



18 March 2019

Shell Cove Boat Harbour Precinct Modification (MP 07_0027 MOD 1)

1. INTRODUCTION

1. On 15 November 2018, the Independent Planning Commission of NSW (**Commission**) received from the NSW Department of Planning and Environment (**Department**) a Part 3A modification application from Frasers Property Australia Pty Ltd (**Proponent**) to modify the Concept Approval for the Shell Cove Boat Harbour Precinct (**Modification Application**). The Modification Application is made under section 75W of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
2. Concept Approval for the Shell Cove Boat Harbour Precinct was originally granted on 15 February 2011 by the then Deputy Director-General, Development Assessment & Systems Performance. The Concept Approval included residential, commercial, retail, hotel, business park, dry boat storage facility, open space and wetlands (MP 07_0027).
3. The project is a transitional Part 3A project under clause 2 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (**Transitional Regulation**). The Commission is the consent authority in respect of such transitional Part 3A projects under the Minister for Planning's (**Minister**) delegation of the function to the former Planning Assessment Commission (**PAC**), by instrument of delegation dated 14 September 2011. The Commission is to be taken to be the same legal entity as the PAC, pursuant to clause 7 of the Transitional Regulation.
4. The ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued, however as the request for this modification was made before 1 March 2018, the provisions of Schedule 2 continue to apply.
5. Under the Minister's delegation dated 14 September 2011, the Commission is the consent authority in respect to the Modification Application because:
 - it constitutes a development of a kind declared by an environmental planning instrument as development for which a public authority (other than a Council) is the consent authority; and
 - the Department received more than 25 submissions from the public objecting to the Modification Application.
6. Professor Mary O'Kane AC, Chair of the Commission, nominated Steve O'Connor (Chair), Ilona Millar and Peter Cochrane to constitute the Commission determining the Modification Application.

1.1 Site and locality

7. The Department's Part 3A Modification Assessment Report dated November 2018 (**Department's Assessment Report**) describes the site as being located approximately 17 kilometres (**km**) south of Wollongong, adjoining Shellharbour village, Shellharbour South Beach and the existing Shell Cove residential area.

8. The majority of the site has been vacant since the 1960's, with the north-western portion of the site developed into a golf course in the 1970's which operated until 2004. The remainder of the site was formerly used as the Shoalhaven City Council (**Council**) landfill or for farming purposes.
9. The site surrounds the approved Shell Cove harbour and marina (DA 95/133) that is currently under construction. The site is bound by Harbour Boulevard to the west, and Shellharbour South Beach and the Pacific Ocean to the east. Bass Point Quarry is located south of the site and residential properties and recreational open space are located to the north. Figure 1 shows the location of the Concept Approval site in context to the surrounding locality.



Figure 1: Site location and surrounding local context (Source: Department's Assessment Report)

1.2 Summary of Modification Application

10. The Modification Application before the Commission for determination proposes the following modifications to the Concept Approval:
 - increasing the maximum number of dwellings from 1,238 to 1,566;
 - revising the housing densities and typologies across the site;
 - removal of the maximum 150,000 square metres (m²) residential gross floor area (GFA) limit;

- reconfiguring the town centre layout, including relocating the hotel building to the northern gateway and amending the layout of the public square;
- increasing the maximum building heights in certain areas;
- making 'serviced apartments' and 'residential accommodation' permissible uses within the hotel building;
- an additional 8,280 m² of land within Precinct E of the Concept Plan layout (i.e. the 'northern lands') for residential development (see Figure 2); and
- amendments to road patterns and layout.

11. The Proponent's Response to Submissions (RtS) dated 7 February 2018, addendum RtS dated 31 May 2018 and additional information amended the scope of the modification to include:

- provision of acoustic walls in place of landscape mounds for the dry boat storage;
- a maximum building height in metres (m) and definition of building height;
- further revisions to the housing typologies to include townhouses in some precincts where only apartments are permitted; and
- further revisions to the road patterns and layout to reflect design development.

12. The approved Concept Plan layout, including approved land uses across the site, is shown in Figure 2. The revised Concept Plan layout as proposed by the modification is shown in Figure 3.

13. Based on the nature of the modifications, as outlined in paragraphs 10 to 12, the Commission is satisfied that the Modification Application is within the scope of section 75W of the EP&A Act.

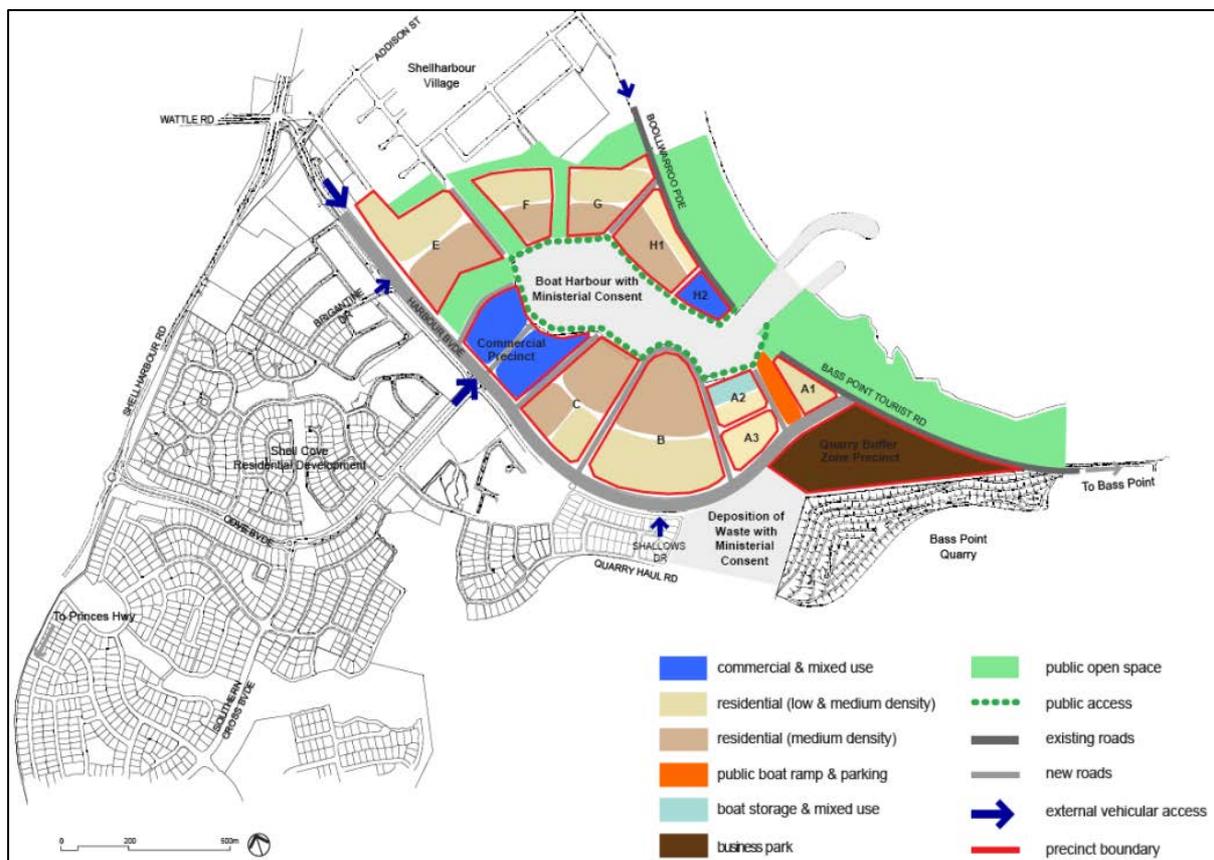


Figure 2: Approved Concept Plan layout (Source: Proponent's Modification Report)

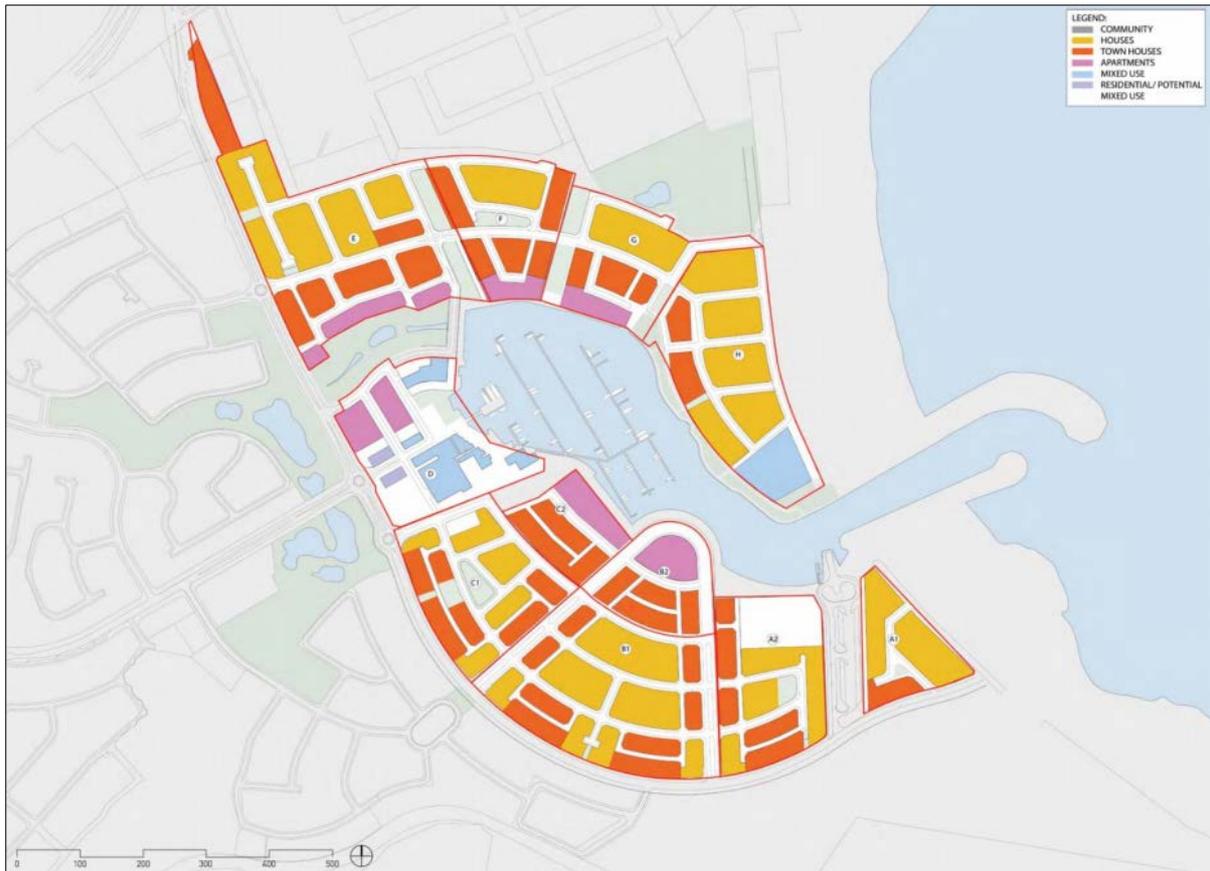


Figure 3: Concept Plan layout as proposed to be modified (Source: Proponent's Modification Report)

1.3 Need for modification

14. The Proponent's Modification Report, dated 8 August 2017, states that:

“there has been a distinct change in housing trends and demands in the urban market since the original Concept Approval in 2011. There is now a greater demand for a range of housing types and sizes (including a higher demand for apartment living and attached dwellings). In this regard, Cox (Architecture) have reviewed the Concept Plan and identified opportunities to increase the residential diversity within the Shell Cove Boat Harbour Precinct”.

2. THE DEPARTMENT'S CONSIDERATION OF THE MODIFICATION APPLICATION

2.1 Key steps in Department's consideration of the Modification Application

15. The Department publicly exhibited the Modification Application between 15 September 2017 and 29 September 2017. Given the level of public interest in the request, the exhibition was extended to 20 October 2017. A total of 210 submissions were received during the exhibition period, including eight from public authorities and 202 from the general public. Of the 202 submissions received from the public, 192 objected to the request, two of which were petitions each with 199 and 198 signatures.
16. A breakdown of the matters raised in objections, and the percentage of submissions attributed to these matters, is provided in Figure 4.

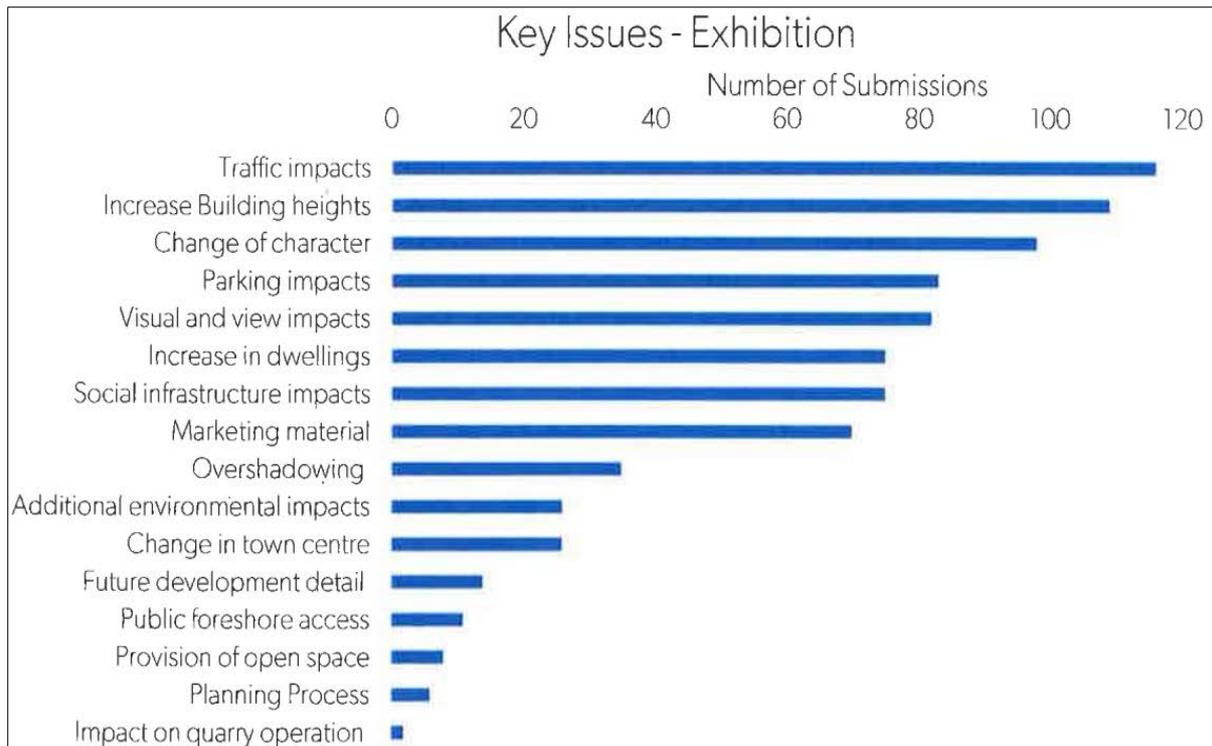


Figure 4: Public objections by issue and percentage of submissions that raised each issue (Source: Department's Assessment Report)

17. In February 2018, the Proponent provided a RtS to address the issues raised during exhibition of the Modification Application. The Department's Assessment Report stated that the RtS included the following:
 - *“a Visual Impact Assessment (VIA) reviewing view impacts associated with the modification from within and surrounding the site;*
 - *identification of maximum numerical building heights across the site;*
 - *clear identification of proposed height changes per precinct; and*
 - *further explanation of the methodology used to calculate the updated traffic impacts associated with the development.”*

18. The Department's Assessment Report stated that the RtS was made publicly available on its website and public authorities and members of the public who made submissions on the modification request were notified. The Department received an additional five submissions from public authorities and 12 submissions from the general public. All the public submissions objected to the Modification Application.

19. The Department's Assessment Report stated that in addition to the key concerns raised during exhibition, the RtS notification identified the following key concerns:
 - *“the VIA is based on an undefined numerical height to which the developer is not bound, and a landform which has been elevated since the concept approval;*
 - *lack of ground-truthing in identifying provision of existing and proposed essential services;*
 - *lack of public benefit associated with the modifications;*
 - *replacement of acoustic mounds with acoustic walls will create a 'fortress' appearance; and*
 - *limited RtS notification period.”*

2.2 The Department's Assessment Report

20. The Department's Assessment Report, dated November 2018, identified the following key assessment issues with the Modification Application:
 - density;
 - built form and character;
 - building heights;
 - building typology and design;
 - town centre;
 - residential and public amenity;
 - view sharing;
 - location of the marina commercial land use and removal of acoustic mounds;
 - overshadowing; and
 - traffic.
21. The Commission notes the Department's Assessment Report assessed the merits of the Modification Application, considered the issues raised in the public authority and public submissions, as well as the Proponent's responses to these. The Department stated that it was satisfied that the key impacts have been satisfactorily addressed by the Proponent and through the recommended conditions of approval.
22. The Commission notes the Department's Assessment Report also considered the Modification Application against the provisions of the *Illawarra-Shoalhaven Regional Plan 2015 (Regional Plan)* and concluded that the Modification Application is appropriate for the site given it is consistent with the Regional Plan's objectives to increase housing supply and provide a variety of housing choices.
23. The Department's Assessment Report concluded that the proposed modification is appropriate on the basis that:
 - *“the proposal continues to be consistent with key strategic objectives for the State and region including Premiers Priorities to make more housing affordable through increased supply, the NSW State Priorities to increase housing supply and create jobs and the Illawarra Shoalhaven Regional Plan to provide a variety of housing choices;*
 - *the proposal also continues to achieve the wider strategically planned development of Shell Cove;*
 - *the proposal would continue to deliver a mixed-use development site with residential, tourism, recreational, community and leisure uses consistent with the original approval;*
 - *the proposed building heights are considered appropriate noting the areas of increased heights are located centrally on the site and they do not result in adverse visual or amenity impacts;*
 - *the proposal would result in some minor view loss impacts however these impacts are negligible when compared to the approved Concept Plan;*
 - *there will be minimal traffic impacts associated with the increase in density compared to the previously assessed modelling;*
 - *the proposal will continue to maintain sufficient levels of public open space and public access to the perimeter of the harbour foreshore area; and*

- *appropriate conditions have been recommended to limit the maximum number of dwellings to 1420 until the Proponent demonstrates adequate water servicing can be delivered, manage the interface with adjoining low-density development to the north of the site and the marina commercial land use within the site and the submission of surface and groundwater reports.”*

3. THE COMMISSION’S MEETINGS AND SITE VISIT

24. As part of its consideration, the Commission met with the Department, the Proponent and Council. The Commission also conducted a site inspection and conducted a public meeting. A summary of the meetings, site inspection and public meeting is set out below.

3.1 Meeting with the Department

25. On 24 January 2019, the Commission met with the Department to discuss the Modification Application. Issues discussed at the meeting are recorded in the transcript, which was made available on the Commission’s website on 29 January 2019.

3.2 Meeting with the Proponent

26. On 24 January 2019, the Commission met with the Proponent to discuss the Modification Application. Issues discussed at the meeting are recorded in the transcript, which was made available on the Commission’s website on 29 January 2019.

3.3 Meeting with Council

27. On 7 February 2019, the Commission met with Council to discuss the Modification Application. Issues discussed at the meeting are recorded in the transcript, which was made available on the Commission’s website on 11 February 2019.

3.4 Site inspection

28. On 7 February 2019, the Commission conducted an inspection of the site and visited the surrounding locality. The Commission also inspected views of the development site from the surrounding residential locality and from the rear balcony of a private dwelling located at 18 Tasman Drive, Shell Cove. The site inspection was attended by the Commission Panel and Secretariat, representatives of the Proponent and a community representative. The site inspection notes were made available on the Commission’s website on 14 February 2019.

3.5 Public Meeting

29. On 7 February 2019, the Commission held a public meeting at The Shellharbour Club, corner of Wattle Road and Shellharbour Road, Shellharbour. A list of speakers that presented to the Commission, the transcript of the public meeting and a copy of the material tendered at the public meeting were made available on the Commission’s website on 11 February 2019. An opportunity to lodge written comments was afforded until seven days following the public meeting. The Commission received four further comments. All submissions received are available on the Commission’s website.

30. In summary, the main issues of concern raised at the public meeting included:

- increased density;
- increased building heights;

- view loss;
- traffic impacts;
- car parking;
- water servicing; and
- the provision of community facilities.

4. ADDITIONAL INFORMATION

31. The Commission received the following additional information in regard to the Modification Application:
- 30 January 2019 – clarification from the Proponent regarding the conditions imposed by the Southern Regional Planning Panel (**SRPP**) relevant to Precinct A;
 - 8 February 2019 – advice from Council confirming that there are no covenants for landscaping on the residential lots that adjoin the boat maintenance facility (**BMF**) in Precinct A;
 - 13 February 2019 – correspondence from the Proponent including:
 - a plan showing the final levels of the retail building located in the town centre precinct;
 - the Precinct A Design Guidelines for Detached Housing (**Precinct A Design Guidelines**); and
 - information on the community facilities proposed to be delivered as part of the Waterfront Precinct;
 - 20 February 2019 – correspondence from the Department including:
 - confirmation that additional land identified as Lot 5074 DP 1249071 forms part of the Modification Application and that the inclusion of this land is within the scope of section 75W;
 - confirmation that the traffic report submitted with the Modification Application considered all future uses including commercial and tourism land uses (84%) and residential land uses (16%);
 - information relating to the Department’s assessment of building heights, noting that the Department considered the proposed building heights in metres relative to storeys; and
 - clarification regarding the inclusion of the definition of ‘tourist and visitor accommodation’ as part of the draft conditions of consent; and
 - 1 March 2019 – correspondence from the Department confirming the site area of Lot 5074 in DP 1249071.

All of the above information is available on the Commission’s website.

5. THE COMMISSION’S CONSIDERATION

5.1 Material considered by the Commission

32. In its determination, the Commission has carefully considered the following material (**material**):
- the Shell Cove Boatharbour Precinct Traffic Study prepared by Maunsell Australia Pty Ltd and dated 24 March 2009;
 - the Concept Approval issued for MP 07_0027 and dated 15 February 2011;
 - the Regional Plan;
 - the Section 75W Modification Report dated 8 August 2017 prepared by Ethos Urban, and its accompanying appendices;
 - the Response to Submissions Report dated 7 February 2018 prepared by Ethos

- Urban, and its accompanying appendices;
- the supplementary RtS Report dated 31 May 2018 prepared by Ethos Urban, and its accompanying appendices;
- the Department's Part 3A Modification Assessment Report dated November 2018;
- the Determination and Statement of Reasons for 2018STH007 – Shellharbour City Council – DA 619/2017 prepared by the SRPP and dated 17 December 2018;
- the Precinct A Design Guidelines;
- additional information provided by the Department, Council and the Proponent at and following their respective meetings with the Commission (refer to paragraph 31); and
- comments made by members of the public at the public meeting and all submissions received.

5.2 Key issues considered by the Commission

33. The key issues considered by the Commission in determining the Modification Application relate to:
- density;
 - built form and character;
 - traffic and car parking;
 - infrastructure services; and
 - landscape buffer between residential lots and the BMF.

5.2.1 Density

34. The Modification Application seeks to increase the maximum number of dwellings approved for the Shell Cove Boat Harbour Precinct from 1,238 to 1,566 and remove the maximum residential GFA limit of 150,000 m².

Public comments

35. The Commission heard concerns at the public meeting and received written comments in relation to the proposed increased density. These concerns included:
- built form impacts from denser and taller buildings and changes to the low-density character of the surrounding area;
 - traffic and car parking impacts;
 - infrastructure constraints;
 - social impacts; and
 - impacts on the natural environment, particularly the surrounding wetlands.

Proponent's consideration

36. The Proponent's Modification Report stated that a review undertaken by the project architect (Cox Architecture) has identified opportunities to increase the residential diversity within the Shell Cove Boat Harbour Precinct. The review identified the potential for each precinct to provide minimum and maximum dwelling targets dependant on the dwelling types that are delivered, up to a maximum of 1,566 dwellings on the site.
37. The Modification Report stated that the increased capacity is underpinned by urban design considerations that would see mid-rise apartments located in the town centre precinct, low to mid-rise apartments and/or terraces along the waterfront and lower density terraces and houses further away from the waterfront. Further, the Modification

Report stated that the additional residential density will create greater housing diversity in a high amenity waterfront location.

38. The Proponent provided a response to the concerns raised in relation to increased density in its RtS, which stated that:

“An increase of 318 dwellings on the sites represents an overall increase of approximately 25%. The increase in the number of dwellings is relatively minor, noting:

- the site area has also been expanded through the inclusion of 5,850m² of land to the north of Precinct E (the northern lands);*
- a large number of the additional dwellings will be provided in the town centre which was always intended to accommodate higher density;*
- the change in dwelling typologies means a greater number of dwellings can be achieved within the same footprint; and*
- the increase strengthens the achievement of the original strategies embodied within the Concept Plan.”*

Department's consideration

39. In relation to the proposed increase in density across the site, the Department stated in its Assessment Report that:

“the site is well suited to support additional residential density, due to the large area encompassed by the Concept Plan site which:

- will incorporate its own town centre and retail services to meet the needs of future residents, with increased densities concentrated within and around the centre*
- is able to locate greater density in the central part of the site, whilst maintaining low scale development at the site boundaries thereby minimising off-site impacts.”*

40. In relation to the proposed removal of the residential floor space limit, the Department stated in its Assessment Report that:

“it is unnecessary to limit the residential floor space on the site. Built form impacts would be controlled by the maximum building heights and the development design guidelines required for each precinct.”

41. The Department concludes that:

“the increased density is acceptable as it would be consistent with the strategic planning objectives for the site and would not result in any unacceptable impacts, subject to recommended conditions.”

Commission's consideration

42. The Commission accepts the conclusions of the Department outlined in paragraph 39 that the site is well suited to support additional residential density due to the large area encompassed by the Concept Plan and due to the town centre precinct providing retail and community services to meet the needs of future residents. Further, the Commission finds that the additional residential dwellings and diversity of housing options provided as part of the Modification Application is acceptable as it is consistent with the goals of the Regional Plan to provide a variety of housing choices to meet the demand for new housing supply that is close to services and jobs.

43. The Commission also accepts the conclusions of the Department outlined in paragraph 40 that it is unnecessary to specify a residential GFA limit as the maximum building height controls and urban design guidelines for each precinct would adequately address the future built form of the development. The Commission acknowledges that the Concept Approval includes a Further Environmental Assessment Requirement (**FEAR**) for the Proponent to submit detailed urban design guidelines as part of any future development applications (**DAs**). The guidelines are required to establish design controls to achieve appropriate density, bulk, scale, textures and colours in relation to surrounding development, topography and streetscape and will be subject to consideration and assessment by the relevant consent authority.
44. For the reasons outlined in paragraphs 42 and 43, the Commission finds that the proposed modification to the approved density, including an additional 318 residential dwellings across the broader Shell Cove Boat Harbour Precinct, is acceptable. The Commission's consideration of increased density in terms of infrastructure capacity is addressed in paragraphs 96 to 102.
45. The Commission also finds that the additional residential density would not result in unacceptable impacts for issues that are related to density including increased building heights, view loss, traffic impacts and infrastructure constraints that are considered in further detail below.

5.2.2 Built form and character

46. The Modification Application proposes amendments to the approved building heights, building typologies and the design of the town centre precinct. The Department's Assessment Report summarises the key changes as follows:
 - *“relocation and increase in the height of the hotel from nine to 11 storeys;*
 - *buildings with a height of five or six storeys in place of four storey buildings;*
 - *additional four storey buildings north of the wetlands / open space corridor;*
 - *relocated three storey buildings adjacent to the northern boundary; and*
 - *overall reduction in three and four storey building heights in favour of an increase in two storey buildings.”*
47. The Proponent's Modification Report states that the future built form will:

“Concentrate taller buildings in the town centre and appropriate locations along the harbour waterfront”.

Public comments

48. The Commission heard concerns at the public meeting in relation to the built form and character, including:
 - increased building heights;
 - visual impacts and view loss; and
 - changes to the low density character of the surrounding area.
49. Additional concerns were raised in written comments following the public meeting. The issues raised primarily related to the adequacy of the Proponent's visual impact assessment and clarification of the finished ground levels in order to undertake a thorough visual impact analysis.

Proponent's consideration

50. To address the concerns raised relating to increased building heights, visual impacts and view loss, the Proponent engaged Richard Lamb and Associates to undertake a Visual Impact Assessment (**VIA**), which formed part of their RtS. The VIA compared the visual impact of the proposed modifications to the approved building envelopes and maximum building heights. The visual comparison was undertaken from public and private domain areas and included the use of a 3-dimensional (**3D**) computer model to present a visual representation of the indicative future building heights and envelopes.
51. Key considerations of the VIA included the proposed relocation and increased height of the hotel building and the increased height of future residential buildings in the town centre and surrounding residential precincts. The comparative analysis was undertaken at the following locations:
- the entrance to the public reserve opposite 50 Shallows Drive;
 - James Cook Parkway adjacent to Top Reserve;
 - Beakys Reserve, Bass Point;
 - Cowies Reserve, Shellharbour boat harbour;
 - the northern end of Shellharbour South Beach;
 - 27 Ragamuffin Circuit;
 - 18 Tasman Drive; and
 - 26 Mystics Drive.
52. In assessing the visual impact of the Modification Application, the VIA applied the planning principles in the judgment of Roseth SC of the Land and Environment Court of NSW in *Tenacity Consulting v Warringah [2004] NSWLEC 140 – Principles of view sharing: the impact on neighbours (Tenacity Principles)*.
53. The VIA concluded that:
- “The increased height sought for the hotel in the Section 75W application, in its proposed location further north, does not cause a significant increase in view blocking compared to the Concept Approval and the re-orientation of the envelope causes a decrease in horizontal bulk visible from the residences assessed.”*
- Further, the VIA stated that:
- “The planning principle in Tenacity was applied to the extent that it is relevant to three private residential views. In our opinion, the section 75W application does not cause significantly greater view loss than the Concept Approval. The differences in terms of views are minor and not significant.”*
54. In relation to the concerns raised regarding changes to the low density character of the surrounding area, the Proponent's RtS stated that:
- “a large part of Precinct A is proposed to have a reduction in height from 3 storeys to 2 storeys + attic which will reduce the built form at the periphery of the Boat Harbour Precinct.”*

Department's consideration

55. The Department acknowledges the VIA in its assessment of the Modification Application and stated in its Assessment Report that:

“Views of the water and horizon are retained and any marginal loss of water views as a result of increased building heights would barely be discernible and would not impact on the overall quality of the view.”

56. In relation to the proposed increase in height of the hotel building, the Department’s Assessment Report stated that:

“despite the increase in height, the modification is likely to result in a building that is less bulky than what could be achieved under the existing Concept Approval, with the increase in maximum height appropriately offset by a reduction in the potential width of the tower and podium.”

The Department concluded that the proposed modification is likely to result in less impacts compared to the current approval, and stated that:

“despite the four metre increase in maximum building height, the proposal is likely to result in less impacts compared to the current approval, as:

- there is a reduction in view loss impacts, as the additional height would result in a loss of sky view only and the reduced width would improve water and horizon views*
- there is a reduction in overshadowing as a result of the reduced building width and the new location does not include residential properties immediately south of the hotel*
- there is an improvement to the character and urban design of the area, allowing for a tall slender building in place of a bulky building.”*

57. In relation to the buildings with a height of five or six storeys in place of permitted four storey buildings, the Department stated in its Assessment Report that:

“in the context of the entire Concept Approval, the additional one to two storey height in the central parts of the site would not be significant and would not materially change the character of the overall development. The five and six storey buildings would not appear out of scale and could fit comfortably with surrounding built forms”.

58. In relation to the buildings with a height of four storeys in place of permitted three storey buildings, the Department stated that:

“additional building height is appropriate in this location as it would take advantage of the amenity of the adjoining open space area and given the absence of residential development to the south, would not result in adverse overshadowing impacts. No material view loss impacts would arise from the proposed change”.

59. In summary, in its Assessment Report the Department concluded that the proposed modifications would not be significant, and stated that:

“In the context of the entire site, the proposed changes would not be significant, and areas of increased height would generally be offset by other areas of lower heights. Key areas of increased building heights have been shown to result in no significant impacts on the character of the area and no unacceptable overshadowing or view loss impacts. The Department’s assessment therefore concludes the proposed building heights are acceptable.”

Commission's consideration

60. The Commission notes that the Modification Application will retain the approved built form character of the site with taller buildings concentrated in the town centre precinct and at appropriate locations along the harbour waterfront. Further, the Commission notes that the Modification Application proposes to reduce the maximum building heights in certain precincts, particularly in Precincts A, B and C that would result in building height reductions from three storeys to two storeys. The approved building heights in comparison to the proposed building heights are shown in Figure 5 and Figure 6, respectively.

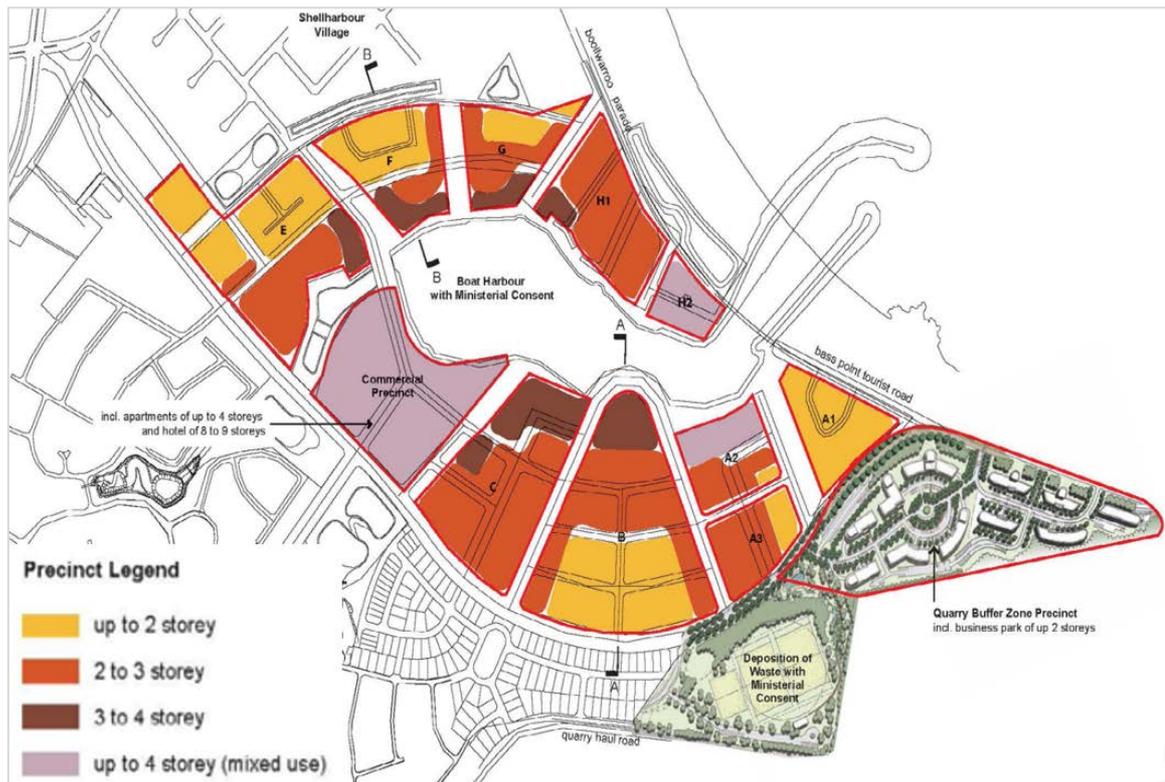


Figure 5: Approved building heights (Source: Proponent's Concept Design Report, June 2018)



Figure 6: Proposed modified building heights (Source: Proponent's Concept Design Report, June 2018)

61. The Commission accepts the findings of the Department, as outlined in paragraph 56, that the proposed modification to the hotel building footprint will result in a more slender tower that is less bulky than what is currently provided for under the approved Concept Plan.
62. The Commission accepts the conclusions made in the Proponent's VIA, as outlined in paragraph 53, that the Modification Application would not cause significantly greater view loss than what has previously been approved as part of the Concept Plan. In its assessment of the Modification Application, the Commission acknowledges that the VIA applied the Tenacity Principles.
63. The Commission recognises the concerns raised by the public in relation to view impacts and view loss resulting from increased building heights. Notwithstanding, the Commission finds that the proposed amendments to the approved building heights, building typologies and the design of the town centre precinct are acceptable as they would not significantly alter the overall character of the approved development and would not result in either the additional loss of significant views or overshadowing. Further, the Commission finds that the increase in building heights will be balanced by the reduced bulk of the hotel building and the reduced building heights from three storeys to two storeys within Precincts A, B and C.

64. The Commission notes that the Modification Application relates to a concept proposal only and, therefore, future development will be subject to more detailed design and assessment as part of future DAs. Therefore, the Commission considers it reasonable that visual impacts continue to be assessed through future DAs. Accordingly, to address the visual impact and view loss concerns raised by the public, the Commission has included an additional FEAR that requires the preparation of detailed VIAs, including representative 3D computer models, for all future development in the boat harbour precinct. The VIA must be submitted to the relevant consent authority as part any DA for future stages.

Further, the VIA is required to be prepared based on the approved reduced levels (**RLs**) of the land subject to the DA.

5.2.3 Traffic and car parking

Public comments

65. Concerns relating to traffic and car parking were raised in the public submissions, during the public meeting and in written comments received following the public meeting. Key concerns raised by the public included:
- increased congestion as a result of the additional residential density;
 - impacts on the level of service at key intersections located within and surrounding the development site;
 - the lack of off-street and on-street parking close to the marina and town centre; and
 - increased car parking demand during the peak holiday periods.

Agency comments

66. Council's submission on the Modification Application noted the importance of adequate on-site car parking provisions to be provided as part of the development to reduce the reliance for on-street car parking. Further, Council considered that the car parking provisions should be assessed as part of any future DAs rather than being approved as part of the Concept Plan.
67. Roads and Maritime Services (**RMS**) advised in its submission on the Proponent's RtS that it does not object to the Modification Application in principle and was satisfied that it will not significantly impact on the state road network.

Proponent's consideration (traffic)

68. The Proponent provided a Traffic Review as part of the Modification Application, which was prepared by Colston Budd Rogers & Kafes Pty Ltd (**CBR&K**). The Traffic Review considered the increase in traffic that would be generated by the Modification Application against the assumptions made in the previous traffic assessments for the development. The Commission notes that the previous traffic assessments included a Traffic Study prepared by Maunsell as part of the original application in 2009 that modelled traffic generation rates for the entire suburb of Shell Cove and subsequent updated traffic studies prepared by Christopher Hallam and Associates in 2015 and 2016.

69. The Traffic Review stated that:

“The approved concept plan was estimated to have a traffic generation of some 4,000 vehicles per hour (two-way) in the weekday afternoon peak. For the residential component this was based on RTA traffic generation rates as set out below:

- *0.85 trips per residential lots;*
- *0.6 trips per medium density dwelling; and*
- *0.4 trips per apartment.”*

70. The Traffic Review further stated that:

“In 2013 the RMS published updated weekday afternoon peak hour traffic generation rates for residential development (RMS TDT 2013/04a). For regional areas, these are set out below:

- *0.78 trips per residential lots; and*
- *0.32 trips per apartment.”*

71. In undertaking the Traffic Review, CBR&K relied on the updated trip generation rates, published by RMS in 2013 and referenced in paragraph 70. The Commission notes that the 2013 trip generation rates did not include a revised rate for medium density dwellings and that CBR&K has therefore applied an 8% reduction to the medium density dwelling rate referenced in paragraph 69 (i.e. 0.55 trips per medium density dwellings).

72. Based on the revised trip generation rates, the Traffic Review assumes the residential component of the development would generate some 750 vehicle movements per hour (two-way) in the weekday afternoon peak period, resulting in an increase of 95 vehicles per hour (two-way) or a 2% increase in overall traffic generation as a result of the Modification Application.

73. In relation to the additional vehicle movements referenced in paragraph 72, the Traffic Review stated that:

“Such a minor increase would not be noticeable in the context of traffic generation of the approved concept plan (4,000 vehicles per hour, two-way).”

74. Additionally, the Traffic Review stated that:

“Key intersections on Shellharbour Road that will service the development will have sufficient capacity to safely and efficiently cater for the full development of Shell Cove. All new intersections serving the Boat Harbour Precinct will be designed with adequate sight distances and for safe and efficient operation.”

75. The Traffic Review concluded that:

“the refined road network as proposed in the S75W will function in a similar manner to the approved road network. This combined with the level of traffic generation of the S75W resulting in only a minor increase in traffic generation (some 2%), indicates that the S75W road network will operate satisfactorily.”

Proponent's consideration (car parking)

76. The Proponent provided a Parking Review as part of the Modification Application, also prepared by CBR&K. The Parking Review provides an analysis of car parking requirements for the town centre and hotel use.
77. For the town centre, the Traffic Review confirmed that 596 car parking spaces would be required as a result of the Modification Application which is similar to the previous analysis of 578 car parking spaces required.
78. For the hotel use, the Parking Review confirmed that 209 car parking spaces would be required which is less than the 265 car parking spaces previously estimated due to the inclusion of concessions for shared use parking between serviced apartments and the restaurant/function use and applying the RMS rates for higher density residential.

Department's consideration (traffic)

79. The Department stated in its Assessment Report that traffic was assessed in detail as part of the original application and was found to be acceptable in terms of traffic impacts, subject to updated traffic assessments provided for each future stage. Further, the Department's Assessment Report stated that the Modification Application does not seek to change the retail and commercial GFA that is the key driver for peak hour traffic movements.
80. The Concept Approval contains a FEAR that requires:

"An updated traffic impact assessment prepared by a suitably qualified person for each stage/precinct of the project which includes a cumulative impact assessment having regard to the status of the future construction of the intersection of Harbour Boulevard and Shellharbour Road."
81. The Department's Assessment Report confirmed that the Modification Application does not seek to change the approved retail and commercial floor space provisions, which is the key driver for peak hour traffic movements.
82. Further, the Department's Assessment Report stated that:

"RMS has revised its traffic generation rates for residential development down from 0.85 trips per residential lot and 0.4 trips per apartment to 0.75 trips per residential lot and 0.32 trip per apartment. This means that predicted traffic generation associated with the residential development would be less than previously predicted."
83. The Department concluded that:

"a 2% increase in traffic, would not be noticeable in the context of total traffic movements, and would not materially impact on the operation of the surrounding road network. Further, existing Further Environmental Assessment Requirement (FEAR) 16 which requires updated traffic impact assessments with consideration of cumulative impacts, will ensure traffic will be considered in detail as part of the assessment of future stages, and if necessary, appropriate intersection upgrades or network improvements can be incorporated to mitigate adverse impacts at that stage."

Department's consideration (car parking)

84. In relation to car parking, the Department's Assessment Report stated that:

"Final parking requirements would be dependent on the final built forms, layout and uses, which have not yet been determined in detail."

85. The Department concluded that:

"while the original Concept Application included estimates and indicative parking figures, these were indicative only and that residential parking would be provided in accordance with Council's DCP and parking associated with other uses would be detailed at the time of future development application."

Additionally, the Department concluded that:

"It is therefore recommended that parking estimates set out in the application are not endorsed and that final parking requirements are a matter for Council to assess as part of any future applications and as part of precinct Urban Design Guidelines, where relevant."

Commission's consideration (traffic)

86. The Commission acknowledges the concerns raised by the public in the submissions on the Modification Application and at the public meeting in relation to traffic impacts. In particular, the Commission notes the concerns in relation to increased traffic congestion and reduced levels of service at key intersections within and surrounding the development site.

87. The Commission notes that the Traffic Review provided as part of the original application included traffic modelling and an analysis of intersection performance that considered traffic implications once the full development was complete. As outlined in paragraph 74, the Traffic Review found that the key intersections will have sufficient capacity to cater for the full development.

88. The Commission acknowledges the traffic generation for the development has been predicted by the Proponent having considered the RMS' revised trip generation rates for residential development, from 2013.

89. The Commission notes that RMS in its submission on the RtS advised that it is satisfied the minor increase in traffic generated as a result of the proposed modification will not significantly impact on the state road network.

90. The Commission accepts the conclusions made by the Department at paragraph 83 and finds that the predicted 2% increase in traffic would not be noticeable in the context of total traffic movements and would not materially impact on the operation of the surrounding road network. Further, the Commission accepts the conclusions made in the Traffic Review at paragraph 74 that key intersections on Shellharbour Road that will service the development will have sufficient capacity to safely and efficiently cater for the full development of Shell Cove.

91. The Commission accepts that the Concept Approval includes a FEAR that will require further investigation to address potential traffic impacts generated by the development

(refer to paragraph 80).

92. The Commission finds that the Modification Application would not generate significant additional traffic impacts for the reasons set out at paragraphs 90 to 91.

Commission's consideration (car parking)

93. The Commission accepts the conclusions made in the Parking Review which has estimated the parking demand for the hotel use based on the shared use of parking between serviced apartments and the restaurant/function use and by applying the RMS parking rates for higher density residential.
94. The Commission accepts the conclusions of the Department outlined in paragraph 85 above that car parking will need to be provided in accordance with Council's Development Control Plan and assessed as part of any DAs for future precincts.
95. The Commission accepts the Department's conclusion that that the final car parking requirements would be dependant on the final built forms, layout and uses, which have not yet been determined in detail. Further, the relevant consent authority will have the opportunity to undertake more detailed assessment of residential car parking provisions as part the future DAs.

5.2.4 Infrastructure services

Sydney Water comments

96. Sydney Water advised in its submission on the Modification Application that it is unable to commit to serving the proposed 1,566 dwellings as the essential water and wastewater assets delivered to date have only been designed to accommodate 1,420 dwellings.
97. Sydney Water therefore requested the Department include a condition requiring the Proponent to lodge a section 73 Compliance Certificate and further consult with it prior to commencing development of each stage.
98. Sydney Water also provided a submission on the RtS requesting that further servicing investigations be undertaken to determine whether there is sufficient capacity in the local wastewater system to accommodate the additional growth.

Proponent's consideration

99. The Proponent acknowledged in its RtS that the existing wastewater infrastructure has been designed to deliver up to 1,420 dwellings. The Proponent also committed to consulting further with Sydney Water to ensure appropriate additional servicing strategies are introduced to meet the capacity required to service the entire development.

Department's consideration

100. The Department stated in its Assessment Report that:

“Based on discussions with Sydney Water, the Department considers adequate water and wastewater servicing can be provided to accommodate 1,566 dwellings in the

future, however until the Proponent demonstrates that adequate water and wastewater infrastructure can be provided, the maximum number of dwellings permitted is recommended to be capped at 1,420 dwellings. Sydney Water has advised to a condition to this effect would be appropriate.”

101. The Department recommended a condition limiting the number of dwellings as part of the development to 1,420 in total, unless written advice from Sydney Water is provided that a maximum number of 1,566 dwellings can be adequately serviced.

Commission’s consideration

102. The Commission finds that the Department’s recommended condition limiting the total number of dwellings until the development can be adequately serviced addresses the issues raised by Sydney Water relating to water and wastewater infrastructure capacity constraints.

5.2.5 Landscape buffer between residential lots and the BMF

103. The Commission notes that Condition 3 (Part B) of the Concept Approval requires the provision of mounds and landscape buffers to provide acoustic shielding to the future residential lots located adjacent to the BMF in Precinct A.

The Modification Application seeks to delete the requirement to provide the mounds and landscape buffers, to be replaced with a 7 m acoustic wall above the hardstand area of the BMF.

104. The Department raised concerns in its Assessment Report regarding the proposed acoustic wall in replace of the mounds and landscape buffers, primarily as it would result in reduced solar access to the residential land located directly adjacent to the acoustic wall. The Department also considered that a 7 m acoustic wall would result in visual impacts and reduced useability of private open space areas.

Precinct A subdivision approval

105. On 17 December 2018, the SRPP granted consent to DA 619/2017 involving the subdivision of land within Precinct A. The approved subdivision comprises:
- 58 residential lots;
 - 6 super lots for future multi dwelling housing and apartment development;
 - 1 lot for the future BMF;
 - 1 public reserve; and
 - 3 residual lots.

The approved subdivision layout shows 9 residential lots (referenced as Lots 1038 to 1046 on the approved subdivision plans) directly adjoining the southern boundary of the BMF lot (marina/commercial land use lot referenced as Lot 1000). It also shows the location of the acoustic wall which is to be constructed along the rear boundary of the BMF (see Figure 7).

106. Condition 67(f) of the consent for DA 619/2017 specifies a requirement for Lots 1038 to 1045 to have a rear building line of 10 m to the dwelling. The restriction is to be enforced as a Section 88B instrument of the *Conveyancing Act 1919* to ensure that future dwellings on these lots can satisfy solar access requirements in accordance with the Precinct A Design Guidelines and to provide an appropriate setback to the acoustic

treatment for the BMF on the rear boundary of Lot 1000.

Proponent's consideration

107. In response to the concerns raised by the Department, the Proponent advised in its RtS that the lots adjoining the BMF are designed to comprise deeper lots to minimise the impact of overshadowing throughout the year and that each of the lots would be able to achieve the minimum private open space and solar access requirements specified in the Precinct A Design Guidelines.

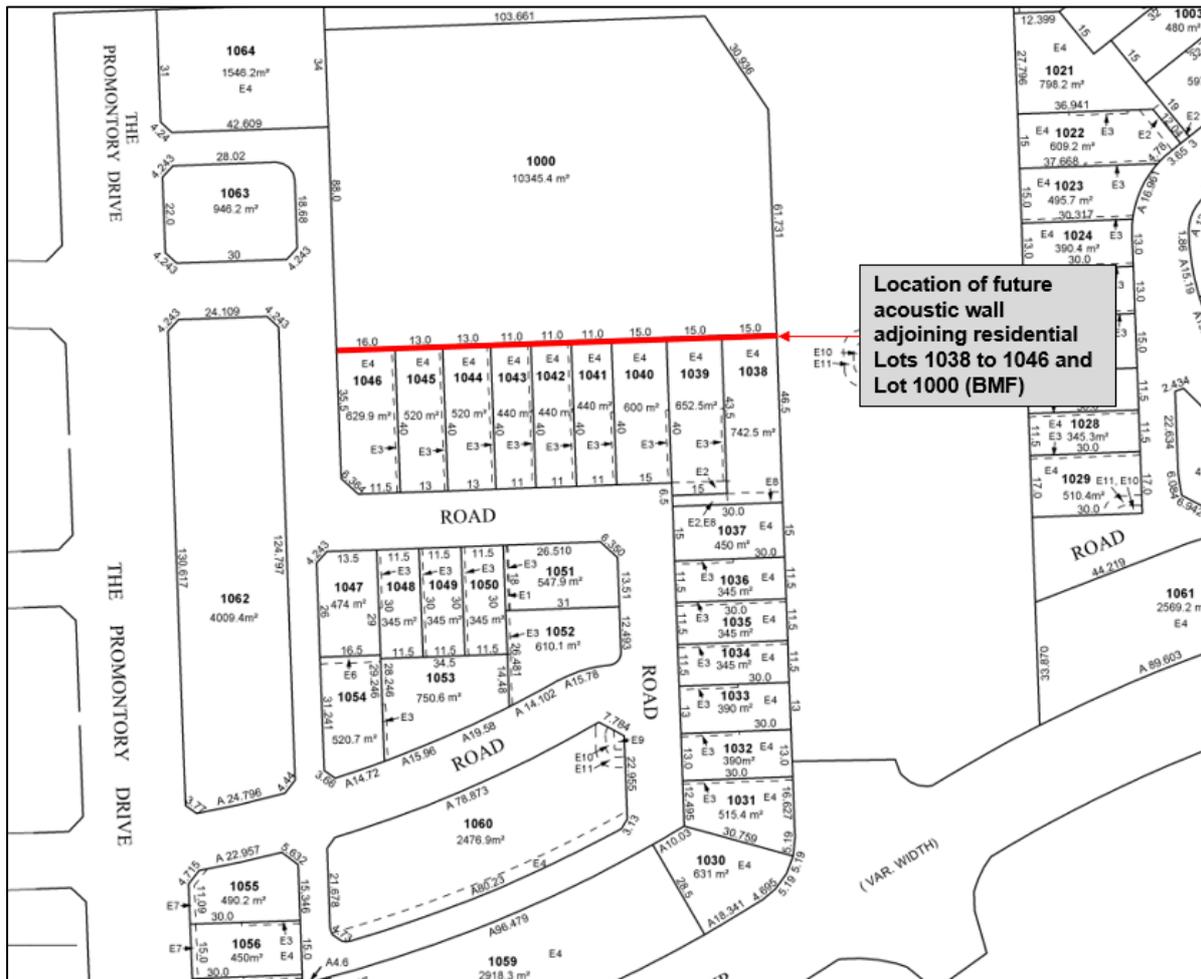


Figure 7: Location of future acoustic wall adjoining Lots 1038 to 1046 in Precinct A (Source: Subdivision Plan for DA619/2017)

Department's consideration

108. In response to the revised design provided by the Proponent, the Department stated in its Assessment Report that:

“the reduced ground level of the marina commercial land use and the 10 m setback to the maximum height of the dry boat storage building will aid in reducing visual impacts to the residential land use. However, the boundary between the two uses will continue to present as either a 6.5 m building or 7 m acoustic wall.”

The Department also advised that the Concept Approval:

“provides for partial road separation between the marina commercial and residential land uses and required acoustic mounds to separate the two uses to mitigate potential amenity impacts. The Department considers removal of these measures and provision of an acoustic wall with deeper lots does not adequately ameliorate the visual and solar access impacts to the residential properties south of the marina commercial land use.”

109. The Department subsequently recommended that:

“a landscape buffer be provided between the two land uses to minimise the amenity impacts to the residential properties. The landscape buffer is to be:

- *a minimum of 5m in width along the entire length of the southern boundary of the marina/commercial land use*
- *located south of the acoustic wall and dry boat storage building*
- *wholly located on land associated with the marina/commercial land use*
- *include appropriate landscaping to screen the acoustic wall and dry boat storage building.”*

Proponent's response to the Department's recommendation

110. In response to the Department's recommendation, the Proponent wrote to the Commission, in a letter dated 7 January 2019, advising that:

“We are of the opinion that that the inclusion of a 5 metre landscape buffer, within the BMF land but level with the residential land, is likely to result in confusion over the ownership and future maintenance of the landscape buffer. The landscaped zone is therefore much better located within a residential lot in order that the home owner can maintain the landscape buffer and effectively utilise the open space as part of their lot.”

111. The Proponent requested the Commission consider amending the Department's recommendation so that the 5 m landscape buffer would be provided on the residential land, as opposed to the marina/commercial land, and for a section 88B instrument in the form of a positive covenant be encumbered on the adjoining residential lots requiring the maintenance of vegetation within the 5 m landscape buffer.

112. The Proponent considered that its recommendation to the Commission, as described at paragraphs 110 and 111 above, would result in a better outcome for the site as it would provide clarity around the ownership of the landscape buffer and would ensure that the landscaping is appropriately managed via an enforceable instrument.

Further advice from the Department

113. The Commission sought advice from the Department in relation to the Proponent's recommendation described at paragraphs 110 and 111 above. The Department subsequently advised the Commission (via email on 22 January 2019) that it does not support the Proponent's recommendation, as:

- *“the amendment would increase number of landowners responsible for maintaining the landscape buffer from one (i.e. the marina/commercial lot) to potentially nine (as approved in the SRPP Precinct A approval);*
- *it increases the likelihood of the landscape buffer not being maintained to the standard which is required to screen the 7m acoustic wall; and*

- *further shifts management of the mitigation required to alleviate impacts associated with the marina/commercial land use to the adjoining residential properties.”*

114. The Department advised the Commission that it does, however, support the requirement for a positive covenant to be placed over the landscape buffer area requiring the ongoing maintenance of the landscape buffer. The amended wording of the condition recommended by the Department in its correspondence to the Commission, dated 22 January 2019, reads as follows:

“a landscape buffer, with a minimum width of 5m, is to be provided between the marina / commercial land use and the residential properties to the south. The landscape buffer is to be:

- (a) provided on land associated with the marina / commercial land use and be located south of the acoustic wall;*
- (b) must include appropriate planting to screen the acoustic wall from the residential properties to the south;*
- (c) must have the same ground level as the residential properties to the south; and*
- (d) be included in the section 88B instrument, for the land associated with the marina / commercial land use in the form of a positive covenant requiring the maintenance of the vegetation specified in (b) above.”*

Commission’s consideration

115. The Commission accepts the recommendation provided in the Proponent’s Noise Impact Assessment, submitted as part of the Modification Application, that a 7 m acoustic wall constructed along the rear boundaries of the residential Lots 1038 to 1046 will appropriately mitigate any future acoustic impacts that may be generated during operation of the BMF on Lot 1000. The Commission notes that the subdivision approval issued by the SRPP in December 2018 provides for the residential allotments abutting Lot 1000 to be some 4 m higher than the BMF lot (Lot 1000). The acoustic wall along the common boundary between the residential lots and the adjoining BMF will therefore present as a 3 m wall.

116. The Commission finds that the Precinct A Design Guidelines, which require a 10 m building setback to the rear boundary of Lots 1038 to 1046, address the solar access requirements for private open space and provides an appropriate setback to the approved acoustic treatment for the future BMF. This requirement is strengthened through Condition 67(f) of the development consent for DA 619/2017 that also enforces the 10 m building setback via a section 88B restriction on the title of Lots 1038 to 1045 (whilst the Commission understands that the intent of this condition to require the setback along all lots adjoining the BMF, it notes that there appears to be a drafting error in the condition as it does not reference Lot 1046).

117. In relation to visual impacts, the Commission finds that the acoustic wall will not visually impact on the public domain as it will face directly onto private open space areas of the adjoining residential lots.

118. The Commission finds that the Department’s recommendation for a 5 m landscaped buffer located along the entire length of the southern boundary at the same level as the residential allotments and wholly on land associated with the commercial/marina land use (Lot 1000) would create an isolated landscaped area that may result in confusion over its ownership and ongoing maintenance. It would potentially be wedged between

the rear acoustic fence of the residential lots adjoining the BMF and future buildings on the BMF site. It may therefore not be a useable area and difficult to access from a maintenance perspective.

119. The Commission notes that the Proponent has recommended, in its letter to the Commission dated 7 January 2019, that a section 88B instrument be placed over the affected residential lots to restrict any built form within 5 m of the acoustic wall and for a positive covenant to be placed over the residential lots requiring the ongoing maintenance of vegetation within the 5 m buffer. The Commission considers that this requirement could be overly restrictive as it would prohibit future land owners from erecting structures such as swimming pools and/ or garden sheds on this portion of privately owned land.
120. Further to paragraph 119, the Commission accepts that the future land owners of Lots 1038 to 1045 will be made aware of the adjoining acoustic wall and the 10 m building setback requirement prior to purchase and may choose to address any perceived visual impacts independently via a landscaped treatment or other appropriate measures.

5.2.6 Other issues

121. An issue raised by a speaker at the public meeting related to the need for social infrastructure and community facilities to be included as part of the development including sports playing fields, exercise equipment and an aquatic and leisure centre.
122. The Commission notes that the Concept Approval includes a FEAR (No. 13) that requires:

“Social infrastructure to be provided in accordance with Council’s Section 94 Contributions Plan. The details of any playground, local library and multi-purpose community centre shall be provided with each stage of the project.”

Further, the Commission notes that the approved Concept Plan shows the locations of future playing fields and informal open space areas.

123. The Proponent seeks to amend FEAR No. 13 as part of the Modification Application to state that the social infrastructure will be provided in accordance with Council’s Section 94 Contributions Plan or, where applicable, any negotiated voluntary planning agreement (**VPA**) in relation to the land.
124. The Commission acknowledges that the Proponent will be required to demonstrate adequate social infrastructure provisions as part of the future DAs either in accordance with Council’s Section 94 Contributions Plan or with the agreement of Council as part of a VPA.

5.2.7 Administrative amendments to the conditions of consent

125. The Commission recommends a number of drafting amendments to the modifying instrument prepared by the Department. The amendments include:
 - deleting the inclusion of the definition for ‘Tourist and Visitor Accommodation’ under Schedule 1;
 - amending the definition of ‘Project’ and ‘Statement of Commitments’ to refer to the relevant documentation submitted as part of the Modification Application;
 - including ‘community facilities’ in the list of approved uses at Schedule 2,

- Condition 1(c);
- deleting the requirement for a 5 m landscape buffer between the marina/commercial land use and the residential properties to the south at Part B – Modifications to the Concept Plan;
- including a requirement at Schedule 2, Condition 17(e) requiring the public access around the perimeter of the harbour foreshore to be provided in the form of a paved concrete footpath and/ or boardwalk and constructed to a minimum width of 1.5 m to allow for two wheelchairs to pass; and
- including new FEAR No. 19 at Part D – Further Environmental Assessment Requirements that requires a VIA to be prepared as part of all future stages of development including representative 3D computer models based on the approved RLs of the land subject to the Modification Application.

126. The Commission has updated the draft modifying instrument to reflect the recommended amendments listed at paragraph 125.

5.3 The public interest

127. The Proponent advised in its Modification Report that “*the fundamental characteristics of the concept approval are retained*” as part of the Modification Application and that the development remains in the public interest as:

- *“The proposed development is in accordance with the overall Structure Plan and Masterplan developed for Shell Cove, the Illawarra Regional Strategy, the Illawarra Regional Environmental Plan and the objectives of the appropriate State Environmental Planning Policies.*
- *The site development will establish land uses which meet the needs of the local and regional community including opportunities for diversification of recreational and housing choice.*
- *The site development will provide for the establishment of a mixed use environment which will contribute to the diversification of the economy of the Illawarra and its employment opportunities.*
- *The Boat Harbour Precinct is an opportunity to create a unique community focus where tourism, recreation and leisure activities can support a broad and diverse range of employment opportunities.*
- *The mixed use development of the site will produce direct and indirect economic benefits within the local economy including significant employment opportunities during the construction and operation of the services and facilities to be provided.*
- *The site development will provide additional recreational and entertainment facilities in the region, in relation to recreational boating opportunities.*
- *Increased public access to Shellharbour South Beach.”*

128. The Department advised in its Assessment Report that:

“the proposal is consistent with the broader strategic planning objectives for the site and would provide social and economic benefits to the region.”

129. In determining the public interest merits of the Modification Application, the Commission has had regard to the objects of the EP&A Act. A relevant object of the EP&A Act to the Modification Application is the facilitation of Ecologically Sustainable Development (ESD). The Commission notes that section 6(2) of the *Protection of the Environment Administration Act 1991* states that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, and that ESD can

be achieved through the implementation of:

- (a) the precautionary principle;
- (b) inter-generational equality;
- (c) conservation of biological diversity and ecological integrity; and
- (d) improved valuation pricing and incentive mechanisms.

130. Under section 1.3 of the EP&A Act, the Commission considers the relevant objects to the Modification Application are as follows:

- facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;
- to promote the orderly and economic use and development of land;
- to promote good design and amenity of the built environment; and
- to provide increased opportunity for community participation in environmental planning and assessment.

131. In relation to the consideration of the Modification Application's impacts against the relevant objects of the EP&A Act listed at paragraph 130, the Commission finds that the Modification Application demonstrates consistency with these objects as:

- it would not result in any significant further environmental or social impacts, beyond those previously assessed and determined to be acceptable as part of the Concept Approval, as set out in paragraphs 62 and 90;
- it would result in the orderly and economic use and development of land that has previously been determined as an appropriate location for a mixed-use development site incorporating residential, commercial, tourism and community land uses;
- it would promote good design and amenity of the built environment through the inclusion of appropriate maximum building heights and provision of urban design guidelines for future precincts; and
- adequate opportunity has been provided for community participation during the assessment of the Modification Application including opportunities to provide written submissions and partake in a public meeting.

132. The Commission finds that the Modification Application is in the public interest as it is consistent with the objectives of the Regional Plan in providing additional housing supply and diversity in housing options close to services and jobs, and it will contribute to the diversification of the economy and provide additional employment opportunities.

6. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

133. The views of the community were expressed through:

- public submissions and comments received (as part of exhibition and as part of the Commission's determination process), as outlined in paragraphs 15, 16 and 18;
- members of the public who spoke at the public meeting or sent written submissions after that meeting, as outlined in paragraph 29; and
- the Commission inspecting the site from the rear balcony of a private dwelling owned by a community representative, as outlined in paragraph 28.

134. In summary, views expressed by the community raised a number of concerns, as summarised in paragraphs 16 and 30.

135. The Commission carefully considered all of these views as part of making its decision. The way in which these concerns were taken into account by the Commission is set out in **section 5** above.

7. THE COMMISSION'S FINDINGS AND DETERMINATION

136. The Commission has carefully considered the Material before it, as outlined in paragraph 32.

137. The Commission finds:

- the large area covered by the Concept Plan is well suited to support the proposed increase in residential density with the needs of future residents to be met by a town centre precinct providing retail and community services, as set out in paragraphs 42 and 43;
- the proposed changes to the built form and character are acceptable, as set out in paragraphs 61 and 62, as they would not lead to significantly greater view loss or additional overshadowing than what was previously approved as part of the Concept Plan;
- the predicted 2% increase in (vehicular) traffic generated by the larger development will not significantly impact the state road network nor be noticeable in the context of total local traffic movements and is, therefore, acceptable, as set out in paragraph 90;
- the demand for car parking generated by the larger development would not be unacceptable and that further detailed assessment of residential car parking provisions can be undertaken by the relevant consent authority as part of future DAs, as set out in paragraph 95;
- water and wastewater infrastructure capacity constraints can be appropriately managed, as set out in paragraph 102, through a condition of consent limiting the total number of dwellings until adequate servicing arrangements are in place;
- the Precinct A Design Guidelines, which require a 10m building setback to the rear boundary of Lots 1038 to 1046, address the solar access requirements for private open space, and provides an appropriate setback to any acoustic treatment for the future BMF, as set out in paragraph 116;
- the provision of a 5 m landscaped buffer wholly on land associated with the BMF in Precinct A, at the same level as the adjoining residential lots, as recommended by the Department, is inappropriate, considering the subdivision consent granted by the SRPP on 17 December 2018, as set out in paragraph 118; and
- the Modification Application is in the public interest, as outlined in paragraphs 131 and 132.

138. The Commission finds that the impacts of the development are acceptable and can be appropriately mitigated through the implementation of the recommended conditions of consent.

139. The Commission has determined to approve the Modification Application, subject to conditions. These conditions are designed to:

- prevent, minimise and/or offset adverse environmental impacts and impacts on the community;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

140. The reasons for the Decision are given in this Statement of Reasons for Decision dated 18 March 2019.



Steve O'Connor (Chair)
Member of the Commission



Ilona Millar
Member of the Commission



Peter Cochrane
Member of the Commission