R E P O R T

Committee          Council Assessment Panel
Meeting Held       Tuesday 10 October 2017
From               Ben Coventry, Manager Planning & Building
Proposal           Special Event – Temporary change of land use to Circus (December 2017 to January 2018) at Lot 101 Armstrong Road, Victor Harbor
Applicant          Lennon Bros Circus
File Reference     Development Application No 453/355/17
Zone               Mixed Use Zone
Plan Date          20 June 2017
Public Notice      Category 3

No representors have sought to address the Panel in support of their representations.

Recommendation    Approval

SUBJECT LAND

The subject land is State Government land in the name of the Minister for Transport & Infrastructure and comprises Lot 101 Armstrong Road, Victor Harbor to which Certificate of Title Volume 6100 Folio 239 refers. The subject land is 11.2ha in area and is bordered by Armstrong Road to the northwest with a frontage of approximately 240m, Ewen Terrace to the southwest with a frontage of approximately 130m and George Main Road to the south with a frontage of approximately 70m.

The subject land is irregular in shape, currently has no identified land use beyond open space and does not exhibit any buildings or structures aside from a pole mounted solar panel towards the eastern boundary. The subject land has two distinct areas being a large expanse of flat grassed paddock on the southwest side which is of a similar level to the Armstrong Road while the northern and eastern sides slope away to a lower lying vegetated portion of the Inman River riparian zone.

The main vehicle access to the subject land is gained from Armstrong Road via a sealed driveway which also services the adjoining Encounter Centre at 42 Armstrong Road. An access gate is located on Ewen Terrace which appears to be utilised as a shortcut to the Encounter Centre. Another access point is located on George Main Road adjacent to the Victor Harbor Police Station which provides access to the weir located in the Inman River.

LOCALITY

The subject land is located on the eastern side of Armstrong Road and the northern side of Ewen Terrace and George Main Road. The northern and eastern boundaries are effectively bordered by
the Inman River with residential development further to the northeast. To the west across Armstrong Road are the Victor Harbor Golf Course and the Encounter Bay Football Oval. Directly adjoining the subject land to the south and southwest are the Encounter Centre which is accessed from Armstrong Road, the Victor Harbor TAFE complex which is accessed Ewen Terrace and the Victor Harbor Police Station and Magistrates Court. On the southern side of Ewen Terrace are residential properties located in the Home Industry Policy Area of the Industry Zone.

In view of the above, it is considered that the locality exhibits the character of open space and river reserve adjoining well established community facilities and an area of residential development specifically zoned for home industry uses.

**PROPOSAL**

The applicants (Lennon Bros Circus) are seeking approval to operate their Circus on a portion of Lot 101 Armstrong Road between the 22/12/2017 and the 8/1/2018 with performances to occur between the 26/12/2017 and the 8/1/2018.

The Circus entails the following:

- 4 semi-trailers, 8 trucks, 10 caravans and 6 four wheel drives;
- Has 27 staff and 1 main Big Top (performance tent);
- The site layout has public access from the existing Armstrong Road access point to an informal car parking area on the northern area of the site, the Big Top is central on the site with the caravan, accommodation, area on the southern section of the site nearest to Ewen Terrace;
Animal content includes 3 lions, 3 camels, 2 miniature donkeys, 7 horses and 8 performing dogs;  
Recorded music is played in the Big Top during performances;  
Waste control is via lidded skip bins with the Circus site cleaned daily and all animal yards cleaned 3 times daily. Animal waste is bagged and sealed and offered free of charge for use in gardens or disposed of in the skip bins;  
At this stage definite show times have not been set but as a rough guide the times will be as follows  
- Mondays-NO SHOWS  
- Tuesdays 11am  
- Wednesday 11am & 2pm  
- Thursday 11am  
- Fri 4pm & 7pm  
- Sat 2pm & 7pm  
- Sun 11am & 2pm  
The box office opens 1 hour before each show. Shows run for 2 hours with a 15 minute intermission half way through. The latest the show would run at night would be 9pm and the majority of the public would have left the site by 9.15pm.

Copies of the application plans and documents have been provided in Attachment 1.

It is noted that Circuses are required to comply with the current State Government legislation and guidelines relating to animal welfare. This includes the Animal Welfare Act 1985, the South Australian Animal Welfare Regulations 2012 and the South Australian Code of Practice for The Welfare of Animals in Circuses. The Code of Practice is legally enforceable and RSPCA inspectors carry out inspections to ensure compliance.

PUBLIC NOTIFICATION
In accordance with the provisions of Section 38 (5) of the Development Act 1993, the subject development application was processed as a Category Three development for the purposes of public notification.

At the expiration of the consultation process four (4) representations were received which raised concern with

- Noise  
- Increase in traffic and parking on Ewen Terrace  
- Use of entrance on Ewen Terrace  
- Fly infestation and rubbish  
- The NRM advised that they had no objection to the proposal but would like to see conditions imposed relating nutrient and weed spread.

A copy of the representations has been provided in Attachment 2.

The applicant has responded to the representations and provided additional information about the days and hours that the circus will operate, confirmed that public access is only via the Armstrong Road access and will not be allowed via Ewen Terrace. Details also provided about waste control and in particular animal waste control so as not to create conditions for a fly infestation.
A copy of the response to the representation is provided in Attachment 3.
REFERRAL

According to Schedule 8 of the Development Regulations 1993, there are no mandatory referral requirements to any government agency or body.

ASSESSMENT

The proposed Circus has been determined to constitute development on that basis that it is a “special event” being held for more than 3 consecutive days on a parcel of land that has not previously had such activities approved on the land. “Special event” means a community, cultural, arts, entertainment, recreational, sporting or other similar event that is to be held over a limited period of time.

The subject land is located within the Mixed Use Zone in the City of Victor Harbor Development Plan. There are no specific provisions within the Development Plan that relate to special events either at the zone level or the general level, it is considered that the most relevant provisions of the Development Plan which relate to the proposed development are as follows:

General Section
Centres and Retail Development
  Objective: 1

Interface between Land Uses
  Objectives: 1, 2 and 3
  Principles of Development Control: 1, 2, 6 and 7

Open Space and Recreation
  Objectives: 3
  Principles of Development Control: 14 and 15

Orderly and Sustainable Development
  Objectives: 1, 3 and 4
  Principles of Development Control: 1

Transportation and Access
  Principles of Development Control: 8, 22 and 23

Mixed Use Zone
  Objectives 1, 2 and 3
  Principles of Development Control 1, 2, 3, 4 and 5

Mixed Use Zone

Objective 1:
A functional and diverse zone accommodating a mix of commercial, community, medium density residential, office, and small-scale shop land uses.

Objective 2:
Development that minimises any adverse impacts upon the amenity of the locality within the zone.
Objective 3:
Development that contributes to the desired character of the zone.

**Desired Character**
The zone provides for a wide range of development but emphasis is placed on activities with a low impact such as community services, residential development and educational facilities.

Vegetated areas, particularly adjacent the Inman River, will be retained for open space and recreational purposes. Legible and safe pedestrian paths will be provided around and through the site to the riverine environment.

The Mixed Use Zone was introduced into the Development Plan in May 2016 to facilitate the further development of the locality for community, residential and educational facilities with a particular emphasis on Emergency Services. New development should be designed to complement the existing community and educational facilities that have been developed on the periphery of the subject land. The TAFE and Police Station titles were previously subdivided from the subject land.

The proposed development being the use of a portion of the land for a special event, Circus, is a short term activity that will not materially affect the land. It has been proposed for this site due to the size of the allotment, the undeveloped state of the site, the large expanse of flat grassed area suitable for car parking and the positioning of the temporary facilities required for running the Circus and the willingness of the land owner, the State Government, to allow for the activity to occur.

The proposal does not achieve nor contribute to the objectives of the zone nor does it detract from or make unachievable the objectives of the zone given the short timeframe and temporary nature of the activity. In a broad sense it could be considered that the proposal does achieve in a limited sense the desired character intent by providing a low impact recreational activity on existing open space without impacting on the local environment.

**Principle 1:**
The following forms of development are envisaged in the zone:

**Principle 2:**
Development listed as non-complying is generally inappropriate.

A special event whether it be a community, cultural, arts, entertainment, recreational, sporting or other similar event is not identified as an envisaged form of development in the zone nor is it identified as a non-complying development in the zone and must therefore be considered on the merits of the proposal.

**Principle 3:**
Development should not be undertaken unless it is consistent with the desired character for the zone.

**Principle 4:**
Development should be in accordance with Concept Plan Map ViH/11 – Mixed Use Neighbourhood Centre.
As previously discussed the proposal while not achieving the long term intent of the zone it is consistent with some of the short term aspects relating to utilisation of open space and low impact recreation activities.

The use of the subject land for a special event, which is characterised as an event to be held over a limited period of time, will not inhibit or prevent the future development of the subject land in accordance with the desired character for the zone or in accordance with the Concept Plan Map ViH/11.

**Principle 5:**
The bulk and scale of development should be compatible with adjoining land uses.

The Big Top and car parking areas have been located centrally on the subject land behind the TAFE and Encounter Centre buildings away from the residential properties in Ewen Terrace. Situated between the Big Top and Ewen Terrace will be the caravans associated with the Circus which is effectively the travelling accommodation which will provide a buffer to the residential properties.

The development is only short term with no permanent structures to remain on site with the main Big Top being screened by vegetation along Armstrong Road and the Inman River and also by the TAFE and Police buildings such that the bulk and scale is compatible with adjoining land uses.

### General Section

**Centres and Retail Development**

**Objective 1:**
Shopping, administrative, cultural, community, entertainment, educational, religious and recreational facilities located in integrated centres.

Ideally entertainment facilities would be located in an integrated town centre zone, however this does not exclude the consideration and approval of other locations that while not zoned as such have characteristics such as size, access and availability that make them conducive for in this case a special event.

**Interface between Land Uses**

**Objective 1:**
Development located and designed to minimise adverse impact and conflict between land uses.

**Objective 2:**
Protect community health and amenity from adverse impacts of development.

**Objective 3:**
Protect desired land uses from the encroachment of incompatible development.

**Principle 1:**
Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:

- (a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants
- (b) noise
- (c) vibration
(d) electrical interference  
(e) light spill  
(f) glare  
(g) hours of operation  
(h) traffic impacts.

Principle 2:  
Development should be sited and designed to minimise negative impact on existing and potential future land uses desired in the locality.

The proposed development is located at the interface between the Mixed Use Zone, Open Space Zone and the Home Industry Policy Area of the Industry Zone. To minimise impacts on adjoining properties the Big Top which is the focus point of paying customers is located towards the centre of the site away from the residential properties in Ewen Terrace.

The length of the proposed special event is limited to 18 days on site with 13 performance days. The time of the performances are 11am, 2pm and 7pm with each show running for approximately 2 hours with a 15 minute intermission such that shows finish about 9pm. The evening shows are generally Friday and Saturday nights. It is considered that the number of shows and the relatively early finish time of 9pm are not unreasonable nor will it diminish the amenity of the locality in the context of surrounding development.

Concerns were expressed about impacts due to increased traffic in Ewen Terrace accessing the Circus, however in the response to representations the applicant has clearly identified that all access will be via Armstrong Road for members of the public and that advertisements for the event will also identify the access point. In addition temporary fencing is installed around the site and the caravans or living area is located adjacent to Ewen Terrace and they will not want members of the public accessing through this area.

Concerns were also expressed about rubbish from the site and fly infestations due to the presence of the animals which is assumed to be in relation to the animal waste. The applicant has provided details in the response to representations that the site will be cleaned daily by staff and that animal yards are cleaned three times daily with animal waste either being bagged for use by the public as garden compost in sealed bags or deposited in the onsite waste skips in sealed bags. It is considered that the proposed measures are acceptable and should not result in unreasonable impacts.

Principle 6:  
Non-residential development on land abutting a residential zone should be designed to minimise noise impacts to achieve adequate levels of compatibility between existing and proposed uses.

Principle 7:  
Development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant Environment Protection (Noise) Policy criteria when assessed at the nearest existing noise sensitive premises.

The main entertainment component of the proposed development is separated from adjoining residential development by the caravans associated with the development and the hour range of the shows is between 11am in the morning and 9pm in the evening which is reasonable span of hours. In addition the potential noise is limited to music in the Big Top that will finish by 9pm and is governed by EPA noise requirements.
Open Space and Recreation

Objective 3:
A wide range of settings for active and passive recreational opportunities.

Principle 14:
Development of recreational activities in areas not zoned for that purpose should be compatible with surrounding activities.

Principle 15:
Recreation facilities development should be sited and designed to minimise negative impacts on the amenity of the locality.

As previously discussed the subject land is undeveloped having only recently been rezoned from Recreation to Mixed Use and as such presents an ideal location for recreational activities of a non permanent and short term nature due to the size, that the site is flat, has good sealed access from a feeder road and is well separated from sensitive land uses.

The layout on the site of the proposed development separates the main activity area from adjoining residential properties and further buffers this area with the caravan or living areas of the performers. It is considered that the subject land is a suitable location for the proposed special event and is compatible with the existing surrounding activities. It is acknowledged that once development occurs on the subject land in accordance with the zone concept plan that such suitability will be diminished or removed entirely.

Orderly and Sustainable Development

Objective 1:
Orderly and economical development that creates a safe, convenient and pleasant environment in which to live.

Objective 3:
Development that does not jeopardise the continuance of adjoining authorised land uses.

Objective 4:
Development that does not prejudice the achievement of the provisions of the Development Plan.

Principle 1:
Development should not prejudice the development of a zone for its intended purpose.

The proposed special event which is only a limited short term activity is orderly development that will provide an entertainment option for members of the general public that wish to attend. The proposal will not prejudice the achievement of the provisions of the Development Plan or development within the zone or surrounding areas nor will it preclude or inhibit any other existing land uses or activities.

Transportation and Access

Principle 8:
Development should provide safe and convenient access for all anticipated modes of transport including cycling, walking, public and community transport, and motor vehicles.
Principle 22:
Development should have direct access from an all weather public road.

Principle 23:
Development should be provided with safe and convenient access which:
(a) avoids unreasonable interference with the flow of traffic on adjoining roads
(b) provides appropriate separation distances from existing roads or level crossings
(c) accommodates the type and volume of traffic likely to be generated by the development or land use and minimises induced traffic through over-provision
(d) is sited and designed to minimise any adverse impacts on the occupants of and visitors to neighbouring properties.

The subject land has direct all weather access from Armstrong Road which is a feeder road within the Victor Harbor road network. The subject land has sufficient onsite parking space, all be it in an informal nature that is sufficient to cater for the event without having undue impact on the existing road network or surrounding properties.

CONCLUSION

The subject development proposal seeks consent for a special event being a Circus from the 22/12/2017 to the 8/1/2018 on a portion of Lot 101 Armstrong Road, Victor Harbor. A special event as defined in the Development Act is a short term or limited activity of a community, recreation, entertainment nature which does not generally have permanent structures or buildings.

The proposed circus is centrally located on the subject land, has appropriate waste control measures in place, access is gained from an existing sealed access point off Armstrong Road and has suitable buffering in the form of the accommodation caravans between the entertainment area and the small area of dwellings located in Ewen Terrace.

Having considered all of the relevant provisions of the Development Plan, it is considered that the subject development proposal is not seriously at variance with the provisions of the Development Plan and is sufficiently in accord with the Development Plan to warrant the granting of consent.

1. RECOMMENDATION

I recommend that the Council Development Assessment Panel:

1) RESOLVE that the proposed development is NOT seriously at variance with the provisions in the Development Plan.

2) RESOLVE to grant Development Plan Consent to Lennon Bros Circus, Development Application No. 453/355/17 for a ‘special event’, temporary change of land use to Circus, December 2017 to January 2018 at Lot 101 Armstrong Road, Victor Harbor, subject to the following conditions:

1. The development shall be undertaken in accordance with the plans and details submitted to, and approved by, Council as part of the application including the response to representations email dated Friday 22 September 2017 and received from Adam St James, except as varied by any subsequent conditions imposed herein.
2. No public access shall be permitted from Ewen Terrace to the event.

3. Nutrients are managed at the site (mainly from the animal yards close to the Inman River) so as to avoid excessive runoff.

4. The potential for seed dispersal via animal faecal matter is managed with all faecal matter removed from the site.

5. The animal feed (e.g. hay) shall be appropriately managed so that it does not spread weeds across the site.

6. The site shall be maintained in a neat and tidy manner so as to avoid the spread of rubbish and other materials associated with the event.