

## ITEM NUMBER: 18.2

### CONFIDENTIAL REPORT

## SEACLIFF PLAZA AMENITIES AND BEACH ACCESS

*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:*

- i. **information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council.**

**Recommendation – Exclusion of the Public – Section 90(3)(i) 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: 151/22 Seacliff Plaza Amenities and Beach Access Concept Approval 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: 151/22 Seacliff Plaza Amenities and Beach Access Concept Approval on the following grounds:
    - i.** pursuant to section 90(3)(i) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information relating to litigation that the Council believes on reasonable grounds will take place involving the Council or an employee of the Council
  - 3.** The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: 18.2

Subject: **Seacliff Plaza Amenities Building and Beach Access**

Date: 24 May 2022

Written By: Project Manager, Public Realm and Urban Design

General Manager: Strategy and Corporate, Ms P Jackson

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## **SUMMARY**

The Seacliff Plaza Project has been funded in the 2021/22 Budget to deliver a design for the Seacliff Foreshore and deliver construction, which includes a new amenity building.

The project was initiated to replace an ageing asset in line with Australian Standards, the Disability Discrimination Act, apply universal design principles, Council's sustainability strategy and increase amenities to provide services for future growth in the area. Accordingly a concept design was presented to Council on 25 January 2022 and approved for public consultation.

Public consultation on the draft concept plan occurred 17 February - 10 March 2022. The results demonstrated overall support and acceptance of the proposed concept but attracted responses from a small group of stakeholders raising ardent concerns about the size and scale of the building. This report includes discussion regarding the consultation feedback, the implications of potential legal action and alternative design options that address the concerns and feedback raised by community.

The project is fully funded to support the construction of the proposed design and this report is seeking the approval of a concept design, landlord consent approval to build the proposed design on the existing site by progressing the development application and then undertaking construction in 2023 within the approved 2021/22 budget.

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## **RECOMMENDATION**

### **That Council:**

- 1. approves Concept Option 1 Seacliff Amenities Building and Beach Access provided in Attachment 1 of this report;**
- 2. provide Land Owner Consent for Option 1 Seacliff Amenities building and Beach Access design as per Attachment 1 of this report to be built on the existing toilet building site as proposed and to submitted the development application for approval; and**

3. **approves the Concept design in Attachment 1 of this report, post Development Assessment approval, to be constructed in the low season of 2023.**

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

4. **That having considered Agenda Item 18.2 151/22 Seacliff Plaza Amenities and Beach Access Concept Approval in confidence under section 90(2) and (3)(i) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the Report and Attachment 5 be retained in confidence until the construction of the project is complete and that this order be reviewed every 12 months.**

#### **STRATEGIC PLAN**

This proposal supports the vision and focus areas of the Strategic Plan by creating accessible places, green buildings and healthy spaces that encourage active transport options and movement. It also contributes to the Wellbeing 2030s aspiration by ensuring “our beaches and Council-controlled public areas are accessible and inclusive”, the Innovation 2030s aspiration by enabling “the Kurna people’s cultural and spiritual relationship to the area is honoured in meaningful, collaboratively agreed ways”, and the Sustainability Objectives: “become a carbon-neutral Council by 2030”, and “prioritise sustainable and active transport (such as walking and cycling) across the city, including by reclaiming streets for play and nature and improving walkability to support healthy ageing.”

#### **COUNCIL POLICY**

- Apply the principles of universal design and social inclusion to all council activities. All project plans and policies address universal design and social inclusion.
- Establish community hubs that integrate community support, recreational, and commercial services in multi-purpose spaces that include frequently excluded demographics such as children and young people, people with disabilities, Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds. Utilisation of council owned buildings increases.
- Become a carbon-neutral council by 2030. Emissions from council operations decrease each year or are offset.

#### **STATUTORY PROVISIONS**

Planning Development and Infrastructure Act 2016

## **BACKGROUND**

The Council's Annual Business Plan (ABP) allocated \$1.07 million of funding to undertake the design of Seacliff Plaza and the construction of Stage 1 works which included a new amenities building. The ABP stated that further funding support would be sought. Consequently, a State Government grant application was submitted to support the delivery of the scope of work and successfully attracted an additional \$1 million dollar from the Open Spaces Grant Program.

This project was funded to replace an ageing asset, address legacy issues of a non-compliant footpath, disconnected access, disability access and apply universal design principles to provide infrastructure that would support all members of the community now and into the future. Refer to the Council Report dated 25 January 2022 Report no 11/12 for detailed background regarding the scope and design development for this project.

The project engaged Aspect Studios to develop a concept masterplan based on previous design work that had been undertaken and feedback from key stakeholders that had been collected. A masterplan concept was developed to ensure previous design issues were resolved and a standalone stage 1 scope of work could be built for the budget, reduce rework if future stages were funded and meet the immediate needs of the community.

Following a council workshop in November 2021 to share the concept design a Motion on Notice was raised to investigate an alternative location for the amenities buildings to reduce costs.

The concept plan and cost estimate were submitted for a second time to a council workshop on 11 January 2022 to discuss the design, seek feedback from Elected Members on the designs, their appetite to receive a Council report requesting approval to undertake public consultation activities.

On 25 January 2022 the project presented a report that included two concept designs, the associated cost estimates and requested that council approve a proposed concept plan/s and undertake public consultation in February of that year. As construction cost reductions were not found in the alternative location and that concept plan presented new risks of impacting on views to a new set of stakeholders, Design Option 1 was approved for public consultation under Motion C080222/2538.

## **REPORT**

The community consultation commenced on 17 February - 10 March 2022 for 21 days. A copy of the community consultation pack and report has been attached to this report.

*Refer Attachments 3 and 4*

### **Consultation Activities Summary**

In the first week of the consultation period the project met with the following key stakeholders to share the design and answer any preliminary questions they may have.

Those parties were:

- The Access and Inclusion Panel
- The Pirate Cat Café owners, located directly across the road from the project site
- The property owners of the properties directly across the road
- A select group of property owners adjacent the site, in the cream brick block of flats to the north of site
- The Seacliff Hotel manager who represented the interests of the property owner
- The Seacliff Surf Lifesaving Club (SSLC).

### **Summary of the Initial Stakeholder Meetings**

The Access and Inclusion Panel were very supportive of the design and appreciative of the effort the project had gone to support people living with disabilities. They did suggest improvements to the design of the DDA parking which has been incorporated into the final design.

The Seacliff Hotel was very supportive and the project was able to negotiate alternative parking space for the café next door and a construction laydown area if the design progressed to construction.

The SSLC were very supportive of the design, particularly the disability facilities and change area, noting a few tweaks to design would further assist their activities, services and emergency services access.

The residents opposite the site were supportive of an updated facility but not supportive of the existing design due to their perceived impact on their views and legacy issue related to previous developments. Two parties advised they would undertake legal action against Council if the development continued as planned. Key feedback through these discussions was the amenities building was too large, amenities should be reduced, and the building be built at the existing level not at the foot path level. The project team communicated that they would investigate options to address their concerns, however this did not temper the parties' position. Consideration has been given to the potential legal avenues these stakeholders could take, the implications for Council and the implications for the project. Attach is a summary of those avenues and implications.

*Refer Attachment 5*

Alternative options were investigated to address the concerns raised. They have been addressed in Options 2, 3 and 6. Additionally small changes to Option 1 have been made to slightly reduce the length and height of the building.

*Refer Attachment 6*

The analysis at the completion of the public consultation activity demonstrated overall the proposed draft concept (Option 1) was accepted by a majority of respondents, however there

were concerns raised by a number of respondents regarding the usage of the lockers and change rooms. For detailed information on the feedback refer the Consultation Report attached.

*Refer Attachment 4*

As a result of the feedback the project team explored design options to incorporate the community's feedback and address their concerns where possible. This exploration led to seven (7) additional concept options being developed for consideration. Attached is a detailed summary to the design features, design compromised and risks associated to options. Below is a condensed summary of the options.

*Refer Attachment 6*

### Summary of the Eight (8) Concept Options and Recommendations

#### **Option 1. Existing Concept Design – Public Consultation Design**

This option is able to deliver all aspects of the scope of work and be constructed with the existing budget.

In particular this design in comparison to the other options and in its own right has been able to adequately address existing issues of:

- Non-compliance and alignment with the Disability Discrimination Act, Council's Access and Inclusion Plan and Environmental Plan.
- Fix the legacy issues of access for people to use the space, access for maintenance and reduce footpath conflicts.
- Remove legacy design elements that appear as bolted on and instead provide a design that supports future growth in line with the masterplan design and future visitation or population growth.
- Increase facilities and amenities for the area.

From the perspective of the community, the design has been supported by a majority of the community with the request for a few minor adjustments to be made to improve the design, which have been addressed.

The disadvantage of this design is that a small number of residents directly opposite the proposed site will not accept this design. While the design has been slightly modified to reduce the scale of the building, it is unlikely to satisfy these stakeholders who have continued to express ardent concerns about the scale of the building, and it being built at the same level as footpath. There is a risk this option may attract legal action.

Notwithstanding the legal action associated to this option, it is considered to be the preferred option due to meeting the projects outcomes, DDA compliance and general community acceptance.

**Option 2. Existing Building Footprint – Reduced Services and Amenities**

This option meets the requirements of the stakeholders who expressed ardent views about the scale of the amenities building.

This design meets most of the scope requirements and provides increased toilet facilities from four to five as well as a shared parent room and DDA compliant toilets.

The design does compromise the outcomes and doesn't appropriately address all aspects of DDA compliance as people would be require to traverse a non-compliant section of the footpath from the dedicated DDA car park to gain entry into the amenities area.

This design may be accepted by the broader community but would be seen as a compromised outcome for some community members due to the shared DDA toilet / parent room facilities, services for people with a disability and the loss of a change area.

Additionally this design:

- is non-compliant and not in alignment with the Disability Discrimination Act, Council's Access and Inclusion Plan and Environmental Plan;
- doesn't fix the legacy issues of access for people to use the space, access for maintenance and reduce footpath conflicts; and
- limits the amenities for future visitation and/or population growth.

While the design meets most of the scope requirements and is less likely to attract legal action, the design is a compromised outcome in relation to DDA compliance and services. Given the changes to the facilities and non-compliant toilet access, it would be strongly recommended that this design be referred to the grant authorities to assess its compliance against the grants criteria and/or negotiate the terms of grant.

**Option 3. Existing Concept Design – At the Existing Level (below the footpath)**

In comparison to Option 1 the key design difference are:

- The scope of work needs to be extended north to accommodate the installation of a compliant DDA access ramp which has not been costed and likely to exceed the current budget
- The DDA ramp also has a conflict point to allow able-bodied people to access the toilet from the boardwalk and the Surf Lifesaving Club deck and will exacerbate existing conflicts on the SLSC deck.
- The existing northern coast park entry point would also need to be relocated and increase costs for the project
- Due to the changes in levels, the change area can't retain both north and south entry points and essentially becomes a change room with an entrance at the north end of the building. This opens the design up to further design requirements, creates unsafe sight line issues in the southern end of the room and conflicts with council's social inclusion practice of providing safe facilities for everyone.



- This design doesn't solve existing issues with footpath levels access and could be seen to further impair them.
- This design is less likely to satisfy the residents whose views are impacted than Option 2

Due to the increased costs, impact on scope and not substantially decreasing potential legal action, Option 3 is not recommended for approval.

**Option 4. Existing Concept Draft – At a Hybrid Level (to reduce DDA ramping)**

Design Option 4 presents the same issues as Option 3 however, the expected increase in construction cost is less than Option 3, but still likely to increase costs above the existing budget due to the ramping and relocation of the outdoor shower area. Therefore this design option is not recommended for approval.

**Option 5. Draft Concept Design – Alternative Location A**

This design option requires more design and consideration to appropriately assess the impact on this option. However, if the main reason to move the toilet facilities to another location is to reduce the impact on views or cost, this design option is not likely to achieve those outcomes.

Additionally the design will impact on the already-limited civic space, conflict with the coast park footpath and impact on the views for a new set of stakeholders who currently have completely unobstructed views to the beach and the ocean. Therefore this design is not recommended.

**Option 6. Draft Concept Design – Alternative Location B**

Similar to Option 5, this option would not solve the issues of impacting on stakeholder views and indeed further impact on the same stakeholder/s who have advised they would take legal action against council due to the building impacting on their views.

Additionally there are a number of other design issues that would need to be solved regarding the greater distance of the DDA car parking closer to the amenities building or costly relocation of car parking.

Subsequently this option is not recommended for construction.

**Option 7. Draft Concept Option – Rebuild Existing Facilities**

This option has very limited benefits as it does not meet the scope apart from replacing the existing toilets and replacing an asset that has reached the end of its use. It should be noted that the replacement of the existing assets will trigger the requirement to provide a DDA toilet and access which can't be achieved without developing the design in line with Option 2.

This option does present the most favourable outcome to avoid potential litigation, as the two parties who have advised they would pursue council legal action suggested that a good outcome from their perspective would be to replace the facility like for like.

Given the limited benefits to this design option, it is not recommended.

**Option 8. Draft Concept Option – Demolish and Remediate**

Option 8 completely removes the basis for legal action due to the development impacting on residents' views, but in turn removes facilities in the area and decreases the amenities.

This option will also likely increase the existing anti-social behaviour of public urination issues that are occurring on properties of the residents and business directly across the road.

Additionally the nearest public toilets are 430 metres away from the current toilet location and approximately a 4 minute walk for an able body person.

This option is not recommended as the removal of facilities may create a decline in visitation and impact on the length of stay for people in the area. Decreasing the length of stay in the area will likely also impact on the economic viability of the existing businesses.

**Recommendation on Options**

While all the design options present benefits to greater or lesser degree, in summary, Option 1 design presents the best community outcomes, meets the criteria of the project's scope, delivers service and amenities for the whole of the community, is not only DDA compliant but improves service for people living with a disability.

Additionally an independent cost estimate has indicated that the Option 1 design can be built within the existing budget.

Lastly, the State Government Grant would not require re-negotiation.

Option 1 is the recommended design on the basis that it:

- Meets scope requirements and fixes existing issues
- Consultation activities generally support the design
- Can be delivered within budget
- Meets external funding requirements
- Meet and integrates with the design outcomes of future stages and fixes issues design issues
- Meets community expectations
- Meets Council's Disability Access and Inclusion Plan 2020-2024
- Meets the Sustainability Plan.

Therefore, this report seeks approval for Option 1 as the recommended concept design.

*Refer Attachment 1*

It should be noted that there are risks related to potential legal action with this design, however other design options may also attract legal action from the same or different parties.

Option 2 has not been recommended as it presents a compromised outcome such as:

- Facilities and services are reduced
- The design is not fully aligned to the Disability Access and Inclusion Plan 2020-2024 and reduces outcomes that align with Council's sustainability plan.

The remaining options are not recommended on the basis that they provide:

- Compromised outcomes that don't deliver on the scope outcomes, the community's feedback as well as other design options
- May not resolve legal issues or transfer issues from one group of stakeholders to another.

### **Next Steps - Development Application**

Following Council's approval of a concept plan the project will undertake development approval of that concept plan. Refer to the Attachment 1 for the planned development package that will be prepared and submitted for the development assessment.

*Refer Attachment 1*

The plan will be lodged on the SA Planning Portal and require Landlord consent and the subsequent review process will determine what is required regarding further public consultation for the development and the criteria that the development will be assessed under.

Given the project's value and design it is highly likely that the assessment will be undertaken by Council's independent Assessment Panel, not SCAP, and further public consultation activities will be required for 21 days.

If the recommended concept plan, Option 1 is approved by Council, it will be submitted as part of the development application for the associated development public consultation. As outlined earlier in this report, this option is likely to attract strident views and feedback from some residents and may attract legal action.

All community members who lodge feedback on the design through the development assessment process will be invited to attend and provide representation of their views at the Council's Assessment Panel for consideration by that panel.

**BUDGET**

- Council's approved budget 2021/22 is \$1.07million
- Approved grant funding \$1 million

This report is also seeking an approval to progress to detailed design and then construction post the development approval.

The construction is proposed to be undertaken in the low season of the 2023 year to reduce the impact of construction for users of the beach and the patronage to businesses directly opposite the site.

The project funding from both the 2021/22 and the 2022/23 will need to be carried forward and the budget spend finalised in the 2023/24 financial year.

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**ATTACHMENT 5 - LEGAL AVENUES AND IMPACTS**

3 <sup>rd</sup> Party Legal Options	Actions for Council	Risks for Council	Likely Outcome and Impact on the project
Lodge a civil claim for financial or personal loss	Consider that there is no 3 <sup>rd</sup> party avenue to appeal Council's or CAP's decision regarding the design and development based on financial/ personal loss	<ul style="list-style-type: none"> <li>• Legal fees associated with responses to the claim</li> <li>• The un-likely event that the project is deemed to impact on views or property values and the Council may be required to pay compensation and or re- scope the project.</li> </ul>	<ul style="list-style-type: none"> <li>• Potentially small legal fees to respond formally to the claim</li> <li>• Nil changes required to Council's decision regarding the concept design or CAP's development decision</li> <li>• Case law demonstrates that the views need to be completely eliminated to cause loss and pay compensation</li> </ul>
Judicial Review of the Development Approval*	Demonstrate due process was completed and followed	<ul style="list-style-type: none"> <li>• Legal fees and court fees to demonstrate due process was followed</li> <li>• While highly unlikely a process breach could be found resulting in the DA process re-commencing</li> </ul>	<ul style="list-style-type: none"> <li>• Nil impact</li> <li>• To date due process has been undertaken and will continue to be followed</li> <li>• It is highly unlikely that a process breach will be found and cause a resubmission of the development application</li> <li>• The resubmission of the development application may not result in a different decision to satisfy the 3<sup>rd</sup> parties</li> </ul>
Section 270 Decision Review*	Undertake a review of process related to the Council's decision, not the decision outcome	<ul style="list-style-type: none"> <li>• Potential cost for an external process review (if deemed necessary)</li> <li>• While highly unlikely a process breach could occur</li> </ul>	<ul style="list-style-type: none"> <li>• Nil impact on the project</li> <li>• It is highly unlikely that a process breach will be found and cause a review of Council's decisions</li> <li>• If a breach is found it is unlikely to result in a different Council decision</li> </ul>

\*These legal actions relate to the procedural matters and not the decision or outcome. If a procedural breach is found and the process is undertaken again, it is un-likely the decision outcome will change.