

10 July 2023

NEW \$135M PARK 2 PROJECT TO REPLACE ADELAIDE AQUATIC CENTRE  
**City council committee rushes to help the state government to meet a  
2026 state election park lands redevelopment schedule**

- Council’s 4 July 2023 resolution to finalise and consult on a construction licence is unlikely to conform to a ‘Temporary Works and Compounds’ legislative provision, which restricts the allowable area under the *Local Government Act 1999*.
- Council’s 4 July 2023 resolution to finalise and consult on a 42-year lease does not conform to the *Adelaide Park Lands Management Strategy* because the Strategy focuses on retaining the *existing* (city council) Park 2 commercial operations, not a new (state government) operation at a new site.
- Anticipated loss of Park 2 regulated and significant trees remains unknown as construction activities are poised to commence.
- Public feedback on a looming *Community Land Management Plan* policy consultation is likely to be discounted (and probably ignored) by the council because of government pressure to rapidly progress the project.
- There is silence about council’s own policy requirement for an initial independent market assessment of licence and lease fees to apply to this Park 2 proposal, potentially breaching provisions under the *Local Government Act 1999*.
- “Permitted use” wording to apply to the 42-year draft lease remains unknown despite a need now to define what is and isn’t allowed to occur at the site.

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**A**delaide City Council is so keen to dump its responsibility for running an aquatic centre in the northern park lands that on 4 July 2023 it ignored existing statutory park lands policy that does not endorse a government proposal to replace the centre with a new building. Moreover, in a draft council lease released on 4 July, council is offering the state government a peppercorn \$2000 annual rent for the new building over a lease period of 42 years.<sup>1</sup> The site tagged for the new building and facilities will take up 2.93ha of park lands.<sup>2</sup>

The statutory park lands policy is referred to in the *Adelaide Park Lands Act 2005* in the form of an *Adelaide Park Lands Management Strategy* and a *Community Land Management Plan*. Neither document on 4 July 2023 endorsed the council’s 4 July

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<sup>1</sup> Adelaide City Council (ACC), City Community Services and Culture Committee, Agenda, Item 4.4, ‘Adelaide Aquatic Centre Redevelopment Lease and Licensing’, 4 July 2023.

<sup>2</sup> ACC, op cit., 4 July 2023 – Extract: “5. At the time of drafting this report, the Minister has indicated that total leased area would be 29,305 sq m, comprising of: [Point] 5.1. A building footprint of 9,500 sq m, [Point] 5.2: **The size of the licensed area will be in total 19,805 sq m** [1.98ha], which includes: [Point] 5.2.1: car park - 12,500sqm, and [Point] 5.2.2: external areas (forecourt, public realm, etc) - 7,305 sq m.” Note that the committee’s 4 July 2023 draft licence schedule did not explicitly state any area sum for the licensed area, so the agenda writer’s knowledge of the “19,805 sq m” sum must have come from another unacknowledged source. A “building footprint” totalling 0.95ha would appear to comply with s202; however, the site would require a much larger area to be fenced off from public access to allow sufficient space for construction teams to begin work. The licence area sum is therefore likely to exceed that .95ha measure. Moreover, should the construction schedule focus only on the car park area (1.25ha), then s202 would be breached.

determination that has led to the drawing up of a construction licence and a lease proposal, each of which would enable new aquatic centre construction works to commence in September 2023. The 4 July agenda paper included a draft licence agreement as a basis to commence construction, as well as a draft 42-year lease agreement as a basis for operations.

Alarming, the council's resolutions on 4 July (see Appendix 2) about a licence and a lease agreement assumed their conformity with statutory policy under the *Adelaide Park Lands Act 2005*, as well as section 202 of the *Local Government Act 1999* with regard to allowable licence areas for temporary works and compounds.<sup>3</sup> But this assumption is contestable. Moreover, the anticipated future loss of some regulated and significant trees also comes under focus under section 202 of that Act. Some trees will be lost under the new centre project, but early 2023 government-commissioned documentation flagging the likely loss is ambiguous.<sup>4</sup> The lack of a detailed master plan for the site, which exists but has not been released, has contributed to the ambiguity.

The project completion date is driven by Labor's schedule to have the centre completed ahead of the March 2026 election to entice voters to support the local state candidate, likely to be Adelaide MP, Lucy Hood. To achieve this deadline, the approvals process this winter 2023 must be fast-tracked and will depend on very tight timing, and complex procedures, to meet an end-August 2023 deadline. Council's committee resolutions on 4 July 2023, as well as provision in the agenda paper of a draft construction licence and a draft 42-year lease, saw it anticipating adopting a novel tactic with regard to the *Community Land Management Plan* for Park 2. This is because some project particulars on 4 July (the intentions of its draft construction licence) did not have *Adelaide Park Lands Act 2005* policy legitimacy, nor likely compliance with section 202 of the *Local Government Act 1999* (see footnote 3).

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<sup>3</sup> Section 202 refers to: 'Temporary works and compounds'; in particular, that areas must be restricted to "one hectare or less to minimise public exclusion", and "not impact on trees and particularly biodiversity areas" and be in receipt of "planning consent". The first two were unlikely, and the third did not exist as at 4 July 2023. Source: Adelaide City Council, Planning, Development and Business Affairs Committee, Agenda, Item 6.2, 'Draft Community Land Management Plan, Amendments prior to consultation', Attachment A, new inclusion made in February and reproduced in April, being Point 8.4.5, 'Temporary works and compounds', 4 April 2023, page 68.

<sup>4</sup> State government publicity brochures (2022 and 2023) discreetly avoided mention of the anticipated number of these trees likely to be destroyed, arising out of this development. There is great political sensitivity about this topic. However, a 23 January 2020 government-commissioned Planning and Design Code study, that was only publicly released in January 2023, contains a sub-chapter and a 'Figure 13' identifying locations of Park 2 site trees surrounding the desired development site. Text identifies a site tree assessment of 457 trees, comprising 25 significant trees and 59 regulated trees (among others). The text is ambiguous as to how many could be lost to development, but notes: "The assessment has identified fifteen regulated trees, six significant trees, and six unregulated trees/tree groups considered to have a High Retention Rating." (page 40). But if these are to be saved, how many others will be lost? The answer is not clear. Only when the Development Application is lodged will the specific number be known. Source: URPS report for Department of Infrastructure and Transport, "For consultation, Adelaide Aquatic Centre Code Amendment". Chapter 5, Investigations, 5.10: Significant and Regulated Trees, January 2023, pages 40–42.

## The *Community Land Management Plan*

In relation to the *Community Land Management Plan* (CLMP) for the park lands zone, the council plans to undertake concurrent July or August “consultation on the Community Land Management Plans (CLMPs) that were endorsed by Council in March 2023. This includes consultation on the CLMP for Denise Norton Park / Pardipardinyilla (Park 2).”<sup>5</sup>

Policy legitimacy could only be accomplished after the council completes this consultation, updates the current (older) version for that park lands site, and signs it off (as the site’s registered proprietor and custodian). Key to achieving this must be a lawfully required public consultation period of at least 21 days, which would have to commence soon. Notably, however, even if city ratepayers or South Australian taxpayers reject the CLMP wording or its allowances for the new centre, the amendment must still be endorsed to avoid policy chaos and a major delay in the government’s schedule.

This consultation approach highlights one of the long-established traditional flaws in park lands consultation policy under the *Local Government Act 1999*, where local government can pretend to consult about park lands projects with an ‘open mind’ but instead can determine ahead of time to push forward, regardless of the feedback. This is transparently disingenuous, but evidences the level of pressure being exerted by the state government to commence construction as soon as possible.

## The *Adelaide Park Lands Management Strategy 2015–2025*

Update amendments are also necessary to the current version of the Act’s second statutory policy document, the *Adelaide Park Lands Management Strategy 2015–2025*. By comparison to the CLMP, amendments to this Strategy are even more difficult to coordinate in a hurry, and would take much longer to finalise. This posed a 4 July 2023 administrative advisory dilemma. The existing Strategy version notes that the ageing 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>6</sup> But it did not aspire to any demolition of the existing commercial facility, or its replacement by a major new construction project elsewhere in Park 2. In the 4 July 2023 committee agenda introduction, council’s administrators advising elected members referenced the Strategy but said little about the fact that the Strategy very clearly did not endorse “... the location of the new Adelaide Aquatic Centre in Denise Norton Park / Pardipardinyilla (Park 2)” (carried motion #1) or the demolition of the existing building, or construction of a large, new multi-storey centre. The evidence was (and is) clear that the proposed project did not (and still does not) comply with *Adelaide Park Lands Act 2005* statutory policy requirements and, as such, could not legitimately lead to a new construction licence or new lease that conformed to the Act at this time. The 4 July advice may have enabled some elected members to falsely conclude that the Strategy already endorsed the particulars of the 4 July proposal to

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<sup>5</sup> Source: Adelaide City Council (ACC), City Community Services and Culture Committee, Agenda, Item 4.4, ‘Adelaide Aquatic Centre Redevelopment Lease and Licensing’, Executive Summary, 4 July 2023, page 45. This intention is repeated under discussion headlined ‘Policy’. “Consultation on the CLMP will occur at the same time as consultation on the long term lease and construction licence.”

<sup>6</sup> *Adelaide Park Lands Management Strategy 2015–2025*, ‘North Park Lands Precinct’, Future moves, Park 2, page 62.

draw up a licence and lease agreement and seek their public endorsement. The council's determination to go ahead and to discount the contents of this critical statutory policy document underscores a recent, post-2018 record of tardy administrative attention to key park lands policy documents such as the Strategy, which was required to undergo a "comprehensive review" by not later than August 2022<sup>7</sup> (obviously 11 months before the 4 July 2023 council meeting). This points to park lands policy management dysfunction reigning behind the council's doors, in an atmosphere of heavy pressure being exerted by the state government keen to see construction of major new infrastructure in Park 2. It means that the council is at July 2023 prosecuting a park lands matter in defiance of what the *Adelaide Park Lands Act 2005* requires through its two statutory policies relating to Park 2.

Failure to conduct an 'independent market assessment'

The council's proposed peppercorn rent of \$2000 a year (as revealed in the draft lease) is not attended by any administration discussion relating to council's 'Park Lands Lease and Licence policy'. (There is a recently updated draft version<sup>8</sup> but which remained unendorsed at council level as at 4 July 2023. However, the intention of both the old policy version and the newly amended draft version is very clear.) It states that: "Commercial lease and licence fees will be informed by an independent market assessment and reviewed periodically, where the lease term is greater than two years (including a right of renewal)." However, no evidence of any such independent market assessment appears in the 4 July 2023 committee agenda at a time when such procedure ought to have been fully explored and addressed, given that public consultation on the construction licence and its fee is soon to occur. The suggestion is that no assessment occurred, and if so, this would constitute a breach of section 202 of the *Local Government Act 1999*, which requires that proposals to create park lands temporary works and compounds must "adhere to the requirements of City of Adelaide lease and permit conditions."<sup>9</sup>

Moreover, should the council (and/or the minister) instead determine that the licence and the lease can be defined as 'Community Leases and Licences', then a tempting suite of discounts can apply, potentially totalling up to 75 per cent of the fee. The council's long history of management of park lands and state projects in the park lands reveals that very substantial discounts have been made available for major state infrastructure projects. (The discounts were rarely flagged ahead of time, and triggered only very late in the approvals process.) The lack of detail regarding this matter suggests a significant lapse in park lands policy due process, especially given that there has been plenty of time in the past year to address it.

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<sup>7</sup> A government minister signed off on this version of the *Adelaide Park Lands Management Strategy 2015–25* in August 2017. The Act requires that a review be completed within five years of that government endorsement. This means that the existing Strategy is overdue for review, but such reviews are usually so complex (and feature detailed public consultation and administrative response) that they traditionally take up to 12 months to conclude. It is obvious that such a review cannot be concluded within the six-to-eight weeks allocated to complete all procedural steps to enable finalisation and public endorsement of a construction licence and lease to enable the project to commence.

<sup>8</sup> Adelaide Park Lands Authority, Agenda, Item 6.1, 'Revised lease and licence policy', Attachment A, Link 3, 'Park Lands Lease and Licence Policy', 27 April 2023, pages 46–53 of that agenda.

<sup>9</sup> Bullet point 1, as found in: Adelaide City Council, Planning, Development and Business Affairs Committee, Agenda, Item 6.2, 'Draft Community Land Management Plan, Amendments prior to consultation', Attachment A, new inclusion made in February and reproduced in April, being Point 8.4.5, 'Temporary works and compounds', 4 April 2023, page 68.

## State government commercial opportunities

Even if no independent market assessment occurs or no discount regime is applied, the lease's cheap rent fee will gift the state government with a substantial park lands commercial opportunity to benefit over 42 years from public land operations revenues at the new centre, given that its expanded facilities (and number of storeys) are likely to attract significantly more visitors and commercial operators than the 780,000 per annum that in recent years have visited the existing swim centre. Council's rationale behind the very cheap rent is that the state government is to spend \$135m on the project. However, over a period of 42 years there will be substantial opportunity for commercial operations and arising revenues to recoup that money, given that new commercial uses of the centre are to apply under a revised Planning and Design Code for the sub-zone at Park 2. Uses will include clubs and shops and administrative office sub-lease opportunities that did not exist in the old centre.

### "Permitted use" wording ambiguity

Curiously, the draft lease tabled in the agenda Item 4.4 on 4 July 2023 and endorsed for public consultation by elected members did not contain details of the site's "Permitted Use" wording, which would more clearly define the likely commercial uses.<sup>10</sup> Moreover, the lease schedule appearing at the end of the draft document, which would normally contain this information, was blank. No plan of the explicit park lands area to be subject to the lease was evident, either. It would appear that respondents to the lease consultation will not have access to this information.

### The delegation pressure (to save precious time)

Illustrating the very tight timing for completion of critical future procedural steps, the motions carried on 4 July 2023 delegated future carriage of the construction licence and lease matters from the elected members to council's CEO and the Lord Mayor, Dr Jane Lomax-Smith. It is unlikely that the public responding to consultation about amendments to the *Community Land Management Plan* will be informed of the explicit details relating to lease's "Permitted Use", because that matter won't be the focus of the CLMP consultation during July and August 2023. It is implied that the permitted use might be seen as something generic like 'public swimming facilities' but this could prompt misapprehension among city councillors. In fact, the wording is going to be much broader because a potential additional permitted use endorsed under the revised Planning and Design Code could also include sub-leasing to agencies and other private businesses with commercial motivations that don't necessarily relate to the use of public, aquatic-exclusive facilities. The Planning and Design Code amendments that were concluded 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

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<sup>10</sup> Extract: "6. USE OF LEASED AREA [Point] 6.1: Permitted Use: The Lessee must use the Leased Area only for the Permitted Use and not use or allow the Leased Area to be used for any other use without the consent of Council. [Point] 6.2: Park Lands [Point] 6.2.1: The Lessee must comply with the approved management plans, guidelines and strategies (from time to time) of the Council and APLA with respect to the use and occupation of the Leased Area (being part of the Park Lands)."

uses such as consulting rooms and offices within the [Park 2] sub-zone.”<sup>11</sup> Evidence in the draft CLMP soon to be publicly released and consulted makes the broadening of the purpose very clear. Reference to Park 2 in the draft CLMP describes “the purpose for which this land is held” as: “Providing for informal recreation including a play space and outdoor fitness station.” A second bullet point mentions swimming facilities: “Providing facilities for indoor aquatic, fitness and allied health.”<sup>12</sup> (There are several other points, too.) But the heading “Objectives, targets and measures for managing the land” actually features only one objective, and its wording is dangerously broad: “To provide facilities for indoor aquatic, fitness and allied health *and ancillary uses* [emphasis added].” If this becomes the wording of the “Permitted Use” clause in the lease, then broader functions vaguely described as “ancillary uses” are either being contemplated, or are open to be contemplated some time in the future, perhaps under future ministerial pressure.

The need for detailed attention to the likely wording of ‘Permitted Use’ is for reasons that may not be apparent to some, and it relates to matters that may not emerge until some future time. For example, matters tested in late 2018 and early 2019 when the Liberal state government enabled the eastern walls of the Adelaide Oval Stadium (Park 26) to be used for construction of a \$42m Adelaide Oval hotel, arose out of the permitted use under the lease terms struck in 2011 between the city council and a government minister. (Its real purpose was to chase new revenues to shore up stadium management funds.) The key word was ‘ancillary’: a use ancillary to a pre-existing permitted use (the stadium). There would be significant cause for concern if the current draft lease’s ‘Permitted Use’ wording for the Park 2 project were to be as dangerously ambiguous as something like ‘informal recreation’, with an additional reference to other potential ‘ancillary uses’.

It would be in the best interests of the city council’s elected members and more than 26,000 city ratepayers to be told of the precise Park 2 lease wording for “Permitted Use” immediately. However, procedural carriage has already passed from elected members’ participation to the administration. Moreover, the looming complicated procedural steps that must be ticked off, without hiccups, over July and August 2023, are pressuring council’s administrators to comply with a demanding schedule similar to that of an express train. And it’s not really a train schedule, it’s a March 2026 state election schedule.

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Appendices 1 and 2 follow on page 7.

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<sup>11</sup> Adelaide City Council, Council agenda, ‘Adelaide Aquatic Centre Code Amendment’, Item 10.3, Executive Summary, page 1, 28 February 2023.

<sup>12</sup> As found in the CLMP draft dated 4 April 2023: Source: Adelaide City Council, Planning, Development and Business Affairs Committee, Agenda, Item 6.2, ‘Draft Community Land Management Plan, Amendments prior to consultation’, Item 6.2, Attachment A, Park 2, pages 78–79 of the committee agenda PDF, or pages 20–21 of the Attachment A draft CLMP referencing Park 2’s purpose.

## APPENDIX 1

Extract:

4 July 2023 City Community Services and Culture Committee  
'Adelaide Aquatic Centre Redevelopment Lease and Licensing'  
Item 4.4, pages 44–88

Extract: introduction for elected members

### EXECUTIVE SUMMARY (page 45)

The purpose of this report is to provide Council with information relating to lease and licensing arrangements to facilitate the State Government's new Adelaide Aquatic Centre Redevelopment (AACR) and seek endorsement on: progression of a draft construction licence, and progression of a draft 42-year lease agreement, which will commence following completion of the redevelopment works. To ensure consistency with Council's usual legislative processes both the draft construction licence and the essential terms of the draft 42-year lease agreement will be detailed in community consultation. **Concurrently, consultation on the Community Land Management Plans (CLMPs) that were endorsed by Council in March 2023** will be undertaken. This includes consultation on the CLMP for Denise Norton Park / Pardipardinyilla (Park 2).

### POLICY

**Adelaide Park Lands Management Strategy 2015-2025** Continue to enhance the Adelaide Aquatic Centre to meet community expectations. Generate a greater focus on servicing the play space and picnicking areas through increased offerings and better access to the existing commercial operations.

**Community Land Management Plan** The current Community Land Management Plan (CLMP) for Denise Norton Park / Pardipardinyilla (Park 2) envisages an Aquatic Centre – however it requires updating to accommodate the State Government project and the long-term leasing of the new Adelaide Aquatic Centre. Consultation on the CLMP will occur at the same time as consultation on the long term lease and construction licence.

## APPENDIX 2

Extract: Motions carried on 4 July 2023:

1. Endorses the location of the new Adelaide Aquatic Centre in Denise Norton Park / Pardipardinyilla (Park 2), Attachment A to Item 4.4 on the Agenda for the meeting of the City Community Services and Culture Committee held on 4 July 2023.
2. Authorises the Lord Mayor and Chief Executive Officer or delegate to negotiate a draft Construction Licence (Licence), Attachment B to Item 4.4 on the Agenda for the meeting of the City Community Services and Culture Committee held on 4 July 2023 for the purpose of undertaking community consultation in accordance with the Local Government Act 1999 (SA).
3. Authorises the Lord Mayor and Chief Executive Officer or delegate to negotiate a draft 42-year Park Lands Lease Agreement (Lease) with the Minister for Infrastructure and Transport (Minister), Attachment C to Item 4.4 on the Agenda for the meeting of the City Community Services and Culture Committee held on 4 July 2023 to facilitate the operation of a new Adelaide Aquatic Centre for the purpose of undertaking community consultation on the essential terms of this agreement in accordance with the Local Government Act 1999 (SA).
4. Notes that results of the community consultation will be presented back to Council in August 2023.
5. Authorises the Lord Mayor and Chief Executive Officer to continue discussions and finalise the outstanding terms and conditions of the draft Construction Licence and draft 42-Year Lease Agreement.