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DATE 30 July 2023

**SUBMISSION: ADELAIDE CITY COUNCIL PROPOSED REVISION OF THE COMMUNITY LAND MANAGEMENT PLAN FOR THE ADELAIDE PARK LANDS ZONE**

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RESPONSE TO YOURSAY PUBLIC CONSULTATION, CLOSES 31 JULY 2023

**Summary**

If this disturbing proposed revision of the Adelaide Park Lands *Community Land Management Plan* (CLMP) is adopted it will result in the effective compromising of the purpose and policy efficacy of one of the two key statutory policy documents required under the *Adelaide Park Lands Act 2005* to guide park lands zone management direction. The gutted (and in parts highly ambiguous) version proposed by the city council in July 2023 would usher in a new and egregious period of state government and commercial exploitation of the park lands.

Park lands CLMP versions have evolved twice since 1999 amendment of the *Local Government Act*, but this third proposed revision is exceptional in the extent of its flaws. It is stripped of previous detailed content, which deeply compromises it. Its endorsement by the city council, the ‘custodian’ of much of the park lands (74 per cent), would represent one of the most profound South Australian changes in park lands management direction via the CLMP since the passing of the *Adelaide Park Lands Act 2005*. (This Act features two statutory policies, one of which is the CLMP. The other is the Strategy.)

Council’s and subsequent ministerial endorsement of this proposed draft would represent a triumph of 2023 government administrative convenience – not for protection of the integrity of the park lands landscapes, but for state government or commercial built-form exploitation and benefit.

This CLMP draft also proposes a breach of section 19 of the *Adelaide Park Lands Act 2005* because with respect to the wording and intention relating to Park 2 it is inconsistent with the *Adelaide Park Lands Management Strategy 2015–25*. That statutory policy document does not contemplate demolishing the existing aquatic centre or creating an alternative (new) centre in another place in Park 2.

There are compelling reasons to comprehensively reject this draft.

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### APPENDIX 3

**Proforma survey form, 7 July 2023: YourSay: in respect of draft CLMP: public feedback**

## CONTEXT

It should be recorded that this July 2023 public consultation was conducted by the City of Adelaide as a matter of great urgency. Some reasons why are explored in this paper. The author of this submission has participated in many YourSay consultations over many years, and has always been notified, as a City of Adelaide ratepayer, ahead of each survey commencement date. However, in this case, a notification arrived four days short of the 31 July deadline. Discussions with city council elected members during the consultation period indicated that some also did not know that a 21-day YourSay survey period had been ‘live’ since 7 July, seeking feedback about a proposed major revision of this CLMP.

### 1. Six critiques of council’s rationales for change

Of great concern at this particular date is that this draft CLMP is being urgently revised to enable and endorse an Adelaide park lands Park 2 state government development concept, rather than the concept needing to comply with the rigour of the existing (2013) CLMP version. In other words, the existing CLMP is to be replaced so that a new version can be adopted that endorses the development proposal at Park 2. (It is also being revised to progress several other park lands development projects or project concepts currently under contemplation.)

A number of explanatory rationales for change have been recently put forward by the city council. However, each is problematic.

For example:

- a) This CLMP version does not deliver what council claims: ‘A more holistic management approach’. On the contrary, it delivers a significantly less holistic approach. Extensive material previously contained in the existing (2013) CLMP for the Adelaide park lands has been jettisoned. Moreover, there is no presentation to consultation respondents of this former content, or discussion as to why it has been deleted.
- b) Despite claims, it does not deliver ‘a functional document’. By stripping the new draft of former content, it is unequivocally less functional, especially in terms of the likely risks encouraged by ambiguous provisions, as well as the vital need for protecting the park lands from propositions that could lead to exploitation of the green open spaces, and alienate the public from access to them. The lack of discussion reference to ‘contemplation’ content of a CLMP is of particular concern.
- c) It does not deliver ‘Reduced duplication’. On the contrary, there is continuous duplication at every park or site reference (totalling 40 sites) of the dangerously ambiguous “Purpose of the park lands” statement, which reads: “Providing facilities, furniture and amenities ancillary to park uses”. This appears to be on the spurious basis that this is principal purpose of the Adelaide park lands. This is simply false.
- d) There is no evidence provided that the draft replacement CLMP will deliver more efficient consideration by “the Adelaide Park Lands Authority, state government and council”. The outcome would not be ‘efficiency’ but simply

greater flexibility for administrators, and it would arise because so much of the original content has been jettisoned, and new, highly ambiguous content has been proposed. Loss of the original material would ensure that development project proposals for the park lands would be even more easily legitimised at APLA contemplation stage and subsequent council, and later planning consent and development assessment stages (Council Assessment Panel or SCAP assessment). The proposed draft CLMP material is so dangerously ambiguous in parts that reference to it would encourage state planning park lands land-use determinations profoundly alien to the park lands green open spaces and landscapes. The key to this would be a new statement in the draft, replicated across all park sites, as the “purpose” words: “*Providing facilities, furniture and amenities ancillary to park uses*”. Commercial, city council and state planners would be able to base their Council Assessment Panel or State Planning Assessment Panel rationales on this statement alone, because its repetition across the whole of the draft will be seen to be the core ‘contemplation’ of the CLMP for the next five years.

- e) The council’s April 2023 CLMP draft document (the one currently subject to consultation in July), under the heading ‘Opportunities’, rationalises the 2023 draft procedure as a “stronger alignment of CLMP content and review processes with statutory requirements”. The words “stronger alignment” are euphemisms for a fresh but flawed reinterpretation of provisions under the *Local Government Act 1999* (section 196, (1a) to (3d)) to allow for delivery of a minimalist new document, stripped of former content, and reduced to (in many cases) one-line statements claiming to address those section 196 criteria. The rationale then states: “This includes a streamlined approach to the five-yearly review process so that it can be achieved within the statutory timeline.” The rationale appears to be that, under current administration stress, process must trump content, therefore content must be stripped out of the existing CLMP, and any future CLMP, to meet future deadlines. But it is already too late for that with regard to this one. The *LG Act 1999* deadline for review of the 2013 CLMP (every five years) has come and gone. The requirements under the legislation have not been met. So much for ‘streamlining’.
- f) As noted in this submission’s summary on page 1, with respect to proposals for Park 2, this draft proposes a breach of section 19 of the *Adelaide Park Lands Act 2005* because the Park 2 proposal is not consistent with the *Adelaide Park Lands Management Strategy 2015–25*, a requirement under the Act. That statutory policy document does not contemplate demolishing the existing aquatic centre or creating an alternative (new) centre in another place in Park 2. The existing Strategy version notes that the Park 2 aquatic centre could in future feature a “large hub around the aquatic centre”, with various recreational features including “upgraded picnic facilities, kiosk/café and play spaces”.<sup>1</sup> But it does not aspire to any demolition of the existing commercial facility, or its replacement under a new lease by a major new construction project elsewhere in Park 2. In other words, the ‘rationale for change’ is based on a proposed breach of park lands legislation. The explicit wording of the proposal in the draft CLMP appears in Appendix 1 of this submission.

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<sup>1</sup> *Adelaide Park Lands Management Strategy 2015–2025*, ‘North Park Lands Precinct’, Future moves, Park 2, page 62.

## 2. Introduction to submission themes

### Key source document:

This response is based on the ‘April 2023’ YourSay CLMP draft, as supplied online on 7 July 2023 in conjunction with the YourSay consultation feedback form (as reproduced in Appendix 3 of this submission).

The City of Adelaide’s proposal is an urgent attempt to create and have endorsed a significantly revised statutory park lands policy instrument, notwithstanding that the legal deadline for the CLMP review has already passed. It was a deadline set under the *Local Government Act 1999* (‘comprehensive review’ *every five years*). That five-year period has passed. This indicates a breach of the Act.

If endorsed, the draft would encourage major future damage to the landscape integrity of the Adelaide park lands. Its new brevity introduces comprehensive ambiguity, which could significantly lead to the compromising of the rigour of existing management directions of the Adelaide park lands. This is a deeply flawed draft CLMP.

### **Key aspects**

#### PUBLIC CONSULTATION

- Critical explanatory background was lacking in the YourSay background material.
- There was inadequate explanation of the complexity of the legal and administrative purpose of a CLMP.
- No current version (ie the existing 2013 version) was provided to allow comparison by respondents to illustrate the substantial deletion of previous content, and extent of change proposed. This approach thus concealed what is a very substantial replacement of much of the former CLMP content. This reflects a disingenuous council procedure.
- There was no detailed discussion of critical related policy likely to emerge in a 2023 anticipated revision of the *30 Year Plan for Greater Adelaide*, which may well inform likely future amendments to the CLMP for the Adelaide park lands zone – including this draft.

#### CONTENT

- Council’s administration has relied on a flawed judgement about the interpretation of key legislation (the *Local Government Act 1999*) as a basis for this revision, and drew on statutory principles of the *Adelaide Park Lands Act 2005* to rationalise the change.
- The proposed CLMP has been stripped of most previous content, which has been critical to land-use determinations since 2013.
- The proposed draft will effectively trash the clarity and efficacy of an existing statutory policy document (the 2013 CLMP) arising from the *Adelaide Park Lands Act 2005*, used to guide future management direction of park lands zone matters.

## **BACKGROUND DISCUSSION**

### **3. Environmental/political context as at July 2023**

The following explanation ought to have been provided during the July 2023 public consultation phase. It was not. This represents a fundamental failure of due process in local government public consultation procedure.

#### *The 30 Year Plan for Greater Adelaide*

This CLMP draft emerges at a critical time, and the timing of its release illustrates the funk in which city council administration finds itself. It is self-induced. The state government's *30 Year Plan for Greater Adelaide* is overdue for comprehensive updating. This plan traditionally includes visions and aspirations for park lands management directions over the next decade. Its contents will influence the evolution of government policy and evolution of statutory park lands documentation under the *Adelaide Park Lands Act 2005*. These comprise the *Adelaide Park Lands Management Strategy (APLMS)* and the *Community Land Management Plan (CLMP)*, via the interacting *Local Government Act 1999*.

Under the 2005 legislation, a CLMP for the park lands must be 'consistent' with the *APLMS*. The draft currently subject to public consultation in some sections is not. Thus until the city council properly revises and consults on a new version of the *Adelaide Park Lands Management Strategy 2015–2025*, it is obviously too early to amend the CLMP. The real impetus to radically amend the CLMP is a local government panic to satisfy fresh state government development project demands, especially in some parks. Park 2 is one. That the amendment to the CLMP is occurring ahead of revisions to the *30 Year Plan* is a sign of this current level of panic.

Curiously, there is no mention in the YourSay consultation background information of the looming demands involved in updating the *30 Year Plan*, which future content will dictate the primary 'visionary' action-plan directions likely to appear in a future version of the *Strategy*, and the future management directions and contemplations of a revised CLMP.

To introduce additional irony, preliminary discussions about the contents of the park lands aspects in the proposed new *30 Year Plan* at Capital City Committee level remain secret under the *City of Adelaide Act 1998*, and any resolutions and documentation arising from those discussions and shared with the city council must also remain secret under that legislation. The public's right to know is, under that Act, nil and without provision for appeal. It is in this almost farcical context that the city council is urgently driving public consultation on this deeply flawed draft CLMP.

### **4. The purpose of a CLMP**

The July 2023 consultation package fails to adequately explain to respondents the purpose of a CLMP. This is a significant failure of due process in local government public consultation procedure.

A CLMP for the Adelaide park lands is intended under the *Local Government Act 1999* to be a definitive legal guideline setting out the future *management directions* of much of the public land under the city council's custodianship and tenure, land in the Adelaide Park Lands Plan, the park lands as we know it today.<sup>2</sup> It is not an 'action plan'. That role falls to the Adelaide Park Lands Management Strategy.

The council's first CLMPs for the park lands began to emerge in 2005, as a result of a city council determination in 2003 to abide by amendments to the *LG Act 1999*. A December 2003 council brochure introducing the public to the idea of CLMPs for the park lands noted the intent behind them, including "enhancement and preservation of cultural, recreational and environmental values" and "forward planning for capital works and maintenance."<sup>3</sup> A CLMP should set out, in fine detail, the future management directions envisaged for each precinct, park or site of the Adelaide Park Lands zone under management by the City of Adelaide. (This proposed 2023 draft identifies annexures for 40 sites, and figures for 42.)

Importantly, it also must reflect any future 'contemplations' for those sites (especially in development terms) such as capital works and maintenance, and existing and future likely leases, potentially allowing for new building, infrastructure and ancillary facilities development, or existing facilities redevelopment. This 'contemplation' function is a critical CLMP aspect influencing future management determinations over the life of the CLMP, as a guide to park lands zone administrators.

Unfortunately, this function is commonly the least-understood feature of the use of CLMPs for the park lands. Few local government elected members understand it, and even fewer members of the public do.

A further complexity is the notion relating to an absence of 'contemplation', because that is just as valid. No contemplation means that there is no basis to consider, in management direction terms, new ad hoc development or lease concepts. In the past, the city council has occasionally unwisely pursued revisions of CLMPs during the plans' five-year shelf life to get around this challenge, and to introduce new 'contemplations' that did not exist at the time. They were commonly contemplations for ill-advised built forms or lease proposals not conducive to protecting the park lands landscapes. Some of them would have led to access restrictions and long-term alienation of the public from the park lands. (An example in 2017 was a concept for a helicopter landing site in Helen Mayo Park, west of Montefiore Road (Park 27).) It failed, for the obvious reason that a CLMP's 'lack of contemplation' meant that there was no policy support for the proposal, or for a lease to enable it. This highlights a key role played by CLMPs under the legislation.

The 2017 episode is once again repeating in July 2023, given that the principal impetus behind the urgency to consult on and endorse the April 2023 draft CLMP is to ensure that a major development proposal for Park 2 (aquatic centre) is quickly progressed, as well as a proposal for a lease, in line with a very tight state government construction schedule.

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<sup>2</sup> Excepting state-managed land under Crown, other agency or Commonwealth tenure, not subject to this CLMP. (The city council's portion is 74 per cent.)

<sup>3</sup> Adelaide City Council, "The Adelaide Park Lands, Community Land Management Plans, 27256\_12\_03" (green, DL fold).

CLMP matters are further discussed below, because in the proposed July 2023 draft at least one new and very broad ‘contemplation’ has been created and embedded across the draft, which would deliver significant future negative consequences (see heading 13 below: ‘*New, embedded ‘contemplation’ statement*’.)

Apart from ‘contemplations’, a competently crafted CLMP must acknowledge and explore the ‘state of play’ across the council-tenured sites in the Adelaide Park Lands Plan; for example, each park’s (or unnumbered site’s) cultural history, heritage matters and issues, landscape zones and landscape typologies, among many other matters. A reference to previous CLMP versions (for example, the current chapters in the existing 2013 version) will illustrate that this detail must be accessible in a CLMP, and at all times avoiding any ambiguity, because future arising land-use proposals will depend on the accuracy and precision of the information record.

The current proposed CLMP comprehensively fails this test. The matter of ambiguity is further addressed below.

## **5. Interpreting the legislation – Council has relied on a flawed judgement driving the interpretation of key legislation as a basis for this revision**

Unfortunately, the section 196 provisions allowing for evolution of a CLMP under the *Local Government Act 1999* (sub sections 1a to 3e) are rather general, and leave room for broad administrative interpretation when a CLMP revision is being contemplated. This is illustrated in the draft version currently being publicly consulted. The draft highlights the outcome of a fresh and substantial council reinterpretation of some of those *LG Act 1999* provisions. This interpretation has delivered a flawed draft CLMP version.

The council has, *for the first time*, determined to use the statutory principles of the *Adelaide Park Lands Act 2005* as a basis to rationalise a wholesale amendment of the existing 2013 CLMP version under section 196 of the *Local Government Act 1999*.<sup>4</sup> It has used these principles, which arise from the *Adelaide Park Lands Act 2005*. Flaws arising from this approach include:

- i. This is a new initiative legitimising a deliberate pursuit of greater apparent brevity but also leading to significant policy ambiguity, the evidence for which is substantial when one examines the proposed draft CLMP. By “deriving [the overall purpose] from the statutory principles” of the *Adelaide Park Lands Act 2005* (Part 5) the council’s administration has made an error of judgement. (Moreover, the city council has not flagged to YourSay respondents of how radically different is this approach in the history of the evolution of park lands CLMP versions since 2005. This is a procedural failure.) Amateur readers may falsely assume that this interpretation is a continuation of existing council policy, but it is not.

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<sup>4</sup> Extract: page 11 – draft 2023 CLMP (‘April 2023’), section 5.2, “Overall purpose for which the Adelaide Park Lands are held” – “Under section 196(3)(b) of the LG Act, a CLMP must state the purpose for which the land is held. The following purpose **has been derived from statutory principles** set out under section 4(1) of the APL Act, in particular section 4(1)(b), (c), (d).”



- ii. The *Adelaide Park Lands Act 2005* statutory principles serve as broad-brush and at times ambiguous ‘motherhood’ statements as the philosophical adjunct for the reading of the ‘action-plan’ *Adelaide Park Lands Management Strategy*. Some principles are more ambiguous than others. Most critically, they were never proposed to be the legal and philosophical foundation influencing the *management directions* of a future CLMP under the *Local Government Act 1999* legislation, brought into operation six years before the *APL Act 2005*. The principles were never inserted into the *APL Act 2005* to guide and define the express purpose of a CLMP as prescribed under the older *LG Act 1999*. There are serious risks inherent in this simplistic approach, but the city council’s administration appears to be indifferent to them. An example follows, especially with respect to one particular principle.
- iii. Statutory principle (d) states that “*the Adelaide park lands provide a defining feature of the City of Adelaide and contribute to the economic and social well-being of the city ...*” The fact that this occurs does not mean, and never did mean, that a key purpose of the park lands under a CLMP management direction is to “contribute to the economic and social well-being of the city”.<sup>5</sup> No legislation requires this view – an economic imperative. The council’s ‘deriving exercise’ takes a general and ambiguous principle (the product of the *APL Act 2005*) and turns it into an outcomes-focused CLMP requirement (under the *LG Act 1999*), prescribing a specific economic ‘purpose for which the [park lands] land is held’. While Adelaide park lands activity might at times socially “contribute” in various ways through events and recreational activities, those aspects do not turn the “contribution” into an economic requirement, a defined purpose. Former CLMPs for the park lands never prosecuted this view and most certainly did not capitalise on the principles from the *APL Act 2005* to derive the purpose for which the land is held. It should not be prosecuted now. In summary, council’s fresh interpretation of section 196 the *LG Act 1999* is misguided. So is the arising July 2023 CLMP draft.

## 6. Proposed new version is riddled with ambiguity

This draft CLMP is riddled with ambiguity, and largely stripped of the previous CLMP’s critical detail. It is also comprehensively lacking in vital former links references as well as explanatory material regarding associated management documentation (park lands custodian city council, and state departments). Despite its apparent brevity, it is not user-friendly, and in its stripped-back form will significantly mislead readers as to the authentic purpose of a CLMP. Reference to it in this form would have high potential to deliver consequences contrary to the previous long-standing monitoring and management of the open-spaces and the cultural history and landscape integrity of the Adelaide park lands over the coming years. This has been a fundamental *management direction* focus implied in each of the previous two CLMP versions. Remember – it is not a development plan. But respondents familiar with such plans (or the relatively new Planning and Design Code) could be forgiven for assuming that this draft CLMP is morphing into a companion document to the Code.

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<sup>5</sup> This is one of the ‘purposes’ that appears on page 11 of the draft CLMP.

## 7. The extent of the loss of former detail

The consultation approach fails to compare and contrast this new draft with the previous 2013 CLMP chapters. This represents a major failure of due process in transparency terms. The absence of this information obscures the extent of change proposed. Respondents are unable to comprehend this extent. They are literally ‘flying blind’ as they attempt to form an opinion about the contents of the new draft. A comparison between the (existing) 2013 CLMP chapters and this proposed July 2023 draft illustrates the extent of proposed change. Administrators have deleted critical ‘Directions’ content, including:

- Desired Future Character statements for each park or site.
- ‘Challenges and Opportunities’ statements.
- The former detailed ‘Management Directions’ for each park or site.

This severely weakens the integrity of what an authentic CLMP ought to present, and compromises its capacity to advise readers of detail not provided in any other park lands statutory policy instrument. This especially applies in relation to those accessing the draft CLMP to explore future park or site land-use ‘contemplations’, including lease proposals. This is one of the fundamental purposes of a CLMP.

The deletion of formerly critical CLMP material has been comprehensive. For example, there is:

- No stated ‘vision’ for each park or park lands site.
- No analysis of each park lands’ park or site landscape zones.
- No detailed overview of each site (no background cultural history, minimal analysis of existing users, and no reference to leases or sub-leases).<sup>6</sup>
- No General Features of Significance.
- No Features of Kaurna Significance.
- No Features of European significance.
- No reference to National Heritage values of the place.
- No express details or links as to what land uses may be contemplated under any existing or proposed Master Plans – or not.
- No guide for investment priorities.
- No explicit reference to existing buildings at the park lands park or site.
- No reference to Community Values, Methodology and Summary, or Cultural Landscape features (with exception to Parks 7 and 8), or Vegetation elements, or Spatial Arrangements, or Historical Views and Aesthetic Qualities.

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<sup>6</sup> All previous CLMP references to leases are proposed to be deleted in the new draft. This is a major departure from previous CLMP content. The draft proposes that the council’s Park Lands Leasing and Licensing Policy would be instead delegated with the task of “establishment and management of leases and licences for commercial and sporting activities in the Adelaide park lands”. (See heading 8.4, page 9). This would significantly weaken the purview of the CLMP because the listing is critical to contemplation of *management direction across all sites*. Procedurally, it would also enable adoption of new lease proposals without having to consult the public about proposed amendment of the CLMP. This function has historically been critical in stopping lease proposals that would have led to alienation of the public from accessing park lands sites. See the example described on page 7 of this submission (helicopter landing site proposed lease).

## **8. Other critical material deleted**

Compared to the previous (2013) CLMP chapters, there are no explicit references to critical matters such as park lands component types; overall patterns of landscape; spatial organisation; land uses, response to natural features, circulation networks, boundary demarcations, vegetation, structures, small-scale elements, and historical views and aesthetic qualities. With two exceptions in this current consultation package (Parks 7 and 8) there is now no link reference to previous, council-commissioned Cultural Landscape and Assessment scholarship. This is a significant deficit.

## **9. Key links jettisoned, explanatory material lacking**

When the council created its 2013 CLMP, multiple links were included in an appendix reference attached to each park or site page. However, in the proposed new 2023 draft, this reference has now been jettisoned. No information-rich appendix pages appear at any of the proposed 40 park or site ‘annexures’. Links have also been reduced to a bare minimum. A critical link that ought to appear for each park or site includes reference to the 2007 council-commissioned documentation by Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, *The Adelaide and Park Lands & Squares Cultural Landscape and Assessment Study 2006*, published in October 2007. This was commissioned to inform the first versions of the CLMP, to 2009, and continued through a link to inform the 2013 version. The material richly informed that first version, across all parks. In 2013, in an updated CLMP, reference was more restricted, but it was still there. In this 2023 proposed version, reference has been almost totally deleted. This is a retrograde step. So-called ‘simplification of documentation’ has a high cost – loss of critical cultural landscape reference.

Moreover, with respect to Dr Jones’ scholarship, a simple link is in practice not sufficient. In an authentic CLMP (as evidenced with the original version and the updated version in 2013), each link ought to be highly specific, given that the Jones reference comprises six lengthy volumes. The link must first be prefaced with explanation, and the link itself ought to lead directly to the related material – for every park or site. None of this is evident in the proposed July 2023 draft.

## **10. Negative consequences inevitable**

In pursuing an apparent need for brevity (‘simplification’), the council author(s) ensure that this CLMP draft delivers a statutory document stripped of critical detail, wallowing in ambiguity, and ripe for very wide interpretation, especially by planners.

## **11. Draft would lead to planning-related assessment traps**

Stripping the new draft of former detail will only serve to encourage commercial and state-based actors and agencies seeking to exploit the park lands, especially to pursue opportunity for construction of future built form, including *permanent* built form, as well as associated new leases, which in some cases would have the potential to alienate South Australians from access to the green, open spaces of their park lands.

## **12. The Planning and Design Code**

Lack of reference in the draft CLMP to the Planning and Design Code (and therefore lack of reference to its Principles of Development Control and Deemed to Satisfy (character) relating to park lands zone land) is a significant omission. Major amendments to that code in 2021 now mean that there ought to be explicit CLMP references to various sites. They include Frome Park land-use (new school expansion and land tenure transfer by the city council, proposed in July 2022 and endorsed in October 2022, but still evidently not completed as indicated in the April 2023 CLMP draft), as well as to Park 20 where a 2018 land-use proposal by Pulteney Grammar put to council in that year remains unresolved. Of greatest contemporary concern is lack of Planning and Design Code amendment reference to Park 2, and the sub-zone provisions now applying to that site (the Aquatic Centre and car park).

The purpose behind this recommendation is to stress that the draft CLMP is not the Code, and the Code is not the CLMP. In other words, the distinction between the two ought to be clearly explained in the CLMP. Future interpreters of the next CLMP version may not otherwise comprehend this.

## **13. New, embedded ‘contemplation’ statement (‘ancillary’ and ‘facilities’)**

An ambiguous new statement has been introduced to this draft CLMP, and it repeats across the document, under each of the 40 references to parks or sites. It reads: *“Providing facilities, furniture and amenities ancillary to park uses”*. This did not appear in previous CLMPs as an embedded, universal ‘contemplation’ and it should not appear in this CLMP. Alarming, this sentence is stated in the draft as the “Purpose for which the land is held”. Then, in repeated park or site references, the ‘Management Proposals’ are stated to “support proposals that are consistent for which the land is held”. This delivers a circular proposition – that the Adelaide park lands are in future to be a site focused on the provision of “facilities, furniture and amenities” because that is (apparently) the purpose of the land. This is not only wrong, but highly misleading because it implies that the CLMP is some sort of development plan (or in the current language, a version of a planning code). This ‘contemplation’ focus falls on what is defined as ‘development’ under the 2016 state planning legislation.<sup>7</sup> However, it is alien to the future management direction for the Adelaide park lands. It should not be focused on what is essentially a Planning and Design Code function. Instead, the focus should be on presenting a park lands management-direction statutory guideline, mapping (among other things) leases across the park lands, not simply a guideline enabling allowances for *“facilities, furniture and amenities ancillary to park uses”*. But the draft at July 2023 claims that this is the “purpose for which the land is held”.

If this statement is retained for each of the 40 parks or sites, the planning-related consequences could be profound, because it would be seen as the CLMP’s principal ‘contemplation’ and, as such, would be widely exploited in subsequent planning assessment contexts. This is because of the explicit wording. Two arising planning-related consequences of the wording are important to comprehend.

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<sup>7</sup> The *Planning, Development and Infrastructure Act 2016*.

- a) The word ‘ancillary’ is a widely exploited legal planning term, and since 2005 has led to park lands determinations approving permanent park lands infrastructure developments. (The state’s 2018 construction of the Adelaide Oval Hotel capitalised on this term at approval stage, as did the city council’s 2020 Oval No 2 car park monetisation allowances for the exclusive benefit of the Adelaide Oval Stadium Management Authority – otherwise known as Adelaide Oval SMA Ltd.) On the basis of the past 15 years’ planning-related history of the park lands, it is clear that ‘ancillary’ allowances are commonly alien to a broad philosophical commitment to protection of the landscape character and the green open spaces of the land included the Adelaide Park Lands Plan. A CLMP’s purpose is not to present a legal ‘trigger’ mechanism simply by implying that land within the Adelaide Park Lands Plan has as its principal purpose of “Providing facilities, furniture and amenities *ancillary to park uses*”. But that is what is proposed in this draft of the CLMP for every park or other site as their “purpose”.
  
- b) The term ‘facilities’ in planning terms embraces park lands development concepts that in the recent past have manifested as large-scale built form at park lands sites. They include a now-completed \$535m redevelopment of the Adelaide Oval; a \$40m Torrens Lake footbridge; a \$2.4b Royal Adelaide Hospital, a \$42m hotel attached to the eastern wall of the oval, and a 2019 \$100m Adelaide Botanic High School (which now includes a very recently approved (January 2022) \$98m extension tower to the school to intrude on park land never previously contemplated for construction of multi-storey built form). The concept of “facilities and amenities ancillary to park users” is sufficient planner-speak for a very wide range of developments legitimised under the March 2021 Planning and Design Code (as amended again in late 2021 to deliver rezoning of some sites in the park lands zone, and likely to be amended in future years, almost certainly for the same purpose).

**14. “Overarching objectives, targets and measures for the Adelaide park lands”  
– Eight additional reasons why this draft is flawed**

- 1) The author(s) of the new draft have created 11 new “overarching objectives, targets and measures for the Adelaide park lands” (Section 10, Table 1, commencing on page 13 of the draft). They cover everything from events, to biodiversity, to heritage landscapes (among other things). These are all based on the content of various council guidelines and plans, including the Adelaide Event Guidelines, a Biodiversity Management Plan, a Cultural Landscape Assessment, and various council Asset Management Plans (among other documents). In the proposed draft, this approach turns the council’s previous CLMP management procedure on its head. Over the past 15 years, the content of the CLMP for the park lands drove the creation and evolution of council guidelines and plans. But now the council seeks to reverse this, such that council guidelines and plans are to drive the contents of the CLMP. If this bizarre approach is taken seriously, logic tells us that when council amends any of the policy documentation, the CLMP objectives, targets and measures will also have to be amended. And if so, sections of any existing version of the CLMP will be made redundant and need to be revised and replaced, through the statutory public consultation process. However, and alternatively, the

proper approach, as it was in the past, is that the CLMP rigour defines the need for documentation, as well as the content of that documentation. The guidelines and plans documentation noted above have no statutory status. But the CLMP does.

- 2) Of the 11 “objectives and targets and measures” proposed in Table 1 in the CLMP draft (page 13), some are very poorly thought through, with at times unclear ‘Target’ details, and illogical relationships reflected in the related ‘Measures’. For example, in relation to “National Heritage Listing” the “Objective” is to “preserve the National Heritage Listing”. This implies that the future of the commonwealth legislation (2008) is under some doubt, which is simply false. The “Target” is stated as creation of a “National Heritage Management Plan” whose purpose is not explained. The “Measure” is the same as the “Target”. Similar muddy thinking appears in relation to a number of other objectives, targets and measures.
- 3) Two “objectives and targets and measures” are particularly offensive, ill-fitting for a CLMP, and wide open to commercial and state planner and executive government exploitation. (1) “Commercial activities” (*Objective 03*) and (2) “Public facilities, furniture and amenities” (*Objective O11*). With regard to (1), at no time in the past has a CLMP document ever contemplated (as found in Section 10) “supporting commercial activities ...” or citing targets that encourage “a range of commercial offerings ...” or allowed for no auditing procedure for up to five years. A CLMP is not a development plan. With regard to (2), at no time has the “purpose” of a park lands site been defined by a certain statement in the proposed draft, which litters the whole document, under the 40 park or site references. That statement says: “... *providing facilities, furniture and amenities ancillary to park users*”. This has never been a fundamental “purpose” for which the Adelaide park lands is held. But in this draft CLMP council’s administration now misguidedly deem it to be the fundamental purpose for which the land is held. Moreover, in future planning and development terms, the wording’s ambiguity will present an alarming opportunity for planners and assessment panels to interpret it, in conjunction with the Planning and Design Code, as they see fit.
- 4) In the draft CLMP, the proposed Category “Public facilities, furniture and amenities” features a list of development concepts (as defined under planning law), but makes clear that it is “not limited to” those (which include fencing and car parking). In fact, there appears to be no limit. This is as far as the wording rigour appearing in the Section 10 table goes and, as such, would strongly encourage proponents seeking development approval for a range of park lands projects defined as ‘development’ under the *Planning, Infrastructure and Development Act 2016*. Such encouragement should be studiously avoided in a CLMP. Remember – it is not a development plan. It is also not a substitute for the Planning and Design Code, but respondents could be forgiven for assuming that it is, given the profound changes proposed to the former 2013 CLMP.
- 5) The draft suggests that the proposed Category “Public facilities, furniture and amenities” is to be influenced by council’s Asset Management Plans. But these plans arose during the lifetime of previous CLMPs and the plans’ contents were driven and shaped by the rigour of previous CLMP versions. In this draft the new Targets and Measures are proposed to be defined by council

guidelines and plans that are not statutory instruments (including the Asset Management Plan itself). Moreover, the management policy is to be driven by administrators in control of those guidelines and plans, whose interpretation can vary markedly over time. Often the variation is ministerially influenced, given that the *APL Act 2005* vests all park lands decision-making power in a state minister. This is a proposal that weakens the rigour of a CLMP, draft or otherwise. It is flawed.

- 6) The proposed Section 10 Category “Sporting use (leases and licences)” is to be measured not by the number of leases or (presumably) sub-leases, as well as licences and their collective terms and conditions, but instead a “range and type(s) of sporting groups and reported through lessee and licensee *annual reports*.” This contrasts long CLMP tradition of referring specifically to the leases themselves, applying to each park or site. This allows a reader of a CLMP to know explicitly what leases already exist for those parks or sites, and sometimes the public access limitations arising from them. (Note, however, that the draft CLMP proposes to abandon any reference to leases – see footnote 6 in this submission.) Moreover, one implied new proposition in this July 2023 draft (which is actually dated April 2023) is that a reader could instead find out this information by accessing lessee and licensee ‘annual reports’. This is novel and alarmingly naive, and it is suggested that it is in many cases impossible to do, given that many lessees and licensees don’t publish annual reports or at least only publish them for their paid-up members, but in any case rarely reveal lease or licence content in them. The real reason for this peculiar measure is probably because council administrators wish to simply delete specific CLMP references to leases, sub-leases and licences for each park or site (see footnote 6). In the CLMP draft, where specific park or site lease links once existed for sound reasons, they can no longer be found.<sup>8</sup> This is a major flaw.
- 7) The proposed (and new) Category described as “Small-scale commercial use buildings” suddenly introduces an explicit new built-form concept for the park lands. This is contemplation of future temporary or permanent construction of buildings for “commercial activity” purpose. The wording used is “provision of fit-for-purpose buildings which offer small-scale *commercial activities* that provide community benefit”. Firstly, this is a very unwise ‘contemplation’ (see discussion of the ‘contemplation’ concept above.) Few respondents to the public consultation will realise that this is a new Category, and council’s administrators make no effort in highlighting its novelty. Secondly, some respondents will assume that it has always existed, which is false. Thirdly, a CLMP is not a substitute for the Planning and Design Code based on 2016 planning legislation featuring a rezoning mechanism, but this is implied under the new Category of “Small-scale commercial use buildings”. It would certainly be seen to be the case by planners scrutinising the CLMP. This is alarming. Fourthly, “commercial activities” in this draft are not defined. Fifthly, neither is “small scale”. The word ‘kiosk’ is mentioned, but the

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<sup>8</sup> Lease references and durations exceeding five years are only listed at the end of the *Adelaide Park Lands Management Strategy 2015–25*; however, their contents, which would summarise access restrictions, are not reproduced. There is no easy access point proposed for future city council public documentation to inform park lands users of this important detail, and removal of lease references from a future CLMP would compound this problem.

ambiguity could easily see retail outlets or small ‘pubs or taverns’ or even just ‘bars’ in the park lands encouraged, capitalising on limited liquor licences. Embracing this level of ambiguity in a CLMP is deeply unwise. Several recreation clubs have already constructed ‘club room’ pavilions in recent years, in which such liquor-licensed commercial activity is already practised.

- 8) In another proposed outcome, management of the Category “Heritage Landscapes and Features” (page 14) is proposed to have targets defined by “State and Local Heritage Listings”, but these heritage places are not comprehensively explored in the CLMP site annexures, only by reference to a listings link. A link reference to “Cultural Landscape Assessments” appears only in two places (referring to Parks 7 and 8). There is link to these assessments in this Category that appears as a Target (T8.1, page 14) but the link appears in the middle of a sentence without further explanation, and this is highly unlikely to prompt most readers to explore it. In previous CLMPs this important reference material appeared in various park or site pages, making it obvious that there was a CLMP management-direction emphasis on the relevance of Cultural Landscape Assessments; that they were core references. But as is further explored below, this draft CLMP has stripped out the emphasis on the relevance of cultural landscape assessment (which includes heritage matters). It was a reference once critical to the whole of the content of previous CLMPs. And there is yet another procedural flaw recommended. The new proposed monitoring measure in regard to ‘heritage landscapes and features’ is a management approach to: “Monitor the number of changes that negatively impact on heritage values *through reports to Council as required*”[emphasis added; see M8.1, page 14]. The theory is good, but who would be required to produce them? Procedurally, its likely effectiveness for public transparency and accountability would be minimal, given that the council is neither legally required to create such reports, nor to follow up any if they were tabled but ignored. Moreover, it is highly unlikely that reports about ‘negative impact’ would even be publicly revealed by the council, leaving the public in the dark about “negative impact on heritage values”.



## **15. CONSULTATION – PROCEDURAL MATTERS**

### **(including:)**

- More background as to why council’s approach is flawed
- Council’s consultation process

### **15.1 Breach of the *Local Government Act 1999*, and the secrecy about legal advice**

This breach was confirmed in the Council Agenda, 9 August 2022, ‘Review of Adelaide Park Lands Community Land Management Plan’, Item 10.16, which stated: “The review of the existing CLMPs for the Adelaide park lands is beyond the statutory timeframe of five years.” That 2022 CLMP draft is similar to the one that has been provided for public consultation 11 months later, in July 2023. That early draft was unwisely approved at a Council meeting on 9 August 2022 and, since then, has been revised again in various iterations while the state government kept introducing new land-use built-form propositions for various policy areas in the park lands zone.

Legal advice sought by council on 22 June 2022 and 4 July 2022 (no doubt relating to this breach and other matters relating to the content of this draft CLMP) is not provided for public edification during the current consultation, an early sign of a broad range of matters deliberately excluded from the consultation explanatory draft. This is exploitation of a public consultation function. There is no indication in the July 2023 draft that confidentiality orders have been applied to the breach matter, or any other matter, possibly including receipt of legal advice. But if they have been imposed under *LG Act 1999* s90 (3) (h) [legal advice] then as a matter of full consultation transparency the public should be provided with, as a minimum, a summary of that information as part of the consultation, if for no other reason than presenting proof that the council’s determination to reinterpret the *Local Government Act 1999* to give rise to a radically different new CLMP draft has been legally sound. It is critical to satisfy a need by the public to be comprehensively informed under the consultation procedures required by the *LG Act 1999*. This is especially appropriate in relation to the council’s 2022 determination to reinterpret the *Local Government Act 1999* and to capitalise on the statutory principles of the *Adelaide Park Lands Act 2005* to create what is clearly a radically different draft CLMP compared to the two previous versions.

### **15.2 Failure to inform the public of recent April CLMP draft amendments during the July consultation**

Consistent with comments noted above about council administration’s failure to present to respondents the current (2013) CLMP for ‘compare and contrast’ purposes, there is additional evidence that procedural failure has also very recently occurred with respect to a draft CLMP which contained very recent (April 2023) text additions to the draft. Something very similar to the draft as we see it in July appeared in a council agenda only three months ago (April), which is accessible online because it appears in a council agenda which is still accessible on the council website.<sup>9</sup> In other

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<sup>9</sup> Adelaide City Council, Planning, Development and Business Affairs Committee, Agenda, Item 6.2, 4 April 2023, ‘Draft Community Land Management Plan, Amendments prior to consultation’, Attachment A. CLMP draft dated 4 April 2023.

words, this is an information-rich repository, but the YourSay consultation procedure failed to refer to it. The colour-coded additions and amendments noted at the time were not drawn to respondents' attention, and the current version available during the consultation period has seen removal of all of the colour coding, so late amendments are now invisible. Failure to table the colour-coded amendments of April, in July 2023 made it impossible for respondents to perceive the recent draft evolution of the CLMP.

### **15.3 Failure to notify the public about related recent new 'General Provisions'**

No reference in the July 2023 YourSay background information is made to 2021 changes of the CLMP's 'General Conditions'. This is a failure of process, because respondents to the public consultation will not know what has occurred relatively recently that has significant relevance to the profound amendments proposed for this CLMP.

Given that no existing (2013 version) CLMP is provided for respondents so that they can 'compare and contrast' that version with the new draft, respondents will not know that major changes occurred only two years ago to a section of that CLMP with regard to car parking and access rules. Some more alert readers may be struck by the curious absence of individual park site references to these two matters in the new July 2023 draft. Former CLMPs, including the *original* 2013 version, addressed car parking and access issues in some specific site references, but the references were randomly and inconsistently covered. (Some sites had no parking or access policy. This is almost certainly the reason why the council made the changes in 2021 and emerged with a revised 'General Conditions' section.)

Under the CLMP's 2021 revised 'General Conditions', amenities include car parks and allowances for random fencing for periods not defined, affecting access. Public reference to the relatively new 'General Conditions' (which is part of any park lands CLMP but not mentioned in the 2023 consultation procedure) allows for these in a suitably ambiguous way. Here is selected wording of the 'General Provisions' which was added to the 2013 version CLMP in 2021:

- “Car parking – “Provide car parking on an adjacent to the Park Lands only where there is a demonstrated need and there is no reasonable alternative, consistent with the overall aim of the Adelaide Park Lands Management Strategy to reduce car parking on the Park Lands by 5% by 2025.”
- “Access – “Maintain public use and movement through the Park Lands. Access may be temporarily restricted during sporting and other events or as a result of necessary maintenance or works.”

The draft CLMP version of July 2023, as presented in this consultation, not only does not mention the CLMP's recently amended (2021) new 'Chapter 1' 'General Provisions', but also does not flesh out what the draft CLMP's new wording “amenities ancillary to park users” means in conjunction with the 'General Conditions' wording. That wording is clearly deliberate, and so is the ambiguity about future access and car parking. The absence of related discussion during this July 2023 public consultation evidences a woefully poor management of public city council consultation procedure.

The city council has also failed to put this proposal into broader context in regard to 2021 changes in which a new ‘Chapter 1’ replaced the former ‘Framework’ of the 2013 CLMP version and ‘General Provisions’ appeared. No mention appears in this 2023 draft CLMP consultation, but it is critical for respondents to be informed of this detail, because the ‘General Provisions’ form part of the whole of the CLMP proposed to be the statutory *management direction* policy instrument for the coming years. The background is that council in 2021 sliced off a part of the 2013 CLMP and updated just that part. No mention of this fundamental change made only two years previously appears in the current July 2023 consultation package. But the changes that the revised ‘General Provisions’ delivered affect the whole of the content of the current draft version, especially in terms of land-use contemplations regarding the often controversial car parking and access issues. A detailed retrospective analysis written by the author of this submission appears in Appendix 2 of this submission.

This critique will no doubt elicit a defence by council’s administration that the land-use matters have already been addressed and are now ‘of the past’, but few respondents will know that. In fact, some respondents to this July 2023 consultation may have not participated in that early 2021 consultation phase because it was not brought to their attention. It is again not being brought to their attention now either, but it should be. Access and car parking contemplations are critical – and often controversial – components of any CLMP. This draft CLMP is no exception. In summary, the critical question that is not addressed is: ‘why has all reference to car parking and access disappeared from individual site pages in the proposed draft?’

#### **15.4 Failure of due process (future CLMP amendment and public consultation) with respect to anticipated future government initiatives**

There are several sections of this April 2023 draft that indicate that the state government intends to take control of sections of the park lands zone for development purposes, and therefore assume that the sites’ tenure (registered proprietorship) of that land will occur through land-acquisition legislation or through city council agreement (commonly under duress). This would mean that the CLMP applying to that land would suddenly cease to have lawful management direction influence. One site is Frome Park (Frome Road, park lands zone). Sections in the April 2023 draft contain statements which imply that when the government chooses the timing, the CLMP will simply and automatically cease to have relevance in those places, without the lawfully required public notification of ‘change of CLMP content’ and statutory applied notice and public consultation period of 21 days. This is a cavalier proposition indifferent to due legal process, and would be unacceptable. No previous CLMP for the park lands proposed that amendments to it at some future time would be simply processed at the whim of state government ministerial discretion using a land tenure transfer procedure as the trigger mechanism to amend the content of a CLMP, at any future time, without following the necessary steps required under the *Local Government Act 1999*.

For example, with respect to Frome Park, the draft CLMP states “The State Government is currently expanding the Adelaide Botanic High School immediately

south of the existing [sic] shown in Figure 13”.<sup>10</sup> The critical subsequent clause is set in bold) in this extract (same page):

“A11.4 Purpose for which the land is held

“In addition to the overall purpose for which the Adelaide Park Lands are held (as outlined in Section 5), the land is held for the purposes of:

- Providing for general and informal recreation for community enjoyment, landscaped in a manner compatible with the adjacent Botanic Gardens and Botanic Park as set out in the Deed of Land Grant when the land was returned to Council by the State Government in 1990.
- Providing a venue for temporary events.
- Providing facilities, furniture and amenities ancillary to park uses.

**The piece of land to be transferred to the State Government will be used for educational purposes. Once transferred the land will no longer be subject to this CLMP.”**

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<sup>10</sup> Page 40 of that 4 April draft CLMP version, the same one as appears in July 2023: Annexure 11.

## 16. OTHER CONTENT FLAWS

### a) General

#### b) Park/site-specific flaws

### a) General

The proposed contents of this draft CLMP illustrate that its author(s) do not understand how critical is a properly crafted CLMP in its role to guiding management directions of the Adelaide park lands.

Those in charge of this July 2023 CLMP public consultation fail to make clear to respondents that the management Category Table 1 “Small-scale commercial use buildings” concept is a **new** Category. They also fail to advise that its specific reference to “commercial use” is not consistent with Strategy 1.4 of the *Adelaide Park Lands Management Strategy 2015–2025*, which is currently in operational use. That Strategy talks only of “activation of the park lands by upgrading and enhancing buildings and structures responsive to their park setting” (page 19 of the January 2018 version). But there is no explicit reference in that document to initiating approvals to construct future “small-scale commercial use buildings” and it is therefore at odds with the legislation the *Adelaide Park Lands Act 2005*, which prescribes the content of the APLMS as a statutory policy. Moreover, the recommended April 2023 draft CLMP “measure” to monitor this novel Category is a limp “as reported every five years”. That is more than one full council term! The measure is meaningless. But few respondents will comprehend how meaningless it is, and there is no YourSay discussion about it. This is yet another failure of due process required in a public consultation.

#### b) Park/site-specific content flaws

1. **All parks/sites:** The words “Providing facilities, furniture and amenities ancillary to park uses” appears on page references to each park or site (totalling 40) as the ‘Purpose for which the land is held’. Discussion above addresses the vexed (and flawed) issue of council’s ‘deriving’ park lands’ purpose from the statutory principles of the *APL Act 2005*. It does not follow that creating “facilities ... and amenities ancillary to park uses” is the purpose of the Adelaide park lands. The statutory principles do not say that. The *Adelaide Park Lands Act 2005* does not say that.
2. **Multiple other parks/sites:** There are many statements in the draft CLMP stating “Protecting the key Biodiversity Area in this park”, but a general link, which is not-site-specific, only appears earlier in the plan (at Section 10). If there is a specific Biodiversity Area in any given park or site, it ought to be explicitly identified in a CLMP, on that park or site page reference. Policy makers and planners must have specific and timely access to such information when reading a CLMP, otherwise they cannot be certain that a future land-use proposal (including a lease proposition) might face an impediment to an ‘in-principle’ approval on the basis of a special biodiversity area. Explicit and timely objectives also may not be possible, given that, at Section 10, the ‘measurement’ mechanism is proposed to be satisfied via “quarterly *internal* reports”. Long experience with this council, and its subsidiary APLA, suggests

that internal reports are not necessarily always published, especially if they contain information unflattering to the park lands City of Adelaide custodian. It is clumsy and unfriendly in information management terms that a key statutory policy document such as a CLMP ought to put a reader into a position of having to seek release of *internal* reports. This council has a long-established obsession with secrecy and obfuscation when it comes to releasing documentation relating to its park lands management. Analysis of APLA, Committee or Council agendas over many years suggests that regular and detailed public release of *internal* reports is highly improbable. Moreover, a CLMP must provide links, and these links should allow immediate access the critical information. This includes timely information. There appears to be no procedure proposed to address this. It is a flaw in the CLMP drafting.

3. **Park 2:** (Noting again the point made earlier in this submission, that this CLMP version is in breach of section 19 of the *Adelaide Park Lands Act 2005* because it is not consistent with Park 2's provisions as documented in the *Adelaide Park Lands Management Strategy 2015–25*).<sup>11</sup> Many readers of this draft CLMP will not comprehend the import of the draft content for Park 2 that is attempting to enable this breach (as reproduced in this submission in Appendix 1). They also are unlikely to comprehend that planner-code wording is being used to contemplate future use of this park. The Objective for Park 2 reads: “To provide facilities for indoor aquatic, fitness and allied health *and ancillary uses*.” The latter three words are planner code for any use related to aquatic facilities and amenities at the site, now or in the future. Historically, this wording has been used at other park lands sites to justify enabling planning permission for other activities never previously contemplated. For example, such wording was used to justify constructing a \$42m hotel attached to the Adelaide oval stadium, or permission to allow car parking adjacent to the stadium in park lands (Oval No 2 and north park lands adjacent to Pennington Terrace) for collection of related revenues by the Adelaide Oval Stadium Management Authority. The word ‘ancillary’ was the planning jargon key to achieve these objectives. It spoke ‘the right language’ to assessors. Council managers of consultation about this CLMP, and this specific site, ought to have provided the Planning and Design Code wording as determined by Plan SA recently, applying to the sub-zone in which the Park 2 development is proposed. The Park 2 Planning and Design Code amendments that were concluded and formally adopted in March 2023 referred to clubs, a gym and shops. An earlier February 2023 analysis by the council noted that one Code amendment aimed to “Introduce additional ancillary land uses such as consulting rooms and offices within the [Park 2] sub-zone.”<sup>12</sup> Additionally, the associated CLMP proposed measure is stated as “user satisfaction”. If a commercial body (or the state government) were able to occupy the site and gain revenue from multi-storey occupation of a park lands built-form site under a lease with a peppercorn rent of \$2000 per annum (as is the current proposal), no doubt ‘user satisfaction’ would follow! But obviously the ‘user

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<sup>11</sup> *Adelaide Park Lands Management Strategy 2015–2025*, ‘North Park Lands Precinct’, Future moves, Park 2, page 62.

<sup>12</sup> Adelaide City Council, Council agenda, ‘Adelaide Aquatic Centre Code Amendment’, Item 10.3, Executive Summary, page 1, 28 February 2023.

satisfaction' criterion is meaningless. If the CLMP is adopted, this would be a significant CLMP procedural flaw. The absence of YourSay discussion about this is clearly a consultation procedural flaw.

4. **Parks 3 and 4:** Curiously, for these two parks, the wording “There are no park-specific objectives, targets and measures” appears (see A 3.5), despite the fact that under s196 (3) (d) of the *LG Act 1999* requires these to exist and be explicitly stated for all parks and sites in the Adelaide Park Lands Plan with exception to those parks and sites not subject to a CLMP (state government tenure). Moreover, as noted above in detail, some of the proposed objectives, targets and measures appearing in section 10 are in places ambiguous and require substantial clarification.
5. **Parks 9 and 10:** Park 9 has recently seen completion of a development project (a new sports pavilion) for the leaseholder (Prince Alfred College), and access restrictions are noted “in the sporting fields/licence areas” on the draft CLMP page. However, no link or explanatory material is provided, so that readers of the future CLMP cannot know of or be in a position to fully comprehend the explicit restrictions. A link must take the reader to the contents of the lease and sub-lease(s) for this Park. Park 10 features University of Adelaide clubrooms. Previous CLMPs provided links to lease details, but this draft does not. It is poor practice that the park lands ‘custodian’ allows a lease holder that has control over access to avoid providing explicit details of those restrictions. The CLMP is the place to do it. This draft fails that test.
6. **Park 11 onwards:** From reference to Park 11 and onwards, statements in the draft CLMP begin to appear directing the reader to the 11 Objectives, Targets and Measures that appear at “Section 10” earlier in the draft. However, this is not user friendly, and the result is that the reader has to suddenly jump back to an earlier section of the report and scour 11 Categories for hints as to what related links may or may not apply. Despite evidence of links at Section 10 (with the same links repeated again and again in that section) there are not many links provided in total. The most repeated link is to the *Asset Management Plan for the Park Lands and Open Space*. However, this major policy document is only occasionally updated by the council and it is likely that the Plan has not been recently refreshed (the Plan does not make this clear). The suggestion is that the writer of this draft CLMP either doesn't know this, or endorses an approach that sees a reader accessing dated material and having to wait some time until it is further updated. (The original plan is dated 2015, but there is no clear online indication of updated material, or when it was last updated.) Moreover, suggested other links to documents such as ‘condition audits’, ‘customer satisfaction surveys’, ‘customer request data’, ‘reports to council as required’, and ‘regular condition inspections and audits’ illustrates a naïve perception of the reality of the council's poor transparency culture. In the opinion of the author of this submission, based on 24 years as a ratepayer and researcher into park lands matters, very few of these documents are ever published by council. Moreover, should the contents of such documents embarrass the council, a confidentiality order is commonly put into place to keep it from the public domain. A reader of the CLMP can have no optimism that they will be able to access up-to-date and accurate information

at the click of a mouse when contemplating the future of a park lands zone site in this CLMP. For this draft to be operationally effective, the council would have to resolve fresh policy that guarantees public access to all of the documentation noted above. A commitment to this must be made in writing in the draft.

7. **Frome Park:** The stated “Purpose for which the land is held” is ambiguous with respect to land adjacent to (south of) the Adelaide Botanic High School, managed in planning terms by a Concept Plan that had statutory effect until very recently. Under major sub-zone rezoning recently (December 2021; brought into operation in January 2022) the Planning and Design Code now allows construction of an expansion of the school onto land within the boundaries of that concept plan, south of the existing school building. A tenure transfer by council to the state was approved by council in October 2022, but appears not to have been progressed at July 2023. While construction of an extension of the school into the sub-zone is already occurring, the site is already fenced off, and not accessible to park lands users. This licensed ‘works’ construction land parcel will remain subject to the CLMP until the state government thinks fit, and this is stated in the draft CLMP in this section. The notion that any state government can at whim trigger the removal of land subject to a CLMP from future CLMP reference is novel, and contradictory to *Local Government Act 1999* provisions that require express, advanced public notification. It is not apparent in this consultation that this is so; it is simply buried in the content of the draft. Moreover, there is no specifically highlighted amendment of the CLMP, ie, before and after text wording. Respondents cannot comprehend the change in wording, because the former 2013 CLMP – the one that is current – has not been provided during this public consultation.
8. **Park 12 onwards:** From Park 12 onwards, multiple CLMP references to leases and licences for sporting fields, rowing sheds and commercial hospitality offerings are not accompanied by links. But taxpayers, city ratepayers, policy makers and planners must have specific and timely access to such information when accessing a CLMP, otherwise they cannot be certain that they can freely access a park lands site, or (in the case of planners) whether a future land-use proposal might face an impediment to ‘in-principle’ approval because of CLMP ‘contemplations’ that resist it. The need to provide explicit links to lease particulars also applies to all subsequent park lands sites in the CLMP. It is no use making statements such as “Restrictions apply during programmed sporting times for the club rooms’ leaseholders in the sporting fields/licence areas” if a reader cannot access the explicit restriction information. A random visit to such links sites will quickly illustrate how few licence or leaseholders show any commitment to advising visitors about the restrictions. Telepathy appears to be the chosen mechanism. But it should never be the administrative mechanism in a CLMP! Detailed and explicit links once existed in former CLMPs. They should exist in this draft, and every future CLMP.
9. **Park 16:** The motor sport racing event returned in late 2022. A more detailed link relating to the ‘declared period’ under the motor sport legislation must be



provided under page reference ‘A16.7’, given the long period in which it applies, whose perimeter fencing restricts access to many hectares of this park lands site for up to six months.

10. **Park 20:** That notoriously ambiguous planning term ‘ancillary facilities’ emerges in relation to this park under the ‘Purpose for which the land is held’ statement. It should be removed, given (as noted earlier in this submission) its planner-code potential for future undefined facilities. It means nothing to amateur readers, but it has practical and legal meaning for planners who work for adjacent property holders (such as schools) and state policy bureaucrats.
11. **Park 25:** Lease holder SACA in late August 2022 received city council permission to erect shade shelters on land in this park that does not comprise land identified in SACA’s lease. This is a good example of the use of wording in the CLMP that would allow such things: “providing facilities, furniture and amenities ancillary to park users”. If this ambiguous wording is retained in the final CLMP for Park 25 it will be used to justify such development (and any future development) in planning terms that, until the SACA request, was never contemplated in a former CLMP. In fact, the clause should be removed from the CLMP for all parks or sites. Other matter: Leaseholders? In terms of Management Proposals, there is more than one leaseholder occupying this park. Is the draft CLMP reference accurate?
12. **Park 27 B (Mary Lee Park):** The draft CLMP ‘Management proposal’ for the Park Terrace Community Garden states that “fencing will be provided” and that “public access to the fenced community garden may be limited”. This is highly ambiguous. Moreover, it illustrates the egregious consequences of the 2021 creation of new wording to the ‘General Provisions’ section that is a preface to this CLMP (none of which is discussed in this draft but ought to have been). The 2021 amended wording read: “*Access. “Maintain public use and movement through the Park Lands. Access may be temporarily restricted during sporting and other events or as a result of necessary maintenance or works.”*” Here is provided evidence of ambiguity piling on to ambiguity. Under the General Provisions, the restriction to access is for a time period unspecified. This gives rise to a CLMP ‘contemplation’ regarding this park that is as clear as mud.

## APPENDIX 1

### Extract from page 22 of the draft July 2023<sup>13</sup> CLMP with reference to the development proposal for Park 2 of the Adelaide park lands

#### “A2.6 Management proposals

- Support State Government commitment to the relocation and development of a new aquatic facility (incorporating upgraded landscaping and other works to surrounding areas) within the park, including by authorising:
  - the grant of any licence(s) overall areas necessary to facilitate construction activities (including decommissioning of the existing aquatic centre and commissioning of a new facility); and
  - the grant of a form of long term lease to or entry into other form of long term arrangement with the State Government to facilitate the State Government’s ownership, management and operation of the new facility;
  - support other facilities and commercial activities complementing the provision of aquatic activities, fitness and allied health uses and ancillary use that are consistent with the purposes for which the land is held;
  - encourage a master plan of the site to promote the integration of uses and spaces.”

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<sup>13</sup> The draft is actually dated “April 2023”.

## APPENDIX 2

### Major park lands access and car parking loopholes in new CLMP ‘Chapter 1’

Authored, John Bridgland, 27/12/20

At the close of 2020, Adelaide City Council attempted to have passed by councillors a seemingly innocuous update to the *Community Land Management Plan* for Adelaide’s park lands. The draft was in the final agenda for Council on 15/12/20: ‘Draft Community Land Management Plan: General Provisions’ Item 10.11, 15 December 2020, pages 178–204.

This was eventually adopted by council, despite a number of public objections. The new ‘Chapter 1’ replaces the former ‘Framework’ of the 2013 CLMP version. The administration explanatory introduction focused on ‘clarity for dog owners’. But unbeknownst to most likely public consultation respondents (sometime in early 2021) the real game was to embed several major loopholes about access and car parking in the park lands, linked to a policy determination quietly adopted by administrators in 2018. This was a policy that would allow the new Chapter 1 contents to determine endorsements where a specific park precinct CLMP did not give adequate policy guidance. In effect, administrators would be saved significant CLMP update work in future years for a number of areas in the Adelaide park lands, because the Chapter 1 policy statement (which applies to the whole of the park lands) will be presumed endorsed land-use policy when access and car parking issues arise in future across the whole of the park lands, and when policy guidance contemplation is sought.

A comparison with the former 2013 Chapter 1 is instructive. Discussion in June 2018 focused on the Park 26 (Adelaide oval adjacent land west, and north, of the Adelaide oval). This land is licensed for use by AOSMA by a state minister. At issue at the time was determination of policy relating to AOSMA’s ongoing requests to hold concerts on the Oval No 2 land. (It held one in 2017, against the provisions of the Park 26 CLMP, reluctantly endorsed by council and the source of much controversy. Other concerts contemplated later did not go ahead.)

The extract from the agenda paper, of 26 June 2018, page 134, illustrates how administrators simply made up a rationale so loose that it could be used to legitimise any pro-AOSMA request for land use access (or any other future party).

*“The 2013 Community Land Management Plan - Chapter One (1) Framework:*

*24. In the absence of an updated CLMP for Tarntanya Wama (Park 26), the contemplation of this event in the Park Lands could be considered against the provisions of the Chapter One (1) Framework CLMP (endorsed by Council in May 2013) and the Adelaide Park Lands Management Strategy 2015-2025.*

**25. The 2013 Chapter One (1) CLMP Framework (Framework) may be considered as an overarching Park Land CLMP that provides details and direction when details are not expressly considered within the Chapters of the CLMP’s.”**

In effect, what the administrator author was saying in 2018 (formatted above in bold) was that the generalist statements in the Chapter 1 would be adequate justification to endorse, where ‘details are not expressly considered within the Chapters of the CLMPs’. This reflects an astonishingly cavalier twist of logic. Sound logic would say that where an activity is not expressly considered (‘contemplated’) in the CLMP for

that park land precinct, it is clearly not open to endorsement or approval. But council's administrators didn't like that, and even revealed how bankrupt their thinking was in an earlier paragraph in the agenda advice:

26. *"As the proposal to consider facilitating a concert on Adelaide Oval No.2 (as a proposed land-use) is not specifically supported in the 2009 CLMP, however, it is not expressly excluded either. [page 134]"*

Only lawyers would think like this. On this basis, a rocket launching pad would get positive contemplation! Such twisted logic rarely appears in public consultation documents, and for obvious reasons. But years of observation of this council's habits confirms that it is the thinking that occurs when councillors seek guidance from administrators.

### ***The loopholes in the proposed new CLMP chapter (2020)***

The source of this detail comes from: Council Agenda 15/12/20: 'Draft Community Land Management Plan: General Provisions' Item 10.11, 15 December 2020, pages 178–204. (The doc is curiously dated "November 2020")

The loopholes are buried in part 10 "Park Lands Wide Statements".

"Access

Maintain public use and movement through the Park Lands. Access may be temporarily restricted during sporting and other events or as a result of necessary maintenance or works."

*Critique: Only sentence 1 should remain. The remainder is so ill-defined and open to abuse that any proposition could be endorsed. The words 'temporarily restricted', 'sporting and other events' or 'as a result of necessary maintenance or works' are large loopholes. They will be abused in future.*

"Car parking

Provide car parking on an adjacent to the Park Lands only where there is a demonstrated need and there is no reasonable alternative, consistent with the overall aim of the Adelaide Park Lands Management Strategy to reduce car parking on the Park Lands by 5% by 2025."

Critique: This too is full of loopholes. Moreover, there is simply no procedure in existence to address them when a bid for new or expanded car parking allowances arises for the park lands. What is the test for 'demonstrated need' or 'no reasonable alternative'? There is no test, and it is tactically useful for Adelaide Park Lands Authority and Council administrators that no test is introduced. It is left to random claims by lessees and license holders, and others, in the absence of any procedural rigour to assess them. The entire paragraph should have been struck out. It is yet another very clear example of how the 'General Provisions' include some very significant opportunities for park lands mismanagement under the guise of 'competent, responsive, transparent and accountable management'.

### APPENDIX 3

*Note: this is a copy of the YourSay July 2023 feedback form. However, all responses by John Bridgland were made via delivery of the submission above, sent via email within the consultation period to [yoursay@cityofadelaide.com.au](mailto:yoursay@cityofadelaide.com.au)*

24 July YourSay survey form on draft CLMP: closes 31 July 2023

Survey starts

0% Complete

All fields marked with an asterisk (\*) are required.

**Questions 1 and 2 refer to the Adelaide Park Lands as a whole.**

1

Do you have any comments about the **overall purpose** for which the Adelaide Park Lands as a system are held, as outlined in section 5.2 (page 5) of the draft CLMP?

2

Do you have any comments about the **objectives, targets and measures** covering all the Adelaide Park Lands, as listed in section 10 (pages 13-16) of the draft CLMP?

**Questions 3, 4 and 5 refer to individual parks within the Adelaide Park Lands.**

3

Do you have any comments about the **purpose** for which the land of a specific park is held, as outlined in each of the annexures contained in section 11 (pages 18-113) of the draft CLMP?

Please name the park or parks to which you are referring.

4

Do you have any comments about the additional **objectives, targets and measures** for managing a specific park, as outlined in each of the annexures contained in section 11 (pages 18-113) of the draft CLMP?

Please name the park or parks to which you are referring.

5

Do you have any comments about the **management proposals** for a specific park, as outlined in each of the annexures contained in section 11 (pages 18-113) of the draft CLMP?

Please name the park or parks to which you are referring.

6

Do you have any **further comments** about the draft consolidated Community Land Management Plan for the Adelaide Park Lands?