

DEED

ROYAL ADELAIDE SHOW PARKING

THE CORPORATION OF THE CITY OF ADELAIDE

and

ROYAL AGRICULTURAL & HORTICULTURAL SOCIETY OF
SOUTH AUSTRALIA INCORPORATED

DATE

27th of September 2011

PARTIES

THE CORPORATION OF THE CITY OF ADELAIDE of 25 Pirie Street, Adelaide SA 5000 (Council)

ROYAL AGRICULTURAL & HORTICULTURAL SOCIETY OF SOUTH AUSTRALIA INCORPORATED of PO Box 108, Goodwood SA 5034 (Society)

BACKGROUND

- A. The Society is charged with the responsibility to conduct the Royal Adelaide Show annually at the Adelaide Showground.
- B. Council has the care control and management of Park Lands in the vicinity of the Adelaide Showground, which have historically been used for the purposes of providing parking for the Royal Adelaide Show.
- C. The parties have a long-term goal to phase out the use of the Park Lands for broad-acre parking for the Royal Adelaide Show.
- D. This deed provides a framework within which the parties will work towards achieving that goal and also regulates how parking on the Park Lands will be managed during the interim period.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Adelaide Showground means the land at Wayville, South Australia occupied or controlled by the Society for the purposes of conducting the Royal Adelaide Show.

Business Day means a day that is not a Saturday, Sunday or public holiday in Adelaide.

Commencement Date means the date of execution of this deed.

Initial Term means a term of five years commencing on the Commencement Date.

Park Lands means the Adelaide Park Lands as defined by the Adelaide Park Lands Plan deposited in the General Registry Office of South Australia.

Renewal Terms means two terms of five years each.

Term means the Initial Term and the Renewal Term(s).

1.2 Interpretation

In this deed, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a provision is not construed against a party only because that party drafted it;
- 1.2.7 if a provision of this deed binds two or more parties, that provision binds those parties jointly and severally;
- 1.2.8 an unenforceable provision or part of a provision may be severed, and the remainder of this deed continues in force, unless this would materially change the intended effect of this deed;
- 1.2.9 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- 1.2.10 an obligation on a party to use "reasonable endeavours" to do a thing requires the party to do all the party reasonably can to do the thing, taking into account all of the personal circumstances and commercial interests of that party.

1.3 Background

The Background forms part of this deed and is correct.

1.4 Ambiguity

In the event of any ambiguity in the interpretation of this deed, this deed is to be interpreted in a manner consistent with the Report presented to the Council on 23/8/2011 titled Royal Adelaide Show – Parking [2010/02708].

2. KEY OBJECTIVES

The key objectives of this deed are to:

- 2.1 recognise the parties' shared aspiration of eventually removing broad-acre parking from the Park Lands for the Royal Adelaide Show through:
 - 2.1.1 the cooperative efforts of the parties, the State Government and Local Government to improve public transport capable of servicing the Adelaide Showground; and

- 2.1.2 the continued efforts of the Society to improve the parking capacity of the Adelaide Showground;
- 2.2 provide for the ongoing interim use of portions of the Park Lands for parking; and
- 2.3 provide for the relocation of parking areas and better management of parking to minimise damage to the Park Lands.

3. TERM

3.1 Term

This deed commences on the Commencement Date and expires at the end of the Term.

3.2 Periodic review

- 3.2.1 The parties will comprehensively evaluate the success and ongoing operation of this deed at the conclusion of the first year and at least twice during the Term with a view to reducing the number of parking spaces in line with the parties' long-term goal.
- 3.2.2 If during the Term the parties agree that the objectives of this deed have been met such that parking on the Park Lands is no longer required, this deed may be terminated in writing.

3.3 Extension of Initial Term

3.3.1 *First Renewal Term*

The Society may exercise its right to extend this deed for a period of five years (**First Renewal Term**) by notice in writing to Council prior to the expiry of the Initial Term, on the same terms as this deed except for the exclusion of this clause 3.3.1 commencing immediately after the Initial Term expires.

3.3.2 *Second Renewal Term*

The Society may exercise its right to extend this deed for a second period of five years (**Second Renewal Term**) by notice in writing to Council prior to the expiry of the First Renewal Term, on the same terms as this deed except for the exclusion of this clause 3.3.2 commencing immediately after the First Renewal Term expires.

4. GENERAL ACKNOWLEDGEMENTS

Council and the Society acknowledge and agree that both parties intend to follow the processes, protocols, procedures and practices outlined in this deed (or such further agreements made by the parties from time to time) and use their reasonable endeavours to seek to fulfil the key objectives of this deed as set out in clause 2.

5. LONG-TERM TRANSPORT SOLUTION

- 5.1 The parties will use their reasonable endeavours to achieve their shared long-term objective of removing parking from the Park Lands and will jointly consult

and involve the State Government, adjoining councils and other stakeholders as and when required to facilitate that outcome.

- 5.2 Without limiting clause 5.1, the parties agree to prepare a Public Transport/Alternative Parking Plan (Plan) to work in conjunction with the State Government and The Corporation of the City of Unley to progressively reduce the long term parking demand on the Park Lands for the Royal Adelaide Show. The Plan will set aspirational goals for the increased use of public transport and alternative parking and identify strategies for jointly achieving these goals. The parties will jointly implement mutually agreed strategies and aim to reduce parking on the Park Lands as public transport availability increases and as additional (non-Park Lands) parking is made available.
- 5.3 The parties acknowledge that the Society has a long-term goal of 90% of patrons travelling to the Royal Adelaide Show by public transport and in working toward this outcome has, in conjunction with the State Government:
 - 5.3.1 installed an international standard bus zone on Goodwood Road;
 - 5.3.2 installed a temporary train station at Goodwood, which operates from the City to the Adelaide Showground;
 - 5.3.3 promoted public transport through its communications plan;
 - 5.3.4 acquired land to enable the Society to gradually increase parking capacity at the Adelaide Showground;
 - 5.3.5 assisted Council in eliminating parking on the Park Lands for other events at the Adelaide Showground by rearranging internal parking operations within the site;
 - 5.3.6 financially supported the Keswick Bike Path situated along the railway line;
 - 5.3.7 introduced a park and ride scheme at ETSA Stadium; and
 - 5.3.8 achieved a re-zoning of the Adelaide Showground to allow for multi-storey car parks combined with office blocks.
- 5.4 Without limiting clauses 5.1 and 5.2, the Society will use its reasonable endeavours to continue to investigate, encourage and support the implementation of specific sustainable transport options including:
 - 5.4.1 electrification, modernisation and extension of rail services;
 - 5.4.2 construction of a permanent rail station servicing the Adelaide Showground and future Keswick Barracks development;
 - 5.4.3 extension of tram services and return of tram line into the Northern end of the Adelaide Showground;
 - 5.4.4 introduction of modern computerised public transport ticketing services that can be integrated into public event ticketing; and

- 5.4.5 a cultural shift within the community toward public transport as a result of providing convenient, reliable, affordable, safe and contemporary services.

6. INTERIM PARKING ARRANGEMENTS

6.1 Acknowledgements

The parties acknowledge and agree that:

- 6.1.1 Council (and the Adelaide Park Lands Authority) has a general policy position to work towards removing parking on the Park Lands, in order to best manage and conserve the Park Lands;
- 6.1.2 the required large scale improvements to public transport, including those set out in clause 5.4, are unlikely to be in place within the short term; and
- 6.1.3 given the considerable social and cultural importance of the Royal Adelaide Show it is considered reasonable to provide assurance to the Society and the public with respect to the continued availability of the Park Lands for parking, while taking appropriate steps to protect the amenity of the Park Lands.

6.2 Parking areas

- 6.2.1 Those areas of the Park Lands shaded in red, or shaded in green and outlined in red, on the plan attached as Annexure A will be made available for parking for a maximum of 2,650 vehicles, subject to clause 6.2.2.2, as required from time to time for the Royal Adelaide Show, subject to ground conditions being considered suitable at the time.
- 6.2.2 Those areas of the Park Lands marked "Area D" and "Area E" on the plan attached as Annexure A contain remnant native vegetation and as such will only be made available for parking for the Royal Adelaide Show:
 - 6.2.2.1 if ground conditions on the sporting fields (part of the areas described in clause 6.2.1 above) are unsuitable for parking and only until such surfaces are improved; and
 - 6.2.2.2 on up to three occasions during the Royal Adelaide Show as overflow areas on high-attendance days;

and Council will install signage as required to educate the public as to why parking will generally not be permitted on certain areas of the Park Lands.

- 6.2.3 Suitability of ground conditions will be determined by Council (acting reasonably) having regard to weather, works and other relevant factors in consultation with the Society prior to and during the Royal Adelaide Show.

6.2.4 It is acknowledged that certain areas of the Park Lands may in future and from time to time be redeveloped or otherwise subject to works such that they will, either temporarily or permanently, be unsuitable for parking. In any such event, Council will make provision for the parking of a minimum of 2,650 vehicles upon alternate proximate areas of the Park Lands, subject to ground conditions being considered suitable at the time.

6.3 **Responsibility for management of parking**

- 6.3.1 Council will continue to manage parking operations on the Park Lands.
- 6.3.2 Council will undertake an annual review of its traffic management plan for Royal Adelaide Show parking, in consultation with the Society, SAPOL and the City of Unley.
- 6.3.3 Where Council considers it reasonable and practicable, Council undertakes to provide a limited amount of discounted parking in its city parking stations adjacent to bus and tram stops during the Royal Adelaide Show to discourage parking on the Park Lands.

6.4 **Fees**

Current fees charged by Council for parking on the Park Lands will during the Term only be increased annually in accordance with the Adelaide CPI, except as otherwise agreed between the parties.

6.5 **First right of refusal to manage parking within the Adelaide Showground during the period of the Royal Adelaide Show**

If during the Term the Society proposes to enter into a contract or other arrangement for the management of off-street parking within the Adelaide Showground during the period of the Royal Adelaide Show:

- 6.5.1 the Society must serve on Council written notice of the Society's intention enter into a contract or other arrangement for the management of off-street parking for the period of the Royal Adelaide Show (**Notice**) and the terms upon which the Society is prepared to enter into such contract or other arrangement (**Contract**);
- 6.5.2 Council may accept the offer within 30 days after service of the Notice and Contract on Council by delivering to the Society the Contract executed by Council;
- 6.5.3 upon acceptance of the offer, the parties are bound by the Contract;
- 6.5.4 within seven days after receipt of the Contract, the Society must execute the Contract and deliver a copy to Council;
- 6.5.5 if Council does not accept the offer, the Society may enter into a contract with a third party within three months of the Notice at a price and on terms that are not less favourable to the Society;
- 6.5.6 the term of any Notice given under this clause shall be kept strictly confidential between the parties to this deed.

6.6 Displacement of existing Park Lands licence holders

6.6.1 *Adelaide Lutheran Sports and Recreation Association Incorporated*

- 6.6.1.1 The Adelaide Lutheran Sports and Recreation Association Incorporated (ALSRA) has a licence over part of the Park Lands, namely certain sports ovals.
- 6.6.1.2 The ALSRA's use of the sports ovals during the Royal Adelaide Show will be restricted or prevented as required (by suspension of the ALSRA's licence to use such area or otherwise).
- 6.6.1.3 Council will use its reasonable endeavours to relocate the ALSRA to alternative sports ovals during the Royal Adelaide Show.
- 6.6.1.4 Council supports the allocation of a reasonable and appropriate portion of revenue obtained from Royal Adelaide Show parking to assist with improvements to the sports ovals, specifically:
 - (a) a connection to the Glenelg Adelaide Pipeline recycled water supply;
 - (b) an initial series of treatments to improve the playing/parking surface;
 - (c) a contribution towards the annual maintenance of the playing surface to improve the capability of the surface to sustain vehicular traffic; and
 - (d) ongoing restoration following parking.

6.6.2 *SA United Church Netball Association Incorporated*

- 6.6.2.1 The SA United Church Netball Association Incorporated (SAUCNA) has a licence over portion of the Park Lands, namely certain netball courts.
- 6.6.2.2 The SAUCNA's use of the parking area adjacent to the netball courts during the Royal Adelaide Show will be restricted or prevented as required (by suspension of the SAUCNA's licence to use such area or otherwise).
- 6.6.2.3 The SAUCNA has been advised by Council that parking on the parking area during the Royal Adelaide Show will attract a fee.

7. COMMUNICATION AND CONSULTATION

While the parties acknowledge the responsibility each party has to their own constituencies, they further agree to a process of communiqués and community consultation and to refrain from any deliberate and adverse public comments regarding

the other parties to this deed (in the context of the subject matter of this deed) should disagreements arise in the pursuit of the objectives set out in this deed.

8. CONFIDENTIALITY AND FOI

- 8.1 The *Freedom of Information Act 1991 (SA) (FOI Act)* gives members of the public rights to access documents of Council. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by Council and other public authorities.
- 8.2 The Society acknowledges Council's obligations to comply with the FOI Act and consents to any disclosures by Council, subject to the Society's rights of consultation, review and appeal, and such other challenge to legal disclosure as the Society may make.

9. TERMINATION FOR BREACH

- 9.1 A party may elect to terminate this deed if another party breaches a condition of this deed and fails to rectify such breach within a reasonable time of being requested in writing to do so.
- 9.2 Without prejudice to the rights of a party in respect of any claim or breach of the provisions of this deed prior to the date of termination, the liability of each party under this deed shall cease upon termination.
- 9.3 Clause 8 and any obligation that arises prior to termination shall survive termination of this deed.

10. DISPUTE RESOLUTION

10.1 General

- 10.1.1 A party must not commence arbitration or court proceedings (except for urgent relief) in respect of a dispute under this deed, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
- 10.1.2 A party claiming that a dispute has arisen under this deed must give written notice to the other party specifying the nature and details of the dispute.
- 10.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 10.1.4 If the parties are unable to resolve the dispute within 10 Business Days, they must promptly refer the dispute to their respective Chief Executive Officers.
- 10.1.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

10.2 **Mediation**

- 10.2.1 If those persons are unable to resolve the dispute within 10 Business Days of referral, a party may refer the dispute for mediation under the mediation rules of the Law Society of South Australia Inc to:
 - 10.2.1.1 a mediator agreed by the parties; or
 - 10.2.1.2 if the parties are unable to agree a mediator within five Business Days, a mediator nominated by the President of the Law Society or the President's nominee.
- 10.2.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.
- 10.2.3 Any information or documents disclosed by a party under this clause:
 - 10.2.3.1 must be kept confidential; and
 - 10.2.3.2 may not be used except to attempt to resolve the dispute.
- 10.2.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

10.3 **Arbitration**

- 10.3.1 If the dispute is not resolved within 10 Business Days of appointment of the mediator, a party may refer the dispute to:
 - 10.3.1.1 an arbitrator agreed by the parties; or
 - 10.3.1.2 if the parties are unable to agree an arbitrator within five Business Days, an arbitrator nominated by the Chairperson of the South Australian Chapter of The Institute of Arbitrators and Mediators Australia or the Chairperson's nominee.
- 10.3.2 A referral to arbitration is a submission to arbitration within the meaning of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* (SA).
- 10.3.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.
- 10.3.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.

10.4 **Performance**

If possible, each party must perform its obligations under this deed during negotiations, mediation and arbitration proceedings.

11. **NOTICES**

- 11.1 Any notice issued under this deed must be in writing and either sent by facsimile, mail or delivered by hand.

11.2 A notice to Council must be addressed to:

Position: Chief Executive Officer

Address: 25 Pirie Street, Adelaide SA 5000

Fax: 08 8203 7709

11.3 A notice to the Society must be addressed to:

Position: Chief Executive Officer

Address: PO Box 108, Goodwood SA 5034

Fax: 08 8212 1944

11.4 A notice may be signed by a party's authorised legal or other representative.

11.5 A notice sent by mail or delivered by hand is effective upon receipt.

11.6 A notice sent by facsimile is effective upon receipt of confirmation of successful transmission to the recipient unless it is transmitted after the close of normal business hours, or on a Saturday, Sunday or public holiday, in which case it is effective on the opening of business on the next Business Day at the intended place of receipt.

12. GENERAL

12.1 Relationship between the parties

12.1.1 The relationship between the parties is limited to the purposes of this deed and is not to be construed as a partnership, joint venture, principal and agent, trust, fiduciary or any other special relationship.

12.1.2 No party is obliged to incur any further obligation unless it expressly agrees to do so in writing.

12.1.3 The parties will not assume or create, or attempt to assume or create, directly or indirectly, any obligation on behalf of, or in the name of, the other party.

12.2 Assignment

A party must not assign any of its rights under this deed without the prior written consent of the other party.

12.3 Amendment

This deed can only be amended, modified, varied, released or discharged by written agreement of the parties and will form an annexure to this deed.

12.4 Severability

If any provision in this deed is voidable or unenforceable, that provision will be severed and the rest of this deed will remain in full force and effect.

12.5 No waiver

- 12.5.1 No right under this deed will be deemed to be waived except by notice in writing signed by the party giving the waiver.
- 12.5.2 A waiver by a party under clause 12.5.1 will not prejudice that party's rights in respect of any subsequent breach of this deed by the other party.
- 12.5.3 Subject to clause 12.5.1, any failure by a party to enforce any clause of this deed, or any forbearance, delay or indulgence granted by the party to the other party, will not be construed as a waiver of the first mentioned party's rights under this deed.

12.6 Governing law

The laws of South Australia apply to this deed and the parties submit to the non-exclusive jurisdiction of the courts of South Australia.

12.7 Announcements

No party may make any press or other release or announcement relating to the commercial terms of this deed without the written approval of the other parties as to form, content and manner of the announcement or release.

12.8 Entire agreement

This deed constitutes the entire, final and concluded agreement between the parties in relation to the subject matter contained herein. It supersedes any previous arrangements, correspondence, tenders, representations, proposals, understandings and communications whether oral or in writing.

12.9 Costs

Each party will bear its own costs of and incidental to the preparation, negotiation, execution and stamping of this deed.

EXECUTED AS A DEED

COUNCIL

Signed for THE CORPORATION OF
THE CITY OF ADELAIDE by its
authorised delegate in the presence of:

Patricia
Signature of witness

R. S. J.
Signature of authorised delegate

PATRICIA KRIEL
Name of witness (print)

Peter Smith
Name of authorised delegate (print)

CEO
Position of authorised delegate

SOCIETY

The common seal of ROYAL
AGRICULTURAL & HORTICULTURAL
SOCIETY OF SOUTH AUSTRALIA
INCORPORATED was affixed in the
presence of:

J. W. Rothwell
Signature of Authorised Officer

J. W. Rothwell
Signature of Authorised Officer

Brock McFARLANE
Name (print)

JOHN W. ROTHWELL
Name (print)

Annexure A Plan

