

## ITEM NUMBER: 17.1

### CONFIDENTIAL REPORT

#### APPLICATION FOR NEW LEASE AGREEMENT – RIMHART NOMINEES PTY LTD

*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.

CONFIDENTIAL

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

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 205/19 Application for New Lease Agreement – Rimhart Nominees Pty Ltd 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: 205/19 Application for New Lease Agreement – Rimhart Nominees Pty Ltd 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; or  
would prejudice the commercial position of the Council
  
    - d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected  

to prejudice the commercial position of the person who supplied the information, or  
to confer a commercial advantage on a third party.

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.
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Item No: 17.1

Subject: **BEACH HOUSE GLENELG – PROPOSED FORECOURT DEVELOPMENT – APPROVAL IN PRINCIPLE**

Date: 11 June 2019

Written By: Property Management Officer

General Manager: City Assets and Services, Mr H Lacy

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### SUMMARY

On 26 September 2006 Council endorsed a lease agreement for Rimhart Nominees Pty Ltd (*the operator of the Beach House amusement complex – referred to as the “Lessee/Applicant”*) over a portion of Colley Reserve South immediately to the east of the Beach House amusement complex forecourt for the purpose of installing a Ferris Wheel amusement ride. The lease commenced on 1 September 2008 for an initial term of five (5) years, with two subsequent consecutive five (5) year renewal terms (each respectively commencing 1 September 2013 and 1 September 2018). On 28 May 2013 Council resolved to support the first lease renewal (Resolution C280513/941).

On 22 May 2018 prior to the expiration of the lease, the Lessee advised of their intention to renew the lease for the second five (5) year lease renewal period. However, at its meeting 10 July 2018 Council resolved (C100718/1216) to refuse the lease renewal on the basis that the Lessee had not fulfilled their obligations under the terms of the lease. Subsequently the Ferris Wheel was progressively dismantled and removed, with only the concrete foundations, some minor fencing and some anchor bolts still remaining.

Rimhart Nominees P/L has now approached Administration seeking to again enter into a lease agreement over a larger area of land (approximately 225m<sup>2</sup>) of Colley Reserve South to the east of the Beach House forecourt in order to erect a two storey, shipping container based café/kiosk/conference space. This report outlines the Applicant’s proposal, as well as relevant discussion points to assist Council in their determination on this matter.

The report further recommends that Council indicate its willingness to receive from the Applicant a formal request for landlord’s approval and subject to the design incorporating toilets and disability access such that if the application were to proceed to Development Assessment it would stand a good chance of approval.

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### RECOMMENDATION

1. That Council provides in-principle support for the proposed development and requests the proponent (Rimhart Nominees Pty Ltd):

- a. modify the proposed design to take account of Development Plan and Building Code requirements including parking provision; provision of toilets and disability access arrangements;
- b. discuss the proposal with Council's Planning and Development Team; and
- c. resubmit the proposal for consideration of Landholder's Consent.

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

That having considered Agenda Item: 17.2 – Report 205/19 - Beach House Glenelg – Proposed Forecourt Development – Approval In Principle in confidence under section 90(2) and (3)(b & d) of the Local Government Act 1999, the Council, pursuant to section 91(7) of that Act orders that report, discussion and attachments be retained in confidence for a period of 12 months or until a formal Development Application is lodged by the Applicant.

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#### COMMUNITY PLAN

Placemaking: Creating vibrant and safe places

#### COUNCIL POLICY

*Commercial Leasing Policy.*

#### STATUTORY PROVISIONS

*Local Government Act 1999.*

*Retail and Commercial Leases Act 1995.*

#### BACKGROUND

##### *Previous Reports, Applications and Decisions*

- Confidential Council Report No.: 232/18; Item No.: 17.2, 'Application to Renew Lease – Rimhart Nominees Pty Ltd', 10 July 2018 (Resolution Nos.: C100718/1215, C100718/1216 & C100718/1217);
- Council Report No.: 348/17; Item No.: 16.1, 'Lease – Rimhart Nominees Pty Ltd Application for Rent Relief', 10 October 2017 (Resolution No.: C101017/934);
- Council Report No.: 107/15; Item No.: 14.4, 'Glenelg Colley Reserve – Lease to Rimhart Nominees Pty Ltd for Ferris Wheel (Application for Rent Reduction)', 14 April 2015 (Resolution No.: C140405/076);



- Council Report No.: 172/13; Item No.: 14.9, '*Rimhart Nominees Pty Ltd – Extension of Lease*, 28 May 2013 (Resolution No.: C280513/941);
- Economic & Corporate Committee Report No.: 460/06; Item No.: 8.8, '*Lease – Rimhart Nominees Pty Ltd (Colley Reserve South Ferris Wheel*', 26 September 2006 (Resolution No.: EC260906/096).

## REPORT

Pursuant to Council Resolution C100718/1215 (7 July 2018), an existing Commercial Lease held between Council and Rimhart Nominees Pty Ltd (*operator of the Beach House amusement centre – the "Applicant"*) was terminated 31 August 2018. The lease authorised operation of a Ferris Wheel located on a small section of Colley Reserve South and the adjacent Beach House forecourt.

Following the expiry of the lease, the Ferris Wheel was dismantled and removed from the location with only the concrete foundations, some minor fencing and some anchor bolts remaining. Rimhart Nominees P/L is now seeking to re-lease the land, increase the size of the previous lease footprint (by approximately 115m<sup>2</sup> to 225m<sup>2</sup>); and erect a two storey, container based structure to operate as a licensed café/kiosk.

### *New Proposal*

The Applicant seeks to lease a total area of 225m<sup>2</sup> of Colley Reserve South. An approximation of the land is shown on the attached plan.

*Refer Attachment 1*

Subject to landlord approval (by Council) and successful Development Approval, the Applicant proposes to erect a two storey 'U' shaped building that will be fitted out as a licensed café/kiosk venue.

The intended capacity of the café is 116 patrons; comprising seating for 72 patrons on the lower level and 44 on the upper level. Seating on both levels will include both inside and external seating. Concept plans are attached.

*Refer Attachments 2, 3, 4 & 5*

### *Community Land Management Plan*

Colley Reserve South is defined as Community Land within Council's Community Land Register. The Reserve is classified as 'Regional Open Space' and as such is protected by a number of prohibitions which are outlined in the Management Plan for this location - being:

- is listed as Local Heritage;
- carries limited approvals for commercial operations:
  - permits lease/licence for community activities, special events, a kiosk or similar, but must at all times be used for recreation purposes; and
- is restricted by a number of Council By-Laws (VIZ 3, 4, 5, 7 & 8).



## ***Planning & Development Assessment***

### *Development Assessment Process*

Should Council provide in-principle support to the proposal, the Applicant will be requested to revise their plans to include parking, toilets and disability access which are considered essential if the proposal is to receive later Development Approval. The Applicant would be encouraged to discuss their proposal with Council's Planning Team to ensure that any subsequent submission would stand a good prospect of receiving development approval.

Subject to the Applicant making necessary changes and additions to Council's satisfaction, the Applicant would be requested to resubmit their proposal to Council for formal landholder's approval.

The Applicant would then lodge the proposal for Development Approval. The proposal is likely to be a Category 3 assessment, which prescribes public notification and representation/objection rights.

Should the proponent submit a formal application for Development Assessment, Council will need to declare a conflict of interest and invite the Minister to appoint State Commission Assessment Panel (SCAP) as the relevant Planning Authority.

SCAP may or may not be appointed on Ministerial discretion, however if SCAP is not appointed and representations are received, the application will proceed to the Council Assessment Panel (CAP) for determination. If CAP refuses the application, the Applicant may appeal the decision through the Environment, Resources and Development (ERD) Court (appeal rights may also be afforded to residents who make written representations during the consultation stage of the assessment process).

### *Planning & Development Preliminaries*

Noting that the location is within the Glenelg Foreshore & Patawalonga Zone, the proposed use of the land is consistent with the relevant zoning provisions.

Further noting that the location carries Local Heritage status, the proposal will also need to be assessed by Council's Local Heritage Adviser at the time of Development Assessment.

On a preliminary assessment of the information's received to date, the following are identified issues that will require scrutiny during Development Assessment:

- based on proposed capacity, the potential deficiency of car parking (whether on or off street). Provisions require four (4) spaces per 100m<sup>2</sup> of total floor space. This leaves a potential deficiency of nine (9) spaces;
- appropriateness of architectural appearance of the building in a prominent location;
- impact to residents (e.g. noise from plant equipment, waste collection etc);



- the Development Plan's requirement that community land be reserved for recreation purposes, and not permanent commercial operations;
- building Code of Australia requirements for toilets. Pursuant to Development provisions, all new buildings requires toilet facilities to be included as part of the build. On preliminary assessment, the proposal requires the following facilities:
  - Male: 2 closet pans + 3 urinals + 2 wash basins;
  - Female: 4 closet pans + 2 wash basins; and
- Disability Discrimination Act requirement for access to upper level (e.g. lift).

#### **Fee Calculation**

The most recent valuation of Colley Reserve (2017) returned a valuation of \$357.00 per m<sup>2</sup>. Should Council choose to apply this figure for any future lease and based on the proposed footprint (225m<sup>2</sup>), the applicable commencing annual rental would be approximately **\$80,300** (plus GST) and subject to annual CPI increases. It should be noted that at this stage, as the application must first received Development Approval before proceeding, a final negotiated rental will be submitted to Council with the subsequent lease report.

#### **Expected Lease Agreement Terms & Conditions**

Should the proposal proceed through Landlord's consent and development approval, the terms of a commercial lease might include:

<b>Lessor</b>	City of Holdfast Bay (ABN 62 551 270 492)
<b>Lessee</b>	Rimhart Nominees Pty Ltd (ACN 093 302 679)
<b>Leased Areas</b>	A portion of land comprised in Certificate of Title Volume 5972 Folio 927 and that which is outline in Attachment 1.  Area approximately 225m <sup>2</sup> .
<b>Commencement Date</b>	1 January 2020 (expected)
<b>Term of Lease</b>	Five (5) years only as this is a Commercial Activity occurring on Community Land. Any subsequent or longer period will be subject to community consultation.
<b>Expiry Date</b>	31 December 2025
<b>Option to Renew</b>	Nil. Lease to be renegotiated at end of term.
<b>Annual Rent</b>	To be negotiated and submitted to Council in Subsequent Report.
<b>Outgoings</b>	Notwithstanding any other provision of the Lease, the Lessee will be responsible for the payment of Outgoings applicable to their respective areas.
<b>Permitted Use</b>	The operation of a restaurant/kiosk, and/or for such other lawful use as the Landlord may consent to.
<b>General Maintenance</b>	The Lessee is responsible for all maintenance of the land and the structures thereon, and is responsible for the repair and replacement of all fixtures, fittings and chattels.

<b>Assignment or Sub Letting</b>	The Lessee will not assign, Sub-Lease or Sublet any part of the premises without the prior written consent of the Lessor.
<b>Special Conditions</b>	Noting that the proposed area is located within the Glenelg Dry Area, the Lessee is responsible for managing liquor service within the leased area and is responsible for the conduct of patrons thereon.

As the location is a prominent portion of community land, it is likely that in the first instance, only a five (5) years lease term would be offered in order to assess the ongoing feasibility of the business operating at the site.

### **Conclusion**

Prior to granting consent for the proposal to proceed to formal submission for Landlord's Approval and subsequently to proceed to Development Assessment, Council's must first determine the suitability and merits of the proposal; particularly whether this is a suitable use of Community Land and whether it is consistent with the recreation status for the land.

### **COMMUNITY CONSULTATION**

Community consultation is not proposed, except as required under the Category 3 Development Assessment process.

### **BUDGET**

An annual budget allocation is provided to City Assets & Services for the review and implementation of property leases. This budget includes the engagement of legal advice and services when and where necessary.

### **LIFE CYCLE COSTS**

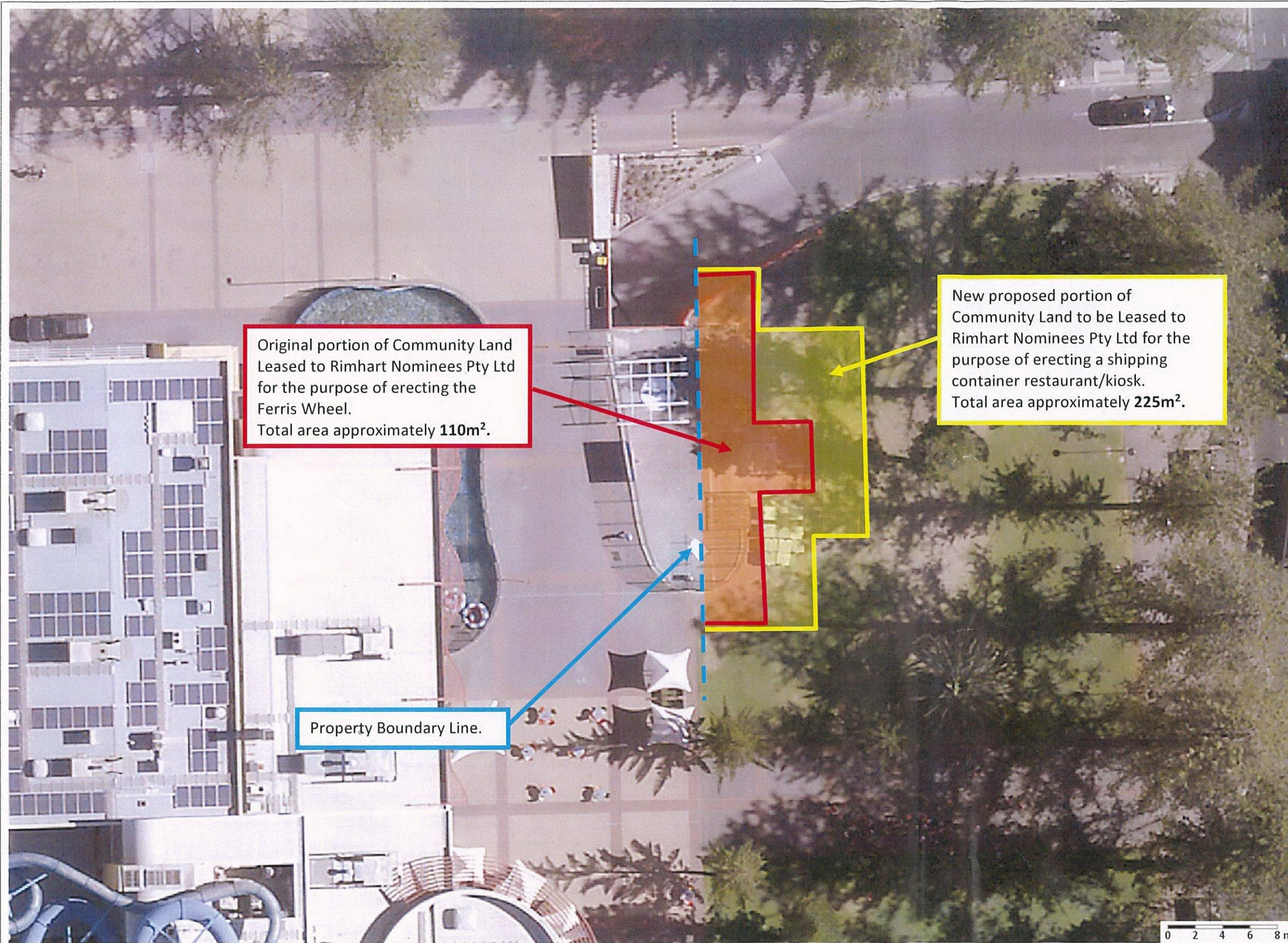
Under the terms of the lease, the lessee is responsible for all costs associated with the removal of the structure, remediation of the land.



# Attachment 1







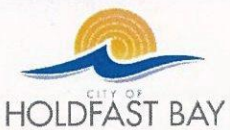
Original portion of Community Land Leased to Rimhart Nominees Pty Ltd for the purpose of erecting the Ferris Wheel.  
Total area approximately 110m<sup>2</sup>.

New proposed portion of Community Land to be Leased to Rimhart Nominees Pty Ltd for the purpose of erecting a shipping container restaurant/kiosk.  
Total area approximately 225m<sup>2</sup>.

Property Boundary Line.

- Holdfast Bay
- Roads Name
- Az Arterial
- Az Sub-Arterial
- Az Collector
- Az Local
- Az Track 2-Wheel Drive
- Az Undefined
- CHB Aerial (2019) - 7.5cm

0 2 4 6 8 m



This map has been created for the purpose of showing basic locality information and is a representation of the data currently held by The City of Holdfast Bay. This information is provided for private use only. While every effort has been made to ensure the accuracy of the product, Council accepts no responsibility for any errors or omissions. Property Boundary line network data is supplied by State Government.

RIMHART NOMINEES

9/05/2019

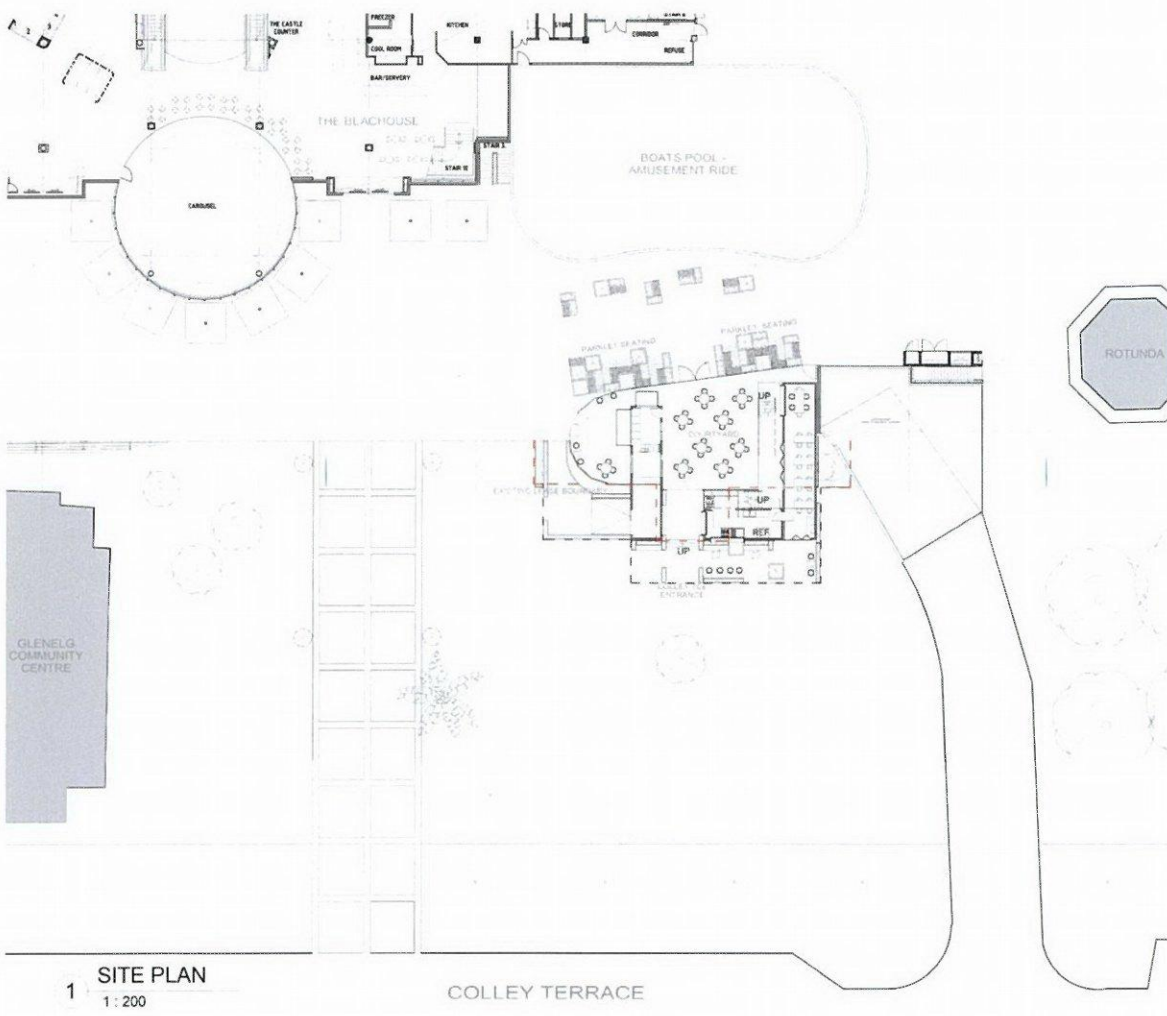
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# Attachment 2





**COLLEY PLAZA REDEVELOPMENT**

PROJECT LOCATION  
**COLLEY TERRACE**  
 GLENELG, SA 5045

PRELIMINARY DRAWING SET

DATE: 01/06/18

DRAWN BY: [Signature]

CHECKED BY: [Signature]

**SITE PLAN**

DRAWING SCALE: 1:200

DATE: 01/06/18

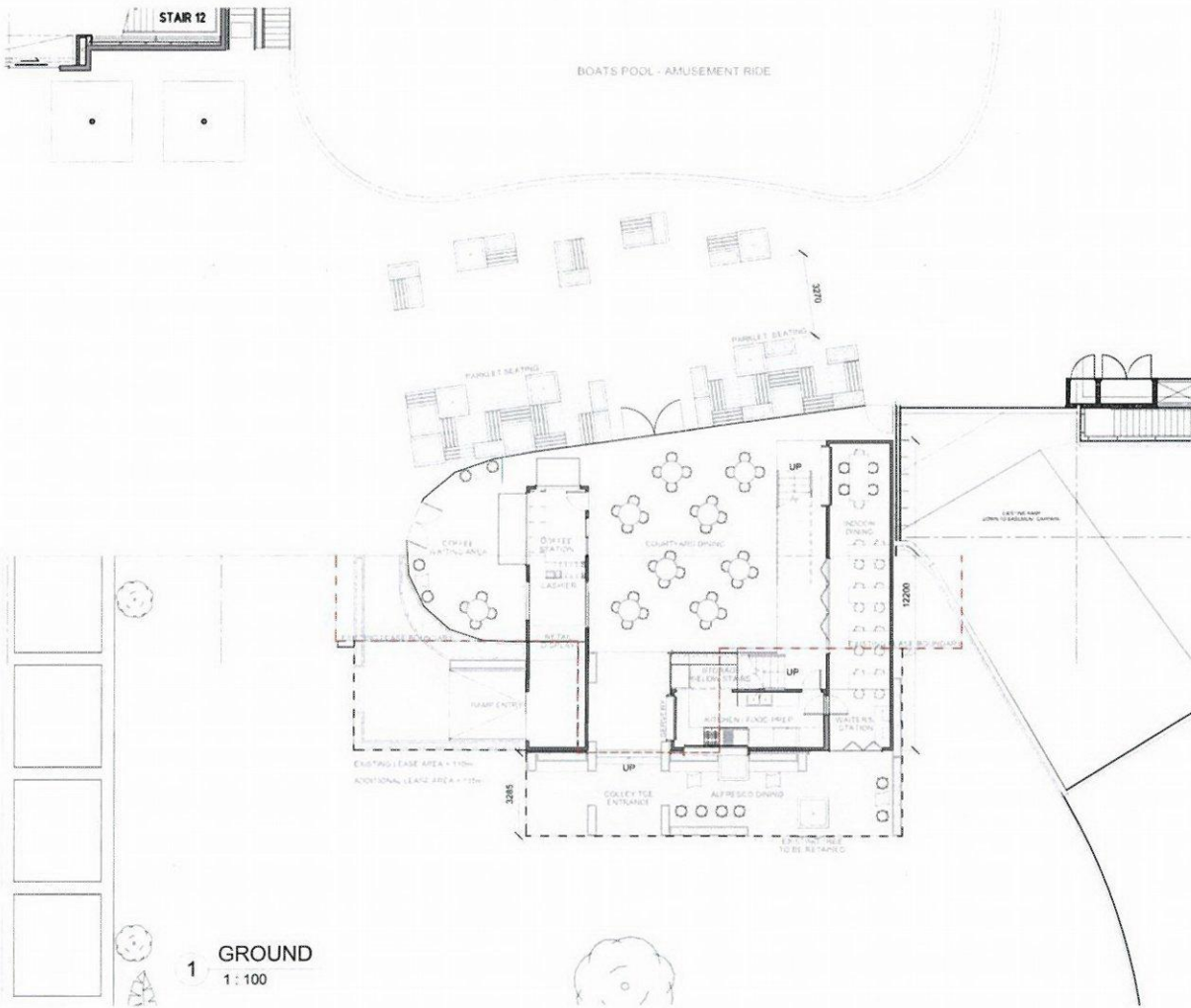
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DRAWN BY: [Signature]

CHECKED BY: [Signature]

LEGEND:  
 - - - - - EXISTING LEASE BOUNDARY  
 . . . . . PROPOSED NEW LEASE BOUNDARY





1 GROUND  
1:100

**COLLEY PLAZA REDEVELOPMENT**

PROJECT LOCATION:  
COLLEY TERRACE  
GLEBE, SA 5048

PRELIMINARY DRAWING SET

DATE: 01/06/18

DRAWN BY: [Signature]

CHECKED BY: [Signature]

DRAWING TITLE:  
**GROUND FLOOR PLAN**

DRAWING SCALE: 1:100

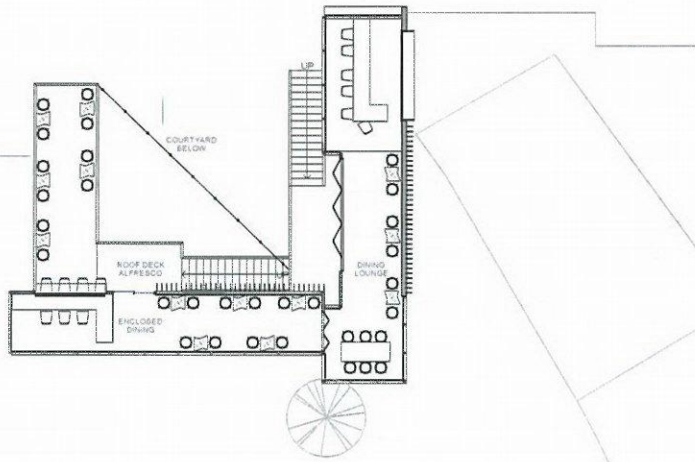
DATE: 01/06/18

SHEET NUMBER: A102

DRAWN BY: [Signature]

CHECKED BY: [Signature]

LEGEND:  
 - - - EXISTING LEASE BOUNDARY  
 - - - PROPOSED NEW LEASE BOUNDARY



① LEVEL 1  
1:100

**COLLEY PLAZA REDEVELOPMENT**

COLLEY TERRACE  
GLENELG, SA 5045

PRELIMINARY DRAWING SET

*RF* ARCHITECTS

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DRAWING TITLE:  
**FIRST FLOOR PLAN**

DRAWING SCALE: 1:100

DATE: 01/06/18

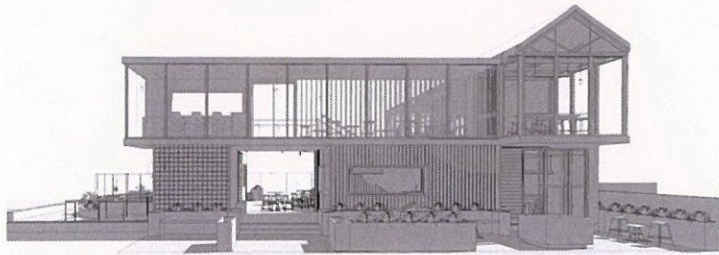
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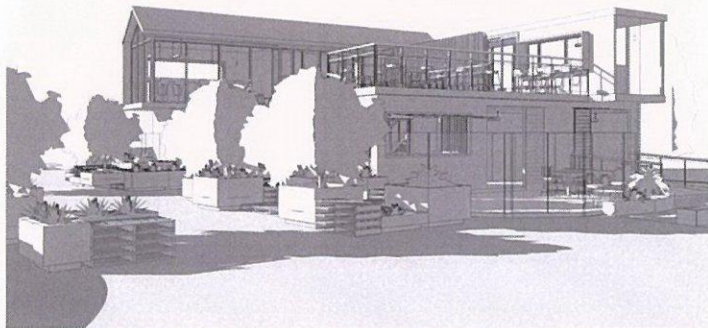
CHECKED BY: *GP*

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2 3D View 6



4 3D View 9

PROJECT TITLE  
**COLLEY PLAZA REDEVELOPMENT**

PROJECT ADDRESS  
 COLLEY TERRACE  
 GLENELG, SA 5045

PRELIMINARY DRAWING SET

DRAWING TITLE  
**3D VIEWS**

DRAWING SCALE: 1:100

DATE: 01 / 06 / 18

SHEET NUMBER: A104

DRAWN BY: RF

CHECKED BY: JF

RF ARCHITECTS  
 10/100 RIVERVIEW DRIVE  
 GLENELG SA 5045  
 PH: 08 8333 1111  
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# Attachment 3





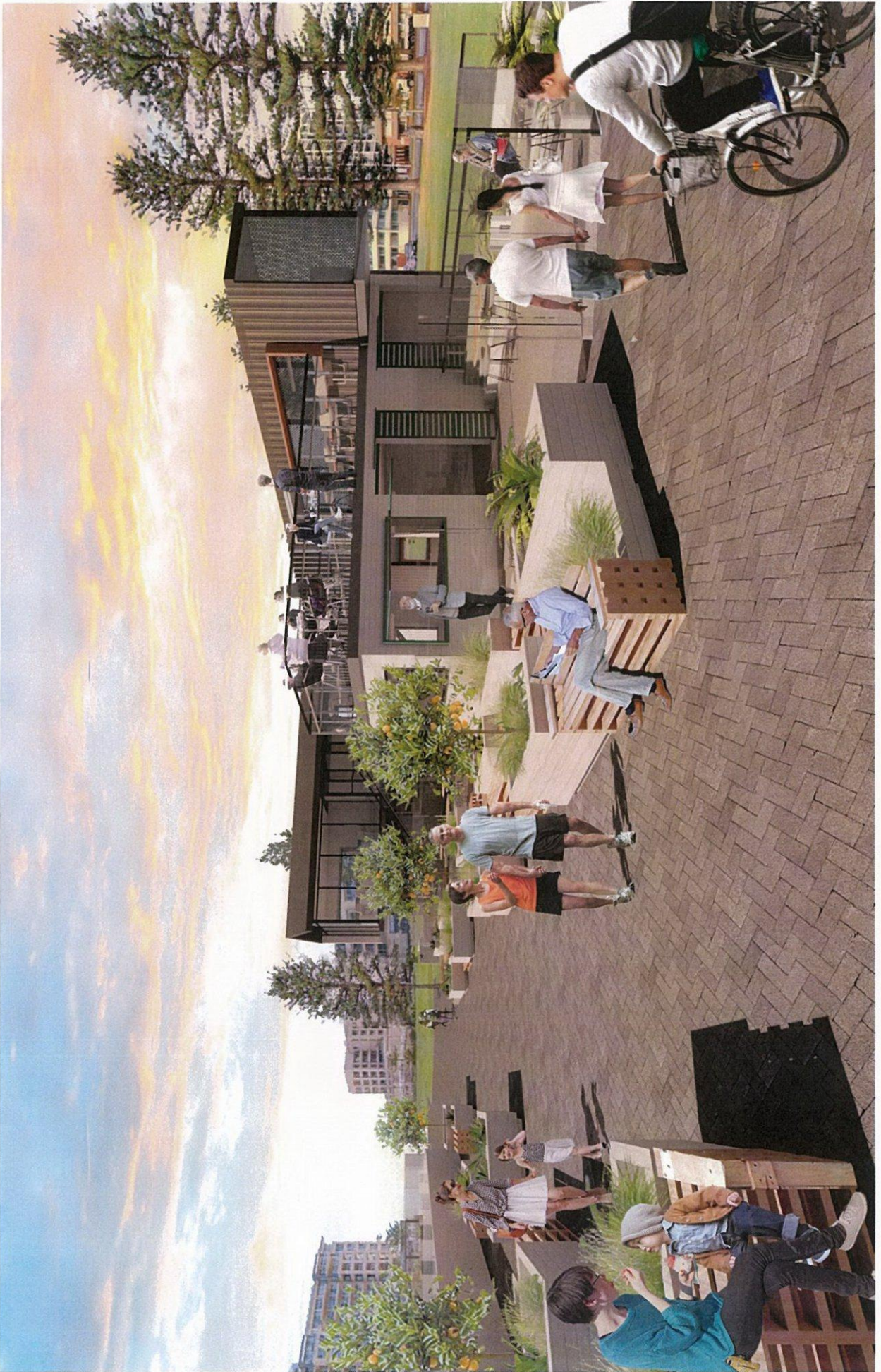




# Attachment 4









# Attachment 5





