

**9 April 2019 Ordinary Council Meeting - Declassified Report as presented to Council on 8 November 2016 – 4.2 Shell Cove – Retail Stage 1 – Progress on Sale**

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

To the General Manager

**Directorate:** Shellharbour Enterprises

**Department:** Shell Cove

**Manager:** Matthew Youell – Director Shellharbour Enterprise

**Author:** Kevin James – Shell Cove Commercial Manager  
Donna Flanagan – Manager Property & Recreation

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### **Reason for Confidentiality**

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

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

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

### **Summary**

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

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

## **Background**

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

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

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

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

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

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

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

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

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

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

**Table 1: Reported Cost and Land Value**

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

The Heads of Agreement was finalised and signed by Council.

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

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

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

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

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

**Table 2: Consultants’ Cost and Land Value**

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

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

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

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

**Table 3: Negotiated Outcomes**

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

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

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

**Table 4: Land Value of alternate site**

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

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

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

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

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

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

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

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

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

## **Conclusion**

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

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

## **Financial/resources implications**

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

## **Legal and policy implications**

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

Otherwise, there are no apparent legal and policy implications.

## **Public/social impact**

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

## **Link to Community Strategic Plan**

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

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

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

## **Consultations**

### **Internal**

Waterfront Activities Group (working party)

### **External**

Australand (part of Frasers Property Group)

## **Political Donations Disclosure**

Not Applicable

## **Recommendation**

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

Approved for Council's consideration:

A handwritten signature in black ink, appearing to be 'M. J. ...', is written over a horizontal line that extends across the page.

**Date of Meeting:** 8 November 2016

### **Attachments**

Nil