



BUSINESS PAPER

Notice is hereby given in accordance with the *Local Government Act 1993* and *Local Government (General) Regulation 2005* of the below mentioned meeting.

Ordinary Council Meeting

Tuesday, 13 December 2022

Commencing at 6:30PM

Shellharbour Civic Centre

Council Chambers

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1. Acknowledgement to Country

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

Webcasting Statement

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 if Council receive any registrations for Addresses to Council this 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.

Please ensure that mobile phones and other electronic devices are turned off or are in silent mode for the duration of the meeting.

In the event of an emergency, please evacuate the building using the nearest exit and follow the instructions given by the wardens. Do not use the lifts.

Statement of Ethical Obligations

The Mayor and Councillors are reminded of their Oath/Affirmation of office made under Section 233A of the Local Government Act 1993 and their obligations under Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

2. Apologies**3. Leave of Absence**

4. Confirmation of Minutes

4.1 Ordinary Council Meeting 29 November 2022

That the Minutes of the Ordinary Council Meeting held on 29 November 2022 as circulated be taken as read and confirmed as a correct record of proceedings.

5. Disclosures of Interest

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

6. Condolences

7. Mayoral Statements / Reports / Presentations

8. Mayoral Minutes

9. Councillors Statements / Reports

10. Reports**10.1 Chief Executive Officer****10.1.1 Christmas and New Year Closure of Council Operations 2022 – 2023
(11963397)**

To the Mayor and Councillors

Directorate: Chief Executive Officer

Group: Council Services

Manager: Flora Lepouras – Executive Manager / Public Officer

Author: Lisa Davey – Governance Manager

Summary

The purpose of this report is to advise of Council's operations and essential services for the 2022 Christmas and 2023 New Year period.

Background

In October 2000 Council resolved that Council operations close down, other than essential services, during the Christmas and New Year period and this has operated successfully from this date.

Council's corporate operations, other than essential services, will be closed for the Christmas and New Year period from 4.30pm Friday 23 December 2022 to Tuesday 3 January 2023. Council's normal operations will recommence Tuesday 3 January 2023.

Council will also be closing its operations from 12.00pm on 16 December 2022 for the staff Christmas function. The Dunmore Recycling & Waste Disposal Depot will be closed from 11.00am on 16 December 2022, however, the site will provide access for kerbside bin collection trucks until the day's kerbside services are complete.

The closure of Council's facilities and services for the Christmas and New Year period are outlined in **Table 1**. These dates are current as at the date of this report, and any changes to operations needed will be communicated to the Councillors and the community via Council's website.

Table 1 – Closure of Council’s Facilities and Services

Facilities and Services	Closure Dates
Shellharbour Civic Centre	Closed from 4.30pm Friday 23 December 2022 Re-opens 8.30am Tuesday 3 January 2023
Oak Flats Depot	Gates closed from 4.00 pm Friday 23 December 2022 Re-opens Tuesday 3 January 2023
Nursery	Closed weekends and Public Holidays Open 28, 29 and 30 December 2022
Pools	Open except for Christmas Day (Public holiday hours are 10.00am – 6.00pm)
Beaches	Will be patrolled seven days per week
Shellharbour City Stadium	Closed from Wednesday 21 December 2022 Re-opens Monday 9 January 2023
Dunmore Recycling & Waste Disposal Depot	Closed on Sunday 25 December 2022
City Library	Closed from 5.00pm Friday 23 December 2022 Re-opens 9.30am Tuesday 3 January 2023
Warilla Library	Closed from 5.00pm Friday 23 December 2022 Re-opens 10.00am Tuesday 3 January 2023
Albion Park Library	Closed from 1.00pm Friday 23 December 2022 Re-opens 10.00am Tuesday 3 January 2023
Oak Flats Library	Closed from 5.00pm Thursday 22 December 2022 Re-opens 10.00am Tuesday 3 January 2023
Shellharbour Village Library	Closed from 5.00pm Friday 23 December 2022 Re-opens 10.00am Tuesday 3 January 2023
Shellharbour City Museum	Closed from 5.00pm Friday 23 December 2022 Re-opens 9.30am Tuesday 3 January 2023
Blackbutt Youth Centre	Closed from 6.00pm Thursday 22 December 2022 Re-opens 9.00am Monday 9 January 2023
The Links Shell Cove	Open except for Christmas Day
Shellharbour Airport	No Regular Passenger Transport flights on Christmas Day Airport will be fully operational

Services that have been designated as essential services during the closedown period are outlined in **Table 2**.

Table 2 – Essential Services over the 2022 Christmas / 2023 New Year Period

Essential Services	Further Information
Regulation Officers (Rangers)	Normal roster arrangements will apply during this period, including all public holiday. Normal callout arrangements for after-hours, weekends and public holidays will continue.
Civil maintenance	Response to urgent and emergency issues only
Building maintenance	Response to urgent and emergency issues only
Plant and vehicle maintenance	Response to operational needs only
Cemetery burials	As required
Cleaning	All open spaces and public toilets as per normal summer requirements Council buildings based on bookings and active services
Shell Cove Marina Precinct	Cleaning as per normal operations.
Street sweeping	Large sweeper only
Mower Operators	Seasonal capacity
Parks and Garden maintenance staff	Seasonal capacity
Aquatic Services	Normal roster arrangements as per summer requirements
Dunmore Recycling & Waste Disposal Depot	Normal roster arrangements, except Christmas day. Response to operational needs as required.

Any calls to Council's telephone number 4221 6111 during the closedown period will be diverted to an after-hours service for attention. For emergencies, the community and customers should telephone 000 immediately.

Financial / Resources Implications

All staff leave requirements are taken into account in Council's annual budget.

Legal and Policy implications

Nil

Public / Social Impact

Essential services will still be available to the community so there should be no adverse impact. Any impacts will be minimised through extensive advertising. A notice will be published on Council's website, social media and placed on Council's buildings. Emergency arrangements will be in place, which in the past have proved to be satisfactory.

Any changes to the details outlined in this report will be communicated to the councillors and community.

Link to Community Strategic Plan

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

Objective: 4.2 We have strong leadership

Strategy: 4.2.1 Our Council is transparent and trusted to make decisions that reflect the values of the community collectively

Consultations

Internal

Senior Management Team

External

Nil

Political Donations Disclosure

Not applicable

Recommendation

That Council receive and note the report Christmas and New Year Closure of Council Operations 2022-2023.

Approved for Council's consideration: Flora Lepouras
Executive Manager/Public Officer

Date of Meeting: 13 December 2022

Attachments

Nil

10.1.2 Code of Conduct Complaint Statistics 2021–2022 (11975699)

To the Mayor and Councillors

Directorate: Chief Executive Officer
Group: Council Services

Manager: Flora Lepouras – Executive Manager / Public Officer
Author: Lisa Davey – Governance Manager

Summary

The purpose of this report is to meet Shellharbour City Council's reporting obligations under the "Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW" (the Procedures) in relation to Code of Conduct Complaints Statistics for the period of 1 September 2021 to 31 August 2022.

Background

Under the Procedures, each Council's complaints coordinator must report annually on a range of complaint statistics to their Council and to the Office of Local Government within three months of the end of September. The Model Code of Conduct Complaints Statistics Report for the period 1 September 2021 to 31 August 2022 is attached to this report (**Attachment 1**).

The statistics that are to be reported are set out in clause 11.1 of the Procedures, shown in the extract below.

11.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:

- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September (the reporting period)*
- b) the number of code of conduct complaints referred to a conduct reviewer during the reporting period*
- c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage during the reporting period and the outcome of those complaints*
- d) the number of code of conduct complaints investigated by a conduct reviewer during the reporting period*
- e) without identifying particular matters, the outcome of investigations completed under these procedures during the reporting period*

- f) *the number of matters reviewed by the Office during the reporting period and, without identifying particular matters, the outcome of the reviews, and*
- g) *the total cost of dealing with code of conduct complaints made about councillors and the general manager during the reporting period, including staff costs.*

Financial / Resources Implications

Attachment 1 outlines the financial implications for the period 1 September 2021 to 31 August 2022.

Legal and Policy implications

The Procedures require Council to report to the Office of Local Government and Council on Council's Code of Conduct complaints statistics within three months of the end of September.

Public / Social Impact

Shellharbour City Council values accountability, integrity and respect by being honest, open and transparent. Reporting on the outcomes and costs associated in dealing with Council's Code of Conduct complaints makes council officials more accountable to the public for their actions.

Link to Community Strategic Plan

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

Objective: 4.2 We have strong leadership

Strategy: 4.2.1 Our Council is transparent and trusted to make decisions that reflect the values of the community collectively

Consultations**Internal**

Nil

External

Nil

Political Donations Disclosure

Not applicable

Recommendation

That Council receive and note the Model Code of Conduct Complaints Statistics report for the period 1 September 2021 to 31 August 2022 as presented.

Approved for Council's consideration: Flora Lepouras
Executive Manager/Public Officer

Date of Meeting: 13 December 2022

Attachments

1. Model Code of Conduct Complaints Statistics Report

Attachment 1 - Model Code of Conduct Complaints Statistics Report

Office of Local Government

Model Code of Conduct Complaints Statistics

Reporting Period: 1 September 2021 - 31 August 2022

Date Due: 31 December 2022

Survey return email address: codeofconduct@olg.nsw.gov.au

Council Name:	Shellharbour City Council
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Contact Name:	Lisa Davey
Contact Phone:	4221 6123
Contact Position:	Governance Manager
Contact Email:	lisa.davey@shellharbour.nsw.gov.au

All responses to be numeric.

Where there is a zero value, please enter 0.

Enquiries: **Performance Team**
 Office of Local Government
 Phone: (02) 4428 4100
 Enquiry email: olg@olg.nsw.gov.au

Model Code of Conduct Complaints Statistics Shellharbour City Council		
Number of Complaints		
1	a The total number of complaints received in the period about councillors and the General Manager (GM) under the code of conduct	4
	b The total number of complaints finalised in the period about councillors and the GM under the code of conduct	1
Overview of Complaints and Cost		
2	a The number of complaints finalised at the outset by alternative means by the GM or Mayor	1
	b The number of complaints referred to the Office of Local Government (OLG) under a special complaints management arrangement	0
	c The number of code of conduct complaints referred to a conduct reviewer	1
	d The number of code of conduct complaints finalised at preliminary assessment by conduct reviewer	0
	e The number of code of conduct complaints referred back to GM or Mayor for resolution after preliminary assessment by conduct reviewer	0
	f The number of finalised code of conduct complaints investigated by a conduct reviewer	0
	g The number of finalised complaints investigated where there was found to be no breach	0
	h The number of finalised complaints investigated where there was found to be a breach	0
	i The number of complaints referred by the GM or Mayor to another agency or body such as the ICAC, the NSW Ombudsman, OLG or the Police	2
	j The number of complaints being investigated that are not yet finalised	3
	k The total cost of dealing with code of conduct complaints within the period made about councillors and the GM including staff costs	5,341

Preliminary Assessment Statistics

3 The number of complaints determined by the conduct reviewer at the preliminary assessment stage by each of the following actions:

a To take no action (clause 6.13(a) of the 2020 Procedures)	0
b To resolve the complaint by alternative and appropriate strategies (clause 6.13(b) of the 2020 Procedures)	0
c To refer the matter back to the GM or the Mayor, for resolution by alternative and appropriate strategies (clause 6.13(c) of the 2020 Procedures)	0
d To refer the matter to another agency or body such as the ICAC, the NSW Ombudsman, OLG or the Police (clause 6.13(d) of the 2020 Procedures)	0
e To investigate the matter (clause 6.13(e) of the 2020 Procedures)	0

Investigation Statistics

4 The number of investigated complaints resulting in a determination that there was **no breach**, in which the following recommendations were made:

a That the council revise its policies or procedures	0
b That a person or persons undertake training or other education (clause 7.40 of the 2020 Procedures)	0

5 The number of investigated complaints resulting in a determination that there **was a breach** in which the following recommendations were made:

a That the council revise any of its policies or procedures (clause 7.39 of the 2020 Procedures)	0
b In the case of a breach by the GM, that action be taken under the GM's contract for the breach (clause 7.37(a) of the 2020 Procedures)	0
c In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993 (clause 7.37(b) of the 2020 Procedures)	0
d In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993 and that the matter be referred to OLG for further action (clause 7.37(c) of the 2020 Procedures)	0

6 Matter referred or resolved after commencement of an investigation (clause 7.20 of the 2020 Procedures)	0
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Categories of misconduct	
7 The number of investigated complaints resulting in a determination that there was a breach with respect to each of the following categories of conduct:	
a General conduct (Part 3)	0
b Non-pecuniary conflict of interest (Part 5)	0
c Personal benefit (Part 6)	0
d Relationship between council officials (Part 7)	0
e Access to information and resources (Part 8)	0
Outcome of determinations	
8 The number of investigated complaints resulting in a determination that there was a breach in which the council failed to adopt the conduct reviewers recommendation	0
9 The number of investigated complaints resulting in a determination that there was a breach in which the council's decision was overturned following a review by OLG	0

10.2 Council Sustainability Directorate**10.2.1 Proposed Licence Agreement to Oak Flats Swimming Club Incorporated - 15 Hope Street, Oak Flats being Part Lot 1 in DP 224750 (11974365)**

To the Chief Executive Officer

Directorate: Council Sustainability
Group: Business and Investment Team

Manager: Trevor James – Manager Business and Investment
Author: Amy Celima – Property Officer

Summary

The purpose of this report is to seek Council endorsement to commence the formal process to enter into a licence agreement, for a three-year term, with Oak Flats Swimming Club Incorporated for the use of up to three swimming lanes in the 50m pool and up to two lanes in the 25m pool at Oak Flats Swimming Pool located at the corner of Kingston and Hope Street, Oak Flats being Lot 1 DP224750.

Background

Shellharbour City Council is the owner of the land classified as Community land situated at the corner of Kingston Street and Hope Street, Oak Flats being Lot 1 in DP 224750. The site is where the Oak Flats Swimming Pool is located as shown in **Attachment 1**.

The Oak Flats Swimming Club (Swimming Club) has been operating out of the Oak Flats Swimming Pool (Swimming Pool) since 1973 and has held licence agreements with Council for the use of the Swimming Pool since 2013.

The most recent licence agreement expired on 30 September 2021 and remained on a holding-over period until July 2022 when the agreement was terminated as a result of the implementation of a new fee structure trial with the Swimming Club. The new fee structure trial required the Swimming Club to hire lanes directly through Council's lane-hire booking system with fees generated in accordance with Council's fees and charges.

After review, the Swimming Club advised Council that the trialled booking method and fee structure is not suitable as it has increased the Swimming Club's booking fees and created a requirement for monthly lane bookings, relative to arrangements available under Council's *Leasing & Licensing of Council Land & Buildings* Policy. Accordingly, the Swimming Club has requested to enter into a new longer term licence agreement, with the ambition of securing regular and consistent lane bookings.

The Swimming Club is a locally based, standalone club with a voluntary management committee, comprised of local area representatives and currently has 202 members.

The Swimming Club is a locally operated, whose principal objective is to promote, teach and encourage swimming and lifesaving skills to its members. The Swimming Club offers squad style training to swimmers aged 5 years and over.

The proposed lane hire schedule outlining the usage times whereby the Swimming Club is permitted to operate is shown in **Attachment 2**. Any amendments can only apply with the approval of the Aquatics and Recreation Coordinator.

This report recommends entering into a three-year licence agreement with the Swimming Club which is consistent with previous agreements.

Should Council resolve not to enter into a licence agreement with the Swimming Club and the associated rental subsidy, the Swimming Club will still be able to hire the lanes they require via Council's lane-hire booking system with fees generated in accordance with Council's fees and charges. However, the Swimming Club has advised that this arrangement would impact its sustainability and the ability to attract and retain members.

Financial / Resources Implications

Council's current adopted lane hire rates that are applicable to the Swimming Club are provided in **Table 1**.

Table 1 – 2022-23 Adopted Oak Flats Lane Hire Fees and Charges (GST Inclusive)

Oak Flats Swimming Pool		Summer	Winter
50m Pool	Peak Hours	\$24 / hour	\$31 / hour
	Off Peak Hours	\$19 / hour	\$24 / hour
25m Pool	Peak Hours	\$31 / hour	\$31 / hour
	Off Peak Hours	\$24 / hour	\$24 / hour

In addition, the 2022-23 Fees and Charges also provide for discounts on the above amounts for not-for-profit clubs and organisations (including swimming clubs) at a rate of 60% for peak hours and 40% for off-peak hours. If the Swimming Club were to be charged as per Council's adopted Fees and Charges, they would be liable to pay an annual total of approximately \$36,815 (which is an average monthly fee of \$3,681.50 paid over the 10 months of hire). The Swimming Club has advised that these fees would impact their club significantly in terms of their ability to operate sustainably and attract and retain members.

The annual fee under the previous licence agreement, taking into consideration the rental subsidy applied at the time was \$22,283 GST inclusive. This annual fee was invoiced in monthly instalments of \$1,856.85 GST inclusive over a full 12-month period. However, this was subsequently varied towards the end of their agreement term to \$1,658.92 per month, to accommodate a reduction in their lane hire usage.

The proposed licence fee has been calculated on the lane hire schedule shown in **Attachment 2**, using the 2022-23 Adopted Oak Flats Lane Hire Fees and Charges as the basis. This has produced a calculated amount of \$84,652 GST inclusive per annum (\$6,511 per month). This amount excludes the not-for-profit discount provisions available in the adopted Fees and Charges.

The Swimming Club has applied to Council to consider a rental subsidy consistent with Council's policy entitled *Leasing and Licensing on Council Public Land and Building*. In accordance with the policy, the level of subsidy the Swimming Club is eligible to receive has been calculated at 70.83% which equates to \$59,959 GST inclusive per annum. Therefore, the proposed annual commencement (first year) rental to be charged is \$24,693 GST inclusive. This proposed annual subsidised rental amount has been agreed to by the Swimming Club.

As Council is offering an annual subsidy, this will be noted as an "in-kind donation" in Council's annual report. All subsidies made under the policy are made as "in-kind donations" in the form of the use of the facility for a lesser amount in return for the services that the Swimming Club provides the community.

The Swimming Club will be responsible for all costs associated with the preparation of the licence agreement.

Legal and Policy Implications

The land is classified as Community land in accordance with Sections 25 and 26 of the *Local Government Act 1993* (the Act). Section 47A of the Act requires Council to give public notice and to exhibit the proposal for a minimum period of 28 days. If there are any written objections, a further report will be presented to Council.

The Plan of Management for the land expressly authorises leasing and licensing of the land.

Council's policy entitled *Leasing & Licensing of Council Land & Buildings* (the Policy) is due for review in October 2023. It is proposed to insert a clause in the licence agreement that states the licence agreement will be subject to review to align with any changes as a result of the reviewed policy. The Swimming Club has acknowledged and agreed to this.

Public / Social Impact

The Swimming Club provides aquatic activities which have a positive impact on the community. By endorsing this licence agreement, the Swimming Club will have a better opportunity to retain members and enhance its ability to function as a viable swimming club for the proposed three years.

The Swimming Club was established in 1966 and since then has produced swimmers of all levels from those competing on a regular basis for fun and fitness through to high

performance national level competitors. The Swimming Club welcomes swimmers of all ages and abilities and currently has over 200 members.

Additionally, the proposed recommendation will have minimal impact on Council run aquatic programs and public use of the Oak Flats Swimming Pool.

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

Priority 1: Continue to make property available for service delivery:

Action: Ensure assets are appropriately used and maintained.

Priority 5: Assign responsibility and accountability:

Action: Clearly define ownership and control of assets.

Link to Community Strategic Plan

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

Objective: 1.1 We inspire community spirit

Strategy: 1.1.2 Work within our communities to connect people, build resilience and opportunities to participate in community life

Objective: 4.2 We have strong leadership

Strategy: 4.2.1 Our Council is transparent and trusted to make decisions that reflect the values of the community collectively

Consultations

Internal

Group Manager Built & Natural Environment
Group Manager Community Connections
Aquatics and Recreation Coordinator
Manager Financial Services
Senior Financial Accountant
Recreation Planner

External

Oak Flats Swimming Club Incorporated

Political Donations Disclosure

Not Applicable

Attachment 1 – Aerial Map – Oak Flats Swimming Pool – Part Lot 1 DP224750



Attachment 2 - Lane Hire Schedule – Oak Flats Swimming Club Inc. – Oak Flats Swimming Pool

		25m Pool		50m Pool	
Month	Day	Time	Lanes	Time	Lanes
June	Monday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Tuesday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Wednesday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Thursday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Friday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
July	Monday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Tuesday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Wednesday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Thursday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Friday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
August	Monday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Tuesday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Wednesday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Thursday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Friday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
September	Monday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Tuesday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Wednesday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Thursday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3
	Friday	4pm-5pm	2	6am-8am 4pm-6.30pm	3 3

		25m Pool		50m Pool	
Month	Day	Time	Lanes	Time	Lanes
October	Monday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Tuesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Wednesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Thursday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Friday			6am-7am	3
November	Monday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Tuesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Wednesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Thursday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Friday			6am-7am	3
December	Monday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Tuesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Wednesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Thursday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Friday			6am-7am	3
January	Monday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Tuesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Wednesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Thursday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Friday			6am-7am	3
February	Monday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Tuesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Wednesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Thursday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Friday			6am-7am	3

		25m Pool		50m Pool	
Month	Day	Time	Lanes	Time	Lanes
March	Monday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Tuesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Wednesday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Thursday	6.45am-7.45am 4pm-5pm	2 2	6am-8am 4pm-6.30pm	3 3
	Friday			6am-7am	3
Point Score	Fridays (22 weeks – 2 nd week Oct – March)			6pm-7.30pm	7

10.2.2 Creation of Easements over Lots 4, 9, 10, 11, 12 13, 14 and 15 DP 238804, Addison Street, Shellharbour (11974466)

To the Chief Executive Officer

Directorate: Council Sustainability
Group: Business and Investment

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

Summary

The purpose of this report is to seek Council's endorsement for the creation of easements for right of access, underground cables, and maintenance over Lots 4, 9, 10, 11, 12, 13, 14 and 15 DP 238804, Addison Street, Shellharbour benefitting Lot 2 and 3 DP238804 (owned by Harbour Cove Developments Pty Ltd).

The easements are required as a condition of a development consent DA0616/2021.

Background

Shellharbour City Council is the owner of the land situated at Addison Street, Shellharbour being Lots 4, 9, 10, 11, 12, 13, 14 and 15 DP 238804. Lot 4 is used as a public laneway. Lots 9 to 15 are used as a public carpark that connects to Mary and Wentworth Streets.

A development consent is conditionally approved for 31 – 35 Addison Street. The development involves the demolition of an existing commercial building and retention of one heritage building. The new development comprises four commercial and 17 residential units, with basement parking.

Under section 4.16(3) of the *Environmental Planning & Assessment Act 1979*, development consent has been granted subject to the landowners obtaining easements for:

1. Right of access and maintenance 2.44m wide over Lot 4 in DP238804 (104.8m²)
2. Right of access 6m wide over Lots 13, 14 and 15 in DP238804 (445m²)
3. Right of underground cables & access 3m wide over Lots 9 to 15 in DP238804 (267 m²)

The proposed easements are shown in **Attachment 1**.

Whilst the location of the easement for underground cables is shown indicatively in **Attachment 1**, the final location will be subject to further consultation with Council staff to ensure minimal impact on the Council carpark.

For the right of access easement to be considered, there must be no practical alternative for vehicle entry and exit. Under the *Shellharbour Local Environmental Plan 2013* 31-35 Addison Street Shellharbour has a designated Active Street Frontage. In accordance with Part 6.1.28 of the *Shellharbour Development Control Plan 2013*, sites that have an Active Street Frontage “*where legally available all vehicular access and servicing must be from a rear lane, car park or side street*”. Therefore, the developments only practical method of access is via Lots 9, 10, 11, 12, 13, 14 and 15 DP 238804 through the establishment of an easement.

By granting the easement, Council will receive compensation and will be able to identify the exact location of the right of access, underground cables, and maintenance over Lots 4, 9, 10, 11, 12, 13, 14 and 15 DP 238804, Addison Street, Shellharbour.

Financial / Resources Implications

An independent valuation report from a registered valuer assessed the applicable compensation amount at \$250,000 excluding GST. This amount has been agreed to by the adjoining landowner.

All costs related to the creation of the proposed easement are to be paid by the adjoining landowner.

The proceeds of the compensation will be allocated to General Revenue which can be used for a range of purposes.

Legal and Policy implications

An easement refers to the right to use the land of another or a right to prevent the owner of that land from using that land in a particular manner.

The easement is attached to the land and registered on title. It continues indefinitely unless it is expressly released by the owner of the benefitted land or extinguished by the Supreme Court on evidence that it is no longer required.

Should Council not approve the recommendations of this report, under Section 88k of the *NSW Conveyancing Act 1919*, the courts have the authority to grant an easement over property if:

- a. There is a reasonable necessity for an easement so that the land can be effectively developed.
- b. The requested land that will become an easement will benefit the public.
- c. The person who owns the land can be compensated for the burden of the easement.
- d. The developer has made every possible reasonable attempt to acquire the owner's easement, and this process has not been successful.

Cases in NSW exist where the court has awarded an easement despite the landowner's refusal. The court may also award costs against the landowner if their actions are unreasonable and not in the public's interest.

Public / Social Impact

The land identified as Lot 9, 10, 11, 12, 13, 14 and 15 DP 238804 is owned by Council and is classified as Operational land in accordance with Sections 25 and 26 of the *Local Government Act 1993* (the Act). As the subject land is classified as Operational land, there is no requirement to place the proposal on public exhibition.

The land identified as Lot 4 DP 238804 is classified as Community land pursuant to Section 26 of the Act. Section 47 of the Act requires Council to give public notice and to exhibit the proposal for a minimum period of 28 days. If there are any written objections received in respect of the proposal, a further report will be provided to Council for consideration.

The proposed development contains mixed typology residential units and four commercial tenancies with onsite parking requirements in accordance with Development Control Plan. The mix of residential units contributes to addressing housing supply shortages in the Shellharbour local government area. The mix of housing typologies being developed also helps cater for various levels of housing affordability. Additionally, the commercial tenancies will create employment opportunities within the development and contribute to the vibrancy of Shellharbour Village.

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

Priority 1: Continue to make property available for service delivery

Action: Ensure assets are appropriately used and maintained

Priority 5: Assign responsibility and accountability

Action: Clearly define ownership and control of assets

Link to Community Strategic Plan

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

Objective: 1.1 We inspire community spirit

Strategy: 1.1.2 Work within our communities to connect people, build resilience and opportunities to participate in community life

Objective: 4.2 We have strong leadership

Strategy: 4.2.1 Our Council is transparent and trusted to make decisions that reflect the values of the community collectively

Consultations

Internal

Group Manager Built and Natural Environment
Senior Development Assessment Officer, Planning
Manager Floodplain and Transport
Manager Asset Planning
Senior Transport Engineer

External

Walsh and Monaghan (Councils Valuer)
Lando Valuations (Landowner Valuer)
Drew Dickson Architects

Political Donations Disclosure

Not Applicable

Recommendation

That:

- 1. Council endorses the creation of an easement for right of access, underground cables, and maintenance over Lot 9, 10, 11, 12, 13, 14 and 15 DP 238804, Addison Street, Shellharbour.**
- 2. Council endorses the creation of an easement for maintenance and access over Lot 4 DP 238804, to be placed on public exhibition pursuant to section 47 of the *Local Government Act 1993* for a period of 28 days calling for submissions.**
- 3. Provided there are no opposing submissions received during the public exhibition period, Council grants an easement for maintenance and access over Lot 4 DP 238804, Addison Street, Shellharbour.**
- 4. If any opposing submissions are received as a result of the public exhibition process, a further report be provided to Council for consideration.**
- 5. Council approves \$250,000 GST exclusive as compensation for the creation of the easements encumbering part Lot 4, 9, 10, 11, 12, 13, 14 and 15 DP 238804, Addison Street, Shellharbour.**
- 6. The Mayor and Chief Executive Officer, or their nominated delegate, be authorised to sign any documentation, including the affixing of the**

Council Seal associated with the creation of the easements over Lot 4, 9, 10, 11, 12, 13, 14 and 15 DP 238804, Addison Street, Shellharbour.

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

Date of Meeting: 13 December 2022

Attachments

1. Plan of the location of the proposed easements over Lot 4, 9, 10, 11, 12, 13, 14 and 15 DP 238804, Addison Street, Shellharbour

Attachment 1 – Plan of the location of the proposed easement over Lot 4, 9, 10, 11, 12, 13, 14 and 15 DP 238804, Addison Street, Shellharbour.



10.2.3 Creation of Easement over Lot 15 DP 238804, Addison Street, Shellharbour (11974351)

To the Chief Executive Officer

Directorate: Council Sustainability
Group: Business and Investment

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

The purpose of this report is to seek Council's endorsement for the creation of easement for right of access over Lot 15 DP 238804, Addison Street, Shellharbour benefitting Lot 1 DP238804 (owned by Demir Nominees Pty Ltd).

The easement is required as a condition of development consent DA0274/2022.

Background

Shellharbour City Council is the owner of the land situated at Addison Street, Shellharbour being Lot 15 DP 238804 which is used as a public car park that connects to Mary and Wentworth Streets.

A development consent is conditionally approved for 37 Addison Street, Shellharbour. The development involves the demolition of an existing commercial building. The new development comprises one commercial and 10 residential units, with basement parking and landscaping.

Under section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, the development application has been determined by granting development consent subject to the landowner obtaining an easement for a right of access 6m wide over Lot 15 in DP238804 (135m²).

The proposed easement is shown in **Attachment 1**.

For the right of access easement to be considered, there must be no practical alternative for vehicle entry and exit. Under the *Shellharbour Local Environmental Plan 2013*, 37 Addison Street Shellharbour has a designated Active Street Frontage. In accordance with Part 6.1.28 of the *Shellharbour Development Control Plan 2013* sites that have an Active Street Frontage “where legally available all vehicular access and servicing must be from a rear lane, car park or side street”. Therefore, the developments only practical method of access is via Lot 15 DP 238804 through the establishment of an easement.

By granting the easement, Council will receive compensation and be able to identify the exact location of the right of access over Lot 15 DP 238804, Addison Street, Shellharbour.

Financial / Resources Implications

An independent valuation report from a registered valuer assessed the applicable compensation amount at \$47,000 excluding GST. This amount has been agreed to by the adjoining landowner.

All costs related to the creation of the proposed easement are to be paid by the adjoining landowner.

The proceeds of the compensation will be allocated to General Revenue which can be used for a range of purposes.

Legal and Policy implications

An easement refers to the right to use the land of another or a right to prevent the owner of that land from using that land in a particular manner.

The easement is attached to the land and registered on title. It continues indefinitely unless it is expressly released by the owner of the benefitted land or extinguished by the Supreme Court on evidence that it is no longer required.

Should Council not approve the recommendations of this report, under Section 88k of the *NSW Conveyancing Act 1919*, the courts have the authority to grant an easement over property if:

- a. There is a reasonable necessity for an easement so that the land can be effectively developed.
- b. The requested land that will become an easement will benefit the public.
- c. The person who owns the land can be compensated for the burden of the easement.
- d. The developer has made every possible reasonable attempt to acquire the owner's easement, and this process has not been successful.

Cases in NSW exist where the court has awarded an easement despite the landowner's refusal. The court may also award costs against the landowner if their actions are unreasonable and not in the public's interest.

Public / Social Impact

The land identified as Lot 15 DP 238804 is owned by Council and is classified as operational land in accordance with Sections 25 and 26 of the *Local Government Act 1993* (The Act). As the subject land is classified as Operational Land, there is no requirement to place the proposal on public exhibition.

The proposed development contains mixed typology residential units (3 accessibly designed) and one commercial tenancy with onsite parking requirements in accordance with the *Shellharbour Development Control Plan 2013*. The mix of residential units contributes to addressing housing supply shortages in the

Shellharbour Local Government Area. The mix of housing typologies being developed also helps cater for various levels of housing affordability. Additionally, the commercial tenancy will create employment opportunities within the development and add to the vibrancy of Shellharbour Village.

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

Priority 5: Assign responsibility and accountability

Action: Clearly define ownership and control of assets

Priority 6: Promote balance between development and sustainability

Action: Make asset decisions which consider and protect the needs of future generations

Link to Community Strategic Plan

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

Objective: 1.2 We are a liveable community

Strategy: 1.2.3 Construct and upgrade buildings and infrastructure that meet current and future community needs

Objective: 4.2 We have strong leadership

Strategy: 4.2.1 Our Council is transparent and trusted to make decisions that reflect the values of the community collectively

Consultations

Internal

Group Manager Built and Natural Environment
Senior Development Assessment Officer, Planning
Manager Floodplain and Transport
Manager Asset Planning
Senior Transport Engineer

External

Walsh and Monaghan (Councils Valuer)
Couvaras Architects

Political Donations Disclosure

Not Applicable

Recommendation

That:

- 1. Council endorses the creation of an easement for right of access over Lot 15 DP 238804, Addison Street, Shellharbour.**
- 2. Council approves \$47,000 GST exclusive as compensation for creation of the easements encumbering part Lot 15 DP 238804, Addison Street, Shellharbour.**
- 3. The Mayor and Chief Executive Officer, or their nominated delegate, be authorised to sign any documentation, including the affixing of the Council Seal associated with the creation of the easements over Part Lot 15 DP 238804, Addison Street, Shellharbour.**

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

Date of Meeting: 13 December 2022

Attachments

1. Plan of the location of the proposed easements over Part Lot 15 DP 238804, Addison Street, Shellharbour

Attachment 1 – Plan of the location of the proposed easement over Part Lot 15 DP 238804, Addison Street, Shellharbour.



10.2.4 Proposed New Lease – Illawarra Shoalhaven Local Health District - 119 Tongarra Road, Albion Park (11974479)

To the Chief Executive Officer

Directorate: Council Sustainability
Group: Business and Investment

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

Summary

The purpose of this report is to seek Council endorsement to enter a three-year lease with Illawarra Shoalhaven Local Health District (ISLHD) for the land and Council-owned building identified as Lot 119 DP 1137491, 119 Tongarra Road, Albion Park.

The lessee has agreed to the proposed lease cost and all other conditions.

Background

Shellharbour City Council is the owner of the land classified as operational land situated at 119 Tongarra Road, Albion Park, Lot 119 DP 1137491, shown in **Attachment 1**.

ISLHD has been an occupant of the building since prior to 1980. However, there is no record that can be found by either Council or the lessee of an official lease agreement. ISLHD has not paid rent during the full tenure of occupation. However, ISLHD has paid for Council managed cleaning services for the premises.

Without a formal lease there is no document that identifies ISLHD's right to occupy the premises, security of tenure, or established obligations in regard to repairs and maintenance. Subsequently, Council staff engaged in negotiation with ISLHD to establish a lease for the benefit of both the Council and ISLHD.

ISLHD operate the Early Childhood Health Centres (EHCs) from the subject premises. EHCs were formerly known as Baby Health Clinics. The centre provides community-based services for children aged 0 to 5 years and their families, at no cost to the clients.

Financial / Resources Implications

A registered land valuer has undertaken an independent valuation on the Council's pre-approved panel, the recommended market rent amount determined is \$37,000. However, ISLHD requested Council to consider a rent reduction as this would help support ISLHD to continue delivering services to the community.

Considering the long-standing occupation at the premises and the significance of the services provided Council staff proposed a compromise solution to provide a staged rent reduction over three years, as detailed in **Table 1**, which was agreed to by ISLHD.

Table 1 - Proposed Subsidised Staged Annual Rental

Year	Percent Discount	Proposed Rent (Annual)
Year 1	75%	\$9,250.00
Year 2	50%	\$18,500.00
Year 3	25%	\$27,750.00

As Council is offering an annual subsidy, this will be noted as an "in-kind donation" in Council's aggregate record of donations to the community. All subsidies made under the policy are made as "in-kind donations" in the form of the use of the facility for a lesser amount in return for the services that ISLHD provides the community.

ISLHD has agreed to the proposed lease cost and all other conditions.

The terms and conditions under the new licence agreement are detailed in **Table 2**:

Table 2 – New licence terms and conditions

Item	Detail
Lease area	1,214 m ²
Terms	3 years
Current Market Rent	\$37,000 excluding GST per annum (proposed rent reduced in Table 1)
Outgoings	100% Lessee responsibility
Permitted Use	Public health services

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

Legal and Policy implications

The land identified as Lot 119 DP 1137491, 119 Tongarra Road, Albion Park, is owned by Council and is classified as operational land in accordance with Sections 25 and 26 of the *Local Government Act 1993*.

As the subject land is classified as Operational Land, there is no requirement to place the proposal on public exhibition.

A resolution of Council is required to affix the Council Seal in accordance with Section 400 of NSW Local Government (General) Regulation 2021.

Public / Social Impact

The approval of the new lease will enable the continuation of services for child health development, infant and child nutrition, breastfeeding and emotional health and

wellbeing support, while providing Council with a financial return for the use of a community asset.

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

Priority 1: Continue to make property available for service delivery

Action: Ensure assets are appropriately used and maintained

Priority 5: Assign responsibility and accountability

Action: Clearly define ownership and control of assets

Link to Community Strategic Plan

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

Objective: 1.1 We inspire community spirit

Strategy: 1.1.2 Work within our communities to connect people, build resilience and opportunities to participate in community life

Objective: 4.2 We have strong leadership

Strategy: 4.2.1 Our Council is transparent and trusted to make decisions that reflect the values of the community collectively

Consultations

Internal

Group Manager Built and Natural Environment

Manager Asset Planning

Manager Financial Services

Senior Financial Accountant

External

Opteon (Valuer)

Political Donations Disclosure

Not Applicable

Recommendation**That:**

1. Council endorses a three-year lease agreement with Illawarra Shoalhaven Local Health District for occupation of Lot 119 DP 1137491, 119 Tongarra Road, Albion Park.
2. Council endorses that the annual market rental of \$37,000 (exclusive of GST) be reduced and staged in accordance with the table below.

Year	Percent Discount	Proposed Rent (Annual)
Year 1	75%	\$9,250.00
Year 2	50%	\$18,500.00
Year 3	25%	\$27,750.00

3. The Mayor and Chief Executive Officer, or their nominated delegate, be authorised to sign all documentation, including the affixing of the Council Seal associated with the lease agreement with Illawarra Shoalhaven Local Health District for occupation of Lot 119 DP 1137491, 119 Tongarra Road, Albion Park.

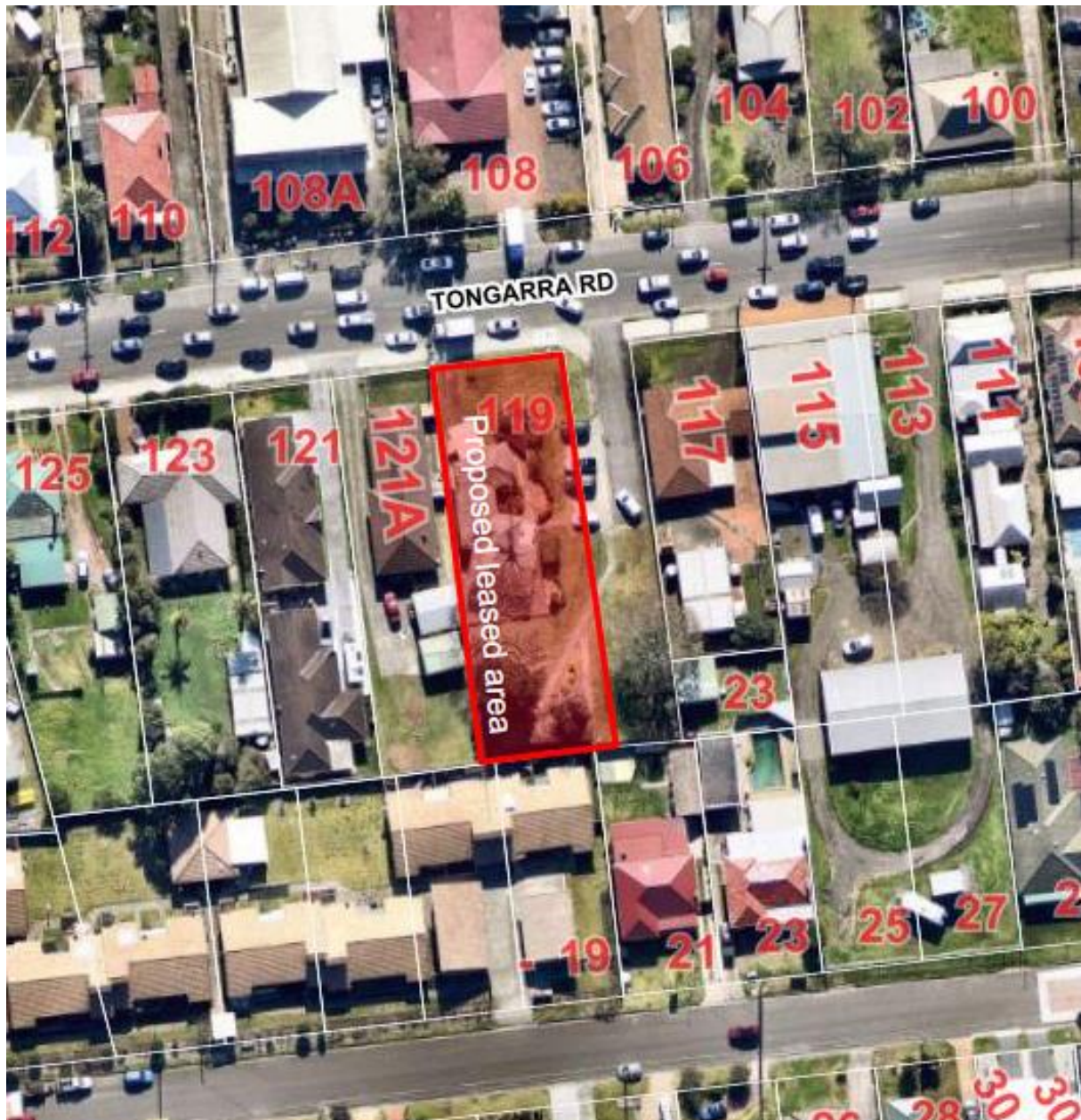
Approved for Council's consideration: Trevor James
Manager Business and Investment

Date of Meeting: 13 December 2022

Attachments

1. Proposed Lease Area Lot 119 DP 1137491, 119 Tongarra Road, Albion Park

Attachment 1 - Proposed Lease Area Lot 119 DP 1137491, 119 Tongarra Road, Albion Park



10.2.5 Shell Cove Subdivisions and Easements (11974328)

To the Chief Executive Officer

Directorate: Council Sustainability
Group: Shell Cove

Manager: Wayde Peterson – Shell Cove Executive Manager
Author: Kevin James – Manager Shell Cove

Summary

The purpose of this report is to seek a Council resolution to affix the Seal on plans and documents for upcoming Shell Cove subdivisions, easements and property sales.

Background

The Shell Cove Project has successfully delivered over 2,500 residential properties, 50 hectares of community space and 5,000 square metres of commercial and retail space, and achieved 85% local employment throughout its construction. These successful outcomes are delivered in part through the planned subdivision of land and easements. In order to have each subdivision or easement plan registered at NSW Land Registry Services, Council is required to sign the Plan and the 88B Instrument as the owner of the land under its Seal.

Land Subdivision & Sale

The following land subdivisions are proposed to be created.

Precinct C2 (Vela Apartments)

This is a strata subdivision plan to create 53 lots and Common Property for the apartments – see **Attachment 1** for its location. The land to be subdivided is Lot 3008 DP1258172.

Precinct B2/C2 (Stage 3002 Housing)

This is a subdivision plan to create 7 lots for the medium density houses – see **Attachment 1** for its location. The land to be subdivided is Lot 3002 DP1258171.

Precinct B2/C2 (Stage 3003 Housing)

This is a subdivision plan to create 9 lots for the medium density houses – see **Attachment 1** for its location. The land to be subdivided is Lot 3003 DP1258171.

Precinct B2/C2 (Stage 3004 Housing)

This is a subdivision plan to create 7 lots for the medium density houses – see **Attachment 1** for its location. The land to be subdivided is Lot 3004 DP1258171.

Precinct B2/C2 (Stage 3005 Housing)

This is a subdivision plan to create 12 lots for the medium density houses – see **Attachment 1** for its location. The land to be subdivided is Lot 3005 DP1258171.

Precinct B2/C2 (Stage 3009 Housing)

This is a subdivision plan to create 13 lots for the medium density houses – see **Attachment 1** for its location. The land to be subdivided is Lot 3009 DP1258172.

Precinct B2/C2 (Stage 3010 Housing)

This is a subdivision plan to create 8 lots for the medium density houses – see **Attachment 1** for its location. The land to be subdivided is Lot 3010 DP1258172.

Precinct B2/C2 (Stage 3011 Housing)

This is a subdivision plan to create 14 lots for the medium density houses – see **Attachment 1** for its location. The land to be subdivided is Lot 3011 DP1258172.

Also, in order to complete the sale and conveyance of each lot, house or apartment, Council may be required to sign the associated documents as owner of the land under its Seal.

Town Centre Easements

The northern carpark land (Lot 4205 DP 1254978) is burdened with an easement to allow the carparking for the adjacent retail land (Lot 4206 DP 1254978) – see **Attachment 2** for the location. A recent review has identified that the proposed 'Waterfront Centre' land (Lot 4023 DP 1254658) on the opposite side of Waterfront Promenade should have the same benefit for carparking. The new Plan of Easements has Lot 4023 benefitted and Lot 4205 burdened.

The same review has identified that Lot 4205 should be burdened by an easement to allow for vehicle access into the adjacent land (Lot 4204 DP 1254978) – see **Attachment 2** for its location. The Plan of Easements or new subdivision plan will have Lot 4204 benefitted and Lot 4205 burdened. Any public car spaces lost on Lot 4205 because of the access will be fully compensated with public car spaces within Lot 4204 and nearby development lots.

Financial / Resources Implications

The approval of the recommendations of this report will enable Shell Cove subdivisions, easements and property sales to progress in accordance with development programs. The achievement of development programs provides a financial return for the Shell Cove Project and Council.

Legal and Policy implications

It is a requirement of Section 400 the *Local Government (General) Regulation 2021* for there to be a resolution of Council in order to execute the documents under Seal.

Public / Social Impact

Residential and community land development at Shell Cove is a critical part of accommodating population growth in the Illawarra region and addressing housing supply shortfalls. Additionally, the mix of housing typologies being developed helps cater for different levels of housing affordability.

Conclusion

A Council resolution to affix the Seal on plans and documents for upcoming Shell Cove subdivisions, easements and property sales will allow the timely land development and sales settlements to occur and, in turn, for the Shell Cove Project to continue to deliver benefits to current and future residents.

Link to Community Strategic Plan

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

Objective: 3.1 We support a strong local economy.

Strategy: 3.1.4 Activate Shell Cove to provide development, tourism and community opportunities.

Consultations**Internal**

Nil

External

Australand Corporation (NSW) – part of Frasers Property Group
Bugden Allen Graham Lawyers

Political Donations Disclosure

Not Applicable

Recommendation

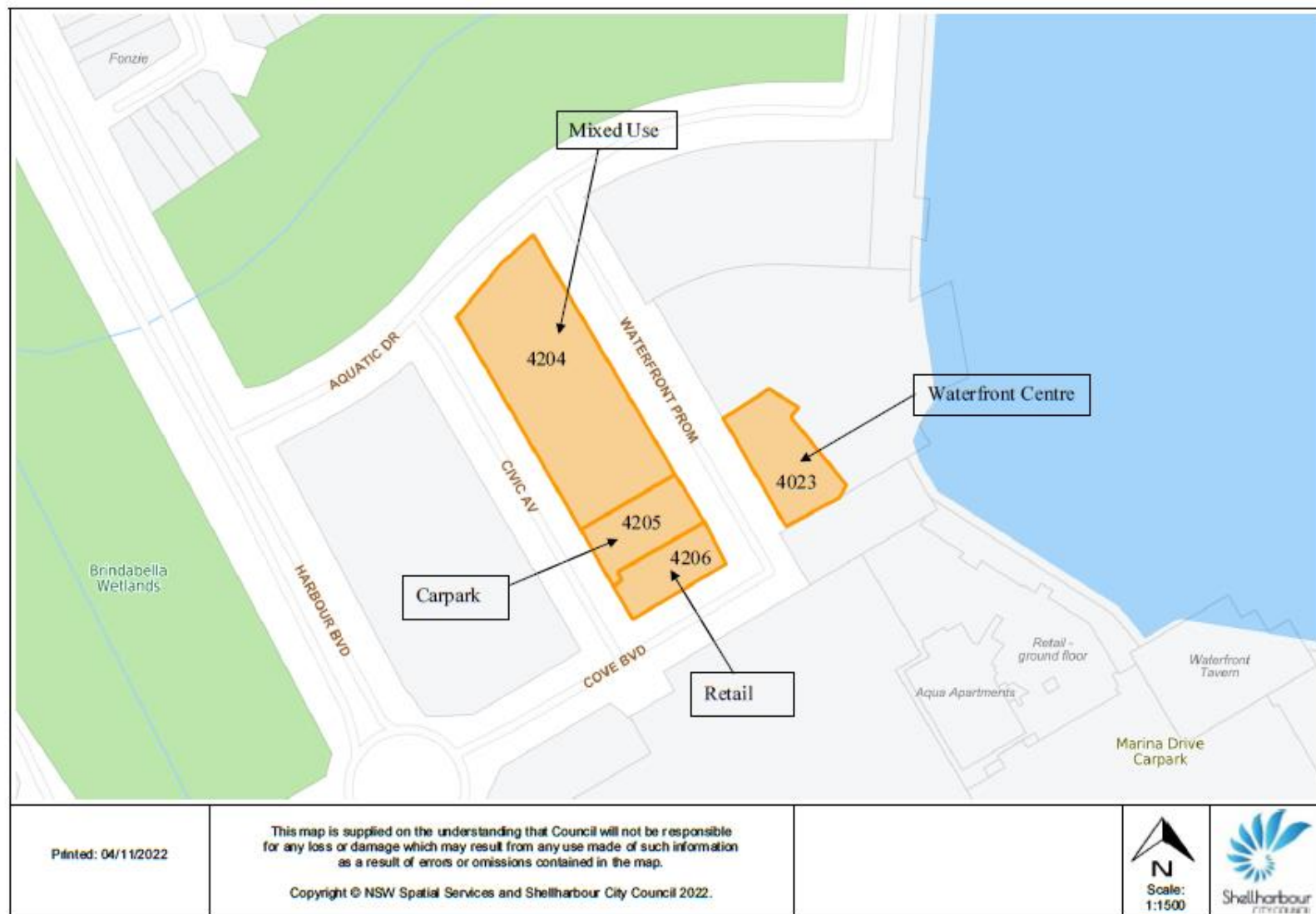
That the Mayor and the Chief Executive Officer, or their nominated delegate, be authorised to sign:

- 1. the Strata Subdivision Plan, 88B Instrument and any associated documents for the subdivision of Lot 3008 DP 1258172, and any documents associated with the sale (including the Transfers) of proposed lots 1 to 53 (Precinct C2 Vela Apartments), under Council Seal;**
- 2. the Subdivision Plan, 88B Instrument and any associated documents for the subdivision of Lot 3002 DP 1258171, and any documents associated with the sale (including the Transfers) of proposed lots 3201 to 3207 (Precinct B2/C2 Stage 3002 Housing), under Council Seal;**
- 3. the Subdivision Plan, 88B Instrument and any associated documents for the subdivision of Lot 3003 DP 1258171, and any documents associated with the sale (including the Transfers) of proposed lots 3301 to 3309 (Precinct B2/C2 Stage 3003 Housing), under Council Seal;**
- 4. the Subdivision Plan, 88B Instrument and any associated documents for the subdivision of Lot 3004 DP 1258171, and any documents associated with the sale (including the Transfers) of proposed lots 3401 to 3407 (Precinct B2/C2 Stage 3004 Housing), under Council Seal;**
- 5. the Subdivision Plan, 88B Instrument and any associated documents for the subdivision of Lot 3005 DP 1258171, and any documents associated with the sale (including the Transfers) of proposed lots 3501 to 3512 (Precinct B2/C2 Stage 3005 Housing), under Council Seal;**
- 6. the Subdivision Plan, 88B Instrument and any associated documents for the subdivision of Lot 3009 DP 1258172, and any documents associated with the sale (including the Transfers) of proposed lots 3901 to 3913 (Precinct B2/C2 Stage 3009 Housing), under Council Seal;**
- 7. the Subdivision Plan, 88B Instrument and any associated documents for the subdivision of Lot 3010 DP 1258172, and any documents associated with the sale (including the Transfers) of proposed lots 3001 to 3008 (Precinct B2/C2 Stage 3010 Housing), under Council Seal;**
- 8. the Subdivision Plan, 88B Instrument and any associated documents for the subdivision of Lot 3011 DP 1258172, and any documents associated with the sale (including the Transfers) of proposed lots 3101 to 3114 (Precinct B2/C2 Stage 3011 Housing), under Council Seal;**
- 9. the Plan of Easements, 88B Instrument and any associated documents over Lot 4205 DP 1254978 that benefit Lot 4204 DP 1254978, Lot 4206 DP 1254978**

Attachment 1 – Location Plan of Shell Cove Subdivisions



Attachment 2 – Location Plan of Shell Cove Easements



10.3 Community and Customers Directorate**10.3.1 Agritourism Planning Reforms and Proposed New Optional Local Environmental Plan Clauses (11974659)**

To the Chief Executive Officer

Directorate: Community and Customers
Group: City Planning

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

Summary

The purpose of this report is to provide Council with an update on the Agritourism Planning Reforms. The report seeks Council's resolution to advise the NSW Department of Planning and Environment that Council wishes to opt-in for the optional clauses 5.24 and 5.25 in the Standard Instrument Local Environmental Plan (LEP) for 'Farm stay accommodation' and 'Farm gate premises' to be included in Shellharbour LEP 2013.

Background

In March 2021, the NSW Government released initial exhibition material relating to Agritourism and small-scale rural development. This exhibition proposed amendments to the NSW Planning System to boost farm businesses and regional tourism, by streamlining the approval of agritourism and other small-scale agricultural development. The proposed reforms are part of the response to the economic impacts of natural disasters and COVID-19 on the farming community.

The Explanation of Intended Effect (EIE) supporting the 2021 exhibition outlined that additional consultation would be needed relating to the agritourism proposals. Given the relevance of this matter to Shellharbour, Council requested to be included in any additional consultation and engagement to ensure that the final reforms were appropriate for the Shellharbour Local Government Area (LGA).

In December 2021, further material on the Agritourism Reforms was released by the NSW Government and additional consultation commenced. The focus of this additional consultation was for Councils across NSW to:

- 'Opt in' or 'out' of the proposed new 'optional' clauses in the Standard Instrument LEP for 'Farm stay accommodation' and 'Farm gate premises'. If opting in, councils could nominate development standards as relevant for each optional clause.
- Nominate zones to apply the proposed new land use terms for 'Agritourism', 'Farm gate premises' and 'Farm experience premises'.

These were reported to Council on 5 April 2022 see **Attachment 1** (issued under separate cover). Council's resolution and subsequent submission indicated that Council did not support the proposed Agritourism Reforms and did not request any additional uses be permitted in any zones until the findings of the Shellharbour Rural Lands Strategy were known and could be used to inform any permissibility or development controls relating to the proposed uses.

Agritourism Reform Changes and Implications for Council

In October 2022, the NSW Government announced that the Agritourism Reforms would be commencing on 2 December 2022 and released copies of the legislative changes, an information sheet and frequently asked questions see **Attachment 2** (issued under separate cover). Council was advised of a range of changes to legislation relating to the first stage of the Agritourism Reforms. These are:

- Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Farm Stay Accommodation) Regulation 2022
- Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022
- State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Agritourism) 2022

The first stage of the reforms, commencing on 1 December 2022, will:

- Amend the NSW Standard Instrument LEP to:
 - Insert the new agritourism and related land use terms. Notably, 'Agritourism', and its sub terms ('Farm experience premises' and 'Farm gate premises') will become permissible with consent in all Standard Instrument LEPs across the State (including Shellharbour LEP 2013) where 'Agriculture' is permissible with consent.
 - Refining controls relating to 'Farm stay accommodation'.
 - Expanding 'development without consent' opportunities for 'Poultry farms' and 'Pig farms'.
 - Introduce the new 'Farm stay accommodation' and 'Farm gate premises' optional clauses. These clauses remain optional and as such, Council has the opportunity to opt in or maintain its opt-out nomination from April 2022.
 - Make related changes to the Dictionary to reflect the new and amended definitions.
- Amend State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008 to:
 - Make changes to the Interpretation section (i.e., dictionary) to reflect the new and amended definitions.
 - Introduce savings provisions for complying development.

- Introduce an exempt development pathway for the rebuilding of farm buildings damaged by natural disasters, agritourism signs, 'Farm experience premises', 'Farm gate premises', 'Farm stay accommodation' and 'Roadside stalls'.
- Introduce a new Code, being the 'Agritourism and Farm Stay Accommodation Code' that provides a complying development pathway for 'Farm experience premises', 'Farm gate premises' and 'Farm stay accommodation'.
- Make consequential changes to the Housing SEPP, Primary Production SEPP and the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 in response to the Agritourism Reform changes.

The key themes that are potentially of most concern for Shellharbour arising from the above changes are outlined below:

Exempt and complying development pathways

These pathways were originally flagged as part of the initial EIE exhibition process in 2021, however, the proposed amendments are substantially different to those exhibited.

From 1 December 2022, Agritourism (and its sub terms - Farm gate premises and Farm experience premises) and Farm stay accommodation can be carried out as exempt or complying development on land in these zones in councils LEP:

- RU1 Primary Production
- RU2 Rural Landscape

In addition to these zones, Farm stay accommodation, Farm experience premises and Farm gate premises can be carried out as exempt development on additional land where development for agritourism, extensive agriculture, intensive livestock agriculture or intensive plant agriculture is permitted with or without development consent under the council's LEP. In Shellharbour LEP 2013 these are:

- C3 Environmental Management
- RE2 Private Recreation

Changes to the Standard Instrument LEP and Shellharbour LEP 2013

If a proposed Agritourism development is permissible in the zone but cannot meet the general requirements or development standards for exempt and complying development, it will be necessary to lodge a development application with council.

The changes to the Standard Instrument LEP and Shellharbour LEP 2013 will have substantial implications for Shellharbour and the assessment of development applications for Agritourism development.

Significantly, the new land use term 'Agritourism', and its sub terms (Farm gate premises and Farm experience premises) will become permissible with consent anywhere that 'Agriculture' is permissible with consent in NSW from 1 December 2022.

In Shellharbour this means the RU2 Rural Landscape Zone. This is directly contrary to Council's April 2022 submission to the Department of Planning and Environment.

The redefined Farm stay accommodation see **(Attachment 1)** will be permitted with consent in the zones where it is currently permitted. These zones are RU1 Primary Production, RU2 Rural Landscape, RU6 Transition and C3 Environmental Management.

As such, come 1 December 2022, Council will be required to consider development applications for 'Agritourism', and its sub terms (Farm gate premises and Farm experience premises) as well as the redefined Farm stay accommodation in the respective zones. Of concern in this regard, is that Council will not have any contemporary supporting development controls in place for these uses. Any development applications received would then need to be assessed on merit by Council.

It is anticipated that any development controls for these uses will be informed by the Shellharbour Rural Lands Strategy in accordance with Council's adopted Local Strategic Planning Statement. In this regard, a suitable consultant has now been engaged and the preparation of the Rural Lands Strategy is anticipated to commence early in the New Year and be completed mid to late 2023. Unfortunately, the timing of the implementation of the Agritourism Reforms and the completion of the Rural Lands Strategy do not align and there will be a period where there will be no specific development controls in Council's LEP or Development Control Plan (DCP). Consequently, applications will need to be assessed on the limited controls contained in the current wording of the optional clauses and a general merit assessment by Council.

'Farm gate premises' and 'Farm stay accommodation' optional clauses:

'Farm stay accommodation' will continue to be permissible under both the current group term ('tourist and visitor accommodation') and where the use is individually specified under Shellharbour LEP 2013. The relevant zones where 'Farm stay accommodation' is currently permissible are:

- RU1 Primary Production (individually specified)
- RU2 Rural Landscape (individually specified)
- RU6 Transition (individually specified)
- B2 Local Centre (mandated under group term 'tourist and visitor accommodation')
- C3 Environmental Management (individually specified)

In accordance with Council's previous resolution, no additional zones were nominated for this use.

'Farm gate premises' however, is a new land use being introduced for the first time into the Standard Instrument. Council nominated to make this land use prohibited in every zone in Shellharbour until adequate development controls could be developed, however the NSW Government have nominated the use as permissible where the

group term Agritourism is permissible. This is in the RU2 Rural Landscape zone in Shellharbour LEP 2013.

In April 2022, Council resolved to opt-in to a different version of the optional clause relating to Farm stay premises and to opt-out of the optional clause for Farm gate premises. Although the optional clauses currently contain limited development controls, they are intended to provide additional rigour and support for these land uses. As such, there is merit in now opting in for both the optional clauses as the 'Farm stay accommodation' and 'Farm gate premises' will now be permissible with consent.

Council has until 23 December 2022 to notify the Department of Planning and Environment that it wishes to opt-in for the inclusion of the optional clauses.

These optional clauses relate to development applications only and will add vigour of assessment in the absence of any specific LEP or DCP provisions. The absence of these optional clauses from Shellharbour LEP would result in any development applications for those uses being considered on merit only.

The optional clauses that Council is recommended to opt-in for inclusion in Shellharbour LEP 2013 in February 2023 are:

5.24 Farm stay accommodation [optional]

(1) *The objectives of this clause are as follows:*

- (a) *to diversify the uses of agricultural land without adversely impacting the principal use of the land for primary production,*
- (b) *to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.*

Direction: Additional objectives may be included.

(2) *Development consent must not be granted to development for the purposes of farm stay accommodation on a landholding unless the consent authority is satisfied all buildings or manufactured homes used to accommodate guests on the landholding will be:*

- (a) *on the same lot as an existing lawful dwelling house, or*
- (b) *on a lot of a size not less than the minimum lot size for a dwelling house to be permitted on the lot under an environmental planning instrument applying to the land.*

(3) *Subclause (2) does not apply if the development is a change of use of an existing dwelling to farm stay accommodation.*

(4) Development consent must not be granted to development for the purposes of farm stay accommodation on land unless the consent authority has considered—

- (a) whether the development will result in noise or pollution that will have a significant adverse impact on the following on or near the land—
 - (i) residential accommodation,*
 - (ii) primary production operations,*
 - (iii) other land uses, and**
- (b) whether the development will have a significant adverse impact on the following on or near the land—
 - (i) the visual amenity or heritage or scenic values,*
 - (ii) native or significant flora or fauna,*
 - (iii) water quality,*
 - (iv) traffic,*
 - (v) the safety of persons, and**
- (c) whether the development is on bush fire prone land or flood prone land, and*
- (d) the suitability of the land for the development, and*
- (e) the compatibility of the development with nearby land uses. Direction—
Additional development standards for farm stay accommodation may be included.*

Direction: Additional development standards for farm stay accommodation may be included.

5.25 Farm gate premises [optional]

(1) The objectives of this clause are as follows:

- (a) to allow for tourism and related commercial uses on land used principally for primary production at a scale that does not adversely affect the principal use of the land for primary production,*
- (b) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.*

Direction: Additional objectives may be included.

(2) Development consent must not be granted to development for the purposes of farm gate premises on land unless the consent authority has considered:

- (a) whether the development will result in noise or pollution that will have a significant adverse impact on the following on or near the land:
 - (i) residential accommodation,*
 - (ii) primary production operations,*
 - (iii) other land uses, and**

- (b) *whether the development will have a significant adverse impact on the following on or near the land:*
 - (i) *the visual amenity or heritage or scenic values,*
 - (ii) *native or significant flora or fauna,*
 - (iii) *water quality,*
 - (iv) *traffic,*
 - (v) *the safety of persons, and*
- (c) *whether the development is on bush fire prone land or flood prone land, and*
- (d) *the suitability of the land for the proposed development, and*
- (e) *the compatibility of the development with nearby land uses.*

Direction: Additional development standards for farm gate premises may be included.

It is noted that the optional clauses will commence in Standard Instrument LEPs from February 2023 (where a Council has nominated to opt-in), however, the clauses no longer include the suggested detailed or set development standards that were in the draft clauses that Council had previously considered. The revised versions do, however, specify that development standards can be added by Councils as required. Whilst this provides Council with greater flexibility and opportunities to tailor these clauses specifically for Shellharbour, the inclusion of additional provisions will need to be undertaken as part of a future planning proposal initiated by Council (not as part of the February 2023 NSW Government managed process). This change in approach has the potential to have resourcing impacts on Council.

The NSW Government are implementing the Agritourism Reforms, and this will present a current and urgent need to prepare appropriate supporting development controls for these land uses in Shellharbour DCP 2013. These controls are proposed to be informed by the findings of the Shellharbour Rural Lands Strategy which is likely to be completed mid – late 2023. Should Council opt-in to the 'Farm gate premises' and 'Farm stay accommodation' optional clauses, Council will also need to prepare a Planning Proposal to set any additional development standards for these uses.

There is significant merit in pursuing Shellharbour specific development standards for these uses, especially 'Farm stay accommodation'.

Therefore, for the reasons outlined above, it is recommended that Council advise the NSW Department of Planning and Environment that Council wishes to opt-in for the optional clauses 5.24 and 5.25 in the Standard Instrument LEP for 'Farm stay accommodation' and 'Farm gate premises' to be included in Shellharbour LEP 2013.

Financial / Resources Implications

If Council resolves to opt-in for the optional clauses (clauses 5.24 and 5.25) the insertion of the optional clauses (without the additional development standards) will be managed by the Department of Planning and Environment. As such, there will be no financial implications for Council.

The process of amending Shellharbour's LEP (through a Planning Proposal) and DCP would be undertaken by City Planning staff. This will utilise staff resources.

The reforms in their current form will place additional responsibility for enforcement and regulation of Agritourism uses onto Council. This is likely to require additional staff resources to be able to meet community expectation of enforcement of the legislation.

Legal and Policy implications

Without specific provisions in Shellharbour LEP and DCP that guide agritourism development, development applications for these uses will need to be assessed individually on merit. This provides a level of risk and uncertainty for the community and Council and may result in undesirable-built form and operational outcomes. Unfortunately, Council will not be able to get appropriate development standards and controls in place for the commencement of the Reforms in December 2022 and February 2023, respectively.

However, the optional clauses recommended for inclusion into Shellharbour LEP 2013 that relate to development applications for 'Farm stay accommodation' and 'Farm gate premises' will assist in mitigating some of the risk and uncertainty in the assessment in the absence of any specific LEP or DCP provisions for those uses. The absence of these optional clauses from Shellharbour LEP would result in any development applications for those uses being considered on merit only.

Public / Social Impact

The agritourism policy introduces new land use definitions for on-farm activities and enables these to be undertaken with development consent or as exempt and complying development if they meet specified development standards. This means landowners will have the opportunity to set up agritourism businesses sometimes without the complexity and cost of lodging a development application. Landowners will be able to run activities on their farms more easily, including farm experiences and on farm accommodation, cellar doors, cafes, retreats, roadside stalls, fruit picking and hosting small events or weddings.

The commencement of these changes before the findings of the Shellharbour Rural Strategy are known will mean that Council will be unable to ensure that any future development of affected rural and environmental land in the City will occur in a considered and appropriate manner, until identified changes from the Rural Strategy are able to be incorporated into Council's DCP and LEP. The proposed 'Agritourism' uses proposed are in rural and environmental zones in the City and without adequate controls in place this will risk adverse impacts arising from this development type.

However, Council has the opportunity to opt-in to two optional clauses recommended for inclusion into Shellharbour LEP 2013 that relate to development applications for 'Farm stay accommodation' and 'Farm gate premises' only. These clauses contain some limited objectives and considerations that Council must make when assessing a

development application for 'Farm stay accommodation' and 'Farm gate premises' which will add a level of vigour of assessment in the absence of any specific LEP or DCP provisions for those uses. The absence of these optional clauses from Shellharbour LEP would result in any development applications for those uses being considered on merit only.

Link to Community Strategic Plan

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

Objective: 2.2 We are a beautiful and connected City

Strategy: 2.2.1 Our planning reflects the unique character of our city and natural environment and is responsive to the evolving needs of our community

It also supports the following priority and action identified within Council's Local Strategic Planning Statement:

Priority No.14: Protect and enhance our rural lands

Action P14.1: Council will develop a Rural Strategy

Consultations

Internal

Group Manager City Development

External

Department of Planning and Environment Staff

Political Donations Disclosure

Not Applicable

Recommendation

That Council:

- 1. Note the NSW Agritourism Reforms including the changes to the State Environmental Planning Policy (Exempt and Complying Development Codes) and NSW Standard Instrument LEP.**
- 2. Authorise the Chief Executive Officer or their delegate to write to the Department of Planning and Environment advising that Council wishes to**

**10.3.2 Shellharbour Local Environmental Plan 2013 Planning Proposal 1/2022
– 418 Princes Highway and 10 Colden Drive, Albion Park Rail (11974660)**

To the Chief Executive Officer

Directorate: Community and Customers
Group: City Planning

Manager: Geoff Hoynes – Group Manager City Planning
Author: Ian Rankine – Senior Strategic Planner

Summary

The purpose of this report is to outline the details of a Planning Proposal application to amend Shellharbour Local Environmental Plan 2013 (LEP 2013) and seek a Council resolution to prepare a Planning Proposal to amend Shellharbour LEP 2013.

The Planning Proposal application seeks to rezone privately owned land currently zoned RE1 Public Recreation to IN2 Light Industrial and introduce a building height of 11.0m, a floor space ratio of 1:1 and a minimum lot size of 2.7ha.

The application applies to a strip of land about 8.0 metres wide that runs along the western boundary of Lot 418 DP 1252087, 418 Princes Highway, Albion Park Rail and Lot 419 DP 1252087, 10 Colden Drive, Albion Park Rail, see **(Attachment 1)**.

This report recommends preparing a Planning Proposal and seeks Council's support to send the Planning Proposal to the NSW Department of Planning & Environment (DPE) for a Gateway determination.

Background

Owner: APR Domain Pty Ltd
Applicant: SET Consultants Pty Ltd

A Planning Proposal is a document that explains the intended effect of a proposed amendment to LEP 2013, such as a rezoning or additional permitted use of land, and sets out the justification for making the amendment.

The LEP amendment process has the following five key steps:

1. *Planning Proposal* – Council is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan.

2. *Gateway Determination* – The Minister (or delegate) determines whether the planning proposal is to proceed. This Gateway acts as a checkpoint to ensure that the proposal is justified before further resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities, and if necessary, the proposal is varied.
3. *Consultation* – If required by the Gateway determination, the proposal is publicly exhibited (this ranges from 10 working days for a basic planning proposal to 30 working days for a complex planning proposal). A person making a submission may also request a public hearing.
4. *Assessment* – Council will consider any submission objecting to the proposal and the proposal may be varied as necessary prior to adoption. Parliamentary Counsel then prepares a draft local environmental plan – the legal instrument.
5. *Decision* – with the Minister’s (or delegate’s) approval, the plan becomes law and is published on the NSW legislation website.

The final decision on whether the plan becomes law and in what form it becomes law, rests with the Minister for Planning, or if delegation is granted, to Council.

The Planning Proposal application is currently at Step 1.

If Council resolves to support the Planning Proposal application, Council staff will prepare the Planning Proposal and send the relevant information to the DPE for their review. This is Step 2 of the Gateway process outlined above.

History to RE1 zoning

Whilst this strip of land is zoned RE1 Public Recreation, it is privately owned and does not appear to have been used for open space or recreation purposes. The RE1 zoning was introduced as part of amendment No. 26 to a previous LEP, Shellharbour LEP 16, which applied to the LGA in 1989.

Amendment 26 was finalised on 3 February 1989 and rezoned a large holding of land from Rural to a combination of 4(a1) Light Industrial 1, 7(d) Environmental Protection Scenic, 9(c) Local Road Reservation and 9(a) Open Space Existing Recreation. See **(Attachment 2)** for an extract of Shellharbour LEP 16 immediately before Shellharbour LEP 2000 came into force.

The LGA wide Local Environmental Plan for this locality changed from LEP 16 to LEP 2000 and then to the current LGA wide Local Environmental Plan, LEP 2013.

(Attachment 3) shows the locality as it was zoned under Shellharbour LEP 2000 immediately prior to LEP 2013 coming into force.

Zoning, lot layout and land ownership of land in this locality changed over the period of Shellharbour LEP 16 and Shellharbour LEP 2000. Over that time, the Roads and Maritime Services (now Transport for NSW) modified their requirements for the location of the Princes Highway which had implications for land zoning.

The large holding has been subdivided a number of times to create the lot layout in this locality. The subdivisions were created from about 1999 to 2020.

(Attachment 4a) shows the current zoning of the land.

(Attachment 5a) shows the current building height of the land.

(Attachment 6a) shows the current floor space ratio of the land.

(Attachment 7a) shows the current minimum lot size of the land.

Development Application 0280/2020

Conditional Development Consent 0280/2020 was issued on 25 March 2021 for a Specialised Retail Premises development comprising ten units, takeaway food and drink premises and associated parking, signage and landscaping. The majority of the development occurs on Lot 419 DP 1252087 with some road works occurring on Lot 418 DP 1252087.

Construction of the Specialised Retail Premises has commenced.

This development consent was issued under the current zoning of the land. The proposed zone change will not adversely impact that development.

Any future development application for Lot 418 will need to address and take into account, the relevant local environmental plan and development control plan provisions at that time.

Planning Proposal application

The application seeks to:

- rezone the privately owned RE1 Public Recreation strip of land to be the same as the existing zoning IN2 Light Industrial elsewhere on the two lots, see **(Attachment 4b)**.
- include a building height of 11.0 metres to be the same as the existing building height elsewhere on the two lots, see **(Attachment 5b)**. There is currently no building height associated with the RE1 zoned land
- include a floor space ratio of 1:1 to be the same as the existing floor space ratio elsewhere on the two lots, see **(Attachment 6b)**. There is currently no floor space ratio associated with the RE1 zoned land

- include a minimum lot size of 2.7 hectares to be the same as the existing minimum lot size elsewhere on the two lots, see **(Attachment 7b)**. There is currently no minimum lot size associated with the RE1 zoned land.

Financial / Resources Implications

The RE1 zoned land is not burdened by a Land Reservation Acquisition Map in LEP 2013. This means that there is no LEP requirement for Council to acquire the privately owned RE1 zoned land.

The applicant paid the relevant Stage 1 Planning Proposal fee as required in Council's Fees & Charges. Should Council support the preparation of a Planning Proposal, the Stage 2 fee is required to be paid in accordance with Council's current Fees & Charges.

The Planning Proposal will be assessed and processed using staff resources.

Legal and Policy implications

The Planning Proposal will need to be assessed and prepared in accordance with the DPE's LEP Making Guidelines 2021, relevant *Environmental Planning & Assessment Act* and *Regulation* requirements and relevant DPE Planning Circulars.

The following matters are considered relevant.

Local Strategic Planning Statement

Council adopted the Shellharbour Local Strategic Planning Statement (LSPS) at its meeting of 19 May 2020.

Section 3.33(2)(c) of the *Environmental Planning & Assessment Act* requires a Planning Proposal to include whether the Proposal will give effect to the LSPS.

The LSPS does not have a specific Action that affects this Planning Proposal.

Action P3.1 Implement recommendations of the Shellharbour City Open Space and Recreation Needs Strategy does not apply to this Proposal as the RE1 zoned land was not included in the strategy as it is privately owned land.

Action P18.4 Review the LEP and DCP to facilitate business investment and growth indirectly relates to this Proposal. The submission of this application requires the LEP to be reviewed and if supported by Council, will add a small amount of Industrial zoned land to that currently available. This will facilitate business investment and growth in the Local Government Area.

Shellharbour Open Space and Recreation Needs Strategy

This Strategy was completed in 2020. The RE1 Public Recreation land on these two sites was not included in that project as the land is privately owned and had not been identified in LEP 2013 for acquisition.

This Strategy does not identify the need for this land to remain zoned RE1.

Local Planning Directions

The Minister for Planning issues local planning directions that need to be considered by Council when assessing Planning Proposals.

This Planning Proposal is inconsistent with one direction – 5.2 Reserving land for public purposes.

This direction states amongst other matters that “A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary (or an officer of the Department nominated by the Secretary)”.

This Planning Proposal intends to remove the RE1 zoning and so is inconsistent with this direction. A Planning Proposal can be inconsistent with the direction if it is considered by the DPE to be of minor significance.

This Planning Proposal reduces the width of the RE1 zoned land by about 8m and about 4200m² in area.

The reduction in RE1 zoned land is considered to be a minor inconsistency with the terms of the Direction as the land zoned RE1 is in private ownership and is not part of the public open space network. The proposal will therefore not impact on the overall supply of public open space for the City now and into the future.

There is no relevant public authority in this case, as the land is privately owned.

Further, the land in its current state does not provide any public recreational use.

Plan Making Delegations

Given the matters in this Planning Proposal are considered to be of local significance, it is recommended that as part of the Gateway submission, Council request the DPE allow Council to use its plan making delegations, including to make or not make the plan under Section 3.36 of the *Environmental Planning & Assessment Act*, after any required consultation on the draft plan.

Public / Social Impact

The existing RE1 zoned land is not currently used for open space purposes and has not been included or counted as open space. The adjoining Public Reserve 56 that runs north to south, will continue to provide open space connectivity along the eastern boundary of the adjoining residential subdivision.

Public/social impacts will be further considered after community consultation.

Link to Community Strategic Plan

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

Objective: 2.2 We are a beautiful and connected City

Strategy: 2.2.1 Our planning reflects the unique character of our City and natural environment and is responsive to the evolving needs of our community

2.2.3 Facilitate sustainable development that considers current and future needs of our community and environment

Consultations**Internal**

Recreation Planner

Senior Transport Engineer

External

Not applicable for this stage of the Planning Proposal. Consultation will occur as required by the Gateway determination

Political Donations Disclosure

Under Section 10.4(4) of the *Environmental Planning and Assessment Act 1979* (the Act) person who makes a relevant planning application to Council is required to disclose any reportable political donations and gifts made by any person with a financial interest in the application within the period commencing two years before the application is made and ending when the application is determined including:

- a. all reportable political donation made to any Councillor of this Council
- b. all gifts made to any Councillor or employee of this Council

Under Section 10.4(5) of the Act, these disclosure requirements also apply to a person, or any associate of a person, who makes a relevant public submission to Council in relation to a relevant planning application.

Note: Section 10.4(1) of the *Act* states: ‘political donations or gifts are not relevant to the determination of any such planning application, and the making of political donations or gifts does not provide grounds for challenging the determination on any such planning application’.

The Disclosure Statements received by Council indicate that no reportable donations or gifts have been made.

Recommendation

That Council:

- 1. Prepare Planning Proposal No 1/2022 to amend Shellharbour Local Environmental Plan 2013 in the following manner:**
 - a. Amend Shellharbour LEP 2013 Land Zoning Map generally in accordance with Attachment 4b**
 - b. Amend Shellharbour LEP 2013 Height of Building Map generally in accordance with Attachment 5b**
 - c. Amend Shellharbour LEP 2013 Floor Space Ratio Map generally in accordance with Attachment 6b**
 - d. Amend Shellharbour LEP 2013 Minimum Lot Size Map generally in accordance with Attachment 7b.**
- 2. Authorise the Chief Executive Officer or their delegate to submit Shellharbour Local Environmental Plan 2013 Planning Proposal No 1/2022 to the NSW Department of Planning & Environment in accordance with section 3.34 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.**
- 3. Delegate to the Chief Executive Officer or their delegate, authority to make minor mapping and Local Environmental Plan instrument changes to Shellharbour Local Environmental Plan 2013 Planning Proposal No 1/2022 if and as required by the NSW Department of Planning & Environment's gateway determination.**
- 4. As part of its gateway submission, apply to the Department of Planning & Environment for Council to use its plan making related delegations, including making or not making the plan under section 3.36 of the *Environmental Planning and Assessment Act*, after any public exhibition of the draft plan.**
- 5. Approve Shellharbour Local Environmental Plan 2013 Planning Proposal No 1/2022 to be publicly exhibited in accordance with the gateway determination.**

- 6. Endorse a further report be provided to Council for consideration after the public exhibition period has closed, detailing the public exhibition outcomes and with further recommendations regarding adoption.**

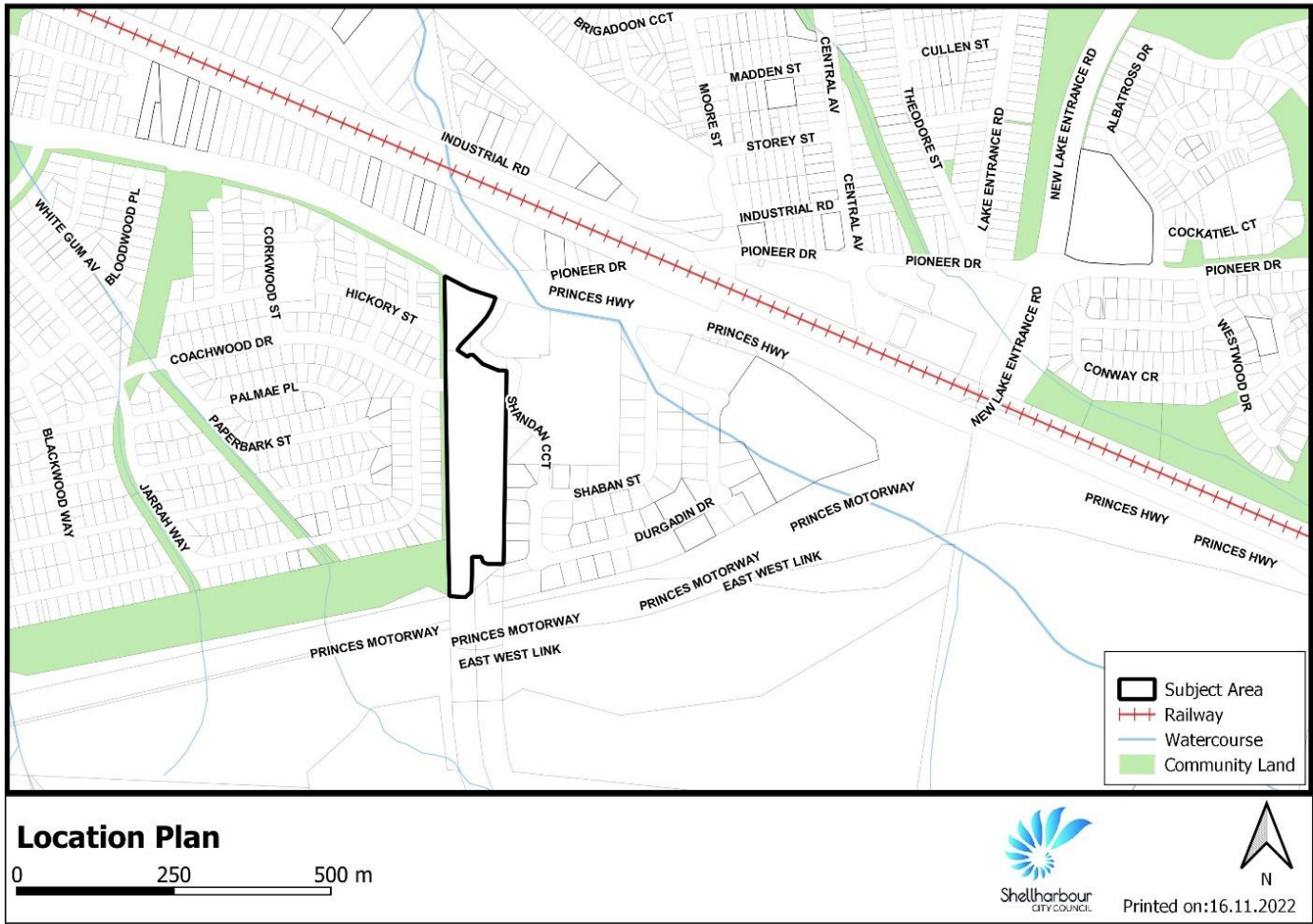
Approved for Council's consideration: Geoff Hoynes
Group Manager City Planning

Date of Meeting: 13 December 2022

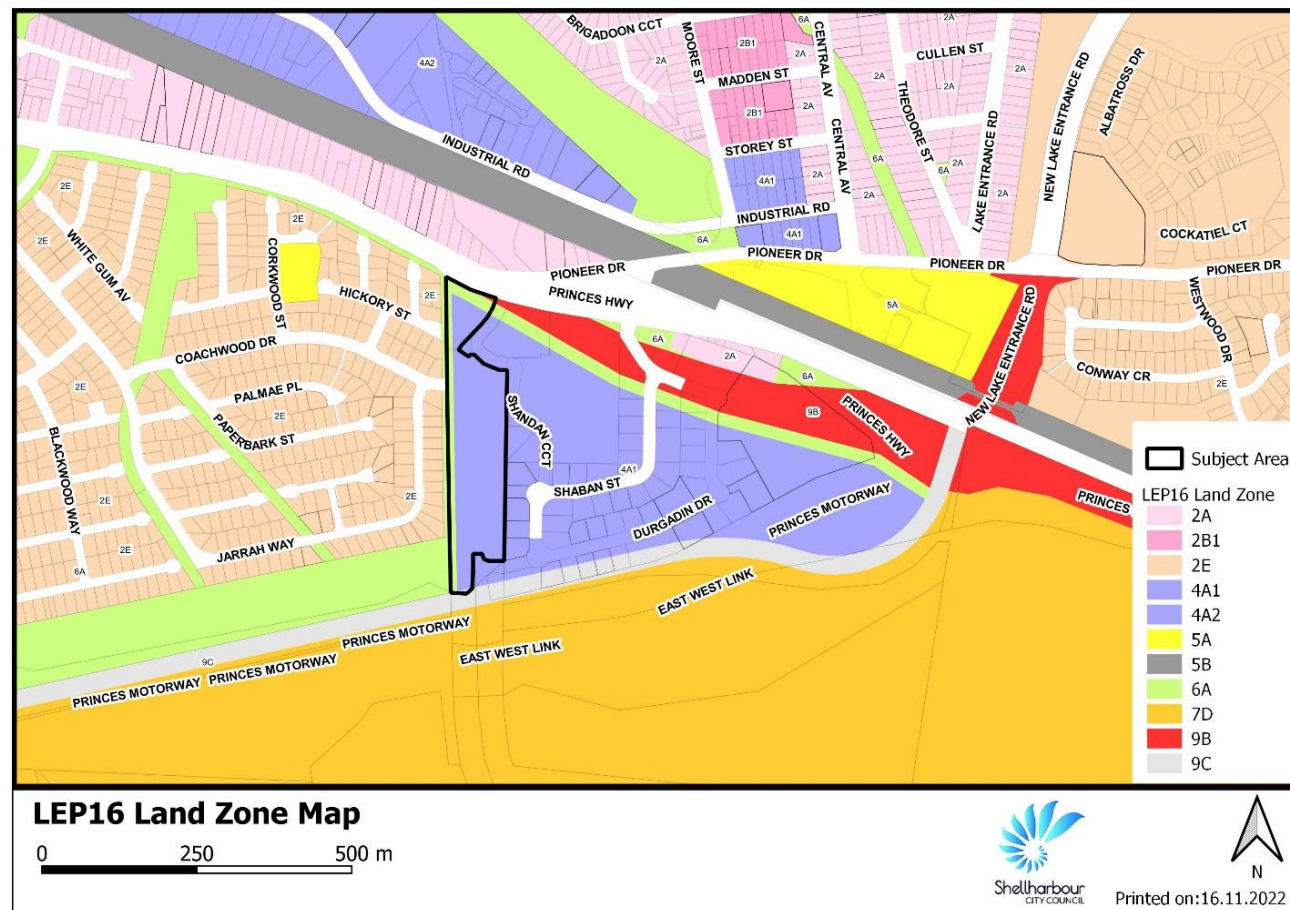
Attachments

1. Locality Plan
2. Extract of Shellharbour LEP 16
3. Extract of Shellharbour LEP 2000
- 4a. Current zoning Shellharbour LEP 2013
- 4b. Proposed zoning Shellharbour LEP 2013
- 5a. Current height of building Shellharbour LEP 2013
- 5b. Proposed height of building Shellharbour LEP 2013
- 6a. Current floor space ratio Shellharbour LEP 2013
- 6b. Proposed floor space ratio Shellharbour LEP 2013
- 7a. Current minimum lot size Shellharbour LEP 2013
- 7b. Proposed minimum lot size Shellharbour LEP 2013

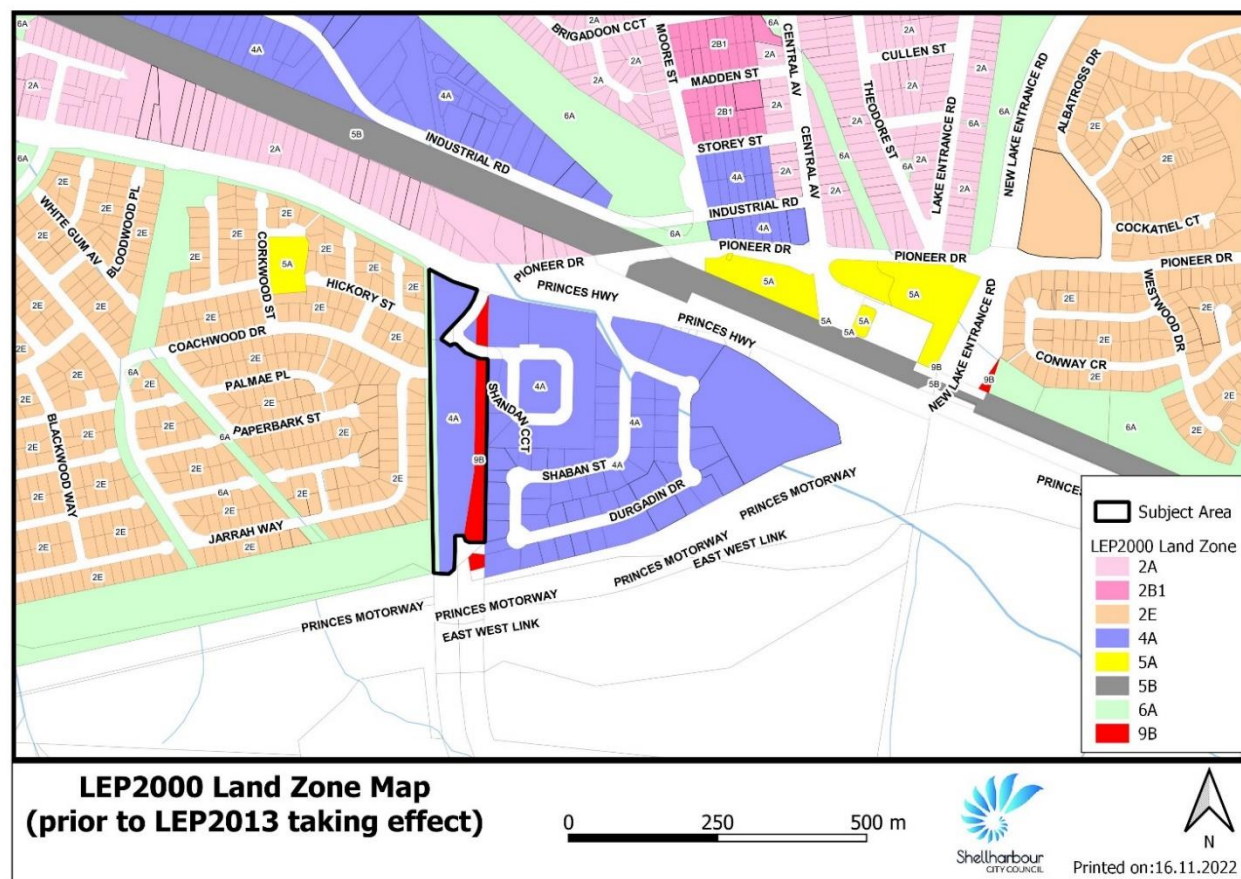
Attachment 1 – Locality Plan



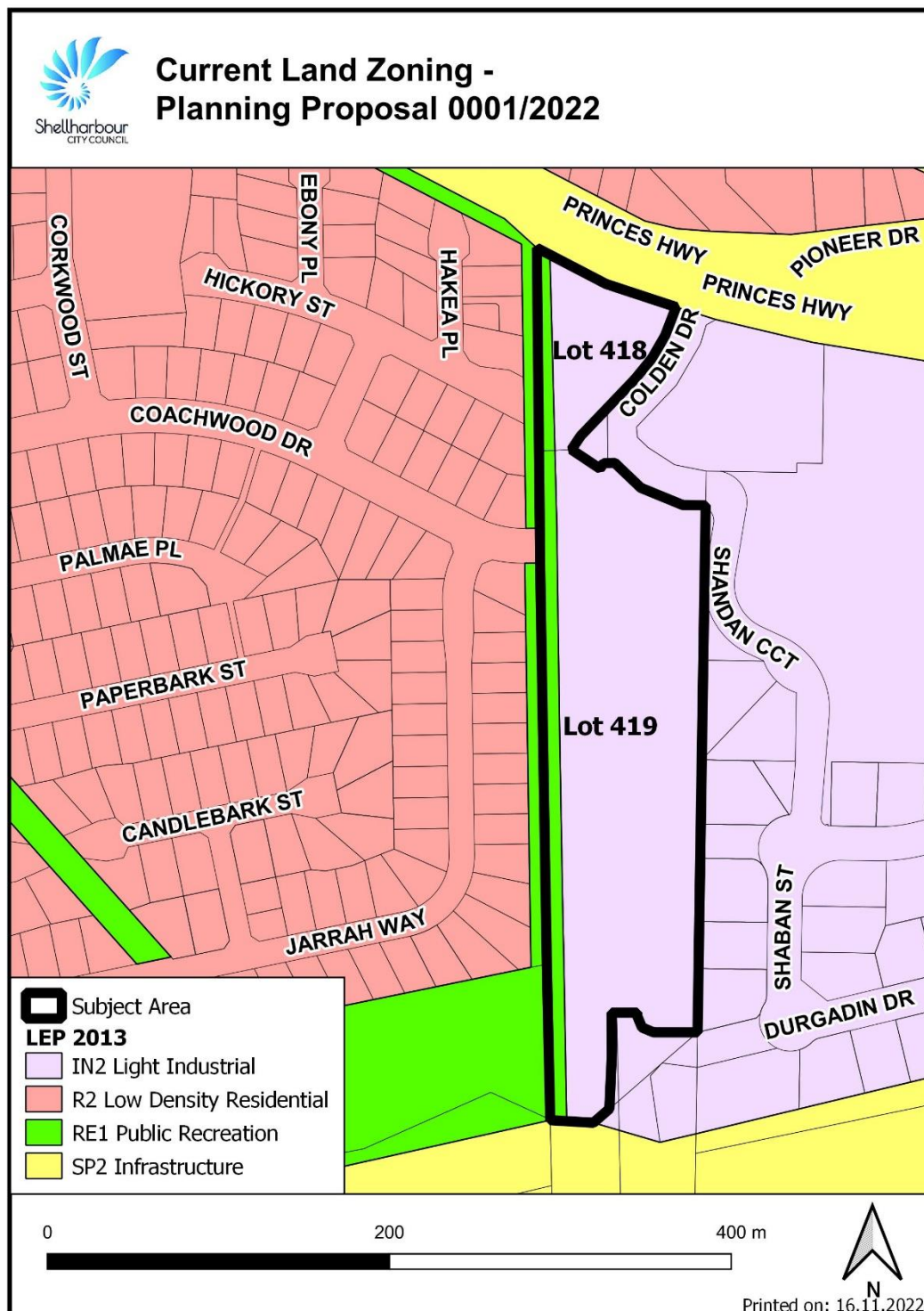
Attachment 2 – Extract of Shellharbour LEP 16



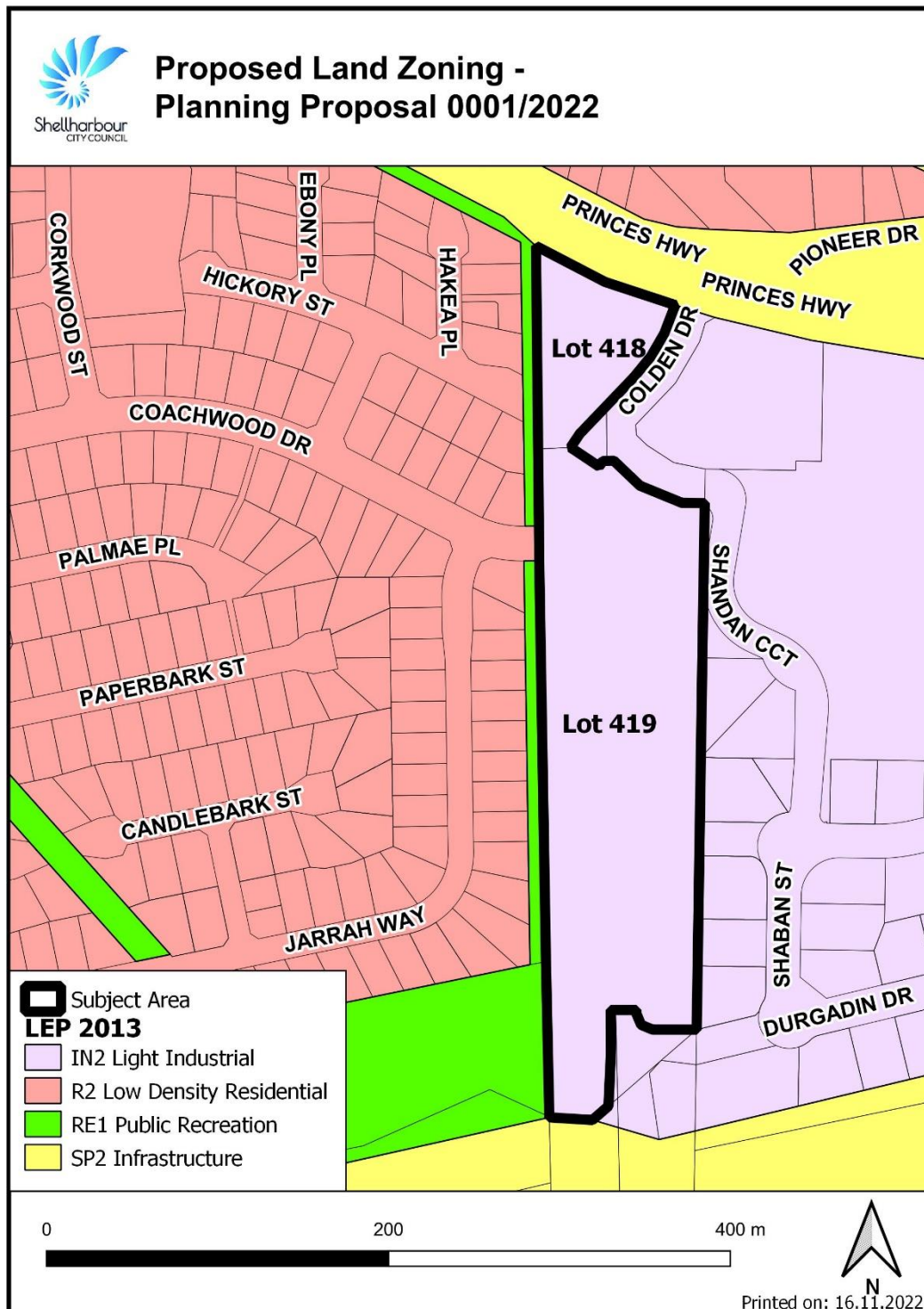
Attachment 3 – Extract of Shellharbour LEP 2000



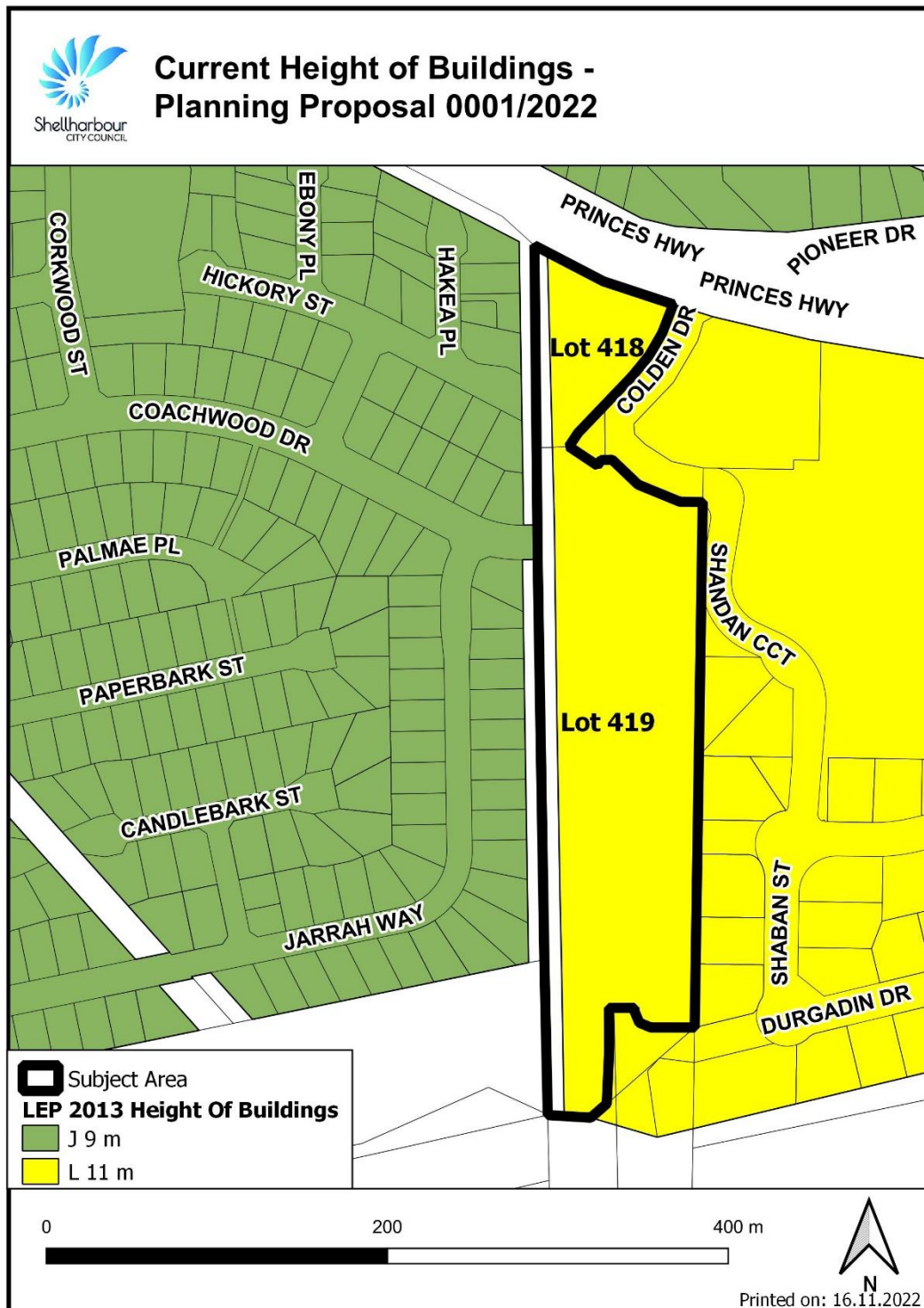
Attachment 4a – Current zoning Shellharbour LEP 2013



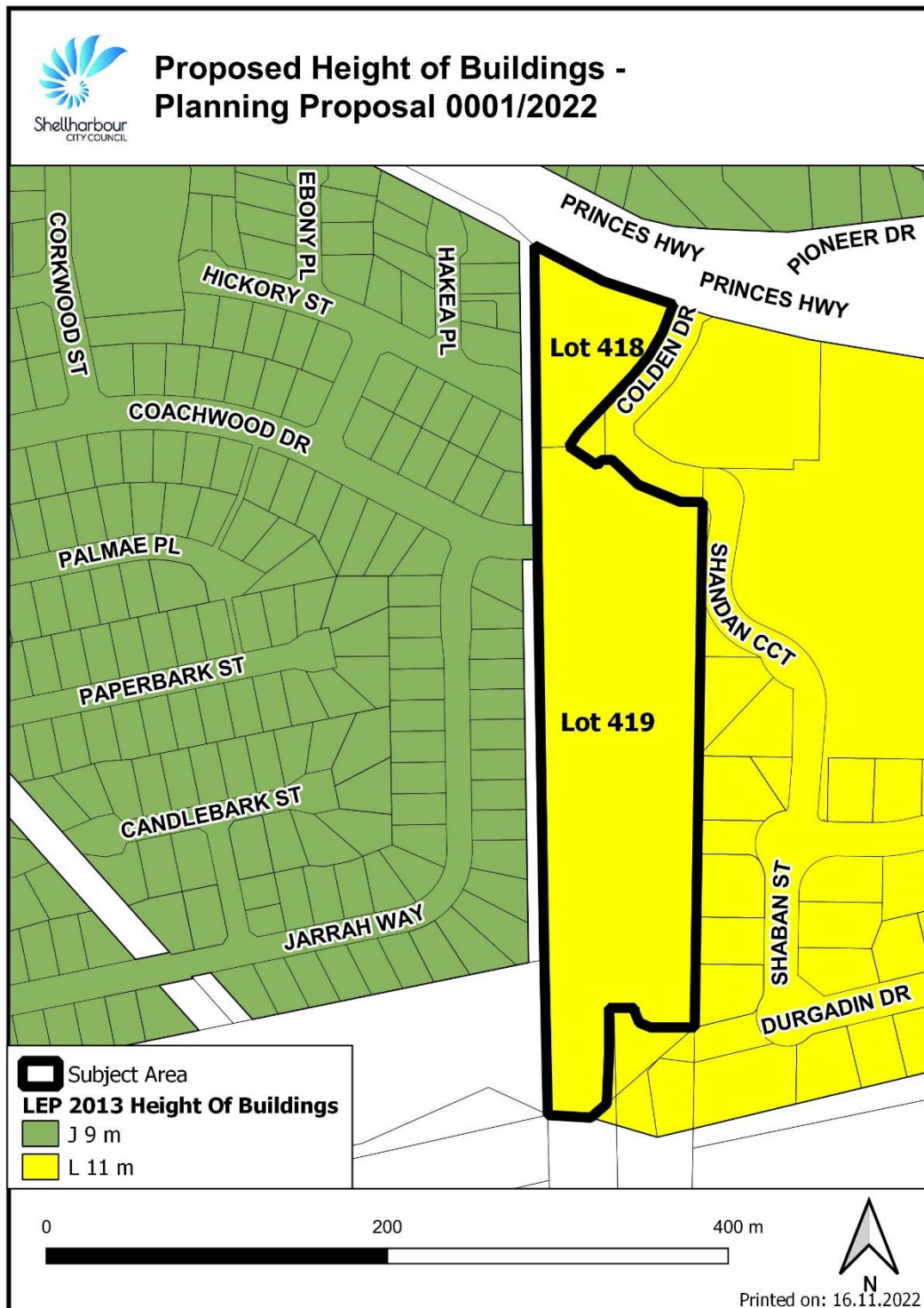
Attachment 4b – Proposed zoning Shellharbour LEP 2013



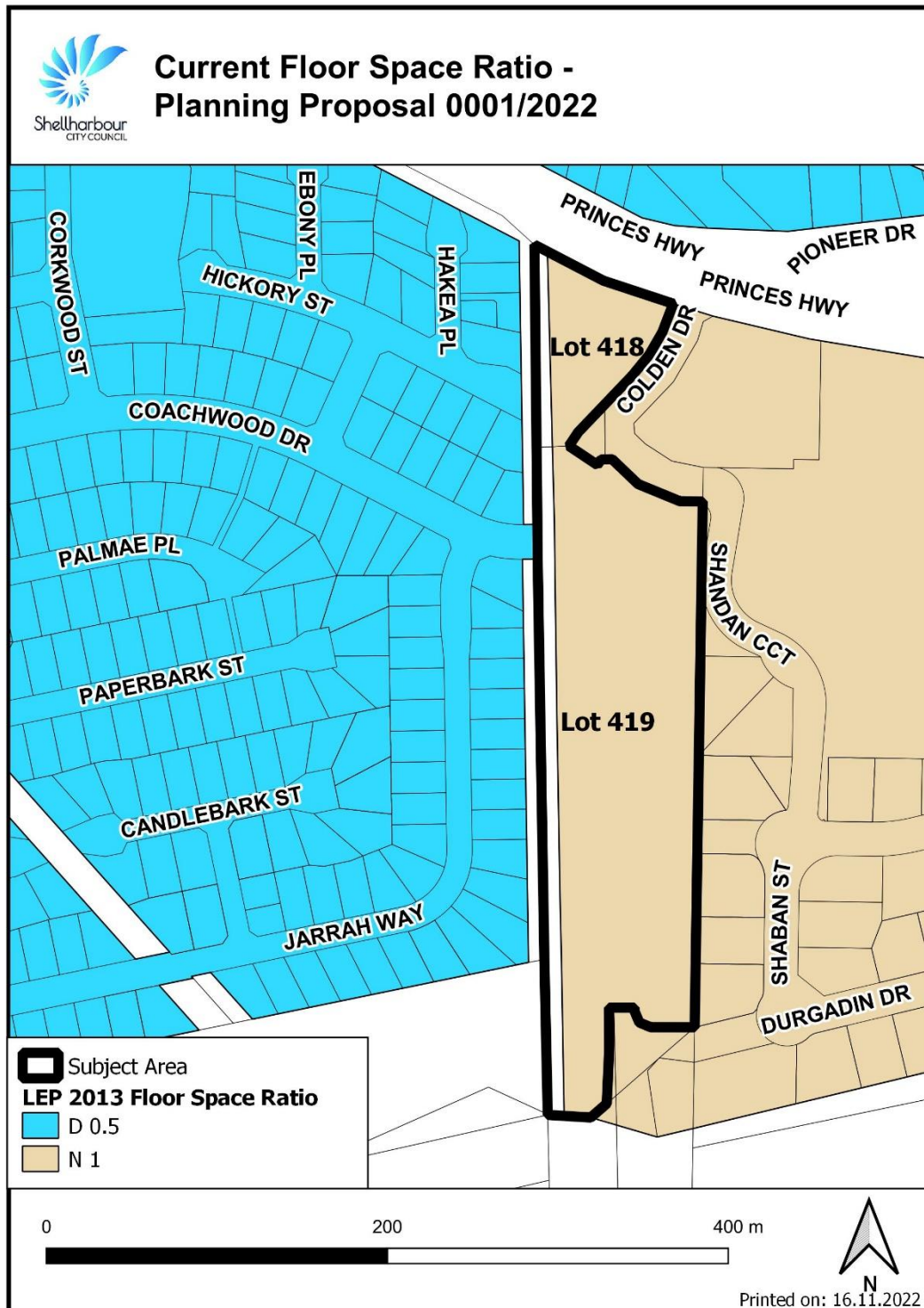
Attachment 5a – Current height of building Shellharbour LEP 2013



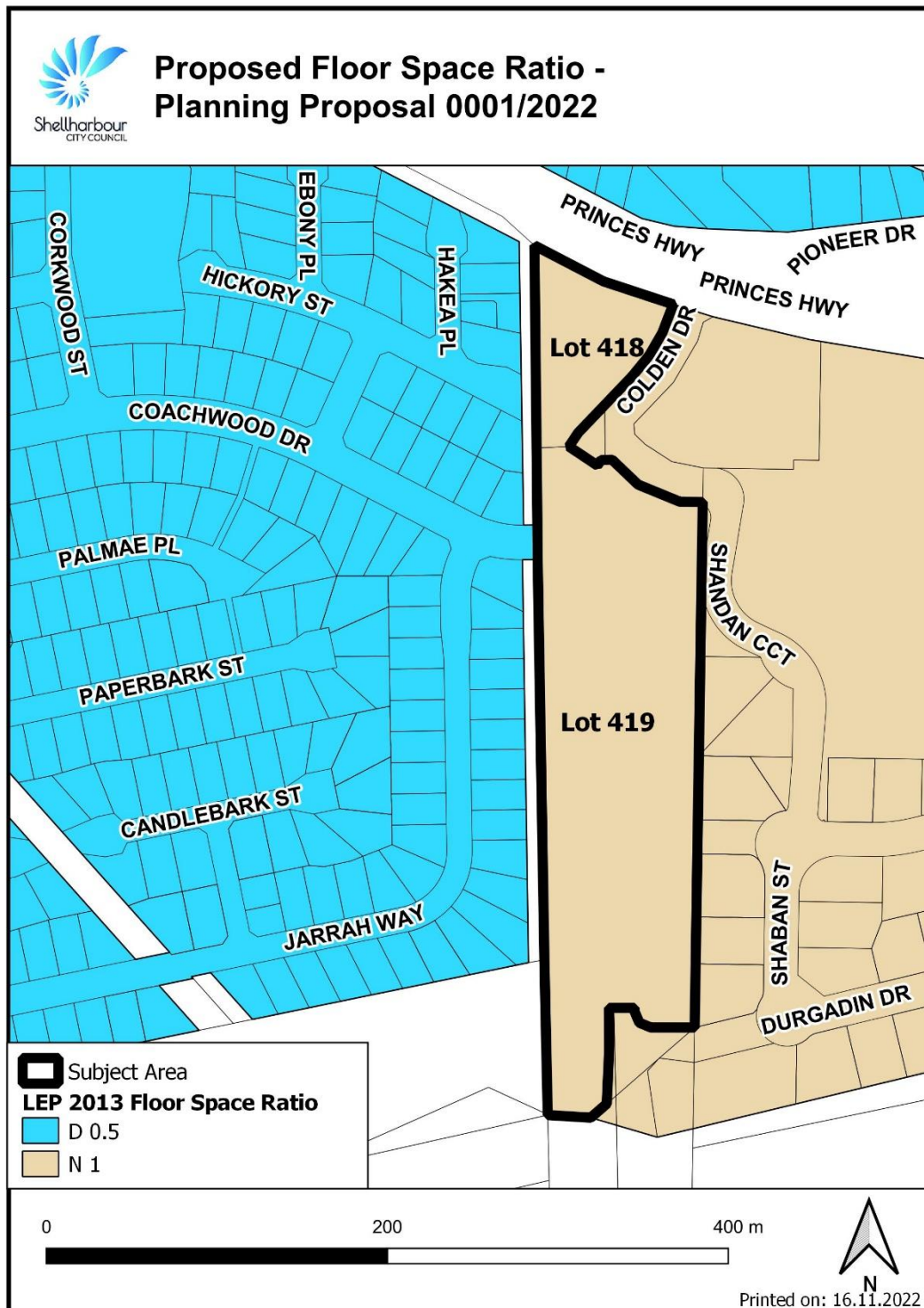
Attachment 5b – Proposed height of building Shellharbour LEP 2013



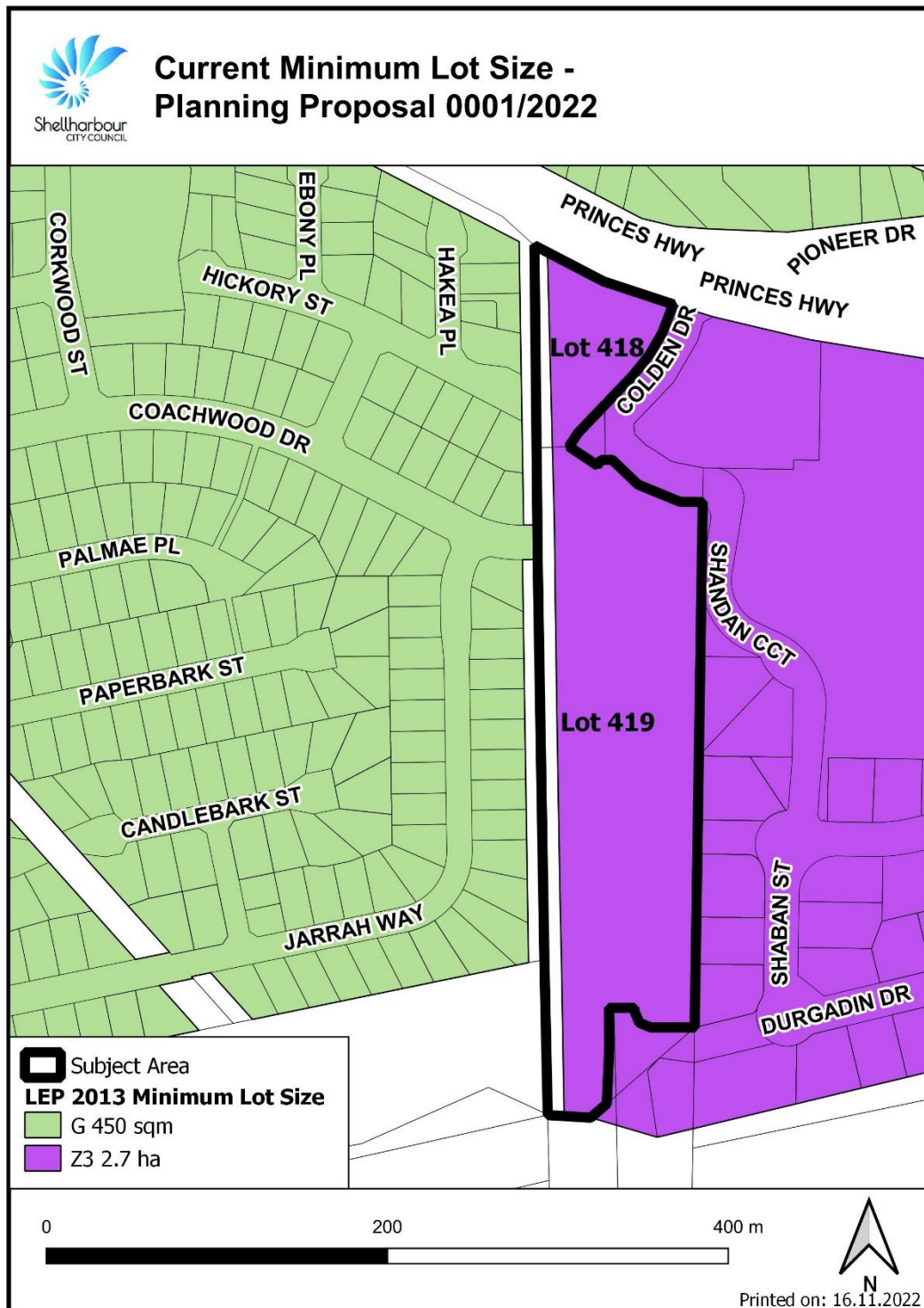
Attachment 6a – Proposed floor space ratio Shellharbour LEP 2013



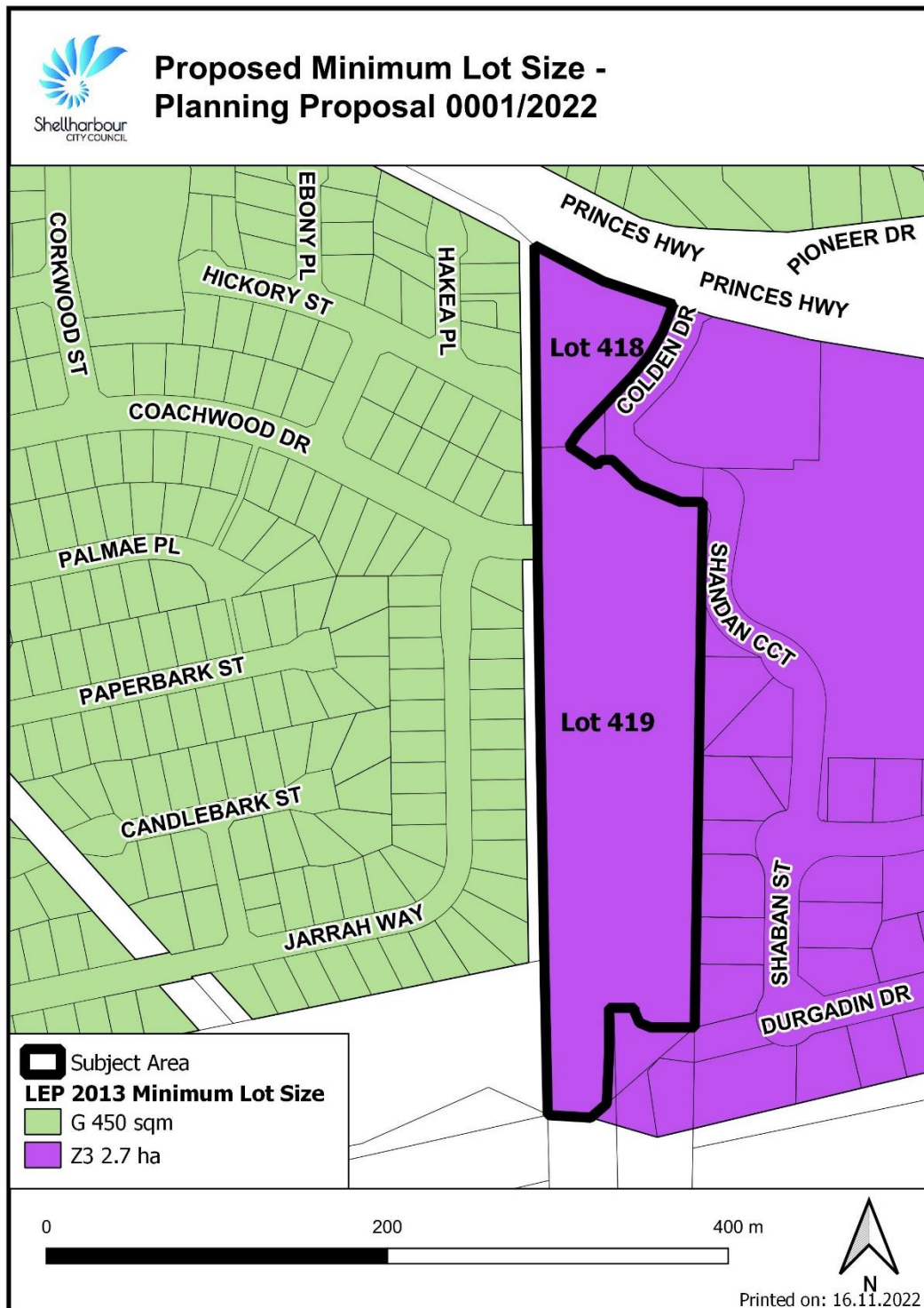
Attachment 6b – Proposed floor space ratio Shellharbour LEP 2013



Attachment 7a – Current minimum lot size Shellharbour LEP 2013



Attachment 7b – Proposed minimum lot size Shellharbour LEP 2013



10.3.3 Opportunities for Oak Flats Youth and Family Recreation Facility (11974658)

To the Chief Executive Officer

Directorate: Community and Customers
Group: City Planning

Manager: Geoff Hoynes – Group Manager City Planning
Author: Melissa Muscat - Graduate Strategic Planner

Summary

The purpose of this report is to respond to a Council resolution, from its meeting of 7 June 2022, where it was resolved:

That a report be prepared on the opportunities for a youth and/or family recreational facility within Oak Flats to enhance the area and surrounding playground at Kingston Street Oak Flats and to increase the accessibility, usability and activation of the space.

It is recommended that Council receive and note the report and resolve to prepare a master plan following the preparation and adoption of the City wide Aquatics Review.

Background

The site subject to this Council resolution forms part of a larger district park that provides a variety of passive and active recreational opportunities that accommodate recreation needs for a range of users (**Attachment 1**). Facilities include Oak Flats swimming pool, a play space, segregated dog agility park, tennis courts and Keith Bond and Geoff Shaw Ovals and associated infrastructure. The site is priority 2 on the adopted Active Open Spaces Master Plan Priority List.

Due to the size and variety of uses at the site, any opportunities for a future youth and or family recreational facility would be investigated through a strategic planning process including extensive community consultation. This could be achieved through preparation of a master plan.

The Open Space Recreation (OSR) Strategy identifies the strategic importance of master planning key open spaces. As a result, Action 2.4 of the OSR Strategy recommends 'Council to continue to initiate, resource and implement master plans for key open spaces informed by the OSRN Study'. The Open Space Recreation Needs (OSRN) Study identifies there will be growing demand for child-friendly, youth-friendly and family-friendly open spaces and recreational facilities in the Local Government Area (LGA). The OSRN Study identifies that consideration needs to be given to how to best cater for different cohorts within the 0-24 year bracket, including access to parks

with amenities, play spaces, built facilities such as skate parks, organised sports and recreation opportunities.

The preparation of a master plan would consider the site within the scope of other strategic frameworks and would be informed by the outcomes of the whole of LGA Aquatics Review, as Oak Flats Pool is a key facility for the site. It is anticipated that the LGA-wide Aquatics Review will commence in eighteen months. Other relevant documents also need to be considered such as the OSRN Study and OSR Strategy (2020), Disability Access and Inclusion Plan (2017), Community Facilities Strategy (2021), Master Plan for Harrison Park (2021), Oak Flats Town Centre Plan (2015) and the site's Plan of Management.

When completed, a master plan would set out the vision for the site and make recommendations for future recreational opportunities at the site. The preparation of a master plan would aim to balance the needs of different members of the community, while enhancing the accessibility, usability and activation of the site. The master plan would be informed by demographic data, condition assessment, safety reports and community consultation. To date, Council has received community requests for other recreation facilities at this site, including a community garden and pump track. Further targeted consultation would be an integral part of the master planning process.

Financial / Resources Implications

Master planning the site would involve staff resourcing and financial assistance to complete the project.

Legal and Policy implications

There are no legal or policy implications associated with the preparation of this report, or with future master planning the site. The preparation of an LGA-wide Aquatics Review will be required before any master planning begins. The preparation of a master plan at this site would be informed by the outcomes of the Aquatics review.

Public / Social Impact

The master planning process would require an extensive community consultation period whereby feedback would be sought from key stakeholders, such as user groups, adjoining residents and the wider community. This consultation period would provide opportunities for the public to have input to the design of the space.

Link to Community Strategic Plan

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

Objective: 1.2 We are a liveable community

Strategy: 1.2.1 Inclusive, accessible and safe for our entire community

Strategy: 1.2.2 Promote healthy living and high-quality public spaces that are well maintained and activated

Strategy: 1.2.3 Construct and upgrade buildings and infrastructure that meet current and future community needs

Objective: 2.2 We are a beautiful and connected city

Strategy: 2.2.1 Our planning reflects the unique character of our City and natural environment and is responsive to the evolving needs of our community

Objective: 4.1 We deliver our future together

Strategy 4.1.1 The community is meaningfully engaged and active in shaping the future of the City

Consultations

Internal

Aquatics and Recreation Coordinator
Manager Asset Planning
Parks Manager
Recreation Planner
Senior Community Planning Officer
Group Manager Built and Natural Environment

External

Nil

Political Donations Disclosure

Not Applicable.

Recommendation

That Council:

- 1. Receive and note this report which addresses Council resolution of 7 June 2022, on the opportunities for a youth and/or family recreational facility within Oak Flats, to enhance the area and surrounding playground at Kingston Street and to increase the accessibility, usability and activation of the space; and**

- 2. Resolve to prepare a master plan for the site, following preparation and adoption of the LGA wide Aquatics Review.**

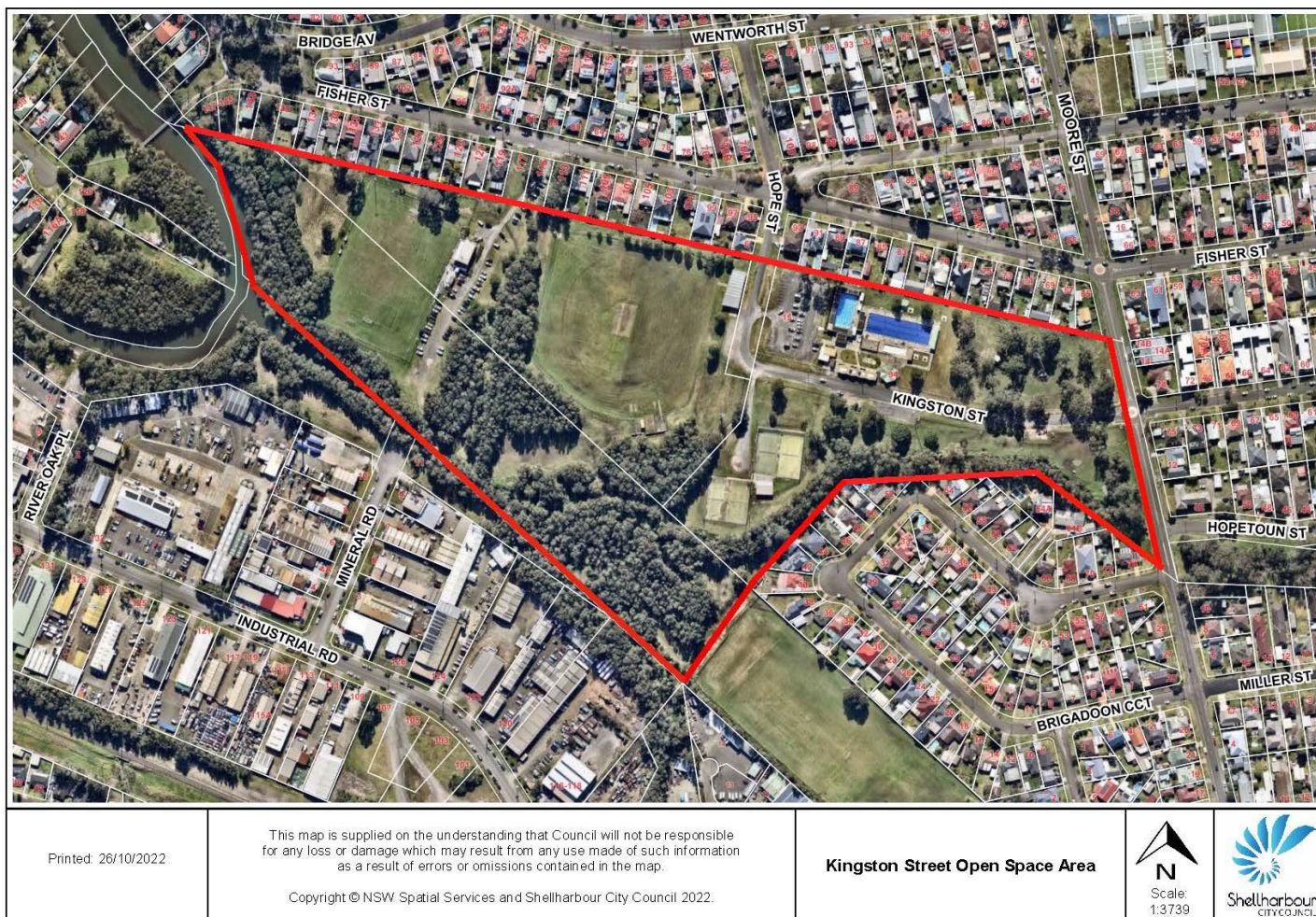
Approved for Council's consideration: Geoff Hoynes
Group Manager City Planning

Date of Meeting: 13 December 2022

Attachments

- 1. Subject Land – Open space area at Kingston Street, Oak Flats**

Attachment 1: Subject Land – Open space area at Kingston Street, Oak Flats



10.3.4 Adoption of Shellharbour City Community Gardens Strategy (11974848)

To the Chief Executive Officer

Directorate: Community and Customers
Group: City Planning

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

Summary

The purpose of this report is to seek Council's resolution to adopt the Shellharbour City Community Gardens Strategy (**Attachment 1**). The report provides detail of the outcomes of public exhibition and of post-exhibition changes to the Strategy.

The draft Strategy was placed on public exhibition from 26 May to 25 June 2022. There were 13 submissions received during this period. A summary of the submissions and subsequent changes are included throughout this report and in (**Attachment 2**).

Background

The Draft Strategy was exhibited from 26 May 2022 to 25 June 2022.

During this period, an advertisement was placed in the local newspaper four times, face to face meetings with existing community garden groups were conducted and social media posts reached over 4,100 people. The draft Strategy was available on Let's Chat and received approximately 350 page visits, and 83% of contributions were supportive of the Draft Strategy.

Stakeholder consultation during the exhibition period

During the exhibition period, Council officers met with each of the existing community garden groups to discuss the draft strategy. The existing community garden groups are Shell Cove Community Garden Inc., Barrack Heights Community Garden, Tullimbar Village Community Garden Inc. and Albion Park Community Garden. Stakeholder meetings involved approximately 20 people in total.

At these meetings, garden groups were both informed and consulted. The meetings were an opportunity to provide feedback on the Strategy, ask questions and inform staff of their garden group's management and experiences to date. Staff advised garden groups on how to make a submission and of the project next steps. All community garden groups provided submissions on the draft Strategy, these submissions were reviewed by staff and have informed the post exhibition version of the Strategy.

In addition to targeted face to face stakeholder consultation, members of the community who had enquired about community gardening or responded to the previous round of community gardens engagement (conducted in 2021 via Let's Chat) received email correspondence of the Draft Strategy's exhibition and the Let's Chat page.

Submissions received during exhibition period

At the completion of the public exhibition period, all Let's Chat responses and email submissions from community and stakeholders were collated and analysed. All community feedback broadly fit into one of three areas;

1. regarding open space networks or public access,
2. regarding the management of a community garden group or
3. regarding the establishment of a community garden.

From this, the following key themes were identified:

- Public access to community gardens
- Information and signage
- Partnerships
- Management and structure
- Buildings and infrastructure
- Resourcing and responsibilities
- Matters outside of the strategy's scope
- Matters to address in future Policy and Guide

The data analysis allowed for a comprehensive review of all submissions and provided useful feedback to be incorporated into the revised Strategy. The submissions table (**Attachment 2**) contains the submission matter and response, or action taken.

Post exhibition changes to the Draft Strategy

As a result of submissions received see (**Attachment 2**) and actions taken to address key themes and incorporate feedback, multiple changes were made to the exhibited version of the Strategy. A description of these changes and justifications are provided below.

Public access to community gardens

Community feedback regarding public access to community gardens included comments in support of open, monitored and restricted access by the public by way of fencing, locking of gates and overall design. This feedback was considered with reference to the requirements of community or public land in the *Local Government*

Act 1993 (the Act). An additional section, addressing public access to community gardens was included in the Strategy, and references Council's obligations under the Act.

Community land is by nature, for the community. This land is owned by Council and governed by the Act. Community gardens located on community land are to adhere to the requirements of the Act and therefore, Council has an obligation to ensure public access to parks and community gardens.

Community gardens should be welcoming and inclusive places. Inclusive practices can be deliberately planned, through physical garden design, diverse opportunities for participation, a welcoming group culture, regular promotion, clear communication and connecting with the broader community.

To promote public access to a community garden, Shellharbour City Council has a preference for no fencing or low-level fencing. The need for fencing and locking of gates will be assessed on a case-by-case basis. If a fence is deemed necessary at a community garden, the garden should be open to the public when a community garden member is present.

Requests to establish community gardens must demonstrate how access to the land by the public will be facilitated and managed. This includes how relevant details such as contacts and opening times will be displayed. For existing community gardens, a requirement to demonstrate how public access to community gardens, including matters such as inclusivity, signage, fencing and access, will be required on the license renewal date, or in exceptional circumstances, at a date negotiated by relevant Council officers and the community garden group.

Layout of Information

Overall, the layout of the Strategy now reflects the hierarchical nature of the information presented. Some details of implementation have been removed and will be included in a future Policy and Guide, which are identified as being required under Actions 1 and 2 respectively, in the Strategy.

Project Context (page 4 of the Strategy) has been updated to reflect the new Community Strategic Plan (CSP) 2022-2032, adopted by Council on 28 June 2022. This change was not related to submissions received but was required to reflect the recently adopted CSP.

The contents page provides strategic direction in the front of the document (page 3 of the Strategy); detailing community engagement which has informed the strategy, the role of Council, including responsibilities, sustainability, maintaining public access to the open space network (which includes community gardens).

In the second half of the strategy, customer-focused information is detailed, this builds upon the theme of getting started with community gardening and will be supported with a future Policy and Guide (as detailed in the Actions). Submissions identified the need for prioritisation of actions, the actions (page 13 of the Strategy) have now been reviewed, condensed and prioritised.

Community garden types

The exhibition document prescribed communal, allotment and hybrid community garden types, informed by best practice, other community garden policies and literature. Feedback from community and stakeholders stated the community gardens listing were too limiting and difficult to understand.

The prescribed garden models have been removed from the Strategy and a high-level definition of community gardens has been provided (page 5 of the Strategy). Garden groups are to decide on the model which best suits the focus of the community garden and group. Details regarding structure of community garden management will be provided in the future Policy and Guide.

Council's role in community gardens

In response to submissions, additional information regarding Council's role (page 8 of the Strategy), especially the requirement to inform groups of relevant opportunities such as grant funding has been stated. Communication of such opportunities will be facilitated through the establishment of a community gardens page on Council's website.

Building on the role of Council in facilitating sustainability through community gardens, information regarding the Local Strategic Planning Statement and partnerships with other organisations have been removed. Removal of specific partnership details will allow information to remain current in the Strategy.

Community gardens in the open space network

The information regarding community gardens and their role in the open space network (pages 9 and 10 of the Strategy) was revised, based on feedback from the community. A statement regarding the keeping of animals as not appropriate in community gardens on public land has been provided.

Community garden stakeholder meetings identified wording regarding an 'equitable spread' of community gardens was problematic and confusing. This sentence has been removed. An equitable provision of gardens in the open space network will be facilitated through the implementation of the Strategy, particularly at site selection stage.

Feedback requesting more information

Feedback from community and stakeholders requesting further details on starting a community garden, joining an existing garden group or learning more about the existing community gardens network are addressed at a high level in the Strategy. Some of these matters will be addressed in the implementation of Actions (page 13 of the Strategy) and others will be addressed in further detail in the future Guide.

Financial / Resources Implications

Preparation of the Strategy, including community and stakeholder engagement has been resourced by Council staff.

Once adopted, implementation of the Strategy and delivery of actions will also be resourced by Council staff.

At present, there are no other financial implications associated with the preparation of this Strategy, or its adoption.

Legal and Policy implications

Preparation of the Community Gardens Strategy has been informed by the following legislation, plans and policies:

- State Environmental Planning Policy (SEPP) (Infrastructure) (2007)
- Local Government Act (1993)
- Local Government (General) Regulation (2021)
- Environmental Planning & Assessment (EP&A) Act (1979)
- Environmental Planning & Assessment (EP&A) Regulation (2000)
- Shellharbour Local Environmental Plan (2013)
- Shellharbour Local Environmental Plan (2000)
- Plan of Management for Community Land
- Leasing and Licencing of Council Public Land and Buildings Policy

Implementation of the Strategy will consider the above legislation, plans and policies.

Public / Social Impact

The implementation of this strategy will assist in the management of existing and establishment of future community gardens as areas of allocated space which operate for the primary purposes of growing fresh food and promoting food security. The expansion of the community gardens network will assist in the provision of quality recreation spaces for the community, while contributing to the health and vibrancy of our community through educational, social, cultural and environmental activities.

Link to Community Strategic Plan

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

Objective: 1.2 We are a liveable community

Strategy: 1.2.1 Inclusive, accessible and safe spaces for our entire community

Strategy: 1.2.2 Promote healthy living and high-quality public spaces that are well maintained and activated

Objective: 2.1 We are sustainable

Strategy: 2.1.3 Partner with the community to inspire innovative practices that promote sustainability

Consultations**Internal**

Recreation Planner
Community Engagement Officer
Team Leader Communications and Engagement
Manager Compliance and Regulation
Acting Manager Planning
Graphic Designer
Senior Community Planning Officer
Parks Manager
Governance Officer
Community Development Officer
Risk and Audit Manager
Property Management Coordinator

External

Albion Park Community Garden Group
Barrack Heights Community Garden Group
Shell Cove Community Garden Inc.
Tullimbar Village Community Garden Inc.

Broader community engagement was also undertaken during the public exhibition of the draft Strategy as detailed in the body of this report.

Political Donations Disclosure

Not Applicable

Recommendation

That Council adopt the Shellharbour City Community Gardens Strategy.

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

Date of Meeting: 13 December 2022

Attachments

- 1. Shellharbour City Community Gardens Strategy**
- 2. Submissions Table**

Attachment 1: Shellharbour City Community Gardens Strategy





Acknowledgement of Country

Shellharbour City Council acknowledges the Traditional Custodians of the land and recognise their continued connection to the land. Council pays it's respect to Elders past present and emerging and the contribution they make to the life of this city and this region.

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Project Context

The development of the Community Gardens Strategy supports the following objectives and strategies of the Community Strategic Plan (CSP) the Community's vision for the City, "We are a naturally balanced, vibrant and connected community". The Community Gardens Strategy also supports the following objectives and strategies of the CSP.



CSP Objective:	1.1 We inspire community spirit
Strategy:	1.1.2 Work within our communities to connect people, build resilience and opportunities to participate in community life
CSP Objective:	1.2 We are a liveable community
Strategy:	1.2.1 Inclusive, accessible and safe spaces for our entire community
Strategy:	1.2.2 Promote healthy living and high-quality public spaces that are well maintained and activated
CSP Objective:	2.1 We are sustainable
Strategy:	2.1.3 Partner with the community to inspire innovative practices that promote sustainability
CSP Objective:	4.1 We deliver our future together
Strategy:	4.1.1 The community is meaningfully engaged and active in shaping the future of our city

Throughout this Strategy, there are a number of actions identified that will be implemented over the next 10 years. Actions will be reported on every 1, 4 and 10 years in line with Council's Operational Plan, Delivery Program and Community Strategic Plan.

Why do we need a Community Gardens Strategy?

The Shellharbour Open Space and Recreation Needs Study and Strategy (2020) identified an ongoing demand within the community for the provision of community gardens, highlighting the importance of continued maintenance and support by Council. The Strategy identifies the following Action 1.10 *Develop a Shellharbour Community Gardens Strategy designed to encourage all-age access and use of specified open spaces.*

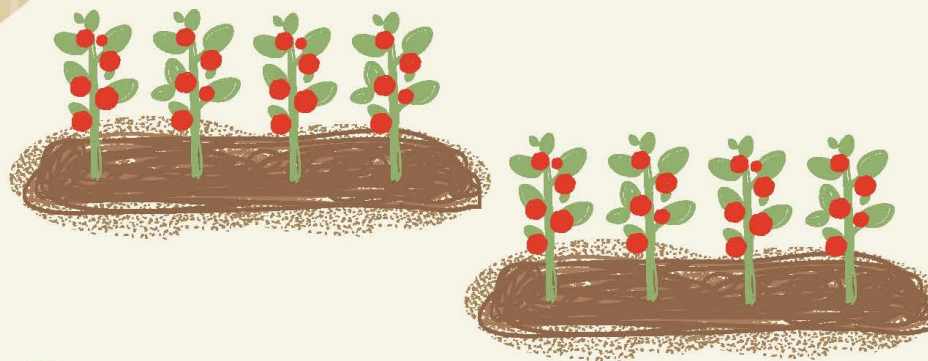
The Community Gardens Strategy provides a strategic focus for establishing and expanding the Community Gardens network across Shellharbour City and has been prepared in consultation with existing community garden groups and the wider community.

Council encourages residents of all ages and abilities to enjoy local open spaces through the provision of space for features such as community gardens.



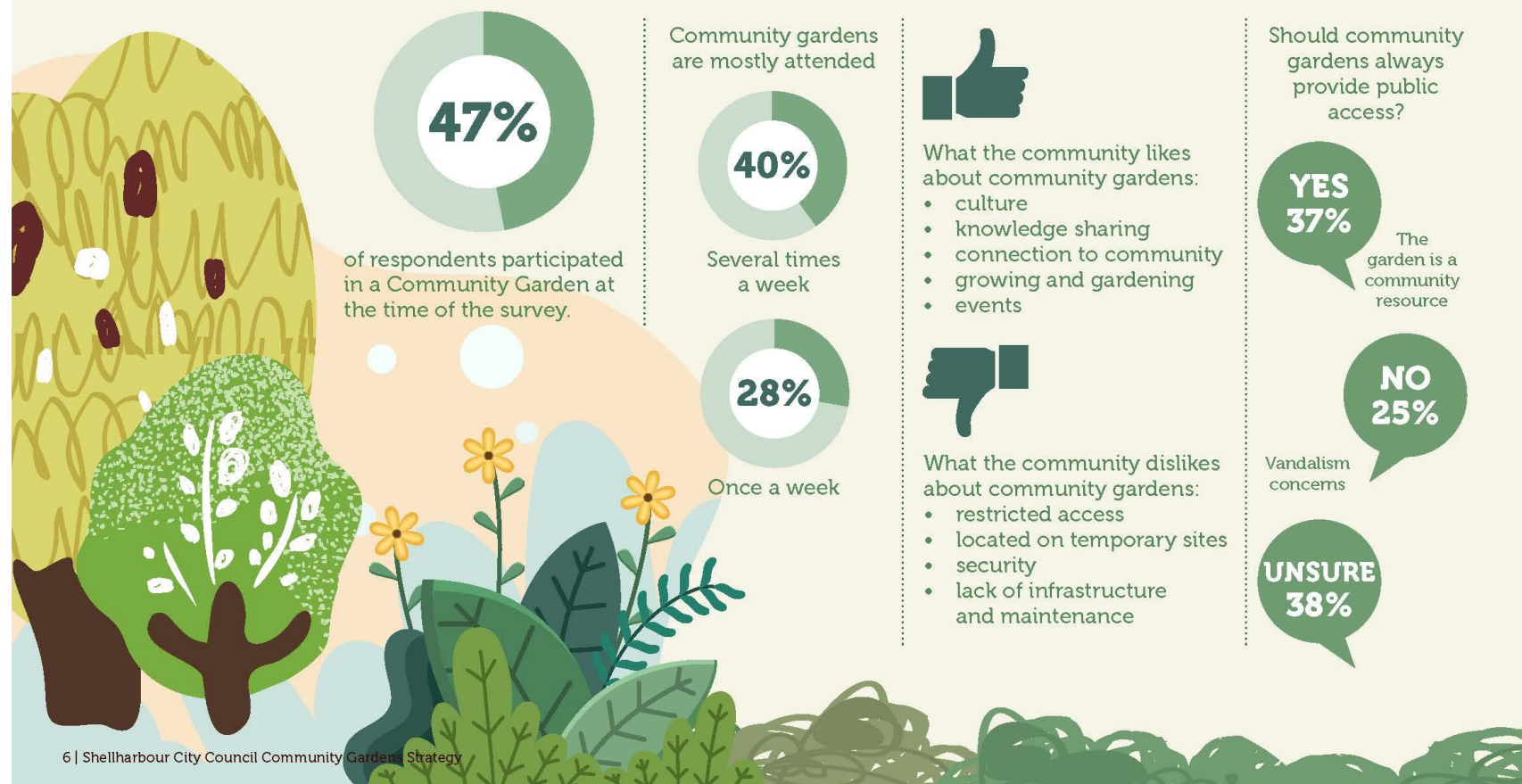
What is a community garden?

In Shellharbour City, community gardens are areas of allocated space on Council owned community (public) land, which operate for the primary purposes of growing fresh food and promoting food security through educational, social, cultural and environmental activities.



What does the community of Shellharbour think about Community Gardens?

Council undertook a survey using the Let's Chat engagement portal, the survey captured feedback on various elements of community gardens. The survey results and themes captured have informed the preparation of this Strategy and its actions.



What does the community of Shellharbour think about community gardens?

Important features in a community garden:

- Sustainable
- Supporting infrastructure
- Permanent storage
- Easy to find and access
- Open to community and welcoming
- Public transport or footpath access
- Car parking
- Co-located with recreational facilities



Guidance requested from Council:

- Tools/Templates
- Learning Sponsorship/Partnerships
- Funding Partnerships
- Assurance via licence agreement



How can community garden experiences be enhanced?

- Mentoring
- Events – workshops, education, open days
- Culture
- Start-up funding and grant opportunities
- Group structure and expectations setting
- Infrastructure – Water, shade, seating, hub
- Open access / Open days for communities
- Amenities



Council's role in community gardens

Shellharbour City Council is responsible for implementing the actions within this strategy, and assessing and responding to garden requests, in accordance with relevant legislation. Shellharbour City Council will inform groups of relevant opportunities, such as grant funding.

Council at times, has also found itself responsible for the maintenance and removal of community gardens that cease to operate. Council's experience with existing community gardens and community consultation has identified the need for a formal strategy, policy and process to be developed, informing community, developers and Council of processes to establish, maintain and sometimes decommission gardens that cease to operate.



8 | Shellharbour City Council Community Gardens Strategy

Community gardens and sustainability

Supporting community gardens and the growing of plants that are adapted to our changing local climate, and encouraging local fruit and vegetable production, can support Council in achieving its environment and sustainability goals.

As our community and built environment change, it is anticipated that interest in, and demand for, community gardens will also change. Expansion of our community gardens network should be strategic and sustainable.



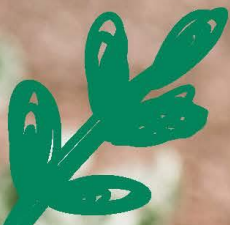
Open Space Network

The Shellharbour City Local Government Area has approximately 200 parks and reserves as part of a broad open space network. Council is committed to ensuring that our open spaces provide variety and opportunities for the wider community; this means providing different open space experiences, such as community gardens.

It is important that when planning for community gardens that the following elements are considered:

- Accessibility
- Provide variety
- Inclusivity
- Suitable soil and landscape
- Proximity to other open space uses
- Proposals are consistent with relevant legislation and guidelines

As community gardens in the Shellharbour City LGA are located on public land, the keeping of animals is not considered appropriate.



Public access to community gardens

Community land is by nature, for the community. The land is owned by Council and governed by the Local Government Act 1993 (the Act). Community gardens located on community land are to adhere to the requirements of the Act and therefore, Council has an obligation to ensure public access to parks and community gardens.

Community gardens should be welcoming and inclusive places. Inclusive practices can be deliberately planned, through physical garden design, diverse opportunities for participation, a welcoming group culture, regular promotion, clear communication and connecting with the broader community.

To promote public access to a garden, Shellharbour City Council has a preference for no fencing or low-level fencing. The need for fencing and locking of gates will be assessed on an individual basis. If you plan a fence for your garden, the garden should be open to the public when a community garden member is present.

Community gardens must demonstrate how access to the land by the public will be facilitated and managed including how relevant details such as contacts, will be displayed.

Liability and Risk Management

It is the responsibility of a community garden group to be aware of their duty of care for members and community, ensure safe access into and within the garden site is maintained and that potential risks are managed.



Getting started: How to establish a community garden

Council recognises that many members of the community are interested in the idea of joining or establishing a community garden, however, are not sure where to start. The development of a Community Garden Guide will assist community in site selection, organisation and planning for community gardens. It will provide instruction to community members and assist in structuring their community garden application to Council.

Funding and resourcing

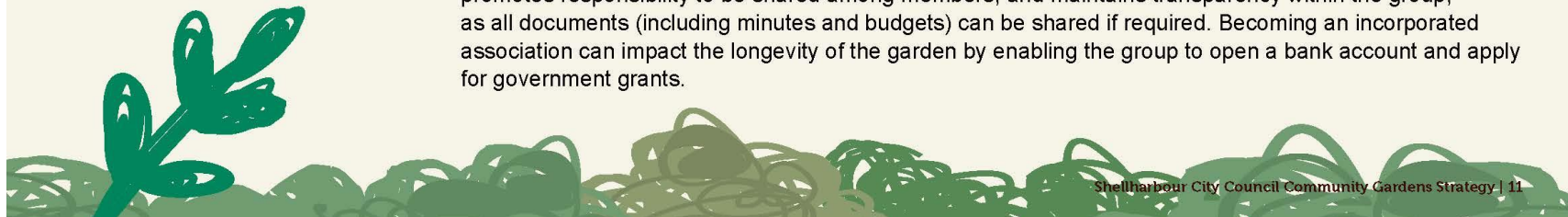
Each community garden will have varied financial goals, depending on the focus of the community garden. When planning to establish a community garden the garden group must consider income sources for necessary financial expenditure and develop a budget. Community garden groups may request associated structures such as a tool shed, fencing and seating. Such structures will be assessed on a case by case basis and may require approval from Council.

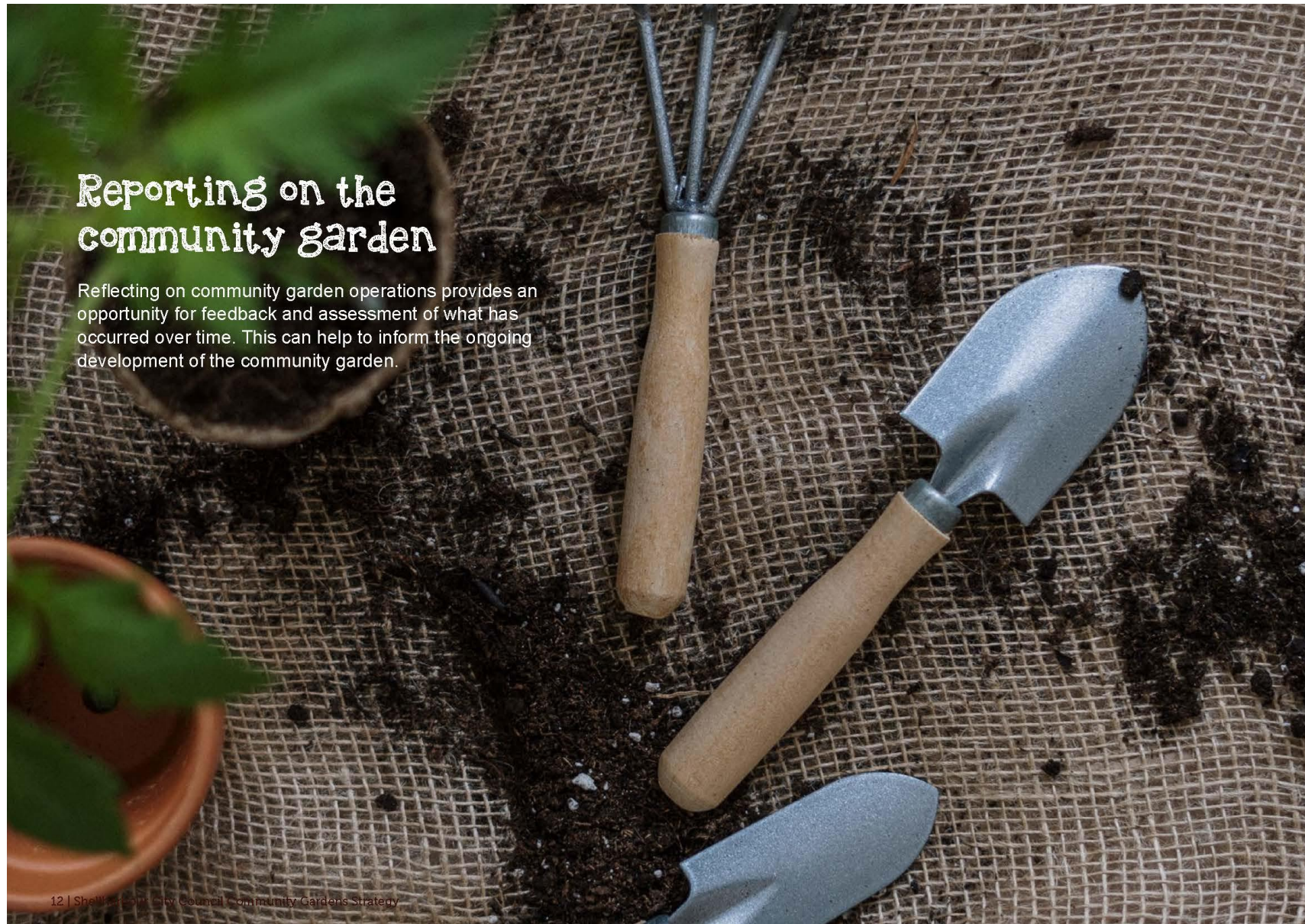
What does a community garden group look like?

- Must be an incorporated association
- Is made up of interested local residents willing to participate
- Provides support to the existing and new garden group members
- Has a Garden Management Group
- Has the skills to organise, manage and maintain a community garden group, or have a mentor to assist in garden management
- Demonstrates the capacity to fund the garden and the ongoing maintenance requirements of the garden
- Complies with Council's policies and this Strategy
- Pays for all fees and charges prevailing at the time
- Responsible for removal if garden ceases to operate

Why an Incorporated Association?

A private or commercial organisation will not be permitted to operate on a community land, hence the requirement to be a registered not for profit/an incorporated association. This requires a management committee, annually elected office bearers and commitment to holding regular meetings. This arrangement promotes responsibility to be shared among members, and maintains transparency within the group, as all documents (including minutes and budgets) can be shared if required. Becoming an incorporated association can impact the longevity of the garden by enabling the group to open a bank account and apply for government grants.





Community Garden Strategy | Actions

This Strategy has informed a number of Actions that will be implemented by Council over the next 10 years. These actions will be reported on every 1, 4 and 10 years in line with Council's Operational Plan, Delivery Program and Community Strategic Plan.

Actions

1. Develop a Community Gardens Policy
2. Develop a Community Gardens Guide to assist in the planning and development of community gardens.
The Guide will address:
 - Roles and responsibilities
 - Funding and resourcing considerations
 - Mitigation and management of potential impacts
 - Application to Council
 - Site selection criteria
 - Reporting on the community garden.
3. Establish a community garden webpage on Council's website, to:
 - Provide a register of community gardens
 - Inform community gardens of opportunities such as grant funding
 - Facilitate partnerships
4. Develop a business process to improve the assessment of community garden applications



Periodic Review

This Strategy should be reviewed 12 months after adoption and every 5 years afterward, or as required.

References

- Shellharbour City Dog Friendly Spaces Strategy, 2019
- City of Freemantle Community Gardening Guide
- Shellharbour Open Space and Recreation Strategy, 2020
- City of Sydney Community Garden Guidelines, 2016
- Kiama Municipal Council, Community Gardens Policy
- Community Gardens Australia - <https://communitygarden.org.au/>
- Eurobodalla Shire Council Community Garden Guidelines
- City of Melbourne, Guide to Community Gardening in the City of Melbourne.
- Ground Rules: A Legal Toolkit for Community Gardens. National Policy and Legal Analysis Network and ChangeLab Solutions





Attachment 2: Submissions Table

No.	Submission Matter	Response/Action
1	Want an area which is open to the public at all times, with herbs and vegetables, as well as a locked area to protect the garden, reduce vandalism and curb excessive harvesting	Noted and addressed in Public Access section of Strategy
	Support requirement for clear signage with contact numbers	Noted
	Communal area to meet and share food and ideas	Noted, additional infrastructure and structures now addressed in Strategy
	Require structures for storage and education workshops	Noted, structures now addressed in Strategy
	Support co-location of community garden with other recreational facilities and amenities	Noted, to be addressed in site selection for new spaces
	Clarification sought on fundraising, signage, grant funding, workshops, fees, license requirements, reporting	To be addressed in further detail in future Community Garden Policy and Guide
	Mentor visits and workshops	Partnerships with mentors to be facilitated through establishment of page on Council's website
	Support for webpage	Noted
	Frequency of education days and open days	To be addressed in future Community Garden Guide, and included in License Agreement
	Support having a number of garden models, so that groups can choose	Noted, the type of garden models have been removed from the Strategy, however garden groups are still able to decide on the model which best suits the focus of the garden/group

No.	Submission Matter	Response/Action
2	Strategy should be aborted	Council's Open Space Recreation Strategy contains Action 1.10 ' <i>Develop a Shellharbour Community Gardens Strategy designed to encourage all-age access and use of specified open spaces</i> '. The Strategy is necessary to formalise and standardise Council's approach to community gardening and allows for the implementation of identified actions, bringing benefits to the Council, Community, Customers and Councillors.
	Supportive of Policy and Guideline being prepared	Noted
	Referred positively to Kiama Municipal Council's Community Gardens Policy, Guideline and forms to establish a new community garden	Noted – reviewed Kiama's Policy and Guide and will use this to inform future Community Garden Policy and Guide
	Community gardens listed are far too limiting and not easy to understand, does not capture informal gardens	Noted and removed from Strategy, however garden groups are still able to decide on the model which best suits the focus of the garden/group
	Not supportive of Let's Chat feedback being in Strategy	Noted, the feedback has remained in Strategy as it provides context and has been used to inform the Strategy
	Wording regarding public access to community gardens can be interpreted in many ways, too ambiguous.	Revised Public Access section in the Strategy. Will be addressed in detail in the Licence Agreement.
	Proposed a segregation of formal and informal community gardens	Noted. Types of gardens to be addressed in future Community Garden Guide
	Keeping of domestic animals rules out permaculture, do not want this to be ruled out	The keeping of animals is addressed in the Open Space Network section of Strategy. As community gardens in the Shellharbour City LGA are located on public land, the keeping of animals is not considered appropriate.
	Commented on the Actions list and the need for prioritization of actions	Actions have been reviewed, the Actions List is now prioritised and consolidated

No.	Submission Matter	Response/Action
3	Request Council support on funding, guidelines, management	To be addressed in future Community Garden Guide
	Request for toilet facilities	To be addressed on a case by case basis and in the site selection of new spaces
	Council resourcing, requested an officer to liaise with	Noted. Preparation of an internal business processes will identify key staff
	Request for Council workshops at community centres	Resourcing of this nature is outside the scope of the Strategy
	Security fencing but has still experienced vandalism	Noted. Fencing is addressed in the Strategy
4	Community Garden involved in partnerships for educational and community activities	Noted. Future partnerships to be facilitated through webpage establishment
	Small number of volunteers, decisions taken by consensus	Noted
	Lack of amenities	Noted. To be addressed on a case by case basis and in the site selection of new spaces
	Garden has experienced vandalism and theft	Noted
	Purpose of the garden was open access, the time has come when security fencing (or alternatives such as climbing crops) should be considered	Noted. Revised Public Access and included fencing in the Strategy. Will be addressed in detail in the License Agreement
	Would like Council assistance through public liability cover, promotion, grant funding application, provision of mulch, machinery, security and surveillance	Addressed in Liability section of Strategy. Will be explored in further detail in the future Community Garden Policy and Guide

No.	Submission Matter	Response/Action
5	Enquiring about setting up a community garden at Thomas Coughrane Reserve, Flinders	Noted
	Guidance from Council on how to facilitate new community garden	Noted, to be addressed in further detail in the future Community Garden Policy and Guide
	A central garden to facilitate community connection	Noted
	Would like to see strategy on Verge Gardens	Noted. Outside the scope of this Strategy, to be addressed as part of the Urban Greening Strategy
6	Community gardens to be an accessible and enjoyable public space for community to connect	Addressed under accessibility in the Strategy and will be included in future Community Garden Policy and Guide
	Does not like padlocked community garden	Noted
	Signage addressing how to join, who to contact, costing, access, aim of community garden	Addressed in the signage section of Strategy and will be included in future Community Garden Policy and Guide
	Awareness and marketing of the garden in suburb	Addressed in the signage section of Strategy and will be included in future Community Garden Policy and Guide
	Supports partnership with local schools	Noted, may be facilitated through the webpage
7	Supportive of strategy	Noted
	information was fantastic, easy to comprehend and engaging	Noted
8	Supports opportunities for garden groups to determine preferred management option	Noted
	Hybrid model to support community accessibility and sense of welcome	Noted
	Clarification on licensing arrangements, fundraising, mentoring, education, fees and charges, reporting	To be addressed in further detail in the future Community Garden Policy and Guide
	Support co-location with other facilities	To be addressed in future site selection criteria

No.	Submission Matter	Response/Action
9	Suggestion for community garden at McDonald Park, Albion Park Rail	Noted
	Partnerships with Scouts	Partnerships to be facilitated through establishment of page on Council's website
10	Supports strategy	Noted
	Should be accessible for all members of community	Noted and addressed in public access section of Strategy. Accessibility to be addressed in detail in future Community Garden Policy and Guide.
11	Consideration of Verge gardens	Outside the scope of this Strategy, to be addressed as part of the Urban Greening Strategy
12	Suggestion for community garden at Myimbarr Ovals, Flinders, native trees and grasses	Noted
	More information on establishing a community garden	To be addressed in the future Community Garden Policy and Guide
13	More guidance and support from Council to help residents identify potential spaces and get them started	To be addressed in future Community Garden Policy and Guide, through site selection criteria and getting started section

10.4 Amenity and Assets Directorate**10.4.1 Delegations to the Chief Executive Officer over the Christmas Holiday Period 2022-2023 (11975441)**

To the Chief Executive Officer

Directorate: Amenity and Assets
Group: Asset Strategy

Manager: Matthew Apolo – Acting Group Manager Asset Strategy
Author: Arvin De Mesa – Acting Projects Manager

Summary

This report recommends a temporary amendment to the Chief Executive Officer's (CEO) delegations to allow for the acceptance of any tenders satisfying the necessary legislative criteria between 13 December 2022 and 7 February 2023 whilst Council meetings adjourn for the Christmas holiday period.

It should be noted that this report refers to the CEO as 'General Manager' as described in the Local Government Act 1993.

Background

Section 377 of *Local Government Act (1993)* (Act) discusses the general power of the Council to delegate. This section of the Act provides that a council may, by resolution, delegate to the General Manager any of the functions of the council, with the exception of a range of specific functions which are not permitted to be delegated. Changes made to Section 377 in September 2016 made it possible for a council to delegate the acceptance of tenders to the General Manager, except where such tenders relate to the provision of services currently provided by members of staff of the council.

The rationale provided for this particular amendment to the Act, as described in the Local Government Acts Taskforce report and subsequent NSW Government response, was to enable the transfer of more operational matters to the General Manager; and to streamline regional procurement initiatives.

The General Manager's delegations were most recently adopted by Council on 29 November 2022, with the delegation subject to this report being:

The Council of the City of Shellharbour delegates to the General Manager all of the delegable functions, powers, duties and authorities of the Council subject to the following limitations:

- d) The General Manager does not have the authority to accept tenders over the value of \$500,000.*

The CEO currently has the authority to accept tenders up to the value of \$500,000. This report seeks to temporarily remove the \$500,000 limit on the delegation for the Christmas holiday period to minimise interruption to capital project delivery whilst Council is on a seven-week break. Council is scheduled to break between 13 December 2022 and 7 February 2023, with the first Ordinary Meeting scheduled for 7 February 2023.

Tenders over \$500,000 currently anticipated to be in-progress across the December/January period include:

- Oak Flats Traffic Facilities – Central Avenue and Fisher Street Pedestrian Upgrade

If the recommendations of this report are endorsed, it is planned that any tender accepted during the period will be reported back to Council for information in due course.

Financial / Resources Implications

There are no financial or resource implications as a result of the recommendations of this report. In the event that tenders are received that are outside of the budget allocated as part of the Operational Plan and Delivery Program and a budget adjustment is required, a report would need to be provided to Council for approval prior to acceptance of the tender.

Legal and Policy implications

The adoption of this temporary delegation to the CEO enables decisions on tenders over the value of \$500,000 to be made for a finite period of time within an established authority. Sections 377 to 381 of the Local Government Act 1993 detail the statutory requirements for the issuance and operation of delegations. It is important that, council officers, in the execution of their duties on behalf of Council, are authorised in accordance with the Local Government Act, to undertake these duties.

A comprehensive register of delegations which allocates the delegations, sub delegations, authorisations and appointments to Council employment positions is published on Council's website and is available for viewing at Council's Civic Centre.

Public / Social Impact

Nil

Link to Community Strategic Plan

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

Objective: 4.2 We have strong leadership.

Strategy: 4.2.1 Our Council is transparent and trusted to make decisions that reflect the values of the community collectively

Consultations

Internal

Executive Manager
Asset Planning Manager
Shell Cove Engineer

External

Nil

Political Donations Disclosure

Not Applicable

Recommendation

That Council:

1. Delegate to the Chief Executive Officer the authority to accept, or otherwise, all tenders over \$500,000 (including GST) in value, excluding tenders that provide services currently provided by members of staff of the council, between 13 December 2022 and 7 February 2023.
2. Note that Clause 1(d) of the Council Policy Titled 'Delegations and Sub-Delegations to the Chief Executive Officer' would not apply during the period 13 December 2022 and 7 February 2023.
3. Receive a report for information providing the details of any tender accepted as a result of the recommendations of this report, should the temporary delegation be applied.

Approved for Council's
consideration:

Matthew Apolo
Acting Group Manager Asset Strategy

Date of Meeting: 13 December 2022

Attachments

Nil

10.4.2 Waste Collection Services Contract 2013-22 (11975477)

To the Chief Executive Officer

Directorate: Amenity and Assets

Group: Asset Strategy

Manager: Matthew Apolo – Acting Group Manager Asset Strategy

Author: Ryan Stirling – Waste and Resource Recovery Manager

Summary

The purpose of this report is to provide information to Council regarding the 2013/22 Waste Collection Services Contract, and the joint tender process with Wollongong City Council for the future Waste Collection Services Contract. This report seeks approval from Council to implement an extension period following the end of the 2013/22 Waste Collection Services Contract on 30 June 2024, due to an extenuating circumstance. Additionally, this report requests that Council delegates the Chief Executive Officer or his delegate to execute the contract extension deed of agreement.

Background

Council provides waste collection services to the Shellharbour community via the 2013/22 Waste Collection Services Contract (Contract). The Contract was procured via a joint tender process with Wollongong City Council in 2013. The current annual contract cost is approximately \$5.4 million.

Under the Contract, Remondis provides various waste collection services relating to domestic, commercial, and public places, including:

- Kerbside collection of Food Organics and Garden Organics (FOGO) green lid bins, recycling yellow lid bins, and garbage red lid bins to approximately 29,500 properties;
- On-call bulky waste collection; and
- Public place bin collection.

The Contract contains performance management provisions that allow Council to gauge the level of service compliance and departures from the Contract specification. The performance benchmarks include missed services, delivery of new bins, repair of bins, clean-up of spilt material, contamination levels of waste streams, incident responses, reporting, availability of vehicles, customer service call resolution, and complaint rectification. Remondis have consistently achieved a high-performance level since commencement of the Contract.

The 2021 community satisfaction survey conducted by Taverner Research identified high satisfaction levels for the kerbside waste collection service which is provided through Remondis. Kerbside garbage collection was ranked as the highest performing operational service.

The Contract began on 1 July 2014, for an initial term of seven years to 30 June 2021. Council has provided the three years extension allowed by the Contract, which has extended the Contract to 30 June 2024.

Joint tender process with Wollongong City Council

On 29 June 2021 Council endorsed the procurement of the next Waste Collection Services Contract via a joint tender process with Wollongong City Council. Council engaged a specialist consultant, Impact Environmental Consulting to assist both councils plan for the joint tender. This detailed planning project has identified various critical factors that are impacting the joint tender process, which are detailed in the attached confidential memo and were outlined in a Councillor briefing session on 30 August 2022.

Proposed extension of the 2013/22 Contract

To manage the risks to the joint procurement process detailed within the confidential memo, it is proposed that Council provide an extension of the existing Contract for a maximum two-year period (two x one-year optional extensions), covering the period 1 July 2024 to 30 June 2026.

Wollongong City Council considered a similar report on 7 November 2022 and resolved the following:

1. In accordance with s55(3)(i) of the *Local Government Act 1993* and due to extenuating circumstances relating to significant supply chain disruptions impacting waste collection service providers, that will impact on the ability to undertake a successful tender process, Council not invite tenders for Waste Collection Services
2. Council delegates authority to the General Manager to negotiate an extension to the current T13/22 contract via Deed of Agreement for a period of up to 2 years (1 year + 1 year)
3. Council endorses the proposal to undertake a subsequent joint tender for a waste collection services contract with Shellharbour City Council for the period commencing after the negotiated extension
4. Council endorses an application be made to the Australian Competition and Consumer Commission (ACCC) for approval to undertake a joint procurement for Waste collection services with Shellharbour City Council

Financial / Resources Implications

It is expected that the joint tender with Wollongong City Council will generate a financial saving compared to tendering as a single entity. The joint tender for the current Contract provided an estimated \$140,000 saving over a ten year period.

The proposed contract extension will cost approximately \$5.4 million per annum. This cost is budgeted within the current delivery program, with over 90% of funding provided in accordance with the *Local Government Act 1993*, which requires that costs relating to providing the domestic waste service must be sourced from the Domestic Waste Management Charge that is levied on each rateable property.

Legal and Policy implications

The expected delays associated with the supply of vehicles, due to significant global supply chain delays meet the criteria for an extenuating circumstance exemption pursuant to s.55(3)(i) of the *NSW Local Government Act*, which allows for the proposed extension of the Contract.

Public / Social Impact

Nil

Link to Community Strategic Plan

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

Objective: 2.1 We are sustainable

Strategy: 2.1.4 Our waste is managed as a valuable resource and the environment impacts are minimised

Consultations**Internal**

Manager Procurement and Supply

External

Impact Environmental Consulting
Remondis
Wollongong City Council

Political Donations Disclosure

Not Applicable

Recommendation

That Council:

- 1. In accordance with s55(3)(i) of the *Local Government Act 1993* and due to extenuating circumstances relating to significant supply chain disruptions impacting waste collection service providers, that will impact on the ability to undertake a successful tender process, does not invite tenders for Waste Collection Services.**
- 2. Delegate authority to the Chief Executive Officer to negotiate an extension to the current 2013/22 Collection Services Contract via Deed of Agreement for a period of up to two years (one year + one year).**

Approved for Council's consideration: Matthew Apolo
Acting Group Manager Asset Strategy

Date of Meeting: 13 December 2022

Attachments

1. Confidential Memo –2013/22 Waste Collection Services Contract

11. Committee Recommendations

12. Items for Information

13. Notices of Rescission/Alteration Motions

14. Notices of Motion

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

16. Urgent Business

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

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

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

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