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1. Acknowledgement to Country

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

Webcasting Comment

The public gallery should note that Council records and webcasts its Council Meetings live to enhance the accessibility of Council Meetings to the broader Shellharbour City Community.

Council Meetings can now be viewed live via webcast, downloaded from Council's website for later viewing, or purchased from Council for viewing on a computer.

At the appropriate time during the meeting pre registered or invited members of the gallery may Address the Council at which time their image, comments or submissions will be broadcast live and recorded.

Council accepts no responsibility for any defamatory or offensive statements.

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

2. Apologies / Leave of Absence

3. Pecuniary Interest and Conflict of Interest Declarations

Note: Councillors who declare a Pecuniary Interest at the Council Meeting are also required to complete a Pecuniary Interest Declaration form.

4. Addresses to Council

5. Reports

5.1 Adoption of Draft Shellharbour Local Environment Plan 2011

To the General Manager

Directorate: City Outcomes

Department: City Strategy

Manager: Carey McIntyre - Director City Outcomes

Authors: **Geoff Hoynes - Group Manager City Strategy**

Ian Rankine - Senior Strategic Planner

Cheryl Lappin - Senior Strategic Planner

Michael Tuffy - Senior Strategic Planner

Tim Collins - Town Planner Cadet

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1. Summary

The purpose of this report is so seek Council's adoption of Draft Shellharbour Local Environmental Plan 2011 (Draft Shellharbour LEP 2011), as contained in Attachments 1 and 2 of this report. When gazetted, Draft Shellharbour LEP 2011 will become Council's pre-eminent planning instrument guiding land use planning decisions through zoning and development controls.

Draft Shellharbour LEP 2011 consists of a written instrument and 12 map overlays. It has been prepared to meet the formatting requirements of the State Government's Standard Instrument for Local Environmental Plans.

Once adopted by Council, Draft Shellharbour LEP 2011 will be forwarded to the NSW Department of Planning and Infrastructure for finalisation. The Minister for Planning will then make the plan and it will be published in the NSW Government Gazette.

The Draft Shellharbour LEP 2011 has gone through significant community engagement and exhibition. This report proposes a number of changes to the exhibited Draft Shellharbour LEP 2011. These changes have been incorporated into Draft Shellharbour LEP 2011 as contained in Attachments 1 and 2 of this report.

Draft Shellharbour LEP 2011 is now reported to Council for final adoption.

2. Background

2.1. General

An LEP is a legal document that guides planning decisions for local government areas. Through zoning and development controls, LEPs allow councils and other consent authorities to manage the ways in which land is used. LEPs are an integral part of the NSW planning system.

On 31 March 2006, the NSW Government gazetted a Standard Instrument for preparing new LEPs. The Standard Instrument has been the subject of a number of reviews and amendments since then. The Standard Instrument attempts to create a common structure and language for LEPs.

The State Government's stated purpose for introducing the Standard Instrument is to "simplify the planning system for residents, businesses and councils by significantly reducing the overall number of LEPs and by introducing a consistent approach to land use planning controls across NSW".

The Standard Instrument sets out 34 standard zones for councils to use when preparing new principal LEPs for their local government area. Councils are not allowed to add new zones or create subzones, or change the name of a standard zone.

We have utilised 24 of these zones in preparing the Draft Shellharbour LEP 2011. For each zone, the Standard Instrument sets out 'core' objectives for development in the zone, and certain mandated permitted or prohibited land uses.

In August 2009 the Minister for Planning and the Minister for Local Government released a joint letter advising all Councils in New South Wales of the Department of Planning and Infrastructure's reprioritised Standard Local Environmental Plan (LEP) Program.

Shellharbour City Council is one of the 67 Councils that have been placed on the NSW Government's priority list. This means that Council has been identified as a local government area where a proactive and focussed approach to delivery of the Standard Instrument LEP will occur.

In comparison with other local government areas, Shellharbour has two relatively current LEPs. Shellharbour LEP 2000 covers our urban areas in addition to some non urban areas. Shellharbour Rural LEP 2004 covers the majority of our non urban areas. However given Shellharbour's desirable coastal location and its close proximity to Sydney, it is experiencing a number of development pressures and opportunities that can be best addressed through a new planning instrument.

2.2. Previous Council Meetings and Resolutions

Draft Shellharbour LEP 2011 has been reported to Council on a number of occasions. The key reports and resolutions are as follows:

- a. 26 September 2006. This meeting considered a report on and resolved to review our two existing local environmental plans, prepare a single comprehensive local environmental plan and prepare a single comprehensive development control plan.
- b. 19 October 2010. This meeting considered a report to endorse the Draft Shellharbour LEP 2011 for the purpose of sending it to the Department of Planning to seek a Section 65 certificate to put it on public exhibition. At this meeting Council resolved:
 - 1) *That Council adopt the recommendations of the rezoning requests reports as contained in Attachment 1 of this report.*
 - 2) *That Council adopt the Draft Shellharbour Community Based Heritage Study and associated Shellharbour Heritage Inventory as contained in Attachment 2 of this report.*
 - 3) *That Council adopt the Urban Fringe Local Environmental Study as contained in Attachment 3 of this report.*
 - 4) *That Council endorse the Draft Shellharbour Local Environmental Plan 2011 as contained in Attachment 4 of this report.*

- 5) *That the endorsed Draft Shellharbour Local Environmental Plan 2011 be made publicly available for inspection on Council's website and at Council's Administration Building.*
- 6) *That Council authorise the General Manager to submit Draft Shellharbour Local Environmental Plan 2011 to the NSW Department of Planning in accordance with Section 64 of the Environmental Planning and Assessment Act for review and certification under Section 65 of the Environmental Planning and Assessment Act.*
- 7) *That Council delegate to the General Manager authority to make minor changes to the endorsed Draft Shellharbour Local Environmental Plan 2011 if and as required by the NSW Department of Planning in order to obtain a Section 65 Certificate or address any conditions of the Section 65 Certificate.*
- 8) *That any changes made in accordance with recommendation 7 above be specifically identified in the documentation accompanying the exhibition of the certified Draft Shellharbour Local Environmental Plan 2011.*
- 9) *That the certified Draft Shellharbour Local Environmental Plan 2011 be publicly exhibited for a minimum of eight weeks.*
- 10) *That an information report be submitted to Council outlining the community engagement strategy associated with the public exhibition of the certified Draft Shellharbour Local Environmental Plan 2011.*
- 11) *That a report be submitted to Council on the public exhibition of the certified Draft Shellharbour Local Environmental Plan 2011 detailing the outcomes of the community and government agency engagement.*
- 12) *That the Draft Shellharbour Local Environmental Plan 2011 be reported back to Council for final consideration.*

- c. 22 February 2011. This meeting considered changes to the Draft Shellharbour LEP 2011 as required by the Department of Planning before they would issue a Section 65 certificate to enable the Draft Shellharbour LEP 2011 to be put on public exhibition. At this meeting Council resolved:

That this item be deferred for further report to a future meeting of the Council in order for this matter to be investigated further.

- d. 5 April 2011. This meeting considered the issues Council wanted investigated following the 22 February meeting. At this meeting Council resolved:

- 1) *That due to the current differences between Council and NSW Department of Planning regarding future land use planning at Killalea State Park, Council defer from Draft Shellharbour LEP 2011 land at Killalea State Park being Lot 17, DP 3710, Lot 18, DP 3710, Lot 19, DP 3710, Lot 1, DP*

609762, Lot 21, DP 1010797, Lot 7013, DP 1111971, Lot 30, DP 751290, Lot 7300, DP 1139844 and Part of Crown Land Foreshore (Parcel 29678).

- 2) That Council endorse the Draft Shellharbour Local Environmental Plan 2011 as contained in Attachment 1 of this report.*
- 3) That Council authorise the General Manager to submit the Draft Shellharbour Local Environmental Plan 2011 to the NSW Department of Planning in accordance with Section 64 of the Environmental Planning and Assessment Act for review and certification under Section 65 of the Environmental Planning and Assessment Act.*
- 4) That Council delegate to the General Manager authority to make minor changes to the endorsed Draft Shellharbour Local Environmental Plan 2011 if and as required by the NSW Department of Planning in order to obtain a Section 65 Certificate or address any conditions of the Section 65 Certificate.*
- 5) That any changes made in accordance with part 4 above be specifically identified in the documentation accompanying the exhibition of the certified Draft Shellharbour Local Environmental Plan 2011.*
- 6) That the certified Draft Shellharbour Local Environmental Plan 2011 be publicly exhibited for a minimum of eight weeks.*
- 7) That Council endorse the detailed community engagement strategy for the public exhibition of the certified Draft Shellharbour Local Environmental Plan 2011 set out in this report.*
- 8) That a report be submitted to Council on the public exhibition of the certified Draft Shellharbour Local Environmental Plan 2011 detailing the outcomes of the community and government agency engagement.*
- 9) That the Draft Shellharbour Local Environmental Plan 2011 be reported back to Council after public exhibition for final consideration.*

e. 16 August 2011. This meeting considered an Administrator's Minute to further exhibit the Draft Shellharbour LEP 2011. At this meeting Council resolved:

- 1) That the draft Shellharbour Local Environmental Plan 2011 be further exhibited for a period of 28 days.*
- 2) That those people who have indicated a desire to make a submission on the draft Shellharbour Local Environmental Plan 2011 be advised that an opportunity will be presented for that to occur by way of the 28 day further exhibition period.*
- 3) That the 28 day further exhibition period be put in place as soon as possible.*

2.3. Community Engagement

Draft Shellharbour LEP 2011 was the subject of one of the most comprehensive community engagement processes undertaken by Council.

The Draft Shellharbour LEP 2011 was on public exhibition for 12 weeks from 2 June - 29 July 2011 and 25 August - 22 September 2011. The exhibition was underpinned by public notifications, media releases, fact sheets, exhibitions, road shows and a dedicated website.

A key element of Council's engagement approach was ensuring that all land owners of property within the urban fringe area, in close proximity to a rezoning request, a proposed heritage item or within a proposed heritage conservation area received a letter. Each letter outlined the exhibition period, where to find information, how to make a submission, and any relevant fact sheets. In addition, if the letter related to a heritage matter, it was accompanied by a corresponding Shellharbour Heritage Inventory (SHI) Sheet. Over 2,000 letters were sent out to the community.

Information packs were sent to surrounding Councils, State Government Agencies and internally to all Departments offering the opportunity to view and comment on the Draft Shellharbour LEP 2011. The information packs included a CD containing all exhibition material and supporting background studies.

Five newspaper advertisements appeared in both the Illawarra Mercury and Lake Times advising the community engagement opportunities. There were also several media stories in Council's section of the papers, outlining the exhibition dates and Roadshow Itinerary.

The exhibition was taken to the community through a number of Roadshows throughout the City. Roadshows were held on 10 separate occasions at local Community and Neighbourhood Centres in Warilla, Shell Cove, Shellharbour Village, Oak Flats, Albion Park and Albion Park Rail. Roadshows were also held at Stockland Shellharbour Shopping Centre and Shellharbour Village Harbourside Markets.

Roadshows provided an opportunity for the community to meet with Council staff to get more information and clarify any queries on the Draft Shellharbour LEP 2011. Around 240 enquires were made throughout the exhibition period at the Roadshows.

An Information Kiosk was also set up on the Ground Floor of our Administration Building for the entire exhibition period. The Kiosk had a computer station, along with copies of the exhibition documents. Community members that utilized the Kiosk had the option to sit down with Council Staff to ask any questions or concerns they had with the Draft Shellharbour LEP 2011. Council received and answered over 200 counter and phone enquires.

Hard copies of the Draft Shellharbour LEP 2011 documents and maps were also available at all of our Library branches for the duration of the exhibition period.

To ensure the community had every chance to access information quickly and easily, Council established a dedicated Draft Shellharbour LEP 2011 website. The purpose of the website was to inform the community about the new Draft Shellharbour LEP 2011 - what it all meant, and how to provide feedback, including an electronic submission form.

All information relating to the Draft Shellharbour LEP 2011 was available on our website including the standard instrument, maps, fact sheets, rezoning requests and background studies/reports. These studies/reports included the Draft Community Based Heritage Study and supporting Shellharbour Heritage Inventory Sheets, the Urban Fringe Local Environmental Study and its supporting background studies.

Online Interactive Mapping made it possible for land owners to type in their address and find out exactly what was proposed for their property. The information provided included proposed zoning, heights, minimum lot size and floor space ratio and if the property was in a heritage conservation area.

The website received over 4,000 visits.

At the end of the 12 week exhibition Council received 180 submissions on the Draft Shellharbour LEP 2011. Of the 180 submissions, 18 were from Government Departments/Agencies, 71 heritage based (including some from Government Departments/Agencies that were specifically heritage based) and 105 general submissions including the urban fringe.

Note the total number of submissions in each category is greater than the actual total number of submissions, as some submissions addressed more than one category.

The results of the Community Engagement are presented in Section 4 of this report.

2.4. Planning Principles and Considerations

The fundamental piece of legislation that Council must consider in the preparation of a comprehensive local environment plan is the *Environmental Planning and Assessment Act (EP&A Act)*.

Council must also consider its own Community Strategic Plan, NSW 2021 and the Illawarra Regional Strategy.

The Act, plans and strategies have all been appropriately considered in the preparation of the Draft Shellharbour LEP 2011.

2.4.1. The Environmental Planning & Assessment Act

The objects of the EP&A Act are:

a. to encourage:

i. the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals,

- water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
- ii. the promotion and co-ordination of the orderly and economic use and development of land;*
- iii. the protection, provision and co-ordination of communication and utility services;*
- iv. the provision of land for public purposes;*
- v. the provision and co-ordination of community services and facilities;*
- vi. the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats;*
- vii. ecologically sustainable development; and*
- viii. the provision and maintenance of affordable housing; and*
- b. to promote the sharing of the responsibility for environmental planning between the different levels of government in the State; and*
- c. to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

2.4.2. Shellharbour City Council Community Strategic Plan

The Community Strategic Plan is the highest level plan in Council's planning hierarchy and must be developed and delivered in partnership between Council, state agencies, community groups and individuals. It identifies the community's main priorities and aspirations for the future with long-term objectives and strategies for achieving them.

Council must also develop a Resourcing Strategy, Delivery Program and Operational Plan to support and complement the implementation of the Community Strategic Plan. These plans provide details about the actions we will take, and the resources we will need to work towards achieving our long-term goals.

The Shellharbour Community Strategic Plan was developed using information provided by the community during extensive community consultation. The aim of this process was to develop a Community Strategic Plan that is relevant, collaborative in its approach, and informed by the views of the Shellharbour community.

The Community Strategic Plan, Delivery Program and Operational Plan contain objectives and strategies that relate directly to the Draft Shellharbour LEP 2011. These are:

Objective 1.6 A community which celebrates our local identity, rich cultural history and varied cultural pursuits

Strategy 1.6.4 Plan for, preserve and promote our community's cultural and environmental heritage and assets for the enjoyment and appreciation of future generations

Action 1.6.4.1 Finalise the Shellharbour Heritage Study and incorporate findings into the Comprehensive LEP / DCP for Shellharbour local government area

Objective 2.1 A City that plans and maintains a sustainable, safe and healthy built environment

Strategy 2.1.1 Strategic and Land Use Planning that guides the growth and development of the City to provide a positive balance of economic, social and environmental outcomes

Action 2.1.1.1 Implement and review the comprehensive Local Environmental Plan for the City

Objective 2.2 A City that maintains and protects its unique natural environment

Strategy 2.2.2 Identify and protect environmentally significant lands

Action 2.2.2.1 Through strategic land use planning, consider and protects lands with biodiversity, scenic or agricultural significance

2.4.3. NSW 2021

NSW 2021 has replaced the NSW State Plan. The NSW Government has stated that NSW 2021 is a 10 year State Government plan to rebuild the economy, return quality services, renovate infrastructure, strengthen our local environment and communities and restore accountability to Government.

While there are no specific matters in NSW 2021 that Council needs to address in the Draft Shellharbour LEP 2011, its key strategies will drive the review of the Illawarra Regional Strategy and the preparation of local and regional action plans. In this respect NSW 2021 is an important consideration in the finalisation of the Draft Shellharbour LEP 2011.

2.4.4. The Illawarra Regional Strategy

The Illawarra Regional Strategy was released in February 2007 and applies to the local government areas of Kiama, Shellharbour and Wollongong.

It represents an agreed NSW Government position on the future of the Illawarra. It is the pre-eminent strategic policy document for the Illawarra Region and complements and informs other relevant State and local strategies and planning instruments. It has a strong focus on job creation and sustainable settlement outcomes.

The Strategy is implemented primarily through local environmental plans and development control plans. The Strategy provides the framework and context to guide the preparation of all new local environmental plans, which must be consistent with the outcomes and actions in the Strategy.

The Strategy focuses on the following general issues: Employment, Housing, Transport, Infrastructure, Environment and Resources. Attachment 10 of this report contains a table showing how Council has addressed all the relevant actions and recommendations of the strategy during the preparation of the Draft Shellharbour LEP 2011.

2.4.5. Council Studies used in preparation of Draft Shellharbour LEP 2011

Council prepared a number of significant strategic planning studies to help inform the Draft Shellharbour LEP 2011. These include:

- Community Based Heritage Study;
- Shellharbour Local Government Area Household and Demographic Projections Study;
- Shellharbour Local Government Area Retail and Commercial Centres Study;
- Shellharbour Local Government Area Employment Lands Studies;
- Urban Fringe Local Environmental Study; and
- Open Space, Recreation and Community Facilities Needs Study.

These studies were reported to Council on 19 October 2010 and were made available during the public exhibition period. Two of these studies are summarised below due to their importance to the community during public exhibition and community engagement.

2.4.5.1. Community Based Heritage Study

In 2005 Council engaged specialist heritage consultants to undertake a Community Based Heritage Study for the Shellharbour LGA.

During the preparation of the Community Based Heritage Study members of the community worked alongside the heritage consultants for the duration of the project, undertaking research, nominating items and considering recommendations for the future management and promotion of local heritage items.

The Heritage Office of the Department of Planning and Infrastructure consider that unlike other Heritage Study methodologies, ongoing community involvement gives an opportunity for the community to understand heritage management and council processes and to take substantial ownership of the study.

The Heritage Office states that there are many reasons why a council should undertake or update its Heritage Study. These include:

- 1) All communities expect that their local council will identify, respect and protect their local heritage;
- 2) All councils in New South Wales have a statutory responsibility to manage the heritage of their areas. *The Environmental Planning and Assessment Act 1979* requires councils to protect heritage through local environmental plans. These plans outline requirements for the management of local heritage and a list of heritage items;
- 3) Councils have a responsibility to develop and maintain community pride and well-being. Heritage is one of the components that enables communities to retain their physical links with the past;
- 4) Heritage also has the potential to underpin the council's tourism initiatives.

Although the Draft Community Based Heritage Study was completed in 2006 it was not presented to Council for adoption until 2010 at the request of the Department of Planning and Infrastructure. The Department of Planning and Infrastructure requested that the study be considered by Council at the same time as the Draft Shellharbour LEP 2011 to enable the incorporation of the Draft Heritage listings into the Draft Shellharbour LEP 2011.

The Shellharbour Community Based Heritage Study proposes 218 Heritage Items and 2 Conservation Areas. The 49 Heritage Items and the 4 Conservation Areas in our current LEPs were all incorporated into the Shellharbour Community Based Heritage Study and Draft Shellharbour LEP 2011. Items proposed in the Shellharbour Community Based Heritage Study that are located in the deferred land of the Draft Shellharbour LEP 2011 have not been included in the LEP. Each proposed Heritage Item and Conservation Area has a relevant Shellharbour Inventory Sheet that has been prepared in accordance with the Heritage Office guidelines. A Thematic History of the City also forms part of the Heritage Study.

2.4.5.2. Urban Fringe Local Environmental Study

A Local Environmental Study (LES) was prepared by Council to investigate specific land located on the fringe of existing residential areas to determine if there are opportunities for additional residential or rural residential development. There are approximately 129 properties in the study area. Of these, approximately 27 were assessed in detail. The remainder were reviewed to determine appropriate zoning based on current lot size, physical location and land use. This study enables Council to set the edge of urban development and determine the appropriate land zoning and land uses for properties within the study area. The issues assessed in this study include:

- Flora and fauna;
- Geotechnical;
- Effluent disposal;
- Drainage;
- Visual assessment;

- Bushfire;
- Aboriginal and European heritage;
- Access and transport; and
- Socio-economic.

A large number of State Government Plans, Policies and statutory regulations apply to the study area and the preparation of the LES. Of particular note, the Illawarra Regional Strategy states that Shellharbour has taken the major responsibility for regional Greenfield land releases over the last 30 years at Albion Park, Blackbutt, Flinders and Shell Cove. As the current estates reach completion, the focus for Shellharbour will shift towards urban renewal opportunities around towns and centres such as Oak Flats. Importantly, the Strategy also notes that land on the fringe of existing urban lands at Dunmore and Albion Park are being investigated to determine appropriate land uses and zonings taking into account its urban, biodiversity and natural resource values.

The physical influences on the study area are extremely important and have a large bearing on the recommendations of this LES. The topography of the study area ranges from flat low lying land to cleared rolling hills to densely vegetated ridges extending towards the Illawarra Escarpment. The escarpment provides an impressive and imposing backdrop to the southern part of Albion Park. A number of watercourses and floodplains are also found in the study area.

The study area contains a significant amount of Endangered Ecological Communities, predominantly Illawarra Lowlands Grassy Woodland and Illawarra Subtropical Rainforest. In accordance with the principles of ecologically sustainable development, this vegetation needs to be given significant importance when considering zoning and land uses.

Due to the topography of the study area, large tracts of land are visually significant when viewed from regional vantage points such as the Illawarra and Princes Highways and the South Coast Rail Line as well as when viewed locally from local roads, parks and existing urban areas.

The Shellharbour City Community Surveys undertaken by in 2004, 2007 and 2010 confirmed the importance of the rural lands to the quality of life of the residents of our community. The surveys found that the following environmental issues rated very high or were important both today and in 10-15 years time:

- Retention of a quality natural environment;
- Rural and farming land is important in the landscape;
- Preventing overdevelopment; and
- Environmental protection.

These results help confirm that the protection of the landscape needs to be a priority. Development in the rural lands must be undertaken in a manner that does not detract from the landscape quality of the area.

Analysis of the issues considered in this LES indicate that:

- Environmental and visual attributes are important considerations in determining land zoning and land uses;
- There is a demand for rural residential style housing;
- Agricultural land makes an important contribution to the Shellharbour City LGA;
- It is important to integrate new development with existing adjoining land uses;
- There is some land potentially suitable for residential zoning;
- Opportunities for rural residential development are limited and where proposed will need to be controlled in terms of lot size and location;
- Some existing Residential 2(e) zoned land should be changed to another residential zone that has a potentially lower development yield as it is on the edge of residential development;
- A development control plan needs to be prepared to assist in the implementation of any rural residential development particularly with respect to location and dwelling design;
- Additional studies including flood assessment, Aboriginal heritage assessment and noise, dust and visual assessment from quarrying activities will need to be undertaken before some parcels of land that may have development potential are considered for zoning or land use amendments.

2.5. Specific Issues Relating to the Preparation of Draft Shellharbour LEP 2011

There are a number of specific issues that had to be addressed in the preparation of the Draft Shellharbour LEP 2011. These issues are as follows:

2.5.1. Aboriginal Objects and Aboriginal Places of Heritage Significance

Draft Shellharbour LEP 2011 is required to adopt the provisions of the Standard Instrument in relation to Aboriginal objects and places of Aboriginal heritage significance. These provisions have some limitations in relation to adequately identifying objects and places and their subsequent management. This could also be said of the provisions that are currently contained in Shellharbour LEP 2000.

Council adopted a relatively unique approach in Shellharbour Rural LEP 2004. It has provisions relating to areas of potential Aboriginal heritage significance. These areas of potential significance are identified on a map in the Rural LEP entitled "Zones of Archaeological Sensitivity".

It was Council's intention to insert the provisions and map of Shellharbour Rural LEP 2004 into Draft Shellharbour LEP 2011. Discussions with the Department of Planning and Infrastructure have indicated that this approach would not be supported.

The Department recognised that mapping known objects and places is a contentious issue as they are usually of a sensitive and confidential nature, especially for local Aboriginal communities. Currently if agreement cannot be reached with the local Aboriginal community to make public the register of objects and places, they cannot be mapped in an LEP. This is currently the case for the Shellharbour LGA.

In an attempt to overcome this, Council in conjunction with Kiama and Wollongong Council's is currently undertaking a project known as the Aboriginal Cultural Heritage Toolkit. The Toolkit is proposed to assist Council's in determining an appropriate level of Aboriginal heritage/cultural assessment on the development applications they receive. The 'appropriate' level of assessment will vary according to the known or potential Aboriginal cultural heritage values of the site or area in question, and the type and likely degree of site disturbance/impacts arising from the development or activity being proposed.

It is proposed to incorporate these requirements into the Comprehensive DCP to ensure consistency of assessment.

2.5.2. Brand Outlet Centres

The provision of a brand outlet centre in the local government area has been the subject of much discussion in the community.

In late 2007, Council received an enquiry as to the possibility of locating a bulky goods store and a brand outlet centre in the LGA; and in particular on land located at 47 - 57 Princes Highway, Albion Park Rail. A brand outlet centre is defined as follows in the Draft Shellharbour LEP 2011:

A brand outlet centre comprises brand name stores selling predominantly clothing apparel but also including homewares, travel goods and the like.

The proposal comprised 14,000m² of brand outlet centre, 4,000m² of existing bulky goods stores, and 9,700m² of new bulky goods/home maker stores.

The subject land is currently zoned 4(a) Light Industrial under Shellharbour LEP 2000, therefore prohibiting the brand outlet centre component of the proposal.

Consultant's Hill PDA was in the process of preparing Council's LGA wide Retail and Commercial Centres Study when the enquiry was received. As a result Hill PDA was asked by Council to consider the proposal in the overall study context.

Hill PDA's assessment indicated that the proposal had merit and the majority of revenue captured by the brand outlet centre would be from outside the LGA.

It is therefore considered advantageous that a brand outlet centre be established in the LGA and the site at 45-47 Princes Highway, Albion Park Rail seems the most appropriate location. The subject land was zoned IN2 in the exhibited Draft Shellharbour LEP 2011, with a brand outlet centre as a Schedule 1 additional permitted use. Council received no submissions on the proposal.

2.5.3. Bulky Goods Premises

Currently under the provisions of Shellharbour LEP 2000, Council can consent to the development of land in a 4(a) Light Industrial zone or 4(a3) Airport Light Industrial Zone for bulky goods premises. In doing so Council has to take into consideration the ability to locate such a premises in a nearby business zone, the impact of such a premises on the primarily industrial nature of industrially zoned land; and if located in an industrial zone, the impact it might have on the viability of nearby business centres.

Council is proposing to allow bulky goods premises in the IN2 Light Industry zone. Council can control the location of any proposal through provisions of the proposed Comprehensive DCP. The DCP will incorporate the considerations listed above and will have stringent design and parking criteria that would prevent bulky goods retailers establishing in existing industrial warehouse developments thereby eliminating much of the land use conflict associated with this type of development in industrial zones. It should be noted that Council has not experienced the severity of land use conflicts that have been experienced in other local government areas.

2.5.4. Calderwood Part 3A Approval

Approximately 600 hectares of land at Calderwood in the north west of the Shellharbour LGA is the subject of a State Government Major Project Approval. The Major Project Approval facilitates the development of the site for approximately 4,800 dwellings, 50 hectares of mixed use/employment uses, infrastructure including road layout and utility provision, and land for riparian corridors and conservation.

The site was listed as "State Significant" under the now defunct Part 3A of the *Environmental Planning and Assessment Act*. The listing has not been revoked. As a result, Draft Shellharbour LEP 2011 does not apply to the land. The planning controls for the land are contained in State Environmental Planning Policy (Major Development) 2005.

2.5.5. Classification and Reclassification of Council Land

Under the provisions of the Local Government Act, 1993, all Council owned land must be classified as operational or community.

All existing classifications are unaffected by the Draft Shellharbour LEP 2011. In addition the Draft Shellharbour LEP 2011 does not propose to reclassify any Council land. As a result Schedule 4 of the Draft Shellharbour LEP 2011 is empty.

2.5.6. Coastal Hazards

The Draft Shellharbour LEP 2011 contains standard clause 5.7 – *Development within the coastal zone*. This clause addresses environmental and amenity issues and also requires that when assessing development within the NSW Coastal Zone, the consent authority considers the effect of coastal processes and coastal hazards and potential impacts, including sea level rise, on the proposed development, and arising from the proposed development. Development must also be assessed using the NSW Coastal Planning Guideline - Adapting to Sea Level Rise.

Coastal Councils are also required under the *Coastal Protection Act 1979* to prepare a Coastal Zone Management Plan. Such plans are to be prepared in accordance with the requirements of the Act, the NSW Coastal Policy 1997, the NSW Sea Level Rise Policy Statement 2009, and the NSW Coastal Planning Guideline: Adapting to Sea Level Rise, 2010 and also the NSW Government Draft Guidelines for Preparing Coastal Zone Management Plans.

Council has completed the first stage of this planning process by finalising the Shellharbour Coastal Hazard Analysis. The hazard analysis has been prepared by SMEC who are a suitably qualified consultancy and funded under the Natural Disaster Mitigation Program administered by the NSW Emergency Management Committee. Preparation of the study involved a suitable level of internal and external stakeholder consultation and has been technically reviewed and endorsed by the NSW State Government. This study was endorsed by Council at its meeting on 9 November 2010.

Following on from the Coastal Hazard Study, Council has engaged BMT WBM to prepare a Coastal Zone Management Plan for the City's coastline. It is proposed that the final Coastal Zone Management Plan will be presented to Council in April/May 2013.

In the interim, Draft Shellharbour LEP 2011 can still effectively operate without the Coastal Zone Management Plan being in place.

2.5.7. Council Initiated Rezoning Requests

Council is both a land owner and a land use regulator through the preparation of LEPs and DCPs. Periodically Council planning officers are requested to consider Council initiated rezoning applications, and in this instance, rezoning requests.

Given Council's dual roles in regards to Council owned land, extra diligence and probity controls are required. In this respect Council has to abide by a number of circulars, guidelines and practice notes issued by the State government. These include:

- Practice Note PN 10-001 - Zoning for Infrastructure in LEPs (2010). This Practice Note supersedes PN08-002 that was in place when the Draft Shellharbour LEP 2011 was reported to Council in 2010;

- Practice Note PN 08-002 - Zoning for Infrastructure in LEPs (2008);
- Practice Note PN 09-003 - Classification of public land through a local environmental plan (2009);
- Best Practice Guideline - LEPs and Council Land (1997); and
- Circular C18 - Processes for the rezoning of Council's property assets for disposal (1990).

City Strategy has received two specific rezoning requests from Council's Property Manager for consideration in the Draft Shellharbour LEP 2011. The two sites are:

- Lot 2, DP 833735, Lots 11 & 12, DP 1125335 - being 162 - 172 Shellharbour Rd Warilla, 4 Lake Entrance Road Warilla, and 69-73 Benaud Crescent Warilla – Warilla Library and former Council Chambers building site.

It is proposed to rezone these properties from Zone 5(a) Special Use (Community Purposes) and 6(a) Public Open Space under Shellharbour LEP 2000 to B5 Business Development and RE1 Public Recreation. The site is currently classified as operational land under the provision of the *Local Government Act 1993*.

This rezoning request was reported to Council on 19 October 2010 and Council resolved to exhibit the Draft Shellharbour LEP 2011 with the B5 Business Development and RE1 Public Recreation zones.

- Lots 2 & 3, DP 1062155 - being Corner Pioneer Drive & Stanford Drive, Oak Flats – Oak Flats Interchange site.

It is proposed to rezone these properties that adjoin the Oak Flats Railway Station from 5(a) Special Use (Public Purposes) under Shellharbour LEP 2000 to B4 Mixed Use. The site is currently classified as operational land under the provisions of *the Local Government Act 1993*.

The two lots that are the subject of this request are part of a larger subdivision that catered for a transport interchange associated with the new Oak Flats Railway Station.

This rezoning request was reported to Council on 19 October 2010 and Council resolved to exhibit the Draft Shellharbour LEP 2011 with the B4 Mixed Use zone.

There are also a number of other pieces of Council owned land being rezoned under Draft Shellharbour LEP 2011. These are not specific rezoning requests but more of a consequence of the application of the Standard Instrument and associated Practice Notes; in particular Practice Note PN10-001 (previously PN08-002) Zoning for Infrastructure in LEPs.

The major zone changes that fall into this category are identified in the following table if not specifically addressed in other sections of this report.

Land	Current Zone	Proposed Zone
Keith Hockey Oval	2(f) Mixed Use Residential	RE1 Public Recreation
The Harbour Theatre (Roo)	5(a) Special Uses Community Centre	B2 Local Centre
4 Beach Road, Shellharbour	5(a) Special Uses Girl Guides	R2 Low Density Residential
61 Central Ave, Oak Flats	5(a) Special Uses Library	B2 Local Centre
63 Central Ave, Oak Flats	5(a) Special Uses Early Childhood	B2 Local Centre
42 Fisher Street, Oak Flats	5(a) Special Uses Community Purposes	B2 Local Centre
43 Fisher Street, Oak Flats	5(a) Special Uses Senior Citizens	B2 Local Centre
44 Fisher Street, Oak Flats	5(a) Special Uses Neighbourhood Centre	B2 Local Centre
45 Fisher Street, Oak Flats	5(a) Special Uses Senior Citizens	B2 Local Centre
2 Wilga Street, Albion Park Rail	5(a) Special Uses Community Purposes	R2 Low Density Residential

2.5.8. Council Open Space Reservations

Shellharbour LEP 2000 contains a number of open space reservations throughout the City. These reservations have been reviewed as part of the preparation of the Draft Shellharbour LEP 2011. As a result of the review, a number of reservations have been removed in the Draft Shellharbour LEP 2011 as they have now been acquired by Council. The remaining reservations have been included on the Land Reservation Acquisition Map of the Draft Shellharbour LEP 2011. There are no new open space reservations or acquisitions proposed in the Draft Shellharbour LEP 2011.

2.5.9. Council Road Reservations

There are a number of existing local road reservations contained in Shellharbour LEP 2000 and Shellharbour Rural LEP 2004. As part of the preparation of the Draft Shellharbour LEP 2011, these reservations were reviewed. As a result, a number of reservations have been removed in the Draft Shellharbour LEP 2011 as they have now been acquired by Council. The main reservations for consideration under the Draft Shellharbour LEP 2011 are addressed below.

2.5.9.1. Rivulet Crescent

It is proposed to amend an existing road reservation for the extension of Rivulet Crescent in Albion Park Rail. In 2006, the Roads and Maritime Service upgraded the Princes Highway and Airport Road intersection by installing traffic lights. The signalised intersection was designed to accommodate the future extension of Rivulet Crescent to form a fourth leg to the intersection. The local road reservation has been amended to accommodate this design. The amended design results in the road traversing an area of

open space that is classified as community land. The Plan of Management for this land allows for a public road to be constructed.

The revised Rivulet Crescent extension is shown on the Land Reservation Acquisition Map of the Draft Shellharbour LEP 2011.

2.5.9.2. Albion Park West Collector

The need for a link road between the existing Albion Park development and the future development planned for the Western Valley area (land west of Crest Road) has been specifically identified since 1993 in Council's Section 94 Contributions Plans. This road has been identified as the "Albion Park West Collector".

As part of Council's decision to exhibit the Draft Shellharbour S94 Contributions Plan 2005 it also recommended that Council commence a review of traffic management options for Albion Park.

Council engaged the consultancy firm, Maunsell, to carry out the Albion Park Traffic study. The study considered the route of the Albion Park West Collector road including:

- a. a northern option,
- b. a southern option, and
- c. implications on vehicle movements on other roads within Albion Park, principally, the Tongarra Road shopping strip.

The study concluded that, amongst other things:

- a. Both route options will have minimal impact on traffic volumes along key road sections in the Albion Park township, particularly the shopping strip.
- b. Both route options would attract relatively small amounts of traffic and will have similar traffic impacts.
- c. It would provide an alternative access in case of emergency.
- d. It will increase traffic volumes along Ashburton Drive near the school. This will be within the road's design capacity but periodic monitoring of road volumes and speeds needs to be undertaken to determine any need for ameliorative local area traffic management measures.
- e. The northern option is preferable in terms of providing greater opportunities for improved access to existing and future communities in Albion Park, without significantly affecting local amenity. A more detailed engineering and environmental assessment of this route is required to ensure that any impacts are minimised and properly managed.

It is not proposed to include the Albion Park West Collector on the Land Reservation Acquisition Map of the Draft Shellharbour LEP 2011. Under existing legislative and financial constraints, Council is unable to prepare an adequate funding model for this project. It cannot be demonstrated under Section 94 of the *Environmental Planning and*

Assessment Act that the collector road will have a large enough benefit area to generate funding sufficient enough to pay for the project. Conversely it would be unreasonable and economically unviable to require a small number of land owners to pay for the road. Either way, Council's portion of the overall cost of the road would be substantial and currently unfunded.

This matter will have to be further addressed in the preparation of the Comprehensive DCP and new Developer Contributions Plan for the City. Until then it should not be considered for inclusion in an LEP.

2.5.9.3. Albion Park Bypass

The Albion Park Traffic Study prepared by Maunsell reinforces the importance of maintaining the existing road reservations in Tripoli Way and The Expressway.

As a result the existing road reservations contained in Shellharbour LEP 2000 and Shellharbour Rural LEP 2004 have been transferred into the Draft Shellharbour LEP 2011.

The exception is the road reservation located with the Calderwood Urban Development Area.

2.5.10. Illawarra Escarpment

The Illawarra Escarpment has been zoned primarily E3 Environmental Management as a best fit zone that reflects the environmental attributes of the area while allowing limited development such as dwellings and agriculture subject to stringent planning requirements. The current Environmental Protection and Landscape zones in Shellharbour Rural LEP 2004 allow these types of uses. The Draft Shellharbour LEP 2011 contains specific maps and clauses that limit dwelling entitlements, show minimum lot sizes and require biodiversity issues to be considered. The existing 40 hectare limit for subdivision and dwelling entitlement is proposed to be retained.

The escarpment is also nominated as a Natural Heritage Conservation Area in the Community Based Heritage Study. A heritage assessment will be required for development in this area to ensure the integrity of the Escarpment is not compromised.

The Macquarie Pass National Park and Budderoo National Park are proposed to be zoned E1 National Parks and Nature Reserves.

2.5.11. Illawarra Regional Airport

The development of the Illawarra Regional Airport to support the regional economy has emerged as a key State priority. To this end the Illawarra Regional Strategy (IRS) of 2007 identifies the airport as a key regional asset, stating that promoting and protecting the airport is a priority. The IRS provides that land use planning decisions should protect the airport, recognising the link it provides to and from the region.

The Illawarra Regional Airport is currently zoned 5(a) Special Uses (Aerodrome) under Shellharbour LEP 2000.

It is proposed to zone the airport SP1 Special Activities (Air transport facility).

In doing so, Council applied the Department of Planning and Infrastructure Practice Note on Zoning for Infrastructure under the Standard Instrument.

In addition to the zoning proposed under the Draft Shellharbour LEP 2011, the airport is also covered by the provisions of State Environmental Planning Policy (Infrastructure) 2007. This document utilises the dictionary of the Standard Instrument and therefore also defines the airport as an air transport facility.

An air transport facility is an airport, or a heliport that is not part of an airport, and includes associated communication and air traffic control facilities or structures. An airport is a place used for the landing, taking off, parking, maintenance or repair of aeroplanes (including associated buildings, installations, facilities and movement areas and any heliport that is part of the airport).

Clause 23 of the State Environmental Planning Policy (Infrastructure) 2007 permits a range of uses within the boundaries of an existing air transport facility, if the development is ancillary to the air transport facility. These uses are:

- a. passenger terminals,
- b. facilities for the receipt, forwarding or storage of freight,
- c. hangars for aircraft storage, maintenance and repair,
- d. premises for retail, business, recreational, residential or industrial uses.

In order to protect the ongoing operation and potential expansion of the airport, the Draft Shellharbour LEP 2011 includes two clauses. The first clause applies to land surrounding the airport that has an Australian noise exposure forecast of 20 or greater. Council must consider whether development applications for residential development, educational establishments, churches, cinemas, hotel motels etc are able to be appropriately located and constructed on this land. The second clause applies to land affected by height limits under the Obstacle Limitation Surface Map. Council must consider whether proposed development will comply with regulations regarding the penetration of the obstacle limitation surface.

In addition, Draft Shellharbour LEP 2011 recognises the significance of the airport's history to the region and identifies it as a local heritage item. Of most significance is the part it played in World War Two, protecting Port Kembla and training RAAF personnel. The airport also contains Illawarra Lowland Grassy Woodland which is an endangered ecological community. This includes the paperbark forest trees.

Recognition of the airport's historical and environmental significance should not unduly restrict the future development of the airport. However its historical and environmental significance must be taken into consideration when developing plans for the airport.

2.5.12. Illawarra Regional Business Park

The Illawarra Regional Business Park is approximately 100 hectares of land to the west of and adjoining the Illawarra Regional Airport and bordered by the Illawarra Highway to the north and Tongarra Road to the south. This land has been deferred from the Draft Shellharbour LEP 2011.

Until 2008 the land was predominantly zoned Agriculture 1(a) with a State Environmental Planning Policy (SEPP) 14 Wetland zoned 7(a) Environmental Protection (Wetlands) under Shellharbour Rural LEP 2004. A small section of 9(b) Arterial Road Reservation also applies to the land under Shellharbour LEP 2000. The majority of the site was then rezoned by the State Government under SEPP (Major Development) 2005 (Amendment 28). The SEPP amendment essentially rezoned approximately 40 hectares of the site to IN2 Light Industrial with the rest predominantly zoned E2 Environmental Conservation. An SP2 Infrastructure Zone also applies along the eastern boundary of the site to protect the ongoing operations of the Illawarra Regional Airport.

In late 2010 the State Government decided to transfer the planning controls for the site into Shellharbour Rural LEP 2004, essentially attaching a "mini LEP" into Part 4 of Shellharbour Rural LEP 2004.

While the SEPP Amendment 28 and the "mini LEP" were generally prepared under the requirements of the Standard Instrument, they do not fully meet its requirements. The planning controls were essentially written to be site specific and therefore the land use zone tables for IN2 Light Industrial and E2 Environmental Conservation, as well as most of the planning provisions, do not fully align with those proposed in the Draft Shellharbour LEP 2011.

This creates difficulties in the transfer of land use planning controls into the Draft Shellharbour LEP 2011. As a result, the land has been deferred from the Draft Shellharbour LEP 2011 for further consideration by the NSW Department of Planning and Infrastructure and Council.

2.5.13. Killalea State Park

Killalea State Park is Crown land dedicated to public recreation. It is managed by Killalea State Park Trust.

The Park is currently zoned 7 (f2) Environmental Protection (Foreshore) under Shellharbour LEP 2000. Killalea Lagoon is a SEPP 14 Wetland which is currently zoned 7(a) Environmental Protection (Wetlands) under Shellharbour LEP 2000.

The objective of the 7(f2) zone is to "protect prominent foreshore areas which are generally undeveloped and which provide aesthetic and recreational opportunities for the public".

Permissible with consent in the 7(f2) zone, amongst other things, are recreation areas and tourist facilities.

Tourist facilities are defined as: "establishments providing holiday accommodation or recreational facilities, or both, on short term use basis, and may include:

- a. a hotel, motel, bed and breakfast accommodation, backpackers inn, serviced apartments, holiday cabins, a caravan park, camping ground, houseboat, and any associated swimming pool, golf course, tennis court and marina,
- b. a restaurant, and
- c. a souvenir shop, arts and craft gallery and exhibition centre.

Under Clause 58 of Shellharbour LEP 2000, Council, in considering whether to grant development consent for uses such as tourist facilities in the 7(f2) zone must take into consideration:

- a. the extent to which the development would affect the scenic qualities of the coastal landscape, headlands, dune systems, and the hinterland, including lagoons, lakes and areas where the original vegetation is still dominant, and
- b. whether the development would result in the degradation of, or restriction of access to, coastal recreation areas, and
- c. any plan, code, policy or design adopted by resolution of the Coastal Council of New South Wales for the purpose of protecting coastal lands, and
- d. the potential impacts of climate change including sea level rise.

As part of the preparation of the Draft Shellharbour LEP 2011 Council believed that given the nature of the Park and the current permissible uses, it was appropriate to refine the types and location of "tourist facilities" in the Park. On 19 October 2010, Council considered and adopted a report that included allowing, caravan parks and eco-tourist facilities in the western section of the Park on land zoned E3 Environmental Management, generally in the vicinity of the existing caravan and camping ground.

The NSW Department of Planning and Infrastructure (DPI) is required to review the Draft Shellharbour LEP 2011 and give approval to put the LEP on public exhibition. As part of that review, DPI required Council to change the Draft Shellharbour LEP 2011 so that caravan parks were permitted on all land within the Park zoned E3 Environmental Management. The Department also asked for the removal of "eco-tourism facilities" from the LEP, as this term was not a definition approved for inclusion in the Standard Instrument LEP at that time.

On 22 February 2011, Council considered a report that recommended permitting caravan parks on all land zoned E3 Environmental Management in the Draft Shellharbour LEP 2011. At that meeting, Council resolved to defer the item to enable the matter to be further investigated.

Another report on the Draft Shellharbour LEP 2011 was considered at the Council meeting of 5 April 2011. The report recommended the deferral of land at the Park from the Draft Shellharbour LEP 2011 due to the current differences of opinion between Council and the Department of Planning and Infrastructure about future land use

planning at the Park. Council adopted that recommendation and the exhibited Draft Shellharbour LEP 2011 identified Killalea State Park as a deferred area.

Deferring Killalea State Park from the Draft Shellharbour LEP 2011 will mean that the existing planning controls applying to the site (Shellharbour LEP 2000 and any relevant State laws and Environmental Planning Policies) will continue to apply. Once a recommendation for future land use planning for the Park has been prepared, a Planning Proposal (rezoning application) will need to be submitted and assessed.

2.5.14. Lake Illawarra

Under the Standard Instrument major waterways must be zoned. Lake Illawarra is the most substantial water body in the City. The LGA boundary between Shellharbour and Wollongong dissects the lake. Therefore, a common approach between the two Councils has been taken to determine the appropriate waterway zones. The Lake Illawarra Authority has also been consulted and provided Bathymetric data (depth contour) to enable accurate mapping.

The Waterways zones have been nominated based on depth, sea grass habitat, the fishing industry and recreational uses of the Lake. Subsequently, depths shallower than 0.5m have predominantly been zoned W1 Natural Waterways and the deeper waters have been zoned as W2 Recreational Waterways.

2.5.15. Mineral Resource Lands

Two hard-rock resource areas have been identified by the Department of Trade and Investment (DTI) as containing mineral resources of State and regional significance. These areas are identified under a Section 117 Direction and are mapped on the Significant Extractive Resources Map of the Draft Shellharbour LEP 2011. State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 contains planning controls for extractive industries set by the State Government. These requirements override those contained in the Draft Shellharbour LEP 2011.

The main purpose of the Section 117 Direction in the Dunmore – Shellharbour Hills area is to ensure that the future extraction of State or regionally significant resources is not compromised by inappropriate development. The Direction has the effect of alerting councils to the presence of the significant mineral resources and ensuring that when a council is preparing a draft LEP, incompatible land uses are not permitted in areas that would lead to the sterilisation of mineral resources of State and regional significance from future possible extraction.

The northern Section 117 area incorporates current quarry operations. Its boundaries have been previously determined by a working group based on a number of factors including resource availability, land ownership and visual suitability. The southern Section 117 area has not yet been developed for quarrying activities, and its exact operational boundaries have not been assessed or determined in detail. DTI is currently undertaking a review of all section 117 areas across the State.

The Illawarra Regional Strategy (IRS) (DPI 2007) recognises the importance of the biodiversity values in the area and requires that the Shellharbour LEP maximise the

protection afforded to significant native vegetation and wildlife corridors. Furthermore, the IRS identifies specific actions for the long-term survival of the *Melaleuca armillaris* Tall Shrubland community. The Regional Strategy Update Report (DPI 2009) recognises that biodiversity conservation be appropriately balanced with hard-rock extraction and implemented primarily through the review of Shellharbour LEP.

The Shellharbour Rural LEP 2004 currently applies to the Mineral Resource Lands. Land within the current quarry operations is predominantly zoned 1(x) Extractive Industry. Outside the current quarry operations, land is zoned either 1(rl) Rural Landscape or 1(a) Agriculture.

The Standard Instrument no longer has a specific extractive industry zone. Quarrying fits into the definition of extractive industry which is a mandated permissible use in the RU1 Primary Production zone. With this in mind the RU1 Primary Production zone has been used on the majority of the northern 117 area. Using a combination of existing biodiversity mapping, the Draft Strategy for the Conservation and Management of Biodiversity in the Dunmore - Shellharbour Area (the then Department of Environment, Climate Change and Water), liaison with DPI and comments received during the Section 62 consultation; the remaining northern 117 area and the adjoining lands have been zoned a mixture of E2 Environmental Conservation, E3 Environmental Management and RU2 Rural Landscape. In this instance the E2 zone has been placed on areas identified as having threatened species and exceptional conservation value.

In addition to the above, relevant clauses (6.9 and 6.10) are contained in the Draft Shellharbour LEP 2011 which refer to the identification of significant extractive resources as required under State Environmental Planning Policy (Mining, Petroleum, Production and Extractive Industries) 2007 and specify restrictions on development within the quarry buffer area. Both the designated resource area and associated buffers are contained in the LEP Maps. These components of the Draft Shellharbour LEP 2011 will help protect the resource that has State and Regional significance and minimise future conflict between quarrying and development in the vicinity of this important local industry and the vegetation, some of which is classed as an Endangered Ecological Community.

As part of this review, DTI provided us with draft maps in December 2011 showing the identified resource and transition (buffer) areas. These maps being draft are not adopted State Government policy. As such, they have not been included in Draft Shellharbour LEP 2011. When the State Government has finalised these maps, Council can consider a planning proposal to amend the maps in the LEP.

2.5.16. Public Open Space Dedications

Since the gazettal of Shellharbour LEP 2000 a number of large residential subdivisions have occurred in areas such as Flinders and Shell Cove. These subdivisions included the requirement to dedicate land to Council for parks and reserves. As part of the preparation of the Draft Shellharbour LEP 2011, these public open space dedications have been zoned RE1 Public Recreation.

2.5.17. Registered Clubs in RE2 Private Recreation Zones

Currently Shellharbour LEP 2000 prohibits registered clubs in 6(b) Private Open Space zones. It is proposed to make registered clubs permissible with consent in RE2 Private Recreation Zones under the Draft Shellharbour LEP 2011.

2.5.18. Retail, Commercial and Industrial Land

Council has carried out a review of all its retail, commercial and industrial lands. Integral to this review was the retail and commercial centres study, employment studies, the Illawarra Regional Strategy, the State's employment lands principles and draft centres policy, relevant Section 117 Directions and LEP Practice Notes. As a result, a range of business and industrial zones are proposed in the Draft Shellharbour LEP 2011.

Under the Retail Centres Hierarchy it is proposed that Albion Park, Warilla and Warilla Grove commercial centres be expanded. There are also separate sections of this Council report relating to Shellharbour City Centre, Shell Cove Boat Harbour Precinct and Tullimbar Village.

All of the existing industrial zones have been converted to either IN1 General Industrial or IN2 Light Industrial under Draft Shellharbour LEP 2011.

2.5.19. Rezoning Requests

During the preparation of Draft Shellharbour LEP 2011, Council received a number of rezoning requests.

Council at its meeting on 19 October 2010 considered these rezoning requests. The following were supported for the purpose of public exhibition of Draft Shellharbour LEP 2011.

- 1) Lot 11, DP 883605, Tongarra Road Croome - rezone from part 1(a) Rural A and part 9(d) Open Space Reservation to permit crematorium, cemetery, chapel, mortuary, cool room, reception area, administration offices and caretakers residence.

Draft Shellharbour LEP 2011 was exhibited with the SP1 Crematorium/Cemetery and the RE1 Public Recreation zones and a reservation on the Land Reservation Acquisition Map for the Public Recreation zoned land.

- 2) Lot 100, DP 1127971, 12 David Avenue and Lots 166-168, DP 15643, 9-13 Devonshire Crescent Oak Flats - rezone Lots 166-168, DP 15643 from 2(a) Residential to RE2 Private Recreation and to permit a microbrewery on Lot 100, DP 1127971.

Draft Shellharbour LEP 2011 was exhibited with the RE2 Private Recreation zone and a Schedule 1 - Additional Permitted Use of a light industry - microbrewery.

- 3) Lot 2, DP 507499, 58 Taylor Road Albion Park, Lot 1, DP 799421, 162 Tongarra Road Albion Park, Lots 1 & 2, DP 38174, 164 - 166 Tongarra Road Albion Park - rezone from 2(a) Residential to B2 Local Centre.

Draft Shellharbour LEP 2011 was exhibited with the B2 Local Centre zone.

- 4) Pt Lot 61, DP 531748 and Lot 3, DP 575862, 13 - 39 Lake Entrance Road Warilla - rezone from 5(a) Special Uses (Public Buildings) to R3 Medium Density Residential.

Draft Shellharbour LEP 2011 was exhibited with the R3 Medium Density Residential zone.

- 5) Lot 2, DP 833735, Lots 11 & 12, DP 1125335, 162 - 172 Shellharbour Road Warilla, 4 Lake Entrance Road Warilla and 69 - 73 Benaud Crescent Warilla (Warilla Library and former Council Chambers building site) - rezone from 5(a) Special Use (Community Purposes and 6(a) Public Open Space to B5 Business Development and RE1 Public Recreation.

Draft Shellharbour LEP 2011 was exhibited with the B5 Business Development and RE1 Public Recreation zone.

- 6) Lots 2 & 3, DP 1062155, Corner Stanford and Pioneer Drive Oak Flats (Oak Flats Interchange site) - rezone from 5(a) Special Use (Public Purposes) to B4 Mixed Use zone.

Draft Shellharbour LEP 2011 was exhibited with the B4 Mixed Use zone.

- 7) Lot 1, DP 622462, 2 Peterborough Avenue Warilla, Lot 2, Section J, DP 11679, 4 Peterborough Avenue Warilla - rezone from 2(b2) Residential to B5 Business Development and Lot 100, DP 1102818, 25 Grove Circuit Warilla and Lot 101, DP 1102818, 29 Shellharbour Road Warilla and Lot 2, DP 29629, 31 Shellharbour Road Warilla - rezone from 4(a) Light Industrial to B5 Business Development.

Draft Shellharbour LEP 2011 was exhibited with the B5 Business Development zone.

2.5.20. Rural Lands

A significant proportion of the Shellharbour LGA contains rural lands. These lands are recognised for their food production value as well their cultural landscape value. These lands are currently zoned 1(a) Rural under Shellharbour LEP 2000 and 1(a) Agriculture and 1(rl) Rural Landscape under Shellharbour Rural LEP 2004. The majority of rural land is in Shellharbour Rural LEP 2004 which is underpinned by the 1996 Shellharbour Rural Lands Study.

Intrinsic to Council's rural zonings is a minimum subdivision standard of 40 hectares. The 2007 Illawarra Regional Strategy states that "Council's will need to maintain the current 40 hectare minimum lot size for rural subdivision until an agreed strategy is developed".

(IRS pg 36). It is proposed that the 40 hectare minimum subdivision standard be maintained in the Draft Shellharbour LEP 2011. Draft Shellharbour LEP 2011 will allow subdivisions less than 40 hectares to create a lot to be used solely for the purpose of primary production and has no dwelling located on it and creates no dwelling entitlement.

In preparing the Draft Shellharbour LEP 2011, Council has carefully considered rural lands in close proximity to our urban areas through the Urban Fringe Local Environmental Study (LES). The LES investigated the potential of existing rural land for urban and semi urban purposes. As a result some rural lands are recommended to be rezoned for residential purposes including R2 Low Density Residential, R5 Large Lot Residential and E4 Environmental Living.

Land covered by the Urban Fringe LES is specifically addressed in a separate section of this report.

2.5.21. Shell Cove Boat Harbour Precinct

The urban release area of Shell Cove is zoned 2(f) Mixed Use Residential under Shellharbour LEP 2000. The zone was specifically developed by Council for the development of Shell Cove as a series of residential neighbourhoods and in particular “the development of a regional boat harbour facility and associated commercial and recreational activities” (Objective 2(b) of Zone 2(f) Shellharbour LEP 2000). The Standard Instrument does not have a zone commensurate to the 2(f) zone.

The State Government has approved a Major Project Application (MP07-0027) for a Concept Plan for the Shell Cove Boat Harbour Precinct which proposes construction of residential, commercial, retail, community facilities, hotel, dry boat storage, business park, open space and wetlands. The approval sets out conceptual key design parameters including land use, indicative floor areas, number of dwellings, building height, road and pedestrian layout, infrastructure requirements, stormwater management and open space.

The uses proposed in the Concept Plan Application are all permissible under the existing 2(f) zone.

In preparing the Draft Shellharbour LEP 2011, the existing 2(f) zone and the proposed uses, controls and regulations contained in the Major Project approval were taken into careful consideration. The resultant zones and planning controls contained in the Draft Shellharbour LEP 2011 are a translation of existing planning controls that apply to Shell Cove. The main elements of the Draft Shellharbour LEP 2011 for Shell Cove are as follows:

- Majority of the existing 2(f) zoned land is rezoned R2 Low Density Residential
- The land the subject of the Ministerial Development consent for the construction and operation of a boat harbour and marina is zoned W2 Recreational Waterway
- The precincts contained in the Concept Plan Application are proposed to be zoned as follows:

- Commercial Precincts - B2 Local Centre
- Residential Precincts - R3 Medium Density Residential
- Business Park Precinct - B7 Business Park
- Height limits have been translated from the Concept Plan Application and range from:
 - 18 metres to 36 metres in the B2 zones
 - 9 metres to 15 metres in the R3 zones
 - 11 metres in the B7 zone
- Floor Space Ratios ranging from none to 1.5:1
- Minimum lot size for standard subdivisions in the R3 zone is 450m² with ability to subdivide down to 225m² where development is integrated
- No minimum lot size in B2 zones in accordance with the approach taken across the whole LGA for these zones
- No minimum lots size in the B7 zone.

The proposed planning controls contained in the Draft Shellharbour LEP 2011 will ensure that Shell Cove can be developed in accordance with the existing 2(f) zone and Concept Plan Approval.

2.5.22. Shellharbour City Centre

Shellharbour City Centre is one of two major regional centres that service the Illawarra and is a vital economic and social hub for the City of Shellharbour. It is essential that Shellharbour City Centre continue to develop and prosper in a competitive economic environment. In order for the City Centre to achieve its full potential, it is imperative that Council has a set of planning controls that will not only encourage development in the City, but ensure that it is undertaken in a way that will maximise its economic and social potential. To this end, Council on 28 September 2008 adopted the revised Shellharbour City Centre Masterplan and Development Control Plan.

The revised planning framework contained in the City Centre Masterplan and Development Control Plan, supports two of the most important development proposals this City has seen in recent years. The first is the revitalisation and expansion of the Stockland Shellharbour Shopping Centre. The second is the establishment of the City Hub.

In preparing the Draft Shellharbour LEP 2011, the existing 3(a) and 2(e) zones as well as the controls and regulations contained in the Shellharbour City Centre Masterplan and DCP were taken into careful consideration. The resultant zones and planning controls contained in the Draft Shellharbour LEP 2011 are a translation of existing planning controls that apply to Shellharbour City Centre. The main elements of the Draft Shellharbour LEP 2011 for Shellharbour City Centre are as follows:

- Majority of land currently zoned 3(a) Mixed Use Commercial is proposed to be zoned B2 Commercial Core
- Land comprising City Park currently zoned 3(a) Mixed Use Commercial is proposed to be zoned RE1 Public Recreation
- Land comprising Stockland Retail Park currently zoned 2(e) Mixed Use Residential is proposed to be zoned B5 Business Development
- Land comprising proposed City Hub on Cygnet Avenue currently zoned 2(e) Mixed Use Residential is proposed to be zoned B4 Mixed Use
- No minimum lot sizes are proposed for B2, B4 and B5 zones in accordance with the approach taken across the whole LGA for these zones
- Height limits have been translated from the adopted City Centre Masterplan and approved development consent for the Stockland Shellharbour expansion
- Floor Space Ratios ranging from none to 0.7:1.

The proposed planning controls contained in the Draft Shellharbour LEP 2011 will ensure that the Shellharbour City Centre can be developed in accordance with the existing 3(a) and 2(e) zones and the adopted Shellharbour City Centre Masterplan and DCP.

2.5.23. The Links Golf Course Precinct

The land comprising The Links golf course is currently primarily zoned Rural 1(a), Environmental Protection 7(d) and Residential 2(f) under Shellharbour LEP 2000. It is proposed to zone this land RE2 Private Recreation and R2 Low Density Residential.

The Department of Planning and Infrastructure has advised that the RE2 zone is intended to cover a wide range of recreation areas and facilities on land that is privately owned or managed or on public land where there is restricted access to the facility, such as a golf course, bowling club, driving range, shooting range, archery club and caravan parks on recreational land.

The objectives of the RE2 Private Recreation Zone are:

- To enable land to be used for private 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.

Permissible uses include registered clubs, recreational facilities (outdoor), hotel and motel accommodation and restaurants.

Currently under Shellharbour LEP 2000 there is a strip of land zoned Residential 2(f) along Dunmore Road. It is proposed to maintain this residential zoning in the Draft Shellharbour LEP 2011. This land will have a R2 Low Density Residential zoning.

It is therefore considered that RE2 Private Recreation, E3 Environmental Management and R2 Low Density Residential are the most appropriate zones for The Links golf course.

In addition, the current zonings that apply to The Links and surrounding land existed prior to the most recent subdivisions of land in the area. As a result there are small pieces of land in and around The Links that have inappropriate zones applying to them. The Draft Shellharbour LEP 2011 is an appropriate time to address these zoning anomalies and fix zone boundaries to the cadastre.

2.5.24. Tullimbar Village

The urban release area of Tullimbar is zoned 2(e) Mixed Use Residential under Shellharbour LEP 2000. The zone was specifically developed by Council for urban release areas to allow for fully developed neighbourhoods and permit a range of residential and commercial uses that would be expected in fully developed neighbourhoods. The Standard Instrument does not have a zone similar to the 2(e) zone or contain the framework to permit such a flexible approach to planning as the current planning controls.

Tullimbar has a Council adopted development control plan (Tullimbar Village DCP) which amongst other things, promotes "development of a mixed use, urban village community in the Western Valley of Albion Park". Tullimbar also has Council adopted Building Design Guidelines. The Building Design Guidelines provide "specific guidelines and controls to assist in the preparation and assessment of development applications for all forms of development including residential, commercial, retail, civic and mixed use development within the Tullimbar Village Centre". There are also Building Design Guidelines for some of the predominantly residential areas of Tullimbar.

In preparing the Draft Shellharbour LEP 2011, the existing 2(e) zone and the controls and regulations contained in the DCP and the Building Design Guidelines were taken into careful consideration. The resultant zones and planning controls contained in the Draft Shellharbour LEP 2011 are a translation of the existing planning controls that apply to Tullimbar.

One fundamental difference as a result of this translation relates to lot sizes. The Tullimbar DCP control on lot size refers to an average, whereas the Standard Instrument LEP requires a minimum lot size. As mentioned above, the exhibited Draft Shellharbour LEP 2011 is an attempt to bring the current controls into the Standard Instrument LEP format and whilst the minimum lot size is lower in some precincts than the average lot size outlined in the DCP, it isn't meant to represent a change in policy or development potential on the land.

3. Consultations

3.1. Community Engagement

Draft Shellharbour LEP 2011 underwent extensive community engagement. Commentary on the community engagement strategy can be found in the **Background** section of this report.

A full assessment of all submissions received during the public exhibition of Draft Shellharbour LEP 2011 are contained in Attachments 3, 4, 5 and 6.

3.2. Internal

Council staff have been consulted on the preparation of the Draft Shellharbour LEP 2011. A series of briefings has also taken place with Councillors.

3.3. External

Officers of the NSW Department of Planning and Infrastructure were regularly consulted during the preparation of the Draft Shellharbour LEP 2011. All appropriate State Government agencies were consulted during the preparation of Draft Shellharbour LEP 2011.

3.4. Political Donations Disclosure

Under Section 147(4) of the *Environmental Planning and Assessment Act 1979* (the Act) a 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 donations made to any Councillor of this Council
- b. all gifts made to any Councillor or employee of this Council.

Under Section 147(5) of the Act, these requirements also apply to a person who makes a relevant public submission to Council in relation to a relevant planning application.

Note:

Section 147(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 of gifts have been made.

Despite being written to requesting a disclosure form to be lodged, about ten people who wrote submissions didn't include a completed disclosure form.

4. Assessment of Submissions and Proposed Changes to Draft Shellharbour LEP 2011

The proposed changes to Draft Shellharbour LEP 2011 are contained in this section of the Council report and Attachments 3, 4, 5 and 6. It is important to note that the Attachments form part of this report and the recommendations they contain are an implicit part of the overall recommendation to Council. In this respect, all recommended

changes have already been incorporated in the Draft Shellharbour LEP 2011 Written Instrument and Maps as contained in Attachments 1 and 2 of this report.

4.1. Heritage Item and Conservation Area Listing

The exhibited Draft Shellharbour LEP 2011 proposed 199 heritage items and two Heritage Conservation Areas. There are currently 49 heritage items and 4 Heritage Conservation Areas contained in Shellharbour LEP 2000 and Shellharbour Rural LEP 2004.

During the public exhibition period a total of 71 submissions were received that related to the heritage aspects of the Draft Shellharbour LEP 2011. As a result of the interest and concern expressed by a number of affected property owners prior to the exhibition, a commitment was made by Council's Administrator that any submissions or comments that were forwarded to Council between the Council meeting on 19 October 2010 and the start of the exhibition would also be considered as a formal submission to Draft Shellharbour LEP 2011. Confirmation was sought by those who had made such submissions to ensure the comments made were still current and they were happy for Council to consider them as a formal submission.

The majority of the 71 submissions were from affected property owners and related to a specific item (building, structure or tree) which is proposed to be added to Schedule 5 of the Draft Shellharbour LEP 2011 as an Item of Local Heritage Significance or the two proposed Heritage Conservation Areas.

The 71 heritage based submissions can be categorised as follows:

- 20 submissions on proposed heritage items in Shellharbour Village
- 30 submissions on proposed heritage items in the greater local government area
- 20 submissions on the proposed Shellharbour Village Heritage Conservation Area (approximately 677 properties in the conservation area)
- 1 submission on the proposed Illawarra Escarpment Heritage Conservation Area (approximately 83 properties in the conservation area)

Given the sensitivity and concern the proposed listings generated, it was considered appropriate to engage an independent suitably qualified Heritage consultant to review all heritage submissions and provide recommendations to Council.

All submissions were summarised. These summaries have been used in the condensed table form of the consultant's findings and recommendations. This table also includes the Council officer recommendations. This table is contained in Attachment 6 of this report. It is worth noting that a full copy of all submissions in addition to the summary and exhibited inventory sheet was forwarded to the consultant so a thorough assessment could be made.

A full copy of the submission summaries, consultant's assessment and relevant inventory sheet as well as the consultant's summary report can be found in Attachment 7.

As a result of the consultant's recommendations and Council officer review, it is proposed that:

- 11 items be removed from the list of Items of Local Heritage Significance.
- 2 items be removed from the list of Items of Local Heritage Significance due to the incorrect original listing.
- 3 items be removed from the list of Items of Local Heritage Significance due to demolition of the item.
- 17 items be removed from the list of Items of Local Heritage Significance and be subject to further investigation to clarify significance at a later date.
- 3 items (being Holiday Shacks) be removed from the list of Items of Local Heritage Significance and be re-investigated at a later date as part of a proposed holiday cottage study.

Therefore 36 of the 68 reviewed items are proposed to be removed from the list of Items of Local Heritage Significance in Schedule 5 of Draft Shellharbour LEP 2011.

The Heritage Conservation Areas, in particular the Shellharbour Village Heritage Conservation Area, generated a lot of discussion within the community. Given this interest, the independent Heritage consultant also reviewed the 21 submissions relating to the Heritage Conservation Areas and provided recommendations to Council. The consultant recommended that the draft Heritage Conservation Areas be retained but more information needed to be provided on the Heritage Inventory sheets explaining the reasons for its significance.

A Heritage Conservation Area does not significantly affect the owner's property rights or the development potential of a property. It does not over-ride other aspects of the Draft Shellharbour LEP 2011 such as permissibility of land uses, height limits or floor space ratios. What the Heritage Conservation Area does enable is for Council to guide and ensure that any future development does not detract from the heritage significance of the area or any adjoining heritage items. This is primarily achieved through the preparation of a heritage impact statement and good urban design.

To assist and guide affected property owners, Council is also proposing to incorporate a specific heritage chapter into the Comprehensive Development Control Plan. This chapter is proposed to contain objectives and design guidelines for both Heritage Items and properties within a Heritage Conservation Area.

It is recommended that the proposed Shellharbour Village and Illawarra Escarpment Heritage Conservation Areas be retained as exhibited. However, the Heritage Inventory Sheet for the Shellharbour Village Heritage Conservation Area has been amended to further elaborate the reasons for significance.

4.2. Building Heights in Town Centres

Submissions have been received on the 11 metre building height limit which is proposed in most town centres including Albion Park. The submissions have suggested increasing this building height to 15 metres. Conversely submissions have been received objecting to the proposed 15 metre height limit in Shellharbour Village commercial area and recommending it should be 11 metres. The case for increasing the 11 metre height limits focus around providing incentives for the town centres to develop. Inherent to this argument is that if height limits increase, land owners or developers are more likely to redevelop properties as the land seems more desirable. A conjoining argument is that floor space ratios would also have to be increased.

In response to these concerns, Council staff have prepared some generic building scenarios that may be achieved under a range of different building height limits (noting that each development site has its own characteristics which ultimately determine its development potential). These scenarios can be found in Attachment 8 of this report.

Generally speaking:

- 1) Under an 11 metre building height scenario, 2 storey retail or a 3 storey mixed use development may generally be achievable.
- 2) Under a 12 metre building height scenario, 3 storey retail or 3 storey mixed use development may generally be achievable.
- 3) Under the 15 metre building height scenario, 4 storey mixed use development may generally be achievable.

It should also be noted that the Draft Shellharbour LEP 2011 contains Clause 4.6 which allows exceptions to development standards such as building heights. Building height limits can be varied to a certain degree if it can be demonstrated that strict compliance with the height limit is unreasonable or unnecessary in the specific instance and that there are sufficient environmental planning grounds to justify contravening the height limit. Any variation will require the concurrence of the Director General of the NSW Department of Planning and Infrastructure, unless this concurrence is delegated to the General Manager.

Council has 4 main options in relation to the matter of building heights in town centres:

- 1) Adopt the exhibited 11 metre height limit (15 metres for Shellharbour Village) contained in the exhibited Draft Shellharbour LEP 2011.
- 2) Adopt an increased height limit of 12 metres to provide increased flexibility in development options (and retain the 15 metres for Shellharbour Village). A 12 metre height limit would increase flexibility and design options while keeping with

the intent of the exhibited Draft Shellharbour LEP 2011. It is considered that such an increase could be satisfactorily justified to the Department of Planning and Infrastructure.

- 3) Adopt an increased height limit of 15 metres, the same as the height limit for Shellharbour Village.
- 4) Adopt either Option 1 or 2 for the purpose of finalising the Draft Shellharbour LEP 2011 and decide that Town Centre Plans be prepared for our 6 principal town centres beginning with Albion Park and Shellharbour Village.

A 15 metre height limit as proposed in Option 3 is not considered an appropriate or viable option.

Initial discussions have taken place with the Department of Planning and Infrastructure about proposed changes. These discussions have centred on the stated height limits not the merits of the proposals. The Department advised that they would be highly unlikely to support the magnitude of the changes suggested in Option 3 above, based on the issues arising from the recent Land and Environment Court judgement (*Friends of Turrumurra v Minister for Planning*). This case is discussed further in section 5.2 of this report.

In addition, Council staff considers a blanket increase in height to 15 metres without an assessment of the capability of individual properties to accommodate such large buildings may be counterproductive to the suggested reasons for increasing height limits in the first place, that being encouraging development and investment. Arbitrarily raising heights limits to 15 metres would only artificially raise property values and also raise unnecessary false expectations that 4 storey buildings could be readily approved by Council on existing land parcels.

The focus of the following discussion on this issue is centred on Albion Park as this area attracted the most submissions advocating an increased height limit of 15 metres.

Albion Park town centre has an old traditional fine grained (long and narrow) subdivision pattern. Attachment 9 of this report contains an aerial of the town centre showing existing buildings, car parking and property boundaries. Many of the land parcels in the town centre have a width of 7 to 10 metres. By any standard these are very narrow and do not even allow a car to enter the site and park at 90 degrees, as would be required in any redevelopment of the sites. Albion Park already has car parking issues. Much of the existing on-site parking is informal parking behind buildings on semi paved and grassed areas. Most of this parking only exists because landowners have removed the dividing fences between these properties to allow access and manoeuvring.

Without looking at the functionality and development capability of the town centre, it is considered inappropriate at this stage to increase height limits to 15 metres. However Council has other options to address this issue.

Option 4 is considered a viable option.

Increasing the building height to 12 metres immediately addresses some of the concerns raised in submissions while giving Council the ability to review all height limits in our town

centres once the detailed town centre planning has been carried out. The benefits of Option 4 are:

- an overall vision accounting for community and investor expectations;
- greater understanding and certainty for investors and the community in what a town centre should be like;
- enhanced and safer public domain and transport/parking arrangements;
- more attractive and economically successful town centres;
- greater community pride.

The Draft Shellharbour LEP 2011 maps attached to this report have been amended to reflect 12 metres for the town centres of Warilla Gove Warilla, Albion Park, Albion Park Rail (near Creamery Road, Hobart Lane and the Princes Highway) and Oak Flats.

Detailed town centre planning should be carried out for Warilla Grove, Warilla, Albion Park, Albion Park Rail, Oak Flats, and Shellharbour Village.

Town centre planning should include written and graphic, dimensioned development guidelines for each centre including provisions addressing:

- conceptual block building envelope sketches with optional upper floor residential or upper floor commercial or upper floor commercial/residential;
- development appearance/character including colours/materials palette;
- public domain treatment/usage including integration with private domain;
- transport /parking provisions; and
- maps of Centres specifying required active frontages, awning weather protection, building envelopes/setbacks, splayed corners, corner elements and entry statements, focal points, public domain treatments including possible gathering areas/meeting places and transport/parking provisions.

Matters such as views, visual privacy, acoustic privacy, solar access, energy efficiency, appearance of existing development, transport facilities, existing planning provisions, existing and planned capital works and the property market will inform these development guidelines.

The proposed 15 metre height limit in the commercial area of Shellharbour Village has generated three submissions of opposition. The main reasons for opposing the height limit are:

- The natural fall of and sight lines along Addison Street lend themselves to the current height limit
- The proposed height limit is not in keeping with the existing vision for Addison Street
- The vision is 70% complete, so inappropriate to change now

- Owners of existing developed properties may be financially disadvantaged by the change
- The proposed height limit may be at odds with proposed heritage objectives

Based on the submissions received, there may be merit in reviewing the 15 metre limit in the commercial area of Shellharbour Village. For instance, it may be more appropriate to apply a 12 metre height limit; consistent with other town centres zoned B2 Local Centre. However, Council needs to be mindful of the legal consideration contained in Section 5.2 of this report relating to changing a Draft LEP after it has come off public exhibition.

Changing the height limits in the commercial area of Shellharbour Village based on three objections may be problematic given that there are approximately 64 individual land owners in the area. That is, Council is unaware of the views of the vast majority of land owners in the town centre. The best way to address this is through the detailed town centre planning process referred to earlier in this section of the report. This process involves consultation with all relevant stakeholders and may result in a recommendation to amend the 15 metre height limit. This would then be subject of a separate planning proposal. Section 5.3 of this report has further information on planning proposals and the gateway process.

4.3. Government Agency Submissions

Attachment 3 of this report contains a full copy of the Government department and agency submissions. A number of the submissions requested changes to the LEP. Some of these were too significant a change from the exhibited Draft Shellharbour LEP 2011 to include now and will require a planning proposal and public exhibition. Other changes are considered appropriate and these are as follows:

1) NSW Rural Fire Service

Change the Land Use table for zones RU1 Primary Production, RU2 Rural Landscape, RU6 Transition, E4 Environmental Living by moving Home based child care from permitted without consent to permitted with consent.

The reason for this is minimise potential impacts from bush fire. Where land in these zones isn't bush fire prone land, the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 may be able to be used to carry out the use without consent.

2) NSW Lake Illawarra Authority

Revise the Zoning Map so that the lake entrance and channel is zoned W2 Recreation Waterway and not W1 Natural Waterways.

This change will align the zoning between Wollongong and Shellharbour LGAs and also better reflect the use of this part of the lake.

3) Roads & Maritime Services

A number of minor zone changes along the Princes Highway, particularly the realigned section in the Croome and Dunmore areas, to reflect the location of the road and property boundaries.

4) NSW Trade & Investment (Agriculture)

Re-order the aims in clause 1.2 of the Draft Shellharbour LEP 2011 so that like aims are grouped together.

5) Southern Rivers Catchment Management Authority

Add a new aim to clause 1.2 of the Draft Shellharbour LEP 2011 to conserve the scenic and environmental resources of the land including the protection of environmental assets such as native vegetation, waterways and wetlands and habitats for threatened species, populations and endangered ecological communities.

6) RailCorp

Remove the Croome tunnel from Schedule 5 - Environmental Heritage of Draft Shellharbour LEP 2011. The Heritage Council has endorsed the removal of this tunnel from RailCorp's register of heritage items.

4.4. General Submissions

Council received 76 submissions that covered the general topics of zoning or what land uses could be undertaken in certain zones, floor space ratio and building height controls, expansion of Albion Park RSL, proposed Crematorium site, Illawarra Regional Airport, Killalea State Park, Oak Flats Bowling Club, Public Recreation Zone, Rural Dwellings and the Warilla Library/former Council Chambers Site. Of these, the majority were about zoning and some individual submissions covered more than one topic.

Attachment 4 contains a detailed assessment of all the general submissions received during the exhibition period. The main issues are summarised below:

4.4.1. Zoning

- 1) A number of submissions sought a change in zone, or land uses allowed in that zone, from that exhibited. Such changes would be a significant change to the exhibited version of Draft Shellharbour LEP 2011 and aren't supported. See section 5.2 of this report for a detailed explanation.

The changes requested would need to be considered as part of a planning proposal and if supported by Council and the NSW Department of Planning and Infrastructure, placed on public exhibition.

- 2) Some submissions raised the issue of lack of residential zoned land in our Local Government Area (LGA) and that Council was not complying with our obligations

under the Illawarra Regional Strategy (IRS) to supply Greenfields land for urban purposes.

The Household and Demographic Projections Study commissioned by Council and exhibited with the Draft Shellharbour LEP 2011, indicated that we have adequate zoned land available within our LGA to meet demand. Draft Shellharbour LEP 2011 does provide small Greenfield subdivision areas. However, additional residential zoned land was not the main priority in the Draft Shellharbour LEP 2011. Further, the IRS confirms that the major regional supply of land for housing will be at West Dapto and not in the Shellharbour LGA. The IRS states that "Shellharbour has taken the major responsibility for regional Greenfield land releases over the last 30 years at Albion Park, Blackbutt, Flinders and Shell Cove. As the current estates reach completion, the focus for Shellharbour will shift towards urban renewal opportunities around towns and centres such as Oak Flats." The State Government has also rezoned areas of Calderwood to allow approximately 4800 dwellings.

- 3) As part of the generic zone conversions, the Shellharbour Club site was zoned R2 Low Density Residential. A registered club is prohibited in the R2 zone and this is an unintended consequence of using the generic zone. Preliminary discussions with the NSW Department of Planning & Infrastructure found that they may accept an addition to Schedule 1 of the Draft Shellharbour LEP 2011. This means that despite a registered club being prohibited in the R2 zone, it is permissible on this site with consent because this site is in Schedule 1. If the Department of Planning and Infrastructure, following their assessment of the LEP, don't agree with including the site in Schedule 1, the Club will need to lodge a planning proposal to consider an appropriate zone for the land.
- 4) The Draft Shellharbour LEP 2011 doesn't provide for any more industrial zoned land. The IRS includes an action that LEPs will ensure additional employment lands are identified and appropriately zoned to cater for jobs growth in the Shellharbour LGA.

The Employment Lands Study was commissioned to inform the preparation of the Draft Shellharbour LEP 2011 and exhibited with the LEP indicates that there is enough industrially zoned land to satisfy future employment needs. Significantly, since the release of the IRS in 2007, the NSW State government approved through the then Part 3A provisions of the *Environmental Planning & Assessment Act*, the rezoning of about 40 hectares of industrial land at Albion Park Rail - Illawarra Regional Business Park - (west of the Illawarra Regional Airport).

4.4.2. Floor Space Ratio and Building Height Controls

One specific submission was received supporting the floor space ratio in the R3 Medium Density Residential zone of 0.7:1 from 0.35:1 and one was received objecting to that increase.

The version of the Draft Shellharbour LEP 2011 that was reported to Council on 19 October 2010 included a floor space ratio in the R3 zone of 0.5:1. The NSW Department

of Planning and Infrastructure required a higher floor space ratio in this zone to reflect the intent of the zone and to provide a difference between the R2 Low Density Residential zone and the R3 zone. The Department's requirement was part of the Section 65 certificate conditions issued by the Department that were required to be complied with before the Draft Shellharbour LEP 2011 could be put on public exhibition. This requirement was subsequently reported to Council on 22 February 2011 and supported by Council at its meeting on 5 April 2011.

Potential issues associated with increased floor space, such as overshadowing, noise, privacy and loss of views will need to be further considered in the preparation of the Comprehensive Development Control Plan (DCP).

The discussion on building height controls is addressed in section 4.2 of this report.

4.4.3. Public Recreation Zone

A submission was received requesting that we allow cafes and restaurants in the RE1 Public Recreation zone because if these uses aren't allowed, it will limit the future growth of tourism.

The report to Council on 19 October 2010 included restaurants as a use permitted with consent in the RE1 zone. As outlined in the report to Council on 22 February 2011, the NSW Department of Planning & Infrastructure has adopted a policy position of not allowing restaurants on land zoned RE1 and so as to not unnecessarily delay the exhibition of the Draft Shellharbour LEP 2011, restaurants were excluded from the RE1 zone.

It is considered appropriate to pursue the use of restaurants in the RE1 zone with the Department as soon as possible, but not hold up the progress of the LEP.

4.4.4. Albion Park RSL Club site

The Draft Shellharbour LEP 2011 includes a change in zoning from residential to business (B2 Local Centre) of about 5,900m² of land associated with the Albion Park RSL Club. Concerns were raised by adjoining owners on the impact of delivery vehicles, new buildings, noise and uses associated with businesses, would have on the surrounding residential development.

The Retail and Commercial Centres Study was commissioned to inform the Draft Shellharbour LEP 2011 identified that additional retail/commercial floor space is required in Albion Park to cater for the expected needs of the community. The Study found that an additional 6,500m² of floor space (including a supermarket) would be required by 2016 and another 2500m² by 2026.

There are a number of constraints in developing existing zoned land or expanding the business zone eastward from Terry Street. The major one is the difficulty in providing rear lane access so that vehicle movements on Tongarra Road are not compromised. The Roads and Maritime Services Department will not support rezoning of land that will have an adverse impact on traffic flows on an arterial road (Tongarra Road).

Taking into account the competing issues of providing additional retail/commercial zoned land to meet the needs of the community and the potential impact on existing residential development if the land is changed to permit retail/commercial uses, it's considered that there is a wider public benefit in changing the zone of the land to B2 Local Centre. The individual merit issues associated with building design, location and use will need to be assessed through the development application process.

4.4.5. Proposed Crematorium site

Six submissions were received on this proposal, one in favour and five objecting.

The submissions objecting generally relate to the potential impact such a use will have on the nearby residential areas, discourage people using the sporting complex, increase in pollution and a religious belief that a cemetery will bring bad luck.

Emissions from the cremator will be monitored by the NSW State Government's Environment Protection Authority (Office of Environment and Heritage). Preliminary information lodged with the rezoning request indicates that it will comply with the relevant controls. More detailed assessment will be required as part of any future development application.

Traffic generation from the proposed development has been reviewed and is considered acceptable. Further assessment will be required as part of any future development application.

The proposed site is not considered to have an adverse impact on the operations and use of the facilities at the Croome Regional Sporting Complex.

All religious beliefs are respected however the proposal must be assessed on its merits and in accordance with legislative requirements. Religious differences aren't sufficient reasons to use to decide if the land should be used as a cemetery/crematorium.

The use proposed will provide a service to the community that isn't currently available in our City. The preliminary assessment of the proposal has found that the site is reasonable for this use. More detailed assessment will be required as part of any future development application.

It is recommended that the exhibited zones of SP1 Crematorium/Cemetery and RE1 Public Recreation be adopted for this site.

4.4.6. Illawarra Regional Airport

A submission raised concerns about the lack of protection to residents from the impact of use of the airport, inadequate assessment of previous development applications and the use of this LEP to avoid greater environmental assessment.

The zone of the airport under the current Shellharbour LEP 2000 is Special Uses 5(a) Aerodrome. The zone exhibited in Draft Shellharbour LEP 2011 was SP1 Air transport facility.

Clause 6.6 "Development in areas subject to airport noise" and Clause 6.7 "Airspace operations", are proposed to assist in managing potential impacts on surrounding land uses whilst at the same time acknowledging the importance of the airport to the Illawarra region.

The Illawarra Regional Strategy identifies the airport as a key regional asset, stating that promoting and protecting the airport is a priority.

The State Environmental Planning Policy (Infrastructure) 2007 applies to the airport lands and this policy will over-ride our LEP.

Notwithstanding the importance that the airport has to our region, land use decisions need to be taken in accordance with the relevant provisions of the *Environmental Planning & Assessment Act* and the potential impact on nearby residents considered in any assessment.

It is recommended that the exhibited zone of SP1 Air transport facility be adopted for this site.

4.4.7. Killalea State Park

Fifteen submissions were received requesting that the Killalea State Park be included in the LEP. Other issues raised included deleting tourist facilities as an allowable use, limiting any development to the footprint of the existing camping/caravan area, include in the LEP the position presented to Council in October 2010. It was stated that Killalea State Park deserves a high level of protection and is a key site because of its unique natural heritage features.

When the Draft Shellharbour LEP 2011 was reported to Council on 19 October 2010, it was recommended that the site be included in Schedule 1 - Additional uses of the LEP and that the uses of caravan parks and eco-tourist facilities be restricted to the western edge of the Park. This location was shown on the Schedule 1 Map of the LEP attached to that Council report.

After the October meeting, the NSW Department of Planning & Infrastructure reviewed the Draft Shellharbour LEP 2011 prior to it going on public exhibition. As part of this review the Department required the Schedule 1 Map to be amended so that caravan parks would be permitted on all land zoned E3 Environmental Management within the Killalea State Park.

When this was reported to Council on 22 February 2011, Council resolved to defer a decision subject to another report. This was done on the 5 April 2011 and Council resolved to defer the site from the exhibited Draft Shellharbour LEP 2011. The reason for deferral was due to the differences between Council and the NSW Department of Planning and Infrastructure regarding the future land use planning for the site.

The site cannot stay permanently deferred and it is important that the zoning and land uses are resolved. It isn't appropriate to include zoning and land uses now as that would be too significant a change to the exhibited Draft Shellharbour LEP 2011.

It is recommended that an assessment of appropriate zones and land uses commence as soon as possible after gazettal of Shellharbour LEP 2011.

4.4.8. Oak Flats Bowling Club site

One submission was received regarding the introduction of a microbrewery to the site and generally about the Club increasing in size.

A microbrewery is defined in the LEP as a light industry. The exhibited Draft Shellharbour LEP 2011 included this use in Schedule 1 - Additional Permitted Uses. Information lodged by the proponent suggests that potential impacts from operating the microbrewery can be managed in an acceptable way.

The location of this Club in a residential area and the request to rezone three lots from Residential to Private Recreation to facilitate possible future expansion of the Club, is an important consideration. At some point, the benefits to the community from the Club will be outweighed by the impacts on the adjoining and adjacent residential properties.

Based on the current proposal and land parcels, it is recommended that the zoning and land uses for these sites as exhibited in Draft Shellharbour LEP 2011 be adopted.

4.4.9. Rural Dwellings

Two submissions were received requesting a change to the exhibited Draft Shellharbour LEP 2011 to permit a dwelling on two rural properties that currently don't have a dwelling entitlement.

1) Lot 372, DP 833729, 272 Yellow Rock Road, Yellow Rock

This property had a development application approved for construction of a dwelling house in April 1999 and a Section 94 contribution was paid in January 2000.

A report to Council on 19 December 2000 on the Shellharbour Rural LEP 2004 confirmed that this property wasn't included in the Schedule to permit a dwelling on the land as it had development consent for that use. It was presumed that the consent would have been acted on and it wasn't necessary to include it in the Schedule.

The development consent lapsed without commencement and under the provisions of both the Shellharbour Rural LEP 2004 and the Draft Shellharbour LEP 2011, a dwelling house is not permitted on the land as the property is less than 40 hectares (11.86 hectares).

This information wasn't provided prior to the preparation of the Draft Shellharbour LEP 2011 and whilst now relevant, it isn't appropriate to reduce the Lot Size Map after exhibition to permit the construction of a dwelling. This will need to be done as a planning proposal and put on public exhibition.

2) Lot 11, DP 248001, 49 Calderwood Road, Calderwood

The submission indicates that this property, under Shellharbour LEP 16 (this LEP predates Shellharbour LEP 2000), could have lawfully constructed a dwelling. The submission further states that when Shellharbour Rural LEP 2004 was gazetted, a dwelling was prohibited on the property. The submission requests that the LEP be changed to permit a dwelling on the land. The property has an area of about 11.75 hectares.

In preparing Shellharbour Rural LEP 2004 a review of rural lands was undertaken. No information has been found in Council records to indicate that this property met the criteria to be included in the Schedule allowing consideration of a dwelling on this property. The property is substantially less than 40 hectares and the assessment undertaken by Council in the preparation of the Rural LEP indicates that the land is affected by flooding and falls within Class 2 Agriculture lands.

Based on the previous assessment by Council, it isn't appropriate to consider a dwelling on this land.

4.4.10. Warilla Library and former Council Chambers site at Warilla

Four submissions were received about this site. The main points raised are:

- 1) Unlikely the site will continue as a community use if it is zoned B5 Business Development.

The proposed zone, B5, permits both community facilities and public administration buildings. In addition, the State Environmental Planning Policy (SEPP) Infrastructure permits public administration buildings in the B5 zone.

Whether the land remains in community ownership is not a matter for consideration under the *Environmental Planning & Assessment Act*. Any asset rationalisation strategy will need to be considered and endorsed by Council when such a report is presented to them. Such a strategy is not part of this report.

- 2) These sites are important pieces of local infrastructure and should have a zone that reflects this. They aren't surplus public lands and there isn't anything in the practice notes that require it to be rezoned. Not aware of any studies that have been done to understand the effect zoning the land B5 will have on other local business zones.

The zoning of this land is consistent with Principle 2.2 of the NSW Department of Planning and Infrastructure's Planning Circular PN 10-001 - Zoning for Infrastructure in LEPs. This Circular states that most infrastructure land currently zoned Special Use should be zoned in the LEP according to what the adjacent zone is, if that zone is a prescribed zone under the Infrastructure SEPP and that type of infrastructure is permitted in the prescribed zone. In this case, the proposed surrounding zone is B5 and the current uses are permitted in the prescribed zones.

The Commercial and Retail Centres Study was commissioned to inform the preparation of and exhibited with, the Draft Shellharbour LEP 2011. The study does not identify expansion of floor space for Warilla. However, the Study does note that Warilla plays an important role in providing commercial services as opposed to retail. The proposed B5 zone doesn't reflect a straight expansion of the Warilla Town Centre which is proposed to be zoned B2 Local Centre. The objectives of the B5 zone include enabling a mix of business uses that are close to and that support the viability of centres and ensure development doesn't detract from the function or viability of centres.

Further, the most suitable zone for the adjoining sites of a fast food restaurant and bulky goods stores is B5. With this in mind, it is considered that the most appropriate zone for the Warilla Library and former Council Chambers sites, taking into account current uses and providing flexibility for the possible future uses of the land, is the B5 Business Development zone.

4.4.11. Comprehensive Development Control Plan

A number of public submissions raised issues that are more appropriately addressed in a Development Control Plan. Council staff are preparing a Comprehensive Development Control Plan for the local government area which will supplement the controls contained in Draft Shellharbour LEP 2011 and share a common language. It is intended that the Comprehensive Development Control Plan will be exhibited later this year and be adopted by Council around the same time as Shellharbour LEP 2011 is gazetted.

4.5. Urban Fringe Submissions

The Urban Fringe lands were assessed in a Local Environmental Study (LES) and that was included in the exhibition material for the Draft Shellharbour LEP 2011. Where applicable, the recommendations of the LES were included in the exhibited Draft Shellharbour LEP 2011.

Attachment 5 contains a detailed assessment of all submissions relating to the Urban Fringe. The main issues are summarised below:

4.5.1. Landowner Submissions

Twenty two submissions were received from landowners. The main issues raised in the landowner submissions included:

- 1) Visual - The LES has placed too much emphasis on the visual quality of the area and the adverse impact that development would have on the landscape. The LES was a broad analysis and didn't take into account individual site characteristics and if it had, additional development would be appropriate.
- 2) Flora - The landowner's studies didn't find the same extent of vegetation, particularly the Endangered Ecological Community (EEC) of Illawarra Lowlands Grassy Woodlands as the LES concluded. This meant that there was more opportunity for development than the LES recommended.

- 3) Infrastructure available - Need to maximise the use of existing infrastructure.
- 4) Tullimbar structure plan - The Tullimbar structure plan was prepared to indicate possible development opportunities in the Tullimbar Western Valley locality. The LES and subsequent Draft Shellharbour LEP 2011 does not reflect the residential development opportunities shown in the structure plan.
- 5) Inadequate assessment of flooding in the Tullimbar locality - The Draft Shellharbour LEP 2011 increases density in the Tullimbar Village locality without an adequate assessment of flooding being completed. This may mean that back flooding may occur on nearby land and also reduced development opportunities on that land.
- 6) Regional need for housing supply - The amount of land zoned and capable of being developed for residential use within the region is not meeting demand or the amount required to be provided under the Illawarra Regional Strategy. The Draft Shellharbour LEP 2011 doesn't take this into account and the Shellharbour Local Government Area (LGA) is not delivering land for housing within Greenfield areas as outlined in the Illawarra Regional Strategy.

4.5.2. Adjoining Landowner Submissions

Fourteen submissions were received from adjoining landowners. Of these, eight were received in regard to one particular property, Lot 11, DP 1128847, Huon Crescent, Albion Park.

The main concerns raised in the submissions were loss of privacy, impact on flora and fauna, increased impacts from flooding/stormwater runoff and increased traffic.

4.5.3. City Strategy Comments

Some of the landowner's submissions included detailed studies that gave a different opinion to some of the technical reports in the LES. The land owner studies covered issues such as visual, geotechnical and flora and fauna. These studies were lodged to support their submission and refute the findings of the studies used to prepare the LES.

The specialist reports used in the LES have been prepared by appropriately qualified professionals appointed by Council. It is agreed that there is always a degree of subjectivity in relation to some of the recommendations, such as visual and flora. The work carried out by the independent consultants and used by Council staff in preparing the LES is the preferred position and removes a large degree of subjectivity that exists when a proponent (or a consultant engaged on behalf of a proponent) undertakes similar work.

The LES is a broad-scale and comprehensive consideration of the constraints and opportunities of land within the study area. The exhibited LES is an independent review of the study area covering about 380 hectares of the LGA. The conclusions and recommendations of the LES are considered to be a sound platform on which to base strategic planning decisions for the Urban Fringe lands. More detailed studies may be required by proponents to support a future development application.

There are sites within the LES where additional studies are needed to assess issues such as flooding and Aboriginal heritage. Until such time as these studies are undertaken and assessed to be satisfactory, the zoning and permitted land uses will not change. A planning proposal will need to be lodged, assessed by Council and the NSW Department of Planning and Infrastructure and if satisfactory, put on public exhibition for these sites.

Attachment 5 provides a detailed assessment of the submissions received during the public exhibition period and Attachments 13 and 14 outline the recommended changes to the written instrument and maps. Generally, it's recommended that the zoning and land use controls exhibited in Draft Shellharbour LEP 2011 are reasonable and appropriate.

The sites where it's recommended to make changes from the exhibited Draft Shellharbour LEP 2011 are as follows:

- 1) Lots 11 - 26, DP 1046042, Bimbadeen Place, Cooby Road and Yeramba Close, Yellow Rock. Height increased from 6.0 metres to 9.0 metres.
- 2) Lot 240, DP 828854, 105 Cooby Road, Tullimbar. Reinstate Residential zone in the same location as currently shown in Shellharbour LEP 2000 and apply height, floor space ratio and minimum lot size controls as exhibited on the adjoining land.
- 3) Lot 4250, DP 1057886, Jamberoo Road, Albion Park. Reduce minimum lot size map from 1 ha to 8600m² to allow one extra lot and dwelling.
- 4) Lot 252, DP 1047669, Pleasant View Close, Albion Park. Change the zone of two areas from E3 Environmental Management to R2 Low Density Residential.
- 5) Lot 153, DP 1089661, Esperance Drive, Albion Park. Reduce minimum lot size map from 2.9 ha to 2.4 ha to allow one extra lot and dwelling.
- 6) Lot 11, DP 1128847, Huon Crescent, Albion Park. Change the location of the zone R5 Large Lot Residential to a location that has less impact on existing trees and adjoining dwellings. Apply height, floor space ratio and minimum lot size controls to reflect the R5 zone. The zone of the land exhibited as R5 Large Lot Residential will change to E3 Environmental Management with height, floor space ratio and minimum lot size controls to reflect that zone.

4.6. General Changes Recommended by City Strategy

As part of our review of Draft Shellharbour LEP 2011, a number of changes to the written instrument and maps are recommended. All changes supported by Council are required to be approved by the Department of Planning & Infrastructure. A complete list is included in Attachments 13 and 14 with some of these changes highlighted below.

4.6.1. Standard Instrument Subdivision Provisions

a. Dual Occupancy

The Standard Instrument generally requires the subdivision of all land to comply with the minimum lot size shown on the Lot Size Map. This requirement doesn't apply to the subdivision of individual lots in a strata plan or community title scheme.

The Standard Instrument will require the torrens title subdivision of a dual occupancy to comply with the minimum lot size. Generally, this is 450m² in Residential zones.

The Section 62 version of Draft Shellharbour LEP 2011 included a clause that permitted the subdivision of dual occupancy and multi-dwelling developments into lots less than the minimum lot size.

This clause was taken out of Draft Shellharbour LEP 2011 when reported to Council when we were given the revised Clause (4.1C) from the Department of Planning and Infrastructure.

Clause 4.1C of the exhibited Draft Shellharbour LEP 2011 permits the subdivision of attached and semi-detached dwellings into lots of 225m² but doesn't permit the subdivision of a detached dual occupancy.

This clause has subsequently been amended by the Department of Planning and Infrastructure and the Model Clause has deleted the section that permitted the subdivision of attached or semi-detached dwelling on a lot of 225m². The Model Clause now only applies to a subdivision into three or more lots.

The torrens subdivision of a dual occupancy in a residential zone is permitted under existing Shellharbour LEP 2000. It is considered that it is in the community's interest to permit the torrens subdivision of a dual occupancy development as it is a form of development currently permitted. The potential impact on surrounding properties of the torrens subdivision of a dual occupancy is minimal. Any potential impact would arise at the construction of a dual occupancy. It is unlikely that a submission would have been made to the exhibited Draft Shellharbour LEP 2011 if a clause had been included permitting the subdivision of dual occupancies. As such it is recommended that the NSW Department of Planning and Infrastructure be requested to:

- include a sub-clause to Clause 4.1 permitting the torrens subdivision of dual occupancy and multi-dwelling housing development; and
- keep Clause 4.1C as exhibited and not use the current Model Clause 4.1C, unless subclause (2) of the exhibited Clause 4.1C is added as a separate Clause or subclause to the Model Clause.

b. Subdivision of split zones (Clause 4.2C)

The Section 62 version of Draft Shellharbour LEP 2011 included a clause that outlined specific properties, the number of lots they could be subdivided into, the number of houses permitted on each lot and the zone that the house is required to be located on.

This Clause was not acceptable to the Department of Planning and Infrastructure and the Department's Clause was used in exhibited Draft Shellharbour LEP 2011.

The Department's Clause (4.2C in the exhibited Draft Shellharbour LEP 2011) permits the subdivision of certain split zoned land to create lots that may have a dwelling constructed on it, as long as the residue land is included in one of the smaller lots.

This has merit in that the residue lot, which usually contains important vegetation, is held in one lot and one owner. The downside to this aspect of the Clause is that it may not be possible to legally apply it on properties with distinct changes in topography or discrete areas of vegetation.

For this reason it is recommended that the NSW Department of Planning and Infrastructure be requested to change Clause 4.2C as exhibited to a version of the Clause used in the Section 62 version of Draft Shellharbour LEP 2011.

This Clause can be found in the Written Instrument contained in Attachment 1.

4.6.2. Shellharbour LEP 2000 - Amendment 15 - Harbour Boulevard

A development application was lodged with Council in 2007 for a proposal to construct Harbour Boulevard (North), associated intersection works and a six lot subdivision at the intersection of Pioneer Drive, Shellharbour Road and Addison Street, Shellharbour. As the proposed road was located on public open space land zone 6(a) and classified as community land, a reclassification to operational land and some zoning changes were required. Consequently, this rezoning process occurred as a spot rezone application and was not finalised at the time of exhibition of Draft Shellharbour LEP 2011. As a result the zones that were exhibited as part of the Draft Shellharbour LEP 2011 were a 'like for like' or 'best fit' for the existing zones in Shellharbour LEP 2000.

Subsequently, Amendment 15 of Shellharbour LEP 2000 - Harbour Boulevard was gazetted on 19th August 2011 and has now been incorporated into the Draft Shellharbour LEP 2011. It is worth noting that the gazetted version of Amendment 15 included a 9(c) Local Road Reservation zone over land that was not yet acquired by Council. As a result of the recent acquisition of the land by Council the area has not been included on the Land Reservation Acquisition mapping layer and is proposed to be zoned R2 Low Density Residential which permits roads.

4.6.3. Deferment of Benson Basin Precinct

Benson Basin (Lot 2000, DP 717478) is a 9.4 hectare parcel of land whose primary function is a stormwater detention facility. It is located to the east of Stockland Shellharbour Shopping Centre and is owned by Landcom. The site is currently zoned 2(e) Mixed Use Residential under Shellharbour LEP 2000. The exhibited Draft Shellharbour LEP 2011 proposed to zone the land RE1 Public Recreation.

It is now recommended that the land be deferred from Draft Shellharbour LEP 2011. At the time of preparing the Draft Plan, it was assumed that the land would be under Council's ownership and management by the time the Shellharbour LEP 2011 was gazetted and in force. For a range of reasons, this will not occur in this timeframe.

Council at its meeting of 24 April 2012, considered a report on Benson Basin, and as a result resolved the following:

- 1) That Council enter into negotiations on a draft Voluntary Planning Agreement with Landcom to include the dedication of Benson Basin in its current state, and

payment of a cash contribution to Council in order to fulfil Landcom's obligations for site 7200 under Council's Section 94 Plan and Deed of Agreement.

- 2) That as part of the negotiations on a draft VPA with Landcom, an indicative design and cost estimation be undertaken for developing Benson Basin to maximise the contribution and true cost of developing the site.
- 3) That the draft VPA be reported back to Council if negotiations are completed, for its consideration and possible agreement.

The proposed RE1 Public Open Space Zone may potentially complicate these negotiations. It is also technically incorrect to zone land as public open space when it is in private ownership. For these reasons the land should be deferred from Draft Shellharbour LEP 2011. The LEP Maps contained in Attachment 2 have been amended to reflect this.

4.6.4. Clause and Map Changes

The following list identifies notable changes to the Written Instrument and Maps that have not been covered elsewhere in the report.

Written Instrument

- 1) Change Clause 1.3 by adding subclause to refer to the deferred lands in the LEP.
- 2) Change Clause 5.9 by deleting subclause (9)

The purpose of this change is to permit the clearing of vegetation using the controls of the *Native Vegetation Management Act*.

- 3) Clause 6.5 Biodiversity

Change the name of the Map so that it indicates "environmentally sensitive land". The purpose of this change is to try to better reflect the importance of the land and incorporate wording used elsewhere in the *Environmental Planning & Assessment Act* including the State Environmental Planning Policies - Major Development 2005 and Exempt and Complying Development Codes 2008.

- 4) Schedule 1 - Additional Permitted Uses

Add 1 Liddell Street, Shellharbour (The Shellharbour Club) to this Schedule so that a registered club is a use permitted with consent on this land.

- 5) Request the Department of Planning & Infrastructure update the Written Instrument to reflect the Government approved changes that have occurred to the template since the LEP was reported to Council in October 2010.

Maps

- 6) Make all of Lot 201, DP 1111193, Boomerang Avenue, Albion Park Rail (HARS site) SP1 Air transport facility instead of part SP1 Air transport facility and part IN1 General Industry.

- 7) Removed building height, minimum lot size and floor space ratio controls over some RE1 Public Recreation zoned land so that they are the same as the majority of the RE1 zoned land.
- 8) Adjusted mapping layers so that they complement the zoning information. In some instances controls such as building height, minimum lot size and floor space ratio did not exactly match the location of the underlying zone. These are listed in full in Attachment 14.
- 9) A Child care centre has been added to the list of purposes included in the SP1 zone used for the Catholic Church site at 247 - 251 Tongarra Road, Albion Park.
- 10) The floor space ratio for 139 - 141 Tongarra Road, Albion Park has been increased from 0.5:1 to 1.5:1. The land is currently zoned 3(a) General Business in Shellharbour LEP 2000. The land was rezoned from Residential to Commercial by an amending LEP on 20 March 2008. A development consent was granted in July 2009 (DA 504/2008) for a commercial building on the site.

Draft Shellharbour LEP 2011 proposes a B2 Local Business zone. Other B2 land in the locality has a floor space ratio of 1.5:1 and this land should have the same ratio.

- 11) A small section of land in Lot 1, DP 996926, Tongarra Road, North Macquarie is zoned SP2 Classified Road. This property is part of the Calderwood development site and the only planning controls that apply to this site are in State Environmental Planning Policy (Major Development) 2005. This zone needs to be deleted from this property.
- 12) Changed that part of Lot 2043, DP 1051789 zoned B1 Neighbourhood Centre to R2 Low Density Residential.

The B1 zone was based on the original location of the possible Flinders railway station. The station is now proposed to be located 300 metres south and the B1 zone is no longer applicable. The change to R2 has the concurrence of Landcom, the owner of the land.

- 13) 57 Buckleys Road, Dunmore. The E2 Environmental Conservation zone as exhibited has changed to E3 Environmental Management. The E3 Environmental Management Zone as exhibited has changed to RU1 Primary Production.

5. Legal, Financial and Future Implications

5.1. Legal & Policy Implications

A local environmental plan is a legal document that regulates land use and therefore has significant legal and policy implications. The plan making process is resource intensive and involves Council as well as the State government. Ultimately it is the NSW Minister for Planning who makes the plan which is then published in the NSW Government Gazette. This statutory process reflects the importance of an LEP and the decision making that has to be made during its preparation.

Council must comply with the provisions of the Environmental Planning and Assessment Act and associated Regulations and Directions. Of particular importance to plan making are Section 117 Directions. Under Section 117 of the Act, the Minister for Planning can issue Directions that require councils to consider particular principles, aims, objectives and policies. Council's assessment of its compliance with relevant Section 117 Directions is contained in Attachment 11 of this report.

State Environmental Planning Policies (SEPPs) deal with issues significant to the people and the State of NSW. These policies are made by the Minister for Planning. The SEPPs which substantially govern the content and operation of the Draft Shellharbour LEP 2011 have been considered in the preparation of this LEP. This assessment is contained in Attachment 12 of this report.

5.2. The Legal Context for Decision Making and Subsequent Plan Amendments

It is important for Council to understand the legal context in which it is considering the Draft Shellharbour LEP 2011 and any changes it wishes to make.

The NSW Land & Environment Court recently gave a judgement on the validity of making changes to a Draft LEP after it has come off public exhibition. The judgement is known as "The Friends of Turramurra v Minister for Planning".

The judgment by Justice Craig is very complex and comprehensive. As a result much of the discussion below is based on an information paper prepared on the court judgment. The information paper focuses on the salient issues for Council that arise from the judgement.

In *Friends of Turramurra Inc v Minister for Planning*, the Court considered the validity of the *Ku-ring-gai Local Environmental Plan (Town Centres) 2010* made by the Minister for Planning on 25 May 2010.

The "Friends" took proceedings in the Land and Environment Court seeking a declaration that the Centres LEP was invalid because substantial amendments were made to the draft LEP after public exhibition of the plan, and the draft plan ought to have been re-notified. It claimed that the absence of re-notification, invalidated the LEP.

Justice Craig found in favour of the "Friends" and made an order declaring that the LEP has no legal force or effect.

The Court recognised that both the planning authority and the Minister had power under the *Environmental Planning and Assessment Act* to amend a draft LEP post exhibition and that the decision to re-notify the amended draft LEP was discretionary. However, the Court held that the discretion is not unfettered.

There is a balance, the Court said, between a response to submissions and the need to ensure that the end product is not so different "in important respects" from the draft instrument that has been exhibited. The determination as to where this balance lies, the Court said, involves a consideration of the amendments and their significance in the

context of the instrument as a whole. There is no "bright line" that determines the point beyond which amendments will require the altered draft to be re-advertised.

The Court held that removing the prescriptive controls in the Centres LEP had a different legal and practical consequence from that which would flow from the draft. In other words, "the amendment made the planning law substantially different" from that which had been the subject of public exhibition.

The Court held that it was necessary to consider the "cumulative impact" of the alterations. When the amendments were considered in their totality, the Centres LEP made on 25 May 2010 was not the outcome of the Pt 3 Div 4 process. The Court stopped short of saying that re-notification of the amendments would have cured any potential invalidity. Re-notification may not be sufficient in all circumstances. It may be necessary in those circumstances to restart the plan making process afresh.

Council planning staff have had discussions with officers from NSW Department of Planning and Infrastructure in relation to the court judgement. The Department advised that there were a number of critical issues for Council and the Department when considering post exhibition amendments to Draft Shellharbour LEP 2011.

- What is the magnitude of the proposed changes?
- What is the cumulative impact of the changes?
- Do the changes result from a legally lodged public submission?
- Did a government agency request the changes as part of consultations?
- Would someone have made a submission if they had known about the proposed change?
- Are the land owners aware of the change and what is their opinion?

It should also be noted that it is not just Council that has to be agreeable to any changes. It is ultimately the Minister who makes the LEP, on the advice from his Department and Parliamentary Counsel. Conversely the Minister or the Parliamentary Counsel can make changes without seeking Council's endorsement. Usually these are generally of a minor nature that does not significantly affect the intention of the plan.

It is important to note Council has the ability to make changes to the Draft Shellharbour LEP 2011 but any changes should be made in the context of the above advice.

5.3. Planning Proposals and the Gateway Process

Draft Shellharbour LEP 2011 will become Shellharbour LEP 2012 once it is finalised and gazetted. Council can initiate amendments to the gazetted LEP as and when it considers it appropriate. Often this is triggered by a developer or land owner requesting what was commonly referred to as a "rezoning request".

The *Environmental Planning and Assessment Act* was revised in 2009 and a "rezoning request" is now called a "Planning Proposal" and goes through a "Gateway" process. A

planning proposal is a document that outlines the intended effect of amending the LEP and the justification for doing so. It is the first step in the LEP making or amending process.

When considering this report and the public submissions on Draft Shellharbour LEP 2011, Councillors may support some of the submissions that are too much of a departure from the exhibited Draft Shellharbour LEP 2011 to be included now but worthy of further consideration.

If this is the case, Council could identify the specific submissions and resolve the authors be encouraged to have further discussions with Council officers about the possibility of lodging a planning proposal for Council's consideration.

As part of the Council officer consideration of the public submissions, some submissions requested changes to the exhibited Draft Shellharbour LEP 2011 that have merit but are too much of a departure from the exhibited Draft Shellharbour LEP 2011 to be considered now. Commentary on those submissions can be found in Attachments 3, 4, 5 and 6.

5.4. Financial/Resources Implications

The development of a comprehensive LEP for a whole local government area as diverse as Shellharbour is a major undertaking. Council has committed substantial and sustained resources to this project over a number of years.

While Council is the main contributor of finances and resources to the project, the NSW Department of Planning and Infrastructure has also assisted financially through the Planning Reform Fund and regularly provided planning advice through their regional office in Wollongong.

6. Conclusion

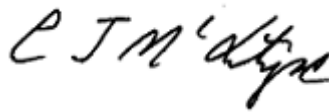
The preparation of Draft Shellharbour Local Environmental Plan 2011 has been a major undertaking involving Council, the community and key State government departments. Council's adoption of the plan will bring the introduction of a contemporary planning system for the local government area one step closer. Combined with the forthcoming Shellharbour Comprehensive Development Control Plan, Council will be better placed to assist the community in achieving its overall vision for Shellharbour as contained in our Community Strategic Plan. That is, being *"a connected community working together to create a safe, sustainable future that provides opportunities for all to achieve their potential"*.

7. Recommendation

That Council:

1. In accordance with the provisions of the *Environmental Planning and Assessment Act*, adopt Draft Shellharbour Local Environmental Plan 2011 as contained in Attachments 1 and 2 of this report.
2. Authorise the General Manager to submit the Draft Shellharbour Local Environmental Plan 2011 to the Director General of the NSW Department of Planning and Infrastructure along with all reports and information required under the provisions of the *Environmental Planning and Assessment Act*.
3. Delegate to the General Manager the authority to make minor changes to the adopted Draft Shellharbour Local Environmental Plan 2011 as required by the Director General or Parliamentary Counsel prior to the plan being made and gazetted.
4. Notify all persons who have made submissions on the Draft Shellharbour Local Environmental Plan 2011 of Council's resolution.

Approved for Council's consideration: _____



Attachments

Note: No attachments have been provided with the printed business paper. All attachments are available to view on Council's website or at Level 2, Council's Administration building.

Attachment 1 - Draft Shellharbour LEP 2011 - Written Instrument

Attachment 2 - Draft Shellharbour LEP 2011 - Maps

Attachment 3 - Government Agency Submission Table

Attachment 4 - General Submission Table

Attachment 5 - Urban Fringe Submission Table

Attachment 6 - Heritage Submission Table

Attachment 7 - Heritage Consultant Report

Attachment 8 - Building Heights Diagram

Attachment 9 - Map of Albion Park Town Centre

Attachment 10 - Illawarra Regional Strategy Compliance Table

Attachment 11 - Section 117 Direction Compliance Table

Attachment 12 - State Environmental Planning Policy Compliance Table

Attachment 13 - Table of Changes to Written Instrument - Draft Shellharbour LEP 2011

Attachment 14 - Table of Changes to Maps - Draft Shellharbour LEP 2011