



Council Agenda

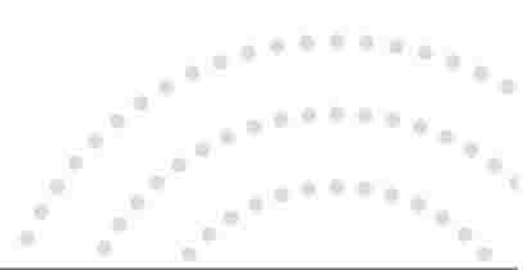
NOTICE OF MEETING

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

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

Tuesday 13 August 2013 at 7.00pm

Justin Lynch
CHIEF EXECUTIVE OFFICER



Ordinary Council Meeting Agenda

1. OPENING

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

2. KAURNA ACKNOWLEDGEMENT

We acknowledge Kaurna 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 Kaurna 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

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 23 July 2013 be taken as read and confirmed.

Moved Councillor _____, Seconded Councillor _____

Carried/Lost

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

8.2.1 Question with Notice – Brighton Caravan Park Public Meeting – City of Brighton Arrangements– Councillor Looker (Report No: 279/13)

8.2.2 Questions With Notice – Glenelg Cinema Development – Councillor Bouchee (Report No: 275/13)

9. MEMBER'S ACTIVITY REPORTS

9.1 Members Activity Report – Murray Darling Association – Councillor Yates (Report No: 276/13)

9.2 Mayor's Activity Report – May 2013 – July 2013 (Report No: 271/13)

10. PUBLIC PRESENTATIONS**10.1 Petitions - Nil****10.2 Presentations****10.2.1 BikeSA**

Mr Michael Bridge, General Manager BikeSA will make a presentation to Council for 5 minutes on Adelaide City Bikes in the City of Holdfast Bay region.

10.3 Deputations**10.3.1 Free Bike Hire Program**

Mayor Rollond has approved a five minute deputation from Steve Bland from the Glenelg Holiday Group regarding Free Bike Hire Program

11. MOTIONS ON NOTICE

11.1 Motion on Notice – Frequency of Meetings– Councillor Looker (Report No: 267/13)

12. ADJOURNED MATTERS - Nil**13. REPORTS OF MANAGEMENT COMMITTEES, SUBSIDIARIES AND THE DEVELOPMENT ASSESSMENT PANEL - Nil****14. REPORTS BY OFFICERS**

14.1 Items in Brief (Report No: 260/13)

14.2 Free Bike Hire – Trial Program (Report No: 272/13)

14.3 Cinema and Carpark HOA (Report No: 252/13)

14.4 Review of Heritage and Character Development Plan Amendment Items Held in Confidence (Report No: 223/13)

14.5 Alwyndor Aged Care Management Committee Appointment (Report No: 251/13)

14.6 Australia Day Dry Zones (Report No: 273/13)

14.7 Buffalo Restaurant - Licence (Report No: 254/13)

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. CONFIDENTIAL ITEMS

17.1 2 Aboyne Avenue Seacliff Park - Sale (Report No: 263/13)

Motion

1. That under provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer, General Managers and administrative staff in attendance in order to consider in confidence this item.
2. That the Chief Executive Officer is satisfied that it is necessary that the public be excluded to enable the Council to discuss and to consider the matter at the meeting on the following grounds:
 - a. information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person or persons (living or dead) in the in regards to *2 Aboyne Avenue Seacliff Park - Sale*
 - And
 - b. Information the disclosure of which –
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance, be contrary to the public interest, as the benefit or detriment to Council in not disclosing information relating to *2 Aboyne Avenue Seacliff Park - Sale* outweighs the public interest at this time.

Moved Councillor _____, Seconded Councillor _____

Carried/Lost

2 Aboyne Avenue Seacliff Park - Sale (Report No: 263/13)

Order to Retain Documents in Confidence

Motion

1. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the documents relating to Report No: 263/13 including:
 - Report
 - Attachment

relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(a and b).

2. That the Chief Executive Officer be authorised to release the minutes relating to Report No: 263/13 at the completion of the sale.
3. This resolution will be reviewed within 12 months by the Council.

Moved Councillor _____, Seconded Councillor _____

Carried/Lost

17.2 Brighton Caravan Park Upgrade - Update (Report No: 277/13)

Motion

1. That under provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer, General Managers and administrative staff in attendance in order to consider in confidence this item.
2. That the Chief Executive Officer is satisfied that it is necessary that the public be excluded to enable the Council to discuss and to consider the matter at the meeting on the following grounds:
 - a. information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person or persons (living or dead).
 - and
 - i. information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council.

Moved Councillor _____, Seconded Councillor _____

Carried/Lost

Brighton Caravan Park Upgrade - Update (Report No: 277/13)

Order to Retain Documents in Confidence

Motion

1. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the documents relating to Report No: 277/13 including:
 - Minutes
 - Report
 - Attachment
 relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(a and i).
2. This resolution will be reviewed within 12 months by the Council.

Moved Councillor _____, Seconded Councillor _____

Carried/Lost

17.3 Minutes - Executive Committee Meeting – 1 August 2013 (Report No: 278/13)

Motion

1. That under provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer, General Managers and administrative staff in attendance in order to consider in confidence this item.
2. That the Chief Executive Officer is satisfied that it is necessary that the public be excluded to enable the Council to discuss and to consider the matter at the meeting on the following grounds:
 - a. information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person or persons (living or dead).And
 - g. matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty.

Moved Councillor _____, Seconded Councillor _____

Carried/Lost

Minutes - Executive Committee Meeting – 1 August 2013 (Report No: 278/13)

Order to Retain Documents in Confidence**Motion**

1. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the documents relating to Report No: 287/13 including:
 - Minutes
 - Report
 - Attachmentrelating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(a and g).
2. That the Chief Executive Officer be authorised to release Report No: 287/13 and the Minutes of the Executive Committee meeting held 1 August 2013 after all parties are informed of the committee's decision.
3. This resolution will be reviewed within 12 months by the Council.

Moved Councillor _____, Seconded Councillor _____

Carried/Lost

18. CLOSURE

**JUSTIN LYNCH
CHIEF EXECUTIVE OFFICER**

Item No: **8.2.1**

Subject: **QUESTION WITH NOTICE – BRIGHTON CARAVAN PARK PUBLIC MEETING – CITY OF BRIGHTON ARRANGEMENTS– COUNCILLOR LOOKER**

Date: 12 August 2013

QUESTION

Councillor Looker asked the following question of the Deputy Mayor, Councillor Clancy:

“Given that the Mayor told the Senator Xenophon public rally on Tuesday 30 July 2013 that the former Brighton Council decided in the 1980s and 1990s it would have what he calls permanent residents’ would the current Deputy Mayor Rosemary Clancy, as a past Mayor and Councillor of the former City of Brighton please explain what arrangements were actually in place.”

Background

Transcript of Mayors Speech to the Xenophon Public Meeting re Caravan Park 30.07.13

Xenophon: Thanks Alison. I would like to introduce the mayor of the city of Holdfast bay Dr Ken Rollond. For those who don't know Ken, which is probably no one in this room, he has been, he has delivered about 10,000 babies in his work as an obstetrician that why he keeps winning those mayoral elections because he delivered most of them. He has been there for a number of years, he has been out on a limb here, he will tell us about a conversation he had just a few minutes ago before this meeting started which I think you will be very interested in. Please give a warm round of applause to ken Rollond.

Rollond: Well thank you very much Nick. Can I just say that at a minute to six I had a message from the administration of the council that I had to be extremely careful what I say and that, er, it could be, if it was used in court what I say tonight could be used against the council. Now can I say that I'm not going to criticise the council and I'm not going to say anything which I haven't already said before and if they want to put me in jail for that, it's fine. (clapping)

Look, look can I also say that (er um) when I first realised this meeting was on that I did ask administration if they could postpone the ICAC meeting they are holding tonight and on two occasions it was refused. They said they couldn't arrange anything. So I am not telling any lies there.

Can I just say what this is all about. In the late 80's early 90's the Brighton Council decided that it would have permanent residents within this park as a purpose and that purpose was to provide regular income during the

winter and in the summer and it provided security against the vandalism and the graffiti that might occur and what can I say, that it has been exceptionally successful in that regard.

Can I then add that to make these these homes, these were caravans that then became permanent and then had annexes built to them. I asked the council if we had ever had development approval and my reply from the administration was that it has never been given and twice I have had that message. In actual fact they now admit they have given development approval for those over the years. So it's a true fact that we have encouraged people to build here and we have encouraged them to live here for a purpose.

Now can I just say a few misinformations, not necessary by council, but perhaps through the media. One is that these are rentals therefore like any rental house the time is up to go. These are not rentals, they rent the land, they don't rent the actual buildings, they provided them themselves. For example the bowling clubs they lease the land and the buildings and we don't tell them to go. The same with the surf clubs. This surf club is on council land and yet we are not telling them, your lease is up and you have got to go. These people expected their lease would be renewed every year and it was an expectation which has been successful for more than 20 years. So that's a really important issue.

The second one is that it's a very cheap rental, they are getting it exceptionally cheap. Do you know they occupy about 2000 square metres or less. They pay, each year, over 200,000 to council. That is an exceptionally good return on that block of land. We don't own any block of land that is empty, even our caravan, our parks, our carparks, do not produce that sort of income after expenses. So they are paying their way incredibly well.

I think that we have to realise that these people have done what they think was the right thing. Council has known that these houses have been bought and sold over the last 20 years and has done nothing to stop it.

To suddenly say, on the 24th January, that you all have to go at the end of June. No I can't say that as its unfair, because that's having a go at council. (pause, applause and laughter)

You all have to form your own opinion as to whether its fair or not.

But look, I think that really, what I, the message I want to get over tonight is, really, mediation seems to me the best solution. By trying to mediate, by trying to get representatives, legal representatives from the caravan park and legal representatives from the council to meet and try and nut out a solution, which is a good solution for everyone. Then that by far the best.

This, the adversarial method we are trying at the moment through courts and legals just doesn't seem the right way to me. But I don't know wether it will be successful. I just feel that is by far the best.

Thank you very much.

Meeting continues

Question: To what extent has the council been locked in to the contract with the developer.

Rollond: Looks its true they have signed an agreement with the developer Free Spirit. But the actual plan of what to do has not been decided. They have produced plans which in fact includes the permanent residents site. But this has not been approved by council. There is no development that can go ahead until it is approved. So this could easily be changed. There is nothing at this stage that forces us to remove them. So the answer is no, we have not made a development plan with them yet.

As I said there are no plans to develop, Until those plans those conceptual plans are presented and agreed then aspect like what the water table like, how deep can you go, is it possible to put whatever development they want to put and one of the possibilities is a swimming pool. Look, none of those have yet been explored. Well you need swimming pools when you have the sea right next to you. None of that has been explored and I do not believe at this stage the indigenous aspects because as you know there are a lot of terribly important, as far as the Kurna people are concerned in this area. So I am not aware that any of that has been explored at this stage.

ANSWER – Deputy Mayor, Councillor Rosemary Clancy

Holdfast Bay Mayor, Ken Rollond at the public meeting at the Seacliff Surf Life Saving Club meeting, held on 30 July 2013, implied there was a deliberate strategy some years ago to create a proportion of permanent occupation at the Caravan Park, stating security and continuous income as reasons for this.

He stated ‘permanent residents’ were a creation of Council.

This is not true and it is a concern that he has misled the public.

I served as a Councillor and Mayor of the former Brighton Council for some years and can say there has never been such a strategy.

To confirm my belief I discussed the matter with former long serving Town Clerk and Chief Executive Officer of Brighton Council, John Chenoweth (who has had a longer association with the Caravan Park and administered policies of Council).

He was adamant that Council did not create permanent residency and that the park manager was told that permanent residents were never to be part of the park.

Park residents were able to stay for three months, move away and then come back. During winter they stayed there for June, July and August as this was a time when the park was not busy. The Manager was told by Mr Chenoweth and council that no one was able to be there permanently.

There were no permanent residents with Brighton Council, thus impossible to have been permanent residents for twenty years.

It had always been the intention of the Brighton Council to build cabins on the site which is occupied by those who were on yearly leases.

The caravan park is covered under the Residential Parks Act. There are no permanent residents in this Act. All residents are required to have a lease. No reasons need to be provided if terminating the lease. There are special arrangements for short term – i.e. three months.

The Act states that a dwelling means—

(a) a structure, whether fixed or moveable, that is designed to be used and is capable of being used for human habitation.

I would suggest that it would be very useful to all members of council to read the Act. Many of the comments made at the public meeting are incorrect and are not reflected in the Act.

Item No: **8.2.2**

Subject: **QUESTIONS WITH NOTICE – GLENELG CINEMA DEVELOPMENT – COUNCILLOR BOUCHEE**

Date: 13 August 2013

QUESTION

Councillor Bouchee asked the following questions:

1. *Could the Chief Executive Officer please provide council with shadow plans for the Taplin cinema development for the dates 1 March, 1 June and 1 September prior to any further discussions.?*
2. *Could the Chief Executive Officer please advise the total measurement of land on the ground level of the Cowper/Milton Street car park which may be owned and or controlled by Mr Taplin in relation to the cinema development...i.e. base of lift/fire exit stairs/ohs requirements for a cinema.*
3. *Could the Chief Executive Officer please advise where the proposed truck deliveries will take place for the cinema.....due to the height restriction of the ground level car park.*
4. *Could the Chief Executive Officer advise the proposed operating hours of the cinema on partridge street.*
5. *Could the Chief Executive Officer advise how I the “cheap as chips” large truck make it’s deliveries...they already have issues in the layout..?*
6. *Could the Chief Executive Officer advise the height of the cinema including the air conditioning and other infrastructure.*
7. *Could the Chief Executive Officer advise the operating noise level of the proposed air conditioning for the cinema*

ANSWER – Manager Organisational Sustainability

1. Preliminary shadow diagrams for the Western (Cinema) Site only were provided by the Taplin Group and have been included in Report Number 252/13 on the proposed Heads of Agreement forming part of these Agenda papers. These preliminary diagrams cover both the Winter solstice in June and Summer solstice in December for morning,

midday and afternoon but will require further refinement. It is possible that these plans could also change following the independent design review by the Office for Design and Architecture SA.

The Taplin Group has advised that final shadow diagrams will be provided to Council for information purposes only as part of the planning assessment process and this has been confirmed in the proposed Agreement.

2. While rights (eg. access and support) for the first floor cinema will need to be considered and detailed in the future community title plans, the latest Concept Plans suggest that stairs, travelators, lifts and services (but excluding supports) could occupy around 200m² of the ground floor level, or almost 5% of the site area (based on a total land area of some 4275m² as per the 2012 valuation report). This may, however, be subject to change as part of final plans and specifications and community title arrangements.

Importantly, as contemplated by the proposed Heads of Agreement, inclusion of these services as part of the lots to be owned by the Taplin Group will remove any obligation on Council to contribute financially to maintenance, repair or replacement of this infrastructure.

3. While it is understood that traffic management issues are still being worked through by the Taplin Group as part of the traffic management report and will need to be considered as part of the planning assessment process, a review of the Concept Plans suggests that deliveries would most likely occur from Cowper/Milton Street in proximity to lifts and services, similar to other commercial premises fronting Jetty Road. This will, however, need to be confirmed by the traffic management report that will be provided to Council for information as part of the planning assessment process.
4. Details such as the operating hours for the cinema will form part of the planning application for the cinema and are not yet confirmed.
5. While it is understood that the building occupied by Cheap as Chips has a rear (eastern side) roller door accessible from Newman's land, it is likely that they accept some deliveries from the southern entrance adjacent Council's at-grade carpark where some loading spaces currently exist.

Delivery and service arrangements will, however, need to be considered as part of the traffic management plan being prepared by the Taplin Group and included in discussions with the owner/operator of the Cheap as Chips site, which will need to be led by the Taplin Group as contemplated in the proposed Heads of Agreement. The traffic management plan will form part of the planning assessment and a copy will be provided to Council for information under the Agreement.

6. The latest Concept Plans which form part of the proposed Heads of Agreement suggest that the eastern section of the cinema fronting Partridge Street will be approximately

13.2 metres high, while the western section (west of Cowper Street) will be approximately 9.3 metres high.

While the proposed Heads of Agreement will allow service infrastructure necessary to carry out the business function of the cinema to exceed this height (by up to a further 5 metres), the Concept Plan only shows service infrastructure to a height of approximately 1.5 metres above the top-most part of each section of the building at this stage (partially screened by a parapet), which is likely to form part of the air-conditioning infrastructure. Other potential service infrastructure has not yet been confirmed but could, for example, include masts/transmission equipment for live broadcasts. Third party infrastructure that does align with the business use of the building would not be appropriate.

It is likely that service infrastructure will be required to be screened and impacts minimised as much as practical (particularly when viewed from the street, adjacent properties and public areas) as part of any future planning approval for the building.

7. Noise from air-conditioning units and other impacts on adjacent properties from the proposed development will be considered as part of the planning assessment process when more detailed plans are submitted.

While the Development Assessment Commission is likely to be the relevant planning authority in this instance, Council's Development Assessment Unit would usually require compliance with the EPA's *Environment Protection (Noise) Policy 2007* for commercial air-conditioning units and submission of a post construction noise assessment report to confirm compliance with these noise standards.

Item No: **9.1**

Subject: **MEMBERS ACTIVITY REPORT – MURRAY DARLING ASSOCIATION – COUNCILLOR YATES**

Date: 13 August 2013

Written By: Councillor Yates

SUMMARY

Presented for the information of Members is an activity report relating to my activities as a Council Representative on the Murray Darling Association

RECOMMENDATION

That the Activity Report from Councillor Yates on the Murray Darling Association be received and noted.

COMMUNITY PLAN

A Place that Values its Natural Environment

COUNCIL POLICY

Not applicable.

STATUTORY PROVISIONS

Not applicable.

BACKGROUND

The Murray Darling Association was founded in 1944 as the Murray Valley Development League. It is an association of Local Government municipalities in New South Wales, Queensland, South Australia, and Victoria, as well as community groups, businesses, individuals and agencies with an interest in ensuring that the Murray-Darling Basin continues as a viable and valuable asset for all Australians.

The Association provides a focus for Local Government – more than a hundred Councils are members - and community participation in the major natural resource issues of the Murray-Darling Basin. It provides information, facilitates debate, identifies needs and priorities, undertakes projects and education initiatives, and promotes research.

For 62 years the Association has contributed to knowledge about water conservation, decentralisation, tourism, the Snowy Scheme, catchment management, water quality, dryland salinity and pests as well as being involved with education, regional development and formation of the Murray-Darling Basin Ministerial Council.

The Murray Darling Foundation is an initiative of the Murray Darling Association, formed to enable businesses, organisations and individuals to contribute in a tax-effective way to improve, maintain and restore land and water resources of the Murray-Darling Basin as well as developing environmental skills, capacity and best practice management, leadership and project opportunities among people, communities and organisations within the Basin. The aim is to build a significant fund so as to undertake projects aimed at assisting the rehabilitation and sustainable approaches to land and water resources across the Murray-Darling Basin in the areas of research, education, sustainable development, joint ventures and works programs.

NB. The Murray Darling Basin Authority (MDBA) has no connection to the MDA - it is a Government Department reporting to the Commonwealth Minister for Water.

REPORT

Annual General Meeting 2013 of REGION 7 (GREATER ADELAIDE) Murray Darling Association Thursday 18th July 2013 at Marion Council Chamber, 245 Sturt Road, Sturt 5047

WELCOME by Mayor Felicity-Ann Lewis

“A Socio Economic annual reporting project of the Murray Darling Basin”. Speaker Dr Jonathan Sobels, Adjunct Senior Research Fellow, Barabara Hardy Institute, University of South Australia, Mawson Lakes, discussed a new project intended to give a bird’s eye view of water volumes in the Murray Darling Basin.

“Reducing Constraints in the Murray Darling Basin system”. Speaker Ray Najar, General Manager, Murray Darling Association explained the problems that extra environmental flows can cause at various places on the Murray Darling. For instance, infrastructure such as bridges may be flooded and thus cut residents off from facilities like hospitals and shops.

“Local water-saving initiatives in Marion”. Speaker Glynn Ricketts, Water Resources Coordinator, City of Marion, spoke about the use to which water from the new wetlands at Oaklands Rd will be put – watering of many local reserves in summer from water pumped into the aquifer during the winter rains - via Aquifer Storage and Recovery.

AGM convened by Ray Najar :

Reports from officers.

Election of officers :

Chairperson : Cr Peter Jamieson, City of Port Adelaide Enfield, re-elected
Deputy Chairperson 1 : Cr Arthur Mangos, City of West Torrens, re-elected
Deputy Chairperson 2 : Pauline Frost re-elected

Secretary : Raelene Telfer re-elected

Minute Secretary : Cr Lynda Yates, City of Holdfast Bay, elected

Meeting concluded with discussion of next meeting to be held 7th Oct, the night before the MDA conference at Goolwa, 8-11th Oct. Flyer attached.

Refer Attachment 1

Item No: **9.2**

Subject: **MAYOR'S ACTIVITY REPORT – MAY 2013 – JULY 2013**

Date: 13 August 2013

Written By: Executive Assistant to CEO and Mayor

General Manager: Chief Executive Officer

SUMMARY

Presented for the information of Members is the Activity Report for the Mayor for May 2013 – July 2013.

RECOMMENDATION

That the Mayor's Activity Report for May 2013 – July 2013 report be received and noted.

REPORT

Start Date	Subject	Location
2/05/2013	Coast FM	
3/05/2013	Holdfast Presentation night	Holdfast Bowls
3/05/2013	Meet with CEO	CEO's office
5/05/2013	Order of St John lunch	Glenelg Golf Club
8/05/2013	Legacy Widows Birthday	Lodge Brighton
8/05/2013	Metro Mayors Lunch	Vung Tau restaurant 771 Port Road Woodville - Esplanade
10/05/2013	Albert Hall tour	Warradale
10/05/2013	Vietnam Vets Coral and Balmoral	Surf Club
11/05/2013	Somerton Surf Life Saving Club Awards	Council Chamber, Glenelg Town Hall
14/05/2013	Pre Council Meeting Workshop - Healthy Holdfast Bay	The Beachouse, Glenelg Council Chamber, Glenelg Town Hall
14/05/2013	National Volunteer Week function breakfast	
14/05/2013	Council Meeting	
15/05/2013	Brighton Hove District Centre Development Plan Amendment - Information Evening	Brighton Tennis Club (Torr Ave clubrooms behind the Civic Centre) Rugby Oval
15/05/2013	Brighton Junior Rugby presentation	
15/05/2013	My Eye Health Program - Community Event	
17/05/2013	Somerton Yacht Club Prize night	Yacht Club
18/05/2013	Glenelg SLSC Dinner and Awards night	Glenelg SLSC
18/05/2013	Closure speech for the Holdfast & Districts Justices Group 2013 JP State Convention	Club Marion
20/05/2013	Friends of Library AGM	Partridge House
23/05/2013	Rituals that bind us	Bay Discovery
25/05/2013	Football Eagles	Unleash Solar

27/05/2013	Holdfast Bay Legacy Widow's Club	Watermark Hotel Anzac Hwy Glenelg
27/05/2013	Talk by Jan Smith reSt names	Partridge House
28/05/2013	Minda Aquatic Centre Opening ceremony and morning tea	Minda - King George Ave Brighton
28/05/2013	Pre Council Meeting Workshop Dinner	Mayor's Parlour, Glenelg Town Hall
28/05/2013	Council Meeting	Council Chamber, Glenelg Town Hall
29/05/2013	Meet with Con Maras	Mayor's Office
29/05/2013	DPTI Bus route change in Glenelg	Community Centre
31/05/2013	Football South	Gliderol
31/05/2013	Meet with CEO	CEO's office
5/06/2013	Jetty Road Mainstreet Management Committee Meeting	Glenelg Library Meeting Room
6/06/2013	Coast FM	Coast FM
7/06/2013	Meet with CEO	CEO's office
7/06/2013	WACG Meeting	Adelaide Airport Management Centre
9/06/2013	Hall of fame dinner	Bay Function Centre
10/06/2013	Football v North	Glenelg Oval
11/06/2013	Ombudsman appointment	Grenfell St
11/06/2013	Pre Council Meeting Workshop - Glenelg Town Hall and Library Redevelopment	Council Chamber, Glenelg Town Hall
11/06/2013	Council Meeting	Council Chamber, Glenelg Town Hall
12/06/2013	Lumina Apartment opening	Russell Hall , Masonic Homes
14/06/2013	Hallett Cove Rotary changeover dinner	House of Jade
14/06/2013	Meet with CEO	CEO's office
15/06/2013	Seacliff Surf Club Presentation	Seacliff Surf Club
16/06/2013	ALGA Conference	Canberra
20/06/2013	Community Consultation re Cinema project	Partridge House
21/06/2013	Meet with CEO	CEO's office
23/06/2013	Prematch Luncheon	Glenelg Oval
23/06/2013	Football v West	Glenelg
25/06/2013	Council Meeting	Council Chamber, Glenelg Town Hall
27/06/2013	Chamber of Commerce	Glenelg Oval
28/06/2013	Citizenship Ceremony	Partridge House, Partridge Street Glenelg
28/06/2013	Meet with CEO	CEO's office
30/06/2013	Rotary Club of Somerton Pk	Somerton Surf Club
1/07/2013	Special Council Meeting	Council Chamber, Glenelg Town Hall
1/07/2013	Disability Care Australia launch	Glenelg Golf Course
2/07/2013	Workshop - Stormwater Management - Joint Workshop with the City of Marion	Main Activity Room, Alwyndor, Dunrobin Road, Hove
3/07/2013	Meeting with Jeff Brown of the Brighton Caravan Park	Meeting Room West
3/07/2013	Rotary Club of Glenelg	Glenelg Golf Club
4/07/2013	Brighton and Hove District Centre DPA Hearing	Kingston Room

4/07/2013	Coast FM - Chris Carpenter (David away)	
5/07/2013	Masonic Homes - PIA SA - "On The Couch" Luncheon,	Sebel Playford, Ballroom - North Terrace, Adelaide
6/07/2013	Brighton Rotary Changeover dinner	Cub Marion
7/07/2013	Brass band presentation	St Andrews Church
8/07/2013	Changeover Dinner of Rotary Club of Holdfast Bay	Somerton Surf Life Saving Club
9/07/2013	CONFIDENTIAL - Meeting with the Legal Team - Broadway Kiosk	Council Chamber
9/07/2013	Council Meeting	Council Chamber,
10/07/2013	Second Hearing - Brighton and Hove District Centre DPA	Kingston Room, Brighton Civic Centre
10/07/2013	Metro Mayors Lunch	Adelaide City
11/07/2013	Better Development Plans Hearing	Kingston Room, Brighton
13/07/2013	Meet Kim Callahan	Caravan Park
13/07/2013	Football v North	Glenelg
14/07/2013	Meals on Wheels luncheon	Marion Hotel 849 Marion Rd
15/07/2013	Meet with Glenelg Football Club CEO Rob Nelson and Club President Nick Chigwidden	CEO's Office
16/07/2013	Council Workshop - Briefing on Cinema and Car Park Proposal	Kingston Room, Brighton Civic Centre
19/07/2013	Meet with CEO	CEO's office
23/07/2013	Pre Council Meeting Workshop - Representation Review	Council Chamber
23/07/2013	Council Meeting	Council Chamber
24/07/2013	Lori Baugh Littlejohns, a PhD student at Southgate Institute for Health, Society and Equity at Flinders Uni	Mayor's Office
26/07/2013	Meet with CEO	CEO's office
27/07/2013	Art Exhibition	Glenelg Fine Arts
27/07/2013	Brighton Surf Club presentation	Brighton Surf Club
28/07/2013	Tutti Salt Water songs	Performing Arts Centre Brighton
29/07/2013	Resilient South Interview	Grazio will Phone Mayor Rolland on 8376 0988
30/07/2013	Nick Xenophon Tim Costello Chloe Fox	Seacliff Surf Club
31/07/2013	Invitation to launch and signing ceremony of Resilient South	Club Marion 262 Sturt Rd Marion
31/07/2013	Conflict of interest - SAIAL - Ombudsman SA	Pilgrim Hall, City
31/07/2013	Resilient South project launch and official agreement signing ceremony	Club Marion - 262 Sturt Road, Marion

Item No: **11.1**

Subject: **MOTION ON NOTICE – FREQUENCY OF MEETINGS – COUNCILLOR
LOOKER**

Date: 13 August 2013

PROPOSED MOTION

Councillor Looker proposed the following motion:

“That prior to the setting of the council meeting program for 2014 administration prepare a report exploring options regarding the frequency of council meetings.”

BACKGROUND

Council has a schedule that arranges twice monthly meetings and 24 meetings a year. Meetings involve significant organisation and some expense and it may be that a schedule involving less meetings will still enable council business to be conducted efficiently. Should fewer meetings be decided then Council may be able to use the time to increase the workshop schedule to enable deeper exploration of relevant issues in a manner not possible in a formal council meeting. For urgent matters there is always the option of a ‘special meeting’. We may decide that status quo is fine but it is appropriate we review how we function to seek efficiencies and improvements.

Item No: **14.1**
Subject: **ITEMS IN BRIEF**
Date: 13 August 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 that Provides Value for Money

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Not applicable

REPORT

14.1.1 Taxi Security Scheme Safer Suburbs Grant Funding

The Taxi Security Scheme is a Commonwealth funded initiative (part of the Safer Suburbs Program) that aims to protect taxi drivers and passengers alike through various projects. For the period 2012/13 to 2014/15 the Taxi Security Scheme will provide \$4.5 million worth of funding for various projects that upgrade taxi ranks around Australia to improve their safety and security.

On 6 May 2013 the City of Holdfast Bay's Liquor Licensing and Community Safety Officer lodged an application with the Commonwealth Attorney-General's Department seeking funding of \$165,000 (plus GST) for such a project, the intent of

which was to upgrade the current impermanent taxi rank operating out of Colley Terrace Glenelg.

On 24 June 2013 Council received correspondence from his Honor Jason Clare, (Minister for Home Affairs and Justice) advising that the City of Holdfast Bay's application had been successful in obtaining funding. 32 Councils from across Australia (including Holdfast Bay) will receive shares of \$3.85million awarded in this round of grants offers. The \$165,000 awarded to Holdfast Bay will aid in formalising a permanent taxi rank at the current Glenelg location. The taxi rank will be upgraded by implementing permanent fixtures that, while not obstructing the pedestrian thoroughfare or existing CCTV line-of-sight, create a system of order for taxi patronage while increasing the safety for those that utilise the area.

Once funding has been received from the Commonwealth Government, and the project plan is underway, a full report will be submitted for member's reference.

14.1.2 **Inconsistency of dates in ILUA and Template Report**

An inconsistency has been noted in relation to the term of the ILUA as it relates to reviews of Council contributions to the Fund as described in the template report and in the ILUA itself.

In the template report reference is made on page 9 to a 3 year period of agreement in respect of Council contributions to the Fund as follows;

"The attached table (attachment C) shows the annual funding to be provided by participating Councils based on Council revenue for the establishment of a \$200,000 fund CPI indexed for a 3 year period with a review to occur before expiration of 3 year period".

The template report also recommends a financial commitment from Councils for a three year period (2013/14 to 2015/16) primarily in recognition of the need for certainty around the Liaison Committee in the initial phase of the agreement, noting that it would be important for the newly elected Councils to affirm their commitment to the ILUA following the Local Government Elections in late 2014.

The ILUA provides for the following two aspects of the period of agreement; - the term of the ILUA and the commitment of Councils to provide their contributions to the Fund.

As regards the term of the ILUA:

- (a) there is an initial trial period of two years from the date the ILUA is registered. Any party may terminate the ILUA at the end of that period by giving the others notice not more than 4, and not less than 2, months before the end of that period (see clause 2.1 (b))
- (b) if the ILUA continues, it is subject to a 5 yearly review at the instance of any party. The parties may agree changes to the ILUA pursuant to such a review, but it remains in force whether or not they do (clause 2.2).

As regards contributions to the Fund, these are reviewed every 5 years (clause 7.1(b)).

For those Councils that have already adopted the ILUA and used the template recommendations this inconsistency does not affect the resolutions passed by your Council as recommendation 2 of the template report states that - "The execution, delivery and performance of the Council's obligations under the ILUA be, and are hereby, approved" and recommendation 5 is consistent with the approach that newly elected Councils have the opportunity to affirm their commitment to the ILUA following the Local Government Elections in late 2014.

14.1.3 **Bus Layover – High Street, Glenelg**

Response to **Item No. 10.1.1 Report No. 189/13 Report Title:** Petition – High Street Traffic between Moseley Street and Partridge Street **Resolution No:** C280513/927
Resolution: that the petition be received by Council and referred to the appropriate department for a response.

On Wednesday 29 May 2013, the Department of Planning, Transport and Infrastructure (DPTI), Public Transport Services (PTS), held a public consultation meeting at the Glenelg Community Centre. The purpose of the meeting was to listen to community views and discuss the 2 options proposed for changes to bus service layover areas.

Members of Parliament in attendance included Hon. Chloe Fox MP, Member for Bright and Dr. Duncan McFetridge MP, State Member for Morphett. The Hon Chloe Fox addressed the audience and advised that if the community did not support either of the proposals, then the matter would not be pursued any further. Dr McFetridge also addressed the audience and reiterated that Minister's position.

The audience was pleased with the outcome to not pursue either option for changes to the bus service layover areas and the meeting continued as an information session only.

A copy of the petition has been forwarded to DPTI/PTSD for their information and consideration and no further action is required for this matter at this time.

Council has also received notification from DPTI/PTSD confirming that the proposals have been withdrawn and a copy of the letter is provided as Attachment 1.

Refer Attachment 1



In reply please quote #7656787
Enquiries to Andrew Every
Telephone 8303 0822

Public Transport Services

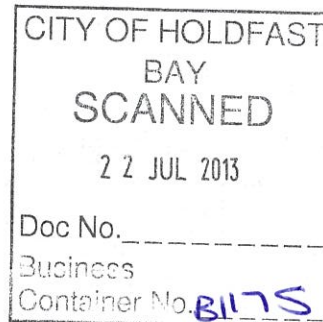
Roma Mitchell House
136 North Terrace
Adelaide SA 5000

GPO Box 1533
Adelaide SA 5001

Telephone: 08 8303 0822
Facsimile: 08 8303 0828

ABN 92 366 288 135

Mr Justin Lynch
Chief Executive Officer
City of Holdfast Bay
PO Box 19
Brighton SA 5048



Dear Mr Lynch



PROPOSALS TO CHANGE BUS SERVICES IN GLENELG

Thank you for attending the public meeting on May 29 at the Glenelg Community Centre regarding possible changes to bus services in Glenelg.

At this meeting, there was a wide variety of representatives including local Members of Parliament, the City of Holdfast Bay, the Department of Planning, Transport and Infrastructure, the business community and residents. As such, it was an excellent opportunity for everyone to be heard and to provide their feedback.

As you would be aware, the proposals put forward by the Department were not supported by the community, and as a result, these proposals will not be progressed further. In regards to potential future alterations to bus services, DPTI are continuing to work closely with Council to identify other possible options to balance the needs of all stakeholders, the Department and the public transport network overall.

This planning work will continue throughout 2013 and will form part of future service changes in 2014 and beyond. As part of this planning process, DPTI will conduct further consultation with the community as appropriate.

We appreciate your involvement in the consultation process and trust that this information is of assistance.

Yours sincerely

Bill Fragoulis
EXECUTIVE DIRECTOR, PUBLIC TRANSPORT SERVICES
PUBLIC TRANSPORT SERVICES DIVISION

26 June 2013

Item No: **14.2**

Subject: **FREE BIKE HIRE - TRIAL PROGRAM**

Date: 13 August 2013

Written By: Manager Traffic and Transport

General Manager: City Assets, Mr S Hodge

SUMMARY

This report provides updated information to Council of a proposal from Bike SA to enter into an agreement to provide a free bike hire scheme. The program offers free unlimited bike hire to the public and supports strategies to reduce car use, improve health, wellbeing and mobility for residents, visitors and tourists. Whilst the program is highly commendable, it comes at a cost which is currently unfunded by Council.

RECOMMENDATION

- 1. That Council advises Bike SA that it wishes to enter into an agreement to participate in the bike hire scheme at cost of \$15,000 for 20 bikes for a period of 12 months, commencing in October 2013.**
 - 2. That Council approach three organisations at Glenelg, Brighton and Seacliff to participate as the preferred nodes for the free bike hire scheme.**
 - 3. That a further report be provided to Council within 6 months providing statistics of the bike hire scheme usage.**
-

COMMUNITY PLAN

A Place with a Quality Lifestyle
A Place for Every Generation
A Place that Values its Natural Environment
A Place that Manages its Environmental Impacts
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

Access and Equity Policy
Climate Change Policy

STATUTORY PROVISIONS

NIL

BACKGROUND

In 2005, a free bike hire scheme was established by Bike SA in Adelaide's CBD. The scheme was initially sponsored by Adelaide City Council and is a free daily bike hire program available for people of all ages to embrace cycling in a simple, accessible way. Cyclists may choose to ride to and from a particular point or, enjoy a leisurely ride in the City, suburbs or along the coast.

The benefits of these programs is well documented, not only from the Adelaide model but particularly from national and international examples, where bike share schemes are major drivers for reduction in car use, lowering congestion and car emissions and improved health for communities.

In 2011, Bike SA held a presentation with a number of stakeholders including the Cities of Holdfast Bay, Port Adelaide Enfield, Charles Sturt, Prospect, Unley, West Torrens and Onkaparinga. Since this time, the Cities of Charles Sturt and Unley have adopted the program in their respective Councils.

Welcoming the introduction of the program into the City of Holdfast Bay is an exciting opportunity and reinforces Council's commitment to the success of achieving clear objectives within the 2012-2015 Community Plan.

REPORT

Report No. 272/12, titled Free Bike hire Program was considered by Council in August 2012 and it was resolved:

"That Council advises Bike SA that it does not wish to enter into a bike hire scheme at a cost of \$20,000 per annum for the next 3 years at this time."

At about this time, the Cities of Charles Sturt and Unley were also considering implementing the bike scheme at their Councils and have since proceeded with establishing 5 nodes in the City of Charles Sturt (Westfield West Lakes, West Beach Surf Life Saving Club, Henley Beach Library, Civic Centre Library, Hindmarsh Library) and 2 nodes in the City of Unley (Unley Swimming Centre, Civic Centre). With 12 nodes in the City of Adelaide, this brings the total number of locations available for people to access free bikes to a total of 19 locations and, at this time last year, the scheme was operating at only 8 locations.

The significant increase to 19 locations is an important achievement and evidence that the scheme is operating successfully and, is well utilised in the CBD and metropolitan Adelaide.

Since expanding the scheme to 3 Councils, Bike SA has reported that March 2013 was a record month, with over 2,600 residents, workers, students, visitors and tourists accessing free bikes. Over 200 of these were in Charles Sturt, equating to over 600 hours of usage in just one month, with West Beach Surf Life Saving Club standing out as the busiest location.

Due to the proximity of the City of Holdfast Bay with the City of Charles Sturt, it has become increasingly evident that introducing the bike hire scheme into our Council, will enhance our status as a City that is easily accessible, promotes and encourages a healthy, greener environment and embraces cycling as a mode of transport.

Refer Attachment 1

In 2012-13 and into 2013-14, Council continues to deliver infrastructure improvements that support our objective to create an accessible, sustainable City. Coast Park, Mike Turtur Bikeway and the Sturt River Shared Path are perfect examples of capital works projects that support local, state and federal governments achieving their objectives of incrementally increasing bike riding.

In accordance with Council's Community Plan, Enhancing City Design and Function, an action focus for 2012-2015 is to develop and implement a City wide Integrated Transport Strategy. In progressing steps to achieve this, Council has developed a Local Area Bike Plan (LABP) and the following was recommended.

5.5.1 Free Bicycle Hire Scheme

It is recommended that a Free Bicycle Hire Scheme is implemented in the City of Holdfast Bay similar to the arrangement adopted by Adelaide City Council (ACC). The City of Charles Sturt and City of Unley have adopted a partnership with ACC so that bikes can be returned at Adelaide, Woodville or Unley.

The project would appeal to tourists providing means for travel to various key attractions within the City of Holdfast Bay, for example, visiting the various beaches via the Coast Park Trail or travelling from Adelaide. Other users would also benefit from the scheme including local workers, students and residents accessing local facilities.

The success of the scheme in Adelaide and the expansion of the program into other Council areas highlight the potential environmental, tourist, economic and transport benefits for the City of Holdfast Bay. Introduction of the scheme would also complement recent and future bicycle infrastructure upgrades including the Coast Park Trail and Mike Turtur Bikeway.

Bicycle SA would be the service provider with Council sponsoring the program with a financial commitment for 3 years of \$20,000 per annum (ex. GST). There may also be any opportunity for additional funding support from the OPAL program. This funding would be used to secure three bike nodes, each housing ten bikes. The funding commitment also includes node signage, all bike maintenance, staff training, administration system, specific insurance liabilities and marketing. A funding commitment staged over a number of years will provide a staged approach allowing the project to grow sustainably, and to monitor useage and respond to demand.

Bicycle SA has proposed that initially, three bike nodes be established in the Glenelg precinct. Support from businesses is required to provide a place for the scheme to operate and overnight housing of the bikes and equipment.

In view of the recommendation in the bike plan, Council staff acknowledged that at this time, a 3 year commitment is not feasible and has considered alternative options to introduce the scheme into the City of Holdfast Bay. Investigations into potential locations, minimal financial commitment and period of operation have been explored to maximise the benefits to Council and the local and broader community.

Negotiations with Bike SA have resulted in a proposal that will meet Council's Community Plan objectives and is a financially responsible starting point to introduce the scheme into the City.

Throughout the process, Council has been aware that a bike hire business operates at the Norfolk Motor Inn (on the Broadway at Glenelg), a meeting was held with the operator to discuss ways that the free bike hire scheme may benefit the business and Council.

Discussions included the option for the Norfolk Motor Inn to be a bike hire node and for them to also display their bike rental information at the other nodes. The meeting included an assessment of the bikes currently available for hire and the quality of bikes are vastly different and superior quality from the free bike hire scheme bikes. The Motor Inn offers high quality tandem bikes, a variety of children's and adult bikes that cyclists may use for short and long distance cycling. The free bike hire scheme offers a basic model bike that is not designed for long distance cycling, is of a practical design and its function suits recreational riding in a metropolitan road and shared path environment. The outcome of discussions was that the Norfolk Motor Inn management do not wish to participate in the free bike hire scheme.

In view of the outcome of discussions with the Norfolk Motor Inn, consideration was given to opportunities for alternative locations to operate as bike hire nodes. To ensure maximum exposure, easy access and equity for potential users to participate in the free bike hire scheme, it is proposed to distribute the 20 bikes between 3 nodes along the coast. The proposed locations are:

Glenelg within proximity of Moseley Square, possibly the Beachouse or La Musette 15 Moseley Street, Glenelg.

Brighton; possibly Brighton Surf Life Saving Club

Seacliff; possibly Seacliff Surf Life Saving Club

As the above locations are offered as proposed nodes, it is anticipated that discussions will be conducted with the prospective operators in the immediate future. There is no cost burden to the participating operators and allocation of resources to facilitate the scheme will be minimal.

The agreement with bike SA to expand the bike hire scheme into the City of Holdfast Bay is offered as the following proposal.

1. Bike SA is the service provider;
2. Council sponsors the scheme with a financial commitment of \$15,000 (ex. GST) for 20 bikes;
3. The scheme operates for an initial period of 12 months, commencing October 2013;
4. Provide the free bike hire at the following locations:-

- a. 10 bikes at Glenelg within proximity of Moseley Square;
 - b. 5 bikes at Brighton;
 - c. 5 bikes at Seacliff.
5. Council to monitor and review success of the scheme by 30 June 2014.

BUDGET

There is no allocation of funding for the initiative in the 2013-14 budget. The budget allocation required for the project is \$15,000 for 1 year (12 months from October 2013 – October 2014).

LIFE CYCLE COSTS

There are no life cycle costs associated with this report unless/until Council adopts a recommendation to proceed with this initiative.

Damian Landrigan

Subject: Adelaide City Bikes Scheme HOLDFAST BAY

From: Michael Bridge <michaelb@bikesa.asn.au>

Date: 29 July 2013 9:23:27 AM AWST

To: Pam Andritsakis <PAndritsakis@holdfast.sa.gov.au>, Linda Johnson <LJohnson@holdfast.sa.gov.au>

Subject: FW: Adelaide City Bikes Scheme HOLDFAST BAY

Pam and Linda – Please see below a note of support for the Adelaide City Bike scheme from a Glenelg resident. Their address can be supplied, if required. I would like this included in material for elected members to consider on 13 August.

Michael

From: Rod Burr [<mailto:burr.rod@gmail.com>]

Sent: Thursday, 25 July 2013 8:40 PM

To: Michael Bridge

Cc: Sue Burr

Subject: Adelaide City Bikes Scheme HOLDFAST BAY

Dear Michael,

We understand that our local council, Holdfast Bay, is shortly to consider participation in this imaginative and sensible scheme.

As ratepayers, we fully support the scheme and look forward to its introduction in Adelaide's premier tourist suburb.

Should it be necessary, you have permission to tender this email as evidence of our support, although we would appreciate it if, for security reasons, our address details were excised and only disclosed to the Holdfast CEO to establish our ratepayer status .

Yours sincerely,

Sandra and Rodney Burr

From: Kat Formato [<mailto:kformato@gmail.com>]
Sent: Friday, 2 August 2013 4:27 PM
To: Justin Lynch
Cc: Pam Andritsakis; Michael.bridge@bikesa.asn.au
Subject: Bicycle SA bike hire down the Bay

Hi Justin, Pam and Michael,

My name is Kat, and I am part owner of a cafe called La Musette, in Glenelg. We have built our business with a focus on the cycling market and, in the planning stages of our cafe we discussed having bikes for hire out the front of the shop.

We've long thought that having a Bicycle SA drop off and pick- up point in Glenelg would be wonderful way to bring tourists down to the Bay and also to provide tourists and residents in the Bay with a free and fun way to get around and explore the area. In addition to getting people out and about in the sunshine, it would give them the freedom to go where they wish, which the bus and tram routes can only provide to a point, and would have the added benefit of keeping them 'local' which would be a huge bonus for local businesses. With the completion of the city to bay bike way, this seems to us to be another logical step to take.

I worked in Grange for a few years and rode to work daily. I saw the bicycle hire go in at West Beach and I've seen serious numbers of these hire bikes on the track making their way to Glenelg and up and down the coastline. There's no question that it would be a great service to provide at the Bay and hopefully, when the proposal is discussed by council on the 13th, it will be given the go ahead!

As you're aware, we've been keen to be involved with this venture and possibly run it from our shopfront. Council has been very supportive of our cafe efforts with landscaping and plans for bike parking out the front of our shop, but the main problem that we were always going to have was storage. Not anymore! We are currently leasing the church on Moseley Street as a residence and have plenty of room for storage there.

Regards,
Kat and Steve
La Musette
15 Moseley Street, Glenelg

Item No: **14.3**

Subject: **CINEMA AND CAR PARK PROPOSAL – HEADS OF AGREEMENT**

Date: 13 August 2013

Written By: Manager Organisational Sustainability

General Manager: Corporate Services , Ian Walker

SUMMARY

The Taplin Group approached Council in early 2012 with an unsolicited proposal to construct a cinema complex above Council's at grade car park in Cowper/Milton Street and a deck car parking facility over Council's eastern Partridge Street carpark. Council subsequently resolved on 10 July 2012 to commence negotiations on a Heads of Agreement subject to broad objectives and commence a process for revocation of the community land status of the Cowper/Milton Street (Western) site to facilitate the proposed development of a cinema complex and car park on Council's land.

Negotiations on a Heads of Agreement have now concluded and a proposed agreement is presented to Council for consideration. The proposed Heads of Agreement reflects the terms under which the Taplin Group is prepared to continue the proposed development. There are some areas where the Heads of Agreement does not meet all the broad objectives of Council's 10 July resolution. While every effort is being and will be made to manage Council's risk, there is always a degree of financial risk in any development project.

Therefore, upon considering the details of the proposed Heads of Agreement, Council is asked to either proceed or not proceed with the proposed development by entering into or not entering into the Agreement.

Ministerial approval to revoke community land has also been granted following public consultation and is subject to Council's final endorsement.

RECOMMENDATION

Council resolves Option 1 – to commit to the proposed development by entering into the Heads of Agreement with the Taplin Group, attached to this Report (as per the detailed recommendation below):

Or

Council resolves Option 2 – not to commit to the proposed development and therefore to not enter into the Heads of Agreement with the Taplin Group, attached to this Report (as per the detailed recommendation below):

Option 1 . Council resolves:

1. Having received approval from the Minister by way of letter dated 19 February 2013, to revoke the community land classification of the whole of the land comprised in Certificates of Title Volume 5117 Folio 402, Volume 5123 Folio 173, Volume 5123 Folio 219, Volume 5324 Folio 96, Volume 5402 Folio 363, Volume 5402 Folio 364, Volume 5651 Folio 969, Volume 5853 Folio 854, Volume 5397 Folio 315, Volume 5397 Folio 316 and Volume 5397 Folio 317 (Western Site).
2. To act outside its policies for contracts and tenders under Section 49 of the Local Government Act 1999 in relation to the sale or disposal of land or assets and the procurement of services by engaging directly with Taplin Management Pty Ltd and/or nominees (Taplin) in relation to the transfer of two Torrens titles to be created in air above the Western Site to Taplin and the construction of two Council car parks by Taplin on the Western (Cinema) Site and on that land comprised in Certificates of Title Volume 5840 Folios 214 and 215, Volume 5555 Folio 121 and Volume 5864 Folio 948 (Eastern Site) for the following reasons:
 - 2.1 Taplin approached Council with a unique proposal for the use of the land, which would be mutually beneficial. This proposal included a cinema which would not be achieved if Council simply engaged a contractor to build a car park.
 - 2.2 Taplin has proven skills and experience in similar developments, including the development of the multi-screen complex at Mitcham Shopping Centre
 - 2.3 Taplin has a proven interest in and commitment to, the greater Glenelg precinct being a major business and land holder in the area, and has recently successfully developed the Bay Junction retail centre
 - 2.4 Taplin's business interests provided reassurance that the proposal will be completed
 - 2.5 The costs per additional car park space in Taplin's proposed development were less than if Council proceeded on its own (noting the report from Walter Brooke).
3. To enter into a heads of agreement with Taplin substantially in the form of the draft heads of agreement attached to the report to Council dated 13 August 2013 (HOA) and relating to the proposed cinema and car park development on the Western Site and the Eastern Site described in that report (Proposed Development) and authorises the Chief Executive Officer to make such minor changes to the HOA as the Chief Executive Officer deems necessary and appropriate to finalise the HOA for execution (including but not limited to inserting the relevant Taplin corporate entity details) and then to execute the HOA on behalf of Council.
4. To authorise the Chief Executive Officer, subsequently to the execution of the HOA, to execute on behalf of the Council a development contract with Taplin on such terms and conditions as are determined by the Chief Executive Officer in negotiation with Taplin provided that such terms and conditions are consistent with the:
 - 4.1. HOA;
 - 4.2 Council Objectives and the Taplin Objectives (as set out in the HOA);

and

- 4.3 Fundamental Terms (as set out in the HOA);**
- 5. To authorise the Chief Executive Officer (with the assistance of such technical expertise as he deems necessary or appropriate), on behalf of Council and in accordance with the HOA, to consider detailed design and construction plans and specifications for the Proposed Development prepared by Taplin as required by the HOA and, unless the Chief Executive Officer considers they are inconsistent with the Concept Plans and Design Principles (as attached to the HOA), approve such detailed design and construction plans and specifications and to consider and approve variations to the approved detailed design and construction plans and specifications throughout the planning and construction stages of the Proposed Development.**
- 6. Subject to execution of a development contract and satisfaction of the relevant conditions precedent in the development contract, to:**
- 6.1 transfer two Torrens title lots in air to Taplin to construct the proposed cinema on the terms contemplated by the HOA;**
- 6.2 authorise the Chief Executive Officer to approve such Lands Titles Office instruments or other documents as are required to effect the amalgamation of the titles on the Western Site, creation of the Torrens title allotments in air and the transfer of the Torrens title allotments to Taplin in accordance with the HOA and/or development contract;**
- 6.3 authorise the Chief Executive Officer to sign any and all documents necessary to effect the amalgamation of the titles on the Western Site, creation of the Torrens title allotments in air and the transfer of the Torrens title allotments to Taplin in accordance with the HOA and/or development contract; and**
- 6.4 where the common seal of Council is required to be affixed to any such documents, authorise the Mayor and Chief Executive Officer to affix the common seal to such documents.**
- 7. Subject to execution of a development contract and satisfaction of the relevant conditions precedent in the development contract, to:**
- 7.1 authorise the Chief Executive Officer to approve such Lands Titles Office instruments or other documents as are required to create the community title division on the Western (Cinema) Site in accordance with the HOA and/or development contract;**
- 7.2 authorise the Chief Executive Officer to sign any and all documents necessary to effect the community title division on the Western Site in accordance with the HOA and/or development contract; and**
- 7.3 where the common seal of Council is required to be affixed to any such documents, authorise the Mayor and Chief Executive Officer to affix the common seal to such documents.**
- 7.4 to authorise the Chief Executive Officer to execute on behalf of Council such other agreements or documents as may be required to effect the Proposed Development as contemplated by the HOA on terms considered appropriate by the Chief Executive Officer.**

Option 2 – Resolve Not to Enter Into Heads of Agreement

That Council having considered the heads of agreement attached to the report to Council dated 13 August 2013 (HOA) and this matter generally Council resolves not to enter into the HOA with Taplin Management Pty Ltd and/or nominees at this time.

COMMUNITY PLAN

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

STATUTORY PROVISIONS

Local Government Act 1999
Development Act 1997

BACKGROUND

To improve parking options in Glenelg, Council engaged consultants Walter Brooke & Associates in October 2011 to investigate design concepts and feasibility of a carpark development on Council's existing grade carpark site at 6-12 Partridge Street (Eastern Site).

At about the same time, the Taplin Group (Taplin) approached Council with a proposal to construct a cinema complex above Council's at grade Milton/Cowper Street carpark (Western Site) and a decked carpark on the Eastern Site.

Walter Brooke presented various design options along with estimated costings to a Council workshop in March 2012. Taplin presented its proposed development to Council at the same workshop.

Refer Attachment 1 (site map)

Following the presentations, Council further considered the proposed development and resolved to progress discussions with Taplin. In broad terms it comprised:

- Taplin to construct a cinema complex at its cost above Council's at grade Cowper/Milton Street carpark (Western Site), including demolition of Council owned buildings at 5 and 7 Partridge Street
- Taplin to construct a decked carpark at its cost on the site of Council's existing at grade carpark on the eastern side of Partridge Street (Eastern Site)
- Council to contribute not more than \$2.5 million towards construction of the decked carpark on the Eastern Site
- Council to retain ownership and operating control of both the at grade carpark on the Western Site and the new decked carpark on the Eastern Site.

The table below provides a short chronology of relevant decision points and milestones from March to June 2012:

27 March 2012	Council resolved to authorise the CEO to develop a detailed proposal regarding a potential cinema and carpark development and present to Council for further consideration. <i>Resolution C270312/457</i>
5 April 2012	Council received letter from Taplin detailing proposed cinema/carparking complex including proposed timing for key stages.
10 April 2012	Council resolved to continue discussions with Taplin regarding the proposed development subject to various conditions. <i>Resolution C100412/461</i>
22 May 2012	Council received a petition in relation to the proposed Cinema and Car Park development.
6 June 2012	Elected Members Workshop to discuss draft Prudential Review Report.

At its meeting on 10 July 2012, Council resolved to accept the Prudential Report and proceed to public consultation, prior to seeking the Minister's approval to remove the community land classification on the western site, and subject to Ministerial approval, to enter into a Heads of Agreement with Taplin. Resolution C100712/576 established Council's objectives for entering into a Heads of Agreement with Taplin and is reproduced in full below:

1. *That the Prudential Review for the 'Cinema and Car Parking Project' be accepted.*
2. *That the Community Land revocation process, including public consultation, commence for the land over which the proposed cinema complex is to be constructed.*
3. *That a Heads of Agreement be drafted for Council's consideration regarding the proposal based on the following broad objectives:*
 - a. *a cinema complex is developed above the council owned land in the Partridge Street West/Cowper Street/Milton Street precinct;*
 - b. *the existing titles are amalgamated and community titles be established to reflect the ownership of the cinema building by the Taplin Group and the ground level car park by Council, subject to community consultation as required by the Local Government Act, 1999 with respect to Community Land;*
 - c. *the Taplin Group to demolish the Council owned buildings at 5 and 7 Partridge Street at its cost and convert into car parking spaces;*
 - d. *the Taplin Group to construct a decked car park, at its cost, on Council's Partridge Street east property with Council retaining ownership of the land and new decked car park;*

- e. Council to contribute the lesser of (i) \$2.5 million or (ii) cost of a decked car park less \$1.0 million; to the Taplin Group for the building a new decked car park;
 - f. the Taplin Group is to provide a minimum of 370 car spaces across both Partridge Street sites, or greater if required to do so to meet any development consent conditions;
 - g. the Taplin Group to undertake streetscape improvements surrounding the cinema complex including undergrounding of high voltage power lines;
 - i. Council to own and operate car parks and provide a minimum of four hours free parking to cinema patrons;
 - h. that advice be sought from the Integrated Design Commission at the commencement of, and throughout the project, to ensure that the best possible visual and urban design outcomes are achieved, in particular in respect to integrating the development with its surroundings, and ensuring easy access to and through the site for pedestrians;
 - j. Taplin Group to provide minimum four hours free parking to the general public at the Bayside Village.
4. The Taplin Group be required to relocate the existing tenants of 5 and 7 Partridge Street to suitable premises within the Jetty Road Glenelg precinct for a period of no less than 12 months at no cost to the tenants.
 5. The Heads of Agreement be subject to a condition precedent that public consultation be undertaken and Ministerial approval be given for the revocation of Community Land status as required by the Local Government Act 1999 and a failure to obtain Ministerial approval will necessarily result in the abandonment of the proposal without any liability for the Council.
 6. The community title created for the cinema complex is limited to two metres higher than the maximum height of the proposed building.
 7. A further report be presented to Council after the Heads of Agreement has been drafted for Council's consideration prior to a commitment being made to proceed.

Ministerial approval for the revocation of community land status of the Western Site was received in February 2013.

Refer Attachment 2

Negotiations with Taplin on the Heads of Agreement (HOA) resumed in April 2013. Council engaged law firm Norman Waterhouse to provide advice on this matter. On 16 July, Council had a public workshop and which provided further input on the negotiations.

Probity

Before entering into any negotiations with Taplin on its proposed development, Council sought advice on whether it was lawful to enter into agreements without first testing the market.

Section 49 of the *Local Government Act 1999* requires that Council's Contracts and Tenders Policy must provide for the recording of reasons for entering into contracts other than those resulting from a tender process. Section 49(2)(c) provides a statutory recognition that the Council is not required to undertake an open tender or other public process in relation to the proposed development provided it has good reasons for not doing so.

Council has entered into negotiations with Taplin without testing the market for the following reasons:

- Taplin approached Council with a unique proposal for the use of the land, which would be mutually beneficial. This proposal included a cinema which would not be achieved if Council simply engaged a contractor to build a car park
- Taplin has proven skills and experience in similar developments, including the development of the multi-screen complex at Mitcham Shopping Centre
- Taplin has a proven interest in and commitment to, the greater Glenelg precinct being a major business and land holder in the area, and has recently successfully developed the Bay Junction retail centre
- Taplin's business interests provided reassurance that the proposal will be completed
- The costs per additional car park space in Taplin's proposed development were less than if Council proceeded on its own (noting the report from Walter Brooke).

REPORT

A proposed HOA is presented for Council's consideration and sets out:

- mutual exclusive commitments and a process to work together to achieve the agreed objectives from the proposed development through to completion of construction
- the Fundamental Terms of the proposed development to be included into a binding Development Contract.

Refer Attachment 3

The proposed HOA reflects the terms under which Taplin is willing to undertake the proposed development. It is between Council and two as yet unidentified Taplin entities, which will be created if and when the HOA is executed. If executed, the HOA would expire on the earlier of 3 months or execution of the Development Contract (more fully described below). The terms of the HOA are now finalised and are the terms to which the developer has agreed. These terms are no longer subject to any further refinement or discussion.

Objectives

The parties' objectives are set out in Annexure B (Objectives) of the proposed HOA. Council's Objectives are repeated as follows:

- To secure a nett increase in public car park spaces across the Sites (currently 235 spaces), taking into account the car parking requirements of the cinema and in any event to achieve a minimum number of 370 spaces across the Sites.
- To retain ownership of and operational control over car parking, in order to generate ongoing revenue from parking and ensure ongoing access to parking by the public (on terms determined by Council).
- To facilitate economic development in the precinct through the construction of a new cinema complex and to improve vibrancy/appeal and visitor attraction.
- To ensure appropriate use of Council assets and funds and obtain value for Council's contributions.
- To ensure certainty in the development outcome (i.e. that the Proposed Development is completed and Council has oversight going forward to ensure the Proposed Development meets Council expectations in terms of design and community engagement) and manage financial risk (i.e. that Council does not pay money (or make other contributions)) for a development that is not completed.

Fundamental Terms

The Fundamental Terms are set out in Annexure C of the proposed HOA and deal with the Western Site, Eastern Site and general terms covering both sites. These terms must form part of the binding Development Contract and it is therefore critical that Council fully understands their implications. Key elements of the terms are summarised below:

Western (Cinema) Site

- Confirms that Council will retain ownership of the ground floor of the Western Site subject to certain limited rights (eg. rights of support and access) to the first floor community strata lots to be granted to Taplin.
- Confirms that Taplin will be responsible for and fund procurement of all titling arrangements to facilitate the development, including:
 - initially procuring the amalgamation of all existing titles (currently 11 titles) across the western site to create three (3) Torrens Titles, including one at ground level for the carpark and two 'in air' for the first floor cinema building, to facilitate construction
 - undertaking the Community Title division of the three Torren Titles to create three (3) community strata lots once construction is sufficiently advanced and transferring the lot comprising the ground floor car park back to Council. Taplin will retain ownership of the two (2) lots at first floor level as well as lifts, stairs, travelator and the roof structure. Should Taplin fail to meet construction timeframes in the Development Contract, it will be obliged at its cost to re-transfer the two Titles 'in air' back to Council
- Requirement for Taplin to seek an independent design review in relation to the interface and integration of the proposed development with its surroundings by

the Office for Design and Architecture SA (ODASA) and include any reasonable recommendations in the final design

- Taplin will be responsible to prepare all detailed plans and specifications and obtain development authorisation and all statutory approvals for the cinema building and carpark. This includes Council's approval for the detailed plans and specifications, which must be granted if consistent with the Concept Plan included in Annexure A and Design Principles in Annexure D of the HOA, and proposed streetscape upgrade works in Cowper and Partridge Streets in conjunction with the planning process by prior to any works. Council approval will, however, be required for any significant design variations (eg. as a result of the ODASA design review)
- Confirms that the proposed development is subject to Taplin obtaining both development approval and construction finance, and that practical completion will occur within eighteen (18) months). In this instance, it is anticipated that the Development Assessment Commission (DAC) will be the relevant planning authority
- Imposes height restrictions above the proposed cinema building with some allowance for service infrastructure required to carry out the business from the site. These limitations are discussed further below
- Requires Taplin to undertake and fund all construction works. This includes:
 - demolition of the existing buildings at 5 and 7 Partridge Street. Council will be required to provide vacant possession of these buildings to facilitate demolition
 - construction of the cinema and car park. This includes line marking and installation of required services (ie. electricity, water, lighting, fire safety equipment, lifts and stairs), but excludes installation of boom gates and ticketing machines. The latter will need to be retrofitted by Council upon practical completion and handover
 - streetscape improvements to Cowper Street from Jetty Road and Partridge Street adjacent both sites, including undergrounding of power lines
- Requires that Taplin must provide copies of the construction contract (to remain confidential), works program and all relevant warranties and certifications, guarantees and rights pursuant to the defects liability period of the future Council-owned structures to Council, and that Council has rights of inspection during construction (eg. to confirm compliance with the Building Code of Australia and acceptable building standards).

Eastern Site

- Confirms that Council will retain ownership of the Eastern Site and proposed car park deck structure and that the car parking facility must be designed with capacity for a second floor deck to be added in the future if parking demands warrant
- Confirms that, consistent with the Western Site, Taplin will be responsible to prepare all detailed plans and specifications and obtain development authorisation and all statutory approvals for the car park structure. This includes Council's approval (as landowner) for the detailed plans and specifications, which must be granted if consistent with the Concept Plan included in Annexure A and Design

Principles in Annexure D of the HOA. Again, Council approval will, however, be required for any significant design variations

- Again, consistent with the Western Site, confirms that the proposed development is subject to Taplin obtaining both development approval and construction finance, and that practical completion will occur commensurate with the Western Site (ie. within eighteen (18) months)
- Confirms that Council's contribution to all costs (including design, planning, construction, consultant's fees, etc) will be limited to the lesser of the following amounts and that any costs over and above this contribution will be at Taplin's cost:
 - \$2.5 million (excluding GST), or
 - the final cost of the car park less \$1 million (excluding GST)
- Again, consistent with the Western Site, requires that Taplin must provide copies of the construction contract (to remain confidential), works program and all relevant warranties and certifications, guarantees and rights pursuant to the defects liability period for the car parking structure to Council, and that Council has rights of inspection during construction.

General

- Requires that Council provide Taplin unrestricted access to both sites to enable construction, including effecting temporary street closures
- Requires that Taplin must construct a minimum of 370 car park spaces across both sites, consistent with Council's previous resolution, and that Taplin must also construct such additional car parking spaces above the 370 spaces if required by DAC to meet the needs of the cinema under the *Development Act 1993*. Importantly, Council cannot reduce the number of available spaces in the future, but may increase the number
- Acknowledges that Taplin may need to negotiate with the private owner of Allotment 55 (occupied by Cheap as Chips) adjacent the Eastern Site to obtain their agreement to the construction of the decked car park over that owner's land as an option to deliver the required number of carparks. While Council will support Taplin in relation to these negotiations, the terms do not commit Council to granting this owner rights over Council's land nor require Council to enter into any other agreements to secure that arrangement. Importantly, if agreement cannot be reached between Taplin and this private land owner, Taplin must still deliver the minimum 370 car park spaces which may necessitate redesign (eg. an additional level)
- Requires that Taplin will use reasonable endeavours to minimise disruption to the public and local businesses during construction and stagger construction to enable as many car parking spaces to remain available for as long as possible where practical and safe to do so. It is acknowledged that there will be a point in construction at which both car parks will need to be closed for practicality and safety reasons
- Requires that Taplin will either procure a performance bond (naming Council as beneficiary) to secure completion of all works and obligations under the HOA and Development Contract, or enter into an agreement with the construction financier

and Council (and potentially the builder) that would provide step in rights to Council and the financier if works or obligations are not met

- Consistent with Taplin's original proposal, requires that Council remain contractually bound to grant to Taplin or any future owner of the cinema building the right to four (4) hours free parking at both sites for the benefit of cinema patrons for the life of the development (which will be reflected in the by-laws of the community corporation). Importantly, cinema patrons have no greater right to park than members of the general public.

Concept Plans and Design Principles

The latest Concept Plans for the proposed development are included in Annexure A of the proposed HOA and referred to within various clauses within the Agreement, including the Fundamental Terms. A copy of the latest Concept Plans that will form Annexure A of the HOA are located at Attachment 4 for Members' reference.

*Refer
Attachment 4*

A number of Design Principles for the proposed development have been included in Annexure D of the proposed HOA. The principles are also referred to in the Fundamental Terms above and include a number of requirements for Taplin to consider in preparation of the final design plans and specifications. It is anticipated that these principles will also be provided to ODASA for reference as part of the design review process.

Key elements of the Design Principles include:

- Provision of quality urban design outcomes and streetscape improvements and articulated street frontages to retain visual interest
- A need for the final designs to incorporate Crime Prevention Through Environmental Design (CPTED) and / or 'safer by design' principles to ensure public safety. This includes sufficient and well-placed lighting, maintaining high levels of visibility and pedestrian access, minimising hiding and entrapment points, clear directional signs and public entry points, safe and well-lit areas for ticketing infrastructure, and allowance for security equipment and anti-vandalism treatments. This may necessitate a CPTED audit as part of the final design
- Minimising impacts on adjoining and adjacent sensitive uses and character (eg. minimising overshadowing, overlooking, noise and fumes, and ensuring appropriate building bulk and scale)
- Incorporation of Environmentally Sustainable Design features (eg. green facades, efficient lighting, reduced energy and water needs, etc)
- Maximising car parking efficiency
- Adopting sound traffic management. This includes safe and convenient movements and loading and unloading, minimising impacts on local roads and residences, ensuring access to properties during special events, considering access and facilities for other modes of transport (eg. bicycles), and ensuring suitable road treatments to support pedestrians and private, commercial and emergency vehicles in Cowper Street)

- Inclusion of in-built 'future proofing' strategies to provide maximum development flexibility.

Compliance with Council's requirements

A detailed assessment of how the broad objectives of Council's 10 July 2012 resolution and further issues raised at the Elected Members' workshop held on 16 July 2013 are reflected in the proposed HOA is included in a table at Attachment 5.

Refer

Attachment 5

Council's 10 July 2012 resolution

The proposed HOA meets all the conditions included in Council's resolution of 10 July 2012 with the exception of the following:

- *Taplin Group to provide minimum of four (4) hours free parking to the general public at the Bayside Village.*

There are no reciprocal parking rights being provided by Taplin in Bayside Village. Taplin has advised that, based on previous experience, unrestricted parking in the shopping centre has a significant detrimental impact on foot traffic and turnover of the centre. It is understood that 2-3 hours free parking is currently available to the public at the centre.

- *The Taplin Group be required to relocate the existing tenants of 5 and 7 Partridge Street to suitable premises within the Jetty Road Glenelg precinct for a period of no less than 12 months at no cost to the tenants.*

At the request of Taplin, the proposed HOA requires that Council provides vacant possession of the site to ensure development timeframes can be met. The building at 5 Partridge Street is currently vacant and 7 Partridge Street is occupied on a monthly basis by Workskil. It is proposed that appropriate advanced notice will be provided to Workskil of the need to vacate once development timeframes are understood.

- *The Heads of Agreement be subject to a condition precedent that public consultation be undertaken and Ministerial approval be given for the revocation of Community Land status as required by the Local Government Act 1999 and a failure to obtain Ministerial approval will necessarily result in the abandonment of the proposal without any liability for the Council.*

Consultation on the proposed revocation of community land status for the Western Site occurred between 24 July and 17 August 2012 and Ministerial approval for revocation was granted on 19 February 2013 subject to final Council endorsement (refer to Attachment 2). Commencement of this process is acknowledged in the Background to the proposed HOA.

In order for the proposed development to proceed, Council must undertake the formal process to revoke the community land status for the parcel of land as described in the Minister's letter.

- *The community title created for the cinema complex is limited to two metres higher than the maximum height of the proposed building.*

The fundamental terms of the proposed HOA states that the community lots comprising the first floor cinema will be height limited to two (2) metres higher than the maximum height of the proposed building (as set out in the Concept Plans) but excluding 'service infrastructure' as is required to carry out and maintain the business to be carried out in the proposed development. It is anticipated that service infrastructure could include heating and cooling units, transmission equipment for streaming live cinema events, etc. It is considered that this would not include third-party transmission equipment (eg. mobile phone towers) that are not required to carry out this business function.

Service infrastructure associated with carrying out the cinema operation will therefore be permitted to exceed that maximum height by a further three (3) metres under the proposed HOA, thereby allowing this infrastructure to be up to five (5) metres higher than the cinema building (currently proposed at 13.2 metres at its highest point) as contemplated in the latest Concept Plans if required.

Key issues from Council's public workshop

Further key issues or queries raised at the Elected Members' Workshop held in public on 16 July 2013 that have not been fully addressed in the proposed HOA, and the reasons for this, are discussed below:

- *Unclear why two titles are proposed 'in air' to separate entities.*

The proposed HOA envisages execution by Council and two (2) Taplin entities. Taplin has advised that two titles are required for company structuring purposes (ie. separate corporate entities), which is understood to be common practice. Each Taplin entity will be jointly and severally liable for the obligations of the other.

- *Ensure that there is no change in use of the cinema building in the future and that titles 'in air' can not be on-sold.*

While the Scheme Description as part of the community title documentation will reflect what each lot will be used for, there can be no guarantee that a change in use will not occur in the future (eg. if the cinema becomes unviable for any reason). Any such proposal would, however, require consideration by the Community Corporation (which includes Council) and be subject to a future development application and assessment to consider its merits. The proposed HOA contemplates that voting rights under the Community Corporation arrangements are intended to be set up so that neither Council, nor the two Taplin entities (even if voting together) can 'out-vote' the other party and there will be dispute resolution provisions built in for stalemates to be resolved by an independent third party.

Further, the future sale of lots cannot be prevented and would be unreasonable to account for future circumstances (eg. in the event that the current or future owner goes bankrupt or fails to appropriately manage the facility and it becomes unviable).

- *Ability to view final plans (including traffic management plan and shadow diagrams) before formally considering the HOA and lodgement of plans with the DAC.*

It is understood that a preliminary Traffic Management Plan is currently being prepared by Taplin.

Further, while preliminary shadow diagrams were previously provided by Taplin for the Western Site, these require further refinement and do not extend to the Eastern Site. Copies of these preliminary diagrams are located at Attachment 6.

Refer Attachment 6

The proposed HOA contemplates that final shadow diagrams, the Traffic Management Plan and any other plans submitted to DAC will be provided to Council for information only (ie. not for approval) as part of the development assessment process. It is likely, however, that these plans/diagrams will not be able to be finalised until completion of the independent design review by ODASA.

- *Continuing and guaranteed availability and access to car parking during construction, community disruption and preference for deck on eastern site to be constructed first.*

The Fundamental Terms of the proposed HOA require that Taplin must effect practical completion of the car park and cinema within 18 months from the commencement of construction, and practical completion of the eastern site car park by the same date. Taplin has advised that it cannot commit to building the decked carpark first and it is likely that the deck will be constructed while the cinema is being fitted out.

While the proposed HOA also requires Taplin to use reasonable endeavours to minimise disruption and stagger construction to enable as many car parking spaces to remain available for as long as possible where practical and safe, it would not be possible to guarantee availability of parking spaces during construction and there will be a point at which both car parks will need to be closed for practical and safety reasons. It would be appropriate, however, for the impending Traffic Management Plan to consider parking supply during construction.

- *Number of car parks required for cinema patrons and community access to sufficient number of car parks.*

While the proposed HOA confirms that 370 car park spaces will be provided and the latest Concept Plans envisage construction of 378 car parks across both sites (including Allotment 55 which is not owned by Council), it also confirms that Taplin must also construct such additional car parking spaces above the 370 spaces if required by DAC to meet the needs of the cinema under the *Development Act 1993* as part of the development assessment process.

In assessing car parking requirements for the cinema, the DAC will need to consider standard parking rates, peak versus off-peak parking demands, availability of shared parking (eg. spaces within the surrounding precinct), public transport access and outcomes of traffic assessments and the Traffic Management Plan. While Council's Development Plan is silent on parking requirements for a cinema, best practice parking standards suggest a minimum of 0.33 parks per seat (1054 seats in latest proposal), with a maximum allowable discount of 25%.

- *Overshadowing from development to adjacent buildings and need for shadowing plans.*

As above, final shadow diagrams are intended to be provided to Council for information purposes as part of the development assessment process and following agreement on the proposed HOA. Potential impacts resulting from the proposed development, including any unreasonable overshadowing, will need to be considered as part of the development assessment process by DAC.

- *Access to lifts and consideration of an external lift.*

The proposed HOA confirms that the lifts and travelator are proposed to form part of the Taplin lots. This means that future maintenance, repair, replacement and management of this infrastructure will be at Taplin's cost.

An external lift is not considered feasible or practical by Taplin from both a design and financial perspective and is therefore not proposed as part of the latest Concept Plans. Lifts will need to be located in the most accessible position(s) for users of the car parking facility and, desirably, their associated service infrastructure should be suitably screened from view from public spaces or adjacent properties.

- *Pedestrian access / safety.*

The Design Principles in Annexure D of the proposed HOA require further consideration of public and pedestrian safety and these matters will be further considered as part of the development assessment phase. Pedestrian safety during construction should also be included in the Traffic Management Plan and ongoing collaboration with Council's staff during the development phase.

- *Potential loss of income from car park revenue during and after construction.*

Revenue from parking fee income (excluding fines) is currently approximately \$100,000 per annum for the Milton/Cowper Street carpark. This carpark also currently accommodates around 25 permit holders at monthly fee of \$80/month. The eastern Partridge Street carpark is time limited but no charge.

Options for additional parking revenue during construction have not yet been considered. Further, management options for the proposed parking facilities have not been fully considered either, noting that a minimum of four (4) hours free parking is to be provided for cinema patrons for the life of the development.

In terms of other sources of income to off-set loss of parking income, the Prudential Report confirmed that the cinema will generate additional rates income (estimated at \$67,000 per annum in 2012 values).

- *Could the land be managed differently and is there potential to impose a percentage limitation on common land?*

The carpark / cinema must be developed as a community title division. The outright sale of the site to Taplin was not consistent with Council's objective of continuing to own and operate the carpark and did not form part of the commercial offering by Taplin. Further, the lease of the site to Taplin (even on a

long-term basis) is unlikely to be sufficiently secure in the current market to allow Taplin to obtain bank finance for construction.

It is reasonable to expect that any rights of support and access would be granted to Taplin or the future owners/operators of the cinema to facilitate a development scheme of this nature and provide certainty of operation of the facility. It is considered to both parties' benefit to limit common property so that there is no obligation to deal with it through the Community Corporation and to simplify future management. Common land requirements will need to be considered further as part of the future community title application.

- *Impact of three titles on fire safety (eg. number of fire escapes).*

Fire safety and Building Code of Australia (BCA) requirements are to be considered as part of the development assessment process. In any event, Taplin will be required to comply with all statutory requirements in relation to fire safety, regardless of the number of lots. The proposed HOA also confirms Council's right to inspect the works during construction to ensure fire, structural and other building standards are met.

- *Application of Council's Procurement Policy to the project and its ability to deal with a single proponent rather than go to market.*

This matter is addressed within the Background to this report above and referred to in the report recommendations.

- *Minimising damage to surrounding properties during construction.*

While it will be Taplin's and builder's responsibility to ensure there is no damage to adjacent properties as part of construction works, consideration should be made in the Development Contracts to require Taplin to undertake dilapidation reports for adjacent properties that may be affected by construction activities. In relation to public areas, Council has powers under the *Local Government Act 1999* to deal with damage to public infrastructure.

- *Provision of parking infrastructure.*

The proposed HOA requires Taplin to effectively construct serviced car park shells. While this will include provision of line marking and installation of required services such as electricity, water, lighting, fire safety equipment, lifts and stairs to the car parking facilities, the installation of boom gates and ticketing machines is excluded and will need to be retrofitted by Council upon practical completion and handover. As Council will be responsible for managing the car park facilities, it will need to determine what system is most appropriate.

Benefit/Cost Considerations

The Prudential Report considered by Council in July 2012 set out how the proposed project supports Council's strategic objectives as well as implications for Council and the community. Since then, the details of the proposed development have been negotiated in the proposed HOA and it is appropriate for these to be revisited.

Benefits

Glenelg has been without a cinema since the Wallis cinema was demolished in 2011 and the proposed development will result in a modern 8-screen cinema complex in the heart of Glenelg, providing a drawcard to improve visitor attraction and experience, as well as aid further economic development and local employment (during construction and when operating).

An increase in the number of car-park spaces will allow improved access to the Jetty Road precinct. The decked carpark on the Eastern Site will be constructed to allow for expansion through the addition of another deck at a later time if required.

Although the new decked carpark on the Eastern Site will, when completed, be owned and operated by Council, construction risk is assumed by Taplin which will hand it over to Council on satisfactory completion. The maximum capital cost to Council for the additional minimum 135 carparks will be \$2.5 million equating to \$18,519 per additional space. This compares to \$36,148 per space if Council were to construct a ramped carpark as estimated by Walter Brooke.

Both the cinema and new decked carpark will incorporate good design principles as set out in the proposed HOA. This will include streetscaping and undergrounding of overhead power lines at Taplin's cost, as well as inclusion of recommendations from the Office of Design and Architecture ODASA.

A new cinema complex will add to Council's rate base. The Prudential Report estimated an increase in rate revenue to Council of around \$67,000 pa (using 2011/12 rates). The new cinema complex will be within the Jetty Road precinct subject to a separate rate and, depending on Council's rating decision, could result in additional rate revenue (the Prudential Report estimated this at around \$27,000 pa using 2011/12 rates).

Costs

Council has, and will, incur costs during the development and construction phases (such as legal advice, communications, engineering, traffic management etc). Taplin has agreed in the proposed HOA to reimburse Council's costs up to \$30,000.

Council will contribute a maximum of \$2.5 million towards construction of the decked carpark on the Eastern Site. As noted above, this represents a prima facie cost of \$18,519 per additional carpark space, compared with \$36,148 if Council were to build it (Refer below for additional infrastructure costs).

There will be a reduction in the number of carpark spaces during construction of the cinema and decked carpark. However, as clarified above, Taplin will have an obligation to minimise disruption and stagger construction to enable as many car parking spaces to remain available for as long as practical and safe. There will be a point during construction, however, at which both carparks will need to be closed. At the same time, there will be disruptions to traffic flow in the area. Both parties will work cooperatively to mitigate inconvenience to locals and visitors.

The loss of carparks at various times during construction will have a financial impact on Council's revenue. In 2012/13, Council earned around \$110,000 from fees and fines on the

Eastern Site. The commitment to provide 4 hours free parking to cinema patrons will result in reduced revenue following construction. If Council determined to extend the 4 hours free parking to non-cinema patrons, a further reduction in revenue would result, possibly down to a small number.

Council has not determined the operating regime of the carparks such as whether to use boom gates or other technology for carpark entry and payment (if any). Such infrastructure will not be included in the construction by Taplin and will need to be retro-fitted by Council at its cost. Subject to the operating regime, Council will incur additional on-going costs to operate and maintain the carparks.

Risk Mitigation

Risk management is critical to a project of this scale and nature and a key component of good governance practice and the prudential requirements under the *Local Government Act 1999*.

An internal project team has been established to consider and address issues in relation to the project. A key priority of the team has been the development of a risk mitigation plan, which has identified a number of risks around governance, public realm and safety, community, property and infrastructure, planning and design, finance, legal and legislative, management and operation, and the environment. Risks identified by Members at the 16 July 2013 public workshop have also been included in the plan. Mitigation strategies have been developed around the more significant risks, which will remain a focus of the Project Team in the event the proposed HOA is executed.

BUDGET

Council has not included the financial implications of the proposed development in its 2013-14 budget. If Council approves the proposed HOA and proceeds with the proposed development, it will need to review its budget to allow for:

- Capital contribution of \$2.5 million towards the decked carpark on the Eastern Site (although subject to construction program this contribution may not be required until the 2014/15 year. Council has previously collected around \$2 million from parking income and allocated to a fund earmarked for additional car-parking in Glenelg.
- Reduction in revenue from carparks during construction
- A write-down of the carrying value of the Western Site. This is currently valued at around \$6.1 million and will need to be written down to around \$1.1 million to reflect the value once a cinema is constructed. As noted in the Prudential Report, arguably the value should already have been written down to reflect its value as a carpark. This write-down will have no effect on Council's operating performance.

LIFE CYCLE COSTS

Once the proposed development is complete, Council will assume ongoing operating and maintenance costs for the new decked carpark as well as an expected reduction in revenue from providing 4 hours free parking to cinema patrons, and possibly all patrons.

In the Prudential Report, it was estimated that ongoing operating costs would be around \$200,000 pa (reflecting operations, cost of capital and depreciation) and a further \$62,000 reduction in revenue, although this will be subject to Council's decision on the operating regimes for the carparks.

Offsetting this is an increase in rate revenue from the new cinema complex and general improvement in visitor and economic activity in the Jetty Road precinct which has significant flow-on effects.

NEXT STEPS

Should Council wish to commit to the proposed development by executing the proposed HOA and subsequently agree to the community land revocation process, Council and Taplin will negotiate the terms of and enter into a Development Contract. The Development Contract is anticipated to be prepared within a month and will be a binding agreement that gives effect to the proposed development consistent with the Fundamental Terms, Design Principles and Objectives contained in the HOA.

It is anticipated that Taplin will also seek an independent design review through ODASA within two (2) months of execution of the HOA, and that reasonable recommendations from the design review will be included in the final plans and specifications, which will be lodged for planning approval within three (3) months of entering into the Development Contracts. Construction finance will also need to be obtained by Taplin within this time.

The proposed HOA contemplates that planning consent will be obtained within nine (9) months of execution of the Development Contract, and that development approval will be secured within twelve (12) months. Given Council's interests in the project, it would be appropriate for the Council to formally write to the Minister for Planning to request that the Development Assessment Commission (DAC) be appointed as the relevant planning authority. The DAC will undertake the required public notification of the planning application under the Development Act, with the proposed development likely to be notified as a Category 2 development based on Council's Development Plan (ie. requiring notification of adjacent properties only with no third party rights of appeal). Council will also be provided the opportunity to provide comment on the proposed development to the DAC during the notification period.

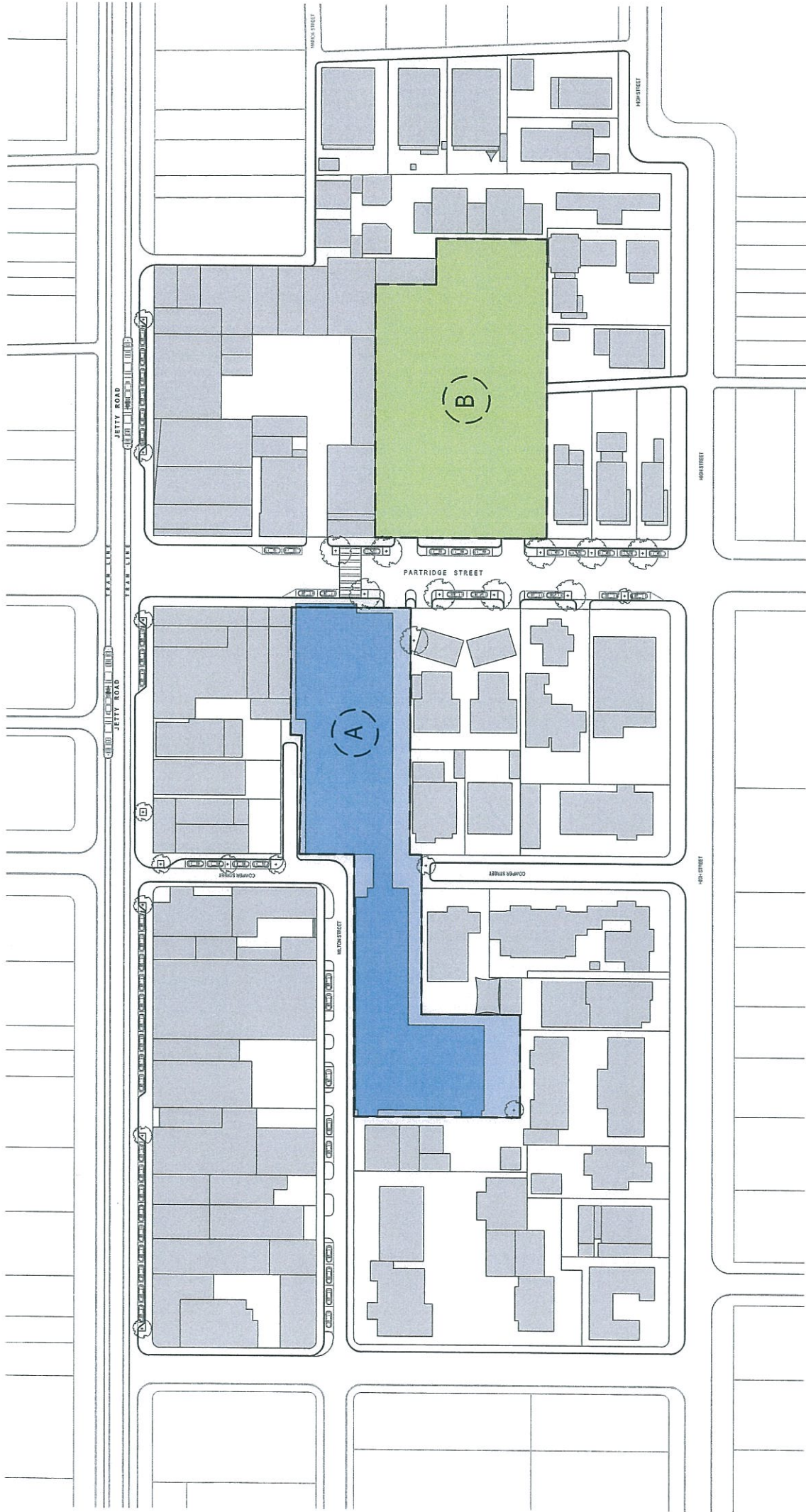
Given the nature of the proposed development and its location at the interface with the Residential Zone (particularly on the eastern site), Council's Development Assessment Unit has suggested that the concept proposal may challenge some provisions of the Development Plan (and possibly the Building Code of Australia) in relation to scale and separation, appearance, overshadowing and access to sunlight. It may therefore be appropriate for Council to engage the services of an independent planning consultant to provide the necessary advice to DAC during the consultation period.

Based on the above process, it is therefore reasonable to expect that construction could occur in twelve months of execution of the Development Contracts, but possibly earlier subject to Taplin obtaining the necessary approvals.

Attachment 1



CONTEXT & SITE LOCALITY PLAN



A OZONE CINEMA COMPLEX (proposed)

B PARTRIDGE STREET CARPARK (proposed)

proskebrown
architects

TAPLIN
EST. 1932
REAL ESTATE

Attachment 2



Hon Gail Gago MLC



**Government
of South Australia**

Leader of the Government
in the Legislative Council
Minister for Agriculture,
Food and Fisheries
Minister for Forests
Minister for Regional
Development
Minister for the Status
of Women
Minister for State/Local
Government Relations
Level 9
Terrace Towers
178 North Terrace
Adelaide SA 5000
GPO Box 1671
Adelaide SA 5001
DX 667
Tel: (08) 8303 2926
Fax: (08) 8303 2533
Email: minister.gago@sa.gov.au

eA164884

CITY OF HOLDFAST BAY SCANNED 21 FEB 2013 Doc No. _____ Business Container No. <u>B1763</u> (P)
--

Mr Justin Lynch
Chief Executive Officer
City of Holdfast Bay
PO Box 19
BRIGHTON SA 5048

Dear Mr Lynch

Thank you for your letter seeking my approval of the Council's proposal to revoke the community land classification of land at the Partridge Street West, Cowper Street and Milton Street, Glenelg, precinct. I apologise for the delay in this response.

I have carefully considered the information provided to me by Council, including the Reports on the proposal and the submissions received as part of the public consultation process. In making my decision I have taken into account the nature of the public consultation undertaken by Council, and Council's responses to the issues raised in the community submissions.

In exercising my discretion, I am not bound by the opinion of the Council on the relative merits of the proposal nor am I bound by the community concerns raised in the submissions received during public consultation. Rather, I must weigh up the various competing interests and considerations and decide whether the revocation is appropriate on my assessment of the merits of the proposal. Generally speaking, my decision as to whether or not to approve the proposal is based on whether the proposal is generally desirable for the community.

I am aware that there have been representations made to the Council during the public consultation process about the impacts of the cinema complex. I am also aware that the proposal is not unanimously supported by the Council's elected body and the decision to proceed with the revocation process has been a difficult one.

After carefully considering the effect of the revocation on the area and the local community, I am of the opinion that, on balance, the revocation will be more positive than not in its effect. I therefore approve the Council's proposal to revoke the classification as community land of land being:

- Allotment 86, in Filed Plan 6535, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5117 Folio 402,
- Allotment 37, in Filed Plan 5563, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5123 Folio 173,
- Allotment 38, in Filed Plan 5563, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5123 Folio 219,

- Allotment 35, in Filed Plan 5563, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5324 Folio 96,
- Allotment 50, in Filed Plan 37833, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5402 Folio 363,
- Allotment 52, in Filed Plan 37833, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5402 Folio 364,
- Allotment 50, in Deposited Plan 50968, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5651 Folio 969,
- Allotment 1, in Deposited Plan 25404, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5853 Folio 854,
- Unit 1, in Strata Plan 14036, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5397 Folio 315,
- Unit 2, in Strata Plan 14036, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5397 Folio 316, and
- Unit 3, in Strata Plan 14036, in the area named Glenelg, Hundred of Noarlunga, contained within Certificate of Title Volume 5397 Folio 317.

The Council is the instigator of this proposed community land classification revocation, and as such it is ultimately the Council that is responsible and accountable to its community for the decisions it makes. My role in the revocation process is not to make the revocation but to review the Council's proposal and the process followed. The effect of my approval gives the Council the authority to revoke the classification itself.

I understand that the land covering the proposed cinema development is zoned District Centre Zone. All development, other than non-complying development, are assigned as Category 1 Development in this Zone, except where the site of the proposed development is adjacent to a residential zone boundary, or is greater than two-storeys in height, in which case it is assigned as Category 2 Development.

As the proposed cinema development is adjacent to a residential zone boundary, the development application will need to be lodged with and assessed by the Development Assessment Commission (the Commission) as a Category 2 development.

I am aware that where a person applies to the Commission for a consent in respect of the Development Plan for a Category 2 development, notice of the application must be given to an owner or occupier of each piece of adjacent land and any other person of a prescribed class. The Commission must give consideration to any representation in writing made by a person entitled to be given a notice and forward to the applicant a copy of any representation that the Commission must consider. The Commission must also allow the applicant an opportunity to respond, in writing, to those representations within the prescribed number of days.

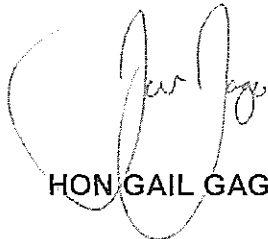
I also understand that if a representation is received within the prescribed number of days, the Commission may, in its absolute discretion, allow the person who made the representation to appear personally or by a representative before it is to be heard in support of the representation.

Many of the detailed design, shadowing, traffic, additional parking requirements and noise issues raised by several adjoining residents and property owners are reasonable and should be addressed in the development assessment phase undertaken by the Commission. My purpose in referencing the planning rules as they affect the forthcoming development proposal is to emphasise that it is incumbent on the Council to ensure that the residents' concerns are taken into account as the final proposal is developed prior to lodgement with the Commission.

If the Council wishes to proceed with the revocation it will need to pass a motion to revoke the community land classification pursuant to subsection 194(3)(b) of the *Local Government Act 1999*.

Thank you for writing to me on this important matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gail Gago', written over a large, faint circular watermark or stamp.

HON GAIL GAGO MLC

19 / 2 / 2013

HEADS OF AGREEMENT

CITY OF HOLDFAST BAY

[INSERT TAPLIN ENTITY NO. 1]
[INSERT TAPLIN ENTITY NO. 2]

**Norman
Waterhouse**
LAWYERS

Level 15, 45 Pirie Street
Adelaide SA 5000
Telephone + 61 8 8210 1200
Fax + 61 8 8210 1234
www.normans.com.au

DATE

PARTIES

City of Holdfast Bay ABN 62 551 270 492 of 24 Jetty Road, Brighton SA 5048 (**Council**)

[INSERT TAPLIN ENTITY NO. 1] ACN [INSERT] and [INSERT TAPLIN ENTITY NO. 2]
ACN [INSERT] both of 79 Jetty Road, Glenelg SA 5045 (together called **Taplin**)

BACKGROUND

- A. Council is the registered proprietor of the Sites.
- B. The Sites are currently used for “at grade” car parking supporting existing retail and commercial activities within the Jetty Road Retail Precinct at Glenelg.
- C. Council has identified there is a need for additional car parking in the area.
- D. Taplin has approached Council with a proposal for the Proposed Development to be undertaken on the Sites, which will deliver additional car parking as well as contribute to increased vibrancy in the precinct.
- E. Council has given in-principle support for the Proposed Development and has undertaken certain preliminary steps, including procuring the revocation of the community land classification of the Western (Cinema) Site.
- F. This agreement sets out the framework within which Council and Taplin will work towards the execution of formal documentation for the development of the Sites.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

Business Day means a day that is not a Saturday, Sunday or public holiday in South Australia.

Concept Plans means the plans attached at Annexure A

Design Principles means the principles set out in Annexure D.

Development Contract means a binding agreement required to document and effect the Proposed Development between the parties.

Eastern Site means that portion of the land located on the eastern side of Partridge Street, Glenelg being the whole of the land comprised in Certificate of Title Volume 5840 Folios 214 and 215, Volume 5555 Folio 121 and Volume 5864 Folio 948.

Fundamental Terms means the fundamental terms for the Proposed Development as set out in Annexure C

Objectives means Council's and Taplin's objectives for the Proposed Development as set out in Annexure B.

Proposed Development means the development of a ground floor car park and first floor cinema on the Western (Cinema) Site and the development of a multi-storey car park on the Eastern Site as more particularly detailed in the Concept Plans.

Sites means the Western (Cinema) Site and the Eastern Site.

Western (Cinema) Site means that portion of the land located on the western side of Partridge Street, Glenelg being the whole of the land comprised in Certificates of Title Volume 5117 Folio 402, Volume 5123 Folio 173, Volume 5123 Folio 219, Volume 5324 Folio 96, Volume 5402 Folio 363, Volume 5402 Folio 364, Volume 5651 Folio 969, Volume 5853 Folio 854, Volume 5397 Folio 315, Volume 5397 Folio 316 and Volume 5397 Folio 317.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to this agreement includes any schedules and annexures to this agreement;
- 1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.9 a reference to a document includes that document as varied, novated or replaced from time to time;
- 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.11 a provision is not construed against a party only because that party drafted it;

- 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by the Act at the date of this agreement.

1.3 **Background**

The Background forms part of this agreement and is correct.

2. **CONSIDERATION**

In consideration of the mutual acknowledgements and undertakings of the parties under this agreement, each party agrees to abide by its respective obligations and undertakings set out in this agreement.

3. **PURPOSE OF AGREEMENT**

The purpose of this agreement is to establish:

- 3.1 the parties' objectives for the Proposed Development;
- 3.2 the Fundamental Terms for the Proposed Development;
- 3.3 a framework within which the parties will work towards execution of the Development Contract; and
- 3.4 an understanding between the parties with respect to exclusivity regarding the Proposed Development.

4. **EXCLUSIVITY**

The parties agree, pending termination of this agreement, to deal exclusively with each other with respect to the Proposed Development.

5. **PROCESS**

Unless otherwise agreed the parties will adopt the following process to progress the Proposed Development:

- 5.1 In addition to the Concept Plans, Taplin to provide to Council (for information purposes) such other plans and specifications as are provided by Taplin to the relevant planning authority (including landscaping plans, traffic management plan, shadowing plans and any other plans submitted to the planning authority).
- 5.2 Taplin to secure a cinema operator before 30 September 2013.
- 5.3 Taplin to seek the advice of the Office for Design and Architecture in relation to the interface and integration of the Proposed Development with its surroundings, being specifically Cowper Street and that portion of Partridge Street adjoining the Proposed Development (both Sites for the avoidance of doubt) and incorporate any reasonable recommendations.

- 5.4 Negotiate the terms of and enter into the Development Contract on terms consistent with:
 - 5.4.1 this agreement;
 - 5.4.2 the Council Objectives and the Taplin Objectives; and
 - 5.4.3 the Fundamental Terms.
- 5.5 Taplin to lodge the Concept Plans for development approval and obtain development approval.
- 5.6 Taplin to finalise detailed design and construction documentation for Council approval (approval to be granted unless inconsistent with the Concept Plans or the Design Principles, whether because of a planning condition or otherwise).
- 5.7 Taplin to call for construction tender.
- 5.8 Taplin to obtain construction finance.
- 5.9 Create Western (Cinema) Site Torrens titles (two) above ground floor level and transfer one title to each Taplin entity.
- 5.10 Commence construction on Western (Cinema) Site and Eastern Site.

6. TIMEFRAMES

The parties will use their reasonable endeavours to achieve the following outcomes within the following timeframes:

- 6.1 execute a Development Contract within one (1) month of execution of this agreement or such further time as the parties may agree;
- 6.2 obtain any recommendations from the Office for Design and Architecture in relation to the Concept Plans within two (2) months of execution of this agreement and any reasonable recommendations (if any) being incorporated in the application referred to in clause 6.3;
- 6.3 submission of an application for development plan consent for the Proposed Development to the relevant planning authority within three (3) months of entering into the Development Contract and to be obtained within nine (9) months of entering into the Development Contract;
- 6.4 development approval or the relevant Minister's consent to be obtained within twelve (12) months of entering into the Development Contract; and
- 6.5 construction finance to be obtained within three (3) months from entering into the Development Contract.

7. ACKNOWLEDGEMENTS

7.1 Taplin

Taplin acknowledges and agrees that by executing this agreement Taplin undertakes, among other matters, to:

- 7.1.1 use reasonable efforts to meet the timeframes set out in clause 6;
- 7.1.2 negotiate with Council in good faith to execute the Development Contract incorporating the Fundamental Terms; and

7.2 Council

Council acknowledges and agrees that by executing this agreement Council undertakes, among other matters, to:

- 7.2.1 use reasonable efforts to meet the timeframes set out in clause 6; and
- 7.2.2 negotiate with Taplin in good faith to execute the Development Contract incorporating the Fundamental Terms.

8. TERMINATION

8.1 Expiry

The term of this agreement commences on the date of execution of this agreement and expires on the earlier of:

- 8.1.1 execution of the Development Contract; or
- 8.1.2 three (3) months from the date hereof

unless terminated earlier in accordance with the rights of termination set out in this agreement.

8.2 Termination

A party may terminate this agreement with immediate effect by giving notice to the other party if:

- 8.2.1 that other party breaches any provision of this agreement and fails to remedy the breach within 20 Business Days after receiving notice requiring it to do so;
- 8.2.2 that other party breaches a material provision of this agreement where that breach is not capable of remedy; or
- 8.2.3 any event referred to in the following subclause happens to that other party.

8.3 Notification of events

Each party must notify the other party immediately if:

- 8.3.1 there is any change in the direct or indirect beneficial ownership or control of that party;
- 8.3.2 that party disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- 8.3.3 that party ceases to carry on business;

- 8.3.4 that party ceases to be able to pay its debts as they become due;
- 8.3.5 any step is taken by a mortgagee to take possession or dispose of the whole or part of that party's assets, operations or business; or
- 8.3.6 any step is taken to enter into any arrangement between that party and its creditors; or
- 8.3.7 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of that party's assets, operations or business.

8.4 Rights on termination

Without prejudice to any accrued rights or remedies of either party in respect to any claim or breach, the liability of each party will cease upon termination.

9. MISCELLANEOUS

9.1 Relationship between the parties

- 9.1.1 The relationship between the parties is limited to the purposes of this agreement and is not to be construed as a partnership, joint venture, principal and agent, trust, fiduciary or any other special relationship.
- 9.1.2 The parties will not assume or create or attempt to assume or create, directly or indirectly, any obligation on behalf, or in the name, of the other party.

9.2 Alteration

This agreement may be altered only in writing signed by each party.

9.3 Approvals and consents

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this agreement.

9.4 Assignment

A party must not assign or otherwise deal with this agreement or any right under it without the written consent of the other party.

9.5 Entire agreement

This agreement:

- 9.5.1 constitutes the entire agreement between the parties about its subject matter;
- 9.5.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

9.6 **Waiver**

A waiver of a provision of or right under this agreement:

- 9.6.1 must be in writing signed by the party giving the waiver;
- 9.6.2 is effective only to the extent set out in the written waiver.

9.7 **Exercise of power**

- 9.7.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.
- 9.7.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

9.8 **Governing law**

- 9.8.1 This agreement is governed by the law in South Australia.
- 9.8.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

10. **GST**

- 10.1 In this clause an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 10.2 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply is increased by an amount equal to the GST payable by the supplier on the supply.
- 10.3 A party need not make a payment for a taxable supply under or in connection with this agreement until it receives a tax invoice for the supply.

11. **NOTICES**

- 11.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
 - 11.1.1 in writing, in English and signed by a person authorised by the sender; and
 - 11.1.2 hand delivered or sent by pre paid post or facsimile to the recipient's address or facsimile number specified below, as varied by any Notice given by the recipient to the sender.
- 11.2 At the date of this agreement, the addresses and facsimile numbers for Notices are:

City of Holdfast Bay

Address: 24 Jetty Road, Brighton SA 5048
Facsimile no: 8298 4561
Attention: Chief Executive Officer

Taplin [insert correct entity]

Address: 79 Jetty Road, Glenelg SA 5045

Facsimile no: 8376 1007

Attention: Mr Andrew Taplin

11.3 A Notice is deemed to be received:

11.3.1 if hand delivered, on delivery;

11.3.2 if sent by prepaid mail, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

11.3.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender.

However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

11.4 If two or more people comprise a party, Notice to one is effective Notice to all.

12. COSTS

12.1 Upon execution of a Development Contract contemplated by this agreement Taplin agrees to pay or reimburse Council's costs (including legal costs) associated with the Proposed Development to a maximum of \$30,000.00 (inclusive of GST).

12.2 Subject to clause 12.1 each party must pay its own costs of preparing this agreement and any document required by it.

EXECUTED as an agreement

The common seal of City of Holdfast Bay was affixed in the presence of:

..... Signature of Mayor Signature of Chief Executive Officer/City Manager/Town Clerk <i>(Please delete as applicable)</i>
..... Name of Mayor (print) Name of Chief Executive Officer/City Manager/Town Clerk (print)

OR

Signed for City of Holdfast Bay by its authorised delegate in the presence of:

..... Signature of witness Signature of authorised delegate
..... Name of witness (print) Name of authorised delegate (print)
 Position of authorised delegate

EXECUTED by [INSERT TAPLIN ENTITY NO. 1])
PTY LTD in accordance with Section 127(1))
of the Corporations Act 2001:)

.....
*Director/*Sole Director and Sole Secretary

Print Full Name:.....

.....
*Director/*Secretary

Print Full Name:.....

(*please delete the inapplicable title)
(Note: please affix common seal if required by the Company's Constitution)

EXECUTED by [INSERT TAPLIN ENTITY NO. 2])
PTY LTD in accordance with Section 127(1))
of the Corporations Act 2001:)

.....
*Director/*Sole Director and Sole Secretary

Print Full Name:.....

.....
*Director/*Secretary

Print Full Name:.....

(*please delete the inapplicable title)
(Note: please affix common seal if required by the Company's Constitution)

DRAFT

Annexure A Concept Plans

DRAFT

Annexure B Objectives

Council has the following objectives for the Proposed Development:

1. To secure a nett increase in public car park spaces across the Sites (currently 235 spaces), taking into account the car parking requirements of the cinema and in any event to achieve a minimum number of 370 spaces across the Sites.
2. To retain ownership of and operational control over car parking, in order to generate ongoing revenue from parking and ensure ongoing access to parking by the public (on terms determined by Council).
3. To facilitate economic development in the precinct through the construction of a new cinema complex and to improve vibrancy/appeal and visitor attraction.
4. To ensure appropriate use of Council assets and funds and obtain value for Council's contributions.
5. To ensure certainty in the development outcome (i.e. that the Proposed Development is completed and Council has oversight going forward to ensure the Proposed Development meets Council expectations in terms of design and community engagement) and manage financial risk (i.e. that Council does not pay money (or make other contributions)) for a development that is not completed.

Taplin has the following objectives for the Proposed Development:

1. To develop and be the owner of a cinema complex and venue suitable for the screening of all types of films, entertainment and exhibitions, but not to be used as a hotel, tavern, nightclub, discotheque or live music venue/concert hall (unless where part of a special event).
2. To provide patrons of the cinema complex with car parking (first four (4) hours free) in the Council car parks to be constructed.
3. To work with Council to develop a facility which provides amenity and services to the community.

Annexure C Fundamental Terms

The following are fundamental terms for the Proposed Development and must be reflected in the Development Contract:

1. WESTERN (CINEMA) SITE

- 1.1 Council will retain ownership of the ground floor of the Western (Cinema) Site, subject to certain rights to the extent necessary to provide access and rights of support for the benefit of the first floor community strata lots to be granted to Taplin. It is intended that those rights will be granted by way of registered rights of way over the Council's car park community strata lot in favour of the two (2) Taplin lots, but minimising any impact on Council's lot.
- 1.2 Taplin will consult with the Office for Design and Architecture in relation to the Concept Plans (but not the interior of the cinema) and incorporate any reasonable recommendations.
- 1.3 Taplin will be responsible to obtain development authorisation and all statutory approvals for the car park works and the cinema.
- 1.4 Taplin will procure the preparation of detailed plans and specifications for the car park works and the cinema consistent with the Concept Plans and Design Principles.
- 1.5 Taplin will obtain Council's approval for the detailed plans and specifications as they relate to the car park, the external structure of the cinema (including lifts, stairways and supports) and the Cowper Street and Partridge Street streetscape upgrade works (but not the interior of the cinema) in conjunction with the planning process but prior to undertaking any works. Council approval will be granted if the detailed plans and specifications are consistent with the Concept Plans and Design Principles. Council approval must be obtained to any variations including as a result of incorporating reasonable recommendations by the Office for Design and Architecture, during the planning process and during construction.
- 1.6 The undertaking of the Proposed Development is subject to Taplin obtaining:
 - 1.6.1 development approval;
 - 1.6.2 construction finance;and Taplin undertakes to provide Council with evidence of satisfaction of these conditions promptly and in any event within a week of development approval being granted and construction finance being obtained.
- 1.7 Council will provide vacant possession of the Western (Cinema) Site.
- 1.8 Taplin will demolish the existing Council-owned buildings at 5 and 7 Partridge Street, and

- 1.8.1 Taplin will procure the amalgamation of the existing titles as required to create three (3) Torrens titles. One of the Torrens titles will be created at ground level and the remaining two Torrens titles will be created "in air" at first floor level above a specified reduced level.
- 1.8.2 Following the transfer of the two Torrens titles to Taplin (see clause 1.8.1), when construction of the Proposed Development is sufficiently advanced Taplin will procure the undertaking of a community title division of the three Torrens titles to create three community strata lots and common property. Council will own the lot comprising the ground floor car park and Taplin will own the two (2) lots situated at first floor level. Lifts, stairs, travelator and roof to form part of the Taplin lots. The scheme description and by-laws must reflect the permitted uses of the lots. Common property will be minimised and voting rights set up so that neither Council nor Taplin (even if both entities vote together) can out vote the other.
- 1.9 The community lots comprising the first floor cinema will be height limited to two (2) metres higher than the maximum height of the proposed building (as set out in the Concept Plans) but excluding service infrastructure as required to carry out and maintain the business to be carried out in the Proposed Development, which infrastructure shall be permitted to exceed that maximum height but only up to a further three (3) metres.
- 1.10 Council will transfer to Taplin at Taplin's cost and in consideration for Taplin agreeing to construct the Council car parks two Torrens title allotments "in air" at a height above the ground floor car park. That transfer will take place when all conditions precedent to the Development Contract have been satisfied and prior to commencement of construction.
- 1.11 If Taplin fails to commence construction of the Proposed Development within an agreed period as set out in the Development Contract Taplin will be obliged at its cost to retransfer the two (2) Torrens title allotments in air to Council.
- 1.12 Taplin will procure the construction of the car park (including line marking and installation of all required services and infrastructure including electricity, water, lights, fire safety, lifts and stairs but excluding installation of boom gates and ticketing infrastructure) and the cinema at Taplin's cost in accordance with the approved detailed plans and specifications (see clause 1.5), and all statutory approvals granted in respect of the works by all relevant authorities.
- 1.13 Council is not required to contribute to the costs of design and construction of the car park and cinema on the Western (Cinema) Site.
- 1.14 Taplin must provide a copy of the executed construction contract to Council, but on a confidential basis.
- 1.15 Taplin must provide a works program to Council and make progress reports to Council as and when required.
- 1.16 Taplin must effect practical completion of the car park and cinema within eighteen (18) months from commencement of construction.
- 1.17 Taplin must ensure that all warranties and certifications, guarantees and rights pursuant to defects liability periods under any design or construction contracts

that relate to any structure to be owned by Council are assigned or novated to Council.

1.18 Taplin will permit Council to inspect the works during construction, subject to the requirements of the building contractor and the terms of the building contract relating to safety requirements.

1.19 Taplin will at Taplin's cost:

1.19.1 undertake streetscape improvements to Cowper Street from Jetty Road to the proposed new cinema complex and that portion of Partridge Street adjoining the Proposed Development (both sides) in accordance with the detailed plans and specifications approved by Council (see clause 1.5) and ensuring that vehicle and pedestrian access is maintained and Cowper Street is developed to a standard that continues to allow access by commercial vehicles;

1.19.2 underground power lines and high voltage lines in Cowper Street from Jetty Road to the proposed new cinema complex and on the western side of Partridge Street and underground the power pole on the Eastern Site.

2. EASTERN SITE

2.1 Council will retain ownership of the Eastern Site and all improvements made to it, at ground and first floor levels.

2.2 Taplin will procure the preparation of detailed plans and specifications for the construction of a ground floor car park and first floor car park deck on the Eastern Site, with capacity for a second floor deck to be constructed at a later date, in accordance with the Concept Plans and Design Principles for the Eastern Site.

2.3 Taplin will obtain Council's approval for the detailed plans and specifications in conjunction with the planning process but prior to undertaking any works. Council approval will be granted if the detailed plans and specifications are consistent with the Concept Plans and the Design Principles. Council approval must be obtained to any variations including as a result of reasonable recommendations by the Office for Design and Architecture, during the development assessment process and during construction.

2.4 Taplin is responsible to obtain development authorisation and all statutory approvals for the car park.

2.5 Taplin will procure the construction of the car park (including line marking and installation of all required services and infrastructure including electricity, water, lights, fire safety, lifts and stairs but excluding installation of boom gates and ticketing infrastructure) in accordance with the approved detailed plans and specifications (see clause 2.3), and all statutory approvals granted in respect of the works by all relevant authorities.

2.6 Council's contribution to all costs including but not limited to all costs in respect of the design, planning and construction of the car park (including all consultants fees incurred in respect of the design, planning and construction of the car park) will be limited to the lesser of:

- 2.6.1 \$2,500,000.00 exclusive of GST; or
- 2.6.2 the final cost of the car park less \$1,000,000.00 (exclusive of GST).
- 2.7 Taplin will be responsible for all costs of design and construction over and above Council's contribution.
- 2.8 Council's contribution will be made by way of monthly progress payments which must be certified by the Project Architect. The Council's contribution will be made after Taplin has first made its contribution to the costs referred to in clause 2.6.
- 2.9 Taplin must provide a copy of the executed construction contract to Council, but on a confidential basis.
- 2.10 Taplin must provide a works program to Council and make progress reports to Council as and when required.
- 2.11 Taplin must effect practical completion of the car park by the date upon which the development on the Western (Cinema) Site is required to reach completion.
- 2.12 Taplin must ensure that all warranties, guarantees and rights pursuant to defects liability periods under any design or construction contracts are assigned or novated to Council.
- 2.13 Taplin will permit Council to inspect the works during construction, subject to the requirements of the building contractor and the terms of the building contract relating to safety requirements.

3. GENERAL

- 3.1 Taplin must ensure a minimum of 370 car park spaces are provided across both Sites.
- 3.2 It is acknowledged that Taplin may negotiate with the owner of Allotment 55 to obtain their agreement to the construction of the decked car park over that owner's land, as an option to deliver a certain number of car parks on the Eastern Site. In that event Council will support Taplin in relation to such negotiations, but does not commit to granting the owner rights over Council land or entering into any other agreements required to secure that arrangement.
- 3.3 If agreement cannot be reached and the deck cannot be built over Allotment 55 (for whatever reason) then Taplin must deliver the minimum number of spaces across both Sites in some other manner.
- 3.4 Council to provide unrestricted access to Sites to undertake the Proposed Development upon the giving of seven (7) days written notice.
- 3.5 Taplin must provide such additional car park spaces over and above the 370 minimum spaces as are determined by the Development Assessment Commission to be required to meet the needs of the cinema.
- 3.6 Taplin will procure a performance bond naming the Council as a beneficiary to secure the completion of all works and other obligations contemplated by this

agreement and the Development Contract prior to the commencement of the works or alternatively enter into an agreement with the construction financier and Council (and the builder, if considered necessary) entitling the construction financier and Council (as applicable) to exercise step in rights in respect of Taplin's obligations under the Development Contract either in the event of breach by Taplin of its obligations under the Development Contract or in the event of a breach by Taplin of its obligations under its finance arrangements with the construction financier so that the obligations of Taplin in favour of the Council are met to Council's satisfaction.

- 3.7 Council will grant to Taplin such rights of access to the Sites as are required by Taplin to enable construction of the Proposed Development, including temporarily closing adjacent streets, at no cost to Taplin.
- 3.8 Taplin will use its reasonable endeavours to minimise disruption to the public and local businesses during construction and stagger construction to enable as many car parking spaces to remain available for as long as possible to the extent practicable and safe, however it is acknowledged that there will be a point in construction at which for practicability and safety reasons both car parks will need to be closed.
- 3.9 Council acknowledges and agrees that Taplin as the owner of the Taplin lots, and any successor in title to Taplin together with the customers of the cinema situated in the Taplin lots will have the right to park in the car parks at both Sites, together with members of the general public. Council must grant to Taplin (for the benefit of cinema patrons) the right to four hours' free parking at both Sites but otherwise with no greater right than members of the general public to park and Council must remain contractually bound to provide parking on those conditions for the life of the development (from practical completion). Those rights will also be contained in the by-laws of the community corporation.
- 3.10 Council will not reduce car park spaces below 370 across both Sites but may increase car park spaces
- 3.11 The operator of the cinema will be permitted (at the cost of the operator and subject to obtaining all statutory approvals) to display signage on both Sites advertising the free parking arrangement.

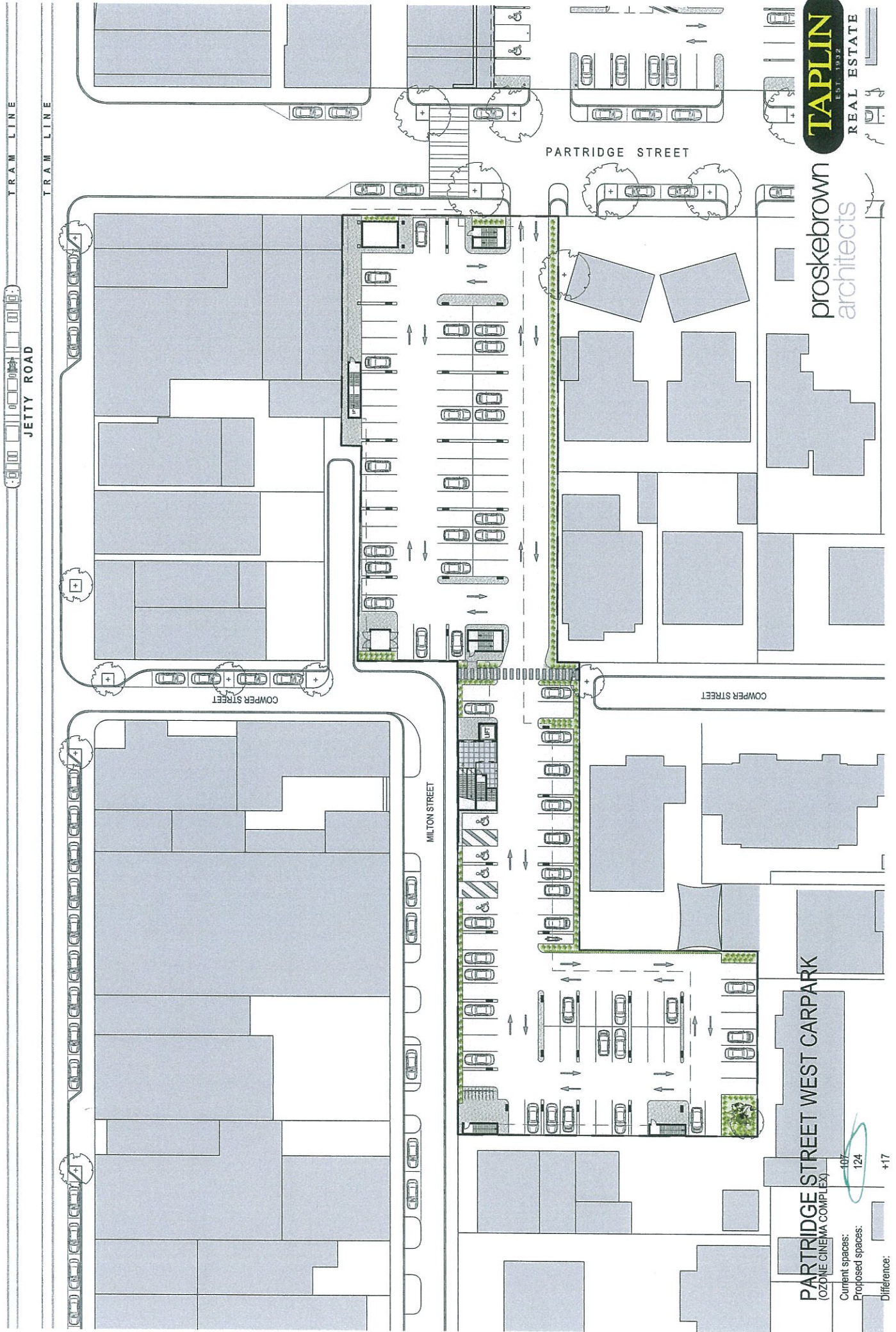
Annexure D Design Principles

- Provision of quality urban design outcomes and streetscape improvements, particularly along Partridge Street and from Cowper Street to Jetty Road.
- Incorporate Crime Prevention Through Environmental Design (CPTED) and / or Safer by Design principles including, but not limited to, the following:
 - Sufficient, consistent and well-placed lighting (eg. to minimise dark areas)
 - Enhanced visibility and sightlines, particularly in places where risk to public safety is high such as adjacent stairwells, lobby entrances and pedestrian thoroughfares
 - High levels of pedestrian access
 - Clear directional signage (including to emergency services and public toilet facilities) and a legible public realm, including clearly defined public entry points to buildings and parking areas
 - Minimising potential hiding and entrapment spots
 - Integration of (or allowance for) security services / equipment and anti-vandalism mechanisms
 - Spaces allocated for future ticketing infrastructure located within high activity and visible areas.
- Consideration of articulated frontages to public streets and areas to retain visual interest.
- Minimising impacts on adjoining and adjacent sensitive uses, including ensuring both visual and acoustic privacy and air quality.
- Design and scale that is sympathetic to adjacent heritage buildings or buildings with streetscape significance.
- Incorporate Environmentally Sustainable Design (ESD) features where practical (eg. green facades, efficient lighting, reduced energy and water needs, etc).
- Adopt sound traffic management practices, including:
 - minimising impacts on local traffic movements and residential properties facing Cowper Street, including during construction
 - maintaining vehicle access to adjacent properties, including during special events in the precinct when Jetty Road is temporarily closed to traffic
 - safe and convenient traffic circulation within car parking areas
 - location and design of loading/unloading and service areas to minimise impacts on adjacent residential areas
 - minimising impacts on operations of existing shops (eg. loading/unloading, service areas and movement of goods)
 - ensuring access and suitable road treatments for private, commercial (eg. garbage collection, delivery vehicles) and emergency vehicles in Cowper Street
 - bicycle access and parking facilities.
- Maximising car parking efficiency.
- Inclusion of in-built 'future proofing' strategies to provide maximum development flexibility.

Attachment 4



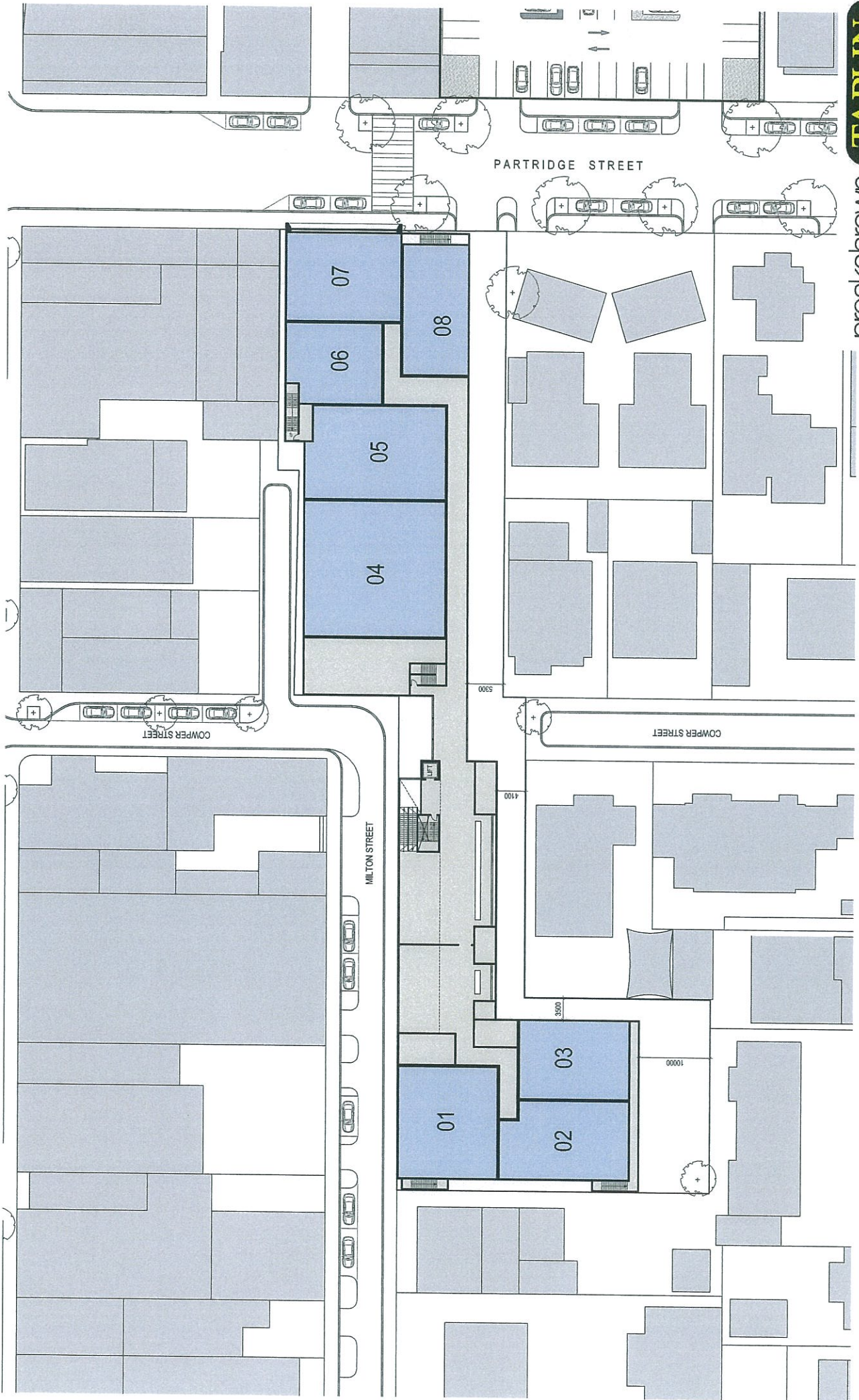
OZONE CINEMA COMPLEX - GROUND FLOOR PLAN



PARTRIDGE STREET WEST CARPARK
(OZONE CINEMA COMPLEX)

Current spaces: 107
Proposed spaces: 124
Difference: +17

OZONE CINEMA COMPLEX - FIRST FLOOR PLAN



-  CINEMAS
-  CIRCULATION & AMENITIES

OZONE CINEMA COMPLEX - VIEW FROM PARTRIDGE STREET



proskebrown
architects

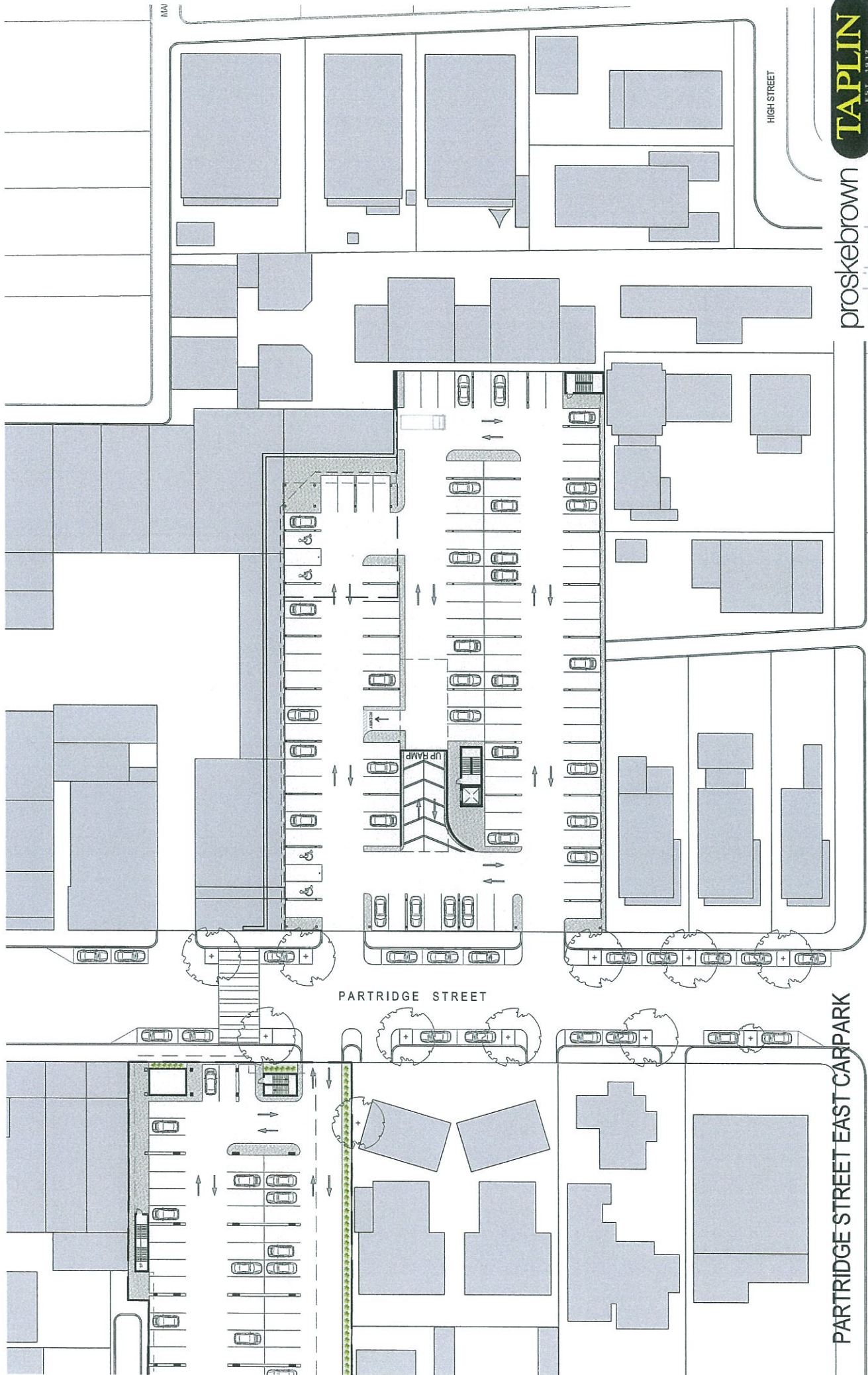
TAPLIN
EST. 1932
REAL ESTATE



TAPLIN
EST. 1932
REAL ESTATE

proskebrown
architects

EAST CARPARK - GROUND FLOOR PLAN



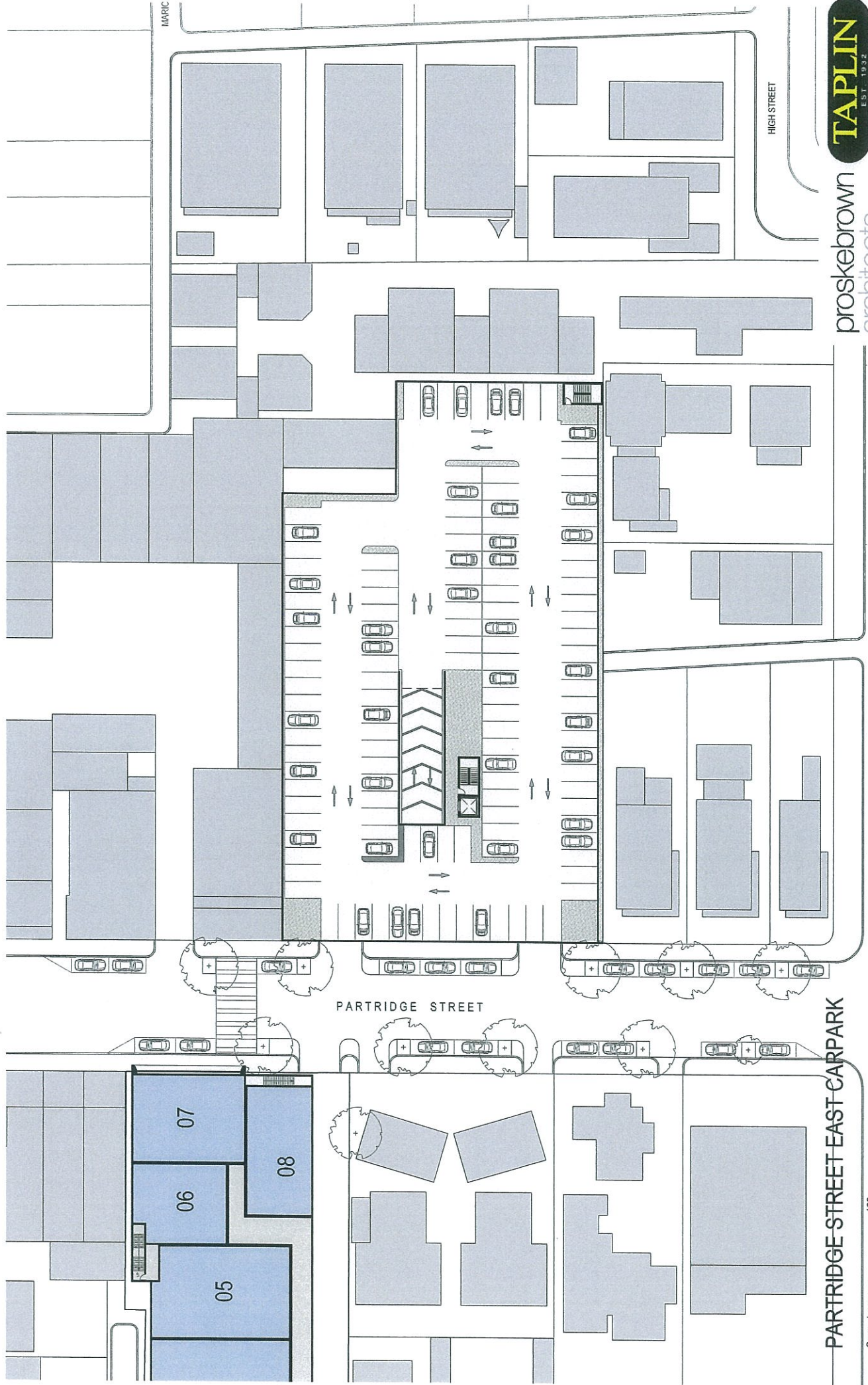
4.7 m deck

HIGH STREET

PARTRIDGE STREET EAST CARPARK

Current spaces:	129
Proposed spaces:	254
Difference:	+125

EAST CARPARK - FIRST FLOOR PLAN



Current spaces: 129
 Proposed spaces: 254
 Difference: +125

PARTRIDGE STREET EAST CARPARK

proskobrown
 architects

TAPLIN
 EST. 1932
 REAL ESTATE

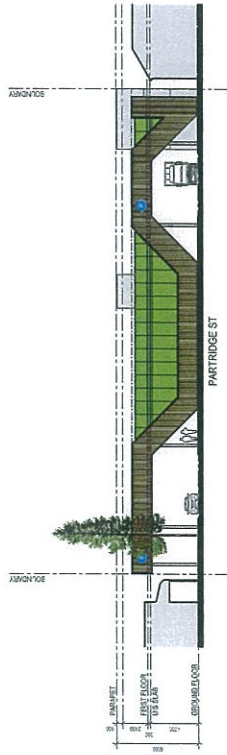
HIGH STREET

PARTRIDGE STREET

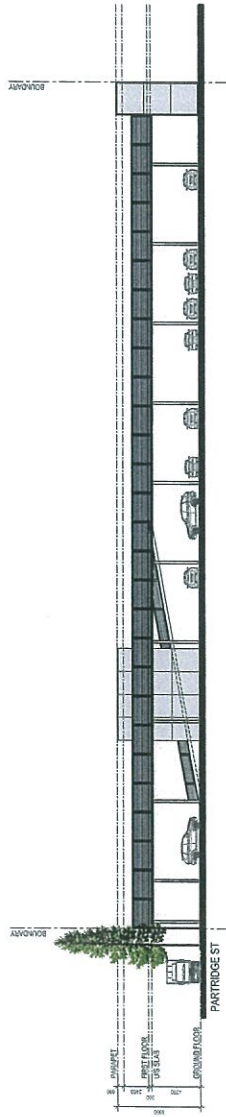
HIGH STREET

MARIC

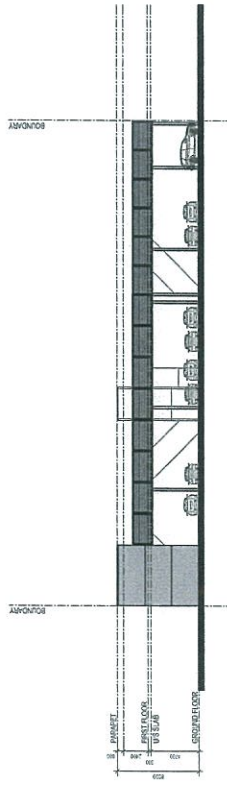
EAST CARPARK - PROPOSED ELEVATIONS



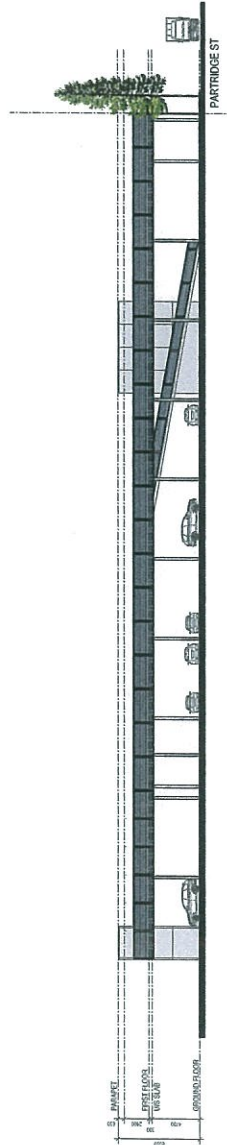
WEST ELEVATION



SOUTH ELEVATION



EAST ELEVATION

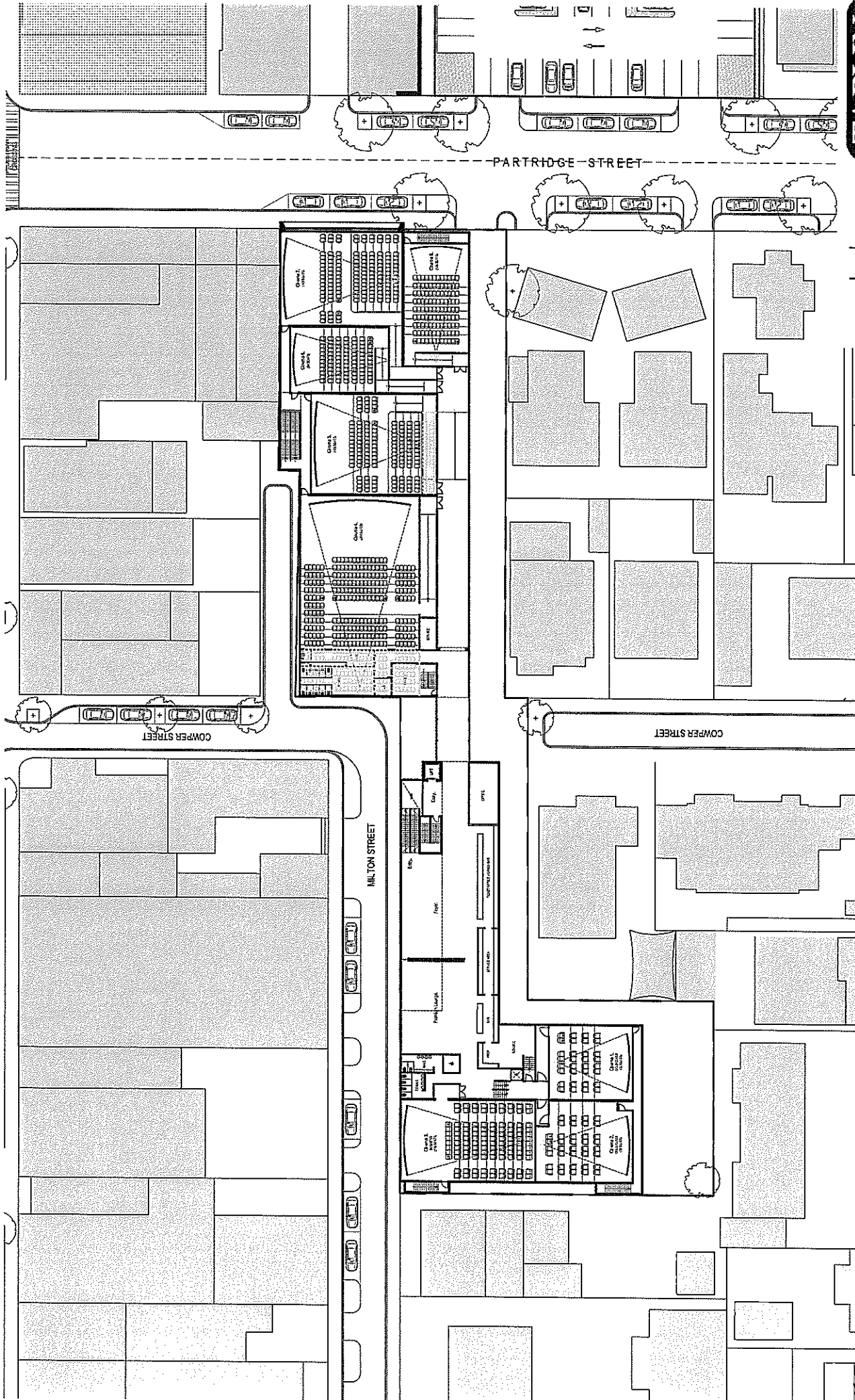


NORTH ELEVATION

EAST CARPARK - VIEW FROM PARTRIDGE STREET



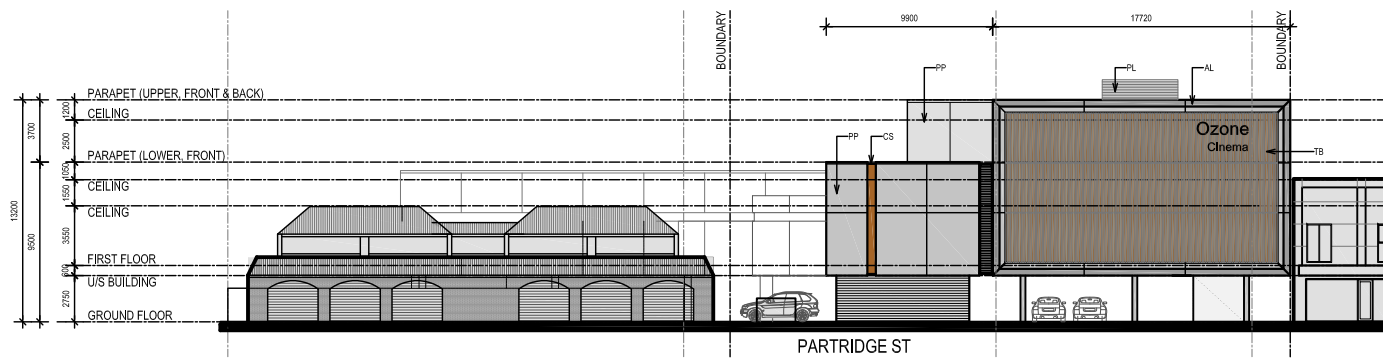
OZONE CINEMA COMPLEX - FIRST FLOOR PLAN



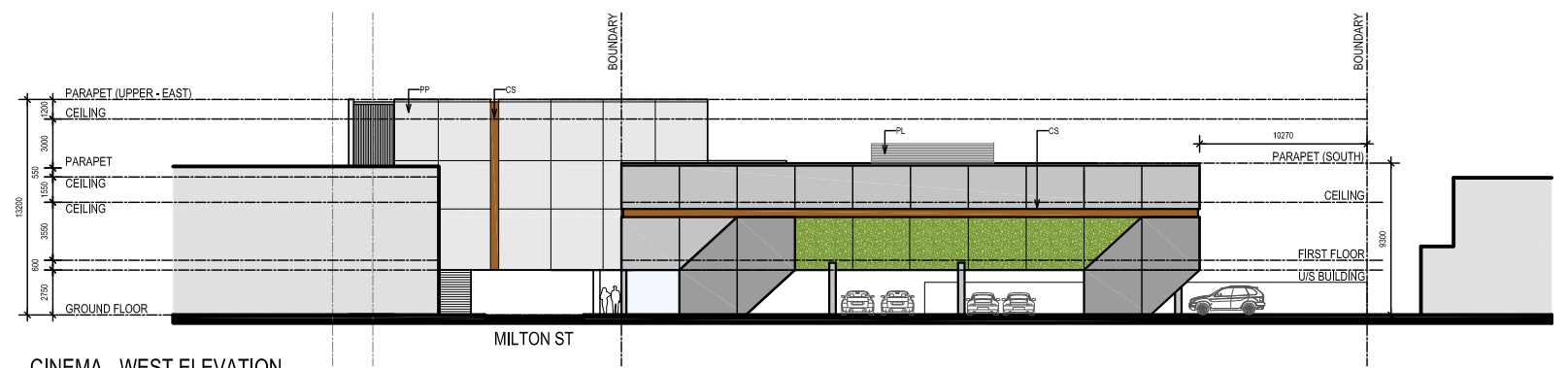
proskobrown
architects

TAPLIN
EST. 1937
REAL ESTATE

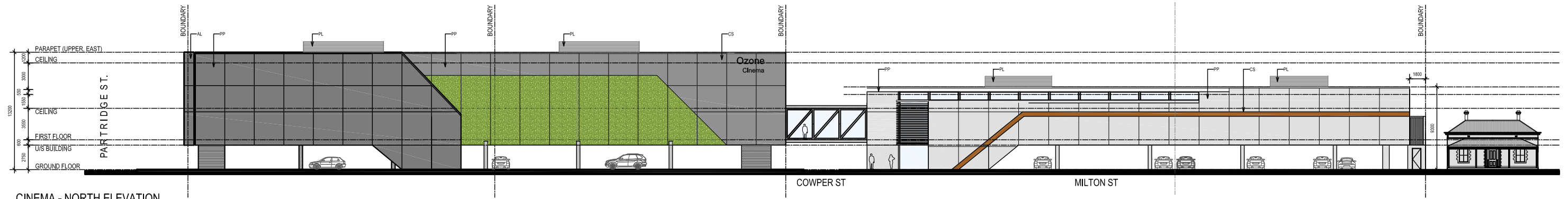
OZONE CINEMA: ELEVATIONS



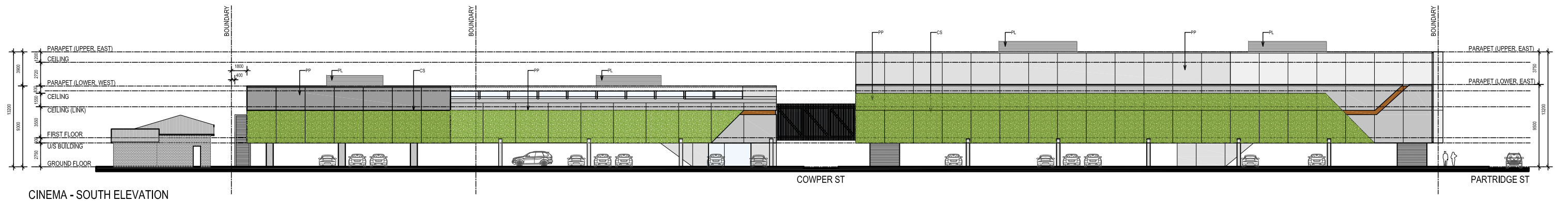
CINEMA - EAST ELEVATION



CINEMA - WEST ELEVATION



CINEMA - NORTH ELEVATION



CINEMA - SOUTH ELEVATION



proskebrown
architects

TAPLIN
EST. 1932
REAL ESTATE

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PRELIMINARY

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GLENELG CINEMA AND CARPARK PROJECT

Assessment of Draft Heads of Agreement against Council resolution and outcomes of Elected Members Workshop

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
<i>Council resolution dated 10 July 2012</i>			
<ul style="list-style-type: none"> a cinema complex is developed above the council owned land in the Partridge Street West/Cowper Street/Milton Street precinct 	Yes	Included in Fundamental Terms (Annexure C)	Clause 1.1 in Annexure C states that Council will retain ownership of the ground floor of the Western (Cinema) Site, subject to certain rights (eg. rights of access and support) to the first floor community strata lots to be granted to Taplin.
<ul style="list-style-type: none"> the existing titles are amalgamated and community titles be established to reflect the ownership of the cinema building by the Taplin Group and the ground level car park by Council, subject to community consultation as required by the Local Government Act, 1999 with respect to Community Land 	Yes	Within 'Background' and Included in Fundamental Terms (Annexure C)	<p>Clause 1.8 in Annexure C of the Agreement contemplates amalgamation of existing titles to create three Torrens Titles at Taplin's cost and community title division of the three Torrens Titles once development is sufficiently advanced. Council will own the lot comprising the ground floor carpark and Taplin will own the two (2) lots situated at first floor level.</p> <p>Consultation on proposed revocation of community land status occurred between 24 July and 17 August 2012 and Ministerial approval for revocation was granted on 19 February 2013 subject to Council endorsement.</p> <p>The 'Background' to the Agreement acknowledges that Council has undertaken certain preliminary steps, including procuring the revocation of the community land classification of the Western (Cinema) Site.</p>
<ul style="list-style-type: none"> the Taplin Group to demolish the Council owned buildings at 5 and 7 Partridge Street at its cost and convert into car parking spaces 	Yes	Included in Fundamental Terms (Annexure C)	Clause 1.8 in Annexure C requires Taplin to demolish the existing Council-owned buildings at 5 and 7 Partridge Street.
<ul style="list-style-type: none"> the Taplin Group to construct a decked car park, at its cost, on Council's Partridge 	Yes	Included in Fundamental Terms	Clause 2.1 in Annexure C confirms that Council will retain ownership of the Eastern Site and all improvements made to it, at ground and

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
Street east property with Council retaining ownership of the land and new decked car park		(Annexure C)	<p>first floor levels.</p> <p>Clauses 2.5 and 2.7 in Annexure C also clarify that Taplin will procure the construction of the carpark (including line marking and installation of all required services and infrastructure including electricity, water, lights, fire safety, lifts and stairs but excluding boom gates and ticketing infrastructure) in accordance with the approved plans and specifications, and that Taplin will be responsible for all costs of design and construction over and above Council's contribution (see below).</p>
<ul style="list-style-type: none"> Council to contribute the lesser of (i) \$2.5 million or (ii) cost of a decked car park less \$1.0 million; to the Taplin Group for the building a new decked car park 	Yes	Included in Fundamental Terms (Annexure C)	<p>Clause 2.6 in Annexure C confirms that Council's contribution to all costs including but not limited to all costs in respect of the design, planning and construction of the car park (including all consultants fees incurred in respect of the design, planning and construction of the car park) will be limited to the lesser of:</p> <ul style="list-style-type: none"> \$2,500,000.00 exclusive of GST; or the final cost of the car park less \$1,000,000.00 (exclusive of GST).
<ul style="list-style-type: none"> the Taplin Group is to provide a minimum of 370 car spaces across both Partridge Street sites, or greater if required to do so to meet any development consent conditions 	Yes	Refer Fundamental Terms (Annexure C)	<p>Clause 3.1 in Annexure C requires that Taplin will ensure a minimum of 370 car park spaces in accordance with Council's resolution. Clauses 3.2 and 3.3 in Annexure C also note that Taplin's ability to provide the agreed number of spaces is dependent on building over Allotment 55 which is not owned by Council. While the Agreement notes that Council will support Taplin in negotiations with the owner of that allotment, Taplin will still be required to provide a minimum number of 370 spaces if negotiations fail.</p> <p>Clause 3.5 in Annexure C also requires Taplin to provide additional car park spaces over and above the 370 minimum spaces as are determined by the DAC to be required to meet the cinema needs.</p> <p>Notwithstanding the above Clauses, the latest Concept Plans</p>

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
			provided by the Taplin Group envisage construction of 378 car parks across both sites, including Allotment 55.
<ul style="list-style-type: none"> the Taplin Group to undertake streetscape improvements surrounding the cinema complex including undergrounding of high voltage power lines 	Yes	Refer Fundamental Terms (Annexure C)	Clause 1.19 now contemplates streetscape improvements and undergrounding of power lines in both Cowper Street (from Jetty Road to the new cinema complex) and Partridge Street adjoining both the western and eastern sites. Clause 1.5 in Annexure C also requires Council's approval for these works.
<ul style="list-style-type: none"> Council to own and operate car parks and provide a minimum of four hours free parking to cinema patrons 	Yes	Included in Fundamental Terms (Annexure C)	Consistent with Taplin's original proposal, Clause 3.9 in Annexure C states that Council must remain contractually bound to provide the right to four (4) hours free parking for cinema patrons at both sites (but otherwise with no greater right than members of the general public to park) for the life of the development. This Clause also anticipates that these rights will be reflected in the By-Laws of the Community Corporation.
<ul style="list-style-type: none"> that advice be sought from the Integrated Design Commission at the commencement of, and throughout the project, to ensure that the best possible visual and urban design outcomes are achieved, in particular in respect to integrating the development with its surroundings, and ensuring easy access to and through the site for pedestrians 	Yes	Included in 'Process' (Clause 5), 'Timeframes' (Clause 6) and Fundamental Terms, (Annexure C)	<p>The Integrated Design Commission has been replaced by the Office for Design and Architecture SA (ODASA).</p> <p>Clause 5.3 of the Agreement requires that Taplin consult with ODASA in relation to the interface and integration of the Proposed Development with its surroundings (ie. Cowper and Partridge Streets). Clause 6.2 requires that the design review occur within two months of execution of the Agreement and incorporate any reasonable recommendations in plans lodged for development consent. Annexure C of the Agreement also requires Council's approval for any significant variations resulting from the design review process.</p>
<ul style="list-style-type: none"> Taplin Group to provide minimum four hours free parking to the general public at the Bayside Village 	No	-	Reciprocal parking rights at Bay Village shopping centre are no longer included in the draft Agreement. Taplin has advised, based on previous experience, that unrestricted parking in the shopping centre has a significant detrimental impact on foot traffic and turnover of the centre.

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
<ul style="list-style-type: none"> The Taplin Group be required to relocate the existing tenants of 5 and 7 Partridge Street to suitable premises within the Jetty Road Glenelg precinct for a period of no less than 12 months at no cost to the tenants 	No	Refer Fundamental Terms (Annexure C)	<p>Clause 1.7 in Annexure C requires that Council provides vacant possession of the Western (Cinema) site to ensure development timeframes can be met.</p> <p>The building at 5 Partridge Street is currently vacant and 7 Partridge Street is occupied on a monthly basis by Workskil. It is proposed that appropriate advanced notice will be provided to Workskil of the need to vacate once development timeframes are understood.</p>
<ul style="list-style-type: none"> The Heads of Agreement be subject to a condition precedent that public consultation be undertaken and Ministerial approval be given for the revocation of Community Land status as required by the Local Government Act 1999 and a failure to obtain Ministerial approval will necessarily result in the abandonment of the proposal without any liability for the Council 	Partly	Refer 'Background'	<p>As above, consultation on proposed revocation of community land status occurred between 24 July and 17 August 2012 and Ministerial approval for revocation was granted on 19 February 2013 subject to Council endorsement.</p> <p>This Report recommends that Council consider formal revocation of the community land status based on the Minister's approval in the context of considering the Heads of Agreement and the process it will establish with the Taplin Group for proceeding with the development.</p>
<ul style="list-style-type: none"> The community title created for the cinema complex is limited to two metres higher than the maximum height of the proposed building 	Partly	Refer Fundamental Terms (Annexure C)	<p>Clause 1.9 in Annexure C states that the community lots comprising the first floor cinema will be height limited to two (2) metres higher than the maximum height of the proposed building (as set out in the Concept Plans) but excluding 'service infrastructure' as is required to carry out and maintain the business to be carried out in the proposed development.</p> <p>Service infrastructure associated with carrying out the cinema operation will therefore be permitted to exceed that maximum height by a further three (3) metres under this Clause (ie. thereby allowing this infrastructure to be up to five (5) metres high if required).</p>
<ul style="list-style-type: none"> A further report be presented to Council after the Heads of Agreement has been 	N/A	-	Purpose of this Report.

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
drafted for Council's consideration prior to a commitment being made to proceed			
Council Workshop held 16 July 2013			
<ul style="list-style-type: none"> How do we ensure there is no change in use of the cinema building in the future 	No	-	While the Scheme Description will reflect what each lot is able to be used for as part of the community title documentation, there can be no guarantee that a change in use will not occur in the future if the cinema becomes unviable. Any such proposal would, however, require consideration by the Community Corporation (which includes Council) and be subject to a future development application to consider its merits. Importantly, voting rights under the community corporation arrangements are intended to be set up so that neither Council, nor the two Taplin entities (even if voting together) can 'out-vote' the other party.
<ul style="list-style-type: none"> Ensure Titles 'in air' cannot be on-sold in the future 	No	-	As above, while the community title arrangements will confirm the use of the titles in air as a cinema, the future sale of the lots cannot be prevented. Further, it would be unreasonable to prevent on-selling of these titles in the future (eg. if the owner goes bankrupt or fails to appropriately manage the facility and it becomes unviable).
<ul style="list-style-type: none"> Unclear why two titles are proposed 'in air' to separate entities 	Yes	Refer 'Process' (Clause 5),	<p>The Agreement envisages Execution by Council and two (2) Taplin entities as parties to the Agreement. The Taplin Group has advised that the two titles are required for internal structuring purposes (ie. separate corporate entities).</p> <p>Clause 5.9 of the Agreement confirms that Taplin intends to initially create two Torrens Titles above ground floor level and transfer one title to each Taplin entity. Clause 1.8.2 in Annexure C contemplates division of the Western (Cinema) site into three Community Strata Lots and common property, with Taplin owning the two lots 'in air' and Council owning the ground floor carpark.</p>
<ul style="list-style-type: none"> Access by pedestrians, cars and 	Yes	Included in Design Principles (Annexure	Clause 1.19.1 in Annexure C now contains an express obligation for Taplin to ensure that Cowper Street is constructed to continue to

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
commercial vehicles (eg. road pavement of suitable standard) must be maintained to Cowper Street		D)	allow access by commercial vehicles. The Design Principles in Annexure D also reinforce the need for quality design outcomes and streetscape improvements to both Cowper and Partridge Streets as well as ensuring access and suitable road treatments for private, commercial (eg. garbage collection, delivery vehicles) and emergency vehicles in Cowper Street. Traffic and access issues also to be considered as part of development assessment process.
<ul style="list-style-type: none"> Continuing and guaranteed availability and access to car parking during construction 	Partly	Refer Fundamental Terms (Annexure C)	<p>Clause 3.8 in Annexure C requires that Taplin will use reasonable endeavours to minimise disruption to the public and local businesses during construction and stagger construction to enable as many car parking spaces to remain available for as long as possible to the extent practicable and safe. This Clause acknowledges, however, that there will be a point during construction at which both car parks will need to be closed for safety and practicality reasons.</p> <p>The Traffic Management Plan submitted as part of the development application should also address parking supply during construction period.</p>
<ul style="list-style-type: none"> Number of carparks required for cinema patrons and community access to sufficient number of car parks 	No	-	<p>While the Agreement states that 370 car park spaces will be provided and the latest Concept Plans envisage construction of 378 car parks across both sites (including Allotment 55 which is not owned by Council), it also confirms that Taplin must also construct such additional car parking spaces above the 370 spaces if required by DAC to meet the needs of the cinema under the <i>Development Act 1993</i>.</p> <p>Car parking requirements for the cinema will therefore be assessed as part of the development assessment process by DAC. This assessment will need to be based on standard parking rates, peak versus off-peak parking demands, availability of shared parking in the precinct, public transport access and outcomes of traffic assessments and the Traffic Management Plan.</p>

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
<ul style="list-style-type: none"> Overshadowing from development to adjacent buildings and need for shadowing plans 	No	Development assessment matter	<p>Potential impacts resulting from the proposed development, including any unreasonable overshadowing will need to be considered as part of the development assessment process by DAC.</p> <p>While some shadow diagrams have been provided for the Western (Cinema) Site only, these require some revision to better clarify potential impacts from the cinema building in isolation of existing conditions. Clause 5.1 of the Agreement confirms that final shadow diagrams will be prepared for the purposes of the planning assessment process and that these plans will be made available to Council for information purposes only.</p>
<ul style="list-style-type: none"> Access to lifts and consider an external lift 	Partly	Refer Fundamental Terms (Annexure C)	<p>Clause 1.5 in Annexure C of the Agreement requires that Taplin will obtain Council's approval for the detailed plans and specifications as they relate to the car park, the external structure of the cinema (including lifts, stairways and supports) and the streetscape upgrade works in conjunction with the planning assessment process but prior to undertaking any works. Clause 1.8 also confirms that the lifts and travelator are proposed to form part of the Taplin lots, meaning that there will be no obligation on Council to contribute financially to maintenance, repair or replacement of this infrastructure.</p> <p>An external lift is not considered feasible or practical by the Taplin Group from both a design and financial point of view and is therefore not proposed as part of the latest Concept Plans. Lifts will need to be located in the most accessible position(s) for users of the car parking facility and, desirably, their associated service infrastructure should be suitably screened from view from public spaces or adjacent properties.</p>
<ul style="list-style-type: none"> Pedestrian access / safety 	Partly	Refer Design Principles (Annexure D)	Annexure D in the Agreement requires Crime Prevention Through Environment Design (CPTED) and 'Safer by Design' principles to be considered in the final design to ensure user and pedestrian safety, as well as safe and convenient traffic circulation within car parking

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
			<p>areas. These matters will need to be considered as part of the ODASA Design Review and development assessment process by the DAC (including within the Traffic Management Plan).</p> <p>Pedestrian safety during construction should also be included within the Traffic Management Plan and ongoing collaboration with Council's Assets department during the development phase.</p>
<ul style="list-style-type: none"> Query four hours free parking in perpetuity (two hours free may be more appropriate) 	Partly	Refer to Fundamental Terms (Annexure C)	Based on Council's resolution on 10 July 2012 and the original commercial proposition put to Council by the Taplin Group, the current Agreement states that Council must remain contractually bound to provide the right to four (4) hours free parking for cinema patrons at both sites for the life of the development. It is anticipated that these rights will be reflected in the By-Laws of the Community Corporation, which could be varied by mutual agreement of the parties in the future.
<ul style="list-style-type: none"> Potential loss of income from car park revenue during and after construction (ie. four hours free) 	No	-	<p>Revenue from parking fee income (excluding fines) is currently approximately \$100,000 per annum for the Milton/Cowper Street carpark. This carpark also currently accommodates around 25 permit holders at monthly fee of \$80/month. The eastern Partridge Street carpark is time limited but no charge.</p> <p>Options for additional parking revenue during construction have not yet been considered. Further, management options for the proposed parking facilities have not been fully considered either, noting that a minimum of four (4) hours free parking is to be provided for cinema patrons.</p> <p>In terms of other sources of income to help off-set any loss of parking income, the cinema will generate additional rates income (estimated at \$67,000 per annum in 2012 values by the Prudential Review report).</p>
<ul style="list-style-type: none"> Restrictions on Council land from Titles 'in 	Yes	Included in	Any construction 'in air' above Council's carpark area will require

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
air'		'Background' and Fundamental Terms (Annexure C)	<p>supports and other infrastructure (eg. lifts), which require allocation of portion of land or rights of access/support.</p> <p>The 'Background' to the Agreement (Item E) notes that Council has given in-principle support for the Proposed Development and the Fundamental Terms of the Agreement anticipate a cinema 'in air' above a Council carpark.</p>
<ul style="list-style-type: none"> • Could the land be managed differently? (eg. long term lease) 	No	-	<p>The carpark / cinema must be developed as a community title division. The outright sale of the site to Taplin was not consistent with Council's objective of continuing to own and operate the carpark and did not form part of the commercial offering by Taplin. The lease of the site to the Taplin Group (even on a long-term basis) is unlikely to be sufficiently secure in the current market to allow Taplin to obtain bank finance for construction.</p>
<ul style="list-style-type: none"> • Potential to impose a percentage limitation on common land 	No	-	<p>It is reasonable to expect that any rights of support and access would be granted to Taplin or the future owners/operators of the cinema to facilitate a development scheme of this nature and to provide certainty of operation of the facility. It is considered to both parties' benefit to limit common property so that there is no obligation to deal with it through the Community Corporation and to simplify future management arrangements. Common land requirements will need to be considered further as part of the future community title application.</p>
<ul style="list-style-type: none"> • Impact of three titles on fire safety (eg. number of fire escapes) 	Partly	Refer Fundamental Terms (Annexure C)	<p>Fire safety and Building Code of Australia (BCA) requirements are to be considered as part of the development assessment process. In any event, Taplin will be required to comply with all statutory requirements in relation to fire safety, regardless of the number of lots.</p> <p>Clause 1.18 in the Fundamental Terms of the Agreement also confirms Council's right to inspect the works during construction, subject to the requirements of the building contract relating to</p>

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
			safety requirements.
<ul style="list-style-type: none"> Council's rights protected and financial risks minimised (eg. performance bond) 	Yes	Included in Fundamental Terms (Annexure C)	<p>Clause 3.6 in Annexure C requires Taplin to either:</p> <ul style="list-style-type: none"> a) procure a <u>performance bond</u> naming the Council as a beneficiary to secure the completion of all works and other obligations contemplated by the Agreement and the Development Contract prior to the commencement of the works, or b) enter into an <u>agreement with the construction financier and Council</u> (and the builder, if considered necessary) entitling the construction financier and Council (as applicable) to exercise step in rights in respect of Taplin's obligations under the Development Contract either in the event of breach by Taplin of its obligations under the Development Contract or in the event of a breach by Taplin of its obligations under its finance arrangements with the construction financier so that the obligations of Taplin in favour of the Council are met to Council's satisfaction.
<ul style="list-style-type: none"> Community Title and common land – protecting against changes in the future 	No	-	As above, while the Development Contract and community title documentation will refer to the development of a cinema above Council's carpark, the future owners of the site may seek to vary the land use in the future via a development application. This would, however, need to be considered by the parties to the Community Corporation, including Council.
<ul style="list-style-type: none"> Two metre limitation above maximum cinema height – is this fixed? 	Yes	Refer Fundamental Terms (Annexure C)	As highlighted above, Clause 1.9 in Annexure C confirms that the height limits of the community title lots comprising the cinema will be fixed at two (2) metres higher than the height of the cinema as proposed in the Concept Plans. However, it is proposed that there will be an additional three (3) metres allowed (above that two metre lot limit) for the purposes of installation of services required for the business use.

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
<ul style="list-style-type: none"> Reciprocal rights to public carparks in Bayside Village and the implications of this under the <i>Development Act 1993</i> 	No	Included in Fundamental Terms (Annexure C)	As above, there are no reciprocal parking rights being offered by Taplin in the Bayside Village given concerns regarding impacts on foot traffic and turnover in the centre.
<ul style="list-style-type: none"> Deck on eastern site should be constructed first to ensure parking supply 	Partly	Refer Fundamental Terms (Annexure C)	<p>Clauses 1.16 and 2.11 of the Fundamental Terms of the Agreement requires that Taplin must effect practical completion of the car park and cinema within 18 months, and practical completion of the Eastern Site car park by this date also.</p> <p>As above, Clause 3.8 of the Fundamental Terms also requires Taplin to use reasonable endeavours to stagger construction to enable as many car parking spaces to remain available for as long as possible to the extent practicable and safe, but acknowledges that there will be a point during construction where both carparks will need to be closed (ie. for practicality and safety reasons).</p>
<ul style="list-style-type: none"> Streetscaping and undergrounding of powerlines in Partridge Street 	Yes	-	As confirmed above, the Agreement now contemplates streetscape upgrades and undergrounding of powerlines in both Cowper and Partridge Streets adjacent the Proposed Development.
<ul style="list-style-type: none"> Application of Council's Procurement Policy to the project and ability to deal with a single proponent rather than go to market 	No	-	<p>Before entering into negotiations with the Taplin Group to proceed, legal advice was sought on whether it was lawful for Council to enter into agreements without first testing the market.</p> <p>Section 49 of the <i>Local Government Act 1999</i> requires that Council's Contracts and Tenders Policy must provide for the recording of reasons for entering into contracts other than those resulting from a tender process. Section 49(2)(c) provides a statutory recognition that the Council is not required to undertake an open tender or other public process in relation to the proposed development provided it has good reasons for not doing so.</p> <p>In this instance, the reasons include that the Taplin Group approached the Council with a unique proposal with mutual benefit, that the Group has the necessary and proven skills and expertise to</p>

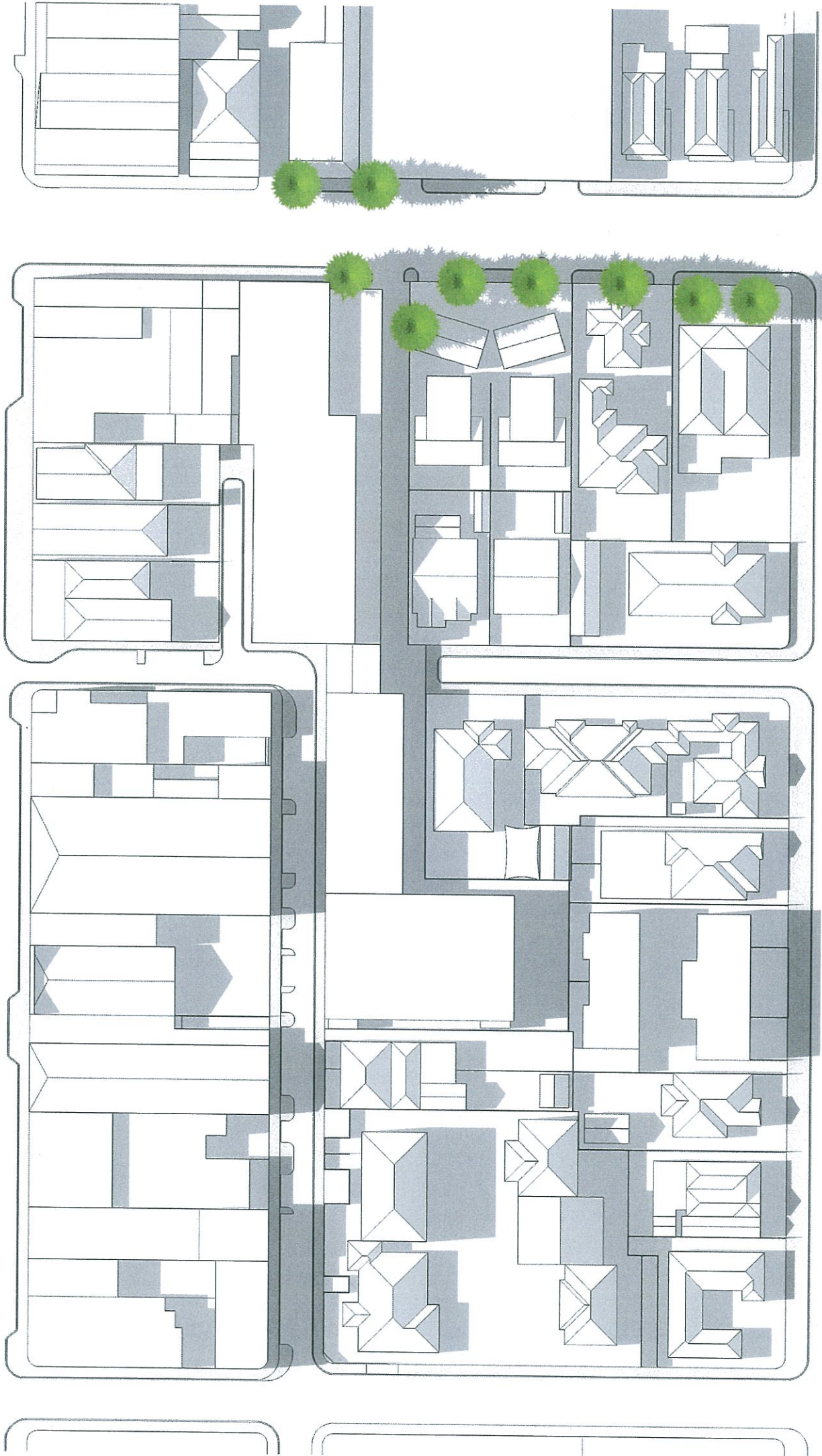
Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
			develop and complete a cinema complex (eg. Mitcham Village), it has a proven interest in and commitment to the Glenelg area and Jetty Road precinct as a major business and land holder in the area, and the costs per car park when aggregated are cheaper than if Council proceeded on its own.
<ul style="list-style-type: none"> Community disruption and access during and after construction 	Partly	Refer Fundamental Terms (Annexure C)	<p>The Traffic Management Plan will need to consider traffic and car park management during construction as part of the development assessment process by DAC.</p> <p>Also as above, Clause 3.8 of the Fundamental Terms also requires Taplin to use reasonable endeavours to minimise disruption to the public and local businesses during construction and stagger construction to enable as many car parking spaces to remain available for as long as possible to the extent practicable and safe.</p>
<ul style="list-style-type: none"> Minimising damage to surrounding properties during construction (ie. dilapidation reports) 	No	-	While it will be the developer's and builder's responsibility to ensure there is no damage to adjacent properties as part of construction works, the need for dilapidation reports for adjacent properties that may be affected by construction activities will be considered in negotiations on the Development Contracts. Council also has powers under the <i>Local Government Act 1999</i> to deal with damage to its public infrastructure.
<ul style="list-style-type: none"> It is the proponent's responsibility to negotiate any extra land requirements in the eastern carpark 	Yes	Included in Fundamental Terms (Annexure C)	Clause 3.2 in Annexure C acknowledges that Taplin may need to negotiate with the owner of Allotment 55 to obtain their agreement to the construction of the decked car park over that owner's land, but clarifies that while Council may support Taplin in these negotiations, it does not commit to granting the owner rights over Council land or entering into any agreements required to secure that arrangement.
<ul style="list-style-type: none"> Provision of parking infrastructure (eg. ticket machines, boom gates, etc) 	No	Refer Fundamental Terms (Annexure C)	Clauses 2.5 and 2.7 in Annexure C clarify that Taplin will procure the construction of the carpark, including line marking and installation of all required services and infrastructure including electricity, water,

Recommendation / Issue	Included in Heads of Agreement Y/N?	How?	Comments
			lights, fire safety, lifts and stairs. However, this <u>excludes</u> boom gates and ticketing infrastructure, which will need to be retrofitted by Council at its own cost upon practical completion and handover of the parking facilities.
<ul style="list-style-type: none"> Ability to view final plans (including traffic management plan and shadow plans) before formally considering Heads of Agreement and lodgement of plans with the Development Assessment Commission (DAC) 	No	-	<p>The Taplin Group has advised that the Traffic Management Plan and final shadow diagrams will be made available to Council for information as part of the development assessment process (ie. once the Heads of Agreement has been agreed to). This has now been reflected in Clause 5.1 of the Agreement.</p> <p>It is noted that these plans may not be able to be finalised until completion of the independent design review by ODASA.</p>

Attachment 6







TAPLIN
EST. 1932
REAL ESTATE

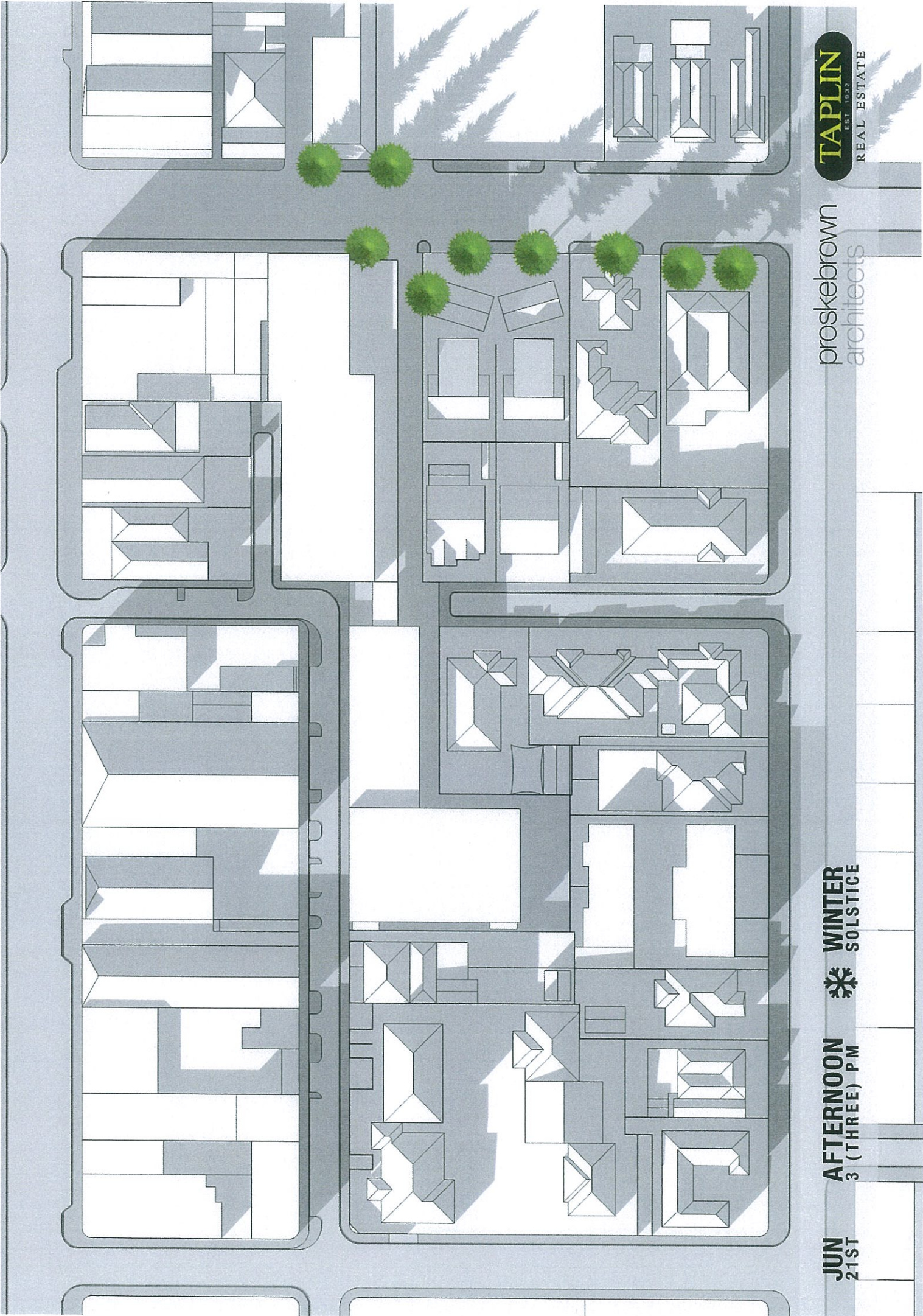
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WINTER
SOLSTICE



MIDDAY
12 NOON

JUN
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TAPLIN
EST. 1932
REAL ESTATE

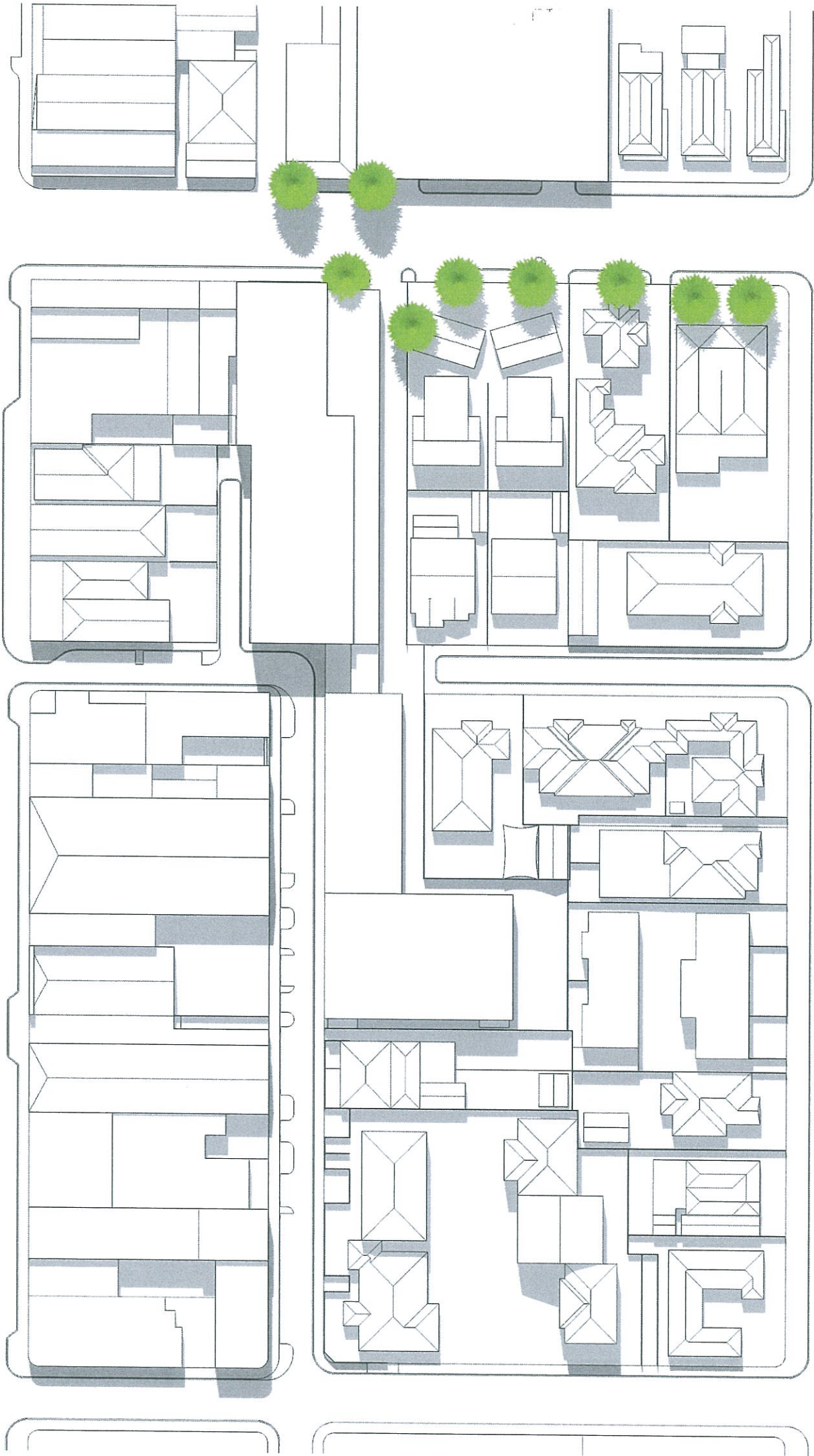
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WINTER
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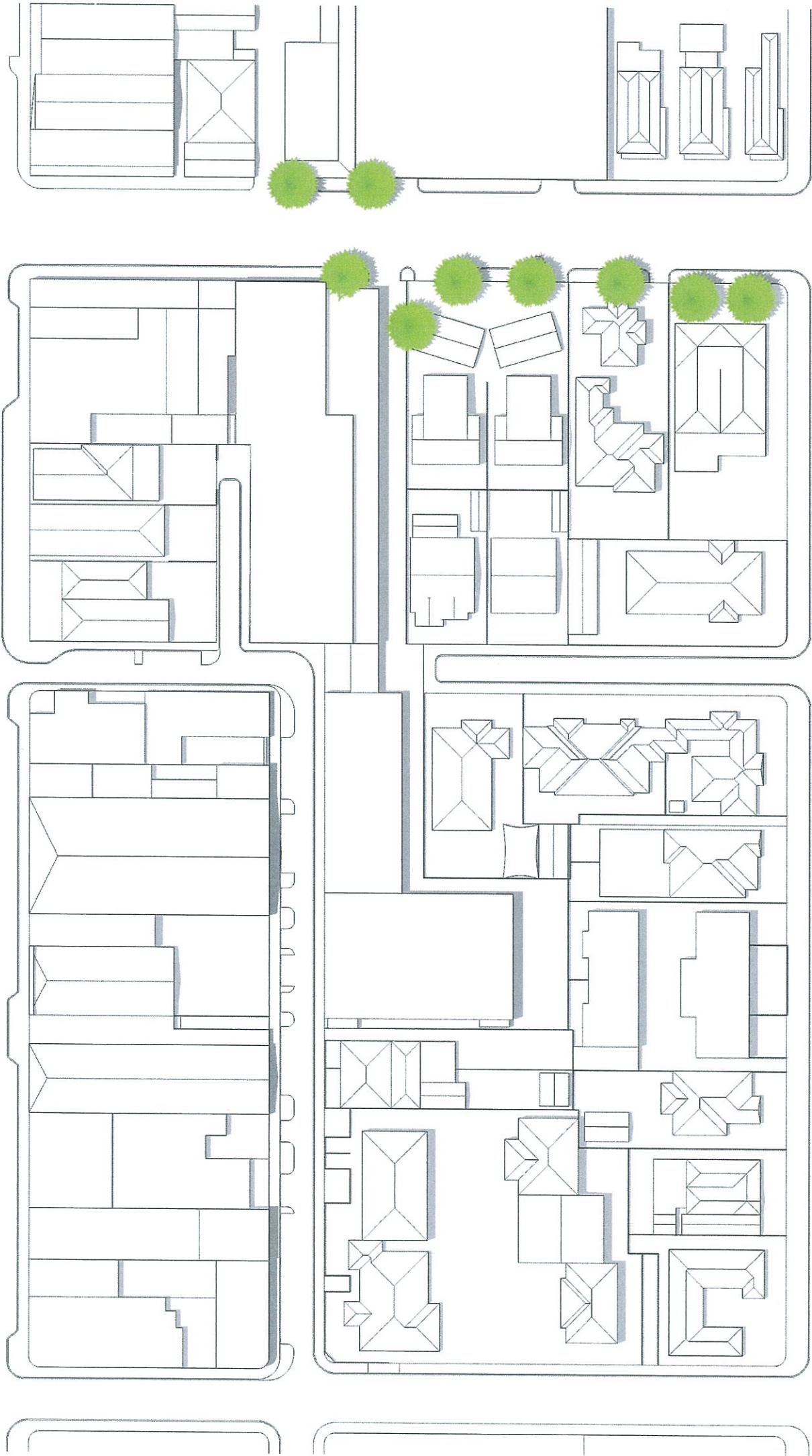
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TAPLIN
EST. 1932
REAL ESTATE



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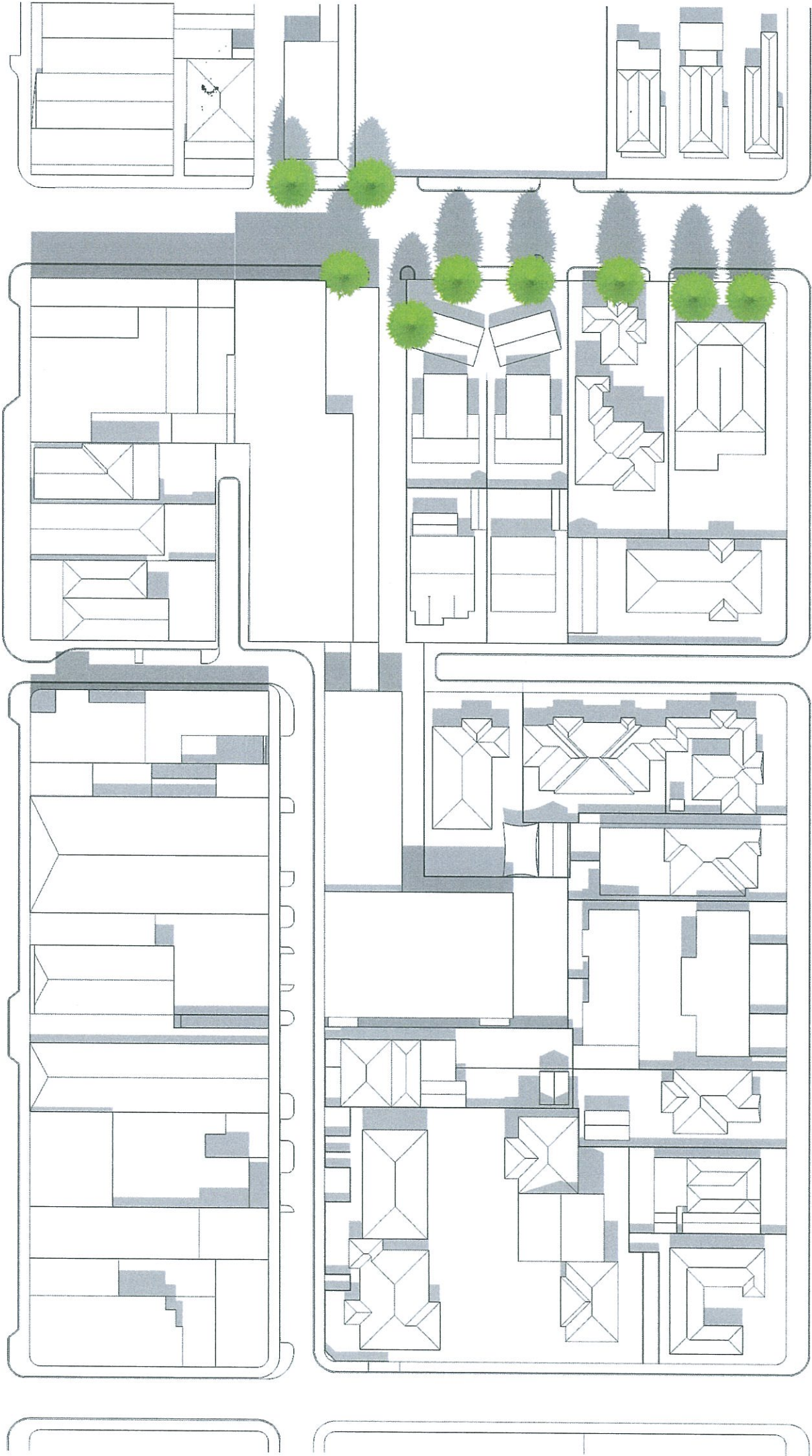
MIDDAY
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SUMMER
SOLSTICE

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TAPLIN
EST. 1932
REAL ESTATE



DEC
21ST

AFTERNOON
3 (THREE) P.M.



SUMMER
SOLSTICE

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architects

TAPLIN
EST. 1932
REAL ESTATE

Item No: **14.4**

Subject: **REVIEW OF HERITAGE AND CHARACTER DEVELOPMENT PLAN
AMENDMENT ITEMS HELD IN CONFIDENCE**

Date: 9 July 2013

Written By: Strategic Planner (Policy)

General Manager: Corporate Services, Mr I Walker

SUMMARY

Council's practice is to review documents held in confidence every 12 months and this practice has continued with a formal review occurring in May 2013. Since this review has been completed the Minister for Planning has placed on interim effect a Heritage and Character DPA. Following consultation on the DPA, it has become clear that the two documents previously considered in the earlier review should now be released from confidence.

This report recommends both items are released from confidence.

RECOMMENDATION

- 1. That the Confidential Item 101/08 to Report 223/13 be released from confidence.**
 - 2. That the Confidential Item 506/08 to Report 223/13 be released from confidence.**
-

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COUNCIL POLICY

Not applicable.

STATUTORY PROVISIONS

Local Government Act 1999

BACKGROUND

Report 101/08

On 11 March 2008, Council considered a report 'in confidence' regarding the outcomes of the City of Holdfast Bay Post 1930s draft Heritage Review in preparation/anticipation of a future DPA and resolved:

- “1. That Council notes the findings and recommendations contained in the City of Holdfast Bay post 1930s draft Heritage Review report prepared by consultants McDougall and Vines, located at Attachment 1 to Report number 101/08.
2. The funding in the order of \$15,000 be considered in the 2008/09 financial year to initiate and commence preparation of a Local Heritage Development Plan Amendment to implement the findings of the City of Holdfast Bay Post 1930s draft Heritage Review.
3. That, should funding be made available to commence preparation of a draft Local Heritage Development Plan Amendment, Administration should be authorised to commence preparation of a Statement of Intent to prepare the Development Plan Amendment for Council's endorsement prior to submitting to the Minister for Urban Planning for approval.
4. The administration report back to Council regarding consultation options for release of the outcomes and recommendations arising from the City of Holdfast Bay Post 1930s draft Heritage Review Report.”

Report 506/08

On 28 October 2008, Council resolved:

“That the draft Statement of Intent for preparation and investigations into a Local heritage Development Plan Amendment, as detailed in Attachment 1 to Report 506/08, be endorsed by Council, signed by the Chief Executive Officer and forwarded to the Minister for Urban Development and Planning for agreement.”

REPORT

The Heritage and Character DPA proposes to list 24 properties as Local heritage Places. This DPA was released for public consultation on 21 March 2013 for a period of eight weeks. It was simultaneously placed on interim operation for a period of 12 months.

Two reports relating to the investigations and process of the DPA have been retained in confidence over this time. The reports are available to members for reference upon request.

This DPA was the culmination of a series of reports and investigations dating back to 2003 as summarised in the table below:

2003	Section 30 Development Plan Review report identified that the listing of Local Heritage Places applied mainly to buildings constructed between 1836 and
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	1920. The report identified a lack of post 1930 Local Heritage listed buildings.
2006	Council initiated a Post 1930s Heritage Review (prepared by McDougall and Vines).
2008	Section 30 Development Plan Review report identified the need to undertake a Local Heritage DPA to identify post-1930s Local Heritage Places as a high priority. Post 1930s Heritage Review (McDougall and Vines) completed February 2008 and considered (in confidence) by Council in March 2008. A Statement of Intent (SOI) was prepared in response to Review recommendations to list additional Local Heritage Places and endorsed (in confidence) by Council in October 2008.
2009	The Minister agreed to the SOI (June).
2009/10	Council prepared a DPA and undertook a detailed review of the Post 1930s Heritage Review (McDougall & Vines). The Heritage Places Review (by Bruce Harry & Associates 2010) recommended Local Heritage listing only 24 of the 58 properties identified in the 2008 Review.
2011	Council submitted the DPA proposing 24 Local Heritage Places (June) to the Minister for approval for public consultation
2013	The Minister approved the DPA for the purposes of statutory consultation and interim operation in the Development Plan (January).
2013	Council commenced public consultation on DPA for an 8-week period (March) and the DPA went on interim operation for a 12-month period.

Report 101/08

The Heritage Places Review (Bruce Harry & Associates 2010), released with the Heritage and Character DPA in March 2013, identifies all 58 properties originally proposed in the Post 1930s Heritage Review (McDougall and Vines 2008).

During public consultation, objectors have requested to see a copy of the (2008) Heritage Review to analyse the rationale and methodology for undertaking a survey of post-1930s buildings and supplement their original submissions.

The 2008 Heritage Review no longer contains sensitive information that requires it to remain confidential.

For these reasons, the council report and 2008 Heritage Review should not remain confidential.

Report 506/08

This council report and attachments (draft Statement of Intent) do not contain any sensitive information that requires them to remain confidential.

CONCLUSION

Now that the DPA is under interim operation there is no longer any requirement to retain confidentiality of these two reports.

BUDGET

There are no budget implications.

LIFE CYCLE COSTS

There are no life cycle costs.

Item No: **14.5**

Subject: **ALWYNDOR AGED CARE MANAGEMENT COMMITTEE
APPOINTMENT**

Date: 13 August 2013

Written By: General Manager

General Manager: Alwyndor Aged Care, Mr G Potter

SUMMARY

The Alwyndor Management Selection Sub-Committee has recently completed the interview process to fill the vacancy on the Alwyndor Management Committee (AMC). The selection panel, comprising Cr Rosemary Clancy, Chief Executive Officer Mr Justin Lynch and AMC Chairman Mr Nick Hakof were unanimous in their recommendation that Mr Todd Bamford be endorsed as the successful candidate and appointed for a two year term to expire on 30 June 2015.

RECOMMENDATION

That Council endorses the recommendation of the Alwyndor Management Committee in relation to the appointment of Mr Todd Bamford to fill the vacancy on the Management Committee for a two year term to expire on 30 June 2015.

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COUNCIL POLICY

Alwyndor Management Committee – Terms of Reference - Membership

STATUTORY PROVISIONS

The Alwyndor Management Committee is a committee of Council under Section 41 of the Local Government Act.

BACKGROUND

Alwyndor Aged Care is owned by the City of Holdfast Bay and operated in accordance with the Dorothy Cheater Trust by the AMC providing a wide range of care, support and accommodation options for older people.

The functions of the Management Committee are defined by the Terms of Reference adopted by Council. The AMC is partly re-appointed annually on a "rolling basis". New appointments can involve either new members and/or the re-appointment of existing members. The Management Committee undertakes a recruitment and selection process, then makes recommendations to Council for the appointment of new members.

REPORT

The Alwyndor Management Selection Sub-Committee recently completed the interview process to fill a vacancy on the AMC, arising from the resignation of member Ms Marissa Barbarioli in October 2012. Eight expressions of interest were received for the advertised vacancy, with four candidates shortlisted for interview on the 27 June 2013. The selection panel, comprising Cr Rosemary Clancy, Chief Executive Officer Mr Justin Lynch and AMC Chairman Mr Nick Hakof were unanimous in their recommendation that Mr Todd Bamford be endorsed as the successful candidate and appointed for a two year term to expire on 30 June 2015.

The profile information provided by the recommended candidate can be made available to Elected Members on request.

BUDGET

There are no budget implications

LIFE CYCLE COSTS

Nil

Item No: **14.6**

Subject: **2014 AUSTRALIA DAY DRY ZONES**

Date: 13 August 2014

Written By: Liquor Licensing and Community Safety Officer

General Manager: City Assets, Mr S Hodge

SUMMARY

Based upon the success of the 2013 Australia Day Dry Zones for both Angus Neil Reserve and Tarniwarra Park, the City of Holdfast Bay will lodge separate applications with the Office of the Liquor and Gambling Commissioner to again impose these locations as temporary short-term dry areas for Australia Day 2014.

The application is based upon the feedback and responses received from the 2013 Australia Day stakeholder debrief. The boundaries and conditions of these dry zones will emulate those of the 2013 dry zones. Full details of which are listed below.

RECOMMENDATION

That Council endorse the proposed Dry Zones and support the lodgment of the respective applications with the Office of the Liquor and Gambling Commissioner for their legislative enactment.

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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.: 329/12; Item No.: 14.8) 2013 Australia Day Dry Zones;
- Item in Brief to the City of Holdfast Bay (IIB No.: 01/12; Item No.: 14.1.2), Angus Neil Reserve Dry Zone Enactment 2012;
- Report to the City of Holdfast Bay (Report No.: 350/11; Item No.: 14.2), 2012 Australia Day – Angus Neil Reserve Dry Zone (2011);
- 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;

REPORT

Council intends to lodge an application with the regulatory services division of the Office of the Liquor and Gambling Commissioner seeking to once again impose regulated short-term dry zones on Angus Neil Reserve and Tarniwarra Park for Australia Day 2014.

Angus Neil Reserve

Background

In the years prior to 2012 Angus Neil Reserve, located on the Esplanade at Seacliff, had been a destination for party revelers in their celebrations on Australia Day. The aftermath of which left copious amounts of waste [to be cleaned at Council's expense] (including general rubbish, lounge suits, tables, tents etc), property damage within the Reserve and the adjacent streets, as well as being the scene of multiple fights and police arrests. The incidences had grown to a point where it was deemed necessary for Council to take action to ensure the interests and safety of the community was maintained. Thus, as a result of the overwhelming feedback received from SAPol, Chloe Fox (local MP for Bright), and the community, Council sought to impose a temporary dry zone for 2012.

On Australia Day 2012 the dry zone was an overwhelming success. The reserve played host to hundreds of families, church groups and gatherings across the duration of the day. In 2013 a similar dry zone was also imposed across the long weekend that Australia Day fell on. However, though the dry zone was again a success in deterring excessive liquor consumption and anti-social behaviour, the reserve experienced a significantly reduced amount of

attendees comparatively to the previous year, with an overall estimation of less than one hundred persons attending across the course of each day during the prohibition.

Proposed 2014 Dry Zone

In 2014 Australia Day again falls on a long weekend, as such Council seeks again to impose a dry zone for this reserve on the following days:

Saturday 25 January 2014	between the hours of 12:01am and 12:00midnight
Sunday 26 January 2014	between the hours of 12:01am and 12:00midnight
Monday 27 January 2014	between the hours of 12:01am and 12:00midnight

The associated conditions will be total prohibition of liquor in both and open and sealed container of alcohol.

Refer Attachment 1

Members of the public will be notified through the City of Holdfast Bay's website and through print media in the Guardian Messenger in the lead up to Australia Day. Residents immediately surrounding the Reserve will also be notified via a letter box drop.

Signage will be erected around the reserve by close of business Friday 24 January 2014.

It should be noted that due to the significant reduction in persons utilising the reserve and adjacent public areas as a result of the prohibition, both SAPol and Council will undertake an assessment across the 2014 long-weekend to evaluate whether the continuation of this dry area will be necessary from 2015 onward.

Tarniwarra Park

Background

On Australia Day 2013 a temporary Dry Zone was imposed on Tarniwarra Park as a result of it being identified as a congregation point where revellers engaged in excessive public drinking, resulting in incidents of anti-social behaviour and a general increase in intoxicated transient foot traffic.

In a proactive attempt to avoid a similar situation to Angus Neil Reserve in 2012, Council in 2013 endorsed the implementation of a trial dry zone on Tarniwarra Park for Australia Day. The dry zone was a great success in deterring excessive liquor consumption in the park, however like Angus Neil Reserve, Tarniwarra Park experienced significantly reduced numbers of attendees.

Proposed 2014 Dry Zone

Though this dry zone was merely a trial in 2013 (to evaluate whether it's implementation would benefit police in maintaining order on the day), for 2014, SAPol have again requested that a dry

zone be imposed for the purpose of maintaining order and to make a final evaluation as to whether it is again needed in 2015 and beyond.

On Australia Day 2014 Council will seek again to impose a dry zone for this reserve on the following days:

Saturday 25 January 2014 between the hours of 12:01am and 12:00midnight

The associated conditions will be total prohibition of liquor in both and open and sealed container of alcohol.

Refer Attachment 2

Liken to the operation of Angus Neil Reserve, members of the public will be notified through the City of Holdfast Bay's website and through print media in the Guardian Messenger in the lead up to Australia Day. Residents immediately surrounding the Park will also be notified via a letter box drop.

Signage will be erected around the reserve by close of business Friday 24 January 2014.

BUDGET

At this present time the only costs associated with a short-term dry zone applications relate to media advertising costs, which in 2013 equated to approximately \$450.00. 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.

Imagery - January 2012



Angus Neil Reserve Dry Zone Area:

Commencing at the point on the corner of Marine Parade (western boundary) and Young Street (southern boundary) then southerly along Marine Parade to Angus Neil Reserve's southern boundary line, then westerly in a straight line to the low water mark of the Gulf of St Vincent, then northerly along the low water mark to a point that is due west in a straight line from the point of commencement, then easterly in a line along the Reserve's northern boundaries to the point of commencement.



Disclaimer
While every effort has been made to ensure the accuracy of the information shown on this map, the City of Holdfast Bay Council accepts no responsibility for any errors or omissions. Proper use of the map is required. Boundary line network data is supplied by State Government.

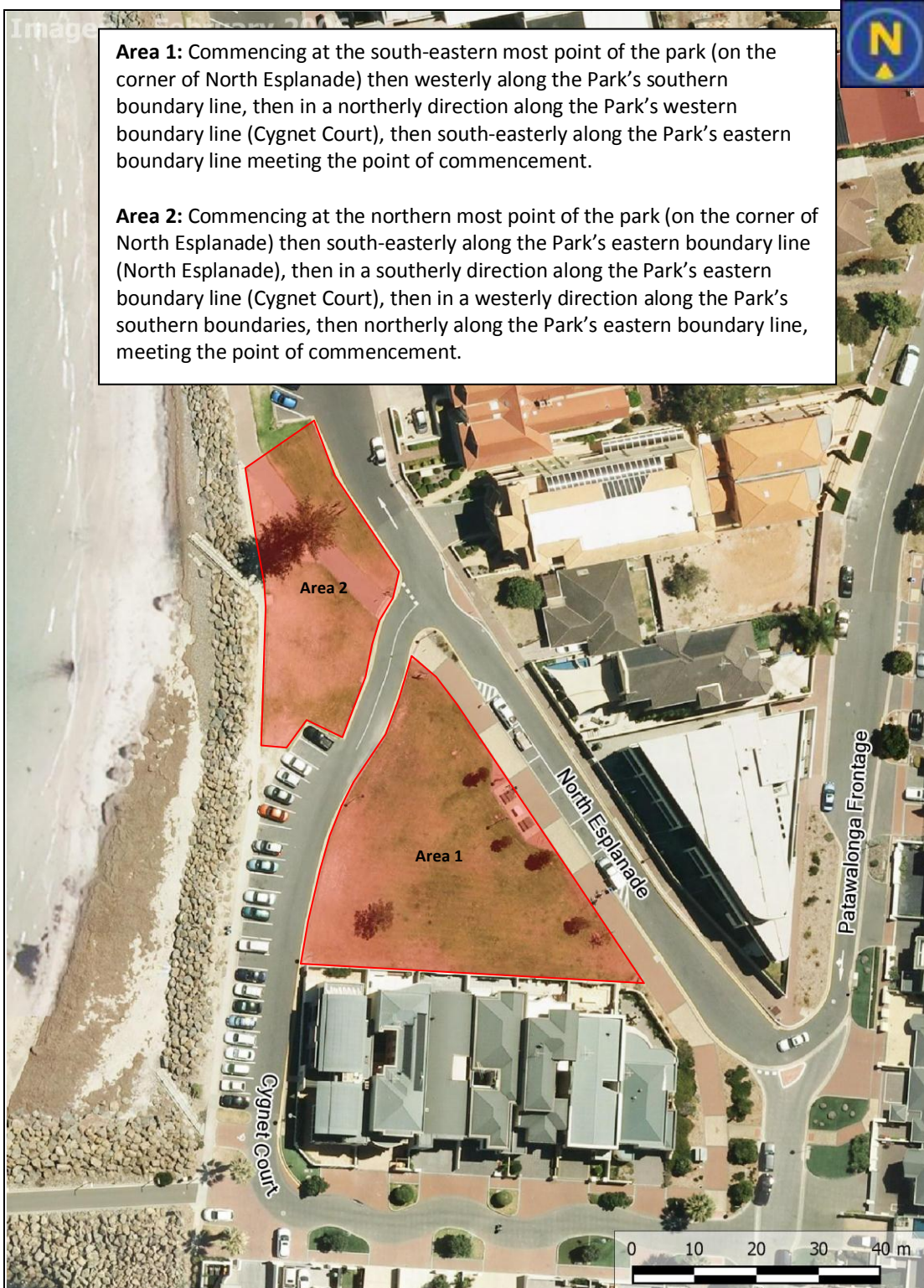
About this Document
This map has been created for the purpose of showing basic locality information and is a representation of the data currently held by The City of Holdfast Bay. This information is provided for private use only.



City of Holdfast Bay

Tarniwarra Park Australia Day 2014 Dry Area

Map Scale: 1:1,017
Created by user
Wednesday, 26 September



About this Document

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Disclaimer

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Item No: **14.7**

Subject: **BUFFALO RESTAURANT - LICENCE**

Date: 13 August 2013

Written By: Strategic Property Officer

General Manager: Corporate Services, Mr I Walker

SUMMARY

During a representation to Council on 23 July 2013, Mr Finlayson, representing Buffin Pty Ltd, advised that the maintenance costs for the Buffalo are substantially higher than expected and this was made apparent by part of the external structure 'falling off'. Mr Finlayson also advised that his company, Buffin Pty Ltd, is not able to support the maintenance cost for the Buffalo to keep The Buffalo operating and short of the City of Holdfast Bay purchasing the vessel in its current condition Mr Finlayson will commence closing the business with the doors finally being closed at the end of February 2014.

RECOMMENDATION

That Council note this report and provide direction to Administration on the future of the Buffalo.

COMMUNITY PLAN

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COUNCIL POLICY

Nil

STATUTORY PROVISIONS

Local Government Act, 1999.
Retail and Commercial Leases Act, 1995.

BACKGROUND

The lease to Buffin Pty Ltd is what is termed a 'ground licence', that is, the land is owned by the City of Holdfast Bay and the Buffalo and associated infrastructure is owned by Buffin Pty Ltd.

On 28 August 2012, by way of a confidential report, Council approved the transfer of the licence for the Buffalo to Buffin Pty Ltd from 1 September 2012, subject to the completion of certain conditions. All of the conditions were satisfied and the transfer was effective from 1 September 2012.

On 23 October 2012 Mr Finlayson, representing Buffin Pty Ltd, made representation to Council regarding the future of the Buffalo.

During the presentation to Council on 23 October 2012 Mr Finlayson sought Council to consider the following;

- Buffin Pty Ltd 'sells' the Buffalo Restaurant to Council for \$1.
- Council provide assistance to Buffin Pty Ltd for maintaining the Buffalo by the way of a one of grant of \$200,000 plus an annual grant of 10% of the audited maintenance cost.
- Requested that Council assist in resolving the car parking issues in the car park area that forms part of the leased area.

On 11 December 2012 Council resolved as follows:

- “1. Rental relief is granted to Buffin Pty Ltd for a period of 3 months from 1 September to 30 November 2012.
2. A rental of \$60,000 per annum be applied from 1 September 2012, subject to annual indexation in accordance with the Consumer Price Index, All Groups, Adelaide.
3. That 80% of the rental received by Council in each year be put towards a maintenance fund, administered by Council, for external maintenance on the condition that the Buffalo remain on its current site.
4. This arrangement be reviewed in the event the lease is assigned or at the expiration of the current lease.”

On 12 February 2013 a rescission motion was passed as follows:

- “1. Rental relief is granted to Buffin Pty Ltd for a period of 3 months from 1 September to 30 November 2012.
2. A rental of \$60,000 per annum is applied from 1 September 2012, subject to annual indexation in accordance with the Consumer Price Index, All Groups, Adelaide.
3. That 80% of the rental received by Council in each year be put towards a maintenance fund, administered by Council, for external maintenance on the condition that the Buffalo remain on its current site, for a period not exceeding three years.
4. This arrangement, i.e. point 3 above, is reviewed in the event the lease is assigned within this three year period.”

REPORT

Mr Finlayson representing Buffin Pty Ltd made a representation about the buffalo Restaurant to Council on 23 July 2013. During the representation Mr Finlayson advised the following:

1. Maintenance costs for the Buffalo are substantially higher than expected and this was made apparent by part of the external structure 'falling off'.
2. Mr Finlayson is not able to support the maintenance cost for the Buffalo to keep it operating.
3. That Council purchase the Buffalo from Buffin Pty Ltd for \$1.
4. Failing that Mr Finlayson will commence closing the business with the doors finally being closed at the end of February 2014.

The current licence to Buffin Pty Ltd over the land on which the Buffalo is situated continues until 31 December 2021. Whilst the structure of the Buffalo remains on site Buffin Pty Ltd is still responsible for the payment of rental and associated charges. The licence also provides that Buffin Pty Ltd is responsible for the ongoing structural and general maintenance of the Buffalo whilst the vessel remains in-situ.

Buffin Pty Ltd requested that Wallbridge & Gilbert undertake a Structural Condition Report of the Buffalo and this report was finalised on 4 December 2012. The report was a non-destructive site review that did not include the above deck masts, rigging, associated rigging connectors or the upper area 'poop' deck.

Whilst the report stated that the primary internal structural support systems of the general building structure were in a quite reasonable condition it also observed that the externally exposed surfaces, finishes and cladding did not appear to be well maintained. There were numerous areas of external timber cladding elements that were fraying, detached and or loose from the supporting structure and in a generally dilapidated state.

From statements made by Mr Finlayson it is clear that the external exposed surfaces of the Buffalo are in need of a major upgrade or replacement is required. It should be noted that the Buffalo does not meet current Development Act or Building Code of Australia standards for accessibility.

The options available for Council to consider are as follows:

1. *Continue the Lease Arrangement as Previously Agreed*

Buffin Pty Ltd has clearly stated that it does not wish to continue with the current arrangement as the costs to maintain the Buffalo are substantially higher than when the changes were made to the lease. To continue with the current arrangement will most probably result in further negotiations being undertaken regards to continuance of the lease.

2. *Buffin Pty Ltd to Investigate Whether Any Other Party Would Be Interested In Taking of the Buffalo and Restoring It.*

From information provided by Buffin Pty Ltd it appears that a substantial amount of funds will be required to restore the Buffalo. Under current Development Act and Building Code of Australia guidelines this would include alterations to provide accessibility to the vessel. Such work may require the installation of a lift or ramps. Due to the construction and design of the Buffalo it is not known if such accessibility could be achieved.

3. *Terminate the Lease with Buffin Pty Ltd and Council Take over the Management and Maintenance of the Buffalo*

Under the current lease the Buffalo is owned by Buffin Pty Ltd. Again it appears from advice received from Buffin Pty Ltd and the previous Structural Condition Audit undertaken by Wallbridge & Gilbert that substantial funding would be required to restore the Buffalo. Also a review would need to be undertaken as to any future use that the Buffalo could be used for.

4. *Allow Buffin Pty Ltd to terminate the lease early and under the provisions of that lease remove all infrastructure from the leased area.*

As mentioned above from information provided by Buffin Pty Ltd it appears that a substantial amount of funds will be required to restore the Buffalo. Under current Development Act and Building Code of Australia guidelines this would include alterations to provide accessibility to the vessel. Such work may require the installation of a lift or ramps. Due to the construction and design of the Buffalo it is not known if such accessibility could be achieved.

The removal of the Buffalo will enable this area to be returned to open space for use by the whole community.

5. *Undertake a Full Condition Audit of the Buffalo*

Such a report would include all aspects including all electrical, mechanical, hydraulic systems etc. review and non-compliances to the Building Code of Australia and provide a further report back to Council on the completion of this report. The costs to undertake such a report are estimated to be \$8,500, ex GST.

BUDGET

Should this offer be accepted any rental payable to Council under the terms of the existing lease will cease as at 30 June 2014.

LIFE CYCLE COSTS

The Lessee is responsible for all structure and general maintenance and removal of the built form at the end of the lease under the terms and conditions of the current lease.