

CONFIDENTIAL

22. Items in Confidence

22.1 Proposed Wind Turbine Trial, Somerton Surf Life Saving Club (Report No: 361/09)

Council Officers Remaining: Mr J Lynch, Mr S Hodge, Ms R Thomas, Ms P Aukett, Mr R Gregory and Ms W Matthews

Mr Tim O'Loughlin, Mr Richard Day and Mr Rodney Mitchell remained to make their presentation to Council.

C110809/447

Councillor Clancy moved and Councillor Beh seconded that, pursuant to Section 90(2) and 90(3)(d) of the Local Government Act 1999 the Council order that the public with the exception of Council officers and any other visitors permitted to remain, be excluded from attendance at the meeting, after taking into account the relevant considerations under Section 90(3), on the basis that it will receive, discuss or consider the following:

- **commercial information of a confidential nature (not being a trade secret) the disclosure of which:**
 - (i) **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**
 - (ii) **would, on balance, be contrary to the public interest.**

CARRIED

Councillor Beh left the chamber at 9:21pm.

Councillor Beh rejoined the chamber at 9:24pm.

Mr Tim O'Loughlin and Mr Richard Day from Department of the Premier and Cabinet and Mr Rodney Mitchell, from O'Donnell Griffin made a presentation to Council on the Proposed Wind Turbine Trial at the Somerton Surf Life Saving Club.

Mr O'Loughlin, Mr Day and Mr Mitchell left the meeting at 10:20pm following their presentation.

Proposed Wind Turbine Trial, Somerton Surf Life Saving Club (Report No: 361/09)

Council and the Somerton Surf Life Saving Club have been approached by the Sustainability and Climate Change Division of the Department of the Premier and Cabinet seeking approval to use the Somerton Surf Life Saving Club as a trial site for producing energy from medium sized wind turbines.

This report provides details of the project, together with a copy of the proposed agreement between the State Government and Somerton Surf Life Saving Club.





C110809/448

Councillor Looker moved and Councillor Lonie seconded that Council, subject to the provision of an engineer's report which includes design calculations of each turbine, and building integrity, plus positive comments from the community consultation:

1. Provides in-principle support for the trial wind turbine project, thereby allowing the State Government to:
 - a. Publicly announce the proposed trial.
 - b. In collaboration with the Council and the Somerton Surf Life Saving Club, undertake community consultation.
 - c. Commence wind monitoring at the site.
2. Subject to Development Assessment Approval, support the temporary erection of a 12m tall wind monitoring mast and associated fencing (at the Governments expense), on the Council owned land at the northern end of Minda Dunes.
3. Provides in principle support for the terms and conditions of the draft lease agreement between State Government and Somerton Surf Life Saving Club .
4. That Administration report back to Council on the results of the Community Consultation.
5. That representatives of each of the manufacturers and a noise specialist from the EPA be available for the community consultations and public meeting.
6. That the Community Consultation include one public meeting.
7. That the SA Govt appoint an independent consultant to undertake a dilapidation report of the SLSC prior to the trial, a copy of which shall be supplied to Council and all defects to be rectified to the satisfaction of Council at the end of the trial.
8. If the trial proceeds any promotional material and press releases are to include reference to the CHB and our Environmental policy.
9. Any signage or advertising be approved by Council.

CARRIED

A division was called

Voted For
 R D Beh
 R M Bouchée
 R A Clancy
 J L Deakin
 L R Fisk
 S C Lonie
 T D Looker

Voted Against
 P N Crutchett
 J D Huckstepp
 A C Norton

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C110809/449

Councillor Clancy moved and Councillor Huckstepp seconded that pursuant to Section 90(2), 90(3)(d) and 91(7) of the Local Government Act





1999:

1. **The Council orders that the documents and minutes relating to Report No: 361/09 with the exception of Resolution No: C110809/447 for going into confidence be kept confidential and not available for public inspection on the basis that they deal with information the disclosure of which:**
 - (i) **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**
 - (ii) **would, on balance, be contrary to the public interest under Section 90(2) and 90(3)(d) of the Act.**
2. **This resolution will be retained in confidence until the Minister's announcement.**

CARRIED

Councillor Crutchett left the chamber at 10:37pm.

Councillor Crutchett rejoined the chamber 10:40pm.

Councillor Huckstepp left the chamber at 10:40pm.





CONFIDENTIAL REPORT

ITEM NUMBER: 22.1

CONFIDENTIAL REPORT NO: 361/09

Tuesday 11 August 2009

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:

commercial information of a confidential nature (not being a trade secret) the disclosure of which:

- (i) 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
- (ii) would, on balance, be contrary to the public interest.

Confidentiality of this document will remain until the resolution is reviewed on or before 30 June 2010 by the Council.

Confidential Reports may be handed back to Administration at the close of the Council meeting for confidential disposal.

If Members choose not to return them, it is their responsibility to ensure the items are secured or disposed of in a confidential manner.



C O N F I D E N T I A L

REPORT TO: **COUNCIL**

DATE: **11 AUGUST 2009**

SUBJECT: **PROPOSED WIND TURBINE TRIAL, SOMERTON SURF LIFE SAVING CLUB**

STRATEGIC PLAN/
CORPORATE PLAN
OBJECTIVE/S: **STRATEGIC PLAN: OBJECTIVE 2.1 – RESPONDING TO CLIMATE CHANGE**

WRITTEN BY: **ROB GREGORY
MANAGER ENVIRONMENTAL AND COASTAL ASSETS**

EXECUTIVE SUMMARY

Council and the Somerton Surf Life Saving Club have been approached by the Sustainability and Climate Change Division of the Department of the Premier and Cabinet seeking approval to use the Somerton Surf Life Saving Club as a trial site for producing energy from medium sized wind turbines.

This report provides details of the project, together with a copy of the proposed agreement between the State Government and Somerton Surf Life Saving Club.

RECOMMENDATION

That Council:

- 1. Provides in-principle support for the trial wind turbine project, thereby allowing the State Government to:
 - a. Publicly announce the proposed trial.**
 - b. In collaboration with the Council and the Somerton Surf Life Saving Club, undertake community consultation.**
 - c. Commence wind monitoring at the site.****
- 2. Subject to Development Assessment Approval, support the temporary erection of a 12m tall wind monitoring mast and associated fencing, on the Council owned land at the northern end of Minda Dunes.**
- 3. Provides in principle support for the terms and conditions of the draft lease agreement between State Government and Somerton Surf Life Saving Club.**
- 4. Request Administration report back to Council on the results of the Community Consultation.**
- 5. Pending successful negotiations, grant approval to the Somerton Surf Life Saving Club to install a solar array system in a suitable location.**

REPORT DETAILS



CONFIDENTIAL

Introduction

The Premier's Department, through the Climate Change and Sustainability Division want to test a series of medium sized wind turbines to assess their viability for commercial applications. This program initially installed wind turbines on buildings within the Adelaide Central Business District, however due to wind variability, caused by surrounding structures, trial data was somewhat inconclusive.

In order to progress this project it was identified that a site with uninterrupted wind patterns would be ideal (coastal location). With no suitable Government buildings being located on the coastal front, an assessment of surf club buildings was undertaken.

The Somerton Surf Life Saving Club (SSLSC) was identified as the preferred location due to its location directly on the metropolitan coast, having no immediate residents on 3 sides (and with the northerly based residents, having somewhat of a visual shield due to the Tamarack trees growing on the northern edge of Jack Fox Oval), the engineering suitability of the building structure and the café operating out of the surf club, which has the ability to provide increased exposure and educational facilities for the duration of the 12 month trial.

Background

Previous Reports and Decisions

There have been no previous reports in relation to the establishment of wind turbines within the City of Holdfast Bay.

Key Issues Discussion

The trial proposes to install a wind monitoring station and four different wind turbines, for a 12 month trial period. During this trial the performance of the turbines will be monitored and all electricity generated provided free of charge to the club.

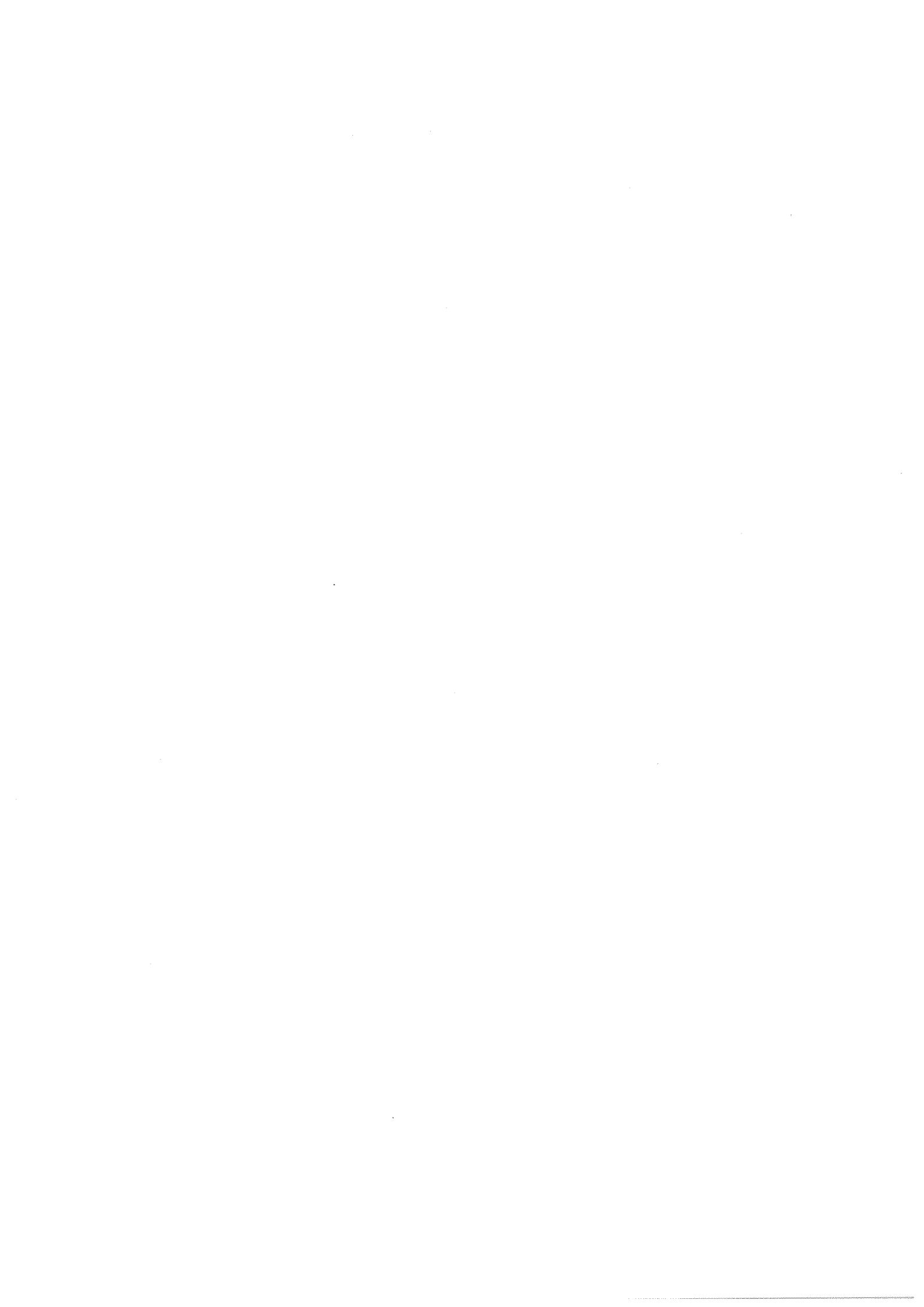
Pending in principle support the wind monitoring station will be the first to be erected in order to begin capturing wind data. It is intended to erect this 12m high structure just south of the area leased to the SSLSC in the Minda Dunes area, which is owned by Council. The pole has metal plate base and does therefore not need to be dug into the ground. It is only the guide wire pegs that penetrate the ground. This results in approximately an 11m x 11m area. Placing the structure on the northern most area of the Minda Dunes, further minimises risk and with this area predominately being historical road base material, there are no concerns with impacting upon a remnant and fragile ecosystem.

Refer to Attachment 1

Pending further discussions the wind mast may be relocated onto the roof of the Somerton Surf Life Saving Club at a later date.

The four wind turbines to be trialled are Sirocco, Venco Twister 1000, Kestrel e300i and Swift MkII. Attachment 2 provides further information on each of these units, including their rated sound level and blade diameter.

Refer to Attachment 2



CONFIDENTIAL

An assessment of the electricity generation of the wind turbines forms a significant component of the trial. However using long-term wind data from Adelaide Airport and manufacturers specifications it is anticipated that the wind turbines collectively will generate around 13,350kw of electricity over a 12 month period. This equates to \$2,850 or approximately 12% of the SSLSC annual electricity costs (currently the SSLSC has an electricity bill in the order of \$24,000/year).

It is anticipated to install all the turbines on the western edge of the roof to minimise wind variability. A visual representation of how and where the units will be located can be seen in Attachment 3.

Refer to Attachment 3

Agreement

Given the land and building is leased to the Somerton Surf Club, it is appropriate that the formal agreement for installation of the turbines is between the State Government (Minister for Sustainability and Climate Change) and the Somerton Surf Life Saving Club (Under Council's lease agreement with the SSLSC, Clause 5 requires the club to seek Council's consent in writing prior to sub leasing any component of the property). A draft agreement is attached, with the final agreement to be presented to Council for endorsement following the community consultation (see below).

Refer to Attachment 4

Key aspects of the agreement not discussed elsewhere in the report are detailed below.

Wind Turbine Maintenance and Building Integrity

Through Annexure A of the agreement the State Government have provided a guarantee to undertake regular routine checks of each of the turbines and the wind monitoring station and additional checks after storm events. This ensures the units remain operating at their peak condition.

O'Donnell Griffin have been engaged by the State Government to ensure that the building structure is able to withstand the additional load bearing of the wind turbines and to ensure they are installed in a manner which will ensure the operation of the turbines does not have an adverse impact on the building structure. In the event that any building damage does occur through the installation or the operation of the wind turbines, section 4.5 of the agreement provides a guarantee by the State Government to make good.

Risk and Insurance

All risk and insurance for the wind turbines will be borne by the State Government as identified in Section 5.2.

Reporting Requirements

Through Annexure A of the agreement Council and the SSLSC are guaranteed to be provided with reports pertaining to the trials progress, performance and completion.



CONFIDENTIAL

End of Trial Period

As per Section 4.5 and Annexure A, representatives from the 3 organisations will begin decommissioning and/or handover negotiations no later than 31 January 2010. These discussions will centre on which of the following options is most suitable:

1. The Department arranges for all turbines to be decommissioned at their own cost.
2. Council and/or the Somerton Surf Life Saving Club purchase all turbines based on an agreed rate or return, net present value and or a simple payback.
3. A combination of the above as determined by the SSLSC and Council.

Somerton Surf Life Saving Club

The Somerton Surf Life Saving Club (SSLSC) has been involved in all discussions with the State Government and Council. The Club has a desire to reduce its operational environmental footprint and as such the Board of Management have provided in principle support for the trial. Full support is dependant upon Council approval and the outcome of the community consultation.

As with Council the Club is concerned about the reaction of nearby residents and wants to ensure the project does not jeopardise the strong relationship they have developed with many of these. Furthermore functions and café sales are a critical income stream for the Club and as such it is important that the wind turbines do not negatively impact on bookings and patronage. It is for this reason Annexure A of the lease agreement provides for a cancellation of the trial if the turbines have a significant detrimental impact on the Club income through functions and the café.

Noise Impacts

Under the *Environment Protection (Noise) Policy 2007* fixed machines (such as air conditioners and pool pumps) must not exceed 45dB during the hours of 10pm and 7am and 52 dB between 7am and 10pm. The rating for frost fans, which is probably more relevant is that they must not exceed 25dB inside the nearest neighbouring house when their windows and doors are closed.

The turbines are ordered north to south based on their rated sound level, with the quietest turbine (the Kestrel e300i, <30dB) being the northern most unit and some 50 metres from the nearest dwelling. The other two units are rated at less than 35dB. The larger Sirocco turbine is rated at between 44-58 dB at a distance of 14m, which is higher, however it will be located at least 70m from the nearest dwelling, with the surf club blocking or deflecting a percentage of noise generated.

The turbines will only operate when there is sufficient wind. When this occurs it also results in an increased ambient noise due to waves breaking onto the beach, and coastal winds. This will assist in negating noise from the turbines, unlike Frost fans which only operate when it is completely still.



CONFIDENTIAL

Aesthetic Impact

A further benefit of locating the wind turbines on the western end of the SSLSC is the minimising of visual impacts from surrounding residential properties. Given the contoured roof of the club and the tamarack trees, the turbines will be largely obscured from the north and north eastern sides (Refer to Attachment 4 and 5).

Refer to Attachment 5 and 6

Community Consultation

Should in principle support from Council to advance the trial proposal be received, the Premier will make a public announcement on the proposed trial. This will be immediately followed by a joint community consultation process to fully inform the public of the project and seek feedback. This will involve as a minimum a significant letter box drop, notification through the Guardian Messenger and a public meeting to be held in the SSLSC building.

Following this a report will be presented back to Council detailing the findings of the consultation in order for Council to make a more informed decision on the trial project.

Education/Exposure

Aside from the energy benefits, the trial has unlimited opportunity for environmental education and exposure for the club and Council.

As part of the project a dedicated website will be developed which will provide extensive information on the project, including real time wind generation statistics. The State Government have also committed to the installation of a monitor inside the café to display this information for patrons.

Solar Array Installation

Separate to the wind turbine trial, is the possibility of installing a solar array system onto the building. The SSLSC has entered into negotiations with Origin Energy with the view of securing a solar system in exchange for sponsorship exposure. Should this be successful it will significantly add to the value of the project in terms of determining which energy source is the most viable. The State Government have also provided in principle support to integrate the solar data into the wind turbine data website, discussed above.

Financial Sustainability Impact

Budget

All costs associated with the project will be met by the State Government. The only cost Council would incur (aside from Staff timing costs) would be the erection of the 11m x11m compound around the temporary wind monitoring station.

Full Life Cycle Costs

Should Council or the SSLSC elect to purchase any number of the wind turbines at the end of the project, then a budget provision will be required. To what extent is unknown at present and will be dependant upon the unit(s) selected, their electricity output and the proportional split with the SSLSC (if any). These discussions will be initiated six months into the trial, when base level data will be able to provide a guide as to the buy out cost of each turbine.



CONFIDENTIAL**Conclusion**

This project has the potential to create significant media exposure and the opportunity to educate and demonstrate leadership in renewable energy generation for the City of Holdfast Bay and the Somerton Surf Life Saving Club. The benefits to the club and Council through environmental leadership and kudos, partnering with the State Government and increased trade potential are all very significant.

As an advocate for our community however Council needs to ensure that the wind turbine trial does not adversely affect the livelihoods of residents or jeopardise the income potential for the business arm of the SSLSC. Through clauses in the agreement which provide for the termination of the trial if adverse impacts on the business occur and ensuring extensive community consultation is firstly undertaken these risks have been minimised.



**STEVE HODGE
GENERAL MANAGER
CITY ASSETS**



ITEM NO: 22.1 REPORT NO: 361/09

Attachment: 1

Attachment 1: Photo of proposed temporary wind monitoring station





Attachment 2: Wind Turbines Selected for Proposed Trial

<p>Scirocco</p> <p>Manufacturer: Eoltec (France)</p> <p>Rated output: 6kW (@11.5m/s & above)</p> <p>Cut in speed: <2.7m/s</p> <p>Diameter: 5.6m</p> <p>Blade Type: Two blades, horizontal axis</p> <p>Rotation speed: 80 – 245 rpm</p> <p>Rated sound level: not stated</p> <p>Weight: 202kg</p> <p>More Info: http://www.eoltec.com/English/Main_en.htm</p> <p>The website includes a number of short videos showing the turbine in operation, photo's of a number of installations, a technical specification and a datasheet.</p>	<p>e300i</p> <p>Manufacturer: Kestrel (South Africa)</p> <p>Rated output: 1kW (@11m/s & above)</p> <p>Cut in speed: 2.5m/s</p> <p>Diameter: 3m</p> <p>Blade Type: Three blades, horizontal axis</p> <p>Rotation speed: up to 750rpm</p> <p>Rated sound level: <30dB</p> <p>Weight: 75kg</p> <p>More Info: http://www.kestrelwind.co.za/content.asp?PageID=60</p> <p>The website includes a photo, a technical specification and a user manual.</p> <p>For a video of a kestrel go to http://www.youtube.com/watch?v=EyIV8PwrHOU</p>
<p>Twister 1000</p> <p>Manufacturer: VencoPower (Germany)</p> <p>Rated output: 1kW (@12m/s & above)</p> <p>Cut in speed: 3.5m/s</p> <p>Diameter: 1.9m (and 1.9m height)</p> <p>Blade Type: 3 blades, vertical axis</p> <p>Rotation speed: not stated</p> <p>Rated sound level: not stated</p> <p>Weight: 130kg</p> <p>More Info: http://www.vencopower.com/venco-twister-1000-t.html</p> <p>The website includes a photo and a technical specification.</p>	<p>SWIFT MkII</p> <p>Manufacturer: Renewable Energy Devices (Scotland)</p> <p>Rated output: 1.5kW (@12.5m/s & above)</p> <p>Cut in speed: 3.4m/s</p> <p>Diameter: 2.12m</p> <p>Blade Type: Five blades with diffuser ring, horizontal axis</p> <p>Rotation speed: not stated</p> <p>Rated sound level: <35dB</p> <p>Weight: not stated</p> <p>More Info: http://www.renewabledevices.com/swift/index.htm</p> <p>The website includes a couple of short videos showing the turbine in operation, photo's of a number of installations and a technical specification. Their US website http://www.swiftwindturbine.com/ also includes a number of short videos.</p>

Attachment 3: Artist impression of infrastructure associated with proposed wind turbine trial (western elevation).





ITEM NO: 22.1 REPORT NO: 361/09
Attachment: 4,

DATED _____ DAY OF _____ 2009

**AGREEMENT FOR THE INSTALLATION, OPERATION AND
MAINTENANCE OF WIND TURBINES**

BETWEEN

SOMERTON SURF LIFESAVING CLUB INC

("the Licensor")

-AND-

MINISTER FOR SUSTAINABILITY AND CLIMATE CHANGE

("the Minister")

[These terms are draft terms only. The Minister will not be legally bound unless and until an agreement is formally executed by the Minister and any actions taken in anticipation of such formal execution will be at the risk of the Party taking them.]

CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000

TABLE OF CONTENTS

1. **ACCURACY OF RECITALS** 2

2. **DEFINITIONS AND INTERPRETATION**..... 2

 2.1 Definitions..... 2

 2.2 Interpretation 3

3. **LICENCE**..... 4

4. **MINISTER’S OBLIGATIONS** 4

 4.1 Pay Rent..... 4

 4.2 Keep Licensed Area in neat, tidy and clean condition..... 4

 4.3 Comply with statutes etc. 5

 4.4 Alterations and additions or replacement 5

 4.5 End of Licence..... 5

 4.6 Assignment and Sublicensing 6

 4.7 Licensor’s Inspection 6

 4.8 Release 6

 4.9 Indemnity 6

 4.10 No Signs..... 7

5. **LICENSOR’S OBLIGATIONS**..... 7

 5.1 Quiet Enjoyment..... 7

 5.2 Insurance..... 7

 5.3 Common Areas 8

6. **MUTUAL COVENANTS** 8

 6.1 Termination 8

 6.2 Right of Renewal 9

 6.3 Holding Over 9

 6.4 Severance 9

 6.5 Entire Agreement 9

 6.6 Modification 9

 6.7 Waiver 10

 6.8 Notices 10

 6.9 Costs 10

 6.10 Delegation 11

 6.11 Dispute Resolution 11

 6.12 Resumption or Compulsory acquisition..... 11

6.13 No Warranties 11
6.14 Goods and Services Tax 12
6.15 Auditor-General 12
6.16 Disclosure of Agreement 12
6.17 Publicity & Acknowledgements 13
6.18 Confidential Information 13

SCHEDULE

- ANNEXURE A PERMITTED USE AND PROJECT PARTICULARS**
- ANNEXURE B LIST OF EQUIPMENT**
- ANNEXURE C PLAN OF THE LICENSED AREA AND COMMON AREAS**
- ANNEXURE D PROJECT DESIGN**
- ANNEXURE E INSTALLATION SCHEDULE**

THIS LICENCE AGREEMENT dated the _____ day of _____ 200

BETWEEN:

SOMERTON SURF LIFESAVING CLUB INC of Corner Repton Road and Esplanade, Somerton Park 5044 (the "Licensor")

AND

MINISTER FOR SUSTAINABILITY AND CLIMATE CHANGE a body corporate pursuant to the *Administrative Arrangements Act 1994* of 15th Floor, State Administration Building, 200 Victoria Square, Adelaide, South Australia 5000 (the "Minister").

RECITALS:

- A. The City of Holdfast Bay ("Council") is the registered proprietor of the whole of the land described in Certificate of Title Volume 5476 Folio 969 (the "Land").
- B. The Council granted a lease to the Licensor on 13 January 2006 ("Lease") of that portion of the Land edged in red on the plan annexed to the Lease ("Premises").
- C. The Minister wishes to enter upon and use those portions of the Premises more particularly described in Item 3 of the Schedule and delineated in the Plan (a copy of which is annexed to this Agreement) for its exclusive use ("the Licensed Area") and the portion(s) described in Item 4 of the Schedule and more particularly delineated in the Plan as in common with the Licensor ("the Common Areas").
- D. The Council has granted its consent under clause 5 of the Lease for the Licensor to grant a licence to the Minister in respect to the Premises on the terms and conditions of this Agreement.
- E. The Licensor has agreed to grant and the Minister has agreed to accept an exclusive licence to enter onto the Licensed Area for the Permitted Use for an initial term commencing on the date of execution of this Agreement and expiring subject to any earlier termination of this Agreement on 30 November 2010.
- F. The Minister and the Licensor have agreed to document the terms of the licence in this Agreement.

NOW IT IS AGREED by and between the parties:

1. **ACCURACY OF RECITALS**

The parties agree both that the matters referred to in the Recitals are true and correct and that the Recitals shall form part of this Agreement.

2. **DEFINITIONS AND INTERPRETATION**

2.1 **Definitions**

In this Agreement, the following words and expressions shall have the following meanings, unless the context otherwise requires:

“Claim” means any claim, demand, action, cause of action, proceedings, judgment, order, relief, remedy, right, entitlement, damage, loss, compensation, reimbursement, cost, expense or liability incurred, suffered, brought, made or recovered of whatever nature, howsoever arising and whether presently ascertained, immediate, future or contingent or whether arising at law or in equity or whether of a contractual, proprietary or tortious nature (whether in negligence, other breach of duty, of a strict liability or otherwise);

“the Commencement Date” means the date of execution of this Agreement;

“the Common Areas” means those portions of the Land or the buildings situated on the Land provided by the Licensor from time to time for common use by occupiers of the Land from time to time including, but not limited to, entrances, paths, landscaped areas, passageways and those portions (if any) of the Land or the buildings situated on the Land identified in Item 4 of the Schedule and in the Plan (a copy of which is annexed to this Agreement);

“Equipment” means the wind turbines and wind monitoring mast, including electrical and monitoring hardware, exterior signage, a computer including flat-screen display in the café on the Land and any other ancillary infrastructure and equipment required in order for the Minister to use the Licensed Area for the Permitted Use as specified in Annexure B;

“Insurable Risk” means any of the following risks, namely, fire, storm, tempest, earthquake, lightning, rain, water and other water damage including flood, aircraft and other aerial devices and articles dropped from them, explosion, malicious damage, riot, strikes, impact by vehicles, sprinkler leakage and other usual and necessary risks against which a prudent building owner can and does ordinarily insure;

“the Land” means the whole of the land referred to in Item 1 of the Schedule;
“the Licensed Area” means those portions of the Land more particularly identified in Item 3 of the Schedule and delineated in the Plan (a copy of which is annexed to this Agreement) for the Minister’s exclusive use and includes the buildings or structures situated on the said Licensed Area (whether constructed by the Licensor or the Minister) and where appropriate, includes any part or parts of the Licensed Area;

“the Licensor” means the said Somerton Surf Lifesaving Club Inc. together with the Licensor’s successors and assigns (if the Licensor is a body corporate) and its heirs, executors, administrators and assigns (if the Licensor is an individual);

“the Licensor’s Representative” means a person nominated in writing from time to time to the Minister by the Licensor as the Licensor’s Representative;

“the Minister” means the said Minister for Sustainability and Climate Change and, where appropriate, includes the Minister’s permitted assigns or subtenants, agents, employees, contractors, consultants and the Minister’s Representative;

“the Minister’s Representative” means a person nominated in writing from time to time to the Licensor by the Minister as the Minister’s Representative;

“Permitted Use” means the use of the Licensed Area for those purposes more particularly specified in Annexure A and for all purposes incidental to such purposes;

“the Term” means the initial term specified in Item 5 of the Schedule and includes such further period as the Lessee may occupy the Licensed Area in accordance with this Agreement (including any extension of this Agreement pursuant to clause 6.2).

2.2 **Interpretation**

2.2.1 The Schedule means the Schedule to this Agreement which forms part of this Agreement and any reference to an “Item of the Schedule” means the relevant Item of the Schedule to this Agreement;

2.2.2 Words importing the singular shall include the plural and vice versa and words importing a gender shall include every other gender;

2.2.3 Where two or more persons are included as “Licensor”, the Licensor’s obligations set out in this Agreement refer to and shall bind such persons and any two or greater number of them jointly and each of them severally;

- 2.2.4 Any reference to a person shall include a body corporate and vice versa;
- 2.2.5 Reference to a statute includes all statutes amending, consolidating or replacing the statutes referred to;
- 2.2.6 Headings and clause numbers have been inserted for the purpose of convenient reference only and shall not affect the construction or interpretation of this Agreement;
- 2.2.7 Where the words "Not Applicable" appear opposite any Item of the Schedule, then each and every clause in this Agreement in which specific reference is made to such part of the relevant Item of the Schedule shall be of no effect;
- 2.2.8 A reference to writing shall be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form;
- 2.2.9 In any circumstances where the Licensor's consent is required pursuant to this Agreement, such consent shall not be unreasonably withheld or delayed.

3. **LICENCE**

- 3.1 The Licensor grants and the Minister accepts an exclusive licence to enter onto the Licensed Area at all times during the Term on the terms and conditions contained in this Agreement.
- 3.2 The Minister and the Licensor acknowledge and agree that the rights, powers and privileges granted to and vested in the Minister pursuant to this Agreement are contractual only and shall not create or vest in the Minister any estate, interest or right of a proprietary nature.

4. **MINISTER'S OBLIGATIONS**

4.1 **Pay Rent**

The Minister shall pay to the Licensor the rent specified in Item 2 of the Schedule at the time and in the manner set out in Item 2 of the Schedule.

4.2 **Keep Licensed Area in neat, tidy and clean condition**

The Minister shall at its expense keep the Licensed Area in a neat, tidy and clean condition at all times during the Term.



4.3 **Comply with statutes etc.**

The Minister shall at all times during the Term promptly comply with:

- 4.3.1 all statutes, regulations, by-laws, ordinances, rules and other forms of statutory instruments or delegated legislation applicable to the Licensed Area or to the use of the Licensed Area by the Minister; and
- 4.3.2 all notices, orders or requirements lawfully given or made by an authority (including but not limited to the Council) or any other person in respect of the Licensed Area.

4.4 **Alterations and additions or replacement**

The Minister may at its expense make any alterations or additions to the Licensed Area it considers necessary or appropriate (whether structural or otherwise) to enable the installation, operation and maintenance of the Equipment **PROVIDED ALWAYS** that prior to making any such alterations or additions or undertaking such replacement, the Minister shall at its expense obtain all approvals required by law (if any) and notify the Licensor of the same.

4.5 **End of Licence**

Upon the expiration or earlier termination of this Agreement, the Minister shall vacate the Licensed Area and either:

- 4.5.1 remove all of its Equipment from the Licensed Area and, if so required in writing by the Licensor, deliver up possession of the buildings and structures situated on the Licensed Area in the condition required by subclause 4.2 having regard to the age of such buildings and structures (fair wear and tear excepted), (such buildings and structures remaining or becoming the property of the Licensor upon such expiration or earlier termination of this Agreement, the Licensor paying no compensation to the Minister for such buildings or structures); or
- 4.5.2 if so requested in writing by the Licensor ("Notice") with such Notice to be received by 30 September 2010, the Minister shall within a reasonable period of time after the expiration or earlier termination of this Agreement transfer possession of the Equipment or such part of the Equipment for such amount as may be agreed between the parties and if no agreement is reached then the Minister must comply with his obligations pursuant to subclause 4.5.1.



4.6 **Assignment and Sublicensing**

4.6.1 Subject to subclause 4.6.2, the Minister shall not assign, transfer, sublicense, mortgage, charge or otherwise part with possession of the Licensed Area without the prior written consent of the Licensor which consent shall not be unreasonably withheld or delayed.

4.6.2 The Minister may, without the written consent of the Licensor, at any time during the Term transfer, assign this Agreement or sublicense the Licensed Area, part with possession of the Licensed Area or otherwise allow the occupation of the Licensed Area by any other Minister of the Crown or any agency or instrumentality of the Crown who will use the Licensed Area for the Permitted Use.

4.7 **Licensor's Inspection**

The Minister shall permit the Licensor and any officer, employee, agent or contractor of the Licensor at all reasonable times upon reasonable notice to the Minister (except in an emergency when no notice shall be required), to enter upon the Licensed Area to examine and view the state and condition of cleanliness and repair of the Licensed Area.

4.8 **Release**

The Minister shall occupy the Licensed Area at the risk in all things of the Minister and the Minister releases to the full extent permitted by law the Licensor, its officers, employees, contractors and agents, in the absence of any default, neglect or omission on their part, from all Claims resulting from any accident, personal injury or loss of or damage to property occurring in, on or in the vicinity of the Licensed Area (including any loss or damage to any personal property of the Minister).

4.9 **Indemnity**

The Minister shall indemnify and keep indemnified the Licensor, its officers, employees, contractors and agents from and against all Claims which the Licensor may incur or incurs in connection with any loss of life, personal injury or loss of or damage to property arising from or out of or in connection with the use and occupation of the Licensed Area by the Minister except where such loss of life, personal injury or loss of or damage to property is caused by any neglect, default or omission by the Licensor or its officers, employees, agents or contractors.



4.10 **No Signs**

The Minister shall not erect, affix, exhibit or display any signs or other advertising material on the Licensed Area unless it forms part of the Equipment without the prior written consent of the Licensor (which consent shall not be unreasonably withheld or delayed).

5. **LICENSOR'S OBLIGATIONS**

5.1 **Quiet Enjoyment**

If the Minister observes and performs all of the Minister's obligations set out in this Agreement, then the Minister may peaceably possess and enjoy the Licensed Area without interruptions or disturbance from the Licensor or from any person claiming under or from the Licensor, except for any interruption or disturbance which may be permitted by the terms of this Agreement.

5.2 **Insurance**

5.2.1 The Minister warrants that the Minister is entitled to the benefit of the South Australian Government Insurance and Risk Management arrangements administered by the South Australian Government Captive Insurance Corporation ("SAICORP") in respect of its use of the Licensed Area pursuant to this Agreement.

5.2.2 The Minister shall ensure that its sub licensees (excluding any Minister of the Crown or any agency or instrumentality of the Crown) shall at their expense effect and maintain:

- (a) a policy of public risk insurance in respect of the Licensed Area in which the limits of public risk shall be not less than **TWENTY MILLION DOLLARS** (\$20,000,000.00) in respect of any one claim or such further sum as the Licensor from time to time reasonably requires; and
- (b) such other insurance policies (if any) as the Licensor and the Minister agree.

5.2.3 The Licensor shall effect and maintain throughout the Term a policy:

- (a) insuring the buildings and structures situated on the Land (excluding the Minister's Equipment and fixtures situated in or on such buildings and structures) against loss or damage by Insurable Risks in the full replacement value.

(b) of public risk insurance in respect of the Land in which the limits of public risk shall be not less than **TWENTY MILLION DOLLARS** (\$20,000,000.00) in respect of any one claim.

5.2.4 The Minister, in specifying levels of insurance in this Agreement, accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of the insurance in respect to how they may or may not respond to any loss, damage or liability.

5.2.5 The Licensor acknowledges and agrees that it is the Licensor's responsibility to assess and consider the risks and scope of the insurance required pursuant to this Agreement.

5.3 **Common Areas**

5.3.1 The Licensor shall allow the Minister, its agents, contractors, workmen, employees, subtenants, licensees and invitees to use the Common Areas at all times during the Term, in common with the Licensor and any other occupiers of the Land from time to time for the purposes for which such Common Areas were designed.

5.3.2 The Minister shall at its expense restore the Common Areas to a neat and tidy condition after each use by it of the Common Areas (having regard to the condition they were in prior to the Minister's use of them).

6. **MUTUAL COVENANTS**

6.1 **Termination**

6.1.1 If the Minister breaches any of its obligations set out in this Agreement and, following the giving by the Licensor of written notice of such breach, the Minister fails to rectify such breach within one calendar month (if such breach is capable of being rectified within such time) or fails to make diligent progress towards rectifying any such breach (if such breach is incapable of rectification within such time), then the Licensor may terminate this Agreement immediately by written notice to the Minister and revoke the licence granted by the Licensor.

6.1.2 Notwithstanding any other provision of this Agreement, the Minister may terminate this Agreement at any time without cause by giving one (1) months' written notice to the Licensor, and the Licensor shall not have any claim or take any action against the Minister in respect of



such termination except for any antecedent breaches of this Agreement by the Minister.

6.2 **Right of Renewal**

The Licensor shall, upon the written request of the Minister made not later than three months before the expiration of the initial term, and if, at the time of such request and at the expiration of the initial term, there shall not be any existing breach of any of the Minister's obligations set out in this Agreement, at the expense of the Minister grant to the Minister an extension of this Agreement for the further term specified in Item 6 of the Schedule and such extension shall be on like terms and conditions as are contained in this Agreement but excluding this option for renewal.

6.3 **Holding Over**

If the Minister shall remain in occupation of the Licensed Area after the expiration of the Term, then no licence from year to year (or longer period) shall be implied by payment or acceptance of rental but the Minister shall continue to occupy the Licensed Area on a monthly licence determinable at any time by either party on one calendar month's notice in writing on the same terms and conditions as those contained in this Agreement so far as is applicable.

6.4 **Severance**

If any term or condition of this Agreement shall be for any reason unlawful, void or invalid or unenforceable, then the offending term or condition shall be severed from this Agreement without affecting the validity or enforceability of the remainder of this Agreement.

6.5 **Entire Agreement**

This Agreement constitutes the entire agreement of the parties in respect of the subject matter of this Agreement and the parties agree that this Agreement supersedes all prior arrangements, understandings and negotiations in respect of the matters dealt with in this Agreement. Further, no agreement whether collateral or otherwise, shall be taken to have been formed between the parties by reason of any promise, representation, inducement or undertaking (if any) given or made by one party to the other party prior to the date of execution of this Agreement.

6.6 **Modification**

No variation, addition to or modification of any provision of this Agreement shall be binding upon the parties unless such variation, addition or

modification is made in writing, signed by each party and expressed to be either supplemental to, in variation of or in substitution for the whole or a part of this Agreement.

6.7 **Waiver**

6.7.1 A waiver of any provision of this Agreement must both be in writing and be signed by the parties or by a person duly authorised to sign such a document on a party's part.

6.7.2 No waiver by a party of a breach of a term or condition contained in this Agreement shall operate as a waiver of any breach of the same or any other term or condition contained in this Agreement.

6.7.3 No forbearance, delay or indulgence by any party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party.

6.8 **Notices**

6.8.1 Notices may be served by delivering the same personally, by mail or facsimile transmission and shall be:

- (a) in writing addressed to the other party at its respective address as set out in this Agreement;
- (b) signed by or on behalf of the sender or by a person duly authorised in that regard by the sender;
- (c) deemed to be duly served or made in the following circumstances:
 - (i) if delivered, upon delivery;
 - (ii) if sending by mail, upon posting;
 - (iii) if sent by facsimile transmission, upon the sender's facsimile producing a transmission report that the facsimile was satisfactorily sent in its entirety to the addressee's facsimile number;

but if delivery is not made before 5.00 pm on any day it shall be deemed to be received at 9.00 am on the next day in that place.

6.8.2 A party may vary either its address or facsimile number from time to time by written notice served on the other party.

6.9 **Costs**

6.9.1 Each party shall pay their own costs (including legal costs) of and incidental to the preparation and execution of this Agreement.



6.9.2 The Minister shall bear the stamp duty (if any) assessed or payable in respect of this Agreement.

6.10 **Delegation**

Any consent, notice, any consultation or any other thing which is, pursuant to the terms of this Agreement, either required to be given, done or performed or which may be given, done or performed by the Minister may be given, done or performed by the Minister's Representative.

6.11 **Dispute Resolution**

If a dispute arises between the Licensor and the Minister as to the terms and conditions of this Agreement or the operation of this Agreement or as to the rights or obligations of the parties under this Agreement, then, unless either the Licensor or the Minister desires to exercise its right to have such dispute adjudicated by court within one (1) month of such dispute arising, either party may refer such dispute to an independent mediator agreed upon by the parties or, failing agreement, to an independent mediator nominated for appointment by the President or Acting President of the Law Society of South Australia. Such independent mediator shall act as an expert not an arbitrator. The findings of such independent mediator shall be final and binding on both the Licensor or the Minister and the Licensor and the Minister shall bear the fees and expenses of such independent mediator in equal shares.

6.12 **Resumption or Compulsory acquisition**

If the Licensed Area is either resumed or compulsorily acquired at any time during the Term by the Crown in right of the Commonwealth of Australia or the Crown in right of the State of South Australia, then this Agreement and the licence granted by the Licensor shall automatically terminate as from the date of such resumption or compulsory acquisition (as the case may be). Neither party shall have any claim against the other in respect of such termination except in respect of any antecedent breaches (if any) of this Agreement by the other party.

6.13 **No Warranties**

The Minister acknowledges and agrees that the Licensor does not make any warranty, representation, promise or assurance as to the suitability of the Licensed Area for the Permitted Use and all implied warranties, representation, promises or assurances (if any) are expressly excluded.

6.14 Goods and Services Tax

6.14.1 Definitions

For the purposes of this clause 6.14:

"**GST law**" has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"**GST**" means the tax imposed by the GST law;

"**GST Rate**" means, at any particular time, the rate (expressed as a fraction of the Value of a supply) at which GST is payable by the supplier on a Taxable Supply;

"**Tax Invoice**" has the meaning attributed in the GST law; and

"**Taxable Supply**" has the meaning attributed in the GST law.

6.14.2 Additional Consideration Referrable to GST

- (a) If any supply made by the supplier under this Agreement is a Taxable Supply, the recipient must pay to the supplier, in addition to any consideration payable or to be provided by the recipient for the supply under this Agreement apart from this clause, ("**base consideration**") an additional amount of consideration ("**GST consideration**") for the supply calculated by multiplying the GST Rate by the base consideration.
- (b) When claiming payment of GST consideration under this clause the supplier must disclose the supply and the base consideration to which the GST consideration is attributable.

6.14.3 Tax Invoice

If any supply under this Agreement is a Taxable Supply:

- (a) any invoice for payment under this Agreement must be a Tax Invoice, (and any prescribed form of invoice under this Agreement is amended accordingly); and
- (b) the recipient is not obliged to make any payment under this Agreement unless the supplier has provided a Tax Invoice in respect of that payment.

6.15 Auditor-General

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (South Australia).

6.16 Disclosure of Agreement

6.16.1 The Minister may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form and either



generally to public or to a particular person as a result of a specific request.

6.16.2 Nothing in this clause derogates from:

- (a) The Licensor's obligations under any provisions of this Agreement; or
- (b) the provisions of the Freedom of Information Act 1991 (SA).

6.17 **Publicity & Acknowledgements**

6.17.1 The Licensor must not make, or permit to be made, a public announcement or media release about any aspect of this Agreement unless the Minister first gives its consent in writing to the Licensor.

6.17.2 The Licensor must ensure that any media release, publicity, promotion, advertising and any printed or electronic materials undertaken or issued by the Licensor in connection with the Project expressly acknowledges the support provided for the Project by the South Australian Government.

6.17.3 The Licensor must ensure that any building, art works, exhibitions, films or documentaries or other things produced or created as a result of the Project has endorsed on it or includes an express acknowledgment of the support provided for the Project by the South Australian Government.

6.17.4 Where the Premier's Representative directs that the Licensor uses a particular form of wording, graphic device or logo for the purposes of clause 6.17.2 or clause 6.17.3, the Licensor must comply with that direction provided that the direction is not unreasonable in the circumstances.

6.18 **Confidential Information**

6.18.1 Neither party may use any Confidential Information of the other party except as genuinely and necessarily required for the purpose of this Agreement.

6.18.2 Neither party may disclose any Confidential Information of the other party except:

- (a) to an employee or agent of that party, on a "need to know" and confidential basis;
- (b) as required by law or a court order; or
- (c) in accordance with any parliamentary or constitutional convention.



- 6.18.3 Each party must promptly notify the other if it becomes aware of any actual or threatened disclosure of any Confidential Information of that party, and must provide all reasonable assistance to that party to protect and enforce the confidentiality of Confidential Information.
- 6.18.4 This clause must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of Confidential Information.
- 6.18.5 The obligations under this clause survive the expiry or termination of this Agreement.

EXECUTED AS AN AGREEMENT

THE COMMON SEAL of)
SOMERTON SURF LIFE SAVING)
CLUB INCORPORATED)
was hereunto affixed in the presence of:)

.....
[**]

.....
[**]

THE COMMON SEAL of the **MINISTER**)
)
FOR SUSTAINABILITY AND CLIMATE)
)
CHANGE)
)
was affixed to this Agreement by)
)
the Minister in the presence of:)

.....
Witness



SCHEDULE

- Item 1:** **The Land**
The whole of the land comprised in Crown Record Volume 5476 Folio 969.
- Item 2:** **The Rent**
\$1.00 per annum if demanded by the Licensor (which rent is exclusive of GST) payable in such manner as the Licensor shall reasonably determine.
- Item 3:** **The Licensed Area**
Those portions of the land more particularly delineated as "the turbine bases", "the wind monitoring mast base" and "the turbine inverter and monitoring board" in the Plan (a copy of which is annexed to this agreement).
- Item 4:** **Common Areas**
Those portions of the land more particularly delineated as "the plant room", "the electrical distribution board", "the roof, floor and wall cavities", "the café", "all stairs and passageways", "the roof" in the Plan (a copy of which is annexed to this agreement) for access purposes and car parking purposes in designated areas.
- Item 5:** **The Initial Term**
From the Commencement Date to 30 November 2010 (subject to any earlier termination of this Agreement pursuant to its terms or by operation of law).
- Item 6:** **The Renewal Term**
3 months commencing on 1 December 2010 and expiring on 28 February 2011.



ANNEXURE A

PERMITTED USE AND PROJECT PARTICULARS

PERMITTED USE

The installation, maintenance, operation and trial of wind turbines (the 'Project') at the Licensed Area, on the terms and conditions contained in this Agreement.

PROJECT

The Minister, will:

- Install, at his own cost, up to four turbines and a wind monitoring mast, including electrical and monitoring hardware, in accordance with the installation schedule in Annexure E, at the Licensed Area in accordance with the design shown in Annexure D
- Apply, at his own cost, for a Network Connection Licence from ETSA Utilities regarding the installation of the Equipment at the Licensed Area.
- Install, at his own cost, any new electrical meters required by ETSA Utilities regarding the installation of the Equipment at the Licensed Area.
- Apply, at his own cost, for any Council approvals necessary for the installation of the Equipment.
- Maintain the turbines over the duration of the trial
- Reserve the right to claim up to five-years worth of Renewable Energy Certificates and any other relevant rebates within 12-months of the date of installation of all turbines, noting that their value may be taken into account during any negotiations regarding the transfer of ownership of the turbines.
- Install, at his own cost, one exterior sign and a computer including flat-screen display at the Licensed Area in accordance with the design shown in Annexure D
- Establish a website as the main communication vehicle for the results of the trial
- In conjunction with the Licensor and the Council, arrange an event to launch the Project following the installation of the turbines



- Commit to entering into negotiations with the Licensor regarding the End of the Licence (refer section 4.5) no later than 31 January 2010.
- Provide the Licensor and the Council with copies of the following reports
 - A Commissioning Report and an Electrical Certificate of Compliance shortly after installation of the turbines. The report will include operational instructions, safety requirements.
 - Interim Report, approx. 3 months after turbine installation
 - A Final Report, approx. 13 months after turbine installation

The Licensor will:

- Provide access to the Licensed Area to enable the installation, monitoring and maintenance of
 - the turbines and wind monitoring mast, including associated electrical and monitoring hardware
 - exterior sign regarding the trial
 - a computer with a flat-screen display in the café

in accordance with the installation schedule in Annexure E at the Licensed Area in accordance with the design shown in Annexure D.
- Liaise with the electricity retailer for the Licensed Area regarding the commercial arrangements regarding export of any excess electricity generated by the turbines on the Licensed Area
- Provide a high-speed internet connection for the computer;
- Keep the turbines and wind-monitoring mast at the Licensed Area operational for a minimum period of 12 months, unless there are significant reasons for decommissioning, such significant reason to be determined and pre-approved by the Minister in writing. A significant reason includes but is not limited to
 - Major turbine structural failure causing injury to a member of the public or significant damage to the building
 - Significant detrimental impact of the trial on the Club's income (namely functions and the café)
 - Significant detrimental impact of the trial on the Club's relationships with it's neighbours



- Not undertake any activities that may void the warranties associated with the turbine(s) or monitoring equipment.
- Commit to entering into negotiations with the Minister regarding the End of the Licence (refer section 4.5) no later than 31 January 2010.

In addition **the Licensor**, may

- install, at its own cost, a 1 to 2kW solar array at the Land, for inclusion in the trial.



ANNEXURE B**LIST OF EQUIPMENT****EQUIPMENT**

- The Equipment includes: Eoltec Scirocco 6kW Wind Turbine
- Kestrel e300i 1kW Wind Turbine
- SWIFT 1.5kW Wind Turbine
- VencoPower Twister 1kW Wind Turbine
- Associated electrical and monitoring hardware including
 - Inverter(s) for each turbine
 - Wiring and cabling
 - Data logger
 -
- Wind monitoring mast including cup anemometer and weather vane
- External sign
- Computer with flat screen display



ANNEXURE C

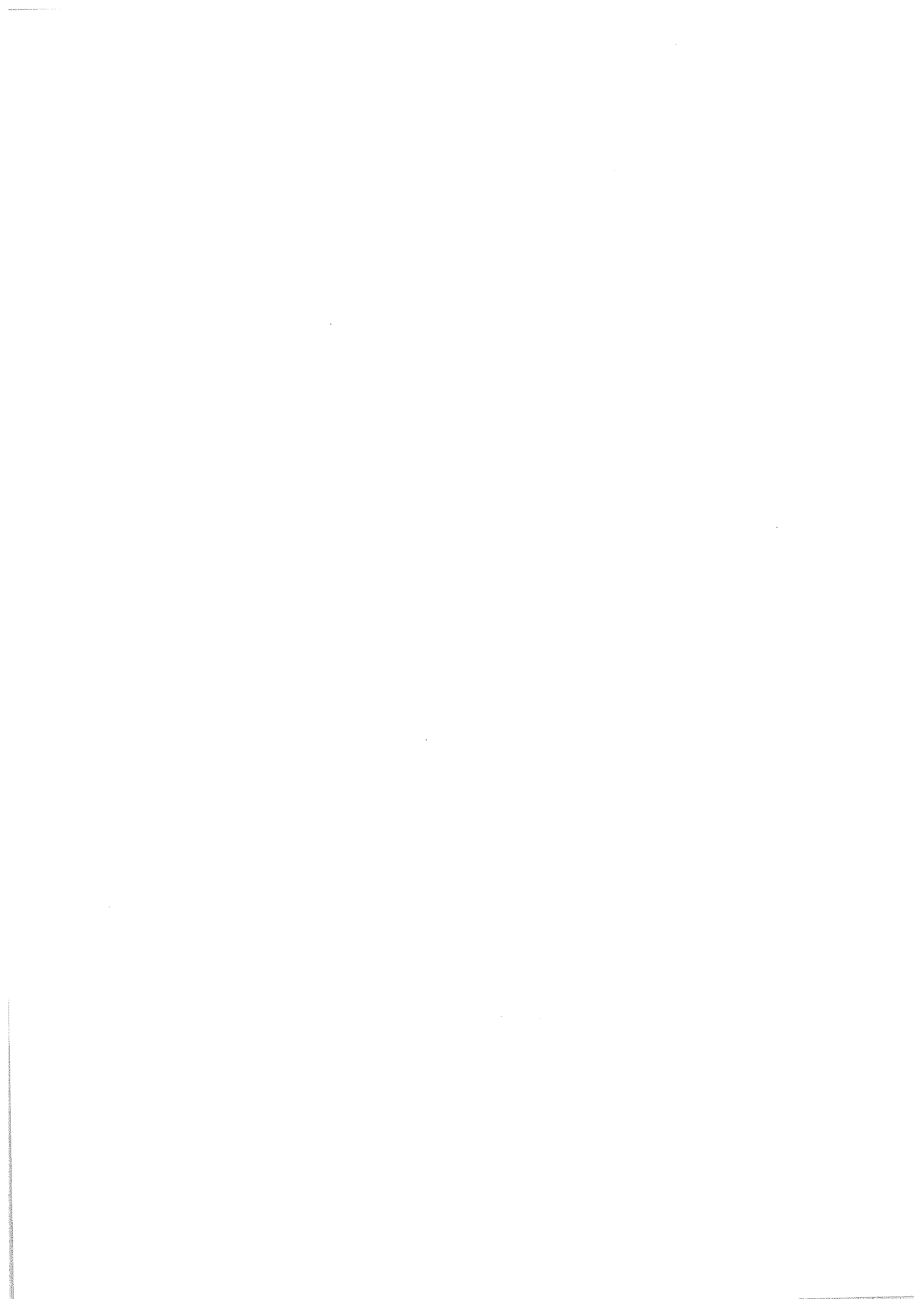
PLAN OF THE LICENSED AREA AND COMMON AREAS



361/09

ANNEXURE D

PROJECT DESIGN

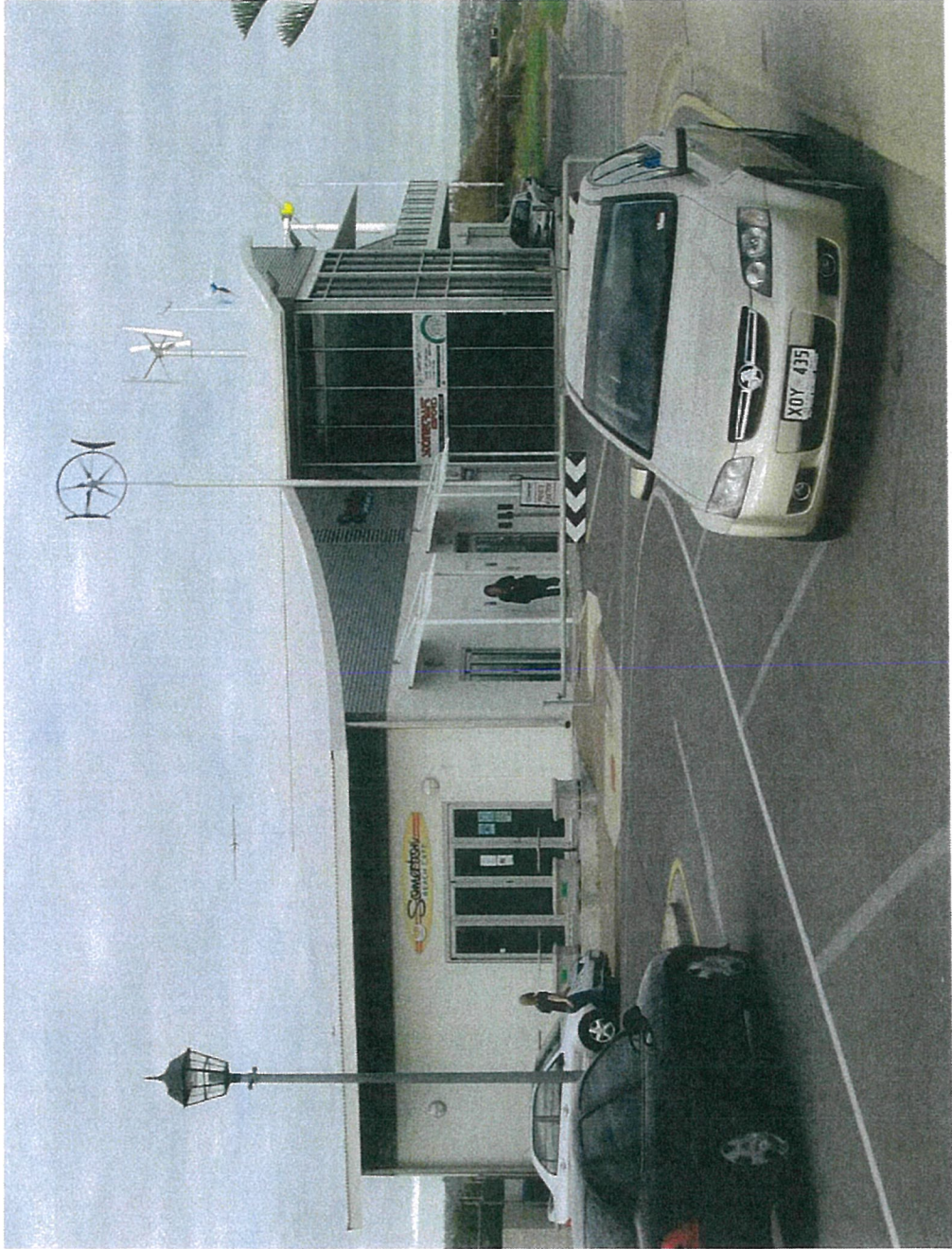


ANNEXURE E

INSTALLATION SCHEDULE



Attachment 5: Artist impression of infrastructure associated with the proposed wind turbine trial (northern elevation).





ITEM NO: 22-1 REPORT NO: 361/09

Attachment: 6

Attachment 6: Artist impression of infrastructure associated with the proposed wind turbine trial (north eastern elevation).



