

# AGENDA

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## **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 Statement**

Due to the current COVID-19 restrictions this Council Meeting will be online. Pre-registered members of the public who address Council at the Addresses to Council Forum should be aware that their image, and comments will be recorded, and broadcast live from Council's website.

It should be noted that the Addresses to Council Forum is held prior to the Council Meeting from 4.30pm to 5.30pm.

Council broadcasts 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 for appropriate behaviour during the public address forum is available on Council's website.

## **2. Apologies**

## **3. Leave of Absence**

## **4. Confirmation of Minutes**

### **4.1 Ordinary Council Meeting 26 October 2021**

That the Minutes of the Ordinary Council Meeting held on 26 October 2021 as circulated be taken as read and confirmed as a correct record of proceedings.

## **5. Disclosures of Interest**

Note: Councillors and staff who declare an Interest at the Council Meeting are also required to complete a Declaration of Interest form.

**6. Condolences**

**7. Mayoral Statements / Reports / Presentations**

**8. Mayoral Minutes**

**9. Councillors' Statements / Reports**

**10. Reports**

**10.1 Chief Executive Officer**

## 10.2 Council Sustainability Directorate

### 10.2.1 Monthly Investment Report – September 2021 (11763137)

To the Chief Executive Officer

**Directorate:** Council Sustainability  
**Group:** Finance

**Manager:** Katie Buckman – Chief Financial Officer  
**Author:** Lisa McCabe – Senior Accountant

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## Summary

The purpose of this report is to provide details to Council of its current investment portfolio in terms of holdings and impacts of changes in market values since the last monthly report, as well as to seek a resolution to receive and note the report. The report for the month of September 2021 details investment performance against applicable benchmarks, and reviews the compliance of Council's investments with policy and legislative requirements.

As at the end of September 2021, \$419,129 of interest revenue has been accrued.

Council is approximately \$87,000 ahead of the annual budget forecast of \$1,327,429 (forecast = \$1,327,429 divided by 12 months and multiplied by 3 months = \$331,857).

## Background

Financial Services staff monitor Council's cash flow on a daily basis, with surplus funds being invested in accordance with Council's Investment Policy, the *Local Government Act 1993*, Local Government (General) Regulation and the Ministerial Investment Order.

Subject to these constraints, Council's objective when investing funds is to obtain the most favourable rate of interest, whilst taking into consideration the risks and security associated with the investment, as well as ensuring that Council's liquidity requirements are also being met. To assist with this process, Council consults with its independent investment advisor (Imperium Markets Pty Ltd) prior to any investment being made. Close attention is paid to Council's Investment Policy document.

This report provides details on the performance for the month of September 2021 (**Attachments 1 & 2**). Please note there have been some formatting changes added to Attachment 1 to provide additional information regarding Council's portfolio.

The return on investments for the month of September 2021 was 0.12%, or approximately 1.44% when annualised. This compares very favourably with the AusBond Bank Bill Index which was 0.00% for the month of September 2021.

Finance staff have consulted with Council's investment adviser, Imperium Markets, in relation to Council's ongoing investment strategy in the current environment. The advice from Imperium Markets continues to be that there is not much value being offered in short-dated deposits (maturing less than 12 months), yielding under 0.50% p.a. In contrast there is an upward pick-up in yield in the 2-5 year maturity range for fixed term deposits. The staggering of investments longer-term and rolling investments for a minimum term of 2 years has the potential to yield (on average) more than double the return in coming years, when compared to investing purely in short-dated deposits.

### **Financial / Resources Implications**

Council is ahead of the annual budget forecast by approximately \$87,000 at the end of September 2021. There are additional fair value assessments of Floating Rate Notes, however these amounts are excluded from the Operational Performance Ratio.

Council remains one of the better performing Councils in the state of NSW where term deposits are concerned, earning on average, approximately \$661,000 in additional interest income compared to other Councils (based on August 2021 rankings). This rankings analysis carried out on 90 NSW Local Government Council term deposit portfolios is conducted by Council's independent investment advisors, Imperium Markets Pty Ltd. This analysis has currently ranked Shellharbour City Council's portfolio as number 8 (based on August 2021 rankings) when analysing the returns generated over the last 12 months.

### **Legal and Policy implications**

Section 212 of the *Local Government (General) Regulation 2005*, requires Council's Responsible Accounting Officer to provide a report to Council, detailing all investments held at the end of each month. This report confirms that the investments made, have been in accordance with the Act and the regulations, along with Council's Investment Policy.

### **Public / Social Impact**

Council invests its surplus funds on the best available advice, to maximise interest returns in accordance with Council's Investment Policy. Any additional interest income achieved through the placement of investments will result in extra funds being put to facilities, operations and outcomes for the community.

### **Link to Community Strategic Plan**

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

Objective: 4.2 Supported by a Council that is responsive, accountable and financially viable

Strategy: 4.2.1 Undertake Council activities within a clear framework of strategic planning, policies, procedures and service standards



## Attachment 1 – Council's Investment Portfolio as at 30 September 2021



## Shellharbour City Council Investment Report by Investment Strategy as at 30 September 2021

The table below shows the actual performance of Council's investment portfolio. It is provided as required by the Local Govt (General) Reg 2005 (CI 212).

Issuer	Rating	Instrument	Rate	Original Investment Date	Original Investment Term	Opening Balance 31/08/2021	Closing Balance 30/09/2021	Monthly Movement	Maturity
<b>Remaining Term to Maturity: 0-90 days</b>									
Commonwealth Bank	AA-	CASH	0.20			18,200,000	20,701,971	2,501,971	T
Westpac	AA-	TD	1.70	16/09/2019	2 years	1,000,000	-	(1,000,000)	16/09/2021
Australian Military Bank	BBB+	TD	1.78	28/11/2019	2 years	2,000,000	2,000,000	-	29/11/2021
Rabobank Australia Branch	A+	TD	3.00	12/12/2017	4 years	2,000,000	2,000,000	-	13/12/2021
						<b>23,200,000</b>	<b>24,701,971</b>	<b>19%</b>	<b>1,501,971</b>
<b>Remaining Term to Maturity: 91-365 days</b>									
Newcastle Permanent	BBB	FRN*	1.44	06/02/2018	5 years	1,774,631	1,773,686	(945)	06/02/2023
HSBC	AA-	FRN*	0.86	27/09/2019	5 years	3,046,257	3,043,434	(2,823)	27/09/2024
Newcastle Permanent	BBB	TD	3.05	24/01/2019	3 years	1,500,000	1,500,000	-	24/01/2022
Police Credit Union SA	Unrated	TD	2.99	25/02/2019	3 years	1,000,000	1,000,000	-	25/02/2022
Police Credit Union SA	Unrated	TD	2.99	26/02/2019	3 years	1,000,000	1,000,000	-	25/02/2022
AMP Bank	BBB	TD	2.75	12/03/2019	3 years	2,500,000	2,500,000	-	11/03/2022
Newcastle Permanent	BBB	TD	2.90	12/03/2019	3 years	3,500,000	3,500,000	-	14/03/2022
St George Bank	AA-	TD	2.30	04/07/2019	3 years	2,000,000	2,000,000	-	04/07/2022
AMP Bank	BBB	TD	0.75	03/03/2021	1.5 years	1,000,000	1,000,000	-	30/08/2022
Westpac	AA-	FRTD	1.06	04/09/2017	5 years	3,000,000	3,000,000	-	05/09/2022
						<b>20,320,888</b>	<b>20,317,120</b>	<b>16%</b>	<b>(3,768)</b>
<b>Remaining Term to Maturity: 1-2 years</b>									
ING Direct	A	TD	0.55	03/03/2021	2 years	2,000,000	2,000,000	-	01/03/2023
Police Credit Union SA	Unrated	TD	1.64	02/03/2020	3 years	2,000,000	2,000,000	-	02/03/2023
BOQ	BBB+	TD	2.30	18/06/2019	4 years	2,000,000	2,000,000	-	19/06/2023
Westpac	AA-	TD	0.56	06/07/2021	2 years	2,000,000	2,000,000	-	06/07/2023
Westpac	AA-	TD	0.82	04/09/2020	3 years	2,000,000	2,000,000	-	04/09/2023
Rabobank Australia Branch	A+	TD	3.40	04/09/2018	5 years	1,000,000	1,000,000	-	04/09/2023
Westpac	AA-	TD	0.84	07/09/2020	3 years	3,000,000	3,000,000	-	07/09/2023
						<b>14,000,000</b>	<b>14,000,000</b>	<b>11%</b>	<b>-</b>
<b>Remaining Term to Maturity: 2-5 years</b>									
BOQ	BBB+	TD	1.15	20/08/2020	4 years	2500000	2500000	-	20/08/2024
NAB	AA-	TD	0.94	07/09/2020	4 years	5000000	5000000	-	09/09/2024
NAB	AA-	TD	0.85	18/12/2020	4 years	3000000	3000000	-	18/12/2024
Westpac	AA-	TD	0.76	18/12/2020	4 years	2000000	2000000	-	18/12/2024
BOQ	BBB+	TD	1.85	13/03/2020	5 years	2000000	2000000	-	13/03/2025
BOQ	BBB+	TD	1.25	04/09/2020	5 years	1000000	1000000	-	04/09/2025
NAB	AA-	TD	1.08	07/09/2020	5 years	7000000	7000000	-	08/09/2025
NAB	AA-	TD	1.05	18/09/2020	5 years	4000000	4000000	-	18/09/2025
Northern Territory Treasury	AA-	BOND	1.20	16/09/2020	5.25 years	1000000	1000000	-	15/12/2025
Northern Territory Treasury	AA-	BOND	1.20	18/09/2020	5.25 years	1000000	1000000	-	15/12/2025
Northern Territory Treasury	AA-	BOND	1.00	14/10/2020	5.17 years	4000000	4000000	-	15/12/2025
Northern Territory Treasury	AA-	BOND	1.20	06/07/2021	4.45 years	3000000	3000000	-	15/12/2025
NAB	AA-	TD	1.00	18/12/2020	5 years	6000000	6000000	-	18/12/2025
Westpac	AA-	TD	1.12	03/03/2021	5 years	2000000	2000000	-	03/03/2026
NAB	AA-	TD	1.25	03/03/2021	5 years	1000000	1000000	-	03/03/2026
P&N Bank	BBB	TD	1.20	03/03/2021	5 years	6000000	6000000	-	03/03/2026
Northern Territory Treasury	AA-	BOND	1.30	17/03/2021	5.25 years	2000000	2000000	-	15/06/2026
Northern Territory Treasury	AA-	BOND	1.30	26/05/2021	5.06 years	1500000	1500000	-	15/06/2026
P&N Bank	BBB	TD	1.25	18/06/2021	5 years	3000000	3000000	-	18/06/2026
Westpac	AA-	TD	1.31	18/06/2021	5 years	3000000	3000000	-	18/06/2026
P&N Bank	BBB	TD	1.20	28/06/2021	5 years	2000000	2000000	-	29/06/2026
Westpac	AA-	TD	1.32	28/06/2021	5 years	5000000	5000000	-	29/06/2026
						<b>67,000,000</b>	<b>67,000,000</b>	<b>51%</b>	<b>-</b>
<b>Remaining Term to Maturity: 5-10 years</b>									
Northern Territory Treasury Corporation	AA-	BOND	1.50	06/07/2021	5.45 years	5,000,000	5,000,000	-	15/12/2026
						<b>5,000,000</b>	<b>5,000,000</b>	<b>4%</b>	<b>-</b>
<b>Senior Bond Performance (Excluding sale/maturity of investments)</b>									
								<b>(3,768)</b>	<b>**</b>
<b>Total Shellharbour City Council Portfolio</b>						<b>129,520,888</b>	<b>131,019,091</b>	<b>1,498,203</b>	

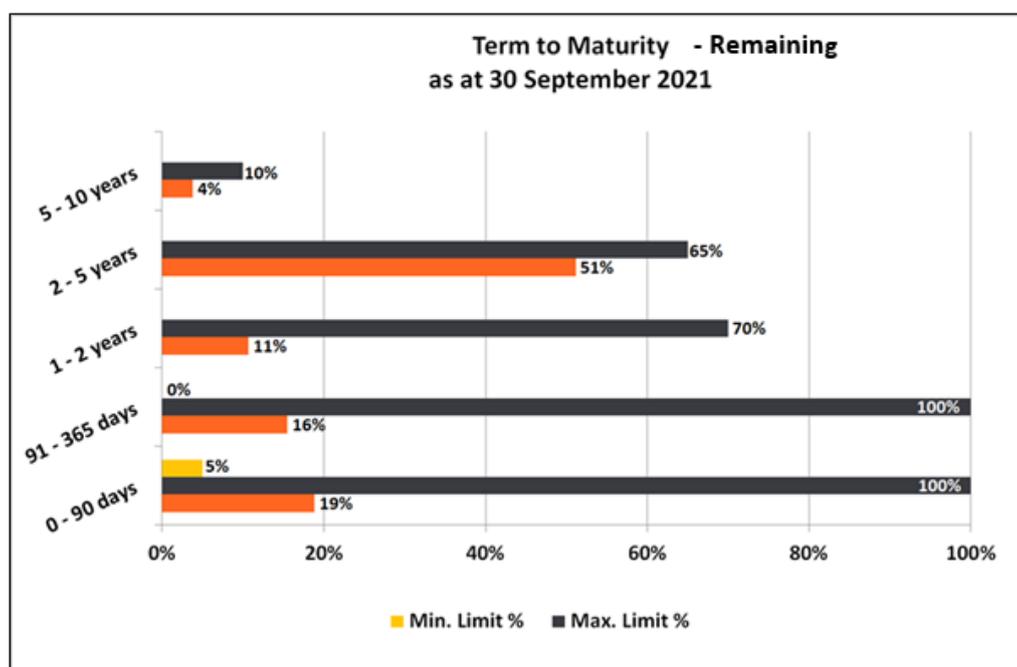
\* Maturity classification of these Floating Rate Notes [FRNs] are based on a Held-For Trading basis, as they are expected to be sold prior to maturity.

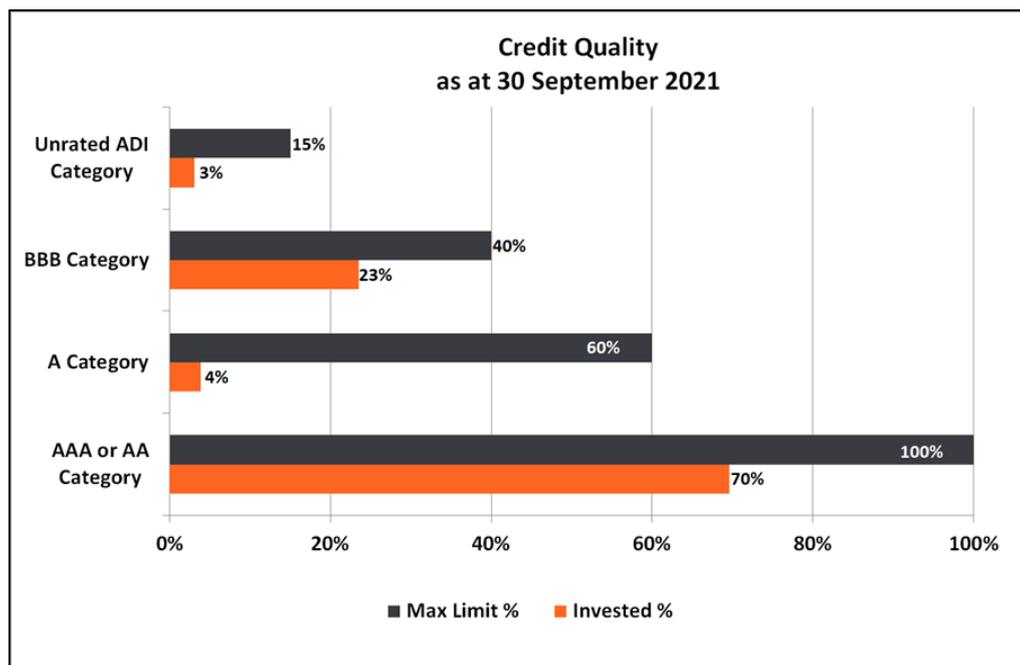
\*\* Returns are calculated using a daily time weighted methodology. The performance figures are net of all fees.

Council's unrestricted cash balance position as at 30 June 2021 was \$28.337M. This will be earmarked for the ongoing budget as part of Council's financial management strategy.

**Attachment 2 – Council’s Investment Portfolio Graphs as at 30 September 2021**

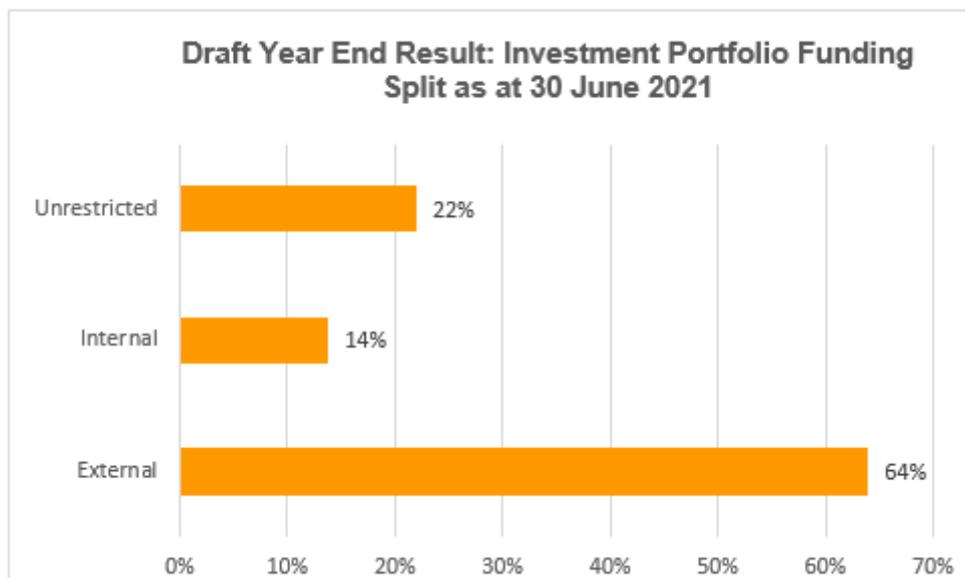
<b>Performance (Actual)</b>	<b>1 month</b>	<b>3 months</b>	<b>6 months</b>	<b>FYTD</b>	<b>1 year</b>	<b>2 years</b>	<b>3 years</b>
Official Cash Rate	0.01%	0.03%	0.05%	0.03%	0.11%	0.29%	0.64%
AusBond Bank Bill Index	0.00%	0.01%	0.01%	0.01%	0.04%	0.31%	0.79%
Council’s T/D Portfolio	0.12%	0.36%	0.76%	0.36%	1.69%	2.17%	2.49%
Council’s FRN Portfolio	0.09%	0.71%	0.96%	0.71%	2.23%	1.98%	2.29%
Council’s Bond Portfolio	0.11%	0.32%	0.61%	0.32%	1.16%	-	-
<b>Council’s Portfolio^</b>	<b>0.12%</b>	<b>0.38%</b>	<b>0.76%</b>	<b>0.38%</b>	<b>1.71%</b>	<b>2.08%</b>	<b>2.45%</b>
<b>Outperformance</b>	<b>0.12%</b>	<b>0.37%</b>	<b>0.74%</b>	<b>0.37%</b>	<b>1.67%</b>	<b>1.77%</b>	<b>1.67%</b>



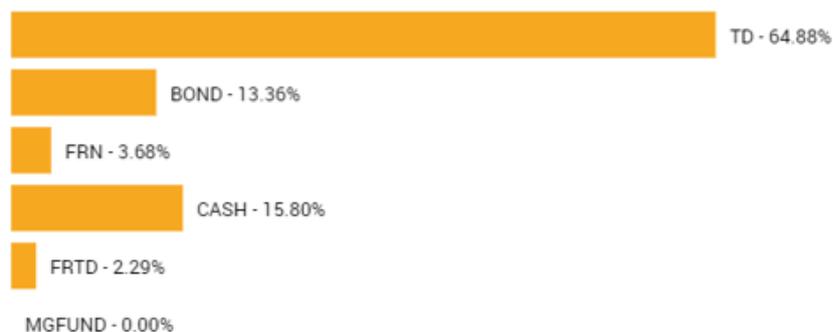


### Counterparty

Compliant	Issuer	Rating	Invested (%)	Max. Limit (%)
✓	CBA	AA-	15.80%	25.00%
✓	HSBC	AA-	2.32%	25.00%
✓	NAB	AA-	19.84%	25.00%
✓	Northern Territory	AA-	13.36%	25.00%
✓	Westpac (SGB)	AA-	18.32%	25.00%
✓	Rabobank Aus.	A+	2.29%	15.00%
✓	ING Bank Aus.	A	1.53%	15.00%
✓	Aus. Military Bank	BBB+	1.53%	12.50%
✓	BoQ	BBB+	5.72%	12.50%
✓	AMP	BBB	2.67%	12.50%
✓	Newcastle PBS	BBB	5.17%	12.50%
✓	P&N Bank	BBB	8.40%	12.50%
✓	Police CU SA	Unrated	3.05%	10.00%
			<b>100.00%</b>	



**Breakdown by Asset Type**



## 10.2.2 Proposed Acquisition of Land – Croom (11763090)

To the Chief Executive Officer

**Directorate:** Council Sustainability  
**Group:** Business and Investment Team

**Manager:** Trevor James – Manager Business and Investment  
**Author:** Lonell Wicks – Property Management Coordinator

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### Summary

The purpose of this report is to seek Council approval to acquire part Lot 1 DP 518114 being part 97A Tongarra Road, Croom (as shown in **Attachment 1**) and part Lot 1 DP 608888 being part 97B Tongarra Road, Croome (as shown in **Attachment 2**) to deliver the shared path project along Tongarra Road between Stapleton Avenue and Croome Road. This report also seeks approval to make formal offers totalling \$10,490 (GST inclusive) to the owners of the land for both acquisitions.

### Background

In July 2017, Transport for NSW notified Council of the successful receipt of a 2017/18 Active Transport Program grant for the construction of a shared path along Tongarra Road from Stapleton Avenue to Croome Road. Once complete, the path would provide improved safety and connectivity for pedestrians and cyclists between Albion Park Rail and Albion Park.

The design of the project has been developed through extensive collaboration with Transport for NSW and integrated into the design of the Albion Park Bypass to ensure consistency and a positive outcome for the community once complete.

In June 2019, construction of the shared path on Tongarra Road commenced at the corner of Croome and Tongarra Road intersection, continuing to the front of 97A Tongarra Road.

The completion of the shared path was placed on hold until the practical completion of the Albion Park Bypass entry and exit ramp and was subject to authority approval. Given the two dependencies of the project are close to completion, the remaining works to connect the shared path are due to recommence.

The continuation of the project prompted discussions with the owners of the land for a potential land acquisition along the front property boundary to accommodate the construction of the missing shared path connection.

Council has obtained a valuation report from a registered valuer to assess the compensation payable pursuant to the *Land Acquisition (Just Terms Compensation) Act 1993*. The valuer assessed the compensation payable for the acquisition of the Land as below (**Table 1**):

**Table 1 – Proposed acquisition of land**

Lot	Address	Required Land	Compensation Payable	GST	As shown
Part Lot 1 DP 518114	97A Tongarra Road, Croom	46.79 sqm	\$9,500	None	<b>Attachment 1</b>
Part Lot 1 DP 608888	97B Tongarra Road, Croom	6 sqm	\$900	Plus GST	<b>Attachment 2</b>

The owner of 97B is registered for charging GST on the sale, whereas the owner of 97A is not registered for GST and therefore not charged GST on the sale.

In addition to the compensation payable, Council will be responsible for the cost of removing and relocating the impacted boundary fence on both properties.

An 'in-principle' offer totalling \$10,490 GST inclusive has been made and accepted by landowners, in accordance with the valuation obtained.

Under the *Land Acquisition (Just Terms Compensation) Act 1993 Act*, if an agreement for the acquisition cannot be reached, Council can proceed to acquire the land by compulsory acquisition.

### **Financial / Resources Implications**

Council is responsible for all reasonable costs incurred by the landowner as a result of the acquisition. This includes compensation, valuation, legal and survey costs. The cost associated is estimated at \$17,500 excluding GST.

The project budget is to be funded from the Asset Improvement Program of the 2021/22 Capital Works Program. The acquisition costs are included in the project budget and does not require additional funding.

### **Legal and Policy implications**

The acquisition of the Land will be in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

The proposal to acquire this land has no implications in relation to the current policies of Council.

### **Public / Social Impact**

The acquisition of the Land will enable the construction of the shared path connection from the corner of Croome and Tongarra Road intersection to Stapleton Avenue. Once complete, the path would provide improved safety and connectivity for pedestrians and cyclists between Albion Park Rail and Albion Park.

This report supports the following strategic priorities and actions of the Property Strategy:

Priority:       Contribute to economic growth and community well-being

Action: Meet service delivery demands by providing fit for purpose assets in optimal locations

### **Link to Community Strategic Plan**

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

Objective: 2.3 A city that is connected through places and spaces

Strategy: 2.3.6 Deliver sustainable whole of life asset management for the community

Objective: 4.2 Supported by a Council that is responsive, accountable and financially viable

Strategy: 4.2.1 Undertake Council activities within a clear framework of strategic planning, policies, procedures and service standards

### **Consultations**

#### **Internal**

Manager Asset Planning  
Acting Group Manager Asset Strategy  
Senior Asset Engineer  
Project Delivery Officer  
Senior Accountant

#### **External**

Land owner of 97A Tongarra Road, Croom  
Land owner of 97B Tongarra Road, Croom  
PJC – Consultant Valuers

### **Political Donations Disclosure**

Not Applicable

**Recommendation****That:**

- 1. Council acquire part Lot 1 in Deposited Plan 518114 being part 97A Tongarra Road, Croom for road purposes under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*.**
- 2. Council make a formal offer of \$9,500 to the owners of Lot 1 in Deposited Plan 518114, 97A Tongarra Road, Croom to acquire the Land.**
- 3. Council acquire part Lot 1 in Deposited Plan 608888 being part 97B Tongarra Road, Croom for road purposes under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*.**
- 4. Council make a formal offer of \$990 GST inclusive to the owners of Lot 1 in Deposited Plan 608888, 97B Tongarra Road, Croom to acquire the Land.**
- 5. Upon acquisition, the land be classified as operational land pursuant to *Local Government Act 1993* and dedicated as road under Section 10, *Roads Act 1993*.**
- 6. The Mayor and Chief Executive Officer, or his nominated delegate be authorised to sign all documentation, including affixing of the Council Seal associated with the acquisition of part Lot 1 in Deposited Plan 518114, 97A Tongarra Road, Croom and part Lot 1 in Deposited Plan 608888, 97B Tongarra Road, Croom.**

Approved for Council's consideration: Trevor James  
Manager Business and Investment

**Date of Meeting:** 16 November 2021

**Attachments**

1. Aerial Map – Area of Acquisition – Part Lot 1 DP 518114 – 97A Tongarra Road, Croom – *Page 16*
2. Aerial Map – Area of Acquisition – Part Lot 1 DP 608888 – 97B Tongarra Road, Croom – *Page 17*

**Attachment 1 – Aerial Map – Area of Acquisition – Part Lot 1 DP 518114 – 97A  
Tongarra Road, Croom**



**Attachment 2 – Aerial Map – Area of Acquisition – Part Lot 1 DP 608888 – 97B  
Tongarra Road, Croom**



**10.2.3 Proposed New Lease – Touchdown Helicopters Pty Ltd – Lot 2 DP 1092398 2/32 Airport Road, Albion Park Rail, Shellharbour Airport (11763086)**

To the Chief Executive Officer

**Directorate:** Council Sustainability  
**Group:** Business and Investment

**Manager:** Trevor James – Manager Business and Investment  
**Author:** Lonell Wicks – Property Management Coordinator

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## Summary

The purpose of this report is to seek Council approval to enter into a new lease with Touchdown Helicopters Pty Ltd for six years, for the land and hangar identified as Lot 1 DP 1092398, 1/32 Airport Road, Albion Park Rail, Shellharbour Airport.

## Background

Touchdown Helicopters Pty Ltd (Touchdown Helicopters) has been the occupant of Lot 1 DP 1092398 since May 2012. The lease area is 1,298 m<sup>2</sup>, which includes a hangar (370m<sup>2</sup>), identified in **Attachment 1**.

At the expiration of the original lease on 14 May 2021, Council agreed that the lease remain on a holding over period until a review of all airport leases was carried out. Ongoing discussions between Council Property staff, the Airport Manager and Touchdown Helicopters has identified that the existing hangar is currently being subleased by Viva Energy Aviation Pty Ltd, Total Aerospace Solutions Pty Limited and Bright Events Pty Ltd (Wings Over Illawarra).

Following further review of the existing sublease agreements, Council staff and the Airport Manager determined that the sublease arrangements are aligned with the airport leasing strategy. The sublease terms and conditions need to be registered within the proposed head lease agreement.

It is therefore recommended, subject to Council resolution, to enter into a new proposed lease with Touchdown Helicopters for a term of six years. This timeframe aligns with another lease held by Touchdown Helicopters at the airport, located within Part Lot 2 DP 1240742. The proposed lease will therefore have a termination date of 7 November 2027.

Touchdown Helicopters has been notified that all proposed subleases including variation or additional subleases must obtain prior consent from Council officers, as per the lease terms and conditions.

**Financial / Resources Implications**

An independent valuation has been undertaken by a registered land valuer on the Council's pre-approved panel. Touchdown Helicopters has agreed to the recommended market rent amount in the valuation and sublease fee.

Lease Area: 1,298 m<sup>2</sup> inclusive of hangar and ground floor office, Lot 1 DP 1092398, 1/32 Airport Road, Albion Park Rail, Shellharbour Airport.

Terms: Six years.

Rent: Commencement rent \$30,000 GST exclusive per annum (\$23.11 per sqm). This amount is consistent with an independent valuation that was undertaken for the land, hangar and ground floor office.

Sublease fee: 10% charge of any rent under a sublease over and above the rent payable within the head lease between Shellharbour Council and Touchdown Helicopters. The commencing sublease fee has been calculated at \$1,119.96 GST exclusive per annum.

Rent Review: Consumer Price Index (CPI) to be applied annually and market rent review following the first five years.

Outgoings: 100% Lessee responsibility.

Permitted Use: Aviation facility, hangar garage, aviation operational offices, aircraft activities including training, aircraft maintenance, flight check, training and charter.

Touchdown Helicopters will be responsible for all costs associated with the preparation of lease agreement in accordance with Council's fees, charges and the policy titled *Leasing and Licensing on Council Public Land and Buildings*.

**Legal and Policy implications**

The land identified as airport land is owned by Council in fee simple and is classified as operational land in accordance with Sections 25 and 26 of the *Local Government Act 1993*.

A Council resolution is required to affix the common seal of the Council.

**Public / Social Impact**

The approval of the new lease will enable the continuation of services to the local community. The various occupant services include firefighting, hazard reductions, shark patrols, flood relief, aerial surveys, Wings Over Illawarra aviation event management and aircraft aeromedical fit out works for NSW Ambulance Service.

This report supports the following strategic priorities and actions of the property strategy:

Priority: Assign responsibility and accountability

Action: Determine and communicate accountability and report responsibilities throughout each step of the integrated approach to asset management and planning

Priority: Contribute to economic growth and community well-being

Action: Meet service delivery demands by providing fit for purpose assets in optimal locations

### **Link to Community Strategic Plan**

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

Objective: 2.3 A city that is connected through places and spaces

Strategy: 2.3.6 Deliver sustainable whole of life asset management for the community

Objective: 4.2 Supported by a Council that is responsive, accountable and financially viable

Strategy: 4.2.1 Undertake Council activities within a clear framework of strategic planning, policies, procedures and service standards

### **Consultations**

#### **Internal**

Manager Airport  
Senior Accountant  
Property Officer  
Property Coordinator

#### **External**

Touchdown Helicopters Pty Ltd  
Herron Todd & White (Valuer)

### **Political Donations Disclosure**

Not Applicable

**Recommendation****That:**

- 1. Council enter into a new lease agreement with Touchdown Helicopters Pty Ltd for Lot 1 DP 1092398 1/32 Airport Road, Albion Park Rail, Shellharbour Airport for six years, on the basis of annual rent of \$30,000 excluding GST per annum, subject to CPI annually.**
- 2. Council endorse subleasing as per the permitted use within the head lease with 'Viva Energy Aviation Pty Ltd', 'Total Aerospace Solutions Pty Limited' and 'Bright Events Pty Ltd'.**
- 3. Council endorse that a subsequent condition be included within the lease, a 10% charge of any rent payable under the subleases over and above of rent payable under the head lease with Touchdown Helicopters Pty Ltd.**
- 4. 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 lease agreements with Touchdown Helicopters Pty Ltd for Lot 1 DP 1092398 1/32 Airport Road, Albion Park Rail, Shellharbour Airport.**

Approved for Council's consideration: Trevor James  
Manager Business and Investment

**Date of Meeting:** 16 November 2021

**Attachments**

1. Proposed Lease Area Lot 1 DP 1092398 1/32 Airport Road, Albion Park Rail, Shellharbour Airport – *Page 22*

**Attachment 1 - Proposed Lease Area Lot 1 DP 1092398 1/32 Airport Road, Albion Park Rail, Shellharbour Airport**



**10.2.4 Shell Cove Marina Service Building (11765981)**

To the Chief Executive Officer

**Directorate:** Council Sustainability

**Group:** Shell Cove

**Manager:** Scott Bridgement – Director Council Sustainability

**Author:** Wayde Peterson – Shell Cove Executive Manager

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**Summary**

The purpose of this report is to provide an update to Council on the status of the Shell Cove Marina Services Building Project (MSB), and to seek approval to not call for new tenders due to extenuating circumstances.

On 28 October 2021, Council terminated Contract 2020/50 with Matrix Group Company Pty Ltd (Matrix) for the Design and Construction of the MSB. It has now become critical for Council to procure a new contractor to recommence works on the MSB site to preserve the value and integrity of the works already carried out and to complete the Shell Cove Marina Services Building.

**Background**

The Marina Services Building (MSB) at The Waterfront, Shell Cove, will cater to customers of Shellharbour Marina and provide public toilet facilities and public green space for visitors to the Waterfront. It will also provide office space for management of the Marina. The development received Consent under DA0598/2019 on 31 March 2020.

On 10 November 2020, Council resolved to award the tender for the MSB design and construction to Matrix for sum of \$2,987,141 excluding GST.

Consequently, Matrix commenced work on the site and progressed the project through to the final design, relevant approvals and pouring of the basement slab.

The MSB project construction was subsequently paused due to Public Health Orders that restricted the travel of Matrix and multiple skilled subcontractors to the Shell Cove site. Matrix and their subcontractors were expected to re-establish the worksite soon after 11 October 2021 when changes to Public Health Orders allowed the project to resume. However, Matrix and their subcontractors did not recommence the project in accordance with the program and Contract 2020/50 was terminated on 28 October 2021.

The construction site currently features a concrete slab which is exposed awaiting the building shell to tie into the reinforcement. Council is also actively maintaining site safety and environmental controls whilst the building site awaits commencement of construction.

In order to reduce site maintenance costs and minimise potential degradation of built elements, this report seeks Council's approval to not call for new tenders, and to negotiate directly with appropriate contractors in view to recommencing work on the site as soon as practical.

### **Implications, Impacts, Links and Conclusion**

#### **Financial / Resources Implications**

The financial details are not disclosed in this report in accordance with Section 10A(2)(d)(i) of the *Local Government Act 1993*, as disclosure of project related financial estimates could negatively impact the competitive negotiation process.

#### **Legal and Policy implications**

Section 55(3)(i) of the *Local Government Act* provides that a Council is not required to call for tenders for a contract where 'because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a Council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.'

The extenuating circumstances in this instance are considered suitable as Council has already run a competitive tender process for these works, noting the termination of that contract has subsequently and abruptly come to an end through no fault of Council. Additionally, works have already commenced on the Site, which is currently left unattended and requires Council to maintain the Site's safety and environmental controls, at additional costs to Council. Delay in appointing a contractor could cause the works to degrade and open Council to further financial risk. Further, the lack of a Marina Services Building negatively impacts the commercial offerings of the Marina and negatively impacts the amenity (toilets and open spaces) for visitors to the area. Therefore, the time and cost taken to invite tenders would not be in the community's best interests.

#### **Public / Social Impact**

The Shell Cove development is a significant undertaking for Council. The Marina Services Building (MSB) at The Waterfront, Shell Cove, will cater to customers of Shellharbour Marina and provide public toilet facilities and public green space for visitors to The Waterfront. It will also provide office space for staff to manage the operation of the Marina.

Early delivery of the MSB construction will ensure that the built elements that are currently exposed can be salvaged and the need for replacement of degraded infrastructure can be minimised. Additionally, maintenance costs associated with environmental and safety control of the site will be reduced.

### **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

### **Conclusion**

To minimise the time in which built elements are exposed to the environment and to minimise costs associated with maintaining the Marina Services Building site, this report seeks Council's approval to not call for new tenders, and in accordance with the *Local Government Act* negotiate directly with appropriate contractors in view to recommencing work on the site as soon as practical.

### **Consultations**

#### **Internal**

Director Amenity and Assets  
Executive Manager

#### **External**

Australand Corporation (NSW) – part of Frasers Property Group acting as Works Superintendent  
Legal advisors

### **Political Donations Disclosure**

Not applicable

**Recommendation****That:**

- 1. Council, in accordance with Section 55 (3)(i) of the Local Government Act (1993) decline to invite tenders for the Marina Services Building project due to the following extenuating circumstances;**
  - a. There is an immediate need to salvage components of the building that are exposed or they will need to be replaced.**
  - b. Costs savings can be made in expediting the works by reducing the time in which Council maintains the sites safety and environmental controls.**
  - c. This is an essential facility that supports the Marina operations and provides public toilets and green space and is necessary to support visitors to the Shell Cove Harbour.**
- 2. In accordance with S178 (4)(b) of the Local Government Regulation 2005, Council enter into negotiations with any person, with a view to entering into a contract in relation to the Marina Services Building or its components, the reason being to expedite the delivery.**
- 3. Council authorise the Chief Executive Officer, or their delegate to approve any documentation including contracts and variations to give effect to the above recommendations.**

Approved for Council's consideration: Scott Bridgement  
Director Council Sustainability

**Date of Meeting:** 16 November 2021

**Attachments**

Nil

**10.3 Community and Customers Directorate****10.3.1 Current Councillor Representatives continuance on the Australia Day Advisory Committee as Community Representatives (11764008)**

To the Chief Executive Officer

**Directorate:** Community and Customers  
**Group:** Community Connections

**Manager:** Jamie Dawson – Manager Community Engagement and Activation  
**Author:** Jessica Smith – Event and Activation Officer

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**Summary**

The purpose of this report is to seek Council endorsement to temporarily suspend terms of reference for the Australia Day Advisory Committee with the purpose of allowing current Councillor representatives to continue in their role on the Australia Day Advisory Committee as a 'Community Representative' until new Councillor representatives can be elected at the first meeting of the new Council in 2022.

**Background**

The Australia Day Advisory Committee currently consists of the following members:

Delegates

Mayor, Councillor Marianne Saliba  
Deputy Mayor, Councillor Robert Petreski  
Councillor Moira Hamilton  
Councillor Kellie Marsh

Staff Representatives

Manager Community Engagement & Activation  
Events and Activations Officer  
Communications Officer

Community Representatives

Mr Ron Dryburgh - Community Representative  
Ms Barbara Street - Community Representative  
Mr Donald Briggs - Community Representative  
Miss Kiki Cuda – Youth Community Representative  
Ms Sandra Mitrevski - Delegate for Anna Watson Member for Shellharbour  
Mr Shane Bitschkat - Delegate for Gareth Ward Member for Kiama  
Mr Donald Martin – Citizen of the Year 2021  
Miss Charli Ryan – Young Citizen of the Year 2021

Due to the Local Government Elections scheduled for 4 December 2021, and the fact that the Australia Day celebrations are before the first Council meeting of the newly elected Council, it is necessary to ensure adequate representation for the Australia Day Advisory Committee so that the key functions of the committee can continue.

The Australia Day Advisory Committee has a principle function of considering, and awarding the Shellharbour Citizen of the Year and the Shellharbour Young Citizen of the Year. Nominations for these awards is open until early December and the Committee undertakes the assessment process in early January each year. The Awards are then presented at the Shellharbour Community Awards, scheduled for 21 January 2022.

As the results of the Local Government Elections are not formally declared until 23 December, and the first meeting of the new Council is not until 8 February 2022, it is important to have continuity and representation to ensure the functions of the Committee can continue. Appointing the current Councillor Representatives (Councillor Marianne Saliba, Councillor Robert Petreski, Councillor Moira Hamilton and Councillor Kellie Marsh) as community representatives in the interim will allow current Councillors continue to participate in the selection process of the Australia Day Award recipients and continuity of the committee flow as in previous years.

The term will be until the 8 February 2022 Extraordinary Council meeting when the new Council will elect Councillor Delegates on Committees, Working Parties, Panels and Outside organisations.

**Financial / Resources Implications**

Nil

**Legal and Policy implications**

Nil

**Public / Social Impact**

Nil

**Link to Community Strategic Plan**

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

Objective: 4.1 Led through collaboration

Strategy 4.1.2 Actively engage, consult and inform the community

## **Consultations**

### **Internal**

Corporate Meetings Officer  
Executive Services Manager

### **External**

Nil

## **Political Donations Disclosure**

Not Applicable

## **Recommendation**

**That Council endorse current Councillor Representatives on the Australia Day Advisory Committee to continue in their role as a Community Representative until 8 February 2022.**

Approved for Council's consideration: Kathryn Baget-Juleff  
Group Manager Community Connections

**Date of Meeting:** 16 November 2022

## **Attachments**

Nil

**10.3.2           Exhibition of a Draft Planning Agreements Policy, and an Associated Draft Planning Agreements Guideline (11763254)**

To the Chief Executive Officer

**Directorate:**    **Community and Customers**

**Group:**         **City Planning**

**Manager:**       Geoff Hoynes – Group Manager, City Planning

**Author:**         Martin Beveridge – Development Contributions Planning Officer

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## **Summary**

The purpose of this report is to seek a Council resolution to endorse for public exhibition purposes, a new Draft Policy and associated Draft Guideline on planning agreements. **(Attachments 1 and 2)**

These documents will together set out Council's requirements and expectations for applicants wishing to enter into a planning agreement with Council. Planning agreement policies are in use by many councils, and the adoption of such a policy by Shellharbour City Council (Council) will be a positive governance measure. It will also help streamline the preparation of future planning agreements by providing clear advice to applicants.

If Council agrees to the exhibition of the Draft Policy and Draft Guideline, the documents will be exhibited for a minimum period of 28 days, and the public invited to make submissions.

If any relevant submissions are received as a result of the public exhibition, or substantial changes are recommended for any reason, a report will be submitted to Council for consideration detailing the public exhibition outcomes and with further recommendations regarding adoption. If there are no relevant submissions received as a result of the public exhibition and there are no substantial post public exhibition changes proposed for any other reasons, Council adopt documents and inform Councillors of the documents final adoption by memo.

## **Background**

### *The Need for a Planning Agreements Policy*

Development contributions for the provision of local infrastructure are usually made to Council in accordance with a Local Infrastructure Contributions Plan, as provided for under sec 7.11 or Sec 7.12 of the Environmental Planning and Assessment Act (the Act). However, the Act also provides for Council and a developer to enter into a voluntary agreement known as a planning agreement to provide public benefits to Council.

Planning agreements are prepared in association with a development application or a rezoning proposal (planning proposal), and since their introduction have been used extensively by many Councils. Planning agreements can provide a number of benefits over the usual infrastructure contribution process. Most importantly, they provide flexibility in the type of benefits that Council can receive as a development contribution, and how these benefits can be distributed to the community. Planning agreements can be particularly useful in delivering infrastructure to “greenfield” areas, in which local infrastructure needs cannot always be fully anticipated when the Council Sec 7.11 Plan is prepared. It is also often the case that Council can receive a greater quantum of development contributions through a Planning Agreement than through its Sec 7.11 contributions.

The NSW Independent Commission Against Corruption has identified the planning agreement process as an aspect of the planning system that is susceptible to corruption. Nevertheless, planning agreements continue to be used extensively by councils, and Council presently has a number of them in preparation. In order to assure that planning agreements are prepared in a transparent and accountable manner, and to demonstrate good governance, many councils have prepared and adopted a Planning Agreements Policy and /or a Guideline document.

It would be desirable, and consistent with the approach of other leading councils for Council to adopt a Planning Agreements Policy and associated Guideline.

A number of documents, including the Act and its Regulations, the Department of Planning’s Practice Note on Planning Agreements and identified best practice from other Council’s Policies and Guidelines, have been used to inform the Draft Policy and Guideline.

As well as providing a rigorous accountability and governance framework around the preparation of planning agreements, the adoption of the Policy and Guideline will streamline the preparation of planning agreements, which will help facilitate the provision of local infrastructure for the community.

#### *Main features of the Draft Planning Agreements Policy and Draft Planning Agreements Guideline*

The Draft Policy has been prepared so that it is consistent with the statutory requirements relevant to the preparation of planning agreements. It is also consistent with the Department of Planning’s Practice Note on Planning Agreements. The Draft Guideline has been prepared to supplement the Draft Policy, by providing detailed advice to applicants for Planning Agreements. Both documents have been prepared in accordance with Council’s templates.

The following paragraphs include some further information about the most important features of the Draft Policy and Draft Guideline.

**a) Draft Planning Agreements Policy**

Clause 1 - Policy Statement/ Objectives: This clause highlights the general objective of this policy, which is to provide a fair, transparent and accountable process for the preparation of planning agreements. It also highlights Council's specific objectives for the policy, which include (*inter alia*):

- Ensuring the highest level of probity in the preparation, negotiation and implementation of planning agreements.
- Enhancing flexibility in the provision of infrastructure and services for the community through the use of planning agreements including.
- Setting out Council's expectations on the use of planning agreements.

Clause 2 – Scope. This clause clarifies that the Policy applies to all planning agreements which affect land in the Shellharbour LGA. This clause also includes transitional arrangements, which provide that once the Policy and Guideline are adopted, they will apply to all planning agreements prepared for land in the Shellharbour LGA, other than those that have commenced their exhibition before the date of adoption of the Policy.

Clause 7 – Policy. This clause includes the details of Council's policy in relation to Planning Agreements, the most significant of which are as follows:

- Clause 7.1 – confirms that it is at Council's complete discretion whether or not to enter into a Planning Agreement, and sets out the circumstances in which Council may consider entering into a planning agreement. These include the following, and which help illustrate the flexibility associated with planning agreements:
  - Meet the demands created by the development for new public infrastructure and services that may be outside those of the current contributions plan.
  - Achieve recurrent funding with respect of public facilities (eg maintenance costs)
  - Monitor or mitigate the planning impacts of development.
- Clause 7.2 – outlines the fundamental principles that will guide Council in preparing a planning agreement and which will help ensure that planning agreements will always be prepared for appropriate purposes. A number of matters are included in this clause, including the following:
  - Not using planning agreements to make undesirable developments acceptable.
  - Not allowing the interests of individuals or interest groups to outweigh community interest in preparing a planning agreement.
  - Not improperly relying on Council's statutory powers to extract unreasonable benefits from developers.

- Clause 7.3 – the Acceptability Test, which outline the criteria to be followed by Council in deciding whether or not to enter into a Planning Agreement, and include (inter alia) the following:
  - Is the planning agreement directed towards a legitimate planning purpose?
  - Is it appropriate to forego the contributions that would be received under Council’s Local Infrastructure Contributions Plan in exchange for the benefits to be received under the Planning Agreement?
  - Does the planning agreement conform to the fundamental principles governing Council’s use of planning agreements?
  
- Clause 7.4 – Planning Agreements and the Public Tender Process. This clause clarifies the relationship between works provided under a planning agreement and the tender process under Sec 55 of the Local Government Act. Technically works provided under a planning agreement could be subject to this process, subject to the value threshold being met. However, Clause 55(3)(i) of the Act allows exemptions from the tender process (subject to a Council resolution) in a range of circumstances, such as the “unavailability of reliable tenderers.” In the case of works delivered under a planning agreement, there would never be any competitive tenderers because works delivered under a planning agreement are always associated with either a DA or an LEP amendment, and only the applicant would be able to access the DA consent or LEP amendment which triggers the need for the works to be done. Council can make a one-time resolution that would apply to all planning agreements, stating that pursuant to Sec 55(3)(i) of the Local Government Act, that Council will not call for tenders for works to be delivered under a planning agreement because of the unavailability in every case of competitive tenderers, meaning that a satisfactory result would not be achieved by inviting tenders. A resolution to this effect is included in this report.
  
- Clause 7.5 – the Content of a Planning Agreement – This clause advises that the applicant for a planning agreement must address the mandatory requirements required by the Act, and directs the applicant to the accompanying Guideline document for further information about matters that Council expects to see addressed in a planning agreement.
  
- Clause 7.6 – Probity Considerations – this clause clarifies the importance of probity considerations to Council in preparing a Planning Agreement and advises that the accompanying Guideline document includes more advice on this matter.
  
- Clause 7.7 – Endorsement and Execution of a Planning Agreement – this clause explains the procedure for executing a planning agreement. It advises that a draft planning agreement will always be reported to Council before exhibition, and will only be reported again at the end of the exhibition period if submissions of objection are received during the exhibition period or if the planning agreement is changed substantially after exhibition. It advises that wherever possible, the Chief Executive Officer will be responsible for executing the planning agreement on behalf of Council.

**b) Draft Planning Agreements Guideline**

- Section 4.3 - refers to a Promapp document which includes detailed advice on the stages involved in preparing a planning agreement. The electronic copy of the Guideline will include a link to this Promapp;
- Section 4.5 - provides important, though rather technical advice concerning the specific matters to be included in a planning agreement. These can be considered as Council's "rules" about how specific matters usually included in planning agreements are addressed, and covers such matters as:
  - Sec 4.5.1 – Security - This clause requires that a planning agreement must provide security to Council to protect against a breach of the planning agreement by the developer. Options to provide security include a requirement that any benefits under the agreement are provided before a construction certificate or a subdivision certificate is issued for the development. Where this is not possible, other options to ensure security include payment of a bond, and registration of the planning agreement on the title of the land, to bind future owners to the agreement.
  - Sec 4.5.3 – Acceptance of Works - This clause describes a process through which Council will accept works delivered under a planning agreement.
  - Sec 4.5.6 – Dispute Resolution - This clause requires that all planning agreements include a provision for dispute resolution (such as mediation) before exercising any legal rights to resolve disputes arising under the agreement.
  - Sec 4.5.11 – Offsets and Credits - This clause outlines Council's policy for allowing offsets or credits on Sec 7.11 contributions in exchange for works provided under a planning agreement. These are quite detailed, and depend on whether the item to be delivered is included in Council's Sec 7.11 Plan, but the principle is to take a cautious approach to the amount of offsets allowed. For example, if a planning agreement proposes to build a road that is included in Council's Sec 7.11 plan, then the maximum offset allowed would normally not exceed the value of the contribution payable by the development for the "roads" category of infrastructure, although a higher amount, up to the maximum cost of the road as included in the Sec 7.11 plan could be allowed if Council agreed there was significant community benefit in delivering the road. If the road is not included in the Sec 7.11 plan, then the amount of offset allowed would be calculated differently, and may include allowing future recoupment to the developer, subject to Council's approval when the draft planning agreement is reported to Council.
  - Sec 4.5.13 – Council's costs - This clause clarifies that all of Council's reasonable costs, such as legal costs and an administration fee of 5% of the total value of the benefits should be paid by the applicant.

- Section 5 – Probity Considerations. This section of the guideline sets out some considerations for ensuring that planning agreements are prepared to ensure probity. Amongst the recommended measures are:
  - Ensuring that planning agreements are prepared in accordance with Council’s Policy and Guidelines and the Department of Planning Practice Note.
  - Ensuring that Councillors do not have a direct role in negotiating planning agreements.
  - Provision for the appointment of a Probity Advisor, or the preparation of a Probity Pan in some situations, such as where a planning agreement relates to a major DA or rezoning proposal or where Council has a commercial interest in the associated application.
  
- Section 6 – Administration This clause sets out the administrative provisions that apply to planning agreements.

#### Exhibition of the Documents

If agreed by Council the Draft Planning Agreements Policy and associated Draft Guideline will be exhibited. The exhibition period will be for a minimum period of 28 days, in accordance with the statutory requirements. However, should it not be possible to complete the exhibition by 20 December 2021, then additional time for the exhibition will be allowed, as provided for by Council’s *“Community Participation Plan for Shellharbour City Council’s Planning Functions - 2021”*

#### **Financial / resources implications**

There are no direct implications associated with the exhibition of the Draft Policy and Guideline.

Ultimately, the adoption by Council of a policy and guideline on planning agreements should streamline the preparation of future planning agreements which should result in lower legal costs when planning agreements are prepared.

#### **Legal & Policy implications**

No legal implications. Legal advice was not sought in preparing the Draft Policy or Guideline document, as they are based on examples use by other councils, and on the recently issued Department of Planning Practice Note on Planning Agreements. Legal advice will always be sought when specific planning agreements are prepared.

If adopted, the Draft Policy and associated Guideline will become Council’s Policy for the preparation of all Planning Agreements applying to land within the Shellharbour LGA, and with which all applicants will need to comply with.

**Public / Social Impact**

Indirectly, the adoption of a Planning Agreements Policy and supporting Guideline will lead to positive community impacts by streamlining the preparation of planning agreements, thereby facilitating the delivery of local infrastructure.

**Link to Community Strategic Plan**

The Draft Planning Agreements Policy and Guideline would support the following objectives and strategies of the Community Strategic Plan:

- Objective: 3.1 Plans, builds and manages infrastructure for the community
- Strategy: 3.1.1 Provide the community with a range of infrastructure delivered in a sustainable manner
- Objective: 4.2 Supported by a Council that is responsive, accountable and financially viable
- Strategy: 4.2.1 Undertake Council activities within a clear framework of strategic planning, policies, procedures and service standards
- 4.2.3 Ensure Council is financially sustainable and continues to be transparent and accountable

**Consultations****Internal**

Executive Manager, Governance  
Chief Financial Officer  
Manager Procurement and Supply  
Manager Asset Planning  
Manager Planning  
Acting Group Manager Asset Strategy  
Manager Subdivision Development

**External**

Consultation with external stakeholders will occur when the Draft Policy and Draft Guideline is approved for exhibition purposes.

**Political Donations Disclosure**

Not Applicable

## Recommendation

That:

1. Council endorse the Draft Planning Agreements Policy and Draft Planning Agreements Guideline to be placed on public exhibition for a period of 28 days calling for submissions.
2. If any relevant submissions are received as a result of the public exhibition of the Draft Planning Agreements Policy and Draft Planning Agreements Guideline, or substantial changes are recommended for any reason, a report be submitted to Council for consideration detailing the public exhibition outcomes and with further recommendations regarding adoption.
3. If there are no relevant submissions received as a result of the public exhibition and there are no substantial post public exhibition changes proposed for any other reasons, Council adopt the Draft Planning Agreements Policy and Draft Planning Agreements Guideline and inform Councillors of the documents final adoption by memo.
4. Pursuant to Sec 55(3)(i) of the *Local Government Act 1993* Council not call for tenders for all works that are to be delivered through a planning agreement, because of the unavailability in every case of competitive tenderers, meaning that a satisfactory result would not be achieved by inviting tenders.

Approved for Council's consideration: Geoff Hoynes  
Group Manager City Planning

**Date of Meeting:** 16 November 2021

### Attachments

1. Draft Planning Agreements Policy – Page 38
2. Draft Planning Agreements Guideline – Page 46

## Attachment 1 – Draft Planning Agreements Policy 2021



Policy

## DRAFT Planning Agreements Policy 2021

Policy Name: Shellharbour City Council Planning Agreements Policy 2021	Policy Number:
Date Adopted: tbc	Review Date:
Policy Owner: Group Manager, City Planning	

## 1. Policy Statement/Objective(s)

Shellharbour City Council is committed to ensuring a fair, transparent and accountable framework for the negotiation, preparation implementation and management of planning agreements. This Policy provides that framework.

The specific objectives of this policy (and Council's strategic objectives in relation to planning agreements) are to:

- a) establish a framework governing the use of planning agreements by Council;
- b) ensure that the use of planning agreements by Council is efficient, fair, transparent and accountable;
- c) ensure the highest level of probity in the preparation, negotiation and implementation of planning agreements
- d) enhance flexibility in the provision of infrastructure and services for the community through the use of planning agreements;
- e) enhance the range and extent of development contributions made by development towards public facilities in the Council's area;
- f) set out the Council's specific expectations on the use of planning agreements;
- g) provide certainty for developers when negotiating and preparing planning agreements
- h) to provide for an appropriate level of public participation into the preparation and consideration of planning agreements and of the public benefits arising from planning agreements

This Policy should be read in conjunction with the accompanying "*Planning Agreement Policy – Guideline Document*", which supplements this Policy, and provides further information for applicants seeking to enter into a planning agreement with Council.

Council expects that this Policy and the associated Guideline will be complied with to the fullest extent possible.

## 2. Scope

This policy sets out Council's rules and expectations relating to the negotiation and preparation of planning agreements.

It applies in all circumstances where an applicant seeks to enter into a planning agreement with Council in connection with a Development Application or a Planning Proposal applying to land in the Shellharbour LGA.

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Policy Name: Planning Agreements Policy  
 Date of Adoption: Draft 14 October 2021 for Council  
 seeking endorsement to exhibit Page 1

The Policy does not limit or fetter Council's duty or discretion to properly determine development applications or planning proposals under the Environmental Planning and Assessment Act, 1979

Transitional Arrangements: This policy applies to all planning agreements prepared in connection with a Development Application or a Planning Proposal applying to land in the Shellharbour LGA, other than those which have commenced their exhibition period before the date that this Policy comes into effect

**3. References**

- Shellharbour City Council Section 7.11 Local Infrastructure Contributions Plan (as updated)
- Shellharbour City Council Works in Kind Policy and Guideline Document (as amended)
- Environmental Planning and Assessment Act NSW 1979
- Environmental Planning and Assessment Regulation NSW 2000
- Local Government Act 1993
- Local Government (General) Regulation 2005
- Planning Agreements Practice Note – NSW Department of Planning industry and Environment (February 2021)
- Tendering Guidelines for NSW Local Government

**4. Internal/External Consultations**

- Finance
- Procurement
- Assets
- Design
- Governance
- City Planning
- Assessments

**5. Definitions**

Act	means the Environmental Planning and Assessment Act 1979
Construction Certificate	has the same meaning as in the EP&A Act.
Contributions Plan	is a document that has been publicly exhibited and adopted by the Council pursuant to Section 7.18 of the EP&A Act that authorises the imposition of a condition of development consent under Section 7.11 of that Act;
Contribution Value means:	(a) in relation to an Infrastructure Item that is identified in the Contributions Plan, the estimated cost for the Infrastructure Item, as specified in the Contributions Plan, which may differ from the final actual cost of construction of the item,  (b) in relation to any other Infrastructure Item approved by the Council, the agreed value of that Infrastructure Item.
Council	means Shellharbour City Council.

Defects Liability Period	means the period stipulated in a planning agreement during which Council may give the Developer a rectification notice stating the works to be rectified at the Developers cost.
Developer	is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or revocation of an instrument (s7.4(11)) or who has made or proposes to make a development application or who has entered into an agreement with or is otherwise associated with such a person.
Development Application	has the same meaning as in the Act;
Development Consent	has the same meaning as in the Act;
Development Contribution	means a monetary contribution required by a condition of Development Consent imposed under Section 7.11 of the Act.
ELT	means Council's Executive Leadership Team
Explanatory Note	means a written statement that provides details of the objectives, nature, effect and merits of a planning agreement or an amendment or revocation of a planning agreement as required under clause 25E of the Regulation;
GST	has the same meaning as in the GST Law,
GST Law	has the meaning given to that term in "A New Tax System (Goods and Services tax) Act 1999 (Cth) and any other Act or Regulation relating to the imposition or administration of the GST
Instrument change	means a change to an environmental planning instrument to facilitate a development that is or may be the subject of a planning agreement
Planning proposal	has the meaning given in section 3.33 of the Act
Practice Note	means the Planning Agreements Practice Note published by the Department of Planning, Industry and Natural Resources in February 2021 and as may be amended from time to time
Planning agreement contribution	means the provision made by a developer under a planning agreement being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used or applied towards a public purpose
Public benefit	is the benefit enjoyed by the public as a consequence of a planning agreement contribution

Public purpose	has the meaning given in Section 7.4 of the Act
Regulation	means the Environmental Planning and Assessment Regulation 2000

## 6.. Variation and Review

Council reserves the right to review, vary or revoke this Policy.

### Review History

Version 1	June 2021
Version 2	

## 7. Policy

### 7.1 Council Discretion to Negotiate a Planning Agreement

The Council has the complete discretion to negotiate a planning agreement with an applicant in connection with any application by the applicant for an **instrument change** or for **development consent** relating to any land in the Council's area, or in conjunction with the relevant Council of any land adjoining the Council's area.

#### 7.1.1 Purposes for which a Planning Agreement may be Negotiated

Council may consider negotiating a planning agreement with a developer to:

- a) compensate for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration
- b) meet the demands created by the development for new public infrastructure, and services that may be outside those of the current Contributions Plan
- c) address a particular deficiency or deficiencies in the existing provision of public facilities
- d) achieve recurrent funding with respect of public facilities
- e) prescribe inclusions in the development that meet specific planning objectives relating to the development
- f) monitor or mitigate the planning impacts of development
- g) secure planning benefits for the wider community.

### 7.2 Fundamental principles governing the use of planning agreements

The Council's use of planning agreements will be governed by the following principles:

- a) Council will always consider a development or rezoning proposal on its merits, not on the basis of a planning agreement. In particular, Council will ensure that:
  - planning decisions shall not be bought or sold through planning agreements, and
  - development that is unacceptable on planning grounds will not be permitted because of **public benefits** offered by planning agreements that do not make the development acceptable in planning terms,

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- b) Council will not allow planning agreements to improperly fetter the exercise of its functions under the **Act**, the **Regulation** or any other Act or law,
- d) Council will not use planning agreements for any purpose other than a proper **public purpose**
- e) Council will not actively seek benefits under a planning agreement that are wholly unrelated to the development the subject of that planning agreement, but may consider offers made by a developer,
- f) Council will use planning agreements to provide local infrastructure in a way that complements its contribution and infrastructure delivery systems, particularly its Local Infrastructure Contributions Plan prepared under Sec 7.11 of the Act. One way in which this might occur is that Council may seek to use planning agreements to provide local infrastructure in association with development applications or rezoning proposals on land that had not been considered for development when its Sec 7.11 Contributions Plan had been prepared or amended;
- g) Council will prefer that the public benefits under a planning agreement have some direct relationship to the development or instrument change with which it is associated. However Council will consider other public benefits where these are consistent with other Council strategic documents, existing development contributions plans or infrastructure delivery plans or other schedules adopted by Council
- h) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement,
- i) Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements, and will not refuse to grant consent to a development on the grounds that a planning agreement has not been entered into in relation to the proposed development, or that the developer has not offered to enter into such an agreement;
- j) if the Council has a commercial stake in development the subject of a proposed planning agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development, and
- k) planning agreements should not be used to justify a dispensation with applicable development standards under clause 4.6 of the Shellharbour Local Environmental Plan 2013, or with the development standards included in Shellharbour LEP 2000 and Shellharbour LEP 2004.

### 7.3 Acceptability test to be applied to all planning agreements

In deciding whether to enter into a Planning Agreement, Council will consider all planning agreements against the following "Acceptability Test".

- a) is the proposed planning agreement directed towards a proper or legitimate planning purpose having regard to the statutory planning controls and other adopted planning policies and the circumstances of the case?
- b) does the proposed planning agreement provide a reasonable means of achieving the relevant purpose?
- c) can the proposed planning agreement be taken into consideration in the assessment of the relevant application for an instrument change or development application?
- d) will the planning agreement produce outcomes that meet the general values and expectations of the community and protect the overall public interest? This should be

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considered (inter alia) particularly with the public interest and impact on community values associated with varying Council's relevant Developer Contributions Plan that may apply in order to accept the benefits proposed under the Planning Agreement (refer also Clause 4.5 (k) and (l) below)

- e) does the agreement provide public benefits that are not wholly unrelated to the development?
- f) does the proposed planning agreement promote the Council's strategic objectives in relation to the use of planning agreements? (that is Clause 1 of this Policy)
- g) does the proposed planning agreement conform to the fundamental principles governing the Council's use of planning agreements?
- h) are there any relevant circumstances that may operate to preclude the Council from entering into the proposed planning agreement?
- i) is the planning agreement consistent with other relevant Council Policies and strategic documents, particularly including this Policy and associated Guideline, and other documents relating to its strategic goals for land use planning and infrastructure delivery, such as the Shellharbour Local Strategic Planning Statement;
- j) Does the planning agreement align with any relevant district and regional strategic plans and policies;
- k) is it appropriate to forego the benefits that would otherwise be paid under Council's Developer Contributions Plan in exchange for the public benefits proposed under the planning agreement? (this applies to those agreements which seek to offset contributions made under Council's relevant Developer Contributions Plan).
- l) Will there be a net community benefit associated with entering into the proposed Planning Agreement. In this context Council would in most cases expect to see the value of the benefits to be provided under the planning agreement exceed those that would otherwise be provided in accordance with Council's Local Infrastructure Contributions Plan. This is particularly the case when the planning agreement proposes to provide works that are not identified in Council's **Contributions Plan**.

The planning agreement will be considered against these criteria when the initial offer is being considered and again before the agreement is executed,

#### **7.4 Planning Agreements and the Public Tender Process.**

Council has resolved pursuant to s55(3)(i) of the Local Government Act 1993 not to invite tenders in respect of any planning agreement because of the unavailability in every case of competitive tenders meaning that a satisfactory result cannot and would not be achieved by inviting tenders

#### **7.5 The Content of a Planning Agreement**

- a) A planning agreement must above all else, address the mandatory content requirements included in Sec 7.4 (especially Sec 7.4(3) of the Act.
- b) the accompanying Guideline outlines Council's policy on some of these mandatory requirements, and on other matters that are usually included in a planning agreement. Council expects that this Policy and the associated Guideline will be complied with to the fullest extent possible

#### **7.6 Ensuring Probity in Preparing Planning Agreements**

Ensuring probity in the preparation of planning agreements is of the utmost importance to Shellharbour Council.

The accompanying Guideline document explains the steps that Council will take to ensure probity in the preparation of Planning Agreements.

#### **7.7 Endorsement and Execution of Planning Agreements**

The endorsement and execution of planning agreements will occur as follows:

- a) When a draft planning agreement is considered appropriate for exhibition, a report shall be prepared for Council seeking a resolution to exhibit it;
- b) Following completion of the exhibition period, the planning agreement will be considered to be adopted by Council unless any of the following circumstances apply, and in which case a further report will be submitted to Council:
  - One or more submissions of objection are received to the exhibition of the draft planning agreement;
  - A change is made to the draft planning agreement following exhibition that changes either the operation of the exhibited draft planning agreement, or the nature, quantity or timing of the benefits to be received;
- c) Where appropriate, and subject to receiving delegation from the Council, the Chief Executive Officer will be responsible for executing a planning agreement on behalf of the Council;
- d) A planning agreement has been executed when it has been signed and dated by both parties.

#### **7.8 Administration of Council's Planning Agreement System**

Council's administration of its planning agreements will be based on principles of transparency and public accessibility. This will be achieved by:

- a) complying with relevant statutory requirements, including:
  - maintaining a Planning Agreements Register;
  - forwarding a copy of all planning agreements to the Minister;
  - reporting on planning agreements in Council's Annual Report,
- b) providing for planning agreements to be accessible to the public both electronically and (upon request) in hard copy.

The accompanying Guideline provides more information about these matters.

#### **8. Related Forms**

NIL

#### **9. Attachments:**

NIL

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**Policy Authorised by:**

Name: Council Resolution No. **TBI**

Date: **TBI**

DRAFT

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Attachment 2 – Draft Planning Agreement Guideline



Guidelines

**DRAFT**  
**PLANNING AGREEMENTS GUIDELINE**

Policy Owner : Group Manager City Planning	
Date Adopted : tbc	Review Date:

**1. Introduction**

Council's Planning Agreements Policy has been prepared to set out Council's requirements for the preparation of planning agreements with Council. This Guideline underpins and supports that Policy by providing further guidance for applicants on the preparation of planning agreements.

Council expects that this Guideline should be followed to the fullest extent possible.

**Key Points**

- This Guideline applies to all situations where an applicant wishes to apply to enter into a planning agreement with Council.

**2. Definitions**

Act	means the Environmental Planning and Assessment Act 1979
Construction Certificate	has the same meaning as in the EP&A Act.
Contributions Plan	is a document that has been publicly exhibited and adopted by the Council pursuant to Section 7.18 of the EP&A Act that authorises the imposition of a condition under Section 7.11 of that Act;
Contribution Value means:	(a) in relation to an Infrastructure Item that is identified in the Contributions Plan, the estimated cost for the Infrastructure Item, as specified in the Contributions Plan, which may differ from the final actual cost of construction of the item,  (b) in relation to any other Infrastructure Item approved by the Council, the agreed value of that Infrastructure Item.
Council	means Shellharbour City Council.
Defects Liability Period	means the period stipulated in a planning agreement during which Council may give the Developer a rectification notice

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	stating the works to be rectified at the Developers cost.
Developer	is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or revocation of an instrument (s7.4(11)) or who has made or proposes to make a development application or who has entered into an agreement with or is otherwise associated with such a person.
Development Application	has the same meaning as in the Act;
Development Consent	has the same meaning as in the Act;
Development Contribution	means a monetary contribution required by a condition of Development Consent imposed under Section 7.11 of the Act.
ELT	means Council's Executive Leadership Team
Explanatory Note	means a written statement that provides details of the objectives, nature, effect and merits of a planning agreement or an amendment or revocation of a planning agreement as required under clause 25E of the Regulation;
GST	has the same meaning as in the GST Law,
GST Law	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any other Act or Regulation relating to the imposition or administration of the GST
Instrument change	means a change to an environmental planning instrument to facilitate a development that is or may be the subject of a planning agreement
Planning proposal	has the meaning given in section 3.33 of the Act
Practice Note	means the Planning Agreements Practice Note published by the Department of Planning Industry and Environment (February 2021) and as may be amended from time to time
Planning agreement Contribution	means the provision made by a developer under a planning agreement being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used or applied towards a public purpose
Policy	means the Shellharbour City Council Planning Agreements Policy
Public benefit	is the benefit enjoyed by the public as a consequence of a planning agreement contribution

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Public purpose	has the meaning given in Section 7.4 of the Act
Regulation	means the Environmental Planning and Assessment Regulation 2000
Surplus Value	means the amount by which the Contributions value of the works exceeds the required monetary contribution

### 3. Variation and Review

Council reserves the right to review, vary or revoke these Guidelines.

#### Review History

Date Guideline first adopted – version 1	Include date
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### 4. Guideline

#### 4.1 What is a Planning Agreement

4.1.1 The Act empowers Council to require developers to make contributions of money, works or land in relation to a development. These contributions (also known as Sec 7.11 or Sec 7.12 contributions) are used to help pay for services and infrastructure that need to be provided as a consequence of the development;

4.1.2 As an alternative to collecting these contributions, the Act also enables the Council and developers to negotiate planning agreements. A planning agreement is a voluntary agreement between a planning authority and a developer who has sought a change to an environmental planning instrument, or who has made or proposes to make a development application or application for a complying development certificate, under which the developer is required to:

- dedicate land free of cost;
- pay a monetary contribution;
- provide any other material benefit, or
- provide any combination of the above to be used or applied towards a public purpose

4.1.3 Planning agreements allow for a wider range of public benefits to be obtained in comparison to benefits collected under Section 7.11 or Section 7.12 of the Act. They also provide for greater flexibility in the timing of the delivery of local infrastructure, and the locations where it can occur;

4.1.4 With the anticipated growth of Shellharbour, it likely that more developers will seek to enter into planning agreements with the Council. A sound policy for the preparation of planning agreements, supported by this Guideline will help facilitate the preparation of planning agreements by providing advice to applicants about what should be included in a planning agreement, explaining the steps in preparing such an agreement, and advising how Council will ensure that probity considerations are addressed in a planning agreement;

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4.1.5 This Guideline provides developers with information about how to enter into a planning agreement with Council, and includes Council's expectations in relation to the content of a planning agreement.

Council expects that this Guideline will be complied with to the fullest extent possible.

#### **4.2 General Guidance on Negotiating and Preparing a Planning Agreement:**

4.2.1 The Council's negotiation of planning agreements will be based on principles of efficiency, fairness, transparency and accountability

4.2.2 Council prefers that the negotiation of planning agreements occurs simultaneously with the associated application for an instrument change or development application.

4.2.3 In some cases, Council may agree to entering into a planning agreement after development consent has been granted. In such cases however a condition of consent must include provision on for a planning agreement to be prepared in accordance with a Letter of Offer submitted by the applicant or developer and approved by Council.

#### **4.3 Process for Entering into a Planning Agreement with Council**

The process that should be followed by an applicant seeking to enter into a planning agreement is explained in detail in Council's Promapp process which can be accessed through the following link.

<https://au.promapp.com/shellharbourcc/Process/Minimode/Permalink/GkKok6dBXfAnHyblWQpXJy>

**(NOTE: THE ABOVE LINK IS STILL IN DRAFT AND WILL BE CONFIRMED PRIOR TO RELEASE OF GUIDELINE)**

The details of each stage are available through the Promapp link referred to above, and are not repeated here. However, for clarity it is advised that if the applicant, following an initial meeting with Council decides to submit a formal letter to enter into a planning agreement, the letter should include the following information:

- 1) details of the development application or instrument change with which the agreement is associated;
- 2) details of the benefits to be provided under the agreement (whether works, land , a monetary contribution;
- 3) if works are being provided whether the work is an item that is included in Councils Local Infrastructure Contributions Plan (Sec 7.11 Plan), and if so the Contribution Value for the works
- 4) if works are being provided, whether any Council approval is required before the works can be constructed
- 5) details of the proposed commencement time of the Agreement
- 6) details of the proposed timing of the delivery of the benefits;
- 7) details of the security to be provided under the planning agreement;
- 8) advice as to whether any offset of benefits payable under Council's Sec 7.11 Plan are being sought;
- 9) whether any maintenance contribution is included in the benefits being provided (to help offset maintenance costs of either land or a facility being provided under the Agreement;

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- 10) agreement to pay Council's reasonable costs in the preparation of the planning agreement
- 11) an outline of any other relevant matters included in this Guideline and an undertaking to comply with these matters in the preparation of the Agreement.

The letter including this information should preferably be submitted at the same time that the development application or planning proposal is lodged.

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#### **4.4. Mandatory Requirements under the Act for Inclusion in a Planning Agreement**

It is essential that a planning agreement comply with Section 7.4 of the Act, including the mandatory content requirements for planning agreements (Sec 7.4 (3)). These matters are as follows:

- a) a description of the land to which the agreement applies,
- b) a description of:
  - i. the change to the environmental planning instrument to which the agreement applies, or
  - ii. the development application to which the agreement applies,
- c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
- d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development,
- e) if the agreement does not exclude the application of sections 7.11 to the development, whether the benefits under the agreement are, or are not, to be taken into consideration in determining a development contribution under these sections of the Act,
- f) a mechanism for the resolution of disputes under the agreement;
- g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

As the mandatory requirements under the Act may change from time to time each planning agreement should be checked against the most current version of the Act and Regulation at the time it is being prepared.

#### **4.5 Advice on Matters to be included in a Planning Agreement**

This section of the Guideline provides advice as to Council's policy position, or "rules" on how some of the mandatory requirements should be addressed in a planning agreement, as well as on other matters that may be included in the agreement.

**Council expects that all planning agreements will be prepared to be consistent with the provisions included in this section of the Guideline.**

##### **4.5.1 Security**

As required by the Act. Council will ensure that planning agreements include adequate security arrangements to protect against a breach of the agreement by the developer. Such arrangements may include the following, depending upon the circumstances of the planning agreement and the public benefits being provided:

- a) where the agreement provides for benefits to be paid in the form of a monetary contribution, that the contribution be made prior to the issue of a construction certificate or a subdivision certificate. Unless unavoidable, a planning agreement should not include a provision that such contributions be made prior to an occupation certificate as this does not provide Council with a sufficient level of security;
- b) where the agreement provides for works to be carried out, a bond or bank guarantee from an Australian bank in favour of the Council should be provided for 120% of the value of the works, and on terms otherwise acceptable to Council (refer also to subclause 'f' below). This should be provided whether or not the works are to be completed before the issue of a construction or subdivision certificate as security against the developer defaulting on the planning agreement, and in which case Council may need to step in and complete the works. The agreement may also need to include "Step - in rights" in favour of Council to provide further

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security against this eventuality;

- c) where a planning agreement provides for the dedication of land to Council, the Agreement must include a provision that enables the Council to compulsorily acquire the land for A\$1.00 in the event of a breach of the agreement by the developer;
- d) Council will also require the planning agreement to be registered on the title of the land;
- e) Council may also in appropriate circumstances require the planning agreement to create a charge on the land, and to provide that Council can lodge a caveat on the title of the land to protect its interests;
- f) Council will also require any financial security that is provided to be indexed according to the same index as the contributions to which it relates.
- g) Council will usually require that any security required for works or for the dedication of land to be in place prior to the issue of a subdivision certificate or a construction certificate.

#### **4.5.2 Type of development contributions under a planning agreement**

- a) Council has no preference for a particular type of contribution and will consider, on a case by case basis contributions including money, the dedication of land free of cost, the construction of works, including a combination of these;
- b) Where a planning agreement proposes the dedication of land to Council, or the dedication of works (for example, stormwater infrastructure, Council will consider whether there may be a requirement for a contribution for the ongoing maintenance of the land or the works proposed to be dedicated and may seek to include this in the planning agreement
- c) Where a planning agreement proposes to undertake works, the provisions of clause 4.5.2 (c) will also apply

#### **4.5.3 Acceptance of Works**

Acceptance by Council of any works to be constructed under a planning agreement shall be subject to the following:

- a) the developer obtaining all necessary approvals (including development consent or complying development certificate) necessary to undertake the works;
- b) the provision by the developer of a certificate confirming that the work has been carried out and completed in accordance with the agreement and with any development consent that applies and with any relevant Australian Standards; and
- c) the Council will also require the planning agreement to provide a defects liability period during which any defects must be rectified at the developers expense. The Defects Liability Period and Maintenance Periods will commence from the hand over date or as set out in the planning agreement.
- d) Where a work is proposed as a benefit under a planning agreement and a monetary value is assigned to that work and is included in the planning agreement for the purpose of valuing the work, Council will expect that the planning agreement will provide for the work to be delivered whether or not it exceeds the value of that work included in the planning agreement;
- e) Prior to completion of the works an inspection will be carried out and Council will assess the

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acceptability of the works. If incomplete or defective works are identified during the inspection, the Developer will be required to remedy these at its own cost to Council's satisfaction. The works will be taken to be completed to the Council's satisfaction when the Council gives written notification to the Developer to that effect. This will be provided for in the planning agreement.

- f) Where the works are located on land not owned by the Council the Council will generally require the land to be dedicated to it free of cost. Pursuant to s7.11(5)(b) of the Act, the value of the land cannot be accepted to satisfy a requirement for a monetary contribution imposed under s7.11(1) of the Act.
- g) In circumstances where the works are provided on land which will not be dedicated to Council, appropriate notations and/or restrictions must be placed on the title to the satisfaction of the Council to ensure that the land will be used for its intended purpose under the planning agreement. Arrangements on title must also be made to provide for future and ongoing maintenance of the land and works either by Council or by another party as provided for by the planning agreement.

#### **4.5.4 Time when developer's obligations arise under a planning agreement**

- a) The Council will generally require a planning agreement to provide that the developer's obligations under the agreement take effect when the first development consent operates in respect of development that is the subject of the agreement.
- b) Contributions will usually be required to be made prior to the issuing of a construction certificate or subdivision certificate in respect of the development;
- c) For planning agreements prepared in connection with instrument changes, the development contributions may be required before any development consent is granted.

#### **4.5.5 Application of s7.11 and S 7.12**

Planning agreements can exclude the application of s7.11 and s 7.12 of the Act in whole or in part, so that a developer may not need to pay some or all of these contributions, in addition to the contributions proposed under the planning agreement.

- a) Council has no general policy on whether a planning agreement should exclude the application of sec 7.11 or 7.12 to development to which the agreement relates. This is a matter for negotiation between the Council and a developer, depending upon the circumstances of the agreement. Some further advice about this matter is included in Clauses 4.6.10 and 4.6.11.
- b) Where the application of sec 7.11 or sec 7.12 of the Act is not excluded by a planning agreement, the Council will consider on a case by case basis whether to include a provision allowing benefits under the planning agreement to be taken into account when determining a development contribution under sec 7.11 or sec 7.12.

#### **4.5.6 Dispute resolution**

A planning agreement must provide a mechanism for the resolution of disputes arising under a planning agreement. The Council will generally require a planning agreement to provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

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#### 4.5.7 Indexing of Costs and GST

- a) In general, Council will expect that monetary contributions paid under a planning agreement are indexed to account for changes in the consumer price index, with the final payment to be indexed to the relevant cpi that is current at the time that the payment is made;

When indexing the contribution required under the planning agreement, the following formula will be applied:

$$C_I = C_B \times \frac{CP_P}{CP_C}$$

Where:

- $C_I$  contribution rate at date of payment  
 $C_B$  base contribution rate as specified in the planning agreement  
 $CP_P$  Latest published 'June quarter' index rate at the date of payment  
 $CP_C$  Latest published 'June quarter' index rate at date of execution of planning agreement.

When indexing the contributions to be paid, Council will generally use the All Groups Consumer Price, Sydney published by the Australian Bureau of Statistics (ABS Series Code 6401.1).

However, Council reserves the right base its indexation of contributions on other indices where this is considered appropriate and relevant to the use to which the contribution will be applied.

- b) Council may also seek to standardise development contributions sought under a planning agreement by basing them on the current Development Contributions Plan. This should streamline negotiations and provide fairness, predictability and certainty for developers.

#### 4.5.8 GST and Planning Agreements

All planning agreements are to be consistent with the A New Tax System (Goods and Services Tax) Act and Regulation

Monetary contributions provided under a planning agreement are exclusive of GST. If GST is or becomes payable on any contribution under a planning agreement, the developer will be required to pay the GST or to pay an amount to Council equivalent to the GST. The template planning agreement includes a provision to this effect.

#### 4.5.9 Recurrent Costs

The planning agreement may seek to include a monetary contribution for recurrent costs (such as ongoing maintenance) associated with the provision of a facility such as a building, or the dedication of land that is provided through the planning agreement

Where the public facility or land primarily serves the development to which the planning agreement relates or neighbouring development, the developer may be required to fund the ongoing costs of the facility in perpetuity.

However, where the public facility or public benefit is intended to serve the wider community, the

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planning agreement may only require the developer to make contributions towards the recurrent costs of the facility or land until a sufficient revenue stream is established to support the on-going costs of the facility or land.

#### **4.5.10 Pooling of Development Contributions**

Where a proposed planning agreement provides for a monetary contribution by the developer, the Council may seek to include a provision permitting money paid under the agreement to be pooled with other money obtained by the Council under other planning agreements, and under conditions imposed on development consents pursuant to s7.11 or s 7.12 of the Act, so that those funds can be applied progressively for the different purposes identified under those agreements and conditions.

Pooling may assist in allowing public benefits, particularly essential infrastructure and services to be provided in a fair and equitable way.

#### **4.5.11 Offsets and Credits for the Payment of Developer Contributions**

Where a developer proposes to provide infrastructure (such as works or land) to Council as a benefit under a planning agreement, Council may allow the provision of this infrastructure to offset contributions payable under sec 7.11 or sec 7.12 of the Act, and/or to allow a credit against future contributions. Council's consideration as to whether to allow an offset or credit will be based on the following principles:

**(a) Offsets for works or land required to enable the development**

Council will generally not agree to offsets of Sec 7.11 contributions for works that are included in a planning agreement and which are considered as "direct works" (ie works that are directly attributable to the proposed development - such as road upgrades resulting directly from a proposed development). Council may however agree to the inclusion of "direct works" in a planning agreement to help provide certainty that they will be delivered, and in some cases to provide for a maintenance contribution for these works.

**(b) Offsets and Credits for Infrastructure included in Council's Contributions Plan**

- i. In most cases, a Works in Kind Agreement is the appropriate type of agreement for a developer to deliver a work that is identified in Council's Local Infrastructure Plan, and developers are referred to Council's Works in Kind Policy and associated Works in Kind Guideline for advice about preparing works in kind agreements to deliver such items of infrastructure.

However, where an item that is included in Council's Local Infrastructure Plan is included as a public benefit under a planning agreement (perhaps because it is one of several other items being delivered), the maximum value of any offset (or credit) that may be given through the planning agreement for this item will generally not exceed the value for that infrastructure that is included in the Contributions Plan

- ii. However, in most cases where an offset is considered appropriate Council will only allow an offset up to the amount of the sec 7.11 or sec 7.12 contribution payable in respect of the same category of infrastructure included in the Section 7.11 or sec 7.12 Plan.

- iii. Council may allow additional offsets but only up to the maximum value of the Sec 7.11 contribution that would be payable. Council will generally not agree to refund any amount by which a contribution made under a planning agreement exceeds the contributions which the developer would otherwise have been required to make under the Act
- iv. Where the cost of the works or the land value exceeds the amount of any offset allowed by way of sub clause (ii) above (the surplus value), Council will generally not allow any refund of the surplus value to the developer.
- v. In cases where a piece of infrastructure benefits other development in the area (carried out by other developers), or where Council wishes for the delivery of that infrastructure to be brought forward, Council will consider entering into recoupment processes with other developers and any money so recouped up to the "Surplus value" will be allowed as a credit or refund to the first developer against future Sec 7.11 or Sec 7.12 contributions for other development in the Shellharbour local government area;

**c) Offsets and Credits for infrastructure items not included in Council's Contributions Plan**

- (i) For all infrastructure items provided for by a planning agreement that are not included in Council's Contributions Plan, a Sec 7.11 offset or credit against future contributions may be allowed where Council believes that a wider community benefit will result from the provision of the public benefits under the planning agreement. The suitability of any offset, and the amount will be determined at Council's discretion, and will be considered against the following principles:
  - Allowing an offset up to the maximum of the amount otherwise payable through the Section 7.11 or 7.12 contribution for the corresponding category of works;
  - Allowing credits to the developer on developer contributions payable on future development when Council has recouped money from other developers benefitting from the infrastructure, (for example, by including the item in a Section 94 Plan, or by the negotiation of planning agreements with other developers). The amount of credit allowed will be the amount of money actually received through the recoupment process, up to a maximum of the "surplus value"
  - Allowing offsets on other categories of the Section 7.11 contribution that is payable up to the maximum amount of contribution required to be paid.
  - Including the item in a Sec 7.11 Plan in cases where Council considers that the works will result in a significant benefit to the wider community;
- (ii) In considering whether to allow offsets or credits for these developments, Council will consider the likely impacts of the offset or the credit on delivering the works program included in the Contributions Plan;

**d) Credits and Refunds**

Council will generally not grant a credit for the value of any contributions made under a planning agreement other than in accordance with this clause

Council will not refund contributions made under a planning agreement unless the development consent is surrendered and the contributions paid have not been spent or

allocated to a project budget. Contributions toward recurrent costs will not be refunded.

Any refund of contributions received under a planning agreement is at the full discretion of Council.

#### **4.5.12 Methodology for valuing Public Benefits under a Planning Agreement**

Where it is agreed that the value of any land or works provided under a planning agreement may offset contributions payable under s7.11 of the Act, the following principles shall be used to help determine the value of the offsets

##### *i) Dedication of Land*

Where the public benefit under a planning agreement is the provision of land for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated amount of compensation to which the Developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land.

Council will normally require the developer to obtain a valuation of the land at his or her cost. Council may also seek to confirm this value by arranging for a separate valuation at its own cost.

If the land is to be dedicated to Council under a planning agreement at "no cost", it will only be considered to be dedicated at "no cost" if no offset of the Section 7.11 contribution is allowed.

All land that is to be transferred to Council under the provisions of a planning agreement, whether it is associated with the undertaking of works or not, must generally be dedicated or transferred at no cost to Council and free of encumbrances.

The developer will be responsible for preparing all documents and meeting all costs associated with the following:

- Removing any encumbrance on the title
- Creating an interest in land in the Council's favour
- Subdividing any of the land
- Preparing and lodging documents for registration
- Obtaining the consent of any land owners to the registration
- Dealing with any requisition from Land and Property Information relating to any dealing lodged for registration.

Where the land is being dedicated in association with the undertaking of works, the land will not be transferred until the completion of works to Council's satisfaction, unless otherwise specified in the planning agreement.

##### *ii) Carrying Out of Works*

Where the benefit under a planning agreement is the carrying out of works for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated value of the completed works determined using the method that would be ordinarily adopted by an independent quantity surveyor.

Council will normally require the developer to obtain a valuation of the works being provided through a planning agreement land at his or her cost. Council may also seek to confirm this value by arranging for a separate valuation at its own cost.

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Council will also have regard to other relevant mechanisms for valuing the benefits proposed to be provided under a planning agreement, and may refer to the "*Local Infrastructure Benchmark Costs (IPART, Final Report April 2014)*." Council may require that the value of contributions of land and works made under a planning agreement should be indexed using an appropriate index (refer cl 4.7.7).

**4.5.13 Council's costs of negotiating, entering into, monitoring and enforcing a Planning Agreement**

Council will generally require a developer to pay all of the Council's reasonable costs of negotiating, preparing and entering into the agreement, and enforcing its terms. This will include all costs associated with any third parties who may be engaged to facilitate a planning agreement. This applies whether or not the planning agreement is ultimately executed.

In addition, Council may require the developer to make a contribution towards the Council's costs of the on-going administration of the agreement and/or administration of the current Development Contributions Plan. Council expects the amount to be approximately 5% of the total value of the benefits to be provided under the agreement.

**4.5.14 Assignment and dealings by the developer and landowner**

The Council will require every planning agreement to provide that the developer (and, if the developer is not the landowner, the landowner) may not transfer the land to any person or transfer its rights or obligations under the agreement unless:

- a) the person to whom the land or rights are transferred agrees to be bound by the planning agreement at no cost to Council,
- b) Council is satisfied that the person to whom the land or rights are transferred is able to perform the obligations under the agreement, based on evidence to be provided to Council when Council's consent to the transfer is sought
- c) the developer is not in breach of the planning agreement, and
- d) the Council otherwise consents to the transfer.

**4.5.15 Monitoring and review of a Planning Agreement**

The Council will continuously monitor the performance of the developer's obligations under a planning agreement. To assist in this regard, Council may require a planning agreement to require the developer to submit reports to show how the requirements of the planning agreement are being complied with.

The Council will also require regular reviews of the terms of the planning agreement and, if the parties consider that amendments to the agreement are required, the parties will use their best endeavors to agree on the amendments.

Amendments might be required if there is a change in circumstances relating to the development or a change in law which impacts upon the contributions which can be made.

**4.5.16 Modification or discharge of the developer's obligations under a planning agreement**

Council will only agree to changing the developer's obligations under a planning agreement, or discharging the developer from its obligations, if:

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- a) the developer has fully performed its obligations under the agreement, including providing all contributions that are required;
- b) the developer has assigned its interest to another party who has agreed to perform the developer's obligations,
- c) the development consent to which the agreement relates has lapsed or has been surrendered,
- d) the performance of the planning agreement has been frustrated by an event beyond the control of the parties, or
- e) the Council and the developer otherwise agree to the modification or discharge of the agreement.

Should the parties agree to a modification of this planning agreement, the proposed modification shall be publicly notified in accordance with the Council's current notification policy, and in accordance with the requirements of the Act and Regulation.

#### **4.5.17 Registration of planning agreements**

The Council will, subject to the requirements of Sec 7.6 of the Act require planning agreements to be registered on the title of the property being developed or that is subject to the instrument change.

To facilitate this process, Council will require the developer to provide all relevant documents for the purposes of registration within (ten) 10 days after execution of the agreement. Council will then attend to the registration.

However, if the planning agreement is not registered prior to the granting of development consent, Council will require the registration of the planning agreement as a condition of development consent.

The registration of the planning agreement against the title can be removed once all of the planning obligations under the agreement have been satisfied.

#### **4.5.18 Notations on certificates under s10.7 of the Act**

The Council may decide to make a notation on any planning certificate issued under section 10.7 (previously sec 149) of the Act in relation to the land to which a planning agreement relates, about the planning agreement, and may include a provision in the planning agreement acknowledging this.

#### **4.5.19 Implementation agreements**

The Council may require an implementation agreement that provides for matters such as:

- a) the timetable for provision of planning obligations under the planning agreement.
- b) the design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer.
- c) the manner in which a work is to be handed over to the council.
- d) the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement

#### **4.5.20 Council's consideration of planning agreements in the exercise of its Statutory Functions**

When exercising its functions under the Act in relation to an application for an instrument change or a development application to which a proposed planning agreement relates, the Council will consider whether the proposed planning agreement is relevant to the application and the proper weight to be given to the proposed planning agreement.

#### **4.5.21 Consideration of applications under Clause 4.6 of Shellharbour LEP 2011**

Clause 4.6 of the Shellharbour Local Environmental Plan 2011 (Shellharbour LEP) allows a developer to object to the application of a development standard to a development. Council will not uphold an objection made under this clause merely because the developer has offered to enter into a planning agreement and provide additional development contributions under that agreement.

Council will assess such an objection under the provisions of clause 4.6 of the Shellharbour LEP. In this regard, the provisions of the planning agreement may be relevant to the extent that any contributions to be provided under the agreement offset any impact of the development which is relevant to the development standard in question.

#### **4.5.22 The Explanatory Note**

The Regulation requires that an Explanatory Note must be prepared and exhibited with the draft planning agreement. The Explanatory Note should help the community to understand the planning agreement, including the public benefits being proposed, how the benefits are being delivered and why they are in the public interest. The Explanatory Note must;

- Summarise the objectives, nature and effect of the proposed agreement;
- Include an assessment of the merits of the planning agreement, including the impact on the public;
- Identify how the planning agreement promotes the public interest;
- Identify whether the planning agreement conforms with Council's capital works program;
- State whether the planning agreement specifies that any of its requirements must be complied with before a construction certificate, occupation certificate or a subdivision certificate is issued;

### **5 Probity Considerations**

The preparation of planning agreements has been identified as a potential source of corruption by the NSW Independent Commission Against Corruption (ICAC). Council will ensure that the following steps are taken to ensure that planning agreements are negotiated and prepared with appropriate levels of probity and with good governance:

- a) ensure that all planning agreements are prepared in accordance with the relevant statutory requirements, the Policy, this Guideline and relevant Guidelines from the Department of Planning;
- b) where possible, ensure a separation between Council staff with a direct role in planning agreements and those assessing development applications or preparing planning proposals associated with a planning agreement. Where this is not possible, consideration should be given to relevant staff entering into a Probity Plan (refer pgh 'i' below) to help manage any

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- potential conflicts of interest;
- c) ensure that Councillors do not have a direct role in negotiating planning agreements.
  - d) ensure that Councillors and council staff understand the circumstances in which planning agreements are appropriate and understand their roles and responsibilities in relation to planning agreements, particularly where there may be a conflict of interest.
  - e) inform all applicants about Council's values and advise them that the negotiations will be carried out in accordance with Council's Statement of business ethics.
  - f) ensure that in any negotiations with developers about a planning agreement that at least two Council staff are present and that notes of the meeting are taken
  - g) all formal offers to negotiate a planning agreement will be referred to Executive Leadership Team (ELT). Where ELT considers the proposed planning agreement relates to a significant development application or instrument change, then if the offer is supported by the Executive, a report to the Council shall be provided outlining the key terms of the agreement and seeking Council approval to negotiate it.
  - h) where the Council has a commercial interest in a development or instrument change that is subject to a planning agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial role in the development;
  - i) in this regard, Council (or Council's ELT) may require a Probity Plan to be prepared for some planning agreements, or recommend the appointment of a third party Probity Advisor to manage probity concerns. This may be appropriate for planning agreements that relate to a major development application or instrument change, where Council has a significant commercial interest in a development that is subject to a planning agreement, or where there may be a potential conflict of interest. Where such a Plan (or third party appointment) is made, Council will expect that the developer should pay the entire cost of preparing the Plan, or engaging the third party Probity Advisor;
  - j) the Council may also appoint an independent party to facilitate or otherwise participate in the negotiation of a planning agreement, where it considers that this may lead to a better planning outcome. Where it is decided to involve a third party in the preparation of a planning agreement, Council will expect that the developer should pay the entire cost associated with the appointment of the third party.
  - k) prior to the exhibition of any draft planning agreement, it will be reported to Council, seeking endorsement to exhibit it. The report to Council will consider the draft planning agreement against this Guideline and the associated planning agreements Policy, particularly clauses 7.2 and 7.3
  - l) the Council has the complete discretion to agree (or disagree) to the preparation of the planning agreement process and to the execution of the planning agreement following the completion of the procedural stages. Furthermore, a decision by Council or ELT to agree to the commencement of the planning agreement process does not imply that Council supports the planning agreement and imposes no obligation on Council to execute the planning agreement following the completion of the procedural stages.
  - m) Council will ensure a full and transparent public exhibition process for planning agreements. Besides complying with any statutory requirements for the exhibition of planning agreements, this will include providing a level of supporting information sufficient to ensure that the public is aware of what is being proposed under a planning agreement.
  - n) A planning agreement will be re-exhibited if any change is made to it after exhibition, other than a minor change which does not affect the operation of the agreement, or the contributions provided under the agreement (subject to legal advice in any particular case if considered necessary).

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## **6 Administration**

Council is required to ensure transparency in managing its planning agreements. As a result, Council's process for managing its planning agreements will adhere to the following principles:

- a) Complying with all relevant statutory requirements. These include:
  - Maintaining a Planning Agreements Register;
  - Sending a copy of all planning agreements to the Minister;
  - Reporting on planning agreements in Council's Annual Reports
- b) Providing for planning agreements to be accessible to the public both electronically via Council's web site, and in hard copy upon request.

### **Related Forms and Documents**

Nil

### **Related Policy:**

This Guideline relates to Council's Planning Agreements Policy

### **Guideline Authorised by:**

Name: [Geoff Hoynes, Group Manager, City Planning

Date: tba

Guideline Name: Draft 14 October 2021 for Council seeking endorsement to exhibit

**10.3.3 Investigating Dog Off-leash Areas on Shellharbour Beaches (11763255)**

To the Chief Executive Officer

**Directorate:** Community and Customers  
**Group:** City Planning

**Manager:** Cheryl Lappin – Acting Group Manager City Planning  
**Author:** Bernadette Sharpe – Recreation Planner

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## Summary

The purpose of this report is to inform Council of the outcomes of recent community engagement into dogs on beaches in Shellharbour. The investigations to date are in response to a resolution from Council at its meeting of 25 March 2021 where it was resolved:

*“That Council Officers implement an Action out of the Shellharbour Dog Friendly Spaces Strategy to investigate the suitability of providing a dog off-leash area on Shellharbour City Beaches and report back to Council on the findings of the investigations.”*

This report details the approach staff have taken to investigate the suitability for providing dog off-leash beach areas at two specific locations being Kiyong Beach at Reddall Reserve Lake Illawarra, and a section along Shellharbour North Beach at Shellharbour Village, as well as the outcomes of recent community engagement on this topic.

It is recommended that Council endorses the two locations for further investigation. To determine the suitability of the two dog beach areas, a review of environmental factors will be undertaken in accordance with Part 5 assessment under the *Environmental Planning & Assessment Act 1979*.

## Background

Shellharbour currently has six (6) dog off-leash areas (**Attachment 1**).

### Dog Friendly Spaces Strategy

The Dog Friendly Spaces Strategy (the Strategy) was adopted in September 2019 (**Attachment 2**). The Strategy, through community consultation, revealed that the community has strong and conflicting views when it comes to allowing dogs on beaches, therefore, consultation with the community in regards to considering off-leash beach access areas will be paramount to decision making on this topic. In response to this, the following action was endorsed in the Strategy.

An action in the Strategy was to investigate the suitability of providing a dog off-leash area on Shellharbour beaches.

Since the adoption of the Strategy, Council has received a number of requests from the community in relation to implementing this Action.

### **Investigating the suitability of Dog Off-leash areas on Shellharbour beaches**

Shellharbour has around seven kilometres of coastline and most of that is fringed by rocky headlands and urban development, such as car parks, public reserves and housing. Therefore, how Council and the community utilises this limited land is extremely significant; any potential additional uses need to have thorough consideration.

Investigations into dog off-leash areas on beaches commenced in early September 2021. An internal working group of relevant staff assessed several areas along the Shellharbour coastline against a set of criteria to determine any potential locations for dog off-leash beach areas.

The assessment of potential dog off-leash areas on beaches was considered against the following set of criteria identified in **Table 1**.

**Table 1 – Assessment criteria: Dog off-leash areas on beaches in Shellharbour City**

<b>Criteria</b>	<b>Considerations</b>
Site characteristics	Area size Existing use of the site Linkages to shared path network Barriers that limit access
Environmental impacts	Proximity to areas of known environmental or conservation significance Sand dunes Nesting shorebird habitat Flora and fauna
Community and social considerations	Potential conflict with users at adjoining or adjacent sites Buffer zones and distances between residences and other uses of the reserve Passive surveillance Site is not currently overcrowded
Management and Regulations	Proximity to a lifeguard patrolled areas

Existing infrastructure	Car parking Amenities Shelters Accessible and inclusive elements
Planning considerations	Supported by Strategic and other planning documents Local Environmental Plan - Land zoning Supported by Plan of Management Consistent with Local Government Act (for example, dogs need to be further than 10m from a children's playspace)

### Outcomes of assessment

The outcome of the assessments that were undertaken resulted in Kiyong Beach, Reddall Reserve, and part of Shellharbour North Beach two being identified as suitable for further investigation (**Attachment 3**). This further investigation has now commenced through community engagement.

### Community Engagement

Community engagement took place from 21 September 2021 to 17 October 2021. Due to COVID-19, consultation was focussed on providing opportunities for the community to contribute and provide feedback in a safe way, primarily online using our social media platforms, Let's Chat and direct mail/emails.

In addition, signage was placed at the Flinders and Oak Flats Dog Agility Parks, Bass Point off leash area, Shellharbour North Beach and Kiyong Reserve. As such, the engagement strategy involved a range of communication methods to seek the community's feedback on the two preferred sites and the general issue of dogs on beaches. This resulted in a significant number of people in the community responding to the engagement as per **Table 2** below.

**Table 2: Summary of Engagement Strategy and responses**

Method of communication	Number of responses (where applicable)
Council's Lets Chat Page including a survey	2284 visits, 942 contributions (approximately 85% of the contributions were dog owners)
Council's online social pages	12,154 engagements with 148 reactions and 151 comments
Media releases picked up and shared by the Illawarra Mercury and Wave FM	The Illawarra Mercury facebook posts received 129 likes and 79 comments.

10 engagement signs out for a 3-week period placed at various locations	The signs had a QR code for people to access the online survey.
Letters to community members who had contacted Council previously regarding dogs on beaches.	

Results from the Let's Chat Survey found that 86.41% of the community were in support of a beach off-leash area for dogs, 10.51% against and 3.08% neutral.

Similarly, results from the Let's Chat Survey found that 76.75% of the community were in support of the Kiyong and Shellharbour North sites, with 14.65% against and 8.60% neutral (**Attachment 4**).

While overall there was significant support for establishing dog off-leash beach areas at the two sites, it is noted that respondents provided additional considerations for dog off-leash beach areas that will be further explored through detailed investigations of the two sites.

The top five considerations to be further explored for future dog off-leash beach areas were:

1. supporting infrastructure (619 comments)
2. signage (329 comments); and
3. regulation (94 comments)
4. owners taking responsibility for their dogs (56 comments)
5. time restrictions (41 comments)

Out of the 942 contributors, 23 comments were received on suggested alternate locations however these locations were ruled out in preliminary investigations where sites were assessed against the criteria listed in **Table 1**.

### Next Steps

Subject to a resolution of Council, staff would commence more detailed investigations of the two potential sites taking into consideration the outcomes of the community engagement including the additional considerations raised by the community and potential budget and resourcing implications.

The detailed investigations would also involve a review of potential environmental impacts of the two sites in accordance with Part 5 assessment under the *Environmental Planning & Assessment Act 1979*. This Part 5 assessment would be delivered through the preparation of a Review of Environmental Factors (REF). If the REF finds creating dog off-leash areas may have a significant environmental impact, then an Environmental Impacts Statement (EIS) would need to be prepared. Public exhibition would be required if an EIS is prepared. A report back to Council would be provided prior to proceeding to an EIS.

The final outcomes of the detailed investigations of each individual sites will be reported to Council and communicated to the community mid 2022.

### **Financial / Resources Implications**

Council staff would resource the detailed investigations including a REF over each site.

### **Legal and Policy implications**

Investigations have considered and will continue to consider the *Companion Animals Act 1998*, the NSW *Local Government Act 1993*, any Plans of Management, Council's Enforcement Policy and the Dog Friendly Spaces Strategy.

Council is required to consider environmental impacts of a proposed activity in accordance with Part 5 assessment under the *Environmental Planning & Assessment Act 1979*.

### **Public / Social Impact**

Providing specific areas where people can exercise their dogs can provide a number of social benefits such as, encouraging socialisation between dog owners, providing an area for exercise for both owners and their dogs and certainty to the community at large in terms of nominating dog areas. However, providing a balance for all beach users, dog owners and non-dog owners is critical consideration.

As with any public area where dogs are allowed, it is important to have effective regulation and management of these beach areas for the safety of the community and the environment.

### **Link to Community Strategic Plan**

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

Objective: 1.2 Active and Healthy

Strategy: 1.2.1 Provide access to services and facilities where people can live, learn and play

Strategy: 1.2.2 Provide diverse opportunities for sport, recreation and enjoyment in the City's parks, open spaces and facilities

### **Consultations**

#### **Internal**

Manager Compliance and Regulation

City Regulation Supervisor

City Regulation Officer

Manager Asset Planning  
Manage Environment  
Lifeguard Supervisor  
Cadet Strategic Planner  
Team Leader Communications and Engagement  
Aquatics and Recreation Coordinator  
Asset Officer Open Spaces  
Events and Activation Officer  
Community Safety Officer  
Community Development Officer - Access and Participation  
Senior Community Planning Officer

**External**

Nil

**Political Donations Disclosure**

Not applicable

**Recommendation**

**That Council:**

- 1. Receive and note the information in this report “Investigating Dog Off-leash Areas on Shellharbour Beaches”**
- 2. Endorse the sites identified in Attachment 3 of this report, being Kiyong Beach Reddall Reserve and part of Shellharbour North Beach for further detailed investigation, including review of environmental factors in accordance with Part 5 assessment under the *Environmental Planning & Assessment Act 1979*.**
- 3. Receive a further report that provides the outcomes of the investigations identified in Recommendation 2 for further consideration.**

Approved for Council's consideration: Cheryl Lappin  
Acting Group Manager City Planning

**Date of Meeting:** 16 November 2021

**Attachments:**

1. Shellharbour Dog Friendly Spaces Brochure – *Page 69*
2. Shellharbour Dog Friendly Spaces Strategy – *Page 70*
3. Map of potential dog beach off-leash areas sites subject to future detailed investigation – *Page 80*
4. Engagement report – Dogs on beaches investigations – *Page 81*

**Attachment 1 - Shellharbour Dog Friendly Spaces Brochure**

**Do you have a four-legged friend?**

Dogs need exercise, but remember, your dog must be under effective control at all times when off your property. That includes:

- Being on a leash on Council's streets and in public reserves, and
- Being under effective control of someone aged 16 years or older when in a designated off leash area

Dogs are permitted on a leash in public reserves in Shellharbour City, but they are not allowed:

- Within 10 metres of children's play areas, and areas where food is prepared or eaten (except at cafes or restaurants that allow dogs in dining areas)
- In wildlife protection areas, on rock platforms or at beaches, except at the designated off leash area along Bass Point Tourist Rd between the Shallows Coastal Reserve and the gravel loader. Threatened shorebirds use Shellharbour's beaches and shorelines to forage and raise their chicks.

**Don't let someone else put their foot in it!**

You must pick up your dog's droppings in any public place. It is an offence to leave droppings on the ground and you could be fined. Droppings left on the ground can be washed into beaches and lakes, and compromise the quality of local waterways for swimming and recreational activities.



### Contact Us

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## DOG FRIENDLY SPACES

in Shellharbour City

### DOG FRIENDLY SPACES in Shellharbour City

Dogs are not allowed in off-leash areas if they are classified as a restricted, dangerous or menacing. Dogs must not attack wildlife, including birds.

  
Dogs Prohibited

  
Dog Friendly Park

  
Off-Leash Area

 <p><b>FLINDERS</b> Whittaker St between Arrabi St and Atchison St. Includes Dog Agility Park</p>	 <p><b>BARRACK HEIGHTS</b> South Side of Jack Brown Oval</p>	 <p><b>OAK FLATS</b> Dog Agility Park, corner of Kingston Street and Moore Street - segregated into large and small dogs</p>
 <p><b>ALBION PARK RAIL</b> Area of Crome Road Sporting Complex near to BMX Track / John O'Dwyer Oval and west of AFL / Cricket ground</p>	 <p><b>MOUNT WARRIGAL</b> Alex Hoffman Park. Access via Cuthbert Drive and Matthews Drive</p>	 <p><b>SHELLHARBOUR</b> Bass Point Tourist Rd between The Shallows Coastal Reserve and the gravel loader. No access to Shellharbour South Beach</p>

**Attachment 2 - Shellharbour Dog Friendly Spaces Strategy**



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## WHY DO WE NEED A DOG FRIENDLY SPACES STRATEGY?

Shellharbour City has almost 30,000 dogs (*NSW Companion Animal Register 2019*) and a population of just over 70,000 people, making dog owners a key user group of our open spaces.

Council currently provides several dog friendly spaces for dogs and owners to spend quality time together and to facilitate opportunities for socialisation and exercise. With limited private open space, the need for Council to plan strategically for the future provision of open space spaces for dogs to exercise is necessary.

Council resolved to prepare a Dog Friendly Spaces Strategy (the Strategy) in response to the success of the existing dog friendly spaces currently in the Shellharbour LGA and to provide a strategic approach to the future provision of our dog friendly spaces.

The formulation of the Strategy is based on the combination of community consultation and best practice learnt from other Council spaces and related documentation.

The Strategy is linked with the Shellharbour Community Strategic Plan objectives and strategies:

### Our City is Active and Healthy

- 1.2.1 Provide access to services and facilities where people can live, learn and play
- 1.2.2 Provide diverse opportunities for sport, recreation and enjoyment in the City's parks, open spaces and facilities.



Shellharbour City | Dog Friendly Spaces Strategy 2019 3

## WHAT THE DOG FRIENDLY SPACES STRATEGY DOES?

The aim of the Strategy is to guide the provision, improvement and management of dog friendly spaces within Shellharbour Local Government Area (LGA).

Specific objectives have been developed for this strategy:

- To balance the needs of dog owners with the needs of the general community for accessible safe parks
- Identify gaps in the provision of dog friendly spaces and ensure equitable distribution across the LGA
- Plan for dog friendly spaces in line with the expected population growth and ownership trends.

Throughout this Strategy there are a number of Actions identified that will be implemented over the next 10 years. The time frame for delivery of these Actions will be short, medium and longterm. This equates to 1 year, 4 years and 10 years respectively aligning with Council's Operational Plan, Delivery Program and Community Strategic Plan.



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## WHAT ARE DOG FRIENDLY SPACES?

For the purpose of this Strategy:

**Dog Friendly Spaces** – Council owned public places that allow dogs either on-leash or off-leash under the supervision of their owners.

**Dog Agility Park** – A fenced off area where dogs can exercise off-leash under the supervision of their owners.

**Dog Off-leash area** – An area where dogs can exercise off-leash under the supervision of their owners but it is not fenced.

**Dog On-leash area** – An area where dogs can be on a lead under the supervision of their owners.

**A Public place** – means:

- (a) any pathway, road, bridge, jetty, wharf, road-ferry, reserve, park, beach or garden, and
  - (b) any other place,
- that the public are entitled to use. (*Local Government Act 1993*)

## WHO IS RESPONSIBLE FOR DOGS IN PUBLIC SPACES?

The *Companion Animals Act 1998* (the Act) legislates requirements for both dog owners and local Councils in managing the presence of dogs in *public places*. The Act can be accessed via the NSW legislation website. The Act therefore is key to the consideration of the most appropriate locations and factors of dog friendly spaces.

Council has a legislative responsibility to provide a minimum of one off-leash area and to provide effective and responsible care and management of dogs within the local government area.

The Act states that you, or the person looking after your dog/s, should not be in control of more than four dogs at the same time and you, or the person looking after your dog/s, should be capable of controlling the dog/s at all times when in an off-leash area.

Where are the dog friendly spaces in the City?



Shellharbour City currently has a variety of dog friendly spaces including two dog agility parks.

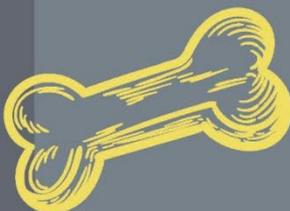
Our [Exercising your dog](#) brochure identifies these areas and where they are.



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## HOW DOES COUNCIL CURRENTLY MANAGE DOG FRIENDLY SPACES?

Current Approach	Comment / analysis
Dogs permitted only on-leash	Unless spaces are prohibited which will be identified on signage, dogs on a leash can be walked throughout Council's public spaces.
Dog Agility Parks: Dogs are permitted off-leash. Generally only used by dogs and their owners	Council currently has two dog agility parks at Oak Flats and Flinders
Dogs Off-Leash Spaces: Dogs permitted off-leash	Council currently has four designated dog off-leash spaces at Barrack Heights, Albion Park Rail, Mount Warrigal and Shellharbour.
Dog exclusion: Dogs are not permitted in certain spaces.	Under the <i>Companion Animals Act 1998</i> , dogs are prohibited in the following places (whether or not they are leashed or otherwise controlled): <ul style="list-style-type: none"> <li>• 10 metres of any children's play spaces in a public place</li> <li>• 10 metres of any food preparation or food consumption spaces</li> <li>• School grounds</li> <li>• Childcare centres</li> </ul> Under the Act, Councils also have the authority to prohibit dogs from other public spaces including; <ul style="list-style-type: none"> <li>• Recreation spaces including sportsfields where organised games are played</li> <li>• Public bathing spaces (including beach spaces)</li> <li>• Shopping complexes</li> <li>• Wildlife protection spaces (such as shorebird nesting habitats on the beaches and rock platforms of the LGA)</li> </ul> In this respect, currently all beach areas of Shellharbour are designated dog prohibited spaces.



Note: In NSW, a Guide Dog in harness is legally allowed to enter all public places, therefore the above does not apply to guide dogs.

# WHAT DOES THE COMMUNITY OF SHELLHARBOUR THINK ABOUT DOG FRIENDLY SPACES?

Council undertook a survey to gauge what the community thought of dog friendly spaces and dog agility parks. This was conducted online through Council's website and social media platforms for a period of just over three weeks (11 April – 4 May 2018).

The survey had



The survey results have provided information that has helped to inform the preparation of this Strategy. In addition to the survey, Council has used previous community consultation outcomes and other correspondence to Council on dogs in public spaces to help inform the Strategy.

Feedback from community consultation and previous correspondence to Council indicates that overall the existing off-leash spaces including the two dog agility parks in Shellharbour are operating well with most concerns being focussed on dog owner responsibility and that there is a desire to increase the dog friendly area network across the LGA. These issues and more are discussed in detail below, and where relevant, are accompanied by recommendations that feed into the implementation plan component of the Strategy.

Shellharbour City | Dog Friendly Spaces Strategy 2019 7

## BALANCING THE NEEDS OF DOG OWNERS AND PARK USERS IN THE OPEN SPACE NETWORK

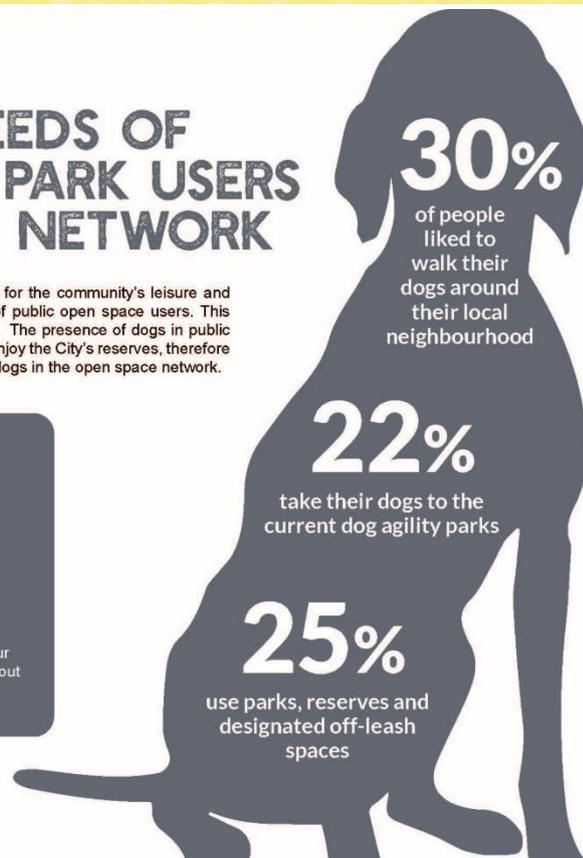
As a provider of various public passive and active open space spaces for the community's leisure and recreation, Council must balance the competing interests of a range of public open space users. This includes children, cyclists, sports clubs and dog owners to name a few. The presence of dogs in public open spaces can be perceived to affect the ability of other park users to enjoy the City's reserves, therefore a sustainable long term solution is required to manage the presence of dogs in the open space network.

The community have highlighted the following main concerns:

- Allowing dogs on sporting fields where children train and play
- People not taking responsibility for their dogs behaviour
- People not picking up after their dog
- Dog attacks
- Non-compliance with Council's relevant laws

The concerns raised demonstrate that more education needs to occur in the community to inform both dog owners and non-dog owners about the rules and responsibilities associated with dogs in public spaces.

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**81%** wanted to see an increase in dog-friendly spaces across the city to provide variety and an equal spread to increase everyone's accessibility to dog friendly spaces, particularly off-leash spaces. Albion Park, Shell Cove and Lake Illawarra were all suggested for new spaces.

A request for an off-leash area on beaches was a common theme from survey respondents. Council currently has no dog friendly areas on any beach. Investigations to date have revealed that the community has strong and conflicting views when it comes to allowing dogs on beaches, therefore, consultation with the public in regards to considering off-leash beach access spaces will again will be paramount to any decision making on this topic.

**Action** – continue education programs to inform dog owners of their responsibilities and consequences of having their dogs in public spaces. **SHORT/MEDIUM**

**Action** – investigate providing an equitable spread of new spaces across the City to provide off-leash and dog agility spaces. **SHORT/MEDIUM**

**Action** – investigate the suitability of providing a dog off-leash area on Shellharbour beaches. **SHORT**

**Action** – develop a policy position on circumstances where dogs should be allowed or prohibited at sporting fields. **MEDIUM**

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## ANCILLARY INFRASTRUCTURE

The community has told Council that there are certain elements to a dog friendly space whether it be an on-leash area, off-leash area or a dog agility park that can enhance the site, increase useability and encourage higher levels of compliance. Council provides fencing, seating, water and natural shade where possible, however, the cost and responsibility to maintain infrastructure falls on Council. Consideration towards the financial life cycle costs and resourcing implications has to occur before placing infrastructure into any public space including dog friendly spaces.

The survey revealed that the top 3 most important features of a dog park were:

- fencing
- drinking water
- dog waste bags and bins.





**Fencing**

Fencing is the most important feature to dog owners at dog off-leash spaces. Fencing is used to separate off-leash spaces from other park activities and can provide a clear boundary of the designated area. Fencing however, can also be visually intrusive, limit future long term public open space uses be costly to install and add to maintenance costs. Completely enclosing a dog off-leash area can also increase wear on the park surface and can lead to dog owners taking a more casual approach when supervising their dogs.

The provision of fences and gates will only be undertaken when an audit of a site shows it is suitable. Currently, Council provides fencing at both Oak Flats and Flinders Dog agility parks. Council will endeavour to place fencing at future dog agility parks; however dog off-leash spaces will remain unfenced with the use of signage, bollards or natural features of a site potentially being used as an alternative to achieve visual definition of dog spaces.



**Bins and Managing Dog Waste**

Dog owners are responsible for the removal and appropriate disposal of litter and dog waste. Council does currently provide dog waste bag dispensers and bins at existing dog agility parks. An owner can be fined for non-compliance with disposing of dog waste but is often ignored.

The survey responses indicate a strong support for Council to continue to provide dog waste bag dispensers and bins at the dog agility parks and to consider providing bins and bag dispensers at other designated dog spaces. Increasing the number of bins and introducing dog waste bag dispensers incurs a significant capital and ongoing maintenance costs to Council including dealing with vandalism of bag dispensers.

Other Councils have different approaches for dealing with dog waste ranging from placing the onus on dog owners to pick up and dispose of dog waste, to introducing bins, dog waste bags or in-park composting facilities. Each has various levels of success in reducing the waste.



**Drinking Water**

The survey revealed that available drinking water was an important feature of a dog park. Currently Council provides drinking water stations at the two dog agility parks. There are also a number of parks and reserves where dogs are permitted off-leash and on-leash where water taps are provided. It is more beneficial to provide infrastructure such as drinking water stations where they can be used by multiple user groups and therefore, planning and design will provide the most efficient and equitable distribution of resources such as this. Council will continue to consider the provision of drinking water at future spaces and include this in the site design and infrastructure criteria when determining future sites.

 **Action** – implement measures to reduce the impact of dog waste in public spaces.  MEDIUM



**Seating**

The need for seating is a common theme coming out of the survey. Currently the two dog parks at Flinders and Oak Flats have some seating installed. Council will continue to consider the provision of seating at future spaces and include this in the site selection criteria to determine future sites.



**Dog Agility Equipment**

Dog agility equipment adds another activity option to a dog agility park. It provides the opportunity for dogs to develop confidence, competencies and have fun. It also allows dogs to practice skills learned at agility and education training. The Oak Flats and Flinders Dog Agility parks have a number of pieces of equipment installed. Consultation with the community has shown that there is a strong support for dog agility equipment, with the three top choices of equipment being a bridge, long tunnel and high hoop.

Council will continue to consider the installation of equipment at suitable future dog friendly spaces.

 **Action** – consider the availability or installation of drinking water stations, lighting, seating, shade and dog agility equipment with the selection criteria to determine new dog friendly spaces  SHORT/MEDIUM



**Shade**

Having shade in dog friendly spaces enhances the use and amenity of the site. All Council's dog friendly spaces are within natural park locations and therefore have varying elements of natural shade in the form of trees and vegetation. Council will continue to consider natural shade at future spaces and include this in the site selection criteria when determining future sites.





### Signage

Effective signage in parks is the most direct way of advising park users and dog owners the location, boundaries and rules of dog friendly spaces. Well-located, easy to read effective signage can:

- Encourage greater compliance with relevant laws and assist Council to promote responsible ownership; and
- Be instrumental in delineating between on- and off-leash spaces, which may counter the need for extensive fencing and assist with reducing confusion over the boundary spaces therefore minimising conflict with other park users and activities.

Currently Council has various signs indicating; prohibited areas for dogs, off-leash or on-leash and the rules around these spaces such as picking up after your dog. Some are text heavy while others have simple imagery. A level of confusion around different signage has been noted by the community, and is an element of dog friendly space that can be reviewed to provide a more clear image based approach to convey key messages to the public.

**Signage to consider the following functions:**

- Educational signage
- Perimeter signage
- On-leash signage / Off-leash signage
- Shared spaces signage
- Environmental protection signage



### Enforcement

In accordance with the *Companion Animals Act 1998* and Council's Enforcement Policy, Council's Regulation Officers manage a range of dog-related issues out in the community. While staff have managed to produce positive results in relation to the enforcement of issues that occur, resourcing of staff to be in the right place and the right time is problematic.

Many of the community concerns raised in relation to the management and control of dogs in public spaces are not necessarily related to particular designated dog friendly spaces, but the broader issue of responsible pet ownership and compliance with Council's local laws. Critical to the success of dog friendly spaces is the need to promote responsible pet ownership and educate dog owners of their responsibilities when managing their dogs in public spaces.

Council's regulation staff will continue to patrol dog friendly spaces regularly and to respond to complaints from the community in relation to dogs in public spaces.



### Community education

A key issue with the operation of dog friendly spaces in the City is that dog owners and non-dog owners are sometimes confused regarding the exact location of dog friendly spaces v's prohibited spaces. This can cause conflict between dog owners and non-dog owners. Confusion can be attributed to; existing signage and information being outdated or unclear and some owners not realising there are designated spaces for off-leash and assuming all parks are off-leash.

Council currently provides information in relation to pet ownership and location of off-leash spaces on its website. Staff have held and supported a number of successful events and education programs such as the 'Dogs Day Out' that involve dog owners and their dogs as well as the community at large.

Council communicates via a range of mediums including brochures, social media, signage, public events and through community consultation.

Survey results highlighted the need for more community education in relation to the Council's regulations for dog owners and the responsibility of dog owners when they have their dogs in public places.

**Action** – support annual dog events and dog training activities

ONGOING

**Action** – devise education programs for the community in relation to the requirements of the *Companion Animals Act 1998*

MEDIUM

**Action** – review and update the *Exercising your Dog* brochure every four years

ONGOING

## EXPANSION OF THE DOG FRIENDLY SPACES NETWORK

Consultation with staff, desktop research and site investigations were conducted to look at the possibility of increasing the number of dog agility parks in Shellharbour LGA. This identified there could be capacity to embellish current off-leash spaces with fencing and agility equipment and also find new spaces for additional dog agility parks around the LGA.

Community consultation with dog park owners at the opening of the dog agility park at Oak Flats and the online survey held in 2018 highlighted the demand for more dog friendly spaces throughout the LGA. Key suburbs identified include Warilla and Albion Park.

The approach to investigating spaces will be based on a number of key factors including:

- Population numbers of registered dogs in each suburb
- Community demand
- Identifying spaces that are forecast for significant growth
- Suitability of sites
- Known native fauna habitat, in particular nesting shorebirds



**Action** – prioritise spaces identified for possible dog friendly spaces.

SHORT/MEDIUM

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## WHAT TO LOOK FOR WHEN SELECTING POTENTIAL DOG FRIENDLY SPACES

The expansion of the dog off-leash network is only feasible if properly supported by enforcement, the provision of ancillary infrastructure to support off-leash activity and intensive community education. The types of factors to take into account for new sites may include:

- Community preference – the selection of dog off-leash spaces takes into account the views of the community;
- A network approach – to ensure a more equitable distribution of dog off-leash spaces across the City;
- Emphasis on District and Citywide reserves (where possible) – as they provide ample space and often, the necessary infrastructure to cater for both dog off-leash spaces and other recreational pursuits;
- Dog registration data – To ensure that spaces with a high concentration of dog ownership are well served by dog off-leash spaces;
- Form and layout of the park;
- Size, Shape and Configuration of the Park and Dog Off-Leash Area;
- Accessibility to the site and while at the site;
- Consideration to Adjacent Park Activities such as organised sporting games;
- Consideration to Spaces of Conservation or Environmental significance (this includes Council's major reserves, wetlands and shorebird habitats);
- Park Usage Levels;
- Appropriate zoning and land classifications.

The use of selection criteria to assess potential dog friendly spaces provides a strategic approach to planning new spaces.



**Action** – establish a set of selection criteria to assess potential dog friendly spaces.

SHORT/MEDIUM



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## SITE DESIGN AND INFRASTRUCTURE

Once a site has been selected for an off-leash or dog agility park, the next step is the design phase and careful consideration of the essential elements for the site. Opportunities will depend on available space and budget.

### A great dog friendly space may include:

- Separate areas for large and small dogs;
- a time out areas for dogs that need a break from the excitement of the park;
- a range of different activity spaces such as ball-play spaces, dog agility equipment spaces etc;
- natural features such as rock scrambles;
- surfaces that will stand up to wear and tear;
- fencing and gateways, the placement of seating, water and shade structures;
- landscaping and the planting of sufficient trees that provide natural shade;
- carparking provision and easy access from the car park to the dog friendly space;
- an area that is accessible and friendly for people of all abilities.

 **Action** – design each new identified dog friendly space  MEDIUM/LONG



## FUNDING

Increasing our dog friendly spaces around the LGA will impact on Councils compliance and regulation resources in regards to monitoring places with restricted spaces and time frames. This could potentially result in the need for additional staff to patrol off-leash spaces, particularly if spaces become problematic and create conflict between open space users.

The costs with establishing new dog friendly spaces such as agility parks and off-leash areas will need to be sought from capital works, developer contributions and possibly grant funding.

Council will have to determine whether a new allocation for funding of new areas is created or the funding will be taken from other budget allocations.

### References

Blue Mountains City Council Dogs in Public Spaces Strategy 2017 DRAFT  
City of Bayside – Dogs, People and Parks. A review of Dog Off-leash spaces  
City of Greater Dandenong Dog Off Leash Strategy 2011  
Maitland City Council – Off Leash Dog Exercise Area Strategy 2013  
Office of Local Government  
Paws for Play  
Shellharbour City Council Enforcement Policy (POL-0026\_V02)  
NSW Companion Animals Act 1998  
NSW Local Government Act 1993

### Available on request

Online survey questions / summary  
Oak Flats Dog Park opening consultation summary report

## PERIODIC REVIEW

This Strategy will be reviewed 12 months after endorsement and every 2 years after.

DATE	 ACTION TAKEN
September 2019	Strategy Adopted
December 2020	Review Completed





Enquiries and feedback should be made to:  
The Chief Executive Officer  
Shellharbour City Council  
Locked Bag 155  
Shellharbour City Centre NSW 2529

Telephone: (02) 4221 6111  
Facsimile: (02) 4221 6016  
E-mail: [council@shellharbour.nsw.gov.au](mailto:council@shellharbour.nsw.gov.au)

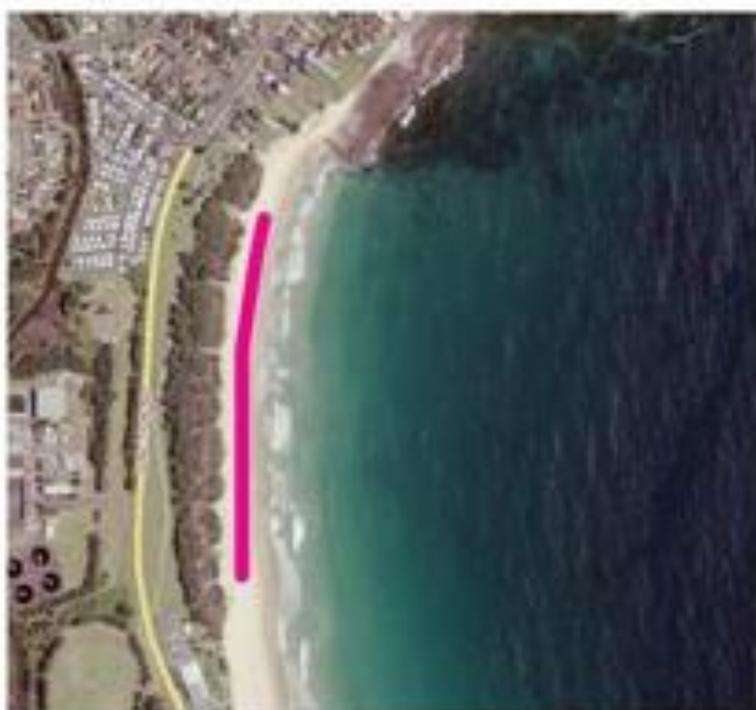
[www.shellharbour.nsw.gov.au](http://www.shellharbour.nsw.gov.au)

**Attachment 3 - Map of potential dog off-leash beach areas sites subject to future detailed investigation**

**Site 1**  
**Kyong**  
**Beach**  
**(Reddall**  
**Reserve)**



**Site 2**  
**Shellharbour**  
**North Beach**  
**(Central)**



**Attachment 4 - Engagement report – Dogs on beaches investigations**

**Lets Chat Shellharbour**

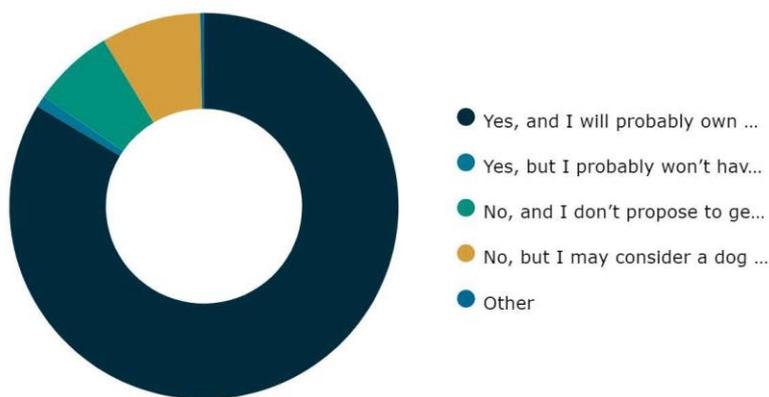
Report Type: Form Results Summary  
 Date Range: 21-09-2021 - 18-10-2021  
 Exported: 20-10-2021 09:04:23

**Closed**

Untitled 854  
 Proposed dog friendly Beach areas Contributors 942  
Contributions

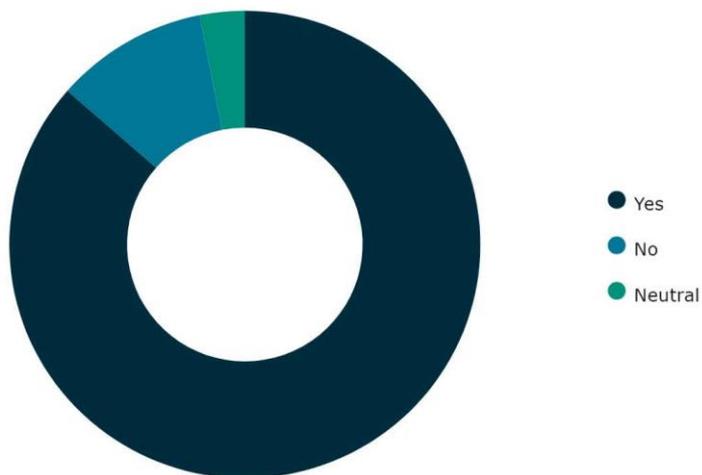
Contribution summary

**1. Do you own a dog? Required**  
 Multi Choice | Skipped: 0 | Answered: 942 (100%)

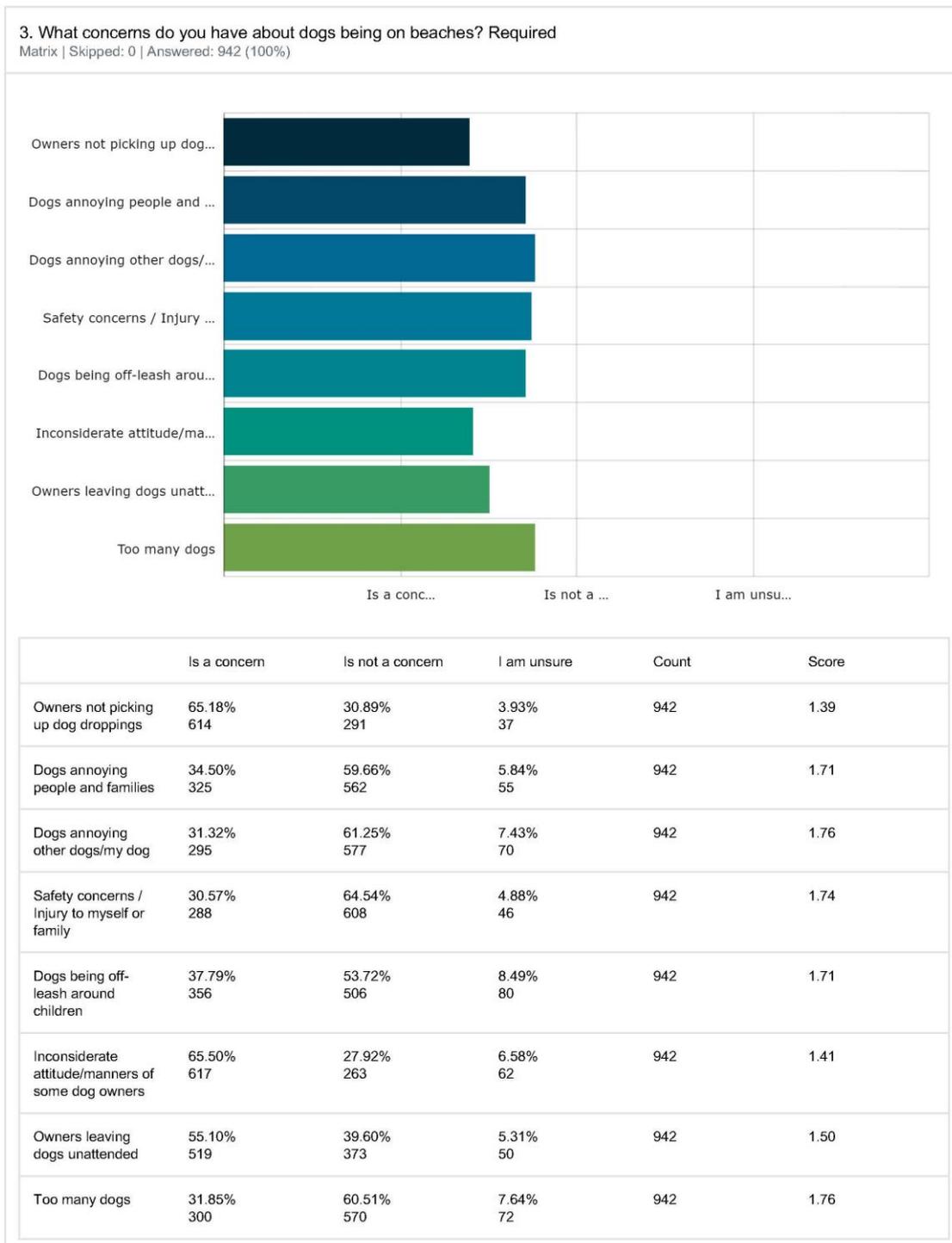


Answer choices	Percent	Count
Yes, and I will probably own a dog well into the future	83.65%	788
Yes, but I probably won't have one in the future	0.96%	9
No, and I don't propose to get one	6.79%	64
No, but I may consider a dog in the future	8.28%	78
Other	0.32%	3
<b>Total</b>	<b>100.00%</b>	<b>942</b>

2. In general, do you support dogs being allowed on beaches in designated areas? Required  
Multi Choice | Skipped: 0 | Answered: 942 (100%)



Answer choices	Percent	Count
Yes	86.41%	814
No	10.51%	99
Neutral	3.08%	29
Total	100.00%	942



6. Do you support the proposal for the Kiyong Beach, Reddall Reserve dog friendly area? Required  
Multi Choice | Skipped: 0 | Answered: 942 (100%)



Answer choices	Percent	Count
Yes	76.75%	723
No	14.65%	138
Neutral	8.60%	81
Total	100.00%	942

7. If Council was to make Kiyong Beach, Reddall Reserve dog friendly, when would you be most likely to visit it? Required  
 Matrix | Skipped: 108 | Answered: 834 (88.5%)

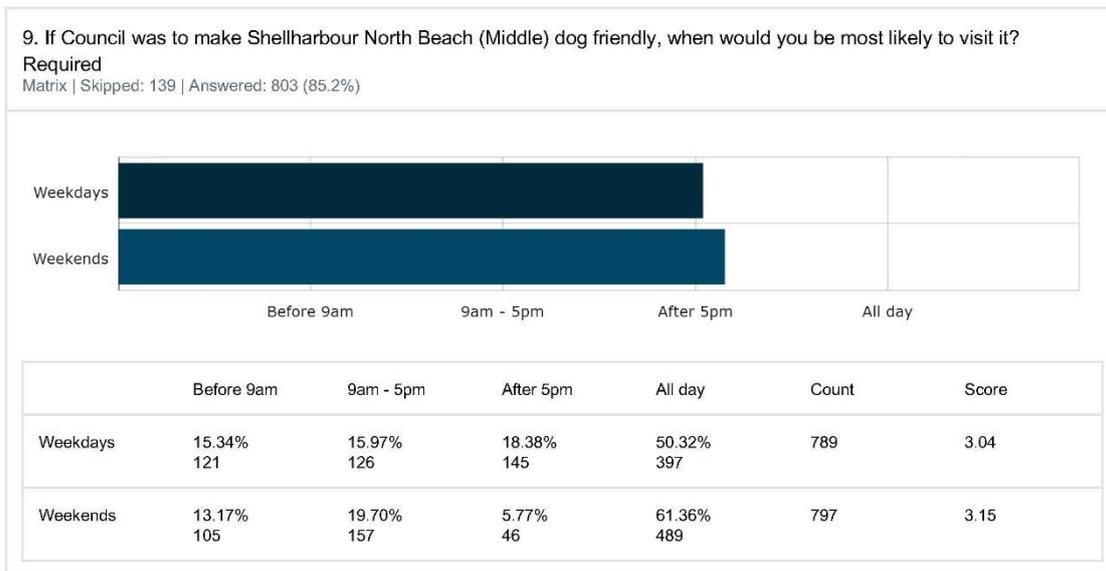


	Before 9am	9am - 5pm	After 5pm	All day	Count	Score
Weekdays	15.66% 127	16.52% 134	22.93% 186	44.88% 364	811	2.97
Weekends	15.87% 129	21.53% 175	5.54% 45	57.07% 464	813	3.04

8. Do you support the proposal for the Shellharbour North Beach dog friendly area? Required  
Multi Choice | Skipped: 0 | Answered: 942 (100%)



Answer choices	Percent	Count
Yes	76.22%	718
No	20.17%	190
Neutral	3.61%	34
Total	100.00%	942



**10.3.4 Endorsement of the Draft Generic Plan of Management for Community Land categorised as Park (11763253)**

To the Chief Executive Officer

**Directorate:** Community & Customers  
**Group:** City Planning

**Manager:** Geoff Hoynes – Group Manager City Planning  
**Author:** Melissa Muscat – Cadet – Strategic Planner

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## Summary

The purpose of this report is to seek Council's endorsement of the Draft Generic Plan of Management for Community Land categorised as Park (the Plan), for the purposes of public exhibition (**Attachment 1**).

In accordance with the *Local Government Act 1993* (LG Act) Community land is required to be categorised, used and managed in accordance with the plan of management applying to the land. The lands included in this plan are categorised as Park in accordance with the LG Act. As well as categorising land, plans of management authorise leases, licenses, or granting of any other estate, determine what development can take place and identify any key values of the land so they can be protected and enhanced.

In accordance with the LG Act, the Plan is proposed to be placed on public exhibition for a period of 28 days with a total of 42 days for receipt of submissions.

## Background

Historically, Council staff prepared site-specific plans of management for Community Land reserves within the Shellharbour City LGA. Council staff resourcing was utilised to investigate and prepare the plans, this process resulted in multiple reports to Council over a number of years, and the endorsement and adoption of many plans. However, many community land reserves were not captured in this process and remained without a plan of management.

City Planning staff began an audit of Community Land Plans of Management in 2018. The audit involved reviewing historical reports to Council, reviewing existing plans of management, capturing land dedicated to Council which required a plan of management and review of Council's land register to identify reserves which did not have a plan of management or had outdated plans of management.

Council staff then determined that the preparation of a 'generic' plan of management for multiple reserves of the same LG Act land categorisation to be the most efficient approach to ensuring all community land is managed by an up to date plan of management.

In the short term, this approach has streamlined the preparation of community land plans of management and in the medium term, it is hoped that the generic plans provide a streamlined mechanism to allow for the simple addition of future reserves into the plan.

The LG Act requires plans of management to be publicly accessible. Currently community can request to view plans of management via Customer Services or Information Management. It is hoped that once adopted, the generic plans of management will be uploaded to Council's website, allowing efficient access for the public.

The Generic Plan of Management for Park land (**Attachment 1**) incorporates 72 reserves and includes:

- Land categorised as park that previously had individual site-specific plans of management,
- Community land that did not have a plan of management; and
- Community land that has recently been dedicated to Council and requires a plan of management.

The Plan will streamline the number of site-specific plans of management for land categorised as park, by creating one document instead of multiple plans. By having one document to refer to will provide a more consistent approach with the format of plans of management along with providing easier customer and community access. Site specific plans of management for other land categorised as park may be prepared for reserves at a later date, if the reserve is not suited to a generic plan or has additional site complexities which are better detailed in site-specific plan.

It is important to note that the Generic Plan of Management for Park land does not determine the maintenance and mowing schedules for parks. This is determined operationally by staff from within the Parks Team.

#### What is community land?

The LG Act defines that all land in the ownership of Council is classified as either 'community' or 'operational'. The default classification is 'community'. The classification of community land reflects the importance of the land to the community due to its special features. Generally, community land is intended for public access and use. To protect community land, the LG Act places restrictions on the land to preserve the special qualities of the area. These restrictions being:

1. Community land cannot be sold; and
2. Cannot be leased/licenced for more than 21 years; and
3. Can only be used for purposes which are consistent with a plan of management.

Operational land is land owned by Council which has no special restrictions other than that which apply to any piece of land. Council may deal with operational land in the same manner as any other person may deal with private freehold land.

### What is a community land plan of management?

Plans of management are legal documents developed to guide how Council land that is classified as 'community land' under the LG Act is managed. A plan of management establishes directions for planning, resource management and maintenance of the land.

This plan of management is deemed 'generic' as it covers more than one reserve. Preparing generic plans of management can ensure community land is managed in accordance with an up-to-date plan. Given the number of community land parcels managed by Council, preparing a plan of management for multiple reserves of the same categorisation is considered to be the most efficient approach. There will be subsequent generic community land plans of management presented to Council in the coming months, for other lands throughout the LGA.

### Categorisation of Land

In addition to classifying land, Council must assign community land a prescribed land category, in accordance with the LG Act. Categories each have assigned core objectives. When determining a land category, consideration of the core objectives must be given in relation to the facilitation, use and management of the land. Categorisation must closely relate to the purpose for which the land is classified, dedicated or reserved.

### Park Land

The lands included in this plan are categorised as Park in accordance with the LG Act. This Plan updates the previous plans adopted for the lands and includes land that has recently been dedicated to Council. See **Attachment 1** for details of lands categorised as Park.

The core objectives for Community Land categorised as Park are specified in the s36 of the LG Act and are:

- a) to encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and
- b) to provide for passive recreational activities or pastimes and for the casual playing of games, and
- c) to improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.

In accordance with the LG Act, the Plan is proposed to be placed on public exhibition for a period of 28 days with a total of 42 days for receipt of submissions. After the public exhibition period, a public hearing is required to be held.

If any relevant submissions are received as a result of the public exhibition and public hearing process, or substantial changes are recommended for any reason, a report will be submitted to Council for consideration detailing the public exhibition and public hearing outcomes and with further recommendations regarding adoption.

If there are no relevant submissions received as a result of the public exhibition and public hearing process and there are no substantial post public exhibition changes proposed for any other reasons, Council will adopt the Draft Generic Plan of Management for Community Land categorised as Park (**Attachment 1**) and inform Councillors of the Plan's final adoption via a memo.

### **Financial / Resources Implications**

The Plan's preparation will be from within the existing budget allocation.

### **Legal and Policy implications**

Council is required to meet its obligations under the LG Act. Section 36 requires Council to prepare a draft plan of management for Community Land. Section 38 of the LG Act requires Council to give public notice of draft plans of management for a minimum of 28 days.

The LG Act, requires public hearings to be held if the proposed Plan would have the effect of categorising, or altering the categorisation of community land under Section 36. A public hearing will be required for this plan of management. A public hearing will be independently facilitated and held after the public exhibition period, to discuss written submissions in a public forum.

Any person can attend the hearing to speak to a submission or observe. Council must make the public hearing report available for public viewing no later than four days after the result of the public hearing has been determined and the report received.

### **Public / Social Impact**

The Plan has been prepared to reflect the current condition of the land and buildings, and outline permitted community uses on the land, as at the date of adoption. The Plan updates the previous plans adopted for the lands and also includes land that have been recently dedicated to Council. Public exhibition and any subsequent public hearing will provide opportunities for the community to have input into the Plan's finalisation.

### **Link to Community Strategic Plan**

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

Objective: 1.1 Vibrant, safe, creative and inclusive

Strategy: 1.1.4 Provide a liveable community that is accessible and inclusive

Objective: 1.2 Active and healthy

Strategy: 1.2.1 Provide access to services and facilities where people can live, learn and play

Objective: 2.3 A City that is connected through places and spaces

Strategy: 2.3.4 Facilitate the development of the built environment to meet community needs

## **Consultations**

### **Internal**

Asset Officer  
Community Planning Officer  
Environment Officer  
Heritage Advisor  
Group Manager Services  
Manager Asset Planning  
Manager Business and Investment  
Manager Community Life  
Parks Manager  
Planning Contractor  
Property Coordinator  
Property Officer  
Recreation Planner  
Senior Asset Engineer  
Senior Environment Officer  
Senior GIS Officer

### **External**

Nil

### **Political Donations Disclosure**

Not Applicable

## Recommendation

That:

1. Council endorse the Draft Generic Plan of Management for Community Land categorised as Park to be placed on public exhibition for a period of 28 days in accordance with the *Local Government Act 1993*, calling for submissions being received for 42 days.
2. After the public exhibition period, a public hearing be held for the Draft Generic Plan of Management for Community Land categorised as Park as per the requirements under the *Local Government Act 1993*.
3. If any relevant submissions are received as a result of the public exhibition and public hearing process, or substantial changes are recommended for any reason, a report be submitted to Council for consideration detailing the public exhibition and public hearing outcomes and with further recommendations regarding adoption.
4. If there are no relevant submissions received as a result of the public exhibition and public hearing process and there are no substantial post public exhibition changes proposed for any other reasons, Council adopt the Draft Generic Plan of Management for Community Land categorised as Park (Attachment 1) and inform Councillors of the Plan's final adoption by memo.

Approved for Council's consideration: Geoff Hoynes  
Group Manager City Planning

Date of Meeting: 16 November 2021

### Attachments

1. Draft Generic Plan of Management for Community Land categorised as Park – *under separate cover*

**10.3.5 Draft Shellharbour Masterplan Priority list for Active Open Spaces (11763256)**

To the Chief Executive Officer

**Directorate:** Community and Customers City  
**Group:** Planning

**Manager:** Geoff Hoynes – Group Manager City Planning  
**Author:** Bernadette Sharpe – Recreation Planner

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## Summary

The purpose of this report is to seek endorsement from Council of the revised Draft Shellharbour Masterplan Priority List for Active Open Spaces and for it to be placed on public exhibition, **(Attachment 1)**.

Masterplanning for Active Open Spaces is beneficial to the Community, Councillors, Customers and Council as it sets expectations on the level of service that can be provided at Council's sporting fields. Further, masterplanning ensures a strategic process that can be referred to for operational needs and applying for grant funding.

The report recommends that Council endorse the draft Shellharbour Masterplan Priority List for Active Open Spaces and for it to be placed on public exhibition for a period of 28 days.

If any relevant submissions are received, a report will be submitted to Council for consideration detailing the public exhibition outcomes. If there are no relevant submissions received as a result of the public exhibition and there are no substantial post public exhibition changes proposed for any other reasons, it is recommended that Council adopt the draft Master Plan and Master Plan Report as attached to this report.

## Background

Since its adoption by Council at its meeting of 11 June 2013, Council staff have been implementing the Shellharbour Masterplan Priority List for Active Open Spaces **(Attachment 2)**.

To date the 2013 priority list has instigated the preparation and adoption of three masterplans; Albion Park Showground (Keith Grey and Des King Ovals) at Albion Park, Flinders Reserve at Flinders and McDonald Park at Albion Park Rail. Council is also currently masterplanning Con O'Keefe Park (including Di Gorman Oval) at Albion Park.

A revised priority list has now been prepared in accordance with the findings of the Shellharbour Open Space and Recreation Needs Study (OSRN Study) and Strategy (OSR Strategy) adopted in April 2020. This will replace the 2013 priority list.

## Active Open Spaces

In accordance with State Government Policy and the Shellharbour Open Space and Recreation Needs Study (2020), Active Open Space is described as land set aside for the primary purpose of formal outdoor sports for the community. Active open space supports team sports, training and competition and typically features sports facilities such as playing fields, change rooms, grandstands and car parks. It may accommodate unstructured community or individual use when not required for its primary purpose and could include informal lawns, play, and picnic and other facilities. Active Open Space includes sportsgrounds and sports fields.

### Revised Masterplan Priority List – Active Open Spaces 2021

The review of the Masterplan Priority list for Active Open Spaces is a result of Council staff implementing the following actions (**Table 1**) out of the 2020 Shellharbour Open Space and Recreation Strategy (OSR Strategy):

**Table 1: Actions – Shellharbour Open Space and Recreation Strategy**

Action #	Action details
1.5	Continue to initiate, resource and implement master plans for key open spaces informed by the OSR Needs Study
2.4	Continue to instigate a masterplanning program for new or upgraded sports facilities, giving consideration to the findings in the OSR Needs Study, including in respect to whole of life costing and sustainable field surfaces.

The assessment criteria used for the project included assessment against six elements as outlined in **Table 2** below:

**Table 2: 2021 Active Open Space Masterplan Priorities – Assessment Criteria**

Element	Factors	Score weight
<b>Usage</b>	Number of user groups throughout the year	20%
<b>Level of Service</b>	Amenities / Facilities Embellishments	15%
<b>Risk</b>	CPTED Environmental risks (flooding / bushfire) Proximity to traffic	10%
<b>Requests</b>	Recorded requests for works / improvements from the Community Items identified in the OSRN Study (2020)	5%
<b>Condition</b>	Asset Maintenance Schedule – Buildings / Open Spaces and Ancillary Assets	35%
<b>Sustainability</b>	Economic – cost to maintain Ecological – Water Supply, Vegetation, Solar Power, Drainage, Social capacity	15%
<b>Total</b>		100%

Within each criterion there are a series of subcomponents that are scored to make up each element.

The new assessment revealed a revised masterplan priority list for 27 existing active open spaces that better reflected and aligned with the themes and findings in the OSRN Study and OSR Strategy in relation to the ongoing provision and maintenance of active open spaces.

The assessment criteria established has resulted in additional collation of information that will inform grant funding opportunities and auditing of assets. For example, the process has now provided staff with an updated list for lighting at each active open space, which can help with assessing where to increase lighting provision.

Out of the 27 spaces, three sites have relatively recent adopted masterplans and another is currently being prepared, thus 23 sites are now prioritised for masterplanning. The sites that have current masterplans are still included in the list as they will eventually require reviewing.

In addition to the 27 existing active open spaces, there are potentially 4 new active open spaces across the City identified for future planning that have not been included in this list. The four new active open spaces are located in, Shell Cove, Benson Basin Shellharbour City Centre, Tullimbar and Calderwood. It is considered that these new spaces will be masterplanned during their individual planning and design phase to ensure best practice, this will occur independently from the active open spaces masterplan priority list.

The revised list revealed that generally the top high scoring priority sites had multiple user groups, a number of poor asset condition items and a higher level of risk both to the community and environment than other sites.

Besides larger sporting precincts such as Croom Regional Sporting Complex and Terry Reserve, most Active Open Spaces on the priority list can have masterplans prepared by staff as the sites are less complex. A typical masterplan will include a short report and associated site plan, with items to be implemented in a staged manner.

### **Implementing the 2021 Masterplan Priorities - Active Open Spaces**

The priority list is a guide for Council, staff and the community and is not envisaged to be static, but to best reflect where Council needs to plan and future proof our Active Open Spaces. This means that from time to time there will be deviations from the priority list in order to:

- ensure aspects that cannot be quantified are addressed. For example, ensuring there is an equitable spread of masterplanned sites across both the east and the west of the City; and
- Ensure staff can consider preparing masterplans if there is an evolving community demand and need.

For example, staff have been approached by a number of sporting clubs who are wanting to be part of a masterplanning exercise for sites to provide guidance, assist with upgrades and grant funding applications.

It is suggested that authority to deviate from the priority list, based on an operational needs basis, be delegated to the Chief Executive Officer and that Councillors be advised of any change.

The implementation of the masterplan priority list and subsequently preparation of masterplans will be reported through the Integrated Planning and Reporting Cycle. Implementation of the works identified in adopted masterplans will be incorporated in Councils Delivery Program and Operational Plan.

This report recommends that Council endorse the draft Shellharbour Masterplan Priority List for Active Open Spaces and for it to be placed on public exhibition for a period of 28 days calling for submissions.

If any relevant submissions are received, a report will be submitted to Council for consideration detailing the public exhibition outcomes. If there are no relevant submissions received as a result of the public exhibition and there are no substantial post public exhibition changes proposed for any other reasons, it is recommended that Council adopt the draft Master Plan and Master Plan Report as attached to this report.

### **Financial / Resources Implications**

The preparation of most of the masterplans will be resourced by staff. More complex masterplans such as Croom Regional Sporting Complex and Terry Reserve may require additional resourcing. Once completed and adopted, masterplans will assist sporting clubs and Council with applying and gaining grant funding for works.

The masterplanning projects will be managed by Recreation Planning within the City Planning Group along with assistance by staff who are involved with the planning, implementation, maintenance and bookings of active open spaces. The masterplanning will involve detailed discussions and workshops with user groups, for example, sporting associations, the Active Recreation Working Party and the wider community. Once masterplans are drafted, they will be reported to Council for endorsement to be placed on public exhibition before being finalised and adopted. The number of masterplans to be developed each year will depend on resourcing and the complexity of each site.

### **Legal and Policy implications**

Recreation spaces are generally on Community Land, being Council owned or Crown land. Any masterplan will need to adhere to relevant legislation such as the NSW Local Government Act 1993 as well as comply with plans of management and other Council policies.

**Public / Social Impact**

The updated masterplanning priority list will inform the community of Council's approach to developing masterplans. The priority list will help with community expectations, capital works programs and the level of service that can be provided for each facility. The masterplanning process also allows the community to be part of the discussion and decision making on active open spaces and will assist with seeking grant funding.

**Link to Community Strategic Plan**

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

Objective: 1.2 Active and Healthy

Strategy: 1.2.2 Provide diverse opportunities for sport, recreation and enjoyment in the City's parks, open spaces and facilities

Objective: 3.1 Plans, builds and manages infrastructure for the community

Strategy: 3.1.1 Provide the community with a range of infrastructure delivered in a sustainable manner

**Consultations****Internal**

Parks Manager  
Mowing Supervisor  
Building Coordinator Construction and Maintenance  
Property Coordinator  
Senior Asset Engineer  
Asset Officer  
Cadet Strategic Planner

**External**

Public exhibition of the priority list will enable the community including local sporting clubs and associations to provide comment on the process and outcomes of the priority list.

**Political Donations Disclosure**

Not Applicable

**Recommendation****That:**

- 1. Council endorse the draft Shellharbour Masterplan Priority list for Active Open Spaces and for it to be placed on public exhibition for a period of 28 days calling for submissions**
- 2. If any relevant submissions are received or if there are any substantial post exhibition changes as a result of public exhibition, a report be submitted to Council for consideration, detailing the public exhibition outcomes and with further recommendations regarding adoption of the Shellharbour Masterplan Priority list for Active Open Spaces**
- 3. If there are no relevant submissions received and no substantial post exhibition changes as a result of public exhibition, Council adopt the Shellharbour Masterplan Priority list for Active Open Spaces and inform Councillors of the documents final adoption by memo.**
- 4. Following adoption of the Shellharbour Masterplan Priority list for Active Open Spaces, that authority to deviate from the priority list based on an operational needs basis be delegated to the Chief Executive Officer and that Councillors be advised of any change.**

Approved for Council's consideration: **Geoff Hoynes**  
Group Manager City Planning

**Date of Meeting:** 16 November 2021

**Attachments**

1. Draft Shellharbour Masterplan Priority List Active Open Spaces (2021) – *Page 100*
2. Shellharbour Masterplan Priority List Active Open Spaces (2013) – *Page 101*

## Attachment 1 - Draft Shellharbour Masterplan Priority List Active Open Spaces (2021)

Ranking	Park Name	Surrounding Street(s)	Suburb	Hierarchy	East / West	Sporting codes	Use	Current level of service				Sustainability	Weighted score	Masterplan Already Prepared
								20%	15%	10%	5%			
1	Oakleigh Park	Shellharbour Rd	Warilla	District	East	Cricket, Rugby League, Basketball	7.0	5.8	7.0	3.0	5.6	5.1	5.9	No
2	Keith Bond Oval / Geoff Shaw Oval / Oak Flats Tennis Courts / Dog Park	Fisher St	Oak Flats	District	East	Football / Cricket, Tennis, Dog Agility, Park	10.0	3.0	5.5	4.0	4.2	6.9	5.7	No
3	Scout Willoughby	Wollongong St	Shellharbour	District	East	Cricket, Rugby League	6.0	6.3	6.0	4.0	5.9	4.3	5.6	No
4	Albion Oval	Wollybutt Drive	Albion Park Rail	District	West	Football, Cricket, Touch Football	7.0	5.5	5.5	4.0	5.3	5.1	5.6	No
5	McDonald Park	Station Road	Albion Park Rail	District	West	Netball, Tennis, Park	7.0	6.3	6.0	1.0	5.4	4.9	5.6	Yes
6	Flinders Reserve	Jyndabyne Rd	Flinders	District	East	Rugby League, Touch Football, Otago	10.0	3.3	4.0	5.0	3.9	6.0	5.4	Yes
7	Mymbarr Community Park	Shellharbour Rd	Shellharbour	Regional	East	AFL, Football, Athletics, Otago, Cricket, AFL, Rugby League, Athletics, BMX, Model Cars,	10.0	0.3	5.0	10.0	3.6	6.9	5.3	No
8	Croom Road Sporting Complex Reserve	Croom Road	Albion Park	Regional	West	Cricket, Rugby League, Dog Ag	10.0	1.3	6.0	5.0	3.4	6.3	5.2	No
9	J N King Memorial Park	Lewarra Ave	Warilla	District (junior)	East	Cricket, Rugby League, Dog Ag	5.0	6.5	5.5	2.0	5.5	4.0	5.2	No
10	Pioneer Park	Addison St	Shellharbour	Community / Neighbourhood	East	Rugby League, Cricket, Skate Park	4.0	7.3	4.5	3.0	5.4	4.3	5.0	No
11	Albion Park Showground / Keith Grey Oval / Des King Oval / Tennis	Tongarra Road	Albion Park	District	West	Cricket, Rugby League, Tennis, Gymnastics	8.0	1.8	5.0	3.0	4.3	6.3	5.0	Yes
12	Cec Glenholmes Oval	Reddall Pde	Lake Illawarra	District	East	Rugby League	4.0	4.5	3.5	9.0	5.3	5.4	4.9	No
13	Terry Reserve	Grey Street	Albion Park	Regional	West	Football Equestrian/ horse training	7.0	0.3	6.5	5.0	3.9	7.1	4.8	No
14	Panorama Oval (Shane Lee Field)	The Esplanade	Oak Flats	District	East	Football, Cricket	6.0	4.8	3.5	3.0	4.9	4.0	4.7	No
15	Keith Hockey	Boollwarroo Pde	Shellharbour	Neighbourhood	East	Cricket, Rugby League	3.0	7.8	4.5	2.0	5.5	2.9	4.7	No
16	Ron Costello Oval / Ben Fretus	William St	Shellharbour	District	East	Rugby League	5.0	0.8	4.0	5.0	5.6	6.3	4.7	No
17	Jock Brown Public Reserve	Messenger St	Barrack Heights	District	East	AFL, Rugby League, Cricket	3.0	5.8	5.0	2.0	5.8	3.7	4.6	No
18	Barrack Heights Sportfield	Daphne St	Barrack Heights	District	East	Football	4.0	4.5	3.5	4.0	5.9	3.7	4.6	No
19	King Mickey Park	George St	Warilla	District	East	Football	3.0	4.5	4.5	9.0	4.6	4.6	4.5	No
20	Andrew Park	Landy Drive	Mt Warrigal	Neighbourhood	East	Netball, Tennis	1.0	8.0	5.0	1.0	6.1	2.6	4.5	No
21	Con O'Keefe Park / DI Gorman Oval	Russell Street	Albion Park	Neighbourhood	West	AFL, Cricket, Football	2.0	9.3	4.5	1.0	4.4	4.0	4.4	Underway
22	Morley Park	Trumper St	Warilla	District (junior)	East	Football, Cricket	4.0	3.8	5.5	4.0	4.1	4.6	4.2	No
23	Freeman Park	Freeman Pde	Mt Warrigal	Neighbourhood	East	Football/ Rugby League	0.0	9.5	3.0	1.0	5.6	2.3	4.1	No
24	Graham Park	Peterborough Ave	Lake Illawarra	Neighbourhood	East	Tennis	2.0	8.0	4.0	1.0	4.7	2.3	4.0	No
25	Dawes Park	Junction Rd	Barrack Point	Neighbourhood	East	Cricket, Rugby League, Park	1.0	8.8	3.0	1.0	4.5	3.1	3.9	No
26	Howard Fowles Oval	Shellharbour Rd	Lake Illawarra	District	East	Cricket	4.0	3.5	4.5	1.0	4.1	4.3	3.9	No
27	James Cook Parkway		Shell Cove	Neighbourhood	East	Football, Basketball, Cricket Plat	2.0	8.0	3.0	1.0	4.0	2.6	3.7	No

## Attachment 2 - Shellharbour Masterplan Priority List Active Open Spaces (2013)

Ranking	Park Name	Surrounding Street(s)	Suburb	Location (Map)	Usage	Purpose	Risk	Sustainability	Condition / Need for improvement	Weighted Score
		<b>Active</b>			20%	25%	15%	25%	15%	/ 10
1	Albion Park Showground / Keith Grey Oval / Des King Oval	Tongarra Road	Albion Park	KEITH GREY AP	9	6	9	9	5.5	7.73
2	Jock Brown Public Reserve	Messenger St	Barrack Heights	JOCK BROWN BH	2	8	10	10	8	7.60
3	Flinders Reserve	Jindabyne Rd	Flinders	FLINDERS FL	8	8	10	8	2.5	7.48
4	Albion Oval	Woollybutt Drive	Albion Park Rail	ALBION APR	8	8	5	8	5.5	7.18
5	Pioneer Park	Addison St	Shellharbour	PIONEER SH	2.5	5	10	10	6.5	6.73
6	Terry Reserve	Grev Street	Albion Park		6	5	10	8	5	6.70
7	Howard Fowles Oval	Shellharbour Rd	Lake Illawarra	HOWARD FOWLES LI	5	5	10	8	6	6.65
8	King Mickey Park	Georae St	Warilla	KING MICKEY WA	5.5	5	8	8	7	6.60
9	Con O'Keefe Park / Di Gorman Oval	Russell Street	Albion Park	CON O'KEEFE AP	2	8	5	8	8	6.35
10	Myimbarr Community Park	Shellharbour Rd	Shellharbour	MYIMBARR SH	10	8	8	1	2	5.75
11	J N King Memorial Park	Leawarra Ave	Warilla	J N KING WA	3	5	8	10	3	6.00
12	Croom Road Sporting Complex Reserve	Croom Road	Albion Park	CROOM AP	10	5	5	5	5	6.00
13	Oakleigh Park	Shellharbour Rd	Warilla	OAKLEIGH WA	5	8	5	5	5	5.75
14	Barrack Heights Sportsfield	Daphne St	Barrack Heights	BARRACK HEIGHTS BH	5.5	3	5	8	5.5	5.43
15	Keith Bond Oval / Geoff Shaw Oval	Fisher St	Oak Flats	KEITH OF	5.5	8	2	5	4	5.25
16	Morley Park	Trumper St	Warilla	MORLEY WA	5.5	5	2	7	5.5	5.23
17	Panorama Oval/Shane Lee Oval	The Esplanade	Oak Flats	SHANE LEE OF	5.5	3	5	5	7	4.90
18	Andrew Park	Landy Drive	Mt Wariala	ANDREW MW	2.5	3	5	8	5	4.75
19	McDonald Park	Station Road	Albion Park Rail	MCDONALD APR	2.5	5	5	3	8	4.45
20	Cec Glenholmes Oval	Reddall Pde	Lake Illawarra	CEC GLENHOLMES LI	8	3	5	2	5.5	4.43
21	Beverley Whitfield Park (Scout Willoughby)	Wollongong Street	Shellharbour	BEVERLEY SH	5	3	2	5	5.5	4.13
22	Ron Costello Oval (Fuller Park) & Keith Hockey	William Street	Shellharbour	FULLER SH	6	3	2	3	5	3.75
23	Freeman Park	Freeman Pde	Mt Warrigal	FREEMAN MW	2	3	5	6	2	3.70
24	Graham Park - Tennis	Peterborough Ave	Lake Illawarra	GRAHAM LI	6	1	2	2	8	3.45
25	Dawes Park	Junction Rd	Barrack Point	DAWES BP	0.5	3	6	3	2	2.80

**10.3.6 Shellharbour Local Environmental Plan 2013 Planning Proposal No. 0003/2019 Lot 300 DP 1223037 - Tongarra Road, Croom (11763252)**

To the Chief Executive Officer

**Directorate:** Community and Customers  
**Group:** City Planning

**Manager:** Geoff Hoynes – Group Manager City Planning  
**Author:** Cheryl Lappin – Senior Strategic Planner

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## Summary

The purpose of this report is to inform Council of the outcomes of the consultation with NSW Parliamentary Counsel and seek Council's resolution to make this amending Local Environmental Plan (LEP). The Minister for Planning and Public Spaces has granted Council delegation to finalise this planning proposal and make the amending LEP.

At its meeting on 29 September 2020, Council resolved to prepare Planning Proposal No. 0003/2019 to amend *Shellharbour Local Environmental Plan 2013* (Shellharbour LEP 2013) by rezoning Lot 300 DP 1223037 to permit an addition use on the land being Function Centre. The land is currently zone SP1 Special Activities (Cemetery/Crematorium) and RE1 Public Recreation.

The location and current zoning of the affected property is shown in **Attachment 1**.

This Planning Proposal was initiated by the landowners. It is recommended that Council resolve to make this amending Local Environmental Plan under delegation from the Minister for Planning and Public Spaces.

## Background

### About Planning Proposals

A planning proposal is a document that explains the intended effect of a proposed amendment(s) to a Local Environmental Plan (LEP), in this case the Shellharbour LEP 2013, and sets out the justification for making the amendment.

This Planning Proposal will involve the following five key steps:

1. *Planning proposal* – Council is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan.
2. *Gateway* – The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is

justified before further resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities, and if necessary, the proposal is varied.

3. *Consultation* – if required by the gateway determination, the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing.
4. *Assessment* – Council will consider any submissions objecting and the proposal may be varied as necessary prior to adoption. Parliamentary Counsel then prepares a draft local environmental plan – the legal instrument.
5. *Decision* – with the Minister’s (or delegate’s) approval the plan becomes law and is published on the NSW legislation website.

Council is at step 5. As delegate for the Minister of Planning and Public Spaces, Council can finalise the planning proposal and make the amending LEP.

#### Planning Proposal – Additional Permitted Use (Function Centre) PP0003/2019

The planning proposal seeks to amend the SLEP 2013 to allow 'function centre' as an additional permitted use within the site. The SLEP 2013 defines 'function centre' as follows:

*Function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.*

The planning proposal seeks to amend the SLEP 2013 to achieve the proposed outcome for the subject site by:

1. Amending Schedule 1, to include a 'function centre' as an additional permitted use on part of the site, 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.*
2. Amending the Additional Permitted Uses Map (Sheet APU\_014 and 018) by colouring and numbering the subject site. (Attachment 2 & 3)

On 29 September 2020, Council resolved:

*That Council:*

1. *Prepare Planning Proposal No 3/2019 to amend Shellharbour Local Environmental Plan 2013 in the following manner:*
  - 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. *Authorise the Chief Executive Officer to submit Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2019 to the NSW Department of Planning & Environment in accordance with section 3.34 of the Environmental Planning & Assessment Act 1979 for review and gateway determination.*
3. *Delegate to the Chief Executive Officer authority to make minor mapping and Local Environmental Plan instrument changes to Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2019 if and as required by the NSW Department of Planning & Environment's gateway determination.*
4. *As part of its gateway submission apply to the Department of Planning 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. *Approve Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2019 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 adoption.*

The Planning Proposal was prepared and sent to the Department of Planning, Industry and Environment (DPIE) on 3 November 2020. The Gateway Determination was issued by DPIE on 4 December 2020.

The Gateway Determination required consultation with the NSW Rural Fire Service (RFS) due to areas of the affected properties being identified as bushfire prone lands

and the Civil Aviation Safety Authority (CASA) due to the close proximity to Shellharbour Airport. Consultation was also required with Shellharbour Airport.

Following the completion of the consultation during which there were no objections, the Planning Proposal was reported to Council again on 21 July 2021 where it was resolved:

*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 59(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 the Chief Executive Officer 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 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.*

This report addresses point four of the above resolution.

The Planning Proposal was referred to NSW Parliamentary Counsel to draft the legal instrument that will give effect to this planning proposal (amending LEP).

Parliamentary Counsel have provided the opinion that the amending LEP can legally be made and provided the draft instrument to Council. The final LEP maps have been approved and signed off by DPIE. As such, Council is now able to make amendment number 24 to the LEP.

### **Financial / Resources Implications**

The applicant has paid the first and second stage component of the rezoning fee in accordance with Council's Fees and Charges Policy.

### **Legal and Policy implications**

Council was granted delegation from the Minister for Planning and Public Spaces to finalise this Planning Proposal.

To use its delegation, Council is required to consider any proposed changes to Shellharbour LEP 2013 and resolve to send them to the NSW Parliamentary Counsel under Section 3.36(1) of the *Environmental Planning & Assessment Act 1979* (EP&A Act) to obtain an opinion from the Parliamentary Counsel that the amending LEP can be made.

Opinion has now been received, and this report is to request Council to consider adopting the proposed changes under Section 3.36(2) of the EP&A Act 1979 to obtain and send them to the NSW Department of Planning, Industry and Environment so that the amending LEP can be finalised.

### **Public / Social Impact**

The Planning Proposal will provide public and social benefits with the provision of an additional events venue.

The Proposal was placed on public exhibition for interested parties to have the opportunity to provide their views for Council's consideration. No written submissions were received from the public.

### **Link to Community Strategic Plan**

The planning proposal to address miscellaneous mapping anomalies supports the following objectives and strategies of the Community Strategic Plan:

- |            |       |  |
|------------|-------|--|
| Objective: | 2.3   | A city that is connected through places and spaces.  |
| Strategy:  | 2.3.2 | Undertake land use planning in a socially, economically and environmentally responsive manner. |
| Strategy:  | 2.3.4 | Facilitate the development of the built environment to meet community needs.                   |

## **Consultations**

### **Internal**

Nil

### **External**

NSW Parliamentary Counsel

### **Political Donations Disclosure**

Not Applicable.

## **Recommendation**

### **That Council:**

- 1. Adopt the following amendments (Amendment 24) to Shellharbour Local Environmental Plan 2013 for the purpose of making the Local Environmental Plan under section 3.36(2) of the Environmental Planning & Assessment Act 1979.**
  - a. Amend Schedule 1 of Shellharbour LEP 2013 Additional Permitted Uses Map in accordance with Attachment 2.**
  - b. Amend Shellharbour LEP 2013 Additional Permitted Uses Map in accordance with Attachments 3 and 4.**
- 2. Delegate the Chief Executive Officer authority to:**
  - a. Sign the Map Cover Sheet;**
  - b. Sign the written Local Environmental Plan; and**
  - c. Send the Planning Proposal to the regional office of the NSW Department of Planning & Environment in accordance with section 3.36(2) of the Environmental Planning & Assessment Act 1979 to place the amending Local Environmental Plan on the NSW Legislation website.**

Approved for Council's consideration: Geoff Hoynes  
Group Manager City Planning

**Date of Meeting:** 16 November 2021

**Attachments**

1. Locality Plan – *Page 109*
2. Amended Schedule 1 (Written Shellharbour Local Environmental Plan Amendment 24) – *Page 110*
3. Amended Additional Uses Map – *Page 112*
4. Amended Additional Uses Map – *Page 113*

**Attachment 1 – Locality Plan**



**Attachment 2 - Amended Schedule 1 (Written Shellharbour Local Environmental Plan Amendment 24)**



**Shellharbour Local Environmental Plan 2013  
(Amendment No 24)**

under the

Environmental Planning and Assessment Act 1979

The following local environmental plan is made by the local plan-making authority under the *Environmental Planning and Assessment Act 1979*.

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Shellharbour Local Environmental Plan 2013 (Amendment No 24) [NSW]

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**Shellharbour Local Environmental Plan 2013 (Amendment No 24)**

under the

Environmental Planning and Assessment Act 1979

**1 Name of Plan**

This Plan is *Shellharbour Local Environmental Plan 2013 (Amendment No 24)*.

**2 Commencement**

This Plan commences on the day on which it is published on the NSW legislation website.

**3 Land to which Plan applies**

This Plan applies to Lot 300, DP 1223037, 10 Croome Road, Croom.

**4 Maps**

The maps adopted by *Shellharbour Local Environmental Plan 2013* are amended or replaced, as the case requires, by the maps approved by the local plan-making authority on the making of this Plan.

**5 Amendment of Shellharbour Local Environmental Plan 2013**

Schedule 1 Additional permitted uses

Insert at the end of the Schedule, with appropriate clause numbering—

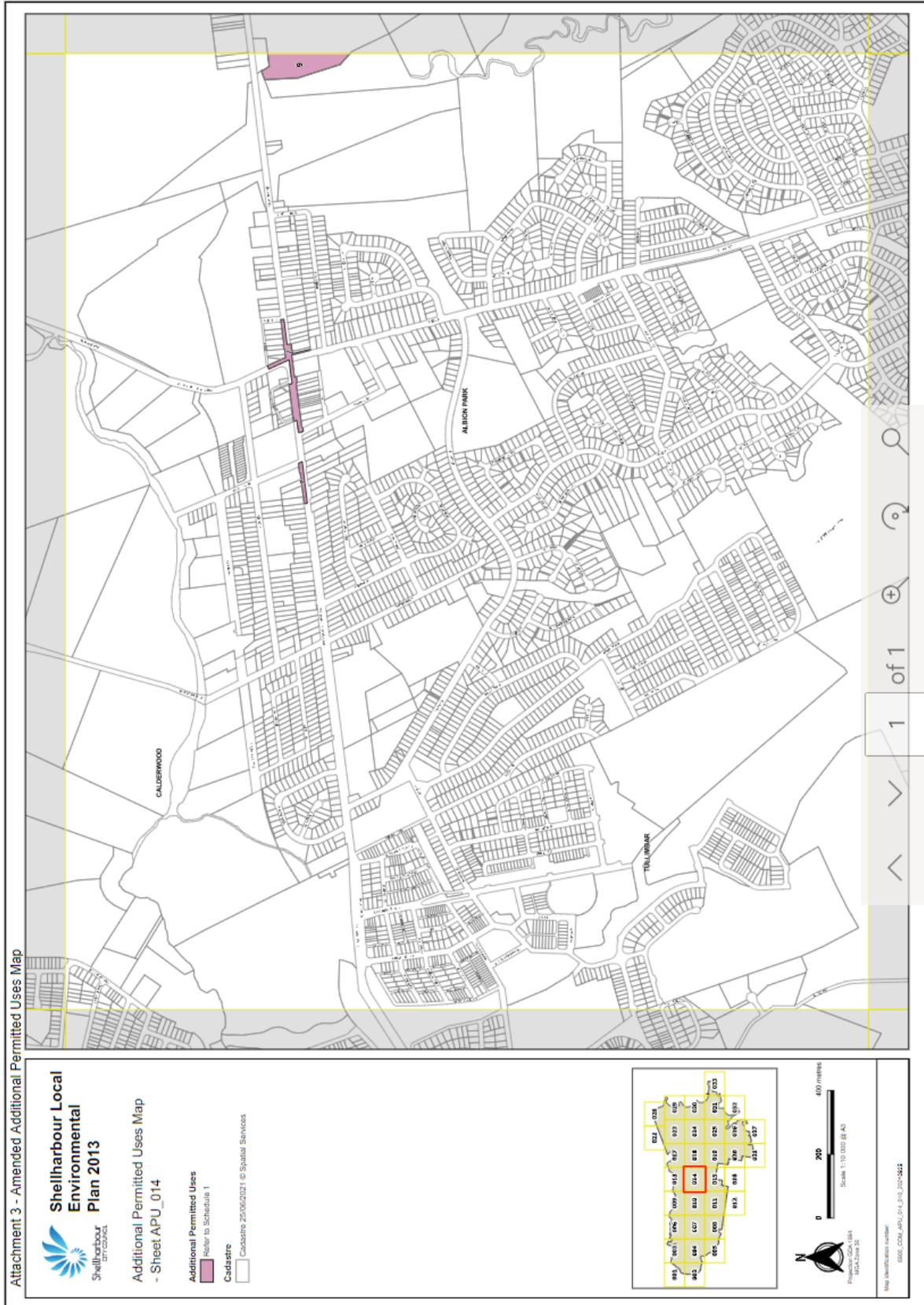
**Use of certain land at 10 Croome Road, Croom**

- (1) This clause applies to the part of Lot 300, DP 1223037, 10 Croome Road, Croom, in Zone SP1 Special Activities, identified as "9" on the Additional Permitted Uses Map.
- (2) Development for the purposes of function centres is permitted with development consent.

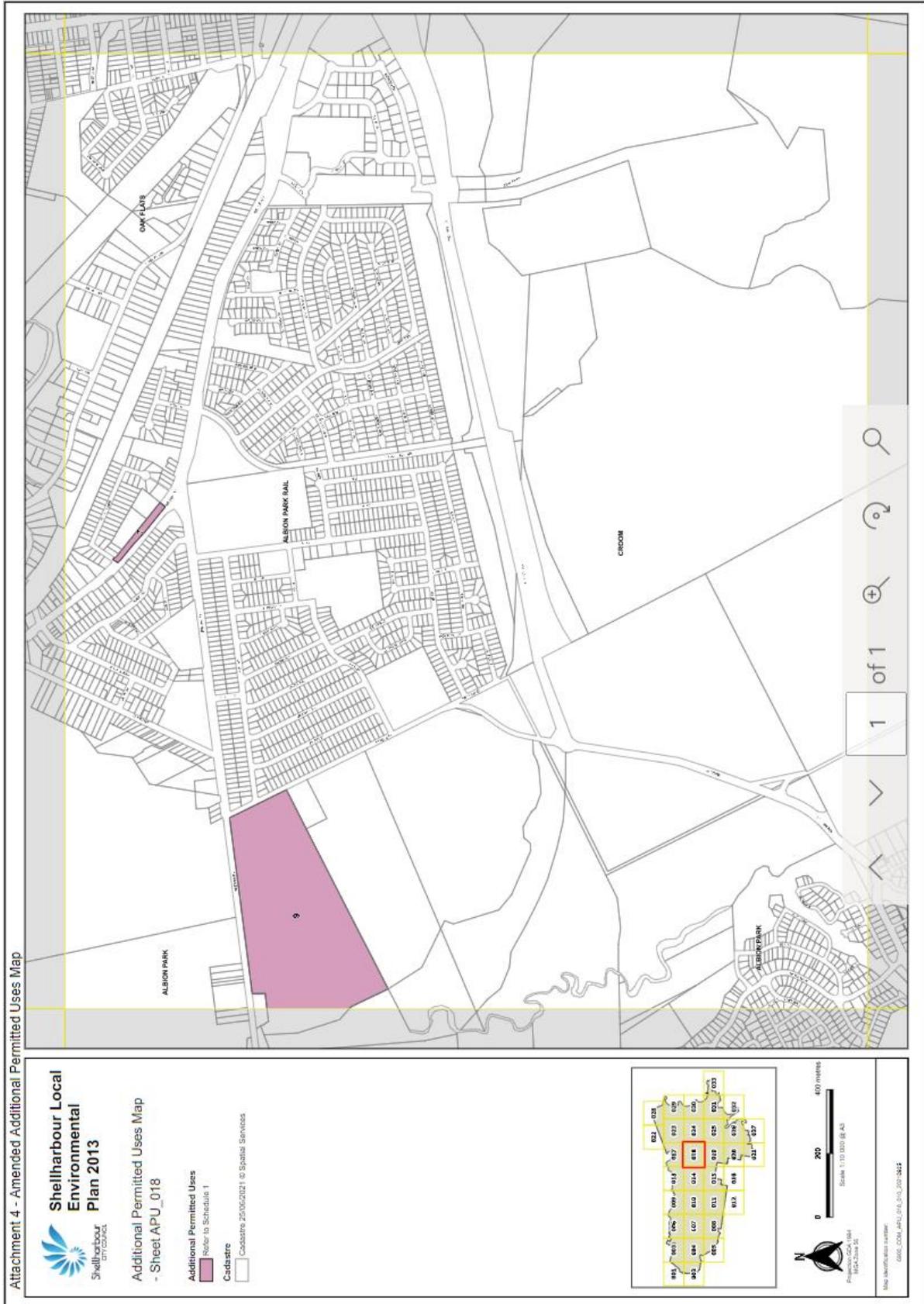
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Page 2

**Attachment 3 – Amended Additional Uses Map APU 14**



**Attachment 4 - Amended Additional Uses Map APU 18**



**10.3.7 Request for Sponsorship and Financial Assistance – Second Quarter Allocations 2021/2022 (11764007)**

To the Chief Executive Officer

**Directorate:** Community and Customers  
**Group:** Community Connections

**Manager:** Kathryn Baget-Juleff – Group Manager Community Connections  
**Author:** Renee Acers- Administration Officer

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## Summary

The purpose of this report is to seek Council's endorsement of the proposed contributions recommended by the Financial Assistance Working Party (Working Party) at its meeting on 27 October 2021 for the second round of allocations for the 2021/2022 financial year, from the Miscellaneous Donations budget.

This report recommends that Council provide financial assistance from the Miscellaneous Donations Budget 2021/2022 totalling \$3,600.00.

Further, this report seeks Council endorsement of \$15,388.75 to provide funds and in-kind allocations from the Community Event Sponsorship Budget 2021/2022.

## Background

Councils may provide financial assistance to others, under S356 of the *NSW Local Government Act 1993* (the Act). Shellharbour City Council allocates funds for certain kinds of donations, listed as miscellaneous donations in each annual Operational Plan and the distribution of funds is managed by the Working Party, which includes all Councillors. Advice and additional information is provided to the meeting by relevant staff.

The Working Party considers requests for financial assistance and makes recommendations to Council subject to the Act, the history of the beneficiary proposal, Council's policy and programme objectives. The Working Party considers requests for assistance in the form of cash, as well as reductions or waivers of Council fees and charges associated with use by applicant organisations, of city facilities or services.

In such cases, Council may charge the value of any fee reduction, against the budget for donations, thereby ensuring that any fee waiver is recognised as a donation and Council is properly credited with this form of financial assistance.

Financial assistance is provided to germinate volunteer projects and individual aspirations, which are in accordance with Council's objectives outlined in the Financial Assistance – Donations Policy. Financial assistance is never intended to be ongoing, or assured. Not all requests for funding assistance are granted.

Not all requests are approved exactly as requested. Approval is generally recommended in part or in full, within Council's budget limits, for those applications that are deemed to fit the guidelines of Council's Financial Assistance - Donations Policy, Council's Fee Reduction Policy and Council's programme objectives.

### Second Quarter Financial Assistance

The second quarter allocations for financial assistance closed on 4 October 2021. This round was promoted on social media, print advertisement and through Council networks from 1 September 2021.

There were 7 applications received for the second round of allocations, totalling \$7,500.00. Of these, 1 was from an organisation that has not previously requested funding.

The Working Party met on 27 October 2021, considered all applications for assistance for the second quarter and made recommendations to the total value of \$3,600.00. See **Table 1** below:

**Table 1: Recommendations Quarter 2 – Miscellaneous Donations budget**

Organisation	Reason Requesting	Amount requested	Amount approved
Hope in a Suitcase	To assist towards the purchase of additional storage space for donated items.	\$1,000.00	\$500.00
Illawarra South Coast Multiple Birth Association	To assist with running a Healthy Families program offering educational parenting support tailored to families of multiples.	\$500.00	Nil
Marine Rescue Port Kembla	To purchase furniture for training room at Ski Way Park, Lake Illawarra	\$2,000.00	\$600.00
Shell Cove Community Garden	To assist with the purchase of benches and shelving for the greenhouse, as well as installation of an automated watering system.	\$1,000.00	\$500.00
Shellharbour Hospital Auxiliary	To assist towards the purchase of a defibrillator machine for Shellharbour Hospital as the current unit needs replacement.	\$1,000.00	\$500.00
Shellharbour Woodcarvers	To assist towards the purchase of a defibrillator machine.	\$1,000.00	\$1,000.00
The Rail Cricket Club	To assist with the purchase of an honor board to acknowledge past and present life members.	\$1,000.00	\$500.00
<b>TOTAL</b>		<b>\$7,500.00</b>	<b>\$3,600.00</b>

## Community Events Sponsorship

The working party also considered two out of round applications for sponsorship of community events in the 2021/2022 financial year and made recommendations to the total value of \$15,338.75. See **Table 2** below:

**Table 2: Recommendations Quarter 2 –Community Event Sponsorship budget**

Name/Organisation	Event Name	Amount requested	Amount approved
Albion Park Show Society	Albion Park Annual Show	\$5,338.75 \$1,500 cash \$3,838.75 in-kind	\$5,338.75 \$1,500 cash \$3,838.75 in-kind
Ciaran Gribbin and Jennifer O’Dea	Summer of Love Festival	\$10,000.00	\$10,000.00
<b>TOTAL</b>		<b>\$15,338.75</b>	<b>\$15,338.75</b> \$11,500 cash \$3,838.75 in-kind

All applicants will be advised in writing. Successful applicants will be advised of the allocation amount and any conditions on the allocation.

## Financial / Resources Implications

Allocations are made within Council's approved budgetary limits.

### Donations:

If recommendations listed in **Table 1** are adopted, an amount of \$13,236.78 remains in the Miscellaneous Donations Budget for allocation during the 2021/2022 financial year. This amount has been calculated as shown in **Table 3**:

**Table 3– Miscellaneous Donations Budget 2021/2022**

Original budget allocation 2021/2022 plus carry over from previous year of \$1,528.78 (miscellaneous donations only)	\$21,528.78
Less amount allocated in first quarter (July to Aug)	-\$4,665.00
Less amount proposed to be allocated in second quarter (Sept to Nov)	-\$3,600.00
<b>Balance remaining for future allocations for 2021/2022 period</b>	<b>\$13,236.78</b>

## Community Event Sponsorship Financials

If recommendations listed in **Table 2** are adopted, an amount of \$13,761.25 remains in the Sponsorship Budget for allocation during the 2021/2022 financial year. This amount has been calculated as shown in **Table 4**:

**Table 4 – Community Events Sponsorship Budget 2021/2022**

Original budget allocation 2021/2022 plus carry over from previous year of \$6,269.00 (sponsorship only)	\$56,269.00
Less amount allocated in first quarter (July to Aug)	-\$27,169.00
Less amount proposed to be allocated in second quarter (Sept to Nov)	-\$15,338.75
<b>Balance remaining for future allocations for 2021/2022 period</b>	<b>\$13,761.25</b>

**Legal and Policy implications**

The allocation of financial assistance is in accordance with Council's Financial Assistance - Donations Policy and Council's Sponsorship Policy.

**Public / Social Impact**

Financial assistance provided by Council has a positive social impact as it supports projects and activities within the community in accordance with Council's policy and program objectives.

**Link to Community Strategic Plan**

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

- Objective: 1.1      Vibrant, safe, creative and inclusive City
- Strategy: 1.1.1    Deliver and promote events and activities for our community
- Objective: 1.2      Active and healthy
- Strategy: 1.2.1    Provide access to services and facilities where people can live, learn and play

**Consultations****Internal**

Financial Assistance Working Party  
Group Manager Asset Strategy  
Management Accountant

**External**

Submissions received from organisations requesting financial assistance and sponsorship of community events.

**Political Donations Disclosure**

Not applicable

**Recommendation****That Council:**

1. **Provide financial assistance from the miscellaneous donations budget totalling \$3,600.00 to the following groups:**

Hope in a Suitcase	<b>\$500</b>
Marine Rescue Port Kembla	<b>\$600</b>
Shell Cove Community Garden	<b>\$500</b>
Shellharbour Hospital Auxiliary	<b>\$500</b>
Shellharbour Woodcarvers	<b>\$1,000</b>
The Rail Cricket Club	<b>\$500</b>

2. **Provide funds and in-kind allocations from the Community Event Sponsorship Budget totalling \$15,338.75 to the following groups:**

Albion Park Show Society – ‘Albion Park Annual Show’	<b>\$1,500 cash \$3,838.75 in-kind</b>
Ciaran Gribbin and Jennifer O’Dea - ‘Summer of Love Festival’	<b>\$10,000 cash</b>

3. **That the sponsored events be added to Council’s Calendar of Events as “sponsored events”.**

Approved for Council's consideration:

Kathryn Baget-Juleff  
Group Manager Community Connections

**Date of Meeting:**

16 November 2021

**Attachments**

Nil

**10.4 Amenity and Assets Directorate****10.4.1 Landfill Cell 6 Project Budget Approval (11764578)**

To the Chief Executive Officer

**Directorate:** Amenity and Assets  
**Group:** Asset Strategy

**Manager:** Daniel Brilsky – Acting Group Manager Asset Strategy  
**Author:** James Brumpton – Project Delivery Officer

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**Summary**

The purpose of this report is to seek Council's approval for the additional budget allocation in 2021/22 for landfill cell 'Cell 6' at the Dunmore Resource Recovery and Waste Disposal Depot.

The project is planned to be a multi-year project and it is now proposed to commence earlier by allocating funds from within the existing Capital program and identifying the budget next financial year to allow for the advertising of tenders and cater for long lead times in delivery of the landfill liner. The total capital budget identified in this report for the construction of Cell 6 at the Landfill is \$3,400,000 ex GST. The budget is to be expended over the 2021/2022 and 2022/2023 financial years, and is essential to Council's ongoing operation of the landfill.

**Background**

The landfill at the Dunmore Resource Recovery and Waste Disposal Depot receives approximately 30,000 tonnes of waste each year. The landfill is extended by building waste cells which includes a compacted base layer, a water proof barrier and a leachate drainage system. Each cell is built to a size that enables landfilling operations for approximately three years.

The most recently completed landfill cell commenced operation in September 2020 and a capital cost of approximately \$3.07M. The proposed new Cell 6 is approximately 15% larger than the previous cell and therefore a proportionally larger budget is sought. The next Cell is to be constructed to allow for continued landfill operations after June 2023. The reasons for bringing forward the advertising of the Tenders and budget allocation are outlined in **Table 1**.

**Table 1 – Page 120**

**Table 1:** Details on the benefit of bringing forward delivery of the project

Issue/Risk	Action
Delays associated with overseas manufacture and supply of geomembrane liner materials.	Bring forward advertising of tenders for construction and engagement of a suitably qualified and experienced contractor. Include the supply of geomembrane liner materials in the contractor's scope as to make them responsible for the procurement
June 2023 capacity in existing landfill cells will be full	Bring forward advertising of tenders for construction and engagement of a suitably qualified and experienced contractor. Eliminates the need of any diversion to other waste facilities

It is noted that Council resolved to delegate authority to the Mayor and the Chief Executive Officer to accept tenders for Cell 6 during the period between the Council election and the first Council meeting in February 2022. If this delegation were to be exercised on the new Cell 6 tender, a report back to Council would be provided to notify Council.

With the existing landfill cells estimated to reach capacity in June 2023, the project was originally planned to commence in mid-2022 with the first step being the adoption of the project budget through the usual process of the preparation and adoption of a delivery program and operation plan for 2022/23. However, for the reasons stated in Table 1, this report recommends Council commence the project as soon as possible.

### Financial / Resources Implications

An allocation of \$700,000 for the current year was approved by Council as part of the adoption of the 2021/22 Operational Plan in June.

A total budget of \$3,400,000 estimated to be required for this project with an anticipated completion date in 2022/23. The estimated phasing for 2021/22 and 2022/23 of the proposed remaining funding is \$1,400,000 and \$2,000,000 respectively.

The additional \$700,000 required in 2021/22 is proposed to be transferred from the existing capital budget item that is identified as the Landfill Capping project. This project is in the design phase and sufficient funding will remain to complete the design works in 2021/22.

As the 2021/22 year was the last year of the current Delivery Program, a detailed capital works program beyond the current year was not included in the Operational Plan adopted by Council in June.

Funding for the Cell 6 project has been identified in the 2021-2031 Asset Management Plan adopted by Council in June 2021 as part of the Integrated Planning and Reporting documents. Therefore the balance of the budget required for 2022/23 will be identified in next years Operational Plan. The project has been previously identified as part of Council's internal Waste Model which is used to determine fees and charges pricing for the Waste Depot. The model incorporates all capital expenditure with the objective to recover those costs through future Waste Depot fees, with those funds then being included in Council's internal Waste Depot restriction. The balance of the Waste Depot restriction as at 30 June 2021 which has been included in Council's draft 2020/21 Financial Reports was \$8.12m.

Cell 6 will be a substantial new asset and therefore once complete, it will increase Council's depreciation expense over its life.

### **Legal and Policy implications**

It is noted that this report is being considered by Council during the 'Caretaker Period' before the Council elections that are due to take place in December 2021. The recommendations in this report can be adopted within the caretaker period as the recommendations do not contravene the directions made by the Office of Local Government. The project was previously advertised and adopted as part of the Operational Plan, this report is seeking to bring forward a capital allocation from the existing waste restriction. Approval of an allocation to the budget is permitted within the Caretaker period and does not contravene Local Government (General) Regulation 2005 Clause 393B Exercise of council functions during caretaker period.

### **Public / Social Impact**

Construction of landfill Cell 6 will enable Council to continue to provide cost effective waste management services for the Shellharbour Local Government Area for a further three to five years.

### **Link to Community Strategic Plan**

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

Objective: 2.2 Practices sustainable living

Strategy: 2.2.2 Provide effective and sustainable waste operations and services for the City

### **Consultations**

#### **Internal**

Waste & Resource Recovery Manager

Waste Operations Manager

Waste Operations Supervisor

Manager Asset Planning  
Senior Asset Engineer  
Senior Accountant

**External**

Nil

**Political Donations Disclosure**

Not applicable

**Recommendation**

**That Council:**

- 1. approve \$700,000 of capital funding being transferred from the Landfill Capping project to the Landfill Cell 6 project in 2021/22.**
- 2. identify the \$2,000,000 of Cell 6 project funding for 2022/23 as part of the next year's Operational Plan in accordance with the Asset Management Plan 2021-2031.**

Approved for Council's consideration: Ben Stewart  
Director Amenity and Assets

**Date of Meeting:** 16 November 2021

**Attachments**

Nil

**11. Committee Recommendations**

**11.1 Recommendations from the Traffic Committee Meeting held on 3 November 2021 recommended for adoption.**

That the Recommendations from the Traffic Committee Meeting held on 3 November 2021 be adopted.

**11.2 Recommendations from the Australia Day Advisory Committee Meeting held on 3 November 2021 recommended for adoption.**

That the Recommendations from the Australia Day Advisory Committee Meeting held on 3 November 2021 be adopted.

**11.3 Recommendations from the Aboriginal Advisory Committee Meeting held on 4 November 2021 recommended for adoption.**

That the Recommendations from the Aboriginal Advisory Committee Meeting held on 4 November 2021 be adopted.

**12. Items for Information**

**13. Notices of Rescission/Alteration Motions**

Nil

**14. Notices of Motion**

**14.1 Notice of Motion by Cr Kellie Marsh and Cr Marianne Saliba: New Dunmore Rural Fire Station Site (11768951)**

**Notice of Motion:**

That Council identify Part Lot 21 DP653009, as the preferred location for the construction of a new Dunmore Rural Fire Station, being a site in the north-east corner of the Councils waste facility land at 44 Buckleys Road, Dunmore.

Signed by:

Cr Kellie Marsh

Cr Marianne Saliba

**Date of Meeting:** 16 November 2021

- 15. Questions on Notice (must be submitted in writing)**
  
- 16. Urgent Business**
  
- 17. Consideration of Motions to Declassify Reports Considered in Closed Session**
  
- 18. Confidential Business (Committee of the Whole in Closed Session)**
  
- 19. Committee of the Whole in Closed Session (Closed to the Public): Adjournment**
  
- 20. Committee of the Whole in Closed Session: Consideration of Adoption of Decisions Reached in Closed Session**