

**Subject 10.3.3 Shellharbour Local Environmental Plan 2013
Planning Proposal No. 3/2019 Lot 300 DP 1223037
Tongarra Road, Croom (11524731)**

To the Chief Executive Officer

Directorate: **Community & Customers**
Group: **City Planning**

Manager: Geoff Hoynes – Group Manager City Planning
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Summary

The purpose of this report is to seek Council's resolution to prepare a Planning Proposal to amend *Shellharbour Local Environmental Plan 2013* (Shellharbour LEP 2013) by rezoning Lot 300 DP 1223037 to permit an addition use on the land being Function Centre. The land is currently zone SP1 Special Activities (Cemetery/Crematorium) and RE1 Public Recreation.

The location and the current zoning of Lot 17 DP 1168920 are shown in (**Attachment 1**).

This Planning Proposal was initiated by the landowner.

The report also recommends that the Planning Proposal be submitted to the NSW Department of Planning, Industry and Environment (DPIE) seeking a Gateway determination. A copy of this report will form part of Council's submission to DPIE.

Background

A planning proposal is a document that explains the intended effect of a proposed amendment(s) to a Local Environmental Plan (LEP), in this case the Shellharbour LEP 2013, and sets out the justification for making the amendment.

This Planning Proposal will involve the following five key steps:

1. *Planning proposal* – Council is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan.
2. *Gateway* – The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities, and if necessary, the proposal is varied.
3. *Consultation* – if required by the gateway determination, the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing.
4. *Assessment* – Council will consider any submissions objecting and the proposal may be varied as necessary prior to adoption. Parliamentary Counsel then prepares a draft local environmental plan – the legal instrument.

5. *Decision* – with the Minister's (or delegate's) approval the plan becomes law and is published on the NSW legislation website.

Council is considering Step 1.

Planning Proposal – Additional Permitted Use (Function Centre) PP0003/2019

This is the subject of this report and seeks to amend Shellharbour LEP 2013 to include an additional permitted use being 'function centres'. The intention of this planning proposal is to utilise the chapel building (approved under DA 153/2015) for both its approved use and as a function centre for weddings and the like. The flexibility to use the facility as both a chapel and function centre ensures the commercial viability of the project given the substantial outlay for both the building and the associated infrastructure. It is still intended to utilise the building for its approved purpose, however, given its substantial capacity it will primarily cater for larger funerals.

The planning proposal seeks to amend the SLEP 2013 to allow 'function centre' as an additional permitted use within the site. The SLEP 2013 defines 'function centre' as follows:

Function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

The planning proposal seeks to amend the SLEP 2013 to achieve the proposed outcome for the subject site by:

1. Amending Schedule 1, to include a 'function centre' as an additional permitted use on part of the site, as follows:

9. *Use of certain land at Croome Road and Tongarra Road*

- (1) *This clause applies to land in Zone SP1 Special Activities being Lot 300 DP1223037 as shown edged heavy red identified as "9" on the Additional Permitted Uses Map.*
 - (2) *Development for the purposes of 'function centres' is permitted with development consent.*

2. Amending the Additional Permitted Uses Map (Sheet APU_014 and 018) by colouring and numbering the subject site. (Attachment 2 &3)

Existing Controls

The subject land is currently zoned part SP1 Special Activities 'Cemetery/ Crematorium' and part RE1 Public Recreation under Shellharbour LEP 2013. The SP1 Special Activities zone was placed on the land by Council to enable the development of a proposed Crematorium and Memorial Gardens. The Standard Instrument LEP (Shellharbour LEP 2013) also permits aquaculture as well as information and educational facilities on land zoned SP1. The land was zoned SP1 at the request of the landowner in SLEP 2013.

Current Approvals and Applications

The subject site currently has two Planning Proposal requests being considered concurrently by Council. There is also an undetermined Development Application that is being considered

by the Land and Environment Court as the applicant has lodged a deemed refusal appeal to the Court. Furthermore, there is a previous Development Application that has been approved by Council. The applicant states that the long-term vision for the site has been guided by a master plan approach that has considered the opportunities and constraints of the site and context and character of the area in arriving at the proposed scheme. All components of the redevelopment of the site have been considered together in arriving at the proposed scheme and have been separated according to the appropriate planning pathways under the EP&A Act 1979.

At key stages in the design process Council were consulted in arriving at the concept proposed. Council officers have raised concerns regarding the compatibility of the proposed uses as well as the implications of assessing each application in isolation during pre-lodgement meetings. It is worth noting that it cannot be assumed that the development approvals or applications currently being assessed will be acted upon. Listed below are the Development Applications and Planning Proposals on the subject site, both approved and under consideration by Council, that are relevant to the current proposal.

Development Application – DA 153/2015

In February 2019, Council granted consent for the construction of a crematorium, chapel and memorial home:

- Chapel with 220 seats, foyer, offices, staff amenities and garage/storeroom;
- Memorial home; and
- Crematorium with cool room, offices and associated staff facilities.

Under this approval, upgrades were approved to the intersection of Tongarra Rd and Croome Road. Furthermore, there was a roundabout approved at the intersection of the access point to the site and Maple Street. These works were approved in consultation with the then Roads and Maritime Service (now Transport for NSW). Supporting this current Planning Proposal to rezone to residential land is a Traffic Impact Assessment (TIA). The TIA has considered the total vehicular movements generated by the complete redevelopment of the site with regard to impacts on the State and Local road network. The report concludes that the approved intersection upgrades are sufficient to cater for the increase in traffic generation for the complete redevelopment of the site.

Development Application – DA0682/2019

In December 2019, a development application to be undertaken in stages was lodged with Council for a cemetery development comprising the following buildings:

- Building B - Chapel with catering area;
- Building C - Memorial Home and associated gardens;
- Building D - Memorial Home Office; and
- Building E – Administration, Garage and Mortuary.

The chapel (Building B) will contain seating for 108 people, which is a substantial decrease from the approved chapel which will contain seating for 220 people. Both chapels form part of the overall business plan and will be utilised to cater for funerals of different scales and needs, Building E will contain the administration for the business in a central location, a garage for the fleet of vehicles and a mortuary which expands upon the capacity approved under the DA153/2015. At the time of writing this report this application was not yet determined and was the subject of Court appeal proceedings instigated by the applicant.

Planning Proposal – Rezone to Residential Land PP0001/2020

This planning proposal seeks to rezone part of the subject site to R2 Low Density Residential. The land that is subject of this planning proposal is surplus to need for the purpose of a Cemetery or Crematorium development under the current planning controls.

Financial / Resources Implications

The Stage 1 Planning Proposal fee of \$4,176 has been paid. Should Council support the preparation of the Planning Proposal, the Stage 2 fee currently \$11,410 will need to be paid prior to sending the Proposal to the DPIE for Gateway determination.

Staff resources have and will be required to continue processing the Planning Proposal.

Legal and Policy implications

Should Council support the preparation of a Planning Proposal, the Planning Proposal will need to be sent to DPIE for Gateway assessment.

Environmental Planning & Assessment Act and Regulations

The Planning Proposal will need to be prepared and assessed in accordance with the requirements of the *Environmental Planning & Assessment Act* and *Regulations*, the Guide to Preparing Planning Proposals and the Guide to Preparing Local Environmental Plans prepared by the DPIE.

Shellharbour Local Strategic Planning Statement

Council adopted the Shellharbour Local Strategic Planning Statement (LSPS) at its meeting of 19 May 2020.

The proposed Planning Proposal for an additional use of Function Centre on the subject land is not specifically discussed in the LSPS. However, it is also not contrary to the actions outlined in the LSPS.

Draft State Environmental Planning Policies, State Environmental Planning Policies (SEPPs)

Council officers have made an assessment of the planning proposals against the SEPPs. Based on this assessment, the planning proposal is consistent with, or not applicable to, the SEPPs.

Local Planning Directions (S9.1 of the *Environmental Planning and Assessment Act*)

4.3 Flood Prone Land –

The planning proposal is inconsistent as it would permit a significant increase in the development of land partially affected by a flood planning area, by allowing function centres as an additional permitted use.

The inconsistency is considered to be of minor significance as any future development application will address flooding. Any future function centre is likely to operate from the existing building.

It will be the Department of Planning and Environment that decides as part of its gateway determination, firstly whether the planning proposal is inconsistent with any direction and if so whether an inconsistency can be justified or is of minor significance.

Illawarra Shoalhaven Regional Plan

The proposed Planning Proposal for an additional use of Function Centre on the subject land is not specifically discussed in the Illawarra Shoalhaven Regional Plan (ISRP). However, it is also not contrary to the actions outlined in the ISRP.

Noise

The applicant has provided an acoustic assessment which sets out the anticipated acoustic implications of the planning proposal and concludes that the proposed development is supportable in terms of its acoustic impacts.

Recommendations are made within the report to ensure that noise emission from functions is within acceptable limits at the nearest residences. Recommendations include prescribing allowable levels of amplified music, restricting the number of allowable openings in the building during functions and the implementation of a Noise Management Plan.

It should be noted that the acoustic report does not consider or assess any potential noise impacts on the proposed residential area that is the subject of an additional Planning Proposal to rezone part of the land to R2 Low Density Residential.

Bushfire

The Planning Proposal contains land that is mapped as bushfire prone land.

Asset Protection Zones (APZs) will be required as part of any future development. The Bushfire assessment report indicates that there is potential for development of the land although and future development applications will need to take into account the need for APZs and design an appropriate lot layout.

As part of the processing of this Planning Proposal (should it be supported by Council and receive a Gateway determination to proceed), referral to the NSW Rural Fire Service (RFS) is required by Local Planning Direction 4.4 Planning for Bushfire Protection. The comments from the RFS will need to be taken into account and incorporated into the Planning Proposal

Traffic

The applicant has provided a traffic impact study (TIS) which sets out the anticipated transport implications of the approved use which will not be affected by the additional use. The additional use will occupy the approved chapel building the use of which will not overlap with its principal function as a chapel. It is not desirable or possible to hold both a funeral and events associated with a function centre concurrently. Therefore, the assumptions made regarding predicted traffic volumes, maximum and average occupancy will not change.

The TIS included recommended upgrades to the road network to facilitate the approved development, which were included as conditions of consent for DA 153/2015. It is considered

that the upgrade requirements under that development consent are sufficient to cater for the additional use as a function centre and that the car parking requirement for 91 vehicles is also sufficient for the proposed additional use.

Shellharbour Airport

The additional permitted use is intended to occupy an approved building that has been considered against the relevant SLEP 2013 clauses. A 'function centre' is not a sensitive use that would be impacted by the operation of the Airport nor impact upon the ordinary operation of the Airport.

As part of the processing of this Planning Proposal (should it be supported by Council and receive a Gateway determination to proceed), referral to the Civil Aviation Safety Authority (CASA) is required by Local Planning Direction 3.5 Development near Licensed Aerodromes. The comments from the CASA will need to be taken into account and incorporated into the Planning Proposal.

City Planning Summary

This proposed additional use is consistent with the existing special activities permitted within the zone 'Crematorium/Cemetery' in that the proposed use will not constrain the use of the site for its primary purpose of cemetery related activities. The planning proposal is considered to be justifiable and supportable in terms of its strategic and site-specific merit.

Plan making delegations

Given the matters in this Planning Proposal are considered to be of local significance, it is intended that as part of its Gateway submission, Council staff apply to DPIE to use Council's plan making delegations, including to make or not make the plan under Section 3.36 of the *Environmental Planning and Assessment Act*, after any required consultation on the draft plan.

Public / Social Impact

The Planning Proposal will provide public and social benefits with the provision of an additional events venue. Progressing the Planning Proposal to Gateway determination and if received, public exhibition will provide an opportunity for interested parties to provide their views for Council's consideration.

Link to Community Strategic Plan

This report supports the following objectives and strategies of the Community Strategic Plan:

Objective:	2.3	A city that is connected through places and spaces
Strategy:	2.3.2	Undertake land use planning in a socially, economically and Environmentally responsive manner
Strategy:	2.3.4	Facilitate the development of the built environment to meet community needs

Consultations

Internal

Senior Civil Engineer
Manager Subdivision Development

Another round of referrals will be undertaken as part of the consultation process should the Planning Proposal receive a Gateway determination to progress.

External

Subject to the Planning Proposal progressing to a Gateway determination, any future consultation with our community will be undertaken in accordance with the Gateway's determination.

Consultation will also be required with:

NSW Rural Fire Service
Civil Aviation Safety Authority and Manager Shellharbour Airport
Department of Planning, Industry & Environment – Planning & Environment teams
Transport for NSW

Political Donations Disclosure

Information lodged with each of the Planning Proposal applications indicate that no political donations have been made.

Recommendation

That Council:

1. **Prepare Planning Proposal No 3/2019 to amend Shellharbour Local Environmental Plan 2013 in the following manner:**
 - a. **Amending Schedule 1, to include a 'function centre' as an additional permitted as follows:**
 - 9. *Use of certain land at Croome Road and Tongarra Road***
 - (1) *This clause applies to land in Zone SP1 Special Activities being Lot 300 DP1223037 as shown edged heavy red identified as "9" on the Additional Permitted Uses Map.***
 - (2) *Development for the purposes of 'function centres' is permitted with development consent.***
 - b. **Amending the Additional Permitted Uses Map (Sheet APU_014 and 018) by colouring and numbering the subject site. (Attachment 2)**
2. **Authorise the Chief Executive Officer to submit Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2019 to the NSW Department of Planning & Environment in accordance with section 3.34 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.**

3. Delegate to the Chief Executive Officer authority to make minor mapping and Local Environmental Plan instrument changes to Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2019 if and as required by the NSW Department of Planning & Environment's gateway determination.
4. As part of its gateway submission apply to the Department of Planning and Environment to use its plan making related delegations including making or not making the plan under section 3.36 of the *Environmental Planning and Assessment Act*, after any public exhibition of the draft plan.
5. Approve Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2019 to be publicly exhibited in accordance with the gateway determination.
6. Endorse a further report be provided to Council for consideration after the public exhibition period has closed, detailing the public exhibition outcomes and with further recommendations regarding adoption.



Approved for Council's consideration:

Date of Meeting: 29 September 2020

Attachments

1. Subject Land Map
2. Proposed amendment to Additional Permitted Uses Map
3. Existing Zone Map

Attachment 1 – Subject Land Map



Attachment 2– Proposed amendment to Additional Permitted Uses Map

Attachment 3 – Existing Zone Map

