

O-Bahn City Access Project - Land Tenure arrangements

Tuesday, 17 October 2023

Infrastructure and Public Works Committee

Strategic Alignment - Enabling Priorities

Program Contact:

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Public

Approving Officer:

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EXECUTIVE SUMMARY

In 2016, the City of Adelaide and the Minister for Transport and Infrastructure (as the position was titled at the time) entered into a Project Deed relating to the delivery of the O-Bahn City Access Project.

The Project included significant works to the O-Bahn infrastructure along Hackney Road and the construction of new O-Bahn track and tunnel through the Park Lands (predominantly Rymill Park / Murlawirrapurka (Park 14)).

The Project Deed required that the new O-Bahn track would, after completion, be located on land that was under the care, control and management of the Minister. This required the temporary transfer of the care, control and management of a wide corridor of Park Lands from the City of Adelaide to the relevant Minister until such time as the construction works were completed, at which point those parts of the Park Lands that were not being occupied by the new O-Bahn track would be returned to the care, control and management of the City of Adelaide.

A series of documents have now been prepared by Crown Law that, if executed, will give effect to the transfer of care, control and management of that portion of Park Lands back to the City of Adelaide. Four of the documents require execution by Council.

If Council resolves to execute the four documents, it will also give effect to other changes in land tenure in the vicinity of the new O-Bahn track that are consistent with the intent of the Project Deed. The purpose of this Report is to seek Council approval to finalise and execute the four documents.

RECOMMENDATION

The following recommendation will be presented to Council on 24 October 2023 for consideration

THAT THE INFRASTRUCTURE AND PUBLIC WORKS COMMITTEE RECOMMENDS TO COUNCIL

THAT COUNCIL

1. Notes that the O-Bahn City Access Project was completed in 2018 and that it is now necessary to change the land tenure in the vicinity of the new O-Bahn track so that it is consistent with the terms (and intent) of the Project Deed that was entered into between the City of Adelaide and the Minister for Transport and Infrastructure in 2016.
2. Notes that the Surveyor-General has written to Council (Attachment A to Item 7.2 on the Agenda for the meeting of the Infrastructure and Public Works Committee held on 17 October 2023), requesting that it approve and execute the documents shown as Appendices A-D in the letter to give effect to the required changes in land tenure, the documents being:
 - 2.1 Instrument for the Minister for Planning to vary GRO Plan 01/2014 pursuant to the *Adelaide Park Lands Act (SA) 2005* – which is shown as Appendix A to the letter.
 - 2.2 Instrument to change the status of land and vest easement rights – which is shown as Appendix B to the letter.
 - 2.3 Application on behalf of the Minister for Climate, Environment and Water for deposit of a plan of division and issue of new certificates of title (Form RTD) – which is shown as Appendix C to the letter.

- 2.4 Application for the variation of easement between the Minister for Climate, Environment and Water and Distribution Lessor Corporation (to vary existing easement rights) (Form VE) – which is shown as Appendix D to the letter.
 3. Approves the documents listed as Appendices A-D in Attachment A to Item 7.2 on the Agenda for the meeting of the Infrastructure and Public Works Committee held on 17 October 2023 (or documents substantially in accordance with those documents) and any other documents to give effect to the land tenure changes requested by the Surveyor-General.
 4. Approves providing the necessary concurrences (pursuant to the *Adelaide Park Lands Act 2005 (SA)*) in order to give effect to the land tenure changes requested by the Surveyor-General.
 5. Notes that the ‘long-form’ easements proposed to be granted (Easements B, C, D, E, F, G, H, J, K and R) and ‘varied’ (Easement P) are summarised in Attachment B to Item 7.2 on the Agenda for the meeting of the Infrastructure and Public Works Committee held on 17 October 2023.
 6. Authorises the Lord Mayor and Chief Executive Officer to execute and affix the Common Seal of the Council to the documents listed as Appendices A-D in Attachment A to Item 7.2 on the Agenda for the meeting of the Infrastructure and Public Works Committee held on 17 October 2023 and any other documents that may be required in order to give effect to the changes in land tenure that have been requested by the Surveyor-General.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities If Council approves and executes the four documents that have been requested by the Surveyor-General, it will finalise the land tenure arrangements relating to the O-Bahn City Access Project.
Policy	Not as a result of this Report
Consultation	The Government of South Australia (State Government) has consulted extensively with the City of Adelaide throughout the delivery of the O-Bahn City Access Project, including in relation to the resolution of land tenure matters.
Resource	Internal resources have been used to process this request, and external legal advice has been sought.
Risk / Legal / Legislative	The changes in land tenure have been done in accordance with the <i>Adelaide Park Lands Act 2005 (SA)</i> , the <i>Roads (Opening & Closing) Act 1991 (SA)</i> and the <i>Real Property Act 1886 (SA)</i> .
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

Adelaide Park Lands Act (2005)

1. The *Adelaide Park Lands Act 2005 (SA)* (the Act) is an act to establish a legislative framework for the management of the Adelaide Park Lands.

Adelaide Park Lands Plan

2. The Act requires that the extent of the Adelaide Park Lands be shown on a plan known as the 'Adelaide Park Lands Plan'. The Adelaide Park Lands Plan must be lodged in the General Registry Office (GRO).
3. The current Adelaide Park Lands Plan is referenced as 'GRO Plan 01/2014' [Link 1 view [here](#)].
4. Under the Act, the Minister responsible for the Act (currently the Minister for Planning) may vary the Adelaide Park Lands Plan to give effect to a change in who owns Park Lands or is responsible for its care, control and management.

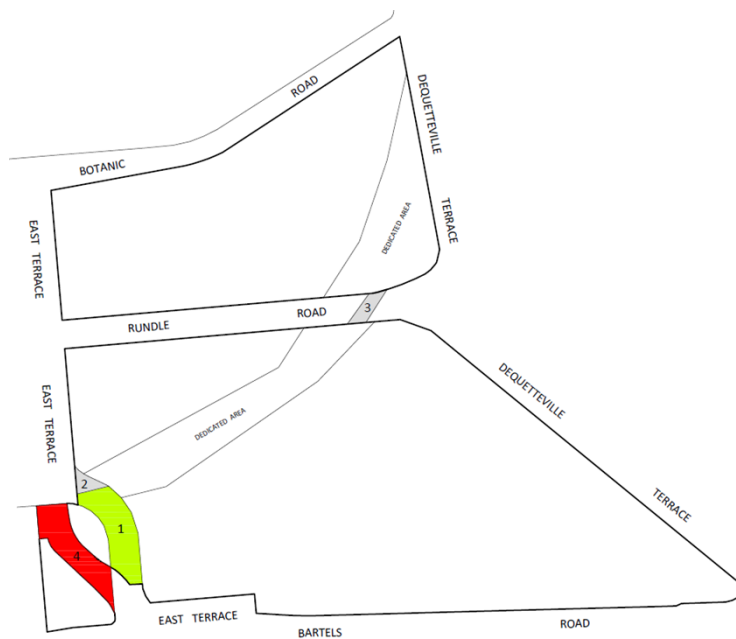
O-Bahn City Access Project and Project Deed

5. The O-Bahn City Access Project was announced in 2013 and completed in 2018 and included the construction of O-Bahn track through the Park Lands (predominantly Rymill Park / Murlawirrapurka (Park 14)). Approximately 350 metres of the track was built below ground and 150 metres of the track was built above ground.
6. The State Government identified early in the planning phase for the O-Bahn City Access Project that there would be multiple implications for the City of Adelaide. As such, a 'Project Deed' [Link 2 view [here](#)] was developed between the City of Adelaide and the Minister for Transport and Infrastructure (as the position was titled at the time). The Minister is henceforth referred to simply as the 'Minister for Transport' in this Report).
7. On 16 February 2016, Council resolved (in part) that:
 8. *The Chief Executive Officer be authorised to finalise the Project Deed prior to it being executed by Common Seal.*
 9. *Subject to the project being granted development plan consent by DAC, the Lord Mayor and Chief Executive Officer be authorised to affix the Common Seal of the Council to the Project Deed and any other items to give effect to that document.*
8. Various clauses in the Project Deed relate to the land tenure arrangements that the Minister for Transport and the City of Adelaide wanted to achieve after the new O-Bahn infrastructure had been constructed. The primary objective of the parties was a desire that the new O-Bahn track constructed through the Park Lands would, following construction, exist on land that was under the care, control and management of the Minister for Transport.
9. The Project Deed contemplated three distinct steps (Steps 1, 2 and 3) that would be required to achieve the desired land tenure arrangement after the O-Bahn City Access Project had been completed. However, a further two steps were subsequently identified as also being necessary (Steps 4 and 5).

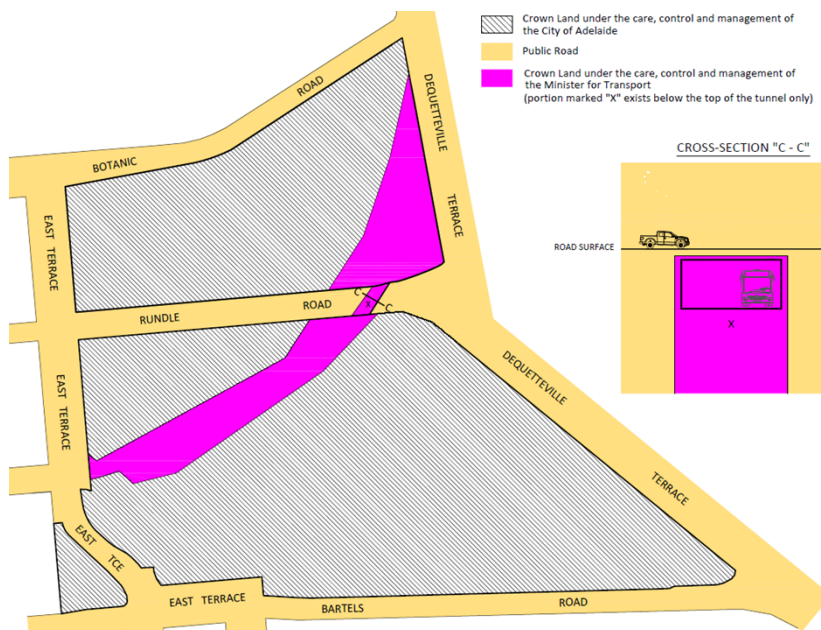
Step 1

10. The first step that was required to achieve the final land tenure arrangement was to transfer the care, control and management of a wide corridor of Park Lands from the City of Adelaide to the Minister for Transport. The corridor of Park Lands to be transferred (known as the 'Dedicated Area') was created significantly wider than the proposed O-Bahn tunnel so that there was sufficient space either side of the proposed tunnel in which to work whilst the tunnel was being constructed.
11. Section 14(5) of the Act gives the Minister responsible for that Act (currently the Minister for Planning) the power to vary the Adelaide Park Lands Plan. However, the Act states that the Minister cannot cease to make the City of Adelaide responsible for the care, control and management of Park Lands without Council's 'concurrence'. Council resolved to give its 'concurrence' to cease being responsible for the care, control and management of the 'Dedicated Area' on 16 February 2016.

- 14.3 Close the portion of Rundle Road numbered '3' on the map below (below the top of the O-Bahn tunnel only) and transfer ownership to the Crown, with the Minister for Transport made responsible for its care, control and management.
- 14.4 Open (as public road) the land numbered '4' on the map below (which was previously Park Lands under the care, control and management of the City of Adelaide).



15. The land tenure after Step 2 was completed is shown in the map below. No further changes to land tenure have been made since that time i.e. this is how the land tenure currently exists.



Letter from the Surveyor-General

16. Construction of the O-Bahn City Access Project was completed in 2018. Since then, the Administration has been working with the Crown Solicitor's Office (including the Surveyor-General and Registrar-General) to finalise the complex land tenure processes associated with the Project. This has culminated in the Surveyor-General writing to the City of Adelaide (letter shown as **Attachment A**) requesting that Council approve and execute the following documents:
 - 16.1. Instrument for the Minister for Planning to vary GRO Plan 01/2014 pursuant to the *Adelaide Park Lands Act (SA) 2005* - Appendix A to the letter.
 - 16.2. Instrument to change the status of land and vest easement rights – Appendix B to the letter.

- 16.3. Application on behalf of the Minister for Climate, Environment and Water for deposit of a plan of division (DP 121055) and issue of new certificates of title (Form RTD) – Appendix C to the letter.
- 16.4. Application for the variation of easement between the Minister for Climate, Environment and Water and Distribution Lessor Corporation (to vary existing easement rights) (Form VE) – Appendix D to the letter.
- 17. Executing these four documents will give effect to the final three steps (Steps 3, 4 and 5) that are required to achieve the desired land tenure arrangements for the O-Bahn City Access Project i.e. Steps 3, 4 and 5 will occur concurrently (subject to Council accepting the recommendations of this Report).

Step 3

- 18. The third step that is required to achieve the final land tenure arrangement is to return those portions of the 'Dedicated Area' that are not being occupied by O-Bahn infrastructure from the care, control and management of the Minister for Transport back to the care, control and management of the City of Adelaide.
- 19. Step 3 is contemplated in clause 9.3.1 of the Project Deed, which states: -

9.3.1 Unless otherwise agreed, at or around the Handover Date it is the intention that all of the Dedicated Area except for:

9.3.1.1 the below ground area containing the underground tunnel infrastructure (including the Portal); and

9.3.1.2 the area from the Portal to Grenfell Street; will be returned to Council's care and control.

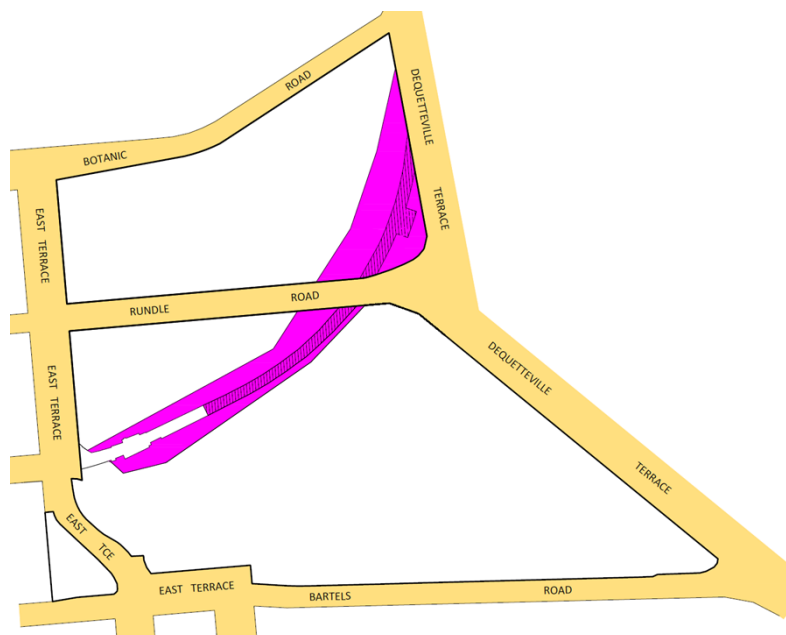
- 20. The Minister responsible for the Act (currently the Minister for Planning) cannot make the City of Adelaide responsible for the care, control and management of Park Lands without Council's 'concurrence' (in the same way that the Minister cannot cease to make the City of Adelaide responsible for the care, control and management of Park Lands without Council's 'concurrence' - as discussed in paragraph 11).

- 21. Accordingly, clause 9.3.3 of the Project Deed goes on to state:

9.3.3 Subject to the Minister complying with its obligations under this deed, the Council intends to provide its concurrence to the return of these areas to Council's care and control.

- 22. Council can provide its 'concurrence' to the transfer of land by resolving to execute the four documents listed in paragraph 16 (which are listed as Appendices A-D in **Attachment A**).

- 23. The land that will be transferred from the care, control and management of the Minister for Transport back to the care, control and management of the City of Adelaide is coloured purple on the map below, noting that the portion that is 'hatched' exists above the top of the tunnel only (the land below the top of the tunnel will remain in the care, control and management of the Minister for Transport).

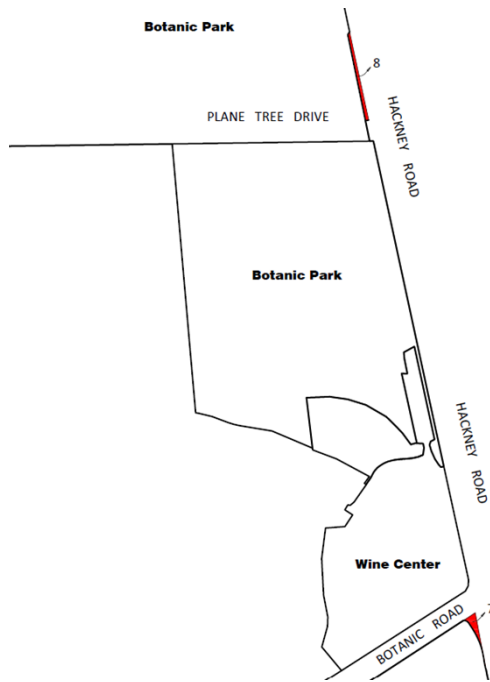


Step 4

24. The fourth step that is required to achieve the final land tenure arrangement is for the Commissioner of Highways to use his/her powers under Section 34G of the *Roads (Opening & Closing) Act 1991 (SA)* to widen or narrow various public roads in the vicinity of the new O-Bahn track.
25. The Commissioner of Highways has already exercised these powers by undertaking the necessary 'road processes' under the *Roads (Opening & Closing) Act 1991 (SA)*. The Minister for Infrastructure and Transport (as the 'relevant authority' under the Act) has made a 'road process order' to widen and narrow those roads and the Attorney-General has 'confirmed' that order.
26. The widenings and narrowings were not contemplated in the Project Deed, however they were subsequently identified as being necessary and are, in any case, consistent with the intent of the Project Deed.
27. Council's remaining role in facilitating Step 4 is to authorise the deposit of a plan of division that will define the extent of the land being transferred. If Council does authorise the deposit of the plan (by executing the four documents listed as Appendices A-D in **Attachment A**), it will result in the following outcomes:
 - 27.1 The portions of public road numbered '5' and '6' on the map below (which are owned by the City of Adelaide) will be closed and transferred to the Crown and made into Park Lands under the care, control and management of the City of Adelaide.
 - 27.2 The portion of Park Lands numbered '7' on the map below (which is owned by the Crown and under the care, control and management of the City of Adelaide) will be opened as public road (which will be owned by the City of Adelaide).

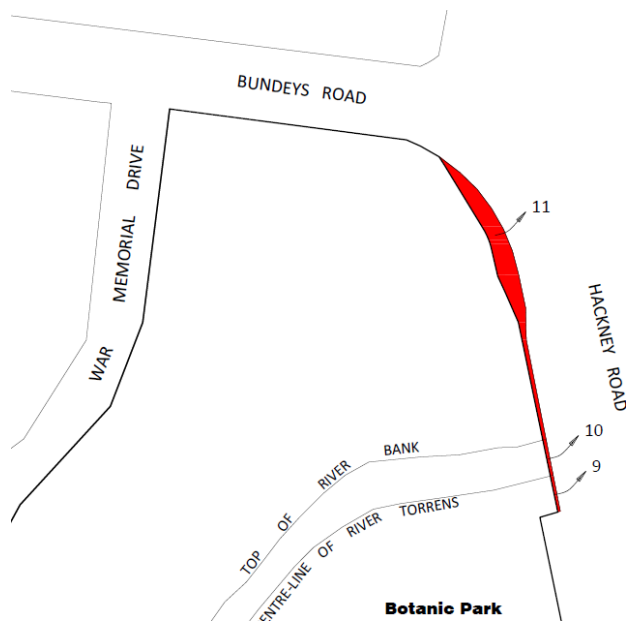


- 27.3 The portion of Park Lands numbered '8' on the map below (which is currently owned by the Crown and under the care, control and management of the 'Board of the Botanic Gardens and State Herbarium') will be opened as public road (which will be owned by the City of Adelaide).



27.4 The portion of Park Lands numbered '9' on the map below (which is currently owned by the Crown and under the care, control and management of the 'Board of the Botanic Gardens and State Herbarium') will be opened as public road (which will be owned by the City of Adelaide).

27.5 The portions of Park Lands numbered '10' and '11' on the map below (which are currently owned by the Crown and under the care, control and management of the City of Adelaide) will be opened as public road (which will be owned by the City of Adelaide).

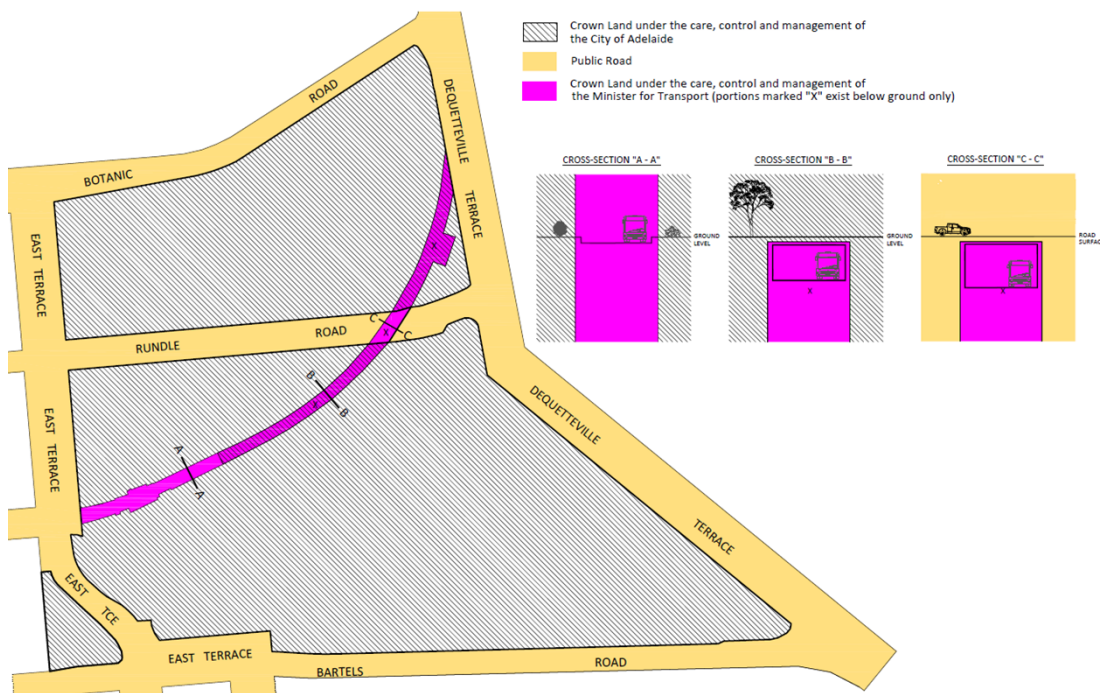


Step 5

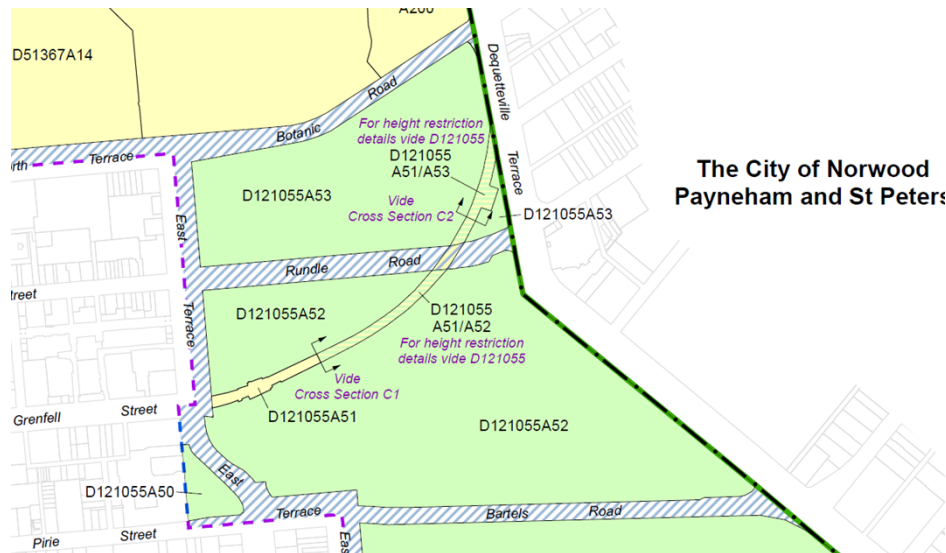
- 28. The fifth step required to achieve the desired land tenure arrangement is for ten easements to be granted and one easement to be 'varied'.
- 29. The ten easements to be granted (Easements B, C, D, E, F, G, H, J, K and R) and the one easement to be 'varied' (Easement P) are 'long-form' easements – noting that a 'long-form' easement is one where the terms are tailored to a specific circumstance.
 - 29.1 Each of the ten 'long form' easements to be granted are shown in the document titled 'Instrument to change the status of land and vest easement rights', which is shown as Appendix B to the letter received from the Surveyor-General (**Attachment A**).
 - 29.2 The 'long form' easement to be 'varied' is shown in the document named 'Application for the variation of easement', which is shown as Appendix D to the letter received from the Surveyor-General (**Attachment A**).
- 30. A summary of the easements to be granted and varied is shown in **Attachment B**.
- 31. The proposed granting and varying of the easements was not contemplated in the Project Deed, however the easements are necessary to ensure that the proposed easement-holders (including the City of Adelaide) will have ongoing rights to be able to access and maintain assets that are located on land that is not under their care, control and management.
- 32. The terms of the long-form easements being granted or varied were prepared by Crown Law with the assistance from Council's external lawyers and input from other Government agencies, including the Surveyor-General and the Registrar-General.

Final land tenure arrangement

- 33. If Council adopts the recommendations of this Report (to approve and execute the documents listed as Appendices A-D in **Attachment A**), the land tenure will be as per the map below (excluding the details regarding easements and changes along Hackney Road).



- 34. The Surveyor-General (for the Minister for Planning) has reflected these intended land tenure arrangements in a draft variation to the Adelaide Park Lands Plan, which is referenced as 'GRO Plan 01/2023'. An extract of GRO Plan 01/2023 is shown below.



Summary

35. The Administration and its external lawyers have engaged extensively with Crown Law, the Registrar-General and Surveyor-General on this complex matter for over five years.
36. The request made by the Surveyor-General for Council to approve and execute the documents listed as Appendices A-D in **Attachment A** will result in a final land tenure arrangement that is consistent with the intent of the Project Deed that was entered into between the City of Adelaide and the Minister for Transport and Infrastructure on 1 April 2016.
37. The approval and execution of the four documents (which is the recommendation of this Report) will allow the finalisation of those outcomes described in Steps 3, 4 and 5 in this Report and will result in the updating of the Adelaide Park Land Plan.
38. If Council adopts the recommendations of this Report, the documents will be executed by the Lord Mayor and Chief Executive Officer. The Crown Solicitor's Office will then coordinate lodgement of the documents with the Registrar-General.

DATA AND SUPPORTING INFORMATION

Within Discussion

Link 1 - GRO Plan 01/2014

Link 2 - Project Deed

Within Attachment B

Link 3 - map showing Easement B

Link 4 - map showing Easement C

Link 5 - map showing Easement D

Link 6 - map showing Easement E

Link 7 - map showing Easement F

Link 8 - map showing Easements G and H

Link 9 - map showing Easements J and K

Link 10 - map showing Easement P

Link 11 - map showing Easement R

ATTACHMENTS

Attachment A – Letter from Surveyor-General

Attachment B – Summary of easements to be granted and 'varied'

- END OF REPORT -