

**Minutes of the Ordinary Meeting
of Shellharbour City Council
held at the Council Chambers, Council Administration Centre
Shellharbour City Centre
on Tuesday 09 April 2019 commencing at 6.30 pm**

Present

Mayor, Councillor	M Saliba
Deputy Mayor, Councillor	J Murray
Councillor	N Cattell
Councillor	M Hamilton
Councillor	K Marsh
Councillor	P Moran
Councillor	R Petreski

In attendance

General Manager	C McIntyre
A/ Director Council Sustainability	M Chiodo
Director Community and Customers	M Boxall
Director Amenity and Assets	B Stewart
Executive Manager / Public Officer	F Lepouras
Chief Financial Officer	G Grantham
Group Manager Asset Strategy	W Peterson
Group Manager Organisation Development	E Woods
Manager Financial Services	P Henderson
Manager Property & Recreation	D Flanagan
Corporate Accountant	J Harris
Organisational Performance Coordinator	T Downton
Media Officer	K Wells
Councillor Support Officer (Minute Taker)	J Frasca
Information Technology Officer/Service Desk	M Felix

1. Acknowledgement to Country

Shellharbour City Council acknowledges the Traditional Owners and Custodians of the Land on which we are meeting and pays its respects to Elders past and present.

Webcasting and Emergency Plan Statement

The Mayor read the usual advice regarding the webcasting of the meetings of the Council and the emergency plan for Council Meetings.

2. Apologies

Ordinary Council Meeting

Nil.

3. Leave of Absence

Nil.

4. Confirmation of Minutes

4.1 Ordinary Meeting 19 March 2019

34 RESOLVED: Marsh/Hamilton

That the Minutes of the Ordinary Council Meeting held on 19 March 2019 as circulated be taken as read and confirmed as a correct record of proceedings.

CARRIED UNANIMOUSLY

5. Declarations of Interest

General Manager Carey McIntyre: Item 6.1 General Manager's Performance – Six Month Review 2018/19

Nature of Interest: The General Manager declared a pecuniary interest in Item 6.1 as it related to his employment contract.

6. Confidential Business (Committee of the Whole in Closed Session)

In accordance with the *Local Government Act 1993*, and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, the following business is of a kind as referred to in Section 10A(2) of the Act, and should be dealt with in a Confidential Session of the Council meeting closed to the press and public.

Set out below is Section 10A(2) of the Local Government Act 1993, in relation to Confidential Business:

10A(2) Which parts of a meeting can be closed to the public? The matters and information are the following:

- (a) personnel matters concerning particular individuals,
- (b) the personal hardship of any resident or ratepayer,
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law,
- (f) matters affecting the security of the council, councillors, council staff or council property,
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege,
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
- (i) alleged contraventions of any code of conduct requirements applicable under section 440.

CONFIDENTIAL ITEMS

6.1 General Manager's Performance - Six Month Review 2018/19 (11195651)

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(a) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (a) personnel matters concerning particular individuals (other than councillors)

This matter has been classified as confidential under Section 10A(2)(a) of the *Local Government Act 1993* as it relates to the General Manager's performance review as a personnel matter and is in accordance with the Guidelines for the Appointment and Oversight of General Managers issued by the Office of Local Government (guidelines under Section 23A of the *Local Government Act 1993*).

Declassification of this Report

The report will not be declassified.

7. Condolences

The Council acknowledged the following deaths in the Local Government area.

Mr John Chisholm	of	Albion Park
Mrs Anne Cormick	of	Albion Park
Mrs Maria Da Lio	of	Albion Park
Mrs Gwen Tomlin	of	Albion Park
Mrs Melissa Jane Cowan	of	Albion Park Rail
Mr Joe De La Cuerda	of	Albion Park Rail
Mrs Betty Dawn Hodgson	of	Albion Park Rail
Mr Robert Hunter	of	Barrack Heights
Mr Wayne Whitney	of	Barrack Heights
Mr Javier Martin	of	Mount Warrigal
Mr Douglas Allan Bruce	of	Oak Flats
Ms Nola Janice Gentle	of	Warilla
Mr Geoffrey Gorman	of	Warilla
Ms Rosa Kovacs	of	Warilla
Mrs Ann Joan Welsh	of	Shellharbour
Mrs Maria Zuzic	formerly of	Shellharbour

35 A Motion of condolence was passed by all present standing for one minute's silence.

8. Mayoral Statements / Reports / Presentations

20/3/19 Citizenship Ceremony

21/3/19 Launch of ultimate learner log book experience

21/3/19 NSW State Emergency Services – Southern Illawarra Cluster Awards
Shellharbour and Kiama Awards

SHELLHARBOUR CITY COUNCIL

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- 25/3/19 White Ribbon Fundraiser with staff– Cheese for Change Morning Tea
- 26/3/19 Coordinated a meeting with a Clontarf Foundation representative and Warilla Bowls & Recreation Club
- 26/3/19 Check handover to Shellharbour Swans Junior AFL
- 27/3/19 CivicRisk Mutual Board Meeting
- 28/3/19 UOW Tottenham Hotspur Global Football Program Dinner
- 2/4/19 Launch of Wings over the Illawarra
- 3/4/19 Australia Day Committee – Cheque Presentation to Recipients
- 4-6/4/19 NSW Australian Local Government Women’s Association Conference

The Mayor congratulated Council’s Planning and Building teams on their success in determining 100 development applications last month.

The Mayor read out a letter received by a Shell Cove resident that congratulated Council on being one of only five councils to achieve all five “Fit for the Future” ratios and for Council being awarded the Museum and Galleries NSW Imagine Award.

9. Mayoral Minutes

9.1 Mayoral Minute: Learnings from 8th Alliance for Healthy Cities (AFHC) Global Conference held 15-20 October 2018 in Kuching Malaysia

36 RESOLVED: Mayor Saliba

That:

1. The report be received and noted.
2. Council Officers investigate creative ways to activate popular open spaces or well utilised open spaces in our City.

CARRIED UNANIMOUSLY

10. Councillors' Statements / Reports

Councillor Petreski advised that he and Councillor Murray attended the opening of the Shellharbour Relay for Life on 5 April 2019.

11. Reports

11.1 General Manager

11.1.1 General Manager's Contract of Employment Renewal (11195650)

37 RESOLVED: Murray/Petreski

That the report detailing the renewal of Carey McIntyre, General Manager's contract of employment for a further period of five years from 2 November 2018 to 1 November 2023 be received and noted.

CARRIED UNANIMOUSLY

11.1.2 Delivery Program 2018 - 2021 including the Draft Operational Plan 2019 - 2020 and the Draft Long Term Financial Plan (11193547)

Councillor Moran asked whether Council has seen an increase in 140ltr bin services since the commencement of the FOGO program. The General Manager took the Question on Notice.

38 RESOLVED: Murray/Cattell

That Council:

1. Endorse for the purpose of exhibition the Delivery Program 2018 – 2021 including the Draft Operational Plan 2019-2020 including Draft Revenue Policy and Draft Fees and Charges 2019-2020 and the Draft Long Term Financial Plan.
2. Publicly exhibit the draft documents (Attachments 1 and 2) for the period 12 April 2019 to 10 May 2019 with submissions being accepted until 4.30pm on 10 May 2019.
3. Post public exhibition provide a report to Council with the outcomes of the public exhibition including any submissions received.

CARRIED UNANIMOUSLY

11.2 Council Sustainability Directorate

11.2.1 Internal Restrictions (11192872)

39 RESOLVED: Murray/Moran

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1. That Council endorse the removal of the Internal Restrictions as detailed within Attachment 1 of this report, with these funds being transferred to Council's unrestricted reserves categorisation, while still maintaining Council's statutory obligations.
2. That these adjustments be made as part of the March Quarter Budget Review.

CARRIED UNANIMOUSLY

11.2.2 Monthly Investment Report - February 2019 (11193127)

40 RESOLVED: Murray/Hamilton

That Council receive and note the attached Investment Portfolio report as at 28 February 2019.

CARRIED UNANIMOUSLY

11.2.3 Non-continuance of Formal Road Closure of a Section of Public Road - Lamerton Crescent and Yerrowah Road, Shellharbour City Centre (11192869)

41 RESOLVED: Murray/Petreski

That Council does not proceed with the road closure of a Section of Public Road Lamerton Crescent and Yerrowah Road, Shellharbour City Centre.

CARRIED UNANIMOUSLY

11.3 Community and Customers Directorate

Nil.

11.4 Amenity and Assets Directorate

11.4.1 Contract 2017-116 - Geoff Shaw & Howard Fowles Amenities Construction - Budget Adjustment (11195335)

42 RESOLVED: Moran/Marsh

That Council:

1. Approve the additional costs detailed in the Confidential Memo – Item 11.4.1 Contract 2017-116 – Geoff Shaw & Howard Fowles Amenities Constructions – Budget Adjustment.

2. That Council approved the funds to be included in the 2019/20 financial year.

CARRIED UNANIMOUSLY

12. Committee Recommendations

12.1 Recommendations from the Traffic Committee Meeting held 6 March 2019 recommended for adoption.

- 43 RESOLVED: Marsh/Hamilton

That the Recommendations from the Traffic Committee Meeting held 6 March 2019 be adopted.

CARRIED UNANIMOUSLY

12.2 Recommendations from the Aboriginal Advisory Committee Meeting held 5 March 2019 recommended for adoption.

- 44 RESOLVED: Cattell/Petreski

That the Recommendations from the Aboriginal Advisory Committee Meeting held 5 March 2019 be adopted.

CARRIED UNANIMOUSLY

12.3 Recommendations from the Disability Access and Inclusion Advisory Committee Meeting held 13 March 2019 recommended for adoption.

- 45 RESOLVED: Moran/Murray

That the Recommendations from the Disability Access and Inclusion Advisory Committee Meeting held 13 March 2019 be adopted.

CARRIED UNANIMOUSLY

13. Items for Information

13.1 Item for Information: Petition regarding Community Centre at 24 Fisher Street, Oak Flats (11193237)

This item for information has been formally noted.

14. Notices of Rescission/Alteration Motions

Nil

15. Notices of Motion

15.1 Notice of Motion submitted by Cr Peter Moran: Australian Hotels Association Membership (11197360)

46 RESOLVED: Moran/Marsh

That the General Manager provide a report to Council at his earliest convenience on the appropriateness of Council being a member of the Australian Hotels Association given that organisation has registered as a Third Party Campaigner in NSW.

CARRIED UNANIMOUSLY

16. Questions on Notice (must be submitted in writing)

Nil.

17. Urgent Business

Nil.

18. Committee of the Whole in Closed Session (Closed to the Public): Adjournment

The Mayor asked whether anyone in the public gallery wish to speak on the reasons why Item 6.1 General Manager's Performance – Six Month Review 2018/19 should not be held in Confidential Session (Closed to the Public). No members of the gallery expressed an interest in addressing council.

47 RESOLVED: Murray/Marsh

1. That Council resolve into Committee of the Whole (in Confidential Session) to consider the above business as listed, together with any late reports tabled at the meeting.
2. That pursuant to Section 10A(1-3) of the *Local Government Act 1993*, the press and public be excluded from the proceedings on the basis that the business to be considered is classified confidential under the provisions of Section 10A(2)(c), (d)(i) & (ii) of the Act as outlined above.

3. That the correspondence and reports relevant to the subject business be withheld from access to the press and public in accordance with Section 11(2) of the *Local Government Act 1993*.

Meeting adjourned 7.23pm

Meeting resumed 7.38pm

19. Committee of the Whole in Closed Session: Consideration of Adoption of Decisions Reached in Closed Session

The following Recommendations to Council from the Committee of the Whole (Confidential) session were read to the Meeting by the Executive Manager.

6.1 General Manager's Performance - Six Month Review 2018/19 (11195651)

COMMITTEE RECOMMENDATION:

1. That the report of the General Manager's Performance Six Month Review 2018/19 be received and noted.
2. That the General Manager's Performance Review Panel recommendations as outlined in the report be endorsed.
3. That the General Manager's Personal Performance Agreement 2018/19 be received and noted (Attachment 1).
4. That it be noted in the opinion of the General Manager's Performance Review Panel, the General Manager Carey McIntyre is performing at a high level and the Council congratulates him on that performance.

48 RESOLVED: Marsh/Cattell

The Recommendations to Council from the Committee of the Whole held earlier today be adopted.

CARRIED UNANIMOUSLY

20. Consideration of Motions to Declassify Reports Considered in Closed Session

Nil.

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20.1 Consideration of Motion to Declassify Report Considered in Closed Session: Shell Cove - Retail Stage 1 - Progress of Sale (11171966)

49 RESOLVED: Moran/Petreski

That Council approve the declassification of the report presented to the Council meeting on 8 November 2016 – 4.2 Shell Cove - Retail Stage 1 - Progress on the Sale (10784902) and that this report be added to the Minutes (Attachment 1).

CARRIED UNANIMOUSLY

Meeting closed 7.40 pm

Attachment 1 – Declassified Report as presented to Council on 8 November 2016 – 4.2 Shell Cove – Retail Stage 1 – Progress on Sale

4.2 Shell Cove - Retail Stage 1 - Progress on the Sale (10784902)

To the General Manager

Directorate: Shellharbour Enterprises
Department: Shell Cove

Manager: Matthew Youell – Director Shellharbour Enterprise
Author: Kevin James – Shell Cove Commercial Manager
Donna Flanagan – Manager Property & Recreation

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(c,d(ii)) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
- (d) commercial information of a confidential nature that would if disclosed:
 - (ii) confer a commercial advantage on a competitor of the council

Candid discussion of this item in any open meeting or briefing of Council, would be contrary to the public interest, as this consideration has implications for the commercial, private interests of Council and its associate in the Management Agreement. Council is considering its options for acquisition or divestment of land which is part of the Harbour Land defined in the Management Agreement, being residential, retail and commercial precincts of The Waterfront, Shell Cove. Also, Council is considering the use of development funds held under the Management Agreement.

Summary

The purpose of this report is to inform Council on the progress of the sale of Retail Stage 1 to Australand and to seek a resolution on progressing with the sale. In particular, the updated information in the consultants' reports varies from the information provided to Council in the confidential reports of 6 October 2015 and 15 March 2016. This report provides the circumstances and latest information to Council.

The Recommendations of this report are for Council to proceed with the sale of the Retail Stage 1 Land to Australand based upon the final negotiated terms. Further, the Shell Cove Management Committee will progress the development of Retail Stage 1 based upon the final negotiated terms.

Background

Council has a strong vision for the Shell Cove Town Centre that will deliver broad social and economic outcomes to the community.

The first development action in the Town Centre is the Retail Stage 1 project involving a full range supermarket, about 8 associated shops and carparking at grade and in a basement (under the supermarket). The development application (DA) was prepared and lodged with Council in early 2016; its approval from the Joint Regional Planning Panel is expected shortly.

A key masterplanning aspect of the retail design is the basement carpark. Before its inclusion in the DA, Council was involved in briefings and meetings in 2015 that lead to its support of it. On 6 October 2015, Council considered a confidential report about carparking and resolved:

1. That Council endorses the Shell Cove Project utilising Project funds for the development of basement carparking within the Retail Stage 1 land which forms part of the Shell Cove Town Centre.
2. That Council endorses the imposition of an appropriate covenant (or similar legal mechanism) for the free public use of the basement carpark, and its negotiation be part of those actions in the sale of the Retail Stage 1 land.

At the same meeting, Council considered a confidential report about the sale of the Retail Stage 1 land to Australand, and resolved:

1. That Council receive and note this report.
2. That Council resolve to undertake a further valuation for this site. This valuation to be based on the improved capital value of the site as a result of the provision of an underground car park.
3. That, if necessary to meet project timelines, this matter be brought back as a matter of urgency to an extraordinary meeting.

The matter was finally considered by Council in a confidential report on 15 March 2016 and it resolved:

1. That Council sells the Retail Stage 1 Land on the terms set out in the Heads of Agreement included in Attachment 1 of this Report.
2. That the General Manager be delegated authority to negotiate the final terms of the Heads of Agreement and the formal Option Documents, subject to the terms of those documents not being inconsistent with the terms set out in the Heads of Agreement included in the Report.
3. That the Mayor and the General Manager, or his nominated delegate, be authorised to execute any document required to give effect to resolution 1.

4. That the Heads of Agreement and formal option documentation specify that the car park be available for full public use and that the necessary legal instruments be used to permanently protect this right.

The key outcomes of the previous Council reports are shown in **Table 1**.

Table 1: Reported Cost and Land Value

Item	Previous Reports
Basement Carpark Cost	\$4.1m
Land Value	\$1.5m

The Heads of Agreement was finalised and signed by Council.

Under the Agreement, the purchase price was to be determined according to a defined process involving the joint appointment of suitably qualified:

- a) Quantity Surveyor – to determine the expected construction costs of the Retail Stage 1 development.
- b) Valuer – to determine the expected rents, capitalisation rates, the end value of the developed Retail Stage 1 land and the residual land value (using the Quantity Surveyor's cost estimates).

The purchase price is the Valuer's determined residual land value.

The joint appointments occurred and the consultants produced their reports. The updated information in their reports varies from the information provided to Council in the confidential reports of 6 October 2015 and 15 March 2016. The purpose of this report is to provide the latest information to Council.

The key outcomes of the consultants' reports are shown in **Table 2**.

Table 2: Consultants' Cost and Land Value

Item	Consultants' Reports
Basement Carpark Cost	\$7,380,708
Land Value	(\$650,000)

The increase in the Basement Carpark Cost is attributed to the passage of time, design changes from the preliminary drawings of mid-2015, detailed civil engineering designs, compliance with the latest standards and that costs are based on median industry results and forecasts.

In accordance with the Heads of Agreement, Council resolutions and Shell Cove Management Committee decisions, the Project is required to contribute a total of \$8,030,708 (being the sum of the “Consultants’ Reports” amounts in **Table 2**).

The reports were reviewed by the Shell Cove Management Committee who held negotiations with the Construction and Retail Divisions of Frasers Property Group. The Construction Division was able to identify areas where the expected real costs differed from the median industry results and forecasts by the Quantity Surveyor. This resulted in a significantly lower total cost and this is acceptable to the Retail Division. Further, the Retail Division offered a revised lower purchase price. These negotiations are summarised in **Table 3**.

Table 3: Negotiated Outcomes

Item	Negotiated Amount
Basement Carpark Cost	\$6,360,833
Land Value	\$0

In instances of \$0 land value, a Contract for Sale of land requires the purchase price to be the nominal amount of \$1. This will be done, accordingly.

The Shell Cove Management Committee sought an updated land value of the lands that would be needed for at-grade carparking if the basement carpark was not to proceed, all-be-it that the DA and the agreed sale have advanced to a point beyond any reversal of the original decision. The land value is shown in **Table 4**.

Table 4: Land Value of alternate site

Item	Assessed Amount
Land Value	\$8,292,000

It is clear that the Land Value in Table 4 is higher than the Basement Carpark Cost in Table 3 and this demonstrates that the basement carpark is still the best value option for the Shell Cove Project to proceed with.

Council Decision Making During Merger Proposal Periods – Section 23A of the Local Government Act 1993.

The Office of Local Government’s Guidelines ‘*Council Decision Making During Merger Proposal Periods (December 2015)*’ seeks to assist councils in serving their communities effectively and provide clear guidance on what is and is not appropriate and permissible during the merger proposal period. In the case of this report, the purpose is to proceed to fund the basement carpark within the Retail Stage 1 of the Shell Cove development. Council Decision Making During Merger Proposal Periods – Section 23A of the *Local Government Act 1993*.

The provision made in Council's current Operational Plan which contemplates the establishment of the Shell Cove Boat Harbour as a lifestyle and boating destination providing development, tourism and community opportunities is reported under Objective 3.2 and Strategy 3.2.1.

The Office of Local Government's document *Council Decision Making During Merger Proposal Periods* states:

- "Council's the subject of merger proposals should not enter into a contract or undertaking involving the expenditure or receipt by the council of an amount equal to or greater than \$250,000 or 1% of the Council's revenue from rates in the preceding financial year (whichever is the larger), unless:
 - The contract or undertaking is entered into as a result of a decision made or procurement process commenced prior to the start of the merger proposal period; or
 - entry into the contract or undertaking is reasonably necessary for the purposes of:
 - meeting the council's ongoing service delivery commitments to its community; or
 - to implement an action previously approved under a council's Delivery Program or the Operational Plan for the relevant year.

In this instance, to proceed to fund the basement carpark within the Retail Stage 1 of the Shell Cove development is not in breach of the above guidelines because it is to implement an action previously approved under a council's Delivery Program or the Operational Plan for the relevant year.

During this period, Council is committed to implement and operate in accordance with the adopted Community Strategic Plan 2013-2023, Delivery Program 2013-2017 and Operational Plan 2016-2017. This matter supports and follows the objectives and strategies outlined below in this report.

Conclusion

There have been changes in the values of the works required to undertake the Retail Stage 1 development, as explained in this report. It has led to a change in the land value for the sale. Importantly, subsequent negotiations have resulted in improved outcomes and this report demonstrates that the basement carpark is still the best value option.

With Council's resolution, Council staff will progress the sale of the Retail Stage 1 Land to Australand based upon the final negotiated terms. The Shell Cove Management Committee will progress the development of Retail Stage 1 based upon the final negotiated terms.

Financial/resources implications

As previously considered by Council, the cost of developing the basement carparking and utilising Project funds to allow that carparking to be developed will lower the amount of development funds held in the Shell Cove Trust Fund. However, the expected cost is lower than the development income expected from the sale of residential lands that would otherwise be unavailable. No funds or resources are required from Council.

Legal and policy implications

Whilst the Shell Cove Management Agreement allows for development of the Project and for the associated use of development funds, and Council has previously resolved the process for the sale of the land, it is prudent to inform Council of the latest information.

Otherwise, there are no apparent legal and policy implications.

Public/social impact

The development of the Retail Stage 1 by Australand will provide a full-line supermarket and associated retail offerings that will deliver broad social and economic outcomes to Council and the whole community – especially the residents of Shell Cove, Flinders and Shellharbour Village.

Link to Community Strategic Plan

The sale and development of Shell Cove Retail Stage 1 supports the following objectives and strategies of the Community Strategic Plan:

Objective: 3.2 Supported by a strong local economy with business and employment opportunities.

Strategy: 3.2.1 Establish the Shell Cove Boat Harbour as a lifestyle and boating destination providing development, tourism and community opportunities.

Consultations

Internal

Waterfront Activities Group (working party)

External

Australand (part of Frasers Property Group)

Political Donations Disclosure

Not Applicable

Recommendation

1. That Council confirms its consideration of the guidelines issued by the NSW Government in accordance with Section 23A of the Local Government Act, 1993 in resolving on this matter.
2. That Council proceeds to sell the Retail Stage 1 Land as per the Council's resolution of 15 March 2016 on the same matter and as amended by the terms set out in this Report.
3. That Council notes the final Shell Cove Project funding of the development of basement carparking within the Retail Stage 1.
4. That this report be de-classified on practical completion of the work associated with Shell Cove Stage 1 Retail in accordance with Clause 11.1.4 of Council's Code of Meeting Practice.

Approved for Council's consideration: _____



Date of Meeting: 8 November 2016

Attachments

Nil