



7 Adjourned Items - Nil

18 Confidential Items

### 18.1 City Services Surplus Land

Report Reference	GC220628F18.1
Originating Officer	Unit Manager Land & Property – Michael Collins
Corporate Manager	Manager City Property - Thuyen Vi-Alternetti
General Manager	Acting General Manager City Development – Warwick Deller-Coombs

### CONFIDENTIAL MOTION

That pursuant to Section 90(2) and (3) (d)(i) and (ii) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager City Services, General Manager Corporate Services, Manager Corporate Governance, Manager City Property, Unit Manager Land & Property, Unit Manager Communications, Unit Manager Governance and Council Support and Governance Officer, be excluded from the meeting as the Council receives and considers information relating to City Services Surplus Land, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to matters pertaining to commercial information of a confidential nature from the market in relation to proposals received for the City Services surplus land, the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.

### REPORT HISTORY

Report Reference	Report Title
SGC191125F02	Future Land Strategy: City Services Surplus Land
SGC210713F12.3	Request for Proposals City Services Surplus Land

### REPORT OBJECTIVE

To provide Council with an update on the negotiations of the lease for the Northern parcel of land at the City Services Depot.

### EXECUTIVE SUMMARY

At its Confidential General Council Meeting held on 13 July 2021, Council resolved to endorse administration to progress negotiations with Buildtec to enter a grounds lease for a term of up to 45-years for a bulky goods facility on the vacant land North of City Services and required that (following negotiations) a further report be brought back to Council for consideration.

Further discussions with Buildtec confirmed a 45-year term is their minimum lease term, and they would consider early exit options by including a mechanism to calculate an appropriate exit value for Council. The commencing annual rental is estimated at [REDACTED]. At 45 years the total cash return to Council is [REDACTED] million and [REDACTED] million at year 20, allowing for an average annual escalation of a 2.5% increase.

Specific discussions have taken place in relation to the Regulated Tree in the South-Eastern corner of the proposed site, and the Regulated Trees along the boundary of Marion Road. Following consultation with Council's arborists and Planning Team, Buildtec have changed their concept designs to retain the Regulated Tree in the South-Eastern corner of the site and are working on ways to minimise the traffic and vehicle crossover impact to the regulated trees on the boundary with Marion Road.

Buildtec has requested a lease term of 50 years, which Administration is supportive of.

Council is now in a position to finalise terms with Buildtec and to enter into the lease agreement.

## **RECOMMENDATION**

### **That Council:**

1. **Endorses the proposed key terms of the draft ground lease to Buildtec Group Pty Ltd (or related wholly owned entity) included in Attachment 1, being over the portion of land contained in Certificate of Title Volume 5494 Folio 674 as delineated in the plan marked Piece A included in Attachment 3 for a term of 50 years, at a commencing rental of [REDACTED] per square metre, estimated at [REDACTED] per annum exclusive of GST and:**
  - a. **Authorises Administration to negotiate and agree final terms and make further amendments to the draft lease agreement as reasonably required, but in line with the key terms included in the draft lease agreement included in Attachment 1.**
  - b. **Notes that Council will not be giving consent in its capacity as landowner for any development design which either requires the removal of or has a high-risk potential for damage to any of the Significant or Regulated Trees within the proposed leased area.**
  - c. **Authorises the Mayor and Chief Executive Officer to attest to the affixation of the Common Seal of the Corporation of the City of Marion to a grounds lease agreement with Buildtec or their related entity nominee for a term 50 (fifty) years for a bulky good facility on the vacant land north of City Services broadly in accordance with the terms outlined in the draft lease agreement in Attachment 1.**
  - d. **Authorises Administration to negotiate and agree terms for Buildtec (or related entity in accordance with the lease agreement) to use their leasehold interest in the City Services surplus land as security against debt funding for the project and authorises the Mayor and Chief Executive Officer to attest to the affixation of the Commons Seal of the Corporation of the City of Marion to any Deed required to give effect to this consent.**
  - e. **Authorises Administration to serve the required notice to Altus Traffic to terminate their occupancy agreement of the site which is currently operating in holding over.**
2. **In accordance with Section 91(7) and (9) of the *Local Government Act 1999* orders that this report, City Services Surplus Land, any appendices and the minutes arising from this report having been considered in confidence under Section 90(2) and (3) (d)(i) and (ii) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until the execution of the Lease Agreement. At this time the report and minutes for this item will be released, with the exception of the financial information which is to be redacted and kept confidential. This confidentiality order will be reviewed at the General Council Meeting in December 2022.**

## DISCUSSION

### Background

At its Confidential General Council Meeting held on 13 July 2021, following a Request for Proposal process, Council resolved to endorse administration to progress negotiations with Buildtec to enter into a grounds lease for a term of up to 45 years for bulky goods facility on the vacant land North of City Services and required that following negotiations a further report be brought back to Council for consideration.

### The Land

The surplus land is contained within Certificate of Title Volume 5494 Folio 674 and is an irregular shape of approximately 7,539 square metres and has approximately 65 metres of frontage on Marion Road. The land was formerly used as a plant nursery by Council prior to the redevelopment of City Services. The site is not classified as community land as it is used for Council operations. Council resolved to exclude the City Services Depot parcel at 935 Marion Road, Mitchell Park comprised in Certificate of Title Volume 5494 Folio 674 from community land classification at their Council meeting on 28 May 2002 (GC280502R902).

Given the land is not classified as Community Land and therefore not on Council's Community Land Register, there is no limitation on the term of the agreement or requirement to undertake public consultation should Council wish to enter into a long-term lease.

Altus Traffic previously held a 12-month licence to use a portion of the land for car parking at a rate of \$518 plus GST per month. Altus Traffic is currently licensing the land from Council. The licence is currently in a holding over arrangement and can be terminated by giving one month's notice. Altus Traffic have been advised of Council's RFP process and the outcome will likely impact on their current arrangement with Council.

### Buildtec Proposal

Buildtec is a South Australian owned business and has a history of 55 years, their proposal seeks to lease the site for 50 years, construct a bulky goods facility providing up to 4 tenancies. Buildtec have identified Pet Stock as a major tenancy with other interest shown by Baby Bunting and RSE Safety Equipment as tenants.

### Proposed Key Lease Terms

#### *Original Proposal*

The original proposal from Buildtec following further discussions with staff in July 2021 was as below:

- rental proposal of [REDACTED] per square metre, a total of [REDACTED] per annum for the site. (Administration sought a valuation in November 2020 which indicated a market land rent of [REDACTED] per annum).
- Preference for a 50-year lease term but indicated that they would consider a 45-year term.
- Buildtec are prepared to provide options for year 25, 30, 35, and 40 with an agreed notice period and mechanism for calculating an exit value.
- Termination of lease by Council prior to Year 35 - The exit value or purchase price by Council would be based on the difference between the current market value of the property (based on the capitalisation method) and the current market value of the unimproved land. This would be assessed by a licensed valuer jointly appointed by the parties.
- Termination of Lease post Year 35 - The exit value or purchase price by council would be based on the Insurance Replacement Cost of the built form improvements on the land which would be assessed by a licensed valuer jointly appointed by the parties.

The early exit arrangements provide Council with options to:

1. Terminate tenancy leases and use facility for Council purposes
2. Continue to lease to sub tenants for a period of time until alternative need identified
3. Terminate lease and demolish should Council require the site for alternative use

### *Negotiations and Revised Proposed Lease Terms*

Following the decision of Council at the 13 July 2021GC Meeting, staff held several meetings with Buildtec representatives to discuss their proposal. Of particular concern was the potential impact to Regulated Trees on the site, and whether Buildtec were able to adjust their design proposal to retain the Regulated Tree in the South-Eastern corner of the subject site and how this might then impact on the rental return to Council. Buildtec has now provided an alternative design concept which retains the tree and seeks to minimise any potential vehicle impacts.

Following internal consultation with Council arborists and Planning Team, Council has made it clear that it would not be supportive of the removal of the Regulated Tree through any development application process, or in Council giving its consent for the removal in its capacity as landowner. Council arborists and planners have been involved in the discussions with Buildtec in order to help facilitate an acceptable design outcome for Council in its landowner capacity.

Buildtec has also asked Council to consider a slightly longer lease term of 50 years and has asked Council to consent to it using the lease as security against debt funding for the development. There would appear to be no impediment to Council offering a 50-year lease term. Advice has been sought in relation to the potential for Buildtec using the lease as debt funding security. The advice is that it should not pose an issue to Council, and that when the lessee formally requests this, that Council will require further legal assistance, at the cost of the lessee, to review the terms applicable.

Following negotiations, the below items have either been agreed in principle or are subject to final detailed agreement.

Lease Term	Council have agreed a 45-year term – Buildtec have requested a 50-year term. No right of renewal.
Annual Rent \$ M2	Commencing at [REDACTED]/m2 (site is approximately 7540 m2)
Rent Review	Fixed annual increase of 2% with market reviews every 5 years (Buildtec has not agreed yet to the market review intervals which will be subject to further discussion)
Break Options for Council	Council may terminate with six months' notice in years 2047, 2052, 2057, and 2062 with conditions applicable to compensation payable to the lessee.
Debt Funding Security	Buildtec would like agreement from Council that it will consent to use of the lease as debt funding security. Advice received that this should be acceptable, but Council will need to see the proposed terms from the individual lender.
Services to Site	Buildtec has confirmed they will be responsible for the augmentation of all services to the site
Timing	Development Approval would be sought within 3 months of lease commencement, and construction completed within 9 months of Development Approval; Rent and outgoings to become payable on receipt of Development Approval.
Trees	Council will have maintenance responsibility for the Regulated Trees along Marion Rd, and Buildtec will have responsibility for the tree in the South-Eastern corner of the site. Council will not consent in its capacity as landowner to the removal of any of the



	significant/regulated trees within the proposed lease area
Site Contamination	Council has provided a copy of a site contamination report and advised Buildtec that a Preliminary Site Inspection would be required from Buildtec as part of any future approvals.
Lessee Entity	Buildtec has advised Council that they would like to use a different wholly owned related entity as the lessee of the site and would undertake for Buildtec Pty Ltd to provide a guarantee. Council may consider this subject to due diligence being undertaken on the alternative entity.

Council have provided Buildtec with a draft lease agreement **Refer Attachment1** to reflect what has been discussed and agreed in principle with them. The recommendation is for Council to authorise Administration to negotiate and agree final detailed terms for Buildtec (or related wholly owned entity) to use their leasehold interest in the City Services surplus land as security against debt funding for the project, and to authorise the Mayor and Chief Executive Officer to attest to the affixation of the Commons Seal of the Corporation of the City of Marion to any Deed required to give effect to this consent.

A draft lease was provided to Buildtec for comment in March 2022 and a response with requested amendments was received from Buildtec in April 2022. A number of the requested changes were agreed, and a revised lease was provided to Buildtec on 3 June 2022. A key requirement from Buildtec in order for the lease and development to proceed is that Council agree, subject to reasonable terms being agreed within a Deed, to Buildtec using the lease as security for debt funding of the project. They have also said that they do not agree to market rent reviews every five years but we are awaiting their counter proposal. Buildtec submitted a further revised design plan proposal in March 2022 – **refer Attachment 2**.

## Summary

Agreement has been reached in principle on the key lease terms and Councils preferred design layout to give maximum protection to regulated trees on the site. A boundary identification survey has been undertaken and a plan lodged for lease purposes for the subject land which is a requirement for the lease of vacant land for a term in excess of 6 years.

Items that may require fine tuning and further agreement prior to lease execution are:

- Lease term of 45 years – Buildtec would prefer 50 years subject to Council consent. It is included in the recommendation that Council agree to a 50-year term, however should Council wish to stick with the originally proposed 45-year term, then it may wish to change this to 45 years.
- Market rent review every five years – awaiting Buildtec counter proposal.
- Agreement from Buildtec that Council may require them to remove the site improvements at the expiry of the lease term.
- Agreement on terms for Council consent to use of the lease as debt funding security.

It is recommended that authorisation be given for Administration to negotiate the final items to be agreed and to enter into the lease agreement with Buildtec (or related wholly owned entity nominated by them).

## ATTACHMENTS

1. Draft Ground Lease - City Services Northern Parcel - Buildtec [**18.1.1** - 35 pages]
2. Revised Buildtec Concept Plan - bulky goods (mirror image) (002) [**18.1.2** - 2 pages]
3. Lease Plan ( Parcel A) - City Services Surplus Land [**18.1.3** - 2 pages]
4. Boundary Identification Survey - City Services Surplus Land [**18.1.4** - 1 page]