



**Government
of South Australia**

TRS20D0046

Treasurer
Level 8
State Administration Centre
200 Victoria Square
Adelaide SA 5000
GPO Box 2264
Adelaide SA 5001
DX 56203 Victoria Square
Tel 08 8226 1866
treasurer.dtf@sa.gov.au

Hon Stephen Mullighan MP
Member for Lee
Unit 1, 62 Semaphore Road
SEMAPHORE SA 5019

lee@parliament.sa.gov.au


Dear Mr Mullighan

APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991*

I refer to your application made under the *Freedom of Information Act 1991* (the Act), dated 3 January 2020.

Your application seeks access to:

"All minutes, briefings and correspondence titled 'Adelaide Oval Hotel – Execution of Loan Contracts' as described on the Objective document management system, between 17 July 2019 and 3 January 2020."

The prescribed legislative timeframe to determine this application has expired and is now deemed as refused access to documents relevant to your application. I refer to my letter dated 22 January 2020 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 15 documents were identified as answering the terms of your application.

I grant you access in full to 9 documents; copies of which are enclosed.
I grant you access in part to 3 documents; copies of which are enclosed.
I refuse you access in full to 3 documents.

Documents Released in Full

Documents 6, 7, 8, 9, 10, 11, 12, 13 and 14

Documents Released in Part

Documents 1, 2 and 15

Documents Exempt in Full

Documents 3, 4 and 5

Documents released in part

Document 1 is a briefing which was prepared by the South Australian Government Financing Authority (SAFA), Department of Treasury and Finance (DTF) in relation to the execution of loan contracts for the Adelaide Oval Hotel.

Documents 1 and 2 contains cabinet decisions, and as such, disclosure would divulge information concerning a deliberation of Cabinet. I therefore determine this exempt pursuant to clause 1(1)(e).

Documents 1 and 2 are released in part as it contains legal advice subject to legal professional privilege. This advice is redacted pursuant to clause 10(1).

Document 2

Document 2 was prepared internally and contains advice and recommendations which were considered for the purpose of decision making relating to the functions of Government. On balance, it is not in the public interest to disclose the content of these documents as it is important for the Government to receive frank and comprehensive advice and opinions, including the expression of views which may be contentious. The prospect that unknown third parties may obtain access to those documents by way of an FOI application may inhibit the provision of full and open opinions and recommendations on such matters in the future.

These documents are provided to me on the basis that they are both forthright and candid. If disclosed, such advice and commentary would not be provided in a candid and forthright manner. Disclosure may also lead to confusion and unnecessary debate resulting from the disclosure of possibilities that are being considered.

Whilst there is a strong public interest in government accountability and transparency, there is the competing public interest to ensure that full and frank advice can occur in confidence. It is necessary that I'm appropriately informed and updated on these matters.

It is my submission that disclosure would, on balance, be contrary to public interest. This is because a Minister of the Crown, as one of the highest offices of a Government, should be able to communicate sensitive matters without subsequent promulgation of opinion and advice deliberated in pre-decisional communications. Disclosure would inhibit frankness and candour in future pre-decisional communications at the highest level of Government and lead to confusion and unnecessary debate resulting from disclosure of possibilities considered. This is the longstanding legal position and there is no reason to depart from that in this matter.

On the balance, it is my submission that the information contained in this minute should not be released for the reasons outlined above, pursuant to clause 9 of the Act.

The minute contains information concerning the financial affairs of the SANFL, which relate to the existing debt facility and plans of SANFL, the details of which are not public knowledge. If disclosed, this could reasonably be expected to have an adverse effect on their financial affairs, as well as prejudice the future supply of such information to SAFA and to the Government. I therefore determine this exempt pursuant to clause 7(1)(c).

Proposed business plans by the SANFL, not relating to the proposed Adelaide Oval Hotel are also mentioned in the briefing. These plans are not public knowledge and if disclosed, could disadvantage the SANFL and their ability to objectively execute or not execute those plans.

Information has been redacted which contains discussions between the Adelaide Oval Stadium Management Authority (AOSMA) and their banker relating to their financing arrangements for other project developments.

Information containing negotiations between SAFA and SACA relating to the terms of the security documents, specifically the permitted financial indebtedness under the guarantee has been redacted as it contains the decision making process undertaken by SAFA. If disclosed, this could adversely impact SAFA's future negotiating position for other financial assistance contracts. Information provided in the briefing contains the consultation/deliberation and decision making of SAFA which if disclosed, could have an adverse effect on the way the agency provides advice to the Government on any future matters.

I therefore determine this exempt pursuant to clause 7(1)(c).

Document 15

Document 15 is released in part as names and contact details have been redacted from the Deed of Priority between the Treasurer and the South Australian National Football League Inc. I therefore determine to exempt this document in part, pursuant to clause 6(1).

Documents Exempt in Full

Documents 3, 4 and 5 contain legal advice subject to legal professional privilege. I therefore determine this exempt pursuant to clause 10(1).

Exemptions

Clause 1 – Cabinet Documents

- (1) *A document is an exempt document—*
- (e) *if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet.*

Clause 6 – Documents affecting personal affairs

- (1) *A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person.*

Clause 7 – Documents affecting business affairs concerning

- (1) *A document is an exempt document—*
- (b) *if it contains matter—*
 - (i) *consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and*
 - (ii) *the disclosure of which—*
 - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*
 - (B) *would, on balance, be contrary to the public interest; or*
 - (c) *if it contains matter—*
 - (i) *consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and*
 - (ii) *the disclosure of which—*
 - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*
 - (B) *would, on balance, be contrary to the public interest.*

Clause 9 — Internal Working Documents

- (1) *a document is an exempt document if it contains matter—*
- (a) *that relates to—*
 - (i) *any opinion, advice or recommendation that has been obtained, prepared or recorded; or*
 - (ii) *any consultation or deliberation that has taken place, in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency; and*
 - (b) *the disclosure of which would, on balance, be contrary to the public interest.*

Clause 10 – Documents subject to legal professional privilege

- (1) *A document is an exempt document if it contain matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.*

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the Act.

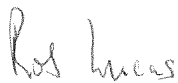
In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

As I am determining this application as Principal Officer, section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Ms Vicky Cathro, Ministerial Liaison Officer, by telephone on 8226 9769 or by email to vicky.cathro@sa.gov.au.

Yours sincerely



Hon Rob Lucas MLC
Principal Officer

16 December 2020

Att.

Schedule of Documents

TRS20D0046 - Adelaide Oval Hotel - Execution of Loan Contracts

Doc. No.	Date	Description of Document	# of pages	Determination Recommendation	Exemption Clause	Reason
1	2/08/2019	Briefing to Treasurer from General Manager, SAFA	3	Released in part	1(1)(e) - Contains information concerning deliberation or decision of Cabinet or Cabinet committee	
					10(1) - Subject to legal professional privilege	
2	28/06/2019	Attachment 2 to Document 1	5	Released in part	1(1)(e) - Contains information concerning deliberation or decision of Cabinet or Cabinet committee	
					7(1)(c)(i)(ii)(A)(B) - Contains information concerning the business, professional, commercial or financial affairs of any agency or person & contrary to public interest	
					9(1)(a)(i) - Contains matter relating to opinion, advice or recommendation prepared for decision-making of the Government, a Minister or an agency & contrary to public interest	
					10(1) - Subject to legal professional privilege	
3	26/07/2019	Attachment 3 to Document 1 - Crown Advice	2	Refused in full	10(1) - Subject to legal professional privilege	

Schedule of Documents

Doc. No.	Date	Description of Document	# of pages	Determination Recommendation	Exemption Clause	Reason
4	10/10/2018	Attachment 3 to Document 1 - Crown Advice	2	Refused in full	10(1) - Subject to legal professional privilege	
5	2/07/2018	Attachment 3 to Document 1 - Crown Advice	4	Refused in full	10(1) - Subject to legal professional privilege	
6		Attachment 1 to Document 1	2	Released in full		
7		Attachment 1 to Document 1	6	Released in full		
8		Attachment 1 to Document 1	6	Released in full		
9		Attachment 1 to Document 1	6	Released in full		
10		Attachment 1 to Document 1	7	Released in full		
11		Attachment 1 to Document 1	7	Released in full		
12		Attachment 1 to Document 1	7	Released in full		
13		Attachment 1 to Document 1	7	Released in full		
14		Attachment 1 to Document 1	7	Released in full		
15		Attachment 1 to Document 1	4	Released in part	6(1) - Unreasonable disclosure of personal affairs	

RELEASE

6

ADELAIDE OVAL HOTEL

FACILITY AGREEMENT

Dated:

BETWEEN:

THE TREASURER OF SOUTH AUSTRALIA

AND

ADELAIDE OVAL SMA LIMITED (ACN 141 259 538)



Government
of South Australia

CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000

Treasurer

EXECUTED by the parties as an Agreement:



THE COMMON SEAL of THE TREASURER OF)
SOUTH AUSTRALIA was affixed in the presence of)

R Colegate
.....
Witness
Rachael Colegate
.....
Print Name

EXECUTED by ADELAIDE OVAL SMA LIMITED)
(ACN 141 259 538) in accordance with s127)
of the Corporations Act 2001 (Cth))

Kevin John Scarce
.....
Director
Kevin John Scarce
.....
Print Name:

[Signature]
.....
Director/Secretary
John Owen
.....
Print Name

DATED this _____ day of _____ 2019

DEED OF GUARANTEE

BETWEEN:

TREASURER OF SOUTH AUSTRALIA
("Treasurer")

-AND-

COMMERCIAL OPERATIONS HOTEL PTY LIMITED (ACN 632 288 683) as trustee for COMMERCIAL
OPERATIONS HOTEL TRUST (ABN 29 495 968 221)

("Guarantor")



Government
of South Australia

CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000

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31. ASSIGNMENTS

31.1 Successors and permitted assigns

This deed is binding on and for the benefit of each party to this deed and their respective successors and permitted assigns.

31.2 Consent of Treasurer

The Guarantor must not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the Treasurer.

31.3 Treasurer right to assign

The Treasurer may assign, novate or otherwise transfer any of its rights or obligations under this deed at any time to a minister or other statutory authority of the Crown. In such circumstances the Guarantor will perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer may reasonably require to effect such assignment, novation or transfer.

32. GOVERNING LAW

This deed shall be governed by and construed in accordance with the Laws of the State of South Australia.

EXECUTED AS A DEED

THE COMMON SEAL of the TREASURER OF
SOUTH AUSTRALIA was affixed in the
presence of:)

.....
Witness

.....
Print Name of Witness



R Colegate

Rachael Colegate

EXECUTED by COMMERCIAL OPERATIONS
HOTEL PTY LIMITED (ACN 632 288 683) as
trustee for COMMERCIAL OPERATIONS HOTEL
TRUST (ABN 29 495 968 221) in accordance
with section 127 of the *Corporations Act*
2001 by authority of the Directors:)

.....
Director

.....
Print Name

Kevin John Scarce

.....
Director/Secretary*

.....
Print Name:

John Mason

*Delete the inapplicable

DATED this _____ day of _____ 2019

DEED OF GUARANTEE

BETWEEN:

**TREASURER OF SOUTH AUSTRALIA
("Treasurer")**

-AND-

SOUTH AUSTRALIAN CRICKET ASSOCIATION LIMITED (A.C.N. 623 135 393)

("Guarantor")



Government
of South Australia

**CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000**

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26. MORATORIUM LEGISLATION

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by the Treasurer of any power or right under this deed or otherwise, are expressly waived, negated and excluded.

27. NO DEDUCTIONS

The Guarantor will make all payments to the Treasurer under this deed in full without any deduction or withholding (whether in respect of set-off, counterclaim, duties, taxes, charges or otherwise) except to the extent required by Law.

28. AMENDMENT

This deed can only be amended, supplemented, replaced or novated by another written agreement executed by the Treasurer and the Guarantor that is expressed to amend, supplement, replace or novate this deed.

29. SET OFF

- (a) The Guarantor authorises the Treasurer to apply (without prior notice at any time) any credit balance or deposit (whether or not then due) to which the Guarantor is at any time entitled on any account from the Treasurer or the Crown, whether or not in connection with this deed, in or towards satisfaction of any sum then due and unpaid from the Guarantor to the Treasurer.
- (b) The Guarantor authorises the Treasurer to set-off (without prior notice at any time) any amount owing (whether present or future, actual, contingent or prospective and on any account whatever) by the Treasurer or the Crown, whether or not in connection with this deed, against any liability (whether present or future, actual, contingent or prospective) of the Guarantor under this deed.
- (c) The Treasurer will not be obliged to exercise any of its rights under this clause 29, which will be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which the Treasurer is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

30. COUNTERPARTS

This deed may be executed in any number of counterparts, all of which will all be taken to constitute one instrument.

31. ASSIGNMENTS

31.1 Successors and permitted assigns

This deed is binding on and for the benefit of each party to this deed and their respective successors and permitted assigns.

31.2 Consent of Treasurer

The Guarantor must not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the Treasurer.

31.3 Treasurer right to assign

The Treasurer may assign, novate or otherwise transfer any of its rights or obligations under this deed at any time to a minister or other statutory authority of the Crown. In such circumstances the Guarantor will perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer may reasonably require to effect such assignment, novation or transfer.

32. GOVERNING LAW

This deed shall be governed by and construed in accordance with the Laws of the State of South Australia.

EXECUTED AS A DEED

THE COMMON SEAL of the **TREASURER OF SOUTH AUSTRALIA** was hereunto affixed in the presence of:)

R. Colegate
.....
Witness

Rachael Colegate
.....
Print Name of Witness



EXECUTED by **SOUTH AUSTRALIAN CRICKET ASSOCIATION LIMITED (A.C.N. 623 135 393)**)

In accordance with section 127)
of the *Corporations Act 2001* by authority)
of the Directors:)

Andrew Sinclair
.....
Director

[Print Name: *Andrew Sinclair*]

Andrew Sweet
.....
Director/Secretary*

[Print Name: *ANDREW SWEET*]

*Delete the inapplicable]

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- (a) The Guarantor authorises the Treasurer to apply (without prior notice at any time) any credit balance or deposit (whether or not then due) to which the Guarantor is at any time entitled on any account from the Treasurer or the Crown, whether or not in connection with this deed, in or towards satisfaction of any sum then due and unpaid from the Guarantor to the Treasurer.
- (b) The Guarantor authorises the Treasurer to set-off (without prior notice at any time) any amount owing (whether present or future, actual, contingent or prospective and on any account whatever) by the Treasurer or the Crown, whether or not in connection with this deed, against any liability (whether present or future, actual, contingent or prospective) of the Guarantor under this deed.
- (c) The Treasurer will not be obliged to exercise any of its rights under this clause 29, which will be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which the Treasurer is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

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31.3 Treasurer right to assign

The Treasurer may assign, novate or otherwise transfer any of its rights or obligations under this deed at any time to a minister or other statutory authority of the Crown. In such circumstances the Guarantor will perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer may reasonably require to effect such assignment, novation or transfer.

32. GOVERNING LAW

This deed shall be governed by and construed in accordance with the Laws of the State of South Australia.

EXECUTED AS A DEED

THE COMMON SEAL of the TREASURER OF SOUTH AUSTRALIA was hereunto affixed in the presence of:)

Rachael Colegate
.....
Witness

Rachael Colegate
.....
Print Name of Witness



EXECUTED by SOUTH AUSTRALIAN NATIONAL FOOTBALL LEAGUE INCORPORATED)
(A.B.N. 59 518 757 737 in accordance with section)
127 of the Corporations Act 2001 by authority of the)
Directors:

[Signature]
.....
Director

[Signature]
.....
Print Name

[Signature]
.....
Director/Secretary*

PHILIP GALLAGHER
.....
Print Name

* Delete as Inapplicable

GENERAL SECURITY DEED

DATED: _____

BETWEEN:

ADELAIDE OVAL SMA LIMITED (ACN 141 259 538)
(Grantor)

AND

THE TREASURER
(Grantee)

Treasurer



Government
of South Australia

CROWN SOLICITOR
Level 9, 46 Pirie Street, Adelaide SA 5000

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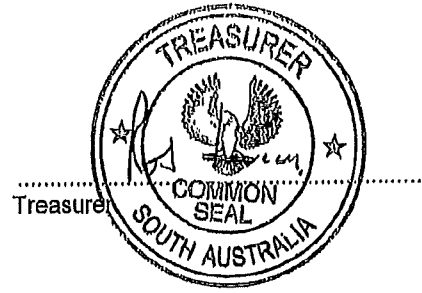
- (b) The Grantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim that it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (a) of this clause.

EXECUTED by the parties as a deed:

THE COMMON SEAL of the TREASURER
was hereunto affixed in the
presence of:)

R. Calgate
.....
Signature of witness

Print Name: *Rachael Calgate*.....



EXECUTED by ADELAIDE OVAL SMA LIMITED)
(ACN 141 259 538) in accordance with s127)
of the Corporations Act 2001 (Cth))

Kevin John Scarce
.....
Director

Print Name: *Kevin John Scarce*.....

John Casin
.....
Director/Secretary

Print Name: *John Casin*.....

GENERAL SECURITY DEED

DATED: _____

BETWEEN:

**COMMERCIAL OPERATIONS HOTEL PTY LIMITED (ACN 632 288 683) as trustee for
COMMERCIAL OPERATIONS HOTEL TRUST (ABN 29 495 968 221)
(Grantor)**

AND

**THE TREASURER
(Grantee)**



**Government
of South Australia**

**CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000**

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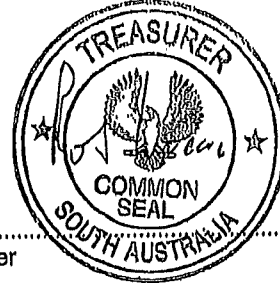
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EXECUTED by the parties as a deed:

COMMON SEAL of the TREASURER)
was hereunto affixed in the)
presence of:)



R Colegate
.....
Signature of witness
Print Name *Rachael Colegate*.....

.....
Treasurer

EXECUTED by **COMMERCIAL OPERATIONS**)
HOTEL PTY LIMITED (ACN 632 288 883) as)
trustee for **COMMERCIAL OPERATIONS HOTEL**)
TRUST (ABN 29 495 968 221) in accordance with)
section 127 of the *Corporations Act 2001* by)
authority of the Directors:

[Signature]
.....
Director
Print Name *John Wilson*.....

[Signature]
.....
Director/Secretary*
Print Name *Kevin John CAREE*.....
*Delete the inapplicable

GENERAL SECURITY DEED

DATED: _____

BETWEEN:

SOUTH AUSTRALIAN CRICKET ASSOCIATION LIMITED (A.C.N. 623 135 393)
(Grantor)

AND

THE TREASURER
(Grantee)



**Government
of South Australia**

CROWN SOLICITOR
Level 9, 46 Pirie Street, Adelaide SA 5000

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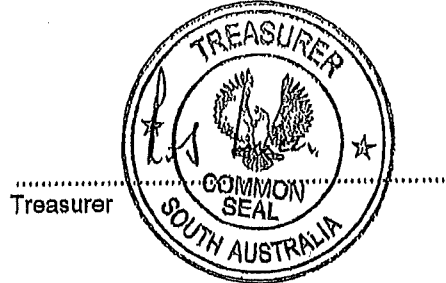
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EXECUTED by the parties as a deed:

COMMON SEAL of the TREASURER)
was hereunto affixed in the)
presence of:)

R Colegate
.....
Signature of witness

Print Name *Rachael Colegate*.....



EXECUTED by **SOUTH AUSTRALIAN CRICKET**)
ASSOCIATION LIMITED)
(A.C.N. 623 135 393) in accordance with section)
127 of the *Corporations Act 2001* by authority of the)
Directors:)

Andrew Sinclair
.....
Director
Print Name *Andrew Sinclair*.....

Andrew Sweet
.....
~~Director/Secretary*~~
Print Name: *ANDREW SWEET*.....

*Delete the inapplicable

GENERAL SECURITY DEED

DATED: _____

BETWEEN:

**SOUTH AUSTRALIAN NATIONAL FOOTBALL LEAGUE INCORPORATED (A.B.N. 59
518 757 737)
(Grantor)**

AND

**THE TREASURER
(Grantee)**

... Done



Government
of South Australia

**CROWN SOLICITOR
Level 9, 46 Pirie Street, Adelaide SA 5000**

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GENERAL SECURITY DEED

DATED this day of 2019

BETWEEN:

SOUTH AUSTRALIAN NATIONAL FOOTBALL LEAGUE INCORPORATED (A.B.N. 59 518 757 737) of
Turner Drive, West Lakes, South Australia 5021 (**Grantor**)

AND

THE TREASURER a body corporate under the *Administrative Arrangements Act 1994* (SA) of State
Administration Centre, 200 Victoria Square, Adelaide SA 5000 (**Grantee**).

THIS DEED PROVIDES:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed the following definitions apply unless the context otherwise requires:

Accounting Principles means applicable accounting standards, principles and practices required by Law, or otherwise as generally accepted in Australia, in each case as uniformly applied.

Accounts mean statements of financial performance, statements of financial position and cash-flow statements together with any statements, reports (including officers' and auditors' reports) and notes attached to or to be read with any of them.

After-Acquired Property means all property that is acquired by the Grantor after the date of this deed.

AOSMA means Adelaide Oval SMA Limited (ACN 141 259 538) of Adelaide Oval, War Memorial Drive, North Adelaide, South Australia, 5006.

Australian ADI means an authorised deposit-taking institution, other than a foreign authorised deposit-taking institution, within the meaning of the *Banking Act 1959* (Cth).

Authorisation means:

- (a) any authorisation, resolution, consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, permission, recording, authority, exemption or registration required by any Government Agency, judicial body or stock exchange or any Law; and
- (b) in relation to anything which a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.

Business means each business and commercial undertaking conducted by the Grantor either alone or with others during the currency of this deed.

Business Day means a day on which banks are open for general banking business in Adelaide (not being a Saturday, Sunday or public holiday in that place).

Charge has the meaning given in clause 1.1(b).

EXECUTED by the parties as a deed:

COMMON SEAL of the TREASURER
was hereunto affixed in the
presence of:



R Colegate
.....
Signature of witness
Print Name *Rachael Colegate*.....

.....
Treasurer

EXECUTED by **SOUTH AUSTRALIAN NATIONAL
FOOTBALL LEAGUE INCORPORATED**
(A.B.N. 59 518 757 737) in accordance with section
127 of the *Corporations Act 2001* by authority of the
Directors:

Dion McAffrie
.....
Director
Print Name *DION MCAFFRIE*.....

Philip Callagher
.....
Director/Secretary*
Print Name: *PHILIP CALLAGHER*.....

*Delete the Inapplicable

Philip

FINLAYSONS

Priority Deed

Commonwealth Bank of Australia

and

The Treasurer of South Australia

and

Adelaide Oval SMA Ltd

FINLAYSONS LAWYERS
Level 8 81 Flinders Street Adelaide
Our Ref: 422137/00
www.finlaysons.com.au

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FINLAYSONS

Priority Deed		
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Priority Deed

13.10 Counterparts

FINLAYSONS

14

Priority Deed

Executed by the parties as a deed

Bank

Signed for and on behalf of
Commonwealth Bank of Australia
ACN 123 123 124 by its attorney (who
has no notice of the revocation of its
power of attorney) in the presence of:

Signature of witness

Name (please print)



Signature of attorney

Name (please print)

Position held



Priority Deed

FINLAYSONS

Treasurer

THE COMMON SEAL of THE)
TREASURER OF SOUTH)
AUSTRALIA was affixed in the)
presence of:)



Rachael Colegate
Signature of witness



Rob Lucas
Signature of authorised signatory



Rachael Colegate
Name of witness (please print)

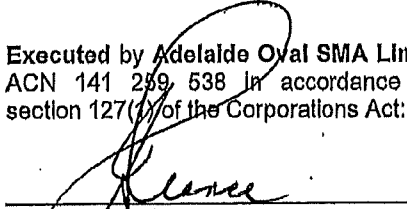
Rob Lucas
Name of authorised signatory (please print)

Priority Deed

FINLAYSONS

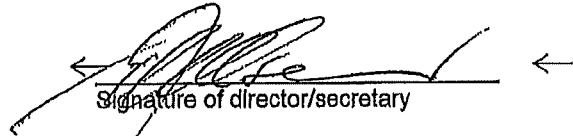
AOSMA

Executed by Adelaide Oval SMA Limited
ACN 141 259 538 in accordance with
section 127(1) of the Corporations Act:



Signature of director

Kevin James Sealie
Name (please print)

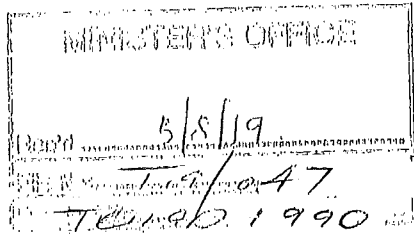


Signature of director/secretary

John Owen
Name (please print)

RELEASE IN PART

MINUTE



MINUTES forming ENCLOSURE

File SAF18/1595

Doc No A1218873

To The Treasurer

ADELAIDE OVAL HOTEL - EXECUTION OF LOAN CONTRACTS

Timing: ROUTINE — For Approval

Recommendations/Issues: It is recommended that you:

- Note the loan and security documents supporting the Adelaide Oval Hotel development have been finalised (on terms outlined and approved by you in prior briefings), and the contracts were executed by the Adelaide Oval Stadium Management Authority (AOSMA), the Commercial Operations Hotel Trust (COHT), the South Australian National Football League (SANFL), and the South Australian Cricket Association (SACA) on 31 July 2019;
- Note that the Facility Agreement with AOSMA requires preconditions to be satisfied by 31 July 2019, or such later date as may be agreed in writing. The preconditions include the execution and registration (where applicable) of these 10 contracts. Finalisation of these contracts was delayed whilst AOSMA settled its private financing arrangements for the development, which ultimately resulted in reduced risk for the State (outlined in the minute approved by you on 2 July 2019);
- Agree to the satisfaction of the preconditions being changed to 31 October 2019, which should allow ample time for execution of the priority deeds with the two banks holding first ranking security, and registration of the State's security interests - note that SAFA will write to AOSMA as your representative under the contracts; and
- Execute the ten deeds attached where indicated.

Noted & Approved/ Not-Approved



Hon Rob Lucas MLC
Treasurer

7/8/19

Key Points:

- In October 2018 a loan of up to \$42 million from the State to the Adelaide Oval Stadium Management Authority (AOSMA) to undertake the construction of a hotel within the Adelaide Oval Core area (Project) was approved.
- Cabinet approved [REDACTED] clause 1(1)(e)
- The Loan Facility Agreement and associated security documents with AOSMA, COHT, SACA and SANFL have been finalised on terms that have been considered and approved by you in prior briefings (the most recent briefing approved 2 July 2019 is attached).
- On 2 July 2019 you noted the progress of negotiations for the loan and securities, the change in AOSMA's debt financing arrangements for the development, and progress of the hotel development, including selection of the builder by AOSMA.
- In June 2019, AOSMA advised SAFA of a change in its financing arrangements agreed with its banker, the Commonwealth Bank of Australia (CBA). Specifically, CBA has agreed to a temporary increase in AOSMA's debt facilities, which will enable it to fund construction until the State's loan facility can be accessed in early December 2019.
- AOSMA has secured all necessary approvals to proceed with the development at this stage, including Development Plan Consent from the State Commission Assessment Panel, and the consent of the Minister for Transport, Infrastructure and Local Government for AOSMA to grant a sub-sublease to COHT to construct and operate the hotel, which is a requirement under *The Adelaide Oval Redevelopment and Management Act 2011 (Act)*.
- SAFA has been advised by AOSMA that the hotel development is proceeding on schedule. Practical Completion is scheduled to occur by 31 August 2020, and the hotel is scheduled to be operational from 1 October 2020.
- The Facility Agreement with AOSMA requires preconditions to be satisfied by 31 July 2019, or such later date as may be agreed in writing. The preconditions include the execution and registration (where applicable) of the 10 attached contracts.
- Finalisation of the loan contracts was delayed whilst AOSMA settled its financing arrangements with the CBA, which ultimately resulted in reduced risk for the State (outlined in the minute approved by you on 2 July 2019).
- AOSMA, COHT, SANFL and SACA executed the respective contracts to which they are party to in respect of the loan, guarantees and securities on 31 July 2019.
- SAFA has also negotiated priority arrangements with the CBA in respect of its existing first ranking security interest with AOSMA, and with Bendigo Bank in respect of its existing first ranking security interest in SANFL. Both banks have provided execution copies of Deeds of Priority, the terms of which have been negotiated by SAFA and the Crown Solicitor's Office (CSO).
- Due to the delay in finalising private financing arrangements it is proposed that you agree to extend the timeframe for the preconditions to be satisfied until 31 October 2019, which should allow ample time for execution of the priority deeds with the two banks, and registration of the State's security interests. Should you agree, SAFA will write to AOSMA as your representative under the contracts.

- As previously advised, it would be a breach of the (Adelaide Oval) Act if any financial assistance is made available to AOSMA before 1 December 2019, which causes the total amount made available to AOSMA between 1 December 2009 and 1 December 2019 to exceed \$535 million.

- It is the CSO's view 


clause 10(1)

- 


clause 10(1)

- AOSMA is able to drawdown the State's \$42 million loan in instalments from 2 December 2019 as reimbursement of project expenses, upon the satisfaction of 11 Performance Milestones that each require evidence of the achievement of key construction milestones.
- The loan is being provided at a fixed rate of interest of 4.5%. Interest is payable monthly as the loan is drawdown, and it converts to a term loan upon practical completion, at which time it is repayable in equal quarterly instalments of principal and interest over ten years on the basis that the outstanding loan balance is amortised over a 30 year term (the residual at maturity will require refinancing).
- It is proposed that you execute the attached copies of the following ten deeds where indicated:
 - AOSMA Facility Agreement (2 copies)
 - COHT Deed of Guarantee (2 copies)
 - SACA Deed of Guarantee (2 copies)
 - SANFL Deed of Guarantee (2 copies)
 - AOSMA General Security Deed (2 copies)
 - COHT General Security Deed (2 copies)
 - SACA General Security Deed (2 copies)
 - SANFL General Security Deed (2 copies)
 - CBA/Treasurer/AOSMA Priority Deed (3 copies)
 - Bendigo Bank/Treasurer/SANFL Priority Deed (3 copies)
- Administrative arrangements to establish the budget line, funding and delegations in the Administered Items for the Department of Treasury and Finance for this loan were created through separate processes at the time of the 2019 State Budget, and no further approvals are required.

Kevin Cantley

Kevin Cantley
GENERAL MANAGER, SAFA

2 August 2019

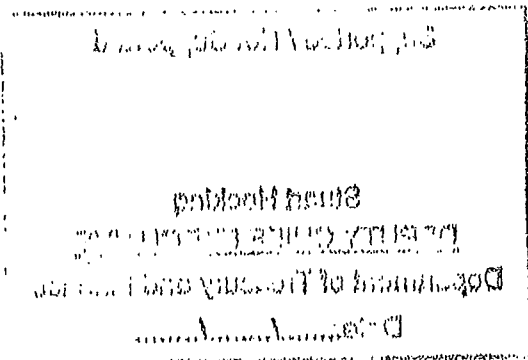
Supported / Not Supported	
	
Stuart Hocking DEPUTY CHIEF EXECUTIVE	
Contact Officer:	Rebecca Wigglesworth Department of Treasury and Finance
Telephone:	0207 2291
Email address:	Rebecca.Wigglesworth@mt.gov.au
Date: 21.8.2019	

ATTACHMENTS

1. The enclosed deeds for execution by the Treasurer where indicated
 - AOSMA Facility Agreement (2 copies)
 - COHT Deed of Guarantee (2 copies)
 - SACA Deed of Guarantee (2 copies)
 - SANFL Deed of Guarantee (2 copies)
 - AOSMA General Security Deed (2 copies)
 - COHT General Security Deed (2 copies)
 - SACA General Security Deed (2 copies)
 - SANFL General Security Deed (2 copies)
 - CBA/Treasurer/AOSMA Priority Deed (3 copies)
 - Bendigo Bank/Treasurer/SANFL Priority Deed (3 copies)

2. Minute approved by the Treasurer on 2 July 2019 settling out final terms for the loan and security arrangements.

3. The CSO's legal opinion and related advices of 10 October 2018 and 2 July 2018.



MINUTE

MINISTER'S OFFICE

Rec'd 1/07/2019

File No. 79/1033

42/19/01/16/33



MINUTES forming ENCLOSURE

File SAF18/1595

Doc No A1186876

To The Treasurer

ADELAIDE OVAL HOTEL - LOAN UPDATE

Timing: URGENT - required by 3 July 2019

Recommendations/Issues: It is recommended that you:

- note the matters that have arisen through negotiations for the State's loan for the Adelaide Oval Hotel development discussed herein and agree to SAFA finalising the loan and security documents incorporating these changes; and
- note that the Adelaide Oval Stadium Management Authority (AOSMA) has selected its preferred tenderer and has advised that it is intending to enter into construction contracts on or around 28 June 2019. Consequently AOSMA and the guarantors are seeking to have the loan and security documents finalised for execution as soon as possible.

Noted & Approved/ Not-Approved

Rob Lucas

Hon Rob Lucas MLO
Treasurer

2/7/19

Key Points:

- In October 2018, Cabinet [REDACTED]
- On 17 December 2018 you agreed the key commercial terms for the loan following the acceptance of the terms by AOSMA, the South Australian National Football League (SANFL) and the South Australian Cricket Association (SACA).
- SAFA has continued to negotiate with AOSMA, SACA and SANFL to finalise terms for the loan and security documents, which are now largely agreed, with the exception of what is to constitute SACA's permitted financial indebtedness.

clause 1(1)(e)



- On 9 May 2019 all parties met with their respective lawyers to resolve remaining matters in the suite of documents. The primary sticking point at that meeting and since then, has been the issue of permitted financial indebtedness.

Permitted Financial Indebtedness

- In granting financial assistance, it is SAFA's preference that the financial position of recipients and guarantors be maintained if not improved. Consequently, the State's loan and security documents include restrictions on additional borrowings and creating further security interests without your permission.

- SANFL sought permission to accommodate in the guarantee and general security deed provisions to enter into a renegotiated facility with Bendigo Bank of

[REDACTED]

- [REDACTED]

- SANFL provided extensive documentation to support its requests, including an Indicative Term Sheet dated 17 May 2019 from Bendigo Bank for facilities totalling [REDACTED] and a subsequent offer.

- SAFA is supportive of SANFL's request to permit this debt on the basis that it is effectively an extension to SANFL's current facility with minor variation [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SACA subsequently revised its request several times, and it was finally agreed between SAFA and the SACA Chair, Mr Andrew Sinolali, following consultation with your office, that the following provisions would be taken to the SACA Board for consideration on [REDACTED]

Permitted Financial Indebtedness means;

- (a) Financial indebtedness of up to [REDACTED] (in aggregate) to fund strategic investments determined by the Guarantor in the ordinary course of the Guarantor's business;
- (b) Financial indebtedness under finance leases;
- (c) Financial indebtedness which gives rise to a purchase money security interest under section 14 of the PPSA; and
- (d) subject to clause 7.5, Financial indebtedness approved in writing by the Treasurer.

Approval of Financial Indebtedness (proposed clause 7.8)

- (e) The Guarantor may at any time request the Treasurer's approval to incur Financial Indebtedness for the purposes of paragraph (d) of the definition of Permitted Financial Indebtedness.
- (f) The Treasurer must not unreasonably withhold its approval to a request under clause 7.8(a) if:
 - The requested indebtedness would not cause the total Financial Indebtedness to exceed [REDACTED]
 - the Debtor is in compliance with its material obligations under the Loan Agreement at the time of the request;
 - the Guarantor's then current assets less the amount of Financial Indebtedness to which the Guarantor's request relates are not less than [REDACTED] of the total amount then owing by the Debtor under the Loan Agreement (inclusive of both principal and interest); and
 - the Guarantor's then net assets will at the time of incurring the Financial Indebtedness to which the Debtor's request relates remain above [REDACTED]
 - the requested indebtedness will be used for capital investments or improvements with a realisable value greater than the amount of the requested indebtedness
- (g) The Treasurer must respond to a request from the Guarantor under clause 7.8(a) no later than 4 weeks after the date of the request.
- (h) The Guarantor agrees that any Financial Indebtedness approved by the Treasurer in accordance with this clause 7.8 will be used by the Guarantor only for capital investments or improvements, or other costs that will be capitalised in the Guarantor's balance sheet in accordance with the Accounting Principles and will not be used for any other purpose.
- (i) For the purposes of this clause 7.8:
 - (i) 'current assets' means the assets of the Guarantor which are current assets as determined in accordance with the Accounting Principles; and

clause 7(1)(c)

clause 9(1)

'net assets' means the dollar amount obtained by deducting the total liabilities of the Guarantor from the total assets of the Guarantor, each as determined in accordance with the Accounting Principles.

- SAFA has been advised that SACA accepted the above provisions, which have now been included in the final draft of the SACA guarantee.

Other Project Developments - Financing Arrangements

- On 12 June 2019, AOSMA advised SAFA that it had discussed with its banker, the Commonwealth Bank of Australia (CBA), [REDACTED].
[REDACTED] SAFA has sought the terms for AOSMA's CBA facility, which have not yet been provided. In any event, details of AOSMA's CBA facility will be required as a precondition to the loan agreement.
- It is understood the change in financing requirement follows the Request for Tender process undertaken by AOSMA for a Design and Construct Contractor and the subsequent submission of proposed building schedules and associated progress payments required by the builder during construction.
- SAFA has been advised that the AOSMA Board has selected its preferred tenderer and a public announcement was made today.
- A precondition of the State's loan facility requires AOSMA to submit the Project Programme and Project Budget. On 19 June 2019, AOSMA submitted a project budget, project cash-flows and revised the project Performance Milestones, which are linked to 11 loan drawdowns in the State's agreement.
- The project programme has the date of Practical Completion to be 31 August 2020. AOSMA advises that the Hotel will be operational from 1 October 2020 at the latest.
- The total asset value of the Hotel is now budgeted to be \$45 million, comprised of:
 - o Construction budget (138 room hotel up from 128 rooms) of [REDACTED]
 - o Client contingency of [REDACTED]
 - o Professional fees and statutory costs of [REDACTED]
 - o Furniture, fittings and equipment (FFE) of \$3,000,000.

The above assets are funded by a CBA/State loan of \$42 million and an AOSMA contribution to fund FFE of \$3 million via its existing CBA facility (which has a limit of [REDACTED]).

- In addition, AOSMA is providing a \$2 million facility to the Commercial Operations Hotel Trust (COHT) to meet start-up costs (such as wages prior to the hotel opening). This financing is also sourced from AOSMA's CBA facility discussed above.
- In total, financing of \$47 million is being provided for the hotel.
- The project cash-flow shows accumulated construction costs are projected to be [REDACTED] at the end of November 2019, with [REDACTED] having been incurred to date in professional fees.
- Subject to the final terms proposed by CBA, the change in debt financing arrangements is expected to reduce the State's initial exposure to the project. Subject to reviewing the terms being offered by CBA, SAFA is supportive of this change.

clause 7(1)(c)

clause 9(1)

Other Project Developments - Lease Arrangements

- AOSMA is responsible for the management of Adelaide Oval and was granted a sublease for the use of the oval in 2011 (which is subject to the use licences granted to SACA and SANFL). The current lease term is for 80 years. The sublease currently prohibits AOSMA from assigning its rights to any other party without the prior written consent of the Minister for Transport, Infrastructure and Local Government.
- AOSMA intends to grant a sub-sublease to COHT under proposed arrangements for the Hotel and has sought the Minister's consent for this. [REDACTED]
- The loan agreement with you provides that AOSMA (and COHT) must comply with the agreed leasing arrangements. [REDACTED] The security documents also restrict the parties dealing with collateral.
- Note the matters arising through negotiations for the State's loan discussed above and agree to SAFA finalising the documents incorporating these changes.

Kevin Cantley

clause 10(1)

Kevin Cantley
GENERAL MANAGER, SAFA

28 June 2019

Contact Officer	Rebecca Wigglesworth
Telephone	0207 2201
Email address	Rebecca.Wigglesworth@sa.gov.au

Supported / Not Supported

[Signature]

David Reynolds
CHIEF EXECUTIVE
Department of Treasury and Finance
Date: 28.6.19

Deed of Priority

Bendigo and Adelaide Bank Limited

The Treasurer of South Australia

South Australian National Football League Inc

*Treasurer
Bendigo Bank*

Piper Alderman
Lawyers

Level 10
70 Franklin Street
Adelaide SA 5000
Australia
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Execution

Executed as a deed on

2019

Executed by Bendigo and Adelaide Bank Limited ABN 11 068 049 178 by being signed by its Attorney:

who certifies that he/she is the attorney for the time being of the Company under the Power of Attorney dated 7 March 2016 registered in dealing number PA12630202 in the presence of:

.....
Name (please print)

.....
Signature of witness

Signed in my presence by the Attorney who is either personally known to me or has satisfied me as to his/her identity

.....
Print full name of witness (block letters)

The common seal of The Treasurer of South Australia is affixed in the presence of:

Rachael Colegate
.....
Witness

Rachael Colegate
.....
Name (please print)



The Common Seal of South Australian National Football League Inc, ABN 69 618 757 737 was hereunto affixed pursuant to its constitution in the presence of

}
}
}

[Signature]
.....
Signature of Authorised Officer
Chairman of the
South Australian Football Commission

[Signature]
.....
Name (print)

[Signature]
.....
Signature of Authorised Officer
Member of the
South Australian Football Commission

PHILIP GALLAGHER
.....
Name (print)

Schedule

Item 1

Bendigo Bank Security 201405260002704 & 201405260002715 & 201808060003438 (South Australian National Football League Inc)

Creditor Security General Security Deed between the Creditor and the Security Provider dated on or about the date of this Deed.

Item 2

Basic Priority Sum –
Bendigo Bank Security \$17,556,000

Basic Priority Sum –
Creditor Security \$21,000,000

Item 3

Bendigo Bank

Attention:

[REDACTED]

Address: Bendigo Bank, Level 3, 80 Grenfell Street, Adelaide SA 5000

Email:

[REDACTED]

Creditor

Attention: The Director, Insurance and Commercial Operations

Address: 200 Victoria Square, Adelaide SA 5000

Email: mail.safa@sa.gov.au

Security Provider

Attention:

[REDACTED]

Address: Level 2, Riverbank Stand, Adelaide Oval, War Memorial Drive, North Adelaide SA 5006

Email:

[REDACTED]