



Council Agenda

AGENDA

NOTICE OF MEETING

Notice is hereby given that an ordinary meeting of Council will be held in the

**Council Chamber – Glenelg Town Hall
Moseley Square, Glenelg**

Tuesday 9 July 2013 at 7.00pm

Justin Lynch
CHIEF EXECUTIVE OFFICER

Please note: This agenda contains Officers' reports and recommendations that will be considered by the Council. Any confidential items listed on the agenda will be circulated to Members separately.



Ordinary Council Meeting Agenda

1. OPENING

His Worship the Mayor will declare the meeting open at 7:00pm.

2. KAURNA ACKNOWLEDGEMENT

We acknowledge Kurna people as the traditional owners and custodians of this land.

We respect their spiritual relationship with country that has developed over thousands of years, and the cultural heritage and beliefs that remain important to Kurna People today.

3. PRAYER

Heavenly Father, we pray for your presence and guidance at our Council Meeting.

Grant us your wisdom and protect our integrity as we carry out the powers and responsibilities entrusted to us on behalf of the community that we serve.

4. APOLOGIES

4.1 Apologies Received – Councillor Donaldson

4.2 Absent

5. ITEMS PRESENTED TO COUNCIL

6. DECLARATION OF INTEREST

If a Council Member has an interest (within the terms of the Local Government Act 1999) in a matter before the Council they are asked to disclose the interest to the Council and provide full and accurate details of the relevant interest. Members are reminded to declare their interest before each item.

7. CONFIRMATION OF MINUTES

Motion

That the minutes of the Ordinary Meeting of Council held on 25 June 2013 and the Special Meeting of Council held on 1 July 2013 be taken as read and confirmed.

Moved Councillor _____, Seconded Councillor _____

Carried

8. QUESTIONS BY MEMBERS**8.1 Without Notice****8.2 With Notice**

8.2.1 Questions on Notice – Brighton Caravan Park – Legal Costs and Compensation (Report No: 228/13)

9. MEMBER'S ACTIVITY REPORTS

9.1 Deputy Mayor's Activity Report (Report No: 222/13)

10. PUBLIC PRESENTATIONS

10.1 **Petitions** - Nil

10.2 **Presentations** - Nil

10.3 **Deputations** - Nil

11. MOTIONS ON NOTICE - Nil**12. ADJOURNED MATTERS - Nil****13. REPORTS OF MANAGEMENT COMMITTEES, SUBSIDIARIES AND THE DEVELOPMENT ASSESSMENT PANEL**

13.1 Minutes – Jetty Road Mainstreet Management Committee – 5 June 2013 (Report No: 212/13)

14. REPORTS BY OFFICERS

14.1 Items in Brief (Report No: 221/13)

14.2 Hotel Licence Variations – Moseley Square Venues (Glenelg Jetty Hotel and the Dublin Irish Pub) – Trial Period Review (Report No: 219/13)

14.3 2013 New Years Eve Glenelg Dry Zone Temporary Boundary Extension (Report No: 218/13)

14.4 Approval of the Kurna/Local Government Indigenous Land Use Agreement (ILUA) (Report No: 220/13)

14.5 Request for Funds to Defend an Appeal Before the Environment, Resources and Development Court for the Construction of a 1140 Square Metre Liquor Store at 466 Brighton Road, Brighton (Report No: 224/13)

14.6 Glenelg Foreshore Building (Report No: 215/13)

14.7 Revised Mobile Trading Policy (226/13)

14.8 Draft Stormwater Management Plan, Coastal Catchments between Glenelg and Marino (229/13)

15. RESOLUTIONS SUBJECT TO FORMAL MOTIONS

Presented for the information of Members is a listing of resolutions subject to formal resolutions, for Council and all Standing Committees, to adjourn or lay on the table items of Council business, for the current term of Council.

16. URGENT BUSINESS – Subject to the Leave of the Meeting

17. CLOSURE

**JUSTIN LYNCH
CHIEF EXECUTIVE OFFICER**

Item No: **8.2.1**

Subject: **QUESTIONS WITH NOTICE – BRIGHTON CARAVAN PARK – LEGAL FEES
AND COMPENSATION – COUNCILLOR BOUCHEE**

Date: 9 July 2013

QUESTION

Councillor Bouchee asked the following question:

- “1. To date, how much has the council paid in legal advice and consultant fees concerning the intended termination of leases of Brighton Caravan Park tenants?”***
- 2. To date, how much compensation has been given to the residents?”***

ANSWER – Manager Organisational Sustainability

1. Approx. \$2,250
2. To date no one has taken up our offer.

Item No: **9.1**

Subject: **DEPUTY MAYOR'S ACTIVITY REPORT**

Date: 9 July 2013

SUMMARY

Presented a summary of the activities of the Deputy Mayor, Councillor RA Clancy for the period 1 January 2013 to 30 June 2013.

RECOMMENDATION

That the Activity Report for the Deputy Mayor, Councillor R A Clancy be received and noted.

COMMUNITY PLAN

A Place that Provides Value for Money

ACTIVITIES

January 2013

14 January 2013	Meeting with Council CEO
15 January 2013	Council Workshop
22 January 2013	Council Meeting
23 January 2013	Development Assessment Panel
24 January 2013	Official Opening of Stage 1 of Alwyndor Redevelopment
26 January 2013	City Of Holdfast Bay Australia Day Celebrations

February 2013

1 February 2013 – 22 February 2013	Acting Mayor
3 February 2013	Brighton Surf Life Saving
7 February 2013	Book Launch – History of the Adelaide and Benevolent Strangers Society
10 February 2013	South Westerns Schools Ministry
12 February 2013	Opening of the Brighton Tennis Club Workshop and Council Meeting
17 February 2013	Volleyball Finals – Australian Championship – Glenelg Beach
19 February 2013	Alwyndor Management Committee
21 February 2013	Senator Don Farrell, Parliamentary Secretary for Sustainability and Urban Waste, Solo Resource Recovery Adelaide Waste and recycling Facility

22 February 2013	Steven Duffy Holdfast Bay and Croquet Club – Sponsor Appreciation Night
25 February 2013	West Beach Trust Chrissie – Sussex Street
26 February 2013	West Beach Trust Council Meeting
27 February 2013	Donna Cox Development Assessment Panel
28 February 2013	Opening of new Southern Carer Centre

March 2013

5 March 2013	Council Workshop
12 March 2013	Workshop and Council Meeting
14 March 2013	FARS Meeting West Beach Trust
19 March 2013	Alwyndor Management Committee
20 March 2013	Caravan Park Meeting
22 March 2013	Football
24 March 2013	Greek Orthodox Archdiocese – National Independence Day Celebrations
26 March 2013	West Beach Trust Workshop and Council Meeting
27 March 2013	Development Assessment Panel

April 2013

2 April 2013	Council Workshop
4 April 2013	Civic Reception for Glenelg Cricket Club A Grade Premiers
9 April 2013	Workshop and Council Meeting
11 April 2013	Executive Committee Meeting
16 April 2013	Alwyndor Management Committee
23 April 2013	West Beach Trust Workshop and Council Meeting
24 April 2013	Development Assessment Panel
25 April 2013	Anzac Day Dawn Service – Glenelg
27 April 2013	SA Rugby – Anzac Day Memorial Match – Brighton Oval
30 April 2013	Library Information Session Council Workshop

May 2013

3 May 2013	WCTU Australian Biennial World Convention – Stanford Grand
7 May 2013	Brighton Caravan Park – Tender Meeting
11 May 2013	Somerton Surf Life Saving Club Presentation Evening
14 May 2013	West Beach Trust Workshop and Council Meeting
15 May 2013	Brighton Hove District Centre Development Plan Amendment – Information Evening

21 May 2013	Alwyndor Management Committee
22 May 2013	Development Assessment Panel
28 May 2013	West Beach Trust Council Meeting
31 May 2013	IPWEA SA Excellence Awards 2013

June 2013

4 June 2013	Council Workshop
11 June 2013	Meeting with Minister Piccolo & Susan McCormick Workshop and Council Meeting
12 June 2013	Meeting with DTEI regarding the Railway Electrification Project
18 June 2013	Alwyndor Management Committee
25 June 2013	West Beach Trust Workshop and Council Meeting
26 June 2013	Development Assessment Panel Meeting
27 June 2013	Alwyndor Selection Committee
28 June 2013	Citizenship Ceremony

Item No: **13.1**

Subject: **MINUTES JETTY ROAD MAINSTREET MANAGEMENT COMMITTEE - 5 JUNE 2013**

Date: 9 July 2013

Written By: Manager, Jetty Road Development

General Manager: City Services, Ms R Cooper

SUMMARY

The Minutes of the Jetty Road Mainstreet Management Committee meeting held 5 June 2013 are attached and presented for Council's information.

RECOMMENDATION

- 1. That the minutes of the Jetty Road Mainstreet Management Committee held 5 June 2013 is received.**
 - 2. That Council note that Jetty Road Mainstreet Management Committee recommends that Council approves the Mobile Trading Policy.**
-

COMMUNITY PLAN

A Place to do Business
A Place that Welcomes Visitors
A Place that Provides Value for Money

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Not applicable

BACKGROUND

The Jetty Road Mainstreet Management Committee (JRMMC) has been established to undertake work to benefit the traders on Jetty Road Glenelg, using the separate rate raised for this purpose. Council has endorsed the Committee's Terms of Reference and given the Committee delegated authority to manage the business of the Committee.

BUDGET

Not applicable

LIFE CYCLE COSTS

Not applicable

CITY OF HOLDFAST BAY

Minutes of the meeting of the Jetty Road Mainstreet Management Committee of the City of Holdfast Bay held in the Glenelg Library Meeting Room, Colley Terrace, Glenelg on Wednesday 5 June 2013 at 6.00 pm.

PRESENT

Elected Members

Mayor K Rollond
Councillor B Patton

Community Representatives

Chairman – Mr M Faulkner, Enve Hair and Beauty
Noodle Box – Mr B Martin
Glenelg Florist – Ms V Corbell
Carusos – Mr R Caruso
Telstra – Ms E Leenaerts
Don Maios Investments, Mr C Maios

Staff

Manager, Jetty Road Development, Ms L Johnson
Manager, Tourism and Marketing – Ms M Lock
Economic and Tourism Coordinator – Ms C McDonald

1. OPENING

The Chairman declared the meeting open at 6.00 pm.

2. APOLOGIES

2.1 For Absence - Pure Espresso, Mr M Deare
Eclectik – Ms C Byron
The Changing Canvas – Mrs G Higgins

2.2 Leave of Absence - None

3. DECLARATION OF INTEREST

Members were reminded to declare any interest before each item.

4. CONFIRMATION OF MINUTES**Motion**

That the minutes of the Jetty Road Mainstreet Management Committee held on 3 April 2013 be taken as read and confirmed.

Moved by Mr B Martin, Seconded by Mr R Caruso

Carried

5. REPORTS/ITEMS OF BUSINESS**5.1 Lighting Update**

A prototype of the proposed lighting for the trees in Jetty Road was displayed to the Committee for their approval.

Motion

That the Manager, Jetty Road Development prepare and distribute a tender document to provide the lighting for the trees in Jetty Road and report back on outcomes prior to the next meeting scheduled for 7 August 2013.

Moved Ms V Corbell, Seconded Mr C Maios

Carried

5.2 Budget Update**Motion**

That the Committee receive and note this report

Moved Ms E Leenaerts, Seconded Mr B Martin

Carried

5.3 Introduction of new Manager, Marketing and Tourism, Marnie Lock and Economic and Tourism Coordinator, Carol McDonald.

Ms M Lock and Ms C McDonald introduced themselves and advised of their respective roles to the Committee.

5.4 Mobile Trading Policy

An email from Greg Digance in relation to the proposed mobile trading policy was read to the Committee.

Motion

The Jetty Road Mainstreet Management Committee is fully supportive of all traders and to the ongoing promotion of Glenelg. After discussion, it was agreed

that the proposed mobile trading policy is fair and reasonable and we therefore recommend its adoption by Council.

Moved Mr R Caruso, Seconded Ms V Corbell

Carried

5.5 Jetty Road Cleaning

At the previous meeting held on 3 April 2013, Mr P Smith, Manager Asset and Public Spaces advised that at present the street is pressure cleaned twice a year. He recommended that it be done once a year with spot cleans carried out as required. Manager, Jetty Road Development has received costs for labour for these cleans. Based on the costs provided, this would appear to equate to more than two cleans per year.

MOTION

That Manager, Jetty Road Development meet with General Manager, City Assets and Manager, Assets and Public Spaces to clarify and confirm cleaning schedule and report back to Committee out of session.

Moved Ms E Leenaerts, Seconded Mr B Martin

Carried

5.6 Car Parking and One Way Streets

At the last meeting of JRMMC, it was requested that the Manager, Jetty Road Development investigate one way traffic on Waterloo Street and additional parallel parking on the Eastern side.

Manager, Jetty Road received information from Manager, Transport and Traffic that a study was carried out in November 2009 and as a result, the parallel parking on each side of Waterloo Street was changed to 45 degree parking on the western side and this achieved an additional 13 parking spaces.

Manager, Transport and Traffic further advised that in order to look at making this a one -way street, JRMMC would have to engage a consultant to carry out a study and the cost for this would be approximately \$15,000.

Motion

That Manager, Jetty Road Development invite the Manager for Traffic and Transport to attend the next meeting in order that we can discuss this in further detail.

Moved Mr C Maios, Seconded Mr B Martin

Carried

5.7 Subsidised Advertising

One of the key requirements from the Business Needs Survey conducted last October, was the need for subsidised advertising for the traders. At present, we are proposing to provide a half page and two quarter page ads in Adelaide matters as well as two full page ads in the Messenger.

Discussion took place as to the frequency and size of ads placed. It was agreed that subsidised advertising is required and we need to ensure that all traders have the opportunity to take advantage of this.

Manager, Jetty Road, together with Manager, Tourism and Marketing to prepare a plan with costings and report back to the Committee out of session.

5.8 Mainstreet SA – State Conference

Mr B Martin and Ms G Higgins attended the Mainstreet SA State Conference in April. Mr B Martin reported the following key findings:

There are different models of mainstreet committees and groups and though not perfect JRMMC is a preferred model with interest from other areas. A problem in getting traders to agree to funding committees is common.

BIDS effective in Auckland NZ because Government and councils support them and fund projects.

Idea from Tumby Bay to include useful items on tourist brochures eg recipes relating to area.

Strong theme throughout for people, pedestrian and cycling friendly precincts and also for heritage, art and public facilities.

Must embrace digital technology to ensure future of precincts.

We have to work continuously to attract the public with interesting experiences, exceptional customer service, the right product mix and an appealing presence and atmosphere.

A tour of Semaphore road was interesting, wide footpaths bike track in footpath. Kite flying and annual trade festivals are 2 main events.

5.9 Mainstreet National Conference

Mr M Faulkner and Ms L Johnson attended the National Conference in May. Key findings/recommendations were as follows:

The national conference had two very informative guest speakers: Julian Dobson the Director of Urban Pollinators from the UK talking about high streets in England and the ones that are working are the ones that have something unique to offer and ideas like recycle money locally with local currency. He also gave 4 ingredients of local value

Commercial - new ways to market
 Civic value leadership
 Cultural value - local identities built on local passion
 Community value - the city belongs to all of us.

The next speaker was Michael McQueen from the Nexus Group who was very inspirational. He talked about how areas and businesses go through shifts in the market place and at some point get to “we are so hot right now” to a turnaround point of losing the mojo and then to a crisis point. This can be related to Kodak, Blackberry, Motorola, Payless shoes etc. The success stories are Lego, McDonalds IBM etc. because they re-invent themselves like we are trying to do at the Bay. His four points to turn things around were

Recalibrate back to basics
 Re-engineer - deconstruct, evaluate then put back together
 Re-Frame - Most valuable asset is fresh eyes
 Re position yourself example used was the new Volvo

Michael also talked about Gen Y. He interviewed over 80,000 Gen Y's and came up with interesting stats:

They spend 40% of the money spent on retail and services
 16% of the workforce is Gen Y - this will grow to 42% in 6yrs
 We need to tap into Gen Y if we want Glenelg to grow and prosper.

The first day of registration and conference cocktail reception is not worth attending.

One Vic Council had carried out a “Battle of the Buskers” event that was very successful. Manager, Jetty Road Development, will develop a concept plan for this and prepare a report for Committee meeting in October 2013.

5.10 Easter Sunday Debrief (Report 180/13)

Motion

That the Committee receive and note this report

Moved Mr B Patton, Seconded Ms E Leenaerts

Carried

- 5.11 April School Holiday Activity Debrief (Report 181/13)

Motion

That the Committee receive and note this report

Moved Ms E Leenaerts, Seconded Mr C Maios

Carried

- 5.12 Mothers' Day Debrief (Report 182/13)

Motion

That the Committee adopt the recommendations contained in this report.

Moved Ms E Leenaerts, Seconded Mr B Patton

Carried

- 5.13 Glenelg Christmas Pageant (Report 192/13)

Further discussion took place around this report and it was agreed that Mr R Caruso and Mr C Maios meet with the Pageant organisers, Jennie Bell Inc to discuss further.

Motion

That the Committee adopt the recommendations contained in this report, and that the sole naming rights sponsor for the Jetty Road Pageant is replaced with five individual supporting sponsors.

Moved Mr R Caruso, Seconded Mr B Paton

Carried

- 5.14 Upcoming Projects

5.14.1 Action List

Motion

That the Committee receive and note this report

Moved Mr B Patton, Seconded Mr B Martin

Carried

5.14.2 Treasure Hunt

Manager, Jetty Road Development advised that we currently have 8 traders on board. Confident that we can get to the 20 traders needed to run this event.

5.14.3 SALA

Manager, Jetty Road Development advised that take-up from traders is slow. Manager, Jetty Road Development is working with Manager, Tourism and Marketing to look at other options for gallery space.

5.14.4 Traders' Awards Dinner

Manager, Jetty Road Development advised that the date has now been changed to 20th September 2013 and more information on the format for this event will be provided at the next meeting.

6. URGENT BUSINESS – Subject to the leave of the meeting**7. DATE AND TIME OF NEXT MEETING**

The next meeting of the Jetty Road Mainstreet Management Committee will be held on Wednesday 7 August in the Glenelg Library Meeting Room, Colley Terrace, Glenelg.

8. CLOSURE

The meeting closed at 7.55 pm.

CONFIRMED

CHAIRMAN

Item No: **14.1**
Subject: **ITEMS IN BRIEF**
Date: 9 July 2013
Written By: Personal Assistant
General Manager: Corporate Services, Mr I Walker

SUMMARY

These items are presented for the information of Members.

After noting the report any items of interest can be discussed and, if required, further motions proposed.

RECOMMENDATION

That the report be noted and items of interest discussed.

COMMUNITY PLAN

A Place for Every Generation
A Place that Celebrates Culture
A Place to do Business
A Place that Welcomes Visitors
A Place that Provides Value for Money

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Not applicable

REPORT**14.1.1 Rates – Housing Trust**

The State Government recently announced that 5000 Housing Trust homes would be handed over to non-profit organisations over the next five years, allowing the Government to achieve a range of cost savings including the payment of rates.

The City of Holdfast Bay currently has 311 rateable SA Housing Trust homes within its boundary and received \$336,021 in rate revenue for 2012/13 financial year.

Under the Local Government Act 1999 Councils are required to provide a 75% rebate to not for profit housing associations. The impact of this would mean an increase in our mandatory rebate budget of \$252,016.

14.1.2 Aboriginal and Torres Straight Island War Memorial Project

A letter from Felicity-Ann Lewis, Mayor of Marion, is attached for Members information. The letter thanks Council for the generous donation towards the Aboriginal and Torres Straight Island War Memorial Project and also an update on the progress of this project.

Refer Attachment 1

14.1.3 Moseley Square Smoking Exclusion Zone Trial Period

The implementation of the Moseley Square Smoking Exclusion Zone was originally expected to commence on 1 July 2013 for a twelve month interim period to run concurrently with the 2013/14 financial year. However, Council's Liquor Licensing & Community Safety Officer has been advised by Drugs and Alcohol Services Australia that the application is currently with the Parliamentary Counsel's office for drafting of the Regulation. Once this stage is completed the draft will then be submitted to the Department of Premier and Cabinet for assent into legislation.

As such, it is now expected that the Smoking Exclusion Zone will not commence its trial period until approximately August/September 2013.

Once the Administration has been advised of the official commencement date, a subsequent Item in Brief will be submitted for Council's viewing.

Item No: **14.2**

Subject: **HOTEL LICENCE VARIATIONS – MOSELEY SQUARE VENUES (GLENELG JETTY HOTEL AND THE DUBLIN IRISH PUB) - TRIAL PERIOD REVIEW**

Date: 9 July 2013

Written By: Liquor Licensing and Community Safety Officer

General Manager: City Assets, Mr S Hodge

SUMMARY

In July 2012 the Liquor and Gambling Commissioner granted a temporary trial order for both the Glenelg Jetty Hotel and the Dublin Irish Pub. The temporary order permitted Liquor to be sold/supplied for consumption in the licensed premises outdoor dining areas by persons seated at a table without a meal between the hours of 10am and 10pm Monday to Sunday. This interim order was approved for a period of twelve (12) months.

As the twelve (12) month trial period expires in early July 2013, the City of Holdfast Bay has been asked to review the temporary conditions for both licensed premises by the Liquor and Gambling Commissioner.

The purpose of this report is to obtain the Council's comments prior to advising the Office of the Liquor and Gambling Commissioner (OLGC) of the Administration's position.

RECOMMENDATION

That Council advises the Office of the Liquor and Gambling Commissioner that it does not object to the trial period variations becoming permanent conditions of Hotel Licence No's: 5108167 (Glenelg Jetty Hotel) and 50107802 (The Dublin Irish Pub).

COMMUNITY PLAN

A Place that is Safe and Secure

COUNCIL POLICY

Liquor Licensing Policy

STATUTORY PROVISIONS

Liquor Licensing Act 1997
Development Act 1993

BACKGROUND

Previous Reports and Decisions

- Report to City of Holdfast Bay (Report No.: 152/12; Item No.: 14.3) 22 May 2012 - HOTEL LICENCE VARIATIONS – MOSELEY SQUARE VENUES (Resolution No.: C220512/514 & C220512/515)

REPORT

In May 2012 an extensive report (Report No.: 152/12; Item No.: 14.3) was submitted to Council advising that the Australian Hotel's Association, acting on behalf of the Glenelg Jetty Hotel and the Dublin Irish Pub, sought to amend the conditions of the respective licensed premises' outdoor dining areas. In early July 2012 the Liquor and Gambling Commissioner granted a trial interim order for both licensed premises based upon Council's request.

The temporary order(s) permitted liquor to be sold/supplied for consumption in the outdoor dining areas by persons seated at a table without a meal between the hours of 10am and 10pm Monday to Sunday.

As the twelve (12) month trial period expires in early July 2013, the City of Holdfast Bay has been asked to review the temporary conditions for both licensed premises by the Liquor and Gambling Commissioner.

To date, Council's Liquor Licensing and Community Safety Officer has not received any complaints about either licensed premise, the consumption of liquor within, or operation of their respective outdoor dining areas. Similarly no objections have been raised by South Australian Police or the Office of Liquor and Gambling Inspectorate.

As no additional negative impacts have emerged in Glenelg Precinct as a result of this trial period, it is considered that the aims of Council's Liquor Licence Policy will not be offended by allowing the permanency of these conditions.

It is therefore considered appropriate that Council advise the Office of the Liquor and Gambling Commissioner of the recommendation outlined in this report.

BUDGET

An annual budget allocation is provided to the Development Assessment Unit to deal with matters concerning Liquor Licence proposals. This budget involves engaging the use of legal advisers, if and when required.

LIFE CYCLE COSTS

At this stage, there are no additional costs to Council associated with that contained within this report.

Item No: **14.3**

Subject: **2013 NEW YEARS EVE GLENELG DRY ZONE TEMPORARY BOUNDARY EXTENSION**

Date: 9 July 2013

Written By: Liquor Licensing and Community Safety Officer

General Manager: City Assets, Mr S Hodge

SUMMARY

The City of Holdfast Bay will again lodge an application with the Office of the Liquor and Gambling Commissioner to temporarily extend the boundaries of the Glenelg Long-Term Dry Zone for New Year's Eve celebrations in 2013.

The application is based upon the feedback and responses received from 2012 New Year's Eve stakeholder debrief. The boundaries and conditions of the 2013 extension will emulate those of previous years, full details of which are listed below.

RECOMMENDATION

That Council endorse this report and attached plan for the 2013 New Year's Eve temporary extension to the Glenelg Dry Zone and lodges an application to the Office of the Liquor and Gambling Commissioner for legislative enactment of this extension.

COMMUNITY PLAN

A Place that is Safe and Secure

COUNCIL POLICY

Liquor Licensing Policy

STATUTORY PROVISIONS

Liquor Licensing Act 1997

Liquor Licensing (Dry Zones - Short-Term) Regulations 1997

BACKGROUND

Previous Relevant Reports

- Report to the City of Holdfast Bay (Report No.: 277/12; Item No.: 14.5), New Year's Eve Glenelg Temporary Dry Zone Extension 2012;
- Item in Brief to the City of Holdfast Bay (IIB No.: 442/11; Item No.: 14.1.4), Dry Zone Enactment 2011;
- Report to the City of Holdfast Bay (Report No.: 280/11; Item No.: 14.6), Dry Zone Evaluation 2011;
- Item in Brief to City of Holdfast Bay (IIB No.: 540/10; Item No.: 14.1.4), New Years Eve Dry Zone Extension 2010;

REPORT

Council intends to lodge an application with the regulatory services division of the Office of the Liquor and Gambling Commissioner seeking to temporarily extend the boundaries of the Glenelg Dry Zone for New Year's Eve 2013.

Council has lodged such legislative applications as temporary dry zone extensions [for significant events and/or celebrations such as New Years Eve]. This has in preceding years proven to both aid the South Australian Police in regulating anti-social behavior and increase the 'family-friendly' appeal of celebrations at Glenelg.

Therefore as in previous years, the 2013 Glenelg Dry Zone extension application will include the areas bounded by:

- The northern property alignment on Augusta Street between Colley Terrace and Brighton Road;
- the eastern property alignment on Brighton Road between Augusta Street and High Street (*including the Dunbar Terrace & Maxwell Terrace Transport Terminus*);
- the southern property alignment on High Street and College Street between Brighton Road and the western property alignment of St John's Row;
- the eastern boundary of the existing permanent dry area from the South Esplanade Lane on the southern side of the Stamford Grand Hotel to the northern property alignment of Anzac Highway.

Refer Attachment 1

The extended area will be operational between the hours of 9.00pm on Tuesday 31 December 2013 until 6.00am on Wednesday 1 January 2014. The area will be designated as one of total prohibition of alcohol in both sealed and unsealed containers on public land.

Members of the public will be notified about the extension through the City of Holdfast Bay's website and through print media in the Guardian Messenger in the lead up to New Year's Eve 2013. As in previous years, businesses and members of the community that reside within the extension zone will also be notified via a letter box drop.

BUDGET

At this present time the only costs associated with a short-term dry zone applications relate to media advertising costs, which in 2012 equated to approximately \$350.00. As in previous years this cost is incurred by Marketing and Tourism.

LIFE CYCLE COSTS

At this stage, there are no additional costs to Council associated with that contained within this report.

Item No: **14.4**

Subject: **APPROVAL OF THE KAURNA/LOCAL GOVERNMENT INDIGENOUS LAND USE AGREEMENT (ILUA)**

Date: 9 July 2013

Written By: Governance Officer

General Manager: City Services, Ms R Cooper

SUMMARY

The Kaurna/Local Government Indigenous Land Use Agreement (ILUA) presents a unique opportunity for to reach agreement with Kaurna people.

The ILUA is will also constitute a unique achievement on a national basis in bringing together 28 Participating Councils and the relevant native title claim group.

The ILUA will provide lasting positive benefits to the participating Councils and the Kaurna people. The investment of the proposed funds will provide certainty and a high level of coordination and will far outweigh the future costs and potentially negative consequences associated with dealing with Kaurna on a one to one basis.

RECOMMENDATION

- 1. The Council enter into an Indigenous Land Use Agreement with Kaurna Peoples native title claimants, by Garth Agius, Vince Buckskin, Lynette Crocker, Phillip Davies, Cecil Graham, Carroll Karpany, Shirley Lampard, Deceased, Joseph Mitchell, Rodney O'Brien, Deceased, Glenice Sumner, Frank Wanganeen, Maureen Wanganeen, Deceased, Georgina Williams, Kaurna Yerta Aboriginal Corporation, Kaurna Nation Cultural Heritage Association Incorporated and 27 other local councils (ILUA)**
- 2. The execution, delivery and performance of the Council's obligations under the ILUA be, and are hereby, approved.**
- 3. The Council enter into, execute and deliver the ILUA in the form of the drafts submitted at the meeting, together with any other document required in connection with the ILUA, and with such amendments as the Principal Member and Chief Executive agree to on behalf of the Council.**
- 4. The ILUA and any other associated documents be executed by the Mayor and Chief Executive Officer.**

5. **The Council approve the allocation of \$7,615.40 in the Council's 2014/2015 Budget and to be adjusted by the change in the Consumer Price Index for the following three years.**
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COMMUNITY PLAN

A Place that Celebrates Culture
A Place that Provides Value for Money
A Place that is Well Planned

COUNCIL POLICY

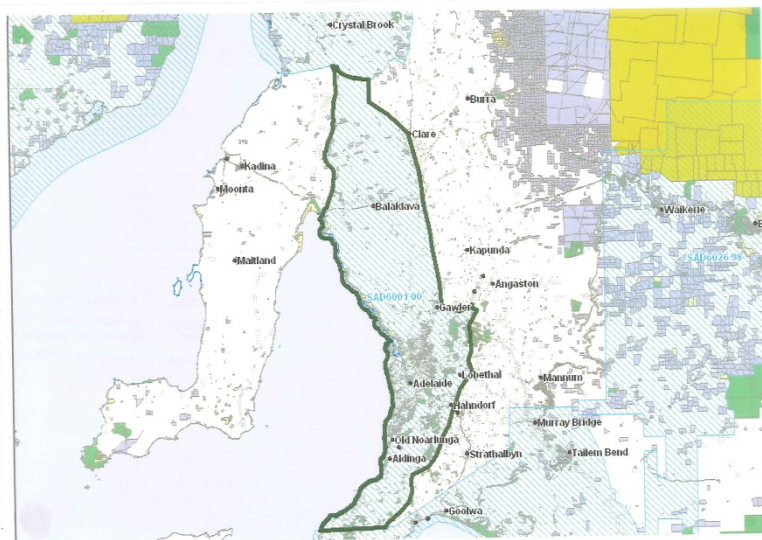
Not applicable

STATUTORY PROVISIONS

Native Title Act
Aboriginal Heritage Act

BACKGROUND

The negotiation of the Kurna ILUA has been an extremely large and complex operation, involving 28 of the 68 local government Councils in South Australia. These 28 Councils are all the Councils within the boundaries of the Kurna native title claim, as shown below.



Given the large number of participating Councils it was necessary to streamline the negotiation process so the Local Government (LG) Leadership Group was established by the Local

Government Association in late 2006. The LG Leadership Group endorsed by the State Executive currently comprises 8 people.

The LG Leadership Group representing the Participating Councils has represented the Councils in negotiations with the Kurna, over a six (6) year period.

REPORT

The ILUA Agreement – Key Elements for Councils

Agreement has been reached with the Kurna to sign an ILUA (Indigenous Land Use Agreement).

In so doing it is important to note the following:

- that agreement has been reached with two groups representing the Kurna, namely the Kurna Yerta Aboriginal Corporation (KYAC) representing the Kurna native title claimants and the Kurna Nation Cultural Heritage Association Incorporated representing Kurna Aboriginal heritage interests.
- that the State Government still remains the first respondent to the Native Title Claim and is responsible for compensation issues.

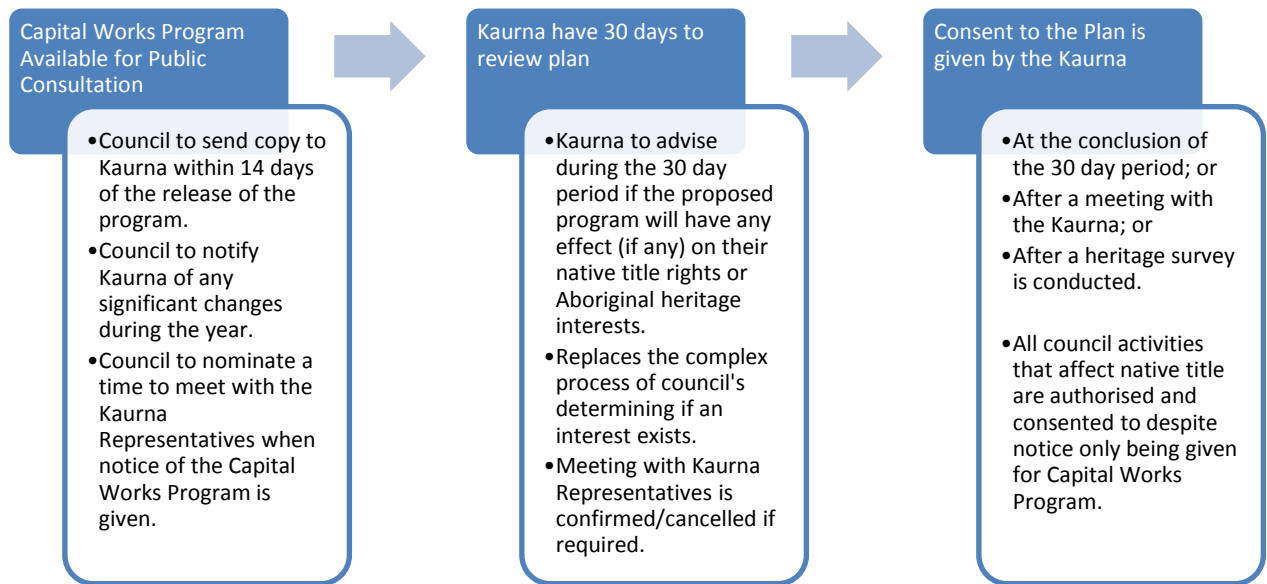
The key elements of the ILUA for Councils are as follows:

1. Protocol to simplify Native Title Act processes
2. Aboriginal Heritage Protocol
3. Planning Protocol
4. Liaison Committee

Refer Attachment 1

1. Native Title Act Future Requirements

Under the ILUA Councils will provide to Kurna their Capital Works Program within 14 days of it being released for public consultation and, as the year progresses; provide information on any substantial amendments to the Works Program as decided by Council.



Under the ILUA a single, simple process applies to those activities of Councils which would have any effect on Native Title rights or Aboriginal heritage interests which will be identified through the Capital Works Programs- which require notification; and the process is predetermined and uniform for all participating councils.

2. Aboriginal Heritage Protocols

Under the *Aboriginal Heritage Act* (SA) it is an offence to damage, disturb or interfere with any Aboriginal site, objects or remains without the authority of the relevant Minister. Irrespective of the ILUA Council needs to comply with this legislation.

Whilst not currently recognised under the legislation, it is common practice to enter into agreements with Aboriginal groups to manage our risk of committing an offence under the Act.

The ILUA provides procedures and protocols which cover the way that the Kurna's Aboriginal heritage interests will be managed and the procedures to be followed if a heritage survey is undertaken by the Council.

The ILUA heritage protocol provides Councils with:

- a known predetermined protocol for undertaking heritage surveys and managing their risk of committing an offence under the *Aboriginal Heritage Act*, thus avoiding the tendency for ad hoc arrangements being made in this regard under pressure at the time the relevant Capital Works are about to be undertaken/in the course of being undertaken with consequent delays and costs;
- defined survey team sizes and advantageous day rates and payment terms;
- a consistent and uniform approach to Aboriginal heritage surveys across all Participating Councils; and
- consistency with State government Aboriginal heritage protocols.

3. Planning Protocols

The Planning Protocol operates to assist Kurna to monitor private development authorisations with a view to protecting their Aboriginal heritage interests.

The protocol requires a Council to notify Kurna of private development authorisations given by the Council as planning authority in relation to Category 3 developments, including subdivisions of land of 4 or more allotments; subdivisions of 4 or more allotments (where such subdivisions are not Category 3 developments); and give a notice to all private developers given development authorisation by the Council as planning authority of the developer's obligations under the *Aboriginal Heritage Act*.

4. Liaison Committee

Under the ILUA a Liaison committee will be established with 12 members with equal Kurna and Council membership, providing a forum for matters of mutual interest are able to be discussed and resolved. Clause 6.2 of the ILUA outlines the committee's functions, which include:

- acting as a forum to resolve issues causing concern between both parties including heritage monitoring and conduct of surveys,
- providing funding for projects of mutual benefit to Kurna and Local Government,
- building capacity of Kurna community and developing on-going relationships between Kurna and Local Government,
- promoting reconciliation between the Councils and the Kurna and the community within the ILUA Area generally;
- economic development opportunities within the ILUA area for the parties;
- service delivery by the Councils and other persons to the Kurna and other Aboriginal people living within the ILUA area;
- further funding of activities arising out of the ILUA and making application for such funding upon behalf of the parties or any of them;
- applying Council funding towards the achievement of the Committee's functions.

At the beginning of each financial year the Committee will provide each of the Council a copy of its written key performance indicators and objectives for the ensuing financial year.

Each year the Committee must prepare and approve annual written report in relation to the Committee's functions, activities and projects during the immediately preceding financial year.

A Liaison Committee Secretariat (constituted by an ILUA administrator) will be established to support the ILUA and the Liaison Committee. The ILUA Administrator will be located in the LGA and will assist with the development of funding and implementation of individual projects of mutual benefit to Kurna.

Funding to support the ILUA

If Council agrees to the ILUA the City of Holdfast Bay will be required to make an annual contribution of \$7,615.40, indexed by CPI, for 3 years with a review to occur before expiration of 3 year period.

This funding will provide for the management of the ILUA and operation of the Liaison Committee. It will also provide for the employment of the ILUA Administrator and the funding of projects as determined by the Liaison Committee

This funding replace existing funding for individual Council reconciliation efforts as this arrangement deals with Native Title and cross Council issues.

Risks of Not Participating in the Kurna/Local Government ILUA

If Council resolves not to participate in the ILUA the consequences could be:

- there would be a fragmentation of dealings between the Kurna and Councils in relation to the future act process of the Native Title Act (Cwth) and Aboriginal heritage agreements, with mixed levels of compliance and greater disparity in the quality of the agreements/arrangements and relationships;
- potential increased costs to individual Councils created by having to deal one on one with Kurna on native title, heritage and planning issues;
- continuation of the "ad hoc" approach to native title and Aboriginal heritage negotiations;
- individual Councils to continue to be involved as respondent parties to native title litigation in the Federal court;

The Kurna/Local Government ILUA presents a unique opportunity for to reach agreement with Kurna.

The ILUA is will also constitute a unique achievement on a national basis in bringing together 28 Participating Councils and the relevant native title claim group.

The ILUA will provide lasting positive benefits to Councils and the Kurna. The investment of the proposed funds will provide certainty and a high level of coordination and will far outweigh the future costs and potentially negative consequences associated with dealing with Kurna one on one.

BUDGET

The annual fees for the support of this ILUA have not been budgeted for the 2013/14 financial year.

The annual contribution of \$7,615.40, will indexed by CPI, for 3 years with a review to occur before expiration of 3 year period.

LIFE CYCLE COSTS

The costs for the participation in the ILUA will be of \$7,615.40, will indexed by CPI, for 3 years and will be reviewed.

Kaurna Peoples Local Government Indigenous Land Use Area Agreement

Kaurna Peoples native title claimants

and

Kaurna Yerta Aboriginal Corporation

and

Kaurna Nation Cultural Heritage Association Incorporated

and

Adelaide City Council

Adelaide Hills Council

Alexandrina Council

The Barossa Council

Campbelltown City Council

City of Burnside

City of Charles Sturt

City of Holdfast Bay

City of Marion

City of Mitcham

City of Norwood Payneham and St Peters

City of Onkaparinga

City of Playford

City of Port Adelaide Enfield

City of Prospect

City of Salisbury

City of Tea Tree Gully

The City of Unley

City of Victor Harbor

City of West Torrens

Clare and Gilbert Valleys Council

Corporation of the Town of Walkerville

District Council of Mallala

The District Council of Mount Barker

District Council of Yankalilla

Light Regional Council

Town of Gawler

Wakefield Regional Council

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Date

This agreement is entered into on the day of 2013

Parties

1. **Kaurna Peoples native title claimants, by Garth Agius, Vince Buckskin, Lynette Crocker, Phillip Davies, Cecil Graham, Carroll Karpany, Shirley Lampard, Deceased, Joseph Mitchell, Rodney O'Brien, Deceased, Glenice Sumner, Frank Wanganeen, Maureen Wanganeen, Deceased, Georgina Williams, in application number SAD 6001/2000 in the Federal Court of Australia, care of Campbell Law, 1st Floor, 18-20 Grenfell Street, Adelaide SA 5000 (*Kaurna*)**
2. **Kaurna Yerta Aboriginal Corporation, AU-60064397945, an Indigenous Corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), care of Campbell Law, 1st Floor, 18-20 Grenfell Street, Adelaide SA 5000 (*KYAC*)**
3. **Kaurna Nation Cultural Heritage Association Incorporated, an incorporated association under the *Associations Incorporation Act, 1985 (SA)* care of Camatta Lempens, 1st Floor, 345 King William Street, Adelaide SA 5000 (*Heritage Association*)**
4. **Adelaide City Council** of Town Hall, 128 King William Street, Adelaide SA 5000
5. **Adelaide Hills Council** of 28 Onkaparinga Valley Road, Woodside SA 5244
6. **Alexandrina Council** of 11 Cadell Street, Goolwa SA 5214
7. **The Barossa Council** of 43-51 Tanunda Road, Nuriootpa SA 5355
8. **Campbelltown City Council** of 172 Montacute Road, Rostrevor SA 5073
9. **City of Burnside** of 401 Greenhill Road, Tasmore SA 5065
10. **City of Charles Sturt** of 72 Woodville Road, Woodville SA 5011
11. **City of Holdfast Bay** of 24 Jetty Road, Brighton SA 5048
12. **City of Marion** of 245 Sturt Road, Sturt SA 5047
13. **City of Mitcham** of 131 Belair Road, Torrens Park SA 5062
14. **City of Norwood Payneham and St Peters** of 175 The Parade, Norwood SA 5067
15. **City of Onkaparinga** of Ramsay Place, Noarlunga Centre SA 5168
16. **City of Playford** of 10 Playford Boulevard, Elizabeth SA 5112

17. **City of Port Adelaide Enfield** of 163 St Vincent Street, Port Adelaide SA 5015
18. **City of Prospect** of 128 Prospect Road, Prospect SA 5082
19. **City of Salisbury** of 12 James Street, Salisbury SA 5108
20. **City of Tea Tree Gully** of 571 Montague Road, Modbury SA 5092
21. **The City of Unley** of 181 Unley Road, Unley SA 5061
22. **City of Victor Harbor** of 1 Bay Road, Victor Harbor SA 5211
23. **City of West Torrens** of 165 Sir Donald Bradman Drive, Hilton SA 5033
24. **Clare and Gilbert Valleys Council** of 4 Gleeson Street, Clare SA 5453
25. **Corporation of the Town of Walkerville** of 66 Walkerville Terrace, Gilberton SA 5081
26. **District Council of Mallala** of 2A Wasleys Road, Mallala SA 5502
27. **The District Council of Mount Barker** of 6 Dutton Road, Mount Barker SA 5251
28. **District Council of Yankalilla** of 1 Charles Street, Yankalilla SA 5203
29. **Light Regional Council** of 93 Main Street, Kapunda SA 5373
30. **Town of Gawler** of 89 Murray Street, Gawler SA 5118
31. **Wakefield Regional Council** of Scotland Place, Balaklava SA 5461

(Parties 4 to 31 inclusive are collectively referred to as the **Councils** and a reference to a **Council** means any one of the 28 Councils)

Recitals

- A Kurna assert traditional ownership and native title in relation to land and waters in the ILUA area.
- B KYAC:
 - (a) enters into this ILUA in the performance of its functions of managing the asserted traditional ownership and native title of the Kurna in relation to land and waters in the ILUA area and all matters relating to them; and
 - (b) by signing this ILUA confirms that KYAC has been authorised by the native title claim group to enter into this ILUA on behalf of the Kurna.

- C The Heritage Association enters into this ILUA in the performance of its functions of protecting and preserving Aboriginal sites, objects and remains in the ILUA area of significance to the Kurna.
- D The Councils are constituted under the *Local Government Act 1999 (SA)* and have the statutory powers and capacities conferred on them under that Act and any other Act.
- E Each party recognises the interests of each other party, and of land owners and occupiers, in relation to the ILUA area.
- F In particular the parties recognise that:
- (a) the relationship of Aboriginal people to land and waters is central to their well-being and to their continuing connection to the religious, emotional, spiritual and non-human world;
 - (b) Kurna assert that native title exists in relation to land and waters in the ILUA area and that the Kurna constitute the group that claims to hold native title in relation to land and waters in the ILUA area; and
 - (c) Aboriginal sites, objects and remains within the ILUA area are of significance to the Kurna and that it is in the interests of the general community within the ILUA area that those sites, objects and remains be preserved and protected.
- G Kurna, KYAC, the Heritage Association and the Councils have negotiated with each other for this ILUA, which, amongst other things, provides for:
- (a) Kurna and the Councils to agree to the validation of all invalid acts done by any of the Councils in the ILUA area before the registration date;
 - (b) Kurna and the Councils to consent to the doing of all future acts in the ILUA area by each of the Councils;
 - (c) a protocol for the preservation and protection of Aboriginal sites, objects and remains in the ILUA area;
 - (d) a planning protocol providing for:
 - (i) notification to the ILUA administrator(s) of certain types of development on certain land; and
 - (ii) notification to certain developers of their obligations under the Aboriginal Heritage Act;
 - (e) the establishment of a liaison committee to carry out functions relative to the common interests of the parties;
 - (f) the appointment of the ILUA administrator(s); and

	(f) funding of the liaison committee and its functions and the ILUA administrators, on the terms of this ILUA.
H	The provisions of this ILUA apply instead of the right to negotiate procedure, which is not intended to apply to the doing of any future act in the ILUA area by any of the Councils.
I	This ILUA is an area agreement pursuant to sections 24CA to 24CL of the <i>Native Title Act 1993</i> (Cth) and regulation 7 of the <i>Native Title (Indigenous Land Use Agreements) Regulations 1999</i> (Cth) and is intended to be registered on the register.
J	The parties enter into this ILUA for the purpose of improving relationships between each of them and to enhance development within the ILUA area for the social and economic well-being of all people living and working in the ILUA area.

It is agreed as follows:

1. Preliminary

1.1 Definitions

In this ILUA, unless the context otherwise requires:

Aboriginal Heritage Act means the *Aboriginal Heritage Act 1988* (SA).

Aboriginal site, object or remains means any of:

- (a) an “Aboriginal site”, an “Aboriginal object”, or “Aboriginal remains” as defined in the *Aboriginal Heritage Act*; and
- (b) “Aboriginal remains”, a “significant Aboriginal area” or a “significant Aboriginal object” as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

Capital Works Program means, in respect of each Council, that section of that Council’s program which sets out a summary of its capital investment activities during a financial year:

- (a) presented in a manner consistent with the note in the Model Financial Statements entitled *Uniform Presentation of Finances*, as prescribed in Regulation 7(c) of the *Local Government (Financial Management) Regulations 2011* (SA); and
- (b) in the form of that Council’s program as it exists as at the date when that Council’s draft annual business plan is released for public consultation pursuant to section 123 of the *Local Government Act 1999* (SA).

Capital Works Program Change means, in respect of each Council, each capital investment activity adopted at any time by that Council by way of amendment or addition to or omission from that Council’s Capital Works Program.

commencement date means the date on which the parties to this ILUA execute it.

Committee has the meaning given to it in clause 6.1(a).

communication has the meaning given to it in clause 9.1.

CPI base means the CPI index prevailing at the commencement date.

CPI current means the CPI index prevailing at the time when any adjustment to Councils' contributions to the Fund is required to be made pursuant to clause 7.1(a)(ii).

CPI factor means:

$$\frac{\text{CPI current}}{\text{CPI base}}$$

CPI index means the Consumer Price Index (Tables 1 and 2. CPI: All Groups, Index Numbers and Percentage Changes; Index Numbers; All groups CPI; Adelaide) as published quarterly (or any index published quarterly in substitution therefor) by the Australian Bureau of Statistics or its successors.

development authorisation has the meaning given to that term in the *Development Act 1993* (SA).

dispute has the meaning given to it in clause 8.1.

dispute parties has the meaning given to it in clause 8.4.

expert has the meaning given to it in clause 8.6(a).

financial year means the financial year of a Council.

force majeure event means any act, event or cause, which is beyond the reasonable control of a party, including such an event being:

- (a) an Act of God, war, sabotage, riot, civil commotion, national emergency (whether in fact or law), fire, lightning, flood, earthquake, landslide, drought, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of that party), epidemic, disease, pestilence, quarantine or radioactive contamination;
- (b) action or inaction of any competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order or decision;
- (c) religious or other ceremonial activities (carried out pursuant to obligations under Aboriginal tradition) of the Kurna; or
- (d) breakdown of plant, machinery or equipment (including ships, trains, trucks or vehicles) or shortage of labour, transportation, fuel, power, plant, machinery, equipment or material.

Fund means the fund established pursuant to clause 7.1.

future act has the meaning provided under the Native Title Act, but excludes any such act that is the compulsory acquisition of the whole or any part of native title rights and interests.

heritage survey has the meaning given to it in clause 4.2.

ILUA means this indigenous land use agreement.

ILUA administrator means the person appointed (or if more than one person is appointed, each of the persons appointed) from time to time, as referred to in clause 6.5(a).

ILUA area means the geographical area in relation to which this ILUA applies, as specified in schedule 1.

LGA means the Local Government Association of South Australia Inc. of 148 Frome Street, Adelaide SA 5000.

matter of cultural confidence has the meaning given to it in clause 4.10(c).

Model Financial Statements means the document published by the Local Government Association of South Australia and adopted pursuant to Regulation 4(2) of the *Local Government (Financial Management) Regulations 2011* (SA).

native title has the meaning given in the Native Title Act.

Native Title Act means the *Native Title Act 1993* (Cth).

native title claim means the Kurna Peoples native title claim SAD 6001/2000; SC 00/1.

native title claim group means the native title claim group as defined in the Native Title Act, in respect of the native title claim.

notifiable act means each of the capital works reflected in each Capital Works Program and each Capital Works Program Change of each Council (where done during the term).

notified act means a notifiable act of which notice has been given pursuant to clause 3.1(a).

notified area means the area within which a notified act is to be done.

notified party has the meaning given to it in clause 8.3.

notifying party has the meaning given to it in clause 8.3.

provision has the meaning given to it in clause 14.3.

register means the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act.

registrar has the meaning given in the Native Title Act.

registration date means the date upon which this ILUA is registered and entered on the register as an area agreement pursuant to sections 24CA to 24CL of the Native Title Act and regulation 7 of the *Native Title Indigenous Land Use Agreements Regulations 1999* (Cth).

review date has the meaning given to it in clause 2.2.

right to negotiate procedure has the meaning given to it in clause 11.2(b).

SANTS means South Australian Native Title Services Ltd, the body funded pursuant to section 203FE of the Native Title Act to act in the capacity of a Native Title Service Provider for South Australia.

secretary means the secretary of the Committee.

specialist means an anthropologist or archaeologist appointed pursuant to clause 4.2(b)(ii) for purposes of carrying out any heritage survey.

survey approval has the meaning given to it in clause 4.2(e)(i).

survey budget has the meaning given to it in clause 4.3(a).

survey report has the meaning given to it in clause 4.8(a).

term means the term of this ILUA set out in clause 2.1.

WPI base means the WPI index prevailing at the commencement date.

WPI current means the WPI index prevailing on the most recent past anniversary of the registration date.

WPI factor means:

$$\frac{WPI\ current}{WPI\ base}$$

WPI index means the Wage Price Index (Table 2b: Total hourly rates of pay, excluding bonuses: South Australia; Private and Public; All industries) as published quarterly (or any index published quarterly in substitution therefor) by the Australian Bureau of Statistics or its successors.

Terms defined in the Native Title Act and Aboriginal Heritage Act and not otherwise defined in this ILUA bear their defined meanings when used in this ILUA.

Other terms which are defined elsewhere in this ILUA bear their defined meanings when used in this ILUA.

1.2 Interpretation

In this ILUA, unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause, schedule, annexure or appendix is a reference to a clause of, or a schedule, annexure or appendix to, this ILUA;
- (f) a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;
- (g) a reference to an agreement, deed or document (including this ILUA) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this ILUA or that other agreement, deed or document;
- (h) a reference to a party to this ILUA or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (j) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (k) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;

- (l) a reference to a document includes an agreement (referred to in paragraph (k)) in writing and any certificate, notice, instrument and document of any kind;
- (m) a reference to dollars and \$ is to Australian currency;
- (n) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (o) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (p) a reference to agree, approve or consent on the part of a party is a reference to agree, approve or consent (as the case may be) on the part of that party in writing; and
- (q) nothing in this ILUA is to be interpreted against a party solely on the ground that the party put forward this ILUA or any part of it.

1.3 Headings

Headings do not affect the interpretation of this ILUA.

1.4 Schedules and annexures

Schedules, annexures and appendices form part of this ILUA.

2. Term

2.1 Term

- (a) This ILUA commences on the commencement date and continues for an indefinite period thereafter subject to earlier termination pursuant to this ILUA or by operation of law.
- (b) Any party may, not more than 4 months and not less than 2 months before the second anniversary of the registration date, give written notice to the other parties that it wishes to terminate this ILUA. If any party gives notice pursuant to this clause 2.1(b), then, unless the parties otherwise agree in writing, this ILUA will terminate on the second anniversary of the registration date or such later date agreed between the parties in writing.
- (c) If this ILUA is not registered pursuant to clause 12 within 12 months of the commencement date then any party may terminate it by written notice given to the other parties.

2.2 Review

- (a) Not more than 12 months, and not less than 6 months, before the expiry of the 5 year period calculated from the commencement date and each successive 5 year period during the term (**review date**) any party may give the other parties notice that it requires a review of this ILUA.
- (b) If any party gives the other parties a notice under clause 2.2(a) the parties must:
 - (i) meet as soon as possible, but in any event within 30 days after the date of that notice; and

- (ii) negotiate in good faith with a view to reaching agreement between the parties in relation to any amendments proposed to this ILUA by any party.
- (c) The parties may agree to amend this ILUA or that no amendments are required to the ILUA.
- (d) Any amendments agreed to by the parties must be set out in writing in a written document signed by all of the parties.

3. Notifiable Act Process (Future Acts and Heritage)

3.1 Council Notice

- (a) Each Council must not more than 14 days after that Council:
 - (i) has released the Council's Capital Works Program for public consultation pursuant to section 123 of the *Local Government Act 1999* (SA) give the ILUA administrator notice of that release; and
 - (ii) has adopted any Capital Works Program Change by way of any amendment, addition to or omission from the Council's Capital Works Program give the ILUA administrator notice of that Capital Works Program Change.
- (b) Any notice given by a Council under clause 3.1(a) must:
 - (i) attach a copy of that Council's Capital Works Program or provide details of that Council's Capital Works Program Change, as applicable;
 - (ii) request the Heritage Association and KYAC to jointly respond to the notice within 30 days of the date of the notice or if a request for extension is made by the ILUA administrator to the Council within that 30 day period, within such longer period which:
 - (A) is reasonable in all of the circumstances; and
 - (B) is approved by the Council,
 regard being had to:
 - (C) the period within which the Heritage Association and KYAC are required to respond;
 - (D) the resources available to the Heritage Association and KYAC for the purposes of responding; and
 - (E) the number of other responses to Councils required to be made by the Heritage Association and KYAC during the period referred to in clause 3.1(b)(ii)(C); and
 - (iii) nominate a date or alternative dates not less than 15 days from the end of the period (if applicable, as extended) referred to in clause 3.1(b)(ii) as the date for representatives of the Council and the Heritage Association and/or KYAC to meet for the purpose of discussing the undertaking of any or all of the notified acts.

3.2 The Heritage Association and KYAC's Response

Within 30 days (or longer period as extended by a Council pursuant to clause 3.1(b)(ii)) of that Council giving the Heritage Association and KYAC notice under clause 3.1(a), the Heritage Association and KYAC may jointly give that Council a response setting out:

- (a) the Kurna's comments on the effect, if any, that any notified act will have on the Kurna's native title rights within the notified area and any proposals KYAC has to reduce or exclude that effect. If KYAC's response to the Council's notice states that the relevant notified act will have an effect on the Kurna's native title rights within the notified area, that response must, in relation to the date or alternative dates nominated by the Council for a meeting pursuant to clause 3.1(b)(iii), either:
 - (i) advise that Council that the Kurna do not require a meeting; or
 - (ii) advise the Council that the Kurna do require a meeting and, if the Council has nominated alternative dates for the meeting, the date selected by KYAC for the meeting; and/or
- (b) in relation to the Kurna's Aboriginal heritage interests:
 - (i) that a notified act will not, in the Heritage Association's view, damage, disturb or interfere with any Aboriginal site, object or remains;
 - (ii) that in the Heritage Association's view an Aboriginal site, object or remains is located within any notified area and, in doing so, provide the Council with sufficient details to enable it to undertake the relevant notified act without damaging, disturbing or interfering with that Aboriginal site, object or remains; or
 - (iii) a request that a heritage survey of any notified area be undertaken. In doing so the Heritage Association will:
 - (A) give the relevant Council reasons for that request;
 - (B) submit to that Council a draft survey budget pursuant to clause 4.3 for that heritage survey; and
 - (C) in relation to the date or alternative dates nominated by the Council for a meeting pursuant to clause 3.1(b)(iii) either:
 - (1) advise that Council that the Heritage Association does not require a meeting; or
 - (2) advise the Council that the Heritage Association does require a meeting and, if the Council has nominated alternative dates for the meeting, the date selected by the Heritage Association for the meeting.

3.3 Further Provisions relating to Response

- (a) The Heritage Association and KYAC must consult with each other in giving any joint response to a Council pursuant to clause 3.2.
- (b) If a Council has nominated alternative dates for a meeting pursuant to clause 3.1(b)(iii) and both KYAC and the Heritage Association require a meeting in their joint response, the joint response must select the same date and time for a joint meeting with the relevant Council.

- (c) A response pursuant to clause 3.2 binds both KYAC and the Heritage Association.
- (d) If KYAC and the Heritage Association do not jointly respond to a notice given pursuant to clause 3.1 in relation to any notified act notified in that notice within 30 days of the date of that notice (as extended, pursuant to clause 3.1(b)(ii), if applicable), the Heritage Association and the KYAC are both deemed to have given consent to the carrying out by a Council of that notified act, subject to the provisions of Aboriginal Heritage Act.

3.4 Council Compliance

- (a) If the Heritage Association responds under clause 3.2(b)(iii) the relevant Council must notify the Heritage Association of its decision either to conduct or not to conduct a heritage survey of the relevant notified area, within 14 days of that Council adopting its Capital Works Program (of which notice was given pursuant to clause 3.1(a) to the Heritage Association in the form released for public consultation pursuant to section 123 of the *Local Government Act 1999* (SA)).
- (b) If KYAC responds under clause 3.2(a)(ii) and/or the Heritage Association responds under clause 3.2(b)(iii)(C)(2), representatives of the relevant Council and KYAC and/or the Heritage Association, respectively must meet on the date nominated by that Council or selected by KYAC and/or the Heritage Association (unless the parties agree that it is not necessary to meet) to discuss, as relevant:
 - (i) the undertaking of the relevant notified act;
 - (ii) the response of KYAC and/or the Heritage Association, as applicable;
 - (iii) in relation to:
 - (A) a response under clause 3.2(a)(ii), KYAC's proposals to reduce or exclude the effect that the relevant notified act will have on the Kaurna's native title rights within the notified area; or
 - (B) a response under clause 3.2(b)(iii)(C)(2), any decision made by the Council about conducting a heritage survey.
- (c) Where a meeting is required to be held, the Council must not do the relevant notified act until after the date for that meeting.
- (d) In doing the relevant notified act the Council must consider:
 - (i) the contents of the joint notice of KYAC and the Heritage Association given under clause 3.2; and
 - (ii) the discussions at any meeting held.

3.5 Aboriginal Heritage Protocol

If the Heritage Association request a heritage survey in response to a Council's notice and that Council elects to conduct a heritage survey of the relevant notified area for the relevant notified act, the provisions of clause 4 will apply.

3.6 Council to Notify of Decision

The Council must notify the ILUA administrator within 7 days of making a decision to undertake or not to undertake a notified act.

3.7 Emergency

- (a) If any emergency situation occurs anywhere within the ILUA area, then, where a Council would otherwise have to comply with clauses 3 and/or 4:
 - (i) that Council may take such measures as it considers necessary in the circumstances;
 - (ii) the provisions of clauses 3 and 4 do not apply to prevent or impair the taking of those measures;
 - (iii) that Council must as soon as reasonably practicable notify the ILUA administrator of the emergency situation; and
 - (iv) after the emergency, that Council and the Heritage Association must consult with each other in relation to any further measures to be taken.

3.8 Compliance with Clause

Subject to clauses 3.7, 3.9 and 4.11, a Council must not do any notified act unless and until it has complied with the provisions of this clause 3 and, if applicable, clause 4.

3.9 Application of this Clause

This clause 3 is not mandatory until the ILUA is registered.

4. Heritage Survey

4.1 Aboriginal Heritage Act

A Council must comply with the Aboriginal Heritage Act in doing any notified act.

4.2 Heritage Survey Procedure

If the Heritage Association gives a Council a notice under clause 3.2(b)(iii) and that Council elects, but may not unreasonably refuse, to conduct a heritage survey (**heritage survey**) of the relevant notified area, the following provisions apply:

- (a) subject to a survey budget being agreed or determined:
 - (i) the Heritage Association and KYAC must both ensure that that heritage survey is undertaken within 30 days of that Council's notice given pursuant to clause 3.4(a); and
 - (ii) the Heritage Association must give that Council notice not less than 7 days before the start of that heritage survey of the dates on which it will start and finish;
- (b) the survey team (**survey team**) must comprise:
 - (i) not more than 4 representatives of the Heritage Association and/or KYAC (as agreed between them); and
 - (ii) if required for purposes of the survey team performing its functions, a specialist, approved by that Council;
- (c) the Heritage Association and KYAC must both ensure that the persons in the survey team have the traditional knowledge and authority to advise whether

- there is any Aboriginal site, object or remains within the relevant notified area;
- (d) the functions of the survey team are to assess the relevant notified area for the purpose of:
- (i) advising their view of whether the relevant notified act will damage, disturb or interfere with any Aboriginal site, object or remains within that notified area; and
 - (ii) nominating the conditions, if any, which in their view are necessary, and which should accordingly apply in order to protect each Aboriginal site, object or remains within the relevant notified area from damage, disturbance or interference by that notified act;
- (e) the survey team will discharge its functions by:
- (i) conducting an inspection and assessment of the relevant notified area, if applicable in conjunction with the specialist, providing a survey report detailing whether and to what extent survey approval (**survey approval**) is given to the relevant notified act and what if any conditions apply to the survey approval; and
 - (ii) providing the survey report to that Council.

4.3 Survey Budget

- (a) A heritage survey must be undertaken in accordance with a survey budget (**survey budget**) which must:
- (i) reflect daily rates (which must be pro-rated for any part day) for each survey team member (other than the specialist) for undertaking the heritage survey, of \$460 per day (exclusive of GST) (adjusted annually on each anniversary of the registration date by the WPI factor), or as otherwise agreed in writing between the parties, but in any event not more than the prevailing market rate;
 - (ii) reflect daily rates (which must be pro-rated for any part day) for the specialist for undertaking the heritage survey, as agreed between the specialist and the relevant Council;
 - (iii) reflect the reasonable costs of travel for attending at any heritage survey of any survey team member; and
 - (iv) reflect that any reasonable administrative costs and expenses constitute no more than 10% of the aggregate of all other costs and expenses comprised in the survey budget.
- (b) A survey budget must be agreed between the Heritage Association and the relevant Council within 21 days or such other period as the parties agree after the Council's notice under clause 3.4(a) is issued, failing which the provisions of clause 8 will apply to the determination of that budget.
- (c) A Council and the Heritage Association may at any time agree to amend the survey budget.
- (d) A Council is not responsible for any costs or expenses of carrying out the heritage survey which exceed the agreed survey budget.

4.4 Payment

- (a) The Heritage Association may invoice a Council the costs and expenses of carrying out a heritage survey (up to a maximum of the amount stated in the survey budget) as follows:
 - (i) 30% not less than 21 days prior to the mobilisation of the survey team to undertake that heritage survey;
 - (ii) 40% upon completion of that heritage survey; and
 - (iii) 30% or the balance thereof within 14 days of receipt of the report and a tax invoice of all costs and expenditure incurred in carrying out that heritage survey.
- (b) Any payment by a Council pursuant to clause 4.4(a) must be made within 14 days of receipt of a tax invoice from the Heritage Association.

4.5 Evidence

Any invoice provided to a Council pursuant to clause 4.4(a) must be supported by evidence, reasonably satisfactory to the relevant Council, that the relevant costs and expenses have been incurred properly.

4.6 Council's Representative

A Council may make a representative available at the notified area for consultation by the survey team at reasonable times during a heritage survey, but the representative may not otherwise be present whilst that heritage survey is being undertaken, except when requested by the survey team.

4.7 Alternative Area

During the undertaking of a heritage survey the survey team and a Council's representative may agree upon any alternative area or location on the relevant notified area within or at which the relevant Council may carry out the relevant notified act.

4.8 Survey Team Report

- (a) Within 14 days of completion of a heritage survey the Heritage Association must provide to a Council a written report (**survey report**) in relation to that heritage survey.
- (b) The survey report must:
 - (i) be consistent with the functions of the survey team for the relevant heritage survey, as reflected in clause 4.2(d);
 - (ii) state whether and to what extent survey approval is given to the relevant notified act and what, if any, conditions apply to the survey approval ; and
 - (iii) be signed by the specialist.
- (c) The copyright in the survey report vests in the Heritage Association.

4.9 Consequences of Report

Subject to the provisions of clause 8, a Council must comply with a survey report.

4.10 Non disclosure

- (a) Nothing in this ILUA requires the Kurna or the Heritage Association or any member of any survey team to disclose the location and/or significance of any Aboriginal site, object or remains, if they consider the location and/or significance to be a matter of cultural confidence, but they must disclose sufficient information in accordance with clause 4.8(b) to enable a Council, its employees, contractors and subcontractors to carry out the relevant notified act on the area given survey approval, without damaging, disturbing or interfering with the relevant Aboriginal site, object or remains.
- (b) The Heritage Association and KYAC must not disclose to any person any information provided by a Council to the Heritage Association or KYAC or any member of the survey team in connection with any heritage survey, which is designated by that Council as confidential information.
- (c) For the purposes of this clause 4.10 ***a matter of cultural confidence*** means any cultural information, including information held in an Aboriginal record, where disclosure of that information is restricted or forbidden by Aboriginal tradition.
- (d) The provisions of clause 4.10(b) survive the expiry or termination for whatever reason of this ILUA.

4.11 Failure by the Heritage Association

- (a) If within 7 days of the date by which:
 - (i) a heritage survey is required to be carried out, it has not been carried out for any reason; or
 - (ii) the Heritage Association is required to provide a report to a Council, it has failed to do so,the relevant Council may give notice to the Heritage Association requiring that:
 - (iii) the relevant heritage survey be carried out; or
 - (iv) a report be provided to that Council,within 14 days of the Council giving that notice.
- (b) A notice provided under clause 4.11(a) must state that, if the Heritage Association and KYAC do not comply with that notice within that period, the relevant Council intends to proceed with the relevant notified act.
- (c) If a Council has given a notice pursuant to clause 4.11(a) and the Heritage Association and KYAC fail to comply with it, that Council may carry out the relevant notified act.

4.12 Discoveries During Operations

If any time during the carrying out of any notified act a Council identifies any site, object or remains which it suspects may be an Aboriginal site, object or remains, that Council must, in addition to any other obligations under the Aboriginal Heritage Act:

- (a) promptly report the location of that site, object or those remains to the ILUA administrator;

- (b) cease to carry out that notified act on the relevant site or the location of the relevant object or remains; and
 - (c) leave where discovered, and not damage, disturb or interfere with, the relevant object or remains,
- unless and until it is lawful for that Council to proceed.

5. Planning Protocol

5.1 Notice to the Heritage Association

- (a) Within 14 days of the end of each month during the term each Council must give the ILUA administrator a notice of the development authorisations granted by it to any person within the ILUA area during that month for each of the following categories of development:
 - (i) each Category 3 development for the purposes of section 38 of the *Development Act 1993* (SA) and Schedule 9 of the *Development Regulations 2008* (SA), including subdivisions of land of 4 or more allotments; and
 - (ii) each subdivision of 4 or more allotments (not being a Category 3 development).
- (b) Any notice given pursuant to clause 5.1(a) must specify in relation to each development authorisation to which it applies:
 - (i) the name, address and contact details of the person to whom development authorisation has been granted;
 - (ii) the location of the development in respect of which development authorisation has been granted; and
 - (iii) a brief description of the development.

5.2 Notice to Developers

- (a) At the same time that development authorisation is notified to a person in respect of a development within the ILUA area a Council must give that person a notice regarding the provisions of the *Aboriginal Heritage Act*.
- (b) Any notice given pursuant to clause 5.2(a) must specify:
 - (i) that it is an offence under the *Aboriginal Heritage Act* to damage, disturb or interfere with any Aboriginal site, object or remains;
 - (ii) the contact details of the Heritage Association; and
 - (iii) that the Heritage Association is responsible for undertaking heritage surveys in the ILUA area.

6. Liaison Committee

6.1 Establishment

- (a) A liaison committee (**Committee**) shall be established within twelve months of the commencement date and will comprise the members and have the functions set out in this clause 6.

- (b) The Committee will continue in existence from the date of its establishment until the date of termination or expiry of this ILUA.

6.2 Functions

- (a) The functions of the Committee are to:
 - (i) make recommendations or give advice to the parties concerning any matter under or relating to this ILUA;
 - (ii) help maintain and develop on-going relationships between the parties and between the parties and other persons and build capacity of the Kaurna community;
 - (iii) act as a forum to resolve issues causing concern between both parties including heritage monitoring and conduct of surveys;
 - (iv) procure funding for projects of mutual benefit to the Kaurna and the Councils;
 - (v) make decisions regarding the undertaking of projects of mutual benefit to the Kaurna and the Councils;
 - (vi) make decisions regarding mechanisms to achieve recognition within the general community in the ILUA area of the Kaurna as the Aboriginal group that asserts traditional ownership of the ILUA area;
 - (vii) make decisions regarding the promotion of reconciliation between the Councils and the Kaurna and the community within the ILUA Area generally;
 - (viii) make decisions regarding economic development opportunities within the ILUA area for the parties;
 - (ix) make decisions regarding Aboriginal training, employment, contracting and business opportunities and strategies within the ILUA area;
 - (x) make decisions regarding service delivery by the Councils and other persons to the Kaurna and other Aboriginal people living within the ILUA area;
 - (xi) make decisions in relation to further funding of any activities arising out of this ILUA and make application for such funding upon behalf of the parties or any of them;
 - (xii) establish such sub-committees as considered necessary to pursue any matter to advance this ILUA;
 - (xiii) subject to clause 6.5(b), appoint the ILUA administrator(s) from time to time;
 - (xiv) after consultation with the LGA, determine the terms and conditions of employment of the ILUA administrator(s) and any changes from time to time in those terms and conditions;
 - (xv) at the request of the LGA or of its own volition and, in either case after consultation with the LGA, make a decision to terminate the employment of the ILUA administrator(s);
 - (xvi) provide operational guidance and direction to the ILUA administrator(s) in the performance of their functions through, amongst other things, the key performance indicators and objectives

established by the Committee from time to time pursuant to clause 6.8;

- (xvii) perform such other functions and make decisions regarding such functions, both as may be agreed upon by the parties; and
 - (xviii) apply the Fund towards the achievement of the above functions.
- (b) The parties agree that the matters reflected in Schedule 4 represent examples of the types of matters which the Committee may consider in the performance of its functions.

6.3 Membership and Payment

- (a) The Committee will be comprised of the following persons:
- (i) three persons nominated by KYAC;
 - (ii) three persons nominated by the Heritage Association; and
 - (iii) six persons nominated jointly by the Councils,
- and each nominee is entitled to appoint an alternate to attend any meeting in his or her stead and to remove and replace that alternate.
- (b) Each of KYAC, the Heritage Association and the Councils may remove and replace any member of the Committee nominated by them.
- (c) Notice of nomination, removal and replacement by KYAC, the Heritage Association or the Councils of a person as a member of the Committee and of the appointment, removal or replacement of any alternate of a nominee of KYAC, the Heritage Association or the Councils must promptly be given to the others of them.
- (d) Notwithstanding the provisions of clause 9, any nomination, removal or replacement of a person as a member of the Committee or of the appointment, removal or replacement of any alternate of a nominee:
- (i) by the Councils may be given by the LGA, on behalf of the Councils, to KYAC and the Heritage Association;
 - (ii) by KYAC, may be given by KYAC to the LGA, on behalf of the Councils, and to the Heritage Association; and
 - (iii) by the Heritage Association, may be given by the Heritage Association to the LGA, on behalf of the Councils, and to KYAC.
- (e) Each member of the Committee nominated by KYAC or the Heritage Association will be paid \$50 per hour (plus GST) (pro-rated for any part hour) from the Fund for each hour (or part thereof) of his or her attendance at any Committee meeting, adjusted annually on each anniversary of the registration date by the WPI factor.

6.4 Chair and Deputy Chair

- (a) Unless the Committee otherwise determines:
- (i) the chairperson of the Committee will rotate on an annual basis between:
 - (A) a Committee member nominated alternatively by KYAC and then the Heritage Association; and
 - (B) a Committee member nominated by the Councils; and

- (ii) the deputy chairperson of the Committee will be:
 - (A) when the chairperson of the Committee is a Committee member nominated by KYAC or the Heritage Association, a Committee member nominated by the Councils; and
 - (B) when the chairperson of the Committee is a Committee member nominated by the Councils, a Committee member nominated alternatively by KYAC and then the Heritage Association.
- (b) Neither the chairperson nor the deputy chairperson have a casting vote.

6.5 ILUA administrator(s)

- (a) The Liaison Committee may appoint one or more persons as ILUA administrator(s), but on the basis that such person alone or such persons together constitute not more than one full time equivalent position or such other number of full time equivalent positions from time to time decided by the Committee.
- (b) Where it is lawful to do so, the Committee must give preference to the employment of a member or members of the Kurna as ILUA administrator(s) if:
 - (i) both the relevant member and another person (who is not a member of the Kurna) apply for employment as ILUA administrator;
 - (ii) both that member and another person (who is not a member of the Kurna) are suitably qualified to be employed as the ILUA administrator; and
 - (iii) the skills, ability and experience, relevant to the position of ILUA administrator, of that other person are no greater than those of that member.
- (c) The ILUA administrator (or, if more than one person is appointed as ILUA administrators, the person nominated by the Committee) is ex officio the secretary of the Committee.
- (d) The secretary is not required to be a member of the Committee.
- (e) The secretary must ensure that:
 - (i) an agenda, and papers, setting out the time and place and business to be conducted at each meeting of the Committee are distributed to members of the Committee and their alternates not less than 7 days before each meeting of the Committee or such shorter period agreed to by the members of the Committee;
 - (ii) draft minutes of each meeting of the Committee are circulated to all members of the Committee within 14 days of each meeting of the Committee; and
 - (iii) the approved minutes of each meeting of the Committee are kept and maintained at such location(s) agreed to by the members and are available for inspection and copying by all members and their alternates.

6.6 Proceedings of Committee

- (a) Subject to the provisions of this clause 6, the Committee may:

- (i) meet together either in person, by telephone, by other means of instantaneous communication or in such other manner as the members of the Committee may approve from time to time; and
 - (ii) adjourn and otherwise regulate its meetings and proceedings as the members think fit.
- (b) The Committee must meet:
- (i) at intervals of not more than 6 months, the first Committee meeting to be held within 3 months of its establishment; and
 - (ii) in any event within 28 days of a request for a meeting from the parties entitled to nominate members to the Committee.
- (c) The venue for each meeting of the Committee will be determined by the Committee.
- (d) The quorum for any meeting of the Committee is two Committee members nominated by each of KYAC, the Heritage Association and the Councils, being a total of six members.
- (e) If a quorum is not present within half an hour from the time appointed for any meeting of the Committee the meeting stands adjourned to the same day in the next week at the same time and place and the Committee member(s) present at the adjourned meeting constitute a quorum.
- (f) Decisions of the Committee will be made by consensus on an unanimous basis.

6.7 Delegation

- (a) The Committee may delegate any of its functions to:
- (i) any sub-committee established pursuant to clause 6.2(a)(xii); or
 - (ii) the ILUA administrator in his or her capacity as the secretary of the Committee.
- (b) A delegation pursuant to clause 6.7(a) is revocable at will by the Committee.
- (c) A delegation pursuant to clause 6.7(a) does not prevent the Committee from acting in any matter.

6.8 KPIs and Objectives

Not less than 30 days before the start of each financial year, the Committee must determine in writing key performance indicators and objectives for the ensuing financial year which are consistent with the Committee's functions and which it will seek to achieve during that year.

6.9 Reporting

- (a) Not less than 14 days before the start of each financial year the Committee must provide each of the Councils, the Kaurna and the Heritage Association with a copy of its written key performance indicators and objectives for the ensuing financial year.
- (b) On or before 31 July in each year during the term the Committee must prepare and approve at a meeting of the Committee an annual written report in relation to the Committee's functions, activities and projects during the immediately preceding financial year and may determine that the report or a

summary or extracts of it be circulated to the Councils, the Kurna and the Heritage Association.

- (c) The report must include details of:
 - (i) an assessment of the extent to which the Committee's key performance indicators and objectives for the immediately preceding financial year have been met;
 - (ii) each of the projects and activities funded from the Fund during the immediately preceding financial year; and
 - (iii) each of the projects and activities current during the immediately preceding financial year but funded from the Fund during a financial years or financial years other than the immediately preceding financial year.
- (d) The details referred to in clauses 6.9(c)(ii) and (iii) must include in respect of each project or activity of the Committee:
 - (i) a brief description of the project or activity;
 - (ii) the amount, if any, funded from the Fund for the project or activity during the immediately preceding financial year;
 - (iii) the aggregate amount funded from the Fund for the project or activity during the immediately preceding and earlier financial years; and
 - (iv) a brief assessment of the merits of the project or activity and the benefits it has provided to the Kurna and/or any or all of the Councils.
- (e) The Committee may at any time prepare any report other than the annual written report referred to in clause 6.9(b).
- (f) The parties acknowledge that:
 - (i) the Fund will be audited as part of the annual audit of the LGA; and
 - (ii) the LGA will provide written details to the Committee of any qualified report made in respect of the Fund in any auditor's report forming part of any annual audit of the LGA.

6.10 Engagement of Advisers

The Committee has the right to decide to engage advisers and other persons and to determine the terms and conditions of any such engagement.

6.11 Invitees

Each member of the Committee has the right to invite a reasonable number of non-members to attend and speak (but not vote) at any Committee meeting as observers or spokespersons having regard to the matters on the agenda for the relevant meeting.

7. Fund

7.1 Establishment of Fund

- (a) The Councils will establish a fund and, subject to clause 7.1(b), will each contribute:

- (i) in respect of the first financial year commencing after the registration date, the respective amounts referred to in schedule 3; and
 - (ii) in respect of each subsequent financial year, the respective amounts referred to in schedule 3, adjusted annually on each anniversary of the registration date by the CPI factor.
- (b) Without detracting from the generality of clause 2.2, the amounts of the contributions of each of the Councils to the Fund for each subsequent financial year will be reviewed by the Councils upon the expiry of the 5 year period calculated from the commencement date and each successive 5 year period during the term.
- (c) The Councils must promptly notify the Kaurna and the Heritage Association of the outcome of each review of the amounts of the contributions of each of the Councils to the Fund pursuant to clause 7.1(b).
- (d) If the amounts of the contributions of each of the Councils to the Fund are changed pursuant to a review under clause 7.1(b), the Councils must contribute the amounts of their respective changed contributions to the Fund for each subsequent financial year.
- (e) Each Council must pay the amount of its contribution for any financial year to the LGA not more than 21 days after the start of that financial year.
- (f) Each of the Councils and the Kaurna, KYAC and the Heritage Association acknowledge and agree that:
- (i) the Fund will be administered by the LGA;
 - (ii) the ILUA administrator(s) will be employed by the LGA as full time or part time employee(s) on the terms and conditions from time to time determined by the Committee, after consultation with the LGA;
 - (iii) the duties of the ILUA administrator(s) will comprise such duties as are from time to time determined by the Committee, but must include in respect of the person or both persons appointed:
 - (A) assisting the Kaurna, KYAC and the Heritage Association in administering their respective rights and obligations under this ILUA, including:
 - (1) receiving and considering each notice given by a Council to the Heritage Association and KYAC pursuant to clauses 3.1(a) and 3.6;
 - (2) the Heritage Association and KYAC responding to each notice given by a Council pursuant to clauses 3.1(a);
 - (3) the Heritage Association and KYAC consulting pursuant to clause 3.3(a) regarding each such response;
 - (4) the appointment of each survey team and any specialist pursuant to clause 4.2(b);
 - (5) formulating and agreeing each survey budget pursuant to clause 4.3;
 - (6) invoicing a Council pursuant to clause 4.4; and
 - (7) receiving and considering each notice given by a Council pursuant to clause 5.1; and

- (B) acting as secretary to the Committee;
- (iv) the LGA will provide the ILUA administrator(s) with an office at the offices from time to time of the LGA and such other equipment and facilities as are necessary to enable the ILUA administrator(s) to perform his or her duties;
- (v) the LGA may withdraw from the Fund:
 - (A) the salary (inclusive of superannuation contributions) of the ILUA administrator(s);
 - (B) the associated on-costs of the employment by the LGA of the ILUA administrator(s) in an amount of 20% of such salary (inclusive of superannuation contributions); and
 - (C) any payment to any Committee member nominated by KYAC or the Heritage Association for attendance at a Committee meeting,

for the sole purpose of the payment of such salary, on-costs and payments, respectively; and
- (vi) the Fund must only be applied for the purposes:
 - (A) referred to in clause 7.1(f)(v); and
 - (B) funding the functions of the Committee, as decided by the Committee,

and each of the Councils, the Kaurna and the Heritage Association must use their respective best endeavours to ensure that their respective nominees on the Committee only apply the Fund or permit or allow the Fund to be applied for those purposes.

8. Dispute Resolution

8.1 Clause applies

All disputes or differences between any of the parties in connection with the interpretation, effect or any other matter in any way relating to this ILUA, other than in relation to what constitutes an Aboriginal site, object or remains, (*dispute*) will be dealt with in accordance with this clause 8 whether the dispute is first raised before, during or after the term.

8.2 Avoidance

The parties agree that:

- (a) they will make every effort to ensure that disputes do not arise;
- (b) if a dispute does arise, they must make every reasonable effort to resolve the dispute in accordance with this clause 8 and without recourse to litigation or arbitration proceedings; and
- (c) the provisions of clauses 8.1 and 8.2(b) do not apply to litigation proceedings for injunctive, interlocutory or declaratory relief.

8.3 Notification

A party (**notifying party**) will, within 30 days after the dispute arises, give a notice to the other party or parties with which it has the dispute (**notified party**) and a copy of that notice to the other parties setting out details of the dispute and any other matter that may, in the reasonable opinion of the notifying party, be relevant to the resolution of the dispute.

8.4 Initial Meeting

Within 7 days of the date of the notice the notifying party and notified party (**dispute parties**) will meet and use their respective reasonable endeavours to resolve the dispute within a further period of 14 days.

8.5 Mediation

If a dispute is not resolved in accordance with the provisions of clause 8.4:

- (a) any dispute party may request the President for the time being of the Law Society of South Australia Inc. (or his or her nominee) to appoint a mediator to mediate that dispute;
- (b) within 7 days of a mediator being appointed, the mediator will convene an initial meeting of the dispute parties in an attempt to resolve that dispute; and
- (c) if that dispute is not resolved at that initial meeting, the mediator will convene such further meetings of the dispute parties during the subsequent 14 days as the mediator reasonably considers necessary for the purpose of resolving that dispute.

8.6 Expert

- (a) If a dispute is not resolved in accordance with the provisions of clause 8.5 then within 7 days, the parties may agree to appoint a person who has an understanding of or experience in the subject matter of the dispute (**expert**) to determine the dispute.
- (b) If the parties fail to agree a mutually acceptable expert, then within 7 days any dispute party may request the President for the time being of the Law Society of South Australia Inc. (or his or her nominee) to appoint an expert to determine the dispute.

8.7 Capacity of Expert

The expert is an expert and not an arbitrator.

8.8 Expert's Determination

The expert's determination is final and binding on the dispute parties.

8.9 Determination costs

- (a) If the expert determines that the notifying party has given notice of a vexatious or frivolous dispute, the expert may determine that the notifying party must pay the whole or a specified portion of the costs and expenses of the other dispute party/ies in relation to the expert's determination.

- (b) Subject to clause 8.9(a), the costs and expenses of the dispute parties in relation to the expert's determination (or any remaining portion of these fees, expenses and costs) will be paid out of the Fund.

8.10 Expert's Fees

- (a) If the expert determines that the notifying party has given notice of a vexatious or frivolous dispute, the expert may determine that the notifying party must pay all, or a specified portion of, the expert's fees and expenses and the cost of the expert's determination.
- (b) Subject to clause 8.10(a), the expert's fees and expenses and the cost of the expert's determination (or any remaining portion of these fees, expenses and costs) will be paid out of the Fund.

8.11 Survival

The provisions of this clause 8 survive the expiry or termination for whatever reason of this ILUA.

9. Communications

9.1 Writing required

Subject to this ILUA, any notice, direction, request, response, consent, approval, demand, report or other communication (**communication**) to be given under this ILUA will be in writing and be addressed for the attention of the representative(s) of the party or parties as set out in Schedule 2.

9.2 Manner of giving

A communication may be delivered by hand, sent by prepaid post or sent by facsimile or other electronic transmission to the address of the party or parties to which it is being given and is deemed to have been received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by post, 3 days after posting; and
- (c) if sent by facsimile or other electronic transmission, on receipt by the sender of a confirmation report.

9.3 Change of details

Details specified in Schedule 2 in respect of a party may be changed by the party by not less than 7 days' notice to the other parties.

10. Warranties and Authority

10.1 Native title warranties

- (a) The Kurna and KYAC each represents and warrants to the other parties to this ILUA that:
 - (i) the Kurna are (as at the date of execution of this ILUA by all of the parties) the registered native title claimants (as defined in the Native

- Title Act) in relation to land and/or waters in the ILUA area and made the native title claim on behalf of the native title claim group;
- (ii) the native title claim group has established KYAC and has authorised it to manage the native title claim and all matters relating to the native title claim on behalf of the native title claim group;
 - (iii) KYAC enters into this ILUA in the performance of its functions of managing the asserted traditional ownership and native title in relation to the land and waters in the ILUA area and all matters relating to them; and
 - (iv) by signing this ILUA KYAC confirms that it has been authorised by the Kurna to enter into this ILUA on behalf of the native title claim group.
- (b) The Heritage Association represents and warrants to the other parties to this ILUA that:
- (i) it represents and, in accordance with Aboriginal tradition, has the authority to speak for, and is authorised to enter into this ILUA on behalf of, the traditional owners and other Aboriginal People who, in accordance with Aboriginal tradition, have the authority to speak for land and waters in the ILUA area;
 - (ii) it enters into this ILUA in the performance of its functions of managing the asserted traditional ownership and heritage in relation to the land and waters in the ILUA area and all matters relating to them; and
 - (iii) by signing this ILUA it confirms that it has been authorised by the traditional owners and other Aboriginal People who, in accordance with Aboriginal tradition, have the authority to speak for land and waters in the ILUA area to enter into this ILUA on their behalf.

10.2 Other Warranties

Each party represents and warrants to the other parties to this ILUA that:

- (a) it has the power to enter into this ILUA and perform its obligations under it; and
- (b) the persons who have executed this ILUA on its behalf have the necessary authority to do so.

11. Native Title Act Statements

11.1 Future Acts

The parties:

- (a) agree to the validation of all future acts done by any of the Councils that have already been done invalidly within the ILUA area before the registration date; and
- (b) consent, subject to clause 11.4, to each of the Councils doing each future act within the ILUA area during the period commencing on the registration date and continuing thereafter for the remainder of the term. Such consent does not imply permission by the traditional owners to do an act which in whole

or part may affect any Aboriginal site, object or remains and that would otherwise amount to a contravention of the Aboriginal Heritage Act.

11.2 No right to negotiate procedures

- (a) The parties agree that the right to negotiate procedure is not intended to apply to the doing of any future act by any Council within the ILUA area during the period commencing on the registration date and continuing thereafter for the remainder of the term.
- (b) For the purposes of this clause 11.2 the **right to negotiate procedure** means the procedures described in Part 2, Division 3, Subdivision P of the Native Title Act and includes any alternative provisions having effect in South Australia instead of that subdivision.

11.3 Non-Extinguishment Principle

The non-extinguishment principle as defined in section 238 of the Native Title Act applies to each validated future act referred to in clause 11.1(a) and each future act referred to in clause 11.1(b), done by any Council within the ILUA area.

11.4 Consent Conditional on Compliance with Clauses 3 and 4

The consent of the parties in clause 11.1(b) in relation to the doing of any future act is conditional on a Council complying with the provisions of clauses 3 and/or 4 which are applicable to the relevant future act.

11.5 Other Native Title Holders

The parties acknowledge and agree that this ILUA is binding pursuant to section 24EA(1)(b) of the Native Title Act on all persons holding native title in relation to any of the land and/or waters in the ILUA area who are not members of the Kurna native title claim group in the same way as the native title group (as defined in section 24CD(2) or (3) of the Native Title Act).

11.6 Acknowledgment regarding Compensation

Kurna acknowledges and agrees that:

- (a) any amounts payable and any benefits provided under or pursuant to this ILUA to the Kurna do not constitute satisfaction of any compensation rights or entitlement to which the Kurna would be entitled whether under the Native Title Act, common law, equity, any other statute or otherwise in respect of any act affecting the native title rights and interests of the Kurna done by the State of South Australia or by the Councils prior to or after the commencement date of this ILUA;
- (b) the State of South Australia is solely liable for any and all compensation rights or entitlement to which the Kurna are entitled whether under the Native Title Act, common law, equity, any other statute or otherwise in respect of any act affecting the native title rights and interests of the Kurna done by the Councils prior to or after the commencement date of this ILUA; and
- (c) the amounts and benefits provided under or pursuant to this ILUA to the Kurna are not compensation, for the purposes of section 24EB of the Native Title Act.

11.7 Application Survival

The provisions of clauses 11.6 survive the removal of the details of this ILUA from the register for whatever reason and the termination of this agreement and remain in those circumstances binding on:

- (a) all persons bound by this ILUA; and
- (b) all persons entitled to any of the benefits under this ILUA.

12. Registration

12.1 Application of ILUA

The parties state that:

- (a) this ILUA applies to the ILUA area; and
- (b) this ILUA is intended to be registered on the register as an area agreement under sections 24CA to 24CL of the Native Title Act and regulation 7 of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).

12.2 Application for Registration

- (a) The parties authorise and request the LGA to apply to the registrar for this ILUA to be registered and entered on the register as an area agreement pursuant to sections 24CA to 24CL of the Native Title Act and regulation 7 of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).
- (b) For the purposes of registering and entering this ILUA on the register as referred to in clause 12.2(a) the parties request SANTS to certify in accordance with the Native Title Act the application to the registrar referred to in clause 12.2(a).

12.3 Best endeavours

Each of the parties agrees to use its best endeavours to obtain the registration of this ILUA as soon as practicable after the commencement date.

12.4 Removal from Register

- (a) All of the parties may request the registrar pursuant to section 199C(1)(c)(ii) of the Native Title Act to remove the details of this ILUA from the register by advising the registrar in writing that they wish to terminate this ILUA.
- (b) The parties acknowledge that the registrar is required to remove the details of this ILUA from the register in the circumstances set out in sections 199C(1)(b), (c)(i) and (c)(iii) of the Native Title Act.
- (c) Upon details of this ILUA being removed from the register the provisions of clause 11.1(b) cease to apply to any future act done after that removal.
- (d) The provisions of clauses 12.4(a), (b) and (c) survive the expiry or termination for whatever reason of this ILUA.

12.5 Registered Native Title Body Corporate

- (a) If a determination of native title is made in respect of the whole or any part of the ILUA area and a registered native title body corporate is determined to

hold the rights and interests from time to time comprising the native title in trust for the native title holders the Kaurna and KYAC must use their best endeavours to ensure that the registered native title body corporate:

- (i) becomes a party to this ILUA in substitution for the Kaurna in relation to the whole or relevant part of the ILUA area in respect of which the native title body corporate is determined to hold native title in trust; and
 - (ii) assumes the rights and obligations of the Kaurna under this ILUA in relation to the whole or that part of the ILUA area.
- (b) The parties (other than the Kaurna) to this ILUA consent to the registered native title body corporate becoming a party to this ILUA and assuming the rights and obligations of the Kaurna in accordance with clause 12.5(a)(ii).
- (c) Each of the parties to this ILUA must sign such documents as are necessary to give effect to the provisions of this clause 12.5.

12.6 Heritage Body

- (a) If a body other than the Heritage Association becomes responsible for protecting and preserving Aboriginal sites, objects and remains within the ILUA area of significance to the Kaurna, the Kaurna and the Heritage Association must use their best endeavours to ensure that such body:
- (i) becomes a party to this ILUA in substitution for the Heritage Association; and
 - (ii) assumes the rights and obligations of the Heritage Association under this ILUA.
- (b) The parties (other than the Heritage Association) to this ILUA consent such body becoming a party to this ILUA and assuming the rights and obligations of the Heritage Association in accordance with clause 12.6(a)(ii).
- (c) Each of the parties to this ILUA must sign such documents as are necessary to give effect to the provisions of this clause 12.6.

13. GST

The parties agree that, if a goods and services, value-added or a comparable tax (**GST**) applies under the “*A New Tax System (Goods and Services Tax) Act 1999*” or associated legislation (**GST legislation**) in relation to any taxable supply (within the meaning of the GST legislation) (**taxable supply**) made by a party (**supplier**) to another party (**recipient**) under or pursuant to this ILUA:

- (a) the amount payable by the recipient to the supplier in respect of the taxable supply (**payment**) does not include GST;
- (b) the supplier may, in addition to the payment, recover from the recipient (and the recipient will pay to the supplier) an additional amount on account of the GST, such additional amount to be calculated in accordance with the GST legislation; and
- (c) the supplier will provide to the recipient a tax invoice (within the meaning of the GST legislation) in respect of the taxable supply as required by the GST legislation.

14. General

14.1 Entire agreement

This ILUA contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

14.2 Amendment

No amendment or variation of this ILUA is valid or binding on a party unless made in writing executed by all parties to it.

14.3 Severability

Each word, phrase, sentence, paragraph and clause (**provision**) of this ILUA is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision which becomes inoperative and such severance will not affect the other provisions of this ILUA.

14.4 Force Majeure

If any party becomes wholly or partly unable because of a force majeure event to perform any of its obligations under this ILUA, then the party affected by the force majeure must give the other parties notice of the force majeure event specifying:

- (a) details of the force majeure event;
- (b) insofar as it is known, the probable scope of the force majeure event; and
- (c) insofar as it is known, the probable duration for which it will be unable to perform the relevant obligation,

and the relevant obligation shall be deemed to be suspended, but:

- (d) the suspension shall be of no greater scope nor longer duration than the consequences of the relevant force majeure event; and
- (e) the party affected by the force majeure event must use all reasonable endeavours to counter it or to otherwise remedy its inability to perform.

14.5 No waiver

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver.
- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the party granting that waiver unless made in writing.

14.6 Minister's Discretion

Nothing in this ILUA fetters the discretion of any Minister of the Crown in the right of South Australia.

14.7 Further assurances

Each party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this ILUA and the transactions contemplated by it.

14.8 No merger

- (a) The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this ILUA.
- (b) Those rights and obligations will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

14.9 Indices

- (a) If the CPI index or the WPI index ceases to be published or the basis upon which the CPI index or the WPI index is calculated is changed to such a material extent that it is no longer appropriate to be used, the Committee must meet to endeavour to determine another appropriate index or indices with the intention that none of the parties will be disadvantaged or benefit by the substitution.
- (b) If the Committee is unable to make a determination under clause 14.9(a), then any party may request the President for the time being of the Institute of Actuaries of Australia or that person's nominee to provide (on the basis that none of the parties will be disadvantaged or benefit thereby) alternative figures or indices which will be equivalent to the CPI index or the WPI index, as applicable, and such figures or indices will then for the purposes of this clause 14.9 be deemed to be the CPI index or the WPI index and be binding on the parties.

14.10 Governing law and jurisdiction

- (a) This ILUA is governed by the laws of South Australia.
- (b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia in connection with matters concerning this ILUA.

14.11 Relationship

- (a) The relationship between the parties is that of independent contractors.
- (b) The parties are not partners, joint venturers nor, subject to clause 14.11(c), principal and agent.
- (c) The Heritage Association and KYAC are each an agent of the Kaurana.
- (d) The Councils acknowledge and agree that in receiving any communication and doing anything pursuant to clauses 3, 4 and 5 the ILUA administrator(s):
 - (i) act as the agent of KYAC and/or the Heritage Association, as applicable; and
 - (ii) are subject to the exclusive direction and control of KYAC and/or the Heritage Association, as applicable.

14.12 Counterparts

This ILUA may be executed in any number of counterparts and all counterparts when exchanged will be taken to constitute one document.

Signed by Garth Agius)
for and on behalf of the)
Kurna Peoples Native Title Claim Group).....
in the presence of:)

.....
Witness

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Name of Witness

Signed by Vince Buckskin)
for and on behalf of the)
Kurna Peoples Native Title Claim Group).....
in the presence of:)

.....
Witness

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Name of Witness

Signed by Lynette Crocker)
for and on behalf of the)
Kurna Peoples Native Title Claim Group).....
in the presence of:)

.....
Witness

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Name of Witness

Signed by Phillip Davies)
for and on behalf of the)
Kurna Peoples Native Title Claim Group).....
in the presence of:)

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Witness

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Name of Witness

Signed by Cecil Graham
for and on behalf of the
Kaurna Peoples Native Title Claim Group
in the presence of:

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Witness

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Name of Witness

Signed by Carroll Karpany
for and on behalf of the
Kaurna Peoples Native Title Claim Group
in the presence of:

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Witness

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Name of Witness

Signed by Shirley Lampard
for and on behalf of the
Kaurna Peoples Native Title Claim Group
in the presence of:

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Witness

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Name of Witness

Signed by Joseph Mitchell
for and on behalf of the
Kaurna Peoples Native Title Claim Group
in the presence of:

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Witness

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Name of Witness

Signed by Rodney O'Brien
for and on behalf of the
Kaurna Peoples Native Title Claim Group
in the presence of:

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Witness

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Name of Witness

Signed by Glenice Sumner
for and on behalf of the
Kaurna Peoples Native Title Claim Group
in the presence of:

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Witness

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Name of Witness

Signed by Frank Wanganeen,
for and on behalf of the
Kaurna Peoples Native Title Claim Group
in the presence of:

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Witness

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Name of Witness

Signed by Maureen Wanganeen
for and on behalf of the
Kaurna Peoples Native Title Claim Group
in the presence of:

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Witness

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Name of Witness

Signed by Georgina Williams,
for and on behalf of the
Kurna Peoples Native Title Claim Group
in the presence of:

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).....
)

.....
Witness

.....
Name of Witness

The Common Seal of the **Kurna Yerta**
Aboriginal Corporation was hereunto affixed
in accordance with its constitution
in the presence of:

)
)
)
)

.....
Chairperson

.....
Member

.....
Name

.....
Name

.....
Member

.....
Member

.....
Name

.....
Name

The Common Seal of Kaurua)
Nation Cultural Heritage Association)
Incorporated was hereunto affixed)
in accordance with its constitution)
in the presence of:

.....
Chairperson

.....
Member

.....
Name

.....
Name

.....
Member

.....
Member

.....
Name

.....
Name

Executed by)
Adelaide City Council pursuant to a)
resolution of the council passed at)
on 2013)

.....
Mayor

.....
Chief Executive

Executed by)
Adelaide Hills Council pursuant to a)
resolution of the council passed at)
on 2013)

.....
Mayor

.....
Chief Executive

Executed by)
Alexandrina Council pursuant to a)
resolution of the council passed at)
on 2013)

.....
Mayor

.....
Chief Executive

Executed by)
The Barossa Council pursuant to a)
resolution of the council passed at)
on 2013)

.....
Mayor

.....
Chief Executive

Executed by)
Campbelltown City Council pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

.....
Chief Executive

Executed by)
City of Burnside pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Charles Sturt pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Holdfast Bay pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Marion pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Mitcham pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

.....
Chief Executive

Executed by **City of Norwood**)
Payneham and St Peters pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Onkaparinga pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Playford pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by **City of**)
Port Adelaide Enfield pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Prospect pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Salisbury pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Tea Tree Gully pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Unley pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of Victor Harbor pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
City of West Torrens pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by **City of Clare and**)
Gilbert Valleys Council pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by **Corporation of the**)
Town of Walkerville pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
District Council of Mallala pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by **The District**)
Council of Mount Barker pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by **District Council**)
of Yankalilla pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
Light Regional Council pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
Town of Gawler pursuant to a)
resolution of the council passed at)
on 2013)

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Mayor

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Chief Executive

Executed by)
Wakefield Regional Council pursuant to a)
resolution of the council passed at)
on 2013)

.....
Mayor

.....
Chief Executive

Schedule 1 – ILUA Area

That geographical area of land and waters within the outer boundaries of the geographical area of land and waters comprised in, and the subject of, the native title application known as the Kurna Peoples native title claim SC 00/1 recorded as native title determination application no. SAD 6001/00 in the Federal Court of Australia

Schedule 2 – Notice Details

1. **Kaurna Peoples native title claim group**

Address: Campbell Law
Level 5, 18-20 Grenfell Street
Adelaide SA 5000

Attention: Tim Campbell

Telephone No: (08) 8410 1844

Facsimile No.: N/A

e-mail: tim@campbelllaw.com.au

2. **Kaurna Yerta Aboriginal Corporation**

a. **Any communication pursuant to clauses 3.1(a), 3.6, 3.7(a)(iii), or 5.1:**

Address: c/o the ILUA administrator
Local Government House
Ground Floor
148 Frome Street
Adelaide SA 5000

Attention: the ILUA administrator

b. **Any communication other than a communication pursuant to clauses 3.1(a), 3.6, 3.7(a)(iii) or 5.1:**

Address: Campbell Law
Level 5, 18-20 Grenfell Street
Adelaide SA 5000

Attention: Tim Campbell

Telephone No: (08) 8410 1844

Facsimile No.: N/A

e-mail: tim@campbelllaw.com.au

3. Kaurna Nation Cultural Heritage Association

a. Any communication pursuant to clauses 3.1(a), 3.6, 3.7(a)(iii), 4.12 or 5.1:

Address: c/o the ILUA administrator
Local Government House
Ground Floor
148 Frome Street
Adelaide SA 5000

Attention: the ILUA administrator

b. Any communication other than a communication pursuant to clauses 3.1(a), 3.6, 3.7(a)(iii), 4.12 or 5.1:

Address: Camatta Lempens
Level 1
345 King William Street
Adelaide SA 5000

Attention: Stephen Kenny

Telephone No: (08) 8410 0211

Facsimile No.: (08) 8410 0566

e-mail: kenny@camattalempens.com.au

4. COUNCILS

Council: **Adelaide City Council**

Address: Town Hall
128 King William Street
Adelaide SA 5000

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **Adelaide Hills Council**

Address: 28 Onkaparinga Valley Road
Woodside SA 5244

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **Alexandrina Council**

Address: 11 Cadell Street
Goolwa SA 5214

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **The Barossa Council**

Address: 43-51 Tanunda Road
Nuriootpa SA 5355

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **Campbelltown City Council**

Address: 172 Montacute Road
Rostrevor SA 5073

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Burnside**

Address: 401 Greenhill Road
Tusmore SA 5065

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Charles Sturt**

Address: 72 Woodville Road
Woodville SA 5011

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Holdfast Bay**

Address: 24 Jetty Road
Brighton SA 5048

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Marion**

Address: 245 Sturt Road
Sturt SA 5047

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Mitcham**

Address: 131 Belair Road
Torrens Park SA 5062

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Norwood Payneham and St Peters**

Address: 175 The Parade
Norwood SA 5067

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Onkaparinga**

Address: Ramsay Place
Noarlunga Centre SA 5168

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Playford**

Address: 10 Playford Boulevard
Elizabeth SA 5112

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Port Adelaide Enfield**

Address: 163 St Vincent Street
Port Adelaide SA 5015

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Prospect**

Address: 128 Prospect Road
Prospect SA 5082

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Salisbury**

Address: 12 James Street
Salisbury SA 5108

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Tea Tree Gully**

Address: 571 Montague Road
Modbury SA 5092

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **The City of Unley**

Address: 181 Unley Road
Unley SA 5061

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of Victor Harbor**

Address: 1 Bay Road
Victor Harbor SA 5211

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **City of West Torrens**
Address: 165 Sir Donald Bradman Drive
Hilton SA 5033

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **Clare and Gilbert Valleys Council**

Address: 4 Gleeson Street
Clare SA 5453

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **Corporation of the Town of Walkerville**

Address: 66 Walkerville Terrace
Gilberton SA 5081

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **District Council of Mallala**

Address: 2A Wasleys Road
Mallala SA 5502

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **The District Council of Mount Barker**

Address: 6 Dutton Road
Mount Barker SA 5251

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **District Council of Yankalilla**

Address: 1 Charles Street
Yankalilla SA 5203

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **Light Regional Council**

Address: 93 Main Street
Kapunda SA 5373

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **Town of Gawler**

Address: 89 Murray Street
Gawler SA 5118

Attention:

Telephone No:

Facsimile No:

e-mail:

Council: **Wakefield Regional Council**

Address: Scotland Place
Balaklava SA 5461

Attention:

Telephone No:

Facsimile No:

e-mail:

Schedule 3 – Fund Contributions

Council	Contribution To Fund (\$)
Adelaide City Council	23,030.04
Adelaide Hills Council	5,089.16
Alexandrina Council	4,903.20
The Barossa Council	4,261.01
City of Burnside	5,185.97
Campbelltown City Council	4,634.12
City of Charles Sturt	13,365.69
Clare & Gilbert Valleys Council	2,376.06
Town of Gawler	2,764.06
City of Holdfast Bay	7,615.40
Light Regional Council	2,294.89
District Council of Mallala	1,234.63
City of Marion	9,746.58
City of Mitcham	6,736.89
District Council of Mount Barker	4,907.71
City of Norwood Payneham & St Peters	4,903.20
City of Onkaparinga	24,773.83
City of Playford	10,190.64
City of Port Adelaide Enfield	14,681.05
City of Prospect	2,578.25
City of Salisbury	13,972.86
City of Tea Tree Gully	10,216.35
City of Unley	5,503.46
City of Victor Harbor	2,841.93
Wakefield Regional Council	1,581.44
Corporation of the Town of Walkerville	1,078.14
City of West Torrens	8,043.23
District Council of Yankalilla	1,490.19
Total	200,000

Schedule 4 – Matters for the Committee

- (a) repatriation and reburial of ancestral remains;
- (b) database of sensitive sites/areas and cultural mapping;
- (c) development and use of the Kurna language;
- (d) Kurna cultural and history awareness programmes;
- (e) joint management of Kurna sites;
- (f) seeking funding for Kurna sport programmes; and
- (g) seeking funding for scholarships and traineeships.

Item No: **14.5**

Subject: **REQUEST FOR FUNDS TO DEFEND AN APPEAL BEFORE THE ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT FOR THE CONSTRUCTION OF A 1140 SQUARE METRE LIQUOR STORE AT 466 BRIGHTON ROAD, BRIGHON**

Date: 9 July 2013

Written By: Manager Development Services

General Manager: City Services, Ms R Cooper

SUMMARY

This report seeks Council's permission to engage legal assistance to defend an appeal lodged with the Environment, Resources and Development Court against decisions of the Development Assessment Panel made on 27 February 2013 to refuse approval for the construction of a 1140 square metre liquor store at 466 Brighton Road, Brighton.

RECOMMENDATION

That Council funds the proper defence of the appeal described in Attachment 1 to this report lodged with the Environment, Resources and Development Court against decisions of the City of Holdfast Bay Development Assessment Panel to refuse applications for the construction of a 1140 square metre liquor store at 466 Brighton Road, Brighton.

COMMUNITY PLAN

A Place that is Well Planned

COUNCIL POLICY

N/A

STATUTORY PROVISIONS

Development Act, 1993

BACKGROUND

At its meeting held on 24 November 2009, Council resolved that the expenditure of any resources supporting decisions of the City of Holdfast Bay Development Assessment Panel require prior Council approval (Resolution Number C241109/618).

REPORT

At its meeting held on 27 February 2013, the City of Holdfast Bay Development Assessment Panel resolved to refuse approval for the construction of a 1140 square metres liquor store at 466 Brighton Road, Brighton. The proposal seeks to replace the existing drive-thru bottle shop at the Brighton Metro Hotel (which currently measures 486 square metres) with a much larger 'warehouse' type liquor store. The applicant has lodged an appeal against the decisions with the Environment, Resources and Development Court.

Council Administration must be in a position to advise the Court whether it is able to properly defend the appeal or not. As there are neither the resources nor legal accreditations for Council Administration to run the appeal, the decision whether to contest the appeal or not will be based on the availability of funds. Full details of the development application including the nature of the proposal, the rationale for the Development Assessment Panel's decision, and the appellant's reasons for lodging the appeal are all described in Attachment 1 to this report.

Without exception, Councils have historically engaged legal representation to defend matters brought before the Environment, Resources and Development Court. It is considered that the decision made by the Development Assessment Panel is entitled to similar defence. It is recommended that Council Administration is permitted to expend funds to resource the proper defence of the appeal.

Refer Attachment 1

BUDGET

The Council establishes a budget each year for the defence of appeals before the Environment, Resources and Development Court. The appeal which is the subject of this report is expected to cost approximately \$21,000 to defend, depending on whether expert witnesses are required or not (based on a preliminary quote for legal fees of \$16,000 and expert witness fees of \$5,000). There are currently sufficient funds in the budget to fund the appeal. This includes legal fees for both preparation and attendance at the Hearing, and the cost of calling on expert witnesses if required. Costs are not awarded in the Environment, Resources and Development Court, meaning there is no opportunity to recover fees in the event of a successful appeal, or vice versa

LIFE CYCLE COSTS

There are no life cycle costs associated with the appeal.

INFORMATION RELATING TO APPEAL	
Nature of Appeal	Applicant Appeal - Appealed by the applicant aggrieved at the decision to approve the application
Site Address	466 Brighton Road, Brighton (Brighton Metro Hotel)
DAP Meeting Date	27 February 2013
Development Number	110/00782/12
Zone	District Centre A
Applicant	Redscape Property Fund
Existing Use	Hotel and Bottle Shop
Proposal	Construction of a 1140 square metre liquor store
Decision by the DAP	Refusal
Representations Received	N/A
Rationale for DAP Decision (DAP Resolution)	<p>Following a detailed assessment of the proposal against the provisions of the Holdfast Bay (City) Development Plan, the Development Assessment Panel considered that the proposed development was seriously at variance with the Development Plan and that it be refused approval for the reason that it is contrary to Council Wide Principles 2, 29, 153, 157, 259, 261 and Introduction to District Centre A Zone and Zone Principle 2. More specifically, the application does not meet the intent of the Development Plan in relation to:</p> <ul style="list-style-type: none"> • Location within the Zone; • Building scale and size; • Location, scale and extent of signage; and • Siting of building and insufficient landscape screening.
Applicant's Reasons for Appeal	<p>In the written statement to the Environment, Resources and Development Court, the appellants have cited the following reasons for appealing the Panel's decision:</p> <ul style="list-style-type: none"> • Development proposed has merit in the context of the zone and current land use
Date of Court Appearance	Date yet to be set at the time of writing this report
Estimated Cost of Appeal Defence	The appeal which is the subject of this report will proceed to a Hearing and is estimated to cost \$21,000 (exclusive of GST) to defend.

Item No: **14.6**

Subject: **GLENELG FORESHORE BUILDING**

Date: 9 July 2013

Written By: General Manager City Assets

General Manager: City Assets, Mr S Hodge

SUMMARY

For several years, Council has considered options for the foreshore building at Glenelg, however the major issue preventing the decision to demolish this building has been the ongoing need for the provision of substantial public toilets and changing room facilities. Administration has investigated the feasibility of removing the first floor of the building and leaving the toilets and changing facilities which could then be refurbished. Further to this the option of refurbishing the ground floor tenancy and providing a 'fit out' to enable the operation of a café/restaurant style operation has been investigated. This option would be for the ground floor portion only whilst maintaining the upstairs section as a vacant shell or demolition of the upper section and refurbishment of the lower level as toilets and Café/Restaurant. This report details the findings and opportunities from these investigations.

RECOMMENDATION

That the report be received and options for future use of the foreshore building be further discussed.

COMMUNITY PLAN

A Place with a Quality Lifestyle
A Place for Every Generation
A Place that is Safe and Secure
A Place that Values its Natural Environment
A Place that Manages its Environmental Impacts
A Place that Welcomes Visitors
A Place that is Well Planned

COUNCIL POLICY

Asset Management Policy

STATUTORY PROVISIONS

Local Government Act 1999

BACKGROUND

Following several discussions regarding the long term use of the Glenelg foreshore building, there were several trains of thought around demolition and returning the site to open space however this then left the difficult decision of where to construct a replacement public toilet and change room complex. Given there was never an obvious answer, the site has remained vacant and under utilised except as a public toilet facility.

Administration has recently engaged in a process to explore the option of removing the first floor of the building and leaving the lower level toilet block and change room facility.

SMEC Engineering were engaged to develop an evaluation of the feasibility in undertaking such a project with the relevant information attached for members' consideration.

Refer Attachment 1

Further to this the option to strip out and re fit the ground floor to serve as a Café/Restaurant type tenancy see attached drawings.

Refer Attachment 2

REPORT

Remove upper storey with toilet block only remaining.

- Demolish the majority of the building with only the toilet block section remaining.
- Construct a new roof.

Cost of demolition and making good penetrations.

Demolition of upper floor removing walls, partitions, floor coverings, ceiling, demolition of western downstairs area including floor, ceilings, floor coverings partitions, walls etc	\$80,000 plus GST
Structural repair works – make good penetrations	\$10,000 plus GST
New outside cladding including lights and finishings	\$70,000 plus GST
New roof	\$10,000 plus GST
Total	\$170,000 plus GST

Refurbishment of Ground Floor Tenancy.

- Upgrade existing electrical supply.
- New cookers.
- New cool room.
- New service counter.
- Upgrade existing toilets.
- Upgrade seating area including flooring, walls, ceiling etc.
- New fenced storage area.
- New 'hark' glazed screening.
- Out door seating (including fixed tables).
- New window shutters.
- New lighting.
- Repair and repaint all steel work.
- Outdoor gas heaters.

BUDGET

If Council were to remove the first floor of this foreshore building with the public conveniences to remain would cost an estimated figure of \$170,000 + GST, further refurbishments of the current public facilities may require an additional budget of around \$150,000.

To strip out the current ground floor tenancy and re fit as a Café Restaurant would cost in the order of \$ 1.8m.

To totally demolish and rebuild on current footprint would cost approximately \$4m.

LIFE CYCLE COSTS

Normal operating and maintenance costs to be borne from recurrent maintenance budget with replacement costs to be developed in conjunction with Asset Management Plans and Long Term Financial Plans.

BUILDING INSPECTION

The inspection was limited to the exterior of the building. No access was provided to the internal areas of the building or the roof. The structural drawings of the building were not available at the time of the inspection and no site measurements were taken.

A specific design assessment of the building or level and dimensional surveys have not been undertaken. Pressure testing of underground services or CCTV surveys of pipework also has not been undertaken.

It should be noted that this report does not constitute a certificate of structural adequacy.

1. Inspection Notes

The following details were noted from the inspection:

- Building is 2 stories in height
- Building is constructed from predominantly concrete block masonry (rendered and painted exterior, material type to be confirmed), with shear walls at the eastern end of the building.
- The building has toilets at the eastern end of the building, and glazing on the western and northern faces (ground floor).
- The first floor is a concrete metal deck suspended slab. The slab appears to be around 150mm thick.
- The first floor slab is supported on steel beams and masonry walls at the eastern end of the building. In the toilet area, a large 250-300UC spans north to south.
- The external balcony Circular Hollow Section (CHS) columns extend from ground level to the roof level. They have a t-cleat connection to steel channel beams at the first floor slab level, and to a steel roof beam at the high level.
- Large internal columns in the building are boxed out. The ground floor ceiling is not exposed. The first floor roof members are exposed, however due to limited access to the building the structural system was unable to be confirmed.
- At the eastern end of the building, there appears to be a concrete perimeter beam, or possibly a bond beam at the first floor level, and also at the first floor ceiling level. This is indicated by the joint lines in the wall.
- There is a walkway between the first floor of the adjoining hotel balcony and the stairs of the building.
- A roof gutter and downpipe system is connected to an underground drainage system.

1.1 Discussion

From visual inspection of the external components of the building, there does not appear to be any issues related to cracking or damage to the walls or facade.

The external steel beams that are located underneath the balcony show signs of corrosion, along with the first floor balustrade. The corrosion to the balustrade is more severe, with loss of section in some locations. Photo 1 provides a view from the Western side of the building, showing the corrosion to both the steel beam and balustrades.

Four large trees are located on the Western side of the building, and debris was noted on the roof. Photo 2 shows a view of the roof on the southern side of the building, with debris evident in the valley and edge gutters.



Photo 1 – External Balcony – corrosion to Support Steelwork and Balustrade



Photo 2 – Debris on southern side of roof

2. **Building Modification Options**

A development option to remove the upper storey is discussed below. A summary and review of the structural implications is provided below.

2.1 **Modification Option**

Toilet Block only remaining

- Demolish the majority of the building with only the toilet remaining
- New Roof

This option involves the demolition of the entire first floor, roof and ground floor areas, excluding the toilet block area. The toilet block is predominantly masonry concrete block construction, it is not expected that there are any lateral stability issues in this area.

We recommend that a structural inspection of the area is completed prior to any demolition work in order to understand the load bearing walls around the toilet block.

From review of Architectural drawings, we have noted that a structural investigation is required for the western toilet wall. It appears that this wall may require additional strengthening, and may also require waterproofing.

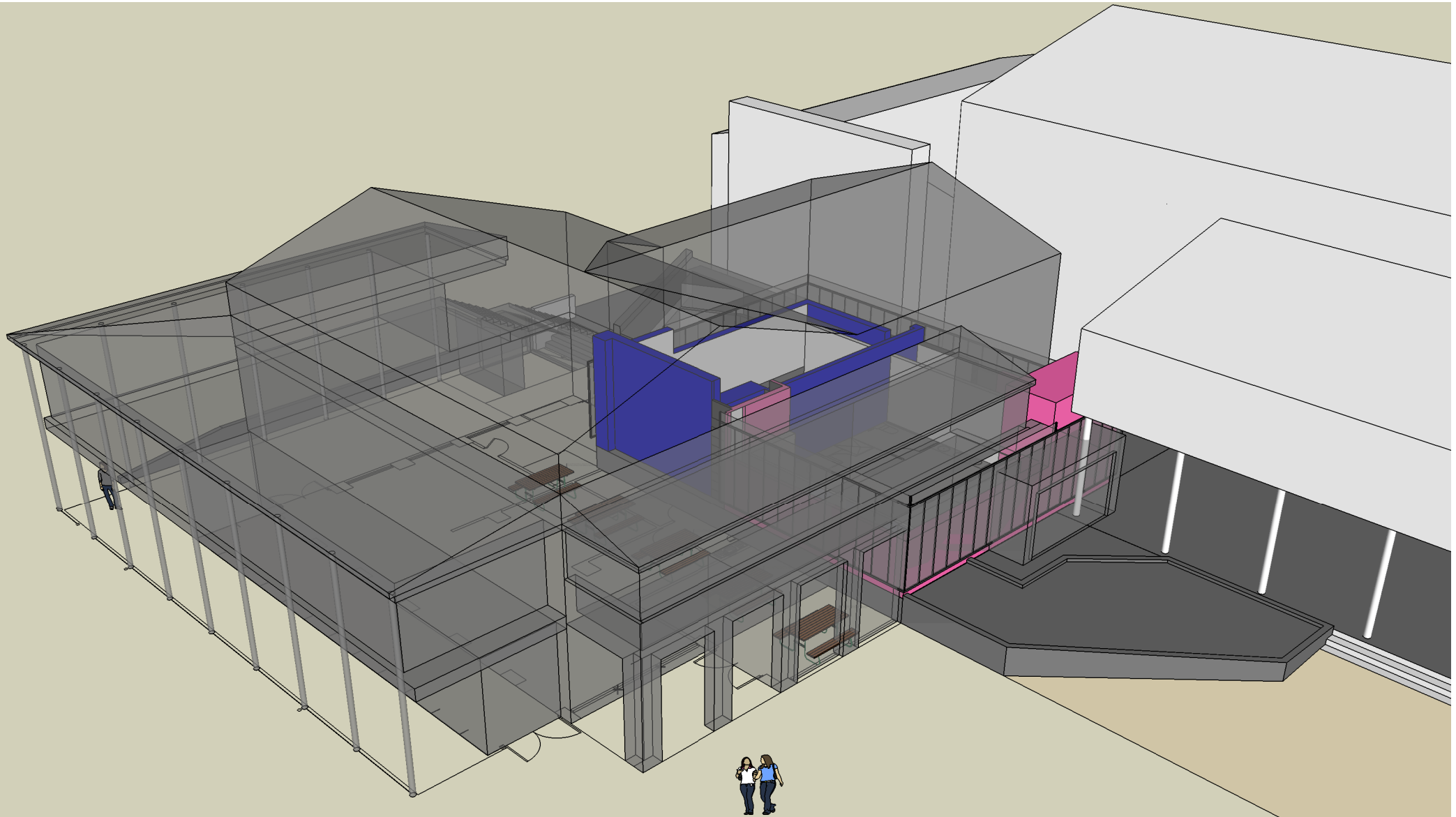
A new roof system is proposed to be constructed on the toilet block roof slab.

Alternatively a topping slab or a sealant could be used on the slab.

Drainage of the building would need to be reviewed prior to demolition work, as it may be possible to utilise some of the existing downpipes and underground pipework.

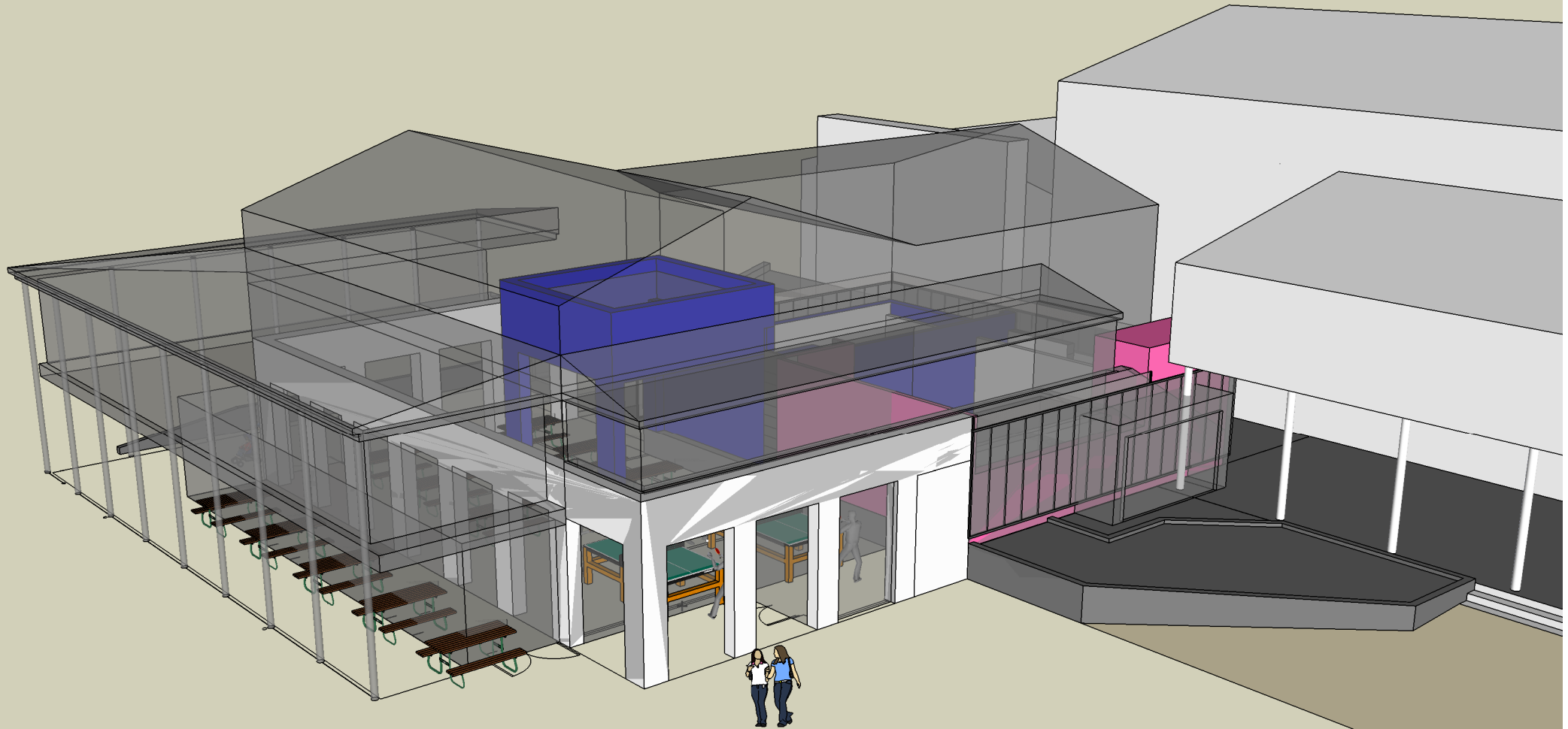
Summary of Structural items:

- Coordination of demolition work and an approved method/sequence in order to maintain the stability of the building
- Dilapidation survey of adjacent buildings & structures prior to demolition
- Review of existing drainage system
- Existing penetrations in the first floor slab would require infilling and sealing.
- Exposed reinforcement bars will need to be coated to prevent corrosion.
- Structural inspection of load bearing walls and support beams in toilet block area.
- Structural inspection of the western wall of the toilet block to confirm whether it requires strengthening and a water proofing treatment.
- Weather and moisture protection to the first floor slab. This could include a new roof structure or a topping slab/water proofing membrane.



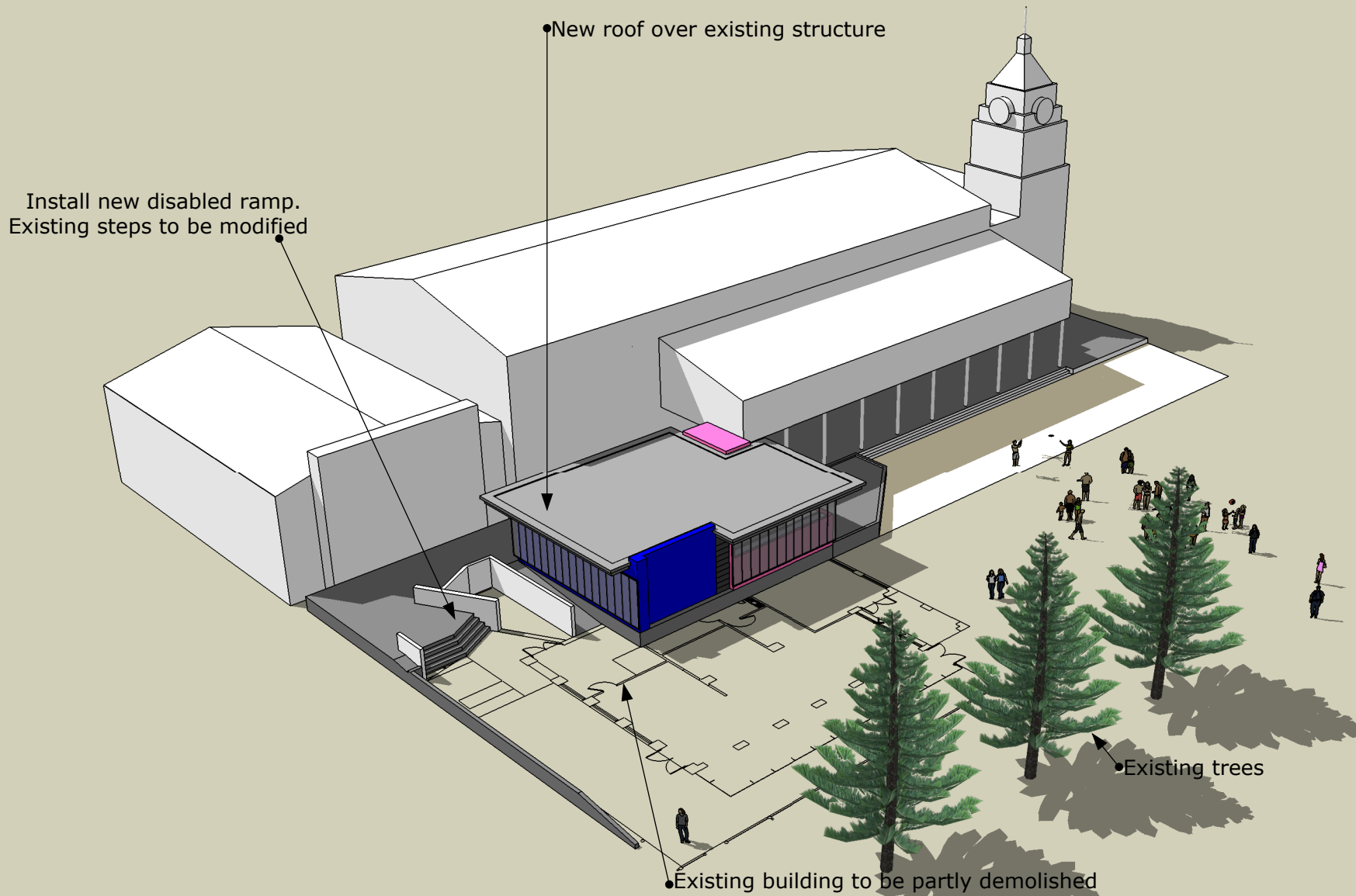
Option 1 - Redevelopment of Foreshore Public Amenities, Glenelg
SA Transparency overlay of existing facilities to be demolished



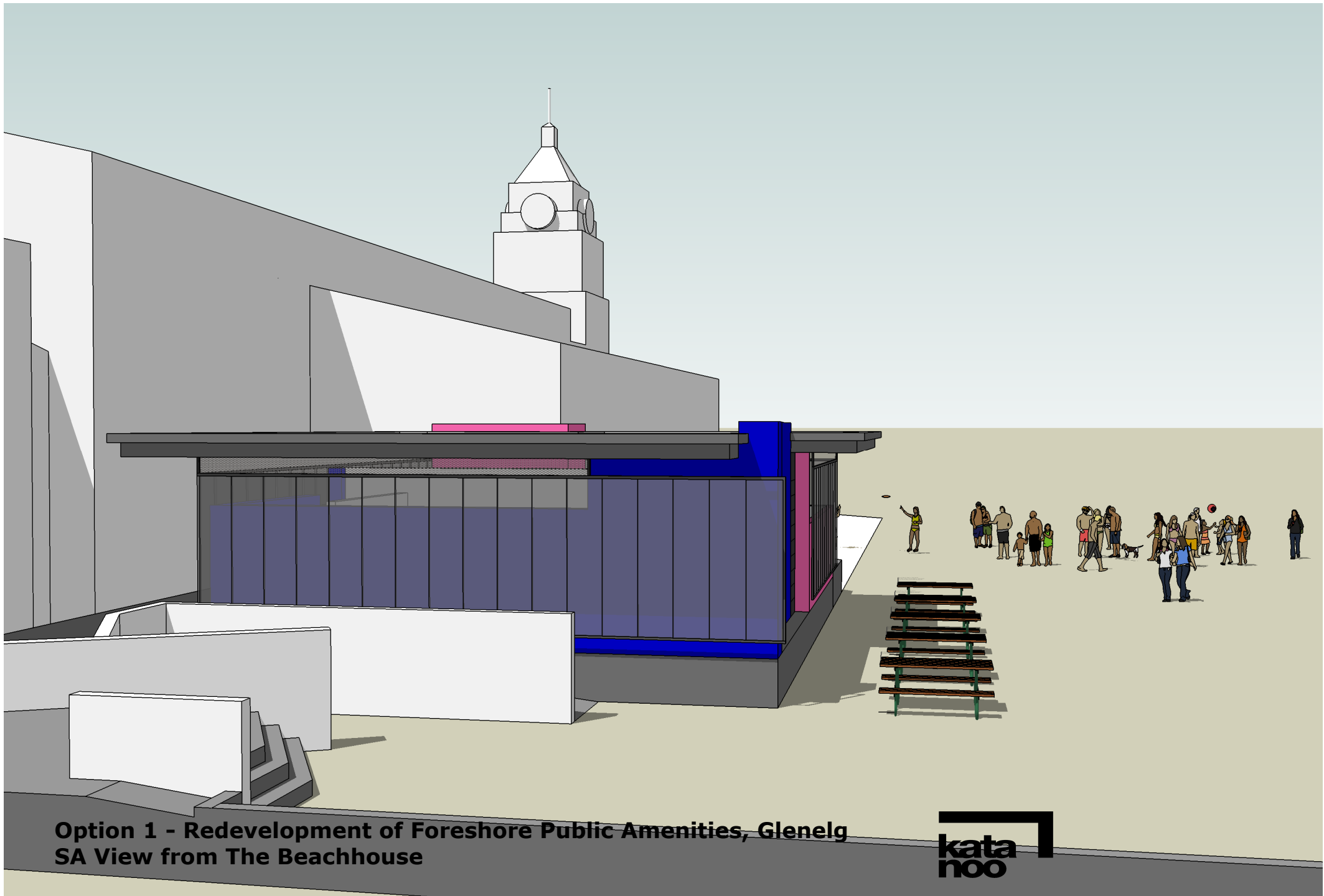


**Option 2 - Redevelopment of Foreshore Public Amenities, Glenelg
SA Transparency overlay of existing facilities to be demolished**



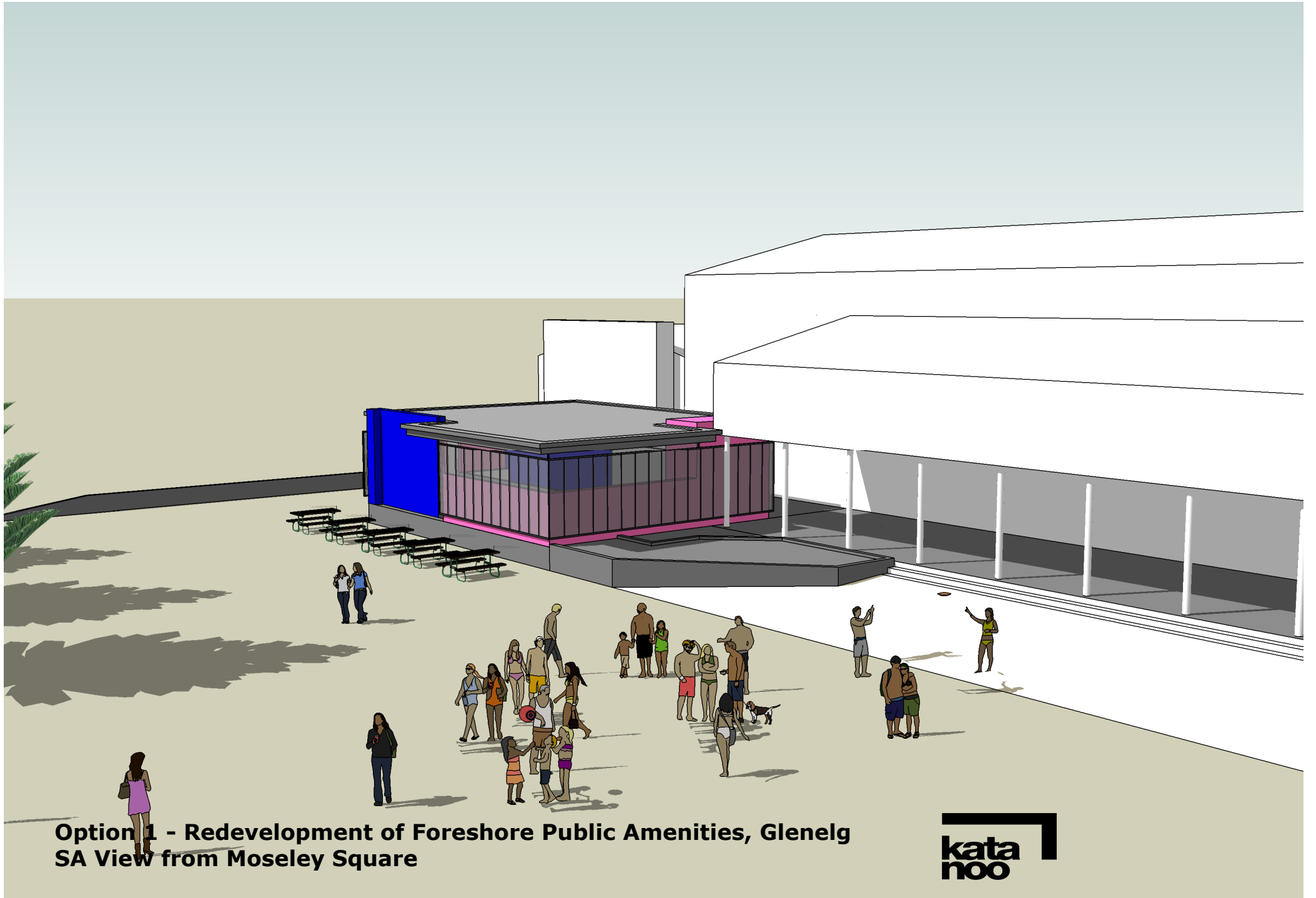


Option 1 - Redevelopment of Foreshore Public Amenities, Glenelg SA
Overhead view showing context to existing Town Hall



Option 1 - Redevelopment of Foreshore Public Amenities, Glenelg
SA View from The Beachhouse

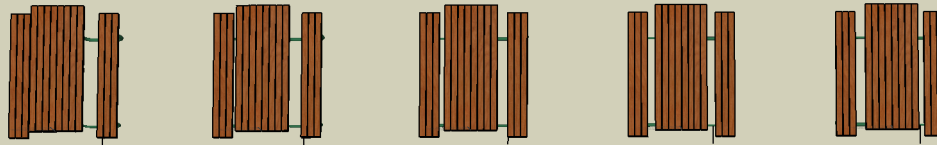




Option 1 - Redevelopment of Foreshore Public Amenities, Glenelg
SA View from Moseley Square



Existing masonry to be modified to ensure privacy and structural integrity



Existing sanitary fixtures to remain

New disabled ramp

Modify existing stairs

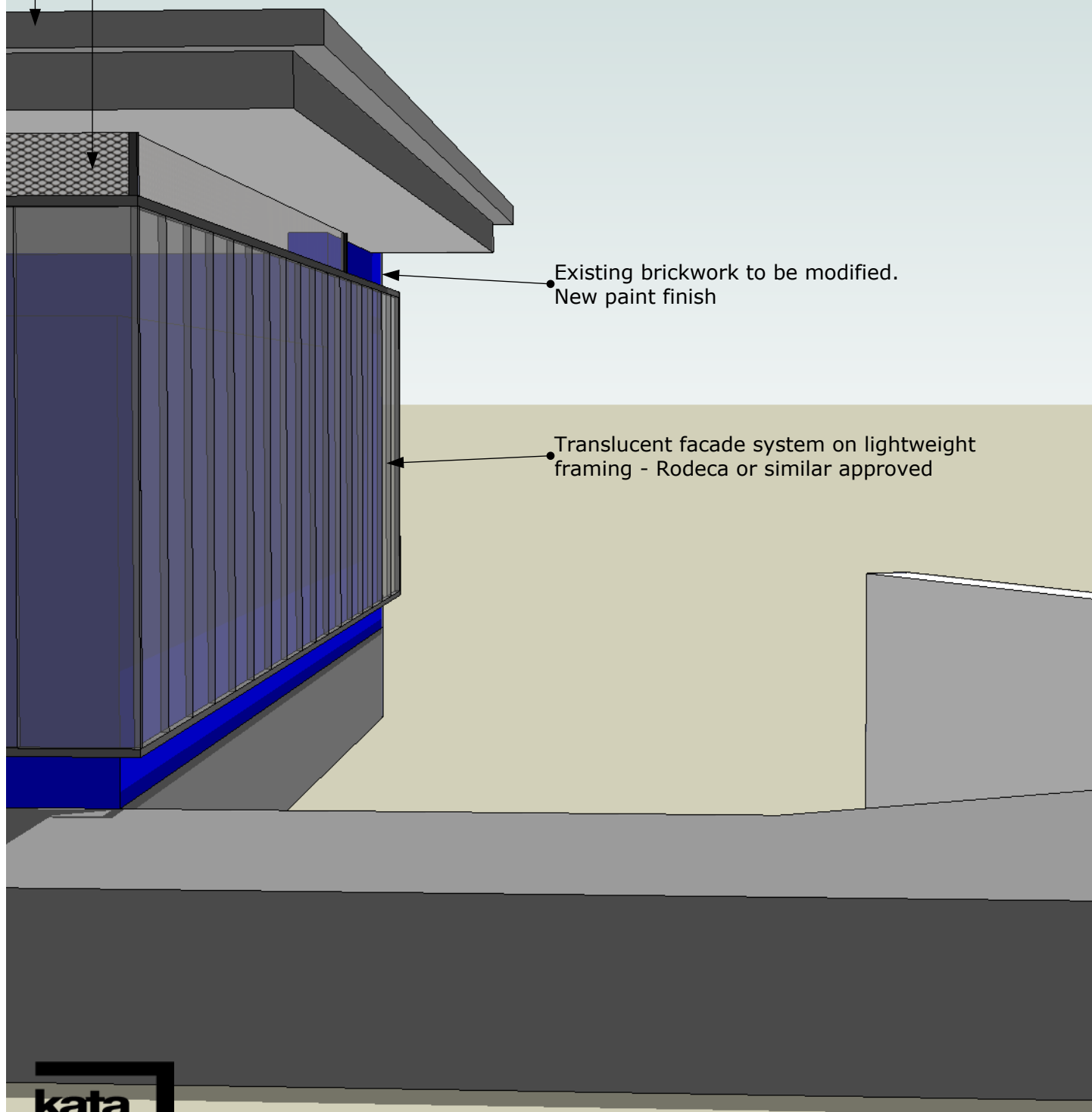
Female

Male

Option 1 - Redevelopment of Foreshore Public Amenities, Glenelg
SA Plan view



- New metal roof over existing structure
- Security mesh at high level to allow for natural ventilation



Existing brickwork to be modified.
New paint finish

Translucent facade system on lightweight
framing - Rodeca or similar approved



**Option 1 - Redevelopment of Foreshore Public Amenities, Glenelg
SA Technical details**

Item No: **14.7**

Subject: **REVISED MOBILE TRADING POLICY**

Date: 9 July 2013

Written By: General Manager City Services

General Manager: City Services, Ms R Cooper

SUMMARY

This report discusses the way in which Council manages mobile trading permits. After consideration of the type and level of mobile trading activity that occurred over the 2012/13 summer period, there was an opportunity to strengthen the current policy. This report discusses the main differences between the existing and revised policies. The revised policy has been discussed at the June meeting of the Jetty Road Mainstreet Management Committee and the Committee recommends this policy to Council for endorsement.

RECOMMENDATION

That Council endorse the revised Mobile Trading Policy.

COMMUNITY PLAN

A Place for Every Generation
A Place to do Business
A Place that Welcomes Visitors
A Place that Provides Value for Money
A Place that Provides Choices and Enhances Life

COUNCIL POLICY

Mobile Trading Van Policy, RS. 11.00.00-01.

STATUTORY PROVISIONS

Local Government Act 1999
Council By-law 3: Local Government Land, Section 2.36: Trading

BACKGROUND

The City of Holdfast Bay is a popular area to hold events and community activities. Coupled with the beach, these activities attract a large number of both residents and visitors into Council's retail precincts. During past summer seasons Council has granted mobile trading permits to allow organisations to either sell or give away products and information.

At Council's meeting on 13 November 2012, Resolution C131112/709 was carried as follows:

- 1. That Council discourages itinerant food vendors, free food, beverage give-aways and voucher distribution in the Glenelg precinct with the intention of showing support to local traders who endure the quiet cold winter season and whose viability is undermined by unfair competition in peak season.*
- 2. That following the summer trading season, Administration report to council on this matter.*

Following this, an investigation was undertaken to examine the current process for allowing mobile trading within the City Of Holdfast Bay. It was found that there was an opportunity to strengthen the policy and this was presented back to Council in March 2013.

At Council's meeting on 26 March 2013, Resolution C260313/894 was carried as follows:

That this matter be adjourned pending consultation with Jetty Road Mainstreet Management Committee.

The current Mobile Trading Policy dates back to 2009 and was revised during the 2012/13 summer period. It should be noted that both the current and proposed new policy apply to the whole geographical area of the City Of Holdfast Bay and are not for the sole application to activities that occur at Glenelg.

The Jetty Road Mainstreet Management Committee (JRMMC), have discussed the proposed changes to the policy and at its meeting on 5th June, the JRMMC recommended to Council that it endorses the new policy.

REPORT

The intention of the changes is to allow flexibility for organisers of larger, repeat events to offer catering and other products to event participant while ensuring that the nature of these activities does not compete with existing business.

The current policy does not require consultation with the Manager, Jetty Road Development. The new policy does require this consultation and in doing so, ensures that the representatives of local business within the Jetty Road, Glenelg precinct, being the JRMMC, are kept informed of mobile trading activities.

The two avenues for mobile trading permits to be granted are:

1. Activities associated with larger events that involve the sale or sampling of products associated with the event. This has included food and beverages, beach wear and sporting goods, depending on the nature of the event.
2. As part of a promotion or not for profit activity. This has included live broadcasts by radio stations and items to give away by charity organisations.

At times, organisations become opportunistic and attempt to piggy-back onto existing activities by promoting and/or giving away products without permission from Council. This is in breach of a Council by-law and is not permitted under any circumstances. When this does occur Council's regulatory inspectors speak with the organisations and they are moved to outside of the City Of Holdfast Bay.

The following table summarises the differences from the current to suggested new policies.

	CURRENT POLICY	NEW POLICY
Restrictions on areas for mobile trading	No	Yes
Restrictions on competitive nature with existing businesses	No	Yes
Applies to all Council land within the City Of Holdfast Bay	Yes	Yes
Requires public liability insurance of \$20,000,000	No	Yes
Must comply with Council by-laws and the Local Government Act	Yes	Yes
Liable for damage to Council land and infrastructure	No	Yes
Compliance with Council's public health regulations	Yes	Yes

Changes to the policy allow strengthen the application process. The main changes are:

1. Ability to refuse the applications if the activity is deemed to be in competition with existing business.
2. Allows for internal consultation with the Manager, Jetty Road Development regarding applications that wish to utilise an area in or adjacent to the Jetty Road, Glenelg precinct.
3. Gives greater protection to Council land and infrastructure.
4. Ensures the applicant has appropriate level of public liability insurance

Further to changes in the policy, Schedule A clearly sets out the process for approval or declining an application. This process is not defined in the current policy. As shown in Schedule A, the process now includes restricted trade areas and a condition to ensure the non-competitive nature of the mobile trading activity.

Refer Attachment 1

BUDGET

No impact.

LIFE CYCLE COSTS

N/A



1. Preamble

1.1 Introduction

Regular requests are received from mobile traders to set up on Council land and/or the beach and foreshore to provide various goods and services.

This policy is intended for mobile businesses engaged in preparing and/or dispensing of goods or services within the City of Holdfast Bay.

1.2 Policy Objective

- To allow for the operation of trading activities in a manner that does not interfere or conflict with the City's permanent retail and service traders.
- To ensure that the operation of mobile trading activities are appropriate for the area and do not cause any nuisance to the surrounding residents or businesses.
- To ensure the amenity of the area is protected while enhancing the area's vibrancy and encouraging visitor and residents to the City.

1.3 Scope

This policy applies to all mobile trading on council land within the City of Holdfast Bay.

1.4 Definition

Mobile trading is defined as the temporary use of the public realm for the delivery of goods and services, either free of charge or at a cost.

2. Policy

2.2 Mobile trading cannot occur in any public place until a permit has been issued by Council, as per Schedule A.

2.3 Approval of permits will consider:

- a. Location;
- b. Permanent retail and service traders;
- c. Benefit to the community;
- d. Ambience created by the trader.

2.4 Council can modify or revoke a mobile trading permit as it sees fit

2.5 The permit is to be carried at all times while trading and produced upon request by an authorised Council representative or Police Officer.

2.6 Permanent Retail and Service Traders

- a. Permanent retail and service traders and the amenity of the Council area must not be adversely affected by mobile trading.
- b. Mobile traders must not set up within 25 metres of a permanent trader unless the mobile vendor has written agreement of permanent trader.



- 2.7 Mobile traders must;
- a. Enhance the vibrancy of the Council area;
 - b. Have an offering that encourage visitors and residents
- 2.8 Mobile trading must comply with the Local Government Act and relevant Council by-laws.
- 2.9 Mobile Trading Operations
- a. No fixed infrastructure, tables, chairs or signage or amplified sound are permitted.
 - b. All advertising must be fixed to the food vehicles and not encroach on the public realm.
 - c. Food vending on the footpath is only permitted in areas where there is adequate footpath space to accommodate it without compromising the safety of other street activities.
 - d. Exclusive use of an area is not permitted and areas are not able to be reserved.
 - e. The mobile vending area must be maintained at a high level of cleanliness. No waste or litter from the vendors operation may be disposed of in Council rubbish bins. All refuse generated as part of the operation must be continuously removed by the mobile trader. Failure to comply with these conditions may result in the permit being revoked.
 - f. Where the council has to undertake any cleaning or tidying of the area, the mobile trader will be liable to reimburse the Council for costs incurred.
 - g. Mobile Traders are not permitted to park on Council owned reserves.
- 2.10 Provision of permits
- a. The permit holder takes full responsibility for the care, appearance, maintenance and operation of their activity area and is responsible for abiding by all legislative requirements relating to the activity.
 - b. Permits are issued for a financial year.
 - c. It is preferred that permit requests are received prior to the start of the financial year.
 - d. Requests received during the financial year will be considered when received.
 - e. All requests, if approved, will be charged for a full year regardless of the date the request was received.
 - f. Applicants will need to demonstrate an appropriate level of public liability insurance. (See Schedule A)
- 2.11 Safety
- a. Safety measures required by mobile traders will be assessed on a case-by-case basis.
 - b. Mobile traders must comply with all legislative requirements relating to business operations, occupational health and safety, employment conditions and any other relevant requirements
 - c. All mobile food traders must comply with all health and food safety aspects as contained within the Food Act 2001 and Food Safety Standards. All mobile food traders will be subject to an inspection



from the Environmental Health team and will endure an annual fee as per the fees schedule.

- d. Safety of the public must be the primary consideration. Mobile traders must not compromise the safety of pedestrians or any other road users or any other users of the space.

Date **26 March 2013**

Mobile Trading Policy

Council

Author **Manager Tourism and Marketing**



Schedule A – Mobile Trading Process

1. Application for a Mobile Traders Permit

An applicant for a mobile traders permit must:

- Read the Mobile Trading Policy
- Complete the Mobile Trading Application Form.
- Include a detailed site plan showing proposed layout and locations of the mobile operation.
- Include a current copy of Public Liability Insurance for at least \$20,000,000.
- Pay the relevant application fee(s).

Mobile traders will receive written notification of Council's decision which will be accompanied by an invoice for the permit fee which must be paid prior to the permit being issued.

Mobile trading cannot occur in any public place until a permit has been issued by Council.

2. Restricted trading areas

In general terms the following areas are excluded from mobile trading, however applications may be considered in special circumstances at the discretion of Council:

- On the Glenelg Foreshore,
- Moseley Square,
- Brian Nadilo Reserve,
- Jetty Road and
- Glenelg Beach i.e. from the outlet of the Patawalonga Lake in the north, to the southern extremity of the Stamford Grand Hotel in the south.

3. Approval Process

On receiving an application Council will:

- Check that all relevant information has been received.
- Check the application to ensure it meets the intent and requirements of the Mobile Trading policy.
- Inspect the site and check accuracy of submitted application plans.
- Undertake an assessment of compliance with the permit conditions and non-competitive nature with businesses within the precinct.
- Assess application against other outstanding matters, which may relate to the premises.
- Approve or refuse the permit application.



The Council will notify the applicant of the outcome of the application in writing and will only issue a mobile trading permit upon the full payment of fees.

A permit is not transferrable.

Approval will be given from the date of issue until 5pm on 30 June of the same financial year.

Renewal of a mobile trading permit is required annually.

4. Insurance

- 4.1 Mobile traders must keep a current product and public insurance policy. The policy must insure for the amount of at least **TWENTY MILLION DOLLARS (\$20,000,000)** and must indemnify the City of Holdfast Bay and cover injury, loss or damage to persons or property arising from their mobile trading activity. A lesser amount might be accepted by Council, but this will be at the discretion of Council.
- 4.2 A Certificate of Currency must accompany the application for a mobile trading permit.

**Schedule B – Fees**

Fee Type	Dollar Amount
Mobile Trading Permit Fee (Annual fee)	\$500.00
Mobile Trading Permit Fee (Annual fee) non-motorised	\$300.00
Where the Mobile Vendor is based in the City of Holdfast Bay Environmental Health inspection fee (per annual inspection, at the place of business)	\$80.00 + GST
Where the Mobile Vendor is not based in the City of Holdfast Bay Environmental Health inspection fee (per site inspection)	\$40.00 + GST

* Fees are subject to change and are current as at 1 March 2013. All fees and charges are approved by Council.

Item No: **14.8**

Subject: **DRAFT STORMWATER MANAGEMENT PLAN, COASTAL CATCHMENTS BETWEEN GLENELG AND MARINO**

Date: 9 July 2013

Written By: Manager Assets and Public Spaces

General Manager: City Assets, Mr S Hodge

SUMMARY

The purpose of this report is to provide Elected Members with information on the Draft Stormwater Management Plan, Coastal Catchments between Glenelg and Marino and to seek a resolution to take the plan to community consultation.

An identical report is being considered by the City of Marion Council tonight to ensure our plans are synchronised. Due to the size of the attachments discussed in the report an electronic copy will be provided to Elected Members on the night and a hard copy is available on request.

RECOMMENDATION

- 1. That Council note the report.**
 - 2. Council endorses the Draft Stormwater Management Plan, Coastal Catchments between Glenelg and Marino for joint community consultation.**
 - 3. Following public consultation the Plan be reviewed and a final Plan and a report be provided to Council for endorsement.**
-

COMMUNITY PLAN

A Place for every generation
A Place that is safe and secure
A Place that values its natural environment
A place that provides value for money

COUNCIL POLICY

N/A

STATUTORY PROVISIONS

Local Government Act 1999

BACKGROUND

The Glenelg to Marino catchment is the area generally west of the Sturt River from the Patawalonga Lake in the north to the hills in the south and encompasses all of the land discharging into Gulf St Vincent between Glenelg and the cliffs at Marino. The catchment is approximately 35 square kilometres in area of which 13 square kilometres is in the City of Holdfast Bay and 22 square kilometres within the City of Marion.

Significant drainage works were undertaken in the 1930's, late 1960's and 1970's including work on the Sturt River and south Western Drainage Scheme that included the alignment and lining of the Sturt River and the construction of drains beneath the sand dunes connecting the catchment to the gulf.

The greater part of the catchment is residential development with a number of larger developments such as the Marion Shopping Centre, Warradale Army Barracks and a number of schools including Brighton Secondary School and Sacred Heart College, shopping precincts along jetty Road Brighton and Jetty Road Glenelg, ovals and open spaces. The catchment has a Hills Face area at its southern end.

There is a variation in the density of development within the catchment and a trend towards increasing housing densities including the development of transit orientated developments. The change in development densities and the increase in impervious areas is one factor affecting the drainage network.

The Plan has taken into account development trends and potential development across the catchment, climate change, sea level rise, the Patawalonga Lake conditions, soil types and soil permeability in the modelling.

At the recent South Australian Institute of Public Works Engineering Australia conference the Plan was awarded the 2013 IPWEA SA Excellence Awards for the Design and/or Construction of a Public Works Project - Water.

REPORT

In 2010 the Cities of Holdfast Bay and Marion commenced a joint project partnering with the Adelaide Mount Lofty Natural Resources Management Board (AMLNRMB) and the Stormwater Management Authority (SMA) to undertake a stormwater study of the Glenelg to Marino catchment. The \$300,000 study was jointly funded by the partners with the following contributions, SMA \$100,000, AMLNRMB \$100,000, City of Holdfast Bay \$50,000 and City of Marion \$50,000.

A Technical Steering Committee to oversee the preparation of the Plan was formed with representation from the Cities of Holdfast Bay and Marion, Adelaide Mount Lofty Natural Resources Management Board, Stormwater Management Authority and the Environmental Protection Authority.

The outcome of this work is the Draft Stormwater Management Plan Coastal Catchments between Glenelg and Marino, (the Plan) refer to disc provided to members.

The Plan has been prepared by Tonkin Consulting with input from Jensen Planning and Design and Australian Groundwater Technologies.

The Cities of Holdfast Bay and Marion have an overarching objective of progressing towards becoming “Water Sensitive Cities” and to minimise flooding and harness the potential of stormwater to overcome water shortages, reduce urban temperatures, and improve waterway health and the landscapes of our cities. Water Sensitive Urban Design is the process that will lead to Water Sensitive Cities”.

The Plan includes a description of the catchment, and all known stormwater assets, identification of issues and opportunities, priorities, timeframes and project construction costs.

The Plan identifies objectives and strategies to meet the requirements of the Stormwater Management Guidelines including the provision of acceptable levels of protection for the community and both private and public assets from flooding, management of the quality of runoff on receiving waters, use of stormwater runoff, improvements to watercourses and riparian ecosystems, desirable planning outcomes and the sustainable management of stormwater infrastructure.

Development and Development Trends

Trends over the last decade have seen the subdivision of land within the catchment and construction of two or more dwellings on allotments that previously contained one dwelling (urban infill). The increase in density has also seen an increase in the impervious area of allotments from less than 50% to over 90%.

A study of past and future development trends was undertaken by Jensen Planning and Design in 2011. Refer to disc provided to members. The study took into account current housing densities, housing growth opportunities within the catchment, the State Government’s 30 year Plan, and the current policy provisions that relate to impervious surfaces.

While precinct Transit Orientated Developments (coordinated development precincts) may allow an increase in housing densities, the continued development of one and two storey developments provide little space for deep rooted plants, water sensitive urban design, and result in an increase in the impermeable surface of these allotments. Refer to disc provided to members Tonkin Consulting (2013) Floodplain Mapping and Drainage Capacity Assessment Report.

While there are a number of different mixes of development that may occur affecting the catchment in the future, and opportunities for water sensitive urban design, and the use of onsite retention and detention measures (refer to disc provided to members) that may mitigate those effects, the hydrology has been based on a current business as usual scenario.

Climate Change

The Plan has taken into account the impacts from climate change including the prediction of a warmer and drier future with higher rainfall intensities. The plan has adopted a 10% reduction in annual rainfall, a 3% increase in potential evapotranspiration, and a 3% increase in rainfall intensity. These changes were predicted in the Local Government Association (July 2010) Local Government Climate Adaption Program Interim Report.

The modelling for the plan has assumed a sea level rise of 0.5 meters over the next 50 years.

Stormwater Runoff Quality and Quantity

The data for the pipe network for the catchment was reviewed and updated and hydrological and hydraulic modelling was undertaken.

Of the approximately 36,000 parcels of land within the catchment approximately 5,000 were found to be subject to inundation to a depth of greater than 0.025 metres (25 millimetres).

The minor drainage system has a primary function of avoiding nuisance flooding and ponding to maintain the serviceability and safety of the road networks. The modelling shows there are no compelling reasons to upgrade the network as the water is contained within the roadways, however a number of deficiencies within the network require the extension of the pipe and pit network at the upstream end.

The primary purpose of the major drainage system is to prevent flooding that causes property damage or that threatens the safety of people in the floodplain. The modelling shows that where the 1 in 100 year event breaks out of the road network and enters properties the flooding is mostly shallow (less than 100 – 200 millimetres deep). However, a number of areas have a risk of flooding to a greater extent. The plan proposes a number of objectives and strategies to reduce the risk to these areas.

In addition to the effects of stormwater on the built environment, the discharge of stormwater to the marine environment results in a number of pollutants including, turbidity, tyre, brake and hydrocarbon products, litter and debris, nutrients, pesticides and chemicals, and bacteriological contamination affecting the coast, refer to disc provided to members.

Objectives and Strategies

The Plan proposes a number of objectives including:

- New development be constructed with appropriate free board (finished floor level above the inundation level) to ensure buildings are not inundated in a 1 in 100 year event,
- New development must provide for overland flows, where possible the 1 in 100 year event should be contained within the road network or public open spaces,
- The major drainage network should have sufficient capacity to ensure that no property is subject to a medium, high, or extreme flood hazard in a 1 in 100 year event.

Strategies to address these objectives include, the implementation of drainage upgrades, development and implementation of planning policy and design techniques, and development and implementation of joint audit programs and policies to ensure that the planning policy and design techniques developed are built and maintained.

Drainage works include upgrades to four (4) locations in the major drainage system, and twenty six (26) locations in the minor drainage system. The City of Marion has a further four (4) locations for drainage works to rectify localised deficiencies.

The Plan proposes that where it is technically possible and financially viable strategies for improving stormwater runoff quality should include, the construction of water sensitive urban design techniques, bio filtration, pervious pavements, and the construction of additional gross pollutant traps.

Priorities and Timeframes

The Plan provides short, medium, and long term projects and actions to enable the prioritisation of works including developing proposals to integrate WSUD into drainage design, the review of stormwater management provisions within current Development Plans, preparation of stormwater catchment plans for the Linwood / Pine Gully and Gilbertson Gully catchments, establishment of a joint council working group and installation of flow monitoring equipment in Drain 18. Drain 18 had flow monitoring equipment installed a number of years ago, the equipment is no longer operational.

The establishment of a joint council working group and the reestablishment of flow monitoring equipment in Drain 18 have been commenced. The data from this monitoring will provide valuable information on the impacts of development on stormwater flow and has a wider community benefit. The project has attracted joint funding from the SMA and AMLNRMB.

Consultation

Public consultation on the Plan is required prior to Council adopting the plan. Section 50 of the Local Government Act 1999 requires that a notice is published in a newspaper circulating within the area of the council describing the matter under consideration and inviting interested persons to make submissions in relation to the matter within a period (which must be at least 21 days) stated in the notice.

Subject to Council's endorsement, the public consultation period will commence on the 10 July 2013 and end on the 2 August 2013.

BUDGET

There are no immediate implications for the 2013/14 budget however once the plan is endorsed by Council it is likely that some minor administrative cost will be incurred in the current financial year.

LIFE CYCLE COSTS

The Plan provides cost estimates for thirty four (34) projects totalling approximately \$23 million including major drainage outfalls, minor drain extensions and additional gross pollutant traps. These projects and costs will be included in the each council's future works programs and Long Term Financial Plans. A number of the projects may be eligible for funding from the SMA and the AMLNRMB. Other funding opportunities will also be examined including Federal Government grants.

CONCLUSION

The South Western Drainage Scheme designed in the 1960's had a design of a 1 in 5 year storm event, however over time, infill and other development has reduced the standard of the existing pipe system.

The Plan quantifies the impact of rainfall events on development within the catchment, provides opportunity to address the effects of changing climate and development densities on the stormwater system, improve the quality of and reduce the quantity of stormwater discharged to the marine environment.

Following public consultation the draft Plan will be reviewed and provided to Council for endorsement.