

Ph: (02) 9986 3362 Fax: (02) 9986 3364

Suite 1, 9 Narabang Way, Belrose 2089

PO Box 714 Turramurra 2074

Email: james@jameslovell.com.au

Web: www.jameslovell.com.au

15 February 2018

The Chairman
NSW Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000
Attention: Steve O'Connor

Dear Sir,

MP 07_0027 MOD1
MODIFICATION TO SHELL COVE BOAT HARBOUR CONCEPT APPROVAL

Introduction

I act on behalf of a group of local residents (see *Attachment A*) in relation to the abovementioned matter which comprises an Application to modify a Concept Plan Approval for the *Shell Cove Boat Harbour* development.

My clients are the registered owners of a series of residential properties located within the residential neighbourhoods of Shell Cove and Flinders. The properties are generally located to the west of the development site, and the topographical features of the locality are such that the properties typically enjoy ocean and foreshore views of Shellharbour South Beach to the east.

On 15 February 2011, the then Minister for Planning granted the Concept Plan Approval (07_0027) for the development of a 100-hectare precinct surrounding the boat harbour and marina.

The current Application seeks to modify the Concept Plan Approval development, with the proposed modifications broadly including increasing the number of dwellings from 1,238 to 1,566, revising the housing densities, building typologies and building heights, relocating the approved hotel and increasing its height from 9 to 11 storeys, and reconfiguring the road pattern and layout.

I prepared a submission in relation to the proposed amendments on behalf of my clients, dated 20 October 2017. The submission was prepared during the formal exhibition period, and raised a number of specific concerns in relation to the proposed development, including *"The absence of any meaningful analysis of the impact on existing views from my clients properties to the ocean and foreshore of Shellharbour South Beach and beyond"*.

The Application to modify the Concept Plan Approval was lodged on 9 August 2017, and formally exhibited between 15 September 2017 and 20 October 2017. In response to the objections received during the exhibition of the Application, the Applicant engaged a consultant to prepare a *"Visual Impact Assessment"* (Richard Lamb and Associates), dated January 2018.

The *"Visual Impact Assessment"* was completed some five (5) months after the Application was lodged, and some three (3) months after the completion of the exhibition period.

A view loss assessment would normally and appropriately form part of a proper site analysis, and inform the overall design process. In my opinion, it is a legitimate concern that the Applicant proceeded to design and lodge the Application to modify the Concept Plan Approval without any clear or precise understanding of the impacts of the proposed modifications.

Irrespective, to the extent that the Applicant (and the Department in its Assessment Report dated 6 November 2018) rely upon the *"Visual Impact Assessment"* in relation to view loss, it is reasonable and appropriate that the accuracy of the *"Visual Impact Assessment"* is critically and carefully examined.

The Visual Impact Assessment

The *"Visual Impact Assessment"* is based on a very fundamental premise. That premise is that the appropriate method of assessment is to compare the building form approved in the Concept Plan Approval with the building form proposed in the modification Application.

In that regard, the fundamental basis of the *"Visual Impact Assessment"* is clearly expressed in the following terms:

*Our advice focusses on an analysis of the **comparison** of the visibility, visual exposure, and visual effects on views and streetscapes that would occur as a result of the section 75W application, compared to the Concept Approval and is supported by analysis of block model photomontages prepared by Digital Line, architectural illustrators, in December 2017 [emphasis added] (Page 3).*

This discussion below includes references to the visual effects of built form that has been approved for the subject site and which is shown in block-model montages in Appendix 2. Although such built forms are not yet constructed or present in existing view compositions, the forms have been approved and are part of the reasonable expectations of desired

future character for the precinct. **The Concept Approval is therefore the appropriate baseline** for assessment of the section 75w modification application, notwithstanding its appearance is significantly different from the existing environment **[emphasis added]** (Page 6).

The existing views are not the appropriate baseline for the **comparative analysis**, as they are intended to be significantly changed in character and in the visibility of specific features, by the Concept Approval. The pairs of photomontages for the **comparison** of visual effects of the Concept Approval and section 75W envelopes are in Appendix 2 **[emphasis added]** (Page 14).

In that context, the “Visual Impact Assessment” states (on Page 3) that the block-model photomontages used for the purposes of demonstrating the comparative impacts of the proposed modifications are based on the maximum height, bulk and location of the buildings depicted in the Concept Plan Approval as follows:

The Concept Approval shown in the block-model photomontages reflects the maximum height, bulk and location of built forms that were included in the Shell Cove Boat Harbour Precinct Concept Plan that was approved under part 3A of the Environmental Planning and Assessment Act 1979 (EPA Act) by the DPE following the Concept Plan application in 2010.

In that regard, the Concept Plan Approval does not specify maximum building heights in terms of Relative Levels (RL’s), Australian Height Datum (AHD), or metres above existing or proposed/finished ground level.

In fact, the Concept Plan Approval refers only to building height in number of storeys (without reference to existing or proposed/finished ground levels), and does not specify the floor to floor heights within any typical (or specific) building.

Further, the Concept Plan Approval is very imprecise in terms of building height, and in all instances refers to a range of storeys (ie. “up to 2 storey”, “2 to 3 storey”, “3 to 4 storey”, “up to 4 storey”, and “8 – 9 storeys”).

The “Visual Impact Assessment” notes (on Page 12) that:

DigitalLine was provided with a 3D computer model of the Concept Approval and proposed section 75 W by Cox, in the form of a Sketchup model containing the maximum approved and proposed envelopes. Cox also provided a site survey.

DigitalLine prepared 3D block models of the approved and proposed envelopes in each view analysed.

In my opinion, the Concept Plan Approval, quite clearly, does not include sufficient detail to prepare a "3D computer model of the Concept Approval". To prepare such a model, specific and precise details would be required in relation to building heights in terms of RL's, AHD, and metres above existing and proposed/finished ground levels. In the absence of that data, it is simply not possible to create a "3D computer model of the Concept Approval".

Irrespective, the "Visual Impact Assessment" expressly relies upon 3D computer model which necessarily requires a precise depiction of the building heights depicted in the Concept Plan Approval.

Again, the Concept Plan Approval refers only to building height in number of storeys, and in all instances refers to a range of storeys (ie. "up to 2 storey", "2 to 3 storey", "3 to 4 storey", "up to 4 storey", and "8 – 9 storeys").

In those circumstances, it is very difficult to understand how a 3D computer model could be created that precisely defines the approved building heights (given the Concept Plan Approval includes no such precision).

I note that one (1) of my clients (Mr Guy Formica of 18 Tasman Drive, Shell Cove) wrote to the Applicant (Mr Glenn Colquhoun of *Frasers Property Australia*) and requested details of the ground levels and building heights being used for the purposes of depicting the building heights incorporated in the Concept Plan Approval. On 9 October 2017, Mr Colquhoun responded to Mr Formica and advised as follows:

As previously explained, the current application before the NSW Dept. of Planning is a concept plan. This document sets the proposed framework for future development and does not include evolved or detail design for individual buildings.

Detail design for each building will be evolved with development applications after the approval of the concept plan on a stage by stage basis.

Levels at this point are preliminary and subject to detail design. As a preliminary indication, apartment buildings generally have a floor to floor height of around 3m plus a basement carpark that would be half in/half out of the ground.

On 21 November 2017, Mr Colquhoun again wrote to Mr Formica and advised that "*Frasers have now commissioned Richard Lamb and Associates to conduct view assessment photo montage imagery within Shell Cove*".

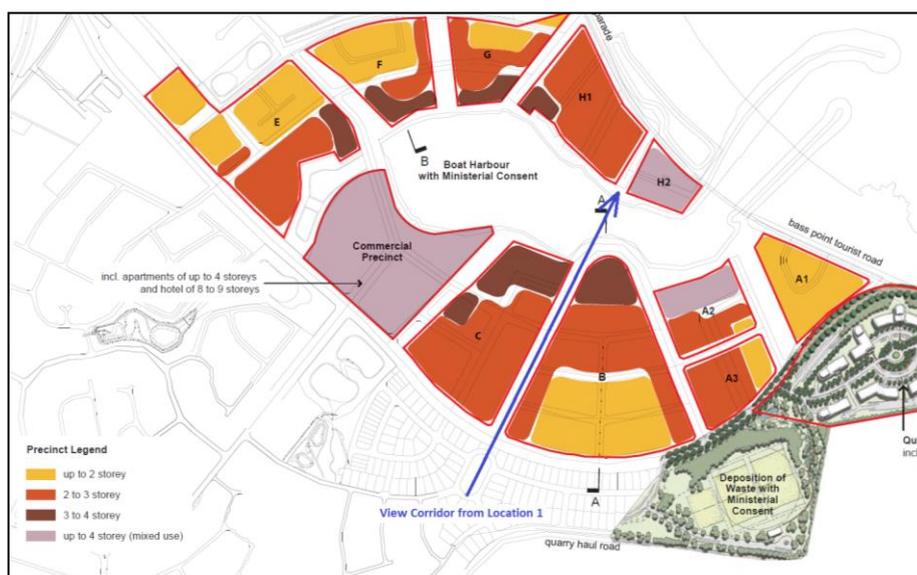
The "Visual Impact Assessment" includes eight (8) photomontages purporting to show a comparison between the Concept Plan Approval and the building form proposed in the proposed modification Application.

The photomontages depict the building forms from relatively distant locations, with one (1) exception. That exception is identified as Location 1, being a view in a north-easterly direction from *Shallows Drive Reserve* (directly opposite No. 50 Shallows Drive).

The photomontage purporting to depict the “*Shallows Drive Concept Approval Envelope*” is extracted from Page 26 of the “*Visual Impact Assessment*” below.



In an attempt to assess the accuracy of the photomontage in depicting the building heights incorporated in the Concept Plan Approval, I have marked the corresponding view corridor on the approved building height plan (prepared by *LFA (Pacific) Pty Ltd*, dated 26 February 2010) in blue below.



As can be observed, the buildings along either side of The Promontory Drive are depicted in the Concept Plan Approval with the letter "C" in an orange colour as "2 to 3 storeys".

Further, I have zoomed into the view corridors along either side of The Promontory Drive to assess the accuracy of the depiction of the buildings included in Concept Plan Approval (in storeys) relative to the existing buildings.



In my opinion, the images above raise very significant concerns with respect to the accuracy of the photomontages in depicting the building heights incorporated in the Concept Plan

Approval. In my opinion, (based on typical floor to floor heights of residential buildings), the height of the “*approved*” building has been significantly overstated.

The above analysis of the photomontage from Location 1 was not intended to highlight a potential view loss from that location. The analysis is simply intended to test the accuracy the 3D computer model in terms of the depiction of the building heights incorporated in the Concept Plan Approval.

Further, it can reasonably be assumed that the 3D computer model (as a whole) has used a similar (highly questionable) approach to defining all of the building heights incorporated in the Concept Plan Approval.

In the circumstances, it is highly probable that the fundamental premise of the “*Visual Impact Assessment*” is flawed. That is, it is highly likely that the differences between the building heights in the Concept Plan Approval and the modification Application are materially greater than the photomontages suggest.

Part 3A Modification Assessment Report

The Modification Assessment Report (dated 6 November 2018) includes an assessment of potential view loss commencing on Page 24, including the following comments:

Loss of views was a key concern raised by residents in the submissions. As a result, the proponent engaged Richard Lamb and Associates to carry out a VIA to consider the impact of the proposed modifications on views. Block-model photomontages were prepared to demonstrate the difference between the likely view impacts of development under the approved and proposed Concept Plan (Page 24).

The VIA demonstrates that from most elevated vantage points, the impacts of the modification would not be significant (Page 24).

The assessment and conclusions identified above are clearly based upon the “*Visual Impact Assessment*”, and the photomontages contained therein.

In my opinion, the conclusions reached in the Assessment Report should be considered with some considerable caution. That is, if the photomontages are not accurate in their depiction of the building heights incorporated in the Concept Plan Approval, the conclusions of the assessment report are based on incorrect information.

Again, based on the analysis I have carried out above, it is highly likely that the differences between the building heights in the Concept Plan Approval and the modification Application are significantly greater than the photomontages suggest.

Conclusion

The existing views from my client's properties are highly valued, and of significant importance to the amenity of the properties.

In that regard, the Applicant (in its "*Visual Impact Assessment*") and the Department (in its Assessment Report) expressly rely upon the photomontages to determine the view loss as a consequence of the proposed modifications.

In my opinion, it is entirely reasonable to critically review the photomontages to determine their accuracy, particularly in relation to the depiction of the building heights incorporated in the Concept Plan Approval.

In that regard, one (1) of my clients (Mr Formica) has repeatedly sought from the Applicant the information necessarily used to depict the building heights incorporated in the Concept Plan Approval, including the RL's for the individual buildings, and details of the existing and proposed/finished ground levels.

Unfortunately, that information has not been forthcoming, circumstances in which a critical review of one (1) of the photomontages (Location 1 as an example) has identified what appears to be a significant discrepancy in the depiction of the approved building heights.

Further, it can reasonably be assumed that the 3D computer model (as a whole) has used a similar (highly questionable) approach to defining all of the building heights incorporated in the Concept Plan Approval.

In my opinion, the Application should not be determined until such time as the accuracy of the photomontages has been clearly established. At this stage, the necessary information (including the RL's for the individual buildings, and details of the existing and proposed/finished ground levels) has not been made available.

I trust this submission is of assistance, and ask that I be kept informed prior to any determination being made, and/or in relation to any request to the Applicant to provide additional information/clarification in relation to matters raised in this submission.

In the meantime, should you require any further information or clarification please do not hesitate to contact the writer.

Yours sincerely,



James Lovell
Director
James Lovell and Associates Pty Ltd

ATTACHMENT "A"

NAME	ADDRESS
Guy Formica	18 Tasman Drive, Shell Cove
Foong Theng Leong	18 Tasman Drive, Shell Cove
Liliana Formica	4 Banks Street, Monterey
Emma and Charles Grinna	16 Lord Howe Ave, Shell Cove
Peter Messer	27 Ragamuffin Circuit, Shell Cove
Nanette and Alan Ryrie	10 Lord Howe Ave, Shell Cove
Katie Dansey	144 Harbour Boulevard, Shell Cove
Maringo and Janja Pavlovic	31 Torres Circuit, Shell Cove
Jason Goodes	21 Larkin Crescent, Flinders
Corrie Rankin	20 Tasman Drive, Shell Cove
Simon Jarochowicz	11 Dillon Road, Flinders
Ed Parkinson	6 Cowries Avenue, Shell Cove
Lorenzo and Giovanna Andleone	4 Oxley Way, Shell Cove

Shell Cove Boat Harbour Precinct Concept Approval

MP 07 0027 MOD1- D541-18

Addendum to Comments Prepared by: Guy Formica

The Traffic Assessment for the 2011 Concept Plan prepared by LFA(Pacific) contains the following table. Note the predicted queue lengths circled in Red. **These queue lengths ranging from 120m to 230m are not acceptable to the residents of Shell Cove.** The footnote to the table states actual performance of the Shellharbour Rd/Harbour Bvde/Wattle Rd and the Harbour Rd/Addison Rd intersections are “likely to be worse than shown.”

These queue lengths will also be increased further due to the proposed modification. This increase has not been assessed by the proponent.

The residents of Shell Cove do not find these queue lengths acceptable.

Table 3-4: Predicted Intersection Performance (with full development)

Intersection	2018 AM Peak		2018 PM Peak		2018 Holiday Peak	
	Overall LoS	Comment	Overall LoS	Comment	Overall LoS	Comment
Shellharbour Rd / Mary St (signals)	A	Operates well in the AM Peak	B	Queuing of over 120m on Shellharbour Rd Nth approach	A	Queuing of over 120m on Shellharbour Rd Nth approach
Shellharbour Rd / Harbour Bvde / Wattle Rd (signals)	C	Queue lengths could potentially extend over 120m in the AM peak	D	Queue lengths could potentially extend over 200m on the northern approach in the PM peak	D	Queue lengths could potentially extend over 230m on the northern approach in the PM peak
Addison St / Harbour Bvde (signals)	A	Operates well in the AM Peak	A	Vehicles could occasionally queue from Shellharbour Rd through this intersection.	A	Vehicles could occasionally queue from Shellharbour Rd through this intersection.
Harbour Bvde / Brigantine Dr (roundabout – single lane approaches)	A	Operates well in AM Peak	A	Operates well in PM Peak	A	Queuing on Harbour Boulevard Sth of around 90m
Harbour Bvde / Cove Bvde (signals)	B	Queuing of around 70m on Harbour Boulevard Nth approach and Cove Bvde	B	Queuing of around 110m on Harbour Boulevard Sth approach	B	Queuing of around 120m on Harbour Boulevard Sth approach
Harbour Bvde / Road A (roundabout)	A	Operates well in the AM peak	A	Operates well in PM Peak	A	Operates well in the Holiday Peak
Harbour Bvde / Road C (roundabout)	A	Operates well in the AM peak	A	Operates well in PM Peak	A	Operates well in the Holiday Peak
Shellharbour Rd / Cove Bvde (roundabout)	B	Queuing of about 130m on Lakewood Bvde	B	Queuing of about 190m on the Shellharbour Rd Nth approach	F	Significant delays and queueing on Shellharbour Rd Nth

* The Shellharbour Rd/Harbour Boulevard and Addison St/Harbour Boulevard intersection have been modelled as isolated intersections in SIDRA3. The actual performance of these intersections are likely to be worse than shown, due to queue interactions between these intersections and the need to adjust the signal timings to manage queues.

Shell Cove Boat Harbour Precinct Concept Approval

MP 07 0027 MOD1- D541-18

Comments Prepared by: Guy Formica

Severe Detrimental Visual Impact

I strongly object to the modification as it will have a severe detrimental impact to my water views and views from the surrounding area. My home is location 7 indicated in the Visual Impact Assessment prepared by Dr Lamb for Frasers Property. This assessment is flawed and its conclusions irrelevant. The reasoning why is as follows.

- a) It is impossible to produce an accurate view analysis and subsequent photo montage without knowing the ground levels (Australian Height Datum or AHD) at the base of the buildings and the building heights **in metres**. The assessment does not specify exact ground level AHD data or building height data in metres that was used to produce the photo montages. This data must form part of the assessment document. This data is missing from the report hence, it does not allow one assessing the report to check its accuracy and validity. I requested this data from Frasers Property Director, Glen Colquhoun in November 2017, but he refused to supply it. See e-mail in Appendix A. The report must be rejected in its current form because this data is not included in the document.
- b) Building ground level AHD data and building heights **specified in metres** did not form part of the original 2011 Concept Approval and therefore no building heights and ground levels were approved in metres. Therefore, it is impossible to produce an accurate photo montage of the 2011 Concept Approval, and hence perform a comparison to the modification.

Hence, the entire conclusion arguments of the View Assessment (and all DPE references to in their recommendation) are false and misleading because no one can state what ground levels and building heights in metres that were approved in 2011, therefore a view comparison is impossible.

Now, my understanding and the general consensus in the building industry is that one storey is 3m high. Glen Colquhoun of Frasers Property agrees (see e-mail in Appendix C). A roof is generally 2m high. Therefore, equating storeys to meters:

2 storeys = 8m high; 3 storeys = 11m high; 4 storeys = 14m high;
5 storeys = 17m high; 6 storeys = 20m high.

The AHD of 3.75m should be used for building ground level for the 2011 concept approval (See e-mail in Appendix B) for 4 storeys or less.

If the visual impact assessment uses 3.75m AHD building ground level and the above height figures in metres to produce a photo montage of the 2011 concept plan, then this may be a possible solution to perform a comparison. The visual impact statement must include these

figures within the document. The IPC should request this be performed ASAP or perform its own visual impact assessment using these figures before making a decision.

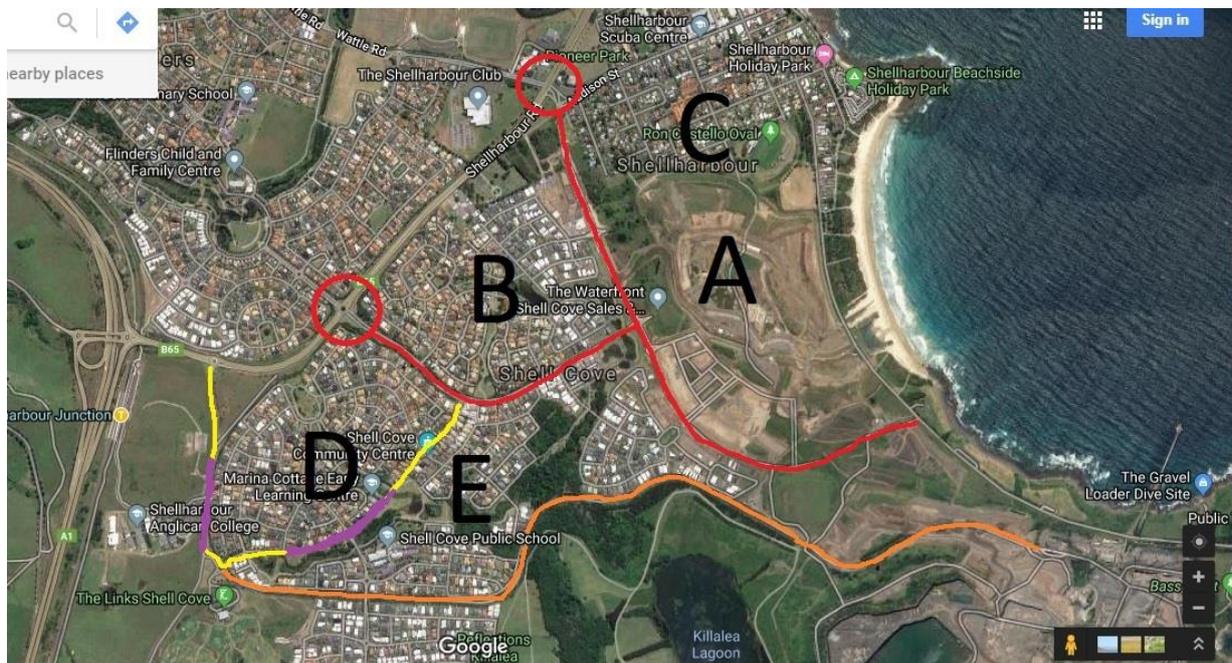
The IPC must make sure that Dr Lamb has followed the exact guidelines of the Land and environment court to produce the report.

In addition, the Visual Impact Assessment relies on computer generated depictions of the building heights and not actual tangible structures. The computer-generated montages cannot depict with 100% accuracy what the views will look like. I therefore propose that one temporary pole for each building over 15m high be erected on site and a clearly visible marker be mounted on each pole at the proposed height of the building. This will allow the IPC and residents to accurately judge and photograph the true impact to their view from their home.

The modification to the concept plan will have a severe and detrimental affect on the views from my property and the surrounding area.

Severe Detrimental Traffic Impact

The traffic analysis of the 2011 Concept Approval and subsequent modification is flawed because it does not consider congestion caused by the two main intersections of Cove Boulevard with Shellharbour Road and Harbour Boulevard with Shellharbour Road. This will cause **SINIFIGANT TRAFFIC DELAYS TO RESIDENTS.**



The roads vehicles use to enter and exit the areas A,B,C,D and E to Shellharbour Road (and then the M1 freeway or to the train station) are Cove Boulevard and Harbour Boulevard. These two roads are indicated in Red on the map. It is possible to enter Shellharbour Road via Cove Boulevard, then Southern Cross Boulevard and then Dunmore Road (indicated in Yellow on the map) but this route is much longer, it has two school zones indicated in Purple on the map, and multiple roundabouts which make it extremely congested already with parents dropping off and picking up their children from

school. The road indicated in Orange on the map is a private road (not for public use) and is used by the nearby quarry and not connected to the development roads.

Therefore, there are only 2 main intersections (circled in red on the map) to get to Shellharbour Road from the site and surrounding areas.

- 1) Traffic Lights at the intersection of Harbour Boulevard and Shellharbour Road.
- 2) The round-about at the intersection of Cove Boulevard and Shellharbour Road.

“The approved concept plan estimated to have a traffic generation of some 4,000 vehicles per hour (two-way) in the weekday afternoon peak hour.” (Taken from Colston Budd Rogers & Kafes Pty Ltd report dated 17th July 2017). This does not include areas B,C,D and E.

Let's assume 50% of vehicles use one intersection and 50% the other intersection. This equates to 2000 vehicles through one intersection per hour. This equates to $2000/60 = 33$ vehicle per minute or one vehicle every 1.8 seconds through an intersection continuously without stopping to avoid congestion. This is absolutely impossible. If we include vehicles from areas B,C,D and E and the extra vehicles from the modification, and the fact that the traffic flow through these intersections is not continuous, and also vehicles stopping to reverse park, **the likelihood of traffic jams and grid lock is certain.**

Major traffic jams on Cove Boulevard, Harbour Boulevard and Southern Cross Boulevard are occurring presently during every morning and afternoon peak hour, and this is before the development has been fully built.

The traffic analysis MUST include the traffic impact caused by the two intersections of Harbour Boulevard with Shellharbour Road and Cove Boulevard with Shellharbour Road, taking into account the timing of the traffic lights and the roundabouts.

Conclusion

Please, do not allow developers and the state government turn our beautiful Shell Cove into an overpopulated traffic congested quagmire simply for the profit of a developer (as they have been doing in Sydney and other parts of NSW) by approving this modification. Decreasing building heights and keeping the GFA at a maximum of 150,000m² will keep the visual appeal of the area more attractive for tourism, reduce overpopulation, it will not affect jobs, it will reduce traffic congestion, and make a happier community for existing and future residents.

If this modification is approved, it will only benefit the developer and have detrimental effects on the community. Raising building heights and lifting the limit on the GFA does not improve the development.

You have over 200 objections (and more than one person per objection) and almost zero supporters of this modification. It is my hope that you follow the will of the people in the community and reject this modification.

Guy Formica.

Subject: FW: Shell Cove Concept Plan

Appendix A



Subject: Re: Shell Cove Concept Plan

Glenn,

Thank you for your response.

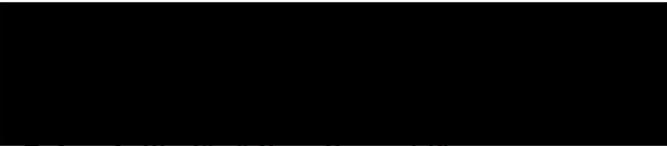
I agree that Dr Lamb can take photographs from my property. I do however have some comments to make.

Firstly, absent me (or anyone else) knowing the location, height, dimension etc... of the proposed buildings it seems it would be impossible to carry out any meaningful assessment of the impact that those buildings will have on, amongst other things my views. With this in mind, I query how Dr Lamb will carry out the task asked of him. I assume Dr Lamb will need to be given the information that I have sought and I ask that you provide it to me also so that I might carry out my own analysis.

Secondly, I am aware that Dr Lamb regularly appears in the Land & Environment Court. Accordingly, he would be well aware of that Court's requirements for the assessment of visual impact assessment and view loss analysis. His report/assessment should be completed in accordance with those guidelines and requirements. It would be unfortunate if the view impact assessment did not properly take my concerns into account because of a failure to comply with those guidelines and requirements. Such a failure could undermine the whole assessment process and leave any decision of the Department open to challenge.

Regards,

Guy.



Subject: RE: Shell Cove Concept Plan

Hi Guy

We have offered to undertake photography from your home in good faith to assist in resolving issues raised by yourself and other residents in relation to view impacts. Richard Lamb and Associates are highly respected experts in this field and their work is regularly used in court cases.

I will be happy to show you through the work when completed and the support that underpins it, however, I am not prepared to negotiate conditions in relation to our offer.

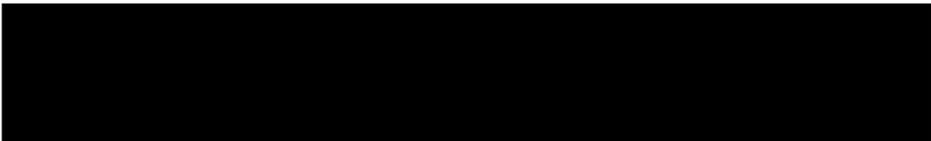
The consultant team will be on site on Tuesday 28th November. If you would like to be part of this process and benefit from this work, then I will require your confirmation by no later than 10:00am Monday 27th November, 2017.

regards

Glenn Colquhoun
Development Director
Frasers Property Australia



In 80+ cities worldwide.



Subject: Re: Shell Cove Concept Plan

Hi Glenn

You still have not supplied me with the information requested months ago.

Only if the following conditions are satisfied will I agree for Richard Lamb and Associates to take photos from my home.

1) Frasers must supply to me the following information first (which should have been supplied to me months ago when requested and you must supply in any case).

- a) The exact location of all proposed buildings in the development, i.e. surveyors drawings depicting the exact footprint of all buildings including longitude and latitude points of reference for the location of each building edge/corner.
- b) The exact height of all proposed buildings in the development i.e. drawings indicating RLs of ground and building tops (including roof and any rooftop plant) for all buildings. AHD levels are OK also.

I require this information to enable production of a 3D model of the whole development in AutoCAD based software. This will allow us to pan and view the development accurately from any point in Shell Cove (including my fellow residents properties). I have requested this information from you many times since Sep 2017 but with no accurate response and partial information only on ground levels (see attached).

2) If photo imagery is to be used, then it must comply with the Land & Environment Court's Practice Guides. This requires such things as certificates from surveyors as to locations and heights from which the photo's are taken, camera lens sizes, etc...

3) I must be supplied a copy the assessment (including photos) prepared by Richard Lamb immediately after its completion. And of course, I will be happy to share with you any 3D modelling we produced once we receive Richard Lamb's assessment, but we of course, we need the above requested information first to produce the 3D modelling.

Regards,

Guy.



From: Glenn Colquhoun



Subject: Shell Cove Concept Plan

Hi Guy

Frasers have now commissioned Richard Lamb and Associates to conduct view assessment photo montage imagery within Shell Cove. Richard Lamb and Associates are specialists in the field of view impacts.

As per our previous discussions, we had intended to have this work undertaken earlier but have decided to await the finalisation of responses to the Department of Planning on the Concept Plan Modification to allow an informed decision on the locations for the assessment.

We plan on having photography taken at a number of locations within Shell Cove and would like to include a view shot from your home if you are agreeable. I have copied Jane Maze-Riley from Richard Lamb and Associates into this email. Jane will co-ordinate the photography with you if this is acceptable.

Could you please confirm that you are agreeable to providing Richard Lamb and Associates access to your home for the purpose of this photography

regards

Glenn Colquhoun
Development Director
Frasers Property Australia

[Redacted signature block]



In 80+ cities worldwide.

Subject: FW: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Appendix B

[Redacted]

Subject: RE: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Guy

My apologies for the delay in getting back to you. As agreed, I provide the following indicative level details for the 5 and 6 storey apartment buildings proposed at The Waterfront

- Six level building - approximate finished ground level at RL 3.75
- Five level building - approximate finished ground level at RL 5.50

As noted, these levels are preliminary indicative levels and as such are subject to change.

I also confirm our agreement that you will not disseminate any calculations, cross sections or visualisations that you prepare without first providing me the opportunity to review their accuracy

We appreciate that the community is concerned about their views and are currently reviewing the best way to be able to graphically present the visualisation of the proposed concept plan changes. It is fairly simple for properties closer to the Waterfront but more complex for those like yourself with more distant views. In this regard we are looking to engage an expert in this field and hope to be able to have some representations for you and the rest of the community in approximately 3 to 4 weeks' time.

regards

Glenn Colquhoun
Development Director
Frasers Property Australia

[Redacted]



In 80+ cities worldwide.

Subject: FW: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Appendix C

[Redacted]

Subject: RE: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Guy

As previously explained, the current application before the NSW Dept. of Planning is a concept plan. This document sets the proposed framework for future development and does not include evolved or detail design for individual buildings.

Detail design for each building will be evolved with development applications after the approval of the concept plan on a stage by stage basis .

Levels at this point are preliminary and subject to detail design. As a preliminary indication, apartment buildings generally have a floor to floor height of around 3m plus a basement carpark that would be half in/half out of the ground

regards

Glenn Colquhoun
Development Director
Frasers Property Australia

[Redacted]



In 80+ cities worldwide.

Objection to MP 07_0027 MOD1 Modification to Shell Cove Boat Harbour Concept Plan

This submission is made on behalf of:

Guy Formica: Owner of 18 Tasman Drive, Shell Cove.

Foong Theng Leong and Felicity Formica: Residents of 18 Tasman Drive Shell Cove (Wife and Daughter of Guy).

Guy Formica and Liliana Formica: owners of 29 Torres Circuit Shell Cove.

Guy Formica, owner of 15 Tasman Drive, Shell Cove.

Introduction

My name is Guy Formica. My living residence is 18 Tasman Drive, Shell Cove. I also own another two investment properties at 29 Torres Circuit and 15 Tasman Drive Shell Cove.

I strongly object to the modification to the concept plan for the following reasons.

1. Severe impact to the ocean views from my home and investment properties because of the height, bulk and scale of the modification.
2. Congestion and overcrowding due to increased traffic and lack of parking.
3. Adverse social impact to infrastructure.
4. Lack of consultation with and supply of information to the public regarding the modification.

1 Impact to views from my home and investment properties.

Below is part of the view from my rear balcony. The balcony adjoins my lounge, dining and open plan kitchen, all from which I have this view as depicted in the following photos.





According to Chapter 35 of the attached Shellharbour Council DCP advice:

View values and principles

35.1.1 Development with the potential to adversely impact views experienced from other properties must address the value of the view that may be affected. In this respect the New South Wales Land and Environment Court Planning Principles must be considered. These include:

- a. Water views are valued more highly than land views*
- b. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

What development must address

35.1.2 Development must address:

- a. what part of other properties have the views currently experienced according to the following principles:
 - i. rear and front boundary views are more easily protected than side boundary views
 - ii. standing views are more easily protected than sitting views
 - iii. retaining side views and sitting views is often unreasonable.
- b. the extent of impact, according to the following principles:
 - i. views from living areas are more significant than views from bedrooms or service areas such as kitchens
 - ii. it is more appropriate to assess a view qualitatively than quantitatively. Impact may be assessed quantitatively, but often this is inappropriate. For instance it may be unhelpful to say view loss is 20% if this includes a sail of the Sydney Opera House. It is more appropriate to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.
- c. Overall reasonableness and compliance of the proposal causing the impact, according to the following principles:
 - i. Even a moderate impact on views caused by non-compliance with planning controls/provisions may be considered unreasonable
 - ii. If the proposal complies with the relevant planning controls/provisions, consideration needs to be given to whether an alternate design could provide the same development potential and amenity, while reducing impact on views. If an alternate design cannot achieve this, then the proposal would likely be considered acceptable.

Note: for more information on the context of the above principles, please refer to Tenacity Consulting v Warringah Council 92004) NSWLEC 140.

Following are points from the judgement in the Tenacity Consulting v Warringah Council case.

26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For

example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

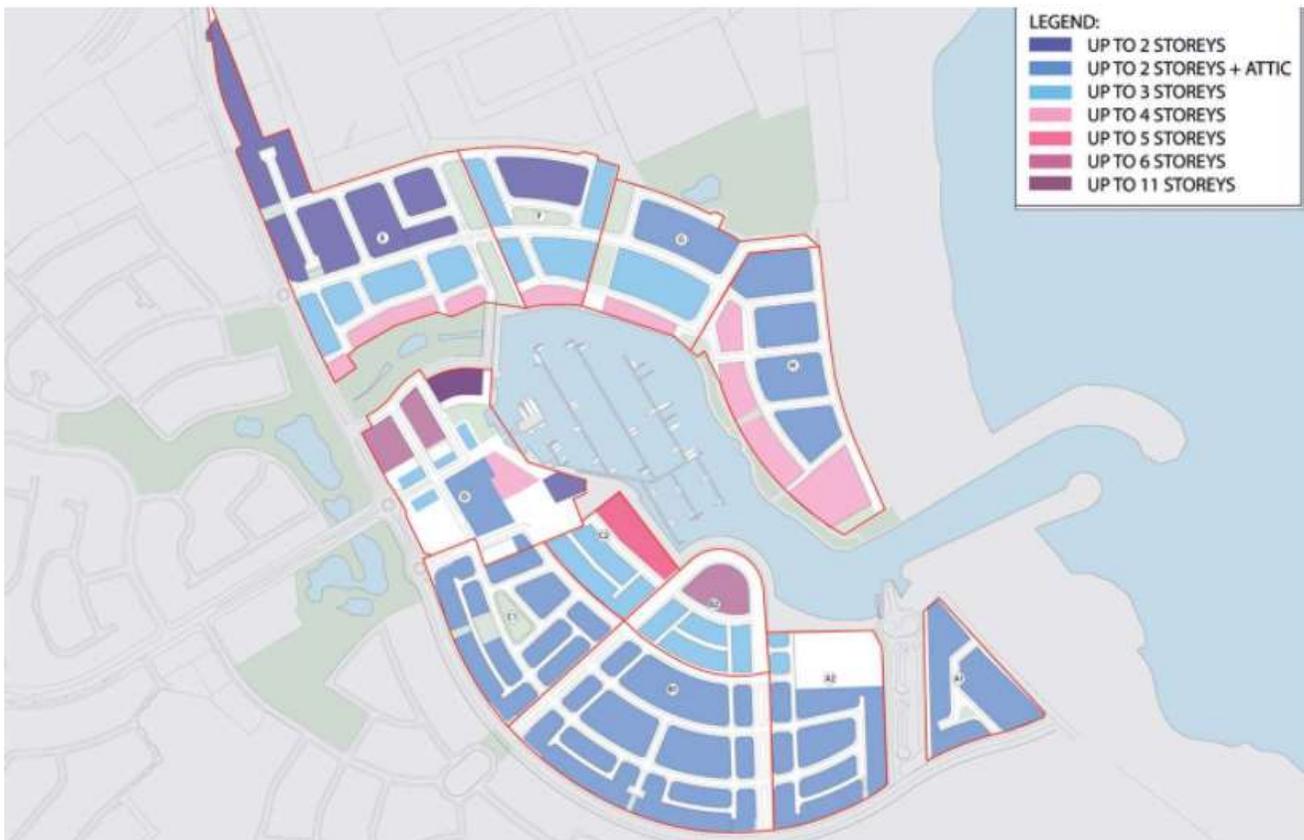
29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Using these 4 steps I have assessed my views.

- 1) I have whole water views and can see the interface between land and water.
- 2) My view is from the entire rear of the property from both sitting and standing positions.
- 3) My View is visible from the Lounge room, dining room, kitchen and rear balcony. Essentially the entire top floor of my home.
- 4) Modification breaches planning controls and is non-compliant because building heights and resulting FSRs are beyond the LEP and DCP, therefore unreasonable.

Therefore, according to all the above, my views are highly valued and the impact to them as a result of the modification is unreasonable. From my calculations, the difference in building heights and scale of the proposed modification (as per the diagram below) will definitely impact my views severely, bordering on devastating.

Views must be “shared” but I feel Shellharbour Council and Frasers are monopolising the whole view with this modification for their own profit. I also find it unfair and unethical that Shellharbour Council can change the controls when it sees fit to suit them and not following their own advice.



Proposed increased building heights.

2 Impact to traffic and parking.

The modification will increase traffic congestion and there is not enough parking. I come to this conclusion because the added external traffic from visitors for shopping and boating from surrounding area has not been taken into account in the traffic report.

The traffic report also does not take into account that most people will drive in and out of the area to get on and off the freeway. It assumes all residents will use Harbour Boulevard when in fact over two thirds will use Cove Boulevard as it is the shortest route. Cove Boulevard will not be able to cope with the traffic congestion as currently in the mornings and afternoons there are traffic jams with existing levels of traffic.

There are also not enough parking spaces calculated for the modification. Parking for visitors and boating enthusiasts to the area has not been taken into account.

3 Adverse Social Impact

The modification will overpopulate the area and impact on our already inadequate local infrastructure and essential services, including hospitals, medical centres and schools. There are now waiting lists for schools that will grow even bigger. Waiting times at Shellharbour Hospital a growing and many patients are being moved to Wollongong hospital. The proposal has not adequately taken these factors into account.

The increase in population density and the dramatic visual impact of the modification also is taking away from the low key and relaxed coastal feel of the area. My understanding the development is designed to generate tourism, not to try and squeeze in as many people as possible into a small area for extra profit.

4 Lack of consultation with and supply of information to the public.

I received no notification from either Shellharbour Council or Frasers Property regarding this modification. I expected notification by mail like other councils do. I only found out about this modification on 21st Sep 2017 from local residents posting it on Facebook.

I visited the Frasers sales office on 22nd Sep where I met Glenn Colquhoun (Frasers Development Director) to find out how the modification will impact my view. I had a brief conversation with Glenn who said he was very busy but could meet with me on 28th Sep. The subsequent meeting was a complete waste of time as I requested the RL of the ground levels and the RL of the tops of the proposed buildings so I could see how my view was impacted. He only showed me the RL of the ground levels and nothing else. He promised he will have them for me ASAP, but as yet I have received nothing. He said he will get his 3D graphics people to superimpose the buildings onto a photo of my view, but as yet I have received nothing. (See attached correspondence between myself and Frasers Development Director, Glenn Colquhoun.) I feel Frasers are purposely delaying releasing the information on view impact until after the exhibition closing date.

Fraser only held one information night on 10th Oct, only 10 days before the exhibition closing date of 20th Oct. Many residents only found out about the modification on this day which only gave them 10 days to read through the mountain of documentation respond. Many complained to me that this is not fair. When I e-mailed and called state Michelle Nile from state planning for extra time to 30th Oct, I was refused. I feel we have not had a fair go.

Shellharbour Council have been no help either. The public are shut out. Every time my neighbours and I contacted the council for information, we were told to contact the Shell Cove Management Committee and/or the Shell Cove Advisory Committee and to talk to them. One of my neighbours wrote an e-mail requesting their contact details. She received the following response.

----- Forwarded message -----

[REDACTED]

Good morning Sonia.

Carey McIntyre (Council's General Manager) has asked me to respond to your email.

The Shell Cove Project involves:

- Shell Cove Management Committee – the development board of senior staff from Council and Frasers Property Australia (the Project Manager) to steer the Project.
- Shell Cove Advisory Committee – a Council internal working party of several appointed Councillors and senior staff.

Neither of these Committees involve the public in terms of members, attendance or addressing the meeting. There are no contact details.

Thanks.

Kevin James | Shell Cove Commercial Manager

[REDACTED]

We the public have been shut out. There has been no public consultation whatsoever between Shellharbour Council and the residents. There are many more e-mails from many residents that I am on copy of who have requested information from the council and received nothing. I could attach them all but this submission would be huge. They attest to the fact that Shellharbour Council are ignoring the public regarding this matter. I have had absolutely no notification whatsoever from Shellharbour Council regarding and proposed changes to the LEP and this modification. Other councils do so by mail. I have received nothing.

Conclusion

For reasons stated above, the modification should not be approved. It proposes a fundamentally different development which must be subject to a new and separate development application.

I have also engaged Hones Lawyers and James Lovell town planners to produce a submission for myself and on behalf of a group of residents. Please refer to their submission for further points which I endorse.

Regards,

Guy Formica.

Objection to DA0385/2017

Shop Top Housing Comprising of 45 Residential Apartments, 6 Retail Units & 2 Lot Stratum Subdivision and Mixed Use Development Comprising of Carpark & Public Domain Works

This submission is made on behalf of:

- Guy Formica: Owner of 18 Tasman Drive, Shell Cove.
- Foong Theng Leong and Felicity Formica: Residents of 18 Tasman Drive Shell Cove (Wife and Daughter of Guy).
- Guy Formica and Liliana Formica: owners of 29 Torres Circuit Shell Cove.
- Guy Formica, owner of 15 Tasman Drive, Shell Cove.

Introduction

My name is Guy Formica. My living residence is 18 Tasman Drive, Shell Cove. I also own another two investment properties at 29 Torres Circuit and 15 Tasman Drive Shell Cove.

I strongly object to this DA for the following reasons.

1. Severe impact to the views.
2. Lack of parking spaces.
3. Traffic.
4. Adverse social impact.
5. Lack of consultation with and supply of information to the public.

1 Impact on Views

Below is the view from my rear balcony. The balcony adjoins my lounge, dining and open plan kitchen, all from which I have this view as depicted in the following photos.



Date: 09-11-2017



Date: 09-11-2017

According to Chapter 35 of the attached Shellharbour Council DCP advice:

View values and principles

35.1.1 Development with the potential to adversely impact views experienced from other properties must address the value of the view that may be affected. In this respect the New South Wales Land and Environment Court Planning Principles must be considered. These include:

- a. Water views are valued more highly than land views*
- b. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

What development must address

35.1.2 Development must address:

- a. what part of other properties have the views currently experienced according to the following principles:
 - i. rear and front boundary views are more easily protected than side boundary views
 - ii. standing views are more easily protected than sitting views
 - iii. retaining side views and sitting views is often unreasonable.
- b. the extent of impact, according to the following principles:
 - i. views from living areas are more significant than views from bedrooms or service areas such as kitchens
 - ii. it is more appropriate to assess a view qualitatively than quantitatively. Impact may be assessed quantitatively, but often this is inappropriate. For instance it may be unhelpful to say view loss is 20% if this includes a sail of the Sydney Opera House. It is more appropriate to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.
- c. Overall reasonableness and compliance of the proposal causing the impact, according to the following principles:
 - i. Even a moderate impact on views caused by non-compliance with planning controls/provisions may be considered unreasonable
 - ii. If the proposal complies with the relevant planning controls/provisions, consideration needs to be given to whether an alternate design could provide the same development potential and amenity, while reducing impact on views. If an alternate design cannot achieve this, then the proposal would likely be considered acceptable.

Note: for more information on the context of the above principles, please refer to Tenacity Consulting v Warringah Council 92004) NSWLEC 140.

Impacts to my views (and others) have not been addressed. An “alternate design” is required such as using underground parking to lower building heights. Also, the following points within the Shellharbour LEP2013 have not been followed.

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure the height of buildings complements the streetscape, rural or natural scenic character of the area in which the buildings are located,
- (b) to ensure the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views,
- (c) to protect areas of scenic or visual importance.

5.5 Development within the coastal zone

(1) (b) to implement the principles in the NSW Coastal Policy, and in particular to:

- (v) protect amenity and scenic quality, and

Date: 09-11-2017

(ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and

(2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:

(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:

(iii) the bulk, scale, size and overall built form design of any building or work involved, and

(c) the impact of the proposed development on the amenity of the coastal foreshore including:

(i) any significant overshadowing of the coastal foreshore, and

(ii) any loss of views from a public place to the coastal foreshore, and

None of the above has been followed or addressed by Shellharbour Council and Frasers.

Following are points from the judgement in the Tenacity Consulting v Warringa Council case.

26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Using these 4 steps I have assessed my views.

- 1) I have whole water views and can see the interface between land and water.
- 2) My view is from the entire rear of the property from both sitting and standing positions.
- 3) My View is visible from the Lounge room, dining room, kitchen and rear balcony. Essentially the entire top floor of my home.
- 4) The DA does not follow planning controls within the LEP and DCP as above.

Date: 09-11-2017

Therefore, according to all the above, my views are highly valued and the impact to them as a result of the DA is unreasonable and contravenes the Shellharbour LEP and DCP. From my calculations, the building height and scale of the proposed DA will definitely impact my views severely, bordering on devastating.

Views must be “shared” but Shellharbour Council and Frasers are monopolising the whole view with this development for their own profit. I also find it unfair and unethical that Shellharbour Council can change the controls when it sees fit to suit them and not following their own LEP and DCP.

I am not the only resident that will have ocean views devastated by this development. One only has to look up from the development site and will see hundreds of homes that will be impacted. There is an absence of any meaningful analysis of the impact on existing views from my properties (and others) to the ocean and foreshore of Shellharbour South Beach and beyond.

A view loss assessment would ordinarily form part of a proper site analysis, and inform the overall design process. It is of some considerable concern that Shellharbour Council and Frasers has proceeded to this point without any clear or precise understanding of the impacts of the proposed development. The locality of Shell Cove is generally characterised by two (2) storeys buildings. **This DA involves introducing a built form that will visually dominate the locality when viewed from the surrounding area.** The proposed DA will substantially increase the number of dwellings, changing the building typology to include multi-storey residential flat buildings, and materially increasing the height of buildings. As a consequence, the proposed DA will significantly increase the visual dominance of the Boat Harbour precinct, and **contribute to an abrupt change in bulk and scale between the development site and the surrounding locality.**

The views from surrounding properties such as No. 18 Tasman Drive are highly valued, and of significant importance to the amenity of those properties. In the circumstances, the fundamental nature of the changes are such that the application should be (at least) deferred until such time as the Shellharbour Council and Frasers has been able to properly identify and consider the view loss impacts from surrounding properties, including in particular, those beyond the development site itself.

Also, in Frasers “Amended Statement of Environmental Effects” dated 14th September 2017, they refer multiple times that the building is Four (4) storeys when in fact it is a Six (6) storey building. This is deceiving people. Three metres is approximately one storey. This building is 19.4m high (as stated in the Statement of Environmental Effects) which is over Six (6) storeys. Trying to pass off a 19.4m high building as 4 storeys is ridiculous.

I have endeavoured to get information from Frasers regarding impact to my views (see attached correspondence). I was promised their technical drawing people will produce drawings that will superimpose the buildings onto a photo of my view and show me the impact, but as yet I have received nothing. I still await these drawings.

2 Parking.

The parking space requirement assessment from Colston Budd Rogers & Kafes Pty Ltd is incorrect and does not comply with the Shellharbour DCP.

According to the DCP requirements Table 13.1 for the residential part:

- 1 space per one bedroom unit resident parking; ($6 \times 1 = 6$)
- 1.5 spaces per two plus bedroom unit resident parking. ($39 \times 1.5 = 58.5$)
- 0.25 spaces per one bedroom unit visitor parking; ($6 \times 0.25 = 1.5$)
- 0.5 spaces per two plus bedroom unit visitor parking. ($39 \times 0.5 = 19.5$)

Total = $6 + 58.5 + 1.5 + 19.5 = 86$ spaces required for the residential part. Only 74 have been allowed for.

Regarding parking for the 6 specialty commercial premises, the parking assessment used defined 5 of the premises as one “Restaurant” of 817m² in size but they used the “Licensed Club” definition in Table 13.1 of the DCP to determine parking spaces. This is incorrect. The “Amended Statement of Environmental Effects” dated 14th September 2017 states:

Date: 09-11-2017

“These retail tenancies, which are likely to be food and drink premises, will be focused on the retail forecourt, the boardwalk and the marina, with this space activated through a wide pedestrian space supplemented by al fresco tables and seating.”

Therefore, parking space requirements need to be re-assessed according to the DCP for “Food and Drink Premises” which includes outdoor seating and parking for staff.

For example, in the assessment from Colston Budd Rogers & Kafes Pty Ltd, premises S.01 to S.05 are classed as one “Restaurant” of 817 square metres. This does not include the outdoor eating areas. If we assume 50% of the indoor area is used as customer seating and 400 square metres for outdoor seating (from architectural plans) then the total customer seating area is: $(0.5 \times 817) + 400 = 808.5$ square metres; therefore according to the DCP, one car park space per 4 square metres requires 202 spaces. If we add 2 spaces per premises for staff, the total is 212 spaces required. Add another 4 spaces for S.06 then 216 are required. Adding this to the 86 residential spaces required, **the total is 302 spaces required. Hence the 211 spaces proposed is very inadequate.**

The “Amended Statement of Environmental Effects” dated 14th September 2017 states:

“Parking for the tavern adjacent to the at-grade car park will be assessed as part of the future DA for the tavern. It is noted that parking for the tavern has been assessed in the overall parking assessment for the Boat Harbour Precinct (taking into account that different land uses have peak parking demand at different times).”

Where is the parking for the Tavern going to be? It will end up people will use the parking for this DA when they visit the Tavern. This assessment of parking must be re-assessed in total including effects of parking requirements of the tavern.

3 Traffic

The Traffic Review (20 July 2017). The review concludes that “the level of traffic generation of the S75W results in only minor increase in traffic generation (some 2%) and thus the S75W road network will operate satisfactorily”.

The Traffic Review appears to be based (originally) on the Shell Cove Boat Harbour Precinct Traffic Study (Maunsell 2009). Whilst reference is also made to subsequent traffic assessments prepared in 2015 and 2016, **it is not clear whether the increased traffic volumes in the locality (that are unrelated to the proposed development) have been incorporated in the more recent assessment.**

In the circumstances, the Traffic Review has understated the additional traffic generating potential of the proposed modifications by at least the traffic generating potential of the hotel. In my opinion, **the Application should be deferred until such time as the traffic implications of the proposed modifications have been properly considered.**

4 Adverse Social Impact

This development will overpopulate the area and impact on our already inadequate local infrastructure and essential services, including hospitals, medical centres and schools. There are now waiting lists for schools that will grow even bigger. Waiting times at Shellharbour Hospital a growing and many patients are being moved to Wollongong hospital. The proposal has not adequately taken these factors into account.

The increase in population density and the dramatic visual impact of this DA also is taking away from the low key and relaxed coastal feel of the area. My understanding the development is designed to generate tourism, not to try and squeeze in as many people as possible into a small area for extra profit.

5 Lack of consultation with and supply of information to the public.

I received no notification from either Shellharbour Council or Frasers Property regarding this DA. I expected notification by a letter to my home like other councils do. I only found out about this modification on from local residents posting it on Facebook. Shellharbour Council need to notify all residents impacted in a letter mailed to their home (as a large number of residents are elderly and do not use computers).

Conclusion

For reasons stated above, the DA should not be approved and needs to be reassessed and redesigned. I would like to have a meeting with decision makers from Shellharbour Council and Frasers to come to an agreement.

Regards,

Guy Formica.



www.frasersproperty.com.au | [LinkedIn](#) | [YouTube](#)



In 80+ cities worldwide.

From: Guy [mailto:guy@exceltronix.com]

Sent: Wednesday, 4 October 2017 11:54 AM

[REDACTED]

Hi Glenn

To get your graphic people to “superimpose the view with the final built form” is a good start, but it would not be accurate; it would vary from property to property, and is not what we asked for. As I stated in my original e-mail below, what we require is **“accurate surveyors diagrams showing RL values for all buildings” you intend to construct**. The drawings you showed me at our meeting that depicted various sectional views with topography and RL level values of ground and building tops is what we want, but you said you could not give me a copy.

When will you give us a copy?

Attached are various photos of ocean views from my house and several of my neighbours (and the number is growing). We look forward to your graphics with the superimposed built form, but more importantly, the drawings depicting the sectional views with ground and building top RLs.

Keep in mind the “Tenacity” case and various cases after it in the Land and Environment Court. Views are “shared” and cannot be monopolised by a developer. We will not give up our ocean views (for which we paid a premium for) taken from us without a fight.

We look forward to your reply.

Regards,

Guy Formica

[REDACTED]

Sent: Thursday, September 28, 2017 5:01 PM

To: Guy

Subject: RE: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Guy

Could you please send me the image you showed me of your view. I would like to look at whether our graphic people can superimpose the view with the final built form

thanks

Glenn Colquhoun
Development Director
Frasers Property Australia

[REDACTED]

www.frasersproperty.com.au | [LinkedIn](#) | [YouTube](#)



[REDACTED]

Hi Glenn

As we confirmed today, our planned meeting details are:

Time; 4pm Thursday 28th Sep 2017

Location: 48 Apollo Dr, Shell Cove NSW 2529

The 2 main questions that I require answers to are:

1. Will existing ocean views of existing residences be blocked or affected by the modification? I will require proof of your answer in the form of accurate surveyors diagrams showing RL values for all buildings.
2. I would like factual and statistical evidence that the Shellharbour infrastructure (hospitals, roads, energy supply, sewer, water supply, etc...) external to the development can adequately handle the modification.

If you can supply this information before our meeting in writing, then we may not require a meeting.

Feel free to call any time.

Regards,

Guy Formica

[REDACTED]

Objection to DA0385/2017

Shop Top Housing Comprising of 45 Residential Apartments, 6 Retail Units & 2 Lot Stratum Subdivision and Mixed Use Development Comprising of Carpark & Public Domain Works

This submission is made on behalf of:

- Guy Formica: Owner of 18 Tasman Drive, Shell Cove.
- Foong Theng Leong and Felicity Formica: Residents of 18 Tasman Drive Shell Cove (Wife and Daughter of Guy).
- Guy Formica and Liliana Formica: owners of 29 Torres Circuit Shell Cove.
- Guy Formica, owner of 15 Tasman Drive, Shell Cove.

Introduction

My name is Guy Formica. My living residence is 18 Tasman Drive, Shell Cove. I also own another two investment properties at 29 Torres Circuit and 15 Tasman Drive Shell Cove.

I strongly object to this DA for the following reasons.

1. Severe impact to the views.
2. Lack of parking spaces.
3. Traffic.
4. Adverse social impact.
5. Lack of consultation with and supply of information to the public.

1 Impact on Views

Below is the view from my rear balcony. The balcony adjoins my lounge, dining and open plan kitchen, all from which I have this view as depicted in the following photos.



Date: 09-11-2017



Date: 09-11-2017

According to Chapter 35 of the attached Shellharbour Council DCP advice:

View values and principles

35.1.1 Development with the potential to adversely impact views experienced from other properties must address the value of the view that may be affected. In this respect the New South Wales Land and Environment Court Planning Principles must be considered. These include:

- a. Water views are valued more highly than land views*
- b. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

What development must address

35.1.2 Development must address:

- a. what part of other properties have the views currently experienced according to the following principles:
 - i. rear and front boundary views are more easily protected than side boundary views
 - ii. standing views are more easily protected than sitting views
 - iii. retaining side views and sitting views is often unreasonable.
- b. the extent of impact, according to the following principles:
 - i. views from living areas are more significant than views from bedrooms or service areas such as kitchens
 - ii. it is more appropriate to assess a view qualitatively than quantitatively. Impact may be assessed quantitatively, but often this is inappropriate. For instance it may be unhelpful to say view loss is 20% if this includes a sail of the Sydney Opera House. It is more appropriate to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.
- c. Overall reasonableness and compliance of the proposal causing the impact, according to the following principles:
 - i. Even a moderate impact on views caused by non-compliance with planning controls/provisions may be considered unreasonable
 - ii. If the proposal complies with the relevant planning controls/provisions, consideration needs to be given to whether an alternate design could provide the same development potential and amenity, while reducing impact on views. If an alternate design cannot achieve this, then the proposal would likely be considered acceptable.

Note: for more information on the context of the above principles, please refer to Tenacity Consulting v Warringah Council 92004) NSWLEC 140.

Impacts to my views (and others) have not been addressed. An “alternate design” is required such as using underground parking to lower building heights. Also, the following points within the Shellharbour LEP2013 have not been followed.

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure the height of buildings complements the streetscape, rural or natural scenic character of the area in which the buildings are located,
- (b) to ensure the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views,
- (c) to protect areas of scenic or visual importance.

5.5 Development within the coastal zone

(1) (b) to implement the principles in the NSW Coastal Policy, and in particular to:

- (v) protect amenity and scenic quality, and

Date: 09-11-2017

(ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and

(2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:

(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:

(iii) the bulk, scale, size and overall built form design of any building or work involved, and

(c) the impact of the proposed development on the amenity of the coastal foreshore including:

(i) any significant overshadowing of the coastal foreshore, and

(ii) any loss of views from a public place to the coastal foreshore, and

None of the above has been followed or addressed by Shellharbour Council and Frasers.

Following are points from the judgement in the Tenacity Consulting v Warringa Council case.

26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Using these 4 steps I have assessed my views.

- 1) I have whole water views and can see the interface between land and water.
- 2) My view is from the entire rear of the property from both sitting and standing positions.
- 3) My View is visible from the Lounge room, dining room, kitchen and rear balcony. Essentially the entire top floor of my home.
- 4) The DA does not follow planning controls within the LEP and DCP as above.

Date: 09-11-2017

Therefore, according to all the above, my views are highly valued and the impact to them as a result of the DA is unreasonable and contravenes the Shellharbour LEP and DCP. From my calculations, the building height and scale of the proposed DA will definitely impact my views severely, bordering on devastating.

Views must be “shared” but Shellharbour Council and Frasers are monopolising the whole view with this development for their own profit. I also find it unfair and unethical that Shellharbour Council can change the controls when it sees fit to suit them and not following their own LEP and DCP.

I am not the only resident that will have ocean views devastated by this development. One only has to look up from the development site and will see hundreds of homes that will be impacted. There is an absence of any meaningful analysis of the impact on existing views from my properties (and others) to the ocean and foreshore of Shellharbour South Beach and beyond.

A view loss assessment would ordinarily form part of a proper site analysis, and inform the overall design process. It is of some considerable concern that Shellharbour Council and Frasers has proceeded to this point without any clear or precise understanding of the impacts of the proposed development. The locality of Shell Cove is generally characterised by two (2) storeys buildings. **This DA involves introducing a built form that will visually dominate the locality when viewed from the surrounding area.** The proposed DA will substantially increase the number of dwellings, changing the building typology to include multi-storey residential flat buildings, and materially increasing the height of buildings. As a consequence, the proposed DA will significantly increase the visual dominance of the Boat Harbour precinct, and **contribute to an abrupt change in bulk and scale between the development site and the surrounding locality.**

The views from surrounding properties such as No. 18 Tasman Drive are highly valued, and of significant importance to the amenity of those properties. In the circumstances, the fundamental nature of the changes are such that the application should be (at least) deferred until such time as the Shellharbour Council and Frasers has been able to properly identify and consider the view loss impacts from surrounding properties, including in particular, those beyond the development site itself.

Also, in Frasers “Amended Statement of Environmental Effects” dated 14th September 2017, they refer multiple times that the building is Four (4) storeys when in fact it is a Six (6) storey building. This is deceiving people. Three metres is approximately one storey. This building is 19.4m high (as stated in the Statement of Environmental Effects) which is over Six (6) storeys. Trying to pass off a 19.4m high building as 4 storeys is ridiculous.

I have endeavoured to get information from Frasers regarding impact to my views (see attached correspondence). I was promised their technical drawing people will produce drawings that will superimpose the buildings onto a photo of my view and show me the impact, but as yet I have received nothing. I still await these drawings.

2 Parking.

The parking space requirement assessment from Colston Budd Rogers & Kafes Pty Ltd is incorrect and does not comply with the Shellharbour DCP.

According to the DCP requirements Table 13.1 for the residential part:

- 1 space per one bedroom unit resident parking; ($6 \times 1 = 6$)
- 1.5 spaces per two plus bedroom unit resident parking. ($39 \times 1.5 = 58.5$)
- 0.25 spaces per one bedroom unit visitor parking; ($6 \times 0.25 = 1.5$)
- 0.5 spaces per two plus bedroom unit visitor parking. ($39 \times 0.5 = 19.5$)

Total = $6 + 58.5 + 1.5 + 19.5 = 86$ spaces required for the residential part. Only 74 have been allowed for.

Regarding parking for the 6 specialty commercial premises, the parking assessment used defined 5 of the premises as one “Restaurant” of 817m² in size but they used the “Licensed Club” definition in Table 13.1 of the DCP to determine parking spaces. This is incorrect. The “Amended Statement of Environmental Effects” dated 14th September 2017 states:

Date: 09-11-2017

“These retail tenancies, which are likely to be food and drink premises, will be focused on the retail forecourt, the boardwalk and the marina, with this space activated through a wide pedestrian space supplemented by al fresco tables and seating.”

Therefore, parking space requirements need to be re-assessed according to the DCP for “Food and Drink Premises” which includes outdoor seating and parking for staff.

For example, in the assessment from Colston Budd Rogers & Kafes Pty Ltd, premises S.01 to S.05 are classed as one “Restaurant” of 817 square metres. This does not include the outdoor eating areas. If we assume 50% of the indoor area is used as customer seating and 400 square metres for outdoor seating (from architectural plans) then the total customer seating area is: $(0.5 \times 817) + 400 = 808.5$ square metres; therefore according to the DCP, one car park space per 4 square metres requires 202 spaces. If we add 2 spaces per premises for staff, the total is 212 spaces required. Add another 4 spaces for S.06 then 216 are required. Adding this to the 86 residential spaces required, **the total is 302 spaces required. Hence the 211 spaces proposed is very inadequate.**

The “Amended Statement of Environmental Effects” dated 14th September 2017 states:

“Parking for the tavern adjacent to the at-grade car park will be assessed as part of the future DA for the tavern. It is noted that parking for the tavern has been assessed in the overall parking assessment for the Boat Harbour Precinct (taking into account that different land uses have peak parking demand at different times).”

Where is the parking for the Tavern going to be? It will end up people will use the parking for this DA when they visit the Tavern. This assessment of parking must be re-assessed in total including effects of parking requirements of the tavern.

3 Traffic

The Traffic Review (20 July 2017). The review concludes that “the level of traffic generation of the S75W results in only minor increase in traffic generation (some 2%) and thus the S75W road network will operate satisfactorily”.

The Traffic Review appears to be based (originally) on the Shell Cove Boat Harbour Precinct Traffic Study (Maunsell 2009). Whilst reference is also made to subsequent traffic assessments prepared in 2015 and 2016, **it is not clear whether the increased traffic volumes in the locality (that are unrelated to the proposed development) have been incorporated in the more recent assessment.**

In the circumstances, the Traffic Review has understated the additional traffic generating potential of the proposed modifications by at least the traffic generating potential of the hotel. In my opinion, **the Application should be deferred until such time as the traffic implications of the proposed modifications have been properly considered.**

4 Adverse Social Impact

This development will overpopulate the area and impact on our already inadequate local infrastructure and essential services, including hospitals, medical centres and schools. There are now waiting lists for schools that will grow even bigger. Waiting times at Shellharbour Hospital a growing and many patients are being moved to Wollongong hospital. The proposal has not adequately taken these factors into account.

The increase in population density and the dramatic visual impact of this DA also is taking away from the low key and relaxed coastal feel of the area. My understanding the development is designed to generate tourism, not to try and squeeze in as many people as possible into a small area for extra profit.

5 Lack of consultation with and supply of information to the public.

I received no notification from either Shellharbour Council or Frasers Property regarding this DA. I expected notification by a letter to my home like other councils do. I only found out about this modification on from local residents posting it on Facebook. Shellharbour Council need to notify all residents impacted in a letter mailed to their home (as a large number of residents are elderly and do not use computers).

Conclusion

For reasons stated above, the DA should not be approved and needs to be reassessed and redesigned. I would like to have a meeting with decision makers from Shellharbour Council and Frasers to come to an agreement.

Regards,

Guy Formica.





Guy

[Redacted]

Hi Glenn

This is not what I asked for. **What are the RLs for the ground and the tops of all buildings (including the roof structure).**

We demand to know how our views will be impacted.

Regards,

Guy.

[Redacted]

Sent: Friday, October 6, 2017 3:33 PM
To: Guy
Subject: RE: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Guy

My apologies for the delay in getting back to you. As agreed, I provide the following indicative level details for the 5 and 6 storey apartment buildings proposed at The Waterfront

- Six level building - approximate finished ground level at RL 3.75
- Five level building - approximate finished ground level at RL 5.50

As noted, these levels are preliminary indicative levels and as such are subject to change.

I also confirm our agreement that you will not disseminate any calculations, cross sections or visualisations that you prepare without first providing me the opportunity to review their accuracy

We appreciate that the community is concerned about their views and are currently reviewing the best way to be able to graphically present the visualisation of the proposed concept plan changes. It is fairly simple for properties closer to the Waterfront but more complex for those like yourself with more distant views. In this regard we are looking to engage an expert in this field and hope to be able to have some representations for you and the rest of the community in approximately 3 to 4 weeks' time.

regards
Glenn Colquhoun
Development Director
Frasers Property Australia

[Redacted]



In 80+ cities worldwide.

From: Guy [mailto:guy@exceltronix.com]
Sent: Wednesday, 4 October 2017 11:54 AM

[REDACTED]

Hi Glenn

To get your graphic people to “superimpose the view with the final built form” is a good start, but it would not be accurate; it would vary from property to property, and is not what we asked for. As I stated in my original e-mail below, what we require is **“accurate surveyors diagrams showing RL values for all buildings” you intend to construct.** The drawings you showed me at our meeting that depicted various sectional views with topography and RL level values of ground and building tops is what we want, but you said you could not give me a copy.

When will you give us a copy?

Attached are various photos of ocean views from my house and several of my neighbours (and the number is growing). We look forward to your graphics with the superimposed built form, but more importantly, the drawings depicting the sectional views with ground and building top RLs.

Keep in mind the “Tenacity” case and various cases after it in the Land and Environment Court. Views are “shared” and cannot be monopolised by a developer. We will not give up our ocean views (for which we paid a premium for) taken from us without a fight.

We look forward to your reply.

Regards,

Guy Formica

[REDACTED]

Sent: Thursday, September 28, 2017 5:01 PM
To: Guy
Subject: RE: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Guy

Could you please send me the image you showed me of your view. I would like to look at whether our graphic people can superimpose the view with the final built form

thanks

Glenn Colquhoun
Development Director
Frasers Property Australia

[REDACTED]

www.frasersproperty.com.au | [LinkedIn](#) | [YouTube](#)



[REDACTED]
Sent: Friday, 22 September 2017 4:16 PM

[REDACTED]
Subject: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Hi Glenn

As we confirmed today, our planned meeting details are:

Time; 4pm Thursday 28th Sep 2017
Location: 48 Apollo Dr, Shell Cove NSW 2529

The 2 main questions that I require answers to are:

1. Will existing ocean views of existing residences be blocked or affected by the modification? I will require proof of your answer in the form of accurate surveyors diagrams showing RL values for all buildings.
2. I would like factual and statistical evidence that the Shellharbour infrastructure (hospitals, roads, energy supply, sewer, water supply, etc...) external to the development can adequately handle the modification.

If you can supply this information before our meeting in writing, then we may not require a meeting.

Feel free to call any time.

Regards,

Guy Formica
[REDACTED]

Visual Impact

1. The Visual Impact Assessment prepared for Frasers Property is flawed and therefore irrelevant. The reasoning why is as follows.
 - a) It is impossible to produce an accurate view analysis and subsequent photo montage without knowing the ground levels at the base of buildings and building heights **in metres**. The assessment does not specify exact ground levels or building heights in metres used to produce the photo montages.
 - b) Ground levels and building heights specified in metres did not form part of the original 2011 Concept Approval and therefore no building heights and ground levels were approved in metres. Therefore, it is impossible to produce an accurate photo montage of the 2011 Concept Approval, and hence perform a comparison to the modification.

Hence, the entire arguments of the View Assessment (and all DPE references to it in making a recommendation) are false and misleading. The truth is, no one can state what ground levels and building heights in metres were approved in 2011 (unless you have a time machine) therefore a view comparison is impossible.

In addition, the Visual Impact Assessment relies on computer generated depictions of the building heights and not actual tangible structures. The computer generated depictions may not reflect the true building heights. I therefore propose that one temporary pole for each building over 15m high be erected on site and a clearly visible marker be mounted on each pole at the proposed height of the building. This will allow the IPC and residents to accurately judge and photograph the true impact to their view from their home.

Traffic

Display Map

The traffic analysis of the 2011 Concept Approval and subsequent modification is flawed because it does not also consider traffic flow onto Shellharbour Road from the site and the housing surrounding the area. This will cause SINIFIGANT TRAFFIC DELAYS TO RESIDENTS.

There are only 2 ways to get to Shellharbour Road from the site.

- 1) Traffic Lights at the intersection of Harbour Boulevard and Shellharbour Road.
- 2) The round-about at the intersection of Cove Boulevard and Shellharbour Road.

“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 hour.” (Taken from Colston Budd Rogers & Kafes Pty Ltd report dated 17th July 2017).

Let's half this value to get 2000 vehicles per hour in one direction. If we assume 50% of drivers will use one intersection and 50% the other intersection, this equates to 1000 vehicles per hour per intersection. This then equates to $1000/60 = 17$ vehicles per minute through one direction of an intersection. This then equates to one vehicle every 3.5 seconds through the intersection **continually** without any vehicle stopping at a round-about or traffic light. To achieve this is impossible!

And this calculation does not include the additional vehicles from the modification, the vehicles of existing surrounding residents, vehicles turning onto Harbour Boulevard and Cove boulevard from adjoining streets, and vehicles stopping to reverse park. If these vehicles are also included, the figure is more than doubled to an estimated vehicle every 1.5 seconds through and intersection without stopping. This is absolutely impossible and will definitely cause traffic jams.

The traffic analysis must include these two intersections, the timing of the traffic lights and the roundabouts.

Conclusion

Please, do not allow developers and the state government turn our beautiful Shell Cove into an overpopulated traffic congested quagmire simply for the profit of a developer (as they have been doing in Sydney and other parts of NSW) by approving this modification. Decreasing building heights and keeping the GFA at a maximum of 150,000m² will keep the visual appeal of the area more attractive for tourism, reduce overpopulation, it will not affect jobs, it will reduce traffic congestion, and make a happier community for existing and future residents. **If this modification is approved, it will only benefit the developer and not the community.**

You have over 200 objections (and more than one person per objection) and no supporters of this modification. It is my hope that you follow the will of the people in the community. **Again I repeat, if this modification is approved, it will only benefit the developer and not the community.**

Guy Formica

Subject: FW: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

[REDACTED]

Subject: RE: Modification to Shell Cove Boat Harbour Concept Plan MP 07_0027 MOD 1

Guy

As previously explained, the current application before the NSW Dept. of Planning is a concept plan. This document sets the proposed framework for future development and does not include evolved or detail design for individual buildings.

Detail design for each building will be evolved with development applications after the approval of the concept plan on a stage by stage basis .

Levels at this point are preliminary and subject to detail design. As a preliminary indication, apartment buildings generally have a floor to floor height of around 3m plus a basement carpark that would be half in/half out of the ground

regards

Glenn Colquhoun
Development Director
Frasers Property Australia



In 80+ cities worldwide.



HONES LAWYERS

Experts in Property & Planning Law

Our Ref: JBH:17410

20 October 2017

The Proper Officer
NSW Department of Planning
GPO Box 39
Sydney NSW 2001

By Email: [REDACTED]

Attention: Michelle Niles

Dear Ms Niles,

Objection to Shell Cove Boat Harbour Modification Concept Plan Ppty: Shell Cove, Shellharbour

We act for a number of local residents (set out in the appended list) concerning the proposed modification (**Modification**) of the Shell Cove Boat Harbour project (**Project**).

Introduction

1. We have been instructed to make the following objection in response to the Modification.
2. For the reasons contained in this letter, we submit that the Modification cannot be lawfully approved and, in any event, the Modification is not one to which approval would be granted on a considered assessment of the merits of the Modification (for the reasons set out in the Submission prepared by James Lovell of James Lovell and Associates enclosed).

The Minister has no statutory power to approve the Modification

3. In order for development to be the subject of Part 3A (now repealed) of the *Environmental Planning and Assessment Act 1979* (the “EPA Act”) it must have been declared to be a project to which Part 3A applies. The Project was so declared by clause 6 (now repealed) of *State Environmental Planning Policy (Major Projects) 2005*.
4. Pursuant to section 75F of the EPA Act, the Director General’s requirements for the Project were issued in October 2007 (the “DG Requirements”). The DG Requirements (in section 2) required consideration of, amongst other matters, issues surrounding visual impacts of the Project.



5. The Environmental Assessment Report (the “**EAR**”) which accompanied the application for the Project set out the Project more fully, including that it proposed 1,238 dwellings and that the hotel would be 8 or 9 storeys as well addressing the DG Requirements, in particular at Part 4 in so far as visual impacts and built form are concerned. Nowhere however in the EAR does it appear that view impacts external to the Project site have been considered.
6. The Director General’s Assessment Report of February 2011 (the “**DG Assessment Report**”) dealt with views and built form. However, like the EAR, nowhere in the DG Assessment Report did it address view impacts external to the Project site having been considered.
7. On 15 February 2011, the Minister’s Determination was issued (the “**Minister’s Approval**”) and described the terms of the Minister’s Approval in Schedule 1 Part A and Schedule 2 Part A Condition 1 as being, amongst other things, up to 1,238 dwellings.
8. In order for a Minister’s Approval to be one which may be modified under section 75W of the EPA Act it is implicit that the modification be within the scope of the “Minister’s approval” as defined by section 75W(1)(a) of the EPA Act.
9. The scope of the power of the Minister to modify an approval under section 75W of the EPA Act was considered in *Barrick Australia Ltd v Williams* [2009] NSWCA 275. Basten JA in the Court of Appeal stated (emphasis added):

*“53 The absence of precision in relation to what might constitute a modification of an approval has formed part of the reasoning for considering that the legislature did not intend that it be the subject of conclusive determination only by a court. As noted, the defined phrase means “changing the terms of an approval to carry out a project under this Part”. Although that is defined to include changing a condition of the approval, there is no clear dividing line between that which may constitute a condition and that which may constitute an element of the underlying project. All that can usefully be said in the abstract is that the requirement for approval of a modification must be understood in the context of three factors. The first is that the subject matter of Pt 3A is defined by reference to major infrastructure developments, as identified by the Minister (or by a State environmental planning policy), as having State or regional environmental planning significance: s 75B. Secondly, the project is required to undergo environmental assessment and public consultation, of a kind not required of a modification. **Construing s 75W in its context, it is clear that the modification of an approval was something intended to have limited environmental consequences beyond those which had been the subject of assessment.** (Given the powers of the Director-General, it cannot be said, of course, that only modifications which properly required no further environmental assessment were envisaged.) Thirdly, the ‘consent authority’ was to be the Minister. Conferring authority on a Minister may have a number of purposes. One such purpose may be to permit the decision-making authority to have regard to matters such as State and regional planning significance, being matters which stand above and beyond developments having limited local impact or insignificant impact at a regional or State level.”*

10. In order to appreciate the context in which the Modification is made, it follows that the extent of the changes to the Minister’s Approval which is sought by the Project must be truly understood. The extent of change contemplated by the Modification includes:
 - (a) Increasing the number of dwellings from 1,238 to 1,556, an increase of over 25%;
 - (b) In precinct A changing the mix of 2 and 3 storeys to 2 storeys plus attic with one block being up to 3 storeys;
 - (c) In precinct B changing the mix of 2 and 3 storeys to 2 storeys plus attic, 3 storeys and 6 storeys;

- (d) In precinct C changing the mix from 4 storeys to 5 storeys on the waterfront;
- (e) In precinct D increasing the hotel height from 8 or 9 storeys to 11, increasing the town centre apartment heights to 6 storeys with the apartments between the Harbour Boulevard and hotel being increased from 4 storeys to 6 storeys;
- (f) In precinct H changing the mix from 3 to 4 storeys on the waterfront;
- (g) Removing the maximum 150,000m² residential gross floor area limit;
- (h) Reconfiguration of the town centre layout;
- (i) Permitting the “hotel” to be changed to a residential flat building;

and, further, no environmental assessment has ever been undertaken in respect of the elements which now make up the Modification.

11. We submit that there is no power to approve the Application as it is not within the scope, object and purpose of s75W of the EPA Act. This is because the significant built form amendments to the Project have not been the subject of prior assessment. In our view, it is clear that the environmental consequences of the Project, properly assessed, will not be **“limited environmental consequences beyond those which had been the subject of assessment”** and are thus beyond power under s75W (*Barrick* at [53]). These impacts are reinforced by the assessment carried out by James Lovell & Associates included as part of this submission.
12. Further, we are of the view that that the scope of section 75W must be narrowly construed in light of the fact that Part 3A has been repealed. In our opinion, it would not be in the public interest to allow a project which is likely to have more than “limited environmental consequences” and has not been the subject of environmental assessment and public consultation under Part 3A to be in effect ‘added on’ to an approved project— particularly in circumstances where the approval process under Part 3A has now been repealed.
13. For the reasons we have given the Modification is beyond the (now repealed) power contained in s75W of the EPA Act. Accordingly, we are of the view that the Application must now be the subject of a development application under Part 4 of the EPA Act.
14. Indeed, in our opinion, any approval of the Modification under Part 3A of the EPA Act is likely to be set aside by the Land and Environment Court as beyond power.

Inadequate information of likely environmental impacts

15. In the DG Requirements, the issue of view loss was required to be addressed. Regrettably in the EAR this was only done in relation to views within the Project – it was not carried out in relation to views external to and looking over the Project. That failure was then carried through to the DG Assessment Report.
16. Similarly, the Modification has failed also to assess the impact on views external to and looking over the Project
17. It seems to us that the failure to provide an assessment of these impacts, particularly in circumstances where the DG Requirements required it, as part of the original application (and Modification) would mean that any assessment and determination would be lacking in basic and essential information for the decision maker.

18. To make a decision to grant approval to the Modification in such circumstances is again likely to be set aside by the Land and Environment Court for failure to consider relevant considerations or otherwise as the decision would be manifestly unreasonable (*Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223).

Conclusion

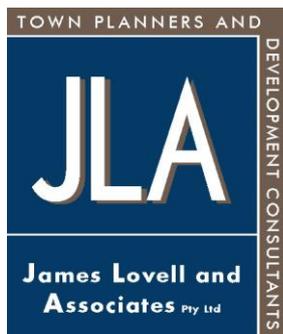
19. We submit that the Application cannot be approved for the following reasons:
- (a) The Modification does not propose something intended to have limited environmental consequences beyond those which had been the subject of assessment. This is particularly the case given the significant increase in number of dwellings and exceedances of the heights set out in the Minister Approval. In the circumstances, it proposes a fundamentally different development which must, as a matter of law, be the subject of a new and separate development application under Part 4 of the EPA Act;
 - (b) The Application contains an incomplete and inadequate assessment of relevant environmental impacts arising from the development that is proposed – in particular an assessment of the visual impacts caused by the proposed increased heights of the buildings; and
 - (c) The Application, in its current form, is so grossly inadequate that it must be refused.

We request that we be notified in writing about any additional information that is submitted, or amendments that are proposed, in respect to the Modification before it is determined.

In the meantime, should you wish to discuss this matter or our submission we ask that you kindly contact Jason Hones of our office.

Partner

Encl.



Suite 1, 9 Narabang Way, Belrose 2089

PO Box 714 Turramurra 2074

Web: www.jameslovell.com.au

20 October 2017

The Director-General
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001
Attention: Michelle Niles

Dear Madam,

MP 07_0027 MOD1
MODIFICATION TO SHELL COVE BOAT HARBOUR CONCEPT APPROVAL

Introduction

I act on behalf of a group of local residents (see *Attachment A*) in relation to the abovementioned matter which comprises an Application to modify a Concept Approval for the *Shell Cove Boat Harbour* development.

My clients are the registered owners of residential properties located within the residential neighbourhoods of Shell Cove and Flinders. The properties are generally located to the west of the development site, and the topographical features of the locality are such that the properties typically enjoy ocean and foreshore views of Shellharbour South Beach to the east.

The *Shell Cove Boat Harbour* development is a substantial urban development project, deemed by the New South Wales (NSW) State Government (and Shellharbour City Council) as being important in achieving the employment and housing targets for the Illawarra Region.

The implementation of the Concept Approval will radically transform the site from essentially undeveloped farmland to a substantial urban precinct accommodating a mix of residential, commercial, retail, business and community land uses, with an associated marina and dry boat storage facilities.

On any reasonable interpretation, there can be no doubt that the proposed modifications will dramatically change the Concept Approval. The modifications are substantial in terms of

building typology, increased building height, bulk and scale, increased number of residential dwellings, increased provision of retail and commercial floor space, and changes to the size of the town centre, and the location of the “*landmark (hotel) building*”.

I have carefully examined the documentation submitted in support of the Application, and support my client’s objections to the proposed modifications on grounds relating to:

1. The absence of any meaningful analysis of the impact on existing views from my clients properties to the ocean and foreshore of Shellharbour South Beach and beyond;
2. The failure of the *Traffic Review* submitted with the modification Application to consider the full range of changes to the Concept Approval; and
3. The apparent inconsistencies between the recommendations of the *Social Infrastructure Assessment* with the modification Application.

At the outset, I note that my clients have engaged *Hones Lawyers* to provide advice in relation to the statutory power of the Minister to approve the modification Application pursuant to Section 75W (now repealed) of the Environmental Planning and Assessment Act 1979.

The advice concludes that “*the Modification cannot be lawfully approved and, in any event, the Modification is not one to which approval would be granted on a considered assessment of the merits of the Modification*”.

Irrespective, this submission has been prepared to consider the “*environmental consequences*” of the proposed modifications independent of the lawful ability (or otherwise) of the Minister to grant consent.

Background

In November 1996, the then Minister for Urban Affairs and Planning granted Development Consent (DA 95/133) for a boat harbour and marina adjacent to the foreshore of Shellharbour South Beach.

On 15 February 2011, the then Minister for Planning granted Concept Plan Approval (07_0027) for the development of a 100-hectare precinct surrounding the boat harbour and marina. The Concept Plan Approval provides a framework for the development of:

- (a) Up to 1,238 dwellings with total gross floor area of approximately 150,000m² comprising single dwellings, medium density and apartments;
- (b) a business park with a maximum gross floor area of 30,000m²;
- (c) retail/commercial/hotel/community development with a maximum gross floor area of 22,000m²;
- (d) public open space and wetlands; and
- (e) associated drainage, stormwater infrastructure and roads.

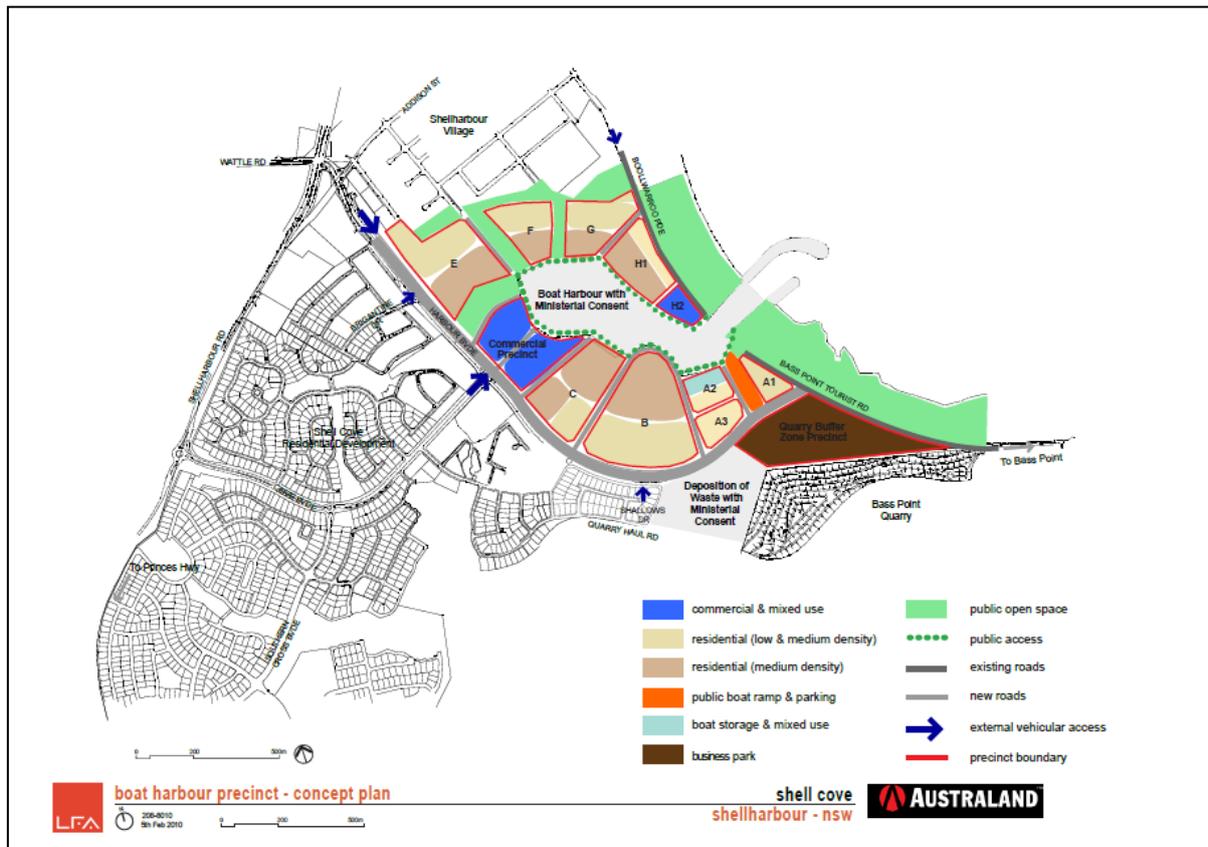


Figure 1: Approved Concept Plan

A series of Development Applications (DA's) have subsequently been lodged and approved by either Council or the Joint Regional Planning Panel (JRPP) for the detailed development of elements of the Concept Plan. A number of further DA's remain undetermined at this stage.

Importantly, I note that the various Development Consents essentially relate to preparatory and servicing works, subdivision of residential allotments for the purposes of attached, detached and semi-detached dwellings, and some retail facilities within the "town centre".

At this stage, the Development Consents are generally consistent with the Concept Approval, and there have been no consents granted for any residential flat buildings, or multi-storey buildings of any type.

Proposed Modification

The *Section 75W Modification Report* (8 August 2017) submitted with the Application suggests "The amendments proposed in this modification generally reflect the concept plan's evolution over time as it has been developed in greater detail". The proposed modifications are described in more detailed as:

- (a) removing the maximum 150,000m² residential gross floor area limit;

- (b) increasing the maximum number of dwellings from 1,238 to 1566;
- (c) revising the housing densities and typologies across the site;
- (d) reconfigurations to the town centre layout including relocating the landmark (hotel) building to the northern gateway;
- (e) increasing the maximum building height in certain areas to permit:
 - a mixed use landmark (hotel) building up to 11 storeys in the town centre;
 - residential flat buildings up to six storeys in the town centre and on the promontory, and
 - residential flat buildings up to five storeys in other harbour waterfront locations;
- (f) including 'serviced apartments' and 'residential accommodation' as permissible uses within the town centre landmark (hotel) building;
- (g) removing the community and hotel uses from the maximum 22,000m² gross floor area cap;
- (h) introducing an additional 6,000m² land (the northern lands) within Precinct E;
- (i) refinements to the road pattern and layout; and
- (j) an administration amendment to reflect Frasers ongoing negotiations with Council to execute a voluntary planning agreement for the site.

The primary concerns of my clients relate to the substantial increase in the number of dwellings, the changes in building typology to include multi-storey residential flat buildings, increasing the building height throughout the majority of the site by (generally) 1 – 2 storeys, increasing the height of the hotel building by 2 – 3 storeys, excluding the hotel from the calculation of approved floor space, and extending the development site to the north to include an additional 6,000m² of site area.

In general terms, the number of dwellings are being increased by 26%, the building heights are increasing by 25% – 40%, and the retail/commercial/hotel/community floor area is effectively being increased by the floor area of the whole of the hotel.

Finally, it is noted that the proposed modifications include allowing the hotel to be used for "serviced apartments", and permitting "the use of the hotel building to accommodate residential apartments". The modifications are proposed "to enable flexibility to adjust and respond to demand for tourist and visitor accommodation in the Illawarra region". In effect, such a change would convert the hotel to a residential flat building.

View Loss

The Director-General's Environmental Assessment Requirements issued in respect of the Concept Approval required an assessment of "the visual impact of the proposal in the context of surrounding development and relevant mitigation measures. In particular address impacts on the amenity of the foreshore, overshadowing of public reserves, loss of views from public places and cumulative impacts".

Further, the “Plans and Documents to accompany the Application” included “View analysis – artist’s impression, photomontages, etc of the proposed development in the context of the surrounding development”.

The “Concept Plan Application and Environmental Assessment” prepared in relation to the Concept Approval includes the following comments in relation to view loss:

The Boat Harbour Precinct development will have minimal impact on existing views to and from the coast. Shellharbour Village will retain its existing relationship to the ocean, the foreshore and the hinterland.

In my opinion, it is difficult (if not impossible) to understand the accuracy of that statement. The residential neighbourhoods of Shell Cove and Flinders to the west of the site include (from many properties) expansive views of the ocean and foreshore. The introduction of the 2 – 8 storey buildings in the Concept Approval will quite obviously have an impact on the existing views.

I note the documentation submitted with the Application did not include any artist’s impressions and/or photomontages depicting the (then) proposed development from anywhere in the vicinity of my client’s properties.

Further, the Director-General’s Environmental Assessment Report prepared in respect of the Concept Approval did not assess the potential view loss associated with the development, and makes no reference to the existing views from anywhere in the vicinity of my client’s properties. In my opinion, that is a curious (and concerning) omission in circumstances where the issue of potential view loss was previously raised in the Director-General’s Environmental Assessment Requirements.

The *Section 75W Modification Report* submitted with the Application includes the following comments in relation to view loss:

The Shell Cove Town Centre will provide an important visual landmark in the coastal landscape and establish an opportunity for a vibrant and interesting urban environment in a marine setting. The proposed increase in heights in the town centre and the residential precincts are unlikely to have any real impact on views across Shell Cove from the surrounding areas as views to the water are primarily down view corridors. The view corridors providing visual connections from the perimeter of the concept plan to the water proposed under the original concept plan are generally maintained. The alignment of view corridors has been modified in certain locations, however, the corridors will still provide visual connections to the boat harbour and the coastal dunes (refer to Figure 15).

The site is proposed modifications are unlikely to have any additional impact on Shellharbour village’s existing relationship to the ocean, the foreshore and the hinterland beyond those contemplated during the previous assessment of the concept plan.

Figure 15 (referred to above) is an image which identifies certain view corridors said to be available to future dwellings within the development site. The image does not include any analysis of (or reference to) the views available from the existing residential neighbourhoods of Shell Cove and Flinders to the west of the site.

In that regard, the photograph below depicts the existing view from one (1) of my client's properties at No. 18 Tasman Drive Shell Cove. The photograph is indicative of the existing views available from the west of the site, and demonstrates the extent to which increases in building height will inevitably impact on the existing views.



Photograph 1: Existing Views from Main Living Areas of No. 18 Tasman Drive Shell Cove

Finally, I am instructed that the owner of No. 18 Tasman Drive has separately (and recently) communicated with Mr Glenn Colquhoun (Development Director, Frasers Property Australia) in relation to the potential view loss from their property. On 6 October 2017, Mr Colquhoun advised my client as follows:

We appreciate that the community is concerned about their views and are currently reviewing the best way to be able to graphically present the visualisation of the proposed concept plan changes. It is fairly simple for properties closer to the Waterfront but more complex for those like yourself with more distant views. In this regard we are looking to engage an expert in this field and hope to be able to have some representations for you and the rest of the community in approximately 3 to 4 weeks' time.

It is noteworthy that the time-frame provided by Mr Colquhoun (3 – 4 weeks from 6 October 2017) would extend well beyond the end of the exhibition period for the modification Application.

It is also noteworthy that a view loss assessment would ordinarily form part of a proper site analysis, and inform the overall design process. In my opinion, it is of some considerable concern that the Applicant has proceeded to this point without any clear or precise understanding of the impacts of the proposed modifications.

Further, I note that Precinct D accommodates the tallest buildings (6 – 11 storeys) proposed within the modification Application. Precinct D is centrally located within the overall development site when viewed from the west.

On 10 July 2017, the Joint Regional Planning Panel (JRPP) granted Development Consent (DA 12/2016) *“to construct 4,623m² of retail floor space comprising 3,670m² supermarket with adjoining liquor tenancy, and 9 specialty shops (including a kiosk), with on-grade and basement car parking for 256 vehicles, 7 motorcycles and 44 bicycles”*.

The *“Shell Cove – Precinct D – Urban Design Guidelines”* prepared to accompany the DA (as required by Schedule 3 of Part D of the Concept Approval) includes the following comments in relation to nature and extent of changes proposed within Precinct D:

Notwithstanding the discussion above, the design of Precinct D has evolved over the 6 years following the Concept Approval in 2011. The evolution has resulted in some fundamental changes to the layout, built form and floor space proposed within Precinct D.

The locality of Shell Cove is generally characterised by two (2) storeys buildings. The Concept Approval involves introducing a built form that will visually dominate the locality when viewed from the surrounding area.

The proposed modifications include substantially increasing the number of dwellings, changing the building typology to include multi-storey residential flat buildings, and materially increasing the height of buildings. As a consequence, the proposed modifications will significantly increase the visual dominance of the Boat Harbour precinct, and contribute to an abrupt change in bulk and scale between the development site and the surrounding locality.

The views from surrounding properties such as No. 18 Tasman Drive are highly valued, and of significant importance to the amenity of those properties. In the circumstances, the *“fundamental”* nature of the changes are such that the Application should be (at least) deferred until such time as the Applicant has been able to properly identify and consider the view loss impacts from surrounding properties, including in particular, those beyond the development site itself.

Traffic Assessment

The modification Application was accompanied by a *Traffic Review* (20 July 2017). The Review identifies the proposed modifications as comprising the addition of 318 dwellings, relocation and reclassification of the hotel to permit serviced apartments, and refinement of the road pattern.

On the basis of the identified modifications, the Review concludes that *"the level of traffic generation of the S75W results in only minor increase in traffic generation (some 2%) and thus the S75W road network will operate satisfactorily"*.

The *Traffic Review* appears to be based (originally) on the *Shell Cove Boat Harbour Precinct Traffic Study* (Maunsell 2009). Whilst reference is also made to subsequent traffic assessments prepared in 2015 and 2016, it is not clear whether the increased traffic volumes in the locality (that are unrelated to the proposed development) have been incorporated in the more recent assessment.

Further, the proposed modifications are not limited to the addition of 318 dwellings and the relocation and reclassification of the hotel. The proposed modifications also include removing the community and hotel uses from the maximum limit of 22,000m² for the retail/commercial/hotel/community component.

In the circumstances, the *Traffic Review* has understated the additional traffic generating potential of the proposed modifications by at least the traffic generating potential of the hotel. In my opinion, the Application should be deferred until such time as the traffic implications of the proposed modifications have been properly considered.

Social Infrastructure

The modification Application was accompanied by a *Social Infrastructure Assessment* (April 2017). The Assessment describes the project as providing *"development of over 3,000 residential dwellings"*, but immediately thereafter refers to *"1,556 residential dwellings"*.

The Assessment also makes reference to an *"18 hole championship golf course"* which does not form part of the modification Application, and *"community facilities"*, the nature and type of which are not disclosed in the modification Application.

The Assessment provides an analysis of the existing and future demand for a range of social infrastructure facilities, with comparisons made between the demand and supply in 2008 and 2017. The necessary supply of certain social infrastructure is based on recommendations of the *Growth Centres Commission* (2006).

It does not appear that any surveys or investigations have been made in relation to the actual availability of places within the existing schools within a 5km catchment radius of the site, either primary or secondary schools.

Irrespective, the Assessment (based on the generic recommendations of the *Growth Centres Commission* (2006)) has identified a pending shortage of secondary schools within a 5km catchment radius of the site by 2026, with the shortage becoming progressively larger (or worse) as the population continues to grow from 2026 and onwards. In the circumstances, the Assessment *"recommends no less than 6,000m² should be allocated for one high school at the subject site"*.

The modification Application does not make any reference to the provision of a high school on the site, or identify a potential location/s. In that context, there can be no certainty that a high school site will be provided, or that any such school would be constructed and operational by 2026, when the shortage of supply arises.

Finally, the Assessment has identified a relatively significant shortage of after school care facilities (places) within a 5 – 10 km radius of the site, with the existing shortage increasing (or becoming worse) from 2016 onwards. Further, the additional dwellings proposed within the modification Application make the existing and future shortage worse.

Irrespective, the Assessment suggests that *"Although there is identified demand for after school facilities to be constructed in the short term within the 10km catchment radius, the existing arrangement as Shell Cove Primary Schools for after school care will meet this demand within the development site"*.

I have been unable to reconcile the existing and future shortage of after school care facilities (places) with the statement that the *"existing arrangement ... will meet this demand"*.

Conclusion

In my opinion, the modification Application raises a number of significant concerns that have not been adequately considered or assessed at this stage. In particular, it is clear that little (if any) assessment has been made of the likely loss of views from residential properties beyond the development site.

It would appear that the Applicant has more recently become aware of the need to undertake that assessment (refer to the comments of Mr Colquhoun to the owner of No. 18 Tasman Drive). A view loss assessment should form part of a proper site analysis, and inform the design process, including building heights and location. Unfortunately, it appears that exercise has been overlooked.

Finally, there remain outstanding concerns in relation to the *Traffic Review* and *Social Infrastructure Assessment*, all of which should be addressed before the modification Application is further considered.

I trust this submission is of assistance, and ask that I be kept informed prior to any determination being made, and/or in relation to any request to the Applicant to provide additional information/clarification in relation to matters raised in this submission. In the

meantime, should you require any further information or clarification please do not hesitate to contact the writer.

Yours sincerely,



James Lovell
Director
James Lovell and Associates Pty Ltd

ATTACHMENT "A"

NAME	ADDRESS
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] ove
[REDACTED]	[REDACTED]

Objection to MP 07_0027 MOD1 Modification to Shell Cove Boat Harbour Concept Plan

This submission is made on behalf of:

Guy Formica: Owner of 18 Tasman Drive, Shell Cove.

Foong Theng Leong and Felicity Formica: Residents of 18 Tasman Drive Shell Cove (Wife and Daughter of Guy).

Guy Formica and Liliana Formica: owners of 29 Torres Circuit Shell Cove.

Guy Formica, owner of 15 Tasman Drive, Shell Cove.

Introduction

My name is Guy Formica. My living residence is 18 Tasman Drive, Shell Cove. I also own another two investment properties at 29 Torres Circuit and 15 Tasman Drive Shell Cove.

I strongly object to the modification to the concept plan for the following reasons.

1. Severe impact to the ocean views from my home and investment properties because of the height, bulk and scale of the modification.
2. Congestion and overcrowding due to increased traffic and lack of parking.
3. Adverse social impact to infrastructure.
4. Lack of consultation with and supply of information to the public regarding the modification.

1 Impact to views from my home and investment properties.

Below is part of the view from my rear balcony. The balcony adjoins my lounge, dining and open plan kitchen, all from which I have this view as depicted in the following photos.





According to Chapter 35 of the attached Shellharbour Council DCP advice:

View values and principles

35.1.1 Development with the potential to adversely impact views experienced from other properties must address the value of the view that may be affected. In this respect the New South Wales Land and Environment Court Planning Principles must be considered. These include:

- a. Water views are valued more highly than land views*
- b. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

What development must address

35.1.2 Development must address:

- a. what part of other properties have the views currently experienced according to the following principles:
 - i. rear and front boundary views are more easily protected than side boundary views
 - ii. standing views are more easily protected than sitting views
 - iii. retaining side views and sitting views is often unreasonable.
- b. the extent of impact, according to the following principles:
 - i. views from living areas are more significant than views from bedrooms or service areas such as kitchens
 - ii. it is more appropriate to assess a view qualitatively than quantitatively. Impact may be assessed quantitatively, but often this is inappropriate. For instance it may be unhelpful to say view loss is 20% if this includes a sail of the Sydney Opera House. It is more appropriate to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.
- c. Overall reasonableness and compliance of the proposal causing the impact, according to the following principles:
 - i. Even a moderate impact on views caused by non-compliance with planning controls/provisions may be considered unreasonable
 - ii. If the proposal complies with the relevant planning controls/provisions, consideration needs to be given to whether an alternate design could provide the same development potential and amenity, while reducing impact on views. If an alternate design cannot achieve this, then the proposal would likely be considered acceptable.

Note: for more information on the context of the above principles, please refer to Tenacity Consulting v Warringah Council 92004) NSWLEC 140.

Following are points from the judgement in the Tenacity Consulting v Warringah Council case.

26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For

example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Using these 4 steps I have assessed my views.

- 1) I have whole water views and can see the interface between land and water.
- 2) My view is from the entire rear of the property from both sitting and standing positions.
- 3) My View is visible from the Lounge room, dining room, kitchen and rear balcony. Essentially the entire top floor of my home.
- 4) Modification breaches planning controls and is non-compliant because building heights and resulting FSRs are beyond the LEP and DCP, therefore unreasonable.

Therefore, according to all the above, my views are highly valued and the impact to them as a result of the modification is unreasonable. From my calculations, the difference in building heights and scale of the proposed modification (as per the diagram below) will definitely impact my views severely, bordering on devastating.

Views must be “shared” but I feel Shellharbour Council and Frasers are monopolising the whole view with this modification for their own profit. I also find it unfair and unethical that Shellharbour Council can change the controls when it sees fit to suit them and not following their own advice.



Proposed increased building heights.

2 Impact to traffic and parking.

The modification will increase traffic congestion and there is not enough parking. I come to this conclusion because the added external traffic from visitors for shopping and boating from surrounding area has not been taken into account in the traffic report.

The traffic report also does not take into account that most people will drive in and out of the area to get on and off the freeway. It assumes all residents will use Harbour Boulevard when in fact over two thirds will use Cove Boulevard as it is the shortest route. Cove Boulevard will not be able to cope with the traffic congestion as currently in the mornings and afternoons there are traffic jams with existing levels of traffic.

There are also not enough parking spaces calculated for the modification. Parking for visitors and boating enthusiasts to the area has not been taken into account.

3 Adverse Social Impact

The modification will overpopulate the area and impact on our already inadequate local infrastructure and essential services, including hospitals, medical centres and schools. There are now waiting lists for schools that will grow even bigger. Waiting times at Shellharbour Hospital a growing and many patients are being moved to Wollongong hospital. The proposal has not adequately taken these factors into account.

The increase in population density and the dramatic visual impact of the modification also is taking away from the low key and relaxed coastal feel of the area. My understanding the development is designed to generate tourism, not to try and squeeze in as many people as possible into a small area for extra profit.

4 Lack of consultation with and supply of information to the public.

I received no notification from either Shellharbour Council or Frasers Property regarding this modification. I expected notification by mail like other councils do. I only found out about this modification on 21st Sep 2017 from local residents posting it on Facebook.

I visited the Frasers sales office on 22nd Sep where I met Glenn Colquhoun (Frasers Development Director) to find out how the modification will impact my view. I had a brief conversation with Glenn who said he was very busy but could meet with me on 28th Sep. The subsequent meeting was a complete waste of time as I requested the RL of the ground levels and the RL of the tops of the proposed buildings so I could see how my view was impacted. He only showed me the RL of the ground levels and nothing else. He promised he will have them for me ASAP, but as yet I have received nothing. He said he will get his 3D graphics people to superimpose the buildings onto a photo of my view, but as yet I have received nothing. (See attached correspondence between myself and Frasers Development Director, Glenn Colquhoun.) I feel Frasers are purposely delaying releasing the information on view impact until after the exhibition closing date.

Fraser only held one information night on 10th Oct, only 10 days before the exhibition closing date of 20th Oct. Many residents only found out about the modification on this day which only gave them 10 days to read through the mountain of documentation respond. Many complained to me that this is not fair. When I e-mailed and called state Michelle Nile from state planning for extra time to 30th Oct, I was refused. I feel we have not had a fair go.

Shellharbour Council have been no help either. The public are shut out. Every time my neighbours and I contacted the council for information, we were told to contact the Shell Cove Management Committee and/or the Shell Cove Advisory Committee and to talk to them. One of my neighbours wrote an e-mail requesting their contact details. She received the following response.

----- Forwarded message -----

[REDACTED]

Good morning Sonia.

Carey McIntyre (Council's General Manager) has asked me to respond to your email.

The Shell Cove Project involves:

- Shell Cove Management Committee – the development board of senior staff from Council and Frasers Property Australia (the Project Manager) to steer the Project.
- Shell Cove Advisory Committee – a Council internal working party of several appointed Councillors and senior staff.

Neither of these Committees involve the public in terms of members, attendance or addressing the meeting. There are no contact details.

Thanks.

Kevin James | Shell Cove Commercial Manager

[REDACTED]

We the public have been shut out. There has been no public consultation whatsoever between Shellharbour Council and the residents. There are many more e-mails from many residents that I am on copy of who have requested information from the council and received nothing. I could attach them all but this submission would be huge. They attest to the fact that Shellharbour Council are ignoring the public regarding this matter. I have had absolutely no notification whatsoever from Shellharbour Council regarding and proposed changes to the LEP and this modification. Other councils do so by mail. I have received nothing.

Conclusion

For reasons stated above, the modification should not be approved. It proposes a fundamentally different development which must be subject to a new and separate development application.

I have also engaged Hones Lawyers and James Lovell town planners to produce a submission for myself and on behalf of a group of residents. Please refer to their submission for further points which I endorse.

Regards,

Guy Formica.

Response to Applicants Response to Submissions
Application Number: MP 07_0027 MOD 1
Location: Shell Cove Harbour, Boollwarroo Parade, Shell Cove

From: Guy Formica, [REDACTED]

Attention: Director – Modification Assessments

27th March 2018

Affirmation

With reference to the Visual Impact Assessment produced by Dr Lamb in January 2018:

The block-model photomontages depicting the Concept Approval of 2011 are not applicable and misleading. They do not depict what was approved by the DPE, therefore their comparison to the 75W application block-model photomontages is not applicable, therefore rendering the view comparison arguments and conclusions of the report irrelevant.

Reasoning

The visual impact assessment produced by Dr Lamb in January 2018 on page 3 states:

“The Concept Approval shown in the block-model photomontages reflects the maximum height, bulk and location of built forms that were included in the Shell Cove Boat Harbour Precinct Concept Plan that was approved under part 3A of the Environmental Planning and Assessment Act 1979 (EPA Act) by the DPE following the Concept Plan application in 2010.”

The above statement by DR Lamb is false for two main reasons:

1. The Concept Approval of 2011 only approved building heights in Storeys and did not specify heights in metres. The height of a storey in metres is subjective. Building heights specified in metres are required to produce a block-model photomontage. Hence, the photomontage produced by DR Lamb for the Concept Approval of 2011 was not approved.
2. The Concept Approval of 2011 did not approve any ground levels for buildings. The ground levels that existed in 2011 have now been made higher due to earthworks by Frasers since 2010. Ground levels of buildings are required to produce a block-model photomontage. Hence, the photomontage produced by DR Lamb for the Concept Approval of 2011 was not approved.

Conclusion

The view comparison arguments and conclusions of the report by Dr Lamb are irrelevant.

This modification will severely impact the ocean view from my home as stated in my previous submissions.

I reserve the right to add further to this submission within the next month. It is not fair that the applicant has been given many months to produce a response and the public have only been given 2 weeks.

I await your feedback.

Regards,

Guy Formica.

2011 : APPROVED CONCEPT PLAN

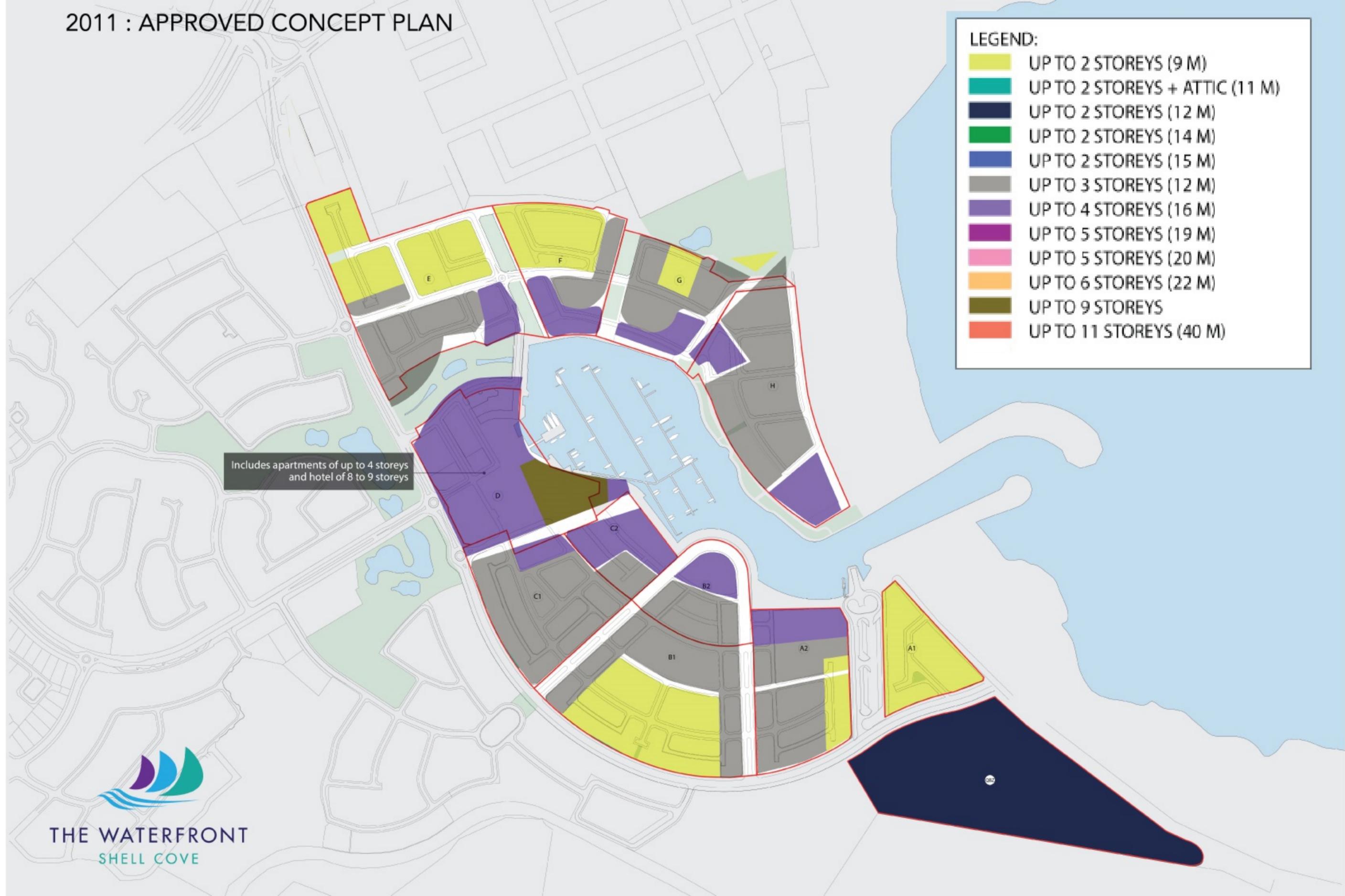
LEGEND:

- UP TO 2 STOREYS (9 M)
- UP TO 2 STOREYS + ATTIC (11 M)
- UP TO 2 STOREYS (12 M)
- UP TO 2 STOREYS (14 M)
- UP TO 2 STOREYS (15 M)
- UP TO 3 STOREYS (12 M)
- UP TO 4 STOREYS (16 M)
- UP TO 5 STOREYS (19 M)
- UP TO 5 STOREYS (20 M)
- UP TO 6 STOREYS (22 M)
- UP TO 9 STOREYS
- UP TO 11 STOREYS (40 M)

Includes apartments of up to 4 storeys
and hotel of 8 to 9 storeys



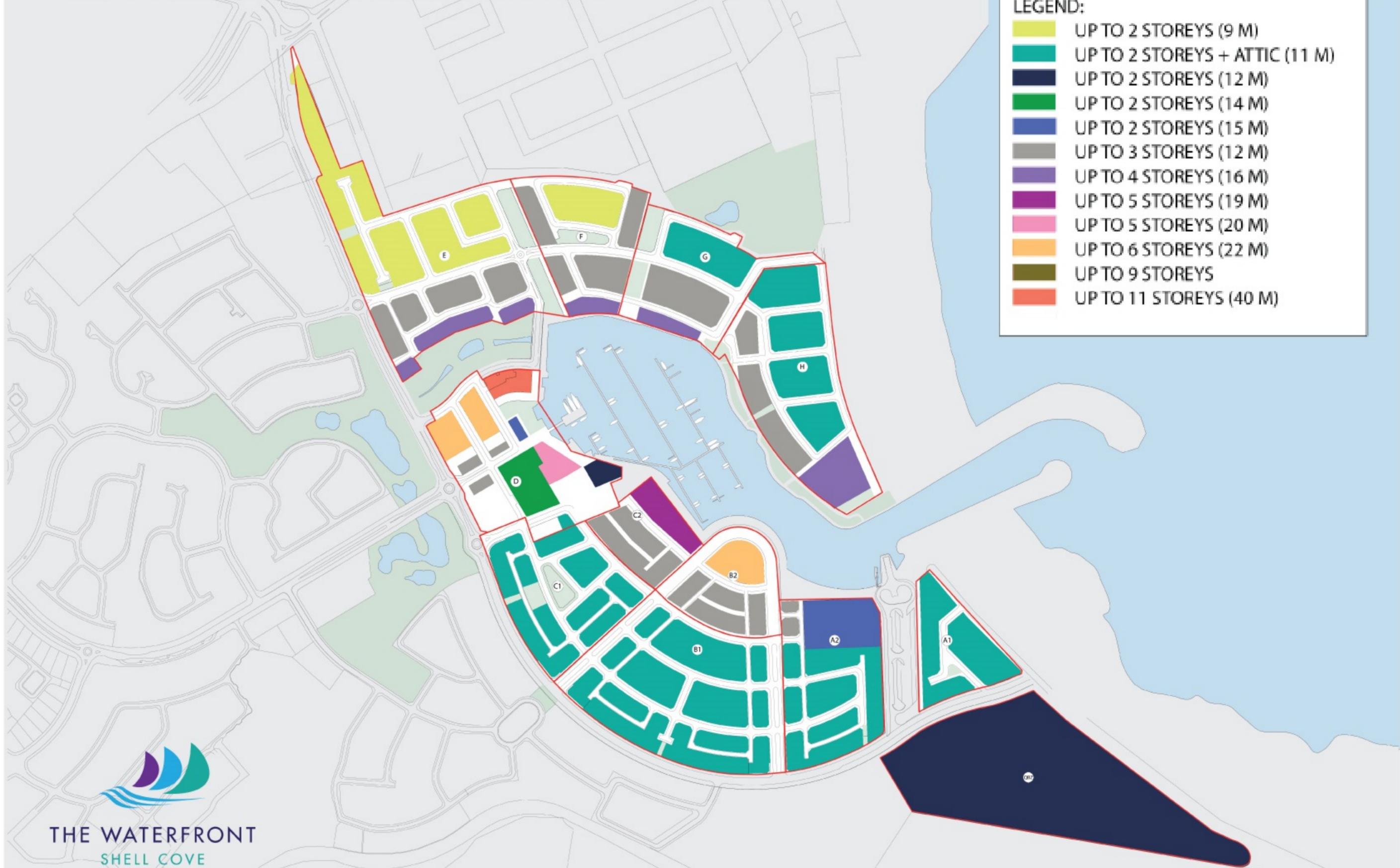
THE WATERFRONT
SHELL COVE



2017 : PROPOSED MODIFIED CONCEPT PLAN

LEGEND:

	UP TO 2 STOREYS (9 M)
	UP TO 2 STOREYS + ATTIC (11 M)
	UP TO 2 STOREYS (12 M)
	UP TO 2 STOREYS (14 M)
	UP TO 2 STOREYS (15 M)
	UP TO 3 STOREYS (12 M)
	UP TO 4 STOREYS (16 M)
	UP TO 5 STOREYS (19 M)
	UP TO 5 STOREYS (20 M)
	UP TO 6 STOREYS (22 M)
	UP TO 9 STOREYS
	UP TO 11 STOREYS (40 M)



THE WATERFRONT
SHELL COVE

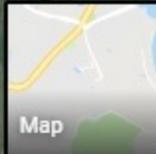


Search Google Maps



Sign in

See travel times, traffic and nearby places



Map

Google

