

**Minutes of the Ordinary Meeting
of Shellharbour City Council
held remotely via Zoom livestream webcast
on Tuesday 20 July 2021 commencing at 6.31 pm**

Present

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

In attendance

Chief Executive Officer	C McIntyre
Director Council Sustainability	S Bridgement
Director Community and Customers	M Boxall
Director Amenity and Assets	B Stewart
Executive Manager / Public Officer	F Lepouras
Chief Financial Officer	K Buckman
Group Manager City Planning	G Hoynes
Group Manager Built and Natural Environment	M Apolo
Acting Group Manager Asset Strategy	A De Clouett
Shell Cove Executive Manager	W Peterson
Manager Business and Investment	T James
Manager Shell Cove	K James
Manager The Links	R Stephenson
Manager Procurement and Supply	J Roberts
Manager Asset Planning	S Robinson
Senior Strategic Planner	C Lappin
Cadet Strategic Planner	M Muscat
Acting Media Officer	A Anstiss
Senior Executive Assistant (Minutes Taker)	L Davey
Executive Assistant - Councillor Support	J Frasca

1. Acknowledgement to Country

Shellharbour City Council acknowledges the Traditional Custodians of the Dharawal Country and recognise their continued connection to the land we meet on today. We pay our respects to Elders past, present and emerging and the contribution they make to the life of this city and this region and extend our recognition to their descendants who continue to live on country.

Webcasting and Emergency Plan Statement

Council broadcasts its meeting live to enhance the accessibility of Council Meetings to the broader Shellharbour City Community. Recordings can be downloaded from Council's website for later viewing. For further information on Privacy refer to Council website.

Council accepts no responsibility for any defamatory or offensive statements. Conduct standards of behaviour during Council meetings and Public Address forums are available on Council's website.

Should Council need to consider confidential matters during a Council Meeting, the open Council meeting will adjourn, the online webstreaming will be paused and will resume when the open meeting has resumed.

2. Apologies

Nil

3. Leave of Absence

Nil

4. Confirmation of Minutes

4.1 Ordinary Council Meeting 29 June 2021

105 RESOLVED: Marsh/Hamilton

That the Minutes of the Ordinary Council Meeting held on 29 June 2021 as circulated be taken as read and confirmed as a correct record of proceedings.

CARRIED UNANIMOUSLY

5. Disclosures of Interest

Nil

6. Condolences

The Mayor acknowledged the passing of Mrs Mavis Stevenson OAM of Avondale, a month after her 100th birthday, who was married to Mr Bob Stevenson, who was an Alderman of Shellharbour Council from 1959 to 1974.

The Council acknowledged the following deaths in the Local Government area

Mr Cano Blazeovski	of	Albion Park
Mrs Audrey Iles	of	Albion Park
Mr Kenneth Lawrence Morley	of	Albion Park Rail
Mr Fritz Karl Augustin	formerly of	Barrack Heights
Mrs Christine Sime	of	Mount Warrigal
Mr Jack 'John' Dunning	of	Shellharbour
Mr Otto Bader	of	Warilla
Mr Ron Garforth	of	Warilla
Mr Gordon Spooner	of	Warilla

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

7. Mayoral Statements / Reports / Presentations

The Mayor outlined the events she has attended since the last Council Meeting:

- | | |
|---------|---|
| 30 June | • On-line RH Dougherty Award/Judges Collaborate Meeting |
| 1 July | • On-line Women's Trauma Recovery Centre Meeting |
| 7 July | • On-line Traffic Committee Meeting |
| 8 July | • On-line ALGWA National Board Meeting
• Win News interview – sand mining project |
| 14 July | • On-line ISJO Executive Officer Interviews
• On-line LGNSW Board Strategy Session – Planning Reform
• On-line Financial Assistance Working Party Meeting |
| 19 July | • On-line ALGWA Executive Board Meeting |
| 20 July | • On-line meeting with CEO and Frasers |

The Mayor read out a letter of thanks received from Mr James Knight acknowledging the work of council staff in addressing various matters which he has raised with Council.

8. Mayoral Minutes

8.1 Mayoral Minute – Submission to Office of Local Government – Circular 21-13 Review of general manager and senior staff remuneration (11698243)

107 RESOLVED: Mayor Saliba

That Council send a submission to the Office of Local Government in response to circular 21-13 Review of general manager and senior staff remuneration as follows:

1. Council therefore requests the current process of each council determining the remuneration of the General Manager/Chief Executive Officer.
2. Council does not agree with the idea that the General Manager/Chief Executive Officer remuneration should be set by the state government using their senior executive scale.
3. Council's view is that every council should have the right to determine how much they pay their General Manager/Chief Executive Officer based on their individual needs and what is required in the role.
4. Council also does not agree with community panels having any ability to participate in the determination of the General Manager/Chief Executive Officer's remuneration package.

CARRIED 5 / 1

FOR – Cr Saliba, Cr Murray, Cr Marsh, Cr Petreski, Cr Hamilton
AGAINST – Cr Moran

9. Councillors' Statements / Reports

Nil

10. Reports

10.1 Chief Executive Officer

Nil

10.2 Council Sustainability Directorate

10.2.1 Progression of Land Development at The Links (11695143)

108 RESOLVED: Murray/Marsh

That Council:

1. Receive and note the information provided on the progress of the development of Council land being Part Lot 6728 DP 1171495, Golf Drive, Shell Cove.
2. Endorse the continuation of investigations into the best possible uses for the development of the land to achieve optimal outcomes for Council and the community.

CARRIED UNANIMOUSLY

10.2.2 Rental Subsidy Warrigal Care – Lot 21 DP 1134603 - 5 Rowland Avenue, Mount Warrigal (11695107)

Councillor Moran asked if the valuer who undertook the assessment is the same as the valuer who undertook the previous assessment. The Chief Executive Officer took the Question on Notice.

109 RESOLVED: Murray/Moran

That:

1. Council enter into a renewed lease for five years with Warrigal Care for Lot 21 DP 1134603, 5 Rowland Avenue, Mount Warrigal on the basis of an annual rent of \$27,963.16 excluding GST per annum, subject to CPI annually.
2. Council note the annual in-kind donation in Council's aggregate record of donations to the community.
3. The Mayor and Chief Executive Officer, or his nominated delegate, be authorised to sign all documentation, including the affixing of the Council Seal, associated with the renewed lease with Warrigal Care for Lot 21 DP 1134603, 5 Rowland Avenue, Mount Warrigal.

CARRIED UNANIMOUSLY

10.2.3 Tender 2021/22 – Supply via Lease of Golf Carts (11696938)

110 RESOLVED: Murray/Petreski

That:

1. In accordance with Clause 178 of the *Local Government (General) Regulation 2005*, for Contract 2021/022 – Supply via Lease of Golf Carts, Council accepts the conforming offer of InGolf & Utility.
2. Council authorise the Chief Executive Officer or his nominated delegate to amend the lease term of any of contracts 2017/67 – Supply via Lease of Golf Carts, 2019/54 – Supply and installation of GPS to fleet golf carts at Links Shell Cove and 2021/022 – Supply via Lease of Golf Carts, upon confirmed delivery date of the new fleet, to enable the alignment of end dates of the GPS and Golf Carts leases.
3. Council authorise the Chief Executive Officer or his nominated delegate to finalise and execute the contracts and any other documentation required to give effect to these resolutions.
4. In accordance with the *Government Information (Public Access) Act 2009* that the name of the successful supplier and estimated spend under the contract be added to the contracts register.

CARRIED UNANIMOUSLY

10.3 Community and Customers Directorate

10.3.1 Shellharbour Local Environmental Plan 2013 Planning Proposal 0005/2020 – Infrastructure Zoning Amendment (11694918)

111 RESOLVED: Marsh/Murray

That Council:

1. Prepare Planning Proposal No 5/2020 to amend Shellharbour Local Environmental Plan 2013 as outlined in Attachment 2.
2. Authorise the Chief Executive Officer or Public Officer to submit Shellharbour Local Environmental Plan 2013 Planning Proposal 5/2020 to the NSW Department of Planning, Industry and Environment in accordance with section 3.34 of the *Environmental Planning and Assessment Act 1979* for review and gateway determination.
3. Delegate to the Chief Executive Officer or Public Officer authority to make minor mapping and Local Environmental Plan instrument changes to Shellharbour Local Environmental Plan 2013 Planning Proposal No

5/2020 if and as required by the NSW Department of Planning, Industry and Environment's gateway determination.

4. As part of its gateway submission apply to the Department of Planning, Industry and Environment to use its plan making related delegations including making or not making the plan under section 3.36 of the *Environmental Planning and Assessment Act*, after any public exhibition of the draft plan.
5. Authorise Shellharbour Local Environmental Plan 2013 Planning Proposal No 5/2020 to be publicly exhibited in accordance with the gateway determination.
6. Endorse a further report be provided to Council for consideration after the public exhibition period has closed, detailing the public exhibition outcomes and with further recommendations regarding the adoption.

CARRIED UNANIMOUSLY

10.3.2 Shellharbour Local Environmental Plan 2013 Planning Proposal No. 0003/2019 Lot 300 DP 1223037 - Tongarra Road, Croom (11694917)

112 RESOLVED: Murray/Marsh

That Council:

1. Adopt the following amendments to Shellharbour Local Environmental Plan 2013 for the purpose of sending the amendments to the office of the NSW Parliamentary Counsel under section 3.36(1) of the *Environmental Planning & Assessment Act 1979*, subject to the maps being finalised in the Standard Instrument format:
 - a. Amending Schedule 1, to include a 'function centre' as an additional permitted as follows:
 9. *Use of certain land at Croome Road and Tongarra Road*
 - (1) *This clause applies to land in Zone SP1 Special Activities being Lot 300 DP1223037 as shown edged heavy red identified as "9" on the Additional Permitted Uses Map.*
 - (2) *Development for the purposes of 'function centres' is permitted with development consent.*
 - b. Amending the Additional Permitted Uses Map (Sheet APU_014 and 018) by colouring and numbering the subject site. (Attachment 2).

2. Delegate to the Chief Executive Officer and Public Officer the authority to send the Planning Proposal to the office of the NSW Parliamentary Counsel in accordance with Section 3.36(1) of the *Environmental Planning & Assessment Act 1979* to draft the legal instrument that will give effect to this Planning Proposal.
3. Delegate to the Chief Executive Officer and Public Officer the authority to make minor mapping and Local Environment Plan instrument changes if required by the office of the NSW Parliamentary Counsel.
4. Require a report be submitted to Council on the outcomes of the request to the office of the NSW Parliamentary Counsel and for final consideration of Planning Proposal No. 0003/2019.

CARRIED 5 / 1

FOR – Cr Saliba, Cr Murray, Cr Petreski, Cr Hamilton, Cr Moran
AGAINST – Cr Marsh

10.4 Amenity and Assets Directorate

10.4.1 Acceptance of 2020-21 Coastal and Estuaries Grant Funding Agreement (11695310)

113 RESOLVED: Marsh/Murray

That Council:

1. Accept the NSW State Government Coastal and Estuary Grants Funding of \$53,334 for Shellharbour Open Coast Coastal Management Program – Scoping Study.
2. Authorise the Chief Executive Officer, or their nominated delegate, to execute 2020-21 Coastal and Estuary Management Program Funding Agreements.
3. Write to the Department of Planning, Industry and Environment thanking the NSW State Government for its assistance with the Grant allocation.

CARRIED UNANIMOUSLY

10.4.2 Tender 2021/34 Bass Point Tourist Road Renewal - Construction (11696646)

114 RESOLVED: Petreski/Murray

That Council:

1. accept the tender offer from Tenderer 'A' for the contract 2021/34 Bass Point Tourist Road Renewal - Construction in accordance with Clause 178 of the Local Government (General) Regulation 2005 (NSW).
2. authorise the Chief Executive Officer, or his nominated delegate, to execute the contract 2021/34, authorise variations and associated documents on behalf of Council.
3. make public the name of the successful contractor and amount payable under the contract, through Council's contract register, in accordance with the Government Information (Public Access) Act 2009.

CARRIED UNANIMOUSLY

10.4.3 Improvement and Upgrades to the Kiosk at Reddall Reserve, Lake Illawarra (11696690)

115 RESOLVED: Hamilton/Marsh

That Council:

1. endorse Option 1 from the Reddall Reserve Kiosk Business Assessment (Attachment 3).
2. approve a \$100,000 budget reallocation from 2021/22 Sportsfield Amenities Program to 2021/22 Community Buildings Program for the purpose of preparing a Concept Design and seek development consent for the upgrade of the Reddall Reserve Kiosk.

CARRIED UNANIMOUSLY

11. Committee Recommendations

11.1 Recommendations from the Traffic Committee Meeting held 5 July 2021 recommended for adoption.

116 RESOLVED: Saliba/Hamilton

That the Recommendations from the Traffic Committee Meeting held 5 July 2021 be adopted.

CARRIED UNANIMOUSLY

12. Items for Information

12.1 Item for Information – Responses to Questions Taken on Notice (11696923)

The Item for Information was formally NOTED.

13. Notices of Rescission/Alteration Motions

Nil

14. Notices of Motion

Nil

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

Nil

16. Urgent Business

Councillor Marsh moved an item of urgent business.

MOTION: Marsh/Moran

In light of the fact the current COVID-19 restrictions are likely to continue for some time, I move that all council supports offered during last year's lockdown be reinstated as soon as possible.

The Mayor Councillor Saliba proposed the following amendment to the MOTION, which was accepted by the Mover and Seconder:

1. In light of the fact the current COVID-19 restrictions are likely to continue for some time, I move that all council supports offered during last year's lockdown be reinstated as soon as possible for a period of one month.
2. That a report be presented to the next Council Meeting providing details of the financial impacts to Council and providing recommendations as to any continuation.

117 RESOLVED: Marsh/Moran

1. In light of the fact the current COVID-19 restrictions are likely to continue for some time, I move all council supports offered during last year's lockdown be reinstated as soon as possible for a period of one month.
2. That a report be presented to the next Council Meeting providing details of the financial impacts to Council and providing recommendations as to any continuation.

CARRIED UNANIMOUSLY

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

17.1 Disposal of Land update – Benson Basin Contract for Sale of Lot 2002 in DP 1250959 - Wattle Road, Shellharbour City Centre (11695106)

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(c) and (d) 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 commercial nature that would if disclosed:
 - (i) Prejudice the commercial position of the person who supplied it
 - (ii) Confer a commercial advantage on a competitor of the Council

This report is confidential because it contains confidential information pertaining to the sale of Lot 2002 in DP1250959 – Wattle Road, Shellharbour City Centre. At its meeting on 13 December 2016, Council considered a report in Committee of the Whole (Confidential Session) where it was resolved:

1. That Council confirm 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 approve for the inclusion of the additional area of lane to be included within the proposed subdivision and subsequent Contract for Sale of Lot 2000 DP717478 Wattle Road Shellharbour City Centre.
3. That a Contract for Sale for Part of Lot 2000 DP717478 Wattle Road, Shellharbour City Centre, be entered with the purchaser named and the contract price as noted within this report.

4. As part of the conditions of the contract for sale that the purchaser relocate the access path to the current standard on the northern boundary into Council's land at their cost and create the necessary easements including registration prior to settlement of the land.
5. That a covenant be created and registered on title for the land owner to be responsible for all future maintenance in perpetuity of the undevelopable part of the land fronting Benson Avenue.
6. That the Mayor and General Manager, or his nominated delegate, be authorised to sign under Council Seal, the Contract for Sale for Part of Lot 2000 DP717478 Wattle Road, Shellharbour City Centre and other associated documentation.
7. That the commercial terms and the proposed purchaser be kept confidential until contracts for the Sale have settled.
8. That this report be declassified once the land transaction has settled.

Therefore, this report must remain confidential until this matter is finalised.

Declassification of this Report

This report is to be declassified upon completion of the sale of Lot 2002 in Deposited Plan 1250959.

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

118 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) and (d) 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*.

CARRIED 4 / 2

FOR – Cr Saliba, Cr Murray, Cr Hamilton, Cr Petreski
AGAINST – Cr Marsh, Cr Moran

Meeting adjourned at 7.52 pm

Meeting resumed at 8.30 pm

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 Chief Executive Officer.

17.1 Disposal of Land update – Benson Basin Contract for Sale of Lot 2002 in DP 1250959 - Wattle Road, Shellharbour City Centre (11695106)

That:

1. Council approve the 'Committee Recommendation' regarding the Disposal of Land – Benson Basin Contract for Sale of Lot 2002 in DP 1250959 – Wattle Road, Shellharbour City Centre.
2. This report be declassified upon completion of the sale of Lot 2002 in DP 1250959.

119 RESOLVED: Murray/Marsh

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

CARRIED 4 / 2

FOR – Cr Saliba, Cr Murray, Cr Hamilton, Cr Marsh
AGAINST – Cr Moran, Cr Petreski

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

20.1 Consideration of Motion to Declassify Report Considered in Closed Session: The Waterfront Shell Cove Land Purchase Option No.7 (11697060) – Attachment 1

120 RESOLVED: Marsh/Murray

That Council declassify the report presented to Council meeting on 3 July 2018 titled 'The Waterfront Shell Cove Land Purchase Option No.7' and that the declassified report be added to the Minutes of the Ordinary Council meeting of 20 July 2021.

CARRIED UNANIMOUSLY

20.2 Consideration of Motion to Declassify Report Considered in Closed Session: Sale of Shell Cove Retail Lands Stages 2 & 3 to Australand (11697097) – Attachment 2

121 RESOLVED: Murray/Petreski

That Council declassify the report presented to Council meeting on 19 April 2016 titled 'Sale of Shell Cove Retail Lands Stages 2 & 3 to Australand' and that the declassified report be added to the Minutes of the Ordinary Council meeting of 20 July 2021.

CARRIED UNANIMOUSLY

20.3 Consideration of Motion to Declassify Report Considered in Closed Session: Confidential Memo - Supporting Information for Recommendation to Award Contract for Shell Cove Boat Maintenance Facility Enabling Works (11697127) – Attachment 3

122 RESOLVED: Marsh/Moran

That Council declassify the confidential memorandum presented to Council at the Ordinary meeting of 23 February 2021 titled 'Supporting Information for Recommendation to Award Contract for Shell Cove Boat Maintenance Facility Enabling Works' and that the declassified memorandum be added to the Minutes of the Ordinary Council meeting of 20 July 2021.

CARRIED UNANIMOUSLY

Meeting closed 8.36 pm

Attachments:

1. Declassified report:
3 July 2018 - The Waterfront Shell Cove Land Purchase Option No.7 – *Page 14*
2. Declassified report:
19 April 2016 - Sale of Shell Cove Retail Lands Stages 2 & 3 to Australand – *Page 23*
3. Declassified memorandum:
23 February 2021 - Supporting Information for Recommendation to Award Contract for Shell Cove Boat Maintenance Facility Enabling Works – *Page 34*

Attachment 1 - Declassified report: 3 July 2018 - The Waterfront Shell Cove Land Purchase Option No.7

Subject **6.1 The Waterfront Shell Cove Land Purchase Option No.7 (11059843)**

To the General Manager

Directorate: **Council Sustainability**
Department: **Shell Cove**

Manager: Matthew Youell – Director Council Sustainability
Author: Kevin James – Manager Shell Cove/ Shell Cove Commercial Manager

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(c, di, dii) 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:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (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's associate in the Management Agreement. Council is considering its options for acquisition or divestment of land that is part of the Harbour Land defined in the Management Agreement, being residential, retail and commercial precincts of The Waterfront, Shell Cove.

Declassification of this Report

The report will be declassified upon the completion of all sales of the residential lots in Precinct A.

Summary

The purpose of this report is to seek Council's resolution to not exercise its first-purchase rights (under the Shell Cove Management Agreement) to the residential lots to be created in Precinct A of The Waterfront Shell Cove. This does not include the land for the Marine Maintenance Facility (Dry Marina) that Council may purchase separately, nor the land for the public boat ramp and carpark that Council will receive from the Project (the non-residential lots).

The Shell Cove Management Committee (the Committee) is advancing the development of this Precinct located to the east of the existing Precinct B1/C1 Residential and surrounding the public boat launching ramp. After a long period of design planning, the development application (DA 619/2017) was lodged with Council in December 2017. Development consent is required from the Joint Regional Planning Panel. The subdivision will create 58 single/duplex residential lots, 6 medium density lots, 1 lot for the Marine Maintenance Facility and 1 lot for the public boat launching ramp. The development program for the Shell Cove Project has the residential lots being offered for sale, beginning in the third quarter of 2018.

Under the Management Agreement between Council and Australand, Council has a first-purchase right to any of these prospective residential lots at their full market price.

The Committee is seeking Council's response now so that the development program for the residential lots can be finalised. In addition, the sales process can commence shortly. The decision is necessary to deliver the built 'Waterfront' and Town Centre in a timeframe and manner essential to the overall Project timetable and optimisation of the yields from the Project to both Council and Australand.

It is considered that there are no investment profit opportunities for Council in purchasing any of these lands. The reasons are contained in this report. Further, Council has no allocated funds for the purchase and construction and does not have the available staff resources to manage the development of the land and houses.

It is recommended Council does not exercise its first-purchase rights for the residential lots to be created in Precinct A. There is no recommendation needed for the non-residential lots at this time.

Background

Under the Management Agreement between Council and Australand, Council has a first-purchase right to any of the lots subdivided within the Harbour Land (which is defined to be the land around the boat harbour and that is now being marketed as 'The Waterfront, Shell Cove'). Council is acquainted with this right through comprehensive reports to Council (in closed session) for the residential Precincts B1/C1 and E lots, the Retail Stages 1, 2 & 3, and the Hotel and Tavern sites of the Town Centre (Precinct D).

If Council exercises this right for a particular lot, then it must pay the full market price into the Trust Fund for the Project.

In 2016, the Shell Cove Management Committee (the Committee) considered and advanced the subdivision development of that part of The Waterfront consisting of Precinct A. The final subdivision layout and the development process were endorsed by the Committee in September 2017. Precinct A is the third major land section within The Waterfront to be developed for residential purposes. The decision is in line with the development timetable and program for the Shell Cove Project and the subdivision optimisation of the yields from the Project to both Council and Australand. This precinct was included in Australand's presentations to Council and is reported in the regular 'Shell Cove Progress Reports to Council'.

Attachment 1 shows the location of this land.

Attachment 2 shows the subdivision plan that creates 58 single/duplex residential lots, 6 medium density lots, 1 lot for the Marine Maintenance Facility and 1 lot for the public boat launching ramp and carpark.

The subdivision DA was prepared and submitted to Council (DA 619/2017) in December 2017, with development consent to be granted by the Joint Regional Planning Panel.

The development program for the Shell Cove Project has the residential lots being offered for sale in the third quarter of 2018, with civil works construction to start once all consents and approvals have been obtained. This is expected to be late this year.

The Committee is seeking Council's response now so that the development program for the prospective residential lots can be finalised.

This does not include the land for the Marine Maintenance Facility (Dry Marina) that Council may purchase separately, nor the land for the public boat ramp and carpark that Council will receive from the Project (the non-residential lots). In addition, the sales process can commence shortly. Importantly, the decision is necessary to deliver the built 'Waterfront' and Town Centre in a timeframe and manner essential to the overall Project timetable and optimisation of the yields from the Project to both Council and Australand. Also, neither Council or Australand want vacant lands lying idle awaiting houses or building development, as these sites are unwelcoming and will stagnate the market attractiveness of Shell Cove.

Prudently for Council to justify a decision to exercise the first-purchase right for any lot, it would need to demonstrate and be satisfied that there are real estate investment profit opportunities in it. In other words, Council would have to execute entrepreneurial rationale in assessing each opportunity. In this regard, Council should consider:

A. Single/duplex lots

The selling price to Council will be the same selling price to the public and would be determined to maximise it in the same way that the Project has for years. The 2018 Feasibility Study (Report #7) is commercial-in-confidence and is being reviewed. This Study includes the total revenue of \$52,358,393 for these Precinct A lots; an amount based on conservative lot values shown in Table 1:

Table 1 – Precinct A Lot Product & Price

Precinct	Product type	Typical lot size	Average Price
A	11m wide land lot	440m ²	\$650,000
	11.5m wide land lot	345m ²	\$581,250
	13m wide land lot	390m ²	\$691,250
	15m wide land lot	450m ²	\$892,273
	17m wide land lot	510m ²	\$1,213,333
	19m wide land lot	570m ²	\$1,290,000
	Duplex land lot	610m ²	\$840,000

If Council was to purchase a lot, there would have to be a significant re-sale price above the purchase price in order to recover the purchase and re-sale costs, as well as the desired investment return. For example, a \$650,000 re-sale price would be required on a \$500,000 purchase price in order to achieve about a 20% return (after costs). If the public is going to buy the lot for \$650,000, then the Project would have set that amount for the sale price to Council.

B. Medium density lots

The selling price to Council will be the same selling price to the builders/investors and would be determined to maximise it in the same way that the Project has for years. The Project designed 59 dwellings for the 6 medium density lots, achieving estimates of:

Total Revenue =	\$58,835,083
<i>less</i>	
Development Costs (excluding land) =	<u>\$34,451,613</u>
<i>equals</i>	
Land Value = Net Profit =	\$24,383,470

There is potential for Council to be the developer of the houses but it would need to have the moneys for the land purchase, high overheads and builder costs before the house settlements occurred after 12-18 months. It is considered that there are no investment profit opportunities for Council in purchasing any of these lots in Precinct A.

Importantly, Council has no allocated funds to be able to purchase any land in Shell Cove and pay for the development costs, including the construction costs of houses. In addition, Council does not have the staff resources to manage any development of the land and the construction of houses.

In conclusion, therefore, it is recommended Council not exercise its first-purchase rights for the residential lots to be created in Precinct A.

No valuation or other expert advice has been sought, given the information in this report.

Financial/resources implications

If Council adopts the recommendation of this report, there are no additional implications as a consequence of this report.

If Council exercises its first-purchase rights, an 'unfunded liability' is created for an amount from \$650,000 to over \$76 million (dependent upon the number of lots taken) for the land purchases. Further funds are needed for administration costs and house construction costs. Also, additional staff resources would be needed to develop the lands.

As stated in this report, the profit margin between the purchase price and re-sale price of a lot without development is likely to be very negligible at best (considering timing) because the Project is actively pursuing the market value price when it releases the lots for sale. Losses are more likely because of the costs involved.

Considering each lot average price is worth in the range of 1% of annual rate revenue to Council, it can be argued that the risk exposure of first-purchase rights as 'speculating-investors' would be very high. This is because Council lacks the necessary resources in the residential development industry.

This report highlights the Project's mandated aim is to attract builders and investors who wish to proactively develop the lots quickly and not leave lots vacant as it negatively impacts on the look of the overall development, especially The Waterfront lots. Others should be engaged who are efficient, experienced and financial to undertake the residential development. For sound economic development reasons, Council should not be a competitor within its own Project.

For these reasons, by adopting the recommendation, Council remains very successful at maximising its return-on-property sales at its current low risk profile to our residents.

There is no recommendation needed for the non-residential lots at this time.

Legal & policy implications

If Council adopts the recommendation of this report, there are no additional implications as a consequence of this report.

Public/social impact

If Council adopts the recommendation of this report, there are no additional impacts as a consequence of this report.

Link to Community Strategic Plan

This report supports the following objectives and strategies of the Community Strategic Plan:

Objective: 3.2 Supports and increases employment and business opportunities within a strong local economy.

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

Consultations

Internal

Nil.

External

Shell Cove Management Committee.

Political Donations Disclosure

Not applicable.

Conclusion

The Shell Cove Management Committee is seeking Council's response now and Council officers recommend that Council not exercise its first-purchase of Harbour Land right under the Management Agreement for the proposed residential lots in Precinct A of The Waterfront, Shell Cove. There is no recommendation needed for the non-residential lots at this time.

This is because of the high risk exposure to Council in not achieving the financial returns on investment due to:

1. The Project seeks the highest market value price for each lot, meaning there are no 'bargains';
2. Losses are more likely, while any profit margin is likely to be very negligible at best;
3. Council will be required to purchase the lots with consideration to its limited funding capacity which would create financial strain on its core business budget allocation; and
4. Lack of in-house resources to develop the lots profitably.

Recommendation

That Council not exercise its first-purchase of Harbour Land right under the Management Agreement for the proposed residential lots 1001 – 1064 in Precinct A and, thereby, not retain the residential lots to be created in Precinct A. This does not include the land for the Marine Maintenance Facility (Dry Marina) that Council may purchase separately, nor the land for the public boat ramp and carpark that Council will receive from the Project (the non-residential lots).

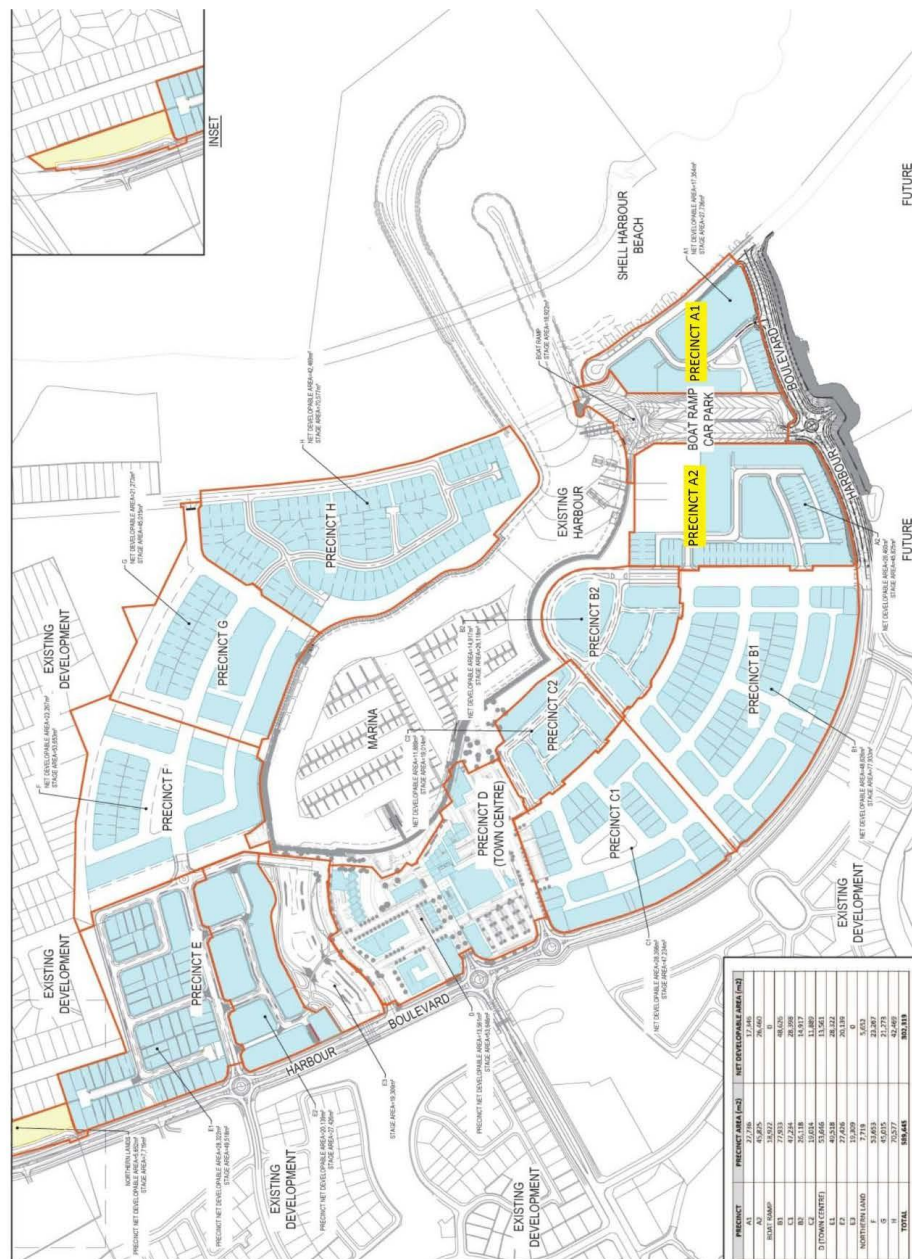
Approved for Council's consideration: _____

Date of Meeting: 3 July 2018

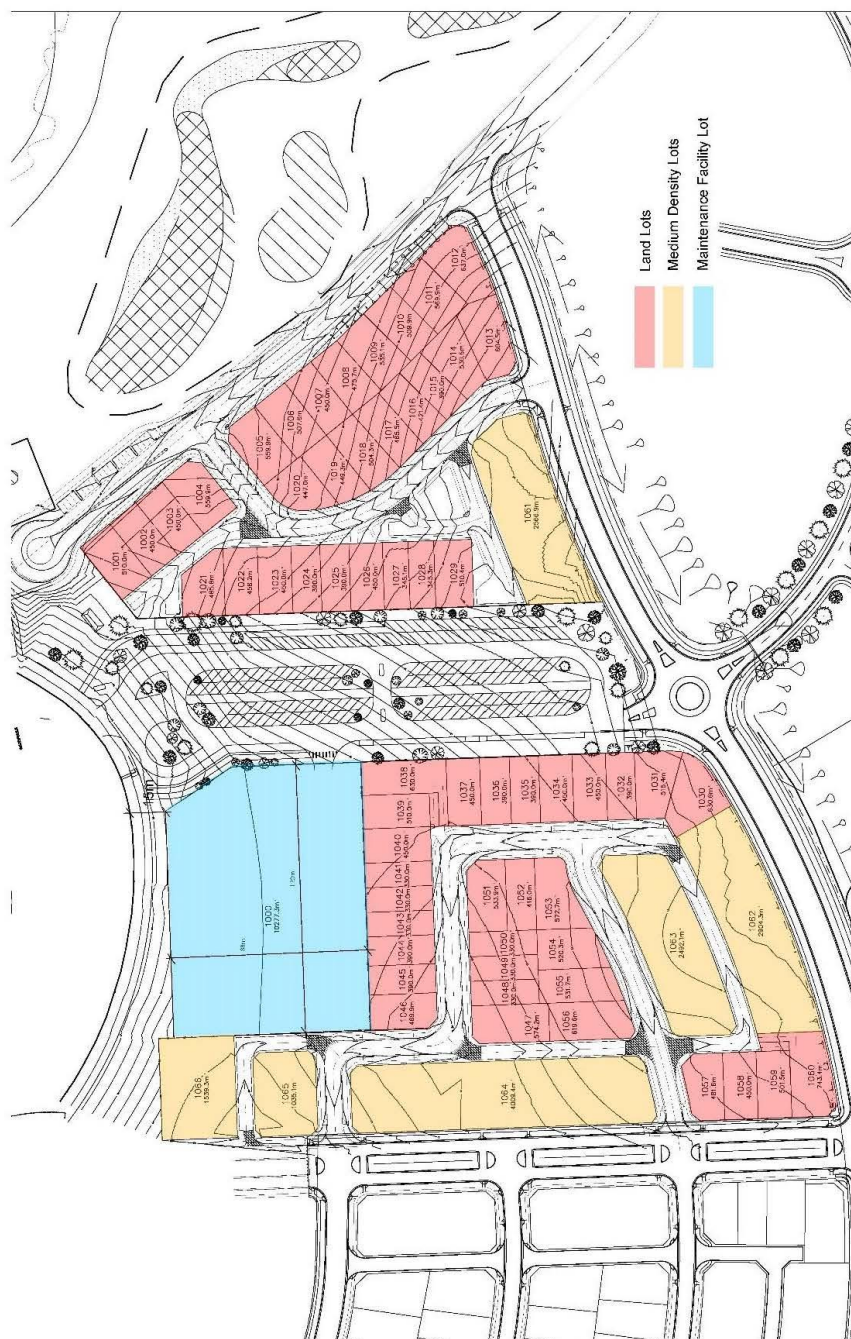
Attachments

1. Location Plan of Precinct A
2. Subdivision Plan of Precinct A

Attachment 1 – Location Plan of Precinct A



Attachment 2 – Subdivision Plan of Precinct A



Attachment 2 - Declassified report: 19 April 2016 - Sale of Shell Cove Retail Lands Stages 2 & 3 to Australand

Subject **3.1 Sale of Shell Cove Retail Lands Stages 2 & 3 to Australand (10698089)**

To the General Manager

Directorate: **Shellharbour Enterprises**
Department: **Shell Cove**

Manager: Matthew Youell – Director Shellharbour Enterprises
Author: Kevin James – Shell Cove Commercial Manager

Reason for Confidentiality

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

- (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's 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.

Summary

The purpose of this report is to seek Council's resolutions to:

1. not exercise its first-purchase rights (under the Shell Cove Management Agreement) to the Retail Stages 2 and 3 Lands in the Town Centre of The Waterfront Shell Cove; and
2. sell the Retail Stages 2 and 3 Lands to Australand.

Council should note that the Retail Stage 2 site excludes the lands for the tavern and marine services & facilities (for example, the marina office).

The Shell Cove Management Committee (the Committee) is advancing the sale and development of these sites, to have these developments on the ground and available to the public at the time of the official opening of the boat harbour and marina – namely, December 2018/early 2019. These sites will become available in mid-2017 because the current harbour construction constraints on them will be removed.

Under the Shell Cove Management Agreement between Council and Australand, Council has a first-purchase right to any of these prospective lots at their full market price. Australand has stated that it wants to separately purchase the Retail Stages 2 and 3 Lands, and develop the sites in accordance with the agreed concepts, under the same purchase arrangements that apply to their purchase of the Retail Stage 1 Land.

The delivery of these developed sites is critical to the Shell Cove development program.

A legal opinion was sought from Marsdens Lawyers on whether or not Council is able to exercise its first-purchase right to Shell Cove sites in light of the Section 23A Guidelines issued by the Office of Local Government (generally referred to as the Council Merger Guidelines). The opinion concluded that Council cannot purchase the site/s and remain within the Guidelines.

Council is not in a financial, resource or legal position to buy any of the Retail Stages 2 and 3 Lands and undertake the immediate development of those sites. It is recommended that Council not exercise its first-purchase right to these sites under the Shell Cove Management Agreement, and to sell them to Australand to develop.

Background

The draft Shell Cove Town Centre Master Plan sets out areas for potential uses of supermarket, retail shops, food & beverage (cafes, restaurants, etc), mixed uses, library & community centre, residential, marine services & facilities, tourist hotel, tavern, carparking and public areas. The latest version of the Plan is shown in **Attachment 1**. The Town Centre is part of Shell Cove that is being developed as 'The Waterfront'.

Under the Shell Cove Management Agreement between Council and Australand Corporation (NSW) Pty Ltd (Australand), the overseeing of the development direction is with the joint Shell Cove Management Committee (Committee). The Committee has agreed to the timely staging of the sale and development of the areas within the Town Centre and the rest of The Waterfront. In particular, Council is aware of the current development of:

- Residential lots in Precincts B1 and C1.
- Land for Retail Stage 1 (Town Centre).

At its meeting on 15 March 2016, Council resolved to progress the sale of the land for Retail Stage 1 to Australand in accordance with the process outlined in that report. Retail Stage 1 includes the supermarket and basement carpark.

The next Retail developments

The Committee has determined to advance the sale and development of 2 other sites in the retail section of the Shell Cove Town Centre, referred to as 'Retail Stage 2' and 'Retail Stage 3', to have these developments on the ground and available to the public at the time of the official opening of the boat harbour and marina – namely, December 2018/early 2019. These sites will become available in mid-2017 because the current harbour construction constraints on them will be removed.

A plan showing these 2 sites is shown in **Attachment 2** and these areas are designated for:

- Retail Stage 2 – a ground floor and forecourt for food & beverage (cafes, restaurants, etc), with upper levels of apartments.
- Retail Stage 3 – a single level of retail shops (with parking) to complement the supermarket and shops in the Retail Stage 1.

Council should note that the Retail Stage 2 site excludes the lands for the tavern and marine services & facilities (for example, the marina office).

In more detail, Retail Stage 2 would be a food and beverage eat street precinct with approximately 6 restaurants/cafes and 2 marine or other specialty retail spaces (total floor area of retail of 901sqm), alfresco dining space viewing over the boardwalk to the harbour, approximately 30 premium harbour view apartments over 3 levels above the food and beverage retail level, and 3 levels of above grade car parking. For Retail Stage 3, a retail pavilion to the north of main street providing approximately 5 retail shops (total retail floor area of 460sqm), comprised primarily of fashion, homewares and service providers

Concept sketches and a cross-section plan for the Retail Stage 2 site are shown in **Attachment 3**.

Australand has stated that it wants to separately purchase the lands for Retail Stage 2 and Retail Stage 3, and develop the sites in accordance with the agreed concepts, under the same purchase arrangements that apply to their purchase of the Retail Stage 1 land. These arrangements involve the process of:

1. Preparation and finalisation of a Heads of Agreement document.
2. Preparation, finalisation and signing of an Option Agreement (includes the Contract for the Sale of Land).
3. Exercise of the Option and Settlement.

The Heads of Agreement would provide for each price to be the value determined by an independent valuer that is agreed between Council and Australand, based on an agreed retail concept development. The method of valuation is known as the residual land value method and is the most commonly accepted method of valuing retail and commercial sites. This proposed method of determining the purchase price for the sale of the land is consistent with that contained in previous Council reports on Retail Stage 1 Land (the most recent was on 15 March 2016).

Land titles

The lands for Retail Stage 2 and Retail Stage 3 will come from current and future subdivisions of:

- Lot 8032 DP 1072187
- Lot 1279 DP 1175512
- Lot 1597 DP 1194294

Council's First Right of Purchase

Before this process can begin, Council needs to consider whether it will exercise its first-purchase right to each of these sites under the Shell Cove Management Agreement. This right was included as Council recognised that there are potential long-term financial benefits of property investment, provided that it was the right investment opportunity and was developed and managed appropriately.

If Council does exercise that right, the full purchase price is required to be paid and the development on it commenced – each site would represent a major investment of capital and staff resources.

For the Retail Stages 2 & 3 lands, **Table 1** shows the land areas and valuation amounts that are in the 2015 Feasibility Study (where the valuation date was 29 October 2014).

Table 1 – 2015 Valuation Details

Site	Land Area	Valuation
Stage 2	962m2 retail 29 apartments	\$4.25 million
Stage 3	468m2	\$0.70 million

The information in **Table 2** is the now proposed land areas for the Retail Stages 2 & 3 sites and the updated valuation amounts (when utilising the 2015 Feasibility Study valuation rates).

Table 2 – Updated Valuation Details

Site	Land Area	Valuation
Stage 2	2,100m2 retail 29 apartments	\$6.5 million
Stage 3	542m2	\$0.8 million

A preliminary development costing for each site (excluding land purchase) was:

- Stage 2 – \$17.0 million
- Stage 3 – \$1.3 million

No current valuation or other expert advice has been sought, given the information in this report.

Proposed Council Merger – implications – Section 23A Guidelines

A legal opinion was sought from Marsdens Lawyers on whether or not Council is able to exercise its first-purchase right to Shell Cove sites (as per the Shell Cove Management Agreement) in light of the Section 23A Guidelines issued by the Office of Local Government. The answer was no, as noted in the opinion's conclusion:

“Based upon the information provided to me by Council with respect to this matter, it would appear that even if the Council was able to comply with the Guidelines with respect to the budget (as set out above), any such decision by Council would not comply with the Guidelines in so far as they relate to the entry into the relevant contract upon the exercise of the option.”

After seeking further advice from Marsdens Lawyers, they responded “the Guidelines place restrictions on Council decisions to expend money. The failure to exercise the Options would result in Council not expending money and therefore is not a breach of the Guidelines, i.e. that decision would not result in Council expending money and is therefore a decision which falls outside of the operation of the Guidelines.”

Conclusion

The official opening of the boat harbour and marina is programmed for December 2018/early 2019. The development process for each retail site involves the detailed planning, approval, construction and tenant selection phases. This involves the best part of 2½–3 years. Therefore, the timing on a purchase decision is critical and this is why Council is being asked to consider this report.

Council is not in a financial, resource or legal position to buy any of the Retail Stages 2 and 3 Lands and undertake the immediate development of those sites. It is recommended that Council not exercise its first-purchase right to these sites under the Shell Cove Management Agreement.

The sale of Retail Stages 2 and 3 Lands to Australand (or its nominee) is in line with previous resolutions of Council. The proceeds of the sale will go directly into the Shell Cove Trust Fund and be dealt with under the Management Agreement.

Financial and resource implications

The immediate purchase of either (or both) lands for the Retail Stages 2 and 3 (and its/their subsequent development and tenancy) are not contained in Council's Operational Plan (budget) and Long Term Financial Plan. Council does not have the finances to be able to undertake the purchase, development and tenancy within the upcoming time period.

Legal and policy implications

Whilst the recommendations and the sale of land process are in line with the Shell Cove Management Agreement and policy, the legal opinion regarding the implications of the Section 23A Guidelines concluded that Council is prevented from purchasing the land/s.

Public/social impact

The development of the Retail Stages 2 and 3 Lands by Australand will complement and extend the retail offerings of the Retail Stage 1 development, and will deliver broad social and economic outcomes to the community and Council. These outcomes include the opportunity to fast-track the Town Centre and provide a new dining tourism destination at the time that the harbour is publically opened.

Link to Community Strategic Plan

The Sale of Shell Cove Retail Lands Stages 2 and 3 to Australand 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

- Chief Financial Officer
- Waterfront Activities Group (WAG)

External

- Australand Corporation (NSW) – now part of Frasers Property Group
- Rice Daubney Architects
- Marsdens Lawyers

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 not exercise its first-purchase of Harbour Land right under the Shell Cove Management Agreement for the proposed Retail Stages 2 and 3 Lands as outlined in this Report and, thereby, not retain those retail lots to be created in Precinct D.
3. That Council sells the Retail Stages 2 and 3 Lands on the terms set out in this Report.
4. 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 this Report.
5. That the Mayor and the General Manager, or his nominated delegate, be authorised to execute any document required to give effect to resolution 3.

Approved for Council's consideration: _____

Date of Meeting: 19 April 2016

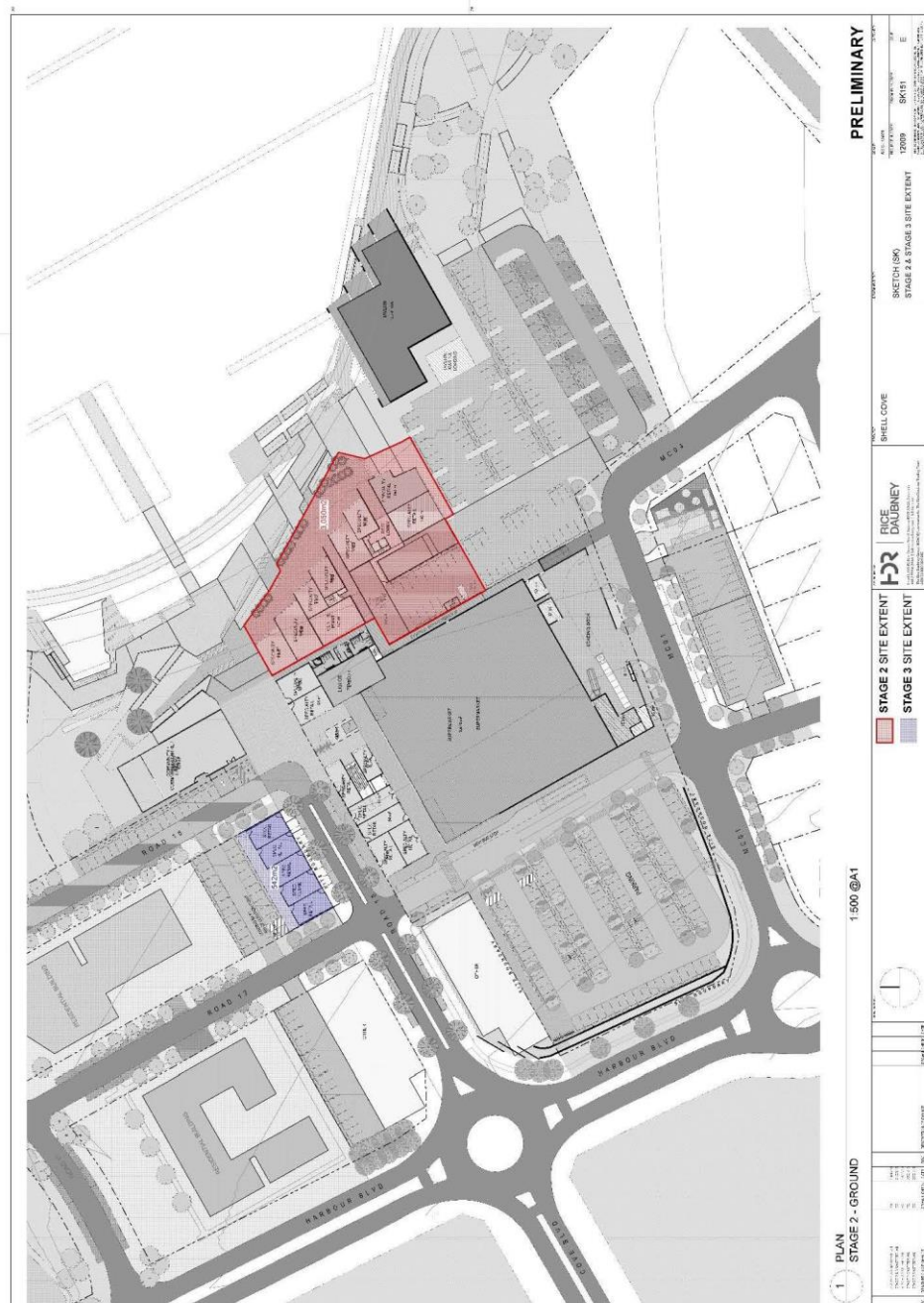
Attachments

1. Shell Cove Town Centre Master Plan (draft)
2. Plan showing location & size of the Lands for Retail Stages 2 and 3
3. Concept sketches and a cross-section plan for Retail Stage 2

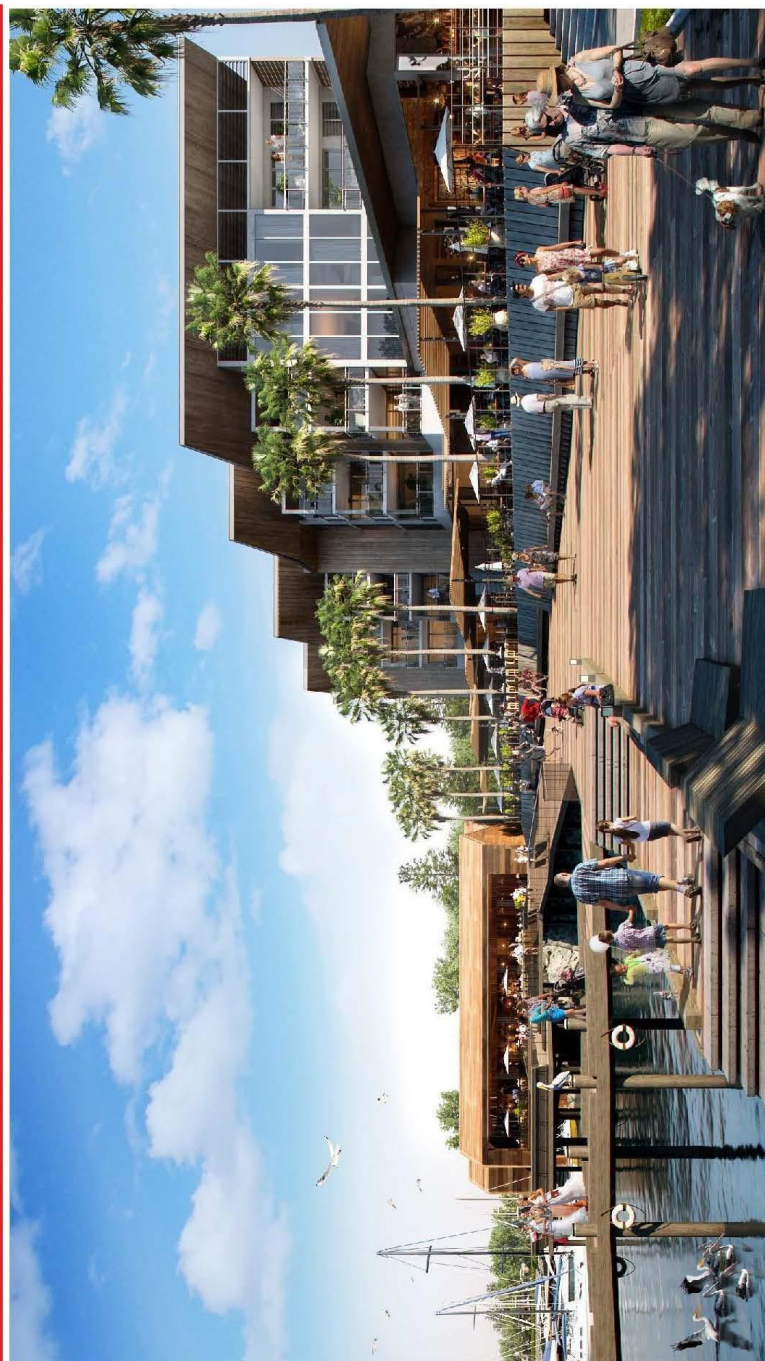
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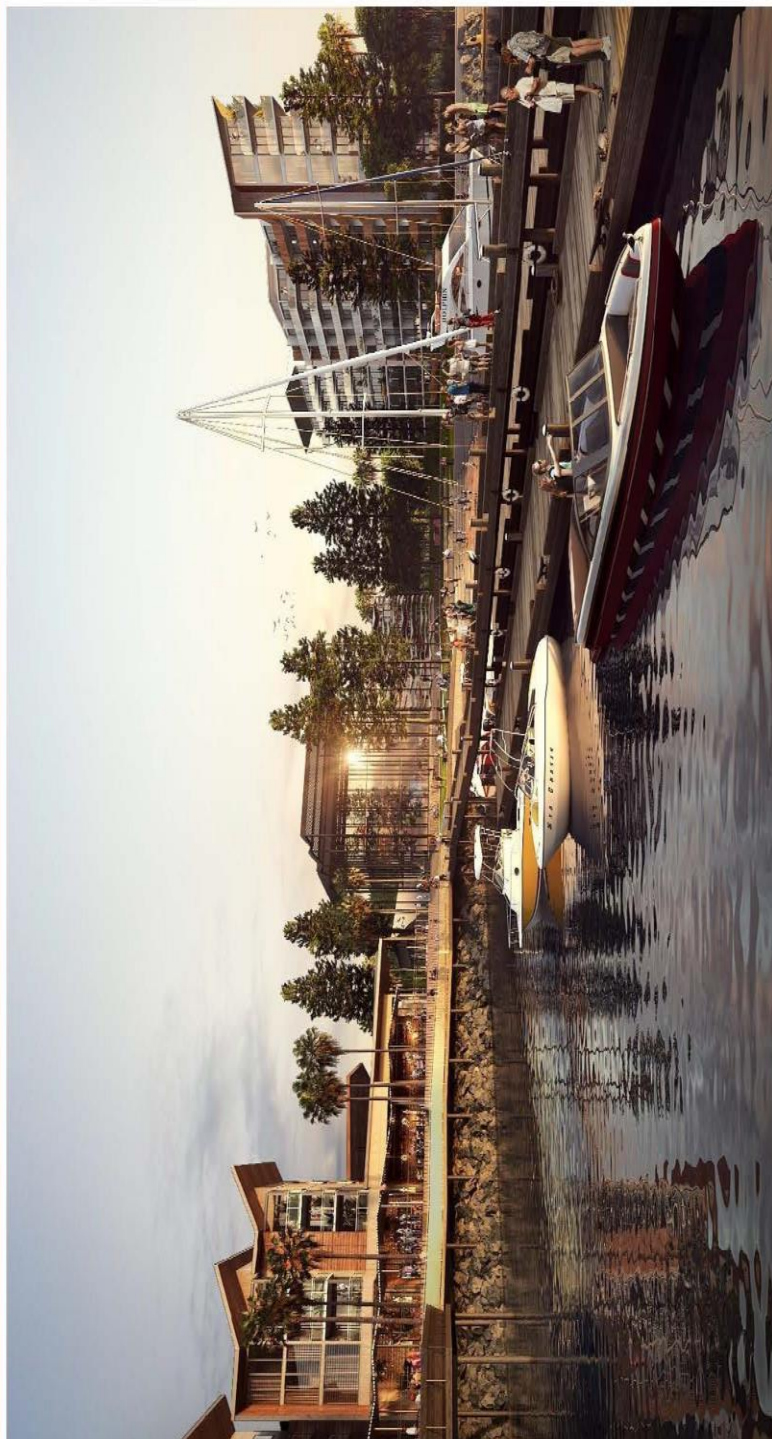


2. Plan showing location & size of the Lands for Retail Stages 2 and 3

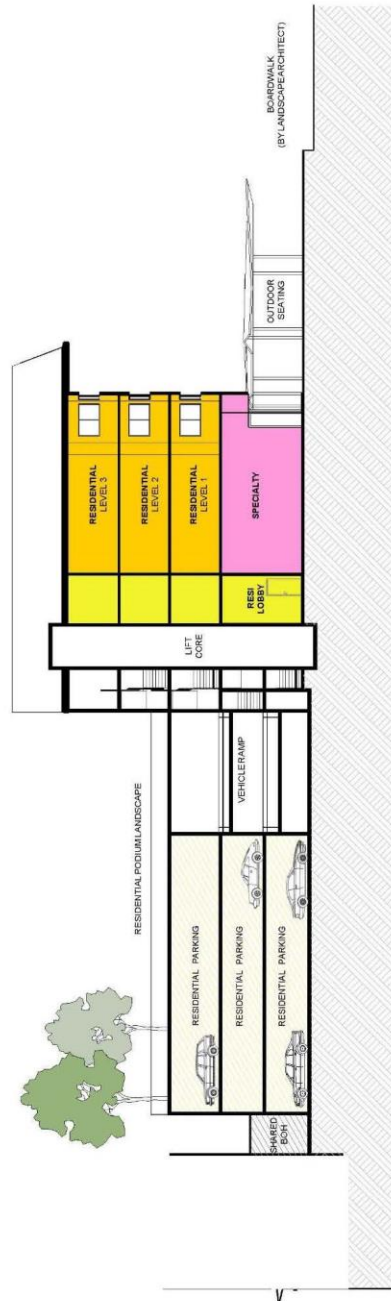


3. Concept sketches and a cross-section plan for the Retail Stage 2





THE WATERFRONT
16/11/2019 / Copyright FCR / Rice Daubney © 2019



KEY

- SPECIALTY TENANCIES
- RESIDENTIAL
- RESIDENTIAL LOBBY/CIRCULATION
- RESIDENTIAL PARKING
- SHARED BOH CORRIDOR

PROJECT: THE WATERFRONT
STAGE 2
PROJECT NUMBER: 12009

CHARPENT SCALE: 1:200 @ A3

DESIGN: RICE DAUBNEY
SK149
16/11/2019

RD RICE DAUBNEY

Attachment 3 - Declassified memorandum: 23 February 2021 - Supporting Information for Recommendation to Award Contract for Shell Cove Boat Maintenance Facility Enabling Works

TO: Mayor & Councillors

SUBJECT: Council Meeting – 23 February 2021
10.2.2 Attachment 1 - Supporting Information for Recommendation to Award Contract for Shell Cove Boat Maintenance Facility Enabling Works (11608555)

DATE: 23 February 2021

Summary

The purpose of this memorandum is to provide additional confidential information to support the Council Report "Shell Cove Boat Maintenance Facility Enabling Works" in order to award a Contract to Contractor 'A', which is Coastwide Civil Pty Ltd.

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

- information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

It is not in the public interest to disclose this information as it may impact the ability of Council to obtain competitive tenders in the future and to negotiate on this project if Council does not accept the offer. It would also impact the tenderers' commercial position.

Background

The Shell Cove Project is currently delivering foreshore works around the perimeter of the boat harbour under DA0400/2019 and DA0402/2019. In the vicinity of the future Boat Maintenance Facility site, certain works (Table 1) are required to facilitate future construction of the Boat Maintenance Facility without causing undue disruption to visitors and constructed infrastructure.

A recent tender for similar foreshore related works in this area completed by the Shell Cove Project team was awarded to Coastwide Civil Pty Ltd who are now the principal contractor in control of the construction site where the Shell Cove Boat Maintenance Facility Enabling Works are proposed. Coastwide Civil have provided an offer of \$710,345 exc GST to complete the scope of works, see Table 1.

Table 1 – Page 2

CONFIDENTIAL MEMO

Table 1 – Item Breakdown

Item	Cost (exc GST)
Promenade Pavement no longer required	-\$65,310
Promenade Pavement with specification increase	\$36,000
Working Pavement	\$552,567
Maintenance and Travel Lift Gangway Landing	\$32,492
Tactiles to Landing	\$9,356
Handrails to Landing	\$15,934
Hydrant Line	\$19,800
Hydrant Double Pillars	\$8,000
Hydrant Booster	\$8,800
Hydrant Valves	\$5,500
Hydrant Screen	\$13,750
Water Line	\$10,000
Power Service	\$15,000
Driveway Crossover	\$34,200
Electrical Design	\$14,256
Total	\$710,345

Recommendation 1 in the open report, recommends that Council resolve to not invite tenders for these enabling works because of extenuating circumstances, as doing so would not attract additional experienced contractors above those in the original tender process. Also, advertising tenders would lead to additional costs and time delays in procurement and the opening of the walk ways around the Shell Cove Harbour to the community.

Recommendation 2 in the open report, recommends that Council allocate a budget amount. That amount is \$750,000 exc GST. This figure represents that shown in Table 1 above and adding a relatively small contingency.

Recommendation 3 in the open report, provides authorisation to the Chief Executive Officer, or his nominated delegate to accept a suitable offer for the scope of works from Coastwide Civil.

If these recommendations are endorsed by Council, staff will seek to negotiate with Coastwide Civil on the scope of works with the goal of reducing the costs proposed by Coastwide Civil.

Financial Capacity Assessment

The recommended sum of \$750,000 exc GST (being the contract sum plus a small contingency) is within the allocated Shell Cove capital works program budget and will be funded by loan borrowings, in accordance with the adopted Delivery Program 2018 – 2022 and Operational Plan 2020 – 2021.

Arcadis Australia Pacific Pty Ltd were engaged for quantity surveying servicing as a double check that the contract price provided is value for money. Shell Cove Working Pavement Budget Estimate report provides confirmation that the price is as expected for the scope of work. An additional check completed by the Project Manager indicated that the rates applied by Coastwide Civil Pty Ltd for the works are in line with those provided in the competitive tender awarded for similar works in this precinct.

A financial assessment recently completed on Coastwide Civil Pty Ltd resulted in a recommendation that no additional financial risk mitigation measures are necessary beyond the following standard contractual conditions:

- Provide a bank guarantee amounting to 5% of the contract price which will be returned post practical completion period of 52 weeks.
- Statutory Declaration to be signed and submitted by the Contractor every progress claim confirming necessary payments to subcontractors have been made.
- Council's assigned Project Manager will double-check progress claims prior to releasing payment.

It is therefore considered that Council's financial interests will be protected subject to bank guarantee as stated above being obtained.

Recommendation

It is recommended in the open report that Council decline to invite tenders for the Shell Cove Boat Maintenance Facility Enabling Works as a satisfactory result would not be achieved due to extenuating circumstances. It is also recommended that Council allocate a budget of \$750,000 exc GST and provide the Chief Executive Officer with the authority to award a contract within the set budget to Contractor 'A', Coastwide Civil. If Council accepts the recommendations the name of the successful contractor and amount payable under the contract will be added to the public contracts register.

If Councillors have any questions, please contact Shell Cove Executive Manager, Wayde Peterson on 4221 6388 in the first instance.

Carey McIntyre
Chief Executive Officer