

**Minutes of the Ordinary Meeting  
of Shellharbour City Council  
held at the Council Chambers, Council Administration Centre  
Shellharbour City Centre  
on Tuesday 30 October 2018 commencing at 6.30 pm**

**Present**

Mayor, Councillor	M Saliba
Deputy Mayor, Councillor	J Murray
Councillor	N Cattell
Councillor	M Hamilton
Councillor	K Marsh
Councillor	P Moran
Councillor	R Petreski

**In attendance**

General Manager	C McIntyre
Acting Director Council Sustainability / Chief Financial Officer	G Grantham
Director Community and Customers	M Boxall
Director Amenity and Assets	B Stewart
Executive Manager / Public Officer	F Lepouras
Group Manager City Development	G Meredith
Group Manager City Planning	G Hoynes
Manager Property Services	D Flanagan
Airport Manager	J Barnden
Media Officer	K Wells
Senior Executive Assistant (Minute Taker)	L Davey
Councillor Support Officer	J Frasca

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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 and Emergency Plan Statement**

The Mayor read the usual advice regarding the webcasting of the meetings of the Council and the emergency plan for Council Meetings.

### **2. Apologies**

Nil

### **3. Leave of Absence**

Nil

### **4. Confirmation of Minutes**

#### **4.1 Ordinary Meeting 16 October 2018**

232 RESOLVED: Petreski/Marsh

That the Minutes of the Ordinary Council Meeting held on 16 October 2018 as circulated be taken as read and confirmed as a correct record of proceedings.

CARRIED UNANIMOUSLY

### **5. Declarations of Interest**

#### **General Manager Carey McIntyre:**

Item 6.1 General Manager's Performance – Twelve Month Review

#### **Nature of Interest:**

The General Manager declared a pecuniary interest for this item as his contract of employment will be discussed. The General Manager will absent himself from the Chamber during discussion on this item.

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

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

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

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

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

**CONFIDENTIAL ITEMS**

**6.1 General Manager's Performance - Twelve Month Review (11121360)**

**Reason for Confidentiality**

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

- (a) personnel matters concerning particular individuals

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

## **Declassification of this Report**

The report will not be declassified.

## **7. Condolences**

The Council acknowledged the following deaths in the Local Government area.

Mr Joseph Huisman	of	Albion Park Rail
Mrs Jean Smith	of	Albion Park Rail
Mr Warren Keith Ryan	of	Blackbutt
Mr Lindsay Rowland	of	Lake Illawarra
Ms Sharon Carr	of	Lake Illawarra
Mr Allan Anthony Rankin	of	Lake Illawarra
Mr Esca Thomas Chinnock	of	Mount Warrigal
Mr Tony Galea	of	Mount Warrigal
Mr Ian Perry	of	Mount Warrigal
Mrs Daphne Jean Carey	of	Shellharbour
Ms Kathy Minns	of	Warilla
Ms Gwen Rugg	of	Warilla

233 A Motion of condolence was passed by all present standing for one minute's silence.

## **8. Mayoral Statements / Reports / Presentations**

The Mayor outlined the events she has attended since 26 September 2018:

26/9/18	Corpus Christi Year 12 Graduation Presentation and Ceremony
27/9/18	Road opening of new intersection Addison Street Flinders Public School – Beverley Whitfield Awards Community meeting at Warilla Surf Club
28/9/18	National Police Remembrance Day
29-30/9/18	ALGWA Executive Meeting in Blacktown

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3/10/18	Raising of the flags at Shellharbour North Beach
	Centenary Hall relaunch morning tea
4/10/18	Southern Youth and Family Services Awards Night
5/10/18	LGNSW Board Meeting
15-20/10/18	Alliance for Healthy Cities Global Conference in Kuching
21-24/10/18	2018 Local Government NSW Conference
25/10/18	Grand opening of Woolworths and speciality shops at Shell Cove Town Centre
	Launch of Fly Corporate Services
26/10/18	Shell Cove Public School – Beverley Whitfield Awards
27/10/18	Hay a day event
	BBQ at Tullimbar
28/10/18	Dogs Day Out

The Mayor welcomed Mr Gareth Ward MP, Member for Kiama and Parliamentary Secretary for the Illawarra and South Coast, who was present in the public gallery.

### **9. Mayoral Minutes**

#### **9.1 Appointment of Native Title Manager (Attachment 1)**

234 RESOLVED: Mayor Saliba

That Council:

1. nominate the Manager Property Services as Council's Native Title Manager and the Executive Manager as the Alternate Native Title Manager.
2. endorse the General Manager to advise the Minister of Industry and Forestry of the appointments accordingly.

CARRIED UNANIMOUSLY

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### 10. Councillors' Statements / Reports

Councillor Marsh provided details of the Shellharbour Remembers Centenary of Armistice Exhibition which will be officially launched on 5 November 2018 and encouraged the community to view the exhibition.

Councillor Marsh referred to the opening of The Waterfront Town Centre and the job opportunities this has provided to the community.

Councillor Marsh also outlined her attendance at a public meeting with Tullimbar residents on Saturday, which the Mayor also attended.

Councillor Petreski provided details of his attendance at the Illawarra Business Awards on 19 October 2018, which he attended on behalf of the Mayor.

Councillor Cattell provided details of his attendance at the Lake Illawarra Local Area Command Police Open Day on 27 October 2018, which he attended on behalf of the Mayor.

### 11. Reports

Note: The Addresses to Council Forum was held prior to the Council Meeting from 4.30pm to 5.30pm.

Agenda Item No & Title	Page Ref	Name
<i>Council Sustainability Directorate</i>		
11.2.2 Lot 10 DP 1157377 Airport Road Albion Park Rail – Illawarra Regional Airport – Lease Agreement – Illawarra Flyers Aircraft Storage Incorporated	16	John Cleary

MOTION: Moran/Marsh

That Standing Orders be suspended in order for Item 11.2.2, the subject of Addresses to Council, and Item 15.2 to be considered here in the agenda.

The Mayor stated that she does not accept the Motion. Councillor Moran then MOVED a POINT of ORDER.

Councillor Murray FORESHADOWED a MOTION that should the MOTION be lost, he would move the following:

That Standing Orders be suspended in order for Item 11.2.2, the subject of Addresses to Council, to be considered here in the agenda.

The MOTION was PUT

The MOTION on being PUT to the Meeting was LOST 3 / 4

FOR VOTE - Cr Cattell, Cr Marsh, Cr Moran

AGAINST VOTE - Cr Hamilton, Cr Murray, Cr Petreski, Cr Saliba

The FORESHADOWED MOTION then became the MOTION, was seconded by Cr Petreski, and on being put to the Meeting was CARRIED UNANIMOUSLY.

235 RESOLVED: Murray/Petreski

That Standing Orders be suspended in order for Item 11.2.2, the subject of Addresses to Council, to be considered here in the agenda.

CARRIED UNANIMOUSLY

**11.2.2 Lot 10 DP 1157377 Airport Road Albion Park Rail - Illawarra Regional Airport - Lease Agreement - Illawarra Flyers Aircraft Storage Incorporated Report (11119031)**

MOTION: Murray/Petreski

That:

1. Council terminate the current and further consecutive five (5) year lease agreement with Illawarra Flyers Aircraft Storage Incorporated (IFAS Inc) for the occupation of part Lot 10 DP 1157377 Airport Road, Albion Park Rail, Illawarra Regional Airport.
2. Council enter into a series of four five (5) year consecutive lease agreements with Illawarra Flyers Aircraft Storage Incorporated (IFAS Inc) for the occupation of part Lot 10 DP 1157377 Airport Road, Albion Park Rail, Illawarra Regional Airport, for the use of light aircraft storage for non-commercial purposes as well as ancillary aircraft assembly, rigging and maintenance on the basis of annual rent of \$8,209.73 plus GST and increase annually by CPI and rent review every five (5) years.
3. Illawarra Flyers Aircraft Storage Incorporated (IFAC Inc) be responsible for the legal and other associated costs in entering into a series of four five (5) year consecutive lease agreements.

4. The Mayor and General Manager, or his nominated delegate, be authorised to sign any documentation, including affixing of the Seal of Council, associated with the series of four five (5) year consecutive lease agreements, with Illawarra Flyers Aircraft Storage Incorporated (IFAC Inc) for the occupation of part Lot 10 DP 1157377 Airport Road, Albion Park Rail, Illawarra Regional Airport.

Councillor Moran proposed the following addendum to part 2 of the recommendation, which was accepted the Mover and Seconder:

Council notes the current market rental amount of \$14,470 which has been reduced by \$6,260.27 to take into account the infrastructure undertaken by Illawarra Flyers Aircraft Storage Incorporated (IFAS Inc).

236 RESOLVED: Murray/Petreski

That:

1. Council terminate the current and further consecutive five (5) year lease agreement with Illawarra Flyers Aircraft Storage Incorporated (IFAS Inc) for the occupation of part Lot 10 DP 1157377 Airport Road, Albion Park Rail, Illawarra Regional Airport.
2. Council enter into a series of four five (5) year consecutive lease agreements with Illawarra Flyers Aircraft Storage Incorporated (IFAS Inc) for the occupation of part Lot 10 DP 1157377 Airport Road, Albion Park Rail, Illawarra Regional Airport, for the use of light aircraft storage for non-commercial purposes as well as ancillary aircraft assembly, rigging and maintenance on the basis of annual rent of \$8,209.73 plus GST and increase annually by CPI and rent review every five (5) years. Council notes the current market rental amount of \$14,470 which has been reduced by \$6,260.27 to take into account the infrastructure undertaken by Illawarra Flyers Aircraft Storage Incorporated (IFAS Inc).
3. Illawarra Flyers Aircraft Storage Incorporated (IFAC Inc) be responsible for the legal and other associated costs in entering into a series of four five (5) year consecutive lease agreements.
4. The Mayor and General Manager, or his nominated delegate, be authorised to sign any documentation, including affixing of the Seal of Council, associated with the series of four five (5) year consecutive lease agreements, with Illawarra Flyers Aircraft Storage Incorporated (IFAC Inc) for the occupation of part Lot 10 DP 1157377 Airport Road, Albion Park Rail, Illawarra Regional Airport.

CARRIED UNANIMOUSLY



237 RESOLVED: Murray/Petreski

That Standing Orders be resumed.

CARRIED UNANIMOUSLY

## **11.1 General Manager**

### **11.1.1 Christmas / New Year Closure of Council Operations (11120501)**

238 RESOLVED: Hamilton/Cattell

1. That Council receive and note the usual closure of council operations, other than essential services, between Christmas and New Year.
2. That Council approve the additional day closure of Council's corporate operations, other than essential services, on Christmas Eve, 24 December 2018.

CARRIED UNANIMOUSLY

## **11.2 Council Sustainability Directorate**

### **11.2.1 Disposal of Land update - Benson Basin - Contract for sale of Part of Lot 2000 DP 717478 Wattle Road, Shellharbour City Centre (11118327)**

MOTION: Murray/Cattell

That Council:

1. Receive and note the information contained within the report titled 'Disposal of Land update - Benson Basin – Contract for sale of Part of Lot 200 DP 717478 Wattle Road, Shellharbour City Centre.
2. Continue with the current Contract for Sale for Part of Lot 2000 DP 717478 Wattle Road, Shellharbour City Council as per the Council resolution of 13 December 2016.

Councillor Marsh requested a personal explanation in relation to the Mayor's comments during debate. The Mayor did not allow Councillor Marsh to give a personal explanation.

239 The MOTION on being PUT to the Meeting was CARRIED 5 / 2

FOR VOTE - Cr Cattell, Cr Hamilton, Cr Murray, Cr Petreski, Cr Saliba  
AGAINST VOTE - Cr Marsh, Cr Moran

**11.2.2 Lot 10 DP 1157377 Airport Road Albion Park Rail - Illawarra Regional Airport - Lease Agreement - Illawarra Flyers Aircraft Storage Incorporated Report (11119031)**

This item was dealt with earlier in the agenda as it was the subject of Addresses to Council prior to the meeting (Refer to Resolution No. 236)

**11.3 Community and Customers Directorate**

**11.3.1 Response to Question on Notice and Mayoral Minute Resolution - Shellharbour Local Environmental Plan 2013 (11090423)**

240 RESOLVED: Hamilton/Murray

That Council receive and note the report titled '*Response to Question on Notice and Mayoral Minute Resolution - Shellharbour Local Environmental Plan 2013*'.

CARRIED UNANIMOUSLY

**11.3.2 Provision of synthetic softfall material and all-inclusive playground equipment in play spaces (11100967)**

241 RESOLVED: Marsh/Petreski

That Council receive and note the report titled 'Provision of synthetic softfall material and all-inclusive playground equipment in play spaces'.

CARRIED UNANIMOUSLY

**11.3.3 Appointment of Community Members to the Lake Illawarra Estuary Management Committee (11119575)**

242 RESOLVED: Murray/Cattell

That Council endorse the appointment of Col Wilton and John Davey as Shellharbour City Council Community Representatives to the Lake Illawarra Estuary Management Committee, with the length of appointment being twelve months or until the State Minister endorses the Coastal Management Program for Lake Illawarra – whatever comes first.

CARRIED UNANIMOUSLY

**11.4 Amenity and Assets Directorate**

Nil

**12. Committee Recommendations**

Nil

**13. Items for Information**

Nil

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

Nil

**15. Notices of Motion**

**15.1 Notice of Motion submitted by Cr Kellie Marsh: Solar Panels for Shellharbour Stadium (11118431)**

243 RESOLVED: Marsh/Moran

That Council officers investigate the cost and viability of installing solar panels for the Shellharbour Sports Stadium.

CARRIED UNANIMOUSLY

**15.2 Notice of Motion submitted by Cr Kellie Marsh and Cr Peter Moran: DA 249/2018 Proposed 37 Lot Residential Subdivision within Tullimbar Village (11120498)**

244 RESOLVED: Marsh/Saliba

That Development Application DA249/2018 be reported to the elected Council for its determination after being assessed by Council's staff.

CARRIED UNANIMOUSLY

**16. Questions on Notice (must be submitted in writing)**

Nil

**17. Urgent Business**

Nil

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

The Mayor asked whether anyone in the public gallery wish to speak on the reasons why Item 6.1 General Manager's Performance – Twelve Month Review should not be held in Confidential Session (Closed to the Public). No members of the public expressed an interest in addressing the Council.

245 RESOLVED: Murray/Marsh

1. That Council resolve into Committee of the Whole (in Confidential Session) to consider the above business as listed, together with any late reports tabled at the meeting.
2. That pursuant to Section 10A(1-3) of the *Local Government Act 1993*, the press and public be excluded from the proceedings on the basis that the business to be considered is classified confidential under the provisions of Section 10A(2)(a) of the Act as outlined above.
3. That the correspondence and reports relevant to the subject business be withheld from access to the press and public in accordance with Section 11(2) of the *Local Government Act 1993*.

CARRIED UNANIMOUSLY

**Meeting adjourned at 7.37pm**

**Meeting resumed at 8.17pm**

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

The following Recommendation to Council from the Committee of the Whole (Confidential) was read to the Meeting by the Executive Manager/Public Officer:

**6.1 General Manager's Performance - Twelve Month Review (11121360)**

COMMITTEE RECOMMENDATION:

1. That the report of the General Manager's Performance Twelve Month Review 2017/18 be received and noted.
2. That the General Manager's Performance Review Panel recommendations as outlined in the 2017/2018 Twelve Month Review report be endorsed.

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3. That the General Manager's Performance Agreement 2017/18 presented to the Performance Review Panel be received and noted.
4. As per the Six Month and 12 Month Review report, Council enter into a new five (5) year performance based contract with the General Manager commencing in November 2018.
5. That the General Manager's mid-year review be conducted in February 2019.
6. That the Mayor or delegate and Council's External Facilitator, Stephen Blackadder from Blackadder Associates Pty Ltd negotiate the conditions of a performance based contract and enter into this contract with the General Manager for a period of five (5) years commencing in November 2018.
7. That it be noted in the opinion of the General Manager's Performance Review Panel, the General Manager Carey McIntyre is continuing to perform at a high level and the Council congratulates him on that performance.

The General Manager left the Chamber at 8.19pm.

246 RESOLVED: Murray/Marsh

That the Recommendations to Council from the Committee of the Whole Meeting held earlier today be adopted.

CARRIED 6 / 1

FOR VOTE - Cr Cattell, Cr Hamilton, Cr Marsh, Cr Murray, Cr Petreski, Cr Saliba

AGAINST VOTE - Cr Moran

The General Manager returned to the Chamber at 8.20 pm.

### **20. Consideration of Motions to Declassify Reports Considered in Closed Session**

Nil

**Meeting closed 8.21 pm**

#### **Attachment:**

1. 9.1 Mayoral Minute – Appointment of Native Title Manager

Attachment 1

1

**Subject 9.1 Mayoral Minutes: Appointment of Native Title Manager (11127386)**

To my fellow Councillors

**Mayoral Minute**

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**Summary**

The purpose of this Mayoral Minute is for Council to endorse the appointment of a Native Title Manager for Council.

The new *Crown Lands Management Act 2016* commenced on 1 July 2018. In accordance with Section 8.8 of the *Act*, Council needs to advise the Minister administering the *Crown Land Management Act* who they have engaged as Council's Native Title Manager.

Section 377(1)(s) of the *Local Government Act 1993* states that the making of an application, or the giving of a notice, to the Governor or Minister is a non-delegable function meaning a resolution of Council is required for such purposes. This report seeks the appropriate resolution.

**Background**

Native Title is how Australian law recognises the rights and interests that Aboriginal people and Torres Strait Islanders hold in land and waters under their traditional laws and customs.

Before the High Court's decision in *Mabo (Mabo v Queensland [No 2] (1992) 175 CRL 1)*, Australian law presumed that the Crown had acquired full title to the land in New South Wales. This presumption rested on the view that Australia was not "settled at law" – that it was terra nullius, or 'nobodies land' – before colonisation.

Native Title is how Australian common law recognises the rights and interests held by indigenous people.

Following *Mabo*, the Commonwealth Parliament passed the *Native Title Act* in late 1993, which was significantly amended in 1998 following the High Court decision in *WIK*. The *Act* as amended in 1998 essentially governs Native Title today.

The term "native title" is defined in s. 223 of the *NT Act (Cth)* as follows:

*The expression native title or native title rights and interests mean the communal, group or individual rights and interest of Aboriginal people or Torres Strait Islanders in relation to land or waters, where:*

- a) *The rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and*
- b) *Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and*
- c) *The rights and inters are recognised by the common law of Australia.*

**Native Title Managers for the purposes of the *Crown Land Management Act 2016***

A comprehensive review of Crown Land Management recommended that Council and Category 1 Crown Land Managers be enabled to manage Crown Land with less oversight from the Minister for Lands and Forestry (the Minister) and the NSW Department of Industry - Lands & Water (the Department).

The *Crown Land Management Act 2016 (CLM Act)* delivers on this recommendation by authorising Council and Category 1 Crown Land Managers to manage certain land that is dedicated or reserved as Crown land under a streamlined model that reduces red-tape and departmental oversight.

The review also recognised that the Commonwealth Native Title legislation needed to be considered in implementing the review recommendations.

The *CLM Act* includes specific provisions to facilitate compliance with the *Native Title Act 1993 (Cth) (NT Act)*.

#### **What are the new requirements?**

The *CLM Act* provides for Councils and category 1 Crown Land Managers to deal with Crown Land without the oversight of the Minister or the department. This makes it essential that these groups clearly understand and comply with their Native Title obligations.

Part 8 of the *CLM Act* provides that Council and category 1 Crown Land Managers must engage a qualified Native Title Manager to oversee and approve dealings that may affect Native Title to ensure they are valid under Native Title legislation.

#### **What is the role of a Native Title Manager?**

The Native Title Manager is required to provide advice for these kinds of dealings for Crown Land that is managed by a Council Manager or Category 1 Non-Council Manager, or vested in a Council under Division 4.2 of the *CLM Act*, unless the land is excluded land.

Native Title Managers are not required to establish whether Native Title rights and interests have been extinguished in relation to Crown Land.

#### **Who can act as a Native Title Manager?**

Only persons who maintain qualifications or have completed training approved by the Minister can provide advice as a Council Native Title Manager, as required by Part 8 of the *CLM Act*.

Council's Manager Property Services and Executive Manager completed the training approved by the Minister on 30 October 2017.

### **Recommendation**

That Council:

1. nominate the Manager Property Services as Council's Native Title Manager and the Executive Manager as the Alternate Native Title Manager.
2. endorse the General Manager to advise the Minister of Industry and Forestry of the appointments accordingly.

Approved for Council's consideration:



**Date of Meeting:** 30 November 2018

**Attachments**

Nil.