

Strategic Alignment - Enabling Priorities

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## EXECUTIVE SUMMARY

Victoria Tower (SA) Pty Ltd has planning consent to construct a 33-storey mixed use tower on the corner of Grote Street and Penaluna Place. The proposed development relies on Penaluna Place for vehicles to be able to access a loading dock and car ramp to a multistorey car park within the proposed development.

The carriageway in Penaluna Place is not wide enough to allow simultaneous two-way traffic flow and the footpath is also not wide enough to provide safe and convenient pedestrian movement.

Victoria Tower (SA) Pty Ltd proposes to widen Penaluna Place by vesting (as public road) a 1.34 metre-wide strip of land to the City of Adelaide. This report recommends Council accept the transfer of land, pursuant to section 190 of the *Local Government Act 1999 (SA)*.

This report also recommends that Council authorises the Chief Executive Officer to negotiate the terms of an agreement with Victoria Tower (SA) Pty Ltd that would require them to transfer the strip of land to the City of Adelaide and construct road infrastructure on it to the City of Adelaide's standard.

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## RECOMMENDATION

### THAT COUNCIL

1. Approves, pursuant to section 190 of the *Local Government Act 1999 (SA)*, acquiring as public road, the land shown as Allotment 3651 on Attachment A to Item 12.5 on the Agenda for the meeting of the Council held on 12 April 2022.
  2. Authorises the Chief Executive Officer to negotiate the terms of an agreement with Victoria Tower (SA) Pty Ltd, the terms of which will require Victoria Tower (SA) Pty Ltd to:
    - 2.1 Construct, to the City of Adelaide's satisfaction, road infrastructure on Penaluna Place and the land shown as Allotment 3651 on Attachment A to Item 12.5 on the Agenda for the meeting of the Council held on 12 April 2022.
    - 2.2 Transfer, as public road, the land coloured yellow and identified as Allotment 3651 on Attachment A to Item 12.5 on the Agenda for the meeting of the Council held on 12 April 2022 to the Corporation of the City of Adelaide.
  3. Authorises the Chief Executive Officer and Lord Mayor to execute and affix the Common Seal to transfer documents, agreements and any other documents to give effect to Council's resolution.
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## IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	<b>Strategic Alignment – Enabling Priorities</b> If Council accepts the vesting (transfer) of Allotment 3651, it will enable Victoria Tower (SA) Pty Ltd to develop its site in accordance with the planning consent granted by the State Commission Assessment Panel (SCAP) to build a 33-storey mixed use tower.
Policy	The acquisition of land is consistent with Council's ' <i>Acquisition &amp; Disposal of Land &amp; Assets Policy</i> ' and is therefore recommended.
Consultation	Not as a result of this report
Resource	Internal staff resources were incurred to consider the proposal and will also be incurred to oversee the delivery of the road infrastructure works. Legal costs will be incurred for reviewing the legal agreement between the City of Adelaide and Victoria Tower (SA) Pty Ltd.
Risk / Legal / Legislative	Owning Allotment 3651 (as public road) will entail legal responsibility for it and therefore the same risks associated with ownership of any public road. The draft agreement between the City of Adelaide and Victoria Tower (SA) Pty Ltd was prepared by lawyers representing Victoria Tower (SA) Pty Ltd and has been reviewed by lawyers representing the City of Adelaide. The Agreement is yet to be finalised. Council may acquire the strip of land pursuant to its powers under section 190 of the <i>Local Government Act 1999 (SA)</i> .
Opportunities	If Council accepts the vesting of Allotment 3651, it will enable Victoria Tower (SA) Pty Ltd to develop its site in accordance with the planning consent granted by SCAP to build a 33-storey mixed use tower.
21/22 Budget Allocation	Not as a result of this report
Proposed 22/23 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
21/22 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	As per normal public road infrastructure.
Other Funding Sources	Not as a result of this report

## DISCUSSION

1. On 31 August 2020 Victoria Tower (SA) Pty Ltd (the Applicant) lodged a development application (S10/56/2020) with the State Commission Assessment Panel (SCAP) to develop the land coloured red on this site map [Link 1 view [here](#)].
2. The development application proposes the demolition of existing structures on the site and the subsequent construction of a 33-storey mixed use building, comprising apartments, offices, retail and car parking. An image from the development application can be seen at Link 2 view [here](#).
3. It can be seen on **Attachment A** that Penaluna Place will be used for access to a loading dock and car ramp (that provides access to the (approximately) 164-space car park in the proposed development).
4. Penaluna Place can be seen in these photos [Link 3 view [here](#)].
5. The existing kerb-to-kerb width of Penaluna Place (approximately 4.6 metres) is insufficient to accommodate simultaneous two-way traffic movements. Additionally, the verges on both sides of the roadway are too narrow to accommodate safe and convenient pedestrian traffic. This was highlighted in a traffic survey undertaken by the Applicant which found that:
  - 5.1 Pedestrians are currently walking along the road pavement between the kerbs and not along the narrow 'footpaths'.
  - 5.2 Drivers are generally required to pull onto the narrow footpath on at least one side of the roadway in order to pass an oncoming vehicle.
6. Given the forecast additional traffic to be generated by the proposed development, the Applicant proposes to widen Penaluna Place adjacent to the subject site by vesting (transferring) as public road a strip of land to the City of Adelaide (CoA).
7. The strip of land to be vested is coloured yellow and identified as Allotment 3651 on **Attachment A**. The balance of the Applicant's land (on which the development will occur) is coloured green and identified as Allotment 3651 on **Attachment A**.
8. As can be seen on the cross-section in **Attachment A**, Allotment 3651 would be limited in height, which would allow the Applicant's building to cantilever over the top of Allotment 3651. The cantilevered building would result in a minimum of:
  - 8.1. 3.8 metres clearance above the proposed footpath.
  - 8.2. 5.0 metres clearance above the widened carriageway (including 600mm back from the kerb).
9. Cross-sections of Penaluna Place before and after the vesting of Allotment 3651 can be seen at Link 4 view [here](#). The vesting will result in the following configuration of Penaluna Place:
  - 9.1 The western kerb alignment being maintained in its current location.
  - 9.2 The eastern kerb alignment being moved further east to increase the carriageway width to 5.5 metres.
  - 9.3 A footpath width of 1.2 metres on the eastern side of Penaluna Place (adjacent to the proposed development).
10. The proposed widening of Penaluna Place would allow:
  - 10.1 Simultaneous two-way vehicle movements adjacent to and from the proposed development.
  - 10.2 Service vehicles, including waste collection vehicles up to 10 metres in length, to manoeuvre into the loading area by undertaking three-point turns in Penaluna Place.
  - 10.3 A dedicated pedestrian footpath on the eastern side of Penaluna Place (of 1.2 metres in width).

### The Agreement

11. The Applicant has agreed to construct new public road infrastructure on Allotment 3651 at no cost to the CoA. The terms regarding the construction of the new road infrastructure (the Works) are contained in a draft 'Road Infrastructure Agreement' (the Agreement) between the CoA and the Applicant. The terms of the draft Agreement require the Applicant to:
  - 11.1 Undertake the Works in accordance with the CoA's requirements at no cost to the CoA.
  - 11.2 Vest Allotment 3651 to the CoA at no cost to the CoA.
12. This Report recommends Council authorise the Chief Executive Officer to negotiate the terms of the Agreement.

## SCAP conditions

13. As a part of the normal planning process, CoA provided referral comments regarding the proposed development to SCAP on 8 October 2020, including a recommendation that the development application be placed on hold until agreement between the CoA and the Applicant was reached regarding the widening of Penaluna Place.
14. Rather than accept our recommendation, SCAP granted planning consent for the proposed development on 23 June 2021, but with various conditions, including:
  - 14.1 Condition 7 – Prior to the commencement of the proposed development, the Applicant must provide evidence to the State Planning Commission that it has the CoA's consent to undertake the Works.
  - 14.2 Condition 6 - That the Works must have been completed prior to the "*occupation or use of the development*".
15. SCAP did not require the transfer of Allotment 3651 to Council as a planning condition because the Applicant's objectives could also have been achieved by other means. For example, the Applicant could have granted a Right of Way to the CoA over the land instead of transferring it. Indeed, other options were considered; however, we believe ownership of Allotment 3651 gives the CoA the best ongoing control over the land and therefore recommend Council resolves to accept the transfer (vesting).
16. Condition 7, as required by SCAP (refer to paragraph 14), will be satisfied if Council resolves to authorise:
  - 16.1 The Chief Executive Officer to negotiate the terms of the Agreement.
  - 16.2 The Lord Mayor and Chief Executive Officer execute the Agreement by affixing the Common Seal of Council.

## Acquisition and Disposal of Land and Assets Policy

17. Council may acquire land pursuant to section 190 of the *Local Government Act 1999 (SA)*. This power has not been delegated by Council. Accordingly, the purpose of this Report is to seek Council's approval to acquire, as public road, the land shown as Allotment 3651 on **Attachment A**.
18. In deciding whether to acquire Allotment 3651, Council should consider whether it is consistent with its '*Acquisition and Disposal of Land and Assets Policy*', which requires Council to consider the acquisition of land in terms of the following key criteria:-
  - 18.1. Alignment with Council's strategic drivers.
  - 18.2. Potential to add value and support Council's city shaping objectives.
  - 18.3. The ability to unlock supply.
  - 18.4. Creation of new commercial and financial value.
  - 18.5. Provision of community benefits and public value.
  - 18.6. Potential to consolidate Land or Assets with Council's existing holdings.
19. The transfer of Allotment 3651 will facilitate a major development, which is consistent with the overarching intent outlined in Council's '2020 – 2024 Strategic Plan' and is consistent with the key criteria outlined in paragraphs 18.1, 18.2 and 18.4.

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## DATA AND SUPPORTING INFORMATION

**Link 1** – Site map

**Link 2** – Image of proposed development

**Link 3** – Photographs of Penaluna Place

**Link 4** – Cross sections of Penaluna Place

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# ATTACHMENTS

**Attachment A** – Plan of Division

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