

Rescind Redundant Land Management Agreement - 192 Wakefield Street, Adelaide

Strategic Alignment - Strong Economies

Public

Tuesday, 3 October 2023

City Planning, Development and Business Affairs Committee

Program Contact:

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Approving Officer:

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Shaping

EXECUTIVE SUMMARY

Council has received a request for a partial rescission of a redundant Land Management Agreement (LMA) associated with a site at 192 Wakefield Street, Adelaide.

The LMA was entered into with associated parties on 21 March 1989 under the since repealed *City of Adelaide Development Control Act 1976 (SA)*.

The purpose of the LMA was to facilitate the transfer of plot ratio from one site to another, however the development that had the benefit of the additional floor area on the site at 192 Wakefield Street did not proceed and the approval has since lapsed.

The current owner has requested Council rescind the LMA so the encumbrance can be removed from the Certificate of Title.

Should Council authorise the partial rescission of the LMA it will be wholly at the applicant's cost.

RECOMMENDATION

The following recommendation will be presented to Council on 10 October 2023 for consideration

THAT THE CITY PLANNING, DEVELOPMENT AND BUSINESS AFFAIRS COMMITTEE RECOMMENDS TO COUNCIL

THAT COUNCIL

1. Approves the rescission of the Land Management Agreement as per Attachment A to Item 7.2 on the Agenda for the meeting of the City Planning, Development and Business Affairs Committee held on 3 October 2023.
 2. Authorises the Administration to undertake the necessary steps to assist the applicant rescinding the Land Management Agreement at the applicant's cost.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Strong Economies Reduce red tape and streamline processes
Policy	Not as a result of this report
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	Not as a result of this report
Opportunities	Not as a result of this report
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	Not as a result of this report
23/24 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

1. Council entered into a Land Management Agreement on 21 March 1989 with two other parties as follows:
 - 1.1. Solarc Nominees Pty Ltd, the owner of the 'donor site' being Observatory House, a conservation site at 84-86 Flinders Street, Adelaide.
 - 1.2. Castle Grey Pty Ltd, the owner of the 'recipient site' a site located at 191-199 Frome Street, 109 Ifould Street and 192-198 Wakefield Street, Adelaide.
 2. The donor and recipient sites are shown on a location map (Link 1 view [here](#)).
 3. The current owner of 192 Wakefield Street has requested Council rescind the LMA so the encumbrance can be removed from the Certificate of Title (Link 2 view [here](#)).
 4. The LMA was made under the since repealed *City of Adelaide Development Control Act 1976 (SA)*. This Act was replaced by the *Development Act 1993 (SA)* which has also been repealed and replaced by the *Planning, Development and Infrastructure Act 2016 (SA)*.
 5. The legislation at the time of the LMA allowed sites which could not be developed to their full potential to sell floor area to another site to allow the other site to be developed over and above what would normally be allowed for by relevant policy guidelines.
 6. Castle Grey Pty Ltd, as an owner of the recipient site, intended to construct a three storey office building and undercover parking on this site.
 7. The proposal did not comply with the basic plot ratio of 1.7 under the City of Adelaide Plan 1986-1991. Consequently, Castle Grey Pty Ltd purchased the transfer of 334m² of floor area from the owner of the donor site to achieve a 0.3 bonus for a maximum plot ratio of 2.0.
 8. Council permitted the transfer of the floor area via an LMA which was registered on the relevant Certificates of Title of both sites.
 9. The LMA had the effect of endorsing and permitting the transfer of floor area and imposed obligations on the owner of the donor site (Observatory House). This included painting and maintaining the site, with Council 'step in rights' if this did not occur. There was also an obligation the site could not be divided, sold or leased without the written consent of Council.
 10. Provisions relating to transferable floor area were removed from planning policy on 24 June 2006 by the General and Park Lands Planning Amendment Review (PAR). No transition was provided by that PAR.
 11. In 1989, Observatory House was on the Register of the City of Adelaide Heritage Items, kept pursuant to the *City of Adelaide Development Control Act 1976 (SA)*. It has since been listed as a State Heritage Place in Part 11 of the Planning and Design Code which represents current policy controls under the *Planning, Development and Infrastructure Act 2016 (SA)*.
 12. The proposed development on the recipient site never proceeded.
 13. There has not been a request to rescind the LMA for the donor site. Were that to occur it would release the owner of that land from the obligations in favour of the Council in respect of the building's maintenance, preservation and conservation. However, given Observatory House is now a State Heritage Place, the *Heritage Places Act 1993 (SA)* provides adequate protection and control.
 14. Administration has sought legal advice regarding the partial rescission which confirmed the present LMA can be partially rescinded (rescinded in respect of the site that received the transferable floor area) without any material legal consequence for Council.
 15. Considering changes in legislation resulting in Observatory House now being protected by a State Heritage listing and restrictions on development of the recipient site no longer realised without plot ratio constraints, the request for the partial rescission of the LMA is considered reasonable.
 16. The purpose of this report is to seek a decision from Council to allow the rescission of the LMA as it relates to land located at 192-198 Wakefield Street.
 17. Should Council authorise the partial rescission of the LMA it will be wholly at the applicant's cost.
 18. There is no impact of rescinding this LMA considering the development never proceeded. The impact of not rescinding this LMA is an encumbrance remaining registered against the Certificate of Title.
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DATA AND SUPPORTING INFORMATION

Link 1 – Donor and Recipient Site Location Map

Link 2 – Request for partial rescission of LMA

ATTACHMENTS

Attachment A – Copy of LMA and associated documents

- END OF REPORT -