

Strategic Alignment - Enabling Priorities

Public

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## EXECUTIVE SUMMARY

At its meeting held on 12 July 2022 Council authorised the Chief Executive Officer (CEO) to negotiate the final terms of a Memorandum of Understanding (MoU) with the Department for Education in relation to the vesting of a portion of Allotment 22 in Certificate of Title 5696/850 in Deposited Plan 51367 (Allotment 22), owned by the City of Adelaide, in the State Government.

On 13 September 2022, the Department for Education wrote to the Chief Executive Officer seeking execution of the MoU by the City of Adelaide during the local government election caretaker period that commenced on 6 September 2022.

A Special Meeting of the Council was held on 13 October 2022 to consider MoU execution and associated statutory decisions against the caretaker provisions, noting this was required due to receipt of the MoU from the State Government during the local government caretaker period.

At its meeting of 13 September 2022, Council resolved to apply to the Minister for Local Government for an exemption to make designated decisions to:

- Execute the MoU under delegation to the CEO in line with Council's decision of 12 July 2022; and
- Provide the necessary concurrences/requests in connection with land tenure arrangements.

The Chief Executive Officer wrote to the Minister for Local Government seeking exemptions under section 91A(3) of the *Local Government (Elections) Act 1999 (SA)* (LGE Act) on 14 October 2022 and received a response on 17 October 2022 granting the exemptions.

The Chief Executive Officer subsequently executed the MoU under the existing delegation from the Council.

This report considers the second matter relating to the legislative concurrences/requests to enable the vesting of the relevant land portions or other adjustment of rights between the State Government and the City of Adelaide as envisaged by the Memorandum of Understanding and to allow construction to commence in line with the intentions of the MoU.

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## RECOMMENDATION

THAT COUNCIL:

1. Notes exemptions to make designated decisions in relation to Execution of the Memorandum of Understanding and to consider the granting of legislative concurrences to enable the vesting of the relevant land portions or other adjustments of rights between the State Government and the City of Adelaide were granted by the Minister for Local Government on 17 October 2022.
2. Notes that the Memorandum of Understanding between the Department for Education, the Department for Environment and Water and the City of Adelaide has been executed by the Chief Executive in line with the decision of Council on 12 July 2022 and confirms the outcomes negotiate by Council which include:

- 2.1. A net gain of Park Lands in the care and control of Council; and
  - 2.2. Significant future investment in the Park Lands.
  3. Notes the assessment by the Chief Executive Officer in relation to the significant decisions under the City of Adelaide Caretaker Policy.
  4. Resolves to proceed to deal with the significant decision (under the Caretaker Policy) to approve the provision of the necessary concurrences/requests as envisaged by the Memorandum of Understanding, and implement the Memorandum of Understanding, as set out below.
  5. Approves the provision of the necessary concurrences/requests pursuant to all relevant legislative requirements to enable the vesting of the relevant land portions and/or other adjustment of rights between the State Government and the City of Adelaide as envisaged by the Memorandum of Understanding.
  6. Approves the Chief Executive Officer (or anyone acting in that position) to make the significant decisions (under the Caretaker Policy) to undertake all steps necessary to implement the Memorandum of Understanding and authorises the Chief Executive Officer (or anyone acting in that position) to take such steps.
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## IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	<b>Strategic Alignment – Enabling Priorities</b> The Strategic Plan states that: <i>‘Council will continue to work innovatively and collaboratively with partners and the community’ to achieve ‘Bold leadership and strategic partnerships to meet challenges and take up new opportunities.’</i> The proposal aligns with action item 5.3 <i>‘Build on effective advocacy and partnerships locally, nationally and globally’.</i>
Policy	This report is consistent with the City of Adelaide’s Caretaker Policy dated 15 March 2022. Reference has been made to Council’s Community Consultation Policy dated 16 July 2019, Council’s Acquisition and Disposal of Land and Assets Policy dated 27 January 2022 and the relevant community land management plan.
Consultation	The Administration has been in negotiation with the State Government through the Department for Education.
Resource	The negotiations with the Department for Education are being undertaken within existing Council resources. Costs relating to the land arrangements between CoA and Department for Education will be borne by the Department as per the MoU.
Risk / Legal / Legislative	The Council has sought and obtained an exemption from the Minister for Local Government to make designed decisions pursuant to the Local Government (Elections) Act 1999 (SA). The Chief Executive Officer has subsequently executed the MoU with the State Government under the delegation of the Council. The State Government has sought that the MoU remain in confidence until certain conditions are met. The MoU can be made public as soon as key milestones are achieved in relation to the MoU.
Opportunities	This report seeks to enable implementation of the MoU as the negotiated position between the City of Adelaide and the State Government based on Council’s principles for the negotiation.
22/23 Budget Allocation	Legal costs incurred for advice on the caretaker provisions can be accommodated within the existing budget allocation for legal advice.
Proposed 23/24 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
22/23 Budget Reconsideration (if applicable)	Budget implications are dependent on formal legal agreements yet to be determined.
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

# DISCUSSION

## Background

1. On 13 October 2022 Council resolved to apply to the Minister for Local Government for an exemption to make designated decisions, both of which relate to enacting its decision of 12 July 2022, these are to:
  - 1.1. Execute the MoU with the Department for Education in relation to the vesting of a portion of Allotment 22 in Certificate of Title 5696/850 in Deposited Plan 51367 (Allotment 22), owned by the City of Adelaide, in the State under CEO delegation in line with Council's decision of 12 July 2022; and
  - 1.2. Provide the necessary concurrences/requests in connection with realising the land tenure arrangements that have been negotiated as part of the MoU.
2. The Minister for Local Government granted the relevant exemptions under section 91A(3) of the *Local Government (Elections) Act 1999 (SA)* (LGE Act) on 17 October 2022 and the Chief Executive Officer (CEO) has subsequently executed the MoU under existing delegation from the Council, bringing into effect Council's decision of 12 July 2022 (Link 1 view [here](#)).
3. The MoU provides for the negotiated outcome between the City of Adelaide and the State Government which includes:
  - 3.1. Land being vested in the City of Adelaide within the Adelaide Park Lands that exceed the area of land being vested in the State, increasing the amount of Adelaide Park Lands in the care and control of Council.
  - 3.2. Significant future investment in the Adelaide Park Lands.
4. This report is presented to Council for the purposes of obtaining the necessary legislative concurrences/requests to enable the vesting of the relevant land portions and/or other adjustment of rights between the State and the City of Adelaide as envisaged by the MoU. These are required for Council to realise the benefits negotiated through the MoU.

## Land to be Vested

5. The land portions subject to vesting arrangements as set out in the MoU are:
  - 5.1. Vesting in the State Government of a single portion of land:
    - 5.1.1. Portion of Allotment 22 in Certificate of Title 5696/850 in Deposited Plan 51367 as delineated in the MoU, still to be surveyed but in any case, not to exceed 1,800m<sup>2</sup>
  - 5.2. Vesting in the City of Adelaide land with a total site area of 1,891 m<sup>2</sup>.
    - 5.2.1. The land to be vested in the City of Adelaide is subject to a request for confidentiality by the State Government and will be communicated publicly as soon as key milestones within the MoU are met.
6. Legal mechanisms to vest land in Council and the State respectively are contemplated by the *Adelaide Park Lands Act 2005 (SA)* (APL Act), including in Sections 14 and 16.
7. The proposed pathway to give effect to the MoU within the relevant timeframes that would enable the State Government to construct the Adelaide Botanic High School Expansion by the commencement of the 2024 school year, involves Council providing concurrence/request for:
  - 7.1. Land being placed under Council's care and control as Park Lands.
  - 7.2. A portion of Allotment 22 being removed from Council's care and control as Park Lands.
8. The APL Act provisions allow the Minister for Planning to make the necessary orders and have effect despite the provision of any other Act or law (including the *Local Government Act SA 1999*).
9. The Administration has received correspondences from the Minister for Planning seeking to exercise relevant power under the APL Act to make the necessary orders to implement the vesting of the portion of Allotment 22 (Link 2 view [here](#)).
10. In addition to being Park Lands, Allotment 22 also has a Crown condition. Under the *Crown Lands Act 2009*, that condition can be varied by agreement.
11. The Administration has received correspondence from the Minister for Climate, Environment and Water, detailing the amendment to the Crown condition to facilitate the development (Link 3 view [here](#)). If passed, the recommendation set out in this report will facilitate the confirmation of that change.

12. The effect of this approach is that the State Government remains the entity progressing the request and is the authority that will be responsible for progressing land vesting arrangements.

### Significant Decision

13. The CEO has determined that the following decisions are significant decisions for the purposes of the Council's Caretaker Policy:
- 13.1. Providing necessary legislative concurrences/requests to enable the vesting of the relevant land portions or other adjustment of rights between the State Government and the City of Adelaide as envisaged by the MoU; and
  - 13.2. Undertaking all steps necessary to implement the Memorandum of Understanding.
14. Bases under the Caretaker Policy upon which this decision may be a significant decision are that:
- 1.1. *The decision will (arguably) significantly affect the Council area*
  - 1.2. *The decision will (arguably) 'bind' the incoming Council*
  - 1.3. *The decision may result in disposal of Council land*
  - 1.4. *The decision may be a decision to 'progress any matter which has been identified as an election issue'.*
  - 1.5. *Any other issue that is considered a major policy decision by the CEO.*
15. The CEO in consultation with the Lord Mayor has determined the matter to be a significant decision, with the reasons outlined below, in accordance with its Caretaker Policy. It is recommended that Council authorise these matters to proceed notwithstanding its determination as a significant decision for the reasons set out below.

Why the matter is considered 'significant'	The decision provides for the vesting of relevant land portions or other adjustment of rights between the State Government and the City of Adelaide as envisaged by the MoU and the implantation of the actions under the MoU.
Why the matter is considered urgent	The State Government has alternative mechanisms available to it to deliver the school expansion which would forego the outcomes negotiated by Council.
What are the financial and other consequences of postponing the matter until after the election, both on the current Council and on the incoming Council	The City of Adelaide and State Government have been working toward a negotiated outcome which includes return of Park Lands to Council and investment in the Park Lands which would be foregone if the matter is postponed until after the election.  This importantly includes returning land to Council, of an area in excess of Allotment 22.  Whilst the Adelaide Botanic High School Expansion is a State Government project a decision to defer consideration of the MoU will impact the current proposed timeframes for the State Government to construct the school.
Whether deciding the matter will significantly limit options for the incoming Council	The matter seeks to coincide and bring into effect a decision on the outcome for the community in accordance with the Council on 12 July 2022 in return for the vesting of a portion of Allotment 22 in the State.
Whether the matter requires the expenditure of unbudgeted funds	The matter doesn't require the expenditure of unbudgeted funds.
Whether the matter is the completion of an activity already commenced and previously endorsed by Council	The matter follows negotiations authorised to commence between the City of Adelaide and the State Government in accordance with the Council decision of 12 July 2022.
Whether the matter requires community engagement	There is no requirement to undertake community engagement.

Any relevant statutory obligations or timeframes	Statutory processes under the <i>Local Government Act 1999 (SA)</i> (LG Act) and the <i>Adelaide Park Lands Act 2005 (SA)</i> (APL Act), apply to processes for land tenure and construction.
Whether dealing with the matter in the election period is in the best interests of the Council area and community	<p>The State Government is committed to delivering the expansion of the Adelaide Botanic High School with construction to be completed ahead of the 2024 school year.</p> <p>Dealing with the matter in the election period ensures Council secures the outcomes negotiated in accordance with the Council decision of 12 July 2022.</p>

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## DATA AND SUPPORTING INFORMATION

**Link 1** – Correspondence from the Minister for Local Government granting exemption to make a designated decision

**Link 2** – Correspondence from the Minister for Planning seeking Council's concurrence

**Link 3** – Correspondence from the Minister for Climate, Environment and Water regarding future use of Allotment 22

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## ATTACHMENTS

Nil

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- END OF REPORT -