

13 July 2022

The Hon. Geoff Brock MP
Minister for Local Government, Regional Roads and Veterans Affairs
GPO Box 1533
ADELAIDE SA 5001

via email: Minister.Brock@sa.gov.au

Dear Minister

DESIGNATED DECISIONS - APPLICATIONS FOR EXEMPTIONS

I write in my capacity as the Mayor of the City of West Torrens (the **Council**).

In particular, regarding circumstances that the Council considers amount to 'extraordinary circumstances' for the purposes of section 91A(3) of the *Local Government (Elections) Act 1999* (the **Act**). That is, the Council will be required to make critical decisions during the 'election period' of the type classified as 'designated decision(s)', in respect of the proposal by the Adelaide Football Club to undertake a significant redevelopment of the Torrens Sports Precinct.

Accordingly, the Council has resolved (copy minute **attached**) to make the applications set out below under section 91A(3) of the Act for Ministerial exemption from the application of section 91A of the Act.

Statutory framework

The election period (commonly referred to as the 'caretaker period') clearly exists for only a defined period of time in the lead up to the local government periodic elections, in this particular instance, at a critical time for the Council. Relevantly, section 91A of the Act, together with regulation 12 of the *Local Government (Elections) Regulations 2010* (the **Regulations**), set out the statutory provisions for this caretaker period and, in particular, the prohibition on the Council making a 'designated decision', as defined by section 91A(8), unless it has the benefit of an exemption under the Regulations. For reference, the 'caretaker period' for the 2022 Council elections commences on 6 September 2022 (close of nominations) and concludes 12 November 2022 (provisional declaration).

Of particular relevance, section 91A(8)(c) of the Act prohibits the Council from entering 'into a contract, arrangement or understanding (other than a prescribed contract) the total value of which exceeds whichever is the greater of \$100 000 or 1% of the council's revenue from rates in the preceding financial year'.

The Council's revenue from rates for the financial year 2021-22 was \$61,632,079 (rates + rate equivalents), 1% of which is \$616,321.

Accordingly, the Council is prohibited from making any decision to enter into a contract, arrangement or understanding (that is not a 'prescribed contract') which exceeds \$616,321 (**Financial Limit**). This statutory obligation curtails certain Council decision-making, irrespective of its policy position.

For completeness, the exemptions for any 'prescribed contract' are not relevant to the Council in the present circumstances.

Torrens Sports Precinct

It is public information that the Adelaide Football Club (**AFC**) has expressed an interest in the Thebarton Oval/Kings Reserve (the **Precinct**) as its preferred site for its new state-of-the-art headquarters and sporting/community facilities. The AFC has developed a masterplan document which includes an integrated sports precinct, anchored by Australian Rules football and, importantly, a facility that will be accessible for community use and enjoyment (the **Project**). Importantly, time is of the essence for the Project.

The Council continues to advance negotiations with the AFC in relation to leasing arrangements and the contractual/funding obligations for the Project. At the time of writing, the parties are negotiating the 'material terms' which are, understandably, subject to certain conditions precedent arising in respect of the Council's prudential and statutory obligations, as well as the AFC's commercial requirements.

There are, notwithstanding, a number of decisions that the Council will be required for the on-going negotiations, some of which will exceed the Financial Limit. To this end, these are the decisions which will be prohibited during the caretaker period and, hence, in respect of which the Council seeks exemptions from you.

Importantly, if the Council is prevented from continuing to progress the Project during the caretaker period, there is the very real risk that the AFC may 'walk away' from the negotiations, to the detriment of the Council and its community. This is an extremely time-sensitive Project.

It is also relevant to note that there appears to be a strong public interest in securing the AFC as a Council tenant, given the widespread and clear benefits, as currently understood, that will be generated for the community. That is, the significant commercial investment to improve facilities/amenities for the Precinct and the accessibility for members of the community, reinforce the unique opportunity for the Council to ensure that the AFC is secured as a long-term tenant for the Precinct.

Status of negotiations

The Council has been diligently working towards ensuring that all of the relevant decisions required to be made with regards to the Project, are in place, before the commencement of the caretaker period which, as previously stated, is 6 September 2022.

However, as a result of legislative and commercial and timing issues, the Council is not at the position to make the Project-critical decisions identified below. Accordingly, this correspondence is the Council's requests for you to grant the necessary exemptions for it to make those decisions during the caretaker period, for the following reasons:

1. The parties are continuing negotiations in a commercial environment which the AFC can accommodate in a reasonable timeframe but not one that results in relevant decisions not being made until after the caretaker period;

2. Whilst the Council will accommodate processes and decisions that are not within the *designated decisions* definitions, by reference to its Caretaker Policy and the opportunities that are available under the Policy in this regard, there are other decisions (as below) that are *designated decisions* which can only be made with the benefit of exemptions granted by you. For example, the Council will engage in statutory community consultation around the leasing proposals for community land that will be for more than the minimum 21 days and, in doing so, will make full and detailed disclosure to its community about the proposal, the Council contributions to it and the community benefits to be realised from it. However, this means that, in all probability, the Council will not be in a position to decide to enter into any formal documentation (agreements for lease, development agreement) following the conclusion of the consultation and the consideration of all relevant submissions, until after the commencement of the caretaker period – and would not want to, or be seen to, be making hasty decisions that might be considered to be for the primary purpose of doing so before 6 September;
3. The grant of the exemptions will give each of the Council and the AFC the necessary certainty to progress the Project within the necessary timelines which, in turn, will maintain the Project and the consequent community benefits that flow from the investment proposed to be made into the community by the AFC; and
4. As this is a commercial Project, it is understandable that the AFC will be required to re-evaluate its commitment to the Project where caretaker- related delays render it non-viable to the AFC.

A review of the matters which have become known to the Council in recent times, leads to the inescapable conclusion that the Council is not and could not make informed, responsible, accountable and transparent decisions in relation to the Project, before the commencement of the caretaker period.

Applications for exemption under section 91A(3)

Accordingly, the Council has resolved to make the following applications to you for exemptions pursuant to section 91A(3) of the Act. These are based upon the 'extraordinary circumstances' which attach to this Project as set out in this letter of application, in order for the Council to be able to make the relevant designated decisions, where the total value exceeds the Financial Limit, namely:

Application for exemption 1:

A decision to enter into an agreement for lease (or licence) where the total value of the rental payments over the term will exceed the Financial Limit, in respect of land at Thebarton Oval with the Adelaide Football Club (AFC) being land that is part of a larger project that will be subject to development.

Application for exemption 2:

A decision to enter into an agreement for lease or licence in respect of land at Kings Reserve that will be subject to compulsory acquisition by the SA Government for the Torrens-to-Darlington project but which is, including in part, to be returned to the Council at a later time.

Application for exemption 3:

A decision to enter into a licence agreement which provides for the Adelaide Football Club to enter into the Thebarton Oval land for access and construction purposes.

Note: even though this will likely not have any \$ value attached to it, it is nevertheless able to be considered to be an agreement associated with the total value of the other associated agreements and hence, should also be subject to an exemption.

Application for exemption 4:

A decision to enter into a binding agreement or understanding between the Council and the SA Government in relation to the return of the balance of land at Kings Reserve to the Council at completion of the Torrens-to-Darlington project.

Application for exemption 5:

A decision to enter into a contract, arrangement or understanding with the Adelaide Football Club in the nature of an associated Development Agreement, the financial commitments of which will exceed the Financial Limit.

Consideration of the applications

Whilst each exemption is, of course, being sought as a separate exemption for the purposes of each decision to be made by the Council, all exemptions are required in order to provide the Council with the necessary legal assurances to progress its current negotiations with AFC to a binding documentary framework.

If there is any hesitation by the Minister about granting any or all of the Exemptions, we request a meeting to discuss and understand any 'issues' and, in the event of an impasse, whether any alternatives are acceptable.

Conclusion

The Council and the AFC have spent considerable time and resources to reach this critical stage of negotiations. In turn, the caretaker-related impediments have the capacity to, at best delay or, at worst, derail the significant progress which has been made in the Project.

As we understand the situation, non-commercial and unnecessary delays with the Project are, likely, to result in AFC exploring other options. A decision by the AFC to 'walk away' because of delays related to the timing of the election cycle, where there are critical time sensitivities, would result in a loss of opportunity for the Council, in connection with this Project which it considers is an essential project with State-wide benefits and, in particular, local community and financial benefits for the City of West Torrens, all of which may also be considered to amount to public interest reasons for granting the exemptions sought.

Please let me know if you require any further information about the Council's application for exemptions.

Yours sincerely



Michael S Coxon
Mayor
City of West Torrens