

CITY OF WEST TORRENS



Confidential Report Item 5.1

of the

SPECIAL COUNCIL MEETING

of the

CITY OF WEST TORRENS

will be held in the Council Chambers, Civic Centre
165 Sir Donald Bradman Drive, Hilton

on

THURSDAY, 15 SEPTEMBER 2022
at 6.00pm

Pursuant to Section 83 (5) of the *Local Government Act 1999* the Confidential Item for the Council meeting is delivered to the Council Members upon the basis of my recommendation that the matters to which the Agenda relates be received, considered and discussed by the Council in confidence under Part 3 of the Act.

Angelo Catinari
Chief Executive Officer (Acting)

City of West Torrens Disclaimer

Please note that the contents of this Confidential Council Agenda have yet to be considered by Council and officer recommendations may be altered or changed by the Council in the process of making the formal Council decision.

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Released

5 CONFIDENTIAL

5.1 Adelaide Football Club - Proposed relocation to Thebarton Oval Precinct

Reason for Confidentiality

The Council is satisfied that, pursuant to section 90(3)(b)(i) and (ii) and (d)(i) and (ii) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

- (b)(i) information the disclosure of which - could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
- (b)(ii) would, on balance, be contrary to the public interest; and
- (d)(i) commercial information of a confidential nature (not being a trade secret) the disclosure of which - 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
- (d)(ii) would, on balance, be contrary to the public interest.

RECOMMENDATION

It is recommended to Council that:

1. Pursuant to section 90(2) of the *Local Government Act 1999*, Council orders, that the public, with the exception of the Chief Executive Officer, members of the Executive and Management Teams in attendance at the meeting, meeting secretariat staff, and Council's legal advisors be excluded from attendance at so much of the meeting as is necessary to receive, discuss and consider in confidence, information contained within the confidential report Item 5.1 - 'Adelaide Football Club - Proposed relocation to Thebarton Oval Precinct' together with attachments and any associated documentation submitted by the Chief Executive Officer, specifically on the basis of the provisions of section 90(3)(b)(i) and (ii), and (d)(i) and (ii) because there are ongoing negotiations relating to the proposed lease that may impact both the existing lessee and also a future prospective lessee of (portion of) the premises and would, on balance, be contrary to the public interest.
2. At the completion of the confidential session the meeting be re-opened to the public.

Brief

This report provides Elected Members with an update regarding the current status of discussions and negotiations with the Adelaide Football Club (**AFC**).

RECOMMENDATION

It is recommended to Council that:

1. The report be noted.
2. It is to be noted that Resolution Item 21.2 of the Council at its meeting on 19 July 2022 which approved a maximum payment of \$2.75M to the South Australian National Football League (SANFL) for the early termination of their lease at Thebarton Oval is now void and of no effect because the stipulated cap of \$5.5M, as set by the Resolution, has now been exceeded in negotiations between the AFC and SANFL.
3. The Council replace the above now non-effective resolution of the Council with authority to make a payment to the AFC of up to \$4.25M as an amount to be included in the Development Agreement, a document which is able to be entered into during the caretaker period, pursuant to the exemption granted by the Local Government Minister.

4. The Administration be authorised to undertake a public consultation process in regards to the proposal from the Adelaide Football Club (AFC) for a long term lease over portion of Thebarton Oval and Kings Reserve.
5. Approval be granted to the form and contents of the proposed consultation documentation and process as detailed within this report.
6. A further report be provided to Council following the period of public consultation detailing all responses received to enable the Council to give due consideration to that information prior to making a decision with regard to the proposal from the Adelaide Football Club (AFC) for a long term lease over portion of Thebarton Oval and Kings Reserve.
7. The Mayor and Chief Executive Officer be authorised:
 - a. subject to confirmation that the SANFL will surrender its lease of Thebarton Oval, to sign and seal any documentation to give effect to the surrender of the existing lease held by the SANFL over portion of the Thebarton Oval complex and any other agreement(s) or documentation which is/may be necessary to secure that surrender; and
 - b. to issue notices of resumption to the Torrensville Bowling Club and the Messinian Association of SA Inc in accordance with the provisions of their respective leases and/or to enter into any negotiations with either or both of them in relation to the termination of their respective rights of occupation
8. To the extent that any document contemplated by these resolutions is to be lodged electronically, the Council authorises the Chief Executive Officer to do all things necessary to instruct the Council's legal advisors to give effect to the registration of such documents with Land Services, including by certification, as necessary, of any documents, as required.
9. The finalisation and execution of any arrangements with the SANFL to surrender its lease will not occur until the following conditions precedent are met:
 - a. terms and conditions for the AFC to secure a lease from Council for the Thebarton Oval/Kings Reserve Precinct are agreed between the parties; and
 - b. community consultation on the proposed 42-year lease for the AFC for the Thebarton Oval/Kings Reserve Precinct is undertaken and allows Council to be responsive to any emerging issues raise, that warrant consideration, in its considerations of whether to grant the proposed lease; and
 - c. withdrawal of the Caveat lodged by the SANFL.

FURTHER

1. In accordance with sections 91(7) and 91(9) of the *Local Government Act 1999*, the Council orders that the Item 5.1 - '*Adelaide Football Club - Proposed relocation to Thebarton Oval Precinct*', the Council Resolution 1, 2, 3, 7, 8 and 9 of the Minutes arising, attachments and any associated documentation, having been considered by the Council in confidence under section 90(3)(b)(i) and (ii), and (d)(i) and (ii), be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting, on the basis that because there are ongoing negotiations relating to the proposed lease that may impact both the existing lessee and also a future prospective lessee of (portion of) the premises and would, on balance, be contrary to the public interest.
2. Council delegates the power of review, but not the extension, of this confidentiality order to the Chief Executive Officer on a monthly basis and to revoke the same in whole or in part, in accordance with the provisions of section 91(9)(c) of the *Local Government Act 1999*.

Introduction

Members will be aware that the Adelaide Football Club (**AFC**) held a press conference at Thebarton Oval on the morning of 24 August 2022. This was to advise that, after extensive analysis and the conduct of all necessary due diligence matters, the Club had determined that Thebarton Oval and the surrounding Kings Reserve was their preferred new home.

Members will also be aware that there has been considerable discussion and ongoing negotiations between Mayor Coxon, Council's Chief Executive Officer, the Council Administration and the AFC and, although those negotiations were not finalised, the AFC issued a Press Release on 24 August 2022 announcing Thebarton Oval/Kings Reserve as its preferred new home. It is understood by the Administration that the Premier's office was involved in the timing of AFC making the announcement, it being tied to the State Government's declaration of the review into the Brompton Gas Works EOI (Expression of Interest) process.

It is to be noted by Members, that the Council has not responded publicly to the AFC announcement, having regard to its role as a responsible public authority, mindful of the statutory framework within which it operates, but also in recognition that it has existing leasehold arrangements with the South Australian National Football League (**SANFL**) at Thebarton Oval. In addition, there are also existing arrangements at the Torrensville Bowling Club (**TBC**) (the AFC having identified a small portion of the oval-facing leasehold as its proposed leasehold area), and a licence to the Messinian Association of SA Inc (**Messinian Association**) for the use of Kings Park Reserve.

Discussion

The Administration wishes to take this opportunity to inform Members of the current status of a number of key and relevant matters in relation to this announcement. However, prior to considering the specific matters relating to this report, it is pertinent to recap and reflect as to how the parties came to reach this point.

Ministerial Exemption

The Council is in an 'election period'; for the purposes of section 91A of the *Local Government (Elections) Act 1999* (the **Elections Act**). As such, its decision-making powers are subject to the Elections Act and its own *Elections Period Caretaker Policy* (the **Policy**).

Members will be aware, that on 5 August 2022, Minister Brock, by letter to the Mayor, confirmed his exemptions to the Council to make certain 'designated decisions' pursuant to section 91A(4) of the Elections Act, including the following:

1. *A decision to enter into an agreement for lease or licence in respect of land at Thebarton Oval with the Adelaide Football Club being land that it part of a larger project that will be subject to development.*
2. *A decision to enter into an agreement for lease or licence in respect of land at Kings Reserve that will be subject to compulsory acquisition by the South Australian Government for the Torrens-to-Darlington project but which is, including in part, to be returned to the Council at a later time.*
- ...
5. *A decision to enter into a contract, arrangement or understanding with the Adelaide Football Club in the nature of an associated Development Agreement.*

*(the **Permitted Decisions**).*

Refer to **Attachment 1** for a complete list of the Ministerial exemptions.

The matters to be considered by Members in this Report are in pursuance of the Council progressing commercial negotiations to make any one or more of the Permitted Decisions.

Previous iterations/locations

The AFC acknowledges that it has outgrown its existing site at West Lakes and, given the demolition of Football Park/AAMI Stadium, has no reason to remain at this location.

The AFC had identified a site within the Adelaide parklands, in the vicinity of the North Adelaide Aquatic Centre, as its preferred relocation site. After considerable discussion and significant public and Council (Adelaide City Council) opposition to the development and use of this proposed site, these plans were abandoned by the AFC.

The AFC continued to investigate and seek an alternative location for a new base - of most recent times these investigations focussed on two principal sites being the former SAGASCO site at Chief Street, Bowden and Thebarton Oval. Whilst the Administration can only speculate as to the pros and cons which the AFC identified in regard to these respective sites, one factor that would appear to have been a critical impediment to the initial choice of Thebarton Oval was the uncertainty over the site and impacts which are/were expected to arise, as a result of the Torrens to Darlington (T2D) road corridor project.

SANFL

Members will be aware that the SANFL is the current leaseholder of the Thebarton Oval, having taken an assignment of the lease from the Adelaide Footy League/South Australian Amateur Football League in December 2019. The report to Council of 5 November 2019 (which sought consent to the assignment) also advised Members that:

"...the SANFL and Adelaide Footy League (AdFL) have signed an agreement, the 'Thebarton Oval Redevelopment Agreement', which contemplates a redevelopment of the Thebarton Oval precinct including;

- *The procurement of the design and construction of a new Football facility on the western side of Thebarton Oval comprising change rooms, player and official amenities, office accommodation, gymnasium, learning facilities, function and meeting spaces;*
- *Refurbishment of the existing change rooms in the heritage listed Phil Ridings Stand; and*
- *Provision of new office accommodation for the AdFL and a capital contribution toward a proposed 'Associations or Sports House'.*

Further, the parties have advised that they are also considering:

- *Realigning the Oval to a true North/South orientation*
- *Upgrading the lighting to broadcast quality; and*
- *The development of a second Oval to the north of Thebarton Oval on Kings Reserve"*

As advised in the report provided to Council's City Facilities and Waste Recovery General Committee at its meeting of 23 September 2021, the SANFL had continued progressing the development of a Venue Improvement Plan (VIP) which acknowledged many of the outcomes sought by the Kings Reserve Master Plan. Given the estimated expenditure associated with the VIP (of some \$18M - and \$6M of which was to be a Council contribution to undertake public realm works associated with the proposed VIP), the SANFL requested consideration for the grant of a long-term lease.

The report also advised that the progress of the SANFL VIP was significantly interrupted or delayed by the COVID-19 pandemic and the possibility of the AFC relocating/co-locating to Thebarton Oval. Given the possible relocation/co-location of the AFC to Thebarton, at this meeting the Committee recommended to Council that (**emphasis added**):

1. ***Council provide its consent for the Administration to commence negotiations with the South Australian National Football League (SANFL) for the proposed grant of a long term lease (or licence) to the SANFL for its use of portion of the Thebarton Oval complex, on the proviso that no final commitment can be provided to the SANFL until such time that:***
 - ***The Adelaide Football Club has determined whether it wishes to relocate/collocate to the Thebarton Oval complex;***
 - *Public consultation has occurred in regard to the proposed grant of lease (or licence); and,*
 - *Any submissions which may be received arising out of that public consultation have been considered by the Council.*
2. *A further report be provided to the Committee / Council detailing the outcome of the negotiation process, prior to any necessary public consultation regarding the proposed grant of lease (or licence) occurring.*
3. *Council provides in principle consent, in its capacity as landowner/landlord of the Thebarton Oval complex for the works proposed in Attachment 2 of the Agenda report, only within the current leased area, subject to any necessary development consents being sought and obtained.*

At its meeting of 5 October 2021, the Council resolved in accordance with the Committee's recommendations.

Subsequent to the meeting of 23 September 2021 the SANFL continued to progress its VIP. A further report was presented to the Council in confidence at its meeting of 17 May 2022 which advised amongst other things (in regard to the SANFL) that:

In accordance with the recommendations of the Committee and the subsequent resolution of Council following the (respective) meetings of 28 September and 6 October 2021, the Administration met with representatives from the SANFL to commence negotiations for a new long term lease for the SANFL's use of portion of the Thebarton Oval complex in mid-October 2021 - the proposed grant of such long term lease being predicated on the delivery of all aspects of the SANFL Venue Improvement Plan (which also delivered the Council's objectives and outcomes identified within, and sought from, the Kings Reserve Masterplan).

And

... that there has been recent discussion and correspondence between the parties relating to the SANFL Venue improvement Plan.

The Administration has advised the SANFL that, given the ongoing uncertainties associated with the T2D project and the potential implications upon the Kings Reserve land, that it believes the Council would be unwilling or unlikely to provide any contribution toward the Kings Reserve public realm components of the project, including spaces that interface with the Oval "proper" proposed works at this time.

The SANFL has indicated that, if there were to be no Council funding provided toward the project, and if it decided to remain at Thebarton Oval, it would limit its works to the construction of a new facility (building) within the current oval alignment and upgraded floodlighting.

On the basis of this information the Council resolved (in regard to the SANFL aspects of the report) as follows:

The SANFL be advised that, at this point in time and based on the SANFL's current proposal considered against the overall Council approved Masterplan for Thebarton/Kings Reserve Complex, the Council does not intend to grant any further lease over the premises to the SANFL upon expiry of the current lease term.

The SANFL be further advised that the Council acknowledges that the lack of any further (long term) lease may likely result in the SANFL seeking to amend or abandon its Venue Improvement Plan for the premises. However, the SANFL is reminded that the obligations the SANFL has with regard to the requirement to undertake capital improvements to the premises, in accordance with the relevant provisions of the lease, are at this time not waived.

The Administration be authorised to enter into negotiations with the SANFL to determine whether the SANFL may be receptive to an early termination or sooner determination of their existing lease agreement, and the terms and conditions which the SANFL may seek for such sooner determination.

The SANFL's current lease term expires on 28 February 2026 but there is a further/extended term of 5 years available to the SANFL (should it not be in breach of, and should it seek the extended term in accordance with the relevant provisions within, the lease) that would expire on 28 February 2031.

Members will be aware that the SANFL and AFC have been in lengthy and protracted negotiations, initially regarding the possible co-location of the AFC to the Thebarton Oval site and, subsequent to this, the AFC's decision to seek to be the single/principal lessee (/licensee) of the site. This decision of the AFC (i.e. to be the sole/principal lessee), prior to the expiry of the SANFL lease, requires the SANFL to agree to either surrender its lease or to assign it to the AFC (both of which would require Council consent).

A Notice of Intention issued by DIT, which impacted portion of the Certificates of Title currently held under lease by the SANFL, was received by Council and resulted in Council issuing an early/informal notice of resumption on the SANFL (and also to the other occupants, TBC and MA). The Administration understands that, following queries made to DIT by the SANFL, the notice of intention will be amended in some form. No amended notice of intention has been received to date however DIT has written jointly to the Council and AFC supporting the negotiations between the Council and AFC in connection with the redevelopment of the land and proposed lease.

It would appear that the issue of the informal resumption notice led the SANFL to lodge a caveat on the relevant (leasehold land) title(s). The presence and effect of this means that in order to "deal" with the land, the Council will need to either obtain the SANFL's consent or take steps to remove/lift the caveat. To this end, any decision to surrender the SANFL lease must be accompanied by the withdrawal of its caveat.

Early termination of SANFL lease

Council, at its meeting on 19 July 2022, considered its commitment to contribute to the compensation payable to SANFL for early termination of the lease. As a result, Council resolved as follows Item 21.2:

That Council provides its commitment to contribute a maximum of \$2.75 million as its share of the financial compensation required to be paid to the South Australian National Football League (SANFL) for their early termination of their lease of Thebarton Oval subject to the Adelaide Football Club (AFC) agreeing to match the Council contribution and the SANFL agreeing that the financial compensation paid to them is not more than \$5.5M.

Further, the finalisation and execution of the compensation payment arrangements to the SANFL will not occur until the following conditions precedent are met:

- 1. Terms and conditions for the Adelaide Football Club to secure a lease from Council for the Thebarton Oval/Kings Reserve Precinct are agreed between the parties; and*
- 2. Community consultation on the proposed 42 year lease for the Adelaide Football Club for the Thebarton Oval/Kings Reserve Precinct is carried out and allows Council to be responsive to any emerging issues raised, that warrant consideration, for the granting of the lease.*

Since that decision on 19 July 2022, negotiations have continued between SANFL and AFC to reach agreement on the SANFL lease surrender terms. This has resulted in the current compensation figure to be agreed between those parties being the amount of up to \$8.5M. Accordingly, the Council's existing resolution is now void and of no effect because the cap that it set and included in its Resolution Item 21.2 has been significantly exceeded.

In the circumstances, any payment by the Council to AFC will be limited to the Council's contribution to the redevelopment of Thebarton Oval and Kings Park, as proposed by AFC and to be set out in a Development Agreement between the parties. The commercial terms of which are to be finalised and returned to the Council for approval (noting that any decision to enter into a Development Agreement in relation to the matters discussed in this report is a Permitted Decision and can, therefore, be made during the caretaker period).

On the 11 September 2022 the CEO of the SANFL, Mr Darren Chandler notified Mr Terry Buss Council's CEO in writing, of SANFL's contractual arrangement with AFC regarding AFC's intention to relocate to Thebarton Oval, this letter (together with accompanying email) provided its express support for the Council to commence public consultation in relation to the same.

A copy of the letter received from the SANFL (together with accompanying email) is **Attachment 2**.

In the previous report to Council on 19 July 2022, a comparison was undertaken between the SANFL lease and the proposed AFL lease arrangement for the site, compared using 'like for like' terms around a lease term of 42 years, rent, rates etc.

Based on those numbers the total income (net of rebates) to CWT for a SANFL investment in the Precinct is significantly lower than that of an AFC investment.

Expressed another way, taking Council's existing capital works budget for the precinct of \$9.46M plus \$4.25M in compensation to SANFL, Council investment in the precinct is \$13.71M (based on 2022 dollars). In return, Council will receive a total of circa \$52M via a combination of AFC capital investment in public infrastructure and rates/rent payable over the 42 year lease period (based on 2022 dollars).

Council has sufficient funding available in its 2022/23 budget (\$4.71M - Precinct Masterplan) to cover the cost of this commitment with a further \$4.76M in forward estimates for the Precinct Masterplan. Prior to announcement of the Torrens to Darlington (T2D) Motorway upgrade project, Council was preparing to sell the remnant Brickworks Market land with an expected return of circa \$4.0M however, this was put on hold because of the uncertainty of the T2D project.

The remnant Brickworks Market land including the heritage kiln and chimney has been subject to a Notice of Intention to acquire the land by the State Government (Department of Transport) for the T2D project.

Any funds realised by the disposal of the remnant Brickworks Market land either via private treaty of compulsory acquisition by the State Government can be dedicated back to funding for the Precinct Masterplan if \$4.25M is 'borrowed' from this funding pool as CWT's contribution to secure surrender of the SANFL lease.

Economic Benefit Input

Whilst yet to be completed for the Thebarton Precinct and not directly comparable, AFC as part of previous bids for North Adelaide and Brompton undertook economic benefit studies on its proposed development which resulted in the following outcomes.

North Adelaide Economic Benefit Key Highlights

- The project would have supported an estimated 662 jobs over a 20 year period between FY2021 and FY2040.
- Through the new sports and community use, and a resulting high employment generation, it is estimated that the Precinct will generate \$2.2bn in gross output to the economy of Greater Adelaide over the same time period.
- Economic benefits from the project are annually projected to be a significant \$934m in Gross Regional Product (GRP) to Greater Adelaide over the same period.

Brompton Economic Benefit Key Highlights

- The project would have supported an estimated 990 jobs over a 20 year period between FY2023 and FY2042.
- Through the new sports, entertainment and community use, and a resulting high employment generation, it is estimated that the Precinct will generate \$3.1bn in gross output to the economy of Greater Adelaide over the same time period.
- Economic benefits from the project are annually projected to be a significant \$1.3b in Gross Regional Product (GRP) to Greater Adelaide over the same period.

The Torrens to Darlington (T2D) Project

As part of its due diligence processes, the AFC, jointly with, and separately to, Council's Administration, sought and entered into discussions with representatives from the Department of Infrastructure and Transport (DIT) in order to gain a clear understanding and appreciation of the area that was required by DIT for the duration of the T2D works, and to also determine whether any variation of that temporary works area could be negotiated. The defined initial/existing DIT works area exercised such significant impact upon the AFC plan that it essentially made that plan untenable for the duration of the T2D works.

As a result of these discussions the AFC, in collaboration with Council, was able to negotiate an outcome that provided the necessary/required/critical certainty to it (the AFC), by clearly identifying and delineating a revised DIT works site boundary outside of the AFC Masterplan footprint. The definition and delineation of the DIT temporary works area has provided the confidence for the AFC to confirm its desire to relocate to the Thebarton Oval complex.

This outcome has also been beneficial for Council as the Administration is now able to report that it (and the AFC) has received formal advice from DIT that the majority of Kings Reserve is/will now be excluded from any temporary occupation by DIT for the duration of the T2D project (and permanent acquisition during, and upon completion, of the works) (**Attachment 3**).

By way of update the Council has also recently received advice on the timing of the acquisition process from DIT (**Attachment 4**). As is indicated within that advice, the formal acquisition process relating to the impacted titles within the Thebarton Oval complex (CT 6221/506 and CT 5436/221 - that is, 58 South Road and 4 Ashley Street (both of) Torrensville) is expected to commence in August 2023.

Principal/key details and desired outcomes of the AFC Masterplan / project

Members will be aware of the project deliverables having recently received a briefing on 30 August 2022 from the AFC and its consultants.

Nevertheless, the key deliverable elements of the proposed project are presented hereunder as follows:

- Realignment and reconstruction of the existing Thebarton Oval playing space to match the dimensions and orientation of Adelaide Oval;
- Construction of a new football oval within Kings Reserve to match the dimensions of the Melbourne Cricket Ground;
- The ovals will be maintained by, and at the cost of, the AFC and will be available for public use at times when not required by the AFC (essentially outside of training times and match days);
- An indoor artificial grassed training field;
- AFL and AFLW facilities capable of accommodating the AFC's future expansion to full-time athletes and coaches;
- Aquatic facilities including hydrotherapy resources, as well as leading rehabilitation and medical amenities;
- Construction of a new Clubroom and Corporate headquarters which is proposed to include allied health facilities;
- A new and improved Council community hub to replace the existing (TCC) building, which will be required to be demolished as part of the planned Torrens to Darlington (T2D) works;
- Additional community facilities including a public plaza area, new roadway and associated parking, skateboard park, playground and soccer pitch-sized turf area.

The estimated total cost of these works is in the order of \$85M. Of this total cost, the AFC and its consultants have estimated that approximately \$45M can be attributed to works which directly benefit the public and/or will lie within the public realm and be publicly accessible.

It is also relevant to note that a number of the projects proposed outcomes align with/acknowledge the key deliverables sought within/from the Kings Reserve Master Plan e.g.

- The removal of barriers and activation of spaces;
- Preserving and enhancing pedestrian and cycling accessibility;
- Providing a unified community precinct approach;
- Enabling community-based facilities;
- Improving of existing sporting infrastructure;
- Allowing for passive recreation.

CWT works/contribution to works

A funding deed (or similar agreement) is proposed to be executed by the parties which will acknowledge Council's commitment to previously nominated and approved Kings Reserve Masterplan works e.g. skate-park and other reserve upgrade works and thus Council's contribution to various public realm elements associated with the project. Within its current budget and forward estimates, Council has earmarked \$9.46M for this purpose.

There has also been some discussion regarding possible soil contamination issues, and which party should bear any risks associated with the presence of contaminated soil. Whilst this matter remains subject to negotiation and further discussion, Council's representatives have indicated and maintained that CWT will not accept any undue risk in dealing with soil contamination matters.

Whilst negotiations between the parties are not finalised, the Administration has notified the Council position to AFC as follows:

- the Council will not commit to anything more than the amount it has agreed to contribute to the Redevelopment, namely \$9.46m
- AFC will be responsible for managing soil contamination of any areas on which it will develop its facilities for exclusive AFC use; and
- subject to further information and investigation by AFC, the Administration will consider the AFC position that management of contamination in public realm areas are a joint liability.

Impacts to other Existing Lessees/Licensees resulting from the AFC Masterplan and the T2D works

There is an existing (ground) lease (held by the Torrensville Bowling Club (**TBC**)) and an existing licence (held by the Messinian Association - on behalf of the MA Hawks Soccer Club (**Messinian Association**)) that will be impacted if the proposed grant of lease to the AFC (and the AFC Masterplan is implemented) proceeds.

The existing 21-year lease to the TBC expires on 28 February 2039 and the existing 5 year licence to the Messinian Association expires on 30 November 2023.

Whilst the AFC project 'footprint' does not extend significantly into the TBC lease area, *any* incursion into the TBC lease area will impact the TBC's operability given the presence of (and requirement to remove) the roof structure that is erected above (at least that portion of) the rear synthetic green.

Irrespective of the above, the TBC will be very significantly impacted by the T2D project. The most recent plan indicating the extent of both the necessary permanent acquisition for T2D infrastructure and the temporary acquisition for the DIT work zone, identifies that a large amount of the TBC premises will be need to be acquired. The acquisition of such a large portion of the site and the associated impacts to the TBC shelter infrastructure and synthetic turf beneath the shelter, renders the continued occupation and operation of the TBC on the remainder of the premises untenable. The TBC land is the subject of a Notice of Intent to Compulsorily Acquire issued by DIT (with the Administration issuing an early and "informal" notice of resumption earlier this year, issued by Council on the basis of and in accordance with the relevant clauses within the lease dealing with, the required resumption of the land).

Members may/will also be aware that, on the basis of the significant impairment that will result to the TBC site from the T2D project works, the Minister for Infrastructure and Transport has committed to secure a site to which the TBC can relocate and to provide new bowling facilities for the Club. (As an aside, the Administration notes that this offer resulted in the TBC abstaining from further negotiations, at this time, in regard to a possible co-location to the Lockleys Bowling Club site.)

Although it is unlikely that the AFC project will commence prior to expiry of the current Messinian Association licence, any further ("run on") licence which may be (have been) contemplated for the Messinian Association on Kings Reserve would also be substantially impacted by the proposed grant of lease to the AFC and AFC Masterplan, as the Masterplan envisages that an AFL oval will be constructed on a significant portion of the land that is currently occupied by the MA Hawks' soccer pitch. Nevertheless, future stages of the development of the precinct masterplan post the T2D works and on the understanding that part of the land acquired will revert to the Council/Community, it is anticipated that the delivery of a new soccer ground, most likely on the eastern side of the complex, subsequent to completion of the T2D project, could be made available. (In such circumstances the length of "disruption" for the MA Hawks at the Kings Reserve site would be of similar duration to that envisaged as a result of the T2D works). Members will be aware that the Administration has taken some steps to enable co-location of the MA Hawks to an alternate facility for the duration of the T2D works.

Insofar as the T2D project is concerned and based on the existing DIT plan, which identifies the land required for permanent acquisition (to accommodate T2D infrastructure) and the DIT work zone for the duration of the project, it would appear that the Messinian Association (MA Hawks) licence area will be significantly impacted for the duration of the works.

At present the lease/licence areas specified within both of these agreements are the subject of Notices of Intention issued by the Minister for Infrastructure and Transport to enable the T2D works to proceed. Both the TBC and Messinian Association have also been issued with early/informal notices of resumption by the Council.

The attached letters (and accompanying plans) from DIT (**Attachment 3 and 4**) confirms/reaffirms the significant impact upon the leased/licensed premises occupied by both the Messinian Association and the TBC. The Administration intends writing to each of the TBC and Messinian Association prior to the commencement of the proposed public consultation, to provide an update on the Council's proposed lease with the AFC and the impact on their respective occupancy.

Having considered the above necessary and pertinent background information it is now appropriate to turn to the specific matters which are the subject of this report.

Proposed Lease Terms and Conditions

The resolution of Council at its (confidential) meeting of 17 May 2022 provided the authority for the Administration to;

"...enter into negotiations with the Adelaide Football Club (AFC) to progress discussions for the grant of a lease or licence to the AFC upon expiry, or sooner determination, of the current lease held by the SANFL".

The Administration, AFC and both parties' legal representatives have been involved in negotiations over the past months and a headline Terms Sheet has now, largely, been agreed between the parties (subject to AFC Board and Council approval). These details are now provided for Members' information and endorsement (noting that whilst there are some elements that require further discussion/negotiation, such matters are not critical, or essential, to the overall agreed position).

The key commercial terms of the proposed lease, as indicated on the attached Key Commercial Lease Terms (and accompanied by the draft lease covenants (**Attachment 5**)), are:

Lease Term

Given the very significant expenditure proposed by the AFC (of some \$85M), and given that the land in question is classified as community land, the AFC seeks the maximum lease term (of 42 years) which is available under the Local Government Act, upon completion of the project works (estimated Q1 2025).

However, in the event that the maximum lease term permitted under the Local Government Act were to be increased during the period of lease, the AFC seeks that the lease then be varied to recognise such increase. During the period of the project works it is envisaged that a construction licence or similar agreement will operate (however for a term that is less than 5 years and, hence, not requiring public consultation).

The AFC also requests that an additional 42-year term, beyond the initial 42-year term, be granted in order for it to recoup/write off its investment in the facility. To this end, it seeks the inclusion of a clause that will trigger negotiations for this additional term, no earlier than 10 years and no later than 8 years, prior to the expiry of the initial term. (The Council will not be obliged to offer any renewal or option in circumstances where the AFC is in breach of the lease.)

In the event that the Council of the day was to determine not to grant the additional term sought, the AFC would seek to rely on the provisions of an alternate clause, which it wishes to be included within the lease agreement, that would require Council to "recompense" or "compensate" the AFC, essentially for the "unused" market value of its investment.

The Administration has sought clarification regarding the proposed valuation mechanism which is envisaged to be used, and confirmation of the assets which are proposed to be included and excluded as part of any potential buy-back. Accordingly, the final form and detail of this clause is not settled. Nevertheless, there has been agreement that, although the AFC project envisages upgrade of the heritage grandstand, this would not be included in the list of "buy-back" assets.

Should the additional lease term be granted by the Council of the day, the buy-back clause would not apply to any further term. In all other aspects it is envisaged that any renewal provided to the AFC would be subject to the same or similar terms and conditions as the initial lease.

Rental, rates and outgoings

At the commencement (for the initial 21 years) of the lease period the rental is proposed to be a rates inclusive rental which acknowledges and recognises the substantial contribution (of some \$45M) provided by the AFC on public realm facilities/assets which are to be delivered by the AFC project, and also the expenditure incurred by the AFC in solely maintaining the ovals. A separate service level agreement or similar instrument is envisaged to apply to the "non-turf" public realm space.

In addition, the AFC will be responsible for all user costs/outgoings applicable to its use of the facilities.

A market-based approach will be used to determine the rental after the initial concessionary (phase in) period.

Lease Area

The AFC has defined its required/desired lease area (**Attachment 6**). Members will note that this area is essentially all land within the Thebarton Oval/Kings Reserve complex that is not (anticipated to be) impacted by the T2D project (i.e. the land excludes the DIT works area).

Times of Use

The oval and plaza spaces will be available for public use at times when not required by the AFC. It is envisaged that the AFC's use of the turf spaces will, essentially, comprise training or other approved uses (e.g. necessary oval upkeep and maintenance and match day usage) and that the publicly accessible spaces will have minimum average monthly time allocations agreed between the parties.

Signage and naming rights

The AFC seeks rights to name the facility. The Administration does not have any objections to this request, on the proviso that the name is not gratuitous and does not offend "normal" community expectations or standards. It is noted that there are/were existing naming rights provided to both the South Australian Amateur Football League/Adelaide Footy League (the previous tenant) and the current sitting tenant (SANFL) of the Thebarton Oval. The Administration further notes that Naming Rights have also been granted to the West Adelaide Football Club in regard to Richmond Oval.

The AFC has indicated that it would locate a number of sponsor signs within the complex and would/may seek to erect signage which is visible from the exterior of the premises. The Administration has advised the AFC that there are no issues relating to inward facing signage (and acknowledges that this is the current state of play at the Oval).

However, the Administration suggests that in circumstances where the signage would be visible from the exterior of the premises, a mechanism/clause be included within the lease agreement which would require the AFC to divulge the terms of any commercial arrangement relating to such externally visible signage. This will allow Council to receive a (financial) benefit via an increase in rates and/or additional rental. In making such a suggestion the intent is that the erection/placement of any exterior facing signage would continue to remain subject to Council's consent (in its capacity of landlord) and that the presence of the clause would not override any requirement for the AFC to seek and gain any necessary planning and/or other approval(s) or consents.

Assignment of the Lease

The Administration and its solicitors have indicated and the AFC and its solicitors have agreed, that the matters relating to rental and rates etc are confidential "personal" (i.e. applicable only) to the AFC. Thus, in circumstances where the AFC may seek to assign its interest in the lease, such concessional treatment in relation to these matters would not be applicable to an incoming lessee. (Any assignment of the lease will require Council consent.)

Public consultation will need to occur in regard to the proposed grant of lease as the land is classified as community land and the desired lease term is in excess of 5 years. Advice obtained from Council's solicitors indicates that the consultation may proceed on the basis of the agreed Key Commercial Lease Terms document (i.e. the completed draft lease agreement is not required to be finalised prior to the commencement of the public consultation period.)

Nevertheless, in circumstances where interested parties seek to see a copy of the "full" draft lease terms and conditions a copy of the proposed (unpopulated) draft lease template will be provided or made available to them.

Consultation Package

A consultation/communications strategy/package has been developed by URPS, in association with the Council and AFC, and is attached for the benefit and information of Members **(Attachment 7 and 8)**.

Members are advised that, in line with previous consultation exercises, a multi-faceted consultation approach is envisaged, that includes:

- The placement of an advertisement regarding the proposed grant of lease within *The Advertiser and Sunday Mail*;
- Availability of information regarding the redevelopment and lease proposal on Council's website (including a (an anticipated) Frequently Asked Questions flyer), at Council's Civic Centre and the Hamra library;
- The opportunity for residents to complete an online survey on Council's "Your Say" webpage
- A letterbox drop to residential and business properties within an area bounded by Port Rd, the River Torrens, Holbrooks Rd and Henley Beach Rd.
- Signage on/around the Thebarton Oval/Kings Reserve Precinct advising of the proposal and consultation details.
- A single contact point to provide answers or clarification to any queries that are raised during the consultation period.

Also, due to scale and community interest of this particular proposal, a review of the proposed public consultation documentation was undertaken by Council's solicitors to ensure that:

1. the proposed Public Consultation Documents, prepared jointly by the Council and URPS (the **PC Documents**) meet the public consultation requirements of the *Local Government Act 1999* (the **LG Act**), as further detailed in the *Council Policy: Public Consultation* (the **Policy**); and
2. the PC Documents are, generally, acceptable and sufficiently detailed, to allow for informed public consultation to occur.

The review findings and confirmation **Attachment 9** provides the necessary comfort to the Council to proceed with the public consultation.

Should the Council provide its endorsement of the consultation strategy and materials it is envisaged that the formal consultation period will commence on Friday 16 September 2022 and conclude on Friday 14 October 2022 i.e. a period of 28 days - which is greater than the standard consultation requirement of 21 days (as stipulated within the Council's consultation policy).

Further, and as has generally occurred with previous public consultation processes:

- a report will be provided to the Council following the public consultation period detailing all responses and submissions that are received during it, to allow the Council to provide full and due consideration to any, and all issues, that may be raised relating to the proposal; and
- any person or person(s) seeking to be personally heard by the Council should be provided with such opportunity (subject to the consent of the Mayor/Presiding Member).

Future consultation

The AFC has requested, and the Administration has agreed, that consultation regarding the AFC Masterplan not proceed until the consultation relating to the lease has occurred. This approach allows the Council to seek and gain a clear understanding of the level of community support for the proposal prior to the AFC committing further funding on the development of the AFC Masterplan.

It is envisaged that, should the lease consultation be favourable, the AFC would continue to refine its Masterplan and at such point as deemed appropriate by the parties, the same or similar consultation process occur for that as this process.

This (current) round of consultation will confirm this intent and process.

Members should note that there remain some matters that need to be confirmed to ensure that any comment or concerns of the Council and/or the public regarding the Masterplan are accorded due weight prior to the Masterplan's implementation.

Other related matters - Prudential Report, Community Land Management Plan and amalgamation of Titles

Given the expected quantum of expenditure related to this project a prudential report will need to be undertaken by the Council.

Should Council determine to proceed with the grant of a long-term lease to the AFC, following the public consultation process, the Administration also proposes to recommend in a future report that:

- The Community Land Management Plan be updated to acknowledge the project and the long-term lease to the AFC; and
- The existing 7 (seven) titles within the Thebarton Oval/Kings Reserve complex be amalgamated/consolidated into two new titles - one that will cover the proposed lease/licence area for the AFC and the other that will apply to the balance of the land within the complex post the T2D works.

Climate Impact Considerations

(Assessment of likely positive or negative implications of this decision will assist Council and the West Torrens Community to build resilience and adapt to the challenges created by a changing climate.)

Whilst at this time (and until such time as there is a clearer understanding of the scope and extent of all proposed works) it is difficult to fully determine and understand the nature of any climate change impacts arising from the project, given the current understanding of the project, the Administration is comfortable in making the following general comments:

- There is unlikely to be any significant reduction in the amount of turf/green space;
- There is likely to be a benefit which will accrue as a result of the substitution of halogen floodlights with LED on the main ("Adelaide" configuration) oval;
- There will be additional floodlighting operating on the secondary ("MCG" configuration) oval which would reduce the benefit accruing from the conversion above (although the anticipated net effect from both ovals is still likely to be positive when compared with the current scenario - this will nevertheless be dependent on the extent of "floodlight" use); and
- The main clubroom building will essentially be constructed on existing hardstand (i.e. little/no greenspace will be lost).

Conclusion

The Administration and representatives from the Adelaide Football Club have met on a number of occasions to progress discussions and negotiations regarding the terms and conditions of a proposed long-term lease to the AFC over Thebarton Oval and Kings Reserve. This is following Council's decision at its meeting of 17 May 2022.

Given the status of negotiations and the fact that the parties have now reached an agreement on a number of key/essential matters, the Administration has formed the view that consultation on the proposed grant of lease can occur. Given the land is community land and the length of the proposed lease the Administration seeks Council's authority to undertake the necessary public consultation process. The Administration further notes that a formal decision on the proposed grant of lease cannot occur until the Council has given due consideration to all comments and submissions which may be received during the public consultation process.

The surrender of the existing lease over the Thebarton Oval currently held by the South Australian National Football League is a necessary precursor to the consideration of the grant of any proposed lease to the Adelaide Football Club over (portion of) the Thebarton Oval complex and Kings Reserve. Subject to the outcome of public consultation, the Administration will continue negotiations with AFC and SANFL to align the surrender of the lease with a long-term commitment with AFC.

Attachments

1. **Letter to Minister Brock from Mayor Coxon and Response from Minister Brock re Designated Decisions - Application for Exemptions**
2. **SANFL Letter 11 September 2022 (together with accompanying email)**
3. **Letter from DIT to CWT and AFC regarding T2D interface with Thebarton Oval**
4. **Letter from DIT to CWT regarding acquisition process for Council properties**
5. **Key Commercial Lease Terms and Draft Lease Covenants**
6. **AFC Lease Area Plan**
7. **Thebarton Oval Lease Agreement Engagement Plan**
8. **CWT YourSay Thebarton Oval Precinct Proposed Lease Information**
9. **Thebarton Oval Precinct - Public Consultation Documentation Confirmation**

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Hon Geoff Brock MP

22MINLG-0239

Mr Michael S Coxon
Mayor
City of West Torrens
165 Sir Donald Bradman Drive
HILTON SA 5033
mayorcoxon@wtcc.sa.gov.au

Dear Mayor Coxon *MICHAEL*

Thank you for your correspondence dated 13 July 2022 regarding an application from the City of West Torrens (the Council) for exemption from the application of section 91A of the *Local Government (Elections) Act 1999* (the Elections Act).

The exemption is requested in order for a number of designated decisions to be made by the Council in relation to its current negotiations with the Adelaide Football Club concerning an integrated sports precinct involving the Thebarton Oval/Kings Reserve (the Project).

I note the Council's advice that these decisions are designated decisions under the Elections Act. I also note the Council's assessment of the extraordinary circumstances related to these decisions.

I have carefully examined the information provided by the Council, and note both the time-sensitive nature of the Project and the potential impact to the Council and its community if the Project does not proceed.

I am satisfied that extraordinary circumstances exist in relation to these decisions. Accordingly, I grant an exemption to the Council pursuant to section 91A(4) of the Elections Act in order for the Council to make each of the following five decisions:

1. A decision to enter into an agreement for lease or licence in respect of land at Thebarton Oval with the Adelaide Football Club being land that is part of a larger project that will be subject to development.
2. A decision to enter into an agreement for lease or licence in respect of land at Kings Reserve that will be subject to compulsory acquisition by the South Australian Government for the Torrens-to-Darlington project but which is, including in part, to be returned to the Council at a later time.
3. A decision to enter into a licence agreement which provides for the Adelaide Football Club to enter into the Thebarton Oval land for access and construction purposes.

Minister for Local Government | Minister for Regional Roads | Minister for Veterans Affairs

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Tel +61 8 7133 1200 | Email minister.brock@sa.gov.au



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4. A decision to enter into a binding agreement or understanding between the Council and the South Australian Government in relation to the return of the balance of land at Kings Reserve to the Council at completion of the Torrens-to-Darlington project.
5. A decision to enter into a contract, arrangement or understanding with the Adelaide Football Club in the nature of an associated Development Agreement.

I trust that these exemptions will enable the Council to continue with its negotiations and advancement of the Project for the benefit of the Council and its community.

Yours sincerely



Hon Geoff Brock MP
MINISTER FOR LOCAL GOVERNMENT

5/8/2022

cc Ms Branka Dzalto, Executive Assistant, Office of the Mayor and CEO, City of West Torrens

From the Office of the Mayor



13 July 2022

The Hon. Geoff Brock MP
Minister for Local Government, Regional Roads and Veterans Affairs
GPO Box 1533
ADELAIDE SA 5001

via email: Minister.Brock@sa.gov.au

Dear Minister

DESIGNATED DECISIONS - APPLICATIONS FOR EXEMPTIONS

I write in my capacity as the Mayor of the City of West Torrens (the **Council**).

In particular, regarding circumstances that the Council considers amount to 'extraordinary circumstances' for the purposes of section 91A(3) of the *Local Government (Elections) Act 1999* (the **Act**). That is, the Council will be required to make critical decisions during the 'election period' of the type classified as 'designated decision(s)', in respect of the proposal by the Adelaide Football Club to undertake a significant redevelopment of the Torrens Sports Precinct.

Accordingly, the Council has resolved (copy minute **attached**) to make the applications set out below under section 91A(3) of the Act for Ministerial exemption from the application of section 91A of the Act.

Statutory framework

The election period (commonly referred to as the 'caretaker period') clearly exists for only a defined period of time in the lead up to the local government periodic elections, in this particular instance, at a critical time for the Council. Relevantly, section 91A of the Act, together with regulation 12 of the *Local Government (Elections) Regulations 2010* (the **Regulations**), set out the statutory provisions for this caretaker period and, in particular, the prohibition on the Council making a 'designated decision', as defined by section 91A(8), unless it has the benefit of an exemption under the Regulations. For reference, the 'caretaker period' for the 2022 Council elections commences on 6 September 2022 (close of nominations) and concludes 12 November 2022 (provisional declaration).

Of particular relevance, section 91A(8)(c) of the Act prohibits the Council from entering 'into a contract, arrangement or understanding (other than a prescribed contract) the total value of which exceeds whichever is the greater of \$100 000 or 1% of the council's revenue from rates in the preceding financial year'.

The Council's revenue from rates for the financial year 2021-22 was \$61,632,079 (rates + rate equivalents), 1% of which is \$616,321.

Accordingly, the Council is prohibited from making any decision to enter into a contract, arrangement or understanding (that is not a 'prescribed contract') which exceeds \$616,321 (**Financial Limit**). This statutory obligation curtails certain Council decision-making, irrespective of its policy position.

For completeness, the exemptions for any 'prescribed contract' are not relevant to the Council in the present circumstances.

Torrens Sports Precinct

It is public information that the Adelaide Football Club (**AFC**) has expressed an interest in the Thebarton Oval/Kings Reserve (the **Precinct**) as its preferred site for its new state-of-the-art headquarters and sporting/community facilities. The AFC has developed a masterplan document which includes an integrated sports precinct, anchored by Australian Rules football and, importantly, a facility that will be accessible for community use and enjoyment (the **Project**). Importantly, time is of the essence for the Project.

The Council continues to advance negotiations with the AFC in relation to leasing arrangements and the contractual/funding obligations for the Project. At the time of writing, the parties are negotiating the 'material terms' which are, understandably, subject to certain conditions precedent arising in respect of the Council's prudential and statutory obligations, as well as the AFC's commercial requirements.

There are, notwithstanding, a number of decisions that the Council will be required for the on-going negotiations, some of which will exceed the Financial Limit. To this end, these are the decisions which will be prohibited during the caretaker period and, hence, in respect of which the Council seeks exemptions from you.

Importantly, if the Council is prevented from continuing to progress the Project during the caretaker period, there is the very real risk that the AFC may 'walk away' from the negotiations, to the detriment of the Council and its community. This is an extremely time-sensitive Project.

It is also relevant to note that there appears to be a strong public interest in securing the AFC as a Council tenant, given the widespread and clear benefits, as currently understood, that will be generated for the community. That is, the significant commercial investment to improve facilities/amenities for the Precinct and the accessibility for members of the community, reinforce the unique opportunity for the Council to ensure that the AFC is secured as a long-term tenant for the Precinct.

Status of negotiations

The Council has been diligently working towards ensuring that all of the relevant decisions required to be made with regards to the Project, are in place, before the commencement of the caretaker period which, as previously stated, is 6 September 2022.

However, as a result of legislative and commercial and timing issues, the Council is not at the position to make the Project-critical decisions identified below. Accordingly, this correspondence is the Council's requests for you to grant the necessary exemptions for it to make those decisions during the caretaker period, for the following reasons:

1. The parties are continuing negotiations in a commercial environment which the AFC can accommodate in a reasonable timeframe but not one that results in relevant decisions not being made until after the caretaker period;

2. Whilst the Council will accommodate processes and decisions that are not within the *designated decisions* definitions, by reference to its Caretaker Policy and the opportunities that are available under the Policy in this regard, there are other decisions (as below) that are *designated decisions* which can only be made with the benefit of exemptions granted by you. For example, the Council will engage in statutory community consultation around the leasing proposals for community land that will be for more than the minimum 21 days and, in doing so, will make full and detailed disclosure to its community about the proposal, the Council contributions to it and the community benefits to be realised from it. However, this means that, in all probability, the Council will not be in a position to decide to enter into any formal documentation (agreements for lease, development agreement) following the conclusion of the consultation and the consideration of all relevant submissions, until after the commencement of the caretaker period – and would not want to, or be seen to, be making hasty decisions that might be considered to be for the primary purpose of doing so before 6 September;
3. The grant of the exemptions will give each of the Council and the AFC the necessary certainty to progress the Project within the necessary timelines which, in turn, will maintain the Project and the consequent community benefits that flow from the investment proposed to be made into the community by the AFC; and
4. As this is a commercial Project, it is understandable that the AFC will be required to re-evaluate its commitment to the Project where caretaker-related delays render it non-viable to the AFC.

A review of the matters which have become known to the Council in recent times, leads to the inescapable conclusion that the Council is not and could not make informed, responsible, accountable and transparent decisions in relation to the Project, before the commencement of the caretaker period.

Applications for exemption under section 91A(3)

Accordingly, the Council has resolved to make the following applications to you for exemptions pursuant to section 91A(3) of the Act. These are based upon the 'extraordinary circumstances' which attach to this Project as set out in this letter of application, in order for the Council to be able to make the relevant designated decisions, where the total value exceeds the Financial Limit, namely:

Application for exemption 1:

A decision to enter into an agreement for lease (or licence) where the total value of the rental payments over the term will exceed the Financial Limit, in respect of land at Thebarton Oval with the Adelaide Football Club (AFC) being land that is part of a larger project that will be subject to development.

Application for exemption 2:

A decision to enter into an agreement for lease or licence in respect of land at Kings Reserve that will be subject to compulsory acquisition by the SA Government for the Torrens-to-Darlington project but which is, including in part, to be returned to the Council at a later time.

Application for exemption 3:

A decision to enter into a licence agreement which provides for the Adelaide Football Club to enter into the Thebarton Oval land for access and construction purposes.

Note: even though this will likely not have any \$ value attached to it, it is nevertheless able to be considered to be an agreement associated with the total value of the other associated agreements and hence, should also be subject to an exemption.

Application for exemption 4:

A decision to enter into a binding agreement or understanding between the Council and the SA Government in relation to the return of the balance of land at Kings Reserve to the Council at completion of the Torrens-to-Darlington project.

Application for exemption 5:

A decision to enter into a contract, arrangement or understanding with the Adelaide Football Club in the nature of an associated Development Agreement, the financial commitments of which will exceed the Financial Limit.

Consideration of the applications

Whilst each exemption is, of course, being sought as a separate exemption for the purposes of each decision to be made by the Council, all exemptions are required in order to provide the Council with the necessary legal assurances to progress its current negotiations with AFC to a binding documentary framework.

If there is any hesitation by the Minister about granting any or all of the Exemptions, we request a meeting to discuss and understand any 'issues' and, in the event of an impasse, whether any alternatives are acceptable.

Conclusion

The Council and the AFC have spent considerable time and resources to reach this critical stage of negotiations. In turn, the caretaker-related impediments have the capacity to, at best delay or, at worst, derail the significant progress which has been made in the Project.

As we understand the situation, non-commercial and unnecessary delays with the Project are, likely, to result in AFC exploring other options. A decision by the AFC to 'walk away' because of delays related to the timing of the election cycle, where there are critical time sensitivities, would result in a loss of opportunity for the Council, in connection with this Project which it considers is an essential project with State-wide benefits and, in particular, local community and financial benefits for the City of West Torrens, all of which may also be considered to amount to public interest reasons for granting the exemptions sought.

Please let me know if you require any further information about the Council's application for exemptions.

Yours sincerely



Michael S Coxon
Mayor
City of West Torrens



We love footy

11 September 2022

Terry Buss
Chief Executive Officer
City of West Torrens
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HILTON SA 5033

SANFL
ABN 59 518 757 737

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MAJOR PARTNERS



Dear Terry

SANFL LEASE OF THEBARTON FACILITY

I refer to previous discussions and correspondences between representatives of each of the City of West Torrens (the **Council**), the South Australian National Football League Inc (**SANFL**) and the Adelaide Football Club Limited (**AFC**), relative to the future use of Thebarton Oval.

In particular, I refer to the existing lease of Thebarton Oval, between the Council and SANFL. This is further described in the following documents:

- (a) Memorandum of Lease between the Council and SA Amateur Football League Inc dated 24 August 2016;
- (b) Deed of Variation of Lease dated 3 November 2017;
- (c) Deed of Assignment of Lease (assigning the lease to SANFL as lessee) dated 12 December 2019; and
- (d) Deed of Extension and Variation of Lease dated 12 April 2021,

(together, the **SANFL Lease**).

As you are aware, on Saturday 10 September 2022, SANFL and AFC executed a 'Heads of Agreement' Deed in relation to their respective intentions at Thebarton Oval. Specifically, the Deed contemplates that, subject to a number of conditions precedent (including agreement being reached between SANFL and Council on the surrender of the SANFL Lease), SANFL will relocate to a facility in West Lakes.

We understand that, separately, subject to lease arrangements agreed between the Council and AFC, the AFC wishes to redevelop Thebarton Oval. Understandably, the redevelopment of Thebarton Oval by AFC cannot be achieved whilst SANFL is the lessee of the Thebarton Oval.

SANFL is advised by Council that, in order for the Council to progress its arrangements with AFC, it is required to undertake a statutory public consultation process in accordance with the requirements of the *Local Government Act 1999*. Council believes that it requires SANFL's consent to the public consultation process being undertaken and has requested SANFL to do so.

.../2

Subject as hereinafter provided, I acknowledge, on behalf of SANFL, that it consents to Council commencing the public consultation process.

The acknowledgement is given on the basis that the Deed is conditional and it may be that some or all of the conditions are not fulfilled or for some other reason, SANFL's possible relocation to a facility in West Lakes does not proceed. Until SANFL and Council enter into a formal Surrender of Lease document for the SANFL Lease, all of its rights are preserved and nothing in this letter is to be interpreted as a surrender or relinquishment of those rights, which are hereby preserved and confirmed.

If Council proceeds with the public consultation process, it of course does so at its own risk and at its cost in all things.

Yours Sincerely

SA NATIONAL FOOTBALL LEAGUE INC



Darren Chandler
Chief Executive Officer

From: Beer, David
Sent: Tuesday, 13 September 2022 1:32 PM
To: Michael Kelleedy
Cc: Zinta Docherty; 'Darren Chandler'; Tabe, Jessica
Subject: RE: WTCC/SANFL discussions (KJ 220156) [TGLAW-Legal.FID3398888]

Dear Michael,

I confirm I have instructions that my email to you below is acceptable to my client and that with your response set out below, no further correspondence is needed. Accordingly, your client can now proceed on the agreed terms.

Regards

David Beer | Partner
THOMSON GEER
T +61 8 8236 1125 | M 0403 069 827
Level 7, 19 Gouger Street, Adelaide SA 5000 Australia
djbeer@tglaw.com.au | tglaw.com.au

Advice | **Transactions** | **Disputes**

From: Beer, David
Sent: Tuesday, 13 September 2022 11:58 AM
To: Michael Kelleedy
Cc: Zinta Docherty; Tabe, Jessica; 'Darren Chandler'
Subject: WTCC/SANFL discussions [TGLAW-Legal.FID3398888]

Dear Michael

I refer to our discussions a few minutes ago.

I confirm that:

- 1 SANFL's primary objective is to ensure that if the conditions in the Deed between it and Adelaide Football Club are not fulfilled or for some other reason the proposed relocation to West Lakes does not proceed, SANFL's Lease of the Thebarton Oval continues and SANFL's relationship with your client is unaffected. The Lease comes to an end when a Surrender of Lease is executed by both parties.
- 2 In that context, I confirm that SANFL does not intend to assert or for it to be implied that Council by proceeding with the public consultation process will be in breach of my client's Lease of Thebarton Oval.
- 3 I had thought that this was clear from the email sent to Zinta Docherty yesterday. The above comments are provided by way of clarification and to remove any doubt.

I am yet to obtain formal instructions from my client. However, I anticipate that my client will accept the position set out above. Can you please confirm that the above is acceptable to your client?

I look forward to hearing from you.

Regards

David Beer | Partner
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Advice | **Transactions** | **Disputes**

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Government of South Australia

Department for Infrastructure
and Transport

In reply please quote #19184320
Enquiries to Matthew.Morrissey@sa.gov.au

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OFFICE

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ABN 92 366 288 135

Mr Tim Silvers
Chief Executive Officer
Adelaide Football Club
105 West Lakes Boulevard
WEST LAKES SA 5021

Mr Terry Buss
Chief Executive Officer
City of West Torrens
165 Sir Donald Bradman Drive
HILTON SA 5033

Dear Tim and Terry

*NORTH-SOUTH CORRIDOR, TORRENS TO DARLINGTON PROJECT
INTERFACE WITH THEBARTON OVAL*

Thank you for coordinating the meeting held on the 22 August 2022, regarding the North-South Corridor, Torrens to Darlington (T2D) Project's interface with Thebarton Oval and Kings Reserve during construction of the T2D Project.

Based on the enclosed revised concept masterplan provided by AFC detailing the interface with the T2D Project works, the Department for Infrastructure and Transport (the Department) confirms that it will provide in principle support, and will continue to work with AFC over the coming years to ensure both significant projects achieve their respective requirements.

I appreciate that the timing of both projects will play a big factor in the land requirements needed, particularly during construction, and that both parties will use best endeavours to ensure that works can proceed simultaneously.

The T2D Project confirms its previous commitment that the portion of Kings Reserve land identified in the current Notice of Intent (NOI) to facilitate the T2D Project at the northern end of the northern tunnel is still required permanently.

Further, the Department will proceed with a future land acquisition (required for construction laydown and ancillary works) in accordance with the proposed CAD interface line provided by AFC on the 26 August 2022 via your appointed Project Manager, Place PM.

#19184320

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The Department is committed to continue to work collaboratively with the AFC and Council as we progress to meet the requirements of all parties. Accordingly, I would recommend that officers from our respective organisations continue to work together through the detailed planning and construction phases.

The key contact within the Department is:

- Mr Matthew Morrissey, Director Land and Planning, North-South Corridor Program Delivery Office, telephone 7109 7493 or email matthew.morrissey@sa.gov.au.

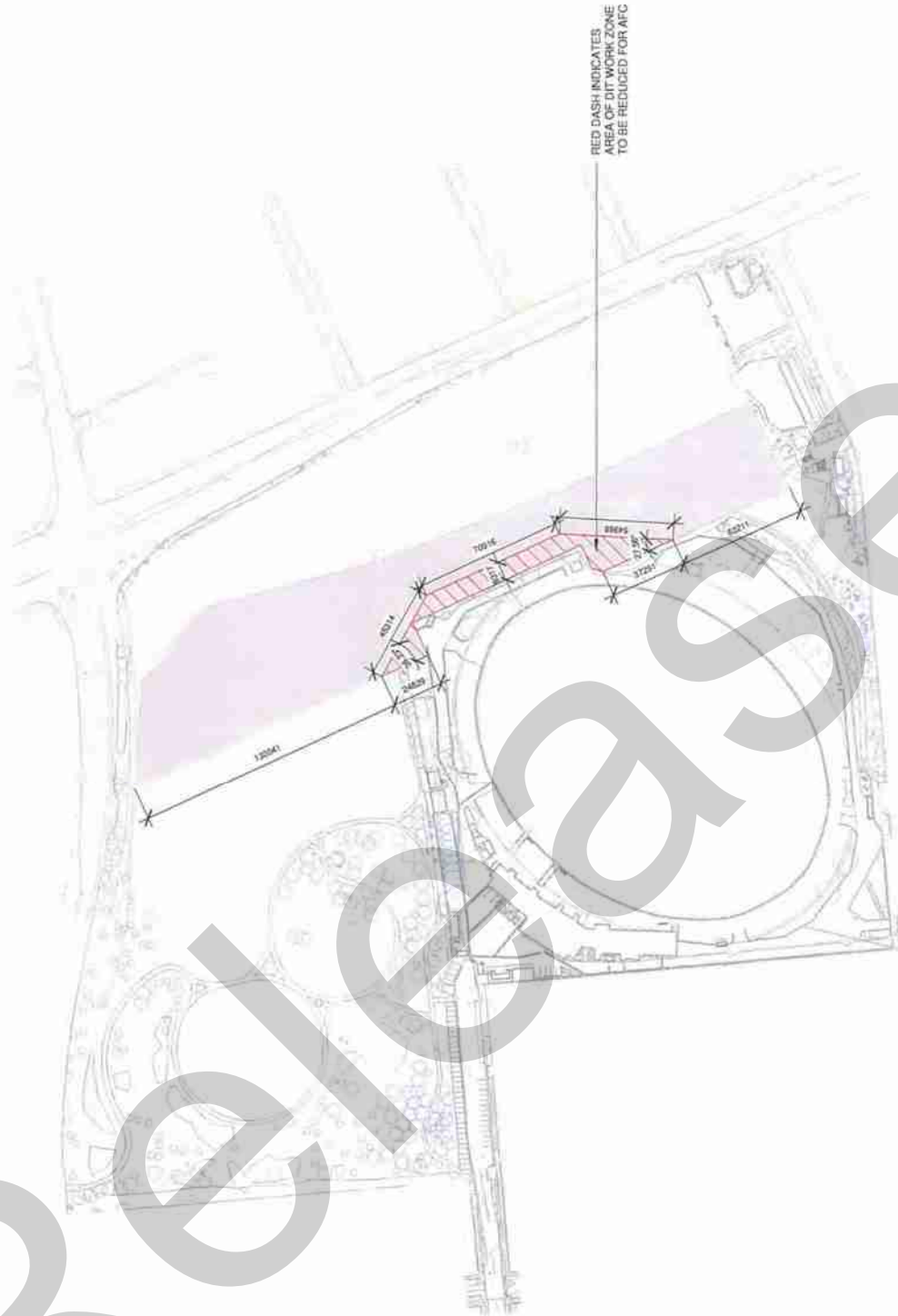
I trust this information is of assistance.

Yours sincerely



Wayne Buckerfield
Executive Director
North-South Corridor Program Delivery Office

31 August 2022



SURVEY OVERLAY PLAN

Scale: 1:2000 @ A3

Project: AFC THEBARTON/AL
Project No: 1837
Client: ADELWIDE FOOTBALL CLUB
Date: 25/04/2022

Drawn: TS
Checked: DC
Drawing: DC
Revision: --



Released



RED DASH INDICATES
AREA OF DTI WORK ZONE
TO BE REDUCED FOR AFC

1 MASTER PLAN OVERLAY PLAN

Scale: 1:2000 @ A3

Project:	AFC THE MOUNTAIN OVAL	Drawn:	TD
Project No:	1007	Checked:	DC
Client:	AVELAGE FOOTBALL CLUB	Drawing:	
Date:	25/08/2022	Revised:	



RED DASH INDICATES
AREA OF DIT WORK ZONE
TO BE REDUCED FOR AFC

AERIAL OVERLAY PLAN

Scale: 1:2000 @ A3

Project:	AFC THEMATIC PLAN
Project No:	1807
Client:	ADELAIDE FOOTBALL CLUB
Date:	25/09/2022

Drawn:	TS
Checked:	DC
Drawn by:	
Reviewed:	

OFFICIAL: Sensitive

Government of South Australia
Department for Infrastructure
and Transport

In reply please quote # 19169257

26 August 2022

Mr Terry Buss
Chief Executive Officer
City of West Torrens
165 SIR DONALD BRADMAN DRIVE
HILTON SA 5033
Via email csu@wtcc.sa.gov.au

77 Grenfell Street
Adelaide SA 5000

GPO Box 1533
Adelaide SA 5001

Telephone: 08 8343 2222
Facsimile: 08 8343 2768

ABN 92 366 288 135

Dear Mr Buss

NORTH-SOUTH CORRIDOR TORRENS TO DARLINGTON PROJECT

We write with regards to our previous correspondence dated November 2021 in which we advised that the formal acquisition process for your properties was expected to commence in mid-to-late 2022.

You may be aware that the State Government made an election commitment to review key elements of the Torrens to Darlington Project to confirm it will deliver the best possible outcome for stakeholders and the South Australian community.

This review is well progressed, and we can confirm that the following properties are still required by the end of 2024 to support the delivery of the Project.

The acquisition process will progressively commence over a 12-month period for the northern section of the Project moving from south to north. We therefore expect to commence the formal acquisition processes for each of the following properties as per the table below:

CT Number	Address	Commencement of Acquisition Process
CT 6103 914	Lot 6, South Road, Kurralt Park, 5037	September 2022
CT 6052 710	Lot 202, South Road, Ashford, 5035	September 2022
CT 5818 433	Lot 64, South Road, Richmond, 5033	April 2023
CT 6076 28	11 – 13 Kingston Avenue, Richmond, 5033	April 2023
CT 5089 821	Common Valuation Number for Council	April 2023
CT 5089 822	Drains	April 2023
CT 6221 506	58 South Road, Torrensville	August 2023
CT 5436 231	4 Ashley Street, Torrensville	August 2023

We understand this change to acquisition commencement timings may be disruptive to arrangements you have already made based on our previous correspondence and we apologise for any inconvenience caused.

We are committed to taking a flexible approach to acquisitions to give people more choice in how they manage this process, including:

- For residential owner occupiers (homeowners) who wish to commence the formal acquisition process sooner, this will be actioned at the request of the homeowner.

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- Homeowners that remain in their property once it has been acquired will be able to do so rent-free (eligibility criteria applies). This rent-free period will be for a maximum period ending no later than November 2023.

Every effort will be made to allow businesses to continue to operate from their current locations for as long as the construction schedule allows, and careful management of business acquisitions will be undertaken to manage a phased approach in-line with the program schedule.

If you would like to discuss this, please contact Donna Griffiths, A/Manager NSC Stakeholder Relations on mobile 0468 567 402 or email donna.griffiths@sa.gov.au.

Yours sincerely

Torrens to Darlington Engagement Team

KEY COMMERCIAL LEASE TERMS

Terms used in this document are set out on page 4.

Item	Key Terms
<p>Statement on public consultation</p>	<p>The Council (CWT) is in negotiations with the Adelaide Football Club (AFC) which is seeking a lease of portion of Council land, identified as the 'Proposed Lease Area' in the Plan being the land more commonly known as Thebarton Oval and Kings Park Reserve (the Land). The public is being asked to respond to a proposal to lease an area of the Land, for the purposes of the AFC establishing its corporate and training headquarters.</p> <p>For completeness, this consultation also includes a construction licence for AFC (or any contractor of AFC), to undertake the necessary works to redevelop the Land to achieve the above objective.</p> <p>Following the completion of the T2D works, it is understood that the Department of Industry and Trade (DIT) will return a portion of the DIT Land to CWT, following which CWT will grant a lease of such land to AFC, on the same or similar terms to those under contemplation, as set out in this consultation document.</p> <p>Please note that a copy of the full terms and conditions of the proposed lease are available upon request, as supplemented and/or varied by these Key Commercial Lease Terms.</p>
<p>Community benefits</p>	<p>CWT has formed the view that the AFC Lease and related redevelopment of the Land will bring significant community benefits.</p> <p>CWT and AFC have commenced work on a Masterplan for the Land, which will include enhancements to the existing facilities and community use thereof, including:</p> <ul style="list-style-type: none"> • significant infrastructure investment by AFC of approximately \$80 million, including around \$45 million specifically towards community benefit and facilities; • co-investment by CWT of approximately \$9 million towards community benefit and facilities; • works to preserve the Heritage Grandstand and the retention of other heritage items (including the David Hookes memorial); • development of a new Community Hub on the Land (following the proposed acquisition of the Thebarton Community Hub for the T2D project). The Community Hub will be located <u>within</u> the Lease area, but will be excluded from the Lease and remain CWT Land; and • new and improved Public Realm facilities. <p>The proposed Lease is subject to a number of conditions which are to be met by each of CWT, AFC, and third parties, including the redevelopment of the facilities located at the Land and the development of new state-of-the-art administration and training facilities for the AFC (Adelaide Crows) AFLW and AFL teams.</p> <p>Subject to the conditions being met (or waived), one such condition being an acceptable outcome of this public consultation (for the purposes of section 202 of the LG Act), CWT intends to grant a lease to AFC on the material commercial terms as set out in this document.</p> <p>(See further <i>Conditions Precedent to AFC Lease</i>)</p>

Conditions Precedent to AFC Lease	<p>The AFC Lease is subject to a number of corporate and statutory conditions, including:</p> <ol style="list-style-type: none"> 1. Public consultation, as proposed by this document. 2. Clarification from DIT in relation to the land to be acquired for the T2D project, which includes a portion of the Land (and part of which is understood will be returned to CWT). 3. Surrender of lease and/or resumption of lease (as applicable, following confirmation by DIT) of any current lease or licence over any part of the Land that will be impacted by this proposal.
AFC Lease Term	<p>42 years (Initial Term) commencing from occupancy by AFC of the completed facilities (projected for Q1 2025).</p> <p>Prior to the commencement of the Lease, CWT will grant a Construction Licence for an interim period to enable construction delivery, including for the development of the new facilities proposed to be built by AFC, together with Public Realm upgrades.</p>
AFC Lease Options	<p>Further Term of 42 years (or maximum term under LG Act if this is increased during the Initial Term).</p> <p>CWT agrees to negotiate in good faith with AFC for a further term of 42 years, these negotiations to be commenced no earlier than 10 years and no later than 8 years prior to expiry of the Initial Term, subject always to the then statutory requirements.</p>
Renewal / Asset Buy-back Arrangement	<p>Acceptance or rejection of the further Lease Option (as above) to be issued to AFC within 120 days.</p> <p>In the event that CWT rejects the AFC request to extend tenure (except in the case of any breach by AFC of the Lease), CWT agrees to acquire the AFC Facilities (Buy Back Option). The Buy Back Option is only available to AFC (i.e. not to any assignee).</p> <p>CWT is not obliged to offer a renewal of the Initial Term, nor to exercise the Buy Back Option in circumstances where AFC is in breach of the Lease.</p> <p>Market value mechanism to be agreed by CWT and AFC for Buy Back Option. Valuation principle of highest and best use on assumed freehold basis to determine market value.</p> <p>Any extension of the Initial Term to be on same terms as Initial Term of Lease (excluding the Buy Back Option).</p>
Rent	<p>Reduction in rent for duration of Initial Term. This reduction reflects:</p> <ul style="list-style-type: none"> • the significant investment by AFC of approximately \$45m in publicly accessible community assets and infrastructure (including the restoration of the Heritage Grandstand and gates located at Thebarton Oval); • the nature and use of the facility and the expenditure by AFC on improvements. In particular, the rental rate is to be determined having specific regard to comparable rents for sports and community club organisations and the upfront and any further capital investment made by AFC in the precinct. <p>The relevant rate for the Initial Term will be a market competitive rate but will not be a commercial rent rate.</p> <p>Rent rebate:</p> <p>Years 1 – 10: 80% rebate</p> <p>Years 11 – 20: 60% rebate</p> <p>Years 21 – 30: 40% rebate</p> <p>Years 31 – 42: 20% rebate</p>

Council Rates	<p>Rate relief to be provided to AFC during the Initial Term as follows:</p> <ul style="list-style-type: none"> publicly accessible space will not attract Council rates; AFC exclusive-use buildings and areas will attract Council rates, but a discretionary rebate of 100% will apply for the first 20 years of the Initial Term, and thereafter at 60% for the balance of the Initial Term; any other area of the Lease the subject of any commercial/retail occupancy by a third party will attract Council rates without any rebate.
	<p>Approximate Rent & Council Rates for Initial Term calculated on indicative figures only as follows (and based on <u>current values</u>*):</p> <ul style="list-style-type: none"> Years 1 to 10 = \$20,250 p.a. (Rent \$20,250 + Rates \$0) Years 11 to 20 = \$40,500 p.a. (Rent \$40,500 + Rates \$0) Years 21 to 30 = \$141,443 p.a. (Rent \$60,750 + Rates \$80,693) Years 31 to 42 = \$161,693 pa (Rent \$81,000 + Rates \$80,693) <p>NB: This amount excludes any additional rates payable where AFC grants a sublease or sublicense to a 3rd party on commercial terms.</p> <p>*See further <i>Indexation for Rent</i>. Council rates to be calculated at prevailing rates in each year.</p>
Indexation for Rent	<p>CPI Review: Annual review on the anniversary of the Commencement Date to reflect the change in CPI (All Groups, Adelaide) (CPI) (except in any year in where a Market Review is held). However, any CPI Review on the 1st to 10th anniversary of Initial Term will be capped at the lesser of CPI or a fixed rate increase of 3%.</p> <p>Market Review: On the 11th, 21st and 31st anniversary of the Commencement Date.</p>
Permitted Use	<p>Sporting and community purposes in accordance and in compliance with the Community Management Plan and as permitted by the <i>Planning, Development and Infrastructure Act 2016</i> (and any legislative instrument thereunder) and other uses as may be approved in writing by CWT.</p>
Insurances	<p>AFC must hold the following insurances:</p> <ul style="list-style-type: none"> Building and contents insurances for AFC Facilities and Heritage Grandstand for replacement value; Plate glass insurance; Public liability: Coverage of at least twenty million dollars (\$20,000,000.00) per claim, and otherwise as advised by the Council 'insurer', the LGA Mutual Liability Scheme
Signage	<p>AFC to facilitate signage outcomes on developable areas (with CWT consent subject to CWT policy and planning approvals (as applicable)).</p> <p>Revenue generating outcomes retained by AFC, areas being used for revenue-generating signage by a 3rd party which is outward-facing will attract Council rates without rebate.</p> <p>Landlord approval from CWT must be obtained for any new or updated signage.</p>
Maintenance Obligations – AFC Facilities, community accessible facilities and open space	<p>AFC to fund the maintenance of the Ovals that are for community use and access.</p> <p>AFC to manage and maintain all AFC Facilities to AFC predefined standards, with reimbursement for applicable CWT contributions. AFC to provide a maintenance budget to CWT each year.</p>
Community access	<p>Community access to the Ovals at all times they are not being used for games (including game days, as required), official training sessions or other related purposes (reasonably acceptable to CWT).</p>

Heritage Grandstand – Maintenance and Use Rights	AFC to fund fit out and maintenance and for non-exclusive use by AFC (if it is reasonably determined by CWT and AFC that it is useable). AFC to contribute a fixed annual amount to a jointly controlled sinking fund. Heritage Grandstand will remain a CWT asset and not subject to any calculation for the purposes of the Buy Back Option.
Exit by Lessee / Change of Control Mechanism	AFC may assign, sublet or part with possession on terms which are reasonably acceptable to CWT, but any assignee must demonstrate it is of sound reputation and provide appropriate undertakings in connection with the AFC Facilities and Public Realm.
Masterplan	CWT, together with AFC, to prepare an updated Masterplan for future public consultation.

Terms used in this document:

AFC	Adelaide Football Club Limited
AFC Facilities	Means the AFC facilities to be developed on the Land, including the corporate and training headquarters and associated buildings.
AFC Lease	The area of the Land to be leased by AFC as marked on the Plan.
CWT	City of West Torrens
DIT	Department of Infrastructure and Transport
DIT Land	The area of the Land anticipated for acquisition by DIT (as marked on the Plan).
Heritage Grandstand	The historic grandstand located at Thebarton Oval.
Land	The land identified in the Plan and commonly known as <i>Kings Park</i> and <i>Thebarton Oval</i> (and immediately surrounding areas), including the AFC Lease, Public Realm and T2D land. This includes the following Certificates of Title: <ul style="list-style-type: none"> • Volume 6131 Folios 655 and 656 • Volume 5092 Folio 344; • Portion of Volume 5436 Folio 231; and • Portion of Volume 6221 Folio 506.
LG Act	<i>Local Government Act 1999</i>
Plan	The plan provided as part of this public consultation process identifying the proposed lease are and DIT acquisition area.
Public Realm	The areas of the Land over which the AFC will have a lease, which will be available to the public for community use in accordance with these terms.
T2D	Torrens to Darlington Project for South Road roadworks, proposed to be undertaken by DIT on behalf of the State Government.

Draft: 07.09.2022

**Draft Base Lease: City of West Torrens (CWT) as Lessor and
Adelaide Football Club Limited (AFC) as Lessee**

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Commented [A1]: PC: Subject to negotiation.
The final terms are yet to be negotiated and will be supplemented and/or varied by the **Key Commercial Lease Terms**.

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Reference Schedule

Item 1 Premises	The whole of the land in Certificate of Title Volume *[#1#]		
Item 2 Lessor	*[#2#]		
Item 3 Lessee	*[#3#]		
Item 4 Term	(a)	Original Term:	*[#4#] commencing on *[#5#] and expiring at midnight on *[#6#]
Item 5 Rent and Manner of Payment	Rent: \$*[#10#] per annum subject to clause 5 and subject to review under clause 4.10 of this Lease. The annual rent must be paid by equal, consecutive, calendar monthly instalments equivalent to one twelfth of the annual rent, always in advance, the first such instalment to be paid on the Commencement Date (being a proportionate instalment if appropriate) and then on the first day of each and every succeeding month		
Item 6 Land	The whole of the land in Certificate of Title Volume *[#1#]		
Item 7 Permitted Use	*[#12#]		
Item 8 Rent Review Dates	(a)	*[#13#]:	Date: *[#14#] Year(s): *[#15#]
	(b)	*[#16#]:	Date: *[#14#] Year(s): *[#17#]

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1 Definitions and interpretation

In this Lease unless the contrary intention appears:

1.1 Definitions

Act means the *Local Government Act 1999*.

Business Day means any day that is not Saturday, Sunday or a public holiday in South Australia;

Commencement Date means the date of commencement of the Original Term set out in **Error! Reference source not found.**(a) of the schedule;

Contaminant means any substance, matter or thing on, in or under the Land which causes it to be:

- (a) unsafe or unfit for habitation or occupation by persons or animals; or
- (b) degraded in its capacity to support plant life; or
- (c) otherwise environmentally degraded;

CPI means the Consumer Price Index (All Groups) for Adelaide published from time to time by the Australian Bureau of Statistics or by the Commonwealth of Australia or by any other body authorised by the Commonwealth of Australia to do so;

Current Market Rent means the annual rent that can reasonably be obtained for the Premises in the open market, by a willing but not anxious lessor, which rent is adjusted to reflect the following conditions:

- (a) on the basis of a ground lease of the Premises on the same terms as this Lease;
- (b) on the basis that the Premises is unoccupied;
- (c) on the basis that the Premises supplied by the Lessor are considered; and
- (d) on the basis that the Lessee's Improvements effected by the Lessee at the Lessee's cost are not considered,

and not considering:

- (e) any breach of this Lease by the Lessee or the Lessor (but without prejudice to any right or remedy for any such breach);
- (f) any damage to or destruction of the Premises nor any consequential cessation or suspension of rent;
- (g) any value attaching to Improvements or Lessee's property erected or installed by or on behalf of the Lessee,

and considering:

- (h) all costs and expenses of any nature payable by the Lessor in respect of the Premises which are not payable by or recoverable from the Lessee under this Lease;
- (i) the fact that the annual rent set out in **Item 5** of the schedule is GST exclusive and that under this Lease an additional amount on account of GST is payable;
- (j) a deduction or allowance for any increase in value of the Premises, including any increase in value arising from any permanent improvements erected or installed at the expense of the Lessee and which the Lessee may not remove from the Premises;
- (k) the benefit of environmental sustainability ratings (if applicable) and environmental performance and implementation of the Environmental Principles relevant to the Premises; and
- (l) any goodwill attaching to the Premises by reason of the Lessee's business conducted at the Premises;

Default Rate means the interest rate for moneys due and owing, but unpaid by the Lessee to the Lessor, as determined by the Lessor from time to time, acting in good faith and by reference to 2% above the interest rate charged by a banker of the Lessor on commercial overdrafts of \$100,000.00;

Environmental Laws means:

- (a) all present and future laws and regulations, environmental protection policies, and directions, standards and guidelines of any relevant authority (and any other like bodies) regulating or otherwise relating to the environment, including any law relating to:
- (i) land use; or
 - (ii) planning; or
 - (iii) heritage; or
 - (iv) coastal protection; or
 - (v) water catchments; or
 - (vi) pollution of air or waters; or
 - (vii) noise, soil or ground water contamination; or
 - (viii) chemicals; or
 - (ix) waste; or
 - (x) use of hazardous or dangerous goods or substances; or
 - (xi) building regulations; or
 - (xii) public and occupational health and safety; or
 - (xiii) noxious trades; and

- (b) all licences, approvals, consents, permissions or permits issued by any relevant authority of an environmental nature;

Environmental Principles means the aim to:

- (a) improve energy efficiency and promote reduction of greenhouse emissions; and
- (b) ensure environmental sustainability of the Premises, the Lessee's Improvements and their Services,

which principles will be determined by the Lessor from time to time, acting reasonably and after consultation with the Lessee and having regard to the condition of the Premises and the performance of the Services and applicable laws at the relevant time;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Land means the Land described in **Item 6** of the schedule;

Lessee means the person described in **Item 3** of the schedule;

Lessee Event means any event held by the Lessee at the Premises, including a sporting event, which may be held at the Premises;

Lessee's Agents means each of the Lessee's agents, contractors, officers, employees, underlessees, invitees and other persons claiming through or under the Lessee;

Lessee's Improvements means:

- (a) the buildings, improvements, fixtures, fittings, plant, equipment, signage and facilities together with all earth works, laying of foundations, site preparation and site surcharging, reticulation, roadway crossovers, paving, surfaces of car parks, driveways, pathways, landscaping, services and augmentation and infrastructure of any nature, which are constructed or installed by or on behalf of the Lessee on the Premises; and
- (b) all installations, alterations and additions undertaken by or on behalf of the Lessee on the Premises at any time,

and includes any part of the Lessee's Improvements, but does not include any improvements undertaken by the Lessee to the Public Realm;

Lessor means the person described in **Item 2** of the schedule;

Network Charges means the costs payable from time to time to the operator of the external electricity distribution network to which the Land is connected on account of the use of that network to deliver electricity to the Land;

Non-Lessee Event means any event, not being a Lessee Event, which may be held at the Premises for the benefit or enjoyment of the Council or the Community at large;

notice means notice in writing or transmitted by facsimile;

Original Term means the original term of this Lease set out in **Item 4** of the schedule;

Permitted Use means the use described in **Item 7** of the schedule;

Premises means the Land and where the context allows includes:

- (a) all present and future improvements, infrastructure or modifications erected on the Premises, excluding the Lessee's Improvements;
- (b) all the Lessor's improvements, infrastructure, fixtures, fittings, plant and equipment installed in or on the Premises; and
- (c) all the roadways, conveniences, Services, amenities and appurtenances of, in or to the Premises, and includes any part of the Premises;

PPSA means the *Personal Property Securities Act 2009* (Cth);

PPSR means the Personal Property Securities Register established under the PPSA;

Public Realm means that part of the Land identified in the Plan of Premises, being that part of the Premises accessible for community use by the public and third parties, outside the Times of Use;

relevant authority means any public, governmental, semi-governmental, statutory or regulatory authority, department or other body having competent jurisdiction in respect of the relevant act, matter or thing;

rent means the rent reserved by this Lease;

Review Date means the relevant date set out in **Item 8** of the schedule;

Services means:

- (a) all electrical, air-conditioning, gas, power, fire, security, plumbing, telecommunication and transportation systems;
- (b) all emergency warning information systems;
- (c) all building management systems; and
- (d) other like installations,

including all pipes, drains, cables, wires, data points and other conduits situated in, under, on or serving the Premises and the Lessee's Improvements;

Supply has the same meaning it does in section 9-10 of the GST Act and excludes any 'GST-free supplies' and 'input taxed supplies' as those terms are defined in section 195-1 of the GST Act;

Term means the Original Term and any period during which the Lessee holds over or remains in occupation of the Premises;

terms of this Lease mean the terms, covenants, agreements, duties, obligations, rights, powers, privileges, provisions, acknowledgements and conditions set out in this Lease; and

Valuer means a qualified valuer (being an individual with the professional designation corresponding to valuer as designated by the Australian Property Institute as at the relevant appointment date) who is appointed to decide under this Lease and:

- (a) who is appointed by the Lessor and the Lessee or (if they fail to agree on the appointee within 7 days of either notifying the other of the requirement for such appointment) at the request of either by the person for the time being holding or acting in the office of President of the Australian Property Institute (South Australian Division);
- (b) who has been an accredited member of that Institute for at least 5 consecutive years immediately prior to the date of such appointment;

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- (c) who has practised as a land valuer as defined in the *Land Valuers Act 1994 (SA)* in the valuation for rental purposes of property similar to the Premises for a period of not less than 5 consecutive years immediately prior to such appointment;
- (d) who is deemed to act as an expert and not as an arbitrator;
- (e) whose determination will be final and binding as between the Lessor and the Lessee, except in the case of manifest error;
- (f) who may seek the assistance of any appropriately qualified experts; and
- (g) all costs and expenses of and incidental to such determination will be paid by the Lessee and the Lessor in equal shares, unless otherwise provided in this Lease.

1.2 Interpretation

- (a) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to 'law' includes a reference to any Act and the common law;
- (b) words importing the singular embrace the plural and words importing one gender embrace the other genders and vice versa respectively;
- (c) any reference to a person will be deemed to include a body corporate and vice versa;
- (d) anything which the Lessee is required to do must be done at the cost of the Lessee and to the reasonable satisfaction of the Lessor;
- (e) an obligation on the Lessee under this Lease (other than an obligation to pay rent or other moneys to the Lessor), requires the Lessee to ensure compliance by the Lessee's Agents with that obligation;
- (f) headings are for convenience of reference only and will not affect the interpretation of this Lease;
- (g) any reference to an 'item of the schedule' means the relevant item of the Reference Schedule contained in this Lease and any reference to a clause means the relevant clause of this Lease;
- (h) where the words 'Not applicable' appear opposite any part of any item of the schedule, then each and every clause in this Lease in which specific reference is made to such part of the relevant item of the schedule will be of no effect;
- (i) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (j) a reference to dollar or A\$ is to Australian currency;
- (k) a reference to time is to time in South Australia, Australia;
- (l) a reference to a party to this Lease and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes and if more than one, then jointly and severally;
- (m) nothing in this Lease is to be interpreted against a party solely on the ground that the party put forward this Lease or any part of it;
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (o) if a body, institute, association or relevant authority referred to in this Lease ceases to exist, then this Lease must be read as referring to such body, institute, association or relevant authority as then serves substantially the same objects as that body, institute, association or relevant authority;
- (p) all money (including rent) payable by the Lessee to the Lessor and costs recoverable from the Lessee by the Lessor must be paid to the Lessor (or such other person as the Lessor notifies the Lessee) and at the place or in the manner specified under clause 2.1 and will be recoverable as a debt and if no date or time for payment is specified must be paid within 7 days of demand; and
- (q) the words 'include', 'includes' or 'including' will be deemed in all cases to be followed by the words 'without limitation'.

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2 Lessee's covenants

The Lessee agrees with the Lessor throughout the Term:

2.1 Rent

to pay the rent free from exchange, deduction, set off or counterclaim and abatement to the Lessor as the Lessor requires:

- (a) at the Lessor's address set out in **Item 2** of the schedule; or
 - (b) by direct bank transfer to the credit of a bank account nominated by the Lessor; or
 - (c) to such other person or at such other place as the Lessor may notify the Lessee,
- and at the times and in the manner set out in the schedule;

Commented [A2]: PC: Rent payable in accordance with Key Commercial Lease Terms.

2.2 Statutory Charges, utilities and management fees

- (a) to pay all present and future rates, taxes, charges, levies, assessments, duties, impositions and fees of any relevant authority including:

- (i) council rates, permit fees and car parking levies (if any);
- (ii) water and sewerage rates, charges and levies;
- (iii) land tax on a single holding basis; and
- (iv) emergency services levies,

which are referable only to the Premises and the Lessee's Improvements (**Statutory Charges**):

- (v) as and when such Statutory Charges are due and payable to the relevant authority; or
- (vi) if required by the Lessor, then to the Lessor within 7 days of demand being made by the Lessor;

- (b) to pay as and when due for payment or if required by the Lessor, within 7 days of demand being made by the Lessor, all costs, fees and charges for the provision of:

- (i) water, gas, oil and other energy or fuels (other than for electricity which costs, fees and charges are payable under clause 4.8) supplied to or separately metered or consumed in the Premises and the Lessee's Improvements;
- (ii) telephone, facsimile, data and other communication services, waste disposal and garbage collection in respect of the Premises and the Lessee's Improvements; and
- (iii) all other utility services supplied to or separately metered or consumed in or in respect of the Premises and the Lessee's Improvements,

irrespective of the identity of the supplier;

- (c) that all such Statutory Charges, costs and charges will be adjusted (if necessary) as between the Lessor and the Lessee and the Lessor's share will be that proportion which relates to the period outside the Term;

Commented [A3]: PC: Council rates (with discretionary rebates) payable in accordance with Key Commercial Lease Terms.

2.3 Costs

- (a) to pay the Lessor's reasonable costs of and incidental to the negotiation, preparation and engrossment and, if the Lessee requires registration, certification and registration of this Lease and any extension or renewal of this Lease;

- (b) to pay the Lessor's reasonable costs of any guarantee, assignment, transfer or surrender of this Lease and any other incidental documents;

- (c) to pay:

- (i) all fees charged by all mortgagees of the Premises for consenting to this Lease or any extension or renewal of this Lease; and

- (d) to pay all stamp duty (if any) and registration fees in connection with this Lease and any assignment, transfer, guarantee, surrender, extension or renewal of this Lease and all the mortgagee consent fees in respect of any assignment, transfer or surrender of this Lease;

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2.4 Assignment and subletting

- (a) not to transfer or assign this Lease or the Lessee's Improvements without the consent of the Lessor, which consent will not be unreasonably withheld or refused;
- (b) not to underlease, licence, grant a concession, part with possession or mortgage this Lease or the Premises or the Lessee's Improvements, without the consent of the Lessor;
- (c) if the Lessee requests that the Lessor consent to any transfer, assignment, underlease, licence, concession, mortgage or parting with possession, the Lessee must promptly on receipt of a request to do so from the Lessor:
 - (i) pay all arrears of rent and other money outstanding under this Lease and remedy all outstanding breaches and defaults of which the Lessee has received prior notice;
 - (ii) pay such money as is reasonably estimated by the Lessor's consultants to be required for the Lessee to comply with any breach of the terms of this Lease, including those relating to the state of repair and cleanliness and painting of the Premises and the Lessee's Improvements, including the reasonable costs of such consultants in inspecting the Premises and the Lessee's Improvements;
 - (iii) submit a true copy of all agreements to be entered into in respect of any proposed dealing with this Lease or the Premises and the Lessee's Improvements which are reasonably required by the Lessor and evidence satisfactory to the Lessor, acting reasonably, that the proposed transferee or assignee (**assignee**) or underlessee is respectable, responsible, solvent and suitable and information reasonably required by the Lessor about the financial standing and business experience of the proposed assignee or underlessee and otherwise satisfy any requirements in relation to the proposed assignee or underlessee as set out by way of Special Condition;
 - (iv) if the proposed assignee or underlessee is a trustee of a Trust submit a copy of the instrument under which such Trust was constituted and the full names, addresses and occupations of the beneficiaries of such Trust; and
 - (v) pay to the Lessor, its agents and its solicitors, the reasonable costs of and incidental to enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal, preparation and stamping of the documents reasonably deemed necessary by the Lessor,

and if such consent is given the Lessee will ensure that prior to the date of any transfer or assignment the proposed assignee:

- (vi) enters into a direct covenant with the Lessor to observe the terms of this Lease; and
- (vii) furnishes such guarantees of the performance of such person's obligations under this Lease as the Lessor may reasonably require;
- (d) the Lessee acknowledges and agrees that it will be a condition of any consent granted by the Lessor to the Lessee to mortgage its estate, interest or rights under this Lease that the Lessee and the mortgagee must enter into a deed with the Lessor acknowledging and agreeing that:
 - (i) any rights created under such mortgage are subject to the rights of the Lessor under this Lease;
 - (ii) the rights of the Lessor will not be limited by section 139 of the *Real Property Act 1886* (SA);
 - (iii) from the date the mortgagee:
 - (A) goes into possession of the Premises or the Lessee's Improvements; or
 - (B) commences to receive the income or profits of the Premises or the Lessee's Improvements; or
 - (C) otherwise exercises its powers under the mortgage,

the mortgagee will be bound by all the terms of this Lease and will perform all of the Lessee's covenants in this Lease (including the Lessee's obligations to pay rent, outgoings and utilities) and will first remedy any default of the Lessee under this Lease existing at that time; and

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- (iv) contemporaneously with service on the Lessee, the mortgagee will serve on the Lessor copies of all notices which the mortgagee serves on the Lessee under the terms of the mortgage; and
- (e) in this clause 2.4, **mortgage** includes a secured interest or any other encumbrance and **mortgagee** includes a secured party or encumbrancee (as the case may be);

2.5 Permitted Use

- (a) not to use or permit the use of the Premises and the Lessee's Improvements other than for the Permitted Use and not to:
 - (i) do or permit to be done anything which may:
 - (A) be or become dangerous, unlawful or immoral; or
 - (B) cause unreasonable annoyance or constitute nuisance at law; or
 - (C) cause damage to the Lessor or its property or any other person or property in or in the vicinity of the Premises and the Lessee's Improvements; or
 - (D) adversely affect:
 - (I) the performance of the Premises, the Lessee's Improvements and their Services; or
 - (II) any environmental sustainability ratings and environmental performance and implementation of the Environmental Principles, relevant to the Premises and the Lessee's Improvements; or
 - (b) to promptly apply for, obtain, keep current and comply with all consents, approvals and licences from all relevant authorities or other persons necessary or incidental to:
 - (i) the use of the Premises and the Lessee's Improvements for the Permitted Use;
 - (ii) the construction of the Lessee's Improvements; and
 - (iii) the provisions of this Lease; and
 - (c) to provide the Lessor with copies of all approvals, consents and licences promptly after being obtained by the Lessee;
 - (d) other than light spill emitting from the existing light towers on the Premises and noise emanating from the Premises during a Lessee Event or a Non-Lessee Event at the Premises, the Lessee must not do or permit to be done anything which may be or become unlawful or immoral or an annoyance, nuisance or damage to the Lessor or any other adjoining owner or occupier including:
 - (i) allowing excessive noise to emanate from the Premises; or
 - (ii) create light spill affecting owners and occupiers of adjoining or nearby land.

Commented [A4]: PC: Permitted use further detailed in Key Commercial Lease Terms.

2.6 Maintenance and repair

- (a) to maintain, repair, replace and keep the Premises, the Lessee's Improvements and the Lessee's property on the Premises in:
 - (i) good and substantial repair and where appropriate, working order, to the extent necessary to conduct the Permitted Use at a high and efficient standard, at all times during the Term fair wear and tear excepted; and
 - (ii) not less than the state and condition in which the Lessee's Improvements and the Premises would be maintained, by a reasonable and prudent registered proprietor of an estate in fee simple in the Premises fair wear and tear excepted,
 except:
 - (iii) to the extent that any damage is contributed to or caused by any wilful or negligent act or omission of the Lessor or any of the Lessor's Agents; or
 - (iv) where the Lessor has given notice that reinstatement or rebuilding is not required;
- (b) to implement procedures relevant to the Premises and the Lessee's Improvements to achieve the environmental initiatives of the Lessee, including to monitor and manage:

Commented [A5]: PC: Maintenance obligations further detailed in Key Commercial Lease Terms.

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- (i) energy and water consumption regarding the Premises and the Lessee's Improvements with the aim of reaching energy and water consumption reduction targets reasonably established for the Premises, the Lessee's Improvements and their Services; and
- (ii) waste reduction and recycling regarding the Premises and the Lessee's Improvements to minimise landfill disposal,

having regard to the Environmental Principles and to:

- (iii) keep appropriate records for a reasonable time; and
 - (iv) produce such records to the Lessor when reasonably requested to do so;
- (c) to promptly repair or replace (or pay to the Lessor its cost of doing so) all damaged, scratched, vandalised or broken glass in or about the Lessee's Improvements, including external windows with glass of the same or similar quality and all damaged or broken light globes and fluorescent tubes and similar items;
- (d) not without the Lessor's consent to:
- (i) modify or obstruct the Services in or servicing the Premises or the Lessee's Improvements; nor
 - (ii) use the lavatories, sinks, drains and other plumbing facilities in the Premises or the Lessee's Improvements for any purpose other than that for which they were constructed or provided and not to deposit or dispose of or permit to be deposited or disposed of, any rubbish, hazardous waste or other material in such facilities,
- or permit such activity;
- (e) to make good any breakage, defect or damage to the Lessee's Improvements to the extent contributed to or caused by the Lessee or any of the Lessee's Agents; and
- (f) if the Lessee by notice requires the Lessor to carry out any works which are the responsibility of the Lessee under this clause 2.6, then:
- (i) the Lessor may (without any obligation to do so and without any liability to the Lessee in respect of such works) on reasonable notice and at reasonable times execute such works as if it were the Lessee; and
 - (ii) the Lessee must pay to the Lessor all the Lessor's reasonable costs and expenses in executing such works;

2.7 Cleaning

having regard to the Environmental Principles applicable to the Premises and the Lessee's Improvements:

- (a) at its cost, to cause the Premises and the Lessee's Improvements to be cleaned regularly and kept clean and free from dirt and rubbish in a proper and workmanlike manner;
- (b) to keep and maintain clean and in good order, repair and condition all of the fixtures, fittings, plant, equipment and chattels of the Lessee, to the extent necessary to prevent any hazard or deterioration in the condition of the Premises and the Lessee's Improvements;
- (c) to store and keep all waste materials and garbage in proper receptacles for it and to ensure that all organic waste is placed in appropriate bags and sealed prior to placement in such waste receptacles and to arrange for the regular removal of it from the Premises and the Lessee's Improvements; and
- (d) to exterminate or eradicate vermin and pests from the Premises and the Lessee's Improvements and to comply with the Lessor's reasonable requests relating to pest control;

2.8 Painting

- (a) in a proper and workmanlike manner, by professional painters, using low environmental impact materials and in colours and according to specifications approved by the Lessor (which approval will not be unreasonably withheld), to paint or cause to be painted:
 - (i) when reasonably required by the Lessor during the Term, all parts of the exterior of the Premises and the Lessee's Improvements as are usually painted and reasonably require repainting to preserve the amenity of the area and external appearance of the Premises and the Lessee's Improvements; and

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- (ii) if required by the Lessor, immediately prior to the expiry of the Term or the surrender of this Lease or within 30 days of any sooner determination of this Lease, all parts of the Premises as are painted at the Commencement Date; and
- (b) that if the Lessee fails to comply with such obligation then the Lessor may, on giving 14 days' notice to the Lessee of the Lessor's intention, undertake such painting through the services of its contractors or nominees and any costs incurred by the Lessor in the exercise of such election must be paid to the Lessor by the Lessee;

2.9 Statutory requirements

to:

- (a) promptly and efficiently satisfy, comply with and observe all present and future laws and the requirements, directions and orders of any relevant authority; and
- (b) promptly do all things reasonably requested by the Lessor, which the Lessor considers necessary to assist the Lessor to comply with its obligations under all present and future laws and the requirements, directions and orders of any relevant authority,

relating to or affecting the use or condition of the Premises or the Lessee's use and occupancy of the Land and (where applicable) irrespective of whether such compliance or obligations are imposed on the owner or occupier of the Premises;

2.10 Notice of defects or hazards and work, health and safety

- (a) to give to the Lessor:
 - (i) prompt notice of any circumstance, including any accident or defect or want of repair in any Services to or improvements, fixtures or fittings in the Premises or the Lessee's Improvements, which the Lessee should reasonably be aware might cause any danger, risk or hazard to the Premises, the Land or the Lessee's Improvements or any person in the Premises or on the Land or the Lessee's Improvements; and
 - (ii) contemporaneously with the notice under clause 2.10(a)(i), reasonable details of the action to be taken by the Lessee to avoid such likely danger, risk or hazard or to remedy such defect or damage;
- (b) that the Lessee is a person conducting a business or undertaking, with management and control of the Premises and the Lessee's Improvements (PCBU) and without limiting clause 2.9, the Lessee will comply, at its cost, with all safety obligations which the Lessee has under work, health and safety laws as a PCBU, including its obligation to:
 - (i) conduct a risk assessment of its activities within the Premises and the Lessee's Improvements; and
 - (ii) ensure the health and safety of workers and other persons at the Premises and the Lessee's Improvements; and
- (c) without limiting clause 2.10(b), to notify the Lessor of any risks to the health and safety of persons using:
 - (i) the Premises; or
 - (ii) the Land; or
 - (iii) the Lessor's property; or
 - (iv) the Lessee's Improvements; or
 - (v) the Lessee's property,
 immediately after becoming aware of such risks;

2.11 Signs and other devices

- (a) not without the consent of the Lessor (which consent will not be unreasonably withheld or delayed) and all relevant authorities, erect, paint, place, display, affix or exhibit on the Premises or the Lessee's Improvements, any permanent sign, advertisement, name or notice, which is visible from outside the Premises or the Lessee's Improvements, provided such signage:
 - (i) is not of a gratuitous or offensive nature to the general public; and

Commented [A6]: PC: Signage requirements further detailed in Key Commercial Lease Terms.

- (ii) does not relate to goods and services which are detrimental to the Lessor (in its reasonable opinion).
- (b) not without the consent of the Lessor (which consent will not be unreasonably withheld or delayed), erect or place inside or outside the Premises or the Lessee's Improvements any radio or television or any loudspeakers, film screens, media equipment or similar devices or equipment which are likely to cause disturbance or result in reasonable complaints;
- (c) to comply with any notice from the Lessor to the Lessee requiring the Lessee to fit effective suppressors to any electrical or other equipment of the Lessee in the Premises or the Lessee's Improvements which may cause electromagnetic interference;
- (d) to maintain radio and television interference levels and electrical disturbance levels emanating from the Premises or the Lessee's Improvements within the limits set out in any relevant Australian Standards; and
- (e) to maintain such signage and equipment in good and substantial repair and on vacating the Premises or otherwise at the request of the Lessor, acting reasonably, to promptly remove any signs, advertisements, names, notices or other equipment erected, displayed, painted, placed, affixed or exhibited on, in, to or outside the Premises or the Lessee's Improvements by or on behalf of the Lessee and to make good any damage or disfigurement caused by reason of such erection, painting, displaying, affixing, placing, exhibiting or removal;

2.12 Lessee's alterations and additions

not without the consent of the Lessor (which consent will not be unreasonably withheld or delayed) and all relevant authorities to:

- (a) construct the Lessee's Improvements; nor
- (b) make any alteration or addition in or to:
 - (i) the Premises; nor
 - (ii) the Lessee's Improvements; nor
 - (iii) the Services,

provided that where such consent is given:

- (c) the materials and design must:
 - (i) first be reasonably approved by the Lessor or its consultants, which approval will not be unreasonably withheld or delayed; and
 - (ii) have regard to the Environmental Principles and initiatives applicable to the Premises, the Lessee's Improvements and their Services and the Lessee's obligations under this Lease;
- (d) such work, equipment or installation must be installed or altered according to the consent so given (if any);
- (e) all reasonable fees payable to the Lessor's consultants in connection with such consent and inspection' must be paid by the Lessee to the Lessor;
- (f) the Lessee must obtain and keep current and ensure that its contractors obtain and keep current such insurance of the Premises, the Lessee's Improvements and the works and of the Lessee and its contractors and workers as the Lessor reasonably requires; and
- (g) such equipment and installations will remain the property of the Lessee and the Lessee must:
 - (i) maintain and repair such equipment and installations in good order and where appropriate in working condition;
 - (ii) pay all associated running costs; and
 - (iii) have regard to the Environmental Principles and initiatives applicable to the Premises, the Lessee's Improvements and their Services and the Lessee's obligations under this Lease;

2.13 Liquor licence

- (a) The Lessee will maintain such licences, permits, approvals and consents as may be necessary from time to time in connection with the Permitted Use.

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- (b) The Lessee must:
- (i) not do, omit or cause to be done any act, matter or thing as a result of which any licence (**Liquor Licence**) issued under the *Liquor Licensing Act 1997* (**Liquor Act**) in respect of the Premises may be liable to be not renewed, or to be suspended, forfeited or removed from the Premises, or in any way prejudicially affected or whereby any offences will be committed under the Liquor Act; and
 - (ii) at all times comply with, observe, carry out and perform the requirements of the Liquor Act and each and every order, direction, and requirements relating to the Premises of the licensing authority or it any inspector, officer or person appointed by the licensing authority.
- (c) The Lessee must not transfer any Liquor Licence in respect of the Premises without the prior consent in writing of the Lessor (which may be withheld in the Lessor's absolute discretion).
- (d) The Lessee must not seek to vary the Liquor Licence without the Lessor's prior consent (which consent may be unreasonably withheld). The Lessor must advise the Lessee of its decision to either consent or to refuse the Lessee's request to vary the Liquor licence within twenty (20) Business Days of receiving the Lessee's request in writing. In the event the Lessor fails to notify to notify the Lessee of its decisions within period specified in this clause, the Lessor is deemed to have consented to the proposed variation.
- (e) During the Term, the Lessee must:
- (i) Supply to the Lessor within four (4) Business Days after forwarding the same to the licensing authority a copy of every statutory declaration, every other form, letter or application required to be forwarded to the licensing authority pursuant to the Liquor Act;
 - (ii) If served with any summons, complaint or other legal process or any notice of communication from any person or authority relating to the Premises or to any licence in respect thereof must immediately inform the Lessor of all necessary particulars and surrounding circumstances and events.

2.14 Reservation of use of conduits

to allow the Lessor and other persons reasonably authorised by the Lessor the free and uninterrupted passage of gas, water, electricity, telecommunication and similar services through and along the Services situated under, in or on the Premises;

2.15 Heavy and noisy equipment

- (a) not without the consent of the Lessor to bring on to or install in the Premises or the Lessee's Improvements, any machinery, plant or equipment of such nature, weight or size as to cause or potentially cause any structural or other damage to the Premises or the Lessee's Improvements or which may in the opinion of the Lessor cause unreasonable noise or vibrations; and
- (b) before bringing any such machinery, plant and equipment on to the Premises or the Lessee's Improvements, to inform the Lessor of the Lessee's intention to do so and the Lessor may reasonably direct the routing, installation and location of all such machinery, plant and equipment and the Lessee must observe and comply with all such directions;

2.16 Dangerous substances

not without the consent of the Lessor to bring or allow to be brought onto the Premises or the Lessee's Improvements any dangerous, noxious, odorous, toxic, volatile, explosive or inflammable substance, compound or pollutant whether in solid, liquid, gaseous or other form other than such substances normally used in the conduct of the Permitted Use, provided that:

- (a) such substances or compounds (including products used in the cleaning of the Premises) are used, handled and stored; and
 - (b) appropriate registers are kept and maintained,
- to comply with all applicable laws;

2.17 Lessor's access and alterations

- (a) to permit the Lessor and any person authorised by the Lessor at all reasonable times, on giving to the Lessee reasonable prior notice, to enter the Premises and the Lessee's Improvements (subject to clause 2.17(c), in the presence of any person appointed for that purpose by the Lessee, which person the Lessee will make available when reasonably required by the Lessor), to:

(i) inspect, collect data and other information and, if necessary, audit regarding the Services and the Lessee's fixtures, fittings and equipment, to assess whether they comply with the Environmental Principles and initiatives applicable to the Premises, the Lessee's Improvements and their Services; and

(ii) view the state of its repair,

and if the Lessor considers that repairs are required or the Services or the Lessee's fixtures, fittings and equipment require alteration:

(iii) the Lessor may then serve on the Lessee a notice of any defect, the repair of or alteration to which is within the Lessee's obligations under this Lease, requiring the Lessee within a reasonable time to remedy the defect;

(iv) in default of the Lessee remedying such defect, the Lessor may execute the required repairs or alterations as if it were the Lessee and for that purpose, the Lessor and any person authorised by the Lessor may enter onto the Premises and the Lessee's Improvements and remain there for the purpose of doing, erecting or effecting any such required repairs or alterations; and

(v) all direct and actual costs of and incidental to carrying out such repairs or alterations must be paid by the Lessee to the Lessor;

(b) to provide reasonable assistance to the Lessor to enable the Lessor to exercise the Lessor's rights under this clause 2.17;

(c) to permit the Lessor and any person authorised by the Lessor:

(i) to carry out:

(A) inspections of; or

(B) alterations or additions to; or

(C) other works (including removal) on or about,

the Premises where the Lessee's prior consent has been given, which consent will not be unreasonably withheld or delayed; and

(ii) where the Lessor has given reasonable prior notice to the Lessee, to enter the Premises for the purpose of carrying out such works,

causing as little disturbance as is practicable to the Lessee in undertaking such works;

(d) in an emergency, the Lessor may, without notice, enter the Premises and the Lessee's Improvements to carry out any works deemed necessary by the Lessor; and

(e) to the extent permitted by law, the Lessee must not make any claim or commence or maintain any suit or action against the Lessor for breach of the quiet enjoyment covenant contained in clause 3 in consequence of such entry or in execution of any of the works contemplated by this clause;

2.18 Security

(a) to use the Lessee's reasonable endeavours to protect and keep safe the Premises and the Lessee's Improvements and any property contained in it from theft or vandalism and to keep all doors, windows and other openings closed and locked when the Premises are not in use; and

(b) to comply with the Lessor's reasonable systems and requirements in respect of the security of the Premises;

2.19 Insurances

(a) to effect by the Commencement Date and maintain during the Term in the names of the Lessee and the Lessor, for their respective rights and interests:

(i) a public liability insurance policy for an amount of not less than \$20,000,000.00 per occurrence (or such other amount as the Lessor may reasonably require and notify the Lessee in writing), which policy extends to the Lessor under section 48 of the *Insurance Contracts Act 1984* (Cth); and

(ii) a policy under which the Premises, the Lessee's Improvements and the Lessee's chattels, fixtures, fittings, plant, equipment and signs in or about the Premises and the Lessee's

Commented [A7]: PC: Required insurances set out in Key Commercial Lease Terms.

- Improvements are insured for their full insurable reinstatement and replacement value and against all insurable risks as the Lessor, acting reasonably, may require from time to time;
- (b) the estimated cost of complete replacement and reinstatement of the Premises and the Lessee's Improvements, including the cost of demolition and removal of debris:
- (i) must be reviewed by the Lessor and the Lessee at each anniversary of the Commencement Date; and
 - (ii) if, before 90 days from each such anniversary, the parties are unable to agree on such estimated cost, then it will be fixed by a member of the Australian Institute of Quantity Surveyors appointed by the President for the time being of the Australian Institute of Quantity Surveyors (SA Chapter):
 - (A) who is deemed to act as an expert and not as an arbitrator;
 - (B) whose fees and costs are to be paid equally by the Lessor and the Lessee;
 - (C) whose determination of the costs of complete replacement and reinstatement will be the value for insurance as set out in clause 2.19(a)(ii); and
 - (D) whose determination will be binding on the parties;
- (c) in respect of the insurances required by clause 2.19(a), the Lessee must:
- (i) deposit with the Lessor copies of the policy and certificates of currency of insurance containing details of the period and cover effected promptly after effecting and renewing such insurance;
 - (ii) pay each premium before the due date and when requested by the Lessor, produce receipts for the payments and certificates of currency;
 - (iii) immediately rectify anything which might prejudice any insurance and reinstate the insurance if it lapses; and
 - (iv) notify the Lessor immediately when:
 - (A) an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (B) any policy of insurance is cancelled; and
- (d) that the Lessee may not:
- (i) do or permit anything which prejudices any insurance in connection with the Premises or the Lessee's Improvements; nor
 - (ii) unless otherwise agreed by the Lessor, disburse any insurance money recovered other than for the purpose of:
 - (A) reinstating or repairing the damage in respect of which a claim under any of the insurance policies was made;
 - (B) construction of improvements first approved by the Lessor; and
 - (C) payment of rent, Statutory Charges and other tenancy costs payable under this Lease;

2.20 Additional premium and excess

- (a) to pay any additional premium levied on account of:
- (i) the Lessee's particular use or occupation of the Premises and the Lessee's Improvements; or
 - (ii) where the Lessor increases the cover for a particular insured risk, at the Lessee's request, regarding any policy of insurance effected in respect of the Premises or any policy of public liability insurance effected by the Lessor; and
- (b) to pay all excess amounts paid or payable by the Lessor under or regarding any of such policies of insurance relating to any accident, incident or claim relating to the Premises;

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2.21 Not to affect Lessor's insurance

not at any time to cause or permit anything in or on the Premises and the Lessee's Improvements which may result in:

- (a) any insurance or indemnity claim regarding the Premises being vitiated or rendered void or voidable; or
- (b) the rate of premium on any insurance or indemnity arrangement increasing; or
- (c) any insurance or indemnity being at risk of being declined or not renewed or not continued; or
- (d) the Lessor being unable to procure or maintain the insurance or to rely upon its membership of the LGA Mutual Liability Scheme;

2.22 Indemnities

to indemnify the Lessor and its officers, employees, agents, contractors and other occupiers of the Land against and in respect of all and any actions, claims, demands, losses, damages, costs and expenses which the Lessor or any of its officers, employees, agents, contractors and other occupiers of the Land may incur in respect of or arising from:

- (a) the death of or injury to any person; or
- (b) loss of or damage to the property of any person; or
- (c) any occurrence in or on any part of the Premises or the Lessee's Improvements,

to the extent contributed to or caused by:

- (d) the Lessee or the Lessee's Agents; or
- (e) the use of the Premises or the Lessee's Improvements by the Lessee or any of the Lessee's Agents (despite such use being within the scope of the Permitted Use); or
- (f) any alterations and additions made by the Lessee to the Premises or the Lessee's Improvements,

except to the extent that the action, claim, demand, loss, damage, cost and expense arises or results from the wilful or negligent act or omission of the person seeking such indemnity;

2.23 Release of Lessor

to occupy, use and keep the Premises and the Lessee's Improvements at the risk of the Lessee and the Lessee agrees that the Lessor and its officers, employees, agents and contractors will have no responsibility or liability and are fully released from all responsibility or liability and the Lessee must not make any claim or commence or maintain any suit or action against the Lessor or any of its officers, employees, agents or contractors for breach of the quiet enjoyment covenant set out in clause 3 in respect of:

- (a) loss of or damage to the Lessee's Improvements and other property;
- (b) claims, demands and damages resulting from or contributed to by any accident, damage or injury occurring in, on or about the Premises and the Lessee's Improvements, unless deriving from any structural defect in the Premises (not contributed to or caused by the Lessee or any of the Lessee's Agents); and
- (c) loss or damage suffered because of or to the extent contributed to by:
 - (i) flooding of the Premises or the Lessee's Improvements affecting the ability of the Lessee to use the Premises or the Lessee's Improvements; or
 - (ii) blockage of any sewers, drains, traps, gutters or down pipes; or
 - (iii) any malfunction, failure to function or interruption of or to the water, gas, electricity, telephone, facsimile, air-conditioning, fire prevention, fire safety, lifts and other systems and other Services (if any) situated in or serving the Premises or the Lessee's Improvements,

except to the extent caused or contributed to by the wilful or negligent act or omission of the Lessor or any of its officers, employees, agents or contractors;

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2.24 Reletting

to permit the Lessor:

- (a) at any time to place 'For Lease' notices and 'For Sale' or similar notices in conspicuous places outside the Premises;
- (b) to enter the Premises on reasonable notice at all reasonable times for the purpose of showing prospective lessees or purchasers over the Premises; and
- (c) to enter the Premises on reasonable notice at all reasonable times during the last 6 months of the Term (if the Lessee has not exercised any rights to renew the Term) for the purpose of showing prospective tenants or purchasers over the Premises;

2.25 Lessee's consent

that where under any statutory requirement, the consent of the Lessee is required to any process, step or dealing by the Lessor with its interest in the Premises, then the Lessee must give its written consent to such proposed process, step or dealing promptly within a reasonable time and, in any event, within xxx (x) days after receipt of a written request from the Lessor to do so, provided that such proposed process, step or dealing does not materially detrimentally affect the Lessee's use of or access to the Premises or the Lessee's Improvements and in the event of any failure by the Lessee to comply with this clause, the Lessee is, by operation of this clause, to be considered to have provided its consent;

2.26 Superior or concurrent interest

- (a) to permit any person having any interest in the Premises superior or concurrent with the Lessor to exercise the Lessor's powers under this Lease and their lawful rights in relation to the Premises; and
- (b) if any person, other than the Lessor, becomes entitled to receive money payable under this Lease either by operation of law or otherwise, to enter into an agreement with that person at the Lessor's expense in the form and containing provisions reasonably required by the Lessor;

2.27 No unauthorised caveat

- (a) not to lodge or cause or permit to be lodged:
 - (i) any absolute caveat on the Certificate of Title for the Land; nor
 - (ii) any permissive caveat containing terms that require the caveatee to obtain the consent of the Lessee to register any future dealing by the Lessor with its interest in the Land or the Premises; and
- (b) to indemnify the Lessor against and in respect of all and any actions, claims, demands, losses, damages, costs and expenses which the Lessor may incur in respect of the lodgement, removal or withdrawal of any such caveat which breaches the requirements of this clause;

3 Quiet possession

The Lessor agrees with the Lessee throughout the Term that if the Lessee pays the rent and duly and punctually observes and performs the terms of this Lease, the Lessee may peaceably possess and enjoy the Premises for the Term, without any interruption or disturbance from the Lessor.

4 Mutual covenants

The Lessor and the Lessee agree throughout the Term that:

4.1 Default

- (a) **Essential terms**
 - (i) clauses 2.1, 2.2, 2.4, 2.5, 2.6, 2.9, 2.10, 2.12, 2.19, 2.22, 4.8, 5, 10 and 11 are fundamental and essential terms of this Lease and the Lessor may treat as a repudiation by the Lessee of this Lease, any breach or default by the Lessee in the observance or performance by the Lessee of its duties and obligations under such clauses; and
 - (ii) the Lessor's acceptance, acquiescence, silence or other conduct in connection with non or late performance of any obligation by the Lessee on any account will not have any effect on the Lessee's obligations;

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(b) Termination and re-entry

if:

- (i) the rent or any part of it is unpaid for a period of 30 days after any of the days on which it ought to have been paid following formal demand for such payment; or
- (ii) the Lessee commits or permits to occur any breach or default in the due and punctual observance and performance of any of the terms of this Lease, the Lessor may give written notice to the Lessee requiring the Lessee to remedy the relevant breach or default within a reasonable period having regard to the nature of the breach or default (such period being not less than 30 days) and, if the relevant breach or default is not capable of remedy, specifying the amount of compensation reasonably required by the Lessor in order to compensate it for the consequences of the breach or default and if the Lessee fails to remedy such breach or default or pay the compensation within the relevant period then the Lessor will (to the extent permitted by law and subject to any requirement to give prior notice under clause 4.2) have the right to terminate this Lease and re-enter and repossess the Premises; or
- (iii) where the Lessee is a body corporate, company or an incorporated association:
 - (A) an order is made or resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the consent of the Lessor); or
 - (B) a Receiver or Receiver and Manager or Administrator or Controller or any of them is appointed to the Lessee or any property of the Lessee is affected by or action is taken towards such appointment; or
 - (C) the Lessee goes into liquidation or provisional liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is insolvent within the meaning of the *Corporations Act 2001* (Cth); or
 - (D) the Lessee being or becoming deemed for the purpose of any law, to be insolvent; or
- (iv) where the Lessee is a natural person, the Lessee is convicted of an indictable offence (other than a traffic offence); or
- (v) execution is levied against the Lessee and not discharged within 14 days,

then the Lessor will (to the extent permitted by law and subject to any requirement to give prior notice under clause 4.2) have the right to terminate this Lease and re-enter and repossess the Premises, without prejudice to any other right or remedy of either party for any antecedent breach or default of any term of this Lease;

(c) Damages

if this Lease is terminated by the Lessor for any reason:

- (i) whether under a right to do so under this Lease; or
- (ii) because of a repudiation at common law,

then the Lessor may recover all costs, expenses, losses and damages in respect of the loss of benefits, which observance or performance of this Lease would have conferred on the Lessor had this Lease and the Lessee's obligations under it been operative and performed, for the unexpired balance of the Term following such termination;

(d) Repudiation

if the Lessee's conduct (whether by act or omission) constitutes:

- (i) a repudiation of this Lease (or of the Lessee's obligations under this Lease); or
- (ii) a breach of any of the terms of this Lease,

the Lessee must compensate the Lessor for the loss or damage suffered because of such repudiation or breach and the Lessor's entitlement to recover damages will not be prejudiced or limited by:

- (iii) the Lessee abandoning or vacating the Premises; or
 - (iv) the Lessor electing to re-enter the Premises or to terminate this Lease; or
 - (v) the Lessor accepting the Lessee's repudiation; or
 - (vi) the conduct of the Lessor and the Lessee constituting a surrender by operation of law; and
- (e) **Mitigation**
- if the Lessor terminates this Lease, then without limiting the Lessor's right to take any other action:
- (i) the Lessor will be deemed for all purposes to have taken reasonable steps to mitigate losses, if the Lessor has appointed, for reward, an arm's length party who conducts the business of property management, to re-let the Premises and that party appears to the Lessor to be acting with reasonable proficiency; and
 - (ii) the Lessee:
 - (A) acknowledges that the Lessor requires any proposal in connection with the Premises to be in writing; and
 - (B) agrees that it is not reasonable for the Lessor to rely or act on any proposal that is not reasonable;

4.2 Landlord and Tenant Act

if:

- (a) notice to the Lessee is required to be given under sections 10 and 12 of the *Landlord and Tenant Act 1936* (SA) before exercising any right of re-entry or forfeiture, then such notice must provide that 14 days is the reasonable period within which the Lessee is to:
 - (i) remedy any such breach if it is capable of remedy; and
 - (ii) make reasonable compensation in money to the satisfaction of the Lessor for the breach; and
- (b) the matter has been referred for determination under clause 10, the Lessor's right of re-entry or forfeiture is subject to such determination;

4.3 Real Property Act

the covenants and powers implied in leases under sections 124 and 125 of the *Real Property Act 1886* (SA) will apply and be implied in this Lease, unless they are expressly or by necessary implication excluded or modified;

4.4 Default interest

without prejudice to any other right or remedy of the Lessor, the Lessee must pay to the Lessor interest at the Default Rate on any money payable but unpaid on the day that money becomes payable by the Lessee to the Lessor under this Lease, such interest to be computed from the date on which the money becomes payable until payment is made in full;

4.5 Costs and remedies on default

- (a) if the Lessee breaches or fails to perform any term of this Lease and such breach or failure to perform continues for 14 days after the Lessor has given the Lessee notice requiring the Lessee to remedy the breach or perform the term (except in an emergency when no notice is required), then:
 - (i) the Lessor may remedy the breach or perform the term without prejudice to any other right or remedy; and
 - (ii) the Lessee must pay to the Lessor all resulting costs reasonably and properly incurred by the Lessor;
- (b) all reasonable costs incurred by the Lessor in respect of:
 - (i) the recovery of rent and other money payable by the Lessee to the Lessor under this Lease; and
 - (ii) the Lessor remedying or attempting to remedy any Lessee's breach of or failure to perform any term of this Lease,

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will be deemed to be additional rent falling due and payable on the date on which the Lessor incurs such costs; and

- (c) the Lessor may in its absolute discretion apply (or re-apply) any or all amounts received from the Lessee under this Lease towards the discharge of the following outstanding amounts (if any) and in the following order of priority or as otherwise decided by the Lessor:
- (i) legal fees on a solicitor/client indemnity basis;
 - (ii) interest charges;
 - (iii) the Lessee's contribution to utilities;
 - (iv) any other amount due and payable by the Lessee to the Lessor under this Lease or otherwise; and
 - (v) rent,

despite any contrary intention or direction of the Lessee or any other party in making payment of such amount;

4.6 No compensation

the Lessee is not entitled to compensation for disturbance in respect of a particular occurrence, if the likelihood of the occurrence was specifically drawn to the attention of the Lessee, in writing, before the Lessee entered into this Lease;

4.7 Destruction or damage

- (a) if the Premises or the Lessee's Improvements are damaged or destroyed, the Lessee must, unless otherwise agreed by the Lessor:
- (i) promptly claim on the insurance referred to in clause 2.19; and
 - (ii) subject to clause 4.7(c), use the proceeds of such insurance to promptly reinstate the Premises and the Lessee's Improvements, to a standard equivalent to the Premises and the Lessee's Improvements prior to the date of damage or destruction,

and any deficiencies in the insurance moneys received must be paid by the Lessee to reinstate the Premises and the Lessee's Improvements to such condition save and except to the extent that insurance proceeds are unrecoverable or deficient due to any act or omission of the Lessor, subject to the Lessee first obtaining the consent of the Lessor and all relevant authorities to such reinstatement works;

- (b) there will be no abatement of rent, Statutory Charges and other tenancy costs on account of the Premises or the Lessee's Improvements being rendered unfit for occupation or inaccessible as a result of such damage or destruction or during rebuilding or reparation of the Premises or the Lessee's Improvements, provided that a fair proportion of the rent, Statutory Charges and other tenancy costs will abate if the damage or destruction results from any wilful or negligent act or omission of the Lessor, which renders insurance moneys irrecoverable under the Lessee's insurance effected pursuant to clause 2.19; and
- (c) if the damage or destruction occurs in the last #18# years of the Term, the Lessee may elect not to reinstate the damage and destruction, but the Lessee must remove all debris and if required by the Lessor, remove all remaining parts of the Lessee's Improvements and make good any resulting damage to the Premises and on completion of such removal and make good works, either the Lessor or the Lessee may terminate this Lease and neither party may make a claim against the other except in respect of antecedent breach or default;

4.8 Electricity laws

- (a) if the Lessor sells electricity to the Lessee in respect of a period and the Lessee does not in respect of that period, purchase electricity from a licensed retailer of electricity of its choice (**Licensed Retailer of Electricity**), then the Lessee must:
- (i) pay, when due, all costs, fees and charges for the provision of electricity by the Lessor to the Lessee, at the rate nominated by the Lessor from time to time;
 - (ii) pay to the Lessor, when due, the Network Charges that the Lessee would be required to pay to the operator of the external electricity distribution network, as if the Premises were directly connected to that external electricity distribution network, unless such Network

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Charges are already included in the rate nominated by the Lessor under clause 4.8(a)(i); and

- (iii) comply with the terms and conditions applicable to the network, as advised by the Lessor from time to time;
- (b) the Lessor acknowledges that where the Lessee is to purchase electricity from a Licensed Retailer of Electricity, the Lessor will for that purpose allow the Lessee without charge payable to the Lessor (except under clause 4.8(c)), but otherwise at the cost of the Lessee, to:
 - (i) access and use the Lessor's network; and
 - (ii) install, maintain and use meters and other necessary equipment in the Premises to record, deal with or segregate the supply of electricity to the Premises,

provided that the Lessee must notify the Lessor of any information relating to the supply and consumption of electricity by the Lessee in or in relation to the Premises, as may be reasonably required by the Lessor to administer the Lessor's network;

- (c) if the Lessee purchases electricity directly from a Licensed Retailer of Electricity and has access to the Lessor's network, then the Lessee must pay to the Lessor the Network Charges that the Lessee would be required to pay to the operator of the external electricity distribution network, as if the Premises were directly connected to that external electricity distribution network, unless the Premises are directly connected by a supply point to that external electricity distribution network;
- (d) to the extent permitted by law, the Lessor gives no warranty or undertaking and makes no representations concerning the condition, suitability, quality or quantity of the electricity sold by the Lessor to the Lessee or electricity supplied to the Premises;
- (e) if the Lessee proposes to increase the electricity requirements of the Premises during the Term, which necessitates:
 - (i) the installation of additional electricity equipment in the Premises; or
 - (ii) alteration to the Lessor's network,
 then to the extent consistent with applicable electricity laws, the Lessee will be liable for the costs of and incidental to:
 - (iii) installing that additional electricity equipment; and
 - (iv) making those alterations to the Lessor's network,
 but:
 - (v) such installation or alteration will be carried out within the Premises or to the Lessor's network, only with the prior approval of the Lessor and in compliance with the terms of this Lease; and
 - (vi) in any event the Lessor may, in its absolute discretion, carry out such installation or alteration and the reasonable cost of such works will be promptly paid by the Lessee; and
- (f) the Lessee acknowledges and agrees that, if at the request of the Lessee, the Lessor makes arrangements with the Lessee for the provision of power from the Lessor's emergency power or back up power generation system (if any is installed at the absolute discretion of the Lessor), then to the extent permitted by law, the Lessee must pay the Lessor's separate charges for the connection to and supply of power to the Premises from the Lessor's emergency power or back up power generation system;

4.9 Holding over

- (a) if the Lessee holds over after the expiry or sooner determination of the Original Term or any extension or renewal of this Lease, as the case may be, (**Holding Over Commencement Date**) with the consent (express or implied) of the Lessor, the Lessee then becomes a monthly tenant of the Lessor, which tenancy may be terminated by either party giving to the other one month's prior notice, expiring at any time, at a monthly rent equivalent to one twelfth of the annual rent, being the amount **A** calculated according to the following formula:

$$A = B \times \frac{C}{D}$$

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where:

B is the amount of the annual rent payable in respect of the Premises immediately before the Holding Over Commencement Date;

C is the quarterly CPI figure applicable immediately before the Holding Over Commencement Date; and

D is the quarterly CPI figure for the corresponding quarter applicable immediately before the date that is 12 months before the Holding Over Commencement Date,

and the rent so adjusted as at the Holding Over Commencement Date will be further adjusted in the same manner as is set out in this clause 4.9(a) (with the necessary changes) on each anniversary of the Holding Over Commencement Date and otherwise on the same terms and conditions (with the necessary changes) as those contained in this Lease so far as applicable; and

- (b) if the Lessee vacates the Premises on the expiry of the Term or sooner determination of this Lease and has not complied with its obligations under clause 4.11 then, despite the Lessee not being in physical occupation of the Premises, the Lessee will be deemed to be holding over on a daily basis at a rent to be determined in the manner specified in clause 4.9(a) (with the necessary changes) and otherwise on the same terms and conditions (with the necessary changes) as this Lease, until the Lessee has complied with its obligations under clause 4.11;

4.10 Rent review

- (a) the rent will be reviewed as at and from each Review Date specified in **Error! Reference source not found.**(a) of the schedule to an amount equivalent to **A** calculated according to the following formula:

$$A = B \times \frac{C}{D}$$

where:

B is the amount of the annual rent payable in respect of the Premises during the 12 months immediately before the relevant Review Date, except in the case of the first review in respect of the Original Term, where **B** will be the initial annual rent specified in **Item 8** of the schedule, but disregarding any rent incentives or rebates;

C is the quarterly CPI figure applicable immediately before the relevant Review Date; and

D is the quarterly CPI figure for the corresponding quarter applicable immediately before the date that is 12 months before the relevant Review Date,

provided that if:

- (i) the CPI (**Original Index**) ceases to be published; or
 (ii) the basis on which the Original Index is calculated is substantially changed,

then the Lessor (acting reasonably) will nominate a similar index or indicator of changes in consumer costs in lieu of CPI;

- (b) the rent will be reviewed as at and from each Review Date specified in **Item 8 Error! Reference source not found.**(b) of the schedule, to the Current Market Rent as at the relevant Review Date, as agreed between the Lessor and the Lessee in writing and failing agreement 30 days before the relevant Review Date, the Current Market Rent as at the relevant Review Date will be as determined by a Valuer and the Valuer's appointment will include a requirement that the Valuer accept instructions to undertake the determination on the following basis:

- (i) promptly on appointment, the Valuer will notify the Lessor and the Lessee in writing of the fact of such appointment and the Valuer's acceptance of it;
 (ii) the Valuer will seek written submissions from the Lessor and the Lessee or their duly authorised representatives as to the matters to which the Valuer should have regard in making the determination and will provide a copy of any submission to the other party to allow a right of reply to the submission;
 (iii) the Valuer will consider those submissions before making the determination, provided that the submissions are made within the time nominated by the Valuer;

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- (iv) promptly on making the determination, the Valuer will dispatch to the Lessor and the Lessee a copy of the determination being a detailed written report;
 - (v) the determination will be made within 30 days following the Valuer's acceptance of the appointment; and
 - (vi) if the Valuer fails to make the determination within 30 days after accepting the appointment or becomes incapacitated or dies or resigns from the appointment, then another Valuer may be appointed to act under this clause 4.10;
- (c) the failure of the Lessor to require a determination of the new rent as at any Review Date will not impede or prevent the Lessor at any subsequent time from requiring the new rent to be determined under this clause 4.10 as at and from the Review Date;
- (d) if the new rent applicable as at and from any Review Date is not reviewed by that date, then:
- (i) pending such review, the Lessee must pay the instalments of the rent at the rate applicable immediately prior to the Review Date; and
 - (ii) the new rent will be varied retrospectively as at and from the Review Date and any necessary adjustment in respect of:
 - (A) any underpayment of any instalment paid after the Review Date must be paid by the Lessee to the Lessor within 14 days after the new rent is determined; and
 - (B) any overpayment will be credited to the next rent instalments due by the Lessee after the new rent is determined;
- (e) this clause 4.10 is subject in all respects to clause 5; and
- (f) despite any other provision of this clause 4.10, the rent on review will not be less than the annual rent payable in respect of the Premises immediately prior to the relevant Review Date (but disregarding any rent incentives or rebates);

4.11 Removal of fixtures and fittings and yielding up Premises

- (a) at or immediately before the expiry of the Term or surrender of this Lease or within 14 days of any sooner determination of this Lease, the Lessee must:
- (i) peaceably surrender and yield up the Premises (and if required by the Lessor, the Remaining Improvements defined in clause 4.11(b)):
 - (A) clean and free of rubbish; and
 - (B) in good and substantial repair, order and condition and safe and where appropriate, in good working order (fair wear and tear excepted); and
 - (ii) surrender all keys and access devices and other security mechanisms for the Premises and the Lessee's Improvements (if relevant) to the Lessor and:
 - (A) inform the Lessor of all combinations on locks, safes and vaults (if any) in the Premises and the Lessee's Improvements (if relevant);
 - (B) provide a detailed list of any security devices which may have been stolen or lost; and
 - (C) pay to the Lessor all replacement costs;
- (b) if the Lessor requires the Lessee to yield up to the Lessor, the Lessee's Improvements or any part of them, which the Lessor requires to remain on the Premises (**Remaining Improvements**), then at or immediately before the expiry of the Term or surrender of this Lease or within 14 days of any sooner determination of this Lease, the Lessee will, in consideration of payment by the Lessor of the current market value of the Remaining Improvements:
- (i)
 - (A) transfer to the Lessor or at the Lessor's direction, all the right, title and interest of the Lessee in the Remaining Improvements;
 - (B) at the Lessor's option, assign or novate all maintenance agreements, warranties, licences and permits relating to the Remaining Improvements; and

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- (C) provide to the Lessor all plans, drawings, specifications and depreciation schedules relating to the Remaining Improvements including relating to completing, refurbishing, altering and extending the Remaining Improvements and an irrevocable licence to the Lessor or its nominee to reproduce and use such plans, drawings, specifications and schedules; and
- (ii) to the extent required by the Lessor and to the reasonable satisfaction of the Lessor, arrange for:
 - (A) all plant, machinery and equipment left by the Lessee to be certified by an appropriately qualified contractor to be in good working order; and
 - (B) all floor coverings (not required to be removed) to be steam cleaned and if excessively worn or torn such damaged floor coverings must be replaced;
- (c) if the Lessor requires the Lessee to remove the whole or any part of the Lessee's Improvements (**Redundant Improvements**), then at or immediately before the expiration of the Term or surrender of this Lease or within 14 days of any sooner determination of this Lease, the Lessee will, at its cost:
 - (i) demolish the Redundant Improvements and clear all resulting debris; and
 - (ii) reconfigure the Services to the condition required by the Lessor, and in carrying out such demolition and reconfiguration the Lessee must:
 - (iii) minimise damage to the Premises and the Remaining Improvements (if any);
 - (iv) make good any resulting damage; and
 - (v) comply with clause 4.11(a)(i);
- (d) the Lessee may at any time during the Term and must by the expiry of the Term or surrender of this Lease or within 14 days of any sooner determination of this Lease, remove from the Premises all plant, equipment, signage, trade or tenant fixtures, fittings and articles brought onto the Premises by the Lessee (which items must be removed entirely, including all ancillary parts and components), but in such removal the Lessee must minimise damage to the Premises and must make good any resulting damage, having regard to the Environmental Principles and initiatives applicable to the Premises, the Lessee's Improvements and their Services;
- (e) the Lessee must comply with the Lessor's reasonable requirements in respect of such removal and reinstatement, provided that if the Lessee fails to do so:
 - (i) the provisions of clause 4.9(b) will apply; and
 - (ii) the Lessor may carry out such demolition, reconfiguration, removal and reinstatement work, at the reasonable cost of the Lessee, and:
 - (A) any Redundant Improvements, fixtures and fittings not removed by the Lessee will be deemed abandoned by the Lessee and will be and become the property of the Lessor absolutely; and
 - (B) any other property left on the Premises by the Lessee may be dealt with by the Lessor, at its discretion and at the cost of the Lessee and the Lessor will not be liable to the Lessee or to any person claiming through the Lessee for any loss or damage occasioned by such dealing; and
- (f) within 7 days of receipt of an appropriate tax invoice, the Lessee must pay to the Lessor all reasonable costs, including consultancy fees, incurred by the Lessor for negotiation, review, approval and subsequent certification that the Lessee has satisfactorily completed its reinstatement obligations under this clause 4.11;

4.12 Power of attorney

- (a) If the Lessor becomes entitled to re-enter and take possession of the Premises after complying with any relevant statutory provision, the Lessee irrevocably appoints the Lessor to be the attorney of the Lessee to execute any documents and perform any acts the Lessor requires to give full effect to the power of re-entry under the *Real Property Act 1886*.
- (b) The Lessor may do, execute and perform all things relating to the Premises as fully and effectually as the Lessee could do. The Lessee must ratify and confirm the appointment of and all actions by the Lessor under this clause 4.12.

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4.13 Notice

- (a) without prejudice to any other means of serving notice any notice required to be served under this Lease will be sufficiently served:
 - (i) if to the Lessee, then:
 - (A) by personal service on the Lessee (or if it is a body corporate on a director, secretary or other officer of the Lessee); or
 - (B) by personal service at the Premises; or
 - (C) by post or facsimile transmission to the Premises or the Lessee's registered office (if a body corporate); or
 - (D) by personal service at or post or facsimile transmission to the Lessee's last place of business or residence known to the Lessor; and
 - (ii) if to the Lessor, then:
 - (A) by personal service on the Lessor (or if it is a body corporate on a director, secretary or other officer of the Lessor); or
 - (B) by post or facsimile transmission to the Lessor's registered office (if a body corporate) or to the Lessor's last known place of business or residence;
- (b) any notice may be signed on a party's behalf by its attorney, director, secretary or other officer or solicitor;
- (c) a notice by post is deemed served at the time when it ought to be delivered in the due course of post;
- (d) a notice by facsimile is deemed served on production of a transmission report by the machine from which it is sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (e) where there is more than one person comprising the Lessee a notice served on or by any one or more of the persons comprising the Lessee is deemed served on or by all of the persons comprising the Lessee;

4.14 Agreement to lease and other matters

- (a) if this Lease is entered into under an agreement to lease, then the Lessee and the Lessor must each observe and perform all the terms and conditions to be observed or performed by them under such agreement to lease, which remain outstanding as at the Commencement Date and continue to apply during the Term;
- (b) subject to clause 4.14(a), the terms of this Lease comprise the whole of the agreement between the parties and no other agreements or terms will be implied in this Lease or arise between the parties by way of collateral agreement;
- (c) no promise, representation or warranty (including as to the suitability of the Premises to conduct the Lessee's business or to the fittings, fixtures and facilities of the Premises) has been given or made by or on behalf of the Lessor to the Lessee;
- (d) no waiver by the Lessor of one breach of any term of this Lease will operate as a waiver of another breach of that or any other term of this Lease; and
- (e) any term of this Lease which is not applicable to the Premises or which is repugnant to the general interpretation of this Lease or which is invalid, unlawful, void or unenforceable will be capable of severance without affecting any of the other terms of this Lease;

4.15 No partnership

nothing contained in this Lease will create the relationship of:

- (a) partnership; or
- (b) principal and agent; or

- (c) joint venture,

between the Lessor and the Lessee and no term of this Lease will create any relationship between the Lessor and the Lessee other than the relationship of lessor and lessee; and

5 GST

5.1 Liability for GST

- (a) Unless otherwise stated, the consideration payable by the Recipient to the Supplier for, or in connection with a Supply under this Lease which is subject to GST, does not include any GST.
- (b) The Recipient must pay to the Supplier an additional amount on account of GST (**GST Amount**) equal to the consideration payable by the Recipient to the Supplier for the Supply multiplied by the prevailing GST rate.

5.2 Time of GST payment

The GST Amount is payable no later than the time the consideration to which the GST Amount relates is payable by the Recipient under this Lease, provided the Supplier has issued a tax invoice to the Recipient.

5.3 Liabilities reduced by input tax credits

To the extent that the consideration for a Supply consists of the reimbursement or indemnity for any liability (including costs and expenses) incurred by the Supplier, in this Lease:

- (a) the amount of that liability will be reduced by the amount of any input tax credit to which the Supplier is entitled because of incurring the liability; and
- (b) the Recipient must also pay the GST Amount relating to the reimbursement or indemnity for that liability.

5.4 Adjustment event

If an adjustment event results in the GST on a taxable Supply being different from the GST recovered by the Supplier, the Supplier must refund to the Recipient the excess and may recover from the Recipient the shortfall, provided the Supplier has issued an adjustment note to the Recipient.

5.5 Definitions

Terms used in this clause 5 have the same meaning as in the GST Act.

6 Personal Property Securities Act

6.1 Lessor may register financing statement

The Lessor may, at any time, register a financing statement or financing change statement on the PPSR in relation to any security interest arising out of this Lease, over any or all of the Lessor's personal property in or about the Premises, at any time, for any time and with any description of collateral, as the Lessor sees fit.

6.2 Co-operation by Lessee

- (a) The Lessee must sign any documents and do anything necessary to enable the Lessor to exercise its rights, and comply with its obligations, under this clause, including to ensure that any security interest is fully effective, enforceable and perfected with the priority required by the Lessor and for this purpose the Lessee agrees that the Lessor may register any security interest as a purchase money security interest on the PPSR, if applicable.
- (b) The costs of and incidental to the registration of a financing statement or financing change statement on the PPSR and any related documents must be paid by the Lessee.

6.3 No financing statement for security deposit/bank guarantee

The Lessee must not register, or permit to be registered, a financing statement on the PPSR in relation to any security deposit or bank guarantee provided by it.

6.4 Exclusion of certain provisions of PPSA

Under section 115 of the PPSA, the parties contract out of the provisions of sections 95, 96, 117, 118, 120, 125, 130, 135, 142 and 143, subsections 121(4) and 132(4), paragraph 132(3)(d) and Division 6 of Part 4.3 of the PPSA.

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6.5 No notice of verification statement

Under section 157(3) of the PPSA, the Lessee waives its right to receive notice of a verification statement in respect of a registration event.

6.6 Definitions

Terms used in this clause 6 have the same meaning as in the PPSA.

7 Acknowledgements

The Lessee acknowledges that:

- (a) the Lessor does not warrant that the Premises will for the duration of this Lease be structurally or otherwise suitable for the business to be conducted in the Premises by the Lessee; and
- (b) the Lessee has relied on its own judgement and expertise and the Lessee's experts in entering into this Lease and deciding that the Premises is suitable for its purposes.

8 Conditions

This Lease is subject to the consent or approval of any person having any mortgage or encumbrance over the Premises and any development or planning approval or consent, being first obtained if required.

9 Consent

Unless otherwise provided in this Lease, where the consent or approval of the Lessor is required, such consent or approval:

- (a) means prior written consent and prior written approval;
- (b) may be given or withheld in the reasonable discretion of the Lessor; and
- (c) if given may be made conditional or unconditional provided any conditions are reasonable.

10 Environmental requirements

- (a) The Lessee must, in relation to the Premises:
 - (i) comply with Environmental Laws;
 - (ii) do all things necessary to prevent a breach of any Environmental Law; and
 - (iii) promptly notify the Lessor of any:
 - (A) breach of any Environmental Law; and
 - (B)
 - (I) notice received by the Lessee; or
 - (II) proceedings commenced, under an Environmental Law;
 - (III) relating to a breach or alleged breach of an Environmental Law; or
 - (IV) requiring any works to be carried out in relation to the Premises or any land adjoining the Premises because of any Contaminant affecting the Premises.
- (b) (i) The Lessee must permit the Lessor and its employees, agents, contractors and consultants to enter the Premises for the purpose of:
 - (A) conducting such annual tests or audits, as are reasonably required by the Lessor, to determine whether there has been any leakage of Contaminants; and
 - (B) monitoring the Lessee's compliance with Environmental Laws.
- (ii) If the tests or audits disclose that there has been a leakage of Contaminants, the Lessee must, at its cost, within 3 months of receiving the report in respect of the leakage or earlier, if required by Environmental Law, take such action as is necessary to:

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- (A) remediate the Premises; and
 - (B) ensure that no further leakage occurs.
- (iii) After the Lessee has carried out the appropriate remediation work, the Lessee must forward to the Lessor a report from an appropriately qualified consultant (approved by the Lessor, which approval will not be unreasonably withheld), which confirms that:
- (A) the Premises has been remediated;
 - (B) the source of the leakage has been identified; and
 - (C) appropriate rectification works have been completed to prevent any further leakage.
- (c) In exercising rights under this clause, the Lessor and its employees, agents, contractors and consultants must:
- (i) give reasonable prior notice to the Lessee of the Lessor's intention to exercise rights under this clause;
 - (ii) cause as little inconvenience as reasonably practicable to the Lessee in its use and occupation of the Premises; and
 - (iii) comply with the Lessee's reasonable hygiene or safety requirements.

11 Exemption application

The Lessee and the Lessor: acknowledge and agree that the provisions of the *Retail and Commercial Leases Act 1995* (SA) (**Leases Act**) will not apply to the provisions of this Lease throughout the Term.

12 Dispute resolution

12.1 All Disputes to be dealt with under this clause

Unless otherwise provided in this Lease, all disputes or differences between the parties in connection with:

- (a) this Lease; or
- (b) any other matter in any way relating to this Lease,

(Dispute) will be dealt with under this clause 12, whether the Dispute is first raised before, during or after the Term.

12.2 Notice of Dispute

Either party (**Disputing Party**) may within 30 days after the Dispute arises, give a notice to the other party (**Non-Disputing Party**):

- (a) setting out details of the Dispute, the reason the Dispute should be resolved in favour of the Disputing Party and any other matter that may, in the reasonable opinion of the Disputing Party, be relevant to the resolution of the Dispute; and
- (b) requiring the Non-Disputing Party to, in good faith, resolve the Dispute within 14 days of the date of the notice.

12.3 Referral of Dispute to an Expert

If the Dispute is not resolved according to the provisions of clause 12.2 and subject to clause 12.4, the determination of the Dispute (**Determination**) will be referred to a suitably qualified and experienced independent person (**Expert**) nominated by the President (or if there is not a President, then Chief Executive Officer or other person of like status) for the time being of The Law Society of South Australia (or if that body has ceased to exist, then a body fulfilling substantially the same functions as the first mentioned body).

12.4 Urgency

Either party may, in a case of genuine urgency, seek immediate interlocutory relief or interim remedy.

12.5 Expert

The Expert is an expert and not an arbitrator.

12.6 Final

The Determination is final and binding on the parties.

12.7 Conduct of Determination

Unless otherwise agreed by the parties in writing:

- (a) the place of the proceedings for the purposes of the Determination will be Adelaide, South Australia;
- (b) each party is entitled to legal representation at all stages of the Determination;
- (c) the proceedings for purposes of the Determination will be conducted according to laws of evidence;
- (d) each party will bear its own costs and expenses in relation to the Determination;
- (e) the parties will pay in equal shares the Expert's fees and expenses and the cost of the Determination including room hire (if any), unless otherwise determined by the Expert;
- (f) the parties must comply with all reasonable requests and produce all necessary documentation to the Expert to enable the Expert to make the Determination;
- (g) the parties may make submissions which the Expert must take into account when making the Determination;
- (h) the Expert must provide its Determination to the parties in writing, with reasons for the Determination and within 14 days of the conclusion of the hearing of the Dispute; and
- (i) the provisions of the *Commercial Arbitration and Industrial Referral Agreements Act 1986 (SA)* do not apply to the resolution of any Dispute under the provisions of this clause 12.

13 Statutory authority

The Lessee acknowledges and agrees that any approval or consent by the Lessor under this Lease does not constitute consent or approval of, or limit, restrict or falter any right, power or privilege of the Lessor in its separate capacity as a statutory authority.

14 FIRB

The Lessee:

- (a) covenants that the Lessee's entry into this Lease is neither a significant action nor a notifiable action within the meaning of the *Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA)* and the *Foreign Acquisitions and Takeovers Regulations 2015*; and
- (b) warrants that it is not a foreign government investor nor does any foreign government investor have any interest in the Lessee for the purposes of FATA.

15 Resumption

- (a) The Lessor may terminate this Lease by giving at least three (3) months' written notice to the Lessee if the Lessor receives notice of resumption or acquisition of the Premises or the Land (or any part of the Land affecting the Premises) from or by any statutory authority.
- (b) Termination of this Lease under this clause 15 releases each party from further liability under this Lease, but does not affect a party's rights or liabilities for a prior breach.

16 Lessor's discretion

The Lessor enters into this Lease as a council acting under sections 7 and 36 of Act and not in any other capacity. This Lease does not preclude or pre-empt the exercise by the Lessor of any other regulatory function or power as a council.

17 Community Land

- (a) This Lease is subject to and conditional upon the Lessor obtaining all consents and approvals and undertaking any process required under the Act or any other law in order for the Lessor to validly grant and duly execute this Lease, including (without limitation):

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- (i) confirmation that the Licence Agreement complies with the Community Land Management Plan; and
 - (ii) any public consultation process required under the Act.
- (b) For the purpose of this clause, **Community Land Management Plan** means the management plan prepared and adopted by Council pursuant to section 196 of the Act in relation to the Land.

18 Oversight legislation

- (a) The Lessee acknowledges that this transaction may be an administrative act and that the *Ombudsman Act 1972* (SA) may apply. The Lessee agrees to cooperate and to comply with all its legal obligations under that or any other Act.
- (b) The Lessee acknowledges that Lessor is an 'agency' for the purposes of the *Freedom of Information Act 1991* (SA) and that documents, correspondence or other information relating to this Lease may be subject to disclosure under that Act.

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Executed as a deed

Lessor:

#20#

Lessee:

#21#

DRAFT
Released

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Plan of Premises



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Released

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PROPOSED LEASE AREA

-  Proposed Adelaide Football Club Lease Area
-  Department for Infrastructure and Transport 'Torrens to Darlington' Road Project Acquisition Area



Prepared for the City of West Torrens
22ADL-1309
7 September 2022

Thebarton Oval Precinct

Lease Agreement Engagement Plan

SHAPING
GREAT
COMMUNITIES



Thebarton Oval Precinct Lease Agreement Engagement Plan 7 September 2022

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1.0 Background

This Engagement Plan provides the framework for the delivery of public consultation related to the proposed lease agreement between the City of West Torrens and the Adelaide Football Club at the Thebarton Oval Precinct.

1.1 Context

The Adelaide Football Club has been searching for a new location to meet the long-term requirements for a home ground. The Thebarton Oval Precinct has been identified as the preferred location.

The Adelaide Football Club has approached the City of West Torrens seeking to establish a long-term lease of the Thebarton Oval Precinct.

A Master Plan for Kings Reserve, which is part of the Thebarton Oval Precinct, was approved by Council in 2018. This plan established a long-term overarching vision for the Kings Reserve as it is one of the premier multi-use open spaces within West Torrens and is widely used for winter sport in addition to active and passive recreation, including large areas of irrigated open space, playground area, skate bowl, Thebarton Oval, bowling club, courts and community centre.

A 42-year lease agreement with the Adelaide Football Club is being proposed and, if agreed, would enable significant investment by the Club at the Precinct, while maintaining delivery of key principles of the existing Kings Reserve Master Plan for the Council.

Establishing such a lease agreement is considered Community Land Alienation by lease or licence and is therefore subject to statutory consultation requirements under the *Local Government Act 1999 (section 202)*. The consultation/engagement also needs to be conducted in line with the City of West Torrens Administration Policy: Public Consultation.

The lease area plan, along with the key terms of the lease agreement, will be relevant to this engagement and the feedback received will help inform any Council decision made in relation to a lease agreement with the Adelaide Football Club.

1.2 Thebarton Oval Precinct

The lease proposes to cover an area encompassing the Thebarton Oval and the adjacent Kings Reserve.

In determining the proposed lease area, the interface of the Precinct with the State Government's Torrens to Darlington Project (T2D) has been accounted for.

Figure 1 Proposed lease area



1.3 Role of this Plan

The role of this Engagement Plan is to clearly outline the stakeholders, risks, key messages, communication and engagement activities, and supporting collateral that will be used in engaging the public on the proposed lease agreement between the City of West Torrens and Adelaide Football Club.

The Plan has been developed in line with the statutory consultation requirements under the *Local Government Act 1999 (Section 202)*. It also aligns with the requirements of the City of West Torrens Administration Policy: Public Consultation.

This Engagement Plan is specific to this stage of the project only. It is focused on the critical stakeholders and engagement in relation to the proposed lease agreement, acknowledging that while this might expand in the future, at this stage it remains targeted and specific.

2.0 Purpose of the engagement

The purpose of this engagement is to gain feedback from the public on the proposed lease and terms between the City of West Torrens and Adelaide Football Club.

The feedback gathered will be presented to the City of West Torrens Elected Council for consideration in any decision made on whether to proceed with the lease and the final lease agreement.

Specifically, the insights provided through the engagement will assist the City of West Torrens to understand:

- The level of support for the City of West Torrens to enter into a long-term lease agreement with the Adelaide Football Club.
- Key public interests and concerns in relation to the terms of the lease.
- Key interests and concerns that will need to be addressed through future stages.

In addition, the engagement also provides the City of West Torrens the opportunity to:

- Communicate future consultations.
- Establish relationships with the public who are likely to have a continued interest.

It is anticipated that there will be keen interest from the public in the lease agreement, particularly from neighbouring property owners and residents, local businesses and interest groups, West Torrens residents as well as Adelaide Football Club members and fans.

To achieve this, the consultation will seek to understand the level of support to establish a lease agreement between the City of West Torrens and the Adelaide Football Club and what underpins this support.

Framing the engagement will be the communication of the lease area, the benefits the agreement would provide the community, the Adelaide Football Club's aspirations for the Precinct. This will assist in setting the context and ensuring the scope of consultation is within the parameters of the lease agreement. In this way, stakeholder and community expectations can be managed from the outset.

The Plan will also show how this consultation fits with the broader project and identifies potential future consultation opportunities.

2.1 Risk assessment

The following project-level risks and their management or mitigation measures are identified below. These are recorded to acknowledge that these may occur and the processes that need to be in place to reduce the likelihood that they will occur, and the consequence should they occur.

Table 1 Project risks and management measures

Risk	Management Measure
Expectations of stakeholders are beyond scope of engagement.	<p>Ensure scope of engagement is clear from the outset.</p> <p>Provide opportunity for stakeholders to provide feedback within clearly defined parameters.</p>
Stakeholders expect to influence specific lease terms.	<p>Ensure scope of engagement is clear from the outset.</p> <p>Ensure lines of enquiry applied through the engagement process are based on the principles of the agreement rather than specific terms and conditions.</p>
Engagement activities aren't accessible to stakeholders / community resulting in poor participation.	<p>Ensure that the community is aware of the consultation and understands how to participate and seek assistance to account for accessibility requirements.</p>
Mobilisation of community against the broader project resulting in negative media attention.	<p>Provide a media release outlining the scope of engagement and how community can participate.</p> <p>Ensure that all contact and feedback is recorded in a database and reported in summary report.</p>
Inconsistency of information being provided publicly.	<p>Ensure that the engagement plan, including key messages, are socialised within Council and project and consultant team.</p> <p>Provide a dedicated contact point for enquiries.</p>
Elected Members lobbied by community members against the project.	<p>Ensure that Elected Members are well briefed on the engagement plan, including key messages.</p> <p>Any direct contact with Elected Members is to be redirected to engagement channels i.e. email, Your Say.</p>
Public view that the engagement is 'tick the box' or disingenuous and that their feedback won't be used in the decision making process.	<p>Ensure that key messages include how feedback will be used to inform the decision making process.</p> <p>Highlight future opportunities to participate in engagement.</p> <p>Ensure that all feedback received through the engagement is captured in summary report and made publicly available.</p>
Public don't believe that they can effectively participate in the consultation with the information available.	<p>Ensure that the scope of engagement is clear from the outset.</p> <p>Highlight future opportunities to participate in engagement.</p>

3.0 Stakeholder mapping

This stakeholder mapping has been prepared in response to the City of West Torrens' needs at this stage of the project. It identifies the diverse stakeholders and community that are likely to be interested in the redevelopment and who can provide valuable insight and information as to how the Precinct can be developed to best meet user needs.

3.1 Engagement approach

While details of engagement activities are detailed in section 5, the following stakeholder mapping captures the general approach for each stakeholder. This approach recognises the varied level of influence over the project that different stakeholders will have.

This adopts the International Association for Public Participation (IAP2) public participation spectrum¹ that articulates the varied levels of influence and associated commitments made during engagement. This is outlined below.

- **INFORM** - level of engagement commits to providing information that helps stakeholders understand the problem/issue, alternatives, opportunities or solutions. It commits to keeping stakeholders informed.
- **CONSULT** - level of engagement builds on the inform level to also seek feedback on the problem/issue and may include scoping options, alternatives etc. It commits to keeping stakeholders informed and letting them know how their feedback was used.
- **INVOLVE** - level of engagement builds further to work directly with stakeholders to ensure that their views are consistently understood and considered. It commits to ensure stakeholder views are reflected in project outcomes and letting them know how this impacted on decision making.
- **COLLABORATE** - sees stakeholders as partners in developing solutions or alternatives and commits to using their input in project outcomes.
- **EMPOWER** - commits to allowing the stakeholder to be the decision maker and that their decisions will be implemented. As the Elected Council has final decision-making powers, 'Empower' is not generally used within Local Government.

For this project, *inform*, *consult* and *collaborate* levels of engagement will be used with stakeholders – refer table 2 below.

¹ Adapted from International Association Spectrum of Public Participation (IAP2) https://iap2.org.au/wp-content/uploads/2020/01/2018_IAP2_Spectrum.pdf

Table 2 Key stakeholder assessment

Stakeholder	Interest	Engagement approach
Council		
City of West Torrens Elected Members	<ul style="list-style-type: none"> Responsible for the approval of any lease of the Thebarton Oval Precinct. Required to consider feedback in the approval of any lease agreement in accordance with the <i>Local Government Act</i>. Interest in ensuring diverse community views are heard and understood. 	COLLABORATE
City of West Torrens staff	<ul style="list-style-type: none"> Responsible for preparation and negotiation of the proposed lease. Responsible for actions in this plan and detailed in Table 3. Manage the Your Say platform. 	COLLABORATE
Project team		
Adelaide Football Club	<ul style="list-style-type: none"> Potential leasee of the Thebarton Oval Precinct. Directly impacted by the outcomes of the engagement. Responsible for delivering on the terms of any lease. Responsible for engaging with their membership/supporters/stakeholders. 	COLLABORATE
Project team including	<ul style="list-style-type: none"> Responsible for planning and delivery of the potential lease terms and conditions. 	COLLABORATE
Community		
Adjacent property owners and residents (Thebarton and Torrensville).	<ul style="list-style-type: none"> Interest in the lease agreement and what this means for public access, visitation, Council rates, amenity etc as this relates to lifestyle. May provide valuable insight into how the Precinct is currently used and any associated current or potential issues. 	CONSULT
Wider South Australian community.	<ul style="list-style-type: none"> Particularly neighbouring communities within City of Charles Sturt. 	

Stakeholder	Interest	Engagement approach
City of West Torrens residents and ratepayers	<ul style="list-style-type: none"> Interest in the lease agreement and what this means for public access, visitation, Council rates, amenity etc. 	CONSULT
City of West Torrens interest groups		
West Torrens Historical Society.	<ul style="list-style-type: none"> Interest in the lease agreement and how it will preserve the history of the Precinct. Can provide valuable insight to the history of the Precinct. May have interest in other aspects of the lease proposal including changes to amenity. 	CONSULT
West Torrens partnerships.	<ul style="list-style-type: none"> Major festival partners which utilise Kings Reserve/Thebarton Community Centre. 	
Local businesses/ organisations		
Existing lessees of the Precinct (SANFL, Torrensville Bowling Club, MA Hawks, Adelaide Magicians Club etc)	<ul style="list-style-type: none"> Directly impacted by the proposed lease agreement NOTE: all groups have been engaged separately prior to this engagement. Interest in this engagement and how their communities can participate. In-direct contact point for enquiries. 	CONSULT
Thebarton Community Centre users.	<ul style="list-style-type: none"> Directly impacted by the proposed lease agreement. Interest in this engagement and how their communities can participate. In-direct contact point for enquiries. 	CONSULT
Education facilities		
Thebarton Senior College, Thebarton Child Care Centre, Torrensville Primary School, Torrensville Pre-school.	<ul style="list-style-type: none"> Interest in the lease agreement and what this means for public access, visitation, Council rates, amenity etc. 	CONSULT

4.0 Communication and information

4.1 Key messages

The following key messages will form the basis of written and verbal communication with stakeholders. They may not be used verbatim but provide an important guide as to the style and tone of communication. Having a clear 'narrative' such as this is also an important way that expectations of stakeholders will be managed.

Engagement scope

- The City of West Torrens has been approached by the Adelaide Football Club seeking to establish a long-term lease of the Thebarton Oval Precinct which includes Thebarton Oval and Kings Reserve.
- The City of West Torrens owns and manages the Precinct on behalf of the community.
- Feedback from the public is essential to understand the overall level of support to establish a long-term lease with the Adelaide Football Club for its occupation and use of the Precinct.
- In line with the requirements of the *Local Government Act (SA) 1999*, the insights gathered through the consultation will be presented to the City of West Torrens and used to inform any decision the Council makes on whether to proceed with a lease and the terms of a final lease agreement.
- The consultation will also assist in understanding key areas of public interest for any future communication and consultation.
- Consultation opens at 9am on Monday 17 September and closes at 5pm on Friday 14 October 2022.
- Feedback can be provided by an online or hardcopy survey. Details are available on the City of West Torrens website, social media and Your Say. Only one submission will be considered per person. Incomplete forms will not be considered.
- Enquiries can be directed to enquiry@thebartonlease.com.au

Lease agreement

- If agreed to by Council, the lease would provide the Adelaide Football Club with certainty of access to the Thebarton Oval Precinct for a period of up to 42 years.
- The long-term lease would enable significant investment by the Club.
- In determining the proposed lease area, the Council, Adelaide Football Club and State Government have been working together given the interface of the Precinct with the Torrens to Darlington Project (T2D).
- The proposed lease includes conditions that the Club would have to meet, including:
 - Paying rent to the Council to access the land.
 - Investing in new facilities for community use as well as the Club's own use.

- Increasing community access to the Precinct, supporting everyday use and organised activity.
- Preserving the history of the Precinct, including all State significant assets.
- Ongoing maintenance of assets and greenspace within the Precinct.
- The draft lease agreement is available to view at yoursay.westtorrens.sa.gov.au/thebartonlease
You can also request a hard copy by emailing enquiry@thebartonlease.com.au

Adelaide Football Club

- The Club has been searching for a new location for its home ground for a number of years.
- The Precinct would support training and development for the Club's 4 teams, as well as a base for its education and community programs.
- It is intended that the Precinct would host the Club's AFLW team's home games, with its AFL team games remaining at Adelaide Oval.
- To support its needs, and to provide for the community, the Club is proposing significant investment at the Precinct which could see facilities such as:
 - Two ovals, both accessible for use by our community.
 - Aquatic facilities, rehabilitation and medical amenities, with publicly accessible allied health services.
 - An indoor artificial grassed training field.
 - A new and improved community hub.
 - More member and fan focussed areas.
 - On-site car parking options.
 - Enhanced community recreational facilities.
 - Increased greenspace available to the local community.
- Should the lease be granted, the Adelaide Football Club will develop a Master Plan that reflects its specific needs at the Thebarton Oval Precinct.
- At the forefront of this planning process will be how the Adelaide Football Club can manage impacts on nearby residents and other activities and be a good neighbour.

Future engagement opportunities

- If Council approves that a lease be executed with the Adelaide Football, the next opportunities for consultation and feedback may include:
 - Draft Thebarton Precinct Master Plan.
 - Development Application for new built form.
- This planning process will consider:

- Location and use of new and existing buildings and ovals.
- Preservation of heritage elements.
- Existing vegetation management and new landscaping.
- Lighting.
- Traffic management.
- Car parking.
- AFC operations.
- Connections to and through the Precinct.

4.2 Supporting collateral

It is anticipated that there will need to be supporting collateral to assist with communicating information about the proposed lease agreement and receiving feedback.

- Content for City of West Torrens website and Your Say page.
- Content for City of West Torrens social media channels.
- Copy for public advertisement.
- Online feedback survey (including a hard copy if requested).
- Information brochure including lease area plan.
- Bespoke engagement database recording contact details and interactions with community and stakeholders.

All collateral will be approved by the City of West Torrens prior to use.

4.3 Enquiries

A dedicated email address has been established to direct engagement enquiries. All enquiries related to the engagement process will be directed to this address with responses provided via this channel.

This email will be monitored by URPS, with enquiries responded to within 2 business days. Where enquires may be more complex, the person making the enquiry will be kept informed of where their enquiry is at while a response is being prepared.

Where enquiries are received via the Your Say page, an email notification will be automatically sent to the dedicated email address. URPS will then respond to the enquiry directly on the Your Say page.

Simple enquiries will be responded to directly by URPS using key messages. More complex enquiries will be directed to City of West Torrens staff to gather advice and further information prior to a response being provided.

Repealed

5.0 Engagement activities

Table 3 engagement activities

Activity	Description/objectives	Target audience	Location	Facilitator
Update project webpages.	CWT project webpage to be established with specific information that provides overview of the lease terms and link to online feedback survey.	All audiences.	Hosted on CWT website. Also link to Your Say page when engagement is live. All engagement materials will reference CWT as central point for information.	Content prepared by URPS and CWT. Content uploaded by CWT.
Email address.	Establish a specific email address as a central point for all public enquiries.	All audiences.	Hosted and managed by URPS. All engagement materials will reference CWT as central point for information.	Simple enquiries will be provided directly by URPS using key messages. Complex enquiries will be directed to CWT for more information and advice. Final responses provided by URPS.
Social media content.	Social media messaging to be prepared to the opportunity to provide feedback on the proposed lease agreement.	All audiences	Hosted on CWT social media channels. Shared on AFC socials.	Content prepared by URPS and CWT. Content uploaded and monitored by CWT. Screenshots of social media comments

Activity	Description/objectives	Target audience	Location	Facilitator
				captured and forwarded to URPS.
Public advert	Advert to be placed in The Advertiser/Sunday Mail promoting the opportunity to provide feedback on the proposed lease arrangement.	All audiences	SA print media.	Content prepared by CWT. Design and placement to be undertaken by CWT.
Postcard.	Postcard to promote opportunity to provide feedback on proposed lease agreement, including link to Your Say page and email address for enquiries.	Property owners, commercial operators and residents within defined catchment (refer Appendix A).	Hand-delivered to catchment. Available at Civic Centre.	Content and production managed by CWT.
Information pack.	Information pack outlining the context, the key lease terms, how the lease would interface with the principles of the Kings Reserve Master Plan, what AFC proposed to use the site for.	All audiences	Available on the webpage and Your Say page. Hard copy also available upon request.	Content prepared by project team. Design by CWT.
Key messages.	Document which outlines the public key messages about the proposed lease agreement.	CWT Elected members. CWT customer service personnel. Project team members and relevant staff.	Directly to target audience	Content prepared by URPS. Distribution by CWT (staff and EMs) and Project Manager (project team).

Activity	Description/objectives	Target audience	Location	Facilitator
Direct communication to adjoining properties.	Communications to those adjoining properties, advising of the lease engagement process.	Businesses, adjoining properties, educational institutions etc located within the Precinct.	Directly to target audience.	Content and distribution by CWT in line with key messages.
Federal and State MPs.	Communications advising of the lease engagement process.			
Direct email to Adelaide Football Club members.	Email to Adelaide Football Club members promoting the opportunity to provide feedback on the proposed lease agreement.	Adelaide Football Club members.	Directly to target audience.	Content and distribution by AFC in line with key messages.
Online and hardcopy feedback survey.	Online and hardcopy survey to capture feedback based along key lines of enquiry.	All audiences. Registration will be required in order to provide online feedback.	Hosted on Your Say. Promoted by postcard, social media channels, public advertisement, website, direct emails.	Content prepared by URPS and CWT and established on Your Say.
Close the loop.	Web / email content summarising how the engagement was undertaken and 'what we heard'.	Directly to engagement participants. All audiences through website.	Direct email and CWT webpage; social media and CWT's newsletter.	Content prepared by URPS. Graphic design, upload and distribution by CWT.

6.0 Reporting and communication

6.1 Approvals and hold points

Provision of the following materials constitute hold points for City of West Torrens approval:

- Engagement strategy,
- Engagement collateral,
- Community and Stakeholder Engagement Summary Report,

6.2 Engagement reporting

Quality record keeping during engagement processes is critical to manage future interactions, identify need for escalation, input into project deliverables and follow through on 'commitments made'.

Summaries of all interactions with stakeholders will be recorded in a bespoke database that can be used for reporting and future communication about the project.

A Community and Stakeholder Engagement Summary Report will be prepared that will outline key themes of feedback received through the feedback survey and written submissions received. It will highlight the level of support for the City of West Torrens entering into a long-term lease with Adelaide Football Club and interest areas to inform any future engagement activities.

6.3 Closing the loop

Following endorsement of the Community and Stakeholder Engagement Summary Report, an 'executive summary' version will be prepared which Council can send to all who participated in the engagement process. This can also be provided on the relevant project webpage and Your Say page. This communication will summarise 'what we heard'. Depending on timing, any decision made by Council in relation to the lease agreement can be included in the email along with any future opportunities for engagement.



DRAFT

Your Say
West Torrens





yoursay.westtorrens.sa.gov.au

Thebarton Oval Precinct

Proposed lease information



PROPOSED LEASE AREA

-  Proposed Adelaide Football Club lease area.
-  Department for Infrastructure and Transport 'Torrens to Darlington' Road Project acquisition area.



Setting the scene

The City of West Torrens Council has been approached by the Adelaide Football Club (the Club) who is looking for a long-term lease of Thebarton Oval Precinct (the Precinct) as its new home.

Before entering into any lease arrangement with the Club, the Council needs to understand the level of support our community has for it. This aligns with the requirements set out in the Local Government Act (SA) 1999.

Your feedback will help the Council make a decision, and to understand better, what your interests are.

To assist the Council with this consultation, URPS has been retained as a third-party consultant to oversee the community engagement process.

Proposed lease area

The Precinct is classified as 'Community Land' and includes Thebarton Oval and Kings Reserve, which Council owns and manages on behalf of the community (refer map).

This area also takes into account the future needs of the State Government's Torrens to Darlington Project (T2D), which proposes to widen South Road.

Proposed lease agreement

The proposed lease seeks a term of 42 years. This long-term arrangement acknowledges the significant financial investment proposed by the Club and would provide them with certainty of access to the Thebarton Oval Precinct for the term.

The proposed lease includes conditions that the Club would have to meet, including:

- Paying rent to the Council to access the land.
- Investing in new facilities for community use, as well as the Club's own use.
- Increasing community access to the Precinct, supporting everyday use and organised activity.
- Preserving the history of the Precinct, including all State significant assets.
- Ongoing maintenance of assets and greenspace within the Precinct.

The draft key commercial lease terms are available to view at yoursay.westtorrens.sa.gov.au/thebartonovallease

You can also request a copy of the draft lease covenants by emailing enquiry@thebartonovallease.com.au or contacting Council on 8416 6333 during business hours.

Benefits to our community

In 2018, after extensive community consultation, the Council approved a Master Plan for Kings Reserve, which adjoins Thebarton Oval and is part of the Precinct. The Master Plan identified 6 key themes which are important to the community:

- Remove barriers and activate the spaces.
- Preserve pedestrian and cycling accessibility.
- A unified community precinct approach.
- Enable community-based facilities.
- Improve existing sporting infrastructure.
- Allow for passive recreation.

These themes have been, and will continue to be, front and centre in the Council's consideration of the request by the Club to lease the Precinct.

Under current arrangements, Thebarton Oval is not available for general community use. The proposed lease with the Club would see this space 'opened up'.

The existing greenspace would still be accessible for recreational activities, with more greenspace being provided. In addition, improvements to existing community facilities and infrastructure would be made as part of the proposed lease.



Aerial view of Thebarton Oval and Kings Reserve - West Maps 2021



Adelaide Football Club proposal

The Club has been searching for a new location for its home ground for a number of years and has made it publicly known that the Thebarton Oval Precinct is its preferred option.

The Precinct would support training and development for the Club's 3 teams, as well as a base for its education and community programs.

It is intended the Precinct would host the Club's AFLW home games, in line with existing venue arrangements catering for 9,000 patrons. Games involving the Crows' AFL team will remain at Adelaide Oval.

To support its needs, and to provide for the community, the Club is proposing significant investment of approximately \$80 million at the Precinct which could see facilities such as:

- Two ovals, both accessible for use by our community, when not in use by the Club.
- Gender equity, with AFLW facilities capable of accommodating the industry's future expansion to full-time athletes and coaches.
- Aquatic facilities, rehabilitation and medical amenities, with publicly accessible allied health services.
- A proposed site to accommodate a community facility to replace Thebarton Community Centre (identified to be removed by the T2D works).
- Community accessible hospitality spaces.
- Improved on-site public car parking options and greater accessibility to accommodate the daily use of the proposed facilities.
- Temporary event, festival and game day parking on Kings Reserve and adjoining green spaces.
- Improved community recreational facilities.
- Continued community festival hosting with greater public amenity provided.
- Increased usable greenspace and public plazas available to our local community.
- A commitment to maintain green space and to enhance existing tree planting.
- Proposed vehicle access via main roads (Ashwin Parade and South Road subject to T2D).
- Containing parking on site to manage impacts on local roads.
- Retaining State significant heritage assets.

If the proposed lease is granted, further work will be undertaken by the Club and the Council to plan and design the Precinct. Further opportunities to provide feedback will be available through this process.

Have your say

You are invited to provide your thoughts on the proposed lease between the Council and the Club by:

- Completing the online survey available at yoursay.westtorrens.sa.gov.au/thebartonovallease
- Completing a hardcopy survey, available from Council, and returning to 'AFC lease submission', City of West Torrens, 165 Sir Donald Bradman Drive, Hilton SA 5033.

All responses must be received by 5pm, Friday 14 October 2022.

Feedback will be recorded and analysed as part of the consultation process. Feedback you provide will help inform the Council's decision about granting the lease.

Note:

- It is Council's process that for a formal submission to be received, it must include your name and residential address. To ensure your submission is valid, please include these details.
- Only one submission will be accepted per person. Incomplete forms and informal feedback, such as social media comments, will not be considered as part of the formal process.
- Written submissions will become public record, including forming part of a report to the Council, and as such personal information, such as names and addresses, may become part of that publicly available information. If you have any questions about this, please email enquiry@thebartonovallease.com.au

Additional information

If you need assistance in completing the online survey, contact Council on 8416 6333 during business hours.

To make an enquiry, please email enquiry@thebartonovallease.com.au



Next steps

If the lease arrangement proceeds, the next steps would be for the Club and Council to develop a Master Plan for the Precinct.

This plan would consider:

- Location and use of new and existing buildings and ovals.
- Preservation of any State significant assets.
- Landscaping and vegetation.
- Lighting.
- Traffic management.
- Car parking.
- Game day (AFLW only) and day to day operations.
- Connections to and through the Precinct.

You will have the opportunity to provide further feedback as part of the finalisation of this Master Plan.

To be kept informed about future opportunities to have your say, please provide your contact details via the online feedback form or email to enquiry@thebartonovallease.com.au

Thebarton Oval Precinct proposed lease public consultation.

Consultation report to be presented to the City of West Torrens Council.

Council decision to be made public.



[yoursay.westtorrens.sa.gov.au/
thebartonovallease](http://yoursay.westtorrens.sa.gov.au/thebartonovallease)

Thebarton Oval Precinct – Proposed lease

The City of West Torrens Council (the Council) has been approached by the Adelaide Football Club (the Club) who is looking for a long-term lease of the Thebarton Oval Precinct (the Precinct) as its new home.

Before finalising any lease arrangement with the Club, the Council needs to understand the level of support the community has for it. This aligns with the requirements set out in the *Local Government Act (SA) 1999*.

Your responses to the following questions will help the Council understand better what your interests are and, ultimately, make a decision on the proposed lease arrangements.

To assist you in completing the survey, please read:

Thebarton Oval Precinct Proposed lease information (hyperlinked)

Draft key commercial lease terms (hyperlinked)

Note: it is Council's requirement that for a formal submission to be received, it must include your name and residential address. To ensure your submission is valid, please include these details. Please refer to the information below with regard to Council's use of personal information.

If you require any assistance in completing this survey, please contact Council during business hours on 8416 6333.

1. About you

Name

Address

Suburb

Phone

Email

2. What best describes you (select one option only)

West Torrens resident

West Torrens non-resident ratepayer

West Torrens business owner

Adelaide Football Club member or supporter

General public

Other (please specify)

3. Do you support the City of West Torrens Council entering into a long-term lease agreement with the Adelaide Football Club? (select one option only)

Support

Somewhat support

Don't know

Somewhat don't support

Don't support

4. Why do you support the Council entering into a long-term lease agreement with the Club?

5. Are there any concerns that you have with regard to the Council entering into a lease agreement with the Club.

6. Do you have any other feedback about the proposed lease?

Thank you for taking the time to provide your feedback.

If the lease arrangement proceeds, the next steps would be for the Club and Council to develop a Master Plan for the Precinct, with the opportunity for you to provide further feedback.

Updates on this process will be provided to everyone who participated in this survey.

Council's use of personal information

Please note that the City of West Torrens is a public authority which is bound by the Local Government Act 1999, and other relevant legislation, to retain information and to make certain information publicly available. In some instances, this will require Council to publish personal information such as names and addresses of those whose information it holds. If you have any questions regarding the use of your personal information, please contact Council on (08) 8416 6333.



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13 September 2022

Mr Terry Buss
Chief Executive Officer
City of West Torrens
165 Sir Donald Bradman Drive
HILTON SA 5033

VIA EMAIL: tbuss@wtcc.sa.gov.au

CC: acatinari@wtcc.sa.gov.au

Dear Terry

THEBARTON OVAL PRECINCT – PUBLIC CONSULTATION DOCUMENTATION

I refer to the on-going negotiations with the Adelaide Football Club (**AFC**) in relation to the proposed long-term lease of the Thebarton Oval & Kings Reserve precinct, for the new AFC headquarters/training base (the **Torrens Sports Precinct**).

Relatedly, you have requested advice in relation to whether:

1. the proposed Public Consultation Documents, prepared jointly by the Council and URPS (the **PC Documents**) meet the public consultation requirements of the *Local Government Act 1999* (the **LG Act**), as further detailed in the *Council Policy: Public Consultation* (the **Policy**); and
2. the PC Documents are, generally, acceptable and sufficiently detailed, to allow for informed public consultation to occur.

The answer to both of your questions, is 'yes', as further detailed below.

1. Relevant land

For the purposes of this letter and the public consultation, we confirm that the following land, located at the Torrens Sport Precinct, is the subject of the proposed lease with the AFC (**AFC Lease**):

- o Kings Park: Volume 6131 Folios 655 and 656; and
- o Thebarton Oval: Volume 5092 Folio 344 and Portion of Volume 5436 Folio 231 (subject to the area of that land to be acquired by DIT in connection with the T2D works).

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We note that the updated AFC Lease Plan, as received from the AFC, incorporates a small area of Volume 6221 Folio 506 (a small portion of the land west of the car park) which, whilst identified by DIT for acquisition, will be included in the AFC Lease. DIT has supported the AFC proposal in its letter to the Council and AFC, dated 31 August 2022.

This has been updated in the **attached** Key Commercial Lease Terms.

2. LG Act

In accordance with the Council's obligations under section 202(2) of the LG Act, the Council must follow the '*relevant steps set out in its public consultation policy*' before it can grant a lease or licence over community land. As previously advised, given the proposed AFC Lease is greater than 5 years, the Council cannot rely on the exemptions set out in section 202(3) of the LG Act.

3. Public Consultation Policy

The decision of the Supreme Court in *Coastal Ecology Protection Group Inc & Ors v City of Charles Sturt [2017] SASC 136 (Coastal Park Decision)* is relevant to the Council in assessing the approach to the proposed public consultation. In the Coastal Park Decision, the Court found that a council must have regard to both the requirements the LG Act and its public consultation policy.

Accordingly, the Council's public consultation for the proposed AFC Lease must be completed in accordance with both the Policy and the LG Act.

As you will be aware:

- 3.1 sections 50(1) and (2) of the LG Act provide that the Council must prepare and adopt a public consultation policy which sets out the steps to be followed where the LG Act requires a matter be put to public consultation; and
- 3.2 section 50(3) and (4) set out the minimum requirements of any public consultation policy in connection with submissions by the public, advertising requirements and the requirement to consult for a period of at least 21 days.

4. Review of PC Documents

Having reviewed the draft PC Documents and the "Thebarton Oval Lease Agreement Engagement Plan" as prepared by URPS (the **Engagement Plan**¹), we confirm:

- 4.1 subject to the Council preparing and publishing a notice:
 - (a) in the local newspaper, for example *The Advertiser*; and
 - (b) on a website determined by you (presumably, the Council website),

which meet the requirements of clause 4.2.3 of the Policy and section 50(4) of the LG Act, we are of the opinion that the approach proposed to be taken by the Council **will fulfil** its obligations under both of the LG Act and the Policy;

¹ We note that the Engagement Plan will need to be updated to reflect the proposed period of public consultation to reflect a period of 28 days.

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4.2 To ensure compliance with the Policy, we note:

- Administration must determine the '*most appropriate consultation method*'. We note that the key stakeholder assessment engagement method, as set out in Table 2 of the Engagement Plan, sets out the approach to be taken to consult with various stakeholders (clause 2.4);
- Administration should identify and consult with relevant stakeholders. Again, Table 2 to the Engagement Plan identifies the stakeholders to include the public at large but also internal stakeholders, the AFC, SANFL, Messinian Association, Torrensville Bowling Club, DIT and residents proximate to the proposed AFC Lease area (clause 2.5);
- the issues on which community views are sought must be clearly stated. This is, specifically, addressed in the Engagement Plan and also in the PC Documents under the heading "*Have your Say*" (clause 4.1.2);
- the Council is to use the most '*cost efficient method of consultation*'. We consider that the proposed hybrid model of on-line and hard copy consultation, as further detailed in the Engagement Plan, is appropriate and sufficient to meet this requirement (clause 4.1.3);
- information is to be provided in a timely and accessible manner, with sufficient time for discussion and submissions. We note that the PC Document and Key Commercial Lease Terms will be available on the Council's "*Have your Say*" public consultation page, with a link to the further (template) terms of the lease. Accordingly, this will provide relevant accessible information.

However, where a document is requested as a hard copy, please ensure that it is provided promptly. To this end, we confirm that the proposal in the Engagement Plan is appropriate. As a final matter, we also support the consultation period being for a period in excess of the minimum, say for a period of 28 days, to allow time for discussion, submissions and collation of feedback (clauses 4.1.3 and 4.5);

- given the AFC Lease is a 'significant matter', the proposed strategy should be presented to the Council. We note that Administration intends to obtain Council approval, prior to commencing the consultation, *currently scheduled* to occur at a Special Council Meeting on Thursday 15 September 2022 (clause 4.1.3);
- following consultation, the final decision is to be returned to the Council (clause 4.1.4);
- the process should be inclusive and cater for the diversity of the Council community, whilst maintaining the focus of the exercise. We consider the strategy proposed in the Engagement Plan is appropriate.

Also ensure that the Council is able to address any request for an alternative form of the PC Documents (for example, translated, larger font etc) to ensure that the

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community is well-represented and the Administration can meet this requirement of the Policy (clause 4.2.1 and 4.3.4);

- Administration has proposed a multi-faceted information strategy, including information available across various methods and in an accessible manner, namely –
 - newspaper notice in *The Advertiser*;
 - availability of information regarding the redevelopment and lease/licence proposal on Council's website, the Civic Centre and the Hamra Library;
 - opportunity for residents to complete an online survey on Council's *Your Say*;
 - letterbox drop to close surrounding residential and business properties;
 - appropriate signage on/around the Thebarton Oval/Kings Reserve Precinct; and
 - a single contact point to provide answers or clarification to any queries. (clauses 4.2.2 & 4.2.3).
- we confirm that the presentation of the PC Documents and specific contact information is appropriate to meet the requirements of the Policy, with no use of jargon and limited use of technical language (clauses 4.3.1 – 4.3.3);
- submissions must be acknowledged and provided to the Council to assist the elected members to understand the public's response and any related decision, with the outcome communicated thereafter. We note that URPS will collate this information in accordance with the process established by the Engagement Plan and clarified in the PC Documents. We also note that the PC Documents expressly state that all written submissions received (including personal information) will become public record and form part of a report to the Council (clause 4.4.1 and clause 4.4.3); and
- as a final matter, the obligations upon you as the CEO, together with the Policy, require that the process is maintained within budgetary constraints and delegations.

This obligation extends to the additional 'overlay' in connection with the current 'election period' (aka caretaker period) and the related obligations under the *Council Policy: Elections Period Caretaker* (clauses 4.4.2 and 4.6).

5. Informed public consultation

In addition to our more focussed legal review of the PC Documents and the strategy that has been prepared by URPS, we also confirm, more broadly, that the PC Documents (supplemented by the Key Commercial Lease Terms) provide a succinct, but informative package for the public. This is to ensure that the public are able to obtain an understanding of the proposed AFC Lease and the Council's intentions in connection with the Torrens Sports Precinct, including reference to future public consultation in connection with a revised Masterplan for the precinct.

We also support the Council aligning the consultation process with the Policy position, namely to provide time for '*adequate consideration of the issues*', by undertaking a consultation period of 28 days rather than the minimum statutory requirement of 21 days, under LG Act.

We confirm that the parameters of the PC Documents are well defined and the issues upon which community view are sought are clearly stated, namely that the proposed AFC Lease be

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for a 42-year term and the key commercial terms, with complete terms and conditions available on request.

Put simply, this is clearly stated in the PC Documents in YourSay – *You are invited to provide your thoughts on the proposed lease between the Council and the Club.*

All in all, the strategy adopted by the Engagement Plan and the information available through the PC Documents is comprehensive and considered. In our view, it will ensure that members of the public are aware and can make informed submissions on the proposed AFC Lease.

As a separate matter, I confirm that, whilst the Council appears to have retained the interim policy, 'Public Consultation During COVID-19' on its website, we have not had regard to this policy, given it was only active for the period of Public Health Emergency and this was lifted on 24 May 2022.

We trust this letter provides the necessary comfort to proceed to the proposed public consultation.

Yours sincerely

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