Confidential Item

CAMPBELLTOWN CITY COUNCIL

Confidential Item

For Council meeting to be held on

Tuesday 2 June 2020 at 7.00 pm

Refer Item 11.6

Confidential Item

11.6 Land Purchase – Crown Solicitor's Advice

Property Officer, Mario Scalz's Report

Purpose of Report

To provide Council with the opportunity to consider the Crown Solicitor's advice with respect to the possible purchase of land within the Council area.

Strategic Plan Link

Strategy 2.5.6 Provide timely and relevant financial information to help make informed decisions

Background

Council has had ongoing discussions since 2011 with various Ministers and State Government Departments with regards to the future use of the former Hambledon Road, Campbelltown Kindergarten site. Attached for Members' information are copies of the relevant reports and minutes since 2011.

Legal advice confirmed that Council has a reasonable and legal right to the site once it ceased being used as a Kindergarten considering Council transferred its ownership of the land in 1960 to the Kindergarten Union of SA and to the Mothers and Babies Health Association. That transfer was based on a number of conditions, most importantly that if the Union decided to dispose of the land, the land was first to be offered to the Council at a nominal consideration of 5 Pounds.

Numerous discussions and legal opinions have been undertaken, all leading to Council lodging a caveat over the land owned by the Minister of Education located at Allotment 15 Hambledon Road, Certificate of Title Volume 5812 Folio 947 which also has implications on abutting land being Allotment 16 Hambledon Road, Certificate of Title Volume 5812 Folio 951.

The Caveat relates to the Council's claim to an equitable interest in the land as the holder of an option or right of purchase. In support of the caveat, numerous Council reports and minutes dating back to the 1960s were provided in support of the claim.

In respect to this ongoing legal matter, Council's solicitors have now been forwarded correspondence from the Crown Solicitor (attached dated 19 May 2020) confirming the Minister's acknowledgement of Council's right to first refusal with respect to the sale of both pieces of land.

Discussion

As previously stated, Council resolved in 1960, to transfer one portion of the site to the Kindergarten Union of SA Inc and another portion to the Mothers and Babies Health Association, which was duly administered.

The Campbelltown Kindergarten operated from the 1960s and closed in 2010. It remained empty until 2013 when the Government granted a sole lease to the Australian Unitarian Druze Community SA to run language classes after their Community building was significantly damaged due to a fire.

At its 21 August 2012 meeting, Council resolved that after considering further legal advice, it reaffirmed its previous decision to authorise the Chief Executive Officer to undertake the necessary steps to lodge a caveat over the property, formally known as the Campbelltown Kindergarten on Hambledon Road, Campbelltown as the Government has resolved to no longer use the land for kindergarten purposes.

This caveat was lodged and registered on the Certificate of Title (see attached Title) and has provided protection to Council's interest on the land since that time.

After many rounds of negotiations between Government officials and Council's solicitors, together with Council's Chief Executive Officer, Council's solicitors have now received formal notification from the Crown Solicitor.

The Minister acknowledges the Council's right of first refusal in respect of the sale of both the land and the adjacent land (allotments 15 and 16 Hambledon Road) and the Minister confirms he is willing to sell the land and the adjacent land back to the Council for the nominal price of $10 for each parcel plus GST in satisfaction of the Council's asserted right.

The sale would be subject to an existing unregistered lease to the Australian Unitarian Druze Community Incorporated, which is due to expire on 27 April 2021.

This offer is open for a period of two (2) calendar months from the date of the correspondence and is subject to execution and return of the formal land sale contract (attached).

Should Council not accept the offer, the Minister may proceed to dispose of the land and adjacent land to any other person and therefore, in the event Council did not want to purchase the properties, would request it to withdraw its caveat over the land immediately upon rejection or expiry of the offer.

Council's solicitors have further advised that the draft contract states the land is commercial land, which means that a purchase would be exempt from stamp duty. However, the Council would still need to pay Lands Titles Office registration fees, which would be calculated on the value of the land. Furthermore, as this is commercial land and the Council is a body corporate, there will be no cooling off period following the service of a Form 1. At the time of presenting this report, Council's solicitors are waiting for details of any rent arrears and also a Form 1 for the properties from the Crown. A copy of the lease is attached.

Searches of the current valuation details for the properties indicate the following fees will apply for the purchase of the site.

Lands Titles Office lodgement fees, with the current capital value for CT5812/951 and CT5812/947 is $840,000 are likely to be in the order of $7,500. There will also be a $170 lodgement fee for the withdrawal of the Council's caveat over the land. These valuation figures are calculated on the figures for the current financial year which may change if settlement occurs after 30 June 2020.

This offer by the Minister finally acknowledges Council's long held position that the property should be returned to Council's ownership. Therefore, it is recommended that Staff provide confirmation to the Crown Solicitor that Council would like the ownership to be transferred to its name.

The finer points of the existing lease should be of no bearing to the transfer of the land to Council's ownership and obviously the current terms of the lease will need to be honoured until the expiry date, after which time Council can consider the future use of the site.

With the purchase of the site, Council needs to resolve that the land be excluded from Community Land Classification which would enable Council to develop or consider options for the future of the site freely in the best interests of the Community.

Social Implications

The acknowledgement by the Minister of Council's first right of refusal for the land has eliminated the ongoing stalemate between Council and the State Government and provides a fair return to Council's goodwill in providing the Community with land for the purposes of children's care and education over a long period of time.

Nearby Churches including Campbelltown Uniting Church, St Martins Anglican Church and Salvation Army Campbelltown may also benefit from the use of the site.

There is currently a lack of Community facilities in the suburb of Campbelltown and this site could provide a good opportunity to provide Community programs and services, including outreach services like financial counselling, emergency relief, food programs and counselling.

Environmental Implications

There are no environmental implications in relation to this report.

Asset Management Implications

Ownership of the property will require the potential upgrading of the building, ongoing maintenance and holding costs associated with the property, which will need to be factored into future budget considerations.

The land, buildings and any other associated fixtures would need to be added to Council's Asset Register and depreciated and maintained accordingly.

Governance / Risk Management

The transfer of the property to Council's ownership has no governance / risk management implications, although a risk assessment will be undertaken after the transfer of ownership has been completed.

In addition, the Community Land Classification would need to be determined prior to Council taking possession of the property. Therefore it would be appropriate to also make that determination at this time and resolve to exclude the land from Community Land Classification as this provides the greatest flexibility for Council regarding the property's future use.

Community Engagement

There are no Community engagement implications in relation to this report.

Regional Implications

With the children services no longer being provided and the property being transferred to Council, it will return to the Community a valued Community asset, which will benefit both the local and regional Community depending on its use.

Economic Development Implications

There are no economic development implications associated with this report.

Financial Implications

The estimated cost to complete the transfer is likely to be less than $10,000, therefore if Council supports the acquisition of this site, it may wish to use the Strategic Land Purchase budget to fund any of the associated purchase costs.

Recommendation

That Council:

1. **advise the Crown Solicitor that Council exercises its right of first refusal in respect of the sale of the whole of the land comprised and described in Certificate of Title Volume 5812 Folios 947 and 951 being Allotment 15 in Filed Plan 133566 and Allotment 16 in Filed Plan 133567, both in the Area named Campbelltown in the Hundred of Adelaide to Council for the nominal price of $10 for each parcel plus GST in satisfaction of the Council's asserted right**
2. **authorise the Mayor and the Chief Executive Officer to sign the contract for the purchase of the land and such other documents as may be necessary to effect the transfer of the land to Council**
3. **allocate the necessary funding to cover all costs for the purchase of the said land from the Strategic Land Purchase Budget**
4. **exclude the land from classification as Community Land.**

Government of South Australia
Attorney-General's Department

If calling please ask for:
Mark Allen

Telephone:
08 8207 1769

Our Reference:
CSO:179850

Your Reference:
N/A

Crown Solicitor's Office
Commercial, Environment & Native Title Section
Level 17
10 Franklin Street
Adelaide SA 5000
GPO Box 464
Adelaide SA 5001
DX 336
Tel 08 8207 1720

19 May 2020

Caroline Smith
Associate
Norman Waterhouse Lawyers
By email only: CSmith@normans.com.au

Dear Ms Smith

Re: Sale of land owned by the Minister for Education – CTs 5182/947 and 951

I refer to previous correspondence in relation to the above matter, namely an exchange of emails with Lisa Hubbard and yourself between 18 June and 15 July 2019.

As you know, your client, the City of Campbelltown (**Council**), lodged a caveat over land owned by the Minister for Education (**Minister**) situated at Lot 15 Hambledon Road, Campbelltown which is comprised in Certificate of Title Volume 5812 Folio 947 (**the Land**). The adjacent land at Lot 16 Hambledon Road, Campbelltown owned by the Minister and comprised in Certificate of Title Volume 5812 Folio 951 (**Adjacent Land**) is also relevant to this matter.

The caveat relates to the Council's claim to an equitable interest in the Land as the holder of an option or right of purchase. Thank you for providing me with a copy of the correspondence referred to as evidence of the existence of that interest.

The Minister acknowledges the Council's right of first refusal in respect of the sale of both the Land and the Adjacent Land and the Minister confirms he is willing to sell the Land and the Adjacent Land back to the Council for the nominal purchase price of $10 for each land parcel plus GST in satisfaction of the Council's asserted right. The sale would be subject to an existing unregistered lease to the Australian Unitarian Druze Community Incorporated which is due to expire on 26 April 2021.

This offer is open for a period of two calendar months from the date of this letter and is subject to execution and return of the formal land sale contract **enclosed**.

If the Council does not accept this offer, the Minister may proceed to dispose of the Land and the Adjacent Land to any other person and therefore requests that the Council withdraw its caveat over the Land immediately upon rejection or expiry of this offer.

Yours faithfully

CROWN SOLICITOR

Per:

Mark Allen
Solicitor



CONTRACT

FOR THE SALE AND PURCHASE OF LAND

(NON-RESIDENTIAL)

Allotment 15 Filed Plan 133566 and Allotment 16 Filed Plan 133567

SALE OF LAND CONTRACT

Between:

The person/s named in **Item 1** of the Schedule (**Vendor**)

- and -

The person/s named in **Item 2** of the Schedule (**Purchaser**)

TERMS

1. On and subject to the terms of this contract, the Vendor agrees to sell to the Purchaser who agrees to purchase from the Vendor the following (**Assets**) for the amount/s (before adjustments and subject to Part 8 of the Standard Terms for the Sale of Land) stated in **Item 7** of the Schedule (**Price**):

   1.1 the estate or interest in land described in **Item 3** of the Schedule (**Land**); and

   1.2 any property described in **Item 4** of the Schedule (**Included Property**),

   but always excluding any property described in **Item 5** of the Schedule (**Excluded Property**).

2. This contract is comprised of this document and the following documents:

   2.1 the Schedule now annexed, and any documents incorporated by reference therein;

   2.2 the Standard Terms for the Sale of Land issued by The Law Society of South Australia now annexed; and

   2.3 any Annexures now annexed, and any documents incorporated by reference therein.

3. This contract may be executed in any number of counterparts, and by the parties in separate counterparts but, if executed in counterparts, is not effective until each party has executed at least one counterpart and those counterparts have been exchanged or delivered to the other party. An executed counterpart may be delivered by any means this contract allows for the giving of notices. Each counterpart constitutes an original of this contract, but the counterparts together constitute one and the same contract.

4. A person signing this contract on behalf of a party warrants that the person has authority to bind that party for that purpose.

Dated the day of 2020

Vendor	**Purchaser**
The Common Seal of	The Common Seal of
MINISTER FOR EDUCATION	**CORPORATION OF THE CITY OF CAMPBELLTOWN**
was affixed hereto in the presence of:	was affixed hereto in the presence of:
…… Signature of Witness	…… **Jill Whittaker** Mayor
…… Full name of Witness	…… **Paul Di Iulio** Chief Executive Officer

SCHEDULE

ITEM 1:	**VENDOR** Name: **MINISTER FOR EDUCATION**, a body corporate pursuant to the *Administrative Arrangements Act 1994* (SA) ABN: 91 814 239 978 Mailing address: Attn: Terry Fantis, Assistant Director Asset Services, Level 2, 8 Milner Street, Hindmarsh SA 5007 Ph: (08) 8226 7043 Email: Terry.Fantis@sa.gov.au
ITEM 2:	**PURCHASER** Name: **CORPORATION OF THE CITY OF CAMPBELLTOWN**, a body corporate established pursuant to the *Local Government Act 1994* (SA) ABN: 37 379 133 969 Mailing address: PO Box 1, Campbelltown SA 5074 Ph: (08) 8366 9222 Email: mail@campbelltown.sa.gov.au (If not otherwise stated, any 2 or more Purchasers will be deemed to purchase the Land as joint tenants)
ITEM 3:	**LAND** An estate in fee simple in the whole of the land comprised and described in Certificates of Title Volume 5812 Folios 947 and 951, being Allotment 15 in Filed Plan 133566 and Allotment 16 in Filed Plan 133567, both in the Area named Campbelltown in the Hundred of Adelaide. Street address (if any): 36B Hambledon Road, Campbelltown, SA 5074
ITEM 4:	**INCLUDED PROPERTY** (Personal property included in the Sale) ☐ Floor coverings (fixed) ☐ Light fittings ☐ Window treatments ☐ Air-conditioner ☐ Clothes line ☐ TV antenna / satellite dish ☐ Free-standing spa / pool ☐ Whitegoods ☐ Solar electricity panels ☐ Kerbside rubbish bins Other - All fixtures and improvements on the Land. If any of the Included Property is sold subject to a Third Party Interest or hire agreement to be assigned to the Purchaser, specify details below: (1) In law, a sale of freehold land includes fixtures upon that land. If in doubt, identify an asset as Included Property or as Excluded Property. (2) If agricultural or horticultural land, consider any crop still growing at Settlement.
ITEM 5:	**EXCLUDED PROPERTY** Nil.
ITEM 6:	**TENANCIES, EXCEPTIONS AND RESERVATIONS** Unregistered lease of the Land to the Australian Unitarian Druze Community Inc commencing on 27 April 2019 and expiring on 27 April 2021. Specify any Tenancy or Third Party Interest (disregarding any other Permitted Interest as defined in this contract) to be taken over by the Purchaser.

ITEM 7:	**PRICE/S** Land: $20.00 Included Property: $0.00 GST (if applicable): $2.00 **Total**: **$22.00**
ITEM 8:	**DEPOSIT** $0 ~~If nothing stated, 10% of the total of the Price/s (before any GST) plus any GST.~~ ~~Payable on the execution of this contract / Payable on expiry of the Cooling-off Period.~~ ~~The Deposit may be tendered by Bank Cheque, or by deposit of clear funds to a nominated bank account of the Deposit Holder, in any combination.~~
ITEM 9:	**BALANCE** $22.00 (including GST, if applicable)
ITEM 10:	~~**DEPOSIT HOLDER**~~ ~~Name/s:~~ ~~ACN / ABN / ARSN (if any):~~ ~~Mailing address:~~ ~~Ph: Email:~~
ITEM 11:	**DATE FOR SETTLEMENT** The date twenty-eight (28) calendar days from the Execution Date or such other date as the parties may agree in writing.
ITEM 12:	**WATER ALLOWANCE** (Clause 22) $ If nothing stated, $400.00.
ITEM 13:	**STATUTORY NOTICES** (Clause 14) (1) Those to be discharged by the Vendor: Nil. (2) Those to be discharged by the Purchaser: Nil.
ITEM 14:	**REGULATORY REQUIREMENTS** (Clause 5) (1) To be obtained by the Vendor: Nil. Period within which to be obtained: Not applicable. (2) To be obtained by the Purchaser: Nil. Period within which to be obtained: Not applicable.

ITEM 15:	**ANNEXURES** Nil.

ITEM 16: **GST** (Part 8) [Mark only **1** box below as "Yes".]

The Sale:

		Yes
(a)	is not a taxable supply, as the Vendor is not, and is not required to be, registered for GST.	☐
(b)	is a taxable supply of real property, with the margin scheme under GST Law Division 75 **not** to apply.	☒
(c)	is a taxable supply of real property, to which the margin scheme under GST Law Division 75 applies.	☐
(d)	is a taxable supply of commercial residential premises.	☐
(e)	is a taxable supply of residential premises to which GST Law section 40-65(2) applies.	☐
(f)	is an input taxed supply of residential premises to be used predominantly for residential accommodation to which GST Law section 40-65(1) applies and section 40-65(2) does not apply.	☐
(g)	is GST-free as a supply of a going concern under GST Law section 38-325.	☐
(h)	is GST-free as a supply of potential residential land subdivided from farm land to which GST Law section 38-475 applies.	☐
(i)	is GST-free as a supply of farm land supplied for a farming business to which GST Law section 38-480 applies.	☐
(j)	is a supply that is partly taxable and partly non-taxable. The GST exclusive values of those respective supplies are as follows:	☐

Taxable Supply
Description of property:
GST exclusive value **$**

Non-Taxable Supply
Description of property:
GST exclusive value **$**

Total **$**_____

Note – total is to be the same as the total of Price/s in **Item 7**.

ITEM 17:	**~~GST WITHHOLDING NOTICE – RESIDENTIAL PREMISES AND POTENTIAL RESIDENTIAL LAND~~** ~~(Clause 64)~~ ~~(1) Vendor's Notice (mark only **1** box)~~ ~~☐ YES – this **Item 17** constitutes the written notice to be given by the Vendor pursuant to section 14-255 of Schedule 1 of the TA Act.~~ ~~☐ NO – the Vendor will, separate to this contract, give the Purchaser written notice pursuant to section 14-255 of Schedule 1 of the TA Act.~~ ~~If YES is marked for **Item 17 (1)**, the Vendor must complete **Item 17 (2)**.~~ ~~(2) The Vendor states:~~ ~~☐ YES – the Purchaser is required to pay the GST Withholding Amount to the Australian Taxation Office in accordance with the TA Act and clause 64 of this contract.~~ ~~☐ NO – the Purchaser is **not** required to pay any GST Withholding Amount to the Australian Taxation Office in accordance with the TA Act.~~ ~~If YES is marked for **Item 17 (2)**, complete the remainder of this **Item 17** below. If NO is marked for **Item 17 (2)**, strike through or leave blank the remainder of this **Item 17** below.~~ ~~(3) GST Withholding Amount required to be paid by the Purchaser to the Australian Taxation Office in accordance with the TA Act and clause 64 of this contract:~~ ~~$~~ ~~Notwithstanding the above amount, it is the Purchaser's responsibility to ensure that the correct GST Withholding Amount is paid to the Australian Taxation Office.~~ ~~(4) Details of the supplier who is liable for GST (Note: this may be the Vendor):~~ ~~Name of supplier:~~ ~~ABN of supplier:~~ ~~Mailing address:~~ ~~Ph: Email:~~ ~~Supplier's proportion of GST Withholding Amount: $~~ ~~(5) GST-inclusive market value of any non-monetary consideration:~~ ~~$~~ ~~For details as to when the GST Withholding Amount is to be paid by the Purchaser, see clause 64 of this contract.~~ ~~If there is more than one supplier, the Vendor must separately provide the details set out in Item 17 (4) for each supplier.~~
ITEM 18:	**ELECTRONIC CONVEYANCING** Subject to Part 12, settlement and lodgement for registration of any transfer of the Land to the Purchaser (together with discharge of any mortgage of the Land this contract requires be discharged and any new mortgage of the Land to be granted by the Purchaser) will be effected electronically in accordance with the EC Law: ☐ Yes ☐ No
ITEM 19:	**ANCILLARY CONTRACT/S** (Part 9) 1) Those to be assigned by the Vendor: Nil. 2) Those to be held in trust for the Purchaser by the Vendor: Nil.

STANDARD TERMS FOR THE SALE OF LAND

PART 1 – PRELIMINARY

1. **DICTIONARY**

In this contract:

ADI means an authorised deposit-taking institution (within the meaning of the *Banking Act 1959* (Cwth))

Ancillary Contract means, as applicable, any contract to which the Vendor is party or by which the Vendor is bound:

a) for a Tenancy – and includes any guarantee, indemnity or bond held as security for a Tenant's performance;

b) for the hire, lease, hire-purchase or bailment of any goods in Included Property and/or any PPS lease (within the meaning of the *Personal Property Securities Act 2009* (Cwth)) in respect of that Included Property, but only if such contract is specified in **Item 4**;

c) for any mortgage, easement, encumbrance or restrictive covenant in relation to the Land (and so far as concerns the Land) that is a Permitted Interest and so not required to be discharged at or before Settlement;

d) in relation to the Land (and so far as concerns the Land) made under section 37A of the *Aboriginal Heritage Act 1988*, section 50(2), section 57 or section 57A of the *Development Act 1993*, section 59 of the *Environment Protection Act 1993*, section 32 of the *Heritage Places Act 1993*, section 23 of the *Native Vegetation Act 1991*, or section 58, section 59 or section 61 of the *Mining Act 1971* and not required to be discharged at or before Settlement; and

e) any other ancillary contracts specified in **Item 19**.

Also included is the benefit of any consumer guarantee under the *Australian Consumer Law* / *Australian Consumer Law (SA)* in relation to any goods in Included Property or any construction work done to the Land.

Assets mean the following individually and collectively:

a) the Land, and any part of that Land; and

b) the Included Property (if any),

but always excluding any Excluded Property.

Bank Cheque means a cheque drawn by an ADI upon itself.

Bank Guarantee means an unconditional, irrevocable guarantee or bond by an ADI in favour of the Vendor and with a expiry date not earlier than 30 calendar days after the Date for Settlement and otherwise in a form acceptable to the Vendor acting reasonably.

Business Day means a day other than:

a) a Saturday, Sunday;

b) a day which is a public holiday in South Australia (within the meaning of the *Holidays Act 1910*); or

c) a day that falls between Christmas Day and the next following New Year's Day.

Business Hours	mean the hours between 9:00 am and 5:00 pm (South Australian time) on a Business Day.
Clearance Certificate	means a certificate issued under section14-220 of Schedule 1 of the TA Act which remains current at the Date of Settlement.
Client Authorisation	has the meaning given in section 240A of the RPA.
Conveyancing Transaction, **Electronic Workspace**, **Lodgment Case**, **Representative**, **Responsible Subscriber, and Subscriber**	have the meaning given in the *Participation Rules* last determined by the Registrar-General under the EC Law.
Cooling-off Period	means the period on and from the Execution Date to the expiration of the prescribed time (within the meaning given in section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*).
Date for Settlement	means the date specified in **Item 11** or as the parties may agree in writing.
Date of Settlement	means the date Settlement occurs.
Default Rate	means at any time 2% per annum above the last published BankSA Variable Business Loan Rate or, if such rate does not exist, 10%.
Deposit	means a deposit of the amount stated in **Item 8** paid by or on behalf of the Purchaser.
Deposit Holder	means a person named in **Item 10** or, if no person is named, means the Vendor.
EC Law	means the *Electronic Conveyancing National Law (South Australia)* as defined in the *Electronic Conveyancing National Law (South Australia) Act 2013*.
Excluded Property	means individually and collectively any asset specified in **Item 5**.
Execution Date	means the date this contract was executed by the last of the parties.
FRCG Withholding Amount	means the amount determined under section 14-200(3)(a) of Schedule 1 of the TA Act in respect of the sale of the Land, or such lesser amount as may be specified in a variation notice under section 14-235 of Schedule 1 of the TA Act, a copy of which notice has been provided to the Purchaser prior to Settlement.
GST, **adjustment**, **adjustment note**, **approved valuation**, **commercial residential purposes**, **creditable acquisition**, **enterprise**, **GST-free, input tax credit**, **input taxed**, **margin**, **margin scheme**, **new residential premises**, **residential premises**, **supply of a going**	have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth) (**GST Law**).

concern, **tax invoice**, **and taxable supply**

GST Withholding Amount means the amount determined under section 14-250 of Schedule 1 of the TA Act in respect of the sale of the Land.

Included Property means individually and collectively:

a) the Vendor's rights and benefits under any Ancillary Contract that remain due to be enjoyed after Settlement;

b) any consent, approval, licence or permit held by the Vendor from government for the occupation, use, enjoyment or development of the Land; and

c) that property (if any) stated in **Item 4**.

Instrument means, as regards a dealing with the Land this contract requires or allows, an instrument as defined in section 3(1) of the RPA.

Item means an item in the Schedule. If no particulars are stated in an Item, that Item must be read as if 'nil' or 'not applicable' (as the context allows) was stated in that Item.

Land means the estate or interest in land stated in **Item 3**, including any:

a) easements, rights, privileges and other appurtenances referred to in the certificate or other muniment of title for that land;

b) improvements or fixtures on that land on the Execution Date to the extent not Excluded Property; and

c) if the Land is sold subject to any Tenancy, the Vendor's right, title, estate and interest under that Tenancy as at and from Settlement.

Lawyer means, as regards a party, a legal practitioner under the *Legal Practitioners Act 1981* or a registered conveyancer under the *Conveyancers Act 1994* acting for that party in the Sale.

LTO means the Lands Titles Registration Office as constituted under the RPA.

New Residential Premises has the meaning given in section 995-1 of the *Income Tax Assessment Act 1997* (Cwth).

Permitted Interest means any of the following, as applicable:

a) restrictions under planning, development or heritage legislation;

b) any statutory easement in favour of government or a public utility;

c) any statutory charge or lien to secure payment of rates or taxes, so long as the liability or debt it secures is not overdue;

d) any easements and rights to which the Land is subject referred to on the certificate or other muniment of title to the Land and any exceptions or reservations referred to therein, and not by the terms of this contract required to be discharged prior to or at Settlement;

e) if the Land is or includes, or will at Settlement include, a unit under the *Strata Titles Act 1988* or a lot under the *Community Titles Act 1996*, easements imported under that legislation as applicable;

f) a matter stated in **Item 6**;

g) any statutory encumbrance (of the meaning given in section 223LA(1) of the RPA) required to give effect to a dealing with the Land this contract requires or allows;

h) the terms and conditions of any Ancillary Contract to be assigned by the Vendor to the Purchaser under this contract; and

i) any estate or interest created by this contract in favour of the Purchaser.

Potential Residential Land has the meaning given in section 995-1 of the *Income Tax Assessment Act 1997* (Cwth).

Price means, in relation to an Asset, the price stated against it in **Item 7** including the Deposit but before any GST applicable.

Purchaser means the person/s named in **Item 2** and, if more than 1, means each of them jointly and severally.

Regulatory Requirement means an approval, certificate, consent, authorisation or permit required to be issued by government or a government instrumentality, such as:

a) a consent by a relevant authority under the *Development Act 1993*;

b) a consent by a Minister under the *Crown Land Management Act 2009* or the *Pastoral Land Management and Conservation Act 1989*;

c) a division of land under the *Community Titles Act 1996*, the RPA or the *Strata Titles Act 1988*;

d) if the Takeovers Act applies to the Purchaser's acquisition of the Land, the grant of an exemption certificate, issue of a no objection notification, or the Treasurer losing power to make an order or decision under Division 2 of Part 3 of the Takeovers Act in relation to the acquisition.

Residential Premises has the meaning given in section 995-1 of the *Income Tax Assessment Act 1997* (Cwth).

RPA means the *Real Property Act 1886*.

Sale means the sale and purchase of the Assets this contract contemplates.

Schedule means the schedule immediately preceding these terms or referencing these terms.

Settlement means settlement of the Sale.

Statutory Notice means, as regards the Assets, any:

a) agreement, claim, declaration, demand, direction, notice, order or demand with or issued by a government, government instrumentality or regulatory body that would be required to be disclosed in a *Form 1 – Vendor's Statement* under section 7 of the *Land and Business (Sale and Conveyancing) Act 1994*; and / or

b) application made under the *Encroachments Act 1944*.

TA Act means the *Taxation Administration Act 1953* (Cwth).

Takeovers Act means the *Foreign Acquisitions and Takeovers Act 1975* (Cwth).

Tenancy	means a tenancy, lease or licence to occupy the Land (or part of the Land) specified in **Item 6**, and **Tenant** has a corresponding meaning.
Third Party Interest	means a trust, mortgage or charge, and: a) in case of the Land, includes a lease, licence to occupy, restrictive covenant, *profit à prendre*, easement, caveat, decree or order of Court (including a decree or order a memorial of which has been entered against the Land under section 105 of the RPA); and b) in case of Included Property, includes any lien, pledge and any security interest (within the meaning given in the *Personal Property Securities Act 2009* (Cwth)).
Vendor	means the person/s named in **Item 1** and, if more than 1, means each of them jointly and severally.
Vendor's Notice	means the notice required to be given to the Purchaser pursuant to section 14-255 of Schedule 1 of the TA Act in respect of the sale of the Land (as set out in **Item 17** or given separately to this contract).

Expressions defined elsewhere in this contract have that meaning.

Subject to all the above, expressions in this contract have the same meaning as in a provision of the RPA that deals with the same matter.

2. INTERPRETATION

In this contract: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; reference to a party includes a successor to the rights or obligations of that party under this contract; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this contract or any portion of it; another grammatical form of a defined word has a corresponding meaning; references to time mean legal time in South Australia; reference to legislation includes the legislation as amended, any substituted legislation, any subordinate legislation under that legislation, and any orders under that legislation; reference to any subordinate legislation includes that subordinate legislation as amended, any substituted subordinate legislation; reference to a section of legislation or a regulation of subordinate legislation includes a section or regulation that substitutes that section or regulation.

3. SEVERANCE

If a provision of this contract would, but for this clause 3, be unenforceable:

3.1 the provision must be read down to the extent necessary to avoid that result; or

3.2 if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this contract.

PART 2 – THE SALE

4. COOLING-OFF

If the Purchaser rescinds this contract under section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*, the Vendor may retain from any Deposit paid only the amount section 5(4) of that Act allows.

5. REGULATORY REQUIREMENTS

5.1 A dealing with the Assets the subject of this contract is not effective pending the satisfaction of any Regulatory Requirement without which that dealing would contravene any legislation.

5.2 A party under this contract given responsibility to attempt to satisfy a Regulatory Requirement must use reasonable endeavours to satisfy that Regulatory Requirement within the time this contract may require (or, if no period is specified in **Item 14**, within 20 Business Days from the Execution Date) and before Settlement.

5.3 Neither party may hinder the satisfaction of a Regulatory Requirement.

5.4 A party who becomes aware that a Regulatory Requirement is satisfied or becomes incapable of being satisfied must, within 2 Business Days, in writing, notify the other party.

5.5 A Regulatory Requirement is not satisfied if:

5.5.1 issued or obtained upon terms and conditions not acceptable to the parties acting reasonably; or

5.5.2 it is the subject of an appeal or judicial review, brought reasonably, and not finally disposed of.

5.6 If a Regulatory Requirement is not satisfied within time, a party not in default under clause 5.2 may terminate the Sale upon giving at least 10 Business Days' written notice to the other party, in which case the Sale terminates upon expiry of that notice period unless the Regulatory Requirement is satisfied in the meantime.

6. TERMINATION FOR DEFAULT

6.1 If, before or at Settlement, a party (**Party 1**) defaults in that party's observance or performance of this contract, the other party (**Party 2**) may give a written notice of default (**Default Notice**) to Party 1.

6.2 A Default Notice:

6.2.1 may be given at any time after the default occurs and before its remedy;

6.2.2 is without prejudice to any other rights or remedies Party 2 may have;

6.2.3 must identify the default (giving reasonable details);

6.2.4 must require Party 1 to remedy the default within 3 Business Days from the service of the notice for a pre-Settlement default, or within such longer period as Party 2 may specify in the notice;

6.2.5 if the default occurred at Settlement, must appoint a time during Business Hours for Settlement and require Party 1 to settle at the time specified in the notice (it being agreed that, if such time is not less than 10 Business Days after the date of service of such notice, then such period of notice will be deemed fair and reasonable and Party 1 shall be precluded from raising any objection to such period of notice);

6.2.6 may state that, unless the default is remedied within the period specified in the notice, Party 2 may terminate the Sale by written notice to that effect to Party 1; and

6.2.7 may be given on more than one occasion.

6.3 Party 2 may recover from Party 1 as a debt:

6.3.1 $900 (plus GST) towards the costs of preparing any (each) Default Notice; plus

6.3.2 the reasonable cost of serving any (each) Default Notice, and

Party 1 must pay or credit such sum to Party 2 at Settlement or on termination of the Sale.

6.4 Time is of the essence in respect of any period of time specified in a Default Notice.

6.5 If the Vendor is Party 2, the Vendor need not first tender a transfer or other conveyance of the Assets to Party 1 before terminating the Sale or before exercising any other rights or remedies of the Vendor.

6.6 If the Vendor terminates the Sale under this clause 6, the Vendor may elect to either:

6.6.1 retain the Assets and sue the Purchaser for damages for breach of contract; or

6.6.2 resell the Assets together or in lots and the deficiency, if any, in price upon the resale together with all reasonable costs and expenses incidental to the resale, any attempted resale and the Purchaser's default must immediately after the resale be made good by the Purchaser; and

(a) in the case of non-payment of the deficiency, costs and expenses, the whole thereof is recoverable by the Vendor as liquidated damages (minus any Deposit paid and forfeited) only if legal proceedings for the recovery are commenced within 12 calendar months after termination of the Sale;

(b) the Vendor is entitled to any increase in price on any resale.

6.7 If the Purchaser terminates the Sale under this clause 6, the Purchaser may sue the Vendor for damages for breach of contract only if legal proceedings for the recovery of the damages are commenced within 12 calendar months after termination of the Sale.

7. UNWINDING THIS CONTRACT

If the Sale terminates before Settlement, within 5 Business Days:

7.1 the Deposit Holder (or failing the Deposit Holder, the Vendor) must repay the Deposit to the Purchaser except that, if the Vendor terminated the Sale under clause 6, the Deposit is forfeited absolutely to the Vendor (despite any rule of common law or principle of equity to the contrary);

7.2 conditional upon repayment of the Deposit to the Purchaser, if repayable to the Purchaser, the Purchaser must cause to be withdrawn any caveat or priority notice the Purchaser or a third party claiming through or under the Purchaser caused to be lodged at the LTO in relation to the Land to protect the Purchaser's rights under this contract or that third party's derivative rights,

and otherwise neither party has further rights against the other in connection with this contract, except in respect of prior default under this contract.

PART 3 – TITLE

8. THE LAND

The Land, as offered for sale by the Vendor and inspected by the Purchaser, is the same as that described in **Item 3**.

9. EVIDENCE OF TITLE

9.1 The certificate of title under the RPA or other muniment of title in the name of the Vendor (or the other person named in Item 1 as owner of the Land) is conclusive evidence of title to the Land.

9.2 The Purchaser is not entitled to an abstract of title, nor to take any objection thereto nor to make any requisition thereon, and no evidence of the identity of the Land is required other than that afforded by comparison of the description in this contract with that in the certificate of title.

9.3 Any error, omission or improper or imperfect description of the Land:

9.3.1 will not rescind the Sale or affect the obligation of the parties to settle on the Date for Settlement; and

9.3.2 if notified by a party to the other before Settlement, but not afterwards, entitles compensation to be received or paid by one party to the other, as the case may require.

10. VENDOR WARRANTIES AS TO TITLE

The Vendor warrants that, at Settlement, the Vendor will have:

10.1 or be entitled to have, indefeasible title to the Land (if the Land is under the provisions of the RPA); and

10.2 the right to sell and transfer the Assets to the Purchaser under this contract free of any Third Party Interest, disregarding any Permitted Interest.

Except as expressly stated in this contract, the Vendor makes no representation or warranty in connection with the Assets, the Sale or anything else.

11. CAVEAT OR PRIORITY NOTICE

If before Settlement:

11.1 the Purchaser (or a third party claiming through or under the Purchaser) causes to be lodged a caveat or priority notice under the RPA to protect the Purchaser's rights under this contract or that third party's derivative rights; and

11.2 the Vendor so requires by written notice to the Purchaser,

the Purchaser must cause the caveator or third party, in a timely manner and in proper form, to consent to or permit the registration before Settlement of any dealing/s with the Land this contract expressly allows or requires.

PART 4 – RISK

12. CONDITION OF THE ASSETS

The Purchaser accepts the Assets:

12.1 subject to any Permitted Interest; and

12.2 in that condition and state of repair and subject to any defects (known or unknown) as at the Execution Date, and subject to fair wear and tear.

13. RISK AND USE OF THE LAND

13.1 Subject to clause 13.2, on and from the Execution Date the Assets shall be at risk of the Purchaser.

13.2 If and for so long as between the Execution Date and Settlement the Vendor or a third party occupies or uses any of the Assets, the Vendor must ensure the Vendor or that third party takes reasonable care of such Assets.

13.3 Subject to clause 13.2, if before Settlement there occurs any loss, damage, destruction, dilapidation, infestation or mechanical breakdown of the Assets from any cause:

13.3.1 the Sale is not affected; and

13.3.2 the Purchaser is not entitled to damages or a reduced Price.

13.4 On and from the Execution Date, the Purchaser must indemnify and hold harmless the Vendor against all liability in respect of the Assets, except to the extent caused or contributed to by the Vendor's wilful act, negligence or default under this contract or failure to take reasonable steps to mitigate such liability. The Purchaser's indemnity under this clause 13.4 is a continuing obligation, except if this contract is terminated prior to Settlement occurring, in which case the Purchaser's indemnity under this clause 13.4 ceases on the date of termination.

PART 5 – STATUTORY NOTICES

14. EXISTING STATUTORY NOTICES

14.1 The Vendor warrants that, on the Execution Date, no Statutory Notice exists which has not been fully complied with or which adversely affects the Assets, except any stated in **Item 13**.

14.2 If a matter is referred to in **Item 13(1)**:

14.2.1 before Settlement, the Vendor must comply with that matter; and

14.2.2 on and from Settlement, as a continuing obligation, the Vendor must indemnify and hold harmless the Purchaser and the Purchaser's successors in title against all liability in respect of that matter due to be observed or performed before Settlement.

14.3 If a matter is referred to in **Item 13(2)**:

14.3.1 after Settlement, the Purchaser must comply with that matter; and

14.3.2 on and from Settlement, as a continuing obligation, the Purchaser must indemnify and hold harmless the Vendor against all liability in respect of that matter due to be observed or performed after Settlement.

15. NEW STATUTORY NOTICES

If, after the Execution Date, a Statutory Notice is given or made:

15.1 before Settlement, the Purchaser must comply with that Statutory Notice;

15.2 and before Settlement the Vendor complies with that Statutory Notice, the Purchaser must reimburse the Vendor upon demand or, if no prior demand is made, at Settlement, all reasonable amounts paid by the Vendor in complying with that Statutory Notice; and

15.3 on and from Settlement, as a continuing obligation, the Purchaser must indemnify and hold harmless the Vendor against all liability in respect of that Statutory Notice.

PART 6 – DEPOSIT

16. DEPOSIT TO BE PAID

The Purchaser must pay the Deposit to the Deposit Holder at the time stated in **Item 8**.

17. INVESTMENT OF THE DEPOSIT

17.1 If the Deposit is provided by cheque or in clear funds and the parties so require in writing, pending Settlement the Deposit Holder must invest the Deposit in the joint names of the parties with an ADI at 14-day call at a current rate of interest.

17.2 If the Deposit is to be invested pending Settlement, on or as soon as practicable after the Execution Date each party must provide its Australian tax file number or Australian business number to the Deposit Holder.

17.3 If a party fails to comply with clause 17.2 and the other party becomes entitled to the Deposit, the first party must compensate the other party for any tax deducted from interest earned on the Deposit.

17.4 The Deposit Holder must pay the interest accrued on the Deposit (net of any proper costs or expenses in investing the Deposit):

17.4.1 if a party terminates the Sale under clause 6 - to that party;

17.4.2 if the Deposit is repaid to the Purchaser - to the Purchaser; or

17.4.3 at Settlement – in equal amounts to the Vendor and the Purchaser.

PART 7 – PRICE

18. PRICE ADJUSTMENTS

The Price/s stated in the Schedule are subject to adjustment as this contract requires.

19. ADJUSTMENT FOR INCOME

19.1 Subject to clause 21, all rents, fees and other income arising from the Assets are to be adjusted to midnight on the day before the Date of Settlement.

19.2 Income is taken to accrue on a daily basis.

19.3 If a payment of income includes or would include an amount on account of GST the Vendor was or is liable to pay, only the net amount of such payment of income is to be adjusted.

19.4 If income to be adjusted is not exclusively referable to the Assets, only a portion of that income is to be adjusted as agreed in writing by the parties or, failing such agreement, in the proportion that the Price bears to the total market values of the income-producing properties to which the income is referable.

20. ADJUSTMENT FOR OUTGOINGS

20.1 Subject to clause 21, all outgoings (including any for utilities, State or municipal rates, levies, taxes, charges) in respect of the Assets are to be adjusted to midnight on the day before the Date of Settlement.

20.2 Outgoings are taken to accrue on a daily basis.

20.3 Any remission of a rate, levy, tax or charge the Vendor received, or is entitled to receive, is to be disregarded.

20.4 Land tax is to be adjusted as if the Land was the only land owned by the Vendor.

20.5 Before or immediately following Settlement, the Vendor must pay and discharge all land tax that has or will become payable in respect of the Land in the rating year in which Settlement occurs and in all previous rating years. Such land tax must be paid whether the tax is then due and payable or not.

20.6 Only outgoings not recoverable from a Tenant are to be adjusted.

20.7 An outgoing to be adjusted must first have deducted any GST input tax credit allowed or allowable to the Vendor in respect of that outgoing.

20.8 If an outgoing to be adjusted is not exclusively referable to the Assets, only a portion of that outgoing is to be adjusted as agreed in writing by the parties or, failing such agreement, in the proportion that the capital value of the Land (within the meaning given in the *Valuation of Land Act 1971*) bears to the total capital values of the properties to which the outgoing is referable.

20.9 If the quantum of an outgoing has not been determined by the date being 5 Business Days before Settlement, then the parties agree that the relevant adjustment of outgoings will be based on the outgoings quantum for the previous year.

21. ADJUSTMENTS IF SETTLEMENT IS POSTPONED

21.1 If Settlement is postponed only by reason of the Vendor's default:

21.1.1 income is adjusted to midnight on the day before the Date for Settlement; and

21.1.2 outgoings will be adjusted pursuant to clause 20.

21.2 If Settlement is postponed only by reason of the Purchaser's default:

21.2.1 income will be adjusted pursuant to clause 19; and

21.2.2 outgoings are adjusted to midnight on the day before the Date for Settlement.

22. WATER CHARGE ADJUSTMENT

The cost or charge for the consumption of water upon the Land is to be adjusted under clause 20.1 as follows:

22.1 where more than 1 official meter reading of water supplied is obtained, the meter reading made on the day nearest to the Date for Settlement is to be used;

22.2 if an official meter reading has not been obtained by either party at least 3 Business Days prior to the Date for Settlement, no later than Settlement the Vendor must instruct the Vendor's Lawyer to withhold in trust after Settlement the sum stated in **Item 12**. Upon the official meter reading being obtained:

22.2.1 that Lawyer must pay to the Purchaser the amount, if any, payable by the Vendor to the Purchaser for water consumed, and refund any balance of the trust money to the Vendor; and

22.2.2 if the trust money is less than the amount payable by the Vendor to the Purchaser, the Vendor must pay the deficiency to the Purchaser.

PART 8 – GST

23. GST TREATMENT

The parties agree that for the purposes of the GST Law, the Sale is as described in **Item 16**.

24. GENERAL RULE FOR TAXABLE SUPPLIES

Subject to clause 26 (margin scheme) and clause 27 (adjustments), if a party (**Party 1**) is or becomes liable to pay GST in respect of a taxable supply Party 1 makes to the other party (**Party 2**) under this contract, then:

24.1 (unless this contract expressly states that the consideration for that taxable supply includes GST) the consideration payable by Party 2 to Party 1 for that taxable supply must be increased by an amount equal to the amount of the GST in respect of that taxable supply (**GST Amount**);

24.2 Party 1 must give a tax invoice for the taxable supply to Party 2:

24.2.1 if the Sale terminates before Settlement – within 20 Business Days after termination; or

24.2.2 if Settlement occurs and the taxable supply is made prior to or at Settlement - at Settlement; and

24.3 Party 2 must pay the GST Amount to Party 1 at Settlement if the taxable supply occurs at Settlement or otherwise within 5 Business Days of receipt of the tax invoice from Party 1.

25. SUPPLY OF A GOING CONCERN

If in **Item 16** the Sale is agreed to be the supply of a going concern, and so GST-free, then:

25.1 the Purchaser warrants that the Purchaser will, at Settlement, be registered or required to be registered under the GST Act; and

25.2 the Vendor warrants that the Vendor, on the Execution Date, carries on, and will at all times until Settlement carry on, the relevant enterprise and will, pursuant to this contract and any other agreement which exists between the Vendor and the Purchaser, supply to the Purchaser at Settlement all of the things which are necessary to carry on the relevant enterprise.

26. MARGIN SCHEME

If in **Item 16** the margin scheme is agreed to apply to the sale of the Land, then:

26.1 the Purchaser's obligation to pay or reimburse GST to the Vendor as regards the sale of the Land is based on the margin under the margin scheme;

26.2 the Purchaser must, where a valuation is required under Division 75 of the GST Law:

26.2.1 obtain at its expense, in the name of the Vendor, an approved valuation of the Land using the valuation method approved by the Vendor; and

26.2.2 provide the approved valuation to the Vendor not less than 5 Business Days prior to Settlement;

26.3 as regards the sale of the Land, the Vendor need not provide a tax invoice to the Purchaser at Settlement; and

26.4 the acquisition of the Land is not a creditable acquisition, and the Purchaser is not entitled to claim an input tax credit.

27. GST ADJUSTMENTS

27.1 If **Item 16** states that:

27.1.1 the sale of the Land is an input taxed supply or is GST-free - but the Purchaser uses the Land in a way that makes the sale a taxable supply; or

27.1.2 the sale of the Assets is the supply of a going concern - but the sale is a taxable supply (other than by reason of a breach by the Vendor of clause 25.2),

upon written demand by the Vendor (whether made before or after Settlement) the Purchaser must pay to the Vendor an amount equal to the Vendor's GST liability together with any interest and / or penalties assessed to the Vendor.

27.2 If **Item 16** states that the supply of the Assets is either wholly taxable or wholly non-taxable, and after Settlement the supply is found to be partly taxable and partly non-taxable, then the Purchaser must either pay to the Vendor or be reimbursed by the Vendor (as is appropriate) the amount of the adjustment in the Vendor's GST liability within 20 Business Days of receipt of a tax invoice or adjustment note. The Purchaser must pay to the Vendor any interest and / or penalties associated with any such adjustment provided an adjustment note is provided.

PART 9 – ANCILLARY CONTRACTS

28. PRESERVATION OF ANCILLARY CONTRACTS

As regards an Ancillary Contract, pending Settlement or termination of the Sale, except with the Purchaser's prior written consent (not to be unreasonably withheld, delayed or conditioned) the Vendor must not:

28.1 breach, suspend, modify adversely or terminate the Ancillary Contract or agree to do so; and / or

28.2 if the Ancillary Contract evidences a Tenancy, agree to any market rent to apply for any period after Settlement.

29. **ASSIGNMENT OF ANCILLARY CONTRACTS**

29.1 Subject to clause 29.2 and clause 29.3, at Settlement, by force of this contract and without need for further writing, the Vendor assigns the Vendor's rights and benefits under the Ancillary Contract/s as then remain to be enjoyed or performed to the Purchaser, and the Purchaser accepts that assignment.

29.2 If an Ancillary Contract requires a counterparty to that Ancillary Contract to consent to the Vendor assigning that Ancillary Contract to the Purchaser, then:

29.2.1 pending Settlement and in the 20 Business Days after Settlement, the Vendor, with the Purchaser's reasonable assistance, must take reasonable steps to obtain that consent, effective from Settlement. Reasonable assistance and steps do not include paying any money other than that due to a counterparty under the Ancillary Contract; and

29.2.2 assignment of that Ancillary Contract under clause 29.1 is conditional upon that consent being obtained.

29.3 If an Ancillary Contract is not in law capable of assignment, insofar as it would not be a breach of that Ancillary Contract, at and from Settlement the Vendor holds the same on trust for the Purchaser.

29.4 To avoid doubt, unless otherwise agreed in writing by these present parties, assignment under this clause 29 excludes a right to all rent, fees, costs, expenses or other money (including damages) payable or to become payable to the Vendor under an Ancillary Contract attributable to a period or circumstance before Settlement, whether paid before or after Settlement.

30. **CROSS INDEMNITIES FOR ANCILLARY CONTRACTS**

On and from Settlement, as regards an Ancillary Contract, as continuing obligations:

30.1 the Vendor must indemnify and hold harmless the Purchaser and the Purchaser's successors in title against all liability in respect of the Vendor's obligations under that Ancillary Contract due to be observed or performed before Settlement, except to the extent such liability is caused or contributed to by the Purchaser's wilful act, negligence or default under this contract or failure to take reasonable steps to mitigate such liability; and

30.2 the Purchaser must indemnify and hold harmless the Vendor against all liability in respect of the Vendor's obligations under that Ancillary Contract due to be observed or performed after Settlement, except to the extent such liability is caused or contributed to by the Vendor's wilful act, negligence or default under this contract or failure to take reasonable steps to mitigate such liability.

31. **DEED/S OF ASSIGNMENT OF ANCILLARY CONTRACTS**

31.1 At any time before or after Settlement, a party may give written notice to the other party requiring that the parties enter into a deed of assignment of any Ancillary Contract separately to more perfectly assign to the Purchaser the benefit of that Ancillary Contract.

31.2 The deed must be prepared by the Lawyer for the party who gives the notice with the cost of preparation of the deed being payable by the party giving the notice (it being agreed that the parties will each bear their own costs of any negotiation in respect of the deed).

31.3 The parties must execute and deliver the deed:

31.3.1 no later than Settlement, if the notice under clause 31.1 is given not less than 10 Business Days before the Date for Settlement; or

31.3.2 otherwise, within 15 Business Days after the day on which the notice under clause 31.1 was given.

31.4 A failure to give notice or to execute a deed under this clause 31 does not affect the assignment given effect by clause 29 or the indemnities under clause 30.

32. POST-SETTLEMENT ADJUSTMENTS UNDER A TENANCY

32.1 If:

32.1.1 before or after the Date of Settlement a Tenant is or becomes entitled to a refund or credit for an amount of rent or contribution to outgoings under the Tenancy overpaid to the Vendor before the Date of Settlement; and

32.1.2 before Settlement the Vendor does not refund that overpaid amount to the Tenant; and

32.1.3 after Settlement the Purchaser allows, or will allow, such refund or credit to the Tenant,

the Vendor must pay the overpaid amount to the Purchaser on demand to the extent not previously and expressly taken into account in adjustment to the Price.

32.2 If:

32.2.1 before or after the Date of Settlement a Tenant is or becomes liable to pay an additional amount of rent or contribution to outgoings to the Vendor in respect of a period of time before the Date of Settlement; and

32.2.2 after Settlement the Tenant pays that additional amount to the Purchaser and not the Vendor,

the Purchaser must pay that additional amount to the Vendor on demand to the extent not previously and expressly taken into account in adjustment to the Price.

32.3 If an overpaid or additional amount to which this clause 32 applies relates to a period of time commencing on or before the Date of Settlement and expiring after the Date of Settlement (**Pay Period**) the amount accounted for under this clause must be determined in the same proportion as the number of days of that Pay Period before the Date of Settlement bears to the whole of that Pay Period.

PART 10 – MATTERS BEFORE SETTLEMENT

33. NOMINEE PURCHASER

If **Item 2** states that the Purchaser enters into this contract for the Purchaser named in **Item 2** and / or nominee or as agent for an undisclosed principal, the Purchaser now named may not later than 10 Business Days before the Date for Settlement by written notice to the Vendor nominate another person as purchaser under this contract but remains liable (as a principal) to the Vendor for the observance and performance of a purchaser's obligations under this contract.

34. ASSIGNMENT BY THE PURCHASER

Any assignment of any of the Purchaser's benefits or obligations under this contract, with or without the Vendor's consent, does not release the assignor from existing or future obligations under this contract.

35. RETAINER OF LAWYERS / SUBSCRIBERS

A party to this contract (including any Purchaser's nominee or assignee) (**Party 1**) who retains a Lawyer or gives a Client Authorisation to a Lawyer or Subscriber for the purposes of Settlement, must:

35.1 if not done beforehand, within 2 Business Days cause that Lawyer's / Subscriber's contact details to be made known to the other party to this contract (**Party 2**) (or, if Party 2 has previously made known Party 2's own Lawyer's / Subscriber's contact details, to the Lawyer / Subscriber acting for Party 2); and

35.2 if, before Settlement, the retainer of that Lawyer terminates, or that Client Authorisation terminates (without replacement on at least equivalent terms given to the same Lawyer / Subscriber), within 1 Business Day make that fact known to Party 2 or Party 2's Lawyer / Subscriber.

36. EXCLUDED PROPERTY

Before Settlement, the Vendor at the Vendor's cost must:

36.1 remove from the Land the Excluded Property (other than the property of continuing Tenants) and all personal property and man-made litter other than the Included Property (if any) stated in **Item 4**; and

36.2 make good any damage done to the Land as a result of the installation or removal of any Excluded Property.

PART 11 – PAPER DOCUMENT-BASED CONVEYANCING

37. TRANSFER DOCUMENT

37.1 At least 10 Business Days before the Date for Settlement (or within such shorter period as the Vendor may allow), the Purchaser (or the Purchaser's Lawyer) must deliver to the Vendor (or the Vendor's Lawyer):

37.1.1 for execution by or on behalf of the Vendor, a transfer of the Land duly executed by or on behalf of the Purchaser; or

37.1.2 a copy of such transfer executed, or to be executed, by or on behalf of the Purchaser and such other material and information as may reasonably be required to enable the Vendor to comply with clause 37.4.

37.2 Failing due delivery of such transfer, the Vendor may at any time thereafter prepare a transfer and recover $500.00 (before any GST) from the Purchaser as a debt on account of the costs so incurred.

37.3 The transfer must be:

37.3.1 in the form section 96 of the RPA requires (if the Land is under the RPA);

37.3.2 to effect transfer of the Land free of all Third Party Interests (disregarding any Permitted Interests); and

37.3.3 duly executed, or to be executed, by or on behalf of the Vendor.

37.4 The Vendor must deliver the executed transfer, or the copy of the transfer and the other necessary material and information referred to in clause 37.1 above, to the Purchaser's Lawyer before Settlement:

37.4.1 for stamping and payment of registration fees;

37.4.2 for complying with any law relating to the sale or transfer of property; and

37.4.3 to be held on trust for the Vendor pending Settlement.

37.5 The above provisions of this clause 37 do not apply if and so long as a transfer of the Land is to be effected electronically via an Electronic Workspace.

38. OTHER CONVEYANCE DOCUMENTS

If any Included Property is of a kind that effective transfer of the Vendor's rights in that Included Property requires a document signed by the Vendor, or signed by both the Vendor and the Purchaser, clause 37 applies as if references therein to a transfer were to such document so far as can be made applicable.

39. **ADJUSTMENT STATEMENT**

39.1 At least 3 Business Days before the Date for Settlement (or within such shorter period as the Purchaser may allow), the Vendor (or the Vendor's Lawyer) must deliver to the Purchaser (or the Purchaser's Lawyer) an adjustment statement setting out in reasonable detail the adjustments to the Price this contract requires or allows.

39.2 Failing due delivery of an adjustment statement, the Purchaser may, at any time thereafter, prepare and give an adjustment statement to the Vendor and recover $500.00 (before any GST) as a debt from the Vendor on account of the costs so incurred.

39.3 The above provisions of this clause 39 do not apply if and so long as a transfer of the Land is to be effected electronically via an Electronic Workspace.

PART 12 – ELECTRONIC CONVEYANCING

40. **APPLICATION OF THIS PART**

Provisions in this Part 12 apply only if, to the extent and so long as:

40.1 the parties agree (either in **Item 18**, elsewhere in this contract or separately) that Settlement and lodgement of the Instruments necessary to record a Conveyancing Transaction this contract requires or allows will be conducted electronically in accordance with the EC Law; and

40.2 a party to this contract has not given later notice under clause 41.

41. **ABANDONMENT OF ELECTRONIC CONVEYANCING**

If a party reasonably determines that Settlement and lodgement of Instruments under this contract cannot be effected electronically, then that party must immediately:

41.1 if an Electronic Workspace has been established for the purposes of this contract, cause their Representative to post a notice to that effect on the Electronic Workspace; or

41.2 otherwise, give written notice of that determination to the other party.

42. **APPOINTMENT OF REPRESENTATIVES**

A party must promptly and at least 10 Business Days before the Date for Settlement:

42.1 (if the party itself is not a Subscriber) give a properly completed and signed Client Authorisation to a Subscriber authorising that Subscriber to be the Representative of that party for the purposes of this contract; and

42.2 ensure that all other persons for whom that party is responsible and who are associated with a Conveyancing Transaction this contract requires or allows are or engage a Subscriber.

43. **PARTICIPATION RULES**

A party who appoints a Representative for the purposes of this contract must, in relation to this contract:

43.1 abide by the *Participation Rules* under the EC Law;

43.2 on a timely basis, provide such information and instructions as are required for the party's Representative to comply with the *Participation Rules*; and

43.3 on a timely basis provide sufficient funds to that party's financial institution and/or that party's Representative to enable exchange of such funds to be effected electronically at Settlement via an Electronic Workspace.

44. ELECTRONIC WORKSPACE

44.1 For the purposes of this clause 44, "Vendor" includes the Vendor's Representative and "Purchaser" includes the Purchaser's Representative and words and phrases have the same meaning as in the *Participation Rules*.

44.2 At least 10 Business Days before the Date for Settlement, the Vendor must:

44.2.1 open an Electronic Workspace for the purposes of this contract;

44.2.2 populate the Electronic Workspace with the details of the Land and other required particulars in relation to the sale of the Land; and

44.2.3 invite the Purchaser and the Vendor's mortgagee (if any) to join the Electronic Workspace.

44.3 The Purchaser must:

44.3.1 accept the invitation to join the Electronic Workspace within 2 Business Days of receipt of the invitation;

44.3.2 populate the Electronic Workspace with the required particulars in relation to the sale of the Land; and

44.3.3 invite the Purchaser's mortgagee (if any) to join the Electronic Workspace.

44.4 If the Vendor does not comply with clause 44.2, the Purchaser may:

44.4.1 open an Electronic Workspace for the purposes of this contract;

44.4.2 populate the Electronic Workspace with the details of the Land and other required particulars in relation to the sale of the Land; and

44.4.3 invite the Vendor and the Purchaser's mortgagee (if any) to join the Electronic Workspace;

and the Vendor must:

44.4.4 accept the Purchaser's invitation to join the Electronic Workspace within 2 Business Days of receipt of that invitation;

44.4.5 populate the Electronic Workspace with the required particulars in relation to the sale of the Land; and

44.4.6 invite the Vendor's mortgagee (if any) to join the Electronic Workspace.

44.5 The parties must do all things reasonably necessary and in a timely manner to complete the Electronic Workspace in order to achieve Settlement on the Date for Settlement.

44.6 Without limiting clause 44.5, to enable the Electronic Workspace to be completed:

44.6.1 the Vendor must provide the Purchaser with the adjustment amounts in accordance with this contract no later than 2 Business Days before the Date for Settlement;

44.6.2 the Vendor must populate the Electronic Workspace with payment details no later than 1 Business Day before the Date for Settlement; and

44.6.3 the parties must, no later than 1 Business Day before the Date for Settlement, ensure that:

(a) all required data has been entered into the Electronic Workspace;

(b) any documents requiring a Digital Signature have been Digitally Signed; and

(c) all certifications required by the EC Law are complete.

44.7 At least 5 Business Days before the Date for Settlement, the Vendor (or the Vendor's Representative) must nominate a time of the day, between the hours of 9.00 am and 4.00 pm, for locking the Electronic Workspace for the purpose of completing Settlement, and must record that nomination on the Electronic Workspace.

45. ELECTRONIC SETTLEMENT

45.1 Unless the respective Representatives of the parties otherwise agree, the Purchaser's Representative will be the Responsible Subscriber for the Lodgment Case that includes the transfer of the Land.

45.2 Settlement occurs when the Electronic Workspace records that:

45.2.1 (if applicable) the exchange of funds or value between financial institutions in accordance with the instructions of the parties to this contract has occurred; or

45.2.2 if there is no exchange of funds or value, the Instruments necessary to enable the Purchaser to obtain transfer of the Land as this contract requires have been accepted for electronic lodgement.

45.3 If, after the locking of the Electronic Workspace, Settlement in accordance with this clause 45 has not occurred by 5.00 pm on the Date for Settlement, the parties must do everything reasonably necessary to effect Settlement:

45.3.1 electronically on the next Business Day; or

45.3.2 if agreed in writing by the parties, otherwise than electronically as soon as practicable.

45.4 If, by reason of an electronic or computer system failure of any of the LTO, the Reserve Bank of Australia or the Electronic Lodgment Network Operator, settlement does not occur on the Date for Settlement, the failure to settle will not constitute a breach or default by either party under this contract.

45.5 If and to the extent this contract requires or allows a dealing with the Assets that cannot be effected electronically (such as grant or surrender of a lease / easement / encumbrance / *profit à prendre*, or delivery of a deed of assignment of an Ancillary Contract):

45.5.1 Settlement must not occur except after, or at the same time as, the parties exchange documents to effect such dealing; and

45.5.2 if, however, Settlement occurs before exchange of those documents, the parties remain liable to exchange those documents on the Date of Settlement.

45.6 Each party must do everything reasonably necessary to assist another party to trace and identify the recipient of any mistaken payment, and to recover the mistaken payment.

PART 13 – SETTLEMENT

46. DATE OF SETTLEMENT

Settlement must occur on the Date for Settlement.

47. PAYMENT OF THE PRICE

At Settlement, the Purchaser must pay the Price (less the Deposit paid and subject to clause 64), together with any GST applicable, by:

47.1 one or more Bank Cheques (provided that if more than 2 are required, the Vendor bears the costs of issue of the third and later Bank Cheques); or

47.2 one or more deposits of clear funds to an ADI account or accounts,

as the Vendor may in writing direct the Purchaser at least 2 Business Days before Settlement. If no direction is given within time, payment must be by Bank Cheque payable to the Vendor.

The above provisions of this clause 47 do not apply if, to the extent, and so long as funds to be exchanged between the parties will be effected electronically via an Electronic Workspace.

48. SETTLEMENT DELIVERABLES FROM THE VENDOR

Upon compliance by the Purchaser with the provisions of this contract to be complied with by the Purchaser at or before Settlement, on the Date of Settlement the Vendor (or the Vendor's Lawyer) must give to the Purchaser (or the Purchaser's Lawyer) at the LTO (or at such other location as the parties may agree in writing):

48.1 any muniment of title of the Land;

48.2 any declaration, application or certificate which the Vendor may be required to make or give under legislation in order to enable the transfer to be registered;

48.3 any deed/s of assignment submitted within time under clause 31;

48.4 any document/s clause 38 requires;

48.5 anything clause 63 requires;

48.6 anything clause 64 requires;

48.7 (if previously requested in writing by the Purchaser) copies of any "as built" documents, drawings or plans, operating or maintenance manuals, in connection with improvements upon the Land or other Assets as the Vendor may then possess;

48.8 the relevant documentation required effectively to transfer the Land to the Purchaser free of any relevant Third Party Interests (in particular mortgages over the Land and security interests over the Purchaser in respect of the Land); and

48.9 (if not provided beforehand) such originals (or, if the originals are not available, copies) of any Ancillary Contracts in writing or partly in writing as the Vendor may then possess, duly stamped, if required to be stamped.

49. POSSESSION OF THE ASSETS

Subject to any Tenancy, vacant possession of the Land and delivery of the balance of the Assets must be given and taken on Settlement or as the parties may agree in writing.

50. AUTHORITY TO REGISTER

Where, under the RPA, a prescribed person (as defined therein) is required to certify an Instrument, upon written request of the prescribed person, and to the extent requested, each party to this contract required to execute that Instrument must, in a timely manner, provide to that prescribed person credible written evidence of that party's:

50.1 compliance with relevant legislation;

50.2 verification of identity required by section 273A(1) of the RPA;

50.3 verification of authority required by section 273B(1) of the RPA;

50.4 execution requirements of the RPA; and

50.5 any prescribed requirements under section 273(1)(d) of the RPA applicable.

51. **PROOF OF AUTHORITY OF AN UNREPRESENTED PARTY**

If, at Settlement, the Vendor or the Purchaser is not represented by a Lawyer, at Settlement and for the purpose of section 273AA(1) of the RPA, that party must satisfy the Registrar-General that the party is authorised to enter into the transaction to which an Instrument executed by that party relates.

52. **COMPLIANCE BY A DERIVATIVE PARTY**

If performance of this contract requires a mortgagee, lessee, caveator or other person claiming an estate or interest in the Land through or under the Vendor to execute an Instrument, the Vendor must take all reasonable steps to ensure that claimant in relation to itself complies with clause 50 and / or clause 51 as if a party to this contract.

PART 14 – AFTER SETTLEMENT

53. **NOTIFICATION OF THE SALE**

As soon as practicable after Settlement, the Purchaser must notify the transfer of the Assets so far as relevant to:

53.1 SA Water or other (each) water industry entity that under the *Water Industry Act 2012* supplies water or sewerage services to the Land;

53.2 the State Government;

53.3 the local or district council in whose area the Land is located; and

53.4 the (each) counterparty to any Ancillary Contract.

Note: If the land is agricultural land and the Vendor or Purchaser is a foreign person (all as defined in the *Register of Foreign Ownership of Agricultural Land Act 2015* (Cwth)), after Settlement that foreign person should notify the sale of the Land to the Commissioner of Taxation as that Act requires.

54. **REQUISITIONS BY THE REGISTRAR-GENERAL**

If the Registrar-General, acting under the RPA, raises any requisition/s concerning any dealing with the Land this contract requires or allows, the parties must comply promptly with such requisition/s so far as they are able.

PART 15 – OTHER

55. **PAYMENTS**

55.1 Subject to the other provisions of this contract, any payment to be made under this contract must be either by Bank Cheque, telegraphic transfer of cleared funds, or a direct credit of cleared funds.

55.2 The receipt of any person paid at the written direction of a party or via an Electronic Workspace is a sufficient discharge to the other party for the amount paid to that person.

56. **DEFAULT INTEREST**

56.1 If Settlement does not occur on the Date for Settlement only by reason of the Purchaser's default, the Purchaser must pay to the Vendor interest on the Price at the Default Rate computed from the Date for Settlement until either the Date of Settlement or the date of termination of the Sale.

56.2 If Settlement does not occur on the Date for Settlement by reason of the Vendor's default, the Vendor must pay to the Purchaser interest on so much of the Price as has from time to time been paid at the Default Rate computed from the Date for Settlement until either the Date of Settlement or the date on which the money paid by the Purchaser is repaid to the Purchaser.

57. **WARRANTY CLAIMS REDUCE THE PRICE**

If the Vendor pays or allows an amount to the Purchaser by reason of an alleged breach by the Vendor of a warranty or representation in this contract, then:

57.1 if the warranty or representation relates to a particular Asset, that amount reduces the Price allocated to that Asset to that extent; and

57.2 otherwise that amount to that extent reduces the Price of all the Assets collectively.

58. **REMEDIES NOT EXCLUSIVE**

Rights and remedies provided for in this contract are in addition to, and without prejudice to, any other rights or remedies a party may have by reason of any default.

59. **NOTICES**

59.1 To be effective, a notice or demand under this contract must be in writing in English and signed by or for the party giving notice or demand, by that party's Lawyer or agent.

59.2 Notice or demand may only be given to a party :

59.2.1 by hand delivery, if the recipient is an individual;

59.2.2 by pre-paid post (air-mail to any address outside Australia) posted in Australia to the recipient's mailing address stated in this contract or as last notified, and is given on the 3rd Business Day after posting (5 Business Days in case of air-mail) or (if earlier) at the time at which the letter would be delivered in the ordinary course of post;

59.2.3 by a means allowed by the *Electronic Communications Act 2000* (SA) (including by email to the recipient's email address stated in this contract or as last notified), and is given when that Act specifies; or

59.2.4 as permitted by legislation applicable to the recipient.

59.3 Where 2 or more persons comprise a party, notice or demand given to or by 1 is effective notice or demand to all or by all (as the case may be).

60. **FURTHER MATTERS**

The parties must, at their expense, promptly do all things reasonably necessary to give full effect to this contract and to facilitate the performance of the transactions this contract contemplates.

61. **COSTS**

Unless stated elsewhere in this contract:

61.1 the Vendor must pay and bear the costs incidental to:

61.1.1 the preparation of this contract;

61.1.2 the discharge, surrender or withdrawal of any Third Party Interest (not a Permitted Interest) existing in respect of the Assets at Settlement and required to be discharged, surrendered or withdrawn to enable the Vendor to give good title to the Purchaser as this contract requires;

61.2 the Purchaser must pay and bear:

61.2.1 the costs incidental to the preparation of the transfer under clause 37;

61.2.2 the costs incidental to any assignment, mortgage or other document to be executed pursuant to this contract;

61.2.3 all stamp duty, registration fees and any other government charge payable in respect of this contract and (subject to clause 61.1.2) any further Instrument or registration this contract requires.

61.3 the parties must pay and bear their own costs of negotiating or executing this contract.

62. FOREIGN PERSONS

Unless otherwise stated in this contract, the Purchaser warrants that the Takeovers Act does not apply, and at Settlement will not apply, to the Purchaser's acquisition of an interest in the Assets under this contract.

63. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING PAYMENT

63.1 If ***both*** the following apply:

63.1.1 the sale of the Land is not excluded under section 14-215 of Schedule 1 of the TA Act; and

63.1.2 the Vendor has not, at least 2 Business days prior to Settlement, given the Purchaser either:

(a) a Clearance Certificate for each person comprising the Vendor; or

(b) a variation notice under section 14-235 of Schedule 1 of the TA Act varying the FRCG Withholding Amount to nil,

then, notwithstanding any other provision of this contract, the provisions set out in clause 63.2 will apply.

63.2 If this clause applies by virtue of clause 63.1, then:

63.2.1 the Purchaser must lodge a Foreign Resident Capital Gains Withholding Purchaser Payment Notification Form with the Australian Taxation Office and give a copy to the Vendor before Settlement;

63.2.2 the Vendor irrevocably directs the Purchaser to draw a Bank Cheque for the FRCG Withholding Amount in favour of the Deputy Commissioner of Taxation and the Purchaser must produce that Bank Cheque at Settlement;

63.2.3 the Purchaser must pay the Bank Cheque for the FRCG Withholding Amount to the Deputy Commissioner of Taxation in accordance with section 14-200 of Schedule 1 of the TA Act and give the Vendor evidence that it has done so within 2 Business Days after the Date of Settlement;

63.2.4 if Settlement is to take place electronically in accordance with the EC Law, payment of the FRCG Withholding Amount must be made by the Purchaser to the Australian Taxation Office at Settlement by means of an electronic transfer of funds through the Electronic Workspace, instead of by Bank Cheque; and

63.2.5 compliance by the Purchaser with the Purchaser's obligations under Schedule 1 of the TA Act to pay the FRCG Withholding Amount is a complete discharge of the Purchaser's obligations under this contract to pay that portion of the Price equal to the FRCG Withholding Amount.

64. **GST WITHHOLDING – RESIDENTIAL PREMISES AND POTENTIAL RESIDENTIAL LAND**

64.1 If the sale of the Land is or includes a supply of Residential Premises or Potential Residential Land, the Vendor must, unless it is not reasonably practicable to do so, give the Purchaser a Vendor's Notice at least 2 Business Days before the Date for Settlement and, in any event, prior to Settlement.

64.2 The Purchaser acknowledges that the Vendor may give more than one Vendor's Notice to the Purchaser and, if so given and received by the Purchaser prior to Settlement, the most recent version of a Vendor's Notice given and received will supersede any previous Vendor's Notice given and received.

64.3 With the exception of clauses 64.1 and 64.2, this clause 64 only applies if the sale of the Land is or includes a supply of New Residential Premises or Potential Residential Land to which sections 14-250 and 14-255 of Schedule 1 of the TA Act apply.

64.4 Notwithstanding any other provision of this contract, the Purchaser is required to withhold the GST Withholding Amount specified in a Vendor's Notice from the Price and to pay that GST Withholding Amount to the Australian Taxation Office at or immediately following Settlement.

64.5 If the Vendor is not the supplier who is liable for GST in relation to the taxable supply under this contract, the Vendor states that details of the supplier are, or will be, specified in a Vendor's Notice.

64.6 If some or all of the consideration for the sale of the Land is not expressed in this contract as an amount of money, the Vendor states that the GST inclusive market value of so much of the consideration as is not expressed as an amount of money is, or will be, specified in a Vendor's Notice.

64.7 The Purchaser must, as soon as practicable after receiving a Vendor's Notice and, in any case, prior to Settlement, complete and lodge online with the Australian Taxation Office a *GST property settlement withholding notification,* or such other form as may be approved in accordance with the requirements of the TA Act, and provide evidence of such lodgement to the Vendor.

64.8 The Purchaser must pay the GST Withholding Amount at the following time and in the following manner:

64.8.1 if Settlement is to take place electronically in accordance with the EC Law, by paying the GST Withholding Amount to the Australian Taxation Office at Settlement by way of an electronic transfer of funds through the Electronic Workspace; or

64.8.2 if Settlement is not to take place electronically in accordance with the EC Law, by:

(a) delivering to the Vendor's Lawyer at Settlement a Bank Cheque for the GST Withholding Amount payable to the Deputy Commissioner of Taxation, in which case the Vendor's Lawyer must:

(i) immediately give the Purchaser a receipt for the Bank Cheque clearly specifying the transaction and the particulars of the Bank Cheque; and

(ii) as soon as practicable following Settlement, provide the Bank Cheque to the Australian Taxation Office in payment of the GST Withholding Amount, and provide the Purchaser with evidence of the payment;

or

(b) any other method permitted by the TA Act from time to time, in which case evidence of such payment must be provided to the other party as soon as reasonably practicable following Settlement.

64.9 Immediately following Settlement, the Purchaser must complete and lodge online with the Australian Taxation Office a *GST property settlement date confirmation*, or such other form as

may be approved in accordance with the requirements of the TA Act, and provide evidence of such lodgement to the Vendor.

64.10 Each party must immediately forward to the other party any acknowledgement that the GST Withholding Amount has been received by the Australian Taxation Office.

64.11 The Vendor acknowledges and agrees that compliance by the Purchaser with the Purchaser's obligations under Schedule 1 of the TA Act to pay the GST Withholding Amount is a complete discharge of the Purchaser's obligations under this contract to pay that portion of the Price equal to the GST Withholding Amount.

64.12 The Purchaser must pay any penalties or interest resulting from late payment or non-payment of the GST Withholding Amount, except to the extent that either:

64.12.1 the penalties or interest arise from any act or omission of the Vendor or the Vendor's Lawyer; or

64.12.2 the Vendor's Notice specifies that the Purchaser is not required to pay any GST Withholding Amount to the Australian Taxation Office and, as at the Date of Settlement, there is nothing in this contract nor any other circumstances relating to this contract which make it unreasonable for the Purchaser to believe the Vendor's Statement is correct,

in which case, to the extent that either of those exceptions applies, the Vendor is responsible for, and indemnifies the Purchaser against, payment of any such penalties or interest.

65. ANNEXURES

65.1 Any Annexures referred to in **Item 15**, and any document/s incorporated by reference into any such Annexure, form part of this contract.

65.2 Provisions in an Annexure prevail over the other provisions of this contract to the extent of any inconsistency.

65.3 Unless otherwise stated, expressions used in an Annexure have the same meaning as in this present document.

66. NO MERGER

Rights and obligations of the parties do not merge on completion of any transaction under this contract. They survive the execution, delivery and registration of any document or Instrument entered into or made for the purpose of implementing any transaction.

67. ENTIRE AGREEMENT

This contract records the entire agreement between all the parties as to its subject so that, subject to its express terms:

67.1 this contract is effective and binding on the parties on execution;

67.2 this contract supersedes any prior contract or obligation between all the parties about its subject, and this contract is effective to release absolutely each party from all claims (in common law, principles of equity or under legislation) another party to this contract might otherwise have in connection with that prior contract or obligation; and

67.3 on the Execution Date, there is no contract between all the parties collateral to this contract.

68. AMENDMENT

68.1 This contract can be amended only by written agreement of all parties.

68.2 Without limiting clause 68.1, a party will not amend the Standard Terms for the Sale of Land issued by The Law Society of South Australia, unless all the amendments are expressly specified in an Annexure.

69. **WAIVERS**

A party waives a right under this contract only by giving written notice that such party waives that right.

70. **GOVERNING LAW AND JURISDICTION**

70.1 The laws in force in South Australia govern this contract.

70.2 The courts of South Australia or the Federal Court of Australia (Adelaide Registry) have exclusive jurisdiction in connection with this contract. The parties irrevocably submit to the jurisdiction of those courts, and any courts that have jurisdiction to hear appeals from those courts.

DATED 27 April 2019

AGREEMENT

BETWEEN

MINISTER FOR EDUCATION

AND

AUSTRALIAN UNITARIAN DRUZE COMMUNITY INC (A842)

Government
of South Australia

CROWN SOLICITOR
Level 10 Education Centre
31 Flinders Street, Adelaide SA 5000

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AGREEMENT dated 27 April 2019

BETWEEN

MINISTER FOR EDUCATION a body corporate by virtue of the *Education Act 1972* and the operation of the *Administrative Arrangements Act 1994* of 31 Flinders Street Adelaide South Australia 5000 (**Minister**)

AND

AUSTRALIAN UNITARIAN DRUZE COMMUNITY INC (A842) an incorporated association pursuant to the *Associations Incorporation Act 1985* of 34a Hambledon Road Campbelltown South Australia 5074 (**Tenant**)

BACKGROUND:

A. The Minister is the registered proprietor of the Land.

B. The Tenant is registered to operate the Australian Druze Arabic School.

C. The Minister and the Tenant previously entered into an agreement for the lease of the Land for a term of five (5) years commencing on 20 February 2013 and expiring on 19 February 2018 for the purpose of operating the Australian Druze Arabic School. The Tenant has continued to hold over on the Land and operate the Australian Druze Arabic School.

D. At the request of the Tenant the Minister agrees to lease the Land to the Tenant on the terms and conditions set out in this Agreement for the purpose of operating the Australian Druze Arabic School.

AGREED TERMS

1. DEFINITIONS

In this Agreement, unless a contrary intention is evident:

1.1 **ANTS GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*

1.2 **Business Day** means any day other than a Saturday, Sunday or public holiday in South Australia;

1.3 **Commencement Date** means the date specified in the Schedule;

1.4 **Facilities Manager** means the facilities manager engaged by the Minister;

1.5 **GST** means the tax imposed by the *ANTS GST Act*;

1.6 **GST Legislation** means the *ANTS GST Act* and associated legislation;

1.7 **GST Rate** means, at any particular time, the rate (expressed as a fraction of the Value of a supply) at which GST is payable by the Minister on a Taxable Supply;

1.8 **Input Tax Credit** has the meaning attributed in the *ANTS GST Act*;

1.9 **Insolvency Administration** means:

1.9.1 the Tenant has proposed a compromise or arrangement with its creditors;

1.9.2 an administrator of the Tenant is appointed;

1.9.3 the Tenant resolves to be wound up voluntarily;

1.9.4 the Tenant appoints a liquidator to wind up its affairs; or

1.9.5 the Tenant is wound up by the Supreme Court, voluntarily or on the certificate of the Corporate Affairs Commission under the *Associations Incorporation Act 1985.*

1.10 **Land** means the estate in fee simple in the whole of the land comprised in Certificates of Title Volume 5812 Folio 951 and Volume 5812 Folio 947;

1.11 **Outgoings** means:

1.11.1 all rates and taxes imposed on the Premises including council rates, water and sewer rates and charges and State land tax;

1.11.2 all financial institutions duty and any other tax or duty payable in respect of this tenancy, the Premises or any business conducted on the Premises;

1.11.3 the cost of maintaining and repairing the electrical and plumbing services;

1.11.4 the cost of routine servicing, preventative maintenance and repairs in relation to the Premises and its facilities whether of a capital or non-capital nature and the costs and charges incurred pursuant to any service and maintenance agreements;

1.11.5 all costs and charges incurred by the Minister in operating, maintaining, repairing and testing all legally required fire fighting, fire protection and the fire alarm systems servicing the Premises; and

1.11.6 all other costs, charges and expenses of any kind properly charged, payable or incurred in respect of the Premises;

1.12 **Permitted Use** means the permitted use as described in clause 12.1.1;

1.13 **Premises** means the building on the Land shown on the plan attached to this Agreement, including but not limited to all floor coverings, window treatments, light fittings, doors, windows, air conditioning and other fixtures, fittings, plant and equipment provided by the Minister, all grounds and gardens and any alterations made to the Premises;

1.14 **Tax Invoice** has the meaning attributed in the *ANTS GST Act*;

1.15 **Taxable Supply** has the meaning attributed in the *ANTS GST Act*;

1.16 **Tenant** includes its executors, administrators and assigns and persons under its control such as employees, contractors, invitees and agents;

1.17 **Term** means the term of this Agreement as set out in clause 4 and includes any extension of the Term pursuant to this Agreement; and

1.18 **Value** of a Taxable Supply has the meaning attributed in the *ANTS GST Act*.

2. INTERPRETATION

In this Agreement, unless a contrary intention is evident:

2.1 the clause headings are for convenient reference only and they do not form part of this Agreement;

2.2 a reference to a clause number is a reference to all of its sub-clauses;

2.3 a reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule of this Agreement;

2.4 a word in the singular includes the plural and a word in the plural includes the singular;

2.5 a word importing a gender includes any other gender;

2.6 a reference to a person includes a partnership and a body corporate;

2.7 a reference to legislation includes legislation repealing, replacing or amending that legislation;

2.8 if two or more persons are Tenants, their obligations under this Agreement refer to and bind them jointly and severally; and

2.9 in resolving inconsistencies in this Agreement:

2.9.1 this Agreement (excluding the schedule);

2.9.2 the schedule; and

2.9.3 2.9.3 the annexure

will have priority in that order.

3. TENANCY

3.1 The Minister agrees to let the Premises to the Tenant.

3.2 The Tenant agrees to rent the Premises for the Term at the rent and on the terms and conditions set out in this Agreement for the purpose of operating the Australian Druze Arabic School, and includes activities incidental to that purpose.

4. TERM

4.1 **Term**

This Agreement commences on the Commencement Date and continues for a term of two (2) years.

4.2 **Holding Over**

If the Tenant occupies the Premises beyond the Term with the Minister's consent:

4.2.1 the Tenant will do so as a monthly tenant paying the rent and other payments specified in this Agreement calculated on a monthly basis

and otherwise on the same terms and conditions contained in this Agreement; and

4.2.2 either party may end the tenancy by giving one calendar month's written notice to the other.

5. RENT

The Tenant must pay rent of $1.10 (inclusive of GST) per annum to the Minister upon demand.

6. GST

6.1 GST on Outgoings

For the purposes of calculating any payment payable by the Tenant in respect of any Outgoing:

6.1.1 the Minister must deduct from the total amount paid or payable by the Minister to a supplier in respect of the Outgoing any Input Tax Credit to which the Minister is entitled to the extent it is attributable to that payment; and

6.1.2 if the Minister is liable to pay GST in respect of a supply for which the Tenant must pay Outgoings, or a proportion of Outgoings, the Outgoings payable by the Tenant is increased by multiplying by one plus the GST Rate.

6.2 Tax Invoice

If any supply under this Agreement is a Taxable Supply then the Minister must provide the Tenant with a Tax Invoice in respect of the Taxable Supply.

7. ADDITIONAL PAYMENTS BY TENANT

7.1 Pay for Services

7.1.1 The Tenant must pay all charges for:

(a) electricity and gas consumed in the Premises;

(b) telephone, internet and/or facsimile services connected to the Premises;

(c) garbage removal;

(d) gardening services; and

(e) all other charges for the supply of any service separately supplied to the Premises.

7.1.2 Where the service is not separately invoiced the Tenant must pay an amount proportional to the Tenant's use or consumption of the service to the Minister.

7.2 Pay Outgoings

7.2.1 Subject to clause 9.1.8, the Tenant must pay all Outgoings when they fall due for payment during the Term.

7.2.2 If the Outgoings are paid by the Minister, the Minister must provide the Tenant with a statement setting out the amount which the Minister calculates to be payable by the Tenant, including copies of relevant accounts or assessment notices.

7.2.3 Except in the case of manifest error, the Tenant must pay to the Minister within twenty (20) Business Days following receipt of the statement or assessment notice the amount payable by the Tenant pursuant to that notice.

7.2.4 If a dispute arises between the Minister and the Tenant as to whether:

(a) any cost, expense, fee or charge is an Outgoing of the Premises; or

(b) anything relating to the determination, calculation or payment of the Outgoings of the Premises, either party may refer the matter for determination by a relevant expert agreed by the parties.

7.2.5 If the parties cannot agree on a relevant expert, either party may request the President for the time being of the Law Society of South Australia to nominate a relevant expert. The expert's decision will be final and binding on the parties and the expert's fees and expenses must be paid by the Minister and the Tenant in equal shares.

7.3 **Costs of Agreement**

Each party will bear its own costs, charges and expenses of and incidental to the negotiation, preparation, execution and any further extension of this Agreement.

8. ASSIGNMENT AND SUB-LETTING

8.1 **No Assignment, Sub-letting or other Dealing Without Consent**

The Tenant must not assign, sub-let, transfer, charge or mortgage any of its interest in this tenancy or in any way part with the possession of the Premises without first obtaining the Minister's written consent, which consent may be given or withheld or be subject to any conditions that the Minister requires.

8.2 **Conditions of Permitted Assignment or Sub-letting**

Without limitation, the Minister may impose the following conditions on the granting of its consent to an assignment, sub-letting or transfer:

8.2.1 the Tenant must submit a copy of any agreement that is or is proposed to be entered into in respect of any proposed dealing with this tenancy;

8.2.2 the Tenant must ensure that the person to whom it is proposed to assign, sub-let or transfer the Premises enters into a direct covenant with the Minister to observe the terms and conditions of this Agreement;

8.2.3 the Tenant must procure from the proposed assignee, sub-Tenant or transferee a performance guarantee of the performance of the terms of this Agreement from a guarantor who is acceptable to the Minister and on terms satisfactory to the Minister; and

8.2.4 the Tenant must comply with any other condition that the Minister requires.

8.3 **Consideration of Application**

The Minister is not obliged to consider an application by the Tenant for the Minister's consent to an assignment, sub-letting or transfer unless the Tenant:

8.3.1 provides evidence satisfactory to the Minister that the proposed assignee, sub-Tenant or transferee is responsible, of sound financial standing and intends to use the Premises for the Permitted Use under this Agreement;

8.3.2 demonstrates to the Minister's satisfaction that all rent and any moneys payable under this Agreement have been paid; and

8.3.3 demonstrates to the Minister's satisfaction that the Tenant is not in breach of any of the provisions of this Agreement.

8.4 **Costs**

The Tenant must pay for all costs reasonably incurred in connection with an application for consent which may include, but is not limited to, the costs of any valuation or experts' reports, any legal advice and the preparation of documentation.

9. CLEANING AND MAINTENANCE

9.1 **Tenant's Obligations**

9.1.1 At its expense at all times during the Term, the Tenant must keep the Premises in good and tenantable repair and condition (reasonable wear and tear excepted).

9.1.2 At its expense immediately before the expiration of the Term, the Tenant must redecorate the interior surfaces of the Premises as they were decorated at the commencement of this Agreement, with materials to a standard and in colours approved by the Minister.

9.1.3 At its expense the Tenant must clean or arrange for the cleaning of the Premises, including internal and external window cleaning.

9.1.4 At all times during the Term, the Tenant must keep the Premises tidy and free from rubbish. The Tenant must not allow any part of the Premises to become in an unsanitary or unhygienic condition.

9.1.5 The Tenant must keep all sewer and water pipes and all drains in the Premises in a clean and sanitary condition and free from any obstruction which is caused by the Tenant, but not by any structural defect.

9.1.6 The Tenant must replace all electric light bulbs, tubes and like fittings in the Premises, including such bulbs, tubes and fittings illuminating any emergency or exit lighting installation, which may become damaged or broken or fail to light.

9.1.7 The Tenant must replace all broken window glass with glass of the same thickness as the original glass.

(a) The Tenant must carry out all preventative maintenance of the Premises at the Tenant's cost.

9.1.8 The Tenant must at its expense maintain, repair or replace the following items, fair wear and tear included:

(a) any hot water service;

(b) all carpets (excluding vinyl or any other floor coverings other than carpet);

(c) any television aerial or satellite dish;

(d) all external fixtures and fittings, including, but not limited to, air conditioners, play equipment, shade structures or pergolas

in or on the Premises or the Land.

9.2 **Minister's Obligations**

9.2.1 The Minister will at all times at its expense keep the Premises (with the exception of the Tenant's fittings) in a good and substantial state of structural repair, and will, subject to the Tenant's responsibilities in clause 9.1, promptly effect any structural repairs.

9.2.2 The Minister will, as and when reasonably required, replace parts of the Premises, including plant, fixtures and all items of a capital nature (with the exception of those items listed in clause 9.1.8) which the Facilities Manager has determined cannot be repaired and which require replacement due to either fair wear and tear or by reason of default, except where repair or replacement is required due to the neglect, default, omission or wilful act of the Tenant.

10. DAMAGE AND REPAIRS

10.1 **Tenant Must Notify Minister of Damage**

The Tenant must give prompt notice to the Minister of any substantial damage occurring to the Premises.

10.2 **Tenant Must Repair Damage**

The Tenant must repair all damage that the Tenant, its invitees, employees or agents cause to the Premises at its expense.

10.3 **Minister's Powers to View and Repair**

10.3.1 The Minister may by its agents and workmen and with all necessary appliances:

(a) enter to view the state of repair of the Premises at all reasonable times and with reasonable notice, except in emergencies when no notice is required; and

(b) require the Tenant to repair any defect or replace any of the items listed in clause 9.1.8 in the Premises and/or the Land or to comply with its obligations relating to maintenance and cleaning by giving written notice to the Tenant.

10.3.2 If the Minister serves a notice, the Tenant must proceed diligently with the work specified in the notice so that it is completed by the time specified in the notice.

10.3.3 If the Tenant does not comply with its obligations pursuant to the notice, the Minister may enter the Premises with all necessary

workers, materials and appliances and carry out any of the required work at the Tenant's cost.

10.3.4 The Minister reserves the right to enter the Premises with all necessary workers, materials and appliances at all reasonable times and without notice to carry out any repairs which in the opinion of the Minister are urgently required to be carried out.

10.3.5 If the Minister carries out any urgent repairs which should in accordance with this Agreement be carried out by the Tenant, then the cost of those repairs must be paid by the Tenant on demand by the Minister.

11. ALTERATIONS

11.1 Alterations by Tenant

11.1.1 The Tenant must not make or permit to be made any alteration to the Premises without first obtaining the Minister's written consent and the approval of all necessary public authorities. The Minister is not obliged to consider the application for consent unless the Tenant presents full plans and specifications for the proposed work to the Minister. The Minister is entitled to obtain the advice of its staff, consultants or any other person in respect of the plans and specifications, at the Tenant's cost.

11.1.2 Any alteration or any other work approved by the Minister is subject to the following conditions. The alteration or work must be carried out:

(a) by a contractor approved by the Minister;

(b) to a standard in conformity with the Premises;

(c) in accordance with the requirements of all relevant public authorities;

(d) in accordance with the plans and specifications approved by the Minister;

(e) in accordance with the Minister's reasonable directions;

(f) to the satisfaction of the Minister's consultants;

(g) at the Tenant's cost and risk; and

(h) in accordance with any other conditions imposed by the Minister.

11.1.3 If the work is abandoned, cancelled, altered, damaged or otherwise unfinished for any reason, the Tenant must restore and reinstate the Premises to the Minister's reasonable satisfaction at the Tenant's expense.

11.2 Tenant's Partitioning, Fixtures, Fittings, Plant and Equipment

11.2.1 All partitioning, fixtures, fittings, plant, equipment and installations, including but not limited to computers, cabling, rainwater tanks and pumps that the Tenant installs in or on the Premises and/or the Land are the Tenant's property, and the Tenant is responsible for their maintenance, repairs, replacement and any running costs.

11.2.2 At or before the expiration of this Agreement, the Tenant may remove its partitioning, fixtures, fittings, plant, equipment and installations from the Premises and/or the Land.

11.2.3 When removing its partitioning, fixtures, fittings, plant, equipment and installations from the Premises and/or the Land, the Tenant must not damage the Premises and/or the Land. If the Tenant does cause any damage to the Premises and/or the Land it must repair the damage and reinstate the Premises and/or the Land to the condition they were in before the partitioning, fixtures, fittings, plant, equipment and installations were installed in the Premises and/or the Land.

11.2.4 If the Tenant does not remove its partitioning, fixtures, fittings, plant, equipment and installations from the Premises and/or the Land within three (3) months of expiry or earlier termination of this Agreement, then such partitioning, fixtures, fittings, plant, equipment and installations become the property of the Minister.

11.3 **Improvements**

Subject to clause 11.2, all alterations, improvements or works in the nature of a fixture built on the Premises by either party become the property of the Minister.

12. USE AND RESTRICTIONS ON USE

12.1 **Permitted Use**

12.1.1 The Tenant must use the Premises solely for the purpose of operating the Australian Druze Arabic School as an ethnic school, and includes activities incidental to that purpose.

12.1.2 Without limiting the Tenant's obligations under this Agreement, the Tenant must attain and maintain at its own expense throughout the Term all approvals, licences and registrations necessary to enable the Tenant to use the Premises for the Permitted Use.

12.2 **No Nuisance**

The Tenant must not do or permit anything to be done in the Premises which in the opinion of the Minister:

12.2.1 is or may become an annoyance, nuisance, grievance, disturbance, obstruction; or

12.2.2 may cause damage or loss to the Minister or to occupants or owners of any adjacent premises.

12.3 **No Offensive Activity**

12.3.1 The Tenant must not carry on or permit to be carried on in the Premises at any time any dangerous, noxious or offensive activity.

12.3.2 Smoking is prohibited in the Premises at all times.

12.3.3 The consumption of alcohol is prohibited on the Premises at all times unless the prior written approval of the Minister and all relevant licences pursuant to the *Liquor Licensing Act* or other relevant legislation are first obtained.

12.4 **No Dangerous Substances**

The Tenant must not bring, store or use or permit to be brought, stored or used in the Premises any noxious, explosive, inflammable or dangerous substance without the written approval of the Minister.

12.5 **No Improper Use**

The Tenant must not use the lavatories, basins, drains, shafts or other conveniences in the Premises for any purpose other than those for which they were constructed. The Tenant must not deposit any unsuitable substances in those conveniences. The Tenant must ensure that its employees, agents, contractors, licensees and invitees comply with this requirement.

12.6 **Overloading**

12.6.1 The Tenant must not bring into, or store in, the Premises, any heavy object, including any safe or heavy office equipment, without the written consent of the Minister.

12.6.2 The Minister may prescribe the maximum weight and the number of heavy objects that may be brought into the Premises.

12.6.3 If the Minister has consented to the Tenant bringing heavy objects into the Premises, the Tenant must:

(a) keep heavy objects in the position that the Minister directs;

(b) only move heavy objects into or out of the Premises under the supervision of the Minister and at an approved time;

(c) take all reasonably necessary steps to ensure that the floors, walls, pillars or any other parts of the Premises are not damaged or strained by overloading or any other cause; and

(d) not damage the Premises by installing, storing, or removing any heavy object.

12.7 **Signs**

12.7.1 The Tenant must not cause a sign to be visible from outside the Premises without the written consent of the Minister.

12.7.2 The Tenant must maintain any sign approved by the Minister in good condition and repair.

12.8 **Keys**

The Tenant will provide the Minister with keys to the Premises to be used by the Minister in case of an emergency.

12.9 **Compliance With Legislation and Notices**

12.9.1 At its own expense the Tenant must comply with:

(a) any legislation relating to the Tenant's use and occupation of the Premises, to health, to buildings and to the type of business which the Tenant conducts on the Premises including but not limited to the provision and maintenance of fire extinguishers and first aid kits;

(b) all occupational health and safety requirements of the Minister in respect of the Premises and take all reasonable precautions against the occurrence of fire in the Premises and

comply with all reasonable directions of the Minister in respect of fire safety, (excepting that the Tenant is not required to make any structural alterations to the Premises unless the use of the Premises by the Tenant necessitates such alterations); and

(c) any notice received from any statutory or public authority including a notice relating to the carrying out of repairs or alterations including those of a structural nature if necessitated by reason of the business carried on in the Premises by the Tenant or by reason of some act, neglect, default or omission of the Tenant.

(d) If the Tenant does not comply with the obligations referred to in this clause, the Minister may enter the Premises for the purpose of complying with the legislation or any notice received from any statutory or public authority.

13. SUITABILITY OF PERSONS

13.1 **Fundamental Term**

Despite any other clause, the parties acknowledge that the rights and obligations under this clause are fundamental to this Agreement.

13.2 **Definition of Minister's Sites**

In this clause "Minister's Sites" means any site of the Minister at which children are or may be present.

13.3 **Definition of Relevant Activity**

In this clause "**Relevant Activity**" means the Permitted Use (where that term is used in this Agreement) and otherwise the provision of goods, services or other activities at or in relation to the Minister's Sites.

13.4 **Definition of Relevant History Information**

13.4.1 In this clause **"Relevant History Information"** means:

13.4.2 an assessment of a person's history within the meaning of section 8B of the *Children's Protection Act 1993* by the authorised screening unit established under the *Children's Protection Regulations 2010* or a screening unit otherwise prescribed by regulations made under the *Children's Protection Act 1993* or such other screening unit as the Minister directs;

13.4.3 consent from the Relevant Personnel to use that assessment for the purposes of this clause; and

13.4.4 any other information reasonably required by the Minister to enable it to establish whether the Relevant Personnel is a suitable person to be involved in the Relevant Activity.

13.5 **Definition of Relevant Personnel**

In this clause "**Relevant Personnel**" means in relation to The Tenant the following persons insofar as they are involved in the Relevant Activity:

13.5.1 itself (where it is an individual);

13.5.2 all its directors, officers, employees, agents, volunteers and invitees;

13.5.3 all its contractors (where they are individuals); and

13.5.4 all directors, officers, employees, agents, volunteers and invitees of its contractors.

13.6 **Definition of Unsuitable Persons**

In this clause "**Unsuitable Person**" means a person that is the subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency.

13.7 **Definition of Risk Assessment**

In this clause "**Risk Assessment**" means a written assessment of the risk of other children being the victim of a sexual offence in relation to the Unsuitable Person that considers at least the following factors:

13.7.1 the nature of the alleged or proved offence;

13.7.2 the circumstances in which the alleged or proved offence occurred;

13.7.3 the place or places where the alleged or proved offence occurred;

13.7.4 the age and gender of the alleged or proved victim(s);

13.7.5 the age and gender of the alleged or convicted offender;

13.7.6 whether the alleged or convicted offender had regular and frequent contact with other children or a group or groups of children and the nature and circumstances of that contact; and

13.7.7 the opportunities that were available to the alleged or convicted offender to offend against other children.

13.8 **Relevant History Information**

13.8.1 The Tenant must:

(a) prior to its first use of a Minister's Site; and

(b) at such other times as either or both The Tenant and the Minister determine are necessary or desirable for the purpose of establishing or maintaining safe environments for children and young people within the meaning of section 114 of the *Children and Young People (Safety) Act 2017* (SA),

obtain complete and current Relevant History Information in relation to:

(c) all of its Relevant Personnel appointed to or engaged to act in prescribed positions within the meaning of section 8B of the *Children's Protection Act 1993* where the Relevant Activity is provided wholly or partly for children; and

(d) any of its Relevant Personnel as required by the Minister.

13.8.2 The Minister may (but need not):

(a) by written notice require the Tenant to provide a copy of any Relevant History Information to the Minister and the Tenant must comply with that notice within ten (10) Business Days of the date of that notice; and

(b) conduct any investigations it considers necessary in respect of any matter contained in Relevant History Information and the Tenant must ensure that it and its Relevant Personnel cooperate fully with any such investigation.

13.9 **No Unsuitable Persons**

The Tenant must not permit or allow, and must procure that its contractors do not permit or allow, an Unsuitable Person who is a Relevant Personnel to:

13.9.1 be involved in the Relevant Activity; or

13.9.2 otherwise be present at any of the Minister's Sites.

13.10 **Steps Required where Unsuitable Person**

Without limiting anything else in this clause, if the Tenant is or becomes aware that it or any Relevant Personnel is an Unsuitable Person, it must:

13.10.1 procure the immediate removal (where relevant) and ongoing exclusion of the Unsuitable Person from the Minister's Sites;

13.10.2 procure the immediate and ongoing exclusion of the Unsuitable Person from involvement in the Relevant Activity;

13.10.3 take all immediate and ongoing steps necessary to protect any children on, or who have been on, the Minister's Sites from harm as a consequence of the presence, removal or ongoing exclusion of the Unsuitable Person, including without limitation:

(a) notifying South Australia Police about the Unsuitable Person as necessary;

(b) making a notification of abuse or neglect in accordance with the *Children and Young People (Safety) Act 2017* (SA) as necessary including by means of the Child Abuse Report Line maintained by the Department for Child Protection (131 478) or such other report line as the Minister or South Australian Government publicly notifies;

(c) providing support to children and families as necessary;

(d) providing supervision of any children for which the Tenant provides the Relevant Activity on the Minister's Sites;

(e) all other steps otherwise required under this clause; and

(f) any other protective action as necessary;

13.10.4 immediately notify the Minister in writing of all known facts about the circumstances in which the Unsuitable Person has been in any way involved in the Minister's Sites;

13.10.5 provide on an ongoing basis full details to the Minister of the circumstances relating to the Unsuitable Person as and when those details become known to the Tenant;

13.10.6 immediately prepare a Risk Assessment and provide a copy to the Minister;

13.10.7 where the Unsuitable Person has been arrested, charged or convicted for a sexual offence or an offence of indecency (but not where the Unsuitable Person is merely the subject of an allegation):

(a) promptly provide notice in a lawful manner to the parents, guardians and primary carers of all children who were involved in the Relevant Activity ("**Relevant Children**") about the Unsuitable Person in the manner provided for in this clause ("**Notice to Parents**"); and

(b) within 24 hours of providing Notice to Parents, provide the Minister with a signed certificate that it has complied with its obligations to provide the Notice to Parents together with a copy of all Notices to Parents; and

13.10.8 comply with any reasonable direction of the Minister with respect to the Unsuitable Person.

13.11 **Imposing Obligations on Relevant Personnel**

The Tenant must ensure that:

13.11.1 all Relevant Personnel are aware of and act in a manner consistent with the provisions of this clause at all times; and

13.11.2 all Relevant Personnel (not being the Tenant) immediately inform the Tenant if the Relevant Personnel is the subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency.

13.12 **Notice to Parents**

13.12.1 In providing Notice to Parents as required where the Unsuitable Person has been arrested, charged or convicted for a sexual offence or an offence of indecency (but not where the Unsuitable Person is merely the subject of an allegation) the Tenant must:

13.12.2 consult with South Australia Police regarding the timing and content of the Notice to Parents and comply with any directions of South Australia Police in this regard;

13.12.3 if the Risk Assessment gives rise to a reasonable suspicion that there are no other potential victims, then subject to any contrary directions from South Australia Police, promptly send a letter to the parents, guardians and primary carers of all Relevant Children containing the following:

(a) a statement that an unnamed Unsuitable Person involved in the Relevant Activity has been arrested, charged or convicted for committing an offence;

(b) a statement of the offence to which the arrest, charge or conviction relates;

(c) a statement that the unnamed Unsuitable Person has been removed from involvement in the Relevant Activity and cannot attend the Minister's Site;

(d) a statement indicating that the Tenant does not believe that there are other victims;

(e) an assurance that the Tenant will keep parents, guardians and primary carers of the Relevant Children informed;

(f) a request to keep the matter confidential in order to protect the victim and the victim's family;

(g) contact numbers of support services for concerned parents, guardians and primary carers; and

(h) a statement that parents, guardians and primary carers who have information that might assist police should contact the investigating police officer, giving that police officer's name, rank and telephone number;

13.12.4 if the Risk Assessment gives rise to a reasonable suspicion that there are or may be other potential victims ("**Other Potential Victims**") then subject to any contrary directions from South Australia Police:

(a) promptly send a letter to the parents, guardians and primary carers of those Other Potential Victims containing the following:

(i) a statement that an unnamed Unsuitable Person involved in the Relevant Activity has been arrested, charged or convicted for committing an offence;

(ii) a statement of the offence to which the arrest, charge or conviction relates;

(iii) a statement that the unnamed Unsuitable Person has been removed from involvement in the Relevant Activity and cannot attend the Minister's Site;

(iv) a statement that the Tenant is calling a meeting of parents, guardians and primary carers of children who have been in regular or frequent contact with the Unsuitable Person;

(v) a statement that the child of the parent, guardian or primary carer to whom the letter is addressed might have had regular or frequent contact with the Unsuitable Person;

(vi) a notification to the parents, guardians and primary carers of those Other Potential Victims of the date, time and location of the meeting to be convened by the Tenant;

(vii) an assurance that the Tenant will keep parents, guardians and primary carers informed;

(viii) a request to keep the matter confidential in order to protect the victims and the victim's family;

(ix) contact numbers of support services for concerned parents, guardians and primary carers; and

(x) a statement that parents, guardians and primary carers who have information that might assist police should contact the investigating police officer, giving that police officer's name, rank and telephone number; and

(b) promptly send a letter to the parents, guardians and primary carers of Relevant Children excepting the Other Potential Victims containing the following:

(i) a statement that an unnamed Unsuitable Person involved in the Relevant Activity has been arrested, charged or convicted for committing an offence;

(ii) a statement of the offence to which the arrest, charge or conviction relates;

(iii) a statement that the unnamed Unsuitable Person has been removed from involvement in the Relevant Activity and cannot attend the Minister's Site;

(iv) an assurance that the Tenant will keep parents, guardians and primary carers of the Relevant Children informed;

(v) a request to keep the matter confidential in order to protect the victim and the victim's family;

(vi) contact numbers of support services for concerned parents, guardians and primary carers;

(vii) a statement that parents, guardians and primary carers who have information that might assist police should contact the investigating police officer, giving that police officer's name, rank and telephone number; and

(viii) a statement that a meeting is being called of parents, guardians and primary carers of children who have been in regular or frequent contact with the unnamed Unsuitable Person.

13.12.5 Nothing in this subclause requires the Tenant to take any actions that would be in breach of law.

13.13 **Child Safe Environments**

In addition to all other obligations under this Agreement, where the Tenant is an organisation to which section 114 of the *Children and Young People Safety Act 2017* (SA) applies, the Tenant must:

13.13.1 have in place appropriate policies and procedures to ensure that, as required by the *Children and Young People Safety Act 2017*:

(a) policies and procedures that ensure that the requirements for reporting of a suspicion that a child or young person may be at risk are satisfied;

(b) policies and procedures designed to ensure that safe environments for children are established and maintained;

(c) policies and procedures that ensure any code of conduct or principles of good practice for caring for, or working with children and young people developed by the Chief Executive of the Department for Child Protection or his/her delegate is complied with;

(d) policies and procedures that ensure that standards of care for ensuring the safety of children and young people as defined by the Chief Executive of the Department for Child Protection or his/her delegate are met; and

(e) such other policies and procedures as may be required by the Chief Executive of the Department for Child Protection or his/her delegate by notice in the Government Gazette.

13.13.2 provide the statement required by the *Children and Young People (Safety) Act 2017* about the Contractor's child safe policies and procedures with the Chief Executive of the Department for Child Protection or his or her delegate, or such other government agency as the Minister or South Australian Government publicly notifies ("**Successor Children's Protection Agency**"), as soon as reasonably practicable after preparing, adopting, or varying or substituting those policies or procedures;

13.13.3 if the Chief Executive of the Department for Child Protection or his or her delegate or such other government agency as the Minister or South Australian Government publicly notifies ("**Successor Children's Protection Agency**") so requires, accompany the statement with a copy of each policy and procedure;

13.13.4 at the request of the Minister, produce for inspection a copy of the policies and procedures as in force at the relevant time;

13.13.5 review the policies and procedures at least once in every five year period; and

13.13.6 execute and provide to the Minister prior to the Tenant's first use of a Minister's Site a truthful declaration in the following terms:

"I/We declare that the Tenant:

- *has appropriate policies and procedures in place to:*
  - *ensure that child safe environments are established and maintained as required by the Children's Protection Act 1993; and*
  - *ensure that appropriate reports of child abuse and neglect are made as required by the Children's Protection Act 1993;*
- *has obtained and, if required by the Minister, will provide to the Minister Relevant History Information in relation to:*
  - *all Relevant Personnel appointed to or engaged to act in prescribed positions within the meaning of section 8B of the Children's Protection Act 1993 where the Relevant Activity is provided wholly or partly for children; and*
  - *any of its Relevant Personnel as required by the Minister;*
- *has lodged a statement setting out its child safe policies and procedures with the Department for Child Protection or Successor Children's Protection Agency; and*
- *if the Minister has required the provision of a copy of Relevant History Information to the Minister, will notify the Minister of any change in that Relevant History Information in relation to any Relevant Personnel or suitability of any Relevant Personnel.*

In this declaration capitalised terms have the meaning given in the contract under which this declaration is required.

I/We declare that I/we have full authority to execute this declaration for and on behalf of Tenant.

X .....*(signature)*

X AKRAM BOUDIAB / Chairman *(name and title)*

X 26/3/19 .....*(date)"*

13.14 **Effect of Non-Compliance**

13.14.1 If:

(a) the Tenant is an Unsuitable Person; or

(b) any Relevant Personnel (not being Tenant) is an Unsuitable Person and Tenant does not strictly, fully and immediately comply with any or all of its obligations under this clause,

13.14.2 then the Minister may in its absolute discretion and without limiting any other remedy:

(a) where Tenant has not complied with its obligation to provide Notice to Parents, at the expense of Tenant, access the Tenant's Premises, books and records and notify the parents of Relevant Children of the arrest, charge or conviction of Tenant or its Relevant Personnel and in this regard Tenant must provide its full cooperation; and

(b) suspend or terminate this Agreement, and

(c) following any such suspension or termination Tenant must for so long as the Minister directs:

(d) provide on an ongoing basis full details to the Minister of the circumstances relating to the Unsuitable Person as and when those details become known to Tenant; and

(e) comply with any reasonable direction of the Minister with respect to the Unsuitable Person.

13.14.3 Any exercise by the Minister of its rights under this clause:

(a) does not limit the Minister's right to pursue any claim against Tenant arising in respect of a breach by Tenant of its obligations under this Agreement; and

(b) will not give rise to any liability owing to Tenant or the Relevant Personnel.

13.15 **Compliance with Security Practices and Procedures**

The Minister may inform Tenant of any security practices and procedures in relation to child safe environments implemented by the Minister or the South Australian Government and Tenant must comply with those procedures at all times.

13.16 **Disclaimer**

The Tenant must include the following statement in its communications provided to users of the Relevant Activity:

"This is not a Department for Education organised or sponsored activity and the Department for Education accepts no responsibility or liability in relation

to this activity. The Department for Education accepts no responsibility or liability for services or activities organised or provided by Tenant."

13.17 **References to Legislation**

A reference to any legislation or to any provision of any legislation includes:

13.17.1 all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and

13.17.2 any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision including (but not limited to) by the commencement of the *Child Safety (Prohibited Persons) Act 2016*.

13.18 **No Derogation**

Nothing in this clause relieves the Tenant of any obligation under this Agreement.

13.19 **Priority**

To the extent of any inconsistency between the rights and obligations under this clause and under the provisions of any other clause in this Agreement, including any provisions relating to termination or remedies, this clause prevails.

14. SUITABILITY OF PERSONS (OTHER OFFENCES)

14.1 **Other Offences**

In addition to any other rights of the Minister and obligations of Tenant under this Agreement, if any Relevant Personnel as defined in this Agreement is the subject of an arrest, charge or conviction for:

14.1.1 any offence of violence or deprivation of liberty (whether indictable or not) or other indictable offence; or

14.1.2 any other offence that the Minister notifies Tenant in writing the Minister considers renders the Relevant Personnel unsuitable to be involved in the Relevant Activity,

("**Other Offence**") that Relevant Personnel will be an Unsuitable Person for the purposes of this Agreement and the Tenant must treat that Relevant Personnel as an Unsuitable Person, subject to clause 14.2.

14.2 **Matters**

In the case of any Relevant Personnel being, and being treated as, an Unsuitable Person by the operation of clause 14.1:

14.2.1 the Risk Assessment required under clause 13.7 is extended to include a written assessment of the risk of other children being the victim of any Other Offence that considers at least the factors set out in clause 13.7; and

14.2.2 the obligations in clauses 13.10.7, 13.11.2 and 13.12 are extended to apply in relation to Relevant Personnel who are the subject of any arrest, charge or conviction for an Other Offence.

15. PAINTING

15.1 The Minister will paint the exterior surfaces of the Premises at reasonable periods as determined by the Minister.

15.2 Subject to clause 9.1.2, the Tenant will paint the interior surfaces of the Premises at reasonable periods as determined by the Minister.

16. SMOKE DETECTORS

The Minister will at the Minister's cost:

16.1 install smoke detectors and fire prevention and protection equipment at the Premises; and

16.2 replace such detectors and equipment as determined by the Facilities Manager.

17. RELEASE, INDEMNITY AND INSURANCE

17.1 **Release**

17.1.1 The Tenant uses and occupies the Premises at its own risk.

17.1.2 To the full extent permitted by law, the Tenant releases the Minister, its agents, contractors and employees in the absence of any wilful act, omission, default or neglect on their part, from all claims resulting from:

(a) any accident, any damage or loss of property or injury or death of persons occurring in the Premises;

(b) any defect in the construction of the Premises or of any fittings or apparatus installed by the Tenant;

(c) the failure of any automatic doors, air conditioning plant, machinery, fire protection services or public utility services to operate; or

(d) any other cause.

17.2 **Public Risk Indemnity**

17.2.1 The Tenant must keep the Minister indemnified from any costs, loss, expense or liability of any kind however suffered or incurred by the Minister in respect of any loss of life, personal injury, loss of, or damage to, property or any other loss arising out of:

(a) the use or occupation of the Premises or the Land by the Tenant;

(b) any occurrence in the Premises or on the Land;

(c) any act, omission, neglect or default of the Tenant; or

(d) any breach in the fulfilment of any of the Tenant's obligations under this Agreement.

17.2.2 The Tenant's obligation to indemnify the Minister under this clause must be reduced in proportion to the extent that any act or omission of the Minister contributes to the loss or liability.

17.3 **Building and Services Indemnity**

The Tenant must keep the Minister indemnified from any cost, loss, expense or liability of any kind however suffered or incurred by the Minister in connection with the negligent use or wilful misuse of water, gas, electricity or air conditioning services by the Tenant or by any person acting under the control of the Tenant.

17.4 **Insurance**

17.4.1 At its expense, the Tenant must effect and maintain the following policies of insurance throughout the Term:

(a) public risk insurance for the Premises and any business carried on in the Premises under which the amount that may be paid out in respect of any one event must not be less than $20,000,000 or a greater sum as the Minister may from time to time reasonably require;

(b) insurance insuring the Tenant's contents and any plant and equipment used in the Premises against loss or damage for the full replacement value; and

(c) plate glass insurance for all plate glass in the Premises.

17.4.2 The policies of insurance must be with an insurer approved by the Minister.

17.4.3 The Tenant must provide to the Minister on demand by the Minister copies of the policies and all certificates of currency and certificates of renewals for the insurances.

18. QUIET ENJOYMENT

Subject to the provisions of this Agreement, if the Tenant pays the rent and complies with all of its obligations under this Agreement, the Tenant may quietly enjoy the Premises for the duration of the Term without any interruption or disturbance from the Minister.

19. DESTRUCTION OF PREMISES

If the Premises:

19.1 are damaged so as to render them substantially unfit for occupation and use by the Tenant or are destroyed; and

19.2 the damage or destruction does not result directly from a wilful act, neglect, default or omission of the Tenant or of persons under its control,

the Minister may terminate this Agreement by written notice and neither party has any right against the other party by reason of the termination and the termination is without prejudice to the rights of either party for any antecedent breach of this Agreement.

20. DISPUTE RESOLUTION

20.1 Subject to clause 20.2, if a dispute arises between the Minister and the Tenant as to the terms and conditions of this Agreement or the operation of this Agreement or as to the rights and obligations of the parties under this Agreement, then:

20.1.1 the dispute will be referred to the parties' Representatives with a view to the Representatives making a recommendation to the parties for the purposes of resolving the dispute; and

20.1.2 if the dispute cannot be resolved by the Representatives within ten (10) Business Days (or a shorter time if the circumstances require), then the dispute may be referred to an independent mediator mutually agreed upon by the parties, or failing agreement, to an independent mediator nominated by the then President of the Law Society of South Australia.

20.2 If a dispute arises between the Minister and the Tenant as to repairs, maintenance and replacement of items in or on the Premises, then the dispute will be referred for resolution to the Facilities Manager.

20.3 Failing resolution of the dispute by any of the means set out in this clause 20, the parties may have the dispute determined according to law (including, if appropriate, by reference to a court).

21. NO WARRANTY

The Lessor does not warrant that the Premises are fit for the intended use by the Tenant.

22. BREACH AND TERMINATION

22.1 **Tenant may terminate**

The Tenant may terminate this Agreement by giving not less than twelve (12) months written notice to the Minister.

22.2 **Events of Default**

The following are Events of Default in respect of this Agreement:

22.2.1 if the Tenant is in breach of any of its obligations under this Agreement, the Minister has given the Tenant written notice of that breach and the Tenant fails to rectify that breach within one month;

22.2.2 if the Tenant is in breach of any of its obligations under this Agreement for which the Minister has previously given the Tenant notice in writing notwithstanding rectification of the previous breach;

22.2.3 if any of the moneys payable by the Tenant pursuant to this Agreement, including the rent, are unpaid for a period of one month after notice has been given to the Tenant that the moneys are outstanding;

22.2.4 if the Tenant assigns the Tenant's estate under this Agreement without the Minister's consent;

22.2.5 subject to any limitation at law, if the Tenant enters into any form of Insolvency Administration; or

22.2.6 if the Tenant ceases to be registered to operate the Australian Druze Arabic School.

22.3 **Notice**

22.3.1 If an Event of Default occurs, the Minister may serve a notice on the Tenant specifying the default and requiring the Tenant to remedy defaults capable of remedy by the time specified in the notice.

22.3.2 If the Tenant fails to remedy the default by that date, then the Minister may re-enter the Premises at any time after that date and terminate the estate of the Tenant and this Agreement.

22.3.3 In the case of a default incapable of remedy, the Minister may serve a notice on the Tenant specifying the default and nominating a date that the Minister may re-enter the Premises to terminate the estate of the Tenant and this Agreement.

22.4 **Effect of Termination**

Termination of this Agreement by the Minister is without prejudice to any right of action of the Minister in respect of any antecedent breach of any of the Tenant's obligations contained in this Agreement.

22.5 **Removal of Tenant's Goods**

22.5.1 If the Minister re-enters the Premises in accordance with this clause, the Minister may remove the Tenant's goods and effects found on the Premises. The Tenant authorises the Minister to remove them into storage in the Tenant's name. The Minister is not liable or responsible for any loss or damage to those goods and effects and they remain at the Tenant's risk at all times.

22.5.2 All costs and expenses that the Minister incurs in removing and storing those goods and effects, notwithstanding that this Agreement will then have terminated, are a debt due by the Tenant to the Minister and must be paid on demand by the Minister. If the Tenant fails to collect the goods and effects in accordance with the Minister's directions, the Minister will deal with the goods and effects in accordance with the *Unclaimed Goods Act, 1987*.

22.6 **Minister's Right to Remedy Defaults**

Any cost incurred in remedying a default of the Tenant is a debt due by the Tenant to the Minister and must be paid on demand by the Minister.

22.7 **Essential Terms**

22.7.1 Each of the following covenants by the Tenant is an essential term of this Agreement:

(a) the payment of services and interest on arrears ;

(b) the Tenant to reimburse the Minister on demand for costs of Outgoings incurred by the Minister; and

(c) the use and restrictions on the Tenant's use of the Premises.

22.7.2 The Tenant hereby covenants to compensate the Minister in respect of any breach of an essential term of this Agreement, and the Minister is entitled to recover damages in respect of that breach. The

Minister's entitlement under this sub-clause is in addition to any other right or remedy to which the Minister is entitled (including the right to re-enter and determine the estate of the Tenant) and is not prejudiced by the exercise of the right of re-entry.

22.8 **Minister Must Mitigate Damages**

If the Tenant vacates the Premises with or without the Minister's consent, the Minister is obliged to take reasonable steps to mitigate its damages and to endeavour to obtain a new tenant on reasonable terms. The Minister's conduct in pursuance of the duty to mitigate damages does not by itself constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law.

23. GENERAL

23.1 **Notices**

23.1.1 A **notice** means a consent, approval or other communication required to be in writing under this Agreement.

23.1.2 A notice must be signed by, or on behalf of, the sender addressed to the recipient and:

(a) delivered to the recipient's address;

(b) sent by pre-paid mail to the recipient's address; or

(c) transmitted by electronic mail.

23.1.3 A notice given to a person in accordance with this clause is treated as having been given and received:

(a) if delivered to the recipient's address, on the day of delivery;

(b) if sent by pre-paid mail, on the third Business Day after posting; or

(c) if transmitted by electronic mail:

(i) when the relevant email appears in the sender's sent log with properties disclosing an appropriate routing; and

(ii) the sender does not receive a message from the system operator to the effect that the relevant email was undeliverable;

but if delivery is not made before 5 pm on any Business Day it will be deemed to be received at 9 am on the next Business Day in that place.

23.1.4 A person may notify its change of contact details from time to time by written notice to the other party.

23.2 **Waiver**

23.2.1 Any waiver of any provision of this Agreement is ineffective unless it is in writing and signed by the party waiving its rights.

23.2.2 A waiver by either party in respect of a breach of a provision of this Agreement by the other party is not a waiver in respect of any other breach of that or any other provision.

23.2.3 The failure of either party to enforce any of the provisions of this Agreement at any time must not be interpreted as a waiver of such provision.

23.3 **Entire Agreement**

23.3.1 This Agreement incorporates the attached schedules.

23.3.2 This Agreement contains the entire agreement between the parties with respect to the Tenant's renting of the Premises and supersedes any prior agreement, understanding or representation of the parties relating to the renting of the Premises.

23.3.3 This Agreement must not be varied in any way except by writing and be signed by or on behalf of both parties.

23.4 **Severance**

If any provision or part of a provision of this Agreement is invalid or unenforceable in any jurisdiction:

23.4.1 the provision must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable; or

23.4.2 if the provision cannot be read down under this clause, it must be severed if it is capable of being severed, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction and the parties must consult in good faith to determine whether any amendment or substituted provision is required.

23.5 **Authorisation**

Any request, approval, consent, determination or any notice or any other thing which pursuant to this Agreement is required to be given, done or performed by the Minister may properly and lawfully be given, done or performed by any person duly authorised by the Minister to do so for the purposes of this Agreement.

23.6 **Tenant not Agent for Minister**

The Tenant must not directly or indirectly hold out or permit to be held out to any member of the public any statement, act, deed, matter or thing in connection with the Premises or otherwise indicating that the Premises or any business conducted on the Premises is being conducted, managed or supervised by the Minister or the Government of South Australia nor must the Tenant act as or represent itself to be the servant or agent of the Minister or the Government of South Australia.

EXECUTED AS AN AGREEMENT

THE COMMON SEAL of the **MINISTER FOR EDUCATION** was affixed to this Agreement by a person duly authorised in that regard)



.....
Authorised Officer

Lucy Midwinter
Print name

IMPORTANT NOTICE

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

***Retail and Commercial Leases Act 1995*: Section 18**

***Retail and Commercial Leases Act 1995*: Regulation 7**

THE MINISTER DOES NOT WARRANT THAT THE PREMISES YOU ARE ABOUT TO LEASE WILL FOR THE DURATION OF YOUR TENANCY AGREEMENT BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS YOU INTEND TO CARRY ON.

SIGNED for and on behalf of the **AUSTRALIAN UNITARIAN DRUZE COMMUNITY INC** by persons authorised by the association to do so:)

...
Akram Bou Diab, Chairman,
Australian Unitarian Druze Community Inc

.....
Abeer Hani, Principal,
Australian Druze Arabic School

.....
Mayada Jamal, Secretary
Australian Druze Arabic School

SCHEDULE

ITEM 1

Land The whole of the land comprised in Certificates of Title Volume 5812 Folio 951 and Volume 5812 Folio 947.

ITEM 2

Premises The building on the Land as shown on the Plan attached to this Agreement.

ITEM 3

Commencement Date On the date the last party executes this Agreement.

Term Two (2) years from the Commencement Date.

ITEM 4

Minister's Representative:

Assistant Director
Asset Services
Department for Education
31 Flinders Street
ADELAIDE SA 5000

Email address: Education.PropertyServices@sa.gov.au

Tenant's Representative:

Akram Bou Diab
Chairman
Australian Unitarian Druze Community Inc
126 Belair Road
HAWTHORN SA 5062

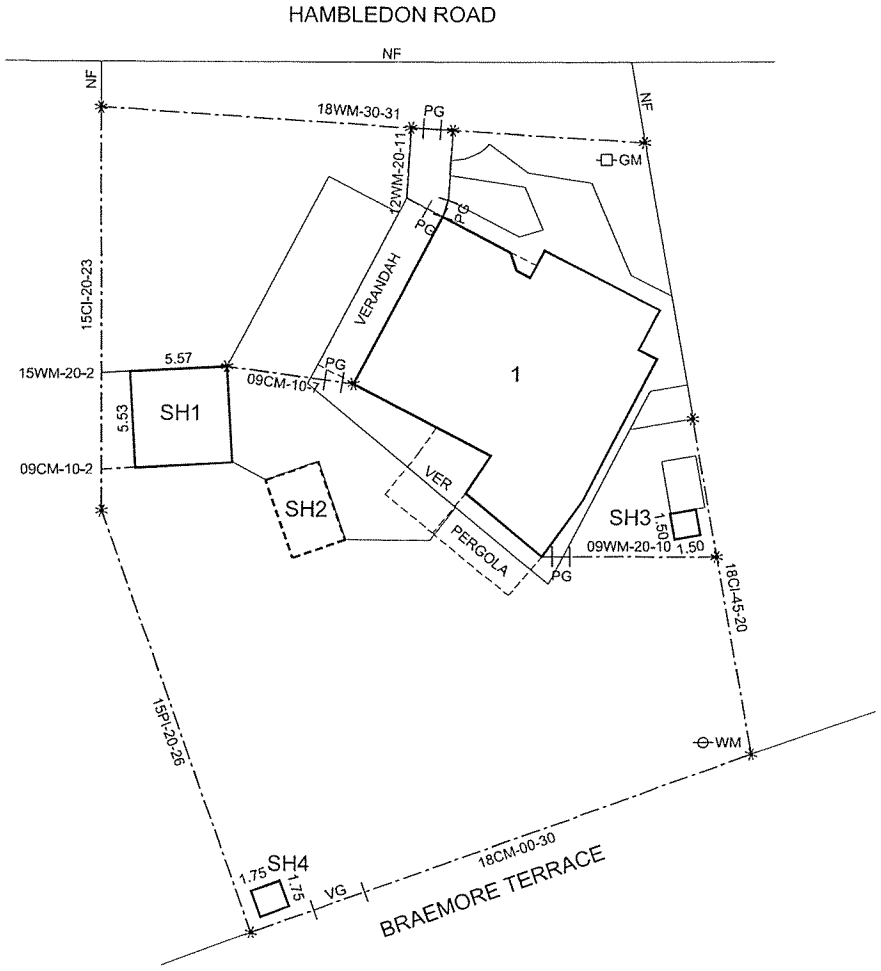
Email address: akramb90@hotmail

ANNEXURE A

PLAN

Scale Bar Units in Metres (1:300) Plot at a scale of 1=0.3 All dimensions to be verified on site

NORTH



BUILDINGS

1	KINDERGARTEN
SH1	GALV.IRON GARAGE STORE
SH2	SHELTER OVER SAND PIT
SH3	GALV. IRON STORE SHED
SH4	COLORBOND STORE SHED

FENCES * height-type-fail date-length (metres) *

CI	corrugated iron	PW	post and wire
CM	chain mesh	WM	weld mesh
GT	galtube	NF	not fenced
PG	Pedestrian gate	VG	Vehicle gate
WM	Water Meter	*	Fence junction
GM	Gas Meter	PMT	Pad mtd trans

CAMPBELLTOWN PRE-SCHOOL CENTRE

HAMBLEDON DRIVE

Government of South Australia
Department for Transport, Energy and Infrastructure

Asset no.	06561	Client.	DECS
DTEI Office.	ADELAIDE	Sheet.	1 of 1
Created by.	Archink	J Sutton	May 2000
Modified by.	Survcad	R.L.Chapman	Feb 2007
Audited by.	-	-	-
Title details.	Unavailable		
Site area.	0.1493ha	Accuracy.	Unknown
Internet.	www.blams.dais.sa.gov.au		

BLAMS 06561

ANNEXURE B

DISCLOSURE STATEMENT UNDER SECTION 12 OF RETAIL AND COMMERCIAL LEASES ACT 1995

INFORMATION FOR TENANTS

Please read the following information carefully.

Disclosure statement under section 12 of *Retail and Commercial Leases Act 1995*

Information for lessees

Please read the following information carefully.

What is a lease?

A lease is a very important document. It is a legally binding contract between the lessor (landlord) and the lessee (tenant). It sets out the rights and obligations of the lessor and the lessee.

A document that binds the lessee to enter into a lease or to take a shop on lease for a renewed term should be treated as if it were the lease.

What should I look for in a lease?

The main features to consider are—

- the term of the lease;
- whether there is an option to renew or extend the lease (and the method of exercising any such option);
- the rent and the basis for rent reviews;
- the amounts that the lessee will have to pay in addition to rent eg fit out costs, maintenance and repair costs and shared operating expenses;
- the consequences of breaching a term of the lease.

Make sure you read the whole document and understand the obligations it will place on you, especially the extra charges in addition to rent that you will have to pay.

If the lease is a sublease, you should seek information about the lessor's rights and obligations under the head lease that are relevant to the lease of the shop.

What information is the lessor required to give me?

The lessor must give you a copy of the proposed lease and this disclosure statement. The disclosure statement must contain the matters set out in section 12 of the *Retail and Commercial Leases Act 1995*.

What should I do before signing a lease or other binding document?

Do not sign until you understand exactly what your obligations under the lease will be.

Before signing a lease or other binding document, you should obtain independent legal and financial advice.

- You should discuss the lease (or any agreement for a lease) and the disclosure statement with your own lawyer or leasing adviser.

- You should seek advice about the financial commitments under the lease from your own accountant or recognised financial or business adviser.
- You should also seek advice from an association representing the interests of lessees.

Before signing a lease or other binding document, oral representations made by the lessor or the lessor's agent on which you have relied should be reduced to writing and signed by or on behalf of the lessor.

Before signing a lease or other binding document, the lessee should sign an acknowledgment of receipt of the disclosure statement.

1 – Details of Shop

1. Address:

   Premises being the whole of the land comprised and described in Certificates of Title Volume 5812 Folio 951 and Volume 5812 Folio 947.

2. Lettable area of Premises:

   Approximately 161m^2

3. The Premises may be used only for the following purposes:

   To operate the Australian Druze Arabic School.

2 – Term of lease

Term of lease – Two (2) years from the Commencement Date

3 – Renewal or Extension of Lease

☑ There is no right to renew or extend the term of the tenancy agreement.

☐ The Tenant has a right to renew or extend the term of the tenancy agreement.

4 – Access to shop

Hours during which the lessee will have access to the shop outside trading hours:

not applicable

Date on which the shop will be available for occupation:

Tenant is already occupying the shop

5 – Monetary obligations

The lessee's obligations to pay rent, to pay or reimburse outgoings, to make or reimburse capital expenditure and any other monetary obligations imposed on the lessee are set out in Appendix A.

6 – Retail shopping centre details

[tick one box]

☐ The Premises are in a retail shopping centre within the meaning of *the Retail and Commercial Leases Act 1995.* See Appendix B for details.

☑ The Premises are not in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995.*

7 – Consequences of breach

The legal consequences of breach of a term of the tenancy agreement are set out in the following clauses of the tenancy agreement:

Clauses 19.1- 19.7 inclusive.

The consequences of early termination of the tenancy agreement by the Tenant are as follows:

The Minister can claim from the Tenant and can sue the Tenant for breach of the tenancy agreement.

The Minister can claim from the Tenant and can sue the Tenant for all rent owing until the expiration of the term.

The Minister can claim from the Tenant and sue for default interest.

The Minister can claim for all its losses and damages for repudiation or breach of the tenancy agreement from the Tenant.

The Minister may elect to re-enter onto the Premises.

The Minister may institute legal proceedings against the Tenant.

The Minister may claim for all costs and expenses including interest incurred as a result of the Tenant's breach of the Tenancy agreement.

The consequences of other breaches are as follows:

The Minister can claim from the Tenant and can sue the Tenant for breach of the tenancy agreement.

The Minister can claim from the Tenant and can sue the Tenant for all rent owing until the expiration of the term.

The Minister can claim from the Tenant and sue for default interest.

The Minister can claim for all its losses and damages for repudiation or breach of the tenancy agreement from the Tenant.

The Minister may elect to re-enter onto the Premises.

The Minister may institute legal proceedings against the Tenant.

The Minister may claim for all costs and expenses incurred as a result of the Tenant's breach of the Tenancy agreement.

The Minister suggests that the Tenant seek independent legal advice in relation to all consequences of breach and early termination under the tenancy agreement document and at law or in equity.

8 – Warnings

Oral representations made by the lessor or the lessor's agent on which the lessee has relied should be reduced to writing and signed by or on behalf of the lessor before the lessee enters into the lease.

The lessee should obtain independent legal and financial advice before entering into the lease.

Date:
Signature of lessor:
Name:

Address:

Acknowledgement of receipt

I acknowledge receipt of this disclosure statement including:

[Tick 1 or more boxes as applicable.]

- ☑ Appendix A—Monetary obligations under lease
- ☐ Appendix B—Retail shopping centre details
- ☐ Attachment—Shop fitting or refitting obligations
- ☐ Attachment—Fixtures, plant or equipment obligations
- ☐ Attachment—Sinking fund obligations
- ☐ Attachment—Proposed changes to shopping centre
- ☐ Attachment—Current tenant mix
- ☐ Attachment—Proposed changes to current tenant mix
- ☐ Attachment—Details of tenant association

Date:

Signature:

Name:

Address:

THE COMMON SEAL of the **MINISTER FOR EDUCATION** was hereunto affixed to this Agreement by a person duly authorised in that regard:)



.....

Authorised Officer

APPENDIX A: MONETARY OBLIGATIONS UNDER LEASE

PART 1 - RENT

1—Base rent

The base rent payable for the shop is or is calculated as follows:

$1.10 (inclusive of GST) upon demand.

2—Basis on which base rent may be changed

The base rent may be changed on the following basis:

Not applicable.

3—Other rent

The following rent calculated on the following basis is also payable under the tenancy agreement:

Not applicable.

PART 2 - CAPITAL EXPENDITURE

[tick the appropriate box or boxes and include relevant attachments as required]

The lessee will be liable for capital expenditures as follows:

- ☑ to pay or reimburse the cost of making good damage to the premises arising when the lessee is in possession or entitled to possession of the premises;
- ☑ to fit or refit the shop as set out in the attachment marked "Shop fitting or refitting obligations" - see clause 11
- ☐ to provide fixtures, plant or equipment as set out in the attachment marked "Fixtures, plant or equipment obligations";
- ☐ to contribute to a sinking fund to cover major items of repair or maintenance as set out in the attachment marked "Sinking fund obligations"

PART 3 - OUTGOINGS

1. The Tenant will be liable to pay or reimburse the following categories of outgoings:

Category of outgoings	**Estimate of Tenant's annual liability**
local government rates and charges	$ To be Advised
electricity	$ To be Advised
gas and oil	$ To be Advised
water and sewerage rates and charges	$ To be Advised
sewerage disposal and sullage	Not Applicable
energy management systems	Not Applicable
air conditioning/ventilation	Not Applicable
building intelligence and emergency systems	Not Applicable
fire protection	$ To be Advised
security	$ To be Advised
lifts and escalators	Not Applicable
public address/music	Not Applicable
signs	Not Applicable
public telephones	$ To be Advised
Insurance Public liability and Tenant's own equipment	$To be Advised
pest control	Not Applicable
uniforms	Not Applicable
car parking	Not Applicable
child minding	Not Applicable
gardening	$To be Advised
cleaning	$To be Advised
audit fees	Not Applicable
management costs	Not Applicable
maintenance and repairs	$ To be Advised
other *[specify]*	$ per year $ per year
Total	$ per year

2. [*tick one box and fill in details if required*]

☑ The Tenant is liable for the full amount of the outgoings.

☐ The Tenant is liable for a proportion of the outgoings calculated according to the following formula:

3. *[tick one box and fill in details if required]*

☑ The amount the Tenant is required to pay towards outgoings does not include a margin of profit for the Minister.

☐ The amount the Tenant is required to pay towards outgoings includes a margin of profit for the Minister as follows:

PART 4 - OTHER MONETARY OBLIGATIONS

[tick one box and fill in details if required]

☐ The Tenant will not be liable for any other kinds of monetary obligations.

☑ The Tenant will also be liable for the following kinds of monetary obligations:

telephone costs,

costs if the Tenant assigns the tenancy agreement,

costs of repairs and maintenance,

costs of compliance with statutory notices,

costs of making good prior to leaving the Premises,

costs of removing fixtures prior to leaving the Premises if the Tenant decides to remove such fixtures (see clause 12),

costs of public liability insurance,

costs incurred by the Minister in relation to expenses charged by architects or engineers,

costs of enforcing the tenancy agreement,

costs of compliance with fire related regulations.

ANNEXURE C

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

***Retail and Commercial Leases Act 1995*: Section 18**

***Retail and Commercial Leases Regulations 1995*: Regulation 6**

THE MINISTER DOES NOT WARRANT THAT THE PREMISES THAT YOU ARE ABOUT TO LEASE WILL FOR THE DURATION OF YOUR TENANCY AGREEMENT BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS THAT YOU INTEND TO CARRY ON.

ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURE STATEMENT

I received a disclosure statement under section 12 of the *Retail and Commercial Leases Act 1995*

on X..... *[date]*

from the Minister for Education relating to the whole of the land comprised and described in Certificates of Title Volume 5812 Folio 951 and Volume 5812 Folio 947.

Date:.....

Tenant:

Australian Unitarian Druze Community Incorporated of 34a Hambledon Road Campbelltown SA 5074

X..... ..... *[signature]*

X..... ..... *[signature]*

Certificate of Title

Title Reference	CT 5812/947
Status	CURRENT
Easement	NO
Owner Number	90004450
Address for Notices	ADELAIDE, SA 5000
Area	1140M² (APPROXIMATE)

Estate Type

Fee Simple

Registered Proprietor

MINISTER FOR EDUCATION AND CHILDREN'S SERVICES
OF ADELAIDE SA 5000

Description of Land

ALLOTMENT 15 FILED PLAN 133566
IN THE AREA NAMED CAMPBELLTOWN
HUNDRED OF ADELAIDE

Last Sale Details

There are no sales details recorded for this property

Constraints

Encumbrances

NIL

Stoppers

Dealing Type	Dealing Number	Beneficiary
CAVEAT	11811835	THE CORPORATION OF THE CITY OF CAMPBELLTOWN

Valuation Numbers

Valuation Number	Status	Property Location Address
1713764056	CURRENT	Lot 15 HAMBLEDON ROAD, CAMPBELLTOWN, SA 5074

Notations

Dealings Affecting Title

NIL

Notations on Plan

NIL

Copyright: www.landservices.com.au/copyright | Privacy: www.landservices.com.au/privacy | Terms of Use: www.landservices.com.au/sailis-terms-of-use

Registrar-General's Notes

NIL

Administrative Interests

NIL

Valuation Record

Valuation Number	1713764056
Type	Site & Capital Value
Date of Valuation	01/01/2019
Status	CURRENT
Operative From	01/07/1968
Property Location	Lot 15 HAMBLEDON ROAD, CAMPBELLTOWN, SA 5074
Local Government	CAMPBELLTOWN
Owner Names	MINISTER FOR EDUCATION AND CHILDREN'S SERVICES
Owner Number	90004450
Address for Notices	ADELAIDE, SA 5000
Zone / Policy / Precinct	R - Residential\3 - Regeneration\
Water Available	Yes
Sewer Available	Yes
Land Use	5210 - Kindergarten And Child Minding Services
Description	KINDN
Local Government Description	Other

Parcels

Plan/Parcel	Title Reference(s)
F133567 ALLOTMENT 16	CT 5812/951
F133566 ALLOTMENT 15	CT 5812/947

Values

Financial Year	Site Value	Capital Value	Notional Site Value	Notional Capital Value	Notional Type
Current	$840,000	$840,000			
Previous	$810,000	$820,000			

Building Details

Valuation Number	1713764056
Building Style	Not Available

Copyright: www.landservices.com.au/copyright | Privacy: www.landservices.com.au/privacy | Terms of Use: www.landservices.com.au/sailis-terms-of-use

Year Built	Not Available
Building Condition	Not Available
Wall Construction	Not Available
Roof Construction	Not Available
Equivalent Main Area	Not Available
Number of Main Rooms	Not Available

Copyright: www.landservices.com.au/copyright | Privacy: www.landservices.com.au/privacy | Terms of Use: www.landservices.com.au/sailis-terms-of-use

Certificate of Title

Title Reference	CT 5812/951
Status	CURRENT
Easement	NO
Owner Number	90004450
Address for Notices	ADELAIDE, SA 5000
Area	380M² (APPROXIMATE)

Estate Type

Fee Simple

Registered Proprietor

MINISTER FOR EDUCATION AND CHILDREN'S SERVICES
OF ADELAIDE SA 5000

Description of Land

ALLOTMENT 16 FILED PLAN 133567
IN THE AREA NAMED CAMPBELLTOWN
HUNDRED OF ADELAIDE

Last Sale Details

There are no sales details recorded for this property

Constraints

Encumbrances

NIL

Stoppers

NIL

Valuation Numbers

Valuation Number	Status	Property Location Address
1713764056	CURRENT	Lot 15 HAMBLEDON ROAD, CAMPBELLTOWN, SA 5074

Notations

Dealings Affecting Title

NIL

Notations on Plan

NIL

Registrar-General's Notes

NIL

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Administrative Interests

NIL

Valuation Record

Valuation Number	1713764056
Type	Site & Capital Value
Date of Valuation	01/01/2019
Status	CURRENT
Operative From	01/07/1968
Property Location	Lot 15 HAMBLEDON ROAD, CAMPBELLTOWN, SA 5074
Local Government	CAMPBELLTOWN
Owner Names	MINISTER FOR EDUCATION AND CHILDREN'S SERVICES
Owner Number	90004450
Address for Notices	ADELAIDE, SA 5000
Zone / Policy / Precinct	R - Residential\3 - Regeneration\
Water Available	Yes
Sewer Available	Yes
Land Use	5210 - Kindergarten And Child Minding Services
Description	KINDN
Local Government Description	Other

Parcels

Plan/Parcel	Title Reference(s)
F133567 ALLOTMENT 16	CT 5812/951
F133566 ALLOTMENT 15	CT 5812/947

Values

Financial Year	Site Value	Capital Value	Notional Site Value	Notional Capital Value	Notional Type
Current	$840,000	$840,000			
Previous	$810,000	$820,000			

Building Details

Valuation Number	1713764056
Building Style	Not Available
Year Built	Not Available
Building Condition	Not Available

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Wall Construction	Not Available
Roof Construction	Not Available
Equivalent Main Area	Not Available
Number of Main Rooms	Not Available

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COPY

11.3 Hambledon Road, Campbelltown Kindergarten

TRIM Reference: B165 Property Officer, Mario Scalzi's Report

Purpose of Report

To advise Council of the proposed sale of the former Hambledon Road, Campbelltown Kindergarten by the LMC (Land Management Corporation) on behalf of DECS (the Department of Education and Children's Services) and Council's interest in the land.

Strategic Plan Link

Strategy 2.5.6 Provide timely and relevant financial information to help make informed decisions

Background

The Hambledon Road, Campbelltown Kindergarten has provided the community children services and early education since its opening in the 1960s.

The land was previously owned by Council which by way of resolution in 1960 was transferred to the Kindergarten Union of SA for a monetary consideration of 5 pounds with a condition placed on the transfer, that the land be used only for the purpose of a kindergarten and should the land be disposed of it shall first be offered to the Council.

The transfer subsequently proceeded and the property has been used for children and early education services until recently when the kindergarten was closed.

After being advised of the closure and potential sale of the property, Council formally advised the LMC of its interest in the land and provided the LMC with extracts of Council minutes and transfer documents and sought the LMC's position on the matter.

Discussion

On 8 July 1960, Council resolved to transfer one portion of allotment 103 facing Hambledon Road to the Mothers and Babies Health Association, and the balance of the allotment facing Braemore Terrace to the Kindergarten Union of SA Inc and resolved:

- that in each case a monetary consideration of 5 pounds was required
- that it be a condition of transfer that the transferor and transferee were to bear in equal parts the cost of subdivision, the cost of new titles and legal costs
- that in the case of the Kindergarten Union, that the Union was to use the land only for the purposes of the Union
- if the Union decided to dispose of the land, the land was first to be offered to the Council at the said nominal consideration of 5 pounds.

By Memorandum of Transfer no 2363576 dated 22 June 1962 the Council transferred the balance of allotment 103 (remaining after the transfer of part of the allotment to the Mothers and Babies Health Association) to the Kindergarten Union of SA Inc in consideration of the sum of 5 pounds and in pursuance of the Council's desire to vest in the Union the ownership of the relevant land.

To date and after considerable resources allotted to researching Council records of correspondence between Council and the Kindergarten Union of any contract of sale, no such records have been located and legal advice received is based on the assumption that conditions attached to the transfer to the Kindergarten Union referred to in Council's resolution were incorporated in an agreement reached with the Kindergarten Union in 1960.

With the Kindergarten Union of SA Inc Act being repealed by the Children's Services Act in 1985 all properties and rights and liabilities vested to the Kindergarten Union of SA are now the responsibility of the Minister for Education and Children's Services, however the Minister is still subject to any liability or obligation that may have been incurred by the Kindergarten Union of SA as a result of conditions attached to the transfer of the land to it in the early 1960s.

Council's legal advice which has considered the matter in detail has summarised all legal matters and implications. While it could be argued that Council has a legitimate claim to the land on its sale, Council's resolution contemplated a condition under which the Council was to have an option or 'right of first refusal' to purchase the land for 5 pounds if the Union decided to dispose of the land.

Indications are that the Council has a respectable case that it has a legally enforceable contractual right against the Minister of 'first refusal' to purchase the land. If Council does have and exercises a right of first refusal to purchase the land at $10.00, it might be another issue whether it would be free to use or dispose of the land as it sees fit or whether it would hold the land on trust for use as a kindergarten or for a similar purpose subject to Local Government Act 1999 requirements for Community Land.

Without solid evidence of any formal agreement in correspondence being located it has been argued by DECS and the LMC and validated by their advice received from the Crown Solicitors Office that notwithstanding the Council resolution, there is no legal impediment that prevents DECS from selling the land through the LMC.

From this advice Council's Chief Executive Officer and Property Officer sought an urgent meeting with DECS representatives at which it was mutually agreed that the sale process would be placed on hold while Council received legal advice.

Legal advice provided to Council and summarised above suggests that Council may, regardless of the lack of documented proof of an agreement between the parties have a claim to the land, legal action may involve the lodging of a caveat claiming Council has an equitable interest in the land.

It seems that without legal proceedings being instigated by Council against the sale of the land there is little or no restriction in ceasing the sale of the property by the LMC and any such legal proceeding may determine that Council has no claim to the land.

From this perspective and considering all matters involved in this case it may be best for Council to try to negotiate an agreement with DECS and the LMC in regards to its interest in the land without the need for legal action being considered by all organisations

Social Implications

A negotiated settlement to the sale of the land and proceeds from any sale will reduce any potential conflict between Council and State Government departments and agencies and will provide the Community with a sense of compensation and fairness in respect of Council's goodwill in providing the Community with land for the purposes of children education.

Environmental Implications

The proposal will have no impact on the environment.

Asset Management Implications

A sale of the property and potential for compensation will provide Council and the Community with a cash injection from the sale proceeds and will remove the need for any ongoing maintenance and holding costs associated with the land should it be returned to Council care and control.

Governance / Risk Management

The proposal has no impact on Council's governance or risk management position.

Community Engagement

No community engagement has been conducted due to DECS being the owner of the land and the LMC as the agent advising of its intention to sell the property and believing it is their right to do so.

Financial Implications

Any compensation received will be treated as general operating income, and would improve Council's operating result. Until further information is provided, it is uncertain what the dollar value is likely to be.

Recommendation

That Council advise the Department of Education and Children's Services and the Land Management Corporation that Council:

1. **maintains its position that it has a legitimate interest in the land known as the Campbelltown Kindergarten located on Hambledon Road and that the Mayor and Chief Executive Officer seek an urgent meeting with the Minister of Education to discuss this matter.**

2. resolves that should the land be sold, a negotiated and appropriate compensation from the sale proceeds be offered to Council by the Department of Education and Children's Services to acknowledge Council's and the Community's interest in providing the land to the Kindergarten Union of SA Inc for education and children services in the Campbelltown area.

3. reserves the right to instigate legal action should a suitable resolution not be reached between Council and the Department of Education and Children's Services.

- The term 'damage' used in PDC 2(c) be amended to read 'significant damage'

- Mapping or policy be included to define the designated area in accordance with section 50B (3) of the *Development (Regulated Trees) Amendment Act 2009* in relation to the Urban Trees Fund as being city wide to negate the requirement for further changes once approval for an Urban Trees Fund has been approved by the Minister under section 50B(1)

and that Council is committed to the protection of significant and regulated trees in public and private open spaces within the Council area and that staff also forward a copy of these comments directly to the Department of Planning and Local Government and that a CEO's Briefing Session be held early in the new year to provide Elected Members with further information regarding the new legislation.

Carried

11.2 Animal Management Plan 2011-2016

TRIM Reference: B1454 & B127

Cr Amber moved and Cr Ryan seconded that Council endorse the revised draft Animal Management Plan 2011 – 2016 and forward it to the Dog and Cat Management Board for approval.

Carried

11.3 Hambledon Road, Campbelltown Kindergarten

TRIM Reference: B165

Cr Leombruno moved and Cr Whittaker seconded that Council advise the DECD (Department for Education and Child Development) and the Land Management Corporation that Council:

1. maintains its position that it has a legitimate interest in the land known as the Campbelltown Kindergarten located on Hambledon Road and that the Mayor and Chief Executive Officer seek an urgent meeting with the Minister of Education to discuss this matter;

2. resolves that should the land be sold, a negotiated and appropriate compensation from the sale proceeds be offered to Council by the DECD to acknowledge Council's and the Community's interest in providing the land to the Kindergarten Union of SA Inc for education and children services in the Campbelltown area;

3. reserves the right to instigate legal action should a suitable resolution not be reached between Council and the DECD.

An **Amendment** was moved by Cr Amber and seconded by Cr Grigg that Council advise the DECD (Department for Education and Child Development) and the Land Management Corporation that Council:

1. maintains its position that it has a legitimate interest in the land known as the Campbelltown Kindergarten located on Hambledon Road and considers the stand taken by DECD to be immoral and that the Mayor and Chief Executive Officer will seek an urgent meeting with the Minister of Education to discuss this matter, and

2. that Council further resolves that:

   - should the land be sold, a negotiated and appropriate compensation from the sale proceeds be offered to Council by the DECD to acknowledge Council's and the Community's interest in providing the land to the Kindergarten Union of SA Inc for education and children services in the Campbelltown area

   - it reserves the right to instigate legal action should a suitable resolution not be reached between Council and the DECD.

The **Amendment** on being put was *Carried* and then became the **Motion** which on being put was *Carried*

With the leave of the Council the meeting was extended to 11.30 pm.

11.4 Drainage Options for Magill Senior Citizens' Centre

TRIM Reference: B131

Dealt with earlier in the meeting.

11.5 Meals on Wheels Lease Agreement

TRIM Reference: B408

Dealt with earlier in the meeting.

11.6 Chief Executive Officer's Performance Appraisal

TRIM Reference: E38

Cr Grigg moved and Cr Leombruno seconded:

1. that Council receive this report and the Chief Executive Officer's Appraisal document prepared by AME Recruitment;

Document Set ID: 1203288
Version: 1 Version Date: 15/12/2011

CAMPBELLTOWN
CITY COUNCIL

Confidential Item

Confidential Item

For Council meeting to be held on

Tuesday 21 August 2012 at 7.30 pm

Refer Item 11.6

Document Set ID: 1424802
Version: 1, Version Date: 16/08/2012

Confidential Item

11.6 Hambledon Road, Campbelltown Kindergarten

TRIM Reference: B165 Property Officer, Mario Scalzi's Report

Purpose of Report

To consider legal advice received in regards to Council decision to authorise the Chief Executive Officer to seek to lodge a caveat over the former Campbelltown Kindergarten site on Hambledon Road.

Strategic Plan Link

Strategy 2.5.6 Provide timely and relevant financial information to help make informed decisions

Background

At Council's 7 August 2012 meeting the following resolution was passed:

'1. Council write to the Premier of South Australia and the Minister for Education and Child Development maintaining its previous position that should the land no longer be used for education purposes, that it should be provided back to the Council for the equivalent of 5 pounds in accordance with Council's decision on 8 July 1960

2. there is no doubt that the land was provided to the Mothers and Babies Health Association and the Kindergarten Union of South Australia for the sum of 5 pounds and our legal advice is that Council has a fair and just claim to have the land returned

3. the Council would be prepared to pay all reasonable fees and charges to have the land returned to Council, and

4. Council authorise the Chief Executive Officer to seek to lodge a caveat over the property declaring Council's interest in this property as soon as possible.'

Discussion

Council's Chief Executive Officer has written to the Premier of South Australia and the Minister for Education and Child Development maintaining Council's position and legal advice has been sought and received from Andrew Hall, Special Counsel from Norman Waterhouse Lawyers (see attached).

The advice received provides Council with the process to be undertaken to lodge a caveat on the property and also provides further advice on other options depending on what outcome Council is trying to achieve.

Document Set ID: 1424802
Version: 1, Version Date: 16/08/2012

Should Council be of the opinion that it is within its rights to have the property transferred to it for the sum originally confirmed then the lodging of a caveat seems to be the appropriate course of action to be taken.

However should Council be of the opinion that it should receive the proceeds from the sale of the land it would not lose any of its contractural rights by not lodging a caveat, it would only risk losing, at most, its equitable right for the order by the Court that the State Government transfer the land to it for a consideration of $10 in accordance with the 1960 agreement with the Kiindergarten Union.

From the detailed advice provided it is clear that whichever process Council decides to take does come with a number of risks and a potential for Council to incur significant costs should the process fail to achieve the desired outcome.

With either process, as with all legal processes, contains certain risks associated with the proceedings and the advice provided while being prepared to proceed with the lodgement of a caveat over the land on Council's behalf , suggests that legal action by the State Government would be inevitable. The potential action by the State may result in the desired outcome for Council not being realised and incur significant costs.

It would seem that the State Government, by way of its advice to Council to date on this matter, would be prepared to have the matter settled through legal proceedings. Therefore Council would need to be prepared to fund this process should it be willing to continue exploring the possibility of having the land refunded to its rightful owner.

Therefore it is important for Council to consider whether it is seeking to have the land transferred back to Council for a sum equivalent to 5 pounds or whether it simply wants the money from the proceeds of the sale of the land. This decision is critical in determining which course of legal action to follow. It should be noted that whichever course of action is chosen does come with potential risks that could lead to financial cost to Council.

Social Implications

A negotiated compensation, whilst unlikely to be offered from any proceeds from the sale of the property, will reduce any potential conflict between Council and State Government. In addition it would provide the Community with a sense of compensation and fairness in respect of Council's goodwill in providing the land for the purposes of children education many years ago. There is no doubt that there is general support from the local Community for Council to seek what is morally right.

Environmental Implications

The sale of the property will have no impact on the environment.

Asset Management Implications

The proceeds of a sale of the property to Council would provide Council and the Community with a cash injection from the sale proceeds, however retention of the property if successfully obtained will require ongoing maintenance and holding costs associated with the property which will need to be factored into future Budget considerations.

Governance / Risk Management

The proposal has no impact on Council's governance or risk management position.

Community Engagement

No community engagement has been conducted due to the Department of Education and Childhood Development being the owner of the land and the URA as the selling agent, advising of its intention to sell the property and believing it is their right to do so.

Financial Implications

Any funds received will be treated as general operating income, and would improve Council's operating result.

Recommendation

Refer to Council

Response from Andrew Hall, Special Counsel - received 13 August 2012

'I confirm that as previously advised, there are a number of risks associated with any attempt to lodge a caveat protecting the Council's 'interest' in the former kindergarten land.

In order to be accepted for lodgement, a caveat must disclose a claim for an 'interest' in land; i.e. some proprietary right in the land and not merely a contractual right that affects the land.

As a general rule a purchaser of land under a contract of sale has a equitable right in the land itself, as well as contractual rights under the contract. Accordingly, a purchaser of land under a 'normal' contract for sale and purchase has an interest that would 'support' a caveat.

An agreement by the Kindergarten Union to offer the land to the Council for 5 pounds should it dispose of the land could arguably be in the nature of an option agreement and hence a conditional contract of sale that would confer on the Council an equitable interest in the land, but this is not entirely clear-cut.

There is also the complication arising from the fact that some of the land was formerly land transferred to the MBHA under a similar 'condition' which the Council did not take up (presumably because the land was to be used for kindergarten purposes). While I consider that this would not necessarily be fatal to the Council's case, it does have the potential to complicate matters in a way that would be unlikely to be beneficial to the Council.

I do not consider it correct to say that there is no evidence of an arrangement between the Council and the Kindergarten Union in terms of the relevant Council resolution. The minutes recording the resolution should be admissible in any Court proceedings and it could be inferred that in the normal course of events, the arrangements with the Kindergarten Union would have been undertaken in accordance with the resolution. Furthermore, the transfer of the land to the Union (the acceptance of which was executed by the Union) was consistent with the resolution in relation to the monetary consideration, although it did not refer to the other 'conditions' under the resolution. Whether or not the evidence would be considered by a Court to prove the Council's case, on the balance of probabilities is far from clear.

The greater difficulty in the way of the Council enforcing its right to be offered the land for $10 is that there is no written acknowledgement of this agreement from the Kindergarten Union (or any statutory successor to the rights and liabilities of the Union) that has so far come to light. As I have mentioned, in order to support a caveat, the Council must claim that its rights under the arrangement have conferred upon it an interest in the land. Under section 26 of the Law of Property Act 1936, no legal action can be brought upon any contract for the sale or other disposition of an interest in land unless the relevant agreement, or some memorandum or note of the agreement, signed by the other party or some person authorised by the other party is in writing. The need to satisfy section 26 of the Law of Property Act is more a matter of form rather than proof (i.e. evidence).

Document Set ID: 1424802
Version: 1, Version Date: 16/08/2012

Given that the Government has so far taken a hard line on its asserted right to sell the land on the open market without regard to the arrangements evident in the Council minutes, it is likely that it would rely on section 26 (as well as the claim of no or insufficient evidence) as a defence against the Council's claim.

I have discussed these issues because, although it would be possible, in my view, to lodge a caveat over the land asserting that the Council has an interest in the land as a result of an agreement with the Kindergarten Union and prohibiting any dealing by the Minister unless the dealing is subject to that interest, the lodging of such a caveat would expose the Council to risk of incurring substantial expense and potential liability.

Once a caveat has been lodged, the caveatee (in this case, the Minister) may, under Section 191(e) of the Real Property Act apply to the Registrar-General for the removal of the caveat. In view of the attitude of the relevant Government officers and Ministers in this case, it would be very likely (if not inevitable) that they would take the relatively simple step in this case.

Once an application is made to the Registrar –General for the removal of a caveat, the Registrar-General must give 21 days' notice to the caveator (i.e. the Council) requiring it to withdraw the caveat.

If the caveat is not withdrawn at the end of the 21 day period (or within any extended time as may be ordered by the Supreme Court, the Registrar-General must remove the caveat.

Therefore, if the lodging of a caveat is to have any more consequences than merely delaying settlement on the sale of the land for a maximum of 21 days, the Council would need to go apply to the Court for the caveat to be extended pending the outcome of litigation over the Council's claim. To be successful in any such application, the Council would need to demonstrate that it has at least an arguable case. In my view, this would be difficult in view of Section 26 of the Law of Property Act.

Even if it were to be successful in its application to extend the caveat, the Council would be by no means guaranteed of ultimate success in the proceedings. If it is ultimately unsuccessful, the Council would almost inevitably be ordered to pay the Governments legal costs of the entire proceedings (on a party and party basis) as well, of course, as having to bear its own legal costs. Of course, if an application to extend the caveat is unsuccessful, the Council would have to pay its own legal costs, and, almost inevitably the Government's costs.

In short, the Council, by lodging a caveat can be made within a relatively short period either to 'put up or shut up'. If the Council chooses to 'shut up', the lodging of the caveat would have been a relatively meaningless gesture, if it 'puts up', this would entail all the expenses and risks associated with litigation.

Apart from that, even if there is no application to the Court for an extension of the caveat, any caveator who has lodged a caveat or has refused or neglected to withdraw any caveat 'wrongly and without reasonable cause' is liable, under Section 191(j) of the Real Property Act, to pay compensation to any person who incurs a loss as a result.

ID: 1424802
sion Date: 16/08/2012

Hence, the Council could potentially be exposed to a claim for compensation from the Government for any costs or losses the Government may claim to have incurred as a result of the lodging of the caveat.

If you have any queries about any of the matters discussed in this email, please feel free to contact me.'

Further to the above advice, the following questions were raised to provide Council with clear advice on the caveat application process:

1. Should Council decide at its 21 August 2012 meeting to proceed with lodging a caveat, how soon can this be done

2. What costs are associated with lodgement of a caveat.

3. While im sure you cannot provide a definitive answer to this next question your advice is still appreciated. Should Council face legal action on removing the caveat by State Government and indeed proceed with a legal case in this matter and be found to not have a case, what sort of sum could Council be up for in costs associated with the case.

Response from Andrew Hall, Special Counsel - received 14 August 2012

'Before dealing with your specific questions, I think I should expand and clarify the advice given in my earlier advice.

1. The District Court (as well as the Supreme Court) has jurisdiction to hear applications relating to caveats - this should reduce costs - but not by very much!

2. In order to secure an order for the extension of a caveat, the Court must be satisfied not only that the Council has a reasonable case, but also that it would be appropriate to extend the caveat having regard to the 'balance of convenience'. In this case, I assume that the Council is not wishing to secure the land as such (i.e., because the Council wants to acquire it for a particular public purpose - but rather wants to recover the current market value of the land (less the 'nominal' amount it received for the original transfer to the Kindergarten Union. I make this assumption on the basis that the Council transferred the land for a nominal consideration because it was going to be used to provide a particular facility for the area.

In that case, a Court may well conclude that the Council is not really wanting to secure the land as such, and the balance of convenience may well dictate that the Government proceed with the sale, and the Council then seek damages for the breach by the Government of the arrangement concluded in 1960 and subsequently 'triggered' by the cessation of the use of the land for kindergarten purposes. In that case, it could well refuse to extend the caveat even if the Council can establish an arguable case.

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If the Council could establish its contractual rights, the obvious starting point for the assessment of the damages or compensation recoverable from the State would be the net proceeds of sale received by the State less $10.

This raises an important point - the Council would not lose any contractual rights by not lodging a caveat - it would only risk losing (at most) its equitable right for an order by the Court that the State transfer the land to it for a consideration of $10 - i.e., an order for 'specific performance' by the State of the 1960 agreement with the Kindergarten Union.

Turning to your specific questions.

1. It is by no means unusual for caveats to be prepared and lodged at very short notice in urgent cases. I understand that the process for the sale of the land has not yet proceeded, so there is no apparent urgency in this case. In that case, the caveat could be lodged within 1- 3 days after the receipt of instructions. Care would need to be taken to draft the caveat in a way that the LTO will accept it as claiming an equitable (unregistered) interest in the land of a kind that will 'support' a caveat.

2. The costs associated with lodging a caveat are those associated with taking instructions, considering the relevant material and determining how the interest claim should be described in the caveat, drafting the caveat and completing a declaration in support of the caveat (this can be done by the caveator's solicitors or conveyancer as 'agent' of the caveator) and lodging the caveat in the LTO. If the caveat is accepted for lodgement without further queries etc, a 'ball-park' estimate of costs is $1000 - $1500 plus an LTO lodgement fee of $144.

3. As you have commented, it is extremely difficult to make an accurate estimate of the costs likely to be incurred in litigation. The Council's costs would be those associated with drafting and issuing and serving the application (including affidavit(s) in support of the application); preparing argument on the application and attending the Court on the hearing of the application. As the issues raised in any case would be legal rather than factual issues, I would not expect the hearing to be very long - say 1/2 day.

A very rough 'ball-park' figure for the Council's costs would be $7,500 to $10,000, plus Court fees for the issuing of proceedings and hearing fees totalling some 2,200.

If the Council is ordered to pay the Government's costs on a party/party basis, it would be liable to pay around 2/3 (say) of the amount of its own costs ($5,000 to $7,500).

I emphasise the these costs would only cover the hearing of an extension application, and not any ultimate hearing to finally resolve the case if an extension is granted - in that case there would be additional Court hearing fees and, of course solicitor's and counsel fees for say a 1 day hearing.

I must also point out that the 'ball park' estimates given above do not constitute an estimate for the purpose of engaging us to undertake any of the work. Subject to any comments you may wish to make, I do not consider it appropriate to expend the time (and consequently the cost to the Council) of undertaking a more considered estimate of costs at this stage.'

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Confidential Item

11.6 Hambledon Road, Campbelltown Kindergarten

TRIM Reference: B165

The time being 10.27 pm the Mayor, with the consent of the Council, invoked Regulation 21, a short-term suspension of proceedings.

With the leave of the Council the meeting was extended to 11.00 pm.

The time being 10.41 pm Cr Ryan left the meeting.

The time being 10.53 pm the Mayor declared the end of the short-term suspension of proceedings.

Cr Grigg moved and Cr Leombruno seconded that the Council following considering further legal advice reaffirms its decision to authorise the Chief Executive Officer to undertake the necessary steps to lodge a caveat over the property formally know as the Campbelltown Kindergarten on Hambledon Road, Campbelltown as the Government has resolved to no longer use the land for kindergarten purposes and it requires the land for Community use.

Carried Unanimously

Document Set ID: 1425084
Version: 5, Version Date: 17/08/2012

11.2 Hambledon Road, Campbelltown Kindergarten

TRIM Reference: B165 Property Officer, Mario Scalzi's Report

Purpose of Report

To update and advise Council on the proposed sale of the former Hambledon Road, Campbelltown Kindergarten by the URA (Urban Renewal Authority) on behalf of the DECD (Department of Education and Child Development) and Council's interest in the land.

Strategic Plan Link

Strategy 2.5.6 Provide timely and relevant financial information to help make informed decisions

Background

Elected Members may recall a report considered at the 20 December 2011 Council meeting advising of the URA's advice to Council of its intention to sell the former Hambledon Road, Campbelltown Kindergarten on behalf of the DECD.

As previously advised the Hambledon Road, Campbelltown Kindergarten has provided the Community with children services and early education since its opening in the 1960s.

The land was previously owned by Council and by way of resolution in 1960 was transferred to the Kindergarten Union of SA for a monetary consideration of 5 pounds with a condition placed on the transfer, that the land be used only for the purpose of a kindergarten and that should the land be disposed of, it should first be offered to the Council at the said nominal consideration of 5 pounds being approximately $10.00 in current currency.

The transfer subsequently proceeded and the property has been used as a kindergarten for children and early education services until recently when the kindergarten was closed.

After being advised of the closure and potential sale of the property, Council formally advised the URA of its interest in the land and provided the URA and DECD with extracts of Council minutes and transfer documents and sought their position on the matter.

After considering information and historical records of Council's interest in the land, Council resolved at its 20 December 2011 meeting:

That it advise the DECD (Department for Education and Child Development) and the Land Management Corporation that Council:

1. maintains its position that it has a legitimate interest in the land known as the Campbelltown Kindergarten located on Hambledon Road and considers the stand taken by DECD to be immoral and that the Mayor and Chief Executive Officer will seek an urgent meeting with the Minister of Education to discuss this matter, and

2. further resolves that:

   - should the land be sold, a negotiated and appropriate compensation from the sale proceeds be offered to Council by the DECD to acknowledge Council's and the Community's interest in providing the land to the Kindergarten Union of SA Inc for education and children services in the Campbelltown area

   - it reserves the right to instigate legal action should a suitable resolution not be reached between Council and the DECD.

Discussion

Since Council's decision, the Mayor and Chief Executive Officer on 23 February 2012 held a meeting with the Minister for Education and Child Development in regards to Council's resolution in an attempt to seek a reasonable settlement to Council's request prior to proceeding with a sale of the property.

The Minister of Education and Child Development advised that she would refer the matter of Council's claims to the land to the Minister for Communities and Social Inclusion, the Hon Ian Hunter MLC to make a determination due to the land being in the Minister of Education and Child Development's Electorate.

Following a four (4) month period Staff received correspondence (attached) advising that Council did not have a legal basis for its position and that the Minister for Communities and Social Inclusion had determined that the sale of the land should proceed in accordance with the Government land disposal process set down in the Department and Cabinet Circular 114. Furthermore the correspondence confirmed that the Department for Education and Child Development will re-commence the sale process.

On receipt of this formal advice the Chief Executive Officer has corresponded once again with the Minister for Education and Child Development expressing his extreme disappointment in the conclusion that Minister Hunter had reached especially since there had not been any further dialogue with Council since the 23 February 2012 meeting and that the advice would be provided to Council for their consideration.

During this period of non advice, Council Staff undertook a further search of its records to determine if there existed any further formal agreement(s) or correspondence during the handover of the parcel of land and contacted a number of people who may have been involved in the decision at the time or were able to provide further information to assist Council's claim.

That search confirmed the existence of the previously reported resolution of Council dated 8 July 1960 which, provided a Council decision to transfer one portion of allotment 103 facing Hambledon Road to the Mothers and Babies Health Association, and the balance of the allotment facing Braemore Terrace to the Kindergarten Union of SA Inc and:

- that in each case a monetary consideration of 5 pounds was required

- that it be a condition of transfer that the transferor and transferee were to bear in equal parts the cost of subdivision, the cost of new titles and legal costs

- that in the case of the Kindergarten Union, that the Union was to use the land only for the purposes of the Union

- if the Union decided to dispose of the land, the land was first to be offered to the Council at the said nominal consideration of 5 pounds.

A further search of Council records located a previously undetected Council Minute of its then Finance Committee dated 16 October 1968 to consider a request received from the Mothers and Babies Health Association to transfer land given to the Association to the Campbelltown Kindergarten.

Council resolved that it agree to the transfer and that Council did not intend to invoke its rights to repurchase the land for 5 pounds being approximately $10.00 in current currency.

While it is not clear whether it was Council's decision to abandon the property entirely this resolution could be deemed to be a decision that Council had no further interest in the land and may be legally challenged should Council wish to proceed in its claim to the land or any type of a negotiated settlement with the sale process.

In discussing the matter with Mr Denis Morrissey and Mr Geoff Heath, Staff were unable to obtain any further information or evidence to support its position and/or legal entitlement to the land.

Council's early legal advice which considered the matter in detail summarised a legal opinion that while it could be argued that Council has a legitimate claim to the land on its sale, Council's resolution contemplated a condition under which the Council was to have an option or 'right of first refusal' to purchase the land for 5 pounds if the Union decided to dispose of the land.

Indications were that the Council had a reasonable case that it has a legally enforceable contractual right to the land however as noted by legal advice at the time and confirmed by the Minister for Communities and Social Inclusion, Mr Ian Hunter MLC, Council has not been able to substantiate a legal basis to the claim due to there being no solid evidence of any formal agreement able to be obtained and presented as evidence.

Legal advice at the time also suggests that Council may, regardless of the lack of documented proof of an agreement between the parties, have a claim to the land however with this decision made to proceed with the sale, legal action may now be the only option for a claim on the property for Council to proceed with this matter.

It seems that without legal proceedings being instigated by Council against the sale of the land there is now no ability for Council in ceasing the sale of the property by the URA and any such legal action may determine that Council has no claim to the land.

From this perspective and considering the Government's decision and subsequent resolution that has been found in Council's Minute Book it may be best for Council to resolve to remove its formal interest in the land and take no further legal action in respect to this land. However it is recommended that Council write to the Minister seeking financial compensation from the proceeds of the sale should the land not be used for education and children services and sold.

Social Implications

A negotiated compensation whilst unlikely to be offered from any proceeds from the sale of the property will reduce any potential conflict between Council and State Government departments and agencies and will provide the Community with a sense of compensation and fairness in respect of Council's goodwill in providing the Community with land for the purposes of children education many years ago.

Environmental Implications

The sale of the property will have no impact on the environment.

Asset Management Implications

A sale of the property and potential for compensation would provide Council and the Community with a cash injection from the sale proceeds and would remove the need for any ongoing maintenance and holding costs associated with the land should it have been returned to Council's care and control.

Governance / Risk Management

The proposal has no impact on Council's governance or risk management position.

Community Engagement

No community engagement has been conducted due to DECD being the owner of the land and the URA as the agent, advising of its intention to sell the property and believing it is their right to do so.

Financial Implications

Any compensation received will be treated as general operating income, and would improve Council's operating result. Unless further information supporting Council's claim is provided, it is unlikely that Council will receive any funds from the sale of this property.

Recommendation

That:

1. **Council advise the Minister for Education and Child Development that it is extremely disappointed however, acknowledges the decision made to re-commence the sale of the Campbelltown Kindergarten**

2. **Council maintains its previous position that should the land be sold, an appropriate compensation from the sale proceeds be offered to Council by the Department of Education and Child Development to acknowledge Council's and the Community's interest in providing the land to the Kindergarten Union of SA Inc for education and children services, and**

3. **the Mayor and Chief Executive Officer be authorised to negotiate a suitable compensation package from the Minister should the land be sold.**

12/31524
B268
7

Hon Grace Portolesi MP

THE CITY OF CAMPBELLTOWN
28 JUN 2012
RECEIVED

Government of South Australia

Minister for Education and Child Development
GPO Box 778
Adelaide SA 5001
Tel: (08) 8226 1205
Fax: (08) 8226 1556
ABN 60 168 401 578
ministerportolesi@sa.gov.au
www.ministers.sa.gov.au

12MECD2080

Mr Paul Di Iulio
Chief Executive Officer
City of Campbelltown
PO Box 1
CAMPBELLTOWN SA 5074

Dear Mr Di Iulio Paul

I refer to our meeting on 23 February 2012 in relation to the former Campbelltown Kindergarten site.

As the property in question is located within my electorate of Hartley, following our meeting I referred the matter to my colleague the Hon Ian Hunter MLC, Minister for Communities and Social Inclusion to make a determination on the issue.

Minister Hunter has recently advised me that after considering the background of the matter, and given that Council has not substantiated the legal basis of its position, he has determined that the sale of the land should proceed in accordance with the government land disposal process set down in the Department of Premier and Cabinet Circular 114.

In view of this advice, the Department for Education and Child Development will re-commence the sale process.

Yours sincerely

Grace Portolesi
MINISTER FOR EDUCATION AND CHILD DEVELOPMENT

15 June 2012

11.2 Hambledon Road, Campbelltown Kindergarten

TRIM Reference: B165

Cr Whittaker moved and Cr Leombruno seconded that:

1. Council write to the Premier of South Australia and the Minister for Education and Child Development maintaining its previous position that should the land no longer be used for education purposes, that it should be provided back to the Council for the equivalent of 5 pounds in accordance with Council's decision on 8 July 1960

2. Should the Government choose not to honour the initial commitment between the Council and the Kindergarten Union of South Australia, and proceeds to sell the land, that a minimum of 50% of the sale proceeds be returned to Council by the relevant State Government Agency in good faith, to acknowledge Council's and the Community's interest in providing the land to the Kindergarten Union of SA Inc for education and children services, to prevent legal proceedings being instigated, and

3. the Mayor and Chief Executive Officer be authorised to negotiate a suitable compensation package from the Minister should the land be sold.

The time being 7.58 pm Cr Nichols re-entered the meeting.

An **Amendment** was moved by Cr Amber and seconded by Cr Grigg that:

1. Council write to the Premier of South Australia and the Minister for Education and Child Development maintaining its previous position that should the land no longer be used for education purposes, that it should be provided back to the Council for the equivalent of 5 pounds in accordance with Council's decision on 8 July 1960

2. there is no doubt that the land was provided to the Mothers and Babies Health Association and the Kindergarten Union of South Australia for the sum of 5 pounds and our legal advice is that Council has a fair and just claim to have the land returned, and

3. the Council would be prepared to pay all reasonable fees and charges to have the land returned to Council.

The **Amendment** on being put was *Carried* and then became the **Motion.**

The time being 8.40 pm Cr Nichols left the meeting.

A **Further Amendment** was moved by Cr Ryan and seconded by Cr Logan that

1. Council write to the Premier of South Australia and the Minister for Education and Child Development maintaining its previous position that should the land no longer be used for education purposes, that it should be provided back to the Council for the equivalent of 5 pounds in accordance with Council's decision on 8 July 1960
2. there is no doubt that the land was provided to the Mothers and Babies Health Association and the Kindergarten Union of South Australia for the sum of 5 pounds and our legal advice is that Council has a fair and just claim to have the land returned
3. the Council would be prepared to pay all reasonable fees and charges to have the land returned to Council, and
4. Council authorise the Chief Executive Officer to seek to lodge a caveat over the property declaring Council's interest in this property as soon as possible.

The time being 8.42 pm Cr Nichols re-entered the meeting.

The **Further Amendment** on being put was *Carried* and then became the **Motion** which on being put was *Carried Unanimously*

11.3 Section 184 Process

TRIM Reference: B47

Cr Logan moved and Cr Pfitzner seconded that:

1. Council authorise the appointment of lawyers to commence the Section 184 process for the properties referred to in this report as:
   - Property 1, Magill
   - Property 3, Rostrevor
2. Staff prepare a further report for Council's consideration should it need to commence the sale process by public auction.

Carried

11.4 Fees Payable by Fitness Groups

TRIM Reference: B68

Cr Pfitzner moved and Cr Nichols seconded that in lieu of setting a commercial rate in line with Council's Facility Hire Policy for commercial users of Council's ovals, Council endorse that:

1. commercial fitness groups be charged the relevant fee for oval hire (or half the fee if only hiring half the oval) as set out in the Fees and Charges Schedule, and

Document Set ID: 1406261
Version: 2 Version Date: 02/08/2012

SOUTH AUSTRALIAN HOUSING TRUST

COMMUNICATIONS TO BE ADDRESSED TO
GENERAL MANAGER,
SOUTH AUSTRALIAN HOUSING TRUST.
BOX 632E, G.P.O., ADELAIDE

RENT AND OTHER REMITTANCES TO BE ADDRESSED TO BOX 229C, G.P.O., ADELAIDE

CELEGRAPHIC AND CABLE ADDRESS
"MAYBE" ADELAIDE

TELEPHONE LA 0211
SITE PREPARATION SECTION LU 6661

17 ANGAS STREET,
ADELAIDE, S.A.

JP/FD

27th January, 1959.

The Town Clerk,
The Corporation of the Town of Campbelltown,

Newton Road,
CAMPBELLTOWN.

(8)

Dear Sir,

Sale of Land : Campbelltown.

Reference is made to the sale of part Lot 103 Hambledon Road, Campbelltown.

Please find attached, Certificate of Title, Vol. 2639 Folio 177, which has issued in the name of your Corporation. Would you please sign and return the attached receipt.

Yours faithfully,

(J. O'GRADY)
for Brian Hastings
Property and Planning Officer

Encl:

SKIPPER, THOMAS, BONNIN & LINN
Barristers & Solicitors

[redacted]
DAVID AUSTIN GRENFELL THOMAS, LL.B.
MURRAY FREW BONNIN, B.A., LL.B.
BERYL EILEEN LINN, LL.B.

COMMISSIONERS FOR AFFIDAVITS (ALL STATES)
NOTARY PUBLIC

TEL. 8-4630 (2 LINES) AND 8-7271
TELEGRAMS AND CABLES, "ADVOCATE" ADELAIDE
G.P.O. Box 1720

EPWORTH BUILDING
33 PIRIE STREET
ADELAIDE

OUR REF. DAGT:MH

YOUR REF.

18th June 1962.

The Town Clerk,
Corporation of the City of Campbelltown,
Newton Road,
CAMPBELLTOWN.

Dear Sir,

re Kindergarten Union and
Mothers' & Babies' Health Association.

We refer to previous correspondence in this matter and now enclose the Transfer from the Corporation to the Kindergarten Union and the Transfer to the Mothers' & Babies' Health Association. For your information we enclose a copy of the subdivisional plan as approved by the Town Planner so that the two pieces of land referred to as A and B can be identified, but we would like this copy plan returned to us.

We also enclose our cheque for £10 to cover the monetary consideration in each Transfer. Would you kindly return us both Transfers after execution by the Corporation? To assist us in having the Transfers passed by the Stamp Duties Office, would you please supply us with a letter to the effect that Piece A is valued at £200 and Piece B at £400?

The name of your Corporation appearing in the Transfers agrees with its name as registered on the Certificate of Title.

Yours faithfully,

SKIPPER THOMAS BONNIN & LINN

per [redacted]

ment Set ID: 1438853
on: 1, Version Date: 24/09/2019

22nd June, 1962.

Messrs. Skipper, Thomas, Bonnin & Linn,
Epworth Building,
35 Pirie Street,
ADELAIDE.

Dear Sirs,

re Kindergarten Union and Mothers' and Babies' Health Association.

In response to yours of the 18th instant, I return herewith Memorandums of Transfers, duly signed and sealed, conveying certain pieces of land in Hambledon Road and Braemore Terrace, Campbelltown, from the Council to the above bodies.

I return the resubdivisional plan as requested.

Enc.

Yours faithfully,

TOWN CLERK.

25th June, 1962.

Messrs. Skipper, Thomas, Bonnin & Linn,
Epworth Buildings,
33 Pirie Street,
ADELAIDE.

Dear Sirs,

This is to certify that the piece of land marked "B" in Braemore Terrace, Campbelltown, in Town Planning Docket No. 2102, 61 is valued by this Corporation at £400.

Yours faithfully,

[redacted]

TOWN CLERK.

25th June, 1962.

Messrs. Skipper, Thomas, Bonnin & Linn,
Epworth Buildings,
33 Pirie Street,
ADELAIDE.

Dear Sirs,

This is to certify that the piece of land marked "A" in Hambledon Road, Campbelltown, in Town Planning Docket No.2102/61 is valued by this Corporation at £200.

Yours faithfully,

TOWN CLERK.

26th June, 1962.

Messrs. Skipper, Thomas, Bonnin & Linn,
Epworth Building,
33 Pirie Street,
ADELAIDE, S.A.

Dear Sirs,

In response to your telephone communication today, I enclose herewith our Title for land being transferred to the Mothers and Babies Health Association and the Kindergarten Union, Register Book Vol. 2639 folio 177.

Your acknowledgment in due course would be appreciated.

Yours faithfully,

TOWN CLERK.

14th December, 1961

Messrs. Skipper, Thomas, Bonnin & Linn,
Epworth Building,
33 Pirie Street,
ADELAIDE, S.A.

Dear Sirs,

re Kindergarten Union and
Mothers' and Babies' Health Association

In response to yours of the 14th ult., I am to advise that this matter received the consideration of my Council at its meeting held on the 11th December, 1961.

I was directed to advise you that the Council would have no objection to a proviso that each body shall retain all improvements contained on their respective properties should at any time the relevant land revert to the Council.

Yours faithfully,

TOWN CLERK

SKIPPER, THOMAS, BONNIN & LINN
Barristers & Solicitors

STANLEY HERBERT SKIPPER, LL.B.
DAVID AUSTIN GRENFELL THOMAS, LL.B.
MURRAY FREW BONNIN, B.A., LL.B.
BERYL EILEEN LINN, LL.B.

COMMISSIONERS FOR AFFIDAVITS (ALL STATES)
NOTARY PUBLIC

TEL. B-4638 (2 LINES) AND B-7271
TELEGRAMS AND CABLES, "ADVOCATE" ADELAIDE
G.P.O. Box 179C

OUR REF. DAGT:NH
YOUR REF. .....

EPWORTH BUILDING
33 PIRIE STREET
ADELAIDE

6

14th November 1961.

RECEIVED
15 NOV 1961
Ans'd.....

The Town Clerk,
Corporation of the Town of Campbelltown,
Newton Road,
CAMPBELLTOWN.

Dear Sir,

re Kindergarten Union and
Mothers' and Babies' Health Association.

We have been instructed by the Kindergarten Union and the Mothers' and Babies' Health Association to act for them in the matter of transfers to be given by your Corporation of portions of Part Allotment 103. We have a copy of your letter of the 12th January last to the General Secretary of the Kindergarten Union setting out the resolution of the Council. Steps are now being taken to obtain approval to re-subdivide and Transfers will be submitted to your Corporation in due course for execution.

With regard to the condition imposed by the Corporation that if at any time either Body decides to dispose of its land this shall first be offered to the Corporation for the nominal sum of £5, we are instructed to ask if the Corporation will agree that this condition is subject to the proviso that each Body shall retain the right to remove any building or other improvements on the land without causing damage to the surface of the land. We shall be glad to hear from you in regard to this.

Yours faithfully,

SKIPPER THOMAS BONNIN & LINN

per

Re, agree to proviso as suggested

SKIPPER, THOMAS, BONNIN & LINN
Barristers & Solicitors

STANLEY HERBERT SKIPPER, LL.B.
DAVID AUSTIN BRENFELL THOMAS, LL.B.
MURRAY FREW BONNIN, B.A., LL.B.
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TELEGRAMS AND CABLES, "ADVOCATE" ADELAIDE
G.P.O. Box 179C

EPWORTH BUILDING
33 PIRIE STREET
ADELAIDE

OUR REF. DAGT:NH

YOUR REF.

24th November 1961.

RECEIVED
27 NOV 1961
Ans'd.

The Town Clerk,
Corporation of the Town of Campbelltown,
Newton Road,
CAMPBELLTOWN.

Dear Sir,

re Kindergarten Union of South Australia Inc.
and Mothers' & Babies Health Association.

We enclose the Plan of re-subdivision prepared by Messrs. Calder, Calder & Associates to provide for the transfers intended to be made to the Kindergarten Union and Mothers' & Babies Health Association. This Plan is to be signed on behalf of the Corporation as registered proprietor and we shall be glad if you will have this attended to and return the Plan to us as soon as possible.

Yours faithfully,

SKIPPER THOMAS BONNIN & LINN

per

CITY
XXXXX

28th November, 61.

Messrs. Skipper Thomas Bonnin & Linn,
Epworth Building,
33 Pirie Street,
ADELAIDE.

Dear Sirs,

re Kindergarten Union of South Australia Inc.
and Mothers' & Babies Health Association.

I am in receipt of your letter enclosing Plan of re-subdivision prepared by Messrs. Calder, Calder and Associates to provide for the transfers intended to be made to the Kindergarten Union and Mother' and Babies Health Association.

I enclose herewith Plan, duly signed, as requested.

Yours faithfully,

Enc.

TOWN CLERK.

THE KINDERGARTEN UNION OF SOUTH AUSTRALIA, Inc.

(Administering Pre-School Work in Nursery Kindergartens and Play Groups)

President:
Sir Herbert Mayo
Life Vice-President:
Mrs. H. J. Lipman, M.B.E.
Vice-Presidents:
Lady Bonython, O.B.E.
Mrs. J. S. Verco, M.B.E.
Mr. D. H. Hollidge, M.A.
Mrs. H. Gillmore
Mrs. R. K. Wood
Hon. Treasurer:
Mr. W. D. Verco
Pre-School Adviser:
Miss K. M. Mellor
Principal K.T.C.:
Miss B. Davis
General Secretary:
Miss D. Hughes

54 FLINDERS STREET
ADELAIDE
Telephone: W 2439

RECEIVED
16 DEC 1960

15th. December, 1960.

The Town Clerk,
Campbelltown City Council,
Newton Road,
Magill.

Dear Sir,

Further to our telephone conversation today, I am writing officially to ask if your Council would transfer to us on behalf of the Campbelltown Kindergarten Association that portion of land contained in lot Part 103 between Hambledon Road and Braemar Terrace, with the exception of a piece fronting Hambledon Road with frontage 100' by 40' depth which I understand is being transferred to the Mothers' and Babies' Health Association. The area for which I am making application measures approximately 100' by 100' depth, with a frontage to Braemar Terrace.

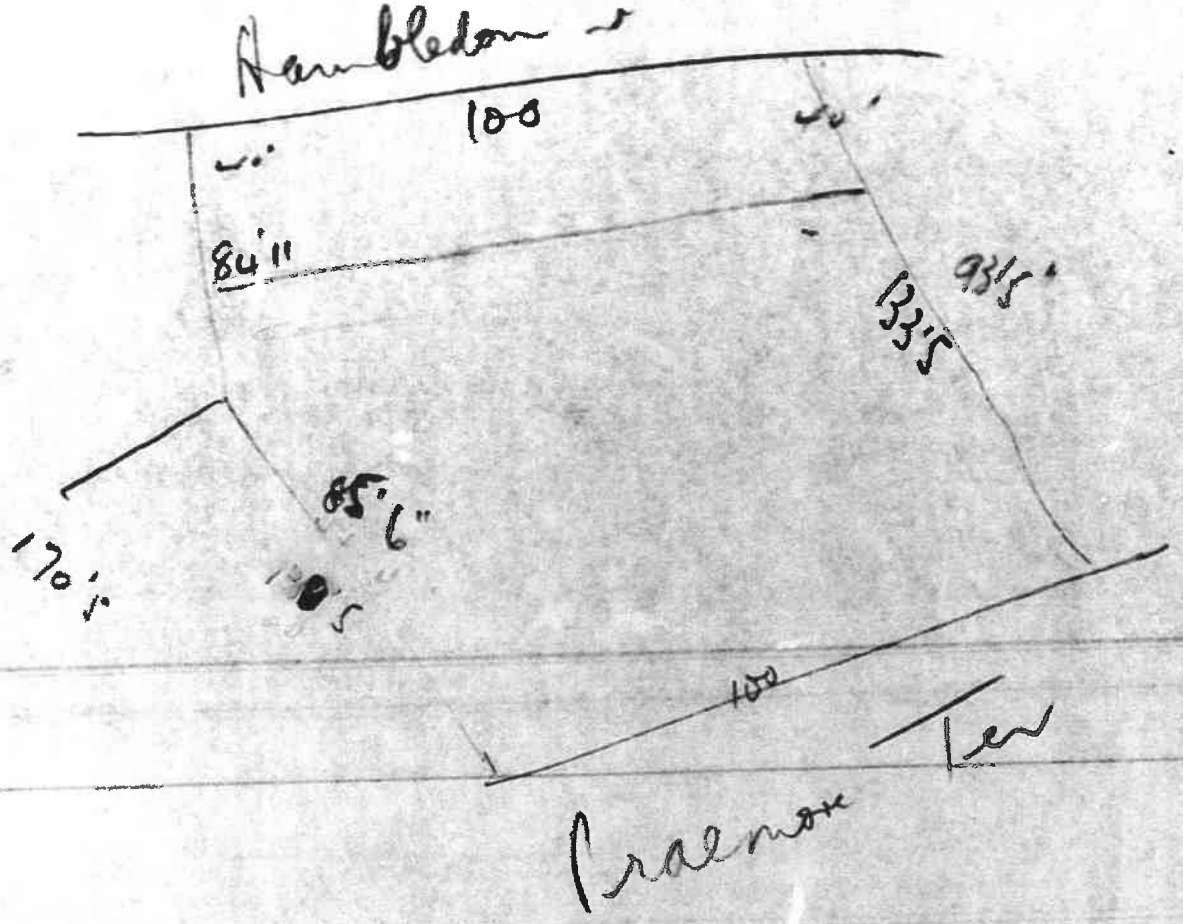
On behalf of the Campbelltown Kindergarten Association I also apply for permission to put the matter of transfer of the land in the hands of an Agent and to apply to the Town Planner for re-subdivision.

Yours faithfully,

General Secretary.

Re/ Make grant for nominal Consideration, the Union being responsible for the cost of the Transfer, the resubdivision of two new titles with the Mothers + Babies Health Assoc.

Pt Lot 103 Ref 2639/177



12th January, 61.

The General Secretary,
The Kindergarten Union of S.A.Inc.,
54 Flinders Street,
ADELAIDE.

Dear Sir,

In response to yours of the 15th ult. I am now to advise that the Council has decided and agrees to transfer to your Union portion of Allotment 103 contained in reference to Title Volume 2639 Folio 177.

The resolution of the Council reads:-

"that portion of Part Allotment 103 facing Hambledon Road with a frontage of 100' and a depth of 40' be transferred to the Mothers' & Babies' Health Assoc. and the balance of the land contained in the Title and facing Braemore Terrace transferred to the Kindergarten Union of S.A. Inc. and that in each transfer a monetary consideration of £5 be required and it shall be the condition of the transfer that the Transferees shall bear equal parts of the cost incurred in the resubdivision of the land, the cost of new Title and all legal and other costs which may arise in the said transfer, and further, the conditions of the transfer shall be that the Kindergarten Union will use the land only for its purposes and the Mothers' & Babies' Health Assoc. for its purposes and shall at any time either Body decide to dispose of the relevant land, the land shall first be offered to the Corporation for the said nominal consideration of £5.".

Subject to these conditions being acceptable to you, you are free now to arrange for the necessary procedure to be given effect to and have the land vested in your Union.

It would be appreciated if this could be done in conjunction with the Mothers' & Babies' Health Assoc. which Association I will advise in terms of the above resolutions.

Yours faithfully,

TOWN CLERK.

Document Set ID: 1438853
Version: 1, Version Date: 24/08/2012

12th January, 61.

The Secretary,
Mothers' & Babies' Health Assoc.,
200 North Terrace,
ADELAIDE.

Dear Sir/Madam,

By direction of my Council I am to advise you that at its Meeting held on the 9th inst. it was decided to transfer to your Association a piece of land in Hambledon Road, Campbelltown, being portion of Lot 103 facing Hambledon Road. The piece to be transferred to your Association has a frontage of 100' and a depth of 40', the balance of the land contained in the Title is being transferred to the Kindergarten Union of S.A. Inc. The Title reference to the land is Volume No.2659/Folio 177 and I have arranged or requested the Kindergarten Union to contact you in respect of the transfer.

The terms of the transfer shall be that both parties bear all costs in equal parts which may be incurred in the resubdivision of the land, the cost of new Titles, all legal and other costs which may arise in connection with the said transfer.

A further condition is that the parties concerned shall use the land for their specific purposes and should at any time either body decide to dispose of the relevant land it shall first be offered to the Corporation at a nominal consideration of £5, which is the consideration required in the present transaction.

Should you require any further information I would be pleased to supply you with same.

Yours faithfully,

TOWN CLERK.

Document Set ID: 1438853
Version: 1, Version Date: 24/08/2012

Mothers and Babies' Health Association

INCORPORATED

PRESIDENT: LADY SOUTHTHON

VICE-PRESIDENTS:
MRS. GEOFFREY DE COESPIGNY
MRS. F. VILLENEUVE SMITH

HON. TREASURER:
MRS. ASHLEY MAGAREY

TELEPHONES:
MEDICAL DIRECTOR, MATRON, SECRETARY } W 2595 (3 LINES)

199-200 NORTH TERRACE,
ADELAIDE
SOUTH AUSTRALIA

MR:GL

25th January, 1961.

The Town Clerk,
Campbelltown City Council,
Newton Road,
MAGILL.

2 [illegible]
Ans'd.

Dear Mr. Leaney,

I wish to acknowledge your letter of the 12th and to express the thanks of this Association for your Council's decision to transfer to the M.B.H.A. the piece of land in Hambledon Road.

This Association agrees to the conditions as set out in your letter and appreciates the Campbelltown Council's action in making it possible for us to build a Child Health Centre at Campbelltown in what we hope will be the near future.

I have spoken to Miss Hughes, the Secretary of the Kindergarten Union and we shall work together in connection with the transfer.

Yours sincerely,

SECRETARY.

THE KINDERGARTEN UNION OF SOUTH AUSTRALIA, Inc.

(Administering Pre-School Work in Nursery Kindergartens and Play Groups)

President:
Sir Herbert Mayo

Life Vice-President:
Mrs. H. J. Lipman, M.B.E.

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Mrs. J. S. Verco, M.B.E.
Mr. D. H. Hollidge, M.A.
Mrs. H. Gillmore
Mrs. R. K. Wood

Hon. Treasurer:
Mr. W. D. Verco

Pre-School Adviser:
Miss K. M. Mellor

Principal K.T.C.:
Miss B. Davis

General Secretary:
Miss D. Hughes

54 FLINDERS STREET
ADELAIDE
Telephone: W 2439

18th January, 1961.

(7)

The Town Clerk,
The Corporation of the Town of Campbelltown,
Newton Road,
CAMPBELLTOWN S.A.

Dear Sir,

Your letter of the 12th January is acknowledged and the matter of the transfer of the land for the Kindergarten will be dealt with by Miss D. Hughes, General Secretary of the Kindergarten Union, on her return from annual leave next week.

Yours faithfully,

The Kindergarten Union of S.A.Inc.,
per

Rec. Received & noted

309.

Mothers and Babies' Health Association

INCORPORATED

PRESIDENT: LADY SONYTHON

VICE-PRESIDENTS:
MRS. GEOFFREY DE CRESPIGNY
MRS. F. VILLENEUVE SMITH

HON. TREASURER:
MRS. ASHLEY MAGAREY

TELEPHONES:
MEDICAL DIRECTOR, MATRON, SECRETARY } W 2595 (3 LINES)

199-200 NORTH TERRACE,
ADELAIDE
SOUTH AUSTRALIA

MB:AT

15th December, 1959.

Mr.J. T.Leaney,
Town Clerk,
Campbelltown Corp.,
Newton Road,
MAGILL.

Dear Mr. Leaney,

I enclose a few notes regarding Campbelltown as discussed with you on the telephone on Friday. Will you send what you think is necessary to the News Review.

I was very pleased to hear from you that land had been set aside for the Kindergarten Union and this Association in Marbledon Road, and would appreciate confirmation of this in writing in due course, to put before my Committee.

With best wishes for Christmas and the New Year.

Yours sincerely,

Secretary.

309

18th December, 59.

The Editor,
News-Review Publications,
North British Building,
95 [illegible]rio Street,
ADELAIDE.

Dear Sir,

I attach hereto a news item for the next issue of the News-Review. You can state in conjunction with this news item that the Council has purchased land in Hambledon Road, Campbelltown, which it is granting to the Mothers and Babies' Health Association. This piece of land abuts a large shopping centre, and the land will be made available to the Association so soon as the Council has an assurance of the commencement of the building of a clinic.

Yours faithfully,

[redacted]

TOWN CLERK.

Document Set ID: 1438853
Version: 1, Version Date: 24/08/2012