

18.3 The Boatshed Cafe - Future Considerations

Report Reference	GC220125F18.3
Originating Officer	Unit Manager Land & Property – Michael Collins
Corporate Manager	Manager City Property - Thuyen Vi-Alternetti
General Manager	General Manager City Development - Ilia Houridis

CONFIDENTIAL MOTION

That pursuant to Section 90(2) and (3)(b)(i) and (ii) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager City Services, General Manager Corporate Services, Manager Office of the Chief Executive, Chief Finance Officer, Manager City Property, Unit Manager Land and Property, Unit Manager Governance and Council Support and Media and Engagement Advisor, be excluded from the meeting as the Council receives and considers information relating to The Boatshed Café - Future Considerations, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to commercial information including financial figures provided by a third party.

REPORT OBJECTIVE

The objective of the report is to:

- provide an update on the progress of the previous resolutions of Council in relation to the Boatshed Café;
- outline an option and recommendation for Council consideration in relation to the works to be undertaken to the premises;
- Outline the considerations and approach should Council wish to seek to progress revocation of the community land classification of and to sell the Boatshed Café premises.

REPORT HISTORY

Report Reference	Report Title
GC211123F16.1	The Boatshed Café – Leasing Arrangements

EXECUTIVE SUMMARY

The report outlines the approach and considerations should council wish to seek to revoke the community land classification of a portion of Allotment 224 in Deposited Plan 9978 comprised in CT Volume 5553 Folio 375 located at 1A Heron Way, Hallett Cove (known as the Boatshed Café).

These considerations include:

- The Community Land Revocation process which would need to be undertaken prior to any potential future sale of the property, which would include the need for community consultation and Ministerial consent.
- Development Approval requirements for land division which could be complicated due to potential car parking provision requirements for the site.

- Vegetation considerations, which should be local native plantings rather than exotic in line with what's already in the conservation park next door.
- Inground infrastructure protection.
- Sale of the premise subject to the existing lease, which may affect the value of the premises and the potential market, and;
- Options in relation to the public toilets within the premises which could be either selling the premises subject to a long-term lease back to Council of the public toilets or creating a community title with Council retaining ownership of the public toilets.

These are key considerations to be taken into account for Council to make an informed decision as to whether to proceed with exploring further a potential revocation and any subsequent sale process of the property, noting that should revocation proceed, it does not require Council to progress with future sale and revocation would provide flexibility in approach to lease provision in the future.

This report also provides an update on the progress of 23 November 2021 resolution of Council, together with a recommendation for Elected Member consideration in relation to works to the Boatshed Café alongside the compliance work that Council has already endorsed to undertake.

RECOMMENDATION

That Council:

1. **Require a Section 194 Report for Consultation on potential revocation of the portion of Councils community land described as Allotment 224 in Deposited Plan 9978 comprised in CT Volume 5553 Folio 375 located at 1A Heron Way, Hallett Cove (known as the Boatshed Café) to be prepared and presented to Council for consideration prior to the end of March 2022**
2. **Extend the timeframe until 28 February 2022 for the lessees of the Boatshed Café to agree to and enter into a payment plan for rent due from December 2019 due to the timeframes required by the valuer to provide a valuation to Council.**
3. **Endorse the scope of works to the Boatshed Café be widened to include the construction of a function room linking the proposed lift and stair access to the deck instead of a corridor.**
4. **Endorses the design and implementation of the works to be funded and undertaken through a combination of the remainder of the 2021/2022 financial year, and during the course of the 2022/2023 financial year.**
5. **In accordance with Section 91(7) and (9) of the *Local Government Act 1999* the Council orders that this report *The Boatshed Café - Revocation and Disposal*, the attachments to this report, and any minutes arising from this report, having been considered in confidence under Section 90(2) and (3)(b)(i) and (ii) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2022.**

DISCUSSION

Background

At the General Meeting of Council held on 23 November 2021 Council resolved:

That Council:
(Alternative - Option 2):

1. *Notes that the lessees of The Boatshed have not undertaken all of the Stage 3 works as detailed in the lease agreement to its reasonable satisfaction within the specified timeframe.*
2. *Agrees to undertake at its cost the remaining Stage 3 works to The Boatshed, Hallett Cove, including installation of disabled access to the first floor of the building via a lift and ramp, disabled access to the deck, and any required fire safety compliance works.*
3. *Will make financial provision for these works, following detailed cost estimates being obtained by Council administration, in its 2021/2022 Capital works budget*
4. *Resolves to obtain a market rent valuation for The Boatshed, Hallett Cove, as at 20 December 2019, from an independent valuer, and that this rent be applied retrospectively back dated to 20 December 2019, and increased in line with CPI on 20 December 2020 and 20 December 2021.*
5. *Obtain a market rental valuation from an independent valuer following completion of the Stage 3 works by Council, taking into account the works undertaken, and that this rent be applied from 1 December 2022 with the rent reviewed annually in accordance with CPI on 20 December each year of the remaining term.*
6. *agrees to grant the right of renewal for the further term of seven (7) years provided the lessee pays the outstanding rent amount in full, or enters into a payment plan acceptable to Council by 30 January 2022, and is not otherwise in breach of any terms of the lease.*
7. *In the event that the lessee declines to accept the renewed lease on the terms outlined above, authorises the issuing of one month notice of termination of the lease in accordance with the holding over provisions, and the appointment of a commercial real estate agent to seek expressions of interest for the lease of the premises.*

Council further resolved in confidence that:

8. *Council Administration brings back a report to the General Council Meeting by the end of January 2022 detailing the approach for revocation and disposal of a portion of Councils community land described as Allotment 224 in Deposited Plan 9978 comprised in CT Volume 5553 Folio 375 located at 1A Heron Way, Hallett Cove (known as the Boatshed Café).*

The primary purpose of this report is in response to the confidential resolution of Council around the approach for revocation and disposal of the café.

Revocation of Community Land Classification and Sale Considerations

The subject land was vested in The Corporation of the City of Marion from private ownership (Hallett Cove Development Pty Ltd) as a “reserve” in the mid to late 1970’s. Due to the age of the available documentation on Land Services SA, a copy of the transfer document is unable to be obtained.

Certificate of Title Volume 4150 Folio 691 was issued to Council in December 1979 which was later converted to a computerised title in July 1988. The current Certificate of Title Volume 5553 Folio

375 is free from all easements and encumbrances. At the time of writing the report, there is no evidence the land was dedicated to Council for a particular purpose other than a “reserve”.

The subject land is contained in Council’s Community Land Management Plan (CLMP) 4 – General Community Facilities.

The Boatshed and associated car park is located in the Open Space Zone. Adjacent land is located within the Conservation Zone (north and west) and Hills Neighbourhood Zone (east). The Open Space Zone generally seeks development that is associated with or ancillary to the provision of unstructured outdoor passive and active recreation facilities (such as open space and recreation areas).

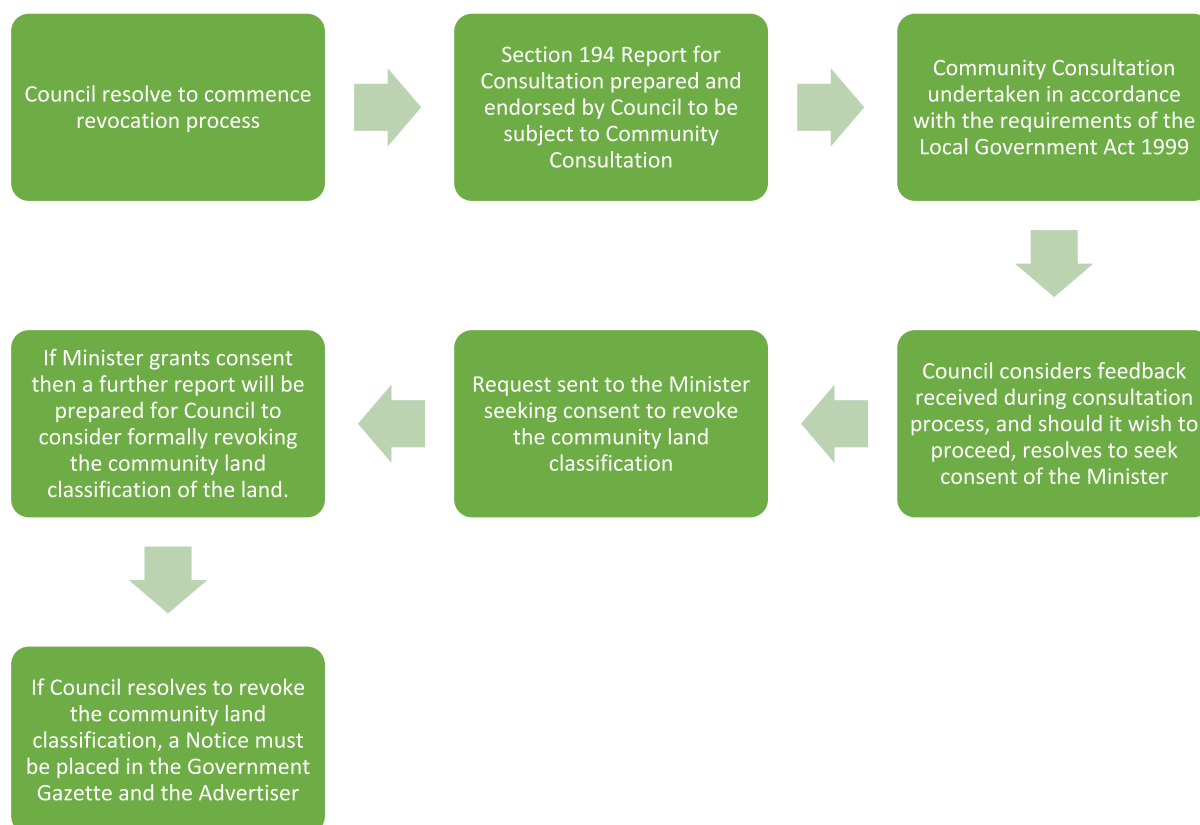
Attachment 4 shows an aerial view of the Boatshed Café which will help to give some context for Elected Members to some of the issues when considering a potential revocation and sale of the property

Revocation Process

Should Council wish to consider the potential sale of the premises it would first need to declare the land surplus and revoke the community land classification of the portion of Allotment 224 in Deposited Plan 9978 comprised in CT Volume 5553 Folio 375 that it wishes to consider selling. The portion that it seeks to revoke will need to take into account any land division considerations, particularly in relation to any parking requirements. It will also need to consider council infrastructure and vegetation in proximity to the premises.

Council could decide to seek to revoke the classification of the land even if it wishes to retain ownership of the property. This would enable Council to grant a longer term commercial lease without the need for undertaking community consultation.

The process for the revocation of community land classification is set out below:



Relevant internal stakeholders have been consulted to provide initial feedback in relation to land division considerations, vegetation considerations, protection of inground infrastructure, and options for the public toilets.

Land Division Considerations – including parking

The following would need to be considered should Council choose to proceed with the revocation and sale of the Boatshed Café:

- The zoning states that Land Division should only occur where it is for the creation of a public road or public reserve, or a minor adjustment of existing allotment boundaries (such as to remove an anomaly in existing boundaries with respect to the location of existing buildings or structures).
- Whilst shops and offices can be constructed within the Zone, they should be small scale and subordinate to the principle use of the land.
- The use would retain existing use rights as shop/restaurant
- Typically, similar uses would require the provision of 0.4 carparking spaces per seat provided (i.e. 50 seats would require the provision of 20 spaces).
- Council would need to consider how parking is provided (and maintained) – this is considered especially important given the number of parking spaces in the immediate vicinity is unlikely to meet the demand generated by the existing restaurant, in addition to parking pressures resulting from the coastal walkway/beach.

Further investigations would need to be undertaken should Council wish to proceed to address how a land division might be able to be undertaken.

Vegetation Considerations

Council have dedicated significant resources to beautifying the landscape surrounding the building and it is now well established. The plantings/vegetation assist in stabilising the localised landscape. This landscape should be protected if there were to be any further developments of the premises. The landscaping/planted vegetation is complimentary to the adjoining Hallett Cove Conservation Park using local native species and if any further landscaping is envisaged it would be requested that it be local native plantings rather than exotic in line with what's already in the conservation park next door.

This would need to be further considered as part of a land division process.

Inground Infrastructure

Council's Survey & Design staff have provided plans relating to stormwater assets in the vicinity of the Boatshed Café (Included as **Attachment 2** and **Attachment 3**).

Attachment 2 is Council's GIS Map which gives an approximate indication of the pipe network surrounding the building.

The imagery is indicative only, the assets do not overlay the aerial background exactly, and have a slight displacement. Despite this, the pipes going around the north and west side of the building are in close proximity to the building.

There is a pipe that appears to connect directly to the building. This connects to a pit somewhere in the middle and under the building, which collects stormwater from the building only. The pipe will belong to the property owner to the junction box, as per dedicated stormwater connections for any private property.

Attachment 3 shows the as constructed plan of the relatively new pipe system as it traverses around the building.

Should Council decide to proceed with a sale of the property, then any Council or other infrastructure that may be located within the land to be sold will need to be positively identified and protected by means of easements.

Public Toilets

This element will need to be resolved as it will impact the community.

There are currently two public toilets located within the premises. There are three options that Council could consider in relation to these:

- Selling the building with the public toilets, resulting in the loss of important public facilities.
- Selling the building subject to a long-term lease back to Council for the public toilets.
- Creating a Community Title for the premises, with Council retaining ownership of the public toilets.

These options will likely have an impact on the potential sale price

Sale Subject to Existing Lease

Provided the existing lessees meet Council's requirements to enable the seven year right of renewal to be actioned, then the premises will need to be sold subject to the existing lease which will likely have between 6-7 years remaining on it. This will limit the market for the premises to either the current lessees, commercial investors, or those who are willing to wait for the lease to expire in 6-7 years' time prior to being able to operate from the premises themselves. Council have requested valuations which will outline the potential difference in value between the two scenarios.

Update on November 2021 Resolutions of Council

Following the 23 November 2021 resolutions of Council, the lessees were verbally informed of the decision of Council (with the exception of the confidential resolution) on 24 November 2021. This was followed up with an email to the lessees on 26 November 2021 following the release of the Council Meeting Minutes, and a meeting with the lessees on 13 December 2021.

Rental Valuations

Council have engaged a valuer to undertake valuations for the Boatshed Café, the instructions to the valuer being in relation to providing:

- A retrospective market valuation (based on the date of 20 December 2019) for the leased premises in accordance with the existing lease conditions between The Boat Shed Pty Ltd and Council.
- A current market sale valuation based on the subject land being successfully revoked from its community land status.
 - 1 x option which includes the 1 x 7 year option having been exercised, at the valuers determined rent, and
 - 1x option which includes vacant possession (including improvements made to date).

The valuer has advised that these valuations will be provided to Council by 21 January 2021. At the time of writing this report the valuation figures are not available, however if the figures have been provided to Council by the date advised then these may be able to be given verbally (in confidence) to Elected Members at the General Council Meeting.

Lease Renewal & Payment Plan

The lessees have sent an email to Council advising that subject to the back dated rent valuation to be applied being determined, that it is their intention that the option to renew for a further term of seven years, as provided for in their lease, be exercised.

The previous resolution of Council gave until the end of January 2021 for the lessees to either pay the back dated rent in full or agree to enter into a payment plan acceptable to Council for the back dated rent. Due to the timeframe for the provision of the rental valuation, it is proposed that the timeframe for the lessees be extended until 28 February 2022.

Scope of Works

Following a meeting held with Council staff, including Development Services staff, and the Project Manager contracted by Council to manage boatshed works to discuss logistics, it was highlighted that due to the nature and logistics of the required works, that a more logical option may be to create a 'function room' linking the lift access to the raised deck rather than just a corridor which would otherwise need to be constructed.

The current Development Approval is for this 'function room' option, which is above and beyond the current Stage 3 works defined in the lease, and which Council has previously resolved to complete. The function space would add significant amenity value and likely rental / sale value to the premises as it would increase the lettable area of the premises and would enjoy an open coastal view.

Detailed cost estimates for undertaking only the required compliance work, including lift access, fire and electrical safety work and a corridor constructed to give access from the lift to the deck have now been provided at \$695,000

The detailed cost estimates for undertaking the required compliance work, including lift access, fire and electrical safety work, and instead of a corridor being constructed to give access from the lift to the deck, a function room with coastal views is constructed to link the lift access to the deck. The estimated cost of this option is \$1,080,000, a difference of \$385,000 effectively meaning that Council and the lessees will be gaining a coastal view function room for an additional \$385,000.

It is recommended that in addition to the compliance works that Council has already resolved to undertake, that it endorses the widening of the scope of works to include the construction of the function room, with the design and works to be funded and completed during the remainder of the 2021/2022 financial year and during the 2022/2023 financial year. It is intended that the design will be considered in consultation with the lessees to ensure the best design outcomes for the premises.

See drawing in **Attachment 1** with current indicative options outlined.

Summary

There would be complications in relation to a potential sale of the property, particularly in relation to parking provision and the public toilets.

If Council is not of a clear view whether it wishes to sell the premises, it may consider that it could still be more appropriate for a Council owned commercial premises to be unencumbered by

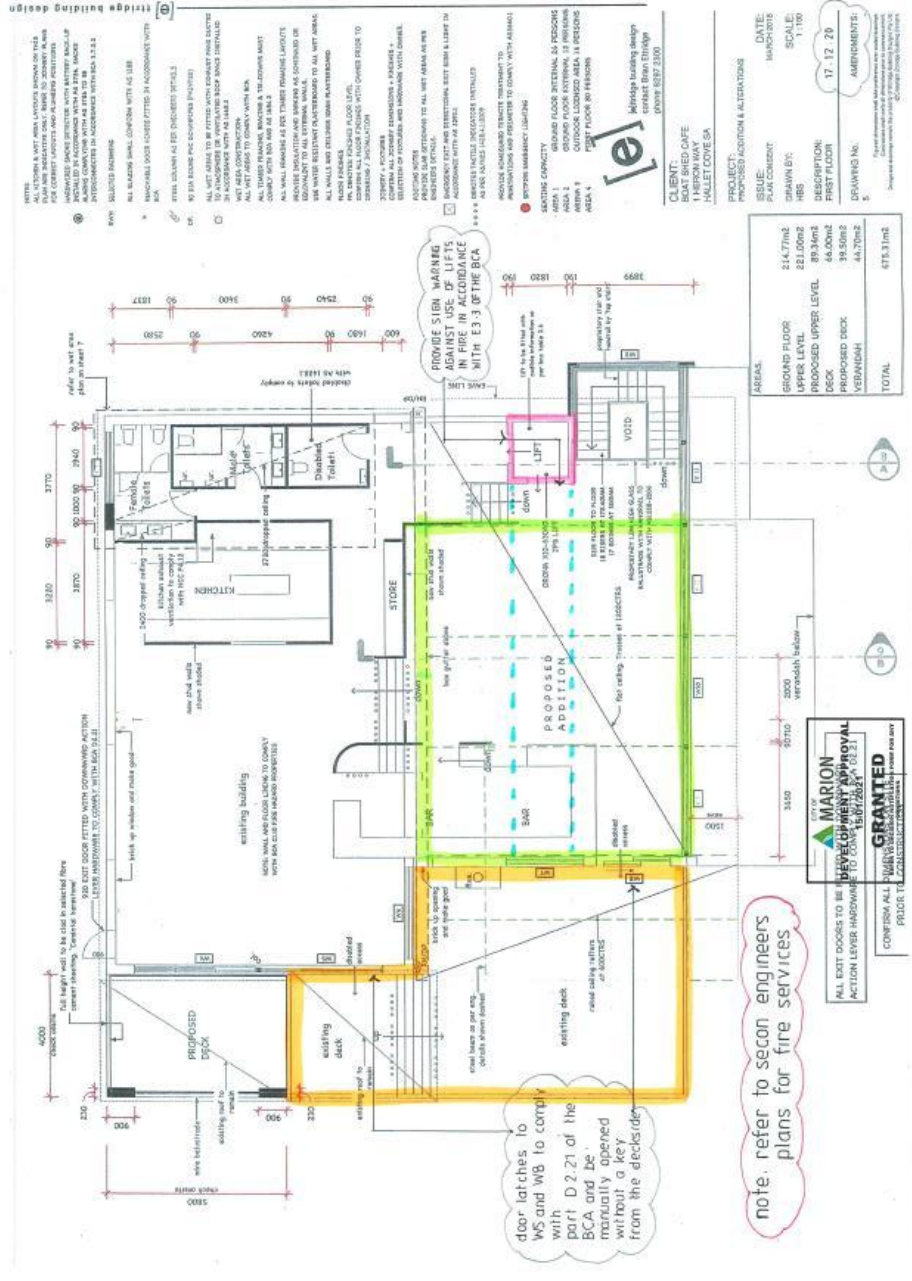
community land classification, Should Council wish to pursue this option then a further report together with a Section 194 Report for Consultation will need to be presented to Council.

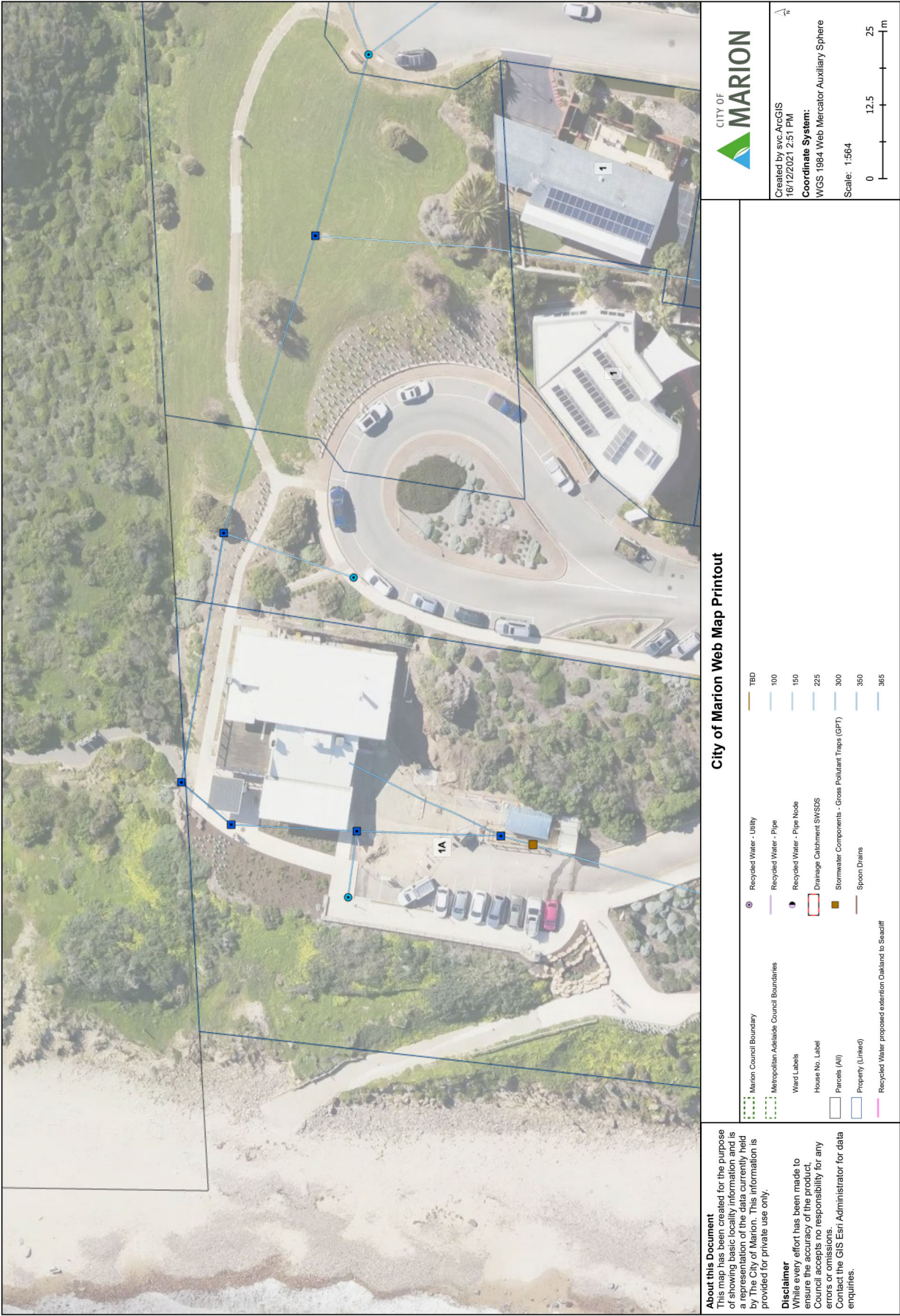
It is recommended that Council endorse the additional expenditure for the works to create the function room which will add significant community and amenity value to the premises, as well as providing a financial return through increased rental value.

ATTACHMENTS

1. Attachment 1 - Drawings showing Indicative corridor and function room options [**18.3.1** - 1 page]
2. Attachment 2 - GIS Imagery - The Boatshed Cafe [**18.3.2** - 1 page]
3. Attachment 3 - As Constructed Drawings - The Boatshed Cafe [**18.3.3** - 2 pages]
4. Attachment 4 - Boatshed Cafe Aerial View [**18.3.4** - 1 page]

Attachment 1 –Drawings showing Indicative function room / corridor options Pink – Lift, Blue – Proposed Corridor to Existing Deck, Green – Function Room (DA Approved), Orange – Existing Deck (DA Approved and non-compliant)







Attachment 4 - Aerial Plan View of the Boatshed Café

Red outline = Subject Area, Yellow Outline = Public Toilets on ground floor only, Blue Outline = Carpark

