

22 November 2018

218123

Ms Carolyn McNally  
Secretary  
NSW Department of Planning and Environment  
23 – 33 Bridge Street  
SYDNEY NSW 2000

Dear Ms McNally,

## **SECTION 75W MODIFICATION SHELL COVE BOAT HARBOUR AND MARINA**

On behalf of Frasers Property Australia Pty Ltd (**Frasers**), formerly known as Australand Corporation (NSW) Pty Ltd, we hereby submit an application pursuant to Section 75W of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify Development Consent DA 95/133 relating to the Shell Cove Boat Harbour and Marina.

The modifications relate to the relocation of the outer harbour uses comprising:

- A multipurpose pontoon, to be used as a boat pick-up point;
- Fuel and pump-out pontoon, to be used for boat refuelling and pumping out of boat sewerage;
- On-water maintenance berths for minor repairs and holding area for boats;
- A travel lift for hauling vessels from the water;
- A heavy-duty platform used to place and remove dry stored boats by forklift; and
- Holding areas.

This application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in Section 75W of the EP&A Act. It should be read in conjunction with the following documents which accompany the application:

- A copy of the Notice of Determination for DA 95/133 and subsequent instruments of modifications (**Attachment A**);
- Secretary's Environmental Assessment Requirements prepared by the Department of Planning and Environment (**Attachment B**);
- Outer Harbour Layout Plans prepared by Worley Parsons (**Attachment C**);
- Traffic Impact Assessment prepared by Arcadis (**Attachment D**);
- Outer Harbour Safe Navigation Statement prepared by Advisian (WorleyParsons Group) (**Attachment E**);
- Shell Cove Boatharbour Construction Environmental Management Plan prepared by Patterson Britton and Partners (**Attachment F**);
- Coastal Processes and Hazards Statement prepared by Advisian (WorleyParsons Group) (**Attachment G**);
- Shell Cove Boatharbour Operational Environmental Management Plan prepared by Patterson Britton and Partners (**Attachment H**);
- Phase 2 Contamination Assessment prepared by Douglas Partners (**Attachment I**);
- Targeted Site Investigation prepared by Douglas Partners (**Attachment J**);
- Proposed Utility, Sewer & Water Services Strategy prepared by Arcadis (**Attachment K**);

- Shell Cove Outer Harbour - Fuel System Design prepared by Petrolink Engineering Pty Ltd (**Attachment L**);
- Noise & Vibration and Air Quality Assessment prepared by Wilkinson Murray (**Attachment M**);
- Shell Cove Precinct A Design Guidelines for Medium Density Housing prepared by Frasers Property (**Attachment N**).

## 1.0 Background

The Shell Cove Waterfront Precinct is a master planned estate comprising residential, commercial, community, retail, hotel, business park, dry boat storage facilities, open space and wetlands. The Precinct is the subject of a Part 3A Concept Plan approval, granted on 15 February 2011 (MP 07\_0027). A Section 75W Modification application to the Concept Plan Approval was lodged with the Department of Planning and Environment (DPE) in August 2017 and is currently under assessment awaiting determination.

Prior to the Concept Plan approval, the (then) Minister for Urban Affairs and Planning approved a DA for the boat harbour / 350 berth marina (DA 95/133), which was originally approved on 26 November 1996 and has subsequently been modified seven times, most recently in July 2017.

Construction certificates for the boat harbour and marina were issued by the Department of Planning and Environment, as the relevant authority and construction of the boat harbour has been progressing over a number of years.

### 1.1 Legislative Context

As stated above, the boat harbour and marina development (DA 95/133) was approved by the (then) Minister for Urban Affairs and Planning under (the former) Part 4 of the EP&A Act on 26 November 1996.

However, under clause 8J(8) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), for the purposes only of modification, the following development consents are taken to be approvals under Part 3A of the Act and Section 75W of the EP&A Act applies to any modification of such a consent:

- a development consent granted by the Minister under section 100A or 101 of the Act,
- a development consent granted by the Minister under State Environmental Planning Policy No 34—Major Employment-Generating Industrial Development,
- a development consent granted by the Minister under Part 4 of the Act (relating to State significant development) before 1 August 2005 or under clause 89 of Schedule 6 to the Act,
- a development consent granted by the Land and Environment Court, if the original consent authority was the Minister and the consent was of a kind referred to in paragraph (c).

As specified in the notice of development consent and the instrument of consent DA 95/133 was approved by the (then) Minister for Urban Affairs and Planning under Section 101 of the EP&A Act, and as such, for the purposes of modifying the consent Section 75W of the EP&A Act was applicable.

As part of the repeal of Part 3A of the EP&A Act in 2011, Clause 12 of Schedule 6A of the EP&A Act was enacted to specifically permit that Section 75W continue to apply to the modification of Part 3A projects, as if it were in force.

We note that the *Environmental Planning and Assessment Amendment Bill 2017* commenced on the 1<sup>st</sup> March 2018. The commencement of this Bill moved the transitional arrangements for Part 3A into a new Regulation, the *Environmental Planning and Assessment (Saving, Transitional and Other Provisions) Regulation 2017*.

As the SEARs request was lodged with the Department of Planning and Environment (DPE) on the 28<sup>th</sup> February 2018, the provisions of Section 75W of the EP&A Act continue to apply to this modification by virtue of Clause 3BA of Schedule 2 of the *Environmental Planning and Assessment (Saving, Transitional and Other Provisions) Regulation 2017*.

## 1.2 Secretary's Environmental Assessment Requirements (SEARs)

In accordance with Item 3 of Schedule 2 of the EP&A Regulation, the delegate of the Secretary of the DPE has issued requirements for the preparation of this Section 75W Modification. A copy of the SEARs is included in **Attachment B**.

**Table 1** below provides a summary of the individual matters listed in the SEARs and identifies where each of these requirements has been addressed in this report and the accompanying technical studies.

**Table 1 Secretary's Environmental Assessment Requirements**

Requirement	Reference	
	Modification Report	Technical Study
<b>Key Issues</b>		
Address the statutory provisions applying to the site and all relevant strategic planning objectives outlined in the documents at <b>Attachment A</b> .	Section 5.0	N/A
<b>Comparison with the Development Consent (DA 95/133)</b>		
Provide a comparative assessment (qualitative and quantitative) of the proposed modification against the Development Consent, a rationale for the proposed amendments and comparison plans clearly identifying the proposed changes.	Section 3.0	N/A
<b>Built Form</b>		
Address the height, bulk and scale of any structures associated with the proposed modification in the context of the site and future development.	Section 5.2.1	Attachment C
<b>Amenity Impacts</b>		
<ul style="list-style-type: none"> <li>Demonstrate future residential lots in the vicinity of the proposed modification would maintain appropriate levels of residential amenity particularly with regard to noise and odour impacts;</li> <li>Include measures to minimise land use conflicts between surrounding land uses and the works associated with the proposed modification; and</li> <li>Consider impacts on current development applications (both with Council or the Department) and approved development applications on the land relating to the proposed modification.</li> </ul>	Section 5.2.2	Attachment M
<b>Noise and Vibration</b>		
Prepare a Noise Impact Assessment for the proposal which assesses noise and vibration impacts associated with the construction and operation of the facility and outline measures to minimise and mitigate the potential impacts on existing and future sensitive receivers.	Section 5.2.2	Attachment M
<b>Visual Impacts</b>		
Address any potential visual impacts associated the relocated harbour structures.	Section 5.2.1	N/A
<b>Public Domain / Open Space</b>		
<ul style="list-style-type: none"> <li>Address any changes to public domain, pedestrian linkages, street activation and landscaping;</li> <li>Demonstrate that public access to the harbour foreshore will be maintained; and</li> <li>Minimise the potential for vehicle, bicycle and pedestrian conflicts.</li> </ul>	Section 5.2.3	Attachment C
<b>Transport and Accessibility</b>		

<p>Include a traffic and transport assessment which includes:</p> <ul style="list-style-type: none"> <li>• An assessment of traffic and transport impacts associated with construction and operation of the facility and demonstrate how impacts would be appropriately mitigated and managed;</li> <li>• Identification of any changes to daily water vehicle movements associated with the modification and assessment of the impact of any changes on the local water traffic network; and</li> <li>• An assessment of the impacts of the facility to the approved road network and infrastructure and use of the Austroads Guidelines to identify appropriate mitigation measures.</li> </ul>	Section 5.2.4	Attachment D
<b>Navigation</b>		
Address the impact of the proposed sitting of the outer harbour structures on navigation within the harbour.	Section 5.2.5	Attachment E
<b>Acid Sulfate Soils</b>		
Provide an Acid Sulfate Soils (ASS) Assessment which assess the potential for interception of ASS and if required, an ASS Management Plan demonstrating that the site suitable for the harbour structures.	Section 5.2.6	Attachment F
<b>Hazardous Materials</b>		
Consider the modification against provisions of State Environmental Planning Policy No 33 – Hazardous and Offensive Development and the Department's Applying SEPP 33 guidelines, including submission of a preliminary risk screening.	Section 5.1.2	Attachment L
<b>Waste Management</b>		
Identify the likely waste generated during construction and operation of the outer harbour structures and measures to be implemented to manage, reuse, recycle and safely dispose of the waste in accordance with relevant guidelines.	Section 5.2.7	Attachment F
<b>Drainage and Flooding</b>		
<ul style="list-style-type: none"> <li>• Address the potential effects of coastal processes and hazards (within the meaning of the Coastal Management Act 2016) and flooding including sea level rise and climate change: <ul style="list-style-type: none"> <li>– On the proposed development; and</li> <li>– Arising from the proposed development.</li> </ul> </li> <li>• Address the nature and degree of impact on receiving waters, demonstrating how the development protects Water Quality Objectives (as endorsed by the NSW Government <a href="http://www.environment.nsw.gov.au/ieo/index.htm">http://www.environment.nsw.gov.au/ieo/index.htm</a>). The assessment should address where these objectives are currently being achieved over time. This should include an assessment of the mitigating effects of proposed stormwater and wastewater management during and after construction; and</li> <li>• Provide details of erosion and sediment controls (during construction) including measures and procedures to minimise and manage the generation of sediment.</li> </ul>	Section 5.2.8	Attachment G
<b>Contamination</b>		
Provide a contamination assessment report which demonstrates the proposed location is suitable for the outer harbour structures in accordance with State Environmental Planning Policy No 55 – Remediation of Land.	Section 5.1.1	Attachment I and Attachment J
<b>Water Resources</b>		
Confirm adequate and secure water supply will be provided for the life of the project. Confirmation that water can be sourced from an appropriately authorised and reliable supply. This is to include an assessment of the current market depth where water entitlement is required to be purchased;	Section 5.2.9	Attachment K and Attachment G

<ul style="list-style-type: none"> <li>• Provide a detailed and consolidated site water balance;</li> <li>• Assess impacts on surface and ground water sources (both quality and quantity), related infrastructure, adjacent licensed water users, basic landholder rights, watercourses, riparian land and groundwater dependant ecosystems; and</li> <li>• Outline any required surface and groundwater monitoring activities and methodologies.</li> </ul>		
<b>Other Approvals</b>		
Identify and outline any proposed amendments to other licences and approvals.	Section 1.4	N/A
<b>Utilities</b>		
In consultation with relevant agencies, address the existing capacity and requirements of the proposed modification for the provision of utilities, including staging of infrastructure works.	Section 5.2.10	Attachment K
<b>Consultation</b>		
<p>During the preparation of the EA, you are required to consult with the relevant local, State or Commonwealth Government authorities, service providers, including:</p> <ul style="list-style-type: none"> <li>• Shellharbour City Council;</li> <li>• NSW Office of Environment and Heritage;</li> <li>• NSW Environment Protection Authority;</li> <li>• NSW Roads and Maritime Services; and</li> <li>• Department of Primary Industries.</li> </ul> <p>The modification request must describe the consultation process and the issues raised and identify where the design of the development has been amended in response to those issues. Where amendments have not been made to address an issue, a short explanation should be provided.</p>	Section 1.3	N/A
<b>Plans and Documents</b>		
<p>The modification request must include all relevant plans and documentation, including:</p> <ul style="list-style-type: none"> <li>• site analysis plan;</li> <li>• site survey plan, showing existing levels, location and height of surrounding features;</li> <li>• locality / context plan;</li> <li>• drawing and plans including plans identifying the approved and proposed location of the harbour structures, elevations and sections and photomontages clearly showing the proposed amendments compared with the Concept Approval. Any ground levels shown on plans shall be consistent with existing or approved ground levels; and</li> <li>• shadow diagrams.</li> </ul>	Figure 2 and Figure 3	Attachment C

### 1.3 Consultation

Consultation has been ongoing with Shellharbour City Council and relevant state authorities as part of the original approval and subsequent modifications. Considering the low scale nature of the proposal (being the relocation of approved structures), it is unlikely that the modification will trigger any additional concerns. It is noted that consultation was undertaken with the following authorities as part of the original development application:

- Premiers Department;
- Department of Planning;
- EPA;
- Illawarra Port Authority;
- NSW Fisheries;

- Department of Mineral Resources;
- National Parks and Wildlife Services;
- RTA (now RMS);
- Tourism Commission;
- Department of Main Roads;
- Department of Water Resources; and
- NSW Agriculture.

We note that Shellharbour City Council have provided landowners consent for the modification application.

#### 1.4 Other Approvals

The Environment Protection Authority NSW (EPA) has issued an Environment Protection Licence (EPL No.12426 as amended 17 January 2007) to Australand for the boat harbour construction under the *Protection of the Environment Operations Act 1997* (POEO Act). Specifically, the EPL authorises and regulates:

- construction of a marina and associated facilities;
- dredging works;
- marinas and boat repair facilities;
- waste facilities – land filling;
- waste facilities – large-scale landfill; and
- inert waste land filling.

The proposed modification will not require any additional approvals or modifications to the existing EPA license.

#### 1.5 Detailed Applications

A number of current Development Applications (DAs) are proposed on land surrounding the Shell Cove Boatharbour and Marina, including:

- MP 07\_0027 MOD 1 - Modification to Shell Cove Boat Harbour Concept Plan (under assessment with the Department of Planning and Environment);
- DA0619/2017 – Precinct A Subdivision (under assessment with Shellharbour City Council); and
- DA0287/2018 – Precinct B2/C2 Subdivision (under assessment with Shellharbour City Council).

## 2.0 Consent Proposed to be Modified

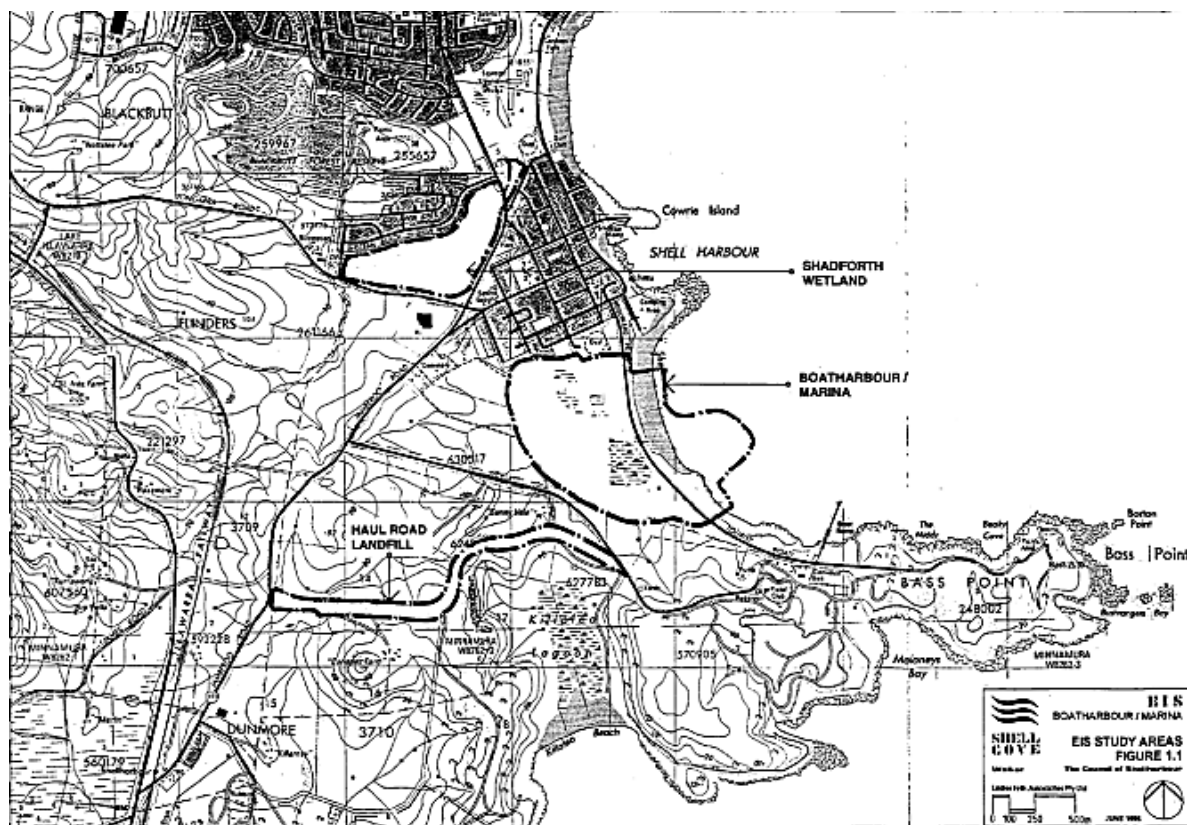
### 2.1 Original Consent

Development consent DA 95/133 (see **Attachment A**) was granted by the (then) Minister for Urban Affairs and Planning on 26 November 1996 for:

- The construction of a boat harbour and associated facilities;
- The enlargement and enhancement of wetlands at Shadforth; and
- The placement of landfill material from the boat harbour site in a series of engineered cells adjacent to the realigned haul road which provides access to the existing quarry at Bass Point.



The three components of the development are located on land depicted in **Figure 1**.



**Figure 1 Original EIS Study Area**

Source: EIS prepared by LFA (Aust) Pty Ltd, June 1995

The boat harbour/marina component of the development comprised:

- The construction and operation of a 22ha boat harbour including breakwater and groynes;
- The establishment of the water based components of a 350 berth marina; and
- The construction of the land platform on which a range of supporting facilities will be subsequently developed.

The originally proposed boat harbour and associated facilities, including the outer harbour structures, are shown in **Figure 2**.

The original EIS explains that the construction of the boat harbour includes the clearing, draining and filling of Shellharbour Swamp, the dredging and excavation of land to form the harbour and harbour entrance, the removal of existing landfill material, the filling and reclamation of land, the removal and disposal of acid sulphate soils, the nourishment of sand dunes, the protection of aboriginal middens, the construction of breakwaters, the erection of boardwalks, boat ramps, gangways, pontoons and wharfs, environmental mitigation measures, construction of the flushing pipeline and other ancillary works.

The harbour contains three main components: the Harbour Entry, the Outer Harbour and the Inner Harbour. The structures proposed within the outer harbour, as part of this modification, are generally consistent with those approved under the original development approval including the fuelling point, the boat fuel storage, and the sewage and bilge pump out.

## 2.2 Previous Modifications to Consent

The consent has been modified seven times, most recently in July 2017. Details of the modifications are summarised in **Table 1**. A copy of each of the instruments of modification is provided in **Attachment A**.

**Table 2 Summary of Modifications to DA 95/133**

DA 95/133	Date Approved	Modification
Mod 1	9 November 2001	To allow the erection of acoustic barriers along the haul road instead of engineered landfill cells.
Mod 2	6 September 2004	To permit the deposition of waste material, extracted from the Shellharbour wetland to a single landfill cell and allow the disposal of actual and potential acid sulfate soils to an EPA licensed landfill site.
Mod 3	31 October 2006	To change the location and orientation of the boat harbour and change the layout and design of the marina; delete the flushing pipe system; and remove the stop work provisions for indigenous heritage.
Mod 4	25 November 2008	To extend the seaward boundary of the development to incorporate the inter-tidal area, which was originally covered by the Part 5 approval, into the Part 4 consent.
Mod 5	20 August 2010	To modify condition 18 to incorporate neutralisation and re-use of acid sulphate soils on the site in accordance with an Acid Sulfate Soil Management Plan.
Mod 6	8 July 2015	To modify the seawall and harbour edge treatment. Inclusion of a jetty and a lookout platform.
Mod 7	7 July 2017	To amend the marina configuration, including two new access points. A new condition was included to permit flexible berthing sizes, allowing for a total number of berths within each berth size to increase or reduce by up to 10%.

The previous modifications largely relate to the development of the inner harbour or harbour entry. It is noted that the outer harbour structures have not been amended as part of any previous modification.

## 3.0 Proposed Modifications to Consent

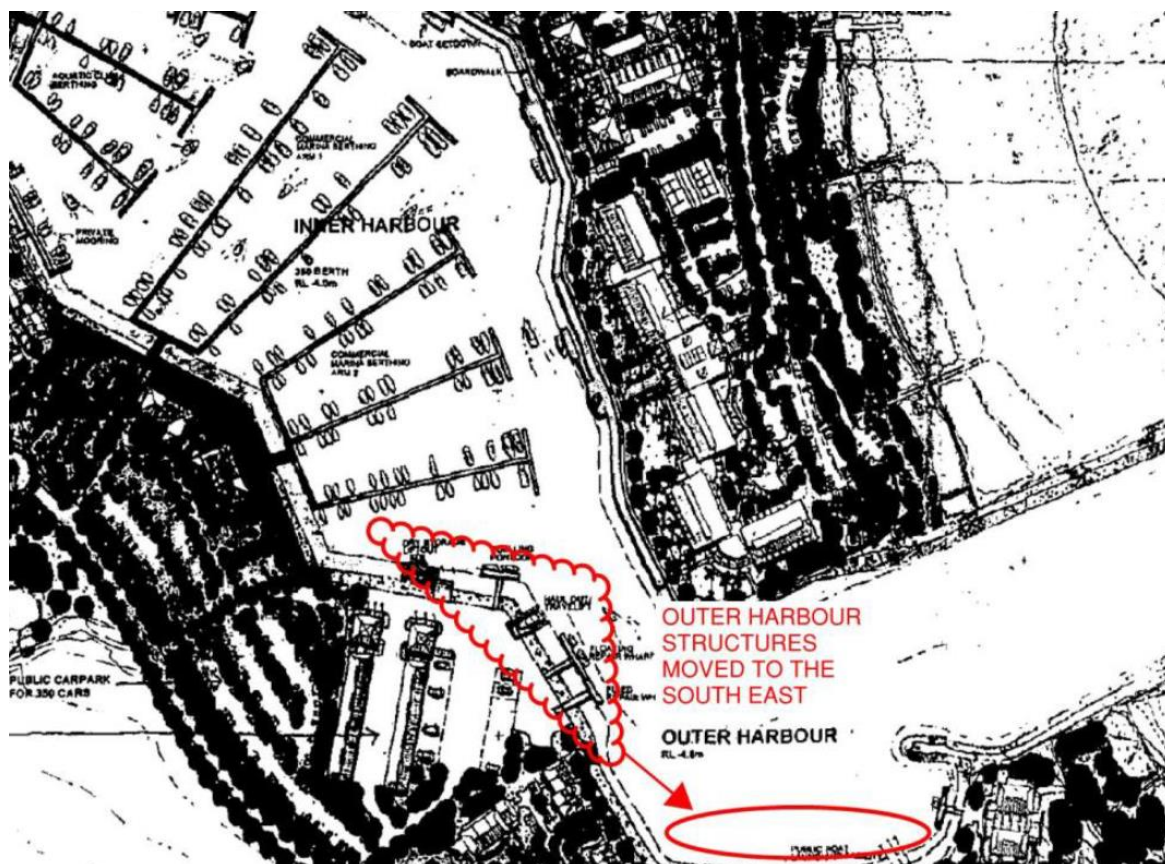
The proposed modifications are limited to the outer harbour area within the Boat Harbour. Specifically, the proposed modification seeks to relocate the following outer harbour structures to the south-east of their original location:

- A multipurpose pontoon, to be used as a boat pick-up point;
- Fuel and pump-out pontoon, to be used for boat refuelling and pumping out of sewerage;
- On-water maintenance berths for minor repairs and holding area for boats;
- A travel lift for hauling vessels from the water;
- A heavy-duty platform used to place and remove dry stored boats by forklift; and
- Holding areas

The fuelling facilities, including above ground fuel dispensers, are proposed as part of this application. The fuel tanks do not form part of this application and no works are proposed within the on-shore boat maintenance facility. We note that there are no changes proposed to the inner harbour or entry channel.

The relocation of the outer harbour structures is shown in **Figure 2** and **Figure 3**. All structures will remain outside the navigation channel that will connect the inner harbour with the entry channel and ocean. The modification application is supported by plans and sections prepared by Worley Parsons (**Attachment B**).





**Figure 2 Boat Harbour / Marina Plan**

Source: EIS prepared by LFA (Aust) Pty Ltd, June 1995 & Advisian



### 3.1 Reasons for the Proposed Modifications

As part of the Shell Cove Boat Harbour Precinct Concept Plan Approval, the boat ramp, boat storage and boat storage car park were approved within Precinct A, which is at the south-eastern end of the Boat Harbour Precinct. In this regard, the relocation of the outer harbour structures to adjacent to Precinct A will improve the operation and functionality of the water and land facilities.

Overall, the relocation of the outer harbour structures results in a development that is comparatively identical to that approved by DA 95/133.

## 4.0 Proposed Modification to Instrument

The proposed modifications described above necessitate amending the development consent. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***.

### Condition 1

In Schedule 2, amend Condition 1 to include:

*(g) the modification application made by Frasers Property Australia (NSW) Pty Ltd on [lodgement date] with accompanying Section 75W Application report by JBA Urban Planning Consultants Pty Ltd dated [February 2017], and the revised Marina Concept General Arrangement Plan, numbered 301015-02681-MA-DSK-0006 Issue A, prepared by Worley Parsons and dated 03/06/15, ~~and the following drawings:~~*

*(h) the modification application made by Frasers Property Australia (NSW) Pty Ltd on [30/08/2018] with accompanying Section 75W Application report by Ethos Urban dated [July 2018], and the revised Boat Harbour Plans numbered 30105-02681-MA-DSK-0024, prepared by Worley Parsons and dated 15/08/18, and the following drawings:*

Outer Harbour Facility Plans prepared by Worley Parsons Pty Ltd			
Drawing No.	Revision	Name of Plan	Date
301015-02681-MA-DSK-0021	E	General Arrangement	16/08/2018
301015-02681-MA-DSK-0024	F	Waterside Option 1	15/08/2018

*Note: Only new and revised plans have been included within this table.*

## 5.0 Planning Assessment

This section of the report assesses and responds to the environmental impacts of the proposed modification. It is structured based on the key topics and issues identified in the SEARs (refer Section 1.2) as well as other matters identified in the environmental assessment process. A full assessment of the EPI's and strategic planning documents identified within the SEARs has been attached as Appendix A (rear of document).

A number of the environmental issues were addressed as part of the original approval and as part of the subsequent modifications to the development. The assessment includes only those matters under section 4.15(1) of the EP&A Act that are relevant to the proposal.

### 5.1 Environmental Planning Instruments

The following environmental planning instruments and development control plans apply to the proposed development.

The following legislation, strategies and planning instruments are relevant to the proposed development:

- SEPP 55 – Remediation of Land
- SEPP 33 – Hazardous and Offensive Development
- SEPP (Coastal Management) 2018
- Shellharbour LEP 2013

### 5.1.1 SEPP 55 – Remediation of Land

The original development application for the Shell Cove Boat Harbour and Marina was accompanied by a Contamination Assessment. Development of the marina is ongoing with the majority of excavation work already complete.

Additionally, the Concept Plan for the Shell Cove Boat Harbour Precinct was accompanied by a Phase 2 site contamination assessment. This assessment included the excavation of boreholes throughout the site, including within the Boatharbour and Marina.

The Phase 2 Contamination assessment concluded that there was no major contamination issue which would preclude the development of the site. To render a number of identified sites suitable for the intended development, it was recommended that a Remedial Action Plan be prepared for the former golf course and at the location of a former farm structure. This report is included as **Attachment I**.

In accordance with the Phase 2 Contamination Assessment, a Targeted Site Investigation (TSI) was undertaken for the lands associated with the former golf course in Precinct E. Based on the analytical results the TSI found that the former golf course land within Precinct E is compatible with the proposed residential use. The Targeted Site Investigation has been provided at **Attachment J**.

Both of these reports confirm that the Shell Cove site is suitable for the proposed land uses.

### 5.1.2 SEPP 33 – Hazardous and Offensive Development

*State Environmental Planning Policy Number 33 - Hazard and Offensive Development* (SEPP 33) establishes a protocol for planning for development that can be categorised as Hazardous or Offensive Development. The Department of Planning's SEPP 33 Guidelines (2011) establish screening thresholds for Dangerous Goods stored on site, above which a Preliminary Hazard Analysis must be carried out to accompany a development application.

#### Fuel Storage and Refuelling

The proposed Boat Maintenance Facility will incorporate underground fuel tanks for the storage of premium unleaded petrol (PULP) and diesel. It is anticipated that these fuel tanks will be filled on a weekly basis. The proposed fuel system will comprise of underground fuel tanks for the storage of approximately 40,000 litres of diesel and 15,000 litres of premium unleaded petrol. The fuel pipelines between the underground tanks and the dispensers on the pontoon will be non-corrodible, double walled HDPE piping as required by law.

Filling of the underground tank compartments will be via gravity fill from a fuel tanker parked in close vicinity to the tank. The tanker driver/operator will connect a fuel hose from the tank outlet into a port in a purpose-built "spill safe box". The spill safe box has a closed compartment designed to catch any spilt fuel and prevent any leaked fuel from entering the environment.

All fuel dispensing for boats will occur via a single facility located on a floating pontoon located within the outer harbour structures. The pontoon will incorporate two dual fuel dispensers mounted on purpose built marine grade stainless steel under-pump sumps.

An assessment of the storage of fuel against the provisions of SEPP 33 has been provided in **Section 5.1.2**.

#### Site Assessment

Substances proposed to be stored onsite include automotive diesel fuel and petrol. Petrolink Engineering have prepared a fuel system design report (**Attachment L**). This report includes an assessment against the requirements of SEPP 33. Through this assessment, it has been determined that the provisions of SEPP 33 do not apply to the development.

### 5.1.3 SEPP (Coastal Management) 2018

The Coastal Management SEPP applies to land in the coastal zone. The Coastal Management SEPP seeks to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the Coastal management Act 2016.

The proposal is considered to be consistent with the provisions of the Coastal Management SEPP given that:

- The proposal remains generally consistent with the original approval (DA 95/133);
- The modification will not increase risk of coastal hazards;
- Will not result in an increased impact on any of the following beyond what was considered acceptable by the development approval and subsequent modifications:
  - Natural coastal processes;
  - Marine vegetation, native vegetation and fauna, undeveloped headlands and/or rock platforms;
  - Existing public open space and safe access to and along the foreshore, beach, headland or rock platform;
  - Aboriginal cultural heritage, practices and places; and/or
  - The use of the surf zone.

### 5.1.4 Shellharbour LEP 2013

The boat harbour is zoned W2 Recreational Waterways and the land above mean high water mark is zoned either R3 Medium Density Residential or B2 Local Centre under the *Shellharbour Local Environmental Plan 2013 (LEP 2013)*.

The objectives of the W2 zone include “*To allow for water-based recreation and related uses*”.

The Boat Harbour development achieves this objective by its nature. The proposed amendments will improve the developments ability to meet this objective by providing structures and facilities that allow for the ongoing use and operation of the marina, in a location that is more appropriate than the previously approved location.

## 5.2 Environmental Impacts

The environmental impacts of the development have largely been assessed and deemed appropriate as part of the original approval (DA 95/133) and subsequent modifications. This assessment seeks only to consider the impact resulting from the relocation of the outer harbour structures.

### 5.2.1 Built Form

#### Visual Impacts

The proposed outer harbour structures are flat pontoons that will sit above the water line. They will not incorporate any significant buildings or tall structures. Fuel dispensers will sit above these pontoons to a height of less than 2 metres with a slender roof structure above to a height of no more than 3 metres.

Given the small-scale nature of the pontoons and fuel dispensers, there is unlikely to be a visual impact resulting from the relocation of the outer harbour structures.

### 5.2.2 Amenity Impacts

A Noise & Vibration and Air Quality Impact Assessment has been prepared by Wilkinson Murray and is included at **Attachment M**. The assessment has been undertaken in accordance with the specific requirements set out in the SEARs. A summary of the assessment and the amenity impacts of the proposed modification are provided below and are based on the following assumed activities:

- Two forklift movements during a peak hour taking up to 15-minutes per lift;



- Maximum 6 boat lifts per day using the 75-tonne boat hoist;
- Up to 17 boats operational in the waterside berths/holding area;
- Intermittent refuelling and pump-out activity; and
- Outside boat wash-down on land.

### Noise and Vibration

Construction of the outer harbour structures will involve bored piling and general construction pontoons. Since the nearby residences will not have been constructed prior to the outer harbour construction, the construction noise impact has not been addressed in detail. The noise assessment has considered the impact of the following uses:

- Boat lift;
- Multipurpose pontoon; and
- Boat movements.

The development was found to be compliant with the Industrial Noise Policy providing:

- A noise fence to a height of 7 metres above the hardstand is constructed on the southern and western sides of the proposed boat maintenance and dry boat storage facility; and
- The windows on the eastern and northern sides of the residences located immediately west of the dry boat storage area are fitted with glazing at least 6mm thick and these residences are air-conditioned.

These acoustic mitigation measures are listed as requirements for the development of Precinct A within the Precinct A Design Guidelines for Medium Density Housing (**Attachment N**).

### Air Quality and Odour

The Proposal has the potential to emit air pollutants in the following ways:

- volatile organic compounds (VOC) associated with the refuelling facilities; and,
- odour associated with the pump-out facilities.

Given the significant distance between the proposed outer harbour facilities and the proposed residential developments, it is not expected that air quality at the future residences will be affected by odour or air pollutants associated with the outer harbour facilities. It has been recommended that operational management plans be developed for the refuelling and pump-out facility to educate users on the proper operation of the facility, and these will be prepared prior to the issuing of a Construction Certificate.

### 5.2.3 Public Domain and Open Space

The proposed relocation of the approved outer harbour structures will not impact the public domain and open space surrounding the boat harbour. As illustrated in **Figure 3**, the outer harbour structures will connect with the open space edge surrounding the boat harbour. Safe access to and along the foreshore surrounding the boat harbour will be maintained.

### 5.2.4 Transport and Accessibility

#### Construction Traffic

Construction traffic management has been detailed within the Construction Environmental Management Plan (CEMP) (**Attachment F**) prepared by Patterson Britton and Partners. This plan proposes management strategies and mitigation measures to reduce the traffic impact on local roads.

The relocation of the outer harbour structures will not impact the ongoing traffic management systems that are in place for the construction of the Shell Cove Boatharbour and Marina.

### Operational Traffic

A Traffic Impact Assessment has been prepared by Arcadis (**Attachment D**) for Precinct A. The assessment includes a consideration of the outer harbour structures. Through the relocation of the outer harbour structures to Precinct A, semi-trailer and articulated trucks are expected to enter the precinct for boat and fuel delivery purposes and to fulfil the operational requirements of the boat maintenance facility. The following truck trips are expected to serve the outer harbour structures on a weekly basis:

- Fuel deliveries: 19.0m articulated vehicles for premium unleaded petrol (PULP) and diesel are expected twice per week subject to demand
- Boat deliveries: 19.0m semi-trailer trucks are expected twice per week subject to demand
- General deliveries: General deliveries trucks are expected three times per week subject to operational requirements
- Waste collection trucks: Waste collection trucks for garbage, recycling, oil waste, paint waste, etc. are expected four times per week subject to operational requirements

In addition to the above truck trips, forklift and marine travel lift are expected in the Outer Harbour Development on occasional basis, however these movements are not expected to result in a traffic impact on the road network.

Considering these additional truck trips with longer lengths, a swept path analysis was conducted for a 19.0m Semi-Trailer Truck for all intersections within Precinct A. The swept path analysis showed that all intersections provided adequate manoeuvrability for the service vehicles.

### Marina Traffic

Daily water vehicular movements are not expected to change as a result of the relocation of the outer harbour structures.

#### 5.2.5 Safe Navigation of Vessels

A Safe Navigation Statement has been prepared by Advisian (**Attachment E**) addressing the impact of the proposed siting of the outer harbour structures on navigation within the harbour. The outer harbour facilities are proposed to support both recreational and commercial vessels within the sheltered outer harbour. Following an assessment of the berthing sizes, channel widths and water depth requirements, Advisian concluded that:

*“The revised Outer Facilities layout provided in Attachment 1 is in accordance with the criteria set out in AS 3962-2001 Guidelines for the design of marinas to provide the safe navigation of various vessel sizes up to 30m in length”*

#### 5.2.6 Acid Sulfate Soils

Acid Sulfate Soils (ASS) were assessed as part of the original EIS and considered appropriate as part of DA 95/133. The conditions of consent for the Shell Cove Boatharbour and Marina required the preparation of an Acid Sulfate Soil Management Plan (ASSMP). This condition was met through the preparation of the Shell Cove Boatharbour Construction Environmental Management Plan (CEMP) prepared by Patterson Britton and Partners (**Attachment F**). This CEMP assesses the:

- Potential environmental impact;
- Management strategy and control measures;
- Monitoring and compliance standards; and
- Corrective actions.



In this way, an appropriate ASSMP is in place in order to address the impact of ASS occurring within the Shell Cove Boat Harbour and Marina site.

## 5.2.7 Waste Management

### Construction Waste

A Construction Environmental Management Plan (CEMP) (**Attachment F**) has been prepared by Patterson Britton and Partners in accordance with the requirements of the existing development consent. The CEMP sets out the environmental management practices, monitoring and mitigation measures for the construction of the boat harbour and marina component of the development.

The proposed modification will not impact the existing CEMP which aims to carry out works in accordance with environmental statutory requirements and avoid environmental issues where possible.

### Operational Waste

An Operational Operational Environmental Management Plan (OEMP) (**Attachment H**) has been prepared by Patterson Britton and Partners. The OEMP provides information on environmental issues, mitigation measures, monitoring, compliance standards, corrective actions, reporting and auditing proceedings relating to the operation of the Boatharbour.

The proposed modification will not impact the existing OEMP.

## 5.2.8 Drainage and Flooding

A Coastal Processes and Hazards Statement has been prepared by Advisian (**Attachment G**) in order to assess the impact of relocating the approved outer harbour structures. This assessment considers the impact on the coastal hazards listed within the Coastal Management Act 2016, being:

- Beach erosion;
- Shoreline recession;
- Coastal lake or watercourse entrance instability;
- Coastal inundation;
- Coastal cliff or slope instability;
- Tidal inundation; and
- Erosion and inundation of foreshores caused by tidal waters and the action of waves, including the interaction of those waters with catchment floodwaters.

Advisian have concluded that the relocation of the outer harbour structures will have no significant impact on the coastal processes and hazards for the site and the previous management measures would be retained.

## 5.2.9 Water Resources

The proposed relocation of the outer harbour structures do not seek to make any changes to the water supply. Therefore, an assessment of the water resources is not required for the following reasons:

- The Boatharbour and Marina will have a secure water supply for the life of its operation;
- The site is not a landlocked water body and the water balance will be dependent on the Pacific Ocean;
- Impacts on surface and ground water will not be impacted through the relocation of the outer harbour structures; and
- The CEMP (**Attachment F**) and OEMP (**Attachment H**) are in operation with a key aim of minimising the environmental impacts from the construction and operation of the marina.

### 5.2.10 Utilities and Services

A Utility, Sewer and Water Services Strategy has been prepared by Arcadis for the entire Precinct A (**Attachment K**). The Boat Maintenance Facility and Outer Boat Harbour Development Addendum is included at Appendix I of the Utility, Sewer and Water Services Strategy. The outer harbour structures will be serviced by a sewer pump out system. Water, electricity and gas will be available from Precinct A if necessary in the future.

The sewer pump out is proposed to be located on one of the proposed pontoons within the proposed Outer Boat Harbour development, which is proposed to cater for sewerage disposal from the toilet facilities on the boats, that will utilise the proposed marina and boat harbour facilities. A private sewer system will convey sewer flows from this sewer pump out facility to a connection point within the proposed Precinct A sewer network.

### 5.3 Site Suitability & Public Interest

The suitability of the site for the Shell Cove Boat Harbour and Marina was determined by DA 95/133. The relocation of the outer harbour structures will not impact on the suitability of this site, rather it will facilitate the use in a location adjacent to the boat ramp and boat ramp car park. In this regard, the proposed relocation of the outer harbour structures is considered to be in the public interest.

## 6.0 Conclusion

The application proposes a modification to the type and location of structures within the outer harbour of the Shell Cove Boat Harbour and Marina. The revised layout seeks to locate the structures in the most appropriate location, adjacent to Precinct A, having regard for the Shell Cove Boat Harbour Concept Plan and the location of the boat ramp and boat storage.

The proposed modification has been assessed for its environmental impacts in accordance with the SEARs issued by the Department of Planning and Environment. It has been determined that the proposed modification will not result in any additional impacts beyond those already considered during the assessment of DA 95/133 and the subsequent modifications.

In light of the above, we therefore recommend that the proposed modification is supported by the Department. We trust that this information is sufficient to enable a prompt assessment of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or by email at [jmurray@ethosurban.com](mailto:jmurray@ethosurban.com) or [rgraham@ethosurban.com](mailto:rgraham@ethosurban.com).

Yours faithfully,



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## Appendix A - Relevant EPIs, Policies and Guidelines

**Table 3 Assessment against EPIs, Policies and Guidelines**

Document	Comment
<b>Environmental Planning Instruments</b>	
Environmental Operations Act 1997	Activities associated with the construction of the boat harbour are subject to an Environment Protection Licence (EPL), being EPL 12426, issued by the Environment Protection Authority (EPA).
State Environmental Planning Policy (Infrastructure) 2007	Not applicable.
State Environmental Planning Policy (State and Regional Development) 2011	Not applicable. The proposal relates to the modification of an existing consent approved under Part 4 of the EP&A Act.
State Environmental Planning Policy No 33 – Hazardous and Offensive Development	Assessment provided in Section 5.1.2.
State Environmental Planning Policy No 55 - Remediation of Land	Assessment provided in Section 5.1.1.
State Environmental Planning Policy (Coastal Management) 2018	Assessment provided in Section 5.1.3.
Shellharbour Local Environmental Plan 2013	Assessment provided in Section 5.1.4.
Illawarra-Shoalhaven Regional Plan	The ongoing development and operation of the site as a marina is consistent with the intent of the Illawarra-Shoalhaven Regional Plan.
Shellharbour Development Control Plan.	The proposed modification remains consistent with the Shellharbour DCP.
<b>Planning Provisions, goals and strategic planning objectives</b>	
NSW State Priorities	No policy is likely to be impacted from the proposed modification.
NSW Long Term Transport Master Plan	No policy is likely to be impacted from the proposed modification.
Draft Future Transport Strategy 2056	No policy is likely to be impacted from the proposed modification.
RMS Guide to Traffic Generating Developments	A Traffic Impact Assessment has been provided in Section 5.2.4 and at Attachment D.
Public Transport Service Planning Guidelines: Rural and Regional NSW (2015)	A Traffic Impact Assessment has been provided in Section 5.2.4 and at Attachment D.
Austroads Guidelines	A Traffic Impact Assessment has been provided in Section 5.2.4 and at Attachment D.
NSW Industrial Noise Policy	The NSW Industrial Noise Policy is considered as part of the Noise and Vibration and Air Quality Assessment ( <b>Attachment M</b> ).
Interim Construction Noise Guidelines	The ongoing construction will be in accordance with the CEMP ( <b>Attachment F</b> ).
Assessing Vibration: a technical guideline	No policy is likely to be impacted from the proposed modification.
Managing Urban Stormwater – Soils and Construction Vol 1	No policy is likely to be impacted from the proposed modification.
EPA Environmental Action for Marinas, Boatsheds and Slipways	The operation of the marina is covered by the OEMP ( <b>Attachment H</b> ).
Best Management Practice for Marinas and Slipways	Best management practices have been adopted as part of the overall design of the marina. The proposed modification seeks to relocate structures to the most appropriate location, nearby to the boat ramp and boat storage facility.
DPI Water Guidelines for Controlled Activities on Waterfront Land	Not applicable.

Document	Comment
Water Sharing Plans for the Greater Metropolitan Region Groundwater Sources	No impact.
Relevant Australian Standards	The relevant Australian Standards will be addressed as part of any Construction Certificates.
Crime Prevention Through Environmental Design (CPTED) Principles	No impact.
Healthy Urban Development Checklist, NSW Health	No impact.