

## 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 10 September 2019 at 7.00pm**

Howard Lacy  
ACTING CHIEF EXECUTIVE OFFICER



## Ordinary Council Meeting Agenda

### 1. OPENING

*The Deputy Mayor will declare the meeting open at 7:00pm.*

### 2. KAURNA ACKNOWLEDGEMENT

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

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

### 3. PRAYER

*Heavenly Father, we pray for your presence and guidance at our Council Meeting. Grant us your wisdom and protect our integrity as we carry out the powers and responsibilities entrusted to us on behalf of the community that we serve.*

### 4. APOLOGIES

4.1 Apologies Received

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 27 August 2019 be taken as read and confirmed.**

Moved Councillor \_\_\_\_\_, Seconded Councillor \_\_\_\_\_

**Carried**

### 8. PUBLIC PRESENTATIONS

#### 8.1 Petitions

8.1.1 Petition – ‘The Exhibition’ Hosted by Dads Warehouse (Report No: 339/19)

8.2 Presentations - Nil

**8.3 Deputations**

8.3.1 Mr Chris George  
*Deputy Mayor Patton has approved a deputation from Mr Chris George in relation to the proposed solar panels for the Broadway Kiosk.*

8.3.2 Mr Trevor Jenkins on behalf of Broadway Kiosk Partners  
*Deputy Mayor Patton has approved a deputation from Mr Trevor Jenkins on behalf of the Broadway Kiosk Partners in relation to the installation of solar panels on the rooftop of the Broadway Kiosk.*

**9. QUESTIONS BY MEMBERS****9.1 Without Notice****9.2 On Notice**

9.2.1 Question on Notice – Angus Neill Reserve Crossing (Report No: 340/19)

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

13.1 Minutes – Audit Committee – 28 August 2019 (Report No: 337/19)

**14. REPORTS BY OFFICERS**

14.1 Items in Brief (Report No: 336/19)

14.2 Broadway Kiosk - Application for Landowner Consent – Installation of Solar Panels (Report No: 334/19)

14.3 Broadway Kiosk Variation to Lease and Liquor Licence (Report No: 335/19)

14.4 Internal Review of Council Decision (Report No: 338/19)

**15. RESOLUTIONS SUBJECT TO FORMAL MOTIONS**

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

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

**17. CLOSURE**

**HOWARD LACY  
ACTING CHIEF EXECUTIVE OFFICER**



Item No: **8.1.1**

Subject: **PETITION – ‘THE EXHIBITION’ HOSTED BY ‘DADS WAREHOUSE’**

Date: 10 September 2019

Written By: Governance and Risk Officer

General Manager: Strategy and Business Services, Ms P Jackson

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## **SUMMARY**

A petition has been received outlining the following concerns:

*“Local Residents and Businesses in the surrounding area are concerned about the happening of the event “The Exhibition” at 13 Byre Avenue, Somerton Park on the 26<sup>th</sup> October 2019.*

*Main concerns are property damage, graffiti, theft, drugs and alcohol abuse and violence, especially as the owner states it will be a reoccurring event. As the event finishes at 2am in the morning, burnouts are also a common occurrence in this area.*

*Enclosed are signatures, names and addresses of residents and business in the surrounding area that will be effected.”*

The 9 pages of the petition received from Mr Lee Newman, which includes 43 signatures meets the relevant criteria for a petition as outlined in the *Local Government (Procedures at Meeting Regulations) 2013*, regulation 10 and Council’s ‘Code of Practice – Meetings Procedures’ clauses 9.1 to 9.3.

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## **RECOMMENDATION**

**That Council note the petition regarding the upcoming event, ‘The Exhibition’ hosted by ‘Dads Warehouse’.**

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## **COMMUNITY PLAN**

Culture: Supporting excellent, efficient operations

**COUNCIL POLICY**

City of Holdfast Bay Code of Practice – Meeting Procedures

**STATUTORY PROVISIONS**

*Local Government Act 1999*

*Local Government (Procedures at Meetings) Regulations 2013*

**BACKGROUND**

On 3 September 2019, Council's Administration received a petition with 43 signatures from Mr Lee Newman. The petition relates to concerns surrounding the upcoming event 'The Exhibition' which will be hosted by 'Dads Warehouse'.

Due to the timing of the event and the proposed number of attendees, the petitioners from surrounding property and business owners are concerned about potential damage, graffiti, theft, drugs and alcohol abuse, violence and burnouts.

Mr Newman and other petitioners are raising these concerns now as they are of the understanding that the event will occur again moving forward.

*Refer Attachment 1*

**BUDGET**

Not applicable.

**LIFE CYCLE COSTS**

Not applicable.

Tuesday 3<sup>rd</sup> September 2019

Chief Executive Officer  
City of Holdfast Bay Council PO Box 19  
BRIGHTON SA 5048

To the Chief Executive Officer

**Re: Petition regarding Event 'The Exhibition' hosted by Dads Warehouse.**

Local Residents and Businesses in the surrounding area are concerned about the happening of the event "The Exhibition" at 13 Byre Avenue, Somerton Park on the 26<sup>th</sup> October 2019.

Main concerns are property damage, graffiti, theft, drugs and alcohol abuse and violence, especially as the owner states it will be a reoccurring event. As the event finishes at 2am in the morning, burnouts are also a common occurrence in this area.

Enclosed are signatures, names and addresses of residents and business in the surrounding area that will be effected.

Kind Regards,

Lee Newman  
Southern Skip Bins, 20 Byre Avenue Somerton Park  
0419 813 213  
Lnewman5@bigpond.com

Item No: **9.2.1**

Subject: **QUESTION ON NOTICE – ANGUS NEILL RESERVE CROSSING**

Date: 10 September 2019

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## **QUESTION**

Councillor Lindop asked the following question:

***“Could Administration please provide an update of the progress and estimated work time line for the installation of the "Wombat" Pedestrian Crossing on the Esplanade at the Angus Neill Reserve in Seacliff”?***

## **ANSWER – General Manager City Assets and Services**

Concept designs are being finalised for the pedestrian crossing at Angus Neill Reserve and should be available mid September 2019. The design will then be referred for community consultation which is expected to take until mid October. The project then needs final design, specifications and tendering which is forecast to be completed by mid to late November. Construction is expected in February/March 2020 with final project delivery by March/April 2020.

Item No: **13.1**

Subject: **MINUTES - AUDIT COMMITTEE – 28 AUGUST 2019**

Date: 10 September 2019

Written By: General Manager Strategy and Business Services

General Manager: Strategy and Business Services, Ms P Jackson

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## **SUMMARY**

The minutes of the meeting of the Audit Committee held on 28 August 2019 are presented to Council for information and endorsement.

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## **RECOMMENDATION**

1. **That the Audit Committee advises Council it has received and considered a Standing Items Report addressing:**
    - **Monthly financial statements**
    - **Audit/Internal control**
    - **Risk management**
    - **Whistleblowing**
    - **Economy and efficiency audits**
    - **Public Interest Disclosure Act 2018**
    - **Audit Committee Meeting Schedule for 2019.**
  2. **That having considered Agenda Item 9.1 Loan Receivables (Report No: 325/19) in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Audit Committee, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of six months and the Chief Executive Officer is authorised to release the documents when the Audited Financial Statements are presented to Council.**
  3. **That having considered Agenda Item 9.2 Internal Audit Services (Report No: 326/19) in confidence under section 90(2) and (3)(b) of the *Local Government Act 1999*, the Audit Committee, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of 12 months and/or the Chief Executive Officer is authorised to release the documents when the contract for services has been finalised and that this order be reviewed every 12 months.**
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## **COMMUNITY PLAN**

A Place that Provides Value for Money

**COUNCIL POLICY**

Not applicable

**STATUTORY PROVISIONS**

*Local Government Act 1999*, Sections 41 and 126

**BACKGROUND**

The Audit Committee is established under Section 41 of the *Local Government Act 1999*, and Section 126 of the *Local Government Act 1999* defines the functions of the Audit Committee to include:

- reviewing annual financial statements to ensure that they present fairly the state of affairs of the council; and
- proposing, and providing information relevant to, a review of the council's strategic management plans or annual business plan; and
- proposing, and reviewing, the exercise of powers under section 130 A; and
- if the council has exempted a subsidiary from the requirement to have an audit committee, the functions that would, apart from the exemption, have been performed by the subsidiary's audit committee; and
- liaising with the council's auditor; and
- reviewing the adequacy of the accounting, internal control, reporting and other financial management systems and practices of the council on a regular basis.

**REPORT**

Minutes of the meeting of Audit Committee held on 28 August 2019 are attached for members' information.

**BUDGET**

Not Applicable

**LIFE CYCLE COSTS**

Not Applicable

**Minutes of the meeting of the Audit Committee of the City of Holdfast Bay held in the Kingston Room, Civic Centre, 24 Jetty Road, Brighton on Wednesday 28 August 2019 at 6:00pm.**

**PRESENT**

**Members**

Presiding Member – Councillor J Smedley  
Councillor R Snewin  
Mr S Spadavecchia  
Mr S Tu  
Ms P Davies

**Staff**

Chief Executive Officer – Mr R Bria  
General Manager Strategy and Business Services – Ms P Jackson  
Manager Finance – Mr J Newton  
A/General Manager Alwyndor – Mr B Capes  
Finance Manager Alwyndor – Ms Lisa Humphrey

**Guest**

Dongju Han from Bentleys

**1. OPENING**

The Presiding Member declared the meeting open at 6.00 pm.

**2. APOLOGIES**

- 2.1 Apologies Received - Nil
- 2.2 Absent - Nil

**3. DECLARATION OF INTEREST**

Members were reminded to declare their interest before each item.

**4. CONFIRMATION OF MINUTES**

**Motion**

**That the minutes of the Audit Committee on 5 June 2019 and the Special Meeting of the Audit Committee on 26 June 2019 be taken as read and confirmed.**

Moved by Councillor Snewin, Seconded by Mr Spadavecchia

**Carried**

**5. ACTION ITEMS**

The Action Items were tabled and discussed.

**6. REPORTS BY OFFICERS****6.1 Standing Items – August 2019** (Report No: 324/19)

The Audit Committee is provided with a report on standing items at each ordinary meeting.

**Motion**

**That the Audit Committee advises Council it has received and considered a Standing Items Report addressing:**

- **Monthly financial statements**
- **Audit/Internal control**
- **Risk management**
- **Whistleblowing**
- **Economy and efficiency audits**
- **Public Interest Disclosure Act 2018**
- **Audit Committee Meeting Schedule for 2019**

Moved Mr Tu, Seconded Mr Spadavecchia

**Carried**

**7. AUDIT COMMITTEE FORWARD AGENDA****8. URGENT BUSINESS – SUBJECT TO THE LEAVE OF THE MEETING**

Mr Spadavecchia asked a question on the article in Indaily regarding climate change risks raised at recent City of Adelaide Council meeting.

The Chief Executive Officer, Mr Bria provided a response.

**9. CONFIDENTIAL ITEMS****9.1 Loan Receivables** (Report No: 325/19)**Motion – Exclusion of the Public – Section 90(3)(d) Order**

- 1. That pursuant to Section 90(2) of the *Local Government Act 1999* Audit Committee hereby orders that the public be excluded from attendance at this meeting with the exception of the Staff in attendance at the meeting in order to consider Report No: 325/19 Loan Receivables in confidence.**
- 2. That in accordance with Section 90(3) of the *Local Government Act 1999* Audit Committee is satisfied that it is necessary that the public be**



excluded to consider the information contained in Report No: 325/19 Loan Receivables on the following grounds:

- d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, as this would prejudice the commercial position who supplied the information.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

3. The Audit Committee is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.

**RETAIN IN CONFIDENCE - Section 91(7) Order**

4. That having considered Agenda Item 9.1 Loan Receivables (Report No: 325/19) in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Audit Committee, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of six months and the Chief Executive Officer is authorised to release the documents when the Audited Financial Statements are presented to Council.

Moved by Councillor Snewin, Seconded by Mr Tu

**Carried**

9.2 **Internal Audit Services (Report No: 326/19)**

**Motion – Exclusion of the Public – Section 90(3)(b) Order**

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 326/19 – Internal Auditor Services in confidence.
2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 211/19 on the following grounds:

- b. pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is

conducting business; or  
proposing to conduct business; or  
would prejudice the commercial position of the Council.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

**RETAIN IN CONFIDENCE - Section 91(7) Order**

2. That having considered Agenda Item 9.2 Internal Audit Services – Report No 326/19 in confidence under section 90(2) and (3)(k) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of 12 months and/or the Chief Executive Officer is authorised to release the documents when the contract for services has been finalised and that this order be reviewed every 12 months.

Moved by Mr Spadavecchia, Seconded by Ms Davies

**Carried**

**8. DATE AND TIME OF NEXT MEETING**

The next meeting of the Audit Committee will be held on Wednesday 9 October 2019 in the Mawson Room, Civic Centre, 24 Jetty Road, Brighton.

**9. CLOSURE**

The Meeting closed at 7.56 pm.

**CONFIRMED      Wednesday 9 October 2019**

**PRESIDING MEMBER**

Item No: **14.1**

Subject: **ITEMS IN BRIEF**

Date: 10 September 2019

Written By: Personal Assistant

General Manager: Strategy and Business Services, Ms P Jackson

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### **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.

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### **RECOMMENDATION**

**That the following items be noted and items of interest discussed:**

1. **Letter to Minister Stephan Knoll regarding heritage protection under the Planning Development and Infrastructure Act 2016 and the subsequent response letter from Minister Stephan Knoll**
  2. **Internal Audit Services**
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### **COMMUNITY PLAN**

Culture: Supporting excellent, efficient operations

### **COUNCIL POLICY**

Not applicable

### **STATUTORY PROVISIONS**

Not applicable

**REPORT****1. Letter to Hon Minister Stephan Knoll regarding heritage protection under the Planning Development and Infrastructure Act 2016 and the subsequent response letter from the Hon Minister Stephan Knoll**

The Chief Executive Officer was asked to write to the Hon Minister Stephan Knoll regarding heritage protection under the Planning Development and Infrastructure Act 2016 with a cc to Stephen Patterson, Member for Morphett, Corey Wingard, Member for Gibson and David Speirs, Member for Black.

*Refer Attachment 1*

The Minister for Transport, Infrastructure and Local Government and Minister for Planning, the Hon Stephan Knoll MP has responded to this letter and is attached for Members' information and interest.

*Refer Attachment 2*

**2. Internal Audit Services**

The term of Council's Internal Auditor, Bentleys expired on 1 August 2019. A select tender process was undertaken in June 2019 to provide internal audit services for a further three years. The tender responses and presentations were considered by the Audit Committee and administration has offered the contract to Galpins. It was considered that Galpins provided the best value for money, with a project pricing schedule that was within Council's budget allocations. Galpins provides consulting to a wide range of clients including local and state government agencies, aged care providers, the not-for-profit sector, superannuation funds and companies. They have a long association with the local government sector and their audit team consists of three partners and eleven qualified staff based in Adelaide and Mount Gambier. Their contract commences from 2 September 2019.

# Attachment 1





[holdfast.sa.gov.au](http://holdfast.sa.gov.au)

Brighton Civic Centre 24 Jetty Road, Brighton SA 5048  
PO Box 19 Brighton SA 5048

P 08 8229 9999 F 08 8298 4561

Glenelg Customer Service Centre and Library  
2 Colley Terrace, Glenelg SA 5045

31 July 2019

Minister for Transport,  
Infrastructure and Local Government  
Minister for Planning  
Stephan Knoll MP  
GPO Box 1533  
Adelaide SA 5001

Dear Stephan Knoll MP,

Council is writing to you to express its concerns with the proposed changes to heritage places under the Planning, Development and Infrastructure (PDI) Act 2016. The State Planning Commission outlined its policy position on heritage and character in the Community and Practitioner heritage guides released in May 2019. The papers outline how heritage properties will be managed, with Heritage Contributory Items currently listed in Council's Development Plan, proposed to have no status under the new PDI Act. Council has significant concerns with the loss of heritage status to properties currently listed as Heritage Contributory Items in our Council's Development Plan.

Within the City of Holdfast Bay there are 534 places listed as Heritage Contributory Items across two Heritage Conservation Areas in Glenelg East, and Glenelg South. These properties play a significant part in retaining the heritage character of these suburbs. With the high number of Heritage Contributory Items in these suburbs, it is evident that these Historic Conservation Areas are an important piece of Glenelg's history that should be retained.

Glenelg has played an important part in the history of South Australia, being the site where South Australia was first proclaimed in 1836. As part of that historical significance, these heritage places provide a visual timeline as to how this area has developed over time.

With the loss of heritage status to properties currently listed as Heritage Contributory Items, it removes the clear and documented process of which properties are important to the heritage character of the area. Without a clear and open process defining which properties are considered worthy of retention to retain the heritage character of these suburbs, it will provide less clarity for future development in these Historic Conservation Areas.

It has been stated by the State Planning Commission that the PDI Act 2016 is being introduced with the aim to improve and stream line the development assessment process from the existing process. By removing the heritage listing of properties it will create ambiguity and provide less certainty and direction for potential applicants. Council's opinion on this is guided by the findings in 13 Hutt Street P/L v Adelaide City Council 2010 SAERDC 52 in which the Courts found in para 21:

*"It follows that references in a Development Plan to heritage value or heritage character are referable only to items on the Register. It would be unfair were it otherwise. If a place contributes to the heritage of the City because it makes a distinctive contribution to the historic character of the City, it is reasonable to expect that it would be on the Register of heritage places."*



*To interpret the Development Plan provisions to infer that there are places not on the Register that are worthy of retention because of the contribution they make to the heritage of the City or their distinctive contribution to the historical character of the City would be to imply that there are other places that are de facto heritage places, the identity of which is not to be revealed until they become the subject of a development application."*

Whilst the findings from the ERD case reference the heritage register in relation to State and Local heritage places, Contributory Items are listed in a Council's Development Plan and noted as being worthy of retention. Without this listed they become unknown, and create issues as outlined in the findings.

Council also acknowledges the report released by the Environment Resources and Development Committee's in regards to its heritage inquiry. The Committee recommended to maintain the heritage listing of Heritage Contributory Items and Historic Conservation as existing until a thorough reviewing of the heritage process is undertaken.

In summing up, Council makes the following recommendations:

- that current heritage classifications and protections including Historic Conservation Zones/Policy Areas and Contributory Items be transitioned in their current form into Generation 1 of the new Planning and Design Code;
- that the State Government implement the recommendations of the final report of the Environment, Resources and Development Committee's Heritage Inquiry; and
- that the State Planning Commission enter into genuine engagement with local government on the detail of the Planning and Design Code as it relates to heritage and character, and in particular demolition control.

Council recommends that the above points are taken into consideration in the final preparation of the Design Code to ensure that heritage properties are appropriately maintained under the new PDI Act 2016. It is considered that this is the most appropriate way to transition heritage properties in the new Planning and Design Code before a detailed analysis is undertaken.

Council advises that in response to your letter dated 2 May 2019, Council is preparing to lodge a Statement of Intent to review the properties currently listed as Heritage Contributory Items in Council's Development Plan.

Yours sincerely,



Roberto Bria  
Chief Executive Officer

cc: Mr Stephen Patterson – Member for Morphett ([morphett@parliament.sa.gov.au](mailto:morphett@parliament.sa.gov.au))  
Mr Corey Wingard – Member for Gibson ([gibson@parliament.sa.gov.au](mailto:gibson@parliament.sa.gov.au))  
Mr David Speirs – Member for Black ([black@parliament.sa.gov.au](mailto:black@parliament.sa.gov.au))

# Attachment 2





19MPL0674



Government  
of South Australia

The Hon Stephan Knoll MP  
Member for Schubert

Mr Roberto Bria  
Chief Executive Officer  
City of Holdfast Bay  
PO Box 19  
BRIGHTON SA 5048

Dear Mr Bria

*Roberto*

Thank you for your letter regarding heritage protection under the *Planning, Development and Infrastructure (PDI) Act 2016*.

The Marshall Liberal Government is wholly committed to the promotion and protection of heritage places in South Australia. Since commencing my role as Minister for Planning after the 2018 State Election, I have approved 208 new local heritage places throughout South Australia, specifically in Mid Murray, the City of Charles Sturt and the Adelaide Hills Council areas.

As to the implementation of the Planning and Design Code, and the future of 'Contributory Items', it is important to note that such items as they currently exist in development plans across the State lack consistent application, and it is in fact the zones and policy areas those items are located within, rather than independent listings themselves, which provide various levels of protection across council areas.

I reiterate my commitment that all of these existing historic conservation zones will transition into the new Planning and Design Code, taking the form of a policy Overlay. By identifying these areas as an Overlay, as opposed to a zone, their status is immediately elevated within the Code. The Overlay will contain policies which seek to protect local heritage values through demolition control (performance assessed), heritage assessment and promotion of adaptive reuse.

The proposed policy framework is to provide clarity and certainty around when demolition can be contemplated, and to ensure that the assessments are fair and consistent across the State when applications are received to undergo thorough consideration. These assessments are yet to be finalised and the Commission is working closely with councils and heritage practitioners to ensure the right balance is achieved.

Nevertheless, whilst 'Contributory Items' will not exist in the new system as individual entities, it does not mean they will not have protection. The intent is that they will not need to be singled out because the Overlay itself will provide them with performance assessed demolition control. It is worth noting that this is consistent with the approach taken in the current system, whereby demolition is considered 'on merit' in the overwhelming majority of cases.

Minister for Transport, Infrastructure and Local Government  
Minister for Planning

Roma Mitchell House Adelaide SA 5000 | GPO Box 1533 Adelaide SA 5001 DX 171  
Tel 08 7109 8430 | Email [ministerknoll@sa.gov.au](mailto:ministerknoll@sa.gov.au)



Furthermore, the Overlay will also help to ensure places which are not currently 'Contributory Items' are redeveloped over time in a way which is sympathetic to the area they are located in, having consideration to heritage values and streetscape characteristics.

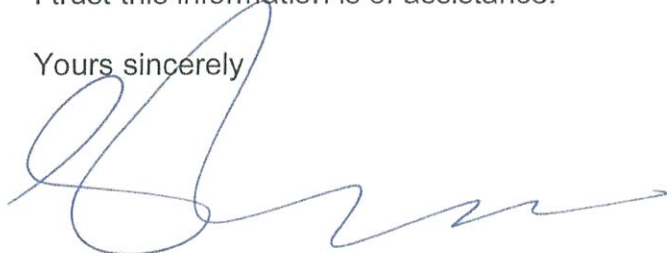
In this context, there is opportunity for councils to undertake a Heritage Development Plan Amendment where they consider existing 'Contributory Items' warrant elevation to the status of a Local Heritage Place; however this pathway is not a necessity to secure their protection.

It should be noted that the new system offers a range of tools not currently available, including the ability to provide additional guidance in the form of Practice Directions and Guidelines, mandating the provision of additional information to support development applications (e.g. heritage assessments and/or contextual analysis), and optional Design Review processes.

I therefore consider that the proposed policy framework, together with the new tools mentioned above, provide the opportunity not only to ensure the ongoing protection of our valued heritage areas, but to further enhance the way in which heritage and character are managed across the State.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Stephan Knoll', with a long horizontal flourish extending to the right.

**HON STEPHAN KNOLL MP**  
**MINISTER FOR TRANSPORT, INFRASTRUCTURE AND LOCAL GOVERNMENT**  
**MINISTER FOR PLANNING**

22 / 8 /2019

Item No: **14.2**

Subject: **BROADWAY KIOSK - APPLICATION FOR LANDOWNER CONSENT –  
INSTALLATION OF SOLAR PANELS**

Date: 10 September 2019

Written By: Team Leader, Commercial and Leasing

General Manager: City Assets and Services, Mr H Lacy

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### **SUMMARY**

The lessees of the Broadway Kiosk are seeking landowner approval from Council to install solar panels on the rooftop of the building in order to increase their electricity efficiency and reduce their carbon footprint.

Community consultation was undertaken with the local residents who live adjacent to the building or who have a view on its roof. A strong majority oppose the proposal.

Provided the solar panels are installed in accordance with Schedule 3 of the Development Regulations 2008, no development approvals or permits are required to proceed with the work and the Kiosk lessees only require Council's landowner consent.

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### **RECOMMENDATION**

**That Council provides landowner consent for the Lessees of the Broadway Kiosk to install solar panels in accord with their submitted proposal.**

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### **COMMUNITY PLAN**

Economy: Supporting and growing local business  
Economy: Making it easier to do business  
Economy: Harnessing emerging technology  
Environment: Building an environmentally resilient city  
Environment: Using resource efficiently

### **COUNCIL POLICY**

Commercial Leasing Policy

## STATUTORY PROVISIONS

Schedule 3 of the *Development Regulations 2008*  
*Local Nuisance and Litter Control Act 2016*

## BACKGROUND

The Broadway Kiosk is located on Council owned land right on the foreshore at 35A South Esplanade Glenelg, and is a successful and popular community café. The building is owned by Council and a commercial lease is in place with the current operators, expiring on 14 November 2028.

At the time of construction in July 2007, the Development Assessment Commission (DAC) imposed conditions for development approval for the building, including no air conditioning or air extraction plant to be placed on the roof of the building.

Despite these conditions, the previous lessees placed an exhaust fan on the roof prompting local residents to obtain a court order for the removal of the fan. This was successfully granted in March 2010 by the Environment, Resources and Development Court (ERD Court).

*Refer Attachment 1*

## REPORT

The lessees of the Broadway Kiosk have sought Council's landowner consent for the installation of an approximately 32.3kW solar system on the roof of the existing kiosk building. The system will comprise 95 panels (each approx. 1956mm×992mm in size) supported on mounting frames on the rooftop of the building. The overall thickness of the panels and mounting frame is less than 100mm above the roof. Details of the proposed installation, including illustrations of its appearance, are included in Attachments 2 and 3.

*Refer Attachments 2 & 3*

The proposed installation would be subject to the following conditions:

- The panels are installed in accordance with Clause 15 of Schedule 3 of the Development Regulations 2008 (not requiring development approval).
- The Broadway Kiosk operators are to incur all installation costs.
- The Broadway Kiosk are responsible for the future maintenance of the solar panels, both in terms of costs and organising regular upkeep/cleaning.
- The solar panels are to be erected in a safe manner by qualified installers (Solar Depot).
- All legislative conditions and relevant Australian standards are to be complied with.
- All conditions of the current lease are to be complied with.
- The lessees are to indemnify the City of Holdfast Bay against any claims, actions, losses or suits etc. that may result in any form as a result of this approval.

## Resident Consultation

Administration consulted with local residents who live adjacent to the Kiosk or who have a direct view of the roof of the building, prior to submitting this report to Council. A copy of the survey letter delivered to affected residents is included in Attachment 4.

*Refer Attachment 4*

Out of 10 surveys issued, a total of 8 were returned with 7 responses against the proposal and 1 response in support. Residents' comments and concerns provided on the surveys are presented in Attachment 5.

*Refer Attachment 5*

In summary, resident concerns were raised in relation to:

- The view from the residents' premises may be affected (eyesore)
- Potential glare
- Risk of the roof rusting
- Disruption for residents from the cleaning/maintenance
- Legal constraint - the residents being under the impression that the 2007 Court Order instructed that no plant or equipment was allowed on the roof.

With the concerns of the residents in mind, Administration sought technical clarification with the solar system supplier regarding specification and environmental impact of the panels. This advice is included in Attachment 3.

*Refer Attachment 3*

In summary, the system supplier advised as follows:

- Visual impact - the panels are installed on a frame which follows the shape of the roof. Overall, the panels and frame are less than 100mm higher than the roof.
- Reflection/ Glare - the proposed panels are anti-glare, with an anti-reflection coating. These same panels are installed at Adelaide Airport. The relative position of the kiosk and properties are such that the afternoon sun will not directly reflect into the front of any properties located to the east of the kiosk.
- Durability - frames are anodized aluminum alloy (no rusting) and are isolated from the kiosk roof through a blue tape membrane and silicone bead. The panels are rated for severe weather resilience and high salt-mist resistance suitable for coastal conditions.
- Disruption - installation duration is estimated at 3 days, depending on weather. Cleaning would occur from a ladder, creating minimal disruption.
- Noise - the panels do not emit noise and the inverter will be placed inside the building.

**Legal constraints**

At the time of construction in 2007, the Development Assessment Commission (DAC) imposed conditions for development approval for the building, including no air conditioning or air extraction plant to be placed on the roof of the building. Subsequently in 2009, residents successfully challenged the installation of a rood mounted extraction system which contravened the terms of the Development Approval through the ERD Court. The ERD Court issued an order in March 2010 requiring that the roof mounted system be removed. Copies of the original DAC Development Consent and conditions and the ERD Court order are provided in Attachment 1.

*Refer Attachment 1*

However, in the case of solar panels, provided they are installed in accordance with Schedule 3 of the Development Regulations 2008, no development approvals or permits are required to proceed with the work. Neither the Council development approval, DAC nor the Court Order prevent the installation of solar panels to the roof. The Kiosk only requires landowner consent.

Advice sought in August 2019 by the Manager, Development Service confirmed that the conditions of the Development Approval and the Court Order would not prevent the applicant from installing solar panels.

**BUDGET**

There are no expenses for Council. The full cost of installation and maintenance of the solar panels will be paid by the Broadway Kiosk lessees.

**LIFE CYCLE COSTS**

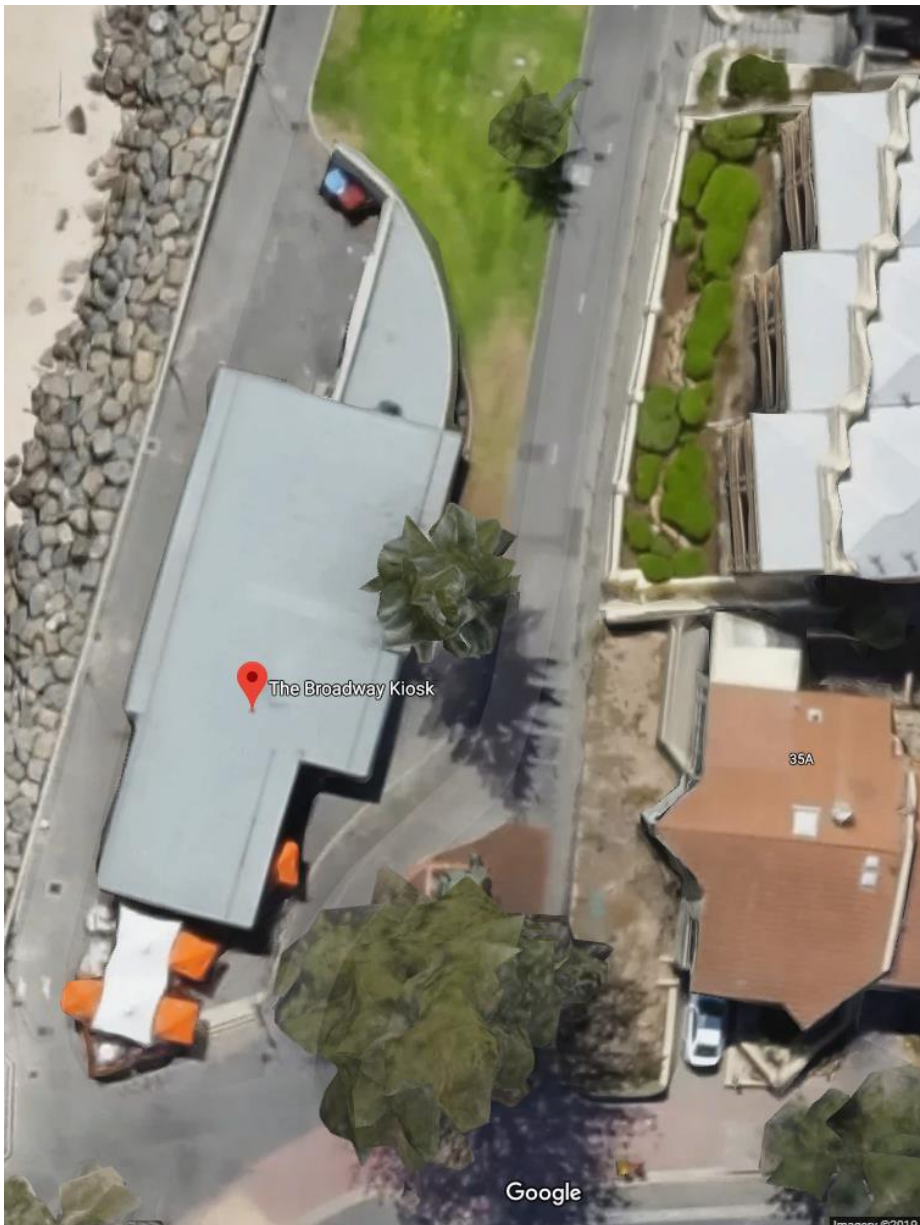
Not applicable.

# Attachment 1





**Broadway Kiosk environment, including neighbouring residences with a view of the roof.**



**Broadway Kiosk: current slightly curved roof, with cream coloured tin roof.**





**Solar panel proposal, mock up: panel size is 2mx1m**



**Example of another curved roof** (Tavern 540 on Port Road), front view:

(note that the Broadway Kiosk is not as curved as this example)



# Attachment 2



## Summary of Solar Proposal for Broadway Kiosk

System size 32.3kW with 95 340W Jinko panels.

Jinko panels are antiglare with an anodized aluminium alloy frames. ( Brochure attached )

Solar Depot framing is 50mm x 50mm box framing which is installed on top of the tin of the roof which has around 12mm flutes making the total height off the roof under 100mm. The frames are anodized aluminium. 14 gauge metal screws with blue tape membrane to prevent the 2 metals touching eliminating corrosion. Silicon is used on screw holes as well. (Frame engineering attached)

Visually the panels would be designed and installed to follow the curve of the roof. The site picture and an example of another curved roof that Solar Depot installed. The curve at Broadway Kiosk is lower than the one in the picture. It's almost flat. (Photo attached )

The majority of the panels are on the western side, facing out to sea and are flat on the very low curved roof. There will be no reflection in the afternoon as the sun is on the west. The panels on the East are not facing the neighbours as the pitch of the roof is too low. They are facing upwards.

The frequency of cleaning the panels would depend on how dirty they get. They can be cleaned from a ground using an elevated access ladder. Our panel cleaner has an 8m reach with his cleaning brush.

The panels do not emit a noise. They are passive. The inverter will be located in the small enclosed entrance in front of the kitchen door. It will not be seen or heard from the street.

The install time would be 3 days depending on weather.

SOLAR DEPOT COMMERCIAL



# Eagle Mono 72

## 325-345 Watt

### MONO CRYSTALLINE MODULE

Positive power tolerance of 0~+3%

ISO9001:2008, ISO14001:2004, OHSAS18001  
certified factory.  
IEC61215, IEC61730 certified products.



(5BB)



## KEY FEATURES



### 5 Busbar Solar Cell:

5 busbar solar cell adopts new technology to improve the efficiency of modules, offers a better aesthetic appearance, making it perfect for rooftop installation.



### PID RESISTANT:

Limited power degradation of Eagle module caused by PID effect is guaranteed under strict testing condition (85°C/85%RH, 96 hours) for mass production.



### Low-light Performance:

Advanced glass and solar cell surface texturing allow for excellent performance in low-light environments.



### Severe Weather Resilience:

Certified to withstand: wind load (2400 Pascal) and snow load (5400 Pascal).

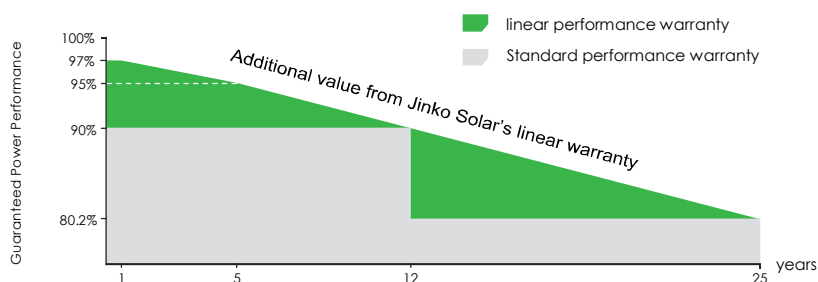


### Durability against extreme environmental conditions:

High salt mist and ammonia resistance certified by TUV NORD.

## LINEAR PERFORMANCE WARRANTY

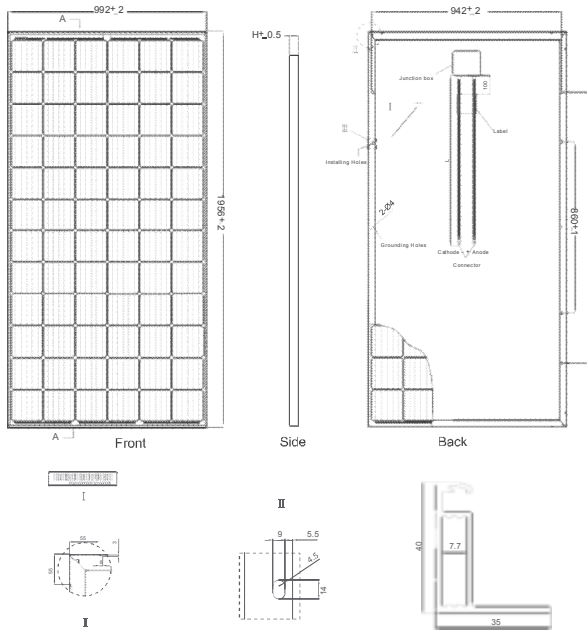
10 Year Product Warranty • 25 Year Linear Power Warranty



POSITIVE QUALITY  
Continuous Quality Assurance



## Engineering Drawings

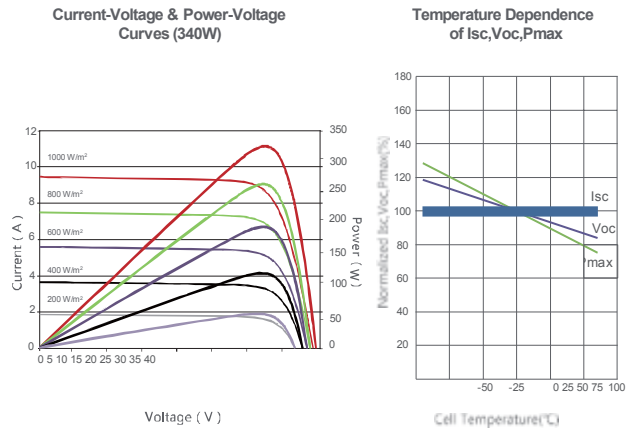


## Packaging Configuration

(Two boxes=One pallet)

26pcs/pallet, 52pcs/stack, 624 pcs/40'HQ Container

## Electrical Performance & Temperature Dependence



## Mechanical Characteristics

Cell Type	Mono-crystalline 156×156mm (6 inch)
No. of cells	72 (6×12)
Dimensions	1956×992×40mm (77.01×39.05×1.57 inch)
Weight	26.5 kg (58.4 lbs)
Front Glass	4.0mm, Anti-Reflection Coating, High Transmission, Low Iron, Tempered Glass
Frame	Anodized Aluminium Alloy
Junction Box	IP67 Rated
Output Cables	TÜV 1×4.0mm², Length:900mm or Customized Length

## SPECIFICATIONS

Module Type	JKM325M-72		JKM330M-72		JKM335M-72		JKM340M-72		JKM345M-72	
	STC	NOCT	STC	NOCT	STC	NOCT	STC	NOCT	STC	NOCT
Maximum Power (Pmax)	325Wp 242Wp		330Wp 246Wp		335Wp 250Wp		340Wp 254Wp		345Wp 258Wp	
Maximum Power Voltage (Vmp)	38.0V 36.3V		38.2V 36.4V		38.4V 36.6V		38.7V 36.8V		38.9V 37.0V	
Maximum Power Current (Imp)	8.55A 6.67A		8.64A 6.75A		8.72A 6.82A		8.79A 6.89A		8.87A 6.98A	
Open-circuit Voltage (Voc)	46.5V 44.5V		46.7V 44.8V		46.9V 45.2V		47.1V 45.5V		47.3V 45.8V	
Short-circuit Current (Isc)	9.03A 7.19A		9.11A 7.24A		9.18A 7.29A		9.24A 7.33A		9.31A 7.38A	
Module Efficiency STC (%)	16.75%		17.01%		17.26%		17.52%		17.78%	
Operating Temperature(°C)					-40°C~-+85°C					
Maximum system voltage					1000VDC (IEC)					
Maximum series fuse rating					15A					
Power tolerance					0~+3%					
Temperature coefficients of Pmax					-0.40%/°C					
Temperature coefficients of Voc					-0.29%/°C					
Temperature coefficients of Isc					0.05%/°C					
Nominal operating cell temperature (NOCT)					45±2°C					

\* STC: ☀ Irradiance 1000W/m² 📏 Cell Temperature 25°C AM=1.5

NOCT: ☀ Irradiance 800W/m² 📏 Ambient Temperature 20°C AM=1.5 🌬 Wind Speed 1m/s

\* Power measurement tolerance: ± 3%



Afternoon sun

North

Reflection path

Concerned  
neighbours



# Attachment 3





29 July 2019

To the Resident  
Broadway and South Esplanade  
Glenelg SA 5045

Dear Sir/Madam,

As landowner, Council has received an application seeking consent for the current tenant of the Broadway Kiosk, to install solar panels on the rooftop of the building in order to increase their electricity efficiency and reduce their carbon footprint.

The City of Holdfast Bay's Strategic Plan includes environmental objectives such as building an environmentally resilient city, using resources efficiently and fostering an environmentally connected community. Whilst the solar panels request from the Broadway Kiosk aligns well with these objectives, Council is also seeking feedback from local residents who have a direct view on the rooftop of the building.

It is worth noting that no development approvals or permits are required to proceed with the work, providing the solar panels are installed in accordance with Schedule 3 of the Development Regulations 2008, which is the current proposal.

The panels would be flat mounted and will not have any glare on them as the angles will be less than 10%. The underside surface of the panels will be less than 100 millimetres above the surface of the roof. The majority of panels will be facing west, not east where residents live. They would be installed by reputable and experienced professionals at the tenant's expense.

A sketch of the proposed changes is provided overleaf for your consideration, as well as a photo of the proposed panel.

To assist Council in this matter, it would be appreciated if you will complete the enclosed survey form and return it in the reply paid envelope by Friday 16 August 2019. Your participation in the survey is appreciated and you will be advised of the survey results and outcomes soon after the closing date.

If you have any queries regarding the proposal, please contact me on 8229 9801.

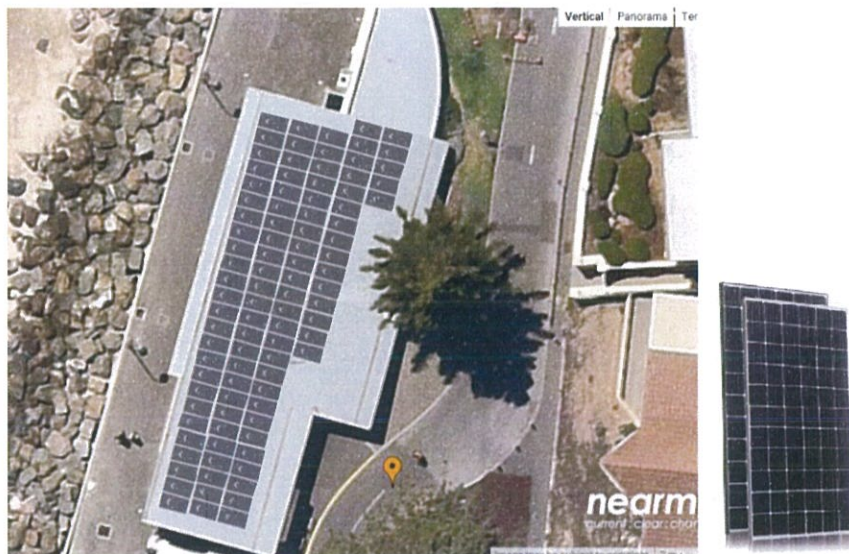
Yours sincerely,



Fabienne Reilly  
**COMMERCIAL AND LEASING TEAM LEADER**



**Proposed installation of Solar Panels on the rooftop of the Broadways Kiosk, Glenelg**





**PROPOSED INSTALLATION OF FLAT MOUNTED SOLAR PANELS  
ON BROADWAY KIOSK ROOFTOP**

☐

I/We **SUPPORT** the proposal as described above

☐

I/We **DO NOT SUPPORT** the proposal as described above

COMMENTS:

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☐

Resident

☐

Property Owner

☐

Business Owner

Name: \_\_\_\_\_

Property Address: \_\_\_\_\_, GLENELG

Contact telephone: \_\_\_\_\_

Email: \_\_\_\_\_

***Thank you for participating in the survey and please return completed form in the reply paid envelope by Friday 16 August 2019.***

*The information you supply in this submission will be used to assist Council in its decision making. This information, including personal information, may be included in a Council report which is available to the public. You can find more information on how the City of Holdfast Bay manages your personal information in the City's Privacy Policy, available on our website*

[www.holdfast.sa.gov.au](http://www.holdfast.sa.gov.au)

# Attachment 4





**BROADWAY KIOSK - SURVEY RESPONSE - SOLAR PANELS, SUMMARY AUGUST 2019**

Support	Object	Comments
	1	<p>As owner of unit X No. 35 South Esplanade, Glenelg South and the nearest residents to the a Broadway KIOSK I strongly object to the proposal to install solar panels on the roof of this KIOSK . When the KIOSK was approved for development, there were a number of conditions, one of which NOTHING was to be installed on the roof. The developer placed an exhaust fan on the roof with council approval and we residents sought a court order for it to be removed which was subsequently granted.</p> <p>The Council then granted approvals for air conditioners to be installed on the roof but needed DAC approval but were denied that approval and ordered the removal of the air conditioners.</p> <p>Then previous owners installed an air extraction unit on the roof for an additional cool room. The council purchased the building after a dispute with the developer and were made aware of the court order and DAC decisions and arranged the removal of this unit.</p> <p>We believe this proposal is against the original development conditions, contrary to both court orders and DAC decisions.</p> <p>We also believe this proposal does not present any evidence that it will align or contribute to any of the objectives stated in your letter, but as it will impact on our property and our lifestyle, and I are vehemently against this proposal.</p> <p>The existing corrugated iron roof of the kiosk, whilst not visually appealing, is far more sympathetic to the coastal environment than these solar panels which are an eyesore and will affect our views to the west which is our sole outdoor living area.</p> <p>The proposal is for a huge number of panels which appears to be designed more as a commercial electricity generating plant than reducing expenses to the KIOSK's commercial operator. Two large Norfolk Island pines shade this rooftop in the morning and will reduce the efficiency of any solar panels.</p> <p>I believe there are errors in some of the statements made in your letter:</p> <ul style="list-style-type: none"> <li>- the roof of the kiosk is in fact currently angled on the eastern side, not the western, in a way that even if the solar panels are flat mounted at an angle of less than 10%, we cannot see how we won't be impacted by reflection. Our neighbors to the south have installed solar panels and we are impacted by their reflection at certain times of the day. As we live closest to the top of the eastern roof your proposal provides no confidence there will be no impact on our property.</li> <li>- your letter claims that the majority of panels will be facing west but ALL of the proposed panels will be clearly seen from all residents on the first and second floors of our building and will be an eyesore.</li> </ul> <p>Your proposal also fails to consider the maintenance and cleaning required of solar panels. We resent this proposal on the basis that installers and maintenance workers will require roof access – and at this time this would enable them to see into our property and create additional, unwanted noise impacts when performing maintenance.</p> <p>If an environmentally sensitive development was a goal, then a commercial food and beverage operation on the beachfront which operates energy-hungry catering equipment would not be a piroity.</p>
	1	<p>As my neighbour mirrors my own objections, I will use his letter and sign it in agreement: To whom it may concern:</p> <p>As owner of unit X No. 35 South Esplanade, Glenelg South and the nearest residents to the a Broadway KIOSK I strongly object to the proposal to install solar panels on the roof of this KIOSK</p> <p>When the KIOSK was approved for development, there were a number of conditions, one of which NOTHING was to be installed on the roof. The developer placed an exhaust fan on the roof with council approval and we residents sought a court order for it to be removed which was subsequently granted.</p> <p>The Council then granted approvals for air conditioners to be installed on the roof but needed DAC approval but were denied that approval and ordered the removal of the air conditioners.</p> <p>Then previous owners installed an air extraction unit on the roof for an additional cool room. The council purchased the building after a dispute with the developer and were made aware of the court order and DAC decisions and arranged the removal of this unit.</p> <p>We believe this proposal is against the original development conditions, contrary to both court orders and DAC decisions.</p> <p>We also believe this proposal does not present any evidence that it will align or contribute to any of the objectives stated in your letter, but as it will impact on our property and our lifestyle, and I are vehemently against this proposal.</p> <p>The existing corrugated iron roof of the kiosk, whilst not visually appealing, is far more sympathetic to the coastal environment than these solar panels which are an eyesore and will affect our views to the west which is our sole outdoor living area.</p> <p>The proposal is for a huge number of panels which appears to be designed more as a commercial electricity generating plant than reducing expenses to the KIOSK's commercial operator. Two large Norfolk Island pines shade this rooftop in the morning and will reduce the efficiency of any solar panels.</p> <p>I believe there are errors in some of the statements made in your letter:</p> <ul style="list-style-type: none"> <li>- the roof of the kiosk is in fact currently angled on the eastern side, not the western, in a way that even if the solar panels are flat mounted at an angle of less than 10%, we cannot see how we won't be impacted by reflection. Our neighbors to the south have installed solar panels and we are impacted by their reflection at certain times of the day. As we live closest to the top of the eastern roof your proposal provides no confidence there will be no impact on our property.</li> <li>- your letter claims that the majority of panels will be facing west but ALL of the proposed panels will be clearly seen from all residents on the first and second floors of our building and will be an eyesore.</li> </ul> <p>Your proposal also fails to consider the maintenance and cleaning required of solar panels. We resent this proposal on the basis that installers and maintenance workers will require roof access – and at this time this would enable them to see into our property and create additional, unwanted noise impacts when performing maintenance.</p> <p>One added comment – the kiosk roof IS sloping EAST – not west, and therefore all panels would need to be significantly lifted to face west and the notion of the panels sitting 10cm above the roof surface is mute!!!</p>
1		
	1	<p>Roof slants towards us furthur blockage of view . plus: 14 August 2019: As the owner of Unit X/XSouth Esplanade, Glenelg South and the nearest residents to the Broadway Kiosk I strongly object to the proposal to install solar panels on the roof of the Kiosk. When the Kiosk was approved for development, there were a number of conditions, one of which NOTHING was to be installed on the roof. The developer placed an exhaust fan on the roof with canal approval and we residents sought a court avder for it to be removed which was subsequently granted. The Council then granted approvals for air Conditioners to be installed on the roof but needed DAC approval which was denied and avdered the removal of the air conditioners.</p> <p>Then previous owners installed an air extraction unit on the roof for an additional cool room. The council purchased the buildings after a dispute with the developer and was made aware of the court order and DAC decisions ; So arranged the removal of this unit. I because this proposal is against the original development conditions, I also believe that this proposal does not present any evidence that it will sign or cortribute to any of the objects stated in your letter, but as it will impact on our property and lifestyle, I am vehemently against this proposal.</p> <p>The existing corrugated iron roof of the Kiosk, Whilst not coastal environment than these solar panels which are on eyesore and will affect our views.</p> <p>The roof of the Kiosk is in fact angled on the Eastern side, not the western, in a way that even if the sloar panels are that mounted at an angle of less than 10%, we cannot see how we won't be impacted by reflection.</p> <p>Your proposal also faints to consider the maintenance and cleaning required. I reject this proposal on the basis that workers will require roof access and create additional, unwanted noise when performing maintenance.</p>
	1	
	1	We Believe that this proposal will not align or contribute to any objectives stated in your letter. It will impact on our Property and lifestyle. Also this proposal is against the original development conditions and is contrary to both court orders and DAC decisions which were made in our favours.
	1	Please review our court order as per phone gave on the 8th August with Fabienne. No plant or equipment on the roof or noise emitting devices. As suggested meet at 35 South Esplanade to discuss as our buildings looks directly down onto Kiosk.
	1	Our home is directly behind the Kiosk. We are concerned about the appearance of the panels and glare from the western sun off the angles. The Kiosk roof is curved and therefore the panels are not western facing and actually will/Could accentuate the glare reflection from the setting sun.
1	7	<b>TOTAL</b>

# Attachment 5





**Development  
Assessment  
Commission**

Ref: 110/0622/04 V1  
Contact: Simon Neldner  
Telephone: 8303 0662  
Fax: 8303 0753

5 July 2007

Ms Rebecca Thomas  
Manager - Development Assessment  
City of Holdfast Bay  
PO Box 19  
BRIGHTON SA 5048

<b>SCANNED</b>	
DATE	6/7/07
DOC. NO.	
BUSINESS CONTAINER NO.	110/0622/04
City of Holdfast Bay	

**Re: Development Application No 110/0622/04 V1 – Variation to external materials and fixtures for the new kiosk building, South Esplanade, Glenelg South.**

Please find attached the Decision Notification Form for the aforementioned development.

Under the provisions of Section 34(2)(c) and (d) of the *Development Act 1993*, the Commission has advised the applicant that the building rules assessment can be conducted either by Council or by a private certifier. Pursuant to these provisions the Commission asks Council to finalise the application once Building Rules Consent is granted and issue the required approvals as appropriate, consistent of course, with the Development Plan consent issued by the Commission.

Yours sincerely

Roger Freeman  
**PRINCIPAL PLANNER, ASSESSMENT BRANCH  
DEVELOPMENT ASSESSMENT COMMISSION**

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**DECISION NOTIFICATION FORM**

**Development Number**  
110/0622/04 V1

**FOR DEVELOPMENT APPLICATION**

**DATED:** 9 May 2007  
**REGISTERED ON:** 9 May 2007

**TO:** Mr John Vlachos  
Ergon Holdings P/L  
2A Macumba Avenue  
Lockleys SA 5032

**LOCATION OF PROPOSED DEVELOPMENT:**

**Allotment:** 1 in DP69618  
**Hundred:** Noarlunga

**Street:** South Esplanade  
**CT Volume:** 5960

**Suburb:** Glenelg South  
**Folio:** 352

**NATURE OF PROPOSED DEVELOPMENT:** Variation to original approval DA 110/0622/04 for changes to materials and finishes of construction for a new kiosk building and associated site works at South Esplanade, Glenelg South.

**From** : **DEVELOPMENT ASSESSMENT COMMISSION**

In respect of this proposed development you are informed that:

NATURE OF DECISION	CONSENT GRANTED	NO. OF CONDITIONS	CONSENT REFUSED	NOT APPLICABLE
Provisional Development Plan Consent	GRANTED	9		
Land Division				N/A
Land Division [Strata]				N/A
Provisional Building Rules Consent	STILL REQUIRED			
Public Space				N/A
Other				N/A
<b>DEVELOPMENT APPROVAL</b>	STILL REQUIRED			

No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Notification Form, you must not start any site works or building work or change the use of the land until you have also received notification of a Development Approval.



**Signed:** [ x ] **Delegate of the Development Assessment Commission**

**Date of Decision:** 5 July 2007 [ ] **Sheets Attached**

**Date:** 5 July 2007



## CONDITIONS for Development Application No: 110/0622/04 V1

- 1 That except where minor amendments may be required by other relevant Acts, or by conditions imposed by this application, the development shall be established in strict accordance with the details and plans submitted in development application number 110/0622/04 and the following amended plans submitted on 9 May 2007 that provide details of only those changes related to external materials and finishes for the new kiosk building:

Drawing Number PO7 – Floor Plan / Roof Plan – Revision 1 – Project Number 15031

Drawing Number PO8 – Elevations / Section – Revision 1 – Project Number 15031

- 2 That the southern most section of wall extending for 2.9 metres beyond the southern wall of the kiosk shall be transparent material.
- 3 That no sound shall be emitted from any device on the subject land so as to impair or impinge upon the enjoyment of residents or users of adjoining properties.
- 4 That the development and the site shall be maintained in a serviceable condition and operated in an orderly and tidy manner at all times.
- 5 That all trade waste and other rubbish shall be stored in covered containers prior to removal and shall be kept screened from public view.
- 6 That no air conditioning or air extraction plant or ducting shall be placed on the roof of the building.
- 7 That the hours of operation of the premises shall be restricted to 6am to 10.30pm, seven days a week.
- 8 That all stormwater design and construction shall be in accordance with Australian Standards and recognised engineering best practices to ensure that stormwater does not adversely affect any adjoining property.
- 9 That all external finishes shall have surfaces which are of a low light reflective nature and be of natural colours.



---

Roger Freeman  
Principal Planner  
Development Assessment Commission

**ADVISORY NOTES for Development Application No: 110/0622/04 V1**

- a) Any future proposal for external lighting of the site, shall be designed and constructed to conform with Australian Standards and must be located, directed and shielded and of such limited intensity that no nuisance or loss of amenity is caused to any person beyond the site.
- b) The applicant is encouraged to provide adequate and suitably located bicycle parking facilities in proximity to the kiosk consistent with the Council's cycling strategy.
- c) The applicant should consider the use of appropriate anti graffiti materials in the kiosk's construction.
- d) No signs are to be displayed upon the subject land. If any signs are required, these shall be the subject of a separate application.
- e) You have a right of appeal against the conditions which have been imposed on this Provisional Development Plan Consent or Development Approval.
- f) Such an appeal must be lodged at the Environment, Resources and Development Court within two months of the day on which you receive this notice or such longer time as the Court may allow.
- g) Please contact the Court if you wish to appeal. The Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0300).



---

Roger Freeman  
Principal Planner  
Development Assessment Commission

# DECISION NOTIFICATION FORM

South Australian - Regulation under the Development Act, 1993 (Regulation 42)

**Contact Officer:** Daniel Jellings (Direct No.82299957)

John Vlachos  
C/: Ergon Holdings Pty Ltd  
2A Macumba Avenue  
LOCKLEYS SA 5032

**DEVELOPMENT NO.** 110/00743/07 (110/00622/04)

**DEV APPLICATION DATED** 05/07/2007  
**AND REGISTERED ON** 21/08/2007

**APPLICANT** John Vlachos

**PROPOSAL** Variation to 110/00622/04 (Demolition Of Existing Kiosk And Construction Of A New Kiosk On South Esplanade Reserve) *Variation to external materials and fixtures*

**SUBJECT LAND** 35A South Esplanade GLENELG SA 5045

**CERTIFICATE OF TITLE** Volume: 5960 Folio: 352

**BUILDING CLASS CODE** 6

I am pleased to advise that Council has made a decision in respect of this proposed development.

Nature of Decision	Decision	Dated	No of Conditions
Development Plan Consent	Approved	05/07/2007	Refer attached
Building Rules Consent	Approved	12/07/2007	Refer attached
<b>DEVELOPMENT APPROVAL</b>	<b>APPROVED</b>	<b>21/08/2007</b>	<b>10</b>

## APPEALS

If you are aggrieved by this decision or any condition(s) imposed, Section 86(1)(a) of the Development Act, 1993 provides you with a right of appeal to the Environment, Resources and Development Court. Any appeal must be lodged with the Court and **not** with the Council, **within two months** after receipt of this notice.

For assistance in lodging an appeal, it is suggested that you contact the Court which is located in the Sir Samuel Way Building, Victoria Square, Adelaide or phone the Court on (08) 8204 0300.

**DEVELOPMENT ASSESSMENT COMMISSION (DAC) - DEVELOPMENT PLAN CONSENT  
CONDITION(S):**

- 1 That except where minor amendments may be required by other relevant Acts, or by conditions imposed by this application, the development shall be established in strict accordance with the details and plans submitted in development application number 110/0622/04 and the following amended plans submitted on 9 May 2007 that provide details of only those changes related to external materials and finishes for the new kiosk building:

Drawing Number P07 - Floor Plan / Roof Plan - Revision 1 - Project Number 15031

Drawing Number P08 - Elevations / Section - Revision 1 - Project Number 15031

- 2 That the southern most section of wall extending for 2.9 metres beyond the southern wall of the kiosk shall be transparent material.
- 3 That no sound shall be emitted from any device on the subject land so as to impair or impinge upon the enjoyment of residents or users of adjoining properties.
- 4 That the development and the site shall be maintained in a serviceable condition and operated in an orderly and tidy manner at all times.
- 5 That all trade waste and other rubbish shall be stored in covered containers prior to removal and shall be kept screened from public view.
- 6 That no air conditioning or air extraction plant or ducting shall be placed on the roof of the building.
- 7 That the hours of operation of the premises shall be restricted to 6am to 10.30pm, seven days a week.
- 8 That all stormwater design and construction shall be in accordance with Australian Standards and recognised engineering best practices to ensure that stormwater does not adversely affect any adjoining property.
- 9 That all external finishes shall have surfaces which are of a low light reflective nature and be of natural colours.

**BUILDING RULES CONSENT CONDITION(S):**

**10 NOTIFICATIONS OF CERTAIN STAGES OF WORK - DEVELOPMENT REGS PART 12**

In accordance with regulation 74 of the Development Act, it is the applicant's responsibility to notify council a minimum of one business day prior to the following stages of construction:

- \* the pouring of footings, so as to enable inspection of reinforcement etc;
- \* at completion of structural timber or steel framing;
- \* at completion of the work.

*Please note the Building Rules Assessment for this application has been undertaken by a Private Certifier, which may be subject to conditions. A copy of the Private Certifier's approval is attached to this Development Approval.*

*Any conditions attached to the Private Certifier's approval must be read in conjunction with all conditions (if any) imposed by Council.*

Date of Decision: 21/08/2007  
Signed: \_\_\_\_\_  
Date: 21/08/2007

<input type="checkbox"/>	Development Assessment Commission or delegate
<input checked="" type="checkbox"/>	Council Chief Executive Officer or delegate
<input type="checkbox"/>	Private Certifier
<input checked="" type="checkbox"/>	Sheets Attached

## NOTES

The following notes in relation to this decision are provided for your information.

1. If this is a consent or an approval with conditions: the development must be substantially commenced.  
or  
for land division, you must apply for certificates of approval.  
within twelve months of the date of this notification unless this period has been extended by the Council or the Development Assessment Commission.  
and  
any act or work authorised or required by this notification must be completed within three years of the date of the notification or a longer time as allowed by the Council or the Development Assessment Commission.  
you will require a fresh consent or approval before commencing or continuing the development if you are unable to satisfy these requirements.
2. This consent or approval does not imply compliance with the ETSA (building supply lines) regulations. It is the responsibility of the owner/occupier to ensure compliance with those regulations.
3. This consent or approval does not ensure compliance with the Disability Discrimination Act 1992, and developers will be liable to complaints under that Act. Your attention is drawn to Australian Standard 1428 parts 1 - 4 which provides some technical direction on how to cater for people with disabilities, in addition to matters covered by the Building Code of Australia (BCA).
4. It is the developer's responsibility to ensure that the public area in the near vicinity of the subject land is kept free of any sand, dirt, debris, pallets or other material that may lodge in the public area during the period of demolition, site preparation and construction.
5. A statement of compliance form is attached with this approval. Please note that where any residential work has been undertaken, you are required to complete and return the form to Council at the completion of the building work.
6. Should this development incorporate any development abutting an adjoining property boundary, Council highly recommends you contact the affected neighbour/s to inform them of such building work.
7. **Please Note:** Where it is intended to erect external walls on the boundary, owners are reminded that the face of the external wall must be on the boundary. To avoid violation of neighbour's rights, the onus of proof of the boundary line rests with the owner. This could necessitate a survey being carried out by a licensed surveyor. The owner will need the neighbour's approval to enter their land to carry out any construction or renovation work. Further, barge boards, capping tiles or other fixtures on the boundary wall must not encroach upon the land of the adjoining owner.
8. The applicant is reminded of the requirements of the Fences Act 1975. Should the proposed works require the removal, alteration or repair of an existing boundary fence or the erection of a new boundary fence, a 'Notice of Intention' must be served to adjoining owners. Please contact the Legal Services Commission for further advice on 8463 3555 or refer to their web site at [www.lsc.sa.gov.au](http://www.lsc.sa.gov.au).
9. If the development herein approved involves alterations to an existing cross-over or the construction of a new cross-over, it is recommended that the applicant or beneficiary of this consent contact Council's Regulatory Services Section on 8229 9962 to determine if any parking controls, signs or bays are affected by the development.

<b>CC:</b>	<b>City of Holdfast Bay 24 Jetty Road BRIGHTON SA 5048</b>
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***Please find attached a copy of the Decision Notification Form for your information.***

**NOTE TO OWNER:**

*The Building Rules Assessment of this development has been carried out by a private certifier.*

*You may be aware of this fact, however it is possible that your builder or architect may have had the work assessed by the private certifier without your knowledge. The purpose of this note is to advise you, as the owner of the land, that Council has not assessed the work for compliance with the Building Code of Australia and associated legislation.*

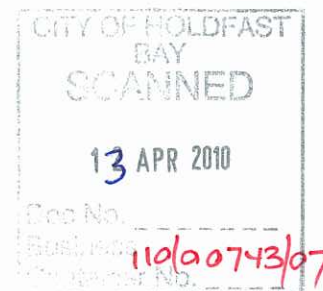
*Council is bound by legislation to accept the Building Rules Assessment of a private certifier, and has issued the Development Approval based on this assessment.*

*Should you have any concerns with the building work whilst in progress, or wish to discuss building related matters, please contact the private certifier for information.*

**In this instance the Private Certifier was Katnich Dodd.**

IN THE ENVIRONMENT, RESOURCES & DEVELOPMENT COURT OF SOUTH  
AUSTRALIA

NO. 360 of 2009



BETWEEN

COMMUNITY CORPORATION NO. 20386 INC  
- and -

CHRIS HAROUS

Appellants

- and -

ERGON HOLDINGS PTY LTD

- and -

C.N.S INVESTMENTS PTY LTD

Respondents

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ORDER

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Commissioner:	Commissioner Mosel
Date of Conference:	Concluding by correspondence on 10 March 2010
Date of Order:	10 March 2010

A. BY CONSENT THE COURT ORDERS that:

- 1 The First and Second Respondents, Ergon Holdings Pty Ltd and C.N.S. Investments Pty Ltd, must demolish and remove the existing kitchen exhaust flue and fan located on the roof of the kiosk building on the land in Certificate of Title Register Book Volume 5960 Folio 352 ("the Land").
- 2 The First and Second Respondents must replace the existing kitchen exhaust flue and fan with an extraction system in accordance with the design proposed in Exhibit A annexed hereto, subject to:
  - 2.1 The discharge louvre being at least 1m<sup>2</sup> in area; and
  - 2.2 The fan being installed away from the elbow bend in the duct work; and



- 2.3 Such further amendments as may be required in the opinion of Bestec Pty Ltd (an independent mechanical services engineer) to ensure the proper functioning of the extraction system, provided that any such amendments achieve or maintain compliance with paragraph 3 of these Orders, and further provided that any such amendments do not require planning authorisation pursuant to the *Development Act 1993* or a consent pursuant to any other legislation.
3. The extraction system referred to in paragraph 2 must be designed, constructed and installed so that noise emitted from the system does not exceed 40 dB(A) measured at 1.2 metres above ground level, at all residential property boundaries.
4. Orders 1, 2 and 3 must be complied with within 8 weeks from the date of these Orders.
5. Each party shall bear their own costs.
6. A copy of Exhibit A shall remain on the Court file.
- B. Exhibit A shall remain on the Court file.
- C. The operative date of consent hereby granted is 10 March 2010.



.....  
DEPUTY REGISTRAR



Item No: **14.3**

Subject: **BROADWAY KIOSK – VARIATION TO LEASE AND LIQUOR LICENCE**

Date: 10 September 2019

Written By: Manager Development Services

General Manager: City Assets and Services, Mr H Lacy

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### **SUMMARY**

The lessees of the Broadway Kiosk are seeking Council approval, as landlord, to apply for a variation to the current lease to allow for an application for an amendment to conditions of the liquor licence. Currently, the Kiosk is licenced to serve alcohol on Sunday from 11:00am. The proposal seeks to extend the liquor licence by three-hours to serve alcohol from the earlier time of 8:00am.

The restriction on serving alcohol is found in both the lease and the liquor licence pertaining to the Kiosk, and hence the need to vary both. Prior to considering the merits of the proposal, it is important to gauge the views of the community. This report seeks Council's approval to undertake public consultation on the issue of extending the commencement of the licenced period on Sundays by 3 hours, from 11.00am to start at 8.00am and variation to the lease for the Broadway Kiosk.

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### **RECOMMENDATION**

1. **That Council authorises Administration to undertake community consultation on amending the Broadway Kiosk lease to allow an application for variation to the liquor licence to serve alcohol from 8:00am on Sunday.**
  2. **That a report is brought back to Council with the results of the community consultation, to inform a decision as to whether the Broadway Kiosk lease should be amended to allow an application for a variation to the liquor licence.**
- 

### **COMMUNITY PLAN**

Placemaking: Creating lively and safe places

Community: Fostering an engaged and contributing community

Culture: Supporting excellent, efficient operations

**COUNCIL POLICY**

Community Consultation and Engagement Policy  
Liquor Licensing Policy

**STATUTORY PROVISIONS**

*Liquor Licensing Act 1997*  
*Retail and Commercial Lease Act 1995*

**BACKGROUND**

The current Broadway Kiosk lease is for a period of twenty one (21) years from 15 November 2007 to 14 November 2028, and initially prohibited the use of the premises as a restaurant or licenced premises.

At its meeting held on 23 June 2015, and following a period of public consultation, Council acceded to a request from the lessees of the Broadway Kiosk to amend the lease to allow for an application for a liquor licence. A subsequent application for a liquor licence was made, which was granted approval for an interim period of twelve (12) months, then extended permanently following a period of compliance. The liquor licence is formally described as a 'Restaurant Licence' which requires patrons to be served and consume alcohol seated at a table in conjunction with a meal (i.e. not a public bar).

The Deed of Variation enabling the liquor licence application and the terms of the approved liquor licence are provided as Attachment 1 to this report.

*Refer Attachment 1*

**REPORT**

The lessees of the Broadway Kiosk are seeking Council approval, as landlord, to apply for a variation to the current lease to allow for an application for an amendment to the liquor licence on Sunday. Preliminary details of that application are referred to in the email presented in Attachment 2.

*Refer Attachment 2*

Currently, the Kiosk is open from 7:00am on Sunday but is only licenced to serve alcohol from 11:00am. The proposal seeks to extend the liquor licence by three-hours to commence at the earlier time of 8:00am. As such, the extension sought for the liquor licence will operate within the existing opening times for the Kiosk, but outside the conditions for serving alcohol prescribed in the lease.

It should be noted that the current conditions contained in both the lease and the liquor licence allows the serving of alcohol from 8:00am to 10:00pm on every other day of the week (Monday to Saturday) with the exception of Sunday, being 11:00am to 10:00pm.

Notwithstanding the relatively minor variation sought to the liquor licence (particularly considering that the Kiosk is already open and serving meals to patrons from 7:00am on Sundays), the Broadway Kiosk is located very close to a residential area, and nearby residents have raised concerns about the general amenity and noise emanating from the site from time to time. It is therefore important to ensure that the views of the community are understood prior to making a decision as to whether to vary the lease to allow for an application to extend the period for the serving of alcohol on a Sunday morning. Council's Community Consultation and Engagement Policy will guide the engagement process and extent of notification.

**BUDGET**

All costs for community consultation are absorbed within the existing Annual Business Plan.

**LIFE CYCLE COSTS**

There are no additional costs to Council in adopting the recommendations. Should there be a future need to prepare a Deed of Variation to the lease, the cost of preparing and registering the documentation will be borne by the lessee.

# Attachment 1





# Restaurant Licence

## 50628125

Liquor Licensing Act 1997

**PREMISES NAME:** BROADWAY KIOSK

**PREMISES ADDRESS:** Corner Broadway and South Esplanade, Glenelg South

**LICENSEE:** Gaetano Maniscalco and Trevor Graham Jenkins

**LICENSED PREMISES:** Outlined in red on the approved plan.

**AUTHORISATION:** To sell and supply liquor in accordance with Section 34(1)(a) & (b) of the Liquor Licensing Act 1997 and any other conditions of this licence.

**TRADING HOURS:** Monday to Saturday 8am to 10pm  
Sunday 11am to 10pm

**CAPACITIES:** Area 1 100 persons  
Area 2 50 persons

The overall capacity is limited to 100 persons.

**CONDITIONS:**

This approval is granted on an interim 12 month period (Refer to order B196890). I grant the parties liberty to apply to bring the matter back on if the need arises.

Date of issue: 25 NOVEMBER 2015

LIQUOR AND GAMBLING COMMISSIONER

**DATED** 12th August **2015**

**BETWEEN**

**CITY OF HOLDFAST BAY**

("the Lessor")

**AND**

**GAETANO MANISCALCO  
TREVOR GRAHAM JENKINS and  
BRODY JOSHUA HENDERSON**

("the Lessees")

## **DEED OF VARIATION OF LEASE**

**"Broadway Kiosk"**

PP:P200721\_430

THIS DEED is made the 12th day of August 2015

BETWEEN: CITY OF HOLDFAST BAY (ABN 62 551 270 492) of PO Box 19, Brighton in the State of South Australia ("the Lessor") of the one part

AND: GAETANO MANISCALCO of 7a Maturin Road, Glenelg in the said State in his own capacity and as Trustee of the *Isabella Trust*, TREVOR GRAHAM JENKINS of 35 Russell Street, Glenelg North in the said State in his own capacity and as Trustee of the *Jenkins Family Trust* and BRODY JOSHUA HENDERSON of 7a Maturin Road, Glenelg in the said State ("the Lessees") of the other part

**RECITALS:**

- A. This Deed is supplemental to a Memorandum of Lease ("the Original Lease") dated the 19<sup>th</sup> day of October 2009 between the Lessor as lessor of the one part and CNS Investments Pty Ltd (ABN 98 100 220 193) and Ergon Holdings Pty Ltd (ABN 38 069 500 750) ("the Original Lessees") as lessees of the other part as varied by a Deed of Assignment of Lease dated the 14<sup>th</sup> day of October 2013 whereby the Original Lessees assigned their interest in the Original Lease to Diego James Fedele and the said Gaetano Maniscalco and a further Deed of Assignment of Lease dated the 1<sup>st</sup> day of December 2014 whereby the said Diego James Fedele assigned his interest in the Original Lease to the Lessees.
- B. By virtue of the Original Lease and the said Deeds of Assignment, the Lessor has granted to the Lessees a lease of the premises known as "*Broadway Kiosk*" situated at South Esplanade, Glenelg South in the said State and being that portion of the land comprised in Certificate of Title Register Book Volume 5960 Folio 352 marked "Kiosk" in Filed Plan FPX 49015 ("the Premises"), for a term commencing on the 15<sup>th</sup> day of November 2007 and expiring on the 14<sup>th</sup> day of November 2028.



- C. In this Deed "the Lease" means the Original Lease as varied by the said Deeds of Assignment.
- D. Under the terms of the Lease, the Permitted Use of the Premises does not allow them to be used as "a restaurant or licensed under the *Liquor Licensing Act 1997* or similar legislation".
- E. The Lessees have requested the Lessor to agree to a variation of the Lease so as to permit the Lessees to apply for a licence to sell liquor from the Premises at certain times, as set out in this Deed.

**NOW IT IS HEREBY AGREED** as follows:

- 1. The parties acknowledge the accuracy of the Recitals, which form part of this Deed.
- 2. The terms of the Lease are hereby amended by inserting the following additional clause after Clause 13:

**"14. LIQUOR LICENCE**

Subject to Item 9 of the Schedule, the Premises may be operated as licensed premises pursuant to the *Liquor Licensing Act 1997* and the following provisions shall apply:

- 14.1 The Lessee must maintain such Licence under the *Liquor Licensing Act* and such other necessary licences, permits, approvals and consents as may be necessary to carry on business contemplated by the Permitted Use. Following the termination or expiry of this Lease the Lessee must transfer to the Lessor or the nominee of the Lessor at the cost of the Lessee all such licences, permits, approvals and consents.
- 14.2 The Lessee must not do or omit to do or allow to be done or omitted to be done any act whereby any licence issued under the *Liquor Licensing Act* in respect of the Premises or in respect of any business conducted thereon may be liable to be suspended, forfeited or removed from the Premises or in any way prejudicially affected or whereby any offence is committed under the *Liquor Licensing Act*.



- 14.3 The Lessee must not apply to the Licensing Authority of South Australia ("the Licensing Authority") or to any other authority to increase, decrease or restrict the hours of trading permitted under any licence in respect of the Premises without the prior written consent of the Lessor.
- 14.4 The Lessee must use the Lessee's best endeavours to maintain and expand the business conducted on the Premises to which such licence relates and to preserve and improve the character thereof.
- 14.5 The Lessee must at the Lessee's own cost at all times during the Term comply with all of the requirements of the *Liquor Licensing Act* and every order and requirement relating to the Premises made or imposed by the Licensing Authority. In default thereof, it shall be lawful for but not obligatory upon the Lessor to enter the Premises and to comply with observe, carry out and perform such order or requirement. All costs incurred by the Lessor in so doing must be repaid by the Lessee to the Lessor upon demand. Any work carried out by the Lessee pursuant to any such order or requirement shall be carried out to the reasonable satisfaction of the Lessor and the Lessor's architect PROVIDED THAT the Lessee shall not be responsible for any structural works except if same are required due to any act or omission of the Lessee or of any persons for whose actions the Lessee is responsible.
- 14.6 Subject to the written consent of the Lessor having first been obtained, the Lessee must renew any licence issued in respect of the Premises as and when required from time to time.
- 14.7 The Lessee must not remove any licence issued under the *Liquor Licensing Act* in respect of the Premises to other premises.
- 14.8 The Lessee must not transfer any licence issued under the *Liquor Licensing Act* in respect of the Premises without the prior written consent of the Lessor.
- 14.9 The Lessee must during the Term supply to the Lessor within seven (7) days after forwarding the same to the Licensing Authority a copy of every form, letter or application required to be lodged with the Licensing Authority pursuant to the *Liquor Licensing Act*.
- 14.10 The Lessor shall be at liberty at any time during the Term to apply to any supplier of alcohol to the Premises for information as to purchases made by the Lessee from the supplier in the conduct of the business on the Premises. The Lessee undertakes to authorise the supplier to release such information to the Lessor.

14.11 If the Lessee or any person under the control of the Lessee shall receive any summons, complaint or other legal process or any notice or communication from any person or authority relating to the Premises or to any licence issued in respect thereof, the Lessee shall immediately provide to the Lessor necessary particulars of same and all relevant circumstances and events. The Lessee shall not consent to any matter referred to in any such communication nor take any action in relation thereto without first obtaining the written consent of the Lessor. In respect of any such communication and all matters or proceedings arising therefrom the Lessor by solicitors or by counsel shall be entitled to appear in and have the conduct of every such matter and proceedings at the cost, in the name and on behalf of the Lessee. Notwithstanding that the Lessee may also appear in any such matter or proceedings the Lessor may defend or appeal against any decision of any court or other authority in such manner as the Lessor in the discretion of the Lessor may think fit. All costs properly incurred by the Lessor shall be paid by the Lessee to the Lessor on demand. For all the purposes as aforesaid the Lessee HEREBY IRREVOCABLY NOMINATES AND APPOINTS the Lessor the attorney and agent of the Lessee.

14.12 In this clause, "Licensing Authority" means the authority charged with the power to grant licences under the *Liquor Licensing Act 1997* (SA)."

3. The terms of the Lease are hereby further amended by deleting the wording of Item 9 of the Schedule and substituting the following:

"Kiosk/catering service and food and refreshment facilities, including the sale of hamburgers, chickens, hot packs and other take away foods and such other items as the Lessor may approve in writing from time to time, provided that the Premises may only be operated as a licensed restaurant under the *Liquor Licensing Act 1997*, or similar legislation, during such periods, on such days and during such hours as the Lessor may from time to time approve in writing."

4. For the purposes of Item 9 of the Schedule of the Lease, the Lessor hereby approves the operation of the Premises as a licensed restaurant under the *Liquor Licensing Act 1997* for a period of 12 months only, commencing on the date that a licence is granted to the



Lessees under that Act on the basis that the serving of alcohol on the Premises is only permitted between the hours of 8.00am and 10.00pm Monday to Saturday and between the hours of 11.00am and 10.00pm on Sunday.

5. All costs of and incidental to the preparation and execution of this Deed are to be borne and paid by the Lessees.

**EXECUTED** by the parties as a Deed.

**THE COMMON SEAL** of **CITY OF HOLDFAST BAY** was affixed in accordance with a resolution of the said Corporation in the presence of:



*[Signature]*

Mayor

*[Signature]*

Chief Executive Officer

**SIGNED SEALED AND DELIVERED** by **GAETANO MANISCALCO** in the presence of:

*[Signature]*

*[Signature]*

Witness

**SIGNED SEALED AND DELIVERED** by **TREVOR GRAHAM JENKINS** in the presence of:

*[Signature]*

*[Signature]*

Witness

SIGNED SEALED AND DELIVERED by  
BRODY JOSHUA HENDERSON in the  
presence of:

)  
)  
)



Witness

# Attachment 2



**From:** Broadway Kiosk [<mailto:broadwaykiosk5045@gmail.com>]  
**Sent:** Tuesday, 6 August 2019 11:30 AM  
**To:** Fabienne Reilly <[FReilly@holdfast.sa.gov.au](mailto:FReilly@holdfast.sa.gov.au)>  
**Subject:** Fwd: Broadway Kiosk Liquor license change request - BXROG

Hi Fabienne,

We are looking to change our liquor license time for Sundays. Currently we are permitted to serve alcohol from 11am. We would like to serve alcohol at 8am, to align with every other day of the week.

I've attached the letter of correspondence from Liquor and Gaming SA.  
Looking forward to hearing from you.

Angela and Trevor

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**From:** AGD:CBS Liquor and Gaming <[LiquorAndGaming@sa.gov.au](mailto:LiquorAndGaming@sa.gov.au)>  
**Date:** Tue, Jul 2, 2019 at 8:57 AM  
**Subject:** RE: Broadway Kiosk Liquor license change request - BXROG  
**To:** Broadway Kiosk <[broadwaykiosk5045@gmail.com](mailto:broadwaykiosk5045@gmail.com)>

Hi Trevor,

The fee for an application to vary trading hours is \$619. We will also require you to submit a letter from the landlord consenting to the proposed changes or a copy of the Certificate of Title (CT) if the licensee owns the premises.

Once the application is submitted we will also require a letter of Council consent to confirm that there are no restrictions placed on any previous Development Approvals that restrict the trading hours permitted for the premises. It may be worthwhile contacting Council in the first instance to confirm whether the proposed hours are currently permitted so as to determine whether any further Development Application needs to be submitted with Council.

If you are happy to proceed to submitting the application prior to contacting Council, please resubmit the application form along with payment and evidence of tenure (landlord consent or CT). I have attached a credit card authorisation form for you to complete.

Regards

**Ben Rogers**  
**Senior Operations Officer**  
Consumer and Business Services

Item No: **14.4**

Subject: **INTERNAL REVIEW OF COUNCIL DECISION**

Date: 10 September 2019

Written By: Team Leader Governance

General Manager: Strategy and Business Services, Ms P Jackson

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## **SUMMARY**

A request for an internal review under section 270 of the *Local Government Act 1999*, has been received for a decision that Council made in relation to a 'No Right Turn' from the Beachouse Car Park to Colley Terrace, Glenelg.

The matter has been prepared for Council to review in accordance with its Internal Review of Council Decisions Policy, and the relevant details are contained within this report.

Council must review its original decision and make a determination as to whether the decision was made in accordance with the relevant policies and procedures and whether the decision was reasonable.

---

## **RECOMMENDATION**

1. **That the original decision of Council be upheld as it was a reasonable decision and no further action is required.**

**OR**

1. **That the original decision of Council be reversed as it was not a reasonable decision and remedial action be taken as follows:**  
  
**(1).....**  
**(2)..... .**
  2. **Council authorise Administration to prepare a letter to the applicant to advise of the outcome of Council's Internal Review.**
-



## COMMUNITY PLAN

Culture: Providing customer-centred services.

## COUNCIL POLICY

Internal Review of Council Decisions Policy

## STATUTORY PROVISIONS

Section 270 *Local Government Act 1999*

## BACKGROUND

The reports presented to Council in this matter during 2019 are as follows:

Council Meeting Date	Details
23 April 2019	<p>Item 8.1.1  <u>Petition Report</u>- (Report No: 180/19)            Petition- Review of Road Restrictions at Colley Terrace, Glenelg.            The full petition was provided to the Elected Members via the HUB, which consisted of 19 pages with 37 signatures and Council's resolution was:  <i>"Council note the petition regarding a review of road restrictions on Colley Terrace, Glenelg from Mr R Carbone of 706/19 Holdfast Promenade, Glenelg."</i></p>
14 May 2019	<p>Item 11.1  <u>Motion on Notice Requesting Review Report</u>- (Report No: 156/19)            Motion on Notice- Permitting Right Turns from the Beachouse Car Park onto Colley Terrace.            Councillor Patton proposed a motion and Council's resolution was:  <i>"That Administration review the current No Right Turn restriction that applies to vehicles exiting the Beachouse Underground Car Park onto Colley Terrace at Glenelg with a view to removing the restriction."</i></p>
9 July 2019	<p>Item 14.4  <u>Review Report</u>- (Report No: 258/19)            Review No Right Turn From Beachouse Car Park to Colley Terrace, Glenelg.            Council's resolution was:  <i>"That Council:</i>            1. <i>Retains the existing No Right Turn prohibition from the Beachouse/Platinum Apartments car park access road to Colley Terrace and that traffic movement remain the same as existing; and</i>            2. <i>Authorise Administration to publish details of Council's decision and that the Head Petitioner be advised."</i></p>

## REPORT

A request for an Internal Review of a Council Decision under Section 270 of the *Local Government Act 1999* was received on 13 August 2019. The request stated the following:

*“One component of the petition which was declined was the provision for Right Turn on to Colley Tce from Platinum and Wilson Public carparks.*

*The Reasons for our review request*

- It may be more beneficial to reduce the high traffic volume on Colley Tce as illustrated below. Should one need to turn right on to Colley Tce they need to drive north down Colley Tce and then return south bound again.  
Note: These actions further add to the already high traffic volume by adding more traffic to Colley Tce, (north and south bound).*
- This current situation is a massive inconvenience.  
Having this Right Turn restriction reviewed/removed, may greatly assist the residents and users of Holdfast Bay Community.”*

The decision under review was made on 9 July 2019 ('the report'), when Council resolved to retain the existing No Right Turn prohibition from the Beachouse/Platinum Apartments car park access road to Colley Terrace, Glenelg and that the traffic movement remain the same as existing ('the decision').

If the decision of Council had been that the No Right Turn restriction be removed, this would enable drivers from the Beachouse/Platinum apartments to turn right onto Colley Terrace and negate the need to turn left in order to turnaround at the roundabout on Anzac Highway (200 metres north) or conduct a safe 'U' turn, in order to travel south on Colley Terrace.

When undertaking an internal review, the main consideration is whether Council, as the original decision maker, complied with the relevant procedural requirements and made an appropriate decision. In reviewing the decision Council must give consideration to the following matters:

Factor for consideration	Administration Comment
The decision must be within a power properly conferred on the decision-maker under the relevant Act	Council has the power to determine the use of traffic control devices under the Instrument of General Approval and delegation to Council, Use of Traffic Control Devices, Road Closure and Granting of Exemptions for Events from the Minister for Transport and Infrastructure dated 22 August 2013.

A decision-maker must consider all matters which are relevant and not take into account matters which are not relevant	Council had the opportunity to consider all the relevant matters detailed in the above three Council reports, opportunity to raise any questions and provide comments for other elected members to consider in relation to the petition, the motion on notice and the review report (see reports detailed above). It is not considered irrelevant information was provided.
A decision-maker must not make a decision or exercise a power or discretion in bad faith or for an improper purpose	There is no evidence that the decision was made in bad faith or for an improper purpose.
A decision-maker must ensure that findings of fact are based on evidence	The information presented to Council came from Council's Traffic Consultant with relevant traffic expertise in order to prepare the report.
Decisions must be reasonable	The decision was made based on the factual information available and balancing the requirements at that location taking into consideration a variety of factors as detailed below.
Those who may be affected by a decision must be accorded procedural fairness	The Petition was provided to the Elected Members via the HUB, with the opportunity for a deputation to be delivered. The deputation was accepted by the Mayor but the Head Petitioner did not proceed with the deputation.
A decision-maker must properly consider the application of existing policies	There are no applicable policies in relation to the decision.
A decision-maker must not exercise a discretionary power at the direction of another person.	There is no evidence that the Council exercised a discretionary power at the direction of another person.

In the report Council was provided with background history in relation to the right turn restriction from 2006/2007, 2013/2014, 2014/2015, 2015/2016, 2018 and 2019.

The review comprised in the Council report dated 9 July 2019 was prepared by Council's experienced Traffic Consultant, who was not involved previously in this matter. This allowed the consultant to objectively consider this matter after new on-site assessments and review of the data available to form a complete review into the request to remove the right hand turn restriction.

The facts presented to Council for consideration in the report, together with relevant data available, included:

- traffic volume and speed along Colley Terrace;
- Stopping Sight Distance (SSD) details;
- Minimum Gap Sight Distance (MGSD) details; and
- crash history.

The 'Review of Existing Right Turn Restrictions' in the report (page 7 and 8) included the following information:

- benefits of existing No Right Turn Restrictions;
- impacts of existing No Right Turn Restrictions;
- considerations for removing the No Right Turn Restriction; and
- impacts of allowing the Right Turn.

The Traffic Consultant Report provided a range of factual information, which was relevant to the assessment, to allow Council to make a reasonable, informed and balanced decision in accordance with its delegations. The prominent consideration was to ensure safety at the location. The data provided was relevant to the assessment and it has not been identified that there is any additional data which could be taken into consideration.

The report conclusion provided a recommendation 'on balance', on the basis of the safety risks identified if the right turn ban were to be removed including increased risk to pedestrians, potential impeded traffic flow and potential impact on a bus parking bay. This was a balanced view provided by administration for Council to consider.

If Council is of the opinion that the original decision was reasonable, no further action is required, and the decision will be upheld by Council and communicated to the applicant.

If Council is of the opinion that the original decision was not reasonable as it did not meet one or more of the above criteria, then Council can provide a remedy or response which is consistent and fair for both the Council and the applicant. The remedy should be appropriate to the failure identified and could include any of the following:

- returning the situation to its original status;
- an explanation;
- an apology or admission of fault;
- a change to policy, procedure or practice;
- a correction to Council records; or
- or financial compensation).

In this matter an appropriate remedy could be for the decision to be reversed and Council to consider the matter based on further information (if it is deemed that additional information would assist Council in this decision) or resolve that the right turn restriction should be removed.

## **BUDGET**

There is no budget implications if the decision is upheld. If the decision is reversed and it is determined the No Right Turn restriction should be removed, it is estimated the cost would be \$2000 (from existing maintenance budgets).

## **LIFE CYCLE COSTS**

Not applicable.