

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 28 February 2023 at 7.00pm

A stylized, handwritten signature in black ink.

**Roberto Bria
CHIEF EXECUTIVE OFFICER**

Ordinary Council Meeting Agenda

1. OPENING

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

2. KAURNA ACKNOWLEDGEMENT

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

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

3. SERVICE TO COUNTRY ACKNOWLEDGEMENT

The City of Holdfast Bay would like to acknowledge all personnel who have served in the Australian forces and services, including volunteers, for our country.

4. 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.

5. APOLOGIES

5.1 Apologies Received

5.2 Absent – Councillor W Miller

6. ITEMS PRESENTED TO COUNCIL

7. 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.

8. CONFIRMATION OF MINUTES

That the minutes of the Ordinary Meeting of Council held on 14 February 2023 be taken as read and confirmed.

9. PUBLIC PRESENTATIONS

9.1 Petitions - Nil

9.2 Presentations - Nil

9.3 Deputations - Nil

10. QUESTIONS BY MEMBERS**10.1 Without Notice****10.2 On Notice**

10.2.1 New Year's Eve – Councillor Fleming (Report No: 57/23)

11. MEMBER'S ACTIVITY REPORTS - Nil**12. MOTIONS ON NOTICE**

12.1 Pedestrian Safety and Traffic Calming Measures – Councillor Smedley (Report No: 58/23)

12.2 Expansion of Existing Glenelg Dry Area – Councillor Patton (Report No: 30/23)

13. ADJOURNED MATTERS - Nil**14. REPORTS OF MANAGEMENT COMMITTEES AND SUBSIDIARIES – Nil****15. REPORTS BY OFFICERS**

15.1 Items in Brief (Report No: 48/23)

15.2 Monthly Financial Report – 31 January 2023 (Report No: 64/23)

15.3 Proposed EPA PFAS Guidelines (Report No: 55/23)

15.4 Single Use Plastics – Proposed 2023 Amendments (Report No: 54/23)

15.5 Proposed Changes to the *Local Nuisance and Litter Control Act 2016* and Variation Regulations (Report No: 63/23)

15.6 Brighton Jetty Sculptures (Report No: 62/23)

15.7 Glenelg Football Club SANFL Tickets (Report No: 51/23)

15.8 Attendance at National General Assembly 2023 (Report No: 56/23)

15.9 Appointment of Behavioural Standards Panel Contact Officer (Report No: 47/23)

15.10 Acting Arrangements in the Absence of Chief Executive Officer (Report No: 50/23)

15.11 Review of Items Held in Confidence (Report No: 49/23)

16. 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.

17. URGENT BUSINESS – Subject to the Leave of the Meeting**18. CONFIDENTIAL ITEMS**

18.1 Electric Vehicle Charging (Report No: 52/23)

Pursuant to Section 83(5) of the *Local Government Act 1999* the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the

Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- d. **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, or to confer a commercial advantage on a third party; and would, on balance, be contrary to the public interest.**

18.2 Council Assessment Panel Appointments (Report No: 60/23)

Pursuant to Section 83(5) of the *Local Government Act 1999* the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- a. **information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).**

18.3 Glenelg Football Club – Naming Rights Agreement (Report No: 70/23)

Pursuant to Section 83(5) of the *Local Government Act 1999* the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- b. **Information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and would, on balance, be contrary to the public interest.**
- d. **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, or to confer a commercial advantage on a third party; and would, on balance, be contrary to the public interest.**

19. CLOSURE



ROBERTO BRIA
CHIEF EXECUTIVE OFFICER

Item No: 10.2.1

Subject: **QUESTION ON NOTICE – NEW YEAR’S EVE – COUNCILLOR FLEMING**

Date: 28 February 2023

QUESTION

Councillor Fleming asked the following questions:

1. ***“What was the State Government financial contribution received for the New Year’s Eve celebrations delivered by Council in 2022?”***
2. ***What was Council’s expenditure for the New Year’s Eve celebrations delivered in 2022?***
3. ***If Council were to match only the 2022 State Government contribution for the 2023 New Year’s event, what could be delivered for the reduced funding?”***

ANSWER – Manager, City Activation

1. Council received \$25,000 as the State Government’s financial contribution from the Department of Premier and Cabinet in 2022 for the New Year’s Eve celebration.
2. In order to deliver the event, Council’s total expenditure was \$290,000, which can be broken down as follows:
 - \$110,000 public safety, which includes expenditure on security guards, additional toilets, safety lighting, fencing and St John triage facility and staff.
 - \$74, 000 entertainment including musicians and fireworks.
 - \$72,000 on staging, which includes stage set up, AV, green room, event power.
 - \$30,000 on staffing which includes Depot overtime (implementing and supervising road closures) and stage manager.
 - \$4,000 on miscellaneous expenditure which includes event signage, etc.

In addition Council received \$10,000 in sponsorship for the event totaling income received at \$35,000, thus the net position for the event was \$255,811.

3. If Council were to match only the 2022 State Government contribution for the 2023 New Year’s event, this would result in a total reduction of budget to deliver the event of \$25,000 (State Government) + \$25,000 (Council Construction) equaling a total of \$50,000. This would not be sufficient to deliver the necessary public safety measures to a satisfactory level. Security contractor costs alone exceeded \$40,000, and this does not include costs of road closure, Depot overtime, first aid, additional toilets or safety lighting.

Item No: 12.1

Subject: **MOTION ON NOTICE – PEDESTRIAN SAFETY AND TRAFFIC CALMING MEASURES – COUNCILLOR SMEDLEY**

Date: 28 February 2023

PROPOSED MOTION

Councillor Smedley proposed the following motion:

1. **That Council installs a raised wombat crossing with amber flashing lights, to replace the existing school crossing on Partridge Street, Glenelg adjacent St Peter’s Woodlands School. The preference is for the lights to be school activated.**
 2. **Administration to bring back to Council a report identifying other needed locations for wombat crossings with lights as appropriate, along local and collector roads within the city, adjacent schools and aged care facilities, particularly Alwyndor. Such report is to suggest prioritised locations for gradual rollout as part of annual budget processes.**
-

BACKGROUND

Increasingly busy collector roads pass by many of our city’s schools and aged care facilities. Installation of such crossings will provide a raised, traffic calming platform, crossing priority for pedestrians (young and old) with lights, highlighted visibility in peak traffic periods.

The need, in the case of schools is I believe evident. With respect to aged care facilities, the intent is to give both residents and their families protection when crossing - Dunrobin Road is perhaps a good example.

Administration Comments

A wombat crossing is a raised 24-hour pedestrian crossing used in areas of high current or future likelihood of pedestrian use. It is not a standard treatment for schools (which are the Emu Crossing that currently exists or a Koala Crossing that includes flashing lights) but can be used in the vicinity of schools. The wombat crossing does not identify any school zones or children present and would replace the existing emu crossing. A reduced speed limit of 40 Km/hr would apply each side of the Wombat Crossing. Administration would investigate radar controlled flashing lights so that they only flash on approach of a driver.

Attachment 1 shows various pedestrian crossings as well as the Partridge Street locality.

Refer Attachment 1

Council has an existing wombat crossing with flashing lights on the Esplanade outside the Brighton Surf Lifesaving club.

The budget estimate would be confirmed after concept design and would include installation, flashing lights, stormwater alterations, services adjustments, and new increased street lighting. Community consultation of adjoining properties as well as stakeholders including emergency services, the school and DIT will be undertaken.

Administration have been working with the school around pedestrian safety improvements and had suggested a Koala Crossing together with the trial of smart technology to increase driver awareness of pedestrians in the area.

Attachment 1





Emu Crossing

Emu Crossings have red and white posts and operate only when the CHILDREN CROSSING flags are displayed.

Emu crossings are placed within School Zones and a speed limit of 25km/h applies 'when children are present'.



Koala Crossing

Koala Crossings have red and white posts at the edge of the road and two yellow alternating flashing lights.

As indicated by a sign, a speed limit of 25 km/h applies when the lights are flashing.



Wombat crossing

A wombat crossing is a raised pedestrian crossing (Zebra). This can include flashing lights and operates as a pedestrian priority full time.



Pedestrian Actuated Crossing

Traffic light signal change is initiated by pressing the button. Pedestrians cross on the green person signal after checking that car drivers have stopped.

Source: Department of Transport website and Way to Go factsheet

https://www.dit.sa.gov.au/Way2Go/school_crossing

Partridge Street Crossing near St Peter's Woodlands Grammar School – Existing EMU crossing.

Photo source: Google Street view.



Item No: 12.2

Subject: **MOTION ON NOTICE – EXPANSION OF EXISTING GLENELG DRY AREA –
COUNCILLOR PATTON**

Date: 28 February 2023

PROPOSED MOTION

Councillor Patton proposed the following motion:

That Council Administration bring back a report to Council on the considerations of extending the current Glenelg Dry Area to align with the boundaries of the New Year's Eve Extended Dry Areas.

Item No: 15.1

Subject: **ITEMS IN BRIEF**

Date: 28 February 2023

Written By: Executive Support Officer

Chief Executive Officer: Mr R Bria

SUMMARY

These items are presented for the information of Members.

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

RECOMMENDATION

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

1. **National Epilepsy Awareness Day “Purple Day” 26 March 2023**
 2. **Brighton Jetty Classic**
 3. **Changes to Road Traffic Act Statutory Declaration Process for Alleged Parking Offences**
 4. **FOGO Update**
 5. **Nominations for the Freight and Supply Chain Strategy Consultative Committee**
 6. **Glenelg Town Hall commercial pop-up businesses**
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REPORT

1. National Epilepsy Awareness Day “Purple Day” 26 March 2023

Council received correspondence from Robyn Wakefield, Chief Executive Officer of the Epilepsy Centre of South Australia and Northern Territory. The Epilepsy Centre is a Not-for-Profit Organisation based in Adelaide, which is committed to providing quality services and support to people living with epilepsy and improving community awareness and attitudes.

The City of Holdfast Bay is invited to participate in a national campaign to light up landmarks in purple on Sunday 26 March 2023. Council will participate in the campaign by illuminating Michael Herbert Bridge and Chapel Plaza on Sunday 26 March 2023.

Refer Attachment 1

2. Brighton Jetty Classic

The Brighton Jetty Classic is South Australia's largest open water swim and street festival. Held on the first Sunday in February annually since 2006, it attracts in excess of 1,000 entries for the 1,500m and 400m swims. It also has distances for the younger ones to build confidence in the ocean, with the Jetty Road Swimkids of 300m, 200m and 100m: everyone from seven years old can be involved.

In conjunction with the open water swim, the festivities extended onto the Esplanade including music, entertainment, arts, TV personalities, sculptures, and market stalls.

A key feature of the Brighton Jetty Classic is the Marilyn Swim. This year saw the biggest group of Marilyn's to date, with a record 513 '*Swimming and Shore*' Marilyns adding to the spectacle. The inaugural Marilyn Jetty Swim was held as part of the 2014 Brighton Jetty Classic. Since then, it has become a crowd favourite with thousands cheering them on from the jetty and shoreline. The fundraising total over 10 years has surpassed \$1,000,000, with money raised helping to support South Australians impacted by cancer and Cancer Council SA.

Organised by the Brighton Surf Life Saving Club, with the support of sponsors and corporate partners, the Brighton Jetty Classic is a major fundraiser for the Brighton Surf Life Saving Club. Funds generated ensure it continues to provide the community service it has become known for, and to maintain and purchase vital capital equipment.

The Brighton Surf Life Saving Club is a not for profit organisation, run by volunteers and provides essential community and surf lifesaving services for Brighton.

3. Changes to Road Traffic Act Statutory Declaration Process for Alleged Parking Offences

On 12 January 2023 the Local Government Association (LGA) sought feedback about the changes to the Road Traffic Act statutory declaration process for alleged parking offences.

Changes to the Road Traffic Act will commence in May 2023 introducing a nomination process in place of statutory declarations for parking offences.

The changes to the Road Traffic Act will allow vehicle owners to nominate the driver at fault for alleged parking offences through nominations, rather than statutory declarations. The Department for Infrastructure and Transport is seeking officer feedback on the form to be used for nominations.

The City of Holdfast Bay has no objection to the changes as it will make it easier for customers to declare they were not the driver by using the (new) proposed nomination form.

Refer Attachment 2

4. FOGO Update

Most residential single dwelling households within the City of Holdfast Bay have been on the default weekly green FOGO bin, fortnightly landfill bin and fortnightly recycling bin collections since November 2022.

As of mid-February 2023, 22.5% of households have opted back to the old weekly landfill, fortnightly FOGO and fortnightly recycling service and 609 households have accessed an upsize bin service. This is in the low end of the range included in initial modelling.

The switch to the best practice model has provided households with more choice and flexibility over their kerbside waste collection service whilst increasing diversion of organic waste away from landfill.

The move to the new model has been widely supported by the community and has led to the City of Holdfast Bay being the first South Australian council to reach the 70% landfill diversion target set for Local Governments to reach by 2030.

The Australian-first model has received both local and national recognition. Council's Environmental Officer, Shani Wood has met with six South Australian councils regarding weekly FOGO since January 2023 and is speaking at numerous waste events/conferences this year about the model. Green Industries SA are developing a best practice kerbside waste guide based on the Holdfast Bay model with two South Australian councils trialing weekly green FOGO and fortnightly landfill in 2023.

The Holdfast Bay Waste Team will continue to promote weekly FOGO and fortnightly landfill collections throughout 2023 through a strong social media presence with FOGO champions and waste tips, delivering more of the successful free compost events, a launch event for the new kerbside waste trucks arriving in March/ April and continued face-to-face school and community group/event education.

Households who have opted out of the new service will be contacted and invited to opt back into the best practice model. Offering of bin upsizes for eligible households, waste tips and responding to individual reasons for opting out will all be trialled together with broader communications and incentives.

The Waste Team are also working with larger multiple unit dwellings and businesses that are still on the old service to provide more access to green FOGO bins for food and garden waste.

5. Nominations for the Freight and Supply Chain Strategy Consultative Committee

Nominations are now open for a Local Government representative on the Freight and Supply Chain Strategy Consultative Committee (Committee) for a period of up to two years. The Committee is established by the Minister for Infrastructure and Transport and provides specialist input and advice to inform the Freight and Supply Chain Strategy. This includes stakeholder engagement, a strategic vision and the

case for change, key challenges and opportunities, recommended focus areas, strategies, actions and key messages.

To be eligible to nominate you must have Local Government knowledge and experience and experience in freight and supply chain matters as they relate to Local Government. Administration recognises that Members may have their reasons for nominating for these vacancies and support Members who wish to nominate for the Committee, if they feel they have the appropriate qualifications.

If you are interested in nominating for the Committee, the Call for Nominations Information Sheet (Part A) outlines information about the role and selection criteria.

Refer Attachment 3

Only nominations submitted by a Council, following a resolution of Council, will be considered. Nominees must complete the Nomination Form (Part B) with your Council.

Refer Attachment 4

6. Glenelg Town Hall commercial pop-up businesses

Following a Council decision in August 2022 to activate the old Boomers Café site with the Glenelg Town Hall, the City of Holdfast Bay undertook an Expressions of Interest (EoI) process which closed 16 September 2022.

The commercial pop-up space in the Glenelg Town Hall is proving to be an incubator space for businesses. Snow Lab and Island Home Living are joining Amplified Beauty and the First Nations business collaboration to almost complete the complement of businesses in the space.

Snow Lab is the inspiration of two local youths from Kingston Park, supported by their parents, by developing snow cone beverages which consist of flavoured syrups and shaved ice. The enterprise has also attracted the interest of Immanuel College who plan on collaborating with Snow Lab to provide opportunities for local youth. Adjacent to Snow Lab will be Island Home Living who are venturing into bricks and mortar for the very first time. They have been established for a number of years operating online and from various markets including the Glenelg Sunset Markets. Their business has grown considerably and the pop-up venture has given them the opportunity to grow their business in a supportive environment.

Attachment 1



From: "Robyn Wakefield" <rwakefield@epilepsycentre.org.au>
Sent: Tue, 7 Feb 2023 13:09:18 +1030
To: "Amanda Wilson" <awilson@holdfast.sa.gov.au>; "Holdfast Mail" <mail@holdfast.sa.gov.au>
Subject: THE EPILEPSY CENTRE SA & NT - NATIONAL EPILEPSY AWARENESS DAY "PURPLE DAY" REQUEST. 26TH MARCH 2023
Attachments: town hall best.png

Attention: Mayor Amanda Wilson and CEO Roberto Bria

Dear Amanda and Roberto,

I hope you are both very well?

Please allow me to introduce myself as CEO of The Epilepsy Centre of South Australia and The Northern Territory.

I am emailing to advise that **National Epilepsy Awareness Day “Purple Day” on Sunday, March 26, 2023.**

For the first time in our 47 year history our new Premier Honourable Peter Malinauskas MP along with our Health and Wellbeing Minister Mr Chris Picton have provided funding to The Epilepsy Centre for the next four years providing us with three Registered Nurses.

In order to raise awareness for epilepsy, The Epilepsy Centre is contacting Councils across the entire State and Territory with the aim to **light up our landmarks on Sunday 26th March “Purple”** and we are contacting you for your assistance please. This is a national campaign driven by each Epilepsy Organisation in their respective States or Territories.

The Epilepsy Centre is based in Adelaide, a Not for Profit Organisation which has been operating for over 47 years and is committed to providing quality services and support to people living with epilepsy and improving community awareness and attitudes in South Australia and The Northern Territory. Approximately 63,000 people live with epilepsy in South Australia and 24,000 in the Northern Territory. Epilepsy can be a devastating condition to manage and the support The Epilepsy Centre provides to the community is an absolute necessity.

Epilepsy can affect anyone at any age. One in 26 people will have a seizure in their lifetime and One in 100 will develop epilepsy permanently. 40% of people with epilepsy are under the age of 18 and 40% are over the age of 60.

Our key services include:

- Counselling
- Advocacy
- Epilepsy Management Support
- Care Plan Development
- Home and Residential Care Visits

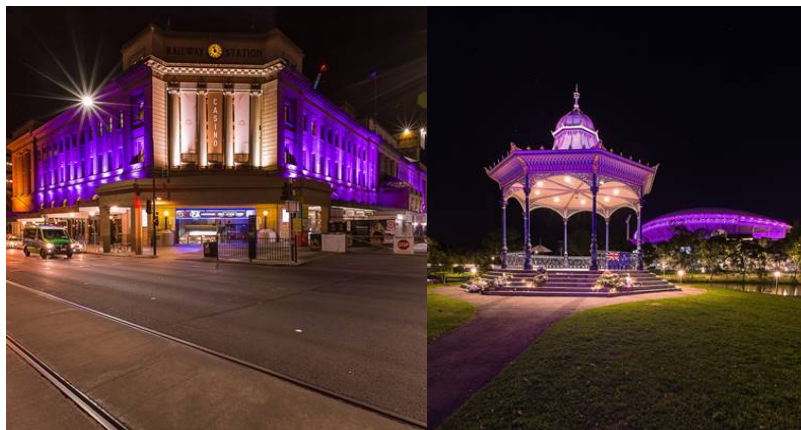
- Employment Support
- Resources
- Workshops
- Clinics
- In hospital Support
- Collaboration and networking with other agencies Client Services
- Risk Assessments
- Epilepsy First Aid Training
- Emergency Medication Training
- Annual Camps
- Epilepsy Education for –
 - Schools
 - Workplaces
 - Sports Groups
 - Disability and Support Workers
 - Community Organisations
 - Family and Friends

I do hope you can be involved in making a difference and make our Landmarks on **National Epilepsy Day “Purple Day”** one to remember !

We would love to share photos across our Facebook (Tag **The Epilepsy Centre**) and on Epilepsy Australia’s Facebook pages where all of Australian Epilepsy Organisations have come together united to spread the word.

If you have any questions, please do not hesitate to contact me anytime on 8448 5665 or 0418 638 737.

Thank you for your time and consideration.



Kindest Regards,
Robyn Wakefield

Chief Executive Officer of The Epilepsy Centre of SA & NT
Board Member, Epilepsy Australia

Attachment 2



Officer feedback sought - changes to Road Traffic Act statutory declaration process for alleged parking offences

BACKGROUND

The *Statutes Amendment (Transport Portfolio) Act 2021* (the Statutes Amendment (TP) Act) was assented to on 20 May 2021. The Statutes Amendment (TP) Act amends a number of Acts, including the:

- *Road Traffic Act 1961*
- *Expiation of Offences Act 1996*
- *Fines Enforcement and Debt Recovery Act 2017* and
- *Motor Vehicles Act 1959*.

There has been a staged approach to commencement of provisions of the Statutes Amendment (TP) Act. Amendments to section **174A—Liability of vehicle owners and expiation of certain offences** of the *Road Traffic Act 1961* (arising from commencement of section 60 of the Statutes Amendment (TP) Act) will come into effect in May 2023. A copy of the tracked changes to section 174A are provided on the pages 2-3 of this document.

This amendment will require a change to council processes.

NOMINATION PROCESS

Following the commencement of changes to section 174A, for alleged parking offences, vehicle owners will be able to nominate another person as the driver or owner of a vehicle by *nomination* rather than by *statutory declaration* as currently required. Unlike statutory declarations, nominations will not need to be witnessed.

The amendments retain offence provisions in subsection (13) and it will be an offence to provide a nomination that is false or misleading with a maximum penalty of \$25,000 or four years imprisonment.

If needed, councils will be able to require a person who makes a nomination to verify the information contained in the nomination by statutory declaration.

The amendments will simplify the nomination process for vehicle owners (as they will no longer need statutory declarations to be witnessed by a justice of the peace (JP)). The change will allow councils to accept nominations via online processes, should they choose.

The Minister for Transport and Infrastructure will prescribe the form to be used for nominations. The form will be published in the SA Government Gazette.

FEEDBACK SOUGHT

The Department for Infrastructure and Transport is seeking Officer feedback on the proposed **Nomination Form**. The form has been developed based on a number of existing council statutory declaration forms in an effort to ensure the required data is captured.

A copy of the Nomination Form is provided on page 4 of this document.

Please submit your feedback on the Form to Tami Norman, Program Leader Governance, by **cob Friday 24 February 2023**.

Questions regarding the legislative changes should be directed to Andrew Parkinson, Unit Manager Law Reform, Legal, Commercial & Assurance Services (DIT).

Road Traffic Act 1961, section 174A marked with changes (s60—Statutes Amendment (Transport Portfolio) Act 2021

174A—Liability of vehicle owners and expiation of certain offences

- (1) In this section—

owner, in relation to a vehicle, has the meaning assigned to the term by section 5, and includes the operator of the vehicle;

prescribed offence means an offence against a prescribed provision of this Act.

- (2) Without derogating from the liability of any other person, but subject to this section, if a vehicle is involved in a prescribed offence, the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee that is fixed for the principal offence applies in relation to an offence against this section.
- (3) The owner and driver of a vehicle are not both liable through the operation of this section to be convicted of an offence arising out of the same circumstances, and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.
- (4) An expiation notice or expiation reminder notice given under the Expiation of Offences Act 1996 to the owner of a vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if the owner was not the driver at the time of the alleged prescribed offence, to provide the council or officer specified in the notice, within the period specified in the notice, with a ~~statutory declaration nomination~~—
- (a) setting out the name and address of the driver; or
 - (b) if the owner had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the Motor Vehicles Act 1959 in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).
- (4a) If the council or officer specified in the notice under subsection (4) believes that a nomination made in response to the notice has been made in error, the council or officer (as the case may be) may permit the nomination to be withdrawn and a new nomination to be made.
- (5) Before proceedings are commenced against the owner of a vehicle for an offence against this section involving the vehicle, the ~~complainant informant~~ must send the owner a notice—
- (a) setting out particulars of the alleged prescribed offence; and
 - (b) inviting the owner, if the owner was not the driver at the time of the alleged prescribed offence, to provide the ~~complainant informant~~, within 21 days of the date of the notice, with a ~~statutory declaration nomination~~ setting out the matters referred to in subsection (4).
- (5a) A council or officer to whom a nomination is provided in response to a notice under subsection (4) or (5) may require the person who made the nomination to verify the information contained in the nomination by statutory declaration.
- (5b) If the informant believes that a nomination made in response to the notice under subsection (5) has been made in error, the informant may permit the nomination to be withdrawn and a new nomination to be made.
- (6) Subsection (5) does not apply to—
- (a) proceedings commenced where an owner has elected under the Expiation of Offences Act 1996 to be prosecuted for the offence; or

- (b) proceedings commenced against an owner of a vehicle who has been named in a ~~statutory declaration nomination~~ under this section as the driver of the vehicle.
- (7) Subject to subsection (8), in proceedings against the owner of a vehicle for an offence against this section, it is a defence to prove—
 - (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged prescribed offence; or
 - (b) that the owner provided the ~~complainant-informant~~ with a ~~statutory declaration nomination~~ in accordance with an invitation under this section.
- (8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the ~~declaration nomination~~ knowing it to be false in a material particular.
- (9) If—
 - (a) an expiation notice is given to a person named as the alleged driver in a ~~statutory declaration nomination~~ under this section; or
 - (b) proceedings are commenced against a person named as the alleged driver in such a ~~statutory declaration nomination~~,the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the ~~statutory declaration nomination~~ that named the person as the alleged driver.
- (9a) The particulars of the ~~statutory declaration nomination~~ provided to the person named as the alleged driver must not include the address of the person who provided the ~~statutory declaration nomination~~.
- (10) In proceedings against a person named in a ~~statutory declaration nomination~~ under this section for the offence to which the ~~declaration nomination~~ relates, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the vehicle at the time at which the alleged offence was committed.
- (11) In proceedings against the owner or driver of a vehicle for an offence against this Act, an allegation in the ~~complaint information~~ that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.
- (12) A nomination under this section must be made in a manner and form approved by the Minister.
- (13) A person must not, in making a nomination for the purposes of this section, make a statement that is false or misleading in a material particular.
Maximum penalty: \$25 000 or imprisonment for 4 years.

Nomination

Road Traffic Act 1961

PART 1—Expiation notice and recipient details

I, _____
(FULL NAME)

of: _____
(ADDRESS AND POSTCODE)

Daytime phone no: _____ Email: _____

Licence no: _____ State issued: _____ Date of birth: ____ / ____ / ____

Company name (if applicable): _____
(N.B. If a company owned vehicle, state your position in the company and registered office of the company below)

Position in Company: _____

Registered Office: _____

received an issued to vehicle
expiation notice: _____ registration number: _____

PART 2—Nomination—select either option A or B below

OPTION A—At the time of the alleged offence, the vehicle had been ☐ Sold ☐ Hired ☐ Leased

SOLD on ____ / ____ / ____ HIRED/LEASED from ____ / ____ / ____ to ____ / ____ / ____

to: _____
(FULL NAME or COMPANY NAME)

of: _____
(ADDRESS AND POSTCODE)

Date of birth: ____ / ____ / ____ Licence number: _____ State of issue: _____

OPTION B—I was the owner of the abovenamed vehicle, but was not the driver. To the best of my knowledge and belief, at the time of the alleged offence, the driver was:

(FULL NAME or COMPANY NAME)

of: _____
(ADDRESS AND POSTCODE)

Date of birth: ____ / ____ / ____ Licence number: _____ State of issue: _____

PART 3—Signature

Warning: Under section 174A (13) of the *Road Traffic Act 1961*, there is a maximum penalty of \$25,000 or four (4) years imprisonment for any person who knowingly makes a statement that is false or misleading in a material particular, when making a nomination.

☐ I hereby state that this nomination is true and correct.

(PRINT FULL NAME)

(SIGNATURE)

Date: ____ / ____ / ____

Attachment 3



PART A

LGA Appointments and Nominations to Outside Bodies — Call for Nominations

Freight and Supply Chain Strategy Consultative Committee (FSCSCC)	
Governing Statute (if applicable)	Established by the Minister for Infrastructure and Transport
Purpose/Objective	<p>To provide specialist advice on the supply chain and freight sector to inform the development of a South Australian Freight and Supply Chain Strategy, including but not limited to:</p> <ul style="list-style-type: none"> - Stakeholder engagement - A strategic vision and the case for change - Key challenges and opportunities - Recommended focus areas, strategies, actions and key messages - Draft strategy
Administrative Details	<p>The appointment will be for a term of up to two years. Details regarding the operations of the FSCSCC are as follows:</p> <ul style="list-style-type: none"> - The FSCSCC shall meet at times to coincide with agreed project timeframes and milestones - The FSCSCC may meet at other times as may be required by the Chair or the Minister - All matters discussed by the FSCSCC should be considered confidential unless otherwise instructed by the Minister - Remuneration of FSCSCC members will be determined in accordance with Premier and Cabinet Circular PC016 – Remuneration for Government appointed Part-time Boards and Committees
Selection Criteria (to be addressed by applicant)	<ul style="list-style-type: none"> • Local government knowledge and experience • Experience in freight and supply chain matters as they relate to local government
Liability and indemnity cover <p><i>The LGA requires that persons appointed to Outside Bodies be appropriately insured throughout the period of their appointment and seeks to collect details of the insurances provided by the Outside Body on an annual basis.</i></p>	
For more information contact: LGA Nominations Coordinator at nominationscoordinator@lga.sa.gov.au or 8224 2000	

Attachment 4



PART B

LGA Appointments and Nominations to Outside Bodies — Nomination Form

Instructions

This form:

- *Must be submitted by a council*
- *Must be emailed in PDF format to nominationscoordinator@lga.sa.gov.au*
- *Receipt of nomination will be acknowledged by return email*
- *CV and response to selection criteria (if applicable) may be emailed separately by the nominee and will be treated confidentially*

This nomination form fulfils the requirements of the LGAs Appointments and Nominations to Outside Bodies Policy, [available here](#).

SECTION 1 to be completed by Council, SECTION 2 to be completed by Nominee.

Please refer to the **Call for Nominations** information sheet (PART A) for details of the Outside Body and the selection criteria to be met by the nominee.

SECTION 1: COUNCIL to complete

Freight and Supply Chain Strategy Consultative Committee (FSCSCC)		
Council Details		
Name of Council submitting the nomination		
Contact details of council officer submitting this form	Name:	
	Position:	
	Email:	
	Phone:	
Council meeting date and minute reference		
Nominee Full Name		
elected member <input type="checkbox"/> OR employee of council <input type="checkbox"/> OR employee of local government entity <input type="checkbox"/>		
<i>Note: by submitting this nomination council is recommending the nominee is suitable for the role.</i>		

PART B

SECTION 2: NOMINEE to complete

Freight and Supply Chain Strategy Consultative Committee (FSCSCC)			
Nominee Details			
* Denotes a Mandatory Field. The information in this form is provided by the LGA to the relevant Minister/State Government Authority for the purposes of actioning an appointment to an outside body. Successful Nominees may be contacted directly by the relevant body using the information provided in this form.			
First Name:*		Gender	
Middle Name:*			
Surname:*			
Home / Personal Postal Address:*			
Phone:		Mobile:	
Personal Email:			
Why are you interested in this role?			
CV	attached <input type="checkbox"/> OR forwarding separately <input type="checkbox"/>		
Response to selection criteria (if applicable) <i>Please refer to the Call for Nominations information sheet for the selection criteria to be addressed.</i>	<i>Nominee to provide response to selection criteria (of no more than 2 pages) for consideration by the LGA Board of Directors.</i> attached <input type="checkbox"/> OR forwarding separately <input type="checkbox"/>		
Do you agree for your details to be retained on the LGA Nominees Database for a period of 12 months in order to be considered for other vacancies on Outside Bodies? Yes <input type="checkbox"/> OR No <input type="checkbox"/> If Yes, please list any fields of interest or Outside Bodies of interest: <ul style="list-style-type: none"> • • • 			
Undertaking: <i>The LGA Board resolved in January 2015 to ensure that appointees to external Boards and Committees remain current local government members or officers. If you leave local government for any reason during the term of your appointment, are you prepared to resign your appointment if requested to do so by the LGA?</i> Yes <input type="checkbox"/> No <input type="checkbox"/> Signature of Nominee: _____			

Item No: 15.2

Subject: **MONTHLY FINANCIAL REPORT – 31 JANUARY 2023**

Date: 28 February 2023

Written By: Management Accountant

General Manager: Strategy and Corporate, Ms P Jackson

SUMMARY

Attached are financial reports as at 31 January 2023. They comprise a Funds Statement and a Capital Expenditure Report for Council's Municipal activities and Alwyndor Aged Care. The adjusted forecast budget includes the carried forward amount as approved by Council 23 August 2022 and the two quarterly budget updates approved by Council 25 October 2022 and 14 February 2023.

No changes to Alwyndor and Municipal budgets are recommended at this time, but the report highlights items that show a material variance from the YTD budget.

RECOMMENDATION

That Council receives the financial reports and budget update for the 7 months to 31 January 2023 and notes:

- **no change to the Municipal activities 2022/23 revised budget forecast;**
 - **no change to the Alwyndor Aged Care 2022/23 revised budget forecast.**
-

STRATEGIC PLAN

Not applicable

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Not applicable

BACKGROUND

Council receives financial reports each month comprising a Funds Statement and Capital Expenditure Report for each of Council's Municipal activities and Alwyndor Aged Care.

The Funds Statements include an income statement and provide a link between the Operating Surplus/Deficit with the overall source and application of funds including the impact on cash and borrowings.

Refer Attachment 1

REPORT

A comprehensive budget update was conducted for the half-year ending 31 December 2022 and approved by Council 14 February 2023. Following this review the majority of the current variances to date are due to budget and actuals timing differences over the first seven months of the financial year.

There are major positive variances within Community Safety due to higher than forecasted car parking related revenue and within Capital Expenditure due to delays in the timing of a number of capital projects. All budgets will be reassessed again as part of the budget review and update to be conducted at 31 March 2023.

Alwyndor Aged Care

There are no changes to the Alwyndor budget forecast as approved by Council, however, a comprehensive budget update will be conducted for the month ending 28 February 2023. Details of the major year to date variances, along with amounts and notes, have been prepared and are attached to this report.

Refer Attachment 1

Attachment 1





City of Holdfast Bay Municipal Funds Statement as at January 2023

2022 - 2023 Original Budget \$'000	Year to Date				2022 - 2023 Adopted Forecast \$'000	Note
	Adopted Forecast \$'000	Actual \$'000	Variance \$'000			
131	96	152	(55)	Cemeteries	131	1
495	270	291	(22)	Commercial & Club Leases	495	
(1,458)	(993)	(950)	(43)	Council Administration	(1,458)	
(917)	(546)	(476)	(70)	Development Services	(935)	2
1,730	771	771	-	- FAG/R2R Grants	1,882	
(1,825)	(1,288)	(1,313)	25	Financial Services	(1,886)	
(10,468)	(5,276)	(5,236)	(41)	Financial Services-Depreciation	(10,468)	
(267)	-	-	-	- Financial Services-Employee Leave Provisions	(267)	
(830)	(257)	(240)	(17)	Financial Services-Interest on Borrowings	(718)	
101	-	-	-	- Financial Services-SRWRA	101	
38,455	39,210	39,223	(14)	General Rates	38,569	
(2,867)	(2,066)	(2,102)	36	Innovation & Technology	(2,867)	
(614)	(277)	(323)	46	People & Culture	(614)	
(612)	(292)	(307)	15	Public Realm and Urban Design	(578)	
(819)	(486)	(472)	(14)	Strategy & Governance	(878)	
(1,204)	(651)	(564)	(87)	City Activation	(1,272)	3
1,266	665	720	(55)	Commercial - Brighton Caravan Park	1,385	4
44	25	31	(6)	Commercial - Partridge House	44	
(563)	(309)	(320)	12	Communications and Engagement	(563)	
(351)	(208)	(203)	(5)	Community and Business Administration	(351)	
(887)	(737)	(741)	4	Community Events	(937)	
892	634	880	(246)	Community Safety	982	5
(574)	(291)	(279)	(12)	Community Wellbeing	(578)	
(533)	(310)	(338)	28	Customer Service	(533)	
-	267	246	21	Jetty Road Mainstreet	(93)	
(1,518)	(790)	(772)	(18)	Library Services	(1,518)	
(302)	(174)	(169)	(5)	Assets & Delivery Administration	(302)	
(1,413)	(637)	(603)	(34)	Engineering & Traffic	(1,518)	
(966)	(315)	(277)	(38)	Environmental Services	(921)	
(8,137)	(4,728)	(4,721)	(6)	Field Services & Depot	(8,282)	
(2,036)	(983)	(960)	(23)	Property Management	(2,095)	
(439)	(269)	(240)	(30)	Street Lighting	(569)	
(4,072)	(2,097)	(2,039)	(58)	Waste Management	(4,072)	6
945	-	-	-	- Less full cost attribution - % admin costs capitalised	945	
390	17,959	18,670	(711)	=Operating Surplus/(Deficit)	263	
10,468	5,276	5,236	41	Depreciation	10,468	
166	-	-	-	- Other Non Cash Items	166	
10,634	5,276	5,236	41	Plus Non Cash Items in Operating Surplus/(Deficit)	10,634	
11,024	23,236	23,906	(671)	=Funds Generated from Operating Activities	10,897	
1,484	3,555	3,761	(205)	Amounts Received for New/Upgraded Assets	4,482	7
474	1,057	1,057	-	- Proceeds from Disposal of Assets	1,936	
1,958	4,613	4,818	(205)	Plus Funds Sourced from Capital Activities	6,418	
(9,094)	(3,833)	(3,196)	(637)	Capital Expenditure on Renewal and Replacement	(13,543)	
(5,721)	(2,142)	(1,904)	(238)	Capital Expenditure on New and Upgraded Assets	(17,205)	
(14,815)	(5,975)	(5,100)	(875)	Less Total Capital Expenditure	(30,749)	8
253	243	243	-	- Plus:Repayments of loan principal by sporting groups	253	
253	243	243	-	Plus/(less) funds provided (used) by Investing Activities	253	
(1,580)	22,116	23,866	(1,751)	= FUNDING SURPLUS/(REQUIREMENT)	(13,181)	
Funded by						
-	2,268	2,268	-	- Increase/(Decrease) in Cash & Cash Equivalents	-	
-	19,174	21,333	(2,159)	Non Cash Changes in Net Current Assets	-	
(2,959)	-	-	-	- Less: Proceeds from new borrowings	(14,560)	
-	-	-	-	- Less: Net Movements from Cash Advance Debentures	-	
1,379	674	266	408	Plus: Principal repayments of borrowings	1,379	
(1,580)	22,116	23,866	(1,751)	=Funding Application/(Source)	(13,181)	

Note 1 – Cemeteries - \$55,000 favourable

Memorial (\$33,000) and cemetery (\$12,000) related revenue higher than forecast.

Note 2 – Development Services - \$70,000 favourable

Planning fee revenue higher than forecast (\$137,000) offset by higher legal fees for appeals (\$73,000).

Note 3 – City Activation - \$87,000 favourable

Employment cost savings due to temporary vacancies (\$52,000) and number of shopfront character grants processed lower than budgeted for (\$14,000).

Note 4 – Commercial - Brighton Caravan Park - \$55,000 favourable

Year to date Caravan Park revenue higher than forecast.

Note 5 – Community Safety - \$246,000 favourable

Employment cost savings due to temporary vacancies (\$28,000) along with higher than forecast revenue for car parking (\$105,000), hoarding fees (\$58,000), and food related permits (\$50,000).

Note 6 – Waste Management - \$58,000 favourable

Year to date savings on waste disposal costs at Southern Region Waste Resource Authority (SRWRA) and waste collection costs at Solo. Year to date saving expected to be offset by forecast cost increases for the remainder of financial year.

Note 7 – Amounts Received for New/Upgraded Assets - \$205,000 favourable

\$200,000 contribution received from the City of Marion for the Harrow Road, Somerton Park stormwater Gross Pollutant Trap (GPT) capital project. Budget adjustments for expenditure and revenue for this project will be made as part of the March 2023 budget update.

Note 8 – Capital Expenditure - \$875,000 favourable

There are positive variances on a number of capital projects mainly due to the timing of projects, including the following:

- Gully Masterplan implementation
- Road reseal program
- Footpaths and cycleway program



City of Holdfast Bay

Capital Expenditure Summary by Budget Item to January 2023

2022-23 Original Budget \$'000	Year to Date			Revised Forecast \$'000
	Adopted Forecast \$'000	Actual \$'000	Variance \$'000	
(944)	-	-	- Full Cost Attribution	(944)
(806)	(403)	(400)	(4) Information Technology	(892)
(989)	(9)	(9)	- Commercial and Economic Enterprises	(3,064)
-	-	(5)	5 Partridge House	-
(85)	(40)	(43)	3 Brighton Library	(85)
-	-	(15)	15 Sport and Recreation	(562)
(13)	(6)	(11)	5 Depot and Stores	(13)
(1,306)	(1,169)	(1,169)	- Machinery Operating	(2,670)
(2,322)	(593)	(315)	(279) Road Construction and Re-seal Program	(2,788)
-	-	-	- Car Park Construction	(100)
(453)	(253)	(102)	(151) Footpath Program	(453)
(1,200)	(46)	(40)	(6) Stormwater Drainage Program	(3,707)
-	(161)	(69)	(92) Traffic Control Construction Program	(161)
(1,122)	(680)	(572)	(108) Kerb and Water Table Construction Program	(1,360)
(30)	-	-	- Other Transport - Bus Shelters etc.	(30)
(3,487)	(1,943)	(1,718)	(226) Reserve Improvements Program	(8,553)
(1,302)	(562)	(536)	(26) Land, Buildings and Infrastructure Program	(3,371)
(450)	(51)	(46)	(5) Streetscape Program	(1,266)
(306)	(40)	(16)	(24) Foreshore Improvements Program	(710)
-	(19)	(36)	16 Caravan Park - General	(19)
(14,815)	(5,975)	(5,101)	(874)	(30,749)



**Alwyndor Aged Care
Funds Statement as at 31 January 2023**

2022-23 Original Budget \$'000	Year to Date				2022-23 Adopted Forecast \$'000	Note
	Original Budget YTD \$'000	Actual YTD \$'000	Variance \$'000			
5,576	3,235	3,839	(604)	User Charges	5,576	
13,653	7,993	8,222	(228)	Operating Grants and Subsidies	13,653	
445	267	352	(85)	Investment Income	445	
5,361	3,042	2,873	169	Reimbursements	5,361	
3,993	2,285	3,012	(727)	Other Income	3,993	
29,027	16,822	18,298	(1,475)	Operating Revenue	29,027	1
(20,916)	(12,176)	(12,514)	337	Employee Costs - Salaries & Wages	(20,916)	2
(6,966)	(4,050)	(5,355)	1,305	Materials, Contracts and Other Expenses	(6,966)	3
(68)	(40)	(71)	32	Finance Charges	(68)	
(1,358)	(800)	(786)	(13)	Depreciation	(1,358)	
(29,308)	(17,066)	(18,727)	1,661	Less Operating Expenditure	(29,308)	
(281)	(243)	(429)	186	=Operating Surplus/(Deficit)	(281)	4
-	-	(16)	16	Net gain/(loss) on disposal of investments	-	
-	-	479	(479)	Net gain/(loss) on Fair Value movement on investments	-	
(281)	(243)	34	(277)	=Net Surplus/(Deficit)	(281)	
1,358	800	786	13	Depreciation	1,358	
-	-	16	(16)	Net gain/(loss) on disposal of investments	-	
-	-	(479)	479	Net gain/(loss) on Fair Value movement on investments	-	
193	112	112	-	Provisions	193	
1,551	912	435	477	Plus Non Cash Items in Operating Surplus/(Deficit)	1,551	
1,269	669	469	199	=Funds Generated from Operating Activities	1,269	
-	-	-	-	Amounts Received for New/Upgraded Assets	-	
-	-	-	-	Plus Funds Sourced from Capital Activities	-	
-	-	-	-	Capital Expenditure on Renewal and Replacement	-	
(524)	(656)	(729)	73	Capital Expenditure on New and Upgraded Assets	(874)	
(524)	(656)	(729)	73	Less Total Capital Expenditure	(874)	
745	13	(259)	272	= Funding SURPLUS/(REQUIREMENT)	395	
745	13	(259)	272	Funded by Increase/(Decrease) in Cash & Cash Equivalents	395	
745	13	(259)	272	=Funding Application/(Source)	395	4

Alwyndor - Notes January 2023

1 Operating Revenue

Operating Revenue is favourable by \$1,475k. This is mainly due to Support at Home client growth remaining strong and exceeding monthly targets.

Residential experienced higher government funding (ACFI up to 30 September 2022 and the new funding model AN-ACC from 1 October 2022 for permanent residents). Occupancy levels have continued to be strong.

COVID-19 grant income of \$257k has been offset by higher costs in Residential.

2 Employee Costs – Salaries & Wages

The variance in employee costs (\$337k unfavourable) is comprised of:

- Residential – additional carers in response to higher acuity residents (offset by higher government funding (ACFI / AN-ACC) as part of Operating Revenue) and staff COVID-19 payments (offset by COVID-19 Grant Income as part of Operating Revenue)
- Wage increases, consistent with Enterprise Agreement, are higher than the 2% assumed in the budget noting the national wage increase and associated workforce market forces at 4.6%.
NB this was highlighted as an anticipated cost pressure when the budget was prepared however the quantum was not known at that time and will be addressed in a future budget forecast.

3 Materials, Contracts and Other Expenses

The \$1,305k YTD increase is attributed to:

- Extraordinary contract labour costs incurred with the introduction and implementation of the new catering model
- Additional brokered services in Support at Home which are recovered as part of Operating Revenue.

4 Operating Deficit

January 2023 YTD

The \$429k Operating Deficit, after allowing for depreciation and capital expenditure, has led to a funding deficit of \$259k as at January YTD. This will be funded by Alwyndor's existing cash reserves.

Item No: 15.3

Subject: **PROPOSED EPA PFAS GUIDELINES**

Date: 28 February 2023

Written By: Environmental Officer

General Manager: Assets and Delivery, Mr M de Heus

SUMMARY

Per- and poly-fluoroalkyl substances, known as PFAS, are manufactured chemicals that have been used in a range of industrial and consumer products since the 1950s. They are of concern around the world because they are not broken down in the environment and can bioaccumulate in food and travel through groundwater.

The Environment Protection Authority SA has proposed guidelines for site suitability and the re-use of PFAS-contaminated waste soils and have invited key stakeholders to provide feedback on the draft guidelines. Administration is supportive of the guidelines.

RECOMMENDATION

That Council endorses the proposed draft response to the Environment Protection Authority SA.

STRATEGIC PLAN

Environment Strategy: Reduce waste to landfill

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Not applicable

BACKGROUND

Per- and poly-fluoroalkyl substances, known as PFAS, are manufactured chemicals that have been used in a range of industrial and consumer products since the 1950s. They are of concern around the world because they are not broken down in the environment and can bioaccumulate in food and travel through groundwater.

All Australian States and Territories are dealing with legacy PFAS issues, and the substances have been found at low levels across a range of land uses.

REPORT

This is the first time the Environment Protection Authority has provided formal guidelines for site suitability and the re-use of PFAS-contaminated waste soils. As per Attachment 1, Administration are in support of the guidelines.

Refer Attachment 1

It is noted that there has been some concern interstate regarding what can be put into Food Organic Green Organic (FOGO) bins because PFAS are known to exist in small quantities in a number of biodegradable products. This has led to one state banning certain items being put in FOGO bins.

Kerbside organics collected interstate are often processed in-vessel. Windrow composting for kerbside organics is used throughout South Australia. This process produces a high-quality product and allows for the effective destruction of pathogens, weeds and processing of compostable packaging.

The City of Holdfast Bay has the utmost confidence and assurance from our organics composter, Peat's Soils, that their use of world leading technology and methods to process organic matter removes any risk of levels of unsafe contaminants like PFAS being present in end use compost products.

Due to this reassurance, Administration is not supportive of any measure that replicates the interstate regulations because this measure drastically reduces food and organic waste recycling efficiency and if introduced locally has the potential to both reduce landfill diversion rates and damage the state's circular economy.

BUDGET

Not applicable

LIFE CYCLE COSTS

Not applicable

Attachment 1





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

1 March 2023

Environment Protection Authority

GPO Box 2607

Adelaide SA 5001

Attention **Rachel Colella**

Principal Adviser Community Engagement

Dear Rachel

The City of Holdfast Bay (CoHB) fully supports the proposed legislative criteria stated within the Environmental Protection Authorities draft Per- and poly-fluoroalkyl substances (PFAS)-contaminated waste disposal site suitability guidelines. The CoHB considers the draft guidelines to be comprehensive and risk adverse enough to protect South Australian communities and ecosystems from potential serious health and environmental hazards whilst still providing safe opportunities for site suitable disposal.

The CoHB's also supports the draft sampling and analysis criteria set in the PFAS in waste soils guideline. It is the CoHB view that the criteria are both risk adverse and are robust enough to protect both the community and the environment whilst still supporting the industrial composting sector.

The CoHB does not support or agree with the recent NSW EPA legislations prohibiting compostable packaging, cardboard, animal faeces and teabags disposal in green FOGO bins as a result of PFAS content. This measure drastically reduces food and organic waste recycling efficiency and if introduced locally has the potential to both reduce landfill diversion rates and damage the state's flourishing circular economy. The CoHB advocates for an increased phase out and ban on products containing PFAS and similar chemical make-up of products that can be composted.

The CoHB has the utmost confidence and assurance from our organics composter, Peat's Soils, that their use of world leading technology and methods to process organic matter removes any risk of levels of unsafe contaminants like PFAS being present in end use compost products.

Yours sincerely

Roberto Bria

Chief Executive Officer



Item No: 15.4

Subject: **SINGLE USE PLASTICS – PROPOSED 2023 AMENDMENTS**

Date: 28 February 2023

Written By: Environmental Officer

General Manager: Assets and Delivery, Mr M de Heus

SUMMARY

The South Australian Government has proposed to ban an additional four single-use plastic products by 1 September 2023. Green Industries SA have invited key stakeholders to provide feedback on the draft regulations.

RECOMMENDATION

That Council endorses the proposed draft letter response to Green Industries SA.

STRATEGIC PLAN

Environment Strategy: Reduce waste to landfill

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Not applicable

BACKGROUND

In early 2022 key stakeholders, including the City of Holdfast Bay, provided feedback on *Turning the Tide on Single-Use Plastic 2021*. Based on this feedback, Deputy Premier the Hon. Susan Close MP announced South Australia's staged next steps for banning single-use and other products over the next three years.

Four additional single-use plastics products are proposed to be banned from 1 September 2023, including:

- Plastic pizza savers
- Plastic-stemmed cotton buds
- Single-use plastic bowls without lids for food and beverages
- Single-use plastic plates for food

This required a variation to the regulations under section 6(1)(h) of the *Single-use and Other Plastic Products (Waste Avoidance Act 2020)* to prescribe additional prohibited items.

Key stakeholders including Local Governments have been asked to provide feedback on the proposal, including the proposed exemptions. Exceptions are around disability and medical needs.

Refer Attachments 1 and 2

REPORT

Administration is in full support of prohibiting the four additional single-use plastic items listed.

Refer Attachment 3

The letter commends the State Government for taking leadership in banning additional single use plastic items and advocates for the continued phase out of single-use plastics, in particular plastic produce bags listed to be prohibited by the end of 2024.

BUDGET

Not applicable

LIFE CYCLE COSTS

Not applicable

Attachment 1



TURNING THE TIDE ON SINGLE-USE PLASTIC PRODUCTS



NEXT STEPS 2022



Government of South Australia
Green Industries SA



**Government
of South Australia**

Green Industries SA

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Published by:

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Acknowledgement of Country

We acknowledge the Kaurna people of the Adelaide Plains as the traditional custodians of the land on which we live and work on.

We respect their spiritual relationship with Sea and Country and acknowledge their Elders – past, present and emerging.

We also pay our respect to the cultural authority of Aboriginal and Torres Strait Islander peoples from other areas of South Australia and Australia.

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From the Deputy Premier



The *Single-use and other Plastic Products (Waste Avoidance) Act 2020* provides the means to phase out unnecessary and problematic single-use and other plastic products in South Australia. Some products have already been banned in South Australia as a result of this legislation.

Between Sunday 5 December 2021 and Saturday 19 February 2022, South Australians were invited to engage with Green Industries SA (GISA) and provide feedback on a discussion paper *Turning the Tide 2021: The future of single-use plastic in South Australia*.

This discussion paper sought to receive community and industry input to help consider future stages of single-use plastic product phase-outs and the indicative timing for any future bans.

Thank you to everyone who took the time to provide their views on this important matter. It is clear that the South Australian community remains profoundly interested in this issue as indicated by the number of the responses received and the sentiments expressed.

A report summarising feedback from the community, businesses and others is available on the Replace the Waste and Green Industries SA websites.

Based on this report and further analysis, I can announce that sufficient grounds exist to ban all the products featured in *Turning the Tide 2021*.

However, as we emerge from the global COVID-19 pandemic, it is important to minimise any impacts to business and industry and not unduly exacerbate community cost of living pressures. For this reason the bans will be staged over a period of three years.

Some of the products to be banned in South Australia will be aligned with other Australian jurisdictions and New Zealand. However for some products such as confetti we are taking the lead in removing these unnecessary and problematic single-use plastic products from sale, supply and distribution in our state.

A handwritten signature in blue ink, appearing to read 'Susan Close'.

Hon Susan Close MP

Deputy Premier

Minister for Climate, Environment and Water

The plastic problem

It is recognised around the world that phasing out single-use plastics is an important and achievable step in striving to reduce pollution, cut carbon emissions and protect marine life. Without action, the annual flow of plastic into the ocean alone will nearly triple by 2040 to 29 million metric tonnes per year, the equivalent of 50 kilograms of plastic for every metre of coastline worldwide.

South Australia has taken steps to address the impacts associated with a range of single-use and other plastic products and was the first jurisdiction in Australia to do so on a state-wide basis. Other states and territories have since followed South Australia's lead.

The steps we have taken

Established a stakeholder taskforce

A taskforce of select business, industry, local government and interest group stakeholders was established to ensure impacts associated with government intervention on single-use plastics are properly considered and inform the development of legislation and its ongoing implementation. The taskforce continues to meet as required and remains an important advisory body to help inform the government's ongoing approach.

Established plastic-free precincts

The plastic-free precincts program (now Plastic Free SA) run by the Boomerang Alliance was established to inform the wider phase-out of single-use items; identifying opportunities, challenges and barriers associated with transitioning away from single-use plastic products to reusable, recyclable or compostable alternatives, as well as inform support requirements for participating businesses. Plastic Free SA program is now open to any engaged business that is seeking to transition away from problematic and unnecessary plastic products.

Introduced legislation

The Single-use and Other Plastic Products (Waste Avoidance) Act 2020 (the SUP Act) commenced on 1 March 2021, prohibiting the sale, supply or distribution of single-use plastic drinking straws (subject to exemptions for disability or medical needs), cutlery and beverage stirrers.

On 1 March 2022, the prohibition extended to include expanded polystyrene cups, bowls, plates and clamshell containers and oxo-degradable plastic products.

The Turning the Tide (2021) – The future of single-use plastic in South Australia discussion paper (Turning the Tide 2021) was released on 5 December 2021. It sought feedback from the community and businesses on whether further products should be prohibited from sale, supply and distribution in South Australia under the SUP Act and also suggested indicative timing for any future bans.

Phase out of single-use plastic products

Following this most recent consultation process, South Australia intends to continue its leadership in phasing out unnecessary single-use and other problematic plastic products. It is considered appropriate that the timing of any future product bans provides sufficient time for business, industry, and the community to prepare and avoid busy trading periods such as Easter and Christmas. Regulations to support further product bans for all the products discussed in Turning the Tide 2021 will be progressively implemented under the framework of the SUP Act over the coming years.

For all the products listed below, consideration will be given to defining the product so it is clear what is being banned and also whether any exemptions may be required.

Phase out by September 2023

Plastic stemmed cotton buds will be phased out and align South Australia with a number of other Australian states and territories, New Zealand and elsewhere. Exemptions where plastic stemmed cotton buds are required for medical, veterinary, and other scientific purposes will be developed.

Single-use plastic bowls and plates will be phased out as alternatives exist and bans are already in place in Queensland and Western Australia.

Plastic pizza savers are difficult to recycle in conventional recycling facilities, and if inadvertently left inside a cardboard pizza box once the pizza has been consumed will impact on the recyclability or compostability of the pizza box.



Phase out by September 2024

Plastic produce bags will be phased out enabling the market to switch to compostable produce bags that are certified to Australian Standards for compostability [AS4736-2006 and AS5810-2010] and that align and support our state's efforts in recovering food waste from households. A major supermarket chain in South Australia alongside some smaller supermarket stores have already transitioned to these compostable produce bags. However, this is not the case for all businesses and the timing of this ban allows them to transition to compostable produce bags and also for suppliers of the bags to tool up and/or for new compostable bag suppliers to enter the market.

There are alternatives for **thick supermarket or boutique-style single-use plastic bags** and the timing of this ban allows retailers to source alternatives and inform customers.

Single-use plastic cups (including coffee cups) offer convenience for consumers, however, these items and their attachments (such as lids and beverage plugs) have limited recovery and recycling pathways, creating confusion for consumers. Some estimates suggest that Australians throw away up to 1 billion coffee cups a year. In order to tackle plastic pollution, business and industry must transition to more sustainable cups, **lids and beverage plugs**.

Fibre and other compostable, or non-plastic recyclable or re-usable alternatives can replace **single-use plastic food containers** with various alternatives already available and in use.



Expanded polystyrene cups, bowls, plates and clamshell containers were prohibited from sale, supply and distribution in South Australia on 1 March 2022. **Other expanded polystyrene (EPS) consumer food and beverage containers** in the market [e.g. gelato tubs] will now also be removed and complete the approach intended for this type of plastic. EPS trays **used for meat, fruit and other food items for retail sale** will also be phased out. Alternatives exist and some major supermarkets are already transitioning to recyclable product trays. EPS is not recyclable through household kerbside collection systems and there are no alternative collection systems available.

Banning **plastic balloon sticks and ties** by this date allows time for businesses / retailers to prepare and source alternatives.

Plastic confetti causes preventable damage to the environment and will also be phased out in South Australia. The interpretation of what constitutes confetti will be defined in regulations.

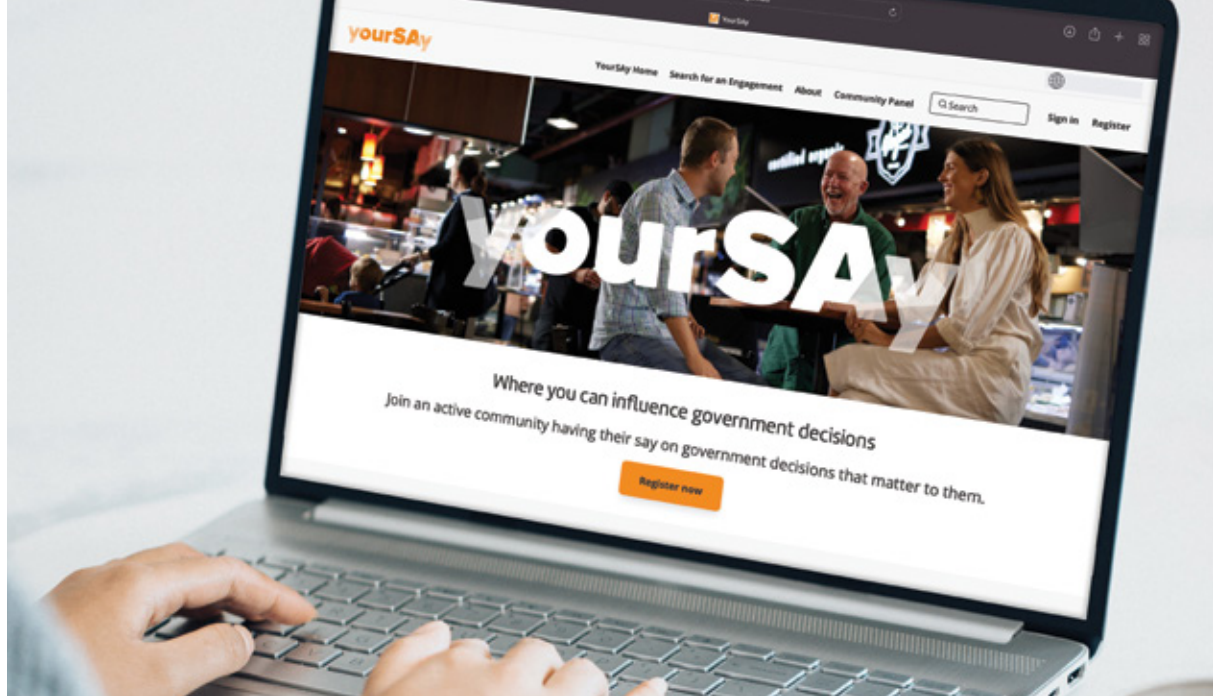
Plastic bread tags can be replaced with non-plastic alternatives as has already been done by at least one major bread producer.



Phase out by September 2025

For some products such as **plastic fruit stickers**, **plastic soy sauce fish**, and **pre-packaged and attached products** [i.e. products that contain plastic straws or cutlery], industry needs time to design new, more sustainable product formats and/or implement alternative arrangements that satisfy the existing purpose of the product where it is still deemed necessary.





Summary of consultation - what you told us

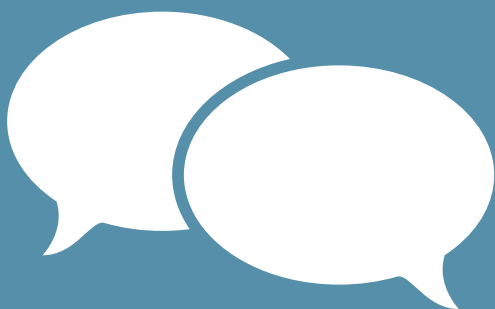
Turning the Tide 2021 specifically asked the community and businesses its views on a range of single-use and other plastic products. The premise of Turning the Tide 2021 was not to re-engage with the community on already agreed first principles – that single-use plastics are a problem and how to address this – but rather to obtain community views on the following nine product groups that are specifically listed at section 14(2) of the SUP Act:

- single-use plastic cups (including coffee cups)
- single-use plastic food containers
- single-use plastic bowls
- single-use plastic plates
- plastic lids on single-use cups (including coffee cups)

- plastic balloon sticks
- plastic balloon ties
- plastic stemmed cotton buds
- plastic bags

Other products considered were:

- fruit stickers
- plastic confetti
- plastic pizza savers
- plastic soy sauce fish
- plastic beverage plugs
- plastic bread tags
- other expanded polystyrene consumer food and beverage containers
- expanded polystyrene trays used for meat, fruit and other items for retail sale pre-packaged and attached products.



2735 GISA survey responses

Consultation ran for 11 weeks, with feedback provided via the government's YourSAy website, in writing to GISA and via social media.

19 YourSAy comments and emails

It is clear that the South Australian community remains profoundly interested in this issue as indicated by the number of responses received and the sentiments and views expressed.

603 panel survey responses

We received 3357 submissions, comments and survey responses from individuals identifying as members of the South Australian public.

29 written submissions from stakeholders representing:



A report summarising the key themes and issues emerging from consultation is available on the Green Industries SA and Replace the Waste websites.

Overview

All stakeholders appreciate and understand the need for continued government intervention in dealing with problematic and unnecessary single-use and other plastic products. There is a reasonable degree of alignment between the views of the general public, councils, and non-government organisations in phasing out single-use plastics, however, opinions vary on some aspects such as the timing of product bans and the range of products to be banned amongst other areas of differentiation.

Business and industry, including the waste and resource recovery sector are less aligned with the above-mentioned group, and have raised a number of issues, concerns and suggestions.

Community feedback

Two surveys administering the same lines of enquiry were conducted, one via the YourSAY engagement platform, which was open to any South Australian desiring to provide feedback on the discussion paper, and the second gathered opinions and feedback from 603 members of the SA public who were recruited via an accredited, paid panel of the state's population aged 18+ years. The purpose of these two surveys was to compare the YourSAY responses with those gathered from a representative sample of the general population to account for the possibility that the YourSAY platform attracted more opinions from people with a more developed interest in this topic than the "average" member of the SA public.

While there were differences in strength of support for further intervention to address the environmental issues caused by single-use plastics, the majority of South Australians (ranging between 86% to 97%) told us they are in favour of this government-led undertaking.



Table 1: Do you support intervention to address environmental problems from single-use plastic products, like bags and takeaway coffee cups?

Support for intervention to address SUPs	GISA survey	General Population Survey
Yes	97%	86%
No	2%	6%
Unsure	1%	8%

Industry feedback

Twenty-nine government, non-government organisations, shared interest, waste and resource and industry stakeholders participated in this consultation via written submissions. They forwarded a wide range of opinions, actions, and suggestions for inclusion by the government. Many of these demonstrated contrary viewpoints, depending upon the sector being represented and the best interests of the submitting organisation.

The sector most affected by proposals to ban problematic and unnecessary plastic products are businesses and industries that manufacture, distribute, supply and sell those items. While most of this sector broadly agreed with the proposed ban/restrictions on the product group and supported a staged approach, it was requested that some categories of items and their alternatives received special/further consideration and attention. Other reservations and concerns included the following:

- creating or exacerbating national inconsistency, enforcement, commercial inefficiencies and confusion when different jurisdictions have different banned items and approaches to the reduction of single-use plastics
- reliance upon bans when other methods of plastics reduction could be considered
- definitions, scope and enforcement of the *Single-use and Other Plastic Products (Waste Avoidance) Act 2020*.
- implementing bans prematurely, before suitable alternatives to [some] plastic products, are available.





Attachment 2



Proposed 2023 Single-use and Other Plastic Products amendment regulations

EXPLANATORY NOTE

Overview

On 4 November 2022, South Australia's Deputy Premier, the Hon Susan Close MP, announced the [staged next steps](#) for phasing out additional single-use and other plastic products over the next 3 years.

Four plastic products will be prohibited from sale, supply or distribution in South Australia from 1 September 2023, including:

- plastic pizza savers
- plastic-stemmed cotton buds
- single-use plastic bowls without lids for food and beverages
- single-use plastic plates for food.

For additional plastic products to be incorporated into the *Single-use and Other Plastic Products [Waste Avoidance] Act 2020*, variations to the regulations under section 6(1)(h) of the Act must be made.

The South Australian Government is seeking feedback from industry, business and the broader community, on the draft '*Single-use and Other Plastic Products [Waste Avoidance] [Prohibited Plastic Products] Amendment Regulations 2023*' including the proposed exemptions.

Provided on the following pages is a summary of the regulations proposed and the factors that informed the development of the definitions and exemptions.

1. Plastic pizza savers

South Australia will be the first jurisdiction in Australia to ban plastic pizza savers.

Pizza savers are difficult to capture for recycling in material recovery facilities and can also become a source of contamination in organics recycling streams should these items be discarded (whether intentionally or unintentionally) in a green organics bin along with the pizza box and/or leftover pizza. Cardboard pizza boxes are accepted in kerbside organics bins in all metropolitan and many regional councils in South Australia. A key intent of the regulation is to support increased recovery of organics through domestic and commercial green organics bins while reducing contamination with plastic.

The proposed definition makes clear that the regulations are not intended to cover an object that may resemble a typical pizza saver [for example, a plastic toy table] that is not put into a pizza box.

Feedback requested

Are there any issues or potential unintended consequences related to this regulation?



2. Plastic-stemmed cotton buds

Plastic-stemmed cotton buds are often flushed down toilets and, due to their weight and small size, can pass through sewage filtration systems into the marine environment. [WWF-Australia](#) lists them among the top 10 worst single-use plastics in Australia.

These items have been, or are in the process of being, banned across most jurisdictions in Australia (excluding Tasmania and the Northern Territory) and have also been banned in New Zealand.

In South Australia, it is intended that plastic-stemmed cotton buds are removed from sale to the general public. Exemptions have been drafted to allow for the continued sale, supply or distribution of plastic-stemmed cotton buds for medical, scientific, law enforcement or forensic purposes, including provision of plastic-stemmed cotton buds in first aid and testing kits.

These proposed regulations reflect exemptions in place in the other Australian jurisdictions and New Zealand.

After a review of all the current regulations, it is proposed that South Australia uses a similar definition to the one in New Zealand's *Waste Minimisation (Plastic and Related Products) Regulations 2022*, which incorporates the possibility of cotton buds containing either cotton wool or synthetic fibre.

Feedback requested

Are these regulations appropriate for preventing plastic-stemmed cotton buds from ending up in South Australia's marine environments?

Are there any issues or potential unintended consequences related to this regulation?

3. Single-use plastic plates and bowls

It is intended that the ban relates only to single-use plastic bowls designed not to have a lid and single-use plastic plates that are designed and used for the consumption of food.

Plastic bowls designed to have lids, plastic cups with lids, and plastic food containers will be included in the products to be banned in [September 2024](#) and will be subject to further consultation in 2023 prior to the drafting of those regulations. Therefore, the current draft regulations make clear that only plastic bowls which are designed and intended for food consumption and are designed not to have a lid are banned.

A number of jurisdictions have already banned plastic plates and plastic bowls without lids, including Western Australia, Queensland and New South Wales. A ban on plastic plates (but not on plastic bowls) in Victoria will commence on 1 February 2023. In recent consultation, the Australian Capital Territory has proposed a ban on plastic plates and plastic bowls to commence on 1 July 2023.

3.1 Plastic-lined paper plates and bowls

Plastic-lined paper plates and bowls are commonly used for birthdays and other celebratory events. These items are recognisable by the bright patterns, seasonal greeting messages and cartoon characters they display.

Printed paper plates and bowls require a thin plastic lining to ensure the product is safe for the consumption of food (that is, to provide a barrier from the inks and dyes).

Plastic-lined paper plates and bowls are not recyclable in the yellow recycling bin unless there are no food residues. These products present as a contaminant in green organics bins as the conventional plastic lining cannot be composted.

Australian jurisdictions have sought to phase-out these items in different ways.

The **New South Wales** and **Victorian** regulations include time-bound exemptions for plastic-lined paper plates until 31 October 2024. The **Australian Capital Territory** have indicated their proposed ban on plastic

plates and plastic bowls is likely to include the same time-bound exemption. The time-bound exemption was developed in recognition that manufacturers, wholesalers and retailers had pre-ordered stock prior to the ban coming into force, and to provide time to source alternatives.

Queensland and **Western Australia** have not included this time-bound exemption for plastic-lined plates or plastic-lined bowls, however **Queensland's** recent guidance note on their government website regarding 'polymer-coated paper plates and bowls' indicates that, while there is no exemption in place, the Queensland Department of Environment and Science will not pursue compliance on these items at this time.

In comparison, **Western Australia's** ban applies to the sale, supply or distribution of all single-use or disposable plastic plates and plastic bowls that are made from plastic, whether made in full or partly of plastic.

For **South Australia**, the key factors in considering whether a potential exemption for plastic-lined paper plates and bowls should be included relate to:

- supporting harmonisation across jurisdictions and ease of regulation
- providing additional time for industry to identify and source alternatives
- difficulty with disposal of used plastic-lined food ware
- their role in the recovery of food waste
- consistency in messaging on how to dispose of other single-use food ware products (specifically those already prohibited or soon-to-be prohibited under the Act).

Currently, the draft regulations have included the time-limited exemption for plastic-lined plates and bowls until 31 October 2024 to mirror the exemptions in place in New South Wales, those soon to be put into place in Victoria, and those expected by the Australian Capital Territory. Alternative approaches may also be considered, subject to consultation feedback.

Feedback requested

Should South Australia address plastic-lined plates and bowls by:

- providing a time-bound exemption for these items?
- prohibiting the sale, supply or distribution of all disposable plates and bowls that contain plastic, including plastic-lined plates?
- undertaking an alternative measure not outlined above?

Are there any issues or potential unintended consequences related to each of these regulations including any potential impacts on people living with a disability?

3.2 Plastic bowls not used for human food consumption

The South Australian regulations have been drafted to provide an exemption for single-use plastic bowls used for medical, scientific, law enforcement or forensic purposes, but do not include exemptions for bowls used to serve food and beverages to people.

The proposed exemption has been developed to cover instances such as sterile single-use bowls used in operating theatres and non-sterile bowls used in veterinary practices, and is informed by exemptions in place in New South Wales following consultation on their single-use plastics legislation.

Feedback requested

Are the proposed exemptions appropriate, and are there any other industries that may require an exemption for single-use plastic bowls?

Are there any issues or potential unintended consequences related to this regulation?



Attachment 3





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

28 February 2023

Single Use Plastic Regulations Consultation
Green Industries SA
PO Box 1047
ADELAIDE SA 5000

Dear Mr Ian Overton,

RESPONSE TO PROPOSED SINGLE USE PLASTIC BANS FOR SEPTEMBER 2023

Thank you for the opportunity to respond to the Proposed 2023 Single-use and Other Plastic Product amendment regulations. The City of Holdfast Bay (CoHB) is in full support of the proposed ban of plastic stemmed cotton buds, single-use plastic bowls and plates and pizza savers by September 2023. The proposed bans will reduce the use of non-renewable fossil fuels being sent to landfill, assist in building the local circular economy and support the CoHB in reaching our strong landfill diversion targets led through our new fortnightly household landfill bin collections model.

The CoHB is also in strong support of the continued phase out of other single-use plastic items in the near future, in particular plastic produce bags, single-use beverage cups and thick supermarket plastic bags.

Our 2017-18 compostable bags in supermarket trial demonstrated the important role that providing alternative compostable produce bags has on increasing food recycling efficiency and reducing plastic waste to landfill. The ban on plastic produce bags and replacing these with compostable bags will increase community access to kitchen caddy compatible compostable bags as well as reduce wide spread community confusion regarding which produce bags are compostable.

With the recent end of the REDCycle soft plastics program many households who cannot access our soft plastics recycling bins at Brighton have reverted back to using their landfill bin for disposal. The ban of thick soft plastic shopping bags would assist in creating a strong product stewardship program led by supermarkets.

We congratulate the national leadership the South Australian Government has shown in banning single-use plastics and look forward to continuing our strong working relationship with Green Industries SA.

Yours sincerely

Roberto Bria
Chief Executive Officer



Item No: 15.5

Subject: **PROPOSED CHANGES TO THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016 AND VARIATION REGULATIONS**

Date: 28 February 2023

Written By: Strategy and Governance Lead

General Manager: Community and Business, Ms M Lock

SUMMARY

The report seeks that Council notes the feedback provided to the Environment Protection Authority regarding their proposed changes to the *Local Nuisance and Litter Control Act 2016* and Variation Regulations. The changes include:

- Amendments to streamline a number of existing provisions of the Act.
 - Clarification on how abandoned trolleys can be managed using the Act.
 - More expiations for offences and new offence provisions.
 - Duty for business owners to minimise litter.
 - Clarification that the Act does not apply to nuisance associated with the service of alcohol.
-

RECOMMENDATION

That Council notes the feedback to the Environment Protection Authority regarding their proposed changes to the *Local Nuisance and Litter Control Act 2016* and Variation Regulations.

STRATEGIC PLAN

Not applicable

COUNCIL POLICY

The *Local Nuisance and Litter Control Act 2016* formalises the role of Local Government in managing local nuisance issues to provide consistency of services in relation to littering and activities that cause nuisance at a local level, such as noise, smoke, odour, and dust.

STATUTORY PROVISIONS

Local Nuisance and Litter Control Act 2016 and Variation Regulations.
Environment Protection Act 1993.
Liquor Licensing Act 1997.

BACKGROUND

The *Local Nuisance and Litter Control Act 2016* (LNLC Act) came into effect (in its entirety) on 1 July 2017.

Refer Attachment 1

The LNLC Act expanded the role of Local Government in responding to nuisance issues in the community. The LNLC Act provides the community with an effective and consistent approach to the management of litter and nuisance complaints.

In July 2019, after councils had experienced two years of administering the legislation, the Environment Protection Authority (EPA), on behalf of the South Australian Government, commenced a review of the LNLC Act.

The LGA has ensured Local Government's voice has been heard throughout the review process by providing formal written submissions to the EPA. This is through seeking feedback from members, holding meetings and information sessions for councils, and through formation of a LNLC working group (consisting of council officers, the LGA, and the EPA).

Proposed changes to the LNLC Act and Regulations

The EPA commenced review of the legislation in August 2018 (after a full year of being in operation) to identify any opportunities to improve the legislation and ensure the legislation was allowing councils to deliver its objectives.

REPORT

The main proposed changes are summarised below, and further information can be found in the enclosed Explanatory Report.

Refer Attachment 2

Draft Bill

- General amendments are proposed to streamline a number of existing provisions of the Act.
- Greater clarification on how abandoned trolleys can be managed using the Act.
- Differential expiations for a number of offences and new offence provisions.
- General Duty for business owners to minimise litter.
- Further clarification the Act does not apply to nuisance associated with the service of alcohol.

Refer Attachment 3

Draft Variation Regulations

- Inclusion of light as an agent of local nuisance.
- Further clarification on what is not local nuisance.

Refer Attachment 4

City of Holdfast Bay – Feedback

The City of Holdfast Bay, Community Safety, provided the following response to the Environment Protection Authority regarding their proposed changes:

- The clarification and consistency as to what constitutes ‘construction noise’ is welcome, as this reconciles the meaning and interpretation currently offered in Schedule 1 of the Act.
- Whilst ‘lighting’ as a nuisance is reinforced, its declaration as a ‘nuisance’ is somewhat subjective. Dispensation from declaring ‘lighting’ as a nuisance should be considered in circumstances where the level of lighting has previously been permitted through past development authorisations, as a revisionist approach in such already adjudicated situations is not supported.
- A distinction should be made in the definition of ‘nuisance’ and ‘annoyance’ which is lawful. Alternatively, the development of guidelines with examples as to what could be considered a ‘nuisance’ and what could be considered an ‘annoyance’ would be helpful when dealing with such complaints.
- Consider an additional clause under ‘Part 3-Things that are not local nuisance’ of the Act, to include noise or other nuisance from Council’s waste collection service run by or on behalf of the Council, to enable Council to collect domestic waste prior to 7:00am.
- Council often receives smoke complaints that do not fail the smoke pollution tests and therefore, do not fall under the ‘illegal smoke’ criteria however, the smoke is still offensive enough to create stress for residents and according to many complainants, health issues. This appears to be largely due to very low flues or the houses/units being too close. Suggest including a standard flu height and a required distance from homes to guide environmental health officers.

BUDGET

Not applicable

LIFE CYCLE COSTS

Not applicable

Attachment 1



South Australia

Local Nuisance and Litter Control Act 2016

An Act to regulate local nuisance and littering; to make related amendments to the *Local Government Act 1999*, the *Motor Vehicles Act 1959* and the *Summary Offences Act 1953*; and for other purposes.

Contents

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Part 1—Interpretation

- 1 Interpretation

Part 2—Things that are local nuisance

- 2 Declared agents (section 17(1)(a))
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Part 3—Things that are not local nuisance

5 Things that are not local nuisance

Schedule 2—Related amendments and transitional provisions

Part 1—Preliminary

1 Amendment provisions

Part 2—Amendment of *Local Government Act 1999*

2 Repeal of section 235

3 Amendment of section 236—Abandonment of vehicles

4 Repeal of section 240

5 Amendment of section 254—Power to make orders

Part 3—Amendment of *Motor Vehicles Act 1959*

6 Amendment of section 139D—Confidentiality

Part 4—Amendment of *Summary Offences Act 1953*

7 Repeal of section 48

Part 5—Transitional provisions

8 Continuation of by-laws under section 240 of the *Local Government Act 1999* relating to bill-posting

9 Continuation of orders made under section 254 of the *Local Government Act 1999*

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Local Nuisance and Litter Control Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

amenity value of an area includes any quality or condition of the area that conduces to its enjoyment;

authorised officer means a person appointed to be an authorised officer under section 12;

class A hazardous litter—see section 22(5);

class B hazardous litter—see section 22(5);

council means a council within the meaning of the *Local Government Act 1999*;

environment protection policy has the same meaning as in the *Environment Protection Act 1993*;

function includes a power or duty;

general litter—see section 22(5);

LGA means the Local Government Association of South Australia;

litter—see section 22(5);

litter abatement notice—see section 30;

local nuisance—see section 17;

nuisance abatement notice—see section 30;

owner—

- (a) in relation to a vessel, has the same meaning as in the *Harbors and Navigation Act 1993*, and includes the operator of the vessel within the meaning of that Act;
- (b) in relation to a vehicle within the meaning of the *Road Traffic Act 1961*, has the same meaning as in section 5(1) of the *Road Traffic Act 1961*, and includes the operator of the vehicle within the meaning of that Act;

premises means—

- (a) any land, building (including residential premises) or place (including a public place, or a movable building or structure); or
- (b) a part of premises;

prescribed activity of environmental significance has the same meaning as in the *Environment Protection Act 1993*;

public place has the same meaning as in the *Road Traffic Act 1961*;

relevant council, in relation to the commission (or alleged commission) of an offence under this Act, means the council for the area in which the commission (or alleged commission) of the offence occurred;

road has the same meaning as in the *Road Traffic Act 1961*;

road-related area has the same meaning as in the *Road Traffic Act 1961*;

vehicle includes—

- (a) a vessel; and
- (b) a vehicle within the meaning of the *Road Traffic Act 1961*;

vessel has the same meaning as in the *Harbors and Navigation Act 1993*.

Part 2—Objects and application of Act

4—Objects of Act

- (1) The objects of the Act are—
 - (a) to protect individuals and communities from local nuisance; and
 - (b) to prevent littering; and
 - (c) to improve the amenity value of local areas; and
 - (d) to promote the creation and maintenance of a clean and healthy environment.
- (2) The Minister, councils and other persons or bodies involved in the administration of this Act must have regard to, and seek to further, the objects of this Act.

5—Interaction with other Acts

- (1) Except as specifically provided by this Act, the provisions of this Act are in addition to, and do not limit, the provisions of any other law of the State.
- (2) Without limiting the generality of subsection (1), this Act is not intended to be construed so as to prevent any person from being prosecuted under any other enactment for an offence that is also punishable by this Act, or from being liable under any other law of the State to any penalty or punishment that is higher than a penalty or punishment provided by this Act.
- (3) Nothing in this Act affects or limits a right or remedy that exists apart from this Act and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.
- (4) Subject to subsection (5), this Act does not apply in relation to an activity authorised by an environmental authorisation within the meaning of the *Environment Protection Act 1993*.
- (5) This Act applies in relation to the use of a road or road-related area by a vehicle for the purposes of, or in connection with, the following prescribed activities of environmental significance:
 - (a) a waste transport business (category A);
 - (b) a waste transport business (category B);
 - (c) dredging;
 - (d) earthworks drainage.

6—Territorial and extra-territorial application of Act

- (1) If—
 - (a) a person causes local nuisance within the State by an activity carried on outside the State; and
 - (b) the activity would, if carried on within the State, constitute a contravention of this Act,the person is liable to a penalty in respect of the contravention as if the activity were carried on by the person within the State.

- (2) For the purposes of this section, a reference to carrying on an activity includes a reference to a failure to act.

Part 3—Administration

Division 1—Councils

7—Functions of councils

- (1) Subject to this Act, a council is the principal authority for dealing with local nuisance and littering in its area.
- (2) In connection with subsection (1), the following functions are conferred on a council by this Act:
- (a) to take action to manage local nuisance and littering within its area;
 - (b) to cooperate with any other person or body involved in the administration of this Act;
 - (c) to provide, or support the provision of, educational information within its area to help detect, prevent and manage local nuisance and littering;
 - (d) such other functions as are assigned to the council by this Act.
- (3) A council must, in performing its functions under this Act, have regard to—
- (a) the guidelines adopted or prescribed by regulation for managing unreasonable complainant conduct; and
 - (b) any other guidelines adopted or prescribed by regulation to assist councils in performing their functions.

8—Annual reports by councils

A council must, in its annual report prepared pursuant to section 131 of the *Local Government Act 1999* in relation to a particular financial year, include details of the performance by the council during that year of functions conferred on it under this Act.

Division 2—Administering bodies

9—Administering bodies

- (1) The Governor may make regulations declaring a body to be an administering body for the purposes of the administration or enforcement of this Act either generally or in specified locations or subject to specified conditions.
- (2) The regulations may—
- (a) provide that this Act or specified provisions of this Act will apply (subject to such conditions, modifications or requirements as may be prescribed by the regulations) in order to confer functions or rights on—
 - (i) an administering body as if it were a council (including a relevant council); or

- (ii) officers or employees of the administering body as if they were authorised officers of a council; and
- (b) provide that any fines, penalties or forfeitures recovered in proceedings commenced by an administering body before a court for an offence against this Act must be paid to the administering body.
- (3) The conferral under this section of a function on an administering body or its officers or employees is not, unless the contrary intention is specified in the regulations, to be taken to limit or affect the performance of that function by the Minister, a council or an authorised officer.

10—Delegation

- (1) An administering body, may, by instrument executed by the administering body, delegate a function conferred on the administering body under this Division to—
 - (a) a committee of the administering body; or
 - (b) an officer or employee of the administering body; or
 - (c) an officer or employee of the administering body for the time being occupying a particular office or position.
- (2) A delegation under this section may be given subject to conditions specified in the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the administering body from acting in any matter.

11—Periodic reports by administering bodies

- (1) An administering body must report to the Minister, at such intervals as the Minister requires, on the performance by the body of functions conferred on the body under this Division.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause copies of the report to be laid before both Houses of Parliament.

Division 3—Authorised officers

12—Authorised officers

- (1) All police officers are authorised officers for the purposes of this Act.
- (2) The Minister may appoint persons to be authorised officers for the purposes of this Act.
- (3) A council may appoint—
 - (a) specified officers or employees of the council; or
 - (b) a specified class of officers or employees of the council,to be authorised officers for the purposes of this Act.
- (4) An appointment—
 - (a) may be made subject to conditions specified in the instrument of appointment; and

- (b) is, in the case of an appointment by a council or other appointment of a prescribed class, subject to conditions prescribed by regulation.
- (5) A person may hold an appointment as an authorised officer from more than 1 council.
- (6) The Minister or a council that has made an appointment under this section may, at any time, revoke the appointment, or vary or revoke a condition specified in the instrument of such an appointment or impose a further such condition.

13—Identity cards

- (1) An authorised officer is not required to be issued with an identity card in the following circumstances:
 - (a) if the authorised officer is a police officer;
 - (b) if the authorised officer is appointed by a council and the Minister has designated a card issued to such an authorised officer by the council as an identity card for the purposes of this Act.
- (2) In any other circumstances, an authorised officer appointed under this Act must be issued with an identity card in a form approved by the Minister—
 - (a) containing the person's name and a recent photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act; and
 - (c) specifying the name or office of the issuing authority.
- (3) The identity card must be issued as soon as is reasonably practicable after the appointment is made (but an authorised officer is not prevented from exercising powers under this Act just because an identity card is yet to be issued).
- (4) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card (unless the identity card is yet to be issued).

14—Powers of authorised officers

- (1) An authorised officer may, for any purpose connected with the administration or enforcement of this Act or with the performance, exercise or discharge of a function under this Act—
 - (a) at any reasonable time, enter or inspect any premises or vehicle; and
 - (b) during the course of the inspection of any premises or vehicle—
 - (i) ask questions of any person found in or on the premises or vehicle; and
 - (ii) open a part of, or thing in or on, the premises or vehicle; and
 - (iii) inspect any substance, material or thing found in or on the premises or vehicle; and
 - (iv) take and remove samples of any substance, material or thing found in or on the premises or vehicle; and
 - (v) require any person to produce any plans, specifications, books, papers or documents; and

- (vi) examine, copy and take extracts from any plans, specifications, books, papers or documents; and
 - (vii) take photographs, films or video recordings; and
 - (viii) take measurements, make notes and carry out tests; and
 - (ix) remove, or seize and retain, any substance, material or thing that has or may have been used in, or may constitute evidence of, a contravention of this Act; and
 - (c) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act, to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
 - (d) require any person to answer any question that may be relevant to the administration or enforcement of this Act; and
 - (e) give directions as to the stopping or movement of a vehicle; and
 - (f) give any other directions reasonably required in connection with the exercise of a power conferred by any of the paragraphs above or otherwise in connection with the administration or enforcement of this Act.
- (2) In the exercise of powers under this Act, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.
- (3) An authorised officer may only use reasonable force—
- (a) to enter any premises or vehicle; or
 - (b) to open a part of, or thing in, the premises or vehicle,
- on the authority of a warrant issued by a magistrate or a justice.
- (4) However—
- (a) an application for a warrant under subsection (3) cannot be made to a justice who is a member, officer or employee of a council; and
 - (b) a magistrate or justice must not issue a warrant under subsection (3) unless satisfied—
 - (i) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or
 - (ii) that the warrant is reasonably required in the circumstances.
- (5) If an authorised officer is inspecting premises or a vehicle under this section, the person in charge of the premises or vehicle must provide such assistance as the authorised officer reasonably requires to facilitate the inspection.
- (6) A person who—
- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this Act; or
 - (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this Act; or

- (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Act; or
- (d) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer or other person with powers under this Act,

is guilty of an offence.

Maximum penalty: \$10 000.

- (7) It is not an excuse for a person to refuse or fail to furnish information under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (8) However, if compliance with a requirement to furnish information might tend to incriminate a person or make a person liable to a penalty, then—
 - (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of, the document or the information (as distinct from the contents of the documents or the information); or
 - (b) in any other case—any answer given in compliance with the requirement,is not admissible in evidence against the person for an offence or for the imposition of a penalty (other than proceedings in respect of the provision of information that is false or misleading).
- (9) An authorised officer, or a person assisting an authorised officer, who—
 - (a) addresses offensive language to any other person; or
 - (b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$10 000.

15—Limit of area of authorised officers appointed by councils

An authorised officer appointed by a council may, subject to any conditions of his or her appointment, exercise powers under this Act outside of the council area in the following circumstances:

- (a) subject to paragraph (b), if the powers are to be exercised in another council area—to the extent agreed to, in writing, by the other council;
- (b) if the authorised officer believes on reasonable grounds that an offence under this Act has been committed within the council area that requires the exercise of powers outside the council area (including within the area of another council or outside the State).

16—Provisions relating to seizure

- (1) If a substance, material or thing has been seized under this Division, the following provisions apply:
- (a) the substance, material or thing seized must be held pending proceedings for an offence against this Act unless the Minister or relevant council (as the case may require), on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister or council thinks fit;
 - (b) if—
 - (i) proceedings are not instituted for an offence against this Act in relation to the substance, material or thing within the prescribed period after its seizure; or
 - (ii) after proceedings have been so instituted and the defendant is not found guilty or convicted of the offence,the person from whom it was seized is entitled to recover the substance, material or thing or, if it has been destroyed, compensation equal to the market value of the substance, material or thing at the time of its seizure;
 - (c) an action for the payment of compensation may be brought in any court of competent jurisdiction;
 - (d) the court by which a person is convicted or found guilty of an offence against this Act in relation to the substance, material or thing may, if the proceedings were instituted within the prescribed period after its seizure, order—
 - (i) that the substance, material or thing be forfeited to the Minister or relevant council; or
 - (ii) if the substance, material or thing has been released pursuant to paragraph (a)—that the person to whom it was released or the defendant pay to the Minister or relevant council (as the case may require) an amount equal to its market value at the time of its seizure as the court thinks fit;
 - (e) if a person is, under this section, entitled to recover any substance, material or thing, but the person—
 - (i) fails to do so within 6 months after having been requested to do so by the Minister or relevant council; or
 - (ii) cannot be located within 6 months after reasonable attempts by the Minister or relevant council to do so,the substance, material or thing is, by force of this section, forfeited to the Minister or council;
 - (f) any substance, material or thing forfeited under this section must be disposed of in such manner as the Minister or relevant council (as the case may require) may direct;
 - (g) if the substance, material or thing is sold, the proceeds of the sale must—

- (i) if the sale was directed by the Minister—be paid into the Consolidated Account; or
 - (ii) if the sale was directed by the relevant council—be paid to that council.
- (2) For the avoidance of doubt, this section does not apply in relation to a substance, material or thing—
 - (a) removed or disposed of by or on behalf of the Minister or a council under section 31 (following non-compliance with the requirements of a nuisance abatement notice or litter abatement notice); or
 - (b) removed or disposed of by a council under section 234 of the *Local Government Act 1999*; or
 - (c) collected by a council under section 297 of the *Local Government Act 1999*.
- (3) In this section—

prescribed period means 6 months (or such longer period as the Environment, Resources and Development Court may, on application by the Minister or relevant council, allow).

Part 4—Offences

Division 1—Local nuisance

17—Meaning of local nuisance

- (1) For the purposes of this Act, local nuisance is—
 - (a) any adverse effect on an amenity value of an area that—
 - (i) is caused by—
 - (A) noise, odour, smoke, fumes, aerosols or dust; or
 - (B) animals, whether dead or alive; or
 - (C) any other agent or class of agent declared by Schedule 1; and
 - (ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or
 - (b) insanitary conditions on premises that unreasonably interfere with or are likely to interfere unreasonably with the enjoyment of premises occupied by persons in the vicinity; or
 - (c) unsightly conditions, of a kind declared by Schedule 1, on premises caused by human activity or a failure to act; or
 - (d) a contravention of, or failure to comply with a provision of an environment protection policy, or of any other Act or law, declared by Schedule 1; or
 - (e) anything declared by Schedule 1 to constitute local nuisance,but does not include anything declared by Schedule 1 not to constitute local nuisance.

Note—

Schedule 1 may be added to or amended by regulation—see section 51(2)(a) and (b).

- (2) For the purposes of subsection (1)(b), conditions on premises will be taken to be insanitary if an authorised officer reasonably believes that—
- (a) the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests; or
 - (b) offensive material or odours are emitted from the premises.
- (3) In this section—
animals includes insects.

18—Causing local nuisance

- (1) A person who carries on an activity intentionally or recklessly and with the knowledge that local nuisance will result is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$60 000;
- (b) in the case of a natural person—\$30 000.

- (2) A person who carries on an activity that results in local nuisance is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of a natural person—\$10 000.

Expiation fee: \$500.

- (3) For the purposes of this section—
- (a) the occupier or person in charge of a place at or from which the activity that results in local nuisance is carried on will be taken to have carried on the activity (but without affecting the liability of any other person in respect of the activity);
 - (b) a reference to carrying on an activity includes a reference to a failure to act.

Note—

If the activity occurs in, at or from a vehicle or in connection with the use of a vehicle, the owner of the vehicle is, under section 26, taken to have committed an offence.

19—Exemptions from application of section 18

- (1) A person will be exempt from the application of section 18 in respect of a specified activity if the council for the area in which the activity is to be carried on declares, by notice in writing, in accordance with this section, that the person is so exempt.

Examples—

The following are examples of activities for which an exemption may be declared:

- (a) construction or demolition works;
- (b) concerts or events;
- (c) activities using amplified sound.

- (2) An application for a declaration under this section must be made to a council in the manner and form prescribed by regulation and must be accompanied by—
 - (a) a site nuisance management plan containing the details prescribed by regulation; and
 - (b) any other information in connection with the application that the council may require; and
 - (c) a fee of an amount fixed by regulation.
- (3) A council must not make a declaration under this section unless it is satisfied that—
 - (a) there are exceptional circumstances that justify the making of the declaration; and
 - (b) the applicant's nuisance management plan adequately sets out the measures that the person will take to prevent, minimise or address any anticipated adverse effects from the specified activity on the amenity value of the area concerned.
- (4) A declaration may be unconditional or subject to conditions, including (but not limited to) conditions relating to—
 - (a) the permitted times or periods of time for carrying on the activity; or
 - (b) the manner of carrying on the activity.
- (5) The council may, by further notice in writing, vary or revoke a declaration under this section.
- (6) A declaration under this section has effect from the date specified in the declaration and remains in force according to its terms for a period not exceeding 3 months specified in the declaration or until revoked by the council.
- (7) A council must publish a declaration made under this section, and any variations of the declaration, on a website determined by the council.

20—Person must cease local nuisance if asked

A person must, on request by an authorised officer, cease an activity, or remove from premises owned or occupied by the person any substance, material or thing that, in the opinion of the authorised officer, is causing local nuisance.

Maximum penalty: \$5 000.

Expiation fee: \$210.

21—Regulations for purposes of Division

Regulations may be made for the purposes of this Division and may, without limitation—

- (a) prohibit, restrict or regulate an activity, or the use or sale of a substance, material or thing, or the use or installation of equipment or infrastructure relevant to the prevention or management of local nuisance; and
- (b) prohibit, restrict or regulate the manufacture, possession, transport, storage, use or disposal of a substance, material, equipment or thing that causes local nuisance; and

- (c) provide for the removal or destruction of a substance, material, equipment or thing that causes local nuisance; and
- (d) provide for compliance standards, and testing or monitoring standards, procedures or techniques (including sensory techniques), to be applied or used by authorised officers in detecting or identifying local nuisance; and
- (e) provide for the taking, analysis or testing of samples relevant to detecting, identifying or monitoring local nuisance including—
 - (i) the persons who may take, analyse or test those samples; and
 - (ii) the places where those samples may be analysed or tested; and
 - (iii) the reporting of the results of the analysis or testing of those samples.

Division 2—Litter control

22—Disposing of litter

- (1) A person must not dispose of litter onto any land or into any waters.

Maximum penalty:

- (a) for an offence involving the disposal of any amount of class A hazardous litter—
 - (i) in the case of a body corporate—\$250 000;
 - (ii) in the case of a natural person—\$120 000 or imprisonment for 2 years;
- (b) for an offence involving the disposal of 50 litres or more of class B hazardous litter or general litter—
 - (i) in the case of a body corporate—\$60 000;
 - (ii) in the case of a natural person—\$30 000 or imprisonment for 6 months;
- (c) for an offence involving the disposal of up to 50 litres of class B hazardous litter—\$10 000;
- (d) for an offence involving the disposal of up to 50 litres of general litter—\$5 000.

Expiation fee:

- (a) for an offence involving the disposal of 50 litres or more of class B hazardous litter or general litter—\$1 000;
 - (b) for an offence involving the disposal of up to 50 litres of class B hazardous litter—\$500;
 - (c) for an offence involving the disposal of up to 50 litres of general litter—\$210.
- (2) For the purposes of subsection (1)—
- (a) if litter is discarded, deposited, blows or falls from premises or a vehicle onto land or into waters, it is taken to have been disposed of onto the land or into the waters; and

- (b) a person will be taken to have disposed of litter onto land or into waters if the person caused or allowed the litter to be disposed of onto the land or into the waters; and
- (c) the occupier or person in charge of a place from which litter is discarded or deposited or blows or falls will be taken to have disposed of the litter (but without affecting the liability of any other person in respect of the disposal).

Note—

If the disposal of litter occurs from a vehicle or in connection with the use of a vehicle, the owner of the vehicle is, under section 26, taken to have committed an offence.

- (3) However, subsection (1) does not apply to the disposal of litter—
 - (a) in a council area—
 - (i) in a bin or other receptacle provided by the council for litter of that kind; or
 - (ii) in some other manner approved or authorised by the council; or
 - (b) at a depot, facility or works of a kind described in Schedule 1 Part A clause 3 of the *Environment Protection Act 1993* at which such material is received; or
 - (c) if the litter consists of a vehicle to which sections 236 and 237 of the *Local Government Act 1999* apply; or
 - (d) in accordance with an approval, consent, licence, permit, exemption or other authorisation or entitlement granted by a council or granted under any Act or law of this State or the Commonwealth.
- (4) In any proceedings where it is alleged that a person contravened subsection (1), it will be a defence if it is proved that—
 - (a) the litter was disposed of on that person's property or on some other person's property with that other person's consent; or
 - (b) the disposal was accidental and the person has, as soon as becoming aware of the disposal, taken all reasonable steps to retrieve the litter.

- (5) In this section, unless the contrary intention appears—

class A hazardous litter means domestic or commercial waste comprised of—

- (a) asbestos;
- (b) material containing asbestos;
- (c) any substance, material or thing of a kind prescribed by regulation;
- (d) a combination of litter referred to in a preceding paragraph of this definition and any other litter;

class B hazardous litter means—

- (a) when disposed of onto land or into waters—
 - (i) live cigarettes or cigarette butts;
 - (ii) used syringes;
 - (iii) waste glass (whether or not broken);

- (iv) any substance, material or thing of a kind prescribed by regulation;
- (v) a combination of litter referred to in a preceding paragraph of this definition and general litter;
- (b) when disposed of into waters—any disused or decommissioned vehicle, appliance or device or part of such a vehicle, appliance or device or any other structure or thing that an authorised officer reasonably suspects is being used, or is intended for use, in the waters as an artificial reef;

general litter means any solid or liquid domestic or commercial waste, and includes, without limitation—

- (a) cigarettes or cigarette butts;
- (b) chewing gum;
- (c) food or food scraps;
- (d) beverage containers;
- (e) packaging;
- (f) clothing, footwear or other personal accessories or personal items;
- (g) furniture;
- (h) garden cuttings or clippings or other plant matter;
- (i) garden landscaping material;
- (j) dead or diseased animals;
- (k) vehicles or vehicle parts;
- (l) machinery or equipment used in farming or agriculture;
- (m) demolition material (including, but not limited to, clay, concrete, rock, sand, soil or other inert mineralogical matter);
- (n) building or construction material or equipment;
- (o) any material or thing used or generated in the course of carrying on a prescribed activity of environmental significance;
- (p) any substance, material or thing of a kind prescribed by regulation,

but does not include hazardous litter;

hazardous litter means class A hazardous litter or class B hazardous litter;

litter means general litter or hazardous litter;

surface waters means—

- (a) marine waters within the meaning of the *Environment Protection Act 1993*; and
- (b) naturally occurring inland waters; and
- (c) artificially created bodies of water or streams that are for public use or enjoyment;

waste has the same meaning as in the *Environment Protection Act 1993*;

waters means surface waters or underground waters.

23—Bill posting

- (1) A person must not post a bill on property without the consent of the owner or occupier of the property.

Maximum penalty: \$10 000.

Expiation fee: \$315.

- (2) If a bill is posted on property in contravention of subsection (1), a person who distributed or authorised the distribution of the bill for posting is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of a natural person—\$10 000.

- (3) In any proceedings where it is alleged that a person contravened subsection (2), it will be a defence if it is proved that the person did not foresee and could not reasonably be expected to have foreseen the likelihood that such bills would be posted without consent.

- (4) If a person is convicted of an offence against subsection (1) or (2), the court may order the offender to pay to the owner or occupier of the relevant property such compensation for loss or damage caused to the property by the commission of the offence as the court considers just.

- (5) In this section—

bill includes a flyer, brochure or poster containing promotional material, and includes anything declared by regulation to be a bill, but does not include anything declared by regulation not to be a bill.

24—Litterer must remove litter if asked

A person must, on request by an authorised officer, remove a bill posted on property, or any other litter disposed of, by that person in contravention of this Division and dispose of it as directed by the authorised officer.

Maximum penalty: \$5 000.

Expiation fee: \$210.

25—Citizen's notification

- (1) A person who reasonably suspects another person of having committed an offence against this Division may notify the Minister or the relevant council of that suspicion by forwarding a report (a *citizen's notification*) to the Minister or the council in the form (which may be electronic), and containing the details (which may include images), prescribed by regulation.
- (2) In any proceedings, a citizen's notification constitutes evidence of the matters contained in that notification.

Division 3—Miscellaneous

26—Liability of vehicle owners

- (1) Subject to this Part, if—
- (a) an activity is carried on—

- (i) in, at or from a vehicle; or
 - (ii) in connection with the use of a vehicle; and
- (b) the activity results in an offence against section 18, 22 or 23 (a ***principal offence***),

the owner of the vehicle is guilty of an offence against this section and is liable to the same penalty as is prescribed for the principal offence and the expiation fee (if any) that is fixed for the principal offence also applies in relation to the offence against this section.

- (2) The owner of a vehicle and the person who committed the principal offence (the ***alleged principal offender***) are not both liable through the operation of this section to be found guilty of, or to expiate, an offence arising out of the same circumstances, and consequently a finding of guilt in relation to, or expiation by, the owner exonerates the alleged principal offender and conversely a finding of guilt in relation to, or expiation by, the alleged principal offender exonerates the owner.
- (3) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if he or she was not the alleged principal offender, to provide the council or officer specified in the notice, within the period specified in the notice, with a statutory declaration—
- (a) setting out the name and address of the person who the owner believes to have been the alleged principal offender; or
 - (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged principal offence and has complied with the *Motor Vehicles Act 1959* or the *Harbors and Navigation Act 1993* (as the case may require) in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).
- (4) If the vehicle is owned by 2 or more persons—
- (a) a prosecution for an offence against this section may be brought against 1 of the owners or against some or all of the owners jointly as co-defendants; and
 - (b) if the case for the prosecution is proved and a defence is not established, the defendant or each of the defendants who does not establish a defence is liable to be found guilty of an offence against this section.
- (5) Before proceedings are commenced against the owner of a vehicle for an offence against this section, the complainant must send the owner a notice—
- (a) setting out particulars of the alleged principal offence; and
 - (b) inviting the owner, if he or she was not the alleged principal offender or the owner of the vehicle at the time of the alleged principal offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out any matters referred to in subsection (3)(a) or (b).
- (6) Subsection (5) does not apply to—
- (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or

- (b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the alleged principal offender.
- (7) Subject to subsection (8), in proceedings against the owner of a vehicle for an offence against this section, it is a defence to prove—
 - (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of commission of the alleged principal offence; or
 - (b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.
- (8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.
- (9) If—
 - (a) an expiation notice is given to a person named as the alleged principal offender in a statutory declaration under this section; or
 - (b) proceedings are commenced against such a person,the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged principal offender.
- (10) The particulars of the statutory declaration provided to the alleged principal offender must not include the address of the person who provided the statutory declaration.
- (11) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was present in or at the vehicle at the time at which the alleged principal offence was committed.
- (12) In proceedings against the owner of a vehicle or the alleged principal offender for an offence under this Part, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.
- (13) For the purposes of subsection (1), an activity comprised of the disposal of a substance, material or thing onto land or into waters that results in an offence against this Act will be presumed, in the absence of proof to the contrary, to have been carried on in connection with the use of a vehicle if the substance, material or thing has been disposed of onto land or into waters and the vehicle was seen arriving at that place before the disposal or leaving the place after the disposal.
- (14) This section does not apply in the case of a principal offence against section 22 if—
 - (a) the vehicle from which the litter was disposed of is—
 - (i) a taxi; or
 - (ii) a train, tram, bus, ferry, passenger ship, or other public transport vehicle that was being used for a public purpose at the time; and
 - (b) the litter was disposed of by a passenger of the vehicle.

27—Defence of due diligence

- (1) In any proceedings against a person for an offence under section 18 or 22, it is a defence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.
- (2) Without limiting subsection (1), in the case of an offence committed or allegedly committed by a person in the course of undertaking a prescribed activity of environmental significance (to the extent referred to in section 5(5)), it is not proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence unless it is proved that the person—
 - (a) had taken reasonable steps to prevent or avoid the circumstances that gave rise to the offence including by putting in place any systems or safeguards that might reasonably be expected to be in place; and
 - (b) complied with the requirements of any notice under this Act that related to preventing or managing the circumstances that gave rise to the offence; and
 - (c) as soon as becoming aware of the circumstances that gave rise to the offence—
 - (i) reported those circumstances to the Minister or the relevant council; and
 - (ii) took all reasonable steps necessary to prevent or reduce those circumstances.
- (3) A person who would, but for the defence provided by this section, have contravened section 18 or 22 is, despite that defence, to be taken to have contravened that provision for the purposes of—
 - (a) any proceedings under section 33 in respect of the contravention; and
 - (b) the issuing or enforcement of a nuisance abatement notice or litter abatement notice in respect of the contravention; and
 - (c) the making by a court of an order under section 45 in proceedings for an offence in respect of the contravention.
- (4) This section does not apply in relation to a person who is charged with an offence under section 46.

28—Alternative finding

If, in proceedings for an offence against this Part, the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against this Part that carries a lower maximum penalty (determined according to relative maximum monetary penalties), the court may find the defendant guilty of the latter offence.

29—Notification to EPA of serious or material environmental harm

If a council has reason to believe that an offence committed under section 18 or 22 has, or may have, resulted in material environmental harm, or serious environmental harm, within the meaning of the *Environment Protection Act 1993*, the council must, as soon as practicable, notify the Environment Protection Authority of that belief.

Part 5—Nuisance abatement notices and litter abatement notices

30—Nuisance and litter abatement notices

- (1) The Minister or a relevant council may issue—
 - (a) a nuisance abatement notice for or in connection with securing compliance with Part 4 Division 1; or
 - (b) a litter abatement notice for or in connection with securing compliance with Part 4 Division 2.
- (2) A notice under this section—
 - (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (by name or by a description sufficient to identify the person); and
 - (c) must specify the purpose for which it is issued; and
 - (d) may direct 2 or more persons to do something specified in the notice jointly; and
 - (e) may impose a requirement that the person do 1 or more of the following:
 - (i) discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice;
 - (ii) not carry on a specified activity except at specified times or subject to specified conditions;
 - (iii) take specified samples or conduct specified tests, examinations, monitoring or analyses at specified times or intervals or for a specified period or until further notice;
 - (iv) furnish to the Minister or council specified results or reports within a specified period;
 - (v) clean up litter that the Minister or council considers to have been caused by a contravention of this Act;
 - (vi) make good any damage to property that the Minister or council considers to have been caused by a contravention of this Act;
 - (vii) prepare, in accordance with specified requirements and to the satisfaction of the Minister or council, a plan of action for the purposes of securing compliance with any requirement of this Act or preventing any future contravention of this Act;
 - (viii) take such other specified action in a specified way, and within a specified period or at specified times or in specified circumstances; and

- (f) may, in addition, in the case of a litter abatement notice, impose a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the Minister or council, a plan of action for the purposes of—
 - (i) preventing the escape of litter from business premises; or
 - (ii) keeping a specified area (not exceeding 100 metres) around business premises free from litter; and
 - (g) may impose any other requirement prescribed by regulation; and
 - (h) must state that the person may, within 14 days, appeal against the notice to the Environment, Resources and Development Court.
- (3) A notice under this section may be issued to a person by 2 or more councils jointly to prevent the person contravening a provision of this Act in those council areas.
- (4) A notice under this section that relates to an activity or conditions on premises may be issued to—
 - (a) the owner or occupier of the premises; or
 - (b) a person who has the management or control of the premises; or
 - (c) a person who is the trustee of a person referred to in paragraph (a) or (b), or is managing the affairs of such a person on some other basis.
- (5) An authorised officer may, if of the opinion that urgent action is required, issue an emergency notice imposing a requirement of a kind referred to in subsection (2)(e) or (3) or as reasonably required in the circumstances.
- (6) An emergency notice may be issued orally, but, in that event, the person to whom the notice is issued must be advised forthwith of the person's right to appeal against the notice to the Environment, Resources and Development Court.
- (7) If an emergency notice is issued to a person by an authorised officer, the notice will cease to have effect on the expiration of 3 business days from the time of its issue unless confirmed by a notice issued by the Minister or council and served on the person.
- (8) The Minister or a council may, by written notice served on a person to whom a notice under this section has been issued by the Minister or council, vary or revoke the notice.
- (9) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty:

 - (a) in the case of a body corporate—\$60 000;
 - (b) in the case of a natural person—\$30 000.

Expiation fee: \$500.
- (10) A person must not hinder or obstruct a person complying with a notice under this section.

Maximum penalty: \$25 000.

31—Action on non-compliance with notice

- (1) If the requirements of a nuisance abatement notice or litter abatement notice issued by the Minister or a council are not complied with, the Minister or council may take any action required by the notice.
- (2) Action to be taken under subsection (1) may be taken on behalf of the Minister or council by an authorised officer or another person authorised by the Minister or council for the purpose.
- (3) If a person other than an authorised officer is authorised to take action under subsection (2), the following provisions apply:
 - (a) the Minister or council must issue the person with an instrument of authority;
 - (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
 - (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
 - (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.
- (4) A person taking action under this section may enter any relevant premises or vehicle at any reasonable time.
- (5) The reasonable costs and expenses incurred by the Minister or a council in taking action under this section may be recovered by the Minister or council as a debt from the person who failed to comply with the requirements of the notice.
- (6) If an amount is recoverable from a person under this section, the Minister or council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- (7) In addition, if an amount recoverable under this section relates to action taken in relation to any land owned by the person to whom the notice was issued (including a building or other structure on such land), the amount will be a charge on the land in favour of the Minister or council in accordance with a scheme prescribed by the regulations (with a priority determined in accordance with the regulations).

32—Appeals

- (1) A person who has been issued with a nuisance abatement notice or litter abatement notice may appeal to the Environment, Resources and Development Court against the notice.
- (2) An appeal—
 - (a) must be instituted within 14 days after the notice is served on the person (or such longer period as the Court allows); and
 - (b) must be made in a manner and form determined by the Court, setting out the grounds of the appeal.

- (3) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).
- (4) The Minister or a council is entitled to be a party to any proceedings under this section.

Part 6—Civil remedies and penalties

33—Civil remedies

- (1) Application may be made to the Environment, Resources and Development Court for 1 or more of the following orders:
 - (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take any specified action;
 - (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act—an order requiring the person to take that action;
 - (c) if a person has caused damage to property by a contravention of this Act—an order requiring the person to take specified action to make good the damage and, if appropriate, to take specified action to prevent or mitigate further damage;
 - (d) if the Minister or a council has incurred costs or expenses in taking action to prevent or mitigate damage caused by a contravention of this Act, or to make good resulting damage—an order against the person who committed the contravention for payment of the reasonable costs and expenses incurred in taking that action;
 - (e) if a person has suffered injury or loss or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage—an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
 - (f) if a person who has been issued with a nuisance abatement notice or litter abatement notice has incurred costs and expenses in carrying out the requirements of the order or reimbursing the Minister or a council for action taken in pursuance of the order—an order for payment of the whole or a portion of the costs and expenses, as the Court considers appropriate, against 1 or more other persons who were liable for the costs and expenses;
 - (g) if the Court considers it appropriate to do so, an order against a person who has contravened this Act—
 - (i) if the application for the order was made by the Minister—for payment for the credit of the Consolidated Account; or
 - (ii) if the application for the order was made by a relevant council—for payment to the council,

of an amount in the nature of exemplary damages determined by the Court.

- (2) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—
 - (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of causing local nuisance, littering or injury to persons or loss or damage to property if the first mentioned person engages in conduct of that kind.
- (3) The power of the Court to make an order requiring a person to take specified action may be exercised—
 - (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or
 - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of causing local nuisance, littering or injury to persons or loss or damage to property if the first mentioned person refuses or fails to take that action.
- (4) In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to—
 - (a) any detriment to the public interest resulting from the contravention; and
 - (b) any financial saving or other benefit that the respondent stood to gain by committing the contravention; and
 - (c) any other matter it considers relevant.
- (5) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a Judge of the Court.
- (6) An application under this section may be made—
 - (a) by the Minister or a council; or
 - (b) by any person whose interests are affected by the subject matter of the application; or
 - (c) by any other person with the permission of the Court.
- (7) Before the Court may grant permission for the purposes of subsection (6)(c), the Court must be satisfied that—
 - (a) the proceedings on the application would not be an abuse of the process of the Court; and
 - (b) there is a real or significant likelihood that the requirements for the making of an order under subsection (1) on the application would be satisfied; and

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- (c) it is in the public interest that the proceedings should be brought.
- (8) If an application is made by a person other than the Minister—
- (a) the applicant must serve a copy of the application on the Minister within 3 days after filing the application with the Court; and
 - (b) the Court must, on application by the Minister, join the Minister as a party to the proceedings.
- (9) If an application is made by a person other than the relevant council—
- (a) the applicant must serve a copy of the application on the relevant council within 3 days after filing the application with the Court; and
 - (b) the Court must, on application by the council, join the council as a party to the proceedings.
- (10) An application under this section may be made in a representative capacity (but, if so, the consent of all persons on whose behalf the application is made must be obtained).
- (11) An application may be made without notice to any person and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant permission to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (12) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).
- (13) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.
- (14) An interim order—
- (a) may be made on an application without notice to any person; and
 - (b) may be made whether or not the proceedings have been referred to a conference; and
 - (c) will be made subject to such conditions as the Court thinks fit; and
 - (d) will not operate after the proceedings in which it is made are finally determined.
- (15) If the Court makes an order requiring the respondent to take any specified action to make good any damage to property or to prevent or mitigate further damage, the provisions of Part 5 relating to—
- (a) the taking of action by the Minister or a council on non-compliance with a nuisance abatement notice or litter abatement notice; and
 - (b) the recovery of costs and expenses by the Minister or a council,
- apply in relation to the Court's order in the same way as in relation to a nuisance abatement notice or litter abatement notice issued by the Minister or a council under that Part.

- (16) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for the grant or variation of an environmental authorisation within the meaning of the *Environment Protection Act 1993* that should have been but was not made, or to remedy any other default.
- (17) The Court may order an applicant in proceedings under this section—
- (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;
 - (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (18).
- (18) If, on an application under this section alleging a contravention of this Act, the Court is satisfied—
- (a) that the respondent has not contravened this Act; and
 - (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
 - (c) that in the circumstances it is appropriate to make an order under this provision,
- the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.
- (19) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.
- (20) Proceedings under this section based on a contravention of this Act may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time.
- (21) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (22) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- (23) Without limiting the generality of subsection (22), in determining whether to make any order in relation to costs the Court may have regard to the following matters (so far as they are relevant):
- (a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest;
 - (b) whether or not the proceedings raise significant issues relating to the administration of this Act.

34—Minister or council may recover civil penalty in respect of contravention

- (1) Subject to this section, if the Minister or a relevant council is satisfied that a person has committed an offence by contravening a provision of this Act, the Minister or council may, as an alternative to criminal proceedings, recover, by negotiation or by application to the Environment, Resources and Development Court an amount as a civil penalty in respect of the contravention.
- (2) The Minister or a relevant council may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.
- (3) The Minister or a relevant council may not make an application to the Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—
 - (a) unless the Minister or council has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Minister or council, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the notice to make such an election; or
 - (b) if the person serves written notice on the Minister or council, before the making of such an application, that the person elects to be prosecuted for the contravention.
- (4) The maximum amount that the Minister or a relevant council may recover by negotiation as a civil penalty in respect of a contravention is the sum of the amount specified by this Act as the criminal penalty in relation to that contravention and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (5) If, on an application by the Minister or a council, the Environment, Resources and Development Court is satisfied on the balance of probabilities that a person has contravened a provision of this Act, the Court may order the person to pay to the Minister or council an amount as a civil penalty (but not exceeding the sum of the amount specified by this Act as the criminal penalty in relation to that contravention and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention).
- (6) In determining the amount to be paid by a person as a civil penalty, the Court must have regard to—
 - (a) the nature and extent of the contravention; and
 - (b) any injury to persons, loss or damage to property or detriment to the public interest resulting from the contravention; and
 - (c) any financial saving or other benefit that the person stood to gain by committing the contravention; and
 - (d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and

- (e) any other matter it considers relevant.
- (7) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the Court.
- (8) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered from the person under this section in relation to the contravention of 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).
- (9) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (10) Proceedings referred to in subsection (9) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.
- (11) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—
 - (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.
- (12) However, subsection (11) does not apply to criminal proceedings in respect of the making of a false or misleading statement.
- (13) Proceedings for an order under this section may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged contravention.
- (14) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings for an order under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (15) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

Part 7—Miscellaneous

35—Constitution of the Environment, Resources and Development Court

The Environment, Resources and Development Court is, when exercising jurisdiction under this Act, to be constituted in the same way as it is when exercising jurisdiction under the *Environment Protection Act 1993*.

36—Delegation by Minister

- (1) The Minister may delegate a function or power conferred on the Minister under this Act—
 - (a) to a specified person or body; or
 - (b) to a person occupying or acting in a specified office or position.
- (2) A delegation—
 - (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (c) is revocable at will and does not prevent the delegator from acting personally in a matter.

37—Service of notices or other documents

- (1) Subject to this section, if this Act requires or authorises a notice or other document to be served on, or given to, a person, the notice or document may—
 - (a) be served on, or given to, the person or an agent of the person; or
 - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
 - (c) be sent by post to the person or an agent of the person at his or her last known address; or
 - (d) if the notice or document is to be served on the owner of land, the land is unoccupied, and the person seeking to serve the notice or document has taken reasonable steps to effect service under the other paragraphs of this subsection but has been unsuccessful—be served by fixing it to some conspicuous part of the land; or
 - (e) if the notice or document is to be served on the occupier of land—be sent by post to the occupier at the address of the land; or
 - (f) be served on the person by fixing it to, or leaving it on, a vessel that the person is apparently in charge of, or expected to board at some stage, if the person giving or serving the notice or document has reasonable grounds to believe that service in this manner will bring the notice or document to the attention of the person to be served; or
 - (g) be sent to the person by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been served or given at the time of transmission); or
 - (h) be served or given in some other manner prescribed by the regulations.
- (2) Without limiting subsection (1), a notice or document to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.

- (3) Subject to the regulations, a notice or document required or authorised to be given to an owner of land may, if it is to be served personally, be served on the owner, 1 of any joint owners, or the agent of the owner.

38—Immunity

- (1) No personal liability attaches to—
- (a) the Minister; or
 - (b) an authorised officer or any other person engaged in the administration of this Act,
- for an honest act or omission in the performance, exercise or discharge, or purported performance, exercise or discharge, of a function under this Act.
- (2) Subject to subsection (3), a liability that would, but for subsection (1), lie against a person lies instead against the Crown.
- (3) A liability that would, but for subsection (1), lie against an officer, employee, agent or contractor of a council lies instead against the council.

39—Protection from liability

A failure by the Minister or a council to perform a function under this Act, does not give rise to any civil liability.

40—Statutory declarations

If a person is required by or under this Act to provide information to the Minister or a council, the Minister or council may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been so verified.

41—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in a report or any other information furnished, or record kept, under this Act.

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- (b) in the case of a natural person—\$20 000.

42—Confidentiality

A person must not divulge any information relating to trade processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act; or

- (d) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.

Maximum penalty: \$25 000.

43—Offences

- (1) Proceedings for an offence against this Act may only be commenced by—
 - (a) the Director of Public Prosecutions; or
 - (b) the Minister; or
 - (c) an authorised officer; or
 - (d) a relevant council; or
 - (e) the chief executive officer of a relevant council; or
 - (f) a police officer; or
 - (g) a person acting on the written authority of the Minister.
- (2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of an authorisation under subsection (1)(g).

44—Offences and Environment, Resources and Development Court

Offences constituted by this Act lie within the criminal jurisdiction of the Environment, Resources and Development Court.

45—Orders in respect of contraventions

- (1) If, in proceedings under this Act, the court finds that the defendant contravened this Act and the contravention has resulted in injury to a person or loss or damage to property, the court may, in addition to any penalty it may impose, do 1 or more of the following:
 - (a) order the person to take specified action to make good any damage and, if appropriate, to take specified action to prevent or mitigate further damage;
 - (b) order the person to take specified action to publicise the contravention and its consequences and any other orders made against the person;
 - (c) order the person to pay—
 - (i) to the Minister or a council that has incurred costs or expenses in taking action to prevent or mitigate or make good any damage (including, in the case of litter, taking action to remove or clean up, and lawfully dispose of the litter); and
 - (ii) to any person who has suffered injury or loss or damage to property as a result of the contravention, or incurred costs or expenses in taking action to prevent or mitigate such injury, loss or damage (including, in the case of litter, taking action to remove or clean up, and lawfully dispose of the litter),

the reasonable costs and expenses so incurred, or compensation for the injury, loss or damage so suffered, as the case may be, in such amount as is determined by the court.

- (2) If a person is found by a court to have contravened this Act, the court may, in addition to any penalty it may impose, order the person to pay to the Minister or a council an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (3) For the purposes of subsection (2), an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of a contravention if the contravention can be attributed (in whole or in part) to that delay or avoidance.
- (4) The court may, by an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (5) An amount paid to the Minister in accordance with an order under subsection (2) must be paid into the Environment Protection Fund under the *Environment Protection Act 1993*.

46—Offences by bodies corporate

- (1) If a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (2) If a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
 - (a) the member knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
 - (b) the member was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
 - (c) the member failed to exercise due diligence to prevent the commission of the offence.

47—Continuing offences

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—
 - (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence; and

- (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence.
- (2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

48—Recovery of administrative and technical costs associated with contraventions

- (1) If a person has contravened this Act and the Minister or a council—
 - (a) has taken action to—
 - (i) investigate the contravention; or
 - (ii) issue a nuisance abatement notice or litter abatement notice in respect of the contravention; or
 - (iii) ensure that the person has complied with requirements imposed in relation to the contravention by a nuisance abatement notice or litter abatement notice or by an order of a court under this Act; or
 - (b) has, in taking such action, incurred costs and expenses in taking samples or in conducting tests, examinations, monitoring or analyses,

the Minister or council may, by notice in writing served on the person, require the person to pay to the Minister or council the reasonable costs and expenses incurred by the Minister or council in taking such action.
- (2) Subject to subsection (3), an amount payable to the Minister or council in accordance with a notice under this section must be paid within the period specified in the notice.
- (3) On application by a person who has been served a notice under this section, the Minister or council that served the notice may, by notice in writing—
 - (a) extend the time for payment of an amount payable in accordance with the notice; or
 - (b) waive payment of such an amount or reduce the amount payable.
- (4) A person who fails to pay an amount payable to the Minister or council in accordance with this section is guilty of an offence.

Maximum penalty: \$2 500.
Expiation fee: \$500.
- (5) If a notice is issued under this section in respect of a contravention and—
 - (a) the contravention is the subject of an appeal; or
 - (b) the notice requires payment of an amount in respect of the issue of a nuisance abatement notice or litter abatement notice in respect of the contravention and the nuisance abatement notice or litter abatement notice is the subject of an appeal,

the first-mentioned notice is suspended until the appeal has been determined (but if the court, on appeal, finds that the contravention was committed or that the nuisance abatement notice or litter abatement notice was properly issued, as the case may be, the first-mentioned notice will have effect as if the period for payment specified in the notice commenced on the day on which the appeal was determined).

- (6) If an amount payable to the Minister or council is not paid in accordance with this section, the amount may be recovered as a debt by the Minister or council.

49—Assessment of reasonable costs and expenses

For the purposes of this Act, the reasonable costs and expenses that have been or would be incurred by the Minister, a council or some other person or body in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

50—Evidentiary provisions

- (1) In proceedings under this Act, where it is alleged that a person caused local nuisance within the meaning of section 17, evidence by an authorised officer that he or she formed the opinion based on his or her own senses that—
- (a) the agent alleged to have caused the local nuisance when discharged or emitted from a place occupied or a vehicle owned by the person travelled to a place occupied by another person; and
 - (b) the level, nature or extent of the agent within the place occupied by the other person was such as to constitute an unreasonable interference with the person's enjoyment of the place,
- constitutes proof, in the absence of proof to the contrary, of those matters.
- (2) In proceedings under this Act, a certificate of an authorised officer certifying that, at a specified time—
- (a) a specified place was a road, road-related area or other public place; or
 - (b) a specified vehicle was stopped or parked in a specified place; or
 - (c) a specified person was the owner or operator of a specified vehicle,
- constitutes proof, in the absence of proof to the contrary, of those matters.
- (3) In proceedings under this Act, a certificate of an authorised officer certifying that—
- (a) specified matter was class A hazardous litter, class B hazardous litter or general litter; or
 - (b) a specified amount of litter was disposed of,
- constitutes proof, in the absence of proof to the contrary, of those matters.
- (4) In proceedings under this Act, a certificate of the Minister, a council or an authorised officer certifying as to a matter relating to—
- (a) the appointment or non-appointment of a person as an authorised officer under this Act; or
 - (b) a delegation or authority under this Act; or

- (c) a notice, requirement or direction of the Minister, a council or an authorised officer under this Act; or
- (d) any other decision of the Minister, a council or an authorised officer; or
- (e) the receipt or non-receipt by the Minister, a council or an authorised officer of a notification, report or information given or required to be given or furnished to the Minister, council or authorised officer under this Act,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

- (5) In proceedings under this Act for the recovery of reasonable costs and expenses incurred by the Minister, a council or some other person or body, a certificate executed by the Minister or council detailing the costs and expenses and the purpose for which they were incurred constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (6) In proceedings under this Act, an apparently genuine document purporting to be an authorisation, notice, order, certificate or other document, or a copy of an authorisation, notice, order, certificate or other document, issued or executed by the Minister, a council or an authorised officer under this Act or the *Environment Protection Act 1993* will be accepted as such in the absence of proof to the contrary.

51—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) declare matters under Schedule 1 relating to local nuisance as contemplated by section 17(1), by inserting a provision into the Schedule;
 - (b) amend Schedule 1 by—
 - (i) substituting a provision in, or deleting a provision from, the Schedule; or
 - (ii) inserting material into, substituting material in, or deleting material from, a provision of the Schedule;
 - (c) require the keeping of records, statistics and other forms of information by any person or body and the provision of reports based on that information;
 - (d) fix fees to be paid in respect of any matter under this Act and regulate the payment, recovery, waiver or reduction of such fees;
 - (e) exempt, either absolutely or subject to prescribed conditions or limitations—
 - (i) persons or classes of persons;
 - (ii) areas of the State,
 from this Act or specified provisions of this Act;
 - (ea) include evidentiary provisions to facilitate proof of breaches of the Act or the regulations for the purposes of proceedings for offences;
 - (eb) contain provisions of a savings or transitional nature;
 - (f) impose fines, not exceeding \$10 000, for breach of a regulation;

- (g) fix expiation fees, not exceeding \$500, for alleged offences against the regulations.
- (3) The regulations may adopt, wholly or partially and with or without modification—
 - (a) a code, standard or guidelines relating to matters in respect of which regulations may be made under this Act; or
 - (b) an amendment to such a code, standard or guidelines.
- (4) The regulations or a code, standard or guidelines adopted by the regulations may—
 - (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body or person, either as in force at the time the regulations are made or as in force from time to time; and
 - (b) be of general or limited application (including so as to apply only to a specified part of the State); and
 - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, a council or a prescribed person or body.
- (5) If—
 - (a) a code, standard or guidelines are adopted by the regulations; or
 - (b) the regulations, or a code, standard or guidelines adopted by the regulations, refer to a standard or other document prepared or published by a prescribed body,then—
 - (c) a copy of the code, standard, guidelines or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
 - (d) in any legal proceedings, evidence of the contents of the code, standard, guidelines or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard, guidelines or other document; and
 - (e) the code, standard, guidelines or other document has effect as if it were a regulation made under this Act.
- (6) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (7) A provision of a regulation made under subsection (6) may, if the regulation so provides, take effect from the commencement of this subsection or from a later day.
- (8) To the extent to which a provision takes effect under subsection (7) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or

- (b) imposing liabilities on the person.
- (9) Before a regulation is made under this Act, the Minister must consult (in such manner as the Minister thinks fit) with the LGA and any councils or other persons or bodies likely to be affected by the regulation.

Schedule 1—Meaning of local nuisance (section 17)

Part 1—Interpretation

1—Interpretation

In this Schedule, unless the contrary intention appears—

authorised graffiti, in relation to premises, means—

- (a) graffiti commissioned for the premises by a public authority as public art; or
- (b) graffiti that is on the premises with the consent of the owner or occupier of the premises (other than offensive graffiti or graffiti comprised only or principally of words, symbols or tags);

bird scaring device means a device designed, adapted or used to scare birds by the emission of noise;

construction activity includes—

- (a) demolition work, site preparation work and building maintenance or repair work; and
- (b) the operation of vehicles within, or entering or leaving, a construction site; and
- (c) any activities, at or within the immediate vicinity of a construction site, of persons who perform work at the site, or work connected with work at the site;

construction noise means noise from any construction activity;

fixed machine means a machine that is installed as a fixture on premises for operation and use in that position;

fixed machine noise means noise from a fixed machine;

machine includes a device or equipment;

machine noise means noise from a machine;

offensive graffiti means graffiti that a reasonable person would consider to be obscene or offensive;

promotional image means an image conveying a promotional message, (whether consisting of words, numbers or other symbols, or other images);

street or tree maintenance machines includes—

- (a) sweeping or cleaning machines, blowers or similar machines when part of an organised program of such activity undertaken by or on behalf of a council or business; and

- (b) chainsaws, power saws or mulching or chipping machines when part of a program of works related to public street trees;

solid fuel heater has the same meaning as in the *Environment Protection (Air Quality) Policy 2016*;

waste has the same meaning as in the *Environment Protection Act 1993*;

waste collection noise means noise from waste collection, and includes noise generated by—

- (a) the intermittent stopping, starting and movement on a road of a waste transport vehicle in the course of collecting waste for a council kerbside waste collection service; or
- (b) the setting down or picking up of a skip bin; or
- (c) the gathering or collection of waste by a vehicle from the site at which the waste was generated; or
- (d) the depositing of waste into a receptacle in which it is to be transported;

waste transport vehicle means a vehicle used for or in connection with a waste transport business (category A) or a waste transport business (category B), each within the meaning of the *Environment Protection Act 1993* Schedule 1 Part A.

Part 2—Things that are local nuisance

2—Declared agents (section 17(1)(a))

Vibration is a declared agent for the purposes of section 17(1)(a).

3—Unsightly conditions on premises (section 17(1)(c))

For the purposes of section 17(1)(c), the following unsightly conditions are declared:

- (a) conditions on premises involving—
 - (i) excessive or unconstrained rubbish, waste or vegetation; or
 - (ii) stockpiled, excessive or unconstrained disused or derelict items or material that a reasonable person would consider to be rubbish or waste in the circumstances; or
 - (iii) graffiti (other than authorised graffiti) that has been left on the premises—
 - (A) in the case of offensive graffiti—for more than 7 days; or
 - (B) in any other case—for more than 28 days,

where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises; or

- (b) conditions involving a building on the premises having been left partially demolished or in a state of disrepair, dilapidation or damage where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises.

4—Things declared to constitute local nuisance (section 17(1)(e))

The following are declared to constitute local nuisance for the purposes of section 17(1)(e):

- (a) noise generated on premises, if an authorised officer forms the opinion—
 - (i) that—
 - (A) in the case of fixed machine noise generated on domestic premises—the noise has travelled from the domestic premises to a habitable room, or an outdoor courtyard or entertainment area, on neighbouring premises; or
 - (B) in the case of noise other than fixed machine noise generated on domestic premises—the noise has travelled from the domestic premises to neighbouring premises between the hours of—
 - 8pm and midnight on any day; or
 - midnight and 9am on Sunday; or
 - midnight and 8am on any other day; or
 - (C) in the case of construction noise—the noise has travelled from the location of the construction activity to neighbouring premises—
 - on any Sunday or public holiday; or
 - after 7pm or before 7am on any other day; or
 - (D) in the case of waste collection noise—the noise has travelled from the place at which it was generated to neighbouring premises—
 - before 9am or after 7pm on any Sunday or public holiday; or
 - after 7pm or before 7am on any other day; or
 - (E) in the case of noise from a street or tree maintenance machine being used in a public place—the noise has travelled from the public place to neighbouring premises—
 - before 9am or after 7pm on any Sunday or public holiday; or
 - after 7pm or before 7am on any other day; and
 - (ii) that the level, nature or extent of the noise (including its volume, pitch, vibrational frequency, prevalence or frequency of occurrence) is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (b) odour generated on premises, if an authorised officer forms the opinion that—
 - (i) the odour has travelled to neighbouring premises; and

- (ii) the nature, intensity or extent of the odour is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (c) dust generated on premises, if an authorised officer forms the opinion that—
 - (i) the dust has travelled to neighbouring premises; and
 - (ii) the nature, extent, smell, density or texture of the dust is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (d) smoke generated on premises, if—
 - (i) an authorised officer forms the opinion that—
 - (A) the smoke has travelled to neighbouring premises; and
 - (B) the nature, extent, colour, smell or density of the smoke is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises; or
 - (ii) without limiting the generality of subparagraph (i), in the case of smoke from a solid fuel heater—
 - (A) a visible plume of smoke extends into the air above neighbouring premises from the flue or chimney of the heater more than 15 minutes after the heater is lit; and
 - (B) an authorised officer forms the opinion that the nature, extent, colour, smell or density of the smoke is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (e) vibration generated on premises, if an authorised officer forms the opinion that—
 - (i) the vibration has travelled to neighbouring premises; and
 - (ii) the nature, intensity or extent of the vibration is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (f) installation of a fixed machine on domestic premises that, in the opinion of an authorised officer, when operated or used in accordance with the manufacturer's instructions, generates noise of a kind referred to in paragraph (a)(i)(A), the level, nature or extent of which is of a kind referred to in paragraph (a)(ii);
- (g) projection of a promotional, obscene or offensive image onto property without the consent of the owner or occupier of the property;
- (h) using an audible bird scaring device otherwise than in accordance with the *Audible Bird Scaring Devices Environmental Noise Guidelines 2007* prepared by the Environment Protection Authority.

Part 3—Things that are not local nuisance

5—Things that are not local nuisance

The following are declared not to constitute local nuisance for the purposes of section 17(1):

- (a) noise or other nuisance from blasting operations carried out as part of a mining operation within the meaning of the *Mines and Works Inspection Act 1920* or *Mining Act 1971*;
- (b) noise or other nuisance from any activity carried on in accordance with a program for environment protection and rehabilitation that is in force for mining operations under Part 10A of the *Mining Act 1971*;
- (c) noise or other nuisance from the keeping of animals in accordance with a development authorisation within the meaning of the *Development Act 1993*;
- (ca) noise, odour or waste from animals living in their natural habitat (other than such animals that have been actively encouraged, by feeding, to gather in a particular area);
- (d) noise or other nuisance from any other activity carried on in accordance with an authorisation (including an approval, consent, licence, permit, exemption or entitlement) granted under any other Act (other than this Act), provided that—
 - (i) the authorisation imposes requirements to control, minimise or eliminate (as far as reasonably practicable) any noise or other forms of nuisance likely to result from the activity; and
 - (ii) those requirements are complied with;
- (e) noise or other nuisance from fireworks displays;
- (f) noise or other nuisance from sporting or associated activities at sporting venues;
- (g) noise or other nuisance from community events run by or on behalf of a council (subject to any conditions imposed by the council);
- (h) noise from public infrastructure works;
- (i) subject to Part 2 clause 4(1)(a)(i)(D), noise from vehicles (other than vehicles operating within, or entering or leaving, business premises);
- (j) noise or other nuisance that may be the subject of proceedings under—
 - (i) the *Community Titles Act 1996*; or
 - (ii) the *Strata Titles Act 1988*; or
 - (iii) the *Residential Tenancies Act 1995*;
- (k) an activity on, or noise emanating from, licensed premises within the meaning of the *Liquor Licensing Act 1997* in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of that Act;
- (l) behaviour in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of the *Liquor Licensing Act 1997*;

- (m) noise principally consisting of music or voices, or both, resulting from an activity at domestic premises;
- (n) noise from activities carried on in the normal course of a school, kindergarten, child care centre or place of worship;
- (o) noise created by a dog barking or otherwise that may be the subject of an offence under section 45A(5) of the *Dog and Cat Management Act 1995*;
- (p) aircraft or railway noise;
- (q) noise caused by emergency vehicle sirens;
- (r) noise outside of the human audible range.

Schedule 2—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Local Government Act 1999*

2—Repeal of section 235

Section 235—delete the section

3—Amendment of section 236—Abandonment of vehicles

Section 236—delete "or farm implement" wherever occurring

4—Repeal of section 240

Section 240—delete the section

5—Amendment of section 254—Power to make orders

Section 254(1), table, items 1 and 3—delete items 1 and 3

Part 3—Amendment of *Motor Vehicles Act 1959*

6—Amendment of section 139D—Confidentiality

Section 139D(1)(ea)—delete paragraph (ea) and substitute:

- (ea) as may be required for the purposes of—
 - (i) Part 9 Division 3 of the *Criminal Law (Sentencing) Act 1988*; or
 - (ii) Part 4 Division 3 of the *Local Nuisance and Litter Control Act 2016*; or

Part 4—Amendment of *Summary Offences Act 1953*

7—Repeal of section 48

Section 48—delete the section

Part 5—Transitional provisions

8—Continuation of by-laws under section 240 of the *Local Government Act 1999* relating to bill-posting

If, immediately before the commencement of clause 4, a by-law was in force under section 240 of the *Local Government Act 1999*—

- (a) the by-law continues in force after that commencement; and
- (b) section 240 of that Act continues in force after that commencement for the purposes of the by-law,

until the by-law is revoked or expires (whichever occurs sooner).

9—Continuation of orders made under section 254 of the *Local Government Act 1999*

If, immediately before the commencement of clause 5, an order was in force under section 254 of the *Local Government Act 1999* requiring a person to do or to refrain from doing a thing specified in section 254(1), table, Column 1, item 1 or 3 of that Act, the order continues in force after that commencement—

- (a) until the requirements of the order are complied with; or
- (b) for such longer period as may be necessary to enable the person or the council to exercise any rights or powers under Chapter 12 Part 2 in relation to the order.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2016	21	<i>Local Nuisance and Litter Control Act 2016</i>	26.5.2016	1.2.2017 except ss 18, 20, 23 & Sch 2 (cll 4, 5, 7—9)—1.7.2017 (<i>Gazette</i> 21.7.2016 p2988)
2017	(1)	<i>Local Nuisance and Litter Control (Amendment of Act, Schedule 1) Regulations 2017</i> (<i>Gazette</i> 19.1.2017 p73)	—	1.2.2017: r 2
2017	5	<i>Statutes Amendment (Planning, Development and Infrastructure) Act 2017</i>	28.2.2017	Pt 17 (s 53)—uncommenced
2017	7	<i>Statutes Amendment and Repeal (Simplify) Act 2017</i>	15.3.2017	Pt 17 (ss 68 & 69)—22.6.2017 (<i>Gazette</i> 22.6.2017 p2224)

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Pt 7		
s 50		
s 50(1)	amended by 7/2017 s 68	22.6.2017
s 51		
s 51(2)	amended by 7/2017 s 69(1)	22.6.2017
s 51(4)	(e) and (f) deleted by 7/2017 s 69(2)	22.6.2017
Sch 1		
Pts 1 and 2	inserted by 1/2017 r 4(1)	1.2.2017
Pt 3		
heading	inserted by 1/2017 r 4(1)	1.2.2017
cl 5	cl 1 redesignated as cl 5 by 1/2017 r 4(1)	1.2.2017
	amended by 1/2017 r 4(2)—(7)	1.2.2017

amended by 5/2017 s 53

uncommenced—not incorporated

Historical versions

1.2.2017

22.6.2017 (electronic only)

Attachment 2



Local Nuisance and Litter Control Act 2016

Explanatory report for reforms

Local Nuisance and Litter Control Act 2016 reforms – Explanatory report

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Abbreviations

EPA	South Australian Environment Protection Authority
EP Act	<i>Environment Protection Act 1993</i>
LGA	Local Government Association
LL Act	<i>Liquor Licensing Act 1997</i>
LNLC Act	<i>Local Nuisance and Litter Control Act 2016</i>
SA	South Australia

1 Introduction

The *Local Nuisance and Litter Control Act 2016* is administered by local government and provides the community with an effective and consistent local service for the management of nuisance complaints and heightened deterrence for littering and illegal dumping.

The LNLC Act provides a modern legislative scheme for litter control in South Australia including:

- tiered offences depending on the type of litter (small versus large quantities, dangerous and hazardous litter)
- improvements in the use of surveillance for evidence gathering in the case of illegal dumping (linking an offence to the registered owner of a vehicle)
- allowing non-government organisations to undertake compliance activities (subject to approval)
- for public reporting of littering and illegal dumping.

1.1 Purpose of the Act

The objects of the LNLC Act are to:

- protect individual and communities from local nuisance
- prevent littering; improve the amenity value of local areas
- promote the creation and maintenance of a clean and healthy environment.

1.2 Why is the Act being reviewed

The EPA commenced review of the legislation in August 2018 (after a full year of being in operation) to identify any opportunities to improve the legislation and ensure the legislation was allowing councils to deliver its objectives.

1.3 Consultation process to date

A discussion paper was completed in collaboration with the Local Government Association (LGA), and was released in July 2019 with a three-month consultation period. The consultation program included a public meeting held in Adelaide and a meeting with local government representatives hosted by the LGA. The consultation was advertised in *The Advertiser* and there was coverage through local media and talkback radio.

A total of 47 submissions were received and the consultation report was published on the EPA website in February 2021¹.

¹ https://www.epa.sa.gov.au/files/14821_Inlc_act_consultation_2019.pdf

2 Draft bill to amend the LNLC Act and other consequential acts

2.1 General amendments

2.1.1 Waste collection vehicles – application beyond roads and road related areas

The LNLC Act is designed so that the majority of activities licensed by the EPA are excluded as these are already regulated under the EP Act. The exceptions are activities associated with a vehicle, such as earthworks drainage, dredging and waste transport.

There are two reasons for the exceptions.

- 1 Litter from earthworks drainage, dredging and waste transport vehicles are better dealt with under the provisions of the LNLC Act. Excluding these vehicles from the LNLC Act would make the operation of public litter reporting more difficult as checks would need to be made against a frequently updated list of vehicle registrations associated with EPA licences.
- 2 The appropriate reporting of other forms of nuisance from these activities, particularly noise. The neighbours of an EPA licensed site would generally report directly to the EPA as they know the site is licensed. However, a person who wishes to report nuisance from a mobile activity is unlikely to know that the activity is licensed by the EPA and would not report to them. This person should have confidence that their local council can deal with all mobile activities, whether EPA licensed or not.

The wording of the current exclusion is limited to 'roads and road-related areas' as defined in the *Road Traffic Act 1961*:

- **road** means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving of motor vehicles
- **road-related area** means any of the following:
 - an area that divides a road
 - a footpath or nature strip adjacent to a road
 - an area that is not a road and that is open to the public and designated for use by cyclists or animals
 - any public place that is not a road and on which a vehicle may be driven, whether or not it is lawful to drive a vehicle there.

The way the exclusion is written means that in the case of waste transport vehicles the LNLC Act generally applies to nuisance generated by them **except** when operating on private property that is not accessible to the public.

There does not appear to be any policy reason as to why nuisance from waste vehicles when they are operating on private property should be treated differently than any other circumstance.

Section 5(5) of the LNLC Act is proposed to be amended to separate activities of category A and B waste transport businesses from dredging and earthworks drainage activities. The LNLC Act will still apply to these activities. The amendment will allow for the LNLC Act to specifically apply to the activities of waste transport business when operating on private property.

2.1.2 Exemptions from the LNLC Act for causing local nuisance

Under section 19 persons creating nuisance may apply for an exemption from the LNLC Act. The current process for applying for this exemption includes submitting a site nuisance management plan containing the details prescribed by regulation; any other information in connection with the application that the council may require; and a fee of an amount fixed by regulation. This section acknowledges that there are some necessary activities in the community that will cause local nuisance which is largely unavoidable. If granted, the exemption will last for a maximum period of three months. The

person must apply for another exemption using the same process if an activity that causes local nuisance lasts longer than three months .

The amendments proposed for section 19 include:

- Addition of subsection (2a): a provision such that where a council is satisfied that the nuisance will be of a limited nature and is unavoidable the council may waive the requirement for a site nuisance management plan as required by section 19(2)(a).
- Addition of subsection (4a): a provision that allows councils to extend exceptions without the need for a further detailed application.
- Addition of subsection (4b): this provision outlines the criteria for making an application for an extension of declaration.
- Amendment of section 6: removal of 'not exceeding three months' and replacing with: (a) for a period as determined by the council to be reasonable in the circumstances and specified on the declaration, (b) until the declaration is revoked by the council under this section, or (c) if the period of its operation is extended by the council under this section – until the end of that period.
- Addition to section 19(7): insertion of 'or extensions' after variations so that the section reads: 'A council must publish a declaration made under this section, and any variations **or extensions** of the declaration, on a website determined by the council'.

The amendments are to allow councils to manage exemptions with flexibility, so they are better able to meet the needs of their community.

2.1.3 Allowing councils to clean up and recover costs after if a hazard exists

The current LNLC Act does not prevent councils from urgent clean-up of litter that may be posing an environmental, health or physical hazard. However it does not allow for cost recovery in these circumstances from the alleged offender. If the alleged offender is known, a litter abatement notice can be issued to the person that requires, among other things, that they clean the litter up. This notice would also include a timeframe for the clean up to occur. If the notice is not complied with then the council may clean it up and charge the clean-up cost to the person responsible.

In situations where there is material that is littered that causes a hazard, whether a health, environmental or physical hazard, it may be reasonable for the community to expect that the material is cleaned up immediately. This may be carried out by the council even if the alleged offender is unknown.

In this scenario, section 45 of the LNLC Act provides for the court to order costs be paid for such matters **only** where there is a conviction. Section 34 outlines the civil penalty provisions; however they do not provide a specific remedy in this regard as the maximum civil penalty is the maximum penalty for the offence plus an illegally obtained economic benefit. It could be argued that part of the penalty applied could be used to offset the cost of clean-up or alternatively, that the clean-up cost was an avoided cost of economic benefit to the alleged offender and recoverable.

The proposed amendment to the LNLC Act is the insertion of a new section that provides for the recovery of costs of urgent clean-up of litter from public place. This section allows for councils to recover reasonable costs and expenses in situations where they have taken urgent action to clean up litter (that is considered to be a hazard) from the person who disposed of the litter if they are later identified. The costs and expenses may include those reasonably incurred by the council 'in taking samples or in conducting tests, examinations, monitoring or analysis in relating to taking action...'.

Under this section an amount must be paid by the person to the council within the period specified in the notice, being not less than 28 days from the date of the notice. If the amount is not paid within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid. If the amount to council is not paid, the amount may be recovered as debt by the council.

2.1.4 Bill posting – car parks and expiations

Under the LNLC Act a person must not post a bill on property without the consent of the owner or occupier. The Act covers the posting of bills on buildings, cars and other property but is unclear with regard to bill posting occurring on vehicles within a carpark and whether the carpark constitutes property or only the cars that the bills are posted to. This is important as the owner of a carpark may be aggrieved by bill posting on their land but may not have recourse to deal with it under the Act. However, the owner of the carpark will be responsible for removing litter and, if offensive material is being distributed, may suffer reputational damage. The ability to address the bill posting would rest with the owner of the car in the carpark and this may be impractical.

Currently, the Act only provides for a court-imposed penalty for person who authorised the bill posting. Court proceedings are a considerable cost to councils and alleged offenders.

Section 23(5) has been proposed to be amended to insert the definition of property:

property includes, in the case of a vehicle (other than a vessel), the land on which the vehicle is located

This allows the 'consent' element of section 23(1) to extend to either the owner of the vehicle **or** the owner of the land. The intent of this amendment is to allow the owners of carparks to appropriately deal with bill posting on vehicles in their carparks without consideration as to whether the vehicle owner had an issue. This amendment also extends to councils dealing with bill posting with regard to public lands and roads.

Section 23(2) provides the maximum penalties for bill posing on property without consent of the owner or occupier. A person who distributes or authorised the distribution of the bill for posting is guilty of an offence. Currently, the LNLC Act has only provided the maximum penalties. This section has been amended to provide an expiation of \$500 and will not include differential expiations.

2.1.5 Expiations

The deterrence value of expiations will differ depending on the context of their use. There is a limit on how laws can address this matter as even a \$5,000 expiation may be of limited deterrence for a multi-million-dollar project. Feedback received from consultation was that the expiation fee amount of \$500 is not a sufficient deterrent for many local nuisance issues and is seen by some to be the 'cost of doing business' or is simply so small compared to the scale of the nuisance that it has no impact.

Amendments to various sections of the LNLC Act are proposed to provide differentiation for expiations between body corporate and natural persons for the following offences:

- 18(2) – Body corporate \$1,000, an individual \$500
- 20 – Body corporate \$500, an individual \$210
- 22(a) – Body corporate \$2,000, an individual \$1,000
- 22(b) – Body corporate \$1,000, an individual \$500
- 22(c) – Body corporate \$500, an individual \$210
- 24 – Body corporate \$500, an individual \$210
- 30(9) – Body Corporate \$1,000, an individual \$500.

2.2 Trolley related amendments

Trolleys that are dumped outside of shopping centres constitute litter under the LNLC Act although the offence applies to the person doing the littering, not the owner of the trolley. Council officers are rarely present to witness the act of littering and there is little in the Act to resolve the problem effectively. The majority of councils consider the current provisions for the management of abandoned trolleys to be ineffective.

2.2.1 Shopping trolleys as definition of general litter

Section 22(5) is proposed to be amended to include shopping trolleys within the definition on general litter to confirm the current interpretation.

2.2.2 Trolley identification

The LNLC Act has been proposed to be amended to insert a new section 24A – Identification of shopping trolleys. A person who provides shopping trolleys for the use of customers in the course of the business must ensure the shopping trolleys are marked with, or have securely attached to them the following information:

- the trading name of the business; and
- the contact phone number (or QR code) for the reporting of trolleys found outside of the business or associated shopping area (including car park) that facilitates collection.

Failure to put identification on the trolley would result in a maximum penalty of \$5,000 or an expiation of \$210.

2.2.3 General duty

An additional section, 21A – General duty to prevent or minimise litter–person carrying on business, is proposed to be included under Part 4 Division 2 of the LNLC Act that applies to businesses. This section creates a general duty for businesses to take all reasonable and practicable measures to prevent litter associated with a business. This is not limited solely to littering by a business but also litter from patrons such as fast food litter and trolleys.

For the purpose of this section, business includes a business not carried out for profit. Failure to comply with the section does not itself constitute an offence however, compliance may be enforced through a litter abatement notice or taken as a contravention of the LNLC Act for the purpose of section 48 – Recovery of administrative and technical costs associated with contraventions.

2.2.4 Litter abatement notices

Section 30(2)(f)(ii) allows for a litter abatement notice to be issued that imposes a requirement for keeping a specified area (not exceeding 100 m) around business premises free from litter (which currently includes trolleys). To better allow for this section to be used for trolleys as a compliance tool it is proposed to be amended to increase the specified area around a business free from litter to 1 km for trolleys and 100 m for all other litter.

To allow for the further inclusion as trolleys within this section the term business premises is proposed to be defined to include any ancillary carpark, and where the business is co-located with other businesses, to include the joint areas of the broader shopping community.

2.2.5 Trolley management plan to satisfaction of council

Section 30(2)(f) allows council to require a plan of action for the purpose of preventing the escape of litter from the premises and keeping a specified area around a business litter free. It is proposed to specify that a plan for abandoned trolleys (shopping trolley management requirements) may include:

- Current name and contact details of the store manager or their delegate to be responsible for liaison with local government representatives about trolley management.
- Actions requiring the provision and maintenance of a list of contacts for their store/stores in the local government area (including phone numbers and emails), with additional company contacts at senior management level.
- Actions to ensure that trolley collection services are sufficiently resourced to enable collection within 72 hours of notification or as otherwise agreed with the council.

- Actions to ensure that trolleys reported as posing significant risk or nuisance are collected immediately upon notification and all other trolleys reported are collected within 72 hours of notification or as otherwise as agreed by the council.
- Actions to maintain records of all trolleys reported and collected or the time at which a trolley collector attended to collect a reported trolley if no trolley was found at that location.
- Actions to inform customers that trolleys should not be removed from the premises or abandoned, and that penalties apply for the dumping of trolleys outside the retail outlet/complex, including indoor and outdoor signage.
- Actions regarding the provision of suitable, well-signed trolley bays at exit points to retail outlets or complexes.
- Actions regarding the provision to council, on request, an up-to-date map showing trolley collection routes and schedules.
- Actions to achieve compliance with any aspect of the Act.

This plan is to be produced to the satisfaction of the council.

The LNLC Act already applies to trolleys and a council can issue a litter abatement notice with the requirement that the retailer provide a plan for improved management of abandoned trolleys. The purpose of the proposed amendments is to provide better guidance, to local councils, on how the existing litter abatement notices can be used for managing trolley abandonment.

The proposed amendments provide councils with further powers to require businesses to implement strategies to reduce excessive trolley abandonment or for the collection of abandoned trolleys where there is a significant issue of trolley abandonment. The amendments are intended as a middle ground between feedback from industry and local government, and provides for a structured understanding and dialogue between the councils and retailers.

These amendments are not designed to unfairly burden or apply unnecessary costs on retailers that manage their trolleys well or do not experience trolley abandonment. The notices will be issued on an individual basis by local councils where there is an issue of trolley abandonment.

2.3 Stormwater management systems

The cleaning of stormwater cleansing devices is a considerable issue in that stormwater quality devices such as oil separators are often installed in developments such as carparks and petrol stations but there is no obligation regarding their ongoing maintenance.

2.3.1 Maintain and clean

A new provision is proposed to be added requiring a person who carries on a business, which owns a stormwater management system, to take all reasonable and practicable measures to prevent or minimise litter that escapes from the stormwater management system. Failure to comply with the section does not itself constitute an offence however, compliance may be enforced through a litter abatement notice or may be taken as a contravention of the LNLC Act for the purpose of section 48 – Recovery of administrative and technical costs associated with contraventions.

2.3.2 Stormwater management system definition

The following definition for stormwater management systems is proposed to be included in section 3 – Interpretation the LNLC Act:

Stormwater management systems means any infrastructure or equipment (including vegetated assets) used for collecting, containing, conveying or treating stormwater for the purposes of stormwater management;

2.3.3 General litter definition

Section 22(5) of the LNLC Act is proposed to be amended to include a further example under general litter:

(oa) a material deposited (either directly or indirectly) into, or that otherwise enters, a stormwater management system (other than stormwater);

2.3.4 Abatement notices

The Minister or local council can issue a litter abatement notice requiring a plan of action for the purpose of securing compliance with the LNLC Act. It has been proposed to insert a new subsection into section 30. This new subsection (2b) allows for situations where a litter abatement notice has been issued, without limiting any other provision within section 30, a requirement can be included regarding the provision, maintenance and cleaning of litter prevention systems such as stormwater management systems.

2.4 New provisions

2.4.1 Abatement notices – linkage to land

One of the main tools for addressing nuisance from fixed machines such as air conditioners and pool pumps is a nuisance abatement notice. Appropriate elements of the notice may include limiting hours of operation or requiring the maintenance of an acoustic barrier.

Local government has identified that the change of ownership of a property with a problematic fixed machine that has controls applied within a notice is not able to be transferred to the new owner of the property and a new regulatory process will need to be undertaken.

New provisions are proposed to allow councils to register a nuisance abatement notice onto land. This will be done through the insertion of section 30A – Registration of nuisance abatement notice in relation to land.

2.4.2 Improving cost recovery

Cost recovery is an important element of any regulatory function performed by government. The LNLC Act contains a number of cost recovery provisions, generally linked to contraventions of the legislation that are directed at recovering costs from alleged offenders. Where such measures are not being utilised or are not completely effective the residual cost is, by default, recovered through general rates as a service provided for the benefit of the broader community.

A new provision is proposed to be added to the LNLC Act to the effect that litter collected by a council or any other material causing local nuisance collected by a council (under section 31 – Action on non-compliance with notice) and for clean-ups where an alleged offender is not identified, is not subject to the *Unclaimed Goods Act 1987*. This Act legislates for the sale and disposal of unclaimed goods in SA.

This proposed new provision includes material causing local nuisance (dead animals, unsightly premises and insanitary conditions) which may not necessarily meet the definition of litter. A further element of this provision is such that, in the case of material removed because it is causing local nuisance only (as there is a link to ownership), any money recouped from the sale or recycling of material is to be provided by the council to the person subject to the nuisance abatement notice notwithstanding the recovery of any costs due.

2.4.3 New offence provision – installation of external lights or air conditioners that cause local nuisance

An amendment to the LNLC Act is proposed to create a new offence provision regarding the installation of devices in locations where it is reasonably likely to create or potentially cause a local nuisance. For the purpose of this provision 'device' will be defined as limited to air conditioners and external lights. Often nuisance associated with these is a result of poor location and there is a cost to the owner to relocate the device. This provision ensures installers give due consideration to the location of the installation of the device.

This is proposed to replace the existing condition in clause 4(f) of Schedule 1 that deems installing a fixed machine on a domestic premises in a poor location, a nuisance.

2.5 Consequential amendments

2.5.1 Liquor Licensing Act 1997

Conditions that are not local nuisance are listed under clause 5 of Schedule 1 of the LNLC Act for the purpose of avoiding duplication with other legislation. Nuisances related to the service of alcohol are regulated under the Liquor Licensing Act 1997 (LL Act) and are not local nuisance under the LNLC Act.

It is proposed that paragraph (k) be deleted from clause 5 of Schedule 1 of the LNLC Act and replaced with:

(k) noise or behaviour in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of the Liquor Licensing Act 1997;

To further clarify that nuisances related to the service of alcohol are not regulated under the LNLC Act, it is proposed that section 106 of the LL Act be amended. The proposed amendments to the LL Act are to limit the application of the section to noise from entertainment and patrons, or any other activity directly associated with the liquor licence issued under the LL Act.

3 Variation regulations

3.1 Light as an agent of local nuisance

Light was included in the definition of local nuisance when the initial draft bill was first consulted on in 2015 but removed due to feedback from councils that the definition of light in the bill was too broad. The Environmental Defenders Office noted in the recent consultation period that ‘given every other sensory nuisance is included it seems prudent to include light considering its ability to interfere with enjoyment of land’.

It is proposed to amend clause 2 of Schedule 1 of the LNLC Act to include light as an agent of local nuisance. The addition of light as an agent of local nuisance is proposed to come with a number of exclusions to avoid an increase in responsibility for regulators (councils). Only issues of light nuisance that may reasonably be resolved are to remain as a result of the various proposed exclusions.

Light is proposed to be declared an agent of local nuisance. The following light sources in Schedule 1 are excluded:

- public street lighting
- public infrastructure works
- airports
- harbours
- vehicles
- railway premises
- bus stations and depots
- public transport operating centres and facilities
- goods vehicles operating and transport centres
- traffic control devices
- navigational aids
- premises or facilities used by an emergency services organisation
- correctional institutions
- premises or facilities of an arm of the Australian Defence Forces (including training areas)
- lights required for the reasonable and safe operation of business premises during times when the business is operating where reasonable efforts have been made to reduce the light impact on neighbouring premises.
- public lights
- Christmas light displays
- natural sources (including the reflection of natural light).

Part 1—Interpretation has been proposed to include the following definition for emergency services organisation.

Emergency services organisation means:

- a an emergency services organisation within the meaning of the *Fire and Emergency Services Act 2005*; and
- b in relation to a particular emergency within the meaning of *the Emergency Management Act 2004* – the control agency for the emergency under that Act; and
- c SA Ambulance Service Inc; and
- d South Australian Police; and

- e a local government council engaged in duties in connection with an emergency;

3.2 Clause 5 of Schedule 1 amendments

Clause 5 of schedule 1 outlines conditions that are not local nuisance for the purpose of section 17(1).

3.2.1 Construction activities

Clause 5(d) of Schedule 1 prescribes noise or other nuisance from activities carried out in accordance with an authorisation granted under any other Act (other than the LNLC Act) as not being local nuisance. The authorisation must impose requirements to control, minimise or eliminate (as far as is reasonably practicable) any noise or other forms of nuisance likely to result from the activity and those requirements are complied with by those conducting the activity.

This clause is proposed to be amended to ensure that construction activities associated with an approval are no longer part of what is not local nuisance.

3.2.2 Noise from public infrastructure – application to vibration and extent of the exclusion

Noise from public infrastructure works is prescribed as ‘not local nuisance’ under clause 5(h) of Schedule 1 of the LNLC Act so that infrastructure works which benefit the public are not unduly regulated where the nuisance is unavoidable. Examples of this include evening or overnight roadworks or water infrastructure maintenance where a certain amount of noise is unavoidable and must be carried out overnight to avoid traffic disruption. Although vibration is a very uncommon form of nuisance associated with public infrastructure works, it is evident that public infrastructure earthworks may result in some level of vibration impact caused by compacting of road base associated with the works.

Under the *Environment Protection Act 1993* the definition of noise includes vibration. Under the LNLC Act noise and vibration are separate agents of nuisance and the exclusion of noise from public infrastructure does not include vibration.

Clause 5(h) of Schedule 1 of the LNLC Act is proposed to be amended so that noise, vibration, and light (subject to light being added as an agent of local nuisance) from public infrastructure works that are conducted due to an urgent public need or to avoid or reduce inconvenience to traffic or pedestrians during normal business hours or long term are not local nuisance.

3.2.3 Residential Tenancies Act 1995

Clause 5(j) of Schedule 1 states that noise or other nuisance that may be subject to proceedings under the *Community Titles Act 1996*, *Strata Titles Act 1988* or *Residential Tenancies Act 1995* are not local nuisance.

The current exemption for local nuisance in tenanted properties is limited to situations where local nuisance can be dealt with under the *Residential Tenancies Act 1995*. However, the remedy provided under this Act may include eviction, which is excessively punitive when compared to the LNLC Act.

The LNLC Act is proposed to be amended to delete the Residential Tenancies Act from this clause such that all local nuisance from tenanted properties fall under the scope of the LNLC Act.

3.2.4 Dust from unsealed public roads

There are tens of thousands of kilometres of unsealed roads in SA. It is not practical or cost effective to seal and maintain all these roads. To ensure councils are not deemed responsible for nuisance dust from unsealed roads, dust from unsealed public roads is proposed to be added to clause 5 of Schedule 1 as a further declaration of what is not local nuisance for the purpose of the LNLC Act.

3.2.5 Noise from refrigerated vehicles

Clause 5(i) of Schedule 1 (noise from vehicles) is proposed to be amended so that it does not include noise from refrigerated vehicles. The operation of a refrigerated truck at a premises is not dissimilar to the operation of a fixed machine such as an air conditioner or pool pump which are included in the definition of local nuisance under clause 4 of Schedule 1. This amendment is to be limited to the noise from the refrigeration mechanism of the vehicle.

3.3 Public infrastructure works

Clause 5(h) of schedule 1 defines public infrastructure works as not local nuisance. Clause 1, Part 1 of Schedule 1 of the LNLC Act is proposed to be amended to include a definition of public infrastructure works for the purpose of this clause.

public infrastructure means—

- (a) infrastructure, equipment, structures, works and other facilities used on or in connection with the provision of essential services or telecommunications; and
- (b) roads and their supporting structures and works;

essential services has the same meaning as the *Essential Services Commission Act 2002*

3.4 Hyperlink in Regulation 4

Regulation 4 of the LNLC Regulations provides a link to *Managing Unreasonable Complainant Conduct Practice Manual* published by the New South Wales Ombudsman. The link has been replaced as the current one has been removed. The document remains the same.

Attachment 3



South Australia

Local Nuisance and Litter Control (Amendment of Act, Schedule 1) Regulations 2022

under the *Local Nuisance and Litter Control Act 2016*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement

Part 2—Amendment of *Local Nuisance and Litter Control Act 2016*

- 3 Amendment of Schedule 1—Meaning of local nuisance (section 17)
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Local Nuisance and Litter Control (Amendment of Act, Schedule 1) Regulations 2022*.

2—Commencement

- (1) Subject to subregulation (2), these regulations come into operation on the day on which they are made.
- (2) The following regulations come into operation 4 months after the day on which these regulations are made:
 - (a) regulation 3(1) to (9) (inclusive); and
 - (b) regulation 3(11).

Part 2—Amendment of *Local Nuisance and Litter Control Act 2016*

3—Amendment of Schedule 1—Meaning of local nuisance (section 17)

- (1) Schedule 1, Part 1, clause 1—after the definition of **construction noise** insert:

emergency services organisation means—

 - (a) an emergency services organisation within the meaning of the *Fire and Emergency Services Act 2005*; and
 - (b) in relation to a particular emergency within the meaning of the *Emergency Management Act 2004*—the control agency for the emergency under that Act; and

- (c) SA Ambulance Service Inc; and
- (d) South Australian Police; and
- (e) a local government council engaged in duties in connection with an emergency; and
- (f) an arm of the Australian Defence Force engaged in police, fire fighting, ambulance or search and rescue duties or duties in connection with an emergency;

essential services has the same meaning as in the *Essential Services Commission Act 2002*;

- (2) Schedule 1, Part 1, clause 1—after the definition of *promotional image* insert:

public infrastructure means—

- (a) infrastructure, equipment, structures, works and other facilities used in or in connection with the provision of essential services or telecommunications; and
- (b) roads and their supporting structures and works;

public infrastructure works means works for the construction, installation, repair, maintenance or replacement of, or making of other physical changes to, public infrastructure;

- (3) Schedule 1, Part 2, clause 2—delete clause 2 and substitute:

2—Declared agents (section 17(1)(a))

The following are declared agents for the purposes of section 17(1)(a):

- (a) vibration;
- (b) light.

- (4) Schedule 1, Part 2, clause 4(a)—delete "generated on premises"

- (5) Schedule 1, Part 2, clause 4(a)(i)—after subsubparagraph D insert:

(DA) in the case of noise from the operation of refrigeration equipment fitted on or in a vehicle that is parked and not being operated—the noise has travelled from the place where the vehicle is parked to neighbouring domestic premises between the hours of—

- 8pm and midnight on any day; or
- midnight and 9am on Sunday; or
- midnight and 8am on any other day; or

- (6) Schedule 1, Part 2, clause 4—after paragraph (e) insert:

- (ea) light emitted from a place, if an authorised officer forms the opinion that—
 - (i) the light has travelled from the place at which it was generated to neighbouring premises; and

- (ii) the nature, intensity, colour, location, direction or extent of the light is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (7) Schedule 1, Part 3, clause 5(d)—before "noise" first occurring insert:

other than in the case of construction noise or other nuisance from construction activities carried out in accordance with a development authorisation within the meaning of the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016*—
- (8) Schedule 1, Part 3, clause 5(h)—delete paragraph (h) and substitute:
 - (h) noise, vibration and other nuisance from public infrastructure works where—
 - (a) the works are carried out because of an emergency or urgent public need; or
 - (b) the works are carried out in the circumstances in order to avoid or reduce inconvenience or disruption to traffic or pedestrians during normal business hours;
- (9) Schedule 1, Part 3, clause 5(i)—delete "clause 4(1)(a)(i)(D)" and substitute:

clause 4(a)(i)(D) and (DA)
- (10) Schedule 1, Part 3, clause 5(j)(iii)—delete subparagraph (iii)
- (11) Schedule 1, Part 3, clause 5—after paragraph (r) insert:
 - (s) dust from unsealed public roads;
 - (t) light emitted by or from the following:
 - (i) public street lighting;
 - (ii) public infrastructure works;
 - (iii) airports;
 - (iv) harbours;
 - (v) vehicles;
 - (vi) railway premises (within the meaning of the *Rail Safety National Law (South Australia) Act 2012*);
 - (vii) bus stations and bus depots;
 - (viii) public transport operating centres and facilities;
 - (ix) goods vehicle operating and transport centres (including goods distribution centres);
 - (x) traffic control devices;
 - (xi) navigational aids (including lighthouses);
 - (xii) premises or facilities (including temporary premises or facilities) used by an emergency services organisation;

- (xiii) correctional institutions (within the meaning of the *Correctional Services Act 1982*);
- (xiv) premises or facilities of, or used by, an arm of the Australian Defence Force (including training areas);
- (xv) business premises during the normal operating hours of the business provided that the lights are required for the reasonable and safe operation of the business and reasonable measures have been taken to reduce the impact of the light on neighbouring premises;
- (xvi) public light displays (including laser light displays);
- (xvii) Christmas light displays;
- (xviii) natural sources (including reflection of natural light).

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2022

Attachment 4



South Australia

Local Nuisance and Litter Control (Guidelines) Amendment Regulations 2022

under the *Local Nuisance and Litter Control Act 2016*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement

Part 2—Amendment of *Local Nuisance and Litter Control Regulations 2017*

- 3 Amendment of regulation 4—Functions of councils—guidelines
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Local Nuisance and Litter Control (Guidelines) Amendment Regulations 2022*.

2—Commencement

These regulations come into operation on the day on which they are made.

Part 2—Amendment of *Local Nuisance and Litter Control Regulations 2017*

3—Amendment of regulation 4—Functions of councils—guidelines

Regulation 4(1)(a)(ii)—delete subparagraph (ii) and substitute:

- (ii) in any other case—the guidelines set out in *Managing unreasonable conduct by a complainant. A manual for frontline staff, supervisors and senior managers* published by the NSW Ombudsman, March 2021, on the website of the NSW Ombudsman;

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Local Nuisance and Litter Control (Guidelines) Amendment Regulations 2022

Part 2—Amendment of *Local Nuisance and Litter Control Regulations 2017*

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2022

Item No: 15.6

Subject: **BRIGHTON JETTY SCULPTURES**

Date: 28 February 2023

Written By: Manager, City Activation

General Manager: Community and Business, Ms M Lock

SUMMARY

Brighton Jetty Sculptures is a major fundraising event for the Brighton Surf Life Saving Club and is planned, managed and run by a small volunteer committee. This year the Brighton Jetty Sculptures Festival was held 18 – 29 January 2023, attracting more than 120,000 people.

RECOMMENDATION

That Council:

1. **Notes this report.**
 2. **Consider a capital budget allocation of \$20,000 annually through the Annual Business Plan process for potential public art acquisitions, subject to recommendations by the selection panel and alignment with the Public Art Policy and the Creative Holdfast Arts and Culture Strategy 2019-2024.**
-

STRATEGIC PLAN

Wellbeing: Arts and culture create vibrancy, celebrate creativity and encourage people to connect with country, place and each other.

COUNCIL POLICY

Creative Holdfast Arts and Culture Strategy 2019-2024
Public Art Policy

STATUTORY PROVISIONS

Not applicable

BACKGROUND

The City of Holdfast Bay has sponsored the sculptures event since it began 15 years ago and has shown ongoing support of the annual festival. This arts event is appreciated by community, visitors and nearby Jetty Road Traders and is a much loved summer event.

Since 2011, Council have purchased and installed a number of suitable public artworks from the annual sculptures exhibition. The purchased artworks have been selected for permanent outdoor display to add interest and vibrancy to public space throughout the City. Initially the artworks were installed along the coast, to create a coastal arts trail. Over the last few years, sites away from the coast path have been identified and works have been installed in other locations throughout the City such as reserves, roundabouts and landscaped gardens. These artworks have gradually contributed to the City's Public Art collection, with the number of suitable display sites for purchases reducing as acquisitions have accumulated.

REPORT

This year the Brighton Jetty Sculptures Festival was held 18 – 29 January 2023, exhibiting 160 sculptures, including 56 outdoor installations along the Esplanade and Bindarra Reserve. The remaining sculptures were displayed in a marquee set up on Bindarra Reserve.

The 2023 event attracted more than 120,000 people to the stunning seaside destination of Brighton. Higher attendance figures are credited to the event coinciding with the Santos Tour Down Under 2023 Oakley Men's Stage 2: Brighton – Victor Harbor on 19 January, bringing a greater number of spectators to the area.

Considering the sculptures displayed, and in light of requirements for developing the City's Public Art collection in alignment with the *Creative Holdfast: Arts & Culture Strategy 2019 – 2024* and Public Art Policy and Guidelines, no purchase was made from the 2023 exhibition, which was communicated by Administration to the volunteer organising committee following the event.

In future years, acquisitions of suitable works will be considered by a selection panel, to be established in November annually, subject to a range of criteria such as: suitability for the long term display in the public realm; distinctiveness from existing acquisitions; and identification of an appropriate display location. Purchases of items that meet these criteria will be considered on a case by case basis.

BUDGET

The total contribution from Council was \$10,300.

The event received \$5,000 cash sponsorship from Council, funded from the Arts and Culture budget, plus extensive in-kind assistance from Administration and Depot staff.

An additional \$5,300 contribution towards incidental costs associated with the installation and display (festoon lighting, air conditioning for the display marquee, and costs of engineering report) were funded from Council's events budget.

LIFE CYCLE COSTS

The Public Art capital budget of \$20,000 will be allocated annually for potential public art acquisitions, subject to recommendations by the selection panel and alignment with the Public Art Policy and the *Creative Holdfast Arts and Culture Strategy 2019-2024*. In any given financial year if budget is not expended the balance will be carried forward to the next financial year to support future acquisitions.

Item No: 15.7

Subject: **GLENELG FOOTBALL CLUB SANFL TICKETS**

Date: 28 February 2023

Written By: Executive Assistant to the Chief Executive Officer

Chief Executive Officer: Mr R Bria

SUMMARY

The City of Holdfast Bay is the owner of the Glenelg Oval. Council has a lease agreement with the Glenelg Football Club. A special condition within the lease is the provision to Council of 40 game admission tickets. These tickets are allocated across Elected Members, Volunteers and Staff.

It is proposed that Council continues the current arrangement with the Glenelg Football Club.

RECOMMENDATION

That Council:

- 1. endorses the Glenelg Football Club SANFL Tickets policy;**
- 2. continues the current arrangement for the allocation of admission tickets for the term of this Council; and**
- 3. continues the current arrangement for the inclusion of a food voucher with each admission ticket for the term of this Council.**

STRATEGIC PLAN

Wellbeing Objectives: 2020 – 2030.

Increase participation rates in community engagements across all age groups.

COUNCIL POLICY

Glenelg Football Club SANFL Tickets

STATUTORY PROVISIONS

Not applicable

BACKGROUND

The City of Holdfast Bay is the owner of the Glenelg Oval. Council has a lease agreement with the Glenelg Football Club to lease the Oval from Council for sporting, recreation, hospitality and community activities for the operation of the Glenelg Football Club Inc. and Glenelg Footballers' Club.

REPORT

A special condition within the lease between City of Holdfast Bay and the Glenelg Football Club is the provision to Council, free of charge, of 40 admission tickets to each game for all SANFL League matches conducted at the property.

Council's policy, Glenelg Football Club SANFL Tickets, outlines the principles for the management of the ticket allocation.

Refer Attachment 1

The current administrative procedure allocates the admission tickets in the following manner:

Elected Members	4
Guests/Neighbouring Councils	4
Volunteers	24
Staff	8

Prior to Covid-19, the allocation of tickets was well utilised, particularly by Volunteers and Staff. However, the uptake of tickets for the 2022 season was reduced. Surplus tickets for each round were offered to community service groups within the City.

Accompanying each ticket is a voucher to the value of \$10 for purchasing food at one of the on-site food vendors. Council is invoiced only for the redeemed food vouchers.

BUDGET

\$3,000 is allocated in the 2022/23 budget. \$3,000 is currently being allocated for the 2023/24 budget.

LIFE CYCLE COSTS

Not applicable

Attachment 1



Trim Container	FOL/17/1744
First Issued / Approved:	26/09/2017
Last Reviewed:	26/09/2017 C260917/910
Next Review:	30/06/2021

PREAMBLE

1.1 Background

Council recognises that issuing tickets to the Glenelg Football Club home games and the ~~hosting of mid game refreshments provide~~ facilitation of refreshments provides the following benefits to the City of Holdfast Bay:

- An opportunity to recognise the community service provided by the office bearers and participants of local community and service clubs;
- A networking opportunity for Elected Members and volunteers.

1.2 Purpose

This policy clarifies Council's approach to the invitation of guests to support local (SANFL) football.

1.3 Scope

This policy applies only to SANFL games played at the Glenelg Oval.

1.4 Definitions

SANFL means the South Australian National Football League

1.5 Strategic Reference

~~Community: Building a healthy, active and resilient community~~ Wellbeing Objectives: 2020 – 2030 Increase participation rates in community engagements across all age groups.

2. PRINCIPLES

- 2.1 Council will maintain a practice of inviting guests to join the Mayor and Elected Members at the home games of the SANFL Glenelg Football Club and hosting half time refreshments for its guests.
- 2.2 The Mayor and the Chief Executive Officer are responsible for the implementation of this policy.

GLENELG FOOTBALL CLUB SANFL TICKETS

- 2.3 The Chief Executive Officer is responsible for the development of a procedure to support this policy which deals with:
- a. Timely issue of invitations
 - b. Identification of guests
 - c. Provision of information for the Mayor regarding guests at each match.
 - d. Distribution of unissued tickets for each game.
- 2.4 The invitation of additional guests is at the discretion of the Mayor and the Chief Executive Officer.

3. REFERENCES

3.1 Legislation

- *Local Government Act 1999*

3.2 Other References

Nil

Item No: 15.8

Subject: **ATTENDANCE AT NATIONAL GENERAL ASSEMBLY 2023**

Date: 28 February 2023

Written By: Executive Support Officer

Chief Executive Officer: Mr R Bria

SUMMARY

Each year, the Australian Local Government Association (ALGA) holds a National General Assembly (NGA) in Canberra where councils from around Australia can discuss current and emerging challenges and opportunities, and advocate to the Federal Government on critical issues facing the sector.

The next Assembly will be held on 13 - 16 June 2023 at the National Convention Centre in Canberra. The theme for this year's NGA is "Our Communities, Our Future".

Registrations are now open, with early bird registrations closing on 19 May 2023. The Mayor and one Elected Member (or two Elected Members in the absence of the Mayor) may attend the ALGA each year, with the understanding that different members will attend in different years, pursuant to Council's Elected Member Training and Development Policy.

RECOMMENDATION

1. That Council approves the attendance of _____ and _____ at the National General Assembly from 13 – 16 June 2023, in accordance with Council's 'Elected Member Training and Development Policy'.
 2. That both Elected Members attending the National General Assembly 2022 present a written report back to Council.
 3. That _____ be Council's voting delegate at the National General Assembly 2023.
-

STRATEGIC PLAN

Statutory compliance

COUNCIL POLICY

Elected Member Training and Development Policy

STATUTORY PROVISIONS

Not applicable

BACKGROUND

Council's Elected Member Training and Development Policy (the Policy) allows for the Mayor and one Elected Member (or two Elected Members in the absence of the Mayor) to attend the Assembly, with the understanding that different members will attend in different years.

For 2022, It was resolved at the Council meeting on 10 May 2022 (Resolution Number: C100522/2596) that Mayor Wilson (as voting delegate) and Councillor Abley attend the conference.

Members should note that the Policy states, Council will only support the attendance by all members at one intrastate Local Government related conference and one interstate Local Government related conference or similar every two years (Clause 2.8(a)). Therefore, the members that attended in 2022 are unable to attend the Assembly in 2023.

The Assembly provides a platform for the Local Government sector to address national issues and lobby the Federal Government on critical issues.

REPORT

The next Assembly will be held on 13 – 16 June 2023 at the National Convention Centre in Canberra. The theme for this year is "Our Communities, Our Future".

Registrations are now open, with early bird registration closing 19 May 2023, at a cost of \$895 per registration. Council is requested to consider representation at the Assembly.

Attendance at the Assembly provides a unique opportunity to enhance Councillors' understanding of local government across Australia and to network with others throughout the sector.

The registration fees include:

- Access to all Assembly sessions
- Access to the Exhibition Hall
- General Assembly satchel
- Catered morning tea, lunch and afternoon tea
- Welcome Reception and Exhibition opening
- General Assembly handbook and materials

There is the option of virtual attendance, but this would restrict attendance at the social events.

Flights and accommodation will be booked by Administration in consultation with the nominated Members.

BUDGET

Attendance at the Assembly (including flights, accommodation, transfers, registration and dinners) costs approximately \$4,250 per attendee. Costs would be reduced by virtual attendance.

The Elected Member Training and Travel and Accommodation budget is sufficient to cover these costs.

LIFE CYCLE COSTS

Not applicable

Item No: 15.9

Subject: **APPOINTMENT OF BEHAVIOURAL STANDARDS PANEL CONTACT OFFICER**

Date: 28 February 2023

Written By: Strategy and Governance Lead

General Manager: Strategy and Corporate, Ms P Jackson

SUMMARY

The report seeks that Council appoints a person as the Contact Officer for matters referred to the Behavioural Standards Panel. The Contact Person will be responsible for the provision of information to and receipt of notice from the Behavioural Standards Panel.

RECOMMENDATION

It is recommended that:

- 1. the report be received; and**
 - 2. Ms Ania Karzek, Manager Strategy and Governance be appointed as the Behavioural Standards Panel Contact Officer.**
-

STRATEGIC PLAN

Statutory requirement

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

The Behavioural Standards for Council Members (Behavioural Standards) are established by the Minister for Local Government pursuant to Section 75E of the *Local Government Act 1999* (the Act). These Behavioural Standards form part of the conduct management framework for Council Members under the Act.

BACKGROUND

Prior to 2022 Local Government Elections, Council Members' behaviour was governed by the Code of Conduct for Council Members, published in accordance with Section 63 of the *Local Government Act 1999* (the Act) and gazetted in the South Australian Government Gazette in August 2013.

Following the Local Government Reforms in 2021, a new Behavioural Management Framework (the Framework) was established to replace the Code of Conduct for Council Members.

A sector-wide consultation process was undertaken by the Local Government Association (LGA) regarding the draft Behavioural Management Policy and the draft Model Behavioural Support Policy. Council resolved at its meeting on 14 September 2021 a response to the LGA and authorised the Chief Executive Officer to send the response on Council's behalf, supporting the post-election commencement timeline.

Resolution No: C140921/2407

The Framework took effect from the commencement of the 2022 Council term. To support the implementation of the legislative reform in relation to Member behaviour, transitional regulations have been enacted which deem the LGA Model Behavioural Management Policy (the LGA's Policy) as each council's policy, until Council adopts its own policy.

Refer Attachment 1

REPORT

The Framework comprises:

- the legislative framework which all Council Members must operate;
- the Behavioural Standards for Council Members, determined by the Minister for Local Government, which apply to all council members in South Australia;
- the mandatory Behavioural Management Policy relating to the management of behaviour of Council Members and adopted pursuant to section 262B of the Act; and
- optional Behavioural Support Policy (policies) designed to support appropriate behaviour by Council Members adopted pursuant to section 75F of the Act.

The Framework is designed to improve the regulation of Council Members' behaviour across the State and includes the capacity to impose sanctions on Council Members that breach requirements.

Each Council is required to prepare and adopt a Behavioural Management Policy within 12 months of the election, by 10 November 2023. The current transitional regulations include a provision for the LGA's Policy to be deemed as each Council's policy from the commencement of the Framework, until Council adopts its own. Accordingly, Council is not required to formally adopt the LGA's Policy.

The LGA's Policy works in conjunction with the leadership requirements associated with the role of Mayor, as set out in Section 58 of the Act. Consistent with the increased leadership obligations, the LGA's Policy assigns responsibility for the management of complaints to the Mayor. If the complaint relates to the Mayor, the Deputy Mayor is then responsible for the management of that particular complaint.

Elected Members are undertaking mandatory training that is designed to equip them with the necessary skills and knowledge for their four-year term with Council. This training is likely to be the foundation that will inform the development of Council's Behavioural Management Policy.

Under the LGA's Policy, Council is required to appoint a person who will need to be the Behavioural Standards Panel Contact Officer, should the need arise. This report seeks that appointment.

It is proposed that staff member Ms Ania Karzek, Manager Strategy and Governance be appointed as the Behavioural Standards Panel Contact Officer. The Contact Officer's role will be to facilitate and provide information to and from the Behavioural Standards Panel and it is appropriate for the appointment to be a staff member from Council's Strategy and Governance area.

BUDGET

Not applicable

LIFE CYCLE COSTS

Not applicable

Attachment 1



Model Behavioural Management Policy

August 2022



This model policy was developed in preparation for the commencement of the Behavioural Management Framework as part of the implementation of the Statutes Amendment (Local Government Review) Act 2021 and associated changes to the Local Government Act 1999 and endorsed by the LGA Board on 23 August 2022.

This resource has been prepared by the Local Government Association of SA (LGA) to assist councils with implementation of legislative changes arising from Local Government Reforms, incorporating advice from Norman Waterhouse Lawyers, for the guidance of and use by member councils.

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Foreword

This model policy document has been developed to assist councils with the implementation of reforms associated with behavioural management for council members, arising from the *Statutes Amendment (Local Government Review) Act 2021*.

All councils must adopt a Behavioural Management Policy relating to the management of behaviour of council members, including the process for receipt and management of a complaint received regarding the conduct of a council member.

Section 262B of the *Local Government Act 1999* (the Local Government Act) sets out a range of matters that must be included within the policy and requires that council review the operation of the Behavioural Management Policy within 12 months after the conclusion of each periodic election.

Legal Framework

There are four components to the Elected Member Behavioural Management Framework (BMF).

- Part 1 The legislative framework within which all council members must operate.
- Part 2 The Behavioural Standards for Council Members, determined by the Minister for Local Government (developed in consultation with the local government sector), which apply to all council members in South Australia.
- Part 3 The mandatory *Behavioural Management Policy* relating to the management of behaviour of council members and adopted pursuant to section 262B of the Local Government Act.
- Part 4 Optional *Behavioural Support Policy* (or policies), designed to support appropriate behaviour by council members and adopted pursuant to section 75F of the Local Government Act.

In addition, the Behavioural Standards Panel, an independent statutory authority comprising three members with powers to impose sanctions on council members who breach legislative and policy requirements has been established¹ to assess and deal with matters referred to it.

LGA Mutual Liability Scheme and LGA Workers Compensation Scheme

In managing matters within the scope of the Behavioural Management Framework, councils must also adhere to the Local Government Association Mutual Liability Scheme (LGAMLS) and/or the Local Government Association Workers Compensation Scheme (LGAWCS) Rules. Where an incident, circumstance or matter occurs which may give rise to a claim, councils must provide notice to the LGAMLS and/or LGAWCS in accordance with the LGAMLS & LGAWCS Scheme Rules. The provision of early notice allows for adequate risk management and prevention strategies to be put in place so as to absolutely minimise risk.

¹ Chapter 13, Part A1—Member Behaviour, Division 2—Behavioural Standards Panel, *Local Government Act 1999*

Commencement of Behavioural Management Framework

The provisions relevant to the Behavioural Management Framework are intended to commence immediately following the 2022 council periodic elections. At this time, the Behavioural Standards for Council Members will replace the former Code of Conduct for Council Members. At the same time, the investigative and disciplinary powers of the Behavioural Standards Panel will commence.

To support councils' compliance with the Behavioural Management Framework requirements, transitional provisions will be enacted which will deem the LGA's Model Policy as *the* Behavioural Management Policy for each council. At any time afterwards, councils can review their Behavioural Management Policy and determine any changes it may wish to make to the document.

The LGA Model Behavioural Management Policy was developed in consultation with Local Government Risk Services, the Office of Local Government and the LGA's *Legal Connect* partners, Norman Waterhouse Lawyers. The Model Policy sets the framework which is consistent with the legislative requirements. However, there are a range of matters within the Policy that councils may wish to customise to meet requirements specific to each council when consideration is given to changes to the Policy.

The LGA Model Behavioural Management Policy reflects the changes to the role of the principal member of council, set out in section 58 of the *Local Government Act 1999*. Consistent with the increased leadership obligations, the Policy assigns responsibility for the management of complaints to the Mayor (except in circumstances where the complaint relates to the conduct of the Mayor). Councils may determine and appoint an alternative person to be responsible for managing any complaints received in accordance with this Policy.

Councils are required to consider the adoption of a Behavioural Support Policy (or policies)² and the LGA has developed a model Behavioural Support Policy to assist with that consideration. Behavioural Support Policies are intended to support appropriate behaviours by members of the council and will assist with meeting obligations relating to leadership and positive and constructive working relationships as set out in sections 58 and 59 of the *Local Government Act*.

² Section 75F(7) of the *Local Government Act 1999* requires councils, within six months after the conclusion of each periodic election to review the operation of existing Behavioural Support Policies, or consider whether it should adopt a Behavioural Support Policy.

Behavioural Management Policy

Responsibility	Chief Executive Officer
Effective date	From the day on which section 147(6) of the Statutes Amendment (Local Government Review) Act 2021 comes into operation
Next review date	Refer to regulation 16 of the <i>Local Government (Transitional Provisions) (Conduct) Amendment Regulations 2022</i>
Applicable Legislation	Local Government Act 1999 s262B <i>Local Government (Transitional Provisions) (Conduct) Amendment Regulations 2022</i>

1. Purpose

This Policy has been prepared and adopted pursuant to section 262B of the *Local Government Act 1999* (the Local Government Act).

This Behavioural Management Policy forms part of the Behavioural Management Framework for council members and sets out the approach to the management of complaints about the behaviour of council members. It sets out the process to be adopted where there has been an alleged breach of the Behavioural Standards for Council Members, this Behavioural Management Policy and/or any Behavioural Support Policy adopted by the Council (***the behavioural requirements***).

2. Glossary

Behavioural Management Framework – comprises four components:

- The legislative framework within which all council members must operate;
- The Behavioural Standards for Council Members, determined by the Minister for Local Government, which apply to all council members in South Australia;
- The mandatory Behavioural Management Policy (this document) relating to the management of behaviour of council members and adopted pursuant to section 262B of the Local Government Act;
- Optional Behavioural Support Policy (or policies) designed to support appropriate behaviour by council members and adopted pursuant to section 75F of the Local Government Act.

behavioural requirements – in this document refers collectively and individually to the Behavioural Standards for Council Members, the Behavioural Management Policy and any Behavioural Support Policies adopted by the Council.

Behavioural Standards for Council Members – established by the Minister for Local Government, and published as a notice in the SA Government Gazette, specifying standards of behaviour to be observed by members of councils; and providing for any other matter relating to behaviour of members of councils.

frivolous – includes without limitation, a matter of little weight or importance, or lacking in seriousness.

misbehaviour – is defined in section 262E of the *Local Government Act 1999* as:

- (a) A failure by a member of a council to comply with a requirement of the council under section 262C(1); or
- (b) A failure by a member of a council to comply with a provision of, or a requirement under, the council's behavioural management policy; or
- (c) A failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1

person responsible for managing the complaint means, subject to any resolution of the Council to the contrary –

1. the Mayor;
2. if the complaint relates to or involves the Mayor, the Deputy Mayor;
3. if the complaint relates to or involves the Mayor and Deputy Mayor, another council member appointed by Council.

repeated misbehaviour – is defined in section 262E of the *Local Government Act 1999* as a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2 (Ch 5- Members of council, Pt 4-Member integrity and behaviour, Div 2-Member behaviour)

serious misbehaviour – is defined in section 262E of the *Local Government Act 1999* as a failure by a member of a council to comply with section 75G (Health and safety duties)

trivial – includes without limitation, a matter of little worth or importance; that is trifling; or insignificant.

vexatious – includes a matter raised without reasonable grounds or for the predominate purpose of causing annoyance, delay or detriment, or achieve another wrongful purpose

3. Principles

Nothing in this Policy is intended to prevent council members from seeking to resolve disputes and complaints in a proactive, positive and courteous manner before they are escalated.

The following principles will apply:

- Where a council member considers there has been behaviour that is inconsistent with the **behavioural requirements** is, a council member may, in appropriate circumstances, seek to respectfully and constructively raise this issue with the member concerned, without the need to lodge a complaint under this Policy;
- If a matter proceeds to a complaint, all council members will continue to comply with the procedures set out in this Policy and support the person responsible for managing the complaint;
- a consistent approach to the assessment, investigation and resolution of complaints will be adopted to facilitate timely and efficient resolution and minimisation of costs;

- Where required, Council may engage the assistance of skilled advisors and support persons in the assessment, investigation and resolution of complaints and avoid adopting an unreasonably legalistic approach.
- ongoing training and relevant resources will be provided to all council members to ensure they have the skills and knowledge necessary to perform their role in accordance with the **behavioural requirements** and the *Local Government Act 1999*.
- training and relevant support will be provided to persons with specific obligations under this Policy to facilitate the management, reporting and resolution of complaints alleging a breach of the **behavioural requirements**.

Council will manage complaints under this Policy with as little formality and technicality and with as much expedition as the requirements of the matter and the Local Government Act allow and with proper consideration of the matter. Council is not bound by rules of evidence but will inform itself in the manner considered most appropriate given the nature of the complaint.

4. The Complaint Management Process

This Policy sets out the procedures for dealing with an allegation of a breach of the **behavioural requirements** applying to council members. These procedures do not apply to complaints about council employees or the council as a whole.

A complaint made in accordance with this Policy must be lodged within 6 months of the behaviour that is inconsistent with the **behavioural requirements** occurring. A decision may be made to accept a complaint lodged more than 6 months after the behaviour that is inconsistent with the **behavioural requirements** occurring on a case-by-case basis, at the discretion of the person responsible for managing the complaint.

Community members can lodge a complaint with the Council in accordance with this Policy but cannot lodge a complaint directly with the Behavioural Standards Panel.

4.1. Dispute versus Complaint

It is important to distinguish between a dispute and a complaint. A dispute is generally a difference of opinion or disagreement between two parties. It may involve a heated discussion or some other unsatisfactory exchange between parties but may not amount to conduct inconsistent with the **behavioural requirements**. Ideally disputes will be handled directly by the parties involved and will not escalate to a complaint requiring action (even informal action) under this Policy. The Mayor (or another person) may play a role in facilitating a resolution to a dispute.

This Policy is intended to deal with matters where conduct is alleged to have been inconsistent with the **behavioural requirements**, rather than where members of council have differences of opinion, even when robustly put.

4.2. Confidentiality

Complaints made in accordance with this Policy will be managed on a confidential basis until such a time as they are required to be reported to Council in a public meeting in accordance with this Policy or are otherwise lawfully made public or disclosed.

Access to information relating to complaints and information about complaints will be limited to parties to the complaint and individuals with a responsibility within the complaint handling process or as otherwise provided for within this Policy³.

A person who has access to information about a complaint (including the complainant and the person complained about) must not directly, or indirectly disclose to any person (including to a council member) that information except:

- For the purpose of dealing with the complaint
- Where required by law
- For the purpose of obtaining legal advice or legal representation, or medical or psychological assistance from a medical practitioner, psychologist or counsellor
- Where the disclosure is made to an external party, investigating the complaint, or mediator/conciliator engaged in accordance with this Policy
- Where the information has been made public in accordance with this Policy or this Policy otherwise authorises or requires the disclosure of the information.

This is not to be confused with formal consideration at a Council Meeting of any matter arising from application of this Policy. Items presented to Council must be assessed on a case-by-case basis in accordance with the requirements of section 90 of the *Local Government Act 1999*.

A complainant may request their identity be kept confidential from the person complained about. This does not constitute an anonymous complaint. The person responsible for managing the complaint will consider such requests on a case-by-case basis, having regard to any applicable legal requirements.

4.3. Stages of Action

This Policy has three distinct stages to the approach that will be taken to address complaints about the behaviour of Council Members:

- Part 1: Informal Action: Where the matter can be resolved directly between the parties.
- Part 2: Formal Action: Where the matter cannot be resolved using informal action and a formal process of consideration is required.
- Part 3: Referrals to the Behavioural Standards Panel: the circumstance under which the Mayor, the Council or other authorised person(s) will make a referral.

4.4. Part 1: Informal action

Council encourages informal resolution of concerns regarding behaviour alleged to be contrary to the **behavioural requirements**. A person may therefore consider raising the matter directly with the council member concerned.

Alternatively, a person may raise their concern with the Mayor on an informal basis. If the concerns relate to or involve the Mayor the person may raise the matter with the Deputy Mayor (if appointed) or

³ There are circumstances in the *Work Health and Safety Act 2012* where information must be disclosed, for example where the health and safety of an employee is at risk.

other council member appointed by the Council as the person responsible for managing complaints under this Policy.

If the Mayor or person responsible for managing the complaint considers that access to resources to support impacted parties and facilitate early resolution of the matter should be provided, the Mayor or person responsible for managing the complaint will request the CEO to facilitate access to relevant resources. The CEO will not refuse any reasonable request for resources made in accordance with this Policy.

4.4.1. Record keeping

Where the Mayor or person responsible for managing the complaint addresses the matter through informal action, a record should be made setting out:

- Details of the complainant
- Details of the person complained about
- A summary of the matter
- A summary of actions taken in response
- Details of agreed actions (if any)

If informal action does not successfully resolve the matter, the record may be made available to an investigation process as provided for under this Policy or to the Behavioural Standards Panel.

4.5. Part 2: Formal action

This Part sets out the process for formal action in response to a complaint regarding the behaviour of council members and addresses the manner in which a complaint will be:

- Received
- Assessed
- Investigated
- Resolved
- Recorded

A complaint made under the Behavioural Management Policy must:

- be received in writing. Subject to an alternative resolution of the Council, a complaint should be marked with “Confidential Council Member Complaint” and forwarded to the relevant email or physical address as published on the Council’s website.
- Provide the name of the council member who has allegedly breached the **behavioural requirements**, the name and contact details of the complainant, the name and contact details of the person submitting the complaint (if different to the complainant) and the name and contact details of any witnesses or other persons able to provide information about the complaint.
- Be specific (including identifying the **behavioural requirements** the complainant alleges have been breached)

- Provide as much supporting evidence as possible to assist an investigation, including the grounds and circumstances of the complaint (e.g. where, when, impact of the behaviour, actions taken to try to resolve the issue, relevant records or documents)
- Identify the outcome being sought
- Be lodged within six (6) months of the alleged conduct occurring on the basis that it is important to address alleged breaches of **behavioural requirements** in a timely manner (with discretion provided to the person responsible for managing the complaint to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis).

4.5.1. Receipt of a Complaint

This step is an administrative process undertaken by the CEO or delegate:

- receipt
- initial acknowledgement
- record keeping; and
- allocation of the matter to the person responsible for managing the complaint.

The CEO or delegate does not undertake an assessment of the merits of the complaint.

Receipt of the complaint will be acknowledged within 2 business days or as soon as reasonably practicable and a copy of this Policy will be provided to the person making the complaint.

The complaint should be directed to the person responsible for managing the complaint in accordance with this Policy.

A complainant may withdraw their complaint at any stage.

4.5.2. Initial complaint assessment

An initial assessment is not an investigation or adjudication of a complaint and no findings as to the merits of the complaint will be made at this stage.

Step 1

The person responsible for managing the complaint will undertake an assessment of it to determine whether the content of the complaint relates to the **behavioural requirements** and whether the conduct occurred in the context of the council member carrying out their official functions and duties.

In undertaking the assessment, the person responsible for managing the complaint will have regard to the following matters⁴:

- the person that is making the complaint (or on whose behalf the complaint has been made) has a sufficient interest in the matter
- the complaint is trivial, frivolous or vexatious or not made in good faith

⁴ The person responsible for managing the complaint will also have regard to whether the council has obligations to report the matter to either the Local Government Association Mutual Liability Scheme (LGAMLS) or the Local Government Association Workers Compensation Scheme (LGAWCS), pursuant to the Rules of those Schemes and council's agreement with those bodies.

- the complaint has been lodged with another authority
- the subject matter of the complaint has been or is already being investigated by the Council or another body
- it is unnecessary or unjustifiable for the Council to deal with the complaint
- the council has dealt with the complaint adequately.

Step 2

If the person responsible for managing the complaint considers the matter warrants further consideration, the person complained about should be advised that a complaint has been received and is undergoing an initial assessment in accordance with this Policy. They should be provided a summary of the matter, at a sufficient level of detail, to understand the nature of the allegations and enable them to provide a preliminary response. This may be achieved by a discussion between the person responsible for managing the complaint and the person complained about, taking into account the principles of this Policy. The person complained about may have a support person present during any discussions.

The person complained about should be given a reasonable opportunity, but no more than ten business days, to provide a response to support the initial assessment. The person responsible for managing the complaint may provide a longer period of time for provision of a response at their discretion. The person responsible for managing the complaint should have regard to any response provided in determining the action resulting from the initial assessment.

Action from initial assessment

The person responsible for managing the complaint will determine what action will result from the initial assessment. A matter may proceed to formal consideration under this Policy, unless there are grounds to take one of the following actions pursuant to section 262B(2)(b):

- refusing to deal with the complaint⁵
- determining to take no further action
- referring to an alternative resolution mechanism or to propose training for relevant parties (e.g. facilitated discussion, provision of training, mediation, arbitration, conflict resolution, etc.)
- referring the matter to another body or agency (e.g., the Ombudsman SA or the Behavioural Standards Panel)

The outcome of the initial assessment will be advised to the complainant and person complained about in writing as far as is permitted by law.

Refusing to deal with the complaint/Determining to take no further action

Where the person responsible for managing the complaint makes a decision not to proceed with formal consideration of the matter the following steps should be taken:

⁵ Section 270(4a)(a)(i) of the *Local Government Act 1999* precludes a review of a decision to refuse to deal with the complaint

- the complainant must be provided written reasons explaining the decision⁶
- the person complained about should be provided with a brief summary of the complaint and the reasons for not proceeding.
- A record of these steps and the decision not to proceed should be made.

Whilst a matter may not proceed, the person responsible for managing the complaint may discuss the issues informally with the parties and identify strategies to build skills, facilitate positive relationship development and reduce the likelihood of repeat occurrences.

Decision to refer to alternative resolution mechanism:

The person responsible for managing the complaint may form the view that the optimal way to deal with the complaint is to implement an alternative resolution mechanism such as facilitated discussion, mediation, arbitration, conflict resolution or training.

The person responsible for managing the complaint should discuss the use of a proposed alternative resolution mechanism with the complainant and the person complained about to determine whether there is support for this approach.

If so, the person responsible for managing the complaint should request the CEO take steps to facilitate access to appropriate internal or external support (not being for the purposes of obtaining legal advice) for parties to the complaint. The CEO will not refuse any reasonable request for resources made in accordance with this Policy.

The complainant and the person complained about should be provided written confirmation of the alternative resolution mechanism to be used for the purposes of resolving the complaint.

Decision to refer to another body or agency

Where the person responsible for managing the complaint makes a decision to refer the matter to another body or agency the person will follow any direction from that body or agency regarding what information is to be provided to the complainant and the elected member complained about regarding the referral.

Decision to proceed to formal consideration:

Where the person responsible for managing the complaint makes a decision to proceed to formal consideration the following steps should be taken:

- the person complained about should be provided with a copy of this Policy, contact details of the person responsible for managing the complaint and a summary document setting out:
 - the specific provision(s) of the ***behavioural requirements*** alleged to have been breached; and
 - the circumstances where this breach is alleged to have occurred.

In circumstances where the complainant has not requested their identity be kept confidential, a copy of the complaint may be provided in full.

⁶ Section 262D, *Local Government Act 1999*

- the complainant should be advised of the decision to proceed and the contact details of the person responsible for managing the complaint.

4.5.3. Formal consideration

Where a decision to formally consider the complaint has been made the person responsible for managing the complaint will determine how to proceed:

- The person responsible for managing the complaint may determine that they are the appropriate person to formally consider the complaint; or
- The person responsible for managing the complaint may determine to engage a third party to formally consider the complaint, for example:
 - an investigator who will report to the person responsible for managing the complaint; or
 - an external service provider with skills relevant to the matter who will report to the person responsible for managing the complaint.

If the person responsible for managing the complaint determines a third party should be engaged, they will request the CEO to facilitate engagement of an appropriate service provider. The CEO will not refuse any reasonable request for resources made in accordance with this Policy.

The person responsible for managing the complaint will advise both the complainant and the person complained about that they are able to have a support person accompany them during discussions relating to the complaint.

It is the expectation of Council that both the complainant and the person complained about will cooperate with any such process to consider the complaint and, if requested, participate in meetings in a timely manner.

Failure by the elected member complained about to comply with this requirement may be taken into account when considering the actions to be taken under section 262B(2)(e) of the Local Government Act and may constitute grounds for referral to the Behavioural Standards Panel for misbehaviour.

Further consideration by the person responsible for managing the complaint (or the third party engaged), may (at the discretion of that person) involve:

- explore the complaint with the complainant and the person who is the subject of the complaint
- speaking with other persons who have been nominated by the parties to have observed the behaviour
- speaking directly with witnesses to the conduct complained about
- requesting the provision of information or documents relevant to the investigation, which may include access to audio or video recordings of meetings.

During the formal consideration of a matter appropriate records should be kept by the person responsible for managing the complaint.

4.5.4. Report

The person responsible for managing the complaint (or the third party engaged) should ensure a report is prepared summarising the matter and setting out their findings, conclusions and recommendations. The report should set out:

- Allegations made in the complaint
- Summary of evidence to which the investigation had regard
- Findings
- Conclusions
- Recommendations

A report will generally include a recommended action for the parties to consider and/or participate in such as, but not limited to the imposition of sanctions as per the Local Government Act:

- discussions with parties to the complaint to seek agreement
- formal mediation if not already undertaken
- Conciliation
- Arbitration
- Education and further training

A copy of the draft report should be provided to the parties to the complaint who should be given a reasonable opportunity, but no more than ten business days, to make submissions in relation to the draft report. The person responsible for managing the complaint (or the third party engaged) may provide a longer period of time for lodgement of submissions to the draft report at their discretion. The person responsible for managing the complaint (or the third party engaged) should have regard to any submissions made in preparing a final report.

Outcome – No breach found

Where the finding is that no breach of the **behavioural requirements** has occurred a final report should be prepared by the person responsible for managing the complaint (or third party engaged) and provided to the complainant and the person complained about.

The complaint will remain confidential in accordance with the requirements of this Policy, except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled⁷ at the next practicable Council meeting. If no such request is received, no further action will be taken.

⁷ Note that the complainants identity may need to be redacted.

Outcome – agreed actions (breach found)

Where the finding is that a breach of the **behavioural requirements** has occurred and the complainant and the person complained about⁸ agree to a path for resolution, that agreement will be documented including matters such as:

- actions to be undertaken
- responsibility for completing actions
- timeframes for completion of actions
- what will occur if there is a repeat of the behaviours complained about
- monitoring arrangements for completion of actions
- what will occur if the actions aren't completed
- confirmation that the matter is considered resolved

The agreement reached will be made in writing, including a commitment by parties to the complaint to abide by the agreement (which may be by electronic means). A copy of the agreement will be retained by each party and a copy held in Council records.

The complaint will remain confidential in accordance with the requirements of this Policy except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled⁹ at the next practicable Council meeting.. The matter must be reported in the Council's Annual Report which must contain the information required by the regulations.¹⁰

Outcome – no agreed action (breach found)

Where the finding is that a breach of the **behavioural requirements** has occurred and the parties to the complaint have failed to reach agreement as to the resolution of the matter a final report should be presented to Council for determination. The person responsible for managing the complaint should request the CEO to include the final report in the Council Agenda as soon as practicable.

4.5.5. Actions of Council

Where the parties are not able to agree on an approach to resolve the matter, the matter will be provided to Council for determine the actions to be taken which may include:

- taking no further action
- passing a censure motion in respect of the member;
- requiring the member to issue a public apology (in a manner determined by the Council)
- requiring the member to undertake a specified course of training or instruction;

⁸ Where the conduct complained about is not raised by the person directly affected by the conduct it will usually be appropriate to discuss the proposed resolution with that person prior to finalising agreement. This is intended to apply in a circumstance where the 'victim' is not the complainant to provide them a reasonable opportunity to have input into the resolution.

⁹ Note that the complainants identity may need to be redacted.

¹⁰ Schedule 4(1)(d), *Local Government Act 1999*

- removal or suspension from one or more offices held in the member's capacity as a member of the Council or by virtue of being a member of the Council – but not the office of Member of the Council;

If Council determines to take action, a report on the matter must be considered at a meeting open to the public¹¹.

Where Council determines to take no further action, the complainant will be advised of this along with reasons, which may include:

- the ground that, having regard to all the circumstances of the case, it is unnecessary or unjustifiable for the council to deal with or continue to deal with the complaint;
- the ground that the subject matter of the complaint has been or is already being investigated, whether by the council or another person or body; or
- the ground that the council has dealt with the complaint adequately.

In making a determination under section 262C(1) Council should be reasonably prescriptive about the manner and time periods in which the action must be completed. Section 262E defines a failure to comply with a requirement of the council under 262C(1) as 'misbehaviour' which may result in a referral to the Behavioural Standards Panel.

The matter must be reported in the Council's Annual Report which must contain the information required by the regulations.¹²

4.6. Behavioural Standards Panel

The Behavioural Standards Panel is an independent statutory authority consisting of three members and has powers to impose sanctions on council members who breach the **behavioural requirements**.

In accordance with section 262Q of the *Local Government Act 1999* a complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour may be made to the Panel by certain persons as set out below. The Panel's jurisdiction arises in the circumstances set out below:

Legislative definition	Plain language explanation
<p><i>misbehaviour</i> means—</p> <ol style="list-style-type: none"> a failure by a member of a council to comply with a requirement of the council under section 262C(1); or a failure by a member of a council to comply with a provision of, or a requirement under, the council's behavioural management policy; or a failure by a member of a council to 	<p>Misbehaviour means:</p> <ol style="list-style-type: none"> a council member fails to take the action required by council; or a council member fails to comply with this policy; or

¹¹ Section 262C(2), *Local Government Act 1999*

¹² Schedule 4(1)(d), *Local Government Act 1999*

comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1;	(c) a council member fails to comply with an agreement reached pursuant to this policy
<i>repeated misbehaviour</i> means a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2;	A second or subsequent breach of the <i>behavioural requirements</i>
<i>serious misbehaviour</i> means a failure by a member of a council to comply with section 75G.	A breach of health and safety duties (including sexual harassment) as set out in section 75G of the <i>Local Government Act 1999</i>

A complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour by a member of council may be referred to the Panel by¹³:

- A resolution of the council;
- the Mayor; or
- at least 3 members of the council
- Responsible person under 75G – direction not to attend meeting.

Behavioural Standards Panel Contact Officer

Council must appoint a person as the contact officer for matters referred to the Behavioural Standards Panel. The contact officer is responsible for the provision of information to and receipt of notice from the Behavioural Standards Panel.

5. Responsibilities

The Mayor, Deputy Mayor (if appointed) or other council member appointed by the council as the person responsible for managing complaints is responsible under this Policy to:

- Perform the tasks bestowed upon the person responsible for dealing with a complaint pursuant to this Policy
- In consultation with the CEO, facilitate access to resources to support impacted parties and resolve the concerns raised in a timely manner prior to the matter becoming serious, or escalating to a formal complaint.
- In consultation with the CEO, engage external resources to assist with investigation and resolution of matters.

The CEO (or delegate) is responsible under this Policy to:

¹³ Section 262Q, *Local Government Act 1999*

- manage the administrative receipt, acknowledgement, record keeping and allocation of a complaint lodged in accordance with this Policy
- facilitate access to external resources to support the resolution of complaints lodged in accordance with this Policy.

The Behavioural Standards Panel Contact Officer (appointed by the council) is responsible under this Policy to:

- comply with any lawful request of the Panel for information related to a matter under consideration.
- Receive and respond to notices relating to matters under consideration by the Panel.

Where the Behavioural Standards Panel Contact Officer is not the CEO, the Contact Officer should keep the CEO informed of the status of matters under consideration by the Panel.

6. Related Legislation

Independent Commission Against Corruption Act 2012

Local Government Act 1999

Ombudsman Act 1972

Public Interest Disclosure Act 2018

Item No: 15.10

Subject: **ACTING ARRANGEMENTS IN THE ABSENCE OF THE CHIEF EXECUTIVE OFFICER**

Date: 28 February 2023

Written By: Executive Assistant to the Chief Executive Officer

Chief Executive Officer: Mr R Bria

SUMMARY

Pursuant to Section 102(b) of the *Local Government Act 1999* and following consultation with Council, the Chief Executive Officer can appoint a suitable person to act in the position of Chief Executive Officer in their absence.

On a number of occasions since 2011, various General Managers have acted as the Chief Executive Officer and this arrangement has proven to be practical and effective.

It is proposed that Michael de Heus in his capacity as a General Manager, is endorsed by Council to act in the absence of the Chief Executive Officer at any time.

RECOMMENDATION

That Michael de Heus be endorsed by Council to act in the position of Chief Executive Officer.

STRATEGIC PLAN

Statutory compliance

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Local Government Act 1999, Section 102(b)

BACKGROUND

Pursuant to Section 102(b) of the *Local Government Act 1999* and following consultation with Council, the Chief Executive Officer can appoint a suitable person to act in the position of Chief Executive Officer in their absence.

Pamela Jackson (General Manager, Strategy and Governance), Marnie Lock (General Manager, Community and Business) and Beth Davidson-Park (General Manager, Alwyndor) have previously been endorsed by Council to act in the position of Chief Executive Officer.

REPORT

On a number of occasions since 2011, various General Managers have acted as the Chief Executive Officer and this arrangement has proven to be practical and effective. The arrangement allows for a 'business as usual' approach, enables further development of skills and interactions with new stakeholders. All General Managers are members of the Senior Leadership Team and have excellent understanding of Council's business, legislative controls and staffing requirements.

The appointment of a General Manager as Acting Chief Executive Officer takes into consideration the General Manager's availability and workload at the time.

It is proposed that Michael de Heus in his capacity as a General Manager, is endorsed by Council to act in the absence of the Chief Executive Officer at any time.

BUDGET

Not applicable

LIFE CYCLE COSTS

Not applicable

Item No: 15.11

Subject: **REVIEW OF ITEMS HELD IN CONFIDENCE**

Date: 28 February 2023

Written By: Executive Support Officer

Chief Executive Officer: Mr R Bria

SUMMARY

An extensive review of all items held in confidence is being undertaken, in stages, under Section 90(3) of the *Local Government Act 1999*.

The Confidential Items Review considers the nature of the information contained within the confidential items, the grounds on which it was originally held in confidence and the length of time the information can be kept confidential. Each item is reviewed individually, resulting in a determination as to whether the confidentiality order for each item is still current under the Act.

This report recommends that 25 Confidential Items (reports and/or attachments and/or minutes) be released from confidence and 24 Confidential Items reviewed at this time should be retained in confidence.

RECOMMENDATION

That Council approves:

1. the Confidential Items presented as Attachment 1 to this report be released from confidence; and
 2. the Confidential Items presented as Attachment 2 to this report be retained in confidence and included in future stages of the Confidential Items Review.
-

STRATEGIC PLAN

Statutory compliance

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Section 90 (3) *Local Government Act 1999*

Section 91 (9)(a) *Local Government Act 1999*

BACKGROUND

Underpinning Council's commitment to transparent decision making is the principle that unless there is good reason, as defined by Section 90(3) of the Local Government Act 1999, all of the material presented to, and discussed at Council as well as its decisions, should be publicly available.

It is recognised that Council will occasionally have cause to retain some items in confidence, it is also best practice that these decisions be reviewed regularly to determine the earliest opportunity to release them to the public, aiming to keep as few matters in confidence as possible.

REPORT

Civic Governance has completed an extensive review of 49 Confidential Items (including reports, attachments and minutes), liaising with relevant Managers, General Managers and Chief Executive Officer. The Chief Executive Officer has delegated authority to release certain confidential items.

A summary of the 25 Confidential Items recommended for release by Council resolution is provided for Members' information.

Refer Attachment 1

A summary of the 24 Confidential Items recommended to be retained in confidence and included in future stages of the extensive Confidential Items review is provided for Members' information.

Refer Attachment 2

BUDGET

Not applicable

LIFE CYCLE COSTS

Not applicable

Attachment 1



Attachment 1 – Release of Confidential Items

Meeting Date	Report Title	Report No	Grounds	Documents to be released	Recommendation
13/09/2016	Chief Executive Officer Performance Appraisal	222/19	(a) Personal Affairs	Attachment	15/02/23 – Attachment recommended for release
27/09/2016	Adjourned Report – Chief Executive Officer's Performance Appraisal	232/16	(a) Personal Affairs	Attachment	15/02/23 – Attachment recommended for release
24/01/2017	Quarterly Report on Commercial Leases – December 2016	16/17	(b) Commercial Advantage	Report, Attachments and Minutes	14/02/23 - Recommended for release
09/05/2017	Chief Executive Officer Performance Appraisal	131/17	(a) Personal Affairs	Attachment	15/02/23 – Attachment recommended for release
11/07/2017	Minda Update	234/17	(h) Legal Advice (i) Litigation	Report, Attachments and Minutes	14/02/23 - Recommended for release
24/10/2017	Brighton Pump Track Maintenance	19.1	(i) Personal Affairs	Minutes	15/02/23 – Minutes recommended for release
12/12/2017	Brighton Oval Complex – Business Case	449/17	(b) Commercial Advantage	Report and Attachments	13/2/23 - Recommended for release
10/07/2018	Sale of Land Proposal	238/18	(b) Commercial Advantage	Report, Attachment and Minutes	07/02/23 - Recommended for release
28/08/2018	Brighton Oval Complex – Redevelopment Contract Approval	294/18	(b) Commercial Advantage (d) Commercial Advantage Not a Trade Secret	Discussion, report, attachments, minutes, tender and contract documents	13/02/23 - Recommended for release
29/08/2018	Audit Committee – Brighton Oval Redevelopment	304/18	(b) Commercial Advantage (d) Commercial Advantage Not a Trade Secret	Attachment 5	14/02/23 – Attachment 5 can be released

Attachment 1 – Release of Confidential Items

Meeting Date	Report Title	Report No	Grounds	Documents to be released	Recommendation
12/02/2019	Rescission Motion footpath encroachment purchase of land portion 15 Pine Avenue Kingston Park	60/19	(d) Commercial Advantage Not a Trade Secret	Discussion Only	07/02/23 - Recommended for release
09/04/2019	Proposed Sale of Land	131/19	(b) Commercial Advantage (d) Commercial Advantage Not a Trade Secret	Report and Attachments	07/02/23 - Recommended for release
09/04/2019	Brighton Oval Building Redevelopment	138/19	(b) Commercial Advantage	Report and Attachments	13/02/23 - Recommended for release
23/07/2019	Buffalo Update		(b) Commercial Advantage (d) Commercial Advantage Not a Trade Secret (h) Legal Advice	Discussion only	14/02/23 - Recommended for release
24/09/2019	Update Brighton Oval Masterplan – Stage 2	342/19	(b) Commercial Advantage	Report, Attachments and Minutes	14/02/23 - Recommended for release
12/11/2019	Adjourned – Confidential Report – Update Brighton Oval Masterplan – Stage 2	412/19	(b) Commercial Advantage	Report, Attachments and Minutes	13/02/23 - Recommended for release
10/12/2019	Internal Review of Council Decision (s.270) E-Scooter Trial	465/19	(i) Litigation	Report and Attachments	15/02/23 – Recommended for release
10/12/2019	Final Designs – Chapel Street Plaza & Hindmarsh Lane	457/19	(b) Commercial Advantage	Report	13/02/23 – Recommended for release
09/06/2020	New Management Agreement - Brighton Caravan Park	146/20	(a) Personal Affairs (d) Commercial advantage Not a Trade Secret	Report and Minutes	07/02/23 - Recommended for release

Attachment 1 – Release of Confidential Items

Meeting Date	Report Title	Report No	Grounds	Documents to be released	Recommendation
23/06/2020	New Management Agreement - Somerton Surf Lifesaving Club Inc	161/20	(d) Commercial Advantage not a Trade Secret	Report, Attachments, Recommendation and Discussion	07/02/23 - Recommended for release
14/07/2020	Adjourned Report - New Management Agreement – Somerton Surf Lifesaving Club Inc.	178/20	(d) Commercial Advantage Not a Trade Secret	Report, Attachments, Recommendation and Discussion	07/02/23 - Recommended for release
11/08/2020	Self Service Bait Vending Machine – Brighton Jetty	198/20	(b) Commercial Advantage	Report, Attachments and Minutes	07/02/23 - Recommended for release
27/10/2020	Minutes – Audit Committee – 7 October 2020	331/20	(b) Commercial Advantage	Report and Attachments	14/02/23 - Recommended for release

Attachment 2



Attachment 2 – Retain of Confidential Items

Meeting Date	Report Title	Report No	Grounds	Documents to be Retained	Recommendation
24/10/2017	Brighton Pump Track Maintenance	19.1	(a) Personal Affairs	Minutes	13/02/23 - Recommended to Retain and review in 12 months.
14/11/2017	Brighton Pump Track Maintenance	415/17	(a) Personal Affairs	Report, Attachment and Minutes	13/02/23 - Recommended to Retain and review in 12 months.
28/11/2017	Adjourned Report – Brighton Pump Track Maintenance	437/17	(a) Personal Affairs	Report and Attachments	13/02/23 - Recommended to Retain and review in 12 months.
12/12/2017	Adjourned Report – Brighton Pump Track Maintenance	445/17	(a) Personal Affairs	Report and Attachments	13/02/23 - Recommended to Retain and review in 12 months.
13/02/2018	Urgent Business - New Catholic Primary School at Hove	N/A	(b) Commercial Advantage	Minutes	07/02/23 – Recommended to Retain and review in 12 months
09/04/2019	Buffalo Licence Agreement – Application for Extension of Time	145/19	(b) Commercial Advantage (d) Commercial Advantage Not a Trade Secret (h) Legal Advice	Report and Attachments	07/02/23 - Recommended to Retain and review in 12 months
23/04/2019	Appointments to the Council Assessment Panel	142/19	(a) Personal Affairs	Attachment 1	07/02/23 - Recommended to Retain and review in 12 months
14/05/2019	Buffalo Update	185/19	(b) Commercial Advantage (d) Commercial Advantage Not a Trade Secret (h) Legal Advice	Report and Minutes	07/02/23 - Recommended to Retain and review in 12 months.

Attachment 2 – Retain of Confidential Items

Meeting Date	Report Title	Report No	Grounds	Documents to be Retained	Recommendation
19/06/2019	Application for New Lease – Rimhart Nominees Pty Ltd	205/19	(b) Commercial Advantage (d) Commercial Advantage Not a Trade Secret	Item was adjourned, however Report, Discussion, Attachments and Minutes to be retained.	07/02/23 - Recommended to Retain and review in 12 months.
13/08/2019	Memorial Seats Update	222/19	(h) Legal Advice	Report, Discussion, Minutes, Attachments	14/02/23 - Recommended to Retain and review in 12 months.
10/12/2019	Material Recovery Facility (MRF)	459/19	(d) Commercial Advantage Not a Trade Secret	Report and Attachments	15/02/23 - Recommended to Retain and review in 12 months.
11/02/2020	Minutes – Special Audit Committee – 4 December 2019	32/20	(d) Commercial Advantage Not a Trade Secret	Attachment 2	15/02/23 - Recommended to Retain and review in 12 months.
25/02/2020	Question on Notice - Belgravia Leisure Lease - Kauri Community and Sports Centre - Councillor Bradshaw	56/20	(d) Commercial Advantage Not a Trade Secret	Report and minutes	07/02/23 - Recommended to Retain and review in 12 months.
14/04/2020	Appointments to the Council Assessment Panel	87/20	(a) Personal Affairs	Attachment 1	07/02/23 - Recommended to Retain and review in 12 months.
28/04/2020	Unsolicited Proposal – New Private Hospital and Specialist Centre	101/20	(d) Commercial Advantage Not a Trade Secret	Report	13/02/23 – Recommended to Retain and review in 12 months.

Attachment 2 – Retain of Confidential Items

Meeting Date	Report Title	Report No	Grounds	Documents to be Retained	Recommendation
09/06/2020	Chief Executive Performance Review	157/20	(a) Personal Affairs (e) Employee Protection	Report and Minutes	14/02/23 - Recommended to Retain and review in 12 months.
23/06/2020	Broadway Kiosk – Application for Rent Review	151/20	(b) Commercial Advantage (d) Commercial Advantage Not a Trade Secret	Report, Attachments and Minutes	07/03/23 - Recommended to Retain and review in 12 months.
23/06/2020	Appointment to the Council Assessment Panel	160/20	(a) Personal affairs	Attachment 1	07/02/23 - Recommended to Retain and review in 12 months.
28/07/2020	Proposed Activation	211/20	(b) Commercial Advantage	Discussion, Report and Attachments	13/02/23 – Recommended to Retain and review in 12 months.
11/08/2020	Kauri Community & Sporting Complex – Management Review	222/20	(d) Commercial Advantage Not a Trade Secret	Report and Attachments	07/02/23 - Recommended to Retain and review in 12 months.
11/08/2020	Urgent Business – Independent Investigation – Mayor Wilson	237/20	(e) Employee protection	Report and Minutes	14/02/23 - Recommended to Retain and review in 12 months.
08/09/2020	Broadway Kiosk – Partial Assignment of Lease	252/20	(d) Commercial Advantage not a trade secret	Report, Attachments and Minutes	07/02/23 - Recommended to Retain and review in 12 months.
22/09/2020	New Management Agreement – Brighton Caravan Park	288/20	(d) Commercial Advantage Not a Trade Secret	Reports, Attachments and Minutes	07/02/23 - Recommended to Retain

Attachment 2 – Retain of Confidential Items

Meeting Date	Report Title	Report No	Grounds	Documents to be Retained	Recommendation
			(k) Supply of goods and services		and review in 12 months.
11/10/2020	Kingston Park Kiosk	368/20	(b) Commercial Advantage	Report, Attachments and Minutes	14/02/23 - Recommended to Retain and review in 12 months.
08/12/2020	Brighton Beachfront Holiday Park – Master Plan	392/20	(d) Commercial Advantage Not a Trade Secret	Report, Attachments and Minutes	14/02/23 - Recommended to Retain and review in 12 months.