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AQUA₄₃

10 June 2008

Mr Rod Hook
Deputy Chief Executive Officer
Department for Transport, Energy & Infrastructure
Roma Mitchell House
136 North Terrace
Adelaide SA 5000

Dear Rod,

**State Aquatic Centre, GP Plus Health Care Centre and Marion Domain Development
Preferred Partner – Proposal May 2008**


Further to our appointment as preferred partner and to our recent meetings on the above project we are now pleased to provide the following proposal for the delivery of the new State Aquatic Centre, GP Plus Health Care Centre and Marion Domain Redevelopment.

This proposal is subject to due diligence, documentation, various board approvals, State Government approval and Council approval over the next 2-3 months.

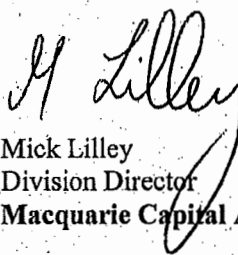
We anticipate finalisation of all conditions precedent to enable a financial close by 30 September 2008, shortly after which the project will commence construction. This proposal remains valid until 31 October 2008.

We look forward to bringing this project of State significance to fruition in the City of Marion.

Yours sincerely,



Alex Candetti
Executive Chairman
Candetti Constructions Pty Ltd



Mick Lilley
Division Director
Macquarie Capital Advisers Limited

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The Aqua 43 Proposal

1. Consortium Undertakings

- This proposal is made by the Aqua 43 consortium ("Aqua 43") which comprises Candetti Constructions Pty Ltd ("Candetti") and Macquarie Capital Advisers Limited ("Macquarie").
- Aqua 43 will arrange additional funding as required to achieve financial close, and thus facilitate the construction of the project.
- Aqua 43 will arrange and facilitate the development, design, construction, long term lease, maintenance and operations of the SAC (in accordance with the SAC Output Specification) so that the operator will provide the State with access for a term of 25 years without subsidy beyond the commercial arrangements outlined herein. At the end of the lease term the operator will have the right to purchase the SA Aquatic Centre land and buildings for a nominal consideration. The State will have the first option to renew that term for a further period of up to 25 years on reasonable commercial terms at market rates for existing use. In the event that the State chooses not to renew, City of Marion ("Council") will inherit the option. In the event that neither State nor the Council exercise their options, Aqua 43 (or nominee) as the eventual freehold owner (after exercising its right to purchase) will have the right to pursue their own interests with the site.
- Aqua 43 will arrange and facilitate the development, design, construction and ownership the GP Plus centre (in accordance with the GP Plus Output Specification) and provide tenure to the Minister for Health ("Health") by way of peppercorn lease for a 25 year term. The Minister for Health shall have a series of options to extend this term for a total period of up to 25 years on reasonable commercial terms at market rates.
- Aqua 43 will seek a development plan amendment for the area covered by the master plan.
- The preliminary master plan, design concepts and specifications for the SAC and GP Plus Centre are the attachments as listed in Appendix B

2. Timeline to Completion

- The timeline attached in Appendix C outlines the proposed development, design and construction of the SAC and GP Plus facilities
- Lodge development applications by mid July 2008 or after State / Council approvals when the Development Deed is agreed.
- All necessary legal documents to be executed within 3 months (31 August 2008)
- Financial close (conditions precedent met) to be achieved within 4 months (30 September 2008)
- The State / Council and Aqua43 will each bear its own costs during the period to financial close
- Aqua43 will bear all external costs to progress the design master plan and commercial arrangements with the commercial development team including various consultants as required.
- Aqua 43's proposal is provided on the basis that the overall design master plan (in particular the Domain site designs) and commercial solution generated by Aqua 43, are its intellectual property and will remain so for 7 years following the date of this proposal.
- Both parties must treat this proposal as Confidential Information

3. Proposed Legal Arrangements and Ownership Structure

- Development Deed between State, Council and Aqua 43 members Candetti Constructions Pty Ltd and Macquarie Capital Advisers Limited:
 - To cover the provision of the Domain land, other land (Warradale site, Rail site), the delivery of the SAC and GP Plus projects (by Candetti) and the operation (by Macquarie Leisure) of the SAC facilities.
 - To cover the provision of a facility that meets Council's requirements for the Leisure Water (as defined in the SAC Output Specification) and makes it a requirement for Council consent to changes to scope or design which may impact on Council's requirements
 - State / Council obligations to commence Reserve Revocation process for Council Reserve and process for partial closure of Road Reserves (Diagonal Way) to integrate with senior living

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- and residential accommodation in exchange for the agreed replacement (with any requisite title/s) of open space that is suitable to Council for community recreational purposes
- Arrangement for a Joint Account including the operational protocols to satisfy the Federal Funding Conditions and the appropriate allocation of funding to the applicable components of the project particularly Federal and Council funding for SAC
- No payment can be made without the reasonable approval of the State and other parties of the Joint Account
- Arrangement for other matters including design development protocols for State / Council / operator, governance and practical matters between the parties
- The transfer of the Marion Reserve and Road Closure Reserve to the Aqua 43 members will be subject to SAC reaching Practical Completion ("PC"). This provides an incentive for Aqua 43 (both Macquarie and Candetti equally) by putting the estimated [REDACTED] final payment to Aqua 43 members at risk on satisfactory completion of SAC
- Funding Agreement (or similar commercial arrangement) to procure the delivery of the State Aquatic Centre between the State, the Council, Macquarie Leisure and Candetti Constructions
 - Funding Agreement on terms acceptable to all parties (party to the Development Deed) including satisfactory provisions regarding QS certification of payments:
 - Scope includes RFP Output Specifications for SAC including specified FINA requirements.
 - Scope includes Macquarie Leisure requirements for Gym and Leisure Water
 - Scope includes Council requirements for Leisure Water
 - Scope to be consistent with Master Plan & drawings attached to this proposal.
 - Scope includes reasonable endeavours to include State, Council and Macquarie Leisure during design development.
 - Will include reasonable provision for pre-agreed compensation payable to the State and Council for late completion
 - Will include reasonable provision for pre-agreed compensation payable to Macquarie Leisure for late completion
 - The State will have step in rights (if Candetti fail to complete their obligations) which will include the right to assume control of the Joint Account and the Marion reserve revocation and road closure proceeds estimated at [REDACTED] (this estimated value of [REDACTED] will be foregone automatically by Aqua 43 members should the State step in)
 - The agreement will be a fixed price, fixed time, no variations type of agreement with the express purpose that no variations will be claimed by the builder unless a variation is requested in writing by a party to the agreement and if so requested, that same party making the request must underwrite the funding (including any cost of time delays) of the variation in writing to the satisfaction of the builder and all other parties to the agreement.
 - The final 10% of the contract price for the SAC will not be paid until PC has been achieved as judged the following experts acting reasonably :-
 - an independent Quantity Surveyor (appointed jointly by the parties) that the contract has been reasonably fulfilled
 - an independent Engineer or Building Expert (appointed jointly by the parties) capable of assessing PC on the SAC
 - The transfer of the Marion Reserve and Road Closure Reserve to the Aqua 43 members will be subject to SAC reaching PC. This provides an incentive for Aqua 43 (both Macquarie and Candetti equally) by putting the estimated [REDACTED] final payment to Aqua 43 members at risk on satisfactory completion of SAC
- Funding Agreement (or similar commercial arrangement) for GP Plus between Candetti (or nominee) as land owner/developer, Candetti Constructions and the State Department of Health ("Health") in its capacity as lessee.
 - Funding Agreement on terms acceptable to all parties (party to the Development Deed) including satisfactory provisions regarding QS certification of payments.

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- Scope is the RFP Output Specifications for GP Plus facility, with the exception that Health is responsible for the supply, installation and commissioning for all workstations, screens, furniture, fittings and equipment
- Scope includes reasonable endeavours to include Health during design development.
- To be consistent with Master Plan & drawings attached to this proposal.
- GP Plus building may at Candetti (or nominee) discretion as land owner and developer, form part of a larger commercial development. Candetti in exercising this discretion must do so to the reasonable satisfaction of Health and with no impact on the provision of the new GP Plus facility and Candetti will take all risks in association with this larger development including planning approvals.
- Will include reasonable provision for pre-agreed compensation payable to the Health for late completion
- The agreement will be a fixed price, fixed time, no variations type of agreement with the express purpose that no variations will be claimed by the builder unless a variation is requested in writing by a party to the agreement and if so requested, that same party making the request must underwrite the funding (including any cost of time delays) of the variation in writing to the satisfaction of the builder and all other parties to the agreement.
- Operations Agreement for SAC between State (ORS) and Macquarie Leisure
 - Macquarie Leisure to operate the SAC and accept demand risk for 25 years
 - Requires SAC to reach practical completion with sunset date 24 months after financial close
 - Performance provisions including financial abatements will be related to performance as measured by KPIs for SAC and set out in the Operations Agreement.
 - Operator and Council to both acknowledge that Council will continue to retain the Marion Swimming Centre as an outdoor pool in its current form and will only maintain the Marion Swimming Centre to comply with occupational health and safety standards and to ensure public safety.
 - Council to acknowledge that it has achieved its objective of indoor aquatic facilities being provided in the Marion region through its investment in the State Aquatic Centre and has no intention to compete with the SAC in the Marion region.
- Agreement to Lease GP Plus between Candetti (or nominee) as land owner/developer and the State (Health)
 - Based on a commercial lease agreement acceptable to both parties and based on standard SA Government lease documentation
 - Building maintenance, FM and outgoings to be the responsibility of the tenant, subject to a facilities management agreement between the parties
 - Peppercorn rent for 25 years
 - Tenant shall have a series options to extend this term for a total period of up to 25 years on a reasonable commercial basis at market rates
 - Acknowledges that the tenant is incorporated under the SA Health Commission Act 1976
- Funding Agreement between an entity within the South Australian Government and Macquarie Capital Group Limited ('Macquarie'), that unconditionally and irrecoverably commits the South Australian Government to payment of the amounts in Schedule 1 (escalated at CPI) to Macquarie (or nominee). Macquarie will commit proceeds to the Joint Account at financial close.
- Land Transfer/Sales Contracts and lease agreements (for all sites including Domain) between State, Council and Aqua 43 (or nominee)
 - If no development is commenced within the applicable DA Approval period on the Domain Site, the Council reserves the right to terminate the leasehold agreement to the State
 - If no development is commenced with the applicable DA Approval period on the other land or 2 years after financial close, whichever is greater, the State reserves the right to buy back the other land at the original sale price or at prevailing market rates, whichever is the greater.
 - The proposed senior living/residential development on the Council Reserve and Road Reserve sites must be carried out in accordance with the development approval for the site and the

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Land Management Agreement issued by Council within 2 years of settlement. Settlement and transfer of land to Aqua 43 (or nominee) will take place as soon as practicable following the completion of the revocation process for the Council Reserve and Road Reserve sites and the satisfactory achievement of PC of the SAC

- Stamp duty paid by purchaser on each land transfer from State/Council to Aqua 43 (or nominee)
- Documentation to address leasehold and freehold arrangements between the State, Council and Aqua 43 (or nominee) as summarised below
 - The Council will continue to own the SAC land for 26.5 years
 - The Council will lease the SAC site to the State. The lease will have a 26.5 year term (at a nominal rate) and include an option for the SAC freehold land and improvements to be acquired by the lessee in 26.5 years for nominal consideration;
 - The SAC will be constructed in an approx. 18 month construction period while the site is leased to the State;
 - At the completion of the construction of the SAC, the State would assign the lease to Aqua 43 (or nominee) for an agreed sum at which time the Operator will contribute its capital commitment to the project that will be deposited into the Joint Account; and
 - At the end of the lease term, Aqua 43 (or nominee) will have an option to acquire the SAC for nominal consideration
- All amounts are GST exclusive with appropriate gross up clauses required
- Arrangements for drafting the documentation will be discussed to facilitate an agreed and streamlined approach to contract finalisation

4. Conditions Precedent

All to the satisfaction of Aqua43 unless otherwise stated

- Development Approval via Section 49 Application for SAC at the Domain Site
- Development Approval via Section 49 Application for GP Plus at the Domain Site
- Process commencement for the reserve revocation and road closure
- Temporary Parking Licence for up to 3 years on the Council reserve (at a nominal fee) from financial close
- PDPC for Oaklands Rail Site (development consistent with zoning and Master Plan)
- PDPC for Warradale Triangle Site (development consistent with zoning and Master Plan)
- Transfer of respective freehold and leasehold titles-Domain, Rail and Warradale Triangle Sites
- Tax opinion supporting all Aqua 43 tax, duty and rate assumptions
- Joint Account arrangement in place and funded, to satisfaction of all parties
- Satisfactory completion of environmental and other site due diligence on the non Domain sites.
- Lifting of the Westfield easement / covenant over the Domain site
- Legal opinion that the State's obligation to make the payments set out in the funding agreement is irrevocable and unconditional
- Ministerial commitment to the DPA for the precinct master plan

All work undertaken by Aqua 43 up to financial close is at Aqua 43's risk. In the event that the project does not achieve Financial Close Aqua 43 is entitled to claim from the State an upper limit of \$100,000 excluding GST for costs incurred on the project. In the event that Conditions Precedent or timelines to financial close are not achieved, no party has the right to claim any further costs or losses incurred on another party.

5. Joint Account Custodial Arrangements

- A Joint Account will be established to the satisfaction of all parties and to enable the diligent management of SAC and GP Plus project funds.

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- Joint Account authority will be by joint control of State, Council, Aqua 43 Members (and Macquarie Leisure regarding PC and the final SAC payment).
- Joint account to be structured to receive all project grants and additional funding and to earn interest (tax exempt) on the balance over the construction period
- QS Payment Regime and Cost to Complete Test will be created with a payment protocol to enable funding to be expended in a diligent manner for the purposes of the project.
- Any costs associated with the management of the joint account and QS to be shared 50 % State / 20% Council / 20% Aqua43 members / 10% Macquarie Leisure

6. Commercial Framework

DEVELOPMENT COSTS		\$m
Development, Design, Construction, Operation and Ownership Costs for State Aquatic Centre, Health and Fitness Centre and associated works;		
Development, Design, Construction and Ownership Costs for GP Plus Centre and associated works.		[REDACTED]
DEVELOPMENT FUNDING		
Federal Government Contribution – SA Aquatic Centre	17.40	
Marion Council Contribution – SA Aquatic Centre	5.00	
SA Government – SA Aquatic Centre	1.45 p.a.	
SA Dept. Health – GP Plus	21.50	
Contributions arranged by Aqua43,	As required	
Total Funding		[REDACTED]

7. SA State Government Support Required

- Following satisfaction of all project conditions precedent the State Government will irrevocably and unconditionally make the following payments to Macquarie Capital Group Limited (each as described in Schedule 1)
 - payment of \$1.2m pa escalated at CPI (CPI adjusted from 1 July 2010) for 25 years, commencing in 20 Dec 09,
 - payment of \$0.25m pa escalated at CPI (CPI adjusted from 1 July 2009) for 25 years, commencing on 20 Dec 09
- SA Dept Health funding at financial close of \$20m and on 1 July 2009 of \$1.5m
- GP Plus maintenance, FM and outgoings to be funded by SA Dept Health.
- All interest earned beyond financial close to accrue to project in Joint Account
- Oaklands railway land to be transferred to Aqua 43 (or nominee) at financial close for nil consideration including consent to reposition part of the existing Rail Station parking in an acceptable manner.
- Warradale triangle corner site of approx 2495m2 (adjacent Coles) to be transferred to Aqua 43 (or nominee) at financial close for nil consideration and negotiate in good faith with Aqua 43 prior to financial close, regarding the potential future closure of Morphett road including impact on the Warradale site and any rights available to purchase the road closure land adjacent.
- Cooperate with Council and Aqua 43 to undertake a Ministerial development plan amendment as required for the master plan.
- Cooperate with Council and Aqua 43 to seek approval for GP Plus and SAC via a Section 49 process on the Domain site
- Cooperate with Council and Aqua 43 to seek PDPC approvals for the Oaklands Railway site, the Warradale triangle corner site (adjacent Coles), the Council park site and road reserves.
- Cooperate with Council and Aqua 43 to lift any existing Westfield or other limiting covenants over the Domain or other sites
- Assignment of SAC lease to Aqua 43 (or nominee) at practical completion, as described in Section 3 above.
- Cooperate with Aqua 43 and the Council to optimise the ownership and leasehold arrangements for the GP Plus to create the best value solution for the State including the resolution of rates and taxes liabilities satisfactory to all parties.

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8. City of Marion Support Required

- Federal Government funding at financial close of \$17.4m (as at 22 Sept 08) to be paid into Joint Account at financial close
- Marion Council funding at financial close of \$5m to be paid into Joint Account at financial close
- All interest earned beyond financial close to accrue to SAC in Government Joint Account.
- Marion SAC site lease granted as described in Section 3, above
- Marion reserve to be subject to reserve revocation process and part road reserve (Diagonal Way) to be subject to road closure process and transferred to Aqua 43 (or nominee) as soon as practicable following finalisation of these processes (should they be successful) and the agreed replacement (with any requisite titles/s for) open space that is suitable to Council for community recreational purposes; and subject to SAC reaching PC.
- Marion reserve to be subject to a 3 year temporary car park permit (at a nominal fee) as CP to financial close which will be extinguished once both the reserve revocation process and road closure process is finalised and land transferred to Aqua 43 (or nominee).
- Cooperate with the State and Aqua 43 to undertake a Ministerial development plan amendment as required for the master plan.
- Cooperate with the State and Aqua 43 to seek Section 49 approvals for GP Plus and SAC on the Domain site
- Cooperate with the State and Aqua 43 to seek the PDPC approvals for the Oaklands Railway site, the Warradale triangle corner site (adjacent Coles), the Council park site and road reserves.
- Cooperate with the State and Aqua 43 to lift any existing Westfield or other limiting covenants over the Domain or other sites.
- Acknowledge that the City of Marion has achieved its objective of indoor aquatic facilities being provided in the Marion region through its investment in the State Aquatic Centre
- The City of Marion wants to explore that the operation of the Marion Swimming Centre be managed by the operator of the State Aquatic Centre
- Council rates are applicable and upon application Council will provide a 100% rebate on the non-commercial activities of the SAC per Appendix D
- That the current applicable commercial "rate" for the SAC will be 0.54% per Appendix D.
- Cooperate with Aqua 43 and the State to optimise the ownership and leasehold arrangements for the GP Plus to create the best value solution for the State including the resolution of rates and taxes liabilities satisfactory to all parties.

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Schedule 1 – State Government Schedule of Base Payments

Year	Date	Base Payment A	Base Payment B	Total
1	20 December 2009	1,200,000	125,000 + cpi	1,325,000 + cpi
2	1 July 2010	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
3	1 July 2011	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
4	1 July 2012	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
5	1 July 2013	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
6	1 July 2014	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
7	1 July 2015	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
8	1 July 2016	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
9	1 July 2017	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
10	1 July 2018	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
11	1 July 2019	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
12	1 July 2020	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
13	1 July 2021	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
14	1 July 2022	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
15	1 July 2023	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
16	1 July 2024	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
17	1 July 2025	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
18	1 July 2026	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
19	1 July 2027	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
20	1 July 2028	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
21	1 July 2029	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
22	1 July 2030	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
23	1 July 2031	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
24	1 July 2032	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
25	1 July 2033	1,200,000 + cpi	250,000 + cpi	1,450,000 + cpi
26	1 July 2034	0	125,000 + cpi	125,000 + cpi

Base Payment A will escalate at CPI from and including 1 July 2010

Base Payment B will escalate at CPI from and including 1 July 2009.

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Schedule 2 – List of Appendices

Appendix A - Site Survey plan and Title diagram

Appendix B– Design Concepts and Specifications

1. SAC Output Specification as issued by the State
2. GP Plus Output Specification (revised to reflect exclusion of fit out etc as agreed by Candetti and Health) as issued by the Dept. of Health
3. MRAC Masterplan indicating the SAC, GP Plus, Oaklands Rail TOD site, Warradale retail site, Senior Living Residential concepts and potential future stage urban link from Domain to rail station
4. SAC Domain Site design concepts including SAC, GP Plus and parking.

Appendix C – Proposed Project Timeline

- Finalise proposal letter – 10 June 2008
- State and Council Approvals by 30 June 2008
- Development Deed agreed and PDPC Approvals lodged by 22 July 2008
- Commence design, documentation and procurement to enable construction to commence October 2008
- Contractual close / signing of all project document by 30 August 2008
- Financial Close by 30 September 2008 (or 3 months from lodging of approvals)
- Start on site - October 2008
- Complete SAC – Target December 2009, Latest 28 February 2010
- Complete GP Plus - March 2010

Appendix D - Rate, levy and land tax assumptions for SAC

- Land tax is exempt
- Council rates are applicable and upon application Council will provide a 100% rebate on the non-commercial activities
- The commercial components will not be rebated and the expected first year Council rates payable by Macquarie Leisure will be between [REDACTED] and [REDACTED] (based on a commercial rateable value of the Gym at say [REDACTED] x 0.54% = approx [REDACTED]. This assumption is based on the premise that if the Gym component is removed from the SAC, the SAC is a non-commercial loss making facility unable to operate without subsidy)
- SA Water
 - Water consumption payable in accordance with commercial use
 - Classified as "other non-residential" so not liable for the component of water rates based on property value
 - Sewerage rates based on property value at non-residential rates
- Emergency Services Levy is payable