

I am 50% owner of 29 Torres Circuit, Shell Cove. I endorse the submission by my son, Guy Formica, and the submission produced by Hones Lawyers and James Lovell and Associates.

**Guy**

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**From:** "Guy" <guy@exceltronix.com>  
**Date:** Saturday, October 7, 2017 4:23 PM  
**To:** "Glenn Colquhoun" <Glenn.Colquhoun@frasersproperty.com.au>  
**Cc:** "Sonia Rees" <soniarees3@gmail.com>; "Henry" <henryad60@hotmail.com>; "Sam" <sam\_archibald@hotmail.com>; "Bev Carrett" <carrett@aapt.net.au>; "Jason Goodes" <jgoodes@iii.net.au>; "Emma Grima" <emma@grimaaccounting.com.au>; "Peter Messer" <petermesser@bigpond.com>; "David Welch" <welchdj2@bigpond.com>; "WIN News" <wollnews@winns.com.au>; "Gareth Ward" <kiama@parliament.nsw.gov.au>; "Michelle Niles" <michelle.niles@planning.nsw.gov.au>; "Jason" <jhones@honeslawyers.com.au>; "Marianne Saliba" <Marianne.Saliba@shellharbour.nsw.gov.au>; "Moir Hamilton" <moira.hamilton@shellharbour.nsw.gov.au>; "Rob Petreski" <robert.petreski@shellharbour.nsw.gov.au>; "John Murray" <John.Murray@shellharbour.nsw.gov.au>; "Nathan Cattell" <nathan.cattell@shellharbour.nsw.gov.au>; "Kellie Marsh" <kellie.marsh@shellharbour.nsw.gov.au>; "Peter Messer" <petermesser@bigpond.com>; "Carey McIntyre" <carey.mcintyre@shellharbour.nsw.gov.au>  
**Subject:** Re: Modification to Shell Cove Boat Harbour Concept Plan MP 07\_0027 MOD 1

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.

**From:** Glenn Colquhoun  
**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**

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**From:** Guy [mailto:guy@exceltronix.com]  
**Sent:** Wednesday, 4 October 2017 11:54 AM  
**To:** Glenn Colquhoun <Glenn.Colquhoun@frasersproperty.com.au>  
**Cc:** Sonia Rees <rees\_sonia@hotmail.com>; Henry <henryad60@hotmail.com>; Sam <sam\_archibald@hotmail.com>; Bev Carrett <carrett@aapt.net.au>; Jason Goodes <jgoodes@iii.net.au>; Emma Grima <emma@grimaaccounting.com.au>; Peter Messer <petermesser@bigpond.com>; welchdj2@bigpond.com; wollnews@winnsww.com.au; kiama@parliament.nsw.gov.au; michelle.niles@planning.nsw.gov.au; jhones@honeslawyers.com.au  
**Subject:** Modification to Shell Cove Boat Harbour Concept Plan MP 07\_0027 MOD 1

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

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**From:** Glenn Colquhoun  
**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**

Mob: +61 414 512 522 Tel: +61 2 4297 7364  
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08/10/2017

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**From:** Guy [mailto:guy@exceltronix.com]  
**Sent:** Friday, 22 September 2017 4:16 PM  
**To:** Glenn Colquhoun <Glenn.Colquhoun@frasersproperty.com.au>  
**Cc:** wollnews@winnsww.com.au  
**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  
Contact; 0400 009 061

# **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 are 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 21<sup>st</sup> Sep 2017 from local residents posting it on Facebook.

I visited the Frasers sales office on 22<sup>nd</sup> 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 28<sup>th</sup> 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 10<sup>th</sup> Oct, only 10 days before the exhibition closing date of 20<sup>th</sup> 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 30<sup>th</sup> 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 -----

From: Kevin James <[Kevin.James@shellharbour.nsw.gov.au](mailto:Kevin.James@shellharbour.nsw.gov.au)>

Date: Thu, 19 Oct 2017 at 10:21 am

Subject: Shell Cove: Project (10945266)

To: [soniarees3@gmail.com](mailto:soniarees3@gmail.com) <[soniarees3@gmail.com](mailto:soniarees3@gmail.com)>

Good morning Sonia.

Carey McIntrye (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

Lamerton House, Lamerton Crescent, Shellharbour City Centre

Locked Bag 155, Shellharbour City Centre, NSW 2529

**p.** (02) 4221 6012 **f.** (02) 4221 6079 **m.** 0412 424 130

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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.