



Government
of South Australia

Report
of the
Auditor-General
Supplementary Report
for the
year ended 30 June 2017

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Second Session, Fifty-Third Parliament

Adelaide Riverbank (Festival Plaza)
Development: November 2017

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Dear President and Speaker

Report of the Auditor-General: Supplementary Report for the year ended 30 June 2017 'Adelaide Riverbank (Festival Plaza) Development: November 2017'

As required by the *Public Finance and Audit Act 1987*, I present to each of you the Auditor-General's Supplementary Report for the year ended 30 June 2017 'Adelaide Riverbank (Festival Plaza) Development: November 2017'.

Content of the Report

Part A of the Auditor-General's Annual Report for the year ended 30 June 2017 referred to audit work that would be subject to supplementary reporting to Parliament.

This Supplementary Report provides detailed commentary and audit observations on a review of the Adelaide Riverbank (Festival Plaza) Development Project.

Acknowledgements

The audit team for this report was Salv Bianco, Philip Rossi and Vasso Gouros.

We also appreciate the cooperation and assistance provided by the staff of Renewal SA and the Department of Planning, Transport and Infrastructure during the review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'I. McGlen'.

Ian McGlen
Acting Auditor-General

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1 Executive summary

1.1 Introduction

Revitalising the Riverbank Precinct is an SA Government initiative aiming to create a vibrant city and strengthen Adelaide as a cultural, economic and social hub of the State. The SA Government conducted a procurement process to identify a private sector developer to participate in this revitalisation. The procurement involved two key phases:

- initially a competitive expression of interest (EOI) and request for proposal (RFP) process
- direct negotiations with the preferred RFP proponent following the rejection of their development proposal.

The procurement and contract negotiation process occurred over several years, most of which was exclusively with the Walker Corporation.

The process started in January 2012 when an EOI was issued. In August 2012 an RFP was issued for the redevelopment of the Adelaide Festival Centre underground car park, a new public square and a potential new mixed-use commercial, retail or cultural building in the precinct. The underground car park was, by its nature, intended expansion and location, going to have foundational structural and functional implications for development of the precinct.

In October 2012 the SA Government approved inviting the Walker Corporation to develop an integrated development proposal in line with set objectives, specific requirements and subject to terms and conditions. The development was proposed to be at no cost to the SA Government. A tender evaluation panel evaluated the Walker Corporation's final proposal in October 2013 and recommended that the proposal should not proceed. In November 2013 the SA Government approved rejecting the Walker Corporation's development proposal, amending the RFP terms and conditions and entering into further discussions with the Walker Corporation for the construction of the car park only.

Following a meeting between the Walker Corporation, the responsible Minister and senior SA Government representatives in late November 2013 the RFP process was effectively terminated. In December 2013 the SA Government commenced direct and exclusive negotiations with the Walker Corporation.

In February 2014 the SA Government and the Walker Corporation entered into an Agreement to Lease (ATL) for the redevelopment of a 1400 space Adelaide Festival Centre car park.

In February 2015, the SA Government approved contributing a net \$100 million (after allowing for \$40 million consideration for development rights) for the purchase of car park spaces, Festival Plaza public realm works and precinct integration works. It also approved an additional \$80 million for Adelaide Festival Centre consequential impacts and complementary works.

In May 2016 the SA Government signed a Development Agreement with the Walker Corporation for the integrated development of the Festival Plaza and car park. The Walker Corporation is required to commence:

- the car park and public realm within 12 months of satisfying or waiving the conditions precedent; or a later date as provided in a Final Program for the development
- an office building (to a maximum of 40 000 m² of net lettable area) and retail development no later than six years after the commencement of the car park lease.

I conducted an audit to assess whether the controls exercised by relevant public authorities were sufficient to provide reasonable assurance that the procurement and negotiation process was conducted properly and in accordance with law.

1.2 Conclusion

I concluded that the controls over the procurement process were not sufficient to provide reasonable assurance that the process was conducted properly and in accordance with accepted standards for procurement management.

This was because our review identified fundamental shortcomings in key areas of the procurement process including the basis for key decisions, governance, application of planning, risk and probity management and negotiation of the ATL.

These fundamental process weaknesses were compounded by the absence of documentation and analysis to support the decisions made. As a consequence, the integrity and probity of the process could not be clearly demonstrated.

In our view there were two critical junctures in the process:

- Firstly, in November 2013 the SA Government rejected the Walker Corporation's proposal but invited it for further discussions for the car park only, subsequently entering into the ATL in February 2014.
- Secondly, in August 2014, the SA Government decided to renegotiate with the Walker Corporation to achieve the car park objectives and development above the car park as a consequence of the terms in the ATL signed in February 2014.

For the first juncture, an alternative was to test the market against well-defined parameters acceptable to the SA Government to ensure the achievement of expected benefits, value for money and project delivery time frames.

From December 2013 the procurement transitioned to a negotiation exclusively with the Walker Corporation. This remained the position until the deal was finalised in early 2017. A number of options were identified in November 2013. At each juncture, various significant risks and benefits were broadly discussed in confidential or privileged documentation consistent with practice common in the public sector at the time. For the decisions to enter into ongoing, exclusive negotiations and to enter into the ATL, we were unable to see any clearly documented risk, market and financial analysis, legal risks and probity advice that was maintained as a permanent agency record.

Such analysis would have also informed the SA Government in later discussions with the Walker Corporation, particularly in late November 2013 when it met with SA Government representatives to discuss the process including claims made about the process. Detailed documented analysis would also have been a significant record to support transition where changes in governance occurred. Notably, fundamental governance change occurred after the State election in 2014 when most of the senior officers representing the SA Government on this matter left the public sector.

In my opinion, once the SA Government decided to enter into direct negotiations with the Walker Corporation in December 2013, how the exclusive negotiations were to be conducted and how the proposal was to be evaluated (including: the criteria used; how risks and benefits were to be assessed; and how probity over the process was to be maintained) should have been established and documented from the outset of the negotiation process.

In addition, more rigorous evaluation was required for the \$30 million the SA Government agreed to pay the Walker Corporation for the use of the 400 car parks. We could not be provided with financial analysis (including costings) to support the capped net present cost of \$30 million included in the ATL in February 2014.

For the second juncture, the scope of direct negotiations with the Walker Corporation was extended beyond the car park, for development above the car park. This was a significant change from the SA Government's position in July 2014, which was to recommence negotiations with the Walker Corporation for the car park only. The need for the SA Government to resolve its requirements above the car park was a consequence of the ATL entered into in February 2014. The SA Government had committed in the ATL to engage with the Walker Corporation to attempt to satisfy the conditions precedent. The car park development had to be informed by what was going above the car park because of the inherent structural and functional relationships. Again, significant risks, including a legal opinion, and benefits were discussed in confidential or privileged documentation consistent with practice common in the public sector at the time. The SA Government chose to negotiate with the Walker Corporation for the development above the car park. This decision did facilitate the SA Government meeting its commitment under the ATL for the car park. The SA Government subsequently worked with the Walker Corporation through to reaching agreement on the integrated development in May 2016.

Aspects of the process were of a reasonable standard. For example, for the period following the SA Government's decision in August 2014 to renegotiate with the Walker Corporation, information, support and analysis necessary for the negotiation process was prepared and available. This included engaging relevant experts, testing and resolving the viability of the Walker Corporation's proposed car park design and engaging relevant stakeholders. Further, prior to concluding negotiations and signing a Development Agreement with the Walker Corporation, in 2015 the SA Government received expert external advice that overall the negotiated transaction represented value for the State.

We also note that to ensure the transaction represents value for money the agency responsible for delivering the project, the Department of Planning, Transport and Infrastructure (DPTI), will need to ensure robust arrangements are implemented to ensure the Walker Corporation completes works for the public realm to the value of \$40 million.

I would expect that future major procurement transactions would not have fundamental shortcomings in process. I also expect that in the future we will have access to documented and detailed analysis maintained as a permanent agency record to evidence information provided by agencies for SA Government decision-making. We have set out a series of recommendations to these ends.

1.3 What we found

1.3.1 Basis for key decisions (section 6)

There was a lack of transparency and documentation to support the basis of key decisions made. Key issues included lack of analysis and documentation to support the rationale for:

- engaging in further negotiations with the Walker Corporation and extending the period of exclusivity following the rejection, in October 2013, of the development proposal it submitted as part of the RFP
- entering into a legally binding agreement in February 2014 in the form of an ATL with the Walker Corporation given significant key aspects of the car park development remained outstanding
- granting ongoing exclusivity to the Walker Corporation in August 2015.

We noted that the SA Government, when approving decisions, was provided with some rationale and analysis of various significant risks and benefits.

Key parts of that information is subject to confidentiality and privilege. There is a need for accessible, relevant business case and supporting documentation to be maintained as a permanent agency record as evidence of information forwarded to decision makers.

In addition, the procurement process was adversely affected by a lack of clarity in the RFP.

1.3.2 Negotiation and evaluation of contracted terms and conditions (section 7)

From July 2014, information, actions and analysis to support the negotiation and evaluation process was available to guide the process, including:

- development of guiding principles, urban design principles and development parameters
- Key Commercial Terms to guide the negotiations
- establishing a negotiation team with input provided by the Crown Solicitor's Office and expert advisors
- independent valuations of the car park spaces
- a review by an external consultant of the commercial terms proposed in the Development Agreement.

We noted that a formal framework, criteria and parameters to progress and evaluate the final negotiated position with the proponent (as reflected in the final Development Agreement) was not established at the outset in December 2013 when the SA Government

agreed to ongoing direct and exclusive negotiations with the Walker Corporation. Key elements would include an evaluation plan and criteria and a formal documented negotiation strategy.

It is important that permanent agency records provide a summarisation of the process that outlines the evaluation performed and key decisions.

1.3.3 Financial analysis of key commercial terms (section 8)

There was a lack of financial analysis (including costings) to support the \$30 million capped net present cost the SA Government initially agreed to pay the Walker Corporation for the use of car park spaces.

The Urban Renewal Authority (Renewal SA) engaged a range of professional service providers to test and resolve the viability of the Walker Corporation's proposed car park design and costings.

Renewal SA also engaged an external consultant to help to assess the commercial terms of the Walker Corporation's proposal. Further, other professional service providers were engaged to provide designs and costings for the car park to help with the process. The external consultant found that the terms were considerably in the favour of the SA Government.

Aspects of the process undertaken to establish the final agreed costings for the car park could have been better documented.

1.3.4 Governance structure (section 9)

There was no evidence of an effective governance structure to oversee the key elements of the procurement process including the EOI and the RFP processes. Issues included:

- frequent changes to the overall responsibility for the procurement without clearly documented rationale
- a change to governance arrangements was made as a consequence of a meeting between the Walker Corporation and the responsible Minister
- adequate governance and reporting arrangements were not established timely and were not maintained
- terms of reference were not evident for key governance committees.

1.3.5 Application of planning, evaluation, approval and procurement frameworks (section 10)

Mandated planning, evaluation, approval and procurement frameworks for construction projects were not complied with. Issues included:

- early planning failed to anticipate and communicate the likelihood of significant cost to the SA Government from this development. At Stage 2 of the RFP, documentation specified that the development proposal should be carried out without any public funding. Almost \$100 million of public funding was ultimately approved for the development

- no evidence to support that the Infrastructure Planning and Delivery Framework was applied to the project and required gateway approvals were obtained
- the required financial evaluation and business case were not completed for the project
- SA Government funding requirements and budget impacts were not adequately assessed prior to commencing the RFP process.

1.3.6 Procurement planning and risk management processes (section 11)

A procurement plan and risk assessment and management plan were not established at the commencement of the procurement and were not maintained throughout the process.

1.3.7 Probity management arrangements (section 12)

Probity management arrangements to oversee the procurement were not properly established and evidenced. Key issues included:

- a probity plan was not established
- the probity framework required under the RFP was not implemented
- no evidence that the need for probity assurance arrangements was considered for the procurement
- required probity documents were not completed by the RFP shortlisted proponent
- a record of contact and interactions with proponents was not maintained for the period leading up to the decision made on 7 July 2014 to continue to negotiate with the Walker Corporation for the car park only
- the then Chief Executive of DPTI meeting with the Walker Corporation outside of the ongoing Renewal SA process in September 2013 was inappropriate as it was inconsistent with sound process
- not all confidentiality and conflict of interest declarations were obtained or were not obtained timely
- a potential conflict of interest associated with a subcontractor of a firm engaged by the SA Government was not effectively managed
- it was not clear whether claims made by the Walker Corporation about fairness and bias in November 2013 and representations made by SA Government representatives prior to the ATL were investigated and how these claims influenced the procurement/negotiation process.

1.3.8 Procurement procedures and standards (section 13)

The agencies responsible for the procurement process did not comply with established procedures and tender documentation did not meet appropriate procurement standards.

Key issues included:

- DPTI could not confirm whether the EOI and RFP Stage 2 Evaluation Plans were completed prior to the evaluation process starting

- the basis for shortlisting EOI proponents was not clear
- the evaluation of the RFP proponents was not adequately documented.

1.3.9 Key procurement documentation (section 14)

Not all documentation for the procurement process was retained and as a result we could not conclude on the fairness of certain aspects of the procurement process. Key issues included:

- tender submissions for two EOI submissions could not be located
- evidence of when two EOI submissions were received was not retained
- signed evaluation reports for the EOI and the RFP Stage 1 and the interim evaluation of the RFP Stage 2 could not be located.

1.3.10 Coordination of significant procurements (section 15)

There was a need for better coordination between government agencies when conducting procurements involving multiple agencies and stakeholders, to ensure interactions with potential participants do not compromise the transparency, probity and fairness of the procurement process.

1.3.11 Development approval requirements (section 16)

The procurement process did not effectively manage the proposed changes to the development approval requirements. Key issues were:

- proposed planning approval amendments were not explicitly addressed at the commencement of the procurement process
- the Walker Corporation claimed that the time allowed under the submission process was insufficient to consider the final outcome of the development plan amendment process
- a robust documented procurement plan and risk management plan should have been established to assist with coordinating procurement process activities and addressing risks associated with the proposed development plan amendment.

1.4 What we recommended

Areas of focus and recommendations from this audit to assist with future public initiatives, including capital works and development proposal procurements, are summarised below.

Recommendation 1

All major initiatives of government should have procurement strategy plans prepared before critical steps commence to help to ensure a fair, relevant, transparent and defensible evaluation process. The strategy plans should be used to monitor the procurement progress and that the process remains on track with expectations for all critical procurement objectives and probity aspects. Plans and related records should always be maintained in a

reliable manner and state, subject to active probity assessment and transferrable at any time to facilitate possible governance changes during the procurement.

Plans should encompass probity and risk management aspects of the procurement and address the issues expected and required including:

- a clear understanding of the scope, reasonably expected costs and other implications of major initiatives
- the strategy for coordinating input from foreseeably affected parties
- the strategy for ensuring consistency of information in tender and proposal and negotiation documents so they contain clear and consistent project scope details and elements, objectives and evaluation and process guides and explanations
- information and analysis necessary to support and guide the procurement and any negotiation process including: guiding and design principles, development parameters, financial parameters, independent valuations, environment testing, cost and forecasting and budget effects
- communication protocols for SA Government decision makers and other key governance arrangements to ensure full, timely and transparent communication of matters relevant to decision-making
- governance arrangements and critical start and other dates
- protocols and rules for contact with proponents including preferred proponents in negotiation. This should include clear restrictions on influential participants (such as Ministers and senior management) meeting or communicating with proponents outside of a process that is in progress
- requirements for meticulous record keeping of all critical internal and external interactions to ensure full and reliable records are kept for procurement management purposes and representations are within negotiation parameters.

These matters should be considered by responsible agencies where relevant in the following recommendations.

Recommendation 2

For key procurements ensure effective governance arrangements are established timely and maintained throughout the procurement process.

Recommendation 3

Implement a mechanism to ensure mandated infrastructure planning, evaluation and delivery framework requirements (including gateway approvals) are complied with.

Recommendation 4

Establish a policy and procedure framework specifically for development proposals, to provide guidance on:

- procurement planning and risk management

- probity management and assurance
- receiving and evaluating tenders/proposals
- negotiation and contracting processes.

The policies and procedures should include specific guidance on seeking, evaluating and negotiating development proposals from the private sector.

Relevant principles established for the procurement of goods and services managed by the State Procurement Board should be considered in developing these policies and procedures.

Recommendation 5

Existing training for staff involved in significant procurement processes should be reviewed to ensure it covers appropriate knowledge of:

- relevant procurement policies and procedures and sound procurement practices
- record management and retention requirements.

A mechanism to ensure compliance with policies, procedures and record management requirements should be implemented.

Recommendation 6

Establish guidelines and principles to help agencies deal with arrangements where proponents are offered periods of exclusivity. Guidelines should include the requirement to clearly document and analyse the rationale for extending exclusivity. This should include specific guidance on matters such as a detailed risk analysis, market analysis, probity and negotiation processes.

Recommendation 7

Implement a framework or arrangements to facilitate effective coordination between government agencies for significant procurements involving multiple agencies and stakeholders.

Recommendation 8

Agencies should retain accessible documentation and detailed analysis as a permanent agency record to evidence information provided for SA Government decision-making.

1.5 Response to our findings and recommendations

During this review Renewal SA and DPTI reviewed drafts of this Report and provided comments and clarification on some matters in the report. We considered this feedback and included relevant comments and responses in the body of the Report.

DPTI also provided the following formal response on the Report:

The recommendations of your report related to improvements to procurement processes and governance have largely been addressed through a number of reforms implemented across this agency over recent years. These reforms include procurement modernisation, establishment of the Portfolio Management Office and improved approaches to delivery of Capital Initiatives.

2 Audit mandate, scope and approach

2.1 Our mandate

We audited the Adelaide Riverbank (Festival Plaza) Development project under section 36(1)(a)(iii) of the *Public Finance and Audit Act 1987*. This section specifically provides for the Auditor-General to assess whether the controls exercised by public authorities are sufficient to provide reasonable assurance that their financial transactions are conducted properly and in accordance with law.

2.2 Our scope

We reviewed the procurement arrangements used to select the preferred tenderer and execute the Development Agreement for the Adelaide Riverbank (Festival Plaza) Development project. The procurement initially involved a competitive EOI and RFP process followed by a direct negotiation process.

Our review focused on:

- project initiation and approvals
- project governance
- procurement planning
- procurement process
- negotiation process and execution of the Development Agreement.

Specifically, the review considered:

- compliance with relevant government policy and procedural requirements, such as Treasurer's Instructions and procurement frameworks
- compliance with agency specific procurement policies and procedures
- information presented to and approved by SA Government
- whether the procurement arrangements considered probity, accountability, transparency and fair treatment of participants
- whether procurement processes established by the SA Government were adequate to assess value for money in entering into the Development Agreement
- whether appropriate governance and accountability arrangements were established and operating effectively to provide adequate oversight of the procurement.

2.3 What we reviewed and how

In completing our review and preparing this Report we sought to identify relevant information and reviewed documentation obtained from the SA Government agencies responsible for completing the procurement process and executing the Development

Agreement with the preferred proponent. Our review also included discussions with relevant officers of the responsible agencies including the Chief Executive of Renewal SA (CE Renewal SA) and the then Chief Executive of DPTI (CE DPTI).

We also considered applicable SA Government and departmental procurement and approval processes for construction procurements. In addition, although not specifically mandated for construction procurements, we considered the principles and concepts in the policy and procedural guidance issued by the State Procurement Board under the *State Procurement Act 2004*.¹ The guidance is specifically for the procurement of goods and services, however many of the principles are also relevant to construction project procurement activities.

Our preliminary audit conclusion, findings and recommendations were forwarded to the Chief Executives of Renewal SA and DPTI for review and comment. Their comments were considered in finalising this Report and are summarised in section 1.5.

Our findings and conclusion were mainly based on:

- review of documentation retained to support the procurement process including tender and project documentation, submissions provided to SA Government, and documented communications between SA Government agency staff (public officers) and proponents who participated in the procurement
- discussions with relevant SA Government agency staff and the then CE DPTI.

It is important to note that most SA Government agency staff who participated in the procurement process were no longer public sector officers at the time of our review.

2.4 Other matters

All amounts included in this Report exclude GST.

¹ Renewal SA is defined as a prescribed public authority under the *State Procurement Act 2004* and is not required to comply with policies, principles, guidelines, standards or directions issued by the State Procurement Board.

3 Project procurement framework

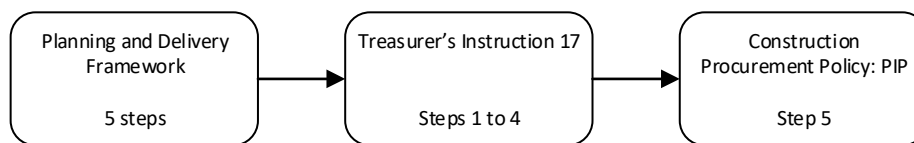
3.1 Planning, approval and procurement frameworks for construction projects

In 2005 Cabinet approved that ‘prescribed construction projects’ with a total value exceeding \$150 000 would be exempt from the *State Procurement Act 2004* (SP Act).² This recognised that construction had a well-established procurement process managed by infrastructure agencies.

Construction projects are to be undertaken and managed in line with the Government’s Five Step Infrastructure Planning and Delivery Framework, Treasurer’s Instruction 17 ‘Evaluation of and Approvals to Proceed with Public Sector Initiatives’ (TI 17) and the Construction Procurement Policy: Project Implementation Process (PIP).

The relationship of the framework, TI 17 and the PIP is summarised in figure 3.1.

Figure 3.1: Relationships of the framework, TI 17 and the PIP



The framework, TI 17 and the PIP have been revised since the procurement process commenced, however they have not changed significantly and the key elements and principles are consistent with the current editions. Sections 3.2, 3.3 and 3.4 summarise the versions in place when the procurement commenced.

3.2 Five Step Infrastructure Planning and Delivery Framework

The Five Step Infrastructure Planning and Delivery Framework provides for effective project governance from inception to completion, including a series of critical gateway approvals. The five steps of the framework are:

- strategic analysis and identification of infrastructure needs
- outline of the case for change and project scoping
- project planning and substantiation – leading to a full business case
- project funding and resource allocation
- delivery of the project – integration with the PIP.

² Government of South Australia 2005, ‘Construction Procurement Policy: Project Implementation Process’, December 2005, p. 8.

The framework includes seven gateway approvals recommended for construction projects. The fourth gateway gives approval for a project to move from strategic planning to project delivery, which is covered by the PIP. The final gateways (ie gateways five, six and seven) are included as part of the PIP.

The sequencing of the process can vary reflecting different procurement methodologies (such as fast-track, early contractor appointment and public private partnership models). As a result, some phases can run in parallel and may have integrated gateway approvals.

Figure 3.2 outlines the seven gateway approvals required under the Five Step Infrastructure Planning and Delivery Framework.

Figure 3.2: Seven gateway approvals under the framework

Gateway number	Gateway description
One	Strategic infrastructure priorities approved by Government.
Two	Project defined for investigation and development of business case.
Three	Project substantiated and business case completed.
Four	Funding model agreed, project included in an approved program and a decision made to proceed to the delivery phase (ie Step Five).
Five	Approval to commit the expenditure required to progress the design, documentation and tender phases.
Six	Approval to call public tenders and commit to the market once the lead agency/project sponsor is satisfied that the project is sufficiently developed to be reasonably certain that it is within the parameters agreed with the SA Government.
Seven	Approval to proceed to construction by committing the balance of the project expenditure and awarding the contract.

- TI 17 – Steps One to Four
- PIP – Step Five

3.3 Treasurer’s Instruction 17

Treasurer’s Instructions are issued under the *Public Finance and Audit Act 1987*. Most public authorities,³ as defined in that Act are required to comply with Treasurer’s Instructions.

³ Treasurer’s Instruction 2 ‘Financial Management’ provides that the Treasurer’s Instructions apply to each public authority except for the University of Adelaide, Flinders University and the University of South Australia, which are only required to comply with Treasurer’s Instruction 19 ‘Financial Reporting’.

TI 17 requires chief executives to ensure all public sector initiatives⁴ are evaluated in line with the guidelines issued by the Department of Treasury and Finance.⁵ The guidelines specify the requirements for undertaking the investment evaluation process for completing the first four steps of the Five Step Infrastructure Planning and Delivery Framework.

These guidelines provide a framework for assessing public sector initiatives and support the application of a comprehensive, consistent and robust investment evaluation process. They provide guidance on the processes and issues relevant for each phase of substantiating an initiative including financial, economic, social, environmental and budget evaluations. The evaluation comprises five phases:

- identifying and defining the service needed – phase 1
- identifying the options to deliver the service – phase 2
- substantiating the project – phase 3
- Cabinet decision-making including determining funding – phase 4
- post-implementation review – phase 5.

All major capital projects require a business case prepared in line with the requirements of TI 17 and the guidelines. The guidelines outline the basic steps for preparing the financial evaluation or business case.

The financial evaluation or business case is prepared as part of identifying the options to deliver the service. The project is then substantiated and once a sound business case is developed Cabinet will review the submission either as part of the Budget process or outside the Budget. The business case will require input from DPTI and the Department of Treasury and Finance.

The scope and depth of the investment evaluation will depend on the scale and nature of proposal.

3.4 Construction Procurement Policy: Project Implementation Process

The SP Act and regulations govern the procurement operations of government agencies and include key principles such as obtaining value for money, providing ethical and fair treatment to all participants and ensuring probity, accountability and transparency in procurement activities.

Prescribed construction projects, as defined by the SP Act regulations, with a total value exceeding \$150 000 are exempt from the requirements of the SP Act.

⁴ TI 17 defines a public sector initiative as any proposal involving a cost in order to derive a benefit consistent with some specified government objective. The term public sector initiative would include a capital project, change in service delivery models or an initiative requiring an environmental impact assessment.

⁵ Department of Treasury and Finance 'Guidelines for the evaluation of public sector initiatives', 2005.

The PIP applies to prescribed construction projects and provides guidance on Step Five (the delivery of the project) of the five step framework (described in section 3.2). It provides detailed procedures to help agencies to achieve well designed, appropriately tendered and effectively constructed projects.

It is our view that the Festival Plaza development is captured by the definition of prescribed construction projects. Further, the PIP is applicable regardless of whether the funding is provided by government or the private sector.⁶

The PIP has six phases that are summarised in figure 3.3.

Figure 3.3: Six phases of the PIP

Phase name	Phase description
5.1 Concept	Includes the development of options for a project and tests assumptions about cost, time, risk, and procurement plans.
5.2 Design	Includes developing the approved concept design in detail to confirm form and structure, materials and aesthetics, services and site works and detailed work on the cost plan and estimate, procurement and program and risk management plan.
5.3 Documentation	Includes the preparation of the drawings, specifications and conditions of contract for the required construction contracts. At this stage the responsible Minister or delegate must decide whether the project will proceed to the tender phase.
5.4 Tender	Includes establishing a tender field, calling and evaluating tenders and making recommendations for the acceptance of tenders. At this stage the responsible Minister or delegate must decide whether the project will proceed to the construction phase.
5.5 Construction	Includes activities by construction contractors and subcontractors or government construction personnel to build or refurbish an asset.
5.6 Review	Includes obtaining feedback about products, processes and asset performance to develop design, construction and market intelligence to benefit future projects.

⁶ Government of South Australia 2005, 'Construction Procurement Policy: Project Implementation Process', December 2005, pp 5 and 11.

4 Development approval requirements

In a letter dated 30 October 2012, the then CE DPTI advised the Walker Corporation it was shortlisted to advance to Stage 2 of the RFP process and invited it to submit a development proposal. The letter specified various requirements including that ‘... the development proposal must have regard to the City of Adelaide Development Plan and the relevant planning policies for the project site.’

The Walker Corporation submitted its initial development proposal to Renewal SA on 22 April 2013. At this time a key requirement of the City of Adelaide Development Plan was that buildings in the Institutional (Riverbank) Zone should not exceed six building levels.

The Walker Corporation’s 22 April 2013 proposal did not meet this height restriction as it proposed two commercial towers both exceeding six building levels.

The *Development Act 1993* provides the legislative framework for undertaking amendments to a development plan. It allows either the relevant council or, under certain prescribed circumstances, the Minister for Planning to amend a development plan.

In June 2013 the Minister for Planning (Mr Rau) sought an amendment to the City of Adelaide Development Plan under section 24(1)(g) of the *Development Act 1993*. That section provides for the Minister for Planning to amend a development plan where the Minister considers the amendment is appropriate because of a matter that, in the Minister’s opinion, is of significant social, economic or environmental importance.

The amendment was sought to provide a planning policy framework that provides a sound platform for the development of two important precincts:

- the Health and Biomedical Precinct
- the Core Entertainment Precinct.

One of the amendments to the development plan was a change to the building heights in the Riverbank (Entertainment Policy Area 28) zone from six building levels to in excess of 20 storeys.

Notice of the amendment process was gazetted in 17 July 2013. After an eight-week consultation period (17 July 2013 – 10 September 2013), the following amendments to the Riverbank (Entertainment Policy Area 28) were gazetted on 11 October 2013:

Development in the Policy Area should generally be up to 20 storeys in height to the south of the central pathway.

Buildings taller than 20 storeys may be contemplated to the south of the central pathway where design excellence can be demonstrated and the Commonwealth Airports (Protection of Airspace) Regulations can be met.

5 Detailed description of the procurement process

5.1 Background

The revitalisation of the Riverbank Precinct is an SA Government initiative with a stated aim to create a vibrant city and strengthen Adelaide as a cultural, economic and social hub of the State. The proposed development was expected to assist a number of targets of South Australia's Strategic Plan including increasing:

- the use of public spaces by the community
- the vibrancy of the SA arts industry
- visitor expenditure
- participation in social, community and economic activities.

5.2 Master planning processes

In February 2011 DPTI engaged external consultants to prepare the Riverbank Precinct Master Plan in consultation with the Riverbank Stakeholder Reference Group. The Reference Group included representation from the Adelaide Festival Centre, Arts SA, Adelaide Convention Centre, Skycity, Intercontinental, Tourism SA, Adelaide City Council and the Integrated Design Commission.

Following community consultation, the draft Adelaide Riverbank Master Plan Design Report was released in December 2011.

In February 2012 the Adelaide Festival Centre (AFC) issued its own draft master plan (the AFC Master Plan) to redevelop the Adelaide Festival Centre site. The plan represented a 10-year works program including:

- the bridge interface, enabling works, station road, plaza and promenade
- a 1360 space, four level car park under the plaza, Festival Plaza redevelopment
- the Adelaide Festival Centre upgrade.

The SA Government saw an opportunity for the private sector to invest in commercial opportunities compatible with the draft Adelaide Riverbank Master Plan and AFC Master Plan.

A procurement process was initiated with the aim of identifying a private sector developer to participate in the revitalisation of the Riverbank Precinct.

5.3 Expression of interest

In January 2012 an EOI was issued to determine market interest from developers, investors and operators in working with the SA Government to realise the full potential of the Riverbank Precinct in a manner compatible with the vision and guiding principles of the draft Adelaide Riverbank Master Plan.

Interested parties were requested to submit an EOI form and supporting information that would be used to evaluate the submissions. This information included:

- details of the interested party (eg corporate structure, experience, financial capacity to support its proposal)
- proposal details
- how the proposal would support the vision and guiding principles in the draft master plan.

The EOI assessment process was managed by DPTI. The EOI was issued on 24 January 2012 and submissions closed on 23 February 2012. Ten EOI submissions were received. The AFC also held discussions with proponents who participated in the EOI to progress the development of the car park and Festival Plaza.

DPTI established an Evaluation Panel and an Evaluation Plan to assess the EOI submissions received. The Evaluation Panel comprised the then Director Strategic Projects DPTI, the SA Government Architect, Deputy Crown Solicitor and the Executive Director Arts SA.

The Evaluation Plan outlined the evaluation process, including the scoring of submissions against the following evaluation criteria:

- description of proposal
- area requirements/size of proposal
- pre-requirements/conditions and proposed funding arrangements
- milestone program
- compatibility with/support for vision and guiding principles of the draft Adelaide Riverbank Master Plan
- any other issues.

The scoring of the submissions was to include an overall assessment of low, medium or high merit.

The Evaluation Panel assessed the submissions and recommended that six proponents be invited to participate in the next stage of the procurement process, the RFP.

5.4 Request for proposal

An RFP for the redevelopment of the AFC car park (the Project) was released to the six shortlisted proponents on 2 August 2012.

The RFP had two stages:

- Stage 1 – to shortlist up to two proponents who demonstrated the capacity and commitment to deliver all aspects of the Project and related civic and commercial opportunities

- Stage 2 – to provide the shortlisted proponent(s) with a period of exclusivity of 20 weeks to submit a development proposal for all aspects of the Project.

Under the terms and conditions of the RFP the SA Government reserved the right, without assigning any reasons, at any time to:

- terminate further participation in the RFP process by any party
- not short list a proponent
- terminate the RFP process or not proceed with the Project
- modify any aspect of the RFP process.

The RFP stated that in no circumstances would the SA Government reimburse any charges, costs, expenses or fees that were incurred by any proponent in the preparation of a submission in response to the RFP.

The stated aim of the RFP was to create the opportunity for the private sector to work with the SA Government to assist in revitalising the Riverbank Precinct and support the AFC to achieve its vision as a leading national and internationally recognised performing arts centre.

The RFP also outlined, subject to SA Government funding and/or through private sector participation, that the AFC had plans to enliven the centre through a series of initiatives, including:

- replacing the existing underground car park with a new facility featuring significantly greater capacity
- creating a new public square capable of hosting events for 8000 people
- upgraded theatres and foyers
- new hospitality and function areas.

The three key project elements of the RFP were the:

- AFC underground car park
- new public square
- potential commercial building (mixed use commercial, retail or cultural building).

The RFP stated that redevelopment of the AFC car park would open up opportunities for the Project to examine and incorporate supporting elements as a coordinated program of works that respond to the AFC and Riverbank Master Plans. The proposed supporting elements were identified in a diagram and were as follows:

- upgrade to Adelaide Festival Theatre and Dunstan Theatre Lobby
- car park
- interactive public park
- food and beverage/retail and community facilities
- future commercial building
- revitalised Station Road
- possible future Casino expansion
- Festival Square.

The indicative timetable for the Project in the RFP proposed that a Development Agreement would be signed in August 2013 and the Project would commence in late 2013. As outlined in this Report, this timeline was not met.

The RFP outlined the evaluation criteria for Stage 1 and Stage 2. In addition to the criteria specified, the RFP stated that DPTI may apply other criteria and have regard to such other matters as, in its sole and absolute discretion, it considered relevant or appropriate to the evaluation of proposals and the delivery of the Project.

5.4.1 Request for proposal – Stage 1

The RFP Stage 1 assessment process was managed by DPTI. DPTI established an Evaluation Panel and an Evaluation Plan to assess the RFP Stage 1 submissions received. The Evaluation Panel comprised the then Director Strategic Projects DPTI, the Chief Finance Officer AFC, the Executive Director Arts SA and the then General Manager Renewal SA.

The Evaluation Plan outlined the evaluation process including the scoring of submissions against the evaluation criteria.

Six proponents were invited to participate in the RFP Stage 1 process and five submissions were received. These were assessed against the evaluation criteria detailed in the Evaluation Plan for the RFP Stage 1 which included:

- Team:
 - Composition of team, skills and experience, capability to prepare a development proposal, proven track record and demonstrated ability to undertake the project.
- Ownership and viability:
 - Financial viability and ownership of the developer.
- Financial solution:
 - Ability to provide a financial framework which maximises the commercial return to SA Government.
 - Identification of potential risks that may impact the financial framework and implementation of the development proposal.
- Development approach:
 - Nature of the proposed methodology, approach and programming by which the development team will achieve the project objectives.
- Rationale for shortlisting:
 - Why the development team should be shortlisted.

The scoring of submissions was to include an overall assessment of low, medium or high merit.

The Evaluation Panel assessed the submissions and recommended that only the Walker Corporation be invited to participate in the RFP Stage 2.

5.4.2 Request for proposal – Stage 2

The RFP Stage 2 provided for up to two shortlisted proponents being offered the opportunity to prepare a project development proposal. It detailed the:

- minimum requirements including details of financial considerations/commitments and parameters that proponents had to address
- evaluation criteria which included:
 - financial risks and returns to the development consortia, the AFC and the SA Government
 - the level of SA Government commitments sought.

Again, the RFP stated that DPTI may apply other criteria and have regard to such other matters as, in its sole and absolute discretion, it considered relevant or appropriate to the evaluation of proposals and the delivery of the Project.

It also provided the successful proponents with a 20-week exclusivity period to prepare a project development proposal.

On 29 October 2012 the SA Government approved inviting the Walker Corporation to develop an integrated development proposal for the AFC car park and other related Riverbank elements in line with set objectives and specific requirements and subject to agreed terms and conditions as documented in an attachment (ie a draft letter inviting them to prepare a development proposal).

The then CE DPTI wrote to the Walker Corporation on 30 October 2012 advising that it was shortlisted to advance to the RFP Stage 2 and would be granted a 20-week exclusivity period to prepare a development proposal. The letter also detailed the project objectives from the RFP and fundamental project requirements. The letter included the requirements that the development proposal:

- should be able to be carried out without any public funding or SA Government pre-commitment
- must have regard to the City of Adelaide Development Plan.

The letter also advised the Walker Corporation that a decision by the SA Government as to whether to proceed to the final phase of RFP Stage 2 (negotiation and completion) would depend on the evaluation of the:

- content, programming and cost of the Project as described in the development proposal
- development proposal against the evaluation criteria specified in the RFP.

In addition, the Walker Corporation was requested to confirm its acceptance of the arrangements by 15 November 2012.

On 15 November 2012 the Walker Corporation emailed DPTI seeking a one-week extension to 22 November 2012. On 15 November 2012 DPTI confirmed its acceptance of the extension to 22 November 2012.

In a letter to the then CE DPTI dated 21 November 2012, the Walker Corporation accepted the opportunity to prepare a development proposal within the 20-week exclusivity period.

The Walker Corporation submitted its development proposal to Renewal SA on 22 April 2013.

5.5 Rejection of the Walker Corporation's development proposal

DPTI established a Tender Evaluation Panel and Tender Evaluation Plan to assess the Walker Corporation's development proposal. The Tender Evaluation Panel comprised the then General Manager Renewal SA (Chair), the then Director Strategic Projects DPTI, the Chief Finance Officer, AFC and the Director Cultural Heritage and Assets, Arts SA.

5.5.1 May 2013 evaluation of initial proposal

In May 2013 the Tender Evaluation Panel found that the Walker Corporation proposal did not contain enough information to effectively assess the proposal.

The then CE Renewal SA wrote to the Walker Corporation on 3 July 2013 advising that:

- at that stage the SA Government was unable to proceed with the proposal to the final phase of the Stage 2 (negotiation and completion)
- the SA Government was extending an opportunity to the Walker Corporation to revise its proposal
- the SA Government would like the Walker Corporation's project team to participate in a workshop.

The workshop was held on 29 July 2013. Later correspondence from the Walker Corporation indicates numerous meetings, communications and exchanges of correspondence followed after the workshop.

The Walker Corporation wrote to the Minister for Housing and Urban Development (Mr Koutsantonis) on 2 September 2013 requesting that the date of submission for response to queries raised in relation to the development proposal be extended to a date being a minimum of two weeks after the date of finalising the ministerial Development Plan Amendment (DPA) process. Public consultation on the DPA was scheduled to conclude on 10 September 2013.

Renewal SA extended the due date of the submission deadline to 1 October 2013 and the Walker Corporation submitted its revised proposal on this date.

5.5.2 October 2013 evaluation and rejection of revised proposal

Following evaluation of the revised proposal the Tender Evaluation Panel recommended the Walker Corporation proposal not proceed to the final phase of the RFP Stage 2 process (negotiation and completion) and that the RFP process be terminated. The Tender Evaluation Panel comprised the then General Manager Renewal SA (Chair), the then Director Strategic Projects DPTI, Chief Financial and Operating Officer AFC and the Director Cultural Heritage and Assets Arts SA. The Tender Evaluation Panel found that the proposal provided only marginally adequate satisfaction of the evaluation criteria and there were significant shortcomings in the information supplied, and had concerns about the Walker Corporation's ability to successfully fulfil requirements. The shortcomings included:

- the lack of appropriate design and the scale of proposed buildings given the nature of the site and precinct
- the commercial sustainability of the proposal, including the car park, including a lack of supporting analysis and data
- insufficient information and transparency regarding the commercial arrangements, including only high level feasibility analysis, and concerns about the basis and tenure for car park users
- limited information how the plaza, car park and retail spaces would operate and integrate with the surrounding area
- limited integration with the AFC
- the ability to manage interface issues
- the loss of future opportunity to the SA Government if a 99-year lease was granted
- the lack of financial return to the SA Government for its ownership of the land.

This recommendation was approved by the Executive Steering Committee (ESC) on 23 October 2013 following its meeting on 21 October 2013. The ESC comprised the then CE Renewal SA (Chair and Co-sponsor), the then CE DPTI (Co-sponsor), the CE AFC and the Executive Director Arts SA. Minutes of the meeting show it was attended by all members of the Tender Evaluation Panel and the ESC (but for one apology) and by the then Deputy Crown Solicitor. The minutes show the Tender Evaluation Panel process and evaluation was discussed and the ESC offered the opportunity for comments. The then CE DPTI raised that the Walker Corporation was seeking to meet the Premier in that week. After discussion the meeting closed, noting the evaluation and recommendation memo would be updated and sent to the ESC for approval.

The recommendation report included a hand written notation from the then CE DPTI stating:

Agree to terminate process but suggest offering Walker Corporation one more chance to put a car park proposal together (which is where we started) with any add-ons subject to further consideration ...

On 23 October 2013 the Walker Corporation wrote to the Minister Housing and Urban Development (Mr Koutsantonis) seeking the Minister's support on a way forward for the Project.

In the letter the Walker Corporation requested that, before making substantial changes to its proposed design, it be allowed to consider the outcome of the DPA. It also stated that:

- the time allowed under the submission process did not grant sufficient time to consider the outcome of the DPA process, or to properly consider options and process a carefully considered final design
- the response time was limited and the DPA outcome was unknown.

In addition, it expressed concern that the focus should be on the design, economics and costs of the parking feasibility before resolving the plaza and built form design issues.

The Walker Corporation sought the Minister's support to evaluate the process in two phases, first the car park and then the design issues which would make the project financially viable within the guidelines of the existing DPA.

On 4 November 2013 the SA Government approved:

- rejection of the Walker Corporation proposal submitted on 22 April 2013 (together with additional information submitted on 1 October 2013)
- amending the RFP terms and conditions to extend the RFP Stage 2 process and engage in further discussions with the Walker Corporation to determine if there was sufficient confidence that the Walker Corporation would be able to achieve the key outcomes required by the SA Government only for the car park nothing further.

These two actions were to:

- reject the Walker Corporation's proposal
- amend the RFP to extend the RFP Stage 2
- seek agreement from the Walker Corporation to participate in the amended process and the amended terms and conditions.

5.5.3 Walker Corporation invited for further discussions for development of the car park only

On 22 November 2013 the then CE Renewal SA wrote to the Walker Corporation. In the letter, he advised that the SA Government had approved rejecting the proposal and amending the RFP terms and conditions to extend the RFP process and for the SA Government and the Walker Corporation to engage in further discussions (for the car park only). He stated that discussions would not involve any other element of either the Project or the proposal. He also indicated discussions on other elements of the Project were dependent on the SA Government being satisfied that appropriate commercial arrangements for the car park could be agreed with the Walker Corporation, and would be subject to a further SA Government approval.

The letter advised that the RFP terms of exclusivity were amended by inserting the following paragraph:

Following, upon, or during the evaluation of, a Proposal, the State may conduct direct discussions or negotiations with any shortlisted proponent for the provision of any part of the Project, including simultaneously with several such proponents for the same or different parts of the project, and to enter into one or more contracts for any part of the Project the subject of any discussions or negotiations.

The letter also invited the Walker Corporation to participate in discussions and to provide information on how it would deliver the car park component of the Project in line with the Project Objectives and Fundamental Project Requirements specified in the RFP documents as well as many additional Fundamental Project Requirements included in the letter. The Walker Corporation was requested to provide the information by 11 December 2013.

He requested the Walker Corporation's response as to whether it accepted the terms and conditions and whether it was prepared to participate in further discussions by 27 November 2013.

5.5.4 Walker Corporation seeks a meeting with the Minister for Housing and Urban Development

On 26 November 2013 Mr Walker met with Minister Koutsantonis, the then CE DPTI, the then CE Renewal SA and senior agency staff. Later correspondence dated 14 July 2014 from the Walker Corporation states that it sought this meeting following rejection of its proposal because of the serious situation in which it found itself. The correspondence states the Walker Corporation raised procedural fairness concerns with the tender evaluation process and panel at the meeting.

On 27 November 2013, the then CE DPTI emailed the Walker Corporation confirming:

- the Walker Corporation should respond to the Renewal SA letter advising that no further correspondence would be entered into with Renewal SA on the potential for a car park and other possible developments on the site of the AFC car park
- all future correspondence should be directed to the then CE DPTI and contact should occur through him and/or the Director Strategic Projects
- the timelines included in the Renewal SA letter would have no further effect on the SA Government's further negotiations
- the then CE DPTI would advise separately on timelines for future negotiations
- the Minister would respond separately on decisions relating to an extension of exclusivity
- in the short term, his expectation was that they would focus discussions on all necessary arrangements that needed to be put in place to establish a car park that would meet future requirements for an expansion of Skycity, the AFC and the requirements for any future developments in the precinct

- at that stage the SA Government had supported holding further discussions on opportunities to secure a car park development. Further representations would need to be made to the SA Government for authorisation in relation to the car park and any other potential developments above the level of the plaza.

On 27 November 2013 the Walker Corporation wrote to the then CE Renewal SA advising that no further correspondence would be entered into between Renewal SA and the Walker Corporation.

Minister Koutsantonis indicated that:

In November 2013 the Government concentrated on developing a car park with associated public spaces integrated with the broader Riverbank Precinct. The Government considered that the Walker Corporation could deliver the car park given its extensive experience delivering successful urban redevelopment projects. Whilst the original Walker Corporation proposal was rejected, Walker Corporation otherwise had the capacity to provide both a car park and, potentially, an innovative public space in consultation with the Government.

Minister Koutsantonis also confirmed that he directed the then CE DPTI to conduct negotiations with the Walker Corporation, noting that he had successfully delivered State infrastructure projects and the SA Government's objectives.

On 11 December 2013 the then CE DPTI wrote to the Walker Corporation confirming that the Walker Corporation had agreed to participate in direct and exclusive negotiations with the SA Government on the redevelopment of the car park. He also advised that the SA Government would review the Walker Corporation's progress by 31 January 2014 and inform Cabinet whether satisfactory arrangements for the car park would be able to be achieved.

5.5.5 The Chief Executive of Premier and Cabinet seeks an update on status of negotiations

In a letter dated 7 January 2014, the then Chief Executive of the Department of the Premier and Cabinet (CE DPC) wrote to then CE DPTI. He highlighted that the SA Government had determined that negotiations with the Walker Corporation be limited to the car park only, with further opportunities to be considered outside the authorised scope of the negotiations. He also stated that negotiations with the Walker Corporation must be conducted in support of the requirements of the Skycity Casino and Adelaide Festival Theatre redevelopments. He requested an update on the status of negotiations, with particular reference to:

- details of the scope of the negotiations
- confirmation that negotiations were being conducted in line with the SA Government's requirements, both to ensure sufficient car park spaces were included in any redevelopment to meet the needs of the expanded casino and paying regard to the existing revenue stream that the car park provides to the Festival Centre.

The then CE DPTI responded in a letter dated 14 January 2014 assuring that negotiations with the Walker Corporation were consistent with the decisions made by the SA Government in November 2013. He stated:

- the Walker Corporation was aware that the SA Government was only canvassing opportunities for a car park that would accommodate the interests of both Skycity and the AFC
- there was no approval for any development on or above the plaza and he was not authorised to canvass any opportunity for any form of development other than a car park.

In the letter the then CE DPTI also recapped events where he was involved in the Project and his perspective on them. In doing so he stated:

- around September 2013, he agreed to meet with Mr Walker independently and outside of the Renewal SA process
- at this meeting he told him (Mr Walker) that in his view ‘the process had gone off the rails’. His point was that the original RFP was undertaken because the SA Government wanted a car park, although it said other associated opportunities would be considered. Instead what was provided was focus on extensive other opportunities and there was not a deal on a car park
- he told the Walker Corporation that, in his view, it would not get approval from the SA Government for development at the scale it was proposing
- he suggested that Mr Walker should write to Minister Koutsantonis and ask for a chance to revisit his proposals with a focus on the car park.

In the letter, he also provided an update on the scope of negotiations, noting (amongst other things):

- assuming no multi-story development was going to be allowed to partly offset costs, and the SA Government wants this to be a source of revenue for the AFC, they could assume the SA Government would be required to fund around \$30 million of the AFC/SA Government share of the car park cost, and a further \$30 million plus to address the plaza public realm treatment and new foyer space for the AFC, ticket office, galleries and retail
- an outcome of the analysis undertaken was that the SA Government would need to fund \$60 million plus towards the costs of the car park and plaza development, plus supporting facilities.

Our enquiries with the agencies responsible for the procurement process found that no record was maintained of the meeting between then CE DPTI and Mr Walker outside the Renewal SA procurement process.

5.6 Agreement to Lease

On 15 January 2014 the Walker Corporation wrote to the then CE DPTI seeking support for the SA Government to enter into a legally binding agreement to develop a car park under

agreed terms. Furthermore, it sought to enter into the arrangements before the caretaker period so that it had greater certainty. The correspondence included a draft ATL. The draft ATL was redrafted by the SA Government on terms considered to be acceptable.

On 7 February 2014 the SA Government approved:

- the Minister for the Arts entering a legally binding ATL for the redevelopment of the AFC car park with the Walker Corporation
- the ATL be executed before the commencement of the caretaker period.

The legally binding ATL between the Minister for the Arts and the Walker Corporation was executed on 11 February 2014. The ATL provided a further 12 months exclusivity and specified numerous conditions precedent including:

- the Walker Corporation obtaining development approval for the construction of the car park
- Cabinet approving the construction of the car park, the Development Agreement, the Lease and SA Government sublease
- the Walker Corporation obtaining all other government and regulatory approvals
- the Walker Corporation satisfying the Minister that it has secured a binding commitment to finance the construction of the car park
- the Walker Corporation submitting plans and the Minister being satisfied to his absolute discretion with the design, nature and form of the car park including the manner in which the car park will integrate to, and interface with, the precinct and also the adequacy of the agreed car park to enable the development of any proposed public square or plaza and buildings on top of the car park
- the Minister being satisfied with the Walker Corporation's program and construction for the car park
- agreeing the valuation of the land of the car park for the purpose of agreeing the rent to be payable under the lease
- the Minister and the Walker Corporation agreeing the terms and conditions of the sublease of car park spaces for use by the SA Government upon which up to 400 car park spaces are to be made available to the SA Government for use
- the Walker Corporation and Skycity entering into a binding agreement for making at least 1000 car park spaces available to Skycity
- agreeing on the delineation of land to be made available for the car park.

Under the ATL the conditions precedent were required to be satisfied or waived (at the discretion of the Minister) within 12 months of signing the agreement.

The ATL also provided for:

- the demolition of the existing car park and construction of a new car park of at least 1400 spaces

- the SA Government agreeing to sublease 400 spaces in the car park which includes (subject to reaching a contrary agreement) the right for the SA Government to generate revenue from the car parks
- the Walker Corporation reaching agreement with the Minister for the Arts to provide the SA Government with 400 car park spaces with a cap on the net present cost of the car parks of \$30 million.

The then CE DPTI advised us that as the SA Government was approaching a State election, the Minister for the Arts (Mr Snelling) executed the ATL to determine whether an arrangement for constructing the car park which was acceptable to the SA Government could be reached with the Walker Corporation. He explained that the ATL included a number of conditions precedent which may or may not have been ultimately satisfied. He also advised that the action taken took the process forward with enough flexibility to continue to work with the Walker Corporation or to walk away from the agreement. He also advised us:

By early in 2014, when I was asked to have no further involvement in the project, no transaction or deal had been made, no land had been sold or leased, nothing had been built, no government funds had been committed and no commitment had been made on any of the above. As stated, our sole purpose was to see if there was any prospect of a deal, which could be worked through all required processes and approvals, that would deliver good outcomes for the government and South Australians.

5.7 Walker Corporation seeks to progress the car park after the election

The State election was held in March 2014. Revised Ministerial appointments followed.

After the new SA Government was formed, the Walker Corporation wrote to the new Minister for Housing and Urban Development (Mr Rau) on 9 April 2014 acknowledging their recent meeting and stating it was keen to move promptly to realise the opportunity it had been given to redevelop the AFC car park through the Project. The Walker Corporation advised that there were a number of outstanding issues to resolve that it considered critical to the timing and viability of the Project and which had been the subject of detailed discussions over many months between the Walker Corporation and government representatives.

The Walker Corporation was concerned that there appeared to be a view in SA Government that the original RFP run by DPTI in July 2012 did not give the SA Government the scope to deal with the Walker Corporation for anything but the construction of the car park. It stated that in its view, a thorough review of the RFP should allay any concerns about that, highlighting that the original RFP stated that:

The redevelopment of the AFC car park opens up opportunities for the Project to examine and incorporate the following supporting elements as a coordinated program of works that respond to the AFC and Riverfront Master Plans.

The Walker Corporation further noted that the project objectives specified in the RFP provided that:

The State is seeking a suitable party to share its vision for the AFC and Riverbank and work towards realising the following objectives for the Project - profitably and responsibly:

- *Develop the Project and other potential elements in a manner consistent with the AFC Master Plan and the Riverbank Master Plan;*
- *Achieve excellence in planning and design which recognises the AFC's vision to reinforce its role as the State's leading arts centre in a manner that supports the revitalisation of the Riverbank Precinct;*
- *Optimise the Project's commercial opportunities, effectively manage development risk and provide appropriate commercial returns to the relevant parties;*
- *Leverage the flexible design of the Project to integrate other compatible developments such as the creation of a new Public Square; and*
- *Enhance the identity, amenity and functionality of the AFC and promote its integration within the Riverbank Precinct.*

The Walker Corporation finished this matter stating:

We believe that the RFP was an open process that properly tested the market and duly selected Walker Corporation to develop the carpark and to explore the ability for it to deliver the other key elements referred to through a coordinated program of works. We do not suggest the government is bound to accept the design of any of the key elements as proposed by Walker Corporation to date, but we do contend that the RFP allows the government to deal exclusively with Walker Corporation to deliver those elements. There is certainly no speedier way to deliver a coordinated program, particularly as Walker Corporation has already commenced engagement with all stakeholders in accordance with the directions (at various stages) of both DPTI and Renewal SA.

The Walker Corporation's second concern was its need to know what would be above the car park, stating:

In order to arrive at a final design and final engineering specification for the proposed carpark, Walker Corporation will need to clearly understand what will be above the carpark and how the carpark will need to interact and interface with surrounding developments. Apart from any other considerations, any infrastructure of substance required above ground will need to be physically supported below the plaza as part of the construction of the car park. In our view this is why the original RFP set out the desirability of a coordinated program of works.

The Walker Corporation concluded by stating it had the capability, the capacity and commitment to deliver all aspects of the Project including the civic and commercial development opportunities and welcomed the opportunity to meet with the Minister for Housing and Urban Development again as soon as possible to discuss the specific requirements for development of the precinct and to continue the engagement with all stakeholders to deliver an outcome that satisfies the SA Government.

Further to Ministerial changes, in early May 2014 the then Chief Executives of DPTI and Renewal SA left the SA public sector.

Correspondence dated 14 July 2014 from the Walker Corporation to the then Acting CE DPTI indicates that he met informally on 14 May 2014 with DPTI representatives and the owners of the Adelaide Casino (Skycity) as set out in section 5.9. The agencies responsible for the procurement had no recorded documentation of this meeting.

5.8 Approval of guiding and urban design principles

Shortly after taking up his role in July 2014, the CE Renewal SA established urban design principles and costings for the redevelopment.

In addition, Renewal SA found:

- the viability of the Walker Corporation's proposed car park was tested and found to compromise the future development of the precinct and was impractical in terms of configuration, layout and depth
- the Walker Corporation's cost estimate was considered to be significantly higher than what would normally be expected
- there was a need to renegotiate the configuration of the car park as the car park proposed did not achieve a number key outcomes required by the SA Government.

On 7 July 2014 the SA Government approved:

- the guiding principles for the Riverbank Precinct as set out in the Master Plan
- the urban design principles that were to form the basis for the SA Government's ongoing and future negotiations relating to the development in the Precinct
- negotiations to design and construct a new car park only be recommenced with the Walker Corporation, with no above ground development
- if for any reason the Walker Corporation decided not to meet the obligations of the ATL to commence the car park by 15 February 2015, the Minister would immediately commence a new procurement process for the design and construction of the new car park through an open tender process
- any proceeds from Precinct assets to be applied to the Precinct before any call on the State Budget.

5.9 Walker Corporation seeks to proceed with its proposal to develop the car park and above the car park

The then Acting CE DPTI met with representatives of the Walker Corporation on 10 July 2014 to negotiate the construction of the car park. During the negotiations the Walker Corporation indicated a desire to construct the car park in line with the ATL and to negotiate the construction of other aspects of the development.

The Walker Corporation followed up this meeting with a letter dated 14 July 2014. The letter expressed disappointment at having not had a response to the earlier letter of 9 April 2014. The Walker Corporation stated it had been working on the Project for more than two years and had invested an enormous amount of time, energy, resources and money into the Project.

The letter set out a lengthy background of the Project up to that time for the Acting CE DPTI's information, covering events from it lodging an RFP submission on 30 August 2012 to entering into the ATL on 11 February 2014.

On the final page of the letter, the Walker Corporation focused on proceeding with the proposal stating:

In reliance upon numerous representations from senior members of the Government and the DPTI to Walker Corporation that development above the carpark would follow after the development of the carpark itself, an Agreement to Lease (ATL) in respect of the carpark land was entered into on 11 February 2014 between Walker Group Holdings Pty Ltd and the Minister for Arts.

Again, numerous meetings and discussions took place following entry into the ATL to progress the Proposal.

However, at an informal meeting on 14 May 2014, Walker Corporation and the owners of the Casino were informed that the DPTI did not intend to convene any further meetings to progress the design of the carpark and the interaction between the carpark land and Casino land in relation to the loading dock, nor would its officers be available to discuss these issues.

Under separate cover, we will be requesting an extension of the negotiation period under the ATL, to compensate Walker Corporation for the time which been lost, for the reasons outlined above, through no fault of its own.

I trust that you will appreciate that we would not have come as far as we have, or entered into the ATL, unless it was our clear understanding, supported by representations made at length by senior members of the Government and the DPTI, that Walker Corporation's involvement in the Project, substantially as contemplated in our Proposal, would become a reality.

Walker Corporation wishes to proceed with the Proposal without further frustration or delay.

In considering Walker Corporation's Proposal, which is its response to the RFP, one cannot simply look at the terms of the ATL in isolation. To do so would leave one with an imperfect and incomplete picture of what the Proposal really involves. This document is but one of a multitude of elements that constitute the Walker Corporation Proposal for the Project.

The many meetings which have been held, discussions which have taken place and representations which have been made, both before and after the document was signed, cannot be ignored in assessing the status of the continuing RFP process.

Please urgently review the situation and let us have a response to our letter of 9 April last, advising how we may go forward on this major State significant Project.

5.10 The SA Government decides to renegotiate with the Walker Corporation

In the period after receiving Walker Corporation's letter, the SA Government decided to deal with the Walker Corporation to undertake the wider development of the Riverbank Precinct rather than the redevelopment of the car park only.

The CE Renewal SA advised us he had provided the SA Government and other stakeholders with a range of information relevant to decisions on progressing the development. He advised that considerations at the time included the impact of the size of the proposed car park on the precinct. He gave examples of the impact including that by going down five levels and underneath the AFC and Parliament House, and being against the train station, it immediately became more than a car park development. Elements of the AFC were affected. They had to change loading docks and it interfered with the Adelaide Convention Centre's parking arrangements. The existing car park has 400 spaces and they were now contemplating 1400 to 2000. This immediately meant that they had to change the configuration of the car park as they had to spread it out.

The CE Renewal SA also advised that the SA Government obtained a legal opinion from private counsel concerning the redevelopment of the Riverbank Precinct.

Further, he advised us that consideration was given to the fact that the Walker Corporation was one of the biggest developers nationally and had the capability to undertake such a development. However, they still needed to work with the Walker Corporation to ensure appropriate commercial conditions were established.

On 18 August 2014 the SA Government approved the CE Renewal SA, CE DPTI and a legal representative from the Crown Solicitor's Office to renegotiate with the Walker Corporation on the basis the negotiations:

- follow the guiding principles, urban design principles and development envelope as endorsed by the SA Government on 7 July 2014
- achieve the car park objectives and development above the car park based on the design principles and development envelope (ie building parameters) endorsed on 7 July 2014
- address the SA Government's broader public realm outcomes for the site
- allow for the staging of the above car park and other development in line with time frames to be endorsed by the SA Government in a future submission
- include the SA Government's terms in relation to consultation with stakeholders and the community on the plaza and other public realm to be detailed in a future submission to the SA Government.

5.11 Approval of funding and key commercial terms

Following the 18 August 2014 SA Government decision to recommence negotiations with the Walker Corporation for development above the car park, there were ongoing intensive negotiations between the SA Government and the Walker Corporation in the period to February 2015.

With the ATL due to expire on 11 February 2015, legal representatives for the Walker Corporation wrote to the CE Renewal SA on 27 January 2015 seeking a six-month extension to the period of exclusivity to provide enough time to finalise agreement on the Key Commercial Terms (KCTs).

We were advised that leading up to 11 February 2015 (ie the date the ATL conditions precedent were required to be satisfied or waived) significant progress was made in establishing the KCTs.

Through negotiations with Renewal SA and other agencies the CE Renewal SA developed three options for the development. The options included:

- full cost of proposed project (net cost \$180.1 million)
- scaled back project scope and quality (net cost \$124.8 million)
- replacement of the existing AFC car park (net cost \$49.2 million).

On 23 February 2015 the SA Government approved option 1 which had a net cost to the SA Government of \$180.1 million.

The key costs to the SA Government of option 1 are summarised in figure 5.1.

Figure 5.1: Key costs to the SA Government

Cost	\$'million
Purchase of 400 car parks	30.0
Festival Plaza public realm works	48.3
Precinct integration works	61.4
<i>Less: Consideration from the Walker Corporation for development rights</i>	<i>(40)</i>
Subtotal – car park, festival plaza and precinct works	99.7
Adelaide Festival Centre consequential impacts and complementary works	80.4
Total net cost to SA Government	180.1

The SA Government also approved the Minister for the Arts and Minister for Housing and Urban Development entering into a KCT Agreement with the Walker Corporation.

On 13 March 2015, the KCT Agreement was signed between the Walker Corporation, the Minister for the Arts (Mr Snelling) and the Minister for Housing and Urban Development (Mr Rau) for the car park and above ground development. The KCTs included extending the right of exclusivity to 10 August 2015.

The KCT Agreement indicates that the purpose of the KCTs is to record the key commercial terms of the Walker Corporation's proposal to undertake the Integrated Development on the Integrated Development Land, for the purpose of:

- considering the Walker Corporation's proposal by the SA Government; and
- if the Walker Corporation's proposal was approved by the SA Government, assisting the parties in negotiating and documenting a Development Agreement for the Integrated Development.

The KCTs contained a list of conditions precedent to the SA Government entering into a Development Agreement with the Walker Corporation including:

- the SA Government and the Walker Corporation agreeing the terms of the Development Agreement (including the Integrated Development Lease and the State Sublease)
- Cabinet approving the Development Agreement, the Integrated Development Lease and the State Sublease
- the Walker Corporation granting Skycity a legally binding option for Skycity to sublease at least 1000 car parking spaces in the car park
- the SA Government being satisfied with the Walker Corporation's preliminary program and preliminary concept plans for construction of the Integrated Development.

The key differences between the provisions of the ATL and the KCTs (specifically relating to the car park redevelopment) are summarised in figure 5.2.

Figure 5.2: Key differences between the ATL and KCTs

Area	ATL provision	KCT provision
Building parameters	A new car park incorporating at least 1400 car park spaces on leased land.	A new six level underground car park which is to be constructed in place of the existing car park on a portion of the Integrated Development Land.
Lease term	The lease of the leased land is for a term of at least 30 years (as may be agreed by the parties).	The Integrated Development Lease Term is to commence on the date of satisfaction of the last of the conditions precedent for the commencement of the car park and expire on 4 March 2085, being the date of expiration of the Skycity lease.
Cost to the State	The net present cost to the SA Government for the 400 car park spaces is not to exceed \$30 million.	The SA Government will pay the Walker Corporation \$30 million as consideration for the use of 400 car parks in one lump sum payment of \$30 million at the commencement of the State sublease.

5.12 Granting ongoing exclusivity

The KCT executed on 13 March 2015 extended the period of exclusivity until 10 August 2015.

We were advised that, as at 10 August 2015, intensive negotiations had resulted in various drafts of the Development Agreement documentation but more time was still required to deal with all the matters contained in the KCT.

On 10 August 2015 the Walker Corporation wrote to the CE Renewal SA seeking the right of exclusivity of dealing with the SA Government to be honoured by the SA Government for as long as the Walker Corporation continued to work with Renewal SA and all relevant stakeholders to develop the proposal.

The CE Renewal SA responded to this request on 12 August 2015 honouring an ongoing continuation of the right of exclusivity subject to the Walker Corporation continuing to work with Renewal SA and other relevant stakeholders to:

- develop the proposal and feasibility of the project that satisfies the SA Government and the Walker Corporation

- finalise the negotiation of the proposed Development Agreement, car park lease and sublease.

We were advised that in August 2014 the SA Government authorised the CE Renewal SA, the CE DPTI and a legal representative from the Crown Solicitor’s Office to renegotiate with the Walker Corporation.

5.13 Public Works Committee

A final report of the Public Works Committee for the Adelaide Festival Centre Precinct Upgrade was tabled in Parliament on 22 March 2016. The report defined the works as three components – the Festival Plaza Works, the Adelaide Festival Centre, and the Northern Riverbank. The three components detailed in the report are summarised in figure 5.3.

Figure 5.3: Components of the Adelaide Festival Centre Precinct Upgrade

Component	Description
Festival Plaza Works	New plaza featuring public art work, water features, trees, shrubs and lawn, as well as seating and shelter.
Adelaide Festival Centre	Reinstatement of the external form of the existing buildings, integration of the centre within the revitalised plaza and internal fit out.
Northern Riverbank	Redevelopment of the north face of the Adelaide Festival Centre overlooking Elder Park and the River Torrens.

The report indicated that the works to be undertaken by the private sector (including the Festival Square Development by the Walker Corporation comprising the underground car park, office tower and retail space) were not part of the submission.

The Public Works Committee recommended that the proposed public work proceed, subject to DPTI returning and providing further details once the final designs and plans were determined.

In June 2016 DPTI provided the Public Works Committee with an update on a number of matters that had not been finalised.

5.14 Development Agreement

On 23 May 2016 the SA Government approved the terms and conditions and execution of the following contractual agreements:

- a Development Agreement for the development of the Integrated Development comprising a public realm, car park, office building, retail area and other works
- a soil banking agreement between the Walker Corporation and Renewal SA to provide for the disposal of soil from the excavation at the site.

The SA Government also approved the terms and conditions and execution of, subject to satisfying or waiving the conditions precedent, the following lease documents:

- an office building lease over the land to be used by the Walker Corporation to construct the office building
- a retail lease over the land to be used by the Walker Corporation to construct the retail spaces
- a car park lease over the land to be used by the Walker Corporation to construct the car park and sublease to the SA Government for its use of 400 spaces.

The Minister for the Arts (on behalf of the SA Government) and the Walker Corporation⁷ executed the Development Agreement on 26 May 2016. The key elements of the agreement are detailed in section 5.16.

A summary of the key differences between the KCT and the final Development Agreement is provided in Appendix 6.

The Development Agreement details the matters agreed to by the SA Government and the Walker Corporation for undertaking the development and subsequent arrangements regarding the possession, use and operation of the development assets.

The Development Agreement contains a number of conditions precedent that must be satisfied within specified time frames for construction to proceed and the SA Government granting the leases to the Walker Corporation.

5.15 Implications of not satisfying the conditions precedent

Under the Development Agreement, the conditions precedent were to be satisfied (or waived) by 30 June 2016 or a later date that does not extend beyond 30 December 2016.

If all the conditions precedent were not satisfied or waived within the time frames specified, either party could terminate the Development Agreement and no liability would attach to either party for termination.

If the Walker Corporation has not substantially commenced construction of the car park, office and retail area within the specified time frames then the SA Government could terminate the lease by giving written notice to the Walker Corporation and no liability would attach to either party for termination.

⁷ The Development Agreement was executed between the Minister for the Arts and the Walker Riverside Development Pty Ltd, Walker Riverside (Car Park) Pty Ltd, Walker Riverside (Retail) Pty Ltd, Walker Riverside (Office) Pty Ltd and Walker Group Holdings Pty Ltd. Under the agreement Walker Group Holdings has agreed to guarantee the performance of the respective obligations of the Walker Riverside Development Pty Ltd, Walker Riverside (Car park) Pty Ltd, Walker Riverside (Retail) Pty Ltd and Walker Riverside (Office) Pty Ltd.

If the Development Agreement was terminated by either party due to either party not satisfying the conditions precedent and the Walker Corporation had already commenced demolition works at the direction of the Minister, the parties agree that:

- the SA Government will promptly reimburse the Walker Corporation for any demolition works costs and expenses incurred by the Walker Corporation
- the SA Government will either take a novation of any existing contract for demolition works and assume responsibility for completion of these works or agree the terms on which the Walker Corporation will agree to procure the completion of the demolition works, on the basis that the Walker Corporation is fully reimbursed by the SA Government for the cost of these works.

As at 30 December 2016 not all the conditions precedent were fully satisfied or waived as required by the Development Agreement. Further, no agreement was entered into between the parties, as provided for in the Development Agreement, to extend the conditions satisfaction date beyond 30 December 2016.

We made enquiries about the legal position of the Development Agreement given that not all the conditions precedent were satisfied. We were advised that as some conditions precedent were not met by the due date, either the SA Government or the Walker Corporation could exercise its contractual right to terminate the Development Agreement. However, until either party exercises that termination right, the Development Agreement continues in legal operation.

The CE Renewal SA advised us that although not all the conditions precedent were satisfied by 30 December 2016 considerable progress had been made to satisfy them.

At the time of this Report, Renewal SA advised us that all the conditions precedent were met or waived.

5.16 Key elements of the Development Agreement

Figure 5.4 summarises the key elements of the Development Agreement executed between the SA Government and the Walker Corporation.

Figure 5.4: Key elements of the Development Agreement

Area	Element
Integrated Development	The Walker Corporation ⁸ is to undertake the Integrated Development on the Integrated Land and other works on Ancillary Land. The Integrated Development comprises the following elements – the Car Park, the Office Building, the Retail Area and the Public Realm.

⁸ Walker Group Holdings Pty Limited (Walker Holdings).

Area	Element
Office Building Development	<p>The Walker Corporation is required to construct the Office Building in accordance with the Final Plans.</p> <p>The Office Building is to:</p> <ul style="list-style-type: none"> • incorporate a combination of Premium Grade and Grade A presentation and services • have a maximum of 40 000 m² of net lettable area. <p>The Walker Corporation is required to substantially commence the construction of the Office Building, by no later than six years after the commencement of the Car Park Lease.</p>
Retail Area Development	<p>The Walker Corporation is required to construct the Retail Area in accordance with the Final Plans.</p> <p>The Walker Corporation is required to substantially commence the construction of the Retail Area no later than six years after the commencement of the Car Park Lease.</p>
Car Park Development	<p>Walker is required to construct the Car Park in accordance with the Final Plans.</p> <p>The Walker Corporation is required to construct 1560 car park spaces and is required to have at least:</p> <ul style="list-style-type: none"> • 400 car parks which are to be subleased to the State • the number of car parks that Skycity has committed to sublease/use • any additional car parks required by the Development Approval for the Office Building and Retail Area. <p>The Walker Corporation is required to substantially commence the construction of the Car Park within:</p> <ul style="list-style-type: none"> • 12 months of satisfying or waiving the conditions precedent; or • a later date as provided in the Final Program for the development.
Public Realm	<p>The design of the Public Realm is to be set out in the Final Plans.</p> <p>The asset is to be owned by the State at all times.</p> <p>The Walker Corporation is required to substantially commence the construction of the Public Realm within:</p> <ul style="list-style-type: none"> • 12 months of satisfying or waiving the conditions precedent; or • a later date as provided in the Final Program.
Office Building lease	<p>The State will grant the Walker Corporation an Office Building Lease expiring 4 March 2085 provided they have obtained development approval on acceptable terms.</p>
Retail Lease	<p>The State will grant the Walker Corporation a Retail Lease expiring 4 March 2085 provided they have obtained development approval on acceptable terms.</p>

Area	Element
Car Park Lease	The State will grant the Walker Corporation a Car Park Lease expiring 4 March 2085 provided they have obtained development approval on acceptable terms.
State's right to use car park spaces	The Walker Corporation will grant the State the right to use 400 car parks under a sublease expiring 3 March 2085. The State will pay the Walker Corporation \$30 million for the use of the car park spaces in one lump sum payment as rent in advance.
Management and revenue sharing arrangements for the car park	Both parties will negotiate in good faith the terms of a management and revenue sharing agreement for the Car Park (with revenue to be shared in proportion to each party's contribution of car parking spaces) as soon as reasonably practicable after the date of the agreement. If the parties cannot reach agreement each party is entitled to manage its car park spaces as it determines in its absolute discretion.
Lease Payment payable to the State	The Walker Corporation will pay \$40 million to the State (by the way of incurring construction costs for the Public Realm) as consideration for the State agreeing to grant the leases for the Integrated Development. The Lease Payment will be apportioned as follows: <ul style="list-style-type: none"> • \$12 million for the Car Park comprising \$4.5 million for granting the Car Park Lease to the Walker Corporation and \$7.5 million for granting the Walker Corporation the right to construct the Car Park • \$25.2 million for the Office Building comprising \$9.45 million for granting the Office Building Lease to the Walker Corporation and \$15.75 million for granting the Walker Corporation the right to construct the Office Building • \$2.8 million for the Retail Building comprising \$1.05 million for granting the Retail Lease to the Walker Corporation and \$1.75 million for granting the Walker Corporation the right to construct the Retail Building.
Soil Removal and Remediation	The total amount payable by the Walker Corporation to the State as disposal charges under a separate Soil Banking Agreement is capped.
Authority Approval	The Walker Corporation is responsible for obtaining all Authority Approvals for the Integrated Development.
Office Building – Right of First Refusal	The Walker Corporation is required to grant the State a right of first refusal for the State to sublease: <ul style="list-style-type: none"> • a portion of the ground floor of the Office Building • the whole or a portion of the first floor of the Office Building.
Retail Area – Right of First Refusal	The Walker Corporation is required to grant the State a right of first refusal for the State to sublease a portion of the ground floor of the Retail Area.
Public Realm Management Agreement	The Walker Corporation is required to enter into a formal agreement with the State for the maintenance, cleaning and general use of the Public Realm by the State, the Public and other relevant stakeholders.
Finance	The Minister agrees to the Walker Corporation granting a mortgage over any of the Integrated Development Leases. The Minister also agrees to enter into a financier's side deed or tripartite deed.

5.17 SA Government's right of first refusal

As highlighted in section 5.16 the Development Agreement provides the SA Government the right of first refusal to sublease:

- a portion of the ground floor of the office building
- the whole or a portion of the first floor of the office building
- a portion of the ground floor of the retail area.

Our enquiries with the CE Renewal SA confirmed that no pre-commitments have been made to the Walker Corporation.

5.18 Project status

At the time of this Report DPTI was progressing works predominately relating to the AFC upgrade and grade separation works for the precinct.

The Walker Corporation has yet to commence works. It is expected to be on site in the later part of 2017 and commence substantial construction works in early 2018.

As indicated in section 5.16, both parties are required to negotiate in good faith the terms of a management and revenue sharing agreement for the car park (with revenue to be shared in proportion to each party's contribution of car parking spaces) as soon as reasonably practicable after the date of the agreement (26 May 2016).

In obtaining an update on the status of the project the CE Renewal SA advised us that this matter has yet to be resolved.

Further, as the amount the Walker Corporation will pay the SA Government (\$40 million) will be made by way of incurring construction costs for the public realm, the SA Government agency responsible for overseeing the works will need to implement appropriate measures to ensure the Walker Corporation completes State works to the value of \$40 million.

6 Basis for key decisions

What we found

There was a lack of transparency and documentation to support the basis of key decisions made. Key issues included lack of analysis and documentation to support the rationale for:

- engaging in further negotiations with the Walker Corporation and extending the period of exclusivity following the rejection, in October 2013, of its development proposal submitted as part of the RFP
- entering into a legally binding agreement in February 2014 in the form of an ATL with the Walker Corporation given significant key aspects of the car park development remained outstanding
- granting ongoing exclusivity to the Walker Corporation in August 2015.

We noted that the SA Government, when approving decisions, was provided with some rationale and analysis of various significant risks and benefits.

Key parts of information is subject to confidentiality and privilege. There is a need for accessible, relevant business case and supporting documentation to be maintained as a permanent agency record as evidence of information forwarded to decision makers.

In addition, the procurement process was adversely affected by a lack of clarity in the RFP.

6.1 Lack of clarity for not terminating the request for proposal

There was a lack of analysis and documentation to support the basis for engaging in further negotiations with the Walker Corporation following the rejection of its development proposal.

Key observations:

- A clear and objective basis for continuing to engage with the Walker Corporation after the Tender Evaluation Panel's recommendation that the Walker Corporation's proposal should be rejected and not proceed to the final stage (negotiation and completion) of the RFP process was not evident.
- Terminating the RFP process and implementing a new process once the decision was made to reject the Walker Corporation's proposal in November 2013 would have provided an opportunity to test the market against well-defined parameters acceptable to the SA Government.

- The agencies responsible for the procurement process should have documented a clear and thorough analysis of the reasons for not terminating the RFP process and approaching the market. This should have included a detailed risk analysis, market analysis and probity advice.

We note that much of the record keeping was prepared on a confidential or privileged basis. In the future we expect to see a documented and detailed analysis maintained as a permanent agency record to evidence information provided for SA Government decision making.

The Walker Corporation submitted its initial development proposal on 22 April 2013. The Tender Evaluation Panel found that the proposal did not adequately address the SA Government's project objectives and fundamental project requirements as provided for in the RFP. The Walker Corporation was provided with an opportunity to revise its proposal.

The Tender Evaluation Panel reviewed the revised proposal and recommended that the ESC:

- note its assessment that the Walker Corporation's proposal provided only marginally adequate satisfaction of the evaluation criteria, there were shortcomings in the information supplied and the panel had concerns regarding the ability to successfully fulfil the requirements
- recommend to the SA Government that the Walker Corporation proposal should not proceed to the final stage of the RFP process (negotiation and completion) and that the RFP process be terminated.

On 23 October 2013 the ESC approved the panel recommendations. However, the recommendation report included a hand written notation from the then CE DPTI (who was a member of the ESC) stating:

Agree to terminate process but suggest offering Walker Corporation one more chance to put a car park proposal together (which is where we started) with any add-ons subject to further consideration

We enquired with the then CE DPTI about the context for his hand written notation.

He explained, consistent with his letter to the then CE DPC, that it was his view that the process went off track given the SA Government primarily wanted a car park however the focus of the procurement process then shifted to the building above the car park.

He indicated that his position, during the periods he was responsible for the Project, was that the SA Government primarily wanted the AFC car park replaced and extended, and the space above the new car park activated as a public plaza. He also expressed the view that the commercial building was never an essential element of the proposal and that it was an opportunity offered to deliver the whole package rather than an imperative in its own right.

The then CE DPTI indicated that he formed that view that the shortcomings in the process and the range of different views on the project scope could result in legal action had the SA Government decided to terminate the process with the Walker Corporation.

We noted that on 23 October 2013, the same date as the ESC approved the panel recommendations, the Walker Corporation wrote to the Minister for Housing and Urban Development (Mr Koutsantonis) requesting to change the RFP and its evaluation such that 'car park outcomes' are resolved first, with the design issues resolved subsequently.

In response to the Tender Evaluation Panel recommendation and the Walker Corporation letter of 23 October 2013, Renewal SA identified the following three options to progress the project:

- reject the Walker Corporation proposal, vary the terms and conditions of the RFP Stage 2 and seek additional information from the Walker Corporation
- terminate the RFP process and commence negotiations with another RFP proponent
- terminate the RFP process and commence a new process.

On 4 November 2013 the SA Government approved:

- rejecting the Walker Corporation proposal submitted on 22 April 2013 (together with additional information submitted on 1 October 2013)
- amending the RFP terms and conditions to extend the RFP Stage 2 process and engage in further discussions with the Walker Corporation to determine if there was sufficient confidence that the Walker Corporation would be able to achieve the key outcomes required by the SA Government.

The approval to engage in further discussions with the Walker Corporation was for the car park only and nothing further.

The option of terminating the RFP process (once the Walker Corporation's proposal was rejected in November 2013) and commencing a new process would allow for the clear definition of the design and commercial requirements and parameters that potential proponents would need to meet. Clear commercial parameters such as the basis of tenure and the value of the site, within which the SA Government would be dealing, should have improved the likelihood of reaching a more quickly defined commercial proposal that addressed critical risks and project delivery time frames. Further, defining key design outcomes could have been addressed by establishing a reference design reflecting the key elements of the Project including integration with adjacent facilities.

Implementing a new process would have provided an opportunity to test the market against well-defined parameters acceptable to the SA Government to achieve expected benefits, value for money and project delivery time frames.

From the information made available to us, we found that there was a lack of documentation and analysis to support the decision to amend the terms and conditions of the RFP and engage in further discussions with the Walker Corporation following acceptance of the Tender Evaluation Panel's recommendation to reject the Walker Corporation's proposal.

Further, given the outcome of the evaluation process and the concerns raised by the Tender Evaluation Panel, there was no clear rationale why the recommendation approved by the ESC to terminate the RFP process was not adopted and a new process commenced.

We are aware that at the time, various significant risks and benefits were broadly discussed in confidential or privileged documentation consistent with public sector practice at the time.

During our enquiries with the then CE DPTI, he advised that he had managed the process to a position where real negotiations and process approvals would be resolved later in 2014 with flexibility available for a new government to work with. He expressed the view that he had not moved, in any substantial way, away from the proposal envisaged in the RFP. He stated:

In the circumstances, it is clear we were still at the time operating within the parameters of the RFP and in my view there was no clear and sustainable case prior to that time to walk away from the process that had been followed by government and Walker since the original EOI.

As part of our enquiries with Minister Koutsantonis, he indicated that:

As to the decisions made by the Government in November 2013, it was prudent of the Government to minimise legal risk. A legal dispute would have delayed the implementation of, and distracted from, project priorities. Further, the Walker Corporation had the capacity to deliver suitable car park and associated works. Alternative options in November 2013 all involved potential legal, commercial, and reputational risk to the State.

Minister Koutsantonis also noted that:

Based on advice, if the Government had, ..., re-tested the market it may have exposed the Government to legal risk. Such re-testing would have been inconsistent with the tender process. That process provided for exclusive negotiations, and the opportunity for the Government and the successful proponent to work together to develop and refine the size, scope and expected outcomes of the development. It may have been inappropriate to have returned to the market with new requirements based on Walker Corporation's proposal.

It is my opinion that at this juncture the option of terminating the RFP process and re-approaching the market would have been consistent with the tender process as documented in the RFP and other supporting documentation.

It is my view that the agencies responsible for the procurement process should have documented a clear and thorough analysis of the reasons for not terminating the RFP once the Walker Corporation's proposal was rejected and approaching the market. This should have included a detailed risk analysis, market analysis and probity advice to ensure procedural fairness and fair treatment of participants.

6.2 Lack of analysis and documentation supporting the basis of signing the Agreement to Lease

There was a lack of analysis and documentation to support the basis for entering into a legally binding agreement (the ATL) with the Walker Corporation in February 2014.

DPTI, the agency responsible for the procurement at the time, had not documented a clear and thorough analysis (including the benefits and risks) of the decision to enter into a legally binding agreement given significant key aspects of the car park development remained outstanding.

We note that much of the record keeping was prepared on a confidential or privileged basis. In the future we expect to see a documented and detailed analysis maintained as a permanent agency record to evidence information provided for SA Government decision making.

On 15 January 2014, the Walker Corporation wrote to the then CE DPTI and provided a draft ATL for consideration and approval as a means of expediting agreement between the SA Government and the Walker Corporation for the development proposal. The draft ATL was considered by DPTI and the Crown Solicitor's Office and redrafted to reflect terms acceptable to the SA Government.

On 7 February 2014 the SA Government approved the:

- Minister for the Arts entering into a legally binding ATL with the Walker Corporation for the redevelopment of the car park
- ATL being executed before the commencement of the caretaker period.⁹

The ATL was subject to a number of conditions precedent which needed to be satisfied before the SA Government was obligated to enter into a Development Agreement with the Walker Corporation.

The ATL was subsequently executed on 11 February 2014.

The Walker Corporation's proposal was assessed in October 2013 as not demonstrating the capacity to deliver the Project in line with the project objectives and fundamental project requirements acceptable to the SA Government. We could not find evidence that the issue of gaining sufficient confidence that the Walker Corporation could achieve the key outcomes required by the SA Government, as specified in November 2013, had been addressed. It is not clear why the SA Government agreed to enter into a legally binding agreement (albeit subject to conditions precedent) during this stage of the procurement process.

At the time of entering the ATL many matters were unresolved. They were left to be worked through with the Walker Corporation later.

⁹ The Caretaker Conventions and Pre-Election Practices guidelines issued by the Department of the Premier and Cabinet provide that the caretaker period starts when the writs for the election are issued and continues until the outcome of the election is clear. The writs for the 2014 State election were issued on 15 February 2014.

For example, the then CE DPTI advised us of his recollection of many unresolved matters. He stated:

It was not clear whether we were just dealing with a proposal to build a car park for the AFC and Skycity, with activated spaces on top, or whether the proposal would also incorporate a commercial building above the plaza. It had not been established whether we were dealing with a proposal to lease or sell land, nor the term of the lease, which would have been different if a commercial building was included. It had not been determined how the government's interest in 400 car parks for the AFC was to be funded and managed, either through an upfront or subsequent capital payment or a monthly lease. Similarly Skycity's position on owning, financing or leasing car parks from Walker had not been worked through.

As mentioned in section 5.6 the Walker Corporation sought to enter into the arrangements before the caretaker period so it had greater certainty. The ATL provided the Walker Corporation with 12 months to satisfy the conditions precedent.

Our review found that the scope of works, assumptions and details required to establish the construction costs for the car park still needed to be clearly understood at the time the SA Government recommended to approve executing the ATL. Costing information obtained by the SA Government was considered confusing and difficult to compare. The costing estimates per car park varied significantly (from \$55 000 to \$100 000 per car park). Further, documentation indicated there was a lack of supporting evidence for:

- the costs or revenue (if any) from the proposed lease, at practical completion, of the land, easement and rights of way for the new car park for a term of 30 years
- detail of the costs or expenditure profile of the proposed sublease, at practical completion, for the provision of 400 car parks to the SA Government for a term of 30 years
- how the \$30 million estimated net present cost to the SA Government of the providing 400 car parks was determined
- the budget impacts, or the timing of the impacts, across the forward estimates from the proposed redevelopment of the AFC car park.

Nonetheless, the ATL included a condition that the net present cost to the SA Government of the 400 car parks made available to the State is to be no greater than \$30 million.

The ATL provided the Walker Corporation with exclusivity and greater certainty, however the arrangements imposed legal obligations, established financial parameters and restricted the ability of the SA Government to pursue other options to deliver the project objectives (ie go back to the market or negotiate with another proponent).

The then CE DPTI told us:

By early in 2014, when I was asked to have no further involvement in the project, no transaction or deal had been made, no land had been sold or leased, nothing had been built, no government funds had been committed and

no commitment had been made on any of the above. As stated, our sole purpose was to see if there was any prospect of a deal, which could be worked through all required processes and approvals, that would deliver good outcomes for the government and South Australians.

We found that DPTI had not documented a clear and thorough analysis (including the benefits and risks) of the decision to enter into a legally binding agreement given significant key aspects of the car park development remained outstanding (including design, securing of finance, land valuation, development above the car park etc).

We are aware that at the time, various significant risks and benefits were broadly discussed in confidential or privileged documentation consistent with public sector practice at the time.

6.3 Basis for the decision to negotiate with the Walker Corporation for the development above the car park

On 18 August 2014 the SA Government approved the CE Renewal SA, CE DPTI and a legal representative from the Crown Solicitor's Office renegotiating with the Walker Corporation, on the basis that the negotiations achieve the car park principles and development above the car park based on the design principles and development envelope endorsed on 7 July 2014 and other matters endorsed on 18 August 2014.

We found that the SA Government, when considering the decision to negotiate with the Walker Corporation for the development above the car park, was provided with a range of information by the CE Renewal SA. This is discussed below.

We found, in considering that material, that there was a need for the Walker Corporation to properly understand what was above the car park as a consequence of the ATL entered into in February 2014. There was, in turn, a need for the SA Government to resolve what was to be above the car park consistent with its commitment to engage with the Walker Corporation under the ATL.

We note that most of the documents were prepared on a confidential or privileged basis. Consistent with practice in much of the public sector at the time there was no consolidated documentation maintained as a permanent agency record of information relevant to the decision. In the future we expect to see a documented and detailed analysis maintained as a permanent agency record to evidence information provided for SA Government decision-making.

In the ATL executed on 11 February 2014, the SA Government and the Walker Corporation agreed to negotiate and engage with each other for the 12 months after the date of the agreement (ie by 11 February 2015) with a view to reaching agreement on the matters specified in the conditions precedent and to also otherwise attempt to satisfy the conditions precedent.

The ATL states:

The design, construction and operation of the Carpark has to be intimately integrated with other developments in the precinct.

The conditions precedent of the ATL to progress to a Development Agreement and lease include:

3.1.8 Walker submitting plans to the Minister for his satisfaction, and the Minister being satisfied, acting in the Minister's absolute discretion, as to the design, nature and form of the Carpark, including in particular, as to the manner in which the Carpark will integrate into, and interface with, the Precinct and also as to the adequacy of the agreed construction of the Carpark to enable the development of any proposed public square or plaza and buildings on top of the Carpark;

3.1.9 the Minister being satisfied that the Carpark will have the physical and aesthetic capability to meet the State's intention for future development in the Precinct.

On 9 April 2014, after the State election in March 2014, the Walker Corporation wrote to the Minister for Housing and Urban Development (Mr Rau) advising that:

- in order for the Walker Corporation to prepare a final design and engineering specification for the car park, it would need to understand what would be above the car park and how the car park would interface with the surrounding developments
- any infrastructure of substance required above ground would need to be physically supported below the plaza as part of the construction of the car park. The Walker Corporation stated its view that this was why the original RFP set out the desirability of a coordinated program of works.

The CE Renewal SA established urban design principles for the project. In doing so, Renewal SA found that there was a need to renegotiate the configuration of the car park and there was a risk that the construction of the car park would not commence within the 12 months specified in the ATL (ie prior to February 2015). On 7 July 2014 the SA Government approved:

- the design guidelines, urban design principles and a preferred development envelope (ie building parameters)
- recommencing negotiations to design and construct a new car park with the Walker Corporation, with no above ground development
- if for any reason the Walker Corporation decided not to meet the obligations of the ATL to commence the car park by 15 February 2015, the Minister would immediately commence a new procurement process for the design and construction of the new car park through an open tender process.

In the course of our audit, the CE Renewal SA advised us that he related with the SA Government and other stakeholders about progressing the development. At the time these considerations included:

- the impact of the size of the proposed car park on the precinct. He advised that going down five levels and underneath the AFC and Parliament House, and being against the train station, it immediately became more than a car park development. Elements of the AFC were affected. They had to change loading docks and it interfered with the Adelaide Convention Centre's parking arrangements. The existing car park has 400 spaces and they were now contemplating 1400 to 2000. This immediately meant that they had to change the configuration of the car park as they had to spread it out
- a series of images prepared by ARM Architecture he had used when relating with stakeholders (see Appendix 7 for some examples) that illustrated, and were influential in explaining, the interrelationship between the underground car park and what was above it. The images also starkly showed the significance of different developments on the plaza level, from no development to complete development of the plaza and public realm. These in turn had vital and different implications for construction of the car park
- the efficiency and advantage of engaging one entity to develop the whole site over relating with multiple parties for different site elements, for project management and for negotiating to include the public realm works into a contract
- managing public access to the precinct over the construction period
- a legal opinion the SA Government obtained from private counsel, concerning the redevelopment of the Riverbank Precinct
- the fact that the Walker Corporation was one of the biggest developers nationally and had the capability to undertake such a development. However, they still needed to complete negotiations with the Walker Corporation to ensure appropriate commercial conditions were established.

It is evident that decisions were required on the nature and scope of development above the car park to inform the car park development. It is also evident a range of commercial and practical considerations existed for progressing the development.

We also noted that the SA Government was provided with information on significant risks, including a legal opinion, and benefits. Much of this was in confidential or privileged documentation consistent with public sector practice at the time.

The SA Government chose to negotiate with Walker Corporation for the development above the car park. This decision did facilitate the SA Government meeting its commitment under the ATL for the car park.

6.4 Provision of ongoing exclusivity to the Walker Corporation in August 2015

In August 2014 the SA Government authorised the CE Renewal SA, the CE DPTI and legal representatives from the Crown Solicitor's Office to renegotiate with the Walker

Corporation. Further, in February 2015 the SA Government authorised the CE Renewal SA to lead negotiations.

In line with this authority, in August 2015 the CE Renewal SA granted ongoing exclusivity to the Walker Corporation for negotiating an agreement for the development.

On 27 January 2015 legal representatives for the Walker Corporation wrote to the CE Renewal SA indicating that under the ATL the Walker Corporation's right of exclusivity technically was to expire on 11 February 2015. In the letter the Walker Corporation requested that the CE Renewal SA confirm and honour its ongoing exclusivity for the development while the Walker Corporation continued to work with Renewal SA staff and stakeholders to finalise KCTs for the development and legal documentation. The letter indicated that the Walker Corporation considered that a six-month extension of the period of exclusivity was suitable. Renewal SA did not provide a written response to this letter.

On 13 March 2015 the KCT Agreement was signed between the Walker Corporation, the Minister for the Arts (Mr Snelling), and the Minister for Housing and Urban Development (Mr Rau) for the car park development and the above ground development, which included extending the right of exclusivity to 10 August 2015.

We were advised that, as at August 2015, there had been intensive negotiations with the Walker Corporation which resulted in various drafts of the Development Agreement documentation, and that these negotiations were progressing but more time was required to deal with all of the matters contained in the KCTs.

The SA Government and the Walker Corporation failed to satisfy the conditions precedent, as specified in the KCTs, by 10 August 2015, within the exclusivity period provided for in the KCTs.

The Walker Corporation wrote to the CE Renewal SA on 10 August 2015 noting that the Walker Corporation's right of exclusivity for the project technically was to expire on that day and requesting that the right of exclusivity to deal with the SA Government be honoured for as long as the Walker Corporation continued to work with Renewal SA and all relevant stakeholders to develop the proposal.

On 12 August 2015 the CE Renewal SA wrote to the Walker Corporation honouring the ongoing continuation of the right of exclusivity subject to the Walker Corporation continuing to develop the proposal.

The CE Renewal SA advised us that as long as the Walker Corporation continued to work with the SA Government to sign the Development Agreement he did not see the need to continuously extend the period of exclusivity having regard to:

- the negotiating parameters approved by the SA Government
- the fact that the status of the negotiations Renewal SA was following targeted a completion date of December 2015.

He also highlighted that in August 2014, the SA Government authorised the CE Renewal SA, the CE DPTI and a legal representative from the Crown Solicitor’s Office to renegotiate with the Walker Corporation and in February 2015 to continue negotiations.

It is sound practice to only grant exclusivity for a specified period as this establishes a clear time frame and deadline for negotiations, which creates some urgency to reach agreement before the exclusivity period runs out.

Given the significance of the development and the financial commitment required by the SA Government we consider it would have been prudent for the SA Government to document an analysis of the risks and benefits of granting ongoing exclusivity.

Details of the extensions to the exclusivity period provided to the Walker Corporation during the procurement process are summarised in Appendix 4.

6.5 Lack of clarity of the request for proposal

The procurement process was affected by a lack of clarity in the RFP.

Various parties involved in the procurement have interpreted what was required by the RFP in different ways. Examples of this included:

- the then CE DPTI was concerned that the evaluation process was not achieving a deal for the car park, his primary goal from the outset
- the RFP evaluation process did encompass more than the car park
- the Walker Corporation made a broad ranging proposal, later entered into an ATL for the car park only and later raised concerns that it was limited to only the car park.

Decisions on the development changed over time:

- On 29 October 2012 the SA Government approved inviting the Walker Corporation to develop an integrated development proposal for the AFC car park and other related Riverbank elements.
- On 4 November 2013 the SA Government approved amending the RFP terms and conditions to extend the RFP Stage 2 process and engage in further discussions for the car park only. In a letter dated 22 November 2013, the Walker Corporation was advised that negotiations were to include the car park only.
- On 23 May 2016 the SA Government approved a Development Agreement for the integrated development comprising a public realm, car park, office building, retail area and other works.

In my opinion, the lack of clarity in the RFP in the first instance contributed to this situation. Other actions and communications discussed in this Report either compounded or reflected this initial lack of clarity.

The RFP title was ‘RFP for the redevelopment of the Adelaide Festival Centre car park **“the Project”**’. The RFP sought, in the first instance, a response from proponents wishing to be

shortlisted to prepare a development, funding and operating proposal redevelopment of the Adelaide Festival Centre car park ('the Project').

The RFP then distinguishes the Project from other elements by stating:

The Project also has the potential to become the prime catalyst to facilitate the development of a new public square above the car park, promote integration of existing Adelaide Festival Centre (AFC) facilities and advance the establishment of new commercial offerings that support the vision of both the Riverbank and AFC's Master Plans.

However, the RFP then states:

*The Request for Proposals (RFP) will be progressed in two stages. In the first stage, the aim is to short-list up to two proponents who can clearly demonstrate that they have the capacity and commitment to deliver **all aspects of the Project and related civic and commercial opportunities.***

*The second stage of the RFP will provide the short listed proponent/s with a period of exclusivity of 20 weeks to submit a development proposal for **all aspects of the Project.** [emphasis added]*

Other commentary in the RFP discusses the relationship between the redevelopment of the car park and the AFC Master Plan and the Riverbank Master Plan, the Riverbank Precinct, and the creation of a new public square.

Section 3 of the RFP, titled 'key project elements' identifies the following key project elements:

- AFC underground car park
- new public square
- potential commercial building.

It states that the redevelopment of the existing car park is the 'principal Project element'. Later it states the redevelopment of the AFC car park would open up opportunities for the Project to examine and incorporate supporting elements as a coordinated program of works that respond to the AFC and Riverbank Master Plans.

The proposed supporting elements were identified in a diagram included in the RFP and were:

- upgrade to Adelaide Festival Theatre and Dunstan Theatre Lobby
- car park
- interactive public park
- food and beverage/retail and community facilities
- future commercial building
- revitalised Station Road
- possible future Casino expansion
- Festival Square.

Through the lack of clarity in the RFP, in my opinion, it could reasonably be read in at least three ways:

- firstly, that it sought proposals to redevelop the AFC car park only
- secondly, that it sought proposals to redevelop the car park, and the relationship to the other elements needed to be clearly communicated in a proposal
- thirdly, that it sought proposals for redevelopment of the car park and the other elements in the Riverbank Precinct affected by the redeveloped car park.

RFP documents should clearly describe the nature and scope of the development required by the SA Government. Clearly documenting what participants were to respond to would have assisted the SA Government and participants gaining a common understanding of the SA Government's requirements, and would have helped with evaluating the proposals and the negotiation process.

In response to this finding the then CE, DPTI commented that:

You have included a finding that the procurement process was affected by a lack of clarity in the RFP.

The original RFP was either drafted or approved by Crown Law before it was released.

It outlined our invitation for the private sector to put forward a proposal specifically for:

- *an AFC underground car park*
- *a new activated public square*
- *an opportunity to present a potential commercial building.*

You have concluded that the RFP could be interpreted in three ways, namely:

- *that it sought proposals to redevelop the AFC car park only*
- *that it sought proposals to redevelop the car park, and the relationship to the other elements needed to be clearly communicated in a proposal, or*
- *that it sought proposals for redevelopment of the car park and the other elements in the Riverbank precinct affected by the redeveloped car park.*

The then CE DPTI also stated he doubted the RFP could have been clearer and that:

These were not tender documents. We were offering an opportunity for the private sector to put forward a proposal for government consideration.

In my view, and the view of the solicitor involved from Crown Law who authorised the RFP for release, our RFP was entirely appropriate for the circumstances.

7 Negotiation and evaluation of contracted terms and conditions

What we found

From July 2014, information, actions and analysis to support the negotiation and evaluation process were available to guide the process, including:

- developing guiding principles, urban design principles and development parameters
- Key Commercial Terms to guide the negotiations
- establishing a negotiation team with input provided by the Crown Solicitor's Office and expert advisors
- independent valuations of the car park spaces
- a review by an external consultant of the commercial terms proposed in the Development Agreement.

We noted that a formal framework, criteria and parameters to progress and evaluate the final negotiated position with the proponent (as reflected in the final development agreement) was not established at the outset in December 2013 when the SA Government agreed to ongoing direct and exclusive negotiations with the Walker Corporation. Key elements would include an evaluation plan and criteria and a formal documented negotiation strategy.

It is important that permanent agency records provide a summarisation of the process that outlines the evaluation performed and key decisions.

7.1 Evaluation plan and criteria were not established in December 2013 to guide the evaluation of the final agreed terms and conditions

Once the decision was made to enter into direct exclusive negotiations with the Walker Corporation in December 2013, an evaluation plan and criteria were not established to guide the evaluation of the final terms and conditions negotiated and agreed with the Walker Corporation in May 2016.

Key elements of an evaluation plan include documenting the objectives and parameters for the negotiation, the evaluation criteria, the use of any experts and the proposed negotiation process.

It is my view that given the Walker Corporation's development proposal was rejected, as part of the RFP process, it would have been prudent to establish an evaluation plan and criteria in December 2013 when the decision was made to continue direct and exclusive

negotiations with the Walker Corporation. This would have allowed subsequent documentation of the extent to which the final negotiated terms and conditions met the objectives of the Project.

In July 2014 the SA Government approved guiding principles, urban design principles and a development envelope (ie building parameters) for the car park and above car park development.

The CE Renewal SA took responsibility for the negotiations in July 2014, well after the time frame we would have expected an evaluation plan and criteria to be in place. The CE Renewal SA subsequently negotiated with the Walker Corporation over an extended period to achieve the car park objectives and development above the car park in accordance with the principles and development envelope approved by the SA Government. The Minister for the Arts (on behalf of the SA Government) and the Walker Corporation executed the Development Agreement on 26 May 2016.

We recognise that the guiding principles, urban designs principles and development envelope were approved by the SA Government in July 2014 to assist with negotiations with the Walker Corporation. We also noted that other documentation and analysis was obtained including independent valuations of the car park spaces and a review by an external consultant of the commercial terms proposed in the Development Agreement.

The CE Renewal SA stated that it was his view that there was no need to establish an evaluation plan and criteria as the SA Government approved to enter into direct and exclusive negotiations with the Walker Corporation. He also advised that the SA Government specified what it wanted from the development by approving the guiding principles, urban design principles and development envelop in July 2014 and August 2014. Further, he indicated that the KCTs approved by the SA Government in February 2015 represented criteria used to guide the negotiations for the Development Agreement.

In May 2016 the SA Government approved the terms and conditions contained in key project documents for the development (such as the Development Agreement and leases). We were advised that the submission seeking the approval included a listing of significant legal and commercial risks (and treatments) arising from the project documents.

We recognise that providing the list to the appropriate authorising body responsible for approving the terms and conditions was prudent.

7.2 No evidence a formal documented negotiation strategy was established from December 2013

There was no evidence of a documented negotiation strategy at the outset in December 2013 when the SA Government agreed to continue to engage with the Walker Corporation.

The CE Renewal SA advised that, from when he took over responsibility in July 2014, a negotiation team was established with input provided by the Crown Solicitor's Office and expert advisors. We found no evidence that a formal documented negotiation strategy was already in place when he took over.

We were advised that a formal negotiation strategy was not required for the negotiations after 18 August 2014 as:

- the 18 August 2014 SA Government decision to renegotiate with the Walker Corporation for the car park and the above car park development provided parameters for negotiations
- the KCTs approved by the SA Government in February 2015 formed the parameters for the negotiations with the Walker Corporation for the Development Agreement.

Further, we were advised that establishing a formal negotiation strategy at that time was not commercially practical due to the complex and dynamic nature of the negotiations. We were also advised that during these complex and dynamic negotiations with the Walker Corporation numerous meetings and correspondence took place between the State legal team and Renewal SA representatives on the strategy to be adopted on the position the Walker Corporation was taking on matters, having regard to the negotiation parameters set by the SA Government. Further, file notes of these meetings and copies of correspondence between the State legal team and Renewal SA were maintained in the Crown Solicitor's Office files.

For significant, complex negotiations it is sound practice to establish a documented negotiation strategy that aligns with the evaluation plan. Further, the strategy should be established and documented before starting the negotiations. It is sound practice to ensure that the formalities associated with competitive tendering should not be relaxed for direct negotiations. This includes agencies establishing and maintaining an agreed negotiation protocol for direct negotiations. A robust negotiation strategy (plan) would include elements such as:

- documenting the responsibilities and authority of all relevant parties
- how meetings will be conducted and negotiations documented
- time frames for the negotiations
- guidance on assessment and analysis of issues
- reporting on progress
- the parameters for negotiations
- a dispute resolution process.

We were advised that between November 2013 and the signing of the Development Agreement extensive negotiations occurred under the ATL and the KCT, leading to the signing of the Development Agreement.

8 Financial analysis of key commercial terms

What we found

There was a lack of financial analysis (including costings) to support the \$30 million capped net present cost the SA Government initially agreed to pay the Walker Corporation for the use of car park spaces.

Renewal SA engaged a range of professional service providers to test and resolve the viability of the Walker Corporation's proposed car park design and costings.

Renewal SA also engaged an external consultant to help to assess the commercial terms of the Walker Corporation's proposal. Further, other professional service providers were engaged to provide designs and costings for the car park to assist with the process. The external consultant found that the terms were considerably in the favour of the SA Government.

Aspects of the process undertaken to establish the final agreed costings for the car park could be have been better documented.

8.1 Lack of evidence to support \$30 million agreed to be paid for 400 car park spaces

DPTI could not provide us with documentation to support how the capped net present cost of \$30 million (ie \$75 000 per space), included in the ATL signed between the SA Government and the Walker Corporation for the use of 400 car parks by the SA Government, was determined.

Our enquiries with the then CE DPTI confirmed that no costings were obtained to support the figure of \$75 000 per car park. He indicated that he estimated that figure at a meeting (date unknown) with the Premier (Mr Weatherill) and others after being requested to estimate a cost he could deliver. He advised us he used his experience to determine the estimate, which was based on an estimated cost of \$55 000 per car park plus developer's margin. As shown in section 5.5.5 the then CE DPTI referred to the amount of \$30 million in his letter of 14 January 2014 to the then CE DPC.

Consistent with the \$30 million threshold included in the ATL, the Development Agreement executed with the Walker Corporation in May 2016 included a requirement for the SA Government to pay the Walker Corporation \$30 million for the use of 400 car parks in a one lump sum payment as rent in advance.

We sought to understand how the \$30 million was determined and how Renewal SA determined that this expenditure represented value for money for the SA Government.

The CE Renewal SA advised us that in February 2014 the SA Government had already given the Walker Corporation exclusive rights to develop the car park, with an agreed position that it would not pay more than \$30 million (ie \$75 000 per space) for 400 car parks. The CE Renewal SA advised that this arrangement was put in place by DPTI executives employed at the time and that Renewal SA is not aware of the analysis that occurred at that time to determine its position. Further, enquiries with DPTI found it could not locate any documentation to support how the \$30 million for the 400 car park spaces was determined.

Independent land valuations obtained by Renewal SA in February 2015 indicated that \$75 000 per car park space was considered to exceed the market value of car park spaces in the Adelaide CBD. The CE Renewal SA advised that work undertaken after July 2014 independently validated the cost of \$75 000 per car park.

8.2 Financial analysis of the commercial terms of the Walker Corporation's proposal

The main financial terms of the Development Agreement between the SA Government and the Walker Corporation were:

- an upfront payment of \$30 million by the SA Government to the Walker Corporation for the use of 400 car park spaces for an anticipated 75 years (less one day) – refer section 8.1.1
- the payment of \$40 million by the Walker Corporation to the SA Government in the form of incurring construction costs for the public realm.

The CE Renewal SA advised that the \$40 million contribution to the public realm costs evolved during negotiations with the Walker Corporation.

The CE Renewal SA advised that in July 2014 Renewal SA engaged an interstate architectural and design firm to review the Walker Corporation's proposed car park designs and costings. He advised that:

- the firm engaged an interstate cost estimator who was independent from the Walker Corporation's cost consultant to assist with the process
- the architectural and design firm advised Renewal SA that the Walker Corporation's designs would require significant modifications
- Renewal SA then engaged the architectural and design firm to modify, further design, document and cost the necessary changes and present the new car park design to Renewal SA
- a meeting of all stakeholders was held to achieve a common position for the car park design and costings.

At the meeting of all stakeholders it was agreed that:

- a new car park design was to be finalised by the interstate architectural and design firm and the Walker Corporation and then approved by the SA Government

- one set of costings would be agreed to by the SA Government, the Walker Corporation and Skycity (the Adelaide Casino)
- the costings of the new car park designs could be done by the Walker Corporation's cost consultant but the interstate cost estimator would be involved in costing discussions and analysis
- an open book approach would be used so that all parties could access costing details
- Renewal SA would pay for the designs and the costing work undertaken by the Walker Corporation's cost consultant, the interstate architectural and design firm and the cost estimator
- the final design would be incorporated into the final works program and no variations were to occur unless agreed to by the SA Government.

The CE Renewal SA advised us that the final costings for the car park determined by the Walker Corporation's cost consultant and overseen by the interstate cost estimator increased by \$15 million from their original costing.

He advised us the final car park design:

- reduced the impact on all surrounding buildings but also identified the actual physical work to be undertaken on the AFC and Parliament House to allow for the car park expansion
- increased the capacity of the roof of the car park to 20 KPA to allow for a weight bearing load of people and emergency vehicles
- varied entrances and exits to the car park
- varied the positioning of allocated spaces to the AFC, Parliament House and the Adelaide Casino
- varied the location and access points to loading docks for the Adelaide Casino, AFC, Parliament House and the InterContinental Hotel
- required an extra level of excavation and remediation and soil extraction.

He also stated that the final costings demonstrated that the maximum amount the SA Government agreed to pay the Walker Corporation for the 400 car park spaces (ie \$30 million) was reasonable.

Renewal SA also engaged an external consultant to review the commercial terms of the proposed Development Agreement including:

- a review of the values of various elements of the proposed redevelopment
- an analysis of the proposed negotiated terms between the SA Government and the Walker Corporation.

The report prepared by the external consultant (dated 9 February 2015) found that the terms were considerably in the favour of the SA Government and therefore commercially defensible.

We were advised that the external consultant was provided with information from a range of different professional service providers including valuation reports and costings. Further, we were advised the external consultant used construction costs for the car park from an independent quantity surveyor firm engaged by Renewal SA who had completed an analysis of the Walker Corporation's costings and undertaken a full cost estimate, independent of the Walker Corporation's costings.

The CE Renewal SA advised us he took appropriate action to test the reasonableness of the costings used by the external consultant. He advised us that the Walker Corporation's cost consultant was engaged separately from the Walker Corporation to re-cost the new car park.

Further, he described the measures undertaken, including the actions described above, to mitigate the inherent risk to the SA Government of using the same cost consultant used by the Walker Corporation.

In summary, he advised us that:

- the final estimated cost was determined by the same cost consultant used by the Walker Corporation using an open book approach
- the process was overseen by the interstate architectural and design firm and the interstate cost estimator
- the final estimated cost was reported back to Renewal SA on behalf of the SA Government and stakeholder groups
- all work was approved and paid by Renewal SA through the project budget.

We were provided with the minutes, designs and costings to support the actions taken.

We found that aspects of the process undertaken to establish the final agreed costings for the car park could have been better documented.

9 Governance structure

What we found

There was no evidence of an effective governance structure to oversee the key elements of the procurement process including the EOI and the RFP processes. Issues included:

- frequent changes to the overall responsibility for the procurement without clearly documented rationale
- a change to governance arrangements was made as a consequence of a meeting between the Walker Corporation and the responsible Minister
- adequate governance and reporting arrangements were not established timely and were not maintained
- terms of reference were not evident for key governance committees.

9.1 The basis for changing who was responsible for the procurement process was not documented

The rationale for changes made to the responsibility for the procurement process was not documented.

There were numerous changes to the responsibility for the procurement over the life of the procurement between DPTI, Renewal SA and the CE of Renewal SA.

When the procurement commenced in January 2012, with the issue of the EOI, it was managed by the then Office of the Chief Executive, DPTI. This office continued to manage Stage 1 of the RFP process. In April 2013, responsibility for Stage 2 of the RFP process was transferred to Renewal SA. In November 2013, the responsibility for the procurement was transferred back to the then CE DPTI.

In July 2014, following the departure of the then CE DPTI, the responsibility for managing the procurement was assigned to the CE Renewal SA.

Appendix 2 provides a summary of the changes in the responsibility for managing the procurement process and the responsible Minister.

We found that there was a lack of documentation outlining the rationale for the numerous transfers of responsibility for the procurement. The reasons for the frequent changes in responsibility were not clear.

This lack of clarity was also evident in the management of the process and interactions with the Walker Corporation.

For example, on 22 November 2013 the then CE Renewal SA wrote to the Walker Corporation advising that the Tender Evaluation Panel concluded that its proposal did not satisfy the fundamental project requirements and the project objectives. The CE Renewal SA requested the Walker Corporation to provide further information by 11 December 2013 to enable the State to make a decision on the feasibility of continuing discussions. The letter advised that the contact person to discuss the arrangements was the General Manager, Riverbank, Infrastructure and Project Coordination, Renewal SA.

The Walker Corporation sought to meet with the Minister for Housing and Urban Development (Mr Koutsantonis). A meeting took place on 26 November 2013.

On 27 November 2013 the then CE DPTI emailed Mr Walker advising (amongst other things):

- that the Walker Corporation should respond to the Renewal SA letter advising that no further correspondence will be entered into with Renewal SA on the potential for a car park and other possible developments
- all future correspondence should be directed to the CE DPTI or the Director Strategic Projects
- the timelines set out in the Renewal SA letter will have no effect in relation to the SA Government's further negotiations
- the CE DPTI will advise the Walker Corporation separately of timelines relevant for future negotiations.

For this example, we could not be provided with documentation supporting the basis or authorisation for the revised arrangements and change in responsibilities.

During our enquiries with the then CE DPTI we were advised that the Minister for Housing and Urban Development (Mr Koutsantonis) asked him, after a meeting between the Walker Corporation and the Minister, to take over negotiations with the Walker Corporation.

Our enquiries with Minister Koutsantonis confirmed that he directed the then CE DPTI to conduct negotiations with the Walker Corporation, noting that he had successfully delivered infrastructure projects and the SA Government's objectives.

It is imperative for a procurement of this size and complexity that the authority and responsibility is determined and documented at the start of the procurement process. Required changes in responsibility should be supported by documentation clearly outlining the rationale for the change and the details of the transferred responsibilities.

In my opinion, the need to document reasons for changes is critical for transparency when a change follows a meeting with a procurement proponent.

9.2 Absence of adequate governance and reporting arrangements

This is a significant project for the State and involves various government agencies (DPTI,

Renewal SA and Arts SA) and a number of other key stakeholders. Sound and clearly defined governance arrangements are important to ensure effective oversight, transparency, accountability and to ensure intended benefits are realised.

Our review found that project governance and reporting arrangements to oversee the project and procurement process were not in place when the procurement process started and were not in place for key parts of the process.

In October 2012, the SA Government approved governance arrangements to oversee and manage the preparation of the development proposal. These arrangements included:

- the Minister for Transport and Infrastructure and the Minister for the Arts taking joint responsibility for the Project
- establishing an ESC to oversee the RFP process and provide executive direction
- DPTI chairing the ESC and having day-to-day project oversight.

In addition, a project control group was established.

These arrangements are discussed below.

9.3 Governance and reporting arrangements were not maintained

Governance and reporting arrangements were not maintained throughout the life of the procurement process.

9.3.1 Executive Steering Committee

A key function of the ESC was to oversee and manage the preparation of the development proposal with the Walker Corporation. The members of the ESC were:

- the then former CE Renewal SA (Chair)
- the then CE DPTI
- CE AFC
- the Executive Director Arts SA.

Correspondence issued to potential ESC members in November 2012 indicated that it was to meet monthly. However the responsible agency, DPTI, could only provide us with the ESC minutes for the following three meetings:

- 27 February 2013 (first meeting)
- 25 July 2013 (marked draft)
- 21 October 2013 (marked draft).

The procurement process started with the release of the EOI in January 2012 and Stage 1 of the RFP was completed in October 2012. However, the ESC first met in February 2013. This

was well after the RFP process to select the preferred tenderer to proceed to the exclusive negotiation period had been finalised. Further, the ESC was not in place to oversee the negotiation process to establish an agreed development proposal following the SA Government rejecting the Walker Corporation proposal submitted in October 2013. As a consequence, key aspects of the procurement process were not subject to oversight by the ESC.

To demonstrate proper accountability and transparency for key discussions and decisions the ESC needed to meet regularly and maintain formal approved minutes for all its meetings.

9.3.2 Project Control Group

In addition to the ESC, a project control group (the AFC Car Park Redevelopment Project Control Group) was established. The project control group comprised representatives from the SA Government (ie DPTI, Arts SA, AFC and Renewal SA) and the Walker Corporation. We understand that the group was to meet fortnightly. However, DPTI could not confirm if the group actually met fortnightly and could only provide us with minutes for the following meetings:

- 5 December 2012
- 6 February 2013
- 20 February 2013
- 6 March 2013
- 20 March 2013.

9.4 The role, function and responsibility of committees were not documented

The role, function and responsibility of committees established for the Project were not documented.

As previously indicated, DPTI established the ESC in February 2013 and the AFC Car Park Redevelopment Project Control Group in December 2012. We sought to understand the purpose, role and responsibility of both the ESC and the group.

DPTI could not provide us with a copy of the terms of reference or similar documentation for the ESC and the project control group. DPTI advised that it could not confirm whether the documents had been prepared.

The project control group first met in December 2012 and ceased meeting in March 2013. However, DPTI was not able to provide documentation to support the purpose of the group.

10 Application of planning, evaluation, approval and procurement frameworks

What we found

Mandated planning, evaluation, approval and procurement frameworks for construction projects were not complied with. Issues included:

- early planning failed to anticipate and communicate the likelihood of significant cost to government from this development. At Stage 2 of the RFP, documentation specified that the development proposal should be carried out without any public funding. Almost \$100 million in public funding was ultimately approved for the development
- no evidence to support that the Infrastructure Planning and Delivery Framework was applied to the project and required gateway approvals were obtained
- the required financial evaluation or business case were not completed for the project
- SA Government funding requirements and budget impacts were not adequately assessed before commencing the RFP process.

10.1 Lack of assessment of the SA Government funding requirement for the project

The SA Government funding requirements and budget impact were not adequately assessed before commencing the RFP process.

Redevelopment of the car park, which envisaged expanding the previous car park to 1400 or more car park spaces, was going to have structural and functional consequences for all the immediate surrounds including the proposed plaza and neighbouring buildings. This has ultimately occurred. There is no evidence that early planning and approvals contemplated the risk that there would be a cost to government from the redevelopment.

Documentation associated with the RFP Stage 2 specified that the proposal should be carried out without any public funding. The SA Government funding approved in February 2015 for the development of \$99.7 million varied significantly to the requirement specified in the letter issued to the Walker Corporation on 30 October 2012 which specified no public funding.

A brief overview of the project elements was included in the RFP, however the SA Government's expectations, requirements and financial parameters, including the required financial commitment by the SA Government, was not included in the document.

On 29 October 2012 the SA Government approved inviting the Walker Corporation to develop an integrated development proposal for the AFC car park and other related Riverbank elements in accordance with set objectives and specific requirements and subject to agreed terms and conditions. While the approval is for more than the car park, the only related cost information we have found at this time is that this was expected to be at no cost to government.

The then DPTI CE, in a letter dated 30 October 2012, invited the Walker Corporation to participate in Stage 2 of the RFP and stated that a fundamental project requirement was that the development proposal needed to be carried out without any public funding or SA Government pre-commitment.

The Walker Corporation proposal in October 2013 also indicated the development would be at no cost to government.

In February 2014, when the SA Government approved the ATL, it was advised that the costs of supporting facilities, such as the new public square, could be at least equal to the cost of the 400 car parks (capped at \$30 million).

Further, in September 2014 the Treasurer (Mr Koutsantonis) wrote to the Deputy Premier (Mr Rau) confirming the principles for the Project which were agreed by the SA Government on 18 August 2014, including that the SA Government did not intend to spend any additional funds on the site, in excess of any revenue it received from the sale of the land for the project.

In February 2015 the SA Government approved its funding requirements for the development. Renewal SA prepared three options and the SA Government approved funding the proposed project up to a net cost to government of \$180.1 million, of which \$80.4 million is for AFC consequential impacts and complementary works.

The net cost to the SA Government of \$99.7 million included:

- purchase of 400 car park spaces (\$30 million)
- festival plaza public realm works (\$48.3 million, offset by \$40 million of works to be contributed by the Walker Corporation)
- precinct integration works (\$61.4 million).

The public realm works include landscaping, lighting, a water feature, new paving and a stage structure.

The integration works include the Station Road upgrade, plaza security garden works, loading dock works, grade separation of festival drive, construction staging and connection works.

The project funding and budget impacts approved by the SA Government were not consistent with the RFP Stage 2 requirement that the proposal be at no cost to government and with no SA Government pre-commitment.

A key element of the Infrastructure Planning and Delivery Framework is appropriate planning and development of a business case including considering:

- whole-of-life costs
- financing options
- procurement options
- financing arrangements and budget impacts.

We found that there was no evidence to support an analysis and evaluation of the project that addressed these elements.

10.2 Required gateway approvals were not obtained for the project

There was no evidence to support whether the SA Government's Infrastructure Planning and Delivery Framework was applied to the Project and whether the required gateway approvals were obtained.

The Government's Infrastructure Planning and Delivery Framework includes a number of gateway approvals that must be obtained for all prescribed construction projects. They are summarised in section 3.2. The first four gateways are part of the first four steps of the Infrastructure Planning and Delivery Framework and must be met before a project can move from strategic planning to project delivery. The last three gateway approvals are part of the PIP and are required to be obtained to progress through the project delivery stages of the project.

We found that there was no evidence to support whether the framework was applied to the Project and whether the required gateway approvals were obtained to progress the Project through the strategic planning stage were obtained.

10.3 Financial analysis or business case was not completed for the project

TI 17 requires chief executives to ensure all public sector initiatives are evaluated in accordance with the Guidelines for the Evaluation of Public Sector Initiatives. The guidelines require agencies to prepare a financial evaluation or business case. Once a sound business case is developed the project is submitted to Cabinet for approval including the funding determination.

Our review found that the financial analysis or business case as detailed in the guidelines was not prepared for the Project.

The SA Government developed a draft Riverbank Master Plan in 2011 which identified current and proposed urban design initiatives and prioritised the implementation strategy for the Riverbank Precinct. The draft Master Plan, however, did not include a financial analysis or business case to support the Project and related procurement.

10.4 No detailed analysis to support the priority areas identified in the request for proposal

There was no evidence of a detailed analysis supporting the selection of the three priority areas included in the RFP.

Key elements of the Infrastructure Planning and Delivery framework include:

- a strategic analysis and identification of the infrastructure needs
- documenting the project scope
- assessing affordability
- determining the budgetary impact.

The EOI provided a very broad outline of the scope of the Project and did not define the specific elements to be included. It listed broad areas of potential development opportunities and sought interest from developers, investors and operators working with the SA Government to realise the full potential of the Riverbank Precinct in a manner consistent with the draft Riverbank Master Plan.

The draft Adelaide Riverbank Master Plan included a retail and commercial strategy that identified numerous potential new and upgraded buildings (including retail and commercial) at various locations. These included:

- cinema
- riverfront hospitality and retail
- festival square building
- casino/hotel
- tower on North Terrace
- development including a hotel west of Morphett Street.

The RFP defined 'the project' as being the car park redevelopment, which was the priority, and describes the potential for 'the project' to become the catalyst for development above the car park. The RFP also outlined the following three project elements:

- AFC underground car park
- new public square
- a potential commercial building.

A brief overview of these elements was included in the RFP, however the SA Government's expectations, requirements and parameters for these elements was not provided.

We sought to understand the basis for establishing of the priorities for the Project. DPTI could not provide us with documentation and analysis to support how and why these three elements were included in the RFP. Our review noted that the car park needed to be replaced due to its significant deterioration and that the plaza needed to be redeveloped due to its age and dilapidated state. However, there was no detailed analysis to support the need for a commercial building, including the type, location and priority.

11 Procurement planning and risk management processes

What we found

A procurement plan and risk assessment and management plan were not established at the commencement of the procurement and were not maintained throughout the process.

11.1 Lack of procurement plan

A procurement plan was not developed for the Project.

An important element of procurement planning is documenting the procurement methodology, strategy and process to meet specific procurement objectives. We found that DPTI and Renewal SA, the agencies responsible for the EOI and RFP processes, were not able to confirm whether a procurement plan was prepared and approved in line with the procurement delegations.

It is sound practice to prepare and approve the procurement plan before approaching the market. The scope and detail included in the plan will vary according to the risk and value of the procurement. Given the scale, complexity, risks and nature of this project, a comprehensive procurement plan for the procurement should have been prepared.

11.2 Lack of risk management plan

A risk assessment and management plan was not established for the procurement.

The identification, evaluation and management of key project risks on an ongoing basis is important particularly on a project of this size, complexity and expected benefits to the State. Risks can then be continually evaluated and managed to minimise the consequences of adverse events.

The level of analysis and documentation required to manage procurement risks will vary depending on the value, complexity and the scope of the procurement. The management of risk should occur at the earliest phases of the procurement process. Further, the risk management plan should be reviewed throughout the lifecycle of the procurement and revised accordingly. For procurements considered high value or risk it is sound practice to include a risk assessment and management plan as part of the procurement plan.

In May 2016 the SA Government approved the terms and conditions contained in key project documents for the development (such as the Development Agreement and leases). We were advised that the submission seeking the approval included a listing of significant legal and commercial risks (and treatments) arising from the project documents.

We recognise that providing the list to the appropriate authorising body responsible for approving the terms and conditions was prudent.

However, in my view this does not diminish the importance of formally identifying, evaluating, monitoring and reporting on risks and mitigation strategies throughout the procurement process. As circumstances and the nature of risks can change, the process for managing the risks for the procurement should be documented on an ongoing basis in a risk management plan or register.

12 Probity management arrangements

What we found

Probity management arrangements to oversee the procurement were not properly established and evidenced. Key issues included:

- a probity plan was not established
- the probity framework required under the RFP was not implemented
- no evidence that the need for probity assurance arrangements was considered for the procurement
- required probity documents were not completed by the RFP shortlisted proponent
- a record of contact and interactions with proponents was not maintained for the period leading up to the decision made on 7 July 2014 to continue to negotiate with the Walker Corporation for the car park only
- the then CE DPTI meeting with the Walker Corporation outside of the ongoing Renewal SA process in September 2013 was inappropriate as it was inconsistent with sound process
- not all confidentiality and conflict of interest declarations were obtained or were not obtained timely
- a potential conflict of interest associated with a subcontractor of a firm engaged by the SA Government was not effectively managed
- it was not clear whether claims made by the Walker Corporation about fairness and bias in November 2013 and representations made by SA Government representatives prior to the ATL were investigated and how these claims influenced the procurement/negotiation process.

12.1 Lack of probity plan

There was no evidence to confirm whether DPTI established a probity plan.

To assist in demonstrating fairness and equity, it is sound procurement practice to establish and document a probity plan. A probity plan helps to ensure that probity issues are considered throughout the procurement process. Probity plans should be customised for individual procurement projects. Key elements of a probity plan include:

- guidance on the management of time frames, deadlines and extensions (including periods of exclusivity)
- ensuring equal access to information is provided to participants
- processes for identifying and dealing with actual, potential and perceived conflicts of interest
- ensuring staff involved with the procurement have appropriate knowledge of policies and procedures

- an assessment of the need for a probity advisor and/or auditor.

DPTI should have, for a project of this size, value and complexity, established a probity plan to ensure that probity issues were considered and adequately addressed.

12.2 Lack of probity assurance arrangements

DPTI did not establish probity assurance arrangements for the procurement.

Our review found that DPTI did not document the rationale for not engaging a probity advisor or probity auditor to review the procurement arrangements for the Project.

The various procurement frameworks and policies applicable to SA Government entities do not specifically require the engagement of probity advisors or auditors. Deciding whether an entity should engage the services of a probity advisor or probity auditor will depend on the nature, significance and risks associated with the procurement.

There is a distinction between the roles of probity auditor and probity advisor. Probity advisors are typically engaged to provide advice to management on processes and probity issues during the procurement process. In contrast, probity auditors generally do not provide advice or participate in the procurement process while it is progressing. Probity auditors undertake an independent review of processes and documentation once it has been completed or at specific stages of the process.

For large and complex procurements which have a significant risk profile it is sound practice for agencies to formally document the rationale for not engaging the services of a probity advisor or independent probity auditor. This should include evaluating the probity risks and identifying the strategies or mechanisms in place or which are to be implemented to address the risks.

We note that although they are not required to be applied to construction procurements, the State Procurement Board guidelines¹⁰ provide good guidance on determining when to implement probity assurance arrangements.

12.3 Required probity deeds were not completed

Probity documentation required by the RFP was not completed by the proponent shortlisted for the RFP (ie the Walker Corporation).

Our review found that DPTI could not confirm whether the shortlisted proponents completed and submitted a probity and process deed as required by the RFP terms and conditions.

¹⁰ State Procurement Board, Probity and Ethical Procurement Guideline, issued June 2015.

The RFP and the development proposal letter sent to the Walker Corporation on 30 October 2012 required that:

Proponents and consortium members will be required to enter into a probity and process deed as a condition precedent to short listing. This deed will regulate the terms and conditions under which confidential information is disclosed by the State to short listed proponents and will outline the probity requirements and process which will apply in respect of proposals.

The signing of this deed is important as it details the rules and processes that proponents need to comply with during the RFP process and secures commitments by all parties to abide by these rules and processes.

12.4 Process to manage interactions with proponents was not in place

The agencies responsible for the procurement process did not implement a mechanism to manage the interactions between representatives of the SA Government and the proponents.

Our review found that a record of all contact and interactions with the proponents was not maintained throughout the procurement process.

To effectively demonstrate the fairness, transparency and equity of the procurement process, it is sound procurement practice for agencies to establish and maintain a record of all contact and interactions with proponents. The record should include details of contact with proponents including when it occurred, with whom, the purpose and any agreed actions.

12.5 The then CE DPTI meeting with Mr Walker outside of the ongoing Renewal SA process was inconsistent with sound process

The then CE DPTI met with Mr Walker around September 2013, outside of the ongoing Renewal SA process. In my opinion the meeting and the advice provided to Mr Walker at the meeting was inappropriate as it was inconsistent with good process and procurement practice, particularly given the CE DPTI's role as a member of the ESC.

Sound procurement practice requires that proponents should only contact nominated officers. This assists with demonstrating the procurement process is fair and transparent. Contact with proponents by public officers who are not responsible for the procurement should be avoided or managed under transparent and agreed protocols.

The Walker Corporation's proposal was being evaluated by the Tender Evaluation Panel at the time and any interaction with the preferred proponent should have been discussed with the panel and the ESC, clearly documented and undertaken within the established process or alternatively after the process had been revised or been concluded. This was required to ensure the integrity and probity of the process.

Renewal SA was responsible for managing Stage 2 of the RFP.

The then CE DPTI stated in a letter dated 14 January 2014 to the then CE DPC that around September 2013, he agreed to meet with Mr Walker independently and outside of the Renewal SA process. He stated that at the meeting he told Mr Walker his view that the 'process had gone off the rails'. His point was that the original RFP was issued because the SA Government wanted a car park, although saying other associated opportunities would be considered. He indicated the focus was on extensive other opportunities and there was not a deal on a car park.

He stated that he told Mr Walker that, in his view, the Walker Corporation would not get approval from the SA Government for development at the scale it was proposing.

He also stated that he suggested at that time that Mr Walker should write to the Minister for Housing and Urban Development (Mr Koutsantonis) and ask for a chance to revisit the Walker Corporation's proposal with a focus on the car park.

On 23 October 2013 the Walker Corporation did write to the Minister for Housing and Urban Development (Mr Koutsantonis) seeking the Minister's support to evaluate the process in two phases – first the car park and then the design issues.

The then CE DPTI did make a hand written notation on the ESC recommendation report of 23 October 2013 reflecting his view to focus on the car park. It stated:

Agree to terminate process but suggest offering Walker Corporation one more chance to put a car park proposal together (which is where we started) with any add-ons subject to further consideration

Subsequently the SA Government approved continuing with the Walker Corporation despite rejecting its development proposal at that time.

The then CE DPTI indicated to us that his actions around this time were consistent with his responsibility as a chief executive to be conscious of the interests of the elected government and focus on getting a car park. He confirmed to us his view that all the process discussion was on the building above the car park. His interest was to negotiate getting a car park, what the cost was, how to access land and find out Skycity's (the Adelaide Casino) requirements.

In response to this finding the then CE DPTI responded that he totally rejected the assertion that the meeting was inappropriate and he commented that:

As CE of DPTI at the time I accepted an invitation to meet with Lang Walker in September 2013. This was not a meeting that I tried to hide.

You are only aware of it because I openly wrote about it in correspondence with the then CE of DPC and spoke about it openly in meetings with the Minister Koutanstonis.

This was not a meeting with one party during a competitive tender or evaluation process. It was not a meeting offering any form of inappropriate favour to any other party.

It was not a meeting that in any way undermined the process we were involved with on the Walker development.

Quite simply, Mr Walker wanted to meet with me to understand what was happening with his proposals.

He is a significant, respected developer with interests in South Australia. My meeting with him afforded him the respect he warranted in his dealings with the SA Government.

He also observed:

Let's be clear my meeting was open and transparent, which was the way I always did business with the private sector.

My motivation was to protect the interests of South Australia and the South Australian Government, which I was serving at the time.

In my view concerns about the evaluation process and how to progress should have been addressed within the process. This is required to ensure the integrity and probity of the process.

12.6 Inclusion of an interest for an expression of interest proponent that was not included in its submission

DPTI could not explain how information not included in the Walker Corporation submission was included in the Tender Evaluation report for the EOI.

The tender evaluation report for the EOI (in this case an unsigned memo from the Evaluation Panel Chairperson to the then DPTI CE) recorded that the Walker Corporation expressed interest in the eastern side of the AFC. We found, however, that this interest was not included in its EOI submission as it only proposed a development west of Morphett Street.

Given that this interest was not recorded in its EOI submission it was not clear why it was in the evaluation report. DPTI could not provide us with evidence to support how and when the interest in the eastern side around the AFC was expressed by the Walker Corporation after the EOI closed.

The EOI tender documents indicate that DPTI reserves the right to seek clarification of any aspect of a submission and require additional information to be submitted. They clarify however that the additional information will not be accepted if it serves to vary the essence of the original submission. Further, they indicate DPTI may engage in discussions with registrants for clarifying its submission or rectifying minor omissions.

DPTI policies and procedures provide that an opportunity to submit additional information must not provide a competitive advantage to the tenderer.

To ensure proper fairness and transparency we consider that the tender evaluation report should have clearly explained how and when the interest was submitted by the Walker Corporation and how the interest was assessed by the Evaluation Panel.

12.7 Lack of independent probity advice

Renewal SA was not able to confirm whether the Tender Evaluation Panel for Stage 2 of the RFP obtained independent probity advice as initially planned.

The initial report from the Evaluation Panel for Stage 2 of the RFP, dated 22 May 2013, noted that following review of the development proposal submitted by the Walker Corporation the panel found that insufficient information was provided by the Walker Corporation to effectively evaluate the proposal. The report noted that the panel was to seek independent probity advice on the extended evaluation and workshop process.

Renewal SA was unable to confirm whether the independent probity advice was sought, received and considered by the panel.

12.8 Not all conflict of interest declarations were obtained

The agencies responsible for the procurement process could not confirm whether the respective Tender Evaluation Panel members for the EOI and RFP completed confidentiality and conflict of interest declarations.

The agencies responsible for conducting the EOI and RFP processes (ie DPTI and Renewal SA), could not locate confidentiality and conflict of interest declarations for the tender evaluation team members for the EOI and RFP (both Stages 1 and 2). Further, DPTI could not confirm if the evaluation team members completed the documents.

DPTI's procurement procedures PR115 'Confidentiality and Conflict of Interest' require all people involved in the evaluation process to sign a confidentiality and conflict of interest declaration, particularly where the value of the works is to exceed \$11 million. Further, the Evaluation Plans for both the EOI and the RFP requires compliance with PR115.

For the RFP (Stages 1 and 2) we were advised that conflict of interest declarations for Tender Evaluation Panel members were captured as part of the endorsement of the Evaluation Plans. In signing off the Evaluation Plans the panel members declared that they had '... no actual or potential conflict of interest in relation to the proposal under consideration.' It is

noted, however, that the Evaluation Plan was signed off after the evaluation process had started and as a result the declarations were not obtained before the evaluation process started.

Confidentiality and conflict of interest declarations should be made by all tender evaluation panel members before the evaluation process starts. This helps to ensure measures are in place to manage the security and confidentiality of tender documents and any actual or potential conflicts are identified at the beginning of the evaluation process.

12.9 Potential conflict of interest associated with a subcontractor was not effectively managed

A potential conflict of interest associated with a subcontractor of a firm engaged by the SA Government to provide expert advice was not effectively identified and managed.

Renewal SA engaged expert advisors including engineering advice. The engineering advice was provided through a consultancy firm engaged to prepare a Precinct Plan for the Riverbank Precinct. The consultancy firm subcontracted another firm to provide engineering advice.

The firm that was subcontracted to provide the engineering advice was also engaged by the Walker Corporation to provide engineering services. Renewal SA ran the procurement process in December 2012 and was responsible for the day-to-day management of the consultancy, however DPTI funded the works and executed the contract with the firm in January 2013.

Review of the tender documents for the consultancy found that the individual nominated to provide the engineering services represented the Walker Corporation in the interactive workshops held in July 2013 to assist the Walker Corporation to prepare its final proposal.

This situation causes a potential conflict of interest which should have been identified, declared and effectively managed.

We found that the conflict was not declared by the consultancy firm and was not identified by Renewal SA or DPTI. Further, we could not be provided with documentation to support whether the risks associated with the potential conflict were assessed and how they were addressed.

12.10 Investigation of claims made by Walker Corporation prior to the Agreement to Lease

It was not clear if claims made by the Walker Corporation about fairness and bias in November 2013 and representations made by SA Government representatives prior to the ATL were investigated and how these claims influenced the procurement/ negotiation process.

On 26 November 2013 Mr Walker met with the Minister for Housing and Urban Development (Mr Koutsantonis), the then CE DPTI, the then CE Renewal SA and senior agency staff. Later correspondence dated 14 July 2014 from the Walker Corporation states that at this meeting of 26 November 2013, the Walker Corporation raised concerns over the procedural fairness of the evaluation process including bias and conflict. In the letter the Walker Corporation claimed that some members of the Tender Evaluation Panel and the ESC did not consider the proposal fairly and with due process. The letter indicated that, given the bias and inherent conflicts that existed amongst members of the Tender Evaluation Panel and the ESC, Mr Walker met with the Minister for Housing and Urban Development (Mr Koutsantonis) on 26 November 2013.

In the letter the Walker Corporation also claimed that numerous representations were made by senior members of the SA Government, including that the development above the car park would follow after the development of the car park in the lead up to entering into the ATL.

We sought to understand the actions taken by the SA Government to address the concerns raised by the Walker Corporation. We found that no formal investigation or probity review of the claims was conducted to determine the veracity of the claims and the implications for the procurement process at the time the claims were made.

We are not aware of any advice obtained by the SA Government regarding the specific claims and potential consequential legal risks arising from the claims made by the Walker Corporation.

We are also not aware of any further claims of concerns about procedural fairness after the 26 November 2013 meeting.

We note that it is evident that despite the claims, the Walker Corporation was satisfied to continue to deal with the SA Government on the development. Before the 26 November 2013 meeting, the Walker Corporation had been invited to participate in discussions and to provide information on how it would deliver the car park component of the Project. Subsequent to the meeting the Minister directed the then CE DPTI to conduct negotiations with the Walker Corporation.

The Walker Corporation entered into an ATL with the SA Government and eventually the Development Agreement in May 2016. A letter dated 9 April 2014 to the Minister for Housing and Urban Development (Mr Rau) from the Walker Corporation included a statement:

We believe that the RFP was an open process that properly tested the market and duly selected Walker Corporation to develop the carpark and to explore the ability for it to deliver the other key elements referred to through a coordinated program of works.

Given the nature of claims made and potential implications for the outcome of the procurement process, in our opinion the specific claims should have been independently investigated by the SA Government at the time the claims were made to determine their

veracity and any implications for the procurement process, with the outcome documented and retained with the procurement records for the development. This would have been prudent and important to assist the SA Government in responding if later concerns were made against the process.

12.11 Probity framework was not implemented

DPTI had not implemented the required probity framework for the Project.

The RFP states that a probity framework was to be established for the Project. Our review of documentation to support the procurement process found no evidence that the probity framework was established and implemented. Further, DPTI could not confirm whether the probity framework was established.

Establishing and implementing an effective framework would have assisted the agencies responsible for the procurement to manage conflicts (actual and perceived) and avoid any potential improper practices.

Given the nature, size, risks and the potential benefits to the State it is sound procurement practice to establish a probity framework specific for the project as intended by the RFP.

13 Procurement procedures and standards

What we found

The agencies responsible for the procurement process did not comply with established procedures and tender documentation did not meet appropriate procurement standards. Key issues included:

- DPTI could not confirm whether the EOI and RFP Stage 2 Evaluation Plans were completed prior to the evaluation process starting
- the basis for shortlisting EOI proponents was not clear
- the evaluation of the RFP proponents was not adequately documented.

13.1 It was not clear when the evaluation plans were completed

DPTI could not confirm whether the EOI and RFP Stage 2 Evaluation Plans were completed prior to each respective evaluation process starting.

DPTI could only provide us with an unsigned copy of the EOI Evaluation Plan dated 29 February 2012. Therefore, we could not confirm when the plan was finalised and agreed. The EOI closed on 23 February 2012, however DPTI could not confirm when the evaluation process started.

Therefore, it was not clear if the EOI Evaluation Plan was completed prior to the evaluation process starting.

Also, we found that the RFP Stage 2 Tender Evaluation Plan was signed by the Tender Evaluation Panel members after the RFP Stage 2 closed. The RFP Stage 2 closed on 22 April 2012 and the Evaluation Plan was signed off by the panel members on 30 April 2013.

DPTI could not confirm when the evaluation process commenced.

Consequently, it was not clear whether the RFP Evaluation Plan for Stage 2 was completed prior to the evaluation process starting.

Sound procurement practice requires the Evaluation Plan to be developed, finalised and signed by the appropriate responsible officer(s) before starting the tender evaluation process. This reduces the risk of the plan being influenced by knowing what is in the tender documents and unfairly favouring a particular proponent. DPTI policies and procedures require the tender evaluation process to be undertaken in line with a predetermined evaluation methodology or Evaluation Plan.

13.2 The basis for shortlisting expression of interest proponents was not clear

The basis for the Tender Evaluation Panel's recommendation on which EOI proponent should be shortlisted was not clear.

An overall assessment of the merit for each submission, as required by the Evaluation Plan to support the shortlisting of proponents, was not included in the documentation maintained to support the evaluation process.

The documentation maintained to support the evaluation of EOI submissions was insufficient to support the Tender Evaluation Panel's recommendation on which proponents should be shortlisted and proceed to the RFP. The documentation included an unsigned recommendation report to the project sponsor (the then CE DPTI), an unsigned memo to the project sponsor, individual assessment forms and hand written notes. Our review of the documentation found that it did not:

- include an overall assessment of the merit of each proposal as required by the Evaluation Plan
- adequately demonstrate the extent to which each submission met the evaluation criteria specified in the Evaluation Plan.

The Evaluation Plan required:

- each panel member to provide an overall subjective assessment of the merit of the proposal against evaluation criteria (ie completion of an individual assessment form)
- panel members to convene to determine and align on the merit and category of each proposal (ie completion of an assessment summary spreadsheet).

The Evaluation Plan required the merit to be classified as either high, medium or low.

We found that the assessment summary spreadsheet used for the evaluation differed to the spreadsheet specified in the Evaluation Plan. Notably, the spreadsheet used did not include an assessment against all the evaluation criteria outlined in the Evaluation Plan and it did not provide an overall merit for each proposal.

Our review of the individual assessment forms noted:

- not all evaluation panel members provided an overall merit for each proposal
- in some instances, parts of the forms were not completed or were incomplete
- not all assessment forms were retained. DPTI could not confirm whether each panel member completed a form for each submission.

The lack of documentation to support the basis for shortlisting proponents means that DPTI could not demonstrate that the evaluation was in line with the Evaluation Plan and that all participants were treated fairly.

13.3 Expression of interest panel members not required to sign the evaluation report

The EOI Evaluation Plan did not require all Evaluation Panel members to sign off the recommendation report.

The EOI Evaluation Plan only required the chairperson of the Evaluation Panel to provide a recommendation report to the project sponsor (the then CE DPTI). The plan did not include a provision and/or requirement for the recommendation report to be signed by all members of the Evaluation Panel.

It is good practice for the evaluation report to be signed by all Evaluation Panel members. This evidences that the key discussions and decisions of the tender evaluation process are agreed by panel members and accurately reflected in the evaluation report.

Our review also found that DPTI could not locate the final signed EOI Evaluation Report. This is further discussed in section 14.3.

13.4 One of the proponents was not included in the expression of interest evaluation report

The evaluation report for the EOI did not include one of the proponents that submitted an EOI.

Our review of the recommendation report to the project sponsor and the memo to the project sponsor (ie evaluation report) found they did not include discussion and assessment for one of the proponents that submitted an EOI. DPTI was unable to provide a reason for this omission from the report and the memo.

13.5 Evaluation of the request for proposal proponents was not adequately documented

The basis for selecting the Walker Corporation as the preferred proponent to progress to Stage 2 of the RFP was not adequately documented.

The documentation available to support the evaluation process did not clearly explain the basis of some of the merit scores assigned to evaluation criteria and the selection of the preferred proponent. The documentation also contained inconsistencies, was incomplete and did not indicate whether identified shortcomings were addressed.

We were provided with the following documents to support the Evaluation Panel's assessment of the RFP Stage 1 submissions:

- evaluation report (including an evaluation summary – Appendix 1)

- AFC car park redevelopment RFP evaluation assessment spreadsheet
- outcomes of evaluation process.

Our review of these documents identified that:

- the evaluation assessment spreadsheet was incomplete. For instance, sections of the spreadsheet were not completed, a merit score was not provided for a number of the evaluation criteria and an overall merit allocation was not provided for each of the submissions
- the basis for some of the merit scores was not clear. For example, the evaluation report indicated that the Financial Solution criteria for one submission was given a modest merit score even though the report identified some issues for this component
- the evaluation assessment spreadsheet identified a number of questions/shortcomings in the information provided by one of the proponents for the Financial Solution criteria, however details of how these questions/shortcomings were addressed were not documented.

13.6 Interactive workshops not conducted as intended

Interactive workshops, as provided for in the RFP Stage 2, were not conducted prior to the Walker Corporation submitting its proposal.

The RFP Stage 2 indicated that the SA Government would conduct an interactive process during Stage 2 in line with the probity framework for the Project. The interactive workshops were to provide shortlisted proponents the opportunity to obtain feedback and clarification during the preparation of proposals for the RFP Stage 2. Under the terms of the RFP the SA Government was to issue shortlisted proponents a protocol for the interactive RFP process during Stage 2.

Our review found that an interactive workshop with the Walker Corporation was not conducted prior to the Walker Corporation submitting its initial proposal on 22 April 2013. Two interactive workshops were held with the Walker Corporation, however this was in July 2013 after the Tender Evaluation Panel for Stage 2 found that its proposal did not contain sufficient information.

Conducting the interactive workshops during the 20-week exclusive negotiation period would have allowed the Walker Corporation and the SA Government to discuss the proposal and clarify any matters prior to its submission.

13.7 Other areas where documentation could not be located

Our review identified other areas where we could not establish whether policies and procedures and/or tender documents were complied with, as relevant documentation could not be located. They are summarised in Appendix 3.

14 Key procurement documentation

What we found

Not all documentation for the procurement process was retained and as a result we could not conclude on the fairness of certain aspects of the procurement process. Key issues included:

- tender submissions for two EOI submissions could not be located
- evidence of when two EOI submissions were received was not retained
- signed evaluation reports for the EOI and the RFP Stage 1 and the interim evaluation of the RFP Stage 2 could not be located

14.1 Not all expression of interest tender submissions were retained

Copies of the tender submissions for two of the proponents who submitted a tender response could not be located by DPTI.

We reviewed EOI submissions to ensure they were received, opened, evaluated and actioned in line with relevant procurement policies and procedures. We found that DPTI could not provide us with copies of the tender submissions received for two of the proponents. As a result, we could not establish whether the submissions were evaluated in line with the EOI terms and conditions. Further, we could not confirm that the evaluation of the submissions was accurately reflected in the tender evaluation report.

We acknowledge that one of the objectives of the EOI was to test the market to identify parties with an interest in developing the precinct. However, the EOI was a competitive procurement process resulting in shortlisting proponents to progress to the next stage of the procurement process (in this case an RFP). Further, the Evaluation Plan for the EOI reinforces that submissions are to be received, opened and evaluated in line with relevant DPTI procurement policies and procedures. Although our review did not identify any specific procedural fairness matter relating to the EOI process, DPTI's failure to adequately secure all the tender documents significantly reduces its ability to attest that all proponents were treated fairly and equitably.

14.2 Inadequate recording of when tenders were received

We found that DPTI did not retain documentation evidencing when two EOI submissions were received. Consequently, we could not establish whether they were received before the EOI submission close time. The hard copies of the submissions provided to us for review were not signed and date/time stamped by the officers who opened the tenders.

Accordingly, DPTI was not able to substantiate that the two submissions were received and opened in line with relevant procurement policies and procedures.

14.3 The signed expression of interest evaluation report was missing

DPTI could not locate the final signed evaluation report for the EOI process and the project sponsor's approval of the Evaluation Panel's recommendations.

DPTI could not provide us with a copy of the final signed evaluation report for the EOI process. DPTI located a memo from the Evaluation Panel Chairperson to the project sponsor (the then DPTI CE) which recommended six proponents be invited to participate in the RFP to redevelop the AFC car park and consider developing other precinct related activities. However, the memo was not signed by the Chairperson. Further, DPTI could not provide us the project sponsor's approval of the panel recommendations.

Therefore, DPTI could not confirm that the evaluation report provided to us for review was the final report prepared and that it accurately reflected the evaluation process undertaken, including key discussions and decisions made.

14.4 Evaluation report for request for proposal Stage 1 was not signed

DPTI could not locate a signed copy of the evaluation report for Stage 1 of the RFP. The report provided to us was dated 9 October 2012, however it was not signed by any of the Evaluation Panel members.

The evaluation report should be signed by all Evaluation Panel members as this evidences that key discussions and decisions of the tender evaluation process are agreed by the panel members and accurately reflected in the evaluation report.

14.5 Interim evaluation report for request for proposal Stage 2 was not signed

DPTI could not locate a signed copy of the interim RFP Stage 2 evaluation report for the proposal submitted by the Walker Corporation on 22 April 2013.

We were provided with an unsigned draft interim evaluation report, dated 22 May 2012, which contained recommendations from the Tender Evaluation Panel to the ESC.

It is good practice for the evaluation report to be signed by all Tender Evaluation Panel members. This evidences that the key discussions and decisions of the tender evaluation process are agreed by panel members and accurately reflected in the evaluation report.

15 Coordination of significant procurements

What we found

There was a need for better coordination between government agencies when conducting procurements involving multiple agencies and stakeholders, to ensure interactions with potential participants do not compromise the transparency, probity and fairness of the procurement process.

15.1 The need for better coordination between government agencies for significant procurements

There were interactions between the AFC and the EOI participants during the EOI process about progressing the development of an AFC car park.

We met with AFC management staff to understand the context and nature of their interactions with the Walker Corporation. We were advised that the car park operations generated a significant amount of revenue for the AFC and the AFC Board had concerns about the SA Government's intention to seek interest from the private sector to develop the car park. In a letter dated 21 December 2011 the Chair of the AFC Board wrote to the Minister for the Arts:

- registering the AFC's interest to redevelop the car park together with associated plaza works
- expressing concern that the SA Government was seeking expressions of interest from the private sector to lead the development of the car park.

The AFC Board minutes for the meeting held on 4 April 2012 recorded that the Minister recommended that the AFC communicate with stakeholders who expressed interest with the EOI process.

The primary objective of the EOI was to provide the private sector with an opportunity to respond to potential development opportunities in the draft Adelaide Riverbank Master Plan and/or other opportunities. The EOI listed six areas contained in the draft Adelaide Riverbank Master Plan including the festival square which included an underground car park.

In reviewing the documentation provided to us to support the EOI process we noted that on 22 May 2012 the CE AFC wrote to the Walker Corporation advising that the AFC was keen to redevelop the existing car park and the existing Hajeck Plaza. In this letter the AFC indicated that it was open to discussing a possible joint venture approach with the Walker Corporation on a mutually exclusive basis to explore avenues for working together.

The Walker Corporation responded in a letter on 22 May 2012 advising that in order for it to enter into a joint venture with the AFC it would require approval from the SA Government for an appropriate period of exclusivity to justify the investment a project of this nature commands and to explore in detail how best to deliver the project together. In the letter it advised that it would also require a commitment by the SA Government that they are willing to proceed with the vision that both the Walker Corporation and the SA Government determined was appropriate for the precinct.

This interaction between the AFC and the Walker Corporation for the possible redevelopment of the car park and plaza occurred while the EOI process was in progress.

The AFC Board minutes for 26 April 2012 noted that the AFC also had discussions with three other private sector entities that had submitted an EOI to progress the car park and plaza development. These entities were:

- Charter Hall Group
- Skycity
- Hines Property Group.

To ensure the fairness, equity and probity of a procurement process it is important that procurement processes (including seeking expressions of interest) run by different government agencies which cover the same or similar areas are appropriately managed and coordinated so that they do not overlap and create any perceived conflict or advantage for any of the participants.

16 Development approval requirements

What we found

The procurement process did not effectively manage the proposed changes to the development approval requirements. Key issues were:

- proposed planning approval amendments were not explicitly addressed at the commencement of the procurement process
- the Walker Corporation claimed that the time allowed under the submission process was insufficient to consider the final outcome of the development plan amendment process
- a robust documented procurement plan and risk management plan should have been established to assist with coordinating procurement process activities and addressing risks associated with the proposed development plan amendment.

On 23 June 2012 the SA Government noted that the Minister for Planning would announce a Ministerial DPA and would ask Renewal SA to undertake a detailed precinct plan of the Riverbank from Bowden to Hackney forming the Riverbank Precinct area.

On 30 October 2012 the then DPTI CE wrote to the Walker Corporation advising that it was shortlisted to advance to the RFP Stage 2. The letter stated that the development proposal must have regard to the City of Adelaide Development Plan and the relevant planning policies for the project site.

The Walker Corporation submitted its initial proposal on 22 April 2013. It included two commercial towers which exceeded the maximum building levels specified by the City of Adelaide Development Plan at that time.

In June 2013 the Minister for Planning (Mr Rau) sought an amendment to the City of Adelaide Development Plan under the *Development Act 1993*.

On July 2013 the then CE Renewal SA invited the Walker Corporation to submit further details about its initial proposal.

On 15 August 2013 the Walker Corporation wrote to the then CE Renewal SA advising that it was working on the feedback provided at a workshop and requesting the deadline to provide additional information be extended from 29 August 2013 to 30 September 2013. The letter indicated one of the factors for the request for the extension was to specifically address the recently released DPA.

The Walker Corporation wrote to the then CE DPTI on 2 September 2013 noting that the DPA was still in progress and the development plan may be amended. It also advised that it would be in a better position to provide a meaningful response if the due date for its response was delayed until the process was complete. The Walker Corporation requested that the date for submitting its revised proposal be extended to a date no less than two weeks after the date of finalising the Ministerial DPA process.

The then CE Renewal SA responded to the letter granting the Walker Corporation one additional extension of time to respond to the request for further information. He requested it provide the response by 1 October 2013.

The Walker Corporation submitted its development proposal on 1 October 2013 as requested.

Amendments to the Riverbank for the Entertainment Policy area were gazetted on 11 October 2013. One of the amendments was to change the maximum building levels from six to in excess of 20 storeys.

As a result, development planning requirements and parameters critical to the development (such as building height levels) changed during the procurement process.

The Walker Corporation wrote to the Minister for Housing and Urban Development (Mr Koutsantonis) on 23 October 2013 stating that at the workshop held with SA Government representatives, it requested that, before making substantial changes to its proposal, it be allowed to consider the outcome of the DPA which provides clarification of requirements. It stated that the time allowed under the submission process did not give sufficient opportunity to consider the final outcome of the DPA process.

The agencies responsible for the procurement could not locate a response to the letter.

Our review found the procurement process did not effectively manage the proposed changes to the development approval requirements. As noted, the SA Government identified the need to implement planning approval amendments affecting the Riverbank Precinct. However, this was not explicitly addressed at the commencement of the procurement process. For instance, the RFP did not provide guidance or direction as to how proponents were to consider the proposed amendments and resulting uncertainty in their development proposals. The letter dated 30 October 2012 advising the Walker Corporation that it was shortlisted requested it to have regard to the City of Adelaide Development Plan. However, there was no mention that the development plan for the precinct was in the process of being revised and how to address the resulting uncertainty in its proposal.

This was a significant and complex procurement with a broad range of stakeholders with different requirements and was subject to uncertainty in several areas. As previously mentioned, the agencies responsible for the procurement process had not established a documented procurement plan and risk management plan for the procurement. The DPA process and resulting uncertainty was a significant factor impacting on the procurement process. It is my view that a robust documented procurement plan and risk management plan should have been established, which would have assisted with coordinating procurement process activities and addressing risks associated with the DPA process.

Appendix 1 – Chronology of key events

Date	Event
2011	
28 November	Draft Adelaide Riverbank Master Plan Design Report (the Master Plan) finalised.
5 December	The SA Government was formally presented the final draft Master Plan for the Riverbank Precinct (the Precinct) and noted that an open expression of interest (EOI) process would be conducted in January 2012 to invite industry and private sector developers to assist in further developing opportunities and ideas within the Precinct.
2012	
24 January	EOI to Participate in the Revitalisation of the Riverbank Precinct was released to the market. The EOI was to ascertain market interest from developers, investors and operators in working with the SA Government to realise the full potential of the Precinct in a manner compatible with the vision and guiding principles in the Master Plan.
23 February	EOI closed with 10 submissions received.
Date unknown	The Chairperson of the EOI Evaluation Panel recommended to the then CE DPTI that six of the EOI respondents be invited to participate in the request for proposal (RFP).
22 May	Chief Executive of the Adelaide Festival Centre (CE AFC) wrote to the Walker Corporation regarding the possibility of a joint venture approach with the Walker Corporation for the revitalisation of the Precinct including the Adelaide Festival Centre (AFC) car park and plaza.
22 May	The Walker Corporation wrote to the CE AFC advising that to enter into a joint venture with the AFC, the Walker Corporation would require approval from the SA Government for an appropriate period of exclusivity to justify the investment a project of this nature and to explore how best to deliver the project together. The Walker Corporation sought confirmation from the AFC that they could work together in determining how best to meet the aspirational needs of all stakeholders in the Precinct.
24 June	The SA Government approved the establishment of the Precinct and the Urban Renewal Authority (Renewal SA) as the central government body responsible for overseeing the planning, coordination, negotiation, development, management and marketing of the Precinct.
2 August	<p>RFP for the Redevelopment of the Adelaide Festival Car Park ‘the Project’ was forwarded to the six shortlisted proponents. The RFP had two stages:</p> <ul style="list-style-type: none"> • Stage 1 – to shortlist up to two proponents who demonstrated the capacity and commitment to deliver all aspects of the Project and related civic and commercial opportunities • Stage 2 – to provide the shortlisted proponent/s with a period of exclusivity of 20 weeks to submit a development proposal for all aspects of the Project.

Date	Event
13 August	The SA Government noted that six proponents to the EOI had been invited to respond to the RFP Stage 1. The project proposal included three elements – an underground car park, a new public square and a commercial building.
30 August	RFP Stage 1 closed with five submissions received.
9 October	The RFP Stage 1 evaluation report (unsigned) recommended that the Walker Corporation be invited to advance to the RFP Stage 2.
29 October	The SA Government approved inviting the Walker Corporation to develop an integrated development proposal for the AFC car park and other related Riverbank elements in line with set objectives and specific requirements. The SA Government also noted a governance framework had been established to oversee and manage the preparation of the development proposal by the Walker Corporation.
30 October	The then Chief Executive of the Department of Planning, Transport and Infrastructure (the then CE DPTI) wrote to the Walker Corporation advising that it had advanced to Stage 2 of the RFP process and would be granted a 20-week exclusivity period to prepare a development proposal. The letter advised the Walker Corporation that the due date to accept the offer was 15 November 2012.
15 November	The Walker Corporation emailed the Director Strategic Projects DPTI seeking an extension of one week (until 22 November 2012) for the Walker Corporation to confirm acceptance of the offer from the SA Government. On 15 November 2012 the Director Strategic Projects DPTI emailed the Walker Corporation granting the one-week extension to 22 November 2012.
21 November	The Walker Corporation accepted the offer to prepare a development proposal as part of the RFP Stage 2.
12 December	The AFC Car Park Redevelopment Project Control Group met for the first time.
2013	
27 February	The AFC Car Park Redevelopment Project Executive Steering Committee met for the first time. It was established to oversee and manage the preparation of the development proposal.
18 April	The Government Architect raised concerns about the overall design merit of the Walker Corporation proposal.
22 April	RFP Stage 2 submission received from the Walker Corporation by Renewal SA.
May	The RFP Tender Evaluation Panel found that the Walker Corporation proposal did not contain enough information to effectively assess the proposal.

Date	Event
3 July	<p>The then Chief Executive of Renewal SA (CE Renewal SA) wrote to the Walker Corporation advising that:</p> <ul style="list-style-type: none"> • DPTI had transferred the management of the project back to Renewal SA as part of the SA Government approving Renewal SA as the government agency responsible for the Precinct • the Executive Steering Committee had accepted the Tender Evaluation Panel’s recommendation that at that stage the SA Government was unable to proceed with the proposal to the final phase of Stage 2 (negotiation and completion) • the SA Government was extending an opportunity to the Walker Corporation and its project team to revise the proposal • the SA Government would like the Walker Corporation’s project team to participate in a workshop to provide the team with the opportunity to seek clarification and feedback in relation to the SA Government’s objectives, expectations and requirements in relation to the project and the current content of the proposal.
29 July	Workshop held with the Walker Corporation.
2 August	Renewal SA wrote to the Walker Corporation advising that the revised submission was due 29 August 2013.
15 August	The Walker Corporation wrote to the then CE Renewal SA requesting that the deadline for providing additional information be extended to 30 September 2013.
2 September	The Walker Corporation wrote to the Minister for Housing and Urban Development (Mr Koutsantonis) requesting that the date of submission for response to queries raised in relation to the development proposal be extended to a date no less than two weeks after the date of finalising the ministerial Development Plan Amendment (DPA) process.
12 September	Renewal SA wrote to the Walker Corporation extending the due date submission deadline to 1 October 2013.
1 October	The Walker Corporation Stage 2 revised submission was received by DPTI.
23 October	<p>Stage 2 Tender Evaluation Panel recommended the Walker Corporation proposal not proceed to the final phase of the RFP Stage 2 process (negotiation and completion) and that the RFP process be terminated.</p> <p>Tender Evaluation Panel recommendation was approved by the Executive Steering Committee. A notation by the then CE DPTI agreed to terminate the process but supported offering the Walker Corporation one more chance to put a car park proposal together with any add-ons subject to further consideration by Cabinet.</p>
23 October	The Walker Corporation wrote to the Minister for Housing and Urban Development (Mr Koutsantonis) seeking the Minister’s support to evaluate the process in two phases – first the car park and then the design issues of the DPA.

Date	Event
4 November	<p>The SA Government approved:</p> <ul style="list-style-type: none"> • rejection of the Walker Corporation proposal submitted on 22 April 2013 (together with additional information submitted on 1 October 2013) • amending the RFP terms and conditions to extend the RFP Stage 2 process and engage in further discussions (for the car park only) with the Walker Corporation to determine if there is sufficient confidence that the Walker Corporation will be able to achieve the key outcomes required by the SA Government.
22 November	<p>The then CE Renewal SA wrote to the Walker Corporation advising the due date for the Walker Corporation to accept the SA Government approved amendments to the RFP was 27 November 2013 and the Walker Corporation had to submit its revised proposal by 11 December 2013.</p>
26 November	<p>The Walker Corporation met with the Minister for Housing and Urban Development (Mr Koutsantonis) and the then CE DPTI.</p>
27 November	<p>The then CE DPTI emailed Mr Walker advising that:</p> <ul style="list-style-type: none"> • the Walker Corporation should respond to correspondence received from Renewal SA advising that no further correspondence would be entered into with Renewal SA on the potential for a car park and other possible developments on the site of the AFC car park • all future correspondence should be directed to the then CE DPTI and not Renewal SA • the timelines set out in the Renewal SA letter of 22 November 2013 would have no effect and that the then CE DPTI would advise separately of timelines relevant for future negotiations • the Minister would respond separately on timelines relevant to an extension of exclusivity.
27 November	<p>The Walker Corporation wrote to the then CE Renewal SA advising that no further correspondence would be entered into between Renewal SA and the Walker Corporation.</p>
11 December	<p>Letter from the then CE DPTI to the Walker Corporation advising that the SA Government would by 31 January 2014 review the progress made by the Walker Corporation in establishing arrangements for a car park that would meet future requirements for the expansion of Skycity, AFC and the requirements for the expansion of the Precinct.</p>
2014	
7 January	<p>The then Chief Executive of the Department of the Premier and Cabinet (CE DPC) wrote to the then CE DPTI seeking an update on the current status of negotiations with respect to the scope of the negotiations and confirmation that the negotiations are being conducted in line with SA Government requirements.</p>

Date	Event
14 January	<p>The then CE DPTI wrote to the then CE DPC advising that:</p> <ul style="list-style-type: none"> • the development proposal received from the Walker Corporation in April 2013 offered far more extensive development above the plaza than was envisaged • when the Walker Corporation submitted its proposal it requested that it work with Renewal SA to have it progressed • around September 2013 the then CE DPTI received a phone call from Mr Walker and agreed to meet with him independently and outside of the Renewal SA process • at the meeting he expressed his view to Mr Walker that ‘the process had gone off the rails’ as the original RFP was focusing on a car park but the SA Government would consider other associated opportunities. Instead what was provided was focus on extensive other opportunities and there was no deal on a car park • he expressed his view to Mr Walker that he would not get approval for development of the scale that he was proposing • he suggested Mr Walker write to Minister Koutsantonis pointing out that he got it wrong and ask for a chance to revisit the proposal with a focus on the car park.
15 January	<p>The Walker Corporation provided the then CE DPTI with a draft Agreement to Lease (ATL).</p>
7 February	<p>The SA Government approved:</p> <ul style="list-style-type: none"> • the Minister for the Arts entering into a legally binding ATL for the redevelopment of the AFC car park with the Walker Corporation • the ATL being executed before the commencement of the caretaker period • delegating the Minister for the Arts’ interests and obligations under the ATL to the Minister for Transport and Infrastructure to assist with the integration of the proposed Skycity redevelopment and proposed current and future Riverbank Precinct initiatives • transferring at a future date the AFC car park (land and structures) to the new Riverbank Authority.
7 February	<p>The SA Government approved the establishment of the Riverbank Authority, an independent statutory authority for the Riverbank Precinct.</p>
10 February	<p>The SA Government approved expenditure totalling \$16.5 million for provision of works associated with the interface to the AFC and the development of the plaza for public use. The SA Government’s total financial contribution to the car park redevelopment, the AFC interface and the plaza redevelopment is estimated at \$46.5 million (\$30 million for securing the right to use 400 car parks and \$16.5 million for the AFC interface works).</p>
11 February	<p>ATL between the Minister for the Arts (Mr Snelling) and the Walker Corporation was executed and included a number of conditions precedent.</p>

Date	Event
13 February	The Minister for Housing and Urban Development (Mr Koutsantonis) wrote to the then CE DPTI advising that development of the Riverbank would be under the control of the Riverbank Authority but negotiations with the Walker Corporation would be managed by DPTI.
9 April	The Walker Corporation wrote to the Minister for Housing and Urban Development (Mr Rau) advising that in order for the Walker Corporation to prepare the final design and engineering specification for the car park, it would need to understand what would be above the car park and how the car park would interface with the surrounding developments.
7 July	<p>The SA Government approved:</p> <ul style="list-style-type: none"> • the guiding principles for the Riverbank Precinct as set out in the Master Plan • the urban design principles which will form the basis for the SA Government’s ongoing and future negotiations relating to the development in the Precinct • the preferred option for the development envelope within which future development could most appropriately occur • negotiations to design and construct a new car park only be recommenced with the Walker Corporation, with no above ground development • if for any reason the Walker Corporation did not meet the obligations of the ATL to commence construction of a new car park by 15 February 2015, to commence a new process for the construction of a car park through an open tender process • any proceeds from Precinct assets to be applied to the Precinct before any call on the State Budget.
14 July	The Walker Corporation wrote to the then Acting CE DPTI seeking to proceed with the proposal to develop the car park and above the car park without further delay. In summarising events to July 2014, it raised concerns it had discussed with government representatives in November 2013 over the procedural fairness of the evaluation process including claims of conflict and bias. The Walker Corporation also made comment that its commitment to this project was supported by representations by senior members of the SA Government.
12 August	Legal advice was sought on the Adelaide Riverbank Festival Plaza development.
18 August	<p>The SA Government approved the CE Renewal SA, CE DPTI and a legal representative from the Crown Solicitor’s Office to renegotiate with the Walker Corporation on the basis that the negotiations:</p> <ul style="list-style-type: none"> • follow the guiding principles, urban design principles and development envelope endorsed by the SA Government on 7 July 2014 • achieve the car park objectives and development above the car park endorsed on 7 July 2014

Date	Event
	<ul style="list-style-type: none"> • address the SA Government’s broader public realm outcomes for the site • allow for the staging of the above car park and other development in line with time frames to be endorsed by the SA Government in the future • address the SA Government’s broader public realm outcomes for the site • include the SA Government’s terms in relation to consultation with stakeholders and the community on the plaza and other public realm to be detailed in a future submission to the SA Government.
2015	
27 January	<p>Legal representatives for the Walker Corporation wrote to the CE Renewal SA seeking a six-month extension to the period of exclusivity to provide enough time to finalise agreement on the Key Commercial Terms (KCTs) and all necessary legal documentation.</p>
23 February	<p>The SA Government approved:</p> <ul style="list-style-type: none"> • government expenditure of \$100 million for the car park and plaza redevelopment and a further \$80 million for the AFC upgrade to be integrated into the development • the Minister for Housing and Urban Development (Mr Rau) finalising the terms of a project agreement with the Walker Corporation by negotiation and in accordance with the KCTs, noting that a further submission would be provided to the SA Government seeking final approval • the CE Renewal SA, in accordance with direction from the Riverbank Authority, to lead negotiations with relevant parties to resolve issues and impacts and finalise details of public realm design for the Precinct, noting that a further submission will be provided to the SA Government seeking final approval in relation to the public realm design. The KCTs would be amended to add that the SA Government would be given the first right of refusal to lease the ground and first floors of the office building to be built by the Walker Corporation and the tenancy mix for the retail area was to be determined in consultation with the Riverbank Authority • additional expenditure authority to the Department of State Development (Arts SA) and Adelaide Festival Centre Trust – a total of \$13.404 million additional operating expenditure and \$186.514 million additional investing expenditure • appropriation of all investing expenditure (totalling a gross amount of \$203.014 million) associated with physical delivery of the Festival Plaza public realm and precinct wide general integration works including integration with the AFC to the agency made responsible for delivery of the project, noting this was likely to be DPTI.

Date	Event
13 March	KCT Agreement signed between the Walker Corporation, the Minister for the Arts (Mr Snelling) and the Minister for Housing and Urban Development (Mr Rau) for the car park and above ground development. The KCTs included extending the right of exclusivity to 10 August 2015.
10 August	The Walker Corporation wrote to Renewal SA seeking the right of exclusivity to deal with the SA Government to be honoured by the State for so long as the Walker Corporation continued to work with Renewal SA and all relevant stakeholders to develop the proposal.
12 August	CE Renewal SA wrote to the Walker Corporation honouring the ongoing continuation of the right of exclusivity subject to the Walker Corporation continuing to develop the proposal.
2016	
23 May	Development Agreement signed.

Appendix 2 – Project reporting responsibility

Date	Event	Agency/Chief Executive	Minister
2012			
January to July	Issue and evaluation of the expression of interest	DPTI Rod Hook	Patrick Conlon Minister for Housing and Urban Development Minister for Transport and Infrastructure
August to October	Issue and evaluation of the RFP Stage 1	DPTI Rod Hook	Patrick Conlon Minister for Housing and Urban Development Minister for Transport and Infrastructure
October	Invitation provided to the Walker Corporation to participate in the RFP Stage 2	DPTI Rod Hook	Patrick Conlon Minister for Housing and Urban Development Minister for Transport and Infrastructure
2013			
April to May	Receipt and interim evaluation of the initial RFP Stage 2 development proposal submitted by the Walker Corporation	Renewal SA Fred Hansen	Tom Koutsantonis Minister for Housing and Urban Development
October	Receipt and final evaluation of the revised RFP Stage 2 development proposal submitted by the Walker Corporation	Renewal SA Fred Hansen	Tom Koutsantonis Minister for Housing and Urban Development
2014			
January to February	Negotiation of Agreement to Lease terms and conditions	DPTI Rod Hook ¹¹	Tom Koutsantonis Minister for Housing and Urban Development
February	Agreement to Lease signed	DPTI Rod Hook	Jay Weatherill Minister for the Arts

¹¹ Rod Hook ceased performing the role of CE DPTI on 9 May 2014.

Date	Event	Agency/Chief Executive	Minister
August	SA Government approved CE Renewal SA, CE DPTI and representative from Crown Solicitor's Office managing negotiations with the Walker Corporation	Renewal SA John Hanlon ¹² DPTI Michael Deegan ¹³	John Rau Minister for Housing and Urban Development
2015			
February	SA Government approved CE Renewal SA leading negotiations with the Walker Corporation	Renewal SA John Hanlon	John Rau Minister for Housing and Urban Development
March	Key Commercial Term Agreement signed	Renewal SA John Hanlon	Jack Snelling Minister for the Arts John Rau Minister for Housing and Urban Development
March 2015 to May 2016	Negotiation of Development Agreement terms and conditions	Renewal SA John Hanlon	John Rau (to 18 January 2016) Minister for Housing and Urban Development Stephen Mulligan (from 19 January 2016) Minister for Housing and Urban Development
2016			
May	Signing of Development Agreement	Renewal SA John Hanlon	Jack Snelling Minister for the Arts

¹² John Hanlon acted in the position of CE DPTI for the period 12 May 2014 to 18 July 2014 before being appointed to the position of CE Renewal SA on 21 July 2014.

¹³ Michael Deegan commenced in the position of CE DPTI on 28 July 2014.

Appendix 3 – Areas where documentation could not be located

Expression of interest (EOI)

Compliance matters	Audit finding
The EOI requests registrants to submit three hard copies and an electronic copy on CD of their submission.	DPTI could not provide a hard copy of the submission for one of the proponents (only a CD copy was available).
The EOI requires each registrant to submit an EOI form with their submission declaring that the information contained in the submission is true and correct.	DPTI could not provide a copy of the EOI form for four of the 10 proponents that submitted an EOI.
DPTI policy and procedure requires a schedule of tenders to be prepared and signed by two authorised officers (ie officers responsible for opening the tenders).	DPTI could not provide a signed copy of the schedule of tenders.
DPTI policy and procedure requires an acknowledgement letter to be sent to each tenderer advising that their tender has been received.	DPTI could only provide an unsigned copy of this letter for each tenderer. As a result we could not determine if the letters were sent and when they were sent.
DPTI policy and procedure requires a minute detailing the number of tenders received to be sent to the Evaluation Panel Chairperson.	DPTI could not provide a signed copy of the minute to the Evaluation Panel Chairperson.
The EOI Evaluation Plan requires that, following the approval of the shortlisted tenderers, the unsuccessful tenderers will be notified.	DPTI could not provide evidence that formal notification of the outcome of the EOI process was provided to the unsuccessful tenderers.

Request for proposal (RFP) – Stage 1

Compliance matters	Audit finding
The RFP Stage 1 Evaluation Plan indicates that following approval of the shortlisted tenderers, the unsuccessful tenderers will be notified.	DPTI could not provide evidence that formal notification was sent to the unsuccessful applicants advising the outcome of the RFP Stage 1.

Request for proposal (RFP) – Stage 2¹⁴

Compliance matters	Audit finding
The RFP Stage 2 Evaluation Plan required each panel member to provide an overall subjective assessment of the merits of the proposal against the evaluation criteria.	DPTI could not provide copies of the individual evaluation sheets for each panel member.

¹⁴ The submission from the Walker Corporation received on 1 October 2013.

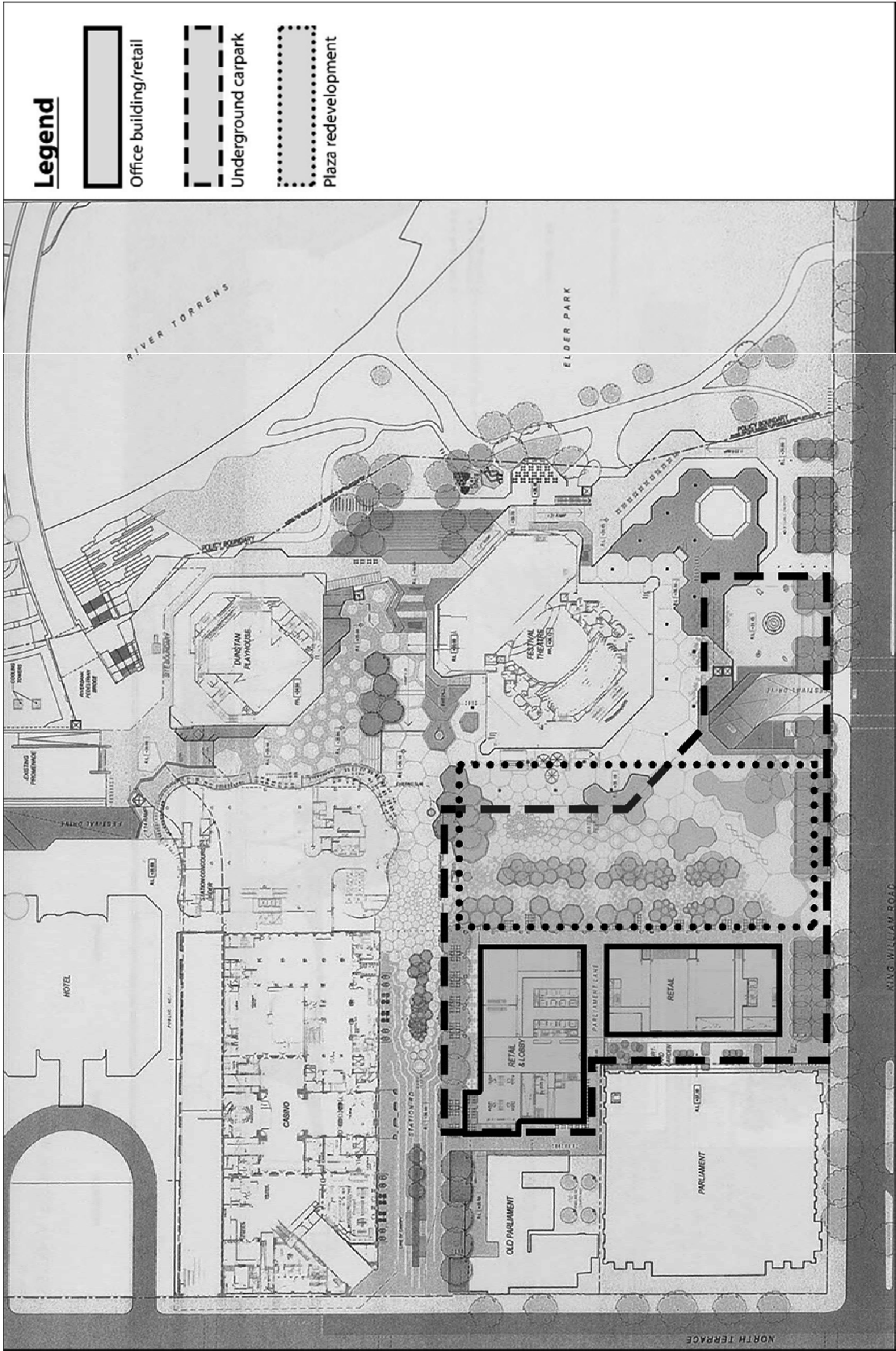
Appendix 4 – Extensions to exclusivity period

Date	Extensions granted to the Walker Corporation
2012	
15 November	<p>On 30 October 2012 the then CE DPTI advised the Walker Corporation had been shortlisted to advance to Stage 2 of the RFP and requested that it confirm its acceptance of the arrangements to proceed with the process by 15 November 2012.</p> <p>On 15 November 2012 the Walker Corporation sought an extension of one week to confirm its acceptance of the SA Government's offer. The Director Strategic Projects DPTI granted the Walker Corporation's request to extend the acceptance date to 22 November 2012. The Walker Corporation accepted the arrangements on 21 November 2013. As a result the 20-week exclusivity period provided to the Walker Corporation under the RFP was to end on 22 April 2013.</p>
2013	
2 August	<p>The Walker Corporation submitted its proposal on 20 April 2013 which was considered by the Evaluation Panel. On 3 July 2013 the then CE Renewal SA advised the Walker Corporation that the SA Government was unable to proceed with the proposal to the final phase of Stage 2 (negotiation and completion). In the letter the Walker Corporation was invited to participate in workshops to seek clarification and obtain feedback and extended an opportunity to revise its proposal.</p> <p>On 2 August 2013 the CE Renewal SA invited the Walker Corporation to provide additional information to support its proposal by 29 August 2013.</p>
12 September	<p>The Walker Corporation wrote to the then CE Renewal SA on 15 August 2013 requesting that the deadline for providing additional information (ie 29 August 2013) be extended to 30 September 2013. Further, on 2 September 2013 the Walker Corporation wrote to the Minister for Housing and Urban Development (Mr Koutsantonis) requesting that the deadline be extended to a date no less than two weeks after the date of finalising the ministerial Development Plan Amendment process.</p> <p>On 12 September 2013 the then CE Renewal SA responded to the request on behalf of the then Minister for Housing and Urban Development and granted one additional extension of time to 1 October 2013 to provide the additional information. The Walker Corporation submitted its revised proposal on 1 October 2013.</p>

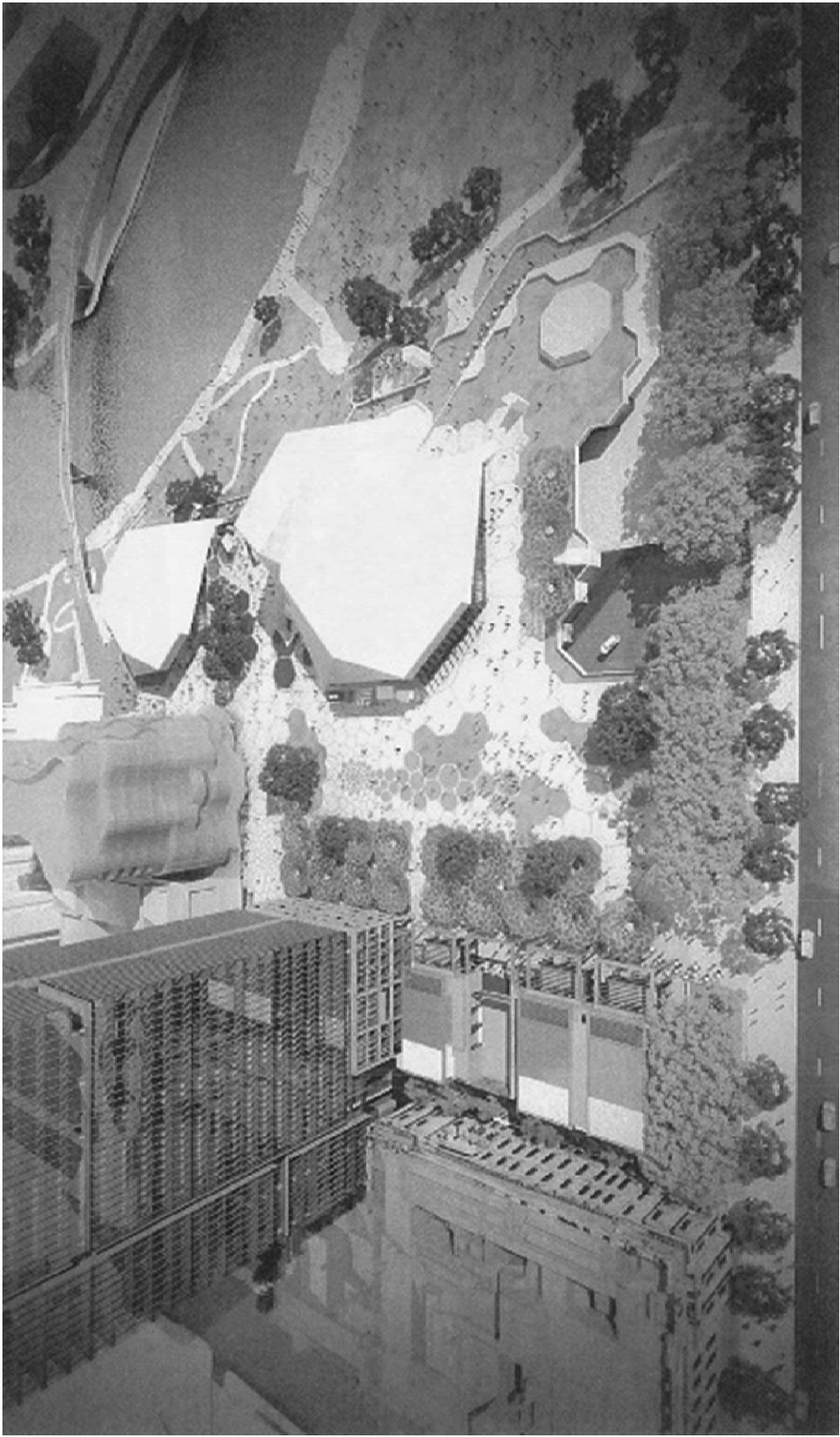
Date	Extensions granted to the Walker Corporation
22 November	<p>On 4 November 2013 the SA Government approved to reject the proposal and amend the RFP terms and conditions to extend the RFP Stage 2 process and engage in further discussions (for the car park only) with the Walker Corporation to determine if there was sufficient confidence that it was able to achieve the key outcomes required by the SA Government.</p> <p>On 22 November 2013 the CE Renewal SA wrote to the Walker Corporation advising it had until 27 November 2013 to accept the SA Government approved amendments to the RFP and it had to submit a revised proposal by 11 December 2013. The revised RFP terms and conditions indicated that the SA Government may conduct direct discussions or negotiations with any shortlisted proponent including dealing simultaneously with several proponents for the same or different parts of the project. However, on 27 November 2013 the then CE DPTI emailed the Walker Corporation advising that the timelines outlined in the 22 November 2013 Renewal SA letter would have no effect and the Minister would respond separately on timelines relevant to an extension of exclusivity.</p>
11 December	<p>On 11 December 2013 the then DPTI CE wrote to the Walker Corporation confirming that it had agreed to participate in direct and exclusive discussions for the car park development. The Walker Corporation was also advised that the SA Government would review its progress by 31 January 2014.</p> <p>The Walker Corporation then entered into the Agreement to Lease (for the car park development only) on 11 February 2014 which granted then a further 12 months exclusivity (due to expire on 15 February 2015).</p>
2015	
13 March	<p>On 13 March 2015, a Key Commercial Term Agreement was signed between the Walker Corporation, the Minister for the Arts and the Minister for Housing and Urban Development for the car park and above ground development. The agreement extended the right of exclusivity to 10 August 2015.</p>
12 August	<p>The Walker Corporation wrote to the CE Renewal SA on 10 August 2015 noting that its right of exclusivity for the project technically was due to expire that day and that it was seeking the right of exclusivity in dealing with the SA Government to be honoured for so long as the Walker Corporation continued to work with Renewal SA and all relevant stakeholders to develop the proposal.</p> <p>On 12 August 2015 the CE Renewal SA wrote to the Walker Corporation honouring the ongoing continuation of the right of exclusivity subject to the Walker Corporation continuing to develop the proposal.</p>

Appendix 5 – Diagrams of project development site

Map of the project development site showing the key elements



Visual impression of the proposed development



Appendix 6 – Key differences between the Key Commercial Terms and the Development Agreement

Area	Key Commercial Terms provision	Development Agreement provision
Car park		
Definition of car park	The car park is defined as a new six-level underground car park which is to be constructed in place of the existing car park on a portion of the Integrated Development Land.	<p>The car park as is defined as a new underground car park of 1560 spaces which is to be constructed on the car park development land under this Agreement.</p> <p>The car park is to have at least the following number of car parks:</p> <ul style="list-style-type: none"> • 400 car parks which are to be subleased to the State • the number of car parks that Skycity has committed to sublease • any additional car parks required by the Development Approval. <p>The car park plans annexed to the Development Agreement indicate that car park will have five levels.</p>
Skycity car park sublease	A condition precedent to entering the Development Agreement was that the Walker Corporation was required to grant Skycity a legally binding option for Skycity to sublease at least 1000 car park spaces.	A condition precedent is the Walker Corporation and Skycity entering into a legally binding agreement for Skycity to sublease 750 car park spaces or such other number as may be agreed between those parties.
Commencement date of the car park lease	The Integrated Development Lease Term to expire on 4 March 2085, being the date of expiration of the Skycity lease.	The State will grant the Walker Corporation the car park lease over the car park development land for a term which will expire on 4 March 2085.
Car park cost to the State	The State will pay Walker \$30 million (GST exclusive) as consideration for the use of 400 car parks in one lump sum payment of \$30 million at the commencement of the State sublease.	The State will pay the Walker Corporation \$30 million (GST exclusive) as consideration for the use of 400 car parks under the car park sublease in one lump sum payment as rent in advance.
Office building		
Grade of office building	The office building was required to be a premium A grade office building.	The office building must incorporate a combination of premium grade and grade A presentation and services.

Area	Key Commercial Terms provision	Development Agreement provision
Maximum height of the office building	The office building was required to be no more than 24 levels with a maximum of 40 000 m ² net lettable area and a gross footprint of 2236 m ² .	No height limit imposed, however, the office building shall have a maximum of 40 000 m ² net lettable area and a gross footprint of 2236 m ² .
Construction commencement date	Construction to commence as soon as practicable after binding pre-commitments have been entered into with tenants for not less than 60% of the office building but within six years of commencement of the integrated car park development lease.	Construction to commence within six years of the commencement of the car park lease. A condition precedent to construction of the office building is that the Walker Corporation achieves binding pre-commitments from tenants to lease at least 60% of the office building but the Walker Corporation is not obliged to commence construction of the office building for up to six years of commencement of the car park lease.
Leasing pre-commitments	The Walker Corporation to procure a legally binding pre-commitment for an entity of sufficient reputation to relocate or expand its offices from interstate to the office building for an area of not less than 10 000 m ² for a period of at least 10 years.	The 10 000 m ² pre-commitment can be made up of pre-commitments from multiple tenants and each pre-commitment can be for a term of five years with a five year renewal option.
Retail area		
Construction commencement date	Construction of retail area to commence within six years of commencement of the Integrated Car Park Development Lease.	Construction of retail area to commence within six years of commencement of car park lease. A condition precedent to construction of the retail area is that Walker Corporation achieved binding pre-commitments from tenants to lease at least 60% of the office building.
Use	Retail area to be used for purposes which reflect its location and approved by the State.	The Development Agreement includes a list of permitted uses for the retail area that will be acceptable to the State without the need for further approval.
Public realm		
Design responsibility	The public realm was to be designed by the State.	The public realm will be designed by the State in consultation with the Walker Corporation and ultimately approved by the State.

Area	Key Commercial Terms provision	Development Agreement provision
Design sign off	The design of the public realm was to include the scope of works and specification in the Development Agreement.	The Development Agreement will include an initial development a preliminary scope of works to be considered by the parties when finalising the design of the public realm and the detailed public realm scope of works.
Other		
Financial arrangements	<p>The Walker Corporation to pay the State \$40 million (GST exclusive) as consideration for the grant of the Integrated Car Park Development Lease, Office Building Lease, Retail Development Lease and Construction Licence and for the right to construct the Integrated Development.</p> <p>The Walker Corporation to apply this \$40 million payment on a progress payment basis for the payment of contractors engaged by the Walker Corporation to construct the Public Realm.</p>	<p>The Walker Corporation shall procure the payment of \$40 million (GST exclusive) to the State and the State will in turn contribute funding up to the amount of the received lease payment towards incurred construction costs of the public realm works. The lease payment obligation will be apportioned as follows:</p> <ul style="list-style-type: none"> • \$12 million for the car park • \$25.2 million for the office • \$2.8 million for the retail area. <p>The relevant Walker Corporation entity will pay its proportion of the lease payment plus GST to the State progressively not less than 10 business days prior to the time payment of an authorised invoice is due.</p>
Remediation costs	The Walker Corporation to carry out all remediation works at the State's cost and direction.	The Walker Corporation is responsible for a specified amount of remediation costs. The State is liable to fund all remediation costs in excess of that amount.
Condition precedent to State entering into Development Agreement	The State must be satisfied with the Walker Corporation's preliminary program and preliminary concept plans for construction of the Integrated Development.	The concept plans will be annexed to the Development Agreement. The final program will be approved as approved as a condition precedent to commencement of construction.

Appendix 7 – Images presented by the Chief Executive of Renewal SA



PRE-EXPENDITURE

EXISTING FESTIVAL PLAZA - Undeveloped





STATION ROAD

COMPLETION OF STATION ROAD IMPROVEMENT

ARM
ARCHITECTURE



NEW PLAZA

ADDITION OF PLAZA & RETAIL OVER CARPARK ONLY

ARCM
ARCHITECTURE



COMPLETE RIVERBANK PRECINCT

OVERALL COMPLETION OF FESTIVAL PLAZA, CARPARK AND PUBLIC REALM

ARMI
ARCHITECTURE

Appendix 8 – Abbreviations used in this Report

Acronym	Description
AFC	Adelaide Festival Corporation
ATL	Agreement to Lease
CE	Chief Executive
DPA	Development Plan Amendment
DPC	Department of the Premier and Cabinet
DPTI	Department of Planning, Transport and Infrastructure
EOI	Expression of interest
ESC	Executive Steering Committee
KCT	Key Commercial Term
PIP	Construction Procurement Policy: Project Implementation Process
Renewal SA	Urban Renewal Authority
RFP	Request for proposal
SP Act	<i>State Procurement Act 2004</i>
The Project	Redevelopment of the Adelaide Festival Centre car park
TI 17	Treasurer's Instruction 17 'Evaluation of and Approvals to Proceed with Public Sector Initiatives