District Council of Mallala

**THE ORDINARY MEETING OF THE DISTRICT COUNCIL OF MALLALA WILL BE HELD IN THE COUNCIL CHAMBERS, REDBANKS ROAD, MALLALA ON MONDAY 11 MAY 2015, COMMENCING AT 7:00PM**

.....
Katrina Márton
**CHIEF EXECUTIVE OFFICER**

# AGENDA

## 1. ATTENDANCE

1.1 Present

1.2 Councillors Apologies

1.3 Councillors Absent

## 2. CONFIRMATION OF MINUTES

2.1 Council Meeting held on Monday 27 April 2015 (MB Folios 12983 to 13000, inclusive).

## 3. BUSINESS ARISING

3.1

## 4. DECLARATION OF MEMBERS' INTEREST

4.1

## 5. OPEN FORUM

5.1 **Speakers**

## 6. BRIEFINGS

6.1 SA WATER – Northern Adelaide Irrigation Scheme - Gerry Harris, Tony Lennon and Jane Wilson

6.2 WAX Designs – Open Space Plan - Warrick Keates

## 7. MAYOR'S REPORT

7.1 No Report

## 8. MINUTES AND/OR RECOMMENDATIONS

8.1 **Economic and Infrastructure Advisory Committee**

8.1.1 No Minutes

8.2 **Environmental Management Advisory Committee**

8.2.1 No Minutes

8.3 **Strategic Planning and Development Policy Committee**

8.3.1 No Minutes

8.4 **Council Development Assessment Panel**

8.4.1 No Minutes

## 9. ASSOCIATED ORGANISATIONS

9.1 **Gawler River Floodplain Management Authority**

9.1.1 Minutes from the meeting as held 15 April 2015 (CON12/314)

9.2 **Central Local Government Region**

9.2 No Minutes

## 10. QUESTIONS WHICH NOTICE HAS BEEN GIVEN

10.1 **Questions on Notice**

10.1.1 No Question on Notice

10.2 **Notice of Motion**

10.2.1 No Notice of Motion

## 11. QUESTIONS WHICH NOTICE HAS NOT BEEN GIVEN

*Rules from Local Government Act 1999 Regulations*:-

* Questions and replies are not entered in the minute book unless expressly required by resolution.
* No debate shall be allowed on any question or reply to any question.

## 12. PETITIONS

12.1 No Petitions

## 13. DEPUTATIONS

13.1 No Deputations

## 14. ADJOURN INTO STANDING COMMITTEE

14.1 No Agenda for Strategic Planning and Development Policy Committee

## 15. ADOPTION OF STANDING COMMITTEE RECOMMENDATIONS

15.1 No recommendations

## 16. ITEMS FOR NOTING / INFORMATION / ACTIVITY REPORTS

16.1 **Items for Information / Noting**

16.1.1 Marine Parks – Declared Sanctuary Zones (CON12/1192)

16.2 **Activity Reports**

16.2.1 Infrastructure Services Activity Report (CON12/1191)

16.2.2 Planning Services Activity Report (CON12/1191)

16.2.3 Development Plan Amendment Activity Report (CON12/248)

## 17. ITEMS FOR DECISIONS

17.1 Council Development Assessment Panel - Removal of a Member (CON12/218)

17.2 RDA Barossa Proposed Changes to the Constitution (CON12/278)

17.3 Barossa and Districts Housing Association Inc – Lease Agreement Renewal (CON12/872)

17.4 Parking on Windmill Road, Two Wells (CON12/987)

## 18. URGENT BUSINESS

18.1

## 19. CONFIDENTIAL ITEMS

19.1 No Confidential Items

## 20. CLOSURE

| District Council of Mallala | 2. CONFIRMATION OF MINUTES |
|---|---|
| **MONDAY 11 May 2015** | |

**Items:**

2.1 Council Meeting held on Monday 27 April 2015 (MB Folios 12983 to 13000, inclusive).

District Council of Mallala

# MINUTES OF THE ORDINARY MEETING OF THE DISTRICT COUNCIL OF MALLALA HELD IN THE MALLALA COUNCIL CHAMBERS, REDBANKS ROAD, MALLALA ON MONDAY 27 APRIL 2015, COMMENCING AT 7:00 PM

## 1. ATTENDANCE

### 1.1 Present

Mayor D Kennington (Mayor) and Crs T Keen, P Daniele, B Summerton, S Strudwicke, K McColl, S Jones, A Picard, E Stubing and Messrs P Sellar (Acting Chief Executive Officer), Gary Mavrinac (General Manager, Infrastructure and Planning), G Graham, (Finance Coordinator) and A Humphrys (Minute Secretary)

### 1.2 Councillors Apologies

Cr M Lawrence

### 1.3 Councillors Absent

Nil

## 2. GENERAL BUSINESS

Moved Cr Daniele Seconded Cr Summerton

"that the minutes of meeting held on Monday 13 April 2015 (MB Folios 12966 to 12982, inclusive), be accepted as read and confirmed."

**CARRIED (2015/117)**

## 3. BUSINESS ARISING

3.1 No Business Arising

## 4. DECLARATION OF MEMBERS' INTEREST

4.1 Nil

Subject to Confirmation

## 5. OPEN FORUM

The Mayor sought leave of the meeting to suspend Part 2 of the Local Government (Procedures at Meetings) Regulations 2013 for 'Open Forum'. The meeting was suspended at 7.02 pm.

5.1 **Tracy Smith** *President, Adelaide Plains Equestrian Club (APEC)*

- Addressed Council outlining APEC future plans and concepts for a multi purpose built facility in the Lewiston area, to accommodate Equine and Canine Clubs in addition to other interested club/organisations, highlighting Clara Harniman Reserve as the preferred location.

**Dean Cook** *Resident, Mallala*

- Expressed concerns of the current debt as held by Council
- Questioned the role of the Council Audit Committee
- Had concerns and questions relating to the current Code of Conduct Process and supporting practices

**Margaret Tiller** *Resident, Mallala*

- Raised concerns of the current debt as held by Council
- Questioned how Council prioritises spending and why could funds not be put towards the repair of the Mallala War Memorial
- Commented on Council for investigating options to develop reserve as part of the Lewiston Study Plan

Meeting resumed at 7.32 pm

## 6. BRIEFINGS

6.1 John Comrie – Chairman, Audit Committee

The Presiding Member sought and was granted leave of the meeting to move Item 17.7 – LGFA Cash Advance Debenture – Cash Flow (CON12/419) forward.

## Matter Laying on the Table

17.7 LGFA Cash Advance Debenture – Cash Flow (CON12/419)

Moved Cr Summerton Seconded Cr Strudwicke

"that Council, having considered Item 17.7 - *LGFA Cash Advance Debenture – Cash Flow*, dated 27 April 2015, resolve that the motion be taken from the table in response to formal motion (2015/102)."

**CARRIED (2015/118)**

Subject to Confirmation

Moved Cr Strudwicke Seconded Cr Summerton

"that Council, having considered Item 17.7 - *LGFA Cash Advance Debenture – Cash Flow*, dated 27 April 2015, endorse the securing of a Cash Advance Debenture to the value of one and half million dollars ($1,500,000) from the Local Government Finance Authority. The facility will be for a term of fifteen years (15 years) at the variable interest rate ruling over the period of the CAD on the balance of funds drawn. The purpose of the Facility is to manage short term cash flow in order to finance expenditure approved in Council's budget."

**CARRIED (2015/119)**

Moved Cr McColl Seconded Cr Daniele

"that Council having considered Item 17.7 - *LGFA Cash Advance Debenture – Cash Flow*, dated 27 April 2015, that authorisation be given for the Council Seal to be placed on the Debenture Documents and the Mayor and Chief Executive Officer be authorised to sign on Council's behalf."

**CARRIED (2015/120)**

## 7. MAYOR'S REPORT

7.1 Meetings Attended and / or Discussions Held (CON12/1199)

Thursday 26 March 2015
Mallala Lions Trailer Demonstration

Friday 27 March 2015
CEO and Deputy Mayor Briefing

Monday 30 March 2015
Elected Members Bus Tour

Tuesday 31 March 2015
CEO Briefing
Audit Committee Meeting

Tuesday 7 April 2015
Interview Channel 9

Wednesday 8 April 2015
Schlodder Shelter, Dublin – Official Opening
Environmental Management Advisory Committee Meeting

Thursday 9 April 2015
CEO and Deputy Mayor Briefing

Subject to Confirmation

Sunday 12 April 2015
Para Cycling Medal Presentation
Youth Week Cinema Event - Mallala

Monday 13 April 2015
Regional Youth Bus Viewing and Presentation
Ordinary Council Meeting

Wednesday 15 April 2015
CEO Designate Briefing

Thursday 16 April 2015
CEO and Deputy Mayor Briefing
Interview Adelaide Advertiser

Friday 17 April 2015
Central Local Government Meeting

Tuesday 21 April 2015
LGA President's Luncheon with Premier Hon Jay Weatherill MP

Friday 24 April 2015
International Bird Sanctuary Meeting with Minster Hunter
CEO and Deputy Mayor Briefing

Saturday 25 April 2015
Anzac Day Commemoration

Sunday 26 April 2015
Commemoration of King Hung – Vietnamese Cultural Centre of South Australia

## 8. MINUTES AND/OR RECOMMENDATIONS

### 8.1 Economic Development Advisory Committee

8.1.1 No Minutes

### 8.2 Community Development Advisory Committee

8.2.1 Minutes of meeting held 9 April 2015 (CON12/1100)

### 8.3 Audit Committee

8.3.1 Minutes of meeting held 31 March 2015 (CON12/522)

### 8.4 Mallala and Districts Historical Committee

8.4.1 No Minutes

Subject to Confirmation

8.5 **Mallala and Districts Homes Committee**

8.5.1 No Minutes

**9. ASSOCIATED ORGANISATIONS**

9.1 **Gawler River Floodplain Management Authority**

9.1.1 No Minutes

9.2 **Central Local Government Region**

9.2 No Minutes

**10. QUESTIONS WHICH NOTICE HAS BEEN GIVEN**

10.1 **Questions on Notice**

10.1.1 No Questions on Notice

10.2 **Notice of Motion**

10.2.1 No Notice of Motion

**11. QUESTIONS WHICH NOTICE HAS NOT BEEN GIVEN**

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**12. PETITIONS**

12.1 No Petitions

**13. DEPUTATIONS**

13.1 No Deputations

**14. ADJOURN INTO STANDING COMMITTEE**

14.1 No Agenda for Strategic Planning and Development Policy Committee

**15. ADOPTION OF STANDING COMMITTEE RECOMMENDATIONS**

15.1 No recommendations

Subject to Confirmation

## 16. ITEMS FOR NOTING / INFORMATION / ACTIVITY REPORTS

### 16.1 Items for Information / Noting

16.1.1 Finance Report (CON12/491)

Moved Cr Summerton Seconded Cr Strudwicke

"that Council, having considered Item 12.6.1 - *Finance Report*, dated 27 April 2015, recommends to Council that it notes and receives the Finance Report as at 31 March 2015."

**CARRIED (2015/121)**

16.1.2 Community & Library Services Report – April 2015 Update (CON12/1406)

Moved Cr Daniele Seconded Cr McColl

"that Council having considered Item 16.1.2 - *Community & Library Services Report – April 2015 Update*, dated 27 April 2015, receives and notes the report."

**CARRIED (2015/122)**

### 16.2 Activity Reports

16.2.1 Corporate and Community Services Status Report (CON12/1199)

Moved Cr Daniele Seconded Cr Summerton

"that the Council, having considered Item 16.2.1 - *Corporate & Community Services Status Report,* dated 27 April 2015, receive the report."

**CARRIED (2015/123)**

## 17. ITEMS FOR DECISIONS

17.1 Bank Account Signatories (CON12/503)

Moved Cr Strudwicke Seconded Cr Keen

"that the Council having considered 17.1 - *Bank Account Signatories,* dated 27 April 2015, recommends that Katrina Márton be added as an authorised signatory to all Council Bank Accounts, including cheques drawn for payment made between Council meetings on accounts, as set out in the following schedule:

1. Vehicle registration and insurance costs
2. Contractors accounts
3. Payment of statutory fees and charges required to be made by certain dates
4. All accounts where a discount is available for prompt payment

Subject to Confirmation

5. All accounts, which if not paid, would attract a penalty
6. Donations, grants, subscriptions and other payments previously approved by Council
7. Salaries and Wages
8. Petty cash reimbursements
9. Payment of amounts and expenses due under any contract or agreement entered into by decision of Council
10. Accounts for the supply of goods and service previously approved by Council
11. Electricity accounts
12. Radio licences
13. Loan repayments
14. Bank charges
15. Investment of surplus funds
16. Legal expenses
17. Refunds of overpayments
18. Income tax instalment deductions
19. Water rates account
20. Insurance and superannuation contributions
21. Search fees."

**CARRIED (2015/124)**

Moved Cr McColl Seconded Cr Keen

"that the Council having considered Item 17.1 - *Bank Account Signatories*, dated 27 April 2015, authorises Council staff to finalise the administrative requirements associated with the addition of the new signatory as approved."

**CARRIED (2015/125)**

17.2 Lewiston Community Focal Point Study - Phase 2: Cost Benefit Analysis (CON13/8)

Moved Cr McColl Seconded Cr Strudwicke

"that the Council, having considered Item 17.2 - *Lewiston Community Study Phase 2: Cost Benefit Analysis,* dated 27 April 2015, receive the report entitled Lewiston Community Focal Point: Cost Benefit Study."

**CARRIED (2015/126)**

Subject to Confirmation

Moved Cr Jones Seconded Cr

"that the Council, having considered Item 17.2 - *Lewiston Community Study Phase 2: Cost Benefit Analysis,* dated 27 April 2015, resolve not to proceed with the study."

**LAPSED**

Moved Cr McColl Seconded Cr Summerton

"that the Council, having considered Item 17.2 - *Lewiston Community Study Phase 2: Cost Benefit Analysis,* dated 27 April 2015, authorise Council Administration to proceed to Phase 3 for the following site(s)

a. Hams Park
b. Clara Harniman Reserve

and that a budget allocation be made in the 2015-16 budget".

**LOST (2015/127)**

Division

Councillor Daniele called a Division

Those voting in the affirmative are Crs Daniele, Summerton and Stubing

Those voting in the negative are Crs McColl, Strudwicke, Jones, Keen and Picard

**The Presiding Member declared the motion LOST**

Moved Cr McColl Seconded Cr Summerton

"that the Council, having considered Item 17.2 - *Lewiston Community Study Phase 2: Cost Benefit Analysis,* dated 27 April 2015, authorise Council Administration to proceed to Phase 3 for the following site(s)

a. Hams Park
b. 210 Hayman Road, Lewiston

and that a budget allocation be considered through the 2015-16 budget deliberation".

**LOST (2015/128)**

Division

Councillor Summerton called a Division

Those voting in the affirmative are Crs McColl, Summerton, Daniel, Stubing

Those voting in the negative are Crs Strudwicke, Jones, Keen and Picard

Presiding Member voted in the negative

**The Presiding Member declared the motion LOST**

Subject to Confirmation

Moved Cr Keen Seconded Cr Strudwicke

"that the Council, having considered Item 17.2 - *Lewiston Community Study Phase 2: Cost Benefit Analysis,* dated 27 April 2015, request that a report be brought back to Council to include costs, flooding concerns, native vegetation issues, identified community club and group participation and minimum cost infrastructure requirements for Hams Park, Clara Harniman Reserve and 210 Hayman Road."

**CARRIED (2015/129)**

17.3 Community Representative Appointments to Council Section 41 Committees (CON12/1046)

Moved Cr McColl Seconded Cr Jones

"that Council, having considered Item 17.3 - *Community Representative Appointments to Council Section 41 Committees*, dated 27 April 2015, endorse the appointment of the following community representatives to the Community Development Advisory Committee:

- Barbara Reid
- Deidre Skene
- Barry Sowerby
- Jasmin Daniele
- Anne Porter."

**CARRIED (2015/130)**

Moved Cr Keen Seconded Cr Strudwicke

"that Council, having considered Item 17.3 - *Community Representative Appointments to Council Section 41 Committees* dated 27 April 2015, endorse the appointment of the following community representatives to the Environmental Management Advisory Committee:

- Cathy Giblin
- Barbara Reid
- Angela Brient
- Mark Webb."

**CARRIED (2015/131)**

Cr Strudwicke called for a Point of order as the debate is not relevant to the subject of appointment to Council Section 41 Committees.

The Mayor did not accept the point of order.

Subject to Confirmation

Moved Cr Strudwicke Seconded Cr Keen

"that Council, having considered Item 17.3 - *Community Representative Appointments to Council Section 41 Committees* dated 27 April 2015, endorse the appointment of the following community representatives to the Economic and Infrastructure Advisory Committee:

- Ian O'Loan
- Jan Heley
- Ian Telfer."

**CARRIED (2015/132)**

Moved Cr Strudwicke Seconded Cr Keen

"that Council, having considered Item 17.3 - *Community Representative Appointments to Council Section 41 Committees* dated 27 April 2015, endorse the appointment of the following community skill based representative to the Animal Management Advisory Committee:

- John Spoodler - (Greyhound Racing – Integrity and Standards Manager)."

**CARRIED (2015/133)**

Moved Cr Strudwicke Seconded Cr Summerton

"that Council, having considered Item 17.3 - *Community Representative Appointments to Council Section 41 Committees* dated 27 April 2015, endorse the appointment of the following community representatives to the Mallala and Districts Homes Committee:

- Chiarina Dunlop
- Irene Giannikos
- Charmaine Standley."

**CARRIED (2015/134)**

The Presiding Member sought and was granted leave of the meeting to suspend standing orders at 9.33 pm
Meeting resumed at 9.55 pm

17.4 Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report (CON12/573)

Moved Cr Keen Seconded Cr Strudwicke

"that the Council, having considered Item 17.4 - *Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report,* dated 27 April 2015, appoints Cr McColl, Cr Keen, Cr Summerton and Cr Jones to the Animal Management Plan Committee."

Subject to Confirmation

**CARRIED (2015/135)**

Moved Cr McColl Seconded Cr Keen

"that the Council, having considered Item 17.4 - *Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report*, dated 27 April 2015, appoints Mayor Kennington, Cr Jones and Cr Summerton to the Audit Committee."

**CARRIED (2015/136)**

Moved Cr Keen Seconded Cr McColl

"that the Council, having considered Item 17.4 - *Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report*, dated 27 April 2015, appoints Mayor Kennington, Cr McColl , Cr Keen , Cr Summerton and Cr Strudwicke to the Chief Executive Officer Performance Appraisal Committee."

**CARRIED (2015/137)**

Moved Cr McColl Seconded Cr Keen

"that the Council, having considered Item 17.4 - *Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report*, dated 27 April 2015, appoints Cr Daniele and Cr Lawrence to the Community Development Advisory Committee."

**CARRIED (2015/138)**

Moved Cr Strudwicke Seconded Cr Picard

"that the Council, having considered Item 17.4 - *Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report*, dated 27 April 2015, appoints Cr Summerton , Cr Stubing and Cr Daniele to the Economic and Infrastructure Advisory Committee."

**CARRIED (2015/139)**

Moved Cr Keen Seconded Cr Strudwicke

"that the Council, having considered Item 17.4 - *Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report*, dated 27 April 2015, appoints Cr Jones and Cr Picard to the Environmental Management Advisory Committee."

**CARRIED (2015/140)**

Subject to Confirmation

Moved Cr Strudwicke Seconded Cr McColl

"that the Council, having considered Item 17.4 - *Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report,* dated 27 April 2015, appoints Cr Strudwicke and Cr Lawrence to the Mallala and Districts Homes Committee "

**CARRIED (2015/141)**

Moved Cr Picard Seconded Cr Keen

"that the Council, having considered Item 17.4 - *Appointment to Section 41 Committees, Subsidiaries and Identified Committee's Report,* dated 27 April 2015, appoints Cr Picard as Council's representatives to the Gawler River Floodplain Management Authority, and that the Proxy Member to the Gawler River Floodplain Management Authority be a staff member."

**CARRIED (2015/142)**

17.5 Audit Committee Independent Members (CON12/522)

Moved Cr Summerton Seconded Cr Strudwicke

"that the Council having considered Item 5 - *Audit Committee Independent Members,* dated 27 April 2015, re-affirms the appointment of John Comrie (Chairman) and Peter Fairlie-Jones as independent members of the District Council of Mallala Audit Committee until a review has been conducted of the Audit Committee Membership in conjunction with the incoming Council Chief Executive Officer, or until 30 November 2015 whichever is the earlier "

**CARRIED (2015/143)**

17.6 Delegations to the Chief Executive Officer (CON12/622)

Moved Cr Keen Seconded Cr Strudwicke

"that Council, having considered Item 17.6 - *Delegations to the Chief Executive Officer,* dated 27 April 2015, that in accordance with *Section 44(6)* of the *Local Government Act 1999*, the Council herby revokes its previous delegations at the 25 August 2014 meeting, resolution number (2014/362) to the office of the Acting Chief Executive Officer as at 4 May 2015 of those powers and functions under the following:

- *Community Titles Act 1996,*
- *Development Act 1993, Development (Development Plans) Amendment Act 2006 & Development Regulations 2008,*
- *Dog & Cat Management Act 1995,*
- *Environment Protection Act 1993,*

Subject to Confirmation

- *Expiation of Offences Act 1996,*
- *Fences Act 1975,*
- *Fire & Emergency Services Act 2005 and Fire & Emergency Services Regulations 2005,*
- *Food Act 2001,*
- *Freedom of Information Act 1991,*
- *Housing Improvement Act 1940,*
- *Land & Business (Sale & Conveyancing) Act 1994,*
- *Liquor Licensing Act 1997,*
- *Local Government Act 1934,*
- *Local Government Act 1999,*
- *Natural Resources Management Act 2004, Natural Resources Management (General) Regulations 2004 and Natural Resources (Transitional Provisions) Regulations 2004,*
- *Roads (Opening & Closing) Act 1991,*
- *Occupational Health Safety & Welfare Act 1986,*
- *South Australian Public Health Act 2011, South Australian Public Health (Legionella) Regulations 2013, South Australian Public Health (Wastewater) Regulations 2013,*
- *Road Traffic Act 1961 (SA), Road Traffic (Miscellaneous) Regulations 1999 and Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions)*
- *Regulations 1999*; and
- *Supported Residential Facilities Act 1992*."

**CARRIED (2015/144)**

Moved Cr Strudwicke Seconded Cr Daniele

**2.1** "that Council, having considered Item 17.6 - *Delegations to the Chief Executive Officer,* dated 27 April 2015, In exercise of the power contained in *Section 44* of the *Local Government Act 1999* the powers and functions under the following *Acts* and specified in the proposed Instruments of Delegation are hereby delegated as at 4 May 2015 to the person occupying the office of Chief Executive Officer:

- Community Titles Act 1996,
- Dog & Cat Management Act 1995,
- Environment Protection Act 1993,
- Expiation of Offences Act 1996,
- Fences Act 1975,
- Fire & Emergency Services Act 2005 and Fire and Emergency Services

Subject to Confirmation

Regulations 2005 – CEO,

- Fire & Emergency Services Act 2005 and Fire and Emergency Services Regulations 2005 – Officers,
- Freedom of Information Act 1991,
- Housing Improvement Act 1940,
- Land & Business (Sale & Conveyancing) Act 1994,
- Liquor Licensing Act 1997,
- Local Government Act 1934,
- Local Government Act 1999,
- Natural Resources Management Act 2004, Natural Resources Management (General) Regulations 2005 and Natural Resources Management (Transitional Provisions – Levies) Regulations 2005,
- Roads (Opening and Closing) Act 1991,
- Road Traffic Act 1961 (SA), Road Traffic (Miscellaneous) Regulations 1999 and Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999,
- Unclaimed Goods Act 1987,
- Work, Health & Safety Act 2012.

**2.2** Such powers and functions may be further delegated by the Chief Executive Officer in accordance with *Sections 44* and *101* of the *Local Government Act 1999* as the Chief Executive Officer sees fit, unless otherwise indicated in the Schedule of Conditions contained in each such proposed Instrument of delegation".

**CARRIED (2015/145)**

Moved Cr Daniele Seconded Cr Keen

**3.1** "that Council, having considered Item 17.6 - *Delegations to the Chief Executive Officer,* dated 27 April 2015, In exercise of the powers contained in *Section 20* and *34(23)* of the *Development Act 1993*, the powers and functions under the *Development Act 1993* and the *Development Regulations 2008* are hereby delegated as at 4 May 2015 to the person occupying the office of Chief Executive Officer, subject to the conditions or limitations indicated in the Schedule of Conditions contained in the proposed Instrument of Delegation under the *Development Act 1993*.

**3.2** Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated in the Schedule of Conditions contained in

Subject to Confirmation

the proposed Instrument of Delegation under the *Development Act 1993*.

**3.3** "that Council pursuant to and in accordance with Section 56A(22) of the *Development Act 1993*, appoints the Chief Executive Officer, as the Public Officer Council's Development Assessment Panel.

**CARRIED (2015/146)**

Moved Cr Daniele Seconded Cr Stubing

**4.1** "that Council, having considered Item 17.6 - *Delegations to the Chief Executive Officer,* dated 27 April 2015, In exercise of the powers contained in *Section 91* of the *Food Act 2001*, the powers and functions under the *Food Act 2001* contained in the proposed Instrument of Delegation are hereby delegated as at 4 May 2015 to the person occupying the office of the Chief Executive Officer ("the head of the enforcement agency" for the purposes of the *Food Act 2001*), subject to the conditions or limitations indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the *Food Act 2001*.

**4.2** Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in Accordance with the relevant legislation unless otherwise indicated in the Schedule of Conditions contained in the proposed Instrument of Delegation under the *Food Act 2001*."

**CARRIED (2015/147)**

Moved Cr Keen Seconded Cr Summerton

**5.1** "that Council, having considered Item 17.6 - *Delegations to the Chief Executive Officer,* dated 27 April 2015, In exercise of the power contained in the *South Australian Public Health Act 2011*, *South Australian Public Health (Legionella) Regulations 2013 and South Australian Public Health (Wastewater) Regulations 2013* in the proposed Instrument are hereby delegated as at 4 May 2015 to the person occupying the office of Chief Executive Officer, subject to the conditions or limitations indicated in the Schedule of Conditions contained in the proposed Instrument of Delegation under the *South Australian Public Health Act 2011*.

**5.2** Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated in the Schedule of Conditions contained in the proposed Instrument of Delegation."

**CARRIED (2015/148)**

Subject to Confirmation

Moved Cr Keen Seconded Cr Daniele

**6.1** "that Council, having considered Item 17.6 - *Delegations to the Chief Executive Officer,* dated 27 April 2015, that in accordance with the Notice to the Council dated 27 April 2009 from the Minister for Transport ("the Minister's Notice"), the Council authorises the following officers to exercise, for, and on behalf of the Council, the power conferred on the Council pursuant to the following clauses of the Minister's Notice in relation to the *Road Traffic Act 1961*:

Clause A.1 - Chief Executive Officer, General Manager Infrastructure & Planning Services, Depot Operations Coordinator, Strategic Infrastructure Coordinator, Infrastructure (Construction) Employees;

Clause B.1 – Chief Executive Officer, General Manager Infrastructure & Planning Services, Depot Operations Coordinator, Strategic Infrastructure Coordinator, Infrastructure (Construction) Employees,

Clause C.1 – Chief Executive Officer, General Manager Infrastructure & Planning Services, Depot Operations Coordinator, Strategic Infrastructure Coordinator, Infrastructure (Construction) Employees,

Clause D.1 – Chief Executive Officer, General Manager Infrastructure & Planning Services, Depot Operations Coordinator, Strategic Infrastructure Coordinator, Infrastructure (Construction) Employees,

Clause E.1 – Chief Executive Officer, General Manager Infrastructure & Planning Services, Depot Operations Coordinator, Strategic Infrastructure Coordinator; subject to –

(i) the conditions contained in the Minister's Notice; and

(ii) where applicable the conditions contained within the Notice from the Commissioner of Highways for the Temporary use of Traffic Control Devices by persons other than Road Authorities" dated 8 April 2002, as amended from time to time;

(iii) any conditions contained in this Resolution or in such instrument; and

(iv) the creation of a separate instrument in writing reflecting such authorisations under the Minister's Notice and this Resolution.

**6.2** The said instrument shall be in substantially the same form as the Proposed instrument of authorisation.

Subject to Confirmation

**6.3** In exercise of the power contained in, and in accordance with, Clause F.1 of the Notice to the Council dated 27 April 2009 from the Minister for Transport ("the Minister's Notice"), the power contained in *Section 33(1)* of the *Road Traffic Act 1961* and delegated to the Council pursuant to Clause F of the Minister's Notice is hereby sub-delegated to the person occupying the office of Chief Executive Officer of the Council subject to:

(i) the conditions contained in the Minister's Notice; and

(ii) any conditions contained in this Resolution or in such instrument; and

(iii) the creation of a separate instrument in writing reflecting such sub-delegation under the Minister's Notice and this Resolution.

**6.4** The said instrument shall be in substantially the same form as the proposed instrument of sub-delegation."

**CARRIED (2015/149)**

The Presiding Member sought and was granted leave of the meeting to suspend standing orders at 10.03 pm
Meeting resumed at 10.09 pm

17.8 LGA Ordinary General Meeting Notice of Motions (CON12/510)

Moved Cr Strudwicke Seconded Cr Keen

"that the Council having considered Item 17.8 - *LGA Ordinary General Meeting Notice of Motions,* dated 27 April 2015, notes and receives the proposed voting for each of the Council Notice of Motions at the LGA General Meeting to be held on the 1 May 2015, and endorses Mayor Kennington to vote at the LGA Meeting as determined at this meeting."

**(2015/150)**

17.9 Hayman Road Playground - Access Relocation (CON12/958)

Moved Cr McColl Seconded Cr Stubing

"That Council, having considered Item 17.9 - *Hayman Road Playground - Access Relocation,* dated 27 April 2015, support the proposal to relocate access/egress to the playground from Hayman Road to Pederick Road and car park relocation as recommended by the Traffic Assessment Report, noting that it is still subject to development approval and potential appeal".

Subject to Confirmation

Prior to the matter being put Cr Jones requested that further information regarding this matter, including the police report of a vehicle accident that occurred, and in accordance with Clause 22 of the *Code of Practice – Meeting Procedures*, stating that he was unwilling to vote on this matter until the requested information was provided.

Councillor Summerton sought and was granted leave of the meeting to make a personal explanation.
That President Tony Flaherty of the Two Wells RSL Sub-Branchy spoke at the last Council meeting with regard to the hiring of the Two Wells Community Centre and being charged $150.00. It costs the Community Centre Committee $100.00 to have the hall cleaned after every hire, and it is standing practice that if a community group is seeking the hall hire at no charge, that they pay the $150.00 hire fee and then write a formal request to the committee to consider. If it is agreed that the hire is at no charge then a refund is given.

**18. URGENT BUSINESS**

18.1

**19. CONFIDENTIAL ITEMS**

19.1

**20. CLOSURE**

There being no further business, the Mayor declared the meeting closed at 10.18 pm.

Confirmed as a true record.

Mayor: .....

Date: ____/____/___

Subject to Confirmation

| District Council of Mallala | 7. MAYOR'S REPORT |
|---|---|
| MONDAY 11 May 2015 | |

**Items:**

7.1 **Activities and Meetings attended**

7.1 No Report

| District Council of Mallala | 8. MINUTES AND/OR RECOMMENDATIONS |
|---|---|
| MONDAY 11 May 2015 | |

**Items:**

## 8. MINUTES AND/OR RECOMMENDATIONS

8.1 **Economic and Infrastructure Advisory Committee**

8.1.1 No Minutes

8.2 **Environmental Management Advisory Committee**

8.2.1 No Minutes

8.3 **Strategic Planning and Development Policy Committee**

8.3.1 No Minutes

8.4 **Council Development Assessment Panel**

8.4.1 No Minutes

| District Council of Mallala | 9. ASSOCIATED ORGANISATIONS |
|---|---|
| MONDAY 11 May 2015 | |

**Items:**

**9. ASSOCIATED ORGANISATIONS**

9.1 **Gawler River Floodplain Management Authority**

9.1.1 Minutes from the meeting as held 15 April 2015 (CON12/314)

9.2 **Central Local Government Region**

9.2 No Minutes

# GAWLER RIVER FLOODPLAIN MANAGEMENT AUTHORITY


**Adelaide Hills Council**
**The Barossa Council**
**Town of Gawler**
**Light Regional Council**
**District Council of Mallala**
**City of Playford**

Address: 3/58 Charles Street, Unley, South Australia 5061
Mobile: 0413 174 222
Email: deangollan@hotmail.com
Website: www.gawler.sa.gov.au/grfma


# M I N U T E S

| | |
|---|---|
| Committee | **Gawler River Floodplain Management Authority** |
| Held On | **Wednesday 15 April 2015 at 9.10am** |
| Location | **Gumeracha** |

## 1. WELCOME

Dr Bruce Eastick formally welcomed Board Members, Deputy Board Members and opened the eightieth meeting of the Board.

## 2. PRESENT

Dr Bruce Eastick AM, AMLRNRMB Appointee, Board Member, Chair
Cr Anne Picard, District Council of Mallala, Board Member
Mr. Gary Mavrinac, District Council of Mallala, Board Member
Mr. Marc Salver, Adelaide Hills Council, Deputy Board Member
Cr Adrian Shackley, Town of Gawler, Board Member
Mr. Sam Dilena, Town of Gawler, Board Member
Cr Denis Davey, City of Playford, Board Member
Cr Carol Muzyk, City of Playford, Deputy Board Member
Mr. Harry Pitrans, City of Playford, Deputy Board Member
Mayor Bob Sloane, The Barossa Council, Board Member
Mr. Ian Baldwin, The Barossa Council, Board Member
Mr. Dean Gollan, Executive Officer

## 3. APOLOGIES

Cr John Kemp, Adelaide Hills Council, Board Member
Mr. Tim Jackson, City of Playford, Board Member
Mr. Andrew Philpott, Light Regional Council, Deputy Board Member
Cr Bill Close, Light Regional Council, Board Member

## 4. MINUTES OF THE PREVIOUS MEETING

*4.1. Board Meeting – 18 February 2015*

Confirmation of the Minutes of the previous Gawler River Floodplain Management Authority meeting held on 18 February 2015.

| GRB 15/0011 | Confirmation of the Minutes |
|---|---|

**Moved: Mr. Pitrans Seconded: Mr. Salver**
**That the Minutes of the previous Gawler River Floodplain Management Authority Board meeting held on 18 February 2015 as per copies supplied to members be confirmed as a true and correct record of that meeting.**

**CARRIED**

*4.2. Audit Committee*

No meeting for the period.

*4.3. Technical Assessment Panel*

No meeting for the period.

## 5. EXECUTIVE OFFICER'S REPORT

*5.1. Financial Report*

| GRB 15/0012 | Financial Report |
|---|---|

**Moved: Mr. Salver Seconded: Mayor Sloane**
**That the financial report as at 31 March 2015 showing a balance of total funds available of $222,985.57 be received.**

**CARRIED**

*5.2. GRFMA Business Plan 2015-2018*

| GRB 15/0013 | Business Plan 2015-2018 |
|---|---|

**Moved: Mr. Pitrans Seconded: Mr. Baldwin**
**That the draft Business Plan 2015-2018 be approved for consultation with the Constituent Councils.**

**CARRIED**

*5.3. Draft Budget 2015-2016*

| GRB 15/0014 | Draft Budget 2015-2016 |
|---|---|

**Moved: Mr. Salver Seconded: Cr. Picard**
**That the draft Budget 2015-2016 be adopted for circulation to Constituent Councils in accordance with Clause 11.2.3 of the Charter.**

**CARRIED**

## 6. CORRESPONDENCE

*6.1. Water Data Services*

Correspondence has been received from Water Data Services Pty Ltd requesting permission to install a radio telemetry station near the Bruce Eastick Dam.

Water Data Services operate the NRMB monitoring station at the flow control gauge on the North Para River, approximately 400m downstream of the flood control dam. Due to the steep valley, there is no phone reception at the site.

Water Data Services are proposing to install a radio telemetry station near the dam to enable remote access to the site instruments and data. The installation would consist of a post with a solar panel and aerials at the top and a small instrument box/cabinet. The preferred location is on the eastern side of the river.

| | |
|---|---|
| **GRB 15/0015** | **Water Data Services Pty Ltd** |

**Moved: Mr. Dilena Seconded: Mr. Salver**
**That approval be given to enter into a Licence Agreement with Water Data Services Pty Ltd to install a radio telemetry station near the Bruce Eastick Dam, provided there is no cost to the Gawler River Floodplain Management Authority.**

**CARRIED**

*6.2. Joseph Dames Engineer & Planners*

Correspondence received from Joseph Dames regarding plastic shed development – impact in river flood plains.

| | |
|---|---|
| **GRB 15/0016** | **Joseph Dames** |

**Moved: Mr. Dilena Seconded: Cr. Davey**
**That the above item of correspondence be noted.**

**CARRIED**

## 7. GENERAL BUSINESS

*7.1. Inspection Trip*

Given the number of new members recently appointed to the Board, it was resolved that the Executive Officer organise an inspection trip of the area to be held during May 2015.

## 8. IN COMMITTEE

*8.1. Findings Report for the Gawler River Flood Mitigation Scheme.*

| | |
|---|---|
| **GRT 15/0017** | **In Committee** |

**Moved: Mr. Salver Seconded: Mr. Pitrans**
**That under the provisions of Section 90(2) of the Local Government Act 1999, an Order be made that the public be excluded from attendance at the meeting in order to consider in confidence agenda item**

**And Further**

**That the GRFMA Board is satisfied that it is necessary that the public be excluded to enable the Board to receive, discuss or consider the report at the meeting on the following ground/s:**

**Section 90(3) (b) information the disclosure of which—**
**(i) could reasonably be expected to confer a commercial advantage on a person with whom the Authority is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Authority, and**
**(ii) would, on balance, be contrary to the public interest;**
**And Further**

**That accordingly, on this basis, the principle that meetings of the GRFMA Board should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.**

**CARRIED**

## 9. OUT OF COMMITTEE

| GRB 15/0019 | Out of Committee |
|---|---|

**Moved: Mayor Sloane Seconded: Mr Salver**
**That the confidential Minutes of the meeting held on 15 April 2015, Item 8.1 - Findings Report and all discussions relating to the matter which was considered in confidence pursuant to Section 90(2) and (3)(b), remain confidential until the report has been made public by the Board.**

**CARRIED**

## 10. NEXT MEETING

Please note that the next Ordinary Board meeting will be held on:

| Date | Host Council |
|---|---|
| Wednesday 17 June 2015 | Barossa Council |
| Meeting to commence at 9.00 AM. | |

## 11. CLOSURE

The Chair thanked everyone for their contribution and closed the meeting at 10.04 AM.

Confirmed 17 June 2015

Chair _____

**Items:**

## 10. QUESTIONS WHICH NOTICE HAS BEEN GIVEN

### 10.1 Questions on Notice

10.1.1 No Questions on Notice

### 10.2 Notice of Motion

10.2.1 No Notice of Motion

| District Council of Mallala | |
|---|---|
| **MONDAY 11 May 2015** | |

**Items:**

**11. QUESTIONS WHICH NOTICE HAS NOT BEEN GIVEN**

*Rules from Local Government Act 1999 Regulations*:-

* Questions and replies are not entered in the minute book unless expressly required by resolution.
* No debate shall be allowed on any question or reply to any question.

**12. PETITIONS**

12.1 No Petitions

**13. DEPUTATIONS**

13.1 No Deputations

**14. ADJOURN INTO STANDING COMMITTEE**

14.1 No Agenda for Strategic Planning and Development Policy Committee

**15. ADOPTION OF STANDING COMMITTEE RECOMMENDATIONS**

15.1 No Recommendations

| District Council of Mallala | 16 | ITEMS FOR NOTING / INFORMATION / ACTIVITY REPORTS |
|---|---|---|
| **MONDAY 11 May 2015** | | |

**Items:**

16.1 **Items for Information / Noting**

16.1.1 Marine Parks – Declared Sanctuary Zones (CON12/1192)

16.2 **Activity Reports**

16.2.1 Infrastructure Services Activity Report (CON12/1191)

16.2.2 Planning Services Activity Report (CON12/1191)

16.2.3 Development Plan Amendment Activity Report (CON12/248)

| | |
|---|---|
| District Council of Mallala | **16.1.1 Marine Parks- Declared Sanctuary Zones** |
| | **Container No:** CON12/1192<br>**Document No:** D15/8590 |
| **Report Date:** 11 May 2015 | **Prepared by:** Strategic Projects Coordinator |
| **Corporate Objective:** | 4.1.1 Promote and support natural resource management initiatives at a local level |

| | |
|---|---|
| **Purpose:** | |

| | |
|---|---|
| **Recommendation 1:** | "that Council, having considered Item 16.1.1 - *Marine Parks- Declared Sanctuary Zones,* dated 11 May 2015, receives the report". |

| **Impact Summary** |
|---|

| **Organisational and Governance** | |
|---|---|
| Financial | Nil |
| Legislation | Council needs to be cognisant of the declaration of a Sanctuary Zone and the requirements of the *Marine Parks Act 2007* |
| Risk | Nil |
| Consultation | Nil |
| Asset Management Plans | Nil |
| Service Standards | Nil |

**Background**

The *Marine Parks Act 2007* (the Act) provides the legislative basis for the establishment of marine parks in South Australia.

Pursuant to the Act a sanctuary zone has been established along the Mallala coastline within an area between Middle Beach and Light Beach, and including the Light River Delta. A parcel of Crown land (namely CR5907/324) was not included in the Sanctuary Zone.

At the Ordinary Meeting of 27 October 2014 Council resolved the following:

> *"that District Council of Mallala contact the relevant authority to express concern about the exclusion areas within the Light River Delta general area".*

**Discussion**

Council Administration wrote to the Minister for Sustainability, Environment and Conservation in late 2014 **(Attachment 1)** enquiring why the parcel of land contained in CR5907/324 had not been included in the declared Sanctuary Zone.

A response was received from the Minister on 22 April 2015 **(Attachment 2**).

The response from the Minister highlights the parcel was not included as there is currently a licence over the land and, until such time that the licence is cancelled, the parcel cannot be included in the sanctuary zone.

The Minister has however highlighted that the land has been identified for possible inclusion within the new Adelaide International Bird Sanctuary; therefore it is possible that a high level of protection may be afforded to the parcel of land at some time in the future.

**Summary**

Council has received a response from the Minister for Sustainability, Environment and Conservation pertaining to query by Council regarding the exclusion of a parcel of land in the sanctuary zone of the Upper Gulf St Vincent Marine Park.

**Attachment 1**
to report 16.1.1
dated 11 May 2015

**Marine Parks- Declared Sanctuary Zones**

# District Council of Mallala

2a Wasleys Road
(PO Box 18)
Mallala SA 5502
Phone: 8527 0200
Fax: 8527 2242
Email: info@mallala.sa.gov.au
ABN 58 384 968 672

Our Ref. CON12/1192

15 December 2015

Hon Ian Hunter MLC
Minister for Sustainability, Environment and Conservation
GPO Box 1047
ADELAIDE SA 5501
DX 138

Dear Minister Hunter,

**Upper Gulf St Vincent Marine Park**

As you are aware, the Marine Parks Act 2007 (the Act) provides the legislative basis for the establishment and management of marine parks in South Australia. The Act also provides for the establishment of marine park zones within each marine park.

A Sanctuary Zone has been established along the northern South Australian coastline within an area between Middle Beach and Light Beach. The District Council of Mallala has ascertained that land within the Sanctuary Zone is Crown Lands and these parcels of land are not under the care and control of Council.

Council has also noted that there is a large parcel of land that includes the Light River Delta that is not included in the prescribed Sanctuary Zone and is seeking your advice as to why this parcel of land has been excluded from the Sanctuary Zone. The Light River Delta is considered one of the most ecologically intact mangrove and salt marsh systems in South Australia.

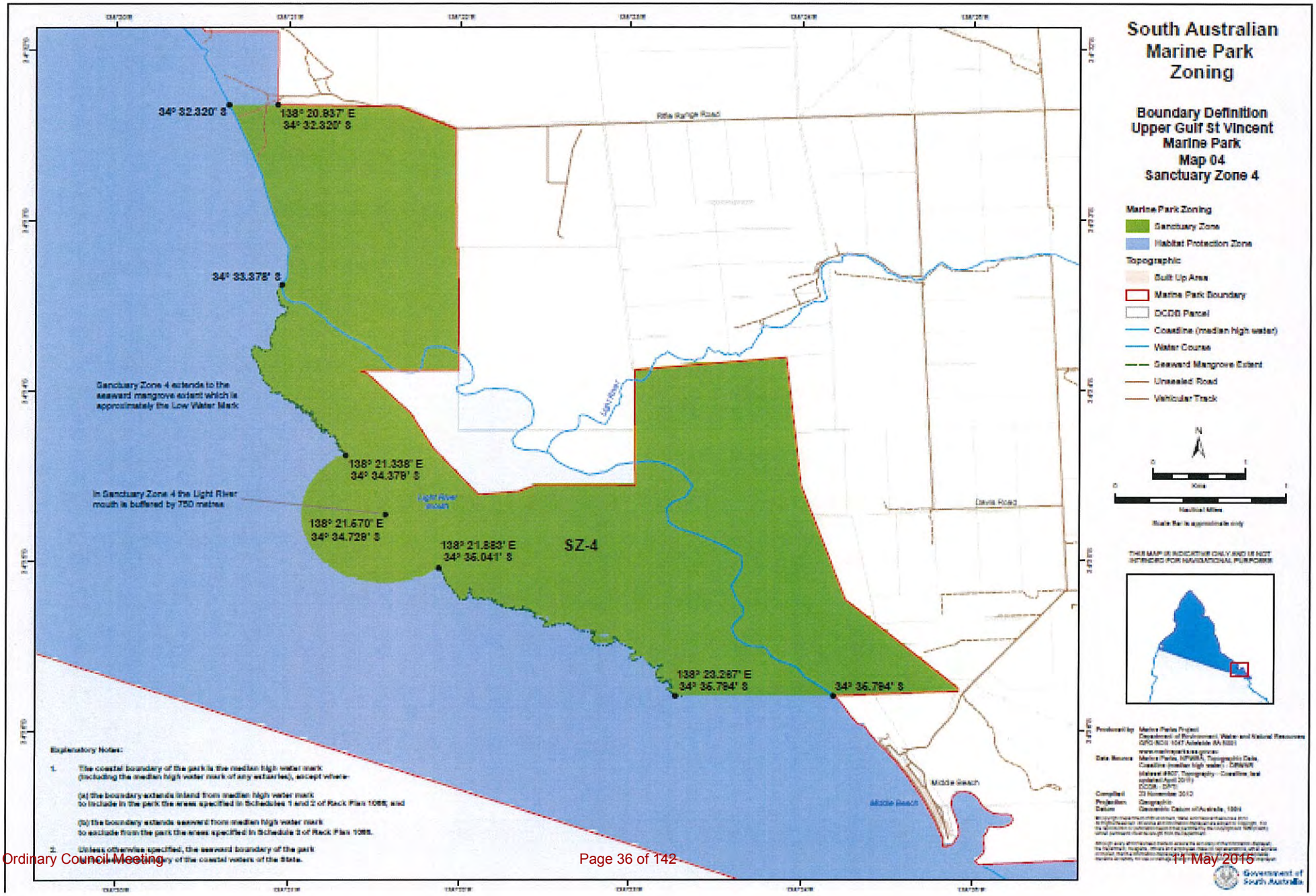
Council Administration have been advised by the Department of Environment, Water and Natural Resources (DEWNR) that this parcel of land was under a lease arrangement at the time of the deliberations on which parcels of land would be included in the Sanctuary Zone and that the leasee at the time was concerned that the inclusion of the land parcel would limit their future options for the use of the site.

Given the lease arrangement has now expired Council seeks your consideration of including this ecologically important parcel of land in the Sanctuary Zone. The parcel of land is illustrated on the map attached and is listed as CR5907/324 with the Land Titles Office.

Should you have any queries regarding this matter, please contact Carol Muzyk, Strategic Projects Coordinator, on (08) 8520 3360 or email carolm@mallala.sa.gov.au

Yours sincerely

Peter Sellar
**Acting Chief Executive Officer**


South Australian Marine Park Zoning
Boundary Definition
Upper Gulf St Vincent Marine Park
Map 04
Sanctuary Zone 4
Marine Park Zoning
Sanctuary Zone
Habitat Protection Zone
Topographic
Built Up Area
Marine Park Boundary
DCDB Parcel
Coastline (median high water)
Water Course
Seaward Mangrove Extent
Unsealed Road
Vehicular Track
34° 32.320' S
138° 20.837' E
34° 32.327' S
34° 33.378' S
Sanctuary Zone 4 extends to the seaward mangrove extent which is approximately the Low Water Mark
138° 21.338' E
34° 34.378' S
In Sanctuary Zone 4 the Light River mouth is buffered by 750 metres
138° 21.570' E
34° 34.728' S
138° 21.883' E
34° 35.041' S
SZ-4
138° 23.287' E
34° 35.784' S
34° 35.784' S
Light River
Light River (mouth)
Davis Road
Middle Beach
Explanatory Notes:
1. The coastal boundary of the park is the median high water mark (including the median high water mark of any estuaries), except where:
(a) the boundary extends inland from median high water mark to include in the park the areas specified in Schedules 1 and 2 of Reck Plan 1088; and
(b) the boundary extends seaward from median high water mark to exclude from the park the areas specified in Schedule 2 of Reck Plan 1088.
2. Unless otherwise specified, the seaward boundary of the park is the outer limit of the coastal waters of the State.
THIS MAP IS INDICATIVE ONLY AND IS NOT INTENDED FOR NAVIGATIONAL PURPOSES
Government of South Australia

**Attachment 2**
to report 16.1.1
dated 11 May 2015

**Marine Parks- Declared Sanctuary Zones**

22 APR 2015

Government of South Australia

The Hon Ian Hunter MLC

15SEC0034

Mr Peter Sellar
Acting Chief Executive Officer
District Council of Mallala
PO Box 18
MALLALA SA 5502

Dear Mr Sellar

I write in response to your letter regarding the inclusion of a parcel of coastal crown land into the Upper Gulf St Vincent Marine Park. I apologise for the delay in my response.

The outer boundaries of South Australia's Marine Parks Network were established through a statewide consultative process in 2009. Based on advice from the former Scientific Working Group, the Government sought to include within marine parks, parcels of coastal crown land with strong ecological links with the adjacent marine environment. This process led to the inclusion of several parcels of crown land along the District Council of Mallala coastline, including available parcels around the Light River Delta area within the Upper Gulf St Vincent Marine Park.

Informal communications between the Department of Environment, Water and Natural Resources and Council staff occurred in November 2014 in relation to this matter. The Department advised Council it had previously assessed the parcel of land listed as CR5907/324 as being of interest for inclusion within the marine park boundary. However, it was deemed not available for inclusion due to an historical lease arrangement with the former operator of the salt fields mining lease.

The Department has since identified that an administrative error resulted in Council receiving an incorrect report that the licence over the land in question had been cancelled. In fact, the licence is still current. Departmental officers have communicated this to Council officers.

Minister for Sustainability, Environment and Conservation
Minister for Water and the River Murray
Minister for Climate Change
Level 9, Chesser House, 91-97 Grenfell Street Adelaide SA 5000 | GPO Box 1047 Adelaide SA 5001 DX 138
Tel 08 8463 5680 | Fax 08 8463 5681 | Email minister.hunter@sa.gov.au | www.premier.sa.gov.au

SOUTH AUSTRALIA

Should the status of the parcel of land be reassessed in the future and the licence cancelled, the parcel may become eligible for inclusion within the marine park boundary. Please note, however, that the process for amending a marine park boundary as prescribed by the *Marine Parks Act 2007* requires significant consultation and administrative processes, as well as approval by both Houses of Parliament.

I am advised the parcel of land has been identified for possible inclusion within the new Adelaide International Bird Sanctuary. As part of this process, it is being considered for proclamation under the *National Parks and Wildlife Act 1972*. If deemed suitable for inclusion, this arrangement would provide a high level of protection for the biodiversity within the site.

Thank you for taking the time to write.

Yours sincerely

**IAN HUNTER MLC**
Minister for Sustainability, Environment and Conservation

20/ 4/ 2015

| District Council of Mallala | **17 ITEMS FOR DECISSION** |
|---|---|
| **MONDAY 11 May 2015** | |

**Items:**

17.1 Council Development Assessment Panel - Removal of a Member (CON12/218)

17.2 RDA Barossa Proposed Changes to the Constitution (CON12/278)

17.3 Barossa and Districts Housing Association Inc – Lease Agreement Renewal (CON12/872)

17.4 Parking on Windmill Road, Two Wells (CON12/987)

| | | |
|---|---|---|
| District Council of Mallala | **17.1** | **Council Development Assessment Panel - Removal of a Member** |
| | **Container No:** | **CON 12/ 218** |
| | **Document No:** | **D15/8591** |
| **Report Date:** **11 May 2015** | **Prepared by:** | **General Manager Infrastructure and Planning Services** |

| | | |
|---|---|---|
| **Corporate Objectives:** | 3.2.1 | Administer Council's Development Plan in accordance with State Planning strategies and Regional priorities. |
| | 3.2.3 | Provide consistent and responsive development assessment and compliance processes. |
| | 5.1.3 | Ensure governance and operational policies, procedures and activities align with organisational, legislative requirements and best practice. |
| | 5.3.1 | Provide and promote professional corporate and administrative services supporting Council operations and the needs of the community. |

| | |
|---|---|
| **Purpose:** | To provide Council with information regarding the removal of a member from the District Council of Mallala Council Development Assessment Panel pursuant to the Terms of Reference. |

| | |
|---|---|
| **Recommendation 1:** | "that the Council, having considered Item 17.1 - *Council Development Assessment Panel – Removal of a Member,* dated 11 May 2015, revoke resolution 2015/104 that Cr Daniele be removed from the Council Development Assessment Panel effective immediately for the term of this Council pursuant to Regulation 21 of the *Local Government (Procedure at Meetings) Regulations 2013.*" |
| **Recommendation 2:** | "that the Council, having considered Item 17.1 - *Council Development Assessment Panel - Removal of a Member,* dated 11 May 2015, advise Cr Daniele of its intention to remove him from the Council Development Assessment Panel, and that Cr Daniele provide submissions on the removal and/or to hear from Cr Daniele, for the Council to consider any submissions he might make, and for the Council to then make its decision either to (or not) remove Cr Daniele from the CDAP." |

| **Impact Summary** |
|---|

| **Organisational and Governance** | |
|---|---|
| Financial | Nil |
| Legislation | Council is required by Section 56A(1) of the *Development Act 1993* to establish and maintain a Council Development Assessment Panel. |
| Risk | Nil |
| Consultation | Nil |
| Asset Management Plans | Nil |
| Service Standards | Nil |

**Background**

Council is required to establish a Council Development Assessment Panel (the Panel) pursuant to Section 56A of the *Development Act 1993*.

Council's Panel consists of a Presiding Member, three Independent Members and three Council Members to form the seven member panel required under the Act.

The primary role of the Panel is to determine, using Council's Development Plan, whether or not to grant Development Plan Consent to various kinds of development, and to advise Council on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications.

At the Ordinary Council Meeting on 13 April 2015, the Council resolved "that Cr Daniele be removed from the Council Development Assessment Panel effective immediately for the term of this Council".

**Discussion**

Council Administration sought legal advice regarding the Council's decision to remove Cr Daniele from the Development Assessment Panel as a result of an investigation and findings made that Cr Daniele has breached the Code of Conduct for Council Members.

In providing this advice, the lawyer confirmed the following facts:

- the complaint made against Cr Daniele was in relation to statements made about another candidate for the office of Mayor during the 2014 elections;
- the complaint was unrelated to Cr Daniele's role as a member of the CDAP;
- Cr Daniele is appointed to the CDAP in his capacity as a Council member;
- there was a finding of a breach of Part 2 of the Code and the Council resolved for Cr Daniele to make a further apology and for him to be censured;
- in addition, the Council resolved to remove Cr Daniele from his position as a member of the CDAP.

Based on the above, the advice (in full) as provided by Natasha Jones, Lawyer – Kelledy Jones, is as follows:

- **whilst it can be said that the Council has not adhered to section 6(a) of the *Local Government Act* 1999 by acting as an informed and responsible decision-maker before resolving to remove Cr Daniele from the DAP, the Council does have the power to remove Cr Daniele from the CDAP. This is because clause 2.25.5 of the**

**Code of Conduct for Council Members provides that if a member is found to have breached the Behavioural Code, the Council may, by resolution, "*resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position to the Council);***

- **the main issue for the Council to consider is the risk that the Council has made a decision that could be subject to scrutiny either by the Ombudsman if it were reviewed or, at worse, by the Courts if the decision were subject to judicial review proceedings. I hold this view because the Council made the decision that adversely impacts upon Cr Daniele before affording Cr Daniele the opportunity to be heard or to make a written submission on the Council's proposed penalty which meant Cr Daniele did not get an opportunity to say why the Council should not impose such a penalty upon him and Council did not take into consideration such information before making the decision;**
- **the CDAP's Terms of Reference also emphasises this approach because clause 4.1 provides that the Council may resolve to remove a member on particular grounds, subject to giving the member of the CDAP an opportunity to be heard ie. affording the member with procedural fairness. This means the proper procedure would have been to notify Cr Daniele of the proposed penalty, to give him enough time to provide submissions on the removal and/or to hear from Cr Daniele, for the Council to consider any submissions he might make, and for the Council to then make its decision either to (or not) remove Cr Daniele from the CDAP. Clause 4 of the CDAP Terms of Reference (Attachment 1) provides an adequate process to ensure the principles of procedural fairness are adhered to;**
- **to advance the matter I recommend that the Council revoke the decision to remove Cr Daniele from the CDAP using Regulation 21 of the *Local Government (Procedure at Meetings) Regulations* 2013 in accordance with a CEO report and for the process to commence 'afresh'. That is, for the Council to give consideration to whether it proposes to impose such a penalty and for the Council to adhere to principles of procedural fairness set out above, which also includes consideration as to whether the proposed penalty is a reasonable one in the circumstances particularly in light of the conduct complained of and the steps already taken, by way of apology, to address the complaint.**

Way Forward

In order to comply with Resolution 2015/104, and based on the legal advice, Council will need to revoke its decision and communicate to Cr Daniele the details for the

removal at least one (1) calendar month before the meeting of the Council at which the matter will be determined.

In doing so, Cr Daniele must be provided the opportunity to be heard or to make a written submission. A written representation must be provided at least fourteen (14) days before the meeting of the Council at which the matter will be determined.

The determination of Council must be communicated to the member.

**Summary**

Council resolved to remove Cr Daniele from the Development Assessment Panel. The Terms of Reference stipulate the process in which a member can be removed from the panel. Legal advice suggested that due process has not been followed, and that procedural fairness has not been provided to the member.

**Attachment 1**
to report 17.1
dated 11 May 2015

**Council Development Assessment Panel - Removal of a Member**

**ESTABLISHMENT & TERMS OF REFERENCE OF THE DISTRICT COUNCIL OF MALLALA COUNCIL DEVELOPMENT ASSESSMENT PANEL ("the CDAP")**

## 1. Establishment of the Council Development Assessment Panel

Pursuant to Section 56A of the Development Act 1993 ("the Act") the Council establishes a Council Development Assessment Panel to be known as the District Council of Mallala Council Development Assessment Panel ("the CDAP") for the purpose of acting as the "*relevant authority*" (as that term is defined in the Development Act 1993) in respect of all development control matters.

## 2. Functions

The functions of the CDAP are:

2.1 to act as a delegate of the Council in accordance with the requirements of the Act; and

2.2 to provide advice and reports to the Council as it thinks fit on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under the Act; and

2.3 to perform other functions (other than functions involving the formulation of policy) assigned to the CDAP by the Council.

## 3. Membership

3.1 Membership of the CDAP shall consist of seven (7) members appointed by the Council taking into account the requirements of the Act, under Section 56A(3)(b) and 56A(3)(c), comprising:

3.1.1 one (1) independent Presiding Member;

3.1.2 three (3) members of the Council; and

3.1.3 three (3) independent members.

3.2 At least one (1) member of the CDAP shall be a woman and at least one (1) member shall be a man and as far as practicable, the CDAP will consist of equal numbers of men and women.

3.3 The Council will appoint the Presiding Member of the CDAP taking into account the requirements of the Act under Section 56A(3)(b).

3.4 The CDAP will appoint the Deputy Presiding Member of the CDAP.

3.5 Members of the CDAP shall hold their positions for a maximum period of two (2) years or until:

3.5.1 removed from membership of the CDAP by resolution of the Council in accordance with Section 56A(3)(g); or

3.5.2 until the office of the member of the CDAP becomes vacant in accordance with Section 56A(3)(h); or

3.5.3 in the case of CDAP members who are members of the Council, until the member is no longer a member of the Council,

whichever occurs first.

3.6 A member of the CDAP whose term of office expires may nevertheless continue to act as a member of the CDAP for a period of up to 6 months until he or she is reappointed or a successor is appointed (as the case may be).

3.7 Members shall attend CDAP meetings. Failure to attend three (3) consecutive meetings of the CDAP without first obtaining leave of absence from the CDAP may result in removal of the member pursuant to Clause 4.

3.8 A member of the CDAP may resign from the CDAP by giving written notice to that effect to the Chief Executive Officer.

3.9 A member of the CDAP incurs no liability for an honest act done in the exercise or performance, or purported exercise or performance, of powers or functions under Part 4 of the Act.

## 4. Removal of a Member

4.1 Subject to giving a member of the CDAP an opportunity to be heard or to make a written submission, the Council may resolve to remove a member for:

4.1.1 breach of, or failure to comply with, the conditions of appointment; or

4.1.2 misconduct; or

4.1.3 neglect of duty; or

4.1.4 incapacity to carry out satisfactorily the duties of his or her office; or

4.1.5 failure to carry out satisfactorily the duties of his or her office; or

4.1.6 for members of the CDAP who are not members of the Council, failure to disclose his or her financial interests in accordance with the Schedule as required by Section 56A(3)(g)(vi) and 56A(6);

4.1.6 failure to comply with a requirement under Section 56A(7) of the Act or a breach of, or failure to comply with, a code of conduct under Section 21A of the Act.

4.2 Particulars of the grounds for removal shall be communicated to the member at least one (1) calendar month before the meeting of the Council at which the matter will be determined.

4.3 The member shall provide any written representation in response to the particulars at least fourteen (14) days before the meeting of the Council at which the matter will be determined.

4.4 The determination of the Council shall be communicated to the member, and in the event of an adverse determination the member shall cease to be a member immediately when the Council has communicated its determination to him/her.

4.5 The determination shall be communicated to the member:

(a) personally; or

(b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member for the purpose of receiving notices of CDAP or Council meetings, as the case may be; or

(c) by leaving it for the member at an appropriate place at the principal office of the Council, if authorised in writing by the member to do so for the purpose of receiving notices of CDAP or Council meetings, as the case may be; or

(d) by a means authorised in writing by the member as being an available means of giving notice (eg facsimile transmission or email) for the purpose of receiving notices of CDAP or Council meetings, as the case may be.

4.6 Notice of the determination not given in accordance with Clause 4.5 is taken to have been validly given if the Chief Executive Officer considers it impracticable to give the notice in accordance with that Clause and takes action the Chief Executive Officer considers reasonably practicable in the circumstances to bring the notice to the attention of the member.

4.7 A CDAP member who has been removed from the CDAP pursuant to Clause 4 of these Terms of Reference may apply to the Council for

reappointment to the CDAP. The decision whether to allow a person to rejoin the CDAP is at the Council's absolute discretion.

## 5. Vacancy of Office

5.1 The office of a member of the CDAP will become vacant if the member:

5.1.1 dies;

5.1.2 completes a term of office and is not reappointed;

5.1.3 resigns by written notice to the Council;

5.1.4 becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or

5.1.5 is convicted of an indictable offence punishable by imprisonment;

5.1.6 is removed from office under Clause 4 of these Terms of Reference.

5.2 Should a vacancy in membership of the CDAP occur at any time then the Council shall fill that vacancy at the earliest opportunity in accordance with Clause 3.

5.3 The vacancy of office of a single member of the CDAP will not invalidate the decision making of the remaining members of the CDAP.

## 6. Terms of Reference

The Terms of Reference for the CDAP are as follows:

6.1 in accordance with the delegations conferred by the Council, the CDAP is charged with responsibility for all matters arising under Part 4 of the Act and the Regulations;

6.2 the CDAP shall act at all times in strict accordance with relevant legislation (being the Act and the Regulations) including any relevant code of conduct under Section 21A of the Act which are relevant to the CDAP in the performance of its functions.

## 7. Disclosure of Interests

7.1 Members of the CDAP who are not members of the Council shall disclose their financial interests in accordance with Section 56A(6) and Schedule 2 of the Act. Failure to do so may result in the removal of the member from office pursuant to Clause 4 of these Terms of Reference.

7.2 Members shall disclose any direct or indirect personal or pecuniary interest in a matter before the CDAP (other than an indirect interest that exists in common with a substantial class of persons) in accordance with Section 56A(7) of the Act. Failure to do so may result in removal of the member from office pursuant to Clause 4 of these Terms of Reference.

## 8. Public Officer

8.1 The CDAP shall also have a public officer appointed by the Council.

8.2 The functions of the public officer include ensuring the proper investigation of complaints about the conduct of a member of the CDAP.

## 9. Reports to Council

The CDAP shall report to Council on a twelve monthly or as needs basis, detailing issues for consideration by the Council. The report shall include advice on trends, issues and other matters relating to planning or development that have become apparent or arisen through the CDAP's assessment of applications under the Act.

| | |
|---|---|
| District Council of Mallala | **17.2 RDA Barossa Proposed Changes to the Constitution** |
| | **Container No:** **CON 12/278**<br>**Document No:** **D15/8600** |
| **Report Date:** **11 May 2015** | **Prepared by:** **General Manager Corporate and Community Services** |
| Corporate Objective: | 2.3 *A Strong and Diverse Economic Base* |

| | |
|---|---|
| Purpose: | To follow up from a resolution from the 23 March 2015 meeting to lay the matter on the table, to provide further information regarding the proposed changes to the RDA Barossa Constitution from a request from Anne Moroney Chief Executive Officer of Regional Development Australia (RDA) Barossa to support amendments to their Constitution as approved by members of RDA Barossa. |

| | |
|---|---|
| Recommendation 1: | "that the Council having considered Item 17.2 - *RDA Barossa Proposed Changes to the Constitution,* dated 11 May 2015, resolve that the motion be taken from the table in response to formal motion (2015/087)." |
| Recommendation 2: | "that the Council having considered Item 17.2 - *RDA Barossa Proposed Changes to the Constitution,* dated 11 May 2015, approves the proposed alterations to the Regional Development Australia Barossa Constitution." |

| **Impact Summary** |
|---|

| **Organisational and Governance** | |
|---|---|
| Financial | Nil |
| Legislation | Nil |
| Risk | Nil |
| Consultation | Nil |
| Asset Management Plans | Nil |
| Service Standards | Nil |

**Background**

Council received correspondence from Anne Moroney Chief Executive Officer RDA Barossa requesting support to approve proposed changes to their Constitution. At the meeting of 23 March 2015 the matter was resolved to lay on the table until further information is provided via formal motion (2015/087).

**Discussion**

From discussion at the 23 March 2015 meeting it was requested that the full tracked copy of the constitution be provided showing all alterations that are proposed. This has now been provided and included as **(Attachment 1)**.

Also attached (**Attachment 2)** for members information, are the 'Rules of the Regional Development Australia Incorporated' with substantive changes highlighted. The alterations to the Constitution have been adopted by the members of the RDA Barossa Board and are provided to be authorised by the member Councils. All other member Council's have approved the proposed changes.

To keep members informed, new CEO Katrina Márton has lodged an application with RDA Barossa to become the District Council of Mallala representative on the Board. This application is likely to be approved sometime this month.

**Summary**

If members are supportive of the proposed amendments, RDA Barossa will be informed of Council support.

**Attachment 1**
to report 17.2
dated 11 May 2015

**RDA Barossa Proposed Changes to the Constitution**

# RULES OF
# REGIONAL DEVELOPMENT AUSTRALIA BAROSSA
# INCORPORATED

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1. **ESTABLISHMENT AND NAME**

1.1 This document establishes an association.

1.2 The name of the association is **"Regional Development Australia Barossa Incorporated"** referred to herein as the **"Association"**.

**2. DEFINITIONS**

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Unless a contrary intention is evident, the following definitions apply to this document and all other Association documents and Policies:

2.1 **"Act"** means the *Associations Incorporation Act 1985*;

2.2 **"Board"** means the board of management of the Association established under these rules consisting of all the Members;

2.3 **"Chair"** means the chairperson of the Association holding office according to these rules;

2.4 **"Commonwealth Minister"** means the Commonwealth ~~Parliamentary Secretary for Infrastructure, Transport, Regional Development and Local Government~~Government Minister or Parlimentary Secretary having responsibility for matters related to Regional Development Australia (RDA);

2.5 **"Commonwealth"** means Commonwealth of Australia;

2.6 **"Deputy Chair"** means the deputy chairperson of the Association holding office according to these rules;

2.7 **"Funding Agreement"** means any agreement of the Commonwealth, the State Minister and/or the Local Government Bodies with the Association that provides funds to the Association directly related to the Regional Development Australia Program;

2.8 **"Funding Partner"** means those bodies providing funding to the Association directly related to the Regional Development Australia Program;

**2.9** **"LGASA"** means the Local Government Association of South Australia, a body corporate pursuant to the *Local Government Act 1999*, or its successors or assigns;

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~~2.9~~ 2.10 **"Local Government Bodies"** means councils constituted ~~-~~under the South Australian *Local Government Act 1999* ~~or the *Outback Areas Community Development Trust Act 1978* ~~operating in the Region and which have current Funding Agreements with the Association and **"Local Government Body"** means any of the Local Government Bodies operating in the Region which has a current Funding Agreement with the Association;

2.1~~0~~ 1 **"Member"** means any person deemed to be a member of the Board under these rules;

2.1~~1~~ 2 **"month"** means a calendar month;

2.~~12~~ 13 **"Policy"** means a policy of the Association approved by the Board;

2.~~13~~ 14 **"President of the LGASA"** means the person holding the office of President under the Constitution of the LGASA pursuant to Schedule 1 of the *Local Government Act 1999*;

2.~~14~~ 15 **"Region"** means Barossa Region, the geographic region established by the State Government and is comprised of the sum of the Local Government Bodies' geographic areas of The Barossa Council, Town of Gawler, Light Regional Council and District Council of Mallala or such other areas as the State Government specifies from time to time;

2.~~15~~ 16 **"Regional Development Australia Program"** means the program established jointly by the Commonwealth, the State Government, and the LGASA to develop and strengthen the regional communities of South Australia;

2.~~16~~ 17 **"Secretary"** means the person holding office under these rules as secretary of the Association;

2.~~17~~ 18 **"special resolution"** means a special resolution defined in the Act;

2.~~18~~ 19 **"State Government"** means the Government of South Australia;

2.~~19~~ 20 **"State Minister"** means the South Australian Minister for Regional Development, a body corporate pursuant to the *Administrative Arrangements Act 1994*; and

2.~~20~~ 21 **"Treasurer"** means the treasurer of the Association holding office according to these rules.

## 3. OBJECTS OF THE ASSOCIATION

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The objects of the Association are:

Regional Development Australia is a national network of committees fostering regional economic development. The Association will work with all three tiers of government, regional business and the wider community to boost the economic capability and performance of their region.

The Association will facilitate policies, programmes and projects designed to strengthen human capital, productivity, infrastructure, access to markets, regional comparative advantage and business competitiveness, leading to increased economic activity and the creation of new jobs, along with improved standards of living and working conditions.

The Association will:

- Undertake regional planning that takes into account the unique characteristics, opportunities and challenges of a region, and aligns with the plans of all levels of government (pertaining to the region), and tailors responses accordingly.
- Engage with stakeholders to identify initiatives that will deliver economic growth that makes a lasting difference to their communities.
- Build partnerships, harness local leadership, marshal support, and encourage cooperation between stakeholders to drive regional priorities.

Where funding to deliver specific projects or services has been obtained, the Association will deliver these projects or services in accordance with funding agreements and in accordance with the overarching objective of driving regional economic development.~~3.1 Where unding to deliver specific projects or servicesTo promote and support the policies, strategic plans and priorities of the Commonwealth, the State Government and the Local Government Bodies that facilitate community economic development outcomes in the Region.~~

~~3.2 To provide services and undertake projects that facilitate community economic development outcomes in the Region that are consistent with the policies, strategic plans and priorities of the Commonwealth, the State Government and the Local Government Bodies.~~

## 4. POWERS OF THE ASSOCIATION

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### 4.1 Powers

~~Subject to sub rule 4.2,~~T ~~t~~he Association has all the powers conferred by section 25 of the Act and without limiting the generality thereof has the following specific powers:

4.1.1 to apply for and obtain grants or other assistance directly relevant to its objects;

4.1.2 to acquire, hold, deal with and dispose of any personal property directly relevant to its objects;

4.1.3 to employ and to remunerate such servants, agents, employees, consultants and contractors directly relevant to its objects other than Members;

4.1.4 to enter into contracts, agreements, arrangements and understandings directly relevant to its objects;

4.1.5 to invest any moneys not immediately required for the purposes directly relevant to its objects in such manner as the Board thinks fit; and

4.1.6 to do all other things necessary or considered desirable by the Board directly relevant to its objects for the purpose of achieving or carrying into effect any of the foregoing.

~~4.2 Limitations on Powers~~

~~Subject to prior consultation with, and agreement of, the Commonwealth Minister, the State Minister and the Local Government Bodies the Association has the following specific powers:~~

~~4.2.1 to borrow money directly relevant to its objects upon such terms and conditions as to repayment, interest and security or otherwise as the Board thinks fit;~~

~~4.2.2 acquire an interest in, hold, deal with and dispose of real property directly relevant to its objects;~~

~~4.2.3 appoint agents to transact any business of the Association on its behalf; and~~

~~4.2.4 to remunerate Members for sitting fees.~~

**5. MEMBERSHIP OF THE ASSOCIATION**

5.1 There must be no ordinary members of the Association.

5.2 The Association must only have Members.

5.3 All Members are members of the Board.

5.4 A Member must be a natural person.

5.5 All Members must be persons legally able to hold the position of a director of an incorporated company.

5.6 A current employee or contractor of the Association cannot be a Member.

5.7 A right, privilege or obligation which a person has by reason of being a Member:

5.7.1 is not capable of being transferred or transmitted to another person; and

5.7.2 terminates on cessation of the person's membership.

**6. REGISTER OF MEMBERS**

6.1 A register of Members must be kept by the Association and must contain:

6.1.1 the full name of the Member;

6.1.2 the postal or residential address of the Member;

6.1.3 the date of admission as a Member;

6.1.4 if applicable, the date of death or time of resignation of the Member;

6.1.5 if applicable, the date and details about the termination or reinstatement of membership; and

6.1.6 any other particulars the Board decides.

6.2 The register must be open for inspection by Members at all reasonable times.

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## 7. THE BOARD

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### 7.1 General

7.1.1 The affairs of the Association must be managed and controlled by a Board which in addition to any powers and authorities conferred by these rules may exercise all such powers and do all such things as are within the objects of the Association.

7.1.2 The Board has the sole management and control of the funds and other property of the Association. ~~which functions and duties may not be delegated except with the joint approval of the Commonwealth Minister, the State Minister and the Local Government Bodies.~~

7.1.3 An act or decision of the Board is not invalid by reason only of a vacancy in its membership or a deficiency in the appointment of a Member.

7.1.4 The Board must appoint a public officer as required by the Act.

### 7.2 Composition of Board

The Board must at all times include all Members and be comprised of:

7.2.1 a Chair and a Deputy Chair who are Members;

7.2.2 a Secretary and a Treasurer appointed by the Board and who are Members;

7.2.3 a minimum of four other Members; and

7.2.4 a maximum of eleven other Members.

7.3 ~~First Members~~

~~7.3.1 Subject to sub rule 7.5, the first Members, from the date of registration of these rules, are the following persons for the term indicated:~~

~~(c) Mr Alan Jamieson (term ends 20 November 2011);~~

~~(d) Ms Samantha Materne (term ends 20 November 2011);~~

~~(e) Ms Victoria McClurg (term ends 20 November 2011);~~

~~(f) Ms Natasha Mooney (term ends 20 November 2013);~~

~~(g) Mr Wayne Perry (term ends 20 November 2013);~~

~~(h) Ms Lynette Seccafien (term ends 20 November 2011);~~

~~(i) Ms Rhia Vines (term ends 20 November 2013);~~

~~(j) Mr Brian Carr (term ends 20 November 2013);~~

~~(k) Mr Stephen Kerrigan (term ends 20 November 2011); (j) Mr Charles Mansueto (term ends 20 November 2013); and (k) Mr David Morcom (term ends 20 November 2011).~~

~~7.3.2 Subject to sub rule 7.5, the first Chair and Deputy Chair, from the date of registration of these rules, are the following persons for the term indicated:~~

~~(m) Chair Mr Hugh (Ian) O'Loan (term ends 20 November 2013); and~~

~~(n) Deputy Chair Mr Alex Zimmermann (term ends 20 November 2013).~~

7.4 ~~Subsequen~~Member~~t~~ **Appointments**

7.4.1 Nominations of candidates for appointment as ~~subsequent appointment as a Member, the~~ Chair or ~~the~~ Deputy Chair of the Association~~, when such positions become vacant~~ will be sought by ~~a publicly advertised~~ an expression of interest (EOI) process undertaken jointly by the Commonwealth, the State Government, the LGASA ~~and~~ (in consultation with the Local Government Bodies).

7.4.2 ~~After the expression of interest process referred to in sub rule 7.4.1,~~ T~~t~~he Commonwealth Minister, the State Minister and the President of the LGASA ~~may~~ will jointly ~~nominate~~ nominate ~~persons as Members,~~ the Chair and~~/or~~ Deputy Chair as Association Members by written instrument, while each Minister remains an operational funding partner of the Association or, in the case of the President of LGASA, while Local Government Bodies remain funding partners.~~and their respective terms.~~

7.4.3 Upon receipt by the Board of notice of a joint nomination ~~under sub rules 7.4.2, or 7.4.5 that nominee is deemed to be a Member,~~ by the Commonwealth, the State Minister and the President of the LGSSA, and following acceptance from the nominee, that nominee is deemed to be the Chair or the Deputy Chair (as the case may be) for the term specified in the notice.

7.4.4 ~~A retiring Member, Chair or Deputy Chair, is eligible for reappointment.~~Nomination of candidates for appointment as

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members other than Chair and Deputy Chair will be sought by an open and transparent expression of interest (EOI) process implemented by the Board.

7.4.5 The Chair and Deputy Chair will appoint Association members (other than Chair and Deputy Chair) by written instrument after consultation with the Commonwealth Minister, State Minister and President of LGASA.

7.4.6 The Chair and Deputy Chair are, subject to these Rules, to hold office for the term jointly specified in their nomination notice. Members other than the Chair and Deputy Chair, subject to these Rules, will hold office for a period up to three years as specified in the appointment instrument.

7.4.7 For the purposes of this clause 7.4.2 members of the Association who were jointly appointed by the Commonwealth Minister, the State Minister and LGASA prior to 1 April 2015 will be taken to have been appointed in accordance with this clause 7.4.

~~Notwithstanding this rule, in the event of a vacancy under sub rules 7.5.2 and 7.5.3, the Board may appoint a person to fill a casual vacancy for the balance of the term of that vacancy or until such time as the Commonwealth Minister, the State Minister and the President of the LGASA give notice jointly nominating a person to fill that vacancy for the balance of the term of that vacancy.~~

7.4.8 A retiring Member, Chair or Deputy Chair, is eligible for reappointment.

7.4.9 In the event of a vacancy under sub-rules 7.5.1 or 7.5.2 the Chair and Deputy Chair, in consultation with the Board, may by instrument in writing appoint a person to fill a casual vacancy for the balance of the term of that vacancy or such other term as specified in the Notice of Appointment.

7.5 **Member Vacancies**

The position of a Member become vacant:

7.5.1 ~~(a)~~ on the expiration of the term of appointment, and

(b) if a subsequent appointment has not been made under the process set out in sub rule 7.4 by that date, the day that such subsequent appointment is made (provided this date is no later than 6 months after the day the term was due to expire), or

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~~or~~

7.5.2 if a Member:

(a) dies;

(b) is disqualified from being a Member by the Act;

(c) is permanently incapacitated by ill health;

(d) is absent without apology from more than three meetings in a financial year;

(e) is absent for more than three consecutive meetings without prior leave of the Board;

(f) becomes an employee or contractor of the Association, or resigns by written notice addressed to the Chair, or, if the Member is the Chair, to the Deputy Chair and that resignation is accepted by resolution of the Board;

(g) is the subject of a special resolution passed by a general meeting of the Board terminating his or her appointment as a Member~~, provided such a vacancy does not become effective until approved by the Commonwealth Minister, the State Minister and the President of the LGASA; or~~

~~(g)~~(h) is the subject of a special resolution passed by a general meeting of the Board terminating his or her appointment as Chair or Deputy Chair, provided such a vacancy does not become effective until approved by the Commonwealth Minister in consultation with the State Minister and the President of the LGASA.

7.5.3 ~~upon receipt by the Board of a joint notice from the Commonwealth Minister, the State Minister and the President of the LGASA to the Board that that Member's appointment is terminated.~~Termination of membership of a Chair or Deputy Chair will not be effective until there is joint agreement of the Commonwealth Minister, the State Minister and the President of the LGASA or upon receipt by the Board of a joint notice from the Commonwealth Minister, the State Minister and the President of the LGASA to the Board that the Member's appointment is terminated.

7.5.4 The Commonwealth Department, State Government and LGASA are to be consulted before a member is removed or suspended, in line with the requirement to consult on appointment of members.

7.5.5 The Association must notify the Commonwealth Department in the event of a casual vacancy. Notwithstanding Rule 7.4.10], the Commonwealth Minister, State Minister and LGASA may, at any time, jointly nominate a member for a vacant Chair or Deputy Chair position on the Board by notifying the Chair (in the case of a vacant Deputy Chair position) or the secretary (in the case of a vacant Chair position), in writing, of the appointee and the expiration of the appointee's term.

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7.5.6 The Association must notify the Commonwealth Department in writing of the filling of a casual vacancy pursuant to this constitution, and of the name and term of the appointment.

7.5.7 The Board may grant a Board member leave of absence from the Board for a period not exceeding three months.

7.6 **Delegation by Board to Sub-Committees**

7.6.1 Except as otherwise provided by these rules, the Board may, by instrument in writing, delegate to one or more sub-committees (consisting of such Member/s as the Board thinks fit) the exercise of such of the functions of the Board as are specified in the instrument, other than:

(a) this power of delegation; and

(b) a function which is a duty imposed on the Board by the Act, these rules, or by any other law.

7.6.2 A function, the exercise of which has been delegated to a sub-committee under this rule may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.

7.6.3 A delegation under this rule may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.

7.6.4 Despite any delegation under this rule, the Board may continue to exercise any function delegated.

7.6.5 Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this rule has the same force and effect as it would have if it had been done or suffered by the Board.

7.6.6 The Board may, by instrument in writing, revoke wholly or in part any delegation under this rule.

7.6.7 A sub-committee may meet and adjourn, as it thinks proper.

7.6.8 A person nominated by the sub-committee, must keep proper minutes of all proceedings of meetings in accordance with agreed procedure.

## 8. CHAIR AND DEPUTY CHAIR

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8.1 The Chair and Deputy Chair must be Members whose positions are jointly nominated by the Commonwealth Minister, the State Minister and the President of the LGASA.

8.2 Subject to this rule, the Chair must preside at all meetings.

8.3 Subject to this rule, in the absence of the Chair at a meeting the Deputy Chair must preside at that meeting.

8.4 In the event of the absence from a meeting of both the Chair and the Deputy Chair, a Member elected by the other Members present at the meeting must preside at that meeting.

## 9. PROCEEDINGS OF MEETINGS OF THE BOARD

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9.1 The Board must hold a general meeting, for the dispatch of business, at least six times each calendar year at times reasonably spaced throughout the entire calendar year.

9.2 At least 14 days' notice of any general meeting must be given to Members. The notice must set out where and when the meeting will be held and particulars of the nature and order of the business to be transacted at the meeting.

9.3 A special meeting may be called by the Chair with at least 48 hours' notice.

9.4 A special meeting must be called by the Secretary upon:

9.4.1 a resolution of the Board to that effect; or

9.4.2 receipt by the Secretary of a petition, signed by a majority of Members calling for a special meeting.

9.5 The Board may invite such persons to attend its meetings as it may from time to time decide.

9.6 Meetings must not be open to the public.

9.7 The quorum for a meeting must be 50% of the number of Members, ignoring any fraction resulting from the calculation, plus one.

9.8 If a quorum is not reached, the meeting must be suspended until a quorum is present, however if a quorum is not present within half an hour of the scheduled time for the beginning of the meeting, the meeting is cancelled.

9.9 Subject to sub rule 9.10 each Member present at a meeting has one deliberative vote.

9.10 Questions arising at any meeting must be decided by a majority of votes and in the event of an equality of votes the Chair has a casting vote in addition to a deliberative vote.

9.11 A conference by telephone or other electronic means between the Members will, for the purposes of this rule, be taken to be a meeting of the Board at which the participating Members are present if:

9.11.1 notice of the conference is given to all Members in the manner determined by the Board for the purpose; and

9.11.2 each participating Member is capable of communicating with every other participating Member during the conference.

9.12 A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if:

9.12.1 notice of the proposed resolution is given to all Members in accordance with procedures determined by the Board; and

9.12.2 a majority of the Members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.

9.13 A resolution mentioned in sub rule 9.12 may consist of several documents in like form, each signed by one or more Members.

## 10. MINUTES OF MEETINGS

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10.1 The Secretary, or person nominated by the Board, must keep proper minutes of all proceedings of meetings in accordance with agreed procedure.

10.2 The minutes kept pursuant to this rule must:

10.2.1 be confirmed by the Members at a subsequent meeting; and

10.2.2 be signed by the presiding Member of the meeting at which the proceedings took place or by the Chair at the next succeeding meeting at which the minutes are confirmed.

10.3 A copy of the minutes kept pursuant to this rule must~~, within 14 days, be provided to all Members.~~ prior to the next scheduled meeting, be provided to all Members.

10.4 When minutes are entered and signed they are, until the contrary is proved, evidence that the meeting was convened and duly held, that all proceedings held at the meeting are be deemed to have been duly held and that all appointments made at a meeting are be deemed to be valid.

## 11. DISCLOSURE OF INTEREST

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11.1 A Member who has a direct or indirect pecuniary or personal interest in a matter under consideration by the Board must as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the Board and not take part in deliberations or decisions of the Board on the matter.

11.2 A Member having a direct or indirect pecuniary interest in a contract or proposed contract with the Association must;

11.2.1 disclose the nature and extent of that interest to the Board as required by section 31 of the Act ,and must not vote with respect to that contract or proposed contract; and

11.2.2 must disclose in writing, the nature and extent of his or her interest in the contract or proposed contract to the Board within 14 days of the interest arising at the meeting of the Board.

11.3 A Member will not be taken to have an interest in a matter for the purposes of this rule by reason only of the fact that the Member has an interest in the matter that is shared in common with the public.

11.4 A disclosure under this rule must be recorded in the minutes of the meeting at which the matter, contract or proposed contract is under discussion.

## 12. POLICIES

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The Board may adopt Polices, or amend existing Policies, consistent with the objects of, and related to the affairs of, the Association by a simple majority vote at any meeting of the Board.

## 13. COMMON SEAL AND EXECUTION OF DOCUMENTS

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13.1 The Association must have a common seal upon which its corporate name must appear in legible characters.

13.2 The seal must not be used without the express authorisation of the Board and every use of the seal must be recorded in the minute book of the Association.

13.3 The common seal of the Association must not be affixed to a document except with the express authorisation of the Board ~~and the affixing of the seal must be attested by the signatures of two Members~~.

13.4 The Board may, by instrument under its common seal, authorise a Member, an employee of the Association (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Association subject to conditions and limitations (if any) specified in the instrument of authority.

13.5 Without limiting sub rule 13.4, an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Association.

13.6 A document is duly executed by the Association if:

13.6.1 the common seal of the Association is affixed to the document in accordance with this rule; or

13.6.2 the document is signed on behalf of the Association by a person or persons in accordance with an authority conferred under this rule.

## 14. FINANCIAL MATTERS

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14.1 **General**

The Board must authorise in writing those Members or persons who may allocate monies on behalf of the Board and set monetary limits on a per allocation and aggregate basis for those allocations.

14.2 **Treasurer**

It is the duty of the Treasurer:

14.2.1 that all money due to the Association is collected and received and that all payments authorised by the Association are made; and

14.2.2 that correct books and accounts are kept showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association.

14.3 **Finance Sub Committee**

14.3.1 The Board must appoint a Finance Sub Committee comprising the Chair, the Treasurer and one other Member.

14.3.2 The role of the Finance Sub Committee includes oversight of the financial management of the Association.

14.4 **Financial Reporting**

The Association must keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of Association in accordance with the Act.

14.5 **Appointment of Auditor**

14.5.1 The Board must annually appoint an auditor for a financial year.

14.5.2 The auditor is eligible for re-appointment.

## 15. PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS

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15.1 The income and capital of the Association must be applied exclusively to the promotion of its objects and no portion may be paid or distributed directly or indirectly to Members or their associates except as honoraria (see Clause 15.2) and reimbursement of expenses reasonably incurred on behalf of the Association.

15.2 ~~The Board must ensure that reimbursement of out-of-pocket expenses of Members and allowances for any Member falls within the levels approved by the Commonwealth Minister, the State Minister and the Local Government Bodies from time to time.~~Subject to a funding partners conditions of funding, the Board, may at its discretion, approve and pay honoraria as it shall think fit.

## 16. ALTERATION TO THE RULES

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16.1 These rules may only be altered (including an alteration to the Association's name) by special resolution of the Members. This includes rescission or replacement by substitute rules.

16.2 The Chair must give all Members at least 21 days' notice, in writing, of any proposed alteration of the rules before the proposed alteration is initially considered by the Board.

16.3 ~~The Board must give notice in writing to the Commonwealth Minister, the State Minister and the Local Government Bodies at least 21 days before voting on a special resolution to alter the rules and must give due consideration to the views of the Commonwealth Minister, the State Minister and the Local Government Bodies on the proposed alteration before voting on the special resolution.~~ The Chair should consult with, and give due consideration to the views of, the Commonwealth, State and Local Governments on any proposed significant changes to their constitution.

16.4 ~~Any proposed alterations created under this rule require the approval of the Commonwealth Minister, the State Minister and the Local Government Bodies before coming into effect.~~

~~16.5 The alteration must be registered with the Office of Consumer and Business Affairs, Corporate Affairs and Compliance Branch, as required by the Act.~~ The

alteration must be registered with the Office of Consumer and Business Affairs, Corporate Affairs and Compliance Branch, as required by the Act.

16.~~5~~6 The registered rules bind the Association and every Member to the same extent as if they have respectively signed and sealed them and agreed to be bound by all of the provisions thereof.

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## 17. DISPUTES AND MEDIATION

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17.1 The grievance procedure set out in this rule applies to disputes under these rules between:

17.1.1 a Member and another Member; or

17.1.2 a Member and the Association.

17.2 The parties to the dispute must meet and discuss the matter in dispute and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.

17.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 28 days, hold a meeting in the presence of a mediator.

17.3.1 The mediator must be:

(a) a person chosen by agreement between the parties; or

(b) in the absence of agreement:

(i) in the case of a dispute between a Member and another Member, a person appointed by the Board;

(ii) in the case of a dispute between a Member and the Association, a person appointed by the Board ,who is a mediator appointed to, or employed with, a not for profit organisation.

17.3.2 A Member can be a mediator.

17.3.3 The mediator cannot be a Member who is a party to the dispute.

17.3.4 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

17.4 The mediator, in conducting the mediation, must:

17.4.1 give the parties to the mediation process every opportunity to be heard;

17.4.2 allow due consideration by all parties of any written statement submitted by any party; and

17.4.3 ensure that rules of natural justice are observed throughout the mediation process.

17.5 The mediator must not determine the dispute.

17.6 The mediation must be confidential and without prejudice.

17.7 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

17.8 The Association must pay all reasonable costs and expenses of the mediator.

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## 18. WINDING UP AND AMALGAMATION

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18.1 Subject to sub rule 18.2, the Association may be wound up or amalgamate with another incorporated association in the manner provided for in the Act.

18.2 Except for the amalgamation with other incorporated associations contemplated by the 2009 Regional Development Australia Program for the Region, the Board must seek the prior approval of the Commonwealth Minister, the State Minister and the Local Government Bodies before acting to wind up or to amalgamate with another incorporated association.

18.3 If a third party or the Commission takes any action under Part 5 of the Act, the Board must immediately notify the Commonwealth Minister, the State Minister and the Local Government Bodies.

## 19. APPLICATION OF SURPLUS ASSETS

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19.1 Subject to section 43 of the Act, surplus assets must be distributed to an association approved ~~by the Commonwealth Minister, the State Minister and the Local Government Bodies~~ by the Board and the Local Government Bodies as being an association the purpose or purposes of which are consistent with the purpose or purposes of the Regional Development Australia Program or any program substituted therefore.

19.2 If there is no distribution under sub rule 19.1, the Commission or any person making an application to the Supreme Court under subsection 43(3) of the Act must take into account the terms of any Funding Agreements in force at the time of the winding up.

19.3 A special resolution under subsection 43(2)(b) of the Act must be consistent with all Funding Agreements in force at the time that the Association is wound up.

## 20. CIRCUMSTANCES NOT PROVIDED FOR

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If any circumstance arises to which these rules are silent, incapable of taking effect or being implemented according to its strict provisions, the Board has the power to determine what action may be taken to ensure the effective administration and objectives of the Board, provided that such action will be determined at a meeting of the Board.

**Attachment 2**
to report 17.2
dated 11 May 2015

**RDA Barossa Proposed Changes to the Constitution**

# Memorandum to Councils

Re: Amendments to Constitution.

Substantive Changes:

**3 Objects.**

The Objects of the Association are restated to reflect a more singular focus on regional economic development. As in practice this has always been the focus of RDA Barossa activity (as generally in South Australia) this recasting of the Objects is aligned with the Boards current focus. The integrated draft which was proposed and contained a number of inputs from various people included an additional "Object" of attracting additional Programs. This, in my view is not an object of the Association but rather a "Power" and was already included under "Powers".

**7.4 Subsequent Appointments:**

The second substantive change proposes a new scheme for appointment of Board members other than Chair or Deputy Chair. The Chair and Deputy Chair continue to be appointed by the Commonwealth Government, after consultation with State Government and LGA. The balance of the Board is appointed by the Chair and Deputy Chair subject to approval by the Commonwealth Government. The appointments continue to be subject to an EOI process lodged with the Commonwealth Government and forwarded to the relevant Chair and Deputy Chairs.

The term of Board members has also been reduced from 4 years to 3 years.

**16. Alteration to the Rules.**

The third substantive amendment relates to the Alteration to the Rules. Currently it requires a complex set of approvals of all levels of government. The proposed new rule requires that the Chair should consult with and give due consideration to the Commonwealth State and Local governments on any proposed significant changes to the constitution. This would seem to be a more flexible arrangement.

Other changes:

2.4 changes to the description of Commonwealth Minister to include parliamentary secretary with responsibility for Regional Development

5. Removal of Clause 5 which dealt with ability to borrow money acquire property and appoint agents etc. This is probably not a great loss in practical terms given the parameters of RDA operations.

15 Some changes to the wording of this Clause (formerly Clause 22) and includes amendments to payment of Board Expenses, but is expansive rather than restrictive in this regard.

There were a couple of references to the Better Practice Guide suggested by contributors to the amendments but my view is that is not appropriate to the Constitution but rather the funding agreements. The Better Practice Guide is an RDA "Manual" which could change name or structure at any time.

Other changes are largely consequential or in expression – eg replacing references to "The Department" with references to the Commonwealth.

# RULES OF
# REGIONAL DEVELOPMENT AUSTRALIA BAROSSA
# INCORPORATED

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## 1. ESTABLISHMENT AND NAME

1.1 This document establishes an association.

1.2 The name of the association is **"Regional Development Australia Barossa Incorporated"** referred to herein as the **"Association"**.

## 2. DEFINITIONS

Unless a contrary intention is evident, the following definitions apply to this document and all other Association documents and Policies:

2.1 **"Act"** means the *Associations Incorporation Act 1985*;

2.2 **"Board"** means the board of management of the Association established under these rules consisting of all the Members;

2.3 **"Chair"** means the chairperson of the Association holding office according to these rules;

2.4 **"Commonwealth Minister"** means the Commonwealth Government Minister or Parliamentary Secretary having responsibility for matters related to Regional Development Australia (RDA).

2.5 **"Commonwealth"** means Commonwealth of Australia;

2.6 **"Deputy Chair"** means the deputy chairperson of the Association holding office according to these rules;

2.7 **"Funding Agreement"** means any agreement of the Commonwealth, the State Minister and/or the Local Government Bodies with the Association that provides funds to the Association directly related to the Regional Development Australia Program;

2.8 **"Funding Partner"** means those bodies providing funding to the Association directly related to the Regional Development Australia Programme

2.9 **"LGASA"** means the Local Government Association of South Australia, a body corporate pursuant to the *Local Government Act 1999*, or its successors or assigns;

2.10 **"Local Government Bodies"** means councils constituted under the South Australian *Local Government Act 1999* operating in the Region and which have current Funding Agreements with the Association and **"Local Government Body"** means any of the Local Government Bodies operating in the Region which has a current Funding Agreement with the Association;

2.11 **"Member"** means any person deemed to be a member of the Board under these rules;

2.12 **"month"** means a calendar month;

2.13 **"Policy"** means a policy of the Association approved by the Board;

2.14 **"President of the LGASA"** means the person holding the office of President under the Constitution of the LGASA pursuant to Schedule 1 of the *Local Government Act 1999*;

2.15 **"Region"** means Barossa Region, the geographic region established by the State Government and is comprised of the sum of the Local Government

Bodies' geographic areas of The Barossa Council, Town of Gawler, Light Regional Council and District Council of Mallala or such other areas as the State Government specifies from time to time;

2.16 **"Regional Development Australia Program"** means the program established jointly by the Commonwealth, the State Government, and the LGASA to develop and strengthen the regional communities of South Australia;

2.17 **"Secretary"** means the person holding office under these rules as secretary of the Association;

2.18 **"special resolution"** means a special resolution defined in the Act;

2.19 **"State Government"** means the Government of South Australia;

2.20 **"State Minister"** means the South Australian Minister for Regional Development, a body corporate pursuant to the *Administrative Arrangements Act 1994*; and

2.21 **"Treasurer"** means the treasurer of the Association holding office according to these rules.

## 3. OBJECTS OF THE ASSOCIATION

The objects of the Association are:

Regional Development Australia is a national network of committees fostering regional economic development. The Association will work with all three tiers of government, regional business and the wider community to boost the economic capability and performance of their region.

The Association will facilitate policies, programmes and projects designed to strengthen human capital, productivity, infrastructure, access to markets, regional comparative advantage and business competitiveness, leading to increased economic activity and the creation of new jobs, along with improved standards of living and working conditions.

The Association will:

- Undertake regional planning that takes into account the unique characteristics, opportunities and challenges of a region, and aligns with the plans of all levels of government (pertaining to the region), and tailors responses accordingly.
- Engage with stakeholders to identify initiatives that will deliver economic growth that makes a lasting difference to their communities.
- Build partnerships, harness local leadership, marshal support, and encourage cooperation between stakeholders to drive regional priorities.

## 4. POWERS OF THE ASSOCIATION

### 4.1 Powers

Subject to sub rule 4.2, the Association has all the powers conferred by section 25 of the Act and without limiting the generality thereof has the following specific powers:

4.1.1 to apply for and obtain grants or other assistance directly relevant to its objects;

4.1.2 to acquire, hold, deal with and dispose of any personal property directly relevant to its objects;

4.1.3 to employ and to remunerate such servants, agents, employees, consultants and contractors directly relevant to its objects other than Members;

4.1.4 to enter into contracts, agreements, arrangements and understandings directly relevant to its objects;

4.1.5 to invest any moneys not immediately required for the purposes directly relevant to its objects in such manner as the Board thinks fit; and

4.1.6 to do all other things necessary or considered desirable by the Board directly relevant to its objects for the purpose of achieving or carrying into effect any of the foregoing.

## 5. MEMBERSHIP OF THE ASSOCIATION

5.1 There must be no ordinary members of the Association.

5.2 The Association must only have Members.

5.3 All Members are members of the Board.

5.4 A Member must be a natural person.

5.5 All Members must be persons legally able to hold the position of a director of an incorporated company.

5.6 A current employee or contractor of the Association cannot be a Member.

5.7 A right, privilege or obligation which a person has by reason of being a Member:

5.7.1 is not capable of being transferred or transmitted to another person; and

5.7.2 terminates on cessation of the person's membership.

## 6. REGISTER OF MEMBERS

6.1 A register of Members must be kept by the Association and must contain:

6.1.1 the full name of the Member;

6.1.2 the postal or residential address of the Member;

6.1.3 the date of admission as a Member;

6.1.4 if applicable, the date of death or time of resignation of the Member;

6.1.5 if applicable, the date and details about the termination or reinstatement of membership; and

6.1.6 any other particulars the Board decides.

6.2 The register must be open for inspection by Members at all reasonable times.

## 7. THE BOARD

### 7.1 General

7.1.1 The affairs of the Association must be managed and controlled by a Board which in addition to any powers and authorities conferred by these rules may exercise all such powers and do all such things as are within the objects of the Association.

7.1.2 The Board has the sole management and control of the funds and other property of the Association

7.1.3 An act or decision of the Board is not invalid by reason only of a vacancy in its membership or a deficiency in the appointment of a Member.

7.1.4 The Board must appoint a public officer as required by the Act.

### 7.2 Composition of Board

The Board must at all times include all Members and be comprised of:

7.2.1 a Chair and a Deputy Chair who are Members;

7.2.2 a Secretary and a Treasurer appointed by the Board and who are Members;

7.2.3 a minimum of four other Members; and

7.2.4 a maximum of eleven other Members

### 7.3 First Members

7.3.1 Subject to sub rule 7.5, the first Members, from the date of registration of these rules, are the following persons for the term indicated:

(a) Mr Alan Jamieson (term ends 20 November 2011)

(b) Ms Samantha Materne (term ends 20 November 2011)

(c) Ms Victoria McClurg (term ends 20 November 2011)

(d) Ms Natasha Mooney (term ends 20 November 2013)

(e) Mr Wayne Perry (term ends 20 November 2013)

(f) Ms Lynette Seccafien (term ends 20 November 2011)

(g) Ms Rhia Vines (term ends 20 November 2013)

(h) Mr Brian Carr (term ends 20 November 2013)

(i) Mr Stephen Kerrigan (term ends 20 November 2011)

(j) Mr Charles Mansueto (term ends 20 November 2013); and

(k) Mr David Morcom (term ends 20 November 2011)

7.3.2 Subject to sub rule 7.5, the first Chair and Deputy Chair, from the date of registration of these rules, are the following persons for the term indicated:

(a) Chair Mr Hugh (Ian) O'Loan (term ends 20 November 2013); and

(b) Deputy Chair Mr Alex Zimmermann (term ends 20 November 2013).

7.4 **Subsequent Appointments**

7.4.1 Nomination of candidates for appointment as Chair or Deputy Chair of the Association will be sought by an expression of interest (EOI) process undertaken jointly by the Commonwealth Department, the State Government and the LGASA (in consultation with the Local Government Bodies).

7.4.2 The Commonwealth Minister, the State Minister and the President of LGASA will jointly appoint the Chair and Deputy Chair as Association members by written instrument, while each Minister remains an operational funding partner of the Association or, in the case of the President of LGASA, while Local Government Bodies remain operational funding partners

7.4.3 Upon receipt by the Board of the notice of a joint nomination by the Commonwealth Minister, the State Minister and the President of the LGASA, and following acceptance from the nominee, that nominee is deemed to be the Chair or the Deputy Chair (as the case may be) for the term specified in the notice.

7.4.4 Nomination of candidates for appointment as members other than Chair and Deputy Chair will be sought by an open and transparent expression of interest (EOI) process implemented by the Board.

7.4.5 The Chair and Deputy Chair will appoint Association members (other than Chair and Deputy Chair) by written instrument after consultation with the Commonwealth Minister, State Minister and President of LGASA.

7.4.6 The Chair and Deputy Chair are, subject to these Rules, to hold office for the term jointly specified in their nomination notice. Members other than the Chair and Deputy Chair, subject to these Rules, will hold office for a period up to three years as specified in the appointment instrument.

7.4.7 For the purposes of this clause 7.4.2 members of the Association who were jointly appointed by the Commonwealth Minister, the State Minister and LGASA prior to 1 April 2015 will be taken to have been appointed in accordance with this clause 7.4.

7.4.8 Each member of the Association is, subject to this constitution, to hold office for the term specified in the relevant appointment instrument.

7.4.9 A retiring Member, Chair or Deputy Chair, is eligible for reappointment.

7.4.10 In the event of a vacancy under sub-rules 7.5.1 or 7.5.2 the Chair and Deputy Chair, in consultation with the Board, may by instrument in writing appoint a person to fill a casual vacancy for the balance of the term of that vacancy or such other term as specified in the Notice of Appointment

7.5 **Member Vacancies**

The position of a Member become vacant:

7.5.1 (a) on the expiration of the term of appointment, and

(c) if a subsequent appointment has not been made under the process set out in sub rule 7.4 by that date, the day that such subsequent appointment is made (provided this date is no later than 6 months after the day the term was due to expire), or

7.5.2 if a Member:

(a) dies;

(b) is disqualified from being a Member by the Act;

(c) is permanently incapacitated by ill health;

(d) is absent without apology from more than three meetings in a financial year;

(e) is absent for more than three consecutive meetings without prior leave of the Board;

(f) becomes an employee or contractor of the Association, or resigns by written notice addressed to the Chair, or, if the Member is the Chair, to the Deputy Chair and that resignation is accepted by resolution of the Board;

(g) is the subject of a special resolution passed by a general meeting of the Board terminating his or her appointment as a Member.

(h) is the subject of a special resolution passed by a general meeting of the Board terminating his or her appointment as Chair or Deputy Chair, provided such a vacancy does not become effective until approved by the Commonwealth Minister in consultation with the State Minister and the President of the LGASA;

7.5.3 Termination of membership of a Chair or Deputy Chair will not be effective until there is joint agreement of the Commonwealth Minister, the State Minister and the President of the LGASA or upon receipt by the Board of a joint notice from the Commonwealth Minister, the State Minister and the President of the LGASA to the Board that that Member's appointment is terminated.

7.5.4 The Commonwealth Department, State Government and LGASA are to be consulted before a member is removed or suspended, in line with the requirement to consult on appointment of members.

7.5.5 The Association must notify the Commonwealth Department in the event of a casual vacancy. Notwithstanding Rule 7.4.10], the Commonwealth Minister, State Minister and LGASA may, at any time, jointly nominate a member for a vacant Chair or Deputy Chair position on the Board by notifying the Chair (in the case of a vacant Deputy Chair position) or the secretary (in the case of a vacant Chair position), in writing, of the appointee and the expiration of the appointee's term.

7.5.6 The Association must notify the Commonwealth Department in writing of the filling of a casual vacancy pursuant to this constitution, and of the name and term of the appointment

7.5.7 The Board may grant a Board member leave of absence from the Board for a period not exceeding three months

## 7.6 Delegation by Board to Sub-Committees

7.6.1 Except as otherwise provided by these rules, the Board may, by instrument in writing, delegate to one or more sub-committees (consisting of such Member/s as the Board thinks fit) the exercise of such of the functions of the Board as are specified in the instrument, other than:

(a) this power of delegation; and

(b) a function which is a duty imposed on the Board by the Act, these rules, or by any other law.

7.6.2 A function, the exercise of which has been delegated to a sub-committee under this rule may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.

7.6.3 A delegation under this rule may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.

7.6.4 Despite any delegation under this rule, the Board may continue to exercise any function delegated.

7.6.5 Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this rule has the same force and effect as it would have if it had been done or suffered by the Board.

7.6.6 The Board may, by instrument in writing, revoke wholly or in part any delegation under this rule.

7.6.7 A sub-committee may meet and adjourn, as it thinks proper.

7.6.8 A person nominated by the sub-committee, must keep proper minutes of all proceedings of meetings in accordance with agreed procedure.

## 8. CHAIR AND DEPUTY CHAIR

8.1 The Chair and Deputy Chair must be Members whose positions are jointly nominated by the Commonwealth Minister, the State Minister and the President of the LGASA.

8.2 Subject to this rule, the Chair must preside at all meetings.

8.3 Subject to this rule, in the absence of the Chair at a meeting the Deputy Chair must preside at that meeting.

8.4 In the event of the absence from a meeting of both the Chair and the Deputy Chair, a Member elected by the other Members present at the meeting must preside at that meeting.

## 9. PROCEEDINGS OF MEETINGS OF THE BOARD

9.1 The Board must hold a general meeting, for the dispatch of business, at least six times each calendar year at times reasonably spaced throughout the entire calendar year;

9.2 At least 14 days' notice of any general meeting must be given to Members. The notice must set out where and when the meeting will be held and particulars of the nature and order of the business to be transacted at the meeting.

9.3 A special meeting may be called by the Chair with at least 48 hours' notice.

9.4 A special meeting must be called by the Secretary upon:

9.4.1 a resolution of the Board to that effect; or

9.4.2 receipt by the Secretary of a petition, signed by a majority of Members calling for a special meeting.

9.5 The Board may invite such persons to attend its meetings as it may from time to time decide.

9.6 Meetings must not be open to the public.

9.7 The quorum for a meeting must be 50% of the number of Members, ignoring any fraction resulting from the calculation, plus one.

9.8 If a quorum is not reached, the meeting must be suspended until a quorum is present, however if a quorum is not present within half an hour of the scheduled time for the beginning of the meeting, the meeting is cancelled.

9.9 Subject to sub rule 9.10 each Member present at a meeting has one deliberative vote.

9.10 Questions arising at any meeting must be decided by a majority of votes and in the event of an equality of votes the Chair has a casting vote in addition to a deliberative vote.

9.11 A conference by telephone or other electronic means between the Members will, for the purposes of this rule, be taken to be a meeting of the Board at which the participating Members are present if:

9.11.1 notice of the conference is given to all Members in the manner determined by the Board for the purpose; and

9.11.2 each participating Member is capable of communicating with every other participating Member during the conference.

9.12 A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if:

9.12.1 notice of the proposed resolution is given to all Members in accordance with procedures determined by the Board; and

9.12.2 a majority of the Members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.

9.13 A resolution mentioned in sub rule 9.12 may consist of several documents in like form, each signed by one or more Members.

## 10. MINUTES OF MEETINGS

10.1 The Secretary, or person nominated by the Board, must keep proper minutes of all proceedings of meetings in accordance with agreed procedure.

10.2 The minutes kept pursuant to this rule must:

10.2.1 be confirmed by the Members at a subsequent meeting; and

10.2.2 be signed by the presiding Member of the meeting at which the proceedings took place or by the Chair at the next succeeding meeting at which the minutes are confirmed.

10.3 A copy of the minutes kept pursuant to this rule must, prior to the next scheduled meeting, be provided to all Members.

10.4 When minutes are entered and signed they are, until the contrary is proved, evidence that the meeting was convened and duly held, that all proceedings held at the meeting are be deemed to have been duly held and that all appointments made at a meeting are be deemed to be valid.

## 11. DISCLOSURE OF INTEREST

11.1 A Member who has a direct or indirect pecuniary or personal interest in a matter under consideration by the Board must as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the Board and not take part in deliberations or decisions of the Board on the matter.

11.2 A Member having a direct or indirect pecuniary interest in a contract or proposed contract with the Association must;

11.2.1 disclose the nature and extent of that interest to the Board as required by section 31 of the Act ,and must not vote with respect to that contract or proposed contract; and

11.2.2 must disclose in writing, the nature and extent of his or her interest in the contract or proposed contract to the Board within 14 days of the interest arising at the meeting of the Board.

11.3 A Member will not be taken to have an interest in a matter for the purposes of this rule by reason only of the fact that the Member has an interest in the matter that is shared in common with the public.

11.4 A disclosure under this rule must be recorded in the minutes of the meeting at which the matter, contract or proposed contract is under discussion.

## 12. POLICIES

The Board may adopt Polices, or amend existing Policies, consistent with the objects of, and related to the affairs of, the Association by a simple majority vote at any meeting of the Board.

## 13. COMMON SEAL AND EXECUTION OF DOCUMENTS

13.1 The Association must have a common seal upon which its corporate name must appear in legible characters.

13.2 The seal must not be used without the express authorisation of the Board and every use of the seal must be recorded in the minute book of the Association.

13.3 The common seal of the Association must not be affixed to a document except with the express authorisation of the Board

13.4 The Board may, by instrument under its common seal, authorise a Member, an employee of the Association (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Association subject to conditions and limitations (if any) specified in the instrument of authority.

13.5 Without limiting sub rule 13.4, an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Association.

13.6 A document is duly executed by the Association if:

13.6.1 the common seal of the Association is affixed to the document in accordance with this rule; or

13.6.2 the document is signed on behalf of the Association by a person or persons in accordance with an authority conferred under this rule.

## 14. FINANCIAL MATTERS

### 14.1 General

The Board must authorise in writing those Members or persons who may allocate monies on behalf of the Board and set monetary limits on a per allocation and aggregate basis for those allocations.

### 14.2 Treasurer

It is the duty of the Treasurer:

14.2.1 that all money due to the Association is collected and received and that all payments authorised by the Association are made; and

14.2.2 that correct books and accounts are kept showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association.

### 14.3 Finance Sub Committee

14.3.1 The Board must appoint a Finance Sub Committee comprising the Chair, the Treasurer and one other Member.

14.3.2 The role of the Finance Sub Committee includes oversight of the financial management of the Association.

14.4 **Financial Reporting**

The Association must keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of Association in accordance with the Act.

14.5 **Appointment of Auditor**

14.5.1 The Board must annually appoint an auditor for a financial year.

14.5.2 The auditor is eligible for re-appointment.

## 15. PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS

15.1 The income and capital of the Association must be applied exclusively to the promotion of its objects and no portion may be paid or distributed directly or indirectly to Members or their associates except as honoraria (see Clause 15.2) and reimbursement of expenses reasonably incurred on behalf of the Association.

15.2 Subject to a funding provider's conditions of funding, the Board, may at its discretion, approve and pay honoraria as it shall think fit.

## 16. ALTERATION TO THE RULES

16.1 These rules may only be altered (including an alteration to the Association's name) by special resolution of the Members. This includes rescission or replacement by substitute rules.

16.2 The Chair must give all Members at least 21 days' notice, in writing, of any proposed alteration of the rules before the proposed alteration is initially considered by the Board.

16.3 The Chair should consult with, and give due consideration to, the Commonwealth, state and local governments on any proposed significant changes to their constitution"

16.4 The alteration must be registered with the Office of Consumer and Business Affairs, Corporate Affairs and Compliance Branch, as required by the Act.

16.5 The registered rules bind the Association and every Member to the same extent as if they have respectively signed and sealed them and agreed to be bound by all of the provisions thereof.

## 17. DISPUTES AND MEDIATION

17.1 The grievance procedure set out in this rule applies to disputes under these rules between:

17.1.1 a Member and another Member; or

17.1.2 a Member and the Association.

17.2 The parties to the dispute must meet and discuss the matter in dispute and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.

17.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 28 days, hold a meeting in the presence of a mediator.

17.3.1 The mediator must be:

(a) a person chosen by agreement between the parties; or

(b) in the absence of agreement:

(i) in the case of a dispute between a Member and another Member, a person appointed by the Board;

(ii) in the case of a dispute between a Member and the Association, a person appointed by the Board ,who is a mediator appointed to, or employed with, a not for profit organisation.

17.3.2 A Member can be a mediator.

17.3.3 The mediator cannot be a Member who is a party to the dispute.

17.3.4 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

17.4 The mediator, in conducting the mediation, must:

17.4.1 give the parties to the mediation process every opportunity to be heard;

17.4.2 allow due consideration by all parties of any written statement submitted by any party; and

17.4.3 ensure that rules of natural justice are observed throughout the mediation process.

17.5 The mediator must not determine the dispute.

17.6 The mediation must be confidential and without prejudice.

17.7 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

17.8 The Association must pay all reasonable costs and expenses of the mediator.

## 18. WINDING UP AND AMALGAMATION

18.1 Subject to sub rule 18.2, the Association may be wound up or amalgamate with another incorporated association in the manner provided for in the Act.

18.2 Except for the amalgamation with other incorporated associations contemplated by the 2009 Regional Development Australia Program for the Region, the Board must notify the Commonwealth Minister, the State Minister and the Local Government Bodies before acting to wind up or to amalgamate with another incorporated association.

18.3 If a third party or the Commission takes any action under Part 5 of the Act, the Board must immediately notify the Commonwealth Minister, the State Minister and the Local Government Bodies.

## 19. APPLICATION OF SURPLUS ASSETS

19.1 Subject to section 43 of the Act, surplus assets must be distributed to an association approved by the Board and the Local Government Bodies as being an association the purpose or purposes of which are consistent with the purpose or purposes of the Regional Development Australia Program or any program substituted therefore.

19.2 If there is no distribution under sub rule 19.1, the Commission or any person making an application to the Supreme Court under subsection 43(3) of the Act must take into account the terms of any Funding Agreements in force at the time of the winding up.

19.3 A special resolution under subsection 43(2)(b) of the Act must be consistent with all Funding Agreements in force at the time that the Association is wound up.

## 20. CIRCUMSTANCES NOT PROVIDED FOR

If any circumstance arises to which these rules are silent, incapable of taking effect or being implemented according to its strict provisions, the Board has the power to determine what action may be taken to ensure the effective administration and objectives of the Board, provided that such action will be determined at a meeting of the Board.

| | |
|---|---|
| District Council of Mallala | **17.3 Barossa and Districts Housing Association Inc – Lease Agreement Renewal** |
| | **Container No:** **CON12/872**<br>**Document No:** **D15/8691** |
| **Report Date:** **11 May 2015** | **Prepared by:** **General Manager Corporate and Community Services** |

| | |
|---|---|
| **Corporate Objective:** | 1.1. Health and family support services that are accessible and meet the needs of our community. |
| | 5.1 Effective governance, leadership and teamwork. |
| | 5.2 Informed and engaged community/stakeholders and staff. |

| | |
|---|---|
| **Purpose:** | For Council to consider granting a lease renewal for a further 2 (two) years to the former Barossa and District Housing Association (now Junction Australia) in terms of managing the Council owned Mallala Dunstan Court Units and Unit 2/7 Chivell Street, Mallala. |

| | |
|---|---|
| **Recommendation 1:** | "that Council having considered Item 17.3 – *Barossa and Districts Housing Association Inc – Lease Agreement Renewal*, dated 11 May 2015, authorise staff to negotiate a renewal of the lease with Junction Australia for a period of two years with the legally drafted lease be brought back to Council for their adoption." |
| **Recommendation 2:** | "that Council having considered Item 17.3 – *Barossa and Districts Housing Association Inc – Lease Agreement Renewal*, dated 11 May 2015 support the original Barossa and Districts Housing Association Performance Indicators for the Mallala units be reviewed with Junction Australia and brought back to Council for their consideration." |

| **Impact Summary** |
|---|

| **Organisational and Governance** | |
|---|---|
| Financial | Legal advice costs be included allocated to operational expenses for the 2014/2015 financial year |
| Legislation | Nil |
| Risk | As the current Lease to Barossa and Districts Housing Association (now Junction Australia) expires at the end of June 2015, a decision on the lease renewal is required to ensure the Council owned aged units at Mallala are managed with minimal disruption to services for the current tenants. |
| Consultation | Nil |
| Asset Management Plans | Nil |
| Service Standards | Key Performance Indicators for the Dunstan Court Units were developed in 2010. It is recommended that Council staff, representatives of Mallala and Districts Homes Committee and Junction Australia meet to update and revise this document **(Attachment 1)** which would then be referred to the Mallala and Districts Home Committee and Council for its consideration. |

**Background**

At a special Meeting of the "Committee on Ageing" held on 1 August 1973, (a former Committee of Council whose members included local residents with an interest in the aged community) and representatives of the District Council of Mallala, it was resolved to request from Council, if they would consider building cottage homes for the aged at Mallala. Council called a ratepayers meeting on October 10 1973 and this project was then later endorsed by Council. Subsequently a Committee was formed comprising three members from Council, two from the Mallala Hospital Board and two from the Committee on Ageing who oversaw this project (now known as the Mallala and Districts Homes Committee).

In 1976, Council received authorisation from the Minister of Local Government, under Section 135 of the Local Government Act 1934, for the construction of seven single bedroom units for aged persons within the township of Mallala. The cost for building these one bedroom units was funded from a Commonwealth subsidy, public subscriptions and each of the intended occupants was required to contribute a once off contribution.

In July 1988 Council purchased land from Mr Peter Schneider on Chivell Street. There are now four units on this parcel of land and Council owns Unit 2/7 Chivell Street which is solely for elderly residents. Although all the units are managed by Junction Australia, the other three units are specifically community housing.

As per the original Council operations the entry criteria for the units is as listed below:

1. Preference will be given to people from within the District Council of Mallala boundaries or with a demonstrated connection to those in the District (boundaries)
2. The minimum age of entry for incoming tenants will be 55., with preference give to those over 65
3. Proof of income and identification will be required
4. Ability to live independently
5. Residents will not necessarily be excluded on the basis of asset or income.

Previously Council managed these Units located at 12 Aerodrome Road (known as units 1-7 Dunstan Court) and Unit 2/7 Chivell Street, until July 2010 when the Barossa and District Housing Association (BDHA) officially took over the management

of them. Council's then Community Services Manager in negotiation with representatives of BDHA commenced negotiations regarding the management of these Units. This authorisation was resolved by Council at the July 2009 meeting.

At the 21 December 2009 meeting Council resolved the below recommendation:

*"That Council agree to make the following aspects of negotiations public*

- *"Council has and continues to discuss the ongoing operation of the Aged Homes with the Barossa and District Housing Association.*
- *Council remain the owner of the facilities*
- *that the agreement with the Barossa and District Housing Association will reflect an operating model where BDHA manage the facility within agreed parameters on behalf of Council*
- *that the conditions and terms of existing residents will not change".*

Council then formalised its arrangements with the Barossa District Housing Association taking over the management of these Mallala owned aged units on 24 May 2010 with the following recommendations being endorsed:

*"That Council resolve to approve the granting of a 5 (five) Years lease to Barossa and District Housing Association in terms of the Memorandum of Lease drafted by the Council's solicitors and that it be further resolved that the seal of the Council be affixed to a Memorandum of Lease in the form. "*

And

*"That Council ratify the agreed Key Performance Indicators as recommended by the Homes for the Aged Section 41 Committee and as specified in the minutes dates 18 May 2010 and Council considers entering into a Land Management Agreement within the five year lease period based upon the satisfactory performance of the Barossa and District Housing Association as determined and measured by agreed Key Performance Indicators."*

In respect to Recommendation 2, a copy of the signed Lease Agreement is included in **(Attachment 2)** to this report. The Barossa and District Housing Association in mid 2014 merged under the umbrella of Junction Australia. Junction Australia provides a diverse range of services to the community over the last 35 years, particularly in the

areas of youth services and community housing as well as regionally – based community service organisations.

Also included as **(Attachment 3)** is an addendum to the Memorandum of Lease Number 11441281 signed by Council and BDHA dated 15 August 2011 which provides amendments to the original lease agreement.

The Chief Executive Officer of Junction Australia is scheduled to attend the next meeting of the Mallala and Districts Home Committee meeting planned for Wednesday 3 June 2015, with the local representative Mr Dean Galanos. This will be an opportune time for the Committee Members and staff to discuss and consider the future of the association with Junction Australia, and to further consider the direction and future needs of our ageing population in the Council area.

**Discussion**

The Mallala and Districts Homes Committee, is established in accordance with the Local Government Act 1999, as a Section 41 Committee. In its Terms of Reference the Committee has specific functions including:

- oversee Council's Community Housing arrangements;
- identify and target future social housing needs within the District;
- ensure accountability of community expenditure; and
- report to Council of current performance and future initiatives.

As included in the background section of this report, Council's lease with BDHA (now part of Junction Australia) is due to expire at the end of this financial year. Discussions have been held with the Mallala and Districts Homes Committee, and in particular the Chairperson Councillor Marcus Strudwicke, as well as the local representative from Junction Australia. It is recommended that a renewal for a two year period be granted to Junction Australia as the lessee.

With Junction Australia taking over the responsibility of managing these units in 2014, the renewal of the lease until 30 June 2017, would allow sufficient time for both the Mallala and Districts Homes Committee and Council to work closely with Junction Australia, to determine the best option for the long term management and operation of the Council units and for the suitable planning for aged accommodation

for independent persons within the district. Depending on the direction proposed this may include a community consultation.

It is proposed that staff seek legal advice in preparing a renewal of lease agreement with Junction Australia for a further two years to 30 June 2017.

In addition the key Performance Indicators for the Mallala units would reviewed by the Mallala and Districts Homes Committee and Junction Australia and be bought back to Council for approval.

**Summary**

The Council owned Mallala units are leased to Junction Australia with the agreement expiring as at 30 June 2015. It is proposed that a renewal to this lease be granted for a further two years to ensure minimal disruption to the current tenants and allow both Council and Junction Australia to consider suitable accommodation for our ageing population.

**Attachment 1**
to report 17.3
dated 11 May 2015

**Barossa and Districts Housing Association Inc – Lease Agreement Renewal**

# BDHA Key Performance Indicators for Dunstan Court Units – 2010

**Governance**

1. The association has clearly defined goals and is accountable for all aspects of its work

**Finances**

1. BDHA clearly explains to tenants the regularly review of rents, when this will occur, and how it will be done.
2. The association's financial systems support effective management and accountability and that monthly P/L and Balance Sheet reports are made available for inspection. That internal and external audits/reviews are planned and carried out annually

**Tenancy**

1. That the association has documented systems for tenancy management
2. That the association provides clear, useful information to ensure that the tenants understand their rights and responsibilities as tenants
3. The association monitors its service delivery to tenants to ensure quality and tenant participation
4. The association will follow all legislation in dealing with lease agreements and terminations
5. The association has a documented system for dealing with all disputes, between the association and tenants, between tenants, between tenants and neighbours and that complaints and appeals of decisions are addressed promptly and fairly.
6. Applicants and tenant's confidentiality and privacy is respected and maintained

**Maintenance and repairs**

1. The association has a documented system for responsive and preventative maintenance and repairs that:
    a. Ensures transparency of decisions
    b. Provides easy to use information to tenants on repairs and maintenance including:
        i. How to request repairs
        ii. Timeframes for different categories of repairs
        iii. Ways to comment on repairs
    c. Provides good service in a timely manner
        i. For emergency repairs –
        ii. For general repairs -
    d. Is equitable between tenants
2. The association has a program for inspecting the properties every 12 months
3. The association has budgeted an appropriate amount for responsive and preventative maintenance and reports against this monthly to the board and District Council if requested.
4. The association measures its performance in the area of repairs and maintenance, 80% of tenants report satisfaction with the process and results, 80% of repairs are completed on time and within estimates and quotes.

**Attachment 2**
to report 17.3
dated 11 May 2015

**Barossa and Districts Housing Association Inc – Lease Agreement Renewal**

Street Address
Level 5
400 King William St
Adelaide SA 5000

Postal Address
GPO BOX 1018
Adelaide SA 5001
DX 662 Adelaide

Tel (08) 8235 3000
Fax (08) 8232 0926
general@wallmans.com.au

www.wallmans.com.au
ABN 98 802 494 422

WALLMANS
LAWYERS

RECEIVED

| DATE | FILE NO. |
|---|---|
| 5/03/15 | 16-51-1-33 |
| CON NO. 12/922 | REG NO. I |
| RECORDS USE ONLY | OFFICER SRB |

Our Ref: TPE:rjv:080640 Your Ref:

2 September 2010

**BY REGISTERED POST**
Mr S Bateman
District Council of Mallala
PO Box 18
MALLALA SA 5502

Dear Steve

**LEASE TO BAROSSA AND DISTRICTS HOUSING ASSOCIATION INC**

Further to our previous correspondence, we confirm that the Lease over the property at the corner of Mary Street and Aerodrome Road has now been registered.

We now take this opportunity of returning to you the following documents, namely;

1. Certificate of Title[1] Register Book Volume 5948 Folio 82 (the title provided to us but unrelated to this transaction)

2. Certificate of Title[2] Register Book Volume 5948 Folio 79 (the relevant Certificate of Title)

3. The Lessor's copy of Memorandum of Lease[3] number 11441281

We confirm that we have provided the Lessee's copy of the Lease to the Barossa and Districts Housing Association Inc at their address.

We note that completes the first stage of this matter. We note there are further steps to be undertaken in relation to the longer term usage of the property in question. We note that matter will be dealt with during the next few years.

As this therefore completes our instructions we take this opportunity thanking you for the same and hope now, going forward, matters can progress as you wish.

Yours faithfully
WALLMANS LAWYERS

TREVOR EDMOND
Partner
Direct Line: 08 8235 3087
Email: trevor.edmond@wallmans.com.au

Enc
[1] Certificate of Title Register Book Volume 5948 Folio 82
[2] Certificate of Title Register Book Volume 5948 Folio 79
[3] Lessor's copy of Memorandum of Lease number 11441281

080640_TPE_Letter_02-09-2010_67.docx

# CERTIFICATE OF TITLE

**REAL PROPERTY ACT, 1886**

**VOLUME 5948 FOLIO 82**

Edition 1
Date Of Issue 05/09/2005
Authority ACT 10284452

**South Australia**

I certify that the registered proprietor is the proprietor of an estate in fee simple (or such other estate or interest as is set forth) in the land within described subject to such encumbrances, liens or other interests set forth in the schedule of endorsements.

**DEPUTY REGISTRAR-GENERAL**

REGISTRAR-GENERAL SOUTH AUSTRALIA

**REGISTERED PROPRIETOR IN FEE SIMPLE**

THE DISTRICT COUNCIL OF MALLALA OF PO BOX 18 MALLALA SA 5502

**DESCRIPTION OF LAND**

LOT 17 PRIMARY COMMUNITY PLAN 23079
IN THE AREA NAMED MALLALA
HUNDRED OF GRACE

**EASEMENTS**

NIL

**SCHEDULE OF ENDORSEMENTS**

NIL

WARNING: BEFORE DEALING WITH THIS LAND, SEARCH THE CURRENT CERTIFICATE



End of Text.

# CERTIFICATE OF TITLE

**REAL PROPERTY ACT, 1886**

**South Australia**

VOLUME 5948 FOLIO 79

Edition 2
Date Of Issue 05/09/2005
Authority RTU 10237534

I certify that the registered proprietor is the proprietor of an estate in fee simple (or such other estate or interest as is set forth) in the land within described subject to such encumbrances, liens or other interests set forth in the schedule of endorsements.

REGISTRAR-GENERAL

REGISTRAR-GENERAL SOUTH AUSTRALIA

## REGISTERED PROPRIETOR IN FEE SIMPLE

THE DISTRICT COUNCIL OF MALLALA OF PO BOX 18 MALLALA SA 5502

## DESCRIPTION OF LAND

ALLOTMENT 10 DEPOSITED PLAN 68201
IN THE AREA NAMED MALLALA
HUNDRED OF GRACE

## EASEMENTS

NIL

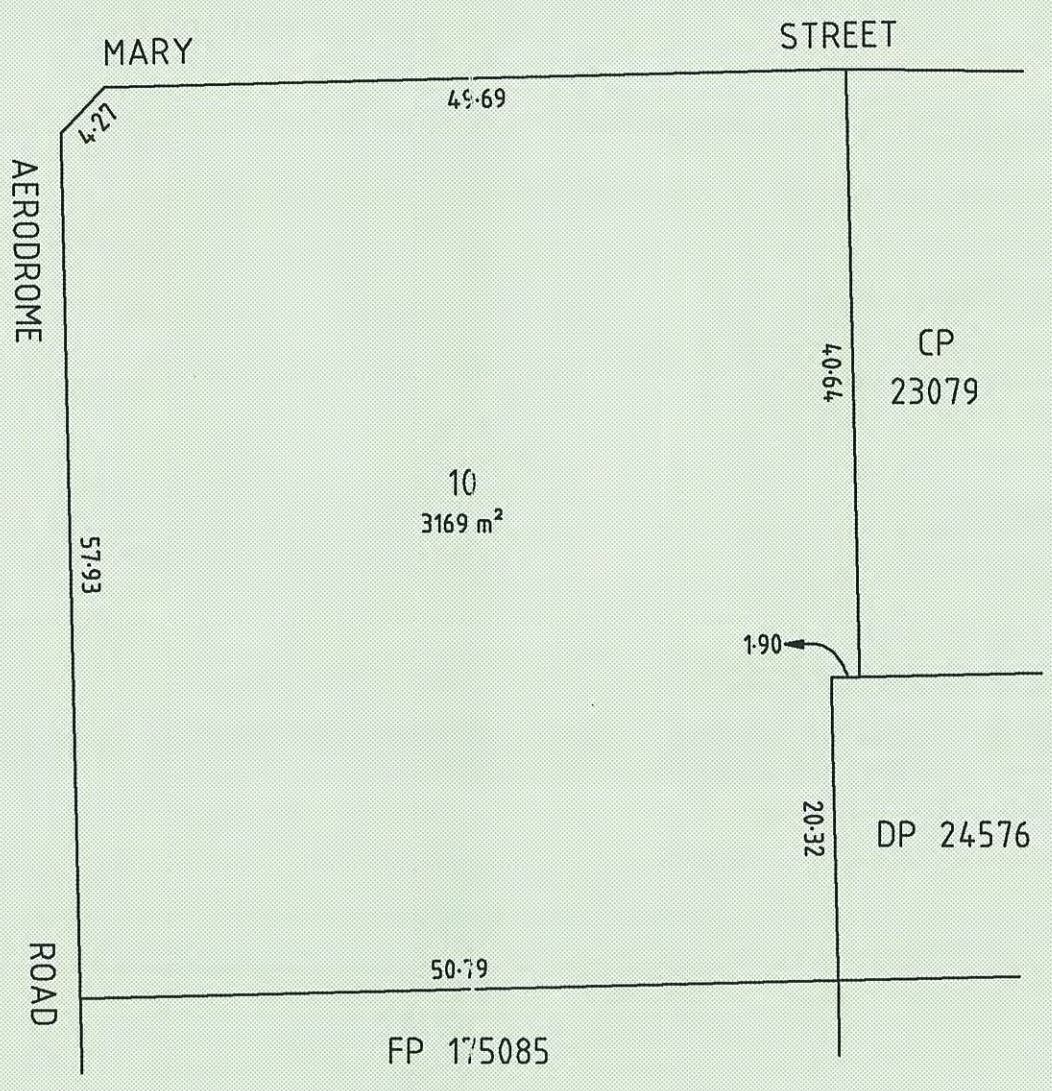
## SCHEDULE OF ENDORSEMENTS

11441281 LEASE TO BAROSSA & DISTRICTS HOUSING ASSOCIATION INC. COMMENCING ON 1.7.2010 AND EXPIRING ON 30.6.2015

End of Text.

WARNING: BEFORE DEALING WITH THIS LAND, SEARCH THE CURRENT CERTIFICATE

571




0 5 10 15 20 Metres



11 May 2015
Page 104 of 142
Ordinary Council Meeting

Form L1

# MEMORANDUM OF LEASE

Item 1

**CERTIFICATES OF TITLE** BEING LEASED

The whole of the land in Certificate of Title Volume 5948 Folio 79

| Item 2 | Item 3 |
|---|---|
| **ESTATE AND INTEREST** | **ENCUMBRANCES** |
| Fee Simple | Nil |

Item 4

**LESSOR** (Full name and address)

**THE DISTRICT COUNCIL OF MALLALA** of PO Box 18, Mallala SA 5502

Item 5

**LESSEE** (Full name, address and mode of holding)

**THE BAROSSA AND DISTRICTS HOUSING ASSOCATION INC** of Schild House, 26 Second Street, Nuriootpa SA 5084

Item 6

**TERM OF LEASE**

COMMENCING ON 1 July 2010

EXPIRING ON 30 June 2015

Item 7

**RENT AND MANNER OF PAYMENT** (OR OTHER CONSIDERATION)

One Dollar ($1.00) per annum exclusive of GST if demanded.

**OPERATIVE CLAUSE** [(a)] delete the inapplicable

The Lessor LEASES TO THE LESSEE the land above described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed herein and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negatived below).

Item 8

**DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.**

Refer Item 1

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

**Schedule Continued**

| | |
|---|---|
| ITEM 9<br>Permitted Use | Low rental housing specifically housing accommodation for the aged. |

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## 1. INTERPRETATION

In this Lease unless the contrary intention appears:

1.1 '**Building**' means the interior and exterior of any building erected on the Land together with all improvements now or after the commencement of this Lease erected on or made to the Land and the improvements and structures on the Land and includes but without limitation all air-conditioning fire protection and other plant machinery and equipment and all fixtures and fittings of the Lessor and all conveniences services amenities and appurtenances of or in the Building and any part of the Building;

1.2 '**Commencement Date**' means the date of commencement of the Original Term set out in Item 6 of the Schedule;

1.3 '**Default Rate**' means:-

1.3.1 The rate of interest two percentage points above the Loan Index Rate for commercial loans charged by the Commonwealth Bank of Australia Limited ABN 48 123 123 124 on the date default occurs, or if there be more than one rate then the highest of such rates; or

1.3.2 If there is no such rate then the rate of interest two percentage points above the National Australia Bank Limited ABN 12 004 044 937 Indicator Base Rate on the date on which default occurs;

1.4 '**GST**' has the same meaning it does in the GST Act;

1.5 '**GST Act**' means *A New Tax System (Goods and Services Tax) Act 1999*;

1.6 '**Land**' means the whole of the land in the titles referred to in Item 1 of the Schedule;

1.7 '**Leased Premises**' means and includes the land described in Item 1 of the Schedule, the interior and exterior of the buildings and improvements from time to time erected on that land and where the context allows or includes:

1.7.1 All the Lessor's fixtures fittings plant and machinery equipment (including air conditioning plant if any) fire protection equipment and chattels installed in or on the Leased Premises;

1.7.2 All the services to or in the Leased Premises and any alterations additions improvements or modifications made to them from time to time; and

1.7.3 All car parking areas (if any) on or within the Leased Premises;

1.8 '**Lessee**' means the person named and described in Item 5 of the Schedule (and if more than one then jointly and severally) and where the context allows the heirs executors administrators successors and permitted assigns of such person (and if more than one then jointly and severally);

1.9 '**Lessee's Agent**' means each of the Lessee's agents, contractors, officers, employees, subtenants, invitees and other persons claiming through or under the Lessee;

1.10 '**Lessor**' means the person named and described in Item 4 of the Schedule (and if more than one then jointly and severally) and where the context allows the heirs executors administrators successors and permitted assigns of such person (and if more than one then jointly and severally);

1.11 '**Lessor's Agent**' means each of the Lessor's agents, contractors, officers, employees, subtenants, invitees and other persons claiming through or under the Lessor;

1.12 '**notice**' means notice in writing or transmitted by facsimile;

1.13 '**Original Term**' means the original term of this Lease set out in Item 6 of the Schedule;

1.14 '**Permitted Use**' means the use to which the Lessee is entitled to put the Leased Premises being the use described in Item 9 of the Schedule;

1.15 '**Recipient**' and '**Supplier**' have the respective meanings ascribed to those terms in the GST Act;

1.16 '**Rent**' means the rent reserved by this Lease;

1.17 '**Retail Shop Lease**' means a Retail Shop Lease as defined in the RTA;

1.18 '**RTA**' means the *Retail and Commercial Leases Act 1995* and each term of this Lease is subject to the RTA;

1.19 '**Schedule**' means the schedule contained at pages 1, 2 and 3 of this Lease;

1.20 '**services**' means all electrical plumbing air conditioning gas telephone facsimile and other like installations including all pipes drains cables wires and conduits situated or contained in or on the Leased Premises;

1.21 '**Supply**' has the same meaning it does in Section 9-10 of the GST Act and excludes any 'GST-free supplies' and 'input taxed supplies' as those terms are defined in Section 195-1 of the GST Act;

1.22 '**Tax Invoice**' has the same meaning it does in the GST Act;

1.23 '**Term**' means the Original Term and any extension or renewal of that term and any period during which the Lessee holds over or remains in occupation of the Leased Premises;

1.24 A reference to any Act includes all statutes regulations codes by-laws or ordinances and any notice demand order direction requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations amendments re-enactments or replacements from time to time of that Act and a reference to 'law' includes a reference to any Act and the common law;

1.25 Words importing the singular shall embrace the plural and words importing one gender shall embrace the other genders and vice versa respectively;

1.26 Any reference to a person shall be deemed to include a corporate body and vice versa;

1.27 All moneys payable by the Lessee to the Lessor under this Lease shall be recoverable as a debt or as rent in arrears and if no date or time for payment is specified shall be payable on demand;

1.28 Any consent where it is required by this Lease from the Lessor shall mean prior consent in writing;

1.29 Anything which the Lessee is required to do under this Lease shall be done at the cost in all things of the Lessee and to the reasonable satisfaction of the Lessor;

1.30 Headings are for convenience of reference only and shall not affect the construction or interpretation of the covenants of this Lease;

1.31 In the event of any part of this Lease being or becoming void or unenforceable then that part shall be severed from this Lease to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any such severance;

1.32 This lease is subject in all respects to any contrary provision which applies by force of law by virtue of the RTA.

## 2. LESSEE'S COVENANTS

The Lessee covenants and agrees with the Lessor throughout the Term:

### 2.1 Rent

The Lessee shall pay the Rent at the times and in the manner stipulated in Item 7 of the Schedule and free from exchange deduction and abatement subject always to the provisions of clause 10.

### 2.2 Outgoings Utilities And Operating Expenses

2.2.1 The Lessee shall pay and discharge when due for payment or pay to the Lessor on demand all present and future rates taxes assessments duties charges impositions and fees of any public municipal or governmental body authority or department (including but without limiting the generality of the foregoing council rates emergency services levy and land tax unless excluded by virtue of Section 30 of the RTA but excluding water and sewerage rates and charges) ('**Outgoings**') imposed charged or assessed upon the Leased Premises or upon the owner or occupier in respect of or payable by either in respect of the Leased Premises. For the purposes of this clause land tax shall be calculated on the basis that the Leased Premises are the sole holding of the Lessor.

2.2.2 The Lessee shall pay as and when due for payment all charges for gas electricity oil telephone and all other like services supplied (either by the Lessor or any other person or authority) to or consumed in or on or in respect of the Leased Premises where such consumption is separately assessed for any individual building upon the Leased Premises.

2.2.3 All such Outgoings shall be adjusted between the Lessor and the Lessee as at the Commencement Date and the expiry or determination (as the case may be) of this Lease and the Lessor's proportion shall be deemed to be so much of such Outgoings that is referrable to any period of time not included in the term of this Lease.

### 2.3 Assignment, Subletting And Mortgaging

2.3.1 The Lessee shall have the right to assign or transfer its interest under this Lease or to sublet the Leased Premises provided that the Lessee shall first obtain the consent in writing of the Lessor which the Lessor may withhold in its absolute discretion.

2.3.2 The Lessee shall not sublease licence grant a concession or part with possession or mortgage or otherwise charge or encumber the Lessee's interest in this Lease without the prior written consent of the Lessor which may be withheld at the Lessor's absolute discretion.

### 2.4 Permitted Use

2.4.1 The Lessee shall not use the Leased Premises nor permit the same to be used otherwise than for the Permitted Use nor shall the Lessee:

(a) do or permit to be done on the Leased Premises anything which may be or become unlawful or immoral or cause an annoyance or nuisance or damage to the Lessor or to any other person in the neighbourhood;

(b) use or permit or suffer to be used the Leased Premises or any part of the same for the purpose of an auction unless the prior written consent of the Lessor is obtained.

2.4.2 The Lessee must:

(a) promptly obtain keep current and comply with all consents approvals and licences from all relevant authorities or other persons necessary or incidental to the use of the Leased Premises for the Permitted Use and the provisions of this Lease; and

(b) provide the Lessor with copies of all approvals consents and licences immediately after being obtained by the Lessee.

**2.5 Maintenance Repair And Painting**

2.5.1 Subject to the RTA the Lessee shall maintain repair replace clean and keep the Leased Premises including without limitation the Building, any improvements and all the Lessor's partitions fixtures fittings plant and equipment in good and substantial repair order and condition and where appropriate in good working order (including without limitation entering into and keeping current any servicing or maintenance contracts reasonably required by the Lessor) provided that the Lessee shall be under no obligation to make good damage by:

(a) fair wear and tear (subject to clause 2.5.2 and except to light globes and fluorescent tubes); or

(b) fire flood lightning storm tempest inevitable accident act of God or war damage (except where insurance moneys are irrecoverable in consequence of any act omission or default of the Lessee or any of the Lessee's Agents in which event the Lessee shall rectify the damage promptly at its expense).

2.5.2 Notwithstanding clause 2.5.1 the Lessee shall maintain the floor coverings in the Leased Premises (whether installed by the Lessor or the Lessee) in good condition at all times and where the Lessee or any of the Lessee's Agents cause damage or excessive wear to the floor coverings to replace the floor coverings to the reasonable satisfaction of the Lessor with new floor coverings of a quality and standard equivalent to or better than that of the floor coverings in the Leased premises at the Commencement Date or at the date of installation of the damaged or worn floor coverings (whichever is the later).

2.5.3 The Lessee shall keep and maintain at all times all lawns shrubs plants and gardens comprised in the Leased Premises neat tidy well trimmed and pruned and to water and nurture them on such occasions as they require to subsist and flourish.

2.5.4 The Lessee shall not nor shall the Lessee permit the Lessee's Agents to:

(a) cut injure damage deface or obstruct any convenience appliance plant or equipment in the Leased Premises; or

(b) mark drill or deface the walls ceilings columns floor or other parts of the Leased Premises;

unless the Lessor's consent is first obtained and then only in accordance with specifications approved by the Lessor.

2.5.5 The Lessee shall make good any breakage defect or damage to the Leased Premises caused or contributed to by the Lessee or any of the Lessee's Agents.

2.5.6 The Lessee shall maintain in good and substantial repair all paved and/or bituminised walkways driveways and car park areas comprised in the Leased Premises and yield up the same in a like condition (fair wear and tear excepted) at the expiration or sooner determination of this Lease.

(a) The Lessee shall at least once in the Initial Term and in each renewed term and in any event immediately prior to the expiration of the Term or the surrender of this Lease or within 7 days of any sooner determination of this Lease in a proper and workmanlike manner and in colours and in accordance with specifications approved by the Lessor paint or cause to be painted all such parts of the Leased Premises as are usually painted.

(b) If the Lessee fails to comply with such obligation then the Lessor may on giving 14 days' notice to the Lessee of the Lessor's intention to do so undertake such painting through the services of its contractors or nominees and any money incurred by the Lessor in the exercise of such election shall be paid to the Lessor by the Lessee.

2.5.7 If the Lessee requires the Lessor to carry out any works which are the responsibility of the Lessee under this clause 2.5 then:

(a) the Lessor may (without any obligation to do so and without any liability to the Lessee in respect of such works) execute such works as if it were the Lessee; and

(b) the Lessee shall pay to the Lessor all the Lessor's reasonable costs and expenses in executing such works.

**2.6 Airconditioning**

2.6.1 Without limiting the generality of the previous clauses the Lessee shall where any plant machinery or equipment for heating cooling or circulating air or any related services, controls or appliances (**'the Plant'**) are provided or installed in the Leased Premises, subject to the RTA:

(a) pay all costs and expenses of and incidental to the normal operation regular cleaning of all filters maintenance servicing replacement and repair of the Plant; and

(b) enter into service and maintenance agreements in respect of the Plant which agreements shall be first approved by the Lessor and which approval shall not be unreasonably withheld or delayed.

2.6.2 The Lessee acknowledges that the Lessor does not warrant that the Plant provided by the Lessor (if any) is suitable for the business to be conducted in the Leased Premises by the Lessee.

**2.7 Cleaning**

Without limiting the generality of the previous clauses the Lessee shall at the Lessee's expense:

2.7.1 Cause the Leased Premises to be cleaned regularly in a proper and workmanlike manner and kept clean and free from dirt and rubbish.

2.7.2 Keep and maintain clean and in good order repair and condition all fittings plant furnishings and equipment of the Lessee in the Leased Premises to the extent necessary to prevent any hazard to or deterioration in the condition of the Leased Premises.

2.7.3 Store and keep all waste materials and garbage in proper receptacles for it and to arrange for the regular removal of it from the Leased Premises.

**2.8 To Repair Damage**

2.8.1 The Lessee shall make good any breakage, defect or damage to the Leased Premises or any of the Lessor's fixtures and fittings in or on the Leased Premises or any facility or appurtenance of the Leased Premises

occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's Agents or otherwise occasioned by any breach or default of the Lessee under this Lease or by the use of the Leased Premises by the Lessee notwithstanding that such use of the Leased Premises may be within the scope of the Permitted Use.

2.8.2 The Lessee shall at the cost of the Lessee from time to time immediately replace all damaged or worn out light globes and fluorescent tubes.

2.8.3 The Lessee shall immediately repair and replace broken glass in the Leased Premises including external windows, with glass of the same or similar quality.

**2.9 Statutory Requirements**

Subject to the RTA the Lessee shall promptly and efficiently satisfy comply with and observe all present and future laws and the requirements directions and orders of any governmental semi-governmental civic health safety environmental licensing or other authority with competent jurisdiction relating to or affecting the use or condition of the Leased Premises or the occupancy by the Lessee of the Leased Premises whether such compliance or obligations are imposed on the owner or occupier of the Leased Premises.

**2.10 No Structural Obligations**

The covenants contained in clauses 2.5, 2.6, 2.9 and 2.26 shall not impose on the Lessee any obligation in respect of any structural alterations improvements additions or repairs except where the same are rendered necessary or desirable as a consequence of any act or omission on the part of the Lessee or the Lessee's Agents or any person on the Leased Premises by lawful licence of the Lessee or by the use of the Leased Premises by the Lessee.

**2.11 Use Of Facilities**

2.11.1 The Lessee shall not use nor permit the Lessee's Agents or any person on the Leased Premises by lawful licence of the Lessee to use the lavatories toilets sinks drains and other plumbing (**'the Facilities'**) in the Leased Premises for any purpose other than that for which they were constructed or provided.

2.11.2 The Lessee shall not deposit or permit to be deposited any rubbish or other material in the Facilities and any damage caused to the Facilities by such misuse shall be made good by the Lessee immediately.

**2.12 Notice Of Defects**

The Lessee shall give to the Lessor prompt notice in writing of any circumstances including any accident to or defect or want of repair in any service to or fittings in the Leased Premises which the Lessee should reasonably be aware might cause any danger risk or hazard to the Leased Premises or any person in the Leased Premises.

**2.13 Signs**

2.13.1 The Lessee shall not without the prior approval in writing of the Lessor and all appropriate and necessary authorities erect display affix or exhibit on or to the Leased Premises any sign advertisement name or notice which is visible from outside the Leased Premises.

2.13.2 The Lessee shall not without the approval of the Lessor in writing erect or place inside or outside the Leased Premises any radio or television or other telecommunications aerial or antennae or any loudspeakers film

screens media equipment or similar devices or equipment which may be heard or seen from outside the Leased Premises.

2.13.3 The consent or approval of the Lessor as the case may be to any matter or thing to which such consent or approval is required under this clause shall not be unreasonably withheld.

2.13.4 Upon vacating the Leased Premises the Lessee shall remove any signs names advertisements or notices erected displayed painted affixed or exhibited upon to inside or outside the Leased Premises by or on behalf of the Lessee and the Lessee shall make good any damage or disfigurements caused by reason of such erection painting displaying affixing placing exhibiting or removal.

## 2.14 Alterations And Additions

2.14.1 The Lessee shall not without the previous consent in writing of the Lessor first had and obtained make any alteration or addition in or to the Leased Premises or any part of the same nor shall the Lessee without the consent in writing of the Lessor which consent shall not be unreasonably withheld install or alter any partitioning work fixed equipment or other fixed installation in or on the Leased Premises.

2.14.2 Where consent is given by the Lessor under this clause 2.14:

(a) such alteration addition or installation shall be done or made in accordance with the approval so given;

(b) any reasonable fees payable to the Lessor's architects for approval and inspection shall be paid by the Lessee on demand;

(c) the materials and design shall first be approved by the Lessor or its consultants;

(d) the Lessee shall obtain and keep current and ensure that its contractors obtain and keep current such insurance of the Leased Premises and the works and of the Lessee and its contractors and workers as the Lessor reasonably requires.

2.14.3 All partitioning work and installations which are the property of the Lessee or which are installed by the Lessee:

(a) shall remain the property of the Lessee;

(b) shall be maintained by the Lessee who shall (in the case of any plant or equipment) be responsible for the repair and running costs; and

(c) may and if so required by the Lessor shall be removed by the Lessee at or immediately prior to the expiration of this Lease but the Lessee shall upon such removal cause no damage to the Leased Premises and shall thereafter reinstate the same to the condition they were in prior to such installation.

## 2.15 Plumbing And Electrical Installations

Without affecting the generality of the preceding clauses the Lessee shall not without the prior consent of the Lessor install any water gas or electrical fixtures equipment or appliance or any apparatus for illuminating air conditioning heating cooling or ventilating the Leased Premises other than kitchen appliances for preparation of food or beverages and office appliances or equipment reasonably necessary for the execution of normal practices of the Permitted Use.

## 2.16 Heavy Objects, Dangerous Substances

2.16.1 The Lessee shall not without the consent of the Lessor bring onto the Leased Premises:

(a) any heavy machinery or other plant or equipment of such nature or size as to cause or (in the reasonable opinion of the Lessor) be likely to cause any structural or other damage to the floors or walls or any other parts of the Leased Premises or any part;

(b) any plant or machinery from which may emanate any noise vibration noisome or noxious odour fume or gas that could pervade the Leased Premises or escape from the Leased Premises to the discernible notice of any person outside the Leased Premises;

(c) any dangerous noxious odorous toxic volatile explosive or inflammable substance compound or pollutant whether in solid liquid gaseous or other form other than such substances normally used in the conduct of the Permitted Use provided that such substances or compounds are handled and stored in compliance with all applicable laws.

2.16.2 Before bringing any heavy machinery or other plant or equipment onto the Leased Premises:

(a) the Lessee shall inform the Lessor of the Lessee's intention so to do and the Lessor may direct the routing installation and location of all such machinery plant and equipment. For this purpose the Lessor may employ the services of its architects or engineers to ascertain the safest and most favourable and convenient method of routing installing and locating such machinery as aforesaid; and

(b) the Lessee shall observe and comply with all such directions that the Lessor may give under this clause.

## 2.17 Access Of Lessor

2.17.1 The Lessee permits the Lessor and all persons authorised by the Lessor and the Lessor's Agents at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) to enter upon the Leased Premises and view the state of its repair and if the Lessor considers that repairs are required:

(a) the Lessor may serve upon the Lessee a notice in writing of any defect the repair of which is the Lessee's obligation under this Lease requiring the Lessee within a reasonable time to repair the same defect;

(b) in default of the Lessee so doing it shall be lawful for the Lessor (without any obligation on the part of the Lessor so to do) for the time being to enter the Leased Premises and execute the required repairs as if it were the Lessee and for that purpose the Lessor its architects contractors workmen and agents may enter upon the whole or any part of the Leased Premises and there remain for the purpose of doing erecting or effecting any such thing; and

(c) any reasonable expenses and costs of carrying out such work shall immediately be payable by the Lessee to the Lessor.

2.17.2 The Lessee permits the Lessor and any person authorised by the Lessor at all times on reasonable notice to carry out repairs renovations maintenance modifications extensions or alterations to the Leased Premises or to any part of the Leased Premises or to the Land or to any part of the Land deemed necessary or desirable by the Lessor, and for any

of these purposes to enter the Leased Premises with or without its architects contractors workmen and agents.

2.17.3 In the course of carrying out any repairs renovations maintenance modifications extensions or alterations to the Leased Premises, the Land or to any part of the Leased Premises or Land, pursuant to this clause the Lessor shall use its best endeavours not to cause undue inconvenience or disturbance to the Lessee.

2.17.4 If the RTA applies to this Lease, the Lessor may not commence to carry out any alteration or refurbishment to the Leased Premises (other than routine maintenance or repairs) that is likely to adversely affect the business of the Lessee unless:

(a) the Lessor has notified the Lessee in writing of the proposed alteration or refurbishment at least one month before it is commenced; or

(b) the alteration or refurbishment is necessitated by an emergency and the Lessor has given the Lessee the maximum period of notice that is reasonably practicable in the circumstances.

2.17.5 Subject to clause 2.17.4 in an emergency the Lessor may without notice enter the Leased Premises to carry out any works deemed necessary by the Lessor.

2.17.6 Subject to the RTA the Lessee shall not make any claim or commence or maintain any suit or action against the Lessor for breach of the covenant contained in clause 3 or otherwise in consequence of such entry or in execution of any of the works contemplated by this clause.

**2.18 Plate Glass Insurance**

2.18.1 The Lessee shall immediately insure and keep insured against breakage all the plate glass in the Leased Premises for its replacement value in the joint names of the Lessor and the Lessee and for their respective rights and interests at the Lessee's expense with such insurance office as the Lessor shall approve (which approval shall not be unreasonably withheld).

2.18.2 The Lessee shall:

(a) on demand deliver the policy of such insurance to the Lessor and produce the receipt or Certificate of Currency for every premium in respect of such insurance to the Lessor; and

(b) expend all moneys received under any such insurance in reinstating such of the plate glass as may be broken and in case such moneys shall be insufficient the Lessee shall make good the deficiency out of the Lessee's own money.

**2.19 Fire And General Insurance**

The Lessee shall pay to the Lessor immediately upon demand all moneys expended by the Lessor in insuring and keeping insured all the buildings improvements fixtures and fittings comprised in the Leased Premises from time to time against loss and damage by fire, storm, tempest, earthquake, flood and such other risks as the Lessor deems necessary for their replacement value as determined by the Lessor from time to time in its absolute discretion under a policy or policies in the joint names of the Lessor and the Lessee and noting their respective rights and interest providing for the complete reinstatement of the Leased Premises and including consequential loss provisions covering loss of rent for 12 months.

**2.20 Extra Premiums And Excess**

The Lessee shall:

2.20.1 Pay to the Lessor immediately upon demand all extra premiums incurred by the Lessor in effecting any insurance of or relating to the Land where such extra premium is payable on account of the extra risk caused by the use to which the Leased Premises are put by the Lessee; and

2.20.2 Pay all excess amounts paid or payable by the Lessor under any policies of insurance referred to in this Lease relating to any accident or claim caused or contributed to by the Lessee or the Lessee's Agent.

**2.21 Public Liability Insurance**

The Lessee shall:

2.21.1 Immediately effect and keep current at all times in respect of the Leased Premises a Public Risk Policy insuring the Lessor against such risks as the Lessor deems appropriate for an amount of not less than $10,000,000 (or such other amount as the Lessor may reasonably require and notify the Lessee in writing) per claim in the joint names of the Lessor and the Lessee and for their respective rights and interests with a company approved by the Lessor which approval shall not be unreasonably or capriciously withheld; and

2.21.2 On demand deliver the policy of such insurance to the Lessor and produce the receipt or Certificate of Currency for every premium in respect of such insurance.

**2.22 Fixtures Fittings And Stock Insurance**

2.22.1 The Lessee shall effect and keep current a policy insuring:

(a) the Lessor's fixtures fittings equipment and signs in or on the Leased Premises; and

(b) the Lessee's fixtures fittings equipment and where applicable stock and permitted signs

to their full insurable value from time to time against loss or damage by fire, burglary, theft, lightning, explosion, tempest, riot, impact of vehicles, earthquake, damage by aircraft or articles dropped from aircraft, water, damage, flood and rain water damage and such other risks as the Lessor specifies from time to time.

2.22.2 Such insurance must be with an insurer approved by the Lessor (which approval will not be unreasonably withheld).

2.22.3 Upon demand the Lessee must deliver to the Lessor the policy of such insurance and an original receipt or Certificate of Currency for every premium in respect of such insurance.

**2.23 Not To Vitiate Lessor's Insurance**

The Lessee shall not at any time do or permit or suffer to be done any act, matter or thing in or on the Leased Premises whereby any insurance in respect of the Leased Premises may be vitiated or rendered void or voidable or whereby the rate of premium on any insurance shall be liable to be increased.

**2.24 Indemnities**

Subject to the RTA the Lessee indemnifies and shall indemnify the Lessor and the Lessor's Agents from and against all and any actions, claims, demands, losses,

damages, costs and expenses for which the Lessor or any of the Lessor's Agents shall or may be or become liable in respect of or arising from:

2.24.1 The negligent use, misuse, waste or abuse of the water, electricity, lighting and other services and facilities to or in the Leased Premises by the Lessee or any of the Lessee's Agents;

2.24.2 Overflow or leakage of water (including rain water) in or from the Leased Premises but having origin within the Leased Premises caused by or attributed to any act or omission on the part of the Lessee or any of the Lessee's Agents;

2.24.3 The death of or injury to any person or loss of or damage to the property of any person caused or contributed to by the use of the Leased Premises by the Lessee or the Lessee's Agents notwithstanding that such use of the Leased Premises may be within the scope of the Permitted Use;

2.24.4 The death of or injury to any person or loss of or damage to the property of any person within or outside the Leased Premises occasioned or contributed to by any act, omission, neglect, breach, or default of the Lessee or any of the Lessee's Agents;

2.24.5 The Lessor, without fault by the Lessor, being made a party to any litigation commenced by or against the Lessee (other than litigation between the Lessor and the Lessee) arising directly or indirectly out of the Lessee's occupancy of the Leased Premises;

except to the extent that the action, claim, demand, loss, damage, cost and expense arises or results from the wilful or negligent act or omission of the person seeking such indemnity.

**2.25 Release**

2.25.1 Subject to the RTA the Lessee occupies uses and keeps the Leased Premises at the risk of the Lessee and the Lessee RELEASES to the full extent permitted by law the Lessor and the Lessor's Agents from all and any claims demands and damages of every kind resulting from any accident, damage or injury occurring in the Leased Premises except where deriving from any wilful or negligent act of the Lessor or any of the Lessor's Agents.

2.25.2 The Lessee shall not make any claim or commence or maintain any suit or action against the Lessor or any of the Lessor's Agents in respect of:

(a) loss of or damage to the Lessee's stock, fixtures or fittings or other property;

(b) claims, demands and damages resulting from or contributed to by any accident, damage or injury occurring in on or about the Land unless deriving from any structural defect in the Land (not caused or contributed to by the Lessee or any of the Lessee's Agents); and

(c) loss or damage including without limitation direct, indirect, consequential and economic loss suffered as a result of or contributed to by:

(i) flooding of the Leased Premises; or

(ii) blockage of any sewers, waste drains, gutters or down pipes; or

(iii) any malfunction, failure to function or interruption of or to the water, gas, electricity, telephone, facsimile, airconditioning, fire prevention, fire safety, lifts, escalators

and other systems and other services situated in or serving the Leased Premises,

except to the extent caused or contributed to by the negligence of the Lessor or any of the Lessor's Agents.

**2.26 Fire Precautions**

2.26.1 Subject to the RTA the Lessee shall:

(a) take such precautions against fire on and in respect of the Leased Premises as are or may from time to time be required under or pursuant to any present and future laws or by any authority (whether governmental municipal civic or otherwise) having jurisdiction in relation to the Leased Premises; and

(b) do and execute or abstain from doing or executing all such other acts matters and things in relation to fire safety or fire prevention as are or may be directed or required (whether of the owner or occupier of the Leased Premises) by any body having jurisdiction in relation to the Leased Premises.

2.26.2 The Lessee shall comply with sprinkler and fire alarm laws in respect of the sprinkler and fire alarm systems installed in or about the Leased Premises and subject to the RTA to pay to the Lessor the cost of any alterations or additions to the sprinkler or fire alarm systems which the Lessor may be required to make by reason of the non compliance by the Lessee with such laws.

2.26.3 The Lessee shall perform and observe and ensure that the Lessee's Agents perform and observe all necessary and proper fire drills and emergency evacuation procedures.

2.26.4 The Lessee shall pay to the Lessor all charges imposed on the Lessor by the South Australian Fire Department or its successor for any callout to or affecting the Leased Premises.

**2.27 Indemnity In Relation To Exercise Of Lessor's Powers**

The Lessee indemnifies the Lessor against all reasonable fees, costs, liabilities and expenses incurred by it in the exercise or attempted exercise of any of the rights, authorities powers or remedies which are exercisable by the Lessor pursuant to this Lease.

**2.28 Pests**

The Lessee shall exterminate and keep the Leased Premises free from all rats and mice and other vermin or pests.

**2.29 Superior Or Concurrent Interest**

The Lessee shall:

2.29.1 Permit any person having any interest in the Land superior or concurrent with the Lessor to exercise the Lessor's powers under this Lease and their lawful rights in relation to the Leased Premises; and

2.29.2 If any person other than the Lessor becomes entitled to receive money payable under this Lease either by operation of law or otherwise to enter into an agreement with that person at the Lessor's expense in the form and containing provisions reasonably required by the Lessor.

### 2.30 No Caveat

The Lessee shall not lodge or cause or permit to be lodged any absolute caveat on the Certificate of Title for the Land and indemnifies the Lessor against and in respect of all and any actions claims demands losses damages costs and expenses which the Lessor may incur in respect of the lodgement removal or withdrawal of any such caveat.

### 2.31 Security

2.31.1 The Lessee shall use the Lessee's best endeavours to protect and keep safe the Leased Premises and any property contained in it from theft or vandalism and to keep all doors windows and other openings closed and locked when the Leased Premises are not in use; and

2.31.2 The Lessee shall not without the consent of the Lessor (which consent shall not be unreasonably withheld) install any security equipment or system in or to the Leased Premises nor to alter or modify any existing security equipment or system; and

2.31.3 All such equipment, systems and installations (except the Lessor's fixtures and fittings) shall remain the property of the Lessee who shall be responsible for all costs associated with the purchase, installation, alteration or modification of any new (and if applicable existing) equipment, system or installation and all maintenance and monitoring of it; and

2.31.4 The Lessee shall pay to the Lessor all charges imposed on the Lessor for any security alarm callout to or affecting the Leased Premises.

## 3. LESSOR COVENANTS WITH THE LESSEE

### 3.1 Quiet Possession

That the Lessee paying the rent reserved and duly and punctually observing and performing the terms of this Lease shall and may peaceably possess and enjoy the Leased Premises for the Term without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by from or under the Lessor.

### 3.2 Lessee's Property

That the Lessee may and shall if requested by the Lessor so to do at or prior to the expiration of the Lease take, remove and carry away from the Leased Premises all fixtures, fittings, plant, equipment or other articles upon the Leased Premises in the nature of trade or tenants fixtures brought upon the Leased Premises by the Lessee but the Lessee shall in such removal do no damage to the Leased Premises and shall forthwith make good any damage which the Lessee may occasion to the Leased Premises.

## 4. ESSENTIAL TERMS, RE-ENTRY, BREACH, DAMAGES

### 4.1 Essential Terms

4.1.1 Clauses 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.8, 2.9, 2.13, 2.14, 2.16, 2.17, 2.18, 2.19, 2.20, 2.21, 2.22 and 10 are of a fundamental character and are essential terms of this Lease.

4.1.2 The acceptance by the Lessor of any arrears or of any late payment of rent shall not constitute a waiver of the essentiality of the Lessee's obligation to pay rent in respect of those arrears, the late payments or in respect of the Lessee's continuing obligation to pay rent during the Term.

**4.2 Re-Entry**

If:

4.2.1 The Rent or any part of it shall be unpaid for a space of 7 days after the due date in this Lease (although no formal or legal demand shall have been made for it); or

4.2.2 The Lessee commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions of this Lease;

4.2.3 (in the event the Lessee is a Company or is an incorporated Association):

(a) an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor); or

(b) a Receiver or Receiver and Manager or Administrator or Controller or any of them is appointed to the Lessee or any property of the Lessee or action is taken towards such appointment; or

(c) if the Lessee goes into liquidation or provisional liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts with the meaning of the *Corporations Act 2001* (Cth) (as amended from time to time); or

4.2.4 (in the event the Lessee is an individual):

(a) the Lessee commits an act of bankruptcy or permits a sequestration order in bankruptcy to be made against the Lessee;

(b) the Lessee is convicted of an indictable offence (other than a traffic offence);

4.2.5 The Leased Premises are left unoccupied for 14 days without the Lessor's consent;

4.2.6 Execution is levied against the Lessee and not discharged within 14 days;

4.2.7 Any property in or on the Leased Premises is seized or taken in execution under any judgment or other proceedings;

4.2.8 Any event described in clauses 4.2.4 to 4.2.7 (all inclusive) occurs in respect of any guarantor of the Lessee's obligations under this Lease

then and in any one or more of such events the Lessor at any time or times after such event shall have the right to re-enter on to the Leased Premises without prejudice to any right of action or other remedy which the Lessor has or might otherwise have for arrears of Rent or breach of any term of this Lease and if such right is exercised:

4.2.9 The Lessor shall be freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of or in respect of this Lease; and

4.2.10 The Lessee shall not be entitled to claim or receive from the Lessor any compensation or damages in respect of such termination, re-entry and repossession.

**4.3 Repudiation**

In the event that the Lessee's conduct (whether by act or omission) constitutes a repudiation of this Lease (or of any of the Lessee's obligations under this Lease) or constitutes a breach of any covenant or covenants, the Lessee hereby covenants to

compensate the Lessor for all loss, damage, costs and expenses of any nature suffered or incurred by reason of such repudiation or breach.

**4.4 Recover Losses**

The Lessor shall be entitled to recover losses, damages, costs and expenses from and against the Lessee in respect of any repudiation or breach of covenant for the losses, damages, costs and expenses suffered or incurred by the Lessor during the entire term of this Lease or any extension thereof or any holding over period.

**4.5 No Bar To Recovery**

The Lessor's entitlement to recover losses, damages, costs and expenses shall not be affected or limited by:

4.5.1 The Lessee abandoning or vacating the Leased Premises;

4.5.2 The Lessor re-entering the Leased Premises and/or terminating the Lessee's leasehold interest in the Leased Premises;

4.5.3 The Lessor accepting the Lessee's repudiation;

4.5.4 Conduct of the parties which may or shall constitute a surrender by operation of law.

**4.6 Damages**

If this Lease is terminated by the Lessor, the Lessor shall be entitled to recover all costs, expenses, losses and damages in respect of the loss of benefits which observance or performance of this Lease would have conferred on the Lessor had this Lease and the Lessee's obligations under it enured for the unexpired balance of the Term following such termination.

**4.7 Mitigation**

4.7.1 In the event of the Lessee vacating the Leased Premises, whether with or without the Lessor's consent, the Lessor shall be obliged to take reasonable steps to mitigate its damages and to endeavour to lease the Leased Premises at a reasonable rent and on reasonable terms having regard to the circumstances at the time.

4.7.2 The Lessor's damages shall be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this paragraph.

4.7.3 The Lessor's conduct in attempting to mitigate its damages shall not constitute acceptance of the Lessee's breach of repudiation or a surrender by operation of law.

**4.8 Landlord And Tenant Act**

In the case of a breach of any covenant or condition contained in this Lease then the notice to the Lessee to be given pursuant to Section 10 of the *Landlord and Tenant Act 1936* as amended shall provide that the period of 14 days is the time within which the Lessee is to remedy any such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Lessor in respect of the breach.

**4.9 Abandoned Chattels**

Subject to the RTA any chattels or other property left on the Leased Premises by the Lessee at the expiration of the Term or the surrender of this Lease or any sooner determination of this Lease may be dealt with at the discretion of the Lessor and at the cost of the Lessee and the Lessor shall not be responsible in any respect

to the Lessee or to any person claiming through the Lessee for any loss or damage occasioned by such dealing.

**4.10 Default Interest And Fees**

Without prejudice to the rights, powers and remedies of the Lessor otherwise under this Lease:

4.10.1 The Lessee will pay to the Lessor interest at the Default Rate on any moneys due and payable by the Lessee to the Lessor on any account whatsoever pursuant to this Lease;

4.10.2 Such interest shall be computed from the date on which the moneys became payable until payment of such moneys is made in full and shall be recoverable in like manner as rent in arrear;

4.10.3 The Lessee will pay to the Lessor a Late Payment Fee whenever monies due and payable by the Lessee have not been received by the Lessor on the due date for payment of such monies and shall be recoverable in like manner as rent in arrears.

**4.11 Power Of Attorney**

If the Lessor becomes entitled to terminate this Lease and so to re-enter and take possession of the Leased Premises after necessary compliance with any relevant statutory provisions as to the exercise of rights of re-entry (of which the statutory declaration of an officer of the Lessor shall be conclusive evidence for the purpose of the Registrar-General) then the Lessee IRREVOCABLY APPOINTS the Lessor as the attorney of the Lessee in the Lessee's name and as the Lessee's act and deed from time to time:

4.11.1 For the purpose of giving full effect to such termination, re-entry and repossession;

4.11.2 To execute a surrender of this Lease and to procure its registration and to record this Power of Attorney; and

4.11.3 To procure to be done any act, matter or thing which may be requisite or proper for giving full effect to such surrender according to the *Real Property Act 1886* or any law or custom for the time being in force in the State of South Australia (including without limitation if necessary to execute and lodge an application to dispense with the Lessee's registered copy of the Lease)

AND all and whatsoever such attorney shall lawfully do or purport to do or cause to be done by virtue of the appointment is by this clause ratified and confirmed.

**4.12 Damage And Destruction**

4.12.1 Subject to the RTA if:

(a) the Leased Premises are wholly or substantially damaged or destroyed then the Lessor may at its option terminate the Lease by giving the Lessee 7 days' prior notice to that effect; or

(b) the Leased Premises are damaged or destroyed so as to render the Premises wholly or partially inaccessible or unfit for use by the Lessee and the Lessor gives the Lessee notice that the Lessor considers that the damage is such as to make its repair impracticable or undesirable then either the Lessor or the Lessee may terminate this Lease by giving the other not less than 7 days' prior notice to that effect; or

(c) this Lease is not terminated pursuant to clauses 4.12.1(a) or 4.12.1(b) but the Lessor fails to repair the damage within a reasonable time after the Lessee has given the Lessor notice to do so (provided that the Lessor shall not be obliged to repair the damage) then the Lessee may terminate this Lease by giving the Lessor 7 days' prior notice to that effect;

then this Lease shall terminate 7 days after the giving of any such notice of termination (or such longer period as the Lessor and Lessee may agree).

4.12.2 In the event of termination under clause 4.12.1 neither party shall have any claim for or right to recover any compensation by reason of such termination but without prejudice to the rights of either party for any antecedent breach or default or any claim by the Lessor from the Lessee for compensation in respect of the damage or destruction.

4.12.3 If the Leased Premises are rendered wholly or partially inaccessible or unfit for use as a result of damage or destruction then a just proportion (if any) of the Rent Outgoings and other charges payable by the Lessee under this Lease having regard to the nature and extent that the Leased Premises have been rendered inaccessible or unfit for use shall cease and be suspended until the Leased Premises are useable and accessible. If such proportion cannot be agreed between the Lessor and the Lessee such proportion shall be determined by a Valuer.

4.12.4 Notwithstanding clauses 4.12.1, 4.12.2 and 4.12.3 if the damage or destruction to the Leased Premises results from the wrongful act or negligence of the Lessee or any of the Lessee's Agents no proportion of the Rent and Outgoings shall cease and suspend unless the Lessor is entitled to fully recover all such loss of rent and Outgoings under an insurance policy to which the Lessee contributes to the premium.

### 4.13 Costs and Remedies On Default

4.13.1 If the Lessee breaches or fails to perform any term of this Lease and such breach or failure to perform continues for 7 days after the Lessor has given the Lessee notice requiring the Lessee to remedy the breach or perform the term (except in an emergency when no notice is required) then:

(a) the Lessor may remedy the breach or perform the term without prejudice to any other right or remedy; and

(b) the Lessee shall pay to the Lessor all resulting costs incurred by the Lessor.

4.13.2 All costs incurred by the Lessor in respect of:

(a) the recovery of Rent and other money payable by the Lessee to the Lessor under this Lease; and

(b) the Lessor remedying or attempting to remedy any Lessee's breach of or failure to perform any term of this Lease

shall be deemed to be additional rent falling due and payable on the date on which the Lessor incurs such costs.

## 5. GENERAL

### 5.1 Waiver

That no waiver by the Lessor of one breach of any covenant obligation or provision in this Lease contained or implied shall operate as a waiver of another breach of the same or any other covenants obligations or provisions in this Lease contained or implied.

**5.2 Notice**

5.2.1 Without prejudice to any other means of serving notice any notice required to be served under this Lease shall be sufficiently served:

(a) if to the Lessee:

by personal service on the Lessee (or if it is a body corporate on a director, secretary or other officer of the Lessee) or by personal service at the Leased Premises or by post or facsimile transmission to the Leased Premises or the Lessee's registered office (if a body corporate) or by personal service at or post or facsimile transmission to the Lessee's last place of business or residence known to the Lessor; and

(b) if to the Lessor:

by personal service on the Lessor (or if it is a body corporate on a director, secretary or other officer of the Lessor) or by post or facsimile transmission to the Lessor's registered office (if a body corporate) or to the Lessor's last known place of business or residence.

5.2.2 Any notice may be signed on the party's behalf by its attorney, director, secretary or other officer or solicitor.

5.2.3 A notice by post is deemed served at the time when it ought to be delivered in the due course of post.

5.2.4 A notice by facsimile is deemed served on production of a transmission report by the machine from which it is sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

5.2.5 Where there is more than one person comprising the Lessee a notice served on or by any one or more of the persons comprising the Lessee is deemed served on or by all of the persons comprising the Lessee.

**5.3 Entire Agreement**

Subject to clause 5.5 of this Lease:

5.3.1 The terms of this Lease and any consents given pursuant to this Lease comprise the whole of the agreement between the Lessor and Lessee;

5.3.2 No other agreements, conditions, warranties or terms shall be implied in this Lease or arise between the Lessor and Lessee by way of collateral agreement except such as are specifically stated in this Lease; and

5.3.3 No promise representation or warranty (including without limitation as to the suitability of the Leased Premises to conduct the Lessee's business or to the fittings fixtures and facilities of the Leased Premises) has been given or made by or on behalf of the Lessor to the Lessee;

and the Lessee acknowledges that it enters into this Lease relying entirely on its own investigations, inspections and judgment.

**5.4 No Partnership**

Nothing contained in this Lease shall create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Lessee and no term of this Lease shall create any relationship between the Lessor and the Lessee other than the relationship of lessor and lessee.

### 5.5 Real Property Act

The covenants and powers implied in leases by virtue of Sections 124 and 125 of the *Real Property Act 1886* shall apply and be implied in this Lease unless they are expressly or by necessary implication excluded or modified.

## 6. RTA - VARIOUS

### 6.1 Receipt

If the RTA applies to this Lease, the Lessee acknowledges that:

6.1.1 Prior to the Lessor and Lessee entering into negotiations concerning this Lease the Lessee received a copy of the proposed Lease; and

6.1.2 Prior to the Lessee executing this Lease the Lessee received a duly completed written statement in the form required under and pursuant to the RTA and the Regulations under the RTA.

### 6.2 No Warranty

The Lessor does not warrant that the Leased Premises will for the duration of this Lease be structurally or otherwise suitable for the business to be conducted in the Leased Premises by the Lessee.

## 7. HOLDING OVER

In the event of the Lessee holding over after the expiration or sooner determination of the term of this Lease with the consent of the Lessor the Lessee shall become a monthly tenant only of the Lessor which tenancy may be terminated by one month's prior notice in writing expiring at any time at a monthly rent as nominated by the Lessor as being the then Current Market Rent for the Leased Premises and otherwise on the same terms and conditions as those contained in this Lease so far as applicable.

## 8. LESSOR'S CONSENT

### 8.1 Definition

In any case where under this Lease the doing or execution of any act matter or thing by the Lessee is dependent upon the consent or approval of the Lessor such consent or approval:

8.1.1 May be given or withheld by the Lessor in its absolute uncontrolled discretion unless otherwise provided; and

8.1.2 Means prior written consent and prior written approval.

### 8.2 Reimburse Costs

The Lessee shall in any event reimburse the Lessor upon demand any costs or fees paid by the Lessor to consultants engaged by the Lessor to examine or advise upon any application made by the Lessee (including any plans specifications or other material submitted therewith) for such consent or approval and all incidental documents and any other moneys outlaid or expenses incurred by the Lessor in connection with such consent or approval.

## 9. CONSENT OF MORTGAGEE

This Lease is subject in all respects to the consent or approval of any person having any Mortgage or Encumbrance over the Land being first had and obtained if required.

## 10. GOODS AND SERVICES TAX

### 10.1 Definition

In this clause and this Lease, unless inconsistent with the context:

10.1.1 **'GST'** means any tax or other similar levy, surcharge, duty or impost charged, levied or imposed by law under the GST law:

10.1.2 **'GST Act'** means the *A New Tax System (Goods and Services Tax) Act 1999* and associated legislation and the expression includes any other Bill, law or legislation that may be introduced into the Parliament by way of amendment to or in substitution for the GST Legislation and all statutory instruments issued under it;

10.1.3 **'GST Rate'** at a particular time is a reference to the rate of the GST (as a percentage of the GST exclusive price or cost of a Supply) at that time;

10.1.4 **'Input Tax Credit'** means money paid or payable or credit allowed or allowable by the Australian Taxation Office under a statutory provision for taxpayers to recover GST paid to their suppliers attributable to the Input Costs of the taxpayers (in the GST Legislation called input tax credits);

10.1.5 **'Supply'** has the meaning attributed to that term in section 9-10 of the GST Law;

### 10.2 Lessee To Pay

If GST is imposed or levied in respect of any Supply made by the Lessor to the Lessee under or in accordance with or pursuant to the terms covenants and conditions of this Lease, the Lessee shall duly and punctually pay the amount of GST to the Lessor or as the Lessor shall direct.

### 10.3 Tax Invoice

Any invoice or request for payment of GST must be in the form of a Tax Invoice within an approved form under the GST Act.

### 10.4 GST In Addition

10.4.1 The amount payable by the Lessee to the Lessor for, or in connection with, a Supply under this Lease does not include any GST.

10.4.2 The Lessee must pay the Lessor an additional amount on account of GST equal to the amount payable by the Lessee for the relevant Supply multiplied by the prevailing GST Rate.

10.4.3 The additional amount is payable at the same time as when the amount for the relevant Supply is required to be paid by the Lessee to the Lessor.

### 10.5 GST On Reimbursed Expenses

To the extent that the amount for a Supply consists of the reimbursement of costs and expenses incurred by the Lessor, in this Lease those costs and expenses are deemed to be exclusive of the amount of any refund or Input Tax Credit of GST to which the Lessor is entitled as a result of incurring the cost or expense.

### 10.6 Concurrent Leases

The Lessee acknowledges that the Lessor has entered into a series of leases or rights of occupancy in relation to the units situate upon the Land. The Lessee acknowledges the rights of the tenants under the concurrent leases and agrees to be bound by the terms of those leases. The Lessee further indemnifies the Lessor in relation to any claim or action brought by any of the lessees under the concurrent leases.

**CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION**

This Lease does not contravene Section 32 of the Development Act.

N/A

DATED 9 JULY 2010

**IMPORTANT NOTICE**
**EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE**

Retail & Commercial Leases Act 1995: Section 18
Retail & Commercial Leases Regulations 1995: Regulation 7

THE LESSOR DOES NOT WARRANT THAT THE PREMISES THAT YOU ARE ABOUT TO LEASE WILL, FOR THE DURATION OF YOUR LEASE, BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS THAT YOU INTEND TO CARRY ON.

EXECUTION

THE COMMON SEAL of
THE DISTRICT COUNCIL OF MALLALA
ASSOCIATION was hereunto affixed
in the presence of:

THE COMMON SEAL of
BAROSSA AND DISTRICTS HOUSING
ASSOCIATION was hereunto affixed
in the presence of:

| | | | |
|---|---|---|---|
| Signature of Authorised Officer | Signature of Authorised Officer | Signature of Authorised Officer | Signature of Authorised Officer |
| CHARLES MANGUETO | S.M. STRUDWICKE | ANDREW CAMERON | JO THOMAS |
| Name of Authorised Officer | Name of Authorised Officer | Name of Authorised Officer | Name of Authorised Officer |
| | | PUBLIC OFFICER | CHAIR BDHA |
| Chief Executive Officer | Mayor | Position Held | Position Held |

* NB: A penalty of up to $2000 or 6 months imprisonment applies for improper witnessing.

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Lessors Copy

LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA

# 11441281

15:44 9-Aug-2010

Fees: $0.00

| Prefix |
|---|
| L |
| Series No. |
| |

## MEMORANDUM OF LEASE

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY**

RevenueSA - Stamp Duty - ABN 19 040 349 865 ©
RevNetID/PRA Bundle No.: EX 12421058G
~~Orig~~/Copy 2 of with 2 copies
Consideration/Value/Security: $0.00
SA Proportion (if applicable): $ -
SD: $0.00 LTO Fees: $121.00
Int: $ - Pen/Add Tax: $ -
Signature: [signature] Date: 9/8/10

**BELOW THIS LINE FOR AGENT USE ONLY**

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886

[signature]
Solicitor/~~Registered Conveyancer/Lessee~~
Trevor Edmond

AGENT CODE

Lodged by: WALLMANS LAWYERS
173 Wakefield Street
ADELAIDE SA 5000

Correction to: WALLMANS LAWYERS WALL

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. .....
2. .....
3. .....
4. .....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1. .....
2. .....
3. .....
4. .....

**DELIVERY INSTRUCTIONS** (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S)

| ITEM(S) | AGENT CODE |
|---|---|
| | |
| | |
| | |
| | |

| CORRECTION | PASSED |
|---|---|
| REGISTERED | 25 AUG 2010 |

pro REGISTRAR-GENERAL

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Lic No.1
080640_TPE_Lease_02-12-2009_39.docx

**Attachment 3**
to report 17.3
dated 11 May 2015

**Barossa and Districts Housing Association Inc – Lease Agreement Renewal**

District Council of Mallala

## Addendum to Memorandum of Lease Number 11441281

Addendum to Memorandum of Lease number 11441281 between the District Council of Mallala (DCM) (lessor) and Barossa & District Housing Association (BDHA) (lessee) commencing 01 July 2010 and expiring on 30th June 2015 the following amendments are made

1. Under Item 1 of the Memorandum of Lease number 11441281, the inclusion of certificates of title being leased 'the whole of land in Certificate of Title Volume 5948 Folio 82 known as Unit 2/7 Chivell Street, Mallala commencing 31 August 2011 and expiring on 30 June 2015

2. Entry criteria for all Units as per Mallala & Districts Homes Committee
    a. Minimum age for entry will be 55, with preference given to those over 65
    b. Applicants must be able to live independently
    c. Preference will be given to residents currently residing within the District Council of Mallala boundaries or with a demonstrated connection to the district
    d. Residents will not be excluded on the basis of assets or income
    e. Units will be non smoking
    f. Pets will be at the discretion of management (Unit 2/7 Chivell Street ONLY)

3. Entry criteria for all Units as per Barossa & Districts Housing Association
    a. Proof of identification will be required
    b. Proof of income and assets will be required

4. Rent will be set at
    a. Dunstan Crt Units – in accordance with Community Housing fee schedule with the exception of existing tenants as at transfer of management at 01/07/2010
    b. Unit 2/7 Chivell Street – 30% of tenant(s) total income

Dated 15.6.2011

District Council of Mallala

Signature of authorised officer

Dated 15/8/2011

Barossa & Districts Housing Association

Signature of authorised officer

Attached: Certificate of Title Volume 5948 Folio 82

| | |
|---|---|
| District Council of Mallala | **17.4 Parking on Windmill Road, Two Wells** |
| | **Container No:** **CON 12/987**<br>**Document No:** **D15/8016** |
| **Report Date:** **11 May 2015** | **Prepared by:** **General Inspector** |
| **Corporate Objective:** | 3.3.1 Ensure a safe and efficient local road network and associated infrastructure. |

| | |
|---|---|
| **Purpose:** | To provide Council with options to address a concern over truck parking on Windmill Road, Two Wells. |

| | |
|---|---|
| **Recommendation 1:** | "that Council, having considered Item 17.4 - *Parking on Windmill Road, Two Wells* dated 11 May 2015, request that a report be brought back to Council on implementing Option ... ." |

| **Impact Summary** |
|---|

| **Organisational and Governance** | |
|---|---|
| Financial | Nil |
| Legislation | In South Australia parking is controlled by the combination of the *Australian Road Rules 1999*, the *Road Traffic Act 1961* and Regulations made under that Act, *Local Government Act 1934,* and the *Local Government Act 1999*. |
| Risk | Being a 'no through road', parking of vehicles on Windmill Road presents a low risk to residents. Council has not received complaints regarding the parking of vehicles except for those raised by a resident at open forum. |
| Consultation | Consultation is dependent on what option Council may wish to pursue. |
| Asset Management Plans | Nil |
| Service Standards | Nil |

## Background

Concern has been raised by a resident (attending Open Forum) in regards to parking issues on the Old Port Wakefield Road and Windmill Road. The main concern mentioned was parking on the footpath.

This has been monitored and a number of Infringement Notices have been issued to offenders. While Council Administration is aware of the parking concerns on Windmill Road, Council has not received any complaints from other ratepayers in relation to parking in this area.

These areas are monitored regularly as time and resources allow.

## Discussion

Windmill Road, Two Wells is a *no through road* and is approximately 180 metres long. This road services the rear entrance of three residential properties and one commercial property that front Old Port Wakefield Road, and the entrance to the Adelaide Plains Kennel and Obedience Club (**Figure 1**).

There has been an issue with trucks parking for extended periods within this road.

The General Inspector has been monitoring this situation and a number of Infringement Notices have been issued in this area. All Expiations have been issued as a result of General Inspector observations and the issue deemed to be a priority due to a danger to other road users and pedestrian safety.

**Figure 1**

When the General Inspector observes a vehicle parking on the footpath, in the first instance the offender is given either a verbal or a written caution placed on the windscreen of the offending vehicle referring to Road Rule Number 197.

*Australian Road Rule Number 197*

*(1) A driver must not stop on a bicycle path, footpath, shared path or dividing strip, or a nature strip adjacent to a length of road in a built-up area, unless*

*(a) the driver stops at a place on a length of road, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under the Australian Road Rules; or*

*(b) the driver is permitted to stop under another law of this jurisdiction.*

Any further infringements observed after a caution has been issued are followed with a parking infringements notice pursuant to the Australian Road Rules with priority given to breaches that cause a danger to other road users or pedestrians.

**Key Considerations**

Heavy and Long Vehicles

Under Road Rule Number 200, a heavy or long vehicle must not obstruct other road users or pedestrians. It must not be parked on a road in a built-up area for more than one hour unless:

- a sign or traffic control device allows a longer period
- the driver is dropping off or picking up goods and stays for no longer than is necessary to complete the task
- a local council has granted an exemption.

*Australian Road Rule Number 200*

*(2) The driver of a heavy vehicle, or long vehicle, must not stop on a length of road in a built-up area for longer than 1 hour, unless the driver is permitted to stop on the length of road for longer than 1 hour by information on or with a traffic control device, or under subrule (2A) or another law of this jurisdiction.*

*(2A) The driver of a heavy vehicle, or long vehicle, other than a bus, is permitted to stop on a length of road in a built up area for longer than 1 hour if, throughout the period when the vehicle is stopped on the length of road, the driver is engaged in dropping off, or picking up, goods.*

*(3) In this rule—*

***heavy vehicle** means a vehicle with a GVM of 4.5 tonnes or more.*

***long vehicle** means a vehicle that, together with any load or projection, is 7.5 metres long, or longer.*

Councils are authorised to issue infringement notices for offences defined in Part 12 of the *Australian Road Rules*. The General Inspector needs to be able to prove that a truck has not moved for more than the one hour time period.

The policing of truck parking can be a very time consuming operation given other tasks undertaken by the General Inspector (i.e. dog control).

Prohibition of traffic or closure of streets or roads (temporary closure)

Pursuant to Section 359 of the *Local Government Act 1934*, a council may by resolution, supported by a majority of all members of the council, exclude vehicles generally or vehicles of a particular class from a particular street, road or public place or part of a particular street, road or public place.

Subject to the *Road Traffic Act 1961*, a council may erect such barricades or other traffic control devices as are necessary to give effect to a resolution passed under this section of the Act. A resolution passed under this section cannot take effect before it has been published in the Gazette and in a newspaper circulating in the area.

A council can resolve to establish:

- a *prohibited zone* (being a zone in which parking is generally prohibited).

  Must specify whether the zone is a *No Standing zone* or a *No Parking zone*; may exempt a specified vehicle or vehicles of a specified class from the parking control.

- a *restricted parking* zone (being a zone in which parking is limited to certain classes of vehicles or to parking for certain purposes).

  Must specify whether the zone is a *loading zone, permit zone, works zone, truck zone, bus zone, taxi zone* or *mail zone*; must, in the case of a permit zone, specify the class of permit required for parking in the zone; may further limit the class of vehicle that may be parked in the zone.

- a *parking zone* (being a zone in which parking is generally permitted).

  May limit the class of vehicle that may be parked in the zone; may impose any of the following conditions on parking in the zone: (i) that parking is subject to a specified time limit; (ii) subject to section 82a of the *Road Traffic Act 1961*, that vehicles must be angle parked; (iii) that a specified fee for parking must be paid in a specified manner (including payment by way of parking meter or ticket dispensing device).

Local Government By-laws

*Power to control access and use of land*

A Council may make by-laws under Section 238 of the *Local Government Act 1999* controlling access to and use of local government land. The by-laws may for example regulate, restrict or prohibit the parking or standing of vehicles. However, a by-law cannot be made under subsection 1 about access to or use of a road.

*Use of roads*

Section 239 of the *Local Government Act 1999* enables a council to make by-laws about the use of roads for

a) moveable signs; or
b) the broadcasting of announcements or advertisements; or
c) public exhibitions or displays; or
d) soliciting for religious or charitable purposes; or
e) motor vehicle maintenance or repair; or
f) the movement of animals; or
g) any other use in relation to which the making of by-laws is authorised by regulation.

Pursuant to section 239(1)(g) of the Act, a council is authorised to make by-laws about the following:

a) the use of roads for camping;
b) the prevention of the obstruction of
    (i) any road; or
    (ii) any footway, water-channel, or watercourse in a road.

*Power to make by-laws*

Section 246 of the *Local Government Act 1999* enables a Council to establish a by-law relating to the driving, parking or standing of vehicles. The by-law may:

i. impose, modify or restrict any evidentiary burden on a party to proceedings for an offence against the by-law, or provide for other matters in respect of evidence or the proof of any matter; and
ii. fix entrance fees or parking fees; and
iii. provide that the owner and the driver of a vehicle driven, parked or standing in contravention of the by-law are each guilty of an offence and liable to the relevant penal.

Road Opening or Closure

The opening or closure of roads is regulated and documented in accordance with the *Roads (Opening and Closing) Act 1991*.

A road process (a road opening; a road closure; or a combination of a road opening and a road closure) may be commenced by a council in relation to a road or proposed road within the area of a council. A council must resolve to commence a road process pursuant to the Act.

Section 12 of the Act allows a council to make 'in principle' agreement for the exchange and transfer of land subject to a proposed road closure with the owners of land adjoining that land.

Way forward

If the parking of vehicles on Windmill Road, Two Wells is considered to be a major concern and high risk to local residents and road users, Council has three main options:

Option A: Designate Windmill Road a No Parking or No Truck zone under the *Local Government Act 1934.*

This option would prevent either all types of vehicles or just trucks from parking in the street, including outside the Adelaide Plains Kennel and Obedience Club and at the rear of the residential/commercial properties. This can be achieved by a resolution of Council, appropriate public consultation and appropriately signposted.

Option B: Designate Windmill Road with a load limit.

This can be done pursuant to the *Road Traffic Act 1961* and would need to be placed in the Government Gazette following a Council resolution. However, this may not solve the problem as it would allow trucks and other vehicles below the load restriction, which is normally 5 tonnes, to park on Windmill Road and Council would not have the option to police the one hour Road Rule. Load Limit can only be policed by SAPOL.

Option C: Restrict parking by introducing a by-law under the *Local Government Act 1999*

This option has the potential to address the issue, however establishing a by-law can be long and costly process.

Option D: Close Windmill Road under the *Roads (Opening and Closing) Act 1991*

This option is to close Windmill Road to restrict all access. Council will need to formally resolve to commence a Road Closure Process and delegate authority to the Mayor and CEO to undertake the process and sign all documentation. The process will require public consultation and notification to adjoining owners and service utility providers.

If it is deemed that parking of vehicles is not a major concern or risk to road users or pedestrians, Council may chose to:

Option E: allow the status quo to continue with officers to monitor the situation, prioritising action based on the safety and welfare of other road users and pedestrians.

**Summary**

Council has been made aware of concerns raised by a resident regarding parking of vehicles on the Old Port Wakefield Road and Windmill Road.

Currently, the General Inspector is able to monitor the situation, and issue parking infringements notice pursuant to the Australian Road Rules, if and when a breach is observed.

Should the parking of vehicles on Windmill Road, Two Wells be considered a high risk, Council has a number of options to address the situation.

**Items:**

## 18. URGENT BUSINESS

18.1

| District Council of Mallala | **19 CONFIDENTIAL ITEMS** |
|---|---|
| **MONDAY 11 May 2015** | |

**Items:**

19.1 No Confidential Items