application. An assessment against Clause 4.6 is provided below.										
Part 5 Miscellaneous provisions												
5.1	Relevant acquisition authority	Not applicable.										
5.1A	Development on land intended to be acquired for public purposes	Not applicable.										
5.2	classification and reclassification of public land	Not applicable.										
5.3	Development near zone boundaries	Not applicable.										
5.4	Controls relating to miscellaneous permissible uses	Not applicable.										
5.6	Architectural roof features	Not applicable.										
5.7	Development below mean high water mark	Not applicable.										
5.8	Conversion of fire alarms	Not applicable.										
5.10	Heritage conservation	No. 54 Airport Road is not listed as a heritage item.										

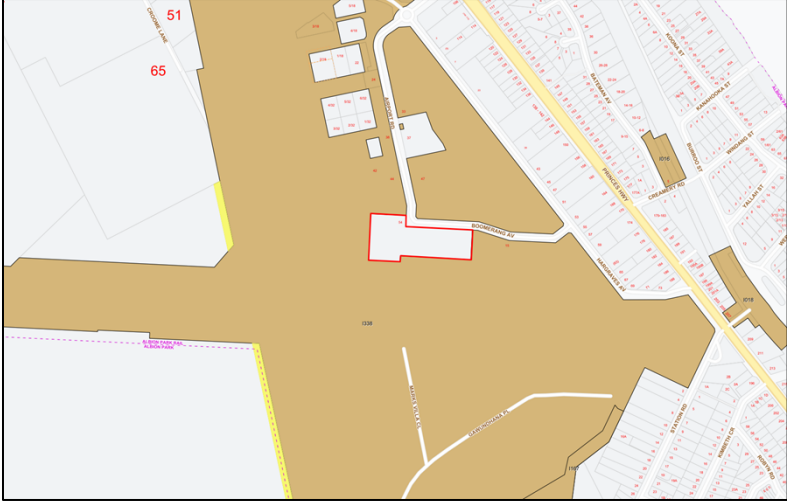
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		No. 42 Airport Road is identified as local heritage item I338 'Illawarra Regional Airport' pursuant to Schedule 5 Environmental Heritage. The Statement of Significance for the heritage item is as follows: <i>"Illawarra Airport is historically significant for the part it played during World War Two, protecting Port Kembla and for RAAF training.</i> <i>It has historic associations with the early 'Waterloo' land grant, c1876 house 'Marks Villa', dairy farming, and with various events and persons during the 20th century.</i> <i>The site contains ecological flora communities, 'Endangered Ecological Community - Illawarra lowland grassy woodland' assigned with a very high conservation priority, native paperbark forest trees are major local landmarks and provide visual separation between the airport 's southern boundary and around the knoll containing 'Ravensthorpe', its workers cottages and the c1876 'Marks Villa' (relocated) Johnston farm complex."</i> The proposal was referred to Councils Heritage Officer, whom undertook a site inspection on 10 September 2025. The referral advice raised no objection to the proposal and did not recommend any conditions of consent. Within the Heritage referral advice, the following was provided: <i>"It is evident that the museum run by the Historical Aircraft Restoration Society has a very strong connection to the Shellharbour Airport and makes an important contribution to its significance. The proposed extension to hanger 3 will ensure the longevity of the historic fleet of aircraft, all of which have heritage significance in their own right. The new hanger doors will prevent ongoing maintenance issues associated with birds, vermin and pollutants.</i> <i>The proposed development does not impact the historic associations of Shellharbour Airport and it will not impact any endangered ecological communities."</i>
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		 Figure 2: SLEP 2013 heritage map layer. 54 Airport Road is outlined in red.
5.11	Bush fire hazard	Any bushfire hazard reduction works are to be undertaken in accordance with the Rural Fires Act 1997.
5.12	Infrastructure development and use of existing buildings of the Crown	Not applicable.
5.13	Eco-tourist facilities	Not applicable.
5.16	Subdivision, or dwellings on, land in certain rural, residential or conservation zones	Not applicable.
5.18	Intensive livestock agriculture	Not applicable.
5.19	Pond-based, tank-based and oyster aquaculture	Not applicable.
5.20	Standards that cannot be used to refuse consent – playing and performing music	Not applicable.
5.21	Flood Planning	The subject site is identified as being affected by flood hazard within the Horsley Creek Floodplain Risk Management Study and Plan. The proposal has been

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		reviewed by Councils Floodplain Engineer who has advised the flood depths in the 1% AEP event and PMF event would be up to 0.15m. The referral advice noted that as the finished floor level of the hangar extension is designed to maintain the finished floor level for level of the existing hangar for operational reasons and given the nature of the development and the maximum flood depth it was concluded that raising the finished floor level further than what is proposed is non-feasible. Councils Flooding Engineer is satisfied that the proposal would be consistent with the objectives of this clause. The proposal is considered to satisfy the objectives of the control, and the matters outlined at Part 3.
Part 6 Additional local provisions		
6.1	Acid sulfate soils	The subject site is affected by Acid Sulfate Soils, Class 4. The depth of earthworks proposed are minimal and both the stormwater drainage works and earthworks would not involve excavation more than 2m from the natural ground level. As such an Acid Sulfate Soils Management Plan is not required. Conditions have been recommended in the event that acid sulfate soils are discovered.
6.2	Earthworks	The subject development would involve minor cut and fill to accommodate the building extension with re-grading works required to provide a transition from the hardstand area to the finished floor level of the hangar. The earthworks proposed are considered appropriate for the proposed development and the site characteristics.
6.4	Stormwater management	The application was accompanied by a Stormwater Drainage Plan detailing that the roof stormwater runoff is to connect to the existing stormwater management system. The hardstand area is to be graded so as to drain towards the existing swale. Councils Stormwater Engineer has considered the proposal against the requirements of this clause and a conditionally satisfactory referral response provided. The proposal is considered to be consistent with the objectives of the clause and satisfies the requirements of Part 3. Conditions recommended are included within the draft consent.

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6.5	Terrestrial Biodiversity	The subject site is not mapped as being Environmentally Sensitive Land on the Terrestrial Biodiversity Map.
6.6	Active Street Frontages	The front of the subject site is not identified on the Active Street Frontages Map.
6.7	Airspace operations	The subject site is within the 20m – 30m Obstacle Limitation Surface Area. The proposed development would not encroach on the OLS, with the maximum RL being 21. The Shellharbour Airport Manager has confirmed that the proposal will not encroach the OLS.
6.8	Development in areas subject to aircraft noise	The building footprint is located between ANEF contour 20 and 30, located in the Illawarra Regional Airport and will not increase the number of people affected by noise. Therefore, the clause does not apply to the development.
6.9	Essential services	The site is serviced by all required essential services.
6.10	Significant mineral resources	Not Applicable.
6.11	Development within the Transition Area	Not Applicable.
6.12	Location of sex services premises	Not Applicable.
6.13	Restricted development area	Not Applicable.
6.14	Development of land at 120 Yellow Rock Road, Tullimbar	Not Applicable.

Clause 4.6 Request – Clause 4.1 Subdivision Minimum Lot Size

The development standard to be varied and extent of variation

The development application does not comply with the 2.7ha minimum lot size development standard under Clause 4.1 Minimum Subdivision Lot Size of the Shellharbour LEP 2013. The proposed boundary adjustment results in a lot size of 1.769ha for 54 Airport Road which is a 34.48% (0.931ha) shortfall of the development standard.

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(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment: The application seeks a variation to the minimum subdivision lot size development standard and is not expressly excluded from the operation of Clause 4.6.

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

Comment: The application was accompanied by a document setting out the ground on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

Clause 4.6 Requirements	Written Request Submitted by the Applicant	Consent Authority's Comments
(a) <i>compliance with the development standard is unreasonable or unnecessary in the circumstances, and</i>	The applicant has provided a written statement which asserts that compliance with the development standard is unreasonable or unnecessary in this case. A summary of this statement is as follows: <i>The proposed variation actually increases the area of an existing subdivision lot, albeit marginally, for the extension of an existing hangar at an airport. The land in question is used for the same purpose, the parking of aircraft, and</i>	- The development standard is associated with the E4 General Industrial Land Use zone. The zoning and its associated development standard are located within the boundaries of the Shellharbour Airport and immediately adjoin the runway. There is no clear strategic planning reason for the location of the zoning and associated development standard in the context of the site. - There are no sites within close proximity to the site where the 2.7ha minimum lot size applies that

the proposal is an entirely appropriate use of land in the circumstance.

- *The zoning of the land in this instance is not appropriate as it is sited on an airport. This anomaly is covered in State Environmental Planning Policy (Transport and Infrastructure) 2021, division 1 Air Transport Facilities, clause 2.25 Development permitted with consent.*

comply with the development standard. The only site that complies or exceeds with the 2.7ha development standard is 42 Airport Road where the development is proposed and has a split 2.7ha and nil minimum lot size development. Other than 42 Airport Road which has a Split SP1 and E4 zoning.

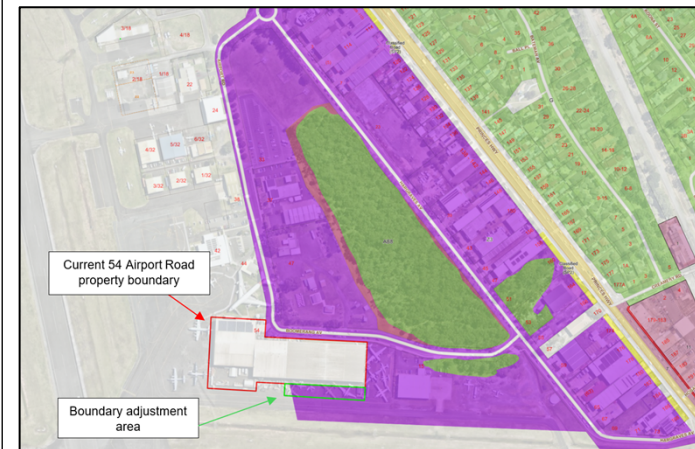


Figure 3: Minimum Subdivision Lot Size mapping layer. Purple areas have 2.7ha lot size.

- The site (54 Airport Road) is already significantly less than the development standard. The proposal will increase the lot size from 1.58ha to 1.769ha. The proposal is unable to utilize the exempt subdivision clauses in the *SEPP (Exempt and Complying Development Codes) 2008* as the site is heritage listed.

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		The statements provided in relation to (a) are supported and Council is satisfied that the applicant has demonstrated (a).
<i>(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.</i>	The applicant has provided a written statement which asserts that the contravention of the development standard is justified on several environmental planning grounds. A summary of these ground are as follows: • <i>By virtue of the development surrounding the proposed site and the proposed development itself, the relationship between the lots must remain inexorably connected: They are linked together as indivisible components of the airport – hangar, movement area and runway.</i>	• The proposed boundary adjustment will result in the hangar extension being located wholly within 54 Airport Road and enable the efficient operations of the HARS building. Without the boundary adjustment the extension will straddle two allotments, resulting in potential NCC non-compliances and lease complications. Strict compliance with the development standard is considered unreasonable in this regard. • The proposal has been designed to ensure minimal impact on the existing airport operations. The environmental planning grounds provided in the applicant's statement are supported and Council is satisfied that the applicant has demonstrated (b).

Clause 4.6 Request – Clause 4.3 Height of Buildings

The development standard to be varied and extent of variation

The development application does not comply with the 11m building height development standard under Clause 4.3 Height of Buildings of the Shellharbour LEP 2013. The proposal seeks consent for a maximum building height of 14.17m exceeds the development standard by 28.81% (3.17m).

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment: The applications seeks a variation to the building height development standard and is not expressly excluded from the operation of Clause 4.6.

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

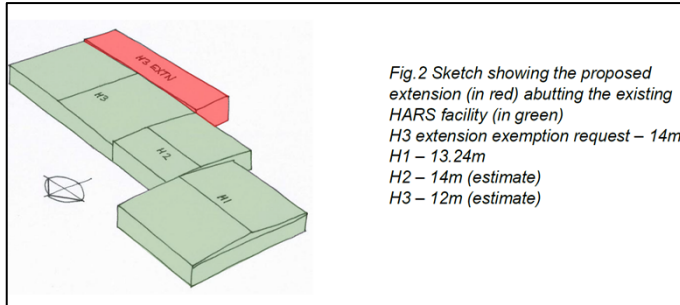
Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

Comment: The application was accompanied by a document setting out the ground on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

Clause 4.6 Requirements	Written Request Submitted by the Applicant	Consent Authority's Comments
<i>(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and</i>	The applicant has provided a written statement which asserts that compliance with the development standard is unreasonable or unnecessary in this case. A summary of this statement is as follows: <i>The height proposed is essential to provide:</i> <i>a) Continued access to the existing hangar area,</i> <i>b) Access for the particularly tall tails of a number of exhibits, and</i>	- The development standard is associated with the E4 General Industrial Land Use zone. The zoning and its associated development standard are located within the boundaries of the Shellharbour Airport and immediately adjoin the runway. There is no clear strategic planning reason for the location of the zoning and associated development standard in the context of the site. - Whilst the objectives of the development standard, being Clause 4.3 Height of Buildings in the SLEP 2013 are achieved, they are also

	<i>c) Height in which to provide hangar doors for wind and weather protection, security and barriers against bird incursions.</i> <i>The proposed extension, with its raised OLS height and completely redesigned main entry profile to the hangar is designed to enable some of HARS larger exhibits, particularly those with higher tails, to be protected from the elements completely under cover. Such aircraft include two ex-RAAF De Havilland DHC-4 Caribous, an ex-RAAF Lockheed AP-3C Orion and a soon-to-be-received ex-RAAF Lockheed C130 Hercules. These are extremely important to Australia's aviation heritage having served the nation for many years in a variety of military and peacetime roles. A minimum clear entry for these aircraft has been determined as twelve metres.</i> <i>The extension will be very similar in appearance to the existing Hangar 3 face. Except at ultra-long range, the building will be viewed only from aircraft and other airside airport traffic. As an airport installation, it is entirely appropriate.</i>	irrelevant when viewed in relation to the site context. - The site is located within the boundaries of Shellharbour Airport. The proposed development is for the storage and maintenance of aircraft which supports the special land use of the wider site as an air transport facility. The aircraft that are stored within the hangar will use runway and other facilities provided within Shellharbour Airport. - The site is located away from residential properties and the proposed hours of operations are the same as HARS. - The proposal relates to an aircraft hangar it will need to comply with CASA requirements in terms of noise, lighting, management of fuels/chemicals. - The proposed maximum height is fit for purpose, comply with the OLS and complements the height of the buildings located at Shellharbour Airport. • Strict compliance with the development standard would: - prohibit the installation of roller doors on the southern elevation of Hangar 3; and - prevent the storage of larger aircraft in an undercover area that is protected from the elements and damage from birds.
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		The statements provided in relation to (a) are supported and Council is satisfied that the applicant has demonstrated (a).
<i>(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.</i>	The applicant has provided a written statement which asserts that the contravention of the development standard is justified on several environmental planning grounds. A summary of these ground are as follows: <i>The surrounding HARS buildings (Hangar 1, Hangar 2 and Hangar 3) all exceed the maximum height permitted by the SLEP (2013) Height of Buildings Map. The proposed extension will, in fact, appear in complete harmony with these surrounding buildings.</i>  Fig.2 Sketch showing the proposed extension (in red) abutting the existing HARS facility (in green) H3 extension exemption request – 14m H1 – 13.24m H2 – 14m (estimate) H3 – 12m (estimate) <i>As a partner as well as tenant of Illawarra Regional Airport, HARS complements the Airport's heritage status by promoting the preservation and operation of heritage aircraft to provide significant justification to the airport's continuing function. HARS does this as the single largest aviation facility on the site and the only one whose sole reason for existence is heritage.</i>	- The plans accompanying the application visually illustrate that the proposal will not be inconsistent with the building height of the immediately surroundings buildings that are also located within the airport's boundaries. - The proposed use is consistent with the objectives of the E4 General Industrial and has demonstrated that it will be support the adjoining SP1 Special Activities zone. - The proposal has been designed so as not to impact on the existing airport operations. The environmental planning grounds provided in the applicant's statement are supported and Council is satisfied that the applicant has demonstrated (b).

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	• <i>Overshadowing is not an issue, as the extended shadow to the south, east and west only covers airport apron, movement and grassed areas.</i> • <i>Its location is well within the airport boundaries and at a significant distance from any residential or commercial installation.</i>	
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