

CITY OF WEST TORRENS



## **Confidential Report Items 21.1 and 21.2**

of the

**COUNCIL MEETING**

of the

**CITY OF WEST TORRENS**

will be held in the Council Chambers, Civic Centre  
165 Sir Donald Bradman Drive, Hilton

on

**TUESDAY, 5 JULY 2022**  
**at 7.00pm**

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Pursuant to Section 83 (5) of the *Local Government Act 1999* the Confidential Items for the Council meeting are delivered to the Council Members upon the basis of my recommendation that the matters to which the Agenda relates be received, considered and discussed by the Council in confidence under Part 3 of the Act.

**Terry Buss PSM**  
**Chief Executive Officer**

### **City of West Torrens Disclaimer**

Please note that the contents of these Council and Committee Agendas have yet to be considered by Council and officer recommendations may be altered or changed by the Council in the process of making the formal Council decision.

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Released

## 21.2 Application for Ministerial Exemption to make Designated Decision during Caretaker Period

### Reason for Confidentiality

The Council is satisfied that, pursuant to Section 90(3)(b)(i),(b)(ii),(d)(i),(d)(ii) and (h) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

- (b)(i) information the disclosure of which - could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council.
- (b)(ii) information the disclosure of which - would, on balance, be contrary to the public interest.
- (d)(i) commercial information of a confidential nature (not being a trade secret) the disclosure of which - could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.
- (d)(ii) commercial information of a confidential nature (not being a trade secret) the disclosure of which - would, on balance, be contrary to the public interest.
- (h) legal advice.

### RECOMMENDATION

It is recommended to Council that:

1. Pursuant to Section 90(2) of the *Local Government Act 1999*, Council orders, that the public, with the exception of the Chief Executive Officer, members of the Executive and Management Teams in attendance at the meeting, and meeting secretariat staff, be excluded from attendance at so much of the meeting as is necessary to receive, discuss and consider in confidence, information contained within the confidential report Item 21.2 - Application for Ministerial Exemption to make Designated Decision during Caretaker Period, attachments and any associated documentation submitted by the Chief Executive Officer, specifically on the basis of the provisions of Section 90(3)(b)(i),(b)(ii),(d)(i),(d)(ii) and (h) because the information discussed and considered in relation to this agenda item is information, the disclosure of which could reasonably be expected to severely prejudice Council's ability to achieve the best possible outcome for the land under consideration and provide a commercial advantage to those with whom Council is in discussions with and would, on balance, be contrary to the public interest.
2. At the completion of the confidential session the meeting be re-opened to the public.

### Brief

To seek an application or applications to be made to the Minister for Local Government, the Hon. Geoff Brock MP, for an exemption or exemptions, pursuant to section 91A (3) and (4) of the *Local Government (Elections) Act 1999* (Caretaker Provisions), if required in relations to the current discussions with the South Australian National Football League (SANFL) and the Adelaide Football Club (AFC) for the proposed Torrens Sports Precinct.

## RECOMMENDATION

It is recommended that Council make application or applications to the Minister for Local Government, the form and content of which is to be determined by the Chief Executive Officer after consultation with Council's legal advisers and the Office of Local Government, for the purpose of obtaining an exemption or exemptions, pursuant to section 91A (3) and (4) of the *Local Government (Elections) Act 1999*, to enable the Council to make a designated decision or decisions in respect of the proposed Torrens Sports Precinct, being:

1. A decision to enter into an agreement for lease or licence 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; and/or
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; and/or
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; and/or
4. 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; and/or
5. A contract, arrangement or understanding with the Adelaide Football Club in the nature of an associated Development Agreement;

Where the total value of each of the above elements either individually or collectively, exceeds the financial thresholds within the definition of 'designated decision' at section 91A (8) of the *Local Government (Elections) Act 1999* and hence, would otherwise be a decision which is unable to be made during the 'caretaker period'.

## FURTHER

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999*, the Council orders that the Item 21.2 - Application for Ministerial Exemption to make Designated Decision during Caretaker Period, the Minutes arising, attachments and any associated documentation, having been considered by the Council in confidence under Section 90(3)(b)(i),(b)(ii),(d)(i),(d)(ii) and (h), be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting, on the basis that the information discussed and considered in relation to this agenda item is information, the disclosure of which could reasonably be expected to severely prejudice Council's ability to achieve the best possible outcome for the land under consideration and provide a commercial advantage to those with whom Council is in discussions with and would, on balance, be contrary to the public interest.
2. Council delegates the power of review, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

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## Introduction

It is public information that the Adelaide Football Club (AFC) have an interest in Thebarton Oval/Kings Reserve and as a consequence, have been in discussions with Council and the South Australian National Football League (SANFL) around establishing their home base at Thebarton Oval and creating an integrated sports precinct anchored by football and accessible public realm proposed as the Torrens Sports Precinct.

With the onset of Caretaker Provisions due to the upcoming 2022 Local Government general elections, Council is prohibited by legislation from making designated decisions during the Caretaker Period unless Council considers there are extraordinary circumstances which require the making of such decisions. Accordingly, Council may apply to the Minister for an exemption, the effect of which would be to allow the required designated decision(s) to be made by Council during the Caretaker Period.

### **Discussion**

Council goes into Caretaker Period on 6 September 2022 and remains so until the 'conclusion of the election' as defined in section 4 (2) of the *Local Government Act 1999* anticipated to be 12 November 2022.

Council is currently in discussions with AFC and SANFL regarding the future use of Thebarton Oval and Kings Reserve and with the onset of Caretaker Provisions commencing 6 September 2022, there are a number of potential decisions to be made resulting from those negotiations that may be considered to be 'Designated Decisions' and accordingly, negotiations between the parties will stall and may even terminate if Council is unable to make decisions until after the Caretaker Period concludes in November 2022. Of course, with the composition of a new Council including the establishment of the new Council structure occurring as the first items of business for the newly elected Council, it will be January 2023 at the earliest before Council would be able to potentially make decisions around the future use of Thebarton Oval/Kings Reserve involving AFC and SANFL.

There are a number of considerations that need to be taken account of moving forward with Thebarton Oval/Kings Reserve in terms of Council's limitations under Caretaker Provisions and at the time of preparing this report, discussions are ongoing with our legal advisers and the Office of Local Government with respect as to what constitutes a Designated Decision. Notwithstanding, our legal advisers recommend that the Administration secure a Council resolution seeking a Ministerial exemption so that if granted, it would allow Council to make decisions, if required, relative to Thebarton Oval/Kings Reserve, SANFL and AFC.

### **Climate Impact Considerations**

*(Assessment of likely positive or negative implications of this decision will assist Council and the West Torrens Community to build resilience and adapt to the challenges created by a changing climate.)*

There is no direct climate impact in relation to this report.

### **Conclusion**

Given the ongoing discussions with AFC and SANFL over the future use of Thebarton Oval/Kings Reserve and the pending onset of Caretaker Provisions as a result of the upcoming Local Government general elections, there is a possibility that Council will not be able to make certain decisions required in relation to these current discussions and accordingly, legal advice suggests that the Council make application to the Minister for exemption to make Designated Decisions, if required and deemed necessary in consultation with the Office of Local Government.

### **Attachments**

Nil