

# AGENDA

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**1. Acknowledgement to Country**

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

**Webcasting Statement**

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 11 August 2020**

That the Minutes of the Ordinary Council Meeting held on 11 August 2020 as circulated be taken as read and confirmed as a correct record of proceedings.

**4.2 Extraordinary Council Meeting 18 August 2020**

That the Minutes of the Extraordinary Council Meeting held on 18 August 2020 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****8.1 Mayoral Minute - Net Zero Emissions Target Report (11486274)**

To my fellow Councillors

**Mayoral Minute**

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**Summary**

The purpose of this Mayoral Minute is to request that Council Officers prepare a report on Shellharbour City Council pursuing a Net Zero Emissions Target.

**Background**

The Illawarra branch of the national community-based organisation Renew, met with me and provided Council a detailed report 'Shellharbour City Council Zero Emissions Plan' comprising multiple proposals to help achieve net zero community emissions based on our broad emissions profile.

Net Zero Emissions broadly refers to a state where any greenhouse gases generated are counter balanced by removal of greenhouse gases from the atmosphere. In practice, net zero means reducing emissions as far as possible, then offsetting the remainder. Achieving net zero emissions will slow down the increase in global temperatures and the associated increased likelihood of climate-related risks for natural and human systems.

In line with the Paris Agreement, all state and territories in Australia have set net zero emissions by 2050 targets. I am aware an increasing number of local Councils are also setting Net Zero Emission targets.

For Councils, setting net zero targets falls into two categories, **Operational Emissions** meaning Council's own emissions across all operations, and **Community Emissions**, which accounts for all emissions produced in our local government area, including residential, commercial and government.

Achieving Community Net Zero Emissions is more difficult and requires other levels of government, business and communities to partake, hence why the States need alignment from Councils to achieve net zero by 2050, who, are well positioned to help facilitate local communities and businesses transition to a net zero emission economy. In the report to Council, Council officers should reference the impacts of the commitments and initiatives Shellharbour City Council has undertaken as part of the Cities Power Partnership pledges and Environmental Leadership Program in setting Emissions targets.

These initiatives include:

- Install solar on council buildings;
- Adopt best practice energy efficiency measures across Council buildings and support community facilities to adopt these measures;
- Set minimum energy efficiency benchmarks for all planning applications;
- Provide fast-charging, user pays infrastructure at key locations;
- Ensure Council fleet vehicles meet strict greenhouse gas emissions requirements.

## **Recommendation**

**That Council officers prepare a report on Shellharbour City Council pursuing a Net Zero Emissions Target.**

Approved for Council's consideration: Cr Marianne Saliba  
Mayor, Shellharbour City

**Date of Meeting:** 1 September 2020

## **Attachments**

Nil

**9. Councillors' Statements / Reports****10. Reports****10.1 General Manager****10.1.1 Update to Council's Codes of Conduct and Procedures for the Administration of the Code of Conduct (11488074)**

To the Mayor and Councillors

**Directorate:** General Manager  
**Group:** Council Services

**Manager:** Flora Lepouras – Executive Manager / Public Officer  
**Author:** Rebecca Kennedy – Governance Manager

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**Summary**

The purpose of this report is to seek endorsement of Council's updated Code of Conduct Policy (the Code) and updated Procedures for the Administration of the Code of Conduct (the Procedures) for the purposes of public exhibition. The Code and Procedures are adapted from the new Model Code of Conduct 2020 (the new Model Code) and Procedures for the Administration of the Code of Conduct (the Model Procedures), for Local Councils in NSW by the Office of Local Government (OLG).

The updates to the new Model Code and Procedures have been prescribed under the Local Government (General) Regulation 2005 and sets out the minimum requirements of conduct for council officials in carrying out their official functions. The updates to the new Model Code of Conduct and Procedures take effect at the date of the prescribed in Circular 20-32 (14 August 2020).

It is proposed that Council's draft Code and Procedures be placed on public exhibition for a period of 28 days calling for submissions and that if any relevant submissions are received 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.

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, the Code and the Procedures as attached to this report will be adopted.

## Background

Section 440 of the *Local Government Act 1993* requires every NSW council to adopt a Code and Procedures that incorporates the provisions of the new Model Code. The new Code and Procedures is to be adopted as soon as possible. The new Model Code of Conduct and Procedures take effect at the prescribed in Circular 20-32 of 14 August 2020 (**Attachment 1**).

Amendments have been made to the Procedures for the Administration of the Model Code of Conduct are in response to the decision by the Supreme Court in the matter of *Cornish v Secretary, Department of Planning, Industry and Environment [2019] NSWSC 1134*.

The Code of Conduct for Councillors (**Attachment 2**), the Code of Conduct for Council Committee Members, Delegates of Council and Council Advisers (**Attachment 3**), the Code of Conduct for Council Staff (**Attachment 4**), and the Procedures for the Administration of the Code of Conduct (**Attachment 5**), are attached to this report identifying the amendments made to the documents.

A summary of the changes to the documents are as follows:-

### Amendments to the Procedures

Consistent with the Supreme Court's decision, councils have the following options when taking disciplinary action against councillors for breaches of their codes of conduct under the new Procedures:

- that a councillor be formally censured for the breach under section 440G of the *Local Government Act 1993* (the Act), or
- that a councillor be formally censured for a breach under section 440G and the matter referred to OLG for further disciplinary action under the misconduct provisions of the Act.

The process outlined for censuring councillors for breaches of the code of conduct has been significantly strengthened to ensure councillors are made publicly accountable to their electors for their conduct. When censuring councillors, councils are required to specify in their resolution the grounds on which the councillor is being censured by disclosing the investigator's findings and determination and any other grounds that the council considers may be relevant or appropriate.

Councillors may seek to avoid public censure for breaches of the code of conduct by voluntarily agreeing to undergo training or counselling, to apologise for their conduct or to give undertakings not to repeat their conduct before the investigator finalises their report to the council. Investigators can finalise their investigations without a report to the council where they consider there to be an appropriate outcome to the matter they are investigating. However, it will remain open to investigators to finalise their report and to recommend censure where they consider this is appropriate and warranted.

The process for referral by councils of code of conduct breaches by councillors to OLG for further disciplinary action under the misconduct provisions of the Act has been streamlined. Investigators are required to consult with OLG before recommending the referral of matters to ensure the conduct in question is sufficiently serious to warrant disciplinary action for misconduct and that there is sufficient evidence of the breach to allow OLG to take further disciplinary action.

Other amendments have been made to the Procedures to:

- allow panels of conduct reviewers to be appointed without a resolution of the council, and
- allow the referral of investigators' reports to OLG for action under the misconduct provisions of the Act where the council will not have a quorum to deal with the matter.

### **Amendments to the Model Code of Conduct**

The Model Code of Conduct has been amended to:

- remove as a breach, failure to comply with a council resolution requiring action in relation to a code of conduct breach (because it is now redundant)
- update the language used to describe the various heads of discrimination in clause 3.6 to reflect more contemporary standards
- include in the definitions of council committee and council committee members, members of audit, risk and improvement committees (ARICs) in anticipation of the commencement of the requirement for all councils to appoint an ARIC following the next local government elections.

Amendments have also been made to the gifts and benefits provisions of the Model Code of Conduct in response to feedback from some councils. The amendments:

- lift the \$50 cap on the value of gifts that may be accepted to \$100
- clarify that items with a value of \$10 or less are not "gifts or benefits" for the purposes of the Model Code of Conduct and do not need to be disclosed
- clarify that benefits and facilities provided by councils (as opposed to third parties) to staff and councillors are not "gifts or benefits" for the purposes of the Model Code of Conduct, and
- remove the cap on the value of meals and refreshments that may be accepted by council officials in conjunction with the performance of their official duties.

Councils are not obliged to amend their codes of conduct to lift the cap on the value of gifts that may be accepted if they do not wish to. It is open to councils to retain the existing \$50 cap or to impose another cap that is lower than \$100. The attached amended Codes include the cap at \$100 as recommended in the Model Code.

**Financial/resource implications**

Nil

**Legal & policy implications**

Council has been advised by the OLG to amend and adopt as soon as possible its Code of Conduct and Procedures based on the new Model Code and Procedures (2020).

**Public/social impact**

This policy sets the minimum standards of conduct for all Council officials to ensure they act with integrity, a reasonable degree of care and diligence, and act in a way that enhances public confidence in Council.

**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: 4.1.1 Ensure that the Mayor and Councillors are representative of the community providing strong, innovative and proactive leadership

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

Strategy: 4.2.3 Ensure Council is financially sustainable and continues to be transparent and accountable

**Consultations****Internal**

Governance Officer

**External**

Office of Local Government

**Political Donations Disclosure**

Not Applicable

## Recommendation

That:

1. Council endorse the Code of Conduct for Councillors, the Code of Conduct for Council Committee Members, Delegates of Council and Council Advisers, and the Code of Conduct for Council Staff, and the Procedures for the Administration of the Code of Conduct, 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 public exhibition, 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 Code of Conduct for Councillors, the Code of Conduct for Council Committee Members, Delegates of Council and Council Advisers, and the Code of Conduct for Council Staff, and the Procedures for the Administration of the Code of Conduct, as attached to this report.

Approved for Council's consideration: Flora Lepouras  
Executive Manager

**Date of Meeting:** 1 September 2020

### Attachments

1. Office of Local Government Circular to Councils 20-32 (14 August 2020) – *Page 11*
2. Code of Conduct for Councillors, Code of Conduct for Council Committee Members, Delegates of Council and Council Advisers, Code of Conduct for Council Staff, Contractors and Volunteers and Procedures for the Administration of the Code of Conduct – *under separate cover*

## Attachment 1 - Office of Local Government Circular to Councils 20-32 (14 August 2020)



## Circular to Councils

<b>Circular Details</b>	20-32 / 14 August 2020 / A708384
<b>Previous Circular</b>	19-25 – <i>Penalties available to councils for code of conduct breaches by councillors</i>
<b>Who should read this</b>	Mayors / Councillors / General Managers / Joint Organisation Executive Officers / Complaints Coordinators / Conduct Reviewers
<b>Contact</b>	Council Governance Team/ 02 4428 4100/ <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>Action required</b>	Council to Implement

### Amendments to the Model Code of Conduct for Local Councils in NSW and Procedures

#### What's new or changing

- The *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Procedures) have been amended in response to the decision by the Supreme Court in the matter of *Cornish v Secretary, Department of Planning, Industry and Environment* [2019] NSWSC 1134.
- Amendments have also been made to the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).
- The new Model Code of Conduct and Procedures have been prescribed under the *Local Government (General) Regulation 2005*.
- The new prescribed Model Code of Conduct and Procedures are available on the Office of Local Government's (OLG) website.

#### What this will mean for your council

- The new Model Code of Conduct and Procedures take effect immediately. This is because the amendments to the Procedures largely reflect existing practice following the Supreme Court's decision and the amendments to the Model Code of Conduct are minor in nature.
- Councils should adopt a code of conduct and procedures based on the prescribed Model Code of Conduct and Procedures as soon as possible.
- Councils' complaints coordinators should bring this circular to the attention of their council's conduct reviewers. Complaints coordinators should also inform conduct reviewers when the council has adopted a new code of conduct and procedures and provide copies.

#### Key points

##### Amendments to the Procedures

- Consistent with the Supreme Court's decision, councils have the following options when taking disciplinary action against councillors for breaches of their codes of conduct under the new Procedures:
  - that a councillor be formally censured for the breach under section 440G of the *Local Government Act 1993* (the Act), or

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- that a councillor be formally censured for a breach under section 440G and the matter referred to OLG for further disciplinary action under the misconduct provisions of the Act.
- The process for censuring councillors for breaches of the code of conduct has been significantly strengthened to ensure councillors are made publicly accountable to their electors for their conduct. When censuring councillors, councils are required to specify in their resolution the grounds on which the councillor is being censured by disclosing the investigator's findings and determination and any other grounds that the council considers may be relevant or appropriate.
- Councillors may seek to avoid public censure for breaches of the code of conduct by voluntarily agreeing to undergo training or counselling, to apologise for their conduct or to give undertakings not to repeat their conduct before the investigator finalises their report to the council. Investigators can finalise their investigations without a report to the council where they consider these to be an appropriate outcome to the matter they are investigating. However, it will remain open to investigators to finalise their report and to recommend censure where they consider this is appropriate and warranted.
- The process for referral by councils of code of conduct breaches by councillors to OLG for further disciplinary action under the misconduct provisions of the Act has been streamlined. Investigators are required to consult with OLG before recommending the referral of matters to ensure the conduct in question is sufficiently serious to warrant disciplinary action for misconduct and that there is sufficient evidence of the breach to allow OLG to take further disciplinary action.
- Other amendments have been made to the Procedures to:
  - allow panels of conduct reviewers to be appointed without a resolution of the council, and
  - allow the referral of investigators' reports to OLG for action under the misconduct provisions of the Act where the council will not have a quorum to deal with the matter.

#### *Amendments to the Model Code of Conduct*

- The Model Code of Conduct has been amended to:
  - remove as a breach, failure to comply with a council resolution requiring action in relation to a code of conduct breach (because it is now redundant)
  - update the language used to describe the various heads of discrimination in clause 3.6 to reflect more contemporary standards
  - include in the definition of council committee and council committee members, members of audit, risk and improvement committees (ARICs) in anticipation of the commencement of the requirement for all councils to appoint an ARIC following the next local government elections.
- Amendments have also been made to the gifts and benefits provisions of the Model Code of Conduct in response to feedback from some councils. The amendments:
  - lift the \$50 cap on the value of gifts that may be accepted to \$100
  - clarify that items with a value of \$10 or less are not "gifts or benefits" for the purposes of the Model Code of Conduct and do not need to be disclosed

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- clarify that benefits and facilities provided by councils (as opposed to third parties) to staff and councillors are not “gifts or benefits” for the purposes of the Model Code of Conduct, and
- remove the cap on the value of meals and refreshments that may be accepted by council officials in conjunction with the performance of their official duties.
- Councils are not obliged to amend their codes of conduct to lift the cap on the value of gifts that may be accepted if they do not wish to. It is open to councils to retain the existing \$50 cap or to impose another cap that is lower than \$100.

**Where to go for further information**

- For further information please contact the Council Governance Team on 02 4428 4100 or by email at [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au).



**Tim Hurst**  
**Deputy Secretary**  
**Local Government, Planning and Policy**

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**10.1.2 Draft Amended Gifts and Benefits Policy (11487862)**

To the Mayor and Councillors

**Directorate:** General Manager

**Group:** Council Services

**Manager:** Flora Lepouras - Executive Manager / Public Officer

**Author:** Rebecca Kennedy – Governance Manager

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## Summary

The purpose of this report is to seek endorsement of the amendments to the Gifts and Benefits Policy for the purpose of public exhibition for a period of 28 days calling for submissions. These amendments are proposed as a result of updates made to the new Model Code of Conduct 2020.

It is proposed that the draft Gifts and Benefits Policy be placed on public exhibition for a period of 28 days, calling for submissions and that if any relevant submissions are received as a result of public exhibition on the Gift and Benefits Policy or the Gift and Benefit provisions of the Model Codes, a report be submitted to Council for consideration detailing the public exhibition outcomes and with further recommendations regarding adoption.

The draft Policy (**Attachment 1**) provides clear direction and guidance to staff and the community on responsibilities regarding gifts and benefits and how they will be handled by staff, providing a reliable and consistent outcome to the staff, community and customers and have been updated to be consistent with the changes to the Model Codes of Conduct and Administration Procedures.

## Background

The Draft Gifts and Benefits policy was adopted 28 August 2019 and was developed in conjunction with the Model Code of Conduct. The policy recognises that the conduct of Council business may give rise to gifts or benefits of appreciation being offered to Council officials. Given the potential for acceptance of gifts and benefits to be misinterpreted and to cause reputational damage to Council and Council officials involved, it is necessary for Council officials to conduct themselves in accordance with a recognised and appropriate set of acceptable procedures.

The newly released Model Code of Conduct and Administration Procedures (2020) changes the amount of a token gift from less than \$50 to less than \$100. Additionally anything under the value of \$10 is not considered a gift. The Gift and Benefit Policy has been amended to reflect these changes.

It is proposed that Council's draft Gifts and Benefits Policy be placed on public exhibition for a period of 28 days, calling for submissions and that if any relevant submissions are received as a result of public exhibition of the Gift and Benefits Policy or the Gift and Benefit provisions of the Model Codes, a report be submitted to Council for consideration detailing the public exhibition outcomes and with further recommendations regarding adoption.

Any gift or benefit accepted, regardless of monetary value, implies, or may imply, a relationship which may interfere with objectivity and independence. In most situations, Council employees can decline offers of gifts or benefits courteously by explaining that acceptance would be against Council policy and therefore they have no discretion in that area.

Council officials will act with integrity at all times. Acceptance of gifts and benefits has real and perceived opportunities for undermining integrity. This Policy sets out the basis on which Council will manage offers of gifts or benefits in accordance with the obligations set out in Council's Codes of Conduct and its Corporate Values.

Being a Council official involves a public trust. This means that duties must be carried out impartially and with integrity. Consequently, it is not appropriate for Council officials to be offered, to accept or to give gifts and benefits that affect, may be likely to affect or could reasonably be perceived to affect, the performance of their official duties.

The objective of this policy is to protect Council officials so that they are not influenced, or perceived that they are being influenced, in the performance of their duties by providing guidance on the procedures to be followed if a gift or other benefit is offered or received.

### **Financial / Resources Implications**

Nil

### **Legal and Policy implications**

This policy is supplementary to the prescribed Model Code of Conduct for Local Council's in NSW and contains more onerous requirements than those under the Model Code.

### **Public / Social Impact**

The Gifts and Benefits provides clear direction and guidance to staff and the community on responsibilities regarding gifts and benefits and how they will be handled by staff, providing a reliable and consistent outcome to the staff, community and customers

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

The Draft Gifts and Benefits Policy supports the following objectives of the Community Strategic Plan:

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

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

Strategy: 4.2.3 Ensure Council is financially sustainable and continues to be transparent and accountable.

## **Consultations**

### **Internal**

Governance Officer

### **External**

Nil

### **Political Donations Disclosure**

Not Applicable

## **Recommendation**

**That:**

- 1. Council endorse the Gifts and Benefits Policy 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 public exhibition on the Gift and Benefits Policy or the Gift and Benefit provisions of the Model Codes, 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 Gifts and Benefits Policy as attached to this report.**

Approved for Council's consideration: **Flora Lepouras**  
Executive Manager

**Date of Meeting:** 1 September 2020

### **Attachments**

1. Draft Gifts and Benefits Policy - *Page 17*

## Attachment 1 – Draft Gifts and Benefits Policy



Policy

## Gifts and Benefits

Policy Owner: Executive Manager/Public Officer	
Date Last Adopted/Amended: TBA	Review Date: TBA

## 1. Policy Statement/Objective(s)

Shellharbour City Council is committed to following a Gifts and Benefits Policy which enhances public confidence in the integrity of local government and adheres to our core values.

This policy outlines Council's commitment to ethical governance and the standards of conduct that is expected from council officials in relation to gifts and benefits.

The objective of this policy is to:

- clearly define the behaviour required of Council officials in relation to gifts and benefits, and
- provide a transparent and accountable process with regard to gifts and benefits that promotes public confidence in Shellharbour City Council.

## 2. Scope

This policy applies to all council officials.

The term "council official" is used within this policy and guidelines, and is defined in accordance with the relevant Codes of Conduct as "councillors, members of staff of council including contractors and volunteers, administrators, council committee members, conduct reviewers and delegates of council".

Any gift or benefit offered or accepted over the value of \$10 shall be subject to the provisions of this Policy.

This policy is to be applied in conjunction with provisions in Council's relevant Code of Conduct.

## 3. References

- Managing Gifts and Benefits in the Public Sector Toolkit issued by the Independent Commission Against Corruption (ICAC) in 2006;
- Audit Office of NSW Performance Audit: Managing gifts and benefits, March 2013;
- Local Government Act 1993 ;
- Local Government (General) regulation 2005 ;
- Code of Conduct for Councillors
- Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors

COLLABORATION

ACCOUNTABILITY

INTEGRITY

RESPECT

SUSTAINABILITY

Policy Name: Gifts and Benefits

Date of Last Adoption/Amendment: TBA[Enter date]

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- Code of Conduct for Council Staff, Contractors and Volunteers
- Council's Policy on the Payment of Expenses and Provision of Facilities to the Mayor and Other Councillors;
- Council's Internal Reporting (Public Interest Disclosures) Procedure.

**4. External/Internal Consultations**

Governance Manager  
 Senior Management Team

**5. Definitions**

<b>Close family members or close members of the family:</b>	<p>Family members who may be expected to influence, or be influenced by that gift or benefit will include:</p> <ul style="list-style-type: none"> <li>a) that council official's children and spouse or domestic partner;</li> <li>b) children of that council official's spouse or domestic partner; and</li> <li>c) dependants of that council official or that council official's spouse or domestic partner.</li> </ul> <p>For the purposes of this Policy, close family members could include extended members of a family (such as, without limitation, parents, siblings, grandparents, uncles/aunts or cousins) <i>if</i> they could be expected to influence, or be influenced by the gift or benefit.</p>
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**6. Variation and Review**

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

This policy may be varied by resolution of the Council. This policy should be reviewed as required but at least every three years and/or following the conduct of the Local Government elections.

**Review History -**

Date Policy first adopted – version 1	28 August 2019
Date amendment adopted – version 2	TBA

**7. Policy**

Council Officials must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.

Council officials must take all reasonable steps to ensure that close family members and close friends do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment by the council official.

Key considerations for council officials in respect of this Policy are:



Policy Name: Gifts and Benefits  
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1. If a council official is offered a bribe, the incident must immediately be reported to the General Manager, the ICAC and where relevant, the police.
2. Soliciting personal gifts or benefits is prohibited under all circumstances. If a council official becomes aware of another council official soliciting gifts or benefits they should report it immediately to the relevant Group Manager, General Manager, the Public Officer and/or the Mayor.
3. Where it is suspected that a gift has been offered for the purposes of influencing the behaviour of a council official in their official capacity, the gift must be declined and it should be reported immediately to the relevant Group Manager, the General Manager, the Public Officer and/or the Mayor.
4. Accepting gifts of money is strictly prohibited. 'Money' includes any form of credit or cash-like gift such as, but not limited to; cash, cheques, money orders, bank deposits, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, memberships or entitlements to discounts, regardless of the amount or value. This situation includes offers of money to cover expenses for trips to view samples of work, or to expedite the work of Council.
5. If a council official is offered a gift of 'money', it is to be refused and the incident reported immediately to the relevant Group Manager, the General Manager, the Public Officer and/or the Mayor. It must be declared in accordance with this Policy. Any gift that is received without the recipient's prior knowledge, for example in the mail, must immediately be reported and declared, and every effort will be made to return it.
6. In normal circumstances, all gifts and/or benefits offered to a council official of Shellharbour City Council are to be declined and declared as a general rule.
7. Notwithstanding the above, there are provisions for special circumstances, which are explained further in the associated Gifts and Benefits Guidelines:
  - a. situations that relate to protocol, cultural aspects, sister-city relationships, international delegations and the like;
  - b. hospitality associated with events and functions hosted by community based (not-for-profit) organisations, attendance at which is consistent with the council official's role – in particular the statutory role of a councillor, and
  - c. insignificant gifts/benefits associated with hospitality, promotional materials and other situations described in this Policy.
8. Should a council official receive a gift or prize as the result of entering a competition while engaging in official duties, the gift or prize is to be declared and surrendered and will become the property of Shellharbour City Council.
9. Any gifts or benefit received as a result of a purchase incentive scheme is to be declared and surrendered and will become the property of Shellharbour City Council. For example, if purchases from a specific supplier reach a certain value which results in a gift being rewarded, this gift will become the property of Shellharbour City Council.

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10. All gifts **over the value of \$10** (except for those mentioned above in clause 7. b and c) offered are to be formally declared and surrendered and entered into Council's Gifts and Benefits Register.

The related Gifts and Benefits Guidelines give details of the steps to be taken to implement this Policy, including the registering of gifts and any breaches of this Policy.

This Policy is based on the *Managing Gifts and Benefits in the Public Sector Toolkit* issued by the Independent Commission Against Corruption (ICAC) in 2006. It also considers the recommendations made in the Audit Office of NSW Performance Audit: *Managing gifts and benefits*, March 2013.

This Policy should be read in conjunction with the following:

- Local Government Act 1993
- Local Government (General) regulation 2005
- Council's Code's of Conduct
- Council's Policy on the Payment of Expenses and Provision of Facilities to the Mayor and Councillors
- Council's Internal Reporting (Public Interest Disclosures) Policy
- Councils Code of Conduct documents

#### 8. Related Forms/Documents

- Gifts and Benefits Guidelines
- Gifts and Benefits Declaration

**Note: Related forms can be located Online under "Forms"**

#### 9. Attachments

Nil

#### Policy Authorised by:

Name: TBA

Date: TBA

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## **10.2 Council Sustainability Directorate**

### **10.2.1 Illawarra Business Chamber Membership (11473322)**

To the General Manager

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

**Manager:** Scott Bridgement – Director Council Sustainability  
**Author:** Trevor James – Manager Business and Investment

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## **Summary**

The purpose of this report is for Council to consider joining the Illawarra Business Chamber (IBC) as a member in the Illawarra First category of membership and to also sponsor the Illawarra Business Awards from 2021 onwards.

## **Background**

The IBC website states they “provide a powerful voice for the interests of the Illawarra business community and our region to all levels of government.” They state that they “are actively involved in policy debate on key economic and business issues” and they aim “to foster a business environment in the Illawarra region that is conducive to profitable business growth, sustainable job creation, and sound economic and social progress.”

Council was previously a member of IBC for in excess of 16 years and also was a sponsor of the Illawarra Business Awards during that time.

Council’s most recent membership fee, in 2015, was \$2,350 (ex GST) and additional annual award sponsorship ranged over the years from \$5,000 (ex GST) to \$9,000 (ex GST).

In 2016, the then Chief Executive of IBC made public statements supporting mergers of Councils within the region and IBC also made a subsequent formal submission to the Inquiry into the Merger between Wollongong and Shellharbour Cities that supported the merger.

At its meeting on 20 September 2016, Council determined to discontinue its membership of IBC and set aside the funds to assist local business chambers - the Shellharbour City Business Chamber and Albion Park Chamber of Commerce. Financial assistance was provided to both these entities in October 2016.

Council has not been a member of IBC since that time.

Council has recently been formally invited to re-join IBC as a member of the Illawarra First group (**Attachment 1**). This is a membership category for large organisations with the region and membership is by invitation only. The annual cost is \$7,000 (incl. GST).

There are two other membership packages:

- Business Networker (\$800 annually) - for small to medium sized businesses to assist them to meet other business operators and build their network within the region.
- Business Workplace (\$2,000 annually) - for businesses that require employment relations support, with advice available from lawyers and other business specialists.

Illawarra First is considered to be the appropriate level of membership for Council as it would enable Council to be part of IBC's advocacy work in the region, as well as having input into IBC policy direction and research projects. It would also provide Council with opportunities to strengthen connections with the leadership of some of the region's largest employers and influential businesses.

Illawarra First members also have opportunities to engage in specific political forums with key government ministers and industry leaders.

### **Financial / Resources Implications**

The annual cost of joining Illawarra First is \$7,000 (incl. GST). Sponsorship categories for the Illawarra Business Awards range from \$2,250 (ex GST) to \$9,000 (ex GST).

### **Legal and Policy implications**

Nil

### **Public / Social Impact**

As a member of Illawarra First, Council and our local community would have the opportunity to benefit from IBC's advocacy for Council projects and to have input into IBC policy direction and research projects.

### **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: 3.2.2 Create, promote and maintain local business, job, investment and lifestyle opportunities

Objective: 4.1 Led through collaboration

Strategy: 4.1.2 Actively engage, consult and inform the community

## **Consultations**

### **Internal**

Business Development and Performance Manager

### **External**

Executive Director, Illawarra Business Chamber

Business Solution Executive, Illawarra Business Chamber

### **Political Donations Disclosure**

Not Applicable

## **Recommendation**

**That:**

- 1. Council determine whether to join the Illawarra Business Chamber as a member of the Illawarra First category of membership.**
- 2. subject to the outcome of recommendation 1, Council consider sponsoring the Illawarra Business Awards from 2021 onwards.**

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

**Date of Meeting:** 1 September 2020

### **Attachments**

1. Invitation to Shellharbour City Council to join Illawarra First – *Page 24*

Attachment 1 – Invitation to Shellharbour City Council to join Illawarra First



Invitation: Shellharbour City Council

## Message from the Executive Director

Mr Trevor James  
Manager, Business and Investment  
Shellharbour City Council  
76 Cygnet Avenue, Shellharbour City Centre

Dear Trevor,

### Invitation to join Illawarra First

Illawarra First members comprise our key business leaders and decision-makers, forming an influential leadership group that helps shape and champion initiatives for the region.

As an Illawarra First member, Council would join the heads of our region's most significant organisations as part of the leadership group that is advancing the Illawarra's economic growth.

A fund comprising \$1 million has been established to support region-wide thought-leadership and advocacy. The Illawarra First Fund is being used to advance research and advocacy projects of region-wide economic significance, and we hope to work more closely with Council on priorities within its local government area.

As an Illawarra First member, Council would have the opportunity to not only influence our research priorities, but inform our advocacy efforts to government and other stakeholders.

We appreciate your consideration and hope you will take this opportunity to join Illawarra First.

Yours sincerely,



**Adam Zarth**  
Executive Director



## The objective of Illawarra First

The Illawarra is an increasingly diverse economic region, with over 27,000 businesses contributing almost \$2.6 billion to the state's economy (2017). However, for the region to fulfil its economic potential, it needs a strong united voice to help shape the political debate and ensure key business priorities progress.

Illawarra First champions the strategic interests of the Illawarra based on a foundation of solid evidence and first-class thought leadership.

Focused on advancing economic development, business growth and long-term employment opportunities for the region, Illawarra First produces evidence-based advocacy, relying on credible existing sources of information and initiating directed research.

## Member benefits and privileges

Illawarra First membership would allow Shellharbour City Council to participate in:

- Shaping the policy agenda and advancing ideas that contribute to our region's economic activity and growth.
- Reducing the barriers that threaten competitiveness and long term development.
- Driving advocacy of these policies and strategies to key decision-makers and stakeholders.
- Exclusive executive forums, CEO roundtables and consultative briefings, providing a unique opportunity to engage with all levels of government, including senior ministers and parliamentarians, bureaucrats and statutory office holders.
- All NSW Business Chamber services and events.



## Advocacy successes

Illawarra First members contribute directly to our public advocacy successes; both within the region and at a state and even federal level.

By way of example, in the last state budget the NSW Government raised payroll tax thresholds to \$1 million over the forward estimates as a direct result of our advocacy on behalf of small-to-medium sized businesses in the region.

At a federal level, Illawarra First has made substantial progress on the South West Illawarra Rail Link through direct advocacy with both the government and opposition.

The state Port Kembla Community Investment Fund was increased in the last round from \$1 million to \$4 million, following Illawarra First advocacy. This means more funding for a greater number of suitable projects in the Port Kembla business district and broader community.



## Bringing decision-makers to the region

Illawarra First brings decision-makers and thought leaders to our region. Over the last 12 months we have heard from:

- Dr Tim Williams, former CEO, Committee for Sydney
- Luke Foley MP, Former NSW Leader of the Opposition
- Robyn Hobbs OAM, NSW Small Business Commissioner
- Graham Millett, Chief Executive Officer, WSA Co
- Dr Mark Cutifani, Chief Executive Officer, Anglo American
- Prof. Peter Shergold AC, NSW Coordinator-General of Refugee Resettlement
- Hon Paul Fletcher MP, Minister for Families and Social Services
- Mark Vasella, Managing Director & CEO, BlueScope
- Tim Reardon, Secretary, Department of Premier & Cabinet
- Hon. Rob Stokes MP, Minister for Planning and Public Spaces
- Anna Bligh AC, Chief Executive Officer, Australian Banking Association
- Romilly Madew AO, Chief Executive Officer, Infrastructure Australia



## Illawarra First advocacy priorities

Infrastructure to support business growth and connectivity

1. South West Illawarra Rail Link
2. Mt Ousley interchange and Widening projects
3. Picton Road Upgrade (dual carriageway)
4. F6 Extension (Stages 1, 2 & 3 to Loftus)
5. South Coast Line upgrade

Reduce ongoing costs to business

1. Lower energy costs to businesses
2. Reduction in payroll tax and administration

Drive employment creation

1. Advocate for major projects and initiatives for the region
2. Attract new professional services businesses to the Illawarra
3. Establish more industrial and commercial real estate

Boost skills and address workforce shortages

1. Support school-based apprenticeships and traineeships
2. Work with education sector to promote careers in key sectors
3. Promote Youth Employment Strategy ('YES')-style programs
4. Encourage members to engage with young jobseekers



**The Illawarra First Fund was established with a balance of \$1 million to finance directed research in support of the economic growth of our region.**

Over the last two years, Illawarra First has produced two significant research reports to support the development of our rail and road connectivity with Western Sydney.

Input from Illawarra First members is key to guiding the development and application of this research in our advocacy to government and decision-makers.

Since its inception, research conducted in the name of Illawarra First members has become the most highly referenced in the region, and beyond the Illawarra is highly-regarded in academia and in government.



Membership fees

Illawarra First membership is a \$7,000 (incl. GST) annual contribution, which entitles members to attend to all Illawarra First events, participate in policy development at a high level and contribute to Illawarra First research and advocacy.

Next steps

Thank you for your interest in Illawarra First. Should Shellharbour City Council elect to join this group, it will become part of the key economic conversation in our region and an elite network that will benefit the organisation and its executives.

If you have any further questions please do not hesitate to contact me:

Adam Zarth, Executive Director, (02) 4229 4722 at [ed@illawarrabusiness.com.au](mailto:ed@illawarrabusiness.com.au)



**10.2.2            Review of Use of Public Reserves by Commercial Fitness Groups and Personal Trainers Policy (11483371)**

To the General Manager

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

**Manager:**      Trevor James – Manager Business and Investment  
**Author:**        Michael Harben – Property Management Coordinator

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## **Summary**

The purpose of this report is to seek Council’s approval to amend the policy titled “Use of Public Reserves by Commercial Fitness Groups and Personal Trainers” so that the process employed for consideration and determination of applications to conduct such activities on community land can be streamlined.

## **Background**

Personal fitness trainers are permitted to conduct physical fitness training sessions on Council’s community land (public reserves including Crown reserves for which Council is Trust Manager) under relevant plans of management and also pursuant to development consents which were issued in relation to a number of Council’s public reserves, subject to the grant of a licence under S47A of the *Local Government Act 1993* (the development consents do not apply to Crown reserves at this stage).

Council’s policy “Use of Public Reserves by Commercial Fitness Groups and Personal Trainers” which is supported by the legislation and the conditions of the consent but which requires every application by personal fitness trainers for a lease or a licence to be reported to Council for approval.

It is also a requirement of Council’s policy that any proposal to occupy, for fitness training purposes, Council owned and/or managed land which is comprised of community land, must be advertised and interested persons are given 28 days to make submissions in relation to a proposal. This notice is first and foremost a specific requirement of S47A of the *Local Government Act 1993* in relation to tenancy agreements not exceeding five years.

At the commencement of the COVID-19 pandemic that led to restrictions and the closing of businesses in March 2020, Council received a rush of enquiries from personal fitness trainers looking for outdoor sites on which to conduct fitness training sessions because their usual places of work indoors, in local gymnasiums and fitness centres were no longer available to them.

At the time it was unfortunate for the fitness industry that Council was unable to respond quickly.

Some fitness industry personnel expressed concern that their aspirations seemed to be out of reach and/or their business continuity plans were not workable because of the time it usually takes for Council to process an application for permission to use Council's reserve network for fitness training.

Opportunities have been identified to streamline the processes and to issue approvals in a more timely fashion, to benefit the industry.

Part 4 Division 3 Clause 117 (1) (c) (iii) of the *Local Government (General) Regulation 2005* stipulates that exemptions from section 47A of the Act (Leases, licences and other estates in respect of community land - terms of 5 years or less) apply to "engaging in a trade or business" which, prima facie, reasonably includes personal fitness trainers.

It also stipulates in Clause 117 (2) (b) that if the use or occupation happens once it is not to continue for more than three days and in Clause 117 (2) (c) if it does happen more than once, each occurrence is not to be over more than three consecutive days, not including Saturdays and Sundays, and is for a maximum period of 12 months.

In order to more fully understand the nuances of the legislation, legal advice was sourced and the responses provided include:

- a) Physical fitness training by commercial groups and/or a personal fitness trainer on Council community land is a use which is exempt from S47A of the *Local Government Act 1993* under the *Local Government (General) Regulation 2005*; and
- b) As such activity is exempt but is nevertheless covered by a current development consent, an application for permission to conduct group fitness and personal training can be considered without having to be advertised under S47A of the Act and it can be approved through the issue of a permit under S68 of the *Local Government Act 1993* without having to be reported to Council.

#### Proposed changes to Policy

In summary, it is proposed that the current practice of licensing commercial fitness groups and personal fitness trainers which has proven to be both time consuming and inefficient, be replaced by a permit system and that an online capability for applying for and approving a permit be developed accordingly. In this way the process is streamlined and the issue of a permit can be achieved in days and not months as is the current experience.

A permit is the preferred means of authorising the use of community land for fitness training if only because it achieves the objective without having to execute a tenancy agreement. Its value is enhanced for the reason that a tenancy agreement can only be approved by a resolution of Council whereas a permit can be issued under delegation pursuant to Section 68 of the *Local Government Act 1993*.

Whilst the initial motivation to identify process improvement was driven by the COVID-19 pandemic restrictions and associated business impacts, Council's commitment to process improvement demonstrates a willingness to find better ways to support business.

This reform which results in improved processes demonstrates Council's commitment to provide services to its customers which are timely, innovative and responsive. The community can be confident that, in making these improvements, Council is demonstrating a commitment to produce a better customer experience.

The proposed amendments to the "Use of Public Reserves by Commercial Fitness Groups and Personal Trainers" policy are identified in **Attachment 1** which has the tracked changes. The proposed exhibition version of "Use of Public Reserves by Commercial Fitness Groups and Personal Trainers" policy is identified in **Attachment 2**.

### **Financial / Resources Implications**

It is not anticipated that there will be a negative impact on income as a result of moving from a lease/licence system to a permit system in relation to the use of public reserves for fitness training. An adjustment to the existing budget is not required.

### **Legal and Policy implications**

It is proposed that policy "Use of Public Reserves by Commercial Fitness Groups and Personal Trainers" be amended as set out in **Attachment 1**.

### **Public / Social Impact**

The implementation of a more efficient process which leads to timely issue of permits is regarded as a benefit to the fitness training industry and the health and well-being of the participants.

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

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

Objective: 1.2 Active and healthy community

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

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**

Governance Manager  
Manager Financial Services  
Administration Officer, Business and Investment  
Property Coordinator  
Manager Information Communication Technology

### **External**

Legal panel

### **Political Donations Disclosure**

Not Applicable

## **Recommendation**

**That:**

- 1. Council endorse the amendments within the policy titled “Use of Public Reserves by Commercial Fitness Groups and Personal Trainers” 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 public exhibition, 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 Use of Public Reserve and Commercial Fitness Groups and Personal Trainers Policy as attached to this report.**

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

**Date of Meeting:** 1 September 2020

### **Attachments**

- 1. “Use of Public Reserves by Commercial Fitness Groups and Personal Trainers” Policy with changes identified – Page 35**
- 2. Proposed Amended “Use of Public Reserves by Commercial Fitness Groups and Personal Trainers” Policy – Page 47**

## Attachment 1 - “Use of Public Reserves by Commercial Fitness Groups and Personal Trainers” Policy with changes identified



Policy

### Use of Public Reserve by Commercial Fitness Groups and Personal Trainers

Policy Owner: Manager Business and Investment	
Date Last Adopted/Amended: 1 May 2018	Review Date: TBA

#### 1. Policy Statement/Objective(s)

Shellharbour City Council is committed to effectively managing the use of public reserves by commercial fitness groups and personal trainers.

Personal and group fitness training is a fast growing segment of the Fitness industry and there has been an increasing demand for fitness training activities on public reserves by commercially operated businesses. This raises a number of concerns within Council:

- Equity of access to public parks and reserves.
- The impact of commercial fitness activities on asset condition and maintenance.
- Public liability concerns.
- The management of public reserves to prevent conflict of uses.
- The impact on surrounding residents
- The impact on the use of the reserves by the general public.

This policy outlines the methods by which Council will manage the use of public reserves by commercial fitness groups and personal trainers to address these concerns.

#### 2. Scope

This policy applies to:

- One on one sessions and/or group activities;
- The approved areas of land detailed in the table set out in item 7.1 and any other areas as advised by Council from time to time.
- Any Commercial Fitness Trainer, Trainer or Personal Trainer applying for a permit.

#### 3. References

Local Government Act 1993  
 Protection of the Environment Operations Act 1997  
 Council's Community Land Plans of Management  
 Wet Weather Policy for Shellharbour City Council's Sportsfields

#### 4. External/Internal Consultations

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Policy Name: Use of Council Reserves by Commercial Fitness Groups and Personal Trainers  
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## To be completed after public consultation

## 5. Definitions

Combat Training	The term "combat training" when used in this policy means physical activities which involve opposing individuals and/or competitive fighting and is of an aggressive or intimidating nature.
Commercial Fitness Training	The term "commercial fitness training" when used in this policy means the teaching of exercise as a business and assisting participants in the improvement of physical fitness and mental wellbeing. Engaging in such business involves the payment of a fee.
Commercial Fitness Trainer, Trainer or Personal Trainer	The term "Commercial Fitness Trainer", "Trainer" or "Personal Trainer" when used in this policy means those people owning, managing or instructing physical fitness training for the purposes of conducting a business for a fee or reward.
Commercial Fitness Training Activities	The term "commercial fitness training activities" when used in this policy means the various physical fitness activities conducted for the purposes of conducting a business through training participants to improve their physical fitness and mental wellbeing.
Fixed Structure	The term "fixed structure" when used in this policy means any item that is deemed immovable or securely positioned including signs and storage containers.
Licence Agreement and Licence Permit	The term "licence" and/or "Licence Agreement" when stated in this policy refers to a printed document that gives official permission from Shellharbour City Council to a specific person, operator or company to conduct commercial fitness training activities on a designated public reserve. A licence may be issued in accordance with the <i>Local Government Act 1993</i> . A printed document that gives permission from Shellharbour City Council to a specific person, operator or company to conduct commercial fitness training activities on a designated public reserve. A permit is issued in accordance with Section 68 of the <i>Local Government Act 1993</i> .
Notices	The term "notices" when used in this policy means signs erected by Council which relate to the doing of anything in a public place, the use of the place or any part of the place or the payment of a fee for entry or use of the public place.
Offensive Noise	The term "offensive noise" when stated in this policy is defined in the <i>Protection of the Environment Operations Act 1997</i> as noise that is of a level, nature, character or quality prescribed by the regulations or that is made at a time or in other circumstances prescribed by the regulations.
Personal and Group Fitness Training Activities	The term "Personal and Group Fitness Training Activities" when used in this policy means the teaching of exercise as a business and assisting participants in the improvement of physical fitness and mental wellbeing. The conduct of and participation in such a business involves the acceptance of and the payment of a fee or reward.
Public Reserve	The term "public reserve" when stated in this policy means any reserve owned and or controlled by Council that is classified as Community land in accordance with the <i>Local Government Act 1993</i>

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	including Crown Land for which Council is Crown Land Manager or for which Council is responsible for care control and management.
Regulations	The term "regulations" when used in this policy means the Protection of the Environment Operations (Noise Control) Regulation 2008.

## 6. Variation and Review

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

### Review History

Date Policy first adopted – Version 1	29 November 2011
Date amendment adopted - Version 2	29 April 2014
Date amendment adopted - Version 3	1 May 2018
Date amendment adopted – Version 4	2020

## 7. Policy

### 7.1. Approved Public Reserves

Development consent is required for any public open space where commercial fitness training activities are to occur. The areas of approved public reserves are set out in Attachment 1, Approved Public Reserves for use by Commercial Fitness Groups & Personal Trainers.

Where an operator wishes to operate from Council land (including Crown land) not listed within Attachment 1 the operator should contact Council to discuss the use of the site. If demand warrants Council's support for the use of the proposed site for commercial fitness training activities, Council will lodge a Development Application in respect of that site.

### 7.2 Exclusion Areas

~~Personal and group fitness training activities are prohibited in the following areas:-~~

Commercial fitness training activities, including group and personal training, are prohibited in the following areas:-

- Cemeteries
- Sand dunes on all beaches
- Memorials
- Playgrounds/children's play areas and equipment
- Council's outdoor exercise equipment
- Designated sports fields or facilities without a specific booking
- Beaches - within the patrolled areas (flagged areas),
- Around trees, vegetated or landscaped areas
- Bushland and areas undergoing revegetation
- Environmentally sensitive areas
- Structures including retaining walls, bollards, shelter sheds etc
- Designated "off-leash" dog exercise areas.

~~Footpaths/cycle ways – clear access on either side and along footpaths and cycle ways must be maintained at all time.~~

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Council may nominate other areas as Exclusion Areas from time to time as deemed appropriate.

Council approved commercial fitness trainers must operate only in the area specified in their permit and maintain clear access on either side and along footpaths and cycle ways at all times.

### 7.3 Permitted Activities

The permitted activities under this policy are limited to the normal activities of a personal trainer and/or fitness trainer including, but not limited to:-

- Gym sessions (with or without weights, fit balls, skipping ropes etc);
- Boxing or pad training;
- Organised aerobic activity;
- Yoga, Tai Chi and Pilates classes and other similar activities;
- Circuit training;
- Walking and running;
- A combination of any of the above.

### 7.4 Prohibited Activities

The following activities are prohibited under this policy:-

- Aggressive or intimidating activities including combat training;
- Activities conducted with amplified music or audio (voice) equipment;
- Organised competitions without a Local Approval or Temporary Licence Application;
- The soliciting of funds directly from park visitors or the public;
- The erection of advertising material (including A frame signs and banners) without Council's written consent;
- The erection of any structure at the premises whether permanent or temporary;
- The use of any reserve furniture and infrastructure other than for the purpose for which it was erected;
- The suspension of any boxing bags or training equipment from trees and/or structures;
- The removal of sand, rock or any other material from beaches and sand dunes, or any other environmentally sensitive area;
- The dropping of heavy equipment on grassed areas.

### 7.5 Exempted Activities/Groups

The following activities are exempt from this policy:

- Individual or small group exercise (where no fees are charged to participate)
- Walking, jogging or cycling groups (where no fees are charged to participate)

The following groups are exempt from this policy:-

- Local sporting clubs
- Local schools
- Surf Life Saving Clubs
- Defence force groups and/or personnel

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~~However, any significant organised activities the above mentioned groups may wish to conduct on a public reserve would be subject to Council's Local Approval processes.~~  
However, any organised health and fitness training activities which these groups wish to conduct on a public reserve remain subject to Council's Local Approval or Temporary Licence processes.

External trainers employed by these groups who derive a commercial benefit from the activities are not exempt from this Policy.

#### 7.6 Eligibility

In order to be considered for a ~~licence agreement~~ permit for the operation of commercial fitness training, evidence of the following must be provided at the time of application: -

- Current Senior First Aid Certificate
- Current Public Liability Insurance Certificate of Currency for an amount not less than \$20 million for each accident and/or event in which Council is indemnified
- Registration with Fitness Australia or other relevant industry body

#### 7.7 Training Group Sizes

Council will determine the maximum number of participants permitted in each group. The determination will be made having consideration for the size of the area authorised for use under each permit, proximity to surrounding residences and other activities (passive and active) being undertaken in the area.

The number of total participants will be limited to that as noted within Attachment 1.

#### 7.8 ~~Types of Licence Agreements~~ Types of Permits

~~In addition to each approved site having development consent for the activity, outdoor commercial fitness operators are required to obtain a permit from Council.~~ The two types of permits applicable for outdoor commercial fitness training are:

- ~~Primary Site Licence~~ Permit  
A primary site ~~licence~~ permit is a non-exclusive permit which allows an operator to undertake such commercial activities from a base site.
- ~~Mobile Licence~~ Permit  
A mobile ~~licence~~ permit is a non-exclusive permission which allows operators to undertake personal (one-on-one) or small group (less than five participants) training activities on multiple approved sites throughout the local government area.

Permits may be applied for online or by completing an application from which can be either downloaded from Council's website or obtained by contacting Council's Customer Service Team.

#### 7.9 ~~Term of Licence & Allocation of Licence~~ Allocation of Permits

Applications for ~~licence agreements~~ permits will be reviewed by Council officers taking into consideration the following factors:-

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- Usage demand, intensity of use of the area by the general public at the times requested;
- Number of permits already applying to the area;
- Type of activities to be undertaken and the potential impact on other users of the reserve and on neighbouring residents;
- Whether the activities will contribute to increasing congestion or user conflict in the area requested.

~~If Council officers have determined that an application for licence can be processed, Council must adhere to the obligations set out in S. 47a of the Local Government Act 1993 in relation to publicly exhibiting the proposal for a period of not less than 28 days.~~

~~New operators may be provided with a 12 month licence in the first instance as a trial. This will be determined through negotiations with Council and the applicant.~~

~~After consideration of the above factors, Council determines whether to:-~~

- ~~▲ Approve an application and issue a licence agreement;~~
- ~~▲ Issue a limited licence agreement with restrictions on the number and types of activities, group size and the time and location of activities;~~
- ~~▲ Not approve the application.~~

~~A personal and group fitness training licence will be valid for a period determined by Council and will authorise the licence holder to use the designated public reserve for commercial fitness training activities in accordance with this policy and the licence conditions on a non-exclusive basis.~~

~~The licence agreement may be issued to either one trainer or one company. If the licence agreement is issued to a company, the company can nominate trainers that will be operating under the agreement. The company must provide a roster listing the qualified trainers who will operate under the agreement.~~

~~Each licence agreement will detail the type of activities permissible, the times the activities may be undertaken, the area to which the licence relates and the number and size of the groups permitted.~~

A permit which allows personal and group fitness training on the areas shown in Attachment 1 will be valid for a period of 12 months and will authorise the permit holder to use a designated public reserve for commercial fitness training activities in accordance with this policy and the permit conditions on a non-exclusive basis.

The permit may be issued to either one trainer or one company. If the permit is issued to a company, the company may nominate trainers who will be operating under the permit. The company must provide a roster listing the qualified trainers who will operate under the permit.

Each permit will detail the type of activities permissible, the times the activities may be undertaken, the area to which the permit relates and the number and size of the groups permitted.

#### 7.10 Fees Payable

An application fee will be payable on each occasion of an application being submitted and will cover the administration costs of processing and completing the application. The relevant fees will be detailed in Council's Fees and Charges.

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A preparation of ~~licence fee~~ permit fee or ~~licence~~ permit renewal fee is payable at the time the application for a ~~licence~~ permit or the renewal of a permit is lodged.

Annual permit fees will be payable in advance annually or on a monthly basis and will be at the rate set by Council from time to time.

Fitness trainers holding a ~~licence agreement~~ permit will be required to pay a security deposit equivalent to one quarter of the annual ~~licence~~ permit fee. This amount will be refunded on termination or expiry of the permit, provided there are no outstanding issues which must first be dealt with eg unpaid rent or damage to Council property.

#### 7.11 Identification of Trainers

~~Each trainer issued with a licence agreement will also be issued with a licence agreement permit. The permit will contain information on the licence conditions (e.g. size of groups, licence area etc). The permit must be displayed by the trainer when requested to do so by Council officers.~~

Each trainer issued with a permit must produce such permit when requested to do so by Council officers.

#### 7.12 Equipment

All equipment used during training sessions must be stored off-site. It is prohibited to erect fixed structures for the storing of equipment.

No equipment is to be suspended from trees and / or structures in the public reserves.

#### 7.13 Hours of Operation

Operating hours for fitness training activities will be identified in each individual permit. Generally, trainers will not be permitted to conduct activities outside daylight hours.

Fitness training activities will be limited to weekdays only on Council's high tourism traffic reserves and will not be permitted on public holidays.

The hours of operation will be limited to that as noted within Attachment 1.

#### 7.14 Risk Management

Each trainer must keep and maintain a log book of significant accidents or injuries occurring during training sessions or otherwise in connection with the permitted activities on or in the vicinity of the permit area and must notify Council within 24 hours of any such incidents.

Prior to commencing fitness activities, permit holders must inspect the immediate area to ensure no hazards are evident and take appropriate action to remove any hazards or alternatively move the training site and, without undue delay, report to Council the hazard or any other hazardous matters observed during the training that may require Council's attention.

The requirements of WorkCover must be complied with at all times.

#### 7.15 Compliance

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Trainers must comply with reasonable directions of Council's Rangers, Lifeguards and other authorised Council officers.

Trainers must also comply with the recommendations made by Fitness Australia or other relevant industry body and all terms and conditions outlined in the permit.

Any breaches of the policy may, at the discretion of Council, result in the permit being withdrawn.

#### 7.16 Vehicle and Trailer Parking

Trainers and their participants are required to park in designated parking areas. Parking on public reserves is not permitted and offenders will incur penalties in accordance with the relevant sections of the *Local Government Act 1993*.

All vehicles and trailers used by trainers are only to be parked in the designated parking areas of their approved permit during their approved ~~agreement time~~ **times of operation**.

#### 6.17 Noise / Disturbance

Under the permit, all fitness trainers must:

- Not create any noise from training activities that unreasonably disturbs other users of the reserve and/or adjacent residents;
- Ensure that all noise associated with their activities does not cause offensive noise as defined by the *Protection of the Environment Operations Act 1997*;
- Ensure that whilst utilising any restricted areas within the permit area such as footpaths and stairways, all participants run in single file and always give way to pedestrians/cyclists using those same areas;
- Ensure that any equipment used during training does not create any hazards or obstructions;
- Leave the training area in the same condition as it was at the commencement of training;
- Manage activities to ensure minimum wear and tear on grassed areas (i.e by rotating within the designated area and/or alternating activities);
- Ensure that participants do not step on, walk on or in any other way inappropriately use picnic tables and park furniture;
- Not interfere with any Council approved or booked activity including but not limited to filming, commercial photography, weddings, birthday party, corporate BBQs, sport or sporting activity that is being carried out on any oval or reserve or part thereof.
- Acknowledge that any booking has priority over the training activities;
- Ensure the use of whistles and similar equipment is limited to after 7.00am on weekdays and after 9.00am on weekends and public holidays (except as otherwise determined under individual permits);
- Ensure there is no use of amplified music or audio equipment;

#### 6.18 Assignment/sub-licence

~~Licence agreements must not be assigned or sub-licensed, under any circumstances.~~  
**Permits issued in accordance with this policy are not transferable.**

#### 6.19 Termination

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~~Council reserves the right to terminate a licence agreement with a trainer without notice if in its sole opinion it has determined that the trainer has failed to comply with the reasonable direction of its staff or has breached the terms of the licence and / or the terms of Council's Policy on the Use of Council's Reserves by Commercial Fitness Groups and Personal Trainers.~~

Council reserves the right to cancel a permit with a trainer without notice if in its opinion it is determined that the trainer has failed to comply with the reasonable direction of its staff or has breached the terms of the permit and / or the terms of Council's Policy on the Use of Council's Reserves by Commercial Fitness Groups and Personal Trainers.

A trainer whose permit has been terminated can appeal in writing to the General Manager, Shellharbour City Council, PO Box 155, Shellharbour City Centre NSW 2529, stating the reasons for the appeal.

**8. Related Forms/Documents**

- Application – Commercial Fitness Training on Council Approved Land

**Note: Related forms can be located Online under "Forms"**

**9. Attachments**

Attachment 1: Approved Public Reserve for use by Commercial Fitness Groups and Personal Trainers

**Policy Authorised by:**

Name: Council Resolution 76

Date: 1 May 2018

## Attachment 1 – Approved Public Reserve for use by Commercial Fitness Groups and Personal Trainers

Activities: - All =

Gym Sessions (with or without weights, fit balls, Boxing or Pad Training skipping ropes)

Organised Aerobic activity

Yoga, Tai Chi and Pilates

Circuit training

Name of Park	Street Address	Suburb	Lo/DP	Activities	Operating Day / Time	Noise Generating Activities Day / Time	Max No. of participants per session
McDonald Park	Tongara Road	Albion Park Rail	140 / 213767	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 4pm Prohibited Sundays & Public Holidays	Monday - Friday 7 am  Saturday - Prohibited	18
Eric Creary Park	Junction Road	Barrack Point	2 / 526063	All	Monday - Sunday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings	Monday - Sunday 7 am	54
Dawes Park	Junction Road	Barrack Point	100 / 12780	Tai Chi, Yoga, Pilates	Monday - Sunday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings	Monday - Friday 7am Saturday, Sunday, Public holidays 9am Yes from 7 am Mon-Fri	25
Wentworth Cottage Park	Pioneer Drive	Blackbutt	8222 / 852573	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Saturday - Prohibited	10
Reddall Reserve	494 Reddall Parade	Lake Illawarra	16 / A / 11044	All	Monday - Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Prohibited Saturday, Sunday & Public Holidays	Monday - Friday 6am	54

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Name of Park	Street Address	Suburb	Lot/DP	Activities	Operating Day / Time	Noise Generating Activities Day / Time	Max No. of participants per session
Graham Park	Peterborough Avenue	Lake Illawarra	24 / G / 11679	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday - Prohibited	18
Boonerah Point Reserve	Reddall Parade	Mount Warrigal	299 / 223828	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday - Prohibited	25
Freeman Park	Roycroft Avenue	Mount Warrigal	914 / 239740	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 7pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday - Prohibited	18
Balarang Reserve	242 Lake Entrance Road	Oak Flats	1132 / 263029	All	Monday - Sunday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings 6am - 8pm Daylight savings Prohibited Saturdays, Sundays & Public Holidays	Monday - Friday 7am Saturday, Sunday, Public holidays 9am Monday - Friday 7am	30
	Boolwarro Parade	Shell Cove	8032 / 1072187	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Prohibited Saturdays, Sundays & Public Holidays	Monday - Friday 7am	18
*Harrison Park	Minga Avenue	Shellharbour City Centre	11 / 1029943	All	Monday - Sunday 6am - 6pm Non-daylight savings* 6am - 8pm Daylight savings*	Monday - Sunday 7am	54
Beverley Whitfield Park	218 Junction Road	Shellharbour	5 / 218551	All	Monday - Sunday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings	Monday - Sunday 7am	54

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Name of Park	Street Address	Suburb	LoVDP	Activities	Operating Day / Time	Noise Generating Activities Day / Time	Max No. of participants per session
Mymbarr Community Park	Wattle Road	Shellharbour	303 / 1051235	All	Monday - Sunday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings	Monday - Friday 7am Saturday, Sunday, Public holidays 9am	18
Grey Park	Town Street	Shellharbour	4, 5 & 6 / 13699	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday - Prohibited	10
J N King Memorial Park	The Kingsway	Warilla	65 / 204408	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 4pm Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday 9am	18
Strong Reserve	334 Osborne Parade	Warilla	76 / 238866	All  Tai Chi, Yoga, Pilates	Monday - Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday, Sunday, Public Holidays * During the summer period only Monday- Friday are permitted	Monday - Friday 7am  Saturday, Sunday, Public holidays 9am	25

\* Activities will not be permitted on ANZAC Day, Remembrance Day and any other day where memorial events are to be held at Harrison Park

## Attachment 2 - Proposed Amended “Use of Public Reserves by Commercial Fitness Groups and Personal Trainers” Policy



Policy

### Use of Public Reserve by Commercial Fitness Groups and Personal Trainers

Policy Owner: Manager Business and Investment	
Date Last Adopted/Amended: 1 May 2018	Review Date: TBA

#### 1. Policy Statement/Objective(s)

Shellharbour City Council is committed to effectively managing the use of public reserves by commercial fitness groups and personal trainers.

Personal and group fitness training is a fast growing segment of the Fitness industry and there has been an increasing demand for fitness training activities on public reserves by commercially operated businesses. This raises a number of concerns within Council:

- Equity of access to public parks and reserves.
- The impact of commercial fitness activities on asset condition and maintenance.
- Public liability concerns.
- The management of public reserves to prevent conflict of uses.
- The impact on surrounding residents
- The impact on the use of the reserves by the general public.

This policy outlines the methods by which Council will manage the use of public reserves by commercial fitness groups and personal trainers to address these concerns.

#### 2. Scope

This policy applies to:

- One on one sessions and/or group activities;
- The approved areas of land detailed in the table set out in item 7.1 and any other areas as advised by Council from time to time.
- Any Commercial Fitness Trainer, Trainer or Personal Trainer applying for a permit.

#### 3. References

Local Government Act 1993  
 Protection of the Environment Operations Act 1997  
 Council's Community Land Plans of Management  
 Wet Weather Policy for Shellharbour City Council's Sportsfields

#### 4. External/Internal Consultations

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**To be completed after public consultation****5. Definitions**

Combat Training	Physical activities which involve opposing individuals and/or competitive fighting and is of an aggressive or intimidating nature.
Commercial Fitness Training	The teaching of exercise as a business and assisting participants in the improvement of physical fitness and mental wellbeing. Engaging in such business involves the payment of a fee.
Commercial Fitness Trainer, Trainer or Personal Trainer	Those people owning, managing or instructing physical fitness training for the purposes of conducting a business for a fee or reward.
Commercial Fitness Training Activities	The various physical fitness activities conducted for the purposes of conducting a business through training participants to improve their physical fitness and mental wellbeing.
Fixed Structure	Any item that is deemed immovable or securely positioned including signs and storage containers.
Permit	A printed document that gives permission from Shellharbour City Council to a specific person, operator or company to conduct commercial fitness training activities on a designated public reserve. A permit is issued in accordance with Section 68 of the <i>Local Government Act 1993</i> .
Notices	Signs erected by Council which relate to the doing of anything in a public place, the use of the place or any part of the place or the payment of a fee for entry or use of the public place.
Offensive Noise	Is defined in the <i>Protection of the Environment Operations Act 1997</i> as noise that is of a level, nature, character or quality prescribed by the regulations or that is made at a time or in other circumstances prescribed by the regulations.
Personal and Group Fitness Training Activities	The teaching of exercise as a business and assisting participants in the improvement of physical fitness and mental wellbeing. The conduct of and participation in such a business involves the acceptance of and the payment of a fee or reward.
Public Reserve	Any reserve owned and or controlled by Council that is classified as Community land in accordance with the <i>Local Government Act 1993</i> including Crown Land for which Council is Crown Land Manager or for which Council is responsible for care control and management.
Regulations	The <i>Protection of the Environment Operations (Noise Control) Regulation 2008</i> .

**6. Variation and Review**

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

**Review History**

Date Policy first adopted – Version 1	29 November 2011
Date amendment adopted - Version 2	29 April 2014
Date amendment adopted - Version 3	1 May 2018
Date amendment adopted – Version 4	2020

**7. Policy**

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### 7.1. Approved Public Reserves

Development consent is required for any public open space where commercial fitness training activities are to occur. The areas of approved public reserves are set out in Attachment 1, Approved Public Reserves for use by Commercial Fitness Groups & Personal Trainers.

Where an operator wishes to operate from Council land (including Crown land) not listed within Attachment 1 the operator should contact Council to discuss the use of the site. If demand warrants Council's support for the use of the proposed site for commercial fitness training activities, Council will lodge a Development Application in respect of that site.

### 7.2 Exclusion Areas

Commercial fitness training activities, including group and personal training, are prohibited in the following areas:-

- Cemeteries
- Sand dunes on all beaches
- Memorials
- Playgrounds/children's play areas and equipment
- Council's outdoor exercise equipment
- Designated sports fields or facilities without a specific booking
- Beaches - within the patrolled areas (flagged areas),
- Around trees, vegetated or landscaped areas
- Bushland and areas undergoing revegetation
- Environmentally sensitive areas
- Structures including retaining walls, bollards, shelter sheds etc
- Designated "off-leash" dog exercise areas.

Council may nominate other areas as Exclusion Areas from time to time as deemed appropriate.

Council approved commercial fitness trainers must operate only in the area specified in their permit and maintain clear access on either side and along footpaths and cycle ways at all times.

### 7.3 Permitted Activities

The permitted activities under this policy are limited to the normal activities of a personal trainer and/or fitness trainer including, but not limited to:-

- Gym sessions (with or without weights, fit balls, skipping ropes etc);
- Boxing or pad training;
- Organised aerobic activity;
- Yoga, Tai Chi and Pilates classes and other similar activities;
- Circuit training;
- Walking and running;
- A combination of any of the above.

### 7.4 Prohibited Activities

The following activities are prohibited under this policy:-

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- Aggressive or intimidating activities including combat training;
- Activities conducted with amplified music or audio (voice) equipment;
- Organised competitions without a Local Approval or Temporary Licence Application;
- The soliciting of funds directly from park visitors or the public;
- The erection of advertising material (including A frame signs and banners) without Council's written consent;
- The erection of any structure at the premises whether permanent or temporary;
- The use of any reserve furniture and infrastructure other than for the purpose for which it was erected;
- The suspension of any boxing bags or training equipment from trees and/or structures;
- The removal of sand, rock or any other material from beaches and sand dunes, or any other environmentally sensitive area;
- The dropping of heavy equipment on grassed areas.

#### 7.5 Exempted Activities/Groups

The following activities are exempt from this policy:

- Individual or small group exercise (where no fees are charged to participate)
- Walking, jogging or cycling groups (where no fees are charged to participate)

The following groups are exempt from this policy:-

- Local sporting clubs
- Local schools
- Surf Life Saving Clubs
- Defence force groups and/or personnel

However, any organised health and fitness training activities which these groups wish to conduct on a public reserve remain subject to Council's Local Approval or Temporary Licence processes.

External trainers employed by these groups who derive a commercial benefit from the activities are not exempt from this Policy.

#### 7.6 Eligibility

In order to be considered for a permit for the operation of commercial fitness training, evidence of the following must be provided at the time of application: -

- Current Senior First Aid Certificate
- Current Public Liability Insurance Certificate of Currency for an amount not less than \$20 million for each accident and/or event in which Council is indemnified
- Registration with Fitness Australia or other relevant industry body

#### 7.7 Training Group Sizes

Council will determine the maximum number of participants permitted in each group. The determination will be made having consideration for the size of the area authorised for use under each permit, proximity to surrounding residences and other activities (passive and active) being undertaken in the area.

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The number of total participants will be limited to that as noted within Attachment 1.

#### 7.8 Types of Permits

The two types of permits applicable for outdoor commercial fitness training are:

- **Primary Site Permit**  
A primary site permit is a non-exclusive permit which allows an operator to undertake such commercial activities from a base site.
- **Mobile Permit**  
A mobile permit is a non-exclusive permission which allows operators to undertake personal (one-on-one) or small group (less than five participants) training activities on multiple approved sites throughout the local government area.

Permits may be applied for online or by completing an application from which can be either downloaded from Council's website or obtained by contacting Council's Customer Service Team.

#### 7.9 Allocation of Permits

Applications for permits will be reviewed by Council officers taking into consideration the following factors:-

- Usage demand, intensity of use of the area by the general public at the times requested;
- Number of permits already applying to the area;
- Type of activities to be undertaken and the potential impact on other users of the reserve and on neighbouring residents;
- Whether the activities will contribute to increasing congestion or user conflict in the area requested.

A permit which allows personal and group fitness training on the areas shown in Attachment 1 will be valid for a period of 12 months and will authorise the permit holder to use a designated public reserve for commercial fitness training activities in accordance with this policy and the permit conditions on a non-exclusive basis.

The permit may be issued to either one trainer or one company. If the permit is issued to a company, the company may nominate trainers who will be operating under the permit. The company must provide a roster listing the qualified trainers who will operate under the permit.

Each permit will detail the type of activities permissible, the times the activities may be undertaken, the area to which the permit relates and the number and size of the groups permitted.

#### 7.10 Fees Payable

An application fee will be payable on each occasion of an application being submitted and will cover the administration costs of processing and completing the application. The relevant fees will be detailed in Council's Fees and Charges.

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A preparation of permit fee or permit renewal fee is payable at the time the application for a permit or the renewal of a permit is lodged.

Annual permit fees will be payable in advance annually or on a monthly basis and will be at the rate set by Council from time to time.

Fitness trainers holding a permit will be required to pay a security deposit equivalent to one quarter of the annual permit fee. This amount will be refunded on termination or expiry of the permit, provided there are no outstanding issues which must first be dealt with eg unpaid rent or damage to Council property.

#### 7.11 Identification of Trainers

Each trainer issued with a permit must produce such permit when requested to do so by Council officers.

#### 7.12 Equipment

All equipment used during training sessions must be stored off-site. It is prohibited to erect fixed structures for the storing of equipment.

No equipment is to be suspended from trees and / or structures in the public reserves.

#### 7.13 Hours of Operation

Operating hours for fitness training activities will be identified in each individual permit. Generally, trainers will not be permitted to conduct activities outside daylight hours.

Fitness training activities will be limited to weekdays only on Council's high tourism traffic reserves and will not be permitted on public holidays.

The hours of operation will be limited to that as noted within Attachment 1.

#### 7.14 Risk Management

Each trainer must keep and maintain a log book of significant accidents or injuries occurring during training sessions or otherwise in connection with the permitted activities on or in the vicinity of the permit area and must notify Council within 24 hours of any such incidents.

Prior to commencing fitness activities, permit holders must inspect the immediate area to ensure no hazards are evident and take appropriate action to remove any hazards or alternatively move the training site and, without undue delay, report to Council the hazard or any other hazardous matters observed during the training that may require Council's attention.

The requirements of WorkCover must be complied with at all times.

#### 7.15 Compliance

Trainers must comply with reasonable directions of Council's Rangers, Lifeguards and other authorised Council officers.

Trainers must also comply with the recommendations made by Fitness Australia or other relevant industry body and all terms and conditions outlined in the permit.

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Any breaches of the policy may, at the discretion of Council, result in the permit being withdrawn.

#### 7.16 Vehicle and Trailer Parking

Trainers and their participants are required to park in designated parking areas. Parking on public reserves is not permitted and offenders will incur penalties in accordance with the relevant sections of the *Local Government Act 1993*.

All vehicles and trailers used by trainers are only to be parked in the designated parking areas of their approved permit during their approved times of operation.

#### 6.17 Noise / Disturbance

Under the permit, all fitness trainers must:

- Not create any noise from training activities that unreasonably disturbs other users of the reserve and/or adjacent residents;
- Ensure that all noise associated with their activities does not cause offensive noise as defined by the *Protection of the Environment Operations Act 1997*;
- Ensure that whilst utilising any restricted areas within the permit area such as footpaths and stairways, all participants run in single file and always give way to pedestrians/cyclists using those same areas;
- Ensure that any equipment used during training does not create any hazards or obstructions;
- Leave the training area in the same condition as it was at the commencement of training;
- Manage activities to ensure minimum wear and tear on grassed areas (i.e by rotating within the designated area and/or alternating activities);
- Ensure that participants do not step on, walk on or in any other way inappropriately use picnic tables and park furniture;
- Not interfere with any Council approved or booked activity including but not limited to filming, commercial photography, weddings, birthday party, corporate BBQs, sport or sporting activity that is being carried out on any oval or reserve or part thereof.
- Acknowledge that any booking has priority over the training activities;
- Ensure the use of whistles and similar equipment is limited to after 7.00am on weekdays and after 9.00am on weekends and public holidays (except as otherwise determined under individual permits);
- Ensure there is no use of amplified music or audio equipment;

#### 6.18 Assignment/sub-licence

Permits issued in accordance with this policy are not transferable.

#### 6.19 Termination

Council reserves the right to cancel a permit with a trainer without notice if in its opinion it is determined that the trainer has failed to comply with the reasonable direction of its staff or has breached the terms of the permit and / or the terms of Council's Policy on the Use of Council's Reserves by Commercial Fitness Groups and Personal Trainers.

COLLABORATION

ACCOUNTABILITY

INTEGRITY

RESPECT

SUSTAINABILITY

Policy Name: Use of Council Reserves by Commercial Fitness Groups and Personal Trainers

Date of Last Adoption/Amendment: 1 May 2018

Page 7 of 11

A trainer whose permit has been terminated can appeal in writing to the General Manager, Shellharbour City Council, PO Box 155, Shellharbour City Centre NSW 2529, stating the reasons for the appeal.

**8. Related Forms/Documents**

- Application – Commercial Fitness Training on Council Approved Land

**Note: Related forms can be located Online under “Forms”**

**9. Attachments**

Attachment 1: Approved Public Reserve for use by Commercial Fitness Groups and Personal Trainers

**Policy Authorised by:**

Name: Council Resolution 76

Date: 1 May 2018

COLLABORATION

ACCOUNTABILITY

INTEGRITY

RESPECT

SUSTAINABILITY

Policy Name: Use of Council Reserves by Commercial Fitness Groups and Personal Trainers

Date of Last Adoption/Amendment: 1 May 2018

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Name of Park	Street Address	Suburb	Lot/DP	Activities	Operating Day / Time	Noise Generating Activities Day / Time	Max No. of participants per session
Graham Park	Peterborough Avenue	Lake Illawarra	24 / G / 11679	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday - Prohibited	18
Boonerah Point Reserve	Reddall Parade	Mount Warrigal	299 / 223828	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday - Prohibited	25
Freeman Park	Roycroft Avenue	Mount Warrigal	914 / 239740	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 7pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday - Prohibited	18
Balarang Reserve	242 Lake Entrance Road	Oak Flats	1132 / 263029	All	Monday - Sunday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings	Monday - Friday 7am Saturday, Sunday, Public holidays 9am	30
	Boolwarro Parade	Shell Cove	8032 / 1072187	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Prohibited Saturdays, Sundays & Public Holidays	Monday - Friday 7am	18
*Harrison Park	Minga Avenue	Shellharbour City Centre	11 / 1029943	All	Monday - Sunday 6am - 6pm Non-daylight savings* 6am - 8pm Daylight savings*	Monday - Sunday 7am	54
Beverley Whitfield Park	218 Junction Road	Shellharbour	5 / 218551	All	Monday - Sunday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings	Monday - Sunday 7am	54

SUSTAINABILITY

RESPECT

INTEGRITY

ACCOUNTABILITY

COLLABORATION

Policy Name: Use of Council Reserves by Commercial Fitness Groups and Personal Trainers

Date of Last Adoption/Amendment: 1 May 2018

Page 10 of 11

Name of Park	Street Address	Suburb	LoVDP	Activities	Operating Day / Time	Noise Generating Activities Day / Time	Max No. of participants per session
Mymbarr Community Park	Wattle Road	Shellharbour	303 / 1051235	All	Monday - Sunday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings	Monday - Friday 7am Saturday, Sunday, Public holidays 9am	18
Grey Park	Town Street	Shellharbour	4, 5 & 6 / 13699	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 9am Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday - Prohibited	10
J N King Memorial Park	The Kingsway	Warilla	65 / 204408	All	Monday-Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday 6am - 4pm Prohibited Sundays & Public Holidays	Monday - Friday 7am  Saturday 9am	18
Strong Reserve	334 Osborne Parade	Warilla	76 / 238866	All  Tai Chi, Yoga, Pilates	Monday - Friday 6am - 6pm Non-daylight savings 6am - 8pm Daylight savings Saturday, Sunday, Public Holidays * During the summer period only Monday- Friday are permitted	Monday - Friday 7am  Saturday, Sunday, Public holidays 9am	25

\* Activities will not be permitted on ANZAC Day, Remembrance Day and any other day where memorial events are to be held at Harrison Park

**10.2.3 Proposed transfer of lease at Shellharbour Airport - Green, Sim and Wallington to Wollongong Aircraft Storage (11484533)**

To the General Manager

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

**Manager:** Trevor James – Manager Business and Investment  
**Author:** Michael Harben – Property Management Coordinator

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## Summary

The purpose of this report is to seek Council's approval to the transfer of a lease over land at Shellharbour Airport from Green, Sim and Wallington to Wollongong Aircraft Storage Incorporated.

## Background

The subject lease was granted to Green, Sim and Wallington for the purpose of "Aircraft Storage" in accordance with a resolution of Council dated 12 May 2015 and as a consequence of the execution of an agreement for lease and a construction agreement dated 30 November 2016. The subject lease area is shown in **Attachment 1**.

The lessees applied for and were granted development consent DA534/2015 dated 17 December 2015 for "Alterations and Additions to an Existing Hangar" and work on the construction of an enhanced aircraft storage facility commenced shortly thereafter.

The lease commenced on 15 May 2018 which is the date the Occupation Certificate was issued in relation to the construction works abovementioned. The leased area is comprised of 2300 sq m in Lot 1 DP 1240742, a plan of subdivision registered 10 June 2020 to facilitate the registration of the lease on title.

Terms and conditions of the lease include:

- Term – 40 years
- Commencing rent - \$7,900 pa excl GST
- Rent reviews – annual CPI increases
- Review to market – every five (5) years
- Bank Guarantee - \$1,975 excl GST

The lessees have advised Council that their interest in the property has been transferred to Wollongong Aircraft Storage, an association incorporated under the Associations Incorporation Act 2009 (copy of Certificate is shown on **Attachment 2**).

The reason for doing this has to do with a preference expressed by the lessees that they wish to operate as a legal entity in line with Illawarra Flyers which operates a similar business at the Shellharbour Airport, mainly concerned with the storage of aircraft. The lessees have also expressed a wish to have a set of by-laws, a constitution and a deed of agreement between all owners as a governance model by which the business can be operated.

They particularly want to be confident of their rights concerning operating procedures and payment of landing fees for all aircraft stored in their hangars and believe that incorporation of an association supported by a constitution is the most effective way of achieving this.

Assignment of rights and obligations under the lease is set out in Clause 14 of the lease as follows:

- Clause 14.1 No assignment is permitted by the Lessee without the consent of the Lessor.
- Clause 14.2 The Lessor acknowledges that the Lessee is three separate individuals and should an assignment of part or whole of the Lease be requested, such assignment will not be unreasonably withheld by the lessor.
- Clause 14.3 If the intended assignee or sub lessee is a company other than a company whose shares are listed on any Australian Stock Exchange, then the directors or principal shareholders of that company, will act as guarantors for such company in the manner set out in Part 16.
- Clause 14.4 A change in the controlling shareholding of the Lessee not being a company whose shares are listed on an Australian Stock Exchange will constitute a transfer of this Lease.

In consideration of these provisions, Council has sought and obtained an acceptance from the current lessees that they will personally guarantee performance of all rights and obligations under the lease.

Council's legal advice confirmed that consent is not to be unreasonably withheld and that the execution of a deed of assignment is appropriate in this case. Furthermore, the legal advice has identified the need to make amendments to the lease to specifically set out personal guarantee requirements, to remove the requirement for a bank guarantee and to amend items in the schedule attached to the lease which relate to those matters.

### **Financial / Resources Implications**

The terms and conditions of the lease are essentially unchanged which means that there are no financial and/or resource implications associated with the proposed assignment of the lease.

**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: 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**

Acting Airport Manager  
Governance Manager

**External**

Legal Panel

**Political Donations Disclosure**

Not Applicable

## **Recommendation**

### **That Council:**

- 1. approve the assignment of lease over Lot 1 DP 1240742, Shellharbour Airport from Green, Sim and Wallington to Wollongong Aircraft Storage Incorporated.**
- 2. authorise the affixing of the Common Seal of the Council of the City of Shellharbour to all documents requiring to be sealed and that the Mayor and General Manager or his nominated delegate be authorised to sign all documentation necessary with the assignment of lease over Lot 1 DP 1240742, Shellharbour Airport from Green, Sim and Wallington to Wollongong Aircraft Storage Incorporated.**

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

**Date of Meeting:** 1 September 2020

### **Attachments**

1. Subject Lease Area – Lot 1 DP 1240742 – *Page 62*
2. Wollongong Aircraft Storage Certificate of Incorporation as an Association – *Page 63*

Attachment 1 – Subject Lease Area – Lot 1 DP 1240742



**Attachment 2 – Wollongong Aircraft Storage Certificate of Incorporation as an Association**



**10.2.4 Proposed Road Closure for Sale to Adjoining Owner at 105 Terry Street Albion Park (11485148)**

To the General Manager

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

**Manager:** Trevor James – Manager Business and Investment  
**Author:** Michael Harben – Property Management Coordinator

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## Summary

The purpose of this report is to seek Council's approval to close part of an unnamed road between properties at 103 and 105 Terry Street, Albion Park (**Attachment 1**) in accordance with Part 4 Division 3 of the *Roads Act 1993* (the Act) for sale to the owner, Anthony John Fayad, of the adjoining property at 105 Terry Street, Albion Park.

## Background

On 27 October 2015, Council considered a report on the subject proposal and resolved to commence a road closure process under the provisions of the Act which were in force at that time. The process was commenced but was not completed in time to meet the requirements implemented as a consequence of the reforms to the Act.

Amendments to the Act gave Councils the power to close a Council owned public road and as a consequence, the Minister responsible for the administration of the Act no longer has the power to approve the closure of a Council public road. This change took effect 1 July 2018 following a two year period of grace and the time for finalisation of road closure applications at that time was further extended to 30 September 2018 by the Department of Planning, Industry and Environment - Crown Lands.

The subject road closure was not completed by the cut-off date because the applicant was not in a position to do so. The applicant has now advised that he wishes to proceed and the matter is again reported to Council for approval of the road closure and sale of the land within the closed road.

Council is advised that the public notice requirements including notification to adjoining owners has been completed and no objections to the road closure have been received nor has Council received any submissions. Furthermore, the Crown Lands division of the Department of Planning, Industry and Environment has advised Council that Crown Lands does not object to:

- The closure of the Council public road;
- The proposed vesting upon closure

The significance of the latter point is that Council is entitled to receive the proceeds from a sale of the closed road.

The applicant, in confirming his request of Council to proceed with the administration of the road closure, confirmed his acceptance of the purchase price of \$165,000 exclusive of GST and it is proposed that the sale of the closed road be now finalised at that figure. For information, the area of the road proposed to be closed is 400.7 sq m (by survey) and is zoned residential under Shellharbour LEP 2013.

### **Financial / Resources Implications**

The applicant is responsible for the payment of all costs in this matter including, advertising, legal, survey and registration of the plan of road closure by Land Registry Services.

Section 43(4) of the Act imposes on Council an obligation to use any funds received by a Council from the disposal of land comprising a former public road owned by Council for the acquisition of land for public roads or for carrying out work on public roads.

### **Legal and Policy implications**

The requirements imposed on Council by the Act in relation to advertising and notification being given to owners of adjoining land and notifiable authorities have previously been complied with by Council.

It is noted that it has been Council's practice to seek a resolution which classifies land within roads proposed to be closed as operational land. Section 43(2) of the Act provides that land to which the section applies (sale of land comprising a former public road) is operational land for the purposes of the *Local Government Act 1993* unless before the land becomes vested in Council, Council resolves that it is to be community land in which case the land is community land.

This road was provided in an Old System private subdivision dating back to 1885 and the status of it had been uncertain. For the purpose of removing any doubt, a notification placed in the NSW Government Gazette dated 27 October 2017 followed by an erratum notice in the Gazette dated 3 November 2017 had the effect of dedicating this road as a public road under Section 16 of the Act.

As mentioned above, Crown Lands accepts that this is a Council public road.

### **Public / Social Impact**

There have been no objections by either residents or service authorities to the proposed road closure.

**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

**Consultations****Internal**

Nil

**External**

Adjoining owners and notifiable service authorities including Crown Lands

**Political Donations Disclosure**

Not Applicable

**Recommendation**

That:

- 1. Council close the unnamed public road between properties at 103 and 105 Terry Street Albion Park and place notification in the NSW Government Gazette to that effect pursuant to Section 38D(1) Roads Act 1993.**
- 2. following vesting of the closed road in Council, the sale of the land within the closed road to the registered proprietor of 105 Terry Street Albion Park for \$165,000 exclusive of GST be approved provided that the purchaser consolidates the land within the closed road with the land comprised of 105 Terry Street Albion Park.**
- 3. the Mayor and General Manager, or his nominated delegate, be authorised to sign any documentation associated with the application for the closure and disposal of the unnamed public road between properties at 103 and 105 Terry Street Albion Park and to affix the Common Seal of the Council of the City of Shellharbour to any document requiring to be sealed.**
- 4. the proceeds from the sale of the land be allocated to the Tripoli Way Extension, Albion Park By-Pass Project.**

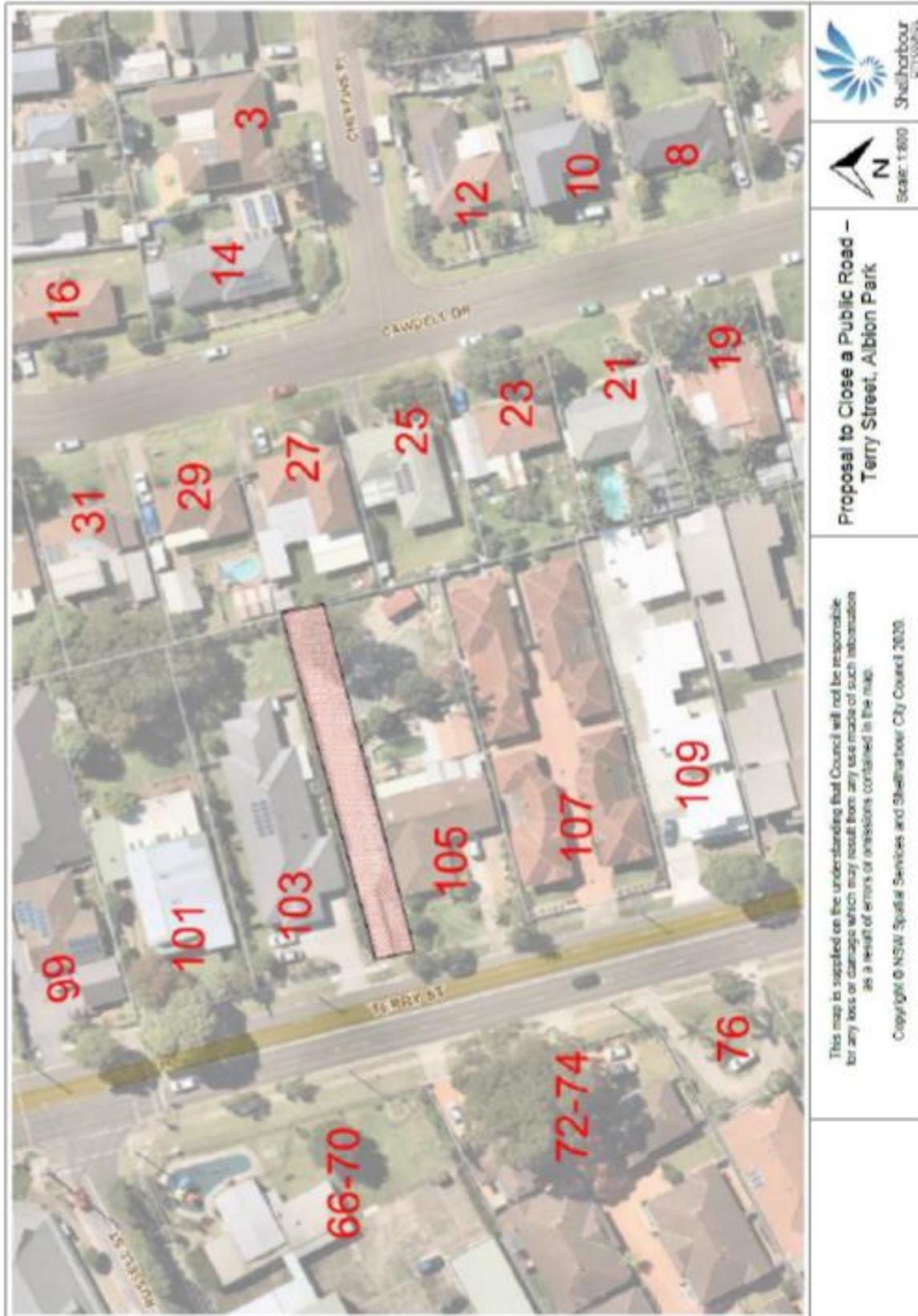
Approved for Council's consideration: Trevor James  
Manager Business and Investment

**Date of Meeting:** 1 September 2020

**Attachments**

1. Plan showing location of the unnamed Council public road between 103 and 105 Terry Street Albion Park – *Page 68*

Attachment 1 - Plan showing location of the unnamed Council public road between 103 and 105 Terry Street Albion Park.



**10.2.5 2019/2020 Draft Annual Financial Reports (11484984)**

To the General Manager

**Directorate:** Council Sustainability

**Group:** Finance

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

**Author:** Paul Henderson – Acting Chief Financial Officer

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## Summary

The purpose of this report is for Council to consider the first stage of its draft Annual Financial Reports process for the year ended 30 June 2020.

Council's Financial Services staff have prepared the draft 2019/2020 Annual Financial Reports. The reports are in draft, and appear in a separate confidential attachment (**Attachment 1**). The reports will be reported back to Council following the external audit process and endorsement by Council's Governance, Risk and Audit Committee. The draft financial reports are now ready for Council's external auditors to carry out their audit and to form an opinion on the reports.

The recommendation of this report seeks Council's endorsement for the reports to be formally referred for audit, which includes the signing of the statements (**Attachments 2 and 3**).

## Background

As per requirements of the *Local Government Act 1993* Council must comply with the Sections 413, 415 and 416 by:

1. Resolving to sign off the statements regarding the 2019/2020 Annual Financial Reports.
2. Referring Council's Annual Financial Reports for the year ended 30 June 2020 for audit.

Financial Services staff have prepared the draft 2019/2020 Financial Reports as required by the *Act* and *Regulations* and seek a Council resolution to sign the statements, so the reports can be referred to the Audit Office of NSW for audit.

Council's external auditors have been tentatively booked to commence their audit in September. Once the external audit has been completed and endorsed for public exhibition by Council's Governance, Risk and Audit Committee, the 2019/2020 Annual Financial Reports will be reported back to Council for formal adoption.

**Financial / Resources Implications**

Council's draft 2019/2020 Annual Financial Reports provide extensive details regarding the cost of goods and services provided and the extent to which that cost was recovered from revenues, during the reporting period. The reports also include details on the assets, liabilities and equity of the Council as at 30 June 2020.

**Legal and Policy implications**

This report ensures Council meets the requirements of the *Local Government Act* regarding the preparation and auditing of its annual Financial Reports.

**Public / Social Impact**

Australian Accounting Standards require the preparation of annual financial reports to provide information to users for making and evaluating decisions about the allocation of scarce resources.

After the audit of the financial reports, they will be placed on public exhibition where any person may lodge a submission regarding the content of the reports.

**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: 4.2.3 Ensure Council is financially sustainable and continues to be transparent and accountable

**Consultations****Internal**

Nil

**External**

Deloitte Touche Tohmatsu  
Audit Office of NSW

**Political Donations Disclosure**

Not Applicable

## **Recommendation**

**That:**

- 1. Council note the draft 2019/2020 Annual Financial Reports.**
- 2. Council approve the application of the signatures of the Mayor, another Councillor, the General Manager and the Responsible Accounting Officer to the General Purpose and Special Purpose Statements.**
- 3. the draft Annual Financial Reports be formally referred to the Audit Office of NSW for audit.**

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

**Date of Meeting:** 1 September 2020

## **Attachments**

1. Confidential Attachment - 2019/2020 Draft Annual Financial Reports - *under separate cover*
2. General Purpose Financial Statement for signature – *Page 72*
3. Special Purpose Financial Statement for signature – *Page 73*

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**Attachment 2 – General Purpose Financial Statement for signature**

Shellharbour City Council

General Purpose Financial Statements  
for the year ended 30 June 2020

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Statement by Councillors and Management made pursuant to Section 413(2)(c) of the  
Local Government Act 1993 (NSW) (as amended)

**The attached General Purpose Financial Statements have been prepared in accordance with:**

- the *Local Government Act 1993* (NSW) (as amended) and the regulations made thereunder,
- the Australian Accounting Standards and professional pronouncements, and
- the *Local Government Code of Accounting Practice and Financial Reporting*.

**To the best of our knowledge and belief, these statements:**

- present fairly the Council's operating result and financial position for the year
- accord with Council's accounting and other records.

**We are not aware of any matter that would render these statements false or misleading in any way.**

**Signed in accordance with a resolution of Council made on 01 September 2020.**

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Marianne Saliba  
Mayor  
01 September 2020

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John Murray  
Councillor  
01 September 2020

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Carey McIntyre  
General Manager  
01 September 2020

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Paul Henderson  
Responsible Accounting Officer  
01 September 2020

**Attachment 3 - Special Purpose Financial Statement for signature**

Shellharbour City Council

Special Purpose Financial Statements

for the year ended 30 June 2020

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Statement by Councillors and Management made pursuant to the Local Government Code of Accounting Practice and Financial Reporting

**The attached Special Purpose Financial Statements have been prepared in accordance with:**

- the NSW Government Policy Statement '*Application of National Competition Policy to Local Government*',
- the Division of Local Government Guidelines '*Pricing and Costing for Council Businesses – A Guide to Competitive Neutrality*',
- the Local Government Code of Accounting Practice and Financial Reporting,

**To the best of our knowledge and belief, these statements:**

- present fairly the operating result and financial position for each of Council's declared business activities for the year, and
- accord with Council's accounting and other records.

**We are not aware of any matter that would render these statements false or misleading in any way.**

**Signed in accordance with a resolution of Council made on 01 September 2020.**

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Marianne Saliba  
Mayor  
01 September 2020

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John Murray  
Councillor  
01 September 2020

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Carey McIntyre  
General Manager  
01 September 2020

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Paul Henderson  
Responsible Accounting Officer  
01 September 2020

**10.2.6 Monthly Investment Report – July 2020 (11485000)**

To the General Manager

**Directorate:** Council Sustainability

**Group:** Finance

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

**Author:** Paul Henderson – Acting Chief Financial Officer

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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, and to seek a resolution to receive and note the report. The report for the month of July 2020 details investment performance against applicable benchmarks, and reviews the compliance of Council's investments with policy and legislative requirements.

As at the end of July 2020, \$181K of interest revenue has been accrued up until the end of July. Council is \$18K ahead of the annual budget forecast of \$1.957M (forecast = \$1.957M divided by 12 months and multiplied by 1 month = \$163K).

**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*, 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 and ensuring that Council's liquidity requirements are also being met. To assist with this process, Council communicates with its independent investment advisors (Imperium Markets Pty Ltd) before any investment is made. Close attention is paid to Council's Investment Policy document.

This report provides details on the performance for the month of July (**Attachments 1, 2**). The return on investments for the month of July was 0.21% or when annualised approximately 2.52%. This compares very favourably with the AusBond Bank Bill Index of 0.01% for the month and 0.12% when annualised.

**Financial / Resources Implications**

Council is ahead of the annual budget forecast by \$18K at the end of July. There are additional fair value assessments of Floating Rate Notes, however these amounts are excluded from the Operational Performance Ratio.

**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

4.2.3 Ensure Council is financially sustainable and continues to be transparent and accountable

**Consultations****Internal**

Nil

**External**

Imperium Markets Pty Ltd

**Political Donations Disclosure**

Not Applicable.

**Recommendation**

**That Council receive and note the Investment Portfolio report as at 31 July 2020.**

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

**Date of Meeting:** 1 September 2020

**Attachments**

1. Council's Investment Portfolio as at 31 July 2020 – *Page 77*
2. Council's Investment Portfolio Graphs as at 31 July 2020 – *Page 78*

Attachment 1 - Council's Investment Portfolio as at 31 July 2020



Shellharbour City Council Investment Report by Investment Strategy as at 31 July 2020

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

Issuer	Rating	Rate	Opening Balance 30/06/2020	Closing Balance 31/07/2020	Monthly Movement	Maturity
<b>Cash Funds</b>						
NSWTC IM CF	AAA	0.94	314,077	314,315	238	T + 3
Commonwealth Bank	AA-	0.55	8,711,919	6,817,928	- 1,893,990	T
<b>Senior Bonds</b>						
AMP Bank	BBB+	2.23	2,007,092	-	2,007,092	24/05/2021
Newcastle Permanent	BBB	2.32	1,763,153	1,775,209	12,056	06/02/2023
NAB	AA-	1.85	4,053,704	4,072,860	19,156	26/09/2023
Westpac	AA-	1.86	2,028,632	-	2,028,632	16/11/2023
ANZ Bank	AA-	1.92	4,067,704	4,087,180	19,476	06/12/2023
Commonwealth Bank	AA-	2.03	2,039,992	2,050,590	10,598	11/01/2024
Westpac	AA-	1.79	2,528,290	2,545,638	17,348	16/08/2024
ANZ Bank	AA-	1.58	1,510,389	1,520,705	10,316	29/08/2024
HSBC	AA-	1.75	2,971,548	2,998,698	27,150	27/09/2024
<b>Senior Bond Performance</b>					<b>116,099</b>	*
* Excluding sale / maturity of investments						
<b>Term Deposits</b>						
BOQ	BBB+	3.00	2,500,000	2,500,000	-	20/08/2020
BOQ	BBB+	3.00	1,000,000	1,000,000	-	21/08/2020
Westpac	AA-	3.00	2,000,000	2,000,000	-	04/09/2020
Rabobank Australia Branch	A+	3.00	2,000,000	2,000,000	-	07/09/2020
Westpac	AA-	2.93	5,000,000	5,000,000	-	07/09/2020
NAB	AA-	1.70	1,000,000	1,000,000	-	16/09/2020
ING Direct	A	2.87	5,000,000	5,000,000	-	18/09/2020
ING Direct	A	2.90	4,500,000	4,500,000	-	14/12/2020
Summerland Credit Union	Unrated	3.15	1,000,000	1,000,000	-	14/12/2020
QSBANK	BBB-	3.60	2,000,000	2,000,000	-	01/03/2021
Australian Unity Bank	BBB+	3.10	2,000,000	2,000,000	-	02/03/2021
Bank of Sydney	Unrated	1.70	1,000,000	1,000,000	-	02/03/2021
BOQ	BBB+	3.60	2,000,000	2,000,000	-	03/03/2021
AMP Bank	BBB+	1.60	1,500,000	1,500,000	-	25/05/2021
Auswide Bank	BBB	2.22	3,000,000	3,000,000	-	18/06/2021
Westpac	AA-	2.22	3,000,000	3,000,000	-	21/06/2021
Bananacoast Community CU	BBB	2.35	2,000,000	2,000,000	-	28/06/2021
St George Bank	AA-	2.30	5,000,000	5,000,000	-	28/06/2021
Westpac	AA-	1.70	1,000,000	1,000,000	-	16/09/2021
Australian Military Bank	BBB+	1.78	2,000,000	2,000,000	-	29/11/2021
Rabobank Australia Branch	A+	3.00	2,000,000	2,000,000	-	13/12/2021
Newcastle Permanent	BBB	3.05	1,500,000	1,500,000	-	24/01/2022
Police Credit Union SA	Unrated	2.99	1,000,000	1,000,000	-	25/02/2022
Police Credit Union SA	Unrated	2.99	1,000,000	1,000,000	-	25/02/2022
AMP Bank	BBB+	2.75	2,500,000	2,500,000	-	11/03/2022
Newcastle Permanent	BBB	2.90	3,500,000	3,500,000	-	14/03/2022
St George Bank	AA-	2.30	2,000,000	2,000,000	-	04/07/2022
Westpac	AA-	2.03	3,000,000	3,000,000	-	05/09/2022
Police Credit Union SA	Unrated	1.64	2,000,000	2,000,000	-	02/03/2023
BOQ	BBB+	2.30	2,000,000	2,000,000	-	19/06/2023
Rabobank Australia Branch	A+	3.40	1,000,000	1,000,000	-	04/09/2023
BOQ	BBB+	1.85	2,000,000	2,000,000	-	15/03/2025
<b>Total Shellharbour City Council Portfolio</b>			<b>103,996,500</b>	<b>98,183,122</b>	<b>-5,813,378</b>	

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

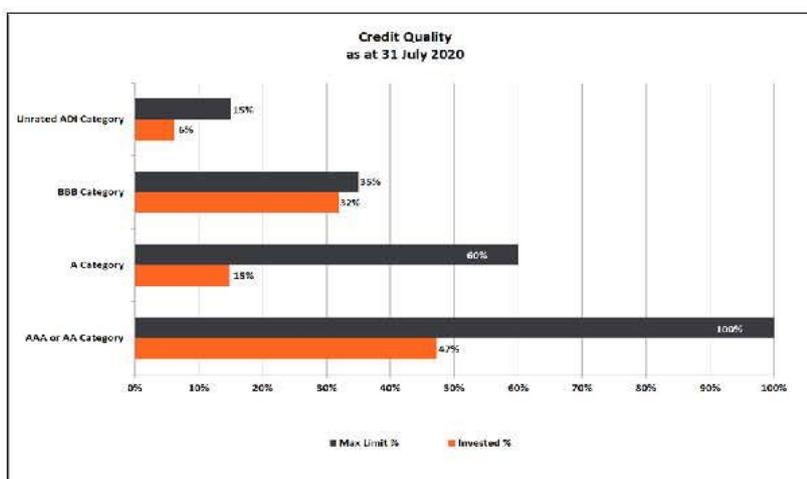
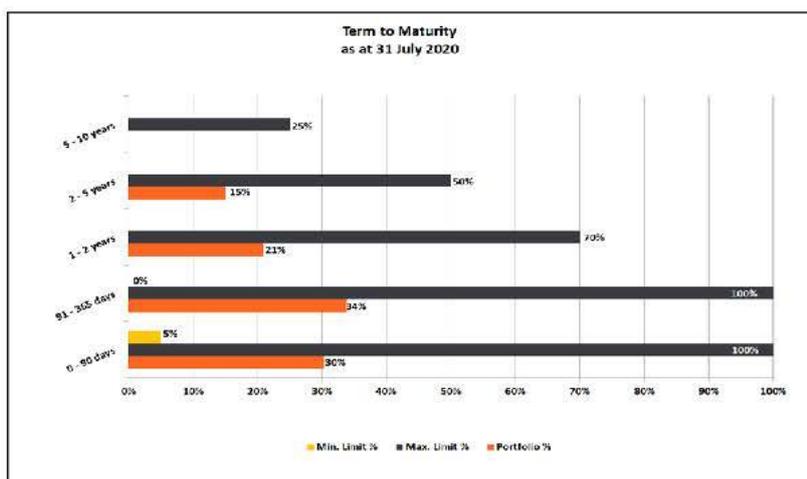
\* Council's unrestricted cash balance position as at 30 June 2019 was \$32.864M.

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 31 July 2020**

Performance	1 month	3 months	6 months	FYTD	1 year	2 years
Official Cash Rate	0.02%	0.06%	0.16%	0.02%	0.58%	1.01%
AusBond Bank Bill Index	0.01%	0.03%	0.25%	0.01%	0.73%	1.32%
Council's T/D Portfolio	0.22%	0.65%	1.33%	0.22%	2.73%	2.99%
Council's FRN Portfolio	0.20%	0.43%	0.89%	0.20%	1.92%	2.50%
Council's Portfolio <sup>^</sup>	0.21%	0.60%	1.22%	0.21%	2.54%	2.93%
Outperformance	0.20%	0.57%	0.97%	0.20%	1.81%	1.61%

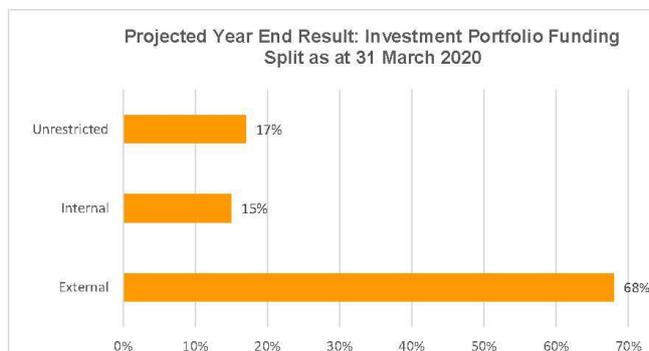
<sup>^</sup>Total portfolio performance excludes Council's cash account holdings. Overall returns would be lower if cash was included.



**Counterparty**

Compliant	Issuer	Rating	Invested (%)	Max. Limit (%)
✓	NSW TCorp	AAA	0.32%	40.00%
✓	ANZ	AA-	5.71%	25.00%
✓	CBA	AA-	3.05%	25.00%
✓	HSBC	AA-	5.17%	25.00%
✓	NAB	AA-	9.03%	25.00%
✓	Westpac (SGB)	AA-	23.98%	25.00%
✓	Rabobank Aus.	A+	5.09%	15.00%
✓	ING	A	9.68%	15.00%
✓	AMP	BBB+	4.07%	10.00%
✓	Aus. Military Bank	BBB+	2.04%	10.00%
✓	BoQ	BBB+	9.68%	10.00%
✓	Australian Unity	BBB	2.04%	10.00%
✓	Auswide Bank	BBB	3.06%	10.00%
✓	Newcastle PBS	BBB	6.90%	10.00%
✓	P&N Bank	BBB	2.04%	10.00%
✓	QBank	BBB-	2.04%	10.00%
✓	Bank of Sydney	Unrated	1.02%	10.00%
✓	Police CU SA	Unrated	4.07%	10.00%
✓	Summerland CU	Unrated	1.02%	10.00%
			<b>100.00%</b>	

\* In accordance with the Australian Government Guarantee Scheme introduced in 2008, the Commonwealth Government guarantees \$0.25m against large deposits for each Authorised Deposit-Taking Institution.



**Breakdown by Asset Type**



**10.2.7 Shell Cove Progress Report to 23 August 2020 (11486163)**

To the General Manager

**Directorate:** Council Sustainability

**Group:** Shell Cove

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

**Author:** Kevin James – Manager Shell Cove

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## Summary

The purpose of this report is to provide Council with the recent progress of the Shell Cove Project from 1 June 2020 to 23 August 2020.

Key activities and highlights were:

- A. There are 14 lots and 16 houses available to the public, as at 23 August 2020.
- B. 18 sales occurred in the period.
- C. 2 sales releases occurred, being 18 lots and 5 houses ('off the plan').
- D. Following significant rainfall events in late July and then early August, the inner and outer harbours were filled with stormwater to levels above the typical high tide levels. With the approval of the EPA, the harbours' waters were treated and large silenced pumps deployed to pump out the water. After the harbours are pumped dry, constructions works can resume but the development program has been affected by up to 10 weeks, with the permanent harbour flooding now targeted for late December 2020.
- E. The Harbour construction works were limited over the last 3 months because the contractor was waiting on the removal of the eastern surcharge mounds – now completed. The wet weather impacts have delayed the final excavation of the outer harbour basin and the completion of the outer harbour facilities (the heavy duty platform and travel lift rails at the harbour edge).

The removal of the sand plug across the entrance channel is expected to occur in March 2021, subject to satisfaction of the requirements in the Environmental Protection Licence (EPL).

A marina contract for the pontoons, gangways and services was awarded to Bellingham Marine Australia Pty Ltd which are the largest and most experienced contractor in the Australian marine industry.

- F. A public opening of the Shell Cove Harbour and the Shellharbour Marina is now planned for late July 2021.

- G. The Project had a cash deficit of \$8,087,999 as at 30 July 2020.
- H. The expected sales income from lots that have not yet settled, called the Sales Due Value, is in the order of \$121.2 million. It is an asset of the Project.
- I. 86.8% of all employment on the works by the Shell Cove Project over the last 3 months to 31 July 2020 were residents of the Illawarra region.

This report seeks a Council resolution to receive and note the report and to resolve to affix the Seal on plans and documents.

## Background

### Timing of the Project

Residential subdivision, and associated major works and services are continuing in accordance with the program that is under continuous review and adjustment.

Harbour construction works are continuing in accordance with the program that is under continuous review and adjustment. The development program has the middle of 2021 when the first boats will be able to moor in the Shellharbour Marina.

### Residential Subdivision

#### Sales

There were 2 sale releases during the period from 1 June 2020 to 23 August 2020:

- 5 houses 'pre-construction' in Precinct A – Stage 58 – on 4 June 2020.
- 18 lots 'pre-construction' in Precinct F – on 11 July 2020.

Shell Cove continued to experience steady but low demands for the land and housing releases, being on par with its competitors. The Project's sales and marketing efforts are under continuous review because of the changing market conditions and COVID-19 restrictions.

The current sales summary, compared to the previous report, is in **Table 1**:

**Table 1 - Sales Summary Comparison**

<b>SALES SUMMARY</b>	<b>23 AUGUST 2020</b>	<b>31 MAY 2020</b>
Total Settled	2,226	2,187
Total Exchanged	82	99
Total Deposit	14	18
<b>TOTAL "SOLD"</b>	<b>2,322</b>	<b>2,304</b>
For Sale	30	25
To be released/not for sale	125	13
<b>TOTAL LOTS</b>	<b>2,477</b>	<b>2,342</b>

There were 18 sales for the period.

### Status of the Precincts

A summary is in **Table 2**:

**Table 2 – Precincts Status**

PRECINCT	NO. OF LOTS	GROSS PROCEEDS (actual or released)
Residential Lots & Houses Stages 1 to 10 (lands outside of The Waterfront)  ➤ Completed & all available sold ➤ Project office lot withheld from sale TOTAL	1,894	\$457,816,581
The Waterfront Precinct A Lots  ➤ Completed TOTAL	58	\$52,545,885
The Waterfront Precinct A Houses  ➤ 3 sites under construction ➤ 21 off-the-plan houses offered for sale ➤ 12 off-the-plan houses not yet for sale TOTAL	33	\$25,445,000
The Waterfront Precinct B1/C1 Lots & Houses  ➤ Completed & all sold TOTAL	221	\$159,508,405
The Waterfront Precinct B2 – Nautilus Apartments  ➤ DA approved ➤ 116 off-the-plan apartments to be offered for sale ➤ 1 off-the-plan services room not yet for sale TOTAL	117	\$0
The Waterfront Precinct D – Town Centre – Lots  ➤ All roads and major lots completed ➤ 5 Main DAs approved TOTAL	5	\$14,843,000

PRECINCT	NO. OF LOTS	GROSS PROCEEDS (actual or released)
The Waterfront Precinct E Lots ➤ Completed TOTAL	58	\$40,705,410
The Waterfront Precinct E Houses ➤ 7 sites completed or under construction ➤ 73 off-the-plan houses offered for sale ➤ 0 off-the-plan houses not yet for sale TOTAL	73	\$65,594,000
The Waterfront Precinct F Lots ➤ DA approved ➤ 18 off-the-plan lots offered for sale ➤ 0 off-the-plan lots not yet for sale TOTAL	18	\$13,120,000

Notes:

1. Gross proceeds for a lot are initially based on listed sales records but are adjusted to actual amounts as the sale progresses to settlement.

Major Construction

Precinct A – Stage 2 subdivision works completed.

Precinct B2/C2 – subdivision bulk earthworks continued.

Precinct E – Stage 3 bridge and wetlands works commenced.

**Financial Status**2019/20 Financial Results (Cash)

The summary for the 2019/20 Financial Year is in **Table 3**:

**Table 3 – 2019/20 Financial Year**

	@ 30 June 2020
Total Income	\$57,597,816
Total Development Costs	(\$63,213,580)
Surplus/(Deficit)	(\$5,615,764)

Note: all figures unaudited

Current Financial Results (Cash)

The summary for the 2020/21 Financial Year to date is in **Table 4**:

**Table 4 – 2020/21 Financial Year to date**

	<b>@ 31 July 2020</b>
Total Income	\$5,728,725
Total Development Costs	(\$6,894,450)
Surplus/(Deficit)	(\$1,165,725)

Note: all figures unaudited

The summary for the Project to date, compared to the previous report, is in **Table 5**:

**Table 5 – Project to date**

	<b>@ 31 July 2020</b>	<b>@ 30 April 2020</b>
Total Income	\$712,021,525	\$684,375,436
Total Development Costs	(\$720,109,524)	(\$703,488,544)
Surplus/(Deficit)	(\$8,087,999)	(\$19,113,108)

Note: all figures unaudited

Income during the report period came from settlements of the former Housing World carpark lots, Precincts A and E1 lots and Stages 51 and 52 houses. Costs mostly involved Boat Harbour and Breakwater civil works, Precincts A, D and E subdivision works, Stage house building, landscaping and the marketing and selling of the lots.

The Project is currently in cash deficit due to the major costs being expended ahead of the receipt of income for that activity. For this reason, the Sales Due Value must be taken into account in assessing the overall financial performance of the Project.

Sales Due Value

The sales due value is defined as the expected sales income from existing and proposed lots (including those with houses) that have not yet settled. These include lots that are:

- available for sale,
- sales with part deposits paid,
- exchanged contracts, and
- withheld for operational and marketing reasons.

This is the unrealised income created from the current and past land subdivisions. It will be received in the future as the lots are settled. It is viewed as an asset of the Project.

The current Sales Due Value is in the order of \$121.2 million.

## **Boat Harbour & Marina**

### Public Opening

A public opening of the Shell Cove Harbour and the Shellharbour Marina is being planned for late July 2021 when the associated land-based services and facilities are completed.

### Extreme Weather Impacts on Harbour

Following significant rainfall events in late July and then early August, the inner and outer harbours were filled with stormwater to levels above the normal high tide levels. The observed water levels at the top of the timber boardwalks – in technical language, RL1.8m. With the approval of the EPA, the harbour waters were treated with flocculant (to allow the sediment to drop to the bottom) and large silenced pumps deployed to pump out the water. The EPA approval allows the pumps to run 24 hours a day, 7 days a week.

The public were informed of these actions through letterbox drops, The Waterfront facebook page and the Project's website.

When the harbours are pumped dry, constructions works can resume but the development program has been affected. A thorough review is underway, but the current understanding is an extension to the program of up to 10 weeks, with the permanent harbour flooding now targeted for late December 2020.

### Harbour

The construction works by Coastwide Civil involve:

- construction of the harbour edges, including concrete walls and rock revetment;
- removal of the access bund separating the inner and outer harbours; and
- timber piling for the jetty and boardwalk.

There are approximately 96% of these works completed.

The extreme weather impacts have delayed the final excavation of the outer harbour basin and the completion of the outer harbour facilities works (the heavy duty platform and travel lift rails at the harbour edge).

The removal of the sand plug across the entrance channel is expected to occur in March 2021, subject to satisfaction of the requirements in the Environmental Protection Licence (EPL).

The recent aerial photographs in **Attachment 1** were taken on 27 July 2020 and show the current status of the works.

### Breakwater

The breakwater (the longer structure) and the groyne (the shorter structure) are completed. There will be no public access until all of the Harbour is completed and handed over to Council.

### Marina Berths

The steel piles for the marina berthing into the inner and outer harbour floors are installed.

By mutual agreement, the balance of the marina contract – pontoons, gangways and services – between Walcon and Australand was terminated. These works were selectively tendered and awarded to Bellingham Marine Australia Pty Ltd (Bellingham). Bellingham are the largest and most experienced contractor in the Australian marine industry. The tender criteria included a focus on the ability to meet the proposed scope and the strict deadline requirements in order to install the pontoons in the Shellharbour Marina by mid-2021.

### Marina Facilities

The delivery of the Marina Services Building is by a public tender that is currently being advertised, and the building will be delivered in 2021. The procurement method reported to Council on 24 September 2019 involving an on-site contractor, did not result in an offer.

The design and the preparation of the development application for the Boatyard Maintenance/Boat Storage Facility approached completion. The method of delivery continued to be investigated, and a date for its construction is yet to be determined.

## **Town Centre**

### Retail

Most of the shops are open, with efforts by Shopping Centres Australia (the owner of the centre) to get the others operational over the coming months.

The public piazza (with its public art and water feature) was completed and opened to the public in June 2020.

Restaurants & Aqua Apartments

The building is under construction by Duffy Kennedy Constructions (DKC) and reached its highest point. Internal fit-out works and facades commenced.

Associated contract works include the basement foundations for the Tavern, the adjacent foreshore, and the main public carpark for the Marina and the Tavern. Currently, it is expected to be opened in May 2021.

Hotel

Oscars Hotels – the successful bidder to build, own and operate the accommodation Hotel at The Waterfront Shell Cove – is waiting on the statutory planning approval of the development application.

Tavern

The construction of the Tavern building by the owner has commenced, following the completion of the early works (the support piling into the Harbour, major retaining walls, the cantilvered concrete floor and the basement shell). Currently, the Tavern is expected to be opened in May 2021.

Library/Community Centre/Visitor Information Centre

The final design has completed but the method of delivery is yet to be finalised.

**Local Labour Content**

The Shell Cove Management Agreement sets minimum performance criteria for all combined Project works of 50% for local labour content.

**Table 6** shows the summary for the statistics provided by Australand for the 3 months ending 31 July 2020:

**Table 6 – Local Labour**

Percentage		Equivalent Person Days	
Local	86.8%	Local	13,539
Other	<u>13.2%</u>	Other	<u>2,059</u>
Total	100%	Total	15,598

These statistics come from the data supplied by contractors to Australand, and the predominant works were on civil subdivision works (various sites), the housing construction (various Stages) and, significantly, the boat harbour civil works.

The cumulative statistic for the Shell Cove Project is 86.5%. Importantly, the Shell Cove Project has significantly exceeded its obligations for all combined Project works.

**Council Seal**

A resolution of Council is required under the Local Government Act 1993 to affix the Seal to a document.

Plan of Easements for Shell Cove Town Centre

When the Town Centre subdivision plan (DP 1254658) was prepared and registered, the final locations of the electrical padmounts and the underground cables within the future main carpark had not been confirmed. These Endeavour Energy assets are to serve the Marina, Marina Services Building, Tavern, Restaurants and Aqua Apartments.

The locations for these electrical services have been agreed – see **Attachment 2** for its location – and the associated works will begin shortly. A Plan of Easements has been approved by Endeavour Energy.

The Shell Cove Management Agreement provides the authorities to permit the creation of Easements over Lot 9009 DP 1254656 and Lots 4027 and 4028 DP 1254658. However, to have the Plan registered at NSW Land Registry Services, Council will need to sign the Plan and 88B Instrument as the owner of the land under its Seal.

Plan of Easements for Bass Point Quarry

There are underground water services to the Bass Point Quarry through Shell Cove. Under the agreement between Council and Hanson (the owners of the Bass Point Quarry), these services can be relocated, removed or upgraded from time to time due to the development of Shell Cove or the Quarry. As part of the current upgrade to the Quarry operations, a new water main is being installed from the eastern end of Harbour Boulevard and within the eastern edge of the future Business Park lot. The new water main replaces the current one that dissects the Business Park land and this is a benefit to Shell Cove – see **Attachment 3** for its location. The existing easement will be released and a new easement created. All costs associated with the works and easements are paid by Hanson.

The Shell Cove Management Agreement provides the authorities to permit the release and creation of Easements over Lot 1092 DP 1254727. However, to have the Plan registered at NSW Land Registry Services, Council will need to sign the Plan and 88B Instrument as the owner of the land under its Seal.

Land Subdivision, Community Scheme Plans & Sale

The Shell Cove Management Agreement provides the authorities to undertake the following activities. However, to have each Plan registered at NSW Land Registry Services, Council will need to sign the Plan and 88B Instrument as the owner of the land under its Seal. Also, to complete the sale and conveyance of each lot or house, Council will need to sign the associated documents as owner of the land under its Seal.

Waterfront Precinct A (Stage 10 Housing)

This is a subdivision plan to create 10 lots for the medium density houses – see **Attachment 4** for its location. The land to be subdivided is Lot 1030 DP1246645.

Waterfront Precinct A (Stage 58 Housing)

This is a subdivision plan to create 10 lots for the medium density houses – see **Attachment 4** for its location. The land to be subdivided is Lot 1060 DP1253523.

Waterfront Precinct A (Stage 59 Housing)

This is a subdivision plan to create 13 lots for the medium density houses – see **Attachment 4** for its location. The land to be subdivided is Lot 1059 DP1253523.

Waterfront Precinct A (Stage 64 Housing)

This is a subdivision plan to create 15 lots for the medium density houses – see **Attachment 4** for its location. The land to be subdivided is Lot 1062 DP1253523.

Waterfront Precinct A (Stage 65 Housing)

This is a subdivision plan to create 5 lots for the medium density houses – see **Attachment 4** for its location. The land to be subdivided is Lot 1063 DP1253523.

Waterfront Precinct A (Stage 66 Housing)

This is a subdivision plan to create 4 lots for the medium density houses – see **Attachment 4** for its location. The land to be subdivided is Lot 1064 DP1253523.

Waterfront Precinct B2/C2 (Stage 1)

This is a subdivision plan to create 8 large lots for future development of apartments and medium density, and residues – see **Attachment 4** for its location. The land to be subdivided is Lot 9009 DP1254656.

Waterfront Precinct B2/C2 (Stage 2)

This is a subdivision plan to create 4 large lots for future development of apartments and medium density – see **Attachment 4** for its location.

The land to be subdivided is proposed Lot 3007 (from the Precinct B2/C2 Stage 1 subdivision).

Waterfront Precinct F & G (Stage 2)

This is a subdivision plan to create 20 lots, including a public reserve and a large residue – see **Attachment 4** for its location. The land to be subdivided is Lots 9006 and 9007 DP1254656.

Waterfront Precinct F & G (Stage 3)

This is a subdivision plan to create 27 lots, including 2 large residues – see **Attachment 4** for its location. The land to be subdivided is proposed Lot 6120 (from the Precinct F & G Stage 2 subdivision).

Actions sought

The recommendations seek Council to sign these documents under Seal.

**Financial / Resources Implications**

It is considered that there are no implications as a consequence of this report.

**Legal and Policy implications**

It is a requirement of the *Local Government Act 1993, as amended*, and its Regulations for there to be a resolution of Council in order to execute the documents under Seal.

The recommendations do not conflict with Council's Policy with regard to this matter of having granted delegated authority to the General Manager to proceed with the Shell Cove Project, subject to all necessary approvals being obtained.

Otherwise, it is considered that there are no additional implications as a consequence of this report.

**Public / Social Impact**

It is considered that there are no impacts as a consequence of this report.

**Link to Community Strategic Plan**

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

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

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

## **Conclusion**

This report summarises the tasks, achievements, activities and results of the Shell Cove Project from 1 June 2020 to 23 August 2020. The key activities and highlights are in the Summary at the start of this report.

To advance the sale of lots and houses to the public, as well as to complete the easement services for the Town Centre and the Bass Point Quarry, the Plans of Subdivision/Easement and associated documents require the Seal of Council to be affixed. It is recommended Council resolve to affix the Seal to these documents.

## **Consultations**

### **Internal**

Nil.

### **External**

- Australand Corporation (NSW) – part of Frasers Property Group
- Sales Team – Frasers Property Group
- Heard McEwan Lawyers
- Hanson – owner of Bass Point Quarry
- Endeavour Energy

### **Political Donations Disclosure**

Not Applicable.

## **Recommendation**

**That:**

- 1. The progress report for the period from 1 June 2020 to 23 August 2020 for the Shell Cove Project be received and noted.**
- 2. The Mayor and the General Manager, or his nominated delegate, be authorised to sign:**
  - a) the Plan of Easements, 88B Instrument and any associated documents over Lot 9009 DP 1254656 and Lots 4027 and 4028 DP 1254658 (Town Centre), under Council Seal;**
  - b) the Plan of Easements, 88B Instrument and any associated documents over Lot 1092 DP 1254727 (Business Park adjacent to the Bass Point Quarry), under Council Seal;**

- c) the Subdivision Plan and 88B Instrument for the subdivision of Lot 1030 DP 1246645, and any documents associated with the sale (including the Transfers) of proposed lots 1101 to 1110 (Precinct A Stage 10 housing), under Council Seal;
- d) the Subdivision Plan and 88B Instrument for the subdivision of Lot 1060 DP1253523, and any documents associated with the sale (including the Transfers) of proposed lots 1301 to 1310 (Precinct A Stage 58 housing), under Council Seal;
- e) the Subdivision Plan and 88B Instrument for the subdivision of Lot 1059 DP1253523, and any documents associated with the sale (including the Transfers) of proposed lots 1201 to 1213 (Precinct A Stage 59 housing), under Council Seal;
- f) the Subdivision Plan and 88B Instrument for the subdivision of Lot 1062 DP1253523, and any documents associated with the sale (including the Transfers) of proposed lots 1401 to 1415 (Precinct A Stage 64 housing), under Council Seal;
- g) the Subdivision Plan and 88B Instrument for the subdivision of Lot 1063 DP1253523, and any documents associated with the sale (including the Transfers) of proposed lots 1501 to 1505 (Precinct A Stage 65 housing), under Council Seal;
- h) the Subdivision Plan and 88B Instrument for the subdivision of Lot 1064 DP1253523, and any documents associated with the sale (including the Transfers) of proposed lots 1601 to 1605 (Precinct A Stage 66 housing), under Council Seal;
- i) the Subdivision Plan and 88B Instrument for the subdivision of Lot 9009 DP 1254656 (Precinct B2/C2 Stage 1), under Council Seal;
- j) the Subdivision Plan and 88B Instrument for the subdivision of proposed Lot 3007 (from Precinct B2/C2 Stage 1 subdivision) (Precinct B2/C2 Stage 2), under Council Seal;
- k) the Subdivision Plan and 88B Instrument for the subdivision of Lots 9006 and 9007 DP1254656, and any documents associated with the sale (including the Transfers) of proposed lots 6101 to 6118 (Precinct F & G Stage 2), under Council Seal; and
- l) the Subdivision Plan and 88B Instrument for the subdivision of proposed Lot 6120 (from Precinct F & G Stage 2 subdivision), and any documents associated with the sale (including the Transfers) of proposed lots 7101 to 7124 (Precinct B2/C2 Stage 3), under Council Seal.

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

**Date of Meeting:** 1 September 2020

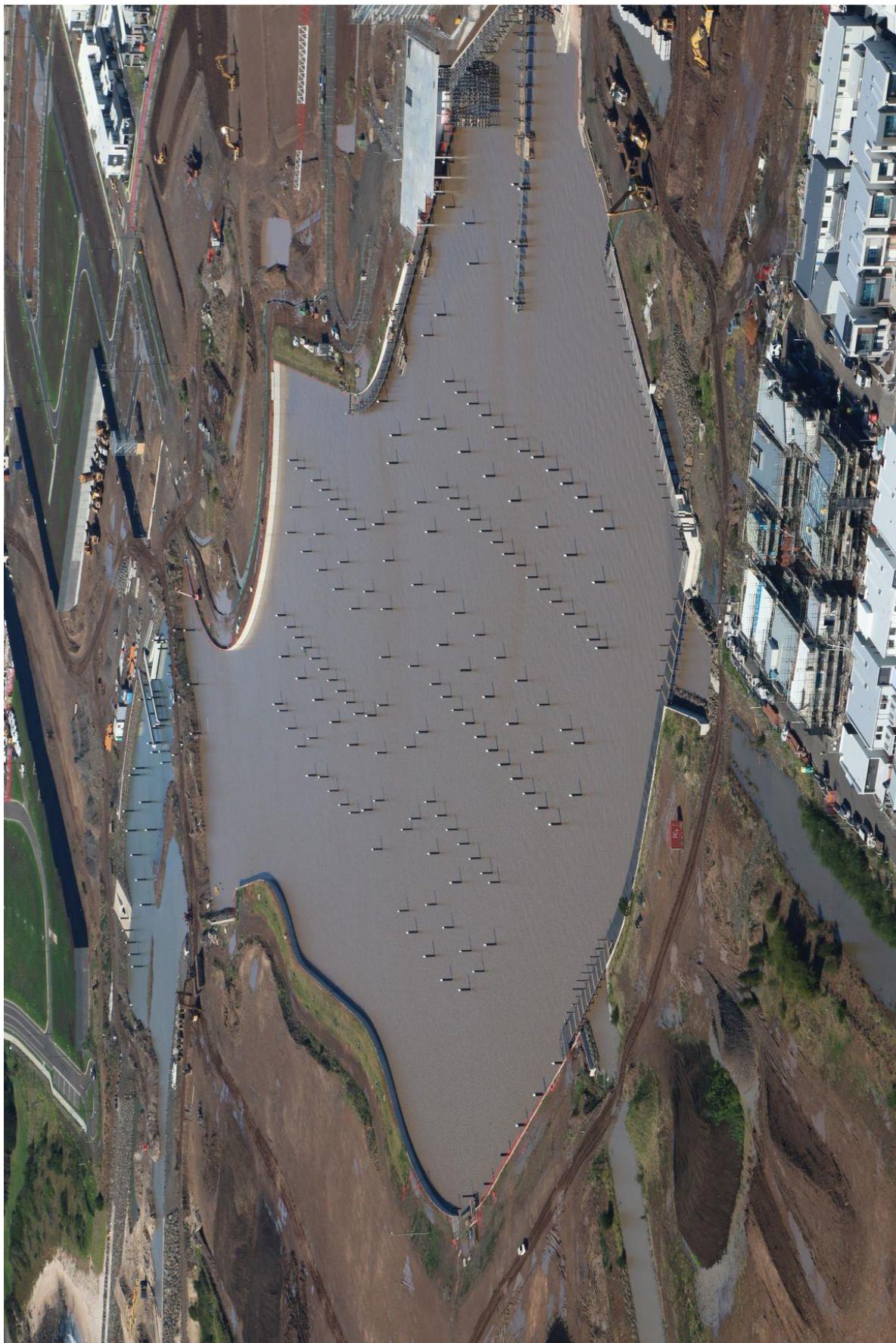
**Attachments**

1. Aerial Photos showing the Harbour & Breakwater Works- *Page 94*
2. Location Plan of Endeavour Energy easements – *Page 98*
3. Location Plan of Hanson easements – *Page 99*
4. Location Plan of Precinct A Housing Stages and Precincts B2/C2, F & G Lot Stages – *Page 100*

**Attachment 1 – Aerial Photos showing the Harbour & Breakwater Works**





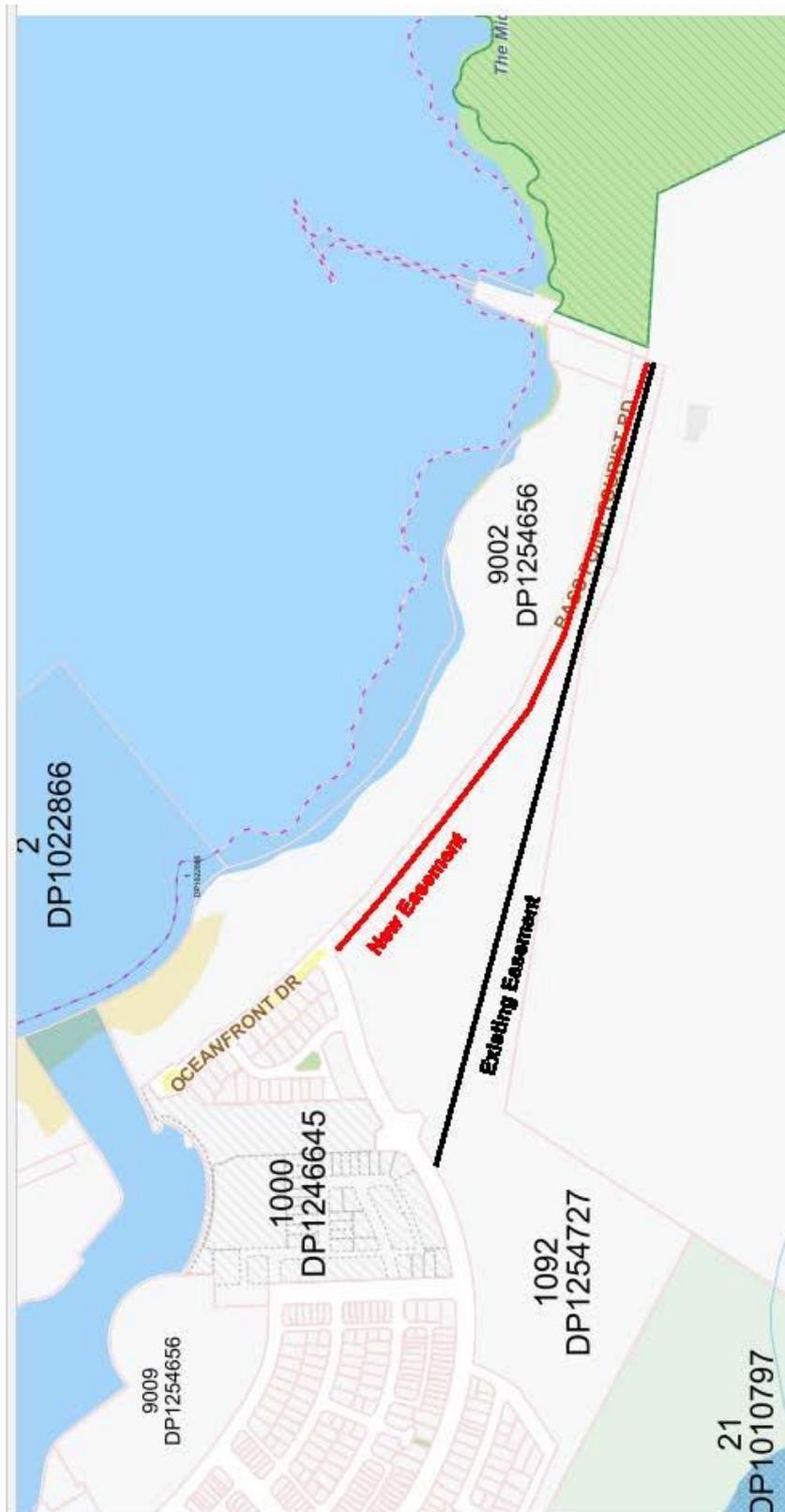




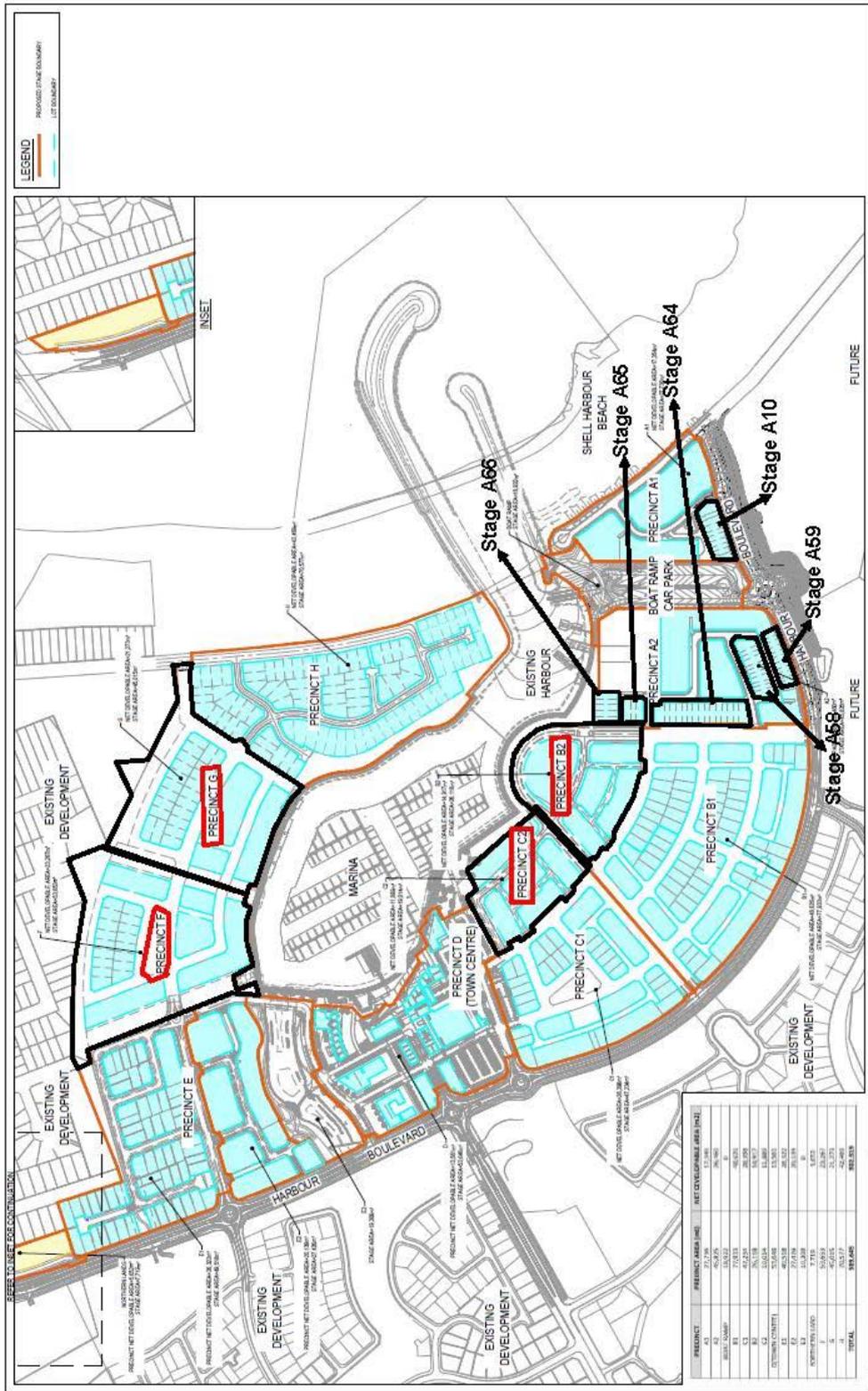
Attachment 2 – Location Plan of Endeavour Energy easements



Attachment 3 – Location Plan of Hanson easements



Attachment 4 – Location Plan of Precinct A Housing Stages and Precincts B2/C2, F and G Lot Stages



**10.2.8 Shell Cove Outer Harbour Facilities (11486273)**

To the General Manager

**Directorate:** Council Sustainability

**Department:** Shell Cove

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

**Author:** Kevin James – Manager Shell Cove

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## Summary

The purpose of this report is to provide an update to Council on the status of the construction of the Shell Cove Outer Harbour Facilities. It is proposed to not call for fresh tenders to complete the installation of outer harbour facilities due to extenuating circumstances, primarily time delays and the ability to provide infrastructure consistent with the inner and outer harbour marina. The report recommends to Council to accept an offer from Contractor 'A' as outlined in the confidential attachment to complete the balance of the Shell Cove Outer Harbour Facilities.

Additionally, the report also seeks Council's approval to increase the budget for this project in order to provide sufficient funds to award the contract. The report also requests authorisation for the General Manager or nominated delegate to accept the offer, approve variations and authorise any documents associated with the contract.

In accordance with Section 10A (2) (d) (i) of the *Local Government Act 1993*, some information will remain confidential as it would, if disclosed, prejudice the commercial position of the person who supplied it. This contract information is provided in a separate attachment (**Attachment 1**).

## Background

The Shell Cove Outer Harbour Facilities package will provide pontoons, gangways and services that operationally service the boat maintenance facility. This is in addition to the Shell Cove Project's funded infrastructure.

It is recommended that Council resolve to not invite fresh tenders for the Outer Harbour Facilities because of extenuating circumstances, as doing so would not attract additional experienced contractors above those in the original tender process. Also advertising tenders would lead to additional costs and time delays in procurement and the opening of the Shellharbour Marina to the community.

Council staff have recommended to accept an updated offer from an experienced contractor that originally tendered, Contractor 'A', as they provide the best value for money, as outlined in the **Attachment 1**.

The preferred Contractor 'A' is capable of undertaking the works. It is recommended that Council accept the offer and award the portion of the contract to Contractor 'A'.

The contractor name and the contract sum will be made public, if Council resolves to accept the preferred Contractor 'A'.

### **Financial / Resources Implications**

The costs of the works have increased since the original budget was finalised due to an escalation in both construction and insurance costs.

The available budget for the project is currently insufficient to allow the contract to be awarded to Contractor 'A' and a budget increase is required. The additional funding is to be sourced from loan funds. A detailed summary of costs is outlined in **Attachment 1**.

### **Legal and Policy Implications**

The recommendation is to not invite tenders and accept the offer from Contractor 'A' in accordance with the reasons outlined in **Attachment 1**.

### **Public / Social Impact**

The Outer Harbour facilities will provide boat mooring facilities and access to maintenance facilities for individuals to moor, repair and refuel boats. The outer harbour facilities will also improve current offerings for emergency service operations and improve the boating experience for the many users.

### **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

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.

Strategy: 3.2.2 Create, promote and maintain local business, job, investment and lifestyle opportunities

## **Consultations**

### **Internal**

Director Amenity and Assets  
Shell Cove Engineer  
Acting Chief Financial Officer

### **External**

Australand Corporation (NSW) – part of Frasers Property Group

### **Political Donations Disclosure**

Nil

## **Recommendation**

### **That Council:**

- 1. approve additional funding as recommended in the Confidential Attachment for the Shell Cove Outer Harbour Facilities and identify adjustments to the budget at the next Quarterly review.**
- 2. in accordance with Section 55(3)(i) of the *Local Government Act 1993*, do not invite tenders for the Shell Cove Outer Harbour Facilities as a satisfactory result would not be achieved due to the following extenuating circumstances:**
  - a) responsibility for the pontoon, gangway and associated services in relation to quality of construction and liability for the works, remain with the principal contract.**
  - b) time and cost savings can be made by avoiding duplication of contractor establishment costs, re-establishing environmental controls, principal contractor requirements, management and administration of approvals that will benefit earlier access to the facilities by the community.**
  - c) a comparable tender was recently awarded to an experienced contractor.**
- 3. accept the offer from Contractor 'A' for the portion of Shell Cove Outer Harbour Facilities, on terms consistent with the recently awarded Marina contract by the Shell Cove Project.**
- 4. authorise the General Manager, or his nominated delegate, to authorise and sign the acceptance of the offer, variations and associated documents on behalf of Shellharbour City Council for the Shell Cove Outer Harbour Facilities.**

5. in accordance with the ***Government Information (Public Access) Act 2009*** that the name of the successful contractor and amount payable under the contract be made public.

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

**Date of Meeting:** 1 September 2020

**Attachments**

1. Confidential Memo – Shell Cove Outer Harbour Facilities – *under separate cover*

**10.2.9 Tender 2020/23 – Management and Operation of Shellharbour Beachside Holiday Park (11487505)**

To the General Manager

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

**Manager:** Trevor James – Manager Business and Investment  
**Author:** Jim Roberts – Manager Procurement and Supply

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## Summary

The purpose of this report is to advise Council of the tender process for the Management and Operation of Shellharbour Beachside Holiday Park (Tender No. 2020/23) and to seek a resolution to decline to accept any of the tender submissions and enter into negotiations with a view to entering into a contract.

In accordance with Section 10A (2)(d)(i) of the Local Government Act 1993, some information will remain confidential as it would, if disclosed, prejudice the commercial position of the person who supplied it. This information will be considered in a separate confidential attachment (**Attachment 1**).

## Background

The current Shellharbour Beachside Holiday Park Managers have given notice and shall not be taking up the option of a further one (1) year extension. The current operators have improved the Holiday Park, occupancy rates have continued to build and Council appreciates their commitment to deliver the services over the last four years of their contract. As a result of the current managers leaving, a public tender for the management of the Holiday Park was advertised on 28 July 2020 and closed on 18 August 2020. Five tender submissions were received from those outlined below;

1. Belgravia Leisure
2. M & P Harrod
3. NRMA Parks and Resorts
4. Secura Lifestyle
5. The Y NSW (YMCA)

Based on the bid responses, this report recommends the Council not accept the tenders and negotiate offers. It is not recommended to invite fresh tenders as it is unlikely there would be additional suitable service providers over and above those that have submitted a tender. It is in the best interest of Council to negotiate to ensure a satisfactory result for the community and the business.

**Financial / Resources Implications**

Declining of all tenders has no immediate financial or resource implications. The negotiation process will ensure the best value for money outcome for Council.

**Legal and Policy implications**

The tender process was conducted in accordance with the requirement set out in the Local Government Act 1993, the Local Government (General) Regulation 2005, Tendering Guidelines for NSW Local Government and Council's Procurement Policy and Procedures.

**Public / Social Impact**

Nil

**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: 3.3 Welcomes, engages and attracts visitors

Strategy: 3.3.1 Promote our City as a tourist destination of choice

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

Strategy: 4.2.3 Ensure Council is financially sustainable and continues to be transparent and accountable

**Consultations****Internal**

Manager The Links Shell Cove  
Management Accountant

**External**

Nil

**Political Donations Disclosure**

Not Applicable

**Recommendation**

**That:**

- 1. Council, in accordance with Section 178 of the Local Government (General) Regulation 2005, decline all tenders for the Shellharbour Beachside Holiday Park (Tender No. 2020/23).**
- 2. Council not invite fresh tenders or applications as doing so would not attract additional suitable service providers over and above those that have submitted a tender.**
- 3. Council enter into negotiations with any person with a view to entering into a contract in relation to the subject matter of the tender. Entering into negotiations will allow consideration of alternate offers and provide the opportunity to achieve the most advantageous result for Council and the community.**
- 4. Council delegate to the General Manager or his nominated delegate the authority to finalise negotiations for contract 2020/23 – Management and Operation of Shellharbour Beachside Holiday Park.**
- 5. Council authorise the General Manager or his nominated delegate to sign the Letter of Award, execute the contract, approve variations and authorise any associated documents for the contract.**
- 6. Council be informed of the outcome of the negotiations and successful contractor that will enter into the contract.**

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

**Date of Meeting:** 1 September 2020

**Attachments**

1. Confidential Memo – Tender Evaluation Summary Tender 2020/23 Management and Operation of Shellharbour Beachside Holiday Park – *under separate cover*

## 10.3 Community and Customers Directorate

### 10.3.1 Public Art Advisory Panel (11485955)

To the General Manager

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

**Manager:** Kathryn Baget-Juleff - Group Manager Community Connections  
**Author:** Carmelina Nunnari - Acting Arts and Cultural Development Officer

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## Summary

The purpose of this report is to seek Council endorsement to establish a Public Art Advisory Panel (PAAP) under the framework of the *Public Art Advisory Panel Guidelines (Attachment 1)*. The development of a PAAP is one of the actions of the recently endorsed Public Art Strategy. The PAAP will assist Council in the assessment and development of future public art commissions and programs.

## Background

The Public Art Strategy 2020-2025 was adopted by Council in April 2020. The strategy includes an action plan to ensure Shellharbour City Council is equipped to provide the best public art practice for the benefit of our community, customers and visitors. The strategy includes the initiation of a *Public Art Reference Group*. Following engagement with internal and external stakeholders, it was decided to set up the group as the Public Art Advisory Panel as this is more in line with recent industry terminology.

In order to ensure public art is commissioned and assessed in line with best practice, contemporary industry standards, the establishment of a Public Art Advisory Panel (PAAP), is a priority action. The PAAP will also assist Council to develop guidelines for the management and maintenance of its public art collection and will establish a technical panel made up of Councillor delegates, Council staff and industry (technical) representatives.

Furthermore, the experience and expertise of the PAAP will assist to determine the level of success to a variety of qualitative measures, including:

- An increase in the number of high-quality public art projects and initiatives
- More vibrant town centres and open spaces throughout the City
- An increase in the number and diversity of creative initiatives integrated into our cultural and community events
- Improvement in the way public art projects are integrated into Council-led capital works projects

- An increase in the number and quality of public art in new developments
- Artwork acquisition processes model best practice guidelines
- Improved management and maintenance of the public art collection

**Financial / Resources Implications**

The PAAP will be facilitated by Council's Art and Cultural Development Officer and Manager Community Engagement and Activation. Other Council staff will be invited to attend as appropriate.

The panel will meet as required. Meeting Minutes will be taken and distributed to the panel members and representatives.

Council funds Public Art through its Capital Works Program, development contributions and a small amount from the operational budgets of both Arts and Cultural Development and asset management programs.

**Legal and Policy implications**

Members of the Advisory Panel will comply with Council's Code of Conduct, the PAAP Guidelines and other relevant Council policies.

A formal review of the Public Arts Policy will be undertaken as part of the actions of the Public Art Strategy. This revised policy will include, and outline, the aims of the PAAP. The Advisory Panel will provide independent advice and make recommendations on the implementation of the Public Art Strategy and the acquisition and management of public art projects in Shellharbour.

**Public / Social Impact**

Community members who are part of the PAAP have a vital role in providing advice and influence towards acquisition processes. This will also strengthen relationships with other professionals and businesses such as the University of Wollongong, TAFE and other cultural societies.

Public Art has significant benefits to communities, local businesses and tourism. Public Art encourages people to engage more deeply with place, its people and its unique stories. Art stimulates expression, provokes emotions and celebrates the creativity and skill of artists, while encouraging the public to discover their own capacity for exploration and imagination.

**Link to Community Strategic Plan**

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

Objective: 1.1 Our city is vibrant, safe, creative and inclusive

Strategy: 1.1.5 Nurture a creative community participating in arts and cultural activities

Objective: 4.1 Our city is 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**

Executive Manager, Council Services  
Manager Business and Investment  
Management Accountant  
Tourism Manager  
Asset Planning Manager  
Manager Planning  
Group Manager Asset Strategy

### **External**

Tweed Shire Council  
Byron Bay Council  
City of Greater Dandenong

### **Political Donations Disclosure**

Not Applicable

## **Recommendation**

### **That Council:**

- 1. endorse the establishment of the Public Art Advisory Panel under the framework of the Public Art Advisory Panel Guidelines (Attachment 1).**
- 2. elect Councillor Representatives to the Public Art Advisory Panel at the Extraordinary meeting on 29 September 2020 with the elections from Council Committees, Working Parties and Outside Organisations.**

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

**Date of Meeting:** 1 September 2020

### **Attachments**

1. Public Art Advisory Panel (PAAP) Guidelines – *Page 111*

**Attachment 1 - Public Art Advisory Panel (PAAP) Guidelines**

**August 2020**

Shellharbour City Council  
Public Art Advisory Panel (PAAP)  
Guidelines



**Purpose**

Shellharbour City Council plays a key role in the design and enrichment of public spaces and places throughout the City. Council recognises that the implementation of a quality public art plan requires expertise. The Public Art Advisory Panel (PAAP) has been established to support Shellharbour City Council's vision for public art as a mechanism for which to inspire, transform and connect. The panel will assist in the facilitation of effective advocacy, support and planning of public art opportunities that ultimately reflect the unique and diverse characteristics of the City. In addition, the panel will articulate an overarching message: *Public Art is for Everyone*.

**Objectives**

The objectives of the PAAP are to:

- make recommendations on applications, expressions of interest and/or proposals for public art with consideration for issues such as artistic merit, technical detail, suitability, public safety and consultation.
- advocate for an increase in the number of high-quality public art projects and initiatives in the City.
- seek opportunities that promote vibrant town centres and open spaces throughout the City.
- support creative and community arts initiatives and local artists.
- support for the integration of public art projects into Council-led capital works projects.
- provide advice and influence towards artwork acquisition processes, management and maintenance of the public art collection.
- ensure that the heritage and culture of Shellharbour's Aboriginal and Torres Strait Islander people are recognised, respected and celebrated in public spaces.

**Membership**

Membership of the PAAP is to be made up of dedicated professionals with appropriate and diverse expertise. It may include representation from the University of Wollongong, TAFE, professional designers, artists and curators and other community members with technical expertise.

Expert advice may be sought out and requested as required, based on experience and knowledge relevant to the proposal. The Advisory Panel members provide informed advice on matters relating to the proposed commissioning and acquisition of permanent public for Shellharbour City.

As a basis the panel will be made up of:

- 2 Councillor Representatives
- 2 Community Representatives
- 1 Community Youth Representative (12-24 years)
- Staff in attendance:
  - Manager Community Engagement and Activation
  - Arts and Cultural Development Officer
  - Asset Planning Manager
  - Other Council staff, as required

Selection of community members will be through an Expression of Interest. The panel members will principally advocate, on behalf of the community, for an increase in public art through

commission and acquisition and will advise on matters of technical viability, artistic merit and promotion of specific art –forms.

The PAAP will not have delegation to commit Council funds or make formal decisions on behalf of Council.

### **Terms of Appointment**

- Councillor Delegates will be elected each year at the Extraordinary September Council Meeting.
- Community Representatives will be elected for a two-year term following an Expression of Interest process. All Community Representative positions will be vacated every two years.
- Community Representative appointments will be reported to Council for endorsement.
- Membership will be periodically reviewed to align with Local Government Elections and the appointments of the panel members to other committees of council.
- Representation will be recommended through a merits-based assessment with a focus on gaining diversity of community viewpoints and local knowledge from across the city for the Advisory Panel to receive advice from different perspectives that exist within the community. Priority will be given to Community Representatives living within Shellharbour City.

### **Casual Vacancies**

Casual vacancies may be filled by application to be considered by the staff facilitator.

### **Meets**

The PAAP meets quarterly, or as required, to assist Council implement the vision and goals of the Public Arts Strategy and the framework outlined in the Public Art Policy.

### **Notice**

Notice of the PAAP meeting must be sent to members no less than 7 days before the panel meeting date.

### **Meeting Protocol**

Meetings will be held in the Shellharbour Civic Centre, or at a suitable alternate venue if, for any reason, the Civic Centre is not available. Meeting notes will be taken by a staff member.

### **Code of Conduct**

Members of the Advisory Panel will:

- Comply with Councils Code of Conduct – PAAP members must read and sign a declaration on the Code of Conduct following induction.
- Work collaboratively as part of the PAAP;
- Work in an open and honest fashion, and with respect for each other;
- Understand that at all times it will be necessary to listen to and negotiate different points of view and perspectives, and to make compromises accordingly;
- Respect each other's opinions and consider the view of each member to be of equal importance;

- Refrain from any form of conduct that may cause a reasonable person unwarranted offence or embarrassment;
- Undertake to fairly present the discussion and information provided at the PAAP to their local communities
- A member who has a pecuniary interest in a matter being considered must disclose the existence and nature of the interest. A member having disclosed a pecuniary interest must not be present at the meeting when the matter is being considered, discussed or voted on.
- A member who has a non-pecuniary interest in a matter being considered at a meeting of the PAAP must disclose the existence and nature of the interest if the member could be influenced, or a reasonable person would perceive that the member could be influenced, by the non-pecuniary interest. A member having disclosed a non-pecuniary interest must not be present at the meeting when the matter is being considered, discussed or voted on.

### **Social Media**

- Social Media refers to website and application platforms that are designed to allow people to share content. Panel members must adhere to copyright, privacy, defamation, contempt of court, discrimination, harassment and other applicable laws. PAAP members must also comply with relevant Council policies including “Digital and Social Media”, “Social Media for Councillors, Committees and Working Group Members” and the Code of Conduct.
- These policies outline guidance on rights and responsibilities in relation to social and digital media. They apply to Council officers, staff, committee members, contractors, volunteers, and other elected officials.
- Abiding by these laws and policies reduces the user’s exposure to security risks

### **Problem Solving**

- If a problem is unresolved or a member has a dispute or complaint, it should first be raised with the staff facilitator who will seek to resolve the matter with the necessary parties.
- Councils Complaints Management policy will be followed.

### **Review**

The guidelines and operation of the PAAP will be reviewed after an initial term of two years, and in line with the community representative membership.

## 10.4 Amenity and Assets Directorate

### 10.4.1 Tender 2020/38 Mary Street North Car Park Renewal (11486326)

To the General Manager

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

**Manager:** Wayde Peterson – Group Manager Asset Strategy  
**Author:** Arvin De Mesa – Project Delivery Officer

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## Summary

The purpose of this report is to inform Council of the tender process for Contract 2020/38 for the renewal of Mary Street north carpark between Mary Street and Wentworth Street Shellharbour Village and to seek a resolution to award contract 2020/38 to Tenderer 'A'. Additionally, this report requests that Council authorises the General Manager or his delegate to sign the Letter of Award and execute the contract and associated documents.

In accordance with Section 10A (2)(d)(i) of the *Local Government Act 1993*, some information will remain confidential as it would, if disclosed, prejudice the commercial position of the person who supplied it. This information will be considered in a separate confidential attachment (**Attachment 1**).

## Background

As part of the 2020/21 Capital Works Program, the northern Mary Street carpark was identified for renewal. The project works will include the renewal of the off street carpark surface through milling and re-sheeting of the existing asphalt pavement, rectification of the existing stormwater drainage system, replacement of the current lighting to meet Australian standards, removal of some trees and landscaping. The project will optimise carpark spaces in accordance with Australian standards to provide approximately a 70% increase in the total number (203 spaces) of perpendicular parking spaces. This will allow the carpark to better service the parking needs of the community, which is in accordance with the Shellharbour Village Town Centre Plan (2014).

Stage 1 of the works are for the western section of the carpark and will commence by mid-September, and Stage 2 provides renewal of the eastern section of the carpark and will immediately commence after Stage 1 is complete, as shown in **Attachment 2**. All works are expected to be completed by mid-December 2020. The contractor and Council will work to minimise disruption to carpark users during construction.

The Mary Street North Carpark Renewal works package was advertised on Tuesday 14 July 2020 via open tender. The request for open tenders closed at 10am on Tuesday 4 August 2020.

Eight tender submissions were received and reviewed by the Tender Assessment Panel (TAP) in accordance with Council's Procurement Policies and Procedures. The eight tender submissions were received from the companies outlined in **Table 1**.

**Table 1:** Tender submissions received (in alphabetical order)

<b>Received Tenders</b>
Affective Service Australia Pty Ltd
Cleary Bros (Bombo) Pty Ltd
Diverse Civil Contracting
Donnelley Civil Pty Ltd
JBG Contractors NSW Pty Ltd
North Shore Paving Co Pty Ltd
Slabco Concreting
Statewide Civil Pty Ltd

Confidential information relating to the assessment of the supplied tenders is contained within **Attachment 1**, including:

1. Non-Price Ranking of Tenders
2. Financial (Price) Ranking of Tenders
3. Final Combined Ranking of Tenders
4. Financial Capacity Assessment

The TAP reviewed the submitted tenders and determined the preferred contractor, Tenderer 'A', was the highest ranked overall and was considered value for money, as outlined in **Attachment 1**.

The preferred contractor, Tenderer 'A' has satisfied the TAP that it can undertake the scope of works described in Contract 2020/38. It is recommended that Council accept the tender and award Contract 2020/38 to Tenderer 'A'. Should Council resolve to accept the recommendations of this report the contractor's name and the contract sum will be made public through Council's contract register.

Alternatively, under Clause 178(3) of the Local Government (General) Regulations 2005, Council can decide not to accept any of the supplied tenders and therefore must, by resolution do one of the following:

- a. Postpone or cancel the proposal for the contract.
- b. Invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details.
- c. Invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,

- d. Invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
- e. Enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
- f. Carry out the requirements of the proposed contract itself.

If Council resolves to enter into negotiations, the resolution must state:

- a. The Council's reasons for declining to invite fresh tenders.
- b. The Council's reasons for determining to enter into negotiations.

### **Financial / Resources Implications**

The project is funded from the Capital Works Program for 2020/21 budget. The tender price offered by Tenderer 'A' is in line with the internal estimate used to establish budget for the scope of the contract. A program level budget of Roads and Carparks provides a total budget of approximately \$2.9M for 2020/21, which also includes other works on road renewals and carparks.

A detailed breakdown of the tender prices and available budget has been included in the confidential **Attachment 1**.

### **Legal and Policy Implications**

The Tender process has been undertaken in accordance with the Local Government Act, Local Government (General) Regulation 2005 (NSW), Part 7 Tendering and Council's Procurement Policy.

The project itself is planned to be carried out on a public reserve by Council as permitted by Division 12 of *NSW State Environmental Planning Policy (Infrastructure) 2007* relating to development without the requirement of consent (as described by the Environmental Planning and Assessment Act 1979) of roads and car parks.

The contract proposed is based on the NSW Government's MW21 standard contract. The MW21 draft contract is designed for government agencies to manage construction contracts valued at up to \$1 million. The relevant contract was provided publicly on Tenderlink when calling for tenders and is also accessible on the NSW Government 'buy' website. The proposed contract contains no confidential conditions that prohibit release of information relating to the contract to Council.

### **Public / Social Impact**

The community will benefit with the renewal of the carpark, especially the customers of business establishments. The newly defined parking spaces and upgraded lighting will improve and maximise the use of the existing area and provide an improved level of public safety.

The project will have a direct impact with several residential houses, apartments, and business establishments in the area during the construction phase of the work. Access to the carpark for nearby residents and businesses will be maintained albeit with temporary through the staged construction works. Staging of works, as noted on the tender, will be required for a portion of the carpark to remain open and available to public while work is carried out on other sections.

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

This report supports 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
- Strategy: 3.1.2 Maintain the City's assets to meet community needs and the delivery of services

### **Consultations**

#### **Internal**

Nil

#### **External**

Illion Australia Pty Ltd  
Businesses and residential properties located adjacent to the carpark

### **Political Donations Disclosure**

Not Applicable

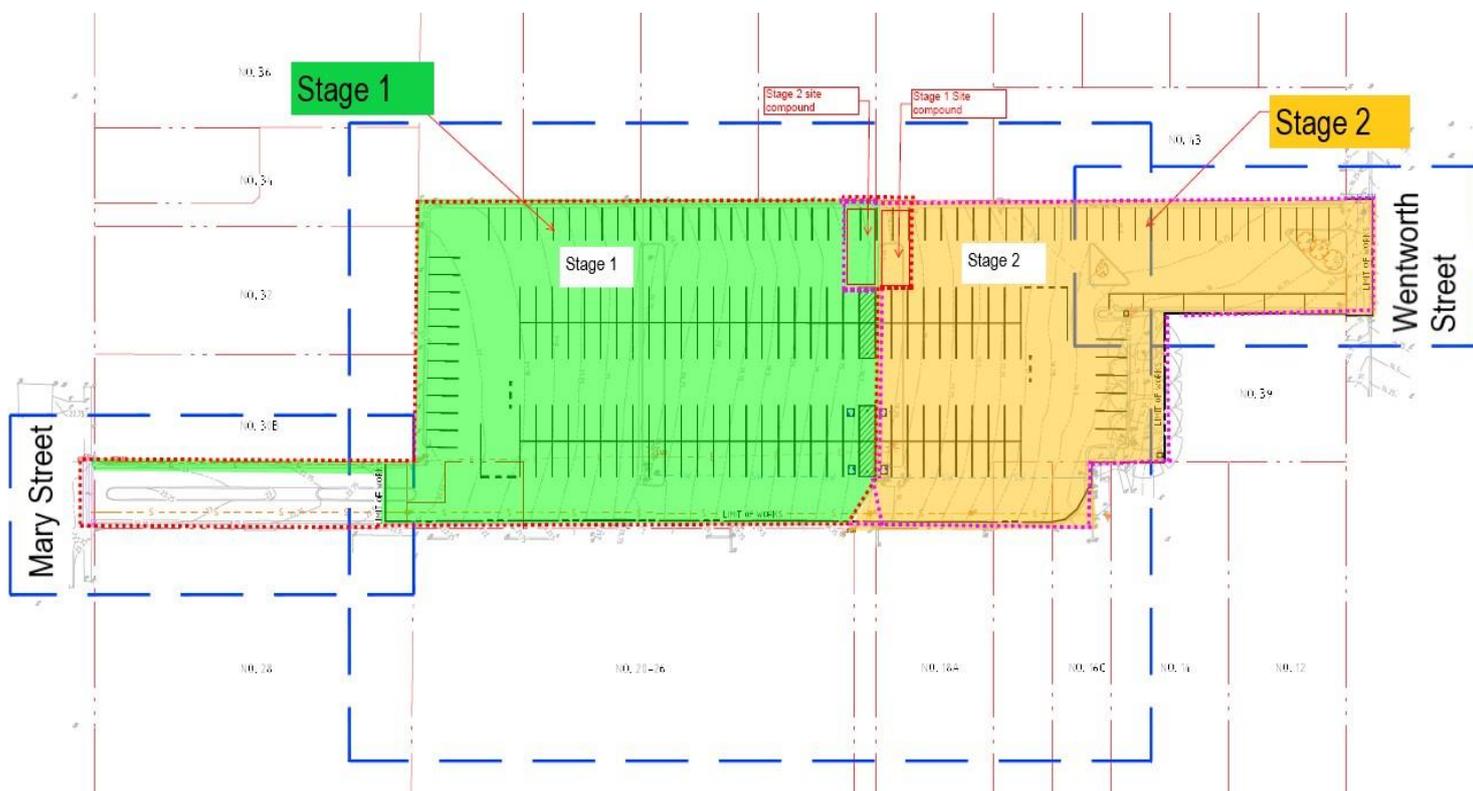
### **Recommendation**

That:

- 1. in accordance with Clause 178 of the Local Government (General) Regulation 2005 (NSW), Council accept the tender offer for Contract 2020/38 from Tenderer 'A' for the Mary Street North Carpark Renewal.**
- 2. Council authorise the General Manager or his nominated delegate to sign the Letter of Award, execute the contract, approve variations and any associated documents for the contract.**
- 3. in accordance with the Government Information (Public Access) Act 2009 that the name of the successful contractor and amount payable under the contract be added to the contracts register.**



Attachment 2 – North Mary Street Carpark Staging of Works



**10.4.2 Update on Informal Parking at Macquarie Park, Albion Park Reserve - Lot 8 DP 244972 and Part of Lot 1 DP 260523 (11486416)**

To the General Manager

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

**Manager:** Wayde Peterson – Group Manager Asset Strategy  
**Author:** Matthew Harvey – Senior Asset Engineer

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## Summary

The purpose of this report is to respond to the following resolution of Council from its meeting conducted on 29 October 2019:

*Given that Lot 8, DP 244972 and part of Lot 1, DP 260523, Macquarie St, Albion Park, collectively known as Macquarie Park, are being used as informal parking areas Council officers shall prepare a report dealing with the advisability of and practicality of placing sufficient bollards in the area to prevent illegal parking on a Council reserve.*

The report concludes that in lieu of the land transaction matter associated with Lot 8, DP 244972 and Lot 1, DP 260523, Macquarie St, Albion Park being unresolved, negotiations are underway between Council and the Diocese to modify the current fencing alignment to prevent illegal parking on a Council Reserve.

## Background

It has been reported and acknowledged that parts of Lot 8, DP 244972 and Lot 1, DP 260523, Macquarie St, Albion Park are currently being used as informal parking areas, both lots are owned by Shellharbour City Council. Further, Lot 1, DP 260523 is divided by a fence that secures private access to Council's land from the adjoining Lot 1, DP 711788 owned by Trustees of the Roman Catholic Church (Diocese of Wollongong).

Council has most recently discussed land transaction matters associated with this location at the 30 June 2020 Council meeting (Agenda Item 10.2.3 Progress of Land Transaction Matters – Catholic Church (Diocese of Wollongong) at Albion Park (11453369)). This report has been prepared separate to the ongoing land transaction matter.

Negotiations are currently underway between the Diocese of Wollongong and Council for the existing fencing installed by the school on Council land to be removed, and new fencing of the same palisade style to be installed along the property boundary. This would be at the Diocese's cost. The proposed arrangement is shown in **Attachment 1**.

Should the proposed fencing works be carried out, vehicles would be unable to traverse directly onto Council land. It is therefore anticipated that there would be no further need to consider the placing of bollards to resolve this matter. Although, strategically placed bollards could be used if vehicles access Council land directly over the kerb at Macquarie Street.

### **Financial / Resources Implications**

Under the proposed arrangement the Diocese of Wollongong would cover costs associated with the removal of the existing fencing on Council land and installing of a similar rigid palisade style of fencing along the property boundary.

### **Legal and Policy Implications**

The proposed fence modifications are consistent with the following sections of legislation.

Chapter 7 Part 2 Division 1 Section 124 Clause 7 of the *Local Government Act 1993* states that Council may order the owner or occupier of land to fence land where public health, safety or convenience renders it necessary or expedient to do so and there is no adequate fence between the land and a public space

Furthermore, under Part 4, Section 25 of the *Dividing Fences Act 1991*, the Act does not operate to impose any liability, or to confer any rights, with respect to dividing fences on a council of a local government area for the purposes of a public reserve, public park or such other public purposes as may be prescribed.

### **Public / Social Impact**

It would be expected that the implementation of this agreement would increase the demand for street parking on Macquarie Street. Moreover, individuals who currently elect to illegally park on Council's land will be required to find alternative parking.

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

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

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

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



**Attachment 1 – Fence alignment between Council and the Diocese of Wollongong on Macquarie Street, Albion Park**



**11. Committee Recommendations****11.1 Recommendations from the Aboriginal Advisory Committee Meeting held 4 August 2020 recommended for adoption.**

That the Recommendations from the Aboriginal Advisory Committee Meeting held 4 August 2020 be adopted.

**11.2 Recommendations from the Traffic Committee Meeting held 5 August 2020 recommended for adoption.**

That the Recommendations from the Traffic Committee Meeting held 5 August 2020 be adopted.

**12. Items for Information****12.1 Items for Information Responses to Questions Taken on Notice (11485492)**

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**12.1.1 Question on Notice**

Council Meeting 11 August 2020 – Item 10.1.2 – Your Ideas, Our Actions – Fourth Quarter Review of the Delivery Program and Operational Plan 2019-2020 (11475491)

Councillor Moran asked if he could receive information on whether Council has an idea of the number of enforcement actions made regarding environmental issues for example developers for not installing silt curtains around sites correctly. The General Manager took the Question on Notice.

**Response**

Council has conducted numerous investigations into non-compliance with sediment control measures across building sites. On average, approximately 10 sites are reported or proactively addressed per month, which are mainly minor breaches where sediment control measures (silt curtains) exist, but need to be repaired.

Verbal directions are being given to resolve most of these matters that require improved controls. Council escalate matters to a *Show Cause Notice* for breaches that are likely to contribute to water pollution or that pose an unacceptable risk to person and property. These *Show Cause* actions may result in written warnings and/or fines.

In the 2019/2020 financial year, Council staff issued four penalty notices in relation to non-compliance with sediment control.

**Responsible Manager:** Mark Miller, Manager Compliance and Regulation

**Date of Meeting:** 1 September 2020

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

Nil

**14. Notices of Motion****15. Questions on Notice (must be submitted in writing)****16. Urgent Business****17. Confidential Business (Committee of the Whole in Closed Session)**

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

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

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

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

**17.1 The Waterfront Shell Cove Land Purchase Option No. 9 (11486193)****Reason for Confidentiality**

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

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

Discussion of this item in any open meeting or briefing of Council would be contrary to the public interest, as this consideration has implications for the commercial, private interests of Council's associate in the Management Agreement. Council is considering its options for acquisition or divestment of land that is part of the Harbour Land defined in the Management Agreement, being residential, retail and commercial precincts of The Waterfront, Shell Cove.

**Declassification of this Report**

The report will be declassified upon the completion of all sales of the residential lots in Precincts D1, D2 and G.

**17.2 General Manager's Performance – Twelve Month Review 2019/20****Reason for Confidentiality**

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

- (a) personnel matters concerning particular individuals

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

**Declassification of this Report**

The report will not be declassified.

- 18. Committee of the Whole in Closed Session (Closed to the Public):  
Adjournment**
  
- 19. Committee of the Whole in Closed Session: Consideration of Adoption of  
Decisions Reached in Closed Session**
  
- 20. Consideration of Motions to Declassify Reports Considered in Closed  
Session**