

PLAN OF MANAGEMENT

**STRONG RESERVE,
CROWN RESERVE 97478**

WARILLA



Adopted by Council 28 July 2022

**STRONG RESERVE,
CROWN RESERVE 97478**

WARILLA

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EXECUTIVE SUMMARY

This Plan of Management, adopted on 28/07/2022 by Shellharbour City Council, applies to Crown Reserve 97478 (part of Strong Reserve), Osborne Parade, Warilla. This Crown Reserve is part of a larger reserve of Council Community land known as Strong Reserve, however this Plan of Management (the Plan) only covers the Crown portion of land. The Crown reserve will be referred to as Strong Reserve in this Plan.

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

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

This Plan replaces the existing plan of management, previously adopted by Council for the land. It should be read in conjunction with any plan of management that applies to the remainder of Strong Reserve.

Acknowledgement of Country

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

PART 1: GENERAL INFORMATION

1. INTRODUCTION

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

1.1 Corporate objectives

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

Council's vision for Strong Reserve recognises the long-term use of the site, as socially, culturally and physically enhancing the community. The site will be managed and maintained according to the categorisation of Park as detailed in this Plan.

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

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

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

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

1.2 Review of this Plan

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

1.3 Community consultation

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

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

2. LAND DESCRIPTION

2.1 Land to which this Plan applies

This Plan applies to part of Strong Reserve situated on Crown reserve 97478, Osborne Parade, Warilla.

The reserve information is detailed below in Table 1.

Reserve Number	97478
Gazetted Date	12/10/1984
Reserve Purpose	Public Recreation
Land parcel/s	<ul style="list-style-type: none">• Lot 68 DP 238866• Lot 69 DP 238866• Lot 70 DP 238866• Lot 71 DP 238866
Area (Sqm)	3196
LEP 2013 zoning	RE1 Public Recreation
Assigned category/categories	Park

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

This Crown reserve is part of a larger reserve of Council Community land known as Strong Reserve, however this Plan only covers Crown Reserve 97478. The adjoining Council land for Strong Reserve is managed under a Community Land Plan of Management, prepared in accordance with the LG Act; please contact Shellharbour City Council for more information.

See Figure 1 below for land to which this Plan applies.



Figure 1 – Land to which this Plan applies

2.2 Owner of the land

Strong Reserve is owned by the NSW State Government (the Crown) and is managed by Shellharbour City Council as Crown Land Manager, under the CLM Act. There are restrictions on transfer and management of Crown land under section 2.12 and 3.22 of the CLM Act.

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



Figure 2 – Owners of the land

2.3 Categorisation of the reserve

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

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

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

- Park

Council currently manages and will continue to manage the reserve in a way that allows the public to utilise the site as for the purpose which is outlined in the core objectives of Park.

See Figure 3 below for land categories.



Figure 3 – Land categories

2.4 Zoning of the Reserve

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



Figure 4 – Land Zones.

The objectives of the RE1 zone in the LEP are:

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

Refer to the LEP for permissible uses in the RE1 zone and other attributes present on the site

2.5 Land comprising the habitat of endangered species or threatened species

There are no known records of threatened species or endangered ecological communities on the site.

2.6 Land containing significant natural features

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

2.7 Culturally significant land

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

Aboriginal Significance

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

Non-Aboriginal Significance

Strong Reserve is not identified as a significant item of Environmental Heritage under *Shellharbour Local Environmental Plan 2013* (LEP).

3. DEVELOPMENT AND USE

3.1 Overview

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

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

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

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

- Footpath – varying condition
- Signs – good condition
- Fencing – fair condition

Vegetation consists of mowed exotic parkland grasses and is in good condition.

3.3 Use of the land and structures as at the date of adoption of the Plan

Strong reserve's current use is park and shared-use pathway used by pedestrians and cyclists.

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

3.4 Permitted use

The purpose of Strong Reserve is for public recreation, the assigned category is Park. This purpose and category align with the reserve's past and current use and corporate objectives.

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

3.5 Further development

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

The general types of uses which may occur on community land categorised as Park, and the forms of development generally associated with those uses, are set out in a table in the Park category section in this Plan.

3.6 Scale and intensity

Strong reserve's current use is park and shared-use pathway. The intensity with which this reserve is used is dependent on varying factors such as weather, day of the week and holidays.

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

3.7 Leases, Licences and other Estates

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

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

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

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

3.8 Short Term Casual Purposes

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

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

3.9 Signs

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

3.10 Easements

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

3.11 Alcohol

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

3.12 Management actions

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

3.13 Fees and charges

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

4. ADDITIONAL MATTERS

4.1 Definitions

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

4.2 Native Title Assessment

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

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

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

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

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

4.3 Community Assistance

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

PART 2: DETAILED INFORMATION REGARDING CATEGORIES OF LAND

5. CATEGORY: PARK

5.1 Introduction

Strong Reserve is categorised as Park. The category of Strong Reserve is shown in Figure 3 – Land Categories.

The guidelines for categorisation of land as Park under clause 104 of the *Local Government (General) Regulation 2021* are if the land:

Is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.

This reserve contains a shared-use pathway and mowed grass. It is therefore categorised as Park.

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

- a) To encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and
- b) To provide for passive recreational activities or pastimes and for the casual playing of games, and
- c) To improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.

5.2 Key issues

The key issues associated with the land categorised as Park within Strong Reserve include but are not limited to:

Linkages to Other Land

The Crown land to which this plan applies, is part of a larger Council community land reserve. The Crown reserve incorporates sections of the shared use pathway linking through the remainder of the Council community reserve.

Coastal Zone

Shellharbour Coastal Zone Management Plan encompasses the reserve and should be read in conjunction with this Plan.

Acid Sulfate Soils

Class 4 Acid Sulfate Soils occur on the site. Any risk of exposure needs to be considered with any proposed works or developments.

5.3 Development and use

The current use of the land categorised as Park within Strong Reserve is public recreation, with pedestrian access and cyclists utilising the shared-use pathway.

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

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

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

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

Purpose/Use	Examples of development to facilitate uses
<ul style="list-style-type: none"> Active and passive recreation including children's play and cycling Group recreational use, such as picnics and private celebrations Eating and drinking in a relaxed setting Publicly accessible ancillary areas, such as toilets Festivals, parades, markets, fairs, exhibitions and similar events and gatherings Low intensity commercial activities (e.g. recreational equipment hire) Filming and photographic projects Busking Public address (speeches) Community gardening <p>NB: Some of the uses listed above require a permit from the council.</p>	<ul style="list-style-type: none"> Development for the purposes of improving access, amenity and the visual character of the park, e.g paths, public art, pergolas Development for the purposes of active recreation such as play equipment, exercise equipment, bike racks, half-court basketball courts, bocce courts Amenities to facilitate the safe use and enjoyment of the park e.g. picnic tables, BBQs, sheltered seating areas Kiosk or refreshment areas including external seating Lighting, seating, toilet facilities, courts, paved areas Hard and soft landscaped areas Storage sheds Car parking and loading areas Commercial development which is sympathetic to and supports use in the area, e.g. hire of recreation equipment Community gardens Heritage and cultural interpretation, e.g. signs Advertising structures and signage (such as A-frames and banners) that: <ul style="list-style-type: none"> - relate to approved uses/activities - are discreet and temporary - are approved by the council Bio-banking and carbon sequestration initiatives Water saving initiatives such as stormwater harvesting, rain gardens and swales Energy saving initiatives such as solar lights and solar panels Locational, directional and regulatory signage

Table 2 - Possible permissible use and development of community land categorised as Park by Council or the Community

5.3 Express authorisation of leases, licences and other estates – Park

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

Type of tenure arrangement	Maximum term	Examples of purposes for which tenure may be granted
Lease	As per statutory requirements	<ul style="list-style-type: none"> Kiosk areas, including seating and tables Management of court facilities hire or sale of recreational equipment
Licence	As per statutory requirements	<ul style="list-style-type: none"> outdoor kiosk seating and tables Management of court or similar facilities hire or sale of recreational equipment
Short-term licence	As per statutory requirements	<ul style="list-style-type: none"> the playing of a musical instrument, or singing, for fee or reward Engaging in a trade or business, such as community events, festivals, fairs, markets, auctions and similar activities The playing of a lawful game or sport The delivery of a public address, public performances Commercial photographic sessions Picnics and private celebrations such as weddings and family gatherings Filming sessions
Other estates		This PoM allows the council to grant 'an estate' over community land for the provision of public utilities and works associated with or ancillary to public utilities and provision of services, or connections for premises adjoining the community land to a facility of the council or public utility provider on the community land in accordance with the LG Act.

Table 3 – Leases, licences and other estates and purposes for which they may be granted for community land categorised as Park

5.4 Management framework for land categorised as Park

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

- Broad management issues,

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

Management Issues	s.36(3)(b) Objectives and performance targets	S. 36(3)(c) Means of achievement of objectives	s.36(3)(d) Manner of assessment of performance
Encourage use of the Reserve	To encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities.	Ensure pedestrians can access the open space unimpeded.	Park is well used by a range of user groups
Facilities on the Reserve	To provide for passive recreational activities or pastimes and for the casual playing of games.	Maintain pathway to an appropriate standard for use.	Facilities maintained as required. No negative reports from park users.
Improvements and maintenance to the Reserve	To improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.	By generally maintaining the area in a neat, tidy and safe condition in accordance with Council's Service Level Agreement (SLA). Undertake appropriate maintenance to facilities. By carrying out foreshore maintenance and restoration work in accordance with Council's available resources.	Park is well maintained, neat, tidy and safe. The reserve is maintained in accordance with Council's SLA for the site. Park is well used by a range of user groups. Inspections are made by appropriate Council staff when required.

Table 4 - Action Plan for land categorised as Park.

APPENDIX 1: PLAN OF MANAGEMENT LEGISLATIVE FRAMEWORK

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

Local Government Act 1993

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

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

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

- a. the category of the land,
- b. the objectives and performance **targets** of the plan with respect to the land,
- c. the means by which the council proposes to **achieve** the plan's objectives and performance targets,
- d. the manner in which the council proposes **to assess its performance** with respect to the plan's objectives and performance targets,

and may require the prior approval of the council to the carrying out of any specified activity on the land.

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

A. must include a description of:

- (i) the condition of the land, and of any buildings or other improvements on the land, as at the date of adoption of the plan of management, and
- (ii) the use of the land and any such buildings or improvements as at that date, and

B. must:

- (i) specify the purposes for which the land, and any such buildings or improvements, will be permitted to be used, and
- (ii) specify the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise, and
- (iii) describe the scale and intensity of any such permitted use or development.

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

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

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

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

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

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

Classification of public land

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

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

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

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

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

The classification or reclassification of council-owned public land will generally be achieved by a Local Environmental Plan (LEP) or by a resolution of council in accordance with sections 31, 32 and 33 of the LG Act. If land is not classified by resolution within a three-month period from

acquisition it automatically becomes community land, regardless of whether it satisfies the objectives for community land as outlined in the LG Act.

For Crown land, Council cannot reclassify community land as operational land without consent of the minister administering the CLM Act.

Crown Land Management Act 2016

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

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

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

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

Principles of Crown land management

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

Crown land management compliance

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

Native Title Act 1993

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

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

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

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

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

Council plans and policies relating to this plan of management

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

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

Shellharbour Local Environmental Plan 2013 (LEP)

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

Shellharbour City Local Strategic Planning Statement 2020

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

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

Shellharbour Open Space and Recreation Needs Study and Strategy 2020

Council's Open Space and Recreation Needs Study and Strategy guides how Council will plan,

implement and manage current and future open spaces and sport, recreation and aquatic facilities across the Shellharbour Local Government Area. This study provides a hierarchy of parks which assists with decision making and planning.

Lake Illawarra Coastal Management Program 2020 - 2030

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

Other state and Commonwealth legislation

NSW state legislation

Environmental Planning and Assessment Act 1979

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

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

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

Aboriginal Land Rights Act 1983

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

National Parks and Wildlife Act 1974

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

Biodiversity Conservation Act 2016

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

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

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

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

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

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

Fisheries Management Act 1994

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

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

Rural Fires Act 1997

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

Water Management Act 2000

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

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

Heritage Act 1977

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

Crown land 2031: State Strategic Plan for Crown land

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

Commonwealth legislation

Environmental Protection and Biodiversity Conservation Management Act 1999

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

Telecommunications Act 1997

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

State Environmental Planning Policies

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 - Vegetation in Non-Rural Areas

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

Chapter 6 - Bushland in urban areas

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

Chapter 8 - Sydney Drinking Water Catchment

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

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 -Infrastructure

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

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 - Coastal Management

This policy applies to land within the coastal zone.

Other relevant legislation, policies and plans

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

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

APPENDIX 2: ABORIGINAL INTERESTS IN CROWN LAND

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

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

Native Title

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

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

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

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

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

For further information about native title and the future acts framework see the [Crown lands website](#).

Native Title Claim of the South Coast People

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

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

Aboriginal Land Rights

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

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

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

APPENDIX 3: EXISTING LEASES AND LICENCES ON THE SITE

Group/organisation	Type of Tenure	Term
Nil		

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