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The Adelaide Aquatic Centre, Park 2, Adelaide park lands, and the future of inner metropolitan swimming infrastructure facilities

## Why a win-win solution appears too hard to contemplate – even if it's almost within reach

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The common challenge with resolving big infrastructure problems is that those faced with them don't examine the historical and political context in which they originated. If they did, they would see with fresh eyes how the past often influences the way the present is perceived, and influences the way people explore a way through. Nothing better illustrates today's vexed issue of what to do about the future of the city council's Adelaide Aquatic Centre.

The solution can be described in one sentence comprising three steps. (1) End the city council's responsibility to provide Adelaide's inner city metropolitan electorates with a swimming facility at its own expense; (2) hand back to the state government the infrastructure responsibility for operating swimming facilities in or near the city; and (3) confront the government's assumption that any infrastructure upgrade solution must expressly draw on park lands.

Politically, that requires some deft local government footwork and courage. State taxpayers' money totalling \$135m temptingly lies on the table. But it has negative park lands conditions attached. The courage should be informed by the fact that the South Australian public, while desiring future inner metro swimming facilities, very clearly does not want them built in the park lands. More discussion – and evidence – follows later...

### Negative consequences immediately

It is important to look at two immediate problems likely to be triggered by the city council soon if nothing changes relative to this state money and proposal. In coming weeks, if the council endorses the current political 'solution', two state laws will be breached, triggering the possibility of court injunctions arising, as well as the trashing of four council lease and licence policy requirements, adopted seven years ago to guarantee council proper process. More follows below. The Adelaide City Council is about to endorse a Park 2 proposal that will cost its 26,000 ratepayers up to \$20m from its budget to pay to demolish its \$21m swimming pool asset, leaving these ratepayers without access to similar public facilities from the start of summer 2024, an arrangement to endure for three long years.



March 2022 Labor state election poster (electorate of Adelaide) – opposition leader, Peter Malinauskas.

Meanwhile, the state Labor government will take full control of what subsequently happens at that Park 2 site, when it fences off 2.5ha of the park to create a construction works compound to build a new \$135m aquatic centre there. Three years later, when it eventually owns and operates the facility under a 42-year lease featuring ludicrously cheap rent, it will effectively control what else occurs in that park. This will be because the lease terms will enable a state minister to have unfettered discretion over future infrastructure proposals near that Park 2 facility.

### Tenant to control the landlord

Critically, every aspect of Labor's 'solution' is focused on this section of the Adelaide park lands, whose registered proprietorship of Park 2 exists under city council 'custodian' arrangements. But, once the lease is signed, those arrangements will never be able to override lease 'permitted use' terms that will be under control by a state minister (and are not currently publicly known). Put simply, the council will remain the landlord, but the tenant, the state government, will control every future determination about future development projects in that park. This is the proposal currently faced by council's elected members.

## The breaches of legislation

Alarming, the aquatic centre proposal, which is up for endorsement by council's elected members, will trigger the breaching of the *Adelaide Park Lands Act 2005*.<sup>1</sup>

Further, when the government's development application is approved (by its own state agency, an illustration of how some planning outcomes are determined in Adelaide) the consequences of receipt of planning consent, followed by development consent, would then see the breaching of the *Local Government Act 1999*.<sup>2</sup> Moreover, to cap it off, before this development assessment phase gets to the state assessment agency, the city council will have to set aside and ignore at least four requirements of its 2016 Lease and Licence Policy, which were crafted by the council to ensure that proposals for new park lands leases satisfy due-diligence criteria relating to the leasing of areas on community land – park lands. (Particulars appear in text commencing on page 3: see 'Six reasons why...')

As at 24 September 2023, everyone is pretending that this outcome will be entirely reasonable, fair, equitable, and even politically smart. Except that it is none of those things. But no-one can comprehend that with any clarity, because everyone has forgotten how it all began, 55 years ago. It is not helpful that, with a few exceptions, many elected members wrestling with today's 'solution' were not even born in the mid-60s. In which case, they are significantly handicapped in exploring the crafting of a 'solution' today.

## The historical context – five critical milestones

This aquatic centre 'problem' has not just emerged. Elected members hoping to develop fresh eyes need to explore Park 2 history going back 55 years to 1968. To do so will reveal that there are four aspects to this problem. Two are political, and two are economic.

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<sup>1</sup> Because the proposal is inconsistent with the objectives of the *Adelaide Park Lands Management Strategy 2015–25*, one of two statutory policies operating under the 2005 Act. Activating it, via an amendment to the existing Community Land Management Plan for the parklands, would breach s19(1) of the Act.

<sup>2</sup> Because the state government proposes to fence off 2.5ha of the site in the park earmarked for the new building, which would breach s202 of the *Local Government Act 1999*, which requires that not more than one hectare be fenced off for such construction works compounds. Worse, when demolition of the existing centre begins in September 2024, the works construction area will expand to 3.5ha. All of this would be enabled under a still-secret Project Agreement, signed by the Corporation of the City of Adelaide, to the very great advantage of the state government, but not to its 26,000 city ratepayers.

**1968:** A decision that year to close the City Baths, on King William Road, meant that the city council was instead induced to transfer a city responsibility to operate aquatic facilities to the Adelaide park lands, at Park 2. It dug a big hole in the park lands turf and filled it with one outdoor pool. This resolved a state government political problem initiated by the then state administration, allowing the City Baths' site land to be used for another state government development. Over the following 40 years or more, the council-run aquatic facilities significantly expanded. Some funding came from the state government, but a lot more funding had to come later from the city council. Gradually, what had been a political solution turned into an economic problem for city ratepayers. Strategically, it would also feature a related long-term park lands error of judgement, because the late-60's solution had relied on access to expansive open spaces of one of the state's parks designated 131 years earlier as open space by Colonel William Light in 1837 (Park 2). Big mistake.

## 2014

The next milestone in the saga, the challenge to deal with the increasing maintenance costs of an ageing aquatic centre, was an economic problem requiring a political solution. One option was to simply close down a costly swimming facility nearing the end of its economic life, and have the state government deliver a solution somewhere else. While contemplating that (and confronting a state government entirely uninterested in accepting that this was its political problem), the council found itself having to pump in big money to keep the facility going. Strategically, the problem still depended on access to the expansive open spaces of the park lands. Reinforcing the big mistake.

## 2017

By about 2017, a 'white knight' quietly rode into Park 2 in the form of the AFL, and its local team, the Adelaide Crows. This entity proposed a takeover of a section of Park 2, to enable construction of new aquatic facilities to complement its own bid to create a football headquarters there, with associated administration buildings. Here was presented an economic solution to an increasingly pressing council economic problem. It was also seen as an attractive political solution, because while the Labor state government did not want to financially support it, it was happy to endorse it.<sup>3</sup> It was around this time that the council entered into talks with the AFL about leasing the land to make the project feasible. A secret December 2019 lease arrangement with a very cheap fee to make this possible was hammered out. Details would stay secret until 1

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<sup>3</sup> Moreover, the Morrison Liberal commonwealth government offered \$15m to help pay Crows' costs.

September 2023.<sup>4</sup> Strategically, this ‘solution’ still relied on a commercial football entity obtaining long-term council-approved access to the expansive open spaces of the park lands; in particular, Park 2. The council liked it. Another major error of judgement.

## 2020

In early 2020 the COVID-19 world-wide pandemic arrived. Its effects decimated AFL revenues and affected operations so badly that it withdrew its offer to take over this park and commence the project. Strategically, this meant that the council was stuck with no solution. But an administrative view endured – that any future solution should rely on a future party getting access to the expansive open spaces of the park lands.

## 2022

Two years later, the city council, also financially battered by the pandemic’s effect on city economic activity, was getting desperate. Increasing centre maintenance costs were fuelling an urgent imperative among administration and elected members to act and stop ‘throwing good money after bad’. Sometime between the election of the Verschoor-led council (late 2018) and the lead-up to the March 2022 election, the Labor state opposition approached the council with a solution. The blueprint, secretly put to council’s administrators, would inform the contents of a secret, slowly evolving draft Project Agreement. On that basis, one month ahead of the 2022 poll, the Labor opposition, led by leader Peter Malinauskas, announced a solution.<sup>5</sup> The political white knight had arrived. Critically, the strategic context once again locked in the council to a park-lands-sited solution. Despite a view among some elected members that the park lands was not an ideal future place for a new aquatic centre, the leader’s pledge, plus an offer of \$80m, meant that the only site contemplated was to be public community lands – and specifically – Park 2.

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<sup>4</sup> A Prudential Report commissioned by the city council, delivered on 22 August 2023, revealed all about this special deal. The council published the report on 1 September 2023.

<sup>5</sup> 12 February 2022: online media announcement. “Today I announced Labor’s plan for the Adelaide Aquatic Centre. A Labor Government that I lead will build a new \$80 million Adelaide Aquatic Centre to provide state-of-the-art swimming and recreational facilities ... . The new centre will replace the much-loved but ageing Adelaide Aquatic Centre which was first built in 1969 as an outdoor pool and redeveloped over the past 50 years as an indoor facility through a series of patchwork projects. The new Adelaide Aquatic Centre will be built either on the current site or in the adjacent corner, with Labor consulting with the community over the location. ... If elected, a Labor Government will: Step in, take ownership and build a new Adelaide Aquatic Centre.”



August 2023: workmen commence soil sampling for the state government’s Park 2 construction project – well before endorsement by the park lands landlord, the city council.

## 2023

More than a year later, on 10 June 2023, Labor’s Infrastructure and Transport minister, Tom Koutsantonis, announced that a significantly expanded aquatic centre concept would replace the original pledge, this time to cost \$135m. The media conference was attended by council’s Lord Mayor, Dr Jane Lomax-Smith, who endorsed the proposal. If nothing else, this potted history illustrates a long-term park lands theme: once an infrastructure proposal manifests in the park lands, it is traditionally very difficult to re-locate it from public land because the land is free for the project proponent to occupy.

## Six reasons why the state proposal ought to be renegotiated

**1 and 2:** Earlier in this essay appear details about the two breaches of state legislation that will be triggered if the government’s ‘solution’ is endorsed by council. It is unusual that the Corporation is contemplating the breaching of state law, but legal advice delivered to it will have already warned key decision makers. Now we come to the likely trashing of aspects of the council’s Lease and Licence Policy (2016) to enable the

state government plan to progress. There are four requirements of the Policy that, under the current government plan, are not met. These are red flags. **3 (i).** To enable the plan to progress to planning assessment, the council's 2013 *Community Land Management Plan (CLMP)* must be amended, especially in the section that deals with Park 2. Unfortunately for the government, however, a draft Park 2 "A 2.6" CLMP 'management proposal' (demolition/construction of new building and special lease and licence) is not consistent with the Park 2 objectives in the current version of the *Adelaide Park Lands Management Strategy 2015–25*. That Strategy does not envisage demolition, and a big new project, or a 42-year lease, and it therefore does not meet the requirements of the 2016 Lease and Licence Policy. A red flag.

**4 (ii).** The CLMP Park 2 Lease and Licence proposal content has not satisfied the 'community engagement' requirements of the City of Adelaide's 2016 Lease and Licence Policy. The community engagement terms in that policy prescribe delivery to public consultation respondents of a "draft lease or licence". However, no draft lease was provided during the July/August 2023 consultation period. (It closed on 3 August.) Moreover, the construction licence was incomplete. This means that the requirement was not met. Another red flag.

**5 (iii).** The proposed lease fee is not based on a calculation based on the footprint of the proposed new centre building, and thus has not met the requirements of the 2016 Lease and Licence Policy. There are at least two problems with meeting this requirement. Firstly, the footprint must be unequivocally clear, but is not. Architects' drawings in the August 2023 Planning Report to the state government do not state the footprint area number. Moreover, the lease fee was struck in December 2019, years before Labor's 2022 initial \$80m proposal emerged, and there is no publicly accessible analysis of the footprint area calculated at that time.

**6. (iv)** The council has failed to consider the critical requirement that, to win Lease and Licence Policy approval, there must be clear evidence of "no significant negative issues raised". On the contrary, this Park 2 project proposal resulted in an avalanche of public opposition to Labor's park lands proposal, and the council's intention to go along with it.

Under the 'Delegation' heading in the Policy, council's administration must establish that certain criteria had been satisfied – that requirements of the Policy are met. One of them is that a proposal requiring a lease and licence, having been subject to public consultation, must ensure that "no significant issues have been raised through the community engagement process".<sup>6</sup>

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<sup>6</sup> This requirement appears in the Policy (Link 3, page 52, or page 7 of the 2016 version (current ACC Policy). The clause

However, each of the 2023 consultation phases (draft CLMP proposal, and later, the Lease and Licence proposal) raised very significant negative issues. For example, the 4 August 2023 findings from the lease and licence consultation found that 97.9% of respondents objected to the idea that a lease or a construction licence should be entered into. The very high rejection rate was evidenced in the council's receipt of 247 emails, 33 *YourSay* survey response forms, and three letters (detailed submissions). It was compelling evidence.

### **Predictable, but is it inevitable?**

Despite the government and media clamour about the existing swimming centre facilities, it is very clear that the public do not want the park lands to be a feature of a future solution. This was succinctly summed up by the independent author of the council's Prudential Report.<sup>7</sup> He wrote: "...based on the consultation process there is a strong sense that a new aquatic centre is warranted, but the park lands should be protected. The view was that a new facility should be located on a brownfield site (preferably not on park lands or on the site of the current AAC [Adelaide Aquatic Centre]). Concerns were also raised during the consultation that related to the protection of the park lands, current bid for world heritage listing, environmental impacts, commercialisation of park lands, lack of public transport options to access the new facility and the early closure of the AAC [Adelaide Aquatic Centre]."<sup>8</sup>

The city council's slide towards the seductive embrace of the state Labor government's \$135m 'solution' has been predictable, but is not inevitable. Constructing and funding aquatic centre infrastructure is really a state government responsibility, and not on park lands. It will take courage to confront the state with these facts, but the widespread public view, as well as fresh elected member thinking enabled by scrutiny of 55 years of public swim centre history, should deliver useful levers as a win-win outcome is negotiated in 2023.

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commences with the words "finalise a lease...". The critical substance reads "... and has been subject to community engagement, providing no significant negative issues have been raised through the community engagement process."

<sup>7</sup> 22 August 2023, City of Adelaide, Prudential Report, Adelaide Aquatic Centre Redevelopment. Source: Adelaide City Council, Audit and Risk Committee, Adelaide Aquatic Centre Redevelopment, Prudential Review, Item 5.4, 1 September 2023: <https://meetings.cityofadelaide.com.au/documents/g792/Public%20reports%20pack%2001st-Sep-2023%2008.30%20Audit%20and%20Risk%20Committee.pdf?T=10>

<sup>8</sup> Prudential Report, Section 5. 'Public consultation', page 13.