

Please address all communications to:  
The General Manager  
240 Blende Street  
PO Box 448  
Broken Hill NSW 2880  
Phone 08 8080 3300  
Fax 08 8080 3424  
council@brokenhill.nsw.gov.au  
www.brokenhill.nsw.gov.au

ABN 84 873 116 132

November 12, 2019

EXTRAORDINARY MEETING

TO BE HELD

**TUESDAY, NOVEMBER 12, 2019**

Dear Sir/Madam,

Your attendance is requested at the Extraordinary Meeting of the Council of the City of Broken Hill to be held in the Council Chamber, Sulphide Street, Broken Hill on **Tuesday, November 12, 2019** commencing at **5:15p.m.** (Public Forum to commence at 5:00p.m.) to consider the following business:

- 1) Apologies
- 2) Disclosure of Interest
- 3) Notice of Motion

A) Motions of Which Notice Has Been Given no. 20/19 - dated November 07, 2019 - Request for Extraordinary Meeting and Notice of Motion Regarding Broken Hill Gateway Signage



JAMES RONCON  
GENERAL MANAGER

## **NOTICES OF MOTION**

1. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN NO. 20/19 - DATED  
NOVEMBER 07, 2019 - REQUEST FOR EXTRAORDINARY MEETING  
AND NOTICE OF MOTION REGARDING BROKEN HILL GATEWAY  
SIGNAGE (17/133)..... 3

## EXTRAORDINARY MEETING OF THE COUNCIL

November 7, 2019

**ITEM 1**MOTIONS OF WHICH NOTICE HAS BEEN GIVEN NO. 20/19

SUBJECT: REQUEST FOR EXTRAORDINARY MEETING AND NOTICE OF MOTION REGARDING BROKEN HILL GATEWAY SIGNAGE 17/133

**Recommendation**

1. That Motions of Which Notice has been Given No. 20/19 dated November 7, 2019, be received.
2. That the Broken Hill City Council, as a matter of urgency, stop the production of the remaining 4 gateway signs and liaise with Deanna Spicer to use her designs for the remaining 4 gateway signs.

**Summary**

Council received a request for an Extraordinary Council Meeting which includes a Notice of Motion from Councillors Algate and Kennedy on 6 November 2019 regarding the Broken Hill gateway signage.

The request and Notice of Motion reads:

*"We, the undersigned Councillors of the Broken Hill City Council hereby request an urgent extraordinary meeting of the Council to be held to consider the following matters.*

*That the Broken Hill City Council, as a matter of urgency, stop the production of the remaining 4 gateway signage and liaise with Deanna Spicer to use her designs for the remaining 4 gateway signs.*

*Deanna Spicer has kindly offered her designs free of charge to the community; Deanna's designs have community wide support. It is obvious from the community feedback that the placement of the first gateway sign has largely been negative.*

*This is an opportunity for Councillors to listen to feedback from the community and correct what has turned out to have had a negative impact on what should have been viewed as a positive from the community about Council and Councillors."*

The Request for Extraordinary Meeting including the Notice of Motion is attached.

**General Manager's Comment:**

A report was prepared for the August 2018 Ordinary Council meeting recommending that Council adopt a proposed gateway sign depicting the line of lode and submit a development application for approval. This design was prepared by Council's Heritage Advisor and was intended to be something that very simply highlighted the essence of Broken Hill, told the

story of the City, reflected the City's designation as Australia's First National Heritage Listed City and acknowledged the traditional owners of the land.

Following the tabling of this report, the following motion was passed:

1. That Broken Hill City Council Report No. 129/18 dated August 15, 2018, be received.
2. That Council holds a competition/public consultation for the design of gateway signage for the highway entrances into the City; and that once the preferred design is approved, the signs are installed quickly and efficiently.

The above motion passed by Council on the 29 August 2018 offered very little direction regarding how the competition should be run. It did not specify that people living outside Broken Hill should be excluded from participating in the competition, nor that local entries should be given priority above others. As such it was conducted with the goal of attracting the best possible design regardless of the artist's place of residence.

Given the lack of governance around the motion, staff contacted Broken Hill Art Exchange to submit a proposal to run the sign competition. The proposal received could not be accepted due to budget constraints, and the project was referred to the 'Our Economy' Key Direction Working Group (KDWG) for the development of the competition scope and terms and conditions.

After discussing the competition the KDWG suggested offering \$5,000 in prize money, and accepting entries as individual designs or as a complete set of 5 different designs. A prospective judging panel was also outlined, and it was explained that a judging panel was preferred to internet voting to ensure the competition would not be compromised. This approach was communicated to all Councillors via e-mail on 20 November 2018 and there were no objections received.

The terms and conditions of the competition were subsequently developed in accordance with the approach described above and were publicly available on Council's website when the competition launched on 29 November 2018.

Councillors were again contacted via e-mail on February 21 2019 after 'blind' judging had taken place. Councillors were given the preferred design but advised that neither the artist, Joe Scerri, nor the public would be advised of the result until due diligence had been undertaken regarding its suitability for fabrication. Councillors were advised that Council could not publicly display or distribute all 73 entries as they remained the intellectual property of the respective artists, and Council would only acquire the rights to the winning entry. The e-mail also outlined the final judging panel that included: Darriea Turley (Mayor), Paul Davies (Heritage Advisor) Cr Jim Nolan ('Our Economy' KDWG representative), Kathy Graham (West Darling Arts), Anthony Hayward (Amany Mitha Indigenous Art Gallery). Council's Chief Operations Officer, Anthony Misagh, also sat in on the meeting to provide engineering advice, but did not act in a judging capacity. Further feedback and any queries were sought from Councillors regarding all of the above, however no response was received, and the winner was announced on 26 February 2019.

Upon being informed of his success Mr Scerri offered to engage with the local indigenous community to ensure the design included an element of cultural significance. Representatives of the Wilyakali community requested that the pinnacles be added to the design, and the indigenous recognition wording on the sign be simplified to "Welcome to Wilyakali Country". These changes were made and the final design was released to the public on 23 May 2019.

**Financial & Reputational Risks**

Council has already engaged a local contractor to fabricate and install the winning gateway design for cost of about \$135,000. Signs are already being fabricated and footings installed for the remaining gateway signs. The bulk of the expense has already been expended through the development of the footings and braces for the sign which are custom made for the design. Whilst there may be potential cost savings if agreement was reached between Council and the contractor to immediately cease current sign fabrication this is the least expensive part of the sign development. However, with this being said, Council is contractually obliged to pay the contractor the full amount.

A further budget adjustment would need to be made to Council's capital budget for any alternate design installations and a new procurement process would have to be undertaken.

Due to the short amount of time between the lodgment of the Extraordinary Meeting notice and the holding of this meeting, Council has had insufficient time to investigate any possible legal ramifications from overturning the competition. However it should be noted that the competition's terms and conditions clearly stated that the designs would be used for "entry signs to be constructed and placed at the five major entry roads into the city" and that the judges' decision was final.

Council has also had insufficient time to investigate whether the proposed new designs pose any risk in regard to copyright infringement and whether appropriate licences will be required. Further consultation with the Wilyakali community may also be required.

**Attachments**

1. [↓](#) Request for Extraordinary Meeting including Notice of Motion
2. [↓](#) Terms & Conditions
3. [↓](#) Deed of Assignment
4. [↓](#) Annexure A

B ALGATE  
COUNCILLOR

T KENNEDY  
COUNCILLOR

Received 6/11/19 3:45pm  
JFB

6/11/2019

To the Mayor

Broken Hill City Council

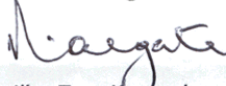
We, the undersigned councillors of the Broken Hill City Council hereby request an urgent extraordinary meeting of the council to be held to consider the following matters.

That the BHCC as a matter of urgency stop the production of the remaining 4 gateway signage and liaise with Deanna Spicer to use her designs for the remaining 4 gateway signs.

Deanna Spicer has kindly offered her designs free of charge to the community; Deanna's designs have community wide support. It is obvious from the community feedback that the placement of the first gateway sign has largely been negative.

This is an opportunity for councillors to listen to feedback from the community and correct what has turned out to have had a negative impact on what should have been viewed as a positive from the community about council and councillors.

Councillor Bob Algate



Councillor Tom Kennedy



# Gateway Signage Design Competition - Broken Hill City Council



## Terms, Conditions, and Design Specifications

Entry into the Broken Hill City Council Gateway Signage Design Competition is subject to the following terms and conditions -

- Entry is open to individuals, businesses and organisations
- Entries may be reproduced by Council in any form for the purpose of promoting the competition.
- Entries are limited to one (1) entry per entrant
- Designs must be for either one (1) entry sign or a set of five (5) entry signs to be constructed and placed at the five major entry roads into the city
- The design/s must be the original work of the entrant
- The winning design will be subject to Development Application approval
- The winner of this competition agrees to sign and enter into a legally binding Deed of Assignment with Broken Hill City Council to assign their designs, the use and development of those designs and any further rights associated with those designs to Council. The form of this agreement is available for viewing at the link below
- Entries must be submitted by 5pm Australian Central Daylight Time (ACDT) Thursday 31 January 2019
- Entries must conform to the design specifications below
- Designs must be submitted in DXF, PDF, JPG or PNG format only
- A panel of five (5) judges will select the winning design and notify the entrant via email by 14 February 2019
- The winning entry will receive Five Thousand dollars (\$5,000) in prize money
- The judges' decision is final

### Design Specifications - all submitted designs must:

- Contain the words "Australia's First Heritage Listed City"
- Contain the words "Land of the Wilyakali people of the Barkindji nation"
- Reflect Broken Hill's culture and heritage
- Be a stencil style design suitable to be cut into COR-TEN steel plates up to nine (9) metres wide

### Deed of Assignment

<https://www.brokenhill.nsw.gov.au/sites/brokenhill/files/public/documents/BHCC%20Gateway%20Signage%20Design%20Deed%20of%20Assignment.pdf>

I have read and understand the terms, conditions, and design specifications of this competition (Select 1 option)

Required

☐ Yes

## Design Submission

Name of Business/Organisation (if applicable)

First Name Required

Last Name Required

Contact Number Required

Email Address Required

Design Files Required



Please attach all files to the end of this form before submitting it.

### Privacy Statement

Council is collecting your personal information in accordance with the Privacy and Personal Information Protection Act 1998.

The purpose for collecting your personal information is to obtain and record details to assess your application.

The intended recipients of the personal information collected include Council officers or other agents contracted by Council. If necessary for reporting purposes, your name will be made publicly available via Council's Business Papers and on Council's website. Your contact details will not be made public on Council's website and will be removed from all applications and reports in Council's Business Papers.

The supply of your personal information may be by law or voluntary. If you cannot provide or do not wish to provide the information sought, Council may not be able to process your application.

You may make an application for access or amendment to information held by Council. Council will consider any such application in accordance with the Act. Enquiries concerning this matter can be directed to the Public Officer by email [council@brokenhill.nsw.gov.au](mailto:council@brokenhill.nsw.gov.au) or addressed to Broken Hill City Council, 240 Blende Street, Broken Hill NSW 2880.

Your information will be collected and stored, in accordance with the State Records Act 1998, by Broken Hill City Council, 240 Blende Street, Broken Hill NSW 2880.

### Declaration



I have read, understand and agree to the competition terms, conditions and design specifications

Name

---

*End of form*

*Don't forget to attach all files before submitting this form*

## DEED OF ASSIGNMENT

This Deed of Assignment is made on \_\_\_\_\_ [insert date] between A \_\_\_\_\_  
[Insert individual name] (called "Assignor") of the one part and B, Broken Hill City Council (called  
"Assignee") of the other part.

### DEFINITIONS

**Intellectual Property  
Rights**

means any and all intellectual and industrial rights anywhere in the world (including present and future intellectual property rights) including (but not limited to) rights in respect of or in connection with confidential information, copyright (including Moral Rights), designs, registered and unregistered trademarks and all other intellectual property and any rights to register those rights, whether created before or after the date of this deed, and in all cases for the duration of those rights and any renewal.

**Moral Rights**

means:

- (a) the right of attribution of authorship;
- (b) the right not to have authorship false attributed;
- (c) the right of integrity of authorship; and
- (d) any other rights of analogous nature which now exist or which may exist in the future, including, without limitation, moral rights under Part IX of the *Copyright Act 1968* (Cth) and any other so-called 'droit moral'.

### RECITALS

- A. The Assignor is the sole author of the design (called "the work") and is owner of all Intellectual Property Rights in the work.
- B. The Assignor warrants that the work and all intellectual property rights in the work does not, and will not, infringe on the Intellectual Property Rights of any third party.
- C. The Assignor agrees to sell to the Assignee the intellectual property rights in the work.

**OPERATIVE PART**

1. In consideration of the sum of Five Thousand Dollars (\$5,000.00) paid by the Assignee to the Assignor (whose receipt is acknowledged) the Assignor as beneficial owner assigns to the Assignee absolutely the property and its interest in the Intellectual Property Rights in the work.

**ENTIRE AGREEMENT & VARIATION**

2. This Deed and the documents referred to or incorporated in it constitute the entire agreement between the parties relating to the subject matter of this Deed and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in relation to the subject matter of this Deed.
3. Each of the parties acknowledges and agrees that it has not entered into this Deed in reliance on any statement or representation of any person (whether a party to this Deed or not) other than as expressly incorporated in this Deed.
4. Without limiting the generality of the foregoing, each of the parties irrevocably and unconditionally waives any right or remedy it may have to claim damages and/or to rescind this Deed by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this Deed or not) and upon which it has relied in entering into this Deed.
5. Each of the parties acknowledges and agrees that the only cause of action available to it under the terms of this Deed and the documents referred to or incorporated in this Deed shall be for breach of contract.
6. Nothing contained in this Deed or in any other document referred to or incorporated in it shall be read or construed as excluding any liability or remedy as a result of fraud.
7. No variation of this Deed shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Deed.

**SEVERABILITY**

8. The invalidity, illegality or unenforceability of any provisions of this Deed shall not affect the continuation in force of the remainder of this Deed.

**GOVERNING LAW & JURISDICTION**

9. This Assignment and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the laws of New South Wales.
10. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of New South Wales over any claim or matter arising under or in connection with this Assignment.

**EXECUTION**

Executed as a Deed and signed by **Assignor**:

**Where company -**

- *(a) By two directors or one director and secretary*

The common seal of *[Name of company and ACN or ABN]* was affixed in accordance with s 127(2) of the *Corporations Act 2001* (Cth) in the presence of:

.....

Director

.....

Director/Secretary

.....

Name of Director (print)

.....

Name of Director/Secretary

- *(b) By a sole director company*

The common seal of *[Name of company and ACN or ABN]* was affixed in accordance with s 127(2) of the *Corporations Act 2001* (Cth) in the presence of:

.....

Sole Director and Secretary

.....

Name of Sole Director and Secretary (print)

**Where individual -**

Signed by the assignor in the presence of witness:

.....

Assignor

.....

Witness

.....

Name of Assignor (print)

.....

Name of Witness (print)

Executed as a Deed and signed by [Assignee]:

Executed by **Broken Hill City Council** ABN 84 873 116 132 in accordance with Section 377 of the  
*Local Government Act 1993* by its duly authorised delegate in the presence of:

.....  
Authorised Delegate

.....  
Witness

.....  
Name of Authorised Delegate (print)

.....  
Name of Witness (print)

## **ANNEXURE A**

### Terms, Conditions & Design Specifications

1. Entry is open to individuals, businesses and organisations.
2. Entries are limited to one (1) entry per entrant.
3. Designs must be for wither one (1) entry sign or a set of five (5) entry signs to be constructed and placed at the five major entry roads into the city.
4. The design/s must be the original work of the entrant.
5. The winning design will be subject to Development Application approval.
6. The first place, second place and third place winners of this competition agree to sign and enter into a legally binding Deed of Assignment with Broken Hill City Council to assign their designs, the use and development of those designs and any further rights associated with those designs to Council. The form of this agreement is available for viewing at the following link **[insert link to Agreement]**.
7. Entries must be submitted by 5 PM Australian Central Daylight Time (ACDT) Thursday 31 January 2019.
8. Entries must conform to the design specifications below.
9. Designs must be submitted in PDF, JPG or PNG format only.
10. A panel of five (5) judges will select the winning design and notify the entrant via email by 14 February 2019.
11. The winning entry will receive Five Thousand dollars (\$5,000) in prize money.
12. The judges' decision is final.

**Design Specifications**

All submitted designs must:

13. Contain the words “Australia’s First Heritage Listed City”.
14. Contain the words “Land of the Wilyakali people of the Barkindji nation”.
15. Reflect Broken Hill’s culture and heritage.
16. Be a stencil style design suitable to be cut into COR-TEN steel plates up to nine (9) metres wide.

[Insert tick box] I have read and understood these Terms, Conditions and Design Specifications and confirm that I have read and understood the Deed of Assignment I will be required to enter should I receive first, second or third place in this competition. I warrant that I have adequately considered the terms of this Deed and have been provided a suitable opportunity to consult independent legal advice regarding my intellectual property rights.