

**SOUTH AUSTRALIA**

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**FINAL REPORT OF  
THE AUDITOR-GENERAL**

**ON THE**

**HINDMARSH SOCCER STADIUM  
REDEVELOPMENT PROJECT**

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*Tabled in the House of Assembly and ordered to be published, 3 October 2001*

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**Fourth Session, Forty-Ninth Parliament**

**Part 1**

**Key Findings and Recommendations**

By Authority: J. D. Ferguson, Government Printer, South Australia





Government  
of South Australia



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2 October 2001

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Gentlemen,

**Final Report of the Auditor-General on the Hindmarsh Soccer Stadium Redevelopment Project**

Pursuant to *Hindmarsh Soccer Stadium (Auditor-General's Report) Act 2001*, I herewith provide to each of you a copy of my 'Final Report of the Auditor-General on the Hindmarsh Soccer Stadium Redevelopment Project'.

I extend my thanks to Government Publishing SA and their staff, and the report printing coordinator Mr D O'Keefe for their efforts which have assisted materially in the production of this Report.

Yours sincerely,

K I MacPherson  
**AUDITOR-GENERAL**



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## GLOSSARY

Adelaide City	Adelaide City Soccer Club was a division of the Adelaide Juventus Sports & Social Club Inc. Adelaide City is currently known as the “Adelaide Force”.
Mr Ashenden	The Hon. Scott Ashenden MP, Minister for Recreation and Sport from 12 December 1996 to 20 October 1997.
Mr Avory	Mr Les Avory, Member of the Board of Commissioners of the Soccer Federation from 1993 and Chairman of the Soccer Federation from December 1996.
Mr Blatter	Mr Sepp Blatter, General Secretary of FIFA.
Mr Bollen	Mr Vaughn Bollen, Manager Capital Works, Office for Recreation, Sport and Racing and successor agencies from March 1996.
Mr Damian Brown	Mr Damian Brown, the Managing Director of National Portfolio Strategies Pty Ltd.
Mr Dean Brown	The Hon. Dean Brown MP, Premier of South Australia from 14 December 1993 to 28 November 1996, Minister for Information and Contract Services from 12 December 1996 to 20 October 1997.
Mr Browne	Mr Jeff Browne, Project Manager, Services SA and its predecessor and successor agencies.
Mr Caruso	Mr Charlie Caruso, Chairman of the Soccer Federation until October 1996.
Mr Ciccarello	Mr Sam Ciccarello, member of the Sydney 2000 Bid Committee established in March 1996 and consultant to Government and head of the Olympic Taskforce from March 1997.
The Council	The City of Charles Sturt and its predecessors, the Corporation of the City of Hindmarsh and the City of Hindmarsh and Woodville.
Mr Crafter	The Hon. Gregory John Crafter MP, Minister for Recreation and Sport between 1 October 1992 and 14 December 1993.
Mr Dixon	Mr Ian Dixon, Stage 2 Project Director from July to November 1997, Chief Executive Officer of the Department of Industry and Trade from 23 October 1997.
Mr Ellis	Mr Terry Ellis, the consultant retained by the Office for Recreation, Sport and Racing in March 1994 to review the April 1989 Feasibility Review and the Soccer Federation’s February 1994 Submission.
Mr Elphinston	Mr Bob Elphinston, General Manager – Games Operation, SOCOG.



Ernst & Young	Ernst & Young, consultants retained by the Office for Recreation, Sport and Racing in April 1996 to prepare a feasibility report on redeveloping the western grandstand.
Mr Evans	The Hon. Iain Evans MP, Minister for Recreation and Sport from 17 December 1997 to 8 October 1998, Minister for Recreation, Sport and Racing from 8 October 1998.
Mr Farrugia	Mr Tony Farrugia, General Manager of the Soccer Federation.
FIFA	Federation Internationale de Football Association, the governing body of international soccer.
Mr Fletcher	Mr Robert Fletcher, the Director of Corporate Services in the Office for Recreation, Sport and Racing and successor agencies from April 1996.
Mr Forbes	Mr George Forbes, Director of Capital Projects in the Office for Recreation, Sport and Racing from 1987 until March 1996.
Mr Ford	Mr Andrew Ford, principal and director of Woods Bagot, primary consultants for Stage 1 and 2.
Mr Forrest	Mr Simon Forrest, Executive Director, Department of Recreation and Sport and successor agencies from 1 July 1997.
Ms Freeman	Ms Judith Freeman, Manager, Project Management Services, Services SA and its predecessor and successor agencies.
Mrs Hall	The Hon. Joan Hall MP, Member for Coles, Ambassador for Soccer in South Australia from December 1995 to 1 October 1999, Chair of the Stage 1 Redevelopment Committee and Executive Group, member of the Sydney 2000 Bid Committee, member of the Olympic Taskforce, member of the Stage 2 Reference Group, Parliamentary Secretary to Mr Ingerson as the Minister for Recreation, Sport and Racing from 21 March 1996 to 29 January 1997, Parliamentary Secretary to Mr Ingerson as Deputy Premier and Minister for Infrastructure from 29 January to 17 December 1997, Minister for Youth and Minister for Employment from 17 December 1997 to 8 October 1998, Minister for Tourism from 8 October 1998.
Mr Hill	Mr David Hill, Chairman of Soccer Australia between 1995 and 23 September 1998.
Mr Hocking	Mr John Hocking, Assistant Crown Solicitor, Crown Solicitor's Office.
Ms Howe	Ms Anne Howe, CEO of Services SA and predecessor and successor agencies.

Mr Ingerson	The Hon. Graham Ingerson MP, Minister for Recreation, Sport and Racing from 22 December 1995 to 12 December 1996, Deputy Premier of South Australia from 28 November 1996 to 7 July 1998, Minister for Local Government, Recreation and Sport from 20 October to 17 December 1997.
IOC	International Olympic Committee.
Mr Jaksa	Mr Gaby Jaksa, Crown Solicitor's Office.
Mr MacFarlane	Mr David MacFarlane, Australian Major Events.
Mr Mayes	The Hon. Milton Kym Mayes, Minister for Recreation and Sport from 18 December 1985 to 1 October 1992.
NSL	The National Soccer League.
NSL Clubs	The National Soccer League Clubs, Adelaide City and West Adelaide.
Mr Olsen	The Hon. John Olsen MP, Premier of South Australia from 28 November 1996.
Mr Oswald	The Hon. John Oswald, Minister for Recreation, Sport and Racing from 14 December 1993 to 22 December 1995.
Mr Pickard	Mr Gordon Pickard, Patron of Adelaide City.
Mr Scarsella	Mr Basil Scarsella, Deputy Chair of Soccer Australia between early 1995 and, from 23 September 1998, Chair of Soccer Australia.
Mr Andrew Scott	Mr Andrew Scott, Stage 2 Project Director from November 1997.
Mr Michael Scott	Mr Michael Scott, CEO of the Office for Recreation, Sport and Racing from 19 September 1994 to 30 June 1997.
Mr Simmonds	Mr Kevin Simmonds, Manager Sporting Events, SOCOG.
Soccer Australia	The Australian Soccer Federation Limited.
Soccer Federation	The South Australian Soccer Federation Inc.
SOCOG	Sydney Organising Committee for the Olympic Games.
Mr Spurr	Mr Bill Spurr, CEO of Australian Major Events.
West Adelaide	West Adelaide Soccer Club was a division of the Hellenic Athletic and Soccer Club of South Australia Inc.
SACES	South Australian Centre for Economic Studies.

## **PART 1 – KEY FINDINGS AND RECOMMENDATIONS**



# CHAPTER 1 – INTRODUCTION

## WHY THE EXAMINATION WAS UNDERTAKEN

In February 1994, the South Australian Soccer Federation prepared a submission for upgrading Hindmarsh Stadium to the Hon. John Oswald MP, then Minister for Recreation, Sport and Racing.<sup>1</sup> The proposal involved an estimated cost of \$22.5 million and 22,000 fixed seats. In April 1995, a Cabinet Budget sub-committee approved a \$6.5 million upgrade of the eastern grandstand at Hindmarsh Stadium. The redevelopment of Hindmarsh Stadium received bi-partisan support.

In December 1995, the Hon. Graham Ingerson MP replaced Mr Oswald as Minister for Recreation, Sport and Racing. From then on, through a series of further Cabinet submissions, step by step, the scope of the construction works was increased. Under Minister Ingerson's leadership that increase was pursued without proper or adequate due diligence. These failures are addressed in Chapters 18 to 26 of this Report.

The primary justification advanced for the redevelopment of Hindmarsh Stadium was the staging of preliminary matches in the Sydney 2000 Olympic Soccer Tournament. The upgrade of Hindmarsh Stadium was described as necessary to secure those matches. No alternative to that upgrading was given serious consideration.<sup>2</sup>

The escalation in cost and the failure of the Government to provide information with respect to the project gave rise to Parliamentary concern. That concern was increased when the Government provided inaccurate and incomplete responses and refused to disclose relevant documents.

For example, the Public Works Committee gave only qualified support for Stage 1. The Public Works Committee declined to support Stage 2 because the Government would not give the Committee evidence it had requested. The Government withheld that evidence, making claims of commercial confidentiality, and inaccurately described the events that led to the increase in the scope and cost of the project.

Comments about the conduct of the project were made in the Auditor-General's Annual Reports to Parliament from 1996-1997.

In November 1999, debate occurred in the Legislative Council about the conduct of the project.

On 17 November 1999, the Legislative Council passed a motion requesting the Treasurer under Section 32 of the *Public Finance and Audit Act 1987* to request the Auditor-General to examine and report on dealings relating to the Hindmarsh Soccer Stadium Redevelopment Project. By letter dated 9 December 1999, the Treasurer conveyed that request to the Auditor-General with specific reference to the text of the Legislative Council's motion.

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<sup>1</sup> In this Report the South Australian Soccer Federation Incorporated is referred to as "the Soccer Federation".

<sup>2</sup> An alternative that had been very briefly considered was for the matches to be held at Adelaide Oval and for a legacy to soccer to be given by upgrading club grounds for use as practice venues. That alternative was rejected by the Soccer Federation and never received consideration by Cabinet.

The motion was:

*"That the Legislative Council requests that the Treasurer, under section 32 of the Public Finance and Audit Act 1987, requests that the Auditor-General examines and reports on dealings related to the Hindmarsh Soccer Stadium Redevelopment Project and, in particular –*

- I. Whether there was due diligence by government representatives prior to the signing of agreements for construction of stages 1 and 2 of the project.*
- II. Whether due diligence was applied subsequent to the commitment to stages 1 and 2, including whether the Crown Solicitor's advice as described on page 12 of the thirty-third report of the Public Works Committee, August 1996, was adhered to.*
- III.(a) Whether undue pressure was placed on individuals leading to legal commitment by them on behalf of sporting clubs or associations.*
- III.(b) The present status of all relevant deeds of guarantee or other legal documents, the financial status of the signatories and whether the legal agreements have created financial difficulty for any non-government persons or organisations.*
- IV. Whether there were any conflicts of interest or other imprudent or improper behaviour by any person or persons, government or non-government, involved with the project, and whether the appropriate processes were followed in relation to –*
  - (a) the planning stages of the project;*
  - (b) the awarding and monitoring of consultancies;*
  - (c) the tendering process;*
  - (d) the letting of contracts;*
  - (e) the construction of the stadium; and*
  - (f) the ongoing management of the stadium.*
- V. The Auditor-General be requested to include in his report recommendations for government and the parliament where appropriate."*<sup>3</sup>

In his letter of request the Treasurer said that the Auditor-General would have to determine how to respond to the Legislative Council's request consistently with the legal obligation placed upon him by

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<sup>3</sup> South Australia, Hansard, Legislative Council Hansard, 17 November 1999, page 478.

Section 32 of the *Public Finance and Audit Act 1987*. I sought the advice of Senior Counsel in determining my responsibilities.

Section 32 of the *Public Finance and Audit Act 1987* provides:

- "32. (1) *The Auditor-General must, if requested by the Treasurer –*
- (a) *examine the accounts of a publicly funded body and the efficiency and economy of its activities; or*
  - (b) *examine accounts relating to a public funded project and the efficiency and cost-effectiveness of the project.*
- (1a) *An examination may be made under this section even though the body or project to which the examination relates has ceased to exist.*
- (2) *After making an examination under subsection (1), the Auditor-General must prepare a report setting out the results of the examination.*
- (3) *the Auditor-General must deliver copies of the report to the Treasurer and to the President of the Legislative Council and the Speaker of the House of Assembly."*

On 24 July 2001, I presented an Interim Report to the Parliament wherein I advised that representations had been made to me that challenged my authority to report in accordance with the Terms of Reference. In order that the matter be put beyond doubt, the Parliament enacted the *Hindmarsh Soccer Stadium (Auditor-General's Report) Act 2001*. This Act was stated to have come into operation on 17 November 1999, the date of the motion of the Legislative Council relating to Hindmarsh Stadium. Section 4 of this Act puts beyond doubt the matter of my legal authority to report upon each of the matters the subject of the Terms of Reference referred to me by the Treasurer.

## **CONDUCT OF EXAMINATION**

Generally, the Government agencies and non-government organisations involved in the Hindmarsh Soccer Stadium Redevelopment Project willingly provided this Examination with access to relevant documents. Documents were obtained from a number of entities including the Office for Recreation and Sport,<sup>4</sup> the Department of Treasury and Finance, the Crown Solicitor's Office, the Department for Industry and Trade, the Department of Education, Training and Employment, the Department for Administrative and Information Services, the Department of Premier and Cabinet, the Soccer Federation, Woods Bagot and National Portfolio Strategies.

Summonses pursuant to Section 34 of the *Public Finance and Audit Act 1987* were prepared and served upon a number of departmental officers and individuals involved with non-government organisations. Over 15,500 documents were reviewed. Oral evidence was heard on oath from

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<sup>4</sup> The Office for Recreation and Sport is a division of the Department of Industry and Trade. From July 1993 to the date of this Report, there have been a number of predecessor entities and changes in administrative arrangements for this entity. The principal changes are set out in Part 2 of this Report.

39 different witnesses. The services of a firm of solicitors and counsel were retained to assist with the conduct of the Examination.

## SCOPE OF EXAMINATION

The Examination's conduct involved issues of a legal, administrative and financial nature. The scope of the Examination conducted within these areas covered, but was not necessarily limited to, the following issues.

### Legal

**Legislative framework** – Each step in the implementation of the redevelopment project was reviewed by reference to the relevant legislation applicable to capital works of a public nature.<sup>5</sup>

**Internal Governmental guidelines** – Each step in the redevelopment was examined by reference to relevant Government guidelines.<sup>6</sup>

**Project documents** – The formal agreements entered into between participants in the redevelopment were examined.<sup>7</sup> In examining those legal documents the appropriateness of the structures and transactions effected by them were considered. The present status of the documents was considered. The adherence to the requirements of those documents was considered, including any waiver or dispensing with the requirements of those documents.

**Undue influence** – The circumstances surrounding the entry into of all of the legal documents relevant to the redevelopment were examined to determine whether undue pressure had been placed on any individual representing a sporting club or association. The circumstances were examined both from a legal perspective of "undue influence" in a sense which might give rise to a cause of action or a legitimate defence, as well as in a broader sense. The circumstances were examined to determine whether undue pressure was brought to bear on parties in a manner with which the Government, as the exemplar of proper behaviour in the community, should not be associated.

### Administrative

**The Office for Recreation and Sport** – The steps taken and methods used by this agency and its predecessors in promoting the redevelopment of Hindmarsh Stadium were examined closely. Internal minutes and submissions to Cabinet were examined closely.

**The roles of the Department of Treasury and Finance, the Crown Solicitor's Office and DAIS** – The roles of the Department of Treasury and Finance, the Crown Solicitor's Office and DAIS<sup>8</sup> in protecting the Government's interest in the project were examined.

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<sup>5</sup> For a discussion of the relevant legislation, see Chapter 18.

<sup>6</sup> For a discussion of the relevant guidelines, see Chapter 18.

<sup>7</sup> For details of the documents see Chapters 29 to 35.

<sup>8</sup> DAIS is the acronym for the Department for Administrative and Information Services. Since 1993, there have been a number of predecessor entities and changes in administrative arrangements for this entity. The principal changes are set out in Part 2 of this Report.



**Cabinet submissions** – Submissions to Cabinet were examined and the information contained in them was compared with the actual facts and the project documents as executed.

**Minutes of meetings** – The minutes of various committees that had an involvement in the project were examined to identify the issues that had been addressed during all stages of the project. Those issues identified were compared with the steps taken by departmental officers and other representatives of Government.

## **Financial**

**Costs** – The actual cost to Government of the project was examined. All monies spent on consultancy fees, actual construction and other associated expenses were identified and examined. The financial accounts of the Soccer Federation and the NSL Clubs were also reviewed.

## **NATURAL JUSTICE AND PROCEDURAL FAIRNESS**

This Examination has observed the requirements of natural justice and procedural fairness. I have ensured that all parties who might be affected adversely by my findings were given opportunity to make written submissions to refute or contradict any tentative findings. The submissions that were received were taken into account in settling the final text of this Report.

## **STANDARD OF PROOF**

This examination has applied the standard of proof to reasonable satisfaction, in the sense set out by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (at 362) and as explained by the Supreme Court of South Australia:

*"It is trite to say that, in Briginshaw v Briginshaw, the High Court made the point that, where the civil onus of proof on the balance of probabilities is applicable, nevertheless, as Dixon J put it, the weight of evidentiary material which will bring a Court to accept that the onus is discharged in a particular case will necessarily need to take into account the 'seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding.*

*As he so forcefully pointed out, reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved." <sup>9</sup>*

This Examination has had regard to the consequences of its findings, such as the effect that certain findings could have on the reputations of individuals. Those findings that are or might be seen as critical of individuals have been made having regard to the standard of proof referred to above.

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<sup>9</sup> *Heinrich v The Medical Board of South Australia*, unreported, Supreme Court of South Australia, Olsson J, 11 April 1996, Judgment No. S5559.

## **ALLEGATION THAT DOCUMENTS WERE SHREDDED**

Mr Ingerson gave evidence to this Examination that he had been told that documents relating to the Hindmarsh Stadium Redevelopment were shredded after the October 1997 election by Minister Ashenden's ministerial staff. Mr Ingerson has submitted to me that I am unable to rely on the documents produced to me as presenting a full chronology of the relevant events because documents were shredded. Mr Ingerson has not identified any specific document that he says is now missing.

Mr Ashenden unambiguously denied the allegation. I have examined Mr Ashenden's staff and satisfied myself that no documents were improperly shredded as alleged. Mr Ashenden's staff did shred some of Mr Ashenden's personal records. In the 1997 Christmas break, Mr Ingerson's staff shredded obsolete duplicate records relating to Mr Ingerson's other portfolios.

In light of the evidence I have obtained, I do not accept Mr Ingerson's submission that I cannot legitimately rely on the documents produced to me as presenting a full chronology of the relevant events because documents were shredded.

Even if there were a suspicion that files or documents were missing, I do not accept that I would be precluded from making findings of fact. To do so would be to encourage Government officers who fear embarrassment to destroy documents knowing that those charged with investigating the conduct of Government could not make findings on the basis of inferences that are capable of being drawn from the available evidence.

## **CHAPTER 2 – OVERVIEW OF KEY FINDINGS AND ISSUES IN THIS REPORT**

### **INTRODUCTION**

The purpose of this Chapter is to provide an overview of the matters examined in this Report and the key findings that I have reached.

This is a summary chapter. It is presented to provide an accessible summary of the relevant Government processes associated with this matter. Readers should, however, be aware of the dangers of basing any view of any individual's conduct without regard to the context of my detailed findings.

### **A NOTE OF IMPORTANCE**

Contention has been engendered by several persons involved with this Examination regarding the history and factual background associated with both Stages 1 and 2 of the Hindmarsh Soccer Stadium Redevelopment Project. This has necessitated the inclusion in this Report of a detailed Chronology of relevant matters. This Chronology is contained in Part 2 of this Report.

In my opinion, in the absence of this Chronology, those involved might avoid proper accountability or unfair inferences and blame might be wrongly directed at many individuals in the public service. This Examination has found that a number of individuals in the public service sought to ensure that proper processes were followed and drew attention to concerns, but were overridden by ministerial authority. I am mindful of the fact that these individuals do not have the benefit of a Parliamentary forum to defend themselves.

### **COSTS**

The cost as at 30 June 2001 including capital cost, Government guarantees, the cost of hosting the Olympic Soccer Tournament<sup>10</sup> and support of soccer organisations associated with the redevelopment of Hindmarsh Stadium exceeds \$41 million. The constituent elements of this cost are stated in Appendices I and 3 of this Report.

The Hon. Graham Ingerson MP has submitted to this Examination a number of times that the Hindmarsh Soccer Stadium Redevelopment Project was completed on time and on budget. With respect to budgetary matters that submission is not correct. The budget for Stage 1 was expanded to accommodate whatever need or cost arose.<sup>11</sup> By contrast the initial budget for Stage 2 was set by reference to a project of which the key component was the concept of a "soccer park". That budget was applied even though Stage 2 as built was a very different project involving the provision of 10,000 additional permanent seats.

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<sup>10</sup> ie net cost identifiable in respect of two agencies of Government, being the Department of Industry and Trade and the Department of the Premier and Cabinet.

<sup>11</sup> The initial budget set in April 1995 for the construction of a new eastern grandstand was \$6.5 million including a \$300 000 reimbursement to the Soccer Federation for the cost of its already built administration facilities. In April 1996, Mr Ingerson, then Minister for Recreation, Sport and Racing sought Cabinet approval for a budget of \$8.125 million. Approval was sought from Cabinet on four further occasions for increases for the Stage 1 budget to \$9.26 million.

## BENEFITS

The cost associated with this redevelopment has, broadly speaking, procured two benefits. First, South Australia now has an international standard soccer stadium with permanent seating capacity for 15,000 spectators. Secondly, the State has had the benefit of hosting matches in the 2000 Olympic Soccer Tournament.

The readily quantifiable direct benefits of the upgraded stadium and the 2000 Olympic Soccer Tournament are:

- Seven Olympic soccer matches were held between 13 and 30 September 2000.<sup>12</sup> From one point of view, those matches were a complete success. The matches themselves were examples of an international sport played at the highest level. On another view, the success was not unqualified. At one stage, it was planned to expand the capacity by temporary seating to 20,000 seats. However, because of low ticket sales, temporary seating was installed only to the extent necessary to have capacity for 18,066. For four of the seven matches held in Adelaide, that capacity was not filled. The cost of hosting the Tournament after taking into account all income generated was \$5.706 million.<sup>13</sup>
- Since October 2000, Hindmarsh Stadium has been used for 14 NSL matches, two Women's soccer matches, Premier and State League Finals, Junior Cup Finals and a Japanese training camp. The average attendance at each NSL match was 3,687. The Premier and State League Finals have attracted over a 1,000 spectators while the Junior Cup Finals attracted a crowd of 1,750. Other soccer events have attracted crowds of less than 1,000. Apart from the Olympic matches, the stadium has not attracted a crowd of greater than 5,358, barely more than a third of its capacity.<sup>14</sup> The income generated by operating the stadium has consistently been less than the cost.

In economic and financial terms, there is a very strong basis for concluding that the Hindmarsh Soccer Stadium Redevelopment Project was not cost-effective.

## POLICY DECISIONS

Executive Government is entitled to decide as a matter of policy to pursue a project on the basis of benefits that may not be readily measured in economic terms. Typically, Executive Government may consider that the social benefits outweigh the lack of economic benefits. It is plain that Mr Ingerson and Mrs Hall both strongly held the belief that redevelopment of the Hindmarsh Stadium would produce significant social benefits.

There were two relevant policies adopted by Executive Government.

- In December 1993, the concept of redeveloping Hindmarsh Stadium formed part of the newly elected Government's policy for the provision of upgraded sporting facilities for netball, athletics and soccer. Each sport was expected to contribute to the cost of upgrading its facilities

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<sup>12</sup> Chapter 16 discusses the staging of the Olympic Soccer Tournament in more detail.

<sup>13</sup> See footnote 10.

<sup>14</sup> This was the Adelaide Force v Parramatta Power match held on 5 January 2001. Source: Soccer Australia website.

commensurate with the sport's capacity to meet debt servicing costs for the capital cost of the facilities.

- From January 1995, the Government was committed as a matter of policy to pursuit of the opportunity to host Olympic Soccer.

Neither policy involved a decision of Executive Government to pursue the redevelopment of Hindmarsh Stadium without regard to cost or proper due diligence or Government processes. Neither involved a decision to disregard existing controls. As Mr Ingerson acknowledged in his examination, it was not the case that a decision had been made to pursue the project at all costs. The cost always had to be reasonable.

The policy decision to redevelop the Hindmarsh Stadium for the purpose of promoting soccer in South Australia cannot itself be the subject of criticism. Nor can the policy decision to pursue the opportunity to host preliminary matches of the 2000 Olympic Football Tournament. It was the manner of the implementation of those policy decisions that has been the cause of public disquiet and the reason for the referral of this matter for examination and report to the Parliament.

## **IN A NUTSHELL WHAT WENT WRONG**

The Government through its responsible Ministers committed to the expenditure of substantial sums of public monies with insufficient regard to existing controls for determining whether that expenditure was, in all the circumstances, warranted. The Government made financial commitments and entered into legal obligations on the basis of inaccurate and incomplete information, and in the absence of adequate analysis.

The Government committed to that expenditure on the basis that a major expansion of Hindmarsh Stadium was necessary to achieve the policy objective of hosting matches in the 2000 Olympic Soccer Tournament. In my Examination I have found that the substantial increase in the scope and cost of the redevelopment project was not required by SOCOG or needed by the sport of soccer in South Australia.<sup>15</sup> What was built was entirely the decision of Cabinet based on recommendations put forward from time to time by the proponent Ministers, Mr Ingerson and Mr Ashenden.<sup>16</sup>

It is not a case that adequate controls did not exist. They did. It was simply that they were repeatedly disregarded by those who had a responsibility to apply them. In summary, the following critical controls were disregarded.

- At no stage was any adequate feasibility study or cost benefit analysis undertaken of the proposed redevelopment.
- Cabinet submissions upon which approvals were given by Cabinet for the undertaking of major financial commitments and legal obligations were inaccurate and incomplete in material respects.

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<sup>15</sup> See Chapters 10 and 23 for a detailed discussion of this issue.

<sup>16</sup> Mr Ashenden was responsible for the project as the Minister for Recreation and Sport between 12 December 1996 and July 1997 when Mr Ingerson as Deputy Premier resumed responsibility for the project.

- Alternatives to the Stage 2 redevelopment were disregarded. Building a less expensive stadium was not adequately considered. Using a different venue was not adequately considered.
- In particular, Treasurer's Instruction 9105 was disregarded in the project initiation phases. It required compliance with Treasury Information Paper 90/1 that required presentation of multiple options including the "do nothing" option. Non-compliance with these requirements constituted a breach of the *Public Finance and Audit Act 1987*.
- FIFA and SOCOG requirements were inadequately defined. The one element over which there was no uncertainty was pitch size. Notwithstanding that this minimum requirement was not negotiable, it was omitted from the scope of the Stage 1 works by the Executive Group of the Hindmarsh Redevelopment Committee to make way for new items such as air conditioning for corporate boxes and the Soccer Federation loan costs. This decision ensured that a key objective of Stage 1 was not met by the Stage 1 works.
- Despite recognition by all levels of Executive Government of the importance of the need to resolve ownership and management issues before commitment to the project, these issues were not adequately addressed until earlier this year.

### **Mr Ingerson**

In my opinion, the disregard shown by Mr Ingerson and his advisers to the concerns of the Public Works Committee, the Crown Solicitor's Office, the Department of Treasury and Finance and Services SA warrants criticism and must be considered to be a contributing factor to the final scope and cost of the Hindmarsh Soccer Stadium Redevelopment Project.

### **The South Australian Soccer Federation**

The South Australian Soccer Federation, in my opinion, determinedly and successfully exploited the inadequacies in the governmental control environment to achieve, at public expense, a facility, that in terms of soccer needs in South Australia, was far in excess of the requirements that attendances indicated as necessary. The attitude taken by the South Australian Soccer Federation to its obligations under the various contractual agreements that it undertook with the Government was somewhat curious. In my opinion, its approach to meeting its legal obligations can only be described as "casual and on occasion, unhelpful", motivated, in my opinion, by the fact that it assumed no financial risk to itself, and the expectation that any financial obligations it did have through payment of levies would be waived or forgiven by the Government within a short period. This in fact is what has occurred.

The Soccer Federation saw the opportunity for its dreams for the Hindmarsh Soccer Stadium to be realised and took every available avenue to advance its own interests. There can be no criticism, per se, of the Soccer Federation for promoting its own self interest. However, Executive Government's response to the requirements of the Soccer Federation and the accommodation of the Federation's failure to meet certain of its contractual obligations is, in my opinion, inexcusable.

## **Mrs Hall**

One of the fundamental constitutional responsibilities of a Member of Parliament is “*the function of vigilantly controlling and faithfully guarding the public finances*”.<sup>17</sup> In my opinion, by participating and involving herself in chairing meetings of the Board of Commissioners of the Soccer Federation as Ambassador for Soccer at a time when the Soccer Federation was seeking substantial monies from the Executive Government and at the same time presiding as the Chair of the Government Ministerial Advisory Committee for Stage 1, Mrs Hall weakened her constitutional obligation of due watchfulness and placed herself in a position whereby she was not able to effectively discharge her public responsibilities on behalf of the community. Having regard to the influence that was sought to be exercised by the Soccer Federation, this situation, in my opinion, compromised the operation of the internal controls within Government.

## **THE UNDERMINING OF THE PUBLIC WORKS COMMITTEE PROCESS**

In my opinion, the Public Works Committee process for Stages 1 and 2 was undermined.

The Public Works Committee's support for the project given in its 33rd Report was based on a submission from the Office for Recreation, Sport and Racing that contained inaccurate and confusing statements about the requirements of SOCOG. Oral evidence given to the Public Works Committee reinforced the impression that the Stage 1 project would meet FIFA requirements and provide the necessary facilities for Adelaide to host the Olympic Soccer Tournament. The Public Works Committee was also given an incomplete version of the Crown Solicitor's Office's advice about the risks attendant upon the Minister for State Government Services directly contracting to undertake the development.

In my opinion, the Public Works Committee's investigations of Stage 2 were thwarted by the material placed before the Committee and by the Government's response to the Committee's questions. The written submission to the Public Works Committee for Stage 2 was inaccurate and incomplete in a number of material respects. The Government refused to disclose information to the Committee. Ultimately the Government moved a motion in Parliament to bring the Committee's deliberations to a halt.

## **OTHER MAJOR FAILURES OF DUE DILIGENCE**

### **Inadequate Feasibility and Cost Benefit Analysis**

It is a matter for concern that a critical review of the Soccer Federation's February 1994 submission to Minister Oswald was disregarded. This review was undertaken by a consultant, Mr Ellis, in March 1994 on instruction from the Office for Recreation, Sport and Racing. Mr Ellis identified a number of significant issues associated with any proposed redevelopment of Hindmarsh Stadium. Mr Ellis' review was scathing. In short, he concluded that the estimated usage did not justify a stadium with 23,750 seats. At the very least this review highlighted the necessity for detailed feasibility studies to be undertaken before any commitment was given to redevelop Hindmarsh Stadium.<sup>18</sup>

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<sup>17</sup> *R v Boston* (1923) 33 CLR 386 at 401.

<sup>18</sup> See Chapter 6 for a detailed discussion of Mr Ellis' review.

However, no feasibility study was undertaken by the Office for Recreation, Sport and Racing at the time of the project's initiation in April 1995. As the content of the project was developed between April 1995 and August 1996, studies by Ernst & Young and Woods Bagot were commissioned. The scope of each of these studies was seriously inadequate for decision-making purposes. This is no criticism of either Ernst & Young and Woods Bagot, both of whom complied with their instructions.

No adequate feasibility study was undertaken by the Department of Recreation and Sport<sup>19</sup> in relation to the Government guarantee given in August 1997 of the \$2 million loan to the Soccer Federation for the fit out of Stage 1.

There was no adequate feasibility study or cost benefit analysis undertaken for Stage 2. Only one formal study was undertaken, limited to an economic analysis. That study was not updated when the project changed or when new information became available. When the Department of Treasury and Finance identified the limitations of that study, no steps were taken to address those limitations. The Woods Bagot master planning performed in December 1995 and January 1996 that covered some of the substance of Stage 2 was not a substitute for a proper feasibility study.

These matters are discussed in detail in Chapters 19 and 23 of this Report.

### **Cabinet Submissions Inadequate Basis for Decision**

The Cabinet submissions upon which Cabinet's approval of Stages 1 and 2 and the loan to the Soccer Federation for the fit out of the western grandstand was based, each to varying degrees contained inaccurate or incomplete information.

These matters are discussed in detail in Chapters 19 and 23 of this Report.

## **FAILURE TO ACHIEVE KEY OBJECTIVE**

Although there was uncertainty as to which of the particular FIFA requirements were mandatory, there was no doubt that pitch size was not negotiable. If Stage 1 was to meet FIFA requirements, the existing pitch at Hindmarsh Stadium needed to be enlarged.

It is a matter of concern that notwithstanding that this was a key objective of the Stage 1 project, the pitch upgrade was deferred and other new items such as corporate box air conditioning and the application fee for the Soccer Federation's loan were included. This decision made by the Executive Group of the Hindmarsh Stadium Redevelopment Committee ensured that a key objective of Stage 1 would not be achieved.

## **OWNERSHIP AND MANAGEMENT ISSUES**

The critical issues of the ownership and management of Hindmarsh Stadium have only recently been resolved,<sup>20</sup> more than three years after these issues first should have been properly addressed.

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<sup>19</sup> This agency was the successor of the Office for Recreation, Sport and Racing from 19 December 1996.

<sup>20</sup> The arrangements between the Government and the Council for the purchase of the stadium, although agreed in principle, are still the subject of negotiation over the terms of formal legal documents. Formal agreements between the Government, the Soccer Federation and Adelaide City were signed and effective from 29 March 2001. See Chapter 16 for further details of these arrangements.



It is common sense that arrangements for the ownership and management of capital works should be adequately addressed before the Government commits to the works. The Government should have properly resolved ownership and management issues before it committed to the Stage 1 project in October 1996.

In the course of implementing the Stage 2 project, no changes were made to the legal structure for Stage 1 that governed the ownership and management of Hindmarsh Stadium. For example, the lease from the Council to the Soccer Federation was not altered to take account of the increased size of the site after incorporation of additional land.<sup>21</sup> No further security rights were put in place to protect the Government's position despite its contribution of a further \$17 million to redevelop a facility leased to the Soccer Federation on land owned by the Council.

The need to address these issues in the context of a substantially greater redevelopment project was recognised by the Government at all levels during the initiation and approval stage of the Stage 2 project.

In my opinion, the primary responsibility for failing to resolve these issues rests with Mr Ingerson who was not only the proponent Minister for Stage 1, but who also was the Minister responsible for initiating investigations into the acquisition of land in 1996 as well as being the lead Minister and the principal proponent of the Stage 2 project from July 1997. Mr Ingerson bears responsibility for failing to resolve these issues before securing Cabinet approval of the final concept and budget for Stage 2 in August and September 1997. I note that Mr Ingerson secured Cabinet's approval on the basis that these issues would be addressed urgently and that no major impediments were seen to their resolution. However, by the time of Mr Ingerson's resignation in August 1998, these issues were not resolved, despite numerous opportunities to do so.

Mr Ingerson has submitted that at the time of his resignation he considered these issues were being negotiated and capable of resolution before construction was complete. I do not consider that an adequate basis on which to have proceeded. As discussed in detail above, once construction commenced, the Government had no effective bargaining position upon which to negotiate a resolution of these issues. This Examination has found no reasonable basis for Mr Ingerson holding this view.

Mr Ashenden bears Ministerial responsibility for failing to consider how to address these issues between December 1996 and July 1997 while he was the Minister responsible for trying to initiate Cabinet approval for the project.

The role of the Cabinet Committee chaired by Deputy Premier Ingerson warrants a lesser criticism in the following regard. Although the Cabinet Committee was not established until after the Government had committed to the Stage 2 project, the Committee did not effectively assist Mr Ingerson in resolving ownership and management issues. I find that the principal reason for this failure was the fact that after its first two meetings, the Cabinet Committee only met twice in 10 months.

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<sup>21</sup> ie the Hindmarsh Bowling Club and Meals on Wheels sites and Hindmarsh Place which was closed.

# THE EFFECT OF THE LEGAL ARRANGEMENTS ON SOCCER ORGANISATIONS

## The Soccer Federation

The Soccer Federation and the NSL Clubs executed agreements<sup>22</sup> committing them to expenditure<sup>23</sup> which, ultimately, they did not meet.

In April 1995, the Soccer Federation agreed with the Government that it would pay for the fit out of the western grandstand. The NSL Clubs agreed with the Soccer Federation to contribute to this cost. This key feature of the April 1995 Memorandum of Understanding and the 1996 Funding Deed was changed in August 1997 without, in my opinion, adequate justification.<sup>24</sup> Instead, the Government provided a guarantee for a further \$2 million loan to the Soccer Federation from the National Australia Bank Limited. The 1996 Funding Deed was amended to impose an additional \$2 levy on any spectator attending matches at Hindmarsh Stadium.

The Soccer Federation agreed with the Government to collect and impose levies on spectators attending matches at Hindmarsh Stadium to fund repayments of the Soccer Federation's loans taken out to fund its contribution to the project cost. The NSL Clubs agreed with the Soccer Federation to the imposition of the levies. In September 1998, the Soccer Federation and the NSL Clubs agreed to change the Levy System to a capped \$5,000 per match without informing the Government that this had been agreed. This was in breach of the Soccer Federation's agreement with the Government.

In November 1998, the Soccer Federation put its proposal for the suspension or waiver of levies to Minister Evans, then Minister for Recreation, Sport and Racing. The Levy System has been effectively suspended since January 1999.

These events have directly increased the cost of the project for Government.<sup>25</sup>

It has been submitted to this Examination that the Soccer Federation and the NSL Clubs could not afford the obligations that they undertook for the redevelopment of Hindmarsh Stadium. It is clearly inefficient and not cost-effective for Government to enter into complex legal relations with persons who cannot meet their obligations. The failure of the Levy System imposed by the Stage 1 Project Documents, has meant that the Government has borne significantly more than its intended share of the repayments of the Stage 1 Loans<sup>26</sup> made to the Soccer Federation.

In my opinion, the particular way in which the legal arrangements for the redevelopment of Hindmarsh Stadium have been set up has benefited the Soccer Federation, without exposing it to substantial financial risk. The Soccer Federation has the benefit of the lease of a stadium with substantially improved facilities. At the same time, it was only obliged to make contributions to the servicing of a

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<sup>22</sup> Namely, the 1996 Licence Agreements which comprised an exchange of letters between the Soccer Federation and the NSL Clubs and the 1997 Licence Agreement which was a formal legal document between the Soccer Federation and the NSL Clubs. This Report uses these descriptions to distinguish between the agreements made at these two different times.

<sup>23</sup> See Chapter 32.

<sup>24</sup> See Chapter 19 for a detailed discussion of this matter.

<sup>25</sup> See Appendix 1.

<sup>26</sup> The Stage 1 Loans are the loans taken out by the Soccer Federation with the National Australia Bank Limited to fund its share of Stage 1 project costs and the fit out of the western grandstand. These agreements are discussed in detail in Chapter 32.

debt to the extent that it had collected levies on spectators using the stadium. Until suspension of the Levy System, any shortfall between the levies collected and loan repayment was required to be met by the Minister for Recreation, Sport and Racing. The Soccer Federation's loan liabilities to the National Australia Bank Limited are guaranteed by the Treasurer.

Under the Licence Agreements, the Soccer Federation passed on to the NSL Clubs a significant share of the expenses for the operation and management of the stadium. The commitment to bear the cost of the fit out of Stage 1 was the only substantial financial obligation made by the Soccer Federation. It was also shared with the NSL Clubs until it was effectively assumed by the Government underwriting the Fit Out Levy provided for in the Fit Out Guarantee Deed.

From my Examination, I have concluded that the Soccer Federation has suffered financial detriment as a result of the increased operational and maintenance costs for a significantly larger stadium in circumstances of declining spectator attendances at matches, the placing of West Adelaide in liquidation, and the refusal of Adelaide City to meet its obligations under the Licence Agreements.

Under the new legal arrangements between the Government and the Soccer Federation, the Soccer Federation has received a considerable financial payment in consideration for it transferring the management of the stadium to Government. This has resulted in the Soccer Federation no longer having responsibility for the considerable maintenance and operating expenses of Hindmarsh Stadium.

### **Adelaide City**

This Report concludes that the Levy System both as it was intended to operate under the Funding and Fit Out Deeds and, as it was in fact implemented by the Soccer Federation and the NSL Clubs, has not materially contributed to Adelaide City's deteriorating financial position.

This Report finds that the major cause of Adelaide City's deteriorating financial position is the significant escalation in its operating costs, both for its NSL team to play at Hindmarsh Stadium and for its other operations.

### **West Adelaide**

In my opinion, the insolvency and liquidation of West Adelaide was not the direct result of the financial arrangements surrounding the redevelopment of Hindmarsh Stadium. The increased costs of West Adelaide's NSL Club playing at the redeveloped Hindmarsh Stadium was only one of a number of contributing causes of West Adelaide's financial collapse.

## **MRS HALL'S ROLE AS AMBASSADOR FOR SOCCER**

### **The Various Roles Held by Mrs Hall**

Mrs Hall was Ambassador for Soccer in South Australia from December 1995 until 1 October 1999.

Mrs Hall also had a number of influential roles in the Hindmarsh Soccer Stadium Redevelopment Project:

- Mrs Hall was the Chair of the Hindmarsh Stadium Redevelopment Committee and its Executive sub-committee. The sub-committee was the project steering committee for Stage 1.

- Mrs Hall was also a member of the Soccer 2000 Bid Committee chaired by Mr Bill Spurr, then General Manager of Australian Major Events.
- Between March and December 1996, Mrs Hall was also Parliamentary Secretary to Mr Ingerson as the Minister for Tourism and the Minister for Recreation, Sport and Racing. Mr Ingerson was the proponent Minister for Stage 1. Mrs Hall continued to work closely with Mr Ingerson when Minister Ashenden replaced him as Minister for Tourism and Minister for Recreation, Sport and Racing in December 1996.
- Mrs Hall then became Mr Ingerson's Parliamentary Secretary while he was the Deputy Premier and Minister for Infrastructure from January to December 1997. Although ministerial responsibility resided with Mr Ashenden as Minister for Recreation, Sport and Racing, Mr Ingerson maintained a keen interest in the project through his role as Deputy Premier and as a senior member of Cabinet. By July 1997, Mr Ingerson was again lead Minister for the project, assisted by Mrs Hall as his Parliamentary Secretary.
- Mrs Hall was a member of the SA Olympic 2000 Taskforce set up by Mr Ashenden as Minister for Recreation, Sport and Racing in March 1997.
- Mrs Hall attended the Workshop held on 6 August 1997 to review the scope of works and budget for Stage 2. Mrs Hall was a member of the Stage 2 Reference Group.<sup>27</sup>

From 17 December 1997 to 8 October 1998, Mrs Hall was Minister for Youth and Minister for Employment. On 8 October 1998, Mrs Hall became Minister for Tourism and a member of Cabinet. The hosting of the Olympic Soccer Tournament at Hindmarsh Stadium was one of Mrs Hall's responsibilities as Minister for Tourism.

### **Mrs Hall: A Conflict of Interest and Duty**

For the reasons set out in Chapter 38 of this Report, I have found that, in two cases, Mrs Hall had a conflict of interest and duty by reason of her position as Ambassador for Soccer:

- Mrs Hall had a conflict of interest and duty while both Ambassador for Soccer and Chair of the Stage 1 Redevelopment Committee in her capacity as Minister Ingerson's Parliamentary Secretary.
- Mrs Hall had a conflict of interest and duty while both Ambassador for Soccer and a Minister of the Crown.

Having regard to the nature of her role within the Soccer Federation, Mrs Hall's failure to resign as Ambassador for Soccer immediately upon her appointment as a Minister of the Crown on 17 December 1997 was, in my opinion, inappropriate and a departure from proper standards of ministerial conduct.

Mrs Hall denied that she had a conflict of interest, actual or perceived, by reason of her position as Ambassador for Soccer. I disagree for the reasons that are discussed in detail in Chapter 38. Mrs Hall has also submitted that she acted in good faith. I accept Mrs Hall's submission and accept

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<sup>27</sup> The role of Stage 2 Reference Group is discussed in Chapter 25.

that she did not appreciate the potential for conflict arising from her position as Ambassador until September 1999 when she became the Minister responsible for staging the Olympic Soccer Tournament at Hindmarsh Stadium.

However, Mrs Hall's integrity is not the issue. Good and proper public administration requires that there be confidence in Government and its processes. That confidence is undermined, in my opinion, when there is a real likelihood of bias in the discharge of public duties, even if a public officer was as impartial as he or she could be. A public officer should not act in purported discharge of his or her office, no matter how principled that person may be, when there is a reasonable public perception of bias or partiality.

After examining Mrs Hall's role as Minister Ingerson's representative on the Stage 1 Redevelopment Committee, I have concluded that Mrs Hall's interests as Ambassador for Soccer, in two instances, impaired her capacity to fulfil her public duty.

First, Mrs Hall involvement as Ambassador for Soccer in the Soccer Federation's deliberations over its financial arrangements with the NSL Clubs for sharing the use and management of Hindmarsh Stadium was inconsistent with Mrs Hall's obligations of objectivity and disinterest as the Minister's representative on the Stage 1 Redevelopment Committee. This involvement gave rise to a further potential for, and the perception of a conflict of interest. In my opinion, the Government's interest in ensuring that the NSL Clubs would be able to meet the commitments agreed with the Soccer Federation differed from that of the Soccer Federation in negotiating the best deal it could with the NSL Clubs.

In my opinion, Mrs Hall is open to criticism in the context of her failure in February 1997 to bring to Government notice the complaints made by Mr Pickard. I regard this as a failure of her public duty as the Minister's representative on the Stage 1 Redevelopment Committee. In my opinion, the conclusion is inescapable that Mrs Hall did not act as she was obliged to do because, as Ambassador for Soccer, she was compromised by her private interests and involvement with the Soccer Federation in determining the Federation's position on the financial arrangements for the use of Hindmarsh Stadium.

Secondly, when Mrs Hall became the Minister for Youth and the Minister for Employment in December 1997, the conflict between Mrs Hall's private interests as Ambassador for Soccer and her duties as a Minister of the Crown became potentially irreconcilable given the emerging divergence in interests between the Soccer Federation and the Government over the financial arrangements for Hindmarsh Stadium including the suspension of the Levy System. In August 1998, Mrs Hall failed to bring Mr Pickard's second letter of complaint about the financial arrangements between the Soccer Federation and the NSL Clubs to the attention of anyone in Government. She has submitted that she felt she could not disclose the Soccer Federation submission for suspension of the levies to anyone in Government.

As a Minister of the Crown, and Member of Parliament, Mrs Hall is a public officer. The duties of a public officer regarding the matters of conflicts of interest and duty have been long settled. Private interests must not be allowed to conflict with public duty.

In my opinion, in the case of Mrs Hall as the Ambassador for Soccer, the tendency for compromise of the duties of her public office and its implications for the effectiveness of the internal controls within Government is a matter for concern. This is particularly the case where the Soccer Federation has

stated to this Examination that it was not concerned with the protection of the Government's interests but was unavowedly seeking to advance its own interests.

## **A GENERAL COMMENT BY WAY OF CLARIFICATION**

I am of the view, that having regard to the importance of this matter that I make some general comments by way of clarification lest it be thought that I am stating that a Member of Parliament should not hold office in a private organisation.

It is not suggested that a Member of Parliament is not eligible for appointment to an office or position in a private organisation, nor is it suggested that it is inappropriate for a Member of Parliament to aid the Executive Government by assistance and advice outside of the Parliament.

In my opinion, it is, however, a different matter where a Member of Parliament holds an "appointment" in a private organisation in circumstances where that organisation is seeking access to public monies to advance its own purposes and the Member is actively participating in its affairs, and is, at the same time, participating in the internal Government processes that directly relate to that same matter.

# CHAPTER 3 – SUMMARY REPORT ON TERMS OF REFERENCE

## TERMS OF REFERENCE I AND II

- "I. Whether there was due diligence by government representatives prior to the signing of agreements for construction of stages 1 and 2 of the project."**
- "II. Whether due diligence was applied subsequent to the commitment to stages 1 and 2, including whether the Crown Solicitor's advice as described on page 12 of the thirty-third report of the Public Works Committee, August 1996, was adhered to."<sup>28</sup>**

In my opinion, for the reasons stated hereunder, there were significant failures of due diligence both prior to, and subsequent to commitment to Stages 1 and 2.

### **Initiation and Approval**

The processes adopted for the initiation and approval of the project were inadequate.

- No feasibility study was undertaken by the Office for Recreation, Sport and Racing at the time of the Stage 1 project's initiation in April 1995.
- As the content of the Stage 1 project was developed between April 1995 and August 1996, the studies undertaken by Ernst & Young and Woods Bagot were commissioned on an inadequate basis.
- No adequate feasibility study was undertaken by the Department of Recreation and Sport in relation to the Government guarantee given in August 1997 for the \$2 million loan to the Soccer Federation for the fit out of the western grandstand.
- The only formal study undertaken for Stage 2 was limited to an economic analysis. That study was not updated or changed when new information became available.
- Alternatives to the Stage 2 project were disregarded. Building a less expensive stadium upgrade at Hindmarsh was not adequately considered. Combining the two stages was not adequately considered. Using a different venue was not adequately considered.
- The budget and content of Stage 2 was not set because of any requirement of SOCOG or need of the sport of soccer.
- Substantial commitments were made by Minister Ingerson in August 1996 to acquire land to the south of the stadium before adequate information about the need for the land had been presented to Cabinet, before there was a plan for use of the land, and without any cost benefit or feasibility study of that land acquisition being undertaken.

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<sup>28</sup> South Australia, Hansard, Legislative Council Hansard, 17 November 1999, page 478.

- The bid to SOCOG to host matches in the 2000 Olympic Soccer Tournament was mishandled. Inadequate efforts were made to clarify SOCOG's criteria for selection of venues. Undue weight was given to a series of imprecise and informal communications from SOCOG.
- The budget for Stage 2 of \$16.205 million set in November 1996 was applied even though Stage 2 as built was a very different project from the original concept for which in principle approval had been given.
- The submissions upon which Cabinet's approval of Stages 1 and 2 was based were inadequate. Each to varying degrees breached Government guidelines for the preparation of Cabinet submissions, was inaccurate or incomplete.
- Treasurer's Instruction 9105 was disregarded. It required compliance with Treasury Information Paper 90/1 that in turn required presentation of multiple options including the "do nothing" option. Non-compliance with these requirements constituted a breach of the *Public Finance and Audit Act 1987*.
- A principal objective of Stage 1, compliance with international standards for football stadia set by FIFA, was not adequately defined. Cabinet was not informed that prior to July 1996 there was no single statement of FIFA standards.
- After July 1996, when a statement of requirements was received from SOCOG, there was a failure to identify what part of SOCOG and FIFA requirements had to be met by permanent rather than temporary facilities.

### **Public Works Committee Process**

In my opinion, the Public Works Committee process for Stages 1 and 2 was undermined.

- The Public Works Committee's support for the project was based on inaccurate and incomplete information.
- The Public Works Committee's support for the project given in its 33rd Report was based on a submission from the Office for Recreation, Sport and Racing that contained inaccurate and confusing statements about the requirements of SOCOG.
- Oral evidence given to the Public Works Committee reinforced the impression that the Stage 1 project would meet FIFA requirements and provide the necessary facilities for Adelaide to host the Olympic Soccer Tournament.
- The Public Works Committee was also given an incomplete version of the Crown Solicitor's Office's advice about the risks attendant upon the Minister for State Government Services directly contracting to undertake the development.
- The Public Works Committee's investigations of Stage 2 were thwarted by the material placed before the Committee and by the Government's response to the Committee's questions.
- The written submission to the Public Works Committee for Stage 2 was inadequate. It was inaccurate and incomplete in a number of material respects.



- The Government refused to disclose relevant information to the Committee.
- The Government was not open about the simple fact that the reason there was no written evidence that SOCOG required Stage 2 was that the Government had not ascertained either verbally or in writing precisely what it was that SOCOG required. It should have been.
- The Public Works Committee was not given an opportunity to examine the provisions of the SOCOG Memorandum of Understanding on its merits because it was denied access to this document on the basis of Cabinet confidentiality, which, in my opinion, did not apply.
- The Treasurer did not point out to the Public Works Committee the substantive defect in the SACES report that the Department of Treasury and Finance had identified.

### **Direction and Control**

In my opinion, the structures adopted for the direction and control of the project were inadequate.

- The Government adopted a series of inappropriate committee structures to control the project.
- Although those committees were nominally advisory, in practice they made key decisions about the redevelopment.
- The Stage 1 project committees' decisions were in large part dictated by the desires of the Soccer Federation and advice given by Woods Bagot rather than the Government's objectives.
- The central agencies of the Department of Treasury and Finance and the Crown Solicitor's Office, together with Services SA gave advice to the Office for Recreation, Sport and Racing, and Minister Ingerson that was either disregarded or inadequately addressed.
- During 1996 work beyond the scope of then approved Stage 1 project was undertaken by Woods Bagot while instructed by the Soccer Federation.
- The Soccer Federation was given excessive access to resources to promote their goals without sufficient control by the Government agencies.
- The Soccer Federation was given too prominent a role in the negotiation of the hosting of the 2000 Olympic Soccer Tournament. Services SA was excluded from these negotiations, so that it could not act as a check on the negotiation process.
- The project management structure for the Stage 2 project<sup>29</sup> provided clearer accountability and responsibility for the project than the structure for Stage 1.
- That structure included a Cabinet Committee to monitor the project. However, for the first year while Deputy Premier Ingerson was its Chair, the Cabinet Committee met too infrequently to perform its role adequately and was indecisive in addressing issues of ownership and management.

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<sup>29</sup> That structure comprised Mr Ian Dixon as Project Director, a Cabinet Committee chaired by the proponent Minister, Deputy Premier Ingerson and a reference group committee to act as a forum for the parties with an interest in the project.

- The Cabinet Committee did not resolve these issues, although primary responsibility for doing so lay with the proponent Minister and its Chair, Deputy Premier Ingerson.
- When Minister Evans became Chair he convened the Cabinet Committee after a 10 month delay. It then met more frequently until it was disbanded in September 2000.
- The difficult issues of ownership and management were not resolved until earlier this year. Criticism of the Cabinet Committee for failing to resolve the ownership and management issues must be tempered by the recognition that these issues should have been resolved before the Committee's establishment. As time passed, changing circumstances meant that it became increasingly more difficult for the Committee to have an effective role in resolving these issues.

### **Ownership and Management**

In my opinion, ownership and management issues were inadequately addressed.

- The importance of the issues of ownership and management of the stadium was recognised as early as 1989 and was the subject of repeated reminders at every level of the Government during the Stage 1 redevelopment. Despite that, those issues have only been resolved recently.
- The Government had numerous warnings from reports prepared during the previous Government and during its own early years, that it must address the issues of ownership and management before committing to Stage 1.
- In the April 1995 Memorandum of Understanding and the October 1996 Funding Deed inadequate mechanisms were agreed with the Soccer Federation to address issues of fundamental importance to the Government (ie the grant of a mortgage over the Soccer Federation's lease and a charge over the bank account into which levies were to be paid). Those mechanisms were chosen even though a better mechanism had been recommended by the Crown Solicitor's Office.
- The mortgage was not obtained and the charge was obtained too late to be of any use. In my opinion, it would have been prudent to obtain this security for performance of the Soccer Federation's obligations under the Funding Deed as part of the Stage 1 Project Documents in October 1996.
- The Office for Recreation and Sport<sup>30</sup> did not adequately monitor the Soccer Federation's compliance with key obligations made to Government in the Funding Deed. This should have been done continuously from October 1996 and was not.
- By October 1998, when it was apparent to the Office for Recreation and Sport that the Soccer Federation was in default of many of its obligations, the initiatives undertaken by Minister Evans to ensure compliance with the Funding Deed, only served to identify the inadequacies inherent in the legal structure for Stage 1 that had been put in place in October 1996.
- In the course of implementing the Stage 2 project, no changes were made to the legal structure for Stage 1 that governed the ownership and management of Hindmarsh Stadium.

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<sup>30</sup> And its predecessor, the Department of Recreation and Sport.

- The need to address the issues of ownership and management in the context of a substantially greater redevelopment project was recognised by the Government at all levels during the initiation and approval stage of the Stage 2 project. Despite recognition of the importance of these issues, the Government committed to Stage 2 in August 1997 by signing the SOCOG Memorandum of Understanding<sup>31</sup> without giving any consideration as to how these issues could be addressed and resolved.
- Cabinet approval of the final concept for Stage 2 was given in August 1997 on the basis that a proposal on ownership and management would be developed as a matter of urgency.<sup>32</sup> It was not.
- In February 1998, Cabinet approved Stage 2 proceeding to the Public Works Committee and the calling of tenders on the basis that the Cabinet Committee would resolve ownership issues (and other issues) as a matter of urgency. These issues were not resolved by the time of Mr Ingerson's resignation as a Minister on 3 August 1998.
- Construction of Stage 2 began in October 1998 before the Government had adopted any firm position on how those issues would be addressed.
- The legal issues relevant to resolution of the issues of ownership and management were not fully identified until October 1998. That was too late.
- The financial and economic factors relevant to resolution of the issues of ownership and management were not analysed until March 1999. That analysis was also undertaken too late.
- By the time Minister Evans became responsible for the project in October 1998, the opportunity for the Government to resolve ownership and management issues before commitment to the project had been lost. Once construction had started, the Government had little effective bargaining power in negotiating a resolution of these issues. As circumstances changed and time passed, these issues became increasingly more complex.

### **TERM OF REFERENCE III(a)**

***"III.(a) Whether undue pressure was placed on individuals leading to legal commitment by them on behalf of sporting clubs or associations."***<sup>33</sup>

- There has been no suggestion, nor is there any evidence that any person was unduly pressured in order for the Soccer Federation to make the legal commitments that it did.<sup>34</sup> The evidence is to the contrary.

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<sup>31</sup> The SOCOG Memorandum of Understanding was signed by the Premier on 15 August 1997. See Chapter 35 below for further detail of the obligations assumed by the Government under this legal document.

<sup>32</sup> The 15 August 1997 Cabinet submission signed by Deputy Premier Ingerson stated in paragraph 3.8(i) that "*Negotiation on the above issues are not seen as a major impediment to the scheme and it is proposed to seek contributions from the Council towards this development*".

<sup>33</sup> Ibid.

<sup>34</sup> For a detailed exposition of these commitments see Chapter 9 which considers all relevant agreements entered into by the Soccer Federation.

- The Soccer Federation was not exposed to any financial risk by the legal arrangements for the redevelopment.
- The Soccer Federation in its negotiations with Government took the approach that it required a grant to fund the redevelopment of Hindmarsh. Throughout its negotiations with Government, the Soccer Federation was very careful not to commit to any financial responsibility that was not ultimately underwritten by Government or the NSL Clubs.
- The Soccer Federation did not fulfil a number of commitments to provide information to Government about the ongoing management of the stadium.<sup>35</sup> The Soccer Federation did not ever complain about the burden of these commitments.
- The failure of the Government to obtain financial information from the Soccer Federation had the consequence that the Government was never in a position to properly assess the capacity of the Soccer Federation to meet its commitments.
- Feasibility was not a concern for the Soccer Federation. Its concern was to get a grant from Government to redevelop the stadium.

### **TERM OF REFERENCE III(b)**

***"III.(b) The present status of all relevant deeds of guarantee or other legal documents, the financial status of the signatories and whether the legal agreements have created financial difficulty for any non-government persons or organisations."***<sup>36</sup>

#### **Purchase of Hindmarsh Stadium Site**

In April 2001, after protracted negotiations with the Soccer Federation, the Council approached the Government seeking an expression of interest to purchase the site. On 30 April 2001, Cabinet authorised Deputy Premier Kerin to offer to purchase Hindmarsh Stadium from the Council for \$1.5 million and to increase that offer by not more than \$200,000, if required.

As a result of ensuing negotiations conducted by the Deputy Premier, the Government and the Council agreed in principle that the Government would purchase the site for \$1.7 million. The purchase is subject to the lease to the Soccer Federation over a portion of the site and a licence to the Hindmarsh Historical Society over another portion. As part of the purchase agreement, the Government has also agreed to issue Trust Grants for open space purposes in the name of the Council for three blocks comprising a portion of the former Croydon West School.

Solicitors for the Government and the Council are currently negotiating the terms of formal documents.

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<sup>35</sup> See Chapter 32.

<sup>36</sup> Ibid.

## **Soccer Federation Agreement**

On 11 December 2000, Cabinet endorsed a negotiated agreement with the Soccer Federation for the ongoing management of Hindmarsh Stadium.

A deed between the Treasurer, the Minister for Recreation, Sport and Racing, the Minister for Government Enterprises and the Soccer Federation was duly executed and dated 29 March 2001.<sup>37</sup>

The key terms of this deed are:

- The term of the deed is two years from 29 March 2001. It will be automatically renewed every two years unless, at each two year anniversary, the Soccer Federation gives three months' notice of the termination of the appointment of the Government as manager of the stadium. The operation of the deed will be reviewed by the Government parties on every fifth anniversary of commencement and the Government parties may elect to terminate and return management of the stadium to the Soccer Federation by giving three months' notice.
- If the Soccer Federation terminates the deed, the Soccer Federation must pay the Treasurer any management losses incurred since 1 October 2000.
- The Government is appointed by the Soccer Federation as the sole and exclusive manager of the stadium. The Government may appoint a manager of the stadium and is responsible for the costs of managing and operating the stadium.
- The Soccer Federation retains control of its offices and any related costs are to be paid by the Soccer Federation.
- The Soccer Federation will have the exclusive use of the stadium for up to 30 days each year and will pay the marginal cost associated with opening of the stadium for that use. That usage will be consistent with the hosting of the following events:

<b>Event</b>	<b>Timing</b>	<b>Number</b>
Premier and State League Night Series	January - February	12
Federation Cup Semi Finals	July	1
Premier and State League Top 5	August – September	6
Under 19 Grand Finals	September	1
Under 23 Grand Finals	September	1
Use by SA Women's Soccer Association	Various	5
Junior Cup Finals	July	1
Junior Championships	October	1
Amateur League Cup	September	1
Federation Cup Final	September	1
<b>Total</b>		<b>30</b>

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<sup>37</sup> The conditions precedent to the operation of this deed have been met or waived.

- For all NSL, Soccer Australia and Soccer Federation events conducted at the stadium, the Soccer Federation will have the exclusive use of two corporate boxes and 250 middledeck grandstand seats. For international soccer matches, the Soccer Federation will have the exclusive use of one corporate box. At NSL, Soccer Australia and Soccer Federation events, the Soccer Federation may display five roller signs.
- The Soccer Federation must use its best endeavours to attract profitable soccer events to the stadium and develop a second NSL team from South Australia.
- The Soccer Federation must ensure that the lease from the Council remains in existence and comply with its obligations under it. (This obligation has been superseded by the agreement that the Government purchase the stadium site).
- The Government will continue to have full responsibility for making repayments to National Australia Bank Limited for the Stage 1 and Fit Out Loans.
- The Government will be responsible for insurance and maintenance of Hindmarsh Stadium during the operation of the deed.
- The Government will pay the Soccer Federation \$599,000 as reimbursement of losses incurred in relation to the stadium and \$16,000 for losses and inconvenience caused during the Olympic Soccer Tournament.
- The Soccer Federation warranted that it was, and is not, in breach of its lease from the Council. It undertook to produce a letter from the Council to this effect within six months of any request to do so. The Soccer Federation also warranted that it would execute a mortgage over the lease within seven days if requested to do so. These terms will be redundant on settlement of the purchase of the stadium site from the Council.

### **Adelaide City Agreement**

On 11 December 2000, Cabinet endorsed a negotiated agreement with Adelaide City for the playing of its NSL matches at Hindmarsh Stadium.

A deed between the Treasurer, the Minister for Recreation, Sport and Racing, the Minister for Human Services and Adelaide City was duly executed and dated 29 March 2001.<sup>38</sup>

The key terms of this deed are:

- The deed will operate so long as the Government is the manager of Hindmarsh Stadium.
- Adelaide City will surrender its club rooms and relocate to Rams Park under a five year lease from the Minister for Human Services at an annual rental of \$43,000. The lease includes an option to acquire Rams Park at the price equivalent to the Valuer-General's current valuation of \$570,000 provided the option is exercised by 31 December 2002.

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<sup>38</sup> The conditions precedent to the operation of this deed have been met or waived.

- The Treasurer must pay Adelaide City \$354,000 for its equity in its former clubrooms in the western grandstand and \$16,000 for losses and inconvenience caused during the Olympic Soccer Tournament.
- Until 30 June 2002, Adelaide City must play home NSL matches at Hindmarsh Stadium. The agreed hire cost for the stadium is \$8,000 plus GST per match. For each match day, Adelaide City will be entitled to use of the match day club rooms, the benefit of all catering and pouring concessions, two corporate boxes, the Chairman's suite and 250 middle deck grandstand seats, five roller signs and one training session per week. Adelaide City will also be entitled to three pre-season practice matches at the marginal cost of opening the stadium.
- The Minister for Recreation, Sport and Racing will pay Adelaide City two sporting grants. \$50,000 was paid on 14 November 2000. A further \$50,000 is payable after the first Adelaide City home match of the 2001/2002 NSL season.

### **Effect on the Stage 1 Project Documents**

- The Stage 1 and Fit Out Loans are current. The Government has been making the quarterly repayments due to the National Australian Bank Limited.<sup>39</sup>
- The Guarantee Deeds for the Soccer Federation's obligations under the Stage 1 and Fit Out Loans are still current. These deeds will be fully discharged on repayment of the Stage 1 and Fit Out Loans.
- The 29 March 2001 deed made between the Government and the Soccer Federation has suspended the operation of some of the terms of the Stage 1 Funding Deed and the Fit Out Guarantee Deed:
  - The Soccer Federation's obligations under the Funding Deed concerning the imposition of the \$3 Levy, the establishment of the operations of Hindmarsh Stadium as a separate profit centre, provision of a business plan and annual report to the Government, use and maintenance of the stadium are suspended during the operation of the deed.
  - The Soccer Federation's obligations under the Fit Out Guarantee Deed concerning the imposition of the \$2 Levy and the expenditure of \$100,000 per annum on marketing and advertising the stadium are suspended during the operation of the deed.
- The 1996 Lease from the Council to the Soccer Federation is still current. On settlement of the purchase of Hindmarsh Stadium by the Government, the Government will become the lessor instead of the Council.
- The 1997 Licence Agreement between the Soccer Federation and the NSL Clubs has not been formally terminated. Adelaide City claims that the agreement is null and void. The Soccer Federation has denied that it is null and void. The liquidator of West Adelaide claims that the club has rights under the 1997 Licence Agreement and that the Government should not purport to deal with the club's rights in entering into an agreement with the Soccer Federation for the management and use of Hindmarsh Stadium.

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<sup>39</sup> See Tables 7 and 8 in Appendix I for details of the repayments made to 30 June 2001.

## **Document for Hosting Olympic Soccer Tournament**

All obligations under the various agreements made for the hosting of the Olympic Soccer Tournament have been performed.

### **TERM OF REFERENCE IV**

***"IV. Whether there were any conflicts of interest or other imprudent or improper behaviour by any person or persons, government or non-government, involved with the project, and whether the appropriate processes were followed in relation to –***

- (a) the planning stages of the project;***
- (b) the awarding and monitoring of consultancies;***
- (c) the tendering process;***
- (d) the letting of contracts;***
- (e) the construction of the stadium; and***
- (f) the ongoing management of the stadium." <sup>40</sup>***

### **Conflicts of Interest**

- Mrs Hall had, and was publicly perceived to have, a significant private interest in the redevelopment of the Hindmarsh Soccer Stadium by reason of her position as Ambassador for Soccer in South Australia.
- Mrs Hall had a conflict of interest and duty while both Ambassador for Soccer and Chair of the Stage 1 Redevelopment Committee in her capacity as Minister Ingerson's Parliamentary Secretary.
- Mrs Hall had a conflict of interest and duty while both Ambassador for Soccer and a Minister of the Crown. Mrs Hall's failure to resign as Ambassador for Soccer immediately upon her appointment as a Minister of the Crown on 17 December 1997 was, in my opinion, inappropriate and a departure from proper standards of ministerial conduct.<sup>41</sup>

### **Appropriate Processes**

- Generally, the failure to adopt appropriate processes during the various phases of the Hindmarsh Stadium Redevelopment Project has been addressed in this Report as failures of due diligence.

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<sup>40</sup> Ibid.

<sup>41</sup> Mrs Hall formally resigned as Ambassador for Soccer on 1 October 1999.



- The selection of Woods Bagot as primary consultant for Stage 1 was not conducted so as to exclude the perception that the successful candidate was preferred for reasons properly extrinsic to the selection process.
- The terms of Woods Bagot's retainer for Stage 1 were effectively drafted by Woods Bagot. They were not subjected to adequate scrutiny by any Government agency. They were not finalised until Woods Bagot had undertaken nearly two months' worth of design work. The scope of works defined in Woods Bagot's consultancy agreement was largely redundant for much of the work undertaken for Stage 1.
- The basis for selection of Mr Ciccarello as a consultant to Government and head of the Olympic Soccer Task Force in March 1997 was inappropriate in that it was undertaken to overcome a separate problem that had been created by Mr Ingerson. Mrs Hall's involvement was influential in securing Mr Ciccarello's appointment. That there were other good reasons to appoint Mr Ciccarello does not excuse Mrs Hall's conduct in bringing to bear upon the decision extraneous matters that were not transparent in the decision-making process.<sup>42</sup>
- Woods Bagot were instructed from May 1996 by Minister Ingerson to do work that was, as a matter of substance, related to Stage 2 without any form of retainer in place. Services SA were not involved in that process.
- There was no competitive tender for the position of primary consultant for Stage 2.
- The tendering process and the letting of contracts for the construction of both Stages 1 and 2 was conducted appropriately and in accordance with usual Government processes. I have found that no sponsorship opportunities were sought or obtained by the Soccer Federation from any tenderer for the construction of the redevelopment.
- It might be suggested that the significant increase in the Stage 1 budget was the result of inadequate management of the construction management process. I do not hold that view. In my view, aside from the structural steel tender, many of the budget increases approved were the result of inadequate planning.
- The Office for Recreation and Sport<sup>43</sup> did not adequately monitor the Soccer Federation's compliance with key obligations made to Government in the Funding and Fit Out Deeds. This should have been done continuously from October 1996 and was not. By October 1998, it was apparent that the Soccer Federation was in breach of many of its obligations. By then, the enforcement of the Soccer Federation's obligations under the Stage 1 Project Documents became subsumed by the wider problem of trying to find a resolution to the ownership and management issues.

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<sup>42</sup> This should not be taken as a criticism of Mr Ciccarello. He took steps to further his own interests at the time when he held no public office, as he was entitled to do.

<sup>43</sup> And its predecessor, the Department of Recreation and Sport.

## CHAPTER 4 – RECOMMENDATIONS

### OVERVIEW

The arrangements recently negotiated by Deputy Premier Kerin have addressed the significant ownership and management issues that remained unresolved on completion of the redevelopment project. On settlement of the sale and purchase contract for the stadium site, the Government will become the owner of the stadium and lessor to the Soccer Federation under the lease granted by the Council. Hindmarsh Stadium will be managed by the Government for at least the next two years in accordance with the terms of the 29 March 2001 deeds made with each of the Soccer Federation and Adelaide City. The newly formed administrative unit, the Office of Venue Management is now responsible for managing Hindmarsh Stadium.<sup>44</sup>

Having regard to the significant public expenditure committed to the redevelopment of Hindmarsh Stadium, it is essential that public confidence be restored in its management. This will require effective administrative arrangements and the close monitoring of the Soccer Federation's and Adelaide City's legal obligations to Government. Corrective action will need to be taken immediately by the Government if there is any indication that Government's objectives in this regard may not be achieved.

In recent years, the Government has initiated and implemented a number of changes to enhance accountability across a range of different matters. The Prudential Management Group was established in mid 1997. The policies developed and implemented as part of the "*Prudential Management Framework*" have enhanced the accountability and transparency of Government processes. Some of the matters that have been identified in this Report as issues for Executive Government have already been the subject of comment in Auditor-General's Reports in recent years. Many of these matters have been incorporated in the "*Prudential Management Framework*" that has been promulgated for the purposes of agencies that are involved in Government projects and contractual arrangements. Nonetheless, there remain some issues that should be emphasised and steps taken to further improve accountability and confidence in public administrative processes.

### PROJECT MANAGEMENT AND CONTROL

#### Compliance

In my opinion, many of the difficulties experienced with the redevelopment of Hindmarsh Stadium would have been avoided if existing controls within the public administration environment had been complied with. It is critical that proponent Ministers and Chief Executive Officers ensure compliance with all relevant legislation, Treasurer's Instructions, and Government guidelines, in pursuing public sector projects.

The first step towards proper compliance with existing legislation, Treasurer's Instructions, and Government guidelines is an awareness, and good working knowledge of, and a respect for, these controls. A culture of good and proper public administration is built on an attitude that embraces the

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<sup>44</sup> The Office of Venue Management was established on 21 December 2000.

common sense of complying with Government guidelines which are intended to promote the efficiency and cost-effectiveness of Executive Government activities.

### **Evaluation of Public Sector Projects**

It is essential that proponent Ministers and Chief Executive Officers ensure that public sector projects are evaluated in accordance with Treasurer's Instruction 17 which in turn requires compliance with "*Guidelines for the Evaluation of Public Sector Initiatives*".<sup>45</sup>

The initiation of feasibility studies for a public sector project needs to be carefully considered at the outset. Inadequate definition of the scope of the study may lead to the feasibility study being of limited or no use.

It is essential that alternative options including the "do nothing" option be considered and presented objectively as well as the "preferred" option. Justification for the preferred option should address the costs and benefits in a balanced and objective way. It should be transparent whether the justification for the project is based on economic or social considerations.

The results of all studies should be recorded in a formal written report.

### **Coordination and Communication Between Ministers and Agencies**

Major projects, like the redevelopment of Hindmarsh Stadium, involve the need for coordination and communication between Ministers and agencies. It is imperative that sound administrative arrangements be established regarding the coordination of the skills and information held by different agencies regarding a particular project or policy issue. The position in this regard was succinctly stated in a report by the Prudential Management Group in the following terms:

*"The critical objective should be to define and determine, with as much clarity as possible, the proper roles of ministers and agencies vis a vis each other, so that there should be no gaps, no unnecessary duplication, and no possibility of agencies or Ministers acting unilaterally without consultation on matters where portfolio responsibilities do overlap."*

### **Agency Advice**

Complex projects will require the considered input of the Department of Treasury and Finance and the Crown Solicitor's Office and in some instances, other relevant agencies. These agencies should be involved at the outset of a project in assisting proponent Ministers and agencies in formulating the best strategies for maximising the public benefit in any transaction undertaken. It is a matter of common sense that appropriate advice can only be provided if proper instructions and opportunity is given to the advisor to reflect on the issues for opinion.

The administration of public sector projects involving construction works can only benefit from the involvement of DAIS. The role of this agency was codified in 1996 in the "*Project Initiation Process*". In my opinion, DAIS' role should extend to involvement in any project that is dependent upon

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<sup>45</sup> Treasurer's Instruction 17 replaced Treasurer's Instruction 9105 from 1 July 1998. It is of similar effect. See Chapter 18 for a detailed discussion on the content of Treasurer's Instruction 9105.

construction including bids for the hosting of events that will require redevelopment or construction of new infrastructure.

### **Preparation of Cabinet Submissions for Public Sector Projects**

The cover sheet of Cabinet submissions seeking approvals for public sector projects should include a statement as to the status of the proponent agency's compliance with all relevant legislation, Treasurer's Instructions and Government guidelines in pursuing public sector projects. Any non-compliances should be expressly identified and an explanation given for the non-compliance.

Cabinet submissions should accurately and fully address the scope, and therefore the limitations, of the feasibility studies undertaken and the justification for the project.

### **PUBLIC WORKS COMMITTEE PROCESS**

The proponent Minister and Chief Executive Officer should as a matter of standard Government practice provide the Public Works Committee with a written submission that accurately and fully addresses each of the matters in Section 12C of the *Parliamentary Committees Act 1991* that is relevant to the public works project in question. In my opinion, there should be transparency in relation to all aspects of the initiation and evaluation of the project. In particular, the written submission should address the project's feasibility by presenting the alternative options, the preferred option and a justification for the preferred option. Formal feasibility studies should be presented as appendices to the submission.

All reasonable requests for further information should be complied with.

### **CONTRACT MANAGEMENT**

It is a waste of public resources and money for Government to enter into legal arrangements with other parties and not monitor, or require the other party to perform its obligations. Formal contracts are entered into for the purpose of protecting the benefit of a transaction and should be actively administered to ensure that the benefit they protect is not lost by non-performance or Executive inaction.

Once a contract is entered into, the proponent Minister and Chief Executive Officer should ensure that performance of the other party's obligations is monitored and performance is adequate. Immediate steps should be taken to deal with the non-performance of an obligation owed to the Government.

### **ONGOING RISK ASSESSMENT**

It is recommended that a review be made of all extant legal documents and contractual arrangements for Hindmarsh Stadium to ensure that proper administrative arrangements are in place to protect the public interest. This will include the current arrangements put in place by Deputy Premier Kerin.

**SOUTH AUSTRALIA**

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**FINAL REPORT OF  
THE AUDITOR-GENERAL**

**ON THE**

**HINDMARSH SOCCER STADIUM  
REDEVELOPMENT PROJECT**

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*Tabled in the House of Assembly and ordered to be published, 3 October 2001*

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**Fourth Session, Forty-Ninth Parliament**

**Part 2  
Chronology**

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## GLOSSARY

Adelaide City	Adelaide City Soccer Club was a division of the Adelaide Juventus Sports & Social Club Inc. Adelaide City is currently known as the “Adelaide Force”.
Mr Ashenden	The Hon. Scott Ashenden MP, Minister for Recreation and Sport from 12 December 1996 to 20 October 1997.
Mr Avory	Mr Les Avory, Member of the Board of Commissioners of the Soccer Federation from 1993 and Chairman of the Soccer Federation from December 1996.
Mr Blatter	Mr Sepp Blatter, General Secretary of FIFA.
Mr Bollen	Mr Vaughn Bollen, Manager Capital Works, Office for Recreation, Sport and Racing and successor agencies from March 1996.
Mr Damian Brown	Mr Damian Brown, the Managing Director of National Portfolio Strategies Pty Ltd.
Mr Dean Brown	The Hon. Dean Brown MP, Premier of South Australia from 14 December 1993 to 28 November 1996, Minister for Information and Contract Services from 12 December 1996 to 20 October 1997.
Mr Browne	Mr Jeff Browne, Project Manager, Services SA and its predecessor and successor agencies.
Mr Caruso	Mr Charlie Caruso, Chairman of the Soccer Federation until October 1996.
Mr Ciccarello	Mr Sam Ciccarello, member of the Sydney 2000 Bid Committee established in March 1996 and consultant to Government and head of the Olympic Taskforce from March 1997.
The Council	The City of Charles Sturt and its predecessors, the Corporation of the City of Hindmarsh and the City of Hindmarsh and Woodville.
Mr Crafter	The Hon. Gregory John Crafter MP, Minister for Recreation and Sport between 1 October 1992 and 14 December 1993.
Mr Dixon	Mr Ian Dixon, Stage 2 Project Director from July to November 1997, Chief Executive Officer of the Department of Industry and Trade from 23 October 1997.
Mr Ellis	Mr Terry Ellis, the consultant retained by the Office for Recreation, Sport and Racing in March 1994 to review the April 1989 Feasibility Review and the Soccer Federation’s February 1994 Submission.
Mr Elphinston	Mr Bob Elphinston, General Manager – Games Operation, SOCOG.

Ernst & Young	Ernst & Young, consultants retained by the Office for Recreation, Sport and Racing in April 1996 to prepare a feasibility report on redeveloping the western grandstand.
Mr Evans	The Hon. Iain Evans MP, Minister for Recreation and Sport from 17 December 1997 to 8 October 1998, Minister for Recreation, Sport and Racing from 8 October 1998.
Mr Farrugia	Mr Tony Farrugia, General Manager of the Soccer Federation.
FIFA	Federation Internationale de Football Association, the governing body of international soccer.
Mr Fletcher	Mr Robert Fletcher, the Director of Corporate Services in the Office for Recreation, Sport and Racing and successor agencies from April 1996.
Mr Forbes	Mr George Forbes, Director of Capital Projects in the Office for Recreation, Sport and Racing from 1987 until March 1996.
Mr Ford	Mr Andrew Ford, principal and director of Woods Bagot, primary consultants for Stage 1 and 2.
Mr Forrest	Mr Simon Forrest, Executive Director, Department of Recreation and Sport and successor agencies from 1 July 1997.
Ms Freeman	Ms Judith Freeman, Manager, Project Management Services, Services SA and its predecessor and successor agencies.
Mrs Hall	The Hon. Joan Hall MP, Member for Coles, Ambassador for Soccer in South Australia from December 1995 to 1 October 1999, Chair of the Stage 1 Redevelopment Committee and Executive Group, member of the Sydney 2000 Bid Committee, member of the Olympic Taskforce, member of the Stage 2 Reference Group, Parliamentary Secretary to Mr Ingerson as the Minister for Recreation, Sport and Racing from 21 March 1996 to 29 January 1997, Parliamentary Secretary to Mr Ingerson as Deputy Premier and Minister for Infrastructure from 29 January to 17 December 1997, Minister for Youth and Minister for Employment from 17 December 1997 to 8 October 1998, Minister for Tourism from 8 October 1998.
Mr Hill	Mr David Hill, Chairman of Soccer Australia between 1995 and 23 September 1998.
Mr Hocking	Mr John Hocking, Assistant Crown Solicitor, Crown Solicitor's Office.
Ms Howe	Ms Anne Howe, CEO of Services SA and predecessor and successor agencies.

Mr Ingerson	The Hon. Graham Ingerson MP, Minister for Recreation, Sport and Racing from 22 December 1995 to 12 December 1996, Deputy Premier of South Australia from 28 November 1996 to 7 July 1998, Minister for Local Government, Recreation and Sport from 20 October to 17 December 1997.
IOC	International Olympic Committee.
Mr Jaksa	Mr Gaby Jaksa, Crown Solicitor's Office.
Mr MacFarlane	Mr David MacFarlane, Australian Major Events.
Mr Mayes	The Hon. Milton Kym Mayes, Minister for Recreation and Sport from 18 December 1985 to 1 October 1992.
NSL	The National Soccer League.
NSL Clubs	The National Soccer League Clubs, Adelaide City and West Adelaide.
Mr Olsen	The Hon. John Olsen MP, Premier of South Australia from 28 November 1996.
Mr Oswald	The Hon. John Oswald, Minister for Recreation, Sport and Racing from 14 December 1993 to 22 December 1995.
Mr Pickard	Mr Gordon Pickard, Patron of Adelaide City.
Mr Scarsella	Mr Basil Scarsella, Deputy Chair of Soccer Australia between early 1995 and, from 23 September 1998, Chair of Soccer Australia.
Mr Andrew Scott	Mr Andrew Scott, Stage 2 Project Director from November 1997.
Mr Michael Scott	Mr Michael Scott, CEO of the Office for Recreation, Sport and Racing from 19 September 1994 to 30 June 1997.
Mr Simmonds	Mr Kevin Simmonds, Manager Sporting Events, SOCOG.
Soccer Australia	The Australian Soccer Federation Limited.
Soccer Federation	The South Australian Soccer Federation Inc.
SOCOG	Sydney Organising Committee for the Olympic Games.
Mr Spurr	Mr Bill Spurr, CEO of Australian Major Events.
West Adelaide	West Adelaide Soccer Club was a division of the Hellenic Athletic and Soccer Club of South Australia Inc.
SACES	South Australian Centre for Economic Studies.



## **PART 2 – CHRONOLOGY**



## CHAPTER 5 – INTRODUCTION TO PART 2

### OVERVIEW

In this part of this Report I have set out my detailed factual findings in a chronology of the events relating to the redevelopment of Hindmarsh Stadium.

The concept of redeveloping Hindmarsh Stadium was discussed for over 10 years before major work was undertaken. From the Soccer Federation's point of view it was interested in *"obtaining additional grants for the continual redevelopment of the stadium"*.<sup>46</sup>

In December 1993, the concept of redeveloping Hindmarsh Stadium formed part of the newly elected Government's policy to provide upgraded sporting facilities for netball, athletics and soccer, with a financial contribution from the sport commensurate with its capacity to meet debt servicing costs for the facilities built.

From September 1993, once Sydney was successful in securing the 2000 Olympics, the focus of discussions concerning the redevelopment of Hindmarsh Stadium changed. Whilst the redevelopment of the stadium for the general good of sport was still a relevant concern, the shorter term opportunity to host part of the Sydney Olympics became the driving concern of those involved.

There was bi-partisan support for the upgrade of Hindmarsh Stadium to enable Adelaide to host Olympic Soccer.

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<sup>46</sup> Minutes of the Board of Commissioners of the Soccer Federation meeting held on 17 August 1993.

## CHAPTER 6 - 1988 TO DECEMBER 1994

### SEPTEMBER 1988 - "A MAJOR FACILITY DEVELOPMENT"

On 20 September 1988, the Hon. Kym Mayes MP, then Minister for Recreation and Sport, met representatives of the Soccer Federation. They told Mr Mayes that the Soccer Federation believed that soccer did not receive enough support. The Soccer Federation expected the Government to fund *"a major facility development."* At that time the Soccer Federation had no clear picture of its exact requirements. Mr Mayes discussed the options of redeveloping Hindmarsh Soccer Stadium or building a new stadium at Sports Park, Gepps Cross. Mr Mayes concluded that encouraging a major facility development would be a positive step. He proposed to commission a feasibility study *"in cooperation with the Soccer Federation and Hindmarsh Council."*

Adelaide City's home ground was at that time Kensington Olympic Sports Field. It occupied the sports field for the six "winter" months of each year, with Athletics SA taking up the rest. Athletics and soccer became incompatible at the sports field when the National Soccer League changed soccer from a winter to a summer competition from October 1989. The solution adopted was to move Adelaide City to Hindmarsh. In October 1989, the Premier's endorsement was sought and given for the Department of Recreation and Sport<sup>47</sup> to fund Athletics SA up to \$750,000 to buy out Adelaide City's lease and fund Adelaide City up to \$460,000 to buy land in Manton Street.

### APRIL 1989 - FEASIBILITY STUDY FOR SOCCER: HINDMARSH V GEPPS CROSS

A feasibility study to consider the two options of redeveloping Hindmarsh or building a new facility at Gepps Cross was prepared jointly by the South Australian Department of Housing and Construction,<sup>48</sup> the Department of Recreation and Sport and the Soccer Federation. It was completed in April 1989 and found that:

- while reputed to be one of Australia's best playing surfaces, Hindmarsh lacked amenities for spectators, members and officials;
- its capacity was 18,000 but only 1,500 seats were under cover;
- lighting did not meet colour television requirements;
- the standard of the facility was no longer commensurate with spectator demands and expectations at the international, national and local levels.

The study costed the options of redeveloping Hindmarsh at \$13 million and building a new facility at Gepps Cross at \$17 million. The Soccer Federation preferred redeveloping Hindmarsh.

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<sup>47</sup> The Department of Recreation and Sport as it was known in 1989 was abolished in July 1993. From July 1993 to the date of this Report there have been a number of successor entities and changes in administrative arrangements for this entity. The principal changes are set out below in this chronology at the times they occurred.

<sup>48</sup> The Department of Housing and Construction was known as "SACON". It became the Department for Building Management on 30 June 1994 and was subject to further administrative changes from October 1997. The principal changes are set out below in this chronology at the time they occurred.

The study addressed in some detail the factors relevant to a redevelopment of Hindmarsh Stadium.

The study contained the following passage: <sup>49</sup>

*"Should the upgrading of the Hindmarsh Stadium proceed it will be necessary to negotiate an arrangement between the SA Government, the Hindmarsh Council and the South Australian Soccer Federation whereby the interests of all parties are recognised and protected.*

*One option is for the Government to lease the stadium with its current improvements from the Council and enter into a sub-lease arrangement with the SA Soccer Federation.*

*The agreement between the SA Soccer Federation and the Government would be similar to that proposed for the Hockey/Lacrosse Complex giving responsibility for the financial management of the facility to the sport.*

*The SA Soccer Federation would enter into sub-lease arrangements with resident clubs.*

*This proposal has been canvassed with representatives from the Council and the SA Soccer Federation and initial indications from both parties are positive.*

*This option, will require more detailed discussions with all parties concerned before a final ownership/management proposal can be agreed to."*

The concept of the Government taking a lease from the Council <sup>50</sup> would have given the Government protection in the event of default by the Soccer Federation under the lease and the ability to ensure that Hindmarsh Stadium continued to be used for the playing of soccer. That concept, raised in 1989, appeared briefly three times later, <sup>51</sup> but was not implemented.

## **AUGUST 1989 - \$3.9 MILLION PACKAGE**

During 1989/90 Budget discussions, the Treasury Department informed the Department of Recreation and Sport that it did not support expenditure of the magnitude considered in the April 1989 Feasibility Study. <sup>52</sup> The Department of Recreation and Sport then worked with the Soccer Federation to develop a smaller modified project at a cost of \$3.9 million.

In August 1989, Mr Mayes announced a \$3.9 million package to "boost soccer headquarters" at Hindmarsh. The works included extension of the western grandstand by 300 seats to 1,800, construction of a new eastern grandstand of 2,800 seats, upgraded lighting to enable televising of

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<sup>49</sup> Page 23.

<sup>50</sup> The Corporation of the Town of Hindmarsh is now the City of Charles Sturt. The details of changes in its legal identity and name are set out below in this chronology at the time they occurred. In this Report, it will be referred to as "the Council" unless otherwise stated.

<sup>51</sup> See below in this Chapter at pages 41, 45 and 53.

<sup>52</sup> Minute dated 16 November 1989 from the Acting Director Operations to the Chief Executive of the Department of Recreation and Sport.

night matches plus spectator and player amenities. Works were to be completed by June 1991. The announcement included the following statement:<sup>53</sup>

*"Included in the design concept of the eastern stand are seven shop-front tenancies, the development of which will be the responsibility of the South Australian Soccer Federation.*

*Income generated from these tenancies, corporate box sponsorship and other revenue sources will provide the SASF with a sound financial base from which to further develop Hindmarsh Stadium in the future."*

## **NOVEMBER 1989 – \$6.2 MILLION ESTIMATE**

In developing a smaller project, both the Department of Recreation and Sport and the Soccer Federation worked on the basis of April 1989 costs, which did not take into account escalation costs to completion over a staged construction. That led to a significant understatement of the real cost of the proposed works.

In November 1989, the Department of Recreation and Sport realised that the \$3.9 million budget for the proposed redevelopment was insufficient. An upper limit of \$6.2 million was estimated. A minute from the Chief Executive of the Department of Recreation and Sport to Mr Mayes, then Minister for Recreation and Sport, recorded that the Department considered the \$6.2 million figure a high figure *"with opportunity to decrease this by negotiation with the Soccer Federation about facilities and quality of finish."*<sup>54</sup> It was planned to stage the project over three years.

In January 1990, the Department of Recreation and Sport sought approval from the Capital Works Budget Committee to undertake the proposed redevelopment at a cost of \$6.2 million.

On 5 February 1990, the Chairman of the Capital Works Budget Committee sent a minute to the Chief Executive of the Department in response to the Department's submission for approval. That minute stated:

*"It was, of course, most unfortunate that the Minister's August 1989 statement was based on April 1989 costs, and that escalation to completion was not included in the figure. Of greater concern, however, is the fact that the \$3.9 million figure significantly understates the cost, in April 1989 values, of the facilities now seen as being required. The Committee cannot stress too strongly the importance of project requirements being finalised before cost estimates are prepared..."*

That minute also correctly pointed out to the Department that the Committee was not an approving body and only made recommendations to Government. Before it could make any recommendations, it would be necessary for a report to be prepared detailing and justifying the revised proposal. That proposal would need to be considered in the context of the Department's other capital works proposals and the Government's overall works program. Before any on-site work could begin, the project would need to be referred to the Parliamentary Standing Committee on Public Works for inquiry and report.

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<sup>53</sup> Press release dated 20 August 1989.

<sup>54</sup> Minute dated 23 November 1989.

## MARCH 1990 - PROJECT JUSTIFICATION REPORT

In March 1990, the Facilities Development Unit of the Department of Recreation and Sport prepared a Project Justification Report. It put the case for redevelopment of Hindmarsh in terms of stated Government policy: <sup>55</sup>

*"To promote the development of a State-wide comprehensive recreation and sport system which will cater for all sections of the community...[with] the stated objective of continuing with a long range program to provide sports facilities to international standard[s]. One of the principal aims ... is to increase the number and standard of participation of people in recreation, sport and fitness activities. The provision of international standard facilities for use by players for both competition and training purposes is an important part of pursuing this aim."*

It also stated that: <sup>56</sup>

*"An essential element of an international standard soccer facility is the provision of adequate lighting per medium of overhead lighting towers. The resultant lighting intensity is an essential component of spectator comfort and television coverage."*

The proposed works no longer included the construction of a new eastern grandstand as had been publicly announced by Mr Mayes in August 1989. <sup>57</sup>

As to management and control, it was proposed that the Government take a lease of the stadium from the Council and sub-lease it to the Soccer Federation, with management shared between the Department of Recreation and Sport and the Soccer Federation. That was a sound concept, previously raised in the April 1989 Feasibility Study, <sup>58</sup> that twice briefly re-appeared but was never adequately pursued. <sup>59</sup> There were no detailed proposals as to how this would work.

It also stated: <sup>60</sup>

*"The Facility will be fully maintained by S.A. Soccer Federation in a manner which will ensure that its capital value and purpose are kept to the highest standard."*

*There will be no recurrent expenditure by S.A. Government."*

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<sup>55</sup> Paragraphs 1.1 and 1.2.

<sup>56</sup> Paragraph 1.4.

<sup>57</sup> Paragraph 4.3.2.

<sup>58</sup> See page 38.

<sup>59</sup> See below in this Chapter under the headings "January 1994 - Proposal for Government to Take Over Lease" and "April 1995 - First Involvement of the Crown Solicitor's Office" at pages 45 and 53.

<sup>60</sup> Paragraph 4.2.

Figures were stated as to attendance levels: <sup>61</sup>

*"Attendances vary in accordance with the status of the match; e.g. International fixtures attract between 12-14 000 spectators. State Representative matches attract between 3-4 000 spectators. National Soccer League attract [sic] 3-4 000 spectators normally but this often increases to 10000. State Soccer League attracts up to 1000. Cup matches attracts [sic] up to 10000."*

These levels have not increased materially since.

This proposal for the redevelopment of Hindmarsh Stadium advanced in the Project Justification Report did not ultimately proceed due to funding constraints.

The Project Justification Report was the most detailed and comprehensive consideration given by Government to the issues relevant to redeveloping the Hindmarsh Stadium.

## **MAY 1991 - PROPOSAL FOR PARTIAL UPGRADE FOR 1993 WORLD YOUTH CHAMPIONSHIPS**

In May 1991, Mr Mayes, the then Minister for Recreation and Sport, sought Cabinet approval to proceed with a partial upgrade of Hindmarsh to conform to "FIFA requirements" <sup>62</sup> for the 1993 World Youth Championships at a cost of \$890,000.

The Cabinet submission did not specify what those FIFA requirements were. It stated:

*"The S.A. Soccer Federation applied to the Federation Internationale De Football Association (F.I.F.A.) to have the Hindmarsh Soccer Stadium accepted as a venue for the 1993 World Youth Soccer Championships.*

*F.I.F.A. inspected the facility and noted as a general impression that 'for the moment, this stadium is unsuitable for this championship...'*

*The Department...has developed plans over the past two years for a total redevelopment of the Hindmarsh Soccer Stadium. This has not been proceeded with due to funding constraints...*

*This proposal has been drawn from the plans for the total redevelopment of Hindmarsh Soccer Stadium. ... Further development is planned as and when Capital Funds become available."*

Treasury did not support the project proceeding at that time and questioned whether it warranted sufficient priority in the difficult budgetary position facing the State. Treasury argued that as soccer was a semi-professional sport, it ought to contribute to the cost of upgrading its premier facility. Despite Treasury opposition, Cabinet approved expenditure of \$890,000.

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<sup>61</sup> Paragraph 4.4.

<sup>62</sup> FIFA is the acronym for the Federation Internationale de Football Association. This is the governing body of international soccer. There were no mandatory FIFA guidelines applicable to all stadia hosting international matches. FIFA had in 1991 published non-binding "Technical Recommendations and Requirements for the Construction of New Stadia". FIFA's practice was to assess separately each stadium that was under consideration for specific events.



By March 1993, the following works had been undertaken at a cost of \$1.8 million:

- new lighting suitable for television (1,200 Lux minimum);
- new VIP seating in the western grandstand;
- 8 new corporate boxes;
- a drug testing room;
- new change room facilities for players;
- an enclosed players' race area;
- improved catering facilities on the western side of the ground; and
- 3,000 fixed seats on the eastern terrace.

Between 5 and 20 March 1993, the World Youth Championship was held in Australia. Seven matches were hosted at Hindmarsh Stadium.

## **JULY 1993 – ABOLITION OF THE DEPARTMENT OF RECREATION AND SPORT**

On 1 July 1993, the Department of Recreation and Sport was abolished and became the Recreation, Sport and Racing Division of the Department of Housing and Urban Development. The Department's employees were transferred to the new Division. The Chief Executive Officer of that Division continued to be responsible to and subject to the direction of the Hon. Greg Crafter MP, then Minister for Recreation, Sport and Racing. After the restructure, it was referred to in correspondence as the "Department of Recreation, Sport and Racing".

## **AUGUST 1993 – MERGER OF HINDMARSH AND WOODVILLE COUNCILS**

On 2 August 1993, the Corporation of the Town of Hindmarsh amalgamated with the Corporation of the City of Woodville to form a new council named the City of Hindmarsh and Woodville. Mr John Dyer, the former Mayor of the City of Woodville, was appointed Mayor of the new council.

## **SEPTEMBER 1993 - SYDNEY 2000 OLYMPICS WIN**

On 2 September 1993, it was announced that Sydney had secured the 2000 Olympic Games. The bid document submitted to the International Olympic Committee named Adelaide as one of the possible host venues for matches in the Olympic Soccer Tournament.

By October 1993, discussions were under way between the Division of Recreation, Sport and Racing and the Soccer Federation about the redevelopment of Hindmarsh to accommodate matches during the Sydney Olympics. The construction of a new eastern grandstand as part of a staged four grandstand redevelopment was discussed.

In the ensuing three years there was considerable tension between the various participants' perceptions of whether the Sydney Organising Committee for the Olympic Games had committed to staging Olympic soccer in South Australia and whether the State Government had committed to

providing financial assistance to ensure that occurred. The Soccer Federation regarded both as well established by October 1993: <sup>63</sup>

*"As reported earlier it was noted that Sydney had been successful in their bid to host the Year 2000 Olympic Games.*

*It was further noted that Soccer is the only sport which will be 'decentralised' from Sydney and a group participate in Adelaide.*

*For Adelaide to host a group in the Year 2000 Olympics the stadium will require extensive renovations as FIFA regulations provide that all international matches which have FIFA sanction are to be played in Stadiums which provide the necessary facilities, in particular, seating.*

*The Chairman advised that he had discussed the matter with the Premier of South Australia who had given a verbal undertaking to him that any expenditure on any stadium in Adelaide for the playing of Soccer in the Olympic games would only be made at the Hindmarsh Soccer Stadium.*

*The Commissioners requested that the Chairman obtain the same commitment at a meeting with the Leader of the Opposition."*

## **NOVEMBER 1993 – SACON ABOLITION AND RECONSTITUTION**

On 22 November 1993, the Department of Housing and Construction (SACON) was abolished. On 20 December 1993, a new Department for Housing and Construction was established incorporating all the employees and functions of the former administrative unit.

## **9 DECEMBER 1993 – MR CRAFTER'S LETTER TO SOCCER FEDERATION**

On 9 December 1993, Mr Crafter, then Minister for Recreation, Sport and Racing wrote to the Soccer Federation stating that he was:

*"...pleased to advise that the Government of South Australia is committed to upgrade the Hindmarsh Stadium to full international standard".*

He wrote that he had instructed his departmental officers to prepare a brief to redevelop Hindmarsh Stadium to ensure qualifying and quarter final matches for the 2000 Olympics were played in South Australia. The eastern grandstand was to receive priority as the first stage to be constructed.

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<sup>63</sup> Minutes of the Soccer Federation Board of Commissioners meeting held on 5 October 1993. That must be compared with later reports eg letter dated 14 July 1994 from Adelaide City to the Soccer Federation: "... whether Adelaide and in particular Hindmarsh Stadium hosts a group for the 2000 Olympics is still very speculative and 'up in the air', and subject to continued government discussions and political lobbying."

## **14 DECEMBER 1993 - CHANGE OF GOVERNMENT**

On 14 December 1993, following the State election, the Labor ministers formally resigned and the new Liberal ministers were appointed. The Hon. Dean Brown MP became Premier. Mr Crafter resigned as Minister of Recreation and Sport. The Hon. John Oswald MP was appointed as Minister for Recreation, Sport and Racing.

On 19 December 1993 following the change of Government, the Division for Recreation, Sport and Racing was separated from the Department of Housing and Urban Development and established as an administrative unit in its own right pursuant to the *Government Management and Employment Act 1985*. Its assets and rights were vested in, its obligations attached to and its employees transferred to the new Office for Recreation, Sport and Racing. The Chief Executive Officer of the Office was responsible to and subject to the direction of the new Minister for Recreation, Sport and Racing, Mr Oswald.

On 20 December 1993, the title of the Treasury Department was altered to the Department of Treasury and Finance.

## **JANUARY 1994 - PROPOSAL FOR GOVERNMENT TO TAKE OVER LEASE**

In January 1994, Mr Neil McGachey, then General Manager<sup>64</sup> of the Office for Recreation, Sport and Racing, obtained approval from the Minister to commence negotiations with the Soccer Federation and the Hindmarsh and Woodville Council for the Government to take over the lease of the stadium. In a minute to the Minister, Mr McGachey stated:<sup>65</sup>

*"The Hindmarsh Stadium is Council owned and is leased to the South Australian Soccer Federation and it would be appropriate at this stage to begin negotiations with Council and the Federation to ensure that Government interests are protected. This would be in order to avoid a repeat of the Olympic Sports Field saga whereby it appears that Athletics SA will not be in a position to continue to utilise OSF at the end of 1994 and approximately \$2M worth of asset which was a contribution by the State and Federal Government and Athletics SA could be lost.*

*I would, therefore, propose that the Government, through Recreation, Sport and Racing hold the lease over Hindmarsh Stadium and enter into a sub-lease arrangement with the Federation in order to protect the State and Federal commitments to this Stadium".*

## **FEBRUARY 1994 - SOCCER FEDERATION'S SUBMISSION TO MINISTER OSWALD**

In January 1994, the Soccer Federation was preparing final plans and costings for its four staged development proposal for the upgrading of Hindmarsh Stadium for the 2000 Olympics and waiting on FIFA to send requirements for stadia hosting international matches. The Soccer Federation had allocated its Commissioner, Mr Les Avory, responsibility for working out the parameters of the redevelopment and putting them in a report.

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<sup>64</sup> Mr McGachey later became the Acting Chief Executive of the Office for Recreation, Sport and Racing. The former Chief Executive was Dr Don Swincer.

<sup>65</sup> Dated 6 January 1994.

On 14 February 1994, the Soccer Federation presented Mr Oswald, then Minister for Recreation, Sport and Racing, with its submission entitled *"Qualification Upgrading Requirements For The Hindmarsh Stadium For the Year 2000 Olympic Games"*.<sup>66</sup>

The Soccer Federation President's Message at the front of this submission stated that the Soccer Federation had been invited by the Australian Soccer Federation<sup>67</sup> to host a section of Olympic soccer *"subject to the upgrading of the Hindmarsh Soccer Stadium to conform with strict F.I.F.A. guidelines. ... Unless the Hindmarsh Soccer Stadium is upgraded to these F.I.F.A. requirements South Australia is going to continually miss out on hosting important International [sic] matches."* On the other hand, if it were upgraded there would be no question that Soccer Australia would look favourably at allocating international matches to South Australia regularly.

The Soccer Federation submission proposed an upgrade to conform to FIFA standards. It stated that:<sup>68</sup>

*"In order to achieve our goal we will require to construct, [sic] on a phased basis, a stadium capable of housing 22,000 spectators – seated, together with the necessary public facilities and amenities – in the following way:*

<i>PHASE ONE</i>	<i>Construction of Eastern Grandstand.</i>
<i>PHASE TWO:</i>	<i>Extension of Western Grandstand</i>
<i>PHASE THREE:</i>	<i>Construction of Northern Grandstand.</i>
<i>PHASE FOUR:</i>	<i>Construction of Southern Grandstand."</i>

Apart from several anecdotal examples of the current stadium's deficiencies, there was no definition or explanation as to what the strict FIFA requirements were.

The Soccer Federation's submission estimated the total cost of construction of the four phased redevelopment at \$22.5 million. It stated that it was envisaged that \$250,000 per annum could be generated from a Capital Improvement Fund that the Soccer Federation would establish by levying 5 percent of all gross income generated by any event or match played at Hindmarsh. The Soccer Federation otherwise required a Government grant as it did not have the resources to contribute to capital improvements of the stadium.<sup>69</sup>

The Soccer Federation's submission positively stated that Hindmarsh was the only stadium in Australia which provided exclusively for soccer. There was no analysis of why this was a positive factor.<sup>70</sup>

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<sup>66</sup> This submission will be referred to as the February 1994 Soccer Federation Submission in this Report.

<sup>67</sup> This is the governing body of soccer in Australia.

<sup>68</sup> Page 7.

<sup>69</sup> Page 17.

<sup>70</sup> Mr Tony Farrugia, General Manager of the Soccer Federation has submitted to this Examination that it was always assumed that if Hindmarsh were the only purpose built soccer stadium it would attract more international fixtures than if it were not. I do not consider this assumption analysis of why it was a positive factor.

The Soccer Federation's submission also stated that the Soccer Federation currently leased the stadium until 1999. This lease was about to be extended and a new lease drawn for 25 years, giving the Soccer Federation "security of tenure" at Hindmarsh.<sup>71</sup>

## **FEBRUARY 1994 - SACON PRELIMINARY FEASIBILITY ESTIMATE OF \$30.75 MILLION**

In late February 1994, SACON<sup>72</sup> prepared a preliminary feasibility estimate for the upgrade at Hindmarsh to FIFA standards at the joint request of the Office for Recreation, Sport and Racing and the Soccer Federation. This costing advice was sought for a Cabinet submission.

It stated that:

- The proposal was to accommodate 25,000 spectators within the broad guidelines of FIFA;
- The key findings made in the April 1989 Feasibility Study were used as part of SACON's investigation;
- Preliminary schematics were prepared and based on the information and brief provided by the Soccer Federation Commissioner, Mr Avory.

SACON concluded that early investigation indicated that a four staged project for construction of a 23,750 spectator stadium with two-tiered stands on the northern, southern and eastern sides would cost \$30.75 million, based on current rates and data drawn from recently completed stadia in Adelaide and Sydney. The basis of this conclusion was not articulated in the report.

Nor was any explanation given to reconcile SACON's costings with the \$22.5 million estimate made in the February 1994 Soccer Federation Submission or the inconsistency between quoted FIFA requirements for stadium capacity of 22,000 or 25,000 or 23,750 seats.

The report attached a notional program that contemplated as part of the initial project process a submission to Cabinet, preparation of a brief and a feasibility study.

## **MARCH 1994 - MR ELLIS' REVIEW OF PROPOSALS TO UPGRADE HINDMARSH**

On 31 March 1994, Mr Terry Ellis, a consultant retained by the Office for Recreation, Sport and Racing, provided a review of the April 1989 Feasibility Study and the Soccer Federation's February 1994 Submission. The review was scathing. In Mr Ellis' opinion:

- The estimates of use did not justify a stadium with 23,750 seats:<sup>73</sup>

*"The theory that 'if facilities are provided - the show will follow' is not necessarily true. The facility proposed would doubtless be the best in Australia, but the estimates of use*

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<sup>71</sup> Page 17.

<sup>72</sup> That is, the Department for Housing and Construction. See footnote 48 above.

<sup>73</sup> Page 1.

do not seem to relate to the size proposed. For example, a maximum of 18,000 patrons on 4 occasions (April 89 Report) and 19 occasions of 5,000 patrons is a stadium of 23,750 capacity.

*It seems false economy to build a facility to a maximum demand level for, perhaps one use per year. As other sports have shown that demand problem is easier to manage than the problems of security, cleaning and loss of ambience when 4-5000 are spread throughout a large facility."*

- On the basis of the costs involved, a proposal for a 5 percent levy would require gross income of \$5 million. That income was not established on the information Mr Ellis had seen.
- The cost of the project, \$1,500 per seat, was excessive given the anticipated use.
- Dual usage of the then proposed Athletic Centre should be considered for major events and a minor upgrade to Hindmarsh to avoid cost duplication.
- The car parking and traffic problems were so serious that an alternate site should be seriously considered: <sup>74</sup>

*"The cost of the desired project is excessive for the use and the scale is ambitious for the location; ...*

*The traffic and carparking problem should over-ride any other and must be resolved before any serious consideration is given to remaining, let alone expanding, on the Hindmarsh Site."*

- The April 1989 Feasibility Report was deficient because it did not provide any detailed proposals as to cost repayment, ownership or rights and conditions of use.
- The costs had risen from \$13 million in April 1989 to \$22.5 million in 1993 and \$30.7 million in February 1994 without any major change in the proposal.

Mr Ellis also observed that it was surprising that the proposals did not put forward the concept of a loan or equity. If the sport was as popular as suggested and had the potential stated, then it should have some ability to pay for the facilities. Mr Ellis recommended that the Soccer Federation prepare 10 year income/expenditure projections to establish whether or not there was an ability to pay and to prove the Soccer Federation's viability so that the Government did not face an annual "bail out". <sup>75</sup>

Mr Ellis' review was not detailed. It was one consultant's comments on the Soccer Federation's own partisan report. It probably overstated concerns about car parking. However, its two key points remain valid even as this Report is published, first in respect of the long term demand for the stadium and second, in respect of the Soccer Federation's ability to contribute to the cost.

According to Mr Tony Farrugia, General Manager of the Soccer Federation, the Soccer Federation was not consulted about, or provided with a copy of Mr Ellis' review.

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<sup>74</sup> Page 3.

<sup>75</sup> Page 2.

## MAY 1994 - CABINET SUBMISSION

In May 1994, the Office for Recreation, Sport and Racing, prepared a Cabinet submission for Mr Oswald, then Minister for Recreation, Sport and Racing, recommending that Cabinet note the possible budget impact of proposals to upgrade two major sporting facilities for soccer and netball. The draft submission very briefly outlined the four Stage phased project for soccer, consistent with the February 1994 Soccer Federation Submission at an estimated cost of \$22.5 million. While SACON's initial costings were referred to, no mention was made of SACON's February 1994 estimate of \$30.75 million. The proposed first stage was construction of a new eastern grandstand in the 1994/5 year at a cost of \$6.75 million. That was said to be necessary to achieve completion of all four stages in time for the 2000 Olympics.

Detailed submissions were promised when all avenues of funding had been fully explored.<sup>76</sup>

## MAY 1994 - REQUEST FOR \$6.7 MILLION GRANT

By late May 1994, the Soccer Federation knew that there was no Federal funding available for the upgrade. Following a meeting with Mr Oswald, then Minister for Recreation, Sport and Racing, the Soccer Federation understood that the Minister would make a request to the Department of Treasury and Finance for a grant in 1995/6 of \$6.7 million to build a new eastern stand.

There was bi-partisan support for the redevelopment of Hindmarsh Stadium. Mr Kevin Foley MP, Shadow Minister for Recreation, Sport and Racing, urged the Government to do everything possible to assist the Soccer Federation in its endeavours to upgrade Hindmarsh to a world class facility.

The Soccer Federation planned to continue its ongoing negotiations with Federal and State Governments to ensure the project actually proceeded.

By July 1994, the Soccer Federation had not received a firm commitment from either the State or Federal Government. Adelaide City thought it was clear that the upgrade and whether Adelaide would host a group for the Olympics was *"very speculative and up in the air"*.<sup>77</sup> Yet the Soccer Federation was still hopeful, even though it knew that there were no funds available for any works in excess of \$3 million in the current budget year.<sup>78</sup> The Soccer Federation continued to lobby for the redevelopment and was encouraged by Minister Oswald's indication that he would seek an amount to build the eastern stand as a minimum requirement for the 2000 Olympics from the 1995/6 Capital Works Budget.

The Soccer Federation went so far as to propose to Minister Oswald that the relocation and building costs for the Soccer Federation's offices be paid by the Soccer Federation until such time as the building of the new eastern grandstand (or any other redevelopment in excess of \$3 million). It proposed that the Soccer Federation would then be entitled to recoup \$200,000 of that cost in repayment for their contribution to works from the redevelopment funds.<sup>79</sup> In discussions with

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<sup>76</sup> This Examination has been unable to determine what happened to this submission. It may have been withdrawn or refused. The only evidence seen on this point suggests that because there was only \$3 million available in the Capital Works Budget, Cabinet decided that the project could not proceed that year.

<sup>77</sup> Letter dated 14 July 1994 from Adelaide City to the Soccer Federation.

<sup>78</sup> Minute dated 30 August 1994 from the Acting Chief Executive, Officer for Recreation, Sport and Racing to Minister Oswald; Letter dated 25 July 1994 from the Soccer Federation to Minister Oswald.

<sup>79</sup> Letter dated 25 July 1994 from the Soccer Federation to Minister Oswald.

Adelaide City, the Soccer Federation sought \$200,000 from Adelaide City pending reimbursement by the Government.<sup>80</sup> Understandably, Adelaide City was unhappy with the security of this proposal.<sup>81</sup> The Soccer Federation's proposal to Minister Oswald did not lead anywhere at that time because there were no funds available in the 1994/5 Capital Works Budget.<sup>82</sup>

For several months, the Soccer Federation did not receive any commitment for a Government funded upgrade. On 15 November 1994, representatives of the Soccer Federation met with Minister Oswald to discuss the Soccer Federation's redevelopment proposals for the 2000 Olympics.

Mr Michael Scott, then Chief Executive of the Office for Recreation, Sport and Racing,<sup>83</sup> made a file note of that meeting. It recorded that the Soccer Federation requested a \$6.75 million eastern stand upgrade, to take the stadium to a capacity of 10,000 (6,000 seated on the eastern side). If Federal funding was unavailable for the north and south sections, the Soccer Federation would look within its own resources to fund this seating. That file note further stated:

*"The Minister advised that he would be prepared to seek Cabinet's in principle approval on this matter [for the \$6.75 million upgrade]. It was also noted that any Cabinet approval would need to be subject to Adelaide securing the rights to host a qualifying round in the Men's Soccer Tournament in the 2000 Olympic Games."*

The Soccer Federation's records<sup>84</sup> reported that the Minister had indicated that the building of a new eastern grandstand was a priority for the South Australian Government and would be taken up by Cabinet and Treasury.

The Soccer Federation by this time had adopted an expedient approach to realising their "dream"<sup>85</sup> of completing the redevelopment. It focused on pursuing the first stage of the phased development so as not to miss out altogether.

However, the Soccer Federation still wished to pursue the full phased redevelopment and made its intentions clear to the South Australian Government at the highest levels.<sup>86</sup>

### **30 JUNE 1994 – ESTABLISHMENT OF THE DEPARTMENT FOR BUILDING MANAGEMENT**

In May 1994, the Government approved changes to the structure and mandate of the Department for Housing and Construction. The revised structure and mandate provided for a central policy and advisory capacity, risk management capabilities, and a small service function.<sup>87</sup>

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<sup>80</sup> Letter dated 8 July 1994 from the Soccer Federation to Adelaide City.

<sup>81</sup> Letter dated 14 July 1994 from Adelaide City to the Soccer Federation.

<sup>82</sup> Minute dated 30 August 94 from Mr McGachey, the Acting Chief Executive, Office for Recreation, Sport and Racing to Minister Oswald.

<sup>83</sup> Mr Scott was appointed Chief Executive of the Office for Recreation, Sport and Racing on 19 September 1994 and resigned on 30 June 1997.

<sup>84</sup> Extract from the minutes of the Board of Commissioners of the Soccer Federation held on 21 November 1994.

<sup>85</sup> Letter dated 26 October 1994 from the Soccer Federation to the Hon. Mike Rann MP.

<sup>86</sup> Letter dated 14 December 1994 from the Soccer Federation to The Premier.

<sup>87</sup> See the Auditor-General's Report for the financial year ended 30 June 1994.



On 30 June 1994, the title of the Department for Housing and Construction was altered to the Department for Building Management. Its Chief Executive Officer was then responsible to the Minister for Tourism and Industrial Affairs. One of the business units comprising the Department was Consultancy Services to provide project and risk management services, contract management, asset management planning and provides a superintendent role to Government on contract administration.<sup>88</sup>

## **OCTOBER 1994 - FIFA REQUIREMENTS AS TO TEMPORARY FACILITIES**

On 27 October 1994, Mr Tony Farrugia, General Manager of the Soccer Federation, sent a letter to Minister Oswald stating that Mr Bob Elphinston, then General Manager – Games Operation, SOCOG, had been told by Mr Sepp Blatter, General Secretary of FIFA, that FIFA would not allow matches to be staged on temporary facilities. According to Mr Farrugia, Mr Elphinston had in turn repeated that conversation to Mr David MacFarlane, then of the Office for Recreation, Sport and Racing.

On the day that the Soccer Federation wrote that letter, the FIFA Executive Committee passed a resolution to permit the use of temporary stands, directly contrary to Mr Farrugia's letter.<sup>89</sup> Ultimately, the final plans for the hosting of qualifying matches in the 2000 Olympic Soccer Tournament in Adelaide did involve some temporary facilities.

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<sup>88</sup> See the Auditor-General's Report for the financial year ended 30 June 1995.

<sup>89</sup> "Authorisation of Temporary Stands in Stadia", FIFA.

## CHAPTER 7 - JANUARY TO DECEMBER 1995

### 30 JANUARY 1995 – SOCOG LETTER TO THE PREMIER OF SOUTH AUSTRALIA

By letter dated 30 January 1995, Gary Pemberton, the Executive President of SOCOG, wrote to then Premier Dean Brown, seeking confirmation of the Government's interest in participating in the 2000 Olympic Soccer Tournament. That letter listed the venues that had been included in the Host City Contract between SOCOG and the International Olympic Committee as:

"VENUE	CAPACITY
<i>Sydney Olympic Stadium (finals)</i>	<i>80,000</i>
<i>Sydney Football Stadium</i>	<i>42,000</i>
<i>Suncorp Stadium (Lang Park), Brisbane</i>	<i>30,000</i>
<i>Olympic Park, Melbourne</i>	<i>30,000</i>
<i>Parramatta Stadium</i>	<i>30,000</i>
<i>Hindmarsh Stadium, Adelaide</i>	<i>15,000"</i>

The letter further stated that SOCOG, in consultation with FIFA and the Australian Soccer Federation, sought confirmation on a number of matters including:

- "(a) The desire by your State to participate in the Olympic Games by hosting a number of matches in the Olympic Football competition;*
- (b) The provision of a venue that is acceptable to SOCOG, FIFA and ASF in all respects including the required minimum seating capacity (a summary of FIFA's minimum requirements is attached;*
- (c) The provision of all necessary infrastructure at no cost to SOCOG to ensure the successful conduct of the Olympic competition including but not limited to – training sites, accommodation, security, local transport, medical services, etc;*
- (d) Cost of capital improvements to venues will not be met by SOCOG as any improvements undertaken represent a long-term investment for the local community and the sport of soccer in particular..."*

The letter attached a one page document entitled "*Football Stadia Minimum FIFA Requirements*" that were stated to be drawn from a range of FIFA publications including regulations and laws of the game, "*Technical Requirements and Guidelines for New Stadia June 1991*" and "*FIFA News*".

The minimum requirements included:

*"Each stadia to have minimum seated capacity 15,000 – no terraces or spectator standing areas.*

*Temporary grandstands and seating permissible [sic] provided strict safety and spectator comfort standards are met – FIFA must approve construction of such temporary stands."*

Also attached was a one-page extract from "FIFA News" entitled "Authorisation of Temporary Stands in Stadia". It set out the conditions upon which the FIFA Executive Committee had resolved to permit the use of temporary stands on 27 October 1994.

On 21 February 1995, Premier Dean Brown responded, confirming Adelaide's selection and advising that a venue would be provided that was acceptable to SOCOG, FIFA and Soccer Australia.

## **FEBRUARY 1995 - EARLY ESTIMATES OF COST OF HOSTING OLYMPIC SOCCER**

On 11 February 1995, Mr Farrugia sent Mr Scott, then Chief Executive of the Office for Recreation, Sport and Racing, a letter about the costs of hosting matches in the 2000 Olympic Soccer Tournament. He estimated those costs as in the order of \$349,700 and stated in his letter that he had made no allowance for CPI or travel between Sydney and Adelaide, that they were estimates only and were broadly based on the 1993 World Championships. However, Mr Farrugia's letter then stated that *"[a]s far as the Stadia requirements are concerned, the requirements of FIFA are self-explanatory."*

On 16 February 1995, Mr Scott prepared a minute to Minister Oswald about the costs of hosting matches in the 2000 Olympic Soccer Tournament. He stated that he considered Mr Farrugia's figure to be underestimated. He expressed his view that *"a figure in the vicinity of \$500,000 would be a more than ample budget for the men's competition"*. The basis for Mr Scott's estimate did not appear in the minute.

## **20 APRIL 1995 – BUDGET SUB-COMMITTEE APPROVAL**

On 20 April 1995, the Budget Sub-committee approved the construction of a new eastern grandstand at a cost of \$6.5 million to be sourced from the recurrent budget of the Office for Recreation, Sport and Racing.

## **APRIL 1995 - FIRST INVOLVEMENT OF THE CROWN SOLICITOR'S OFFICE**

The Crown Solicitor's Office opened its first file in relation to the Hindmarsh Stadium redevelopment on 28 April 1995.

Shortly before, Mr George Forbes, Director of Capital Projects in the Office for Recreation, Sport and Racing, had correctly identified that:<sup>90</sup>

*"[t]he term of the lease with the Hindmarsh and Woodville Council needs to be agreed, as a long term commitment will be essential." [emphasis supplied]*

On the same day that the Crown Solicitor's Office opened its file, a Memorandum of Understanding between the Government and the Soccer Federation was executed.

In the first draft of the Memorandum of Understanding produced by the Crown Solicitor's Office, two alternative mechanisms were postulated to protect the use of the stadium for soccer.

First, it was proposed that the Government would take a lease of the stadium and sublease it to the Soccer Federation. This was the same concept that had been raised in 1989,<sup>91</sup> 1990<sup>92</sup> and 1993.<sup>93</sup>

The second option was for the Soccer Federation to take a lease from the Council and for the Government to have the first right of refusal to take an assignment of the lease if the Soccer Federation sought to assign the lease during its term.

In the final Memorandum of Understanding as executed, the second option was preferred.

That concept, included in the Memorandum of Understanding by the Crown Solicitor's Office after having been briefed for at most 48 hours, became the sole protection given to the Government to ensure the ongoing availability for soccer of the redeveloped Hindmarsh Stadium.

The concept of the Government taking over the lease was raised with the Soccer Federation, although not in writing. The Soccer Federation rejected it because it perceived it as requiring it to give up control of its traditional home. The Federation's position in that regard had changed since 1989. The Government did not press the point.

## **28 APRIL 1995 - MEMORANDUM OF UNDERSTANDING WITH THE SOCCER FEDERATION**

The April 1995 Memorandum of Understanding was not a binding legal document. It expressly stated in Clause 6.2 that:

*"The parties acknowledge that this Memorandum of Understanding is entered into by all of them in good faith on the understanding that both the Minister and SASF are undertaking further feasibility studies regarding the development and finance of the Hindmarsh Developments in the manner contemplated by this Memorandum of Understanding."*

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<sup>90</sup> Note of discussion points prepared by Mr Forbes dated 26 April 1995.

<sup>91</sup> See above under the heading "April 1989 - Feasibility Study for Soccer: Hindmarsh v Gepps Cross" at page 38.

<sup>92</sup> See above under the heading "March 1990 - Project Justification Report" at page 41.

<sup>93</sup> See above under the heading "January 1994 - Proposal for Government to Take Over Lease" at page 45.

The April 1995 Memorandum of Understanding required that the commitment to play matches at Hindmarsh Stadium be given by the NSL Clubs<sup>94</sup> to the Soccer Federation in their licence agreements with the Soccer Federation.

The April 1995 Memorandum of Understanding defined the project as the works to be undertaken by the Soccer Federation at Hindmarsh at a maximum cost of \$6.5 million and comprising:

- provision of the Soccer Federation's new office, at that time already built;
- construction of a new eastern grandstand; and
- such other works as the Soccer Federation might propose and the Government accept.

The eastern grandstand was defined by reference to a Site Plan and a Concept Plan that comprised annexures to the April 1995 Memorandum of Understanding. The Site Plan denoted the eastern grandstand as a shaded rectangle on the eastern side of the stadium.<sup>95</sup> The Concept Plan was a line drawing of a soccer field surrounded by boxed areas designating seats within the triangle-shaped land bounded by Hindmarsh Place and Manton and Holden Streets. On the eastern side the words "new grandstand" were written. The areas designated for the eastern grandstand in the Site Plan and the Concept Plan were different shapes.

The April 1995 Memorandum of Understanding provided that the Soccer Federation and the Government would contribute to the cost of the redevelopment. Both would use their best endeavours to procure a contribution from the Council. The redevelopment would be financed by the Soccer Federation borrowing up to \$6.5 million and the Government using "*its good offices [to] facilitate*"<sup>96</sup> obtaining that finance to the extent that was appropriate and legal.

The April 1995 Memorandum of Understanding envisaged that the Soccer Federation would fund its contribution of up to 50 percent of the loan repayments by a \$3 levy on all spectators using the new grandstand and \$1 for each spectator using the existing western grandstand. The Government would pay any shortfall between the spectator levies and the loan repayments.

Although the Sydney 2000 Olympics was a key motivation for entering into the April 1995 Memorandum of Understanding, they were not referred to.

## **29 APRIL 1995 – MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERATION AND THE NSL CLUBS**

The day after the April 1995 Memorandum of Understanding was executed, the Soccer Federation met with representatives of the two clubs which had NSL teams, Adelaide City and West Adelaide. The two NSL Clubs approved the Memorandum of Understanding with the Government in principle except that they refused to be responsible for the \$1 levy to be imposed upon spectators using the existing western grandstand.

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<sup>94</sup> That is, Adelaide City and West Adelaide.

<sup>95</sup> The Site Plan, Annexure A, was a copy of Figure 7 in the 1989 Feasibility Study without Figure 7's original title. Figure 7 in the 1989 Feasibility Study denoted Option 4 for the upgrading of Hindmarsh involving covered seating of 9,000 and total seating of 13,800. The new eastern grandstand seated 2,500 under cover.

<sup>96</sup> Clause 5.4 of the April 1995 Memorandum of Understanding.

## **1 MAY 1995 – COUNCIL OF CLUBS AUTHORISATION OF SOCCER FEDERATION LOAN**

An extraordinary meeting of the Council of Clubs of the South Australian Soccer Federation was held on 1 May 1995 to consider the Government's offer of an eastern grandstand.

The minutes<sup>97</sup> record that the Chairman reported that the Government had recently called meetings with the Soccer Federation to discuss the building of a new eastern grandstand:

*"...in line with the requirements for South Australia to host a section of the year 2000 Olympics, Soccer Tournament."*

The proposal required the Soccer Federation to borrow and service a loan of \$6.5 million under Government guarantee.

The minutes then record that:

*"It was noted that the Federation was not exposed to any risk and any shortfall in the repayments would be made by the State Government – without limitation."*

*It was also noted that as part of the Agreement, Government had agreed to include the new Office Administration area as part of the project and therefore the repay [sic] the borrowing's [sic] of \$200,000 to Adelaide City SC." [emphasis supplied]*

## **1 MAY 1995 - CABINET APPROVAL**

On 28 April 1995, Mr Oswald signed a submission seeking Cabinet approval of the April 1995 Memorandum of Understanding. The definition of the project included a new eastern grandstand but the size and layout of that grandstand was not defined in the Cabinet submission. Only one criterion was stated in the Cabinet submission by which the content of the project could be discerned and that was the cost of \$6.5 million. Mr Oswald has submitted to this Examination that the project was not defined further in the Cabinet submission because it was intended that the content of the project would be the subject of detailed negotiations between the Government and the Soccer Federation within the cost ceiling set by Cabinet of \$6.5 million.

On 1 May 1995, Cabinet considered that submission and gave approval for the Minister for Recreation, Sport and Racing, to conduct negotiations within the principles set out in the April 1995 Memorandum of Understanding. Cabinet also endorsed the Office for Recreation, Sport and Racing being given an additional budget appropriation equivalent to the Government's contribution to the repayments of the \$6.5 million loan that the Soccer Federation would take out.

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<sup>97</sup> Minutes of the Council of Clubs meeting held on 1 May 1995.

Paragraph 2.2 of the submission read as follows:

*"With the success of the Sydney Olympic 2000 bid Hindmarsh Stadium has been chosen as a venue to host Olympic Soccer fixtures provided the Hindmarsh stadium is upgraded to meet FIFA requirements [sic]. FIFA have indicated that matches can only be played on soccer specific stadiums, ie. Hindmarsh. This upgrading will not only guarantee that Adelaide will host a section of the Olympic Games but will continue to host major international soccer events prior to and after the Olympics."*

Mr Oswald has submitted to this Examination that this paragraph in the Cabinet submission was based on *"the best advice coming out of the Soccer Federation from its President and others that the upgrade proposal would secure the Olympic matches"*.

I have found that this advice was incorrect, as was paragraph 2.2 of the Cabinet submission in that:

- There had been no commitment from SOCOG to use Hindmarsh Stadium. Certainly Hindmarsh Stadium would not be used if it did not meet the "minimum FIFA requirements" sent to the Premier on 30 January 1995.
- There is no written record of FIFA having stated that Olympic matches could only be played on soccer specific stadia. Indeed, on 30 January 1995, SOCOG had informed the Premier that the other venues proposed included Sydney Olympic Stadium, Sydney Football Stadium, Brisbane Suncorp Stadium, Melbourne Olympic Park and Parramatta Stadium, none of which were soccer specific. Further, the "minimum FIFA requirements" sent to the Premier on 30 January 1995 did not require that the stadium be soccer specific.
- The April 1995 Memorandum of Understanding and the Cabinet submission proposed the construction of a new eastern stand at a cost of \$6.5 million. It was implicit in the Cabinet submission that this would meet minimum FIFA requirements for number of seats. A file note made by Mr Scott in November 1994 recorded that the Soccer Federation wanted a new eastern grandstand comprising 6,000 seats at a cost of \$6.75 million which would increase the stadium's capacity to 10,000 seated. However, the FIFA minimum stadium requirements received in January 1995 required a minimum capacity of 15,000 seated. No reference was made in the Cabinet submission for the need for temporary seating at a further cost.

The submission also stated that the Soccer Federation was to contribute up to 50 percent of the repayment of the loan of \$6.5 million over a 20 year period. That contribution was to be funded by a "premium" on ticket prices. The submission contained an estimate that approximately \$300,000 to \$400,000 could be achieved in each year. The submission stated:

*"While the contribution by the Federation will vary dependent on the number of spectators utilising the Eastern and Western stands the figure proposed is considered to be achievable and reasonable. The figure represents a cost of \$13 per spectator occupying the Eastern stand which is \$3 in excess of the general admittance cost. This additional cost will provide funds to assist in loan repayments, etc. Similarly the cost per spectator occupying the Western stand will be \$14 (an increase of \$1) the additional cost of \$1 will also contribute toward the repayment of the loan."*

That calculation assumed that the new eastern stand would be fully occupied at each of the NSL matches. While the submission described the estimate as *"achievable and reasonable"*, in fact, the Office for Recreation, Sport and Racing had not undertaken any independent or detailed analysis of those expectations.<sup>98</sup> In fact, the serious reservations expressed in Mr Ellis' Review were not taken into account.

The April 1995 Memorandum of Understanding envisaged that the Soccer Federation would fund its contribution to the financing of the project by a \$3 levy on all spectators using the new grandstand and \$1 for each spectator using the existing grandstand.

The Cabinet submission multiplied those levies by anticipated average attendances at NSL, international and Premier League matches. The anticipated averages involved either substantial increases in average attendances at each match or increases in the number of spectators attending matches choosing to sit in the grandstands. For example, the anticipated average spectators sitting in the new grandstand for NSL matches was 3,000. The average attendances at NSL matches in the preceding four seasons had been as shown below:

Year	Adelaide City	West Adelaide
1991/1992	4,683	3,250
1992/1993	3,714	4,369
1993/1994	4,219	3,383
1994/1995	4,482	3,825

The Soccer Federation did not have historical records to show how many of those attending chose to sit in the existing stand but its capacity was 930 or roughly 20 percent of those attending. If attendances remained the same, about 75 percent of spectators would have to choose to pay extra to sit in the grandstands.

Mr Oswald's view in evidence to this Examination was that when Cabinet approved further negotiations it was on the basis that the budget must be strictly limited to \$6.5 million and that an eastern stand together with temporary seating on the northern and southern sides of the ground would be sufficient to secure matches in the 2000 Olympic Soccer Tournament. Mr Oswald has submitted to this Examination that:

*"if negotiations failed to produce a project for the \$6.5 million then all bets were off and we would have had to withdraw our commitment to the Games."*

On 3 May 1995, the then Premier issued a press release:

*"Premier Dean Brown today announced a \$6.5 million upgrade of Hindmarsh Stadium to bring the venue up to international standard."*

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<sup>98</sup> Indeed, the earlier optimistic estimate of income put forward by the Soccer Federation in its February 1994 submission to Minister Oswald had been criticised by the independent consultant Mr Ellis, who identified the need for those estimates to be thoroughly checked (see under the heading "March 1994 - Mr Ellis' Review of Proposals to Upgrade Hindmarsh" at page 47 above).



*Mr Brown said the upgrade was essential to ensure a world-class stadium in preparation for Olympic 2000 preliminary matches which will be played in Adelaide."*

On 4 May 1995, an article "\$6.5m grandstand for Hindmarsh" was published in The Advertiser. It stated that:

*"The announcement was welcomed by Adelaide City, its NSL counterpart West Adelaide and the SASF, which highlighted further plans for upgrading facilities.*

*The federation's Chairman, Mr Charlie Caruso, said his personal aim was to transform the stadium by spending about \$30 million to create a stadium for 25,000 seated spectators."*

## **18 MAY 1995 - COMMITTEES FOR REDEVELOPMENT ESTABLISHED**

After the April 1995 Memorandum of Understanding had been approved by Cabinet, Mr Scott, the Chief Executive of the Office for Recreation, Sport and Racing, set up four committees, each with representatives from the organisations shown below:

Committee	Representative Organisations
"Finance"	Soccer Federation Office for Recreation, Sport and Racing The Department of Treasury and Finance
"Marketing"	Soccer Federation Office for Recreation, Sport and Racing
"Project Design and Development"	Soccer Federation Office for Recreation, Sport and Racing Department for Building Management
"Executive"	Soccer Federation Office for Recreation, Sport and Racing The Department of Treasury and Finance Crown Solicitor's Office Department for Building Management

The set up of those committees was defined in a letter dated 18 May 1995 sent to the Soccer Federation by Mr Scott. Although it described the function of each committee, it did not specify how decisions would be made. It stated that the committee structure would *"ensure equal representation by both Government and the Federation"* [emphasis supplied]

The Council was invited to join the Executive Committee on 30 November 1995.

## 20 JULY 1995 - FIRST MEETING OF THE EXECUTIVE COMMITTEE

On 20 July 1995, the first meeting of the executive committee for the redevelopment of the Hindmarsh Soccer Stadium was held.

The minutes of that meeting record that it was intended that Department for Building Management should have a significant role in the project.<sup>99</sup>

*"Judy Freeman then outlined DBM's possible role in the project, describing the Department as a risk manager for the Government, assisting the project to meet the desired brief to program as well as to budget.*

...

*Judy advised that she would prefer DBM to have a significant involvement in this project rather than smaller, advisory role."*

In relation to project definition:

*"It was agreed that a meeting be scheduled with representatives from Recreation, Sport and Racing, SA Soccer Federation, and Department for Building Management in order to prepare the design brief."*

A design brief had been prepared by the Office for Recreation, Sport and Racing by the time of that meeting but it was recognised at the meeting to be inadequate.

The meeting endorsed the establishment of the committees proposed by Mr Scott:

- An "executive committee" comprising the Assistant Crown Solicitor<sup>100</sup> and the President<sup>101</sup> and General Manager<sup>102</sup> of the Soccer Federation and the Chief Executive<sup>103</sup> and the Director of Capital Projects<sup>104</sup> of the Office for Recreation, Sport and Racing.
- A "marketing sub-committee" comprising one representative from the Office for Recreation, Sport and Racing<sup>105</sup> and one from the Soccer Federation.<sup>106</sup>

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<sup>99</sup> Minutes of Meeting of Hindmarsh Soccer Stadium Upgrade Committee held on 20 July 1995, pages 4-5.

<sup>100</sup> Mr John Hocking. Mr Hocking did not attend this meeting.

<sup>101</sup> Mr Charlie Caruso.

<sup>102</sup> Mr Farrugia.

<sup>103</sup> Mr Scott.

<sup>104</sup> Mr George Forbes.

<sup>105</sup> Mr Bruce Raymond.

<sup>106</sup> Mr Martin Harrington.

- A "finance sub-committee" consisting of the Director of Capital Projects of the Office for Recreation, Sport and Racing, the General Manager of the Soccer Federation, the Deputy Chair of Soccer Australia<sup>107</sup> and a representative from the Department of Treasury and Finance.<sup>108</sup>
- A "project design development sub-committee" comprising the Director of Capital Projects of the Office for Recreation, Sport and Racing, the General Manager of the Soccer Federation and two representatives from the Department for Building Management.<sup>109</sup>

The minutes of the meeting record that:

*"Michael Scott informed that the Sydney Organising Committee for the Olympic Games would be a valuable resource subsequent to the completion of the design brief."*

This statement suggests that the Committee recognised the importance of consulting SOCOG in developing the design brief for the project so as to meet FIFA/SOCOG requirements.

## **AUGUST 1995 - SOCCER FEDERATION ATTEMPTS TO INCREASE BUDGET**

Mr Oswald gave evidence to this Examination that the Soccer Federation sought to use comments about temporary stands made by FIFA as a reason to expand the scope of the development but he had insisted on the project remaining limited to one grandstand within the budget of \$6.5 million. He had been asked to approve additional expenditure so that no temporary stands, of the type used during the Grand Prix, would be necessary. Mr Oswald refused. His departmental staff received informal indications from SOCOG that that would be sufficient.

## **1 SEPTEMBER 1995 - APPOINTMENT OF DEPARTMENT FOR BUILDING MANAGEMENT AS PROJECT MANAGER**

On 1 September 1995, the Department for Building Management was appointed as project manager for the Hindmarsh Stadium Redevelopment project. An agreement for the Department's role in the proposed construction of a new eastern grandstand with undercover seating for 5,000 was recorded in an exchange of letters between the Office for Recreation, Sport and Racing and the Department for Building Management.

## **4 SEPTEMBER 1995 - DEPARTMENT FOR BUILDING MANAGEMENT PROJECT BRIEF**

The Department for Building Management prepared a "consultancy brief" dated 4 September 1995, which described in note form the content of the new eastern grandstand. That brief specified that the seating in the new grandstand should meet FIFA guidelines but it did not mention that the pitch had to be upgraded for the stadium to comply with FIFA guidelines.

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<sup>107</sup> Mr Basil Scarsella.

<sup>108</sup> Mr Neil Nosworthy.

<sup>109</sup> Ms Judith Freeman and Project Manager, Mr Jeff Browne.

## 20 SEPTEMBER 1995 - TENDER PROCESS FOR APPOINTMENT OF PRIMARY CONSULTANT

By letter dated 20 September 1995, the Soccer Federation invited six firms of architects to make submissions for the position of primary consultant to provide architectural and engineering services.

The letter was prepared by the Department for Building Management. It included the following: <sup>110</sup>

*"Role of the Department for Building Management*

*DBM will provide project and cost management services for both consultancy stages of the project.*

*The DBM role, coordinated by the DBM project manager, will include project overview, support and advice to the project team on Government policy and procedures, facilitation of project approvals and engagements, provision of the tendering service and contract administration as Superintendent's Representative. Formal submission of the project for planning approval and certification under the Development Act will be by the project manager based on information provided by the primary consultant.*

*DBM cost management service will include budgeting, costing, progress payments processing and the input of data into the contract reporting system.*

*DBM will be responsible for the printing of the tender documents and for calling tenders."*

The letter inviting tender submissions included the following specification of work: <sup>111</sup>

*"It is intended that consultancy services be procured in two stages.*

*The initial stage will consist of the following services:-*

- *preparation of a comprehensive brief of requirements;*
- *undertaking of feasibility investigations;*
- *preparation of preliminary concepts;*
- *provision of a recommended proposal.*

*The DBM cost manager will prepare notional estimates and will assess the estimates against the budget.*

*The remaining stage will consist of primary consultancy services from sketch design through to contract administration."*

The requirement of the "feasibility investigations" was not specified in more detail either in that letter or in any later document or instruction to the primary consultant ultimately engaged.

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<sup>110</sup> Pages 1 and 2.

<sup>111</sup> Page 2.

Engagement of the primary consultant beyond the initial design stage was not guaranteed: <sup>112</sup>

*"It should be noted that an engagement as primary consultant for the initial stage may not necessarily indicate continued engagement of the same primary consultant for the remaining stage."*

A notional budget for the project, including professional fees, was stated as \$6.2 million. <sup>113</sup> Of the \$6.5 million approved by Cabinet in May 1995, \$300,000 was for works already undertaken to the Soccer Federation's office administration facilities.

Tenders were received from six architectural firms. Representatives of the Soccer Federation, the Office for Recreation, Sport and Racing and the Department for Building Management interviewed three short listed architectural firms.

The architectural firms visited the site before making their submissions. In the course of Woods Bagot's visit, Mr Andrew Ford, the Adelaide principal and a partner of Woods Bagot, made a note which read *"Stage I - another \$10 mill coming .: ? masterplan"*. <sup>114</sup> In his evidence to this Examination, Mr Ford said that someone, maybe Mr Jeff Browne, Senior Project Manager in the Department of Building Management, must have made the point to him that the development was part of an ongoing development program. He did not recall anyone suggesting that the Government had already given a commitment to spend that money.

Woods Bagot were very conscious of the fact that the \$6.2 million budget covered work which had to fit into the longer term needs for the site. In their tender submission they said: <sup>115</sup>

*"This project offers a number of site challenges. The compact nature of the grounds, the need for continuous operation, the importance of maximising the value of the existing facilities, provision of the new grandstand and ensuring future opportunities are 'protected' in the master planning are all critical. Further, the risk to the owners and operators should be minimised.*

*Strategic master planning is therefore a vital factor in this project. The site opportunities and constraints will be carefully evaluated. Alternative design solutions will be prepared and carefully assessed to ensure that the best solution meets key criteria, including value for money, providing opportunities for future development, the best use of existing facilities and maximising the opportunity to continue operations during construction."*

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<sup>112</sup> Page 2.

<sup>113</sup> Page 3.

<sup>114</sup> The symbol ".:" is taken to mean "therefore".

<sup>115</sup> Page 1.

Woods Bagot's submission also stated: <sup>116</sup>

*"Client Support*

*Woods Bagot is keen to support SASF and we would like to explore corporate options such as sponsorship and other ways in which we can assist the SASF in achieving its objectives as part of our ongoing relationship." [original emphasis]*

After Woods Bagot's submission was received, the Soccer Federation sent a letter to the Chief Executive of the Office for Recreation, Sport and Racing that contained the following passage: <sup>117</sup>

*"It should be noted that as part of Woods Bagot original submission they offered some form of sponsorship to the Soccer Federation and we advise that we have submitted proposals to this Company and intend to follow up on these."*

Woods Bagot were approached by the Chairman of the Soccer Federation seeking confirmation of their sponsorship offer. <sup>118</sup> Mr Ford confirmed that Woods Bagot intended to offer sponsorship if Woods Bagot were the successful tenderer. The Chairman of the Soccer Federation, Mr Caruso, then asked how much Woods Bagot were offering and how much would Woods Bagot be prepared to cut off their fees because other tenderers might also be prepared to do the same. Mr Ford objected to sponsorship being part of the tendering process. It was not part of the offer to tender and Mr Ford feared that if the Soccer Federation sought that from them, they would also seek it from other tenderers, leading to a *"Dutch auction"*. Mr Ford informed DBM about his objections and DBM ensured that the integrity of the tender process for the primary consultant was maintained. Ultimately, even though their submission invited it, Woods Bagot did not provide the Soccer Federation with any sponsorship either as part of the tender process for the primary consultant or more generally for the redevelopment project.

Woods Bagot's tender submission also contained the following passage: <sup>119</sup>

*"Andrew Ford and Peter Hoare have also recently been involved in several preliminary studies of the Hindmarsh Soccer Stadium for SASF in exploring options for new grandstands."*

Mr Ford and Mr Peter Hoare of Woods Bagot had informal discussions with Mr Avory about the plans to either redevelop Hindmarsh Stadium or relocate to a new stadium north of the city that were the subject of the 1989 Feasibility Study. Woods Bagot were not paid for their involvement and neither Mr Ford nor Mr Hoare regarded Woods Bagot as retained by the Soccer Federation.

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<sup>116</sup> Page 7.

<sup>117</sup> Letter dated 1 November 1995 from SA Soccer Federation to Mr Scott signed by Mr Farrugia.

<sup>118</sup> Mr Avory has informed this Examination that Mr Caruso's approach was not authorised by the Soccer Federation.

<sup>119</sup> Woods Bagot submission page 34.

## **30 OCTOBER 1995 - ESTABLISHMENT OF SERVICES SA**

On 30 October 1995, the Department for Building Management was abolished and Services SA established. The employees and functions of the Department were transferred to Services SA.

## **8 NOVEMBER 1995 - APPOINTMENT OF WOODS BAGOT**

Woods Bagot were selected as primary consultant because they were the preferred candidate of the Soccer Federation. The Soccer Federation expressed a preference for Woods Bagot, noting that the Soccer Federation would pursue the possibility of sponsorship from Woods Bagot.<sup>120</sup> The Office for Recreation, Sport and Racing supported the appointment of Woods Bagot.<sup>121</sup>

Woods Bagot were not the cheapest of the tenderers. Services SA had assessed the cheapest tenderer as having the necessary skills for the project, even if not the same skill level as Woods Bagot. Services SA considered Woods Bagots' proposal offered the most appropriate level of services for a market competitive fee.

On 8 November 1995, the Soccer Federation sent Woods Bagot a letter formally offering Woods Bagot the contract as primary consultant.<sup>122</sup> The scope of the retainer was indicated in the letter's heading - "*Hindmarsh Soccer Stadium New Eastern Grandstand*" but not otherwise. That letter stated that it enclosed a formal contract document but it did not. That contract was not sent until 9 January 1996. The contract then sent, defined the scope of Woods Bagot's retainer by reference to Woods Bagot's own submission. It was not executed until February 1996.

## **8 NOVEMBER 1995 - WOODS BAGOT PRELIMINARY DESIGN WORK**

### **Project Definition**

Woods Bagot commenced preliminary design work immediately.

They were not provided with any documents to show how the budget of \$6.2 million had been set.

Woods Bagot did not consider themselves constrained by the previous project definitions. Those project definitions did not precisely state the extent to which compliance with FIFA guidelines was necessary.

During the selection process, by Services SA letter dated 29 September 1995, Woods Bagot had been provided with a copy of FIFA's "*Technical Recommendations for the Construction of New Stadia*". During a site visit Woods Bagot were told that a thorough understanding of those requirements was necessary. The extent to which adherence to those standards was necessary was not specified. Woods Bagot were not instructed as to the criteria they were to apply in determining which of the FIFA standards were mandatory and which optional.

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<sup>120</sup> The circumstances of the selection of Woods Bagot are described in detail above.

<sup>121</sup> Minute dated 2 November 1995 from Mr Scott, Chief Executive of the Office for Recreation, Sport and Racing.

<sup>122</sup> This letter was prepared for the Soccer Federation by Services SA.

During a series of design meetings held from December 1995, Woods Bagot tabled a draft *"FIFA Requirements Comparison Schedule"* to be built up progressively. The minutes of these meetings record that "Field Size" was a primary issue as *"Field and boundary clearances is [sic] currently below FIFA requirements for International matches"*.<sup>123</sup>

### **Assessment of Future Development Options**

Between their appointment in November 1995 and March 1996, Woods Bagot developed a series of options for the first stage of the redevelopment. The design process adopted by Woods Bagot involved taking very detailed instructions from the Soccer Federation. Woods Bagot regarded the Soccer Federation as the client.

Woods Bagot's design philosophy was based on an approach taught to them by an American consultant. That philosophy required an examination with the client of how the specific project being undertaken would fit with the future desires of the client and possible further development of the site. That philosophy reflected common sense in that duplication and waste would occur if the development had to be demolished or excessively altered when later developments were undertaken. The development might close off options for future development.

When Woods Bagot commenced preparation of their own *"Functional Design Brief"*,<sup>124</sup> they defined the project objectives as:<sup>125</sup>

*"Generally, the objective of this project as funded is the design and development of a new eastern grandstand for the Hindmarsh Stadium.*

*In particular, there is a requirement to achieve the best value for money for the various stakeholders involved. These stakeholders are:-*

*South Australian Soccer Federation*

*City of Hindmarsh and Woodville (owners of the site)*

*Government of South Australia (provider of finance and represented by Office for Recreation, Sport and Racing)*

- 1. The National League Clubs - Adelaide City and West Adelaide (currently located on site in western grandstand)*
- 2. All the Federation clubs*
- 3. Soccer Australia (National body)*

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<sup>123</sup> Item 1.1.2 in minutes of Design Meetings No. 1 and 2 held on 12 and 21 December 1995.

<sup>124</sup> This was a far more detailed document than the consultancy brief prepared by the Department for Building Management and sent to Woods Bagot in September 1995.

<sup>125</sup> Draft Contents Page.



*Due to the long term implication of this project to the first 3 stakeholders in particular, the agreed methodology is to thoroughly investigate and analyse the current and future needs and objectives of the stakeholders and develop a flexible master plan for the full long term development of the facilities on this site. From this viewpoint, it is intended to determine the most appropriate use of the current available funding to agree a scope and brief for the first stage.*

*Detailed objectives within the above scenario are:-*

- provide the most value for the least cost at all times*
- provide the best possible amenity for all of the spectators and other users*
- provide as many covered seats as possible*
- provide a world class facility to promote soccer and South Australia throughout Australia and internationally*
- to add value and financial return to all of the stakeholders*
- to optimise the flexibility of the stadium to capitalise on alternative events and uses."*

### **Identification of Need for Land Acquisition**

Woods Bagot prepared rough sketch plans of the main playing pitch and the possible locations of the grandstands by reference to that pitch. Woods Bagot formed the opinion that if the pitch was to be enlarged to accommodate the grass surround required by FIFA and there was to be a stand on each side of that pitch with total seating capacity of 20,000, the stadium site would have to be expanded. That would require the closure of Hindmarsh Place near the south western corner of the stadium. That in turn would necessitate acquisition of the properties fronting Hindmarsh Place that would then have no street access or acquisition of other land from which to provide the street access.

Woods Bagot spoke to the Council about this issue. Coincidentally, the Council had already been considering acquiring a number of the properties adjacent to the stadium site and closing Hindmarsh Place. On 11 December 1995, the Council sent Woods Bagot a plan of the land surrounding the stadium showing certificate of title references, land owned by the Council and land currently for sale.

Woods Bagot's preliminary sketches identified that if the playing pitch was to be expanded, the stadium site needed to be extended to the south into Hindmarsh Place and east over the land then occupied by the Hindmarsh Bowling Club.

### **Financial Examination**

Woods Bagot endeavoured to identify the mix of revenue at the stadium and the effect that different mixes of facilities (eg spectator seating versus corporate boxes) would have on revenue. They were based solely on incomplete historical figures obtained from the Soccer Federation. Their inquiries were not finalised.

### **Identification of Preference to Redevelop Western Side**

Woods Bagot formed the view from the time of their submission that the main grandstand at the Hindmarsh site should be on the western rather than the eastern side. As part of the client briefing

process with the Soccer Federation, they prepared a series of options. Woods Bagot identified a number of options for the future development of grandstands on all four sides of the pitch. The options involved variations in the configuration of the grandstands, such as whether a grandstand would be single or multiple-tiered or would extend over Hindmarsh Place or the Bowling Club. Woods Bagot developed a number of combinations of those options that Woods Bagot considered were feasible. They recorded thirteen of those combinations in a compilation document that compared the different ultimate total capacities. Those capacities ranged between 15,000 and 22,965 seats.

Each combination envisaged that one of the grandstands on either the eastern or the western side of the pitch would be larger than the others. Woods Bagot distilled from the thirteen combinations of different configurations, seven options for the development of the first grandstand, referred to as "Stage 1".

Most of the options were variations on the development of a new eastern stand. The third, Option C, was a redevelopment of the existing western stand. Option G was a new two tier stand on the southern side.

Option C was Woods Bagot's preferred option. For that option to remain within the \$6.2 million budget, it would have only 3,730 seats, not 5,000 as envisaged by the May 1995 Cabinet submission. To achieve the target of 5,000 seats, it was necessary to extend the western stand to the north and south.

## CHAPTER 8 - DECEMBER 1995 TO MAY 1996

### LATE 1995 - APPOINTMENT OF MRS HALL AS AMBASSADOR FOR SOCCER

In late 1995, the Hon. Joan Hall MP was appointed Ambassador for Soccer by the Soccer Federation. She was invited to take on the role by the then Deputy Chair of Soccer Australia, Mr Scarsella to replace the former President. The role had not previously existed.

Mrs Hall's position as Ambassador for Soccer was an honorary position. In her evidence before this Examination, Mrs Hall said it involved her ceremonially and in a chairing capacity. Mrs Hall did not involve herself in the day to day activities of the Soccer Federation or the NSL Clubs. However, Mrs Hall did attend meetings of the Board of Commissioners of the Soccer Federation occasionally.

Mrs Hall's role as Ambassador for Soccer is discussed in detail in Chapter 38.

### 22 DECEMBER 1995 - CHANGE OF MINISTER FOR RECREATION, SPORT AND RACING

On 22 December 1995, the Hon. Graham Ingerson MP replaced Mr Oswald as Minister for Recreation, Sport and Racing.

Mr Ingerson gave evidence to this Examination that, although he could not recall the specific occasion, he believed that he would, immediately upon taking over, have obtained a briefing from Mr Scott or someone else in the Office for Recreation, Sport and Racing about the stadium project. He did not have a hand over meeting with the previous minister.

### 18 JANUARY 1996 - WOODS BAGOT'S FIRST PROJECT REPORT

By letter dated 18 January 1996 to Services SA, Woods Bagot provided their first report on the status of the project.<sup>126</sup> Woods Bagot reported:

*"The methodology we are following on this project has a strategic focus rather than a traditional architectural briefing and design approach. This involves working with the Soccer Federation to understand their financial drivers and business objectives before finalising the brief and the scope of the project.*

*This will enable us to match the brief and the design options that follow to the available funds in a way that will best service the ongoing needs of the Federation.*

*In order to do this we needed to obtain figures on the financial returns that Soccer are currently achieving or expect to achieve for various aspects of their operations. We have also suggested options for Soccer have to follow up for acquiring additional land around the site which will not affect the project funds and will open up a range of design options for more effective use of the site. Soccer have had some difficulty providing this information and we have had to extend the programme...*

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<sup>126</sup> The Department for Building Management had become part of the newly formed agency, Services SA.

*The cost of the project will depend on the final mix of ancillary facilities such as covered seating, corporate facilities, club rooms etc. With the methodology we are following we can assure you that the project will be contained within budget while providing the best possible value for money to the Federation." [emphasis supplied]*

No representative of Government with financial expertise was involved in examining the Soccer Federation's "financial drivers" affecting the design of the stadium.<sup>127</sup> This issue was left to Woods Bagot who were architects, not financial advisers.<sup>128</sup>

## **22 JANUARY 1996 - FIFA LETTER ABOUT PITCH SIZE**

On 22 January 1996, FIFA sent a letter to the Soccer Federation confirming that the pitch for Olympic competitions must be 105 metres by 68 metres with a grassed area behind the goals of 3 to 5 metres and outside the sidelines of 2 metres.

## **FEBRUARY 1996 - ESTABLISHMENT OF HINDMARSH STADIUM REDEVELOPMENT COMMITTEE**

In February 1996, Mr Ingerson as Minister for Recreation, Sport and Racing established a new committee called the Hindmarsh Stadium Redevelopment Committee. This Ministerial Advisory Committee replaced the project management structure that had operated from July 1995 which had been established by Mr Scott as the Chief Executive of the Office for Recreation, Sport and Racing.

The stated objective of the committee was to:<sup>129</sup>

*"[C]omplete the Hindmarsh Soccer Stadium development project, within the agreed budget of \$6.5m for Stage 1, by August/September 1997, with the least disruption to the South Australian soccer community and the national league competition."*

I consider that the reference to "Stage 1" in this stated objective indicates that the then Minister, Mr Ingerson viewed the \$6.5 million redevelopment as part of a wider project. Mr Ingerson has submitted to this Examination that use of "Stage 1" does not justify this conclusion. I do not accept Mr Ingerson's submission.

This was different from the former Minister Oswald's view and consequently, from the May 1995 Cabinet approval and the April 1995 Memorandum of Understanding under which the project was being pursued.

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<sup>127</sup> The Government did not obtain any proper or considered understanding of the financial operation of the stadium until the Arthur Andersen Report was delivered in March 1999. See below in this Chronology at "27 November 1998 – Recognition that Government not able to assess Soccer's capacity to pay".

<sup>128</sup> Mr Ingerson submitted to this Examination that this finding was incorrect because Woods Bagot employed Rider Hunt as cost consultants to costs the design before it was submitted to Government. I do not agree. Rider Hunt were not involved in the redevelopment until September 1996 when they were instructed by Services SA to cost options for Stage 2.

<sup>129</sup> Letter from Mr Ingerson, Minister for Recreation, Sport and Racing to Mr Browne, undated but about February 1996.

The letter continued:

*"...this Committee which is to be responsible to me as Minister for Recreation, Sport and Racing ... will provide me with regular progress reports to ensure the redevelopment is delivered on time and on budget."*

Before this Examination Mr Ingerson gave evidence about his intentions in setting up this committee. He said:

*"...that was to set up advisory committees to keep me informed, I think, around that time and I can't remember the exact date but around that time we were formally given Parliamentary Secretaries by the then Premier and my way of being kept personally informed was to involve the Parliamentary Secretaries in any committees we had so that I had a direct input as to what went on versus what might have been reported to me by the Department and/or the soccer Federation..."*

There were no written reports from this Committee to the Minister found among the considerable volume of documents produced to this Examination. Mr Ingerson confirmed that he did not receive any. He gave evidence that he was kept informed of the deliberations of the Committee by oral briefings from Mrs Hall, who was his Parliamentary Secretary and Chair of the Committee, as and when was necessary. He was also kept informed of developments by Mr Scott as Chief Executive of the Office for Recreation, Sport and Racing during their regular weekly briefing meetings.

Copies of the minutes were distributed to the members of the committee and to Ms Judith Freeman of Services SA.

The members of the committee were:

<b>Member</b>	<b>Representing</b>
The Hon. Joan Hall MP (Chair)	Minister Ingerson
Mr Basil Scarsella (Deputy Chair)	The Soccer Federation
Mr Charlie Caruso then Mr Les Avory <sup>130</sup>	The Soccer Federation
Mr Tony Farrugia	The Soccer Federation
Mr Charlie Zollo	Adelaide City
Mr Charlie Caprogreco <sup>131</sup>	Adelaide City
Mr John Garas <sup>132</sup>	West Adelaide
Mr Harry Zachroyannis	West Adelaide
Mr Peter Korolis <sup>133</sup>	West Adelaide
Mr Michael Scott	Office for Recreation, Sport and Racing

<sup>130</sup> When Mr Avory replaced Mr Caruso as Chairman of the Soccer Federation in October 1996, he began attending these meetings as a representative of the Soccer Federation.

<sup>131</sup> Mr Charlie Caprogreco only attended the fourth meeting of this Committee.

<sup>132</sup> Mr John Garas did not attend the first two meetings of the Committee.

<sup>133</sup> Mr Peter Korolis attended the first meeting in place of Mr Harry Zachroyannis.

Member	Representing
Mr George Forbes then Mr Vaughn Bollen <sup>134</sup>	Office for Recreation, Sport and Racing
Mr Geoff Whitbread	Council
Mr Jeff Browne	Services SA
Mr Kevin Brodie	Services SA
Mr Andy Ford	Woods Bagot
Mr Peter Hoare	Woods Bagot

Shortly prior to the first meeting of the committee, Woods Bagot sent Mrs Hall a copy of a map showing the ownership of the land surrounding the stadium. Ownership of the surrounding land had become an issue for the committee because Woods Bagot's master plan investigations had identified the need to expand the site south and west to accommodate a larger playing pitch. Mrs Hall has informed this Examination that while she cannot now identify the map sent to her, she recalls that she made inquiries to ascertain whether the Government owned any of the land surrounding the stadium because the possibility had been raised that the redevelopment might extend beyond the existing boundaries of the stadium. However, there were no funds included in the Stage 1 budget for the acquisition of land and it was not part of the scope of works contemplated to that date for the project. At the first meeting of the committee held on 26 February 1996, Woods Bagot presented the options for the redevelopment of the stadium. Woods Bagot expressed their preference for the redevelopment of the existing western stand. Discussion at the meeting focused on two of the options:

- Option "C" - upgrading of the existing western grandstand; and
- Option "D" - a single tiered grandstand on the eastern side incorporating the existing concrete terraces to remain at the front of the stand at an estimated cost of \$4.45 million.

There was considerable initial resistance from the Soccer Federation representatives to the change from east to west. Mr Ford attributed that to a fear that an attempt to change the nature of the project could place the entire funding of \$6.5 million at risk.

Eventually, Mr Scarsella was persuaded of the merits of the change. The other Soccer Federation representatives followed his lead.

Mr Geoff Whitbread of the Council asked at that meeting whether:

*"...the margin of cost effectiveness of a 20,000 person stadium capacity had been appraised against a lesser capacity particularly in regard to opportunities for temporary grandstand facilities for high capacity events."*

The minutes record next to that comment *"All to Note"*. However, no consideration was later given by that committee to setting the goal for ultimate capacity by reference to cost-effectiveness.

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<sup>134</sup> When Mr Vaughn Bollen replaced Mr Forbes in the Office for Recreation, Sport and Racing in March 1996, Mr Bollen attended these committee meetings in his place. Mr Bollen's position in the Office for Recreation, Sport and Racing was as Manager, Capital Works.

The issue of presenting more than one option to Minister Ingerson was considered. The Chair, Mrs Hall:

*"...advised that this Committee will determine the preferred option and will then recommend accordingly to the Minister."*

Despite that statement, the next day, Woods Bagot asked Services SA to check and inform them:

*"...if another option (A or D) [is] to be presented to the Minister. (Agreed that no further costing or development required for these options)".*<sup>135</sup>

## **22 FEBRUARY 1996 - CHANGE OF TITLE FOR SERVICES SA**

On 22 February 1996, Services SA's title was altered to the Department for State Government Services. It was still referred to as Services SA.

## **23 FEBRUARY 1996 - SOCCER FEDERATION LEASE**

On 23 February 1996 the Soccer Federation entered into a lease of the stadium site from the Council. The Government was not consulted about the terms of that lease, even though that was a condition of the April 1995 Memorandum of Understanding. This also became a condition of the Funding Deed entered into between the Government and the Soccer Federation in October 1996.<sup>136</sup>

The Government did not take any security over the lease, as part of the legal arrangements for either Stage 1 or Stage 2.

## **FEBRUARY 1996 - 2000 OLYMPIC SOCCER QUALIFYING TOURNAMENT**

On 27 February 1996, Mr Scott, Chief Executive of the Office for Recreation, Sport and Racing, sent Mr Ingerson as Minister for Recreation, Sport and Racing a minute concerning the 2000 Olympic Soccer Qualifying Tournament. That minute stated that it had been indicated by the Chief Executive of SOCOG that *"it is not a foregone conclusion [that] Hindmarsh Stadium will be selected as a venue, for the staging of qualifying rounds of the 2000 Olympic Soccer competition."*<sup>137</sup> Further, *"it is clear that Adelaide faces competition in its aspirations to Stage preliminary rounds of the 2000 Olympic Soccer competition."*<sup>138</sup>

Mr Scott recommended that the Minister request Australian Major Events<sup>139</sup> to establish a committee to promote Adelaide as a preferred venue for staging Olympic soccer matches.

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<sup>135</sup> Minutes of Consultant Meeting No 1 held on 27 February 1996.

<sup>136</sup> See below under heading "14 October 1996 - Execution of Funding Deed" at page 126.

<sup>137</sup> Page 1.

<sup>138</sup> Page 2.

<sup>139</sup> Australian Major Events were the body responsible for staging major events in South Australia.

## **FEBRUARY 1996 - DEBT SERVICING COSTS DURING CONSTRUCTION**

On 29 February 1996, Mr Scott sought confirmation from the Under Treasurer that the Office for Recreation, Sport and Racing could meet the debt servicing costs of the proposed loan of \$6.5 million for the project during construction out of that agency's recurrent budget. He stated that \$400,000 was available from the agency's 1995/6 recurrent budget. As no loan had yet been negotiated, a portion of those funds was being used to engage primary consultants and would be reimbursed once the loan was established.

## **6 MARCH 1996 - CHANGE FROM EASTERN TO WESTERN GRANDSTAND**

On 6 March 1996, the second meeting of Mr Ingerson's Ministerial Advisory Committee was held. Woods Bagot presented revised versions of Options C and D discussed at the 26 February meeting. After considerable discussion, the western grandstand option was preferred. The matters identified in the minutes as favouring the western grandstand redevelopment option were:

- There was a greater benefit of a western grandstand to spectators in regard to sun, rain and wind.
- It allowed for more corporate facilities than a new eastern grandstand.
- It was better value for money.
- It allowed greater flexibility for future development.

The minutes record that upon acceptance of revised Option C, Mrs Hall, as Chair, requested that a presentation be prepared for Mr Ingerson as Minister for Recreation, Sport and Racing including:

- Revised Option C.
- The approximate cost for a northern extension of the western grandstand.
- The approximate cost for an additional southern bay extension to the western grandstand.
- The approximate cost to relocate media facilities in order to achieve two additional corporate boxes.

This presentation was to include detail on what could be provided for \$6.2 million as well as the indicative cost of additional facilities. The meeting also resolved that Woods Bagot's master plan options for the use of the Bowling Club site, Hindmarsh Place and Holden Street should be presented to Mr Ingerson as Minister for Recreation, Sport and Racing. It was specifically noted that the *"master plan options allow for the future increase of the pitch size to meet FIFA etc requirements."*

The minutes further record that Mrs Hall advised *"that a presentation to the clubs and the Soccer Commissioners regarding the proposal as recommended to the Minister should occur following the presentation to the Minister"* and *"prior to proceeding any further"*.



## 8 MARCH 1996 - MR SCOTT MEETS WITH SOCOG

Mr Scott met with representatives of SOCOG including Mr Kevin Simmonds, Manager Sporting Events, on 8 March 1996.

Mr Scott's file note of his visit records being informed by SOCOG of the following:

- SOCOG were preparing a detailed questionnaire on venues, training sites and other hosting issues that would be sent to the Premiers of the four States identified in the Sydney bid document as well as the Chief Minister of the ACT and the Mayors of Wollongong and Newcastle.
- The completed questionnaires would be analysed by a committee comprising representatives of SOCOG and Soccer Australia.
- An assessment team would visit Adelaide to analyse Adelaide's response and assess Adelaide's capability of hosting the event.
- SOCOG would then consult FIFA on its recommendations in February/March 1997.
- SOCOG would announce the successful cities by the end of March 1997.
- SOCOG would require the Government to sign a Memorandum of Understanding outlining the roles and responsibilities of the Government and SOCOG.
- It was most likely that SOCOG would request a Rights fee from the states to stage the event.
- Temporary seating is allowed for 2000 Olympic Soccer on the basis that it has the approval of the appropriate authorities and is not bench seating.
- While Mr Scott believed that it would be between 15,000-20,000, SOCOG could not give a definitive answer on the question of seating capacity. This issue was currently being resolved with FIFA.
- The venue must be ready in Olympic mode by September 1999.

Mr Scott's file note also records that Mr Scott informed Mr Simmonds of the current redevelopment project and the master plan for the site. It further records: <sup>140</sup>

*"Although actually never visiting the site Mr. Simmonds advised that reports he had read suggested that there were severe restrictions associated with the Hindmarsh site. I advised him that the master plan was addressing these issues and would be happy to provide a detailed briefing after they had been further advanced and endorsed by the Minister and the SA Soccer Federation. (I sensed from the meeting that issues associated with securing extra land around the site ie the bowling club and closure of Hindmarsh Place would be critical to Adelaide securing a Preliminary round of the 2000 Soccer Tournament.)" [original emphasis]*

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<sup>140</sup> Paragraph 16.

Mr Scott identified the key issues to be resolved, namely:

- Identification of the resources (people and financial) to complete the questionnaire in conjunction with the Australian Major Events committee;
- Development of an effective presentation strategy to SOCOG, involving the Premier;
- Progress of the current redevelopment being *"well underway by the date of the SOCOG inspection in order to demonstrate the South Australian Government's commitment to hosting this event"* and
- *"Fast track the acquisition of the Bowling Club plus the closure of Hindmarsh Place to alleviate [sic] SOCOG's concerns associated with the space restrictions of Hindmarsh Stadium"*.

## **18 MARCH 1996 - CABINET APPROVES MRS HALL'S APPOINTMENT AS PARLIAMENTARY SECRETARY TO MR INGERSON**

On 18 March 1996, Cabinet approved the recommendation to the Governor of the appointment of 15 Members of Parliament as Parliamentary Secretaries to various Ministers.

On 21 March 1996, the Governor appointed Mrs Hall Parliamentary Secretary to Mr Ingerson as Minister for Industrial Affairs and Minister for Recreation, Sport and Racing in respect of Tourism and Recreation and Sport.<sup>141</sup>

## **20 MARCH 1996 - MR INGERSON'S FIRST BRIEFING**

On 20 March 1996, Mr Ford of Woods Bagot met with Minister Ingerson. This was the first time that Minister Ingerson was briefed by Woods Bagot about the project. He authorised further investigation of land acquisition, town planning and traffic planning.

Woods Bagot then sought proposals for the provision of these consultancy services. On 26 March 1996, Woods Bagot reported to Mr Browne of Services SA on these proposals. Woods Bagot proposed a further fee of \$8,000 for coordinating this work.

### **Land Acquisition**

At about that time, Mr Ford had discussions with Mr Damian Brown, the Managing Director of National Portfolio Strategies Pty Ltd and the Council to discuss how land acquisition was to be investigated further.

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<sup>141</sup> The Hon. Rodney Bass MP was appointed Parliamentary Secretary to Mr Ingerson in respect of Industrial Affairs and Racing.

On 22 March 1996, Mr Damian Brown wrote to Mr Ford of Woods Bagot about his firm's potential appointment to act for the "various stakeholders" in advising and actioning a confidential land consolidation/acquisition strategy. Mr Damian Brown advised:

*"It is acknowledged that two clear alternatives are available to complete a land consolidation, the first being by compulsory land acquisition and the second being by commercial negotiation. Whilst each alternative has advantages, given the time-frame you have outlined for completion of this task, we would recommend that the only commercial solution available is to negotiate direct with the registered proprietors concerned, utilising 'blind' acquisition vehicles and subsequently transferring ownership rights to the ultimate owner, whomever that may be."*<sup>142</sup>

...

*The notion of achieving a total site consolidation, in the limited time available is extremely questionable, however, there exists a real opportunity to capture at least three major land parcels..."*<sup>143</sup>

Mr Damian Brown estimated that National Portfolio Strategies' fees for a planning study would be \$6,000 plus \$1,500 for its lawyers' fees if necessary. He estimated that the likely cost of the three targets would be \$4 million and the cost of securing options over that land would be \$40,000 for non-refundable option fees plus \$63,250 in fees (including legal costs).

In its letter of report dated 26 March 1996, Woods Bagot advised Services SA that it could not engage National Portfolio Strategies directly "because of the commercial, professional and indemnity issues" involved in retaining a land acquisition consultant. Ultimately, National Portfolio Strategies were retained by the Office for Recreation, Sport and Racing and then directly by Mr Ingerson as Minister for Recreation, Sport and Racing.<sup>144</sup>

### **Town Planning**

Woods Bagot secured the agreement of the Council for Mr Alan Faunt of the Council to provide town planning services to the project at no cost.

### **Traffic Planning**

Woods Bagot arranged for Murray Young & Associates to provide traffic planning advice in two stages. The first stage was the provision of an overview of the feasibility of the road closures. The second stage proposed was a more detailed study if the road closures were to proceed.

Woods Bagot retained Murray Young & Associates as a sub-contractor.

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<sup>142</sup> Page 1.

<sup>143</sup> Page 2.

<sup>144</sup> See the sections below under the headings "22 May 1996 - Retainer of National Portfolio Strategies" at page 86 and "20 August 1996 - Letter of Nomination to National Portfolio Strategies" at page 117.

## **21 MARCH 1996 - ESTABLISHMENT OF ADELAIDE OLYMPIC BID COMMITTEE**

Following Mr Scott's recommendation, Minister Ingerson established another committee whose role was to promote Adelaide for Olympic qualifying events.

The committee met for the first time on 21 March 1996. The committee included Mr Bill Spurr, the Chief Executive of Australian Major Events, Mrs Hall and representatives of the Soccer Federation, Adelaide City and the Office for Recreation, Sport and Racing. The role of this committee was to take steps to ensure that Adelaide succeeded in becoming a host for soccer matches in the Sydney 2000 Olympics. However, the committee did not include any representatives of the Government departments responsible for construction of a stadium adequate to host those matches (ie Services SA) or for overseeing funding (ie The Department of Treasury and Finance) or for implementing legal procedures to protect the Government's interests (ie the Crown Solicitor's Office). This committee, which had the most direct relationship with SOCOG in respect of meeting SOCOG's requirements, met independently of the committee responsible for implementing the design of the stadium necessary to achieve that end. Mr Sam Ciccarello was a consultant who had undertaken considerable work on Adelaide's staging of Grand Prix races. At this time he was leading a committee reviewing the efficiency of a number of departments in the ministerial portfolio of Mr Ingerson. He joined the Adelaide Olympic Bid Committee in July 1996 after receipt by the Premier of SOCOG's technical questionnaire and a document setting out FIFA/SOCOG's stadium requirements for the 2000 Olympic Soccer Tournament.

## **21 MARCH 1996 - ISSUES IDENTIFIED BY TREASURY AND FINANCE**

An internal Department of Treasury and Finance minute dated 21 March 1996 records the issues this agency had identified as requiring attention on the Hindmarsh Stadium project. On the issue of interest during construction, the minute recorded that the May 1995 Cabinet approval made no mention of how interest on the Soccer Federation loan would be funded during construction. As it was clear that the project had been developed on the basis of spending \$6.2 million on the grandstand, a significant change to project budget would:

*"...present a problem. Mr Scott is threatening to halt the project pending resolution of the matter and this is likely to generate a good deal of heat."*

The minute continued that although Cabinet had not approved the additional contribution for interest:

*"... there is sufficient confusion in the documentation to suggest that Government would be expected to pick up the difference."*

*Fortuitously provision has been made in the 1995-96 and 1996-97 budgets for Recreation, Sport and Racing to enable this payment without immediate budget impact. There would be an impact in about 20 years time when the budget provision would not be sufficient to cover the last loan repayment.*

*In these circumstances it is suggested that we acknowledge the confusion and accept that the interest during construction will be an additional cost."*

## **APRIL 1996 - SOCCER FEDERATION COMPLAINT TO SOCCER AUSTRALIA ABOUT THE BID PROCESS**

On 1 April 1996, Mr Farrugia sent a letter to Mr David Woolley, the Chief Executive of Soccer Australia, complaining that the Sydney Olympic Soccer Tournament matches were to be allocated on the basis of a bidding process.

He stated that on 15 April 1994 he had been assured by Soccer Australia and SOCOG that Adelaide would be hosting matches. He further wrote:

*"As you are aware on the basis of these assurances made the State Government has allocated to the Federation a grant of some \$6.5 million for stage one of the upgrading of the stadium and is committed to ensure that the stadium will meet the minimum requirements of FIFA and IOC for the Tournament."*

The April 1995 Memorandum of Understanding did not provide for "a grant" to the Soccer Federation.

### **2 APRIL 1996 – INVOLVEMENT AGAIN OF THE CROWN SOLICITOR'S OFFICE**

On 2 April 1996, a conference was held at the Office for Recreation, Sport and Racing involving Mr Hocking from the Crown Solicitor's Office to discuss the three major sporting stadia projects being undertaken by that agency.<sup>145</sup> Mr Hocking's file note of that meeting records that concerns were expressed by the Office for Recreation, Sport and Racing over:

- the Soccer Federation's capacity to fund the additional borrowing required because the cost of the project had increased to accommodate the change to redevelopment of the western grandstand;
- the ticketing arrangements put in place to ensure all paying spectators were accounted for;
- the Government's exposure from the terms of the borrowing and the ability of the Soccer Federation to contribute to loan repayments given that *"Treasury and Finance figures were budgeted on the Government having to pick up in fact 60 percent"* of the repayments; and
- the ability of the Soccer Federation to draw crowds to Hindmarsh Stadium.

Mr Hocking advised that *"the next step is to consider what formal contracts need to be put in place having regard to the MOU and the issues set out above"*. The meeting was left on the basis that Mr Robert Fletcher, the Director of Corporate Services in the Office for Recreation, Sport and Racing, would provide the Crown Solicitor's Office with a briefing note on the present status of the project.

After that meeting Mr Hocking nominated Mr Gaby Jaksa, a senior solicitor in the Crown Solicitor's Office, as responsible for the Hindmarsh Stadium Redevelopment project. Mr Jaksa did not receive further instructions until 10 May 1996 when he had a conference with Mr Fletcher.

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<sup>145</sup> That is, the Hindmarsh Stadium redevelopment, construction of a new netball stadium and a new athletics facility.

## **8 APRIL 1996 – FUNDING OF INTEREST DURING CONSTRUCTION**

Minister Ingerson sent the Treasurer a minute on 8 April 1996 seeking his agreement to use funds appropriated for the Office for Recreation, Sport and Racing to meet interest costs during construction of the netball and soccer facilities. That minute estimated the likely cost to be \$570,000 which would be incurred in the 1995/6 and 1996/7 budget years. The long term cost to the Government was noted as arising at the end of the term of the loans – in 20 years' time.

## **APRIL 1996 - DRAFT ERNST & YOUNG REPORT**

In April 1996, the Office for Recreation, Sport and Racing retained Ernst & Young to prepare a report on the feasibility of the proposed redevelopment of the western grandstand. A draft addressing the following narrow issue was prepared in late April 1996. It compared two scenarios:

- Upgrading of the western grandstand at that time, with a deferral of construction of northern and southern extensions to the western grandstand.
- Upgrading of the western grandstand and construction of extensions at the same time.

Ernst & Young concluded that it was more cost-effective to proceed with the latter option principally because of the additional costs of having two separate construction projects and the disruption to the playing of soccer. Ernst & Young did not compare the various options prepared by Woods Bagot. They were not asked to do so.

## **29 APRIL 1996 - CABINET APPROVAL FOR WESTERN GRANDSTAND REDEVELOPMENT AND \$8.125 MILLION BUDGET**

### **Cabinet Decision**

On 26 April 1996, Mr Ingerson as Minister for Recreation, Sport and Racing signed a Cabinet submission seeking approval for the redevelopment of the western grandstand at an estimated cost of \$8.125 million and to proceed with documentation. That day Cabinet gave its approval to Mr Ingerson's recommendation without change.

### **Preparation of the Submission**

In March 1996, Mr Vaughn Bollen was transferred to the Office for Recreation, Sport and Racing from the Court Services Department. Mr Bollen's role in the Office for Recreation, Sport and Racing was as Manager, Capital Works. Mr Bollen's role was to attend to all of the necessary internal governmental approval processes, such as Public Works Committee and Cabinet approvals.

Mr Bollen prepared the first draft of the Cabinet submission seeking approval of the change from construction of a new eastern grandstand to redeveloping the existing western grandstand.

The definition of the project in the submission approved by Cabinet on 26 April 1996 was:

- Redevelopment of the existing western grandstand; and
- Upgrade and facelift to the eastern side.

It was implicit in the Cabinet submission that FIFA guidelines would be met. However, there was considerable uncertainty as to the content of SOCOG's and FIFA's technical requirements until July 1996. As at 26 April 1996, neither FIFA or SOCOG requirements were part of the definition of the project that had been given to Woods Bagot or of the functional design brief that they set for themselves after consultation with the Soccer Federation.

The April 1996 Cabinet submission put forward only one option for redevelopment of Hindmarsh Stadium. Only Option C from Woods Bagot's four options, upgrading of the western grandstand, was put before Cabinet.

### **Departure from April 1995 Memorandum of Understanding**

On 29 April 1996, Cabinet approved the change in the project scope from construction of a new eastern grandstand to redevelopment of the existing western grandstand. At the same Cabinet meeting, Cabinet noted that *"the Office for Recreation, Sport and Racing will finance investigations into town planning, traffic planning and land acquisition for the development of the southern end of the stadium relating to the Master Plan"*.

This represented a substantial departure from the concept embodied in the April 1995 Memorandum of Understanding and the project approved by Cabinet on 1 May 1995.

### **Inaccuracies in Cabinet Submission**

The Cabinet submission leading to this approval was inaccurate.

### **Misdescription of the Soccer Federation Commitment**

It contained the following passages: <sup>146</sup>

*"The Memorandum of Understanding approved by the Cabinet Budget Committee in May 1995 has been entered into between the Minister for Recreation, Sport and Racing and the South Australian Soccer Federation (SASF) which sets in place the financial parameters for SASF to make up to 50 percent of the principal and interest repayments on the loan which is to finance this project.*

...

*Subsequent negotiations with the SA Soccer Federation has now resulted in the Federation agreeing to meet 50 percent of the principal and interest repayments."*  
*[emphasis supplied]*

The Soccer Federation had not agreed to be bound to pay 50 percent, irrespective of the amount of levies collected. If Cabinet were persuaded to approve the increase in budget by the increased responsibility shouldered by the Soccer Federation, then Cabinet was misled. A later submission noted a return to the previous position. <sup>147</sup>

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<sup>146</sup> Paragraphs 3.17 and 3.18.

<sup>147</sup> See on page 109 below.

A minute to Mr Ingerson prepared by Mr Scott two months later on 27 June 1996 recorded that:

*"The original Memorandum of Understanding provided that the Government would meet at least 50 per cent of the costs (principal plus interest). The Soccer Federation's share was to come from a levy on seats and any shortfall would also be met by the Government.*

*In meetings with you leading up to the decision to increase the cost of the project from \$6.5 million to \$8.125 million, it was advised that the Federation would now meet 50 per cent of the cost. That is, even if the levy on seats does not yield this amount. If I recall correctly, your Parliamentary Secretary was to discuss this with the Federation and obtain its agreement. At the bi-lateral budget meeting with the Treasurer you indicated that this was to be the situation.*

*So far as I know, the Soccer Federation is still operating on the assumption that the arrangement in the original Memorandum of Understanding will apply.*

*I would appreciate your clarification of the situation as this will clearly impact on the nature of the agreement with the Federation. In particular, if the original arrangement is to apply, the Office's Audit Committee has alerted me to the need to devise reasonably sophisticated arrangements to ensure that the State's interests are protected."*

Mrs Hall has submitted to this Examination that she categorically denied that Mr Ingerson ever directed her or asked her to obtain the Soccer Federation's agreement to meeting 50 percent of the cost of the redevelopment. The Soccer Federation had made it clear to the Government at all times that it was not prepared to assume itself any responsibility for any of the cost of the redevelopment.

The statement in the Cabinet submission that the Soccer Federation's agreement had been obtained was false.

### **Inadequate Summary of Ernst & Young Report**

Paragraph 3.18 of the Cabinet submission referred to the draft Ernst & Young Report and stated that:

*"With the proposed redevelopment and extensions of the western stand in lieu of the eastern grand stand, the firm of Ernst and Young were engaged to undertake a net present value study. The analysis concluded that the redevelopment of the western grand stand including the northern and southern extensions, which incorporates 3,105 additional seats, provides better value for money and investment for both the State Government and the SA Soccer Federation."*

As appears above, the Ernst & Young Report was limited to the narrow issue of the marginal benefit of proceeding with the extensions to the western stand, and not any comparison to the eastern stand proposal.



## **Land Acquisition**

The April 1996 Cabinet submission also sought Cabinet's approval for:

*"4.2 noting that the Office for Recreation, Sport and Racing will finance investigations into town planning, traffic planning and land acquisition for the development of the southern end of the stadium relating to the Master Plan."*

The justification for this approval placed before Cabinet was:

*"3.11 The Office for Recreation, Sport and Racing is to investigate town planning, traffic planning and land acquisition for the development of the southern end of the stadium. Cabinet should note that if the land acquisition is to be pursued then the estimated cost for the acquisition will be \$1,750,000 with funds most likely required in the 1997/98 financial year. It is proposed that funds for the land acquisition could be sourced from two parties viz; Hindmarsh/Woodville Council and State Government. An approach will also be made to the Federal Government."*

That was the only explanation recorded for the land acquisition.

## **Interest Cost During Construction**

The Cabinet submission sought approval for the Office for Recreation, Sport and Racing to fund an estimated \$570,000 of interest costs during construction from that agency's appropriations for the project in the 1995/6 and 1996/7 years. By omitting that there was confusion over this issue from the May 1995 Cabinet approval and it was now considered too late to disrupt the project, the Cabinet submission did not address this issue as candidly as the Department of Treasury and Finance did in their internal minute dated 21 March 1996. An internal Department of Treasury and Finance minute dated 6 May 1996 stated:

*"Although Treasury and Finance did not have the opportunity to formally comment on the revised proposal it is assumed that the Cabinet's decision reflected an understanding that if these costs were not met [sic] by the Government it would have resulted in a corresponding reduction in the scope of works able to be undertaken from a finite project budget with the potential for disruption to the project."*

## **No Comment by Treasury and Finance or the Crown Solicitor's Office**

The Cabinet Cover Sheet recorded that consultation had occurred with the Department of Treasury and Finance, the Crown Solicitor's Office, the Soccer Federation and the Council. The Cabinet submission did not specify the detail of that consultation.

The draft was not circulated to the Department of Treasury and Finance or the Crown Solicitor's Office for formal comment before it was sent to Cabinet for approval as is usual Government practice. The Crown Solicitor's Office was still awaiting formal instructions from the Office for Recreation, Sport and Racing. Consultation with the Council had only occurred so far through its representation on the Hindmarsh Stadium Redevelopment Committee.

## 1 MAY 1996 - MEETING OF THE COUNCIL OF CLUBS

At an extraordinary meeting of the Council of Clubs of the Soccer Federation held on 1 May 1996, a resolution was passed authorising the Soccer Federation to borrow up to \$8.125 million on the proviso that the loan was supported by an unconditional Government guarantee.

The minutes record that there was lengthy discussion at the meeting about the reasons for the change from building a new eastern grandstand to redeveloping the existing western grandstand. The minutes record that:

*"Emphasis was placed on the importance that the South Australian Soccer Federation was not committed in any way to financing the loan, with the repayment of the loan being financed by way of a \$3 surcharge being placed on all patrons utilising the Western Grandstand, and the South Australian Government [sic] picking up any shortfall in repayments [sic] by the Federation."*

## 1 MAY 1996 - PRESENTATION OF MASTER PLAN BY WOODS BAGOT

After the meeting of the Council of Clubs held on 1 May 1996, there was a major unveiling of the master plan for the upgrading of Hindmarsh Stadium at the Soccer Federation's offices. Mr Ingerson delivered a speech and Woods Bagot unveiled the overall master plan. By this time, it was public knowledge that the Soccer Federation's goal was to achieve the full redevelopment of the entirety of Hindmarsh Stadium, rather than the limited project envisaged by the April 1995 Memorandum of Understanding between the Government and the Soccer Federation.<sup>148</sup>

Mr Scott, Chief Executive of the Office for Recreation, Sport and Racing, recommended to Mr Ingerson that if he was asked at the presentation about the Government's commitment and intentions for future developments at the stadium he should respond:<sup>149</sup>

*"that the State Government has demonstrated its support for Soccer by today's announcement which firmly entrenches South Australia as the Soccer capital of Australia as it is the only stadium solely designated for Soccer. Both the Soccer Federation and the State Government may need to consider minor upgrades and the installation of temporary facilities associated with the 2000 Olympics and these will be considered once negotiations have been undertaken with SOCOG."*

It is instructive to pause at this point and reflect that Mr Scott expected that only "*minor upgrades and the installation of temporary facilities*" would be necessary when subsequently the capital cost of the redevelopment expanded from \$8.125 million to \$28.394 million.

## 2 MAY 1996 - ARTICLE IN THE ADVERTISER

The public announcement made at Hindmarsh on 1 May 1996 by Minister Ingerson and Mr Caruso as Chairman of the Soccer Federation was reported the following day in The Advertiser. The article "*Centrepiece of SA soccer set to host Olympic 2000 final group*" began:

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<sup>148</sup> For example, see The Advertiser "*\$6.5m upgrade for Hindmarsh*" published on 4 May 1995 referred to at page 59.

<sup>149</sup> Minute dated 1 May 1996 from Mr Scott to Minister Ingerson.

*"An \$8.125 million upgrade of Hindmarsh Stadium, mooted this time last year, was approved yesterday – virtually assuring the South Australian Soccer Federation of the right to host a group in the Sydney 2000 Olympic Games finals.*

*The cost will be shared equally by the State Government and the SASF. It is understood that government initially will loan the SASF its \$4m component".*

### **3 MAY 1996 - THE DEPARTMENT OF TREASURY AND FINANCE'S FURTHER INSTRUCTIONS**

On 3 May 1996, Mr Scott sent a minute to Mr Rick Jansan, Chief Budget Analyst in the Department of Treasury and Finance, instructing that agency to proceed with the financial analysis of the funding proposals presented by the banks and to send Mr Scarsella on behalf of the Soccer Federation a copy for his information. He wrote: *"Could you please proceed with this analysis at your earliest convenience as the Minister for Recreation, Sport and Racing wishes this project to commence before August, 1996."*

On 6 May 1996, the Acting Under Treasurer sent Mr Scott a minute in response to his instructions to proceed with analysis of the banks' funding proposals. That minute addressed two issues: Provision of financial advice by the Department of Treasury and Finance and Policy Issues.

#### **Financial Advice**

This minute stated that:

*"As a general principle, it is usual for agencies to undertake economic and financial analysis themselves or obtain financial advice from external sources other than Treasury and Finance in order to evaluate proposals received. Treasury and Finance's role is to provide comment and advice on financial options after the relevant agency has analysed and developed a preferred approach. During the course of evaluation Treasury and Finance may also provide comment and advice in relation to the methodology adopted and the actual financial and risk analysis undertaken by the agency. Independent financial advice from an external consultant may therefore be required.*

*However in the present circumstances Treasury and Finance is prepared to provide technical financial evaluation advice to the Office for Recreation, Sport and Racing (ORS&R) in relation to the financial proposals received. This advice will be separate from Treasury and Finance's role in advising the Treasurer in relation to the:*

- *soundness or otherwise of the overall project; and*
- *alternative means of obtaining the outcome of construction by the Soccer Federation of new, increased seating capacity at Hindmarsh Stadium."*

The Under Treasurer proposed to charge the Office for Recreation, Sport and Racing a fee of \$50 per hour for evaluating the banks' funding proposals. As the existing banks' proposals were based on a \$6.5 million project, it was necessary for new proposals to be sought from the banks for a \$8.125 million project.

## **Policy issues**

This minute formally raised the concerns of the Department of Treasury and Finance with the project as approved by Cabinet on 29 April 1996. They were stated as follows:

*"Treasury and Finance understands that at least one of the banks invited to tender has had difficulty in obtaining relevant financial information from the South Australian Soccer Federation (SASF). This indicates that SASF may be treating the government guarantee similar to a government grant with lesser regard for the commercial realities of the underlying viability or otherwise of the proposal without the backing of a government guarantee.*

*To minimise the possibility of a call on the government guarantee Treasury and Finance considers that in providing any guarantee of any financial arrangement the government should seek:*

- *Information from SASF in relation to:*

  - *Current and forecast levels of attendances at games; and*
  - *Full cash flow forecasts with sensitivity analysis in the context of meeting debt servicing and repayments.*

- *The existence of an agreement between the financier and the SASF that an amount of revenue is set aside and quarantined to meet SASF loan facility repayments.*
- *A margin from SASF recognising the benefit to SASF and risk to the government emanating from the guarantee.*
- *A guarantee deed being negotiated which provides the government with appropriate rights and access to information to monitor the risk on the guarantee."*

## **10 MAY 1996 - FURTHER INSTRUCTIONS FOR THE CROWN SOLICITOR'S OFFICE**

Mr Jaksa, the solicitor in the Crown Solicitor's Office newly appointed with responsibility for the Hindmarsh Stadium project, received his first instructions on 10 May 1996 in a conference with Mr Fletcher. Later that day, Mr Fletcher provided Mr Jaksa with copies of the Cabinet submission approved on 29 April 1996 and a draft financial analysis prepared by Ernst & Young.

## **22 MAY 1996 - RETAINER OF NATIONAL PORTFOLIO STRATEGIES**

On 22 May 1996, Mr Bollen from the Office for Recreation, Sport and Racing wrote to Mr Damian Brown of National Portfolio Strategies seeking a fee offer for urgently negotiating with the owners of land south of the stadium and securing six month options over that land.

On 27 May 1996, National Portfolio Strategies responded by estimating an upper fee limit of \$16,000 plus legal costs of \$10,000 plus disbursements.

On 4 June 1996, Mr Bollen wrote to National Portfolio Strategies accepting their *"fee offer with an upper limit of \$26,000"*. He scheduled a meeting between Mr Damian Brown, Mr Bollen and Mr Jaksa of the Crown Solicitor's Office in June 1996.

## **23 MAY 1996 - FIRST MEETING OF THE EXECUTIVE GROUP OF THE HINDMARSH STADIUM REDEVELOPMENT COMMITTEE**

The working executive of the Hindmarsh Stadium Redevelopment Committee met for the first time on 23 May 1996. The Chair, Mrs Hall, advised the meeting that this committee would *"deal with the day to day issues to ensure efficiency associated with the project development"*.

Membership of the Executive Group involved all the members of the Redevelopment Committee except representatives of the NSL Clubs and the Council.

The minutes of the first meeting record that:

*"Joan Hall advised that the Minister for Recreation, Sport & Racing has advised that the project should follow usual Government process, ie, Minister of State Government Services will be the Principal in all contracts and the project will be referred to Cabinet for final approval.*

*Tony Farrugia agreed that the project follow Government process providing that the ability to offer 'friends of soccer' an involvement in the project was maintained. This issue was agreed by all.*

*Judith Freeman discussed the need to separate the tendering process from any sponsorship process. It was agreed that guidelines need to be determined prior to the commencement of tendering."*

The minutes also record that the meeting agreed that construction management was the preferred procurement method and that a registration of interest process would be used to shortlist potential construction managers. It was also agreed that Baulderstone would continue to advise Woods Bagot on buildability issues until the construction manager was appointed.

The Executive Group continued to meet once or twice a month until the completion of the project in December 1997. The Redevelopment Committee only met infrequently, every second or third month until its final meeting in December 1996.

## **30 MAY 1996 - INSTRUCTIONS FROM TREASURY AND FINANCE TO THE CROWN SOLICITOR'S OFFICE**

On 30 May 1996, Mr Jaksa of the Crown Solicitor's Office attended a meeting with two representatives of the Department of Treasury and Finance to obtain instructions on the preparation of the Funding and Guarantee Deeds.

## **31 MAY 1996 - TREASURY AND FINANCE RESPONSE TO MR SCOTT'S REQUEST TO WORK TOGETHER**

By minute dated 31 May 1996, the Acting Under Treasurer responded to Mr Scott's request that both agencies work in partnership to achieve the best result for the Government overall. In this minute, the Under Treasurer clarified his agency's role as follows:

*"One of the main roles undertaken by Treasury and Finance is to provide advice to the Treasurer in relation to the financial and economic consequences to the State of various courses of action.*

*In order to maintain its objectivity in this respect Treasury and Finance is generally not involved in evaluating for agencies financial and economic proposals.*

*Consistent with maintaining its objectivity and as stated in my 25 May minute Treasury and Finance can, however, comment and advise on the methodology adopted and the actual financial and risk analysis undertaken by the agency.*

*In offering to evaluate the Hindmarsh Stadium upgrade financial proposals for your agency Treasury and Finance is firstly undertaking an additional function and secondly potentially limiting its ability to provide objective advice.*

*As such it is not usual practice for Treasury and Finance to make such an offer. However, given that the evaluation should be relatively simple, an offer was made..."*

## CHAPTER 9 - JUNE TO JULY 1996

### JUNE 1996 - PUBLIC WORKS COMMITTEE DELIBERATIONS ON STAGE 1

#### Submission to Public Works Committee

Stage 1 was referred to the Public Works Committee by a submission dated 5 June 1996.

That submission was prepared by officers of the Office for Recreation, Sport and Racing. In preparing that submission they obtained substantial assistance in drafting from Woods Bagot.

The submission contained the following passage:

*"With the success of the Sydney Olympic 2000 bid, the Hindmarsh Stadium has been chosen as a venue to host the Olympic soccer fixtures, provided the Hindmarsh Stadium is upgraded to meet the Federation Internationale De Football Association (FIFA) requirements. The upgrading will maximise Adelaide's chances of hosting a preliminary round (4 out of 16 nations) of the Olympic Soccer competition while continuing to host major international events prior to and after the Olympics." [emphasis supplied]*

Those two sentences were inconsistent. The first, taken alone, suggested that Adelaide had already been selected and that all it had to do was meet FIFA requirements. The second, taken alone, suggested that there was a selection process still to be undergone. Taken together, they were ambiguous.

That was not remedied by other sections of the submission. For example, the submission also stated:<sup>150</sup>

*"When it was announced that the 2000 Olympics had been awarded to Sydney, the success of the World Youth matches in 1993 provided the spring board for Adelaide to host preliminary matches Sydney 2000 Olympics. A letter to the Premier in January 1995 from the Executive President of the Sydney Organising Committee for the Olympic Games (SOCOG) confirmed Adelaide was included in the list of venues for the soccer preliminary matches provided the venue was acceptable to the FIFA, SOCOG and the Australian Soccer Federation (ASF) and in turn sought confirmation for the State Government to participate in the Olympic Games."*

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<sup>150</sup> Page 8.

## **12 June 1996 Hearing before the Public Works Committee**

During the 12 June 1996 hearing before the Public Works Committee, Mr Farrugia of the Soccer Federation gave the following evidence:<sup>151</sup>

*"PRESIDING MEMBER: Despite the upgrade of the stadium and the plans proceeding, are we yet sure that we will get the Sydney 2000 spin off and see games played in Adelaide?"*

*MR FARRUGIA: Another committee has been set up to ensure that Adelaide does participate in the Olympic Games, which involves Australian Major Events Chief Executive Bill Spurr. All the documents are made to the IOC, which had four venues – Adelaide, Melbourne, Sydney and Brisbane - to host sections of the Olympic Games soccer tournament. On that basis and on winning the bid we are told that any variation from that bid document would require IOC approval and there would have to be good reasons why you would move away from the venue stipulated, particularly when those venues are approved by FIFA and the Soccer Federation in Sydney. No, there is not a written commitment to us saying that we will get the Olympic Games other than the bid document. Secondly, we are working hard to ensure that we comply with the FIFA requirements to ensure that there is no reason for SOCOG to take the games away from Adelaide."*

Mr Browne gave evidence that the project would be managed by a construction manager, yet to be appointed. The Committee was told by Mr Browne and Mr Farrugia that when tenders were received for particular parts of the project, those tenders would be considered by the 12 person executive committee previously established. It would be up to that committee to choose the preferred tenderer.

## **JUNE 1996 - LETTER TO COUNCIL**

In June 1996, Mr Browne of Services SA prepared a draft letter to the Council to be sent on the Soccer Federation's letterhead. The draft proposed that representatives of the Soccer Federation, Government and the Council meet to discuss the project and its future. A copy of the draft was sent to Mr Hoare of Woods Bagot to find out whether he would be prepared to facilitate that meeting. Mr Hoare informed Mr Browne that this was the Soccer Federation's responsibility.

At the Executive Group meeting held on 25 June 1996, Mr Farrugia reported that he had sent a letter to the Council seeking its consideration of the project in their capacity as owners of the land. The minutes record that a presentation to the Council was planned prior to 5 July 1996.

## **13 JUNE 1996 - THE CROWN SOLICITOR'S OFFICE BRIEFING ON LAND ACQUISITION**

On 13 June 1996, a meeting was held at the Crown Solicitor's Office to brief Mr Jaksa on the proposal to obtain options over the land south of the stadium. That meeting was attended by Mr Bollen, Mr Damian Brown of National Portfolio Strategies and Simon O'Loughlin of O'Loughlins, solicitors for National Portfolio Strategies. According to Mr Jaksa's file note of the meeting, apart from being informed about it, the Crown Solicitor's Office was not asked for and did not volunteer advice about

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<sup>151</sup> Page 13 of the transcript.



the proposal. The Crown Solicitor's Office was not approached again in relation to the National Portfolio Strategies land acquisition investigations.

## **24 JUNE 1996 - THE DEPARTMENT OF TREASURY AND FINANCE ANALYSIS OF THE FUNDING OFFERS**

On 24 June 1996, the Department of Treasury and Finance provided the Office for Recreation, Sport and Racing with a detailed report on the revised funding offers received from four trading banks. The document was limited to the relative merits of the four finance proposals. It did not consider the Soccer Federation's ability to meet the loan repayments because further information <sup>152</sup> was required from the Soccer Federation before that analysis could be done.

Implicit in the obtaining of those offers and their analysis by Treasury and Finance, was that the basic concept from the April 1995 Memorandum of Understanding was to remain. The key features of the Soccer Federation borrowing money to pay for construction work for land which it had the exclusive right to occupy, with the Government to guarantee those borrowings, remained.

In preparing this report, an internal Treasury and Finance minute recorded that *"even without the knowledge of SASF's financial status, there is concern regarding their ability to service their share of the loan given the attendance requirements"*. <sup>153</sup>

This concern was reiterated in the Under Treasurer's minute to Mr Scott enclosing the report:

*"Treasury and Finance has noted the draft Ernst & Young report regarding the feasibility of the development. We acknowledge the methodology and assumptions included in the Report, and particularly note the addendum. Using an interest rate of 10 percent to calculate repayments required on an \$8.125 million loan, the SASF would need to have over 70 percent of the grandstand occupied at matches with the assumed ticket prices with a 20 percent rise in attendances if it is to be able to meet its portion of principal and loan repayments. [original emphasis]*

*Therefore, even without knowledge of SASF's financial status, there are concerns regarding its ability to service its share of the loan given the attendance requirements. [emphasis supplied]*

*This means that there is a real risk that these attendance assumptions will not be realised resulting in the guarantee proposed to be put in place by the Treasurer (which is understood to be a precondition for all the financing proposals) being called upon with the result that the Office for Recreation Sport and Racing (ORS&R) will need to supply further funds from its budget allocation to fund any shortfall of SASF payments."*

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<sup>152</sup> That is, current and projected financial statements of the Soccer Federation, details of the current relationship between the Soccer Federation and the NSL Clubs and details on the current match fee structures and attendances and future scheduled matches and other events.

<sup>153</sup> Dated May 1996.

## **25 JUNE 1996 - SECOND MEETING OF EXECUTIVE GROUP**

The minutes of the second meeting of the Executive Group held on 26 June 1996 record that Mr Scott was to arrange for the Office for Recreation, Sport and Racing to facilitate and manage land acquisition opportunities. The issue of the adjoining properties was discussed and the minutes record that Mrs Hall "agreed to pursue bowling club issues".

## **26 JUNE 1996 - ESTIMATES COMMITTEE**

On 26 June 1996, Mr Ingerson as Minister for Recreation, Sport and Racing responding to a question asked about the Redevelopment Committee's role in the tender process for the Hindmarsh Stadium Redevelopment project stated to the Estimates Committee that:

*"[T]he inference that any member of that Executive committee, whether a member of this Parliament or any other members, might have a role in that decision is incorrect."*

## **28 JUNE 1996 - PRESSURE ON THE CROWN SOLICITOR'S OFFICE FOR THE DOCUMENTS**

On 28 June 1996, Mr Hocking in the Crown Solicitor's Office received a minute from Mr Scott concerning the progress of the legal work for the project. That minute stated:

*"My understanding is that we had a verbal commitment that an initial draft of these documents would be available by 14 June 1996. At the time of writing we have not yet received this work."*

*"I understand that there may be good reason why the agreed deadline has not been achieved. However, could I stress that in relation to the Sports Stadium Projects there is a need to ensure that once timing commitments have been established they are adhered to. My Minister has made it clear to me, on behalf of the Cabinet, that priority is to be given to ensuring that we progress these projects in a timely manner."*

Mr Ingerson gave evidence to this Examination that he could not recall any specific deadline. His concern was simply to ensure that the project was completed within the time that had been originally planned.

On receipt of this minute Mr Hocking telephoned Mr Scott. His file note records that there was a dispute between the agencies as to the agreed time lines for the project. It further recorded:

*"M.S. enormous pressure from the MRSR + Joan Hall for docs. MRSR wanted to take up with A-G but MS wanted to sort out with me." [original emphasis]*

In evidence before this Examination Mr Hocking said the note indicated that Mr Scott was under considerable pressure from Mr Ingerson as Minister for Recreation, Sport and Racing and Mrs Hall for the documents.

*"[The project] had high Government political priority and the responsible Minister was most anxious to have the matter completed".*

## **JULY 1996 - MR SCOTT'S BIRMINGHAM TRIP**

In July 1996, Mr Scott, the Chief Executive of the Office for Recreation, Sport and Racing, travelled to Birmingham, Alabama where soccer matches had been staged in the 1996 Olympics. He found out from the Birmingham Local Organising Committee that Birmingham had paid US\$4.5 million to the Atlanta Organising Committee for the right to Stage the event and had incurred direct operational costs of US\$5.5 million. From Mr Scott's factual investigation it was apparent that Mr Scott's estimate of \$500,000 in February 1995 was quite inadequate.

Olympic soccer was played in Alabama between 20 and 28 July 1996. Eleven matches were played in those eight days, four more than were played in Adelaide.

Mr Scott reported his findings to the Adelaide Olympic Bid Committee.

## **1 JULY 1996 - FINAL ERNST & YOUNG REPORT**

On 1 July 1996, Ernst & Young delivered to the Office for Recreation, Sport and Racing their final report on the feasibility of the redevelopment of the western grandstand at Hindmarsh Stadium. The Report was also sent to the Department of Treasury and Finance.

Although the Report was described as being a report on the financial analysis of the redevelopment, it dealt with only two issues:

- The marginal benefit of constructing northern and southern extensions to the western grandstand (comprising an extra 756 seats for an additional cost of \$1.275 million) at the same time as the main redevelopment (costing \$6.2 million comprising 3,279 seats). This first issue had been the subject of Ernst & Young's draft report delivered in late April 1995.<sup>154</sup>
- The Soccer Federation's ability to contribute to the interest costs of the \$8.125 million loan to fund the redevelopment on the basis of a \$3 levy on spectators using the redeveloped grandstand and projected attendance figures.

Ernst & Young concluded that for the Soccer Federation to meet its financial obligations:

- attendances at matches would have to increase by 20 percent more than the attendances projected if the proposed levy of \$3 per ticket was maintained; or
- the levy would have to be increased to \$4.

Ernst & Young's Report was heavily qualified. The attendance figures upon which their analysis was based were provided by the Soccer Federation. Their Report included past records of attendances at the stadium and estimates of future attendances prepared by the Soccer Federation. Those estimates included an arbitrary increase in attendances of 40 percent. Ernst & Young specifically disclaimed any attempts to independently verify those attendance figures either as to the past or as to how realistic future estimates were.

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<sup>154</sup> See the section above under the heading "April 1996 - Draft Ernst & Young Report" at page 80.

Ernst & Young undertook sensitivity analyses that considered the effect upon the figures of variations in attendances. Those analyses did not consider the possibility that attendances might decrease.

## **1 JULY 1996 - FINANCIAL INFORMATION FROM THE SOCCER FEDERATION**

By letter dated 1 July 1996, Mr Farrugia of the Soccer Federation sent the Department of Treasury and Finance a five year forecast, the 31 October 1995 Annual Report, financial statements for the Soccer Federation, details of the current ticket prices for matches, a list of match attendances from April 1995 to March 1996 and stated that the Soccer Federation was currently negotiating licence agreements with the NSL Clubs. Mr Farrugia's letter addressed the issue of future projections by stating that:

*"Short of having a crystal ball as to the attendance at Soccer matches in the future, I believe that it would be fair to say the game will continue to enjoy steady crowds and support growth over the next 5-10 years."*

Mr Farrugia stated that Australia's recent qualification for the Olympic Games and the World Cup preliminaries and the provision of better facilities were the reasons for expecting this growth in attendances at soccer matches at Hindmarsh.

## **2 JULY 1996 - FIRST DRAFT OF FUNDING DEED**

The first draft of the Funding Deed was prepared by Mr Jaksa of the Crown Solicitor's Office on 2 July 1996. It and a revised draft of the Deed of Guarantee was circulated for comment to the Office for Recreation, Sport and Racing and the Department of Treasury and Finance.

## **4 JULY 1996 - SECOND DRAFT OF FUNDING DEED**

The Crown Solicitor's Office circulated revised drafts of the Funding Deed and the Deed of Guarantee to the Office for Recreation, Sport and Racing and the Department of Treasury and Finance. The accompanying minute expressly advised that neither document should be discussed with the Soccer Federation until the Crown Solicitor's Office had received comments from both agencies and incorporated any necessary changes into the documents.

## **5 JULY 1996 - TREASURER'S BRIEFING ON CONCERNS OVER FUNDING ARRANGEMENTS**

On 5 July 1996, the Under Treasurer sent the Treasurer a briefing note on issues arising from the funding arrangements for *"the Soccer Federation's (SASF's) redevelopment of the Hindmarsh Stadium"* on the basis that the Soccer Federation would be required to meet 50 percent of the debt servicing costs for a \$8.125 million loan as submitted to Cabinet on 26 April 1996.

The minute detailed the Department of Treasury and Finance's concerns over the Soccer Federation's inability to service its share of the loan repayments from the spectator levy:<sup>155</sup>

*"Treasury and Finance recently obtained from SASF: financial statements; five year forward cash flow projections; match fee structures and attendances; and future*

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<sup>155</sup> Page 2 of the minute dated 5 July 1996 from the Under Treasurer to the Treasurer.

*scheduled matches and other events. Based on this information, Treasury and Finance has undertaken preliminary sensitivity analyses regarding SASF's ability to meet repayments. Consistent with the Ernst and Young report and based on an indicative interest rate of 10 percent and assumptions that: current attendance numbers and ticket prices are maintained; and that at least 50 percent of attendees occupy the grandstand, SASF may be able to meet 38 percent of the loan repayments. However, on more conservative assumptions regarding a minimal number of events at Hindmarsh, SASF may only be able to meet 25 percent of the loan repayments.*

...

*Accordingly indications are that SASF can be expected to find it difficult to meet 50 percent of the loan repayments and that additional funding will be sought from ORS&R within the first year or two after completion of the grandstand (due August 1997)."*

The minute also recorded the difficulty experienced in obtaining financial information from the Soccer Federation as well as indications from Soccer Federation officials that it may be treating the project as a Government grant, *"with lesser regard for the commercial realities of the underlying viability or otherwise of the project".*<sup>156</sup>

## **8 JULY 1996 - TREASURER'S AGREEMENT THAT FUNDING SHORTFALL CAN BE MET FROM THE SPORT AND RECREATION FUND**

On 8 July 1996, the Treasurer sent a minute to the Minister for Recreation, Sport and Racing replying to his request that SAFA present a funding proposal for loan funds for the soccer and netball facilities. The Treasurer stated that he was unable to approve the Minister's request because current Government policy did not permit a direct financial relationship with SAFA and the Office for Recreation, Sport and Racing. However, subject to Cabinet Budget Committee and Cabinet approval, the Treasurer proposed that the Government's share of the project costs be funded from the capital side of the Budget *"as this would represent the most cost effective financing option from the Government's perspective"*.

This minute continued:

*"Prior to proceeding down this course, I will need to be assured of the sporting bodies' capacity to service their share of the costs. In this context, I understand that there may be some reservations regarding the SA Soccer Federation's (SASF) ability to meet 50 per cent of the potential loan repayments based on indicative modelling forecasts prepared by external consultants. This would suggest that there is a real risk of the Government's guarantee, which I understand is a precondition for all the financing proposals, being called on and a requirement for further funding to meet any shortfall in SASF payments.*

*Given the above, I suggest that any shortfall in debt servicing costs be met from the allocation of funds set aside in the Sport and Recreation Fund to provide financial assistance to sporting bodies for facilities development."*

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<sup>156</sup> Page 3 of the minute dated 5 July 1996 from the Under Treasurer to the Treasurer.

## 9 JULY 1996 - PRESENTATION TO COUNCIL OF REDEVELOPMENT PROPOSAL

On 9 July 1996, Council members were invited by the Soccer Federation to a presentation of the redevelopment proposal for the Hindmarsh Stadium. Woods Bagot presented preliminary plans for a major expansion of the existing western grandstand.

Council minutes <sup>157</sup> record that the Council saw that the aim of the briefing was to:

- *"Acquaint Council with current issues affecting the ongoing soccer presence on the site.*
- *Seek Council comment on preliminary concept plans for an extension to the existing stadium building, prior to lodging a Development Application.*
- *Establish a dialogue on the long term development options for further consolidation of the site."*

## 9 JULY 1996 - SOCOG INVITATION FOR EXPRESSION OF INTEREST AND TECHNICAL QUESTIONNAIRE

### The Questionnaire

On 9 July 1996, Mr John Iliffe, then President of SOCOG, sent to Premier Brown a letter enclosing SOCOG's technical questionnaire and a document setting out FIFA/SOCOG's stadium requirements for the 2000 Olympic Soccer Tournament.<sup>158</sup> The letter sought return of the questionnaire by 30 September 1996. The enclosed FIFA/SOCOG requirements required a minimum capacity of 15,000 seats. The requirements noted that FIFA's requirement for the 2004 Olympic Games was a minimum capacity of 20,000 seats and that SOCOG would welcome proposed stadia that met the 2004 requirement. The document noted that temporary grandstands and seating were permissible provided the strictest safety and spectator comfort standards were met.

Mr Iliffe's letter and the enclosed questionnaire did not make clear how SOCOG's selection process would work. It did not set out formal conditions of bidding or tendering. Indeed it did not refer to a "bid" or "tender". It contained the following passage:

*"The essential qualifying criteria for States, Territories or Cities to be considered for participation in the Olympic Football Tournament is provision of a competition stadium in full compliance with FIFA/SOCOG requirements. If this qualifying criteria is not satisfied, then States/Territories/Cities will not be eligible for consideration.*

*Accordingly, attached to this letter are detailed FIFA/SOCOG Requirements, along with a Technical Questionnaire relating to the proposed competition stadium and training sites. States/Territories/Cities are requested to read these Requirements, and return a completed Questionnaire to SOCOG by 5pm on 30 September 1996 if you [sic] are interested in participating in the Olympic Football Tournament.*

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<sup>157</sup> Dated 12 August 1996.

<sup>158</sup> It was entitled "OLYMPIC GAMES FOOTBALL TOURNAMENT – FIFA/SOCOG REQUIREMENTS".

*An analysis will be made by SOCOG of the responses received, followed by inspections of the proposed competition venue, training sites and other infrastructure.*

*Provided that the technical and training requirements are met, detailed negotiations will then take place between SOCOG and the 'preferred' States/Territories/Cities on financial, marketing and organisational arrangements. SOCOG's Board will then choose the 'preferred' venues to participate in the Olympic Football Tournament, to which FIFA's concurrence will be sought. SOCOG will subsequently advise all parties of the final decisions taken, to be followed by a public announcement of the chosen venues."*

I consider that this was an unsatisfactory basis for the submission of a bid involving an unquantified amount of Government expenditure. It gave no idea of how SOCOG would select the "preferred" venues. The SOCOG/FIFA requirements were a minimum pre-requisite but beyond that, the document gave no guidance as to what criteria would be applied. The letter introduced a second basis for selection that was not clear. The letter stated that a public announcement of the chosen venues would occur after detailed negotiations about the commercial arrangements. In fact, SOCOG actually announced the successful cities before those negotiations.

The Sydney 2000 Bid Committee sought clarification from SOCOG of some aspects of the stadia requirements document from SOCOG. There was no officer from Services SA involved in both the communications with SOCOG about the requirements of the 2000 Olympic Soccer Tournament and the supervision of the building project. Australian Major Events attended meetings with SOCOG but not meetings of any of the various Hindmarsh Stadium Redevelopment Committees, including the Executive Group that made many of the decisions that affected the content of the project.<sup>159</sup> Services SA attended the stadium committee meetings but not the Bid Committee.

Woods Bagot, the Soccer Federation and Mrs Hall attended both.

### **Preparation of Adelaide's Bid**

The work of responding to the SOCOG questionnaire was undertaken by the Bid Committee set up in May 1996. Mr MacFarlane, then of Australian Major Events, was primarily responsible for that. Woods Bagot provided assistance in working out what was necessary to be able to provide the facilities required by the bid document and produced drawings showing the configuration of the stadium in "Olympics mode".

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<sup>159</sup> Many of the Executive Group's decisions were the subject of approval by Cabinet. Cabinet did not approve every decision of the Executive Group.

## **Table of SOCOG/FIFA Requirements**

Woods Bagot became concerned that there might be some misunderstanding about which of the SOCOG/FIFA requirements would be met by the western grandstand redevelopment. They prepared a "compliance matrix" that contained a detailed list of the SOCOG/FIFA requirements with an indication of whether the item was already in existence, to be provided as part of the western grandstand redevelopment or to be a temporary facility.

### **10 JULY 1996 - CABINET SUBMISSION**

On 10 July 1996, Mr Ingerson as Minister for Recreation, Sport and Racing signed a Cabinet submission recommending:

- approval for expenditure of \$1,164,108 comprising \$760,000 for documentation, disbursements and project management fees and \$404,108 for the Construction Manager;
- that Cabinet note the engagement of Hansen Yuncken Pty Ltd as the Construction Manager for the fixed lump sum of \$404,108; and
- assignment of the Minister for State Government Services (or his delegate) to accept all trade package tenders.

The view of the Department of Treasury and Finance was recorded in a minute dated 12 July 1996 from the Under Treasurer to the Treasurer. On the basis that a revised funding proposal was expected to be put to the next Cabinet Budget Committee, Treasury suggested that it may not have been appropriate to proceed with the construction management contract until the funding arrangements were finalised. Further, the recommendation that approval be given to the Minister for State Government Services to accept tender for trade packages should not be given and sought as part of the final Cabinet approval.

This Cabinet submission was withdrawn before it was scheduled to be considered by Cabinet on 15 July 1996.

### **10 JULY 1996 - RECONVENING OF THE PUBLIC WORKS COMMITTEE**

On 10 July 1996, the Public Works Committee reconvened. Mr Browne from Services SA gave evidence about the mechanism for controlling the selection of tenderers. He informed the Committee that the project would be managed by Services SA with the assistance of a private industry construction manager. Services SA and the private industry construction manager would divide the project into "tender packages" according to sub-trades. Any tenders would need to conform to the specification to be tendered through the audited Services SA processes endorsed by the Executive Committee and accepted by the Minister for State Government Services.

The Public Works Committee retained concerns about whether that approach was appropriate. As a consequence, the Committee requested Minister Ingerson to obtain written confirmation from the Crown Solicitor that the process proposed was appropriate by letter dated 17 July 1996.



## **10 JULY 1996 - MR SCOTT'S REQUEST TO THE CROWN SOLICITOR'S OFFICE TO RESOLVE FUNDING DEED ISSUES URGENTLY**

By minute dated 10 July 1996, as a result of recent meeting between the Soccer Federation and the Minister for Recreation, Sport and Racing, Mr Scott gave his comments on the draft Funding Deed prepared by the Crown Solicitor's Office on 4 July 1996. Mr Scott stated that the Minister requested that a further draft be provided by the close of business the following day so that final negotiations occurred early the next week before the Minister went overseas.

This minute informed the Crown Solicitor's Office that:

- From early on both participants had promoted the project as a joint venture and that theme should be reflected in the Funding Deed.
- The draft did not include the *"key fundamentals of the Memorandum of Understanding ie the introduction of a \$3 levy per spectator utilising the new grandstand"*.
- Services SA believed from a risk management perspective that the Minister for State Government Services should be the principal to the construction contracts and not the Soccer Federation as proposed in the April 1995 Memorandum of Understanding.
- The Government would now make its 50 percent contribution directly rather than the Soccer Federation borrowing the whole of the project costs and the Government repaying 50 percent of the debt servicing costs.

## **11 JULY 1996 - FURTHER INSTRUCTIONS FROM THE MINISTER FOR RECREATION, SPORT AND RACING ON THE TERMS OF THE FUNDING DEED**

By minute dated 11 July 1996, Mr Scott requested the Crown Solicitor's Office to include a further term in the Funding Deed as a result of further discussions with the Minister:

*"If unforeseeable circumstances arrive and SAFA are unable to contribute 50 percent of the debt servicing arrangement, after consultation with the respective parties (Treasurer, Minister and SAFA), any shortfall could be addressed by either or both of the following*

- *renegotiation of clause(s) of the Trust Deed and/or the operations of Hindmarsh Stadium Business Unit, or*
- *increased contribution by the State Government via the MRSR."*

## **11 JULY 1996 - CROWN SOLICITOR'S OFFICE ADVICE TO MR SCOTT**

In response to Mr Scott's minutes dated 10 and 11 July 1996, Mr Jaksa of the Crown Solicitor's Office sent a minute to Mr Scott and to the Department of Treasury and Finance. Mr Jaksa's minute complained about the way in which the project was being progressed:

- The proposal now involved the Soccer Federation merely using its best endeavours to pay one half of the proposed loan repayments. That diverged with his instructions from the Department of Treasury and Finance and was inconsistent with the 29 April 1996 Cabinet approval. *"Consistency with this Cabinet approval is of paramount importance and needs to be considered further."*

- Mr Jaksa had conflicting instructions on the structure of the arrangement and the provisions of the Funding Deed. That made it difficult to draft the Funding Deed.
- Negotiations had been conducted with the Soccer Federation about the structure of the funding and legal arrangements in the absence of officers of the Department of Treasury and Finance or the Crown Solicitor's Office. That was ill-advised.
- A copy of the draft Funding Deed had been provided to the Soccer Federation before the Crown Solicitor's Office had received any comments from the Office for Recreation, Sport and Racing or, more importantly, from the Department of Treasury and Finance, contrary to Mr Jaksa's express written instructions of 4 July 1996.
- The deadline imposed by the Minister was unreasonable and unnecessary given that the bank had not been selected and the *"most important contents of the Funding Deed are ultimately dependent on the structure of the relationship between the Federation, the bank, the Treasurer and the Minister"*.

## **12 JULY 1996 - CROWN SOLICITOR'S OFFICE REQUIREMENT FOR QUANTIFICATION OF THE SHORTFALL**

The Crown Solicitor's Office advised Mr Scott that the revised Cabinet submission on the project should expressly state that the Minister for Recreation, Sport and Racing is proposing to top up the Soccer Federation's payments to service the loan and that this liability should be quantified in the Cabinet submission.

## **12 JULY 1996 - TREASURY'S RESPONSE TO MR SCOTT'S MINUTES AND RESPONSE OF THE CROWN SOLICITOR'S OFFICE**

By minute dated 12 July 1996, the Under Treasurer responded to Mr Scott's minutes dated 10 and 11 July 1996 and the response of the Crown Solicitor's Office dated 11 July 1996.

That minute stated:

*"On the basis of the Treasurer's minute,<sup>160</sup> OSR&R [sic] will be responsible for any shortfall in SASF loan repayments. As such it is essential that OSR&R [sic] is satisfied with the arrangements put in place through the Funding Deed and the Deed of Guarantee. Such arrangements should attempt to minimise the likelihood of a shortfall occurring and minimise the value of a shortfall should it occur.*

*To provide a clear delineation of responsibility, it is agreed that OSR&R [sic] will provide instructions to Crown Law with respect to the Funding Deed and that Treasury and Finance will provide instructions with respect to the Deed of Guarantee. Notwithstanding [sic] it is essential that both OSR&R and Treasury and Finance each have an opportunity to provide comment on each other's draft documents.*

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<sup>160</sup> That is, dated 8 July 1996 and referred to above under the heading "8 July 1996 - Treasurer's Agreement that Funding Shortfall can be Met from the Sport And Recreation Fund" at page 95.

*As a general comment if the arrangements proposed by either OSR&R [sic] or Treasury and Finance are inconsistent with approved Cabinet Submissions then it is necessary for consideration to be given to putting forward a new Cabinet Submission."*

Mr Ingerson in giving evidence to this Examination said he "*totally refuted*" the complaints made by the Crown Solicitor's Office. When giving evidence Mr Ingerson recalled that there was a wide range of issues the subject of disagreement between his department and the Crown Solicitor's Office, but he did not recall the detail.

Mr Ingerson took the view that the Crown Solicitor's Office were letting his department down by not getting on with the job and holding it up unreasonably. He said he was only interested in getting the Funding Deed agreed by all the parties to take back to Cabinet. Mr Ingerson said he was not interested, nor was it his responsibility to get involved in the day to day machinations in finalising the Funding Deed. That was the responsibility of his department and the Crown Solicitor's Office.

Neither Mr Scott or anyone else from the Office for Recreation, Sport and Racing responded in writing to the Crown Solicitor's Office.

### **15 JULY 1996 - CROWN SOLICITOR'S OFFICE ADVICE ON WHO SHOULD BE THE PRINCIPAL TO THE CONSTRUCTION CONTRACT**

By minute dated 15 July 1996, the Crown Solicitor's Office advised the Attorney-General as to why the Crown Solicitor proposed that the Soccer Federation be the principal to the construction contract instead of the Minister for State Government Services.

That advice identified that the Government had no interest in the land upon which the redevelopment was been undertaken or equity in the project. The Crown Solicitor was concerned for the Government not to accept any risk from the construction consequent upon a Minister of the Crown being the principal to the construction contract. Instead the Crown Solicitor proposed to pass that risk to the Soccer Federation as "*the development is not a Government development but a private development in which the Government is providing significant financial support.*"

The Crown Solicitor's view was not shared by the Minister for Recreation, Sport and Racing, the Office for Recreation, Sport and Racing or Services SA for the following reasons:

- the Soccer Federation had no experience, expertise or resources to effectively manage the risk of the project;
- the Soccer Federation recognised this and did not want to be the principal in the project; and
- Government would have no input to the management of the project yet bear all the risk as guarantor.

## 15 JULY 1996 - REDEVELOPMENT COMMITTEE MEETING

### Endorsement of Project Consultancy Fees

The minutes of the Hindmarsh Stadium Redevelopment Committee meeting held on 15 July 1996 record that the Mr Scott proposed endorsement of Woods Bagot's continued retainer for the rest of the project for a fee of \$495,000 and subject to further negotiation with his Office, Services SA fee be \$140,000. Mr Whitbread suggested that there be a ceiling of \$760,000 for professional fees and sundry costs for the project rather than limit Services SA's fees.

### Council

The minutes also record that Mr Farrugia reported on the presentation to Council held on 9 July 1996 and that the Council has asked the Soccer Federation to maintain communication with the Council on future proposals for the site.

## 16 JULY 1996 – ATTORNEY-GENERAL'S MEETING WITH THE MINISTER FOR RECREATION, SPORT AND RACING

On 16 July 1996, a meeting was held between the Attorney-General, Mr Ingerson as the Minister for Recreation, Sport and Racing, Ms Ann Ruston and Mr Hocking of the Crown Solicitor's Office.

Mr Hocking's file note of this meeting records:

*"Imperative that Services S.A. manages the project*

*A.G. points out that can't contract to build on someone elses [sic] land. ∴ we need sub-lease or licence to occupy site during construction period.*

*J.H.(Mr Hocking) to check out lease and progress this option*

*A.G. mortgage of lease important*

*security may never be used but from an accountability perspective essential. Something we may give away later but need it now.*

*A.G. instructs to progress as fast as we can. Present an issues paper to him that he can canvass in Cabinet + with Premier. [Include structure of document] All issues.*

*A.G. Matter must go back to Cabinet before execution of documents..." [original emphasis]*

## 17 JULY 1996 - THE CROWN SOLICITOR'S OFFICE DISCOVERY THAT LEASE EXECUTED

Mr Hocking of the Crown Solicitor's Office discovered that the 1996 Lease had been executed without reference to the Government in the course of a telephone conversation with Mr Farrugia, the General Manager of the Soccer Federation on 17 July 1996. Mr Hocking's file note records that he inquired whether the Government had approved its terms as required by both the April 1995 Memorandum of Understanding and the Funding Deed (then still in draft). Mr Farrugia said that it had not but that he thought the Government had a copy of it.

Mr Hocking telephoned Mr Fletcher in the Office for Recreation, Sport and Racing to raise this issue. Mr Fletcher was unsure what had happened but said he would need the Crown Solicitor's advice. Mr Hocking advised Mr Fletcher to consider the lease first and see if it raised any specific issues which should be included in the instructions to the Crown Solicitor. The Crown Solicitor would then consider anything else that was apparent. He advised that this should happen as soon as possible and not wait until execution of the Funding Deed.

In fact, the Office for Recreation, Sport and Racing had already sent a copy of the lease to the Crown Solicitor's Office on 16 July 1996. On 18 July 1996, the Office for Recreation, Sport and Racing sent the Crown Solicitor's Office a minute expressing its concerns over certain terms of the lease and seeking the Crown Solicitor's advice on its suitability. Specifically, the Office for Recreation, Sport and Racing queried the absence of a right to vary the lease when it might need to be varied to suit the Funding Deed.

The Crown Solicitor's Office did not formally respond to that minute. However, Mr Jaksa, the solicitor responsible for the file within the Crown Solicitor's Office has informed this Examination that he was sure he gave oral advice on the lease. It is clear he was alive to the need for him to review the lease. For example, on 26 July 1996, he advised the Office for Recreation, Sport and Racing that he would write to the Council after he had had the opportunity to consider the lease. He also noted it on a handwritten list of things to do that he made in early August 1996.

The Crown Solicitor's Office had reviewed the 1996 Lease to the extent of identifying the need for the Council's consent for the granting of a mortgage over the lease and a licence to construct. It did not identify or address other inadequacies.

## **17 JULY 1996 - CABINET NOTE DETAILING EXPENDITURE TO DATE**

Mr Ingerson as Minister for Recreation, Sport and Racing signed a Cabinet Note on 17 July 1996 informing Cabinet that:

- There had been expenditure of \$1,164,108 comprising \$760,000 for documentation, disbursements and project management fees and \$404,108 for Hansen Yuncken Pty Ltd who had been engaged as the Construction Manager.
- The Minister for State Government Services (or his delegate) had been assigned to accept all trade package tenders.

## **17 JULY 1996 - PUBLIC WORKS COMMITTEE LETTER TO MINISTER FOR RECREATION, SPORT AND RACING**

Mr Oswald as Chair of the Public Works Committee wrote to Mr Ingerson as Minister for Recreation, Sport and Racing on 17 July 1996 expressing concerns about the conflicting evidence it had received about the project. It stated:

*"Mr Jeff Browne, of Services SA and Mr Tony Farrugia, of the South Australian Soccer Federation first gave evidence for this project to the Committee on 12 June 1996. This evidence is in direct conflict with the Hansard recorded during Estimate Committees and evidence received from Mr Browne on 10 July 1996.*

*Whilst Mr Browne provided an additional statement to the Committee on 10 July 1996 to clarify the conflicting remarks, the Committee requires confirmation of the relevant details prior to tabling its report for this reference. Consequently, the Public Works Committee asks that you request the Crown Solicitor to confirm, in writing, that the procedure being adopted for Construction Management and tender processes of the Hindmarsh Stadium is well founded, lawful in all respects and legally defensible.*

*The Committee would also appreciate receiving a flow chart detailing the checks and balances put in place to ensure that this process will not place the Government in an embarrassing situation in the future.*

*Finally, the Public Works Committee would appreciate receiving a copy of all instructions the Office of Recreation, Sport and Racing and Services SA gave the Crown Solicitor when seeking his advice that the process being adopted for the Construction Management tender approvals and sponsorship arrangements for the Hindmarsh Stadium project are legally defensible."*

## **24 JULY 1996 - DISCUSSION BETWEEN THE CROWN SOLICITOR'S OFFICE AND COUNCIL ABOUT LAND OWNERSHIP ISSUES**

On 24 July 1996, Mr Jaksa of the Crown Solicitor's Office telephoned the Director of Corporate Services at the Council to discuss issues arising from its ownership of the land upon which the stadium redevelopment was proposed to occur. The Council's consent was required as owner of the land to the proposed development and a licence required to be granted to the Minister for State Government Services during construction. Mr Jaksa also identified the need for a direct contractual relationship between the Crown and the Council in case of breach of the lease by the Soccer Federation.

His minute of 26 July 1996 recorded:

*"I have also discussed with the Director of Corporate Services of the City of Hindmarsh and Woodville its willingness to consent both to the granting of a licence to the Minister for SGS to occupy and control portions of Hindmarsh Stadium for the purpose of undertaking the development and to the actual undertaking of the development for the purposes of the lease. He indicated that the Council supported this in principle and he would be recommending to Council that these consents be given. I am advised that this matter is to be considered by Council on 12 August 1996.*

*I also foreshadowed that some sort of "facilitation deed" may be necessary between the Council and the Crown regulating the Council's right to terminate the lease.*

*I advised that I will write to the Council this week formally discussing these matters after I have had the opportunity of considering the lease."*

That passage also appeared in minutes sent to The Department of Treasury and Finance, Services SA, the Office for Recreation, Sport and Racing and the Attorney-General. The Facilitation Deed referred to was not prepared as part of the transaction documents for Stage 1. A draft was eventually prepared by the Crown Solicitor's Office in April 1998 but it was not sent to the Soccer Federation or the Council and, of course, has not been executed.

## 29 JULY 1996 - CROWN SOLICITOR'S OFFICE RESPONSE TO PUBLIC WORKS COMMITTEE REQUEST

### First minute to the Minister for Recreation, Sport and Racing

On 26 July 1996, the Crown Solicitor's Office sent a minute to the Minister for Recreation, Sport and Racing in relation to the concerns raised in the Public Works Committee's letter to the Minister dated 17 July 1996.

First that minute stated that the Crown Solicitor's Office in providing this opinion was:

*"...exclusively relying on a conference held between Ms Judith Freeman, Mr Vaughn Bollen and the writer on Monday, 22 July 1996 and the minute dated 24 July 1996 from Ms Judith Freeman to the Chief Executive Officer of the Office of Recreation, Sport & Racing written at my request as a consequence of that conference."*

The minute then contained three paragraphs concerning the proposed structure for undertaking the development. The first of those paragraphs referred to "two intertwined and relevant aspects": the appointment of Hansen Yuncken Pty Ltd as Construction Manager and the proposal the Minister for State Government Services being the principal in the construction agreements.

The second and third of those paragraphs stated:

*"I note that Services S.A. have strenuously argued that the Minister should be the principal contracting party. However, as previously advised, I confirm the Attorney-General's position that this is a matter which must be considered by Cabinet prior to it being implemented. I also note that the Minister for State Government Services has already entered into a contract with Hansen Yuncken Pty Ltd for it to act as a "construction manager" in relation to this project. My instructions from Ms Judith Freeman of Services S.A. is that the existing contractual relationship only relates to building advice during the development documentation phase. Further stages of the proposed construction management arrangement are subject to Cabinet's approval.*

*Moreover, if this type of contracting model is to be implemented, then I consider that there is a range of legal, commercial and risk management issues which need to be addressed, especially in relation to the relationship between the Minister for State Government Services and the Soccer Federation. I have highlighted and briefly discussed some of these matters in the accompanying minute addressed to Services S.A., the Office for Recreation, Sport & Racing and the Department of Treasury & Finance."*

As to the Public Works Committee's request, the minute stated that the procedures described in Services SA's minute would be legally defensible and appropriate provided that:

- "1. Cabinet approves the Minister for State Government Services to be the principal contracting party and to be contractually responsible to undertake the development.*

2. *The various commercial, prudential and risk management issues attendant upon the Minister for State Government Services directly contracting to undertake the redevelopment are adequately addressed, especially in respect of the contractual relationship between the Crown on the one hand and the Soccer Federation on the other.*
3. *The processes set out in Services S.A.'s minute dated 24 July 1996 are implemented and observed. This would include the following:*
  - 3.1 *all usual government tender processes are implemented and observed;*
  - 3.2 *the Minister is exclusively responsible to accept the lowest conforming tenders;*
  - 3.3 *the Hindmarsh Redevelopment Executive Group and the Hindmarsh Redevelopment Committee are, in relation to the actual undertaking of the development, merely performing a liaison or consultative function and do not have any right or power to determine or influence the acceptance of tenders or the performance of the Minister's contractual, prudential or construction responsibilities and obligations.*

*Any "sponsorship" arrangements proposed by individual tenderers for "trade packages" are considered separately from the acceptance of the actual tender and are negotiated independently by the Soccer Federation directly with any such tenderer."*

I have found that no sponsorship opportunities were sought or obtained by the Soccer Federation from any tenderer for the construction of the redevelopment. As discussed above, although Woods Bagot offered sponsorship in their tender for the primary consultancy, no sponsorship was provided. This issue of sponsorship was properly supervised by Services SA and its predecessor, DBM, ensuring the integrity of the tender processes for the whole project.<sup>161</sup>

### **Accompanying Minute**

The minute sent by the Crown Solicitor's Office to the Minister for Recreation, Sport and Racing dated 26 July 1996 referred to an accompanying minute that addressed some of the *"legal, commercial and risk management issues"* attendant upon the relationship between the Crown and the Soccer Federation. The issues raised in this lengthy minute included:

- Hansen Yuncken Pty Ltd's appointment for more than *"building advice during the development documentation phase"* required Cabinet approval.
- The Attorney-General's requirement that the proposal for the Minister for State Government Services to be the principal in any construction agreements be submitted to Cabinet for consideration. This was to be done urgently.

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<sup>161</sup> See the section above headed "20 September 1995 – Tender Process For Appointment of Primary Consultant".



- The Crown Solicitor's Office had not been informed of the proposal for the Minister for State Government Services to be the principal until 10 July 1996 although the proposal had been the subject of "2-3 months" of action and consideration. Consequently, this change had not been reflected in the draft Funding Deed.
- The Crown Solicitor's Office had discussed the Council's willingness to consent to the development under the lease and to granting a licence to the Minister to build on its land. Mr Jaksa had also *"foreshadowed that some sort of 'facilitation deed' may be necessary between the Council and the Crown regulating the Council's right to terminate the lease."* Mr Jaksa proposed to write to the Council formally about these matters after he had reviewed the lease.
- If the Minister for State Government Services became the principal in the construction agreements, Mr Jaksa considered that *"a fundamental change is effected to the nature of the relationship between the Crown on the one hand and the Soccer Federation on the other as well as raising a constellation of related commercial, legal and risk management issues. Furthermore, all of these issues will have to be reflected in the relevant documentation."*

### **Final Minute to the Minister for Recreation, Sport and Racing**

On 29 July 1996, the Crown Solicitor's Office sent the Minister for Recreation, Sport and Racing an amended version of its minute dated 26 July 1996.

The final version omitted three paragraphs included in the 26 July version<sup>162</sup> and the reference to the accompanying minute addressing the range of legal, commercial and risk management issues that needed to be addressed as a consequence of a fundamental change in the legal structure for the project.

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<sup>162</sup> See the section under the heading "First minute to the Minister for Recreation, Sport and Racing" at page 105 above.

## CHAPTER 10 - AUGUST TO SEPTEMBER 1996

### 1 AUGUST 1996 - CIRCULATION OF REVISED FUNDING DEED

On 1 August 1996, Mr Jaksa of the Crown Solicitor's Office circulated a revised version of the draft Funding Deed to the Office for Recreation, Sport and Racing, the Department of Treasury and Finance and Services SA. The minute accompanying the draft sought instructions on the progress of the further Cabinet submission required by the Attorney-General that needed to address the proposal for the Minister for State Government Services to be the principal in the construction contract. That Cabinet submission also needed to inform Cabinet of the Crown Solicitor's concerns about the Soccer Federation's capacity to service the loan and should include an estimate of the amount of the shortfall over the life of the loan.

This minute also stated:

*"I also advise that the Attorney-General is of the view that the Crown should seek some security from the Federation for the performance of its obligations. The Funding Deed always envisaged this by providing that the Federation would, at the request of the Minister for Recreation, Sport and Racing, grant a mortgage of its lease or a fixed and floating charge. The granting of such a security would require the Council's consent pursuant to the lease. I note that I have already foreshadowed with the Council that a contractual accommodation between the Crown and the Council will be necessary in order to regulate the Council's rights to terminate the lease for breach by the Federation. This document would essentially provide that the Council could not terminate the lease without giving to the Crown the opportunity to remedy any relevant breach of the Federation."*

Mr Jaksa sent a copy of this minute to the Attorney-General and the Crown Solicitor. The covering minute stated:

*"I enclose a copy of my minute dated 1 August 1996 to various persons. I note that a revised version of the Funding Deed has been distributed. This amended version has been drafted on the basis that the Minister for State Government Services is to undertake a contractual obligation to construct the development. Extensive provisions have been inserted to minimize the risks attendant upon the Crown undertaking such an obligation. These include specific obligations on the Federation, releases of liability and indemnities given by the Federation, exclusions of representations and warranties and representations and warranties made by the Federation. In the light of the Crown's recent experience concerning the Hindmarsh Island bridge, a provision has also been included permitting the Minister for State Government Services to terminate his construction obligation if an event of frustration or of supervening illegality of performance should occur."*

*Given the current close working relationship between the Office for Recreation, Sport and Racing and the Soccer Federation, it is incumbent on me to alert you to the possibility that there may be an adverse reaction by the Minister or the Soccer Federation to the incorporation of these provisions in the Funding Deed."*

## **2 AUGUST 1996 - RETAINER OF WOODS BAGOT FOR STAGE 1 DESIGN WORK**

From May 1996, Woods Bagot negotiated with Services SA over the price they would be paid for their consultancy services for the rest of Stage 1. Services SA sought an interim approval from the Office for Recreation, Sport and Racing to fund consultancy fees and disbursements totalling \$477,000 for the project from that agency's budget, pending final Cabinet approval.

On 2 August 1996, Services SA wrote to Woods Bagot formally extending Woods Bagot's retainer to do the detailed design work for Stage 1 and to act as principal consultant during the construction phase for Stage 1.

## **6 AUGUST 1996 - VALUE MANAGEMENT STUDY**

Services SA conducted a Value Management Study for Stage 1 on 6 August 1996. The stated objective of the study was *"to ensure that client expectations are being achieved and to determine cost saving opportunities."*<sup>163</sup>

## **8 AUGUST 1996 - CROWN SOLICITOR'S OFFICE FURTHER COMPLAINT AFTER MEETING WITH THE SOCCER FEDERATION**

On 5 August 1996, a meeting was held with the Soccer Federation to discuss the draft Funding Deed. It was attended by Mr Scott and Mr Fletcher of the Office for Recreation, Sport and Racing, Mr Jaksa of the Crown Solicitor's Office and Mr Farrugia and Mr Scarsella of the Soccer Federation and its solicitor, Mr Charles Brebner.

Following the discussions at that meeting, on 8 August 1996, Mr Jaksa sent a lengthy minute to the Office for Recreation, Sport and Racing and the Department of Treasury and Finance complaining about divergences in his instructions and lack of agreement on fundamental issues. He copied his minute to the Attorney-General and the Minister for Recreation, Sport and Racing. Although this minute raised a number of significant concerns with the funding arrangements for the project, neither the Office for Recreation, Sport and Racing nor the Department of Treasury and Finance responded in writing.

### **Divergent Instructions**

*"The result of this meeting is that I am now required substantially to revise the terms of the Funding Deed. Yet again, it appears that my instructions materially diverged either from the actual basis of the arrangements with the Federation or from the Federation's understanding of these arrangements. From my perspective, this is manifestly an unsatisfactory manner in which efficiently to progress this project and is the cause of some frustration.*

*Furthermore, many of the matters discussed at that meeting and the divergences in understanding relate to fundamental aspects of the transaction. It is also unsatisfactory that there should exist such a lack of agreement on these matters at this late stage."*

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<sup>163</sup> Minutes of the meeting of the Executive Group held on 4 August 1996.

### **No Cabinet Approval or Consideration by Treasury**

*"Finally, many of the aspects of the financial arrangements summarized below have not been considered by Cabinet or the Department of Treasury & Finance. Each of these matters must be clearly discussed in the next Cabinet Submission."*

### **Government or Private Project**

*"The Federation perceives the project not as its own but as essentially a government project. It is of the opinion that the size, cost and other major aspects of the development have been determined for it by the government and it is merely a participant in this decision-making process with no overall control. If it is, and always was a government project, then it should have been presented as such to Cabinet and the various agencies."*

### **Whether Soccer Federation's Contribution Quarantined to Levies**

*"The Federation's position is that it is not responsible for the repayment of the loan other than from its collection of the proposed \$3 grandstand levy. All of its other revenue sources, including those earned or derived from activities conducted from Hindmarsh Stadium, are to be quarantined from and unavailable to contribute to the repayment of the loan which it is proposing to obtain.*

*Effectively this state of affairs entails that the Crown bears the risk of the repayment of the loan to the extent that levy collections are insufficient to service the loan.*

*I consider that it is crucial that the magnitude of this potential liability of the Minister for Recreation, Sport & Racing be estimated as accurately as possible and that Cabinet be advised of this estimate in the next Cabinet submission.*

*Moreover, I have discussed this matter yesterday with the Department of Treasury & Finance and it appears to be at variance with its understanding of the extent of the Federation's obligations as being to repay the loan from all revenue earned or derived from the use of Hindmarsh Stadium. The latter was the reason motivating the establishment of the Hindmarsh Stadium profit centre."*

### **Unreliability of the Ernst & Young Report**

*"The Federation is not prepared to warrant, to any extent, the truth, accuracy or completeness of the information the Federation provided to Ernst & Young for the purpose of the preparation of its report. Moreover, the Federation has not been provided with a copy of this final report. The representatives of the Federation stated that all they provided to Ernst & Young were their best estimates of future attendances at Hindmarsh Stadium. In these circumstances, I am not sure what credence can be given to the results of the Ernst & Young report.*

*However, I note that Department of Treasury & Finance have undertaken their own independent assessment of the Federation's ability to service the loan. I understand that its results are similar to those of Ernst & Young. It estimates that the Federation may be able to meet 38 percent and 25 percent of the loan repayments on best and worst case scenarios respectively. However, I note that this analysis did not take into account the effect on gross levy collections of the proposed arrangements for the issuing of complimentary tickets by the Federation."*

Free tickets were estimated to amount to \$144,000 of levy foregone.

### **Mortgage over Lease**

*"The Federation were [sic] loathe to consent to the granting of a mortgage of its lease to the Minister at this stage. However, I reiterate that this is a requirement of the Attorney-General."*

### **Unconditional Treasurer's Guarantee**

The Soccer Federation had *"erroneously and without authority"* written to the National Australia Bank Limited referring to an unconditional Treasurer's Guarantee. The Crown's Solicitor's Office had drafted a "last recourse" type and the Department of Treasury and Finance were adamant that it would not be an unconditional guarantee. The Government's position was undermined by the Soccer Federation's actions.

Mr Ingerson in giving evidence to this Examination said he *"totally refuted"* the complaints made by the Crown Solicitor's Office.

## **8 AUGUST 1996 - CROWN SOLICITOR'S OFFICE LETTER TO COUNCIL**

On 8 August 1996, Mr Jaksa of the Crown Solicitor's Office wrote to the Council seeking their consent for the Soccer Federation and the Crown undertaking the redevelopment and for the granting of a licence to the Minister for State Government Services for the construction of the development. His letter continued:

*"Moreover, given that the Crown is making a substantial contribution to the construction costs, the Crown has an interest in ensuring that Hindmarsh is used for the playing of soccer during the remainder of the term of the existing Lease and the period of any renewal exercised by the Federation. Consequently, the Crown may require the Federation to grant a mortgage of its lease. Such a mortgage would require the Council's consent pursuant to Clause 2.30. In any event, and as discussed with the writer, given the Crown's substantial investment in the development of the Hindmarsh Stadium, an agreement will need to be reached between the Council on the one hand and the Crown on the other regulating the Council's right to terminate the lease. I note that these matters are still under consideration and need to be discussed further."*

## **12 AUGUST 1996 - COUNCIL RESOLUTION TO ESTABLISH ADVISORY COMMITTEE**

On 12 August 1996, the Council resolved to establish an Advisory Committee to consider the future development of Hindmarsh Stadium. The terms of reference for this committee stated that its functions were:

- "1. To advise and recommend to Council on the long term development of the Hindmarsh Soccer Stadium site.*
- 2. To advise and recommend to Council on any planning policy changes with respect to the Hindmarsh Soccer Stadium development.*
- 3. To advise and recommend to Council on any matters relating to the existing ground lease arrangements between Council and SA Soccer Federation.*
- 4. To negotiate the long term future of other organisations currently housed on the site of the Hindmarsh Soccer Stadium and to recommend to Council as required."*

## **13 AUGUST 1996 - WOODS BAGOT REVIEW OF VALUE MANAGEMENT STUDY FINDINGS**

On 13 August 1996, Mr Hoare of Woods Bagot sent Services SA, the Soccer Federation, Hansen Yuncken Pty Ltd and Connell Wagner a fax about the possible cost savings and actions identified at the Value Management Study held on 6 August 1996.

\$160-135,000 of cost savings had been identified that were stated as immediately achievable to bring the project back close to "on budget". This was noted as not providing any contingency for extra items requested by the Soccer Federation following their last meeting with the NSL Clubs.

Mention was made of the deferral of the pitch extension: *"SASF have now received Olympic requirements formally and this includes a 120 x 80 pitch. Combined with the Minister's statement – this option appears to be politically unacceptable."*

## **13 AUGUST 1996 - MR SCOTT'S REQUEST FOR SOFTER APPROACH IN THE GUARANTEE**

By minute dated 13 August 1996 to the Under Treasurer, Mr Scott stated that the Soccer Federation had expressed their concern over the terms of the Deed of Guarantee requiring that the Soccer Federation be wound up before it was called up in case of default under the loan. He asked:

*"I would be grateful if you could consider a softer approach in the guarantee along the lines that would enable the Bank to approach the Treasurer immediately on default by the Federation. Note that this situation should not arise since our Minister is effectively guaranteeing the Federation's repayments through the Funding Deed."*

## 14 AND 15 AUGUST 1996 - CIRCULATION OF CABINET SUBMISSION FOR COMMENT

A draft Cabinet submission seeking final approval for the funding arrangements for Stage 1 was prepared by the Office for Recreation, Sport and Racing. Assistance was sought from the Crown Solicitor's Office for the wording of the sections summarising the terms of the Funding Deed.

Mr Jaksa of the Crown Solicitor's Office sent its further comments on the Cabinet Submission to the Office for Recreation, Sport and Racing that same day. He advised that the submission should:

- State that the Soccer Federation was not required to repay the loan from any other sources of its revenue.
- Raise the issue of free tickets not subject to the levy.
- Contain an estimate of the magnitude of the potential liability of the Minister for Recreation, Sport and Racing for a shortfall between the levy collections and the loan repayment.

Mr Jaksa then sent a minute to the Crown Solicitor of matters to be raised with the Attorney-General:

- He sought the Attorney-General's views on whether a mortgage over the lease was still necessary. Mr Jaksa felt it should be required although it may delay execution of the Funding Deed.
- He noted the compromise that had been reached over the alternatives of an unconditional or last recourse guarantee by including a requirement that the Soccer Federation serve notice on the Minister for Recreation, Sport and Racing for payment before any demand is made on the Treasurer.

*"...as the Minister is effectively underwriting the Federation's repayment of the loan, I am insisting that the Cabinet submission contain an estimate of the Minister's potential liability..."*

A revised version of the Draft cabinet submission was sent to the Crown Solicitor's Office on 15 August 1996 for further comment. Mr Jaksa faxed his handwritten comments of the draft to Mr Fletcher in the Office for Recreation, Sport and Racing on 16 August 1996.

His numerous comments included:

- As to the engagement of Hansen Yuncken Pty Ltd, *"but previous advice"*;
- As to paragraph 3.1.5 overstating the Soccer Federation's ability to meet its share of the loan repayments: *"T&F 2/3 – 3/4 - on what basis are these estimates made? Ernst & Young, Treasury?"*
- As to land acquisition: *"Has this commenced? My advice was that it was to go to Cabinet first. Please clarify."*
- As to the engagement of National Portfolio Strategies: *"Has this been done?"*

- As to the option documents: *"What document is this? Who prepared? On whose advice is it said to be appropriate?"*

By minute dated 16 August 1996, the Under Treasurer provided the Department of Treasury and Finance's view on the proposed Cabinet submission:

- The submission should take into account the proposed changes to the Guarantee discussed by Treasury with the Crown Solicitor's Office. Instead of an unconditional or last recourse guarantee, the bank will serve a notice on the Soccer Federation requiring payment and the service on the Minister for Recreation, Sport and Racing to pay before a demand can be made on the Treasurer.
- Land acquisition should be the subject of a separate Cabinet submission including a business case detailing cost/benefit analyses of the various options.

### **19 AUGUST 1996 - FURTHER COMMENTS FROM THE CROWN SOLICITOR'S OFFICE AND TREASURY**

By minute dated 19 August 1996 directed to the Director of the Cabinet Office, the Crown Solicitor's Office supplemented its comments on the Cabinet Submission dated 16 August 1996, although Mr Jaksa had not had the opportunity of considering the final version.

It stated:

*"... I have been instructed by the Attorney-General to advise Cabinet of his view that the State should obtain security from the Soccer Federation for the performance of its obligations contained in the Funding Deed and the Deed of Guarantee. It is proposed that this security be in the form of a mortgage, in favour of the Minister for Recreation, Sport & Racing or the Treasurer, of its interest as lessee of the land comprised in Hindmarsh Stadium. Moreover, it is also proposed that the Federation grant to the Minister for Recreation, Sport & Racing a fixed charge over the bank account for the deposit of levy collections and any moneys collected by the Federation from this levy.*

*I note that these matters have been discussed with the Soccer Federation and are contained as obligations on it pursuant to the Funding Deed. I also note that these documents will be prepared by me."*

By minute dated 19 August 1996, from the Deputy Chief Executive of the Cabinet Office to the Premier, it was noted that the Cabinet Submission for the Hindmarsh Soccer Stadium was received at 4 pm on Friday 16 August 1996. Officers from the Department of Treasury and Finance had expressed their concerns regarding the Guarantee Deed which were summarised as:

- Treasury proposed that the Government's contribution be limited to \$4.0625 million. Cost overruns are to be shared equally by the Government.
- The estimated shortfall in the Soccer Federation meeting its loan repayments was \$185,000. Free tickets and pricing may inhibit the Soccer Federation's repayments.
- The underwriting by the Minister for Recreation, Sport and Racing of this shortfall was a substantial move away from the 29 April 1996 Cabinet approval.



## **19 AUGUST 1996 - CABINET FINAL APPROVAL OF STAGE 1 FUNDING ARRANGEMENTS AND APPOINTMENT OF CONSTRUCTION MANAGER**

On 14 August 1996, Mr Ingerson as Minister for Recreation, Sport and Racing signed a Cabinet submission seeking final approval of the Stage 1 budget and funding arrangements and appointment of Hansen Yuncken Pty Ltd as construction managers. Cabinet granted its approval in the terms recommended save that it was noted that tenders for trade packages could not be let until the Public Works Committee's report was finalised.

### **Funding**

Approval was sought for expenditure of \$7,648,000 to take the project cost to \$8.125 million, of which the Government would pay half (\$4.0625 million).

Detail was included as to the essential features of the draft Funding Deed, including some of the issues advised by the Crown Solicitor's Office as necessary to be brought to Cabinet's attention. For example, the changes in the arrangements since the April 1995 Memorandum of Understanding<sup>164</sup> and that the Soccer Federation would not contribute 50 percent of the debt servicing costs as approved by Cabinet on 29 April 1996.

### **Deed of Guarantee**

The submission referred to the Soccer Federation's preference for an unconditional guarantee although the Crown Solicitor's Office had prepared a "last recourse" type. The submission stated *"[t]his matter is the subject of ongoing discussions and will need to be resolved before any documentation is signed, However, it is anticipated that a resolution will be found."*<sup>165</sup>

The Cabinet submission did not ask Cabinet to resolve this issue.

### **Principal in the Construction Contract**

As required by the Crown Solicitor's Office, this issue was brought to Cabinet's attention. The contrary views of the Crown Solicitor's Office were not stated in writing to Cabinet. It was noted however:

*"This proposal is supported by the Minister for Recreation, Sport and Racing, the Minister for State Government Services, the Office for Recreation, Sport and Racing, Services SA and the South Australian Soccer Federation."*<sup>166</sup>

### **Construction Manager**

Details of the selection process and contract made with Hansen Yuncken Pty Ltd were included.

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<sup>164</sup> That is, change from new eastern grandstand to redeveloped western grandstand, increased project cost, Government contribution to be directly funded as a grant and letter of intent only required from Soccer Australia.

<sup>165</sup> Paragraph 3.3.2.

<sup>166</sup> Paragraph 3.4.3.

## Land Acquisition

The submission also included the following recommendation that Cabinet accepted:

*"Note that options for the purchase of land in Hindmarsh Place are being pursued by the Office for Recreation, Sport and Racing as part of the overall Master Plan for the bid for the Sydney 2000 Olympics preliminary soccer matches."*

The explanation given for acquiring the options was as follows:

### *"3.6 Land Acquisition*

*3.6.1 A long term strategy has been prepared for the site which will provide a framework for orderly implementation of any future development and systematic upgrading of the site for the Sydney 2000 Olympics qualifying matches. Measures proposed include the closure of Hindmarsh Place which will provide off-street car parking, upgrading site fencing to soften the interface with the streetscape, site paving and tree planting, widening of pavements and development of pedestrian zones at main entries.*

*In the Cabinet submission in April 1996 it was noted that the Office for Recreation Sport and Racing is to investigate town planning, traffic planning and land acquisition for the future development of the southern end of the stadium. It was also noted in the Cabinet submission that the indicative cost for the land acquisition would be \$1,750,000.*

*3.6.2 The firm National Portfolio Strategies (NPS) has been engaged by the Office for Recreation Sport and Racing to a secure six month option on allotments in Hindmarsh Place. The cost to secure the options is in the order of \$10,000 which will be funded from the Office for Recreation Sport and Racing's budget.*

*3.6.3 Preliminary investigations completed by NPS indicate the cost to Government to purchase the allotments would be in the order of \$1,205,000. However to acquire all of the land in Hindmarsh Place would require the purchase of an additional allotment on the corner of Manton and Hindmarsh Place which has a current market value of between \$1.76M and \$1.935M.*

*3.6.4 For South Australia to maximise its chance of hosting the Sydney 2000 Olympics qualifying matches and other international soccer and rugby union fixtures, funds to a maximum of \$3.2M will be required in 1997/98 to acquire the land in Hindmarsh Place.*

*3.6.5 It is now proposed the Minister for Recreation Sport and Racing will authorise NPS to proceed with securing the options on the land in Hindmarsh Place. The mechanism to be adopted for this will be by way of a nomination form similar to that used by the Minister for Employment, Training and Further Education for land acquisition in Light Square, Adelaide.*

3.6.6 *Full details of the acquisition will be the subject of a separate Cabinet Submission."*

The stated reason for the land acquisition was the concern expressed by Sydney about the constriction of the site. The submission committed the Government to expenditure on land acquisition when there had been no decision by Cabinet to pursue any work in Woods Bagot's master plan beyond the western grandstand.

Mr Ingerson has informed this Examination that:

*"The reality of which Cabinet was well aware is that once it had committed to the extension of the Western stand to the south, and with the extension of the pitch, future development would encroach into Hindmarsh Place."*

## **20 AUGUST 1996 - LETTER OF NOMINATION TO NATIONAL PORTFOLIO STRATEGIES**

On 20 August 1996, following recent discussions, National Portfolio Strategies sent Mrs Hall:

- a letter of nomination authorising National Portfolio Strategies to act for the Minister for Recreation, Sport and Racing in acquiring land south of the stadium;
- a map showing the targeted land; and
- their Strategy Overview including details of the properties to be acquired and the estimated acquisition price of \$4.145 million. It contained no discussion of how the land would be used if acquired.

On 26 August 1996, National Portfolio Strategies sent to Mr Ingerson a letter enclosing the Strategy Overview and the letter of nomination for him to sign.

Mr Ingerson executed the letter of nomination. Between September and November 1996, National Portfolio Strategies proceeded to enter into four option contracts on his behalf as Minister for Recreation, Sport and Racing. The letter to Mr Ingerson stated that the option contracts provided for settlement of the purchase of the land after 1 July 1997 *"(ie within the 1997/98 Budget Year)"*.

## **23 AUGUST 1996 - COUNCIL'S CONSENT FOR REDEVELOPMENT**

By fax dated 23 August 1996, Perry responded to the Crown Solicitor's Office letter dated 8 August 1996. It stated that the matter had been considered by the Council at its meeting of 12 August 1996 and resolutions passed consenting to redevelopment and granting to an exclusive licence to the Minister for State Government Services to undertake the redevelopment. Neither the Council in meeting or the fax addressed the wider issued of the proposed Facilitation Deed.

## **23 AUGUST 1996 - HANSEN YUNCKEN PTY LTD RETAINER**

On 23 August 1996, the Minister for State Government Services entered into the Construction Management Agreement with Hansen Yuncken Pty Ltd.

That agreement committed the Government to pay Hansen Yuncken Pty Ltd for managing the complete construction of Stage 1.

## **26 AUGUST 1996 - COUNCIL'S SUPPORT FOR DEVELOPMENT APPLICATION**

At a meeting of the Council held on 16 August 1996, the Council resolved to support the Development Application for Stage 1.

## **27 AUGUST 1996 - EXECUTIVE GROUP DEFERRAL OF PITCH UPGRADE**

The minutes of the Executive Group meeting held on 27 August 1996 record that in considering the budget overrun issues from the Value Management Study, "increasing the pitch size" was decided to be treated as a further contingent item.

*"The Executive Group noted and endorsed this strategy as an available approach to reducing expenditure, although, the Executive Group did not consider the strategy particularly attractive.*

*Michael Scott and Tony Farrugia reported on the Soccer 2000 Bid.*

*Woods Bagot agreed to provide a drawing showing all space requirements necessary to meet bid requirements. It was noted that not all of these requirements form part of the current funded proposal.*

*The Soccer 2000 Bid is due to be lodged by the end of September 1996. Michael Scott discussed the possibility of including some of the project cost (pitch increase) as part of the Bid funding."*

## **28 AUGUST 1996 - THE PUBLIC WORKS COMMITTEE'S 33<sup>RD</sup> REPORT**

In August 1996, the Public Works Committee published its 33<sup>rd</sup> Report.

The Public Works Committee reported that it had three concerns with the project:

- car parking;
- procurement method; and
- land ownership.

### **Car Parking**

As to car parking, the Committee urged the Office for Recreation, Sport and Racing and the Soccer Federation to address these issues as a matter of urgency and stated that it would monitor their progress in doing so.

## **Procurement Method for Contract Delivery**

The Committee was concerned that the method for management of the construction of the redevelopment provided increased opportunities for the Soccer Federation to obtain sponsorship but that that gave rise to a greater risk of conflict of interest. The Public Works Committee recommended the project on condition that all the requirements set out by the Crown Solicitor in its letter dated 29 July 1996 were met.

## **Land Ownership**

The Committee reported that all the land involved in the stadium was owned by the Council and that lease negotiations had recently been concluded whereby the stadium would be leased by the Council to the Soccer Federation for 21 years with a right of renewal for a further 21 years.

Further:

*"Although the Soccer Federation has secured use of the facility for a further forty two years, as landlords, the City of Hindmarsh Woodville will be the major beneficiaries of the stadium upgrade. To date the Hindmarsh Woodville Council have not been approached to make a contribution toward the cost of the stadium upgrade and the Committee recommends that this matter be discussed with the council.*

*Furthermore, given the level of capital expenditure associated with the project, the Committee is concerned by the possibility that the facility may no longer be available to the South Australian Soccer Federation at the end of the lease term."*<sup>167</sup>

## **Project Justification**

The Public Works Committee stated in its Report on Stage 1:

*"This upgrade will provide Adelaide with the necessary facilities to host preliminary matches for the Sydney 2000 Olympics."*<sup>168</sup>

### **"Necessity of Construction**

*To ensure Adelaide retains the opportunity to host preliminary rounds of the competition, it is essential that a stadium meeting the FIFA minimum requirements is available...*

*The proposed upgrade will ensure those requirements are met."*<sup>169</sup>

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<sup>167</sup> Page 13 of the 33<sup>rd</sup> Report.

<sup>168</sup> Page 4.

<sup>169</sup> Page 9.

## **29 AUGUST 1996 - LICENCE AGREEMENT BETWEEN SOCCER FEDERATION AND THE NSL CLUBS**

While negotiation of the Funding Deed and design work on the stadium continued, Mr Avory, Mr Scarsella and Mr Farrugia on behalf of the Soccer Federation entered into negotiations with the two NSL Clubs that had NSL teams as to the terms of the licence under which those clubs would use Hindmarsh Stadium.

The negotiations concluded with the Soccer Federation sending each of the NSL Clubs a detailed six page letter on 29 August 1996 recording the licence agreement and requesting them to counter-sign it and return it to him. The NSL Clubs signed and returned the letters, although West Adelaide sent a covering letter containing a number of minor variations to the agreement.

The licence agreement did not compel the clubs to play their NSL matches at the stadium nor any particular matches. An addendum to the licence agreement was executed by both NSL Clubs on 2 October 1996 that included that obligation.

The licence agreements were negotiated and drafted without the assistance of solicitors. The Government was not given an opportunity to comment upon the licence agreements, even though the use of the stadium by the NSL Clubs in national matches was an important justification for the upgrade. Despite their imperfections, the documents constituted binding legal agreements.

The NSL Clubs later sought, successfully, to renegotiate the licence agreements and then later again sought to treat them as null and void.

## **30 AUGUST 1996 - COUNCIL'S LETTER TO MR INGERSON ABOUT NOMINEE FOR ADVISORY COMMITTEE**

On 30 August 1996, Mr John Dyer, the Mayor of the Council, wrote to Mr Ingerson as Minister for Recreation, Sport and Racing inviting him to nominate a representative for the Advisory Committee the Council proposed to establish. The letter stated:

*"Stage 2 envisaging a comprehensive upgrade of the entire site to achieve its full potential, has not yet been finalised, involving a number of issues requiring careful management. In order to provide an effective vehicle to achieve this, Council has also formally established the Hindmarsh Soccer Stadium Advisory Committee (HSSAC)..."*

## **SEPTEMBER 1996 - ADELAIDE'S BID TO SOCOG**

### **Discussions with SOCOG Representatives**

Adelaide's bid team engaged in a number of discussions with representatives of SOCOG about the requirements for the bid. On 9 September 1996, Mr Spurr, Mr MacFarlane, Mr Ciccarello and Mr Farrugia of the Sydney 2000 Bid Committee met in Sydney with Mr Elphinston and Mr Simmonds of SOCOG. Mr Farrugia produced detailed minutes of that meeting. According to those minutes the purpose of the meeting was to clarify Sydney's technical requirements. Mr MacFarlane presented to SOCOG an outline of what Adelaide proposed to do to Hindmarsh stadium to make it suitable for the staging of the Olympics. Mr Farrugia's minutes record only one item of Adelaide's proposal that the SOCOG representatives said would not be adequate. That was the size of the change rooms.

SOCOG stated that it might not be necessary to provide separate warm up areas since warm up could take place on the pitch, as it had in Atlanta.

SOCOG were aware that there was a longer term plan for further work at the site and asked when that work would be done. Mr Farrugia volunteered that it was hoped that work would be done by 2000.

### **Lodgment of Final Bid**

The final bid document was lodged with SOCOG under cover of a letter signed by the Premier dated 20 September 1996.

The final bid contained drawings prepared by Woods Bagot showing how the ground would be laid out for the matches.

The bid was considered by the members of the Bid Committee to be sufficient to win matches for Adelaide.

### **15 SEPTEMBER 1996 - TREASURY AND FINANCE APPROVAL OF SHORTFALL IN SPORT AND RECREATION BUDGET**

On 15 September 1996, approval was granted by the Treasurer for an annual provision of \$50,000 to be included in the Office for Recreation, Sport and Racing budget as a grant to the Soccer Federation on an as required basis as a "safety net" given the impact on the Soccer Federation of the additional cost of borrowing externally (instead of from SAFA) and the guarantee fee.

An internal Department of Treasury and Finance minute <sup>170</sup> recorded that the Minister for Recreation, Sport and Racing had "earmarked" a portion of funds from the annual allocation of the Sport and Recreation Fund to fund any shortfall in the Soccer Federation's loan repayments. Cabinet had subsequently approved this, with \$250,000 being allocated for this purpose.

### **16 SEPTEMBER 1996 - NOMINATION OF MRS HALL FOR COUNCIL ADVISORY COMMITTEE**

Mr Ingerson as Minister for Recreation, Sport and Racing nominated Mrs Hall for the Council's Advisory Committee. His letter stated *"The Council's initiative of establishing this Committee has my endorsement and it will provide an effective mechanism for addressing a wide range of issues associated with any future upgrading at the Hindmarsh stadium."*

### **19 SEPTEMBER 1996 - RIDER HUNT BRIEFING ON COST ESTIMATE FOR ADDITIONAL PERMANENT GRANDSTANDS**

On 19 September 1996, Mr Steve Knight from Rider Hunt <sup>171</sup> attended a meeting at Woods Bagot's office with Mr Bollen and Mr Hoare. This Examination has not been provided with any minutes or file note of that meeting.

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<sup>170</sup> Minute dated 15 September 1996 from the Under Treasurer to the Treasurer.

<sup>171</sup> The cost consultant retained by Woods Bagot.

This meeting was the first instruction they had been given to do this work. <sup>172</sup>

Either at that meeting or soon after, Rider Hunt were provided with two 1:750 scale concept drawings of the stadium marked "CD13" and "CD14" and another drawing marked "CD08". This Examination has not been provided with copies of those drawings. <sup>173</sup>

"CD13" and "CD14" described two options for further development of Hindmarsh Stadium, both providing an additional 15,000 seats. <sup>174</sup>

Option 1 and Option 2 were only slightly different. Option 2 involved slightly more demolition work, site works and landscaping and additional car parking. Option 2 was based on an assumption that an additional parcel of land would become available.

## **19 SEPTEMBER 1996 - EXECUTIVE GROUP DEFERRAL OF PITCH UPGRADE**

Also on 19 September 1996, the Hindmarsh Stadium Executive Group resolved that the pitch upgrade that had until then been part of the project should be deferred. That pitch upgrade was essential to comply with the July 1996 SOCOG/FIFA minimum requirements. By that decision, the Committee ensured that Stage 1 would not meet FIFA requirements for pitch dimensions.

That resolution occurred in the following context:

- On 9 September 1996, SOCOG informed Mr Farrugia, Mr Spurr, Mr MacFarlane and Mr Ciccarello, representatives of the Sydney 2000 Bid Committee, that the SOCOG/FIFA requirements as to pitch size were "not negotiable". <sup>175</sup> Of those four, only Mr Farrugia was on the Hindmarsh Stadium Redevelopment Committee Executive Group.
- On 20 September 1996, Adelaide's bid to SOCOG to host matches in the 2000 Olympic Soccer Tournament was finalised when Premier Dean Brown signed a covering letter of that date. That bid had as an attachment <sup>176</sup> a document prepared by Woods Bagot headed "Hindmarsh Stadium - Future Development". That attachment referred to a single re-development at a cost of \$8.5 million. <sup>177</sup> The attachment included a list of the components of the project that included the following:

*"The playing surface increased in size to FIFA full international standard of 120m x 80m."*

On 25 September 1996 Ms Howe and Ms Freeman of Services SA signed a minute prepared by Mr Browne addressed to the Minister for State Government Services setting out the then current estimated cost of Stage 1. A summary of that minute is set out in the box below.

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<sup>172</sup> Letter from Rider Hunt to Mr Scott dated 26 September 1996.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Recorded in Mr Farrugia's minutes of the meeting with SOCOG. The words quoted were in block capitals in the minutes.

<sup>176</sup> Attachment 8.

<sup>177</sup> Despite the discrepancy between that figure and the budget that had at that time been approved by Cabinet it is plain that attachment referred to the western grandstand redevelopment project, later known as Stage 1.



The minute recorded no comparison of the proposed changes to the benefits of the project or what effect they would have. The pitch upgrade was described as a "deferral" only to be added back to the project if other items cost less than expected after tendering.

Also passing without comment were the facts that two of the items, temporary toilets and corporate box air conditioning, were costs which had until then been entirely the responsibility of the Soccer Federation but now had become the Government's responsibility.

	\$	\$
Approved budget		8,125,000
<i>plus</i> Recent developments:		
Design changes	200,000	
Changes required after obtaining geotechnical advice	136,000	
Development Assistance Commission requirements	130,000	
Soccer Federation changes:		
Extend lift to upper tier level	30,000	
Eastern side toilets	43,000	
Temporary toilets	10,000	
Air conditioning to corporate boxes	100,000	
General changes	29,500	
Total additional costs		+ 678,500
<i>Less</i> Deferred items		- 556,000
New estimate		8,247,500

## 24 SEPTEMBER 1996 - ADDITIONAL PERMANENT GRANDSTANDS ESTIMATE REVIEW MEETING

On 24 September 1996, Rider Hunt met with Mr Ford at Woods Bagot.<sup>178</sup> There are no minutes or file note of that meeting.

Although Rider Hunt later described the meeting as an "*estimate review meeting*", a handwritten note from Rider Hunt to Mr Hoare records that at the meeting Mr Ford suggested to Rider Hunt that Mr Hoare should be given the estimate to review.

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<sup>178</sup> Ibid.

## 26 SEPTEMBER 1996 - DRAFT COST ESTIMATE FOR ADDITIONAL PERMANENT GRANDSTANDS

On 26 September 1996, Mr Knight of Rider Hunt sent a draft of the cost estimate to Mr Hoare with a handwritten covering note.<sup>179</sup>

In the note Mr Knight recorded that Mr Ford had suggested that Mr Hoare review the estimate before it was sent to the Department of Recreation and Sport. The draft on Woods Bagot's file adjacent to that note covers only Option 1, although the terms of the note suggest that both options were enclosed.

The draft cost estimate for the building work comprised in Option 1 totalled \$25,491,093.

Mr Knight noted that the draft did not yet include an allowance for escalation but that would be included.

## 26 SEPTEMBER 1996 - RIDER HUNT REVISION OF DRAFT COST ESTIMATE FOR ADDITIONAL PERMANENT GRANDSTANDS

There is no record of Woods Bagot's comments on the draft cost estimate. However, a comparison of the draft for Option 1 and the version sent to the Department of Recreation and Sport shows that Rider Hunt increased their estimate significantly.

The total for the building work comprised in the final version was \$29,039,592. The difference between that total and the total of \$25,491,093 in the draft was accounted for by the following items:

	Draft \$	Final \$	Difference \$
Grandstands	14,846,500	18,518,700	3,672,200
Car Parking	872,545	667,119	(205,426)
Roadway outside boundary	616,480	586,480	(30,000)
Practice Pitches	212,340	196,065	(16,275)
External Services	757,000	885,000	128,000
			3,548,499

The increase was accounted for almost entirely by the greater estimated cost of the grandstands.

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<sup>179</sup> The note was marked "26/9/95". Rider Hunt had not been retained by that date in 1995 so it is clear that date should be 1996.

## **26 SEPTEMBER 1996 - RIDER HUNT COST ESTIMATE**

On 26 September 1996, Rider Hunt sent their completed cost estimate to Mr Scott. It included two options that were only slightly different. The three largest cost elements were common to both options:

- additional permanent grandstands at a cost of \$18,518,700;
- a sports training facility at a cost of \$2,058,750;
- a lighting upgrade at a cost of \$2,285,000.

The elements of the estimate are consistent with Rider Hunt having been asked to estimate what it would cost to provide the facilities required for the 2000 Olympic Soccer Tournament entirely as permanent facilities.

## CHAPTER 11 - OCTOBER 1996 TO FEBRUARY 1997

### 3 OCTOBER 1996 - MR SCOTT'S ADVICE TO SOCCER FEDERATION ABOUT LOAN COSTS

By letter dated 3 October 1996, Mr Scott informed the Soccer Federation that the Crown Solicitor's Office had advised that the costs of the loan were the Soccer Federation's responsibility and not the Government's. He suggested that the Soccer Federation apply for a grant from the Minister for Recreation, Sport and Racing under the Statewide Development Program.

### 4 OCTOBER 1996 - SOCOG RESERVATIONS ABOUT CONSTRUCTIONS OF HINDMARSH STADIUM SITE

In the course of making arrangements for the visit to Adelaide of SOCOG's bid evaluation team, Mr Simmonds from SOCOG, spoke to Mr MacFarlane of Australian Major Events. According to Mr MacFarlane's memorandum of the conversation, he was told that SOCOG's major concern about Adelaide was the constrained site. Even so, SOCOG conceded that SOCOG *"probably needed Adelaide as much as Adelaide needed the event"*.

### 13 OCTOBER 1996 - LAUNCH OF THE REDEVELOPMENT

Mrs Hall as Ambassador for Soccer and the Soccer Federation hosted a special launch of the Hindmarsh Stadium Redevelopment on Sunday 13 October 1996 at Hindmarsh. The launch was followed by the kick off of the 1996/97 NSL season.

### 14 OCTOBER 1996 - EXECUTION OF FUNDING DEED

On 14 October 1996, the Treasurer, the Minister for Recreation, Sport and Racing, the Minister for State Government Services and the Soccer Federation executed the Funding Deed. This document records the terms upon which the Government agreed to provide the Soccer Federation with financial assistance in undertaking Stage 1 of the Hindmarsh Stadium redevelopment.

In the Funding Deed:

- the Government promised to pay for half of the cost of construction work for the redevelopment of the western grandstand at Hindmarsh Soccer Stadium;<sup>180</sup> and
- the Minister for Recreation, Sport and Racing promised to pay that part of the other half of the cost that the Soccer Federation could not fund from levies imposed on spectators using the western grandstand.

Under the Funding Deed, the Soccer Federation was entitled to insist upon the Government contributing a minimum of \$4.0625 million to the upgrading of the western grandstand at Hindmarsh Stadium.

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<sup>180</sup> To a limit of \$4.062 million.

Effectively, the Minister for Recreation, Sport and Racing underwrote any shortfall between the Soccer Federation's loan repayments and the levies. The Minister's obligation cut in before the Treasurer's Guarantee would be called.

The final terms of the Deed of Guarantee between The Treasurer, the National Australia Bank Limited and the Soccer Federation and the Loan between the National Australia Bank Limited and the Soccer Federation were still being negotiated by representatives of Government when the Funding Deed was executed. Those documents were executed on 23 October 1996.

## **15 OCTOBER 1996 - START OF ON SITE CONSTRUCTION WORKS FOR STAGE 1**

Work commenced on site on Tuesday 15 October 1996, five weeks behind the project timelines.

While the Funding Deed had been executed, its terms were not operative until all of the conditions precedent to it had been satisfied. A key condition precedent was execution of the Loan between the Soccer Federation and the National Australia Bank Limited and the Deed of Guarantee, neither of which was executed until 23 October 1996. Negotiations continued between Finlaysons (the National Bank's solicitors), the Crown Solicitor's Office and the Department of Treasury and Finance over the economic cost payable to the bank on termination of the Loan until shortly before execution of the final documents on 23 October 1996.

## **16 OCTOBER 1996 - SELECTION OF PRACTICE VENUES FOR DISPLAY TO SOCOG**

On 16 October 1996, Mr MacFarlane of Australian Major Events wrote in a fax to Mr Ciccarello:

*"Further to our discussion late yesterday, the following are my thoughts on the selection of training venue sites, for the SOCOG visit.*

*The opposing forces at work in this matter is the SASF, whose preference, naturally, is that all training site venues be at its affiliated club grounds and that the "action" be shared between national and state league clubs. The other approach suggests that we should be setting soccer politics aside and presenting to the SOCOG delegation, the best training venues on offer, in Adelaide, irrespective of whether such sites are the home of an SASF affiliated soccer club or not.*

*The problem with the SASF approach, is that it does not have enough clubs of a suitable standard (in my opinion) to present with conviction, to the SOCOG delegation. Tony Farrugia's reaction to the suggestion that some of the SASF clubs might not be considered to be of a suitable standard, is that the State Government should help bring these clubs up to scratch and this contribution becomes the legacy (over and beyond Hindmarsh), delivered to soccer, as a consequence of the staging of this event. My response to Tony was that a significant proportion of the Adelaide bid already has to be taken 'on promise', at least in relation to the competition venue and that we should not ask SOCOG to also take 'on promise' too many of the training venues.*

*One point on which the SASF is implacable, is the use of the Adelaide Oval. Tony's view [Farrugia] is that if the Adelaide Oval is offered up as a training venue, SOCOG might*

*push the line that it should be used as the competition venue. Tony understands that Elphinston has seen the Adelaide Oval and is most impressed with this venue.*

*So taking all of the above into account, I suggest that we should settle on the following training venues:*

- *Adelaide City's training venue in southern Parklands*
- *West Adelaide's training venue in southern Parklands*
- *West Torrens Birkalla's facility*
- *the Mile End athletic stadium*

*This approach will result in being able to offer SOCOG high standard training facilities, close to the centre of Adelaide. From a political perspective, the benefits are seen to be spread around in the selection of these sites. The one major disadvantage, however, is that Adelaide City and West Adelaide sites would require the provision of temporary fencing. This is both expensive and delivers no lasting benefit.*

*The bottom line, however, is that allowing for all other considerations, we must offer up the best quality bid possible. To do otherwise, jeopardises our chances of success in this venture and obviously, unless we succeed in securing a pool for Adelaide, nobody wins a prize!"*

## **23 OCTOBER 1996 - FINALISATION OF STAGE 1 LOAN AGREEMENT AND DEED OF GUARANTEE**

Negotiations between the Crown Solicitor's Office and the Department of Treasury and Finance and Finlaysons, solicitors for the National Australia Bank Limited were not finalised over the terms of the Loan Agreement between the Soccer Federation and the bank until 23 October 1996. On that day, the Loan Agreement and the Deed of Guarantee between the Treasurer, the bank and the Soccer Federation were executed.

On the same day, the Office for Recreation, Sport and Racing sent the National Australia Bank Limited a department cheque for \$15,000 in payment of the Soccer Federation's application fees for the loan of \$4.0625 million.

## **23 OCTOBER 1996 - EXECUTIVE GROUP REASSESSMENT OF BUDGET AND WORK SCOPE**

The minutes of the Executive Group meeting held on 23 October 1996 record that the meeting discussed a revised budget and scope of work strategy following discussion between Mr Farrugia of the Soccer Federation, Mr Scott and Mr Hoare.

This budget assumed additional funding of \$418,000, deleting from the project the eastern side works and the pitch upgrade and was stated to include as priority items:

- temporary catering and spectator facilities during construction;
- level one concessions;

- level four corporate air conditioning (that the Soccer Federation had now agreed with the NSL Clubs would be part of the project cost); and
- the Soccer Federation's loan costs (although the Crown Solicitor's Office had previously advised were not the Government's responsibility).

## **24 OCTOBER 1996 - MINISTER INGERSON'S TIP OFF**

After Adelaide's bid was submitted, SOCOG representatives arranged to come to Adelaide to inspect the venue on 29 October 1996, arriving on the evening of the previous day.

In the intervening period, according to Mr Ingerson, there were communications among Mr Ingerson, his departmental officers, SOCOG representatives and Victorian Government Ministers, that led to Mr Ingerson and the Bid committee forming the view that Adelaide's bid might not succeed. One such communication was between a senior SOCOG official and Mr Ingerson.

In the week prior to the SOCOG visit, Mr Ingerson had a telephone conversation with a senior SOCOG official who said words to Minister Ingerson to the effect that Adelaide's bid was at the lower end and that if Adelaide still wished to be part of the Olympic Games, Adelaide needed seriously to reconsider its position.

Mr Ingerson said the SOCOG official did not give any detail of why that was the case or mention any particular aspects of Adelaide's bid or the stadium that required improvement. Mr Ingerson regarded the SOCOG official's comments as only 50 percent likely to be an accurate statement of SOCOG's position. Although he had reservations about the accuracy of what he had been told, Mr Ingerson said he was not prepared to go on with the bidding process without a second option. Mr Ingerson said he spoke to Premier Olsen about the need to have a second option and that the Premier was "*quite happy*" for him to get an alternative provided whatever was agreed as needed was approved by Cabinet.

The senior SOCOG official gave evidence before this Examination that he did not recall the specific telephone conversation, although he had conversations with Mr Ingerson on a number of issues over the several years he was with SOCOG. He gave evidence that it was unlikely that he said that Adelaide was unlikely to be chosen as a venue because he did not know whether or not that was the case.<sup>181</sup> He said he probably conveyed to Mr Ingerson that because SOCOG would not assume any financial burden from hosting Olympic soccer matches outside Sydney and Adelaide was located further from Sydney than others, Adelaide needed to be confident that the recovery and financial model SOCOG sought was reflected in Adelaide's bid. Adelaide needed to consider the matters that made it less attractive than other venues and how it would bring those matters into account in its bid.

### **Instructions to Woods Bagot**

As a result of that telephone conversation, Mr Ingerson telephoned Mr Ford of Woods Bagot and asked to meet him. Mr Ford went to Mr Ingerson's office. Mr Ingerson asked Mr Ford what the options were for the development. Mr Ford described to Mr Ingerson the options from the master plan that had been explored earlier in the year and told him about some of the options for land acquisition

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<sup>181</sup> The senior SOCOG official was not involved on a day to day basis in the selection of venues for the soccer tournament. That was left to SOCOG's Sports Commission headed by Mr Graham Richardson.

in the area. Mr Ingerson asked Mr Ford to prepare some drawings of some options that could be used during SOCOG's visit the following week if necessary.

Mr Ford and his staff spent many hours, in the ensuing days before Tuesday 29 October 1996, including long hours right through the intervening weekend, preparing concept plans for a much bigger development of the stadium. The exact plans prepared have not survived, nor is it clear how many and what options those plans showed. However, the plans did involve options including:

- Acquisition of all of the land south of the stadium between Hindmarsh Place and Richard Street;
- Extensive landscaping of the acquired land to turn the entire triangle of land bounded by Holden, Richard and Manton Streets into a soccer park precinct;
- One full size and one half size practice pitch south of the stadium; and
- New permanent stands on the northern, southern and eastern sides of the stadium.

Mr Ford showed the plans to Mr Ingerson once they were finished. The Minister was impressed that such plans had been able to be prepared in such a short time.

### **27 OCTOBER 1996 - REIMBURSEMENT OF \$300,000 TO THE SOCCER FEDERATION**

On 27 October 1996, the Office for Recreation, Sport and Racing sent a cheque for \$300,000 to the Soccer Federation. It reimbursed the Soccer Federation for \$300,000 of costs incurred and paid by the Soccer Federation for the construction of its office facilities in December 1994. Costs of \$300,000 were agreed to be Project Costs pursuant to Clause 30 of the Funding Deed. Mr Ingerson as the Minister for Recreation, Sport and Racing had agreed to repay these costs even though all the conditions precedent to the Funding Deed had not been met or waived. He did so on condition that the Soccer Federation undertook to ensure that appropriate resolutions were adopted by the Council of Clubs on 25 November 1996.

### **28 OCTOBER 1996 - LETTING OF TRADE PACKAGES FOR CONSTRUCTION**

On 28 October 1996, Mr Scott sent a minute to Mr Ingerson as Minister for Recreation, Sport and Racing informing him that as the legal documents had now been executed, the demolition trade package could now be let for work to commence on site.

### **29 OCTOBER 1996 - VISIT BY SOCOG DELEGATION**

On the evening of 28 October 1996, a delegation from SOCOG arrived in Adelaide to examine the Hindmarsh Stadium site. They visited the stadium the next day.

There is no contemporaneous record of the visit. Later the visit was repeatedly referred to as the key point at which it became clear that the redevelopment of the western grandstand alone would not result in a venue that would be satisfactory for Olympic soccer.



Different attendees have different recollections of what occurred but the following facts are well established by the oral evidence given to this Examination.

- The delegation had breakfast on the Tuesday with the Premier in the State Administration Centre.
- The delegation was shown the practice venues before visiting Hindmarsh stadium.
- At the stadium the delegation walked around the site, escorted principally by Mr Farrugia and Mrs Hall.
- After the tour of the site, a presentation was made to the delegation in a room at the Soccer Federation's offices known as the "Band Room". The presentation was made by Woods Bagot and Australian Major Events using computer based slides.
- There was discussion after the presentation.
- Minister Ingerson arrived late, while the delegation was in the Band Room. The presentation by Woods Bagot and Australian Major Events had already started.
- After some discussion, Mr Ingerson made a further presentation about a proposed further development of the stadium. He showed drawings of the further development mounted on plastic boards. These were the drawings prepared by Woods Bagot in the preceding few days.
- The delegation was taken to the airport to catch a plane at about midday.

That account does not address the factual key issues that arise out of the SOCOG visit.

### **Key Issues**

The key issues for this Examination about the SOCOG representatives' visit are:

- What the SOCOG representatives said about the likelihood of Hindmarsh Stadium being chosen as a venue for the Olympic Soccer Tournament.
- What the SOCOG representatives said needed to be changed at the stadium.
- What Minister Ingerson said was proposed by way of further development.

### **What the SOCOG Representatives said about Hindmarsh Stadium's Chances**

Most attendees could recall receiving a negative impression from the SOCOG representatives, but there was some degree of variation on how strong that was. With three exceptions, no witness could recall the Sydney representatives saying clearly that Adelaide was unlikely to be chosen.

One exception was Mr Farrugia who gave evidence that Mr David Hill, then Chairman of Soccer Australia made a gesture like a knife being drawn across his throat during a discussion of the use of temporary grandstands.

Another exception was that Mrs Hall gave evidence that she could recall one occasion while standing on the pitch that someone had said: "*This is not acceptable*". She was not sure that it did not happen on another occasion.

Mr Ingerson gave evidence that while they were not told that Adelaide's bid was not acceptable, they were told that it was not likely to be accepted without being told specifically any significant reasons as to why.

Mr Elphinston, SOCOG's General Manager – Sport gave evidence that prior to the visit, SOCOG considered Adelaide's bid at the lower end because Hindmarsh Stadium, of all the venues under consideration, was the most restricted. Specifically, SOCOG were concerned whether Hindmarsh could accommodate the significant number of Olympic facilities and its limited seating capacity. He said these concerns were expressed to Government representatives on a number of occasions.

Taking all of the evidence into account I find that the SOCOG representatives did not make any express statements about the likelihood of success of Adelaide's bid but that the questions they asked, coupled with their general demeanour, conveyed the impression to those attending that Adelaide's bid was not looked upon favourably.

### **What the SOCOG Representatives said Needed to be Changed**

Apart from the gesture recalled by Mr Farrugia in respect of the temporary stands, no witness could recall any direct statement by the SOCOG representatives that any particular aspect of the stadium had to be changed.

Some examinees could remember questions being asked about the following matters:

- What was the available space in the stadium surrounds?
- What roads were to be closed?
- Where was the large number of outside broadcast vans to be stationed?

Mrs Hall recalled Mr Elphinston of SOCOG saying that a relevant criterion was that there had to be a legacy left for sport. Mr Ingerson's recollection is stronger. He recalled that they said that existing proposed legacy was inadequate and there needed to be "*more permanent improvement*".

In relation to SOCOG's visit, Mr Ciccarello wrote in April 1998:

*"It is my recollection that SOCOG's General Manager of Sport, Mr Bob Elphinston made it very clear that, unless there was extensive upgrading of facilities and infrastructure at Hindmarsh Stadium, further than that proposed at that stage, including seating, lighting, pitch, changerooms etc, then our bid would fail."*

Mr Ingerson has submitted to me that this passage of Mr Ciccarello's minute confirms that it was made plain on 29 October 1996 that SOCOG sought more permanent improvement to the stadium. I note that Mr Ingerson has stopped short of suggesting that SOCOG specifically sought more permanent seating. This was the reason advanced as the need for Stage 2 in his 13 November 1996 Cabinet submission. I note that Mr Ciccarello's minute does not refer to permanency.

Apart from those matters, no witness recalled any particular item of criticism. That was consistent with the approach of SOCOG recorded in Mr Farrugia's minute of the Sydney 2000 Bid Committee's meeting with SOCOG on 9 September 1996.

Mr Elphinston said the SOCOG representatives did not specify what should be provided at Hindmarsh. SOCOG's prime requirement was that there be enough space around the stadium to accommodate the Olympic facilities. SOCOG did not specify that additional land had to be acquired permanently as SOCOG was not concerned how the extra space was procured. In fact, most Olympic sites procure the necessary space for Olympic facilities temporarily. SOCOG was concerned that there be 20,000 seats but did not specify the mix of permanent or temporary seats. SOCOG did not have a specific desirable level of permanent seats. However, while Mr David Hill from Soccer Australia was very concerned about a legacy for sport, it was up to the local sport and Government to specify the form of the legacy. Permanent facilities obviously provided a legacy. From SOCOG's perspective, the notion of a legacy was a fairly broad and generalised requirement.

Mr Elphinston said that the SOCOG representatives did not do or say anything that would have required new plans to be presented. The further redevelopment was volunteered by Minister Ingerson.

Taking all of the evidence into account I find that during the visit of the delegation on 29 October 1996, the SOCOG representatives did not make any express statements about how any particular aspect of the stadium could be improved. The questions they asked showed their concern about the amount of space available at the site. They expressed a general concern about the amount of additional permanent improvements proposed but did not specify what amount was required or that permanent seating was essential. The SOCOG representatives did not specify what was required to be done to address the concerns they expressed. That was left entirely to be decided by Cabinet on the basis of recommendations put forward from time to time by the proponent Ministers, Mr Ingerson and Mr Ashenden.

#### **What Minister Ingerson said was Proposed by way of Further Development**

The drawings presented by Minister Ingerson cannot now be located.<sup>182</sup>

There is a drawing in existence that was attached to the Cabinet submission and letter sent to SOCOG on 20 November 1996 following the SOCOG visit.<sup>183</sup> That drawing showed the key elements identified above<sup>184</sup> resulting from work over the weekend preceding the SOCOG visit.

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<sup>182</sup> Woods Bagot did not necessarily keep a printed copy of every draft of every drawing. Their computer aided drafting system meant that they could print the current version of any plan when needed. They would readily file A3 and A4 drawings on their correspondence file as a historical record but not larger plans. As to Government's record keeping, none of the relevant administrative units have been able to assist this Examination in locating these drawings.

<sup>183</sup> Copies of that letter were on a number of the files examined in the course of this Examination. Each copy was obtained from SOCOG's files some time after the event, since they all bear SOCOG's "received" stamp.

<sup>184</sup> See page 130 above.

No witness was able to identify unequivocally that drawing as recording the same proposal as was shown to SOCOG but all agreed that it could have been. The preponderance of evidence favours concluding that it was substantially the same:

- The elements in the drawing accord with the elements recalled by those witnesses who can recall what Mr Ingerson showed.
- It is inherently unlikely that Mr Ingerson would have sent SOCOG later on 20 November 1996 something different.
- As Mr Ford and Mr Hoare from Woods Bagot were not aware of the 20 November 1996 letter it is unlikely that they prepared a special drawing to accompany it.

On one view, the drawing attached to the letter to SOCOG dated 20 November 1996 represented the Hindmarsh redevelopment at its most lavish. It showed:

- Inclusion of all of the land between Hindmarsh Place and Richard Street in the stadium precinct; and
- Permanent stands on each of the northern, southern and eastern sides of the pitch.

## **29 AND 30 OCTOBER 1996 - ANNOUNCEMENT OF CANBERRA AND MELBOURNE UPGRADES**

SOCOG had stated that it wished to use only three venues outside of Sydney. A number of cities had indicated that they wished to host soccer games. Perth had been an early contender but was persuaded to drop out because of its distance from Sydney. Newcastle and Albury-Wodonga made bids but they were not considered serious competitors by the Sydney 2000 Bid Committee. Because of their populations, Brisbane and Melbourne were regarded as certainties. Canberra was seen as Adelaide's real competition.

On 29 October 1996 Canberra announced a \$27 million upgrade to Bruce Stadium.<sup>185</sup> Canberra became Adelaide's bid team's major concern.

On 30 October 1996, Victoria's Premier, Mr Jeff Kennett, called for expressions of interest for development of a \$200 million sports stadium in Melbourne's docklands:<sup>186</sup>

*"...in time for the World Soccer Championships in 1999 and the preliminary rounds of the 2000 Olympic Soccer Tournament."*

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<sup>185</sup> Canberra Times, 30 October 1996, "\$27m boost to ACT Games Bid".

<sup>186</sup> Australian Financial Review, 31 October 1996, "\$200m hi-tech stadium for CBD".

## 6 NOVEMBER 1996 - MEETING OF BID COMMITTEE TO CONSIDER SOCOG VISIT

On 6 November 1996, the Adelaide Soccer 2000 Bid Committee met in Minister Ingerson's office with the following agenda:

- "1. *Review of visit by SOCOG Delegation.*
2. *Consideration as to whether or not any further information should be forwarded to SOCOG, in relation to Adelaide's bid.*
3. *Any further business."*

No minutes were kept of that meeting. The agenda was sent to the members of the Bid Committee. That did not include Services SA or Woods Bagot.<sup>187</sup>

## 14 NOVEMBER 1996 - FURTHER FUNDS REQUIRED FOR STAGE 1

On 12 November 1996, Mr Ingerson as Minister for Recreation, Sport and Racing and Matthew as Minister for State Government Services signed a cabinet submission seeking Cabinet approval for further funds of \$560,000 for Stage 1 as a result of Development Assessment Commission requirements and latent conditions.

The submission sought further funding to take the budget for Stage 1 to \$8.685 million:

<b>New Work</b>	<b>Cost \$</b>
DAC requirement and latent conditions necessitating modification of the construction form of the piling	359,000
DAC requirement for streetscaping	91,000
Extension of lift to upper tier	40,000
Additional seats	40,000
Lighting to corporate suites	30,000
Total	560,000

Cabinet was not expressly informed that the lighting in the corporate suites was part of the fit out works to be undertaken by the Soccer Federation as required by the Funding Deed.<sup>188</sup> The submission stated:<sup>189</sup>

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<sup>187</sup> The day before that meeting members of the committee received copies of newspaper articles recording the announcement of the Canberra and Melbourne plans for multi-million dollar stadium construction projects.

<sup>188</sup> Clause 31 provided that "The parties hereby covenant and acknowledge that the Federation shall undertake and be responsible for, exclusively at its cost and expense, the fit out or refurbishment of the clubrooms under the grandstand at Hindmarsh Stadium and the purchase or installation of any fixtures, fittings, plant or equipment for this purpose. Consequently, any such cost or expense incurred, payable or paid by the Federation for this purpose is not and shall not be construed as being a Project Cost."

<sup>189</sup> Paragraph 3.9.

*"The costings for the western grandstand redevelopment did not allow for fit out to the corporate suites as this was seen as the responsibility of the West Adelaide and Adelaide City Clubs and the SASF. The leasing of the suites will generate revenue critical to the financial stability of these organisations. As with most commercial tenancies, potential lessees are enticed by incentives offered by the lessor. To that end it is considered the installation of lighting would assist in this practice..."*

Approval was also sought for the further funding to be contributed entirely by the Government contrary to Clause 54 of the Funding Deed. The stated rationale was that *"the request for additional funds is largely the result of satisfying DAC's requirements and latent conditions, and not budget variations initiated by the SASF, it is reasonable to apply Clause 54 'Waiver' of the Funding Deed..."*<sup>190</sup>

Cabinet noted the recommendations for which approval was sought on 14 November 1996, noting that the budget for Stage 1 *"may need to be increased"*.

## **18 NOVEMBER 1996 - CABINET APPROVAL OF SUBMISSION FOR STAGE 2**

On 13 November 1996, Mr Ingerson as Minister for Recreation, Sport and Racing, signed a Cabinet submission seeking *"in principle endorsement of the Hindmarsh Stadium Master Plan – Option 1"*. This was the first consideration of what very soon became known as "Stage 2".

A plan of "Option 1" was annexed to the Cabinet submission. It showed:

- Acquisition of all of the land south of the stadium between Hindmarsh Place and Richard Street.
- Extensive landscaping of the acquired land to turn the entire triangle of land bounded by Holden, Richard and Manton Streets into a soccer park precinct.
- One full size and one half size practice pitch south of the stadium.
- New permanent stands on the northern, southern and eastern sides of the stadium.

Notwithstanding the content of the attached drawing, it was apparent from the cost breakdown included in the Cabinet submission that new permanent stands were not part of the approval.

The submission sought only *"in principle"* approval.

On 18 November 1996, Cabinet gave its approval subject to two important qualifications:

- Cabinet approved written confirmation being given to SOCOG that Adelaide would implement Stage 2, but subject to being awarded a round in the 2000 Olympic soccer tournament.
- If SOCOG did award a round of the 2000 Olympic soccer tournament to Adelaide, a further detailed Cabinet submission was to be presented.

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<sup>190</sup> Paragraph 3.11.

The option presented to Cabinet did not involve any new permanent stands. Cabinet was given the option of a cheaper Stage 2, again not involving any stands, but involving a reduced acquisition of land. The estimated cost of the cheaper option was \$13,280,000. It was considered that:

*"This option will ensure that Adelaide may be successful in its bid to host a round of the 2000 Olympic Soccer Tournament however from a long term quality [sic], development [of] this option is severely limited and does not maximise the opportunities likely to be presented."*

The land comprised by Option 2 was exactly co-extensive with the land for which National Portfolio Strategies had been authorised to obtain options to purchase by Mr Ingerson's letter of nomination dated 26 August 1996.<sup>191</sup>

The Crown Solicitor's Office was provided with the submission. It drafted a minute to the Attorney-General that addressed briefly two matters about the submission:

- The fact that the Crown Solicitors Office had not provided any advice about the nomination of National Portfolio Strategies to acquire options over land in Hindmarsh Place.
- The wording of the proposed letter to SOCOG.

The Crown Solicitors Office did not identify any other respects in which the Government's processes leading to the November 1996 Cabinet submission might have been flawed.

On 18 November 1996 Cabinet approved the submission.

## **20 NOVEMBER 1996 - ADDITIONAL COMMITMENT TO SOCOG**

Pursuant to Cabinet's approval, Minister Ingerson sent a letter dated 20 November 1996 to SOCOG confirming that the additional works would be undertaken. The letter stated:

*"Following your visit, I confirm that the South Australian Cabinet has agreed to extend the Hindmarsh Stadium as outlined at our meeting.*

*This will allow for a very significant enhancement of the Hindmarsh Stadium project beyond the scope of the present redevelopment, on which work has already commenced. As outlined the second Stage development will provide for a significant increase in the overall size of the stadium, which along with other options, will permit the installation of a second soccer pitch.*

*Attached is a draft plan showing the area identified as our future development site."*

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<sup>191</sup> See above under the heading "20 August 1996 - Letter of Nomination to National Portfolio Strategies" at page 117.

The drawing attached was the same as the drawing put before Cabinet on 16 November 1996. What was not clear to SOCOG was that the attached drawing was not intended to convey that new permanent stands were planned. That was only apparent from the cost breakdown and narrative contained in the Cabinet submission that was not sent to SOCOG. The Crown Solicitor later expressed the view in a minute dated 21 March 1997 to the Attorney-General that this letter effectively incorporated the additional work in Adelaide's bid.

Mr Elphinston gave evidence to this Examination that he could not tell whether the northern and southern grandstands were intended to be permanent or not. If they were temporary, that would have been acceptable to SOCOG provided the temporary seating met certain safety requirements. He said SOCOG considered the proposed further development a much better arrangement because it offered more space around the site for the Olympic facilities and represented a good legacy for the sport. However, if adequate space had been provided temporarily that would have been sufficient. SOCOG did not require the permanent acquisition of land or consider a second warm up pitch necessary.

## **28 NOVEMBER 1996 - PREMIER OLSEN**

On 28 November 1996, the Hon. John Olsen MP was sworn in as Premier of South Australia, replacing Mr Dean Brown.

## **12 DECEMBER 1996 - CHANGE OF MINISTER FOR RECREATION, SPORT AND RACING**

On 12 December 1996, Mr Ingerson resigned as Minister for Tourism, Minister for Industrial Affairs and Minister for Recreation, Sport and Racing and was appointed Minister for Infrastructure, Minister for Police, Minister for Emergency Services and Minister for Racing. Mr Ingerson had been appointed Deputy Premier on 28 November 1996.

The Hon. Edward Scott Ashenden MP was appointed Minister for Tourism, Minister for Local Government and Minister for Recreation and Sport.

## **19 DECEMBER 1996 - RENAMING OF THE OFFICE FOR RECREATION, SPORT AND RACING**

On 19 December 1996, the title of the Office for Recreation, Sport and Racing was altered to the Department of Recreation and Sport.

## **19 DECEMBER 1996 - SOCOG GRANT OF OLYMPIC SOCCER TO ADELAIDE**

On 19 December 1996, Mr Michael Knight, New South Wales Minister for the Olympics and then President of SOCOG, sent a letter to Premier Olsen formally advising that the SOCOG Board had endorsed a recommendation that Adelaide host matches in the Olympic Soccer Tournament:

*"...subject to the conclusion of negotiations with your Government on financial, contractual and organisational matters, including provision of facilities consistent with offers made to SOCOG".*



SOCOG was satisfied that the concerns expressed at the September Olympic Soccer Bid Committee meeting in Sydney on 9 September 1996 and during the site visit on 29 October 1996 had been addressed sufficiently by Minister Ingerson's letter dated 20 November 1996. The press release enclosed with Mr Michael Knight's letter stated that all venues selected:

*"... have all met the technical requirements set down by FIFA, Soccer Australia and SOCOG".*

## **1 JANUARY 1997 - FORMATION OF THE CITY OF CHARLES STURT**

On 1 January 1997, the City of Henley and Grange and the City of Hindmarsh and Woodville were amalgamated to form a new council named the City of Charles Sturt. Mr John Dyer, the Mayor of the former City of Hindmarsh and Woodville, was appointed Mayor of the new City of Charles Sturt.

## **7 JANUARY 1997 - LAND ACQUISITION IMPASSE**

By 7 January 1997, National Portfolio Strategies had reached a point where they could not procure agreements to sell with four of the landowners. They sought permission from the Chief Executive of the Department of Recreation and Sport to disclose the purchasers' identity in an attempt to break the impasse.

## **8 JANUARY 1997 - EXTENSION OF NATIONAL PORTFOLIO STRATEGIES' RETAINER**

Mr Scott, Chief Executive of the Department of Recreation and Sport requested a fee offer from National Portfolio Strategies for their services in securing options over a further parcel of land south of the stadium (5 properties on Richard Street between Holden Street and the Black Lion Hotel). This land had not been previously targeted by National Portfolio Strategies as part of their retainer by Mr Ingerson on 26 August 1996.

On 8 January 1997, National Portfolio Strategies responded to Mr Scott's request. National Portfolio Strategies estimated fees for these services were \$14,000. Mr Scott accepted this offer by letter on 9 January 1997.

Ultimately, no options were secured over this land.

## **21 JANUARY 1997 - ONGOING MANAGEMENT ARRANGEMENTS**

By minute dated 19 January 1997 to Mr Scott in the Department of Recreation and Sport, the Department of Treasury and Finance outlined the ongoing management and monitoring tasks required to be undertaken on a regular basis under the project documents for Stage 1.

## 22 JANUARY 1997 - COMPLAINT BY THE NSL CLUBS ABOUT FINANCIAL ARRANGEMENTS FOR STAGE 1

On 22 January 1997, the Patron of Adelaide City, Mr Gordon Pickard complained to the Soccer Federation about the implications to Adelaide City of the financial arrangements for Stage 1 of the redevelopment.<sup>192</sup> A meeting was organised to discuss these issues at the Soccer Federation on 30 January 1997. Mrs Hall chaired the meeting. In the course of the resulting discussions, Adelaide City asserted that the letters exchanged in August 1996 had no legal standing.<sup>193</sup>

Mr Pickard observed in a letter he sent to Mrs Hall on 7 February 1997:<sup>194</sup>

*"Firstly the financial arrangements of the SASF letter dated 29 August 1996 casts an unusually large financial burden on the two NSL clubs relative to the SASF. The SASF enjoy a level of benefits, such as tickets and boxes, out of proportion to their part in putting on "the show" which is minimal. The SASF have been granted superior packaging opportunities since they can offer all events at the stadium, such as the Olympic Games. The 500 tickets equate to \$91,000 of free seats, 6 corporate boxes equate to another \$28,000, while the grandstand levy will cost the club between \$81,000 and \$108,000 if there is no relief. In addition, the two NSL clubs will pay 100 percent of the first \$100,000 maintenance despite the many Federation events staged there.*

*It is the tenant's opinion that this arrangement is too heavily weighted in favour of the landlord. Even after factoring in a potential increase in numbers due to the new facility, our forecasts indicate that Adelaide City will need to retain much of its income if it is to survive. This must be equally important to our friends at West Adelaide. In the excitement of achieving the new grandstand – terrific for the game – I am not sure that the tenant checked to see if it could afford the rent or the landlord checked to see if the tenant could afford the rent. We suggested that the financial imbalance should be looked at." [original emphasis]*

This letter highlighted a recurrent theme in respect of the NSL Clubs' contribution to the cost of the stadium that had not ever been satisfactorily addressed. Indeed, even after sending this letter to Mrs Hall, no further investigation was undertaken by the Government of the financial effect of the funding arrangements for Stage 1 until Arthur Andersen were commissioned in January 1999.

In her evidence to this Examination, Mrs Hall said that she was furious that the letter had been addressed to her. Mrs Hall has submitted to this Examination that she received the letter as Ambassador for Soccer and consider she did not have any authority to respond to it. She referred it to either Mr Farrugia or Mr Ivory of the Soccer Federation. She did not draw it to the attention of any officer of the Government to investigate the allegation that the arrangements were financially detrimental for the NSL Clubs. There then ensued five months of negotiations between the Soccer Federation and Adelaide City and West Adelaide over the terms of the financial arrangements for Hindmarsh Stadium. West Adelaide did not actively participate in these negotiations.

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<sup>192</sup> Letter dated 22 January 1997 from Mr Farrugia, Soccer Federation, to Adelaide City and letter dated 7 February 1997 from Mr Gordon Pickard, Patron Adelaide City, to Mrs Hall.

<sup>193</sup> Letter dated 13 February 1997 from Mr Farrugia, Soccer Federation to Adelaide City.

<sup>194</sup> Letter dated 7 February 1997 from Mr Gordon Pickard, Adelaide City, to Mrs Hall.

## **28 JANUARY 1997 - CABINET APPROVAL OF REVOCATION OF APPOINTMENTS AS PARLIAMENTARY SECRETARIES AND NEW APPOINTMENTS**

On 28 January 1997, Cabinet approved recommendations to the Governor that:

- the revocation of appointments of Parliamentary Secretaries previously made including that of Mrs Hall as Parliamentary Secretary to Mr Ingerson in respect of Tourism and Recreation and Sport; and
- new appointments including Mrs Hall as Parliamentary Secretary to Mr Ingerson as Minister for Infrastructure.

The Governor appointed Mrs Hall as Parliamentary Secretary to the Minister for Infrastructure on 29 January 1997.

## **10 FEBRUARY 1997 - RE-ESTABLISHMENT OF COUNCIL ADVISORY COMMITTEE FOR HINDMARSH STADIUM**

At a meeting of the Council held on 10 February 1997, the Council re-established the Hindmarsh Soccer Stadium Advisory Committee. The previous terms of reference<sup>195</sup> were adopted.

## **12 FEBRUARY 1997 - SOCOG BRIEFING**

Consequent upon SOCOG's approval of Adelaide as a venue, officers from Australian Major Events began negotiations with SOCOG about the basis of Adelaide's participation.

At the formal start of those negotiations, Adelaide's Bid representatives, Mr John Heard,<sup>196</sup> Mr Spurr and Mr MacFarlane attended a briefing with SOCOG on 12 February 1997. Representatives of the other cities hosting soccer matches attended. The briefing lasted three hours and was directed towards commercial and organisational issues and not the physical requirements of the venues. It was a one-sided briefing not a two-way negotiation but it was the start of that process.

Detailed minutes were made of the briefing. Those minutes did not include discussion of the content of the stadium. Specifically they did not state that some parts of the stadium facilities that were required to be provided must be permanent rather than temporary.

The briefing explained the division of cost of staging the matches between "base", "fee" and "SOCOG":

- Base: to be provided by the State, the cost of which was to be borne solely by the State;
- Fee: to be provided by SOCOG, the cost of which was to be borne solely by the State; and
- SOCOG: to be provided by SOCOG, the cost of which was to be borne solely by SOCOG.

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<sup>195</sup> See the section above under the heading "12 August 1996 - Council Resolution to Establish Advisory Committee" at page 112.

<sup>196</sup> Chairman of Australian Major Events.

"Fee" costs were always to be negotiated on the basis of the actual cost to SOCOG of the services and facilities that SOCOG was to provide. Thus, if a reduction could be attained in the cost of provision of a service via SOCOG, SOCOG would pass the benefit of that reduction to the State.

## **12 FEBRUARY 1997- FIRST DRAFT OF SOCOG MEMORANDUM OF UNDERSTANDING**

The first draft of the SOCOG Memorandum of Understanding was provided on the same day as the meeting with SOCOG in Sydney.

It did not include or refer to Schedule 2C entitled "*Works to be completed at the stadium*". That was included in the final version of the SOCOG Memorandum of Understanding.

Clause 7.8(a) of the final Memorandum of Understanding required completion of the Schedule 2C works by defined dates. That clause was not in the original Memorandum of Understanding. The final version of Clause 7 is significantly expanded from the original draft. That suggests that Clause 7 was the subject of considerable negotiation.

By Clause 5.8 and the definition of "Proposal" in Clause 1.1 of the draft Memorandum of Understanding, Adelaide's bid document dated 20 September 1996 "*together with subsequent correspondence amending or clarifying same*" was binding on the Government except to the extent inconsistent with the Memorandum of Understanding. By that draft provision, SOCOG intended to bind the Government to carry out the proposal contained in Mr Ingerson's letter dated 20 November 1996.<sup>197</sup>

## **LATE FEBRUARY 1997 - COST OF HOSTING OLYMPIC SOCCER**

Later in February 1997, Mr MacFarlane of Australian Major Events formed the view that the team that was to negotiate with SOCOG should obtain specific authorisation to negotiate up to a set amount before attending negotiations with SOCOG. Mr MacFarlane thought that \$7.5 million should be set as the ceiling. He thought that the team would be able to secure a much better result than that but that was a reasonable limit.

Mr MacFarlane prepared a briefing paper to Mr Ashenden as the Minister of Tourism about the 2000 Olympic Soccer Tournament. It concluded with two recommendations:

- A team should be appointed to negotiate with SOCOG. That team should comprise the Crown Solicitor and Australian Major Events, but not the Soccer Federation since it carried no financial responsibility for the delivery of the event.
- The Government should obtain binding legal commitments to secure the use of the stadium for the matches before negotiating with SOCOG. Legal commitments were required from the Soccer Federation and owners or occupiers of the training venues.

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<sup>197</sup> Mr Ciccarello has pointed out to this Examination that no specific features of the proposal contained in Mr Ingerson's letter dated 20 November 1996 were included in the schedules to the SOCOG Memorandum of Understanding that described the works to be completed by the Government (Schedule 2A) or the FIFA/SOCOG stadium requirements (Schedule 3).

The paper included:

- A summary of the briefing with SOCOG on 12 February 1997.
- A detailed summary of the content of the draft Memorandum of Understanding that had been received from SOCOG including the following passage:

*"The effect of these provisions of the MOU, on the advice of the Crown Solicitor, is that SOCOG has grounds for expecting that Adelaide will deliver a venue for the staging of preliminary matches in the 2000 Olympic Soccer Tournament, identical or significantly similar in character, to that disclosed in the Minister's letter of 20 November 1996. The cost of funding this more ambitious proposal for the upgrading of the Hindmarsh Stadium, therefore becomes a commitment to be met by the Government prior to 1999."* <sup>198</sup>

- An estimate of the cost of hosting the matches:

"	<b>Millions</b>
Current upgrade of Western Grandstand	\$8.535
Further enhancement of Hindmarsh Stadium, as proposed by Minister for RSR, on 20/11/1996	\$16.6 to 20
Staging costs of 2000 Olympic Soccer Tournament	<u>\$6 - \$8</u> <u>\$31.135 (low)</u> <u>\$37.135 (high)"</u>

In the covering minute Mr MacFarlane observed:

- "1. Attached is a briefing note advising on a number of implications arising out of the staging of preliminary round matches of the 2000 Olympic Soccer tournament at the Hindmarsh Stadium.
2. The most significant of these implications, is the substantial cost associated with further development of the Hindmarsh Stadium to the standard specified under a SOCOG Memorandum of Understanding, which document host States are required to execute by late April 1997.
3. This development work will entail a road closure and the acquisition of a significant number of properties on the southern side of Hindmarsh Stadium. In all probability some of the properties in question will need to be compulsorily acquired. Further complications will almost certainly arise in the course of the acquisition process, given that at least one of the properties (a church) is heritage listed.
4. Of fundamental concern is the requirement set down within the Memorandum of Understanding to have this work completed by early in 1999. Barely two years are available to finalise property acquisitions and complete the required site works.
5. The attached briefing note suggests that before the Memorandum of Understanding is negotiated with SOCOG, the Government's total financial commitment to soccer over the next three years is reconfirmed."

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<sup>198</sup> Paragraph 8.

These comments about the difficulties of the land acquisition process were made at about the same time as Mr Scott was considering a change of the project to permanent seats rather than land acquisition.

According to Mr MacFarlane, when that briefing note was finally delivered to Minister Ashenden's office it was returned to Mr Spurr, Chief Executive of Australian Major Events by Minister Ashenden's staff member, Mr Peter Lawrence in Mr MacFarlane's presence. Mr Ashenden informed this Examination that he had never returned correspondence in that way. Mr Lawrence gave evidence that he did not and would not have returned correspondence in such a discourteous way, even if he had been instructed to do so. Mr Spurr in his evidence, recalled the event but did not know whether Minister Ashenden had seen the briefing note or not.

## **21 FEBRUARY 1997 - THE PUBLIC WORKS COMMITTEE INFORMED OF INCREASE FROM \$8.125 MILLION TO \$8.685 MILLION**

During the course of the design work for the western grandstand redevelopment it became apparent that a different piling system would have to be used. This was partly due to the requirements of the Development Assessment Commission and partly due to soil problems. Cabinet approved the increase in cost from \$8.125 million to \$8.685 million on 14 November 1996 and the Public Works Committee was informed of the change by letter dated 21 February 1997.

## **24 AND 25 FEBRUARY 1997 - MR CICCARELLO'S DISPUTE WITH THE GOVERNMENT**

Mr Ciccarello maintained that in mid 1996 he had been promised by Minister Ingerson the post of Chief Executive in the soon to be established Tourism, Recreation and Sport Commission. Following Mr Olsen's replacement of Mr Dean Brown as Premier, the legislation setting up that Commission was withdrawn from the Legislative Council, having been passed by the House of Assembly.

Mr Ciccarello complained to the Government and sought compensation for opportunities he had foregone while waiting to be appointed.

By February 1997, Mr Ciccarello was considering taking "*a formal approach*" to remedying his complaint. Following a telephone conversation with Mrs Hall on 24 February 1997, Mr Ciccarello believed the matter could be resolved expeditiously.

On 25 February 1997, Mr Ciccarello wrote to Mrs Hall to convey his appreciation for her efforts in endeavouring to address his complaint. He concluded his letter setting out his position with the following request:

*"Although I have contemplated a much more formal approach to remedy this matter, I am, given your telephone call yesterday, hopeful that through discussion, we can expeditiously resolve this matter. To which, I respectfully request that you advise the Premier and the Deputy Premier of the contents of this letter. I additionally request the Government to address the matter of its obligation and commitment to deliver on its promises to me of a long term contract for my professional services, together with my loss of earnings."*

## CHAPTER 12 - MARCH TO JUNE 1997

### MARCH 1997 - STUDY BY THE SOUTH AUSTRALIAN CENTRE FOR ECONOMIC STUDIES

In March 1997, the South Australian Centre for Economic Studies<sup>199</sup> produced a cost benefit analysis for the Department of Recreation and Sport. SACES concluded that there was a net negative benefit of \$20.898 million. That analysis took into account the economic benefit expected from the staging of Olympic soccer.

That study compared the expected additional revenue to the State resulting from the project to the estimated cost of the project. In assessing revenue, the study adopted the approach that only revenue from outside the State was "*additional*" in the relevant sense. Thus, increased attendances of South Australian spectators at NSL matches would not lead to any benefit for the State but increased attendances of interstate spectators would.

That study did not attempt to address whether the stadium would be adequate for the 2000 Olympic Soccer Tournament or other international matches, which was a key benefit that had been considered by the Government.

The study was an exercise in analysis rather than data gathering or checking. The study referred to only two sources of information:

- The Department of Recreation and Sport; and
- The assumptions contained in a report by Market Equity SA Pty Ltd.

The SACES study did not state that any checks had been undertaken of the quality of the data from the Department or the validity of the assumptions of Market Equity SA Pty Ltd.

One element that was completely untested was the annual revenue from operation of the stadium. That was stated to have been assumed by the Department of Recreation and Sport to be \$450,000.

The SACES study was drafted in accordance with the limited instructions given to SACES. SACES had discussions with Mr Scott, then Chief Executive of the Department of Recreation and Sport, and sent him a letter setting out how SACES would prepare a cost benefit analysis. SACES was only asked to undertake a cost benefit analysis. It was not instructed to undertake a needs analysis.<sup>200</sup> SACES was not asked to examine other options. SACES stated that its report would comply with "*Guidelines prepared by the South Australian Treasury (1990)*".

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<sup>199</sup> The acronym "SACES" is used in this Report to refer to the South Australian Centre for Economic Studies.

<sup>200</sup> "*Needs analysis*" is an expression used by the Government's internal guidelines entitled "*Project Initiation Process*" that govern capital projects from January 1996: "*The real purpose of the needs analysis in the project initiation process is to ensure that only those projects that meet the criteria for demonstrated need will be provided.*"

## **MARCH 1997 - INCREASE IN STRUCTURAL STEEL COST FOR STAGE 1**

In March 1997, tenders closed for the structural steel package for Stage 1, a very significant item in the cost of the western grandstand redevelopment. The lowest tenderer was in excess of the amount allowed for. The structural steel was re-tendered. That did not lead to a significant reduction. As a result, an increase of \$445,000 was required bringing the total Project Cost to \$9.13 million. Cabinet noted the effect of accepting the structural steel tender to the project budget on 19 May 1997. Cabinet approved that increase on 25 August 1997.

The Public Works Committee was informed of that increase on 28 August 1997.

### **1 MARCH 1997 - MRS HALL'S VISIT ABOUT MR CICCARELLO**

According to Mr Ashenden, on 1 March 1997, Mrs Hall telephoned him seeking an appointment. She came to see him and told him that something had to be done for Mr Ciccarello. She said that Mr Ciccarello had been left in the lurch and that both the Premier and Deputy Premier Ingerson agreed that Mr Ciccarello should be appointed as a consultant whatever the procedural requirements were.

In evidence before this Examination, Mrs Hall could not recall that conversation. Mr Ingerson said that he was unaware of it and that he had not asked Mrs Hall to speak to Mr Ashenden in those terms.

### **3 MARCH 1997- SOCOG LETTER**

On 3 March 1997, Dr Mal Hemmerling of SOCOG, sent a letter to Mr MacFarlane of Australian Major Events. The letter:

- stated SOCOG's revenue targets for the 2000 Olympic Soccer Tournament preliminary matches;
- estimated SOCOG's cost recovery fee at \$5.59 million; and
- informed Adelaide that the next negotiation would be in Sydney on 18 March 1997. SOCOG would be represented by its "*Football Negotiation Committee*" under the Chairmanship of Mr Graham Richardson.

### **7 MARCH 1997 - MR MACFARLANE'S FAX TO MR SIMMONDS OF SOCOG**

On 7 March 1997, Mr MacFarlane sent Mr Simmonds of SOCOG a fax that stated:

*"Thank you for your fax of 5 March 1997. As mentioned in our earlier telephone conversation, the proposed SOCOG meeting date of 18 March 1996 will cause some problems for us.*

*We are in the process of reworking the proposal presented by the Hon. Graham Ingerson MP, then Minister for Recreation and Sport, during the visit of the SOCOG delegation to Adelaide on 28 October 1996. Essentially the revised approach is to ensure provision of a greater number of permanent seats within the stadium. While the proposal unveiled by Minister [sic] significantly increased the stadium 'footprint', it did*



*little [sic] increase the overall number of permanent seats, which is now considered to be a far more important legacy of the refurbishment of the Hindmarsh Stadium.*

*The reworking of this proposal entails seeking Cabinet approval for an increased financial allocation. Cabinet is scheduled to consider a submission in this matter on 24 March 1997. Since the revised plan for the refurbishment of the Hindmarsh [sic] is fundamental to negotiations on the SOCOG Memorandum of Understanding we seek a later meeting with Graham Richardson and his colleagues and his colleagues [sic] and suggest the first week of April. By that time Cabinet's position will be known."*

It is clear from Mr MacFarlane's fax to Mr Simmonds that the change of the proposal from land acquisition to permanent stands was something that was initiated by Australian Major Events, not SOCOG.

Mr MacFarlane gave evidence to this Examination that he telephoned Mr Scott to check Mr Scott's availability for the proposed meeting with SOCOG. During that call Mr Scott told him that he was working on changes to the proposal for the redevelopment of Hindmarsh Stadium. Mr MacFarlane was not involved in that work. Mr Scott gave evidence to this Examination that:

- The change from land acquisition to permanent seats was not the result of concerns expressed by SOCOG.
- The proposal changed because of a concern that land acquisition of the magnitude required by the proposal put by Mr Ingerson to SOCOG would take too long, endangering completion in time for the 2000 Olympic Soccer Tournament.

## **12 MARCH 1997 - MR MACFARLANE'S DISCUSSIONS WITH QUEENSLAND, VICTORIA AND ACT**

On 12 March 1997, Mr MacFarlane prepared a memorandum to Heard as Chairman of Australian Major Events. It dealt with discussions he had had with his Victorian and Queensland counterparts about the "recovery fee" that SOCOG sought from each State. The "recovery fee" was the amount that SOCOG required to be paid to ensure that the staging of matches in the 2000 Olympic Soccer Tournament outside of Sydney would not result in any loss to SOCOG. It was to be calculated by reference to the actual cost to SOCOG and the revenue from the matches. Originally it was envisaged that SOCOG would pay for any temporary facilities that were to be provided. Thus, if a venue had a large number of temporary seats its recovery fee would be higher. The reason why SOCOG was to provide temporary facilities was to ensure that the facilities were of the same standard and so SOCOG could take advantage of its buying power.

Without disclosing South Australia's recovery fee, Mr MacFarlane found out the following recovery fees:

State	Recovery Fee \$
SA:	5.56 million
Victoria:	3.50 million
Queensland:	2.70 million

Mr MacFarlane was told that ACT would pay a similar fee to Adelaide. Mr MacFarlane stated in the memorandum that it was: "... to be expected given that their requirement for temporary seating is about the same as ours."

The figure of \$5.56 million was similar to the figure of \$5.59 million set out in Dr Hemmerling's letter dated 3 March 1997.

Mr MacFarlane recommended to Mr Heard that they should seek a meeting with Mr Ashenden as Minister for Tourism the following day to discuss the cost of the event for Adelaide.

## **12 MARCH 1997 - STAGE 2 FORMAL SUBMISSION TO CABINET**

On 12 March 1997, the submission that had been foreshadowed by the 13 November 1996 submission was signed by Mr Ashenden as Minister for Recreation and Sport.

The submission presented two very different options for further development:

- "Option 1" involving land acquisition and site development. The drawing of this option was almost identical to that sent to SOCOG on 20 November 1996 except that it was clear on this drawing that there were no new permanent stands.
- "Option 2" involving only \$1.22 million worth of land acquisition but \$23.49 million on construction of new permanent stands, including a grandstand of identical design to the upgraded western stand.<sup>201</sup>

The submission firmly recommended Option 2, at a cost of \$24.71 million. The stated reason for preferring Option 2 was:<sup>202</sup>

*"As the greater proportion of the capital cost for Option 2 (\$24.710m) is vested in facilities rather than land and, therefore, offers greater potential for recouping incremental revenue, it is considered that Option 2 is the preferred option."*

No explanation was advanced for how two such radically different options for Stage 2 could both meet SOCOG's requirements. It was not explained why if the space that Option 1 provided was no longer necessary for the staging of matches in the 2000 Olympic Soccer Tournament, it was necessary to pursue Stage 2 at all. It was not explained why Option 2, with three new permanent stands was necessary. It was not explained why a less expensive option, such as only a new eastern stand would not suffice.

Before this Examination, Mr Scott gave evidence that his understanding of the reason for preferring Option 2 was that the complications associated with land acquisition could lead to delay. That could prejudice having the stadium ready for the 2000 Olympic Soccer Tournament.

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<sup>201</sup> It also included \$720,000 of additional items so the total for Option 2 was \$24.71 million.

<sup>202</sup> Paragraph 3.6.

The submission also noted:

*"The complex, on completion, will be owned by the State and Local Government which will present operating and control issues that must be resolved between the Government, Council and the SA Soccer Federation."* <sup>203</sup>

The submission annexed a copy of the SACES report. The summary of the SACES report included in the submission was: <sup>204</sup>

*"The estimated benefit cost ratio is less than one (B/C = 0.4). The proposal is attractive in view of the anticipated stream of future revenue that would be generated through sporting events such as Super League Rugby Union, TV rights and private sponsorship, although this would not offset the substantial capital cost."*

Both the Crown Solicitor's Office and the Department of Treasury and Finance observed at the time of reviewing the draft submission that it was not appropriate to describe the proposal as "attractive" given the SACES conclusion.

Cabinet considered the proposal on 24 March 1997. Cabinet requested it to be reviewed by the Financial and Commercial Contracts Committee so that the cost could be brought within the \$16.205 million envisaged by the November 1996 "in principle" approval.

## **17 MARCH 1997 - ESTABLISHMENT OF OLYMPIC TASK FORCE**

On 13 March 1997, Minister Ashenden invited Mr Ciccarello to a meeting in his office with Mrs Hall, Mr Andrew Daniels (an associate of Mr Ciccarello's), Mr Farrugia and Mr Lawrence. The purpose of the meeting was to discuss the establishment of an Olympic Task Force to be led by Mr Ciccarello and to include Mrs Hall but not Mr Heard, Mr Spurr or Mr MacFarlane from Australian Major Events. The Task Force was also to include Mr Lawrence, Mr Farrugia, Mr Scarsella and Mr Scott.

On 14 March 1997, Mr Ashenden as Minister for Recreation and Sport signed a submission to Cabinet recommending the establishment of a task force to finalise commercial arrangements with SOCOG.

Up until then, Australian Major Events was handling negotiations with SOCOG. It was removed without warning at Minister Ashenden's direction. Mr Lawrence, Minister Ashenden's staff member arrived at the offices of Australian Major Events unannounced and requested that he be given all Australian Major Events' files on Adelaide's bid for the Olympic Soccer. I consider this conduct inconsistent with the procedures that should apply in these matters.

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<sup>203</sup> Paragraph 3.13.

<sup>204</sup> Paragraph 3.22.1.

Australian Major Events' removal was the subject of understandable resentment. Different witnesses gave this Examination different reasons for its removal:

- Australian Major Events was removed to create a position for Mr Ciccarello because the Government thought that otherwise he would have commenced litigation that would have embarrassed Mr Ingerson because of the promises he had made to Mr Ciccarello.<sup>205</sup>
- Dr Hemmerling had told Premier Olsen at the Melbourne Grand Prix to remove Australian Major Events or Adelaide would lose hosting the soccer.
- Mr Ciccarello gave evidence that he was told by Minister Ashenden at their first meeting on 13 March 1997 that it was necessary to have a single-minded and focused approach to the bid negotiations, rather than have Australian Major Events who were involved in a number of events.
- Australian Major Events had been difficult and hence placed the negotiations with SOCOG in jeopardy by not being available for a meeting with SOCOG on a particular date.<sup>206</sup>
- Australian Major Events had allowed Adelaide to "lose" the Commonwealth Games and could not be allowed to do the same with the Olympic soccer.
- Mr MacFarlane, the officer with the day to day responsibility for the bid within Australian Major Events, has submitted that he believed Australian Major Events might have been removed because it drew attention to the likely cost of hosting Olympic soccer in Adelaide at between \$31.135 to \$37.135 million.

I accept Minister Ashenden's evidence of his reasons for removing Australian Major Events. I also accept Mr Ashenden's evidence that he did not remove Australian Major Events to resolve Mr Ciccarello's dispute with Government and that he saw that as a separate matter.

On 17 March 1997, Cabinet approved the establishment of a Task Force to negotiate commercial arrangements with SOCOG at a cost of up to \$5.59 million on behalf of the Government, with the final decision to be made by Cabinet. The Task Force was to report to Mr Ashenden as Minister for Tourism, Minister for Local Government and Minister for Recreation and Sport. Cabinet directed that the Task Force include a representative of the Crown Solicitor's Office and Treasury and Finance.

By letter dated 9 April 1997, Mr Ashenden as Minister for Recreation and Sport retained Mr Ciccarello as a consultant to the SA Olympic Football Task Force. His retainer was effective from 17 March 1997. He was hired at \$770 per day plus disbursements for the duration of the negotiation process through to entry by the Government into the SOCOG MOU in August 1997. Casual secretarial assistance was provided by the Department of Recreation and Sport.

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<sup>205</sup> Mr Ciccarello has submitted to this Examination that he categorically denied that he at any time sought to take over from AME the handling of the bid or negotiations with SOCOG. I accept Mr Ciccarello's submission. Having regard to Mr Ciccarello's experience and qualifications, I consider he was well suited for the appointment and I make no criticism of him in regard to his appointment to replace Australian Major Events.

<sup>206</sup> In fact it was not that a representative of Australian Major Events was unavailable for a meeting with SOCOG. It was Mr Scott, the Chief Executive of the Office for Recreation, Sport and Racing who was unavailable.

## **17, 18 AND 19 MARCH 1997 - INITIAL MEETINGS OF TASK FORCE**

According to Mr Ciccarello's notes of the first meeting on 17 March 1997 of the new Olympic Task Force:

*"Michael Scott:*

- \* *SACOG [sic] should be advised original plan for Stage 2 as presented to SOCOG by Ingerson is being revised - it is better but different.*
- \* *Plans not yet been to Cabinet [but they will have before the 25 March meeting]"*.

The agenda for that Task Force's meeting on 18 March 1997 included the following as "Item 8":

*"Cabinet Submission regarding 'Option One' and 'Option Two' relating to proposed Stage Two of redevelopment of Hindmarsh Stadium."*

At the Task Force's second meeting on 18 March 1997 Mr Ciccarello stated:

- that the cost of each item in Schedules 2A and 2B had to be audited.
- that Options 1 and 2 for the Stage 2 redevelopment would be considered by Cabinet on 24 March 1997.

On 19 March 1997, Mr Ciccarello sent a fax to Mr Simmonds of SOCOG enclosing a list of queries about the SOCOG Memorandum of Understanding. None of the questions related to SOCOG's requirements for the content of the stadium.

On 20 March 1997, Mr Ciccarello requested the Crown Solicitor to prepare a summary of the SOCOG Memorandum of Understanding for presentation to Cabinet. He noted that the *"fixing or capping [of] 'Base Costs' and 'Recovery Fees' "* was to some extent fluid.

## **20 MARCH 1997 - CHECKS ON CONDITIONS PRECEDENT STAGE 1 DOCUMENTS**

On 20 March 1997, Mr Jaksa of the Crown Solicitor's Office sent a fax to the Department of Treasury and Finance and Mr Fletcher of the Department of Recreation and Sport inquiring as to the status of satisfaction of the conditions precedent to the Funding Deed and the Stage 1 Loan Agreement. The second condition precedent to the Floating Rate Bill Facility required satisfaction or waiver of the conditions precedent to the Deed of Guarantee which included satisfaction or waiver of the conditions precedent to the Funding Deed. Mr Jaksa drafted pro forma notices of waiver for both deeds.

On 7 April 1997, Mr Scott wrote to Mr Farrugia of the Soccer Federation for the purpose of ensuring that all the conditions precedent had been satisfied. Mr Scott confirmed that the Crown Solicitor's Office was currently drafting a mortgage of the lease of the stadium, a charge over the bank account for the levy and a facilitation deed between the Council and the Minister for Recreation and Sport as to the enforcement of the Council's rights under the lease.

On 17 April 1997, Ms Freeman of Services SA faxed Mr Bollen in the Department of Recreation and Sport advice that in the context of a fast track construction managed project, the conditions precedent

were met by progressive approvals as the trade packages came into existence. *"In view of the fact that a clear project management strategy was agreed and in place to ensure that the approvals were achieved I advise that the spirit of the condition precedent was achieved at the time of construction commencement"*.

On 12 May 1997, Mr Jaksa sent a fax to the Department of Treasury and Finance asking whether the Soccer Federation had satisfied the conditions precedent as draw down by the Soccer Federation on the interim facility was imminent.

On 29 May 1997, Mr Fletcher of the Department of Recreation and Sport wrote to Mr Farrugia confirming the status of satisfaction or waiver of the various conditions precedent to the Funding Deed. Clauses 3.1.6,<sup>207</sup> 3.1.7<sup>208</sup> and 3.1.10<sup>209</sup> were outstanding.

On 8 July 1997, Mr Fletcher of the Department of Recreation and Sport wrote to Mr Farrugia in response to his letter of 26 June and confirmed that all conditions precedent to the Funding Deed for the benefit of the Minister except Clauses 3.1.10, had been satisfied.

On 8 August 1997, the Treasurer wrote to the National Australia Bank Limited notifying it that all of the conditions precedent to the Guarantee Deed had been satisfied or to the extent not satisfied, were thereby waived.

On 29 August 1997, the Treasurer, Mr Ashenden as Minister for Recreation and Sport and Mr Dean Brown as Minister for Information and Contract Services signed a notice of waiver addressed to the Soccer Federation that had been prepared by the Crown Solicitor's Office. This notice effectively stated that all conditions precedent to the Funding Deed and the Guarantee Deed had been satisfied and to the extent any had not, they were waived.

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<sup>207</sup> Clause 3.1.6 provides: *"The Minister is satisfied that the Federation has procured a legally binding and enforceable written contractual obligation from Adelaide Juventus Sports and Social Club Inc. that the national league soccer team known as the 'Adelaide City Zebras' as at the date of this Deed shall play all of its national league matches to be played in South Australia at Hindmarsh Stadium for a period of at least twenty (20) years commencing on the date of this Deed."*

<sup>208</sup> Clause 3.1.7 provides: *"The Minister is satisfied that the Federation has procured a legally binding and enforceable written contractual obligation from Hellenic Athletic and Soccer Club of South Australia Inc. that the national league soccer team known as the 'West Adelaide Sharks' as at the date of this Deed shall play all of its national league matches to be played in South Australia at Hindmarsh Stadium for a period of at least twenty (20) years commencing on the date of this Deed."*

<sup>209</sup> Clause 3.1.9 provides: *"The Minister is satisfied that the Federation has procured a letter from Soccer Australia Ltd (ACN 008 540 770) addressed to the Federation and the Minister that all national league, international or any other matches to be played in South Australia under the jurisdiction or auspices of or otherwise sponsored or promoted by Soccer Australia Ltd shall be played at Hindmarsh Stadium for a period of at least twenty (20) years commencing on the date of this Deed."*

## **25 MARCH 1997 - BRIEFING OF ATTORNEY- GENERAL ON STAGE 2 CABINET SUBMISSION**

On 25 March 1997, the Crown Solicitor sent the Attorney-General a minute briefing him on the submission considered by Cabinet on 24 March 1997. It stated:

*"One issue which the Cabinet Submission does not address is the ultimate ownership and operation of the stadium. The Stadium is owned by the Charles Sturt Council and leased to the Soccer Federation. If Stage II is pursued in either option, the stadium will be partially owned by the Council and the State. Given that the State will have expended over \$30 million, this is an unsatisfactory state of affairs. In the normal course I would suggest that some hard negotiation with the Council and the Soccer Federation is required before the government should be firmly committed to this project.*

*The difficulty is that S.A.'s right to hold some soccer matches of the 2000 Olympics is dependent upon the redevelopment of the stadium beyond which the Government has already committed. The letter from the Minister for Recreation, Sport and Racing has in effect incorporated the redevelopment into the State's bid for matches (copy attached)."*

## **25 MARCH 1997 - SOCOG MEETING**

On 25 March 1997, Adelaide's Olympic Soccer Task Force met with SOCOG's Soccer Negotiating Committee. The minutes of that meeting include the following passage:

### *"COST RECOVERY FEE*

*As has already been reported SOCOG is seeking a cost recovery fee of \$5.59 m (1997 dollars) from the State to host the games.*

*This cost is based on the number of items outlined in the MOU which are arranged by SOCOG and charged on to the State. The reason for this is buying power and negotiation.*

*There may be some opportunities in the items as "Fees", to be converted to direct State Responsibility costs ("Base Costs") and these would have to be determined so as not conflict with SOCOG arrangements in place, in particular Value in Kind (VIK) and other Sponsorship arrangements entered into by SOCOG.*

*It was even suggested that we should consult with SOCOG in regard to permanent facilities being undertaken as there may be an opportunity of savings of up to 15 percent on necessary requirements for the Hindmarsh Stadium upgrade (seats?).*

*The question was asked if our \$5.59 m requested, included an "opportunity fee" for SOCOG, given that the capacity of ticket sales in Adelaide was less than those in other States.*

Mr Elphinston advised this was NOT the case and the additional charges being placed on South Australia was due to:

- requirement of placing additional Temporary Seating as compared with other venues.
- the additional infrastructure required at Hindmarsh Stadium in setting up the site (security etc.).

The recovery fee is based, by SOCOG, on the submission made by South Australia including letter from Minister Ingerson. Should there be a variation, the fee would be adjusted accordingly.

*Clearly, should there be more permanent seats provided than indicated in our original submission, the "Fee Charges" made by SOCOG could be reduced given that there will not be a requirement for as much temporary seating to be erected."*<sup>210</sup> [original emphasis]

In discussing the additional cost associated with the temporary facilities, SOCOG did not express any view that from SOCOG's point of view it preferred the content of Stage 2 to be permanent seats rather than land acquisition.

## **27 MARCH 1997 - WOODS BAGOT UPDATE COMPLIANCE MATRIX**

On 27 March 1997, Mr Hoare of Woods Bagot sent to Mr Scott in the Department of Recreation and Sport an updated "*Compliance Matrix for Olympics 2000 Requirements*" for Stages 1 and 2.

## **17 APRIL 1997 - DRAFT 2 OF SOCOG MEMORANDUM OF UNDERSTANDING**

The second draft of the SOCOG Memorandum of Understanding was provided by SOCOG with a letter from Mr Elphinston dated 17 April 1997.

With that letter, SOCOG provided a number of documents including a budget outlining the calculation of the Cost Recovery Fee. The budget totalled \$6,319,333. This was significantly more than the previously estimated \$5.59 million. Notably that budget included \$2 million for provision of temporary seats. That line item had the comment:

*"Not required under current Stadium proposal".*

It may be inferred that SOCOG had been told about the proposed Option 2.

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<sup>210</sup> Page 3.



After receipt of Draft 2 of the Memorandum of Understanding there was a meeting of the Olympic 2000 Football Task Force held on 22 April 1997. It discussed the new draft. The minutes of that meeting record the following discussion:

- *"The single biggest cost for the stadium and Olympic fitout is temporary seating (\$2 million). Discussion followed on whether the figures are based on the original bid document which indicated the requirement of 10,800 temporary seats. If so, SOCOG has costed seats at approx \$200 per seat. It is considered that this figure could be adjusted and reduced by increasing the permanent number of seats (Stage 2) at the Hindmarsh Stadium."*<sup>211</sup>
- *"Mr Lawrence advised that Cabinet had not yet received a final submission from the Minister as to which Stage 2 redevelopment option would be recommended. The Minister is awaiting further advice regarding an associated issue before he is able to deliberate on which option he wishes to put to Cabinet."*

*Mr Lawrence suggested that the assessment, recommendation and decision-making process could take up to as long as six weeks.*

*Mr Ciccarello advised that it is not possible to test and verify the "Recovery Fee" and "Base Costs" estimates until Cabinet had decided on which option it would pursue (especially with regard to the major cost components of the "Recovery Fee" being temporary seats @ \$2 million).*

*Mr Lawrence advised that we will have to work on the original bid document until Cabinet approval is obtained.*

*Mr Lawrence advised Messrs Scott and Ciccarello to meet with the Minister to receive direction of which option to use.*

*Ms Hart advised that notwithstanding that Cabinet still have to further consider, and determine which redevelopment option would get up, Treasury has included an amount of \$16.2 m into the Department of Recreation and Sport's Forward Estimates."*<sup>212</sup>

Those passages establish that instead of the selection between options being driven by negotiations with SOCOG, in fact the negotiations had to wait on a decision from Cabinet.

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<sup>211</sup> Page 2.

<sup>212</sup> Page 3.

## **14 APRIL 1997 - WOODS BAGOT LETTER ABOUT SPECULATIVE WORK**

On 14 April 1997, Mr Ford of Woods Bagot wrote a letter to Mr Scott as Chief Executive of the Department of Recreation and Sport stating:

*"As you will remember, in 1997 Woods Bagot were requested by the Government to invest some design expertise into the feasibility of extending the Hindmarsh Soccer Stadium to a Stage 2 development.*

*These drawings were to be used as part of a submission to Cabinet.*

*It was understood that Woods Bagot were to undertake this work on a speculative basis and that should the project be receptive to Cabinet, the cost of same would be incorporated within the overall fee for the total development.*

*As you are aware, the project was well received by Cabinet and consequently, considerable development work to the project has since occurred.*

*This has included many options to fine tune the scope and cost to the requirements of all the stakeholders.*

*We are very committed to this project, but the extended delays in its announcement and approval to initiate the remainder of the process is of some concern, particularly with the end of the financial year looming.*

*Would it be possible for the Department to confirm our arrangement and consider that if the project start is say, delayed past 30th June, 1997, or otherwise not proceed, that the costs incurred to date be reimbursed."*

## **APRIL 1997 - EXTENSION OF OPTIONS FOR LAND ACQUISITION**

On 23 April 1997, Mr Scott sent a minute to Mr Ashenden as Minister for Recreation and Sport requesting approval to extend the options on land in Hindmarsh Place secured by National Portfolio Strategies on behalf of the Government.

## **1 MAY 1997 - CROWN SOLICITOR'S RESPONSE TO INTERIM REPORT OF PUBLIC WORKS COMMITTEE**

On 1 May 1997, the Crown Solicitor instructed Mr Jaksa to look at the Interim Report of the Public Works Committee and consider:

- "1. What if we spit the dummy and tell SOCOG we can't hold the Olympic Soccer Matches.*
- 2. Can we not do Stage 2 and still hold them.*
- 3. Page 27 last dot point. Do we have anything?"*

There is no record within Government that these options were considered.

## 9 MAY 1997 - MEETING WITH SOCOG

Prior to a meeting with SOCOG scheduled for 9 May 1997, Mr Ciccarello prepared a list of requests for changes to the Memorandum of Understanding.

Significantly that list included the following:

"30. *Re 2 Stadium Fitout: Temporary seating:*

*I advise that in all 'Stage 2 Redevelopment' options being considered by the SA Government, the minimum permanent seating (per SOCOG and FIFA standards) will be a minimum of 15,000.*

In our original bid document we proposed 9200 permanent seats with 10,800 temporary seats.

*For the purposes of calculating cost estimate of temporary seating, we have revised down to 5,000 seats.*

(a) *We request that this item be transferred from 'Recovery Fee' to 'Base Cost'.*

This was a definitive request to change the temporary seats to permanent. It shows that the decision to pursue a stadium option involving permanent seats was taken by the Government and not by SOCOG.

SOCOG agreed at a meeting on 22 May 1997 to consider that request.

On 6 June 1997, Mr Ciccarello sent a letter to Mr Simmonds of SOCOG enclosing a set of questions and requests. It repeated the request for temporary seats to be transferred from "Recovery fee" to "Base Cost".

## 27 MAY 1997 - AGREEMENT BETWEEN SOCCER FEDERATION AND NSL CLUBS AS TO FUNDING OF FIT OUT

On 27 May 1997, representatives of the NSL Clubs and the Soccer Federation met to negotiate the terms of the licence agreement between them. They had been negotiating since January 1997, when Mr Pickard of Adelaide City first complained to the Soccer Federation about the cost of playing at Hindmarsh Stadium.<sup>213</sup> Since then, there had been numerous meetings including several chaired by Mrs Hall in an effort to resolve outstanding issues.

On 28 May 1997, Mr Farrugia of the Soccer Federation sent a draft of the agreed terms to the NSL Clubs. His letter stated that:

*"As advised previously, the Premier and the Minister for Recreation and Sport are anxious that all matters related between the Federation and the Clubs should be finalised to enable works to be completed on time."*

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<sup>213</sup> See the section above under the heading "22 January 1997 - Complaint by the NSL Clubs about Financial Arrangements for Stage 1" at page 140.

The enclosed draft terms provided that:

- The fit out of the western grandstand (including the corporate boxes and the clubrooms) would cost no more than \$2 million.
- The fit out works would be built to the specification of the Hindmarsh Redevelopment Committee in consultation with the Clubs.
- A submission would be made to Government for it would be funded by a loan taken out by the Soccer Federation, guaranteed by the Government with a \$2 levy on anyone attending the stadium during a match under the control of the NSL Clubs or the Soccer Federation.

#### **4 JUNE 1997 - SERVICES SA REPORT ON RISK MANAGEMENT ISSUES**

On 4 June 1997, Ms Anne Howe, Chief Executive of Services SA, sent to Mr Dean Brown as Minister for Information and Contract Services a report on the risk management issues arising from Stage 1.<sup>214</sup>

It included the following comments about Services SA's role in the project: <sup>215</sup>

*"The main point to note about this organisation chart is the complex role of Services SA which in the one hand is the Risk Manager protecting the Government [sic] interests on a complex project and directing the clients on certain aspects of the project while on the other hand, the Project and Cost Manager considered to be providing a service to the clients and accepting direction from them."*

The difficulties associated with the committee structure were recognised: <sup>216</sup>

*"The Executive Committee has consistently attempted to manage the overall budget for the project within the agreed limits but has often found that there is an inconsistent understanding between the parties of the actual agreed scope of the project."*

*"Pressure applied by the two club tenants with expectations that their full requirements have been incorporated into the project when often it was anticipated that the clubs would fund such requirements have consistently caused difficulty in managing the budget [sic]."*

#### **13 JUNE 1997 - START OF SERVICES SA'S INVOLVEMENT IN STAGE 2**

On 13 June 1997, Mr Bollen of the Department of Recreation and Sport, sent a minute to Mr Dean Millard, Manager, Design Management in Services SA seeking Services SA's involvement in Stage 2. He specifically asked if Mr Browne could attend a programming meeting at Woods Bagot on 16 June 1997 to discuss all facets of the project from this point on. He stated that the preliminary program

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<sup>214</sup> "Report on Risk Management Issues" dated 4 June 1997 for the Minister for Information and Contract Services.

<sup>215</sup> Page 3.

<sup>216</sup> Page 4.

involving completion by September 1999 had already been developed by Woods Bagot and was then four months behind for reasons outside his agency's control.

This minute set out the background to Stage 2. It stated that *"funds of \$7.7M have been allocated for the Hindmarsh Stadium-Stage II development"* in the State Government's budget for 1997/98 and that *"document had been released publicly"*.

It continued:

*"It is proposed a submission will be forwarded to Cabinet for consideration within weeks, seeking among other things, approval for the project to proceed and funds for the documentation."*

*As you are aware, Services SA have a mandate to provide risk management services to agencies for proposed capital works in excess of \$150,000. As the Stage II project is now public [sic] essential that a project manager and cost manager be appointed. This agency and Joan Hall MP are happy for Jeff Browne to continue as project manager for Stage II. With his knowledge of the current project it would seem logical for him to continue. Similarly, as discussed with yourself and Judith Freeman earlier this year, it is proposed that Woods Bagot's consultancy for Stage 1 be extended for Stage II. However we advise the project is and will continue to be politically sensitive and therefore will require Jeff Browne's virtual full time attention."*

## **16 JUNE 1997 - CABINET APPROVAL FOR THE PURCHASE OF LAND IN HINDMARSH PLACE**

On 16 June 1997, Cabinet considered a submission seeking approval for the purchase of three properties in Hindmarsh Place south of the stadium. Cabinet approved that a Cabinet Sub-committee comprising the Attorney-General, the Treasurer and the Minister for Recreation and Sport meet and have authorisation to approve funds to enable that purchase.

On 16 June 1997, that Sub-committee approved the expenditure of \$851,000 to acquire land in Hindmarsh Place. The Sub-committee sent a minute to the Premier that stated:

*"The Sub-Committee agreed that on the advice available the three options to purchase should be exercised but this should not be regarded as an indication that the stadium project is now fully approved. The 3 properties are, we were told, necessary for either option for development of the stadium."*

*The Sub-Committee also agreed that a working group comprising representatives from Treasury and Finance, Crown Solicitor's, Recreation and Sport, Services SA and Department for Housing and Urban Development should meet urgently to begin to work through the issues relating to the stadium and sort out potential problems now, prior to presentation of a Submission relating to the project to Cabinet. Department of Recreation and Sport to convene."*

The acquisition went ahead. The Department of Recreation and Sport wished to use National Portfolio Strategies' solicitors for the conveyancing work and sought Crown Solicitor's approval to do so. The attitude of the Crown Solicitor's Office was:

*"If they want to pay for something that we can do for nothing why should we stop them."*

Later, when the firm's fees came to be certified by the Crown Solicitor, he made the point that his office would have done the work for free.

## **23 JUNE 1997 - NSL CLUBS LICENCE AGREEMENT**

Negotiations between the Soccer Federation and the NSL Clubs resulted in the execution of a binding licence agreement on 23 June 1997.<sup>217</sup>

The Soccer Federation sent the Department of Recreation and Sport a draft of the licence agreement as part of the *"satisfaction of conditions precedent process"* under the Funding Deed. Mr Scott responded by letter dated 25 June 1997, after the execution of the agreement stating:

*"Thank you fer [sic] sending me a facsimile of the draft licence agreement with the Soccer Clubs. Much of it is not relevant to the Department but I do have a couple of comments.*

*First, I note that clause 3.4 binds the Clubs to play all their National Competition Matches at the stadium. Once this is signed it will fulfil two further conditions precedent under the Funding Deed between the Federation and the Government.*

*Second, I note that the agreement provides for the flow on of up to \$1 in the increase of the levy. However, while the Funding Deed gives the Minister the right to insist on increases up to this amount, there is scope to negotiate a higher amount if circumstances warrant. I would suggest the licence agreement should reflect this.*

*My other comments relate to the proposal to borrow \$2 million for further works at the stadium. I note that it is contemplated that you will seek a Treasurer's Guarantee for this loan. If you do seek a guarantee, I would anticipate that the Government would raise concerns about:*

- *catering rights being provided exclusively to the Clubs, including for non-soccer events;*
- *any surpluses from the proposed \$2 levy after meeting loan repayments being returned to the Federation and the Clubs.*

*In the latter case I would anticipate the Government would seek to have such surpluses available to meet shortfalls on the loan covered by the Funding Deed. Part of the rationale for this would be that the imposition of the \$2 levy would limit the scope to increase the (\$3) grandstand levy to cover shortfall in meeting those loan repayments.*

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<sup>217</sup> In this Report, this agreement is referred to as the 1997 Licence Agreement.

*You may wish to take these issues on board in future discussion with the Clubs."*

## **25 JUNE 1997 - FIFA APPROVAL OF FIVE VENUE PLAN**

On 10 June 1997, SOCOG had a meeting with the different venues' representatives about the commercial arrangements. Mr Graham Richardson of SOCOG chaired the meeting. Mr Ciccarello attended for Adelaide. SOCOG told the venue representatives that there was some doubt about FIFA's support for the use of four interstate venues. That must have come as something of a surprise to them since they had believed that Adelaide was selected as a venue from the time of receipt of the December 1996 letter from Mr Michael Knight.<sup>218</sup>

On 25 June 1997, Mr Sandy Holloway, the new Chief Executive of SOCOG, wrote two letters to Premier Olsen. One began: *"I am writing in relation to the possible participation of Adelaide in the Olympic Football Tournament."*<sup>219</sup> The letters went on to confirm that FIFA had now approved the use of five rather than four venues.

## **25 JUNE 1997 - DRAFT 3 OF SOCOG MEMORANDUM OF UNDERSTANDING**

Draft 3 of the SOCOG Memorandum of Understanding was sent to Mr Ciccarello under cover of a letter dated 26 June 1997.

Mr Simmonds of SOCOG sent a fax to Mr Ciccarello dated 26 June 1997 responding to Mr Ciccarello's questions of 6 June 1997. In particular, Mr Simmonds stated that SOCOG agreed to the transfer of the temporary seats to "Base Cost":

*"Noted - very pleasing to see enhanced legacy."*

Draft 3 introduced the concept of a cap on the fee cost that the State would have to pay to SOCOG.<sup>220</sup> This was incorporated in a new Clause 12.2 and was capped at \$3.71 million.

That must be compared with SOCOG's estimated recovery fee stated at the outset of the negotiations, ie \$5.59 million. The difference is accounted for in part by the fact that by this time what had previously been identified as the largest single item that SOCOG was to provide (ie, temporary seating) had been removed from the fee cost. SOCOG had stated that the temporary seating accounted for \$2 million of the \$5.59 million. Ultimately that cost was covered as follows:

- 5,000 seats were provided as temporary seats. Adelaide took over responsibility for providing those seats.
- 10,000 seats were provided as permanent seats. Adelaide bore that cost.

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<sup>218</sup> See page 138 above.

<sup>219</sup> Emphasis supplied.

<sup>220</sup> "Fee costs" described the reimbursement the State was obliged to make to SOCOG for certain services and facilities provided by SOCOG.

Adelaide still bore the cost for both. However, the cost was removed from the calculation of the SOCOG Fee Cost and became part of the cost of the Stage 2 project costs. It appeared that the negotiating team had succeeded in substantially reducing the fee paid to Sydney. It had, but it had not reduced the overall cost to South Australia in redeveloping Hindmarsh Stadium and hosting Olympic soccer.

Draft 3 included a change to Schedule 2B that recorded the allocation of the cost of facilities between SOCOG and the Government. Whereas previously temporary seating had been a SOCOG fee cost (ie, to be provided by SOCOG at the State's cost) it became a base cost (ie, to be provided by the State at the State's cost).

## **25 JUNE 1997 - WORKING PARTY FOR DRAFT CABINET SUBMISSION**

A working party meeting was held by the Department of Recreation and Sport on 25 June 1997 to consider a draft Cabinet submission for Stage 2.

## **26 JUNE 1997 - SERVICES SA COMMENT ON MARCH 1997 COST ESTIMATE**

On 26 June 1997, Services SA prepared a report on the cost estimate produced by Rider Hunt in March 1997 which had founded the March 1997 Cabinet submission. The report included the following statement:

*"The total project budget appears tight in a number of areas and contains a number of high risk elements."*

## **30 JUNE 1997 - SERVICES SA QUERY OF \$16.205 MILLION BUDGET**

On 30 June 1997, Ms Anne Howe sent a memorandum to the Chief Executive of the Department of Recreation and Sport stating that Services SA had difficulty in accepting that Stage 2 of the project could be kept within \$16.205 million budget given the level of uncertainty of the project.

*"At recent briefing sessions and as noted in the draft Cabinet submission it is clear that a number of complex issues associated with the project cannot be resolved until negotiations are held with relevant parties. Given the confidential nature of these issues it is understood that consultation cannot occur prior to Cabinet approval. Accordingly, there is a level of risk with the detail provided in the submission given that it is based on a number of assumptions and untested briefing.*

*The most significant issues appear to be:*

- *specific project investigation related to issues such as geotechnical and soil contamination and diversion of street services*
- *Byelorussion [sic] Church relocation*
- *finalisation of brief and sign off by affected parties*
- *ability to effect a road closure in the timeframe set*
- *the dependencies on other funding sources for land*
- *co-operation of the City of Charles Sturt*



- *Development Approval method*
- *final ownership of the land*

*These issues could have a major impact on project costings and Cabinet should be alerted to the sensitivity of the timeframes and the decisions related to the resolution of these matters.*

*The draft Cabinet submission seeks approval for the project to proceed to the end of documentation phase [sic] (recommendation 4.1) although there has been limited investigation of what the estimate of \$16.205M can provide. Therefore it is suggested that Cabinet approval may be sought as a staged process limited in this instance to funding for project work up to the end of the design development phase.*

*As the project is still in the embryonic stages the proposal for a value management study to be carried out to substantiate the assumptions and quantify and verify the needs for Option 3 is supported. This will enable finalisation of a brief and the impact of land and Council negotiations to be incorporated into project parameters. As a result Government will then be able to be provided with a much clearer view of all program and cost issues including the capacity of the estimate to provide stakeholders project expectations. It is therefore proposed that recommendation 4.1 be altered accordingly.*

*If approval for up to design development is sought at this stage funding in the order of \$400,000 is now required in lieu of the \$1.188M nominated in the draft submission.*

*Services SA would have difficulty in accepting the project could be contained within the \$16.205M budget given the current level of uncertainty associated with the preliminary work done to date. This advice will form part of Services SA briefing to the Minister of Information and Contract Services.*

...

*Services SA accepts that it is logical that Woods Bagot undertake the primary consultancy role for the project given their engagement for Stage 1. However, in regard to Recommendation 4.6, it is suggested that Cabinets endorsement [sic] should be subject to successful negotiation of an acceptable fee.*

*The circumstances of Woods Bagots involvement to date is understood. However, it is suggested that the detail included in 3.29 to 3.35 need not be incorporated in the Cabinet submission as it attracts too much attention to an issue that has not been dealt with in accordance with government process and as a result it may invite criticism of your Agency. If pressured for comment Services SA would be compelled to state that our involvement should have been sought earlier.*

*In addition to the issue of negotiating a satisfactory fee, Services SA propose that you advise Cabinet of the logical reason to continue to utilise Woods Bagot and that in the event that Stage 2 does not proceed it will be necessary to seek funding reimbursement for costs incurred."*

## CHAPTER 13 - JULY TO NOVEMBER 1997

### 7 JULY 1997 - CABINET APPROVAL OF LETTER OF AGREEMENT WITH SOCOG

On 7 July 1997, Cabinet gave approval to a request to sign a letter of agreement with SOCOG setting out the financial basis for the hosting of matches in the 2000 Olympic Soccer Tournament in Adelaide.

On 11 July 1997, the Premier signed the letter of agreement with SOCOG agreeing to Stage Olympic soccer matches in Adelaide. The letter included a commitment to provide an adequate stadium. That concept was not defined.

At this time the content of Stage 2 had not been finalised within Government.

### 8 JULY 1997 - BRIEFING BY WOODS BAGOT OF MINISTER FOR INFORMATION AND CONTRACT SERVICES

As a result of the concerns expressed to Mr Dean Brown as Minister for Information and Contract Services by Ms Howe as Chief Executive of Services SA, Mr Dean Brown sought a briefing from Woods Bagot on the proposed Stage 2 project in July 1997. After the briefing, Woods Bagot sent Mr Dean Brown a bound package of drawings of the project dated from May 1996 to June 1997.<sup>221</sup> Woods Bagot informed Mr Dean Brown that the cost of the various options investigated ranged from \$11.4 to \$29.81 million.

### 9 JULY 1997 - FIT OUT GUARANTEE

The licence agreement executed by the NSL Clubs in June 1997 included a proposal that the Soccer Federation would obtain a loan of \$2 million to be guaranteed by the Government.

The purpose of the \$2 million loan was for the fit out of the corporate and clubroom facilities in the redeveloped western grandstand. Of that \$2 million, \$300,000 was to be paid by the NSL Clubs for the commercial kitchen to service the corporate boxes and the clubrooms.

On 9 July 1997, Mr Ashenden as Minister for Recreation and Sport signed a Cabinet submission seeking approval for a Treasurer's Guarantee for a loan of \$2 million by the Soccer Federation for the fit out of the western grandstand.

The Cabinet submission set out the following as justifications for the granting of the Fit Out Guarantee:

- It was necessary to make the Soccer Federation legally responsible for the fit out to ensure it was completed in a timely and consistent fashion.

*"3.2 On review of the proposition that the SASF and the Adelaide City and West Adelaide Soccer Clubs each prepare separate briefs and enter into individual*

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<sup>221</sup> This volume of drawings was not produced to this Examination.

*arrangements for the development of their relevant areas, several issues were identified as creating potential problems regarding the proper and timely completion of the M&ES [mechanical and engineering services] and fit-out.*

*These issues include:*

- *the expeditious completion of the works*
- *the required synchronisation of the M&ES works*
- *conformity to fit-out uniform quality standards*
- *maximising cost efficiencies*
- *the presentation of a co-ordinated high standard, completed stadium for use at international events such as the Olympic Football Tournament in year 2000.*

*3.2.1 To resolve these issues it is recommended the SASF co-ordinate and accept on behalf of the three entities, the principal legal and commercial responsibility for the M&ES and fit-out requirements."*

- The Soccer Federation could not afford the fit out from its own assets and so needed the guarantee to be able to borrow the money.

*"3.5 Detailed costings have been carried out for the provision of mechanical and electrical services and the fit-out as described above and have been estimated at \$2 million. (Refer to Attachment A)*

*3.6 The SA Soccer Federation is unable to raise funds of this magnitude for this purpose, as it is not the proprietor of the Hindmarsh Stadium title deed, and therefore is seeking a Government guarantee for the loan as required by its loading [sic] facility."*

- The works were necessary for the hosting of matches in the 2000 Olympic Soccer Tournament. If those works were done on a temporary basis it would cost \$250,000.

*"3.9 The Executive Director of the SA Olympic Football Task Force has estimated that it would cost the Government approximately \$250,000 extra to temporarily facilitate the M&ES and fit-out for Adelaide's rounds of the Olympic Football Tournament if not completed during this stage of the stadium redevelopment."*

- The Soccer Federation could afford to service the loan from an additional levy because market research had shown that there was room for growth in the soccer market and attendances at soccer matches continued to grow.

*"3.12 Market research has been carried out by the SASF in regard to the proposed levy and specialist marketing advice regarding ticket pricing has been provided by Marketing consultants, Hamra Management.*

*Hamra Management has concluded that the existing aggregate level of attendances at Hindmarsh Stadium National Soccer League matches represents the 'hard core' of soccer enthusiasts in Adelaide, and the proposed ticket price increase should not affect the demand for tickets.*

...

*3.13.1 The Hamra Management report also concludes there is considerable scope for the SASF to improve attendances and greater utilisation of the stadium generally."*

On 14 July 1997, Cabinet did not decide on whether to approve the granting of the guarantee immediately. Instead, it referred the matter to be investigated by Mr Ian Kowalick, then Chief Executive of the Department of Premier and Cabinet. Mr Kowalick produced a minute recording his investigations. That minute showed that Mr Kowalick's investigations comprised speaking with various banks about whether they would be prepared to lend without the benefit of the Government guarantee.

The conclusion of the minute dated 7 August 1997 was:

*"If Cabinet believes that the development of services and fitout at Hindmarsh warrants a guarantee, then the guarantee should be provided under the same general terms as the existing guarantee except that the Federation and the clubs must in this case accept that the Treasurer will have recourse in the first instance to an increase in the levy beyond the \$1 currently provided (say \$3) and failing that after a period of 12 months, to all revenues of the Federation and clubs to recover any calls upon the guarantee."*  
[original emphasis]

The Department of Treasury and Finance did not support the provision of a Government Guarantee on grounds that there was a possibility that repayment shortfalls would arise on the \$4.0625 million loan guarantee, not to mention an additional loan of \$2 million.

On 11 August 1997, Cabinet approved the granting of the Treasurer's Guarantee for the fit out loan subject to:

- the Soccer Federation providing a business plan detailing the source of loan repayments;
- a change in the documentation for the existing and new guarantees so that there is a provision to increase the \$3 levy by more than \$1 over the 20 year period and to allow for the levy to be increased in line with inflation;
- the terms and conditions of the guarantee should be consistent with the existing guarantee which includes the application of a guarantee fee and the new guarantee must be in place before work proceeds.

This changed a key feature of the Funding Deed in that the ultimate risk of the cost of the fit out was now the responsibility of the Government.<sup>222</sup>

## **14 JULY 1997 - FURTHER CABINET CONSIDERATION OF STAGE 2**

### **Preparation of Submission**

The Cabinet submission signed by Mr Ashenden as Minister for Recreation and Sport on 9 July 1997 was the subject of discussion by a working party including representatives of the Department of Treasury and Finance, Services SA, the Crown Solicitor's Office and the Department of Recreation and Sport.

Services SA reviewed a draft of the submission. On 3 July 1997, Ms Howe of Services SA signed a minute prepared by Ms Mary Marsland, Director of Client Services, Services SA to Mr Dean Brown, as Minister for Information and Contract Services, briefing him on the submission. Services SA supported the submission but noted significant risks and unresolved issues. Those risks were identified in the submission but not the strategy to manage them. Key issues that remained unresolved included future ownership of the site and the costs of temporary requirements for the Olympics.

This was not the first time that the ongoing management of the stadium had been raised and it was not the last. Even so, the issue is still not resolved as at the time of this report, over four years later.

### **Content of the Submission**

On 9 July 1997, Mr Ashenden as Minister for Recreation and Sport signed a Cabinet submission presenting a revised concept plan for Stage 2 called "Option 3". The key difference between it and "Option 2" as considered in March 1997 was that Option 2 included a covered two tier grandstand on the eastern side of almost identical size and design to the Stage 1 upgraded western stand, whereas Option 3 was for an unroofed single-tier terrace. That brought the cost within the \$16.205 million budget.

The 9 July 1997 Cabinet submission identified a number of potential problems for the Stage 2 project caused by building on land that was not the subject of the existing lease from the Council to the Soccer Federation. In respect of the additional land, the submission set out possible solutions to the issues relating to each piece of land:

- It was assumed that Council would contribute land it owned to the Government at the end of the project.
- \$100,000 had been allowed in the budget for the relocation of the Hindmarsh Bowling Club.
- A budget of \$369,000 for compulsory acquisition of the land occupied by the Byelorussian Church was included.

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<sup>222</sup> See footnote 188.

- A budget of \$279,000 was allowed for the cost of relocating Meals on Wheels.
- A budget of \$810,000 was allowed for making fit seven heritage buildings.

The submission did not refer to the existing problem created by the main stadium site being upon land over which the Government had no control.

The Cabinet submission noted that both Canberra and Melbourne had announced significant ground upgrades.

### **Cabinet Resolution to Refer to Inter-Departmental Working Group**

On 14 July 1997, Cabinet considered the scope of Stage 2. Cabinet again approved the pursuit of Stage 2 *"in principle"*. Cabinet resolved that the Chief Executive of the Department of Premier and Cabinet should form and Chair an inter-departmental working group. The group was required by Cabinet to report to Cabinet in two weeks with the process for resolution of issues and a recommendation of a Project Manager.

### **14 JULY 1997 - MEETING TO DISCUSS CABINET'S CONCERNS OVER STAGE 2 PROPOSAL**

On 14 July 1997, a meeting was convened at the request of the Chief Executive of the Department of Premier and Cabinet to discuss concerns raised at the Cabinet meeting earlier that day. The meeting was attended by the chief executives and officers of the Department of Recreation and Sport, the Department for Housing and Urban Development, Services SA, the Crown Solicitor's Office, the Department for the Environment and Natural Resources and the Department of Treasury and Finance.

Mr Kowalick requested that a Sub-committee of the Departments report back by 18 July 1997. A risk management plan was prepared by the Department of Recreation and Sport that discussed and identified risks and strategies for their management. The plan included two models for project management said to provide clear accountability. Both models designated accountability with the Chief Executives of the Department of Recreation and Sport and Services SA and their responsible Ministers. Both models included a project control group headed by a Project Manager from Services SA. The model which included a project steering committee similar to Stage 1 was not recommended *"due to the watering down of direct accountabilities and the blurring of the decision-making responsibilities"*.

### **21 JULY 1997 - CABINET APPROVAL FOR CABINET COMMITTEE AND PROJECT DIRECTOR FOR STAGE 2**

On 21 July 1997, Cabinet approved the establishment of a Cabinet Committee comprising Mr Ingerson as the Deputy Premier and Chair, the Attorney-General, Mr Dean Brown as Minister for Information and Contract Services and Mr Ashenden as the Minister for Recreation and Sport. Cabinet also approved the appointment of Mr Ian Dixon, Chief Executive of the Office of Local Government as the Project Director for Stage 2.

The Cabinet Committee was not given any formal written terms of reference as to its function although it was later stated in the Cabinet submission dated 15 August 1997 that it was proposed that the Cabinet Committee be responsible for monitoring the progress of the Stage 2 development and interface with the staging of the Olympic mode. A diagram of the project management structure for Stage 2 showed the Cabinet Committee as the "Client" meeting monthly. Project Control comprised the Project Director, Mr Dixon and a Project Reference Group comprising representatives of Government agencies and stakeholders.

Cabinet referred the 9 July 1997 submission back to Minister Ashenden without approving it.

### **30 JULY 1997 - PUBLIC WORKS COMMITTEE ATTENTION TO STAGE 2**

On 30 July 1997, Mr Oswald as Chair of the Public Works Committee, wrote to Mr Ashenden as Minister for Recreation and Sport highlighting that page 40 of the Capital Works Program 1997-98 gave details of a second stage in the redevelopment of Hindmarsh Soccer Stadium to the value of \$16.2 million to commence in September 1997.

Stage 2 was stated in the Capital Works Program to be necessary in order to provide a facility with all the amenities necessary for the preliminary round of competition for the Sydney 2000 Olympics that are to be played in Adelaide. The Public Works Committee sought an explanation since this was at variance with the evidence presented to the Public Works Committee in 1996. The Public Works Committee also asked Minister Ashenden whether the Council would be approached for a financial contribution.

### **5 AUGUST 1997 - DRAFT 4 OF SOCOG MEMORANDUM OF UNDERSTANDING**

In Draft 4 of the SOCOG Memorandum of Understanding, the cap on the fee cost to be paid to SOCOG was reduced to \$3.309 million.

The time frame for construction of the stadium was set out in more detail:

- By 31 December 1999, the major works for the stadium (to be set out in a new Schedule 2C) had to be completed.
- By 1 August 2000, the stadium had to be completed to the Schedule 3 standard except for certain agreed excluded works such as the temporary seating.
- By 25 August 2000, if the stadium had not been completed SOCOG had the right to terminate.

The concept of Schedule 2C and the work contained in it was introduced in this draft. Schedule 2C was included with the draft sent by SOCOG. It was entitled "*Works to be Completed at the stadium*". The body of it was blank except for the phrase: "[*To be completed by the State*]".

## **6 AUGUST 1997 - LETTER FROM COUNCIL ABOUT STAGE 2**

On 6 August 1997, the Council sent a letter to Mr Ingerson as Deputy Premier, expressing the Council's support for the project. The letter continued:

*"Obviously, we are not in a position to sign off on the project at this stage as we have all recognised there are a number of issues requiring careful negotiation. We are already in the process of constructively working through these issues with Mr Ian Dixon, the newly appointed Project Director, and are confident and optimistic of a successful resolution. To this end, you will already be aware that Council, in anticipation of these issues, has already established an Advisory Committee ... "*

## **6 AUGUST 1997 - STAGE 2 SCOPE AND BUDGET WORKSHOP**

On 6 August 1997, a half day workshop was held at the offices of the Department of Recreation and Sport. The workshop was led by Mr Dixon as Project Director. Mrs Hall as Chair of the Stage 1 Redevelopment Committee, Mr Ciccarello as leader of the Olympic Task Force, officers from the Department of Recreation and Sport and Services SA attended as well as Mr Farrugia of the Soccer Federation and officers of Woods Bagot, Connell Wagner and Rider Hunt.

The minutes of this workshop record that Mr Dixon highlighted the complex issues involved. The organisational structure for the project was described to the meeting and that Mr Ingerson as Deputy Premier is the Chair of the Cabinet Committee for the project. The client was stated to be the Cabinet Committee.

Confidentiality issues were stressed by Mr Dixon and Mrs Hall. The minutes further record that:<sup>223</sup>

*"...this was not a traditional Value Management Workshop but rather a review of the budget and scope of works for Stage 2 to ensure that there was agreement on the scope and that it would meet the expectations of the various parties present."*

## **11 AUGUST 1997 - DRAFT 5 OF SOCOG MEMORANDUM OF UNDERSTANDING**

This draft was sent by fax by SOCOG to Mr Ciccarello on 11 August 1997.

Draft 5 added the concept of Schedule 2D. It was entitled *"Works Not Included in Final Completion Standard"*. The list of works included only one item, *"the installation of temporary seating at the stadium"*. The balance of the list contained the following phrase: *"[\*The State to Complete - Further Works]"*.

After receiving Draft 5, Mr Ciccarello prepared drafts of Schedules 2C, the list of major works to be completed by the Government, and Schedule 2D.

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<sup>223</sup> Page 3.



## **11 AUGUST 1997 - FIRST MEETING OF HINDMARSH SOCCER STADIUM CABINET COMMITTEE**

On 11 August 1997, the first meeting of the Hindmarsh Soccer Stadium Cabinet Committee was held. In attendance were Mr Ingerson as Deputy Premier and Chair of the meeting, the Attorney-General, Mr Dean Brown as Minister for Information and Contract Services, Mr Ashenden as Minister for Recreation and Sport, Mr Kowalick, Mr Dixon, Mr Ciccarello, the Crown Solicitor, Ms Marsland of Services SA, Mr Jaksa from the Crown Solicitor's Office and Ms Anne Westley of Strategic Policy and Cabinet Division.

Mr Dixon, made a presentation on the status of the Hindmarsh Stadium project. Mr Dixon said that the issue of ownership needed to be resolved given that the Council owned the land and Government and the Soccer Federation were funding the new buildings. He further stated that the issue of stadium management had to be addressed to ensure all interests were taken into account in the long run. The minutes record that Mr Dixon as Project Director and the Crown Solicitor were to report on land ownership and/or transfer options.

## **15 AUGUST 1997 - FINAL SOCOG MEMORANDUM OF UNDERSTANDING**

The final version of the SOCOG Memorandum of Understanding was executed by Premier Olsen on 15 August 1997.

The final figure for Total Fee Cost included in the final Memorandum of Understanding was \$3,309,000. SOCOG provided a breakdown of the calculation of that item on 8 July 1997. That breakdown totalled \$3,308,862. No explanation was given by SOCOG for the difference between those two figures but it may reasonably be inferred that it was simply rounded up.

This Examination has also examined two other more detailed breakdowns of the Total Fee Cost:

- The first detailed estimate provided by SOCOG in April 1997 totalling \$6,319,333.
- The detailed estimate in July 1997 placed before Cabinet totalling \$3,328,640

The final figure was a further \$19,640 less than the July figure placed before Cabinet.

The difference of \$3,010,471 between the April 1997 and July 1997 figures provided by SOCOG is accounted for by the following changes:

Description	April \$	July \$	Change \$	Explanation
Athlete's village	806,375	780,000	(26,375)	SOCOG revised estimate
Official Hotel	170,625	181,250	10,625	SOCOG revised estimate
Athlete's travel	-	83,333	83,333	Not known
Accreditation Centre	75,000	75,000	-	
Advertising	100,000	100,000	-	
Airport Services	-	-	-	
Catering	-	-	-	
Olympic Football Task Force	17,000	-	(17,000)	SOCOG agreed to bear
Information Centre	-	-	-	
Host broadcaster	947,333	-	(947,333)	SOCOG agreed to bear
Language Services	40,000	40,000	-	
Look of the Games	250,000	250,000	-	
Olympic Family	-	-	-	
Public Relations	50,000	50,000	-	
Publications and Programs	-	-	-	
Technology: Cabling services	500,000	120,000	(380,000)	Included in permanent work as part of Stage 2
Technology: magnetometer	60,000	60,000	-	
Technology: x-ray machines	160,000	160,000	-	
Ticketing	50,000	50,000	-	
Transport	-	-	-	
Volunteers	143,000	66,000	(77,000)	SOCOG revised estimate
Training sites	-	-	-	
Stadium: security fencing	400,000	400,000	-	
Stadium: media centre	550,000	550,000	-	
Temporary seating	2,000,000	-	(2,000,000)	Partly Included in permanent work as part of Stage 2; Temporary seating cost transferred to base cost.
Stadium operations	-	-	-	
Contingency	-	343,279	343,279	
<b>Total</b>	<b>6,319,333</b>	<b>3,308,862</b>	<b>(3,010,471)</b>	

In summary, \$2.38 million of the reduction in the fee payable to SOCOG was achieved by the State bearing the cost in another way. In the case of the replacement of temporary seating by permanent seating the reduction was achieved only by a very substantial increase in the cost of provision of the seating.

The Memorandum of Understanding entered into with SOCOG contained two schedules relevant to the additional construction work Adelaide had to do. Schedule 2C recorded "*Works to be Completed at the stadium*". The first and only draft of that schedule was produced on 12 August 1997 by Mr Ciccarello, after Cabinet had already decided in principle that the option containing 15,000 permanent seats should be preferred. Schedule 3 to the SOCOG Memorandum of Understanding was in substance a repetition of the "*minimum stadium requirements*" sent to Premier Dean Brown in July 1996.

It included the requirement of a minimum of 15,000 seats. The schedule specifically envisaged that temporary seating would be permitted subject to specific approval.

The Memorandum of Understanding required the contract documentation for the stadium construction to be submitted to SOCOG for final approval. The plans were later provided to SOCOG. However, ultimately, SOCOG waived the requirement for it to approve formally the final construction contract.

## **18 AUGUST 1997 - CABINET SUBMISSION FOR STAGE 2**

On 18 August 1997, Deputy Premier Ingerson signed a further Cabinet submission for Stage 2. Its key recommendations were that Cabinet endorse:

- new concept plan for Stage 2;
- the Project Management Structure for Stage 2;
- the budget range for Stage 2 to be between \$15.95 million and \$18.12 million;
- the engagement of Woods Bagot as primary consultant.

It also recommended that Cabinet note that a proposal on stadium ownership and management would be developed as a matter of urgency.

On 18 August 1997, Cabinet approved all of the recommendations except:

- it "noted" rather than endorsed the new concept plan;
- it did not endorse the budget range.

The new concept plan was very similar to that in the previous submission considered by Cabinet on 9 and 21 July 1997. The key differences were:

- an altered configuration for the eastern grandstand;
- a different layout for the practice pitch and carpark south of the stadium.

## **25 AUGUST 1997 - CABINET APPROVAL OF FURTHER INCREASE IN EXPENDITURE FOR STAGE 1**

On 25 August 1997, Cabinet approved increased expenditure for Stage 1 to \$9.13 million. Cabinet also approved the Government waiving the Soccer Federation's obligation under the Funding Deed to contribute 50 percent of the extra Project Costs. The Cabinet submission signed by Mr Ingerson as Deputy Premier seeking this approval stated: <sup>224</sup>

*"...it is clear from the recent negotiations in relation to the fitout of Stage 1 that there is no point in seeking a capital contribution from the Federation. Accordingly it is proposed that the requirement of clause 6.2 be waived."*

Construction of the Stage 1 works was reported to be 75 percent complete by this time.

## **2 SEPTEMBER 1997 - SECOND MEETING OF HINDMARSH SOCCER STADIUM CABINET COMMITTEE**

On 28 August 1997, Mr Dixon provided a draft paper on ownership and management to the Crown Solicitor's Office and the Department of Treasury and Finance for comment. The draft paper contained an analysis of different arrangements including an independent trust.

At the second meeting of the Hindmarsh Soccer Stadium Cabinet Committee held on 2 September 1997, Mr Dixon's draft paper on stadium ownership and management was considered. It was resolved that a more detailed paper be prepared by Mr Dixon as Project Director and the Crown Solicitor. The Committee did not meet again until 16 March 1998.

## **4 SEPTEMBER 1997 - SOCCER FEDERATION BUSINESS PLAN**

On 4 September 1997, the Soccer Federation prepared an extended business plan in support of their proposal to the Government for the guarantee of the \$2 million Fit Out Loan.

The business plan was considered by the Department of Treasury and Finance. The Department described the business plan as containing the minimum information acceptable. It was noted that the assumptions to the forecasts were critical and that there was no risk assessment of unfavourable changes which might affect those assumptions.

## **8 SEPTEMBER 1997 - CABINET ENDORSEMENT OF FORMAL SUBMISSION OF STAGE 2**

On 4 September 1997, Mr Ingerson signed a Cabinet Submission seeking Cabinet's approval of the budget for Stage 2 and the pursuit of Option 3 involving new permanent stands on each of the northern, southern and eastern sides of the pitch.

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<sup>224</sup> Paragraph 3.6.

As had the 18 August 1997 Cabinet submission, this Cabinet submission added \$1.92 million of "variable and discretionary works" to the \$16.205 million budget that had been previously approved. It comprised:

Work	Cost \$
Bowling Club relocation *	100,000
Byelorussian Church relocation *	370,000
Meals On Wheels relocation *	135,000
Scoreboard	100,000
Western Grandstand Players Race	100,000
Upgrade to Surrounding Streets *	500,000
Alter Change Rooms In Western Grandstand	440,000
Loose Furniture And Equipment	75,000
Signature signage	100,000
	1,920,000

The works marked with an asterisk above totalling \$1.105 million had, in the November 1996 Cabinet submission, been included within the budget of \$16.205 million. This Cabinet submission put forward a wholly different concept for the Stage 2 development.

On 8 September 1997, Cabinet endorsed the budget estimate of \$16.205 million for Stage 2. Cabinet qualified its approval with the statement that, *"Every attempt must be made to keep the project within \$16.2 m budget."*

## **10 SEPTEMBER 1997 - SOCOG MEMORANDUM OF UNDERSTANDING SIGNED**

In early September 1997, SOCOG and the IOC signed the SOCOG Memorandum of Understanding. This was after the Premier had signed it on 15 August 1997. The document was dated 10 September 1997.

## **17 SEPTEMBER 1997 - RETAINER OF WOODS BAGOT FOR STAGE 2**

Woods Bagot had been appointed for Stage 1 on the basis of a selection process where six candidates had been considered. In Stage 2, no other candidates were considered. The Department of Recreation and Sport simply retained Woods Bagot. The justification for that was set out in a draft of the 9 July 1997 Cabinet submission as follows:

*"3.29 The firm of Woods Bagot were selected in an open competition as the primary consultant for the Western Grandstand project presently under construction.*

*3.30 As part of the development bid to secure a preliminary round of the Sydney 2000 Olympic Games Soccer Tournament, there was a need to engage consultants to undertake conceptual and feasibility work in regard to design, land acquisition, planning issues and brief development.*

- 3.31 *The Department of Recreation and Sport concluded that, in view of Woods Bagot's knowledge of the site, it would be sensible for Woods Bagot to continue. This was subsequently agreed by Services SA.*
- 3.32 *To date, Woods Bagot have undertaken a considerable amount of work on the Stage II project for no payment. This includes a degree of sub-consulting work with other firms whom Woods Bagot would be obliged to pay. It is estimated that the costs incurred by Woods Bagot would be in the order of \$60,000.*
- 3.33 *These costs are built into the Stage II project. Accordingly, if the project proceeds, Woods Bagot will be reimbursed for these expenses.*
- 3.34 *However, at this stage, Woods Bagot have no commitment from the Government in relation to reimbursement of their costs should the project not proceed. While they are not seeking payment at this stage, they are anxious about their position from an audit perspective.*
- 3.35 *It is considered that it would be unreasonable for Woods Bagot to carry these costs if the project does not proceed. Under these circumstances additional funds would need to be provided to the Department of Recreation and Sport to enable it to reimburse Woods Bagot."*

Services SA informed the Department of Recreation and Sport that the process adopted was not appropriate.

*"The circumstances of Woods Bagot's involvement to date is understood. However, it is suggested that the detail in 3.29 to 3.35 need not be incorporated in the Cabinet submission as it attracts too much attention to an issue that has not been dealt with in accordance with the government process and as a result it may invite criticism of your Agency. If pressured for comment Services SA would be compelled to state that our involvement should have been sought earlier." <sup>225</sup>*

This topic was dealt with in the final July Cabinet submission as follows:

- "3.31 The firm of Woods Bagot was initially selected as the preferred consultant for Stage 1 of the Hindmarsh Stadium Redevelopment in competition with a selected field of consultants.*
- 3.32 As part of the bid to secure rounds of the 2000 Olympic Football Tournament, there was a need to utilise the services of Woods Bagot, in view of their knowledge of the site, to undertake conceptual and feasibility work in regard to design, land acquisition, planning issues and brief development for this proposal.*
- 3.33 Given its background and involvement in investigating the feasibility of the expanded project, it is proposed Woods Bagot be further engaged for Stage 2 subject to a satisfactory fee being negotiated by Services SA."*

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<sup>225</sup> Minute dated 30 June 1997 from Howe, Services SA to Mr Bollen the Department of Recreation and Sport.

Woods Bagots Primary Consultancy Services and Fee Offer document produced in August 1997 stated: <sup>226</sup>

*"Woods Bagot and Connell Wagner have been undertaking a feasibility consultancy for the Department of Recreation & Sport on the Hindmarsh Stadium Stage 2 project for approximately 18 months.*

*The scope of work for the consultancy included:*

- *Attendance at briefing meetings*
- *Preparation of presentations to government ministers*
- *Preparation of concept design options*
- *Assistance in the preparation of cabinet submissions*
- *Preparation of budget/scope documents*
- *Preparation of engineering solutions, options and costings*
- *Assistance in the preparation of budgets*
- *Assessment of existing site services*
- *Assessment of external site services*
- *Review of pitch lighting and structure*
- *Attendance at value management session*
- *Preparation of geotechnical survey*

*The reimbursements for the consultancy is on a time incurred basis. The cost incurred to the 24th August 1997 is as follows:*

<b>Consultant</b>	<b>Cost \$</b>
Woods Bagot	96,733
Connell Wagner	41,440
<b>Total</b>	<b>138,173 "</b>

Woods Bagot were formally retained for Stage 2 by execution of a formal contract document dated 17 September 1997 prepared under the direction of Services SA.

The services to be provided by Woods Bagot were defined by reference to the Budget/Scope Document for Stage 2 dated 12 August 1997, prepared by Woods Bagot before their formal appointment.

A total lump sum fixed fee of \$453,059 <sup>227</sup> was payable for consultancy services to the completion of the design development phase. A fixed upper limit for disbursements was set at \$107,355. <sup>228</sup>

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<sup>226</sup> Page 10.

<sup>227</sup> Comprising concept development \$138,173; phase 1 schematic \$145,332; phase 2 design development \$169,554.

<sup>228</sup> Schedule 2.

## **26 SEPTEMBER 1997 - FIT OUT GUARANTEE DEED**

On 26 September 1997, the Treasurer executed the Fit Out Guarantee. By that guarantee the Government guaranteed borrowings by the Soccer Federation for the fit out of the clubrooms and corporate facilities in the western grandstand the subject of the Stage 1 upgrade. In return for the Government agreeing to guarantee a \$2 million loan to the Soccer Federation to undertake the fit out, the Soccer Federation promised to spend \$100,000 on the marketing of soccer.

Thus, one of the key features of the Funding Deed was changed and the Government now bore the risk of the cost of the fit out.

## **30 SEPTEMBER 1997 - DRAW DOWN OF STAGE 1 LOAN**

On 30 September 1997, commercial bills were discounted for the Soccer Federation yielding net proceeds of \$4,061,999.<sup>229</sup> The net proceeds were then available to meet progressive payments for the Stage 1 redevelopment works.

## **7 OCTOBER 1997 - AMENDMENT DEED AND FIT OUT GUARANTEE DEED**

On 7 October 1997 the Treasurer, Minister for Recreation and Sport, Minister for Information and Contract Services and the Soccer Federation entered into the Amendment Deed and the Fit Out Guarantee Deed. These documents amended the Funding Deed to take account of the changes required by Cabinet as a precondition to provision of the Treasurer's Guarantee.

## **13 OCTOBER 1997 - COUNCIL CONCERNS ABOUT TENURE**

On 13 October 1997, the Council resolved:

- "1. That Council give in principle endorsement for the concept plans and road closure attached to the letter from the Hindmarsh Stadium Project Director of 19 September 1997 and agrees to the State undertaking improvements on Council owned land, subject to achievement of the required development approvals.*
- 2. That Council seek legal advice regarding the proposal for the [Soccer Federation] to grant a licence to the State for the purpose of allowing Olympic soccer competition.*
- 3. That further reports be brought forward once options have [sic] clarified for relocation of the occupants and tenants on Council owned land.*
- 4. That a further report be brought forward to the most favourable tenure, ownership and management arrangements as an outcome of current investigations.*
- 5. That Council advise of its commitment to working with the Government to achieve a successful outcome for all parties affected by the project and the general community."*

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<sup>229</sup> This was less than the loan amount of \$4.0625 million agreed between the Soccer Federation and the Government under the Funding Deed.



The Council wrote to Mr Dixon as the Government's representative for the Hindmarsh Soccer Stadium project to inform it of that resolution. Again, the Government had placed before it the need to address the issues of tenure, ownership and management.

## **20 OCTOBER 1997 - MINISTERIAL REARRANGEMENT**

After losing his seat in the State election, Mr Ashenden resigned as Minister for Tourism, Minister for Local Government and Minister for Recreation and Sport on 20 October 1997. Mr Ingerson resigned as Minister for Infrastructure,<sup>230</sup> Minister for Police, Minister for Emergency Services and Minister for Racing and was appointed Minister for Industry, Trade and Tourism and Minister for Local Government, Recreation and Sport.

Mr Dean Brown resigned as Minister for Information and Contract Services. The Hon. Dr Michael Armitage MP was appointed Minister for Administrative and Information Services.

## **23 OCTOBER 1997 - ESTABLISHMENT OF THE DEPARTMENT OF INDUSTRY AND TRADE**

On 23 October 1997, the Department of Industry and Trade was established as a new administrative unit under the Public Sector Management Act 1995. It incorporated the activities of several administrative units that were abolished on 23 October 1997 including the Department of Recreation and Sport. The activities of the former Department of Recreation and Sport were then carried on by a division of the Department of Industry and Trade named the Office for Recreation and Sport.

The Executive Director of the Office for Recreation and Sport was responsible to and subject to the direction of the Chief Executive Officer of the Department of Industry and Trade. Mr Ingerson was the responsible Minister as the Minister for Local Government, Recreation, and Sport and the Minister for Industry, Trade and Tourism.

Mr Dixon, the Project Director for Stage 2 was appointed Chief Executive of the Department of Industry and Trade. As Chief Executive of that department, he had significantly increased responsibilities. Several days after this appointment, Mr Dixon asked Mr Andrew Scott to take over his responsibilities as Project Director from November 1997. Mr Dixon was to continue to have oversight for the project and be involved in key issues, as Chief Executive of the Department of Industry and Trade.

Mr Andrew Scott distributed a revised diagram of the Stage 2 Project Management Structure to members of the Stage 2 Project Reference Group. It showed Mr Andrew Scott as the Project Director reporting to the Client Group comprising Deputy Premier Ingerson and Mr Dixon as Chief Executive of the Department of Industry and Trade. There was no further formality to Mr Andrew Scott assuming the role of Project Director.

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<sup>230</sup> The body corporate, the Minister for Infrastructure, was dissolved on 20 October 1997 and a new body corporate incorporated, the Minister for Government Enterprises. The assets, rights and liabilities of the dissolved body corporate were vested and attached in the new body corporate.

## 23 OCTOBER 1997 - ESTABLISHMENT OF THE DEPARTMENT OF ADMINISTRATIVE AND INFORMATION SERVICES

On 23 October 1997, the Department of Administrative and Information Services was established, incorporating the activities of a number of administrative units including the former Department for State Government Services. The new department became the portfolio based agency for the Ministerial Portfolio of Administrative and Information Services. Its responsibilities as relevant to this Report included project risk management, building asset management, procurement and contract services, capital building works and major projects delivery.<sup>231</sup>

## 27 OCTOBER 1997 - STRATEGIC VALUE MANAGEMENT STUDY

On 27 October 1997 a meeting referred to as a "Value Management Study" was held. The meeting was presided over by Mr John Tapper of Tapper Communication Pty Ltd.

The purpose of the meeting was defined in a letter from Mr Tapper sent on 21 October 1997 to each of the participants:

*"A Design Cost Value Management Workshop is to be held ... to finalise the design direction for the Hindmarsh Soccer Stadium - Stage 2.*

...

*Value Management is the process of examining the project from a needs and best function basis. The essence of Value Management is to ask 'why?' in order that the real needs are addressed and that every cost meets a function."*

The meeting was attended by:

Organisation	Representative
Woods Bagot	Ms Anne Clisby Mr Materne
Office for Recreation and Sport	Mr Bollen Mr Forrest
Connell Wagner	Mr Ron Ely Mr Adrian Jones Mr Mitchell Mr Ian Ide
The Soccer Federation	Mr Farrugia
Murray Young & Associates	Mr John Hadaway
Services SA	Ms Freeman Mr Browne
Department of Treasury and Finance	Mr Nosworthy
Bruce Harry & Associates	Mr Bruce Harry

<sup>231</sup> See my Annual Report for the financial year ended 30 June 1998.

Organisation	Representative
Olympic Football Task Force	Mr Ciccarello
Rider Hunt	Mr John Popplewell Mr Chris White
Council	Mr Paul Perry

A notable absentee was the Project Director. Mr Dixon has submitted to this Examination that he was absent because he had been recently appointed Chief Executive of the new Department of Industry and Trade and had significantly increased responsibilities. He considered his role as Project Director at this time as nominal. Either Mr Dixon or Mr Andrew Scott as the newly proposed Project Director should have attended this meeting.

After the meeting Mr Tapper produced a report entitled "*Strategic Value Management Study*".

That report recorded that the meeting had proceeded on the basis that some elements of the project were essential. These were the answers to the question "What MUST it do?":

1. *Provide a stadium to FIFA standards that enables further and minimal development for Olympic qualifier soccer matches as part of Sydney 2000 Olympics.[sic]*
2. *Build a stadium that meets the ongoing needs and outlook of Soccer SA and third parties for at least 15 years (realistically 30 years).*
3. *Provide level of comfort and value for money for spectators at all levels of the sport including international.*
4. *Provide fifteen thousand permanent seats, in a comfort that is as good as any stadium in Australia for the six month soccer season."*

The report drew a distinction between FIFA requirements and SOCOG requirements. As appears in item 1 above, compliance with FIFA standards was something that the project "MUST" do. The SOCOG requirements were not in the same category:

*"The Stage 2 project has three components:*

1. *Building new terraces.*
2. *Increase of pitch and facilities upgrade to FIFA requirements.*
3. *Creation of precinct and landscaping with adequate access, circulation, amenities.*

*The requirements of SOCOG are not the priority but obviously all allowances, considerations that can enable the SOCOG upgrade are to be sought without adding to project cost."*

The report did not define what were FIFA requirements and what were SOCOG requirements.

The meeting did not conclude with a final list of items to be included in the final design. Mr Tapper's report concluded with a list headed "Action Plan":

	<b>"Action</b>	<b>By Whom?</b>	<b>By When?</b>
1.	<i>Provisions for later construction of eastern stand roof.</i>	<i>Vaughan [sic] Mr Bollen</i>	<i>21/11/97</i>
2.	<i>Disabled needs, specifications paper.</i>	<i>Woods Bagot</i>	<i>14/11/97</i>
3.	<i>Transport interpretation.</i>	<i>John Hadaway Woods Bagot or Murray Young</i>	<i>14/11/97</i>
4.	<i>Settle Byelorussian Church</i>	<i>Project Director paper</i>	<i>14/11/97</i>
5.	<i>M on W solution</i>	<i>Project Director paper</i>	<i>14/11/97</i>
6.	<i>Community PR plan and internal.</i>	<i>Project Director paper</i>	<i>1/12/97</i>
7.	<i>Notional fitout / concessions.</i>	<i>Project Director paper</i>	
8.	<i>Services specification.</i>	<i>Chris White, Rider Hunt</i>	<i>14/11/97</i>
9.	<i>Minister briefing process/information train.</i>		<i>21/11/97</i>
10.	<i>Bowling club treatment, action.</i>	<i>Council, Paul Perry</i>	<i>15/12/97</i>
11.	<i>Issues/service change interpretation of VM needs into discussion paper for Ian Dixon</i>	<i>Project Team Woods Bagot</i>	<i>24/11/97</i>
12.	<i>QS report/finalise cost plan and budget.</i>	<i>John Popplewell</i>	<i>10/12/97</i>
13.	<i>Development process - lock in a brief process, decision tree and project leadership.</i>	<i>Project Director</i>	<i>1/12/97"</i>

Mr Tapper described the outcomes of the meeting as follows:

*"The outcomes of the study as identified by the facilitator are:*

1. *With firm project direction and control of design development process there is no reason why the project cannot be produced and meet most brief / expectations for the budget of \$16.2M.*
2. *Two items could derail this result and the project:*
  - *Escalation through slippage in contractual commitments and early purchasing of fitout items. Contractual pricing past June 98 is a threat to the budget.*
  - *Lack of clear decision process and stakeholder responsibility could allow interest groups with no financial pressure to escalate needs, promote wish lists or promote vague lockup at milestone points.*

*While workshop participants felt responsible for achieving the best result and working as a team, an unwillingness to take some of the tough brief decisions due to unclear accountability was evident and needs addressing.*

1. *Decisions could be made to finalise the design brief, in particular specify the allowances for SOCOG needs and possible future uses / additional staged improvement (roof to East stand) likely.*

*At the moment the project brief in some areas (Meals on Wheels, Bowling Club, etc.) is not clearly defined and subject to continued review which proposes [sic] significant risk to the project.*

*The discussion paper to be produced for the Project Director will be a determining document on key items in / out of project, with a resultant budget and design strategy.*

2. *All parties require strong project direction and management of decisions and timelines, including some authority over who owns what, who contributes to, gains benefit from, in order that the project development process is not exploited. Item 2 above refers strongly to this.*
3. *The heritage buildings precinct can be staged or excluded from the project as long as the stadium precinct area is not reduced by restricted access to the Northern end."*

## **28 OCTOBER 1997 - NSL CLUBS UNABLE TO CONTRIBUTE TO FIT OUT**

In October 1997, the Soccer Federation informed the Government that the two NSL clubs could only contribute \$130,000 to the cost of the commercial kitchen.

On 28 October 1997, the Soccer Federation proposed to the Government that the \$170,000 shortfall in the \$300,000 cost of the commercial kitchen should be met from the \$2 million loan that the Federation was to procure for the fit out.

As a result of this change, Woods Bagot were required to undertake additional work on changing the functional design brief so that the completion of the commercial kitchen could still take place within the \$2 million budget for the fit out.

## **30 OCTOBER 1997 - RENAMING OF THE DEPARTMENT OF ADMINISTRATIVE AND INFORMATION SERVICES**

On 30 October 1997, the title of the Department of Administrative and Information Services was altered to the Department for Administrative and Information Services.<sup>232</sup>

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<sup>232</sup> This Department will continue to be referred to as "DAIS" in this Report despite the alteration to its title.

## NOVEMBER 1997 – AUDITOR-GENERAL’S 1996/97 ANNUAL REPORT

The Auditor-General's Report for the financial year ended 30 June 1997 sets out my concerns about the refinancing of the Soccer Federation's office by a payment of \$300,000 after the works had been undertaken. At that time I said:

*"The Soccer Federation had every right to request such an arrangement in its negotiations with the Government and there can be, and is, no criticism of the Soccer Federation in this matter. It would, however, be expected that, on the part of the Government, there would be evidence of a proper analysis and justification of such an arrangement that is consistent with the current policy regarding these matters. In the absence of proper process and analysis for the purpose of decision-making there is the potential to inappropriately confer private ie non-public benefits with public monies and to expend public monies without regard to principles of economy and efficiency.*

*The original financing of the Office Administration Facility of the Soccer Federation was a private matter undertaken by the Soccer Federation and is, prima facie, not a matter associated with a 'public work' to be constructed. In fact, as acknowledged in the Memorandum of Understanding it is a facility that 'has been completed'. There is no evidence that this office facility is to be demolished or in any other way modified as part of the proposed upgrade of the western grandstand of the Hindmarsh Soccer Stadium as proposed in the Public Works Committee Report and the Executive Government approval."*

## **CHAPTER 14 - DECEMBER 1997 TO SEPTEMBER 1998**

### **6 DECEMBER 1997 - PRACTICAL COMPLETION OF STAGE 1 WORKS**

On 8 December 1997, Services SA certified that the Stage 1 project works had reached the stage of Practical Completion (as defined under the Construction Management Agreement) on 6 December 1997.

### **17 DECEMBER 1997 - MINISTERIAL REARRANGEMENT**

On 17 December 1997:

- Mr Ingerson resigned as Minister for Local Government, Recreation and Sport. The Hon. Iain Evans MP was appointed Minister for Recreation and Sport and Minister for Police, Correctional Services and Emergency Services.
- Minister Evans did not have any responsibility for Hindmarsh Stadium until 8 October 1998 when he was appointed Minister for Industry and Trade and Minister for Recreation, Sport and Racing. Mr Ingerson continued to be responsible for the redevelopment and the staging of the Olympic Soccer Tournament as Deputy Premier and Minister for Industry and Trade.
- Mr Armitage resigned as Minister for Administrative and Information Services and the Hon. Wayne Matthew MP was appointed Minister for Administrative Services and Minister for Information Services.
- On Cabinet's recommendation, the Governor revoked the appointments of four Parliamentary Secretaries including Mrs Hall's appointment as Parliamentary Secretary to the Minister for Infrastructure.
- Mrs Hall was appointed Minister for Youth and Minister for Employment.

### **JANUARY 1998 - COUNCIL COMPLAINT ABOUT USE OF STADIUM FOR RUGBY**

By letter dated 23 January 1998, the Council complained to the Soccer Federation about use of the stadium contrary to the express terms of its lease. The Council's consent had not been sought to use the stadium for rugby or for concerts.

### **FEBRUARY 1998 - NSL CLUBS DIFFICULTIES IN PAYING LEVIES**

In February 1998, after the 97/98 soccer season was underway, representatives of Adelaide City expressed concern to the Soccer Federation about Adelaide City's ability to meet payments of levies under the funding arrangements entered into with the Government.

## 23 FEBRUARY 1998 - CABINET APPROVAL OF REFERRAL OF STAGE 2 TO PUBLIC WORKS COMMITTEE

On 23 February 1998, Cabinet approved:

- an increase in the funding of the redevelopment of the western grandstand to \$9.26 million; and
- the referral of Stage 2 to the Public Works Committee at an estimated cost of \$18.5 million.

The Cabinet submission noted that the Government was to enter into discussions with the Council and the Soccer Federation regarding management of the stadium.

The Cabinet submission was marked with the traditional Premier's handwritten note of approval and the following significant addition:

*"The Cabinet sub-committee to as a matter of urgency resolve ownership and public access questions, site decontamination and planning issues."*

The submission had been made available for comment by Treasury and Finance and the Crown Solicitor's Office. Mr Jaksa of the Crown Solicitor's Office sent his comments to Mr Bollen in the Office for Recreation and Sport on 12 February 1998. Mr Jaksa advised:

- He disagreed with the statement that a "precedent" had been set with respect to increases in project costs:

*"These should be determined on a case by case basis. Whether the State should agree to assume such escalations depends on the particular circumstances. The reference in the last sentence of this section to a precedent being set should be deleted and the passage rewritten in order that it justifies a decision that the State bear the entire amount of the cost escalation."*

- He considered one of the most important sections dealing with the setting up of a management group for the stadium should be expanded. In particular, the submission should discuss:

*"7.1 What will the functions of the management committee be?"*

*7.2 How will the committee operate?"*

*7.3 Why is it proposed that the Council be represented on the committee given that until now it has not been involved, in an operational sense, in the management of the stadium?"*

*7.4 Have these matters been discussed with the Federation?"*

*7.5 What is the Federation's attitude to this co-operative management arrangement?"*

*7.6 Who will effectively 'control' the management of the stadium, ie., will this be ceded from the Federation to possibly an alliance between the State and the Council?"*

*7.7 Who will be entitled to revenue derived from the operation and use of the stadium?"*



7.8 *Who will be responsible for the maintenance of the stadium? Is the State to have any residual liability in relation to this matter given the magnitude of its investment? What obligations in this respect are to be imposed on the Federation and possibly also the Council?"*

These issues were not addressed in the submission put before Cabinet.

On 19 February 1998, the Department of Treasury and Finance sent a minute to the Treasurer about the proposed increase in the budget for Stage 2 to \$18.5 million. They expressed the view that the project could proceed at a lower cost without affecting the functional requirements.

However, the submission blandly stated that:

*"While further savings could be made, it is believed that these would compromise the project to the point where they are unacceptable."*

## **25 FEBRUARY 1998 - DEFINITION OF STAGE 2 WORKS**

On 25 February 1998, after Cabinet's approval of the referral of the Stage 2 works to the Public Works Committee, Woods Bagot circulated a 'Design Report and Return Brief' for Stage 2. This recorded what was to be the design definition of Stage 2.

## **26 FEBRUARY 1998 - SUBMISSION TO PUBLIC WORKS COMMITTEE OF STAGE 2**

Stage 2 was referred to the Public Works Committee by a submission dated 26 February 1998. Mr Ingerson, as Deputy Premier, had made comments on a draft that were incorporated in the final submission.

The submission to the Public Works Committee said:<sup>233</sup>

*"Discussions with the Sydney Organising Committee for the Olympic Games (SOCOG) delegation during their visit to Adelaide on 29 October 1996, confirmed the two key criteria that would be utilised in awarding cities the rights to stage rounds of the 2000 Olympic Soccer Tournament were:*

- *The adequacy of the site and facilities to stage the event to Federation Internationale De Football Association (FIFA) standards.*
- *The legacy that would be provided to the sport as a result of hosting a round of the Olympic Soccer Tournament.*

*The SOCOG delegation also confirmed the stadium was inadequate, even after the completion of the western grandstand redevelopment. It was made clear that further substantial enhancement would be needed if Adelaide was to secure a round of the Olympic Soccer Tournament.*

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<sup>233</sup> Page 5.

*In response to SOCOG's comments a concept was developed for a Stage 2 redevelopment of the Master Plan for the Hindmarsh Soccer Stadium. In November 1996 Cabinet endorsed in principle the Stage 2 concept at an estimated cost of \$16.205 million and noted there are a range of variable and discretionary works that may form part of Stage 2 estimated to cost \$1.92 million."*

This passage of the submission gave the impression that the development of the concept for Stage 2 occurred only after the SOCOG visit. In fact, the key elements of Stage 2 were identified before the SOCOG visit and were presented to the SOCOG representatives during their visit. The submission should have disclosed that Mr Ingerson volunteered the Stage 2 concept on 29 October 1996.

The statement that "*variable and discretionary works ... estimated to cost \$1.92 million*" had been noted by Cabinet in November 1996 was incorrect.<sup>234</sup> That description of works first appeared in then Deputy Premier Ingerson's Cabinet submission dated 4 September 1997. As shown by the list in the discussion of the September 1997 Cabinet submission above, \$1.105 million of that work had been included within the budget of \$16.2 million in the November 1996 Cabinet submission.<sup>235</sup>

The submission stated that Attachment D to the submission was a summary of *the "strategy to apply [FIFA guidelines] at Hindmarsh Soccer Stadium"*. In fact, Annexure D was a copy of FIFA and UEFA's own technical report, with no specific reference or adjustment to Hindmarsh.

#### **4 MARCH 1998 - PUBLIC WORKS COMMITTEE HEARINGS FOR STAGE 2**

The hearings of the Public Works Committee in relation to the Stage 2 of the Hindmarsh project commenced on 4 March 1998 and continued on 18 March 1998.

The Committee's hearings focused on the reason why the necessity for an expanded project had arisen when the original western grandstand redevelopment had been intended to meet SOCOG requirements.

The hearing on 18 March 1998 particularly focused on the process by which Stage 1 had been approved on the basis that it would satisfy SOCOG. The evidence given to the Committee on this point was that:

- It was not until SOCOG's 29 October 1996 visit that it became clear that Stage 1 was not adequate.<sup>236</sup>
- The only liaison between the project planner and SOCOG prior to submission of Stage 1 to the Public Works Committee in 1996 was through Adelaide Major Events and the Soccer Federation.<sup>237</sup>

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<sup>234</sup> Mr Dixon informed the Public Works Committee on 4 March 1998 that this statement should be deleted. He described it as a "transposition error".

<sup>235</sup> See the section headed "8 September 1997 - Cabinet Endorsement of Formal Submission of Stage 2" at page 174.

<sup>236</sup> Hansard page 72 para 266.

<sup>237</sup> Hansard page 71 para 261.

## 6 MARCH 1998 - COUNCIL CONCERNS ABOUT OWNERSHIP ISSUES

On 6 March 1998 Mr Whitbread, of the Council, wrote to Mr Dixon to express concern about the failure to address issues of ownership, management and tenancy arrangements for the stadium.

Mr Whitbread noted that the existing arrangements, including the lease to the Soccer Federation, had been rendered outdated by the physical changes such as use of a mix of some land leased to other parties, some Council land and some Crown land.

On 10 March 1998 the solicitors for the Council sent a letter to the Crown Solicitor's Office repeating the Council's concerns about the inappropriateness of the existing ownership and tenure arrangements following the redevelopment and the absence of a long term management strategy for the facility.

The letter observed that:

*"We understand that the current lease to the SA Soccer Federation is important to give the State Government security for the financial obligations the SA Soccer Federation has to the State government for those improvements which have occurred and those which are contemplated."*

The letters may have prompted some action. On 13 March 1998, Mr Dixon signed a two page minute addressed to the Hindmarsh Soccer Stadium Cabinet Committee. The minute did not set out any firm proposal but sought that Committee's approval to enter into formal discussions. It was less detailed than Mr Dixon's earlier minute drafted on 28 August 1997. In his evidence before this Examination, Mr Dixon was unable to recall specifically why the matter had not advanced since the 1997 minute, although he could recall that as Chief Executive of the Department of Industry and Trade he had a very heavy workload. Mr Dixon later submitted that there was uncertainty at the time as to where responsibility for the project would lie within Government

On 13 March 1998, Mr Jaksa from the Crown Solicitor's Office met with Mr Ted Byrt, Mr Steve Aitchison and Mr Paul Perry, all representing the Council and Mr Bollen and Mr Andrew Scott of the Department of Industry and Trade. Mr Perry raised concerns about ownership and management issues. The Council's position was that if these issues were not resolved by July, then the Council might impede the development because the matter had been left for too long. This was the Council's legal advice. Mr Jaksa's file note of this meeting recorded that Mr Perry also said *"this won't occur"*. On 6 April 1998, Mr Jaksa faxed Mr Andrew Scott and Mr Bollen his summary of matters discussed at the meeting on 24 February 1998 on the future ownership and management arrangements of Hindmarsh Stadium after the completion of Stage 2 of the development.

## **16 MARCH 1998 - THIRD MEETING OF HINDMARSH SOCCER STADIUM CABINET COMMITTEE**

On 16 March 1998, the third meeting of the Hindmarsh Soccer Stadium Cabinet Committee was held. Deputy Premier Ingerson chaired the meeting. The Committee now comprised the Attorney-General, the Hon. Iain Evans MP as Minister for Recreation and Sport <sup>238</sup> and the Hon. Wayne Matthew MP as Minister for Administrative Services <sup>239</sup>.

The minutes record that the Committee discussed the current status of Public Works Committee's consideration of the project. Further:

*"The Deputy Premier advised that the Public Works Committee may have misinterpreted the sequence of events whereby Cabinet determined that, by the expenditure of additional funds to make the project permanent rather than temporary, the project should move from Stage 1 to Stage 2."*

As to ownership and management issues for the project, the Committee discussed the paper prepared by Mr Dixon and resolved that the Department of Industry and Trade is:

*"to discuss ownership and management issues, on a non-committal basis, with the relevant parties and is to revert to the Committee with a paper discussing options for the Government."*

## **23 MARCH 1998 - MR DIXON'S LETTER TO THE PUBLIC WORKS COMMITTEE**

On 23 March 1998 Mr Dixon, Chief Executive of the Department of Industry and Trade, prepared a letter answering some of the questions raised by the Public Works Committee, but not the central question that concerned the Committee ie how the content of Stage 2 had been determined. The substance of some of the answers given in the letter must be noted, given the correspondence that was to follow.

- The cost of maintenance of the stadium would be borne by the Soccer Federation under its lease from the Council.
- The net present value of the project had been assessed by SACES as negative. Cabinet had decided that the project was justified by a wide range of broader community benefits which could not be adequately captured by economic modelling.
- It was not economic to build an additional 5,000 permanent seats. The 5,000 temporary seats used for the 2000 Olympic Soccer Tournament would cause blockage in surrounding roads which would only be undertaken for a very major event. Crowds of that magnitude would be rare. The estimated cost of providing 5,000 additional seats by increasing the size of the eastern grandstand would conservatively be \$10 million. The cost of providing 5,000 temporary seats on a once-off basis was approximately \$150,000. The additional permanent seats would need to be used at least six times a year to warrant the expense.

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<sup>238</sup> Instead of former Minister Ashenden.

<sup>239</sup> Instead of Mr Dean Brown as the former Minister for Information and Contract Services.

## **MARCH 1998 - MS WHITE'S FOI REQUEST**

In parallel with the Public Works Committee's investigations, Ms Trish White MP, during 1998 conducted her own investigation of the Hindmarsh redevelopment. Ms White issued a Freedom of Information Act request seeking documents relevant to SOCOG's requirements for the Olympic Games.

Production of those documents pursuant to the FOI request was resisted on the principal ground that they were confidential to SOCOG. SOCOG wrote stating that it did not wish the documents to be released.

There is nothing commercially sensitive about FIFA and SOCOG's statement of minimum criteria for football stadia. It is a bland document setting out functional requirements. It does not contain trade secrets about the running of soccer venues. It does not mention pricing or revenue arrangements. Theoretically, the information in the statement might assist someone who was building a stadium to get a commercial advantage in the form of a list of the necessary facilities. The fact that Woods Bagot had largely anticipated the elements of the statement before it was received from SOCOG, even taking into account Woods Bagot's considerable ability, shows that it was not a unique repository of knowledge.

In my opinion, disclosure of that document alone may have led to questions being asked as to necessity for a \$18.5 million redevelopment. It might have also dispelled the suspicion that the Government's approach to the FOI application had engendered.

## **1 APRIL 1998 - PUBLIC WORKS COMMITTEE REQUEST FOR FURTHER INFORMATION**

The Public Works Committee convened again on 1 April 1998. Prior to that hearing the secretary to the Public Works Committee asked the Department of Industry and Trade to provide:

- Copies of all correspondence between SOCOG and any of the Soccer Federation, the Department of Industry and Trade, the Office for Recreation and Sport and the Hindmarsh Soccer Stadium Executive Committee.
- Details of attendances at matches since completion of Stage 1.
- Details of attendances at matches for the previous three years.

In reporting that to then Deputy Premier Ingerson, Mr Dixon stated:

*"There is no significant correspondence between SOCOG and the Department of Industry and Trade, including the former Office for Recreation and Sport, in the files. I believe SOCOG may have corresponded with Australian Major Events very early on when the Government was preparing its bid for the preliminary rounds of the 2000 Football Tournament to be held at the Hindmarsh Soccer Stadium but this is not covered under the request. In March 1997, the 2000 Football Task Force was established to take over the bid from Australian Major Events. It is understood all correspondence by SOCOG from that time on was with the Task Force.*

*The evidence given to the Committee to date by officers of this agency has been that decisions on the scope of works and funding for the Hindmarsh Soccer Stadium re-development were made by the executive arm of Government and not by the Department of Industry and Trade. Hence, we are unable to assist the Committee on such issues. This stance will be maintained."*

## **2 APRIL 1998 - MR INGERSON'S REQUEST TO MR CICCARELLO FOR INFORMATION ABOUT THE BID**

On 2 April 1998, Deputy Premier Ingerson asked Mr Ciccarello to provide him with information relating to the State's bid for the Olympic Soccer Tournament and the need to redevelop and upgrade Hindmarsh Stadium to meet SOCOG, IOC and FIFA requirements.

On 6 April 1998, Mr Ciccarello sent Deputy Premier Ingerson a chronology and some supporting documents. He said he had provided this information to the best of his knowledge and that he had not taken any copies of documents from the Government files that had been kept up to 17 March 1997. Those files had been handed back to Minister Ashenden in July 1997 when Mr Ciccarello's consultancy with him finished.

Mr Ciccarello's minute stated in relation to SOCOG's 9 July 1996 letter inviting a bid:

*"The fact is that the (initial) upgrade of Hindmarsh Stadium never did meet SOCOG/FIFA requirements and that on receipt of the 9<sup>th</sup> July 1996 letter, along with the "FIFA/SOCOG requirements" documents, AME was probably directed to complete the technical questionnaire on the basis that it would comply with such FIFA/SOCOG requirements if it was successful in being selected as an Olympic Football host city and subject to mutually satisfactory commercial negotiations.*

*It is not known if Cabinet was formally advised of the non compliance of the stadium (post proposed upgrade), but it would certainly be expected that there would be written correspondence to the then Minister regarding this matter and seeking his directions (that correspondence may be in AME's pre March 1997 files, or in the Dept of Rec and Sports' file)." [original emphasis]*

Cabinet was first informed formally in writing that Stage 1 would not meet SOCOG or FIFA requirements by Minister Ingerson's 13 November 1996 submission that proposed the concept for Stage 2.

## **22 APRIL 1998 - MR INGERSON'S LETTER TO PUBLIC WORKS COMMITTEE ABOUT STAGE 2**

On 22 April 1998, Mr Ingerson wrote as Deputy Premier to the Presiding Member of the Public Works Committee.

After setting out a brief chronological account of the history of the Hindmarsh Stadium redevelopment, the letter set out the following explanation for the decision to undertake Stage 2.

*"It appears the [sic] some of the main concerns of the Committee during its examination of the soccer project are the number of seats required and whether they should be temporary or permanent. With regard [sic] the former, it has been quite clear from the*

*first documentation produced by SOCOG that the requirement for Adelaide would be to provide a minimum capacity of 15,000 seats. Whether temporary or permanent seating should be supplied was easily determined by comparing the cost to install temporary infrastructure for the Adelaide Grand Prix which was \$10.0 million each year. The cost over the eleven year period of the Grand Prix was therefore \$110.0 million with no infrastructure left behind for this expenditure. The Government decided permanent seats was the option it required.*

*Prior to the visit by SOCOG in October 1996 there was an impression at that time that Stage 1 was sufficient to secure the preliminary rounds of the 2000 Olympic Football Tournament. This changed after that visit by the SOCOG delegation when it became clear that Adelaide's bid was inadequate compared to other possible venues which had submitted bids.*

*The decision by Cabinet to proceed with Stage 2 was based on a social and sporting benefit to the State. The fact that the project has a negative Net Present Value and a benefit - cost ratio of less than 1 was considered by Cabinet as part of its decision to proceed with this project. Cabinet has known from the beginning that the upgrade of the Hindmarsh Stadium is to have a minimum capacity of 15,000. It has made a conscious decision to be involved in the Olympics and therefore to redevelop the stadium to a standard that provides a legacy for the sport afterwards. Attached is Schedule 3 of the Memorandum of Understanding between the State Government and SOCOG, which sets out the physical requirements for the Olympics which clearly states that a minimum of 15,000 seats are required." [emphasis supplied]*

A later Cabinet submission dated 2 July 1997 estimated the cost of hire of 5,000 temporary seats at \$100 per seat ie \$500,000 in total. If 15,000 seats had been hired the cost would be expected to be roughly three times that, ie \$1.5 million.

Mr Ingerson's letter enclosed two documents:

- The letter from SOCOG dated 9 July 1996 enclosing the minimum requirements for the stadium.
- Schedule 3 to the Memorandum of Understanding with SOCOG that was substantially the same as the earlier statement of minimum requirements.

Given that Mr Ingerson's letter enclosed Schedule 3 from the SOCOG Memorandum of Understanding, it is notable that it did not also enclose Schedule 2C. That schedule set out a very abbreviated note form description of the content of Stages 1 and 2.

### **30 APRIL 1998 - PUBLIC WORKS COMMITTEE INTERIM REPORT ON STAGE 2**

After receipt of Mr Ingerson's letter and its hearings in March and April 1998, the Public Works Committee had not received evidence from which it could make a finding about how the content of Stage 2 had been determined. Hence the Public Works Committee could not determine that the entirety of Stage 2 was necessary to meet SOCOG's requirements.

Accordingly, on 30 April 1998, the Public Works Committee published an Interim Report, the 67<sup>th</sup> Report of the Committee, entitled "*Hindmarsh Soccer Stadium Upgrade - Stage 2*". The key finding of that report was as follows.

*"As reported in the Public Works Committee report to Parliament for Stage 1 of the Hindmarsh Soccer Stadium Redevelopment, the upgrade of the Hindmarsh Stadium was seen as a major opportunity to establish the stadium and soccer in general, as a viable alternative family sport.*

*In particular the Committee reported that the proposed project will:*

- *provide an international standard facility capable of expansion in the future,*
- *enable an additional 3,000 spectators to clearly see matches in comfort by providing good site [sic] lines, comfortable seating, corporate facilities, approved amenities and clubrooms,*
- *minimise capital and operational costs by designing a low maintenance structure with minimum energy usage,*
- *establish the Hindmarsh Soccer Stadium as the only premier facility in South Australia, dedicated to soccer and capable of holding international matches, and*
- *provide an improved, long term facility for the West Adelaide and Adelaide City Soccer Clubs.*

*While the Committee acknowledges these benefits to be applicable to Stage 1 of the redevelopment, the Committee understands that works already completed for Stage 1 will generally enable the state to attract most sporting, recreational, entertainment or cultural events on a local, state, national or international level. The Committee believes that Stage 2 will not significantly increase the stadium's "attractiveness" in this regard.*

*Furthermore, the Committee considers that on the evidence presented so far, the Stage 1 work already completed, coupled with temporary seating to increase the seating capacity of the ground to 20,000+, would be sufficient to meet SOCOG's requirements which means that Adelaide would be able to host the preliminary rounds of the 2000 Olympic soccer competition. On the evidence presented so far, the Committee considers the expenditure of a further \$18.5m will render the venue over capitalised.*

*After examination of both written and oral evidence, the Public Works Committee finds that at this stage it cannot endorse the proposal to undertake Stage 2 of the Hindmarsh Soccer Stadium Upgrade as it cannot ensure that the project meets the criteria as set out in the Parliamentary Committees Act 1991.*

*The Committee is concerned that after consideration of evidence presented to date it has been unable to clearly determine how Stage 2 evolved. Members have been given hearsay opinion and verbal reports indicating that SOCOG advised further substantial enhancement of the stadium's seating capacity and associated amenities would be needed over and above Stage 1 if Adelaide was to secure a round of the Olympic Soccer Tournament.*



However, even though the Committee has requested the documentation to substantiate this view, Members are yet to be presented with any hard evidence. To date the evidence that has been requested and not provided includes:

- *The benefit/cost study carried out by the SA Centre for Economic Studies on the economic viability of the additional works;*
- *The Ernst and Young report prepared in 1996 assessing SASF's capability to service a loan;*
- *The Memorandum of Understanding between the SASF and the State Government signed and sealed in May 1995;*
- *The Memorandum of Understanding between the SOCOG/FIFA/Australian Soccer and the State Government signed August 1997;*
- *Acquittals from the Department of Premier and Cabinet, Attorney-General and Treasury and Finance, and*
- *Evidence of correspondence between SOCOG and the South Australian Government which details the need for, and specifications of, additional work at the Hindmarsh Soccer Stadium.*

*The Committee is of the opinion that at this time, as crucial information has not been provided it cannot fulfil its obligations pursuant to Section 12C of the Parliamentary Committees Act 1991.*

*As such, the Committee is as yet unable to endorse Stage 2 of the works or lodge its final report to Parliament. The Committee must be given all material evidence needed for the proper evaluation of the project according to law.*<sup>240</sup> *[original emphasis]*

## **25 MAY 1998 - MR INGERSON'S RESPONSE TO PUBLIC WORKS COMMITTEE INTERIM REPORT**

After the Public Works Committee's Interim Report was delivered, Mr Ingerson wrote on 25 May 1998 to the Presiding Member to address the issue of the inability of the Department of Industry of Trade to release Cabinet documents. The letter said this in relation to the issue of Cabinet confidentiality:

*"I have discussed your request for documents with the Premier and Attorney-General. Release of Cabinet documents would undermine Cabinet confidentiality, however, I believe the Committee can be adequately accommodated without releasing such material."*

The letter then referred to a number of documents that it enclosed, including the following:

*Memorandum of Understanding with SOCOG* - Mr Ingerson's letter enclosed a summary of this document prepared by the Crown Solicitors Office. As did Mr Ingerson's letter dated 22 April 1998, the list of schedules to the Memorandum of Understanding the Crown Solicitors Office omitted Schedule 2C.

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<sup>240</sup> Page 26-27

Correspondence from SOCOG - Mr Ingerson's letter enclosed the following correspondence with SOCOG:

*The completed questionnaire submitted to SOCOG in September 1996.*

Mr Ingerson's letter to SOCOG dated 20 November 1996 and its attached plan – showing, as Mr Ingerson's letter to the Public Works Committee described it:

*"...this plan involved acquiring land extending from Hindmarsh Place to Richard Street and from Holden Street to Manton Street. This was to provide practice pitches and other support facilities, which had been raised as issues in the questionnaire."*

Mr Ingerson's letter did not include any communication from SOCOG that said that the content of Stage 2 must be provided by permanent facilities, nor any file note made by the Government of any discussions with SOCOG that led to the fixing of the content of Stage 2.

Mr Ingerson's letter contained the following summary of the discussions with SOCOG that led to the change in the content of Stage 2 after the 20 November 1996 letter:

*"During the negotiations, SOCOG staff verbally agreed that practice pitches were no longer essential since all matches would be 'single-headers'. The proposal was therefore modified to reduce the land content and increase the percentage of permanent seats".*

SOCOG had informed representatives of Adelaide's Olympic Bid Committee on 9 September 1996 that the practice pitches were not essential.

*Letter from David Hill of Soccer Australia dated 18 May 1998* - This letter was written well after the event, after the Public Works Committee had commenced its investigation of Stage 2. It contained no more detail about the process by which the content of Stage 2 had been determined than Mr Ingerson's letter.

The letter did not enclose the South Australian Centre for Economic Studies Report or the Ernst & Young Report that the Public Works Committee had requested.

## **25 MAY 1998 - MR KOWALICK'S RESPONSE TO THE PUBLIC WORKS COMMITTEE INTERIM REPORT**

On 25 May 1998, Mr Kowalick as Chief Executive of the Department of Premier and Cabinet wrote to the Presiding Member of the Public Works Committee about the concerns that the Committee had about not being able to establish from documents whether the proper prudential processes had been followed. Mr Kowalick's letter stated that he wrote as a member (and former Chair) of the Prudential Management Group whose task is *"to look at the adequacy of contractual processes"* and because he had been involved in bringing about changes to the project management following Stage 1.

The letter continued:

*"The Cabinet records indicate that Cabinet considered the Stage 2 proposals, or some of its elements, on a number of occasions. The decision-making processes were obviously complicated because the requirements of the project (both technical and in respect of the requirements for staging of Olympic events) changed significantly over time.*

*In has been long standing practice under successive South Australian governments not to release Cabinet decisions, and it is not within my gift to make them available, so if you require more detail that is a matter for you to discuss with the Premier. In any case in isolation a listing of Cabinet decisions does not of itself fully illustrate the prudential processes involved so I wish to provide the following comments in clarification.*

*On 14/7/97 Scott Ashenden, then Minister for Recreation and Sport submitted a master plan with various options for Stage 2. The recommendations (as submitted) were not approved at that time. Rather Cabinet approved the project in principle only and referred the matter to me as CEO of DPC. The terms of the referral were:*

*"CEO of DPC to Chair an interdepartmental working group and report to Cabinet within 2 weeks with the process for resolution of issues and recommendation of a Project Manager."*

*That working group included the members of the Prudential Management Group so as to ensure that proper contractual processes were put in place. Thus in a very real sense the PMG were involved in ensuring that appropriate processes were in place for Stage 2. The key outcomes of my verbal report to Cabinet were:*

- 1. The appointment of a dedicated Cabinet sub committee made up of the Attorney-General (Chair) Treasurer, Minister for Recreation and Sport and Minister for the Environment to resolve a number of outstanding issues about the various development options;*
- 2. The appointment of Ian Dixon as Project Manager because he had extensive project management experience;*
- 3. The greater involvement of Services SA staff in the technical/ construction aspects of the project and a more narrowly defined role for Recreation and Sport staff;*
- 4. An agreed project management process between the various parties.*

*It may not be apparent from the evidence you have received, but I can assure your Committee that the appropriate senior officers from DPC, Treasury and Crown Law took a very active part in putting in place appropriate processes for the construction project. Whilst the matter was not formally considered by the PMG it was subjected to close scrutiny by the officers that make up the PMG." [original emphasis]*

## **16 JUNE 1998 - THE PUBLIC WORKS COMMITTEE FINAL REPORT ON STAGE 2**

The Public Works Committee scheduled further hearings for 10 June 1998.

On 4 June 1998 Mr Ingerson moved the following resolution in the House of Assembly:

*"That this house remits the interim report of the Public Works Committee on the Hindmarsh Soccer Stadium Upgrade - Stage 2 to the Committee and instructs it to present a final report to the Speaker by 16 June 1998."*

As a consequence, the Public Works Committee did not proceed with further hearings but instead delivered its final report, its 70<sup>th</sup>, on 16 June 1998.

The Public Works Committee's conclusion was that:

*"The Government's decision to withhold vital information and direct the Committee to report, through the vote of the Parliament, means that the Committee has been denied the opportunity to resolve those matters it considers to be in the public interest."*

*Given the above concerns, and those outlined in the Committee's interim report to Parliament, the Public Works Committee is unable to recommend that the proposed Stage 2 Redevelopment of the Hindmarsh Soccer Stadium proceed."*

## **19 JUNE 1998 - BRIEFING OF ATTORNEY-GENERAL ON LAND OWNERSHIP AND MANAGEMENT ISSUES**

On 19 June 1998, Mr Jaksa of the Crown Solicitor's Office sent the Attorney-General copies of the following documents:

- *Mr Jaksa's minute dated 6 April 1998* - and an associated minute about ownership and management issues.
- *Draft Deed of Charge* - Mr Jaksa said that this document was provided to the Department of Recreation and Sport, Treasury and Finance and the Soccer Federation but that he had not had any discussions in relation to it.
- *Draft Facilitation Deed* - Mr Jaksa said that he had not yet distributed this document because it involved ownership and management issues which it was proposed would be discussed with Council and the Soccer Federation.
- *Minute dated 29 August 1997* - It was from the Under Treasurer to Mr Dixon discussing ownership and management issues.

Mr Jaksa wrote in his covering minute to the Attorney-General:

*"I note that I have not drafted the proposed mortgage of the Federation's lease which is to be granted to the State pursuant to the first Funding Deed. Again, this was an issue which was overtaken by the decision to proceed to Stage II and the consequent need to consider ownership and management issues more broadly."*

## **24 JUNE 1998 - PAYMENT OF SHORTFALL ON 30 JUNE 1998 LOAN INSTALMENT**

By 24 June 1998, it was apparent that the Soccer Federation would not be able to pay the instalment of \$105,744 due on 30 June 1998. Minister Ingerson approved the departmental recommendation that the instalment be met by transferring the surplus of \$20,408 in the Fit Out levy account to the Grandstand levy account and the shortfall of \$52,825 be paid from the State facilities program of the Sport and Recreation Fund.

## **29 JUNE 1998 - COUNCIL COMPLAINT OVER USE OF STADIUM FOR RUGBY**

On 29 June 1998, Mr Perry of the Council sought an urgent meeting with Mr Farrugia of the Soccer Federation to discuss the use of the stadium for rugby contrary to the express terms of its lease from the Council. The Council's approval had not been sought to hold rugby at the stadium although the matches had been advertised. Although the Soccer Federation claims that the Mayor had been informed, the Council's formal approval had not been sought.

## **21 JULY 1998 - NEGOTIATIONS WITH SOCCER FEDERATION ABOUT OWNERSHIP OF THE STADIUM**

Although the issue of ownership and management of the stadium had been repeatedly referred to in Cabinet submissions, working papers and correspondence from the Council, the first serious attempt to address the issues with the Soccer Federation was on 21 July 1998.

On 21 July 1998 Mr Andrew Scott and Mr Bollen on behalf of the Government met with Mr Scarsella, Mr Farrugia and Mr Avory of the Soccer Federation to discuss ownership and management of the stadium. The Soccer Federation representatives were happy for the Government to take over ownership but they wished to continue to manage the stadium. They were not happy with a trust or board model.

## **27 JULY 1998 - BOWLING CLUB RELOCATION**

From November 1997, extensive negotiations occurred between representatives of the Bowling Club, the Council and the Department of Industry and Trade and the City of West Torrens.

In July 1998, after seeking the Crown Solicitor's advice as to how the payment could be legally transferred from the State to the Club it was agreed that:

- the Department of Industry and Trade would make a grant of \$155,000 from the Project Budget for Stage 2 to the City of West Torrens to contribute to the upgrade of the former Thebarton Bowling Club;
- that the City of West Torrens would grant the Hindmarsh Bowling Club a 14 year lease; and
- the Hindmarsh Bowling Club would vacate the Manton Street premises by 7 September 1998 so that it could be used as a site office during construction of the Stage 2 works.

An agreement on these terms was recorded in a letter dated 27 July 1998 sent by Mr Ingerson as Minister for Industry, Trade and Tourism to the City of West Torrens.<sup>241</sup>

### **31 JULY 1998 - FOURTH MEETING OF HINDMARSH SOCCER STADIUM CABINET COMMITTEE**

On 31 July 1998, Mr Ingerson as Minister for Industry, Trade and Tourism chaired the fourth meeting of the Hindmarsh Soccer Stadium Cabinet Committee. The minutes record that the Committee discussed a paper titled "*Ownership and Management of Hindmarsh Stadium*" which was tabled at the meeting. The Committee approved Mr Ingerson as Minister for Industry, Trade and Tourism negotiating with other interested parties on ownership and management of the stadium for the "*long terms [sic] benefit to the State at the lowest cost*". The Minister was to bring a proposal back to the Committee for ratification.

On 6 August 1998, the Cabinet Office referred the typed minutes of the meeting to the Attorney-General as the most senior member of the Committee given Mr Ingerson's resignation on 3 August. As the Attorney-General was not present at the meeting, he sent them to Mr Iain Evans, the next most senior member present, for endorsement as a correct record.

The next meeting of the Hindmarsh Soccer Stadium Cabinet Committee was held over a year later on 19 August 1999. There had been no resolution of the ownership and management issues by this time.

### **3 AUGUST 1998 - RESIGNATION OF MR INGERSON AS MINISTER FOR INDUSTRY, TRADE AND TOURISM**

On 3 August 1998, Mr Ingerson resigned as the Minister for Industry, Trade and Tourism and was replaced by Premier Olsen. Mr Ingerson had resigned as Deputy Premier on 7 July 1998 and was replaced by Deputy Premier Kerin. Premier Olsen assumed ministerial responsibility for the Hindmarsh Stadium Redevelopment Project temporarily until 8 October 1998 when Minister Evans assumed responsibility.

### **13 AUGUST 1998 - ADELAIDE CITY'S FURTHER COMPLAINT ABOUT THE COST OF PLAYING AT HINDMARSH**

By letter dated 13 August 1998, Mr Brett Graham of Adelaide City wrote to Mr Farrugia of the Soccer Federation to thank him for "*agreeing to talk to the Government about providing some relief against the prohibitive cost of playing at the stadium.*"

His letter continued:

*"As mentioned at the meeting we have been concerned that no feasibility was ever produced to substantiate the ability of soccer to fund the new grandstand. During today's meeting you and Basil advised that one had indeed been prepared and that you would send us a copy. If you could do that at the earliest time we would be grateful."*

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<sup>241</sup> The letter dated 27 July 1998.

That same day, Mr Pickard, patron of Adelaide City sent a letter to the Soccer Federation complaining that the Soccer Federation was in breach of the licence agreement because it had approached Adelaide City's sponsors. The Soccer Federation wrote back refuting Mr Pickard's allegations.

On 14 August 1998, Mr Pickard wrote to Mrs Hall as Ambassador for Soccer: His letter complained that:

- The impost of a further levy of \$2 for the fit out had *made "the situation of the NSL Clubs worse to the point where their survival is in jeopardy"*.
- Again, there had been no feasibility study on the ability of the NSL Clubs to pay the levy.
- The cost of the fit out was excessive.
- *"By forcing the clubs into a joint tenancy at the last moment you have placed Adelaide City in a vulnerable position by chaining it to a potentially insolvent club."*
- At a meeting last year with Mr Avory and Mr Farrugia of the Soccer Federation and Mr Brett Graham and Mr Joe Tripodi of Adelaide City, Mr Avory had:

*"... told us not to worry about the clubs [sic] liability for the SASF loans because in a few years the State Government would pay off the SASF loan.*

*I have been told by Adelaide City people – prepared to sign statutory declarations- that during negotiations, Basil Scarcella [sic] advised that plans existed for one or potentially both loans to be paid out by the Government. Funds earmarked for the Hindmarsh second Stage to be built for the Olympic Games would be utilised. In other words, don't worry about the club's liabilities under the loans it would soon be fixed by the State Government to everyone's benefit.<sup>242</sup>"*

His letter finished *"You got the clubs into this mess, now help them get out of it."*

On 18 August 1998, Mrs Hall replied by acknowledging receipt of the letter and stating that it had been forwarded to the General Manager of the Soccer Federation for a detailed response:

*"As you would be aware, as Ambassador for Soccer South Australia, like my predecessor, the Hon. Mick Young, I am not involved in the administration nor day to day management of Soccer in this State..."*

The Soccer Federation did not respond to that letter in writing. Mr Farrugia has informed that a letter was not sent because a meeting was arranged for 20 August that was later cancelled by Mr Pickard.

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<sup>242</sup> Mr Scarsella has informed this Examination that he never advised that "plans existed", although he would have commented that it was in the best interest of the sport for it to negotiate with the Government to have the loans extinguished in the long term.

Mr Pickard wrote to Mrs Hall again in October 1999 and apologised for the accusing tone and harshness of his previous letters to Mrs Hall.<sup>243</sup>

## **7 SEPTEMBER 1998 - ADELAIDE CITY PROPOSAL FOR DEFERRAL OF LEVIES OR FIXED FEE**

By letter dated 7 September 1998 to the Soccer Federation, Adelaide City proposed that there be either a moratorium on the levies payable or there be a fixed rental of \$12-13,000 per game instead. Or, the Soccer Federation could pay the NSL Clubs a rebate of \$10,000 per game if the existing financial arrangements were not changed. The letter referred to a meeting on 10 September "to organise a joint deputation to approach the Treasurer and the Minister for Sport."

## **10 SEPTEMBER 1998 – SOCCER FEDERATION MATCH COSTS CAP AT \$13,000**

By letter dated 10 September 1998 to the NSL Clubs, the Soccer Federation agreed to cap costs for matches played by the clubs at \$13,000 per match until the earlier of 31 October 1998 or until a formal response had been received from the Government to suspend the levies. It was later confirmed that the fixed rental fee would apply until the Government's response was received.

Mr Evans as the Minister for Recreation, Sport and Racing was not informed of this agreement until 5 November 1998.

## **15 SEPTEMBER 1998 - VACATION OF BOWLING CLUB FOR USE AS SITE OFFICE**

The Bowling Club site was vacated and the Bowling Club relocated in the week commencing 7 September 1998. From about 6 October 1998, the former clubrooms were used as a site office for the construction of the Stage 2 works. Construction commenced at the different components of the site on a staggered basis over the ensuing weeks.

## **21 SEPTEMBER 1998 - CABINET APPROVAL OF BAULDERSTONE HORNIBROOK**

On 14 September 1998, Deputy Premier Kerin signed a Cabinet submission recommending approval of Baulderstone Hornibrook as construction manager for Stage 2 and total expenditure of \$17 million for the project. On 21 September 1998 Cabinet approved those recommendations.

## **29 SEPTEMBER 1998 - SOCCER FEDERATION PROPOSAL ON LEVIES**

On 29 September 1998, Mr Farrugia sent Mrs Hall, Mr Scarsella and Mr Avory the Soccer Federation's draft submission to Government seeking relief from the levies for their comment. The submission outlined three options:

- Government picking up the loan repayments for one year until October 2000 and suspending the Funding Deed during construction of Stage 2. Levies collected would be held in trust for future payments.

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<sup>243</sup> See the section below headed "8 October 1999 – Mr Pickard's Letter to Mrs Hall."



- As the first option save that the Government would suspend collections for two years until October 2001.
- The NSL Clubs pay a fixed match fee of \$13,000 of which \$5,000 would be directly attributed to repayments of the loan and \$8,000 to match and maintenance expenses.

## **29 SEPTEMBER 1998 - CONSTRUCTION AGREEMENT FOR STAGE 2**

On 29 September 1998, the Minister for Government Enterprises executed the Construction Agreement with Boulderstone Hornibrook for Stage 2.

This followed a tendering process conducted by DAIS in accordance with usual Government tendering guidelines.

## CHAPTER 15 - OCTOBER 1998 TO AUGUST 2000

### OCTOBER 1998 - CESSATION OF PAYMENT OF LEVIES

From October 1998, the Soccer Federation ceased imposing, collecting and banking any levies into the Levy Bank Accounts established under the Funding and Fit Out Deeds for Stage 1. Mr Evans as the Minister for Recreation, Sport and Racing was not informed of the agreement between the Soccer Federation and the NSL Clubs to cap match costs at \$13,000 and allocating \$5,000 per match for the levies until 5 November 1998.

### 8 OCTOBER 1998 - MINISTERIAL APPOINTMENTS OF MRS HALL AND MR EVANS

On 8 October 1998, Mr Olsen resigned as the Minister for Industry, Trade and Tourism.<sup>244</sup>

On 8 October 1998, Mrs Hall resigned as Minister for Youth and Minister for Employment and was appointed Minister for Tourism. Mr Evans resigned as Minister for Police, Correctional Services and Emergency Services, Minister for Recreation and Sport and Minister for Racing and was appointed Minister for Industry and Trade and Minister for Recreation, Sport and Racing.

On 8 October 1998, Minister Evans assumed responsibility for Hindmarsh Stadium as the Minister for Industry and Trade. In September 2001, responsibility for resolving ownership and management issues was transferred to Deputy Premier Kerin.

### 28 OCTOBER 1998 - MINISTER EVANS REQUEST FOR MEETING TO CONSIDER INCREASING LEVIES

On 28 October 1998, Mr Evans as Minister for Recreation, Sport and Racing wrote to the Soccer Federation. His letter stated:

*"I note that, to date, the Grandstand Levy has contributed less than one quarter of the loan repayments. Before considering exercising my right pursuant to clause 8.2.4 of the Deed to increase the Levy with the Federation I wish to meet to discuss the issue.*

*Please contact my Executive Assistant...to arrange a convenient time."*

Minister Evans was unaware of the agreement between the Soccer Federation and the NSL Clubs to vary the Levy System or of their intention to seek suspension of the levies. Mrs Hall had not informed him about the draft submission sent to her on 29 September 1998.

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<sup>244</sup> The body corporate, the Minister for Industry, Trade and Tourism was dissolved and two new body corporates formed, the Minister for Industry and Trade and the Minister for Tourism on 8 October 1998.

## 31 OCTOBER 1998 - AUDITOR- GENERAL'S 1997/98 ANNUAL REPORT

The Auditor-General's Annual Report for the year ended 30 June 1998, makes comment on the management of a number of sporting stadia, including the Hindmarsh Stadium. The report included the following:

### "Soccer and Netball Stadiums

*In relation to the Hindmarsh Soccer Stadium and the Mile End Netball Stadium the respective Funding Deeds include similar key accountability provisions, notably:*

- *the operations of the stadiums must be accounted for as separate profit centres;*
- *a separate management committee with Ministerial representation must be formed to oversee the operations of the stadiums. Key responsibilities of the committees include the establishment and maintenance of accounts and accounting records for the stadium profit centres, preparation of annual budgets and to seek to maximise use, and therefore revenue, of the stadiums;*
- *a five year business plan must be prepared and maintained for the stadium profit centre operations;*
- *separate financial statements must be prepared for the stadium profit centres;*
- *the accounts, accounting records or accounting systems or procedures, including those in relation to the stadium profit centre must be audited each financial year by an auditor approved by the Minister;*
- *the Treasurer, the Minister, or any duly authorised employee, agent or contractor may inspect the books, accounts or other documentation relating to the management, administration or affairs of the sporting associations, including those in relation to the stadium profit centres;*
- *for each financial year an annual report concerning the affairs of the stadium profit centres must be prepared and forwarded to the Minister;*
- *Ministerial or Treasurer's representatives can attend meetings of the sporting associations where issues relating to the management of the stadium are to be discussed.*
- *The parties including, the Minister, the Treasurer, the Minister's nominees to the management committees, the sporting associations and the Department of Industry and Trade (Office for Recreation and Sport) all play important roles in ensuring compliance with the overall accountability provisions of the Funding Deeds.*

*The Audit review identified that the Office for Recreation and Sport had prepared summaries of the respective Deed provisions and the status reports covering the key accountability provisions contained in the Deeds. The status reports reflected correspondence forwarded by the Office for Recreation and Sport to the sporting associations and the responding information provided by the associations.*

*The status reports indicated that a number of key provisions in both Deeds had not been sufficiently addressed by all parties since the Deeds were put in place. The following provides further information with respect to some of the matters noted by Audit and reported to the Department of Industry and Trade (Office for Recreation and Sport) on 27 August 1998 for advice of action proposed in relation to the matters.*

#### Management Committees

*At the time of the audit the soccer committee was yet to be formed and there was a vacancy for a Ministerial representative to the netball committee. In addition to representatives on the management committees the Deeds also provide for attendance of nominees of the Treasurer or Minister as observers at meetings of the sporting associations.*

*Audit raised with the Department the matters regarding the unsatisfactory position concerning the committees and sought advice of formal arrangements planned or implemented between the Minister, Minister's representative, Department and sporting associations with respect to communication of issues associated with the management of the stadium profit centres.*

#### Preparation of Business Plans for Stadium Profit Centres

*In the case of netball, a report prepared in August 1996, prior to approval for the construction of the stadium, has been used as the initial business plan. The Department wrote to SANA in January 1998 indicating the need to update the plan. SANA responded in April 1998 advising that updating of the plan could commence towards the end of the 1998 calendar year.*

*With respect to soccer, several documents have been provided but none satisfy the requirements set out in the Deed.*

#### Inspection of Operations, Books and Records

*At the time of the Audit review the provisions in each Deed for review of the operations and record keeping in relation to the stadiums had not been exercised. This was despite the fact that both stadiums had not been able to fully fund the sporting associations' loan repayments during the year thereby requiring the Government to meet the shortfall.*

*The repayment of the sporting association loans is limited by the Deeds to funds arising from defined activities. In both cases the quantum of these funds is dependant upon the operating performance of the stadium profit centres. The Deeds both contain requirements for the sporting association to promote the profitable use of the facilities.*

*Audit enquired of the Department as to whether an independent review of operations, accounting records and procedures was planned to ascertain compliance with the accountability arrangements set out in the Funding Deeds, including the integrity of attendance recording mechanisms (spectators for soccer and spectators and players for netball).*

### Approval of Auditor

*Both Deeds include a provision for the approval of the auditor of the sporting association and a requirement that the audit include the accounts, accounting records and systems or procedures maintained in relation to the respective facilities.*

*In both cases the nominated auditor has been approved without consideration of the scope of the audit to be performed. Audit suggested that the Department obtain a copy of the engagement letter to ensure that the scope of the audit includes the operations of the independent profit centre for the respective stadium. It was further suggested that the Department seek to have a clause inserted in the engagement letter that provides for copies of any findings by the auditor in relation to the operation of the stadiums to be provided to the Department.*

### Other Issues

*In addition to the common issues, the Audit review noted a number of unresolved matters specific to each Deed. For example, the Netball Deed has specific provisions requiring the collection of a levy for each player playing on the Edward Park courts. Correspondence sighted by Audit between the Department and SANA indicated that the levy was not being collected.*

The response from the Department was that those matters would be satisfactorily addressed.

## **5 NOVEMBER 1998 - SOCCER FEDERATION SUBMISSION SEEKING RELIEF FROM LEVIES**

On 5 November 1998 Mr Avory, Mr Scarsella and Mr Farrugia of Soccer Federation met Mr Evans as Minister for Recreation, Sport and Racing to discuss the Soccer Federation's submission for suspension of the levies.

At that meeting, Minister Evans was given the submission prepared by the Soccer Federation with Mrs Hall's assistance.

## **13 NOVEMBER 1998 - FIT OUT LOAN REPAYMENT**

On 10 November 1998, the Soccer Federation wrote to the Minister for Recreation, Sport and Racing and informed him that a Fit Out Loan repayment of \$48,801.28 was due on 13 November 1998, there was only \$601.51 in the Fit Out Levy Bank Account and only \$15,000 has been collected instead of the Levies. The letter asked the Minister what action he wished the Soccer Federation to take.

Mr Simon Forrest, the Executive Director of the Office for Recreation and Sport responded by letter also dated 10 November 1998. His letter stated that the Soccer Federation was in breach of the Fit Out Guarantee Deed for not collecting the Fit Out \$2 Levy. He advised that the Soccer Federation should meet its obligations under the various agreements and deposit an amount equal to the Fit Out Levy into the Fit Out Levy Bank Account. If there was still a shortfall between the amount of the next repayment and the balance of the Fit Out Levy Bank Account, then the Soccer Federation should send the necessary reconciliations and notices to the Minister for Recreation, Sport and Racing to enable payment of the shortfall.

On 12 November 1998, the Soccer Federation replied to the 10 November 1998 letter from Mr Forrest. The letter stated that:

*"We are well aware of our obligations under the funding deed and note that should the Minister reject any of our options or submissions made to him, we will be liable to make the payment due as if the levies were being collected."*

The Soccer Federation advised the amount of levies that should have been collected (Grandstand Levies of \$14,199; Fit Out Levies of \$23,242) and stated that \$20,000 that had been collected from the NSL Clubs had been paid into the Fit Out Levy Bank Account that day.

Mr Forrest wrote back that same day. On the basis that the Fit Out Levies that should have been collected were \$23,242 and as there was \$600 already in the Fit Out Levy Bank Account, he would arrange for a cheque for \$25,000 to be deposited into the Fit Out Levy Bank Account for the shortfall between the loan repayment and the Fit Out Levies. The Soccer Federation would need to meet the difference between the \$20,000 collected from the NSL Clubs and the Fit Out Levies it should have collected and deposit those monies into the Fit Out Levy Bank Account by close of business the next day.

The Soccer Federation deposited a further \$3,201 into the Fit Out Levy Bank Account on 12 November 1998. The Minister for Recreation, Sport and Racing paid \$25,000 of the Fit Out Loan repayment made on 13 November 1998.<sup>245</sup>

## **27 NOVEMBER 1998 - RECOGNITION THAT GOVERNMENT NOT ABLE TO ASSESS SOCCER'S CAPACITY TO PAY**

On 27 November 1998, Mr Forrest, Executive Director of the Office for Recreation and Sport in the Department of Industry and Trade, sent Mr Evans as Minister for Recreation, Sport and Racing a minute commenting on the issues raised at the 5 November 1998 meeting with the Soccer Federation. His minute stated:<sup>246</sup>

*"Essentially the issue is that the Clubs claim to be in financial difficulty because of the levy.*

### *Capacity to pay*

*This is probably the major issue. The Clubs maintain that they are in financial difficulty and that the need to fund the Levies aggravates this. However, I would suggest that the real issue is lack of attendances at national league games in Adelaide – ie poor off field and on field performance on the part of the Clubs. It is by no means evident that acceding to their request will solve the problem. Indeed, to do so might simply be to defer the inevitable.*

*However, we are also not in a position to form a proper judgement about the capacity of the Clubs to pay the levies. The only information provided by the Federation relates to gate takings and its cost to open the stadium. Before acceding to this request on its own*

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<sup>245</sup> See Table 6 of Appendix 1.

<sup>246</sup> Page 3.

*terms we would need to have additional information about the full operations of the Clubs. In particular, we have no information about:*

*Operations of the Corporate Suites Sponsorship Catering operations  
Other operating revenue and expense streams.*

*In addition, there are other issues that should be addressed that relate to the payment of the levy:*

- No increase in ticket price was imposed in relation to the Grandstand Levy. Ticket prices are controlled by Soccer Australia and the Federation should be required seek [sic] approval to increase ticket prices.*
- The deeds require the levies to be charged for all matches played under the auspices of the Clubs and the Federation. To date we have seen only evidence that levies are being charged for National League games, international soccer matches and Rugby matches. In particular there is no evidence that levies are being paid into the accounts for Premier League or State League games. For instance, the Ernst and Young report referred to the Homestart Top 4 Premiership play-off (two rounds plus final), Fairmont Challenge Cup (three rounds plus final) and the Johnnie Walker Cup (three games). The Funding Deed requires that at least fifteen Premier League games are played at the stadium each calendar year.*

*The Federation needs to provide advice on what is occurring in relation to these games."  
[emphasis supplied]*

## **17 DECEMBER 1998 - CHARGE OVER LEVY MONIES**

The Crown Solicitor's Office drafted the charge over the Levy monies in December 1997, 14 months after execution of the Funding Deed. Execution copies of the document were not prepared until November 1998, a year after the first levies had been collected and paid into the Levy Bank Accounts.

The executed charge was dated 17 December 1998.

## **31 DECEMBER 1998 - GRANDSTAND LOAN REPAYMENT DUE**

On 22 December 1998, the Soccer Federation wrote to the Office for Recreation and Sport about the repayment of the Grandstand Loan of \$105,763.82 due on 31 December 1998. The Soccer Federation asked if the Minister for Recreation, Sport and Racing would accept \$26,794, (being the balance of the \$50,000 collected from the NSL Clubs after payment of an amount equal to the Fit Out Levies on 12 November 1998) in lieu of the \$37,854 of Grandstand Levies due to 22 December 1998.

Mr Forrest, the Executive Director of the Office for Recreation and Sport responded by return letter requiring the Soccer Federation to deposit into the Grandstand Levy Account the total amount of the Grandstand Levies due. The Soccer Federation deposited \$37,896 into the Grandstand Levy

Account on 28 December 1998. The Minister for Recreation, Sport and Racing paid \$67,910 of the Grandstand Loan repayment made on 31 December 1998.<sup>247</sup>

In his letter to the Soccer Federation dated 22 December 1998, Mr Forrest directed the Soccer Federation to ensure that the Grandstand Levy on matches to be held before 31 December 1998 were banked in accordance with the Funding Deed. Grandstand Levies of \$13,071 for the match held on 27 December 1998 were not imposed, collected or deposited as required. Fit Out Levies of \$51,472 for matches held between 15 November and 27 December 1998 were not imposed, collected or deposited as required either.<sup>248</sup>

## **18 JANUARY 1999 - DIT LETTER TO COUNCIL**

On 18 January 1999, Mr Andrew Scott as Director, Project Coordination in the Department of Industry and Trade wrote to Ms Susan Law, Chief Executive of the Council. His letter informed the Council that Minister Evans had approved the Department of Industry and Trade entering into negotiations with the Council for the Government to take over the proprietary rights of the stadium. It asked that the full Council agree in principle to the transfer before any further negotiations occur.

## **22 JANUARY 1999 - MINISTER EVANS' AGREEMENT TO SUSPEND LOAN REPAYMENTS PENDING ARTHUR ANDERSEN REPORT**

On 20 January 1999, Mr Forrest sent a letter to the Soccer Federation informing it that before Minister Evans determined his response to the Soccer Federation's proposal for relief from the levies, the Minister proposed to retain independent consultants to review the finances and operations of the Soccer Federation, the stadium and the NSL Clubs. In the meantime, the Minister required that the *"terms of the deeds should be fully complied with."*

After a telephone discussion between Mr Farrugia and Mr Forrest and further discussions between Mr Forrest and Minister Evans, a letter dated 22 January 1999, was sent by Mr Forrest to the Soccer Federation. It confirmed Evans' agreement as Minister for Recreation, Sport and Racing to suspend the need for the Soccer Federation to meet future repayments of the Grandstand and Fit Out Loans pending receipt and consideration of a report by Arthur Andersen. That letter expressly stated that after consideration of the Arthur Andersen Report, the Soccer Federation may be required to pay the amounts that would have been due as levies.

## **25 MARCH 1999 - VOLUNTARY ADMINISTRATION OF WEST ADELAIDE**

On 25 March 1999, Mr Bruce Mulvaney was appointed voluntary administrator of West Adelaide. According to the report prepared by Mr Mulvaney in his capacity as voluntary administrator, West Adelaide had a long history of being in financial difficulties. The operations and management of the club were characterised by internal disputes between the club committee and a private sponsor of the club.

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<sup>247</sup> See Table 5 of Appendix 1.

<sup>248</sup> See Table 2 of Appendix 2.



Until the Arthur Andersen Report dated 31 March 1999 was delivered, the Government had no substantiated information about the financial position of the NSL Clubs. A minute dated 11 September 1998 from Mr Andrew Scott, Director Project Coordination in the Department of Industry and Trade to Mr Dixon records:

*"You mentioned that you had received a confidential query late last month concerning the financial status of the two NSL clubs viz, Adelaide City and West Adelaide soccer clubs.*

*Our investigations revealed there are two areas, the fit out of the western grandstand and the lease for the Thebarton oval which raise a question over the solvency of the West Adelaide Club. There was no evidence to suggest there is a problem with the solvency of Adelaide City.*

...

*It is well known that the West Adelaide soccer club is not in a strong financial position and therefore it was suggested that it was this club that was unable to make its payment to SASF. This information is only hearsay and cannot be substantiated with any documentation..."*

### **31 MARCH 1999 - ARTHUR ANDERSEN REPORT**

On 31 March 1999, Arthur Andersen delivered their report entitled *"Financial Review of Soccer in South Australia"* to the Office for Recreation and Sport.

One of the reasons given for commissioning the report was that the Minister for Recreation and Sport wished to have the finances and operations of the Soccer Federation and the stadium reviewed before responding to the Soccer Federation's request for relief from the payment of levies.<sup>249</sup>

In January 1999 Arthur Andersen had submitted to Office for Recreation and Sport a proposal to provide professional services. The Office for Recreation and Sport treated that proposal as the project definition for the work. The essence of that definition was:<sup>250</sup>

*"We understand the consultancy is to assess the current financial position of SASF and the Clubs, advise the Office of Recreation and Sport ("OR&S") on the extent of the financial difficulties facing SASF and the Clubs and, present suitable options for potential restructure of the existing arrangements."*

The work would include *"a review of ... operations of the Hindmarsh Stadium and the corporate facilities as separate cost/profit centres"*.<sup>251</sup>

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<sup>249</sup> Letter from Mr Forrest to Mr Farrugia dated 20 January 1999.

<sup>250</sup> Page 3.

<sup>251</sup> Ibid.

The Soccer Federation was given the opportunity to review the draft project definition.

The report was divided into six sections:

- Introduction;
- Review of the "external environment" for South Australian soccer encompassing international soccer and national soccer;
- Hindmarsh Stadium encompassing the redevelopment, the financing arrangements, attendances and levy collection;
- Review of the "internal environment" for South Australian soccer encompassing the Soccer Federation and the two NSL Clubs;
- Hindmarsh Stadium management structure including a comparison with other sporting bodies;
- Alternative re-financing options.

A review of any feasibility studies or capital works submissions in relation to Stage 2 was specifically excluded from the scope of Arthur Andersen's review.

The key findings in the final report were:

- The projected attendance levels upon which the Government based its assessment of the feasibility of the levies to fund the Soccer Federation's contribution to the Stage 1 and Fit Out Loans were too aggressive.<sup>252</sup> They should have considered the possibility that attendances might decrease.
- In the 1998/1999 season, the average attendance for each NSL team was 5,819. Perth Glory's average attendance was 14,965. South Australia NSL teams' average was 3,411.<sup>253</sup>
- The Federation had capped the expenses for the Clubs at \$13,000 per game without notifying the Minister in the first instance.<sup>254</sup> That cap was significantly lower than the actual expenses (including the levy expense) incurred by the Soccer Federation in operating the stadium during the 1997/98 season.<sup>255</sup> By comparison, the cost of playing a match at Norwood or Thebarton Ovals was between \$5,500 and \$6,500, excluding levies.<sup>256</sup>
- The Soccer Federation had not collected levies for the Premier and State League Grand Finals, J-League exhibition matches nor any for the Women's soccer games.<sup>257</sup>

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<sup>252</sup> Page 20.

<sup>253</sup> Page 6.

<sup>254</sup> Page 11.

<sup>255</sup> Page 27.

<sup>256</sup> Page 28.

<sup>257</sup> Page 11. The Soccer Federation has submitted that it did not collect these levies because there was insufficient attendances at J-League and Women's matches.

- Due to insufficient attendance levels at matches the levies collected by the NSL Clubs and the Soccer Federation were insufficient to service the Soccer Federation's loans for Stage 1 and the fit out. The Government had met the difference. At the date of the report the shortfall in required repayments for 1998/99 on the total bank bill facilities was \$247,829. The Soccer Federation had paid only \$61,060.
- The Hindmarsh Stadium Management Committee had only held one meeting at the time the Report was commissioned.<sup>258</sup>
- The Soccer Federation's Financial Report reported Hindmarsh Stadium's operations in a note to the Soccer Federation's accounts, not as a separate reporting entity with its own separate financial report.<sup>259</sup>
- The Soccer Federation had conducted a television and radio campaign in 1997/98 in partial compliance with its marketing obligations under the Funding Deed. The advertisements did not mention the NSL Clubs or when their matches were to be played.<sup>260</sup>

The key recommendations in the final report were:

- The Government should obtain through the Treasurer a mortgage over the Soccer Federation's lease from the Council, as it was entitled to do under the Stage 1 Funding Deed.<sup>261</sup>
- The stadium should be managed by an independent third party because of the lack of beneficial interdependence between the principal users of the stadium, the NSL Clubs, and the current manager, the Soccer Federation.<sup>262</sup>
- The Government should seek to acquire the stadium from the Council.<sup>263</sup>
- As guarantor of the Soccer Federation's debts, the Government should consider re-financing the Soccer Federation's debt to a level that it could service. This would involve forgiving part of the debt.<sup>264</sup>
- Consideration should be given to reducing the levies, that reduction to be reflected in a reduction in ticket prices.<sup>265</sup>

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<sup>258</sup> Page 10.

<sup>259</sup> Page 11.

<sup>260</sup> The Soccer Federation informed this Examination that it offered the NSL Clubs the opportunity to participate for a small share of the costs, but the NSL Clubs declined.

<sup>261</sup> Page 11.

<sup>262</sup> Page 67.

<sup>263</sup> Page 67.

<sup>264</sup> Page 69.

<sup>265</sup> Page 70.

## **JUNE 1999 - ADELAIDE CITY ALLEGATION THAT LICENCE AGREEMENT VOID**

In June 1999, Adelaide City alleged that the Soccer Federation was in breach of the 1997 Licence Agreement, entitling Adelaide City to damages and to renegotiate its terms. During the course of negotiations in the following four months a formal Variation Agreement was prepared by Reynolds Prescott, the solicitors for the Soccer Federation. Adelaide City refused to sign it.

## **2 JUNE 1999 - PUBLIC WORKS COMMITTEE RECONVENE**

On 21 April 1999, Mr Dixon as Chief Executive of the Department of Industry and Trade sent a letter to the Public Works Committee reporting on progress of the Stage 2 redevelopment. He reported that Boulderstone Hornibrook had been the successful tenderer and that work had progressed well. 40 percent of the budget of \$17 million had been spent. He reported on the relocation of the Byelorussian Church, Meals on Wheels and the Hindmarsh Bowling Club.

The Public Works Committee reconvened on 2 June 1999 to clarify specifically the status of the financial arrangements for the project, the security of the Government's investment and responsibility for future maintenance costs. The Public Works Committee expressed major concern over these issues during its questioning of Mr Forrest and Mr Fletcher from the Office for Recreation and Sport, Mr Bollen from the Department of Industry and Trade, Mr Scarsella of Soccer Australia and Mr Farrugia of the Soccer Federation.

## **17 JUNE 1999 - COUNCIL LETTER ABOUT NAMING RIGHTS FOR STADIUM**

By letter dated 17 June 1999 to the Soccer Federation, the Council put the Soccer Federation on notice that the naming rights of the stadium vested in the Council as owner and any attempt by the Soccer Federation to deal with those rights would be seen as an interference with the Council's proprietary rights. If necessary, the Council would protect its position by taking legal action if required to protect its rights.

## **19 AUGUST 1999 - HINDMARSH SOCCER STADIUM CABINET COMMITTEE**

On 19 August 1999, Minister Evans reconvened the Hindmarsh Soccer Stadium Cabinet Committee for its first meeting in over a year.<sup>266</sup> The Cabinet Committee comprised Minister Evans as the Chair, the Attorney-General and the Hon. Robert Lawson QC MLC as Minister for Administrative Services.<sup>267</sup> However, the Attorney-General did not attend the meeting. The Treasurer, the Hon. Robert Lucas MLC attended by invitation.

The meeting considered the March 1999 Arthur Andersen's report. Minister Evans has informed this Examination that he reconvened the Committee to inform it of, and to seek its guidance as to the appropriateness of recommendations made in a briefing paper on the Arthur Andersen's report placed before the Committee by Minister Evans.

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<sup>266</sup> Its previous meeting was on 31 July 1998, see under the heading "31 July 1998 - Fourth Meeting of Hindmarsh Soccer Stadium Cabinet Committee" on page 200.

<sup>267</sup> Instead of Mr Matthew, the former Minister for Administrative Services.

The Committee decided to support a number of Minister Evans' recommendations. The key recommendations were:

- The Arthur Andersen Report should be treated as confidential. A summary of it should be prepared for public release.
- The Treasurer should acquire a mortgage over the Soccer Federation lease from the Council in accordance with the Funding Deed as Arthur Andersen had recommended.
- Mr Andrew Scott should continue negotiations with Council to establish a price for acquisition of the stadium. A final decision on whether the Government should prefer acquisition should await a report from Treasury and Finance and the Office for Recreation and Sport on the risks associated with ownership and operational control.
- A Sports Facility Management Trust should be established to manage the Hindmarsh Stadium and other major sports facilities.
- The amount to be paid by the Soccer Federation for the 1998/99 season should be fixed. For the period up to 31 December 1998 the Soccer Federation should pay the full levies required by the Funding Deed and Fit Out Guarantee Deed. From 1 January 1999 the amount should be fixed at a flat \$5,000 per game.

A Cabinet submission reflecting these decisions was to be prepared for the Cabinet meeting on 23 August 1999.

The Committee also deferred decision on the following recommendations pending presentation of reports from Treasury and Finance and the Crown Solicitor's Office:

- The recommendation that future loan repayments (ie the shortfall after collection of levies) be repaid from consolidated revenue rather than the Office for Recreation and Sport State Facility Fund.
- The recommendation that negotiations with the Soccer Federation to fix a flat amount for the levies be overseen by the Minister for Recreation and Sport.
- The recommendation that the Stage 1 and Fit Out Loans be paid out.
- The recommendation that the Government's preference be to own the stadium.

## **23 AUGUST 1999 - CABINET APPROVAL**

On 20 August 1999, Mr Evans as Minister for Industry and Trade and Minister for Recreation, Sport and Racing signed a Cabinet submission entitled "*Hindmarsh Stadium – Ownership and Management*".

The submission recommended that three issues identified by Arthur Andersen in its 31 March 1999 report be addressed urgently:

- Exercise by the Treasurer of his right for a mortgage over the lease between the Soccer Federation and the Council.
- Identification of an alternative basis for the NSL Clubs using the stadium as *"it is unlikely that there is capacity within the sport to meet about half of the debt-servicing requirement"*.
- Putting in place an independent management arrangement for the stadium because the Soccer Federation was not considered to have the capacity to manage the stadium effectively.

The submission informed Cabinet of the Hindmarsh Soccer Stadium Cabinet Committee's agreement:

- That the Department of Treasury and Finance and the Office for Recreation and Sport would prepare a statement of the risks and benefits of Government ownership or management of the stadium.
- To note ongoing negotiations with the Council over ownership of the site.
- That the Minister for Recreation, Sport and Racing would prepare a Cabinet submission on the establishment of a Sport Facilities Trust to manage a range of sporting stadia.
- That the Department of Treasury and Finance would prepare an advice on options for termination of the Soccer Federation's loans with the National Australia Bank Limited.
- That the Committee recommended that the Soccer Federation be required to pay:
  - levies as required under the Funding and Fit Out Deeds to 31 December 1998; and
  - \$5,000 per NSL match from 1 January 1999.

On 23 August 1999, Cabinet approved the recommendations of the Hindmarsh Soccer Stadium Cabinet Committee without any amendment.

### **3 SEPTEMBER 1999 - HINDMARSH SOCCER STADIUM CABINET COMMITTEE MEETING**

On 3 September 1999, the Hindmarsh Soccer Stadium Cabinet Committee convened again with Minister Evans as Chair. The minutes record that the Committee considered papers from the Crown Solicitor's Office on:

- Discussions with the Soccer Federation about varying the levy structure to a flat fee of \$5,000.
- Consideration of ownership and management options.

The Committee considered the following options for management and control of the stadium:

- A mortgage over the Soccer Federation's lease. The Committee reconsidered whether it was appropriate to seek a mortgage over the Soccer Federation's lease. The Committee decided

that it needed to have a clear outcome in mind before pursuing the mortgage over the lease because it considered that course of action might result in obligations which might limit the Government's ability to resolve other issues concerning the ownership and management of the stadium.

- A joint management structure with other stadia. The Committee noted that the different ownership of different portions of land upon which the stadium was sited made this difficult.
- Outsourcing of management of various sports stadia. Hindmarsh Stadium could be included in this proposal if the issue of ownership could be resolved.

Ultimately the Committee resolved that the Office for Recreation and Sport, the Department of Treasury and Finance and the Crown Solicitor's Office should:

- *Develop the objective*
- *Address how it is to be achieved (ownership and management control)."*

The minutes record no preference for one structure over any other.

## **7 SEPTEMBER 1999 - MORTGAGE OVER THE 1996 LEASE**

On 7 September 1999, the Department of Treasury and Finance instructed the Crown Solicitor's Office to *"commence action to register a first mortgage on the Federation's lease of Hindmarsh Stadium on behalf of the Treasurer as soon as possible."*

In mid October 1999, Minister Evans requested that the Soccer Federation execute a mortgage over the 1996 Lease at the Treasurer's request under Clause 23 of the Funding Deed. This was the first time the Soccer Federation had been requested to execute the mortgage, although the Funding Deed had been signed in October 1996.

By letter dated 22 October 1999, the Soccer Federation responded to the request for a mortgage over the lease, stating that before the Soccer Federation signed a mortgage it required an undertaking from the Government that any existing or potential breach of the lease would not prejudice its position with regard to management of the stadium or the lease.

On 5 November 1999, Reynolds Prescott, the Soccer Federation's solicitors, wrote to the Department of Treasury and Finance about the Soccer Federation's concerns with the terms of the proposed mortgage.

## **10 SEPTEMBER 1999 - TRANSFER OF RESPONSIBILITY FOR STAGING OLYMPIC SOCCER**

On 10 September 1999, the Chief Executive of the Department of Industry and Trade sent a minute to the Premier seeking his approval for the transfer of responsibility for staging the Olympic Soccer Tournament from the Department of Industry and Trade to the SA Tourism Commission. The justification given was that the SA Tourism Commission had both the expertise and experience through its Major Events group to ensure that the hosting of an Olympic event was flawless. The minute stated that the proposed change had been agreed by Mr Evans as Minister for Recreation, Sport and Racing and Mrs Hall as Minister for Tourism.

The Premier approved the transfer.

## **22 SEPTEMBER 1999 - WINDING UP OF WEST ADELAIDE**

On 22 September 1999, West Adelaide was placed in liquidation.

## **1 OCTOBER 1999 - MRS HALL'S RESIGNATION AS AMBASSADOR FOR SOCCER**

Mrs Hall formally resigned as Ambassador for Soccer on 1 October 1999.

Mrs Hall's letter of resignation to the Chairman of the Soccer Federation stated the reasons for her resignation as follows:

*"As my political responsibilities continue to grow, my personal time continues to decrease. As you know, the Soccer Olympics in Adelaide will be a very significant major event and I have now been given the ministerial responsibility for the Olympic tournament to be held just over 12 months from now.*

*This has significantly changed my non-political position with soccer. Therefore, to remove any possible credibility to the allegation of 'conflict of interest', whether mischievous or unintended, I have most regretfully decided to relinquish the position as Soccer Ambassador."*

## **7 OCTOBER 1999 - HINDMARSH SOCCER STADIUM CABINET COMMITTEE MEETING**

On 7 October 1999, the Hindmarsh Soccer Stadium Cabinet Committee convened again.

The Committee noted three significant events:

- West Adelaide had been placed in liquidation.
- Soccer Australia would not allow time for a consortium to put forward a proposal for a replacement second South Australian team.
- Adelaide City had announced its intention to play its next game at Norwood Oval.



The minutes noted that the effect of those events was that the Soccer Federation was in breach of its obligations to the Government under the Funding Deed.

The meeting discussed generally a draft of the submission to Cabinet discussed further below.

The Committee resolved that before that submission should be put to Cabinet. The Department for Industry and Trade, the Department of Treasury and Finance and the Crown Solicitor's Office should prepare a report that:

- *Reviews legal documents to determine the rights and obligations of the SA Government and the best way forward for the Government in pursuing ownership assignment of the lease and management control.*
- *Options for minimising costs associated with achieving these objectives.*

*The Committee noted that the SA Government's commitments to SOCOG should be considered as part of the review of legal obligations."*

## **8 OCTOBER 1999 - LETTER TO THE SOCCER FEDERATION**

On 8 October 1999, Minister Evans wrote to the Soccer Federation informing it that he would accept in lieu of levy payments due between 1 January and 30 September 1999, \$5,000 per NSL match plus the amount of the levies payable on other events held at the stadium.

His letter expressly stated that:

*"Nothing in this letter is to be construed as relieving the Federation of its obligations to collect and bank the levies under the Documents before and after the period 1 January 1999 to 30 September 1999."*

On 19 October 1999, the Soccer Federation wrote to Minister Evans:

*"We respectfully request that you reconsider your position regarding the payment of levies and consider a relief from levy payment for a defined period. Relief in this regard is a critical factor in preventing a complete breakdown of the situation, to where Lawyers and Courts determine formal outcomes,*

*We advise that if the levies are re-imposed the Club has confirmed that it will play its home matches elsewhere (see attached correspondence)."*

## 8 OCTOBER 1999 – MR PICKARD’S LETTER TO MRS HALL

On 8 October 1999, Mr Pickard wrote to Mrs Hall:

*"I'm writing to express my thanks for all the time and effort you gave to the game over many years. Those of us involved in soccer have greatly appreciated your dedication, support and forthright approach. Having dealt with all sorts of people I can instantly recognise someone who is genuinely and honestly trying to help the situation rather than merely looking for electoral support. I think the game will truly miss it's [sic] Ambassador and we will miss your bright personality around the club.*

...

*As I see it the current ruckus should focus more on soccer's inability to meet it's [sic] financial commitments than on the government. It seems to me that if the ABC news reporter knew the full background he would have been directing his questions to Basil Scarcella [sic] and the SA Soccer Federation. From my involvement as Patron of Adelaide City it is clear to me that the Government has been misled as to the financial ability of soccer to repay it's [sic] debts and that information came from those people. In my view their mishandling of the financial aspect of the project has caused difficulties that could have been avoided. It would be sad to think the flack surrounds you when the people who are genuinely responsible are in hiding.*

*In hindsight my previous letters to you regarding the grandstand were too harsh and I would like to apologise for their accusing tone. I know now that you were doing your best for soccer and for South Australia. Knowing what I know now I shouldn't have written to you at all. I only wrote to you because I was advised to by Les Avory and Tony Ferrugia [sic] who said that the SASF couldn't help the two NSL clubs – it was a government matter.*

*You may not be aware that Basil Scarcella [sic] told the clubs that, wink, wink, nudge, nudge, there was a 'good chance' the Government would pay out the SASF Hindmarsh loans when money was granted for the second stage of Hindmarsh. Scarcella [sic], who led the negotiating between the SASF and the clubs, said that while he couldn't promise it, if the money came through the club's [sic] would only have to pay the levies for one to two years. Scarcella [sic] effectively put the Sharks and Adelaide City in a position where they were crazy if they didn't sign the contract. We have people who will sign statutory declarations that this became a major factor in the clubs deciding to agree to such a difficult financial commitment. Later, when the money didn't come through Scarcella [sic] was nowhere to be seen.*

*At a subsequent meeting in 1998 Scarcella [sic] and Tony Ferrugia [sic] stated that the SASF had performed a feasibility study that showed the SASF and clubs could meet the repayments to the government. They promised to send me a copy but have not done so despite repeated requests. I believe it was either seriously flawed or did not exist. I expect you had relied on similar advice from these people. Incredibly, as Vice Chairman of Soccer Australia Scarcella [sic] knew how much financial trouble the Sharks were in yet he still tied the Government, the SASF and the two NSL clubs together in a fragile deal.*

*I believe the SASF people, who are responsible for the game, should be made accountable for a situation that has been unfairly blamed on the government.*

*In many ways you may be better off away from soccer. Unfortunately the game hasn't quite got it's [sic] act together, can't attract high calibre administrators and it's [sic] people always seem to end up fighting amongst themselves. This will change in time but first soccer needs to attract good young people. This will only happen when Australia consistently qualifies for the World Cup finals. Only then will we truly appreciate our great new soccer stadium." [original emphasis]*

## **15 OCTOBER 1999 - FURTHER REDUCTION IN MATCH FEE FOR 1999/2000**

An informal interim agreement was reached for Adelaide City to continue playing at Hindmarsh for the 1999/2000 season at a reduced fixed fee of \$11,000 per match for all costs and levies.<sup>268</sup> Since then, Adelaide City have claimed that the Soccer Federation has breached some of the terms of that interim agreement and that the 1997 Licence Agreement is null and void. The Soccer Federation has claimed that levies are payable by Adelaide City if the Minister later seeks reimbursement.

## **18 OCTOBER 1999 - THOMPSON TREGEAR REPORT**

On 18 October 1999, Thompson Tregear delivered a report to the Soccer Federation about the management of the redeveloped stadium. Thompson Tregear recorded their engagement as follows:<sup>269</sup>

*"In August 1999, the SASF engaged Thompson Tregear Pty Ltd, a firm of management consultants specialising in the leisure industry, to*

- provide advice on the future management of the stadium;*
- prepare a financial operating forecast and business plan; and*
- develop an implementation strategy to ensure a smooth transition from existing arrangements to any recommended arrangements."*

In preparing their report Thompson Tregear spoke to representatives of the Government, the two NSL Clubs, the Soccer Federation and the Council. The Government expressed concern that:<sup>270</sup>

*"... the SASF has not set up the management of the stadium as an independent cost centre and has not prepared a business plan as required under the deed arrangement. It has also had to exercise its guarantee on the SASF loans on the western grandstand due to insufficient funds being available through the collection of levies."*

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<sup>268</sup> Adelaide City letter dated 15 October 1999.

<sup>269</sup> Page 1.

<sup>270</sup> Page 10.

In relation to the levy arrangement Thompson Tregear found that: <sup>271</sup>

*"Having analysed the financial performance of the stadium, it is clearly apparent that the levies placed on admission fees have a negative effect on the current and recommended arrangements.*

*In simple terms, the levies have been introduced in order to ensure that some of the capital cost of the stadium (ie, the western grandstand) is repaid by the SASF. The fact is that the SASF cannot afford to repay the loan which is evidenced by the past and current financial performance of the stadium and also by the fact that the State Government has had to fund the shortfall in quarterly loan repayments under its guarantee arrangement, due to insufficient levies being collected."*

In relation to the Soccer Federation's obligation under the Fit Out Guarantee Deed to spend \$100,000 per year marketing Hindmarsh Stadium, Thompson Tregear found that: <sup>272</sup>

*"Whilst there will be a budget line within the stadium accounts for the promotion of the stadium, the stadium will also be promoted indirectly by the NSL Clubs and the SASF as regular users. It may not be necessary to spend \$100,000 on promoting the stadium in any one year in which case it places an unrealistic cost burden on the stadium operation."*

The report showed in diagram form the management structure for the stadium. Thompson Tregear identified a problem with that structure: <sup>273</sup>

*"The problems arising from the existing arrangements surrounding the operation of the stadium can be summarised as follows:*

- *the revenue and expenses streams associated with the stadium are confused with the revenue and expense streams of soccer;*
- *the real financial operating position of the stadium is not clearly or readily apparent;*
- *the 'stadium' is not in control of the revenue flows that logically relate to it;*
- *the SASF is both user and manager of the stadium;*
- *the users in the form of the SASF and the two NSL Clubs, are all represented on the stadium Management Committee and as a consequence have a conflict of interest; and*
- *the complex arrangements that have evolved in relation to the management and operation of the stadium contribute to the animosity between the various stakeholders."*

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<sup>271</sup> Page 22.

<sup>272</sup> Page 24

<sup>273</sup> Page 18.

Thompson Tregear recommended that a new legal entity be established to manage the stadium:

- It should be *"a completely separate entity from the SASF"*.<sup>274</sup>
- The entity *"would be owned and ultimately controlled by the SASF"*.<sup>275</sup>
- The members of the board of the new entity *"should not also be members of the SASF Commission"*.<sup>276</sup>
- The new entity should have control of revenues from catering and ticket sales (then controlled by the NSL Clubs).<sup>277</sup>

Thompson Tregear recognised that the stadium was unlikely to generate net revenue flows in the foreseeable future.

## **20 OCTOBER 1999 - MINISTER EVANS' MEETING WITH SOCCER FEDERATION**

Minister Evans meet with representatives of the Soccer Federation at Parliament House briefly on 20 October 1999 to discuss the Soccer Federation's request for some relief from the Levy System . It was agreed that these issues needed to be discussed further.

## **25 OCTOBER 1999 - CABINET COMMITTEE MEETING**

The Cabinet Committee reconvened on 25 October 1999 for 40 minutes. Minister Evans reported on his recent dealings with the Soccer Federation. After discussion of the legal and financial issues arising, the Committee resolved that a draft Cabinet submission be prepared including three options:

- Do nothing.
- Pay the Soccer Federation debt and the Government take over management of the stadium by vesting it in the Adelaide Entertainment Corporation.
- Forgive the debt and allow the Soccer Federation to manage the stadium on the basis that an independently audited amount be put aside each year for stadium maintenance.

The Cabinet submission should also consider the Soccer Federation's offer to restructure the Levy System.

The Committee resolved that the Soccer Federation should be pressed to sign the mortgage over the lease. The Crown Solicitor was to provide Minister Evans with advice on how the mortgage can be enforced by the Government.

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<sup>274</sup> Page 19.

<sup>275</sup> Page 19.

<sup>276</sup> Page 21.

<sup>277</sup> Page 22.

## **31 OCTOBER 1999 – AUDITOR-GENERAL’S 1998/99 ANNUAL REPORT**

The Auditor-General’s Annual Report for the year ended 30 June 1999 made the following comment:

*"In regard to the Hindmarsh Soccer Stadium, in response to problems being experienced by the SASF to meet loan repayment commitments, an external accounting firm was commissioned to undertake an independent review of the position. The review report was submitted to Cabinet in late August 1999. Cabinet approved, among other recommendations, a proposal to receive a comprehensive submission dealing with issues of the Hindmarsh Soccer Stadium debt and management of the stadium and other sports facilities.*

*The outcome of last year’s audit review of stadium management arrangements revealed deficiencies with respect to meeting adequate standards of accountability. The Department has implemented actions to address the issues, however, the nature and extent of some issues will require some long term resolution strategy. The Hindmarsh Soccer Stadium is a case in point."*

### **4 NOVEMBER 1999 - MINISTER EVANS’ MEETING WITH THE SOCCER FEDERATION**

The Soccer Federation requested an urgent meeting with Minister Evans on 4 November 1999. Minister Evans raised the possibility of removing the Levy System provided the stadium was maintained by the Soccer Federation adequately. The Soccer Federation was opposed to the Government taking over management of the stadium. The Soccer Federation had still not signed the mortgage over the lease.

### **5 NOVEMBER 1999 - CABINET COMMITTEE MEETING**

The Cabinet Committee reconvened on 5 November 1999 for just over an hour. The Committee considered a draft Cabinet submission proposing the ownership and management options resolved at its meeting of 25 October 1999. It was resolved that a further Cabinet submission would be prepared for Cabinet’s meeting on 8 November 1999. Specific direction was given as to the issues that the submission needed to address, but not how those issues would be resolved.

### **8 NOVEMBER 1999 - CABINET AUTHORITY TO ACQUIRE OWNERSHIP OF THE STADIUM**

On 8 November 1999, Cabinet authorised Minister Evans to take all steps necessary to acquire ownership of Hindmarsh Stadium. Cabinet noted:

- It may be necessary for Minister Evans to purchase part of the site for up to \$865,000 but only as a last resort.
- Minister Evans may need to assume responsibility for the Grandstand and Fit Out Loans at debt servicing costs of \$620,000 per annum or a \$6 million pay out.
- The stadium may require an annual operating subsidy of \$150-200,000.

Minister Evans was authorised to pursue legal action or to appoint a receiver or liquidator to the Soccer Federation to achieve the outcome sought.

Cabinet agreed that for the period 1 January to 30 September 1999, the Soccer Federation be required to pay \$5,000 for each NSL game played at Hindmarsh and the lesser of \$5,000 or the levies for each other event.

### **9 NOVEMBER 1999 - SOCCER FEDERATION LETTER TO THE PREMIER**

On 9 November 1999, Mr Avory as Chairman of the Soccer Federation wrote to the Premier:

*"After a four year involvement in this exciting State investment in our Sport and tremendous working relationship with your Government, it is with great disappointment that I now find myself writing to you for the first time with regard to issues surrounding the future management and leaseholding of the Hindmarsh Soccer Stadium. Following a meeting attended by my General Manager with your Minister for Recreation and Sport, I believe it imperative to bring these issues to your notice in an effort to maintain the good relationship you have with the soccer fraternity."*

Premier Olsen has been the Patron of the Soccer Federation since early 1997.

### **10 NOVEMBER 1999 - TRANSFER OF LEASE**

By letter dated 10 November 1999 to the Soccer Federation, Minister Evans confirmed that he agreed to vary his earlier agreement for payment of levies during the period 1 January to 30 September 1999 to:

- \$5,000 per NSL match; and
- the lesser of \$5,000 or the equivalent of the levies payable for other events.

The letter also offered to suspend (not waive) payment of the levies until further notice if the Soccer Federation was prepared to enter into negotiations in good faith *"with the object of the Government acquiring the lease of the stadium from the Federation."*

A further letter offering to pay out the Stage 1 loans in return for a transfer of the lease was sent by Minister Evans to the Soccer Federation on 16 December 1999. The Soccer Federation refused to comply. Further discussions occurred between the Minister's office and the Soccer Federation. No resolution was reached.

### **3 DECEMBER 1999 - PRACTICAL COMPLETION OF STAGE 2 WORKS**

On 24 January 2000, DAIS certified that the Stage 2 project works had reached the stage of Practical Completion (as defined by the Construction Management Contract) on 3 December 1999.

### **13 DECEMBER 1999 - MINISTER EVANS' OFFER TO THE COUNCIL**

On 13 December 1999, Minister Evans wrote to Ms Law of the Council and offered \$865,000 for the Council's interest in Hindmarsh Stadium, based on the Valuer-General's January 1999 valuation.

Ms Law responded by letter dated 16 December 1999. She wrote that while the Council welcomed the opportunity to negotiate sale of the site, the sale needed to be at market price and site would be rateable on transfer of ownership. The offer was not considered to be market value.

## **16 DECEMBER 1999 - MINISTER EVANS' OFFER TO THE SOCCER FEDERATION**

On 16 December 1999, Minister Evans wrote to the Chairman of the Soccer Federation, Mr Avory enclosing a document outlining what he described as the Government's "*Best and Final Offer*" for transfer of the leasehold interest in the stadium to the Government in consideration of the Government taking over the Soccer Federation's liabilities for the Grandstand and Fit Out Loans and the operating and maintenance costs of the stadium. Minister Evans offered that the stadium be managed by a controlling body that would sub-contract management for an annual service fee of \$48,000. The Soccer Federation would be invited to tender for the management contract. The controlling body would own all revenue rights to the stadium such as catering, broadcasting, advertising, product endorsement etc. The Soccer Federation would be offered a sub-lease of its office area at no cost.

## **4 JANUARY 2000 - MINISTER EVANS' REQUIREMENT FOR A RESPONSE**

In the absence of a response from the Soccer Federation to his offer of 16 December, Minister Evans wrote to Mr Avory on 4 January 2000. Minister Evans reiterated that it was the Government's "*Best and Final Offer*" and he would revoke the offer by 12 January if not accepted or not recommended to the Council of Clubs for acceptance.

On the same day Mr Avory wrote to Minister Evans confirming the Soccer Federation's willingness to continue with fair and equitable negotiations to transfer the lease. While he considered agreement on most issues was in sight, the Soccer Federation required compensation for its goodwill in the stadium and the value of its lease. He proposed the Government transfer to the Soccer Federation the fee simple in the site of the Heritage buildings south of the stadium.

On 5 January 2000, Minister Evans wrote back stating that he would not improve the Government's offer by transferring the property requested.

## **14 FEBRUARY 2000 - TRANSFER OF OFFICE FOR RECREATION AND SPORT**

On 14 February 2000, the Office for Recreation and Sport was transferred from the Department of Industry and Trade to the Department for Environment and Heritage.

## **13 APRIL 2000 - CABINET COMMITTEE MEETING**

Minister Evans reconvened the Cabinet Committee on 13 April 2000. It has not met since 5 November 1999.

Minister Evans updated the Committee on the stalemate reached in negotiations with the Soccer Federation. The Soccer Federation asked for ownership of \$560,000 of property for goodwill for transferring the stadium lease to the Government. The Soccer Federation also wanted the term of the management contract from the controlling body for the stadium to run for the balance of the lease term – 37 years.



Minister Evans updated the Committee on the status of negotiations with the Council for the sale of the site. The Council had valued the site at \$3 million, whereas the Valuer-General's valuation was \$865,000. The Council had rejected the Government's offer of \$2.1 million.

The Committee resolved that another paper exploring options to purchase the site and to ensure the mortgage over the lease was signed would be prepared for the next meeting in consultation with officers from the Attorney-General's Department and Treasury. A meeting with the Council was to be held to discuss the lease of the land which was not subject to the Soccer Federation's lease.

## **10 MAY 2000 - CABINET COMMITTEE MEETING**

The Committee considered a paper prepared by Minister Evans that explored options for renegotiating the Government's existing arrangements with the Soccer Federation. The paper did not explore options to purchase the stadium as had been agreed at the last meeting. Minister Evans proposed a new arrangement be negotiated with the following key features:

- The Government would take over responsibility for the Grandstand and Fit Out Loans.
- The Government would forgive a range of the Soccer Federation's debts to it.
- The Soccer Federation would be required to establish the stadium as a separate profit centre on a basis acceptable to Government.
- The Soccer Federation would alter its constitution to establish a Board of Management for the stadium.
- The Government would provide an operating subsidy for the stadium for 5 years.
- The Soccer Federation would immediately enter into negotiations with the Council to extend its lease to the whole of the site.
- The Crown Solicitor would advise on whether the Government should hold a mortgage over the lease.
- A business plan would be developed for the stadium.

I note that none of these proposals were new. Terms requiring the stadium to operate as separate profit centre, a management board, a business plan and a mortgage over the lease were all included in the Stage 1 Funding Deed as terms intended to protect the Government's interests.

The Committee accepted Minister Evans recommendations and resolved that Cabinet be updated on the current status and the proposed course of action. Any negotiations would be subject to Cabinet approval.

## **24 MAY 2000 - REDUCTION IN MATCH FEE FOR 2000-2001 NSL SEASON**

By letter dated 24 May 2000 to the Soccer Federation, Adelaide City proposed new conditions for it to play at Hindmarsh for the 2000/01 season. That letter stated that it was at Minister Evans' request that Adelaide City was seeking to work out its arrangements for the up coming season and proposed a further reduction in the fixed fee to \$8,000 per match.

## **JUNE 2000 - ADELAIDE CITY RELOCATION TO RAMS PARK**

By June 2000, Adelaide City continued to assert that its licence agreement with the Soccer Federation in relation to occupation of Hindmarsh Stadium was null and void.

With the Olympic soccer matches due to start in September 2000, the SOCOG Memorandum of Understanding required the Government to ensure delivery up of the vacant stadium by 3 July 2000. Under its licence agreement with the Soccer Federation, Adelaide City was obliged to vacate Hindmarsh Stadium to allow the Olympic soccer to proceed.

Government was concerned that Adelaide City might rely on its allegation that the licence agreement was void to create difficulties in its vacating the stadium. By this time, Adelaide City was the only full-time occupant of any part of the stadium.

At the same time, Adelaide City wanted to relocate permanently to Rams Park.

On 3 July 2000, Cabinet approved the Chief Executive of the Department of Premier and Cabinet entering into discussions with Adelaide City to ensure that it vacated the stadium during the staging of the Olympic Soccer Tournament.

## **23 AND 27 JUNE 2000 - CABINET COMMITTEE MEETINGS**

On 23 June 2000, the Cabinet Committee considered a further paper prepared by Minister Evans proposing a process for meeting with the Soccer Federation representatives and a draft letter of offer on the terms discussed at the 10 May 2000 Cabinet Committee meeting. After discussion of the paper and the draft offer, the Committee resolved that both be revised and written with greater precision and detail and that they include:

- Options for the management committee and its structure; and
- The exact amount and terms under which the Grandstand and Fit Out loans are to be forgiven.

It was resolved that the Department of Treasury and Finance would undertake further analysis of how best to forgive the loans.

On 27 June 2000, the Committee reconvened to consider a revised options paper and letter of offer to the Soccer Federation. It was resolved to send the Soccer Federation an interim offer that match payments not be greater than last year for the 2000/2001 NSL season. The more detailed offer would be sent in about six weeks time.

## **30 JUNE 2000 - LETTER FROM COUNCIL TO SOCCER FEDERATION**

On 30 June 2000, the Council wrote to the Soccer Federation about issues relating to the lease. The Council required further information in order to consider the Soccer Federation's request for the Council's consent to the assignment of the Soccer Federation's lease to the Government. The Council requested that the Soccer Federation inform the Council of its intentions with regard to the substantial area of the site not covered by the existing lease.

## **1 AUGUST 2000 - NOTICE OF DEFAULT FOR UNPAID WATER**

The Soccer Federation was sent a notice of default dated 1 August 2000 by the Council demanding payment of unpaid water charges of \$9,211.90. Those charges were then paid.

## **10 AUGUST 2000 - CABINET COMMITTEE MEETING**

The Cabinet Committee met on 10 August 2000 to consider a revised offer to the Soccer Federation. The proposal differed from the last offer considered. Minister Evans now proposed that the management of the stadium be assigned to Government rather than be undertaken by a committee within the Soccer Federation's constitutional structure. A Ministerial advisory body would have oversight of the management. The day to day operations would be contracted out to an organisation with facility management experience.

It was noted that agreement still needed to be secured with Adelaide City to play its NSL matches at Hindmarsh Stadium.

The Committee suggested changes to the letter and resolved that it be sent to the Soccer Federation and a reply sought within 7 days.

The Cabinet Committee did not meet again.

## **11 AUGUST 2000 - MINISTER EVANS' FINAL OFFER TO THE SOCCER FEDERATION**

On 11 August 2000, Minister Evans sent Mr Avory, Chairman of the Soccer Federation the letter of offer approved by the Cabinet Committee. Broadly, the proposal was for the Soccer Federation to grant all rights to manage the stadium to the Government, during which period the Government would suspend operation of the Soccer Federation's obligations under the Funding and Fit Out Guarantee Deeds.

Acceptance was sought by 18 August 2000, failing which Minister Evans would take steps to enforce the Funding Deed.

The Soccer Federation made a counter-offer by letter dated 18 August 2000. The Soccer Federation proposed a number of variations as well as seeking \$1 million as compensation for goodwill and loss of commercial opportunities from transferring management of the stadium to the Government.

Minister Evans responded by letter dated 21 August 2000. He rejected the claim for \$1 million compensation and gave the Soccer Federation a further deadline of 23 August 2000 before he would take steps to enforce the Funding Deed.

Mr Avory responded by another lengthy letter on 22 August 2000. He sought a time to negotiate the outstanding issues to the satisfaction of all concerned. In response to the Minister's statement that he would enforce the Funding Deed, he said that then the Soccer Federation would reinstate the levy and insist that Adelaide City comply with the Licence Agreement.

## **25 AUGUST 2000 - CAVEAT OVER 1996 LEASE**

On 25 August 2000, the Treasurer lodged a caveat over the Soccer Federation's lease from the Council claiming an estate or interest as mortgagee pursuant to the clause in the Funding Deed containing the Soccer Federation's promise to grant a mortgage to the Treasurer, if requested.

## **31 AUGUST 2000 - MINISTER EVANS' MEETING WITH THE SOCCER FEDERATION**

Minister Evans met with the Board of Commissioners of the Soccer Federation on Sunday 27 August 2000 in an effort to resolve the outstanding issues for the transfer of management of the stadium to the Government. No agreement was reached on outstanding issues including the Soccer Federation's demand for compensation.

On 31 August 2000, Mr Avory wrote to the Minister again seeking the Minister's urgent attention. He complained that the Soccer Federation was frustrated by the lack of progress made due to the bureaucratic and indecisive approach by the Minister's office. He also pointed out that the unresolved issue with Adelaide City's tenancy was becoming pressing given the forthcoming NSL season.

## **CHAPTER 16 - FROM SEPTEMBER 2000**

### **6 SEPTEMBER 2000 - SOCCER FEDERATION REQUEST FOR PREMIER'S INTERVENTION**

Mr Avory wrote to Premier Olsen on 6 September 2000 requesting his intervention and involvement in meetings with all parties to resolve issues before the start of the new NSL season. Minister Evans and the Soccer Federation had reached an impasse over the Soccer Federation's claims for compensation in return for transferring management of the stadium to the Government. Negotiations with Adelaide City over its relocation to Rams Park had broken down over its claims for compensation for being relocated during the Olympic Tournament.

### **8 SEPTEMBER 2000 - REVISED PROPOSALS FOR THE SOCCER FEDERATION**

Following meetings between representatives of the Department of Premier and Cabinet and the Office for Recreation and Sport and the Soccer Federation held earlier in the week, Mr Fletcher of the Office for Recreation and Sport sent a "without prejudice" letter to the Soccer Federation on 8 September 2000. His letter proposed arrangements for two years to 30 June 2002 additional to Minister Evans' offer of 11 August 2000. For the first time, the proposed offer included compensation of \$250,000 stated to be in response to the Soccer Federation's claim for costs incurred in operating the new stadium.

Mr Avory wrote an emotive letter dated 11 September 2000 objecting to the proposal. Mr Fletcher reiterated the Government's offer of 8 September 2000 by letter dated 15 September and asked the Soccer Federation to reconsider its position. The Soccer Federation was intractable. Mr Avory's response on 18 September 2000 was that the outstanding issues required further negotiation.

### **SEPTEMBER 2000 - DEPUTY PREMIER KERIN'S ASSUMPTION OF RESPONSIBILITY FOR HINDMARSH STADIUM**

At Premier Olsen's direction, Deputy Premier Kerin assumed responsibility for resolving the difficult issues concerning ownership and management of Hindmarsh Stadium. Minister Evans has submitted to this Examination that the firmness of his resolve in dealing with the Soccer Federation may well have been the principal factor for him being relieved of responsibility for the stadium. He says that it was well known by early 2000, that relations between him and the Soccer Federation were strained, adding to his difficulties in negotiating a resolution of the outstanding issues of ownership and management.

Government representatives continued negotiations with the Soccer Federation, Adelaide City and the Council in an attempt to resolve ownership and management of the stadium.

## **13-30 SEPTEMBER 2000 - STAGING OF OLYMPIC MATCHES**

The 2000 Olympic Soccer Tournament was staged in Australia between 13 and 30 September 2000. Seven matches were played at Hindmarsh Stadium.

The stadium's seating capacity as finally configured was 18,066, comprising 14,623 permanent seats.<sup>278</sup> 3,395 temporary seats were erected at a final cost of \$598,202. 17 of the 21 available corporate suites provided 312 seats. The remaining four were used for SOCOG administration and media operations. Two suites were used by SOCOG (30 seats) and two by the Government (75 seats).

Two areas were put aside for non-ticketed seating: 80 seats as the Olympic Family Stand of Honour and 248 seats for the media and press.

Ticket revenue for the Tournament was \$1.254 million. Total revenue of \$1.793 million. Total expenses were \$7.499 million. The net cost to the State of hosting the Tournament was \$5.706 million.

## **20 NOVEMBER 2000 - FURTHER LETTER FROM COUNCIL**

On 20 November 2000, the Council sent the Soccer Federation a further letter addressing the key issues of lease area, building maintenance and site management for the Soccer Federation's lease of that part of the site on which the stadium is built.

Representatives of the Council and the Soccer Federation met subsequently on 29 November 1999 to discuss these issues. Mr Farrugia of the Soccer Federation informed representatives of the Council that the Soccer Federation intended that once an agreement had been finalised with the Government, the Government would pay for all expenses relating to the use of the stadium from 1 October 2000, including the water rates.

## **11 DECEMBER 2000 - PUBLIC ANNOUNCEMENT OF ADELAIDE CITY PLAN TO PURCHASE RAMS PARK**

On 11 December 2000, Adelaide City announced that its members had voted unanimously at a special general meeting to purchase Rams Park and look to playing all its NSL games there on Friday nights instead of Saturdays.

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<sup>278</sup> The stadium as constructed has 15,055 permanent seats. 432 seats were removed to accommodate camera platforms or press tribunes.

## **11 DECEMBER 2000 - CABINET APPROVAL FOR RESOLUTION OF OWNERSHIP AND MANAGEMENT**

On 11 December 2000, Cabinet approved a further approach to resolution of the ownership and management of the stadium. Approval was given to separate agreements between the Government and the Soccer Federation and Adelaide City that had been negotiated by Deputy Premier Kerin. The terms of the agreements reached were set out in draft letters to each of the Soccer Federation and Adelaide City that were attached to the Cabinet submission.

The key elements of the approved agreements were:

- The Government would take over management of the stadium but the Soccer Federation would continue to lease the stadium from the Council.
- The Government would continue not to require the Soccer Federation or Adelaide City to contribute to the funding of the redevelopment of the stadium. Loan repayments to be a debt to be off set against revenue from the operation of the stadium.
- Adelaide City must continue to play all its NSL games at the stadium.
- The Soccer Federation's allocation of free seats and corporate boxes would be reduced.
- The Soccer Federation would be allowed to nominate two members of the management body, but one must not be a member of the Soccer Federation Board of Commissioners or any of its constituent clubs or any of its affiliates.
- The Soccer Federation would have use of the stadium for 30 soccer related events each year. It would pay the marginal cost of opening the stadium for those events but otherwise will enjoy that use for free.
- The Soccer Federation would provide the mortgage of the lease it was already obliged to provide.
- As compensation for the disruption caused by the redevelopment of the stadium, the Government would pay the Soccer Federation \$599,000.
- The Government would offer Adelaide City a once off payment of \$354,000 for previous expenditure at the stadium.
- For trading losses suffered during the Olympics, the Government would pay the Soccer Federation and Adelaide City \$16,000 each.

## **21 DECEMBER 2000 – ESTABLISHMENT OF OFFICE OF VENUE MANAGEMENT**

On 21 December 2000, a new administrative unit was established and named the "*Office of Venue Management*".

### **3 JANUARY 2001 - NOTICE FROM COUNCIL NOT TO USE CERTAIN AREAS**

By letter dated 3 January 2001, the Council notified the Soccer Federation that it was not to use areas on which the stadium was sited that were not part of its lease without the prior written approval of the Council. At the date of that letter, the Council had not received any request from the Soccer Federation to use the unleased areas.

### **22 JANUARY 2001 - REQUEST FOR PAYMENT OF UNPAID WATER CHARGES**

By fax dated 22 January 2001, the Council requested payment of unpaid water charges of \$13,349.25. Those charges have since been paid.

### **29 MARCH 2001 - EXECUTION OF AGREEMENTS APPROVED ON 11 DECEMBER 2001**

Deeds reflecting the Cabinet decision of 11 December 2000 were prepared by the Crown Solicitor's Office and agreed with the Soccer Federation and Adelaide City. The deeds dated 29 March 2001 were signed by the Soccer Federation, Adelaide City and the Government.

Under the Deed between the Government and the Soccer Federation, the Soccer Federation, among other obligations:

- warranted that it was not in breach of the lease and undertook to provide to the Government a letter from the Council confirming that it was not in breach of the lease, within six months of being requested to do so; and
- undertook to execute in favour of the Treasurer, a mortgage over the lease and within six months of a request from the Government obtain the consent of the Council to the mortgage.

The Deed between the Soccer Federation and the Government was also subject to certain conditions precedent including:

- that Adelaide City enter into a binding commitment to play all its NSL matches at Hindmarsh Stadium at least until 30 June 2001; and
- that the Minister for Recreation, Sport and Racing be satisfied that the Soccer Federation has procured a letter from Soccer Australia to the Soccer Federation and the Minister undertaking that all matches (including NSL and international matches) played under its auspices in South Australia will be played at Hindmarsh Stadium for a period of 20 years.

### **30 APRIL 2001 - CABINET DECISION TO PURCHASE HINDMARSH STADIUM**

After Cabinet approved the agreement with the Soccer Federation on 11 December 2000, the Soccer Federation and the Government sought the Council's consent to a mortgage of the lease. However, on at least five occasions, the Council refused to consider this request without revisiting the lease and the "unleased" portions of land which comprise the site.

Subsequently, the Chief Executive of the Council approached the Government to ascertain whether the Government was interested in purchasing Hindmarsh Stadium.



On 30 April 2001, Deputy Premier Kerin sought and obtained Cabinet approval to purchase the stadium for up to \$1.7 million. The approval acknowledged that the purchase would be subject to the lease to the Soccer Federation and a licence agreement over part of the land to the Hindmarsh Historical Society and the issue of Trust Grants for open space purposes in the name of the Council over three blocks of land which comprised the former Croydon West School.

### **SEPTEMBER 2001 - NEGOTIATION OF PURCHASE CONTRACT**

After the Cabinet decision made on 30 April 2001, the Government commenced negotiations with the Council for the purchase of Hindmarsh Stadium. The negotiations have been successful in that an in principle agreement has been reached between the Government and the Council for the purchase of the stadium for \$1.7 million and the Trust Grants over the Croydon West School land. As at 3 September 2001, solicitors for the Government and the Council were negotiating the formal terms of the legal documents necessary to give effect to the sale.



**SOUTH AUSTRALIA**

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**FINAL REPORT OF  
THE AUDITOR-GENERAL**

**ON THE**

**HINDMARSH SOCCER STADIUM  
REDEVELOPMENT PROJECT**

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*Tabled in the House of Assembly and ordered to be published, 3 October 2001*

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**Fourth Session, Forty-Ninth Parliament**

**Part 3**

**Detailed Findings on the Terms of Reference**

By Authority: J. D. Ferguson, Government Printer, South Australia

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2001



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## GLOSSARY

Adelaide City	Adelaide City Soccer Club was a division of the Adelaide Juventus Sports & Social Club Inc. Adelaide City is currently known as the “Adelaide Force”.
Mr Ashenden	The Hon. Scott Ashenden MP, Minister for Recreation and Sport from 12 December 1996 to 20 October 1997.
Mr Avory	Mr Les Avory, Member of the Board of Commissioners of the Soccer Federation from 1993 and Chairman of the Soccer Federation from December 1996.
Mr Blatter	Mr Sepp Blatter, General Secretary of FIFA.
Mr Bollen	Mr Vaughn Bollen, Manager Capital Works, Office for Recreation, Sport and Racing and successor agencies from March 1996.
Mr Damian Brown	Mr Damian Brown, the Managing Director of National Portfolio Strategies Pty Ltd.
Mr Dean Brown	The Hon. Dean Brown MP, Premier of South Australia from 14 December 1993 to 28 November 1996, Minister for Information and Contract Services from 12 December 1996 to 20 October 1997.
Mr Browne	Mr Jeff Browne, Project Manager, Services SA and its predecessor and successor agencies.
Mr Caruso	Mr Charlie Caruso, Chairman of the Soccer Federation until October 1996.
Mr Ciccarello	Mr Sam Ciccarello, member of the Sydney 2000 Bid Committee established in March 1996 and consultant to Government and head of the Olympic Taskforce from March 1997.
The Council	The City of Charles Sturt and its predecessors, the Corporation of the City of Hindmarsh and the City of Hindmarsh and Woodville.
Mr Crafter	The Hon. Gregory John Crafter MP, Minister for Recreation and Sport between 1 October 1992 and 14 December 1993.
Mr Dixon	Mr Ian Dixon, Stage 2 Project Director from July to November 1997, Chief Executive Officer of the Department of Industry and Trade from 23 October 1997.
Mr Ellis	Mr Terry Ellis, the consultant retained by the Office for Recreation, Sport and Racing in March 1994 to review the April 1989 Feasibility Review and the Soccer Federation’s February 1994 Submission.
Mr Elphinston	Mr Bob Elphinston, General Manager – Games Operation, SOCOG.

Ernst & Young	Ernst & Young, consultants retained by the Office for Recreation, Sport and Racing in April 1996 to prepare a feasibility report on redeveloping the western grandstand.
Mr Evans	The Hon. Iain Evans MP, Minister for Recreation and Sport from 17 December 1997 to 8 October 1998, Minister for Recreation, Sport and Racing from 8 October 1998.
Mr Farrugia	Mr Tony Farrugia, General Manager of the Soccer Federation.
FIFA	Federation Internationale de Football Association, the governing body of international soccer.
Mr Fletcher	Mr Robert Fletcher, the Director of Corporate Services in the Office for Recreation, Sport and Racing and successor agencies from April 1996.
Mr Forbes	Mr George Forbes, Director of Capital Projects in the Office for Recreation, Sport and Racing from 1987 until March 1996.
Mr Ford	Mr Andrew Ford, principal and director of Woods Bagot, primary consultants for Stage 1 and 2.
Mr Forrest	Mr Simon Forrest, Executive Director, Department of Recreation and Sport and successor agencies from 1 July 1997.
Ms Freeman	Ms Judith Freeman, Manager, Project Management Services, Services SA and its predecessor and successor agencies.
Mrs Hall	The Hon. Joan Hall MP, Member for Coles, Ambassador for Soccer in South Australia from December 1995 to 1 October 1999, Chair of the Stage 1 Redevelopment Committee and Executive Group, member of the Sydney 2000 Bid Committee, member of the Olympic Taskforce, member of the Stage 2 Reference Group, Parliamentary Secretary to Mr Ingerson as the Minister for Recreation, Sport and Racing from 21 March 1996 to 29 January 1997, Parliamentary Secretary to Mr Ingerson as Deputy Premier and Minister for Infrastructure from 29 January to 17 December 1997, Minister for Youth and Minister for Employment from 17 December 1997 to 8 October 1998, Minister for Tourism from 8 October 1998.
Mr Hill	Mr David Hill, Chairman of Soccer Australia between 1995 and 23 September 1998.
Mr Hocking	Mr John Hocking, Assistant Crown Solicitor, Crown Solicitor's Office.
Ms Howe	Ms Anne Howe, CEO of Services SA and predecessor and successor agencies.

Mr Ingerson	The Hon. Graham Ingerson MP, Minister for Recreation, Sport and Racing from 22 December 1995 to 12 December 1996, Deputy Premier of South Australia from 28 November 1996 to 7 July 1998, Minister for Local Government, Recreation and Sport from 20 October to 17 December 1997.
IOC	International Olympic Committee.
Mr Jaksa	Mr Gaby Jaksa, Crown Solicitor's Office.
Mr MacFarlane	Mr David MacFarlane, Australian Major Events.
Mr Mayes	The Hon. Milton Kym Mayes, Minister for Recreation and Sport from 18 December 1985 to 1 October 1992.
NSL	The National Soccer League.
NSL Clubs	The National Soccer League Clubs, Adelaide City and West Adelaide.
Mr Olsen	The Hon. John Olsen MP, Premier of South Australia from 28 November 1996.
Mr Oswald	The Hon. John Oswald, Minister for Recreation, Sport and Racing from 14 December 1993 to 22 December 1995.
Mr Pickard	Mr Gordon Pickard, Patron of Adelaide City.
Mr Scarsella	Mr Basil Scarsella, Deputy Chair of Soccer Australia between early 1995 and, from 23 September 1998, Chair of Soccer Australia.
Mr Andrew Scott	Mr Andrew Scott, Stage 2 Project Director from November 1997.
Mr Michael Scott	Mr Michael Scott, CEO of the Office for Recreation, Sport and Racing from 19 September 1994 to 30 June 1997.
Mr Simmonds	Mr Kevin Simmonds, Manager Sporting Events, SOCOG.
Soccer Australia	The Australian Soccer Federation Limited.
Soccer Federation	The South Australian Soccer Federation Inc.
SOCOG	Sydney Organising Committee for the Olympic Games.
Mr Spurr	Mr Bill Spurr, CEO of Australian Major Events.
West Adelaide	West Adelaide Soccer Club was a division of the Hellenic Athletic and Soccer Club of South Australia Inc.
SACES	South Australian Centre for Economic Studies.

## **PART 3 – DETAILED FINDINGS ON THE TERMS OF REFERENCE**





## CHAPTER 17 – INTRODUCTION TO PART 3

### OVERVIEW OF PART 3

Part 3 of this Report contains my detailed findings on the Terms of Reference.

#### Term of Reference I

***"Whether there was due diligence by Government representatives prior to the signing of agreements for construction of stages 1 and 2 of the project."***

Chapters 18 to 22 address Terms of Reference I and II together by examining due diligence in Stage 1 of the Hindmarsh Stadium Redevelopment Project.

#### Term of Reference II

***"Whether due diligence was applied subsequent to the commitment to stages 1 and 2, including whether the Crown Solicitor's advice as described on page 12 of the 33<sup>rd</sup> report of the Public Works Committee, August 1996, was adhered to."***

Chapters 23 to 26 address Terms of Reference I and II together by examining due diligence in Stage 2 of the Hindmarsh Stadium Redevelopment Project.

#### Term of Reference III(a)

***"Whether undue pressure was placed on individuals leading to legal commitment by them on behalf of sporting clubs or associations."***

Chapter 27 contains the detailed findings on Term of Reference III(a).

#### Term of Reference III(b)

***"The present status of all relevant deeds of guarantee or other legal documents, the financial status of the signatories and whether the legal agreements have created financial difficulty for any non-government persons or organisations."***

Chapters 28 to 36 address Term of Reference III(b). Chapter 28 contains the introduction to these chapters. Chapter 29 presents a historical overview that groups the relevant legal documents according to the phases of the redevelopment. Chapters 30 to 35 contain a detailed examination of each material document and identify the specific financial obligations created or altered by each document.

Chapter 36 considers the financial status of the Soccer Federation and the NSL Clubs and the contribution of the legal relations created by the documents to the financial status of the Soccer Federation and the NSL Clubs.

#### **Term of Reference IV**

***"Whether there were any conflicts of interests or other imprudent or improper behaviour by any person or persons, Government or non-Government, involved with the project, and whether the appropriate processes were followed in relation to –***

- (a) the planning stages of the project;***
- (b) the awarding and monitoring of consultancies;***
- (c) the tendering process;***
- (d) the letting of contracts;***
- (e) the construction of the stadium; and***
- (f) the ongoing management of the stadium."***

Chapters 37 to 40 address Term of Reference IV. Chapter 37 contains an overview of the following two chapters.

Chapters 38 and 39 address the first part of Term of Reference IV: Whether any person involved in the project had a conflict of interest. Chapter 38 addresses conflicts of interest of Government representatives. Chapter 39 addresses conflicts of interest of non-government persons.

Chapter 40 addresses the second part of Term of Reference IV: Whether the appropriate processes were followed during the various phases of the redevelopment project.

## CHAPTER 18 - DUE DILIGENCE IN STAGES 1 AND 2

***Term of Reference I - "Whether there was due diligence by Government representatives prior to the signing of agreements for construction of stages 1 and 2 of the project."***

***Term of Reference II - "Whether due diligence was applied subsequent to the commitment to stages 1 and 2, including whether the Crown Solicitor's advice as described on page 12 of the 33rd report of the Public Works Committee, August 1996, was adhered to."***

### OVERVIEW

In my opinion, there were significant failures of due diligence during Stage 1 of the redevelopment of Hindmarsh Stadium. Those failures related to:

- The process adopted for the initiation and approval of the project.
- The structures adopted for the direction and control of the project.
- The failure during Stage 1 to address adequately the critical issues of the ownership and management of the stadium.

Chapter 19 discusses failures in the Stage 1 project initiation and approval process. Chapter 20 discusses the Public Works Committee Process for Stage 1. Chapter 21 discusses inadequacies in the Government's direction and control of Stage 1. Chapter 22 discusses the Government's failure to address adequately ownership and management of Hindmarsh Stadium during Stage 1.

I have also found that there were significant failures of due diligence during Stage 2 of the redevelopment of Hindmarsh Stadium. Those failures were of a more serious nature than the failures in Stage 1 because of the much greater project cost. Notwithstanding the experience of the difficulties encountered with Stage 1, the Government committed almost exactly the same errors in relation to Stage 2, that is:

- The Government's existing mandatory guidelines were disregarded in the initiation and approval of this stage of the project.
- The direction and control of the project was haphazard, principally because of the lack of attention given at senior levels of Government.
- The critical issues of the ownership and management of the stadium upon completion of the project remained unresolved.

Chapters 23 to 26 examine each of these matters in detail.

## SCOPE OF THIS EXAMINATION

### **Section 32 of the Public Finance and Audit Act 1987**

Section 32 of the *Public Finance and Audit Act 1987* requires the Auditor-General, if requested by the Treasurer, to examine the accounts relating to a publicly funded project and the efficiency and cost-effectiveness of the project.

The Treasurer's letter to the Auditor-General dated 9 December 1999 was a request within the meaning of Section 32 to examine the Hindmarsh Soccer Stadium Redevelopment Project. The Treasurer confirmed that in his letter dated 13 January 2001.

### **The Hindmarsh Soccer Stadium (Auditor-General's Report) Act 2001**

The *Hindmarsh Soccer Stadium (Auditor-General's Report) Act 2001* authorises the undertaking of this Examination as an inquiry in response to the Treasurer's request. The Act authorises any inquiry by the Auditor-General relating to the Terms of Reference or any matter considered by the Auditor-General to be relevant to the inquiry.

### **The "Project"**

The redevelopment of Hindmarsh Stadium is now generally known as comprising two stages: Stage 1 and Stage 2. From February 1994 until December 1995, the redevelopment proposal centred around the construction of a new eastern grandstand. In December 1995, Woods Bagot developed options for the first stage of the redevelopment of Hindmarsh Stadium. Most of these options were centred around the existing concept of constructing a completely new eastern grandstand. One option was the refurbishment and extension of the existing western grandstand.

In March 1996, on the recommendation of the Hindmarsh Stadium Redevelopment Committee, Minister Ingerson changed the content of the project from the construction of a new eastern grandstand to the refurbishment and extension of the existing western grandstand. Cabinet approval for this change in the content of the project was given in April 1996. That changed project only became generally known as Stage 1 when plans for substantial further construction work at Hindmarsh Stadium were announced in November 1996. By that time the content of Stage 1 was set.

In this Report, the expression "Stage 1" encompasses the first stage of the redevelopment project through each of its forms, from the original proposal for a new eastern grandstand to the final refurbished and extended western grandstand as built.

It has been submitted that an examination of Stage 1 of the Redevelopment of Hindmarsh Stadium should not involve an examination of the proposal to construct a new eastern grandstand. I reject that submission. An examination of the change in the scope of the project works from a new eastern to a redeveloped western grandstand is central to an understanding of the efficiency and cost-effectiveness of Stage 1. It is plain that Cabinet, Minister Ingerson and the Office for Recreation, Sport and Racing regarded the western grandstand to be a variation of the same project. The project steering committee<sup>279</sup> that made the decision to change the focus from east to west was not reconstituted after that decision was made. The primary consultant, Woods Bagot, was retained

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<sup>279</sup> ie the Hindmarsh Stadium Redevelopment Committee.

under a contract to construct a new eastern grandstand without any change being made to the terms of their contract to reflect changes in the content of the project.

### **Efficiency and Cost-Effectiveness**

A Section 32 examination necessarily entails an assessment of the objectives of the project to test it against the central concepts of "efficiency" and "cost-effectiveness". It has been submitted to this Examination that the only permissible subject of this Examination is the physical result of the project. I reject that submission as clearly contrary to the intent of Section 32.

It has also been submitted to this Examination that the central issue for consideration should be whether the project was completed on time and on budget. In my opinion, a Section 32 examination entails more than examining whether the project was implemented on time and on budget. It entails an examination of the process for the initiation of the project and the legal and financial arrangements for the implementation of the project and for the ongoing use of the resulting facilities.

The efficient and cost-effective use of public funds and resources is a fundamental of good government. A culture of public sector management that fosters accountability, integrity and due process results in the efficient and effective use of public resources.

The efficient and cost-effective use of public funds and resources is a key goal of the whole of Government program on prudential management that was announced on 6 February 1996.<sup>280</sup> Prudential management rests on three key principles:

- Accountability – *"Government must be accountable for its activities and decisions, which must be in the public interest."*<sup>281</sup>
- Probity - *"Agency conduct should inspire confidence in the public sector and in the integrity of public sector process."*<sup>282</sup>
- Due Care, Foresight and Diligence – *"The public sector should exercise due care, foresight and diligence in the management of public resources."*<sup>283</sup>

Chapters 19 to 26 address the latter principle. The Hindmarsh Stadium Redevelopment Project involved the use of significant public resources and the expenditure of significant public funds, \$24.562 million to 30 June 2001 with total Government exposure to 30 June 2001 of \$34.94 million.<sup>284</sup> The Government officers involved in the project were obliged to ensure that they discharged their public duties with due care, foresight and diligence in order to ensure the efficient and cost-effective use of public funds and resources.

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<sup>280</sup> The *"Government Accountability Statement"* was made in Parliament by then Premier Brown. House of Assembly Hansard Report – 6 February 1996 page 856.

<sup>281</sup> Government of South Australia, 1998, *"Prudential Management Framework"*, page 6.

<sup>282</sup> *Ibid*, page 7.

<sup>283</sup> *Ibid*, page 8.

<sup>284</sup> See Tables 1, 2 and 3 of Appendix 1 which show the Cost of the Redevelopment to Government.

Any failure to meet this essential standard could compromise the efficiency and cost-effectiveness of a publicly funded project and, in my opinion, did in the case of the Hindmarsh Stadium Redevelopment Project.

## DEFINITION OF DUE DILIGENCE

### Due Diligence Generally

"Due diligence" is commonly used in two expressions:

- "To perform a due diligence", is an expression used to describe the conduct of a systematic review of an organisation, business, entity or asset prior to entry into a transaction or committing to a project. Consider the sale of a business. Typically the vendor will perform a due diligence to check that the vendor is not exposing itself to unforeseen liability. Conversely, the purchaser will conduct its own due diligence to check that it is getting what it is paying for.

In *Universal Telecasters (Qld) Ltd v Guthrie* (1978) 18 ALR 531 it was defined as: "A minimum standard of behaviour involving a system which provides against contravention of relevant regulatory provisions and adequate supervision ensuring that the system is properly carried out".

- "To perform duties with due diligence", means that duties are discharged in a manner appropriate to the circumstances in which the duties are being discharged.

In *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1960] 1 All ER 193, Willmer LJ stated: "An obligation to exercise due diligence is to my mind indistinguishable from an obligation to exercise reasonable care."

These two concepts are closely related. Compliance with the obligation to perform duties with due diligence will often dictate that a formal due diligence must be undertaken prior to entry into the relevant transaction.

The Terms of Reference and Section 32 require both types of due diligence to be addressed. Term of Reference I emphasises formal pre-commitment due diligence. Term of Reference II requires an examination of due diligence in the ongoing performance of duties and the adequacy of implementation of due diligence measures developed before commitment.

### The Substance of Due Diligence

What constitutes due diligence for any given project depends upon the circumstances and the nature of the project. It is not possible to set out the steps that will satisfy the requirement for due diligence in every case. Indeed, it is undesirable to do so because those charged with performing duties with due diligence may have to adopt or develop specific mechanisms to afford protection appropriate to the particular project.<sup>285</sup>

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<sup>285</sup> For example, one mechanism that was suggested on a number of occasions for this project was that the Government take a head lease of the stadium from the Council and then sub-lease to the Soccer Federation. That is not a mechanism typically used by financiers of construction projects but was appropriate in this case. This is discussed in Chapters 22 and 26.

It is possible to state a minimum set of requirements that must be fulfilled. Those requirements fall into three broad categories:

- compliance;
- benefits or needs; and
- risks.

These minimum requirements apply to all organisations, including Government.

### **Compliance**

Those charged with due diligence must ensure that the activities of their organisation comply with relevant rules. Those rules are of differing levels of strictness.

### ***Legislation***

There must be compliance with any relevant legislation, whether Act of Parliament, regulation or any other rule given force of law.

### ***Internal Guidelines***

An organisation may have its own internal rules or guidelines in place governing how particular activities must be undertaken. Typically those rules are put in place so that those with ultimate responsibility within an organisation can ensure that those charged with implementing the goals of the organisation act in an approved manner. Such guidelines should only be waived or modified with the approval of those with ultimate responsibility after careful consideration of the need to do so and an examination of the consequences.

### ***Project Specific Rules, Procedures and Structures***

An organisation may impose upon itself rules, procedures and structures intended to regulate only the specific project which the organisation is then considering or implementing.

In some projects it may be necessary to adopt structures different from those that usually apply, depending on the circumstances of the project. In a large construction project, the typical structure for developing the concept of the project and subsequently administering the project has the minimum elements of the principal or client, the primary consultant (usually an architect or engineer) and the builder. In some projects, a different structure will be necessary. The decision about what structure to adopt must be an informed one based on an assessment of the features of the project.

In the case of Stage 1, a committee structure was adopted during both the concept development and the implementation phases. That structure was adopted because of the involvement of numerous parties including the Soccer Federation as end-user and the Council as land-owner. That structure is the subject of criticism in Chapter 21.

The rules may be in the form of provisions in legal documents, intended to preserve a benefit or reduce a risk.

As a practical matter, experience shows that the rules incorporated in legal documents are often the most likely to be modified or abandoned because of the exigencies of a transaction as it develops. Experience also shows that it is that abandonment or modification that exposes the organisation to greater risk.

In the case of the Hindmarsh Stadium Redevelopment Project, many of the rules that were imposed by documents entered into early in the project were later relaxed or abandoned without proper consideration. That is the subject of criticism in Chapters 19 to 26 and 33.

### **Benefits or Needs**

In private relationships, subject to any legal rule to the contrary, citizens are entitled to protect or further their own interests, no matter how selfish they may be in doing so. Governments, however, are constitutionally required to act in the public interest.<sup>286</sup>

Generally Government must expend money for public purposes or in the public interest. Care must be exercised to ensure that the public purpose or public interest is clearly identified. It may be the case that in expending money on a public purpose or in the public interest a private benefit will be conferred incidentally. However, the principal justification for Government expenditure must be the achievement of public benefits.

The intent of due diligence is to ensure paramountcy of the public benefit in the use of public funds and resources:

*"...the intent is to establish arrangements for the protection of the public interest in the context of ensuring that the public benefit is at all times the paramount consideration and that any issues which may be prejudicial to the public interest are identified at an early stage."*<sup>287</sup>

To discharge its due diligence responsibilities, Government must, in relation to a project:

- identify and articulate the objectives or the perceived public benefits or the need for the project;<sup>288</sup>
- quantify the objectives, public benefits or needs to be met by the project;<sup>289</sup>
- develop measures prior to commitment to the project to ensure that the benefits actually accrue to the public benefit or that the needs are addressed;

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<sup>286</sup> *Attorney-General (UK) v Heinemann Publishers* (1987) 10 NSWLR 86, 191.

<sup>287</sup> The "Government Accountability Statement", see footnote 280 above.

<sup>288</sup> To identify the benefits the project must be adequately specified. The detail and precision of specification depends upon the level of commitment to which the organisation is considering committing. A transaction should be seriously questioned where benefits put forward by its proponents are apparently rationalisations.

<sup>289</sup> This includes checking that the benefits actually exist and examining whether the benefits could not be achieved by a smaller project.



- ensure that those measures are adhered to during implementation; and
- supervise the project to ensure that the expected benefits are achieved.

The protective measures must be developed and set in place prior to commitment. When this is not done the Government's ability to negotiate those measures at a later stage can be lost.

Sometimes practical reality will qualify that statement of principle. For example, events can unfold in such a way that the steps set out above cannot be performed as clinically separate tasks. Or in cases of urgency, if the opportunity to benefit from the project is not to be missed, some of the steps may be performed after commitment.

Nonetheless, those involved must be conscious of the need to perform each of those steps, notwithstanding that the order in which they are undertaken is different from the above. Further, those matters should never be allowed to excuse a failure of due diligence where, in truth, the organisation had more than sufficient time to complete each of those steps.

## **Risks**

Almost all activities are attended by some level of risk.

To achieve due diligence, any organisation (including Government) must, in relation to a project:

- identify the risks to the organisation of the project;
- quantify the level of risk involved;<sup>290</sup>
- develop measures prior to commitment to the project to reduce the risk to acceptable levels, or if practical, eliminate the risk;
- ensure that those measures are adhered to during implementation; and
- supervise the project to ensure that risks are minimised.

The division of relevant factors into benefits and risk is not mutually exclusive. Some relevant factors could be placed in both categories. For example, cost is relevant to both. An increase in cost reduces the net benefit. The likelihood of variations in cost is a risk factor.

Government is no different from any other organisation in this regard.

## **SPECIFIC REQUIREMENTS APPLICABLE TO PUBLIC PROJECTS**

### **Legislative Requirements**

#### **Parliamentary Committees Act 1991**

Section 16A of *the Parliamentary Committees Act 1991* requires any project which is a "public

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<sup>290</sup> In this context "level" connotes both the probability that the risk will occur and the magnitude of the damage if it does.

work"<sup>291</sup>, with a total cost of or in excess of \$4 million to be referred to the Public Works Committee.<sup>292</sup> That Committee must inquire into, consider and report on the proposed project before any money can be applied to actual construction.

That Section does not specify the form in which a project is to be referred to the Public Works Committee. It also does not require that the resulting report have any particular form or content. Specifically it does not require that the Public Works Committee approve the project.

Section 12C of the *Parliamentary Committees Act 1991* by implication gives some parameters for the Public Works Committee's report by setting out the functions of the Public Works Committee. Of particular note is that the Public Works Committee must investigate "*the necessity or advisability of constructing it*". This statutory requirement is squarely in the nature of due diligence. Section 12C provides:

- "12C. *The functions of the Public Works Committee are-*
- (a) *to inquire into, consider and report on any public work referred to it by or under this Act, including-*
- (i) *the stated purpose of the work;*
  - (ii) *the necessity or advisability of constructing it;*
  - (iii) *where the work purports to be of a revenue-producing character, the revenue that it might reasonably be expected to produce;*
  - (iv) *the present and prospective public value of the work;*
  - (v) *the recurrent or whole-of-life costs associated with the work, including costs arising out of financial arrangements;*

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<sup>291</sup> Section 3 of that Act defines "Public Work" to mean: "*Any work that is proposed to be constructed where –*

- (a) *The whole or part of the cost of construction of the work is to be met from money provided or to be provided by Parliament or a State instrumentality; or*
- (b) *The work is to be constructed by the Crown or a State instrumentality."*

<sup>292</sup> Section 16A provides:

- (1) *Subject to subsection (3), a public work is referred to the Public Works Committee by force of this Section if the total amount to be applied for the construction of the work will, when all stages of construction are complete exceed \$4,000,000.*
- (2) *No amount may be applied for the actual construction of a public work referred to in subsection (1) unless the work has been inquired into by the Public Works Committee under this Act and the final report of that Committee on the work has been presented to its appointing House or published under Section 17(7).*
- (3) *The Minister may exempt a public work from the operation of subsection (1) if:*
  - (a) *the whole or part of the cost of construction of the work is to be met from money provided by the Superannuation Funds Management Corporation of South Australia; or*
  - (b) *the work is to be constructed by or on behalf of the Superannuation Funds Management Corporation of South Australia,*

*(whether or not the work is to be constructed on land of the Crown of the Superannuation Funds Management Corporation of South Australia)."*

- (vi) *the estimated net effect on the Consolidated Account or the funds of a statutory authority of the construction and proposed use of the work;*
  - (vii) *the efficiency and progress of construction of the work and the reasons for any expenditure beyond the estimated costs of its construction;*
- (b) *to perform such other functions as are imposed on the Committee under this or any other Act or by resolution of both Houses".*

It is not set out in the Act but it is reasonable to imply an obligation on Government to ensure that the Public Works Committee is provided with the information it requires to form a view on the matters required by Section 12C.

### **Public Finance and Audit Act 1987**

Section 19(1) of the *Public Finance and Audit Act 1987*<sup>293</sup> provides:

*"The Treasurer may, for and on behalf of the State—*

- (a) *guarantee performance of obligations by a semi-government authority;*
- (ab) *guarantee performance of obligations by any other person if, in the opinion of the Treasurer, the guarantee will facilitate the carrying out by a semi-government authority of its functions;*
- (b) *indemnify any person against loss, expenditure or costs related to a contract to which a semi-government authority is a party, or a contract that is incidental, ancillary, or otherwise related to such a contract."*

Section 19(1)(ab) requires as a precondition to the exercise of the power of the Treasurer to give a Government guarantee to a person who is not a semi-government authority, such as a sporting body, for the Treasurer to be of the opinion that the guarantee will facilitate the carrying out by a semi-government authority of its functions. That opinion must be formed after investigation as to whether or not the provision of a guarantee will facilitate the carrying out by a semi-government authority of its functions.

The Treasurer's statutory obligations under Section 19(1)(ab) require the exercise of due diligence.

Section 41 of the *Public Finance and Audit Act 1987* provides that the Treasurer may issue instructions requiring that procedures, set out in the instructions, be followed in the course of financial administration by the Treasurer and public authorities. Treasurer's Instructions for the evaluation of public funded projects require due diligence. One objective is to ensure efficiency and cost-effectiveness in the expenditure of public funds and resources.

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<sup>293</sup> In New South Wales, the *Sporting Bodies' Loans Guarantee Act 1977*, authorises the execution of guarantees for the repayment of loan to certain sporting bodies. There is no equivalent legislation in South Australia.

## **Government Internal Guidelines**

The following guidelines are relevant to this Examination:

- Treasurer's Instructions 307 and 9105 <sup>294</sup>
- Treasury Information Paper 90/1: "*Guidelines for the Evaluation of Public Sector Projects*" <sup>295</sup>
- Cabinet Handbook 1994, as amended;
- the "*Prudential Management Framework*" <sup>296</sup>
- In July 1998 the Project Handbook was distributed to agencies including the then current versions of the preceding items. Its stated purpose is to consolidate into a single resource the various Government policies, guidelines and principles governing public projects.
- "*Project Initiation Process for Capital Works*" <sup>297</sup>
- "*Government Boards and Committees – Guidelines for Agencies and Board Directors*". <sup>298</sup>

### **Treasurer's Instructions**

#### ***Treasurer's Instructions 307 and 9105***

Treasurer's Instruction 307 required that a project costing more than \$4 million must be approved by Cabinet.

Treasurer's Instruction 9105.2 required that the Chief Executive Officer must ensure that agency officers evaluate projects in accordance with Treasury Information Paper 90/1. Treasurer's Instruction 9105.4 required that proponent agencies justify projects on economic grounds and specify the implications of the project on the financial performance of the proponent agency and on the State budget.

Compliance with Treasurer's Instructions are mandatory pursuant to Section 41 of the *Public Finance and Audit Act 1987*. A person who contravenes or fails to comply with an instruction is guilty of an offence and subject to a penalty of \$1000. <sup>299</sup>

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<sup>294</sup> These instructions were in effect until 1 July 1998, when they were replaced by Treasurer's Instruction 17 to similar effect.

<sup>295</sup> These guidelines were replaced by "*Guidelines for the Evaluation of Public Sector Initiatives*" in December 1997.

<sup>296</sup> The development of a framework for prudential management was announced in Parliament by then Premier Brown on 6 February 1996. See footnote 280 above. The "*Prudential Management Framework*" was approved by Cabinet in May 1998.

<sup>297</sup> Government of South Australia, January 1996. This handbook has the title "*Project Initiation Process*" on its cover. However, throughout its body text, it refers to itself as "*Project Initiation Process for Capital Works*".

<sup>298</sup> The first edition of this information booklet was first printed by the Department of Premier and Cabinet in September 1995. It was updated in July 2000.

<sup>299</sup> Section 41(2).

## **Treasury Information Paper 90/1**

Treasury Information Paper 90/1 contained a number of relevant guidelines:

- Projects were to be submitted to Cabinet in a particular format, including an economic analysis supported by a project feasibility report.<sup>300</sup> The format of the economic analysis to be submitted to Cabinet required all feasible options to be identified with the relative cost-benefit of each set out and the reason for favouring the preferred option.<sup>301</sup>
- All costs and benefits were required to be identified.<sup>302</sup>
- A realistic set of options should have been developed, since there is rarely only one solution.<sup>303</sup>

## **Cabinet Handbook**

The Cabinet Handbook contained the following:

- Define your proposal – what does it set out to achieve and why? What are the options?
- Work out the costs and benefits of the proposal – remember to consider all the likely effects of the proposal, not just those on your agency.
- It also reiterated the applicability of Treasury Information Paper 90/1.

## **Project Initiation Process**

The "*Project Initiation Process*" was an internal handbook produced by Services SA and its predecessor agency, the Department for Building Management and the Department of Treasury and Finance. It was endorsed by Cabinet in July 1995. In Appendix 1 it listed the agencies who were required to use it. That list included the Office for Recreation, Sport and Racing. In its foreword Deputy Premier Baker and the Hon. Wayne Matthew MP, then Minister for State Government Services said:

*"The 'Project Initiation Process for Capital Works' is a component of strategic asset management. It highlights the need to carefully consider and justify proposals for new or replacement services and the most appropriate means of service delivery. When new or additional assets are under consideration, and before initiating any capital works projects, agencies are expected to consider all options for service delivery, taking time to examine a range of alternatives before making a firm commitment."*

Throughout the "*Project Initiation Process*" two themes recur:

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<sup>300</sup> Page 56.

<sup>301</sup> Appendix 1.

<sup>302</sup> Page 17.

<sup>303</sup> Page 14.

- A wide range of options to address a particular need must be considered before the project is approved.
- The Department of Treasury and Finance and Services SA will assist agencies in applying the process.

The Department of Treasury and Finance's responsibility was defined as being:

*"to advise Government on the implications for expenditure on the Government's assets and to ensure that appropriate policies and processes are in place to assist agencies in the management of their assets."*

The "*Project Initiation Process*" is often expressed in terms of "provision of services" and "asset management". It should not be thought that the fact that Hindmarsh Stadium was not to be used for Government to provide services directly or to acquire an asset. It must be applied whenever public funds are to be used for building work.

## **WHO PERFORMS GOVERNMENT DUE DILIGENCE**

### **Preface**

The responsibility for due diligence lies with all Government officers at every level involved with a project. Each level may have specific roles to play but all must ensure that due diligence is applied in their part of the project.

Government internal guidelines impose the primary obligation for their fulfilment upon the proponent agency.<sup>304</sup> Other specific agencies have functions in relation to due diligence, discussed immediately below. Proponent agencies can and should in appropriate cases draw upon expertise external to the Government:

*"..agencies, when considering any 'new' type of transaction, should consult at the start of the process with key central agencies which will share accountability for prudential management. In particular, Crown Law, Treasury and Finance and the Department of Premier and Cabinet can provide assistance and guidance on the integrity of the process to be employed."*<sup>305</sup>

### **Government Advisory Agencies**

#### **The Crown Solicitor's Office**

Constitutionally, the Attorney-General is responsible for the provision of legal advice to Government. In practice those responsibilities are usually discharged by lawyers employed or instructed by Government.

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<sup>304</sup> "*Project Initiation Process*", see footnote 297 above, page 6, paragraph 1.8.4.

<sup>305</sup> "*Government Accountability Statement*", see footnote 280 above.

The Crown Solicitor's Office<sup>306</sup> provides a complete legal service to departmental agencies in the same way as a private law firm. This includes structuring transactions, negotiating and drafting documentation and advising on compliance issues. Its representatives are held out as having specialist knowledge in areas of public law, public risk and liability and Government policy, unavailable elsewhere. The Crown Solicitor has the added duty of ensuring the legal integrity of Government transactions.<sup>307</sup>

Lawyers acting for Government have special duties. As the Solicitor-General for South Australia has stated:

*"Lawyers acting for government are obliged to advise government not only in relation to the law, but also in relation to the core values of government. These core values include ethical principles of selflessness, integrity, objectivity, honesty and legality."*<sup>308</sup>

In the *"Project Initiation Process"* the role of the Crown Solicitor's Office is described as:

*"The office of the Crown Solicitor provides advice on commercial and legal matters generally, and assists contract negotiations and development. The office ensures certification of the adequacy of proposed contractual arrangements, as well as probity of procedures and the methods proposed for asset acquisition."*<sup>309</sup>

Under the Government's prudential management regime, involvement of the Crown Solicitor's Office is mandatory in all major grant projects.<sup>310</sup> This is common sense given the critical role the Crown Solicitor's Office has to fulfil in guarding the public interest.

It is also common sense that the Crown Solicitor's Office be consulted at the start of any new project and share responsibility for the prudential management of the project. By its involvement, the Crown Solicitor's Office will be responsible for the legal integrity of a project.<sup>311</sup>

This is not to say that representatives of the Crown Solicitor's Office can initiate their own instructions. Like any other legal practitioner, representatives of the Crown Solicitor's Office act upon instructions. Nor can they insist that their advice be followed unless to do otherwise would be unlawful.

It is also common sense that Government agencies follow the advice given by the Crown Solicitor's Office. Mechanisms developed by the Crown Solicitor's Office to protect the public benefit should be implemented.

## **The Department of Treasury and Finance**

This agency can also bring its special expertise to bear upon specific projects to assist in developing

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<sup>306</sup> The Crown Solicitor's Office is a Division of the Attorney-General's Department which is responsible to the Attorney-General for the provision of legal services to him, to Cabinet and to all government agencies.

<sup>307</sup> Page 2 of the Crown Solicitor's Office Client Handbook.

<sup>308</sup> See Selway QC, "The Duties of Lawyers Acting for Government" (1999) 10 *Public Law Review* 114.

<sup>309</sup> Page 56.

<sup>310</sup> See the South Australian Government Prudential Management Group's *Project Handbook*, 29 June 1998, sections 1.8 "Legal Audit" and 1.17 "Getting Legal Assistance" at pages 9 and 15 respectively.

<sup>311</sup> "Government Accountability Statement", see footnote 280 above.

mechanisms to protect the public benefit. The Department of Treasury and Finance has an obvious prudential management role in examining the financial and budgetary effect of projects and recommending measures to protect the budget in specific cases. This agency is also expected to ensure that other Government agencies adopt appropriate policies and processes in the management of their assets.<sup>312</sup>

### **The Department of Premier and Cabinet**

The Cabinet Office is a core function of the Department of Premier and Cabinet. The Cabinet Handbook states that:

*"The role of the Office is to deliver high standard, comprehensive support to the Premier and Cabinet through the provision or coordinated policy advice on a range of matters, including those matters to be considered by Cabinet."*<sup>313</sup>

The Cabinet Office has two primary functions:

- Policy development and coordination
- Secretarial, operational and support service for Cabinet.

As part of its policy function, the Department of Premier and Cabinet under the Government's prudential management regime is stated to be responsible for policy consistency, management processes and skills development across the whole of Government.<sup>314</sup>

The Chief Executive Officer of the Department of Premier Cabinet is a key member of the Prudential Management Group established following the making of the *"Government Accountability Statement"*.<sup>315</sup> The Prudential Management Group also comprises the Chief Executive Office of the Department of Justice and the Under Treasurer. The stated role of this group is:

*"to be responsible to Cabinet for the provision of advice and assistance to Agencies on the integrity of processes used in the delivery of projects and arrangements with the private sector. In particular the allocation of responsibility is as follows:*

- **Department of Premier and Cabinet** – for policy consistency, management processes and skills development;
- **Department of Justice** – for legal considerations, and
- **Department of Treasury and Finance** – for financial process and accounting policy.

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<sup>312</sup> "Project Initiation Process", para 1.8.4, page 6.

<sup>313</sup> Page 10.

<sup>314</sup> "Prudential Management Framework", see footnote 281 above at page 9.

<sup>315</sup> See footnote 280 above.



*The Prudential Management Group does not substitute for, or remove, the accountability and responsibility of an Agency, its Minister, Board or Chief Executive for*

- *the conduct and merit of a Project,*
- *whether proper processes are implemented, or*
- *that the optimal outcome is achieved for Government.*" <sup>316</sup>

As part of its Cabinet secretarial and support function, the Department of Premier and Cabinet is responsible for the receipt and distribution of Cabinet submissions. In assisting Cabinet in optimal decision-making, the Cabinet Office will circulate Cabinet submissions to relevant Government agencies and ministerial offices and prepare a Cabinet Comment indicating whether:

- the proposal is consistent with Government policy
- appropriate agencies have been consulted about the proposal
- there are any concerns with the proposal from whole of Government perspective.

There are precise rules for the form of Cabinet submissions and the time for preparation and delivery to the Cabinet Office. Submission are required to be delivered to the Cabinet Office six working days before the day for consideration by Cabinet.<sup>317</sup>

### **Access to Other Expertise**

#### **DAIS** <sup>318</sup>

This agency is the repository within Government of expertise in project and construction management. The involvement of DAIS representatives assists agencies in the planning and implementation of specific projects.

Part of the role of its predecessor agency, Services SA is described in the "*Project Initiation Process*" as:

*"Operates in conjunction with government agencies to provide professional assistance for the planning, delivery, maintenance and disposal of built assets. Has responsibility for property management services and the management of the procurement for the Government's built assets, as well as managing the risks related to Government's building and construction and performing the industry interface role on behalf of Government..."* <sup>319</sup>

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<sup>316</sup> "*Prudential Management Framework*", see footnote 281 above at page 9.

<sup>317</sup> Page 22 of the Cabinet Handbook.

<sup>318</sup> ie The Department for Administrative and Information Services. This agency's predecessors include the Department for State Government Services which was known as Services SA (22 February 1996 – 23 October 1997), Services SA (30 October 1995 – 22 February 1996), the Department for Building Management (30 June 1994 – 30 October 1995) and the Department for Housing and Construction (20 December 1993 – 30 June 1994).

<sup>319</sup> Page 55.

DAIS and its predecessor agencies, Services SA and the Department for Building Management were required to be involved in tender calls for any Government project over \$150,000.<sup>320</sup>

Unlike the Crown Solicitor's Office, the Department of Treasury and Finance and the Department of Premier and Cabinet, the nature of DAIS' role is as a service provider.

### **Resources External to the Government**

In every project the proponent agency must consider what skills are required to complete due diligence. In an appropriate case, a proponent agency may have to retain external consultants with the necessary skills.

Often the need for external consultants will arise because of the need for their involvement in the implementation of the project. Architects and engineers will always be necessary for construction projects.

In the case of the Hindmarsh Stadium redevelopment no consideration was given by the Government to commissioning a marketing consultant to get data on the assumptions about spectator attendances that had been made. Market research was an express requirement of the *"Project Initiation Process"*:

*"Most market or service needs analysis has historically relied on basic information such as:*

- *historical trends (eg. past enrolments or past history of service delivery);*
- *comparable area standards (eg square metres per office worker, student or prisoner); and*
- *forecasts including demographic data from the ABS census (which may not reflect changes which have occurred since the last census).*
- *The real purpose of the needs analysis in the project initiation process is to ensure that only those projects that meet the criteria for demonstrated need will be provided. This process involves asking the following type of questions.*
- *What is the state of the market (in terms of price/demand, etc) and in particular what are the expectations and plans of likely users and client/customers?"*

The expertise of a sporting facility management consultant was not sought by Government at any stage. The Soccer Federation retained Thompson Tregear, specialist leisure management consultants to advise it in August 1999.

### **The Process of Briefing Other Agencies**

When a proponent agency instructs another Government agency or an external party the instruction must be sufficiently detailed and clear that the due diligence is performed. It is not appropriate that the proponent agency simply refer the matter for "sign off".

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<sup>320</sup> *"Project Initiation Process"*, page 45.

At the same time, other agencies must test the scope and detail of the instruction by reference to the public interest. It is not sufficient for the other agency to be solely reactive to the instructions given. The fact that Government officers may be fully occupied does not, in my opinion, excuse failure to take proper care in the exercise of their duties.

## **HOW THIS EXAMINATION HAS APPLIED THE DEFINITION OF DUE DILIGENCE**

### **"Signed Agreements for Construction" and "Commitment"**

Term of Reference I requires this Examination to identify whether due diligence was undertaken by Government representatives prior to the signing of agreements for construction. Term of Reference II requires this Examination to identify whether due diligence was applied subsequent to commitment to Stages 1 and 2.

In the case of the Hindmarsh Stadium Redevelopment Project, the *"signing of agreements for construction"* was neither the only nor the key *"commitment to Stages 1 and 2"* that occurred. This Examination has found that commitments were made incrementally for the upgrading of Hindmarsh Stadium.

In respect of Stage 1, the Government agreed to Hansen Yuncken Pty Ltd's appointment as construction manager at a fixed lump sum price of \$404,108 on 23 August 1996.<sup>321</sup> However, the key legal document for Stage 1, the Funding Deed, was not signed until 14 October 1996.

The Government made other lesser, but significant commitments for the first stage of upgrading Hindmarsh Stadium before either the Construction Management Agreement or Funding Deed for Stage 1 were signed.

For example, in April 1995, non-binding Memoranda of Understanding were entered into between the Government and the Soccer Federation, and between the Soccer Federation and the NSL Clubs. The Memorandum of Understanding signed by Minister Oswald did not legally commit the Government to redeveloping Hindmarsh Stadium. Its purpose was to record the status of negotiations between the Government and the Soccer Federation for the construction of a new eastern grandstand. It contemplated further negotiation and final agreement being reached after feasibility studies had been undertaken and the approval of Cabinet and the NSL Clubs given.

In my opinion, although the commitment made was not legally binding, the Government made a serious commitment to the first stage of upgrading Hindmarsh Stadium by entering into the Memorandum of Understanding with the Soccer Federation. It was therefore essential that the Government's commitment be attended by due diligence appropriate to the circumstances.

It is clear that in April 1995 the Government intended that due diligence would be undertaken before a binding legal commitment was given for the first stage of upgrading Hindmarsh Stadium. However, this did not occur and significant commitments were made to Stage 1 without adequate and critical due diligence being undertaken by Government. These failures of due diligence are discussed in detail in Chapters 19 to 21.

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<sup>321</sup> See Chapter 32.

A further commitment was made by the Government's appointment of Woods Bagot as the primary consultant in November 1995. That was a binding legal commitment to Woods Bagot, but it did not commit the Government to going ahead with the construction. Cabinet gave its approval in April 1996 to refurbishment and extension of the western grandstand. Although not legally binding, Cabinet's approval was another significant commitment by the Government to upgrade Hindmarsh Stadium. In June 1996 the Government agreed, by exchange of letters, to retain Woods Bagot to do the detailed design work for Stage 1 and to act as principal consultant during the construction phase for Stage 1.

The consequence was that as each successive commitment was entered into, it became less likely that the Government would, as a result of a due diligence step, not proceed with the first stage of upgrading Hindmarsh Stadium.

The same can be said of Stage 2. The best example is the letter dated 20 November 1996 from Mr Ingerson, then Minister for Recreation, Sport and Racing, to SOCOG that stated that the Government would undertake further construction work at Hindmarsh Stadium. That letter was imprecise in the scope of the work that it said would be undertaken. SOCOG's response was to promise that South Australia would host games in the 2000 Olympic Soccer Tournament, but subject to further negotiation. In my opinion, there was no formal legal obligation arising out of that exchange of correspondence. However, it gave rise to the expectation that Hindmarsh Stadium would be substantially upgraded to host the Olympic Soccer Tournament.

By March 1997, the Government had expended \$30,000 on consultancy fees and \$20,500 in option fees to acquire options over land to be acquired south of Hindmarsh Place.<sup>322</sup> That did not commit the Government to exercising those options but it did involve expenditure. In July 1997, the Minister for Recreation, Sport and Racing purchased three properties for a total cost of \$851,500. This expenditure would have been wasted if due diligence undertaken had caused the Government not to go ahead with completion of Stage 2.

On 8 July 1997, Premier Olsen signed the SOCOG Letter of Agreement. That agreement was superseded by the SOCOG Memorandum of Understanding which Premier Olsen signed on behalf of the State on 15 August 1997. These agreements committed the Government to provide certain facilities at Hindmarsh Stadium including 15,000 permanent seats with backrests as a minimum, the relocation and extension of the playing pitch, new turnstiles and the relocation and upgrading of lighting.<sup>323</sup>

This Examination has found that by August 1997,<sup>324</sup> the opportunity to withdraw from a much larger redevelopment of Hindmarsh Stadium than Stage 1 had been lost, without adequate due diligence being undertaken. This Report discusses these inadequacies in detail in Chapters 22 to 26.

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<sup>322</sup> See Chapter 34.

<sup>323</sup> See Chapter 35.

<sup>324</sup> This was well before the signing of the Stage 2 Construction Agreement on 29 September 1998.

For these reasons, the concept of completing due diligence "before" signing agreements for construction cannot be assessed in this Report solely on the basis of a single date for each of Stages 1 and 2. Instead, it is necessary to examine the performance of due diligence across the whole life of the Hindmarsh Soccer Stadium Redevelopment Project from its earliest consideration in April 1995 to the present day.

# CHAPTER 19 – STAGE 1 PROJECT INITIATION AND APPROVAL

## OVERVIEW

In my opinion, for the reasons discussed in this Chapter, the process by which Stage 1 was initiated by its proponent agency the Office for Recreation, Sport and Racing and the responsible Ministers<sup>325</sup> was inadequate because:

- No feasibility study was undertaken by the Office for Recreation, Sport and Racing at the time of the project's initiation in April 1995. As the content of the project was developed between April 1995 and August 1996, studies by Ernst & Young and Woods Bagot were commissioned on an inadequate basis.
- No adequate feasibility study was undertaken by the Department of Recreation and Sport<sup>326</sup> in relation to the Government guarantee given in August 1997 of the \$2 million loan to the Soccer Federation for the fit out of the western grandstand.
- The three submissions in May 1995, April 1996 and August 1996 upon which Cabinet's approval of Stage 1 was based were inadequate. The July 1997 submission seeking approval for a Government guarantee of a \$2 million loan to the Soccer Federation for the fit out of Stage 1 was also inadequate. Each to varying degrees breached Government guidelines for preparation of Cabinet submissions or contained inaccurate or incomplete information. Central advisory agencies and Services SA were not always consulted and, when consulted, not given a proper opportunity to comment on Cabinet submissions or advise on the project. In particular, the Government guidelines in Treasury Information Paper 90/1,<sup>327</sup> requiring presentation of multiple options and examination of the "no action" option, was disregarded.
- A principal objective of Stage 1 was not adequately defined. That objective was loosely described in the first two Cabinet submissions for Stage 1 as compliance with international standards for football stadia set by FIFA. Cabinet was not informed that prior to July 1996 there was no single statement of FIFA standards and therefore no clearly identifiable objective. After July 1996, when a statement of requirements was received from SOCOG, there was a failure to identify what part of SOCOG and FIFA requirements had to be met by permanent rather than temporary facilities.

This Chapter discusses each of these matters in detail.

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<sup>325</sup> ie Ministers Oswald, Ingerson and Ashenden. Mr Oswald was the Minister for Recreation, Sport and Racing from 14 December 1993 to 22 December 1995. Mr Ingerson was the Minister for Recreation, Sport and Racing from 22 December 1995 to 12 December 1996. Mr Ashenden was the Minister for Recreation and Sport from 12 December 1996 to 20 October 1997.

<sup>326</sup> This agency was the successor of the Office for Recreation, Sport and Racing from 19 December 1996.

<sup>327</sup> "Guidelines for the Evaluation of Public Sector Projects".

## FEASIBILITY STUDIES AND COST BENEFIT ANALYSES

Pursuant to Section 41 of the *Public Finance and Audit Act 1987*, it was mandatory for proposals to redevelop Hindmarsh Stadium to be evaluated by the Office for Recreation, Sport and Racing in accordance with Treasury Information Paper No 90/1.<sup>328</sup> This required an economic analysis supported by a project feasibility study. The format of the economic analysis required identification of all feasible options and a cost benefit analysis of each option.

No feasibility study or cost benefit analysis was undertaken at the time of the project's initiation in April 1995. It is clear from the terms of the April 1995 Memorandum of Understanding made between the Government and the Soccer Federation, that Minister Oswald intended that feasibility studies be undertaken later but before a binding commitment was made to upgrade Hindmarsh Stadium.

Nor was any adequate feasibility study or cost benefit analysis undertaken by the Office for Recreation, Sport and Racing while Minister Oswald was responsible for the project. This should have been done before the appointment of the primary consultant in November 1995.

On 22 December 1995, Minister Ingerson assumed responsibility for the project. By this time, Woods Bagot had been selected as the primary consultant.

As the content of the project was developed between December 1995 and August 1996, studies by Ernst & Young and Woods Bagot were commissioned by the Office for Recreation, Sport and Racing. These studies were restricted in scope and relied upon unverified information provided by the Soccer Federation.

The inadequacies in these feasibility studies were inextricably linked with a fundamental defect that characterised both stages of the Hindmarsh Soccer Stadium Redevelopment Project: the failure to properly identify and analyse the objectives of the project. In my opinion, the failure to perform properly those studies and to identify the objectives of the project had a negative effect on the cost-effectiveness and efficiency of the Hindmarsh Soccer Stadium Redevelopment Project.

### **Objectives of the Redevelopment**

#### **Mandatory Identification of Objectives**

The need to identify objectives is given binding force by internal Government guidelines. Treasury Information Paper 90/1 requires definition of the objectives of a public project as the first key step in the evaluation process.<sup>329</sup>

*"Project evaluation must be based on a clear specification of the operating objectives and their relationship to the overall objectives of the Government."*<sup>330</sup>

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<sup>328</sup> See sections headed "Treasurer's Instructions" and "Treasury Information Paper 90/1" at pages 250 and 251 above in Chapter 18.

<sup>329</sup> Page 11 of Treasury Information Paper 90/1.

<sup>330</sup> Page 12 of Treasury Information Paper 90/1.

Compliance with the guidelines in that paper was mandatory by reason of Treasurer's Instruction 9105.<sup>331</sup> That instruction was in force from October 1990 until 1 July 1998. In turn, that instruction had the force of law by reason of Section 41 of the *Public Finance and Audit Act 1987*.

The identification and measurement of the objectives of the project is an exercise that should be undertaken by the proponents of a project before commitment to the project. That is a matter of common sense. If the objectives are not clearly identified, the content of the project could be inappropriate to meet the objectives.

### **Identification of Objectives as Part of a Feasibility Study**

In common parlance, the exercise of identification of objectives is included as part of a study called a cost benefit analysis or feasibility study. However, there are different methods of performing those studies, not all of which depend on the precise identification of objectives. For that reason, it may not be enough for there to be a cost benefit analysis or feasibility study. If those studies do not contain a proper identification of objectives, that must be undertaken as a separate exercise. Typically, if an identification of objectives does appear in a cost benefit analysis or a feasibility study it will record earlier, possibly informal, consideration of the objectives since it is the analysis of the objectives that should lead to the instigation of the project, not vice versa.

It should not be the case that a project is initiated and the justification for it found afterwards.

### **No Comprehensive Statement of Objectives Exists for Stage 1**

In the case of Stage 1 of the Hindmarsh Stadium Redevelopment Project, there was no document comprehensively recording an adequate identification of the objectives of the project. A number of objectives were stated but in imprecise terms. The two studies undertaken that were described at the time as feasibility studies, the Ernst & Young report and Woods Bagot's master planning, did not describe the objectives. In the case of the Ernst & Young report it was limited to a study of two specific financial issues. The Woods Bagot master planning was undertaken on the basis of the wishes of the Soccer Federation and not any specified Government objective. Furthermore, except for completing sketch plans of different master plan options, Woods Bagot did not complete their feasibility investigations.

The absence of any document comprehensively stating the Government's objectives has meant that this Examination has had to reconstruct what the Government's objectives were. If this project had been handled correctly, those objectives would be found, at the very least in summary form, in the files of the proponent agency, the Office for Recreation, Sport and Racing and its predecessors and successors. This Examination has not found any such document.

No witness gave evidence to this Examination that they had prepared or seen a document containing a more detailed statement of objectives than this Examination has uncovered. Nor is any such document referred to in other documents.

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<sup>331</sup> Treasurer's Instruction 9105.2 provides: "*The Chief Executive Officer shall ensure that officers of the Department evaluate projects in accordance with the evaluation framework detailed in Treasury Information paper No 90/1 'Guidelines for the Evaluation of Public Sector Projects'*".



Mr Ingerson has submitted to this Examination that the Government's clear objectives were readily gleaned from Cabinet submissions and the Government's policy statement before the 1993 State election to provide a number of sports including soccer with facilities of a national and international standard. In my opinion, this is not to the point. The Office for Recreation, Sport and Racing were obliged by force of law to identify in writing the objectives of the project as part of the evaluation process required by Treasury Information Paper No 90/1. The proponent agency did not undertake this first key step in specifying the operating objectives of the project and relating those identified to the overall objectives of Government.

### **Statements of Objectives in Cabinet Submissions**

The statements of the Government's objectives that can be relied upon as the most authoritative are those emanating, from time to time, from the Premier and the proponent Minister. The documents that include those statements are Cabinet submissions and press releases.

Mr Ingerson has submitted to this Examination that I ought not reveal the 'content' of Cabinet submissions as distinct from the 'deliberations' in Cabinet, because to do so would undermine the principle of Cabinet confidentiality. I do not accept that submission.

Cabinet submissions are the property of the Crown and not the Government. The security of, and access to, those submissions is a matter of long-standing convention.

I accept that the Auditor-General should not lightly disclose the content of Cabinet submissions. However, in this case, there are factors that dictate that certain matters dealt within the submissions must be disclosed. First, the inadequacy of the other records of the Government means that without recourse to the Cabinet submissions it would not be possible to reconstruct the chronology of events. Secondly, the submissions are in many cases inaccurate. Thirdly, by reason of Treasurer's Instruction 307.4<sup>332</sup> for projects with a cost of over \$4 million, Cabinet is the body charged with final Executive approval. If the process for the approval of projects is to be the subject of examination, the adequacy of submissions to the body that exercises final Executive power must also be examined.

### **Summary of Objectives**

This Examination has reconstructed the following statement of Government objectives for Stage 1 of the Hindmarsh Soccer Stadium Redevelopment Project.

- The upgrading would maximise Adelaide's chances of hosting matches in the 2000 Olympics.<sup>333</sup>

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<sup>332</sup> See below in Chapter 18 the Section headed "Treasurer's Instructions" at page 250.

<sup>333</sup> Cabinet submission (MRS CAB 43/95) dated 1 May 1995, at paragraph 2.2. Cabinet submission (MRSR 15/96) dated 26 April 1996, at paragraph 2.4. Note that the May 1995 submission stated that the upgrade would "guarantee" that Adelaide would host Olympic matches. This changed to the more conservative "maximise chances" in the April 1996 submission.

- Complying with FIFA requirements would allow Adelaide to continue to host major international soccer events prior to and after the Olympics.<sup>334</sup> The upgrading would result in Hindmarsh Stadium complying with FIFA requirements.<sup>335</sup> The project would provide a facility of national and international standard.<sup>336</sup>
- The project provided the opportunity to further enhance the stadium towards its Master Plan goal of providing seating and the necessary facilities for 22,000 spectators.<sup>337</sup>
- The project would provide a family focus for patrons at the stadium.<sup>338</sup>
- The project would provide an additional franchise opportunity for catering, to the benefit of small business.<sup>339</sup>
- The project would significantly boost building and construction employment opportunities.<sup>340</sup>

### **Early Feasibility Studies**

Two detailed studies of the redevelopment of Hindmarsh Stadium were undertaken prior to the feasibility studies prepared for Stage 1. Those studies were more detailed than any of the studies prepared for Stage 1.

The first study was completed in April 1989. It considered and compared the two options of redeveloping Hindmarsh Stadium or building a new facility at Gepps Cross. It was prepared jointly by the South Australian Department of Housing and Construction,<sup>341</sup> the Department of Recreation and Sport and the Soccer Federation. The stated objective of the project was:

*"A stadium of international standard capable of providing undercover seating for 9 000 spectators with associated amenities is required in order to more readily attract international fixtures to South Australia."*<sup>342</sup>

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<sup>334</sup> Cabinet submission (MRS CAB 43/95) dated 1 May 1995, at paragraph 2.2. Cabinet submission (MRSR 15/96) dated 26 April 1996, at paragraph 2.4.

<sup>335</sup> Cabinet submission (MRS CAB 43/95) dated 1 May 1995, at paragraph 2.2. Cabinet submission (MRSR 15/96) dated 26 April 1996, at paragraph 2.4.

<sup>336</sup> Cabinet submission (MRSR 15/96) dated 26 April 1996, at paragraph 3.1.

<sup>337</sup> Cabinet submission (MRSR 15/96) dated 26 April 1996, at paragraph 3.1. Note that the other benefits listed in the April 1996 submission (Olympics, FIFA standards) were expressed as immediate benefits. Stage 1 was specifically identified as being only a step toward achieving the benefit of having 22,000 seats.

<sup>338</sup> Cabinet submission (MRSR 15/96) dated 26 April 1996, at paragraph 3.24.

<sup>339</sup> Cabinet submission (MRSR 15/96) dated 26 April 1996, at paragraph 3.25.

<sup>340</sup> Cabinet submission (MRSR 15/96) dated 26 April 1996, at paragraph 3.26.

<sup>341</sup> The Department of Housing and Construction was known as "SACON". It became the Department for Building Management on 30 June 1994 and was subject to further administrative changes from October 1997. The principal changes are set out in Chapter 4 of this Report.

<sup>342</sup> Page 6.

The brief was stated to be the provision of spectator facilities of a minimum 8-10,000 undercover seats.<sup>343</sup> Four options for upgrading Hindmarsh Stadium were considered involving four grandstands seating between 13,800 to 20,000 people, including 9,000-11,200 undercover seats and spectator amenities. The option involving total seats of 13,800 including 9,000 undercover seats was selected as the most appropriate and economical proposal.<sup>344</sup>

No basis was stated for that number of undercover seats. However, the viability of the project was stated to be contingent upon a clear commitment from the Soccer Federation that all fixtures that would attract patronage would be held at the new or redeveloped facility.<sup>345</sup>

The first study reported detailed figures for participation in the sport of soccer at different levels. It did not specifically link those participation levels with the size or quality of facilities required at Hindmarsh. It concluded that redevelopment of Hindmarsh Stadium was preferable to construction of a completely new facility at Gepps Cross.

The second study was completed in March 1990. It was entitled "*Project Justification Report for Proposed Redevelopment of an International Facility at Hindmarsh.*"

The second study sought to justify a more modest proposal for the redevelopment of Hindmarsh Stadium. It involved upgrading of the surface, lighting and seating, redevelopment of the existing western grandstand to include corporate boxes, bars, a restaurant, change rooms and administration facilities for the Soccer Federation but no new grandstands.<sup>346</sup>

The second study reported attendance figures that were said to vary in accordance with the status of the match: NSL matches attracted 3-4,000 and often up to 10,000 spectators; international fixtures attracted between 12-14,000 spectators.<sup>347</sup>

At the time of those two studies Sydney had not been awarded the right to host the 2000 Olympics. Neither study referred to the desirability of upgrading Hindmarsh Stadium to meet FIFA standards.

### **No Reliance Upon or Updating of Earlier Studies**

Despite their inadequacies, the two earlier studies were more detailed than any study for the redevelopment of Hindmarsh Stadium prepared later.

Mr Ingerson informed this Examination that he had no regard to earlier studies prepared under the previous Government. He regarded that Government as having been wholly discredited. That attitude might justify treating earlier studies with caution. It did not warrant ignoring previous work entirely that would have assisted the Government in examining the feasibility of the project.

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<sup>343</sup> Page 7.

<sup>344</sup> Page 16.

<sup>345</sup> Ibid.

<sup>346</sup> Section 4.3.2 of the Project Justification Report.

<sup>347</sup> Section 4.4.

In 1994 SACON considered the April 1989 study when it prepared an estimate of the cost of \$30.75 million for an upgrade of Hindmarsh Stadium to include 23,750 seats but only for the purpose of assessing cost.

At the very least, the Office for Recreation, Sport and Racing should have ensured that those studies were reviewed and updated. It was necessary for the studies to be updated because of the passage of time. The earlier studies represented a useful starting point for a review because the stated policies of the two political parties about sporting facilities were virtually identical. As a practical matter, it was inefficient of the current Government not to have regard to those earlier studies.

### **Inadequate Commissioning of Feasibility Studies**

There were three studies undertaken prior to commitment to Stage 1 that included elements of a feasibility study. Neither separately or collectively were they adequate to fulfil that function. They were:

- SACON's preliminary feasibility estimate;
- Woods Bagot's master planning; and
- Ernst & Young's feasibility report.

The proponents of the project was the Office for Recreation, Sport and Racing. While it is appropriate for a proponent agency to commission other agencies or external consultants to prepare a formal study, in the first instance a proponent agency should, in my opinion, prepare its own methodical and considered analysis of the Government's objectives that are to be met by the project. The Office for Recreation, Sport and Racing should have done so in this case but it did not.

The retainer of SACON, Woods Bagot and Ernst & Young was in each case insufficient to result in an appropriate feasibility study. This is not a criticism of SACON, Woods Bagot or Ernst & Young. Adequate specification of their retainer was the responsibility of the proponent agency, the Office for Recreation, Sport and Racing and in the case of Woods Bagot's retainer, the Department for Building Management and its successor, Services SA, as is discussed below.

### **SACON Preliminary Feasibility Estimate**

SACON's two-page "*Preliminary Feasibility Estimate*" prepared in February 1994 was an estimate of the cost of building a 23,750 seat stadium at Hindmarsh without reference to any other factors such as whether such a stadium would be used.

SACON were given the Soccer Federation's February 1994 submission to Minister Oswald and asked to prepare an estimate of the cost of the works envisaged by the Soccer Federation. They were not instructed to undertake a complete review of all aspects of the feasibility of the stadium redevelopment. SACON also had regard to the 1989 study but were not asked to update the other findings. The SACON report contemplated preparation of a feasibility study as part of the project initiation process.

SACON's study was not intended to be and was not a sufficient feasibility study.

## **Woods Bagot Preliminary Design Work**

The September 1995 letter inviting Woods Bagot to make a submission for the primary consultancy included as part of the specification of the services required, the undertaking of "feasibility investigations". That requirement was included in the Consultancy Agreement made between Woods Bagot and the Minister for State Services and dated 23 February 1996.<sup>348</sup> What was required as "feasibility investigations" was not further defined in any later instruction to Woods Bagot. Woods Bagot were not referred to the requirements of Treasury Information Paper 90/1.

Most of the time Woods Bagot invested in this part of their work involved discussions with, and information gathering from, the Soccer Federation. Woods Bagot produced three categories of internal working documents as a result.

First, Woods Bagot took detailed instructions from the Soccer Federation as to its "wishes" for the stadium. Those instructions were recorded initially in a handwritten questionnaire. As Woods Bagot's thinking about the design of the stadium was refined, Woods Bagot turned the substance of those instructions into a narrative brief describing the design parameters for the stadium.

A key instruction from the Soccer Federation was that it ultimately wished to have a stadium with a total capacity of 20,000 seats. The Soccer Federation regarded that as the minimum necessary to attract international matches. That became a basic element of the concept for the future development of Hindmarsh Stadium. The assumption that it was desirable to seek a capacity of that order was not questioned by Woods Bagot, the Office for Recreation, Sport and Racing, Services SA, or Minister Ingerson. In my opinion, it should have been.

The Soccer Federation believed that the inadequacy of Hindmarsh Stadium was a major reason for spectator attendances at soccer matches remaining at the level of about 5,000 per NSL match. It believed that a better stadium would lead to higher spectator numbers.

Secondly, Woods Bagot attempted to obtain from the Soccer Federation detailed information about the financial factors affecting profitability of the stadium. Woods Bagot sought to assign revenue figures for each type of accommodation at the stadium. Woods Bagot recorded that information in a schedule with the per seat cost of construction for each type of accommodation. Woods Bagot sought to find the desirable mix of general admission spectator seating versus corporate boxes versus concession stands. Ultimately, Woods Bagot were unable to complete that task because the quality of the information available from the Soccer Federation was inadequate.

That exercise was a useful one. It should have been completed. It does not appear that the results of it were brought to the attention of the Office for Recreation, Sport and Racing, Services SA, the Department of Treasury and Finance, the Hindmarsh Stadium Redevelopment Committee or its Executive Group, Ingerson or Cabinet. Preferably, the exercise should have involved someone with financial expertise rather than architectural.

Thirdly, Woods Bagot produced a series of sketches showing different possible layouts for the stadium. Those options were costed.

Each option was based on the assumption that an ultimate capacity of between 15,000 and 25,000 seats was desirable.

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<sup>348</sup> See Chapter 9 for further details of this Consultancy Agreement.

In settling on the ultimate desired capacity, empirical evidence should have been obtained as to the likelihood of that capacity being used. Market research would have given the Government better information upon which to base its decisions about the project. In the absence of that research, there was no basis for believing that the objectives relating to spectator attendances would be achieved.

Woods Bagot did not produce any report containing the results of the work that they had done under the terms of their retainer to undertake feasibility investigations.

### **Ernst & Young Report**

In April 1996, the Office for Recreation, Sport and Racing instructed Ernst & Young to prepare a report on the feasibility of redeveloping the western grandstand at Hindmarsh Stadium. A draft report was prepared in late April 1996 addressing the marginal benefit of constructing northern and western extensions to the proposed redevelopment of the western grandstand. It compared:

- Upgrading the western grandstand as proposed (costing \$6.2 million for 3,279 seats) but deferring the construction of northern and southern extensions to the western grandstand (a further cost of \$1.275 million for an additional 756 seats); and
- Upgrading the western grandstand with the further northern and southern extensions (total cost of \$8.125 million for 4,035 seats).

In this draft report, Ernst & Young concluded that it was more cost-effective to proceed with the one larger project principally because of the additional costs from having two separate construction projects and the disruption to the playing of soccer. Ernst & Young did not compare all of the various options for Stage 1 that had been prepared by Woods Bagot. They were not instructed to do so.

By the time Ernst & Young delivered their final report in July 1996 it had two sections. The first dealt with the comparison between a \$6.2 and \$8.125 million redevelopment of the western grandstand as described above. The second addressed the Soccer Federation's ability to contribute to the interest costs of the \$8.125 million loan proposed to fund the project on the basis of a \$3 levy on spectators using the redeveloped western grandstand.

In calculating the Soccer Federation's likely contribution to interest costs, Ernst & Young relied on information from the Soccer Federation and projected an arbitrary 20 percent increase in future spectator numbers and multiplied that by the amount of the proposed levy. Ernst & Young performed sensitivity analyses that showed the effect of increases in the number of spectators, changes in the proportion of spectators using the grandstand and interest rates. Ernst & Young did not consider the possibility of a fall in spectator numbers.

The data used by Ernst & Young was inherently unreliable. The Soccer Federation refused to warrant the accuracy of the projections they had provided. The rates for increases in spectator numbers were arbitrary. Ernst & Young made these matters clear in their report. Ernst & Young specifically disclaimed any attempts to independently verify attendance figures either as to the past or as to how realistic the future projections were.

Ernst & Young's report did not address the effect of a decline in spectator numbers.

Even more than the other studies that had been carried out, the subject matter of the Ernst & Young report called for testing by empirical market research.

Although it was described as a feasibility report, the scope of Ernst & Young's retainer was too limited for their report to fulfil the requirements of the Government's internal guidelines requiring economic and financial evaluations of all options for the project.

### **Omissions from Studies**

Treasury Information Paper 90/1 specifically requires that the following matters be addressed:

- The objectives of a project must be clearly defined.
- All feasible options to the project must be identified.
- The "do nothing" option must be considered.
- Economic costs and benefits must be identified and quantified and the results of that cost benefit analysis properly presented.
- A financial analysis must be undertaken that assesses the financial implications of the project for the proponent agency and the State Budget.
- Other relevant factors such as the social impact of the project must be identified.
- A risk assessment must be undertaken.

The three studies described above did not address those matters. This is not a criticism of SACON, Woods Bagot or Ernst & Young. In each case, their instructions were limited and imprecise. In the case of Woods Bagot, if the Office for Recreation, Sport and Racing and the Department for Building Management had expected a formal report addressing the matters required by Treasury Information Paper 90/1, they should have been specified as part of Woods Bagot's retainer. They were not.

### **The Fit Out Guarantee**

On 26 September 1997, the Treasurer executed the Fit Out Guarantee. By that guarantee the Government guaranteed borrowings by the Soccer Federation for the fit out of the clubrooms and corporate facilities in the western grandstand the subject of the Stage 1 upgrade. The execution of that document was attended by inadequate consideration.

In return for the Government agreeing to guarantee a \$2 million loan to the Soccer Federation to undertake the fit out, the Soccer Federation promised to spend \$100,000 on marketing of soccer.

### **Previous Arrangements for Fit Out**

It was a key feature of the financing structure envisaged by the April 1995 Memorandum of Understanding and the Funding Deed that the Soccer Federation and the NSL Clubs would bear the cost of fitting out the corporate facilities and the clubrooms in the new or upgraded grandstand.

## Cabinet Submission for Fit Out Guarantee<sup>349</sup>

The July 1997 Cabinet submission for approval of the Fit Out Guarantee advanced the following justifications:

- It was necessary to make the Soccer Federation legally responsible for the fit out to ensure that it was completed in a consistent and timely fashion. The Soccer Federation could not afford the fit out from its own assets.
- The works were necessary for the hosting of matches in the 2000 Olympic Soccer Tournament. If those works were done on a temporary basis it would cost \$250,000.
- The Soccer Federation could afford to service the loan because market research had shown that there was room for growth in the soccer market and attendances at soccer matches continued to grow.

Average attendances at NSL matches had not grown in the period from 1991/1992 to 1998/1999.

The average attendances across the period are shown in the graph below:



Further, Treasury's assessment was that the Soccer Federation would not be able to maintain the loan repayments with the result that the Government would certainly be called upon under the guarantee.

The market research referred to in the Cabinet submission was undertaken by Tan Research Pty Ltd, on instructions from Hamra Management Pty Ltd. The survey conducted by Tan Research Pty Ltd was qualitative and not quantitative. It did not ask those surveyed how likely that they would attend soccer. It only asked questions directed at what was more likely to make them attend.<sup>350</sup> Tan

<sup>349</sup> See the Section below in this Chapter headed "Inadequacy of July 1997 Submission" at page 284.

<sup>350</sup> That is not a criticism of Tan Research. It is fair to infer that the Soccer Federation instructed Tan Research on the assumption that it was worth doing so.



Research did not attempt to quantify the number of additional spectators that might be encouraged to attend. It was an inadequate basis upon which to conclude that the Soccer Federation had the potential to fund increased borrowings.

There had been no investigation of why the Government should be guaranteeing the fit out. The facilities were solely for the benefit of the Soccer Federation and the NSL Clubs. Further, they represented a direct financial benefit to them. Having their own clubrooms at the stadium would save the NSL Clubs the cost of maintaining clubrooms elsewhere. The revenue from the corporate facilities would flow to the NSL Clubs and the Soccer Federation. They were not essential for the staging of matches at the stadium.

During the Olympics it could be expected that the clubrooms and the corporate facilities would be made available for use by SOCOG. There was a public benefit to the extent that SOCOG required those facilities to be available as a condition of Adelaide being granted hosting rights.

At other times both would be used exclusively for the benefit of the NSL Clubs and the Soccer Federation.

It might be said (although it was not at the time) that it enhanced the promotion of soccer for its central body and two highest level teams to have excellent facilities. However, at the time of the Funding Deed, that factor had been insufficient to warrant the Government funding the fit out.

No proper feasibility investigations had been undertaken into the financial position of the Soccer Federation or the NSL Clubs to substantiate the representations made about their collective financial positions.

This Examination was unable to locate within Government a copy of the report described as "by Hamra Management" evidencing the market research they conducted on behalf of the Soccer Federation. The Department of Recreation and Sport as the proponent of the July 1997 submission for the Fit Out Guarantee should have retained a copy of the documents that were relied upon in formulating the submission to Cabinet. This Examination obtained a copy from the Soccer Federation.

### **Significance of Policy Decision**

Mr Ingerson made submissions to this Examination relying upon the nature of the decisions to pursue hosting of Olympic soccer and redevelopment of the Hindmarsh Stadium as policy decisions as an answer to the failure to undertake due diligence.

The decision to pursue hosting of Olympic soccer is no reason not to undertake proper due diligence. Mr Ingerson acknowledged in his Examination that the decision was not ever to pursue that "*at any cost*". The cost always had to be reasonable. What was reasonable could only be determined by a proper analysis of all the relevant factors. The use to which the Hindmarsh Stadium would be put after the 2000 Olympic Soccer Tournament was relevant in determining whether the cost was reasonable.

As to the decision that there would be a new grandstand built at Hindmarsh, even if an in principle decision to proceed with a project has been made, it is necessary to determine its exact content. The due diligence process is still essential to ensure that the relevant information has been gathered and is presented in an objective and impartial manner to allow that an informed decision to be made.

## **Conclusion on Inadequacy of Feasibility Studies**

The Office for Recreation, Sport and Racing and Mr Oswald as the Minister responsible for that agency between April and November 1995, should have ensured that a feasibility study was undertaken prior to the appointment of Woods Bagot in November 1995.

The Office for Recreation, Sport and Racing and Mr Oswald should have ensured that Woods Bagot's instructions to undertake feasibility investigations were adequate. The Department for Building Management did not correct any inadequacy in those instructions. In my opinion, it should have. It failed to properly define the primary consultancy brief and seek proper instructions from the proponent agency as to the Government's objectives for the project. The Department for Building Management failed to fulfil its responsibility to give advice to the Office for Recreation, Sport and Racing in this regard.

The Office for Recreation, Sport and Racing and Mr Ingerson as the Minister responsible for that agency from December 1995, were responsible for the inadequate retainer of Ernst & Young. The Cabinet submission inappropriately described the Ernst & Young report as a feasibility study. In my opinion, it was not.

The Department of Recreation and Sport and Mr Ashenden as the proponent Minister for the July 1997 Cabinet submission seeking a Government guarantee for the Fit Out Loan to the Soccer Federation should have ensured adequate feasibility investigations were undertaken. This was serious failure of due diligence.

## **CABINET SUBMISSIONS INADEQUATE BASIS FOR CABINET DECISIONS**

### **Overview**

For the reasons discussed below, the three submissions in May 1995,<sup>351</sup> April 1996<sup>352</sup> and August 1996<sup>353</sup> upon which Cabinet's approval of Stage 1 was based were inadequate. Each to varying degrees breached Government guidelines for preparation of Cabinet submissions, was inaccurate or incomplete. The Crown Solicitor's Office, the Department of Treasury and Finance and Services SA were not always consulted about the submissions. When they were consulted, they were not given a proper opportunity to consider each submission. The Government guidelines in Treasury Information Paper 90/1 requiring presentation of multiple options and examination of the "do nothing" option were disregarded by in each submission.

In light of the importance of Cabinet's role in relation to public works and the importance of Cabinet submissions in informing Cabinet, the inadequacies in the Cabinet submissions for Stage 1 were a serious failure of due diligence on the part of the proponent Minister and the proponent agency that had prepared these submissions.

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<sup>351</sup> Signed by then Minister Oswald, Minister for Recreation, Sport and Racing.

<sup>352</sup> Signed by then Minister Ingerson, Minister for Recreation, Sport and Racing.

<sup>353</sup> Signed by then Minister Ingerson, Minister for Recreation, Sport and Racing.

## **Cabinet's Role Generally**

It must be appreciated that Cabinet functions as a political body, with responsibility for its decisions collectively vested in its constituent Ministers. The principle of the collective responsibility of Cabinet necessitates that any differing views within Cabinet will not be made known publicly. As a matter of convention, Cabinet Ministers are bound by decisions of Cabinet and required to support those decisions. Just as no record is made of deliberations in Cabinet, no record is made of any dissent on any decision made by Cabinet collectively.

There is no constitutional delineation of what matters a Minister must refer to Cabinet. That is a matter that by and large is regulated politically. Some matters are the specific preserve of Cabinet. Approval of public works with a value in excess of \$4 million is one such matter.<sup>354</sup>

The Cabinet process must provide for the considered and informed examination of the specific matters before Cabinet.

*"For Cabinet to operate effectively, Cabinet submissions are to be prepared by agencies in a manner that aids well-informed decision-making. The purpose of Cabinet documents is to allow Ministers to discuss, analyse and resolve issues on their merits and in ways conducive to effective implementation."*<sup>355</sup>

The business of modern government is such that each individual Minister cannot realistically be expected to know the detail of each other Minister's portfolio. Similarly, the attention Cabinet gives to any single matter must generally be less detailed than that given by the proponent Minister and agency. Accordingly, Cabinet submissions should be summary in nature but they must be accurate summaries that aid well-informed decision-making.

The Cabinet submissions for Stage 1 were not accurate in several material respects. They did not give Cabinet the opportunity to make informed decisions about the necessary scope of works and budget for Stage 1 or likely risks arising from the project.<sup>356</sup>

Mr Ingerson has submitted that it is Cabinet's role and prerogative to make decisions based on the information provided to it and if it is not satisfied with the information available to it, to reject the submission or call for more detailed advice. I agree with Mr Ingerson's submission. However, Cabinet is heavily reliant on the submissions put to it by proponent Ministers and agencies and, in my opinion, entitled to assume that appropriate due diligence has been undertaken by the proponent Minister and his departmental officers.

## **Cabinet Submissions**

The committee nature of Cabinet has led to the development of a series of rules governing the form and content of Cabinet submissions. These rules are in part intended to ensure the efficient operation

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<sup>354</sup> See Treasurer's Instructions 307.4 and 17.12 which are discussed in Chapter 18 at page 250.

<sup>355</sup> Department of Premier and Cabinet, Cabinet Handbook, page 8.

<sup>356</sup> Mr Ingerson has submitted that it is unfair for me to make criticisms based on inaccuracies or omissions in Cabinet submissions because I am not privy to any oral submissions made to Cabinet or the information that the various Cabinet Ministers bring to Cabinet. In my opinion, it is not appropriate and I query whether it is indeed possible for material inaccuracies and omissions to be cured in the way suggested by Mr Ingerson. In my opinion, matters requiring considered and detailed analysis should be committed to writing.

of Government through effective and efficient systems for the management of Cabinet business. These rules are published in the Cabinet Handbook prepared by the Department of Premier and Cabinet that is available to Ministers, agencies and those responsible for handling Cabinet matters. For example:

- Submissions are required to cover only the main points and not all of the detail of the Government's consideration of a project. A one or at most two-page cover sheet with a captioned note form summary of the submission is required.
- In formulating a submission, the proposal should be defined, the Government's objectives articulated and options to it considered.
- The costs and benefits of the proposal should be worked out and all likely effects of the proposal considered, not just those affecting the proponent agency. Economic and financial evaluations of the proposal are required to be set out in appendices to the submission in accordance with Appendix IV of Treasury Information Paper 90/1.<sup>357</sup> The evaluations should be vetted by the Department of Treasury and Finance and signed by a representative of that agency.
- The discussion of the proposal in a submission should be even-handed. It should cover both the advantages and disadvantages of the proposal.
- In the case of public works, the submission must identify a realistic set of options and the consequences of the "do nothing" or base case option, from which the best option can be chosen.
- Consultation with other agencies of Government affected by or having a legitimate interest in the proposal is required. The Department of Treasury and Finance, the Crown Solicitor's Office and DAIS<sup>358</sup> should be consulted for the purpose of ensuring that these agencies can fulfil their risk management functions. The consultative process should identify support for and problems with the proposal. The outcomes of the consultative process should be clearly specified and the detail included in the body of the submission.
- To allow Cabinet time to consider submissions properly, submissions are required to be lodged with the Cabinet office six working days prior to the time allotted for discussion.

The Cabinet Handbook says that if Cabinet submissions are not prepared in accordance with these requirements, Cabinet may reject the submission or refer it back to the proponent Minister.

For the reasons discussed below, the three Cabinet submissions for Stage 1 of the Hindmarsh Stadium Redevelopment Project breached all of these rules. These breaches, in my opinion, constituted a serious failure of due diligence on the part of the proponent Ministers Mr Oswald and Mr Ingerson and the proponent agency, the Office for Recreation, Sport and Racing.

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<sup>357</sup> Compliance with the guidelines in Treasury Information Paper 90/1 was mandatory by reason of Treasurer's Instruction 9105 which was in force from October 1990 to 1 July 1998. That instruction had the force of law by reason of Section 41 of the *Public Finance and Audit Act 1987*.

<sup>358</sup> Formerly Services SA from 30 October 1995 to 23 October 1997, and before that, the Department for Building Management from 30 June 1994.

## **Submissions a Summary of Deliberations**

Cabinet submissions are intended to be only a summary of the Government's consideration of a project. For Stage 1 of redevelopment of Hindmarsh Stadium, the Cabinet submissions were the most comprehensive Government documents dealing with the objectives, costs and benefits of the project. There were various internal memoranda between Government agencies dealing with specific aspects of the project in a piecemeal way but no other documents that comprehensively collated all of the information relevant to the project in the one place.

It is not the function of Cabinet submissions to be the sole record of all of the Government's work on a project. However, in practice the Cabinet submissions fulfilled that function. The April 1996 Cabinet submission was used by the Office for Recreation, Sport and Racing as a briefing paper for the Crown Solicitor's Office. It was inapt for that function. The Crown Solicitor's Office should have been briefed on the proposal to change the scope of Stage 1 before Cabinet approval for it was sought. The Crown Solicitor's Office should have been provided with a copy of the draft Cabinet submission and allowed an opportunity to comment on the proposal in it. It was not consulted.

## **Even-Handedness of Discussion**

The Cabinet submissions for Stage 1 did not mention a single reason why the project should not go ahead. The risks associated with the project that were identified in the Cabinet submissions, were understated. For example, the greater risks in regard to time and cost from a western grandstand redevelopment instead of a new eastern grandstand were not brought to Cabinet's attention in any of the Cabinet submissions.<sup>359</sup> To the extent of the Soccer Federation's incapacity to fund the interest costs from the grandstand levy was identified in the Cabinet submissions, it was understated.

Other problems were not identified in the Cabinet submissions such as the lack of definition of FIFA requirements, the Soccer Federation's desire for a much larger project, the financial impact of the Levy System on the NSL Clubs and ownership and management issues.

## **Realistic Set of Options**

The Cabinet submissions for Stage 1 did not identify any options or the consequences of the "do nothing" or base case option. As a matter of law, Treasury Information Paper 90/1 required the "do nothing" option to be considered and a realistic set of options developed and included, from which the best option could be chosen.

Part IV of that paper set out the format for reporting to Cabinet the results of economic and financial evaluations of a project. It also required each feasible option to be identified and those evaluations included as appendices to the submission.

The April 1996 Cabinet submission put forward only one option. It did not include as appendices any economic or financial evaluations of the project. The absence of discussion about feasible options from that submission might have been only a formal breach of the applicable rules if it were not for the fact that there had been no evaluation of the "do nothing" option by the proponent Minister or the proponent agency, the Office for Recreation, Sport and Racing.

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<sup>359</sup> These risks were raised by the representative of Services SA at the first meeting of the Hindmarsh Stadium Redevelopment Committee held on 26 February 1996.

That failure is rendered more stark by the fact that at that time there were four alternatives that had been actively considered by the Hindmarsh Stadium Redevelopment Committee. Woods Bagot had developed four options of varying cost. The cheapest option, Option D, was to build a single tiered grandstand on the eastern side incorporating the existing concrete terraces to remain at the front of the grandstand at an estimated cost of \$4.45 million. The next cheapest option, Option A, was a single tiered grandstand and the replacement of the existing concrete terraces on the eastern side at an estimated cost of \$5.9 million.

Only Option C, upgrading of the western grandstand was put before Cabinet.

The failure to present different options to Cabinet was a clear breach of Treasury Information Paper 90/1, which was a requirement of Treasurer's Instruction 9105, with force of law.

It was not merely a formal failure. By that omission, Cabinet was deprived of an opportunity to exercise control of the project consistent with its original approval given in May 1995. It was incumbent upon Mr Ingerson as the proponent Minister and the Office for Recreation, Sport and Racing as the proponent agency to ensure that options were presented to Cabinet in accordance with Treasury Information Paper 90/1.

It was Minister Oswald's view that when Cabinet had approved further negotiations for a new eastern grandstand in April 1995, it had been on the basis that the budget must be strictly limited to \$6.5 million and that an eastern grandstand together with temporary seating would be sufficient to secure matches in the 2000 Olympic Soccer Tournament. He gave evidence to this Examination that the Soccer Federation had sought to use comments about temporary stands made by FIFA as a reason to expand the scope of the development but he had insisted on the project remaining limited to one grandstand within the budget of \$6.5 million. His departmental staff received informal indications from SOCOG that temporary seating would be sufficient.

There were good reasons advanced by Woods Bagot for the selection of Option C (redeveloped western grandstand).

- In any future development of the stadium the new grandstand the subject of Stage 1 was to be the main grandstand and would hold more spectators than grandstands to be constructed on the other sides. The main grandstand should have the best position taking into account prevailing weather conditions and sun position. Those factors militated in favour of the western grandstand being the main grandstand.
- It would leave open greater scope for future development of the stadium.

However, the minutes of discussion of the options that took place at the Hindmarsh Stadium Redevelopment Committee meetings record that the desirability of Option C was not accepted without reservations by the members of that committee:

- The Chief Executive Officer of the Office for Recreation, Sport and Racing initially preferred Option D (single tiered eastern grandstand) because it allowed for 5,000 seats and hence it would be easier for the Soccer Federation to service the loan.
- The Soccer Federation and the NSL Clubs initially preferred Option D (single tiered eastern grandstand) because it gave better corporate facilities.

- The representative of Services SA considered that Option C (redeveloped western grandstand) presented greater risk in regard to cost and time.

In that context, it was important for Cabinet to be fully informed of the options available at that time. The April 1996 Cabinet submission should have informed Cabinet that there were viable cheaper options that, together with temporary grandstands, may have satisfied FIFA and SOCOG requirements.

The issue of presenting more than one option to Minister Ingerson was considered by the Hindmarsh Stadium Redevelopment Committee at its first meeting and rejected. The Chair of the meeting, Mrs Hall:

*"...advised that this Committee will determine the preferred option and will then recommend accordingly to the Minister."*

Despite that statement, the next day, Woods Bagot asked Services SA to check and inform them:

*"...if another option (A or D) to be presented to the Minister. (Agreed that no further costing or development required for these options)".<sup>360</sup>*

Minister Ingerson was ultimately presented with Option C (redeveloped western grandstand) as the recommendation of the Hindmarsh Stadium Redevelopment Committee.

### **Inadequate Consultation with Central Agencies**

The Office for Recreation, Sport and Racing did not consult adequately with the central advisory agencies or Services SA in preparing Cabinet submissions for approvals sought for Stage 1.

### ***May 1995 Cabinet Approval***

The May 1995 Cabinet submission was prepared by the proponent agency on the same day as it was signed by Mr Oswald as Minister for Recreation, Sport and Racing and was considered by Cabinet.<sup>361</sup> Representatives of the Crown Solicitor's Office and the Department of Treasury and Finance were consulted in so far as they were involved in the brief negotiations with the Soccer Federation that resulted in the April 1995 Memorandum of Understanding. The representative of the Crown Solicitor's Office involved in the negotiations said in evidence to this Examination that he recommended a non-binding memorandum of understanding to record the status of negotiations between the Soccer Federation and the Government because there had been insufficient time to negotiate and draft properly a binding agreement.

The Department of Treasury and Finance prepared a minute to the Treasurer dated 1 May 1995 that supported the submission, but recommended that the funding arrangements should be structured to limit the Government's liability to a fixed capital contribution. Almost a year later, in April 1996, an internal minute of the Department of Treasury and Finance commented that it was apparent that little consideration had been given in 1995 to the means by which the Government could provide financial

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<sup>360</sup> Minutes of Consultant Meeting No 1 dated 27 February 1996.

<sup>361</sup> ie 1 May 1995.

assistance for the project. That minute identified the risks arising from the Government's preparedness to effectively underwrite the total cost of the project including:

- the Soccer Federation's lack of effort in putting forward a financial case to support its loan application would lead to the expectation of a Government guarantee;
- the Soccer Federation had not provided the necessary financial information to the banks to support its application for a loan;
- the provision of a Government guarantee created a disincentive for the Soccer Federation to take a commercial approach to the project;
- an option was for the Government to provide a grant of a fixed amount up front (say 50 percent of the project cost) and force the Soccer Federation to make a proper application for a loan;
- the option proposed was the most expensive one for Government.

The April 1995 Memorandum of Understanding overlooked the issue of how interest repayments would be made on the loan to the Soccer Federation during the construction period (when the levies were not being collected). This additional cost was later assumed by the Government and approved by Cabinet in April 1996.

These issues should have been identified in April 1995 and addressed before April 1996 when they were first recognised. The haste with which the April 1995 Memorandum of Understanding was negotiated, drafted and approved by Cabinet precluded the opportunity for proper consideration of the project by advisory agencies.

The Department for Building Management (the predecessor of Services SA) was not involved in the project until July 1995.

There has been no adequate explanation for the urgency surrounding the entry into the April 1995 Memorandum of Understanding, particularly given the ensuing months of delay in implementing the project.

Mr Oswald has submitted to this Examination that by making this finding I have misunderstood the function of the May 1995 Cabinet submission. Mr Oswald submits that its limited purpose was to seek endorsement of the April 1995 Memorandum of Understanding as a basis for future negotiations. He submits he was not seeking Cabinet approval of a project to construct a new eastern grandstand, he was seeking approval to continue negotiations with the Soccer Federation. I do not accept these submissions. Strictly speaking, Mr Oswald did not need Cabinet approval to negotiate with the Soccer Federation or to enter into a non-binding memorandum of understanding. However, in my opinion, Mr Oswald was prudent in seeking Cabinet's immediate endorsement of the project because the entry into the Memorandum of Understanding with the Soccer Federation was publicly regarded as a serious commitment by the Government to the redevelopment of Hindmarsh Stadium where the estimated cost exceeded \$4 million.

#### ***April 1996 Cabinet Approval***

The Office for Recreation, Sport and Racing prepared the draft April 1996 Cabinet submission without adequate consultation with any of the advisory agencies. The April 1996 submission incorrectly stated



that consultation had taken place with the Department of Treasury and Finance and the Crown Solicitor's Office. It inappropriately conveyed that there had been extensive consultation with these agencies on all aspects of the project. There had not been.

During the course of a briefing on the three sporting stadia projects held on 2 April 1996, a representative of the Crown Solicitor's Office had advised that Cabinet approval would be required for the Hindmarsh Stadium project. There were no further communications between the Office for Recreation, Sport and Racing and the Crown Solicitor's Office on the project until 10 May 1996, after Cabinet approval had been given. In fact, the Office for Recreation, Sport and Racing used the Cabinet submission to brief the Crown Solicitor's Office on the revised project.

Mr Ingerson has submitted to this Examination that the Crown Solicitor's Office had been involved to an appropriate extent. I disagree. As the Crown Solicitor has pointed out to this Examination:

*"In any event, consultation after the preparation of a draft Cabinet submission is of very limited utility. For sensible comment to be made about complex projects, intimate knowledge of the project is required."*

The Department of Treasury and Finance was not given a formal opportunity to comment on the April 1996 Cabinet submission. However, that agency was involved in assessing proposals for a loan to the Soccer Federation from four major trading banks for the project. The Department of Treasury and Finance was also asked to consider how interest on the loan would be funded during the construction period for the soccer and netball stadia (when the levies were not being collected). In early April 1996, the Department of Treasury and Finance also considered the guarantee and risks to the Government's proposed involvement in the project. A number of risks to Government were identified but not communicated to the Office for Recreation, Sport and Racing with the same force as communicated internally within the Department of Treasury and Finance. In my opinion, they should have been. In particular, advice that the proposed change in the scope and budget for the project was an opportunity for Government to renegotiate the terms of its involvement in the project should have been included in the Cabinet submission.

Services SA were not consulted directly for input into this Cabinet submission. In my opinion, they should have been, and particularly, their expertise in identifying the need to define FIFA requirements should have been sought.<sup>362</sup>

### ***August 1996 Cabinet Approval***

Input to the August 1996 Cabinet submission and comments on drafts of it were sought from the Crown Solicitor's Office and the Department of Treasury and Finance by two different representatives of the Office for Recreation, Sport and Racing. That process was started on 13 August 1996.

Regardless of that consultative process and before its conclusion, Minister Ingerson signed the Cabinet submission on 14 August 1996. Significant comments were provided to the Office for Recreation, Sport and Racing on 16 and 19 August 1996, but after Minister Ingerson had signed it and it had been submitted to the Department of Premier and Cabinet.

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<sup>362</sup> Mr Ingerson has pointed out to this Examination that Services SA were involved in the project through Mr Jeff Browne's membership of the Hindmarsh Stadium Redevelopment Committee. The Committee was not involved in preparation of the Cabinet submission.

This process was inefficient and wasted the time of the agency representatives asked to consider urgently the draft Cabinet submission in so far as their comments were not taken into account in preparing the draft submission. Again, there was no need for the urgency.

On this occasion Cabinet was informed of the substance of both agencies' concerns about the project when it met on 19 August 1996. However, there had been inadequate time for Cabinet to consider these concerns properly or for these agencies to formulate fully their concerns.

Services SA was not consulted on the content of the draft submission. In my opinion, it should have been.<sup>363</sup>

## **Inadequate Content of April 1996 Submission**

### **Overview**

The content of the April 1996 Cabinet submission was inadequate for the reasons discussed below. It incorrectly stated that the Soccer Federation had agreed to meet 50 percent of principal and interest payments of a loan to fund the cost of the project. It suggested that the proposed \$8.125 million project would provide an international facility for the Sydney 2000 Olympics. It inaccurately summarised such work as had been undertaken by way of feasibility studies. For the reasons already discussed above, these studies were inadequate as feasibility studies. The Cabinet submissions incorrectly referred to "FIFA requirements" that did not exist.

The April 1996 submission was expressed in such a way as to convey the impression that its recommendations were based upon appropriate studies of the benefits, costs and risks associated with the project. However, contrary to applicable guidelines, no single document was prepared that contained or collated those studies.

The submission referred to two specific studies that had been performed to that time.

### **Misstatement of Soccer Federation Commitment**

The Cabinet submission stated:

*"3.17 The Memorandum of Understanding approved by the Cabinet Budget Committee in May 1995 has been entered into between the Minister for Recreation, Sport and Racing and the South Australian Soccer Federation (SASF) which sets in place the financial parameters for SASF to make up to 50 percent of the principal and interest repayments on the loan which is to finance this project.*

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<sup>363</sup> I note, but do not accept, Mr Ingerson's submission that Mr Browne's involvement on the Hindmarsh Stadium Redevelopment Committee or in giving evidence before the Public Works Committee was an appropriate level of involvement for Services SA.

3.18 *Subsequent negotiations with the SA Soccer Federation has now resulted in the Federation agreeing to meet 50 percent of the principal and interest repayments.* [emphasis supplied]

These statements were incorrect. The Soccer Federation had not agreed to be bound to pay 50 percent, irrespective of the amount of levies collected.

### **Misdescription of Ernst & Young Report**

Paragraph 3.18 of the April 1996 Cabinet submission referred to the Ernst & Young report as follows:

*"With the proposed redevelopment and extensions of the western stand in lieu of the eastern grand stand, the firm of Ernst & Young were engaged to undertake a net present value study. The analysis concluded that the redevelopment of the western grand stand including the northern and southern extensions, which incorporates 3,105 additional seats, provides better value for money and investment for both the State Government and the SA Soccer Federation. Subsequent negotiations with the SA Soccer Federation has now resulted in the Federation agreeing to meet 50 percent of the principal and interest repayments."* [emphasis supplied]

The Cabinet Submission did not say what option represented lesser value for money and investment for the State Government and the Soccer Federation than the proposed upgrade of the western grandstand. However, paragraphs 3.3 to 3.11 of the Cabinet submission referred to the various options considered by the Redevelopment Committee as part of the Woods Bagot master planning process.

A copy of the Ernst & Young report was not annexed to the Cabinet submission. In fact, only a draft report of the Ernst & Young study had been completed at that time. It compared:

- A \$6.2 million upgrading of the western grandstand (comprising 3,279 seats) and deferring the construction of northern and southern extensions to the western grandstand (a further cost of \$1.275 million for an additional 756 seats); and
- A \$8.125 million upgrading of the western grandstand including the further northern and southern extensions (comprising 4,035 seats).

Ernst & Young concluded that it was more cost-effective to proceed with the latter option principally because of the additional costs of having two separate construction projects and the disruption to the playing of soccer.

Ernst & Young had not considered the various options developed by Woods Bagot or the four options presented to the Hindmarsh Stadium Redevelopment Committee.

In my opinion, for the reasons set out above, the summary of the Ernst & Young report in the submission conveyed the impression that Ernst & Young had considered the various options developed by Woods Bagot and those presented to the Hindmarsh Stadium Redevelopment Committee.

### **Woods Bagot Master Planning**

Paragraph 3.3 of the April 1996 Cabinet submission referred to a master plan or study:

*"The Ministerial Advisory Committee with the assistance of the primary consultant has now completed a master plan, which takes into consideration the future development options for the stadium as well as issues associated with off-street parking and road closures for traffic management.*

*The study concluded that the upgrading of the western grandstand, which currently has a seating capacity of 930, was a more strategic approach than the eastern grandstand option due to issues associated from a master plan and environmental (weather) perspective."*

For the reasons stated below, those statements in the Cabinet submission conveyed a false impression about the studies they described.

The reference to "master plan" was a reference to the preliminary design work undertaken by Woods Bagot. That "study" was flawed in that it proceeded on the assumption that the Soccer Federation's desire for an ultimate stadium with a grandstand on each of the four sides of the pitch with capacity for 20,000 was warranted. That assumption was not tested.<sup>364</sup> It should not have been accepted without testing.<sup>365</sup>

### ***Inadequate Description of FIFA Requirements***

The submission assumed that FIFA requirements would be met, but that was not part of the definition of the project that had been given to Woods Bagot nor of the functional design brief that they set for themselves after consultation with the Soccer Federation.

The Cabinet submission did not make clear that the issue of compliance with FIFA requirements was a complex one and that further investigation of that was required. There was at that time no single definitive detailed statement of FIFA requirements.<sup>366</sup>

### ***Adequacy for the Sydney 2000 Olympics***

Paragraph 2.4 stated:

*"With the success of the Sydney Olympic 2000 bid, the Hindmarsh Stadium has been chosen as a venue to host the Olympic soccer fixtures, provided the Hindmarsh Stadium is upgraded to meet the [FIFA] requirements. The upgrading will maximise Adelaide's chances of hosting a preliminary round (4 out of 16 nations) of the Olympic Soccer competition while continuing to host major international events prior to and after the Olympics." [emphasis supplied]*

This paragraph was ambiguous. Adelaide had been chosen as a venue but it only had a chance of hosting Olympic soccer.

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<sup>364</sup> Woods Bagot were instructed by the Soccer Federation to plan for a capacity of 20,000. This is not to criticise Woods Bagot. It is a criticism of the instructions given to Woods Bagot by the Office for Recreation, Sport and Racing, with Services SA's assistance.

<sup>365</sup> This issue is discussed further in relation to Stage 2 under the heading "Woods Bagot Master Planning".

<sup>366</sup> See Appendix 5 of this Report for a detailed explanation of "FIFA Requirements".

Paragraph 3.1 of the submission implied that the project would provide a facility for the Sydney 2000 Olympics.

Paragraph 3.2 of the submission, in describing the original project, stated that:

*"The stadium would be developed to a level which will enhance its use for the Sydney 2000 Olympics football competition."*

The submission did not specify what was necessary to attract the Sydney 2000 Olympic soccer tournament. The submission did not state that there was a bidding process or that the requirements for that process were not yet known and would not be known until SOCOG provided the Government with its questionnaire.

The Chief Executive Officer of the Office for Recreation, Sport and Racing and Minister Ingerson were well aware of these issues. Minister Ingerson, on the Chief Executive Officer's recommendation, had set up the Soccer 2000 Bid Committee in March 1996.

In my opinion, the submission should have addressed these issues frankly and directly and set out the proponent agency's strategy for addressing these potential problems with the project. For example, no consideration was given in the Cabinet submission to deferring the Stage 1 upgrade until receipt of the SOCOG questionnaire and plan an integrated redevelopment.

Mr Ingerson has submitted to this Examination that it was not the purpose of this submission to seek approval for the Olympic Soccer Bid or a project which would secure the Olympic games. Mr Ingerson also submitted that it was plain that Stage 1 was going to be developed in any event, in accordance with the Government's 1993 policy on the provision of upgraded sports stadia. Furthermore, he submitted that these comments in the Cabinet submission were wholly appropriate to place the proposed works in context and show that the works had a broad based prospective value.

I do not accept these submissions as sufficient explanation for a material inadequacy in the April 1996 Cabinet submission.

### **Inadequate Content of August 1996 Submission**

The August 1996 Cabinet submission sought approval of the financial arrangements and funds to enable the construction of an redeveloped western grandstand. Approval was also sought to engage Hansen Yuncken as the Construction Manager.

It referred to the Cabinet approval given for the project in April 1996.

It corrected one incorrect statement from the April 1996 submission but gave, in my opinion, a spurious reason for the change. In relation to the earlier statement that the Soccer Federation had agreed to bear 50 percent of the project costs, the August 1996 submission noted that this was not the case. It implied that there had been a change and that the reason for the change was that originally it was envisaged that the entire project would be funded by a bank loan, meaning that the Soccer Federation would be entirely responsible for 50 percent of the cost. That was wrong. The Soccer Federation had never agreed to contribute to funding costs from its own funds. It had always insisted that its contribution be limited to the Levy monies. There had been no change as suggested. Further, the source of the Soccer Federation's funding had no logical connection with how much it was to be liable to contribute.

## **Inadequacy of July 1997 Submission**

It was a key feature of the April 1995 Memorandum of Understanding and the Funding Deed that the Soccer Federation would bear the cost of the fit out of a new or redeveloped grandstand at Hindmarsh Stadium.

The licence agreement executed by the Soccer Federation and the NSL Clubs in June 1997 included a term that the Soccer Federation would obtain a loan of \$2 million to be guaranteed by the Government to fund the fit out of the corporate and club room facilities in the redeveloped western grandstand. Of that \$2 million, \$300,000 was to be paid by the NSL Clubs for the commercial kitchen to service the corporate boxes and the clubrooms.

On 9 July 1997, Minister Ashenden, then Minister for Recreation and Sport signed a Cabinet submission seeking approval for a Treasurer's Guarantee for a loan of \$2 million by the Soccer Federation for the fit out of the western grandstand.

The Cabinet submission advanced the following justifications for approval of the Fit Out Guarantee:

- It was necessary to make the Soccer Federation legally responsible for the fit out to ensure it was completed in a timely and consistent fashion.
- The Soccer Federation could not afford the fit out from its own assets and so needed the guarantee to be able to borrow the money.
- The works were necessary for the hosting of matches in the 2000 Olympic Soccer Tournament. If those works were done on a temporary basis it would cost \$250,000.
- The Soccer Federation could afford to service the loan from an additional levy because market research had shown that there was room for growth in the soccer market and attendances at soccer matches continued to grow.

These matters were plainly inadequate to justify the provision of a \$2 million Government guarantee to enable the funding to fit out facilities for use predominantly by the Soccer Federation and the NSL Clubs. In my opinion, the provision of a Government guarantee essentially conferred a private benefit that was an inappropriate use of Government resources.

There was no merit in the proposition that conferring legal responsibility for the fit out on the Soccer Federation would ensure that the fit out was completed properly or in a timely fashion. Absence of financial risk for the Soccer Federation and the NSL Clubs, ensured that the Soccer Federation and the NSL Clubs had no interest in controlling the scope or cost of the fit out works. This obvious risk was not identified.

If the works were necessary for the hosting of the 2000 Olympic Soccer Tournament, then that issue should have been fully discussed and a sound business case presented as to why \$2 million worth of permanent facilities were justified instead of \$250,000 of temporary facilities. This was not done.

The necessity for the scope of the proposed fit out works was not questioned. The scope of the works was set by the Soccer Federation, the NSL Clubs and Woods Bagot. The submission did not

inform Cabinet that when it was the obligation of the Soccer Federation and the NSL Clubs to pay for the fit out,<sup>367</sup> the proposed cost of the fit out works was only \$1 million. However, since the NSL Clubs had successfully renegotiated the terms of their Licence Agreements with the Soccer Federation, the solution to the impasse between them was to pass the entire financial risk for the fit out to the Government.

The submission did not mention the concerns of the Executive Group of the Hindmarsh Stadium Redevelopment Committee that the project would be delayed because of the difficulties encountered in getting specifications for the design of the fit out from the NSL Clubs and the impasse in negotiations between the Soccer Federation and the NSL Clubs over their financial arrangements for the redeveloped facility. These concerns should have been articulated. In my opinion, the Executive Group's desire to effectively increase the Government's exposure for Stage 1 by \$2 million in order to maintain project efficiency and deliver the project before the beginning of the next NSL season should have been made transparent in the submission to Cabinet. It was not.

There was no proper analysis of the stated findings of the market research conducted by Hamra Management.

No proper feasibility investigations had been undertaken into the financial position of the Soccer Federation or the NSL Clubs to substantiate the representations made about their collective financial positions.

The Department of Treasury and Finance did not support the provision of a Government guarantee. That agency pointed out in a minute to the Treasurer the inappropriateness of providing Government guarantees for private purposes, the lack of business case to justify the expenditure or to give comfort that the guarantee would not be called. The Department of Treasury and Finance was also of the view that there was no capacity for the levies to sustain further loan repayments.

The Crown Solicitor's Office also provided comment on the submission. The Crown Solicitor's Office advised the Director of the Cabinet Office that the submission was vague about the nature of the obligations of the Soccer Federation and the Treasurer, extremely vague as to the financial case for the proposal and did not address the financial position of the NSL Clubs.

On 14 July 1997, Cabinet did not decide on whether to approve the granting of the guarantee. Instead, it referred the matter to be investigated by the Chief Executive Officer of the Department of Premier and Cabinet. He produced a minute recording his investigations. That minute showed that his investigations comprised speaking with various banks about whether they would be prepared to lend without the benefit of the Government guarantee.

The conclusion of the minute dated 7 August 1997 was:

*"If Cabinet believes that the development of services and fitout at Hindmarsh warrants a guarantee, then the guarantee should be provided under the same general terms as the existing guarantee except that the Federation and the clubs must in this case accept that the Treasurer will have recourse in the first instance to an increase in the levy beyond*

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<sup>367</sup> ie under the Funding Deed between the Minister for Recreation, Sport and Racing and the Soccer Federation and the 1996 Licence Agreement between the Soccer Federation and the NSL Clubs.

*the \$1 currently provided (say \$3) and failing that after a period of 12 months, to all revenues of the Federation and clubs to recover any calls upon the guarantee."*

On 11 August 1997, Cabinet approved the granting of the Treasurer's Guarantee for the fit out loan subject to:

- the Soccer Federation providing a business plan detailing the source of loan repayments;
- a change in the documentation for the existing and new guarantees so that there is a provision to increase the \$3 levy by more than \$1 over the 20 year period and to allow for the levy to be increased in line with inflation;
- the terms and conditions of the guarantee should be consistent with the existing guarantee which includes the application of a guarantee fee and the new guarantee must be in place before work proceeds.

This approval did not accord with the recommendation of the Chief Executive of the Department of Premier and Cabinet. Consequently, there was no financial risk to the Soccer Federation and the NSL Clubs for the Fit Out Loan.

### **Conclusion about Stage 1 Cabinet Submissions**

The inadequacy of the Cabinet submissions prepared prior to commitment to Stage 1 represented a failure to undertake adequate due diligence on the part of the proponent Ministers, Mr Oswald and Mr Ingerson and the proponent agency, the Office for Recreation, Sport and Racing.

The inadequacy of the July 1997 Cabinet submission represented a failure to undertake adequate due diligence on the part of the proponent Minister Ashenden and the proponent agency, the Department of Recreation and Sport.

### **INADEQUATE DEFINITION OF FIFA/SOCOG REQUIREMENTS**

A principal objective of Stage 1 was at no Stage adequately defined by the proponent agency, the Office for Recreation, Sport and Racing. That objective was loosely described in the first two Cabinet submissions as compliance with international standards for football stadia set by FIFA. Neither Cabinet submission stated that prior to July 1996 there was no single definitive statement of FIFA standards that represented an achievable objective in terms of what was necessary to upgrade Hindmarsh Stadium to international or Olympic standard. The primary consultant was not given clear instructions and not supervised adequately to ensure that the lack of a single statement of FIFA standards was addressed.

After July 1996, when a statement of requirements was received from SOCOG, there was no analysis by either the Office for Recreation, Sport and Racing or Services SA of those requirements to identify what part of SOCOG and FIFA requirements must be met by permanent rather than temporary facilities. The Government agencies involved in the design of Stage 1 allowed the final design to omit



what was on any view the most fundamental of FIFA requirements, that the pitch have certain dimensions.<sup>368</sup>

The failure properly to articulate a central objective of the project was a fundamental failure of due diligence. It meant that the Government was unable, in a rational and coherent way, to ensure formulation of the project's content in the most cost-effective way.

Proponent Ministers Oswald and Ingerson and the proponent agency, the Office for Recreation, Sport and Racing, were principally responsible for this serious failure of due diligence. The Department for Building Management and its successor, Services SA, share some responsibility because of their failure to adequately assist the Office for Recreation, Sport and Racing in specifying the primary objective of the project.

### **Instructions to Woods Bagot about FIFA Requirements**

As elaborated below, in the project definition documents prepared by the Government during the initiation of Stage 1, the meaning of the loose expression "compliance with FIFA requirements" and its variants was repeatedly skirted around.<sup>369</sup> For the objective of compliance with FIFA requirements to be achieved the Office for Recreation, Sport and Racing had to understand those requirements and oversee the project to ensure that they were met. The looseness of the concept necessitated greater, rather than less, vigilance on the part of Office for Recreation, Sport and Racing.

The Department for Building Management prepared a "consultancy brief" dated 4 September 1995, which described in note form the content of the new eastern grandstand. That brief lacked some critical detail. It specified that the seating in the new grandstand should meet FIFA guidelines but it did not mention that the pitch had to be upgraded for the stadium to comply with FIFA guidelines. It failed to specify all of the elements necessary to ensure that the stadium complied with FIFA requirements.

By letter dated 29 September 1995, Woods Bagot were provided with a copy of FIFA's *"Technical Recommendations for the Construction of New Stadia"*. However, they were not instructed that all, or if a part, what part, of that document had to be complied with.

During a site visit during the selection process Woods Bagot was told that a thorough understanding of those requirements was necessary. However, it was not made clear to what extent adherence to those standards was necessary. Nor were Woods Bagot instructed as to the criteria they were to apply in determining which of the standards were mandatory and which optional.

That defect in the instructions given to Woods Bagot was not cured by the documents by which they were formally engaged. On 8 November 1995, the Soccer Federation sent Woods Bagot a letter formally offering Woods Bagot the contract as primary consultant. The only indication of the scope of the retainer was in the letter's heading - *"Hindmarsh Soccer Stadium New Eastern Grandstand"*. That letter stated that it enclosed a formal contract document but it did not. That was not sent until 9 January 1996. The contract then sent defined the scope of Woods Bagot's retainer by reference to Woods Bagot's submission to be the primary consultant.

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<sup>368</sup> The dimensions of the total grass area required were 120m x 80m with a playing area of 105m x 68m. The existing pitch at Hindmarsh Stadium was 114m x 78m.

<sup>369</sup> See Appendix 5 for a detailed explanation of the meaning of "FIFA Requirements".

The definition of the project should have been set during this initial period in such a way as to ensure that the key objective of FIFA compliance could not be lost. If the looseness of the concept meant that the definition could not be set, a procedure should have been put in place to ensure that the Office for Recreation, Sport and Racing could check that compliance had been achieved.

In December 1995 Woods Bagot commenced preparation of their own *"Functional Design Brief"*. It was a far more detailed document than that prepared by the Department for Building Management. In it Woods Bagot defined their project objectives as:<sup>370</sup>

*"Generally, the objective of this project as funded is the design and development of a new eastern grandstand for the Hindmarsh Stadium.*

*In particular there is a requirement to achieve the best value for money for the various stakeholders involved. These stakeholders are:-*

1. *South Australian Soccer Federation*
2. *City of Hindmarsh Woodville (owners of the site)*
3. *Government of South Australia (provider of finance and represented by Office for Recreation, Sport and Racing)*
4. *The National League Clubs - Adelaide City and West Adelaide (currently located on site in western grandstand)*
5. *All the Federation clubs*
6. *Soccer Australia (National ? body)*

*Due to the long term implication of this project to the first 3 stakeholders in particular, the agreed methodology is to thoroughly investigate and analyse the current and future needs and objectives of the stakeholders and develop a flexible master plan for the full long term development of the facilities on this site. From this viewpoint, it is intended to determine the most appropriate use of the current available funding to agree a scope and brief for the first stage.*

*Detailed objectives within the above scenario are:-*

- *Provide the most value for the least cost at all times*
- *Provide the best possible amenity for all of the spectators and other users*
- *Provide as many covered seats as possible*
- *Provide a world class facility to promote soccer and South Australia throughout Australia and internationally*

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<sup>370</sup> Page 2 *"Functional Design Brief"* dated 14 August 1996.

- *To add value and financial return to all of the stakeholders*
- *To optimise the flexibility of the stadium to capitalise on alternative events and uses*

*The overriding requirement is to maximise spectator seating and bring the stadium up to FIFA Standards for international standard matches..."*

The brief did not state the criterion that Woods Bagot applied in deciding which of FIFA's recommendations would be satisfied. Woods Bagot's design brief was circulated to Services SA and the Office for Recreation, Sport and Racing in August 1996. The failure at that point to define what compliance with FIFA guidelines meant should have been noticed by the Office for Recreation, Sport and Racing or Services SA and they should have queried it with Woods Bagot.

### **Failure to Analyse Requirements Received from SOCOG**

SOCOG told the Government on about 3 March 1996 that SOCOG was preparing a detailed questionnaire on venues, training sites and issues associated with hosting preliminary rounds for the 2000 Olympic Soccer Tournament.

No consideration was given to postponing the design work on Stage 1 pending receipt of that document.

That questionnaire was received on about 9 July 1996, with a statement of SOCOG and FIFA's minimum requirements. That document was not provided to Services SA.<sup>371</sup> It was circulated via the Soccer 2000 Bid Committee on which Services SA were not represented.

Prior to receipt of that document, Woods Bagot had prepared a first draft of a schedule entitled "*FIFA Requirements Schedule*" as part of their functional design brief. Next to a list of FIFA requirements Woods Bagot noted:

- whether the requirement was met by "existing provision";
- whether the requirement was met by "proposed provision" ie by the Stage 1 works; and
- under the heading "remarks", if it was not proposed to meet the requirement, an explanation.

Woods Bagot constructed the list of requirements by abstracting short form descriptions from FIFA's Technical Recommendations booklet. A number of items were not proposed to be included in Stage 1. For most of these the explanation given was that the existing facilities were "*considered adequate by SASF*". For many it was obvious from the table why that would be the case. For example, the ability to divide the viewing area into four self-contained sectors was principally a crowd control issue that was not critical in Australia. For others, the departure was not explained.

The table was a sensible and methodical way of addressing this issue at the time when SOCOG had not yet provided its firm statement of minimum requirements.

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<sup>371</sup> Woods Bagot were instructed to keep their work on the bid for the Olympic Soccer Tournament confidential.

However, after SOCOG's statement of minimum requirements was received on about 9 July 1996, Woods Bagot's *"FIFA Requirements Schedule"* was superseded. The statement of minimum requirements should at that time have been analysed closely. Woods Bagot did in fact undertake that exercise as part of their involvement in preparation of the response to SOCOG's questionnaire. The document Woods Bagot produced was called a "compliance matrix". However, Woods Bagot did not distribute that document to those involved in the Stage 1 design process until November 1996.

The final version of Woods Bagot's *"FIFA Requirements Schedule"* rather than the compliance matrix was included as an appendix to Woods Bagot's *"Functional Design Brief"* dated 14 August 1996 prepared to define the Stage 1 project prior to commencement of detailed design work.

Mrs Hall and Mr Michael Scott, the Chief Executive Officer of the Office for Recreation, Sport and Racing, knew about the statement of minimum requirements in their capacity as members of the Soccer 2000 Bid Committee but did not take steps to ensure that it was analysed by Woods Bagot and Services SA before commitment to Stage 1. Minister Ingerson, to whom Mrs Hall reported, also did not ensure that the effect of the statement of minimum requirements upon Stage 1 was given proper consideration.

### **Omission of Pitch Upgrade**

Although there was uncertainty as to which of the particular elements in the FIFA Technical Recommendations booklet were mandatory, there was no doubt that pitch size was not negotiable. Further, it is in the nature of pitch size that it had to be met by permanent rather than temporary facilities. It was possible that some requirements of FIFA or SOCOG could be met by temporary facilities. However, if Stage 1 was to meet FIFA requirements, it had to address all of the required works of a permanent nature.

Pitch size was one of those items. The Laws of the Game specify the size of pitch required for international matches. By letter to the Soccer Federation dated 22 January 1996, FIFA confirmed that pitch size was not negotiable.

Woods Bagot included the upgrade to the pitch size in each description of the Stage 1 project up to and including the August 1996 *"Functional Design Brief"*.<sup>372</sup>

As detailed design work proceeded in August 1996, the Soccer Federation sought the inclusion of items that it perceived as desirable for its use of the upgraded western grandstand. As the list of included items grew it became clear that the desired works would not fit within the budget approved by Cabinet.

On 6 August 1996, a Value Management Study was conducted by Woods Bagot and Services SA, partially to determine cost saving opportunities. On 27 August 1996, the Executive Group of the Hindmarsh Stadium Redevelopment Committee, noted and endorsed a strategy of deferring the eastern side development and the pitch upgrade if necessary. The Chief Executive Officer of the Office for Recreation, Sport and Racing minuted as raising the possibility of funding the pitch upgrade as part of the Olympic bid.

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<sup>372</sup> The existing grassed area of 114m x 78m needed to be increased in size to 120m x 80m, with a playing area of 105m x 68m. Extra clearance was required from the playing area boundaries.

Services SA prepared a draft cost summary on 19 September 1996 that was tabled at the Executive Group meeting held later that day and reviewed to determine items that could be undertaken at a later date and deferred to bring the project back to budget. It was further agreed that these items could be re-included if expenditure trends improved.

The agreed deferrable items included the pitch upgrade. That pitch upgrade was essential to comply with FIFA requirements. By that decision, the Executive Group ensured that a key objective of Stage 1 would not be achieved.

A sub-committee of the Executive Group was convened on 18 October 1996 to consider the revised budget for the project based on Cabinet approving additional funds for latent conditions and the Development Act conditions. The pitch upgrade was shown as an exclusion from the scope of works while other new items were included such as air conditioning for corporate boxes and the Soccer Federation's loan costs.

At that time, no expenditure on permanent construction works beyond Stage 1 had been authorised. It was a very significant failure of due diligence that the Hindmarsh Stadium Redevelopment Committee as the project steering committee and the Office for Recreation, Sport and Racing as the proponent agency for the project allowed a decision to be made that had the effect of guaranteeing that a key objective of Stage 1 would not be met.

## CHAPTER 20 – PUBLIC WORKS COMMITTEE PROCESS FOR STAGE 1

### OVERVIEW

The Public Works Committee's support for the project given in its 33rd Report was based on a submission from the Office for Recreation, Sport and Racing that contained inaccurate and confusing statements about the requirements of SOCOG. Oral evidence given to the Public Works Committee reinforced the impression that the Stage 1 project would meet FIFA requirements and provide the necessary facilities for Adelaide to host the Olympic Soccer Tournament. The Public Works Committee was also given an incomplete version of the Crown Solicitor's Office's advice about the risks attendant upon the Minister for State Government Services directly contracting to undertake the development.

### INADEQUATE INFORMATION ABOUT FIFA/SOCOG REQUIREMENTS PROVIDED TO THE PUBLIC WORKS COMMITTEE

As required by the *Parliamentary Committees Act 1991*, Stage 1 was referred to the Public Works Committee by a submission dated 5 June 1996. The written submission contained inaccurate and confusing statements, as an examination of the true position in respect of SOCOG's requirements shows. Oral evidence given to the Public Works Committee did not clarify the position. As a consequence, the Public Works Committee's support of the project was misinformed.

#### Written Submission to the Public Works Committee

The submission to the Public Works Committee was prepared by the Office for Recreation, Sport and Racing. In preparing that submission they obtained substantial assistance in drafting from Woods Bagot.

The formal submission to the Public Works Committee of Stage 1 was, in my opinion, inadequate to assist that committee to discharge its functions pursuant to Section 12C of the *Parliamentary Committees Act 1991*.

The Public Works Committee was required to inquire into, consider and report on "*the stated purpose*" and "*the necessity or advisability of constructing*" the project.

With respect to "*the necessity or advisability of constructing*" Stage 1, the submission to the Public Works Committee contained the following passage from the April 1996 Cabinet submission:

*"With the success of the Sydney Olympic 2000 bid, the Hindmarsh Stadium has been chosen as a venue to host the Olympic soccer fixtures, provided the Hindmarsh Stadium is upgraded to meet the [FIFA] requirements. The upgrading will maximise Adelaide's chances of hosting a preliminary round (4 out of 16 nations) of the Olympic Soccer competition while continuing to host major international events prior to and after the Olympics." [emphasis supplied]*

Those two sentences were inconsistent. The first, taken alone, suggested that Adelaide had already been selected and that all it had to do was meet FIFA requirements. The second, taken alone, suggested that there was a selection process still to be undergone. Taken together, they were confusing and ambiguous.

That was not remedied by other sections of the written submission. For example, the submission also stated:

*"When it was announced that the 2000 Olympics had been awarded to Sydney, the success of the World Youth matches in 1993 provided the spring board for Adelaide to host preliminary matches for the Sydney 2000 Olympics. A letter to the Premier in January 1995 from the Executive President of [SOCOG] confirmed Adelaide was included in the list of venues for the soccer preliminary matches provided the venue was acceptable to the FIFA, SOCOG and the Australian Soccer Federation and in turn sought confirmation for the State Government to participate in the Olympic Games."*<sup>373</sup>

Mr Ingerson has submitted to this Examination that this matter was explained by Mr Farrugia in the oral evidence he gave to the Public Works Committee on 12 June 1996.<sup>374</sup> In my opinion, Mr Farrugia's evidence gave the clear impression that Adelaide would host the Olympic Soccer Tournament if Hindmarsh Stadium was upgraded to meet FIFA requirements. Mr Bollen's oral evidence reinforced this impression:

*"Adelaide was to be chosen as the venue of the preliminary matches for the Olympic soccer competition, with the proviso that there be certain upgrading, including increased pitch size and seating facilities to a minimum recommended capacity of 20,000 people."*

*The current project allows for a total capacity of 15,000 people but the additional 5,000 people can be accommodated in temporary seating at the northern and southern ends of the facility at a later stage if funds are not available for further development of this project. The announcement of the 2000 Sydney Olympic Games and Adelaide's hosting of the preliminary matches saw an executive committee formed to establish some of the funding proposal for the development of this project."*<sup>375</sup>

### **True Position on Satisfaction of Olympic Requirements**

The submission to the Public Works Committee, as a whole, was inadequate to convey the true position known by Government at that time.

- SOCOG had told the Chief Executive Officer of the Office for Recreation, Sport and Racing in early March 1996 that SOCOG was preparing a detailed questionnaire on venues, training sites and issues associated with hosting preliminary rounds for the 2000 Olympic Soccer Tournament. That questionnaire was received with a letter to the Premier dated 9 July 1996, with a statement of SOCOG and FIFA's minimum requirements, after the submission to the Public Works Committee but before it had reported.
- The Government had a copy of FIFA's detailed *"Recommendations for Construction of Stadia"*. Those guidelines were stated not to be binding but the Government and Woods Bagot adopted the view that it was desirable that they be adhered to as far as possible. One key reason for not applying those guidelines to Hindmarsh Stadium was that they were heavily oriented to

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<sup>373</sup> Page 8.

<sup>374</sup> See page 89 of Chapter 9 where Mr Farrugia's evidence is quoted.

<sup>375</sup> Page 2 of the transcript for 12 June 1996.

European soccer where crowd control was a far more significant factor. In Europe crowd control issues led to the use of high security fences, segregated seating areas and moats around the pitch. Those and other requirements were not necessary in Australia. Therefore, the Government had to wait for the questionnaire from SOCOG before it knew definitively what SOCOG's minimum requirements were.

The questionnaire and statement of minimum requirements received from SOCOG in July 1996 introduced a complication that the Public Works Committee was not informed about. That complication was that SOCOG's July 1996 letter of invitation stated that SOCOG and FIFA would select "preferred" venues from those that met the minimum requirements. It did not state the basis for selection. Obviously, in a competition where there are more bidders than places, the better bids will win. However there were no defined standards setting out what would make a bid "better".

In my opinion, the Public Works Committee should have been informed of these matters.

### **Public Works Committee Erroneous Conclusion in 33<sup>rd</sup> Report**

Ultimately, the Public Works Committee incorrectly concluded in its Report dated 28 August 1996:

*"This upgrade will provide Adelaide with the necessary facilities to host preliminary matches for the Sydney 2000 Olympics."*<sup>376</sup>

*"To ensure Adelaide retains the opportunity to host preliminary rounds of the competition, it is essential that a stadium meeting the FIFA minimum requirements is available..."*

*The proposed upgrade will ensure those requirements are met."*<sup>377</sup>

## **INCOMPLETE ADVICE OF THE CROWN SOLICITOR'S OFFICE PROVIDED TO THE PUBLIC WORKS COMMITTEE**

After its initial hearings in July 1996, by letter dated 17 July 1996, the Public Works Committee requested from Mr Ingerson as Minister for Recreation, Sport and Racing that advice be obtained from the Crown Solicitor's Office that the construction management and tender processes for the project were appropriate.

In preparing that advice, the Crown Solicitor's Office relied exclusively on a conference held on 24 July 1996 with a representative from the Office for Recreation, Sport and Racing and one from Services SA and a minute written by the representative from Services SA at the Crown Solicitor's Office's request following that conference.

On 26 July 1996, the Crown Solicitor's Office prepared a minute to Minister Ingerson in response to the request from the Public Works Committee. That minute referred to an accompanying minute that addressed some "legal, commercial and risk management issues" that were closely associated ie the structure for ownership and management.

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<sup>376</sup> Page 4.

<sup>377</sup> Page 9.



On 29 July 1996, the Crown Solicitor's Office prepared a further version of its advice to the Minister for Recreation, Sport and Racing in response to the Public Works Committee's request but omitting the reference to the accompanying minute that contained the following additional advice about the issue of ownership and management:

- The Crown Solicitor's Office had discussed the Council's willingness to consent to the development under the lease and to granting a licence to the Minister to build on its land. It had also "*foreshadowed that some sort of 'facilitation deed' may be necessary between the Council and the Crown regulating the Council's right to terminate the lease.*" The Crown Solicitor's Office proposed to write to the Council formally about these matters after it had reviewed the lease.
- If the Minister for State Government Services became the principal in the construction agreements, the Crown Solicitor's Office considered that "*a fundamental change is effected to the nature of the relationship between the Crown on the one hand and the Soccer Federation on the other as well as raising a constellation of related commercial, legal and risk management issues. Furthermore, all of these issues will have to be reflected in the relevant documentation.*"

In my opinion, the Public Works Committee should have been provided with the full text of the earlier advice of the Crown Solicitor's Office. The additional issues were sufficiently connected for it to be appropriate that the Public Works Committee be fully informed of them.

#### **Satisfaction of Conditions Imposed by the Public Works Committee**

The Terms of Reference of this Examination expressly require investigation of whether the conditions set out in the Crown Solicitor's advice dated 29 July 1996 were met. Compliance with that advice was a condition of the Public Works Committee's support for the project in its 33<sup>rd</sup> Report.

The Crown Solicitor's advice referred to was contained in a minute from the Crown Solicitor's Office to the Minister for Sport's office dated 29 July 1996. Relevantly, that minute read:

*"First, the Public Works Committee has requested the Minister to instruct the Crown Solicitor to provide his written confirmation that "the procedure being adopted for Construction Management and tender processes of the Hindmarsh Stadium is well founded, lawful in all respects and legally defensible". I note that in providing my opinion on this matter I am exclusively relying on a conference held between Ms Judith Freeman, Mr Vaughn Bollen and the writer on Monday, 22 July 1996 and the minute dated 24 July 1996 from Ms Judith Freeman to the Chief Executive Officer of the Officer of Recreation, Sport and Racing written at my request as a consequence of that conference.*

*Turning to the Public Works Committee's confirmation request, I advise that the process as described in Services SA's minute referred to above would be legally defensible as an appropriate arrangement expeditiously and efficiently to undertake the redevelopment of Hindmarsh Stadium in the light of all relevant circumstances provided that each of the following conditions is satisfied.*

1. *Cabinet approves the Minister for State Government Services to be the principal contracting party and to be contractually responsible to undertake the development.*
  
2. *The various commercial, prudential and risk management issues attendant upon the Minister for State Government Service directly contracting to undertake the redevelopment are adequately addressed, especially in respect of the contractual relationship between the Crown on the one hand and the Soccer Federation on the other.*
  
3. *The process set out in Services SA's minute dated 24 July 1996 are implemented and observed. This would include the following:*
  - 3.1 *all usual government tender processes are implemented and observed;*
  
  - 3.2 *the Minister is exclusively responsible to accept the lowest conforming tenders;*
  
  - 3.3 *the Hindmarsh Redevelopment Executive Group and the Hindmarsh Redevelopment Committee are, in relation to the actual undertaking of the development, merely performing a liaison or consultative function and do not have any right or power to determine or influence the acceptance of tenders or the performance of the Minister's contractual, prudential or construction responsibilities and obligations.*
  
4. *Any "sponsorship" arrangements proposed by individual tenderers for "trade packages" are considered separately from the acceptance of the actual tender and are negotiated independently by the Soccer Federation directly with any such tenderer."*

All matters were complied with in form. The issue of sponsorship is discussed in detail in Chapter 39 below. Compliance with paragraphs 2 and 3.3 requires further discussion.

Paragraph 2 was ambiguous. The words "*various commercial, prudential and risk management issues*" suggested a wide compass. The words "*attendant upon the Minister for State Government Services directly contracting*" suggested that the concern was only about the direct consequences during construction of the Minister for State Government Services being the principal in the construction contract.

The direct consequences of the Minister being principal included a concern that in accepting responsibility as principal for building works to be undertaken on land in respect of which the Soccer Federation exercised total control, the Minister for State Government Services might become liable to the Soccer Federation in some way. That risk was adequately addressed in form by the close supervision of the project by Services SA.

At that time, the Crown Solicitor's Office had identified a range of "*commercial, prudential and risk management issues*" that were not directly attendant upon the Minister being contract principal but which were sufficiently closely related to it in other contexts. Three days before the date of the Crown

Solicitor's Office's advice relied upon by the Public Works Committee, a Crown Solicitor's Office minute prepared on 26 July 1996 recorded:

*"I have also discussed with the Director of Corporate Services of the City of Hindmarsh and Woodville its willingness to consent both to the granting of a licence to the Minister for SGS to occupy and control portions of Hindmarsh for the purpose of undertaking the development and to the actual undertaking of the development for the purposes of the lease. He indicated that the Council supported this in principle and he would be recommending to Council that these consents be given. I am advised that this matter is to be considered by Council on 12 August 1996.*

*I also foreshadowed that some sort of "facilitation deed" may be necessary between the Council and the Crown regulating the Council's right to terminate the lease.*

*I advised that I will write to the Council this week formally discussing these matters after I have had the opportunity of considering the lease."*

That passage appeared in minutes sent to the Department of Treasury and Finance, Services SA, the Office for Recreation, Sport and Racing and the Attorney-General. The Facilitation Deed was prepared by the Crown Solicitor's Office in 1998 but never sent to the Soccer Federation or the Council, let alone executed. Accordingly, while the concerns raised in paragraph 2 of the Crown Solicitor's Office's minute were fulfilled as required by the Public Works Committee, the other serious concern raised contemporaneously by the Crown Solicitor's Office was not.

Paragraph 3.3 was adhered to in form. The Hindmarsh Stadium Redevelopment Committee Executive Group made recommendations that were referred to Minister Ingerson for approval. However, the manner in which that committee made its decisions gave inadequate weight to preserving the benefits upon which the Government had relied in embarking upon Stage 1 of the project. There was not a single instance when the recommendations of the committee was not accepted by the Government. As a matter of practice the wishes of the Soccer Federation usually carried the day in that forum.

In my opinion, as a matter of form the Crown Solicitor's Office's advice was adhered to. However, as a matter of substance the risks that the Public Works Committee sought to have addressed by imposing those conditions on the provision of its support were not addressed.

### **Conclusion on the Stage 1 Public Works Committee Process**

The investigation of public works by the Public Works Committee is a statutory requirement of the *Parliamentary Committees Act 1991*. In an appropriate case, Parliament can act on the report of the Public Works Committee to stop a project. The requirement recognises that public works of a certain size have such significance that an added check is necessary as part of the initiation and approval of a project. That statutory requirement is undermined if Executive Government does not provide the Public Works Committee with full and accurate information upon which to base its recommendations.

The Public Works Committee's support for the Stage 1 project was founded on the erroneous conclusion that Stage 1 would ensure that FIFA requirements were met and would provide the necessary facilities to host the Olympic Soccer Tournament. In my opinion, the Public Works Committee process was misinformed by inaccurate and incomplete information provided by representatives of the Soccer Federation and the Office for Recreation, Sport and Racing.

# CHAPTER 21 - DIRECTION AND CONTROL OF STAGE 1

## OVERVIEW

This Chapter addresses the Government's failure to adequately direct and control Stage 1 of the Hindmarsh Stadium Redevelopment Project. The inadequacies discussed in detail below can be summarised as follows.

- The Government adopted a series of inappropriate committee structures to control the project. Although those committees were nominally advisory, in practice they made key decisions about the redevelopment. The committees' decisions were in large part dictated by the desires of the Soccer Federation and advice given by Woods Bagot rather than the Government's objectives.
- The central agencies of the Department of Treasury and Finance and the Crown Solicitor's Office, together with Services SA were unable to ensure that necessary due diligence issues were addressed. These agencies gave advice to the Office for Recreation, Sport and Racing, and Minister Ingerson that was either disregarded or inadequately addressed. Minor criticisms can be made of the representatives of these agencies who did not follow through with prudential matters they had identified.

## COMMITTEE STRUCTURE

The Government adopted inappropriate committee structures to control the Stage 1 project. Although the committees set up were nominally advisory, in practice they made key decisions about the redevelopment. Decisions made by these committees were in large part dictated by the desires of the Soccer Federation and advice given by Woods Bagot rather than by the Government's objectives.

### Definition of Committee Roles and Functions and Reporting Requirements

It is a matter of common sense that for a committee to effectively fulfil its function, there must be a clear and appropriate definition of its role and function and defined expectations of its reporting function. The Government's information booklet "*Government Boards and Committees – Guidelines for Agencies and Board Directors*" also makes this plain.<sup>378</sup>

The documents setting up each committee did not adequately define the committee's responsibilities or the reporting mechanism or accountability of the committee.

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<sup>378</sup> This booklet was available within Government from September 1995.

## Committees Set Up Under Minister Oswald

After the April 1995 Memorandum of Understanding had been approved by Cabinet, the Chief Executive Officer of the Office for Recreation, Sport and Racing set up four committees, each with representatives from the bodies shown below:

Committee	Organisation
Finance	Soccer Federation Office for Recreation, Sport and Racing Department of Treasury and Finance
Marketing	Soccer Federation Office for Recreation, Sport and Racing
Project Design and Development	Soccer Federation Office for Recreation, Sport and Racing Department for Building Management
Executive	Soccer Federation Office for Recreation, Sport and Racing Department of Treasury and Finance Crown Solicitor's Office Department for Building Management the Council <sup>379</sup>

The set up of those committees was defined in a letter sent to the Soccer Federation dated 18 May 1995. Although it described the function of each committee, it did not specify how decisions would be made. It did not specify who would have the final say on any issue.

The Executive met only once in July 1995. The committee structure did not serve any effective purpose because between July and December 1995, the project was implemented largely outside the committee structure. During that period it was implemented by the Soccer Federation and the Office for Recreation, Sport and Racing with assistance from the Department for Building Management and Woods Bagot.<sup>380</sup>

The Department for Building Management were appointed project manager for Stage 1 in August 1995. The Department for Building Management supervised the tender, selection and appointment of the primary consultant and compiled the preliminary project brief.

Woods Bagot were appointed primary consultant in November 1995. Invitations were sent to banks seeking proposals for a loan to the Soccer Federation for its share of the project costs. Woods Bagot undertook their preliminary design and master planning work and developed a series of options for Stage 1. Woods Bagot worked closely with the Soccer Federation *"to understand their financial drivers and business objectives before finalising the brief and scope of the project."*<sup>381</sup>

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<sup>379</sup> The former City of Hindmarsh and Woodville, now the City of Charles Sturt, was invited to join the Executive Committee on 30 November 1995.

<sup>380</sup> In early 1996 this committee structure was replaced by another set up by Ingerson as the new Minister for Recreation, Sport and Racing.

<sup>381</sup> Woods Bagot's first project report dated 18 January 1996.

The budget of \$6.2 million<sup>382</sup> set in the April Memorandum of Understanding acted as the only real constraint in the development of the scope of the redevelopment works.<sup>383</sup> Otherwise, the Government's control over the content of the proposed redevelopment was loose. The Government had not investigated the feasibility of the proposed redevelopment or properly articulated and documented its objectives for a new eastern grandstand. Consequently, the process of project design and development was vulnerable to the strong desire of the Soccer Federation to develop an international stadium without regard to the financial viability of doing so.

In my opinion, for the reasons set out above, the proponent agency, the Office for Recreation, Sport and Racing and the responsible Minister Oswald did not assert proper control over the project in its formative stage from April to December 1995.

### **Committees Set Up By Minister Ingerson**

After Mr Ingerson became Minister for Recreation, Sport and Racing in December 1995, he established a new committee structure to replace those committees set up by the Chief Executive Officer of the Office for Recreation, Sport and Racing while Mr Oswald was the responsible Minister.

In February 1996, Minister Ingerson set up the Hindmarsh Stadium Redevelopment Committee, with Mrs Hall as Chair. In May 1996, Mrs Hall set up what was nominally a sub-committee called "the Hindmarsh Stadium Redevelopment Committee Executive Group". She described the Executive Group's role at its first meeting as *"a working executive that would deal with the day to day issues to ensure efficiency."*<sup>384</sup> The Executive Group's minutes record its function as managing the scope of the project within the budget's parameters.<sup>385</sup>

After its first two meetings, the Hindmarsh Stadium Redevelopment Committee met infrequently, ie only every second or third month, until its final meeting in December 1996. The bulk of the work in overseeing Stage 1 was carried out by the Executive Group. It met once or twice a month from May 1996 until the completion of Stage 1 in December 1997.

The Executive Group was the same as the Hindmarsh Stadium Redevelopment Committee except representatives of the NSL Clubs and the Council were excluded.

There were no formal terms of reference for either committee.

Minister Ingerson partially defined the functions and responsibilities of the Hindmarsh Stadium Redevelopment Committee in his letter of invitation to the various members. The letter described it as a Ministerial Advisory Committee, responsible to Ingerson as Minister for Recreation, Sport and Racing. It also stated that he expected that the committee would provide him with regular progress reports to ensure that the redevelopment was delivered within the agreed budget of \$6.5 million and

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<sup>382</sup> ie excluding the \$300,000 reimbursement for the Soccer Federation's administration facilities.

<sup>383</sup> For example, Minister Oswald refused to increase the budget for the redevelopment in August 1995 when the Soccer Federation submitted that FIFA considered that temporary stands would be inadequate.

<sup>384</sup> Minutes, 23 May 1996.

<sup>385</sup> Minutes, 19 September 1996.

on time by August/September 1997, with least disruption to the South Australian soccer community and the NSL competition.

Minister Ingerson did not give any direction as to the mechanism by which the committee's advice would be communicated to him as Minister. In his evidence to this Examination, Mr Ingerson said that he kept himself informed by involving his Parliamentary Secretary Mrs Hall as Chair of the committee and receiving regular verbal reports from and weekly meetings with Mrs Hall and Mr Michael Scott, the Chief Executive Officer of the Office for Recreation, Sport and Racing.

As the committees commenced operation, the method of reporting was developed in an ad hoc way. Minister Ingerson did not provide the committee with any further written directions after the initial letter of invitation. There were no written recommendations given to Minister Ingerson. Minister Ingerson did not receive copies of the minutes of either committee.

Mr Ingerson gave evidence to this Examination that he was updated on the deliberations of the committees by Mrs Hall. The minutes of the committees do not record that as a result of any verbal report, Minister Ingerson gave Mrs Hall instructions to take back to the committee.

In addition to the reports Ingerson received from Mrs Hall and the Chief Executive Officer of the Office for Recreation, Sport and Racing, Minister Ingerson received a briefing from Woods Bagot on 20 March 1996. That briefing had been discussed at the committee meeting held shortly prior to the briefing.

### **Inappropriate Membership of Committees**

In parallel with the Hindmarsh Stadium Redevelopment Committee and its Executive Group chaired by Mrs Hall, Minister Ingerson established a committee to pursue the granting of the right to host matches in the 2000 Olympic Soccer Tournament. That committee was called the "Soccer 2000 Bid Committee".

That committee included representatives of Australian Major Events, the Office for Recreation, Sport and Racing and the Soccer Federation. From time to time, Woods Bagot assisted with the work of that committee. According to the minutes of the meetings, Mrs Hall attended meetings in her capacity as Ambassador for Soccer. This committee did not include any representative of Services SA.

The committee worked on a bid document to SOCOG of a proposal for the use of Hindmarsh Stadium to host matches in the Sydney 2000 Olympic Soccer Tournament. Under the proposal, Hindmarsh Stadium would be made to fulfil SOCOG's requirements by a combination of permanent and temporary works.

Until expenditure on Stage 2 was approved by Cabinet in November 1996, the permanent works by which that proposal was to be effected were the works in Stage 1.

Despite the fact that the Government's key objective for Stage 1, ie compliance with FIFA requirements, was almost identical to the aim of the proposal put to SOCOG, there was no formal connection between the Hindmarsh Stadium Redevelopment Committee overseeing Stage 1 and the Soccer 2000 Bid Committee. There was a great deal of common membership between the two. However, the two operated in near complete isolation from one another.

That isolation was taken to the point that when the Soccer 2000 Bid Committee received SOCOG's statement of minimum requirements it was not provided to the Hindmarsh Stadium Redevelopment Committee overseeing Stage 1.

In practice that meant that no one from Services SA saw the statement of minimum FIFA requirements. Services SA was the Government agency that had the expertise and responsibility for checking that the project met the Government's objectives. The result of the committee structure set up by Minister Ingerson was that Services SA was denied a key piece of information that would have enabled it to perform that function.

There should, in my opinion, have been a formal connection between the Soccer 2000 Bid Committee and the Hindmarsh Stadium Redevelopment Committee. There should have been a formal exchange of information. If there was a need for some information to be kept confidential from some members of the Hindmarsh Stadium Redevelopment Committee, it should have been made clear what it was. There was no good reason why SOCOG's minimum requirements could not be communicated to Services SA. The Soccer 2000 Bid Committee should have included a representative of Services SA.<sup>386</sup> The result of that failure was that no officer of the Government with appropriate expertise was aware of the requirements of SOCOG.

### **Lack of Control**

The need to have committees involved in the structure of administration of Stage 1 of the Hindmarsh Stadium Redevelopment Project was succinctly described in evidence before this Examination by an officer of DAIS:

*"Through the processes of steering committee, project control group, design team meetings and so on. I think there needs to be an understanding that you cannot deliver major projects with single point accountability. There is not vested in any one particular party all the skills, knowledge and resources to be able to be truly singularly accountable for the delivery of the project and so what we're looking to do, in all major projects, is to set up a good organisation structure that is rigorous, that has the right representation from decision makers who can say: this is my decision on that matter, that's my decision on that matter, who have resources available to give them full briefing, recommendation and so on through the life of the project, but it is a team approach.*

*So you're looking to see a structure that puts the funding client, the end user client, with DAIS, with the primary consultant, with the cost manager, with the contractor, when the contractor comes on board, so that good decision-making can be made as a team."*

That describes why a project steering committee was desirable. It emphasises the need for different disciplines to be represented on the steering committee for a complex project so that each discipline could contribute to the efficient and cost-effective implementation of the project.

Decisions made by the Hindmarsh Stadium Redevelopment Committee and the Executive Group were arrived at by consensus. The minutes of both meetings show that the usual course of the

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<sup>386</sup> Mr Ingerson has submitted to this Examination that the Bid Committee was set up under the control of Tourism (Major Events) and that Services SA have not been part of any Bid Committee since Australian Major Events was set up. I do not accept this explanation as excusing the failure to involve Services SA in the Bid Committee.



meetings was that, after discussion, the Soccer Federation's desires as end-user carried the day. There was no occasion when the committee made a recommendation at the end of that process but the Government refused to implement it. The decision made in October 1996 to defer the upgrade to the pitch in favour of design refinements and corporate box air conditioning is the best example of that.

The difficulties associated with the committee structure were recognised in June 1997 by Services SA:

*"The Executive Committee has consistently attempted to manage the overall budget for the project within the agreed limits but has often found that there is an inconsistent understanding between the parties of the actual agreed scope of the project.*

*Pressure applied by the two club tenants with expectations that their full requirements have been incorporated into the project when often it was envisaged that the clubs would fund such requirements have consistently caused difficulty in managing the budget."*<sup>387</sup>

What was missing on the part of the Government agencies represented on the Hindmarsh Stadium Redevelopment Committee and its Executive Group was the independent formulation of those agencies' response on issues to be addressed by those committees. This was essential in managing any conflict between the Government's and the Soccer Federation's objectives and ensuring the paramouncy of the Government's objectives.

It is to be expected that agency representatives on committees will formulate independently of the committee the concerns of the agency. That may entail internal memoranda between individual representatives and their departmental superiors recording deliberations leading to adoption of a position based on the agency's particular concerns and responsibilities within the framework of Government.

There is a notable lack of such documentation for Stage 1 of the Hindmarsh Stadium Redevelopment Project. The agency representatives did their work for the Hindmarsh Stadium project at the meetings of the committees.

Minister Ingerson gave evidence to this Examination that he appointed Mrs Hall as Chair of the Hindmarsh Stadium Redevelopment Committee so as to maintain ministerial control of the project. As Mrs Hall was his Parliamentary Secretary, he was kept personally informed and had direct input into what happened. Minister Ingerson considered that Mrs Hall's dual role as Chair and as his Parliamentary Secretary placed greater ministerial control over the project than otherwise.

In my opinion, Minister Ingerson's intended mechanism for increasing ministerial control over Stage 1 of the redevelopment failed because he did not appoint a Chair with an objective and dispassionate interest in the redevelopment of Hindmarsh Stadium. It was Mrs Hall's responsibility as Chair of the project steering committee for Stage 1 and its Executive Group to identify the Government's objectives and ensure that her committees worked to those objectives, uninfluenced by the Soccer Federation's desires for increasing the scope and budget for the works without financial risk to itself.

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<sup>387</sup> "Report on Risk Management Issues" prepared by the Chief Executive Officer of Services SA for the Minister for Information and Contract Services dated 4 June 1997.

Neither Mrs Hall nor Minister Ingerson recognised Hall's potential conflict of interest between her role as Chair of the Hindmarsh Stadium Redevelopment Committee and its Executive Group and her role as Ambassador for Soccer. Mrs Hall's potential conflict went unchecked. She did not absent herself from any of the committees deliberations, particularly those which concerned increases in the scope and cost of the works, with no financial risk to the Soccer Federation.

This was a serious failure of due diligence on the part of Minister Ingerson and Mrs Hall. Minister Ingerson should have recognised the potential for conflict and dealt with it by appointing someone else or requiring Mrs Hall's resignation as Ambassador for Soccer as a precondition to her appointment as Chair. Minister Ingerson should have controlled and supervised the business of the Hindmarsh Stadium Redevelopment Committee more closely and despite Mrs Hall's potential conflict, recognised when the Soccer Federation's interests sought to take advantage of the Government.

Mrs Hall should not have accepted the role of Chair while remaining Ambassador for Soccer.

The project steering committee structure for Stage 1 should have been able to accommodate the fact that the Government and the Soccer Federation had potentially different objectives. The Government's much greater financial exposure in the project and the fact that as Government it is entitled to decide matters of public importance meant that a mechanism should have been put in place that ensured that the Government's objectives always remained paramount. The Government should not be involved in funding projects where the Government's objectives are not to be met.

The committee structure should have reflected that the Government's objectives were to remain paramount. The definition of the committee structure did not reflect that because Government's objectives had not been properly articulated or recorded.

## **INADEQUATE APPLICATION OF AGENCY ADVICE**

The central agencies of the Department of Treasury and Finance and the Crown Solicitor's Office, together with Services SA, were put in a position by the Office for Recreation, Sport and Racing and its responsible Minister Ingerson where they were unable to ensure that necessary due diligence issues were addressed adequately. Those agencies gave advice to the Office for Recreation, Sport and Racing and Minister Ingerson that was disregarded. Minor criticisms can be made of the representatives of these agencies who did not follow through with prudential matters they had identified.

### **Advice Given But Not Acted Upon**

#### **The Crown Solicitor's Office Advice about the 1996 Treasurer's Guarantee**

On 2 July 1996, the Crown Solicitor's Office provided the Department of Treasury and Finance with a revised draft of the Deed of Guarantee. In a covering minute to the draft, the Crown Solicitor's Office referred the Department to Section 19(1)(ab) of the *Public Finance and Audit Act 1987* and advised:

*"In the current situation, the Treasurer is proposing to guarantee the obligations of the South Australian Soccer Federation Inc. This he can do only if it would facilitate the carrying out by a semi-government authority of its functions.*

*The only relevant semi-government authority would be the Minister for Recreation, Sport and Racing and an appropriate function would be to promote, enhance and develop the*

*sport of soccer in South Australia. This may be sufficient to satisfy the requirements of this provision. In any event, I understand that the proposal for the Treasurer to grant this guarantee has been or will be submitted to Cabinet for its approval."*

The Department of Treasury and Finance did not investigate this issue further. The Treasurer executed the Deed of Guarantee on 23 October 1996. The Department of Treasury and Finance has not provided this Examination with any documents showing that the Treasurer formed an opinion, after proper investigation, that the provision of the guarantee to the Soccer Federation facilitated the carrying out by a relevant semi-government authority of its functions. In matters of this nature, there should be documents providing an audit trail recording what investigations were undertaken and that the Treasurer had reasonably formed the requisite opinion. The requirement of transparency is important, particularly when the consequence could be that the provision of the guarantee in the absence of a reasonably formed opinion within the terms of Section 19(1)(ab) may have deprived the Treasurer of the power to provide such a guarantee.

### **The Crown Solicitor's Office's Advice about Negotiating Funding Deed**

On 4 July 1996, the Crown Solicitor's Office circulated revised drafts of the Funding Deed and the Deed of Guarantee to the Office for Recreation, Sport and Racing and the Department of Treasury and Finance. The accompanying minute expressly advised that neither document should be discussed with the Soccer Federation until the Crown Solicitor's Office had received comments from both agencies and incorporated any necessary changes into the documents. That recommendation was appropriate. It recognised that the Government needed to formulate its position in a considered way, taking into account the expertise of each of the relevant Government agencies before providing the draft to the Soccer Federation.

Despite that advice, Minister Ingerson met with the Soccer Federation to discuss the draft Funding Deed before any comments had been provided to the Crown Solicitor's Office. On 10 July 1996, the Chief Executive Officer of the Office for Recreation, Sport and Racing sent the Crown Solicitor's Office a minute requiring alterations to be made to the Funding Deed that flowed directly from the negotiations with the Soccer Federation.

### **The Crown Solicitor's Office's Advice about Content of August 1996 Cabinet Submission**

On 4 July 1996, the Crown Solicitor's Office produced a draft of the Funding Deed to be entered into with the Soccer Federation. Consistent with the April 1996 Cabinet submission that formed the basis of the Crown Solicitor's Office's instructions from Office for Recreation, Sport and Racing, the draft funding Deed provided for the Soccer Federation to contribute 50 percent of the cost of the construction of Stage 1.

When it was realised that the Soccer Federation still expected the arrangements in the April 1995 Memorandum of Understanding to be adhered to, Cabinet approval of the change from the April 1996 Cabinet approval was necessary.

The Crown Solicitor's Office advised the Chief Executive Officer of the Office for Recreation, Sport and Racing that the revised Cabinet submission on the project should expressly state that the Minister for Recreation, Sport and Racing was proposing to top up the Soccer Federation's payments to service the loan and that this liability should be quantified in the Cabinet submission. That advice was repeated in August 1996, in a minute sent to both the Office for Recreation, Sport and Racing and the Attorney-General.

The August 1996 Cabinet submission that sought approval of execution of the Funding Deed correctly identified that the arrangement was different. However, it gave an inadequate explanation for the change. It implied that there had been a change to the funding arrangements. The correct explanation was that the Soccer Federation had not ever agreed to be responsible for 50 percent. It had always insisted on its repayments being limited to the Levy monies.

The Cabinet submission was not prepared in accordance with the Crown Solicitor's Office's advice. It did not quantify the Government's potential exposure for the borrowings of the Soccer Federation.

### **The Crown Solicitor's Office Advice about Ownership and Management**

The Crown Solicitor's Office gave repeated advice that the issue of ownership and management should be addressed. That advice was not acted upon.

#### ***Advice at the time of the First Draft of the Memorandum of Understanding with the Soccer Federation***

In the first draft of the Memorandum of Understanding produced by the Crown Solicitor's Office, two alternative mechanisms were postulated to protect the use of the stadium for soccer.

First, it was proposed that the Government would take a lease of the stadium and sublease it to the Soccer Federation. This was the same concept that had been raised in 1989, 1990 and 1993.

The second option was for the Soccer Federation to take a lease from the Council and for the Government to have the first right of refusal to take an assignment of the lease if the Soccer Federation sought to assign the lease during its term.

In the final Memorandum of Understanding as executed, the second option was preferred.

That concept, included in the Memorandum of Understanding by the Crown Solicitor's Office after having been briefed for at most 48 hours, became the sole protection given to the Government to ensure the ongoing availability for soccer of the redeveloped Hindmarsh Stadium.

The concept of the Government taking over the lease was raised with the Soccer Federation, although not in writing. The Soccer Federation rejected it because it perceived it as requiring it to give up control of its traditional home. The Soccer Federation's position in that regard had changed since 1989. The Government did not press the point. Further, the Government did not give proper consideration to the concept of the Government taking over the Soccer Federation's lease, a concept that had been recommended by the Crown Solicitor's Office.

#### ***Advice at the Time of Finalising the Funding Deed***

On 1 August 1996, the Crown Solicitor's Office circulated a revised version of the draft Funding Deed to the Office for Recreation, Sport and Racing, the Department of Treasury and Finance and Services SA.

The accompanying minute recommended that a contractual arrangement between the Government and the Council was necessary to ensure that the Council could not terminate the lease without giving to the Government the opportunity to remedy any relevant breach by the Soccer Federation.

The Crown Solicitor's Office was not ever given instructions to prepare a document reflecting the contractual arrangement it had recommended. In 1998, in the context of the Stage 2 development, the Crown Solicitor's Office prepared a Facilitation Deed between the Government, the Council and the Soccer Federation to reflect that arrangement. In my opinion, that document should have been put in place at the time of the commitment to Stage 1 to provide appropriate protection of the significant public funding that was being provided.

### **Inadequate Instructions Given**

The Crown Solicitor's Office was given inadequate instructions upon which to base its advice. While the Crown Solicitor's Office is expected to some extent to set the scope of its own retainer by reason of its dual role as service provider and protector of the Government's interest, it must be given complete and accurate information about the project upon which it is expected to advise. It is a matter of common sense, that proponent agencies involve the Crown Solicitor's Office in complex projects at an early stage.

There were repeated instances where the Crown Solicitor's Office was not given adequate instructions, undermining its ability to fulfil the due diligence duties that fell upon it.

### **April 1995 Memorandum of Understanding with the Soccer Federation**

The Crown Solicitor's Office was instructed about preparation of the Memorandum of Understanding only 48 hours prior to the deadline that had been set for execution of the document. That meant that the Crown Solicitor's Office could not:

- give proper consideration to all of the issues arising;
- provide detailed written advice about alternative structures;
- give proper consideration to whether the initiation of the project had occurred in accordance with mandatory Government procedures.

The deadline that had been set was wholly arbitrary. The Crown Solicitor's Office should have been given proper time to consider the matter. It should have had time in which to provide a detailed written advice about the project.

### **Preparation of the Funding Deed in 1996**

The process of preparation of the Funding Deed was characterised by conflict and acrimony between the Crown Solicitor's Office and the Office for Recreation, Sport and Racing.

From the Crown Solicitor's Office's point of view it was frustrated by the fact that its advice about the conduct of the negotiations was disregarded. From the Office for Recreation, Sport and Racing's point of view, the Crown Solicitor's Office's attitude obstructed completing the transaction documents within the time frame specified by Minister Ingerson.

This Examination finds that the manner in which the Crown Solicitor's Office was instructed by the Office for Recreation, Sport and Racing was inappropriate. The Crown Solicitor's Office sought to ensure that the Government's interests were properly protected and that the approval given by Cabinet in April 1996 was properly reflected in the documents it prepared.

The deadlines set by Minister Ingerson for the preparation of a draft Funding Deed were arbitrary. In evidence before this Examination Mr Ingerson acknowledged that there was no particular requirement of urgency for the legal documentation, he just wished to ensure that the project as a whole was not held up by any of the steps that were necessary.

On 2 April 1996, a conference was held at the Office for Recreation, Sport and Racing, involving the Crown Solicitor's Office, to discuss the three major sporting stadia projects being undertaken by that agency.<sup>388</sup>

The representative of the Crown Solicitor's Office advised that "*the next step is to consider what formal contracts need to be put in place having regard to the MOU and the issues set out above*". The meeting was left on the basis that the Director of Corporate Services in the Office for Recreation, Sport and Racing, would provide the Crown Solicitor's Office with a briefing note on the present status of the project.

After that meeting, another senior solicitor in the Crown Solicitor's Office was nominated as responsible for the Hindmarsh Stadium Redevelopment Project. That representative did not receive further instructions until 10 May 1996 when he had a conference with the Director of Corporate Services in the Office for Recreation, Sport and Racing.

At that meeting, the Director of Corporate Services promised the Crown Solicitor's Office a written briefing to form the basis for the first draft of the necessary project documents. That written "briefing" was provided later that day by the provision of copies of the Cabinet submission approved on 29 April 1996 and a draft financial analysis prepared by Ernst & Young.

That was not an appropriate method of briefing the Crown Solicitor's Office. Cabinet submissions are prepared for the purpose of briefing Cabinet. While they can be provided to the Crown Solicitor's Office by way of background, they should not be relied upon as the principal source of instructions. The Ernst & Young analysis was also inappropriate. It was addressed solely to the narrow question of the timing of construction of extensions to the western grandstand. In my opinion, the Crown Solicitor's Office should have been involved in establishing the concept of the project before a Cabinet submission was prepared.

That the April 1996 Cabinet submission was inaccurate in a material respect meant that the Crown Solicitor's Office wasted a substantial amount of time. The Department of Treasury and Finance worked with the Crown Solicitor's Office at the same time under the same misunderstanding. The April 1996 Cabinet submission contained the statement that the Soccer Federation had agreed to contribute 50 percent of the cost of construction of the upgraded western grandstand rather than only up to 50 percent depending upon the amount of levies that could be collected from spectators.

The Crown Solicitor's Office and the Department of Treasury and Finance gave their advice after May 1996 on the basis that the Funding Deed was intended to require a 50 percent contribution from the Soccer Federation and a last resort guarantee.

It was not until July 1996 that the discrepancy between their instructions and the Soccer Federation's understanding was corrected. In the meantime, a considerable amount of effort was wasted by the

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<sup>388</sup> That is, the Hindmarsh Stadium redevelopment, construction of a new netball stadium and a new athletics facility.

Crown Solicitor's Office. Mr Ingerson has submitted to this Examination that this was a minor issue in the documentation. I disagree. There was a significant difference between the two proposals.

In August 1996, the representative from the Crown Solicitor's Office attended a meeting with the Soccer Federation to finalise the terms of the Funding Deed. He found that there was still a large discrepancy between the Soccer Federation's understanding of the arrangements and his instructions.

This might have been avoided if the Office for Recreation, Sport and Racing had prepared a proper briefing paper for the Crown Solicitor's Office and, as the Crown Solicitor's Office had recommended, involved the Crown Solicitor's Office in the negotiations with the Soccer Federation at an earlier stage. It might also have ensured that the agency gave appropriate consideration to the relevant issues.

### **Inadequate Advice Given**

Some of the advice given by advisory agencies was inadequate, even allowing for the deficiencies in their instructions. The inadequacies in that advice are consistent with the issues for advice having been given inadequate opportunity to consider the issues upon which their advice was sought.

### **Failure to Identify Legislative Requirements**

The Crown Solicitor's Office did not bring to the Treasurer's or Cabinet's or the Minister for Recreation and Sport's attention the need for the Treasurer to satisfy the provisions of Section 19(1)(ab) of the *Public Finance and Audit Act 1987* in granting a guarantee of the Soccer Federation's Fit Out Loan. The Crown Solicitor's Office had referred the Department of Treasury and Finance to this Section in July 1996 when it sent the agency a revised draft of the Deed of Guarantee.

Section 19(1)(ab) provides:

*"The Treasurer, may for and on behalf of the State –*

- (a) guarantee performance of obligations by a semi-government authority;*
- (ab) guarantee performance of obligations by any other person, if, in the opinion of the Treasurer, the guarantee will facilitate the carrying out by a semi-government authority of its functions;"*

The Minister of Recreation and Sport constituted as a Minister of the Crown is a semi-government authority by virtue of Section 17(1)(a)(i) of the *Public Finance and Audit Act 1987*. The Minister of Recreation and Sport<sup>389</sup> constituted as a body corporate was declared to be a semi-government authority for the purposes of the *Public Finance and Audit Act 1987* on 23 January 1992. Before the Treasurer could exercise his power under Section 19(1)(ab) he was required to form the opinion that the guarantee facilitated the Minister for Recreation and Sport carrying out its functions.

The Treasurer, his department and the Crown Solicitor's Office should have given this issue proper consideration. They did not. Consequently, there was no articulation of any sound Government

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<sup>389</sup> This declaration applies to successors of the Minister of Recreation and Sport, including the Minister for Recreation and Sport as it was constituted in August 1997.

objective for the provision of a Treasurer's Guarantee for the Fit Out Loan sufficient to found the Treasurer forming an opinion within the terms of Section 19(1)(ab).

In my opinion, the Treasurer could not have reasonably formed the opinion that the provision of a guarantee to the Soccer Federation to fund the Fit Out Loan facilitated the Minister for Recreation and Sport carrying out his functions. If the Treasurer had properly considered the issue, he might have formed the view that the guarantee was for a loan for the construction of facilities for use predominantly by the Soccer Federation and the NSL Clubs. As such the provision of the guarantee conferred a private benefit that did not facilitate the Minister for Recreation and Sport carrying out his legitimate functions.

### **Failure to Identify Non-Compliance with Internal Government Guidelines**

Failures to comply with relevant internal guidelines were apparent on the face of the Cabinet submissions for Stage 1. The Department of Treasury and Finance and the Crown Solicitor's Office were not provided with either the May 1995 or April 1996 Cabinet submissions before they were approved by Cabinet. Services SA were not consulted on any of the submissions. However, both the Department of Treasury and Finance and the Crown Solicitor's Office had seen the August 1996 submission beforehand.

Both agencies made some comments on each submission, sometimes in very critical terms. However, none of them identified the following critical failures of the Government's process:

- There was no single comprehensive statement of the objectives of the project.
- There was no adequate feasibility study or cost benefit analysis.
- All options for the project had not been considered and were not addressed in the Cabinet submission.

As to the second of these, the Department of Treasury and Finance did recommend that a separate feasibility study should be prepared for the land acquisition process, without noting that no adequate study had been undertaken for the main project of Stage 1.

It should be noted that when the Crown Solicitor's Office and the Department of Treasury and Finance caused delay to the finalisation of the Funding Deed because of the issues of concern that they did raise, they were subjected to considerable pressure originating with Minister Ingerson. In this difficult situation, it may have been difficult to raise legitimate concerns about the initiation of the project.

### **Poor Advice about Ownership and Management Structures**

The key mechanism for addressing ownership and management for Stage 1 was the Funding Deed.

The content of that deed was the result of intense negotiations between the Crown Solicitor's Office, the Office for Recreation, Sport and Racing, the Department of Treasury and Finance and the Soccer Federation. Some elements of the final deed were incorporated because the Crown Solicitor's Office was instructed that was all that the Government required from the Soccer Federation.

The key element of the Funding Deed that was intended to protect the Government if the Soccer Federation breached its obligations was the mortgage over the lease.



That mechanism was inappropriate for the bilateral relationship envisaged by the Funding Deed:

- The Council's consent was necessary before the mortgage could be granted. The Crown Solicitor's Office did not advise that if that consent was not obtained before the Government committed to Stage 1, the obligation to provide the mortgage would be worthless.
- A mortgage of the lease would, for practical purposes, make it difficult for the Government to take over the lease. It would, however, allow the Government to sell the lease to repay the Soccer Federation's debt. Such a sale would depend upon the Council providing consent that it may not give if the Soccer Federation was in breach of the lease.
- If the Soccer Federation was in breach of the lease the Council could terminate the lease without notice to the Government. A mortgage over a terminated lease would be worthless.

The Crown Solicitor's Office did not ever give advice to that effect. Its advice that the mortgage would provide protection to the Government was inadequate to the extent that it did not identify the lack of utility of the mortgage.

#### **Failure to Attend to Prudential Matters that had been Identified**

The Crown Solicitor's Office identified critical prudential matters to be attended to but did not finalise those matters.

#### ***Review of the Soccer Federation's Lease***

The Crown Solicitor's Office discovered, in the course of a telephone conversation with the General Manager of the Soccer Federation on 17 July 1996, that the 1996 Lease had been executed without reference to the Government.

The Crown Solicitor's Office then telephoned the Office for Recreation, Sport and Racing to raise this issue. It advised the Office for Recreation, Sport and Racing to consider the lease first and see if it raised any specific issues which should be included in the instructions to the Crown Solicitor. The Crown Solicitor would then consider anything else that was apparent. The Crown Solicitor's Officer advised that this should happen as soon as possible and not wait until execution of the Funding Deed.

On 18 July 1996, the Office for Recreation, Sport and Racing sent the Crown Solicitor's Office a minute expressing its concerns over certain terms of the lease and seeking the Crown Solicitor's advice on its suitability. Specifically, the Office for Recreation, Sport and Racing queried the absence of a right to vary the lease when it might need to be varied to suit the Funding Deed.

The Crown Solicitor's Office did not ever respond to that minute in writing. However, the solicitor responsible for the file within the Crown Solicitor's Office was alive to the need for him to review the lease. For example, on 26 July 1996, he advised the Office for Recreation, Sport and Racing that he would write to the Council after he had had the opportunity to consider the 1996 Lease. He also noted it on a handwritten list of things to do that he made in early August 1996.

The Crown Solicitor's Office had reviewed the 1996 Lease to the extent of identifying the need for the Council's consent for the granting of a mortgage over the lease and a licence to construct. It did not identify or address other inadequacies, such as:

- The description of the premises leased was ambiguous. It referred to a General Registry Office Plan which could be interpreted not to include as part of the portion leased to the Soccer Federation the old western grandstand and the area to the west of it. In my opinion, that ambiguity should have been identified and resolved.
- The permitted use of the stadium was specified as soccer. The Office for Recreation, Sport and Racing had queried whether it should be expanded to allow for rugby. The definition should have been expanded.
- The Soccer Federation was not entitled to assign the lease without the Council's consent. Given the outlay that the Government was considering, it should, in my opinion, at least have had included in the lease an exception in the case of the Government so that if the Government negotiated for the assignment of the lease to the Government, the Council was obliged to consent.

For example, a simple clause could have been included to the effect that:

*"Despite Clause 2.30:*

1. *The Lessor acknowledges that the Lessee has granted the Minister for Recreation, Sport and Racing a first right of refusal to take an assignment of the Lessee's interest in this lease.*
  2. *The Lessor shall not consent to an assignment of the Lessee's interest in the lease or any part thereof without first obtaining the written acknowledgment from the Minister for Recreation, Sport and Racing that the Minister does not wish to exercise such first right of refusal.*
  3. *The Lessee may assign the Lessee's interest in this lease to the Minister for Recreation, Sport and Racing without the Lessor's consent."*
- The price at which the Minister was entitled to exercise the first right of refusal should have been negotiated in advance. Alternatively a mechanism for setting that price that specified that it should not include the value of the improvements paid for by Government.

It was not the Crown Solicitor's Office's fault that the 1996 Lease had not been reviewed before the Soccer Federation executed it. However, it was specifically instructed to review it but did not provide written advice of its review. If the Office for Recreation, Sport and Racing or Minister Ingerson were to negotiate with the Council for amendments to the lease as part of the Government's commitment to fund major improvements to land owned by the Council, the Office for Recreation, Sport and Racing and Minister Ingerson had to be adequately informed of the defects in the lease.

### ***Facilitation Deed***

In July 1996, the Crown Solicitor's Office volunteered the advice that a direct contractual relationship needed to be set up between the Government and the Council. One specific concern that the Crown Solicitor's Office had was that if the Soccer Federation breached the lease the Council could terminate the lease. That might leave the Government's investment in the works comprised by Stage 1 unavailable to be used by participants in the sport of soccer.

Having given that advice, the Crown Solicitor's Office received no instructions to pursue that matter further. To that extent the Crown Solicitor's Office's advice was disregarded.

However, the Crown Solicitor's Office gave that advice in the context where it had engaged in negotiations directly with Council about the granting of permission to the Government to enter upon the stadium site to undertake construction works. In my opinion, it was required to do more than merely offer its advice. The Crown Solicitor's Office has an additional duty of ensuring the legal integrity of Government transactions.<sup>390</sup> To properly protect the Government's interests, the Crown Solicitor's Office must determine if it has been properly instructed and act on that basis.<sup>391</sup>

The Crown Solicitor's Office did not pursue the concept of the direct contractual relationship with Council any further before the Government was committed to Stage 1. In 1998, the Crown Solicitor's Office prepared a draft Facilitation Deed that it circulated within Government. It prepared that document without receiving express instructions to do so. It did not ever ensure that the document was executed or that negotiations were entered into with the Council and the Soccer Federation.

Given the significance of this issue, failure to resolve the relationship between the Council and the Government in the way conceived by the Crown Solicitor's Office or in any other way before the Government committed to Stage 1, was a significant failure of due diligence on the part of the proponent agency, the Office for Recreation, Sport and Racing and Minister Ingerson as its responsible Minister. Failure to press the issue was a failure of due diligence on the part of the Crown Solicitor's Office having regard to that agency's constitutional duties.

### **Advice Not Sought**

On some key issues the advice of the Crown Solicitor's Office and the Department of Treasury and Finance was simply not sought. The opportunity to exercise their important roles of protecting the Government's interests was lost.

### **April 1996 Cabinet Submission**

The April 1996 Cabinet submission was the most important submission in relation to Stage 1. It set out the increased budget of \$8.125 million and the change of focus from the eastern side of the stadium to the western side.

The April 1995 Memorandum of Understanding approved by Cabinet in May 1995 envisaged that feasibility studies would be undertaken by both the Government and the Soccer Federation.

It was therefore appropriate that the April 1996 Cabinet submission be examined by the Crown Solicitor's Office and the Department of Treasury and Finance before it was submitted to Cabinet. It was not.

Those agencies were thereby denied an opportunity to comment on the proposed structure for funding of the project or to identify the failures of compliance with the Government's internal

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<sup>390</sup> Page 2 of the Crown Solicitor's Office Client Handbook.

<sup>391</sup> B. Selway QC, "The Duties of Lawyers Acting for Government", (1999) 10 *Public Law Review* 114.

guidelines that had occurred to that point. The most important of those was the failure to produce a formal comprehensive feasibility study of the project.

In my opinion, Minister Ingerson should not have signed the April 1996 Cabinet submission without ensuring that it had been the subject of considered examination by the central agencies and Services SA.

### **No Advice Sought about Other Measures to Protect Achievement of the Government's Objectives**

The Crown Solicitor's Office was not instructed to give advice generally on legal mechanisms that might be included or sought to protect the objectives that the Government sought.

- Ensuring that the stadium was adequate for hosting matches in the 2000 Olympic Soccer Tournament.
- Ensuring that the stadium complied with FIFA guidelines.
- Ensuring that the NSL Clubs would use the stadium.

### ***Ensuring that the Stadium was Adequate for Hosting Matches in the 2000 Olympic Soccer Tournament***

There was no formal requirement put in place for the 2000 Olympics to be secured before the Government was committed to the western grandstand redevelopment. Further, the Funding Deed and its associated documents did not include any escape clause for the Government if the Olympics were not granted.

Such a clause could not have been entirely open-ended. Once construction works had commenced it would have been unreasonable for the Government to expect to abandon a partially completed project. The Government should have had the option of abandoning the project in the absence of a commitment from SOCOG right up until construction commenced. Instead, the Government entered into the Funding Deed with no such protection. According to Mr Ingerson, within a matter of weeks, SOCOG informed the Government that the development envisaged by the Funding Deed would not be sufficient for the holding of Olympic soccer matches. At that point the Government was legally committed to the Stage 1 development. If the Government had wished not to continue with the development in the absence of the right to host matches in the 2000 Olympic Soccer Tournament, it would have placed itself in breach of the Funding Deed.

Government officers have suggested that it was in the nature of the negotiations for the holding of 2000 Olympics soccer that a firm commitment could not be obtained because of the fluid nature of SOCOG's own planning. That uncertainty rendered more important taking whatever steps could be taken to ensure that the perceived benefits would accrue.

Mr Ingerson has submitted to this Examination that there was no need for an escape clause because it was Government policy to build Stage 1 irrespective of the Olympics. I do not accept Mr Ingerson's submission. In my opinion, it was incumbent upon the proponent Minister and his agency to instruct the Crown Solicitor's Office to take steps to protect a key objective of the Stage 1 project. These instructions were not provided. They should have been.

### ***Ensuring that the Stadium Complied with FIFA Guidelines***

There was no requirement imposed in the Funding Deed or elsewhere that the upgrade be certified or approved by FIFA. Similarly to the granting of the 2000 Olympic matches, the Government should have had the ability to terminate the project if it became apparent that the redevelopment did not comply.

Execution of the Funding Deed had been endorsed by Cabinet on 19 August 1996. At that time the definition of the project had included an upgrade to the playing pitch.

By the time the Funding Deed was executed, the Hindmarsh Stadium Redevelopment Committee Executive Group had approved the change of the definition of the project to remove the upgrade to the playing pitch, thus ensuring that a key objective would not be met.

The Office for Recreation, Sport and Racing should have instructed the Crown Solicitor's Office to ensure that the Funding Deed provided that any changes to the content of Stage 1 would not result in the project not complying with FIFA requirements.

### ***Ensuring that the NSL Clubs Would Use the Stadium***

One of the key benefits relied upon by the Government in embarking upon Stage 1 was the fact that it would allow the two NSL Clubs to train and play on a pitch of international standard. If the NSL Clubs did not play on the stadium one of the main benefits of the redevelopment would be lost.

As well as affecting the benefit of the redevelopment, the NSL Clubs playing at the stadium affected the cost of the redevelopment for the Government. The Soccer Federation's contribution to the cost of Stage 1 (and later to the cost of the fit out) was limited to the amount of levies collected at soccer matches. Historically, apart from the 1993 Youth Championships, the matches with the best attendance were NSL matches. Thus, the NSL Clubs use of the stadium and their collection of levies had to be ensured.

As a further matter, for the NSL Clubs to play at the stadium they had to still be in existence.

This following section of this Chapter considers those three issues relating to the NSL Clubs.

### ***Commitment to Play at Hindmarsh***

The NSL Clubs made their commitment to play at Hindmarsh to the Soccer Federation as part of the 1996 and 1997 Licence Agreements. That commitment should have been made to the Government as a precondition to the Government's obligations under the Funding Deed. Effective protection of the public benefit of the continued playing at Hindmarsh of NSL games could have been achieved quite simply.

Responsibility for this failure of due diligence primarily lies with Minister Ingerson, as Minister for Recreation, Sport and Racing. He had taken a decision for the Government not to be involved directly with the NSL Clubs.

This was another example of the Government leaving to the Soccer Federation a matter that should have been attended to by Government officers, even if in consultation with the Soccer Federation. As events unfolded, the manner in which the Soccer Federation handled those agreements led to the

ultimate position that Adelaide City threatened first to play its matches at Norwood Oval amid allegations that the legally binding agreements were null and void, and later, to seek to be relocated to Rams Park. The Government was both morally and legally unable to prevent that other than by capitulating to Adelaide City's demands in respect of waiver of levies.

### ***Payment of Levies***

The mechanisms contained in the Funding Deed (as amended for the Stage 1 Fit Out) for the imposition and collection of levies did not have the effect intended because they did not take into account the existing arrangements for the operation and management of the stadium. The ground manager acted as agent of whichever NSL Club was the home side and remitted an amount equivalent to the levies payable to the Levy Bank Accounts after deducting its management fee and other expenses. A levy was not collected from each spectator as they entered the grounds. Consequently, the burden of the levies fell on the NSL Clubs because they did not include the levies in every ticket they pre-sold or gave away. While that was a matter entirely within the control of the NSL Clubs, its consequences presented a risk that soccer would not continue to be played at Hindmarsh.

The Crown Solicitor's Office were not expressly instructed to consider the best legal mechanism for protecting against the risk that levies would not be collected from spectators. However, the Crown Solicitor's Office were alive to the need to ensure the integrity and transparency of the Levy System. Integrity could not be achieved without full information about the financial arrangements between the Soccer Federation and the NSL Clubs. The representative of the Crown Solicitor's Office involved has informed this Examination that he understood that the Office for Recreation, Sport and Racing had investigated ticketing arrangements. However, this matter had not been adequately investigated before commitment to Stage 1. In my opinion, the Office for Recreation, Sport and Racing should have investigated the matter fully and involved the Crown Solicitor's Office more closely in the issue.

### ***Continued Existence of the NSL Clubs***

This was not effectively addressed at all. The Government did not put in place any mechanism even to ensure that it would know that a NSL Club was in financial difficulty. The information that the Soccer Federation was obliged to provide only indirectly reflected on the financial position of the NSL Clubs.

The NSL Clubs were voluntary organisations and there were limits to the extent to which measures could protect their existence. However, the Government, in my opinion, should have considered inclusion in the Funding Deed of a provision for the Government to be kept informed of the financial position of the NSL Clubs having regard to the importance of this issue for Governmental financial matters.

### **Conclusion on Role of Central Agencies and Services SA**

The manner in which Minister Ingerson and the Office for Recreation, Sport and Racing utilised the services of the central agencies (ie the Crown Solicitor's Office and the Department of Treasury and Finance) and Services SA undermined the effectiveness of those agencies to protect the Government's interests. It meant that those agencies were unable to ensure that the Government's objectives in the project were achieved cost-effectively. This was a serious failure of due diligence.

## **CHAPTER 22 - FAILURE TO RESOLVE OWNERSHIP AND MANAGEMENT FOR STAGE 1**

### **OVERVIEW**

This Chapter discusses the Government's failure to properly resolve ownership and management of Hindmarsh Stadium before the Stage 1 Funding Deed was signed in October 1996.

The importance of the issues of ownership and management of the stadium was recognised as early as 1989 and was the subject of repeated reminders at every level of the Government during the Stage 1 redevelopment. Despite that those issues have only been resolved recently. The failure to address the issues is aggravated by the following matters:

- The Government had numerous warnings from reports prepared during the previous Government and during its own early years, that it must address the issues of ownership and management before committing to Stage 1.
- In the April 1995 Memorandum of Understanding and the October 1996 Funding Deed inadequate mechanisms were agreed with the Soccer Federation to address the issues (ie the grant of a mortgage over the Soccer Federation's lease and a charge over the bank account into which levies were to be paid). Those mechanisms were chosen even though a better mechanism had been recommended by the Crown Solicitor's Office.
- The mortgage was not obtained and the charge was obtained too late to be of any use. In my opinion, it would have been prudent to obtain this security for performance of the Soccer Federation's obligations under the Funding Deed as part of the Stage 1 Project Documents in October 1996.
- The Office for Recreation and Sport<sup>392</sup> did not adequately monitor the Soccer Federation's compliance with key obligations made to Government in the Funding Deed. This should have been done continuously from October 1996 and was not. By October 1998, when it was apparent to the Office for Recreation and Sport that the Soccer Federation was in default of many of its obligations, the initiatives undertaken by Minister Evans to ensure compliance with the Funding Deed only served to identify the inadequacies inherent in the legal structure for Stage 1 that had been put in place in October 1996.

### **WARNINGS THAT OWNERSHIP CRITICAL TO PROTECTING PUBLIC INVESTMENT**

Public funds can be wasted on public works if it is not ensured that the resulting works are used to meet the objectives for which the works were undertaken. Usually that means that the ownership and management of the resulting works must be arranged to ensure the works are available for a particular use. Where other parties have control of the resulting asset, the arrangements must be made before commitment to the project. Otherwise the Government may not be able to put the

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<sup>392</sup> And its predecessor, the Department of Recreation and Sport.

arrangements in place or will only be able to put them in place at greater cost and hence reduced efficiency.

In the case of Stage 1 of the Hindmarsh Soccer Stadium Redevelopment Project, the land on which the stadium is sited was owned by the Council and was leased by a voluntary organisation, the Soccer Federation. There was a clear need to ensure that the arrangements as to ownership and management were adequate.

The need for those measures was recognised at all levels of the Government including Cabinet, the Attorney-General, the Chief Executive Officer of the Office for Recreation, Sport and Racing and the Crown Solicitor's Office.

## **INADEQUATE PROTECTION ADOPTED**

The Funding Deed contained measures intended to protect the Government's interest in the completion of Stage 1. Those measures were inadequate for the detailed reasons set out below. Those measures were amended and augmented by an amending Deed entered into at the time the Government gave a guarantee of the loan taken by the Soccer Federation for the fit out of the corporate facilities and clubrooms in the western grandstand. The inadequacy of those measures were not remedied by the later amendments.

The protective measures in the Funding Deed were:

- Clause 23 gave the Government the power to request the Soccer Federation to grant it a mortgage over the lease from the Council. It would have been prudent to insist upon the provision of that mortgage at the same time as the Funding Deed was executed. When the mortgage was requested later the Soccer Federation would not provide it without a waiver of its breaches to that time.
- Clause 36 required the Soccer Federation to grant the Government a charge over the bank account into which levies were paid that had been collected under the terms of the Funding Deed. It would have been prudent to insist upon the provision of that charge at the same time as the Funding Deed was executed. By the time the charge was provided, the Soccer Federation had ceased collecting and banking the levies.
- Clause 38.5 gave the Government a right of first refusal if the Soccer Federation ever sought to assign its lease.
- Clauses 40 and 48 required the Soccer Federation to report on various matters related to the management of the stadium after completion.

Those measures were inadequate to address the following issues of management and ownership:

- Ensuring that the Council as owner of the land did not prevent the stadium from being available for playing soccer.
- Ensuring that the Soccer Federation managed the stadium in such a way as to maximise its use for soccer.



**Ensuring that the Council as Owner of the Land did not Prevent the stadium from being Available for Playing Soccer**

The Funding Deed had as a condition precedent that the Soccer Federation had entered into a long term lease with the Council on terms satisfactory to the Government.<sup>393</sup>

The concept of a long term lease to the Soccer Federation with a first right of refusal to the Government on assignment of the lease carried over from the April 1995 Memorandum of Understanding to the Stage 1 Funding Deed. The appropriateness of that mechanism was not revisited or questioned during the six months of negotiations over the final terms of the Stage 1 Project Documents. It should have been.

The result of these failures is that the Government has no rights as against the owner of the land on which the Government has borne the entire funding risk for the Stage 1 redevelopment. Instead, the Government's rights lie against the Soccer Federation. They depend entirely on the status of the Soccer Federation's rights as against the Council. Flaws in the Soccer Federation's rights under the 1996 Lease prejudice the Government. Those flaws include:

- The 1996 Lease only covers part of the Council's land on which the stadium is built, so there is uncertainty over the Soccer Federation's rights over that land.
- There is uncertainty over the description of the land leased under the 1996 Lease because of an ambiguity in the filed General Registry Office Plan describing the portion leased to the Soccer Federation.

More importantly, if the lease were terminated for breach by the Soccer Federation, the Government would have no right as against the Council to ensure that the stadium is used for soccer. The Government's only recourse would be against the Soccer Federation for breach of promise to not breach the lease. The Soccer Federation has limited financial capacity to meet a damages claim by the Government for breach of contract. In any event, damages would be an inadequate remedy to compensate for the loss of the public benefit of the playing of soccer at Hindmarsh after the Government has invested millions of dollars redeveloping it.

The same risk of loss of the public benefit of the playing of soccer at Hindmarsh would exist if there were a dispute between the Soccer Federation and the Council over the Soccer Federation's rights under the lease or if the Soccer Federation were wound up.

These risks could have been managed by giving the Government tenure as head lessee with a sub-lease to the Soccer Federation.

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<sup>393</sup> Clause 3.1.4.

## **Ensuring that Hindmarsh Stadium was Managed so as to Maximise its Use for Soccer**

The Funding Deed as originally executed contained no obligation upon the Soccer Federation to make use of the additional revenue or any part of it for general purposes of promotion of soccer. The constitution of the Soccer Federation required it to act for the benefit of soccer. That was not a document upon which the Government could rely. Also the Soccer Federation might change its constitution.

At the time of Stage 1 the NSL Clubs were considering privatisation. There was no guarantee that the operations of the Soccer Federation might become increasingly commercialised with the risk that its public function would become diluted.

Sanctions that operated only after the Soccer Federation had failed in its obligations were inappropriate. The Government should have adopted a legal structure that gave it or an appropriately constituted independent body a direct role in the ongoing management of the stadium and preferably the controlling role.

## **RECOMMENDED PROTECTION DISREGARDED**

Although the obligations that the Soccer Federation accepted prior to the Government's commitment to Stage 1 were inadequate, the Government should have insisted upon their implementation.

Those obligations were contained in the April 1995 Memorandum of Understanding with the Soccer Federation and the Funding Deed.

### **April 1995 Memorandum of Understanding**

In considering the Soccer Federation's obligations contained in the Memorandum of Understanding, it is necessary to identify whether there was formal compliance with its requirements. In considering that matter, it must be understood that the Memorandum of Understanding was intended to be a record of the state of the negotiations that the Soccer Federation and the Government had reached in April 1995. It was not intended to be a legally binding document. For that reason, there may not be a failure of due diligence simply because a requirement in the April 1995 Memorandum of Understanding was adopted in a different form at a later time, so long as the Government considered that issue. If there was an inadequacy in the measure ultimately adopted, that may lead to a criticism at that later time, but the criticism does not arise through a failure to comply with the April 1995 Memorandum of Understanding per se.

The Memorandum of Understanding contained the following guidelines for the negotiations it envisaged would take place between the Government and the Soccer Federation before the Government committed to construction of a new eastern grandstand.

- Clause 2.1 required the Soccer Federation to enter into a formal registered lease with the Council for a minimum term of 42 years "*on such other terms as shall be acceptable to the South Australian Government*". In February 1996, the Soccer Federation entered into a new lease with the Council, without obtaining the Government's approval. The Office for Recreation, Sport and Racing had taken no steps prior to that to ensure that it was consulted about the lease. After the Crown Solicitor's Office discovered in July 1996 that the lease had been entered into, neither the Office for Recreation, Sport and Racing nor the Crown Solicitor's

Office took steps to ensure that the lease was varied to terms that were acceptable to the Government.

- Clause 2.2 required the Soccer Federation to grant licences to Adelaide City and West Adelaide committing those clubs to play all matches to be played by them in South Australia at Hindmarsh Stadium for the term of the loan facility to be taken by the Soccer Federation to finance Stage 1. The Soccer Federation entered into those licences by an exchange of letters in August 1996. No Government officer participated in those negotiations. That was the result of a decision by Minister Ingerson to keep the NSL Clubs at "arm's length". The August 1996 exchange of letters omitted the commitment to play at Hindmarsh. That was added by an addendum that was executed in October 1996.
- Clause 2.3 required the Soccer Federation to obtain a legally enforceable commitment that all soccer matches played under the jurisdiction of the Australian Soccer Federation in South Australia would be played at Hindmarsh Stadium. During the negotiation of the Funding Deed, that requirement was reduced to a requirement that the Soccer Federation obtain a letter from Soccer Australia. Although that was not an adequate measure to ensure the substance of the requirement, it did constitute sufficient application of the guideline embodied in the April 1995 Memorandum of Understanding.
- Clause 2.4 required the Soccer Federation to obtain legally enforceable commitments from clubs playing at the equivalent of district level under the auspices of the Soccer Federation that they would play at Hindmarsh Stadium. This obligation was diluted in the Funding Deed in that the Soccer Federation undertook to arrange that Premier League matches were regularly played at Hindmarsh and at least 15 times a calendar year. They were.
- Clause 5.5 required that the finance obtained by the Soccer Federation would be on terms and conditions approved by the Government. The terms and conditions of the finance provided to the Soccer Federation were considered extensively by the Treasurer and the Crown Solicitor. This requirement was complied with sufficiently.
- Clause 6.2 required the parties to undertake feasibility studies. Those were not undertaken adequately as has been described above in Chapter 19.

As a minimum, the Office for Recreation, Sport and Racing and the Crown Solicitor's Office should have ensured that the measures set down in the April 1995 Memorandum of Understanding to protect the public interest were implemented before the Funding Deed was signed in October 1996.

### **Funding Deed**

#### **Failure to Secure a Mortgage Over the 1996 Lease**

In July 1996, the Attorney-General instructed the Crown Solicitor that the Government ought to obtain security from the Soccer Federation for performance of its obligations under the Stage 1 Funding Deed. The Attorney-General stated that security was essential from an accountability point of view.

The Crown Solicitor's Office did not draft the mortgage over the lease until September 1999 when the Treasurer exercised his right to request a mortgage of the lease under Clause 23.1 of the Funding Deed. This step was taken to secure the Government's position in the circumstances of the Soccer Federation's failure to collect the levies, the demise of West Adelaide and inability to secure an agreement with the Council over land ownership and tenure. This step was taken far too late.

Failure to secure the mortgage over the 1996 Lease as part of the Stage 1 Project Documents has been explained by the Crown Solicitor's Office as follows:

*"The mortgage was deferred pending a review of the management and ownership issues surrounding Hindmarsh Stadium...The preparation and completion of the mortgage was deferred as if there was to be a change in ownership structure between the parties involved with Hindmarsh Stadium, this could affect the mortgage and its terms, or whether there was a need for a mortgage at all."*

Despite the inadequate protection afforded to the Government by a mortgage over the lease, I do not accept that explanation as reasonable or sufficient. The mortgage could and should have been executed in October 1996 at the same time as the Funding Deed. As the Crown Solicitor's Office's minute also stated:

*"If the review of ownership and management will not be completed for some time then the mortgage should be proceeded with now. This is particularly so if there is concern about the financial circumstances of the South Australian Soccer Federation Incorporated."*

### **Failure to Execute the Charge Over the Levy monies until December 1998**

The Government's security rights were not protected as the Attorney-General had instructed be done in July 1996. Just as consideration of variations to the 1996 Lease for the Government's benefit, preparation of the Facilitation Deed and the mortgage over the lease were not attended to until after commitment to both Stages 1 and 2, preparation of the charge did not occur until that security was virtually worthless. The charge over the Levy monies was executed by the Soccer Federation after the last payments of Levy monies were made into the Levy Bank Accounts.

### **Failure to Monitor Soccer Federation Obligations under Funding and Fit Out Deeds**

The Funding and Fit Out Deeds contain the Soccer Federation's legal obligations for Stage 1.<sup>394</sup> Many of these obligations were included to provide transparency and accountability in relation to the Soccer Federation's management of Hindmarsh Stadium after its redevelopment using substantial public moneys.

It was incumbent on Government to ensure that performance of these obligations was monitored regularly and steps quickly taken to demand proper compliance whenever performance was inadequate. Initially, Government representatives were diligent in initiating arrangements for the monitoring of the Soccer Federation's contractual obligations under the Funding and Fit Out Deeds.

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<sup>394</sup> Chapter 9 of this Report addresses the status of the Soccer Federation's performance of these obligations in detail.

In January 1997, the Department of Treasury and Finance sent the Chief Executive Officer of the Department of Recreation and Sport a minute proposing arrangements for monitoring the performance of the Soccer Federation's obligations under the Funding Deed. This correspondence resulted in the Under Treasurer sending the Soccer Federation a letter in March 1997 that summarised these obligations.

On 4 September 1997, as the Stage 1 redevelopment work was nearing completion, the Department of Recreation and Sport wrote to the Soccer Federation for the stated purpose of beginning a routine monitoring of the Soccer Federation's obligations. This letter enclosed a two page list of the key obligations and the information that was required by the Department. By letter dated 16 October 1997, the Soccer Federation provided the Department with some of the information requested.

The Department of Recreation and Sport should have demanded a more timely and thorough response from the Soccer Federation. Instead, the Department waited until mid December 1997 before taking further steps to assess the adequacy of the Soccer Federation's performance of its obligations. This was after both completion of the Stage 1 works<sup>395</sup> and the playing of the first NSL match for the 1997-98 season at Hindmarsh Stadium.<sup>396</sup>

The Office for Recreation and Sport<sup>397</sup> recorded its assessment of the status of performance of the Soccer Federation's obligations under the Funding Deed in a four page summary. The summary was compiled from the earlier list of obligations and the information provided by the Soccer Federation in its letter dated 16 October 1997. Many responses were inadequate. In most cases, all of the information required had not been provided. Other responses were out of date. For example:

- In respect of the Soccer Federation's obligation to effect certain insurances, it was noted that *"Federation advised in letter dated 16 October 1997 that insurances presently being reviewed."* By December 1997 and opening of the Stage 1 works, this was an unacceptable position from the Government's position. The Office for Recreation and Sport and the Department of Treasury and Finance should have ensured that adequate insurance was in place. They did not obtain copies of the relevant policies until March 1998.
- In respect of the Soccer Federation's obligation to grant a charge over the Levy Bank Account, it was noted *"Charge drafted."* While the charge had been drafted by the Crown Solicitor's Office on 10 December 1997, it had not yet been sent to the Soccer Federation. It was not executed until December 1998, after the Soccer Federation had ceased collecting and banking the \$5 Levies. The Office for Recreation and Sport and the Crown Solicitor's Office should have ensured that the charge was executed at the time of entry into Funding Deed. If not, the charge should have been executed before the first NSL match attracting levies was played at Hindmarsh Stadium on 7 December 1997.

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<sup>395</sup> ie 6 December 1997.

<sup>396</sup> ie 7 December 1997.

<sup>397</sup> The Department of Recreation and Sport was abolished as an administrative unit on 23 October 1997 and its activities carried on by the Office for Recreation and Sport, a new division established within the new administrative unit, the Department of Industry and Trade.

- In respect of the obligation that the Minister and the Soccer Federation meet to discuss the Levy System, it was noted that the Soccer Federation had advised in its 16 October 1997 letter that control of access to the grandstand would be by computerised turnstile and a reconciliation statement completed after each event. The summary then noted:

*"There is a need for further information on this matter in particular relating to controls to ensure and attest to the veracity of the information provided."*

Further information was provided by letter in March and November 1998. By November 1998, the Office for Recreation and Sport considered it needed audit advice on the arrangements in place, but it did not seek that advice.

The Office for Recreation and Sport should have met with the Soccer Federation to determine how the Soccer Federation proposed to manage the ticketing and access to Hindmarsh Stadium and the western grandstand. It should have then set the standards for proper operation of the Levy System and put in place all necessary controls before the first match was played at Hindmarsh Stadium. This was never done and was a significant failure of due diligence on the part of the Office for Recreation and Sport.

- In respect of the Soccer Federation's obligation to maintain match attendance records, it was noted that the Soccer Federation had advised of the arrangements in place. However, further information was *"required on the controls in place to ensure and attest to the veracity of the records."* The figures provided were not audited. The Office for Recreation and Sport should have ensured that appropriate systems and controls were in place before the first match was played at Hindmarsh Stadium. The match reconciliations should have been audited within the first several months of operation.
- In respect of the Soccer Federation's obligation to establish separate accounts for its management of Hindmarsh Stadium, it was noted that the Soccer Federation had advised it would establish a separate profit centre from 1 November 1997, prepare first accounts for the period ended 31 October 1998 and present them to the Minister in January 1999. No details were provided of the separate accounting system and it was noted that further information was *"required on the controls in place to ensure and attest to the veracity of the records."* The Office for Recreation and Sport should have ensured that appropriate systems and controls were in place before the first match was played at Hindmarsh Stadium. The Soccer Federation has not established a separate profit centre or produced separate financial statements for the operation of the stadium.
- In respect of the Soccer Federation's obligation to form a management committee, the Soccer Federation said in its 16 October 1997 letter that it required instructions from the Minister for Recreation, Sport and Racing. That was not correct. Eventually, a committee was formed and it met for the first time in January 1999, 13 months after the first match was played at Hindmarsh Stadium. The Office for Recreation and Sport should have ensured that the Management Committee was effectively functioning from late 1997, well before the first match was played.

The Auditor-General's Annual Report for the year ended 30 June 1998 raised a number of concerns relating to the administration of Soccer Federation's contractual obligations to Government under the Funding Deed in the context of comments made on the management arrangements for several sporting stadia. The response from the Office for Recreation and Sport was that it would address these concerns.

Mr Evans as the Minister for Recreation, Sport and Racing then took the following action towards ensuring the Soccer Federation complied with its obligations under the Funding Deed.

- Minister Evans wrote to the Soccer Federation on 28 October 1998, asking for the Soccer Federation to establish a clear understanding of the accountability requirements and time frames set out in the Funding Deed.
- Minister Evans appointed the Director of Corporate Services in the Office for Recreation and Sport to be his nominee on the Management Committee for Hindmarsh Stadium that began meeting in January 1999.
- An inter-agency committee chaired by the Executive Director of the Office for Recreation and Sport was established to monitor contractual arrangements for the various sporting stadia, including Hindmarsh Stadium.
- In January 1999, Minister Evans commissioned Arthur Andersen to undertake an independent review of soccer in South Australia. Arthur Andersen's report was provided to Cabinet in late August 1999 as part of a proposal for a review of the existing arrangements for the management of Hindmarsh Stadium.

In my opinion, Minister Evan's initiatives to establish proper controls and systems for transparency and accountability in relation to the ongoing management of Hindmarsh Stadium under the legal arrangements set up in 1996 were undertaken too late, having been inadequately administered until October 1998. However, this is a minor criticism relative to the failure by Minister Ingerson to resolve the ownership and management issues while he was responsible for the project. Minister Evans' initiatives then highlighted the inherent inadequacies in the legal structure set up in 1996 for the Stage 1 Project.

## **CONCLUSION ON ISSUE OF OWNERSHIP AND MANAGEMENT**

The objective of the Government of hosting matches in the 2000 Olympic Soccer Tournament has been achieved, although not by Stage 1 alone.

The objective of providing a stadium for use by the South Australian soccer community is not adequately ensured until such time as the proposed arrangements between the Council, the Soccer Federation and the remaining NSL Club and the Government are consummated. These arrangements should have been put in place before signing of the Funding Deed in October 1996.

## CHAPTER 23 – STAGE 2 PROJECT INITIATION AND APPROVAL

### OVERVIEW

In my opinion, for the reasons discussed in this Chapter, the process by which Stage 2 was initiated by its proponent agency the Department for Recreation and Sport<sup>398</sup> and its proponent Ministers<sup>399</sup> was inadequate because:

- There was no adequate feasibility study or cost benefit analysis undertaken. Only one formal study was undertaken, limited to an economic analysis. That study was not updated when the project changed or when new information became available. When the Department of Treasury and Finance identified the limitations of that study, no steps were taken to address those limitations. The Woods Bagot master planning performed in December 1995 and January 1996 that covered some of the substance of Stage 2 was not a substitute for a proper feasibility study.
- Alternatives to the Stage 2 project were disregarded. Building a less expensive stadium was not adequately considered. Combining the two stages was not adequately considered. Using a different venue was not adequately considered.
- Substantial commitments were made by Minister Ingerson in August 1996 to acquire land to the south of the stadium before adequate information about the need for the land had been presented to Cabinet, before there was a plan for use of the land and without any cost benefit or feasibility study of that land acquisition being undertaken.
- The bid to SOCOG to host matches in the 2000 Olympic Soccer Tournament was mishandled. Inadequate efforts were made to clarify SOCOG's criteria for selection of venues. Undue weight was given to a series of imprecise and informal communications from SOCOG. The flawed committee structure for the bid set up in March 1996 under Minister Ingerson's direction contributed to difficulties with the bid. Prior to SOCOG's first announcement that Adelaide was selected, Services SA, a key agency involved in the redevelopment of the stadium, was excluded from the bid team.
- The budget for Stage 2 of \$16.205 million was set in November 1996 by reference to a proposed project involving acquisition of a large amount of land and creation of a "soccer park". That budget was applied even though Stage 2 as built was a very different project involving the

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<sup>398</sup> Before December 1996, the Department of Recreation and Sport was called the Office for Recreation, Sport and Racing. On 23 October 1997, the Department of Recreation and Sport was dissolved as an administrative unit. The Department of Industry and Trade was established and the activities of the former Department of Recreation and Sport were then carried out by a division of the Department of Industry and Trade under the same name, the Department of Recreation and Sport. Mr Simon Forrest continued as the Executive Director of the Department of Recreation and Sport. Mr Dixon became the Chief executive Officer of the Department of Industry and Trade on its establishment. Deputy Premier Ingerson was the Minister responsible for the Department of Industry and Trade as the Minister of Industry, Tourism and Trade from 20 August 1997 to 3 August 1998.

<sup>399</sup> ie Ministers Ingerson and Ashenden and Deputy Premier Ingerson. Minister Ingerson was the Minister for Recreation, Sport and Racing from 22 December 1995 to 12 December 1996. Mr Ashenden was the Minister for Recreation and Sport from 12 December 1996 to 20 October 1997. From 20 October to 17 December 1997, Mr Ingerson was the Minister for Local Government, Recreation and Sport. Deputy Premier Ingerson assumed responsibility for the project as the lead Minister in July 1997 until his resignation as a Minister on 3 August 1998.



provision of 10,000 additional permanent seats. The change in the content of the project was not made because of any requirement of SOCOG or need of the sport of soccer.

- The submissions upon which Cabinet's approval of Stage 2 was based were inadequate. Each to varying degrees breached Government guidelines for the preparation of Cabinet submissions, was inaccurate or incomplete. In particular, Treasurer's Instruction 9105 was disregarded. It required compliance with Treasury Information Paper 90/1 that required presentation of multiple options including the "do nothing" option. Non-compliance with these requirements constituted a breach of the *Public Finance and Audit Act 1987*.

Each of these matters is considered in detail in this Chapter.

## **FEASIBILITY STUDIES AND COST BENEFIT ANALYSES**

There was no adequate feasibility study or cost benefit analysis undertaken before the Government's commitment to Stage 2.<sup>400</sup> The sole formal study that was prepared in March 1997 by the South Australian Centre for Economic Studies<sup>401</sup> was based on a limited scope of instruction and inadequate data.

The SACES study did not consider the objectives of the project or whether the proposal was the best means to meet those objectives. It breached Treasurer's Instruction 9105 which required compliance with Treasury Information Paper 90/1. Upon identifying the limitations of the SACES report in the context of the Public Works Committee's investigations of the project in May 1998, the Treasurer and the Department of Treasury and Finance took no steps to have those limitations addressed.

### **Stated Approach of SACES Study**

The SACES study compared the expected additional revenue to the State resulting from the project to the estimated cost of the project. In assessing revenue, the study adopted the approach that only revenue from outside the State was "additional" in the relevant sense. Thus, increased attendances of South Australian spectators at NSL matches would not lead to any benefit for the State but increased attendances of interstate spectators would.

### **Limitations of Data Utilised in SACES Study**

The SACES study was an exercise in analysis rather than data gathering or checking. The study referred to only two sources of information:

- The Department of Recreation and Sport; and
- The assumptions contained in a report by Market Equity SA Pty Ltd.

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<sup>400</sup> In Chapter 18 the issue of when the Government committed to Stage 2 is discussed. I have concluded that by 15 August 1997, when the Government signed the SOCOG Memorandum of Understanding, the opportunity to withdraw from a much larger development of Hindmarsh Stadium than Stage 1 had been lost. On 18 August 1997, Cabinet approved expenditure of \$1.711 million and endorsed the project management structure for Stage 2. On 8 September 1997, Cabinet endorsed the budget estimate for Stage 2 at \$16.2 million, noting that there was a range of variable and discretionary works that may form part of Stage 2 at an estimated cost of \$1.92 million.

<sup>401</sup> The acronym "SACES" is used in this Chapter to refer to the South Australian Centre for Economic Studies.

The SACES study did not state that any checks had been undertaken of the quality of the data from the Department or the validity of the assumptions of Market Equity SA Pty Ltd. The Market Equity SA Pty Ltd report addressed the economic benefits to South Australia of the existence of the Adelaide Rams Rugby League team.

There was reason to be cautious. The data provided by the Department of Recreation and Sport was collated by temporary staff from rough estimates obtained from Australian Major Events. There was no empirical testing of that data. One element that was completely untested was the annual revenue from operation of the stadium. That was stated to have been assumed by the Department of Recreation and Sport to be \$450,000. It was not based on any market research.

### **Exclusions from the Study**

The SACES study did not attempt to address whether the stadium would be adequate for the 2000 Olympic Soccer Tournament or other international matches, which was a key objective of the Government.

### **Criticism of the Study by the Department of Treasury and Finance**

The SACES study was the subject of criticism by the Department of Treasury and Finance in May 1998. That criticism was made in the context of the investigation of the project by the Public Works Committee.

The background to that criticism was that in its 30 April 1998 Interim Report on Stage 2, the Public Works Committee made the following observation:<sup>402</sup>

*"It is not apparent from the evidence provided to the Committee exactly what cost/benefit analyses have been undertaken to justify any further upgrade of the Hindmarsh Soccer Stadium. More specifically, the Committee is concerned that the necessary documentation detailing the economic, financial and social viability of the proposed project has not been made available to enable it to satisfactorily evaluate the project.*

*The Committee has requested a copy of the study undertaken by the SA Centre for Economic Studies, but no material has been provided. As detailed in Section 4.2 of this report, the Committee was initially advised that this would be provided. The Department of Industry and Trade has provided the Committee with excerpts from the study which indicated that the benefit cost ratio was 0.4 and the Net Present Value [negative] \$20.898m. However, without access to the assumptions that were used in completing this study, the information provided is useless to the Committee in evaluating this project."*

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<sup>402</sup> 67<sup>th</sup> Report of the Public Works Committee "Hindmarsh Soccer Stadium - Stage 2", paragraph 4.4, page 22.

As a result of a request from the Premier, an internal Department of Treasury and Finance minute to the Treasurer was prepared on 19 May 1998 commenting on the SACES report. Treasury pointed out a minor defect in the mathematical calculation but otherwise verified SACES' calculation of net present value. Treasury also made a far more substantive criticism:

*"One criticism is that the analysis does not cover the reasonable alternatives to the proposed option. As a result it is not clear whether the proposal is the cost-effective option. However this is more a criticism of the brief provided to the consultants rather than the analysis itself."*

That was a serious breach by the proponent Minister Ashenden and the Department of Recreation and Sport of Treasurer's Instruction 9105 which required compliance with Treasury Information Paper 90/1. It is a matter of concern that even though the defect in the cost benefit analysis was identified at that point, nothing was done to address it. The Treasurer and the Department of Treasury and Finance should have ensured that their concerns about the SACES report were addressed.

### **No Attempt to Update or Refine SACES Study in Light of Further Information**

The content of Stage 2 was changed after the SACES study was completed but no revised report was sought.

The SACES study was annexed to the March 1997 Cabinet submission. The March 1997 submission was withdrawn from Cabinet. The SACES study was not attached to or abstracted in any subsequent submission. Its findings were not before Cabinet when Cabinet made its final decision to commit to Stage 2.<sup>403</sup>

On 9 July 1997, Minister Ashenden signed a Cabinet submission presenting a revised concept plan for Stage 2. The key difference between it and the option considered in March 1997 was that the March 1997 proposal included a covered two tier grandstand on the eastern side of almost identical size and design to the Stage 1 upgraded western stand, whereas the July 1997 proposal was for an unroofed single-tier terrace. That brought the cost within the \$16.205 million budget. Cabinet reconsidered this submission on 21 July 1997 and referred it back to Minister Ashenden without approving it.

On 18 August 1997, Cabinet considered a submission presented by Deputy Premier Ingerson for a similar concept plan to that in Minister Ashenden's 9 July submission and budget range of \$15.95 million to \$18.12 million. Cabinet noted the new concept plan but did not endorse the budget range. On 8 September 1997, Cabinet endorsed the estimated budget for Stage 2 at \$16.205 million, noting that there was a range of variable and discretionary works that may form part of Stage 2 at an estimated cost of \$1.92 million.

By June 1997, the team that was negotiating with SOCOG had obtained substantial information about the likely cost of hosting the 2000 Olympic Soccer Tournament.

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<sup>403</sup> Cabinet approvals committing to Stage 2 were given on 9 and 21 July, 18 August and 8 September 1997. See Chapter 13 for a detailed discussion of these approvals.

Neither the change in cost and scope of the project nor the new information about the cost of hosting the 2000 Olympic Soccer Tournament was given to SACES to update its report. No updated cost benefit analysis was attached to the June 1997 submission or any subsequent submission including the final submission for Stage 2 that was considered by Cabinet on 8 September 1997.

Minister Ashenden, Deputy Premier Ingerson and Mr Michael Scott as the Chief Executive Officer of the Department of Recreation and Sport should have ensured that the SACES report was updated and included in later Cabinet submissions.

### **Woods Bagot Master Planning Process**

The main component of Stage 2 as ultimately constructed was new permanent single tier terraces on the north, south and east sides of the pitch. That concept had been considered by Woods Bagot during the master planning process between November 1995 and January 1996. That work by Woods Bagot was the most rigorous examination of that concept that was performed.

The principal focus of that examination was the wishes of the Soccer Federation as end-user, not the objectives of the Government.

Little consideration was given to the following matters.

### **The Future Need for an Enlarged Facility**

The Soccer Federation's February 1994 proposal proceeded on the basis that because the Soccer Federation had control of a stadium centred around a pitch with four sides with room for a stand on each side, the four stands seating 20,000 in total, it should pursue the construction of that. The proposal did not address the possibility that soccer in South Australia did not need a stadium with a capacity of 20,000 and would not need such a stadium for the foreseeable future. During Woods Bagot's master planning exercise that issue was given no further consideration. The need for a 20,000 seat stadium had been questioned in March 1994 by the Ellis report. More significantly, the minutes of the first meeting of the Hindmarsh Stadium Redevelopment Committee on 26 February 1996, record that after the results of Woods Bagot's master planning were presented:

*"2.2.7 G Whitbread asked whether the margin of cost effectiveness of a 20,000 person stadium capacity had been appraised against a lesser capacity particularly in regard to opportunities for temporary grandstand facilities for high capacity events."*

A marginal note recorded *"All to note"*. However, the desirability of the ultimate goal being set at 20,000 was not ever the subject of close examination. Services SA should have ensured that that fundamental assumption was tested. Mrs Hall as Chair of the Executive Group should have ensured that the actions listed in the minutes were attended to in a substantive way.<sup>404</sup>

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<sup>404</sup> Mrs Hall has submitted that it is inappropriate to criticise her or the committee for failing to do something that was extraneous to their proper role. I do not accept this submission. Nor do I accept that Mrs Hall or the committee considered this issue not to be their role when the issue was raised in the meeting. The minutes record otherwise.

## **The Cost of Keeping Open the Soccer Federation's Options for Future Development**

It was prudent to examine the scope for future development. It would be undesirable if the eastern stand were built in such a way that it closed off viable options for future development of the site. However, the examination proceeded on the assumption that the Soccer Federation would at some time have the capacity to fund development of the scale set out in the Soccer Federation's February 1994 proposal. It did not have that capacity without the Government's support. At that time, that support was limited to construction of an eastern grandstand. Preserving options for the future can involve a current cost. If, when realistically assessed, an option is unlikely ever to be feasible, then the cost of preserving it ought not be incurred. The Office for Recreation, Sport and Racing and its successors should have taken steps to measure this cost.

## **The Soccer Federation's Ability to Meet the Cost of Upkeep of an Enlarged Facility**

The Soccer Federation's February 1994 proposal did not consider that the consequence of building the best equipped stadium on the Hindmarsh site was that the Soccer Federation or its members would, at the very least, be responsible for the increased costs of upkeep of the larger facility. Woods Bagot's master planning did not address that issue. The Office for Recreation, Sport and Racing and Services SA should have addressed that issue.

## **The Possibility of an Unstaged Redevelopment**

At the other end of the scale from the Government deciding that Stage 1 was the limit of the Government's involvement in redevelopment of Hindmarsh Stadium was the possibility that it would fund the full development of the stadium in one project. The Soccer Federation had formulated its redevelopment proposal in stages for two reasons.

First, the Soccer Federation perceived that it would be easier to persuade the Government to advance the redevelopment monies in smaller amounts to fit in with the annual capital works budget. The first of those factors was a relevant factor for the Government but one requiring analysis by the Department of Treasury and Finance in the context of the overall State budget. No one in the Government, let alone Treasury, adequately considered the possibility that the full development should be undertaken as one project.<sup>405</sup> It could not be assumed that it would always be preferable to stagger the construction works.

Secondly, the Soccer Federation considered that a staged development would cause less disruption to the playing of soccer at the stadium. While work on one stand was taking place the other(s) could be used during ongoing games. That proposition has an element of common sense to it. However, that factor could not be simply assumed to be paramount. A comparison of the estimated cost of temporary relocation to another ground against the cost of implementing two separate construction projects ought to have been undertaken.

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<sup>405</sup> Mr Ingerson has submitted that the finding that alternatives were disregarded or inadequately considered is wrong. Mr Ingerson relied on the evidence given by Mr Dixon to the Public Works Committee on 4 March 1998. In my opinion, Mr Dixon was unable to substantiate the claim that redeveloping Hindmarsh was less costly than a greenfield site. I note the Public Works Committee were also dissatisfied with Mr Dixon's attempt to substantiate this claim. [See page 47 of the transcript for 4 March 1998]. Other witnesses were examined on this issue and Mr Bollen gave evidence that apart from the 1989 feasibility study no more recent comparison had been done between Hindmarsh and alternate sites. In my opinion, relying on a 1989 feasibility study was inadequate given the passage of time and changed circumstances.

## **Conclusion on Inadequacy of Feasibility Studies and Cost Benefit Analyses**

Minister Ashenden and Deputy Premier Ingerson, as the proponent Ministers should have ensured that adequate feasibility studies were undertaken.

Mr Michael Scott, the Chief Executive Officer of the Department for Recreation and Sport in March 1997 commissioned the SACES report. That report was not commissioned in accordance with the Government guidelines and in breach of Treasurer's Instruction 9105 and Section 41 of the *Public Finance and Audit Act 1987*. The Chief Executive Officer should have ensured that it was commissioned properly.

When this defect in the SACES study was identified in May 1998 during the Public Works Committee's investigations of the project, neither the Treasurer for the Department of Treasury and Finance took steps to ensure that it was addressed.

## **ALTERNATIVES TO THE DEVELOPMENT WERE DISREGARDED**

Alternatives to the Stage 2 redevelopment were disregarded. Building a less expensive stadium was not adequately considered. Combining the two stages was not adequately considered. Using a different venue was not adequately considered.

Treasurer's Instruction 9105.2 was not sufficiently complied with. That instruction required departmental officers to evaluate projects in accordance with Treasury Information Paper 90/1. Appendix 1 to that paper set out the format for reporting to Cabinet the results of the economic evaluation of a project. That required "*each feasible option*" to be identified.

To determine what constituted a "feasible option" required a precise definition of what the objective was that was being addressed. The objective that Stage 2 was intended to address was a stadium that would satisfy SOCOG. That had two aspects.

The first aspect was that an Olympic venue had to meet the circulated minimum requirements for stadia. For example, the stadium had to have a minimum capacity of 15,000 seats. It was acceptable for the minimum criteria to be satisfied by temporary facilities, with temporary seating or temporary road closures to make additional land available. The November 1996 Cabinet submission was based on a proposal that involved the additional seating being temporary. The budget of \$16.205 million was to be spent on land acquisition and site works.

The second aspect was not set out by SOCOG or FIFA in any document as a set of criteria but it was clear, especially after 29 October 1996, that SOCOG and FIFA required something more than adherence to their minimum requirements.

The options that were developed show that the Government interpreted that second aspect as being satisfied by providing more of the minimum requirements by permanent rather than temporary facilities.

### **Less Expensive Development**

In November 1996, Minister Ingerson sent to SOCOG a letter enclosing a plan showing the "soccer park" concept. Between December 1996 and March 1997, Minister Ashenden and the Chief Executive Officer of the Department of Recreation and Sport decided that the budget should be expended on permanent seats rather than land acquisition.

Having decided that acquisition of all of the land entailed in the "soccer park" concept was not necessary, no consideration was given to reducing the budget below \$16.205 million.

This was possible. For example, if the new northern and southern single tier terraces were omitted, the project would have savings of the order of \$3.45 million. The additional seating required for the 2000 Olympic Soccer Tournament could have been provided by temporary seating. SOCOG had not stated any requirement that permanent northern and southern stands were necessary. SOCOG had not stated that any particular level of expenditure was required. SOCOG had not specified that the "*permanent legacy for sport*" needed to be of any particular magnitude. SOCOG was satisfied with a plan involving only land acquisition and temporary seats. No consideration was given to whether SOCOG would be satisfied with a new eastern grandstand with temporary seating at the northern and southern ends of the stadium.

Minister Ashenden, Deputy Premier Ingerson and the Chief Executive Officer of the Department of Recreation and Sport should have considered a cheaper development and presented it to Cabinet.

### **Postponing Stage 1 to Amalgamate it with Stage 2**

The connection between the SOCOG visit and Stage 1 was not properly considered. The Stage 1 Funding Deed had been executed on 14 October 1996. Although there would have been a cost associated with delaying or even withdrawing Stage 1, that had to be assessed against the possible benefits of pursuing Stage 1 and 2 at the same time or not at all. The Funding Deed was entered into at a time when Adelaide was just about to get SOCOG's response to its bid.

Rather than halting Stage 1 while the effect of the SOCOG visit was assessed, on 11 November 1996, Minister Ingerson signed a Cabinet submission seeking an increase in the budget for Stage 1 of \$560,000.

Notwithstanding the recent execution of the Funding Deed, some consideration ought to have been given to whether Stage 1 should be continued in light of the SOCOG visit.

Treasurer's Information Paper 90/1 required that in the evaluation of a project proponent agencies must:

*"...specify a realistic set of options from which the best option can be chosen."*

That paper recognised that it might be necessary to revisit that exercise:

*"The sequence of steps presented here should in no way be regarded as rigid: it may be necessary to return to previous steps as the nature of the problem becomes evident, or repeat all of the steps to examine the effect on outcomes of changes in underlying assumptions."* <sup>406</sup>

The discovery on 29 October 1996 that Stage 1 would not be adequate to host matches in the 2000 Olympic Soccer Tournament was a substantial change in the assumptions that had been made about Stage 1 to that time. It should have led to the options for Stage 1 being reconsidered. Minister Ingerson and Mr Michael Scott as the Chief Executive of the Officer of Office for Recreation and Sport should have given proper documented consideration to the inter-relationship between Stage 1 and Stage 2.

### **Use of a Different Venue**

The option that another venue in Adelaide might be suitable was not given adequate consideration. There was some reason to believe that SOCOG might be happy with Adelaide Oval as a venue. On 16 October 1996, a fax to the consultant Mr Ciccarello from Australian Major Events contained the following:

*"Further to our discussion late yesterday, the following are my thoughts on the selection of training venue sites, for the SOCOG visit.*

*The opposing forces at work in this matter is the SASF, whose preference, naturally, is that all training site venues be at its affiliated club grounds and that the "action" be shared between national and state league clubs. The other approach suggests that we should be setting soccer politics aside and presenting to the SOCOG delegation, the best training venues on offer, in Adelaide, irrespective of whether such sites are the home of an SASF affiliated soccer club or not.*

*The problem with the SASF approach, is that it does not have enough clubs of a suitable standard (in my opinion) to present with conviction, to the SOCOG delegation. Tony Farrugia's reaction to the suggestion that some of the SASF clubs might not be considered to be of a suitable standard, is that the State Government should help bring these clubs up to scratch and this contribution becomes the legacy (over and beyond Hindmarsh), delivered to soccer, as a consequence of the staging of this event. My response to Tony was that a significant proportion of the Adelaide bid already has to be taken 'on promise', at least in relation to the competition venue and that we should not ask SOCOG to also take 'on promise' too many of the training venues.*

*One point on which the SASF is implacable, is the use of the Adelaide Oval. Tony's [Farrugia] view is that if the Adelaide Oval is offered up as a training venue, SOCOG might push the line that it should be used as the competition venue. Tony understands that Elphinston [SOCOG'S General Manager Sport] has seen the Adelaide Oval and is most impressed with this venue.*

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<sup>406</sup> Page 11.



*So taking all of the above into account, I suggest that we should settle on the following training venues:*

- *Adelaide City's training venue in southern Parklands*
- *West Adelaide's training venue in southern Parklands*
- *West Torrens Birkalla's facility*
- *the Mile End athletic stadium*

*This approach will result in being able to offer SOCOG high standard training facilities, close to the centre of Adelaide. From a political perspective, the benefits are seen to be spread around in the selection of these sites. The one major disadvantage, however, is that Adelaide City and West Adelaide sites would require the provision of temporary fencing. This is both expensive and delivers no lasting benefit.*

*The bottom line, however, is that allowing for all other considerations, we must offer up the best quality bid possible. To do otherwise, jeopardises our chances of success in this venture and obviously, unless we succeed in securing a pool for Adelaide, nobody wins a prize!"*

It can be anticipated that a number of reasons could be advanced why Adelaide Oval would not have been a satisfactory venue:

- It was an oval not a rectangle. A rectangular ground is preferable for soccer.

That could not be an overwhelming factor. First, SOCOG's General Manager Sporting Events would hardly have been impressed by Adelaide Oval as a venue if it were. Secondly, the matches ultimately played in Melbourne were played at Melbourne Cricket Ground, which is oval shaped.

- Using Adelaide Oval would have meant no legacy for soccer.

The fax from Australian Major Events to Mr Ciccarello pointed to an alternative way in which Adelaide could have provided a legacy for soccer, in association with the staging of the Olympic matches. That is, instead of a massive upgrade to Hindmarsh Stadium, a series of smaller upgrades to the local club grounds to bring them up to the standard required to be a practice venue would have been a legacy for soccer. In my opinion, it might have been a better legacy since it would have given "grass roots" clubs a lasting benefit whereas Hindmarsh Stadium was arguably a net detriment to those clubs since the additional cost of opening the larger stadium was prohibitive.

- The Government had just committed to construction of Stage 1. If Hindmarsh Stadium were not to be the venue, the work on Stage 1 would be wasted, or at least, would lose one of its significant benefits. That was correct. However, the Government had only executed the Funding Deed on 14 October 1996. The only contract for construction that had been entered into was with the construction manager Hansen Yuncken Pty Ltd. There would have been a cost involved in withdrawing from Stage 1 but it might not have been prohibitive.

Mr Ingerson has submitted that this criticism is wrong in fact. In support of his submission, Mr Ingerson states that Adelaide Oval, Thebarton, Football Park and The Levels were considered at least initially. However, the Soccer Federation and Soccer Australia were opposed to AFL grounds because the spectators would be too far from the play.

I do not accept Mr Ingerson's submissions. Mr Ingerson has not relied on any evidence in making these submissions. The evidence I have considered shows that apart from the 1989 feasibility study, no more recent comparison was done of alternatives to redeveloping Hindmarsh. I find that it was assumed that because the Soccer Federation had undertaken work to establish its headquarters at Hindmarsh Stadium and there was existing infrastructure at Hindmarsh Stadium that was being redeveloped as Stage 1, the Stage 2 redevelopment should occur at Hindmarsh. This assumption was not adequately tested as it should have been by the preparation of a considered analysis of all feasible options.

### **Conclusion on Failure to Investigate All Feasible Options**

It is not for me to express an opinion on whether there was a better option available. There is enough evidence upon which I can and do find that there were alternatives to Stage 2 available to the Government that could not be rejected without investigation. Those alternatives were not investigated, in breach of Treasury Instruction 9105 and Section 41 of the *Public Finance and Audit Act 1987*. Minister Ashenden, Deputy Premier Ingerson, Mr Michael Scott as the Chief Executive Officer of the Office for Recreation and Sport and its successor, the Department of Recreation and Sport, the Treasurer and the Department of Treasury and Finance should have ensured that proper consideration was given to a less expensive redevelopment or using an alternative venue or combining Stages 1 and 2.

### **PREMATURE COMMITMENTS TO LAND ACQUISITION**

Investigations into acquiring land south of the stadium were commenced by National Portfolio Strategies in March 1996 following a meeting between Woods Bagot and Minister Ingerson.

On 20 August 1996, Minister Ingerson signed a letter of nomination to National Portfolio Strategies authorising it to acquire options over land south of the stadium.

The instructions to National Portfolio Strategies to investigate the acquisition of land and the issuing of the letter of nomination were premature.

There were two matters that gave rise to the perceived need for the acquisition of land.

First, in January 1996 Woods Bagot formed the opinion that if the pitch was to be extended to meet FIFA requirements and a permanent stand erected on the southern side of the pitch, Hindmarsh Place would have to be closed. That in turn would necessitate acquiring land fronting Hindmarsh Place near the south western corner of the stadium that no longer had street access. Woods Bagot presented that concept to the Office for Recreation, Sport and Racing on the express basis that the additional cost would be borne by the Soccer Federation.

Secondly, in March 1996 a comment by SOCOG's Manager Sporting Events to the Chief Executive Officer of the Office for Recreation, Sport and Racing about the constriction of the site led to the concern that for Adelaide to secure the right to host matches in the 2000 Olympic Soccer Tournament the stadium site would have to be expanded.

In my opinion, neither of those was a sufficient basis to warrant commitment to acquisition of land.

Woods Bagot's opinion was formed in the course of the master planning exercise that they undertook in relation to Stage 1. That exercise was undertaken on the assumption that a larger development of Hindmarsh Stadium was justified, albeit possibly only at some time in the future. Woods Bagot did not address whether that assumption was warranted. If it were not, the justification for investigating land acquisition did not exist. Enlargement of the playing pitch only dictated additional land acquisition if a permanent southern stand was to be built as well.

The comment by SOCOG's Manager Sporting Events to the Chief Executive Officer of the Office for Recreation, Sport and Racing was too informal and uncertain a matter upon which to base any significant level of expenditure. SOCOG's Manager Sporting Events specifically stated that he had not seen the site himself. The Government took no steps to attempt to clarify SOCOG's concerns in this regard. The comment was insufficient to justify incurring significant expenditure.

In April 1996, Cabinet noted that the Office for Recreation, Sport and Racing was to fund investigation of land acquisition. The form of those investigations was not defined. A draft of the Cabinet submission upon which Cabinet decided to note the investigations had not been commented upon by the Crown Solicitor's Office or the Department of Treasury and Finance. The lack of a justification for Cabinet's approval was apparent from the Cabinet submission:

*"3.11 The Office for Recreation, Sport and Racing is to investigate town planning, traffic planning and land acquisition for the development of the southern end of the stadium. Cabinet should note that if the land acquisition is to be pursued then the estimated cost for the acquisition will be \$1,750,000 with funds most likely required in the 1997/98 financial year. It is proposed that funds for the land acquisition could be sourced from two parties viz; Hindmarsh/Woodville Council and State Government. An approach will also be made to Federal Government."*

The investigations that were undertaken after April 1996 by National Portfolio Strategies were limited to the issue of whether the land south of the stadium could be acquired and the approximate price. There were no further investigations undertaken of the two matters that had led to those investigations being undertaken. No consideration was given as to whether it was desirable or cost-effective to maintain the ability to expand the stadium site. No investigation was undertaken of the possibility that SOCOG's requirements could be met through temporary closure of Hindmarsh Place or temporary use of the nearby land. The bid to SOCOG was lodged on 26 September 1996 on the basis that it did not include additional land acquisition.

After National Portfolio Strategies had completed their initial investigations, on 14 August 1996, Minister Ingerson signed a Cabinet submission that included a brief reference to the land acquisition. When the Department of Treasury and Finance commented on the submission it stated that the land acquisition should be the subject of a separate feasibility study. That study was not ever undertaken.

On 20 August 1996, Minister Ingerson signed the letter of nomination. That letter was not checked by the Crown Solicitor's Office. It had been drafted by O'Loughlins as solicitors for National Portfolio Strategies. The letter legally committed the Government to paying the option fee for the privately held parcels of land fronting the western half of Hindmarsh Place. The Crown Solicitor's Office had been informed about the proposal to obtain options over the adjacent land at a meeting on 13 June 1996 but was not asked for and did not volunteer advice about the proposal. The Crown Solicitor's Office was not approached again in relation to National Portfolio's Strategies' investigations.

## **Conclusion on Premature Commitment to Land Acquisition**

In my opinion, Minister Ingerson and Mr Michael Scott as the Chief Executive Officer of the Office for Recreation, Sport and Racing should have ensured that the objective that was to be met by the acquisition of land was properly and clearly identified and that a separate feasibility study was undertaken for the land acquisition.

Mr Ingerson has submitted that this finding is wrong. He has submitted that his decision was based on advice that the stadium should ultimately be extended to the south and it was open for him to accept that advice. For the reasons discussed above, I disagree with Mr Ingerson's submission.

## **SOCOG BID MISHANDLED**

The bid to SOCOG to host matches in the 2000 Olympic Soccer Tournament was mishandled. Inadequate efforts were made to clarify SOCOG's criteria for selection of venues. Undue weight was given to a series of imprecise and informal communications from SOCOG. The flawed committee structure set up under Minister Ingerson's direction contributed to difficulties with the bid and the negotiations. Prior to SOCOG's first announcement that Adelaide was selected, a key agency involved in the redevelopment of the stadium, Services SA, was not included in the bid team.

## **Failure to Clarify SOCOG's Criteria for Selection of Venues**

The Government accepted the basis for the bid process that was set out by SOCOG unquestioningly. That basis was insufficiently precise.

On 9 July 1996, Mr John Iliffe, then President of SOCOG sent to Premier Brown a letter enclosing SOCOG's technical questionnaire and FIFA/SOCOG stadium requirements. The enclosed FIFA/SOCOG requirements required a minimum capacity of 15,000 seats. The requirements noted that FIFA's requirement for the 2004 Olympic Games was a minimum capacity of 20,000 seats and that SOCOG would welcome proposed stadia that met the 2004 requirement. The document noted that temporary grandstands and seating were permissible provided the strictest safety and spectator comfort standards were met.

Mr Iliffe's letter and the enclosed questionnaire did not make clear how SOCOG's selection process would work. It did not set out formal conditions of bidding or tendering. Indeed it did not refer to a "bid" or "tender". It contained the following:

*"The essential qualifying criteria for States, Territories or Cities to be considered for participation in the Olympic Football Tournament is provision of a competition stadium in full compliance with FIFA/SOCOG requirements. If this qualifying criteria is not satisfied, then States/Territories/Cities will not be eligible for consideration.*

*Accordingly, attached to this letter are detailed FIFA/SOCOG Requirements, along with a Technical Questionnaire relating to the proposed competition stadium and training sites. States/Territories/Cities are requested to read these Requirements, and return a completed Questionnaire to SOCOG by 5pm on 30 September 1996 if you are interested in participating in the Olympic Football Tournament.*

*An analysis will be made by SOCOG of the responses received, followed by inspections of the proposed competition venue, training sites and other infrastructure.*

*Provided that the technical and training requirements are met, detailed negotiations will then take place between SOCOG and the "preferred" States/Territories/Cities on financial, marketing and organisational arrangements. SOCOG's Board will then choose the "preferred" venues to participate in the Olympic Football Tournament, to which FIFA's concurrence will be sought. SOCOG will subsequently advise all parties of the final decisions taken, to be followed by a public announcement of the chosen venues."*

This was unsatisfactory as a basis for submitting a bid. It gave no idea of how SOCOG would select the "preferred" venues. The SOCOG/FIFA requirements were a minimum pre-requisite but beyond that, the document gave no guidance as to what criteria would be applied.

There were two meetings with SOCOG or FIFA representatives intended to clarify the basis of the bid process.

The first meeting was with Ms Corinne Blatter from FIFA, who was invited to Adelaide to meet with Woods Bagot about the content of the stadium. The content of discussions with Ms Blatter during her visit was not recorded in writing.

The second meeting, on 9 September 1996 in Sydney, was between two officers of Australian Major Events, the consultant Mr Ciccarello and the General Manager of the Soccer Federation, on behalf of the Bid Committee, and two representatives of SOCOG. The General Manager of the Soccer Federation made detailed minutes. The stated purpose of the meeting was to clarify the technical requirements of the SOCOG bid. The minutes record only one item of Adelaide's proposal that the SOCOG representatives said would not be adequate. That was the size of the change rooms. Given that was the purpose it would have been appropriate for someone with construction expertise such as a representative of Services SA to have been present at the meeting.

Neither meeting resulted in a clear statement of the criteria that would be applied in determining which venues would be preferred. It was inappropriate of the Government to engage in a competitive process without a clear understanding of the criteria that were to be applied in selecting the winners.

The criteria in one respect resolved into the question of the extent to which SOCOG would accept facilities being provided on a temporary basis. Ultimately the Government committed to providing 15,000 permanent seats. That was not as the result of any statement of requirement by SOCOG.

It was not the case that SOCOG simply required a certain amount of money to be spent.

### **Conclusion on Failure to Clarify Selection Criteria**

Minister Ingerson, Mrs Hall, Mr Michael Scott as the Chief Executive Officer of the Office for Recreation, Sport and Racing and Australian Major Events should have insisted that SOCOG formalise with precision the criteria that were to apply.

## **Informal and Imprecise Communications**

### **Introduction**

The Government allowed its communications with SOCOG to become inappropriately informal and imprecise.

First, the Government reacted to informal and imprecise communications to SOCOG in a disproportionate and irrational manner. The Government did not adequately record some of those communications or attempt to clarify them.

Secondly, the Government's communications to SOCOG were inappropriately imprecise.

It is plain that Minister Ingerson and his Chief Executive Officer took the view that in negotiations with SOCOG, Adelaide negotiated from a position of weakness. The Government's response to communications from SOCOG indicating any level of dissatisfaction with Adelaide's candidacy was to give SOCOG whatever it wanted.

To some extent it was a matter of judgment how to handle the negotiations. However, the Government gave inadequate consideration to adopting a more robust stance. That such a stance might be justified was apparent from past communications.

On 1 April 1996, the General Manager of the Soccer Federation wrote to Soccer Australia complaining that Adelaide had been led to believe that it had already been selected as a venue. That complaint was not ever repeated during subsequent negotiations.

In March 1996, SOCOG's Manager Sporting Events informed the Chief Executive Officer of the Office for Recreation and Sport that SOCOG needed Adelaide as much as Adelaide needed SOCOG.

Further, Melbourne's experience showed that a host city could engage in fairly robust negotiations with SOCOG. Melbourne pulled out of the bid process. It was later reinstated. It is unlikely that Adelaide was in the same position as Melbourne because of the larger spectator numbers expected in Melbourne and Melbourne was an Olympic City. However, the incident demonstrated that SOCOG would not necessarily terminate consideration of a bid at the first sign of resistance to SOCOG's will.

Notwithstanding those matters, examination of five particular examples will suffice to demonstrate the approach of the Government to negotiations with SOCOG.

- The informal intimation in March 1996 from SOCOG's Manager Sporting Events to the Chief Executive Officer of the Office for Recreation and Sport about site constriction
- Minister Ingerson's "tip off" by a senior SOCOG official shortly prior to SOCOG's evaluation visit on 29 October 1996
- SOCOG's representatives' comments on 29 October 1996
- Minister Ingerson's 20 November 1996 letter to SOCOG
- Dismissal of Australian Major Events

Each of these incidents is considered in more detail.

### **Informal Intimation About Site Constriction**

In March 1996, the Chief Executive Officer of the Office for Recreation and Sport spoke to SOCOG's Manager Sporting Events. The Chief Executive Officer formed the view that SOCOG was concerned about the space constrictions of the site. Partly as a result of that National Portfolio Strategies were instructed to commence investigations into land acquisition. SOCOG's Manager Sporting Events had acknowledged that he had not ever visited the site. The Government could not ignore the concerns voiced by SOCOG's representative. Against that, it was too informal and uncertain a communication to be relied upon as the basis for incurring significant expenditure.

The Chief Executive Officer of the Office for Recreation and Sport informed SOCOG's Manager Sporting Events of the existence of the Woods Bagot's master plan. This was not appropriate. The master plan had been prepared by Woods Bagot to ensure that the Stage 1 works would not be wasted. The Government was not at that time even considering the possibility of undertaking works beyond Stage 1.

### **Minister Ingerson's Tip Off by a Senior SOCOG Official**

Adelaide's bid document was lodged with SOCOG under cover of a letter signed by the Premier dated 20 September 1996. The final bid contained drawings prepared by Woods Bagot showing how the ground would be laid out for the matches. The bid was considered by the members of the Bid Committee to be sufficient to win matches for Adelaide.

SOCOG's evaluation team was scheduled to visit Adelaide on 29 October 1996. That was to be the culmination of the selection process for host venues for the 2000 Olympic Soccer Tournament.

Shortly before 29 October 1996, Minister Ingerson received a confidential communication from a senior SOCOG official.

The senior SOCOG official said words to Minister Ingerson to the effect that Adelaide's bid was at the lower end and that if Adelaide still wished to be part of the Olympic Games Adelaide needed seriously to reconsider its position.

The senior SOCOG official did not give any detail of why that was the case or mention any particular aspects of Adelaide's bid or the stadium that required improvement. Minister Ingerson regarded the comments as only 50 percent likely to be an accurate statement of SOCOG's position.

The official was not involved on a day to day basis in the selection of venues for the soccer tournament. That was left to SOCOG's Sports Commission.<sup>407</sup>

As a result of that telephone conversation, Minister Ingerson telephoned Mr Ford of Woods Bagot and asked to meet him. Mr Ford went to Minister Ingerson's office. Minister Ingerson asked Mr Ford what the options were for a greater development. Mr Ford described to Minister Ingerson the options from the master plan that had been explored earlier in the year and told him about some of the options for

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<sup>407</sup> This conversation is discussed in detail in Chapter 11.

land acquisition in the area. Minister Ingerson asked Mr Ford to prepare some drawings of some options for a bigger redevelopment that could be used during SOCOG's visit the following week if necessary.

Mr Ford and his staff spent many hours in the ensuing days before Tuesday 29 October, including long hours right through the intervening weekend, preparing concept plans for a much bigger development of the stadium. The plans involved options including:

- Acquisition of all of the land south of the stadium between Hindmarsh Place and Richard Street;
- Extensive landscaping of the acquired land to turn the entire triangle of land bounded by Holden, Richard and Manton Streets into a soccer park precinct;
- One full size and one half size practice pitch south of the stadium;
- New permanent stands on the northern, southern and eastern sides of the stadium.

In evidence to this Examination, Mr Ingerson said that if he had not had the conversation with the senior SOCOG official on about 24 October 1996, then as a result of the meeting with the SOCOG representatives on 29 October 1996 he would have arranged for the drawings to be prepared and sent to SOCOG within a week anyway.

In my opinion, it was not appropriate for Mr Ingerson to react to the senior SOCOG official as he did. By doing so Minister Ingerson created the situation on 29 October 1996 where he committed the Government, albeit subject to Cabinet approval, to a much more significant project, without the benefit of full consideration and advice.

In instructing Woods Bagot direct, Minister Ingerson by-passed Services SA, the Bid Committee and his own agency. If there were reasons not to produce the plans during the visit, Minister Ingerson did not hear them.

## **29 October 1996 SOCOG Visit**

### ***Overview***

After Adelaide's bid was submitted, SOCOG's representatives arranged to come to Adelaide to inspect the venue on 29 October 1996, arriving on the evening of the previous day.

The inappropriate handling of the informality of the 29 October 1996 visit has three aspects:

- Given the importance of the visit it is striking that there is no written record.
- On the basis of informal and imprecise comments Minister Ingerson produced the additional drawings he had commissioned earlier from Woods Bagot.
- Minister Ingerson's presentation became the basis for a further commitment to SOCOG. His presentation was too vague to be such a proper basis.

Each aspect is discussed further.



### ***No Written Record***

Given the importance of the SOCOG visit it is striking that there is no surviving written record of it.

The SOCOG visit was a key milestone in Adelaide's attempt to obtain matches in the 2000 Olympic Soccer Tournament. It was not a social or informal visit. The basis for consideration of bids set out in SOCOG's July 1996 letter was an insufficiently precise basis for Adelaide to engage in the bid process. However, that letter did, at least, make it clear that a step in the process would be the site inspection by SOCOG's evaluation team.

In those circumstances, it is reasonable to expect that the discussion occurring at the visit would have been recorded in writing. Not only is that a reasonable expectation based on common experience, other events show that it was the practice of those involved:

- Woods Bagot made minutes and file notes of numerous of their meetings relating to this project. They minuted their interview meetings with the Soccer Federation. They made handwritten notes of their first site visit before their formal submission for consideration as primary consultant. Mr Hoare of Woods Bagot has informed this Examination that he attended the meeting to present the design work undertaken by Woods Bagot on the Olympic overlay and had no opportunity or reason to take notes. In making this observation I do not criticise Woods Bagot.
- The General Manager of the Soccer Federation made detailed minutes of the meeting of the Sydney 2000 Bid Committee in Sydney on 9 September 1996.
- Australian Major Events staff made file notes of significant telephone conversations with representatives of SOCOG. In particular, on 24 October 1996 there was a note of the telephone conversation with SOCOG's Manager Sporting Events.
- Services SA made detailed and comprehensive minutes of every meeting they attended, particularly project steering committee meetings. They would have made detailed minutes if they had been there.

Taking all of those matters into account, it is extraordinary that there is in existence today no contemporaneous note, however informal, of what occurred on that day. It was a failure of due diligence on the part of each the Government representatives who attended that meeting not to prepare a detailed report about the meeting. Those government officers who did not attend but who were later charged with implementing the project should have interviewed participants in the meeting and reduced their accounts into writing.

### ***Minister Ingerson's Production of the Woods Bagot Plans***

In response to a further set of informal comments by representatives of SOCOG on 29 October 1996, Minister Ingerson presented those plans to SOCOG. SOCOG was satisfied with those plans.

Minister Ingerson had not sought the advice of Mr Ciccarello prior to presenting the plans to SOCOG. Mr Ciccarello was surprised when Minister Ingerson presented the additional plans. Minister Ingerson regarded Mr Ciccarello to be a very skilled negotiator. Mr Ciccarello's opinion was that Minister Ingerson should not have presented the additional plans to SOCOG. He assessed their comments on that day as a preliminary indication of position only.

### ***Minister Ingerson's Presentation Inadequately Precise***

On the basis of what SOCOG had said at that visit or previously, there was no material for the Government to form the view that what Minister Ingerson had presented was the minimum that SOCOG required or the most cost-effective means of addressing SOCOG's concerns.

The key findings of my Examination in relation to the events of 29 October 1996 are as set out below.<sup>408</sup>

- The SOCOG representatives did not make any express statements about the likelihood of success of Adelaide's bid but the questions they asked, coupled with their general demeanour, conveyed the impression to those attending that Adelaide's bid was not looked upon favourably.
- During the visit of the delegation on 29 October 1996, the SOCOG representatives did not make any express statements about how any particular aspect of the stadium could be improved. The questions they asked showed their concern about the amount of space available at the site. They expressed a general concern about the amount of additional permanent improvements proposed but did not specify what amount was required or that permanent seating was essential. The SOCOG representatives did not specify what was required to be done to address the concerns they expressed. That was left entirely to be decided by Cabinet on the basis of recommendations put forward from time to time by the proponent Ministers Ingerson and Mr Ashenden.
- Minister Ingerson presented to the SOCOG representatives a proposal for further development that included acquisition of all of the land between Hindmarsh Place and Richard Street in the stadium precinct and on one view, permanent stands on each of the northern, southern and eastern sides of the pitch.

Mr Ingerson's letter to SOCOG dated 20 November 1996 treated Mr Ingerson's presentation as having a precision that it did not have. In my opinion, the entire exchange was an unsatisfactory basis upon which to proceed. Mr Ingerson should not have allowed the process to become as hurried as he did. After receiving the confidential information from the senior SOCOG official, he should have planned a strategy with the Bid Committee that did not involve presenting plans on 29 October 1996 that had not been the subject of proper consideration.

That criticism is partially ameliorated by the fact that Minister Ingerson qualified the presentation by expressing it to be subject to Cabinet approval. After the 29 October 1996 presentation, Minister Ingerson instructed Woods Bagot to develop other options, two of which were costed and presented to Cabinet in his 13 November 1996 submission.

### ***Minister Ingerson's 20 November 1996 Letter***

On 20 November 1996, Minister Ingerson sent a letter to SOCOG enclosing an unclear drawing showing additional works to Hindmarsh Stadium. The drawing showed extension of the stadium site in accordance with the "soccer park" concept but also stands on the north, south and east sides of the stadium. The components shown in the drawing were:

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<sup>408</sup> Chapter 11 contains a detailed discussion of this event.

- Acquisition of all of the land south of the stadium between Hindmarsh Place and Richard Street
- Extensive landscaping of the acquired land to turn the entire triangle of land bounded by Holden, Richard and Manton Streets into a soccer park precinct
- One full size and one half size practice pitch south of the stadium
- New stands on the northern, southern and eastern sides of the stadium.

It was ambiguous whether the stands were permanent or temporary.

The letter stated:

*"Following your visit, I confirm that the South Australian Cabinet has agreed to extend the Hindmarsh Stadium as outlined at our meeting.*

*This will allow for a very significant enhancement of the Hindmarsh Stadium project beyond the scope of the present redevelopment, on which work has already commenced. As outlined the second Stage development will provide for a significant increase in the overall size of the stadium, which along with other options, will permit the installation of a second soccer pitch.*

- Attached is a draft plan showing the area identified as our future development site."

The approval given by Cabinet on 18 November 1996 pursuant to which that letter was sent did not include additional permanent seating. Although the same ambiguous drawing was attached to the Cabinet submission, the cost summary showed that additional permanent stands were not part of the approval.

Minister Ingerson has made a submission to this Examination that the letter must have been accepted by SOCOG as conveying that the additional permanent seating would be constructed. If that were correct then the letter would contain a commitment well beyond that authorised by Cabinet, involving expenditure of over \$10 million more than had been authorised. The minutes of later negotiations with SOCOG in March 1997 show that SOCOG by that time did not understand Adelaide's proposal to include additional permanent seating. Mr Elphinston's evidence before this Examination confirmed that SOCOG did not regard the plan as denoting any particular level of permanent seating.

In my opinion, it is not appropriate that a letter containing such a major commitment should have been ambiguous. Minister Ingerson should have ensured that it was not.

Minister Ingerson has submitted that this letter was deliberately ambiguous and rightly so. I disagree.

### ***Dismissal of Australian Major Events***

On 14 March 1997, Mr Ashenden as Minister for Recreation and Sport signed a submission to Cabinet recommending the establishment of a task force to finalise commercial arrangements with SOCOG.

Up until then, Australian Major Events had handed negotiations with SOCOG. It was removed without warning at Minister Ashenden's direction. Mr Lawrence, Minister Ashenden's staff member arrived at

the offices of Australian Major Events unannounced and requested that he be given all Australian Major Events' files on Adelaide's bid for the Olympic Soccer.

Different witnesses gave this Examination different reasons for Australian Major Events removal:

- Australian Major Events was removed to create a position for Mr Ciccarello because the Government thought that otherwise he would have commenced litigation that would have embarrassed Mr Ingerson because of the promises he had made to Mr Ciccarello.<sup>409</sup>
- Minister Ashenden gave evidence that Dr Hemmerling, the Chief Executive of SOCOG, had warned Premier Olsen at the Melbourne Grand Prix that Adelaide's bid was "off the rails". Other witnesses gave evidence that they had heard that Dr Hemmerling had told the Premier at the Melbourne Grand Prix to remove Australian Major Events or Adelaide would lose hosting the soccer.
- Mr Ashenden also gave evidence that he was concerned that the Government was not as well represented as it could have been by Australian Major Event and that he had received unsatisfactory feedback from within Government concerning the professionalism of Australian Major Events.. For example, Australian Major Events had been difficult and hence placed the negotiations with SOCOG in jeopardy by not being available for a meeting with SOCOG on a particular date.<sup>410</sup>
- Mr Ciccarello gave evidence that he was told by Minister Ashenden at their first meeting on 13 March 1997 that it was necessary to have a single-minded and focused approach to the bid negotiations, rather than have Australian Major Events who were involved in a number of events.
- Australian Major Events had allowed Adelaide to "lose" the Commonwealth Games and could not be allowed to do the same with the Olympic soccer.<sup>411</sup>
- Mr MacFarlane, the officer with the day to day responsibility for the bid within Australian Major Events, has submitted that he believed Australian Major Events may have been removed because it drew attention to the likely cost hosting of Olympic soccer in Adelaide at between \$31.135 to \$37.135 million.

I accept Minister Ashenden's evidence of his reasons for removing Australian Major Events. However, it was inappropriate in my view for Minister Ashenden to rely on informal and imprecise communications from SOCOG made to the Premier. The concerns within Government about Australian Major Events' performance ought to have been formally clarified and tested.

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<sup>409</sup> Mr Ciccarello has submitted to this Examination that he categorically denied that he at any time sought to take over from AME the handling of the bid or negotiations with SOCOG. I accept Mr Ciccarello's submission. Having regard to Mr Ciccarello's experience and qualifications, I consider he was well suited for the appointment and I make no criticism of him in regard to his appointment to replace Australian Major Events.

<sup>410</sup> In fact it was not that a representative of Australian Major Events was unavailable for a meeting with SOCOG, it was Mr Scott, the Chief Executive of the Office for Recreation, Sport and Racing who was unavailable.

<sup>411</sup> Australian Major Events conducted Adelaide's negotiations with the Australian Commonwealth Games Association. When a significant rights fee was demanded, Australian Major Events recommended to the Premier that the Government not accept an obligation for that fee. The Australian Commonwealth Games Association would not change its position and Adelaide, like other bidding cities, discontinued its bid.

## **Conclusion on Informal Communications**

For the reasons discussed above, Ministers Ingerson and Ashenden and Mr Michael Scott as the Chief Executive Officer of the Office of Recreation, Sport and Racing each placed disproportionate reliance on informal and imprecise communications with SOCOG. Each should have sought to clarify these communications in a formal way and test them.

## **Composition of Bid Committee**

The Bid Committee was inappropriately segregated from the Stage 1 Redevelopment Committee.

The work of responding to the SOCOG questionnaire was undertaken by a Bid Committee that had been set up in May 1996. Most of the work was undertaken by Mr David MacFarlane of Australian Major Events. Woods Bagot provided assistance in working out what was necessary to be able to provide the facilities required by the bid document and produced drawings showing the configuration of the stadium in "Olympics mode".

The committees respectively responsible for the Stage 1 redevelopment and the SOCOG bid had a significant overlap in membership. The Soccer Federation, Mrs Hall, the Office for Recreation, Sport and Racing and Woods Bagot were represented on both. Services SA was not. If it had been, it may have become aware of uncertainties as to the sufficiency of Stage 1 to meet SOCOG requirements earlier so that the necessity for Stage 2 could have been given full consideration before commitment to Stage 1. Further, as the Government agency with primary expertise in project management and conduct of tender processes in respect of public works, it might be expected that Services SA would have identified the deficiencies in the definition of the SOCOG competitive process.

The Soccer Federation was given an inappropriately powerful role in the negotiations with SOCOG. As a result, on 19 September 1996, the General Manager of the Soccer Federation informed SOCOG that Adelaide was considering further works to the Hindmarsh Stadium. It is not possible to tell now whether that disclosure of a wholly embryonic plan contributed in any way to the stance adopted by SOCOG on 29 October 1996. That is not to suggest any impropriety on either SOCOG's or the Soccer Federation's part. However, the Government had been careful to keep the Bid Committee's work confidential, to the point of instructing Woods Bagot not to disclose matters relating to the work it undertook for the bid outside the Bid Committee. It made sense to have the Soccer Federation involved in the preparation of the bid and the planning of arrangements for the Olympics. However, since it was the Government that would have to meet the cost of any additional commitment to SOCOG, the Government should not have disclosed that it was prepared to adopt its most expensive position until it was quite clear that it was necessary. Further, it should have been the Government's decision to adopt the position and not a representative of a voluntary organisation that could not meet the cost of that commitment.

## **Conclusion on Composition of Bid Committee**

Minister Ingerson and Mr Michael Scott as the Chief Executive Officer of the Office for Recreation, Sport and Racing should have ensured that Services SA was represented on the Bid Committee so that Services SA could bring to the Stage 1 Redevelopment Committee its expertise in ensuring Government's primary objective of meeting SOCOG and FIFA requirements was satisfied as best it could be in Stage 1. I consider that Services SA was hampered in its ability to do this by being excluded from the Bid Committee.

Mr Ingerson has submitted that it was appropriate for Services SA not to be included on the Bid Committee. He submitted that this was the traditional role of Australian Major Events and that Services SA's involvement was appropriate only once a decision had been made to proceed with Stage 2. Mr Ingerson's submissions do not address the point that the benefit of Services SA involvement in the Bid Committee was to provide expert feedback to the Stage 1 Redevelopment Committee.

Furthermore, Minister Ingerson should have ensured that the Soccer Federation was not engaged in direct negotiations with SOCOG.

## **INAPPROPRIATE PROCESS FOR SETTING BUDGET FOR STAGE 2**

### **Overview**

The budget for Stage 2 was set in November 1996 by reference to one concept, the "soccer park" concept. That concept was chosen because of the perceived concerns of SOCOG about the constriction of the site. Those concerns were not precisely identified.

The budget set in the November 1996 Cabinet submission was not set by reference to any requirement of SOCOG's that a particular amount be spent or that any particular facilities had to be permanent rather than temporary. No attempt was made to find out whether SOCOG would be satisfied with less money being spent.

The decision in early 1997 to change Stage 2 to comprise principally permanent stands did not result from the requirements of SOCOG.

No effort was made to review the budget at the time of the change of scope.

As a separate issue, the budget for the relocation of the Hindmarsh Bowling Club was set in an arbitrary way.

### **Budget Set by Reference to Abandoned "Soccer Park" Concept**

The budget for Stage 2 of \$16.205 million was initially estimated by reference to a proposed project involving acquisition of a large amount of land and creation of a "soccer park".

When Minister Ingerson presented concept plans to SOCOG on 29 October 1996 those plans included both the extensive land acquisition involved in the "soccer park" concept and on one view, new permanent stands on each of the four sides of the stadium. When Minister Ingerson signed the November 1996 Cabinet submission for Stage 2, it set out the "soccer park" concept (with a slightly cheaper variation) with no additional permanent stands.

The preference for the "soccer park" concept gave priority to SOCOG's concerns expressed informally in conversations prior to 29 October 1996 and evident on that day from the nature of the questions asked by the SOCOG evaluation team.

The Government had insufficient information upon which to base that choice. The conversations with SOCOG both before and on 29 October 1996 were an insufficiently precise basis upon which to make the choice to acquire substantial amounts of land.

In his evidence to this Examination Mr Ingerson said that the most important point about the November 1996 Cabinet submission was to obtain Cabinet's acceptance that the Government had to spend about \$16 million more if it wished to continue to be considered as a host for matches in the 2000 Olympic Soccer Tournament.

That was not apparent from the submission presented to Cabinet by Minister Ingerson:

- The Cabinet submission sought approval very specifically to pursue "Master Plan Option 1".<sup>412</sup> Although only a concept plan, the content of that plan was clearly set out in the submission. The budget was based on a cost estimate by Rider Hunt that listed the expected elements of the soccer park concept and itemised costs.
- The Cabinet submission was not expressed to be seeking an allocation of funds for unspecified works. It sought an amount by reference to a particular project.
- The only alternative to "Master Plan Option 1" presented in the submission was a cheaper version of the "soccer park" concept. If the intention was to obtain an allocation of funds to be spent on whatever project the Department of Recreation and Sport thought fit, the submission should have set out a variety of possible projects. Minister Ingerson and the Chief Executive Officer of the Office for Recreation, Sport and Racing should have ensured that content of the November 1996 submission reflected the true intent of the proposal.

#### **Budget Not Set by Reference to Concerns of SOCOG**

The budget set in the Cabinet submission approved by Cabinet in November 1996 was not set by reference to any requirement of SOCOG's that a particular amount be spent or that any particular facilities had to be permanent rather than temporary. No attempt was made to find out whether SOCOG would be satisfied with less money being spent.

SOCOG had stated during the 29 October 1996 site visit that SOCOG would take into account the extent to which the staging of matches in Adelaide would leave a "legacy for sport". SOCOG did not at that time nor afterwards state what size or extent of legacy SOCOG required.

No attempt was made to clarify that issue with SOCOG.

There were no discussions with SOCOG about how much the upgrade to Hindmarsh would cost. SOCOG did not state a figure that it required be spent.

The objective of Stage 2 was to procure the right to host matches in the 2000 Olympic Soccer Tournament. The budget was set by reference to that objective only to the extent that the Government ensured that the amount spent was at least sufficient to secure that objective. There was no investigation of whether the objective could be achieved for a smaller budget. If the objective could have been achieved for a smaller budget the project would have been more cost-effective.

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<sup>412</sup> Cabinet's in principle approval was subject to SOCOG awarding the Tournament to Hindmarsh Stadium. Chapter 11 contains a detailed discussion of the Cabinet submission.

### **Change to Permanent Stands**

After the November 1996 Cabinet approval, the Department of Recreation and Sport prepared a more detailed Cabinet submission for Stage 2. The first draft was prepared by an officer in the Department. Woods Bagot prepared the drawings that were to accompany it. Cost estimates were obtained from Rider Hunt for the two options presented in it. Mr Michael Scott, the Chief Executive Officer of the Department of Recreation and Sport recommended to Mr Ashenden, then Minister for Recreation and Sport that a concept involving principally new permanent stands rather than land acquisition should be preferred. The submission proceeded on that basis. In evidence to this Examination, Mr Michael Scott said the change away from land acquisition was because further investigation had shown that the cost of acquiring the additional land was prohibitive.

It is clear that the change from the "soccer park" concept was not the result of any requirement of or statement by SOCOG. At most, SOCOG pointed out to Adelaide's negotiating team in April 1997 that Adelaide could reduce the fee to be paid to Sydney by building permanent stands. Any amount spent on permanent stands would reduce the need to install temporary stands, the cost of which Sydney would pass on to Adelaide. The minutes of those negotiations with SOCOG show that SOCOG regarded it entirely as a matter for Adelaide whether it wished to change from temporary to permanent stands. Mr Elphinston, in his evidence to this Examination, confirmed that this was in fact SOCOG's view.

Those negotiations occurred after Minister Ashenden accepted his Chief Executive Officer, Mr Michael Scott's recommendation to prefer permanent stands over land acquisition.

After the decision not to pursue the acquisition of all land between Hindmarsh Place and Richard Street was taken, no consideration was given to whether a cheaper option could be pursued. Cost estimates were not obtained for the options involving construction of only some of the permanent stands (eg only a permanent eastern grandstand). No discussions were held with SOCOG to find out what level of permanent seating it required.

In the November 1996 Cabinet submission the \$16.205 million was to be spent on \$6.8 million of land acquisition and \$9.405 million of site works. In the design of the stadium approved by Cabinet in September 1997, the make up of the \$16.205 million<sup>413</sup> was \$7.7 million of terracing and permanent grandstands, \$850,000 on land acquisition and the balance on a variety of works, principally within the boundaries of the stadium itself rather than the environs.

### **Arbitrary Budget for Bowling Club Relocation**

There was no rational connection between the budget set for relocation of the Hindmarsh Bowling Club and the Bowling Club's position. The Bowling Club was near the end of its lease of the land and had no right of renewal.

The compensation payable for the relocation of Hindmarsh Bowling Club was set in an arbitrary manner.

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<sup>413</sup> A fixed total of \$16.205 million was specified for the fixed total of the works proposed.



In 1995, the Hindmarsh Bowling Club leased from the Council the western portion of the triangle-shaped land between Manton and Holden Streets and Hindmarsh Place, adjacent to the old stadium.

The Valuer General's valuation for the land was \$153,000. The Hindmarsh Bowling Club's lease expired on 31 December 1998. According to the 9 July 1997 Cabinet submission the Hindmarsh Bowling Club had low membership and might not be in a good financial position, both of which were said to help the Government in negotiations with the Hindmarsh Bowling Club.

On 25 June 1997, the Stage 2 Cabinet submission working party set a budget of \$100,000 to cover "merger fees" in relocating the Hindmarsh Bowling Club on the assumption that no new facilities would be required by the club and the Council would not charge anything for the land. There was no rational connection between what was known about the Hindmarsh Bowling Club's position and the budget set. This budget was set before any of the assumptions had been tested by discussions with either the Council or the club. The figure was included by Woods Bagot in the *Project Definition Brief* as an estimate to allow for a contribution to fit out or infrastructure for relocating.

It was reasonable to include an allowance for the relocation. However, it should have been set on a rational basis. Considering that the land was worth \$153,000, an amount of nearly two-thirds of that value to compensate for the remaining 12 months of a lease was plainly excessive.

From November 1997, extensive negotiations occurred between representatives of the Hindmarsh Bowling Club, the Council and the Department of Industry and Trade and the City of West Torrens that owned the site of the former Thebarton Bowling Club. It was proposed that the Hindmarsh Bowling Club be relocated to the premises of the former Thebarton Bowling Club. In July 1998, after seeking the Crown Solicitor's advice as to how the payment could be legally transferred from the State to the Hindmarsh Bowling Club it was agreed that:

- the Department of Industry and Trade would make a grant of \$155,000 from the Project Budget for Stage 2 to the City of West Torrens to contribute to the upgrade of the former Thebarton Bowling Club;
- that the City of West Torrens would grant the Hindmarsh Bowling Club a 14 year lease of the former Thebarton Bowling Club; and
- the Hindmarsh Bowling Club would vacate the Manton Street premises by 7 September 1998 so that it could be used as a site office during construction of the Stage 2 works.

An agreement on these terms was recorded in a letter dated 27 July 1998 sent by Mr Ingerson, as Minister for Industry, Trade and Tourism to the City of West Torrens.

The Government bore the cost of providing upgraded facilities on land that it did not own, in return for the Council agreeing to make the Hindmarsh Bowling Club land available for use as part of the stadium site, while title to that land remained with the Council.

In my opinion, the cost of \$155,000 could not be justified by reference to the value of the Hindmarsh Bowling Club's remaining lease. The Government did not have to compensate Council for the loss of use of that land as a bowling club since Council still owned the land and the bulk of the land upon which the stadium stood. The cost might have been justified on the basis of a social need to maintain an equivalent sporting facility but the Government did not give that matter any consideration.

Mr Dixon, the Chief Executive Officer of the Department of Industry and Trade should have ensured that the budget for relocation of the Hindmarsh Bowling Club was set in a proper manner.

### **Conclusion on Inappropriate Method of Setting Budget**

It is not inappropriate that Cabinet having set a budget limit for a project should insist on that limit being adhered to, even if changes to the content of the project are recommended. That is because Cabinet must take into account the allocation of funds across all Government activities. However, the converse does not apply. If changes to the content of a project are recommended by a proponent Minister, consideration should be given to whether the changes present the opportunity to reduce the budget for the project.

The proponent Ministers Ashenden and Ingerson and the Department of Recreation and Sport, should have considered the opportunity to reduce the budget fixed by reference to the "soccer park" concept when the fundamental concept was later changed.

## **CABINET SUBMISSIONS INADEQUATE BASIS FOR CABINET DECISIONS**

### **Overview**

The submissions upon which Cabinet's approval of Stage 2 was based were inadequate. Each to varying degrees breached Government guidelines for preparation of Cabinet submissions, was inaccurate or incomplete. In particular, Treasurer's Instruction 9105 that required compliance with Treasury Information Paper 90/1. It required presentation of multiple options including examination of the "do nothing" option. Breach of Treasurer's Instruction 9105 constituted a breach of Section 41 of the *Public Audit and Finance Act 1987*.

### **Breach of Treasurer's Instruction 9105**

The Cabinet submissions breached the mandatory requirements of Treasurer's Instruction 9105 that required compliance with Treasury Information Paper 90/1. That paper required submissions to Cabinet to include a report on the project evaluation in a particular form, the format for which was set out in the paper. The SACES study partly complied with the requirements but only as to the presentation of its economic analysis. Neither the SACES study nor any other paper attached to the Stage 2 Cabinet submissions fulfilled the other requirements of the Treasury Information Paper.

The most significant of these requirements is that a study annexed to the Cabinet submission list all feasible options. That was not done. The failure to consider alternatives and the fact that alternatives were available is described earlier in this Chapter.

The November 1996,<sup>414</sup> March and July 1997<sup>415</sup> submissions for Stage 2 each presented, in form, two options for the project. None described the effect of the "do nothing" option.

- The November 1996 options were both directed at the "soccer park" concept, with "Option 2" involving slightly less cost. They did not represent different methods for addressing the objective of satisfying SOCOG.

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<sup>414</sup> Minister Ingerson signed this Cabinet submission.

<sup>415</sup> Minister Ashenden signed these Cabinet submissions.

- The March 1997 options were radically different methods but neither presented cheaper methods of achieving the objectives.
- The July 1997 options were simply variations on the options that had been presented previously.

The 18 August and 4 September 1997 submissions signed by Deputy Premier Ingerson proposed a concept plan for a single option.<sup>416</sup>

Proponent Ministers Ingerson and Ashenden and the departmental staff responsible for assisting in the preparation of the Cabinet submissions for Stage 2 should have ensured that each submission complied with Treasury information Paper 90/1 and specifically presented multiple feasible options, including the "do nothing" option.

### **Inadequate Content**

#### **Overview**

The Cabinet submissions for Stage 2 were an inadequate basis for decision on the recommendations made to Cabinet. They contained unclear statements about the relevant background to the decision to proceed with the project. They omitted material information. The main respect in which the submissions were inadequate was that these ambiguities and omissions obscured the ongoing failures in the initiation and approval of the project.

There were substantial flaws throughout the initiation and approval of Stage 2. There was no proper feasibility study undertaken. Adequate consideration was not given to alternatives to the project. The budget was not set in an appropriate manner. The primary consultant undertook work without a formal retainer and when ultimately formally retained it was not on the basis of a competitive selection process.

Those matters should have been expressly addressed in the Cabinet submissions for Stage 2.

#### **13 November 1996 Cabinet Submission**

Minister Ingerson signed the first Cabinet submission proposing Stage 2 on 13 November 1996. The justification given in the November 1996 Cabinet submission for Stage 2 was:

*"Option 1 is preferred as it addresses the concerns raised by SOCOG and the Public Works Committee relating to the areas of traffic management, parking, future expansion of the stadium and spectator access and safety."*

The submission did not make clear that *"the concerns raised by SOCOG"* had been raised in only an informal manner. It did not state that no attempt had been made to elucidate with SOCOG exactly what SOCOG required from the stadium. The submission omitted the following matters relevant to the issue of whether more space was required around the site:

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<sup>416</sup> Chapter 13 discusses these Cabinet submissions in detail.

- The Bid Committee had formed the opinion that a proposal that did not involve any land acquisition beyond the existing boundary of the site would be sufficient to meet SOCOG's requirements.
- On 9 September 1996, SOCOG had informed the Bid Committee that a warm up pitch would probably not be necessary.

In reporting the key matter that Stage 2 was intended to address, the concerns of SOCOG, the submission should have been entirely accurate and transparent.

The submission stated that the need for Stage 2 had arisen because of concerns expressed by SOCOG. It did not state how the need for one element of Stage 2 had arisen. The submission sought funding for the upgrade to the pitch to FIFA requirements, estimated to cost \$636,000. It did not state that the pitch upgrade had previously been a part of Stage 1 and included within its budget. The removal of that element from Stage 1 had not previously been the subject of a Cabinet submission. The upgrade of the pitch to meet FIFA requirements remained a constant element in Stage 2. No Cabinet submission stated why the pitch upgrade had been removed from Stage 1. Minister Ingerson and Mr Michael Scott, the Chief Executive Officer of the Office for Recreation, Sport and Racing should have ensured that the November 1996 Cabinet submission reported accurately the reason for that element being included in Stage 2.

### **12 March 1997 Cabinet Submission**

On 12 March 1997, the submission that had been foreshadowed by the 13 November 1996 submission was signed by Minister Ashenden.

The submission presented two very different options for further development.

- "Option 1" involving land acquisition and site development. The drawing of this option was almost identical to that sent to SOCOG on 20 November 1996 except that it was clear on this drawing that there were no new permanent stands.
- "Option 2" which involved only \$1.22 million worth of land acquisition but \$23.49 million on construction of new permanent stands, including a grandstand of identical design to the upgraded western stand.

No explanation was advanced in the Cabinet submission for how two such radically different options could both meet SOCOG's requirements.

The Cabinet submission firmly recommended Option 2, at an estimated cost of \$24.710 million. The stated reason for preferring Option 2 was:

*"As the greater proportion of the capital cost for option 2 (\$24.710m) is vested in facilities rather than land and, therefore, offers greater potential for recouping incremental revenue, it is considered that option 2 is the preferred option."*

There was no basis for the statement about recouping incremental revenue. It would only have validity if there were a basis for an expectation that:

- Increased permanent seating would lead to increased spectator numbers at matches.

- Any increase in spectator numbers would offset the higher management costs of a larger stadium.

Neither had been the subject of any adequate investigation or consideration. Minister Ashenden and Mr Michael Scott, the Chief Executive Officer of the Department of Recreation and Sport should have ensured that the Cabinet submission was entirely transparent about the scope and extent of the investigations that founded its recommendations.

The March 1997 Cabinet submission was withdrawn. It was, however, the only submission to contain information, albeit inadequate, about the feasibility and cost-effectiveness of Stage 2.

### **9 July 1997 Cabinet Submission**

The 9 July 1997 submission signed by Minister Ashenden contained a revised version of the preferred option from the March 1997 submission, called "Option 3". The principal difference was that the eastern grandstand was an unroofed decking stand on the eastern side instead of a stand of similar design to the upgraded western stand.

The submission repeated the justification for preferring Option 3:

*"The greater proportion of the capital cost for Option 3 is vested in facilities rather than land and therefore offers greater potential for improved revenue and provides the optimum benefit for the State. It is considered the preferred option."*

No further studies had been undertaken since the March 1997 Cabinet submission. There was no basis for the assertion that Option 3 provided "*optimum benefit*". The benefits had not been measured or analysed.

The Cabinet submission again failed to be entirely transparent about the scope and extent of the investigations that founded its recommendations.

The Cabinet submission did not give a full account of the circumstances of the retainer of Woods Bagot. The original draft of the submission prepared by the Department of Recreation and Sport noted accurately that Woods Bagot had no expectation of being paid for the work that they had done to that date. It stated that Services SA had "*subsequently*" approved the course of retaining Woods Bagot without a competitive selection process. Services SA criticised the first draft and recommended that a much more abbreviated version be inserted. The Department of Recreation and Sport accepted that recommendation. As a result, the full circumstances of Woods Bagot's retainer were not reported to Cabinet in any Cabinet submission.

Where there is an irregularity in retention of external consultants that should be fully disclosed and the reasons for departure from usual procedures explained in full. In my opinion, it is unacceptable that Ministers should sign Cabinet submissions deliberately drafted with the intention of deflecting criticism. The process of supervision by higher echelons of the Government is thwarted if all levels do not report frankly on departures from usual procedure.

### **15 August 1997 Cabinet Submission**

The August 1997 Cabinet submission signed by Deputy Premier Ingerson introduced the concept of a range for the budget for Stage 2 and "*variable and discretionary works*" estimated to cost a total of

\$1.92 million. These items were in addition to the fixed cost of the project that was within the budget of \$16.205 million fixed by the Cabinet submission approved in November 1996.

This gave the impression that the main cost of Stage 2 had been kept within the budget set by the 1996 Cabinet submission. However, the variable and discretionary works included works estimated to cost a total of \$1.105 million that in the November 1996 submission had been within the \$16.205 million budget. In short, the budget for Stage 2 still exceeded the November 1996 budget by \$1.105 million.

Deputy Premier Ingerson and Mr Ian Dixon as the Chief Executive Officer of the Department of Industry and Trade should have ensured that the submission was completely transparent about the composition of the budget for which it sought approval.

#### **4 September 1997 Cabinet Submission**

The 4 September 1997 Cabinet submission signed by Deputy Premier Ingerson repeated the two matters mentioned above for the August 1997 submission.

#### **16 February 1998 Cabinet Submission**

The 16 February 1998 Cabinet submission signed by Deputy Premier Ingerson contained an updated cost estimate for the project. The works that had previously been noted as variable and discretionary were included in the final project cost that had now increased to \$18.5 million.

The Cabinet submission described various efforts to reduce costs including the conduct of a Value Management Study. The submission did not state that the most significant exercise that had not been undertaken, a review of the project to ascertain to what extent three new permanent grandstands were necessary to meet the requirements of SOCOG. Deputy Premier Ingerson and Mr Ian Dixon as the Chief Executive Officer should have ensured that it did.

#### **Conclusion on Inadequate Cabinet Submissions**

As discussed above, Ministers Ingerson and Ashenden and Mr Michael Scott and Mr Ian Dixon as the concerned Chief Executive Officers should each have ensured that the Cabinet submissions for Stage 2 for which they were responsible were accurate, complete and complied with Government guidelines including Treasury Information Paper 90/1.

# CHAPTER 24 – STAGE 2 PUBLIC WORKS COMMITTEE PROCESS

## OVERVIEW

In my opinion, the Public Works Committee's investigations of Stage 2 were thwarted by the material placed before the Committee and by the Government's response to the Committee's questions. The written submission to the Public Works Committee for Stage 2 was inadequate. It was inaccurate and incomplete in a number of material respects. The Government refused to disclose information to the Committee. Ultimately the Government moved a resolution in Parliament to bring the Committee's deliberations to a halt.

On 26 February 1998 the submission of Stage 2 was made to the Public Works Committee. As with Stage 1, the submission complied with the *Parliamentary Committees Act 1991* in form.

### Inadequate Content of Original Submission

#### Overview

The Stage 2 submission to the Public Works Committee contained numerous incorrect or incomplete statements about:

- The Soccer Federation's contribution to the funding arrangements for the project;
- The Council's contribution to the funding arrangements for the project;
- SOCOG's requirements for the upgrade;
- The reasons for the content of Stage 2;
- The process used for the design of Stage 2;
- Application to the Federal Government for funding; and
- Arrangements for ownership and management.

It is apparent from a review of the submission to the Public Works Committee that large slabs of text in it were lifted from previous Cabinet submissions with little consideration given to whether the information was helpful or informative or would assist the Public Works Committee in its investigations.

#### Funding Arrangements

On page 4 the submission to the Public Works Committee said:

*"The project was jointly funded between the State Government and the SA Soccer Federation."*

This was an abbreviated way of describing the funding arrangement for Stage 1. If other aspects of due diligence had been carried out properly it would have been a fair description of the arrangement. However, in the circumstances it failed to disclose a number of key features of the "joint funding":

- The financial feasibility of the Soccer Federation's contribution had not been properly assessed in that no research had been undertaken to establish the likely spectator numbers at the redeveloped stadium and no investigations of the NSL Clubs' financial position had been undertaken.
- While the Funding Deed had provided for the Soccer Federation and the Government to bear the cost of any increase over the original budget of \$8.125 million equally, the first time that had been tested the Government had waived the Soccer Federation's contribution.<sup>417</sup>
- A fundamental tenet of the original funding arrangements was that the Soccer Federation and the NSL Clubs would bear the cost of the fit out of the corporate facilities and the clubrooms. By the time of the submission to the Public Works Committee the Government had given a guarantee so that the Soccer Federation could obtain a \$2 million loan to fund that work.
- Under the Funding Deed, the Soccer Federation was required to provide a charge over the bank account into which levies were paid but had not yet done so.

### **The Council's Contribution to the Funding Arrangements for the Project**

On page 8 the submission to the Public Works Committee said:

*"The City of Charles Sturt has also indirectly contributed by charging the SASF a peppercorn rental for its lease of the stadium. The lease which is for twenty one years with a right of renewal for a further twenty one years was re-negotiated in 1995 between these two parties with consideration to the loan the SASF has taken out for the Stage 1 project."*

My Examination did not discern any sense in which the lease was entered into "with consideration to" the Soccer Federation's loan for Stage 1. The lease makes no reference whatsoever to the loan. It was entered into before the terms of the Soccer Federation's borrowings had been finalised.

The sole reference in the lease to the Stage 1 redevelopment was in Clause 4.32 that provided:

*"The parties acknowledge that the Lessor grants the Lessee this lease on the basis of the Lessee's commitment to improvement of the Premises recorded in the Lessee's application for Development Approval. The Lessor reserves the right to terminate this Lease if the Lessee cannot demonstrate reasonable attempts to achieve the redevelopment proposals by the date of the first review of rent (item 9 of the lease Schedule)."*

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<sup>417</sup> I note that in his oral evidence to the Public Works Committee, Mr Farrugia said that the Soccer Federation was contributing \$4 million by a Government guaranteed loan to the project costs of \$9.26 million. I do not consider this sufficient disclosure of the fact that the Government had waived the Soccer Federation's obligation to contribute 50 percent of excess project costs.



That clause was ineffectual because no application for development approval had been lodged at that time. If it were effectual, it would be of only slight utility to the Soccer Federation in that it could be used by the Soccer Federation to support an argument that it mounted to the Council, as landowner not planning authority, impliedly giving consent to the redevelopment. Since ultimately the construction was undertaken with the Minister for State Government Services as contract principal it was necessary for the Minister to have the Council's consent to enter upon the land for the purposes of the redevelopment.

The lease did not protect the Government's interests as far as the Soccer Federation's loan was concerned. The Soccer Federation had negotiated and entered into its new lease from the Council without consulting with the Government even though it had agreed in the April 1995 Memorandum of Understanding that the lease would be on terms acceptable to the Government. After the lease had been executed the Crown Solicitor's Office was provided with a copy of the lease but did not ever provide the Office for Recreation, Sport and Racing with formal advice upon it. The Soccer Federation was only able to obtain its loan for the construction of Stage 1 with the support of the Government's guarantee. The arrangement by which the Government gave that guarantee was recorded in the Funding Deed. That deed required the Soccer Federation to give a mortgage of the lease upon request by the Government. It was, therefore, an essential part of the Soccer Federation's loan that it be in a position to grant the Government a mortgage over its lease. The new lease entered into between the Soccer Federation and the Council did not require the Council to consent to a mortgage of the lease. In a very real sense, the lease from Council had not been entered into "*with consideration to*" the Soccer Federation's loan.

In short, the lease was entered into too early for it to be said that it was entered into "*with consideration to*" the Soccer Federation's loan for Stage 1.

### **SOCOG's Requirements for the Upgrade**

On page 5, the submission to the Public Works Committee said:

*"Discussions with the Sydney Organising Committee for the Olympics Games (SOCOG) delegation during their visit to Adelaide on 29 October 1996, confirmed that two key criteria that would be utilised in awarding cities the rights to stage rounds of the 2000 Olympic Soccer Tournament were:*

- *The adequacy of the site and facilities to stage the event to Federation Internationale De Football Association (FIFA) standards.*
- *The legacy that would be provided to the sport as a result of hosting a round of the Olympic Soccer Tournament.*

*The SOCOG delegation also confirmed the stadium was inadequate, even after the completion of the western grandstand redevelopment. It was made clear that further substantial enhancement would be needed if Adelaide was to secure a round of the Olympic Soccer Tournament."*

In my opinion, that was not an accurate statement of the genesis of Stage 2.

The SOCOG delegates' discussions on 29 October 1996 did not involve any express statements about the likelihood of success of Adelaide's bid. Certainly the questions they asked, coupled with their general demeanour, conveyed the impression to those attending that Adelaide's bid was not looked upon favourably. Further, the SOCOG representatives did not make any express statements about how any particular aspect of the stadium could be improved. The questions they asked showed their concern about the amount of space available at the site. The questions they asked showed their concern about the amount of additional permanent improvements proposed but did not specify what amount was required or that permanent seating was essential. The SOCOG representatives did not specify what needed to be done to address the concerns they expressed. That was left entirely to be decided by the Government on the basis of recommendations put forward from time to time by the proponent Ministers, Mr Ingerson and Mr Ashenden. Once the SOCOG delegates had been shown additional plans by Minister Ingerson, they expressed interest in the plans. However, it is incorrect to state, as the submission to the Public Works Committee did, that the SOCOG representatives confirmed that the stadium was inadequate and that it was made clear that further substantial enhancement was required to secure the games.

On page 11 the submission contained a section entitled "*Necessity for Constructing the Work*". That section was accurate in the facts it stated but inaccurate and unhelpful in what it did not state.

*"Government has continued its long term program of providing new and the upgrading of major sporting facilities viz a viz; Pines Hockey Stadium, Velodrome, Athletics Stadium, Netball Stadium, Hindmarsh Soccer Stadium (Stage 1).*

*The success of the World Youth matches in 1993 demonstrated Adelaide could host soccer matches of an international standard and provided the impetus for Adelaide to seek nomination to host preliminary matches for the 2000 Olympic Soccer Tournament.*

*A letter to the then Premier in January 1995 from the Executive President of the Sydney Organising Committee for the Olympic Games (SOCOG) confirmed Adelaide was included in the list venues for the soccer preliminary matches provided the venue was acceptable to the FIFA, SOCOG and the Australian Soccer Federation (ASF). The letter also sought confirmation from the State Government that it was interested to participate in the Olympic Games.*

*On 19 December 1996 SOCOG announced Adelaide would host a round of the 2000 Olympic Soccer Tournament, subject to the completion of relevant negotiations. The South Australian Olympic Football Task Force has completed the major negotiations which culminated with the signing of a letter of agreement between the Premier on behalf of the State Government and SOCOG on 15 August 1997.*

*On 8 September 1997 the Premier unveiled a concept plan for Stage 2 of the multi-million dollar redevelopment of the Hindmarsh Soccer Stadium."*

The history set out was inapposite to the topic addressed ie *"the necessity for constructing the work"*. It hinted that the construction was necessary for the hosting of the 2000 Olympic Soccer Tournament without expressly saying that. It could not say that because no one had ascertained whether works to the extent comprised in Stage 2 were necessary. It contained a vague statement about the Government's policy of upgrading sports stadia. It did not explain why soccer required a stadium much more expensive than each of the other sports mentioned. It could not since no research had been undertaken as to whether participants in the sport of soccer required or would use a stadium of that size, apart from Woods Bagot interviewing the Soccer Federation.

## **The Reasons for the Content of Stage 2**

On page 5, the submission to the Public Works Committee said:

*"In response to SOCOG's comments a concept was developed for a Stage 2 redevelopment of the Master Plan for the Hindmarsh Soccer Stadium. In November 1996 Cabinet endorsed in principle the Stage 2 concept at an estimated cost of \$16.205 million and noted there are a range of variable and discretionary works that may form part of Stage 2 estimated to cost \$1.92 million."*

This passage of the submission gave the impression that the development of the concept for Stage 2 occurred only after the SOCOG visit. In fact, the key elements of Stage 2 were identified before the SOCOG visit and were presented to the SOCOG representatives during their visit. The submission should have disclosed that Mr Ingerson volunteered the Stage 2 concept on 29 October 1996.

Mr Dixon corrected that inaccuracy in the Public Works Committee hearing held on 4 March 1998. However, the fact that \$1.82 million of *"variable and discretionary"* works had been previously included within the \$16.205 million budget was now additional to that budget was not made clear to the Public Works Committee.

## **The Process Used for the Design of Stage 2**

On page 13 the submission stated:

*"The project brief was jointly prepared by the SASF, the Department for Industry and Trade and the Department for Administrative and Information Services and takes into account a staged implementation of the requirements of the Federation Internationale De Football Association (FIFA)."*

The project brief was prepared principally by Woods Bagot on the basis of instructions from the Department for Recreation and Sport. Services SA were provided with a draft of the project brief, upon which they provided comment.

On page 14 the submission said:

*"While the site is constrained it is still the best option based on access and cost. The majority of the infrastructure exists and requires upgrading to meet the building code and relevant standards."*

There was no basis for stating that the Stage 2 upgrade to Hindmarsh Stadium was *"the best option"*.

First, that statement was only meaningful if a need had been identified which that option met. The need for Stage 2 was not ever properly articulated.

Secondly, even assuming that the need addressed by Stage 2 was providing a venue for the 2000 Olympic Soccer Tournament, there had been no attempt to identify or assess other options such as using another venue.

On page 15 the submission stated:

*"FIFA guidelines are based on European experience and some aspects are not regarded as necessary in the Australian context. Principally these are the crowd control issues. Nevertheless, these issues have been considered and an acceptable position negotiated. The strategy to apply them at the Hindmarsh Soccer Stadium are summarised in Attachment D".*

To the extent that that conveyed that a rigorous process of determining the content of Stage 2 by reference to FIFA guidelines had been undertaken that was incorrect. Stage 2 was to include such of the works necessary to host matches in the 2000 Olympic Soccer Tournament as Mr Michael Scott as the Chief Executive Officer of the Department of Recreation and Sport had determined should be permanent. The basis for that determination was not any negotiation with FIFA.

The submission stated that Annexure D to the submission was a summary of the *"strategy to apply [FIFA guidelines] at Hindmarsh Soccer Stadium"*. In fact, Annexure D was a copy of FIFA and UEFA's own technical report, with no specific reference or adjustment to Hindmarsh.

#### **Arrangements for Ownership and Management**

On page 10 the submission to the Public Works Committee said:

*"4. Future Stadium Ownership/Management*

*The key stakeholders in these two issues are the City of Charles Sturt (the Council), which owns the existing Stadium, the SA Soccer Federation (SASF) which leases and operates the stadium from the Council and the State Government which will be financing Stage 2 of the redevelopment of the stadium.*

*The Stage 1 Funding Deed already provides a mechanism for the proposed management of the Hindmarsh Stadium. Liaison is continuing between the Government, the Council and the SASF to ensure the structure of the management adequately represents the interests of all parties."*

This summary was inaccurate in two respects.

First, it suggested that the Funding Deed was adequate and was being adhered to. In my opinion, the Funding Deed contained inadequate measures to protect the Government's investment in Hindmarsh Stadium. Such measures as it did contain had not been enforced by the Government.

Secondly, it suggested that the issues of management and ownership were the subject of ongoing discussions and, implicitly, that those discussions were effectual. They were not. Those issues have only recently been resolved. Further, they were matters that the Government could and should have dealt with before referring the project to the Public Works Committee. The issues had been identified in 1989. Stage 2 had been under consideration since November 1996. By February 1998 those issues should have been concluded.

### **Conclusion about Submission to Public Works Committee**

Deputy Premier Ingerson and the Chief Executive Officer of the Department of Industry and Trade should have ensured that the submission to the Public Works Committee was accurate and informative.

### **Failure to Provide Information about SOCOG**

#### **Interim Report**

The hearings of the Public Works Committee for the Stage 2 commenced on 4 March 1998 and continued on 18 March 1998.

The Public Works Committee focused on why the necessity for an expanded project had arisen when the original western grandstand redevelopment had been intended to meet SOCOG requirements.

The evidence given to the Public Works Committee on this point was that:

- It was not until SOCOG's 29 October 1996 visit that it became clear that Stage 1 was not adequate.<sup>418</sup>
- The only liaison between the project planner and SOCOG prior to submission of Stage 1 to the Public Works Committee in 1996 was through Australian Major Events and the Soccer Federation.<sup>419</sup>

On 23 March 1998, Mr Ian Dixon as the Chief Executive Officer of the Department of Industry and Trade prepared a letter answering some of the questions raised by the Public Works Committee, but not the central question that concerned the committee ie how the content of Stage 2 had been determined. The substance of some of the answers given in the letter must be noted, given the correspondence that was to follow.

- The cost of maintenance of the stadium would be borne by the Soccer Federation pursuant to its lease from the Council.
- The existing 3,000 seats on the eastern side of the stadium installed for the 1993 World Youth Championships were unsuitable for re-use.

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<sup>418</sup> Hansard page 72 paragraph 266.

<sup>419</sup> Hansard page 71 para 261.

- The net present value of the project had been assessed by SACES as negative. Cabinet had decided that the project was justified by a wide range of broader community benefits which could not be adequately captured by economic modelling.
- It was not economic to build an additional 5,000 permanent seats. The 5,000 temporary seats used for the 2000 Olympic Soccer Tournament would cause blockage in surrounding roads which would only be undertaken for a very major event. Crowds of that magnitude would be rare. The estimated cost of providing 5,000 additional seats by increasing the size of the eastern grandstand would conservatively be \$10 million. The cost of providing 5,000 temporary seats on a once-off basis was approximately \$150,000. The additional permanent seats would need to be used at least six times a year to warrant the expense.
- The cost of using a greenfield site at Gepps Cross had been examined "some years ago" but was not pursued because it was not readily accessible from the metropolitan area.

The Public Works Committee convened again on 1 April 1998. Prior to that hearing the secretary to the Public Works Committee asked the Department of Industry and Trade to provide:

- Copies of all correspondence between SOCOG and any of the Soccer Federation, the Department of Industry and Trade, Office for Recreation and Sport and the Hindmarsh Soccer Stadium Executive Committee.
- Details of match attendances since completion of Stage 1.
- Details of match attendances for the previous three years.

In reporting that request to Deputy Premier Ingerson, the Chief Executive Officer of the Department of Industry and Trade stated:

*"There is no significant correspondence between SOCOG and the Department of Industry and Trade, including the former Office of Recreation and Sport, in the files. I believe SOCOG may have corresponded with Australian Major Events very early on when the Government was preparing its bid for the preliminary rounds of the 2000 Football Tournament to be held at the Hindmarsh Soccer Stadium but this is not covered under the request. In March 1997, the 2000 Football Task Force was established to take over the bid from AME. It is understood all correspondence by SOCOG from that time on was with the Task Force.*

*The evidence given to the Committee to date by officers of this agency has been that decisions on the scope of works and funding for the Hindmarsh Soccer Stadium development were made by the executive arm of Government and not by the Department of Industry and Trade. Hence, we are unable to assist the Committee on such issues. This stance will be maintained."*

That passage leads to two separate criticisms.

First, it highlights that the proponent agency of both Stage 1 and 2 had not corresponded with SOCOG to establish the key stated benefit of the redevelopment ie compliance with SOCOG's requirements for the 2000 Olympic Soccer Tournament. If the agency relied on the correspondence that others had with SOCOG of others to establish the requirements of the redevelopment it should have obtained copies of that correspondence. In fact, the content of Stage 2 was determined by the Department of Recreation and Sport and Woods Bagot, not as a result of the negotiations of the Bid Committee with SOCOG.

Secondly, it shows an inappropriately obstructive approach. The Public Works Committee had assumed that any relevant correspondence with SOCOG about the need for Stage 2 was with the Department. The agency that submitted Stage 1 to the Public Works Committee for consideration was the Office for Recreation, Sport and Racing.<sup>420</sup> That agency was part of the Department of Industry and Trade. The agency that submitted Stage 2 to the Public Works Committee for consideration was the Department of Industry and Trade.<sup>421</sup> The proponent agency for a project should be prepared and able to provide the Public Works Committee with all information it requests. It should not take a pedantic approach to the precise words used by the Public Works Committee in its requests for documents. If the Public Works Committee acts inappropriately or in excess of its power, it can be curbed by Parliament. It is not appropriate for departmental officers to seek to hinder the investigative arm of Parliament.

On 22 April 1998, Deputy Premier Ingerson wrote to the Presiding Member of the Public Works Committee.

After setting out a brief chronological account of the history of the Hindmarsh Stadium redevelopment the letter set out the following explanation for the decision to undertake Stage 2.

*"It appears the some of the main concerns of the Committee during its examination of the soccer project are the number of seats required and whether they should be temporary or permanent. With regard to the former, it has been quite clear from the first documentation produced by SOCOG that the requirement for Adelaide would be to provide a minimum capacity of 15,000 seats. Whether temporary or permanent seating should be supplied was easily determined by comparing the cost to install temporary infrastructure for the Adelaide Grand Prix which was \$10.0 million each year. The cost over the eleven year period of the Grand Prix was therefore \$110.0 million with no infrastructure left behind for this expenditure. The Government decided permanent seats was the option it required.*

*Prior to the visit by SOCOG in October 1996 there was an impression at that time that Stage 1 was sufficient to secure the preliminary rounds of the 2000 Olympic Soccer Tournament. This changed after that visit by the SOCOG delegation when it became clear that Adelaide's bid was inadequate compared to other possible venues which had submitted bids.*

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<sup>420</sup> 33<sup>rd</sup> report of the Public Works Committee, para 1.1, page 3.

<sup>421</sup> 67<sup>th</sup> report of the Public Works Committee, para 1.1, page 3.

*The decision to proceed with Stage 2 was based on a social and sporting benefit to the State. The fact that the project has a negative Net Present Value and a benefit - cost ratio of less than 1 was considered by Cabinet as part of its decision to proceed with this project. Cabinet has known from the beginning that the upgrade of the Hindmarsh Stadium is to have a minimum capacity of 15,000. It has made a conscious decision to be involved in the Olympics and therefore to redevelop the stadium to a standard that provides a legacy for the sport afterwards. Attached is Schedule 3 of the Memorandum of Understanding between the State Government and SOCOG, which sets out the physical requirements for the Olympics which clearly states that a minimum of 15,000 seats are required."* [emphasis supplied]

The following observations must be made about that explanation:

- At the time when Stage 1 was approved in 1996, the Government's plan was to provide 10,000 temporary seats. That decision was made even though temporary seats would result in no new investment.
- It did not explain why 10,000 permanent seats were judged necessary to meet SOCOG's requirement for a "legacy for sport". It did not explain how the Government knew that SOCOG would not be satisfied by a smaller development. For example, a new permanent eastern stand with temporary northern and southern stands might have satisfied SOCOG. It would have increased the "legacy for sport". It would have been significantly cheaper. It would have left permanent seating for 10,000. Given historical attendances at soccer matches that would have been more than ample to meet ongoing needs.
- The comparison to the cost of Grand Prix facilities was simplistic. The Cabinet submission dated 2 July 1997 estimated the cost of hire of 5,000 temporary seats at \$100 per seat ie \$500,000 in total. If 15,000 seats had been hired the cost would be expected to be roughly three times that ie \$1.5 million. For the once only occasion of the 2000 Olympic Soccer Tournament that was plainly a more economic option than the \$11 million component of the \$16.205 million Stage 2 budget. It might not have been economic if Hindmarsh Stadium was necessary for Adelaide to host one international soccer match each year with the recurrent cost of \$1.5 million. However, no examination of the likelihood of Adelaide obtaining one international soccer match per year was undertaken. Further, no examination was undertaken of whether an existing venue in Adelaide would suffice.

Deputy Premier Ingerson's letter enclosed two documents:

- The letter from SOCOG dated 9 July 1996 enclosing the minimum requirements for the stadium.
- Schedule 3 to the Memorandum of Understanding with SOCOG that was substantially the same as the earlier statement of minimum requirements.

Those documents would have shown the Public Works Committee that Stage 2 would provide some of SOCOG's minimum requirements. Some, however, were still to be provided by temporary facilities, even after completion of Stage 2. What they would not show to the Public Works Committee was why the Government had decided to provide some facilities by permanent structures.



Given that Deputy Premier Ingerson's letter enclosed Schedule 3 from the SOCOG Memorandum of Understanding, it is notable that it did not also enclose Schedule 2C. That schedule set out, in very abbreviated note form, a description of the content of Stages 1 and 2. It should have been provided. It would have cast into sharp definition the difference between SOCOG's minimum requirements and the content of Stages 1 and 2, which in turn highlighted the fact that the Government had made a judgment about what was to be included in Stage 2, that was not based on any detailed statement of requirements for permanent works from SOCOG.

The Government should have been open about the simple fact that the reason there was no written evidence that SOCOG required Stage 2 was that the Government had not ascertained either verbally or in writing precisely what it was that SOCOG required.

After the correspondence received from Deputy Premier Ingerson and its hearings in March and April 1998, the Public Works Committee had not received sufficient evidence from which it could make a finding about how the content of Stage 2 had been determined and hence that the entirety of Stage 2 was necessary to meet SOCOG's requirements.

Accordingly on 30 April 1998, the Public Works Committee published an Interim Report, the 67<sup>th</sup> Report of the Committee, entitled "*Hindmarsh Soccer Stadium Upgrade - Stage 2*". The key finding of that report was as follows.

*"As reported in the Public Works Committee report to Parliament for Stage 1 of the Hindmarsh Soccer Stadium Redevelopment, the upgrade of the Hindmarsh Stadium was seen as a major opportunity to establish the stadium and soccer in general, as a viable alternative family sport.*

*In particular the committee reported that the proposed project will:*

- *Provide an international standard facility capable of expansion in the future,*
- *Enable an additional 3,000 spectators to clearly see matches in comfort by providing good site [sic] lines, comfortable seating, corporate facilities, approved amenities and clubrooms,*
- *Minimise capital and operational costs by designing a low maintenance structure with minimum energy usage,*
- *Establish the Hindmarsh Soccer Stadium as the only premier facility in South Australia dedicated to soccer and capable of holding international matches, and*
- *Provide an improved long term facility for the West Adelaide and Adelaide City Soccer Clubs.*

*While the Committee acknowledges these benefits to be applicable to Stage 1 of the redevelopment, the Committee understands that works already completed for Stage 1 will generally enable the state to attract most sporting, recreational, entertainment or cultural events on a local, state, national or international level. The Committee believes that Stage 2 will not significantly increase the stadium's "attractiveness" in this regard.*

Furthermore, the Committee considers that on the evidence presented so far, the Stage 1 work already completed, coupled with temporary seating to increase the seating capacity of the ground to 20,000+, would be sufficient to meet SOCOG's requirements which means that Adelaide would be able to host the preliminary rounds of the 2000 Olympic Soccer competition. On the evidence presented so far, the Committee considers the expenditure of a further \$18.5 million will render the venue over capitalised.

After examination of both written and oral evidence, the Public Works Committee finds that at this stage it cannot endorse the proposal to undertake Stage 2 of the Hindmarsh Soccer Stadium upgrade as it cannot ensure that the project meets the criteria as set out in the Parliamentary Committees Act 1991.

The Committee is concerned that after consideration of evidence presented to date it has been unable to clearly determine how Stage 2 evolved. Members have been given hearsay opinion and verbal reports indicating that SOCOG advised further substantial enhancement of the stadium's seating capacity and associated amenities would be needed over an above Stage 1 if Adelaide was to secure a round of the Olympic Soccer Tournament.

However, even though the Committee has requested the documentation to substantiate this view, Members are yet to be presented with any hard evidence. To date the evidence that has been requested and not provided includes:

- The benefit/cost study carried out by the SA Centre for Economic Studies on the economic viability of the additional works;
- The Ernst & Young report prepared in 1996 assessing SASF's capability to service a loan;
- The Memorandum of Understanding between SASF and the State Government signed and sealed in May 1995;
- The Memorandum of Understanding between the SOCOG/FIFA/Australian Soccer and the State Government signed August 1997;
- Acquittals from the Department of Premier and Cabinet, Attorney-General and Treasury and Finance, and
- Evidence of correspondence between SOCOG and the South Australian Government which details the need for, and specifications of, additional work at the Hindmarsh Soccer Stadium.

The Committee is of the opinion that at this time, as crucial information has not been provided it cannot fulfil its obligations pursuant to Section 12C of the Parliamentary Committees Act 1991.

As such, the Committee is as yet unable to endorse Stage 2 of the works or lodge its final report to Parliament. The Committee must be given all material evidence needed for the proper evaluation of the project according to law." [emphasis supplied]

## **Cabinet Confidentiality**

After the Public Works Committee's Interim Report was delivered, Deputy Premier Ingerson wrote on 25 May 1998 to the Presiding Member to address the issue of the inability of the Department of Industry of Trade to release Cabinet documents. The letter said this in relation to the issue of Cabinet confidentiality:

*"I have discussed your request for documents with the Premier and Attorney-General. Release of Cabinet documents would undermine Cabinet confidentiality, however, I believe the Committee can be adequately accommodated without releasing such material."*

The letter then referred to a number of documents that it enclosed.

### ***Memorandum of Understanding with SOCOG***

Deputy Premier Ingerson's letter enclosed a summary of this document prepared by the Crown Solicitor's Office. That summary was generally a fair one. However, it contained the same omission as Deputy Premier Ingerson's letter dated 22 April 1998. In the list of schedules to the Memorandum of Understanding the Crown Solicitor's Office did not include Schedule 2C. That was a serious omission given the significance of that schedule.

In my opinion, the SOCOG Memorandum of Understanding was not protected by Cabinet confidentiality. It was not a Cabinet paper in any relevant sense. It was a commercial agreement between the Government and SOCOG. It had been placed before Cabinet before it was executed but that did not make it confidential any more than the reading of a newspaper article in Cabinet would make the article confidential.

The SOCOG Memorandum of Understanding contained a confidentiality clause with the usual exception that the Memorandum of Understanding could be disclosed if required by law. The Public Works Committee has power pursuant to Section 28(2) of the *Parliamentary Committees Act 1991* "to send for persons, papers and records". The extent of that power is not defined, save that Section 28(1) of the same Act states that committees established under that Act, as the Public Works Committee is, have the same powers as committees established by either House of Parliament. In respect of those committees, the current Solicitor-General has recorded that:

- They may call before them Ministers in the same way that Parliament can, although Ministers, as Members of Parliament, are not compellable witnesses.
- In Parliament, Ministers probably may decline to answer a question if it would breach some commercial confidentiality.<sup>422</sup> That exception has no status except that it is generally recognised by Parliament as reasonable.
- Crown Servants may be called before Parliamentary Committees. If they are, they must object to answer questions if the Minister could have so objected were the question asked in Parliament and the Minister has so instructed the Crown Servant.

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<sup>422</sup> "The Constitution of South Australia", (1997, The Federation Press), page 61, para. 4.11.2.

Parliamentary practice, therefore, recognises that commercial confidentiality should be protected. However, it is a matter of reasonableness and not a matter of law.

Audit has previously commented on the importance of balancing commercial confidence against the public right to know and the need for Parliament to be able to obtain information about the executive branch of Government.<sup>423</sup> It is not for this Report to express a concluded view upon whether a Parliamentary Committee ought to be prevented by commercial confidentiality from ascertaining information that it judges to be relevant to the discharge of a statutory duty imposed upon the committee. That is a matter for Parliament to deliberate upon.

It is sufficient to note that the Public Works Committee was not given an opportunity to pursue provision of the SOCOG Memorandum of Understanding on its merits because it was denied access on the basis of Cabinet confidentiality, which, in my opinion, did not apply.

### ***Acquittals from the Department of Premier and Cabinet, Attorney-General and the Treasurer***

Deputy Premier Ingerson's letter enclosed formal letters addressing those issues.

The Treasurer's letter dated 22 May 1998 stated that the estimated cost of the project was \$18.5 million and that it would be funded by the Government. The letter referred to the SACES study:

*"The SA Centre of Economic Studies carried out an economic analysis of a proposal to upgrade the Hindmarsh Stadium in March 1997. The analysis employs a standard discounted cash flow technique and uses a 7 percent real discount rate (together with sensitivities) in line with the Treasury and Finance Guidelines on the Evaluation of Public Sector Initiatives.*

*The outcome of the analysis shows that the project has a net present cost.*

*A check of the calculations reveals that the year 2004/5 has been omitted from the analysis, presumably inadvertently. The effect of the exclusion is minimal – the net present cost is about \$0.1m higher than it should be.*

*It is also noted that the analysis was carried out on a higher capital cost option (\$24.7m) compared with the current proposal which is estimated to cost \$18.5m. The inclusion of the lower capital cost improves the outcome but still results in a net present cost.*

The Treasurer's letter did not point out the substantive defect in the report that the Department of Treasury and Finance had identified, that is:

*"One criticism is that the analysis does not cover the reasonable alternatives to the proposed option. As a result it is not clear whether the proposal is the cost-effective option. However this is more a criticism of the brief provided to the consultants rather than the analysis itself."*

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<sup>423</sup> "Government Contracts: Claims of Commercial Confidentiality and/or Public Interest Confidentiality - the role of the Auditor-General", Auditor-General's Report to Parliament for the year ending 30 June 1998.

In my opinion, the Treasurer should have included this criticism in his letter to the Public Works Committee.

The other acquittals do not warrant further comment.

### ***Correspondence from SOCOG***

Deputy Premier Ingerson's letter enclosed the following correspondence with SOCOG:

- The completed questionnaire submitted to SOCOG in September 1996.
- Mr Ingerson's letter to SOCOG dated 20 November 1996 and its attached plan showing, as Mr Ingerson's letter to the Public Works Committee described it:

*"..this plan involved acquiring land extending from Hindmarsh Place to Richard Street and from Holden Street to Manton Street. This was to provide practice pitches and other support facilities, which had been raised as issues in the questionnaire."*

Significantly, Mr Ingerson's letter did not include a single communication from SOCOG that said that the content of Stage 2 must be provided by permanent facilities, nor any file note made by the Government of any discussions with SOCOG that led to the fixing of the content of Stage 2.

Mr Ingerson's letter contained the following summary of the discussions with SOCOG that led to the change in the content of Stage 2 after the 20 November 1996 letter:

*"During the negotiations, SOCOG verbally agreed that practice pitches were no longer essential since all matches would be 'single headers'. The proposal was therefore modified to reduce the land content and increase the percentage of permanent seats".*

That statement was not correct. SOCOG had informed representatives of the Bid Committee on 9 September 1996 that the warm up pitches were not essential.

Further, the letter did not explain why an alternative option was not pursued. If SOCOG had reduced its requirements by removing the need for the practice pitches, the scope of Stage 2 could have been reduced accordingly. There was no communication from SOCOG that it required that any particular amount of money be spent on permanent structures.

### ***Letter from David Hill of Soccer Australia dated 18 May 1998***

This letter was written well after the event, after the Public Works Committee had commenced its investigation of Stage 2. It contained no more detail about the process by which the content of Stage 2 had been determined than Mr Ingerson's letter.<sup>424</sup>

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<sup>424</sup> Mr Ingerson has submitted that I have not made adequate reference to Mr Hill's letter. I disagree. Mr Hill's letter does not address what was said by SOCOG representatives on 29 October 1996. A detailed discussion of my findings on all the evidence is contained in Chapter 11.

## **SACES Report and Ernst & Young Report**

The letter did not enclose the SACES report or the Ernst & Young report that the Public Works Committee had requested. In my opinion, Cabinet confidentiality did not warrant withholding those documents. The Solicitor-General, in *"The Constitution of South Australia"*, in the context of disclosure of documents in court proceedings summarised the basis of Cabinet confidentiality:

*"Not all Cabinet submissions are automatically protected from disclosure. The public interest aspects of the confidentiality of Cabinet material rest on two broad foundations:*

- (i) *the public interest in the preservation of the confidentiality of the material itself. Some Cabinet materials eg budget papers, are necessarily confidential.*
- (ii) *The constitutional necessity that the deliberations of Cabinet should be secret and that all ministers be bound by the ultimate decision of Cabinet."*

The SACES study was not in its nature a Cabinet document. The Government internal guidelines required such an analysis to be undertaken for capital works over \$150,000. It was only the fact that Stage 2 was expected to cost more than \$4 million that meant that the study was to go before Cabinet. There was nothing inherently confidential about the analysis contained in the study. As to the foundation described in (i) above, to the extent that some detail of the confidential commercial arrangements with SOCOG might have been inferred from the study those exact details could have been masked. As to (ii), disclosure of the SACES study would not in any way disclose the content of Cabinet deliberations.

There was even less basis to resist production of the Ernst & Young report. It had not been placed before Cabinet. Cabinet had not received an accurate account of it.

In my opinion, Deputy Premier Ingerson's letter did not state in a frank way the very short answer to the Public Works Committee's request for all correspondence with SOCOG about the content of Stage 2. The correspondence simply did not exist. As this Examination has found, that was a very serious failure of due diligence in the planning of Stage 2.

## **Conclusion on Inadequate Responses to Public Works Committee Reports**

I find that Deputy Premier Ingerson's letter to the Public Works Committee did not overcome the earlier failures to inform the Public Works Committee properly so that it could fulfil its statutory obligations.

Deputy Premier Ingerson and Mr Ian Dixon as the Chief Executive Officer of the Department of Industry and Trade should have ensured that the Public Works Committee was given complete and accurate information in response to its requests for information.

## **Parliamentary Resolution that the Public Works Committee Table its Report**

The Public Works Committee scheduled further hearings for 10 June 1998.

On 4 June 1998, Deputy Premier Ingerson moved the following motion in Parliament:

*"That this house remits the interim report of the Public Works Committee on the Hindmarsh Soccer Stadium upgrade - Stage 2 to the Committee and instructs it to present a final report to the Speaker by 16 June 1998."*

That motion was passed.

As a consequence, the Public Works Committee did not proceed with further hearings but instead delivered its Final Report, its 70<sup>th</sup>, on 16 June 1998.

The Public Works Committee's conclusion was that:

*"The Government's decision to withhold vital information and direct the Committee to report, through the vote of the Parliament, means that the Committee has been denied the opportunity to resolve those matters it considers to be in the public interest.*

*Given the above concerns, and those outlined in the Committee's interim report of parliament, the Public Works Committee is unable to recommend that the proposed Stage 2 Redevelopment of the Hindmarsh Soccer Stadium proceed."*

I am of the opinion that the failure properly to provide the Public Works Committee with information sufficient to enable it to discharge its statutory duties was a failure of due diligence as discussed in detail above. This Examination has considered whether the Government's decision to move Parliament to require the Public Works Committee to deliver its final report without concluding its investigations also constituted a failure of due diligence.

A motion in Parliament is not one that is subject to review by Audit, absent a specific authorisation or request. Deputy Premier Ingerson was not required to undertake any form of due diligence before moving that resolution. In any event, Parliament exercised control over its own creation entirely in accordance with its own powers and procedures.

### **Conclusion on Parliamentary Resolution**

For those reasons, I do not express any opinion on the decision to force the Public Works Committee to report before it had completed its investigations.

The failure of due diligence in relation to the Public Works Committee lies in the failure by Deputy Premier Ingerson and Mr Ian Dixon as the Chief Executive Officer of the Department of Industry and Trade to provide the Public Works Committee with the information necessary for it to discharge its duties at the outset.

## CHAPTER 25 – DIRECTION AND CONTROL OF STAGE 2

### OVERVIEW

The Government's direction and control of Stage 2 of the Hindmarsh Stadium redevelopment project was inadequate for the reasons discussed in detail in this Chapter. In summary:

- During 1996 work beyond the scope of the then approved Stage 1 was undertaken by Woods Bagot while instructed by the Soccer Federation. The Soccer Federation was given excessive access to resources to promote their goals without sufficient control by the Government agencies. The Soccer Federation was given too prominent a role in the negotiation of the hosting of the 2000 Olympic Soccer Tournament. Services SA was excluded from these negotiations, so that it could not act as a check on the negotiation process.
- The project management structure for the Stage 2 project<sup>425</sup> provided clearer accountability and responsibility for the project than the structure for Stage 1. That structure included a Cabinet Committee to monitor the project. However, for the first year while Deputy Premier Ingerson was its Chair, the Cabinet Committee met too infrequently to perform its role adequately and was indecisive in addressing issues of ownership and management. The Cabinet Committee did not resolve these issues, although primary responsibility for doing so lay with the proponent Minister and its Chair, Deputy Premier Ingerson. When Minister Evans became Chair he convened the Cabinet Committee after a 10 month delay. It then met more frequently until it was disbanded in September 2000. The difficult issues of ownership and management were not resolved until earlier this year. Criticism of the Cabinet Committee for failing to resolve the ownership and management issues must be tempered by the recognition that these issues should have been resolved before the Committee's establishment. As time passed, changing circumstances meant that it became increasingly more difficult for the Committee to have an effective role in resolving these issues.
- Services SA and the central agencies, the Department of Treasury and Finance and the Crown Solicitor's Office were unable to ensure that necessary due diligence issues were addressed because their advice was disregarded on occasions.

### WORK CRITICAL TO STAGE 2 WAS UNDERTAKEN THROUGH STAGE 1 STRUCTURE

During 1996 work beyond the scope of the then approved Stage 1 was undertaken by Woods Bagot while instructed by the Soccer Federation. The Soccer Federation was given excessive access to resources to promote their goals without sufficient control by the Government agencies. The Soccer Federation was given an unduly influential role in the Olympic Soccer Bid Committee.

In both cases there was a proper foundation for the Soccer Federation's involvement. The Soccer Federation was partly responsible for funding Stage 1. It was the occupier of the stadium that was proposed as the venue for the hosting of matches in the 2000 Olympic Soccer Tournament. The

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<sup>425</sup> That structure comprised Mr Ian Dixon as Project Director, a Cabinet Committee chaired by the proponent Minister, Deputy Premier Ingerson and a reference group committee to act as a forum for the parties with an interest in the project.



Soccer Federation's involvement was not subject to appropriate control by the Government's representative agencies.

Although those two categories of work were not at the time intended necessarily to lead to the wider project that ultimately became Stage 2, that work did in fact establish the basis upon which Stage 2 was ultimately developed. Since the cost of Stage 2 was borne entirely by the Government it should have ensured that the planning process reflected public objectives rather than the private objectives of the Soccer Federation.

Mr Ingerson has submitted to this Examination that the Soccer Federation was Woods Bagot's client for Stage 1 because *"at the time the project was deemed to be a Soccer Federation project with Government support and funding"*. I do not consider this characterisation of the project precludes Executive Government's responsibility in any way for ensuring that the public interest was adequately protected because substantial public funds were involved in Stage 1.

### **Excessive Access of The Soccer Federation To The Government's Resources**

During the master planning process between December 1995 and January 1996 Woods Bagot took detailed instructions from the Soccer Federation about its future plans for the stadium site. They produced detailed concepts for the future development of the site, all based on the assumption that it was desirable to build permanent stands on all four sides of the stadium. That was the wish of the Soccer Federation.

A representative of Services SA had a small role in the master planning process. However, at no time did Services SA seek to limit the scope of the plan that Woods Bagot had developed. Woods Bagot were not directed to analyse the cost of maintaining the Soccer Federation's ability to expand the site in the long term. Woods Bagot were not directed to prepare a more modest set of feasible options.

Woods Bagot considered that the Soccer Federation was their client for the purpose of Stage 1, including for the purpose of the master planning exercise that in substance addressed the content of what ultimately became Stage 2.

### **Conclusion on the Soccer Federation's Access to Government Resources**

Woods Bagot's view that the Soccer Federation was its client was not corrected by the proponent Minister Ingerson and agency, the Office for Recreation, Sport and Racing as it should have been.

### **The Soccer Federation Role on the Bid Committee**

The Bid Committee for the hosting of the 2000 Olympic Soccer Tournament should have contained a representative of Services SA to ensure that the Government's interests were protected.

The Soccer Federation should not have been given such a prominent role on the Bid Committee. The Government was required to bear the entire financial cost of the bid to host matches in the 2000 Olympic Soccer Tournament.

The Soccer Federation's role on the Bid Committee gave it a disproportionate opportunity to influence the Government's planning for the event. Inadequate control was exercised over the Soccer Federation's influence.

For example, the Soccer Federation's desire not to have SOCOG consider an alternative venue to Hindmarsh Stadium was decisive. That position was recorded in a minute by Australian Major Events about the selection of practice venues. As a result no consideration was given to use of Adelaide Oval as a venue. If Services SA had been on the Bid Committee, that option would have come to its attention. Assuming that Services SA would have adhered to the edicts of Treasury Information Paper 90/1, the Cabinet Handbook and the "*Project Initiation Process*", it would have ensured that that option was given proper consideration in the context of investigation of Stage 2. The effect of exclusion of Services SA from the SOCOG bid process was that it was insulated from the most important source of information about how the redevelopment project would meet one of the Government's key objectives for Stage 1 and the key objective for Stage 2, being satisfaction of SOCOG's requirements.

### **Conclusion on Composition of Bid Committee**

Minister Ingerson and Mr Michael Scott as the Chief Executive Officer of the Office for Recreation, Sport and Racing should have included Services SA on the Bid Committee.

## **PROJECT MANAGEMENT STRUCTURE**

### **Deputy Premier Ingerson as Proponent Minister**

From June 1997, Services SA raised concerns about significant risks and unresolved issues affecting Stage 2. Services SA specifically criticised Minister Ashenden's draft 9 July Cabinet submission for not identifying a strategy for managing these risks or establishing a formal project management structure.

On 14 July 1997, while approving the pursuit of the Stage 2 in principle, Cabinet referred the project to an inter-departmental working group to be chaired by Mr Kowalick. The working group was to report within 2 weeks on a process for resolving the issues and recommend a project manager.

A risk management plan was prepared by the Department of Recreation and Sport. It included two models for project management said to provide clear accountability. Both models designated responsibility for the project as lying with the Chief Executives of the Department of Recreation and Sport and Services SA, who were in turn to be responsible to their respective Ministers. A project control group would be chaired by a project manager from Services SA. There had been discussions that Mr Jeff Browne would be the most appropriate candidate.

On 21 July 1997, Cabinet reconsidered the 9 July submission and approved the establishment of a Cabinet Committee and Project Director. The Committee was Chaired by Deputy Premier Ingerson and included the Attorney-General, Mr Dean Brown as the Minister for Information and Contract Services and Mr Ashenden as the Minister for Recreation and Sport.

On 15 August 1997, Cabinet endorsed the project management structure for Stage 2 proposed in the Cabinet submission signed by Deputy Premier Ingerson on 15 August 1997. The submission stated:

- "3.1 Project Management Structure (refer Attachment A.)
- 3.1.1 *To enable the smooth progression of Stage 2 it was paramount that an appropriate management structure be established.*
- 3.1.2 *It is proposed the Cabinet Committee chaired by the Deputy Premier be responsible for monitoring the progress of the Stage 2 development and the interface with the staging of the Olympic mode.*
- 3.1.3 *A proposed project management structure is shown in Attachment A and includes a Project Director, Project team and a Project Reference Group comprising key Government agencies and stakeholders."*

Attachment A described the Cabinet Committee as the "client" and stated that it would meet monthly.

The Cabinet Committee perceived itself as responsible for overall project delivery but not for the construction management process. That was perceived as the responsibility of the Minister for Information and Contract Services as the principal under the construction contracts.<sup>426</sup>

I find that the project management structure for Stage 2 did provide clearer accountability and responsibility for Stage 2 than the structure for Stage 1. However, while Deputy Premier Ingerson was Chair from July 1997 to 3 August 1998, the Cabinet Committee met too infrequently to perform its role adequately. After its first two meetings, it only met twice in 10 months. It did not meet monthly as was originally intended.<sup>427</sup>

The important features of the project had been determined before the Committee first met.<sup>428</sup> Within the first month of the Committee's establishment, the Committee met twice and diligently disposed of a large range of issues affecting project delivery.

After those first two meetings, the Committee did not meet frequently enough to perform properly its role in monitoring the project. At this time, the most important issues remaining for the Committee to address were ownership and management of the stadium. On these issues the Committee was indecisive. It commissioned discussion papers on ownership and management options. Without determining a detailed solution to the issues, the Project Director and Deputy Premier Ingerson were authorised to negotiate a resolution of these issues with the Soccer Federation, the Council and the NSL Clubs to bring back for ratification by the Committee.

That did not occur before Mr Ingerson's resignation as a Minister on 3 August 1998. It was another year before the Cabinet Committee met again. After his resignation the issue was left in abeyance.

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<sup>426</sup> Minutes of meeting held on 11 August 1997.

<sup>427</sup> The dates of its meetings while chaired by the Deputy Premier were 11 August and 2 September 1997, 16 March and 31 July 1998.

<sup>428</sup> They were embodied in Minister Ashenden's 9 July 1997 Cabinet submission.

No formal mechanism was put in place to ensure that work delegated by the Cabinet Committee continued. There was no hand over briefing between Minister Ingerson and his ultimate replacement, Mr Evans.

Minister Ingerson has submitted that at the date of his resignation the issues of ownership and management were being negotiated and that he expected that these issues would be resolved during the course of construction and by October 1999.<sup>429</sup> By the time the construction agreement for Stage 2 was signed on 29 September 1998, the Soccer Federation and the NSL Clubs were preparing a submission to the Government to suspend the Levy System. In my opinion, once construction had begun, the Government had lost any effective bargaining position.

### **Minister Evans as Responsible Minister**

After Minister Ingerson's resignation, the Cabinet Committee did not meet again until 19 August 1999.<sup>430</sup> The last meeting had been held over a year earlier.

Minister Evans had assumed responsibility for Hindmarsh Stadium on 8 October 1998 when he became a Cabinet Minister and Minister for Industry and Trade.<sup>431</sup>

Minister Evans has informed this Examination that he reconvened the Cabinet Committee on 19 August 1999 to inform it of, and seek its guidance on the issues arising from Arthur Andersen's Review of Soccer in South Australia. He also said that there was no particular need or purpose in the Committee meeting before that date. He reconvened it when he was ready to go back to Cabinet with clear recommendations.

The Committee chaired by Minister Evans met more frequently than before, ten times with 12 months.<sup>432</sup>

Mr Evans has described to this Examination the Committee as fulfilling an advisory role. The Attorney-General and the Hon. Robert Lawson have similarly described the Committee's function as a problem solving process, a place to throw around ideas to try and resolve issues. It is apparent that by October 1998, the members of the Committee had a different perception of its role that the original purpose for setting it up.

The major business of the Committee was efforts to address the still unresolved issues of ownership and management. Minister Evans has submitted to me that these issues were not of his making and inherited. I agree with Minister Evans. These issues should have been resolved by the Government before legal commitment was made to the Stage 1 project in October 1996. Although there were later opportunities for these issues to be resolved as part of the project initiation process for Stage 2, I consider these issues should have been addressed decisively and resolved well before October 1998. Once construction had started, the Government had lost any effective bargaining position.

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<sup>429</sup> This was the position put to the Public Works Committee.

<sup>430</sup> Mr Evans replaced former Deputy Premier Ingerson as Chair. The Hon. Robert Lawson had replaced Mr Wayne Matthew as Minister for Administrative Services. The Hon. Robert Lucas MP, the Treasurer, was invited to attend for the purposes of discussing Arthur Andersen's financial review of Soccer in South Australia. The Attorney-General was the only continuing member of the Committee since its establishment.

<sup>431</sup> Minister Evans had first become a member of the Cabinet Committee upon his appointment as Minister for Recreation and Sport in December 1997. He attended the March and July 1998 meetings chaired by Deputy Premier Ingerson.

<sup>432</sup> 19 August, 3 September, 7 and 25 October and 5 November 1999, 13 April, 10 May, 23 and 27 June and 10 August 2000

These issues had become increasingly more complex as time passed because:

- In November 1998 the Soccer Federation on behalf of the NSL Clubs has requested a suspension of the Levy System.
- The Soccer Federation had ceased imposing and collecting the Levies from October 1998.
- It was recognised that the Government did not have sufficient information about the financial state of the Soccer Federation or the NSL Clubs until 31 March 1999.
- West Adelaide went into voluntary administration in March 1999.
- A dispute had arisen between Adelaide City and the Soccer Federation over their financial relations under the Licence Agreements in early 1999.
- Disputes occurred between the Council and the Soccer Federation over the status of the Soccer Federation's performance of its obligations under the lease from mid 1999.
- In negotiations with the Council and the Soccer Federation, Minister Evans had almost no bargaining power.

The Committee chaired by Minister Evans did not resolve the ownership and management issues despite its efforts to do so.

Minister Evans submitted that as the responsible Minister and Chair of the Committee he was proactive, took positive steps, was consistent and formulated a firm position as early as November/December 1999. He submitted that it was not possible to adopt a firm position any earlier, certainly not by March 1999 before receipt of the Arthur Andersen report. He further submitted that the issues were intractable, the Soccer Federation was intransigent, the Soccer Federation and NSL Clubs financially vulnerable and the Council resistant. He also submitted that each time he took a firm position he was met with the continued prevarication and resistance from the Soccer Federation.

I accept Minister Evans submissions. However, I consider that Minister Evans should have regularly convened the Cabinet Committee to consider and have input into ownership and management issues in the period from October 1998 to July 1999. After 19 August 1999, the Committee chaired by Minister Evans was diligent in attempting to resolve the very difficult issues it had inherited, although it did not resolve those issues.

### **Conclusions on Project Management Structure**

While the project management structure for Stage 2 provided clearer accountability and responsibility for the project than the structure for Stage 1, the Cabinet Committee chaired by Deputy Premier Ingerson met too infrequently to perform its role adequately. Between October 1997 and August 1998, it met twice and not monthly as approved by Cabinet. By September 1997, the key remaining issues for it to address were ownership and management. The Committee met too infrequently to assist effectively in the resolution of these issues. When it did meet, the Committee authorised the Project Director and Deputy Premier Ingerson to negotiate a solution to these issues without determining a preferred solution. A negotiated solution was not reached before Mr Ingerson's resignation.

These criticisms must be tempered by the recognition that the Cabinet Committee inherited issues that had been identified as requiring resolution during Stage 1 but were not and that as time passed, the issues became increasingly more difficult to resolve. Primary responsibility rests with Deputy Premier Ingerson as the proponent Minister for the Stage 1 project and for not resolving these issues when given a subsequent opportunity in the initiation of Stage 2. These issues should have been resolved before the Government committed to the project by signing the SOCOG Memorandum of Understanding in August 1997. When that opportunity had been lost, Deputy Premier Ingerson should have ensured that these issues were resolved before the project was referred to the Public Works Committee in February 1998. They were not resolved when Mr Ingerson resigned in August 1998. They certainly should have been resolved before the construction agreement for Stage 2 was signed on 29 September 1998.

By the time Minister Evans became responsible for the project in October 1998, the opportunity to resolve the issues of ownership and management before the Government had committed to the project had been lost. The Government had little or no bargaining position in resolving the difficult issues that had arisen between the Soccer Federation, the NSL Clubs and the Council. However, in my opinion, Minister Evans should have regularly convened the Cabinet Committee in the period from November 1998 to July 1999 to consider and attempt to resolve the ownership and management issues.

## **INADEQUATE APPLICATION OF AGENCY ADVICE**

### **Overview**

The central agencies of the Department of Treasury and Finance and the Crown Solicitor's Office together with Services SA were unable to ensure that necessary due diligence issues were addressed. Those advisory agencies gave advice that was disregarded. In some cases, their advice was inadequate.

### **Agencies Advice Disregarded**

The Department of Treasury and Finance's recommendation in August 1996 that a feasibility study be undertaken of the proposed land acquisition was disregarded by Minister Ingerson and Mr Michael Scott as the Chief Executive Officer of the Office for Recreation, Sport and Racing.

The Crown Solicitor's Office provided the Office for Recreation, Sport and Racing with a draft Facilitation Deed. That deed gave the Government some protection from the Council moving to evict the Soccer Federation. Throughout the discussions between the Government, the Soccer Federation and the Council, the Facilitation Deed was not provided to the Council and the Soccer Federation. The Department of Recreation and Sport and later the Department of Industry and Trade did not ever provide the Crown Solicitor's Office with comments or instructions upon the Facilitation Deed.

In February 1998, the Crown Solicitor's Office recommended that the Cabinet submission that resulted in final approval of Stage 2 should be expanded to set out a detailed description of the management structure envisaged for the stadium. That advice was disregarded by the Chief Executive Officer of the Department of Industry and Trade.

### **Inadequate Advice Given**

Neither Services SA, the Department of Treasury and Finance or the Crown Solicitor's Office brought to the Minister's, the relevant Chief Executive Officer's or Cabinet's attention the failure to comply with relevant internal guidelines and specifically, Treasurer's Instruction 9105 and Treasury Information Paper 90/1. Non-compliance with Treasurer's Instruction 9105 constituted a breach of the *Public Finance and Audit Act*.

For example, on 13 November 1996 Mr Ingerson, then Minister for Recreation, Sport and Racing, signed a Cabinet submission seeking "*in principle approval to develop option 1 of the Hindmarsh Stadium master plan*". This was the first consideration of what very soon became known as "Stage 2".

The Crown Solicitor's Office was provided with the Cabinet submission. It drafted a minute to the Attorney-General that only briefly addressed two matters in the submission:

- The fact that the Crown Solicitor's Office had not provided any advice about the nomination of National Portfolio Strategies to acquire options over land in Hindmarsh Place.
- The wording of the proposed letter to SOCOG.

The Crown Solicitor's Office did not identify any of the other respects in which the Government's processes leading to the November 1996 Cabinet submission were flawed.

The Department of Treasury and Finance and the Crown Solicitor's Office should have identified each occasion on which Treasurers Instruction 9105 and other Government guidelines were breached.

## CHAPTER 26 - FAILURE TO RESOLVE OWNERSHIP AND MANAGEMENT DURING STAGE 2

### OVERVIEW

The critical issues of the ownership and management of Hindmarsh Stadium have only recently been resolved,<sup>433</sup> more than three years after these issues first should have been properly addressed.

It is common sense that arrangements for the ownership and management of capital works should be adequately addressed before the Government commits to the works. As discussed in detail in Chapter 22, the Government should have adequately resolved ownership and management issues before it committed to the Stage 1 project in October 1996.

In the course of implementing the Stage 2 project, no changes were made to the legal structure for Stage 1 that governed the ownership and management of Hindmarsh Stadium. For example, the lease from the Council to the Soccer Federation was not altered to take account of the increased size of the site after incorporation of additional land.<sup>434</sup> No further security rights were put in place to protect the Government's position despite its contribution of a further \$17 million to redevelop a facility leased to the Soccer Federation and owned by the Council.

The need to address the issues of ownership and management in the context of a substantially greater redevelopment project was recognised by the Government at all levels during the initiation and approval stage of the Stage 2 project. Despite recognition of the importance of these issues, the Government committed to Stage 2 in August 1997 by signing the SOCOG Memorandum of Understanding<sup>435</sup> without giving any consideration as to how these issues could be addressed and resolved.

Cabinet approval of the final concept for Stage 2 was given in August 1997 on the basis that a proposal on ownership and management would be developed as a matter of urgency.<sup>436</sup> It was not.

In February 1998, Cabinet approved Stage 2 proceeding to the Public Works Committee and the calling of tenders on the basis that the Cabinet Committee would resolve ownership issues (and other issues) as a matter of urgency.

These issues were not resolved by the time of Mr Ingerson's resignation as a Minister on 3 August 1998. It was Mr Ingerson's view that these issues were capable of resolution in the course of the construction phase of the project and that, at the time of his resignation, these issues were in hand.

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<sup>433</sup> The arrangements between the Government and the Council for the purchase of the stadium, although agreed in principle, are still the subject of negotiation over the terms of formal legal documents. Formal agreements between the Government, the Soccer Federation and Adelaide City were signed and effective from 29 March 2001. See Chapter 16 for further details of these arrangements.

<sup>434</sup> ie the Hindmarsh Bowling Club and Meals on Wheels sites and Hindmarsh Place which was closed.

<sup>435</sup> The SOCOG Memorandum of Understanding was signed by the Premier on 15 August 1997. See Chapter 35 below for further detail of the obligations assumed by the Government under this legal document.

<sup>436</sup> The 15 August 1997 Cabinet submission signed by Deputy Premier Ingerson stated in paragraph 3.8(i) that "*Negotiation on the above issues are not seen as a major impediment to the scheme and it is proposed to seek contributions from the Council towards this development*".



Mr Dixon, the Chief Executive Officer of the Department of Industry and Trade was in the course of preparing a paper on these issues for the Cabinet Committee.

In September 1998, Cabinet approval of Baulderstone Hornibook's tender was given. This allowed construction to proceed. At the time, ownership and management options were still being considered and Mr Dixon, the Chief Executive Officer of the Department of Industry and Trade was still developing a paper for the Cabinet Committee's consideration of these issues. After Mr Ingerson's resignation, the Cabinet Committee was not reconvened until August 1999.<sup>437</sup>

Construction of Stage 2 began in October 1998 before the Government had adopted any firm position on how those issues would be addressed. The legal issues relevant to resolution of the issues of ownership and management were not fully identified until October 1998. That was too late. The financial and economic factors relevant to resolution of the issues of ownership and management were not analysed until March 1999. That analysis was also undertaken too late.

By the time Minister Evans became responsible for the project in October 1998, the opportunity for the Government to resolve ownership and management issues before commitment to the project had been lost. Once construction had started, the Government had little effective bargaining power in negotiating a resolution of these issues. As circumstances changed and time passed, these issues became increasingly more complex. For example:

- In November 1998 the Soccer Federation on behalf of the NSL Clubs has requested a suspension of the Levy System.
- The Soccer Federation had ceased collecting the Levies from October 1998.
- It was recognised that the Government did not have sufficient information about the financial state of the Soccer Federation or the NSL Clubs until 31 March 1999.
- West Adelaide went into voluntary administration in March 1999.
- A dispute had arisen between Adelaide City and the Soccer Federation over their financial relations under the Licence Agreements in early 1999.
- Disputes occurred between the Council and the Soccer Federation over the status of the Soccer Federation's performance of its obligations under the lease from mid 1999.

Some criticism might be made of Minister Evans for not resolving these issues between October 1998 and September 2000. Certainly, Minister Evans should have regularly convened the Cabinet Committee between October 1998 and July 1999 to consider and have input into ownership and management issues. However, this must be understood as relatively a minor criticism given that the opportunity to address this issue had been lost earlier.

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<sup>437</sup> See Chapter 25 for a detailed discussion of the Cabinet Committee's role in Stage 2.

## **OWNERSHIP AND MANAGEMENT MUST BE RESOLVED BEFORE COMMITMENT**

It is common sense that arrangements for the ownership and management of capital works should be adequately addressed before the Government commits to the works.

Public funds can be wasted on public works if it is not ensured that the resulting works are used to meet the objectives for which the works were undertaken. Usually that means that the ownership and management of the resulting works must be arranged to ensure the works are available for a particular use. Where other parties have control of the resulting asset, the arrangements must be made before commitment to the project or the Government may not be able to put the arrangements in place or will only be able to put them in place at greater cost and hence reduced efficiency.

As discussed in detail in Chapter 22, the Government first should have properly resolved ownership and management issues when it committed to the Stage 1 project in October 1996.

Until new arrangements were made earlier this year, the only existing legal rights of control over the stadium that the Government had were pursuant to the Stage 1 Funding Deed. That Deed gave the Government some say, albeit limited, in the management of the stadium. If the Soccer Federation had lost its rights to occupy the stadium pursuant to its lease from the Council, the Government would have lost all rights in relation to control of the stadium.

The Council had sent a number of letters to the Soccer Federation warning it about breaches of its lease. On 1 August 2000 the Council served a formal notice of default requiring the Soccer Federation to remedy its failure to pay water charges. A notice of default is the first formal step in a process that could lead to termination of the lease and ultimately eviction. The Soccer Federation remedied its breach but it was a matter for grave concern for the Government that there was a substantial risk of termination of the lease.

As part of its agreement with the Government under the Stage 1 Funding Deed, the Soccer Federation had agreed to grant the Treasurer a mortgage over the lease with the Council. The Government did not seek that mortgage until 1999. By that time disputes had arisen between the Soccer Federation and the Council over the status of the Soccer Federation's performance under the lease. The Government was unable to secure a mortgage over the lease. If it had sought this security before it executed the Funding Deed in October 1996, there would not have been any impediment to its grant.

It was wholly imprudent of the Government and a serious failure of due diligence not to have addressed the issues of ownership and management prior to commitment to the Stage 1 project.

Further opportunities to resolve these issues arose before commitment to Stage 2.

For example, the Government acquired land for \$851,000 for use as part of the stadium in June 1997. Minister Ingerson had initiated investigations for the acquisition of land surrounding the stadium in April 1996. Options for the land acquired were entered into on Minister Ingerson's behalf from September 1996.

However, no consideration had been given to how ownership and management issues would be best addressed. In my opinion, before any land was acquired as part of the Stage 2 project there was a clear need to ensure that the arrangements as to ownership and management arrangements for Hindmarsh Stadium were adequate to protect the Government's investment in the stadium.

When the opportunity to resolve ownership and management of the stadium before commitment to Stage 1 had been lost, the Government should have resolved these issues before committing to Stage 2.

The Premier of South Australia executed the SOCOG Memorandum of Understanding on 15 August 1997, although SOCOG did not execute it until 10 September 1997. By executing that agreement, the Government made a legal commitment to a substantially greater redevelopment than Stage 1, although the description of the scope of the works was very general.<sup>438</sup> Before making this commitment, the Government had not determined a strategy for resolving ownership and management of Hindmarsh Stadium once it was redeveloped.

On 18 August 1997, Cabinet approval of the final concept for Stage 2 was given on the basis that a proposal on ownership and management would be developed as a matter of urgency.<sup>439</sup> It was not.

By December 1997, the Government had secured sufficient agreement with the Council and the Soccer Federation to allow construction to take place and for the 2000 Olympic Soccer Tournament matches to be staged.<sup>440</sup> However, the Government did not then resolve the issues of ownership and management beyond the inadequate mechanisms contained in the Funding Deed.

As the issues of ownership and management were not resolved before the Government committed to the Stage 2 project, these issues should have been resolved as a matter of priority. They were not resolved before the project was referred to the Public Works Committee in February 1998. They were not resolved before the construction agreement was signed in September 1998 and on site construction commenced in October 1998. Nor were they resolved prior to completion of the construction work in December 1999.

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<sup>438</sup> Schedule 2C described the works to be completed as: "

- *Completion of all permanent Terracing and Grandstand.*
- *Installation of 15,000 seats (with backrests) to Terracing and Grandstand.*
- *Relocation and extension of playing pitch and completion or works to surface of playing pitch.*
- *Installation of new turnstiles to southwest and south east public entrances.*
- *Relocation of and upgrade of pitch lighting requirements to FIFA's specification.*
- *Completion of change rooms to minimum NSL requirements and standards.*
- *Completion of permanent site works."*

<sup>439</sup> The 15 August 1997 Cabinet submission signed by Deputy Premier Ingerson stated in paragraph 3.8(i) that "*Negotiation on the above issues are not seen as a major impediment to the scheme and it is proposed to seek contributions from the Council towards this development*".

<sup>440</sup> The Government entered into a Stadium Use Deed with the Soccer Federation on 18 August 1997. A Licence Agreement was entered into between the Government and the Council on 8 December 1997. These agreements are discussed in further detail Chapter 35 below.

Failure to adequately resolve critical issues before commitment to a project has two obvious consequences.

- First, if no satisfactory arrangement can be reached, Government should be in a position to withdraw or alter its commitment to the project, if necessary. If commitment is made prematurely, the ability to withdraw the Government's commitment or change its position is effectively lost.
- Secondly, once the Government had committed to building the stadium and even more so once it had completed construction, the Government had lost a significant bargaining strength. The redeveloped stadium represented a considerable improvement upon the Council's land, for which it was not required to make any financial contribution. The redeveloped stadium represented a very large boost to the facilities available for the use of participants in the sport of soccer in South Australia. While the Soccer Federation had a very strong desire for Stage 2 to be completed, it never assumed any risk for the redevelopment or direct responsibility for the cost of the project. Because Minister Ingerson had decided not to have any direct contractual relationship with the NSL Clubs, the Government had no control over the NSL Clubs' involvement in Hindmarsh Stadium.

By October 1998, the Government had almost no bargaining power in negotiations conducted with the Council, the Soccer Federation and/or Adelaide City to resolve the issues of ownership and management because the Government had committed to Stage 2.

## **GOVERNMENT RECOGNITION OF THE IMPORTANCE OF THE OWNERSHIP ISSUE**

### **Nature of the Issues**

The issue of ownership had two aspects to it. First, there was the issue of disparate ownership:

- The Government owned some of the land used in the stadium site. That land had been acquired in June 1997 for the purpose of the Stage 2 project.
- The main part of the site was still owned by the Council and leased to the Soccer Federation.
- Some parts of the stadium site were owned by the Council but not covered by the Council's lease to the Soccer Federation.

It was not legally essential for each parcel of land to have the same ownership, but it was necessary for the manager of the stadium to have the same rights of occupation over all of the land necessary for the operation of the stadium. Otherwise, one owner of part of the stadium could thwart use of the rest by denying the right to use the stadium. In fact, this has been a matter of real concern for the Government. The Council and the Soccer Federation have exchanged correspondence over allegations that the Soccer Federation has breached the terms of its lease.<sup>441</sup>

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<sup>441</sup> See Chapters 15 and 16 for details of this correspondence.

The second aspect of the ownership issue was the concern of the Government that it might be necessary for the Government to own the stadium site to ensure that it was made available for use for playing soccer.

The issue of management of the stadium was closely related to the issue of ownership. It encompassed such questions as who would be responsible for the day to day running of the stadium, arranging special events and scheduling soccer matches. Although the owner of the stadium need not be the manager, nevertheless there had to be a clear legally binding relationship between the owner and the manager.

The need for those measures was recognised at all levels of the Government including Cabinet, Chief Executive Officers, the Department of Treasury and Finance and the Crown Solicitor's Office.

### **March 1997 Cabinet Submission**

The 11 March 1997 Cabinet submission signed by Minister Ashenden expressly identified the new problem introduced by Stage 2 of multiple ownership:

*"3.12 A feature of this submission is for the State Government to acquire the necessary land to implement Option 2. The Charles Sturt Council, formerly the City of Hindmarsh & Woodville and the City of Henley & Grange, is the registered proprietor of the existing stadium.*

*3.13 The complex, on completion, will be owned by the State and Local Government which will present operating and control issues that must be resolved between the Government, Council and the SA Soccer Federation. There are also a number of specific issues that need to be addressed between the Government and Council including:*

- Council owned land and 4 Hindmarsh Place*
- Relocation of the Bowling Club*
- Road closure of Hindmarsh Place*
- Heritage buildings and;*
- Relocation of Meals on Wheels.*

*3.14 The proposed development comprises land located partly within a district Centre Zone and partly within a Residential 2B Zone. A "stadium" within these zones is considered a non-complying development. In addition, the Development Act 1913 provides that no development may be undertaken unless it is an approved development and therefore, for the purpose of the proposed development, approval must be sought under the Development Act.*

3.15 *A further complication is that the proposed development will be on land owned by the City of Charles Sturt (existing Stadium) and the State Government (proposed Land acquisition). It is considered the Crown will acquire sufficient interest in the development site to formally process an application for the proposed development. Further investigation will be required as to which section of the Development Act is relevant to the proposed development."*

This Cabinet submission did not contain any solution to the issues it identified. It did not record advice from the Crown Solicitor's Office on the topic, since none had been sought.

On 25 March 1997, the Crown Solicitor's Office suggested to the Attorney-General that the issue of ownership should be the subject of some *"hard negotiation"* with the Council and the Soccer Federation. It is now apparent that this suggestion was not taken up until November 1999 when Minister Evans proposed to Cabinet for the first time a firm position to resolve ownership and management issues.

#### **July 1997 Cabinet Submission on SOCOG Letter of Agreement**

In early July 1997, in the course of commenting on the Cabinet submission seeking approval of the draft SOCOG Letter of Agreement, the Crown Solicitor expressed further concerns over the absence of formal arrangements with the Soccer Federation as to the terms and conditions upon which the Government would host the Olympic Soccer matches. The Crown Solicitor advised:

*"as the State is making a significant contribution to the redevelopment of the stadium for the purpose of holding these soccer matches, this contribution should be recognised by the State having rights in respect of the use of the stadium and that these rights should be entrenched in a formal agreement."*

The Crown Solicitor expressly pointed out that Hindmarsh Stadium was owned by the Council and subject to a 42 year lease to the Soccer Federation.

Despite this advice, the only adequate step taken to address the Crown Solicitor's concerns was the entry into a Stadium Use Deed in August 1997. No steps were even taken to amend the terms of the Soccer Federation's existing lease to incorporate the additional land that had become part of the stadium site.

In my opinion, given the obvious significance of the obligation proposed to be undertaken to SOCOG to provide a facility suitable for hosting Olympic Soccer, it is remarkable that greater consideration was not given to resolving the critical issues of ownership and management.

#### **July 1997 Cabinet Submission for Stage 2**

The 9 July 1997 Cabinet submission signed by Minister Ashenden identified a number of potential problems for the Stage 2 project caused by building on land that was not the subject of the lease from the Council to the Soccer Federation. In respect of the additional land, the submission set out possible solutions to the issues relating to each piece of land:

- It was "assumed" that Council would contribute land it owned to the Government at the end of the project. That statement was illogical given that the main part of the stadium was owned by the Council and leased to the Soccer Federation on a long lease. If the intent was to consolidate the land under one owner either the main site had to be transferred to the Government, which was not suggested, or Council should retain the land it already had.
- \$100,000 had been allowed in the budget for the relocation of the Hindmarsh Bowling Club. The amount of \$100,000 was set in an arbitrary fashion.
- A budget of \$369,000 for compulsory acquisition of the land occupied by the Byelorussian Church was included.
- A budget of \$279,000 was allowed for the cost of relocating Meals on Wheels.
- A budget of \$810,000 was allowed for making fit seven heritage buildings.

The 9 July 1997 submission did not refer to the existing problem created by the main stadium site being upon land over which the Government had no control. The fact that spending an additional \$16.205 million on land occupied by the Soccer Federation might give rise to an opportunity to renegotiate the basis upon which the Soccer Federation occupied that land was overlooked or disregarded.

A minute to the Treasurer from the Under Treasurer was forwarded to the Cabinet Office which commented on Minister Ashenden's 11 July 1997 Cabinet submission. That minute expressed the view that management arrangements for the stadium should be resolved before construction commenced.

The Cabinet Office prepared a minute dated 11 August 1997 for Cabinet. It stated:

*"The Minister for Information and Contract Services advises that there are a number of risks associated with this project both from a budget and time perspective. These include:*

- *the compulsory acquisition and/or relocation of the Byelorussian Church;*
- *legal issues associated with road closures and other planning approval requirements; and,*
- *the unresolved issue of future ownership and joint use agreements between Government, City of Charles Sturt and the Soccer Federation... [emphasis supplied]*

### **Referral to Inter-Departmental Working Group**

Cabinet referred the 9 July Cabinet submission to an inter-departmental working group chaired by the Chief Executive Officer of the Department of Premier and Cabinet. As a result, the Department of Recreation and Sport prepared a risk management plan that identified risks and strategies for their management. That plan identified ownership and management risks and stated that the Department of Recreation and Sport along with the Department of Treasury and Finance and the Crown Solicitor's Office would be addressing options before approaching the Council and the Soccer Federation.

### **August 1997 Cabinet Submission**

The August 1997 Cabinet submission signed by Deputy Premier Ingerson was the third consecutive Cabinet submission to identify the need to address the issues of ownership and management. It was the first of the three submissions for the Stage 2 concept to receive Cabinet's approval, although the budget was not endorsed. It stated three times: *"a proposal on stadium ownership and management will be developed as a matter of urgency"*.

It contained a more detailed section addressing ownership and management issues:

*"3.8.1 As advised to Cabinet over recent weeks, there are a number of specific issues that need to be addressed with key stakeholder to enable the site to be secured fro the purposes of the proposed development. There has been significant advancement towards the resolution of some of these issues since the appointment of the Project Director. However, further work is still required by the Project Director on the following:*

(1) *City of Charles Sturt – resolution of the following issue.*

- *land ownership/transfer*
- *relocation of the Bowling Club*
- *partial road closure of Hindmarsh Place and Chapel Streets*
- *Street to form cul de sacs.*
- *relocation of Meal on Wheels*
- *community consultation*
- *car parking*

*Initial contact with Council officers has indicated that Council are likely to be supportive in assisting the Stage 2 development, however, the Council has not been briefed at this stage.*

*A letter of support from the Mayor and the CEO of the City of Charles Sturt is attached.*

*Negotiations on the above issue are not seen as a major impediment to the scheme and it is proposed to seek contributions from the Council towards this development.*

(2) *Heritage buildings...*

(3) *The Byelorussian Church...*

(4) *Ownership and management of the stadium complex*

*A proposal on stadium ownership and management will be developed as a matter of urgency."*

### **September 1997 Cabinet Submission**

The September 1997 Cabinet submission signed by Deputy Premier Ingerson and consequent Cabinet approval of the budget for Stage 2 finally committed the Government to Stage 2. It contained no reference to ownership and management.



## **February 1998 Cabinet Submission**

On 16 February 1998, Deputy Premier Ingerson signed a Cabinet submission seeking approval to refine the budget estimate for Stage 2 at \$18.5 million, to proceed to the Public Works Committee and subsequently call for tenders.

The Cabinet submission stated:

### *"3.20 Stadium Ownership/Management*

*Apart from the land purchased by the SA Government for Stage 2, the majority of the site is already owned by the City of Charles Sturt, including the stadium buildings. This raises the issues of how the facility will be managed in the future, to minimise current and future risks and liabilities for the SA Government while ensuring that the facility is used to the maximum benefit for the State, given the major investment by the State Government.*

*3.21 The preferred option is for the City of Charles Sturt to continue to own the facility but providing third party access to the stadium reduces the risk of the SA Government being approached to provide a separate stadium for Rugby. It also minimises future financial responsibility and places the SA Government at arm's length while still having some control of stadium management.*

*3.22 It is proposed to establish a Management Group for the stadium consisting of the State Government, Charles Sturt Council and the SA Soccer Federation (SASF). This will require a change to the current funding deed which requires the SASF establish a Management Committee to manage and operate the stadium as a separate and independent profit centre. The Deed requires a nominee of the "Minister for Recreation and Sport" to be present at all meetings of the Committee and makes provision for the Minister's nominee to become a voting member of the Committee. The SASF has informally noted that it would support this approach to safeguard its position with the Council from whom it leases the facility."*

For the first time in the approval process for Stage 2, a Cabinet submission expressed a preference for a position on ownership and management. However, the proposal was superficial and raised more questions than it answered. I do not consider this to present Cabinet with sufficient information from which to decide upon a firm position to resolve options for ownership and management.

I note the comments of the Crown Solicitor's Office:

*"...For example, what are the committee's specific functions, how will it operate, why is the Council represented when it has not been operationally involved, who will 'control' stadium management (ie will this be ceded from the Federation to the State/Council), what third party access rights will apply to the stadium, what will the revenue arrangements be, who will have the maintenance obligations etc"*

The Department of Treasury and Finance commented that other parties should be responsible for the operation, management and replacement of facilities at Hindmarsh Stadium given the Government's capital contribution of approximately \$24 million. No mechanism was proposed for this outcome.

On 23 February 1998, Cabinet gave its further approval for the project with the added qualification that:

*"4.7 The Cabinet sub-cttee to as a matter of urgency resolve ownership and public access, site decontamination & planning issues."*

This did not occur before October 1998 when construction of the Stage 2 project began.

## **NO POSITION ADOPTED UNTIL STADIUM NEARLY COMPLETE**

Until November 1999, the Government failed to adopt a clear position as to the structure it wished to implement for ownership and management of the stadium. By that time construction of the Stage 2 works were nearing Practical Completion (as defined in the Construction Management Agreement for Stage 2). A clear position should have been adopted before commitment was made to the Stage 2 project in August 1997. Once that opportunity had been lost, then a clear position should have been adopted before October 1998 when construction of the Stage 2 works began. It was not.

Until the establishment of the formal project management structure for Stage 2 in July 1997, the project was under the direction and control of the Minister for Recreation and Sport, first Minister Ingerson and then Minister Ashenden. Neither put forward a preferred position for ownership and management to Cabinet for its consideration.

Consideration of options for ownership and management did not begin until after commitment was made to Stage 2 in August 1997. Inadequate consideration was given to these issues between August 1997 and October 1998. Partly, that was the result of a failure to analyse in legal and economic terms the implications of the different structures that were available. Partly, it was the result of vacillation and indecision on the part of senior members of Government involved in determining a position on these critical issues. Primarily, responsibility for this failure rests with Deputy Premier Ingerson and Mr Dixon as the initial Project Director and then Chief Executive Officer of the Department of Trade and Industry.

The Cabinet Committee did not effectively assist Deputy Premier Ingerson in resolving ownership and management issues. I find that the principal reason for this failure was the fact that after its first two meetings, the Cabinet Committee only met twice in 10 months. Deputy Premier Ingerson and his Chief Executive Officer, Mr Dixon should have arranged for the Cabinet Committee to meet regularly and at least monthly as was originally intended.

The Cabinet Committee chaired by Deputy Premier Ingerson considered a number of different options and did not express a firm preference for any one option. Consequently, no firm position on these critical issues was adopted by Government until November 1999 when Cabinet approved a position presented by Minister Evans with the support of the Cabinet Committee he had reconvened on 19 August 1999.

The Cabinet Committee first considered options in relation to ownership and management of the stadium at its second meeting on 2 September 1997, soon after the Committee was established. A preferred option and two alternatives had been formulated at a high level meeting on 15 August 1997 between the Project Director, the Chief Executive Officer of the Department of Premier and Cabinet, the Crown Solicitor and the Under Treasurer from the Department of Treasury and Finance. That preferred option involved all of the land that was part of the stadium site being transferred to the Council to be incorporated in the Soccer Federation's lease and the establishment of a management committee in which the Government would have a controlling interest.

The preferred option had the principal attraction of simplicity. The principal criticism of the preferred option was that it would not give the Government ownership of the land. However, that was principally a matter of perception. Legally, appropriate contractual constraints could be put in place, including an encumbrance upon the land that ensured that the land was used in accordance with the objectives of the Government. The Cabinet Committee directed the Crown Solicitor's Office and the Project Director to refine that specific proposal further to present to the committee with a more detailed proposal.

Unfortunately, the Cabinet Committee did not set a deadline for presentation of the more detailed proposal and did not specify the form in which the proposal was to be put. The Cabinet Committee should have set a deadline and should have required that, at the very least, skeleton legal documents giving effect to each of the changes to the arrangements be drafted. As it was, the Cabinet Committee did not meet again until 16 March 1998.

That more detailed proposal was not ever prepared.

Between September and December 1997 little work was done on the issue of ownership and management. A State election intervened in October 1997.

On 19 December 1997, the Office for Recreation and Sport sought advice from the Crown Solicitor's Office on the preferred option presented to the Cabinet Committee. The Crown Solicitor's Office did not respond.

On 23 February 1998, Cabinet gave further approvals for the project on the basis that ownership and management issues would be resolved as a matter of urgency by the Cabinet Committee.

On 16 March 1998, the Cabinet Committee met to discuss a paper prepared by Mr Dixon. It was resolved that the Department of Industry and Trade would discuss ownership and management with the relevant parties and revert to the Committee with another paper discussing options.

On 30 April 1998, the Public Works Committee published its Interim Report in which it expressed its preference for the stadium to be owned by the Government.

Between April and July 1998, a number of papers were prepared about different issues relevant to ownership and management and different possible options for it.

On 31 July 1998, Minister Ingerson recommended to the Cabinet Committee that it authorise him to negotiate with the Council and the Soccer Federation about ownership and management. Minister Ingerson sought that authorisation with only one clear feature, that the stadium be controlled by a board nominated by the Government with representatives of user groups. Minister Ingerson did not state any preference as to who should own the stadium. The Cabinet Committee's authorisation to Minister Ingerson on 31 July 1998 removed the requirement for a board. Minister Ingerson was given authority to negotiate but he had to bring a proposal back to the Cabinet Committee before final commitment.

Minister Ingerson resigned soon after for reasons unrelated to Hindmarsh Stadium. Minister Evans, as the new Minister for Industry, Trade and Tourism assumed responsibility for Hindmarsh Stadium on 8 October 1998. Minister Evans approved his departmental officers entering into negotiations with the Council to acquire the stadium in early 1999. Those negotiations were still under way when the Cabinet Committee met for the first time after the resignation of Minister Ingerson on 19 August 1999.

At that time the Cabinet Committee endorsed Minister Evans continuing his negotiations on the basis of the Government purchasing Hindmarsh Stadium from the Council ie the same basis that the committee had endorsed in July 1998.

## **NO PROPER ANALYSIS OF LEGAL RISKS**

No proper analysis of legal risk was undertaken prior to commitment to the Stage 2 project. This was a serious failure of due diligence on the part of the responsible Ministers and Chief Executive Officers.

This analysis should have been sought in early 1997 in the initiation and approval phase for Stage 2 by Minister Ashenden and his Chief Executive Officer, Mr Michael Scott. When the formal project management structure was established for Stage 2 in July 1997, a proper legal analysis of the risks associated with different ownership and management options should have been sought by the Project Director and the proponent Minister, Deputy Premier Ingerson.

The Crown Solicitor's Office prepared a draft paper on 2 October 1998 entitled "*Hindmarsh Stadium Development – Consideration of Ownership and Management Options*". The paper was sent to the Office for Recreation and Sport. In a methodical fashion, the draft memorandum set out six ownership options for the stadium. It identified and described a set of advantages and disadvantages for each option.

While the draft memorandum identified the relevant issues and described each issue in some detail, it did not express any view as to the relative importance of each issue nor express an opinion as to which option should be preferred.

The Crown Solicitor's Office was not instructed by the Project Director or the Office for Recreation and Sport to take that exercise the necessary step further and identify with precision which issues were critical or to make a recommendation about which structure should be preferred.

## **NO PROPER ANALYSIS OF FINANCIAL OR ECONOMIC FACTORS**

There was no adequate feasibility study undertaken that considered different options for ownership and management of Hindmarsh Stadium before commitment to Stage 2. The SACES study undertaken in March 1997 was based on limited data and a limited scope of instruction. SACES were not instructed to examine in detail the costs of operation of the stadium nor the sources of revenue.

As a consequence when the Government first attempted to deal with these issues in November 1998 in the context of the Soccer Federation's proposal for a deferral or suspension of the levies, the Government realised that it had insufficient financial and economic information to make a considered decision.

The Government should have undertaken a proper financial study of the stadium's operations prior to commitment to the Stage 2 project.

For example, a very significant issue underlying resolution of the issues of ownership and management was the question of who would bear the costs of the ongoing maintenance of the stadium.

The difficulty for the Government was that neither the Council nor the Soccer Federation and initially the Government itself wished to accept responsibility for those costs. Each adopted positions in the negotiations that were difficult if not impossible to reconcile:

- The Council's position was that it did not wish to continue to own the stadium or contribute to the costs of its upkeep. However, even though it had and was to contribute little to the Stage 1 and Stage 2 redevelopment, the Council insisted on being compensated if it was to transfer ownership of the site.
- The Soccer Federation did not wish to own the site. It did not wish to be responsible for the upkeep or eventual replacement of the stadium. However, the Soccer Federation believed that because of its long-term involvement with the stadium it was entitled to continue managing the stadium, without the involvement of other parties.
- Prior to the Public Works Committee's Interim Report of 30 April 1998, the Government's position was that it did not wish to own the stadium but that it wished to ensure that a management structure was in place that would promote the profitability of the stadium and ensure its availability for sport. After the Public Works Committee's Interim Report in 30 April 1988, the Government's position changed so that its preferred position was to seek ownership of the stadium.

By this time, the Government had no alternative but to take responsibility for underwriting the cost of maintaining the stadium or risk the stadium falling into disrepair. The Council had no ongoing obligation to ensure its upkeep. The Soccer Federation, even if it were obliged to do so, did not have the financial resources.

In January 1999, prompted by the Soccer Federation's submission seeking relief from payment of levies, Minister Evans, as Minister for Industry and Trade, instructed the Office for Recreation and Sport to instruct Arthur Andersen to conduct a review of the finances and operations of the stadium, the Soccer Federation and the NSL Clubs.

On 31 March 1999, Arthur Andersen delivered its report. The report contained a summary itemisation of the Soccer Federation's expenses incurred in operating the stadium. Arthur Andersen expressed the opinion that the Government should acquire the stadium.

Because they had not been instructed to, Arthur Andersen did not examine the financial consequences of the six options for ownership and management that had previously been identified by the Crown Solicitor's Office in October 1998.

That exercise was seen to be a difficult one. The minutes of the Cabinet Committee meetings refer to the difficulties associated with identifying the expenses of the stadium and the cost to the Government of acquiring the freehold. Those difficulties were ascribed to the complicated ownership structure that existed.

The task may have been difficult. However, it was not ever attempted. amongst the numerous papers prepared by the Crown Solicitor's Office, the Department for Industry and Trade, the Department of Treasury and Finance and the Office for Recreation and Sport (and its predecessors and successors), there is no single attempt to tabulate all of the costs to the Government of the different possible structures for ownership and management. All of the papers proceeded on a narrative or qualitative basis with little attempt to assign values to each of the factors considered.

This important exercise should have been undertaken in early 1996 in assessing the feasibility for the ownership and management structure adopted for Stage 1 in the Funding Deed. This exercise should have been undertaken as part of the initiation and approval phase for Stage 2 in early 1997. It should certainly have been done well before October 1998 when construction of the Stage 2 works began.

This relatively minor criticism I have made of the failure to undertake this analysis since October 1998, must be understood against the seriousness of the failure to address the financial and economic implications of different ownership and management options at the outset of the Hindmarsh Stadium Redevelopment Project.

## **CONCLUSION ON FAILURE TO ADDRESS OWNERSHIP AND MANAGEMENT**

The proponent Ministers for the Stage 2 project should have ensured that the critical issues of ownership and management were adequately addressed before the Government committed to the Stage 2 project.

Primary responsibility for failing to resolve these issues rests with Mr Ingerson who was not only the proponent Minister for Stage 1, but who also was the Minister responsible for initiating investigations into the acquisition of land in 1996 as well as being the lead Minister and the principal proponent of the Stage 2 project from July 1997. Mr Ingerson bears responsibility for failing to resolve these issues before securing Cabinet approval of the final concept and budget for Stage 2 in August and September 1997. I note that Mr Ingerson secured Cabinet's approval on the basis that these issues would be addressed urgently and that no major impediments were seen to their resolution. However, by the time of Mr Ingerson's resignation in August 1998, these issues were not resolved, despite numerous opportunities to do so.

Minister Ingerson has submitted that at the time of his resignation he considered these issues were being negotiated and capable of resolution before construction was complete. I do not consider that an adequate basis on which to have proceeded. As discussed in detail above, once construction commenced, the Government had no effective bargaining position upon which to negotiate a resolution of these issues. This Examination has found no reasonable basis for Mr Ingerson holding this view.

Mr Ashenden bears Ministerial responsibility for failing to consider how to address these issues between December 1996 and July 1997 while he was the Minister responsible for trying to initiate Cabinet approval for the project.

Mr Michael Scott as the Chief Executive Officer of the Office for Recreation, Sport and Racing<sup>442</sup> until 30 June 1997 should have provided better assistance to Ministers Ingerson and Ashenden in addressing these issues than he did. Mr Michael Scott should have acted to resolve these issues before the Government committed to the Stage 2 project.

From the time of his appointment as the Stage 2 Project Director in July 1997 and ultimately in his capacity as the Chief Executive Officer of the Department of Industry and Trade, Mr Dixon should have provided better assistance to Deputy Premier Ingerson in addressing and resolving these issues than he did. Although the opportunity had been lost to resolve these issues before commitment, Mr Dixon should have acted to resolve these issues as a priority and at least before the project was referred to the Public Works Committee in February 1998. When that did not occur, Mr Dixon should have acted to ensure that these issues were addressed and resolved with urgency before any commitment to construction was given.

The role of the Cabinet Committee chaired by Deputy Premier Ingerson warrants a lesser criticism in the following regard. Although the Cabinet Committee was not established until after the Government had committed to the Stage 2 project, the Committee did not effectively assist Deputy Premier Ingerson in resolving ownership and management issues. I find that the principal reason for this failure was the fact that after its first two meetings, the Cabinet Committee only met twice in 10 months. Deputy Premier Ingerson and his Chief Executive Officer, Mr Dixon should have arranged for the Cabinet Committee to meet regularly and at least monthly as was originally intended.

Some criticism might be made of Minister Evans for not resolving these issues between October 1998 and September 2000. Certainly, Minister Evans should have regularly convened the Cabinet Committee between October 1998 and July 1999 to consider and have input into ownership and management issues. However, this must be understood as relatively a lesser criticism given that the opportunity to address this issue had been lost earlier.

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<sup>442</sup> And its successor agency, the Department of Recreation and Sport.

# CHAPTER 27 – UNDUE PRESSURE ON SPORTING CLUBS OR ASSOCIATIONS

**Term of Reference III(a) - "Whether undue pressure was placed on individuals leading to legal commitment by them on behalf of sporting clubs or associations."**

## OVERVIEW

This Chapter addresses Terms of Reference III(a) under the following headings:

- Relevance of this Chapter
- The definition of undue pressure
- The various legal commitments made by the Soccer Federation
- The various legal commitments made by the NSL Clubs
- The complaints made after entry into legal commitments by the NSL Clubs about the costs of playing at Hindmarsh
- Conclusion

## RELEVANCE OF THIS CHAPTER

The Soccer Federation and the NSL Clubs executed agreements<sup>443</sup> committing them to expenditure<sup>444</sup> which, ultimately, they did not meet. That increased the cost of the project for Government.<sup>445</sup> This unplanned increase in the cost to Government of the Hindmarsh Soccer Stadium Redevelopment Project has directly compromised the efficiency and cost-effectiveness of the project.

It has been submitted to this Examination that the Soccer Federation and the NSL Clubs could not afford the obligations that they undertook for the redevelopment of Hindmarsh Stadium. It is clearly inefficient and not cost-effective for Government to enter into complex legal relations with persons who cannot meet their obligations. The failure of the Levy System imposed by the Stage 1 Project Documents, has meant that the Government has borne significantly more than its intended share of the repayments of the Stage 1 Loans made to the Soccer Federation. Term of Reference III(a) addresses a possible explanation as to why.

If undue pressure was placed upon individuals that led to legal commitment by sporting clubs or associations, those obligations may be unenforceable. It is inefficient and not cost-effective for Government to enter into legal relations with sporting clubs or associations that are unenforceable.

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<sup>443</sup> Namely, the 1996 Licence Agreements which comprised an exchange of letters between the Soccer Federation and the NSL Clubs and the 1997 Licence Agreement which was a formal legal document between the Soccer Federation and the NSL Clubs. This Chapter uses these descriptions to distinguish between the agreements made at these two different times.

<sup>444</sup> See Chapter 32.

<sup>445</sup> Appendix 1.



## DEFINITION OF UNDUE PRESSURE

"Undue pressure" is not a legal term of art. It is therefore necessary to set out the definition adopted in this Chapter.

This Examination has considered the expression in both a legal and a less technical sense.

"Undue pressure" is relevant to this Examination if in a legal sense any impugned conduct could give rise to a right to seek legal redress or a legitimate defence to the legal commitments undertaken by a sporting club or association.

"Undue pressure" has three legal connotations: duress, undue influence and unconscionability. Common law duress signifies the procuring of contractual consent by illegitimate threat.<sup>446</sup> The equitable doctrine of undue influence refers to the improper use by a person of their influence over another person so as to deprive the weaker person of the free use of their will or judgment.<sup>447</sup> Undue influence is a form of unconscionable conduct by the person seeking to retain the benefit of a dealing with a person under a special disability in circumstances where it is not consistent with equity or good conscience to do so.<sup>448</sup>

The difference between these legal concepts is that undue influence signifies an influence falling short of the 'coercion' or 'force' inherent in a threat, but which is still improper.

Common law duress concerns the reality of contractual assent. The equitable concepts of undue influence and unconscionability concern the conscience of a party seeking to retain the benefit of a dealing obtained by undue pressure or the use of unfair tactics.

In such cases, the law regards the resultant dealing as unenforceable against the weaker party. For example, the transaction may be set aside by a Court, rescinded by the weaker party or property restituted depending upon the circumstances.

This Examination has also considered undue pressure in a less technical sense. Conduct that may not have a legal effect in the sense outlined above may still warrant comment by the Auditor-General. For example, if undue pressure led to proper safeguards being avoided that could have a direct effect on the efficiency and cost-effectiveness of a publicly funded project.

It could be said that any persuasion involves an element of pressure. The point at which that pressure becomes undue is to an extent "subjective". This Examination has proceeded on the basis that pressure is "undue" if it is inconsistent with the precepts of good government.

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<sup>446</sup> *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447 at 474 per Deane J.

<sup>447</sup> See Halsbury's Laws of Australia [185-970]

<sup>448</sup> See Halsbury's Laws of Australia [110-5010]

## THE LEGAL COMMITMENTS MADE BY THE SOCCER FEDERATION

There has been no suggestion, nor is there any evidence that any person was unduly pressured in order for the Soccer Federation to make the legal commitments that it did.<sup>449</sup>

The evidence is to the contrary. The individuals representing the Soccer Federation welcomed the redevelopment project and willingly entered into legal commitments on its behalf. These individuals were strongly influenced by the funding mechanism for the redevelopment used in the April 1995 Memorandum of Understanding and the Funding Deed. The Soccer Federation was not exposed to any financial risk for its loan repayments, which were to be funded by a levy increasing the price of tickets sold to spectators using the redeveloped grandstand. The Soccer Federation was not obliged to repay the loan from any other source than the Levy monies and any shortfall between the Levy monies and the loan repayments was the Government's responsibility.

The fact the Soccer Federation was not exposed to any financial risk was specifically emphasised to the NSL Clubs at the two meetings of the Council of Clubs<sup>450</sup> convened to authorise the Soccer Federation to enter into the loan.<sup>451</sup>

The Soccer Federation in its negotiations with Government took the approach that it required a grant to fund the redevelopment of Hindmarsh. Throughout its negotiations with Government, the Soccer Federation was very careful not to commit to any financial responsibility that was not ultimately underwritten by Government or the NSL Clubs.

Ultimately, in order to meet the Government's policy that sporting organisations contribute commensurate with the sport's ability to pay, a Government guaranteed loan, funded by the Levy System, was conceived as the way for the sport contributing without the Soccer Federation having any liability to pay from its own funds.

It has been suggested that some individuals representing the Soccer Federation may have believed that the loan and levy arrangements in the Funding Deed were temporary and would be forgiven by the Government after a few years.<sup>452</sup> This Examination has been unable to verify these suggestions or to discover the foundation for any such belief. This Examination has found no evidence that any representative of Government said or did anything to engender this belief. Such a representation by Government would be inconsistent with the clear terms of the April 1995 Memorandum of Understanding and the Funding Deed.<sup>453</sup>

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<sup>449</sup> For a detailed exposition of these commitments see Chapters 30 to 35 which considers all relevant agreements entered into by the Soccer Federation.

<sup>450</sup> Under the then Constitution of Soccer Federation, the Council of Clubs was vested with the control of the business affairs and policy of the Soccer Federation.

<sup>451</sup> Minutes of extraordinary meetings of the Council of Clubs held on 1 May 1995 and 1996. Mr Avory, a Commissioner of the Soccer Federation Board at that time, gave evidence that the Board emphasised that the Soccer Federation was not exposed to any risk in order to give the clubs confidence to authorise the Board of Commissioners to borrow the necessary funds for the redevelopment.

<sup>452</sup> Letter from Mr Pickard of Adelaide City to Mrs Hall dated 14 August 1998.

<sup>453</sup> It is noted that the former Vice President of West Adelaide, Mr Garas said he would not have believed this if it had been said to him.

The Soccer Federation did not fulfil a number of commitments to provide information to Government about the ongoing management of the stadium.<sup>454</sup> The Soccer Federation did not ever complain about the burden of these commitments. The failure of the Government to obtain this information had the consequence that it was never in a position to properly assess the capacity of the Soccer Federation to meet its commitments. Feasibility was not a concern for the Soccer Federation. Its concern was to get a grant from Government to redevelop the stadium.

The Soccer Federation in its Licence Agreements with the NSL Clubs passed on or shared many of its obligations with the NSL Clubs.<sup>455</sup> The Soccer Federation may have been a more successful negotiator but that does not mean it used undue pressure. With no risk to its interests, the Soccer Federation has received a significant benefit at the expense of Government and, to a lesser extent, a benefit has also been received by the NSL Clubs. These favourable arrangements encouraged the Soccer Federation to enter willingly into its legal commitments for the redevelopment.

## **THE LEGAL COMMITMENTS OF THE NSL CLUBS**

The evidence surrounding:

- negotiations between the Soccer Federation and Adelaide City over the relocation of its club rooms to Hindmarsh which led to the March 1995 Loan Agreement;
- the entry by the NSL Clubs into the April 1995 Memorandum of Understanding with the Soccer Federation;
- the authorisation by the Council of Clubs for the Soccer Federation to enter into Stage 1 of the redevelopment given in May 1995 and again in May 1996;<sup>456</sup> and
- the entry by the NSL Clubs into the Licence Agreements in August and October 1996 and in June 1997;

shows that the NSL Clubs shared the Soccer Federation's willingness to promote the proposed redevelopment. The evidence is clear that the NSL Clubs made the commitments they were asked to make willingly and absent any undue pressure.

The full ramifications of the commitments made by the NSL Clubs to the Soccer Federation in the Licence Agreements were not adequately analysed during the planning stages of the redevelopment project by either the Government, the Soccer Federation or the NSL Clubs.

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<sup>454</sup> See Chapter 32.

<sup>455</sup> For example, in the April 1995 Memorandum of Understanding, the Soccer Federation was to undertake the fit out of the grandstand at its cost. In the 1996 Licence Agreements, the NSL Clubs were responsible for the fit out of their areas. Ultimately, a further \$2 million was borrowed by the Soccer Federation to fund the fit out of the Soccer Federation and NSL Clubs areas in the grandstand, which loan was guaranteed by the Government. See Part 2 and Chapter 32 for further details of these transactions.

<sup>456</sup> Minutes of extraordinary meetings of the Council of Clubs held on 1 May 1995 and 1996.

### **The Adelaide City Club Rooms and Loan Agreement**<sup>457</sup>

Negotiations over the terms of the Soccer Federation's proposed licence to Adelaide City began in 1994 as part of a proposal that Adelaide City relocate its clubrooms to Hindmarsh. While those negotiations took over a year until the agreement reached was formalised in a legal document, there is no evidence of any undue pressure being placed on any individual representing Adelaide City. The Soccer Federation expressed some frustration at the delay in reaching a final agreement with the Club, but that was insignificant and not indicative of any undue pressure.

### **The 1995 Clubs Memorandum of Understanding**<sup>458</sup>

There is no suggestion, nor is there any evidence, that the representatives of the NSL Clubs signed the April 1995 Memorandum of Understanding with the Soccer Federation on behalf of the NSL Clubs, other than willingly.

Negotiations between the Government and the Soccer Federation took place quickly in the three days preceding execution of the April 1995 Memorandum of Understanding. At a specially convened meeting held on Saturday 29 April 1995, the NSL Clubs were asked to support the Soccer Federation in entering into the Memorandum of Understanding with the Government for the redevelopment of Hindmarsh. The NSL Clubs were specifically asked to agree to enter into a licence agreement to play all matches at Hindmarsh for the same period as the 21 year lease to the Soccer Federation from the Council. The NSL Clubs agreed to do so on condition that:

- any corporate facilities built were to be shared equally between the Soccer Federation and the NSL Clubs; and
- the NSL Clubs would not be bound by the proposed \$1 levy on Western grandstand spectators.

The NSL Clubs welcomed the redevelopment. NSL Club officials involved in administration of South Australian soccer at the time have given evidence to the Examination that the soccer community generally thought the redevelopment was a good deal for soccer and the Levy System was a small price to pay for it. At this very preliminary stage, and after limited opportunity to consider the ramifications of the proposed arrangements, little consideration was given to the feasibility of the redevelopment from the NSL Clubs' position. Nonetheless, it was clearly understood by all parties including the NSL Clubs that further negotiations would need to occur. Consequently, no one voiced any objections to the proposed redevelopment at this time.

### **May 1995 and May 1996 Authorisation by the Council of Clubs**

On 1 May 1995, the Council of Clubs authorised the Soccer Federation to borrow up to \$6.5 million for the redevelopment, provided the loan was supported by an unconditional Government guarantee.<sup>459</sup>

On 1 May 1996, the Council of Clubs authorised the Soccer Federation to borrow up to \$8.128 million for the redevelopment subject to the same proviso: that the loan is supported by an unconditional Government guarantee.<sup>460</sup>

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<sup>457</sup> See Chapter 32 for more details of this agreement.

<sup>458</sup> See Chapter 31 for more details of this agreement.

<sup>459</sup> Minutes of extraordinary meetings of the Council of Clubs held on 1 May 1995.

<sup>460</sup> Minutes of extraordinary meetings of the Council of Clubs held on 1 May 1996.

There is no suggestion, nor is there any evidence of any undue pressure at this time. To the contrary, because the proposed arrangements did not expose the Soccer Federation to any financial risk and this was clearly minuted,<sup>461</sup> the member clubs granted the requisite authorisation willingly.

### **The 1996 Licence Agreements**

Preliminary discussions between the Soccer Federation and the NSL Clubs over the terms of the 1996 Licence Agreement began in early 1996. These negotiations focused on how they would share the various revenue earning rights, the running costs of the stadium and the proposed new facilities. There was one complaint from Adelaide City in August 1995 about not being sufficiently involved in the planning stage of the project.<sup>462</sup> Apart from that, there were no other complaints or any evidence of undue pressure during the course of these negotiations. Adelaide City's relationship with the Soccer Federation at that time was amicable.

The 1996 Licence Agreements were negotiated and signed without proper feasibility studies being undertaken into the position of the NSL Clubs to meet them. While this was a serious failure in the planning process, it does not evidence any undue pressure.

### **The 1997 Licence Agreement**

The first complaint about the financial burdens imposed on the clubs by financial arrangements for the redevelopment was made in January 1997. Mr Gordon Pickard, Patron, sponsor and Finance Committee member of Adelaide City and two other board members<sup>463</sup> met with the Chairman and General Manager of the Soccer Federation on 30 January 1997 to discuss the implications of the redevelopment on Adelaide City. Mr Pickard wrote to the Mrs Hall, Ambassador for Soccer on 7 February 1997 to bring to her attention Adelaide City's position on the redevelopment as he was concerned that she may not have an accurate account of the club's position. Mr Pickard made a number of comments to convey Adelaide City's concern with the redevelopment:

- NSL Clubs were then losing money at NSL level. Adelaide City was then losing \$150,000-\$200,000 each season.<sup>464</sup>
- Attendances were then down to 3,500 for Adelaide City matches.<sup>465</sup>
- There was then a financial imbalance between the Soccer Federation and the NSL Clubs. The Soccer Federation enjoyed a disproportionate share of the benefits while the NSL Clubs wore the burden of the costs. In Mr Pickard's view that imbalance needed to be addressed.

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<sup>461</sup> In 1995, "It was noted that the Federation was not exposed to any risk and any shortfall in the repayments would be made by the State Government – **without limitation.**" [*Original emphasis*] In 1996, "Emphasis was placed on the importance of the South Australia Soccer Federation was not committed in any way to financing the loan, with the repayment of the loan being financed by way of a \$3 surcharge being placed on all patrons utilising the Western Grandstand, and for the South Australian Government picking up any shortfall in repayments by the Federation."

<sup>462</sup> The Soccer Federation submit that this complaint was remedied quickly by arranging a meeting with representatives of Adelaide City.

<sup>463</sup> Messrs Joe Tripodi and Brett Graham.

<sup>464</sup> The Soccer Federation has submitted to me that it had not control over NSL Clubs' budgets. I concur.

<sup>465</sup> The Soccer Federation has also submitted that those involved in negotiations "agreed" that improved facilities would attract more patrons. There was no empirical data to support such an assumption and hindsight has not proven this assumption to be correct.

- He was not sure that either the *"tenant or the landlord had checked to see if the tenant could afford the rent"*.<sup>466</sup>
- Demand for the soccer product might not be sufficient to meet the costs of the new stadium.

None of those comments evidence undue pressure.

In the course of the ensuing discussions, Adelaide City asserted that the 1996 Licence Agreements were not binding, although notably, not on any basis involving undue pressure. The Soccer Federation disagreed but was prepared to discuss the issues.<sup>467</sup> Fresh negotiations ensued between the Soccer Federation and the NSL Clubs for five months, culminating in execution of a final agreement on 23 June 1997.<sup>468</sup>

These negotiations focused on expanding and clarifying the NSL Clubs' catering rights and a new arrangement for the funding of the fit out of the grandstand (corporate boxes and club rooms). By the final agreement, the NSL Clubs improved their position on these issues. The NSL Clubs were no longer obliged to fund the fit out of their club rooms and their corporate boxes. The entire grandstand fit out was agreed to be funded by a \$2 million loan taken out by the Soccer Federation. Loan repayments were to be funded by a \$2 levy on every spectator entering any event held at the stadium by the Soccer Federation or the NSL Clubs. The Soccer Federation was not obliged to repay these monies from any other source and any shortfall between the loan repayments and the Levy monies was to be paid by the Government.

Solicitors represented both the Soccer Federation and Adelaide City in the final stage of the negotiations for the 1997 Licence Agreement. The final document was prepared by Phillips Fox, the Soccer Federation's solicitors after review by Thomsons, Adelaide City's solicitors.

These facts negate any suggestion of undue pressure leading to the NSL Clubs entry into the 1997 Licence Agreement. The failure of anyone to properly investigate the NSL Clubs' ability to meet the obligation they assumed in the 1997 Licence Agreement does not constitute undue pressure.

Some representatives of Adelaide City have complained that the 1997 Licence Agreement was signed before the sub-committee specifically charged with that responsibility had concluded negotiations, which resulted in several concessions that had already been negotiated being left out of the final agreement. This Report does not conclude that this was undue pressure. Instead, this Report has found this to be a consequence of strong differences of opinion between various people involved in the management of Adelaide City, and primarily, a matter for the internal management of that NSL club.

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<sup>466</sup> The Soccer Federation have correctly submitted that the "rent" was not going up as the levies were to be charged on top of ticket prices. The increased costs of playing at Hindmarsh Stadium were a different matter altogether.

<sup>467</sup> Letter from the Soccer Federation to Adelaide City dated 13 February 1997. The Soccer Federation maintains to date its vehement denial of this assertion and has pointed out to me that these allegations have not been substantiated despite requests that they be.

<sup>468</sup> ie, the 1997 Licence Agreement.

## LATER COMPLAINTS ABOUT THE COST OF PLAYING AT HINDMARSH

The NSL Clubs expressed concerns about their difficulty in meeting their financial obligations under the 1997 Licence Agreement only after they began playing at Hindmarsh under its terms. In August 1998, these concerns were formally raised with the Soccer Federation.<sup>469</sup> Later these concerns evolved into assertions that, based on legal advice received by Adelaide City, the 1997 Licence Agreement was null and void because the Soccer Federation was in breach of its sponsorship and free ticket allocations.<sup>470</sup>

At no time has either NSL Club asserted that it is not obliged to perform under that agreement because of any undue influence or pressure exerted on it or any of its representatives.

In this period, the only suggestions of undue pressure have arisen in the context of Mr Pickard's attempts to renegotiate with the Soccer Federation already binding commitments made by Adelaide City.

The first suggestion was made in a letter written by Mr Pickard to the Hon. Joan Hall MP on 14 August 1998, in which Mr Pickard stated that:

*"By forcing the clubs into a joint tenancy at the last moment you have placed Adelaide City in a vulnerable position by chaining it to a technically insolvent club."*

Mr Pickard acknowledged to this Examination that by "*forcing*" he meant that the Soccer Federation had refused to change its position.

Mr Pickard withdrew the substance of his allegations against the Hon. Joan Hall MP in a later letter to her when she had resigned as Ambassador for Soccer in October 1999:

*"...In hindsight my previous letters to you regarding the grandstand were too harsh and I would like to apologise for their accusing tone. I know now that you were doing your best for soccer and for South Australia. Knowing what I know now I shouldn't have written to you at all. I only wrote to you because I was advised to by Les Avory and Tony Farrugia who said that the SASF couldn't help the two NSL clubs – it was a government matter."*<sup>471</sup>

The second suggestion was found in notes made under Mr Pickard's direction of a meeting held on 12 August 1998 between Mr Vince Cosmai and Mr Charlie Capogreco of Adelaide City at which Mr Capogreco was asked to give his recollection of the licensing arrangements between the NSL Clubs and the Soccer Federation and the fit out. Those notes stated that:

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<sup>469</sup> On 13 August 1998 there was a meeting held between Messrs Pickard and Graham of Adelaide City, Messrs Makris and Day of West Adelaide, and Messrs Scarsella, Avory and Farrugia of the Soccer Federation at which the NSL Clubs' concerns about the existing financial arrangements were discussed. Letters dated 13 August 1998 from Mr Pickard to the Soccer Federation and from the Soccer Federation to Mr Pickard.

<sup>470</sup> Letters from Adelaide City to the Soccer Federation dated 13 August 1998, 8 June, 29 and 30 September and 1 October 1999.

<sup>471</sup> Letter dated 8 October 1999.

*"Eventually Adelaide City and West Adelaide (John Garas, Retsis and George Vlahos) were coerced to sign a 21 + 21 right of renewal in exchange for the rights for all catering at Hindmarsh to go to the two clubs ..."*

This statement is odd. It describes what appears to be a fair bargain: ie a long term lease to the landlord's benefit in return for additional revenue to the NSL Clubs. The word "coerced" does not fit the rest of the notes. The notes contain no details of any coercion (eg physical, verbal or commercial threats). To the contrary, the notes reflect willingness to enter into various legal commitments after negotiation and deliberation. The notes end:

*"I believe the \$50,000 over 21 years was a good deal and the catering rights which we were trying to get also influenced out thinking."*

It is apparent that the word "coerced" was used in the same way Mr Pickard used "forcing".

Mr Garas, then Vice President of West Adelaide, who is named in the notes told this Examination that he disagreed with the Levy System. He said he and the former West Adelaide President, Mr Harry Zacharoyannis<sup>472</sup> voiced their disagreement but were in a minority and overruled by other West Adelaide board members in their support for the redevelopment. Mr Garas' feeling that he had no choice but to accept the proposed arrangements because he disagreed was not undue pressure.

Mr Garas told this Examination of a verbal threat made by the then Vice President of Soccer Australia, Mr Basil Scarsella in the course of a meeting with the Soccer Federation that West Adelaide would be thrown out of the NSL if it did not agree. When pressed, Mr Garas conceded that it might have been said in the context of West Adelaide not continuing to be part of the NSL if it was not prepared to cooperate with the NSL in doing what was good for soccer. Mr Scarsella has denied making such a threat. It is likely that if Mr Scarsella said something like that, it was ambiguous. It is difficult to see how such a threat could be carried through or be persuasive.

It is apparent that whatever was said by Mr Scarsella did not influence Mr Garas' views or actions. He disagreed with the Levy System and voiced his disagreement. The rest of the board of West Adelaide overruled him and West Adelaide voluntarily entered into the Licence Agreements despite his objections. That was not undue pressure.

## **CONCLUSION**

This Examination has not shown that undue pressure was placed upon any individuals leading to commitment by them on behalf of sporting clubs or associations.

In reaching this conclusion the contemporaneous evidence of the circumstances surrounding the entry into relevant legal agreements has been examined in light of the possible meanings of undue pressure.<sup>473</sup> This Examination has found:

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<sup>472</sup> Now deceased. Mr Farrugia gave evidence to the contrary. He said Mr Zacharoyannis approved of the Levy System and points out he signed the April 1995 Memorandum of Understanding on behalf of West Adelaide.

<sup>473</sup> See Chapters 30 to 35 which considers the status of all documents comprising the legal obligations of the participants in the redevelopment project from time to time.



- That there has not ever been any suggestion that any individual representing the Soccer Federation was ever placed under any undue pressure to enter into any commitment on its behalf.
- The fact that the Soccer Federation was not exposed to any financial risk by the redevelopment was a strong influence. This fact was emphasised by members of the board of the Soccer Federation to member clubs in order to seek their authority and approval and was relied upon by those member clubs in supporting the redevelopment project.
- There is no contemporaneous evidence of any undue pressure placed upon any individual representing either of the NSL Clubs leading to the commitments made in the Licence Agreements.
- The NSL Clubs executed the Licence Agreements committing them to expenditure which, ultimately, they did not or were not able to meet. They undertook those commitments willingly but without proper consideration or investigation of their ability to meet them.
- Since January 1997 complaints have been made about the financial burden placed on the NSL Clubs by these commitments.<sup>474</sup> Those complaints did not refer to undue pressure, except in two cases.<sup>475</sup> However, in each case, the NSL Clubs' complaint was that they could not get the Soccer Federation to change its position on certain issues when the NSL Clubs sought to renegotiate the terms of the 1996 Licence Agreements in early 1997.

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<sup>474</sup> See Chapter 11 under heading "January 1997 – Complaint by the NSL Clubs about the Financial Arrangements for Stage 1".

<sup>475</sup> Letter from Mr Pickard of Adelaide City to Mrs Hall dated 14 August 1998 which stated: "*By forcing the clubs into a joint tenancy at the last moment...*". Minutes of meeting held on 12 August 1988 between Charlie Capogreco and Vince Cosmai which stated: "*Eventually Adelaide City and West Adelaide (John Garas, Retsis and George Vlahos) were coerced to sign a 21 + 21 right of renewal...*".

## CHAPTER 28 - DETAILED FINDINGS ON TERM OF REFERENCE III(b)

*Term of Reference III(b) - "The present status of all relevant deeds of guarantee or other legal documents, the financial status of the signatories and whether the legal agreements have created financial difficulty for any non-government persons or organisations."*

### OVERVIEW

Chapters 28 to 35 address Term of Reference III(b) in the following way.

#### **Chapter 29 - Historical Overview of Legal Documents**

There are more than a hundred legal documents concerning the redevelopment of Hindmarsh Stadium. This Chapter presents a historical overview that groups the documents according to the following phases of the redevelopment:

- Prior to April 1995
- April 1995 Memoranda of Understanding
- Stage 1 Project Documents
- Fit Out of Stage 1
- The Acquisition of Land Surrounding Hindmarsh Stadium
- Stage 2 – Hosting Olympic Soccer at Hindmarsh Stadium

The current arrangements for ownership and management are also discussed in this Chapter.

#### **Chapters 30 to 34 - Present Status of Legal Documents**

These Chapters contain an analysis of each of the material agreements concerning the redevelopment of Hindmarsh Stadium. This analysis examines each material document and identifies the specific financial obligations created or altered by it. There is a separate chapter for the documents relating to each historical phase of the redevelopment.

#### **Chapter 35 – Financial Status of the Signatories and Creation of Financial Difficulty by Legal Documents**

This Chapter considers the financial status of the Soccer Federation and the NSL Clubs and the contribution of the legal relations created by the documents to the financial status of the Soccer Federation and the NSL Clubs.

The words "non-government persons or organisations" in Term of Reference III(b) literally include more than the Soccer Federation and the NSL Clubs. However, it is plain that it is these organisations to which the term of reference is directed. No issue to financial substance arises for the other organisations that are parties to the legal agreements for the redevelopment of Hindmarsh Stadium.

This Examination has identified and assessed the present status of the documents comprising the legal obligations of the participants in the project. This involved identifying breaches of obligations assumed in relation to the project and the consequences of those breaches.

Now that Stage 2 is complete, the Soccer Federation and the surviving NSL Club, Adelaide City are unable to meet the financial obligations they assumed for Stage 1. The other NSL Club, West Adelaide is in liquidation.

In my opinion, the Soccer Federation has breached a number of its legal obligations to Government for Stage 1. To some extent, those breaches were waived or the requirement to perform suspended pending the resolution of negotiations between the Government, the Soccer Federation and the Council over the ownership and management of Hindmarsh Stadium. In my opinion, the failure of the Soccer Federation to meet its obligations to Government for Stage 1 has significantly increased the cost of the project to Government. This has occurred because the Government assumed the entire financial risk for Stage 1, despite the appearance of Stage 1 being a jointly funded project.<sup>476</sup>

This Examination has also found that the Government's failure to assess properly the capacity of the Soccer Federation or the NSL Clubs to meet the financial obligations they assumed for Stage 1 has reduced the efficiency of the project. Significant public resources were expended in putting in place the complex legal relations for Stage 1. In my opinion, those resources have been wasted to the extent that legal commitments made by the Soccer Federation or the NSL Clubs were ineffectual or worthless.

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<sup>476</sup> Tables 2, 7 and 8 of Appendix 1 show the amount of the debt servicing costs that have been paid by Government instead of the Soccer Federation.

# CHAPTER 29 - HISTORICAL OVERVIEW OF LEGAL DOCUMENTS

## INTRODUCTION

This Examination has identified and considered the documents intended by the parties to create or formalise their legal relations relating to the Hindmarsh Soccer Stadium Redevelopment Project. Those documents must be seen against the background of the documents governing legal relations before the redevelopment of Hindmarsh Stadium

## LEGAL DOCUMENTS PRIOR TO APRIL 1995

Legal relations concerning the operation of Hindmarsh Stadium prior to its redevelopment were straightforward. The financial commitments of the Soccer Federation and the NSL Clubs for the operation of the stadium were modest.

From about 1960, the Soccer Federation leased the stadium from the local Council <sup>477</sup> for a nominal rent. <sup>478</sup> The Soccer Federation sub-let part of the stadium to the NSL Clubs for a rent that just covered the Soccer Federation's expenses for the stadium. The 1995 accounts of the Soccer Federation state: <sup>479</sup>

<b>NOTE 19: HINDMARSH STADIUM</b>	<b>1995 \$</b>	<b>1994 \$</b>
<b>Income</b>		
Rent received	81,000	82,676
<b>Expenditure</b>		
Rent	-	3,000
Maintenance and expenses	80,891	78,841
	80,891	81,841

While the Council was responsible for the cost of maintaining the playing area, both parties shared the cost of improvements to buildings and the mounds. <sup>480</sup> As between the Council and the Soccer Federation, the Soccer Federation was responsible for managing all matches. <sup>481</sup> As between the

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<sup>477</sup> The local council was prior to 1981 the Corporation of the Town of Hindmarsh. It is now the City of Charles Sturt. The details of changes to its legal identity and name are set out in Part 2 of this Report at the time they occurred. In this Report, it will be referred to as "the Council" unless otherwise stated.

<sup>478</sup> This rent was \$3,000 for the year ended 31 October 1994. Further details of the lease that was current in 1994 are set out below in Chapter 30 under the heading "The 1981 Lease" at page 420.

<sup>479</sup> Notes to and forming part of the accounts of the Soccer Federation for the year ended 31 October 1995.

<sup>480</sup> The raised, grassed standing areas for spectators.

<sup>481</sup> Clauses 17 and 18 of the 1981 Lease that is referred to in footnote 478 above.

Soccer Federation and the NSL Clubs, an independent contractor managed the matches. Net revenue from matches accrued to the benefit of the party hosting the match.<sup>482</sup>

The management contract with the independent contractor Weslo was in force until 31 August 2001 even though the stadium has been totally redeveloped. The terms of this contract were still relevant principally because crowd numbers have not changed markedly since the redevelopment.<sup>483</sup>

Historically, the Government had no involvement in the day to day operation of Hindmarsh Stadium. The Government was involved in the sport of soccer through its agency, the Office for Recreation, Sport and Racing. This agency was responsible for administering the Government's programs at all levels of sport and recreation. From time to time, the Soccer Federation received financial assistance from the Government through the agency's grants programs.

## **THE APRIL 1995 MEMORANDA OF UNDERSTANDING**

In April 1995, the Government signed a memorandum of understanding for the joint funding of a \$6.5 million upgrade of Hindmarsh Stadium. This upgrade involved the construction of a new eastern grandstand.<sup>484</sup> The Soccer Federation and the NSL Clubs also signed a memorandum of understanding of their agreement to support the upgrade.<sup>485</sup>

These documents did not alter existing legal relations between the parties as these documents were not legally binding.

The stated purpose of the memorandum of understanding with Government was to record the negotiations between the Government and the Soccer Federation at that time regarding the scope and management of the proposed redevelopment of Hindmarsh Stadium and how it would be funded.<sup>486</sup> That document expressly acknowledged that the parties would undertake further feasibility studies and the undertakings made in it were subject to consideration by both Cabinet and the constituent clubs of the Soccer Federation.<sup>487</sup>

Although not legally binding, both memoranda of understanding entrenched the parameters within which the parties conducted their future negotiations and ultimately, the essential terms of the Stage 1 Project Documents.<sup>488</sup> Adequate feasibility studies were not undertaken by any party.<sup>489</sup>

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<sup>482</sup> Details of this agreement are set out below in Chapter 30 under the heading "The 1994 Ground Management Agreement" at page 421.

<sup>483</sup> Appendix 2 shows historical match attendances for Hindmarsh Stadium.

<sup>484</sup> Details of this document are set out below in Chapter 31 at page 424.

<sup>485</sup> Details of this document are set out below in Chapter 31 at page 427.

<sup>486</sup> Recital E.

<sup>487</sup> Clauses 6.2 and 6.3.

<sup>488</sup> Today, the redevelopment is generally referred to as having occurred in two stages: Stage 1 and Stage 2. In 1995 until early 1996, the redevelopment proposed was the construction of a new eastern grandstand. The proposal changed to redevelopment of the existing western grandstand in early 1996. The redevelopment of the western grandstand became known as Stage 1 in late 1996 when plans for further redevelopment work at Hindmarsh were considered. In this Report, the term "Stage 1 Project Documents" is used to refer to all the documents concerning the redevelopment of the western grandstand as distinct from the construction of a new eastern grandstand.

<sup>489</sup> Chapter 19 of this Report addresses this issue in detail.

## STAGE 1 PROJECT DOCUMENTS

In February and March 1996, the Hindmarsh Stadium Redevelopment Committee chaired by Mrs Hall considered various options for the upgrade of Hindmarsh Stadium that had been identified by Woods Bagot. That committee resolved to recommend to Mr Ingerson, then Minister for Recreation, Sport and Racing that the stadium be upgraded by redeveloping the existing western grandstand instead of constructing a new eastern grandstand. Minister Ingerson accepted that recommendation.

In April 1996, Cabinet approved a revised scope of work and project budget for the redevelopment of Hindmarsh Stadium: the redevelopment of the existing western grandstand for \$8.125 million.

Between February 1996 and June 1997 dozens of legal documents were executed to create new, or to formalise existing, legal relations for the redevelopment of the western grandstand. These documents significantly changed existing legal relations between the parties. Substantial financial commitments were made by Government, the Soccer Federation and the NSL Clubs.

The key project document executed was the Funding Deed dated 14 October 1996.<sup>490</sup> This deed set out the terms of the agreement between the Government and the Soccer Federation for the redevelopment. Under it, the Government agreed to contribute up to \$4.0625 million to assist the Soccer Federation's redevelopment of the western grandstand. The Soccer Federation agreed to borrow and borrowed \$4.0625 million to fund its share of the redevelopment costs from the National Australia Bank Limited.<sup>491</sup> The Treasurer guaranteed the Soccer Federation's obligations under that loan.<sup>492</sup>

The Soccer Federation assumed no financial risk for its loan repayments which were to be funded by a levy on spectators using the upgraded grandstand. The Soccer Federation was not obliged to repay its loan from any source other than the Levy monies and any shortfall between the Levy monies and the loan repayments was the Government's responsibility.<sup>493</sup>

The Government did not enter into any legal arrangements with the NSL Clubs. The Soccer Federation granted the NSL Clubs sub-licences to occupy parts of the stadium and negotiated the terms upon which the Soccer Federation and the NSL Clubs would share the operating profits and expenses of the stadium. These negotiations occurred without Government review. The Government did not concern itself with these legal arrangements except to require<sup>494</sup> the Soccer Federation to secure for the public's benefit, a legally binding commitment to play all national league games at Hindmarsh for at least 20 years.<sup>495</sup> As this commitment was made by the NSL Clubs to the Soccer Federation and not Government, the Government has no control over the NSL Clubs' involvement with Hindmarsh Stadium.

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<sup>490</sup> Details of this document are set out below in Chapter 32 under the heading "The Stage 1 Funding Deed" at page 438.

<sup>491</sup> Details of this document are set out below in Chapter 32 under the heading "Stage 1 Loan Agreement at page 452.

<sup>492</sup> Details of this document are set out below in Chapter 32 under the heading "The 1996 Guarantee" at page 453.

<sup>493</sup> Details of the Levy System are set out below in Chapter 32 under the heading "The Stage 1 Funding Deed" at page 439.

<sup>494</sup> Conditions precedent 3.1.6 and 3.1.7 and Clause 38 of the Funding Deed.

<sup>495</sup> This was done and is discussed further below in Chapter 32 under the headings "The 1996 Licence Agreements" and "The 1997 Licence Agreement" at pages 436 and 455.

In my opinion, the absence of legal relations between the Government and the NSL Clubs was a serious flaw in the legal arrangements for the redevelopment. If this issue had been properly addressed, the Government would have been in a better position to deal with the impasse that later developed between the Government, the Soccer Federation and the NSL Clubs over the cost of playing at Hindmarsh Stadium.<sup>496</sup>

The Government did not enter into legal arrangements with Council as the owner of the land being redeveloped. Tenure over the redeveloped stadium was secured by a long term lease of the stadium between the Soccer Federation and the Council. The redeveloped stadium now occupies land partly owned by the Council and partly owned by the Government.<sup>497</sup> Consequently, as the Soccer Federation only have a registered lease over part of the land owned by Council and the Government owns other parts of the land, until the recent acquisition by the Government of the site from the Council, there was uncertainty over the precise legal relations between the Council, the Soccer Federation and the Government for tenure of the stadium.

The public benefit of the continued use of the redeveloped stadium for soccer was partly protected by a term of the Funding Deed requiring the Soccer Federation to enter into this lease *"on terms consistent with the Funding Deed and acceptable to the Minister for Recreation, Sport and Racing"*. This term was also a condition precedent to the Government's commitments in the Funding Deed.<sup>498</sup>

Negotiations over the terms of this lease took place between the Soccer Federation and the Council from early 1995 until its execution in February 1996 without any involvement by Government representatives. In July 1996, when this was discovered by the Crown Solicitor's Office and the Office for Recreation, Sport and Racing, inadequate legal analysis was undertaken of the suitability of its terms from the Government's position. If that analysis had been done properly, a number of simple but fundamental changes to it would have been obvious as essential to protect the public interest. Having regard to the substantial benefits accruing to the Council and the Soccer Federation as a result of the Government's investment in upgrading Hindmarsh Stadium, it is unlikely that the Council and Soccer Federation would not have agreed to these changes being made before the Government committed to the upgrade. If made, these changes would have substantially improved the Government's position in the impasse that developed between the Government, the Soccer Federation and the Council over ownership and management of the stadium.

## **FIT OUT OF STAGE 1**

Between August and October 1997 further legal documents<sup>499</sup> were executed for the purpose of the Government guaranteeing a further loan to the Soccer Federation of \$2 million to fund the fit out of the redeveloped western grandstand. These documents effectively relieved the Soccer Federation of the commitment it had made in the Funding Deed to pay for the fit out from its own resources.<sup>500</sup>

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<sup>496</sup> Chapters 22 and 26 address the Government's failure to address ownership and management in detail.

<sup>497</sup> Plan 10 of Appendix 4 shows the land upon which Hindmarsh Stadium is built. The land the subject of the current lease is discussed below in Chapter 32 under the heading "The 1996 Lease" at page 432.

<sup>498</sup> Clause 3.1.4 of the Funding Deed at page 446 in Chapter 32 below. This term followed the April 1995 Memorandum of Understanding in this regard.

<sup>499</sup> Details of these documents are set out below in Chapter 33.

<sup>500</sup> Clause 2.2.26. This issue is discussed further below in Chapter 32 under the heading "The Stage 1 Funding Deed" at page 438.

## THE ACQUISITION OF LAND SURROUNDING HINDMARSH STADIUM <sup>501</sup>

Since 1989, the acquisition of land surrounding Hindmarsh Stadium had been considered by the Council as a way of relieving the restrictions of the existing site. <sup>502</sup> The closure of Hindmarsh Place had been investigated over a period of several years and the Council had acquired land nearby. <sup>503</sup>

Upon their appointment, the primary consultant, Woods Bagot, readily identified that expanding the site of the stadium by acquiring additional land would best accommodate an enlargement of the pitch to FIFA standards and the creation of an international facility.

The relocation of the Hindmarsh Bowling Club <sup>504</sup> and Meals on Wheels <sup>505</sup> and the closure of Hindmarsh Place were obvious options to explore to expand the site. Both the Office for Recreation, Sport and Racing and the Redevelopment Committee chaired by Mrs Hall began investigations into the potential for adding these sites, even though this was not part of the scope of the Stage 1 works and there was no provision in the Stage 1 budget for acquiring further land. Ultimately, existing legal relations for this land were not altered until Stage 2 of the redevelopment. <sup>506</sup>

The potential to acquire land to the west (along Holden Street), east (along Manton Street) and south (between Hindmarsh Place and Richard Street) of the stadium was identified by Woods Bagot after discussions with the Council in late 1995. In March 1996, National Portfolio Strategies were approached by Woods Bagot to formulate a confidential land consolidation and/or acquisition strategy for the stakeholders in the project. This followed a presentation by Woods Bagot to Mr Ingerson, then Minister for Recreation, Sport and Racing of master plan options for the future development of the site.

National Portfolio Strategies were then retained by the Office for Recreation, Sport and Racing to investigate land acquisition. In August 1996, Minister Ingerson was sent a Strategy Overview and a proposed letter of nomination authorising National Portfolio Strategies to enter into contracts for the purchase of certain land surrounding Hindmarsh Stadium. <sup>507</sup> Minister Ingerson executed it without seeking advice from the Crown Solicitor's Office as to the appropriateness of its terms.

On 19 August 1996, Cabinet approval was given to Minister Ingerson to enter into legal commitments for the acquisition of extra land as part of the Office for Recreation, Sport and Racing's "Master Plan" for the bid for the Sydney 2000 Olympics preliminary soccer matches. This approval was given without the Department documenting its "Master Plan" or seeking Cabinet approval of it.

From September 1996, National Portfolio Strategies secured options for the purchase of four parcels of land south of the stadium. <sup>508</sup> The Crown Solicitor's Office was unaware that these options had

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<sup>501</sup> This issue is discussed further below in Chapter 34 at page 464.

<sup>502</sup> Plan 1 of Appendix 4 is a plan of the site as it existed in 1989 and 1995 before its redevelopment.

<sup>503</sup> For example, No. 4 Hindmarsh Place.

<sup>504</sup> Located at the northern corner of Manton Street and Hindmarsh Place. See Plan 1 of Appendix 4.

<sup>505</sup> Located at the northern corner of Holden Street and Hindmarsh Place. See Plan 1 of Appendix 4.

<sup>506</sup> The acquisition of these sites is discussed below in Chapter 35 under the headings "Relocation of Hindmarsh Bowling Club" at page 473 and "Meals on Wheels Relocation" at page 474.

<sup>507</sup> Details of this document are set out below in Chapter 34 under the heading "Letter of Appointment" at page 464.

<sup>508</sup> Details of these documents are set out below in Chapter 34 under the heading "Option Agreements" at page 464.



been secured until November 1996. The legal documents for these options were prepared by O'Loughlins, the solicitors retained by National Portfolio Strategies at the Office for Recreation, Sport and Racing's expense. The Crown Solicitor's Office did not review these legal documents.

Legal commitments for the acquisition of land surrounding the stadium were made before the Department had documented its "Master Plan" or sought Cabinet approval of it. Three of the options were extended and the decision made to purchase the land by a Cabinet sub-committee on 16 June 1997 before the Government had any binding commitment from SOCOG for South Australia to host Olympic soccer at Hindmarsh.<sup>509</sup>

## **STAGE 2 AND THE HOSTING OF OLYMPIC SOCCER AT HINDMARSH STADIUM**

The potential to host a preliminary round of matches for the men's soccer during the Sydney 2000 Olympics was the impetus for a more than threefold escalation of the scope and cost of the redevelopment at Hindmarsh.

The legal documents which created legally binding obligations between the Government and SOCOG were executed between July and September 1997.<sup>510</sup> While the terms of these agreements favoured SOCOG, this was not unreasonable given the relative bargaining positions of the parties.

Other legal documents were prepared by the Crown Solicitor's Office for the construction of the Stage 2 works.<sup>511</sup>

Existing legal relations for the tenure of land surrounding the stadium were altered to increase the land upon which the Stage 2 redevelopment occurred. Formal legal documents were executed in July 1999 to relocate Meals on Wheels<sup>512</sup> and the Belarusian Church.<sup>513</sup> In April 1999, Hindmarsh Place and Chapel Street were partially closed and informal compensation agreements reached with two of the adjacent landowners.<sup>514</sup> Although there was no formal legal document for the relocation of the Hindmarsh Bowling Club, in July 1998 legally binding agreements were made between the Council, the Government, the Hindmarsh Bowling Club and the West Torrens Council.<sup>515</sup>

Very few legal documents were created to address the rights and obligations of the Soccer Federation, the NSL Clubs or the Council as against the Government in the context of a significantly larger redevelopment. The main agreement was the Stadium Use Deed dated 18 August 1997 which

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<sup>509</sup> The SOCOG Letter of Agreement was executed on 8 July 1997 after extensive negotiation with SOCOG. These contracts and the SOCOG Letter are discussed further below in Chapters 34 and 35 under the headings "Contracts for Purchase of Land" at page 465 and "July 1997 SOCOG Letter of Agreement" at page 466.

<sup>510</sup> For further discussion of these agreements Chapter 35 below under the headings "July 1997 SOCOG Letter of Agreement", "The Olympic Memorandum of Understanding" and "SOCOG Marketing Agreement" at pages 466,466 and 468.

<sup>511</sup> For further discussion of these agreements see the sections below in Chapter 35 headed "Stage 2 Construction Management Agreement" and "Stage 2 Minister's Licence Agreement" at page 472.

<sup>512</sup> For further discussion of these agreements see the sections below in Chapter 35 headed "Meals on Wheels Relocation" at page 474.

<sup>513</sup> Details of this document are set out below in Chapter 35 under the heading "Belarusian Church Relocation Deed" at page 475.

<sup>514</sup> Details of this document are set out below in Chapter 35 under the heading "Compensation Agreements with Adjacent Landowners" at page 476.

<sup>515</sup> These agreements were partly written and partly oral. Details of this document are set out below in Chapter 35 under the heading "Relocation of Hindmarsh Bowling Club" at page 473.

gave the State control and use of the stadium for the Olympic Tournament and a licence to construct the Stage 2 Works. The Government, the Council and the Soccer Federation signed a deed with the Australian Olympic Committee on 22 December 1997 which prohibited the use of the word "Olympic" in association with the stadium by the Government, the Council or the Soccer Federation or any of their assignees until 2006.<sup>516</sup>

There were no legal documents executed which addressed the issues of ownership and management of the redeveloped stadium. Consequently, the structure created by the Stage I Project Documents has governed legal relations for the redeveloped stadium until the recent arrangements made with the Council, the Soccer Federation and Adelaide City. For example, even the current lease from the Council to the Soccer Federation was not altered to take account of the increased size of the land on which the stadium was built.<sup>517</sup> No security rights were put in place to protect the Government's investment in Hindmarsh Stadium if the Soccer Federation's lease was terminated for breach.

In my opinion, the Government failed to take steps to protect the public interest by properly reviewing existing legal relations in the context of a significantly greater redevelopment.

This failure is exacerbated by the circumstances in which the legal structure for Stage 1 was conceived. In the April 1995 Memorandum of Understanding the project was a \$6.5 million private development, requiring Government assistance to facilitate the Soccer Federation funding construction of a new eastern grandstand by a bank loan. Loan repayments were to be funded by the Soccer Federation imposing a levy on spectators and were Government guaranteed. Tenure was to be secured by a long term lease to the Soccer Federation, on terms approved by the Government. The Soccer Federation was obliged to secure the tenure of the NSL Clubs. This structure was conceived by the Crown Solicitor on 48 hours notice, without adequate instructions and in the absence of any feasibility studies. Over a year later, this legal structure was adopted without material review, even though the scope of the project had changed to a \$8.125 million redevelopment of the western grandstand requiring at least \$4.0625 million of direct government funding. Until recently, the legal structure for Stage 1 governed the legal relations for a \$28.394 million redevelopment for which the Government has borne all of the funding risk and almost all of the cost to date.<sup>518</sup>

Since October 1998, the Levy System under the Funding and Fit Out Guarantee Deeds has not operated as intended. The Soccer Federation stopped imposing, collecting and banking levies. In November 1998, the Soccer Federation submitted that the Minister for Recreation, Sport and Racing either suspend or waive the Levy System. Since then, the Levy System has effectively been suspended. First, it was suspended pending the outcome of Arthur Andersen's review of the financial position of soccer in South Australia. Later, it was suspended pending the outcome of negotiations between the Government, the Council, Soccer Federation and Adelaide City over ownership and control of Hindmarsh Stadium.

The Levy System is now suspended for so long as the Government manages Hindmarsh Stadium under the 29 March 2001 deed made with the Soccer Federation.

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<sup>516</sup> This Deed was required by SOCOG in its September 1997 Memorandum of Understanding.

<sup>517</sup> Details of this document are set out below in Chapter 32 under the heading "The 1996 Lease" at page 432.

<sup>518</sup> Table 3 in Appendix 1 shows the total Government exposure as at 30 June 2001 if no further contribution is made by the Soccer Federation from past or future levies payable.

## **CURRENT ARRANGEMENTS FOR OWNERSHIP AND MANAGEMENT**

### **Purchase of Hindmarsh Stadium Site**

In April 2001, after protracted negotiations with the Soccer Federation, the Council approached the Government seeking an expression of interest to purchase the site. On 30 April 2001, Cabinet authorised Deputy Premier Kerin to offer to purchase Hindmarsh Stadium from the Council for \$1.5 million and to increase that offer by not more than \$200,000, if required.

As a result of ensuing negotiations conducted by the Deputy Premier, the Government and the Council agreed in principle that the Government would purchase the site for \$1.7 million. The purchase is subject to the lease to the Soccer Federation over a portion of the site and a licence to the Hindmarsh Historical Society over another portion. As part of the purchase agreement, the Government has also agreed to issue Trust Grants for open space purposes in the name of the Council for three blocks comprising a portion of the former Croydon West School.

Solicitors for the Government and the Council are currently negotiating the terms of formal documents.

### **Soccer Federation Agreement**

On 11 December 2000, Cabinet endorsed a negotiated agreement with the Soccer Federation for the ongoing management of Hindmarsh Stadium.

A deed between the Treasurer, the Minister for Recreation, Sport and Racing, the Minister for Government Enterprises and the Soccer Federation was duly executed and dated 29 March 2001.<sup>519</sup>

The key terms of this deed are:

- The term of the deed is two years from 29 March 2001. It will be automatically renewed every two years unless, at each two year anniversary, the Soccer Federation gives three months' notice of the termination of the appointment of the Government as manager of the stadium. The operation of the deed will be reviewed by the Government parties on every fifth anniversary of commencement and the Government may elect to terminate and return management of the stadium to the Soccer Federation by giving three months' notice.
- If the Soccer Federation terminates the deed, the Soccer Federation must pay the Treasurer any management losses incurred since 1 October 2000.
- The Government is appointed by the Soccer Federation as the sole and exclusive manager of the stadium. The Government may appoint a manager of the stadium and is responsible for the costs of managing and operating the stadium.
- The Soccer Federation retains control of its offices and any related costs are to be paid by the Soccer Federation.

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<sup>519</sup> The conditions precedent to the operation of this deed have been met or waived.

- The Soccer Federation will have the exclusive use of the stadium for up to 30 days each year and will pay the marginal cost associated with opening of the stadium for that use. That usage will be consistent with the hosting of the following events:

<b>Event</b>	<b>Timing</b>	<b>Number</b>
Premier and State League Night Series	January - February	12
Federation Cup Semi Finals	July	1
Premier and State League Top 5	August – September	6
Under 19 Grand Finals	September	1
Under 23 Grand Finals	September	1
Use by SA Women's Soccer Association	Various	5
Junior Cup Finals	July	1
Junior Championships	October	1
Amateur League Cup	September	1
Federation Cup Final	September	1
<b>Total</b>		<b>30</b>

- For all NSL, Soccer Australia and Soccer Federation events conducted at the stadium, the Soccer Federation will have the exclusive use of two corporate boxes and 250 middle deck grandstand seats. For international soccer matches, the Soccer Federation will have the exclusive use of one corporate box. At NSL, Soccer Australia and Soccer Federation events, the Soccer Federation may display five roller signs.
- The Soccer Federation must use its best endeavours to attract profitable soccer events to the stadium and develop a second NSL team from South Australia.
- The Soccer Federation must ensure that the lease from the Council remains in existence and comply with its obligations under it. (This obligation has been superseded to the extent that the Government will become the lessor instead of the Council on settlement of the purchase of the stadium site).
- The Government will continue to have full responsibility for making repayments to National Australia Bank Limited for the Stage 1 and Fit Out Loans during the operation of the deed.
- The Government will be responsible for insurance and maintenance of Hindmarsh Stadium during the operation of the deed.
- The Government will pay the Soccer Federation \$599,000 as reimbursement of losses incurred in relation to the stadium and \$16,000 for losses and inconvenience caused during the Olympic Soccer Tournament.<sup>520</sup>

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<sup>520</sup> The Government has already paid half of these amounts and the balance will be paid shortly on execution of the sale and purchase agreement for the stadium site.

- The Soccer Federation warranted that it was, and, is not in breach of its lease from the Council. It undertook to produce a letter from the Council to this effect within six months of any request to do so. The Soccer Federation also warranted that it would execute a mortgage over the lease within seven days if requested to do so. (These terms will also be redundant on settlement of the purchase of the stadium site from the Council.)

### **Adelaide City Agreement**

On 11 December 2000, Cabinet endorsed a negotiated agreement with Adelaide City for the playing of its NSL matches at Hindmarsh Stadium.

A deed between the Treasurer, the Minister for Recreation, Sport and Racing, the Minister for Human Services and Adelaide City was duly executed and dated 29 March 2001.<sup>521</sup>

The key terms of this deed are:

- The deed will operate so long as the Government is the manager of Hindmarsh Stadium.
- Adelaide City will surrender its club rooms and relocate to Rams Park under a five year lease from the Minister for Human Services at an annual rental of \$43,000. The lease includes an option to acquire Rams Park at the price equivalent to the Valuer-General's current valuation of \$570,000 provided the option is exercised by 31 December 2002.
- The Treasurer must pay Adelaide City \$354,000 for its equity in its former clubrooms in the western grandstand and \$16,000 for losses and inconvenience caused during the Olympic Soccer Tournament.<sup>522</sup>
- Until 30 June 2002, Adelaide City must play home NSL matches at Hindmarsh Stadium. The agreed hire cost for the stadium is \$8,000 plus GST per match. For each match day, Adelaide City will be entitled to use of the match day club rooms, the benefit of all catering and pouring concessions, two corporate boxes, the Chairman's suite and 250 middle deck grandstand seats, five roller signs and one training session per week. Adelaide City will also be entitled to three pre-season practice matches at the marginal cost of opening the stadium.
- The Minister for Recreation, Sport and Racing will pay Adelaide City two sporting grants. \$50,000 was paid on 14 November 2000. A further \$50,000 is payable after the first Adelaide City home match of the 2001/2002 NSL season.

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<sup>521</sup> The conditions precedent to the operation of this deed have been met or waived.

<sup>522</sup> The Government has already paid half of these amounts and the balance will be paid shortly on execution of the sale and purchase agreement for the stadium site.

## CHAPTER 30 - PRESENT STATUS OF LEGAL DOCUMENTS PRIOR TO APRIL 1995

### THE 1981 LEASE <sup>523</sup>

The Council <sup>524</sup> is the owner of the land known in 1981 as the Hindmarsh Soccer and Sports Ground. Hindmarsh Stadium was built on the triangular shaped land bounded by Holden and Manton Streets and Hindmarsh Place. In 1981, this land was comprised in two certificates of title:

- Certificate of Title Register Book Volume 2392 Folio 63 being a triangle of land bounded by Manton Street on its eastern side. <sup>525</sup>
- Certificate of Title Register Book Volume 1804 Folio 107 being a L-shaped strip comprising a 5m x 223m strip along Holden Street joined to a 5m x 223m strip along Hindmarsh Place. <sup>526</sup>

The land described in the 1981 Lease is uncertain. It described the land the subject of the lease to the Soccer Federation by reference to Certificate of Title Register Book Volume 1804 Folio 107 and as that portion of the land shown in a plan said to be annexed to it which was known as the Hindmarsh Soccer and Sports Ground. The plan is not annexed to the 1981 Lease provided to this Examination and it now cannot be located. <sup>527</sup> The certificate of title reference describes only the L-shaped strip and not the greater part of the triangle bounded by Holden and Manton Streets and Hindmarsh Place.

While the term of this lease was until 1 March 1999, it was superseded by a lease executed on 23 February 1996, which commenced on 1 January 1995. <sup>528</sup>

The 1981 Lease obliged the Soccer Federation to pay the Council:

- an annual rental of \$2,750 in quarterly instalments paid in advance. <sup>529</sup> The annual rental was adjusted at the beginning of every 5<sup>th</sup> year <sup>530</sup> and for the year ended 31 October 1995 was \$3,000. <sup>531</sup>

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<sup>523</sup> In this Report the lease between the Corporation of the Town of Hindmarsh (now the City of Charles Sturt) and the Soccer Federation dated 25 August 1981 will be referred to as the 1981 Lease to distinguish it from the current lease between the City of Charles Sturt and the Soccer Federation.

<sup>524</sup> See footnote 477 above.

<sup>525</sup> This land is Lot 52 in Deposited Plan 40657. CT 2392/63 has since been converted to computer CT 5258/778 and then merged into new CT 5664/129.

<sup>526</sup> This L-shaped strip was added to the existing triangle of land owned by the Council after a partial road closure in 1942. It is described as Lot 91 in Filed Plan 199557. CT1804/107 has since been converted to computer CT 5355/940 then 5648/24 and then merged into CT 5664/129.

<sup>527</sup> Neither the Council nor the Soccer Federation have a copy of the plan. As the 1981 Lease was not in registrable form and not registered, there is no publicly filed copy.

<sup>528</sup> In this Report it is referred to as the 1996 Lease.

<sup>529</sup> Clause 3(a).

<sup>530</sup> Ibid.

<sup>531</sup> Note 19 to the accounts of the Soccer Federation for the year ended 31 October 1995.

- 5 percent of net takings for local soccer matches and 10 percent for NSL and interstate and international matches within two months of the month in which matches were played.<sup>532</sup> This payment does not appear to have been made by the Soccer Federation.<sup>533</sup>

The Soccer Federation was responsible for the control and management of all matches played.<sup>534</sup>

The 1981 Lease obliged the Council to:

- care and maintain and line the playing area to the limit of the spending of the monies received from the Soccer Federation as rental and net takings.<sup>535</sup>
- insure at its costs the improvements on the land.<sup>536</sup>
- form a management committee of seven (four from the Council and three from the Soccer Federation) to care for and control the ground.<sup>537</sup>

In the 1981 Lease, the parties agreed to equally share the cost of any improvements to the building and mounds on the ground.<sup>538</sup> Any income earned from use of the ground when not required by the Soccer Federation was required to be paid to the Council and used for improvements.<sup>539</sup>

## **THE 1994 GROUND MANAGEMENT AGREEMENT**

### **Parties, Execution Status, Enforceability and Purpose**

This agreement records the terms of the appointment by the Soccer Federation and the NSL Clubs of Weslo Holding Pty Ltd as ground manager for events held at Hindmarsh Stadium. Although the document is dated 3 December 1994, this appointment began on 1 September 1994 while the 1981 Lease was still operative.<sup>540</sup>

The document is duly executed and was legally binding.

### **Key Terms**

Weslo's primary obligation was to manage and control spectators and security in consideration for a management fee calculated on a sliding scale by reference to the size of the expected crowd for any

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<sup>532</sup> Clauses 3(b)(c) and (d).

<sup>533</sup> Note 19 to the accounts of the Soccer Federation for the year ended 31 October 1995 which only shows payment of rent.

<sup>534</sup> Clauses 17 and 18.

<sup>535</sup> Clause 7.

<sup>536</sup> Clause 15.

<sup>537</sup> Clause 24.

<sup>538</sup> Clause 29.

<sup>539</sup> Clause 14(d).

<sup>540</sup> Clause 1.

event. Weslo were responsible for their own costs<sup>541</sup> and were obliged to pay the net takings<sup>542</sup> to whoever conducted the event (ie any one of the Soccer Clubs or the Soccer Federation).<sup>543</sup>

The management fees applicable from 1 September 1994 to 1 September 1996 were set out in the agreement:<sup>544</sup>

Crowd Expected	Management Fee	Required Gate and Security Staff
Up to 1,000	\$200	2
Up to 2,000	\$1,500	15
Up to 4,500	\$1,750	17
Over 4,500	\$2,500	26

Extra staff or services cost the promoter whatever it cost Weslo to provide those services.<sup>545</sup>

The management fees for each year from 1 September 1996 were to be fixed by agreement between the parties. For the 1999/2000 season,<sup>546</sup> the Soccer Federation and Weslo agreed upon a fixed rate per match of \$3,000 for five to eight security staff, front of house and money control staff and one car park attendant. Weslo agreed to charge less than expected staff costs for some matches on condition that steps were taken to organise operations so as to reduce staff numbers. For example, to reduce ticket sales staff, advanced ticket sales were to be promoted and ticket prices were to be set so that the gate price was the same as the advanced purchase price.

This agreement also set out the terms of the purchase of computerised turnstiles by Weslo and sale to the Soccer Federation and the NSL Clubs. Weslo agreed to take a bank loan, guaranteed by the Soccer Federation. The Soccer Federation and the two NSL Clubs were required to pay 1/3 each of the interest and principal repayments.<sup>547</sup>

### **Currency**

This agreement expired on 31 August 2001.<sup>548</sup>

## **THE ADELAIDE CITY CLUB ROOMS AND LOAN AGREEMENT**

### **Parties, Execution Status and Purpose**

This document records the agreement between the Soccer Federation and Adelaide City for the provision and development of club rooms and offices at Hindmarsh in consideration for the Soccer

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<sup>541</sup> Clause 3.

<sup>542</sup> Defined as gate takings less management fees and any expenses notified to it by the Soccer Federation by Clause 3(e).

<sup>543</sup> Clauses 3(e) and 16, Recital (3).

<sup>544</sup> Clause 4.

<sup>545</sup> Clause 4(d).

<sup>546</sup> Average attendances for the 1999/2000 season were 5,018 and for 1998/99 were 4,124. Appendix 2 shows match attendance figures as prepared by the Soccer Federation.

<sup>547</sup> Clause 11.

<sup>548</sup> Clause 1.



Federation vacating its office and boardroom and relocating. A loan of \$200,000 was to be made from Adelaide City to the Soccer Federation to fund the building of its new office.

The only copy of the agreement found was taken from the minute files of the Soccer Federation. It is undated and has only been executed by Adelaide City under seal. This Report has concluded that it was duly executed by Adelaide City in April or May 1995 and on 17 May 1995, approval was given to the Federation for execution at a meeting of the Board of Commissioners of the Soccer Federation.<sup>549</sup>

### **Enforceability and Currency**

This agreement was legally binding even if it was never executed by the Soccer Federation. The circumstances surrounding the formation of this contract unequivocally show that the parties intended the terms of this document to be legally binding.

The obligations concerning the relocation of the Soccer Federation's offices, the building works for Adelaide City's club rooms and offices, the licence to Adelaide City to occupy those club rooms and offices, the loan and its repayment have all been discharged.<sup>550</sup> The terms of the licence granted to Adelaide City were superseded by the Licence Agreements.<sup>551</sup>

### **Key Terms**

This agreement obliged Adelaide City to lend the Soccer Federation \$200,000 payable in \$50,000 instalments by 31 March 1995, which instalments were paid but not strictly in accordance with the timetable set out in the agreement.<sup>552</sup>

The terms of repayment depended upon which of a number of different events occurred. As it turned out, the most relevant was that the Soccer Federation was obliged to repay the loan immediately upon receipt of a reimbursement by Government (or anyone else) for the costs of the office or provision of funding exceeding \$3 million for redevelopment of the stadium.<sup>553</sup> This repayment occurred in November 1996.

If the loan was repaid before 1 December 2005 and Adelaide City still occupied the same size premises, a rental of \$5,000 per annum was agreed.<sup>554</sup> Otherwise, Adelaide City were entitled to occupy the premises rent free until 1 January 2002, when the annual rent increased to \$5,000.<sup>555</sup>

The licence of the premises to Adelaide City for its club rooms expressly prohibited Adelaide City from selling any liquor, soft drink or food.<sup>556</sup> Catering and pouring rights were extensively renegotiated in later licence agreements between the Soccer Federation and the NSL Clubs.

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<sup>549</sup> Minutes of the Board of Commissioners of the Soccer Federation for meeting held on 11 April and 17 May 1995.

<sup>550</sup> See discussion below as to key terms.

<sup>551</sup> Details of this document are set out below in Chapter 32 at pages 25 and 42.

<sup>552</sup> Clause 2. Letter from the Soccer Federation to Adelaide City dated 29 March 1995.

<sup>553</sup> Clause 3.

<sup>554</sup> Clause 7.

<sup>555</sup> Clause 5.

<sup>556</sup> Clause 8(11).

# CHAPTER 31 – PRESENT STATUS OF APRIL 1995 MEMORANDA OF UNDERSTANDING

## THE APRIL 1995 MEMORANDUM OF UNDERSTANDING

### Parties and Execution Status

The parties to the April 1995 Memorandum of Understanding were the Minister for Recreation, Sport and Racing on behalf of the State of South Australia and the Soccer Federation. It was duly executed on 28 April 1995.

### Enforceability

This document was, on its own terms, not legally binding.<sup>557</sup> Its purpose was to record the negotiations between the Government and the Soccer Federation at that time regarding the scope and management of the proposed redevelopment of Hindmarsh Stadium and how it would be funded.<sup>558</sup> It expressly acknowledged that the parties would undertake further feasibility studies and the undertakings made in it were subject to consideration by both Cabinet and the constituent clubs of the Soccer Federation.<sup>559</sup>

### Currency

The April 1995 Memorandum of Understanding was superseded by the Stage 1 Funding Deed without proper feasibility studies having been undertaken.<sup>560</sup>

### Overview of Key Terms

The document stated, inter alia, that:

- the Soccer Federation proposed to undertake significant development works at Hindmarsh at a maximum cost of \$6.5 million;<sup>561</sup>
- those works<sup>562</sup> included the erection of a new eastern grandstand and an office administration facility that had already been built;<sup>563</sup> and
- the Government recognised the need for a soccer stadium suitable for playing international soccer and would assist in financing the redevelopment.<sup>564</sup>

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<sup>557</sup> Recital F.

<sup>558</sup> Recital E.

<sup>559</sup> Clauses 6.2 and 6.3.

<sup>560</sup> Chapters 18 to 19 address this issue in detail.

<sup>561</sup> Recital B and Clause 1.

<sup>562</sup> Clause 1. See Plans 2 and 3 of Appendix 4 which comprise the annexures A and B to the April 1995 Memorandum of Understanding. Plan 2 shows the existing site as at 1989. The new eastern grandstand was shown by shading the eastern stand on a 1989 SACON plan that depicted a much larger redevelopment.

<sup>563</sup> Clause 4.1 which was also the subject of the Adelaide City Club Rooms and Loan Agreement.

<sup>564</sup> Recitals C and D, Clauses 5 and 6.

## **Conditions Precedent and Status of Performance**

The development was stated to be subject to the following conditions precedent being satisfied in full to the satisfaction of Government.<sup>565</sup> That is, the Soccer Federation:

- entering into a formal registered lease with the Council for a minimum term of 42 years on terms acceptable to Government;<sup>566</sup> (This was done but not on terms approved or considered by Government.)<sup>567</sup>
- granting licences to the NSL Clubs committing them to play all their matches at Hindmarsh;<sup>568</sup> (They were granted).<sup>569</sup>
- obtaining a legally enforceable commitment that all Australian Soccer Federation matches in South Australia would be played at Hindmarsh;<sup>570</sup> (This was done by way of a letter to the Minister for Recreation, Sport and Racing).<sup>571</sup>
- obtaining a legally enforceable commitment that all South Australian Soccer Federation matches in South Australia at district level would be played regularly (ie a minimum of 15 times per calendar year) at Hindmarsh.<sup>572</sup> (This was done by including it as a term of the 1996 Funding Deed).<sup>573</sup>

## **Ownership and Control**

The function of the stated Conditions Precedent was to ensure the ongoing use of the redeveloped facility for soccer in South Australia, albeit framed within the way in which soccer was played at that time.

The key mechanism for safeguarding the ongoing public benefit of the stadium was the lease by the Soccer Federation from the owner of the land, the Council. The Soccer Federation promised<sup>574</sup> that it would:

- be granted a registered lease on conditions approved by the Minister for a 21 + 21 year term (which it was but not on terms approved or considered by the Minister);

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<sup>565</sup> Clause 2.

<sup>566</sup> Clause 2.1.

<sup>567</sup> ie the 1996 Lease Agreement.

<sup>568</sup> Clause 2 of the Memorandum of Understanding.

<sup>569</sup> The 1996 Licences that were superseded by the 1997 Licence Agreement.

<sup>570</sup> Clauses 2.3 of the Memorandum of Understanding.

<sup>571</sup> Letter from the Australian Soccer Federation dated 4 October 1996.

<sup>572</sup> Clause 2.4 of the Memorandum of Understanding.

<sup>573</sup> Clause 3.1.6 and 3.1.7 of the Stage 1 Funding Deed.

<sup>574</sup> Clause 3.

- grant a right of first refusal to the Minister if the lease were to be assigned during its term (which was included in the Funding Deed); and
- ensure that the lease would be kept on foot for the whole of the term of the Soccer Federation's loan from an external financier.

### **Construction Obligations**

The Soccer Federation promised to use its best endeavours to obtain practical completion of the eastern grandstand by 30 June 1997.<sup>575</sup> It would be the principal under the building contract, with the Minister to approve the plans and specifications and be represented on the project management team.<sup>576</sup>

The Soccer Federation promised to fit out the club rooms under the new eastern grandstand at its cost.<sup>577</sup>

### **Funding**

The April 1995 Memorandum of Understanding contemplated that the Soccer Federation and the Government would contribute to the cost of the development,<sup>578</sup> and both would use their best endeavours to procure a contribution from the Council.<sup>579</sup>

The Soccer Federation promised to procure its contribution by a 20 year credit foncier loan of \$6.5 million from an external financier<sup>580</sup> and would contribute up to one half of each quarterly loan payment by paying a Spectator Contribution (\$3 for every spectator using the new eastern grandstand and \$1 for every spectator using the western grandstand).<sup>581</sup> The Government promised to pay the shortfall between the Spectator Contribution and each loan instalment payment.<sup>582</sup> Any excess Spectator Contribution was required to be applied against the principal of the loan or some other capital improvement at Hindmarsh.<sup>583</sup>

The Government also promised that it would use its good offices to facilitate the Soccer Federation obtaining finance to the extent that it was appropriate and that it was legally able to do so.<sup>584</sup>

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<sup>575</sup> Clause 4.2.

<sup>576</sup> Clause 4.4.

<sup>577</sup> Clause 4.5.

<sup>578</sup> Clause 5.1.

<sup>579</sup> Clause 5.2.

<sup>580</sup> Clause 5.5.

<sup>581</sup> Clause 5.6.

<sup>582</sup> Clause 5.6.2.

<sup>583</sup> Clause 5.8.

<sup>584</sup> Clause 5.4.

## **Reporting and Accountability**

The Soccer Federation promised that it would keep records that would enable the Government to audit and review its administration of the finance procured, including but not limited to calculation of the Spectator Contribution.<sup>585</sup>

## **THE NSL CLUBS MEMORANDUM OF UNDERSTANDING**

### **Parties and Execution Status**

On 29 April 1995 this document was signed by:

- Mr C. Caruso as Chairman of the Soccer Federation;
- Mr C. Zollo as President of Adelaide City; and
- Mr H. Zacharoyannis as President of West Adelaide.

### **Enforceability**

On balance, this Report has concluded that this document was not legally binding. While stated to be an agreement, it contemplated the entry into a number of formal binding agreements, the material terms of which had not yet been negotiated or agreed. Its relevance is noted as the basis of subsequent negotiations between the Soccer Federation and the NSL Clubs.

### **Currency**

It has been superseded by later licence agreements made between the Soccer Federation and the NSL Clubs.<sup>586</sup>

### **Key Terms**

This document records the NSL Clubs' support of the Soccer Federation entering into a formal agreement with the Government on the terms of the Memorandum of Understanding except that:

- the Soccer Federation and the NSL Clubs would equally share any corporate facilities built; and
- the NSL Clubs would not be bound by the proposed \$1 levy on western grandstand spectators.

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<sup>585</sup> Clause 5.9.

<sup>586</sup> These agreements are discussed below in Chapter 32 at pages 436 and 455.

## CHAPTER 32 – PRESENT STATUS OF THE STAGE 1 PROJECT DOCUMENTS

### ENGAGEMENT OF THE DEPARTMENT FOR BUILDING MANAGEMENT

The Consultancy Services Division of the Department of Building Management provided other Government agencies with project and cost management services. The Department described itself as "a risk manager for the Government, assisting the project to meet the desired brief to program as well as to budget." In 1995, its fees "usually ranged between 1.2 percent -1.5 percent of the construction cost on projects, plus an agreed lump sum for briefing and feasibility work".<sup>587</sup>

A legally binding agreement for the Department's role in the proposed construction of a new eastern grandstand with undercover seating for 5,000 was recorded in an exchange of letters. By letter dated 24 August 1995, the Department for Building Management offered a fixed fee of \$14,000 for its services in arranging the engagement of a primary consultant for the project. This offer was accepted by the Soccer Federation and the Office for Recreation, Sport and Racing by letter dated 1 September 1995 sent on their behalf by the Office for Recreation, Sport and Racing.<sup>588</sup>

The interrelationship between the role of the Department for Building Management and that of the primary consultant was set out in the Soccer Federation's invitation for submissions for engagement of a primary consultant sent to six architectural practices:<sup>589</sup>

#### ***"Role of the Department for Building Management***

*DBM will provide project and cost management services for both consultancy stages of the project.*

*The DBM role, co-ordinated by the DBM project manager, will include project overview, support and advice to the project team on Government policy and procedures, facilitation of project approvals and engagements, provision of the tendering service and contract administration as Superintendent's Representative. Formal submission of the project for planning approval and certification under the Development Act will be by the project manager based on information provided by the primary consultant.*

*DBM cost management service will include budgeting, costing, progress payments processing and the input of data into the contract reporting system.*

*DBM will be responsible for the printing of the tender documents and for calling for tenders."*

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<sup>587</sup> Section headed "Role of Department of Building Management" in minutes of meeting held on the Hindmarsh Soccer Stadium Upgrade on 20 July 1995.

<sup>588</sup> At this stage, late 1995, the project was perceived as a Government assisted private project, not a public project.

<sup>589</sup> Letter dated 20 September 1995 from the Soccer Federation to Woods Bagot. This letter was prepared by the Department of Building Management.

In July 1996, Services SA<sup>590</sup> proposed that it be paid \$140,000 from the project budget for its services from sketch design through to contract administration during construction. While representatives of the Office for Recreation, Sport and Racing initially objected to the size of the fee, further negotiations did not lead to a reduced fee. Services SA were ultimately paid \$155,000 for their services in Stage 1, comprising the \$14,000 fixed fee for engaging the primary consultant and \$141,000 for their further services.

There are no outstanding obligations to be performed under this agreement for services.

## **WOODS BAGOT CONSULTANCY AGREEMENT FOR STAGE 1**

### **Parties, Execution Status, Enforceability and Currency**

This agreement records the terms of the appointment by the Minister for State Government Services of Woods Bagot Pty Ltd as primary consultant for the construction of the proposed new eastern grandstand.

The agreement is dated 23 February 1996 and duly executed. The Director of the Department for Building Management signed the agreement for the Minister of State Government Services.

The agreement was legally binding. There are no outstanding obligations to be performed under this agreement.

### **Key Terms**

The contract comprised a one page agreement stating that the parties agreed to be bound by the annexed general conditions, schedules of services and fees and the Project Brief. The general conditions and schedule of services were in the standard generic form used by Services SA for all projects. Definition of the eastern grandstand project was included by annexing Woods Bagot's submission for its appointment as the Primary Consultant and the Consultancy Brief prepared by the Department for Building Management.

These annexures were over 100 pages. It is difficult to determine the precise scope of the consultancy services required to be provided other than to conclude that the services to be provided were all the services referred to throughout the annexures.<sup>591</sup> However, from Schedule 3 it is clear that the consultancy services were to be carried out in two phases:<sup>592</sup>

The first phase was referred to as the Feasibility Stage and was described as comprising:

- the preparation of a comprehensive brief of requirements;

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<sup>590</sup> In October 1995 the Department for Building Management was abolished and its functions assumed by a new agency. For the balance of this Chapter and elsewhere in this Report, that agency is referred to as Services SA unless otherwise stated.

<sup>591</sup> For example, the general conditions refer to the Brief as meaning any document (if any) so entitled and annexed or referred to in which the services are particularised. The "Services" were defined to mean the services required to be carried out as in the schedules and more particularly described in the Brief. Schedule 3 was headed "The Brief" and referred to Woods Bagot's submission. There was no document entitled "Brief" or "Project Brief" although the annexure to Services SA's letter of invitation was entitled "Consultancy Brief".

<sup>592</sup> The Brief was defined in Schedule 2 to the Consultancy Agreement.

- the undertaking of feasibility investigations;
- the preparation of preliminary concepts; and
- the provision of a recommended proposal.

The contract price for the first phase was a fixed lump sum fee of \$45,000 (including structural and civil engineering services from Connell Wagner).

The second phase comprised primary consultancy services from sketch design through to contract administration during construction.

For this second phase, Woods Bagot offered an indicative fee of 3-4 percent of the construction costs or \$165,000 - \$220,000 based on construction costs of \$5.5 million.<sup>593</sup> The Consultancy Agreement provided that if Woods Bagot were to provide consultancy services for the next stage and the procurement method of construction management was used, then this indicative fee would form the basis of negotiation of Woods Bagot's fees for the second phase.<sup>594</sup>

Woods Bagot did provide consultancy services for the second phase of the project. In May 1996, Woods Bagot proposed a lump sum fee of \$560,000.<sup>595</sup> Woods Bagot submitted that their fee should be higher than their indicative fee offer because:

- the scope of works had become more complex given the change of concept from construction of a new eastern grandstand to redevelopment of the existing western grandstand;
- the master planning work done from November 1995 was additional to the original scope of the initial feasibility work; and
- additional work had been done to present concept designs to the Soccer Federation to assist in obtaining approvals for an increase in the project budget.

The scope of the works had changed as a result of Woods Bagot's feasibility work. The master plan work was clearly not additional to the original scope of work. As part of this first phase, Woods Bagot offered in their submission to develop a strategic master plan to enhance future planning and optimise value for the total amenity.

In July 1996, a lump sum fee of \$495,000 plus \$10,514 for disbursements was agreed between Services SA and Woods Bagot.<sup>596</sup>

In seeking approval within Services SA for the extension of Woods Bagot's consultancy fee, the Project Manager for the redevelopment stated that he was satisfied that the revised fee was

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<sup>593</sup> The total indicative fee offered for architectural and engineering consulting services was \$265,000-\$320,000 including \$100,000 for Connell Wagner.

<sup>594</sup> Schedule 3 to the Consultancy Agreement.

<sup>595</sup> This fee was first proposed as \$355,000 for architectural services plus 2.95 percent of project cost for engineering services totalling \$595,000.

<sup>596</sup> Comprising \$170,000 for Design/Design Development; \$235,000 for Documentation and \$90,000 for Construction.



representative of the increased scope of work and more complex nature of the project. He did not state a reason for his conclusion.

In March 1997, Woods Bagot claimed further fees of \$73,762<sup>597</sup> for Stage 1 stating that the scope and budget for the project had increased significantly since their fees were negotiated.

In October 1997, Services SA agreed to increase Woods Bagot's consultancy fees for Stage 1 to a lump sum of \$605,787 comprising:

<b>Stage of Work</b>	<b>Amount \$</b>
Feasibility	45,000
Design	170,000
Documentation	235,000
Contract administration during construction	90,000
Additional work	30,000
Obsolete work	35,787
<b>Total</b>	<b>605,787</b>

The fixed upper limit for disbursements was increased from \$17,976 to \$56,748.

The primary consultancy fee finally agreed for Stage 1 was almost double the original indicative offer and fixed fee upon which Woods Bagot won their consultancy during a competitive tender process. This was done without re-tendering the consultancy.

This Examination has not been able to determine whether Woods Bagot received as part of the phase 2 fee any further fee for master planning work which comprised the phase 1 scope of work or fee for assisting in increasing the scope of the budget. Clearly, they should not have.

In my opinion, particular caution must be taken by Government representatives in scrutinising a consultant's claim for additional fees due to an increase in the complexity and scope of works when that consultant has recommended the very increase in complexity and scope of the works leading to the claim.<sup>598</sup> In this situation there is the potential for the project budget to spiral or the actual works built to be cut to allow for the increased consultancy fees.

The Services SA Project Manager for Stage 1 of the Hindmarsh Soccer Stadium Redevelopment accepted Woods Bagot's claims and negotiated minor savings. No formal justification report was prepared or sought for the profound change in the scope of the Stage 1 works from the new eastern grandstand to a redeveloped western grandstand. That should have been done to justify the change in concept as well as the consequent increase in consultancy fees.<sup>599</sup>

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<sup>597</sup> Comprising \$35,787 for the budget increase; \$30,000 for work done for items not proceeded with or deferred to making budget savings; and \$7,975 for claims from Connell Wagner in working on the NSL Clubs' fit out.

<sup>598</sup> Woods Bagot recommended the change from a new eastern to a redeveloped western grandstand.

<sup>599</sup> Chapters 18 to 21 discuss this issue in detail.

The scope of works defined in Woods Bagot's consultancy agreement was largely redundant for much of the work undertaken.

## **THE 1996 LEASE**

### **Parties and Execution Status**

The parties to the 1996 Lease were the Council<sup>600</sup> and the Soccer Federation, both of which duly executed the Memorandum of Lease under seal on 23 February 1996. The 1996 Lease was lodged for registration at the Land Titles Office on 10 May 1996 and it was registered in September 1996.<sup>601</sup>

### **Enforceability and Currency**

The 1996 Lease was for a term from 1 January 1995 to 31 December 2016 with a renewal term of 21 years.<sup>602</sup>

The 1996 Lease is legally binding and still current.

This Examination did not disclose any basis which would currently entitle the Council to terminate the 1996 Lease.

The Council alleges that the Soccer Federation has breached a number of its obligations under the 1996 Lease since January 1998, including breach of the permitted use of the stadium,<sup>603</sup> interfering with the Council's proprietary rights as owner of the naming rights for the stadium<sup>604</sup> and failure to pay water rates.<sup>605</sup> The Soccer Federation disputes the alleged breaches and has paid the outstanding water rates. The Council has not taken any further steps to enforce any alleged right to terminate the 1996 Lease.

On settlement of the sale and purchase agreement for the stadium site, the Government will become the lessor under the 1996 Lease.

### **Key Terms – The Lease Schedule**

The Lease Schedule<sup>606</sup> provided the following further key terms:

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<sup>600</sup> The former City of Hindmarsh and Woodville (now the City of Charles Sturt).

<sup>601</sup> Page 2 of 30.

<sup>602</sup> Items 7 and 8 of the Lease Schedule.

<sup>603</sup> ie using the stadium for rugby when the permitted use Clause in the 1996 Lease only provides "Soccer field, stadium, and soccer administration complex". The Council complained to the Soccer Federation in January and June 1998 about use of the stadium for rugby. The Soccer Federation denied any breach in its letter to the Council dated 30 June 1998.

<sup>604</sup> The Council complained to the Soccer Federation about the potential interference with its naming rights by letter dated 17 June 1999. The Soccer Federation denied that the naming rights were not leased to it in its letter to the Council dated 20 September 1999.

<sup>605</sup> On 1 August 2000, the Council gave the Soccer Federation written notice to remedy its default in failing to pay an SA Water accounts for \$9,211.90. The Soccer Federation paid these accounts under protest that a water main had been burst by a Council contractor resulting in 'high use'.

<sup>606</sup> Page 1 of 30.

The Premises – the Hindmarsh Soccer Stadium Complex and Playing Field located on the land bordered by Manton Street, Holden Street and Hindmarsh Place, Hindmarsh and identified as the pieces of land marked "1" on the General Registry Office Plan 38/1995.

The General Registry Office Plan does not unambiguously delineate the leased area. On one interpretation of that plan, the leased area did not include the old western grandstand or that portion of the land to its west. If so, there is a serious flaw in the description of the leased premises.<sup>607</sup>

The Land – comprised in Certificate of Title Register Book Volume 1804 Folio 107 and Volume 2392 Folio 63. These certificates of title have been cancelled since February 1996. That land now comprises only part of Certificate of Title Register Book Volume 5664 Folio 129. The stadium after completion of Stage 2 is built on more land than that land the subject of the 1996 Lease.

The Permitted Use – soccer field, stadium and soccer administration complex.

Rent – During the first five years of the initial term of 21 years, rent of \$1 was payable on demand. In the following years of the initial term, rent was payable monthly in advance calculated from 1 January 2000 on the basis of \$5,000 per annum as annually adjusted for CPI in accordance with Clause 4.4. In every fifth year starting from 1 January 2005, rent would be reviewed by taking the greater of the CPI adjusted annual rent from last year or 10 percent of the increase (if any) in the Soccer Federation's net revenues from operating the stadium in the last year compared with the year five years earlier.<sup>608</sup> Rent upon review would never fall.<sup>609</sup>

Premises Maintenance Contracts – There was an agreement between Programmed Maintenance Services Pty Ltd and the Council for 12 years, which the Soccer Federation was obliged to take over.<sup>610</sup>

### **Key Terms – The Lessee's Covenants**

The Soccer Federation was obliged:

- in addition to rent, to pay all costs associated with use of the premises: rates and taxes,<sup>611</sup> utilities,<sup>612</sup> outgoings,<sup>613</sup> air conditioning costs,<sup>614</sup> maintenance and repair,<sup>615</sup> cleaning,<sup>616</sup> painting,<sup>617</sup> garbage and waste;<sup>618</sup>

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<sup>607</sup> See Chapter 22 above which discusses this issue in the context of due diligence in Stage 1.

<sup>608</sup> Clause 4.4.5.

<sup>609</sup> Clause 4.4.7.

<sup>610</sup> Item 11 of the Lease Schedule.

<sup>611</sup> Clause 2.2.

<sup>612</sup> Clause 2.3.

<sup>613</sup> Clause 2.4.

<sup>614</sup> Clause 2.5.

<sup>615</sup> Clause 2.7.

<sup>616</sup> Clause 2.8.

<sup>617</sup> Clause 2.11.

<sup>618</sup> Clause 2.13.

- to maintain and repair, clean and paint the premises;<sup>619</sup>
- to insure the premises;<sup>620</sup>
- not to assign or sublet without the Council's consent.<sup>621</sup>

It was an express term of the lease that the Council had granted the Soccer Federation the lease on the basis of the Soccer Federation's commitment to improvement of the premises recorded in the application for Development Approval. The Council reserved its right to terminate the lease if the Soccer Federation could not demonstrate reasonable attempts to achieve redevelopment by 1 January 2000.<sup>622</sup> This right to terminate lapsed on completion of the redevelopment works undertaken at Hindmarsh.

The Lease contained an express term prohibiting the assignment, subletting or mortgaging of the lease without the Council's prior consent.<sup>623</sup> The Lease expressly acknowledged the Council's consent to the Soccer Federation sub-leasing the premises to the NSL Clubs from 1 January 1995.<sup>624</sup>

### **No Government Approval of Terms**

The April 1995 Memorandum of Understanding required as a precondition and express term that the 1996 Lease be entered into on terms acceptable or approved by Government.<sup>625</sup> This was also an express term of the Funding Deed.<sup>626</sup> The 1996 Lease was entered into without consulting any representative of Government as to the suitability of its terms from the Government's position. The Crown Solicitor's Office did not adequately review its terms.<sup>627</sup>

### **Hindmarsh Stadium Site Now Greater than Land in 1996 Lease**

The Hindmarsh Stadium after completion of Stage 2 is built on all of the land comprised in Certificate of Title Register Book Volume 5664 Folio 129. This land is a consolidation of the whole of the triangle of land bounded by Holden and Manton Streets and Hindmarsh Place,<sup>628</sup> the western two-thirds of Hindmarsh Place (which has been closed as a road) and 4 Hindmarsh Place. There is no formal lease over this additional land to the Soccer Federation.

In November 2000 and January 2001, the Council complained to the Soccer Federation about its use of parts of the stadium site that are not part of the 1996 Lease, without the formal written approval of the Council. The Soccer Federation wrote in January 2001 seeking permission to use the unleased

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<sup>619</sup> Clauses 2.7, 2.8, 2.9 and 2.11.

<sup>620</sup> Clause 2.23 and 2.24.

<sup>621</sup> Clause 2.30.

<sup>622</sup> Clause 4.22.

<sup>623</sup> Clause 2.30.

<sup>624</sup> Clause 2.30.

<sup>625</sup> See pages 425 and 425 above.

<sup>626</sup> See page 446 below.

<sup>627</sup> This issue is discussed in Chapter 22 above in the context of due diligence in Stage 1.

<sup>628</sup> ie the original stadium site as well as the former Bowling Club and Meals On Wheels sites.

parts of the stadium site until negotiations between the Government, the Council and the Soccer Federation were concluded. No formal response was given by the Council to the Soccer Federation's request and the Soccer Federation has continued to use the whole of the stadium site to date.

### **Caveat by the Treasurer** <sup>629</sup>

On 25 August 2000, the Treasurer lodged a caveat over the 1996 Lease claiming an estate or interest as mortgagee pursuant to the clause in the Funding Deed containing the Soccer Federation's promise to grant a mortgage to the Treasurer, if requested.

If the Soccer Federation warned <sup>630</sup> the caveat, the Treasurer would have 21 days within which to seek relief from the Supreme Court, namely specific performance of the Soccer Federation's promise to grant a mortgage over the 1996 Lease.

As at the date of this Report, the caveat was still in place. The mortgage over the 1996 Lease is no longer required now that Government will purchase the stadium site. The caveat will need to be withdrawn before the Government can become the registered proprietor of the stadium site. This can be done simply.

## **STAGE 1 CONSTRUCTION MANAGEMENT AGREEMENT**

### **Parties, Execution Status and Enforceability**

A formal document entitled "*Agreement Conditions for the Building Consultancy & Construction Management Agreement for the Hindmarsh Soccer Stadium Upgrade*" and dated 23 August 1996 was duly executed by the Minister for State Government Services and Hansen Yuncken Pty Ltd in September 1996. This agreement expressly provided that it superseded all prior negotiations, representations or agreements including the tender documents and the accepted offer. <sup>631</sup>

### **Currency and Status of Performance**

Practical completion of the Stage 1 works for which Government contracted Hansen Yuncken to provide construction management service occurred on 6 December 1997. The defects liability period expired on 5 December 1998. There are no outstanding obligations to be performed under this agreement.

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<sup>629</sup> This is further discussed below in Chapter 32 under the heading "Mortgage of the 1996 Lease" at page 446.

<sup>630</sup> "Warning a caveat" is the expression for the process by which a person whose land has been caveated requests that the Registrar-General give notice to the holder of the caveat to take proceedings to substantiate that interest before the caveat is removed.

<sup>631</sup> Clause 1. On 23 July 1996, Services SA on behalf of the Minister for State Government Services wrote to Hansen Yuncken accepting that company's offer for building consultancy and construction management services at a fixed lump sum of \$12,000. Acceptance formed a legally binding contract on the terms proposed in Hansen Yuncken's letter dated 5 July 1996.

On 23 August 1996, Services SA on behalf of the Minister for State Government Services wrote to Hansen Yuncken accepting that company's offer for building consultancy and construction management services at a fixed lump sum of \$404,108. A binding contract between the Government and Hansen Yuncken was formed on receipt by Hansen Yuncken of that letter on the terms proposed in Hansen Yuncken's proposal dated 5 July 1996 and letters dated 10,12 and 16 July 1996.

## THE 1996 LICENCE AGREEMENTS

### Parties and Execution Status

The Soccer Federation sent identical letters to each of the NSL Clubs on 29 August 1996 seeking confirmation that they accurately represented discussions for finalisation of the leasing arrangements for the stadium. In each letter setting out the terms of the arrangements, the expression "it was agreed" was used repeatedly. However, the first page of each letter stated that:

*"While some progress was made [in finalising leasing arrangements] it appears that there are three issues still outstanding, to which we offer the following solutions..."*

Each letter asked each NSL Club to sign the final page entitled "Confirmation of Agreement" and return it to the Soccer Federation for it to arrange for its solicitor "to formalise a Heads of Agreement". In the case of Adelaide City that Confirmation of Agreement stated:

*"I confirm that the foregoing correspondence dated 29 August 1996 accurately represents agreements made between the South Australian Soccer Federation and the Adelaide City Soccer Club."*

The same confirmation was sought from West Adelaide.

Both Clubs signed the confirmation of agreement under seal and returned them to the Soccer Federation as requested. West Adelaide hand wrote on the confirmation of agreement they signed "*See attached letter*" and sent a letter dated 30 August 1996 to the Soccer Federation acknowledging receipt of the letter dated 29 August, correcting 3 matters and stating:

*"Point 3 on page 1 is still a point of non-agreement. We suggest that Mr. Scarcella's [sic] suggestion has some merit. We suggest that the naming right [sic] to the stadium be split as follows..."*

This exchange of letters omitted a critical obligation from the Government's point of view: the letters did not contain any commitment from the NSL Clubs to play at Hindmarsh.

On 2 October 1996, the Soccer Federation sent further identical letters to each of the NSL Clubs that referred to "our agreement" and were entitled "Addendum to Licence Agreement – Hindmarsh Soccer Stadium". These letters further stated:

*"As a matter of fact, we are required to be more specific in the "Term of Licence".*

*Could you please sign where indicated below as your Club's clear understanding that [the Club] agrees to play all of its National Soccer League matches at the Hindmarsh Soccer Stadium during the term of the Licence Agreement.*

...

### Confirmation

*I confirm...that [the Club] agrees to play all its National Soccer League matches at the Hindmarsh Soccer Stadium during the term of the Licence."*

Both NSL Clubs signed these confirmations and returned them to the Soccer Federation.

### **Enforceability**

In all the circumstances, this Examination has concluded that this exchange of letters did constitute a legally binding agreement in relation to all issues except the three that were outstanding. In the case of West Adelaide, their letter dated 30 August 1996 effectively accepted the offer made by the Soccer Federation on page one of its letter to resolve the first two outstanding issues.

Failure to agree those outstanding issues at that time did not affect the enforceability of the other obligations effectively agreed.

### **Currency**

The 1996 Licence Agreements were superseded by the 1997 Licence Agreement executed on 23 June 1997.<sup>632</sup> Its essential terms were substantially the same except the obligations of the NSL Clubs to fit out their club rooms and corporate boxes at their cost were varied by the introduction of a \$2 million Fit Out Loan taken out by the Soccer Federation and guaranteed by the Government.<sup>633</sup>

### **Key Terms**

Term – the same as offered to the Soccer Federation by the Council – 21 years plus an option for renewal of 21 years.

Licence Payments – each of the NSL Clubs to pay the Soccer Federation up to \$50,000 per annum (indexed by CPI) for the running costs of the stadium up to \$100,000 and any costs exceeding \$100,000 to be shared equally between the NSL Clubs and the Soccer Federation.

Catering Rights – The NSL Clubs were granted rights to share and outfit catering facilities at their cost as well as the profits generated from those facilities. \$0.50 (indexed by CPI) per spectator was to be paid to the Soccer Federation for any event in which neither NSL Club participated.

Cleaning – The NSL Clubs were to be responsible for cleaning in consideration of the catering rights.

Allocation of grandstand seats – 500 seats were to be allocated to the Soccer Federation for each NSL match, for which the Soccer Federation was liable for the \$3 levy on the basis that it would not underprice the NSL Clubs in selling those seats. The NSL Clubs were entitled to all other seats.

\$3 Levy – A charge of \$3 per person utilising the western grandstand was to be made and paid to the Soccer Federation at the conclusion of each match to be used solely to repay the loan. The power of the Minister to increase this levy by \$1 was noted and it was agreed that after repayment of the loan the levy would be retained by the NSL Clubs.

An agreement was yet to be determined if the Government agreed to 400 free seats per match.

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<sup>632</sup> Clause 14.7 of 1997 Licence Agreement.

<sup>633</sup> Details of this document are set out below in Chapter 33.

Corporate Boxes – The allocation of the 24 corporate boxes was agreed for NSL matches and other events. Each NSL Club was responsible for the fit out of eight boxes to the specification of the Soccer Federation. The Soccer Federation's offer to pay for the air conditioning for the corporate boxes was accepted by West Adelaide but not agreed to by Adelaide City.

Club Rooms – It was agreed that the Adelaide City Club Rooms and Loan Agreement be upheld until 2005. In consideration of the NSL Clubs allocating 500 grandstand seats to the Soccer Federation, the club rooms rental of \$5,000 per annum under that agreement was waived. As to West Adelaide, it was agreed to document a similar agreement where applicable for it. Various space was agreed to be allocated to the NSL Clubs (subject to the outstanding issue of extra space requested by Adelaide City).

Each party was responsible for the fit out of its own area in the grandstand at the specification of the Soccer Federation.

Insurance – The NSL Clubs were responsible for insurance in their own areas.

Concessions and Foodhall – It was agreed that "The Project"<sup>634</sup> would bear the costs of relocating and building new facilities.

## **THE STAGE 1 FUNDING DEED**

### **Parties**

This document records the terms upon which the Government agreed to provide the Soccer Federation with financial assistance in undertaking capital redevelopment works at Hindmarsh Soccer Stadium.<sup>635</sup> It was duly executed by the Treasurer, the Minister for Recreation, Sport and Racing, the Minister for State Government Services and the Soccer Federation on 14 October 1996.

### **Enforceability and Currency**

This document created a binding contract between the parties on execution.

Performance of the obligations created was subject to satisfaction of specified conditions precedent included for the sole benefit of the Government.<sup>636</sup> The Government having the benefit of the specified conditions precedent was entitled to waive satisfaction of those conditions by giving notice to the Soccer Federation.<sup>637</sup> Such notice was given on 29 August 1997 which effectively waived any outstanding condition precedent to the extent it was not already satisfied. The specified conditions precedent were otherwise satisfied progressively until 29 August 1997.

On 7 October 1997, the Fit Out Amendment Deed amended the Funding Deed as part of the new arrangements for the fit out of the western grandstand introduced by the Fit Out Guarantee Deed and

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<sup>634</sup> ie the Project Budget funded by the Stage 1 Loan and the Minister for Recreation, Sport and Racing.

<sup>635</sup> Recital H.

<sup>636</sup> Clause 3.

<sup>637</sup> Clauses 3.3 and 3.4.



Fit Out Guarantee.<sup>638</sup> The terms amended (principally those relating to the imposition and collection of the \$3 Levy) were superseded and replaced with new terms for the \$3 Levy on grandstand patrons. The Fit Out Guarantee Deed principally introduced a \$2 Levy on all entrants to the stadium.<sup>639</sup>

The Funding Deed as amended is legally binding and current. The Soccer Federation is in breach of some of its obligations under the Funding Deed. Performance of other obligations have been informally waived or suspended by the Government. The 29 March 2001 deed made with the Soccer Federation has suspended the operation of many key obligations so long as the Government remains the manager of Hindmarsh Stadium.<sup>640</sup> The status of performance of the various key terms of the Funding Deed is addressed below in the context of each specific obligation.

## **Key Terms and Status of Performance**

### **Scope of the Redevelopment**

The development works were described as the construction and fit out of an enlarged western grandstand, the administrative offices of the Soccer Federation built in 1995 and other associated and ancillary works. These works were defined by reference to the Brief dated August 1996 prepared by Woods Bagot,<sup>641</sup> as amended from time to time by further agreement.<sup>642</sup>

### **Project Costs**

The Project Costs were defined to include all the costs in undertaking the Development (some of which had already been incurred):

- including design and the preparation of the Design Brief; (*primarily past costs*);
- the obtaining of approvals, consents and licences; (*partly past costs, partly future costs*);
- construction; (*all future costs*);
- project management fees; (*partly past costs, partly future costs*);
- construction management fees; (*partly past costs, substantially future costs*);
- the reimbursement of the Soccer Federation for up to \$300,000 for the Office Accommodation Facility built in 1995; (*all past costs*); and
- insurance (*all future costs*).

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<sup>638</sup> In this Report, the terms of the Stage 1 Funding Deed are referred to as they are amended by the Fit Out Amendment Deed, unless otherwise stated.

<sup>639</sup> Details of this document are set out below in Chapter 33 under the heading "The Fit Out Guarantee Deed" at page 459.

<sup>640</sup> See Chapter 29 for a detailed discussion of the terms of this deed at page 417.

<sup>641</sup> "Hindmarsh Stadium – Functional Design Brief".

<sup>642</sup> Clauses 2.1.7, 2.1.24, 2.1.25, 2.1.2.

The fit out of the club rooms (including fixtures, fittings, plant and equipment) was expressly excluded from the Project Costs and required to be undertaken by the Soccer Federation at its cost.<sup>643</sup> Financial risk for this obligation of the Soccer Federation was transferred to the Government by the Fit Out Guarantee Deed in October 1997.<sup>644</sup>

## Funding

On the condition that the Soccer Federation had procured a loan for half the Project Costs (either actual or up to a maximum of \$4.0625 million) from National Australia Bank Limited,<sup>645</sup> the Minister for Recreation, Sport and Racing agreed to contribute and pay the other half.<sup>646</sup>

The Minister for Recreation, Sport and Racing was obliged to pay the first half of Project Costs (\$4.0625 million), then the Soccer Federation would pay the second \$4.0625 million. The Soccer Federation drew down on the Stage 1 Loan on 30 September 1997 and the proceeds were applied in payment of the Soccer Federation's share of the Project Costs.<sup>647</sup>

If the Project Costs exceeded \$8.125 million the excess was to be shared equally between the Minister for Recreation and Sport and the Soccer Federation.<sup>648</sup> This did not ultimately happen and the Government has funded all excess Project Costs totalling \$1,134,000.<sup>649</sup>

Cabinet approved the waiver of this term of the Stage 1 Funding Deed on 25 August 1997 for \$1,005,000 of the additional Project Costs of \$1,134,000 on Deputy Premier Ingerson's recommendation that there was "no point" in seeking a capital contribution from the Soccer Federation.<sup>650</sup> No formal approval has been given to waive the Soccer Federation's obligation to pay for 50 percent of the final \$129,000 of increased Project Costs.

## Grandstand Levy

The Soccer Federation was obliged to impose and collect a \$3 Levy on every spectator using the Grandstand Area (as defined) at any event held at Hindmarsh<sup>651</sup> and deposit those monies on the

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<sup>643</sup> Clauses 2.1.26 and 31.

<sup>644</sup> Details of this document are set out below in Chapter 33.

<sup>645</sup> Condition precedent Clauses 3.1.2 and 3.1.3. Throughout this Report this loan is referred to as Stage 1 Loan.

<sup>646</sup> Clauses 7 and 10.1.

<sup>647</sup> Details of this document are set out below in this Chapter 32 under the heading "Stage 1 Loan Agreement" at page 452.

<sup>648</sup> Clauses 6.2 and 10.1.3.

<sup>649</sup> Table 1 of Appendix 1 shows the total cost of Stage 1 was \$9.259 million, \$1.134 million more than \$8.125 million. Table 5 of Appendix 1 shows the increases made to the Stage 1 Budget from time to time.

<sup>650</sup> No attempt was made by the Minister or other Government representatives to investigate the Soccer Federation's capacity to contribute at this stage.

<sup>651</sup> The \$3 Levy applied to any event at Hindmarsh regardless of who played, organised, promoted, staged or otherwise conducted it or whether it was held by the Soccer Federation or any other person with the Soccer Federation's consent. Clause 8.1.

next business day following receipt<sup>652</sup> into a bank account established for that purpose.<sup>653</sup> There was no express obligation to impose the \$3 Levy by increasing the ticket price for events.<sup>654</sup>

The Soccer Federation was obliged to consult and discuss with the Minister arrangements for the operation of the Levy System such as access to the grandstand, collection procedures, record keeping, audit controls etc.<sup>655</sup> In case of disagreement between the parties, the Soccer Federation was obliged to implement the Minister's requirements.<sup>656</sup>

The Soccer Federation was obliged to repay the National Australia Bank Limited from monies in the Grandstand Levy Bank Account and was expressly not obliged or liable to pay the bank from any source other than from the \$3 Levy monies.<sup>657</sup> The Soccer Federation was not obliged to pay any interest on the Stage 1 Loan until the earlier of 31 August 1997 or the date of Practical Completion<sup>658</sup> (while the stadium was under construction).<sup>659</sup>

The Minister for Recreation, Sport and Racing was required to pay the National Australia Bank Limited any shortfall between the costs of servicing the Stage 1 Loan<sup>660</sup> and the \$3 Levy monies upon receipt of written notice from the Soccer Federation.<sup>661</sup> The Soccer Federation was obliged to reimburse the Minister for Recreation, Sport and Racing for any shortfall plus interest but only from any excess of the \$3 Levy monies over the loan repayments or the guarantee fee payable to the Treasurer.<sup>662</sup>

The Government had a once off right to increase the \$3 Levy by \$1 during the Term of 20 years if the Soccer Federation was in breach of the Stage 1 Loan or the Minister had paid any shortfall between the debt servicing costs and the \$3 Levy monies.<sup>663</sup> This right was expanded by the Fit Out Amendment Deed to give the Minister a right to increase the \$3 Levy by up to \$1 each financial year in accordance with a specified formula if the Soccer Federation was in breach of the Stage 1 Loan, if the Minister had paid any shortfall between the debt servicing costs and the \$3 Levy monies or if the Minister expected a shortfall.<sup>664</sup>

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<sup>652</sup> Clause 8.11.

<sup>653</sup> Clause 8.6. In this Report, this bank account will be referred to as the "Grandstand Levy Bank Account".

<sup>654</sup> Cf Clause 7.2 of the Fit Out Deed. An express Clause to this effect should have been included in the Funding Deed to guard against the risk that tickets would be sold without adding the \$3 Levy, as did occur with season passes and free tickets issued by the NSL Clubs. This shifted the burden of payment of the \$3 Levy to the NSL Clubs instead of spectators without any consideration of the desirability of doing so. Details of this document are set out below in Chapter 33 under the heading "The Fit Out Guarantee Deed" at page 459.

<sup>655</sup> Clause 8.8.

<sup>656</sup> Clause 8.9.

<sup>657</sup> Clauses 9.1 and 9.2.

<sup>658</sup> ie as defined by the Construction Management Agreement.

<sup>659</sup> Clause 10.4.

<sup>660</sup> This included interest as well as all funding fees such as facility fees, acceptance fees etc.

<sup>661</sup> Clauses 9.6 and 9.7 and 4.

<sup>662</sup> Clause 13.

<sup>663</sup> Clauses 8.2, 8.3, 8.4 and 8.5.

<sup>664</sup> Clauses 4 and 5 of the 1997 amendment Deed.

The Minister has not exercised these rights to increase the levies to date. Mr Evans, as Minister for Recreation, Sport and Racing wrote to the Soccer Federation in October 1998 requesting a meeting to discuss this issue after noting that the \$3 Levy had contributed less than one quarter of the Stage 1 Loan repayments.<sup>665</sup> This discussion was overtaken by the Soccer Federation's request in November 1998 that the levies be waived or suspended.

The first repayment of the Stage 1 Loan was due on 30 December 1997. The \$3 Levy monies have covered 17.1 percent of the loan repayments for the Stage 1 Loan to 31 December 2000.<sup>666</sup> The balance was paid by the Minister for Recreation Sport and Racing.<sup>667</sup>

In October 1998, after less than a full year of operation of the Levy System, the Soccer Federation ceased imposing, collecting and banking the \$3 Levy monies into the Grandstand Levy Bank Account as required by the Funding Deed.<sup>668</sup> In August 1998, the NSL Clubs had asked the Soccer Federation to review the financial arrangements for the playing of NSL matches at Hindmarsh Stadium. The Soccer Federation eventually agreed to approach the Government to suspend or waive the Levy System. In September 1998, the Soccer Federation and the NSL Clubs agreed to cap costs and levies per match for the upcoming NSL season at \$13,000, allocating \$5,000 per match for levies<sup>669</sup> until a formal response was received from the Government to the proposal for suspension or waiver of the Levies.

The Soccer Federation put its proposal for the suspension or waiver of levies to Mr Evans, then Minister for Recreation, Sport and Racing at a meeting on 5 November 1998.

On 10 November 1998, the Soccer Federation wrote to the Minister for Recreation, Sport and Racing and informed him that a Fit Out Loan repayment of \$48,801.28 was due on 13 November 1998, there was only \$601.51 in the Fit Out Levy Bank Account and only \$15,000 has been collected instead of the Levies. The letter asked the Minister what action he wished the Soccer Federation to take. Mr Simon Forrest, the Executive Director of the Office for Recreation and Sport responded by letter also dated 10 November 1998. His letter stated that the Soccer Federation was in breach of the Fit Out Guarantee Deed for not collecting the Fit Out \$2 Levy. He advised that the Soccer Federation should meet its obligations under the various agreements and deposit an amount equal to the Fit Out Levy into the Fit Out Levy Bank Account. If there was still a shortfall between the amount of the next repayment and the balance of the Fit Out Levy Bank Account, then the Soccer Federation should send the necessary reconciliations and notices to the Minister for Recreation, Sport and Racing to enable payment of the shortfall.

On 12 November 1998, the Soccer Federation replied to the 10 November 1998 letter from the Executive Director of the Office for Recreation and Sport. The letter stated that:

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<sup>665</sup> Letter dated 28 October 1998.

<sup>666</sup> ie \$235,015 of the \$1,373,146 paid to 31 December 2000.

<sup>667</sup> See Tables 2, 7 and 8 of Appendix 1.

<sup>668</sup> The Soccer Federation has not imposed, collected or banked the \$2 Fit Out Levy either. See the discussion below in Chapter 33 about the Stage 1 Fit Out at page 460.

<sup>669</sup> ie both the Grandstand and the Fit Out Levies.

*"We are well aware of our obligations under the funding deed and note that should the Minister reject any of our options or submissions made to him, we will be liable to make the payment due as if the levies were being collected."*

The Soccer Federation advised the amount of levies that should have been collected (Grandstand Levies of \$14,199; Fit Out Levies of \$23,242) and stated that \$20,000 that had been collected from the NSL Clubs had been paid into the Fit Out Levy Bank Account that day.

The Executive Director of the Office for Recreation and Sport wrote back that same day. On the basis that the Fit Out Levies that should have been collected were \$23,242 and as there was \$600 already in the Fit Out Levy Bank Account, he would arrange for a cheque for \$25,000 to be deposited into the Fit Out Levy Bank Account for the shortfall between the loan repayment and the Fit Out Levies. The Soccer Federation would need to meet the difference between the \$20,000 collected from the NSL Clubs and the Fit Out Levies it should have collected and deposit those monies into the Fit Out Levy Bank Account by close of business the next day.

The Soccer Federation deposited a further \$3,201 into the Fit Out Levy Bank Account on 12 November 1998. The Minister for Recreation, Sport and Racing paid \$25,000 of the Fit Out Loan repayment made on 13 November 1998.<sup>670</sup>

On 22 December 1998, the Soccer Federation wrote to the Office for Recreation and Sport about the repayment of the Grandstand Loan of \$105,763.82 due on 31 December 1998. The Soccer Federation asked if the Minister for Recreation, Sport and Racing would accept \$26,794, (being the balance of the \$50,000 collected from the NSL Clubs after payment of an amount equal to the Fit Out Levies on 12 November 1998) in lieu of the \$37,854 of Grandstand Levies due to 22 December 1998.

The Executive Director of the Office for Recreation and Sport responded by return letter requiring the Soccer Federation to deposit into the Grandstand Levy Account the total amount of the Grandstand Levies due. The Soccer Federation deposited \$37,896 into the Grandstand Levy Account on 28 December 1998. The Minister for Recreation, Sport and Racing paid \$67,910 of the Grandstand Loan repayment made on 31 December 1998.<sup>671</sup>

In his letter to the Soccer Federation dated 22 December 1998, the Executive Director of the Office for Recreation and Sport directed the Soccer Federation to ensure that the Grandstand Levy on matches to be held before 31 December were banked in accordance with the Funding Deed. Grandstand Levies of \$13,071 for the match held on 27 December 1998 were not imposed, collected or deposited as required. Fit Out Levies of \$51,472 for matches held between 15 November and 27 December 1998 were not imposed, collected or deposited as required either.

On 20 January 1999, the Executive Director of the Office for Recreation and Sport wrote to the Soccer Federation to advise that before the Minister for Recreation, Sport and Racing responded to the proposal for the suspension or waiver of the levies, he wished Arthur Andersen to review the financial position of the Soccer Federation and the NSL Clubs. In the meantime, the Soccer Federation was required to meet its obligations under the Funding and the Fit Out Guarantee Deeds and impose, collect and bank the levies.

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<sup>670</sup> See Table 8 of Appendix 1.

<sup>671</sup> See Table 7 of Appendix 1.

Upon complaint by the General Manager of the Soccer Federation, the Minister for Recreation, Sport and Racing agreed to suspend the need for the Federation to meet future repayments of either the Grandstand Loan or the Fit Out Loan pending receipt and consideration of Arthur Andersen's report. This suspension was confirmed in a letter dated 22 January 1999 from the Executive Director of the Office for Recreation and Sport. It stated that the suspension was on the clear understanding that once the report had been considered, the Soccer Federation "*may be required to repay amounts that would have been due as levies under the two deeds*". The Soccer Federation was asked to provide weekly reports on the leviable attendance at Hindmarsh Stadium and adequate notice to the Minister for Recreation, Sport and Racing of due dates and amounts for future loan repayments.

The Minister for Recreation, Sport and Racing has funded the entirety of the repayments for the Grandstand and Fit Out Loans since January 1999, despite completion of the Arthur Andersen report in March 1999.<sup>672</sup>

With Cabinet approval,<sup>673</sup> the Minister for Recreation, Sport and Racing has:<sup>674</sup>

- suspended the payment of levies due from 1 January 1999 until further notice, reserving the Minister's right to demand payment unless otherwise agreed;
- waived payment of levies for the NSL matches held on 15 and 29 October and 12 and 26 November 1999;<sup>675</sup>
- agreed to accept \$5,000 for each NSL match held between 1 January and 30 September 1999 instead of the levies;<sup>676</sup>
- agreed to accept the lesser of \$5,000 or the levies for all other games played at Hindmarsh Stadium.

Although the Soccer Federation has asked that the levies be waived, no binding agreement was reached between the Minister for Recreation, Sport and Racing and the Soccer Federation to this effect until the 29 March 2001 deed negotiated by Deputy Premier became operative. Until that time, the Minister for Recreation, Sport and Racing was entitled to demand from the Soccer Federation payment:

- in full of all levies due before and after the period 1 January to 30 September 1999 except for the 4 matches waived that have not yet been paid;<sup>677</sup> and
- \$90,000 in lieu of the levies due between 1 January and 30 September 1999.

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<sup>672</sup> See Tables 7 and 8 of Appendix 1.

<sup>673</sup> 8 November 1999.

<sup>674</sup> Minister's letter dated 10 November 1999 to the Soccer Federation.

<sup>675</sup> Total levies waived were \$51,338. See Table 3 of Appendix 2.

<sup>676</sup> ie \$90,000 (18 matches @ \$5,000 each) instead of \$174,262 in levies. See Table 2 of Appendix 2.

<sup>677</sup> Appendix 2 shows the amount of levies due by the Soccer Federation to 30 September 2000.

In further breach of its obligations under the Funding Deed, levies were not imposed and collected by the Soccer Federation for the following events: <sup>678</sup>

- Premier Finals since the 1997/98 season;
- South Australian Women's Soccer Matches;
- J-League Matches.

The Minister for Recreation, Sport and Racing has not made any formal demand of the Soccer Federation for payment of levies on these events. As this Examination has not been provided with information about the number of spectators attending those events, the amount for which the Minister would be entitled to demand payment is unknown. <sup>679</sup>

### **Treasurer's Guarantee**

The Soccer Federation's Loan from the National Australia Bank Limited was guaranteed by the Treasurer under a separate Deed of Guarantee. <sup>680</sup> The Soccer Federation was obliged to pay the Treasurer a guarantee fee of 0.75 percent per annum of the maximum amount drawn down under the Loan on 31 October each year. <sup>681</sup>

In October 1997, the Soccer Federation paid \$2,724.11 representing the guarantee fee for the month of September 1997 to the Government in relation to the Stage 1 Loan. No other guarantee fee payments have been demanded of or received from the Soccer Federation since October 1997. The Treasurer is entitled to demand from the Soccer Federation payment of \$89,392 due to 31 October 2000. <sup>682</sup>

### **Free Tickets**

The Soccer Federation was entitled to issue up to 400 free tickets for NSL matches and 150 for Premier League matches, with the prior consent of the Minister for Recreation, Sport and Racing and not collect the \$3 Levy on those tickets. The Soccer Federation was also entitled to issue free tickets to players and one guest each, referees, linesmen, coaches, team managers, media, employees and life members. <sup>683</sup>

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<sup>678</sup> Arthur Andersen report at page 11, paragraph 3.2 and p 28, paragraph 3.9.1.

<sup>679</sup> The Soccer Federation has informed this Examination that it kept records of these amounts but has not said how much they are.

<sup>680</sup> Clauses 4 and 3.1.1 of the Conditions Precedent. Details of this document are set out below under the heading "The 1996 Guarantee" at page 453.

<sup>681</sup> Clause 5.

<sup>682</sup> See Table 9 of Appendix 1 which shows the Guarantee Fees due to the Treasurer under the Guarantee Deeds to 31 October 2000.

<sup>683</sup> Clauses 8.15 and 8.16.

## **Charge over the \$3 Levy monies**

The Soccer Federation undertook to grant the Minister for Recreation, Sport and Racing a fixed charge over the Levy monies.<sup>684</sup> This charge was not executed until 17 December 1998<sup>685</sup> and after the Soccer Federation had requested suspension of payment of the levies and ceased imposing, collecting and paying the levies into the Levy Bank Accounts.

## **1996 Lease**

The Soccer Federation was to enter into a binding and enforceable lease with the Council for 21 years (plus an option to renew for 21 years) commencing on 1 January 1995 on terms acceptable to the Minister for Recreation, Sport and Racing and comply with its terms throughout.<sup>686</sup> The Soccer Federation entered into the 1996 Lease on 23 February 1996 without consulting any representative of Government as to its terms prior to its execution and contrary to the express terms of Clause 3.1.4 of the Funding Deed.

This omission is not a breach by the Soccer Federation of the Funding Deed. The Soccer Federation provided Government representatives with a copy of the registered lease three months before the Funding Deed was executed. The failure of Government representatives to review the terms of the 1996 Lease and seek amendments to protect the public interest is a failure of due diligence on the part of the Crown Solicitor's Office and the Office for Recreation, Sport and Racing.<sup>687</sup>

The Soccer Federation also undertook to first offer to dispose of its interest under the 1996 Lease to the Minister for Recreation, Sport and Racing but only if it desired to dispose of that interest.<sup>688</sup> To date the Soccer Federation has not expressed any desire to dispose of its interest without requiring considerable compensation in return.

The Government will become the lessor under the 1996 Lease on settlement of the sale and purchase agreement for the stadium site.

## **Mortgage of the 1996 Lease**

As security the Soccer Federation undertook to grant the Treasurer on request a first registered mortgage of the 1996 Lease.<sup>689</sup> Despite requests made from October 1999, the Soccer Federation did not comply with this term of the Stage 1 Funding Deed because it could not secure the consent of the Council. On 25 August 2000, the Treasurer lodged a caveat over the 1996 Lease.<sup>690</sup> A mortgage of the 1996 Lease is no longer required now that an agreement has been reached for the Government to purchase the stadium site.

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<sup>684</sup> Clause 36.

<sup>685</sup> Details of this document are set out below in this Chapter 32 under the heading "The Charge over the Levy monies" at page 458.

<sup>686</sup> Clause 38 and Conditions Precedent 3.1.4 and 3.1.5. See Chapter 22 for a discussion of this issue in the context of due diligence in Stage 1.

<sup>687</sup> This issue is discussed in Chapter 20 above.

<sup>688</sup> Clause 38.5.

<sup>689</sup> Clause 23.

<sup>690</sup> See the Section above in this Chapter headed "Caveat by the Treasurer " at page 434.



## **Licences from the NSL Clubs**

The Stage 1 Funding Deed was subject to the conditions precedent that the Soccer Federation had procured a legally binding and enforceable written contractual obligation from each NSL Club to play all their NSL matches at Hindmarsh for at least 20 years.<sup>691</sup>

The Soccer Federation entered into the 1996 Licence Agreements<sup>692</sup> with the NSL Clubs in order to satisfy this condition precedent but without consulting any representative of Government as to the suitability of the terms of these agreements.<sup>693</sup> This issue is discussed in Chapter 21 in detail.

A copy of the final draft of the 1997 Licence Agreement was sent to the Department of Recreation and Sport on 25 June 1997 during the course of the process of verification of the satisfaction of the conditions precedent to the Stage 1 Funding Deed. The Department's comments on that draft were not taken into account by the Soccer Federation as they were sent to the Soccer Federation on 25 June 1997 after execution of the 1997 Licence Agreement. Later the Department confirmed that its execution satisfied the relevant conditions precedent on 8 July 1997.

## **Letter from Soccer Australia**

As a condition precedent to the Stage 1 Funding Deed,<sup>694</sup> the Soccer Federation was required to procure a letter from Soccer Australia stating that all soccer matches (national and international) played in South Australia under their auspices would be played at Hindmarsh for 20 years. This was done by 4 October 1996 and acknowledged as sufficient on 29 May 1997.<sup>695</sup>

## **Premier League Matches**

The Soccer Federation undertook to ensure that the Premier League matches were regularly played at Hindmarsh and at least 15 times per calendar year.<sup>696</sup> The Soccer Federation has arranged for the finals to be played at Hindmarsh each season to comply with this obligation. Levies have not been imposed, collected or banked for Premier League finals since the 1997/98 season.

## **Role of the Minister for State Government Services**

The role of the Minister for State Government Services was to procure construction.<sup>697</sup> The Soccer Federation was required to grant the Minister for State Government Services a licence over the

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<sup>691</sup> Clauses 3.1.5 and 3.1.6.

<sup>692</sup> See the Section above in this Chapter 32 at page 436.

<sup>693</sup> Copies of the 29 August 1996 letters as confirmed and signed by the NSL Clubs were not sent to the Department of Recreation and Sport until 30 September 1996. The 29 August letters did not contain any obligation on the part of the NSL Clubs to play all matches at Hindmarsh. It appears that the Department identified the critical omission and asked the Soccer Federation to prepare the 2 October 1996 letters which comprised the obligation to play all NSL matches at Hindmarsh.

<sup>694</sup> Clause 3.1.8.

<sup>695</sup> Letter from Soccer Australia to Minister Ingerson dated 4 October 1996 and acknowledged by the Department as sufficient on 29 May 1997.

<sup>696</sup> Clause 39.

<sup>697</sup> Recital F and Clause 24.

stadium so that construction could take place, with the consent of the Council.<sup>698</sup> This was done at the same time as execution of the Funding Deed on 14 October 1996.<sup>699</sup>

### **Establishment of the Stadium as a Separate Profit Centre**

The Soccer Federation was required to establish and maintain its operation of the stadium as a separate profit centre from all its other operations. Separate financial statements, accounting records and systems were required to be set up and maintained.<sup>700</sup>

The Soccer Federation has not properly complied with this obligation to date. For the years ended 31 October 1995 to 2000 the Soccer Federation has reported on these operations as a note to its audited financial statements. The Office for Recreation and Sport has stated that not all relevant revenues and expenses have been brought to account in the Hindmarsh Stadium profit centre. Despite the agency's request that the Soccer Federation prepare separate financial statements in accordance with Australian accounting standards for future reporting periods,<sup>701</sup> the Soccer Federation has not yet done this.

This obligation has been suspended during operation of the 29 March 2001 deed made with the Soccer Federation.

### **Records of Match Attendances**

The Soccer Federation was required to keep accurate and complete records of spectator attendances at Hindmarsh Stadium including the number of spectators using the grandstand area and complimentary tickets.<sup>702</sup>

The Hindmarsh Stadium Reconciliation Summaries prepared by the Soccer Federation contain figures for match attendances, complimentary tickets and spectators using the Grandstand and levy calculations based on those figures. This Examination has found that a number of the calculations are mathematically incorrect. The correct calculations are contained in Appendix 2 to this Report. The result is that the Soccer Federation has under paid levies for the 1997/98 season.<sup>703</sup>

The match attendance figures are unaudited. The Soccer Federation has provided the Office for Recreation and Sport some information about the Levy System. A reconciliation of the match attendance figures and the Levy Bank Accounts was started but not completed pending resolution of the ongoing negotiations between the Government, the Soccer Federation and the Council. The Soccer Federation has not provided the Office for Recreation and Sport with any match attendance figures for the 2000/2001 NSL season.<sup>704</sup> Consequently, the Office for Recreation and Sport does not

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<sup>698</sup> Clauses 3.1.13 and 3.1.14.

<sup>699</sup> Details of this document are set out below in this Chapter 32 under the heading "The Stage 1 Minister's Licence Agreement" at page 42.

<sup>700</sup> Clause 40.

<sup>701</sup> Office for Recreation and Sport's letter dated 11 June 1999.

<sup>702</sup> Clause 40.3.

<sup>703</sup> \$14,826 for the 1997/98 NSL season.

<sup>704</sup> The Soccer Federation has informed this Examination that it does not have match attendance figures for these games because it was not party to the arrangements between the Government and Adelaide City for matches not played at Hindmarsh Stadium.

have up to date or accurate records of the amounts due to the Minister for Recreation, Sport and Racing under the Funding and Fit Out Deeds.

### **Management Committee**

The Soccer Federation was required to establish a Management Committee to administer the operations of the stadium.<sup>705</sup> This committee did not meet until 20 January 1999, ie 13 months after the completion of Stage 1 and the commencement of operations of the redeveloped stadium. It should have been established in late 1997.

The Management Committee has met infrequently. Its composition is dominated by representatives from the Soccer Federation and its business has been distracted by issues such as the Arthur Andersen report and uncertainty over the Soccer Federation's request for a suspension of the levies.

On 20 August 1999, Adelaide City wrote to Minister Evans informing him that Adelaide City would no longer actively participate in the Management Committee. Adelaide City representatives felt that a potentially strong conflict of interest had been identified during meetings when considering the management of the stadium. They felt that the Soccer Federation and the NSL Clubs were each striving to achieve different financial outcomes. In the circumstances, Adelaide City recommended that each of the Soccer Federation and the NSL Clubs have input into a proposal for the independent management of Hindmarsh Stadium.

On 23 August 1999, Adelaide City wrote again to Minister Evans complaining about the cancellation of the Management Committee meeting scheduled for that evening and the repeated failure of the Soccer Federation to provide audited figures for the past operation of the Hindmarsh Stadium profit centre.

In August 1999, the Soccer Federation retained Thompson Tregear, leisure management consultants, to advise it on the future management of the redeveloped stadium. In their report delivered to the Soccer Federation in October 1999, Thompson Tregear found that the management structure for the stadium was inappropriate:

- As income and expenditure for the stadium was not accounted for separately from income and expenditure for soccer, the real financial position of the stadium's operations was unknown.
- The stadium was not in control of the revenue flows logically relating to it.
- The Soccer Federation is both a user and a manager of the stadium and there is a conflict between those different interests.
- The Soccer Federation and the NSL Clubs as users of the stadium were all represented on the stadium Management Committee and as users and members of that committee had a conflict of interest.

Thompson Tregear recommended that a new legal entity, controlled by the Soccer Federation, be established to manage the stadium. That entity should be given control of the revenues from ticket

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<sup>705</sup> Clauses 40.7 and 40.6.

sales and catering currently controlled by the Soccer Federation and Adelaide City. Members of its board should not also be members of the Soccer Federation Board of Commissioners.

This obligation has been suspended during operation of the 29 March 2001 deed made with the Soccer Federation.

### **Record Keeping, Audit, Provision of Information and a Business Plan and Annual Reporting**

The Soccer Federation undertook to:

- keep proper records <sup>706</sup> (which has not been monitored)
- audit its accounts and records annually <sup>707</sup> (which has been done);
- provide any information requested by the Minister for Recreation, Sport and Racing <sup>708</sup> (which has been done generally, although often inadequately and in an untimely fashion);
- provide before or on execution of the Funding Deed a five year business plan addressing specified matters <sup>709</sup> (this has not been done and has been suspended by the 29 March 2001 deed); and
- provide the Minister for Recreation, Sport and Racing a report in the specified form by 31 January after each financial year end <sup>710</sup> (this has been done although not within the time required and has been suspended by the 29 March 2001 deed).

The Soccer Federation has not complied with many of these obligations adequately or at all in the case of some of these obligations. <sup>711</sup> Since the suspension of the Levy System in January 1999, the Minister for Recreation, Sport and Racing Sport has not required performance of any of these obligations.

### **Promotion of Soccer and Best Use of the Stadium**

The Soccer Federation was required to use its best endeavours to actively promote and market South Australian soccer and Hindmarsh Stadium <sup>712</sup> as well as maximise the profitable use of the stadium consistent with the preservation of its playing surface to FIFA standards. <sup>713</sup>

Since the Auditor-General's Annual Report for the year ended 30 June 1997, the Office for Recreation and Sport has monitored the Soccer Federation's compliance with obligations under the Funding Deed. The Office has regularly reviewed and recorded the status of performance of the various

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<sup>706</sup> Clause 41.

<sup>707</sup> Clause 42.

<sup>708</sup> Clause 44.

<sup>709</sup> Clause 45.

<sup>710</sup> Clause 46.

<sup>711</sup> Office for Recreation and Sport's Commentary on Compliance as at January 2000.

<sup>712</sup> Clause 50.

<sup>713</sup> Clause 48.

obligations and outstanding action. None of these reports record an opinion on whether the Soccer Federation has complied with this obligation.<sup>714</sup>

While performance of a "best endeavours" obligation is difficult to measure objectively, the Office for Recreation and Sport should have made inquiries sufficient to make an informed and considered view on this critical issue. For example, as a minimum an opinion could be formed by reference to the criteria for use contained in the April 1995 Memorandum of Understanding and the Funding Deed. eg minimum match requirements and mechanisms for securing those events at Hindmarsh. Against these criteria, it is apparent that Hindmarsh Stadium is not being used to its potential.

### **Insurance**

The Soccer Federation was required to insure all aspects of the stadium and its operation.<sup>715</sup>

Evidence of insurance was provided to the Office for Recreation and Sport in March 1998 and 1999. No response has been received from the Soccer Federation to clarification sought by the Office for Recreation and Sport about the adequacy of that insurance subsequently.

During the operation of the 29 March 2001 deed, the Government is responsible for insurance of the stadium.

### **Good Repair**

The Soccer Federation is obliged to keep the stadium in good repair.<sup>716</sup>

Despite regular review of the Soccer Federation's obligations under the Funding Deed, the Office for Recreation and Sport have not formed a view on the Soccer Federation's performance of this obligation.<sup>717</sup> This is a fundamental obligation which should be regularly and strictly monitored by the Office for Recreation and Sport. Uncertainty over the status of performance of this obligation is of particular concern in light of evidence received by this Examination that insufficient resources were being spent by the Soccer Federation on the stadium's upkeep because of cost pressures.

This obligation has been suspended during operation of the 29 March 2001 deed made with the Soccer Federation.

### **Events of Default**

Upon breach of the Funding Deed by the Soccer Federation<sup>718</sup> or the occurrence of other defined events of default,<sup>719</sup> the Treasurer or Minister for Recreation, Sport and Racing are entitled to:

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<sup>714</sup> For example, in the Office for Recreation and Sport's Commentary on Compliance as at January 2000, the Office states in regard to this obligation, "No particular comment."

<sup>715</sup> Clause 37.

<sup>716</sup> Clause 49.

<sup>717</sup> For example, the Office for Recreation and Sport's Commentary on Compliance as at January 2000 states in regard to this obligation, "No particular comment."

<sup>718</sup> Clause 52.1.8.

<sup>719</sup> Clause 52.1.

- appoint a receiver, receiver and manager, company administrator to take possession of, operate and manage the Soccer Federation's assets, property and undertaking; <sup>720</sup>
- terminate the Funding Deed forthwith; <sup>721</sup>
- institute legal proceedings against the Soccer Federation to enforce performance by the Soccer Federation of its obligations or to recover damages; <sup>722</sup>
- recover any costs incurred in remedying the Soccer Federation's breach as a debt. <sup>723</sup>

Neither the Treasurer or the Minister for Recreation, Sport and Racing have taken any steps to exercise these rights.

## **STAGE 1 LOAN AGREEMENT**

### **Parties and Execution Status**

Execution of the documents comprising the Stage 1 Loan Agreement between National Australia Bank Limited and the Soccer Federation was completed on 23 October 1996.

The Stage 1 Loan Agreement comprised:

- A Floating Rate Bill Facility on the terms contained in a letter of offer dated 8 October 1996 as amended by two letters dated 23 October 1996.
- A Fixed Rate Bill Facility on the terms contained in a letter of offer dated 8 October 1996 as amended by two letters dated 23 October 1996 .
- An Addendum to the Floating Rate Bill Facility Letter dated 23 October 1996 specifying the draw down procedure .

These documents were duly executed and created legally binding obligations on satisfaction of the specified conditions precedent.

### **Key Terms and Status of Performance**

The limit of the Stage 1 Loan was *"the amount following discounting of the Bills resulting in net proceeds of \$4.0625 million."*

The Floating Rate Bill Facility was available to be drawn down by the Soccer Federation from 30 April to 30 September 1997. <sup>724</sup> The Fixed Rate Bill Facility was available to be drawn down by the Soccer Federation from 30 September 1997 until 30 September 2017. <sup>725</sup>

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<sup>720</sup> Clause 52.1.12.

<sup>721</sup> Clause 52.1.9.

<sup>722</sup> Clause 52.1.11.

<sup>723</sup> Clause 52.1.10.

<sup>724</sup> The "Availability Period" in Clause 1 of the Letter of Offer.

<sup>725</sup> Ibid.

The \$15,000 application fee was paid by cheque by the Office for Recreation, Sport and Racing on 25 October 1996. That cost has been included in the Project Costs. A quarterly facility fee of 0.15 percent per annum of the amount of the Floating Rate Bill Facility and 0.35 percent per annum on the amount of the Fixed rate Bill Facility was payable in advance.<sup>726</sup> An Activation Fee of 0.20 percent of the amount of the face value of each Bill was payable on acceptance of each Bill under the Floating Rate Bill Facility.<sup>727</sup> As provided for in the Stage 1 Loan Agreement,<sup>728</sup> all fees payable (except the Application Fee) have been debited from the Grandstand Levy Bank Account.

Draw down under the Stage 1 Loan Agreement was subject to satisfaction of specified conditions precedent. Evidence of satisfaction of all conditions precedent was provided to the solicitors for National Australia Bank Limited on 30 July 1997.<sup>729</sup>

The Floating Rate Bill Facility was in place but not drawn down while the Government funded the first half of the Project Costs. On 30 September 1997 the first draw down was made under the Fixed Rate Bill Facility. Repayments have been made on the quarterly maturity of the Bills in compliance with the terms of the Stage 1 Loan Agreement.<sup>730</sup>

As at 31 December 2000, the amount owing under the Stage 1 Loan is \$3.726 million.

## **THE 1996 GUARANTEE**

### **Parties and Execution Status**

On 23 October 1996 the Treasurer, National Australia Bank Limited and the Soccer Federation duly executed this deed under seal.

### **Enforceability and Currency**

Section 19(1)(ab) of the *Public Finance and Audit Act 1987* provides:

*"The Treasurer may, for and on behalf of the State—*

- (a) guarantee performance of obligations by a semi-government authority;*
- (ab) guarantee performance of obligations by any other person if, in the opinion of the Treasurer, the guarantee will facilitate the carrying out by a semi-government authority of its functions;*
- (b) indemnify any person against loss, expenditure or costs related to a contract to which a semi-government authority is a party, or a contract that is incidental, ancillary, or otherwise related to such a contract."*

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<sup>726</sup> Clauses 10 of the Letters of Offer.

<sup>727</sup> Clause 8 of the Letter of Offer.

<sup>728</sup> Clauses 12 of the Letters of Offer.

<sup>729</sup> Letter dated 30 July 1997 from the Crown Solicitor.

<sup>730</sup> See Tables 7 and 8 of Appendix 1.

Section 19(1)(ab) imposed a precondition to the grant of a guarantee to the Soccer Federation that the Treasurer form an opinion that the guarantee would facilitate the carrying out of the functions of a relevant semi-government authority. The only relevant semi-government authority in this case is the Minister for Recreation, Sport and Racing. A sufficient basis for the exercise of the Treasurer's power would have been the Treasurer forming the opinion after investigation, that the provision of the 1996 Guarantee facilitated the Minister for Recreation, Sport and Racing's function in promoting, enhancing and developing soccer in South Australia by providing the sport with suitable stadium facilities.

However, this Examination has not found any record in the files of the Department of Treasury and Finance that the Treasurer investigated that matter or formed the required opinion.

In my opinion, if the requisite opinion was not formed by the Treasurer, there is uncertainty as to the validity of the Treasurer's exercise of power under Section 19(1)(ab). This is because it is unclear whether or not Section 19(1)(ab) displaces the Crown's prerogative to grant a guarantee. If it does, in my opinion, the 1996 Guarantee is void and unenforceable if the Treasurer did not form the opinion that the guarantee of the Soccer Federation's obligations under the Stage 1 Loan facilitated the carrying out of the functions of the Minister for Recreation, Sport and Racing.

If the exercise of the Treasurer's power to grant the 1996 Guarantee was lawful, then the 1996 guarantee is still in force. The Minister for Recreation, Sport and Racing has paid the shortfall between the Levy monies and repayments due under the Stage 1 Loan to date.<sup>731</sup> Consequently, the National Australia Bank Limited has no entitlement to take any steps to enforce the Treasurer's Guarantee.

### **Key Terms and Status of Performance**

The Treasurer guaranteed the National Australia Bank Limited the repayment by the Soccer Federation of all monies owing under the Stage 1 Loan Agreement up to a maximum of \$4.0625 million of the limit of the loan.<sup>732</sup>

Performance of the obligations created was subject to satisfaction of all of the specified conditions precedent included for the sole benefit of the Treasurer.<sup>733</sup> The Treasurer as sole beneficiary of the specified conditions precedent was entitled to waive satisfaction of those conditions by giving notice to the Soccer Federation.<sup>734</sup> Such notice was given on 8 August 1997 which effectively waived any outstanding condition precedent to the extent it was not already satisfied. The specified conditions precedent were otherwise satisfied progressively until 8 August 1997.

To enforce the Treasurer's Guarantee on breach or default by the Soccer Federation in repayment of the Stage 1 Loan, the National Australia Bank Limited is required to deliver a written notice in the prescribed manner.<sup>735</sup>

The 1996 Guarantee will be fully discharged on repayment in full of the Guaranteed Monies.<sup>736</sup>

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<sup>731</sup> See Tables 7 and 8 of Appendix 1.

<sup>732</sup> Clauses 4, 2.1.10 "Guaranteed Monies", 2.1.13 "Loan Contract" and 2.1.16 "Principal Maximum".

<sup>733</sup> Clause 3.

<sup>734</sup> Clauses 3.2, 3.3 and 3.4.

<sup>735</sup> Clause 6.

<sup>736</sup> Clause 9.



## THE STAGE 1 MINISTER'S LICENCE AGREEMENT

### Parties, Execution Status and Purpose

The Soccer Federation and the Minister for State Government Services duly executed a Licence Agreement on 14 October 1996. By this document the Soccer Federation granted the Minister an exclusive licence<sup>737</sup> to the stadium to enable the Minister to procure construction of the redevelopment in accordance with the terms of the 1996 Funding Deed. The City of Charles Sturt consented to the granting of the licence.<sup>738</sup>

### Enforceability and Currency and Status of Performance

The Stage 1 Minister's Licence Agreement was binding. All of the obligations contemplated by this agreement have been performed.

## THE 1997 LICENCE AGREEMENT

### Parties and Execution Status

This agreement was duly executed by the Soccer Federation, Adelaide City and West Adelaide under seal on 23 June 1997.

### Enforceability and Currency

The parties acknowledged their intention to create a legally binding agreement between them but that it was a preliminary agreement and they intended to enter into a further more detailed agreement, incorporating terms that are normally included in a licence agreement for the use of a sports stadium.<sup>739</sup> While the parties have subsequently varied the terms of their agreement they did not do so in the way envisaged in June 1997.<sup>740</sup>

The parties further agreed that the 1997 Licence Agreement was to continue to be binding upon a NSL Club and its liabilities would not be affected in any way if the other NSL Club was dissolved or wound up and it would not be responsible for the several liability of the other club.<sup>741</sup>

This agreement superseded all previous licence agreements between the parties, specifically the 1996 Licence Agreements.<sup>742</sup>

In June 1999, Adelaide City alleged that the Soccer Federation was in breach of the 1997 Licence Agreement. Negotiations between the parties over the terms of a new arrangement were

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<sup>737</sup> Clause 3.

<sup>738</sup> Recital D. At a meeting of Council on 12 August 1996 it was resolved that Council grant its consent pursuant to subClause 2.30 of the 1996 Lease for the Soccer Federation to grant an exclusive licence to the Minister for State Government Services for the purpose of undertaking the development.

<sup>739</sup> Clause 14.1.

<sup>740</sup> Details of this variation to their agreement are set out below under the heading "Variations of the 1997 Licence" at page 457.

<sup>741</sup> Clause 14.6.

<sup>742</sup> Clause 14.7.

unsuccessful until the recent arrangements brokered by Deputy Premier Kerin. Under the new arrangements, the Government has entered into a deed with Adelaide City requiring Adelaide City to play its home NSL matches at Hindmarsh Stadium until at least 30 June 2002. This deed does not purport to deal with the 1997 Licence Agreement which is a matter between the Soccer Federation and the NSL Clubs.

### **Key Terms and Changes to the 1996 Licence Agreements**

While this agreement expressly superseded the 1996 Licence Agreements, it merely formalised those terms without substantive change except to the following terms.

Licence Payments – Additional terms were included specifying how that payment would be made and reducing the NSL Clubs' payments if a third licensee were introduced.<sup>743</sup>

Advertising and Sponsorships – Terms agreeing the parties' respective rights and obligations were included. Specifically, the Soccer Federation agreed not to approach sponsors of the NSL Clubs which would be likely to affect the NSL Clubs' ability to retain their sponsors.<sup>744</sup>

Catering Rights – These terms were much expanded from the terms of the 1996 Licence Agreements. A maximum amount of \$250,000 per NSL Club was fixed for the corporate and public catering fit out required to be undertaken by the NSL Clubs.<sup>745</sup>

Cleaning – Further to the agreement that the NSL Clubs were responsible for cleaning, it was agreed that a contractor would be appointed and that either the home club would pay for the cleaning costs or they would be shared equally.<sup>746</sup>

Fit Out of Corporate Boxes, Club Rooms and Facilities – The provisions of the 1996 Licence Agreements were fundamentally changed. It was agreed:

- to cap the total cost of fitting out the redeveloped western grandstand at \$2 million;<sup>747</sup>
- that a submission be made to the Government to provide a guarantee in support of the Soccer Federation borrowing \$2 million to pay for the fit out;<sup>748</sup>
- the loan be repaid by charging a \$2 levy on all spectators attending the stadium at every event;<sup>749</sup>
- if a NSL Club wished to repay one half of the balance of the loan and cease collecting the \$2 levy, then the Soccer Federation would use its best endeavours to facilitate that.<sup>750</sup>

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<sup>743</sup> Clauses 4.1 and 4.2.

<sup>744</sup> Clauses 5 and 5.2.

<sup>745</sup> Clause 6.

<sup>746</sup> Clause 7.

<sup>747</sup> Clause 12.2.1.

<sup>748</sup> Clause 12.2.2.

<sup>749</sup> Clause 12.2.4.

<sup>750</sup> Clause 12.2.5.

Olympic Games – A new term was included which required the NSL Clubs to relinquish all their rights and obligations to the stadium during the Olympics. The Soccer Federation agreed to use its best endeavours to ensure that the NSL Clubs retained the use of their club rooms.<sup>751</sup>

## VARIATIONS OF THE 1997 LICENCE

### Fit Out

The NSL Clubs each sent the Soccer Federation letters dated 21 August 1997 that were duly executed under seal. Those letters stated that they served as confirmation and authorisation for the Soccer Federation to modify the 1997 Licence Agreement to incorporate additional guarantees for the repayment of the Fit Out Loan and "*in case of any shortfall*":

- *demand that the Federation pay any excess received from the \$2 levy charged for all patrons admitted to Hindmarsh Stadium for matches under the control of the Clubs and Federation (up to the shortfall);*
- *increase the current \$3 Grandstand contribution (as per the current Agreement) and further modify this Agreement to allow the Minister to adjust this contribution annually by CPI;*
- *increase the \$2 Admission Levy by \$1, to \$3 during the term of the loan."*

These amendments were intended to be binding and facilitate the Fit Out arrangements later agreed between the Minister for Recreation, Sport and Racing and the Soccer Federation. However, the words do not make sense and it seems that some words were missing: ie "*in case of any shortfall the Minister may demand that the Federation pay etc*".

### Licence and Levy Payments

In August 1998, representatives of the NSL Clubs approached the Soccer Federation to renegotiate the costs of playing at Hindmarsh for the 1998/99 season. A moratorium waiving the levies for five years or the capping of costs and the levies per game was suggested.<sup>752</sup>

The Soccer Federation agreed to cap the NSL Clubs' costs (including the licence fee, lighting, cleaning, security and levies) at a fixed fee of \$13,000 per match until a formal response was received from the Government to a submission for suspension or waiver of the levies.<sup>753</sup> The Minister for Recreation, Sport and Racing was not informed of this agreement until the Soccer Federation delivered its formal submission to him on 5 November 1998.

In June 1999, Adelaide City alleged that the Soccer Federation was in breach of the 1997 Licence Agreement, entitling Adelaide City to damages and to renegotiate its terms. During the course of negotiations in the following four months a formal Variation Agreement was prepared by Reynolds Prescott, the solicitors for the Soccer Federation. Adelaide City refused to sign it. An informal interim

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<sup>751</sup> Clause 13.

<sup>752</sup> Letter dated 7 September 1998 from Adelaide City to the Soccer Federation.

<sup>753</sup> Letters dated 11 and 14 September 1998 from the Soccer Federation to the NSL Clubs.

agreement was reached for Adelaide City to continue playing at Hindmarsh for the 1999/2000 season at a reduced fixed fee of \$11,000 per match for all costs and levies.<sup>754</sup> Since then, Adelaide City have claimed that the Soccer Federation has breached some of the terms of that interim agreement and that the 1997 Licence Agreement is null and void. The Soccer Federation has claimed that levies are payable by Adelaide City if the Minister later seeks reimbursement.

For the 2000/01 season, Adelaide City proposed new conditions for their playing at Hindmarsh. At the Minister's request that the NSL Club and the Soccer Federation work out their arrangements for the up coming season, Adelaide City proposed a further reduction in the fixed fee to \$8,000 per match.<sup>755</sup>

The Liquidator of West Adelaide has asserted that the Government in striking a deal with the Soccer Federation over the future ownership and management of Hindmarsh Stadium should not purport to deal with the club's continuing rights under the 1997 Licence Agreement. The Government has denied any liability to West Adelaide.

## **THE CHARGE OVER THE LEVY MONIES**

### **Parties, Execution Status and Enforceability**

The Soccer Federation and the Minister for Recreation, Sport and Racing duly executed this deed on 17 December 1998. The deed is legally binding.

### **Purpose**

The deed charged the money paid into the Levy Bank Accounts and the Soccer Federation's interest in any money to be paid into the Levy Bank Accounts in favour of the Minister for Recreation, Sport and Racing.<sup>756</sup> This charge was intended to secure the performance of the Soccer Federation's obligations for the collection and payment of levies. It did this to the limited extent that Levy monies were collected and paid or to be paid into the bank accounts.<sup>757</sup>

The Crown Solicitor's Office did not draft the charge until December 1997, 14 months after execution of the Funding Deed. Execution copies were not prepared until November 1998, a year after the first levies had been collected and paid into the Levy Bank Accounts.

The charge was not executed until after the Soccer Federation had made its 5 November 1998 submission to the Minister for a suspension or waiver of the levies and the Soccer Federation had effectively ceased collecting and paying the levies into the Levy Bank Accounts.

In my opinion, the charge did not afford the Government any substantive security.

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<sup>754</sup> Adelaide City letter dated 15 October 1999.

<sup>755</sup> Adelaide City letter dated 24 May 2000.

<sup>756</sup> Clauses 2 and 1.1.3.

<sup>757</sup> Definition of "Charged Property" in Clause 1.1.3.

## CHAPTER 33 – PRESENT STATUS OF LEGAL DOCUMENTS FOR FIT OUT OF STAGE 1

### THE FIT OUT GUARANTEE DEED

#### Purpose and Execution Status

This document records the terms upon which parties agreed the Treasurer would provide a guarantee to the National Australia Bank Limited for a \$2 million loan to the Soccer Federation for the purpose of fitting out the redeveloped western grandstand. It was duly executed by all the parties and dated 7 October 1997.

#### Enforceability and Currency

This document created a binding contract between the parties on execution.

Performance of the obligations created was subject to satisfaction of specified conditions precedent included for the sole benefit of the Government parties.<sup>758</sup> The Government parties having the benefit of the specified conditions precedent were entitled to waive satisfaction of those conditions by giving notice to the Soccer Federation.<sup>759</sup> The Government parties were entitled to terminate the Deed if the conditions precedent were not satisfied by 31 October 1997.<sup>760</sup> Such notice was given in September 1997 which effectively waived any outstanding condition precedent to the extent it was not already satisfied. The specified conditions precedent were otherwise satisfied progressively from 21 August 1997 until 18 September 1997.

A number of key obligations have been suspended during operation of the 29 March 2001 deed made with the Soccer Federation.

#### Key terms and Status of Performance

##### **Scope of the Fit Out**

The development works (the Fit Out) were described as the installation of mechanical and electrical services in the new enlarged western grandstand and the fit out of club offices and corporate and clubroom facilities and other associated and ancillary refurbishment works. These works were defined by reference to a Fit Out Functional Brief dated 6 August 1997 prepared by Woods Bagot, as amended from time to time by agreement between the parties.<sup>761</sup>

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<sup>758</sup> Clause 3.

<sup>759</sup> Clauses 3.3 and 3.4.

<sup>760</sup> Clause 3.5.

<sup>761</sup> Clauses 2.1.2 "Brief", 2.1.8 "Development", Recital A.

## Funding

The Soccer Federation had, in consultation and with the Treasurer's consent, procured a loan for the costs of the Fit Out, not to exceed a maximum principal of \$2 million.<sup>762</sup>

The Soccer Federation was obliged to impose and collect a \$2 Levy on every spectator seeking to enter any event at the stadium under the auspices of the Soccer Federation or the NSL Clubs (but not any other event organised under licence from the Soccer Federation) by increasing the ticket price for the event.<sup>763</sup> The \$2 Levy was to be paid into a special bank account exclusively for collection of it.<sup>764</sup> The Soccer Federation was obliged to repay the National Australia Bank Limited for the Fit Out Loan from monies in the \$2 Levy Bank Account and was expressly not obliged or liable to repay from any source other than the \$2 Levy monies.<sup>765</sup>

The Soccer Federation was obliged to use the \$2 Levy monies to repay the Fit Out Loan or the Stage 1 Loan or the guarantee fees payable to the Treasurer.<sup>766</sup>

The Minister for Recreation and Sport was required to pay any shortfall between the Fit Out Loan repayments and the \$2 Levy monies in accordance with specified notice provisions.<sup>767</sup> The Soccer Federation was obliged to reimburse the Minister for Recreation and Sport for any shortfall plus interest.<sup>768</sup>

The Minister for Recreation and Sport had a once off right to increase the levy by \$1 during the term of the Fit Out Guarantee.<sup>769</sup>

On 13 November 1998, the Minister for Recreation, Sport and Racing was required to pay the first shortfall between the \$2 Levy monies and the Fit Out Loan repayments due to the National Australia Bank Limited. Since then the Minister for Recreation, Sport and Racing has paid the entire amount of each repayment due under the Fit Out Loan.<sup>770</sup>

In breach of its obligations under the Fit Out Deed, the Soccer Federation has not imposed and collected the \$2 Levy since October 1998.<sup>771</sup>

These obligations have been suspended during operation of the 29 March 2001 deed made with the Soccer Federation.

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<sup>762</sup> Clause 6, Recitals B and C.

<sup>763</sup> Clauses 7.1 and 7.2. Cf Clause 8.1 of the Funding Deed which applied the \$3 Levy to any event held at Hindmarsh.

<sup>764</sup> Clause 7.8.

<sup>765</sup> Clauses 9.1 and 9.3.

<sup>766</sup> Clause 7.10.

<sup>767</sup> Clauses 9.6 to 9.9.

<sup>768</sup> Clause 13.

<sup>769</sup> Clause 7.6.

<sup>770</sup> See Tables 7 and 8 of Appendix 1.

<sup>771</sup> See a detailed discussion of this issue above in Chapter 32 from page 442.

## **Marketing and Advertising Expenditure**

The Soccer Federation undertook to spend at least \$100,000 (CPI adjusted) per annum over three consecutive years commencing on 1 November 1997 on a marketing and promotional campaign to encourage greater usage of the stadium.<sup>772</sup> The Soccer Federation was required to submit a budget to the Minister for Recreation and Sport for his approval within 30 days before the start of each year.<sup>773</sup>

The Soccer Federation did not submit a budget as required for the first two years of operation, despite numerous requests from the Office for Recreation and Sport. A budget for the 1999/2000 year was prepared by Thompson Tregear, the leisure management consultants engaged by the Soccer Federation in August 1999. The Soccer Federation, on Thompson Tregear's recommendation proposed that the marketing budget be reduced to a reasonable budget of \$50,000.<sup>774</sup>

Apart from the first year, the Soccer Federation has not complied with its obligation to spend \$100,000 on marketing and promotion of the stadium.<sup>775</sup>

This obligation has been suspended during operation of the 29 March 2001 deed made with the Soccer Federation.

## **Treasurer's Guarantee**

The Fit Out Loan was guaranteed by the Treasurer under a separate Deed of Guarantee.<sup>776</sup> The Soccer Federation was obliged to pay the Treasurer a guarantee fee of 0.75 percent per annum of the maximum amount drawn down under the Fit Out Loan on 31 October each year.<sup>777</sup> No payment nor any demand for payment of this guarantee fee has been made to date. The Treasurer is entitled to demand payment from the Soccer Federation of \$39,387 for the period to 31 October 2000.<sup>778</sup>

## **Charge over the Levy monies**

The Soccer Federation undertook to grant the Minister for Recreation and Sport a fixed charge over the \$2 Levy monies.<sup>779</sup> This charge was not executed until 17 December 1998.<sup>780</sup>

## **Reporting Obligations**

The Soccer Federation agreed to the inclusion of substantively the same terms for the maintaining of accounting records and financial statements, audit, inspection of records, provisions of information and business plan and annual reporting to the Minister for Recreation and Sport as in the

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<sup>772</sup> Clause 27.

<sup>773</sup> Clause 27.4.

<sup>774</sup> The Soccer Federation's letter dated 7 October 1999 to the Minister for Recreation, Sport and Racing.

<sup>775</sup> The financial statements for the Soccer Federation for the years ended 31 October 1998, 1999 and 2000.

<sup>776</sup> Clauses 4 and 3.1.1 of the Conditions Precedent. Details of this document are set out below at page 462.

<sup>777</sup> Clause 5.

<sup>778</sup> See Table 9 in Appendix 1.

<sup>779</sup> Clause 36.

<sup>780</sup> This issue is discussed above in Chapter 32 under the heading "The Charge over the Levy monies" at page 458.

Stage 1 Funding Deed.<sup>781</sup> The Soccer Federation has not complied with many of these obligations adequately or on time and not at all in the case of some of these obligations.<sup>782</sup>

## **Events of Default**

The Minister for Recreation and Sport and the Treasurer have the same rights on occurrence of an event of default by the Soccer Federation as are provided in the Stage 1 Funding Deed.<sup>783</sup>

## **THE FIT OUT LOAN**

The Fit Out Loan Agreement comprised a floating rate bill facility for \$2 million on terms contained in a letter dated 22 August 1997 and a letter of offer dated 21 August 1997. The documents are duly signed and constitute a legally binding agreement.

The first draw down occurred on 13 February 1998. \$1.866 million was outstanding as at 31 December 2000. Repayments have been made by the Minister for Recreation, Sport and Racing on behalf of the Soccer Federation since November 1998 in accordance with the terms of the Fit Out Loan Agreement.<sup>784</sup>

## **THE FIT OUT GUARANTEE**

### **Parties and Execution Status**

On 26 September 1996 the Treasurer, National Australia Bank Limited and the Soccer Federation duly executed this deed under seal.

### **Enforceability and Currency**

Section 19(1)(ab) of the *Public Finance and Audit Act 1987* provides:

*"The Treasurer may, for and on behalf of the State—*

- (a) guarantee performance of obligations by a semi-government authority;*
- (ab) guarantee performance of obligations by any other person if, in the opinion of the Treasurer, the guarantee will facilitate the carrying out by a semi-government authority of its functions;*
- (b) indemnify any person against loss, expenditure or costs related to a contract to which a semi-government authority is a party, or a contract that is incidental, ancillary, or otherwise related to such a contract."*

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<sup>781</sup> Clauses 33 to 38.

<sup>782</sup> The Soccer Federation's failure to comply with its obligations is discussed above in Chapter 32 under the heading "The Stage 1 Funding Deed - Key Terms and Status of Performance" at page 439.

<sup>783</sup> Clause 40. See the Section above in Chapter 32 at page 451.

<sup>784</sup> Ibid.



Section 19(1)(ab) imposed a precondition to the grant of a guarantee to the Soccer Federation that the Treasurer form an opinion that the guarantee would facilitate the carrying out of the functions of a relevant semi-government authority. The only relevant semi-government authority is the Minister for Recreation, Sport and Racing.

This Examination has not found any record in the files of the Department of Treasury and Finance that the Treasurer investigated that matter or formed the requisite opinion.

In my opinion, if the requisite opinion was not formed by the Treasurer, there is uncertainty as to the validity of the Treasurer's exercise of power under Section 19(1)(ab). This is because it is unclear whether or not Section 19(1)(ab) displaces the Crown's prerogative to grant a guarantee. If it does, in my opinion, the 1996 Guarantee is void and unenforceable if the Treasurer did not form the opinion that the guarantee of the Soccer Federation's obligations under the Stage 1 Loan facilitated the carrying out of the functions of the Minister for Recreation, Sport and Racing.

If the exercise of the Treasurer's power to grant the Fit Out Guarantee was lawful, then the Fit Out Guarantee is still in force. As the Government has paid the shortfall between the Fit Out Levy monies and repayments due under the Fit Out Loan to date,<sup>785</sup> the National Australia National Bank Limited has no entitlement to take any steps to enforce the Treasurer's Guarantee.

### **Key Terms and Status of Performance**

The Treasurer guaranteed the National Australia Bank Limited the repayment by the Soccer Federation of all monies owing under the Fit Out Loan Agreement up to a maximum of \$2 million.<sup>786</sup>

Performance of the obligations created was subject to satisfaction of all of the specified conditions precedent included for the sole benefit of the Treasurer.<sup>787</sup> The Treasurer as sole beneficiary of the specified conditions precedent was entitled to waive satisfaction of those conditions by giving notice to the Soccer Federation.<sup>788</sup> Such notice was given in September 1997 which effectively waived any outstanding condition precedent to the extent it was not already satisfied.

To enforce the Treasurer's Guarantee on breach or default by the Soccer Federation in repayment of the Fit Out Loan, the National Australia Bank Limited is required to deliver a written notice in the prescribed manner.<sup>789</sup>

The Fit Out Guarantee will be fully discharged on repayment in full of the Guaranteed Monies.<sup>790</sup>

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<sup>785</sup> Ibid.

<sup>786</sup> Clauses 4, 2.1.10 "Guaranteed Monies", 2.1.13 "Loan Contract" and 2.1.16 "Principal Maximum".

<sup>787</sup> Clause 3.

<sup>788</sup> Clauses 3.2, 3.3 and 3.4.

<sup>789</sup> Clause 6.

<sup>790</sup> Clause 9.

# CHAPTER 34 – PRESENT STATUS OF LEGAL DOCUMENTS FOR THE ACQUISITION OF LAND SURROUNDING HINDMARSH STADIUM

## RETAINER TO UNDERTAKE A STRATEGY OVERVIEW

National Portfolio Strategies were retained by the Office for Recreation, Sport and Racing in May 1996 to formulate a confidential strategy for the acquisition of land south of the stadium between Hindmarsh Place and Richard Street. The initial approach to National Portfolio Strategies was made by Woods Bagot who had recommended that extra land be acquired to lessen the restrictions of the site.

In March 1996, National Portfolio Services estimated their fees would be \$7,500 for a detailed report on how best to achieve a land consolidation and \$63,250 for implementation of a land consolidation costing \$4 million. Non-refundable option fees were estimated to be \$40,000.<sup>791</sup>

A strategy for the acquisition of all of the land south of the stadium between Hindmarsh Place and Richard Street for \$4.145 million was presented to Mr Ingerson, then Minister for Recreation, Sport and Racing on 26 August 1996. Option fees were estimated to be \$20,000.<sup>792</sup>

## LETTER OF APPOINTMENT

Mr Ingerson, then Minister for Recreation, Sport and Racing executed a letter of nomination appointing National Portfolio Strategies to act as agent in acquiring all of the land between Hindmarsh Place and Richard Street for not more than \$4.145 million. That agreement was legally binding and included an indemnity from the Minister in favour of National Portfolio Strategies for any liabilities incurred in the course of acting for the Minister.

This contract has been performed.

## OPTION AGREEMENTS

### 3 Hindmarsh Place – Azzuri Club land

On 3 September 1996, National Portfolio Strategies entered into an option to purchase 3 Hindmarsh Place from Azzuri Club Ltd for \$125,000 expiring on 31 March 1997 for an option fee of \$5,000.

### 3A Hindmarsh Place – former Christian Church

On 16 October 1996, National Portfolio Strategies entered into an option to purchase 3A Hindmarsh Place from Messrs Archbold, Mumford and Marchant for \$250,000 expiring on 31 March 1997 for an option fee of \$2,500.

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<sup>791</sup> Letter dated 22 March 1996 from National Portfolio Strategies to Woods Bagot.

<sup>792</sup> Letter dated 26 August 1996 from National Portfolio Strategies to the Minister.

## **6 Hindmarsh Place – Anglican Church**

National Portfolio Strategies secured this property by way of a contract for the sale of land subject to a special condition precedent to settlement that the purchaser elect to proceed with settlement before 31 March 1997. The option fee was \$5,000 and the purchase price \$440,000.

## **15A Richard Street – Flexbane & Nib Nominees**

On 4 November 1996, National Portfolio Strategies entered into an option to purchase 15A Hindmarsh Place from Flexbane Pty Ltd and Nib Nominees Pty Ltd for \$420,000 expiring on 31 March 1997 for an option fee of \$1,500.

## **CONTRACTS FOR PURCHASE OF LAND**

In March 1997, the three option agreements for 3, 3A and 6 Hindmarsh Place<sup>793</sup> were extended at an additional cost of \$25,500, of which \$6,500 was non-refundable. In seeking Cabinet approval for this purchase in June 1997, Mr Ashenden, then Minister for Recreation and Sport stated that the purchase had not been undertaken in March "*due to a degree of uncertainty about the final cost of the total project*". National Portfolio Strategies were of the opinion that the owners would be unlikely to grant a further extension if asked.

Cabinet referred the decision as to whether to approve the purchase of this land to a sub-committee comprising the Attorney-General, the Treasurer, the Minister for Recreation and Sport and the Minister for Environment and Natural Resources on 16 June 1997. That same day the sub-committee decided that the land should be acquired but that "*should not be regarded as an indication that the project is fully approved.*"<sup>794</sup>

The Minister for Recreation and Sport purchased all three properties in July 1997 for a total cost of \$851,500.<sup>795</sup>

<b>Property</b>	<b>Settlement Date</b>	<b>Sale Price \$</b>
3 Hindmarsh Place	21 July 1997	125,000
3A Hindmarsh Place	7 July 1997	250,000
6 Hindmarsh Place	7 July 1997	440,000
Total Purchase Price		815,000
Option extension fee		6,500
Consultant's fees		30,000
Total Cost		851,500

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<sup>793</sup> The option over 15A Richard Street was not extended in circumstances of the owners wishing to finalise negotiations with the existing tenant for a right of lease renewal.

<sup>794</sup> Minute dated 16 June 1997 from the Attorney-General to the Premier.

<sup>795</sup> The Cabinet submission dated 5 June 1997.

# CHAPTER 35 – PRESENT STATUS OF LEGAL DOCUMENTS FOR STAGE 2 AND HOSTING OLYMPIC SOCCER AT HINDMARSH STADIUM

## JULY 1997 SOCOG LETTER OF AGREEMENT

### Parties and Execution Status

The final executed version of the letter of agreement between the Sydney Organising Committee for the Olympic Games and the Government of South Australia was dated 8 July 1997. It was signed by Sandy Holloway, SOCOG's Chief Executive on behalf of SOCOG and Premier Olsen on behalf of the State and then returned to SOCOG.

### Enforceability and Currency

The letter was expressed to be "*intended to be legally binding*".<sup>796</sup> It had some provisions that required the parties to reach agreement later, which may have been unenforceable. For example, the letter stated that the parties agreed to negotiate in good faith with the objective of signing a memorandum of understanding and marketing agreement in substantially the terms of drafts previously provided to the State.<sup>797</sup> It also stated that the parties agreed to discuss the State's willingness to guarantee ticket revenue.<sup>798</sup>

The letter of agreement envisaged that the parties would negotiate a memorandum of understanding prior to 15 August 1997. SOCOG had the right to terminate the letter of agreement if the State did not sign the memorandum of understanding by that time. While the State met its obligations by that time, the memorandum of understanding was not signed by SOCOG or approved by the IOC or the AOC until 10 September 1997.

Clause 20.4 of the subsequent memorandum of understanding included an "entire agreement" clause stating that it was the sole document covering its subject matter. It is plain that the memorandum of understanding was intended to supersede the letter of agreement. The memorandum of understanding had terms to the same effect as the letter of agreement, but in more detail. It is not, therefore, necessary to consider the letter in any more detail.

## THE OLYMPIC MEMORANDUM OF UNDERSTANDING

### Execution Status

This document was executed by the Premier of South Australia on 15 August 1997. It was dated 10 September 1997, the date on which it was duly executed by SOCOG.

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<sup>796</sup> Clause 11.

<sup>797</sup> Clause 9.

<sup>798</sup> Clause 5.

## **Enforceability and Currency**

This agreement is expressed to bind the parties upon approval by the IOC and AOC until 31 December 2000. IOC approval is noted on the document by the signature of two of its directors. The express term of the agreement has expired by the effluxion of time.<sup>799</sup>

## **Key Terms**

This agreement was intended to regulate all aspects of the staging of the Olympic Soccer matches at Hindmarsh Stadium:

- The physical requirements for the matches, both as to the venue and the conduct of the matches;
- Control of advertising and concession rights;
- Who bore the cost of the matches;
- Who kept the revenue from the matches.

## **Physical Requirements**

As to the physical requirements of the stadium, the agreement contained a very brief description of the new work required, ie completion of all permanent terracing and grandstands, installation of 15,000 seats with backrests as a minimum, relocation and extension of the playing pitch, new turnstiles, relocation and upgrade of lighting.<sup>800</sup> The description of the new works was not detailed. The agreement also contained a description of the standard for the venue as a whole, irrespective of whether the work was new or not. The works had to be completed in a tight time frame. The Initial Date for Completion of the works was 31 December 1999 and the Date for Final Completion was 1 August 2000.<sup>801</sup>

## **Organisation and Conduct of Matches**

As to the organisation and conduct of the matches, the State was required to act on the direction of FIFA and SOCOG to the full extent permitted by law. FIFA and SOCOG retained full "artistic" control of the staging of the matches.

Similarly, SOCOG retained complete control over advertising and concession rights.

## **Cost**

The cost of the matches was split into four categories: State to pay; SOCOG to pay but State to reimburse; SOCOG to pay; and Sydney Olympic Broadcasting Organisation to pay. A detailed schedule split categories of expenditure among the four categories. The categorisation of some items attracts attention but is probably understandable. For example. *"Olympic Family Official Hospitality*

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<sup>799</sup> Clause 4.

<sup>800</sup> Schedule 2C.

<sup>801</sup> Clause 7.8.

by Host Government (subject to SOCOG guidelines)" was a cost to be paid by the State. Guidelines dictated what should have been given in the degree that the host city thought appropriate.

The components of cost to be borne by the State were the subject of stated caps, totalling \$3.309 million.<sup>802</sup>

## **Revenue**

The State had two options.

First, SOCOG was to receive all ticket revenue up to \$3.19 million (1997 dollars),<sup>803</sup> with the State to keep any amount over.<sup>804</sup>

Alternatively, SOCOG would accept the lesser amount of \$2.951 million, but the State had to guarantee receipt of that amount.

That is, if SOCOG was to take the risk of low ticket revenue, it wanted more of the revenue.

The State had to choose which option by 9 January 1998.

Additionally, the State was to receive all revenue from 14 corporate boxes, car parking and program sales from the venue.

The terms of the agreement was, like all arrangements with SOCOG, stringently in SOCOG's favour. It is doubtful though that those who negotiated it could have done better. In my opinion, Sydney took away a large portion of the revenue while Adelaide bore the bulk of the cost. Against that, there was no soccer tournament in Adelaide without an Olympic Games in Sydney. Those who negotiated the agreement, limited Adelaide's exposure on cost to fixed sums.

## **SOCOG MARKETING AGREEMENT**

### **Parties and Execution Status**

This document between SOCOG and the Government of South Australia sets out the marketing rights granted to the State in connection with Adelaide hosting Olympic Soccer matches. It was duly signed by the Premier on behalf of the State on 15 August 1997.

### **Enforceability and Currency**

This agreement is expressed to bind the parties upon approval by the IOC and AOC until 31 December 2000. IOC approval is noted on the document by the signature of two of its directors. Its terms are no longer operative.

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<sup>802</sup> Clause 12.2.

<sup>803</sup> The money amounts were expressed to be subject to adjustment for changes in SOCOG's ticket pricing.

<sup>804</sup> Schedule 6 Clause 4.

## **Key Terms**

Apart from giving South Australia three circumscribed types of marketing rights, this agreement imposed obligations on South Australia directed to protecting SOCOG's and the IOC's revenue streams.

The first type of right given was to use specified graphical symbols and names for a limited period.<sup>805</sup> South Australia was able to use the Sydney 2000 logo and associated logos for the purpose of promoting soccer matches at Hindmarsh for the period leading up to and for a short time after the holding of the matches. South Australia could not use the logos directly to make money. So, for example, South Australia would be given promotional posters by SOCOG but could not resell them.

The agreement contained what might be termed mechanical requirements for the use of the logos: for example, a requirement that the "*SOCOG Visual Standards Manual*" be adhered to in the physical reproduction of the SOCOG logo etc.

Secondly, it gave the State access to "premiums" and the right to distribute them. "Premiums" is an odd term used to describe free promotional merchandise. The State was required to buy those premiums only from specified SOCOG approved sources.<sup>806</sup>

Thirdly, it gave the State the right to a hospitality package, but at South Australia's cost.<sup>807</sup>

The balance of the agreement imposed obligations on South Australia. For example, it had to:

- Conduct an opening ceremony to a standard and format advised by SOCOG.<sup>808</sup>
- Comply with the Olympic Charter.<sup>809</sup>
- Assist SOCOG to prevent ambush marketing.<sup>810</sup>
- Decorate the venue as required by SOCOG.<sup>811</sup>

## **STADIUM USE DEED**

### **Execution Status, Enforceability and Currency**

This deed between the Minister for Recreation and Sport and the Soccer Federation was duly executed by the parties on 18 August 1997. The deed expired on 31 December 2000.<sup>812</sup>

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<sup>805</sup> Clause 3.1.

<sup>806</sup> Appendix C.

<sup>807</sup> Clause 3.3.

<sup>808</sup> Clause 3.4.

<sup>809</sup> Clause 4.

<sup>810</sup> Clause 7.4.

<sup>811</sup> Clause 10.

<sup>812</sup> Clauses 6 and 2.2.26.

## **Key Terms**

The deed records the terms upon which the Minister and the Soccer Federation agreed that Hindmarsh Stadium would be used to host matches in the 2000 Olympics. It was the document by which the State ensured that it had the right from the legal occupant of the stadium to make the stadium available to SOCOG as required by the memorandum of understanding between the State and SOCOG.

Soccer Federation Involvement in Olympic Negotiations – The recitals record that the Soccer Federation had assisted and been involved in the negotiations with SOCOG about the memorandum of understanding and marketing agreement.<sup>813</sup>

Olympic Memorandum of Understanding and Marketing Agreement – The Soccer Federation agreed to do as asked by the Minister so that the State could comply with those agreements. That included giving access to the stadium at no charge.<sup>814</sup> The State agreed to bear all costs associated with organising and staging the Olympic soccer matches.<sup>815</sup>

Stage 2 Development – The recitals stated that the State proposed to construct the Stage 2 Development.<sup>816</sup> The Soccer Federation agreed to that. The Stage 2 Development was defined as the development required by the Olympic Memorandum of Understanding. The Soccer Federation granted the Minister for Recreation, Sport and Racing a licence to the stadium to construct the stadium on the terms annexed to the deed.<sup>817</sup>

Assistance by the Soccer Federation – The Soccer Federation agreed to assist the State in organising or staging the Olympic soccer. The State agreed to reimburse the Federation for any costs incurred to third parties.<sup>818</sup> The Soccer Federation was not entitled to any revenue from the hosting of the Olympic Soccer tournament at Hindmarsh.

Ticket Allocation – The State agreed to give due consideration to allocating the Soccer Federation some of its tickets to the Olympic soccer matches in consideration of its cooperation and assistance.<sup>819</sup>

Relocation of the Soccer Federation's Offices – The State agreed to relocate and reinstate the Soccer Federation's offices during and after the Olympic soccer matches.<sup>820</sup>

The Stadium Use Deed is remarkable not for its terms but for the concepts it touched upon but did not adequately resolve.

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<sup>813</sup> Recitals A and B.

<sup>814</sup> Clauses 4, 5 and 7.

<sup>815</sup> Clauses 25 and 26.

<sup>816</sup> Recital E.

<sup>817</sup> Clauses 11.2 and 11.3. Details of this document are set out below in this Chapter 35 under the heading "Stage 2 Minister's Licence Agreement" at page 473.

<sup>818</sup> Clause 12.

<sup>819</sup> Clause 13.

<sup>820</sup> Clause 19.



- It ensured that the State would have sufficient control of the stadium to secure delivery of one perceived benefit of the Stage 2 Development ie the Olympic Soccer Tournament. It did not address the other perceived benefits such as the long-term availability of the stadium for the public benefit.
- It envisaged construction of an expensive new stadium and ensured that during the Olympics that the new stadium would be managed appropriately but said nothing about its management in the future.

It is not an answer to these criticisms to say that the Stadium Use Deed was only concerned with the staging of the Olympics. It is the only document that regulates the State and the Soccer Federation's relationship in respect of the Stage 2 Development and yet it covers only the obligations relevant to that development that SOCOG required be addressed for SOCOG's benefit.

In my opinion, this was an opportunity lost by the Government to correct the failures of due diligence in Stage 1.

## **WOODS BAGOT CONSULTANCY AGREEMENT FOR STAGE 2**<sup>821</sup>

### **Parties, Execution Status, Enforceability and Currency**

This agreement records the terms of the appointment by the Minister for Information and Contract Services of Woods Bagot as primary consultants for Stage 2 of the Hindmarsh Soccer Stadium Redevelopment Project.

The agreement is dated 17 September 1997 and duly executed.

The agreement was legally binding. There are no outstanding obligations to be performed under this agreement.

### **Key Terms**

The services to be provided by Woods Bagot were defined by reference to the Budget/Scope Document for Stage 2 dated 12 August 1997 and prepared by Woods Bagot before their formal appointment. Otherwise the agreement contained Services SA's standard generic Schedule of Services.<sup>822</sup>

A total lump sum fixed fee of \$453,059<sup>823</sup> was payable for consultancy services to the completion of the design development phase. A fixed upper limit for disbursements was set at \$107,355.<sup>824</sup>

Woods Bagot's consultancy was extended by Services SA on 23 April 1998. The scope of the services were extended to include Phase 2 documentation at a fixed fee of \$387,552. A further

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<sup>821</sup> Rider Hunt were engaged separately for Stage 2. A cost management fee of \$134,800 was offered in August 1997 and considered reasonable by Services SA.

<sup>822</sup> As Schedule 1.

<sup>823</sup> Comprising \$138,173 for concept development, \$145,332 for phase 1 schematic and \$169,554 for phase 2 design development.

<sup>824</sup> In Schedule 2.

\$266,442 was agreed in March 1999 for the contract administration during construction as well as Woods Bagot's claim of \$65,720 for work done outside the scope of works. A second claim of \$59,734 was allowed for extra work outside the original scope of work.

The total primary consultancy fee for Stage 2 ultimately paid to Woods Bagot was \$1,232,507 comprising:

<b>Stage of Work</b>	<b>Amount \$</b>
To design development	453,059
Phase 2 documentation	387,552
Contract administration during construction	266,442
First extension claim	65,720
Second extension claim	59,734
<b>Total</b>	<b>1,232,507</b>

Woods Bagot were reimbursed for disbursements of \$212,254.

Woods Bagot's original fee offer for Stage 2 was \$1,107,053 which equated to 7.5 percent of the anticipated construction contract value. In assessing the reasonableness of this offer, Services SA stated that the fee was slightly less than *"what was offered in a competitive environment for Stage 1 (7.7 percent of the then anticipated Stage 1 construction contract value)."*

## **STAGE 2 CONSTRUCTION MANAGEMENT AGREEMENT**

### **Parties, Execution Status and Enforceability**

Boulderstone Hornibrook Pty Ltd tendered for the construction management of Stage 2 by tender document dated 31 July 1998.

A binding contract was formed between Boulderstone and the Minister for Administrative Services on receipt by Boulderstone of Services SA letter dated 28 September 1998 accepting Boulderstone's tender at the fixed lump sum price of \$11,859,316.

A formal agreement entitled "Contract No 89-A-98" dated 29 September 1998 was executed by Boulderstone and the Minister for Administrative Services under seal.

### **Currency and Status of Performance**

Practical completion of the Stage 2 works for which Government contracted Boulderstone to provide construction management service occurred on 3 December 1999. The defects liability period expired on 3 December 2000. There are no outstanding obligations to be performed under this agreement.

## **STAGE 2 MINISTER'S LICENCE AGREEMENT**

### **Parties, Execution Status and Purpose**

The Minister for Government Enterprises and the Soccer Federation duly executed this agreement on 28 September 1998. By this agreement the Soccer Federation granted the Minister an exclusive licence<sup>825</sup> to the stadium to enable the Minister to procure construction of the Stage 2 Development in accordance with the terms of the Olympic Memorandum of Understanding. The agreement is on substantially the same terms as the Stage 1 Minister's Licence Agreement. The City of Charles Sturt consented to the granting of the licence.

### **Enforceability, Currency and Status of Performance**

The Stage 2 Minister's Licence Agreement was binding. All of the obligations contemplated by this agreement have been performed.

## **THE STAGE 2 COUNCIL LICENCE**

### **Parties, Execution Status and Purpose**

The agreement dated 8 December 1998 was duly executed by the Minister for Government Enterprises and The City of Charles Sturt. By this agreement the Council granted the Minister an exclusive licence<sup>826</sup> to the stadium to enable the Minister to procure construction of the Stage 2 Development in accordance with the terms of the Olympic Memorandum of Understanding. The agreement is on substantially the same terms as the Stage 1 and 2 Minister's Licence Agreements made between the Soccer Federation and the Minister.

### **Enforceability, Currency and Status of Performance**

The Stage 2 Council Licence Agreement was binding. All of the obligations contemplated by this agreement have been performed.

## **RELOCATION OF HINDMARSH BOWLING CLUB**

In 1995, the Hindmarsh Bowling Club leased from the Council the eastern portion of the triangle-shaped land between Manton and Holden Streets and Hindmarsh Place, adjacent to the old stadium. That lease expired on 31 December 1998.

From November 1997, extensive negotiations occurred between representatives of the Bowling Club, the Council, the Department of Industry and Trade and The City of West Torrens over the proposed relocation of the Hindmarsh Bowling Club to the former Thebarton Bowling Club. In July 1998, after seeking the Crown Solicitor's advice as to how the payment could be legally transferred from the State to the Club, it was agreed that:

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<sup>825</sup> Clause 3.

<sup>826</sup> Clause 3.

- the Department of Industry and Trade would make a grant of \$155,000 from the Project Budget for Stage 2 to the City of West Torrens to contribute to the upgrade of the former Thebarton Bowling Club;
- the City of West Torrens would grant the Hindmarsh Bowling Club a 14 year lease of the former Thebarton Bowling Club; and
- the Hindmarsh Bowling Club would vacate the Manton Street premises by 7 September 1998 so that it could be used as a site office during construction of the Stage 2 works.

An agreement on these terms was recorded in a letter dated 27 July 1998 sent by Mr Ingerson, then Minister for Industry, Trade and Tourism to the City of West Torrens. Miscellaneous documents record the terms of the agreement with the Council and the Bowling Club. The terms of this agreement have been fully performed.

## **MEALS ON WHEELS RELOCATION**

### **1957 Lease**

Meals on Wheels Incorporated<sup>827</sup> ("Meals on Wheels") leased from the Corporation of the Town of Hindmarsh, the south western corner of the triangular-shaped land between Manton and Holden Streets and Hindmarsh Place, adjacent to the old stadium. The terms of the lease were recorded in a unregistered lease dated 26 March 1957 (the "1957 Lease"). The 1957 Lease was surrendered on 24 May 1999. The terms of surrender are recorded in a Deed of Surrender dated 5 July 1999.

### **Relocation Proposals**

In 1996, the Soccer Federation's long term objective was to remove the Meals on Wheels building and incorporate that site into the stadium, developing the corner of Holden Street and Hindmarsh Place as a paved and landscaped entry zone.<sup>828</sup>

In mid 1997, preliminary concept plans for Stage 2 assumed that Meals on Wheel would be relocated and that site incorporated into the stadium. \$279,000 had been allowed in the Stage 2 budget for building works associated with the relocation. No allowance was made to purchase new freehold or leasehold premises for Meals on Wheels. It was assumed that the Council would be responsible for the cost of relocating Meals on Wheels.<sup>829</sup>

In late 1997, Meals on Wheels were approached by the Government and the Council to explore options for Meals on Wheels relocating into two upgraded heritage buildings on the stadium site. In March 1998, land on the corner of Manton and Richard Streets owned by Southcorp Ltd was identified as a suitable site. It was proposed that the Government would acquire the land for approximately \$180,000 upon which a new kitchen building would be constructed by Meals on Wheels' builder, Tagara Builders at an indicative cost of \$315,000. The Government would pay for the construction costs, with Meals on Wheels contributing \$50,000 towards the development. On

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<sup>827</sup> Now Meals on Wheels (SA) Inc.

<sup>828</sup> Woods Bagot's "*Hindmarsh Stadium Planning Report*" July 1996 at page 4.

<sup>829</sup> eg Woods Bagot's "*Hindmarsh Soccer Stadium Stage 2 Project Definition Brief*" July 1997 page 8.

completion of construction, the Government would transfer the land to Meals on Wheels for no monetary consideration.

Informal agreement was reached over a long period of time by exchange of letters and meetings between representatives for the parties.

### **Contract for Sale and Purchase of 52 Manton Street**

In November 1998, Southcorp Ltd and the Minister for Industry and Trade entered into a contract for the sale and purchase of 52 Manton Street, Hindmarsh.<sup>830</sup> The agreed purchase price was \$175,000 and a deposit of \$17,500 paid on 9 November 1998. Settlement occurred on 9 February 1999.

### **Construction of New Kitchen Building**

Meals on Wheels had appointed Tagara Builders to construct the new kitchen building. The Minister paid all of the construction costs (\$452,031) out of the Stage 2 Project Budget. On 18 June 1999, Meals on Wheels sent the Minister a cheque for \$50,000.

### **Deed of Surrender of Lease**

A Deed of Surrender of Lease dated 5 July 1999 was entered into between the City of Charles Sturt and Meals on Wheels (SA) Inc. This deed had been prepared by the Crown Solicitor's Office. It recorded the terms upon which Meals on Wheels had surrendered its lease from the Council on 24 May 1999 for no consideration.

### **Relocation Deed**

A Relocation Deed dated 12 July 1999 was entered into between the Minister for Recreation, Sport and Racing and Meals on Wheels (SA) Inc. This deed recorded the terms upon which it had been agreed that Meals on Wheels surrender the 1957 Lease and the Minister construct a new kitchen building at 52 Manton Street, Hindmarsh for Meals on Wheels. Meals on Wheels were to pay the first \$50,000 of constructions costs<sup>831</sup> and the Minister the balance. Upon completion of construction, the Minister agreed to transfer the freehold land to Meals on Wheels for no consideration.

On 17 December 1999, the Minister for Industry and Trade transferred 52 Manton Street, Hindmarsh to Meals on Wheels.

The cost of the Meals on Wheels Relocation was \$590,090.

## **BELARUSIAN CHURCH RELOCATION DEED**

By letter dated 27 July 1998, Mr Ingerson as Minister for Industry and Trade offered to relocate the Belarusian Church from 5A Hindmarsh Place to 420 Torrens Road, Kilkenny at the Government's cost by constructing a new church on a 'like-for-like' basis. On 28 July 1998, Minister Ingerson agreed to pay for the engagement of a mediator to facilitate negotiations between the Belarusian Church and

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<sup>830</sup> Current Certificate of Title Volume 5650 Folio 381.

<sup>831</sup> Clause 10.

Government over arrangements for the relocation. The Minister also agreed for the Government to pay for the Belarusian Church's legal fees and the costs of a Priest to bless the new church.

On 12 July 1999, the Minister for Recreation, Sport and Racing, the Minister for Environment and Heritage and the Belarusian Autocephalic Orthodox Church (SA) Inc ("Belarusian Church") entered into a Relocation Deed. The deed provided the terms upon which the Belarusian Church had agreed to relocate from 5A Hindmarsh Place to new purpose built premises at 420 Torrens Road, Kilkenny.

The key terms were:

- The Minister for Environment and Heritage would transfer the land at 420 Torrens Road to the Belarusian Church.
- The Minister for Recreation, Sport and Racing would pay the Minister for Environment and Heritage \$150,000 for 420 Torrens Road.
- The Minister for Recreation, Sport and Racing would pay the cost of constructing a new purpose built church on 420 Torrens Road.
- Upon practical completion of the new church, the Belarusian Church would transfer to the Minister for Recreation, Sport and Racing, 5A Hindmarsh Place.

The transfer for 5A Hindmarsh Place was lodged for registration at the Land Titles Office on 29 October 1999.

The total cost of relocating the Belarusian Church of \$836,038 was paid out of the Stage 2 Project Budget.

## **COMPENSATION AGREEMENTS WITH ADJACENT LANDOWNERS**

On 22 April 1999, the closure of the western two thirds of Hindmarsh Place and the northern one quarter of Chapel Street was gazetted. These road closures were part of Stage 2.

To facilitate these road closures, part of Chapel Street was converted into off street parking for row cottages at 3-7 Chapel Street. The City of Charles Sturt as owner of the road transferred this land to the Guerins, the owners of the cottages. The Government paid the owner \$5,000 compensation for the transfer.

In order to deviate Chapel Street to allow off street parking for the Guerin row cottages, approximately 6.5 metres of land on the corner of Richard and Chapel Streets was acquired from the Azzuri Soccer Club for \$800.

The compensation paid to the adjacent landowners was paid from the Stage 2 Project Budget.

# CHAPTER 36 - FINANCIAL STATUS OF THE SIGNATORIES AND CREATION OF FINANCIAL DIFFICULTY BY LEGAL DOCUMENTS

## FINANCIAL STATUS OF THE SOCCER FEDERATION

The Soccer Federation's financial statements show that for the three years ended 31 October 1998 the revenue earned from ongoing operations was sufficient to meet ongoing expenses. For the two years ended 31 October 2000, the Soccer Federation recorded an operating loss.

	Year ended 31 October 1996 \$	Year ended 31 October 1997 \$	Year ended 31 October 1998 \$	Year ended 31 October 1999 \$	Year ended 31 October 2000 \$
Income	1,500,979	1,741,107	2,606,917	2,087,227	2,378,537
Expenditure	1,493,311	1,715,344	2,600,583	2,184,543	2,696,248
Operating Surplus (Loss)	7,688	25,763	6,334	(97,316)	(317,711)

For the year ended 31 October 2000, the Soccer Federation brought to account abnormal revenue of \$615,000 shown as due from the Government partially to reimburse the Soccer Federation for current and prior year expenses incurred from managing Hindmarsh Stadium.<sup>832</sup> It also brought to account as an expense levies payable of \$152,900. After taking into account these abnormal and extraordinary items, the Soccer Federation earned sufficient revenue to cover its expenses in the year ended 31 October 2000.<sup>833</sup>

In the first year of operation of the Levy System, the Soccer Federation did not bring to account levies collected and banked under the terms of the Funding and Fit Out Deeds in its financial statements for the year ended 31 October 1998.<sup>834</sup> This accounting practice changed in later years. The Soccer Federation's financial statements for the year ended 31 October 1999 show levies payable to the Minister for Recreation, Sport and Racing of \$152,900.<sup>835</sup> In the note to its financial statements for the Hindmarsh Stadium Operations, the Soccer Federation showed \$61,200 as levies paid. The Soccer Federation's financial statements for the year ended 31 October 2000 have treated those levies payable as not being required to be paid.<sup>836</sup>

According to its financial statements for the years ended 31 October 1996 to 2000, the Soccer Federation has significant net assets. Its net asset position has increased in line with the Government grants received for the redevelopment of Hindmarsh Stadium which are reflected in the value of fixed assets shown in its balance sheet.

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<sup>832</sup> See page 4 of and Note (i) to the Financial Statements of the Soccer Federation for the year ended 31 October 2000.

<sup>833</sup> The operating surplus after abnormal and extraordinary items was \$450,189.

<sup>834</sup> Note 1(i) "Loan Funding Assistance from the State Government" to the Soccer Federation's financial statements for the years ended 31 October 1998 – 2000.

<sup>835</sup> Note 8 "Creditors and Borrowings" to the Soccer Federation's financial statements for the years ended 31 October 1999.

<sup>836</sup> They have been treated as an extraordinary item. Notes 2 and 8 to the Soccer Federation's financial statements for the year ended 31 October 2000.

	31 October 1996 \$	31 October 1997 \$	31 October 1998 \$	31 October 1999 \$	31 October 2000 \$
Total Assets	3,813,612	11,389,266	13,831,435	12,165,296	23,459,105
Total Liabilities	689,422	4,924,083	6,712,244	6,635,079	6,426,464
Net Assets	3,124,190	6,465,183	7,119,191	5,530,217	17,032,641
Leasehold Improvements – Hindmarsh Stadium <sup>837</sup>	2,311,114	6,709,574	12,297,052	10,710,846	21,447,013

The Soccer Federation's liabilities to the National Australia Bank Limited under the Stage 1 and Fit Out Loans have been disclosed in the balance sheet of the Soccer Federation for the years ended 31 October 1998 to 2000. Notes to the entries for those liabilities disclose that those liabilities are guaranteed by the Government and that the shortfall between loan repayments and levies collected have been paid by the Office Recreation and Sport. <sup>838</sup>

If the leasehold improvement to Hindmarsh Stadium and the corresponding liability to the National Australia Bank Limited are disregarded in the Soccer Federation's balance sheet at 31 October 2000, it had net assets of \$898,291. It has legally enforceable agreements with the Government that entitle it to require the Minister for Recreation, Sport and Racing to meet any shortfall between the levies collected and repayments of the Stage 1 and Fit Out Loans.

The results of the Soccer Federation's operation of Hindmarsh Stadium are recorded in notes to its annual accounts for all its operations. A consolidation appears in the Table below.

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<sup>837</sup> At cost and after depreciation. See Note 6 "Fixed Assets" to the Soccer Federation's financial statements for the years ended 31 October 1996 to 2000. For the year ended 31 October 1997, fixed assets included \$4,825,936 stated to be for the Hindmarsh Stadium Grandstand under construction.

<sup>838</sup> Note 8 "Creditors and Borrowings" to the Soccer Federation's financial statements for the years ended 31 October 1998 – 2000. Technically, the Minister for Recreation, Sport and Racing is obliged to meet the shortfall under the Funding and Fit Out Deeds.



<b>HINDMARSH STADIUM OPERATIONS</b>					
	31 October 1996 \$	31 October 1997 \$	31 October 1998 \$	31 October 1999 \$	31 October 2000 \$
<b>Income</b>					
NSL Clubs Costs	98,193	80,362	81,900	383,476	176,000
Hindmarsh Marketing		54,400	236,600	118,904	
Other charges			47,405		
Additional cleaning			19,578		
Ground Manager wage			3,787		
Cleaning			17,319		
Contribution to light and power			11,000		
<b>Total Income</b> <sup>839</sup>	98,193	134,762	417,589	502,380	176,000
<b>Expenses</b>					
Advertising			475	12,000	18,717
Auditors Remuneration	-	-	-	-	11,203
Consultant Fees				6,248	8,752
Electrical Contract			2,539	5,868	-
Equipment Hire			853		-
General Expenses	90,776	75,463	9,579	9,085	8,012
Insurance			39,452	42,304	41,398
Legal Fees					4,994
Levies Paid				61,200	-
Light and Power			14,012	39,961	62,870
Public amenities			6,283	7,650	5,357
Hindmarsh Marketing		38,928	264,625	91,822	69,371
Repairs and Maintenance			19,754	27,744	44,477
Rental payable				507	-
Rubbish Removal			5,585	6,446	5,178
Security			5,924	8,722	5,533
Stadium Cleaning			36,897	30,680	26,750
Ticketing Expenses			-	-	10,120
Turnstile Maintenance			1,235	7,644	-
Wages			39,842	40,473	41,990
Wages – Ground Staff Match Days			-	86,567	57,911
Water			11,251	7,183	34,906
<b>Total Expenditure</b> <sup>840</sup>	<b>90,776</b>	114,391	458,306	492,104	457,539
<b>Net Profit/(Loss)</b>	<b>7,417</b>	20,371	(40,717)	10,276	(281,539)

<sup>839</sup> In the year ended 31 October 2000, the Soccer Federation's financial statements show \$109,355 as income recovered from the Olympics. See Note 20.

<sup>840</sup> Note 20 to the Soccer Federation's financial statements for the years ended 31 October 1996 to 1998 state that a detailed comparative breakdown to determine these items was not maintained in 1996 or 1997.

In breach of the Funding Deed, the Soccer Federation has not established a separate profit centre for its operation of Hindmarsh Stadium, independent from the remainder of its operations.<sup>841</sup> For the two years ended 31 October 1997, the Soccer Federation did not maintain a detailed breakdown of income and expenses for the stadium.<sup>842</sup>

The Arthur Andersen report also reviewed the basis of allocation of expenses shown in the notes to the annual accounts for Hindmarsh Stadium Operations and Marketing. Arthur Andersen recommended that a number of expenses would be more appropriately shared between stadium operations and the Soccer Federation's other operations. A 100 percent allocation against stadium operations was excessive and did not take into account the Soccer Federation share of those expenses.

The consolidation of income and expenses for Hindmarsh Stadium set out above shows that since completion of Stage 1 in December 1997, expenses for the operation and maintenance of Hindmarsh Stadium have increased five-fold. Until West Adelaide was placed in liquidation, the Soccer Federation managed to pass on the majority of those costs to the NSL Clubs, showing a \$10,276 surplus from operating Hindmarsh Stadium for the year ended 31 October 1999.

Expenses for the three years ended 31 October 2000 remained relatively similar (\$458,000 - \$492,000) despite the significant variation in the number of NSL matches played at Hindmarsh Stadium. There has been a marginal decline in the last two financial years despite the significant decrease in NSL matches played at Hindmarsh Stadium.

<b>NSL MATCHES PLAYED AT HINDMARSH STADIUM</b>					
	<b>31 October 1996</b>	<b>31 October 1997</b>	<b>31 October 1998</b>	<b>31 October 1999</b>	<b>31 October 2000</b>
NSL matches	33	26	20 <sup>843</sup>	29	18

The significant trading loss reported by the Soccer Federation for the year ended 31 October 2000 (\$317,711) reflects the loss incurred from the operation and maintenance of the stadium (\$281,539), disregarding abnormal income.<sup>844</sup> The loss incurred from the operation and maintenance of the stadium principally reflects the loss of costs recovery income from West Adelaide (\$176,000) and reduced costs recovery from Adelaide City than previously agreed.

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<sup>841</sup> See Note 20 "Hindmarsh Stadium" showing operating expenses and Note 22 "Hindmarsh Stadium Marketing".

<sup>842</sup> Arthur Andersen state in their report that they were advised by the Soccer Federation that this was primarily due to the western grandstand not being open to the public until December 1997. Page 21 of their report.

<sup>843</sup> 7 matches were played at Thebarton and Norwood Ovals while Stage 1 was being completed.

<sup>844</sup> Abnormal income of \$109,355 was shown as Expense Recovery from the Olympics.

## FINANCIAL STATUS OF ADELAIDE CITY

The following Table summarises the operating performance of Adelaide City for the 5 years ended 30 June 2000 as shown in its audited financial statements.

<b>SUMMARY OF OPERATING RESULTS</b>					
<b>Year ended</b>	<b>30-Jun-96</b>	<b>30-Jun-97</b>	<b>30-Jun-98</b>	<b>30-Jun-99</b>	<b>30-Jun-00</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Income</b>					
Net Bar and Canteen	73,368	73,511	30,893	53,437	29,526
Fund Raising	42,196				
Net NSL Team	(126,493)	(131,082)	(545,840)	(315,817)	(426,160)
Net Juniors	18,559	36,286	28,872	24,763	31,831
Net Women			3,586		(3,653)
Membership Fees	142,334	122,934	168,128	181,907	118,927
Dividend Received	3,382	3,742	9,310		
Profit on sale of Shares			75,582		
Interest Received	115,890	98,857	61,773	37,161	8,676
Insurance Recoveries				4,933	10,348
Sundry				1,361	2,952
<b>Total Income/(Loss)</b>	<b>269,236</b>	<b>204,248</b>	<b>(167,696)</b>	<b>(12,255)</b>	<b>(227,553)</b>
<b>Expenses</b>					
Accounting Fees	1,045	1,045	6,120	4,820	5,400
Admin – Contract				55,664	16,536
Advertising				15,465	7,731
Bad Debts			5,400		10,000
Bank Fees	5,020	6,537	12,573	8,397	16,030
Bank Interest					13,352
CEO Costs Admin					12,369
Consulting Fees – Fit Out			5,200		
Clubroom Renovations			66,926		
Depreciation	18,998	21,666	37,914	66,478	
FBT	2,521	3,780	6,949	12,850	
General Expenses	1,883	1,935	8,966	6,612	26,926
Insurance	13,733	12,917	13,170	12,206	17,094
Legal Fees		1,167	15,986	70,132	18,528
Long Service Leave	455	585			
Marketing Commission				3,941	
Membership Expenses					5,848
Office Expenses	7,402	4,793	6,435	5,016	8,677
Payroll Tax			20,810	27,225	5,643
Printing and Stationery	14,914	9,306	12,319	18,576	21,649
Wages – Administration	57,212	93,181	87,636	81,696	197,222
Redundancy			25,329		
Registration and Licence					2,383
Sundry					1,432
Superannuation	18,847	20,147	37,496	47,761	13,736
Telephone and Postage	12,343	18,515	16,368	20,376	13,492
Wages Processing					1,355
Workcover Levy	969	2,667	2,564	3,438	5,860
<b>Total Expenditure</b>	<b>155,342</b>	<b>198,241</b>	<b>398,161</b>	<b>460,653</b>	<b>421,263</b>
<b>Net Profit/(Loss)</b>	<b>113,894</b>	<b>6,007</b>	<b>(565,857)</b>	<b>(472,908)</b>	<b>(648,816)</b>

Adelaide City traded at a profit for the two years ended 30 June 1996 and 1997. Since then, Adelaide City has traded at a significant loss. The increased net loss from the operation of its NSL Team and a substantial increase in expenses for all its operations have contributed to Adelaide City's trading loss. This trading loss have been exacerbated by a decline in other income (ie catering income and memberships). Other income was previously sufficient to fund the trading loss from its NSL team before completion of Stage 1.

As a result of the redevelopment of Hindmarsh Stadium, Adelaide City brought to account in the financial year ended 30 June 1998, \$72,126 of expenditure on its club rooms fit out.<sup>845</sup>

Adelaide City's financial statements show that the following operating results for its NSL team for the five years ended 30 June 2000.

<b>SUMMARY OF OPERATING RESULTS FOR ITS NSL TEAM</b>					
<b>Year ended</b>	<b>30-Jun-96</b>	<b>30-Jun-97</b>	<b>30-Jun-98</b>	<b>30-Jun-99</b>	<b>30-Jun-00</b>
	\$	\$	\$	\$	\$
<b>Income</b>					
Gate Takings	259,789	164,415	217,526	335,148	372,142
Sponsorship	244,305	275,228	405,910	501,124	649,041
Prize Money	10,924	19,596	1,698	18,000	1,557
Player Sales	273,800	234,211	97,806	248,701	298,258
Souvenirs				2,972	1,325
Game Night Income					17,479
Sundry	64			5,570	10,000
<b>Total Income</b>	<b>788,882</b>	<b>693,450</b>	<b>722,942</b>	<b>1,111,515</b>	<b>1,559,758</b>
<b>Expenses</b>					
Coaching Contract				68,750	10,000
Coaches Wages	53,352	71,528	115,815	59,784	61,829
FBT					17,545
Gate Levy			73,544	92,175	
Insurance				29,669	32,007
Match Programs		2,800	4,495	28,499	34,293
NSL	119,846	77,019	60,713	52,371	38,514
Payroll Tax					14,377
Player Wages	297,748	357,275	544,513	560,200	664,301
Player Purchases	60,500	23,000	40,000	10,850	58,689
Promotions and Advertising	79,937	70,454	157,729	247,020	155,084
Salary Sacrifice					30,000
Souvenirs and Posters	(1,373)	3,982	22,397	225	8,871
Soccer Federation	26,757	38,893	24,179	46,807	198,000
Sponsorship Expenses					99,666
Sundry	246,549	169,816	215,973	220,133	292,504
Superannuation					48,657
Upgrade Costs – Unley	32,059	9,675	9,424	10,849	8,030
Wages Preparation					3,595
<b>Total Expenditure</b>	<b>915,375</b>	<b>824,532</b>	<b>1,268,782</b>	<b>1,427,332</b>	<b>1,985,918</b>
<b>Net profit/(Loss)</b>	<b>(126,493)</b>	<b>(131,082)</b>	<b>(545,840)</b>	<b>(315,817)</b>	<b>(426,160)</b>

<sup>845</sup> \$66,926 was expensed for demolished leasehold improvements and \$5,200 incurred in consulting fees.

Income from all sources including gate takings has increased in the two years ended 30 June 2000 as compared with the previous three years.

Gate takings are received from Weslo Holdings for home NSL matches, net of levies and stadium operating expenses. Adelaide City's financial statements do not disclose the breakdown between gross ticket revenue, levies and stadium operating expenses. The only figures shown are for levies in the years ended 31 June 1998 and 1999. These figures do not reconcile with figures produced by the Soccer Federation and this Examination has not found any explanation for this difference.<sup>846</sup>

However, there has been a significant increase in expenditure since the year ended 30 June 1997 that has outweighed increased income. In particular, coaches' wages, players' wages, promotions and advertising have significantly increased. The net trading loss from Adelaide City's NSL Club operations largely corresponds with an increase in operating expenses.

Based on the figures produced by the Soccer Federation, Adelaide City's gross gate takings, levies paid and other expenses paid in the last three financial years was:

Year	Total Match Attendance	Gate Takings \$	Grandstand Levy \$	Fit Out Levy \$	Other Expenses \$	Net Match Takings \$
1997/98	52,819	287,723	(57,252)	(95,776)	(91,424)	43,271
1998/99	64,338	323,946		(75,000)	(120,000)	128,946
1999/00	90,340	366,383		(90,000)	(108,000)	214,447

As the Table below shows, Adelaide City's operating loss has significantly reduced its net asset position. As at 30 June 2000, Adelaide City did not have sufficient current assets to cover its current liabilities. It has been using its current assets (in particular cash at bank) to fund its trading loss.

BALANCE SHEET					
Year ended	30-Jun-96 \$	30-Jun-97 \$	30-Jun-98 \$	30-Jun-99 \$	30-Jun-00 \$
Current Assets	1,495,664	1,685,618	1,129,974	576,549	208,730
Non-Current Assets	331,699	131,699	6,903	6,363	6,363
Fixed Assets	298,166	324,400	1,398,216	1,334,271	535,603
Total Assets	2,125,529	2,141,717	2,535,093	1,917,183	750,696
Current Liabilities	6,725	16,321	77,375	28,083	323,810
Non-Current Liabilities	5460	6,045	904,224	801,182	-
Total Liabilities	12,185	22,366	981,599	829,265	323,810
Net Assets	2,113,344	2,119,351	1,553,494	1,087,918	426,886

The financial statements of Adelaide City do not reflect its financial obligations under the Licence Agreements to pay levies or share the operating costs for Hindmarsh Stadium with the Soccer

<sup>846</sup> For example, Adelaide City show a Gate Levy of \$73,544 for the year ended 30 June 1998. The Soccer Federation's match reconciliation reports show \$153,028.

Federation. If Adelaide City were required to meet those commitments, it would not be able to meet its other liabilities and ongoing expenses and would be insolvent.

The annual financial statements of Adelaide City are audited. Adelaide City's auditor expressed a qualified audit opinion for the year ended 30 June 1999 on the basis that internal controls were deficient in a number of areas and there were problems with the club as a going concern. The auditor expressed further qualifications in his audit opinion for the year ended 30 June 2000 on the basis of the club's problems as a going concern. The auditor's opinion stated in part:

*"In essence what the above is trying to convey to the board of directors is that if it were not for the sale of players receipts and interest earned on cash investments being brought to account as income, the club's financial operations would have been operating at a substantial loss for several years.*

*If the operating trend continues, the club's cash reserves will continue to be eroded. One would then have to ask, how long can one allow this trend to continue before all assets of the club are eroded and the club can no longer afford to exist."*

The auditor also stated that he had not seen any legal documents confirming the Board's opinion as to its 21 year sub-licence of Hindmarsh Stadium from the Soccer Federation or its commitment to repay the \$1.1 million fit out of the western grandstand.

## FINANCIAL STATUS OF WEST ADELAIDE

West Adelaide traded at a loss for the last two years of operations.<sup>847</sup>

<b>PROFIT AND LOSS FROM OPERATIONS</b>			
	<b>Year to 30 April 1996 \$</b>	<b>Year to 30 April 1997 \$</b>	<b>Year to 30 April 1998 \$</b>
Total Income	1,247,033	804,139	929,829
Total Expenses	1,108,819	937,850	1,101,512
Net Profit/(Loss)	138,215	(133,710)	(171,682)

During this period, West Adelaide further eroded its negative working capital to the extent that it did not have sufficient current assets to meet its current liabilities at 30 April 1998.

The financial statements for West Adelaide show a decline in its revenue base. Profit from the sale of players declined significantly as did canteen income and gate takings. Both canteen and gate takings continued to decline in line with the decline in spectator attendances at matches. By 30 April 1998, West Adelaide had eroded its net equity to a small negative balance.

West Adelaide was placed in liquidation on 22 September 1999. The liquidator is in the process of winding up its affairs. It is unlikely that there will be any distribution to creditors. In particular, there will be no payments to the Soccer Federation by the liquidator of West Adelaide for monies owing under the Licence Agreements.

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<sup>847</sup> Unaudited financial statements.

## **CREATION OF FINANCIAL DIFFICULTY BY LEGAL DOCUMENTS**

### **Soccer Federation**

For the reasons outlined above in this Chapter, the particular way in which the legal arrangements for the redevelopment of Hindmarsh Stadium have been set up has benefited the Soccer Federation, without exposing it to substantial financial risk. The Soccer Federation has the benefit of the lease of a stadium with substantially improved facilities. At the same time, it is only obliged to make contributions to the servicing of a debt for less than a fifth of the total cost of the redevelopment and only to the extent that it has collected levies on spectators using the stadium. Any shortfall between the levies collected and loan repayment is required to be met by the Minister for Recreation, Sport and Racing. The Soccer Federation's loan liabilities to the National Australia Bank Limited are guaranteed by the Treasurer.

Under the Licence Agreements, the Soccer Federation passed on to the NSL Clubs a significant share of the expenses for the operation and management of the stadium. The commitment to bear the cost of the fit out of Stage 1 was the only substantial financial obligation made by the Soccer Federation. It was also shared with the NSL Clubs until it was effectively assumed by the Government underwriting the Fit Out Levy provided for in the Fit Out Guarantee Deed.

This Report concludes that the Soccer Federation has suffered financial detriment as the result of increased operational and maintenance costs for a significantly larger stadium in circumstances of declining spectator attendances at matches, the placing of West Adelaide in liquidation and the refusal of Adelaide City to meet its obligation under the Licence Agreements.

Under the legal arrangements entered into between the Government and the Soccer Federation on 29 March 2001, the Soccer Federation has received a considerable financial payment in consideration for it transferring the management of the stadium to Government. This has resulted in the Soccer Federation no longer having responsibility for the considerable maintenance and operating expenses of Hindmarsh Stadium.

### **Adelaide City**

This Report concludes that the Levy System both as it was intended to operate under the Funding and Fit Out Deeds and as it was in fact implemented by the Soccer Federation and the NSL Clubs has not materially contributed to Adelaide City's deteriorating financial position.

This Examination has heard evidence that the NSL Clubs did not pass all of the burden of the \$5 Levy onto spectators. The Arthur Andersen report quantified the financial impact of Adelaide City failing to pass the \$5 Levy onto season passes for its members at approximately \$35,000 per season.<sup>848</sup>

This Examination has also heard evidence that the NSL Clubs gave away huge quantities of free tickets upon which they had to pay the \$5 Levies.

The financial statements for Adelaide City for the five years ended 30 June 2000 show that levies of \$73,544 and \$92,175 were paid by it for the years ended 30 June 1998 and 1999 respectively. Gross gate takings over this five year period increased because of the increase in ticket prices caused by

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<sup>848</sup> Page 45.

the introduction of the Levy System. In the first year of the Levy System, gate takings net of the \$5 Levies decreased by approximately \$20,000 from the previous year. By the following year end, 30 June 1999, gate takings net of the \$5 Levies had increased significantly to \$242,973.

<b>SUMMARY OF OPERATING RESULTS FOR ITS NSL TEAM</b>					
<b>Year ended</b>	<b>30-Jun-96</b>	<b>30-Jun-97</b>	<b>30-Jun-98</b>	<b>30-Jun-99</b>	<b>30-Jun-00</b>
	\$	\$	\$	\$	\$
<b>Income</b>					
Gate Takings	259,789	164,415	217,526	335,148	372,142
less Gate Levy	-	-	(73,544)	(92,175)	-
Net Gate Takings	259,789	164,415	143,982	242,973	372,142

Now that ticket prices have been increased by \$5 corresponding with the \$5 Levy, it is to Adelaide City's obvious financial advantage that it retains that increase in gate takings without paying it to the Soccer Federation to pay into the Levy Bank Accounts.

If Adelaide City had not paid the Levies it did in the two years to 30 June 1999 under the Licence Agreements or the \$5,000 lump sum per match agreed with the Soccer Federation in September 1998 for the 1998/99 NSL season, it would only be in a marginally better financial position that it is currently. These payments are not significant enough to offset the deterioration in Adelaide City's financial position that has resulted from a decline in income from its catering activities, membership fees and interest at the same time as an escalation in operating expenses for all its operations, not just its NSL team.

The decrease in net profit from Adelaide City's catering activities is a result of outsourcing catering to Spotless Services Australia Limited.<sup>849</sup> Prior to Spotless's appointment, catering for home matches was subsidised by volunteer labour and donations from sponsors and supporters of the club. Membership fees have declined with the club's on-field performance. Interest income has declined as Adelaide City has used its cash reserves to fund operating losses.

This Report finds that the major cause of Adelaide City's deteriorating financial position is the significant escalation in its operating costs, both for its NSL team to play at Hindmarsh Stadium and for its other operations.

### **West Adelaide**

West Adelaide had been in financial difficulty for several years: it had operated at a loss in every year since 1995 except the year ending 30 June 1996.<sup>850</sup> In his April 1999 Report to Creditors, the then Administrator, Mr Mulvaney, identified six reasons for the failure of West Adelaide:<sup>851</sup>

- Internal disputes;

<sup>849</sup> Adelaide City have informed this Examination that the appointment of Spotless was not their decision and was the result of an agreement between the Soccer Federation and West Adelaide when the stadium was left dirty by West Adelaide volunteers.

<sup>850</sup> Report to creditors of West Adelaide by Mr Bruce Mulvaney pursuant to Section 439A(4) of the *Corporations Law* dated 21 April 1999, page 10.

<sup>851</sup> Page 10.



- Poor management and control of financial affairs;
- Restriction on the ability of the fund raising committee to raise funds;
- Excessive expenditure on unnecessary items;
- High rental charges for the hire of playing fields;
- Low attendances at matches.

The financial statements for West Adelaide do not dissect gate takings into gross gate takings less levies but records them on a net basis. It is difficult to discern from the financial statements the impact of levies paid. However, the records of the Soccer Federation show that from the introduction of the Levy System in December 1997 to April 1998, West Adelaide paid \$73,590 in levies. For the year ended 30 April 1998, net gate takings decreased by about a quarter. This decline in ticket revenue was the direct result of a decline in spectator attendances at West Adelaide home matches.

In my opinion, the way in which West Adelaide implemented its levy ticket pricing arrangements had minimal impact on its deteriorating financial position. In the years ended 30 April 1997 and 1998, West Adelaide traded at a significant deficit despite the Levy System. The financial difficulties faced by West Adelaide were caused by declining gate takings due to declining spectator attendances, a decline in profit from the sale of players and a decline in canteen income. The decline in West Adelaide's financial position was in line with its deteriorating on-field performance.

The Soccer Federation's agreement in September 1998 to charge a fixed match fee of \$13,000 (\$8,000 for expenses and \$5,000 for the levies), allowed West Adelaide to retain a higher proportion of the ticket revenue than it was entitled to under the Licence Agreements. Obviously, West Adelaide's financial position would have been improved to the extent it was able to keep the additional revenue earned by increasing the ticket prices to include the \$5 Levies. However, retention of the \$5 Levies would not have been sufficient to arrest West Adelaide's financial collapse.

In my opinion, the insolvency and liquidation of West Adelaide was not the direct result of the financial arrangements surrounding the redevelopment of Hindmarsh Stadium. The increased costs of West Adelaide's NSL Club playing at the redeveloped Hindmarsh Stadium was only one of a number of contributing causes of West Adelaide's financial collapse.

## CHAPTER 37 – DETAILED FINDINGS ON TERM OF REFERENCE IV

"Whether there were any conflicts of interests or other imprudent or improper behaviour by any person or persons, Government or non-Government, involved with the project, and whether the appropriate processes were followed in relation to –

- (a) the planning stages of the project;
- (b) the awarding and monitoring of consultancies;
- (c) the tendering process;
- (d) the letting of contracts;
- (e) the construction of the stadium; and
- (f) the ongoing management of the stadium."

### INTRODUCTION

This Term of Reference concerns the matter of the integrity of the processes adopted by the Government with respect to the Hindmarsh Soccer Stadium Redevelopment Project. This project involved the use of public resources and the expenditure of a significant amount of public funds – the capital cost was \$22.17 million to 30 June 2001.<sup>852</sup> A high degree of trust and confidence was reposed in those public officers of Government who were charged with responsibility for decisions about the redevelopment.

#### **Conflicts of Interest**

To ensure the integrity of Government processes involved, it is essential to identify and manage conflicts of interest actual or potential, including any perception of a conflict of interest. The perception of a conflict of interest erodes public confidence in the integrity and fairness of Government processes, giving rise to the inefficient use, or even a misuse, of public resources. An actual conflict of interest directly impairs the capacity of public officers of Government to make decisions about the efficient and cost-effective use of public resources.

In Chapter 38, I address the conflicts of interest of government representatives that I have found during this Examination.

In Chapter 39, I address the conflicts of interest of non-government persons.

#### **Imprudent or Improper Behaviour**

In my Examination, I have not found any improper or imprudent behaviour relating to the Hindmarsh Soccer Stadium Redevelopment Project (conflicts of interest apart) that was not also a failure of due

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<sup>852</sup> The Government's total exposure as at 30 June 2001 is \$34.94 million. See Appendix 1.

diligence. As I have addressed failures of due diligence separately in Chapters 21 to 26, I have not dealt with them again in addressing Term of Reference IV.

### **Appropriate Processes**

I have addressed the failure to adopt appropriate processes during the various phases of the Hindmarsh Soccer Stadium Redevelopment Project as a failure of due diligence in Chapters 18 to 26. Chapter 40 contains my detailed findings on two matters:

- irregularities in the appointment of consultants; and
- the sponsorship issue that arose as the Public Works Committee process for Stage 1.

Except for these two matters, putting failures of due diligence and conflicts of interests aside, this Examination has found that the processes adopted for the various phases of Hindmarsh Stadium were appropriate.

# CHAPTER 38 - CONFLICTS OF INTEREST OF GOVERNMENT REPRESENTATIVES

## OVERVIEW

For the reasons set out in this Chapter, I have found that Mrs Hall had a conflict of interest and duty by reason of her position as Ambassador for Soccer in two cases. First, Mrs Hall had a conflict of interest and duty while both Ambassador for Soccer and Chair of the Stage 1 Redevelopment Committee in her capacity as Minister Ingerson's Parliamentary Secretary. Secondly, Mrs Hall had a conflict of interest and duty while both Ambassador for Soccer and a Minister of the Crown. In the latter case, Mrs Hall's failure to resign as Ambassador for Soccer immediately upon her appointment as a Minister of the Crown on 17 December 1997 was, in my opinion, inappropriate and a departure from proper standards of ministerial conduct.<sup>853</sup>

Mrs Hall denied that she had a conflict of interest, actual or perceived, by reason of her position as Ambassador for Soccer. I disagree for the reasons that are discussed in detail below. Mrs Hall has also submitted that she acted in good faith. I accept Mrs Hall's submission and accept that she did not appreciate the potential for conflict arising from her position as Ambassador until September 1999 when she became the Minister responsible for staging the Olympic Soccer Tournament at Hindmarsh Stadium.

However, Mrs Hall's integrity is not the issue. Proper public administration requires that there be confidence in Government and its processes. That confidence is undermined, in my opinion, when there is a real likelihood of bias in the discharge of public duties, even if a public officer was as impartial as he or she could be. A public officer should not act in purported discharge of his or her office, no matter how principled that a person may be, when there is a reasonable public perception of bias or partiality.

## RELEVANT PRINCIPLES

For the purpose of this Report an analysis of conflicts of interest includes a consideration of the obligations and responsibilities of "public officers". The common law definition of a public officer "*is an officer who discharges any duty in the discharge of which the public is interested, more clearly so if he is paid out of a fund provided by the public.*"<sup>854</sup> Members of Parliament,<sup>855</sup> Ministers of the Crown,<sup>856</sup> public servants,<sup>857</sup> members of Government boards and committees are public officers.

Public officers are subject to special duties and responsibilities. Some of these duties and responsibilities give rise to fiduciary obligations.

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<sup>853</sup> Mrs Hall formally resigned as Ambassador for Soccer on 1 October 1999.

<sup>854</sup> *R v Whitaker* [1914] 3 KB 1283 at 1296. A person need not be formally appointed, or have his or her duties formally prescribed to be a public officer. A person can be a public officer even though one can only determine what his or her duties are "...from what he has always done and been considered as entitled to do..." Finn, "Public Officers: Some Personal Liabilities" (1977) 51 ALJ 313 at 314.

<sup>855</sup> *R v Boston* (1923) 33 CLR 386.

<sup>856</sup> *Roche v South Australia* (1983) 105 LSJS 140.

<sup>857</sup> *R v Clarke* [1954] ALR 312.

Public officers are obliged to serve the public interest in good faith, with honesty and integrity. In discharging their duties, public officers are required to exercise the degree of care and diligence appropriate in the circumstances. This includes having a clear understanding of the functions of their office and taking reasonable steps to be informed about the business of their office. They must make conscientious and informed decisions and exercise an active discretion in making decisions in the discharge of their office. They must act independently of any influences that may impair their capacity to make objective and disinterested judgments. Public officers must discharge their duties impartially.

A public officer is obliged to avoid conflicts of interests and duties.

*"In discharging his duties an officer is expected to demonstrate an unselfish and undivided loyalty to the public he serves. The law will not countenance his acquiring interests, or his entering into engagements, which conflict with his official duties."* <sup>858</sup>

In considering this obligation public officers are not entitled to wear "two hats" or artificially segregate their interests or duties. The nature of the obligation is ongoing and all-embracing. No distinction can be made between the different capacities of the public officer, whether public or private. <sup>859</sup>

An "interest", in rudimentary terms, connotes the existence of a private concern that may influence or may be perceived to influence the decision or conduct of the public officer in acting in the discharge of his or her public office. Consequently, in this Report, the expression "private interest of a public officer" denotes any interest, whatever its nature, that is not attendant upon the responsibilities and obligations of the specific public office in question and consistent with principles of good and proper public administration.

In my opinion a public officer breaches his or her obligation if that officer has a conflict of public duty and private interest and/or the nature of the relationship between the private interest and the public duty/office is such as to give rise to a tendency whereby the public officer could be impaired or fettered in the discharge of his or her public duty or office.

A public officer should not place himself or herself in a position in which he or she must perform inconsistent duties. For example, inconsistent duties arise where the public officer is obliged to make full and frank disclosure to more than one office, including disclosure of the confidential business and information of the other.

Where a conflict of interest or duty arises, the public officer must act to resolve the conflict. That action may involve either:

- resigning from the public office;
- resigning from the private position or giving up the private interest in conflict with the public office; or
- after making full and frank disclosure, seeking approval of the relevant public authority and desisting in participation in any decision-making process concerning that private interest.

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<sup>858</sup> Finn, "Public Officers: Some Personal Liabilities" (1977) 51 ALJ 313 at 316.

<sup>859</sup> Selway, "The Constitution of South Australia" at 154.

The appropriate action will depend upon the actual circumstances of each case.

It is equally important that there can be no perception and/or apprehension of bias on the part of a public officer in performing his or her responsibilities. Bias or a perception of bias can arise from a perceived or actual conflict of interest. The judicial test for bias is whether right-minded persons would think there was a real likelihood of bias, even if the public officer was as impartial as he or she could be, in the discharge of his/her responsibilities.<sup>860</sup> No matter how principled a person may be, in circumstances of a reasonable public perception of bias, he or she should not act in purported discharge of his or her office.

The enforcement of these obligations of public officers is *"essential to the soundness and efficiency of our government, which exists for the benefit of the people who are its sovereign."*<sup>861</sup>

## **MRS HALL – OVERVIEW OF HER VARIOUS ROLES**

Mrs Hall had a number of influential roles in the Hindmarsh Soccer Stadium Redevelopment Project.

Mrs Hall was the Chair of the Hindmarsh Stadium Redevelopment Committee and its executive sub-committee. The sub-committee was the project steering committee for Stage 1. Mrs Hall was also a member of the Soccer 2000 Bid Committee chaired by Mr Bill Spurr, then General Manager of Australian Major Events. Between December 1995 and December 1996, Mrs Hall was also Parliamentary Secretary to Mr Ingerson as the Minister for Tourism and the Minister for Recreation, Sport and Racing. Mr Ingerson was the proponent Minister for Stage 1.

Mrs Hall continued to work closely with Mr Ingerson when Minister Ashenden replaced him as Minister for Tourism and Minister for Recreation, Sport and Racing in December 1996. Mrs Hall then became Mr Ingerson's Parliamentary Secretary when he became the Deputy Premier and Minister for Infrastructure. Although ministerial responsibility resided with Mr Ashenden as Minister for Recreation, Sport and Racing, Mr Ingerson maintained a keen interest in the project through his role as Deputy Premier and as a senior member of Cabinet. By July 1997, Mr Ingerson was again lead Minister for the project, assisted by Mrs Hall as his Parliamentary Secretary.

Mrs Hall was a member of the SA Olympic 2000 Taskforce set up by Mr Ashenden as Minister for Recreation, Sport and Racing in March 1997.

Mrs Hall attended the Workshop held on 6 August 1997 to review the scope of works and budget for Stage 2. Mrs Hall was a member of the Stage 2 Reference Group.

During 1996 and 1997, while a Parliamentary Secretary and Chair of the Stage 1 project steering committees, Mrs Hall was involved in facilitating agreement between the Soccer Federation and the NSL Clubs over the allocation and cost of space and facilities in the redeveloped western grandstand. In early 1997 (while Mrs Hall was Mr Ingerson's Parliamentary Secretary and Chair of the Stage 1 Redevelopment Committee) and again in late 1998 (while Mrs Hall was a Minister of the Crown), Mrs Hall was directly apprised of the complaints made by the NSL Clubs about the burden imposed upon them by the financial arrangements for Stage 1 of the redevelopment. In late 1998 while Mrs Hall was a Minister of the Crown, Mrs Hall was sent a draft submission from the Soccer

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<sup>860</sup> *Metropolitan Properties Co (FCG) Ltd v Lannon* (1969) 1 QB 577.

<sup>861</sup> *Driscoll v Burlington-Bristol Bridge Co* 86 A2d 201 at 222 (1952) (US).

Federation on behalf of the NSL Clubs to Mr Evans, then Minister for Recreation, Sport and Racing. This draft submission sought relief from payment of the levies.

From 17 December 1997 to 8 October 1998, Mrs Hall was Minister for Youth and Minister for Employment.

On 8 October 1998, Mrs Hall became Minister for Tourism and a member of Cabinet. The hosting of the Olympic Soccer Tournament at Hindmarsh Stadium was one of Mrs Hall's responsibilities as Minister for Tourism.

From December 1995 until 1 October 1999, Mrs Hall was Ambassador for Soccer in South Australia.

### **Mrs Hall – Ambassador for Soccer in South Australia**

Mrs Hall was, and is, an active supporter of soccer in South Australia. Mrs Hall was Patron of the Campbelltown City Soccer Club and a member of Adelaide City. Mrs Hall had been instrumental in the staging of the 1995 NSL Grand Final held at Hindmarsh Stadium and was publicly thanked by the Soccer Federation for her support:

*"We must make particular tribute to the Member for Coles, Mrs. Joan Hall for efforts in bringing the whole affair together. I can assure all Members that in Mrs. Hall, Soccer has a true supporter – at all levels." <sup>862</sup> [original emphasis]<sup>863</sup>*

In late 1995 Mrs Hall was invited by the then Deputy Chair of Soccer Australia and defacto Treasurer of the Soccer Federation, Mr Basil Scarsella to take up the position of President of the Soccer Federation. The President was the second most senior position in the Soccer Federation after the Patron. The position of Patron was held for many years by the Premier of the day and still is today.

Mrs Hall has informed this Examination that she declined the offer for the position of President because it was a position defined by the Constitution of the Soccer Federation and she considered any official position potentially inconsistent with her position as a Member of Parliament. Instead, in November 1995 Mrs Hall was offered and in December 1995 accepted the newly created position of Ambassador for Soccer<sup>864</sup> on the basis that it was not defined by the Constitution, it was ceremonial and not unlike the position of Patron. Mrs Hall regarded her position as Ambassador as having no official or constitutional status and involving "no authority whatsoever". Mrs Hall did not regard herself as having any day to day role in the activities of the Soccer Federation.

Mrs Hall's position as Ambassador for Soccer was an honorary position in the sense of being unpaid. While the position was without status under the Constitution of the Soccer Federation, it was publicly recognised as a highly important position within the Soccer Federation. Mrs Hall was publicly held out as the pre-eminent representative of the Soccer Federation in the same way as the position of

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<sup>862</sup> Page 10 of the 34<sup>th</sup> Annual Report of the Soccer Federation.

<sup>863</sup> Mrs Hall has submitted that the writer intended "at all levels" to mean "at all levels of soccer" and not at "all levels of Government". While I am prepared to accept Mrs Hall's submission that the writer may have intended this construction in this case, I do not accept that Mrs Hall was not a supporter of soccer (at all levels within soccer) at all levels of the community including Government. As is discussed below in this section, I consider Mrs Hall keenly promoted the sport of soccer whenever and to whomever she could.

<sup>864</sup> The position of Ambassador for Soccer had not existed previously or subsequent to Mrs Hall's resignation as Ambassador for Soccer on 1 October 1999.

President had been previously held out. As Ambassador for Soccer, Mrs Hall assumed responsibilities within the Soccer Federation by chairing meetings and officiating at special functions. For example, Mrs Hall chaired the Council of Clubs meeting held on 25 November 1996. The minutes of that meeting record that:

*"The Commission invited Mrs. Joan Hall to take the position of Ambassador for Soccer SA discharging all duties which would normally be assumed by the President including the Chair of meetings of the Council."*

Her ceremonial role<sup>865</sup> and involvement in the chairing of meetings in an unofficial capacity was capable of reinforcing a public perception of her as an advocate for the interests of soccer in South Australia. She was, in the ordinary sense of the word "ambassador", an authorised messenger or representative of soccer.<sup>866</sup>

During Mrs Hall's four years as Ambassador for Soccer, no one held the position of President and no steps were taken by the Soccer Federation to fill this vacancy.<sup>867</sup> The Soccer Federation's annual reports during this period listed Mrs Hall's position prominently and second only to the Patron. This listing was an honour previously reserved for the position of President. While Mrs Hall was Ambassador for Soccer, the Soccer Federation included in three successive annual reports, as the leading report for the Soccer Federation, a "message" from Mrs Hall as Ambassador for Soccer.<sup>868</sup>

In the Soccer Federation's 1996 Annual Report, Mrs Hall made the following statement as Ambassador:

*"Ambassador's Message*

*By Joan Hall, MP*

*Persistence, it is said, is the main ingredient in the recipe for success.*

*That is certainly true for South Australia's soccer community. It has taken years of persistence and dedication from professional and volunteers alike [sic], but the dream is about to materialise.*

*Adelaide is finally getting an international standard soccer stadium, designed and built for soccer. It is the culmination of decades of hoping and planning, of seeing soccer grow in stature and popularity to a position where it is played by 30,000 men and women, boys and girls in this state.*

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<sup>865</sup> For example, Mrs Hall as Ambassador for Soccer hosted special functions at Hindmarsh Stadium together with the Commissioners of the Soccer Federation, such as the 13 October 1996 launch of the Stage 1 Redevelopment Project.

<sup>866</sup> The Macquarie Dictionary, 1981, page 95.

<sup>867</sup> Under the Soccer Federation's Constitution, the principal function of the President was to chair meetings of the Council of Clubs and to be an ex officio member of all committees but without any entitlement to vote. In the absence of a President, the Chair of the Board of Commissioners of the Soccer Federation could fulfil the function of Chair of the Council of Clubs and did so while Mrs Hall was Ambassador for Soccer. Thus there was no practical need for a President while Mrs Hall was Ambassador for Soccer as she otherwise fulfilled the usual ceremonial functions of the President.

<sup>868</sup> The 35<sup>th</sup>, 36<sup>th</sup> and 37<sup>th</sup> Annual Reports of the Soccer Federation for the years ended 31 October 1996, 1997 and 1998, respectively.



*As the Soccer Ambassador for South Australia, it is both a joy and privilege to promote our game. Certainly, a stadium of undoubted class will further cement our reputation as the Soccer State and should weigh heavily with the Sydney Olympic Games Organising Committee as they choose venues for the preliminary rounds of soccer in the year 2000.*

*It often seems there aren't enough hours in a day to do all that we must. But it is then we realise that we are not alone, but part of a great team: SA Soccer Federation board members and staff; club administrators and supporters; players and referees; and our generous sponsors, all working together to drive the world game to greater heights here at home.*

*The rejuvenated and renewed Hindmarsh Stadium is proof positive that persistence has paid off: it is also an inspiration and incentive to work even harder. 1996 has been a landmark year for the Federation and soccer itself, but there is still much to be done.*

*I wish you and your families a very happy Christmas and look forward to a New Year that will represent fresh challenges and fresh inspiration, to take soccer to even greater heights.*

*Joan Hall, MP*

*Ambassador, Soccer SA" <sup>869</sup>*

In the Soccer Federation's 1997 Annual Report, the Ambassador's Message was:

*"As Ambassador for Soccer SA, it is again my privilege to record a most successful year for the South Australian Soccer Federation.*

*At the time of writing, we are only days away from realising a dream with the opening of the new Western Grandstand facility at the Hindmarsh Soccer Stadium. Work will commence early next year on the second Stage of the redevelopment of our Stadium, which will give us the capacity to permanently seat up to 15,000 spectators at any event.*

*We are proud that Hindmarsh is the only purpose built soccer facility in Australia and therefore we can, and should, expect to play host to many more national and international soccer events in the future.*

*In July this year the Premier, John Olsen, officially signed the Memorandum of Understanding with SOCOG (Sydney Organising Committee of the Olympic Games) which guarantees that Adelaide will host six qualifying matches and one quarter final in September of 2000 Olympic soccer tournament. It is soccer that has given Adelaide the opportunity to directly participate in the Olympic Games, to be an Olympic City, and the upgraded Hindmarsh Stadium is the legacy left behind for the sport.*

*Across the State, I appreciate the number of invitations I have received throughout the year to attend Club functions and matches, and I know you will understand that it is not always possible for me to attend them all. However, I can assure you that I passionately enjoy my role as Ambassador and am honoured to be part of South Australia's soccer community.*

*1998 promises to be yet another exciting and significant year for soccer. Like you, I am proud of our South Australians in the Socceroos squad, particularly our Captain, Alex Tobin. We look forward to victory at the MCG on Saturday, November 29th, and to the Socceroos qualifying for France '98 World Cup.*

*I thank all members of my 'extended soccer family' at the South Australian Soccer Federation, Soccer Australia, club members of the National, Premier, State and Women's Leagues, the juniors and amateurs, along with our many and valued sponsors, for their ongoing support of Soccer.*

*To everyone involved in the sport, I extend my best wishes for the festive season and a happy, safe and prosperous New Year."* <sup>870</sup>

In this way, Mrs Hall as Ambassador for Soccer publicly aligned herself with the Soccer Federation in promoting soccer, and particularly in pursuing the redevelopment of Hindmarsh Stadium.

Mrs Hall was passionate in her support for the project.<sup>871</sup> The Soccer Federation publicly expressed its gratitude to Mrs Hall for the completion of Stage 1 in its 1997 Annual Report as follows:

*"We must never forget the efforts of our Ambassador, Joan Hall who without her tireless commitment to the project and our sport we could very well be still waiting for the plans to come off the drawing board.*

*Joan's dedication and devotion to our sport is an example to us all as to what can be achieved if one has a dream and sets their goals to ensure that dream comes true."* <sup>872</sup>

In evidence to this Examination, Mrs Hall explained her support for the redevelopment of Hindmarsh Stadium as follows:

*"... I happen to have a personal belief that good sporting facilities for all sports are a right across the community and ... that soccer has just as much right to have good international standard sporting facilities as cycling, basketball, cricket or netball and athletics."*

In my opinion, for the reasons discussed above, Mrs Hall had, and was publicly perceived to have, a significant private interest in the redevelopment of the Hindmarsh Soccer Stadium by reason of her position as Ambassador for Soccer in South Australia.

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<sup>870</sup> Page 5.

<sup>871</sup> Mrs Hall described her support for the project as such in the speech she gave at the 1997 Soccer Federation Presentation dinner.

<sup>872</sup> Page 8.

Mrs Hall has submitted to this Examination that this finding is wrong or should be withdrawn or heavily qualified. I disagree. Mrs Hall submits that her interest was not personal, was shared by thousands of other soccer supporters and her appointment as Ambassador did not change her interest as such. In my opinion, given what was involved in that position, as discussed above, Mrs Hall's position as Ambassador for Soccer distinguished her from other soccer supporters. The fact that her interest in the redevelopment of Hindmarsh Stadium was shared by thousands of others is not germane.

Mrs Hall has also submitted that because her interest was not pecuniary, it was not sufficient to give rise to a conflict of interest. I disagree. In my opinion, Mrs Hall's interest as Ambassador for Soccer given the nature of her position was at least sufficient to give rise to a right-minded person thinking that there was a real likelihood of bias if Mrs Hall participated in any decisions over the redevelopment of Hindmarsh Stadium as a representative of Executive Government, even if Mrs Hall was as impartial as she could be.

### **Mrs Hall – Parliamentary Secretary**

#### **Terms of appointments**

Between 21 March 1996 and 29 January 1997, Mrs Hall was Parliamentary Secretary to:

- the Minister for Tourism; and
- the Minister for Recreation, Sport and Racing in respect of Recreation and Sport.<sup>873</sup>

During that period, Mr Ingerson was the appointed Minister for Tourism and Minister for Recreation, Sport and Racing.

From 29 January until 17 December 1997, Mrs Hall was Parliamentary Secretary to the Minister for Infrastructure. Mr Ingerson was Minister for Infrastructure until he resigned on 20 October 1997. On 20 October 1997, the Minister for Infrastructure as a body corporate was dissolved. No further Minister was appointed to that Ministry.<sup>874</sup>

#### **Duties as a Parliamentary Secretary**

The duties of a Parliamentary Secretary were set out in Government guidelines:

##### ***"Guidelines for the Office of Parliamentary Secretary***

1. *The Office will not be an office of profit for the purposes of Section 45 of the Constitution Act 1934 and no emoluments, remuneration, allowances or perquisites will attach to the Office.*
2. *The appointment will be at the Governor's pleasure only.*
3. *The Parliamentary Secretary will perform such duties as the Minister directs.*

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<sup>873</sup> The Hon. Rodney Piers Bass MP was Parliamentary Secretary to the Minister for Recreation, Sport and Racing in respect of Racing.

<sup>874</sup> Extraordinary Gazette of the South Australian Government Gazette published on 20 October 1997, pp 1055, 1058-1059.

4. *The Parliamentary Secretary will not have any authority to bind the Crown in right of the State of South Australia.*
5. *Ministers will be responsible for the provision of basic facilities to enable the performance of the duties of the office. This will include the provision of a desk and other materials solely for official purposes.*
6. *The Parliamentary Secretary will be permitted the occasional use of a Government motor vehicle to represent the Minister at public functions.*
7. *The Parliamentary Secretary should use the Parliamentary Travel Allowance to undertake any travel associated with the duties of the Office.*
8. *The Parliamentary Secretary will not have any power to authorise the expenditure of public funds.*
9. *The Parliamentary Secretary will not have any authority to direct public servants or other Government employees.*
10. *The usual fiduciary duties of a Public Office, such as duties of confidentiality and disclosure and avoidance of conflicts of interest apply to the Parliamentary Secretary.*
11. *No public statement on the relevant portfolio will be made by the Parliamentary Secretary without the approval of the relevant Minister."* <sup>875</sup> [emphasis supplied]

### **Mrs Hall – Chair of the Stage 1 Redevelopment Committee**

#### **Formal Definition of Mrs Hall's Role**

From February 1996 until December 1997, Mrs Hall served as Chair of the Hindmarsh Stadium Redevelopment Committee. Mrs Hall's role as Chair was partially defined by a letter that was sent by Minister Ingerson to each committee member in February 1996. That letter:

- set out as the objective of the new Ministerial Advisory Committee: ie the completion of Stage 1 within the agreed budget for \$6.5 million by August/September 1997 with minimum disruption to the soccer community and the NSL competition;
- denoted Mrs Hall as Chairperson: "*Joan Hall MP, Ambassador for Soccer South Australia*";
- required the Finance sub-committee to report to Mrs Hall; and
- stated that Mrs Hall was to ensure consultation between the committee and the media, participants in soccer, major sponsors, other facility managers and sporting codes possibly interested in using the redeveloped stadium.

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<sup>875</sup> These guidelines were set out in the Cabinet Submissions for appointments made on 21 March 1996 and 29 January 1997. [Emphasis supplied].

This letter was the only specific definition of Mrs Hall's role and the Minister's expectations of her responsibilities and functions as Chair.

With hindsight, Services SA described the Stage 1 Redevelopment Committee as a "project steering committee".<sup>876</sup> This committee met infrequently and the bulk of the work and day to day direction for Stage 1 was carried out by a sub-committee, the Executive Group. Mrs Hall was also the Chair of this sub-committee. The Executive comprised the same people as the Redevelopment Committee except for representatives of the NSL Clubs and the Council.

At the Executive Group's first meeting on 23 May 1996, Mrs Hall described the role of the Executive Group as:

*"...a Working Executive that will deal with day to day issues to ensure efficiency associated with the project development."*<sup>877</sup>

The Executive Group affirmed this view of its role during a discussion about its role in regard to project expenditure variances:

*"The Executive Group's role is to manage the scope at [sic] the project within the budget parameters."*<sup>878</sup>

### **The Minister's View of Mrs Hall's Role**

Minister Ingerson appointed Mrs Hall as Chair of what he described as a "Ministerial Advisory Committee" so as to maintain ministerial control of the project. He said in his evidence to this Examination:

*"... around about that time we were formally given Parliamentary Secretaries by the then Premier and my way of being kept personally informed was to involve the Parliamentary Secretary in any committees we had so that I had direct input as to what went on versus what might have been reported to me by either the Department and/or the Soccer Federation..."*

Minister Ingerson also said that the establishment of a Ministerial Advisory Committee chaired by Mrs Hall as his Parliamentary Secretary:

*"... actually placed much more Ministerial control over it than the other process. In other words, by appointing my Parliamentary Secretary...the Government made it very, very clear that it wanted to have a direct role and responsibility in the way the committee worked and it was a direct relationship with me as Minister. There was no passing of the buck to a chief executive. It was straight to my Parliamentary Secretary..."*

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<sup>876</sup> Services SA "Report on Risk Management Issues Arising Out of the Funding Need of the Hindmarsh Soccer Stadium Redevelopment" prepared in June 1997 page 4.

<sup>877</sup> Minutes, 23 May 1996.

<sup>878</sup> Minutes, 19 September 1996.

It generally was well known that Mrs Hall was Ambassador for Soccer. Minister Ingerson knew at the time of his appointment of Mrs Hall to her various positions that she was Ambassador for Soccer. Indeed, his letter of appointment named her in that capacity. He did not perceive any difficulty with her participating in the Stage 1 Redevelopment Project in both her capacity as Ambassador and as his Parliamentary Secretary because he considered her position as his Parliamentary Secretary prevailed:

"A: *She was my Parliamentary Secretary first...She was Chairman of the committee second...*

Q: *And a member of the Soccer 2000 Bid Committee as well.*

A: *And – yes, but that was all secondary. She was my Parliamentary Secretary first and – and surely – surely, you can clearly understand that there would be some issues that were discussed between me and her as Parliamentary Secretary that were never ever discussed or expected to be discussed at any other level."*

### **Mrs Hall's View of Her Role**

Mrs Hall said she was asked to get involved to get the project moving. She saw her role as one of chair, facilitator and communicator.

*"If you wanted a description about what I use to consider my role, and that was to be a coordinator of a very disparate group of people."*

Mrs Hall appreciated that she had a mix of interests but did not see that she had placed herself in a position of potential conflict by accepting the position of Chair of the Stage 1 Redevelopment Committee as Minister Ingerson's Parliamentary Secretary while remaining the South Australian Ambassador for Soccer.

In her evidence to this Examination, Mrs Hall said:

"Q: *You were there as the nominee of the Minister.*

A: *Yes.*

Q: *You were also there as the Ambassador for sport?*

A: *For soccer ... That is a moot point, I guess. I suspect if I had no interest in soccer I wouldn't have been invited to chair the meetings. I certainly wouldn't have – if I hadn't been the Minister's nominee, I wouldn't have been invited to chair the meetings either and it just happened to be a, I suppose, mix of interest and position at the time."*

Later in her evidence Mrs Hall said:

"Q: *... In what capacity were you participating as Chair of that committee, as the Ambassador for Soccer, or was your role as Parliamentary Secretary to the Minister, therefore, Ministerial Adviser, Member for Coles, or all three.*

*What number of the above?*

A: *I think "insanity" might be one of the better descriptions at the moment. I can't recall. I think I was Parliamentary Secretary when I was first appointed to do it...*

Q: *Yes, yes, according to this you were, yes.*

A: *My instinct because I don't know that it was ever actually defined. I think I would have been there as Parliamentary Secretary who actually had an interest in sport and soccer. I suspect if I didn't have an interest in any sport, or an involvement in any sport, I probably wouldn't have been asked to do it, but I think the main reason I was asked to do it is that I worked closely with the Minister who had carriage of a project that didn't appear to be moving."*

### **Mrs Hall's Conflict of Interest and Duty as Chair of the Stage 1 Redevelopment Committee**

Mrs Hall was appointed Chair of the Stage 1 Redevelopment Committee in her capacity as Minister Ingerson's Parliamentary Secretary. The position of Chair was a public office. As such, in discharging her duties as Chair, Mrs Hall must be expected to have demonstrated an undivided loyalty to the public interest she served.

As Chair of the Stage 1 Redevelopment Committee, Mrs Hall was obliged to exercise her skill and knowledge for the sole benefit of the Government and ultimately for the public interest. Mrs Hall was not entitled to represent the views of the Soccer Federation or the wider soccer community in preference to the Government's interests.<sup>879</sup> Mrs Hall was obliged to put her knowledge of soccer and her contacts within the soccer community at the Government's disposal for the pursuit of the Government's objectives.

As a matter of proper public administration, Mrs Hall was obliged to avoid any potential or actual conflict between her public duty and any private interest. In the event of conflict, Mrs Hall was obliged to take action to resolve the conflict.

Mrs Hall has submitted to this Examination that she understood she was required to serve the public interest on the committee which was established for the purpose of seeing Stage 1 through to completion within a set budget and on time.<sup>880</sup> I accept Mrs Hall's evidence and submissions made to this Examination on her behalf that she saw her primary responsibility as delivering the project on time and on budget. In terms of the objectives set by Minister Ingerson, that was to manage the scope of the Stage 1 project within the set budget of \$6.5 million and complete the project by August/September 1997 with minimum disruption to the soccer community.

It was also Mrs Hall's responsibility as Chair to provide the right environment for consideration of those issues relevant to the committee achieving the objectives set for it by Minister Ingerson. For the committee to achieve those objectives, it was incumbent upon Mrs Hall in discharging her duties as Chair to identify and manage any interests that had the potential to subvert the public interest in undertaking the project within the set budget and manage the scope of works accordingly.

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<sup>879</sup> Department of the Premier and Cabinet, "Government Boards and Committees: Guidelines for Agencies and Board Directors", 1995, pp 1.2 and 4 respectively.

<sup>880</sup> Mrs Hall also submitted that she did serve these interests. For the reasons discussed in this Chapter I do not agree with her submission to the extent that her ability to serve the public interest was impaired by her continuing role as Ambassador for Soccer.

I consider that the Stage 1 Redevelopment was potentially dominated by soccer's interests.<sup>881</sup> The Soccer Federation had a long term goal of building an international standard stadium with permanent grandstands on all four sides of the pitch with a total seating capacity of at least 20,000. That was not the goal of the Government at the time of the establishment of the Stage 1 Redevelopment Committee. The Government's goal was to build a new grandstand comprising 5,000 seats at a cost of \$6.2 million.<sup>882</sup>

Mrs Hall has submitted to this Examination that the role of the Stage 1 Redevelopment Committee and its Executive Group were specific, with limited powers and functions and that neither were final decision makers or were to replace the normal processes of Government. While I accept the accuracy of each of these submissions, these matters do not remove the potential for the conflict I have identified above.

In my opinion, Mrs Hall's position as Ambassador for Soccer potentially impaired her capacity to identify and manage the Soccer Federation's interest in achieving its long term goal, which involved a greater expenditure of public funds. Her position potentially affected her conduct, in two specific instances. Indeed, despite the limited function of these committees, two key recommendations were made that affected the scope of works and the budget allocated to the project:

- the change from a new eastern to an upgraded western grandstand project at a cost of \$8.125 million; and
- the deletion of the upgrade to the playing pitch from the scope of the works.

I find that the deliberations leading to those two recommendations directly involved the potential for conflict that I have identified above.

### ***The Change from an Eastern to Western Grandstand Project***

Mrs Hall participated in committee deliberations that resulted in significant recommendations from the Stage 1 Redevelopment Committee to Minister Ingerson to change the scope of the works and the allocated budget for the Stage 1 project.<sup>883</sup>

At the first meeting of the Stage 1 Redevelopment Committee, Woods Bagot presented four options for the first stage redevelopment of Hindmarsh Stadium. One option proposed a change in the scope of the project from construction of a new eastern grandstand to an upgraded western grandstand seating with lesser seats within the allocated budget. At the second meeting, a revised option for an upgraded western grandstand including the cost of additional seats by a northern and southern extension of the existing grandstand and corporate entertainment facilities was presented to the committee.

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<sup>881</sup> Mrs Hall has submitted that it is wrong to find that the Stage 1 Redevelopment Committee was dominated by soccer interests. She submitted that only five of the 12 members of the committee came from the Soccer Federation or the NSL Clubs, which is less than half. I note that the committee comprised two representatives of Woods Bagot who regarded the Soccer Federation as their client. One member represented the Council. That left four representatives of Government, not including Mrs Hall. If the soccer representatives were seen to include Mrs Hall and Woods Bagot, that meant a split of 8 to 4, with the representative from the Council as the sole independent interest.

<sup>882</sup> The budget for the new grandstand was only \$6.2 million because \$300,000 had been committed to reimburse the Soccer Federation for the earlier construction of its administration facilities.

<sup>883</sup> Chapter 8 above sets out the details of these deliberations of the Stage 1 Redevelopment Committee.



The committee determined that it would recommend to Minister Ingerson this revised option for the upgrading of the western grandstand as the preferred option. A presentation was made by Woods Bagot to Minister Ingerson of only the committee's preferred option together with costings for the various additional facilities proposed and detail on what could be provided within the allocated budget of \$6.2 million. Woods Bagot's presentation also included master plan options for a phased full redevelopment in the future.

This Examination has found no evidence that adequate investigations were made to test the option of a less expensive upgrade of the western grandstand that maximised seating capacity at the expense of facilities that may not have favoured the Soccer Federation's preference for corporate entertainment facilities. Instead, the committee recommended to the Minister only one option including corporate entertainment facilities and detail on what it would cost to increase the number of seats to the necessary level.

In my opinion, the committee should have investigated those options and presented their findings to the Minister in a way that did not inevitably require an increase in the project budget if the Government were still to meet its key objectives of hosting international and Olympic soccer.

Mrs Hall has made various submissions to this Examination in support of the appropriateness of the recommendation made by the committee and her involvement in that recommendation. For example, it was not known in February 1996 whether there would be any further redevelopment of Hindmarsh Stadium. On one view, it made good sense given prevailing weather conditions to have the major grandstand located on the western side. After discussing the issues, during which opposing views were put, all committee members eventually favoured the option to upgrade the western grandstand.<sup>884</sup> The Minister was presented with detail on what could be achieved on the western side for \$6.2 million and the cost of additional facilities and he made the final decision. Bi-partisan support was expressed for the upgrade of the western grandstand at a cost of \$8.125 million.

I accept Mrs Hall's submissions as being an accurate account of events. However, in my opinion, these matters do not diminish the risk that Mrs Hall did not question the decision to present the Minister with only one option because she was influenced by her private interests as Ambassador for Soccer. This is markedly so given that the recommendations made by the committee of which she was Chair were inconsistent with the primary objective set for the committee by the Minister establishing it.

Mrs Hall has submitted that this finding should not stand and should be withdrawn. In support of her submission, Mrs Hall has submitted that:

*"the reasonable and intelligent member of the public would be surprised, if not astonished, if the Redevelopment Committee had not accepted the recommendation from Woods Bagot and had not, whilst bringing the attention of the Minister to the additional cost involved, recommended accordingly."*

I disagree with Mrs Hall because I consider the reasonable and intelligent member of the public would have asked Woods Bagot to investigate further options within the \$6.2 million budget involving differing and lesser mixes of facilities that may not have favoured as many of the Soccer Federation's

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<sup>884</sup> In considering Mrs Hall's obligations as Chair of the committee, it is not to the point what others thought or whether the recommendations were unanimously supported.

long term desires. For example, the common sense in the change from east to west for the location of the major grandstand did not preclude the construction of a 5,000 seat grandstand on the east excluding all of the facilities of the major grandstand, on the basis that those facilities could be upgraded in the western grandstand at a later stage. That option was not investigated or considered.

### ***Changes to the Scope of Works***

Mrs Hall also participated in the Executive Group Committee's deliberations that resulted in recommendation of the exclusion from the scope of the Stage 1 project's works of the upgrade to FIFA standards of the playing pitch.

On 27 August 1996, the Executive Group considered cost saving options to address the budget overrun. Exclusion of the upgrade to the eastern side works and increasing the size of the pitch were endorsed as options, albeit unattractive ones.

On 23 October 1996, the Executive Group reassessed the scope of works and budget "priorities". It was agreed:

- that the eastern side upgrade and enlargement of the pitch would be deleted from the project works;
- additional funding of \$418,000 would be required; and
- air conditioning for corporate boxes and the Soccer Federation's loan application fees would be included as priority items.

This decision ensured that the Government's primary objective of ensuring that Stage 1 met FIFA requirements in respect of the pitch failed. The fact that two of the priority items included were costs that had been until then the responsibility of the Soccer Federation was passed without comment.

Again, in my opinion, right-minded members of the public might reasonably hold the view that Mrs Hall's capacity to question these significant changes to the scope of works and budget in a disinterested and objective way was impaired by her private interests as Ambassador for Soccer.

### ***The Soccer Federation's Relationship with the NSL Clubs***

Minister Ingerson had defined as part of Mrs Hall's function as Chair of the Stage 1 Redevelopment Committee that she would ensure broad consultation over the project, including with the NSL Clubs.

Initial consultation with the NSL Clubs occurred at the early meetings of the Redevelopment Committee. Later, once the Executive Group had assumed the day to day carriage of the project, it was agreed that Mrs Hall would arrange meetings with the NSL Clubs to determine the allocation of space and facilities between the Soccer Federation and the NSL Clubs.<sup>885</sup> Mrs Hall subsequently became involved with Woods Bagot in trying to facilitate agreement on these issues.

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<sup>885</sup> Minutes of meeting, 23 May 1996.

The Soccer Federation and the NSL Clubs had distinctly different interests on these fit out and licensing issues.<sup>886</sup> Understandably, each wished to maximise revenue earning rights and minimise contributions to expenses for operating Hindmarsh Stadium. To the extent the Soccer Federation negotiated terms that the NSL Clubs could not or would not later honour because they considered those obligations too onerous, the Government's interests in the Soccer Federation's financial arrangements with the NSL Clubs conflicted with those of the Soccer Federation.

On 7 July 1996, Mrs Hall chaired a special meeting of the Board of Commissioners of the Soccer Federation.<sup>887</sup> The minutes of that meeting record that Mrs Hall was welcomed as Ambassador, took the Chair of the meeting and then:

*"...advised that in order to finalise all arrangements, financing and agreements with the Government of South Australia in regard to redevelopment of the Hindmarsh Soccer Stadium, it was necessary to document and finalise the Commission's views in regards to ongoing negotiations with the two National League Clubs, Adelaide City and West Adelaide, in regard to Licence Agreements."*

The meeting then resolved the Board of Commissioners of the Soccer Federation's views on each of the key issues to be resolved with the NSL Clubs. On behalf of the Soccer Federation, Messrs Scarsella, Farrugia and Avory then negotiated and eventually agreed the terms of the August 1996 Licence Agreements with the NSL Clubs. In my opinion, the terms of the Licence Agreements favoured the Soccer Federation.<sup>888</sup>

On 8 October 1996, Mrs Hall attended a further meeting of the Board of Commissioners of the Soccer Federation. The minutes record that after having considered all the information and documents tabled by the General Manager, the Board resolved to do all things necessary to undertake the Stage 1 Redevelopment including entry into the Funding Deed, the Deed of Guarantee, the Licence Agreement and the Loan Agreement.<sup>889</sup>

Apart from Mrs Hall's involvement as Chair of the Redevelopment Committee and Executive Group, the Government left the Soccer Federation to negotiate with the NSL Clubs over the terms of their participation in the funding arrangements for Stage 1. I find Mrs Hall's involvement in the Soccer Federation's executive deliberations over its position vis a vis the NSL Clubs inconsistent with her obligations of objectivity and disinterest owed as the Minister's representative on the project steering committee.

Furthermore, any obligation Mrs Hall felt to maintain the confidentiality of the Soccer Federation's deliberations and decisions at the 7 July 1996 meeting potentially compromised her obligations to the public to use that information for the Government's benefit in achieving its objectives.

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<sup>886</sup> Mrs Hall has submitted that the NSL Clubs are part of the Soccer Federation. The inference is that they cannot have separate or divergent interests. I do not accept this submission, express or inferred. Clearly, the Soccer Federation and the NSL Clubs have a separate legal existence and distinct interests.

<sup>887</sup> I do not accept Mrs Hall's submission that the role of Chair was an impartial role. At the very least, Mrs Hall was privy to the Board of Commissioners deliberations over their position.

<sup>888</sup> See Chapter 36 at page 485

<sup>889</sup> The meeting also considered other business not relevant to this Examination.

In February 1997, Mr Pickard, the Patron of Adelaide City complained to Mrs Hall as Ambassador for Soccer about the financial implications of Stage 1 of the redevelopment.<sup>890</sup> In my opinion, receipt of this information in Mrs Hall's capacity as Ambassador for Soccer gave rise to an actual conflict between the interests of the Government and the Soccer Federation. In her capacity as Ambassador (no matter its lack of legal status), she had received information of some importance to the Government's interest, namely that the financial arrangements involving the NSL Clubs may have been beyond the NSL Clubs' capacity to bear, with consequent prejudice to the Government's ability to recover a contribution to the funding costs. This probability was quite separate and distinct from the likely effect on soccer in South Australia of the potential financial collapse of the NSL Clubs.

Mrs Hall did not respond to Mr Pickard's letter.

Mrs Hall has informed this Examination that she had no authority to respond to a letter addressed to her as a purported officer of the Soccer Federation when her role as Ambassador was purely honorary and without legal status.

Mrs Hall has submitted that Mr Pickard's letter did not raise any new information about the financial capacity of the NSL Clubs which was not already known to the Government. I disagree. Mrs Hall's submission does not take account of the inadequate analysis of the feasibility of the Stage 1 funding arrangements. I consider that Mr Pickard's letter raised a number of serious questions about the financial arrangements for Hindmarsh Stadium at a time when there was still an opportunity for the Government to redress these issues before commitment to Stage 2. Further, to that point the Government had left it to the Soccer Federation to negotiate arrangement for the use of Hindmarsh Stadium directly with the NSL Clubs. The fact that the NSL Clubs were, at least on the evidence of Mr Pickard's letter, at loggerheads, was a matter requiring investigation.

Mrs Hall has also informed this Examination that Mr Pickard's allegations were substantially withdrawn in a letter sent to Mrs Hall in October 1999 as Ambassador for Soccer. The contents of this letter highlight the distinctly different interests of the Government, the Soccer Federation and the NSL Clubs in relation to the funding arrangements for Stage 1:

*"I'm writing to express my thanks for all the time and effort you gave to the game over many years. Those of us involved in soccer have greatly appreciated your dedication, support and forthright approach. Having dealt with all sorts of people I can instantly recognise someone who is genuinely and honestly trying to help the situation rather than merely looking for electoral support. I think the game will truly miss it's [sic] Ambassador and we will miss your bright personality around the club.*

...

*As I see it the current ruckus should focus more on soccer's inability to meet it's [sic] financial commitments than on the government. It seems to me that if the ABC news reporter knew the full background he would have been directing his questions to Basil Scarcella [sic] and the SA Soccer Federation. From my involvement as Patron of Adelaide City it is clear to me that the Government has been misled as to the financial ability of soccer to repay it's [sic] debts and that information came from those people. In my view their mishandling of the financial aspect of the project has caused difficulties that could have been avoided. It would be sad to think the flack surrounds you when the people who are genuinely responsible are in hiding.*

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<sup>890</sup> See Chapter 11 for a detailed discussion of this letter.

*In hindsight my previous letters to you regarding the grandstand were too harsh and I would like to apologise for their accusing tone. I know now that you were doing your best for soccer and for South Australia. Knowing what I know now I shouldn't have written to you at all. I only wrote to you because I was advised to by Les Avory and Tony Ferrugia [sic] who said that the SASF couldn't help the two NSL clubs – it was a government matter.*

*You may not be aware that Basil Scarcella [sic] told the clubs that, wink, wink, nudge, nudge, there was a 'good chance' the Government would pay out the SASF Hindmarsh loans when money was granted for the second Stage of Hindmarsh. Scarcella, who led the negotiating between the SASF and the clubs, said that while he couldn't promise it, if the money came through the club's [sic] would only have to pay the levies for one to two years. Scarcella [sic] effectively put the Sharks and Adelaide City in a position where they were crazy if they didn't sign the contract. We have people who will sign statutory declarations that this became a major factor in the clubs deciding to agree to such a difficult financial commitment. Later, when the money didn't come through Scarcella was nowhere to be seen.*

*At a subsequent meeting in 1998 Scarcella [sic] and Tony Ferrugia [sic] stated that the SASF had performed a feasibility study that showed the SASF and clubs could meet the repayments to the government. They promised to send me a copy but have not done so despite repeated requests. I believe it was either seriously flawed or did not exist. I expect you had relied on similar advice from these people. Incredibly, as Vice Chairman of Soccer Australia Scarcella [sic] knew how much financial trouble the Sharks were in yet he still tied the Government, the SASF and the two NSL clubs together in a fragile deal.*

*I believe the SASF people, who are responsible for the game, should be made accountable for a situation that has been unfairly blamed on the government.*

*In many ways you may be better off away from soccer. Unfortunately the game hasn't quite got it's [sic] act together, can't attract high calibre administrators and it's [sic] people always seem to end up fighting amongst themselves. This will change in time but first soccer needs to attract good young people. This will only happen when Australia consistently qualifies for the World Cup finals. Only then will we truly appreciate our great new soccer stadium." [original emphasis]*

However, the fact that Mr Pickard changed the tone of his correspondence does not alter the two key underlying facts. First, that as at February 1997 the relationship between the Soccer Federation and the NSL Clubs was acrimonious. Secondly, that the NSL Clubs were claiming to be having financial difficulties meeting the obligations imposed on them as a result of the redevelopment.

As a representative of Government charged with specific responsibilities for Stage 1 of the project, I consider it was a legitimate expectation that Mrs Hall would discharge her duties as a public officer by acting to protect the Government's interests. She did not bring Mr Pickard's complaints to the attention of any other representative of Government for investigation. In my opinion, this was a failure of her duties as the representative of the proponent Minister for the project.

Mrs Hall has denied this finding. She has submitted:

*"The finding on this page overlooks the fact that one of the reasons [Mrs Hall] was appointed to the position to which she was appointed was that she had an understanding of the soccer milieu. It was her role, amongst other things, to assess and deal with matters such as the Pickard complaint. It was not her job to pass the burden along. In fact, the very finding made in the second sentence underlines this because it begs the question 'by whom'; to whom was she to pass the information, who was to investigate it, and who was to finally assess the impact of the finding of the investigation upon the project when the project was working against a time line, when the relevant contractual documents had already been executed, and the work of Stage 1 partly completed."*

In my opinion, it was clear to whom Mrs Hall was obliged to pass the information. She should have passed the information to Deputy Premier Ingerson. Mrs Hall reported to Deputy Premier Ingerson as his Parliamentary Secretary. Mrs Hall was Minister Ingerson's representative on the Stage 1 Redevelopment Committee. Or, Mrs Hall could have passed this information on to the then responsible Minister for Recreation and Sport, Mr Ashenden or to the Chief Executive Officer of the Department of Recreation and Sport.

In all the circumstances, I find that Mrs Hall did not act in the public interest by not passing this information to any appropriate representative of the Government. In my opinion, Mrs Hall was compromised in this regard by her private interests and previous involvement with the Soccer Federation in determining its position on funding issues with the NSL Clubs.

### **Mrs Hall's Conflict of Interest and Duty as a Minister of the Crown**

#### ***Mrs Hall – Minister for Youth, Minister for Employment, Minister for Tourism***

Mrs Hall did not resign from her position as Ambassador for Soccer until 1 October 1999. From December 1997 to October 1998 she remained Ambassador for Soccer while the Minister for Youth and the Minister for Employment. For almost a year from October 1998 to 1 October 1999, she remained Ambassador for Soccer while the Minister for Tourism and a member of Cabinet.

In her evidence to this Examination Mrs Hall said:

*"... After the election in '97 and I was appointed a junior Minister after that I pondered very seriously whether I should remain as Ambassador for Soccer because I had been, surprise, surprise, you know the discussion of a number of questions during estimates and a whole range of, you know, fun allegations that were out there. And I seriously pondered whether I should maintain that position ...*

*And it was my view, and it's in fact what happened, I essentially came off all committees in a chairing capacity because I thought – I personally thought that was inappropriate at that stage because I was a Minister. And I maintained membership of, I think it was called the reference group, but don't hold me to the title because we'd changed a lot by this stage...*

*And when I became the Minister for Employment and Youth it wasn't a problem, there didn't seem to be any conflicts anywhere around the place. But when I became the Minister for Tourism and maybe...*

*... part of that portfolio is AME and I assumed that AME would've been involved in some part on the presentation and staging of the Olympic tournament and so I made the decision, no one asked me to, no one forced me to, I actually made the decision myself that I was going to resign from the position of Ambassador because (a) my time commitments totally changed with this portfolio I've currently got, and (b) I thought it was inappropriate when I would be taking recommendations and decisions to Cabinet that I was directly involved with as Minister and I didn't believe it was appropriate that I should be aligned with any sport as an individual sport..."*

Mrs Hall's failure to resign as Ambassador for Soccer immediately upon her appointment as a Minister of the Crown was inappropriate given the clear potential for a conflict of interest.

In particular, I consider Mrs Hall's discussions within Executive Government about the Soccer Federation's proposed submission to Government seeking the suspension or waiver of the Levy System, while Ambassador for Soccer, a Minister of the Crown and a member of Executive Government, were a departure from the proper standards of ministerial conduct in circumstances of an actual conflict of interest.

### ***The Soccer Federation's Proposal Seeking Relief from the Levies***

In August 1998, Mrs Hall failed to bring Mr Pickard's second letter of complaint about the financial arrangements between the Soccer Federation and the NSL Clubs to the attention of anyone in Government.

In September 1998, as Ambassador for Soccer, Mrs Hall received a copy of the Soccer Federation's draft submission to Government seeking relief from the levies by one of the following:

- the Government picking up the loan repayments for one year until October 2000 and suspending the Funding Deed during construction of Stage 2, with any levies collected being held in trust for future payments; or
- as with the first option but suspending collections for two years instead of one; or
- the NSL Clubs paying a fixed match fee of \$13,000 of which \$5,000 would be directly attributed to repayments of the Soccer Federation's loan and \$8,000 to match and maintenance expenses.

At the time, Mrs Hall was Minister for Youth and Minister for Employment. On 8 October 1998, Mrs Hall became Minister for Tourism and a Member of Cabinet. As a Minister of the Crown, Mrs Hall was a member of Executive Government.

On 28 October 1998, Minister Evans wrote to the Soccer Federation wishing to convene a meeting to discuss the issue of increasing the levies. Minister Evans was unaware of the agreement between the Soccer Federation and the NSL Clubs to vary the Levy System or of their intention to seek a suspension of the levies.

On 5 November 1998, the Soccer Federation provided its submission to Mr Evans, then Minister for Recreation, Sport and Racing.

Mrs Hall has informed this Examination that it was not for her to "leak" a copy of the draft to Government. If she had, it would have been in breach of her position with the Soccer Federation. Mrs Hall does not consider that she owed any duty to Mr Evans, the Minister for Recreation, Sport and Racing to disclose the contents of that draft to him. However, she has since recollected that she had discussed issues relating to the levy payments and perhaps the fact of the existence of the draft with the Chief Executive Officer of the Department of Premier and Cabinet.<sup>891</sup> Mrs Hall has said she also discussed issues relating to the levies with Ministers Ingerson and Evans. She did not provide a copy of the draft submission to anyone in Government as she understood it would be forwarded directly to Minister Evans in the near future. Mrs Hall did not inform Minister Evans of the existence of the draft submission.

This incident exemplifies the irreconcilable nature of Mrs Hall's conflict of interest in remaining Ambassador for Soccer while also a Minister of the Crown who had involved herself in the Executive processes of Government in relation to issues affecting the project. By discussing those issues with a public servant, Mrs Hall exerted an influence as a Minister of the Crown that could not be disregarded notwithstanding that she was not the Minister responsible for the project. In my opinion, she should not have placed herself in this position and should have resigned as Ambassador for Soccer immediately upon assuming an Executive role in Government as a Minister of the Crown.

Mrs Hall's obligations as a Minister of the Crown are all embracing and incapable of being isolated to different parts of Executive Government. Her claim that she owed no duty to Mr Evans because she had no reporting line to him, in my opinion, demonstrates Mrs Hall's lack of understanding of her fundamental obligations as a public officer and as a Minister of the Crown.

I find her conduct in this regard a departure from the proper standards of ministerial conduct.

### **Mrs Hall's Conflict of Duties as a Member of Parliament and a Parliamentary Secretary**

In my annual report to Parliament for the financial year ended 30 June 1997, I set out my concerns about the participation by Members of Parliament in Executive Government processes.<sup>892</sup>

A Member of Parliament appointed to a position of public office as a Parliamentary Secretary is placed in a position of potential conflict with his or her duties as a Member of Parliament. The Member of Parliament is compromised in his or her capacity to act as a check on the activities of Executive Government.

As the High Court observed in *R v Boston*:

*"Every transaction entered into by the Executive Government is open to criticism and, if need be, to censure by appropriate action in Parliament, even if the Government has power to carry through the transaction without express parliamentary authority."*

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<sup>891</sup> The Premier had assumed responsibility for the project upon Minister Ingerson's resignation in August 1998.

<sup>892</sup> See that part of the Auditor-General's Annual Report entitled "*Participation by Members of Parliament in Executive Government Processes: Role and Authority of Parliamentary Secretaries: Participation of Parliamentary Secretaries as Members of Parliamentary Committees*".



*Epecially is this the case where the transaction involves the payment out of public funds."*<sup>893</sup>

These principles had been previously articulated in *Horne v Barber*:

*"... the law will not sanction or support the creation of any position of a member of Parliament where his own personal interest may lead him to act prejudicially to the public interest by weakening (to say the least of it) his sense of obligation of due watchfulness, criticism, and censure of the Administration."*<sup>894</sup>

As discussed above, Mrs Hall's position of Chair of the Stage 1 Redevelopment Committee involved her in deliberations concerning the expenditure of public funds.

It was not sufficient protection from the potential for conflict of duty that the *Guidelines for the Office of Parliamentary Secretary* provided that a Parliamentary Secretary had no power to authorise the expenditure of public funds. A Member of Parliament is not in a position objectively to scrutinise an Executive decision to spend public funds that originated as a recommendation from that person acting in his or her capacity as a Parliamentary Secretary.

In Mrs Hall's case, her involvement in the Hindmarsh Soccer Stadium Redevelopment Project as a Parliamentary Secretary involved a conflict with the duties attendant upon her as a Member of Parliament. This conflict was exacerbated by her private interests as Ambassador for Soccer. In my opinion, Mrs Hall should not have involved herself in the Hindmarsh Stadium Soccer Redevelopment Project as she did. While I do not accept Mrs Hall's submission refuting these findings, I do not suggest any lack of good faith on the part of Mrs Hall.

### **Mrs Hall – Soccer 2000 Bid Committee**

Between March and October 1996, Mrs Hall was a member of another committee established by then Minister Ingerson to promote Adelaide for Olympic Soccer qualifying events. Ultimately, this committee was responsible for the preparation of Adelaide's bid submitted to SOCOG.<sup>895</sup>

The minutes of those meetings refer to Mrs Hall as the Soccer Ambassador SA. When asked by this Examination in what capacity she attended Mrs Hall said:

*"A: ... Parliament House at 6pm, that suggest to me it was a dinner meeting and I suspect the reason I was there as Soccer Ambassador was I probably paid for it. Let me just get a sense on that. Does that say where we met?..."*

*Q: ... do you recall if you were there as the nominee of the Minister or---*

*A: No, I can't recall that. But I suspect I was."*

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<sup>893</sup> (1923) 33 CLR 386 at 394.

<sup>894</sup> (1920) 27 CLR 494 at 500 per Isaacs J.

<sup>895</sup> Mrs Hall has submitted that the conduct of the Bid Committee are beyond the proper scope of this Examination. I disagree.

As the Minister's nominee, Mrs Hall's involvement served several purposes. She kept the Minister personally informed of this committee's progress. As Chair of the Stage 1 Redevelopment Committee and a member of Adelaide's Bid Committee, she was a conduit for information between both fora.<sup>896</sup> As Ambassador for Soccer, she contributed her knowledge of soccer and her contacts with Soccer Australia and FIFA officials to Adelaide's cause in its bid.

In the case of Adelaide's Bid Committee, there was an obvious concurrency between Mrs Hall's duties as the Minister's nominee and her private interests as Ambassador for Soccer. In my view, a conflict would only have arisen if the committee had been charged with the decision as to whether to bid or not. It was not. In that case, Mrs Hall's private interests may at most have been perceived to predispose her to the bid option.

### **Mrs Hall – SA Olympic Football Taskforce**

On 17 March 1997, Cabinet approved the establishment of a Taskforce to finalise commercial arrangements with SOCOG at a cost of up to \$5.59 million. The Taskforce was to be led by Mr Ciccarello, it included Mrs Hall and it reported to Mr Ashenden, then Minister for Recreation, Sport and Racing.

I have considered whether Mrs Hall's private interest as Ambassador for Soccer and her view of the importance of the event to South Australia and that soccer had given South Australia this opportunity gave rise to a perception of, or a potential or actual, conflict of interest. I have found no suggestion of an actual or potential conflict of interest nor have I identified any real risk of a perception for conflict upon my examination of the business of the Taskforce, in view of the nature of Mrs Hall's role on the Taskforce.

### **Mrs Hall – Stage 2 Reference Group**

Mrs Hall attended a Scope/Budget Workshop for Stage 2 on 6 August 1997. Mrs Hall also participated in Stage 2 as a member of the Stage 2 Reference Group which met between August 1997 and September 1998.<sup>897</sup>

The minutes of the Workshop refer to Mrs Hall as "*the Chairperson of the Stage 1 Executive Committee*". They record that Mrs Hall introduced herself in that capacity and spoke to the linkages between the two stages of the redevelopment. After presentations of a design concept prepared by Woods Bagot and proposed budget for that scope of works, the workshop identified associated risks.

On 18 August 1997, the Stage 2 Reference Group was endorsed by Cabinet as part of the project management structure for Stage 2. The Reference Group was responsible to the Project Director, Mr Dixon, who in turn was responsible to the Cabinet Sub-committee lead by Mr Ingerson as Deputy Premier. The Cabinet Sub-committee was charged with responsibility for monitoring the progress of Stage 2 and the interface with the staging of the Olympic soccer tournament. The Reference Group comprised representatives of key Government agencies and stakeholders in the project. Mrs Hall was nominated as Ambassador for Soccer.

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<sup>896</sup> As were Messrs Caruso, Farrugia and Scarsella as representatives of the Soccer Federation and Mr Scott from the Office for Recreation, Sport and Racing.

<sup>897</sup> It was replaced by the Project Control Group established under the conditions of the construction contract that took over the bulk of the day to day work for Stage 2.

Mrs Hall's role in the Stage 2 Reference Group was significantly less influential than her role in the Stage 1 Redevelopment Committee. Mrs Hall's responsibilities were also significantly different. She openly participated as a representative of the interests of soccer in her role as Ambassador for Soccer. As a member of the Stage 2 Reference Group, she was not responsible for setting the strategic direction for the project. That was the responsibility of the Cabinet Sub-committee, led by the then Deputy Premier Ingerson.

For part of the time she served as a member of the Reference Group, Mrs Hall was Mr Ingerson's Parliamentary Secretary. For the reasons discussed above, I am of the opinion, that there was a potential for conflict between her duties as Parliamentary Secretary and her private interest as Ambassador for Soccer.

### **Mrs Hall - Conclusion**

In my opinion, for the reasons discussed in detail in this Chapter, Mrs Hall had a, and was publicly perceived to have a, significant private interest in the redevelopment of the Hindmarsh Soccer Stadium by reason of her position as Ambassador for Soccer in South Australia.

Mrs Hall was appointed Chair of the Stage 1 Redevelopment Committee in her capacity as Minister Ingerson's Parliamentary Secretary.<sup>898</sup> The position of Chair was a public office. As such, in discharging her duties as Chair, Mrs Hall was expected to demonstrate an undivided loyalty to the public interest she served. That required of her, the perception of, and actual, impartiality.

As a result of the matters I have found in this Examination, I consider that Mrs Hall's interests as Ambassador for Soccer gave rise to a potential conflict with her duties as Chair of the Stage 1 Redevelopment Committee. As Ambassador, it was a reasonable public perception that Mrs Hall was sympathetic to the interests of the Soccer Federation in demanding the best facilities for the least cost to the Soccer Federation. As Chair of the Stage 1 Redevelopment Committee she was obliged to protect the public interest in providing the minimum necessary to meet the public need for improved facilities for soccer, as distinct from the Soccer Federation's desires.

I have identified two instances in which Mrs Hall's position as Soccer Ambassador potentially impaired her capacity to identify and manage the Soccer Federation's long term goal, which involved a greater expenditure of public funds than the Government's specified objective in founding the Stage 1 Redevelopment Committee. First, Mrs Hall's participated in the committee's deliberations that resulted in recommendations to change the scope of the project from a new eastern to an upgraded western grandstand for an increased budget of \$8.125 million. Secondly, Mrs Hall participated in deliberations of the Executive Group to delete from the scope of works the pitch upgrade required to meet FIFA standards.

In both instances, I accept Mrs Hall's submission that she acted in good faith.

In my opinion, the potential for, and perception of, conflict were sufficient in the circumstances for Mrs Hall to resign her position as Ambassador for Soccer upon appointment as Chair of the Stage 1

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<sup>898</sup> Mrs Hall's duties as a Member of Parliament to scrutinise the activities of Executive Government conflicted with her duties as Parliamentary Secretary to Minister Ingerson in controlling Stage 1 of the project through her position as Chair of the Stage 1 Redevelopment Committee. I consider that such a conflict whenever it occurs is irreconcilable as it is fundamentally inconsistent with the functions and duties of a Member of Parliament under our system of Government who is not also a member of Cabinet.

Redevelopment Committee. In my opinion, if Mrs Hall wished to remain Ambassador for Soccer, she should not have accepted the role as Chair.

I have concluded that Mrs Hall's involvement as Ambassador for Soccer in the Soccer Federation's deliberations over its financial arrangements with the NSL Clubs for sharing the use and management of Hindmarsh Stadium was inconsistent with Mrs Hall's obligations of objectivity and disinterest as the Minister's representative on the Stage 1 Redevelopment Committee. This involvement gave rise to a further potential for, and the perception of a conflict of interest. In my opinion, the Government's interest in ensuring that the NSL Clubs would be able to meet the commitments agreed with the Soccer Federation potentially differed from that of the Soccer Federation in negotiating the best deal it could with the NSL Clubs.

In my opinion, Mrs Hall is open to criticism in the context of her failure in February 1997 to bring the complaints made by Mr Pickard to the attention of Minister Ingerson. I regard this as a failure of her duties as the Minister's representative on the Stage 1 Redevelopment Committee. In my opinion, the conclusion is inescapable that Mrs Hall did not act as she was obliged to do because, as Ambassador for Soccer, she was compromised by her private interests and involvement with the Soccer Federation in determining its position on the financial arrangements for the use of Hindmarsh Stadium.

When Mrs Hall became the Minister for Youth and the Minister for Employment in December 1997, the conflict between Mrs Hall's private interests as Ambassador for Soccer and her duties as a Minister of the Crown became potentially irreconcilable given the emerging divergence in interests between the Soccer Federation and the Government over the financial arrangements for Hindmarsh Stadium including the suspension of the Levy System. In August 1998, Mrs Hall failed to bring Mr Pickard's second letter of complaint about the financial arrangements between the Soccer Federation and the NSL Clubs to the attention of anyone in Government. In September 1998, Mrs Hall was in a position where she chose to disclose to Government only part of the information available to her. She felt she could not disclose the Soccer Federation submission for suspension of the levies to anyone in Government. However, Mrs Hall discussed issues relating to the Levy payments with the Chief Executive of the Department of Premier and Cabinet as well as Ministers Ingerson and Evans.

As a Minister of the Crown, her conduct in this regard was a serious departure from the proper standards of ministerial conduct.

Mrs Hall's failure to resign as Ambassador for Soccer immediately upon her appointment as a Minister of the Crown on 17 December 1997 was, in my opinion, inappropriate and a departure from proper standards of ministerial conduct.

Mrs Hall has submitted that she made complete disclosure of her interest in soccer and her position as Ambassador for Soccer was well known. Despite her submission, Mrs Hall did not make proper disclosure of the potential for conflict at any point in time. Mrs Hall did not do so because she did not recognise the potential for conflict until September 1999. Indeed, Mrs Hall denied the existence of any potential or actual conflict arising by reason of her position as Ambassador for Soccer. In my opinion, proper disclosure of a potential or actual conflict of interest requires full disclosure of the specific interest and informed consent. Both the disclosure and consent must be formally documented. Consent is only informed where the full ramifications of the potential or actual conflict are made apparent. This did not occur in the case of Mrs Hall's involvement in the Hindmarsh Soccer Stadium Redevelopment Project.

## **CHAPTER 39 - CONFLICTS OF INTEREST OF NON-GOVERNMENT PERSONS**

### **THE SOCCER FEDERATION**

The Soccer Federation stood to benefit from the redevelopment project by obtaining a massive improvement to land to which it had the exclusive right to occupy. Potentially, it stood to reap the benefits of the revenue from those improvements.

At the same time, the Soccer Federation was allowed to represent the interests of all soccer users, including particularly the two NSL Clubs. There was an obvious conflict between the Soccer Federation's interests and that of the NSL Clubs when it came to decisions about the ongoing management of the stadium or which entity would bear the costs of operating the stadium.

In its dealings with the Government, the Soccer Federation ensured that its position was protected so that it was not liable for any contribution to the cost of Stage 1 of the redevelopment beyond its receipt of levies. At the same time, it negotiated a licence agreement with the NSL Clubs, which bound them to make contributions regardless.

The Soccer Federation was in a difficult position. Historically, the Soccer Federation had both the benefit and burden of the lease of Hindmarsh Stadium. It was also the representative body for soccer in South Australia. Minister Ingerson's conscious decision for the Government not to become involved in arrangements between the Soccer Federation and the NSL Clubs disregarded the potential conflict of interest between these two roles of the Soccer Federation's.

In my Examination I have found the potential for a conflict between the different roles of the Soccer Federation first became a real issue when it was identified by representatives of Adelaide City during meetings of the Hindmarsh Stadium Management Committee held in mid 1999. When disagreement occurred between representatives of the Soccer Federation and Adelaide City over stadium management issues, Adelaide City wrote a letter of complaint to Minister Evans. In that letter, Adelaide City complained that the club felt that the financial outcomes that each of the Soccer Federation and the NSL Clubs were striving for were very different. The Adelaide City representatives felt so strongly that they gave notice of their intention to withdraw from the Management Committee. As a possible solution, Adelaide City proposed that each organisation have input into a proposal for the independent management of Hindmarsh Stadium.

Thompson Tregear, the leisure management consultants retained by the Soccer Federation in August 1999 to advise it on the future management of the stadium identified the conflict between the Soccer Federation's interests in being both a user and manager of the stadium. Thompson Tregear's October 1999 report found that the management structure for the stadium was inappropriate because:

- The Soccer Federation was both a user and the manager of the stadium and there was a conflict between those interests.
- The Soccer Federation and the NSL Clubs as users were all represented on the Management Committee and their interests as members of that committee and users of the stadium conflicted.

To avoid these conflicts of interest, Thompson Tregear recommended that the stadium be managed by another entity, controlled by the Soccer Federation. To maintain the independence of the manager, membership of that entity's board should not also be members of the Soccer Federation's Board of Commissioners.

In my opinion, these matters should have been identified and adequately addressed by the Government as part of the management structure provided for in the legal arrangements for Stage 1.

It was probably beyond the level of professionalism and objectivity, which can reasonably be expected from a sporting organisation of that nature to expect the Soccer Federation to separate the two functions. However, it was not beyond Government. Government has now acquired control of the stadium and its administration is to be placed under the control of an independent body. Government should have done this in October 1996.

# CHAPTER 40 – APPROPRIATE PROCESSES

## OVERVIEW

Generally, I have addressed failures to adopt appropriate processes during the various phases of the Hindmarsh Stadium Redevelopment Project as failures of due diligence. Chapters 17 to 26 contain a detailed discussion of those failures. In this Chapter, I make some further observations on issues that I consider warrant specific mention.

## THE PLANNING STAGES OF THE PROJECT

### Overview

In my opinion, the planning of Stages 1 and 2 of the Hindmarsh Stadium Redevelopment Project was inadequate. The principal failures in the planning stage were:

- The failure to undertake adequate feasibility studies.
- The presentation to Cabinet of inadequate written submissions seeking approval for the project.
- The failure to define adequately FIFA and SOCOG requirements.
- The decision not to enter into any direct legal relationship with the NSL Clubs.
- The failure to resolve ownership and management issues.

### Inadequate Feasibility Studies

No feasibility study was undertaken by the Office for Recreation, Sport and Racing at the time of the project's initiation in April 1995. As the content of the project was developed between April 1995 and August 1996, studies by Ernst & Young and Woods Bagot were commissioned on an inadequate basis.

No adequate feasibility study was undertaken by the Department of Recreation and Sport<sup>899</sup> in relation to the Government guarantee given in August 1997 of the \$2 million loan to the Soccer Federation for the fit out of Stage 1.

Those failures of due diligence are discussed in detail in Chapter 18.

There was no adequate feasibility study or cost benefit analysis undertaken for Stage 2. Only one formal study was undertaken, limited to an economic analysis. That study was not updated when the project changed or when new information became available. When the Department of Treasury and Finance identified the limitations of that study, no steps were taken to address those limitations. The Woods Bagot master planning performed in December 1995 and January 1996 that covered some of the substance of Stage 2 was not a substitute for an adequate feasibility study.

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<sup>899</sup> This agency was the successor of the Office for Recreation, Sport and Racing from 19 December 1996.

Alternatives to the Stage 2 redevelopment were disregarded. Building a less expensive stadium was not adequately considered. Combining the two stages was not adequately considered. Using a different venue was not adequately considered.

Those failures of due diligence are discussed in detail in Chapter 23.

### **Cabinet Submissions Inadequate Basis for Cabinet Decision**

The three submissions in May 1995, April 1996 and August 1996 upon which Cabinet's approval of Stage 1 was based were inadequate. The July 1997 submission seeking approval for a Government guarantee of a \$2 million loan to the Soccer Federation for the fit out of the western grandstand as part of Stage 1 was also inadequate. Each to varying degrees breached Government guidelines for preparation of Cabinet submissions or contained inaccurate or incomplete information. Central advisory agencies and Services SA were not always consulted and, when consulted, not given a proper opportunity to comment on Cabinet submissions or advise on the project. In particular, the Government guidelines in Treasury Information Paper 90/1<sup>900</sup> requiring presentation of multiple options and examination of the "no action" option, was disregarded.

Those matters are discussed in detail in Chapter 18.

The submissions upon which Cabinet's approval of Stage 2 was based were inadequate. Each to varying degrees breached Government guidelines for the preparation of Cabinet submissions, was inaccurate or incomplete. In particular, Treasurer's Instruction 9105 was disregarded. It required compliance with Treasury Information Paper 90/1 that in turn required presentation of multiple options including the "do nothing" option. Non-compliance with these requirements constituted a breach of the *Public Finance and Audit Act 1987*.

Those matters are discussed in detail in Chapter 23.

### **Inadequate Definition of FIFA/SOCOG Requirements**

A principal objective of Stage 1 was not adequately defined. That objective was loosely described in the first two Cabinet submissions for Stage 1 as compliance with international standards for football stadia set by FIFA. Cabinet was not informed in the written submissions that prior to July 1996, there was no single statement of FIFA standards and therefore no clearly identifiable objective. After July 1996, when a statement of requirements for the 2000 Olympic Soccer Tournament was received from SOCOG, there was a failure to identify what part of SOCOG and FIFA requirements had to be met by permanent rather than temporary facilities.

Those matters are discussed in detail in Chapter 18.

The budget for Stage 2 of \$16.205 million was set in November 1996 by reference to a proposed project involving acquisition of a large amount of land and creation of a "soccer park". That budget was applied even though Stage 2 as built was a very different project involving the provision of 10,000 additional permanent seats. The change in the content of the project was not made because of any requirement of SOCOG or need of the sport of soccer.

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<sup>900</sup> "Guidelines for the Evaluation of Public Sector Projects".



Those matters are discussed in detail in Chapter 23.

### **No Legal Relationship Between the Government and the NSL Clubs**

The Government did not enter into any legal arrangements with the NSL Clubs. The Soccer Federation granted the NSL Clubs sub-licences to occupy parts of the stadium and negotiated the terms upon which the Soccer Federation and the NSL Clubs would share the operating profits and expenses of the stadium. Those negotiations occurred without Government review. The Government did not concern itself with those legal arrangements except to require<sup>901</sup> the Soccer Federation to secure a legally binding commitment to play all national league games at Hindmarsh for at least 20 years.<sup>902</sup> As this commitment was made by the NSL Clubs to the Soccer Federation and not Government, the Government has no control over the NSL Clubs' involvement with Hindmarsh Stadium.

In my opinion, the absence of legal relations between the Government and the NSL Clubs was a serious flaw in the legal arrangements for the redevelopment. If this issue had been properly addressed, the Government would have been in a better position to deal with the impasse that later developed between the Government, the Soccer Federation and the NSL Clubs over the cost of playing at Hindmarsh Stadium.<sup>903</sup>

### **Failure to Resolve Ownership and Management Issues**

The Government did not adequately address ownership and management of Hindmarsh Stadium in the planning phase for Stage 1. These issues were not adequately resolved when the Funding Deed was signed in October 1996.

The importance of the issues of ownership and management of the stadium was recognised as early as 1989 and was the subject of repeated reminders at every level within Government during the Stage 1 redevelopment.

In the April 1995 Memorandum of Understanding and the October 1996 Funding Deed, inadequate mechanisms were agreed with the Soccer Federation to address the issues (ie the grant of a mortgage over the Soccer Federation's lease and a charge over the bank account into which levies were to be paid). Those mechanisms were chosen even though a better mechanism had been recommended by the Crown Solicitor's Office.

The mortgage was not obtained and the charge was obtained too late to be of any use. In my opinion, it would have been prudent to obtain this security for performance of the Soccer Federation's obligations under the Funding Deed as part of the Stage 1 Project Documents in October 1996.

Failure to resolve ownership and management issues for Stage 1 is discussed in detail in Chapter 22.

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<sup>901</sup> Conditions precedent 3.1.6 and 3.1.7 and Clause 38 of the Funding Deed.

<sup>902</sup> This was done and is discussed further below in Chapter 32 under the headings "The 1996 Licence Agreements" and "The 1997 Licence Agreement" at pages 436 and 455.

<sup>903</sup> Chapters 22 and 26 address the Government's failure to address ownership and management in detail.

In the course of implementing the Stage 2 project, no changes were made to the legal structure for Stage 1 that governed the ownership and management of Hindmarsh Stadium. For example, the lease from the Council to the Soccer Federation was not altered to take account of the increased size of the site after incorporation of additional land.<sup>904</sup> No further security rights were put in place to protect the Government's position despite its contribution of a further \$17 million to redevelop a facility leased to the Soccer Federation and owned by the Council.

The need to address the issues of ownership and management in the context of a substantially greater redevelopment project was recognised by the Government at all levels during the initiation and approval stage of the Stage 2 project. Despite recognition of the importance of these issues, the Government committed to Stage 2 in August 1997 by signing the SOCOG Memorandum of Understanding<sup>905</sup> without giving any consideration as to how these issues could be addressed and resolved.

Cabinet approval of the final concept for Stage 2 was given on the basis that a proposal on ownership and management would be developed as a matter of urgency.<sup>906</sup> It was not.

Failure to resolve ownership and management issues for Stage 2 is discussed in detail in Chapter 26.

## **THE AWARDING AND MONITORING OF CONSULTANCIES**

### **Irregular Retention of Primary Consultant for Stage 1**

#### **Overview**

The selection of Woods Bagot as primary consultant for Stage 1 was not conducted so as to exclude the perception that the successful candidate was preferred for reasons properly extrinsic to the selection process.

The terms of Woods Bagot's retainer were effectively drafted by Woods Bagot. They were not subjected to adequate scrutiny by any Government agency. They were not finalised until Woods Bagot had undertaken nearly two months' worth of design work. The scope of works defined in Woods Bagot's consultancy agreement was largely redundant for much of the work undertaken for Stage 1.

#### **Terms of Woods Bagot's Consultancy Agreement**

On 8 November 1995, the Soccer Federation sent Woods Bagot a letter formally offering Woods Bagot the contract as primary consultant. The only indication of the scope of the retainer was in the letter's heading - "*Hindmarsh Soccer Stadium New Eastern Grandstand*". That letter stated that it enclosed a formal contract document but it did not. That was not sent until 9 January 1996. The

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<sup>904</sup> ie the Hindmarsh Bowling Club and Meals on Wheels sites and Hindmarsh Place which was closed.

<sup>905</sup> The SOCOG Memorandum of Understanding was signed by the Premier on 15 August 1997. See Chapter 35 above for further detail of the obligations assumed by the Government under this legal document.

<sup>906</sup> The 15 August 1997 Cabinet submission signed by Deputy Premier Ingerson stated in paragraph 3.8(i) that "*Negotiation on the above issues are not seen as a major impediment to the scheme and it is proposed to seek contributions from the Council towards this development*".

contract then sent defined the scope of Woods Bagot's retainer by reference to Woods Bagot's own submission.

Between 8 November 1995 and 9 January 1996, Woods Bagot interviewed the Soccer Federation and formulated a series of options for the total redevelopment of Hindmarsh Stadium. That work was done while no adequate definition of the scope of Woods Bagot's retainer was in place. In particular, the extent to which the design of the stadium was to comply with "*FIFA requirements*" and what that meant was not defined.

The final letter to Woods Bagot containing their retainer, defined the scope of that retainer by reference to Woods Bagot's original submission. That submission contained no detail of the content of the project.

In my opinion, the Department for Building Management should have ensured that the scope of Woods Bagot's retainer was adequately defined.

### **Mr Ciccarello's Appointment**

The possibility that Mr Ciccarello might have been selected for reasons that are wholly inappropriate would have been excluded if a transparent process were used. The importance of a transparent process ensures the maintenance of confidence in Government processes.

In late February 1997, following a telephone conversation with Mrs Hall, Mr Ciccarello wrote to Mrs Hall requesting that the Government address its breach of promise for a long term contract for his professional services with him. His letter requested that she inform the Premier and Deputy Premier of the contents of his letter. He said in his letter that, given his telephone discussion with her, he was hopeful that they could expeditiously resolve the matter.

According to evidence given by Mr Ashenden to this Examination, Mrs Hall approached him as Minister for Recreation, Sport and Racing and informed him that both the Premier and the Deputy Premier had agreed that Mr Ciccarello, should be appointed as a consultant. Mr Ashenden said Mrs Hall told him that she was concerned that Mr Ciccarello had been left in the lurch and that something should be done for him.

Mrs Hall confirmed in her evidence and submissions made to this Examination that, following receipt of the letter from Mr Ciccarello, she did speak with the Premier and Deputy Premier Ingerson to ask that something be done for him. She also spoke to Minister Ashenden about the letter.

Mr Ashenden has given evidence that when he as the Minister raised the necessity for due process in appointing a consultant and budgetary concerns, Mrs Hall said that he should negotiate that with Mr Ciccarello. He told Mrs Hall he would not do it. Mrs Hall denied any such conversation with Mr Ashenden occurred.

In my opinion, Mrs Hall should not have interfered in the appointment of Mr Ciccarello. Minister Ashenden should have ensured that Mr Ciccarello's engagement was undertaken in an entirely transparent manner.

Then Deputy Premier Ingerson telephoned and came to visit Minister Ashenden to discuss Mr Ciccarello's appointment. After that visit, Minister Ashenden said he was left in no doubt that he was required to appoint Mr Ciccarello.

Mr Ingerson gave evidence that the only reason he was aware of for Mr Ciccarello's appointment in place of Australian Major Events that he had been told was that Mr Ashenden wished to change direction. He said that otherwise he was not involved.

In his evidence to this Examination, Mr Ashenden acknowledged that there were good reasons to appoint Mr Ciccarello as head of the Taskforce. Mr Ciccarello had contacts with SOCOG and he had experience with the Grand Prix. Mr Ashenden has said that his objection was to the process and the cost. Mrs Hall has submitted that she spoke to the Premier, Deputy Premier Ingerson and Minister Ashenden on the basis that she considered that Mr Ciccarello was well suited to the task and had already done much to assist South Australia in securing the Olympic Soccer Tournament. Mrs Hall has denied that she told Minister Ashenden that it had been agreed by the Premier that Mr Ciccarello should be appointed.

There is contradictory evidence about the reason for the appointment of Mr Ciccarello to head the Government's negotiating team for the commercial arrangements for hosting of matches in the 2000 Olympic Soccer Tournament and what was specifically said about this matter.

It is not necessary for me make a finding as to the reason for Mr Ciccarello's appointment. However, I do consider that the basis for selection of Mr Ciccarello was inappropriate in that it was undertaken to overcome a separate problem that had been created by Mr Ingerson.

Mrs Hall has submitted that she did not interfere with the proper processes. She submitted that she is entitled to express an opinion about a process over which she has no control, it was not her decision and the proper processes were in fact followed. I do not accept Mrs Hall's submissions in this regard. Her involvement was influential in securing Mr Ciccarello's appointment. Mr Ashenden said in giving evidence in this Examination that he felt that it had been made clear to him that he had no choice but to appoint Mr Ciccarello. That there were other good reasons to appoint Mr Ciccarello does not excuse Mrs Hall's conduct in bringing to bear upon the decision extraneous matters that were not transparent in the decision-making process.

To the extent that Mr Ciccarello's appointment was an attempt to resolve Mr Ciccarello's dispute with Government, it did not. Mr Ciccarello continued to pursue his claim for compensation for breach of promise.

In my opinion, Mrs Hall was influential in securing Mr Ciccarello's appointment as a consultant to Government and head of the Taskforce. Mrs Hall should not have interfered with the proper processes of Government for the appointment of a consultant to the extent that she did.

This should not be taken as a criticism of Mr Ciccarello. He took steps to further his own interests at the time when he held no public office, as he was entitled to do.

## **IRREGULAR RETAINER OF PRIMARY CONSULTANT FOR STAGE 2**

### **Overview**

Woods Bagot were instructed from May 1996 by Minister Ingerson to do work that was, as a matter of substance, related to Stage 2 without any form of retainer in place. Services SA were not involved in that process.

There was no competitive tender for the position of primary consultant for Stage 2.

## **Work Prior to Formal Retainer for Stage 2**

Woods Bagot had been appointed for Stage 1 on the basis of a selection process where six candidates had been considered. In Stage 2, no other candidates were considered. The Department for Recreation and Sport simply retained Woods Bagot. The justification for that was set out in a draft of the 9 July 1997 Cabinet submission as follows:

- "3.29 The firm of Woods Bagot were selected in an open competition as the primary consultant for the Western Grandstand project presently under construction.*
- 3.30 As part of the development bid to secure a preliminary round of the Sydney 2000 Olympic Games Soccer Tournament, there was a need to engage consultants to undertake conceptual and feasibility work in regard to design, land acquisition, planning issues and brief development.*
- 3.31 The Department of Recreation and Sport concluded that, in view of Woods Bagot's knowledge of the site, it would be sensible for Woods Bagot to continue. This was subsequently agreed by Services SA.*
- 3.32 To date, Woods Bagot have undertaken a considerable amount of work on the Stage II project for no payment. This includes a degree of sub-consulting work with other firms whom Woods Bagot would be obliged to pay. It is estimated that the costs incurred by Woods Bagot would be in the order of \$60,000.*
- 3.33 These costs are built into the Stage II project. Accordingly, if the project proceeds, Woods Bagot will be reimbursed for these expenses.*
- 3.34 However, at this stage, Woods Bagot have no commitment from the Government in relation to reimbursement of their costs should the project not proceed. While they are not seeking payment at this stage, they are anxious about their position from an audit perspective.*
- 3.35 It is considered that it would be unreasonable for Woods Bagot to carry these costs if the project does not proceed. Under these circumstances additional funds would need to be provided to the Department of Recreation and Sport to enable it to reimburse Woods Bagot."*

Services SA informed the Department for Recreation and Sport that the process adopted was not appropriate.

*"The circumstances of Woods Bagot's involvement to date is understood. However, it is suggested that the detail in 3.29 to 3.35 need not be incorporated in the Cabinet submission as it attracts too much attention to an issue that has not been dealt with in accordance with the Government process and as a result it may invite criticism of your Agency. If pressured for comment Services SA would be compelled to state that our involvement should have been sought earlier."<sup>907</sup>*

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<sup>907</sup> Minute from Anne Howe, Services SA to Vaughn Bollen of the Department of Recreation and Sport dated 30 June 1997.

This topic was dealt with in the final July Cabinet submission as follows:

- "3.31 The firm of Woods Bagot was initially selected as the preferred consultant for Stage 1 of the Hindmarsh Stadium Redevelopment in competition with a selected field of consultants.*
- 3.32 As part of the bid to secure rounds of the Sydney 2000 Olympic Football Tournament, there was a need to utilise the services of Woods Bagot, in view of their knowledge of the site, to undertake conceptual and feasibility work in regard to design, land acquisition, planning issues and brief development for this proposal.*
- 3.33 Given its background and involvement in investigating the feasibility of the expanded project, it is proposed Woods Bagot be further engaged for Stage 2 subject to a satisfactory fee being negotiated by Services SA."*

The submission did not seek Cabinet approval for non-compliance with usual procedures for tendering of work.

The Cabinet submission signed by Deputy Premier Ingerson on 15 August 1997 dealt with the retainer of Woods Bagot in the same way as Minister Ashenden's 9 July 1997 Cabinet submission.

The Cabinet submission upon which Cabinet's approval was finally sought for the appointment of Woods Bagot as the primary consultant for Stage 2 was significantly different from the first draft. It omitted the fact that Woods Bagot had been instructed by Minister Ingerson and the Office for Recreation, Sport and Racing to undertake substantial work prior to the Cabinet submission without:

- A proper specification of the scope of their work;
- An agreement for the basis upon which they would charge.
- Their appointment being the subject of a competitive tender.

Services SA's criticism of the first draft was entirely correct. The additional work undertaken by Woods Bagot commencing shortly after Minister Ingerson's telephone conversation with the senior SOCOG official should, from the outset, have been the subject of:

- Supervision and monitoring by Services SA; and
- Woods Bagot's formal retainer.

The lack of a formal retainer of Woods Bagot for Stage 2 occurred because Minister Ingerson took responsibility for instructing Woods Bagot direct. Also, the connection with the Olympic bid gave rise to the imposition of confidentiality restrictions that in reality had the effect of excluding only Services SA.

In March 1996, Minister Ingerson had met with Woods Bagot to obtain a briefing on the change of the redevelopment work from a new eastern to an upgraded western grandstand and the proposals for land acquisition. On that occasion he instructed Woods Bagot to press on with the land acquisition investigations. Woods Bagot reported on those instructions to Services SA. The fee for that work was set out in correspondence from Woods Bagot.

In October 1996, Minister Ingerson instructed Woods Bagot directly to prepare the plans that he showed to SOCOG representatives on 29 October 1996. Services SA were not informed of that work. That work led to Woods Bagot preparing the various concept drawings that were the subject of the November 1996 and March and July 1997 Cabinet submissions.

That work was perceived as growing out of the Bid Committee work and for that reason was kept confidential. Of the parties represented on the Hindmarsh Stadium Redevelopment Committee Executive Group, only Services SA was excluded from the process of instructing Woods Bagot in relation to the preparation of the Stage 2 concept plans.

In my opinion, this was wholly inappropriate for the following reasons:

- The Government was potentially incurring the cost of consultancy fees without knowing how much or on what basis.
- Services SA were not given the opportunity to point out fundamental defects in the project evaluation for Stage 2.
- If the need for a primary consultant for Stage 2 had been addressed in a formal way earlier, there might have been time to consider other consultants. Even if Woods Bagot had ultimately been the preferred candidate, a competitive process could only have assisted in reducing Woods Bagot's fees.

Minister Ingerson and Mr Michael Scott as the Chief Executive Officer of the Office for Recreation, Sport and Racing (and its successor agency, the Department of Recreation and Sport) should have ensured that Woods Bagot were retained in accordance with usual Government practice. Mr Ashenden shares responsibility for this failure to observe proper processes to the extent that he was the Minister responsible for the project between December 1996 and July 1997.

### **Formal Retainer of Woods Bagot for Stage 2**

Woods Bagot were formally retained for Stage 2 by execution of a formal contract document dated 17 September 1997 prepared under the direction of Services SA.<sup>908</sup>

The services to be provided by Woods Bagot were defined by reference to the Budget/Scope Document for Stage 2 dated 12 August 1997, prepared by Woods Bagot before their formal appointment.

The 9 July 1997 Cabinet submission had made it clear that the Department of Recreation and Sport proposed that Woods Bagot continue to be retained without any competitive process. The justification for that was the concept work that had already been done.

The logic applied in choosing Woods Bagot for Stage 2 was flawed:

- The fact that Woods Bagot had "*background and involvement*" in the project was a factor in favour of appointing Woods Bagot. It was not determinative by itself.

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<sup>908</sup> The terms of this agreement are discussed in detail in Chapter 35 above.

- The fact that Woods Bagot had undertaken work with no retainer and before a commitment to Stage 2 had been given by the Government was not relevant to the issue of their further retainer.
- That fact also did not mean that Woods Bagot had to be paid for their work. Woods Bagot knew that the work they were undertaking might not lead to a formal retainer. It was work that is known commercially by professionals as "speculative".

It was Services SA's standard procedure that the retainer of a service provider for one phase of a project did not mean that the service provider would be retained for a later phase. That was recorded in the letter Services SA prepared for the Soccer Federation to send to Woods Bagot in September 1995:

*"It should be noted that an engagement as primary consultant for the initial stage may not necessarily indicate continued engagement of the same primary consultant for the remaining stage."*

Woods Bagot had worked on Stage 2 since mid-1996 on a speculative basis and incurred substantial costs and disbursements.<sup>909</sup> Cabinet endorsed Woods Bagot's appointment as primary consultant for Stage 2 on 18 August 1997, subject to Services SA negotiating a suitable fee. Woods Bagot were already intimately involved in the project. Indeed, Woods Bagot had prepared the concept brief that set the scope of work for which they were eventually contracted. By August 1997 there were considerable time pressures facing the implementation of Stage 2 to meet Olympic deadlines. Since the proposal to retain a primary consultant was left until then it may have been too late to consider consultants other than Woods Bagot.

In my opinion, Woods Bagot's appointment for Stage 2 should have been regularised in 1996 and the contract for primary consultant competitively tendered, even if on a more limited basis than for Stage 1.

## **NATIONAL PORTFOLIO STRATEGIES**

National Portfolio Strategies were appointed in April 1996 by Woods Bagot by the Office for Recreation, Sport and Racing on instructions from Minister Ingerson. There was no selection process.

That may have been considered appropriate because of the necessity to keep the investigations into land acquisition secret to improve the Government's negotiating position with the landowners. That was a relevant factor to consider in determining the procedure for appointment of the consultant but it was not by itself conclusive. Consideration should have been given to whether the need for secrecy could have been addressed by:

- Obtaining fee quotations from candidates on the basis of a generic description of the work involved without identifying the specific project.
- Having each candidate sign a confidentiality deed.

No such consideration was given.

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<sup>909</sup> As at 24 August 1997, this work was costed at \$138,173 on a time basis, applying Woods Bagot's standard charge-out rates. Page 10 of Woods Bagot's fee offer for Stage 2.



Services SA were not instructed to arrange National Portfolio Strategies' retainer. Instead, the Office of Recreation, Sport and Racing set up their retainer. In my opinion, the Office of Recreation, Sport and Racing should have instructed Services SA to undertake this role.

## **RIDER HUNT**

Rider Hunt initially undertook work on the basis of no written appointment. They were instructed by Woods Bagot on 19 September 1996 to prepare a cost estimate for expanded permanent seating at the Hindmarsh Stadium at a time when the possibility of Stage 2 had not been raised with Cabinet.

In March 1997, Rider Hunt were instructed by the Department of Recreation and Sport to undertake work on costing a version of Stage 2 without any formal retainer or understanding as to their fees. Services SA were not consulted about their appointment.

The cost of the work that Rider Hunt undertook was later treated as a disbursement of Woods Bagot.

The criticisms that apply to the retainer of Woods Bagot apply equally to Rider Hunt.

The Office for Recreation and Sport should have ensured that Rider Hunt was selected in a proper process and that they were given a clear formal retainer.

## **THE TENDERING PROCESS AND THE LETTING OF CONTRACTS**

### **Overview**

I consider that the tendering process and the letting of contracts for the construction of both Stages 1 and 2 was conducted appropriately and in accordance with usual Government processes.

### **Sponsorship**

During the course of the Public Works Committee process for Stage 1, the Public Works Committee expressed concerns about the procedures proposed to be adopted for construction management and tender processes.

The Presiding Member of the Public Works Committee requested that Minister Ingerson seek a written opinion from the Crown Solicitor confirming that those processes were well founded and lawful. The Crown Solicitor's Office confirmed that those processes would be, provided that:

- Cabinet approved the Minister for State Government Services as the principal contracting party and to be contractually responsible to undertake the development. (This occurred for both Stages 1 and 2.)
- The various commercial, prudential and risk management issues attendant upon the Minister for State Government Services directly contracting to undertake the redevelopment were adequately addressed, especially in respect of the contractual relationship between the Crown on the one hand and the Soccer Federation on the other. (These issues were adequately addressed in the licence agreements entered into between the Soccer Federation and the Minister for State Government to which the Council gave its consent for both Stages 1 and 2.)

- All usual government tender processes are implemented and observed. (They were for the construction management and letting of trade packages phase of both the Stage 1 and 2 projects.)
- The Minister is exclusively responsible to accept the lowest conforming tenders. (This occurred.)
- The Hindmarsh Redevelopment Executive Group and the Hindmarsh Redevelopment Committee are, in relation to the actual undertaking of the development, merely performing a liaison or consultative function and do not have any right or power to determine or influence the acceptance of tenders or the performance of the Minister's contractual, prudential or construction responsibilities and obligations. (This occurred for the construction management and letting of trade packages phase of both the Stage 1 and 2 projects. I note that it did not occur in relation to key decisions made about the scope of the Stage 1 works which is the subject of detailed discussion in Chapter 38 above.)
- Any "sponsorship" arrangements proposed by individual tenderers for "trade packages" are considered separately from the acceptance of the actual tender and are negotiated independently by the Soccer Federation directly with any such tenderer.

I have found no evidence that all these matters were not adequately addressed in the construction management and letting of trade packages phase of both the Stage 1 and 2 projects.

I have found that no sponsorship opportunities were sought or obtained by the Soccer Federation from any tenderer for the construction of the redevelopment. As discussed below, although Woods Bagot offered sponsorship in their tender for the primary consultancy, no sponsorship was provided.<sup>910</sup> The matter of sponsorships was properly supervised by Services SA and its predecessor, the Department of Building Management ensuring the integrity of the tender processes for the whole project.

### **Inappropriate Selection Process**

In their tender submission, Woods Bagot stated that they were prepared to offer sponsorship to the Soccer Federation if they were the preferred candidate.<sup>911</sup>

Woods Bagot were approached by the Chairman of the Soccer Federation seeking confirmation of their sponsorship offer.<sup>912</sup> Mr Ford confirmed that Woods Bagot intended to offer sponsorship if Woods Bagot was the successful tenderer. The Chairman of the Soccer Federation, Mr Caruso, asked how much Woods Bagot was offering and how much would Woods Bagot be prepared to discount their fees because other tenderers might also be prepared to do the same. Mr Ford objected. Mr Ford feared that if the Soccer Federation sought that from them, they would also seek it from other tenderers, leading to a "*Dutch auction*".

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<sup>910</sup> See page 528 above.

<sup>911</sup> This matter is discussed in detail in Chapter 7.

<sup>912</sup> Mr Avory has informed this Examination that Mr Caruso was not authorised by the Soccer Federation to make this approach.

Mr Ford informed Department of Building Management<sup>913</sup> about his objections and the Department of Building Management ensured that the integrity of the tender process for the primary consultant was maintained. The selection panel did not consider any sponsorship option.

Ultimately, even though their submission invited it, Woods Bagot did not provide the Soccer Federation with any sponsorship either as part of the tender process for the primary consultant or more generally for the redevelopment project.

Woods Bagot were subsequently selected as primary consultant although they were not the cheapest of the tenderers. The Soccer Federation expressed a preference for Woods Bagot, noting that the Soccer Federation would pursue the possibility of sponsorship from Woods Bagot.<sup>914</sup> The Office for Recreation, Sport and Racing supported the appointment of Woods Bagot.<sup>915</sup> Services SA had assessed the cheapest tenderer as having the necessary skills for the project, even if not the same skill level as Woods Bagot. Services SA considered that Woods Bagot's proposal offered the most appropriate level of service for a market competitive price.

It is not appropriate in a Government funded project that selection preference should be given to a candidate because the candidate has offered sponsorship. The selection criteria should be stated in a clear and open way. The key relevant criteria should be price and ability to perform the required services. In rare cases, there might be other relevant factors that the Government will wish to consider. However, those factors should always be stated in the tendering or invitation documents.

The letter of invitation seeking submissions for the role as primary consultant prepared by the Department of Building Management should have expressly stated that offers of sponsorship would be disregarded and should not be included in submissions.

In their tender submission, Woods Bagot stated that they were prepared to offer sponsorship to the Soccer Federation if they were the preferred candidate.

I do not consider that Woods Bagot were necessarily preferred because of their offer of sponsorship. The evidence demonstrates that Woods Bagot were unanimously considered to be the better tenderer offering a higher level of skill and service than the cheaper option. However, I consider the selection process should have been conducted so as to preclude the perception that Woods Bagot's offer of sponsorship was not influential.

## **THE CONSTRUCTION OF THE STADIUM**

### **Stage 1**

Cabinet approved an initial budget of \$6.5 million for the Stage 1 project in May 1996. Approval was sought from Cabinet on four further occasions for increases to the Stage 1 budget to \$9.26 million.

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<sup>913</sup> DBM was the predecessor of Services SA.

<sup>914</sup> The circumstances of the selection of Woods Bagot are described in detail below.

<sup>915</sup> Minute from the Chief Executive Officer of the Office for Recreation, Sport and Racing dated 2 November 1995.

Date of Cabinet Approval	Description of Additional Expenditure Required	Amount \$
29 April 1996	Change from New Eastern for \$6.5 million to Upgraded Western Grandstand for \$8.125 million including reimbursement for Soccer Federation's new office	1,625,000
14 November 1996	Changes to piling design and method of construction resulting from October 1996 geotechnical survey and DAC condition	359,000
	DAC requirement for additional streetscaping	91,000
	Extension of lift to upper tier of western grandstand	40,000
	Additional 200 Grandstand Seats	40,000
	Corporate Box Lighting	30,000
25 August 1997	Budget revision for under-estimate structural steel tender package	445,000
23 February 1998	Extra work required to attend to spectator safety issues	33,650
	Extra work required to satisfy certificate of occupancy in time for planned opening	27,200
	Unforeseen extra work	26,500
	Trade contractor's claim for payment for additional work in connection with fabrication and installation of new connection collars for the ties between the roof and the super structure	42,650
<b>Total Increase In Budget Approved By Cabinet For Stage 1</b>		<b>2,760,000</b>

This Table shows that there was a 42 percent increase in the budget set for Stage 1 in May 1995. Apart from the change in scope of the project in April 1996, the single largest item was the unanticipated increase in the cost of the structural steel tender - \$445,000. The next most significant item was the unanticipated change to the piling system - \$359,000.

The need to return to Cabinet for approval for additional funding for Stage 1 was the subject of a review by Services SA of the cost management processes for the project.<sup>916</sup> In that report, Services SA stated:

- The construction management methodology for the project was the right procurement strategy for the project.
- The unanticipated increase in the cost of the structural steel package was principally the result of changed market conditions. Services SA re-tendered the structural steel packages for a minor reduction in cost. However, erection costs were under-estimated.

I accept Services SA's conclusions in this regard. This Examination has found no evidence to the contrary.

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<sup>916</sup> This report is discussed briefly in Chapter 12.

It might be suggested that the 14 percent increase in the Stage 1 budget was the result of inadequate management of the construction management process. I do not hold that view.

In my view, aside from the structural steel tender, many of the budget increases approved were the result of inadequate planning. For example, the geotechnical survey that partly led to the need to revise the design of the piling system was not undertaken until October 1996. The budget set in June 1996 was estimated for a design based on geotechnical advice for general conditions in the area. Some additional work was done that was not included in the original budget estimate that might reasonably have been expected to have been included. Some items, namely the inclusion of corporate box lighting and additional seating were included as a result of a decision to increase the scope of the works.

## **Stage 2**

I find that the processes for managing the construction of the Stage 2 works were appropriate and make no criticism of this aspect of the project.

## **THE ONGOING MANAGEMENT OF THE STADIUM**

The Office for Recreation and Sport<sup>917</sup> did not adequately monitor the Soccer Federation's compliance with key obligations made to Government in the Funding Deed. This should have been done continuously from October 1996 and was not. By October 1998, when it was apparent to the Office for Recreation and Sport that the Soccer Federation was in default of many of its obligations, the initiatives undertaken by Minister Evans to ensure compliance with the Funding Deed only served to identify the inadequacies inherent in the legal structure for Stage 1 that had been put in place in October 1996 and not altered despite the construction of Stage 2.

These matters are discussed in detail in Chapters 22 and 32.

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<sup>917</sup> And its predecessor, the Department of Recreation and Sport.



## **APPENDICES**





## APPENDIX 1 – THE COST OF THE REDEVELOPMENT

### TABLE 1 – CAPITAL COST

	Government \$'000	Soccer Federation \$'000	Total \$'000
Stage 1 (refer Note 1)	5 196	4 063	9 259
Fit Out (refer Note 2)	-	2 136	2 136
Stage 2	16 974	-	16 974
<b>Total Capital Cost to 30 June 2001</b>	<b>22 170</b>	<b>6 199</b>	<b>28 369</b>

### TABLE 2 – REPAYMENT OF SOCCER FEDERATION LOANS

	Government \$'000	Levies \$'000	Total \$'000
Under Funding Deed to 30 June 2001 (refer Note 3)	1 350	235	1 585
Under Fit Out to 30 June 2001 (refer Note 4)	512	158	670
<b>Total Repayments of Soccer Federation Loans to 30 June 2001</b>	<b>1 862</b>	<b>393</b>	<b>2 255</b>

### TABLE 3 – TOTAL GOVERNMENT EXPOSURE

	Government \$'000
Total Capital Cost to 30 June 2001	22 170
Total Government Support of Soccer Federation Loans to 30 June 2001	1 862
Government Support for Soccer Federation and Adelaide City (refer Note 5)	530
<b>Total Cost to Government to 30 June 2001</b>	<b>24 562</b>
Outstanding obligations under Stage 1 Loan Guaranteed By Government	6 739
Outstanding obligations under Fit Out Loan Guaranteed By Government	3 216
Outstanding Obligations – Support for Soccer Federation and Adelaide City (refer Note 5)	423
<b>Total Government Exposure</b>	<b>34 940</b>

## **Comments**

The total cost to the Government of \$24.562 million is the accumulated cost to 30 June 2001 and does not include:

- Costs for the staging of the Sydney 2000 Olympic Soccer Tournament. These costs are shown in Appendix 3.
- Interest costs during the early stage of construction incurred during 1995/96 to 1996/97 because the Office for Recreation, Sport and Racing did not keep separate records of that interest cost.
- Cost of acquisition of the land upon which the stadium is constructed as the transaction had not been finalised at the date of this Report.

**Note 1** - The capital cost for Stage 1 of \$9.259 million is the actual cost of the Stage 1 redevelopment, that is defined in the Stage 1 Funding Deed as the Project Costs. The Project Costs include those costs paid by the Soccer Federation that were funded by a Government guaranteed loan of \$4.0625 million from the National Australia Bank Limited but exclude additional borrowings of \$81,000 by the Soccer Federation to fund the first interest payment. These borrowings were not Government guaranteed. Table 4 below shows the detailed Capital Costs.

**Note 2** - The total cost of the fit out of the western grandstand is \$2 136 000. The fit out was funded by a Government guaranteed \$2 million loan from the National Australia Bank Limited to the Soccer Federation. The balance was paid by the two NSL Clubs.

**Note 3** - Under the Stage 1 Funding Deed, any shortfall between the levies collected and the debt servicing costs of the Stage 1 Loan was required to be paid by the Minister for Recreation, Sport and Racing. The Soccer Federation's obligations under the Stage 1 Loan were also guaranteed by the Treasurer under a separate Deed of Guarantee. The amount of \$1.350 million represents payments made by the Minister for Recreation, Sport and Racing under the Funding Deed for shortfalls between the levies and the required loan repayments. The Deed of Guarantee has not been called upon. Refer to Table 7 below.

**Note 4** - Under the Fit Out Deed, any shortfall between the levies collected and the debt servicing costs of the Fit Out Loan was required to be paid by the Minister for Recreation and Sport. The Soccer Federation's obligations under the Fit Out Loan were also guaranteed by the Treasurer under a separate Deed of Guarantee. The amount of \$0.512 million represents payments made by the Minister for Recreation, Sport and Racing (as the successor of the Minister for Recreation and Sport) under the Fit Out Deed for shortfalls between the levies and the required loan repayments. The Deed of Guarantee has not been called upon. Refer to Table 8 below.

**Note 5** – Under agreements dated 29 March 2001 with the Soccer Federation and Adelaide City for the registration of a mortgage over the stadium, the transfer of the management of the stadium to the Government and to reimburse losses incurred in managing the stadium during the period of the redevelopment, the Government agreed to pay the Soccer Federation \$599,000 and Adelaide City \$354,000, totalling \$953,000. \$530,000 of this amount was paid by 30 June 2001 and \$423,000 is payable under the agreements.

**TABLE 4 – DETAILED CAPITAL COST**

	<b>Cabinet Approval \$'000</b>	<b>Budget Estimates \$'000</b>	<b>Actual Costs \$'000</b>
<b>Stage 1</b>			
Construction Costs (Contracts)			8 040
Design, Documentation and Contract Administration (Primary Consultant's Fees)			651
DAIS (Project and Cost Management Fees)			155
Soccer Federation office accommodation and loan application fee			315
Disbursements, sundries and on costs			98
<b>Total – Stage 1</b>	9 260	<sup>918</sup> 8 685	9 259
<b>Stage 2</b>			
Construction Costs (Contract)			12 549
Land Acquisition and Relocation Costs			2 443
Design, Documentation and Contract Administration (Primary Consultant and Cost Management fees)			1 634
DAIS (Project Management Fees)			282
Disbursement, Sundries, On Costs			181
<i>Less: Recoveries of costs recharged - Not directly related to State 2</i>			(115)
<b>Total – Stage 2</b>	17 000	<sup>919</sup> 17 000	<sup>920</sup> 16 974

<sup>918</sup> Capital Works Program 1997-98, page 40.

<sup>919</sup> Capital Investment Statement, 1999-2000 Budget Paper 5, page 54.

<sup>920</sup> This represents the actual cost to completion as per the DAIS's Fees and Resources Management System at 30 June 2001.

**TABLE 5 – INCREASES MADE TO THE STAGE 1 BUDGET**

<b>Date of Cabinet Approval</b>	<b>Description of Expenditure Required</b>	<b>Amount \$</b>
29 April 1996	Change from New Eastern for \$6.5 million to Upgraded Western Grandstand for \$8.125 million including reimbursement for Soccer Federation's new office	1,625,000
14 November 1996	Changes to piling design and method of construction resulting from October 1996 geotechnical survey and DAC condition	359,000
	DAC requirement for additional streetscaping	91,000
	Extension of lift to upper tier of western grandstand	40,000
	Additional 200 Grandstand Seats	40,000
	Corporate Box Lighting	30,000
25 August 1997	Budget revision for under-estimate structural steel tender package	445,000
23 February 1998	Extra work required to attend to spectator safety issues	33,650
	Extra work required to satisfy certificate of occupancy in time for planned opening	27,200
	Unforeseen extra work	26,500
	Trade contractor's claim for payment for additional work in connection with fabrication and installation of new connection collars for the ties between the roof and the super structure	42,650
<b>Total Increase In Budget Approved By Cabinet For Stage 1</b>		<b>2,760,000</b>

**TABLE 6 – INCREASES MADE TO THE STAGE 2 BUDGET**

<b>Date of Cabinet Approval</b>	<b>Description of Expenditure Required</b>	<b>Amount \$</b>
18 November 1996	Option 1 – Soccer Park concept	16,205,000
8 September 1997	Concept involving 3 new permanent grandstands - \$1.92 million of variable and discretionary works not approved	16,205,000
23 February 1998	Approval for project to proceed to the Public Works Committee on the basis of an estimated budget	18,500,000
21 September 1998	Final budget approval	17,000,000
<b>Total Increase in Budget Approved by Cabinet For Stage 2</b>		<b>795,000</b>

**TABLE 7 – REPAYMENTS OF STAGE 1 LOAN TO 30 JUNE 2001**

<b>Date</b>	<b>Government \$</b>	<b>Levies \$</b>	<b>Total \$</b>
30 December 1997	93 448	12 256	105 704
30 March 1998	-	105 764	105 764
30 June 1998	52 825	<sup>921</sup> 52 919	105 744
30 September 1998	79 326	26 359	105 685
30 December 1998	67 910	37 717	105 627
30 March 1999	105 683	-	105 683
30 June 1999	105 662	-	105 662
30 September 1999	105 603	-	105 603
30 December 1999	105 581	-	105 581
30 March 2000	105 586	-	105 586
30 June 2000	105 526	-	105 526
29 September 2000	105 502	-	105 502
29 December 2000	105 479	-	105 479
31 March 2001	106 008	-	106 008
29 June 2001	105 507	-	105 507
<b>Total Repayments under the Stage 1 Loan to 30 June 2001</b>	<b>1 349 646</b>	<b>235 015</b>	<b>1 584 661</b>
Interest accrued to 30 June 2001 due to Minister	226 921		
<b>Total Due to Minister to 30 June 2001</b>	<b>1 576 567</b>		

**Comments**

Table 7 shows the total debt servicing costs to 30 June 2001 for the loan of \$4.0625 million taken out by the Soccer Federation to fund its share of the Project Costs for Stage 1. In accordance with the terms of the Stage 1 Funding Deed, shortfalls between the levies collected and the debt servicing costs of the Stage 1 Loan have been paid by the Minister for Recreation, Sport and Racing. Under the Stage 1 Funding Deed, the Minister is entitled to interest on the amount paid and the total amount paid by the Minister (including interest accrued) is repayable by the Soccer Federation from future levy collections.

From January 1999, with Cabinet approval, the Minister has suspended the payment of levies pending the conduct of negotiations to resolve the ownership and management issues with the Soccer Federation and Adelaide City. Since then, the Minister has paid all the debt servicing costs of the Stage 1 Loan.

<sup>921</sup> Includes transfer of \$20 408 from the Fit Out Levy Bank Account to the Grandstand Levy Bank Account.

**TABLE 8 – REPAYMENTS OF FIT OUT LOAN TO 30 JUNE 2001**

<b>Date</b>	<b>Government \$</b>	<b>Levies \$</b>	<b>Total \$</b>
13 February 1998	-	36 873	36 873
13 May 1998	-	48 802	48 802
13 August 1998	-	48 792	48 792
13 November 1998	25 000	23 820	48 820
15 February 1999	48 678	-	48 678
13 May 1999	48 761	-	48 761
13 August 1999	48 789	-	48 789
15 November 1999	48 721	-	48 721
13 February 2000	49 093	-	49 093
15 May 2000	48 310	-	48 310
13 August 2000	48 683	-	48 683
13 November 2000	48 690	-	48 690
15 February 2001	48 646	-	48 646
15 May 2001	48 651	-	48 651
Payments under the Fit Out Guarantee Deed to 30 June 2001	512 022	158 287	670 309
Interest accrued to 30 June 2001	60 557		
<b>Total Due to Minister to 30 June 2001</b>	<b>572 579</b>		

**Comments**

Table 8 shows the total debt servicing costs to 30 June 2001 for the loan of \$2 million taken out by the Soccer Federation to fund the Fit Out for Stage 1. In accordance with the terms of the Fit Out Deed, shortfalls between the levies collected and the debt servicing costs of the Fit Out Loan have been paid by the Minister for Recreation and Sport. Under the Fit Out Deed, the Minister is entitled to interest on the amount paid and the total amount funded by the Minister (including interest accrued) is repayable by the Soccer Federation from future levy collections.

From January 1999, with Cabinet approval, the Minister has suspended the payment of levies pending the conduct of negotiations to resolve the ownership and management issues with the Soccer Federation and Adelaide City. Since then, the Minister has paid all the debt servicing costs of the Fit Out Loan.

**TABLE 9 – GUARANTEE FEE PAYABLE TO THE TREASURER**

<b>Guarantee Fee Payable on Stage 1 Loan</b>		
<b>Due Date</b>	<b>Maximum Principle Outstanding During the Previous Year \$</b>	<b>Guarantee Fee Payable \$</b>
31 October 1997	4,061,999	2,587
31 October 1998	4,061,999	30,465
31 October 1999	3,975,354	29,815
31 October 2000	3,881,573	29,112
Total Payable to the Treasurer to 31 October 2000 for Guarantee of Stage 1 Loan		91,979
Less Paid		(2,587)
<b>Total Net Payable to the Treasurer to 31 October 2000 for Guarantee of Stage 1 Loan</b>		<b>89,392</b>
<b>Guarantee Fee Payable on Fit Out Loan</b>		
<b>Due Date</b>	<b>Maximum Principle Outstanding During the Previous Year \$</b>	<b>Guarantee Fee Payable \$</b>
31 October 1998	1,964,834	10,497
31 October 1999	1,942,800	14,571
31 October 2000	1,895,811	14,219
<b>Total Payable to the Treasurer to 31 October 2000</b>		<b>39,287</b>
<b>Total Net Payable to Treasurer to 31 October 2000 for Guarantees of Stage 1 and Fit Out Loans</b>		<b>128,679</b>

Comments

The Soccer Federation's loans from the National Australia Bank Limited for Stage 1 and the Fit Out of the western grandstand were guaranteed by the Treasurer under separate Guarantee Deeds. The Soccer Federation is obliged to pay the Treasurer a guarantee fee of 0.75 percent per annum of the maximum amount drawn down under the Loan on 31 October each year.

**APPENDIX 2 - SPECTATOR ATTENDANCES AND LEVIES PAYABLE  
UNDER FUNDING AND FIT OUT DEED AND LEVIES WAIVED OR  
SUSPENDED**

**TABLE 1 - 7 DECEMBER 1997 TO 30 SEPTEMBER 1998**

<b>Table 1 - 7 December 1997 - 30 September 1998</b>		<b>Spectator Attendances</b>			<b>Levies</b>		
<b>Date</b>	<b>Match</b>	<b>Total (Note 1)</b>	<b>General Admission (Note 1)</b>	<b>Grandstand (Note 1)</b>	<b>Grandstand Levy (Note 2)</b>	<b>Fit Out Levy (Note 3)</b>	<b>Total Levies Payable (Note 4)</b>
07-Dec-97	Adelaide City v Marconi	5 355	3 448	1 907	\$4 521	\$9 910	\$14 431
21-Dec-97	Adelaide City v Gippsland	3 437	1 665	1 772	\$4 116	\$6 074	\$10 190
28-Dec-97	Adelaide Sharks v Melb. Knights	3 643	2 135	1 508	\$3 324	\$6 486	\$9 810
04-Jan-98	Adelaide City v South Melbourne	5 927	3 509	2 418	\$6 054	\$11 054	\$17 108
07-Jan-98	Adelaide City v Newcastle	3 429	1 834	1 595	\$3 585	\$6 058	\$9 643
11-Jan-98	Adelaide Sharks v Newcastle	2 410	1 442	968	\$1 704	\$4 020	\$5 724
15-Jan-98	Adelaide Sharks v Adelaide City	9 946	4 972	4 974	\$13 722	\$19 092	\$32 814
18-Jan-98	Adelaide City v Perth	4 466	2 094	2 372	\$5 916	\$8 132	\$14 048
25-Jan-98	Adelaide Sharks v Marconi	2 221	1 153	1 068	\$2 004	\$3 642	\$5 646
01-Feb-98	Adelaide City v Carlton	4 543	2 382	2 161	\$5 283	\$8 286	\$13 569
07-Feb-98	Rugby 7's	6 962	3 563	3 399	\$8 997	\$0	\$8 997
01-Jan-00	Australia v Japan	7 673	3 915	3 758	\$10 074	\$14 546	\$24 620
18-Feb-98	Adelaide City v Wollongong	2 222	1 039	1 183	\$2 349	\$3 644	\$5 993
22-Feb-98	Adelaide City v Canberra	3 413	1 920	1 493	\$3 279	\$6 026	\$9 305
01-Mar-98	Adelaide Sharks v South Melbourne	2 772	1 592	1 180	\$2 340	\$4 744	\$7 084
08-Mar-98	Adelaide City v UTS Olympic	4 553	2 627	1 926	\$4 578	\$8 306	\$12 884
15-Mar-98	Adelaide Sharks v Perth Glory	2 373	1 401	972	\$1 716	\$3 946	\$5 662
22-Mar-98	Adelaide City v Melbourne Knights	3 951	1 915	2 036	\$4 908	\$7 102	\$12 010
24-Mar-98	Olyroos v Brazil	6 396	3 633	2 763	\$7 089	\$0	\$7 089
29-Mar-98	Adelaide Sharks v Carlton	2 194	1 216	978	\$1 734	\$3 588	\$5 322
05-Apr-98	Adelaide City v Adelaide Sharks	7 507	4 503	3 004	\$7 812	\$14 214	\$22 026
12-Apr-98	Adelaide Sharks v Brisbane	938	323	615	\$645	\$1 076	\$1 721
26-Apr-98	Adelaide City v Wollongong	4 016	2 592	1 424	\$3 072	\$7 232	\$10 304
03-Jul-98	Adelaide Rams v Balmain	2 664	0	2 664	\$6 792	\$0	\$6 792
26-Jul-98	Adelaide Rams v Auckland	2 799	0	2 799	\$7 197	\$0	\$7 197
07-Aug-98	Adelaide Rams v Manly	2 809	0	2 809	\$7 227	\$0	\$7 227
15-Aug-98	Adelaide Rams v North Sydney	2 398	0	2 398	\$5 994	\$0	\$5 994
11-Sep-98	SASF Grand Finals	4 692	2 521	2 171	\$5 313	\$8 584	\$13 897
<b>Totals for 1997-98 NSL Season</b>		<b>115 709</b>	<b>57 394</b>	<b>58 315</b>	<b>\$141 345</b>	<b>\$165 762</b>	<b>\$307 107</b>
<b>Less Amounts Paid into Levy Bank Accounts (Note 5)</b>					<b>-\$135 273</b>	<b>-\$157 008</b>	<b>-\$292 281</b>
<b>Outstanding Levies Payable to 30 Sep 98</b>					<b>\$6 072</b>	<b>\$8 754</b>	<b>\$14 826</b>



TABLE 2 - 1 OCTOBER TO 31 DECEMBER 1998 AND 1 JANUARY TO 30 SEPTEMBER 1999

		Spectator Attendances			Levies					
Date	Match	General			Grandstand Levy (Note 2)	Fit Out Levy (Note 3)	Total Levies Payable (Note 4)	Amount Waived (Note 6)	Amount Payable After Waiver (Note 6)	Suspended (Note 7)
		Total (Note1)	Admission (Note 1)	Grandstand (Note 1)						
11-Oct-98	Adelaide City v Perth Glory	4 672	2 498	2 174	\$ 5 322	\$ 8 544	\$ 13 866			
18-Oct-98	Adelaide Sharks v Sth Melbourne	3 488	2 039	1 449	\$ 3 147	\$ 6 176	\$ 9 323			
25-Oct-98	Adelaide City v Melbourne Knights	2 920	1 570	1 350	\$ 2 850	\$ 5 040	\$ 7 890			
08-Nov-98	Adelaide Sharks v Newcastle	2 131	1 192	939	\$ 1 617	\$ 3 462	\$ 5 079			
15-Nov-98	Adelaide Sharks v Northern Spirit	4 384	1 988	2 396	\$ 5 988	\$ 7 968	\$ 13 956			
22-Nov-98	Adelaide Sharks v Sydney Olympic	2 779	1 598	1 181	\$ 2 343	\$ 4 758	\$ 7 101			
29-Nov-98	Adelaide City v Sydney Untied	4 301	2 195	2 106	\$ 5 118	\$ 7 802	\$ 12 920			
06-Dec-98	Adelaide Sharks v Carlton	2 967	1 681	1 286	\$ 2 658	\$ 5 134	\$ 7 792			
13-Dec-98	Adelaide City v South Melbourne	3 104	1 194	1 910	\$ 4 530	\$ 5 408	\$ 9 938			
20-Dec-98	Adelaide Sharks v Wollongong	2 660	1 374	1 286	\$ 2 658	\$ 4 520	\$ 7 178			
27-Dec-98	Adelaide City v Adelaide Sharks	8 341	3 584	4 757	\$ 13 071	\$ 15 882	\$ 28 953			
<b>Levies Payable from 1 October to 31 December 1998</b>					<b>\$ 49 302</b>	<b>\$ 74 694</b>	<b>\$ 123 996</b>			
<b>Less amounts paid into Levy Bank Accounts from 1 October to 31 December 1998 (Note 8) -</b>					<b>\$ 37 896</b>	<b>-\$ 23 201</b>	<b>-\$ 61 097</b>			
<b>Outstanding Levies Payable from 1 October to 31 December 1998</b>					<b>\$ 11 406</b>	<b>\$ 51 493</b>	<b>\$ 62 899</b>			
03-Jan-99	Adelaide Sharks v Northern Spirit	2513	1244	1269	\$2 607	\$4 226	\$6 833	\$1 833	\$ 5 000	\$ 5 000
10-Jan-99	Adelaide City v Marconi	3664	1313	2351	\$5 853	\$6 528	\$12 381	\$7 381	\$ 5 000	\$ 5 000
17-Jan-99	Adelaide Sharks v Sydney United	2035	1094	941	\$1 623	\$3 270	\$4 893	-\$107	\$ 5 000	\$ 5 000
24-Jan-99	Adelaide Sharks v Canberra	1762	886	876	\$1 428	\$2 724	\$4 152	-\$848	\$ 5 000	\$ 5 000
26-Jan-99	Adelaide City v Carlton	3332	1514	1818	\$4 254	\$5 864	\$10 118	\$5 118	\$ 5 000	\$ 5 000
31-Jan-99	Adelaide City v Canberra	3784	1474	2310	\$5 730	\$6 768	\$12 498	\$7 498	\$ 5 000	\$ 5 000
07-Feb-99	Adelaide Sharks v Perth Glory	2265	1039	1226	\$2 478	\$3 730	\$6 208	\$1 208	\$ 5 000	\$ 5 000
14-Feb-99	Adelaide Sharks v Gippsland	1700	686	1014	\$1 842	\$2 600	\$4 442	-\$558	\$ 5 000	\$ 5 000
21-Feb-99	Adelaide City v Wollongong	4127	1480	2647	\$6 741	\$7 454	\$14 195	\$9 195	\$ 5 000	\$ 5 000
08-Mar-99	Adelaide Sharks v Marconi	1851	820	1031	\$1 893	\$2 902	\$4 795	-\$205	\$ 5 000	\$ 5 000
15-Mar-99	Adelaide City v Brisbane Strikers	5421	2328	3093	\$8 079	\$10 042	\$18 121	\$13 121	\$ 5 000	\$ 5 000
19-Mar-99	Adelaide Sharks v Melbourne Knights	1358	596	762	\$1 086	\$1 916	\$3 002	-\$1 998	\$ 5 000	\$ 5 000
28-Mar-99	Adelaide City v Gippsland	4517	1922	2595	\$6 585	\$8 234	\$14 819	\$9 819	\$ 5 000	\$ 5 000
04-Apr-99	Adelaide Sharks v Adelaide City	3660	1589	2071	\$5 013	\$6 520	\$11 533	\$6 533	\$ 5 000	\$ 5 000
11-Apr-99	Adelaide City v Newcastle	3327	1021	2306	\$5 718	\$5 854	\$11 572	\$6 572	\$ 5 000	\$ 5 000
18-Apr-99	Adelaide Sharks v Brisbane	1937	957	980	\$1 740	\$3 074	\$4 814	-\$186	\$ 5 000	\$ 5 000
25-Apr-99	Adelaide City v Sydney Olympic	4524	1706	2818	\$7 254	\$8 248	\$15 502	\$10 502	\$ 5 000	\$ 5 000
02-May-99	Adelaide City v Perth Glory (final)	4097	1367	2730	\$6 990	\$7 394	\$14 384	\$9 384	\$ 5 000	\$ 5 000
<b>Total Levies Payable from 1 January to 30 September 1999</b>					<b>\$76 914</b>	<b>\$97 348</b>	<b>\$174 262</b>	<b>\$84 262</b>	<b>\$ 90 000</b>	<b>\$ 90 000</b>

Table 3 - 1 October 1999 to 30 September 2000		Spectator Attendances			Levies					
Date	Match	Total (Note 1)	General Admission (Note 1)	Grandstand (Note 1)	Grandstand Levy (Note 2)	Fit Out Levy (Note 3)	Total Levies Payable (Note 4)	Amount Waived (Note 6)	Payable After Waiver (Note 6)	Suspended (Note 7)
15-Oct-99	Adelaide Force v Parramatta Power	4538	3076	1462	\$3 186	\$8 276	\$11 462	\$11 462	\$0	
29-Oct-99	Adelaide Force v Carlton	4762	2705	2057	\$4 971	\$8 724	\$13 695	\$13 695	\$0	
12-Nov-99	Adelaide Force v South Melbourne	5022	3147	1875	\$4 425	\$9 244	\$13 669	\$13 669	\$0	
26-Nov-99	Adelaide Force v Auckland Kingz	4376	2456	1920	\$4 560	\$7 952	\$12 512	\$12 512	\$0	
10-Dec-99	Adelaide Force v Wollongong	3543	1948	1595	\$3 585	\$6 286	\$9 871	\$0	\$9 871	
28-Dec-99	Adelaide Force v Auckland Kingz	5432	3640	1792	\$4 176	\$10 064	\$14 240	\$0	\$14 240	
07-Jan-00	Adelaide Force v Canberra	4109	2540	1569	\$3 507	\$7 418	\$10 925	\$0	\$10 925	
26-Jan-00	Adelaide Force v Newcastle	3895	1766	2129	\$5 187	\$6 990	\$12 177	\$0	\$12 177	
30-Jan-00	Adelaide Force v Marconi	4432	2581	1851	\$4 353	\$8 064	\$12 417	\$0	\$12 417	
04-Feb-00	Adeladie Force v Brisbane	3253	2030	1223	\$2 469	\$5 706	\$8 175	\$0	\$8 175	
18-Feb-00	Adelaide Force v Perth Glory	4615	2882	1733	\$3 999	\$8 430	\$12 429	\$0	\$12 429	
03-Mar-00	Adelaide Force v Sydney United	3846	2617	1229	\$2 487	\$6 892	\$9 379	\$0	\$9 379	
17-Mar-00	Adelaide Force v Newcastle	3767	2466	1301	\$2 703	\$6 734	\$9 437	\$0	\$9 437	
31-Mar-00	Adelaide Force v Sydney Olympic	5062	3400	1662	\$3 786	\$9 324	\$13 110	\$0	\$13 110	
14-Apr-00	Adelaide Force v Northern Spirit	4616	2423	2193	\$5 379	\$8 432	\$13 811	\$0	\$13 811	
25-Apr-00	Adelaide Force v Gippsland	6318	4324	1994	\$4 782	\$11 836	\$16 618	\$0	\$16 618	
07-May-00	Adelaide Force v Melbourne Knights	10075	7097	2978	\$7 734	\$19 350	\$27 084	\$0	\$27 084	
19-May-00	Adelaide Force v Sydney Olympic (final)	8679	5455	3224	\$8 472	\$16 558	\$25 030	\$0	\$25 030	
<b>Totals for 1999-00 NSL Season</b>		90340	56553	33787						
<b>Outstanding Levies Payable from 1 October 1999 to 30 September 2000</b>					<b>\$79 761</b>	<b>\$166 280</b>	<b>\$246 041</b>	<b>\$51 338</b>	<b>\$194 703</b>	

Season	Levies					
	Grandstand Levy	Fit Out Levy	Total Levies Payable	Amount Payable		Suspended
	(Note 2)	(Note 3)	(Note 4)	Amount Waived (Note 6)	After Waiver (Note 6)	(Note 7)
1997/98 Season from 7 December 1997 to 30 September 1998 - Table 1	\$6 072	\$8 754	\$14 826	\$0	\$14 826	
1998/99 Season from 1 October to 31 December 1998 - Table 2	\$11 406	\$51 493	\$62 899	\$0	\$62 899	
1998/99 Season from 1 January to 30 September 1999 - Table 2	\$76 914	\$97 348	\$174 262	\$84 262	\$90 000	\$90 000
1999/00 Season from 1 October 1999 to 30 September 2000 - Table 3	\$79 761	\$166 280	\$246 041	\$51 338	\$194 703	\$194 703
	<b>\$174 153</b>	<b>\$323 875</b>	<b>\$498 028</b>	<b>\$135 600</b>	<b>\$362 428</b>	<b>\$284 703</b>

## NOTES

**Note 1** - The figures for spectator attendances at Hindmarsh Stadium have been taken from the Hindmarsh Stadium Reconciliation Summary prepared by the Soccer Federation. These figures have not been audited.

**Note 2** - The amount of levies required to be imposed, collected and banked by the Soccer Federation for repayment of the Stage 1 Loan has been calculated in accordance with the Clause 8 of the Funding Deed. The Grandstand Levy for each match is calculated by multiplying the number of Grandstand spectators less 400 complimentary tickets, by \$3.

**Note 3** - The amount of the levies required to be imposed, collected and banked by the Soccer Federation for repayment of the Fit Out Loan has been calculated in accordance with Clause 7 of the Fit Out Deed. The Fit Out Levies for each match is calculated by multiplying the total number of spectators less 400 complimentary tickets, by \$2.

**Note 4** - The total amount of levies payable for each match is calculated by adding the Grandstand Levies and the Fit Out Levies together.

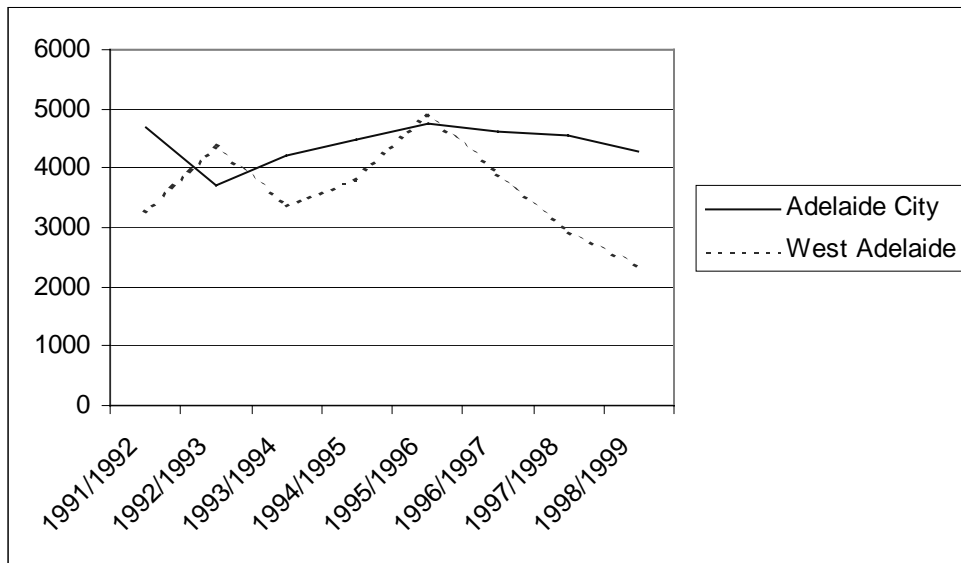
**Note 5** - The amount of levies paid into the Levy Bank Accounts in accordance with the Soccer Federation's obligations under Clauses 8 and 7 of the Funding and Fit Out Deeds respectively, has been taken from the Hindmarsh Stadium Reconciliation Summary prepared by the Soccer Federation. These figures have not been audited.

**Note 6** - On 8 October 1999, the Minister for Recreation, Sport and Racing agreed to accept \$5,000 per NSL match instead of the levies as calculated under the Funding and Fit Out Deeds and the levies as usual for other events. On 8 November 1999, with Cabinet approval, the Minister agreed to accept \$5,000 per NSL match and the lesser of the levies or \$5,000 for each other event instead of the levies as calculated under the terms of the Funding and Fit Out Deeds for the period 1 January to 30 September 1999.

**Note 7** - On 22 January 1999, the Minister for Recreation, Sport and Racing agreed to suspend the need for the Soccer Federation to meet future Stage 1 and Fit Out Loan repayments pending the Arthur Andersen review of soccer in South Australia. The suspension was expressly stated not to relieve the Soccer Federation to make retrospective payment of the levies payable under the Funding and Fit Out Deeds. By letter dated 10 November 1999, the Minister for Recreation and Sport suspended payment of the levies as varied by his agreement of 8 November 1999, until further notice on the condition that the Soccer Federation entered in negotiations in good faith with the object of the Government acquiring the lease of the stadium from the Soccer Federation.

**Note 8** - The Soccer Federation did not collect the levies from October 1998. It agreed with the NSL Clubs to accept a lump sum of \$5,000 per match in lieu of levies and collected \$50,000 from the NSL Clubs for the first 10 matches of the 1998-99 NSL Season. On 12 and 13 November 1998, the Soccer Federation deposited \$23,201 into the Fit Out Levy Bank Account. On 30 December 1998, the Soccer Federation deposited \$37,854 into the Grandstand Levy Bank Account.

**TABLE 5 – AVERAGE ATTENDANCES AT NSL MATCHES AT HINDMARSH STADIUM FROM 1991/1992 TO 1998/1999**



## APPENDIX 3 – THE COST OF HOSTING OLYMPIC SOCCER AT HINDMARSH STADIUM

Revenue	\$
Ticket Revenue	1 254 116
Fee Return	525 185
Programs/Parking/Sundry	13 639
<b>Total Revenue</b>	<b>1 792 940</b>
<b>Base Costs (Refer attached Spreadsheet)</b>	
<b>Schedule 2A</b>	
Athletes Village	150 565
Official Hotel & Media Hotel	3 354
Accreditation Centre	16 728
Advertising/Marketing	335 146
Airport Services	5 959
Catering	97 984
Ceremonies – Gala	149 865
Olympic Taskforce	1 309 762
Insurance	34 833
Legals	1 993
Look of the Games	106 851
Medical Services	9 764
Olympic Family	20 843
Public Relations Promotions	31 966
Security	227 274
Technology	32 750
Transport	222 625
<b>Total Schedule A</b>	<b>2 758 262</b>
<b>Schedule 2B</b>	
Training Sites	276 949
Stadium	866 561
Stadium Operations	292 083
Insurance	51 373
Temporary seating	598 202
<b>Total Schedule B</b>	<b>2 085 168</b>
<b>Other</b>	
Community relations	1 486
Traffic/parking management	10 753
<b>Total Other</b>	<b>12 239</b>
<b>Total Base Costs</b>	<b>4 855 669</b>
<b>SOCOG Fee</b>	
Instalment 1 at 10 percent	330 900
Instalment 2 at 20 percent	661 800
Instalment 3 at 20 percent	661 800
Instalment 4 at 45 percent	989 050
Instalment 5 at 5 percent (reconciliation)	
<b>Total SOCOG Fees</b>	<b>2 643 550</b>
<b>Total Expenses</b>	<b>7 499 219</b>
<b>Deficit</b>	<b>(5 706 279)</b>

**APPENDIX 4 – CONCEPT AND SITE PLANS OF  
HINDMARSH STADIUM**

PLAN 1 - HINDMARSH STADIUM - SITE PLAN - 1995

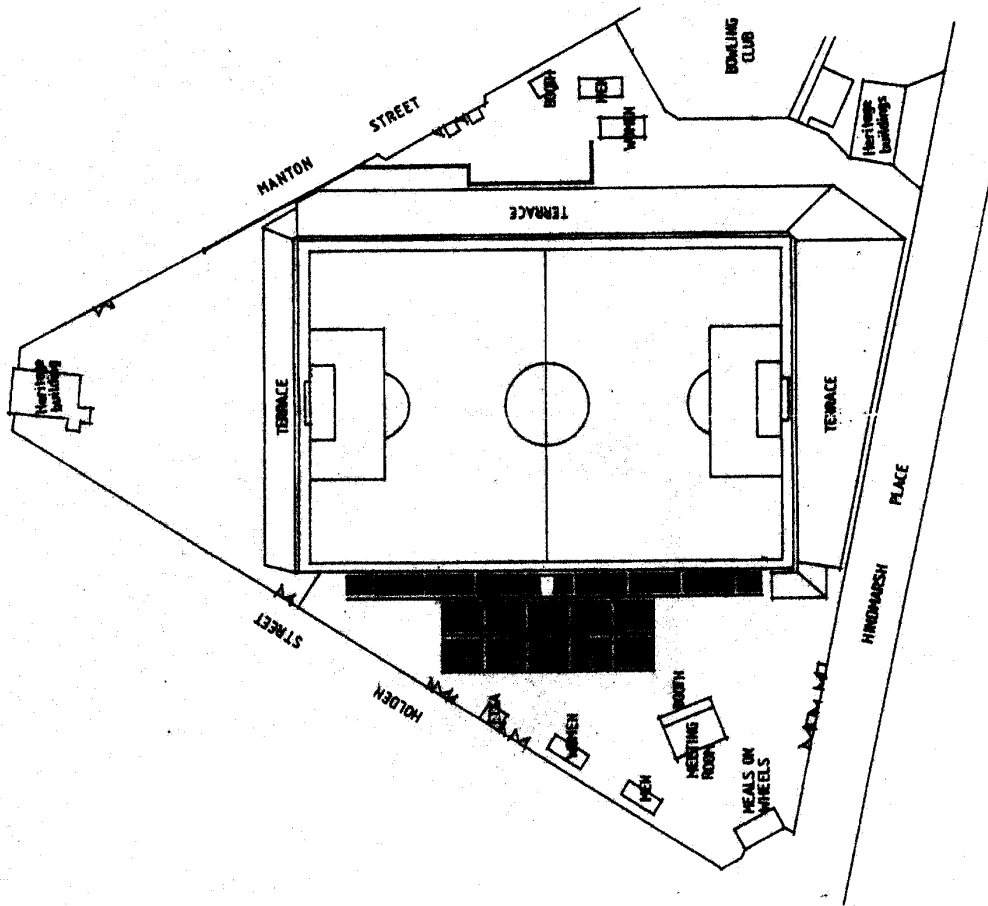


FIGURE 2

HINDMARSH STADIUM - EXISTING SITE PLAN

**PLAN 2 - HINDMARSH STADIUM SITE PLAN - 1989 - USED AS ANNEXURE A TO APRIL 1995 MEMORANDUM OF UNDERSTANDING**

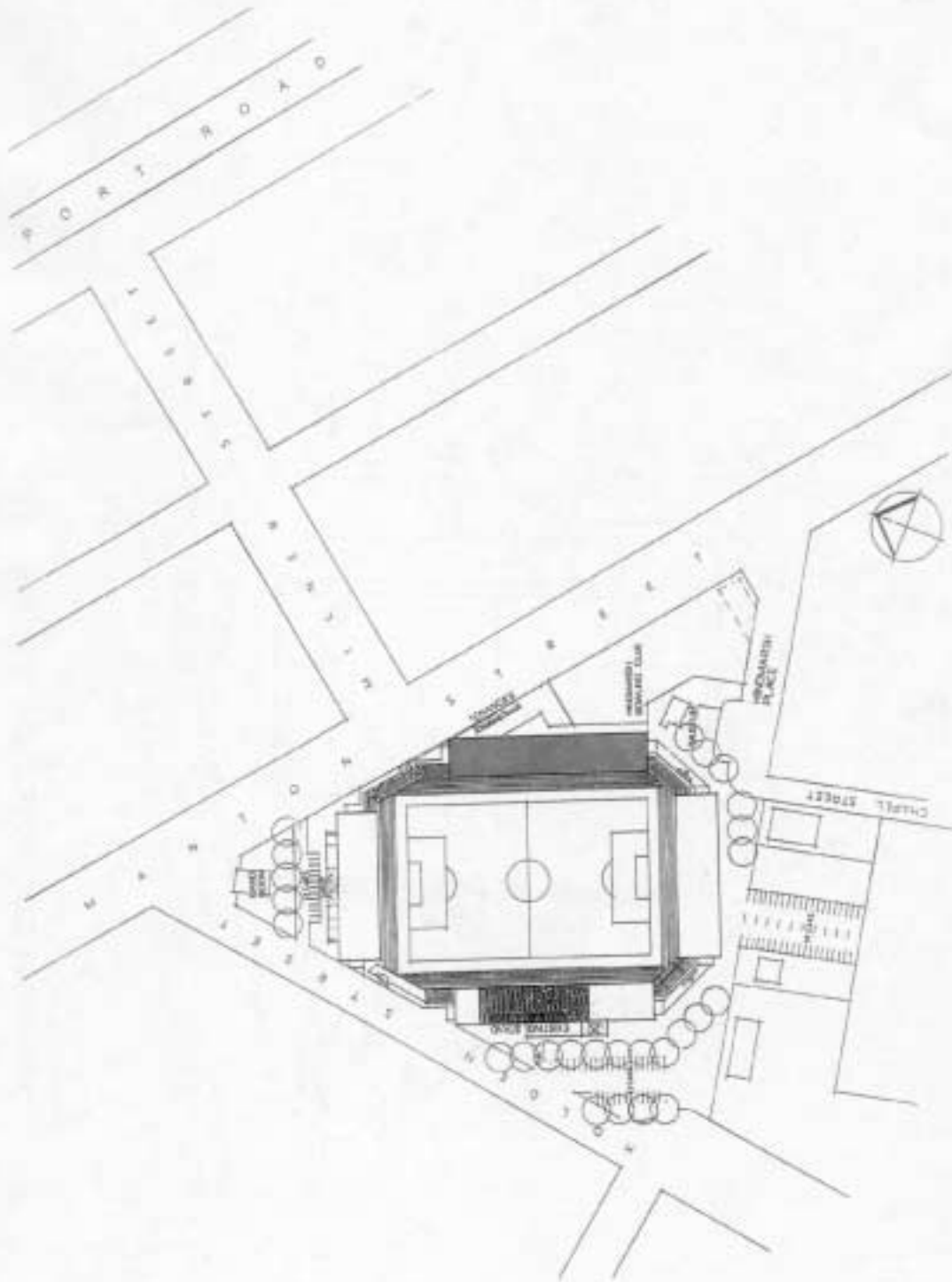


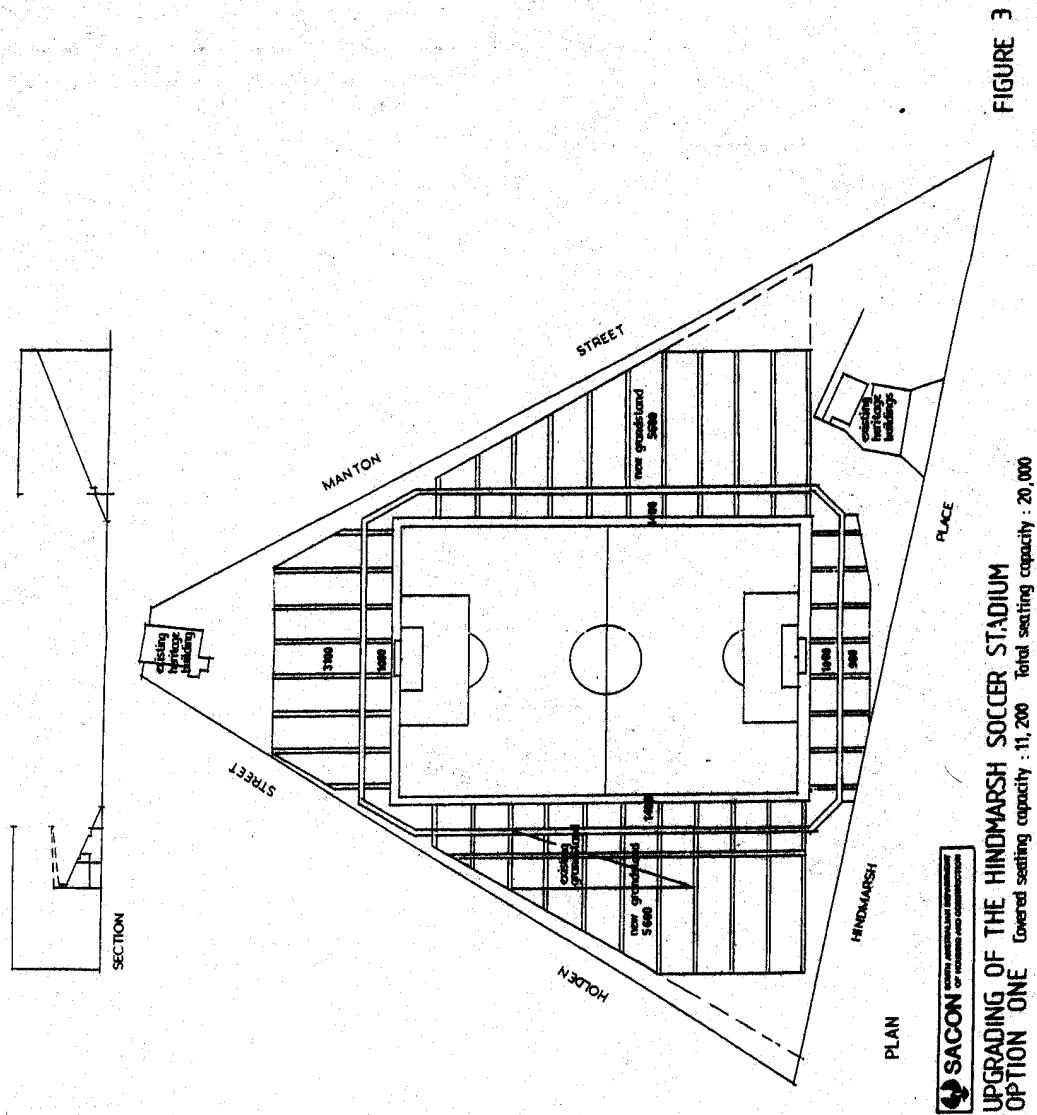
FIGURE 7



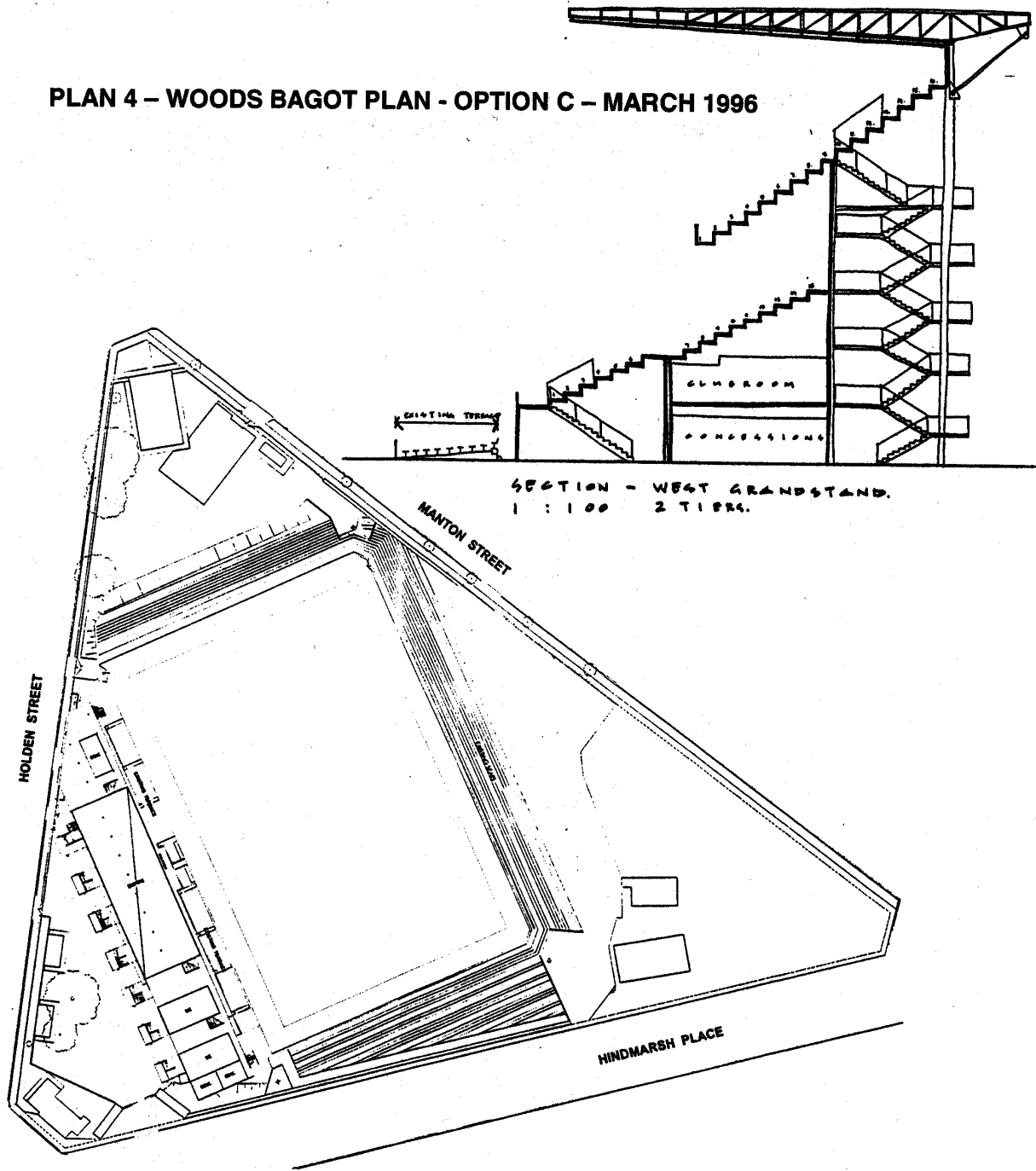
UPGRADING OF THE HINDMARSH SOCCER STADIUM  
SITE PLAN



**PLAN 3 – OPTION ONE FROM 1989 SACON FEASIBILITY STUDY - USED AS ANNEXURE B TO APRIL 1995 MEMORANDUM OF UNDERSTANDING**



PLAN 4 – WOODS BAGOT PLAN - OPTION C – MARCH 1996



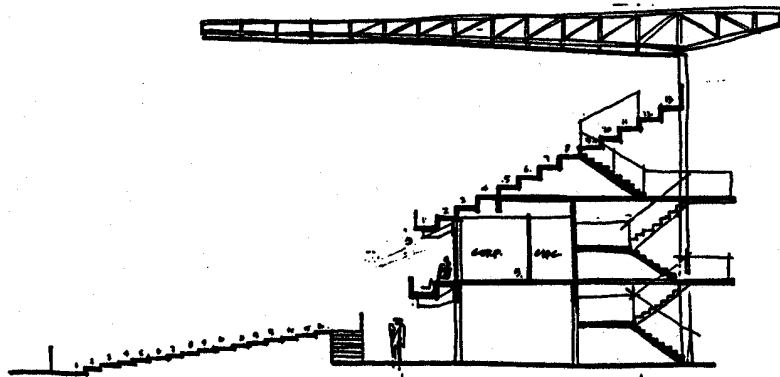
Western Grandstand Level	Seats
UPPER TIER	2264
MID LEVEL	1444
EXISTING	930
TERRACE	1400
<b>TOTAL</b>	<b>6038</b>



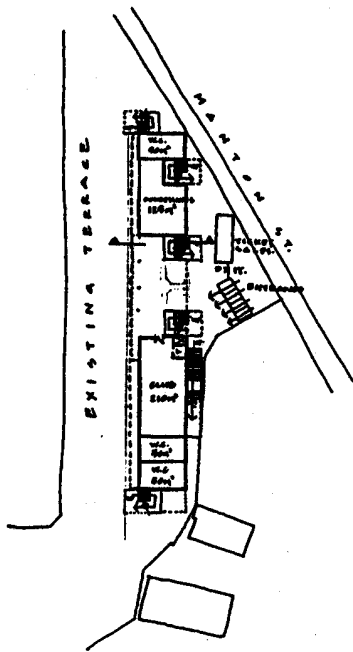
**HINDMARSH STADIUM**  
OPTION C WEST STAND  
FIRST & SECOND TIER  
LOWER LEVEL PLAN

**WOODS BAGOT**

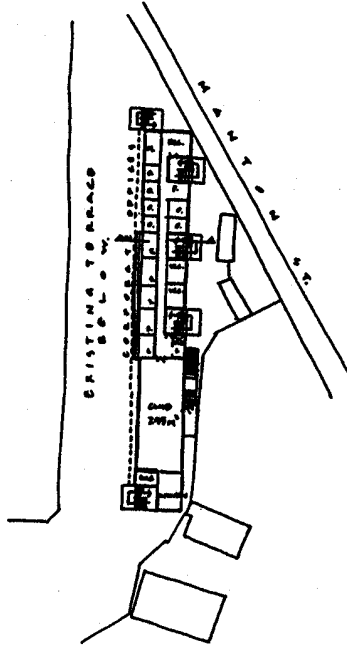
PLAN 5 - WOODS BAGOT PLAN - OPTION D - MARCH 1996



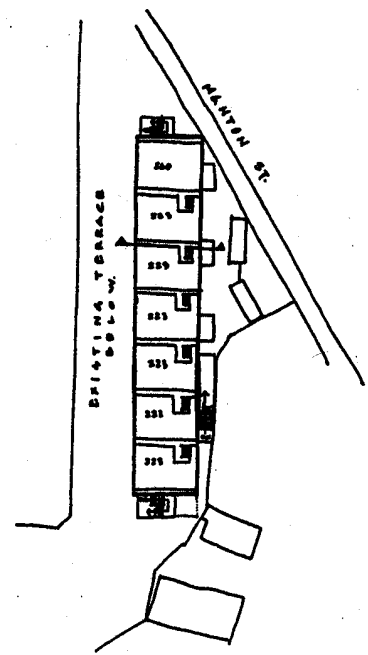
SECTION - EAST GRANDSTAND.  
1:100



GROUND  
1:500



MID-LEVEL  
1:500  
TOTAL AREA = 700m<sup>2</sup>.  
HALL, STAIR, CORRIDOR, OFFICE, etc.



UPPER-LEVEL  
1:500  
SEATS (UPPER-LEVEL) 1978

HINDMARSH  
STADIUM  
OPTION (D)

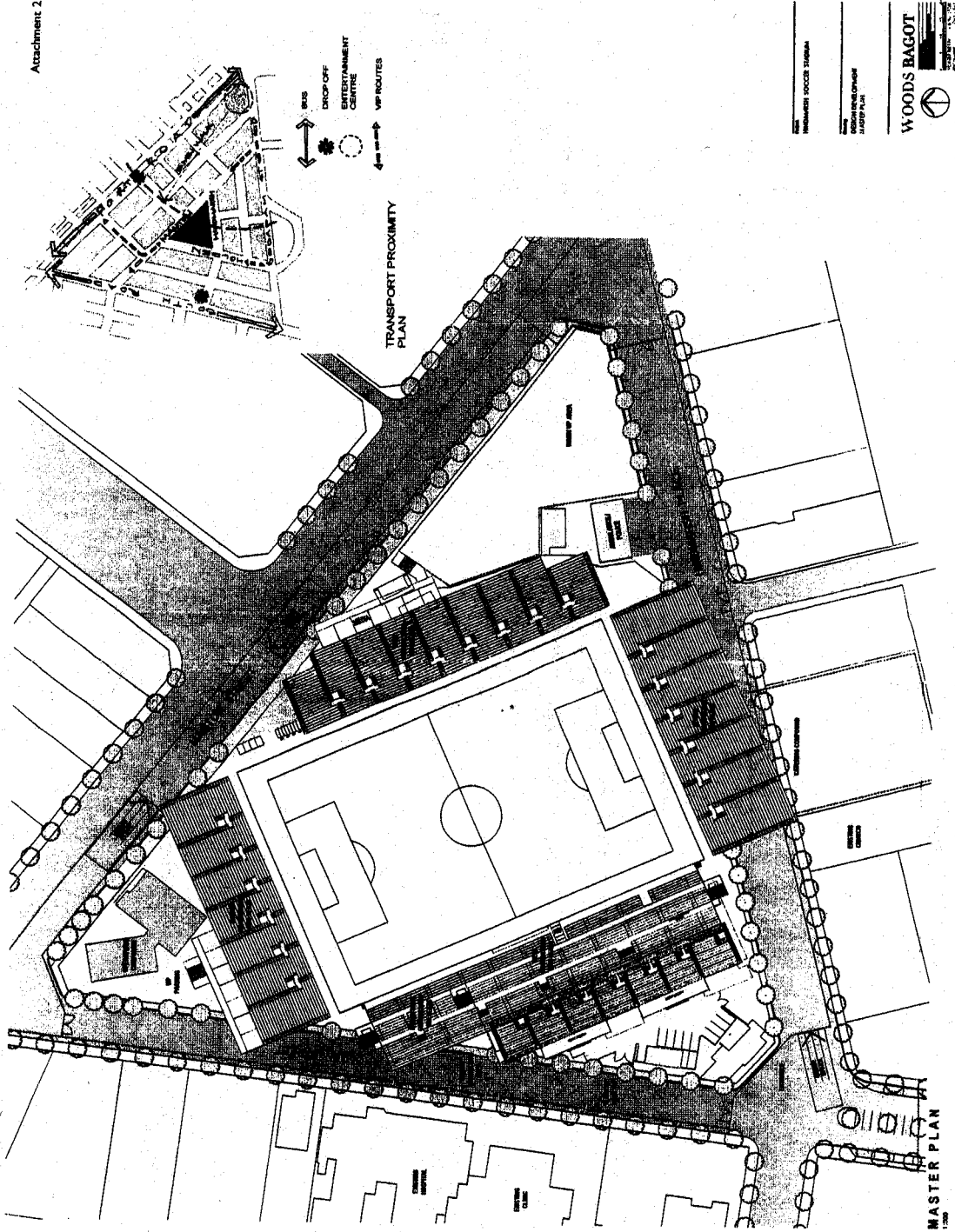
EAST GRANDSTAND  
SINGLE TIER ROOFED WITH  
CORRIDOR & STAIRS.  
EXISTING TERRACE.



SEATS	
EXISTING	5000
UPPER-LEVEL	1978
<b>TOTAL</b>	<b>4578</b>

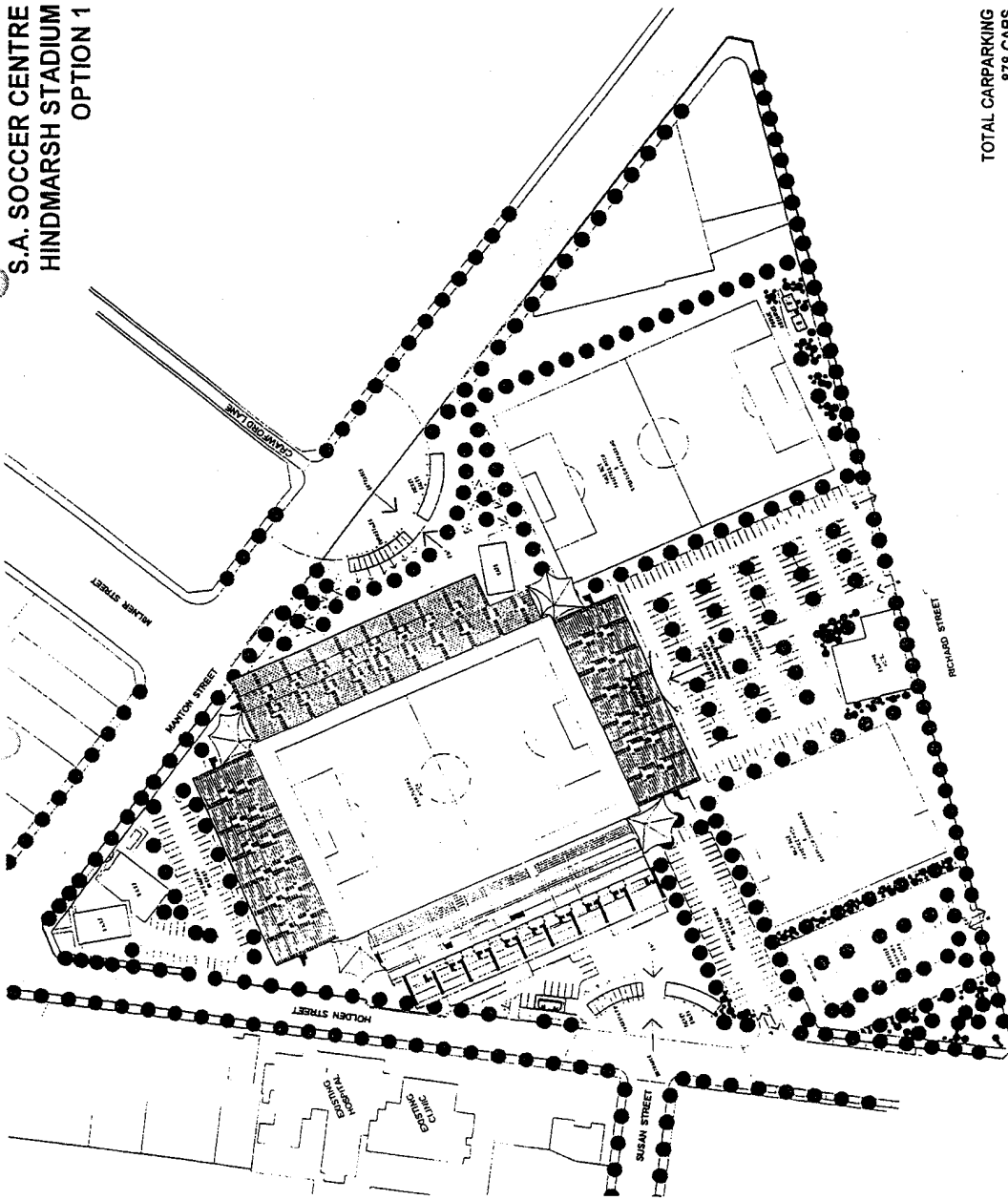
**PLAN 6 – MASTER PLAN SUBMITTED TO SOCOG IN SEPTEMBER 1996 AS PART OF ADELAIDE’S BID**

Attachment 2



**PLAN 7 – NEW CONCEPT PLAN SUBMITTED TO SOCOG ON 20 NOVEMBER 1996**

**S.A. SOCCER CENTRE  
HINDMARSH STADIUM  
OPTION 1**



**TOTAL CARPARKING  
878 CARS**

6-3-72

PROJECT	HINDMARSH SOCCER STADIUM
DATE	20 NOV 96
SCALE	1:25
DATE	20 NOV 96
SCALE	1:25
DATE	20 NOV 96
SCALE	1:25
DATE	20 NOV 96
SCALE	1:25
DATE	20 NOV 96
SCALE	1:25

**WOODS BAGOT**

ARCHITECTS

100/102 RIVERVIEW ROAD  
MELBOURNE VIC 3000  
TEL: 03 9437 4000  
FAX: 03 9437 4001

SCHMIDT DESIGN  
100/102 RIVERVIEW ROAD  
MELBOURNE VIC 3000  
TEL: 03 9437 4000  
FAX: 03 9437 4001







6-3-72

PLAN 8 - OPTION 1 - 12 MARCH 1997 CABINET SUBMISSION

6-4-11  
ATTACHMENT A

001 103 033

LEGEND

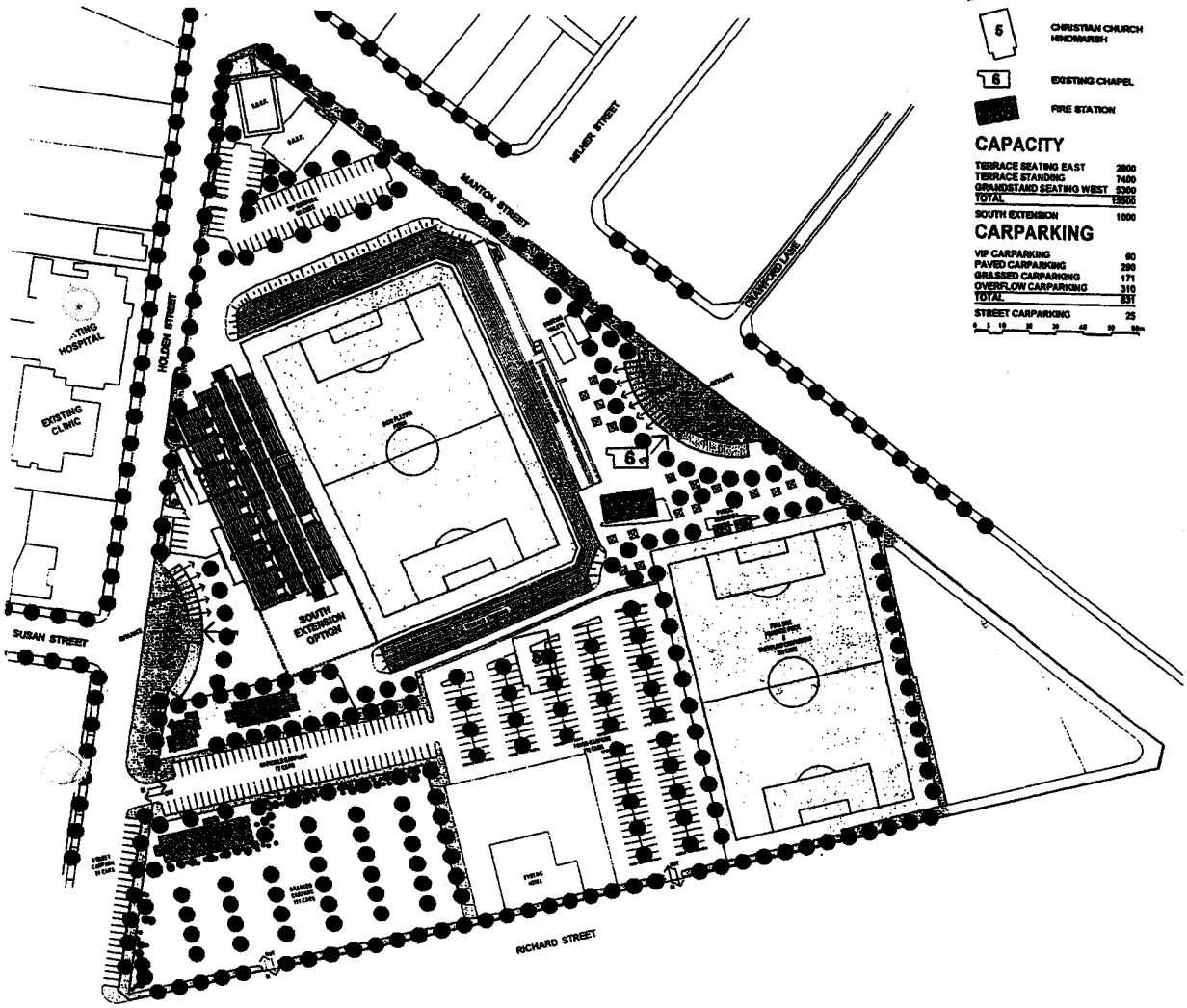
-  SYNOD DIOCESE  
ADELAIDE ANGLICAN  
CHURCH RESIDENCE
-  SYNOD DIOCESE  
ADELAIDE ANGLICAN  
CHURCH
-  SYNOD DIOCESE  
ADELAIDE ANGLICAN  
CHURCH HALL
-  5  
CHRISTIAN CHURCH  
HINDMARSH
-  6  
EXISTING CHAPEL
-  FIRE STATION

CAPACITY

TERRACE SEATING EAST	2800
TERRACE SEATING WEST	7400
GRANDSTAND SEATING WEST	5300
<b>TOTAL</b>	<b>15500</b>
SOUTH EXTENSION	1000

CARPARKING

VIP CARPARKING	60
PAVED CARPARKING	230
GRASSED CARPARKING	171
OVERFLOW CARPARKING	310
<b>TOTAL</b>	<b>871</b>
STREET CARPARKING	25



ORIGINAL PROPOSAL - OPTION 1



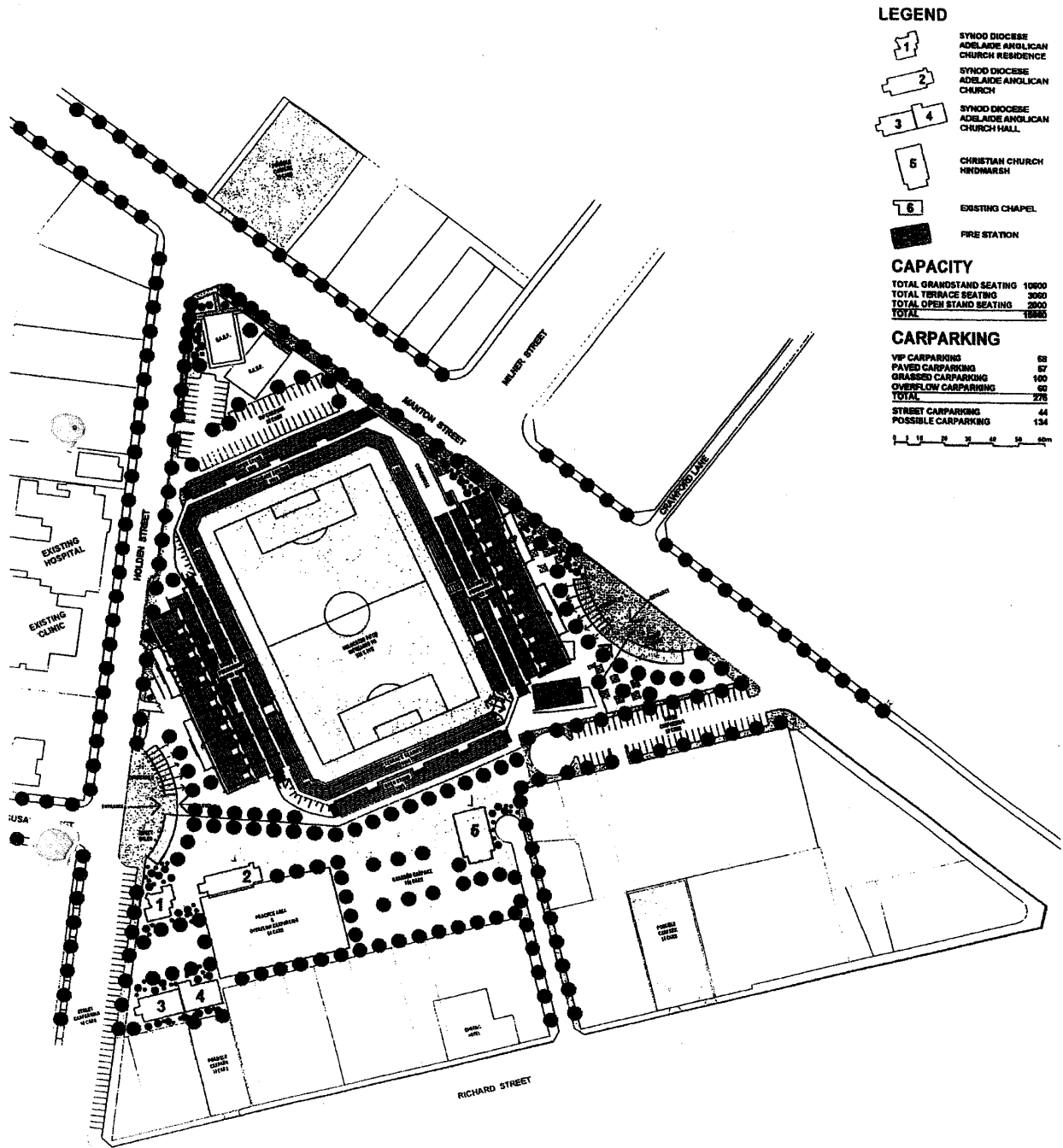
STAGE 2 MASTERPLAN  
SCHEME A  
HINDMARSH SOCCER STADIUM

PLAN 9 - OPTION 2 - 12 MARCH 1997 CABINET SUBMISSION

6-4-12

ATTACHMENT B

001 103 034



LEGEND

- 1 SYNOOD DIOCESE ADELAIDE ANGLICAN CHURCH RESIDENCE
- 2 SYNOOD DIOCESE ADELAIDE ANGLICAN CHURCH
- 3 4 SYNOOD DIOCESE ADELAIDE ANGLICAN CHURCH HALL
- 5 CHRISTIAN CHURCH HINDMARSH
- 6 EXISTING CHAPEL
- FIRE STATION

CAPACITY

TOTAL GRANDSTAND SEATING	10000
TOTAL TERRACE SEATING	3000
TOTAL OPEN STAND SEATING	2000
<b>TOTAL</b>	<b>15000</b>

CARPARKING

VP CARPARKING	55
PAVED CARPARKING	57
GRASSED CARPARKING	100
OVERFLOW CARPARKING	60
<b>TOTAL</b>	<b>272</b>
STREET CARPARKING	44
POSSIBLE CARPARKING	134



ALTERNATIVE PROPOSAL - OPTION 2 (REVISED)



STAGE 2 MASTERPLAN  
SCHEME B  
HINDMARSH SOCCER STADIUM

PLAN 10 - HINDMARSH STADIUM - TITLES PLAN - NOVEMBER 1999

HINDMARSH SOCCER STADIUM  
TITLES PLAN

017 141 004

HERITAGE BUILDINGS

- |   |   |
|---|---|
|  | SYDNEY UNITED<br>WELLSVILLE ANGLICAN<br>CHURCH RESSURECTION |
|  | SYDNEY UNITED<br>WELLSVILLE ANGLICAN<br>CHURCH              |
|  | SYDNEY UNITED<br>WELLSVILLE ANGLICAN<br>CHURCH (HALL)       |
|  | STURTEVANT HOUSE<br>WELLSVILLE                              |
|  | EXISTING GRAVEL<br>AND STONES                               |
|  |   |



- |   |   |
|---|---|
|  | CITY OF CHARLES STURT<br>INCLUDING SECTION OF ROAD CLOSE  |
|  | CITY OF CHARLES STURT   |
|  | WRITER FOR RECREATION<br>& SPORT & PAVING<br>PURCHASED IN 1987  |
|  | FORMER BELARODEN<br>CHURCH LANE 7 REDEVELOPED<br>TO BRIDGE FOR THE<br>RECREATION & SPORT & PAVING<br>OCTOBER 1988 |





## **APPENDIX 5 – EXPLANATION OF "FIFA REQUIREMENTS"**

### **INTRODUCTION**

There are numerous references to "FIFA Requirements", "FIFA Standards" and "FIFA Guidelines" in the correspondence and other documents dealing with the redevelopment of Hindmarsh Stadium.

The correspondence and documents typically contain references to the effect that an upgrade of the stadium would enable it to comply with FIFA's requirements, standards or guidelines. The impression given was that there was a document, or perhaps a series of documents, published by FIFA setting out mandatory requirements for a stadium that was to host international matches. None of the references precisely identified the FIFA document.

This Examination has not been given any document containing a single statement from FIFA of mandatory requirements for any stadium anywhere in the world that was to host international matches. The evidence examined by this Examination leads to the conclusion that no such statement existed.

With the sole exception of pitch size, what FIFA required of a stadium before it would allow a stadium to host matches in a particular competition was fixed by FIFA only for that competition. It might be that requirements that were applied by FIFA for one competition would not apply to another.

Some of the documents provided to this Examination suggest that on some occasions FIFA's requirements for a competition could only be ascertained after FIFA had inspected a proposed venue and given its assessment of whether it was satisfactory.

For those reasons, any statement that a stadium could be upgraded to satisfy FIFA mandatory requirements for the hosting of international matches generally rather than a specific tournament had the potential to mislead.

This Appendix seeks to set out:

- A brief description of the documents that have been published by FIFA since 1991 relevant to stadia hosting international matches; and
- A summary of other indirect evidence of FIFA's requirements.

The relevance of this issue is that until a statement of SOCOG/FIFA requirements was received in July 1996, the Stage 1 project proceeded without a clear definition of what was required to secure matches in the 2000 Olympic Soccer Tournament.

This section does not address the even less well-defined concept of "a legacy for sport".

## FIFA GENERIC PUBLICATIONS

### Laws of the Game<sup>922</sup>

FIFA publishes a set of rules called "*Laws of the Game*". Law 1 sets out the requirements for the field of play. Law 1 specifies a larger field of play for international matches:

*"Length:                    minimum 100m (110 yds)*  
*maximum 110m (120 yds)*  
*Width:                     minimum 64m (70 yds)*  
*Maximum 75m (80 yds)."*

The Laws of the Game do not specify a minimum surround for the field of play.

As might be expected, the Laws of the Game do not contain any other requirement affecting the construction of a stadium.

### Authorisation of Temporary Stands in Stadia

On 27 October 1994 FIFA's Executive Committee passed a resolution about authorisation of temporary stands in stadia. That resolution was recorded in a publication called "*FIFA News*".<sup>923</sup>

The resolution stated that temporary stands would be permitted but that their use would require specific authorisation for each occasion when they were sought to be used.

### Non-binding Technical Recommendations

In 1991 FIFA published a booklet entitled "*Technical Recommendations and Requirements for the Construction of New Stadia*".<sup>924</sup> That document stated:

*"The booklet is not intended to be binding but to give recommendations to be taken into account when constructing a stadium."*

The booklet referred to "new safety regulations issued by FIFA and UEFA". This Examination has not been able to locate those safety regulations.

In 1996 FIFA published the second edition of the technical recommendations with a slightly revised title, "*Technical Recommendations and Requirements for the Construction or Modernisation of*

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<sup>922</sup> The description in this section is based on a copy of the document entitled "Laws of the Game 2000" obtained from FIFA's official Internet web site [www.fifa.com](http://www.fifa.com).

<sup>923</sup> The copy of this resolution examined by this Inquiry was a one-page extract from "FIFA News" containing the relevant resolution.

<sup>924</sup> The copy of the document examined by this Inquiry is undated. The date of 1991 is inferred from the document entitled "Football Stadia Minimum FIFA Requirements" that was sent to Premier Brown by Pemberton of SOCOG on 30 January 1995. That lists its sources as including a document entitled "Technical Requirements and Guidelines for New Stadia, June 1991". Despite the discrepancy in the title (it uses "Guidelines" instead of "Recommendations") it is likely that it refers to the same document. As noted below, the 2000 version of this document described a version distributed in 1995 as the second edition, strongly suggesting that there had only been one previous edition.

*Football Stadia*".<sup>925</sup> It was also expressed to be non-binding and referred to the FIFA / UEFA safety regulations.

In 2000 the third edition of the technical recommendations was published with a slightly revised title "*Football Stadia: Technical Recommendations and Requirements*".<sup>926</sup> The reference to safety regulations was removed. The non-binding nature of the document was reinforced:

*"However, it is worth noting that this manual is more a list of recommendations than a strict list of guidelines that must be adhered to during the design and construction process."*

The technical recommendations were comprehensive and detailed. They included:

- Players and spectators should be protected from the sun and prevailing weather conditions.
- There should be sufficient open space surrounding the stadium to provide for future development.
- Human safety is the first and foremost condition.
- All spectators must be seated in individual numbered seats with shaped backrests. There should be sufficient legroom between rows.
- There should be an unobstructed view of the playing area from all seats.
- The playing field must be absolutely smooth and level.
- There should be a grass border around the playing area required by the Laws of the Game. The recommended dimensions were 120m by 80m for the total area and 105m by 68m for the playing field. The latter was described as the only acceptable dimensions for the final competitions of both the FIFA World Cup and confederation championships.
- Change rooms should be a minimum of 100m<sup>2</sup>. The recommendations set out minimum equipment numbers for the change rooms (eg two massage tables).
- There should be two warm up areas of 100m<sup>2</sup>.
- The capacity will depend on local requirements but if it is hoped to use the stadium for major football events 30,000 will be the minimum.

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<sup>925</sup> In a statement in the introduction to the 2000 edition, the second edition is recorded as distributed in 1995. The printed copy of this edition found in the files of the Department of Industry and Trade and examined by this Inquiry is undated. A copy of the document obtained from FIFA's Internet web site is marked "©1996". That date is preferred.

<sup>926</sup> The copy examined by this Inquiry was obtained from FIFA's Internet web site.

## SYDNEY 2000 GUIDELINES

### Football Stadia Minimum FIFA Requirements

On 30 January 1995 SOCOG sent to Premier Brown a one-page document entitled "*Football Stadia Minimum FIFA Requirements*". The document stated:

*"The following minimum requirements are drawn from a range of FIFA publications -*

- *Regulations, 1991 Women's World Championships*
- *Regulations, 1992 Barcelona Olympics*
- *Regulations, 1993 World Youth Championships*
- *Regulations, 1994 World Cup*
- *Laws of the Game*
- *Technical Requirements and Guidelines for New Stadia, June 1991*
- *FIFA News*".

Although there was nothing in the document itself to establish that it had only been prepared for the Sydney Olympics, that conclusion is suggested by two facts:

- The accompanying letter from SOCOG contained the following requirement:  
  
*"The provision of a venue that is acceptable to SOCOG, FIFA and ASF in all respects including the required minimum seating capacity (a summary of FIFA's minimum requirements is attached)."*
- The accompanying letter and the summary of FIFA's minimum requirements were in identical typeface and layout.

The document contained a very brief statement of requirements. They covered only the following topics:

- pitch requirements as to size and quality;
- seating capacity of 15,000;
- temporary grandstands;
- stadium to be certified for safety by local authorities; and
- lighting suitable for television.

They did not cover requirements for:

- change rooms;
- VIP areas;
- Player access to the field; and
- Media facilities.

### **Olympic Games Football Tournament FIFA/SOCOG Requirements**

On 7 July 1996 SOCOG sent to Premier Brown a copy of a 17-page document entitled "*Olympic Games Football Tournament FIFA/SOCOG Requirements, Competition Stadia, Training Sites, Accommodation, Support Services*".

The document was set out in note form rather than complete sentences.

It is apparent from the content of some parts of the document that it drew heavily on FIFA's technical recommendation document. Other parts of the document were Olympics specific.

The document covered all of the areas covered by the FIFA technical recommendations and additional requirements specific to the Olympics, such as the requirement for the stadium to be empty of advertising.

## **INDIRECT EVIDENCE OF FIFA REQUIREMENTS**

### **1993 World Youth Championships**

On 14 September 1989, M Wells ("Wells"), then General Manager of the Soccer Federation, wrote to George Forbes ("Forbes"), then Director of the Department of Recreation and Sport. The letter referred to the fact that Hindmarsh Stadium had not been approved by FIFA for the World Youth Championships. He enclosed documents described as:

- FIFA's brief appraisal of the stadium;
- FIFA's latest dictate regarding safety; and
- FIFA check list.

This Examination has not been provided with the enclosures to that letter.

Wells' letter summarised FIFA's appraisal document as identifying the following items as needing attention:

- A suitable media centre;
- A medical room;

- Separate access for match officials to and from the field, secure from players and team officials;
- Numbered seats; and
- Interview/media room away from playing area.

Subsequently, the Australian Soccer Federation ("Soccer Australia") sent a letter confirming that Hindmarsh had not been selected. This Examination has not been provided with a copy of that letter. The defects it mentioned were summarised in a 1991 Cabinet Submission:

- Inadequate seating for the media and associated support facilities;
- Quality of and security associated with referees' change rooms;
- Quality of and security associated with players' change rooms;
- Lighting; and
- VIP seating and security.

The last three points were not in the earlier Soccer Federation letter. The second point was only mentioned in part.

On 22 May 1991 the Hon. Kym Mayes MP, then Minister of Recreation and Sport, signed a Cabinet submission seeking:

*"That approval be given to proceed with a partial upgrade of Hindmarsh Soccer Stadium in order that it conform with FIFA requirements for the conduct of the 1993 World Youth Championship.*

*That approval be given to expend a total of \$890 000 over the financial years 1991/92 and 1992/93 from the Department of Recreation and Sport Capital budget, for the upgrade of Hindmarsh Soccer Stadium."*

The reference to "FIFA requirements for the conduct of the 1993 World Youth Championship" was probably a reference to the documents FIFA had provided during the course of assessing Hindmarsh Stadium. That is, the brief appraisal, safety dictate and checklist referred to in the Soccer Federation's letter.

At about this time the first edition of FIFA's non-binding technical recommendations document was published. This Examination has been unable to ascertain whether that document was referred to by the Department of Recreation and Sport in preparing the proposal embodied in the 1991 Cabinet submission.

Some matches in the 1993 World Youth Championship were staged at Hindmarsh Stadium. It may be inferred that FIFA reassessed the stadium after upgrading and found it adequate. This Examination has not found any evidence relating to that reassessment.

### **Initial negotiations with the Soccer Federation for further upgrade**

On 20 October 1993, Forbes then an officer in the Division of Recreation, Sport and Racing, reported to the Minister of Recreation and Sport that negotiations were under way between officers of the Division and the Soccer Federation:

- regarding funding options and detailed costing of the eastern grandstand; and
- for the upgrade of the stadium to include four grandstands in order to accommodate matches during the Sydney Olympic Games.

In his minute to the Minister, Forbes stated:

*"The South Australian Government were major contributors to the success of the Adelaide section [of the Youth Championship] with the following:*

- *upgrade of Stadium to FIFA Standards - \$1.8M*
- *underwriting of the conduct of the Championships - \$100,000*
- *administrative support to the event through the management and co-ordination of the Press and Media".*

The use of the expression "FIFA Standards" suggested documented generic standards but as appears from the preceding history, it is more likely to have been a reference to the specific assessment documents provided by FIFA.

### **Preliminary costing of further development**

In February 1994 SACON was asked for costing advice on a proposal for the further upgrade of Hindmarsh. The only record of that work provided to this Examination is a two-page document dated 23 February 1994 entitled "Hindmarsh Soccer Stadium Upgrade to FIFA Standards Project Report". The work by SACON was based on a brief provided by Les Avory, a Soccer Federation Commissioner. It involved construction of three new stands and extensions to the existing western stand.

SACON estimated a total cost of \$30.75 million.

SACON did not identify what the "FIFA Standards" were. The use of exactly the same term to describe the standard reached by only \$1.8 million of work undertaken prior to the 1993 World Youth Championship illustrates that the expression had no fixed meaning.

### **Initial negotiations with SOCOG for hosting of 2000 Olympic Soccer Tournament**

During 1994 and 1995 there were discussions between officers of the Office for Recreation, Sport and Racing and SOCOG about the staging of matches in the 2000 Olympic Soccer Tournament. Those discussions were in part about the requirements of the venue.

Although there are documentary references to the fact of those discussions there is little about the content.

A draft Cabinet submission prepared by Forbes in about 23 May 1994 recorded:

*"With the success of the Sydney Olympic 2000 bid, the hosting of Olympic fixtures at Hindmarsh Stadium is a possibility, provided the Hindmarsh Stadium is upgraded to meet FIFA requirements. FIFA have indicated that matches can only be played on soccer specific stadiums, ie Hindmarsh. This upgrading will not only guarantee that Adelaide will host a section of the Olympic Games but will continue to host major international soccer events after the Olympics."*

This Examination has been unable to identify the source of the statement that matches could only be played on soccer specific stadia. It does not appear in any of the published FIFA guidelines identified above. None of the other venues ultimately used for the 2000 Olympic Soccer Tournament were soccer specific.

After Adelaide had received the one-page summary of FIFA/SOCOG minimum requirements in late January 1995, Scott wrote a minute to Oswald stating:

*"It should be noted that the latest advice from SOCOG of FIFA's requirements differs from the previous verbal and written position on this matter."*

In evidence before this Examination Scott expanded upon that observation:

*"MR SCOTT: At that stage we were just trying to estimate the parameters. One of the difficult things that we had at that stage was that the information coming out of SOCOG was ever-changing because organising an Olympic Games is a massive event and all their attention really was focused on, I guess, the Sydney side of things and to, I guess, understand the - they didn't totally understand and had determined what their expectations were going to be of the host States and I think that's something that unfolded over a period of time, that their expectations and the Olympic premium is very high and that wasn't known until way down the track as SOCOG actually better defined it.*

*MR RICE: Right.*

*MR SCOTT: So you were in there trying to get things done but the nature of how the project unfolded from an events side was that it was continuously evolving. There wasn't, from early days, a clear set of guidelines that said: look - I mean, you had your physical requirements for the facility but you didn't have all your technical requirements, very detailed requirements, for hosting the event from, you know, security, medical, VIP hosting, all - I mean, SOCOG put fairly significant demands on."*

The complaint that SOCOG changed the requirements for the stadium was repeated by other witnesses in evidence before this Examination.

The Hon. Graham Ingerson MP's recollection was that Adelaide did not know what SOCOG's requirements were until the July 1996 letter from Iliffe enclosing the questionnaire and statement of minimum requirements.



MR RICE: *I think you will probably remember this but in the Cabinet approval of 1 May '95, that is exhibit TC16, it says this in the Cabinet submission, paragraph 2.2:*

*' This upgrade - '*

*that is still eastern side -*

*' will not only guarantee that Adelaide will host a section of the Olympic Games but will continue to host major international soccer events prior to and after the Olympics.'*

HON. G. INGERSON: *Yes, well, both of them have been proven to be incorrect.*

MR RICE: *The point is Cabinet - - -*

HON. G. INGERSON: *Accepted that.*

MR RICE: *- - - worked on that proposition at that point in time?*

HON. G. INGERSON: *Absolutely. Absolutely.*

MR RICE: *And, as you said before, I think you said it was either Minister or Premier Brown wrote a letter: the Government is committed to the project on the basis that, if we - won't proceed if the Games do not come Adelaide's way?*

HON. G. INGERSON: *Yes, but he also made a commitment that said - that said very very clearly that we had to meet both FIFA, SOCOG and Soccer Australia requirements and that was absolutely critical to the - to the whole future process because once you made that commitment you were then locked into a significant upgrade because there was absolutely no doubt once we had received the - the full requirements of FIFA that, one, the oval wasn't big enough, the lighting was insufficient, that there was insufficient seats being supplied, whether they were temporary or permanent, that there were a whole range of issues which, back in '95, when Minister Oswald put the proposition, weren't obvious, in my view, to Cabinet.*

*Now - and also I believe not obvious to Minister Oswald neither because none of those SOCOG or FIFA requirements were sent out to anyone until that letter was written to Minister Brown from Iliffe. And it was on those conditions that we comply with the FIFA requirements that locked us in, if we wish to continue, because at any stage, right up until the MOU - and I think this is an important point too - at any stage up to the MOU all of this stuff is irrelevant. Doesn't matter how many designs we had, doesn't matter what the process was, until Minister Olsen committed that MOU we could*

*have still done no more than the development of the western stand and we could have walked away from the Olympics, right up to that stage.*

*And so all of the - all of the histrionics and everything that goes with these Cabinet submissions are irrelevant until that MOU is signed because it wasn't until that was signed that, in fact, the Government was locked into any formal agreement with SOCOG applied to our Commonwealth Games negotiations, it applied to the Olympic negotiations, it applied to the Grand Prix. It applies to the V8, it applies to everything. He said: all of this - all of that is irrelevant in the context of until Minister Olsen - Premier Olsen signed the MOU there was no commitment at all by Government to go any further. There was always a statement that we would do it, but there was no formal contractual commitment until he signed that MOU, and that is a very important issue in my view.*

In further evidence:

*"HON. G. INGERSON: That's correct, Ken, but the reality was that what was the actual requirements of FIFA and they varied almost depending on who you spoke to. The first formal position put down by FIFA that I'm aware of was the letter from Iliffe to the Premier asking us to bid or advising us in our bidding process and attached to that was a whole range of criteria that they actually for the first time formally put together. Those criteria may have existed but for the first time. Now, I had a discussion the other day with Jeff Browne in getting some from Services SA - in getting some background information.*

*He advised me that they had a lot of difficulty being part of the design and construction team actually finding out from FIFA and from SOCOG what was the parameters in which they had to work and that was an ongoing process right through until the formal document was put to us. You know, that is how - as I remember it. I don't think it was a big - -"*

### **Woods Bagot preliminary examination of FIFA Requirements**

In December 1995, after Woods Bagot were initially retained, Woods Bagot prepared a table entitled "FIFA Requirements Schedule". Next to a list of the FIFA requirements Woods Bagot noted:

- whether the requirement was met by "existing provision";
- whether the requirement was met by "proposed provision"; and
- under the heading "remarks", if it was not proposed to meet the requirement, an explanation.

Although the schedule is in note form, It is apparent from the order in which each item appears, the grouping of items and certain coincidences of expression, that the schedule was a summary of FIFA's non-binding technical recommendations booklet.

The table was included as an appendix to Woods Bagot's "Functional Design Brief" dated 14 August 1996 prepared to define the Stage 1 project prior to commencement of detailed design work. Hence "proposed provision" denoted what was to be provided by Stage 1.

There were a number of items that the schedule recorded it was not proposed to include in Stage 1. For most of these the explanation given was that the existing facilities were "considered adequate by SASF". For many it was obvious from the table why that would be the case. For example, the ability to divide the viewing area into four self-contained sectors was principally a crowd control issue that was not critical in Australia. For others, the departure was not explained.

What was plain was that the Soccer Federation provided Woods Bagot with instructions as to what would satisfy FIFA's requirements. That is clear from minutes of design meetings where the Soccer Federation were delegated responsibility for confirming with FIFA that the pitch sizes were mandatory. FIFA provided that confirmation by letter dated 22 January 1996.

### **July 1996 Statement of Requirements**

On 7 July 1996 Adelaide received SOCOG/FIFA's statement of requirements for host venues for the 2000 Olympic Soccer Tournament.

That document made clear what had until that time been unclear. It showed that Stage 1 would not be enough by itself, but it left open the possibility that the additional requirements could be met by temporary facilities.

Adelaide's bid was prepared on the basis that Adelaide would provide its venue to satisfy the requirements of that document by Stage 1 plus temporary facilities.

The July 1996 document was almost the last word on "FIFA Requirements". A version of it was included, in more formal language but identical in substance, as Schedule 3 to the SOCOG Memorandum of Understanding as finally executed.

### **29 October 1996 - "Legacy for Sport"**

On 29 October 1996 during its evaluation visit to Adelaide SOCOG communicated to Adelaide that the proposal to meet FIFA's requirements by Stage 1 plus temporary facilities was not acceptable.

That communication was not the subject of any written record made at or about that time.

The extent to which Adelaide had to provide the necessary facilities by permanent facilities was not ever set out in a document originating from FIFA or SOCOG until the Memorandum of Understanding with SOCOG was executed in August 1997.

The circumstances of the entry of that document are described in another section.