



INFRASTRUCTURE AND PUBLIC WORKS COMMITTEE AGENDA & REPORTS

for the meeting

Tuesday, 18 July 2023
at 6.15 pm

in the Colonel Light Room, Adelaide Town Hall

© 2023 CITY OF ADELAIDE. ALL RIGHTS RESERVED.



Members – The Right Honourable the Lord Mayor, Dr Jane Lomax-Smith
Councillor Couros (Chair)
Councillor Elliott (Deputy Chair)
Councillors Abrahamzadeh, Davis, Giles, Hou, Li, Martin, Noon, Dr Siebentritt and Snape

1. Acknowledgement of Country

At the opening of the Infrastructure and Public Works Committee meeting, the Chair will state:

'Council acknowledges that we are meeting on traditional Country of the Kurna people of the Adelaide Plains and pays respect to Elders past and present. We recognize and respect their cultural heritage, beliefs and relationship with the land. We acknowledge that they are of continuing importance to the Kurna people living today.

And we also extend that respect to other Aboriginal Language Groups and other First Nations who are present today.'

2. Apologies and Leave of Absence

On Leave -

The Right Honourable Lord Mayor, Dr Jane Lomax-Smith
Councillor Couros

3. Confirmation of Minutes - 20 June 2023

That the Minutes of the meeting of the Infrastructure and Public Works Committee held 20 June 2023, be taken as read and be confirmed as an accurate record of proceedings.

View public 20 June 2023 Minutes [here](#).

4. Presentations/Workshops

4.1 Asset Management Plans & Maintenance Standards 3 - 12

5. Reports for Recommendation to Council

5.1 Grant of Easement for arbor beams in Chesser Street 13 - 34

5.2 Grant of Easement at Paxton's Walk 35 - 45

6. Closure



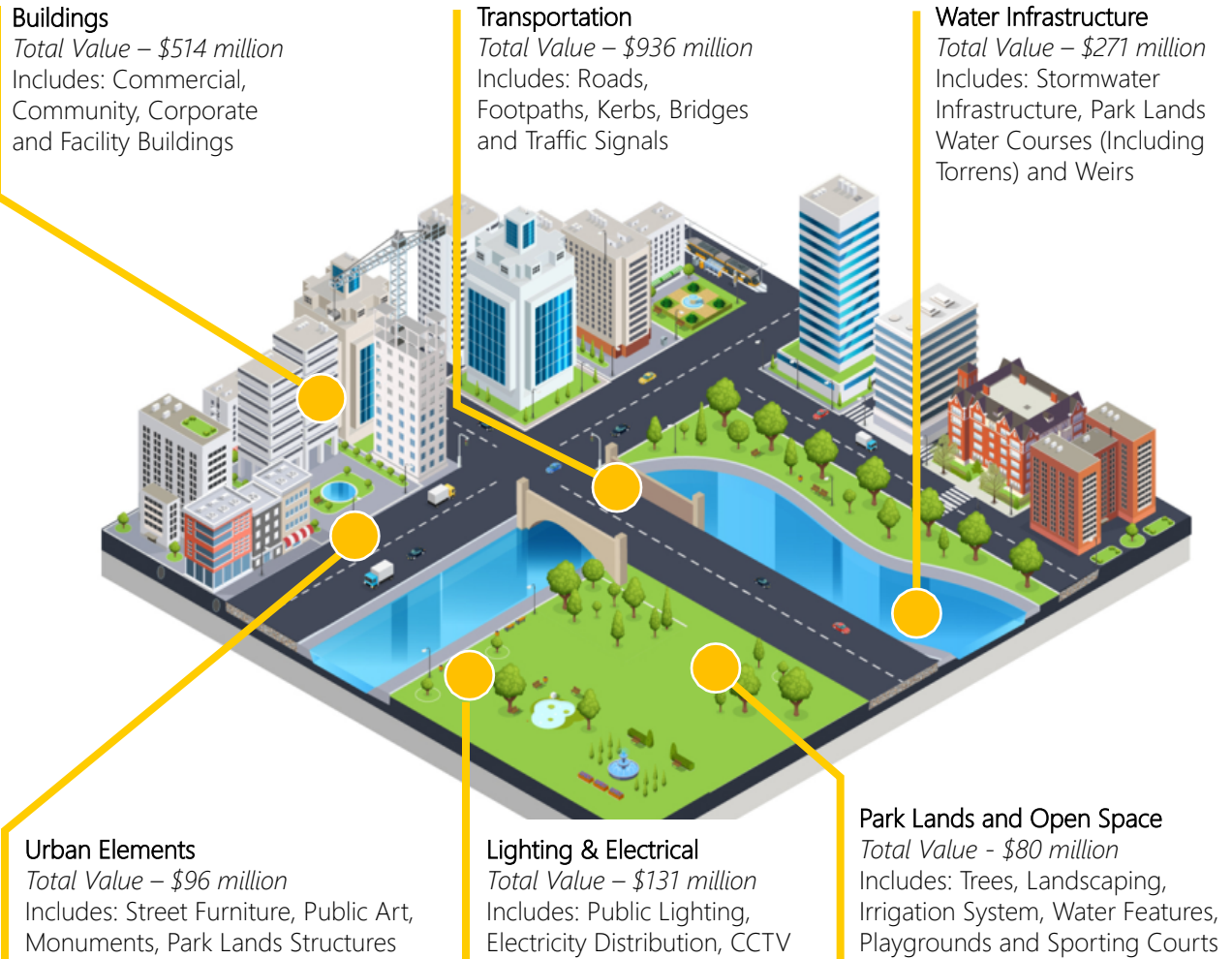
Asset Management Plans & Maintenance Standards

Asset Management Overview

Asset Management enables an organisation to forecast and understand the immediate, medium, and long-term requirements of our assets. Sound Asset Management promotes good stewardship and enables us to:

- Improve the cost efficiency by looking at the whole of lifecycle costs
- Target critical assets to ensure performance is maintained and risk is managed
- Understand what level of service can be achieved and at what cost
- Ensure infrastructure networks are appropriately funded for the long term
- Improve customer satisfaction by aiming to match services with community's expectations

The purpose of an Asset Management Plan is to forecast the cost and timing of required lifecycle activities to manage our assets to the agreed level of service while managing any associated risks.



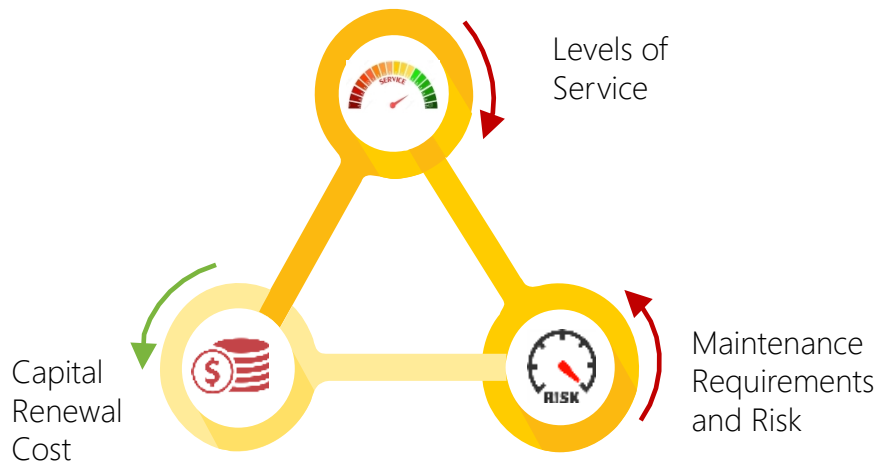
Levels of Service Overview

Asset management planning requires the relationship between cost of service and level of service to be understood.

Levels of service guide the level to which our assets are maintained, inform when intervention works such as replacement will occur as well as define the nature of replacements (e.g. whether an asset should be renewed, upgraded or disposed).

Levels of service are generally driven by:

- Customer expectations
- Legislative requirements (minimum requirements)
- Availability of resource / financial constraints



Customer Levels of Service

How our customer receives the service

Examples:

- Footpaths are clean
- Footpaths are safe
- Footpaths meet user needs

Customer levels of service are generally measured through customer service requests and customer satisfaction surveys

Technical Levels of Service

How we provide the service

Examples:

- Footpaths are cleaned every week
- Footpaths are inspected every year
- Footpaths are maintained within response time KPI
- Footpaths are renewed at condition state 4

Technical levels of service are measured and monitored through internal systems and reporting.

It is important to routinely monitor reporting outputs to understand whether resourcing is sufficient, or if we need to consider adjusting budgets or levels of service

Asset Lifecycle Overview

Page 6

Activity	Description	Example	Intervention
Operations	Ongoing activities including inspection, planning, cleaning and utility costs.	Maintenance Inspections, street sweeping, linemarking reapplication, lawn mowing	Informed by intervention levels outlined in Operations & Maintenance Plans and funded through BP&B
Maintenance	Works that retain an asset as near as practicable to an appropriate service condition	Road patching, footpath paver adjustments, building and structure repairs	Informed by intervention levels outlined in Operations & Maintenance Plans and funded through BP&B
Renewal	Works that return the service capability of an asset up to that which it had originally provided	Road resurfacing, footpath reconstruction, pipeline replacement	Informed by intervention levels outlined in Asset Management Plans and funded through BP&B
Upgrade	Works associated with providing a higher level of service	Widening a footpath, upgrading footpath materials, increasing the size and amenity of a building	Informed by Strategic Documents, and prioritised and funded through BP&B Process
Acquisition/New	Works associated with providing a new service	Building a new public toilet or creating a new pathway connection	Informed by Strategic Documents, and prioritised and funded through BP&B Process
Disposal	Works associated with decommissioning an asset that is removed from service	Decommissioning Adelaide Aquatic Centre	Informed by Strategic Documents, and prioritised and funded through BP&B Process

Asset Inspection Types

Condition Audits

- Typically undertaken every 4 years
- Inform remaining life estimates for assets
- Inform asset renewal planning and asset management plans (legislative)
- Inform asset revaluation (legislative)



Maintenance Inspections

- Undertaken more frequently and between condition audits based on risk management
- Inform asset maintenance planning
- Defects evaluated against intervention levels
- Inform maintenance programs
- Ability to escalate into capital works



Asset Renewal Planning Overview

Condition 1 - Excellent

Very Good: asset is free of defects with no or minimal maintenance required



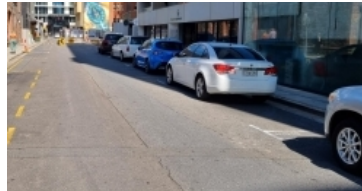
Condition 2 - Good

Good: minor defects, increasing maintenance required such as crack sealing and asphalt patching



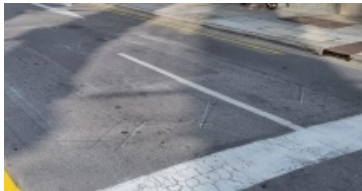
Condition 3 - Fair

Fair: asset requires preventative road resurfacing or has defects requiring significant maintenance intervention



Condition 4 - Poor

Poor: significant defects, higher order cost intervention for pavement rehabilitation

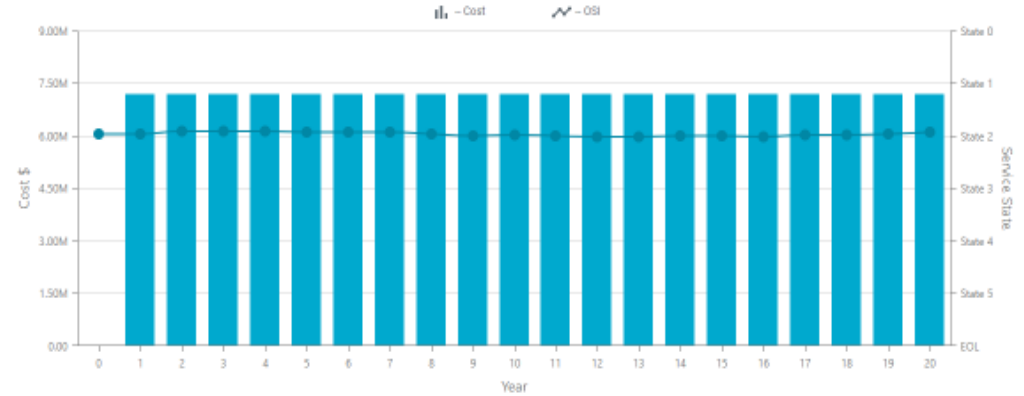


Condition 5 - Very Poor

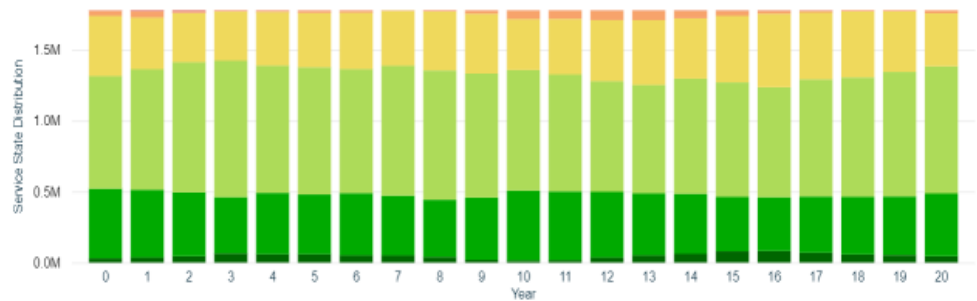
Very Poor: physically unsound and/or beyond rehabilitation, full reconstruction may be required



Annual Renewal Investment



Network Condition Distribution



Operations and Maintenance Overview

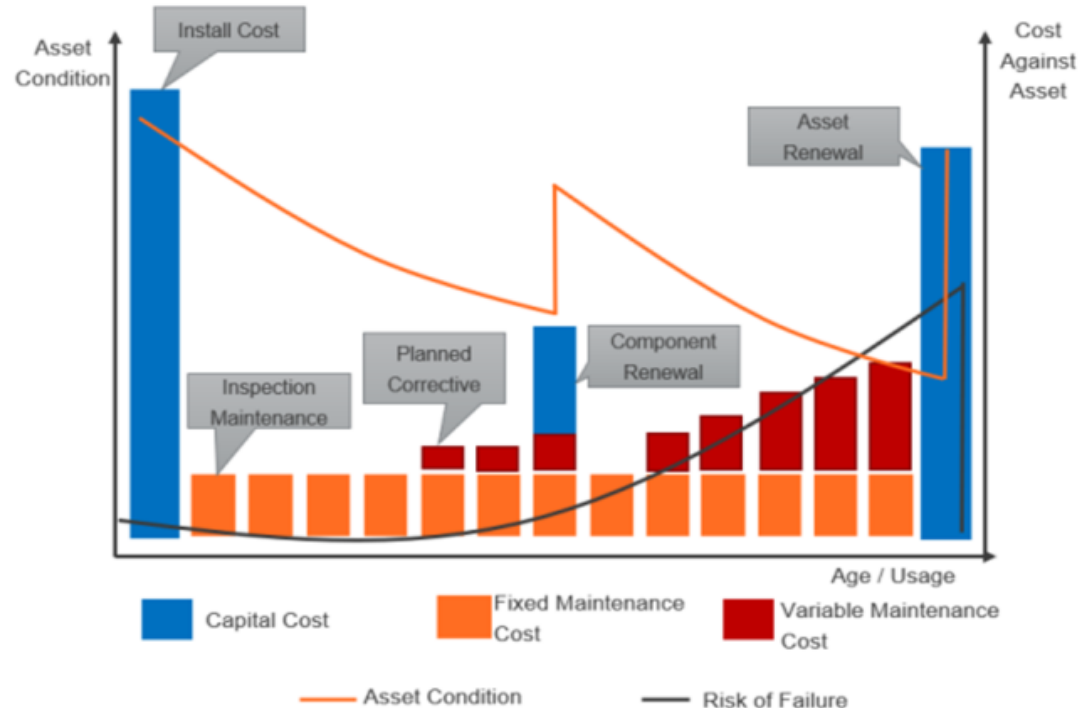
Maintenance and operations are the fundamental activities that we need to undertake on an ongoing basis to ensure our assets provide services to the community in line with their expectations and enable us to minimise whole of life costs.

Operational activities such as inspections, street sweeping and gardening are generally relatively consistent throughout an asset's life.

Page 9 Maintenance activities such as footpath repairs and road patching are generally delivered following maintenance inspections or customer service requests and are scheduled through proactive and reactive programs.

Generally, an assets maintenance costs will increase over time and renewal works are required when it is no longer cost effective to maintain the asset to the agreed level of service.

Ensuring maintenance programs are well planned and appropriately resourced enables us to reduce risk, optimise the lifespan of our assets and reduce whole of life costs.



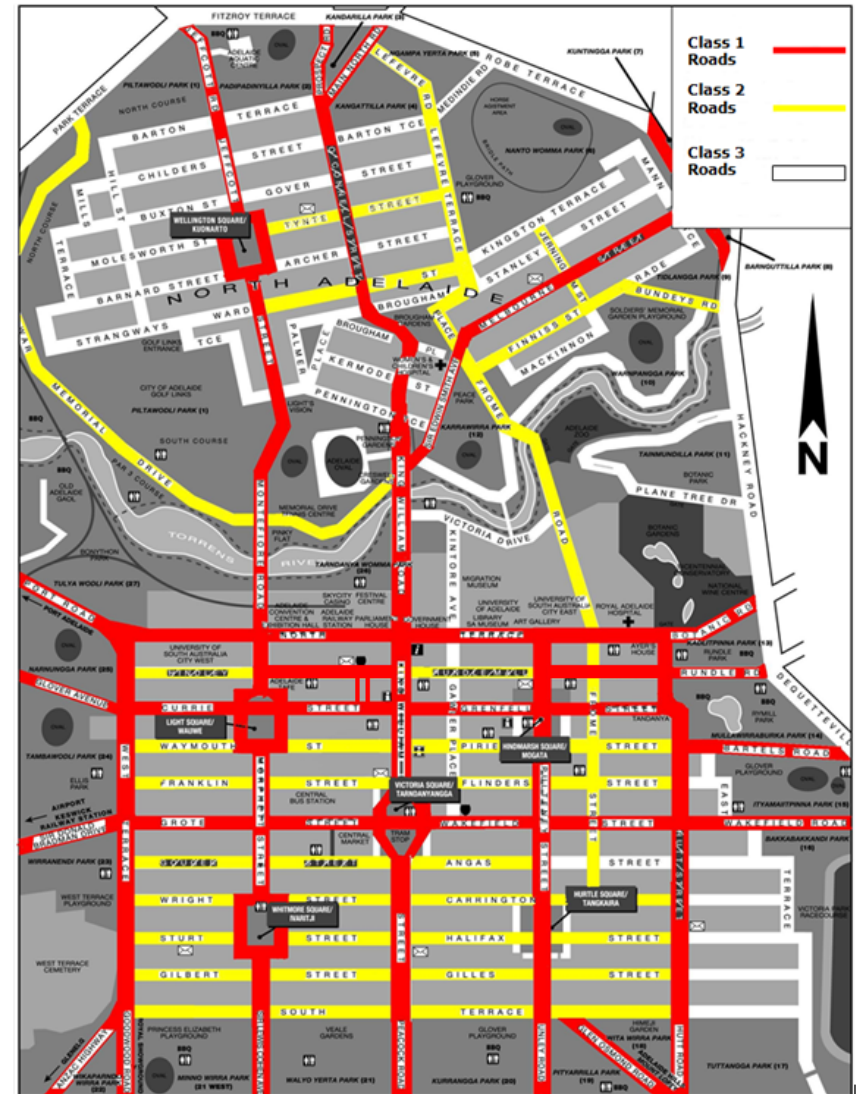
Operations and Maintenance Plans – Example of Best Practice

Operations and Maintenance Plans are technical documents which outline the ongoing inspection programs and operational and maintenance activities required to appropriately manage an asset throughout its life.

Generally, Operations and Maintenance Plans are developed for networks of assets, with management strategies varying across specific asset hierarchies, however at times Operations and Maintenance Plans will be developed for individual critical assets.

Key elements of operational and maintenance plans are:

- Organisational roles and responsibilities
- Asset inspection frequencies (scheduled and reactive)
- Identification of key failure modes and typical repair types
- Programmed maintenance frequencies
- Reactive and proactive maintenance intervention levels and response times
- Criteria to escalate maintenance issues into capital works program



Maintenance Intervention Levels & Response Times – Example of Best Practice

Potholes & Delamination

What we look for in Maintenance Inspections:

Small bowl-shaped depressions that penetrate all the way through the asphalt surface down to the base course.

A loss in a discrete section of the wearing course layer.



Page 11

Intervention Level	Recommended Process	Performance Requirements	Make Safe Response Time	Full Repair Response Time	Service Performance Targets
Depth greater than 50mm	<ul style="list-style-type: none"> Inspection, determine intervention level, enter job into RAMM Make safe - Place hot mix asphalt in pothole or area where surface has delaminated and compact to remove differential Full repair - Area <1m², saw cut affected area and reinstate patch with asphalt Full repair - Area >1m², profile to a depth of 50mm in the affected area and reinstate asphalt 	<ul style="list-style-type: none"> The repair shall comprise materials that are compatible with, or of better quality than existing pavement. The finish of the final surface shall match the existing surface The repair shall ensure water resistance Surplus material shall not impede surface drainage or be left on the shoulders or verge 	Class 1 Roads - 2 days Class 2 Roads - 2 days Class 3 Roads - 2 days	Class 1 Roads - 60 days Class 2 Roads - 90 days Class 3 Roads - 90 days	90%
Depth between 25mm & 50mm			Class 1 Roads - 2 days Class 2 Roads - 2 days Class 3 Roads - Full Repair	Class 1 Roads - 60 days Class 2 Roads - 90 days Class 3 Roads - 90 days	90%
Depth less than 25mm			Class 1 Roads - Full Repair Class 2 Roads - Full Repair Class 3 Roads - Full Repair	Class 1 Roads - 60 days Class 2 Roads - 180 days Class 3 Roads - 180 days	90%

Work to Date & The Journey Ahead

We are currently in the process of transforming our Asset Management and Asset Maintenance to align with industry best practice.

Work to date:

- Implementation of new Asset Management System (Assetic) in 2020
- Renewal Programs within Asset Management Plans are being developed using predictive scenario modelling

Currently Underway:

- Asset Management Plans are being prepared for community consultation and Council adoption within 2023/24 FY
 - All Plans to be adopted by Council by 30 June 2024 (ESCOSA Review)
 - Transportation and Urban Elements – Q2
- Enhanced mobile application, cost tracking and reporting for maintenance management (AM2 Project)

Journey Ahead:

- Staged review and update of Maintenance Standards and Operations and Maintenance Plans
- Incorporation of updates into future revisions of Asset Management Plans and Long-Term Financial Plan
- Continual monitoring and review of response time KPI, to assess proposed changes to budgets, intervention levels or response times
- Delivery of CEO KPI
 - Conduct four (4) public realm condition audits
 - Quarterly reports on public realm condition audits presented to Council
 - Develop a program to implement the findings by end June 2024

Grant of Easement for arbor beams in Chesser Street

Strategic Alignment - Enabling Priorities

Public

Tuesday, 18 July 2023

Infrastructure and Public Works Committee

Program Contact:

Mark Goudge, Associate Director Infrastructure

Approving Officer:

Tom McCready, Director City Services

EXECUTIVE SUMMARY

On Tuesday 27 June 2023, the City of Adelaide took ownership of a newly-replaced arbor in the northern portion of Chesser Street (between French Street and Grenfell Street).

The arbor is comprised of 17 steel beams that span across Chesser Street and attach to the buildings either side.

This report requests that Council accept the granting of two easements that will entitle the City of Adelaide to attach the beams (and other infrastructure) to those buildings.

RECOMMENDATION

The following recommendation will be presented to Council on 25 July 2023 for consideration

THAT THE INFRASTRUCTURE AND PUBLIC WORKS COMMITTEE RECOMMENDS TO COUNCIL THAT COUNCIL

1. Approves, pursuant to section 190 of the *Local Government Act 1999 (SA)* and section 96 of the *Real Property Act 1886 (SA)*, accepting:
 - 1.1 The Grant of Easement shown as Attachment A to Item 5.1 on the Agenda for the meeting of the Council held on 25 July 2023 (or a Grant of Easement substantially in accordance with that easement) the terms of which will entitle the City of Adelaide to affix, maintain and replace:
 - 1.1.1 Arbor beams
 - 1.1.2 Public lighting infrastructure
 - 1.1.3 Wi-fi infrastructure
 - 1.1.4 CCTV infrastructureon portions of the land numbered '1' on Attachment B to Item 5.1 on the Agenda for the meeting of the Council held on 25 July 2023.
 - 1.2 The Grant of Easement shown as Attachment C to Item 5.1 on the Agenda for the meeting of the Council held on 25 July 2023 (or a Grant of Easement substantially in accordance with that easement), the terms of which will entitle the City of Adelaide to affix, maintain and replace arbor beams on portions of the land numbered '2' on Attachment B to Item 5.1 on the Agenda for the meeting of the Council held on 25 July 2023
2. Authorises the Chief Executive Officer to finalise the terms of the grants of easement if necessary.
3. Authorises the Chief Executive Officer and Lord Mayor to execute and affix the Common Seal to grant of easement documents and any other documents to give effect to Council's resolution.

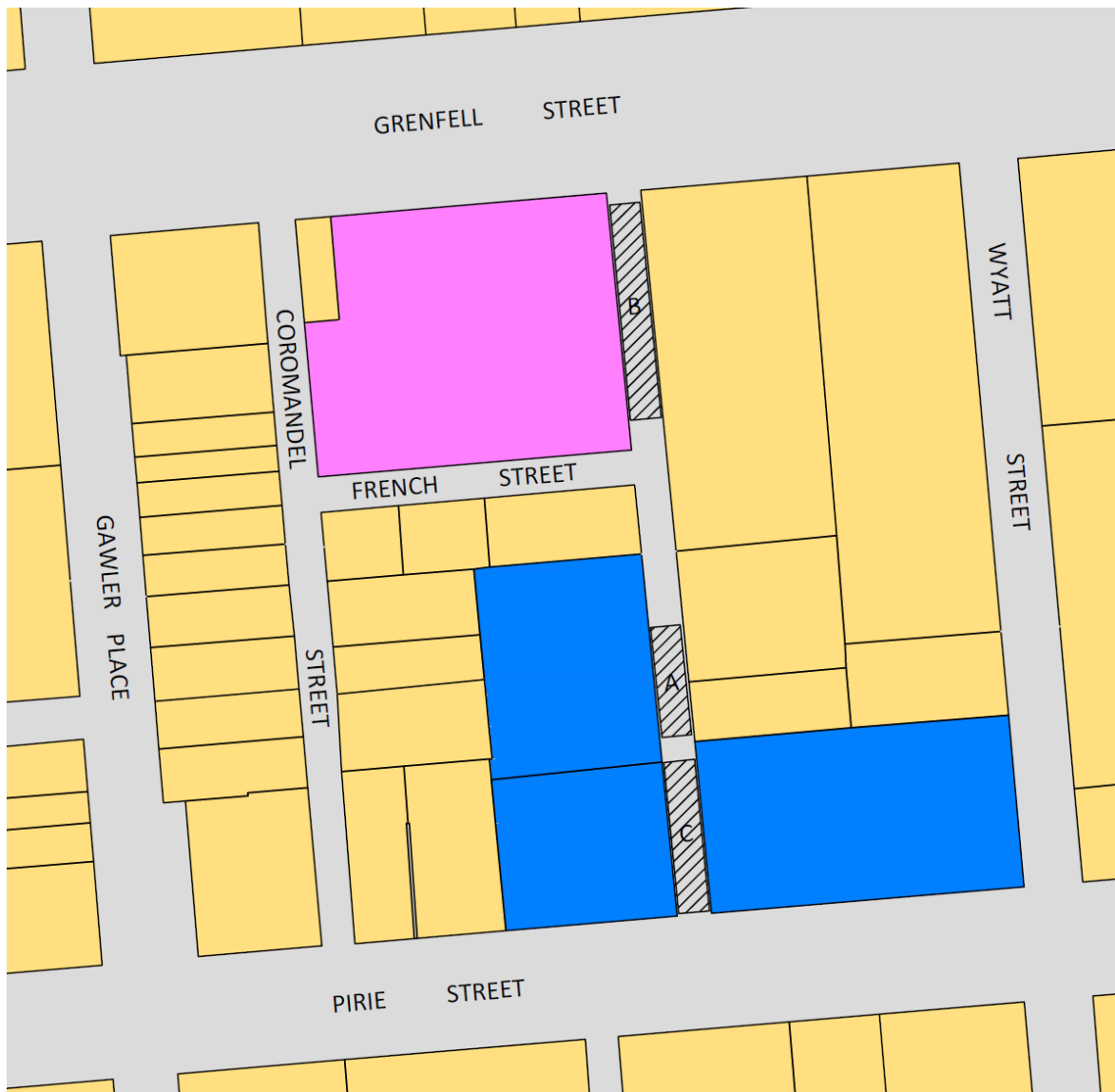
IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities If Council accepts the grants of easement, it will give long-term certainty to the City of Adelaide with respect to its right to affix, maintain and replace various infrastructure (arbor beams, public lighting, Wifi and CCTV) to certain buildings in Chesser Street.
Policy	Not as a result of this report
Consultation	Not as a result of this report
Resource	Internal staff resources to consider the proposal and legal costs to prepare and register the grants of easement.
Risk / Legal / Legislative	The grants of easement have been prepared by lawyers representing the City of Adelaide. Council may accept the granting of an easement pursuant to its powers under section 190 of the <i>Local Government Act 1999 (SA)</i> and section 96 of the <i>Real Property Act 1886 (SA)</i> . If Council accept the Grant of Easement, it will provide the City of Adelaide with ongoing certainty to affix the beams (and other infrastructure) to the adjoining buildings. If Council chooses not to accept the Grant of Easement, CoA will be provided with the same protections as the Easement, but by way of a Licence instead. However, an Easement is better protection for Council as it binds future owners of the buildings and is a public record.
Opportunities	If Council accepts the grants of easement, it will give long-term certainty to the City of Adelaide with respect to its right to affix, maintain and replace various infrastructure (arbor beams, public lighting, Wifi and CCTV) to certain buildings in Chesser Street.
23/24 Budget Allocation	Not as a result of this report
Proposed 24/25 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	The grants of easement are permanent and can only be extinguished with the consent of the grantor and grantee.
23/24 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	The grants of easement will require CoA to maintain the arbor beams (and other infrastructure) in good repair. The costs of doing so are unknown at this stage.
Other Funding Sources	Not as a result of this report

DISCUSSION

Background

1. Chesser Street has 35 steel beams spanning across it. The beams are fixed to the buildings either side of Chesser Street and steel cables are strung between the beams. Vines cover the beams and cables to create arbors.
2. The 35 steel beams were installed in three 'batches' between 1977 and 1984.
 - 2.1 The first batch of beams ('Batch A' – comprising 9 beams) was installed in 1977 by The Wyatt Benevolent Institution Incorporated over the portion of Chesser Street lettered 'A' on the map below. The Wyatt Benevolent Institution Incorporated was, at that time, the owner of the land coloured blue on the map. The beams in 'Batch A' were installed immediately adjacent to 'The Chesser Cellar', a popular Adelaide restaurant at that time.
 - 2.2 The second batch of beams ('Batch B' – comprising 17 beams) were installed in 1982 by Emanuel Constructions Pty Ltd over the portion of Chesser Street lettered 'B' on the map below. Emanuel Constructions Pty Ltd was, at that time, the owner of the land coloured pink on the map.
 - 2.3 The third batch of beams ('Batch C' – comprising 9 beams) were installed in 1984 by The Wyatt Benevolent Institution Incorporated over the portion of Chesser Street lettered 'C' on the map below. As discussed above, The Wyatt Benevolent Institution Incorporated was, at that time, the owner of the land coloured blue on the map.



3. Each batch of beams was authorised by Council via legal instruments that were, essentially, licenses to make alterations to a public road. If the same request were received today, the beams would be authorised by Council pursuant to section 221 of the *Local Government Act 1999 (SA)*.

Upgrade of Chesser Street (north)

4. The property numbered '1' on **Attachment B** is owned by WIN IPG Adelaide Pty Ltd (WIN IPG).
5. The property numbered '2' on **Attachment B** is owned by The Trust Company Ltd (Trust Co). Trust Co acquired the property from Chesser Properties Pty Ltd (Chesser Properties) on 6 April 2022.
6. In March 2021, Chesser Properties (as owner of the property numbered '2' on **Attachment B** at that time) approached the City of Adelaide (CoA) with a proposal to upgrade, at their cost, the portion of Chesser Street adjacent to their property (i.e. between French Street and Grenfell Street). The purpose of the upgrade was to create a space that their tenants could use, including for outdoor dining. Under the proposal:
 - 6.1 Chesser Properties would regrade and resurface the portion of Chesser Street between French Street and Grenfell Street in order to create a flush surface (by removing the kerbs and constructing a central strip drain).
 - 6.2 Chesser Properties would upgrade the arbor in that section of Chesser Street.
 - 6.3 Council would remove the Loading Zones in that portion of Chesser Street and close it to traffic (pursuant to section 32 of the *Road Traffic Act 1961 (SA)*).
7. On 4 May 2021 'The Committee' considered a report recommending that Council close to traffic the portion of Chesser Street between French Street and Grenfell Street (pursuant to section 32 of the *Road Traffic Act 1961 (SA)*). Whilst the Report was ostensibly about the closure of Chesser Street, some Elected Members were concerned about potential changes to the arbor resulting from its upgrade by Chesser Properties. Accordingly, the Administration gave the following undertaking:

"... an undertaking was given that if there was a material change to the arbour from what is currently proposed, that a report would be brought back to Council."
8. On 11 May 2021 Council resolved to close to traffic the portion of Chesser Street between French Street and Grenfell Street (Link 1 view [here](#)).

Ownership of the 'Batch B' arbor

9. The arbor identified as 'Batch B' in paragraph 2.2 has been authorised (to exist over Chesser Street) by CoA via at least three agreements since 1982, the most recent of which was a 'Permit' that was issued to a previous owner of the property numbered '1' on **Attachment B** (Brentwood (Australis) Limited) on 22 December 1993.
10. Under the proposal put forward by Chesser Properties, CoA would own the arbor after it had been upgraded (replaced) by Chesser Properties. Any residual legal responsibility by the current owner of the property numbered '1' on **Attachment B** (WIN IPG) for the original arbor (under the terms of the 'Permit' issued to Brentwood (Australis) Limited) would end once that arbor was removed.
11. In October 2022, CoA entered into an 'Infrastructure Agreement' with Chesser Properties that required Chesser Properties to upgrade Chesser Street to CoA's satisfaction. The 'Infrastructure Agreement' provided that ownership of the newly-constructed arbor would transfer to CoA upon 'Final Completion' of the upgrade works. 'Final Completion' occurred on Tuesday 27 June 2023.
12. With respect to the Administration's undertaking outlined in paragraph 7, the arbor was, for all intents and purposes, replaced like-for-like. The vine covering the original arbor was lifted whilst the old arbor was removed and the new arbor was erected. The vine appears to be in good health. The upgrade works can be seen in (Link 2 view [here](#)).

Easement and Licence Agreement

13. In November 2022, CoA entered into an 'Easement and Licence Agreement' (the Agreement) with the owners of the properties to which the new (replaced) arbor beams are attached – WIN IPG and Trust Co.
14. The purpose of the Agreement was to give CoA the ongoing right to attach arbor beams to the buildings either side of Chesser Street (owned by WIN IPG and Trust Co) after 'Final Completion' had occurred (i.e. when CoA became the owner of the arbor).
15. The Agreement provides CoA with the ongoing right to attach the arbor beams to the buildings via two mechanisms:
 - 15.1 Licences
 - 15.2 Easements

16. The licences give CoA the right to attach the arbor beams to the buildings either side of the beams during the following periods:
 - 16.1. From 'Final Completion' (when CoA took ownership of the arbor beams) until such time as WIN IPG and Trust Co grant easements to CoA (that entitle us to attach the arbor beams to their buildings); and Council accepts the grants of easement (the recommendation of this Report); OR
 - 16.2. For a term of 50 years (from 'Final Completion') in the event that WIN IPG or Trust Co are unable to register the easements or if Council does not accept the grants of easement (i.e. resolves not to adopt the recommendation of this Report).
17. This Report recommends Council accept the grants of easement. Whilst the terms of the easements are the same as the licences, a licence is only enforceable with the current owner of the land – not future owners. Conversely, an easement is registered on the certificate of title for the land and binds future owners – thereby providing better protection to CoA.
18. The terms of the grants of easement have already been negotiated and form part of the Agreement. Notwithstanding this, it is a recommendation of this Report that Council authorise the Chief Executive Officer to finalise the terms of the easements should there be an unforeseen circumstance that requires minor amendments to the grants of easement.
19. The proposed Grant of Easement from WIN IPG (**Attachment A**) also includes the right for CoA to affix, maintain and replace public lighting, Wifi and CCTV infrastructure on the WIN IPG building.

Council's legislative powers relating to easements

20. Council may acquire land, including a legal interest in land (which includes easements), pursuant to section 190 of the *Local Government Act 1999 (SA)*. Council may accept the grant of an easement pursuant to section 96 of the *Real Property Act 1886 (SA)*. These powers have not been delegated by Council.

DATA AND SUPPORTING INFORMATION

Link 1 - Council resolution 11 May 2021

Link 2 – Photo of the recently completed upgrade of Chesser Street (between French Street and Grenfell Street)

ATTACHMENTS

Attachment A – Grant of Easement from WIN IPG Adelaide Pty Ltd

Attachment B – Site map

Attachment C – Grant of Easement from The Trust Company Ltd

- END OF REPORT -

Attachment A
LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA
GRANT OF EASEMENT

FORM APPROVED BY THE REGISTRAR-GENERAL

SERIES NO	PREFIX
	TG

PRIORITY NOTICE ID	
--------------------	--

STAMP DUTY DOCUMENT ID	
------------------------	--

AGENT CODE

LODGED BY:

COWELL CLARKE

CCL1

CORRECTION TO:

COWELL CLARKE

CCL1

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION
(COPIES ONLY)

1

2

3

4

5

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS:

1

2

3

4

5

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

GRANT OF EASEMENT

(Pursuant to Section 96 of the Real Property Act 1886)

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION OVER WHICH RIGHTS AND LIBERTIES ARE BEING GRANTED

The whole of the land comprised in Certificate of Title Volume 6127 Folio 671

ESTATE & INTEREST

Fee simple

GRANTOR(S) (Full name and address)

WIN IPG ADELAIDE PTY LTD ACN 627 707 475 of Level 48, 101 Collins Street, Melbourne, Victoria 3000

CONSIDERATION (Words and figures)

Nil (Value does not exceed \$100.00)

GRANTEE(S) (Full name, address, mode of holding and appurtenant land description)

THE CORPORATION OF THE CITY OF ADELAIDE of 25 Pirie Street, Adelaide SA 5000

THE GRANTOR ACKNOWLEDGES RECEIPT OF THE CONSIDERATION HEREIN EXPRESSED AND HEREBY GRANTS TO THE GRANTEE:

Firstly, the Grantor grants to the Grantee and its employees, agents, contractors and workmen a right to affix, maintain and replace sixteen (16) beams ("**Arbor Beams**") on those portions of the improvements erected from time to time on the land comprised in Certificate of Title Volume 6127 Folio 671 marked "D" on FX **[INSERT]**.

Secondly, the Grantor grants to the Grantee and its employees, agents, contractors and workmen a right to affix, maintain and replace public and street lighting ("**Public and Street Lighting**") on those portions of the improvements erected from time to time on the land comprised in Certificate of Title Volume 6127 Folio 671 marked "E" on FX **[INSERT]**.

Thirdly, the Grantor grants to the Grantee and its employees, agents, contractors and workmen a right to affix, maintain and replace wi-fi infrastructure ("**Wi-Fi Infrastructure**") on those portions of the improvements erected from time to time on the land comprised in Certificate of Title Volume 6127 Folio 671 marked "E" on FX **[INSERT]**.

Fourthly, the Grantor grants to the Grantee and its employees, agents, contractors and workmen a right to affix, maintain and replace CCTV infrastructure ("**CCTV Infrastructure**") on those portions of the improvements erected from time to time on the land comprised in Certificate of Title Volume 6127 Folio 671 marked "E" on FX **[INSERT]**.

AND the Grantor and the Grantee, the parties to this easement hereby covenant and agree as set out in Annexure A.

TO BE HELD APPURTENANT TO:

Easement in gross.

ANNEXURE A

1. Easement Rights

The Grantor agrees that in order for the Grantee to exercise the rights granted pursuant to this Easement, but for no other purpose, the Grantee may at its own cost following the giving of reasonable notice except in the case of an immediate and substantial risk to the safety of property or person, when no notice shall be required:

- 1.1 exercise the rights under this Easement either itself or by any of the Grantee's employees, agents, contractors, officers, invitees and other persons claiming through or under the Grantee;
- 1.2 inspect and repair any of the Arbor Beams, Public and Street Lighting, Wi-Fi Infrastructure or CCTV Infrastructure;
- 1.3 replace by affixation to the Easement Land any or all of the Arbor Beams, Public and Street Lighting, Wi-Fi Infrastructure or CCTV Infrastructure in the same manner as the then existing beams, Public and Street Lighting, Wi-Fi Infrastructure or CCTV Infrastructure are affixed (or otherwise as agreed by the Grantor) for which purpose the Grantee shall be entitled to undertake such work on the façade of the Building adjacent to the relevant Easement Land as is reasonably required for the purpose of such replacement; and
- 1.4 do anything else that is reasonably necessary to exercise its rights pursuant to this Easement.

2. Easement Obligations

The Grantee must:

- 2.1 maintain the Arbor Beams at all times in good and substantial repair order and condition, (fair wear and tear excepted);
- 2.2 maintain the Public and Street Lighting, Wi-Fi Infrastructure and CCTV Infrastructure in good repair and working condition (fair wear and tear excepted);
- 2.3 use its reasonable endeavours to maintain the vines adjacent to the Land and to keep them pruned and watered on such occasions as shall be required to keep them in good condition;
- 2.4 prior to exercising any rights under clause 1 provide the Grantor with reasonable prior notice except in the case of an immediate and substantial risk to the safety of property or persons when no notice shall be required;
- 2.5 in exercising any rights pursuant to this Easement, and subject to the giving of appropriate notice:
 - 2.5.1 ensure that all work is undertaken and completed:
 - (a) in a proper and workmanlike manner;
 - (b) in accordance with all applicable laws and building codes; and
 - (c) in accordance with any reasonable direction or requirements of the Grantor;
 - 2.5.2 cause as little inconvenience or obstruction as practicable to the Grantor and any occupant of the Land or Building;
 - 2.5.3 cause as little damage as practicable to the Land and Building;
 - 2.5.4 promptly restore or rectify and damage caused to the Land and Building;

2.6 prior to exercising any rights under clause 1.3, obtain the Grantor's prior written consent which consent will not be unreasonably withheld or refused where the Grantee satisfies the Grantor that such replacement is reasonably required and that no damage will be caused by such replacement, which cannot be reasonably restored or rectified (in which case, the Grantee must promptly restore or rectify such damage); and

2.7 indemnify and keep indemnified the Grantor from all damage, loss, or claims the Grantor suffers or incurs arising from the Grantee's negligent or wilful act or omission in the exercise of any of the Grantees rights in clause 1.

3. **Extinguishment or Variation of Easement**

3.1 The Grantor and the Grantee agree that if at any time after the expiration of the Initial Period the Grantee determines that it wishes to extinguish this Grant of Easement as regards the right Firstly described in this Grant of Easement but is prepared to allow the Arbor Beams to remain, the following provisions shall apply:

3.1.1 the Grantee will simultaneously give written notice to the Grantor and the Adjoining Owner of the Grantee's intention to vary this Grant of Easement as regards the Arbor Beams;

3.1.2 the Grantor and the Grantee will meet with the Adjoining Owner to discuss Council's intention to vary the Easement as regards the Arbor Beams;

3.1.3 if within the period of ninety (90) days from the date of service by the Grantee of a notice on the Grantor and the Adjoining Owner the Grantor and the Grantee do not agree to retain the Arbor Beams, the Grantee shall at any time thereafter be entitled to remove the Arbor Beams in which event:

(a) the provisions of clauses 2.5.1 to 2.5.4 shall apply; and

(b) the Grantor and the Grantee will cause to be certified a Variation of Easement to extinguish the right Firstly described which shall be lodged for registration at Land Services SA at the Grantee's cost and expense;

3.1.4 if within the period of ninety (90) days from the date of service by the Grantee of a Notice on the Grantor and the Adjoining Owner the Grantor and the Adjoining Owner agree to retain the Arbor Beams and either or both the Grantor or the Adjoining Owner agree to take a transfer of the ownership of the Arbor Beams, the Grantee agrees that it will not remove the Arbor Beams and the Grantor and the Grantee will cause to be certified a Variation of Easement to extinguish the right Firstly described which shall be lodged for registration at Land Services SA at the Grantee's cost and expense. Ownership of the Arbor Beams will transfer to the Grantor and/or the Adjoining Owner (as the case may be) automatically upon registration of the Variation of Easement;

3.1.5 upon variation of this Grant of Easement pursuant to clause 3.1.4:

(a) the Grantor and the Adjoining Owner will be responsible to negotiate and document the arrangements to apply between them with respect to the ongoing presence of the Arbor Beams; and

(b) the Grantor and the Adjoining Owner will make application to the Grantee for a permit pursuant to the *Local Government Act* upon the Grantee's usual terms and conditions for such permit in order to enable the Arbor Beams to remain constructed over a public street.

3.2 The Grantor agrees that if at any time after the expiration of the Initial Period the Grantee determines that it no longer wishes to retain the Arbor Beams and wishes to extinguish this Grant of Easement as regards the right Firstly described, the Grantee shall be entitled to remove the Arbor Beams in which event:

3.2.1 the provisions of clauses 2.5.1 to 2.5.4 shall apply; and

3.2.2 the Grantor and the Grantee will cause to be certified a Variation of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense.

3.3 If the Grantor proposes to demolish that part of the Building comprising the Easement Land or any part of it and the Grantor does not propose to replace that part of the Building in the same or similar location and the demolition has received all required statutory approvals, then subject to the Grantor giving the Grantee at least three (3) months' written notice setting out reasonable details of the proposal sufficient to indicate a genuine intent to demolish, this easement shall be extinguished with effect from the date upon which the Grantor commences the demolition of the Building ("**Extinguishment Date**") and as soon as practicable after the Extinguishment Date the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense.

3.4 If the Grantor proposes to demolish that part of the Building comprising the Easement Land or any part of it and the Grantor does propose to replace that part of the Building in the same or similar location and the Grantee determines to provide temporary support for the Arbor Beams until such construction has been completed then this Easement and the rights granted pursuant to this Easement shall continue in full force and effect provided that such rights shall be suspended until such time as construction of the replacement building has been completed at which time the Grantee shall be entitled to exercise all such rights.

4. **Limitation of Liability – Grantor**

4.1 WIN IPG Adelaide Pty Ltd ACN 627 707 475 (**Trustee**) enters into this Easement only in its capacity as trustee of the WIN IPG Adelaide Office Trust (**Trust**) and in no other capacity.

4.2 Subject to clause 5.3, a liability of the Trustee arising under or in connection with the entry into or performance of this Easement or the transactions contemplated by it is limited to the amount the Trustee actually receives in the exercise of any right (including a right of indemnity) that it has to satisfy the liability out of the assets, from time to time, of the Trust (**Trust Assets**).

4.3 Clauses 5.1 and 5.2 do not apply to the extent that the Trustee's right to satisfy the liability out of Trust Assets is not available or is restricted because the Trustee's behaviour disentitled it from being able to rely on any right it has (including a right of indemnity) to satisfy the liability out of Trust Assets.

4.4 To the extent permitted by law, this clause 5 applies despite any other provision of this Easement or any principle of equity or law to the contrary, and extends to all liabilities and obligations of the Trustee (including negligence) arising under or in connection with this Easement.

5. **Definitions**

In this easement unless the contrary intention appears:

5.1 "**Adjoining Land**" means the whole of the land in Certificate of Title Volume 6135 Folio 772;

5.2 "**Building**" means the building erected on the Land;

5.3 "**Easement Land**" means as the context requires those portions of the land comprised in Certificate of Title Volume 6127 Folio 671 marked "D" and "E" in FX **[INSERT]**;

5.4 "**Grantee**" means The Corporation of the City of Adelaide;

5.5 "**Grantor**" means WIN IPG Adelaide Pty Ltd as trustee of the WIN IPG Adelaide Office Trust and any subsequent registered proprietor of the Land;

5.6 "**Initial Period**" means the period of ten (10) years from the date of lodgement of this Grant of Easement for registration; and

5.7 "**Land**" means the whole of the land in Certificate of Title Volume 6127 Folio 671.

DATED.....

CERTIFICATION **Delete the inapplicable*

Grantor(s)

*The Certifier has taken reasonable steps to verify the identity of the grantor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

*The Certifier has retained the evidence to support this Registry Instrument or Document.

*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party

for: Company name
On behalf of the Grantor

Grantee(s)

*The Certifier has taken reasonable steps to verify the identity of the grantee or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

*The Certifier has retained the evidence to support this Registry Instrument or Document.

*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party

for: Company name
On behalf of the Grantee

CONSENT TO THE GRANT OF AN EASEMENT

CONSENTING PARTY (Full Name and Address)

NATURE OF ESTATE OR INTEREST HELD

I/We the consenting party consent to the

(1)* discharge of *Encumbrance / *Mortgage over the easement being granted pursuant to Section 144 of the Real Property Act 1886.

(2)* granting of the easement subject to *Encumbrance / *Mortgage pursuant to Section 90F of the Real Property Act 1886.

* Strike through the inapplicable

EXECUTION BY CONSENTING PARTY

DATED

.....
Signature of CONSENTING PARTY

.....
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.

.....
Print Full name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Business Hours Telephone No

.....
Signature of CONSENTING PARTY

.....
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.

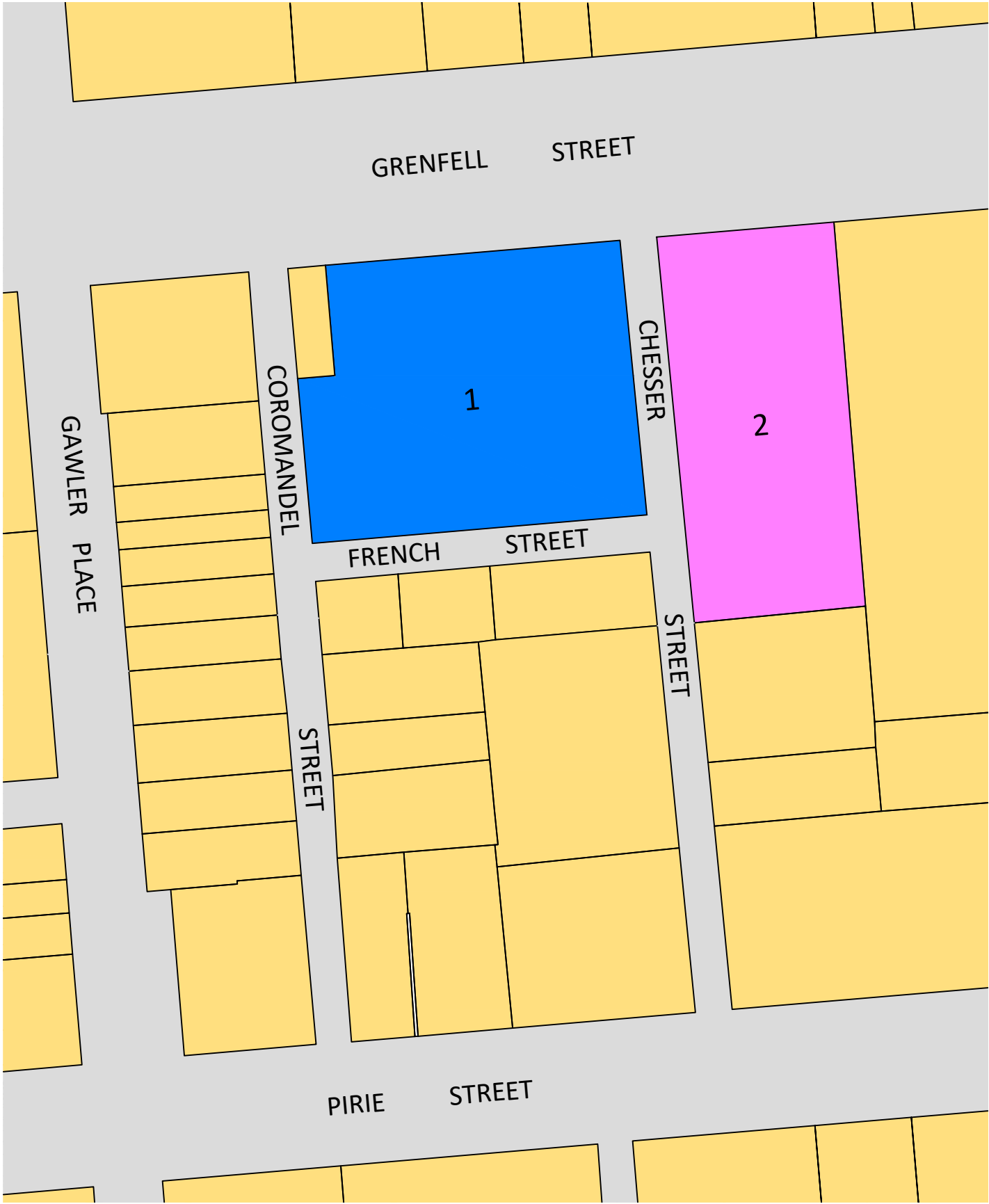
.....
Print Full name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Business Hours Telephone No.....

LEGEND

- Public Road
- WIN IPG ADELAIDE PTY LTD
- THE TRUST CO. LTD



LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA
GRANT OF EASEMENT

FORM APPROVED BY THE REGISTRAR-GENERAL

SERIES NO	PREFIX
	TG

PRIORITY NOTICE ID	
--------------------	--

STAMP DUTY DOCUMENT ID	
------------------------	--

AGENT CODE

LODGED BY:

COWELL CLARKE

CCL1

CORRECTION TO:

COWELL CLARKE

CCL1

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION
(COPIES ONLY)

- 1
-
- 2
-
- 3
-
- 4
-
- 5
-

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS:

- 1
-
- 2
-
- 3
-
- 4
-
- 5
-

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

GRANT OF EASEMENT

(Pursuant to Section 96 of the Real Property Act 1886)

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION OVER WHICH RIGHTS AND LIBERTIES ARE BEING GRANTED

The whole of the land comprised in Certificate of Title Volume 6135 Folio 772

ESTATE & INTEREST

Fee simple

GRANTOR(S) (Full name and address)

THE TRUST COMPANY LTD as custodian for the Cromwell Grenfell Street Trust (ACN 004 027 749) care of level 19, 200 Mary Street, Brisbane 4000

CONSIDERATION (Words and figures)

Nil (Value does not exceed \$100.00)

GRANTEE(S) (Full name, address, mode of holding and appurtenant land description)

THE CORPORATION OF THE CITY OF ADELAIDE of 25 Pirie Street, Adelaide SA 5000

THE GRANTOR ACKNOWLEDGES RECEIPT OF THE CONSIDERATION HEREIN EXPRESSED AND HEREBY GRANTS TO THE GRANTEE:

The Grantor grants to the Grantee and its employees, agents, contractors and workmen a right to affix, maintain and replace seventeen (17) beams ("**Arbor Beams**") on those portions of the land comprised in Certificate of Title Volume 6135 Folio 772 marked "C" on FX [INSERT] including on the improvements erected from time to time on that land.

AND the Grantor and the Grantee, the parties to this easement hereby covenant and agree as set out in Annexure A.

TO BE HELD APPURTENANT TO:

Easement in gross.

ANNEXURE A

1. Easement Rights

The Grantor agrees that in order for the Grantee to exercise the rights granted pursuant to this Easement, but for no other purpose, the Grantee may at its own cost following the giving of reasonable notice except in the case of an immediate and substantial risk to the safety of property or person when no notice shall be required:

- 1.1 exercise the rights under this Easement either itself or by any of the Grantee's employees, agents, contractors, officers, invitees and other persons claiming through or under the Grantee;
- 1.2 inspect and repair any of the Arbor Beams;
- 1.3 replace by affixation to the Easement Land any or all of the Arbor Beams in the same manner as the then existing beams are affixed (or otherwise as agreed by the Grantor) for which purpose the Grantee shall be entitled to undertake such work on the façade of the Building adjacent to the relevant Easement Land as is reasonably required for the purpose of such replacement; and
- 1.4 do anything else that is reasonably necessary to exercise its rights pursuant to this Easement.

2. Easement Obligations

The Grantee must:

- 2.1 maintain the Arbor Beams at all times in good and substantial repair order and condition (fair wear and tear excepted);
- 2.2 use its reasonable endeavours to maintain the vines adjacent to the Land and to keep them pruned and watered on such occasions as shall be required to keep them in good condition;
- 2.3 prior to exercising any rights under clause 1 provide the Grantor with reasonable prior notice except in the case of an immediate and substantial risk to the safety of property or person when no notice shall be required:
- 2.4 in exercising any rights under clause 1, and subject to the giving of appropriate notice:
 - 2.4.1 ensure that all work is done in a proper and workmanlike manner;
 - 2.4.2 comply with all relevant laws and any reasonable direction of the Grantor;
 - 2.4.3 cause as little inconvenience or obstruction as practicable to the Grantor and any occupier of the Grantor's Land;
 - 2.4.4 cause as little damage as practicable to the Grantor's Land, and the Building including the Easement Area;
 - 2.4.5 if damaged by the Grantee, restore the Grantor's Land and Building as nearly as practicable to its former condition
- 2.5 prior to exercising any rights under clause 1.3, obtain the Grantor's prior written consent which consent will not be unreasonably withheld or refused where the Grantee satisfies the Grantor that a beam or beams need reasonably be replaced and that no damage will be caused by such replacement, which cannot be reasonably restored or rectified.
- 2.6 indemnify and keep indemnified the Grantor from all damage, loss, or claims the Grantor suffers or incurs arising from the Grantee's negligent or wilful act or omission in the exercise of any of the Grantees rights in clause 1.

3. Extinguishment of Easement

- 3.1 The Grantor and the Grantee agree that if at any time after the expiration of the Initial Period the Grantee determines that it wishes to extinguish this Grant of Easement but is prepared to allow the Arbor Beams to remain, the following provisions shall apply:
- 3.1.1 the Grantee will simultaneously give written notice to the Grantor and the Adjoining Owner of the Grantee's intention to extinguish this Grant of Easement;
 - 3.1.2 the Grantor and the Grantee will meet with the Adjoining Owner to discuss Council's intention to extinguish the Easement;
 - 3.1.3 if within the period of ninety (90) days from the date of service by the Grantee of a notice on the Grantor and the Adjoining Owner the Grantor and the Grantee do not agree to retain the Arbor Beams, the Grantee shall at any time thereafter be entitled to remove the Arbor Beams in which event:
 - (a) the provisions of clauses 2.4.1 to 2.4.5 shall apply; and
 - (b) the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense;
 - 3.1.4 if within the period of ninety (90) days from the date of service by the Grantee of a Notice on the Grantor and the Adjoining Owner the Grantor and the Adjoining Owner agree to retain the Arbor Beams and either or both the Grantor or the Adjoining Owner agree to take a transfer of the ownership of the Arbor Beams, the Grantee agrees that it will not remove the Arbor Beams and the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense. Ownership of the Arbor Beams will transfer to the Grantor and/or the Adjoining Owner (as the case may be) automatically upon registration of the Extinguishment of Easement;
 - 3.1.5 upon extinguishment of this Grant of Easement pursuant to clause 3.1.4:
 - (a) the Grantor and the Adjoining Owner will be responsible to negotiate and document the arrangements to apply between them with respect to the ongoing presence of the Arbor Beams; and
 - (b) the Grantor and the Adjoining Owner will make application to the Grantee for a permit pursuant to the *Local Government Act* upon the Grantee's usual terms and conditions for such permit in order to enable the Arbor Beams to remain constructed over a public street.
- 3.2 The Grantor agrees that if at any time after the expiration of the Initial Period the Grantee determines that it no longer wishes to retain the Arbor Beams and wishes to extinguish this Grant of Easement, the Grantee shall be entitled to remove the Arbor Beams in which event:
- 3.2.1 the provisions of clauses 2.4.1 to 2.4.5 shall apply; and
 - 3.2.2 the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense.
- 3.3 If the Grantor proposes to demolish that part of the Building comprising the Easement Land or any part of it and the Grantor does not propose to replace that part of the Building in the same or similar location and the demolition has received all required statutory approvals, then subject to the Grantor giving the Grantee at least three (3) months' written notice setting out reasonable details of the proposal sufficient to indicate a genuine intent to demolish, this easement shall be extinguished with effect from the date upon which the Grantor commences the demolition of the Building ("**Extinguishment Date**") and as soon as practicable after the Extinguishment Date the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense.

-
- 3.4 If the Grantor proposes to demolish that part of the Building comprising the Easement Land or any part of it and the Grantor does propose to replace that part of the Building in the same or similar location and the Grantee determines to provide temporary support for the Arbor Beams until such construction has been completed then this Easement and the rights granted pursuant to this Easement shall continue in full force and effect provided that such rights shall be suspended until such time as construction of the replacement building has been completed at which time the Grantee shall be entitled to exercise all such rights.

4. **Limitation of Liability**

The parties acknowledges that the Grantor is only entering into this Grant of Easement as custodian/bare trustee of the Cromwell Grenfell Street Trust (**Scheme**) and the parties agree, notwithstanding any other provisions of this agreement that:

- 4.1 The Grantor is liable under this agreement only as custodian/bare trustee of the Scheme and not in its own right (or as trustee of any other trust);
- 4.2 a reference to the Grantor in this agreement means the Grantor as custodian of the Scheme and not in its own right (or as trustee of any other trust); and
- 4.3 the remedies of the other parties against the Grantor as custodian of the Scheme are limited to the Grantors right of indemnity from the assets of the Scheme and equitable lien or other encumbrance against the property of the Scheme to secure the right of indemnity. This clause shall not apply in relation to any amounts owed, due or payable under this agreement by the Grantor to the other parties arising from any fraud or negligence or dishonesty of the Grantor or as consequence of any breach of the constitution of the Scheme.

5. **Definitions**

In this easement unless the contrary intention appears:

- 5.1 "**Adjoining Owner**" means the registered proprietor from time to time of the whole of the land in Certificate of Title Volume 6127 Folio 671;
- 5.2 "**Building**" means the building erected on the Land;
- 5.3 "**Easement Land**" means those portions of the land comprised in Certificate of Title Volume 6135 Folio 772 marked "C" in FX **[INSERT]**;
- 5.4 "**Grantee**" means The Corporation of the City of Adelaide;
- 5.5 "**Grantor**" means The Trust Company Ltd as custodian of the Cromwell Grenfell Street Trust;
- 5.6 "**Initial Period**" means the period of 10 years from the date of lodgement of this Grant of Easement for registration; and
- 5.7 "**Land**" means the whole of the land in Certificate of Title Volume 6135 Folio 772.

DATED.....

CERTIFICATION **Delete the inapplicable*

Grantor(s)

- *The Certifier has taken reasonable steps to verify the identity of the grantor or his, her or its administrator or attorney.
- *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Certifier has retained the evidence to support this Registry Instrument or Document.
- *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party

for: Company name
On behalf of the Grantor

Grantee(s)

- *The Certifier has taken reasonable steps to verify the identity of the grantee or his, her or its administrator or attorney.
- *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Certifier has retained the evidence to support this Registry Instrument or Document.
- *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party

for: Company name
On behalf of the Grantee

CONSENT TO THE GRANT OF AN EASEMENT

CONSENTING PARTY (Full Name and Address)

NATURE OF ESTATE OR INTEREST HELD

I/We the consenting party consent to the

- (1)* discharge of *Encumbrance / *Mortgage over the easement being granted pursuant to Section 144 of the Real Property Act 1886.
- (2)* granting of the easement subject to *Encumbrance / *Mortgage pursuant to Section 90F of the Real Property Act 1886.

* Strike through the inapplicable

EXECUTION BY CONSENTING PARTY

DATED

.....
Signature of CONSENTING PARTY

.....
Signature of CONSENTING PARTY

.....
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.

.....
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.

.....
Print Full name of Witness (BLOCK LETTERS)

.....
Print Full name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Address of Witness

.....
Business Hours Telephone No.....

.....
Business Hours Telephone No.....

Grant of Easement at Paxton's Walk

Strategic Alignment - Enabling Priorities

Public

Tuesday, 18 July 2023

Infrastructure and Public
Works Committee

Program Contact:

Mark Goudge, Associate Director
Infrastructure

Approving Officer:

Tom McCready, Director City
Services

EXECUTIVE SUMMARY

The City of Adelaide recently completed an upgrade of Paxton's Walk.

A portion of the upgrade works have been constructed on a thin slither of adjoining land (Ayers House and gardens), which is owned by the Minister for Environment and Water. The Minister is willing to grant an easement to the City of Adelaide that will entitle the City of Adelaide to retain the encroaching upgrade works on the Minister's land and will also entitle the City of Adelaide and public to pass and repass (on foot only) over that portion of land.

This report recommends that Council accept the Grant of Easement from the Minister for Environment and Water.

RECOMMENDATION

The following recommendation will be presented to Council on 25 July 2023 for consideration

THAT THE INFRASTRUCTURE AND PUBLIC WORKS COMMITTEE RECOMMENDS TO COUNCIL:

THAT COUNCIL

1. Approves, pursuant to section 190 of the *Local Government Act 1999 (SA)* and section 96 of the *Real Property Act 1886 (SA)*, accepting the Grant of Easement shown as Attachment A to Item 5.2 on the Agenda for the meeting of the Council held on 25 July 2023 (or a Grant of Easement substantially in accordance with that easement) the terms of which will entitle:
 - 1.1 The City of Adelaide and the public to pass and repass (on foot only) over the land lettered 'A' on Attachment B to Item 5.2 on the Agenda for the meeting of the Council held on 25 July 2023.
 - 1.2 The City of Adelaide to construct, install and replace 'ramp infrastructure' on the land lettered 'A' on Attachment B to Item 5.2 on the Agenda for the meeting of the Council held on 25 July 2023.
2. Authorises the Chief Executive Officer to finalise the terms of the Grant of Easement (including its extent) if necessary.
3. Authorises the Chief Executive Officer and Lord Mayor to execute and affix the Common Seal to a Grant of Easement and any other documents to give effect to Council's resolution.

IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities If Council accepts the Grant of Easement, it will give long-term certainty to the City of Adelaide with respect to its right to retain the 'ramp infrastructure' on a small portion of the adjoining land and also the right to pass and repass (on foot only) over that land.
Policy	Not as a result of this report
Consultation	Not as a result of this report
Resource	Internal staff resources and legal costs to prepare and register the Grant of Easement.
Risk / Legal / Legislative	The Grant of Easement has been prepared by lawyers representing the City of Adelaide. Council may accept the granting of an easement pursuant to its powers under section 190 of the <i>Local Government Act 1999 (SA)</i> and section 96 of the <i>Real Property Act 1886 (SA)</i> .
Opportunities	If Council accepts the Grant of Easement, it will give long-term certainty to the City of Adelaide with respect to its right to retain the 'ramp infrastructure' on a small portion of the adjoining land and also the right to pass and repass (on foot only) over that land.
23/24 Budget Allocation	Not as a result of this report
Proposed 24/25 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	The Grant of Easement is permanent and can only be extinguished with the consent of the grantor and grantee of the easement.
23/24 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	The Grant of Easement will require CoA to maintain the 'ramp infrastructure' in good repair.
Other Funding Sources	Not as a result of this report

DISCUSSION

1. The land coloured purple on **Attachment B** is owned by Community Corporation No. 23945 Incorporated. The Palais Apartment building exists on this land.
2. The land coloured blue on **Attachment B** is owned by the Minister for Environment and Water. Ayers House and its gardens exist on this land.
3. The land coloured yellow on **Attachment B** is currently owned by Community Corporation No. 23945 Incorporated, but will be transferred to the City of Adelaide (CoA) within the next 3-6 months. The Paxton's Walk pedestrian link exists on this land.
4. CoA recently completed a significant upgrade of Paxton's Walk. The upgrade was funded almost entirely through the State Government's 'Planning and Development Fund' (to the value of \$2.2m). The upgrade can be seen in these images. (Link 1 view [here](#)). The upgrade works include a pedestrian ramp.
5. A small portion of the pedestrian ramp (the Encroachment) has been constructed on the adjacent Ayers House land. The portion of land on which the Encroachment exists is lettered 'A' on **Attachment B** and measures approximately 0.68 metres x 3.16 metres. The extent of the encroachment is bordered in red on the image below.



6. Whilst the Encroachment was not absolutely necessary in order to complete the upgrade works, it led to better design outcomes.
7. The Encroachment has been authorised by the Minister for Environment and Water by way of a draft Grant of Easement, which is shown as **Attachment A**. The Encroachment is referred to as 'Ramp Infrastructure' in the Grant of Easement.
8. This report recommends that Council accept the Grant of Easement in order to provide CoA with long-term certainty regarding its right to retain the Encroachment on the land owned by the Minister for Environment and Water.
9. The Grant of Easement also entitles CoA and the public to 'pass and repass' (on foot only) over the portion of land lettered 'A' on **Attachment B**. This entitlement is commonly referred to as a 'Right of Way'.
10. The terms of the Grant of Easement have already been negotiated. Notwithstanding this, it is a recommendation of this report that Council authorise the Chief Executive Officer to finalise the terms of the Grant of Easement should there be an unforeseen circumstance that requires minor amendments to it.
11. Council may acquire land, including a legal interest in land (which includes easements), pursuant to section 190 of the *Local Government Act 1999 (SA)*. Council may accept the grant of an easement pursuant to section 96 of the *Real Property Act 1886 (SA)*. These powers have not been delegated by Council.

DATA AND SUPPORTING INFORMATION

Link 1 – Paxton's Walk Upgrade images

ATTACHMENTS

Attachment A – Grant of Easement

Attachment B – Site Map

- END OF REPORT -

Attachment A
LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA
GRANT OF EASEMENT
FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
--------------------	--

STAMP DUTY DOCUMENT ID	
------------------------	--

SERIES NO	PREFIX
	TG

AGENT CODE

LODGED BY:

COWELL CLARKE

CCL1

CORRECTION TO:

COWELL CLARKE

CCL1

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION
(COPIES ONLY)

- 1

- 2

- 3

- 4

- 5

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS:

- 1

- 2

- 3

- 4

- 5

CORRECTION	PASSED
REGISTERED	

GRANT OF EASEMENT

(Pursuant to Section 96 of the Real Property Act 1886)

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION OVER WHICH RIGHTS AND LIBERTIES ARE BEING GRANTED

The whole of the land comprised in Certificate of Title Volume **[INSERT]** Folio **[INSERT]**

ESTATE & INTEREST

Fee simple

GRANTOR(S) (Full name and address)

[INSERT] of **[INSERT]**

CONSIDERATION (Words and figures)

Nil (Value does not exceed \$100.00)

GRANTEE(S) (Full name, address, mode of holding and appurtenant land description)

THE CORPORATION OF THE CITY OF ADELAIDE of 25 Pirie Street, Adelaide SA 5000

THE GRANTOR ACKNOWLEDGES RECEIPT OF THE CONSIDERATION HEREIN EXPRESSED AND HEREBY GRANTS TO THE GRANTEE

HERE SET FORTH THE RIGHTS AND LIBERTIES BEING CREATED AND DEFINE PRECISELY

The Grantor hereby grants to the Grantee and its employees, agents, contractors, workmen and invitees and the general public a full and free unrestricted right and liberty over that portion of the land in Certificate of Title Volume [INSERT] Folio [INSERT] marked [INSERT] on FX [INSERT] to pass and repass at any time on foot only.

AND the Grantor and the Grantee, the parties to this easement hereby covenant and agree as set out in Annexure A.

TO BE HELD APPURTENANT TO:-

HERE SET FORTH THE APPURTENANCE AND DEFINE PRECISELY

Easement in gross.

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

To be completed by lodging party

Office Use Only

ANNEXURE to Grant of Easement dated

NUMBER

over Certificate of Title Volume [INSERT] Folio [INSERT]

ANNEXURE A

1. Grantee's Covenants

- 1.1. The Grantee shall be entitled at its own cost and expense to construct and install the Ramp Infrastructure on the Easement Land and shall be entitled to replace the Ramp Infrastructure or any part of it should such replacement be required from time to time.
- 1.2. The Grantee must construct the Ramp Infrastructure in accordance with the Grantee's plans and specifications approved by the Grantor (acting reasonably) and in accordance with all necessary statutory consents and approvals.
- 1.3. The Grantee must at its own cost and expense following the completion of the construction and installation of the Ramp Infrastructure maintain the Ramp Infrastructure in good repair and condition at all times.
- 1.4. If the Grantee fails to comply with its obligations pursuant to clause 1.3, the Grantor may undertake such maintenance, repair or other work as may be required and the Grantee must pay to the Grantor on demand an amount equal to all reasonable costs and expenses incurred by the Grantor in effecting or performing any maintenance, alteration, repair or other work as may be required (including GST on any such amounts).

2. Definitions

In this easement unless the contrary intention appears:

- 2.1. "**Easement Land**" means that portion of the land comprised in Certificate of Title Volume [INSERT] Folio [INSERT] marked [INSERT] on FX [INSERT];
- 2.2. "**Grantee**" means The Corporation of the City of Adelaide or any person authorised by it;
- 2.3. "**Grantor**" means the proprietor or proprietors from time to time of the Land and includes its tenants, employees, agents, contractors, managers and caretakers, visitors, workmen and invitees;
- 2.4. "**Land**" means the whole of the land comprised in Certificate of Title Volume [INSERT] Folio [INSERT] and includes the Easement Land; and
- 2.5. "**Ramp Infrastructure**" means the ramp and railings to be constructed and installed by the Grantee on the Easement Land and any replacement to such Ramp Infrastructure from time to time.

DATED.....

CERTIFICATION **Delete the inapplicable*

Grantor(s)

*The Certifier has taken reasonable steps to verify the identity of the grantor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

*The Certifier has retained the evidence to support this Registry Instrument or Document.

*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party
for: Company name
On behalf of the Grantor

Grantee(s)

*The Certifier has taken reasonable steps to verify the identity of the grantee or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

*The Certifier has retained the evidence to support this Registry Instrument or Document.

*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party
for: Company name
On behalf of the Grantee

CONSENT TO THE GRANT OF AN EASEMENT

CONSENTING PARTY (Full Name and Address)

NATURE OF ESTATE OR INTEREST HELD

I/We the consenting party consent to the

- (1)* discharge of *Encumbrance / *Mortgage over the easement being granted pursuant to Section 144 of the Real Property Act 1886.
- (2)* granting of the easement subject to *Encumbrance / *Mortgage pursuant to Section 90F of the Real Property Act 1886.

* Strike through the inapplicable

EXECUTION BY CONSENTING PARTY

DATED

.....
Signature of CONSENTING PARTY

.....
Signature of CONSENTING PARTY

.....
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.

.....
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.

.....
Print Full name of Witness (BLOCK LETTERS)

.....
Print Full name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Address of Witness

.....
Business Hours Telephone No.....

.....
Business Hours Telephone No.....

NORTH TERRACE

Palais Building

Paxton's Restaurant

RAMP UP
↓

A

VAUGHAN PLACE

VAUGH