

18.1 Bait Vending Machine Trial – Brighton Jetty (Report No: 410/19)**Motion – Exclusion of the Public – Section 90(3)(b) Order****C121119/1678**

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 410/19 Bait Vending Machine Trial – Brighton Jetty in confidence.
2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 410/19 Bait Vending Machine Trial – Brighton Jetty in confidence on the following grounds:
 - b. pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business; would prejudice the commercial position of the Council.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.
3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.

Moved Councillor Clancy, Seconded Councillor Abley

Carried Unanimously

This report summarises the options to address community concerns in regards to the bait vending machine that has been installed on the foreshore near Brighton Jetty plaza.

Motion**C121119/1679****That Council:**

1. endorse continuation of the existing permit until the expiry of the trial period on 31 August 2020, noting that a review of the trial, including community consultation will take place prior to August 2020; and

Moved Councillor Bradshaw, Seconded Councillor Smedley

Carried

RETAIN IN CONFIDENCE - Section 91(7) Order

C121119/1680

2. that having considered Agenda Item 18.1 Bait Vending Machine Trial – Brighton Jetty (Report No: 410/19) in confidence under section 90(2) and (3)(b) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the discussion, report and attachments be retained in confidence for a period of 12 months with the Chief Executive Officer authorised to release the documents following completion of the trial period or at the expiry of the 12 month confidentiality period.

Moved Councillor Bouchee, Seconded Councillor Abley

Carried Unanimously

CONFIRMED

Tuesday 26 November 2019

MAYOR

ITEM NUMBER: 18.1

CONFIDENTIAL REPORT

BAIT VENDING MACHINE TRIAL – BRIGHTON JETTY

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.**

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

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 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: **18.1**

Subject: **BAIT VENDING MACHINE TRIAL – BRIGHTON JETTY**

Date: 12 November 2019

Written By: Commercial and Leasing Team Leader

General Manager: City Assets and Services, Mr H Lacy

SUMMARY

This report summarises the current situation with the bait vending machine trial on the foreshore near the Brighton Jetty plaza and explores options to either relocate the machine, terminate the operator's permit or continue with the one (1) year trial.

RECOMMENDATION

That Council:

1. **endorse continuation of the existing permit until the expiry of the trial period on 31 August 2020, noting that a review of the trial, including community consultation will take place prior to August 2020; and**

RETAIN IN CONFIDENCE - Section 91(7) Order

2. **that having considered Agenda Item 18.1 Bait Vending Machine Trial – Brighton Jetty (Report No: 410/19) in confidence under section 90(2) and (3)(b) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the discussion, report and attachments be retained in confidence for a period of 12 months with the Chief Executive Officer authorised to release the documents following completion of the trial period or at the expiry of the 12 month confidentiality period.**
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COMMUNITY PLAN

Community: Building a healthy, active and resilient community
Community: Providing welcoming and accessible facilities
Economy: Making it easier to do business
Economy: Harnessing emerging technology
Economy: Boosting our visitor economy
Economy: Supporting and growing local business

COUNCIL POLICY

Commercial Activation of Community Land Policy (Resolution No C130819/1582)

STATUTORY PROVISIONS

Section 200, *Local Government Act 1999* - Permit to use Community Land for Business purposes.
Unfair contract terms, Australian Consumer Law.

BACKGROUND

In August 2019, Administration (by delegation) granted a permit under Section 200 “Use of Community Land for Business purposes” of the Local Government Act for a bait vending machine to be operated on the Esplanade at Brighton adjacent to the Brighton Jetty for a trial period of 12 months (ie until 31 August 2020).

Refer Attachment 1

The proposal was aimed at facilitating convenient 24 hour access to bait for the local fishing community and general visitors to the area. As such, and given the success of similar machines in other South Australian locations and interstate, it seemed an appropriate activity to trial at the Brighton Jetty.

However, the permit was granted without Council’s formal endorsement. In the days following the installation, members of the public expressed both their support and concerns in regards to the bait vending machine. Council consequently moved a Motion for Administration to prepare a report on options to address community concerns. (Motion C240919/1612)





Summary of community feedback in the first week of the vending machine installation:

- Administration received 8 emails, 7 of them raised objections in regards to the machine storing live bait and/or encouraging fishing.
- Social media posts were mixed, with people either strongly opposing or enthusiastically supporting the initiative:
 - 310 reactions on the Brighton SA Facebook page on 03 September 2019. 38% of the feed comments were positive, 54% negative (of which 63% raised concerns about live bait) and 8% other.
 - 638 reactions on the ABC Adelaide Facebook page on 04 September 2019 and 823 comments. 61% of the feed comments were positive, 9% negative and 30% other.
- Adjacent local businesses such as the Brighton Jetty Bakery, the Esplanade Hotel and Café 85 are supportive of the initiative. The bakery advertised the vending machine on their Facebook page.

Despite the abundant initial response on social media, there were no media coverage regarding the vending machine and no further comments received by Administration since the first few days of September.

The most notable community concerns have been:

- The vending machine sells live bait:

Most products are frozen with the only live baits being gents (maggots) and worms. These are sold live at any retail bait outlet so, in this regard, the vending machine is supplying bait in the same form and range as any retail bait outlet.

- Possible impact on the bricks and mortar bait shop on Brighton Road

Council's Business Development Partner has been in discussion with the operator of bait shop on Brighton Road to ensure their competitiveness in the market place, through access to free business advisory services, business planning, digital training and support through the small business grant program.

It is also noted that the petrol station opposite the Bait shop also sells bait.

The bait and tackle shop relies mainly on the income generated by the sale of tackle during the daytime. Vending machines focus on bait and rely heavily on tides and weather. 95% of turn over happens between the hours of 6pm and 6am with the peak between 10pm and 12am, when the Brighton shop is closed. As an example, the vending machine operator reported going to refill the machine at night and there were over 40 people on the Brighton Jetty.

- Where is this business from?

The vending machine operator is 'How's Ya Tackle' which is a local SA business based in Port Noarlunga. The machines are manufactured in NSW. The operator already has another 4 machines within the City of Onkaparinga and Victor Harbor. He is the only bait supplier accredited in South Australia and an approved member of "Brand South Australia".

- Bait, source:

Nothing in the vending machines is imported apart from the tackle items which are sourced through local agencies. 89% of the products are from South Australia. The squid is from within the pacific quarantine zone; worms and gents are Australian; the pilchards are South Australian; and prawns are from NSW.

- Impact on environment:

All bait bags used in the vending machine are biodegradable, 100% recyclable and reusable. The operator is the only fishing supplier in the state that does so. The vending machine is placed strategically near a recyclable bin, and bags used are a zip-lock design to promote reuse.

A Frequently Asked Questions was developed to answer other community concerns.

Positive feedback:

Most supportive feedback noted the convenience of the vending machine, both in terms of location and accessibility at night time when it is 'fishing time'. The innovation and the fact that the operator is a local SA firm from Port Noarlunga were also highlighted.

Feedback from the operator:

The operator 'How's Your Tackle' (HYT) reports only positive feedback from the fishing community. Within the first month of operation, the machine was outselling all other South Australian locations two times over. HYT intends to multiply its machines on popular fishing locations: with pre-approval to install additional machines at West Lakes and another at a café at Henley Beach.

Options to address community concerns:

Option 1 - Terminate the permit and remove the machine

Unlike previous situations where Council has had to rely solely on the provisions within the Local Government Act, this Section 200 permit includes a specific clause which provides council with the right to terminate the agreement as follows:

11.2 At any time by written notice by Council to the permit holder for any reasons deemed necessary by Council, for which the permit holder has no right of recourse against Council.

However, it is our view that Council would need to establish reasonable grounds for termination to ensure that it was not exposed to a claim for lost profit and mobilization/demobilization costs. A change of mind may not be deemed 'reasonable grounds' if tested in court.

Administration could nonetheless negotiate a termination with the operator, giving him at least one month's written notice as per the permit, with negotiated compensation for loss of profits and costs.

Administration has estimated the likely compensation costs as follows:

- Removal of machine, transport storage costs = \$1,600
 - Estimated loss of profit over 9 months (December 2019 to August 2020), based on assumption that rent represents 15% of annual profit = \$3,750
 - Site remediation: 1 day's work to remove, dispose & remediate concrete pad = \$1,000
- Total: \$6,350**

A communication plan would be established to manage messaging and potential adverse reactions from sectors of the public.

Option 2 - Relocate the machine at Council's costs

The following alternative locations were explored, although they are not recommended:

- Further south along the Esplanade foreshore - this alternative location would be below the footpath level so minimizing visual impact of the machine. However, electricity set up costs would be significant.

- Adjacent Brighton Surf Life Saving Club - the operator initially investigated this option, before approaching Administration. However, research shows that fishermen will walk 30 to 50m maximum from the end of the jetty to get their bait. This option would not be suitable for the operator.
- Footpath against 'View at 85' Café: the cafe had originally expressed interest in having the machine against its wall facing the Esplanade, on the footpath between the café and the fish and chips shop. However this may compromise the flow of pedestrian traffic and 'View at 85 Café' has just been replaced with a wine bar. Business owners have not been approached to discuss this option.

It is likely that the operator would seek that council either pay for the relocation in full or enter a cost sharing arrangement. Likely costs are around \$6,000 including new electrical connection.

Option 3 - Continue the trial period as per existing permit

This option sees Council committing to the trial period, whilst continuing to support the business development of the Brighton Road bait & tackle shop with advice and grant opportunities. This is the recommended option given that the permit was lawfully issued and that initial community concerns seem to have quietened down.

A review will be undertaken prior to the conclusion of the trial, including community consultation, together with considerations of any incidents (if applicable), interest, satisfaction and objections. The review will be submitted to Council for assessment before the expiry of the permit.

If supportive, the opportunity for a bait vending machine could be offered through a competitive process, including the Brighton Road bait & tackle shop.

Alternatively, if community support is not demonstrated or Council doesn't deem it appropriate to continue, the machine will be removed by 01 September 2020.

BUDGET

- A 'flat' permit fee of \$700 (excl GST) has been paid for the 12 months trial.
- There were no costs incurred by Council in the installation as the operator paid for all expenses.
- In regard to electricity costs, the machines operate with dual fridge / freezer zones for different bait and tackle. Electricity consumption has been tested in the eastern states in multiple climates with average estimated electrical consumption of around \$600pa. The operator agreed to pay \$770 (incl GST) to cover the cost of electricity.

LIFE CYCLE COSTS

Depending on the success of the trial, Council could consider charging a higher permit fee to generate revenue for this high profile location.

Attachment 1





PERMIT TO USE COMMUNITY LAND FOR BUSINESS PURPOSES

Section 200, *Local Government Act 1999*

PERMIT AUTHORISATION

Council:	City of Holdfast Bay, 24 Jetty Road Brighton SA 5048 ABN 62 551 270 492
Permit holder:	Boyd Sparrow T/as How's Ya Tackle (ABN 46 994 171 449) 136 Esplanade, Port Noarlunga South SA 5167
Location of use:	One approved site: By the Brighton Jetty on the Esplanade, opposite 85 Jetty Road, Brighton SA 5048, as per red mark on Annexure A
Description of use:	PERMITTED USE: <ul style="list-style-type: none"> • Trial period for Bait and Tackle sales to the public via one (1) vending machine sited in location in Annexure A. • Installation of a small concrete pad to secure machine in place and lockable electricity boxes to host 1 Bait & Tackle Vending Machine at the site nominated in Annexure A.
Exclusive occupation:	Does this permit confer a right of exclusive occupation? YES/NO
Term of permit:	Until 31 August 2020
Commencement date:	30 August 2019
Public consultation:	Is public consultation required? YES/NO
Conditions:	The permit is issued subject to the General and Special Conditions outlined in ANNEXURE B.
Authorisation Fee and operation costs:	<ul style="list-style-type: none"> • \$700 Permit fee inc. GST per vending machine for 12 months • \$700 electricity charge per machine per site.

Pursuant to Section 200 of the *Local Government Act 1999*, the City of Holdfast Bay hereby authorises this Permit for the aforementioned purpose(s) to be undertaken on Community Land, subject to the designated Permit Area and associated Permit conditions.

Date of Issue: 8 August 2019

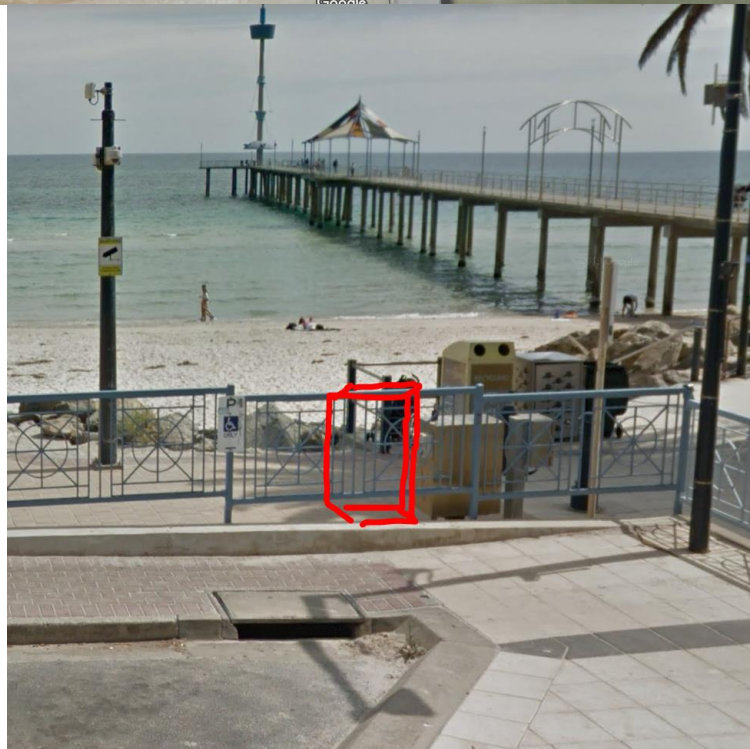
Fabienne Reilly
COMMERCIAL AND LEASING TEAM LEADER
CITY ASSETS & SERVICES



PERMIT TO USE COMMUNITY LAND FOR BUSINESS PURPOSES
Section 200, Local Government Act 1999

ANNEXURE A

PERMITTED AREAS OF OPERATION





CITY OF
HOLDFAST BAY

PERMIT TO USE COMMUNITY LAND FOR BUSINESS PURPOSES

Section 200, Local Government Act 1999

ANNEXURE B

GENERAL CONDITIONS

1. Definitions

In these conditions -

- 1.1 “permitted use” means the use referred to in the “Description of Use” on the front page of this Permit Authorisation;
- 1.2 “premises” means the property and/or permitted areas of operation referred to in “Location of Use” and “ANNEXURE A”.

2. Approvals

- 2.1 This permit is subject to the permit holder obtaining any/all necessary approvals, permits or licences that may be required under any/all laws in relation to the permitted use.
- 2.2 For the term of this permit, the permit holder must comply with:
 - 2.2.1 all conditions associated with this permit or any applicable approval, licence or permit; and
 - 2.2.2 all applicable industry standards, health or safety standards, current Australia Standards or any other applicable codes of practice.

3. Permitted use

- 3.1 Not to undertake or permit any other business other than in accordance with the Permit.

4. Safety

- 4.1 The permit holder must ensure that all reasonable care is taken to ensure that the permitted use is carried out, in such a manner as to ensure that the safety of persons using or visiting the premises is not endangered at any time.

5. Liability and indemnity

- 5.1 The permit holder acknowledges that the Council is not liable for any injury, damage or loss resulting from the granting of this permit or related in any way to the permitted use;
- 5.2 The permit holder indemnifies and holds harmless the Council in respect of any claim that may arise from any injury, damage or loss.



6. Insurance

- 6.1 The permit holder must take out and maintain a public liability insurance policy relating to the permitted use in the sum of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) or such other amount as the Council may from time to time require;
- 6.2 The permit holder must provide the Council with a certificate of currency of the policy before commencing the permitted use and at any other time on request.

7. Assignment

- 7.1 This permit is personal to the permit holder and non-transferable. The permit holder must not assign the benefit of the permit to any other person without first seeking and obtaining the written permission of the Council.

8. Ownership of Fixtures and Equipment

- 8.1 All fixtures, materials and equipment which the permit holder may bring on to the premises for the operation of the business remain the property and responsibility of the permit holder.
- 8.2 At its own cost and expense, the permit holder will comply with all statutory requirements, any applicable construction industry or public health and safety standards in relation to the erection, installation, maintenance and removal of the fixtures and equipment.

9. Maintenance and Repair

- 9.1 The permit holder must at his own cost and expense during the Permit period maintain the fixtures, equipment and facilities and keep them in good, safe and proper repair and conditions to Council's satisfaction.

10. Council's Rights

- 10.1 This permit does not derogate from the Council's powers under the *Local Government Act 1999*.

11. Termination of Permit

- 11.1 The permit will immediately be cancelled on the expiration of the Permit Period; or
- 11.2 At any time by written notice by Council to the permit holder for any reasons deemed necessary by Council, for which the permit holder has no right of recourse against Council.
- 11.3 If the permit holder commits a breach of the conditions of this permit, or if continued vandalism occurs, the Council may, by notice in writing to the permit holder cancel, suspend, revoke or vary the conditions of the permit.



- 11.4 If council serves a termination notice, the time period specified in the notice must be at least one month.

SPECIAL CONDITIONS

- 12.** The vending machines must be inspected regularly to ensure good working order and are appropriately maintained.
1. Any loss, theft or damage to the vending machines is the full responsibility of the Applicant.
 2. The Permit Holder must ensure the vending machine is securely fixed to the ground.
 3. Any vandalism or damage must be cleaned up within 24 hours.
 4. The Permit Holder shall ensure the prompt removal of any graffiti from the sites.
 5. All charges and costs incurred by the Council must be paid as and when due by the Applicant.
 6. The Permit Holder must reinstate and / or repair the sites once the vending machines have been removed from the land, using approved and qualified trade suppliers.
 7. City of Holdfast Bay will undertake a WHS site induction for the Permit Holder on site with regard to use of the power box however it is the Permit Holder's responsibility to induct any other contractors engaged by the Permit Holder to maintain the vending machines (including stock re-fillers, repair works, graffiti removers etc).
 8. Council may require the vending machine to be relocated or removed from the nominated site if works, which may include site upgrades, re-development and or maintenance, are required to any of the sites for any reason at the Council's discretion. In this instance the Council will engage with the Permit Holder as an affected stakeholder and use its best endeavours to achieve a mutually beneficial outcome for both parties.
 9. The Permit Holder shall comply with any reasonable request made by an authorised officer of Council in connection with the use of the land.
 10. The Permit Holder must ensure they display contact details for customers to access if the vending machines are out of order or malfunctioning.
 11. The Permit Holder must ensure the vending machines are kept in good working order including being fully stocked at all times during the term of this agreement.
 12. If the neon signs are found to be a nuisance for the community, the Permit Holder will remove the neon set up, if requested by Council.