

## BACKGROUND REPORT ON CLOSURE OF THE BEACH CAFÉ

Whyalla City Council is keen to share details about its reasons and reasoning in closing the Beach Café. It wants to outline its next steps and address the queries and concerns it has received.

This report addresses:

1. Context
2. Chronology of recent events leading to the decision to close the Beach Café
3. Why the closure of the Beach Café was considered in a confidential meeting
4. Why the public was not consulted about closing the Beach Café
5. Overview of the rationale for the decision to close the Beach Café
6. Misconceptions
7. What happens now?
8. Options for the future

### 1. CONTEXT

The relationship between Council and the tenant, N & A Petropoulos, is governed by a lease between the parties. All dealings must be in accordance with the provisions of the lease. The lease is a commercial document and sets out the parameters under which the Café operates as a business.

As a public authority, Council's role with the Café building and surrounding land is that of a landlord, regulator and custodian of community land. It is obliged to manage the land in the best interests of ratepayers, balancing health, safety, risk and the proper expenditure of ratepayers' money.

### 2. CHRONOLOGY OF EVENTS LEADING TO THE DECISION TO CLOSE THE BEACH CAFÉ

- **28 February 2020:** the tenant's five-year lease expired. A six-month extension was granted to enable Council to conduct a public Expression of Interest process. This is consistent with the requirements of the *Local Government Act 1999* and Council's consultation policy. The Expression of Interest was to seek a lessee of the Whyalla Foreshore Premises. The current lessee would be able to express an interest. This is a legal requirement. The tenant had previously offered to pay for improvements to the building, however any capital outlays required would be included in the Expression of Interest process whereby prospective respondents, including the tenant, could include offers of capital investment options in their proposal.
- **1 July 2020:** Council's Environmental Health Officer conducted a Food Safety Assessment at the Café. A report to the tenant identified 14 non-compliances with the Food Act 2001. The tenant was given six months to rectify the non-conformances.





- **4 August 2020:** the tenant received notice confirming that Council did propose to seek a public Expression of Interest process. This meant the first and last right of refusal to grant a new lease to the tenant was not an available option, that the lease had expired and they had transitioned to a periodic monthly lease in accordance with Clause 14.4 of the lease. The Expression of Interest process was delayed by the COVID-19 pandemic and consequent unavailability of Council resources.
- **16 October 2020:** Council received a request from the tenant seeking maintenance works. Council's Civil Works Coordinator attended the Café to inspect and review the works required. This prompted escalation of the matter given the extent of observed works needed.
- **4 November 2020:** a further inspection of the building was undertaken by Council's Environmental Health Officer, Civil Works Coordinator and Building Assessments Officer. Soon after this inspection, Council's Chief Executive Officer was made aware of its findings. He was concerned that the business was being conducted in breach of legislation that regulates work, health and safety, food preparation and the Building Code of Australia. The Chief Executive Officer requested that a report be prepared for Councillors' consideration.
- **30 November 2020:** a Special Meeting of Council considered the report.

### 3. WHY WAS THE CLOSURE OF THE BEACH CAFÉ CONSIDERED IN A CONFIDENTIAL MEETING?

Council was legally obliged to consider the matter in confidence consistent with the *Local Government Act 1999*. Council resolved to consider it as a confidential item on the basis that the report *"contained 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. (s.90(2) and (3) of the LGA."*

### 4. WHY WAS THE PUBLIC NOT CONSULTED ABOUT CLOSING THE BEACH CAFÉ?

Council has powers and duties vested in it under many pieces of legislation. Council conducts many of its activities directly in accordance with legislative, legal and regulatory requirements.

Once aware of the number and nature of breaches of legislation regulating work, health and safety, food preparation and the Building Code of Australia, Council had a legal, moral, and ethical responsibility to act.

Council has a responsibility both as a landlord and as a regulator. Continuing the café business in the building was not an option. If Council had allowed the café to continue to operate, it could be considered 'impropriety' at the low end or 'maladministration' at the high end. Both are unacceptable for the operation of a public authority.

Council fulfilled its legal, legislative and regulatory obligations. This is not a matter for public consultation.

Council will consult the community about facilities and amenities that should be provided on the foreshore and how we fund any future investment. There are short, medium- and longer-term options that Council and the community can consider summarised in section 7 – Options for the Future.

The long-term future of the facility will be considered as part of the upcoming Foreshore Master Plan community consultation, which is expected to start in February 2021. It will enable everyone to have their say on their priorities for the area.

## 5. OVERVIEW OF THE RATIONALE FOR THE DECISION TO CLOSE THE BEACH CAFÉ

- The café portion of the building is not compliant with the Building Code nor Food Act 2001 in the preparation and serving of hot food
- The building was not originally constructed for use as a café
- Previous works in recent years have included work on the toilet and exterior walls of the building, extending the southern extension (conversion of brick to glass), sewer and water works, kitchen tiles, and roof pitch and guttering; all of which improved amenity and functionality for patrons with disabilities
- Recent inspections confirmed an investment of hundreds of thousands of dollars would be required to achieve compliance and allow the business to continue serving hot food and meet basic building requirements
- As part of Council's condition assessment of all council buildings, a recent independent condition assessment identified the Beach Café as being in fair-to-poor condition. This means that 'the condition deterioration would be quite obvious and asset serviceability would now be affected and maintenance cost would be rising'
- Some of the major issues, many of which have the potential to compromise proper hygiene and put patrons at risk, include:
  - Insufficient extractors for ventilation
    - Fans not regularly cleaned, leading to significant build-up of material and poor ventilation in food preparation areas
    - Replacement requires the removal of most of the roof
  - Walls / floor / tiles in disrepair
    - Damage / holes throughout the premises encourage pests
    - Repair / replacement requires the removal of all wall / floor tiles
  - Erecting more walls to separate cleaning and food preparation activities
    - These activities currently occur in the same space
  - Insufficient internal plumbing
    - Buckets used to collect and remove dirty water from hand basin immediately adjacent to food preparation/cooking area
    - Large sections of the floor would need to be demolished and replaced to address this issue
  - Insufficient storage areas
    - Freezers and other food stuff stored outside the café





- The size of the building would need to be increased to address this issue, necessitating significant structural work
  - General cleanliness was not up to standard
- As a landlord and a regulator, Council has a moral, ethical, legal, regulatory and legislative obligation to close the facility because of its high level of non-conformances with the building code and public health/food safety requirements
  - Allowing the café to remain open would pose a risk to patrons, the tenant and staff. This increases Council's exposure to litigation
- Given that the café is not a community facility, but rather a commercial business, as well as the fact that the building's condition has recently been assessed as fair-to-poor, Council cannot justify spending significant ratepayer funds on an outdated facility that has limited remaining useful life
- This is particularly pertinent if the community identifies other priorities for the area through the Foreshore Master Plan consultation process, which is expected to begin in February
- The café's lease was not, therefore, renewed. Operations ceased on 4 January 2021. The lessee was on a monthly lease, so was given one month's notice to vacate. Given the potential public health risks, Council considered terminating the lease on a shorter notice period, but decided to provide the tenant with time to wind up operations in an orderly fashion

## 6. MISCONCEPTIONS

Council's decision is driven solely by the condition of the building and its non-conformance as a café. It has nothing to do with a proposed new hotel. The proposed hotel development is yet to seek development approval. Any concept designs circulated publicly are purely concepts and have not been presented to Council for official consideration and/or approval.

The developer may submit a development assessment application for a hotel development on the existing site of the Foreshore Motel with either Council or the State Commission Assessment Panel. It is anticipated that the scale of development will result in it being undertaken by the State Government, not Council.

There are no agreements or commitments between Council and the prospective developer. Any proposed development of, or sale of, community land would require extensive public consultation in accordance with s.202 of the LGA.

## 7. WHAT HAPPENS NOW?

Council will convene a community forum to provide an opportunity for a 'face-to-face' conversation to explain the rationale behind the decision and the processes Council must follow, as well as to start to explore future options for the building. Council wants:

- Residents to have their opinions heard and questions answered
- To outline the facts/rationale behind its decision to close the Beach Café and dispel many of the misunderstandings that are circulating in the community
- Council and the community to start discussing options for the future

- To start extensive community consultation from February on the overall Foreshore Master Plan. This will enable the entire community to have a say on how they want to see the precinct developed. It also will enable the community to decide the amount of ratepayer funds they are willing to commit to any facilities in the area. The consultation is expected to be completed in April/May

To redress the loss of catering through the closure of the Beach Café, Council has arranged for an extensive food offering across the foreshore precinct through a number of mobile food vans and pop-up activities.

Council will encourage a festive atmosphere to cater for all visitors and complement Whyalla's stunning new jetty. Extensive shelter, tables and seating will be part of the offering, ensuring patrons can enjoy the area in all weather conditions. This will act as a precursor to a broader rejuvenation of the foreshore area.

## 8. OPTIONS FOR THE FUTURE

Should the community decide it would like to see an operation continue in the café building, Council must undertake an open Expression of Interest process before offering the facility to any third party.

Options may include a comprehensive re-build and improvements to house a café, through to reduced services such as a kiosk on the site, or a replacement building as part of the Foreshore Master Plan.

**[End]**

