



Adelaide Park Lands Preservation Association, Inc.

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Legislative Council

Parliament of South Australia

### **Redevelopment of Adelaide Oval**

**SUBMISSION, February 2019**

#### **About APPA**

The Adelaide Park Lands Preservation Association Inc (APPA) was founded in 1987 as a non-profit community based 'watchdog' to guard Adelaide's greatest treasure: the unique open spaces of its Park Lands, which include the city squares. APPA offers a focal point for South Australians to help in the preservation and restoration of Colonel Light's visionary gift.

Apart from current campaigns about specific issues or Park Lands sites, APPA has three ongoing *unique* activities designed to focus community attention on, and raise awareness of the rarity, beauty and world importance of the Adelaide Park Lands. These regular activities are:

- the biennial Adelaide Park Lands Art Prize;
- the Park Ambassadors Program, with guided walks through the Park Lands; and
- provision and maintenance of on-line resources to encourage the community to discover and explore the Park Lands, including:
  - self-guided walking "trail guides,
  - the Adelaide Park Lands 'photo of the day' and 'video of the month.'

Through these activities, APPA is aware of a very strong and widespread community commitment to the long term protection of the Adelaide Park Lands.

#### **Definition of Adelaide Park Lands**

The Adelaide Park Lands are defined by Part 3 of the *Adelaide Park Lands Act 2005* (APLA 2005). Under the Act, the area designated as Adelaide Park Lands is defined by a plan deposited in the General Registry Office, Adelaide (GRO 127/2006). See Fig 1. It includes the six squares, Palmer and Brougham Gardens. The area designated as Adelaide Park Lands may be changed only by resolution of both Houses of Parliament.

APLA 2005 states sites in the Park Lands "should be held for the public benefit of the people of South Australia" (not private interests).

The area included as the leased area held by the Stadium Management Authority (SMA) is part of Adelaide Park Lands. It is not owned by the Authority. The area on which the proposed hotel would be located is Park Lands, regardless of claims by SMA that the proposed hotel would not “extend” onto Park Lands.

### **Legislative Council Select Committee**

The Legislative Council has established a Select Committee to inquire into and report on a redeveloped Adelaide Oval (the Oval). APPA addresses some of the Select Committee’s terms of reference as follows:

#### **(c) The corporate governance of the Oval, including the Stadium Management Authority:-**

##### **(i)**

The *Adelaide Oval Redevelopment and Management Act 2011* (AORMA 2011) provides, at section 8:

*8—Extent of financial commitment*

*(1) If an appropriation is made for the purposes of, or in connection with, the redevelopment of Adelaide Oval envisaged by this Act, the total amount that the Minister, or any other entity acting on behalf of the State, is authorised to **make available** or expend for a designated purpose is \$535 million.*

*(2) Subsection (1) applies in relation to any amount **made available** or expended during the period commencing on 1 December 2009 and ending on 1 December 2019.*

The *Report of the Auditor-General: Report 4 of 2018 - Adelaide Oval redevelopment for the designated period 1 January 2018 to 30 June 2018* notes that.

“As at 30 June 2018, \$3.616 million of project funds remained”

Accordingly, the SMA is restricted in non-recurring expenditure to a maximum of \$3.616 million until 1 December 2019. The State Government is prohibited by section 8 from making available any more funds until that date. The reported approved \$42 million government loan guarantee is therefore *ultra vires*, and should not proceed.

##### **(ii)**

SMA is not a public authority appointed by government. It is characterised as a “public” company limited by guarantee<sup>1</sup>, but is very different to most public companies as it has no tradeable shares. The SMA board consists of eight members, four appointed by South Australian Cricket Association (SACA) and four appointed by South Australian National Football League (SANFL). There are no other board director(s). The chairman is elected from and by the board. Members are not required to have any particular skills relevant to stadium management. All directors are male, middle aged, white and Anglo-Saxon.

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<sup>1</sup>A company limited by guarantee Constitution of Adelaide Oval SMA Limited, ASIC registered, 23 Dec, 2009.

The lack of diversity amongst the board is regrettable. APPA submits that the ceding of control of Adelaide Oval to this type of company was effectively privatisation of that part of the Park Lands and should be changed so that the public asset is controlled by an Authority that includes Ministerial, Adelaide City Council (ACC) and community members.

**(f) The proposed hotel development at the Adelaide Oval, and the process by which the Government considered the proposal and approved financing the proposed hotel development;**

The *City of Adelaide Act 1998* sets up a Capital City Committee comprising three State Government Minister and three members of the City Council (by default chaired by the Premier and including the Lord Mayor). Its purpose is to “enhance and promote the development of the City of Adelaide”. It “must prepare a Capital City Development Program for consideration by the State Government and the Adelaide City Council.”

The State Government did not bring the Oval hotel project before the Capital City Committee. It did not seek to include this proposal in the Capital City Development Program.

Whatever decision-making process preceded the hotel announcement in November 2018, excluded the City Council entirely.

It is not clear whether any process of due diligence or risk management was undertaken before the Government announced that a \$42 million loan would be made available to the SMA. It is not clear whether the Auditor-General had been consulted.

**(h) The legislative, regulatory and other legal frameworks governing the operations of the Adelaide Oval, and any opportunities for improvement;**

The proposed hotel is located on Tarntanya Wama (Park 26) of the Adelaide Park Lands. Usually such a proposal on Park Lands would be reviewed under the terms of the *Adelaide Park Lands Act 2005* and the Adelaide Park Lands Management Strategy 2015-2025 pursuant to that Act. Any such proposal on another part of the Park Lands would also be evaluated against other ACC plans (e.g. a Community Land Management Plan, the ACC Sports Infrastructure Master Plan and/or the ACC Park Lands Event Management Plan). It would also need to have regard to the inclusion of the Adelaide Park Lands on the Commonwealth's National Heritage Register and to pending listing of the Park Lands as a State Heritage Area.

In some cases, proposals for development must be referred to the Liquor & Gambling Commissioner pursuant to the *Liquor Licensing Act 1997*.

Proposals for development in the Park Lands are also (usually) reviewed by the Adelaide Park Lands Authority, which includes three government and three ACC members and one community member appointed by the Minister.

However, under Section 11 of the AORMA 2011 the Adelaide Park Lands Management Strategy under the APLA 2005 does not apply to the hotel proposal within the Adelaide Oval Core leased

area. All development now and into the future within the core leased area is taken to be *complying* development under section 35 of the *Development Act 1993* and Category 1 development under section 38 of that Act. Effectively, none of the other legislation nor policy documents apply to the core leased area, and there is little that the ACC can do about that.

These provisions effectively undermine the rule of law as it would otherwise apply to the Stadium Management Authority. These provisions send a signal to the public that the Stadium Management Authority can get away with things that no other South Australian company or land tenant would be permitted to do.

The whole of the SMA 'controlled' area of Park Lands, both the core leased area and the wider licenced area should, as a matter of good governance and fiduciary integrity, now be subject to the same laws regulating development that apply to the rest of the Park Lands.

As it stands, the privately-appointed SMA board has made (and had development consent for) a proposal that obviously would clash with the provisions that apply to the rest of the Adelaide Park Lands.

It is time to amend the AORMA 2011 to return the area of the Stadium to the provisions that apply to the rest of the Park Lands.

In effect, the core area has been privatised. The quest to build a hotel on the Park Lands within the SMA's core leased area is itself a powerful argument for the need to review the governance of Adelaide Oval and the AORMA 2011.

It is time to rewrite the AORMA 2011, to remove the anomalies and bring to the Authority a more accountable, diverse and skilled board.

**(i) The impact of the Oval and its operations on the surrounding parklands and the legislative, regulatory and other legal frameworks governing further development in the parklands; and**

Adelaide Oval occupies (or utilises as car park) a high proportion of the north-of-river part of Tarntanya Wama (Park 26). Beyond the core area (AORMA 2011, Schedule 1) the Oval has had direct negative impact on Light's Vision, Stella Bowen Park, Pennington Gardens West, Creswell Gardens, and to some degree, Pinky Flat and numerous landmarks such as Victor Richardson Road and gates,.

The proposal for a hotel would further extend that negative impact, notwithstanding that the hotel is proposed to be within the core leased area.

The essential point is that **a private hotel is not consistent with a public Park**. There are many places where hotels might be built. Commercial land could be obtained in the City or North Adelaide, but not on Park Lands. A hotel on that site would forever change the peaceful character of Creswell Gardens, Pennington Gardens. and Stella Bowen Park alongside Adelaide Oval within Tarntanya Wama (Park 26) .

The stadium itself is an alienation of Park Lands. It's a private building, as the playing surface is off limits to the public. Of course, it's the playing home of multi-million dollar sports franchises,

both football and cricket. Nevertheless sport (even professional sport) is a land use typically associated with Parks, and the noise and inconvenience to other Park users are mostly restricted to game days.

A hotel would be a very different use of the land. A hotel would exist solely to make a profit, unconnected to sport. It would be a commercial enterprise 24 hours a day, 7 days a week. **It would be inconsistent with the purposes for which public Park Land was made available to the SMA.**

A hotel would effectively leech off a public Park Lands site for a private commercial purpose. Transforming a sporting arena into a hotel site is an example of corporate greed.

#### **(j) Any other related matters;**

##### **“Ancillary basis”**

Sub-section 4(4) of the AORMA 2011 provides that:

*(4) The Adelaide Oval Core Area must be used predominantly for the purposes of a sporting facility (including related uses and with recreational, entertainment, social and other uses being allowed on an ancillary or temporary basis from time to time).*

The Select Committee is urged to seek legal advice on whether the development of a hotel would be consistent with this provision.

The plain English meaning of the words in section 4(4) would suggest that a private hotel operating 24 hours a day, 7 days per week would not be “ancillary” to the purposes of a sporting facility

##### **Constitution of the SMA**

The Constitution of SMA lists the SMA's "objects" as including to "develop and promote football and cricket". There is nothing in the SMA's Constitution that would authorise building a hotel.

To emphasise this point about the SMA's lack of powers to build a hotel, what would apply if the SMA proposed to build retail shops and a supermarket, within the core area?

SMA might argue that such a proposal would be convenient for patrons. However, like a hotel, such a facility would not be ancillary nor directed at the SMA's object to "develop and promote football and cricket".

##### **Funding junior or women's sport?**

It was reported in *The Advertiser* on Thursday 31 January 2019 that the SMA needed profit from its proposed hotel in order to fund women's and junior sport in the state. This begs

the question as to how the SMA could gain sufficient profit for that, as well as cover the liability of a very expensive capital loan of \$42 million. In addition, the SMA is already required to contribute \$0.8 million in 2019 and \$1.0 million each year from 2020 (indexed to CPI), to the Sport and Recreation Fund under section 18 of the AORMA 2011) . Either SMA would be burdening itself with a double liability, or its public statements on this topic might be regarded as misleading.

### Summary

1. The proposed hotel would be on Tarntanya Wama (Park 26) and by law, the Park Lands "should be held for the public benefit of the people of South Australia" (not private interests).
2. Section 8 of the AORMA 2011 prevents the Government from making available \$42 million to the SMA for this purpose, at least until 1 December 2019
3. The corporate governance of the Adelaide Oval core leased area should be changed to reflect the wider public interest in the Oval and surrounding area
4. The exemptions granted to the SMA under the AORMA 2011 effectively undermine public confidence in the rule of law insofar as the SMA is exempt from multiple laws that apply to the rest of the community and the rest of the Park Lands
5. The decision-making process undertaken by the Government prior to announcing its \$42 million loan guarantee was at best incomplete and inadequate, failing to even consult with the landlord, the ACC.
6. **A private hotel is not consistent with a public Park.** A hotel on this site would forever change the peaceful character of Creswell Gardens, Pennington Gardens. and Stella Bowen Park alongside Adelaide Oval within Tarntanya Wama (Park 26).
7. A hotel cannot be regarded as "ancillary" to a sporting stadium and therefore is not within the purposes permitted by section 4 of the AORMA 2011.
8. The Constitution of the SMA affords no powers to build a hotel. To find otherwise would open the floodgates for many other uses, equally objectionable.

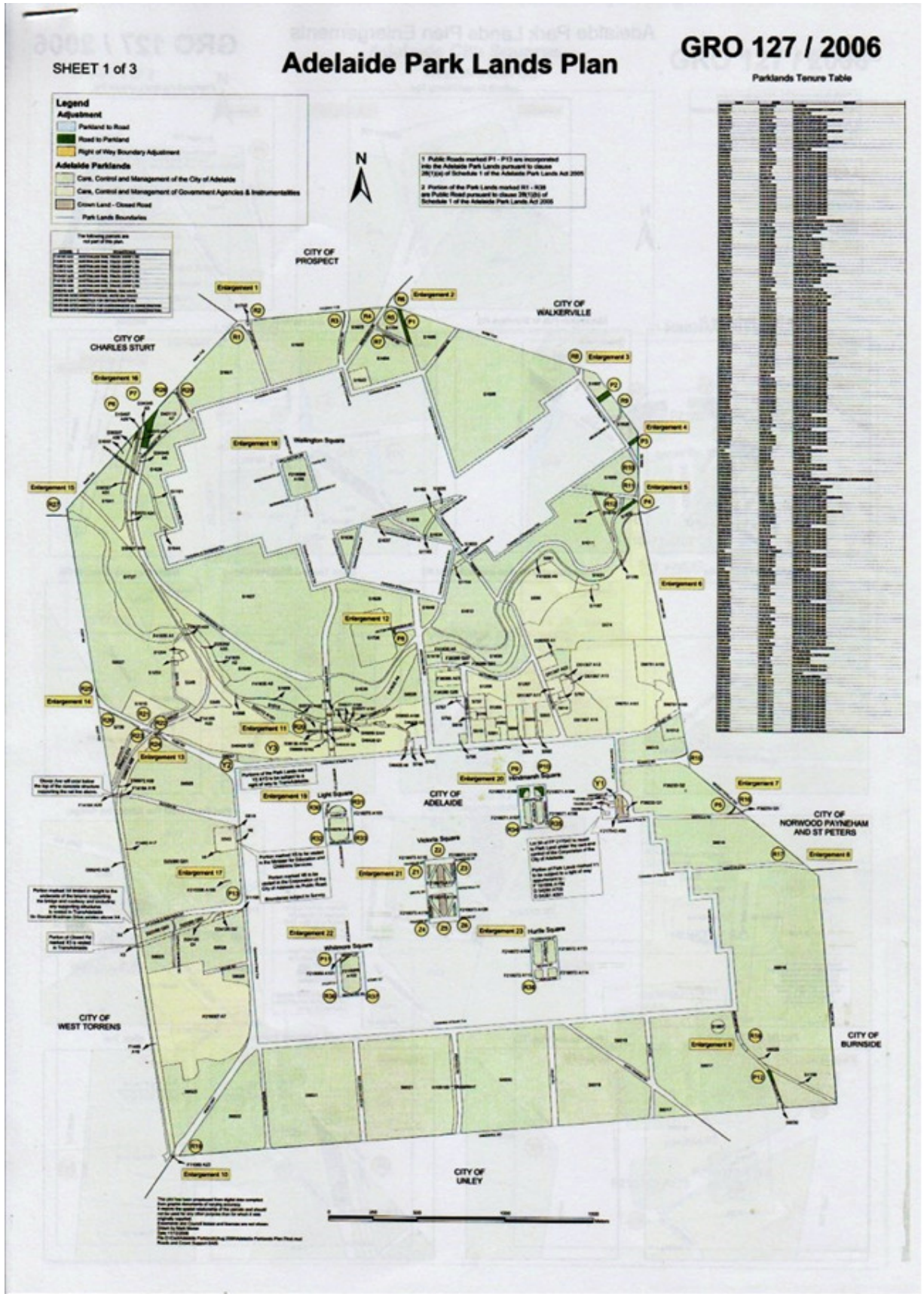


Figure 1 Adelaide Park Lands :GRO 127/2006

**Attachment E**

**Adelaide Oval Precinct**

**Management and Tenure arrangements**

**Legend**



Liquor Licence Area 1

Liquor Licence Area 2

