

# PLAN OF MANAGEMENT

**HENNEGAR BAY RESERVE,  
CROWN RESERVE 97393**

**OAK FLATS**



**Adopted by Council 26 September 2022**

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## EXECUTIVE SUMMARY

This Plan of Management, adopted on 26/09/2022 by Shellharbour City Council, applies to Hennegar Bay Reserve, The Boulevard, Oak Flats. It is situated on Crown reserve 97393 and a small amount of adjoining Council owned land.

The purpose of this Plan of Management (the Plan), is to provide Council with a framework that enables decisions regarding Hennegar Bay Reserve, to be made in a consistent and equitable basis. The plan meets all the requirements of the *Crown Land Management Act 2016* (CLM Act) and the *Local Government Act 1993* (LG Act) as amended.

The majority of Hennegar Bay Reserve is owned by the NSW State Government (the Crown) and is managed by Shellharbour City Council as Crown Land Manager, under the CLM Act. In addition to the Crown component, there are 12 small lots owned by Shellharbour City Council, which are part of Hennegar Bay Reserve and included in this plan of management.

This Plan replaces the existing plan of management previously adopted by Council for the land. It should be read in conjunction with the existing plans of management for the adjoining reserves of Central Park and the Oaks Reserve/Oak Park, Oak Flats.

### **Acknowledgement of Country**

Shellharbour City Council acknowledges the Traditional Custodians of Dharawal Country and recognise their continued connection to the land. We pay our respects to Elders past, present and emerging and the contribution they make to the life of this city.

## PART 1: GENERAL INFORMATION

### 1. INTRODUCTION

The *Crown Land Management Act 2016* (CLM Act) commenced on 1 July 2018, introducing legislation to govern the management of Crown land in NSW. Councils will now manage their Crown reserved land as if it were public land under the *Local Government Act 1993* (LG Act). Most of this land is expected to be 'community land' under the LG Act, meaning that Councils will be required to have plans of management in place for the land. Hennegar Bay Reserve is a Crown reserve and is classified as community land under the LG Act. Therefore, this Plan of Management (the Plan) has been prepared to comply with the legislation.

#### 1.1 Corporate objectives

The purpose of this Plan is to provide Council with a framework that enables decisions regarding Hennegar Bay Reserve, to be made in a consistent and equitable basis. The Plan meets all the requirements of the CLM Act and the LG Act, as amended.

Council's vision for Hennegar Bay Reserve recognises the long-term use of the site's infrastructure, as socially, culturally and physically enhancing the community. The site will be managed and maintained according to the categorisation of General Community Use and Natural Area – Foreshore as detailed in this Plan.

The Plan incorporates the direction statements within the Shellharbour Open Space and Recreation Needs Study and Strategy. These are:

1. Shape open spaces to encourage public recreation and relaxation,
2. Ensure sports grounds and facilities support active participation,
3. Improve access to aquatic facilities and activities,
4. Encourage sustainable enjoyment of the natural environment,
5. Activate open spaces and facilities to broaden public participation,
6. Work in collaboration with stakeholders to achieve our Strategy,
7. Provide effective management, maintenance, and monitoring.

The Plan is also written to reflect each of Council's core values: Collaboration – Accountability – Integrity – Respect – Sustainability.

Further information about the legislative context of Crown Reserve Plans of Management can be found in Appendix 1 of this document.

#### 1.2 Review of this Plan

Council reviews plans of management every five years, or as required. Reviewing the Plan is the only way to change the land category, nature and use of the land.

#### 1.3 Community consultation

Shellharbour City Council recognises community participation is an integral aspect of planning and is committed to providing opportunities for the community to be involved in the planning system.

This Plan is required to be placed on public exhibition for a period of 28 days in accordance with the LG Act. The public exhibition will provide opportunity for the community to provide feedback via submissions.

## 2. LAND DESCRIPTION

### 2.1 Land to which this Plan applies

This Plan applies to Hennegar Bay Reserve situated on Crown reserve 97393, The Boulevard, Oak Flats. In addition, there are twelve small lots owned by Shellharbour City Council, which are a part of Hennegar Bay Reserve and included in this Plan.

The reserve information is detailed below in **Table 1**.

<b>Reserve Number</b>	97393
<b>Gazetted Date</b>	17/8/1984
<b>Reserve Purpose</b>	Public Recreation
<b>Land parcel/s</b>	<ul style="list-style-type: none"> <li>• Lot 7313 DP 1199591 (Crown land)</li> <li>• Lot 1 DP 709545 (Council owned)</li> <li>• Lot 2 DP 709545 (Council owned)</li> <li>• Lot 3 DP 709545 (Council owned)</li> <li>• Lot 4 DP 709545 (Council owned)</li> <li>• Lot 5 DP 709545 (Council owned)</li> <li>• Lot 6 DP 709545 (Council owned)</li> <li>• Lot 8 DP 709545 (Council owned)</li> <li>• Lot 9 DP 709545 (Council owned)</li> <li>• Lot 10 DP 709545 (Council owned)</li> <li>• Lot 11 DP 709545 (Council owned)</li> <li>• Lot 12 DP 709545 (Council owned)</li> <li>• Lot 16 DP 709545 (Council owned)</li> </ul>
<b>Area (Sqm)</b>	14864
<b>LEP zoning</b>	<ul style="list-style-type: none"> <li>• RE1 Public Recreation</li> <li>• W1 Natural Waterways</li> </ul>
<b>Assigned category/categories</b>	<ul style="list-style-type: none"> <li>• General Community Use</li> <li>• Natural Area - Foreshore</li> </ul>

**Table 1 - Information about reserve covered by this plan of management.**

Note: The footpath and area maintained by Council to the mean high water mark (MHWM) are within the reserve boundary. See Figure 1 below for land to which this Plan applies.



**Figure 1 – Land to which this Plan applies.**

**2.2 Owner of the land**

Most of Hennegar Bay Reserve is owned by the NSW State Government (the Crown) and is managed by Shellharbour City Council as Crown Land Manager, under the CLM Act.

In addition to the Crown component, there are 12 small lots owned by Shellharbour City Council, which are part of Hennegar Bay Reserve. These small grassed lots adjoin the main Crown reserve lot and are included in this Plan.

There are restrictions on transfer and management of Crown land under section 2.12 and 3.22 of the CLM Act.

See **Figure 2** below showing owners of the land.



**Figure 2 – Owners of the land.**

### 2.3 Categorisation of the reserve

Under section 3.23 of the CLM Act, Crown land reserves managed by Council are required to be categorised into one or more of the following categories according to their purpose:

- Park,
- Sportsground,
- General Community Use,
- Area of Cultural Significance,
- Natural Area – Bushland,
- Natural Area – Wetland,
- Natural Area – Escarpment,
- Natural Area – Watercourse,
- Natural Area – Foreshore.

In accordance with advice from the Department of Planning, Industry and Environment – Crown Lands, the guidelines set out in the *Local Government (General) Regulation 2021*, and Practice Note 1: Public Land Management (Department of Local Government Amended 2000) Hennegar Bay Reserve is categorised into two categories:

- General Community Use, and
- Natural Area - Foreshore

This reserve is situated along the foreshore of Lake Illawarra and includes a shared use pathway to facilitate active transport, passive recreational uses and connectivity to adjoining reserves. The category of General Community Use will apply to the shared use pathway and land from the path to the residential boundaries on the southern side. The category of Natural Area – Foreshore will apply to the land from the northern edge of the pathway to the lakes edge.

Council currently manages and will continue to manage the reserve in a way that allows the public to utilise the site as for the purpose which is outlined in the core objectives of General Community Use and Natural Area - Foreshore.

See **Figure 3** below for land categories.



**Figure 3 – Land categories**

## 2.4 Zoning of the Reserve

Hennegar Bay Reserve is zoned RE1 Public Recreation and W1 Natural Waterways under the *Shellharbour Local Environmental Plan 2013* (LEP). The reserve adjoins other lands zoned W1 – Natural Waterways and R2 – Low Density Residential. Land zones are shown in **Figure 4** below.



**Figure 4 – Land Zones**

The objectives of the RE1 zone in the LEP are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The objectives of the W1 zone in the LEP are:

- To protect the ecological and scenic values natural waterways.
- To prevent development that would have an adverse effect on the natural values of waterways in this zone.
- To provide for sustainable fishing industries and recreational fishing.

Refer to the LEP for permissible uses in the RE1 zone and W1 zone and other attributes present on the site, including but not limited to terrestrial biodiversity and the presence of acid sulfate soils.

## **2.5 Land comprising the habitat of endangered species or threatened species**

The site has not been identified under Section 36 A or B of the LG Act, with regards to the habitat of endangered species or threatened species. Section 36A of the LG Act refers to a critical habitat which is now declared as Areas of Outstanding Biodiversity Values under the *Biodiversity Conservation Act 2016*. Section 36B of the LG Act refers to an applicable Recovery Plan for listed threatened species and ecological communities. Neither of these are applicable to this site.

## **2.6 Land containing significant natural features**

The site has not been identified under Section 36 C of the LG Act, with regards to significant natural features.

## **2.7 Culturally significant land**

Under Section 36D of the LG Act, the reserve has not been identified as an Area of Cultural Significance.

### **Aboriginal Significance**

At the time the plan was made, no identified items of cultural heritage significance, known Aboriginal archaeological sites, or places of specific Aboriginal heritage significance were located within the reserve. Nevertheless, any works proposed should ensure consistency with Chapter 27 - Aboriginal Heritage, of Shellharbour Development Control Plan (DCP).

### **Non-Aboriginal Significance**

Hennegar Bay Reserve is not identified as a significant item of Environmental Heritage under *Shellharbour Local Environmental Plan 2013*.

## **3. DEVELOPMENT AND USE**

### **3.1 Overview**

Council's Resourcing Strategy ensures sufficient financial and human resources exist to provide services and infrastructure assets expected by the community. The Long-Term Financial Plan, Asset Management Strategy, and Workforce Management Plan contained within the strategy address strategies and actions contained within the Community Strategic Plan. These strategies and actions are then implemented through the Delivery Program and Operational Plan. The Resourcing Strategy ensures Council has an ongoing commitment to the maintenance of this reserve.

### **3.2 Condition of the land and structures on adoption of the Plan**

Council's Asset Management Plan reports on the current state of Council assets. Asset conditions are assessed as part of comprehensive network inspections. These assessments are undertaken in accordance with the Institute of Public Works Engineering Australasia Practice Notes.

At the date of adoption of this Plan, assets identified on the site and their current condition include:

- Park bench – fair condition
- Shared-use pathway – excellent condition
- Storm water pipe – fair condition

The mowed grass area adjoining the pathway was in good condition.

The vegetation present within the subject site contains two Coastal Swamp Oaks which form part of a larger patch of swamp Sclerophyll Forest on Coastal Floodplain Endangered Ecological Community (EEC). The eastern edge of the Crown Land reserve also slightly crosses into an area of mapped Illawarra Coastal Grassy Woodlands EEC. Saltmarsh EEC is also present along the extent of the Reserve bordering the lake frontage, parallel to the mown grass strip and shared use pathway.

### **3.2 Use of the land and structures as at the date of adoption of the Plan**

Hennegar Bay public reserve's current use is a shared use pathway for pedestrians, strollers, rollerbladers, skateboarders and cyclists along the foreshore of Lake Illawarra. The land provides for active transport and recreational opportunities and is part of the shared pathway that extends around Lake Illawarra and the coast to Shellharbour.

See Appendix 3 for current leases and licence on the site.

### **3.3 Permitted use**

The purpose of Hennegar Bay Reserve is for public recreation, the assigned categories are General Community Use and Natural Area - Foreshore. These purposes and categories align with the reserve's past and current use and corporate objectives. Refer to the LEP for permissible uses in the RE1 zone and other attributes present on the site, including but not limited to terrestrial biodiversity and the presence of acid sulfate soils.

### **3.4 Further development**

Further development may be considered along with maintenance of existing infrastructure if it is consistent with the categories and purpose for the reserve and relevant legislation such as the LG Act, *Native Title Act 1993*, and the CLM Act.

The general types of uses which may occur on community land categorised as General Community Use and Natural Area, and the forms of development generally associated with those uses, are set out in tables in the relevant category section in this Plan.

### **3.5 Scale and intensity**

Hennegar Bay public reserve's current use is a shared use pathway for pedestrians, strollers, rollerbladers, skateboarders and cyclists along the foreshore of Lake Illawarra. The land provides for active transport and recreational opportunities and is part of the shared pathway that extends around Lake Illawarra and the coast to Shellharbour. The intensity with which this pathway is used is dependent on varying factors such as weather, day of the week and holidays.

The reserve will be used in future for public recreation, with public right of access to all outdoor areas.

### **3.6 Leases, Licences and other Estates**

This Plan expressly authorises leasing, licensing or granting of any other estate over this reserve for any community purpose as determined by Council. Any agreement which may be entered into will be in accordance with relevant section of the LG Act (s. 46 and 47) and in consideration of native title implications for Crown land.

This Plan expressly authorises the issue of leases, licences and other estates over the reserve, provided that:

- The purpose is consistent with the reserve purpose of the land.
- The purpose is consistent with the core objectives for the category of the land.
- The lease, licence or other estate is for a permitted purpose listed in the LG Act or the *Local Government (General) Regulation 2021*.
- The issue of the lease, licence or other estate and the provisions of the lease, licence or other estate for Crown land can be validated by the provisions of the *Native Title Act 1993*.
- Where the land is subject to a claim under the *Aboriginal Land Rights Act 1983* the issue of any lease, licence or other estate will not prevent the land from being transferred in the event the claim is granted.
- The lease, licence or other estate is granted and notified in accordance with the provisions of the LG Act or the *Local Government (General) Regulation 2021*.
- The issue of the lease, licence or other estate will not materially harm the use of the land for any of the purposes for which it was dedicated or reserved.
- Council Crown Land Managers have obtained written advice from a qualified Native Title Manager that any proposed lease or licence arrangements comply with any applicable provisions of the *Native Title Act 1993* for Crown land.

Tables in the relevant category sections of this Plan further identify the purposes for which leases and licences may be issued over the reserve.

### **3.7 Short Term Casual Purposes**

Subject to Council approval, the following short term casual purposes may be allowed if considered appropriate:

- a) the playing of a musical instrument, or singing, for fee or reward,
- b) engaging in a trade or business,
- c) the playing of a lawful game or sport,
- d) the delivery of a public address,
- e) commercial photographic sessions,
- f) picnics and private celebrations such as weddings and family gatherings,
- g) filming sessions.

### **3.8 Signs**

Council uses signs to regulate the activities carried out on community land and to provide educational information. All Council signs erected under Part 9 of the CLM Act, plus reserve name signs and traffic and safety signs, are permissible. Council must approve all other signs, including design before erection. All signs must be sympathetic to their environment in their design, construction and location.

### **3.9 Easements**

Council reserves the right to grant easements as required for utilities and access.

### **3.10 Alcohol**

Council can declare the area an alcohol-free zone under Chapter 16, Part 4 - Street Drinking (s.642-648) of the LG Act.

### **3.11 Management actions**

Management actions must be consistent with those outlined in this Plan. Council shall provide (when required) the construction and maintenance of utility services, provision and maintenance of wetlands, floodways, cycle ways, vehicular access ways and the granting of easements.

### **3.12 Fees and charges**

Council fees and charges may apply for specific uses of the reserve, these are outlined in Council's Fees and Charges Schedule. Applications must be lodged with Council for reserve hire.

## **4. ADDITIONAL MATTERS**

### **4.1 Definitions**

The terms used within this Plan are to be understood as they are presented in the LG Act. For terms which require further definition, please see the *Interpretations Act 1987*.

### **4.2 Native Title Assessment**

The CLM Act provides new direction for the management of Crown Land and Council is now responsible for compliance with Native Title legislation for the Crown land that it manages.

Council is required to undertake steps to identify if any activities that they do, or do not allow on Crown land, will have native title implications, what provisions of the *Native Title Act 1993* will validate the activity and what procedures should be taken in relation to a particular activity prior to its commencement.

Council must receive written advice from its Native Title Manager in relation to certain activities and acts it intends to carry out on Crown land.

Where a plan of management covers both Crown and Council owned land, native title assessment and advice for any activity is only required for the Crown land portion of the reserve.

See Appendix 2 for more information regarding aboriginal Interests in Crown Land.

### **4.3 Community Assistance**

Council will encourage, where appropriate, community assistance in the development of new facilities as well as maintenance of existing facilities through the co-operation and assistance of local groups.

## PART 2: DETAILED INFORMATION REGARDING CATEGORIES OF LAND

### 5. CATEGORY: GENERAL COMMUNITY USE

#### 5.1 Introduction

Part of Hennegar Bay Reserve is categorised as General Community Use. The categories of Hennegar Bay Reserve are shown in Figure 3 - Land Categories. The General Community Use area includes the shared use pathway and the mowed grass on the southern side of the path, adjoining the residential properties.

The guidelines for categorisation of land as General Community Use under clause 106 of the *Local Government (General) Regulation 2021* are if the land:

- (a) may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public, and
- (b) is not required to be categorised as a natural area under section 36A, 36B or 36C of the LG Act and does not satisfy the guidelines under clauses 102–105 for categorisation as a natural area, a sportsground, a park or an area of cultural significance.

This section of the reserve is therefore categorised as General Community Use.

The core objectives of the LG Act for the management of land categorised as General Community Use are:

To promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:

- (a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and
- (b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).

#### 5.2 Key issues

The key issues associated with the land categorised as General Community Use within Hennegar Bay include but are not limited to:

##### **Impact on residence**

Council will, as far as possible, consult with adjoining owners in respect of activities on the land which may affect them.

##### **Access to Reserve**

Ensure continued access to the reserve to enable its use for the purpose of General Community Use for all residents, including those with a disability.

##### **Public Safety**

Ensure and maintain public safety of persons using the land. Passive surveillance of the reserve will be enhanced with increased usage.

## General Maintenance

Ensure general maintenance of the shared use pathway and landscaping to facilitate use by the community.

### 5.3 Development and use

The current use of the land categorised as General Community Use within Hennegar Bay Reserve is a shared use pathway and landscaped/mowed grass. The shared use pathway was in excellent condition at the time this plan was adopted and the grass cover adjoining the pathway was generally good.

The pathway is used by pedestrians, strollers, rollerbladers, skateboarders and cyclists along the foreshore of Lake Illawarra. The land provides for active transport and recreational opportunities and is part of the shared pathway that extends around Lake Illawarra and the coast to Shellharbour.

Developments and uses on the reserve must be consistent and permissible under the LEP and SEPPs applicable to this site. These activities or developments must also be consistent with the land categorisation.

Council approval may be required prior to any development or improvement made to community land.

All major developments and improvements to be funded (solely or partially) by Council will be subject to Council approval.

The general types of uses which may occur on community land categorised as General Community Use, and the forms of development generally associated with those uses, are set out in detail in **Table 2**. The facilities on community land may change over time, reflecting the needs of the community. The following examples in the table does not guarantee approval as this is subject to site suitability and assessment. It is not an exhaustive list.

Purpose/Use	Examples of development to facilitate uses
Providing a location for, and supporting, the gathering of groups for a range of social, cultural or recreational purposes.	Development for the purposes of social, community, cultural and recreational activities.  Development may include: <ul style="list-style-type: none"><li>• landscaping and finishes, improving access, amenity and the visual character of the general community area</li><li>• water-saving initiatives such as rain gardens</li><li>• energy-saving initiatives such as solar lights and solar panels</li><li>• locational, directional and regulatory signage.</li></ul>

**Table 2 - Possible permissible uses and development of community land categorised as General Community Use**

#### 5.4 Express authorisation of leases, licences and other estates – General Community Use

This plan of management expressly authorises the issue of leases, licences and other estates over the land categorised as General community Use. **Table 3** provides some possible types of purposes for which tenure may be granted. The following examples in the table does not guarantee approval as this is subject to site suitability and assessment. It is not an exhaustive list.

Type of tenure arrangement	Maximum term	Examples of purposes for which tenure may be granted
Lease	As per statutory requirements	<ul style="list-style-type: none"> <li>• cultural purposes</li> <li>• recreational purposes</li> <li>• commercial retail uses associated with the facility (e.g. sale or hire of sports goods)</li> </ul>
Licence	As per statutory requirements	<ul style="list-style-type: none"> <li>• recreational purposes</li> <li>• sale of goods or services that are ancillary to community land use and reserve purpose</li> </ul>
Short-term licence	As per statutory requirements	<ul style="list-style-type: none"> <li>• the playing of a musical instrument, or singing, for fee or reward, such as busking or concerts</li> <li>• engaging in a trade or business, such as community events, auctions, markets, book launches, film releases, displays, exhibitions, fairs, fashion parades, shows and similar activities</li> <li>• the playing of a lawful game or sport</li> <li>• the delivery of a public address, such as speeches, meetings, seminars, presentations and educational programs</li> <li>• commercial photographic sessions</li> <li>• picnics and private celebrations such as weddings and family gatherings</li> <li>• filming sessions, such as broadcasts associated with any event, concert or public speech</li> <li>• other uses consistent with the purpose, category and objectives of the reserve</li> </ul>
Other estates		This PoM allows the council to grant ‘an estate’ over community land for the provision of public utilities and works associated with or ancillary to public utilities and provision of services, or connections for premises adjoining the community land to a facility of the council or public utility provider on the community land in accordance with the LG Act.

**Table 3 – Leases, licences and other estates and purposes for which they may be granted for community land categorised as General Community Use.**

## 5.5 Management framework for reserves categorised as General Community Use

The Action Plan (Table 4) is prepared in accordance with Section 36 of the LG Act and identifies the:

- Broad management issues,
- Objectives and performance targets of the Plan with respect to the land,
- Means by which Council proposes to achieve the Plan's objectives and performance targets; and
- The manner in which Council proposes to assess its performance with respect to the

<b>Management Issues</b>	<b>Objectives and performance targets s.36(3)(b)</b>	<b>Means of achievement of objectives s.36(3)(c)</b>	<b>Manner of assessment of performance s.36(3)(d)</b>
Facilities	To promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public.	Implement strategies to maintain the reserve, and ensure all associated services are safe, accessible and inclusive of the needs of the whole community.  Provide and maintain shared use pathway to a satisfactory standard.	Natural and built services meet the needs of the community.  That inspections are made by appropriate Council staff when required.  Whether there are complaints from users.
Tenures	To promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).	Advertise, promote and manage tenures accordingly.	Monitor Tenures.

Landscaping	To provide a well-maintained reserve.	<p>Mowing the area on a regular basis necessary to achieve a reasonable standard of presentation.</p> <p>By removing refuse and waste material from the area when required.</p> <p>By generally maintaining the area in a neat, tidy and safe condition.</p>	That inspections are made by appropriate Council staff when required.
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**Table 4 - Action Plan for land categorised as General Community Use.**

## 6. CATEGORY: NATURAL AREA

Part of Hennegar Bay Reserve is categorised as Natural Area which is further defined and categorised as Foreshore. The categories of Hennegar Bay Reserve are shown in Figure 3 – Land Categories. The Natural Area category is the strip of land situated on the water's edge, on the northern side of the pathway, and forms a transition zone between the aquatic and terrestrial environment.

The guidelines for categorisation of land as Natural Area under clause 102 of the *Local Government (General) Regulation 2021* are if the land:

Whether or not in an undisturbed state, possesses a significant geological feature, geomorphological feature, landform, representative system or other natural feature or attribute that would be sufficient to further categorise the land as bushland, wetland, escarpment, watercourse or foreshore under section 36(5) of the LG Act.

This part of the reserve is the foreshore of Lake Illawarra and is therefore categorised as Natural Area.

The core objectives for the management of land categorised as Natural Area are:

- (a) to conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area, and
- (b) to maintain the land, or that feature or habitat, in its natural state and setting, and
- (c) to provide for the restoration and regeneration of the land, and
- (d) to provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion, and
- (e) to assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*.

This section should be read in conjunction with the land's sub-category of Foreshore outlined in this Plan.

## **7. CATEGORY: FORESHORE**

### **7.1 Introduction**

Hennegar Bay Reserve is categorised as General Community Use and Natural Area – Foreshore. These areas are shown in Figure 3 - Land Categories. The Foreshore area is the strip of land situated on the water's edge, on the northern side of the pathway, and forms a transition zone between the aquatic and terrestrial environment. It is the sub-category to Natural Area and covers the same area.

The guidelines for categorisation of land as Foreshore under clause 111 of the *Local Government (General) Regulation 2021* are if the land is situated on the water's edge and forms a transition zone between the aquatic and terrestrial environment.

This part of the reserve is the foreshore of Lake Illawarra and is therefore further categorised as Foreshore.

The core objectives for management of community land categorised as Foreshore are:

- (a) to maintain the foreshore as a transition area between the aquatic and the terrestrial environment, and to protect and enhance all functions associated with the foreshore's role as a transition area, and
- (b) to facilitate the ecologically sustainable use of the foreshore, and to mitigate impact on the foreshore by community use.

### **7.2 Physical environment**

#### **Topography**

The landscape of Hennegar Bay Reserve is levelled park lands on the foreshore of Lake Illawarra.

#### **Hydrology/Flooding**

Water from the site drains into Lake Illawarra. All or part of the land has been identified within the Lake Illawarra Flood plain Risk Management Study and Plan 2012 as flood prone. Councils' Floodplain Risk Management Development Control Plan (DCP) will apply to the site.

#### **Soils**

The soils within the area of the site are dominated by Soloths. The reserve contains class 1 acid sulfate soils.

#### **Vegetation**

The vegetation present within the subject site contains two Coastal Swamp Oaks which form part of a larger patch of Swamp Sclerophyll Forest on Coastal Floodplain Endangered Ecological Community (EEC). The eastern edge of the Crown land reserve also slightly crosses into an area of mapped Illawarra Coastal Grassy Woodlands EEC. Saltmarsh EEC is also present along the extent of the Reserve bordering the lake frontage, parallel to the mown grass strip and walking track.

#### **Fauna**

The mature trees provide roosting and foraging habitat for birds moving through the landscape.

The Saltmarsh and adjacent Lake Illawarra Frontage, Seagrass Meadows and Estuarine Flats provide foraging habitat for species of waders (birds).

## 7.2 Key issues

The key issues associated with the land categorised as Natural Area within Hennegar Bay include but are not limited to:

### **Protection of Biodiversity**

Ensure biodiversity is protected and ecosystem function is maintained as well as possible.

### **Maintain Natural State**

Protect the natural state and setting of the foreshore of Lake Illawarra.

### **Provide Community Use while minimising disturbance**

To provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion.

### **Transitional Area**

Maintain the foreshore as a transition area between the aquatic and terrestrial environment.

### **Acid Sulfate Soils**

Class 1 Acid Sulfate Soils occur on the site. Any risk of exposure needs to be considered with any proposed works or developments.

## 7.3 Development and use

The current use of the land categorised as Natural Area within Hennegar Bay Reserve is the natural foreshore of Lake Illawarra.

Developments and uses on the reserve must be consistent and permissible under the LEP and SEPPs applicable to this site. These activities or developments must also be consistent with the land categorisation.

Council approval may be required prior to any development or improvement made to Community Land.

All major developments and improvements to be funded (solely or partially) by Council will be subject to Council approval.

The general types of uses which may occur on community land categorised as Natural Area – Foreshore, the forms of development which generally associate with those uses, as set out in detail in **Table 5**. The facilities on community land may change over time, reflecting the needs of the community. The following examples in the table does not guarantee approval as this is subject to site suitability and assessment. It is not an exhaustive list.

Purpose/Use	Examples of development to facilitate uses
<ul style="list-style-type: none"> <li>• Preservation of the council's natural heritage including the identified endangered ecological communities</li> <li>• Preservation of biological diversity and habitat</li> <li>• Providing a location for formal and informal recreation</li> <li>• Walking and cycling</li> <li>• Environmental and scientific study</li> <li>• Approved bush care projects requiring ecological restoration activities associated with protection of flora and fauna.</li> <li>• Fire hazard reduction</li> </ul>	<ul style="list-style-type: none"> <li>• Visitor facilities: picnic tables, BBQs, sheltered seating areas, lighting, Low-impact walking trails</li> <li>• Interpretive signage</li> <li>• Water-saving initiatives such as rain gardens, swales and sediment traps</li> <li>• Energy-saving initiatives such as solar lights and solar panels</li> <li>• Bridges, observation platforms</li> <li>• Work sheds or storage sheds required in connection with the maintenance of the land</li> <li>• Bicycle/boat hire or similar</li> <li>• Temporary erection or use of any building or structure necessary to enable a filming project to be carried out</li> <li>• Locational, directional and regulatory signage</li> </ul>

***Table 5 - Possible permissible use and development of community land categorised as Natural Area – Foreshore by Council or the Community***

## 7.4 Express authorisation of leases, licences and other estates - Natural Area – Foreshore

This plan of management expressly authorises the issue of leases licences and other estates over the land categorised as Natural Area – Foreshore. **Table 6** provides some possible types of purposes for which tenure may be granted. The following examples in the table does not guarantee approval as this is subject to site suitability and assessment. It is not an exhaustive list.

Type of tenure arrangement	Maximum term	Examples of purposes for which tenure may be granted
Lease	As per statutory requirements	<ul style="list-style-type: none"> <li>walkways, pathways, bridges, causeways</li> <li>observation platforms, signs</li> <li>bicycle/boat hire or similar</li> <li>work sheds or storage sheds required in connection with the maintenance of the land</li> <li>temporary erection or use of any building or structure necessary to enable a filming project to be carried out</li> </ul>
Licence	As per statutory requirements	<ul style="list-style-type: none"> <li>walkways, pathways, bridges, causeways</li> <li>observation platforms, signs</li> <li>bicycle/boat hire or similar</li> <li>work sheds or storage sheds required in connection with the maintenance of the land</li> <li>temporary erection or use of any building or structure necessary to enable a filming project to be carried out</li> </ul>
Short-term licence	As per statutory requirements	<ul style="list-style-type: none"> <li>the playing of a musical instrument, or singing, for a fee or reward</li> <li>engaging in a trade or business, such as bicycle/boat hire, scientific studies and surveys or similar</li> <li>the playing of a lawful game or sport</li> <li>the delivery of a public address</li> <li>commercial photographic sessions</li> <li>picnics and private celebrations such as weddings and family gatherings</li> <li>filming sessions, including the temporary erection or use of any building or structure necessary to enable a filming project to be carried out</li> </ul>
Other estates		This PoM allows the council to grant ‘an estate’ over community land for the provision of public utilities and works associated with or ancillary to public utilities and provision of services, or connections for premises adjoining the community land to a facility of the council or public utility provider on the community land in accordance with the LG Act.

**Table 6 – Leases, licences and other estates and purposes for which they may be granted for community land categorised as Natural Area – Foreshore.**

## 7.5 Management framework for reserves categorised as Natural Area - Foreshore

The Action Plan (**Table 7**) is prepared in accordance with Section 36 of the LG Act and identifies the:

- Broad management issues,
- Objectives and performance targets of the Plan with respect to the land,
- Means by which Council proposes to achieve the Plan's objectives and performance targets; and
- The manner in which Council proposes to assess its performance with respect to the Plan's objectives and performance targets.

<b>Management Issues</b>	<b>s.36(3)(b) Objectives and performance targets</b>	<b>S. 36(3)(c) Means of achievement of objectives</b>	<b>s.36(3)(d) Manner of assessment of performance</b>
Biodiversity	To conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area.	Undertake an effective targeted weed control program to ensure survival of key native vegetation.	That inspections are made by appropriate Council staff when required.
Natural State	To maintain the land, or that feature or habitat, in its natural state and setting.	By carrying out foreshore maintenance and restoration work in accordance with Council's available resources.  Weed control.  Removal of waste.	That inspections are made by appropriate Council staff when required.
Restoration	To provide for the restoration and regeneration of the land.	If needed, consider planting appropriate species.	That inspections are made by appropriate Council staff when required.
Appropriate Community Use	To provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion.	Ensure safety, access and inclusion are key considerations in the provision of any assets or facilities.  Provide appropriate signage to avoid disturbance of the foreshore.	Whether there are complaints from users.  That inspections are made by appropriate Council staff when required.

Recovery Plan/Threat abatement Plan	To assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the <i>Threatened Species Conservation Act 1995</i> or the <i>Fisheries Management Act 1994</i> .	Undertake land management, restoration and maintenance in accordance with the relevant plans as outlined in legislation, including the <i>Biodiversity Conservation Act 2016</i> .	Land management, restoration and maintenance is in accordance with the relevant plans as outlined in the legislation. The plans are kept relevant and reviewed as required.
Transition Area	To maintain the foreshore as a transition area between the aquatic and the terrestrial environment, and to protect and enhance all functions associated with the foreshore's role as a transition area.	By carrying out foreshore maintenance and restoration work in accordance with Council's available resources.  Rubbish removal  Weed control	That inspections are made by appropriate Council staff when required.
Ecologically Sustainable Use	To facilitate the ecologically sustainable use of the foreshore, and to mitigate impact on the foreshore by community use.	Inform the community in good faith, regarding any issues associated with the foreshore in terms of its key management issues.	Community knowledge about foreshore management issues and responding by contributing positively to outcomes.  Monitor any negative or positive change/impacts that may occur on the ecological value of the land categorised as foreshore.
Lake Illawarra Coastal Management Program (CMP)	Reduce threats to Lake Illawarra.	Implement recommendations from the Lake Illawarra CMP	Recommendations from the CMP are implemented.

**Table 7 - Action Plan for land categorised as Natural Area - Foreshore.**

## APPENDIX 1: PLAN OF MANAGEMENT LEGISLATIVE FRAMEWORK

The primary legislation that impacts on how community land is managed or used is briefly described below. You can find further information regarding these acts at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

### **Local Government Act 1993**

Section 35 of the *Local Government Act 1993* (LG Act) provides that community land can only be **used** in accordance with:

- the plan of management applying to that area of community land, and
- any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land, and
- the provisions of Division 2 of Chapter 6 of the Act.

Section 36 of the Act provides that a plan of management for community land must identify the following:

- a. the category of the land,
- b. the objectives and performance **targets** of the plan with respect to the land,
- c. the means by which the council proposes to **achieve** the plan's objectives and performance targets,
- d. the manner in which the council proposes **to assess its performance** with respect to the plan's objectives and performance targets, and may require the prior approval of the council to the carrying out of any specified activity on the land.

A plan of management that applies to just one area of community land:

- A. must include a description of:
  - (i) the condition of the land, and of any buildings or other improvements on the land, as at the date of adoption of the plan of management, and
  - (ii) the use of the land and any such buildings or improvements as at that date, and
- B. must:
  - (i) specify the purposes for which the land, and any such buildings or improvements, will be permitted to be used, and
  - (ii) specify the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise, and
  - (iii) describe the scale and intensity of any such permitted use or development.

Land is to be categorised as one or more of the following:

- a. a natural area
- b. a sportsground
- c. a park
- d. an area of cultural significance
- e. general community use.

Land that is categorised as a natural area is to be further categorised as one or more of the following:

- a. bushland
- b. wetland
- c. escarpment
- d. watercourse
- e. foreshore
- f. a category prescribed by the regulations.

Additionally, under section 36 of the LG Act, a site-specific PoM must be made for land declared:

- as critical habitat, or directly affected by a threat abatement plan or a recovery plan under threatened species laws (sections 36A(2) and 36B(3))
- by council to contain significant natural features (section 36C(2))
- by council to be of cultural significance (section 36D(2)).

### **Classification of public land**

The LG Act requires classification of public land into either 'community' or 'operational' land (Section 26). The classification is generally made for council-owned public land by the council's Local Environmental Plan (LEP) or in some circumstances by a resolution of the council (Section 27).

Crown reserves managed by council as Crown land manager have been classified as community land upon commencement of the *Crown Land Management Act 2016* (CLM Act). Councils may manage these Crown reserves as operational land if written consent is obtained from the minister administering the CLM Act.

Classification of land has a direct effect on the council's ability to dispose of or alienate land by sale, leasing, licensing or some other means. Under the LG Act, community land must not be sold (except for scheduled purposes), exchanged or otherwise disposed of by the council, and the land must be used and managed in accordance with an adopted PoM. In addition, community land is subject to strict controls relating to leases and licences (sections 45 and 46) of the LG Act.

By comparison, no such restrictions apply to operational land that is owned by councils. For example, operational land can be sold, disposed, exchanged or leased including exclusive use over the land, unencumbered by the requirements which control the use and management of community land. Crown reserves managed by council as operational land may generally be dealt with as other operational land but may not be sold or otherwise disposed of without the written consent of the minister administering the CLM Act.

Operational land would usually include land held as a temporary asset or an investment, land which facilitates the council carrying out its functions or land which may not be open to the general public (for example, a works depot).

The classification or reclassification of council-owned public land will generally be achieved by a Local Environmental Plan (LEP) or by a resolution of council in accordance with sections 31, 32 and 33 of the LG Act. If land is not classified by resolution within a three-month period from acquisition it automatically becomes community land, regardless of whether it satisfies the objectives for community land as outlined in the LG Act.

For Crown land, Council cannot reclassify community land as operational land without consent of

the minister administering the CLM Act.

### ***Crown Land Management Act 2016***

Crown reserves are land set aside on behalf of the community for a wide range of public purposes, including environmental and heritage protection, recreation and sport, open space, community halls, special events and government services.

Crown land is governed by the CLM Act, which provides a framework for the state government, local councils and members of the community to work together to provide care, control and management of Crown reserves.

Under the CLM Act, as Council Crown land managers, councils manage Crown land as if it were public land under the LG Act. However, it must still be managed in accordance with the purpose of the land and cannot be used for an activity incompatible with its purpose – for example, Crown land assigned the purpose of ‘environmental protection’ cannot be used in a way that compromises its environmental integrity.

Councils must also manage Crown land in accordance with the objects and principles of Crown land management outlined in the CLM Act. The objects and principles are the key values that guide Crown land management to benefit the community and to ensure that Crown land is managed for sustainable, multiple uses.

### **Principles of Crown land management**

- Environmental protection principles are to be observed in the management and administration of Crown land.
- The natural resources of Crown land (including water, soil, flora, fauna and scenic quality) will be conserved wherever possible.
- Public use and enjoyment of appropriate Crown land are to be encouraged.
- Where appropriate, multiple uses of Crown land should be encouraged.
- Where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained.
- Crown land is to be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the state of NSW, consistent with the above principles.

### **Crown land management compliance**

In addition to management and use of Crown reserves that is aligned with the reserve purpose(s), there are other influences over council management of Crown reserves. For example, Crown land managers may have conditions attached to any appointment instruments, or councils may have to comply with specific or general Crown land management rules that may be published in the NSW Government Gazette. Councils must also comply with any Crown land regulations that may be made.

### ***Native Title Act 1993***

The Commonwealth *Native Title Act 1993* (NT Act) recognises and protects native title rights and interests. The objects of the NT Act are to:

- provide for the recognition and protection of native title
- establish ways in which future dealings affecting native title may proceed and to set standards for those dealings
- establish a mechanism for determining claims to native title
- provide for, or permit, the validation of past acts invalidated because of the existence of native title.

The NT Act may affect use of Crown land, particularly development and granting of tenure. Specifically, the CLM Act makes it mandatory for council to engage or employ a native title manager. This role provides advice to council as to how the council's dealings and activities on Crown land can be valid or not valid in accordance with the NT Act.

Council must obtain the written advice from an accredited native title manager that Council complies with any applicable provisions of the native title legislation when:

- a. granting leases, licences, permits, forestry rights, easements or rights of way over the land
- b. mortgaging the land or allowing it to be mortgaged
- c. imposing, requiring or agreeing to covenants, conditions or other restrictions on use (or removing or releasing, or agreeing to remove or release, covenants, conditions or other restrictions on use) in connection with dealings involving the land
- d. approving (or submitting for approval) a plan of management for the land that authorises or permits any of the kinds of dealings referred to in (a), (b) or (c).

### **Council plans and policies relating to this plan of management**

Council has developed plans and policies that are concerned to some extent with the management of community land. These documents have been considered when preparing this PoM.

The following is a list of documents that have a direct association with this PoM:

#### **Shellharbour Local Environmental Plan 2013 (LEP)**

Shellharbour Local Environmental Plan 2013 guides planning decisions for the city through zoning and development controls, which provide a framework for the way land can be used.

#### **Shellharbour City Local Strategic Planning Statement 2020**

The Shellharbour City Local Strategic Planning Statement (LSPS) guides the future of land use planning in the City and provides guidance on meeting our changing needs, managing land use planning challenges and will assist us to further develop the local character of Shellharbour now and into the future. The LSPS identifies a land use planning vision, supported by planning priorities and actions which inform Council planning, decisions and with managing the future growth of our City based on economic, social and environmental needs over the next 20 years.

Planning Priority 3 of the LSPS 'Deliver high quality, well-connected and integrated, green spaces' requires Council to continue to review and update plans of management for Community land.

#### **Shellharbour Open Space and Recreation Needs Study and Strategy 2020**

Council's Open Space and Recreation Needs Study and Strategy guides how Council will plan, implement and manage current and future open spaces and sport, recreation and aquatic facilities across the Shellharbour Local Government Area. This study provides a hierarchy of parks which assists with decision making and planning.

#### **Lake Illawarra Coastal Management Program 2020 – 2030**

The Lake Illawarra Coastal Management Program (CMP) is a long-term strategy for the coordinated management of the Lake. It includes a set of actions to reduce threats to the Lake. The actions are to be implemented by a range of land managers over the next 10 years.

## **Other state and Commonwealth legislation NSW state legislation**

### ***Environmental Planning and Assessment Act 1979***

The *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the framework for planning and development across NSW and guides environmental planning instruments which provide a basis for development control.

The EP&A Act ensures that effects on the natural environment, along with social and economic factors, are considered by the council when granting approval for or undertaking works, developments or activities.

This Act is also the enabling legislation for planning policies which may have a direct influence on open space management. On a state-wide level there are State Environmental Planning Policies (SEPPs). On a regional level there are Regional Environmental Plans (REPs). On a local level there are Local Environmental Plans (LEPs) as well as Development Control Plans (DCPs).

### ***Aboriginal Land Rights Act 1983***

The *Aboriginal Land Rights Act 1983* (ALR Act) is important legislation that recognises the rights of Aboriginal peoples in NSW. It recognises the need of Aboriginal peoples for land and acknowledges that land for Aboriginal people in the past was progressively reduced without compensation. Crown land meeting certain criteria may be granted to an Aboriginal Land Council. This Act may affect dealings with Crown land that is potentially claimable.

### ***National Parks and Wildlife Act 1974***

Statutory responsibilities on the council arising from this Act specifically relate to the protection of sites of pre- and post-European contact archaeological significance. This Act may affect community land categorised as cultural significance, natural area or park.

### ***Biodiversity Conservation Act 2016***

**Note:** This Act repealed several pieces of legislation including the *Native Vegetation Act 2003*, *Threatened Species Conservation Act 1995*, the *Nature Conservation Trust Act 2001*, and the animal and plant provisions of the *National Parks and Wildlife Act 1974*.

This Act covers conservation of threatened species, populations and ecological communities, the protection of native flora and fauna. This Act primarily relates to community land categorised as natural area. However, other categories may also be affected.

The *Threatened Species Conservation Act 1995* has been repealed and superseded by the *Biodiversity Conservation Act 2016*. However, references to the former legislation remain in the LG Act and are therefore retained in this guideline.

DPIE's Energy, Environment and Science division advises that recovery plans and threat abatement plans made under the *Threatened Species Conservation Act 1995* were repealed on the commencement of the *Biodiversity Conservation Act* in 2017. These plans have not been preserved by any savings and transitional arrangement under the Biodiversity Conservation Act or LG Act, meaning pre-existing plans have no legal effect.

For this reason, requirements relating to recovery plans and threat abatement plans for local councils preparing plans of management under section 36B of the LG Act are now redundant. Councils will be advised if future amendments are made to the LG Act to enable these mechanisms.

Certain weeds are also declared noxious under this Act, which prescribes categories to which the weeds are assigned, and these control categories identify the course of action which needs to be carried out on the weeds. A weed may be declared noxious in part or all of the state.

### ***Fisheries Management Act 1994***

The *Fisheries Management Act 1994* (FM Act) includes provisions for the management of state fisheries, including the conservation of fish habitats, threatened species, populations and ecological communities of fish and marine vegetation and management of the riparian zone, waterways and threatened marine/freshwater aquatic species. This relates to community land categorised as natural area (foreshore, watercourse or wetland).

Where an area of community land is declared to be critical habitat, or if that area is affected by a recovery plan or threat abatement plan under Part 7A of the FM Act, a site-specific plan of management will need to be undertaken.

### ***Rural Fires Act 1997***

This Act contains provisions for bushfire risk management and the establishment of a Bushfire Management Committee. It also includes direction on development in bushfire prone lands.

### ***Water Management Act 2000***

This Act is based on the concept of ecologically sustainable development, and its objective is to provide for the sustainable and integrated management of the water sources of the state for the benefit of both present and future generations. The Act recognises:

- the fundamental health of our rivers and groundwater systems and associated wetlands, floodplains, estuaries has to be protected
- the management of water must be integrated with other natural resources such as vegetation, native fauna, soils and land
- to be properly effective, water management must be a shared responsibility between the government and the community
- water management decisions must involve consideration of environmental, social, economic, cultural and heritage aspects
- social and economic benefits to the state will result from the sustainable and efficient use of water.

### ***Heritage Act 1977***

This Act contains provisions for the conservation of items of heritage and may relate to community land categorised as cultural significance or natural area.

## **Crown land 2031: State Strategic Plan for Crown Land**

The State Strategic Plan for Crown land sets the vision, priorities and overarching strategy for the management of Crown land and outlines timeframes and outcomes.

### **Commonwealth legislation**

#### ***Environmental Protection and Biodiversity Conservation Management Act 1999***

This Act enables the Australian Government to join with the states and territories in providing a national scheme of environment and heritage protection and biodiversity conservation. It incorporates threatened species on a national level and with relevance to Matters of National Environmental Significance.

#### ***Telecommunications Act 1997***

This Act provides for telecommunication facilities being permitted on community land without authorisation in a PoM.

### **State Environmental Planning Policies**

#### ***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

##### **Chapter 2 - Vegetation in Non-Rural Areas**

This policy deals with clearing of native vegetation in urban areas and land zoned for environmental protection.

##### **Chapter 6 - Bushland in urban areas**

This policy deals with bushland in urban areas, so is applicable to PoMs for community land categorised as Natural Area – Bushland.

##### **Chapter 8 - Sydney Drinking Water Catchment**

This policy aims to protect quality of surface water and the ecosystems that depend on it and requires that any development would have a neutral or beneficial effect on water quality.

#### ***State Environmental Planning Policy (Transport and Infrastructure) 2021***

##### **Chapter 2 -Infrastructure**

This planning policy lists development allowed with consent or without consent on community land.

#### ***State Environmental Planning Policy (Resilience and Hazards) 2021***

##### **Chapter 2 - Coastal Management**

This policy applies to land within the coastal zone.

## **Other relevant legislation, policies and plans**

*Biosecurity Act 2015*  
*Catchment Management Authorities Act 2003*  
*Companion Animals Act 1998*  
Council plans, strategies, policies, procedures and guidelines, generally as amended  
*Disability Discrimination Act 1992*  
*Environmental Protection and Biodiversity Conservation Management Act 1999 (Cth) Local*  
*Land Services Act 2013*  
*Operations Act 1997*  
*Pesticides Act 1999*  
*Protection of the Environment Operations Act 1997*  
*Protection of the Environment Operations (Noise Control) Regulation 2008 Public*  
*Works Act 1912 (as amended)*  
*Retail Leases Act 1994 Rural*  
*Fire Regulation 2002*  
*Shellharbour Development Control Plan*  
*Shellharbour Asset Management Plan*  
*Soil Conservation Act 1938*  
*Telecommunications Act 1997 (Cth) NSW*  
*Invasive Species Plan 2008-2015*  
*National Local Government Biodiversity Strategy NSW*  
*Biodiversity Strategy*

The list above is not exhaustive. Depending on the nature of the land subject to a plan of management, there may be other relevant legislation, policies and procedures that need to be considered. Further advice on this can be sought by contacting Council.

## APPENDIX 2: ABORIGINAL INTERESTS IN CROWN LAND

Crown land has significant spiritual, social, cultural and economic importance to the Aboriginal peoples of NSW. The CLM Act recognises and supports Aboriginal rights, interests and involvement in Crown land.

The management of Crown land can be impacted by the *Native Title Act 1993* (Cth) and the *Aboriginal Land Rights Act 1983* (NSW).

### Native Title

Native title describes the rights and interests that Aboriginal and Torres Strait Islander people have in land and waters according to their traditional law and customs. Native title is governed by the Commonwealth *Native Title Act 1993* (NT Act).

Native title does not transfer the land to the native title holder, but recognises the right to land and water, by providing access to the land and if applicable, compensation for any loss, diminution, impairment or other effect of the act on their native title rights and interests.

All Crown land in NSW can be subject to a native title claim under the NT Act. A native title claim does not generally affect Crown land where native title has been extinguished or it is considered excluded land.

When preparing a PoM, Council is required to employ or engage a qualified native title manager to provide advice and validate acts (developments and tenures) over the reserve, in line with the NT Act. The most effective way to validate acts under the NT Act is to ensure all activities align with the reserve purpose.

If native title rights are found to exist on Crown land, council Crown land managers may be liable to pay compensation for acts that impact on native title rights and interests. This compensation liability arises for local councils whether or not the act was validated under the NT Act.

For further information about native title and the future acts framework see the Crown lands website.

### Native Title Claim of the South Coast People

The Yuin group of Aboriginal peoples along the south coast of NSW lodged a native title claim with the Federal Court on 3 August 2017. The South Coast people's claim covers 16,808 sq. km, extending south from Sydney to Eden, along the south coast of NSW and west towards Braidwood and also extends three nautical miles into the ocean. Shellharbour LGA is one of six councils within this area.

The claim does not affect freehold land but does extend to national parks, state forests, Crown land and council-managed Crown land and reserves. The claim includes the exclusive or non-exclusive right to access, to remain in and use the land and waters for any purpose, to take resources and to maintain and protect places and objects of significance.

## **Aboriginal Land Rights**

The *Aboriginal Land Rights Act 1983* (ALR Act) seeks to compensate Aboriginal peoples for past dispossession, dislocation and removal of land in NSW (who may or may not also be native title holders).

Aboriginal land claims may be placed on any Crown land in NSW. The Department of Planning, Industry and Environment is responsible for investigating claims as defined in the ALR Act. If a claim is established, the land is transferred to the Aboriginal Land Council as freeholdland.

At the time of preparing this plan of management, Crown reserves within Shellharbour LGA are affected by an undetermined Aboriginal land claim (claim number 42453, lodged 15/12/2016). Council has considered the claim in development of this plan of management.

### APPENDIX 3: EXISTING LEASES AND LICENCES ON THE SITE

<b>Group/organisation</b>	<b>Type of Tenure</b>	<b>Term</b>
Nil		

(Current as at the date of adoption of the Plan)