

INTER-COUNCIL AGREEMENT

Fleurieu Regional Aquatic Centre

CITY OF VICTOR HARBOR

ALEXANDRINA COUNCIL



Level 15, 45
Pirie Street
Adelaide SA

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Amendments:

Schedule 2 and 4 amended 3 June 2016 – elected member and staff name changes.
 Approved G. Maxwell (NEM3891916) and P. Dinning (IEM10152116)_ 3 June 2016.

Schedule 2 and 3 amended 14 September 2016 – staff name changes.
 Approved G Maxwell and P.Dinning

DATE

PARTIES

City of Victor Harbor of PO Box 11, Victor Harbor SA 5211 (**CVH**)

Alexandrina Council of PO Box 21, Goolwa SA 5214 (**AC**)

BACKGROUND

- A. CVH and AC are both councils constituted under the *Local Government Act 1999* (SA) (**LG Act**).
- B. CVH and AC have worked together over a number of years to investigate the possibility of establishing a regional aquatic centre for the benefit of constituents of, and visitors to, their council areas.
- C. In 2007 CVH and AC signed a Memorandum of Understanding to progress investigations in relation to site, funding and construction opportunities for a regional aquatic centre.
- D. CVH and AC identified land on the corner of Waterport Road and Ocean Road, Hayborough, South Australia as a potential site for a regional aquatic centre. Specially, CVH and AC identified a 2 hectare portion of land forming part of the land comprised in Certificate of Title Volume 6082 Folio 451 (**Land**), being land currently owned by Grove One Pty Ltd as trustee for the Steven Wright Family Trust and trading as “Environmentally Sustainable Developments” (**Landowner**).
- E. Subsequently, CVH and AC entered into a Heads of Agreement with the Landowner (**Heads of Agreement**) which includes an option for CVH and AC to purchase the Land for \$1 (**Option**).
- F. CVH and AC have, amongst other things, commissioned for the purposes of the FRAC Project:
 - (a) a business case report prepared by SGL consulting group;
 - (b) a prudential report for the purposes of section 48 of the LG Act prepared by BRM Holdich.
 - (c) a concept design prepared by Brown Falconer (**Concept Design**); and
 - (d) landscape character and visual assessment.
- G. CVH and AC have, amongst other things, prepared for the purposes of the FRAC Project:
 - (a) Regional Development Australia Fund round 4 (April 2013) grant funding application;
 - (b) South Australian Office of Recreation and Sport infrastructure grant funding application (April 2013); and

- (c) project risk management plan (**Risk Management Plan**).
- H. The FRAC Project will comprise:
 - (a) CVH and AC acquiring the Land; and
 - (b) the design and construction of the FRAC on the Land.
- I. As part of the FRAC Project, CVH will apply for all development approvals for the FRAC. AC will be the relevant authority under the *Development Act 1993* in respect of CVH's application.
- J. It is anticipated that a regional subsidiary will be established for the on-going operation of the FRAC.
- K. CVH and AC now enter into this agreement to record the terms of their agreement and commitment to the FRAC Project.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

Auditor means an auditor appointed pursuant to clause 13.4.

Business Day means a day that is not a Saturday, Sunday or public holiday in South Australia.

CEOs means the City Manager of CVH and the Chief Executive of AC.

Commencement Date has the meaning given to it in clause 2.

Concept Design has the meaning given to it in Recital F(c).

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.

Data means information directly or indirectly relating to this agreement and/or the FRAC Project and includes software (including source code and object code versions) manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, market research, information, correspondence, letters, warranties and manufacturer's information and data sheets, personal identification numbers (PINS) and access codes for security and alarm systems, and papers of every description including all copies of and extracts from them.

Deliverables means all documents, equipment, software, information and Data produced or supplied as part of the FRAC Project.

Force Majeure Event means an event beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

FRAC means the Fleurieu Regional Aquatic Centre as envisaged by the desired outcomes detailed in Schedule 4.

FRAC Project means all actions and activities required for the design and construction of the FRAC.

Funding Agreements means all funding agreements entered into by CVH and AC for Commonwealth and South Australian Government funding, and any funding from any other source, for the FRAC Project.

Heads of Agreement has the meaning given to it in Recital E.

Independent Expert means a suitably qualified expert in a relevant field in relation to the subject matter on which a dispute has arisen and who has no current or prior relationship with any party to the dispute which could reasonably impact on the expert's ability to consider the dispute impartially.

Intellectual Property Rights includes property and rights in respect of or in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, design, inventions (including patents), semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights (including all renewals and extensions) whether created before or on or after this agreement.

Invoices means all invoices received by CVH and AC pursuant to contracts entered into for the FRAC Project.

Land has the meaning given to it in Recital D.

Landowner has the meaning given to it in Recital D.

LG Act means the *Local Government Act 1999 (SA)*.

Option has the meaning given to it in Recital E.

PCG means the project control group detailed in Schedule 2 to this agreement.

Procurement Policy has the meaning given to it in clause 11.1.

Project Account has the meaning given to it in clause 13.2.

Project Manager means the person described in clause 6.2.

PWP has the meaning given to it in clause 10.1.

Regional Subsidiary means a regional subsidiary established pursuant to section 43 of the LG Act for the FRAC Project or any part of it, and for the on-going operation of the FRAC.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to this agreement includes any schedules and annexures to this agreement;
- 1.2.7 a reference to a document includes that document as varied, novated or replaced from time to time;
- 1.2.8 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.9 a provision is not construed against a party only because that party drafted it;
- 1.2.10 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 1.2.11 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.12 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by the Act at the date of this agreement;
- 1.2.13 a reference to the "parties" or the "councils" is a reference to CVH and AC.

1.3 Background

The Background forms part of this agreement and is correct.

2. TERM OF AGREEMENT

Unless otherwise agreed by the parties in writing, the operation of this agreement will commence on the date on which the last of the parties to this agreement executes this

agreement (**Commencement Date**) and will continue until it is terminated by a party or the parties in accordance with this agreement.

3. **PURPOSE OF AGREEMENT**

The parties have entered into this agreement to record the terms and conditions on which they have agreed to work together on the FRAC Project and the parties agree that this agreement is intended to be legally binding on them.

4. **OBJECTIVES FOR THE FRAC**

The joint objectives of the parties for the FRAC, subject to the funding being obtained as described in clauses 8.3, 8.4 and 8.5, are as set out in Schedule 1 to this agreement.

5. **AUTHORITY**

5.1 The parties acknowledge and agree that they each enter into this agreement pursuant to, and in accordance with, a resolution of their council.

5.2 In entering into this agreement, each of CVH and AC authorises their respective CEOs, or their delegates, to undertake and complete all tasks required by, and for the proper operation of, this agreement.

6. **GOVERNANCE STRUCTURE**

6.1 **Governance Structure**

Unless otherwise agreed or changed by the parties in writing, the parties agree that the groups detailed in Schedule 2 and reporting lines detailed in Schedule 5 have been established by the councils for the management and implementation of each part of the FRAC Project. The staff appointed to the positions, entities and groups detailed in Schedule 5 have the responsibilities in relation to the FRAC Project assigned to them in Schedule 5 for each of the stages of the FRAC Project.

6.2 **Project Manager**

Unless otherwise agreed or changed by the parties in writing, the Buildings Manager from AC will be appointed by CVH and AC as the project manager for the FRAC Project and will be supported in this role by the Senior Building Officer from CVH as the assistant project manager. The Senior Building Officer from CVH will act in the role of project manager during any period of absence of the AC Buildings Manager.

6.3 **Delegations**

CVH and AC acknowledge that all persons and groups required to do acts pursuant to this agreement have been duly authorised to do those acts.

7. **OWNERSHIP OF FRAC PROJECT PROPERTY AND CONTRACTS**

7.1 **Land**

7.1.1 CVH and AC together have the Option to purchase the Land.

- 7.1.2 CVH and AC must use their reasonable endeavours to do everything necessary to exercise the Option.
- 7.1.3 Subject to clause 7.1.4, following CVH and AC exercising the Option, CVH and AC will be the registered proprietors of the Land as tenants in common.
- 7.1.4 If a Regional Subsidiary has been established in accordance with clause 16 prior to CVH and AC exercising the Option, then the Regional Subsidiary will be the registered proprietor of the Land.

7.2 **Contracts**

- 7.2.1 All contracts, agreements and other documents required for the purposes of the FRAC Project for and on behalf of CVH and AC with any other person will be in the joint names of CVH and AC, unless and until a Regional Subsidiary is established after which time all contracts, agreements and other documents required for the purposes of the FRAC Project will be in the name of the Regional Subsidiary.
- 7.2.2 If and when a Regional Subsidiary is established, CVH and AC must ensure that all contractual warranties, guarantees, rights and obligations for the FRAC Project are novated to the Regional Subsidiary and the parties must ensure that all contracts entered into by CVH and AC for the FRAC Project contain provisions which enable this to occur at a reasonable cost.

8. **PROJECT CONTRIBUTIONS**

8.1 **CVH Contributions**

- 8.1.1 CVH will contribute the following to the FRAC Project:
 - 8.1.1.1 up to \$6.5 million; and
 - 8.1.1.2 in kind contributions as required for the completion of the FRAC Project, which is estimated at the date of this agreement as being valued at \$300,000.

8.2 **AC Contributions**

- 8.2.1 AC will contribute the following to the FRAC Project:
 - 8.2.1.1 up to \$6.5 million; and
 - 8.2.1.2 in kind contributions as required for the completion of the FRAC Project, which is estimated at the date of this agreement as being valued at \$300,000.

8.3 **Alexandrina Arts Committee Contribution**

CVH and AC acknowledge that they have received a gift of \$20,000 from D Investment Share Club trading as Alexandrina Arts Committee for the FRAC Project.

8.4 **Commonwealth Government Funding**

- 8.4.1 CVH and AC have applied for \$8 million in funding from the Commonwealth Government, through the Regional Development Fund, for the FRAC Project (**Commonwealth Government Funding**).
- 8.4.2 If CVH and AC are unsuccessful in securing the Commonwealth Government Funding within 6 months of the Commencement Date, the parties must meet on one or more occasions and negotiate in good faith to agree:
 - 8.4.2.1 how they will progress the FRAC Project without the Commonwealth Government Funding; or
 - 8.4.2.2 to delay the FRAC Project in order to seek other external funding for the FRAC Project; or
 - 8.4.2.3 to abandon the FRAC Project.

8.5 **South Australian Government Funding**

- 8.5.1 CVH and AC have applied to the South Australian Government for \$500,000 in funding for the FRAC Project (**State Government Funding**).
- 8.5.2 If CVH and AC are unsuccessful in securing the State Government Funding then clause 8.6 will apply as required for the completion of the FRAC Project.

8.6 **Shortfall in Funding**

Any funding required for the completion of the design and construction of the FRAC in addition to the funding committed to the FRAC Project outlined in clauses 8.1 to 8.5 (inclusive) is to be provided in equal shares by CVH and AC.

9. **GENERAL OBLIGATIONS OF THE PARTIES**

- 9.1 CVH and AC agree to use their reasonable endeavours to do everything necessary to progress and complete the FRAC Project within the timeframe required by the Funding Agreements (or such other date as is agreed by the parties in writing).
- 9.2 CVH and AC agree to use their reasonable endeavours to comply with all requirements of the Funding Agreements and all other requirements of contracts entered into in accordance with this agreement for the FRAC Project.
- 9.3 CVH and AC agree to use their reasonable endeavours to comply with all requirements of the Heads of Agreement.

10. **MEETINGS**

- 10.1 CVH and AC must convene a project working party (**PWP**), which must attend regular meetings through the term of this agreement to discuss and agree on matters relating to the FRAC Project.

- 10.2 Without limiting clause 10.1, CVH and AC agree to the meeting schedule outlined in Schedule 3 to this agreement.

11. PROCUREMENT OF GOODS AND SERVICES

11.1 How Procurements Will be Carried Out

All goods and services required for the FRAC Project will be procured in accordance with the procurement policy in Schedule 6 to this agreement (**Procurement Policy**) and in the manner determined by the CEOs.

11.2 Compliance with Policies

Unless otherwise agreed by the parties, the parties must ensure that they comply with the Procurement Policy when undertaking all procurement for the purposes of the FRAC Project.

12. STATUTORY APPROVALS

- 12.1 CVH must apply for and use reasonable endeavours to obtain all statutory approvals, including all approvals under the *Development Act 1993 (SA)* (**D Act**), required for the FRAC Project and enter into all agreements required to secure such approvals.
- 12.2 Without limiting clause 12.1, CVH must apply for and use reasonable endeavours to obtain approval under the D Act for Development Application 455/289/13 and enter into all agreements required to secure such approval.
- 12.3 The parties acknowledge that AC is the relevant authority under the D Act for all approvals required for the FRAC Project under the D Act, as per the letter from the Department of Planning, Transport and Infrastructure dated 14 August 2013.
- 12.4 All activities required by a condition of a statutory approval granted for the FRAC Project and by any agreement required for the grant of a statutory approval for the FRAC Project form part of the FRAC Project.
- 12.5 The equal sharing of all costs of the FRAC Project as outlined in clause 13 applies notwithstanding that CVH and AC may undertake certain tasks and enter into certain agreements individually as required by this clause 12.

13. FINANCE ARRANGEMENTS

13.1 Primary Responsibility

- 13.1.1 The parties agree that CVH will have primary responsibility for the management of the finances for the FRAC Project.
- 13.1.2 For the purposes of, but without limiting, clause 13.1.1, CVH is responsible for:
- 13.1.2.1 receiving invoices, arranging assessment and, if required, approval of invoices by the Project Manager and/or the CEOs as required by the Procurement Policy and arranging payment of approved Invoice amounts;

- 13.1.2.2 rendering invoices to AC for 50 percent of all approved invoice amounts and receiving and processing payment from AC;
 - 13.1.2.3 receiving and processing funding payments and reimbursing AC for 50 percent of all funding payments;
 - 13.1.2.4 in conjunction with AC and the PCG the continuous monitoring, adjustment and refinement of budgets and projected cash flows against the actual FRAC Project expenses;
 - 13.1.2.5 preparing reports on FRAC Project finances as required by the Funding Agreements and AC and the Auditor; and
 - 13.1.2.6 providing advice and recommendations to the PWP and the audit committees of CVH and AC in respect of the above when required.
- 13.1.3 CVH and AC must each track their own in-kind contributions to the FRAC Project and must provide this information as required to the other party on request.
- 13.1.4 AC must provide CVH with all information required by CVH to enable CVH to complete its obligations pursuant to clauses 13.1.1 and 13.1.2.
- 13.1.5 CVH must not incur any expenses for or on behalf of CVH and AC for the FRAC Project unless such expenses are either included in the budget agreed by CVH and AC or otherwise with the prior consent of the CEOs (subject to financial delegations) or both councils.

13.2 **Separate Account**

- 13.2.1 CVH must maintain a separate account with the Local Government Finance Authority for the FRAC Project (**Project Account**) once any of the funding detailed in clauses 8.4 and 8.5 is received.
- 13.2.2 All payments and receipts for the FRAC Project will be processed via CVH's general operative account and will be reconciled with the account described in clause 13.2.1 monthly.

13.3 **Operation of Account**

All funds received or expended for or on account of the FRAC Project must be credited or debited to the Project Account in the manner described in clause 13.2.

13.4 **Auditor**

As soon as possible after the Commencement Date, the parties must jointly appoint an auditor for the FRAC Project. If the parties are unable to agree on an auditor then either party may apply to the Local Government Finance Authority to appoint an auditor for the FRAC Project.

13.5 Reimbursement of CVH by AC

13.5.1 AC must pay CVH 50 percent of all Invoice amounts paid by CVH for the FRAC Project on receipt of, and in accordance with, a tax invoice for this contribution from CVH.

13.5.2 CVH must reimburse AC for 50 percent of all funding amounts received by CVH for the FRAC Project.

13.6 Periodic Accounting

CVH must cause to be prepared monthly and also upon the conclusion of the FRAC Project detailed statements of all moneys received together with accounts showing income and outgoings of the FRAC Project.

13.7 Annual Accounts and Financial Statement

As soon as reasonably practicable (and in any event not later than four calendar months) after the expiry of each Financial Year during the FRAC Project CVH must cause a profit and loss account and a balance sheet for the FRAC Project to be prepared and submitted to the audit committees of both CVH and AC and the elected members of AC and CVH via the CEOs for their endorsement;

13.8 Audit

The annual accounts and statements prepared by CVH or on behalf of CVH and AC for the FRAC Project must if required by either of the parties, or as otherwise required by any Funding Agreements, be audited by the Auditor.

14. REPORTING OBLIGATIONS

14.1 CVH and AC must each provide assistance to the other to ensure that all reports required to be prepared and submitted pursuant to Funding Agreements are prepared and submitted within the timeframes required by the Funding Agreements.

14.2 CVH and AC must each provide assistance to the other to ensure that all reports required by each of the parties for their own administration are prepared and submitted in accordance with agreed timeframes.

15. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS AND DELIVERABLES

Except as otherwise provided for in this agreement or otherwise agreed by the parties, CVH and AC acknowledge and agree that all Intellectual Property Rights and Deliverables created in relation to the FRAC and the FRAC Project will be jointly owned by CVH and AC and CVH and AC are permitted to use, and may only use, the Intellectual Property Rights and Deliverables for the purposes of the FRAC and the FRAC Project.

16. ESTABLISHMENT OF A REGIONAL SUBSIDIARY

16.1 CVH and AC acknowledge and agree to establish a Regional Subsidiary.

- 16.2 CVH and AC must use reasonable endeavours to progress the establishment of a Regional Subsidiary prior to the commencement of the operation of the FRAC.

17. DISPUTE RESOLUTION

17.1 Resolution by negotiation

If there is a dispute between the parties relating to a matter under this agreement or otherwise in respect of the FRAC Project, the aggrieved party must serve a notice on the other party setting out the nature of the dispute (**Notice of Dispute**). The parties must then make every effort to resolve the dispute by negotiation.

17.2 Reference to CEOs

If the dispute cannot be resolved within 10 Business Days of service of the Notice of Dispute, the parties must refer the matter to their respective CEOs who must meet within 15 Business Days of the service of the Notice of Dispute who must negotiate in good faith to resolve the dispute.

17.3 Reference to Independent Expert

17.3.1 If the dispute cannot be resolved within 10 Business Days of a meeting or the first meeting convened by the respective CEOs of the parties pursuant to clause 17.2, the parties must refer the matter to a mutually agreed Independent Expert for determination.

17.3.2 If the parties cannot agree upon an Independent Expert, then either party may request that one of the following be appointed to resolve the dispute:

17.3.2.1 in the case of the dispute concerning a legal matter, a practising barrister or solicitor having at least seven years current and continuous practice in South Australia appointed by the President for the time being of the Law Society of South Australia; or

17.3.2.2 in any other case, any other suitably qualified expert nominated by the President for the time being of the Law Society of South Australia.

17.4 Written submission

The written submission of the dispute to the Independent Expert must state the specific matter to be determined together with all other reasonably relevant matters and must be accompanied by a copy of this agreement and all other agreements that have been entered into by CVH and AC for the FRAC Project that are relevant to the dispute.

17.5 Procedures

The Independent Expert must give due weight to any representations put forward by a party within any time limit prescribed by the Independent Expert. The Independent Expert must give reasons for determination. The parties must

supply the Independent Expert with any requested information, assistance and co-operation.

17.6 Costs

Unless otherwise provided in this agreement or the Independent Expert otherwise determines in their absolute discretion, the fees and expenses of the Independent Expert must be borne by the parties to the dispute in equal shares.

17.7 Conclusiveness of report

The Independent Expert acts as an independent expert, not an arbitrator. The Independent Expert's decision is conclusive and final and binding on the parties to the dispute (except in the case of manifest error).

17.8 Urgent relief

Nothing in this clause prevents a party from seeking urgent injunctive and/or equitable relief before an appropriate court.

18. COMMUNICATIONS AND ANNOUNCEMENTS

CVH and AC agree that the communications protocol forming Schedule 7 to this agreement applies to this agreement and the FRAC Project and each party must comply with this protocol. CVH and AC must also communicate with the community about the FRAC Project as detailed in Schedule 4 to this agreement.

19. COMPLIANCE WITH FUNDING AGREEMENTS

Each party must use its best endeavours to ensure that all requirements on either or both of the parties under all Funding Agreements are complied with.

20. COMPLIANCE WITH HEADS OF AGREEMENT

Each party must use its best endeavours to ensure that all requirements on either or both of the parties under all Heads of Agreement are complied with.

21. MANAGEMENT OF RISKS

CVH and AC must ensure that risks are managed in accordance with the Risk Management Plan and that a risk register is maintained and reviewed at least monthly by the PCG and the PWP for the duration of the FRAC Project.

22. TERMINATION

22.1 Termination for Breach

22.1.1 A party may terminate this agreement with immediate effect by giving notice to the other party if:

22.1.1.1 that other party fails to pay any sum of money within 20 Business Days after that date such payment fell due under this agreement;

22.1.1.2 that other party breaches any other provision of this agreement and fails to remedy the breach within 20 Business Days after receiving notice requiring it to do so;

22.1.1.3 that other party breaches a material provision of this agreement where that breach is not capable of remedy.

22.2 **Termination on Establishment of Regional Subsidiary**

Unless otherwise agreed by the parties, this agreement will automatically terminate, without any notice being required, immediately after a Regional Subsidiary is established for the FRAC by the parties, and approved by the Minister, pursuant to section 43 of the LG Act.

23. **FIDUCIARY RELATIONSHIP**

Each of CVH and AC acknowledges and agrees with the other that by virtue of its execution of this agreement it has entered into a fiduciary relationship with the other party and each of the parties in their dealings with the other in connection with the FRAC Project must act diligently and in good faith so as to give to the other the full benefit of the fiduciary relationship.

24. **NO PARTNERSHIP**

Nothing in this agreement is to be construed to imply that the relationship of partners exists between CVH and AC who hereby expressly declare acknowledge and agree that no such relationship between them is created or is intended to be created by this agreement.

25. **GENERAL**

25.1 **No Commission Salaries or Fees**

No salaries, fees, commissions or other remuneration for any services rendered to or for the FRAC Project by CVH or AC or their officers or employees will be paid or payable by the FRAC Project to any of the parties or to any of their officers or employees.

25.2 **FRAC Project Liabilities**

Each of the parties must pay and discharge punctually their separate debts and obligations respectively and at all times must indemnify the other party against any claim arising there from.

25.3 **No Sale Transfer Assignment or Mortgage**

Other than is expressly provided in this agreement, each of the parties acknowledges and agrees that the Land and other assets of the FRAC Project must not be sold, transferred, assigned, mortgaged, pledged, charged or otherwise dealt with without the prior approval of both CVH and AC.

26. **CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION**

26.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any

purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:

- 26.1.1 keep confidential;
- 26.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
- 26.1.3 maintain proper and secure custody of; and
- 26.1.4 not use or reproduce in any form,

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this agreement.

- 26.2 The *Freedom of Information Act 1991* (SA) (**FOI Act**) gives members of the public rights to access council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by the councils subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the councils and other public authorities.
- 26.3 The parties each consent to any disclosures made as a result of either of the parties complying with their obligations under the FOI Act, subject to any legally required consultation.

27. **FORCE MAJEURE**

- 27.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:
 - 27.1.1 neither party is liable for such delay or failure; and
 - 27.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.
- 27.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
 - 27.2.1 notify the other party as soon as possible giving:
 - 27.2.1.1 reasonably full particulars of the Force Majeure Event;
 - 27.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
 - 27.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - 27.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;

- 27.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
 - 27.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
 - 27.2.5 notify the other party when resumption of performance occurs.
- 27.3 If a delay or failure under this clause exceeds 60 days, either party may immediately terminate this agreement by notice to the other party.

28. MISCELLANEOUS

28.1 Alteration

- 28.1.1 This agreement may be altered only in writing signed by each party and provided that the alteration has been authorised by resolutions of both parties.
- 28.1.2 Notwithstanding clause 28.1.1, any or all of the schedules or annexures to this agreement may be altered by agreement of the CEOs.

28.2 Approvals and consents

Unless otherwise provided, a party must not unreasonably withhold or delay any approval or consent under this agreement.

28.3 Assignment

The rights powers discretions privileges duties and obligations of each of the parties in this agreement are personal to the respective parties a party must not assign or otherwise deal with this agreement or any right under it.

28.4 Entire agreement

This agreement:

- 28.4.1 constitutes the entire agreement between the parties about its subject matter; and
- 28.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

28.5 Waiver

A waiver of a provision of or right under this agreement:

- 28.5.1 must be in writing signed by the party giving the waiver; and
- 28.5.2 is effective only to the extent set out in the written waiver.

28.6 Exercise of power

28.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

28.6.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

28.7 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

28.8 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

28.9 Governing law

28.9.1 This agreement is governed by the law in South Australia.

28.9.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

29. GST

29.1 In this clause an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given to it in that Act.

29.2 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply is increased by an amount equal to the GST payable by the supplier on the supply.

29.3 A party need not make a payment for a taxable supply under or in connection with this agreement until it receives a tax invoice for the supply.

30. NOTICES

30.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

30.1.1 in writing, in English and signed by a person authorised by the sender; and

30.1.2 hand delivered or sent by pre paid post, facsimile or email to the recipient's address or facsimile number specified below, as varied by any Notice given by the recipient to the sender.

30.2 At the date of this agreement, the addresses and facsimile numbers for Notices are:

City of Victor Harbor
Address: PO Box 11, Victor Harbor SA 5211
Facsimile no: (08) 8551 0501
Email: localgov@victor.sa.gov.au
Attention: Director, Corporate and Community Services

Alexandrina Council
Address: PO Box 21, Goolwa SA 5214
Facsimile no: (08) 8555 3603
Email: alex@alexandrina.sa.gov.au
Attention: General Manager, Organisation and Culture

30.3 A Notice is deemed to be received:

- 30.3.1 if hand delivered, on delivery;
- 30.3.2 if sent by prepaid mail, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);
- 30.3.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;
- 30.3.4 if sent by email, at the time and on the day shown in the sender's server, if it shows that the notice was sent or otherwise routed to the person's electronic address or server last notified, and has not been rejected or returned by such server.

However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

30.4 If two or more people comprise a party, Notice to one is effective Notice to all.

31. COSTS

- 31.1 The parties must equally share the costs of negotiating, preparing and executing this agreement and any document required by it.
- 31.2 The parties must pay (within the time permitted by statute) equal shares of the stamp duty and other government charges in respect of this agreement and any document and transaction required or contemplated by it for the FRAC Project.

EXECUTED as an agreement

The common seal of City of Victor Harbor was affixed in the presence of:

.....
Signature of Mayor

.....
Signature of City Manager

.....
Name of Mayor (print)

.....
Name of City Manager (print)

The common seal of Alexandrina Council was affixed in the presence of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer

.....
Name of Mayor (print)

.....
Name of Chief Executive Officer (print)

Schedule 1 – Desired Outcomes

Schedule 1 to Inter-Council Agreement

Fleurieu Regional Aquatic Centre (FRAC) Project - Project Desired Outcomes

This schedule details the project desired.

The project is subject to external grant funding. As at April 2013, the agreed project outcomes are construction of an environmentally sustainable indoor aquatic centre consisting of:

-) an 8 lane, 25 metre lap swimming pool;
-) a multi-use rehabilitation, leisure and children’s pool;
-) a crèche facility;
-) a commercial kiosk; incorporating feature deck with views to wetland and open space surrounds;
-) plant and equipment rooms;
-) office accommodation;
-) dedicated change rooms and toilet facilities;
-) first aid and lifeguard rooms; and
-) dedicated car parking, bus parking, pedestrian linkages and traffic management.

This schedule can be amended subject to the approval of both Councils and external funding partners.

Schedule 2 – Groups Structure

Schedule 2 to Inter-Council Agreement

Fleurieu Regional Aquatic Centre (FRAC) Project Governance Structure – Incumbents schedule

This schedule details the incumbents of the Project Working Party (PWP), Project Management Group (PMG) and the Project Control Group (PCG) and is subject to change as follows:

-) by resolution of Council in relation to the appointment of Elected Members from their Council
-) by agreement of both Council's Chief Executive Officer in relation to staff
-) by appointment in accordance with adopted procurement policies in relation to external subject matter experts.

Project Working Party (PWP)	
Mayor Graham Philp	City of Victor Harbor (CVH)
Mayor Keith Parkes	Alexandrina Council (AC)
Cr Pat Chigwidden	City of Victor Harbor
Cr Terry Andrews	City of Victor Harbor
Cr Grant Gartrell	Alexandrina Council
Cr Madeline Walker	Alexandrina Council
Mr Graeme Maxwell	Chief Executive Officer, City of Victor Harbor
Ms Victoria MacKirdy	Acting Chief Executive, Alexandrina Council

1. The position of chair is rotated between the two Mayors as is the venue of the meetings between the two Councils with the host Council undertaking both Chairperson and agenda/minute duties.
2. The Chief Executive Officer's executive assistant would normally provide secretarial support. Ms Karina Overall, CVH and Ms Margaret Terrell, AC.
3. Staff from the PCG invited to attend PWP as required.
4. Other Elected Members of both Council's invited to observe PWP meetings.

The Project Management Group (PMG) is made up of the Project Manager, Architect and Construction Manager as well as any subject matter experts as required (e.g. quantity surveyor, engineer, pool specialists) to deliver the project.

FRAC Project Management Group (PMG)	
Project Manager, AC (Chair)	Mr David Moyle
Architect	Hames Sharley & DWP Suters
Construction Manager	Kennet Pty Ltd
<i>Subject Matter Experts</i>	<i>as required</i>

The Project Control Group is made up of staff from both Councils comprising three core teams and additional staff subject matter experts as required. The Project Control Group supports the Project Working Party and the Project Management Group. The CEOs lead the

Project Control Group and Project Management Group and retain accountability for these groups.

FRAC Project Control Group (PCG) - Governance	
Director Corporate & Community Services, CVH (Chair) A/General Manager Infrastructure & Assets, AC A/General Manager Organisation & Culture, AC Project Manager, AC Communications Officer, AC Communications Officer, CVH Administration Officer, CVH <i>Subject Matter Experts</i>	Ms Kate Jessep Mr Simon Grenfell Ms Elizabeth Williams Mr David Moyle Ms Kelly Robinson Ms Michelle James Ms Lisa Manhire <i>as required including Legal Representatives, Finance Managers, Director E&I CVH, Senior Buildings Officer CVH.</i>

FRAC Project Control Group (PCG) - Reporting	
Project Manager, AC (Chair) Finance Manager, CVH A/Finance Manager, AC <i>Subject Matter Experts</i>	Mr David Moyle Ms Kellie Knight-Stacey Mr Grant Jennings <i>as required</i>

FRAC Project Control Group (PCG) - Procurement	
Procurement Officer, CVH (Chair) Project Manager, AC Finance Manager, CVH Director Corporate & Community Services, CVH A/ General Manager Infrastructure & Assets, AC Local Government Association (LGA) Procurement Panel# <i>Subject Matter Experts*</i>	Ms Dana Bradshaw Mr David Moyle Ms Kellie Knight-Stacey Ms Kate Jessep Mr Simon Grenfell <i>As appointed</i> <i>as required</i>

1. Administrative support provided as required by CVH Corporate Administration Officer – Ms Lisa Manhire
2. *may include consultant SMEs.
3. # LGA Procurement Panel may be used in lieu of council staff as per Project Procurement Policy.

FRAC Project Control Group (PCG) – Subject Matter Experts	
Director Environment & Infrastructure, CVH Finance Manager, CVH A/Finance Manager, AC Infrastructure Manager, CVH Infrastructure Manager, AC ICT Manager, CVH IT Manager, AC Manager Community Services, CVH (joint services AC) Star Club Field Officer (joint services to CVH and AC) Director Planning & Regulatory, CVH Manager Planning, AC Policy Planner, CVH <i>Other Subject Matter Experts</i>	Mr Glenn Sandford Ms Kellie Knight-Stacey Mr Grant Jennings Mr Bruce Henderson Mr Stewart Ratcliff Mr Daniel Brinkworth Mr Ryan Hill Mr Mark Oliphant Mr Jeremy Bell Mr Graham Pathius Ms Sally Roberts Mr David Read <i>as required</i>

Schedule 3 – Meeting Schedule

Schedule 3 to Inter-Council Agreement

Fleurieu Regional Aquatic Centre (FRAC) Project Governance Structure – Meeting schedule

This schedule details the meeting requirements for the Project Working Party (PWP) and the Project Control Group (PCG) and is subject to change by agreement of both Council's Chief Executive Officers.

Project Working Party (PWP)	
Regular	Second Tuesday of the month – 10am
Special	As required.
Standing agenda items:	
<ul style="list-style-type: none"> - Project – outcomes, timelines, budget - Project Risk - Project Reporting - Project Procurement 	

1. The position of chair is rotated between the two Mayors as is the venue of the meetings between the two Councils with the host Council undertaking both Chairperson and agenda/minute duties.
2. The Chief Executive Officer's executive assistant would normally provide secretarial support. Ms Karina Overall, CVH and Ms Margaret Terrell, AC.
3. Staff from the PCG invited to attend PWP as required.
4. Other Elected Members of both Council's invited to observe PWP meetings.

FRAC Project Control Group (PCG) - Governance	
Regular	First Tuesday of the month – 9 am
Special	As required
Standing agenda items:	
<ul style="list-style-type: none"> - Project – outcomes, timelines, budget - Project Risk - Project Reporting - Project Procurement - Agenda items for the PWP 	

FRAC Project Control Group (PCG) - Reporting	
Regular	At least quarterly or as required to meet Council and Funding reporting requirements.
Standing agenda items:	
<ul style="list-style-type: none"> - Federal funding milestone reporting - State funding milestone reporting - PWG / Audit Committee / Council reporting 	

FRAC Project Control Group (PCG) - Procurement	
See Project Gantt Chart	

Schedule 4 - Consultation Plan

Schedule 4 to Inter-Council Agreement

Fleurieu Regional Aquatic Centre (FRAC) Project Communications Plan

Introduction

Alexandrina Council and the City of Victor Harbor will provide regular updates to stakeholders and the community about the Fleurieu Regional Aquatic Centre (FRAC).

Stakeholders

-) State and Federal Governments
-) Elected Members
-) Community groups
-) Ratepayers and residents

Branding

All communication and marketing materials relating to the Fleurieu Regional Aquatic Centre will use consistent joint branding. Templates for external and internal communications will be provided to each council.

Key messages

Key messages will be prepared by communications officers and distributed to elected members and council staff at various project milestones. Key messages will be approved by the Chief Executive (Alexandrina) and Chief Executive Officer (Victor Harbor) prior to distribution.

Evaluation

The success of this communications plan can be measured by the following key performance indicators:

-) Take up of key messages in the media;
-) Attendance at meetings and related community events;
-) Feedback on communications from members of the public.

Points of Contact

Alexandrina Council	Kelly Robinson Communications Officer kelly.robinson@alexandrina.sa.gov.au 8555 7084 / 0488 555451	Simon Grenfell General Manager Environment and Infrastructure simon.grenfell@alexandrina.sa.gov.au 8555 7000
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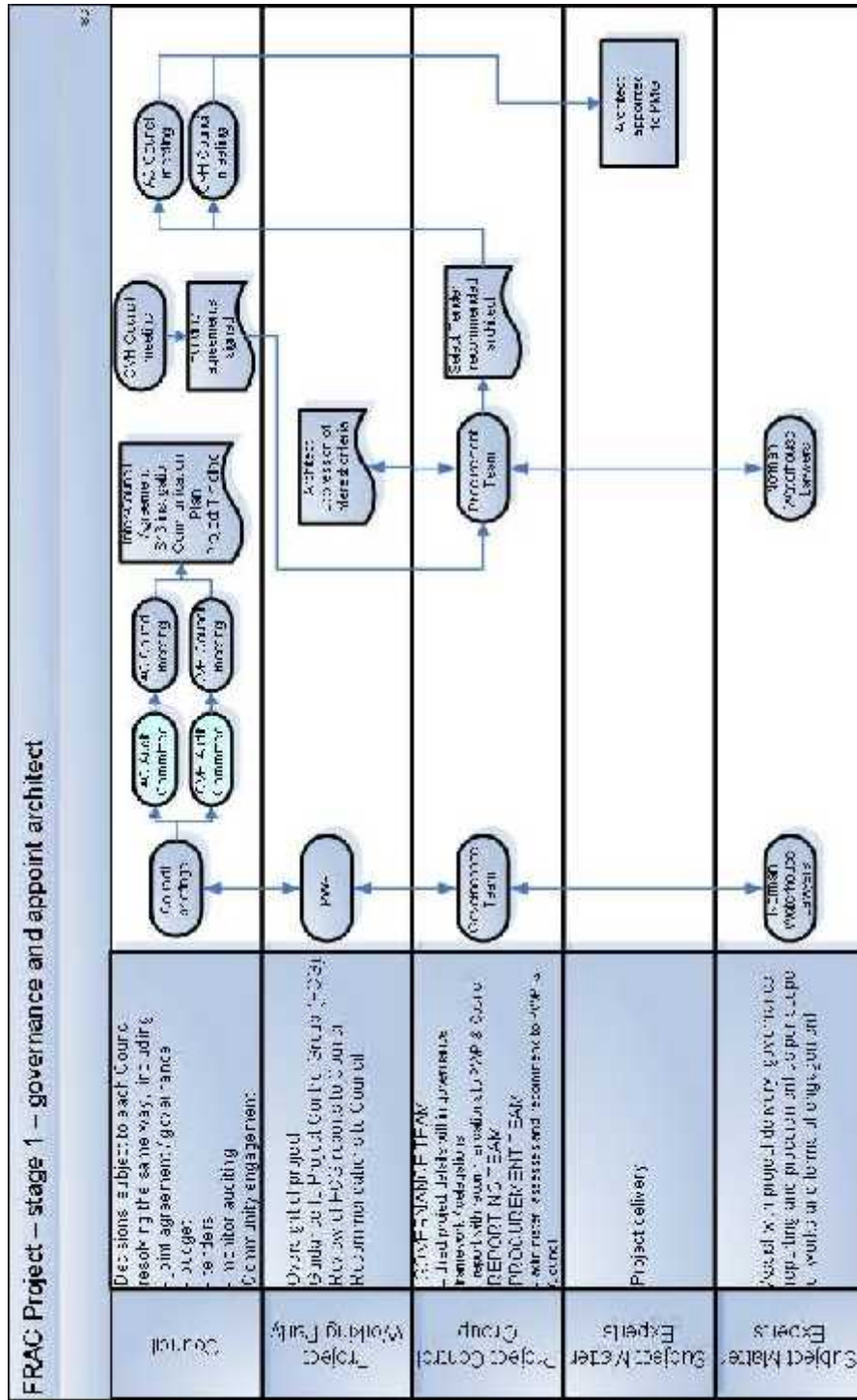
City of Victor Harbor	Michelle James Communications Officer mjames@victor.sa.gov.au 8551 0588 / 0400 391 386	Kate Jessep Director Corporate and Community Services kjessep@victor.sa.gov.au 8551 0511 / 0457 839 969
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Communications Matrix

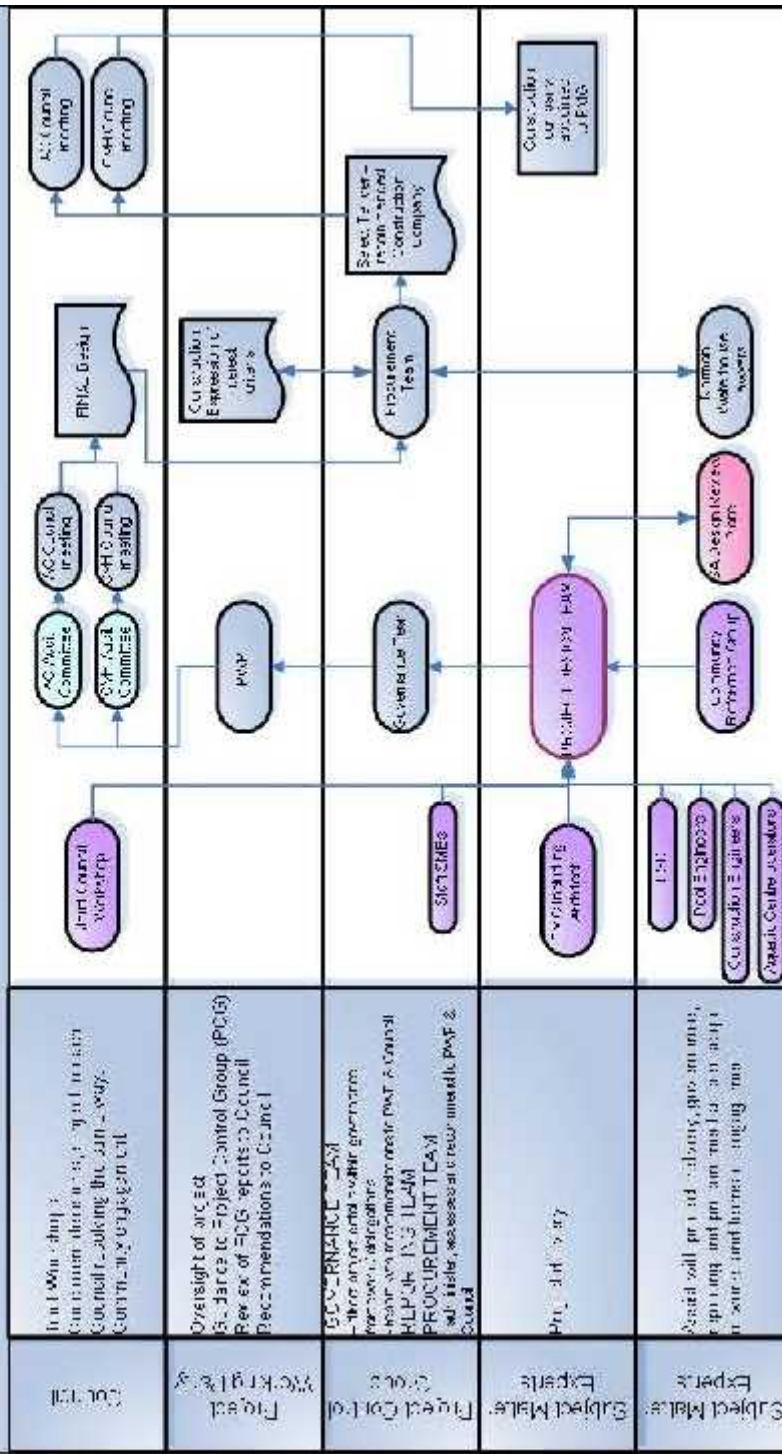
Communication	Description	Responsible
Meetings	<ul style="list-style-type: none">) Project Governance team meetings between Alexandrina Council and City of Victor Harbor.) Joint Working Party meetings.) Regular meetings between communications officers. 	Project Governance Team, Joint Working Party members, communications officers.
Monthly progress report	<p>A monthly progress report will be prepared for the project the first week of the month. The progress report will include:</p> <ul style="list-style-type: none">) updated photos;) new construction;) any delays/time improvements and reasoning. <p>The monthly report will be available on each council's website, My Say Alexandrina, Victor Viewpoint, in council offices, libraries and via media outlets. (Budget CVH – 58840)</p>	Communication officer (Alexandrina), supported by communications officer (Victor Harbor).
Website	<p>Information about the project will be displayed on each council's website.</p> <p>Information updates will include:</p> <ul style="list-style-type: none">) updated photos;) key messages;) monthly progress report;) all working party minutes (after adoption by councils);) media releases;) advertising; and) any other communications material developed throughout the project. 	Communications officer (Alexandrina), communications officer (Victor Harbor).
Newsletters	<p>Each council newsletter will feature a relevant update on the progress of the Fleurieu Regional Aquatic Centre with photos.</p> <p>Alexandrina Council newsletter:</p> <ul style="list-style-type: none">) Printed quarterly (Jan, Apr, Jul, Oct);) A4 full colour, 8 pages;) Minimum one page each edition to be dedicated to FRAC progress. <p>Victor Viewpoint:</p> <ul style="list-style-type: none">) Monthly edition dedicated to FRAC. 	Communications officer (Alexandrina), communications officer (Victor Harbor).
Media releases	<p>Media releases to feature new developments and project milestones.</p> <p>Media release deadlines for local papers (can be flexible if arrangements are made</p>	Communication officer (Alexandrina), supported by communications

	<p>These ads will follow the same approval process as public notices.</p> <p>A proof will be required for all advertising from the newspapers.</p> <p>Public notice advertising deadlines:</p> <ul style="list-style-type: none">)] The Times – 10am Wednesday (but if a proof is required 4pm Tuesday).)] The Southern Argus – 5pm Monday. <p>General advertising deadlines:</p> <ul style="list-style-type: none">)] The Times – TBC.)] The Southern Argus – TBC. <p>All advertising will be costed to budget line CVH – 58840.</p>	
Communication	Description	Responsible
Council meetings	During the construction and monitoring phase monthly milestone reports will be presented to each council.	
Internal communications	<p>Alexandrina Council:</p> <ul style="list-style-type: none">)] Monthly updates will be posted as a news article on Council’s <i>Connect</i> site with current progress photos.)] Any additional updates can be posted as an announcement on <i>Connect</i>.)] General Manager Environment and Infrastructure (or delegated staff member) to provide a brief verbal update at each General Staff Meeting.)] Managers to provide brief updates to staff at department meetings on progress (information can be used from <i>Connect</i> or General Staff Meeting). <p>City of Victor Harbor:</p> <ul style="list-style-type: none">)] Monthly updates will be forwarded as email with current photos.)] Any future intranet - area dedicated to monthly updates with current photos.)] Director Corporate and Community Services (or delegated staff member) to provide brief verbal update at monthly All Staff meeting.)] Managers to provide brief progress updates to staff at department meetings. 	<p>Communications Officer Alexandrina, General Manager Environment and Infrastructure, Chief Executive Officer</p> <p>Communications Officer Victor Harbor, Director Corporate and Community Services, Chief Executive Officer.</p>

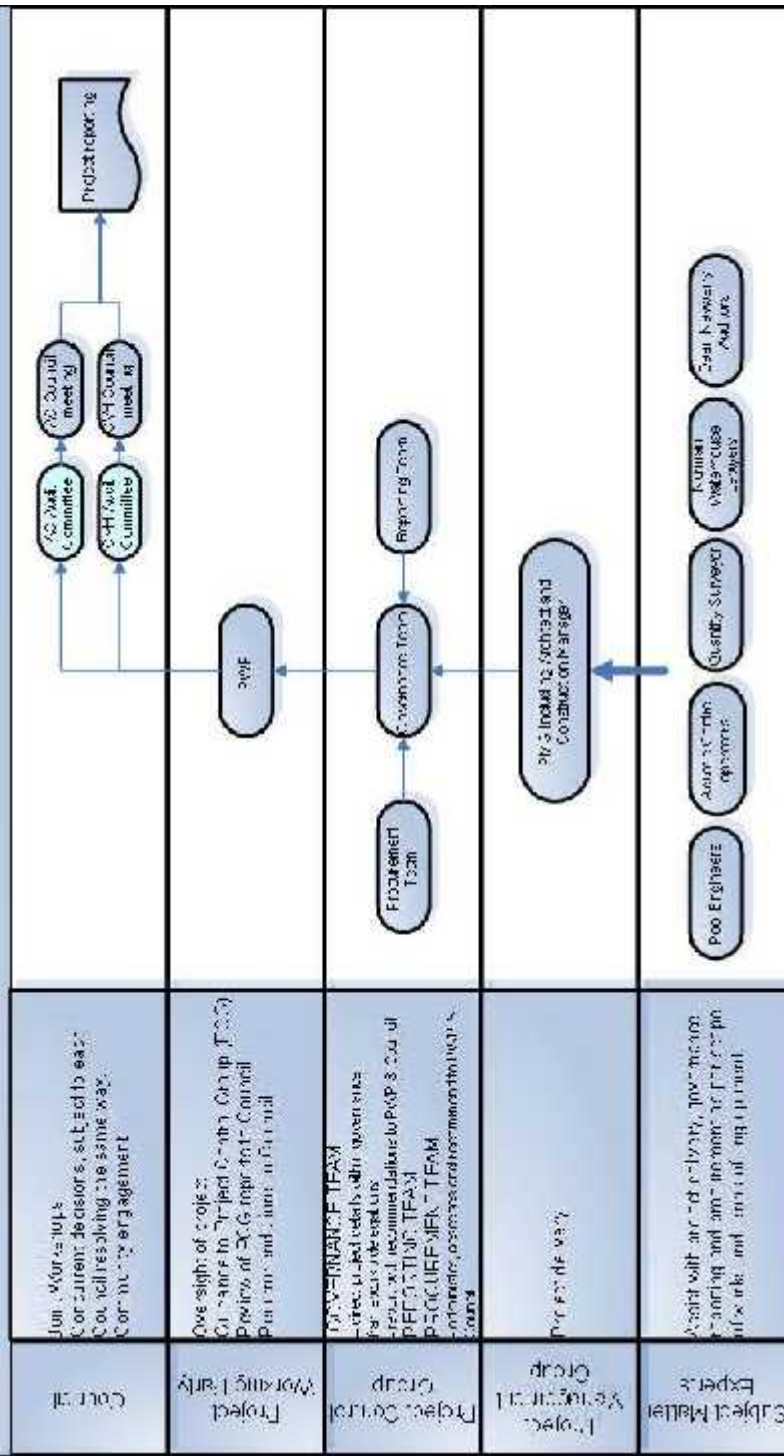
Schedule 5 – Governance Structure



FRAC Project – stage 2 – design and appoint construction company



FRAC Project – stage 3 – construction





Fleurieu Regional Aquatic Centre Procurement Policy

Responsibility	Project Control Group - Governance
Effective date	28 October 2013
Last revised date	28 October 2013
File references	City of Victor Harbor Council – Alexandrina Council -
Next review date	28 October 2015
Related Legislation and Documentation	Local Government Act (SA) 1999, s.49 Local Government Act (SA) 1999, s.48 Work Health and Safety Act and Regulations (SA) 2012 Alexandrina Council and City of Victor Harbor Fleurieu Regional Aquatic Centre Section 48 (Prudential) Report

This Fleurieu Regional Aquatic Centre (FRAC) Procurement Policy has been set up to specifically guide the process of the procurement of goods and services in relation to all phases of design and construction of the FRAC Project (the Project), and the agreement between the City of Victor Harbor and the Alexandrina Councils.

1. INTRODUCTION

- 1.1 In compliance with Section 49 of the Local Government Act (SA) 1999, the Fleurieu Regional Aquatic Centre (FRAC) should refer to this policy when acquiring goods and services.
- 1.2 Section 49 of the Act requires Councils to prepare and adopt policies on contracts and tenders on:
 - 1.2.1 the contracting out of services
 - 1.2.2 competitive tendering and the use of other measures to ensure that services are delivered cost-effectively
 - 1.2.3 the use of local goods and services wherever possible.
- 1.3 Furthermore, Section 49 (a1) of the Act requires Councils to develop and maintain policies, practices and procedures directed towards:
 - 1.3.1 obtaining value in the expenditure of public money
 - 1.3.2 providing for ethical and fair treatment of participants
 - 1.3.3 ensuring probity, accountability and transparency in all operations.
- 1.4 This Policy seeks to:
 - 1.4.1 define the methods by which Councils can acquire goods and services
 - 1.4.2 demonstrate accountability and responsibility of Councils to ratepayers
 - 1.4.3 be fair and equitable to all parties involved
 - 1.4.4 enable all processes to be monitored and recorded
 - 1.4.5 ensure that the best possible outcome is achieved for the Councils.
- 1.5 However, this Policy does not cover:
 - 1.5.1 non-procurement expenditure such as sponsorships, grants, funding arrangements, donations and employment contracts

1.5.2 the disposal of land and other assets owned by the Councils

1.5.3 the purchase of land by the Councils.

2. **POLICY OBJECTIVE**

Councils aims to achieve advantageous procurement outcomes by:

- 2.1 enhancing value for money through fair, competitive, non-discriminatory procurement
- 2.2 promoting the use of resources in an efficient, effective and ethical manner
- 2.3 making decisions with probity, accountability and transparency
- 2.4 advancing and/or working within both Councils economic, social and environmental policies
- 2.5 providing reasonable opportunity for competitive local businesses to supply the project
- 2.6 use existing LGA Procurement panel arrangements and documentation wherever possible
- 2.7 appropriately managing risk
- 2.8 ensuring compliance with all relevant legislation.

3. **PROCUREMENT PRINCIPLES**

Councils must have regard to the following principles in its acquisition of goods and services:

3.1 *Encouragement of open and effective competition*

3.2 *Obtaining Value for Money*

3.2.1 This is not restricted to price alone.

3.2.2 An assessment of value for money must include, where possible, consideration of:

3.2.2.1 the contribution to Councils' long term plan and strategic direction

3.2.2.2 any relevant direct and indirect benefits to Councils, both tangible and intangible

3.2.2.3 efficiency and effectiveness of the proposed procurement activity

3.2.2.4 the performance history, and quality, scope of services and support of each prospective supplier

3.2.2.5 fitness for purpose of the proposed goods or service

3.2.2.6 whole of life costs

3.2.2.7 Councils' internal administration costs

3.2.2.8 technical compliance issues

3.2.2.9 risk exposure

3.2.2.10 the value of any associated environmental benefits.

3.3 *Probity, Ethical Behaviour and Fair Dealing*

Councils are to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations.

3.4 *Accountability, transparency and reporting*

3.5 *Ensuring compliance with all relevant legislation*

3.6 *Encouragement of the development of competitive local business and industry*

Where the evaluation criteria are comparable, consideration may be given to the following:

- 3.6.1 the creation of local employment opportunities
- 3.6.2 increased availability of local servicing support
- 3.6.3 increased convenience with communications with the supplier for contract management
- 3.6.4 economic growth within the local area
- 3.6.5 benefit to Councils of associated local commercial transaction
- 3.6.6 the short and long term impact of the procurement on local business.

3.7 *Environmental protection*

Councils will seek to:

- 3.7.1 adopt purchasing practices which conserve natural resources
- 3.7.2 align the Councils procurement activities with principles of ecological sustainability
- 3.7.3 purchase recycled and environmentally preferred products where possible
- 3.7.4 integrate relevant principles of waste minimisation and energy
- 3.7.5 foster the development of products and services which have a low environmental impact
- 3.7.6 provide leadership to business, industry and the community in promoting the use of environmentally sensitive goods and services.

3.8 *Workplace Health & Safety*

- 3.8.1 All procurement will be undertaken with consideration of the Work Health and Safety Act and Regulations (SA) 2012.

4. **PROCUREMENT METHODS**

Value of Purchase (\$)	Possible Method of Procurement	
Less than \$4,999	Direct purchase or At least 3 written quotations for higher risk items	
\$5,000 to \$99,999	Request for Quotation (RFQ)	Request for Expression of Interest (REOI) and then RFQ or RFT.
Over \$100,000	Request for Tender (RFT) through Council websites and Tenders SA	

Generally, open and fair competition is best achieved by undertaking a tender process so that all interested parties have an opportunity to bid. However, there may be procurements in which a tender process will not necessarily deliver the most efficient and effective outcome. In such instances, other market approaches may be more appropriate.

The Project Control Group may, having regard to any other factors considered relevant by the Councils, in its absolute discretion determine to utilise one or more of the following procurement methods:

Direct Purchasing

Purchase from a single source, without first obtaining competing bids.

4.1.1 This method may be suitable for low value, low risk goods and services, and where the supplier already has a successful service history with the Councils.

4.1.2 Direct purchases may be made by staff who have the authority to purchase goods and services less than \$4,999 directly from suppliers if:

4.1.2.1 Provision exists in the current budget for the purchase

4.1.2.2 Staff undertaking the direct purchase are satisfied that the price is competitive, and that the supplier is the preferred or sole supplier of the goods and/or services

4.1.2.3 In all cases, suppliers must provide their Australian Business Number (ABN) and a tax invoice.

4.1.3 Payment options for direct purchasing include: petty cash, credit card and trade accounts.

4.2 *Request for Quotations (RFQ)*

4.2.1 Written quotations are obtained from prospective suppliers.

4.2.2 Generally, quotations for purchases between \$5,000 and \$99,999 and in the absence of some form of tender must be sought from at least three separate and independent providers. These quotations are then registered in the Councils Records Management Systems in the FRAC Project Procurement file (no. FI.210).

4.2.3 This method may be suitable for simple, largely price-based purchases.

4.2.4 A "Short Form Request for Quotation" can be used for purchases with minimal specifications.

4.2.5 A "Long Form Request for Quotation" can be used for purchases with detailed specifications.

4.2.6 Quotations will be received, recorded, assessed and decided in the same manner as open tenders.

4.2.7 Seeking quotations are also an important aspect of budget planning, however, staff must make it clear to the supplier at all times that they are approaching for this purpose and that these quotations are for information only.

4.3 *Requests for Expressions of Interest (REOI)*

4.3.1 This is where Councils issues an open invitation for a proposed goods and/or service.

4.3.2 This method may be used where there is potentially a large market for the proposed goods and/or service, and the Councils would like to be able to prepare a short list of suppliers to then invite to participate in a tender process.

4.4 *Request for Tenders (RFT)*

4.4.1 A tender is issued for a proposed goods and/or service.

- 4.4.2 A 'Select' Request for Tender may be appropriate when a REOI has already been issued, or where it has reasonable grounds for only dealing with a select group of potential suppliers.
- 4.4.3 Requests for 'open' tender for works, services and purchases where the estimated net value of the procurements will be \$100,000 or more, will be advertised on the Council websites and the [Tenders SA](#) website.
- 4.4.4 Otherwise, Councils may issue an "Open" Request for Tender.
- 4.4.5 'Open' tenders should be used where the net value of the procurement is over \$50,000, and may be used where the net value of the procurement is between \$5,001 and \$49,999 if a high risk level is established.
- 4.4.6 Despite their technical availability for purchases below \$5,000, open tenders should not be used unless it is absolutely essential to do so, such as the circumstance of Community sensitivity.

4.5 *Panel contracts*

- 4.5.1 This is where the Councils establishes panel arrangements with a select group of suppliers – generally, this occurs once the Councils has completed its appointment of such suppliers in accordance with this Policy, and can include either:
 - 4.5.1.1 a standing offer from a pool of suppliers for the provision of goods and services on agreed terms
 - 4.5.1.2 the prequalification of certain suppliers who may or may not be engaged on terms to be agreed.
- 4.5.2 Once a panel has been established, the Councils may purchase the particular goods and/or service through such panel arrangements.

4.6 *Strategic alliances*

- 4.6.1 This is where the Councils undertakes procurement through contract arrangements already established and administered by other organisations, including:
 - 4.6.1.1 LGA Procurement;
 - 4.6.1.2 G6 Procurement Group;
 - 4.6.1.3 Procurement Australia;
 - 4.6.1.4 State Government contracts.

4.7 *External procurement service provider*

- 4.7.1 This is where the Councils have determined there are no existing contractual arrangements or strategic alliances in place and it is more efficient to engage an external procurement service provider to perform part or the whole tendering process for works, services and purchases where the estimated net value will be \$100,000 or more.

5. CONSIDERATIONS FOR THE COUNCILS

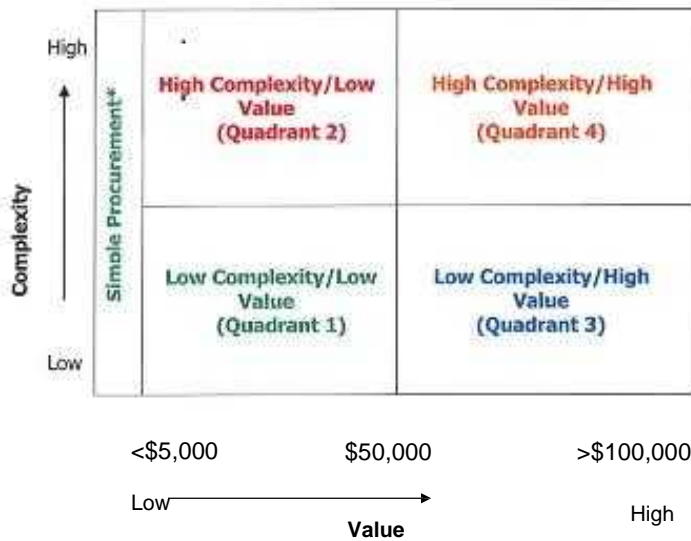
The appropriate method of procurement will be determined by reference to a number of factors, including:

5.1 *Value of the Purchase*

The value of the purchase will be calculated as follows:

- 5.1.1 *single one-off purchase* – the total amount, or estimated amount, of the purchase (ex GST)
- 5.1.2 *multiple purchases* – the gross value, or the estimated gross value, of the purchases (ex GST)
- 5.1.3 *ongoing purchases over a period of time* – the annual gross value, or the estimated annual gross value, of the purchases (ex GST).
- 5.2 *Where Panel or ‘Pool’ arrangements are in place, eg LGA Vendor Panel, these should be utilised where possible. Assessment should be made to ensure value for money will still be provided. This does not necessarily remove the need to issue a call for tenders.*
- 5.3 *Cost of an open market approach versus the value of the acquisition and the potential benefits.*
- 5.4 *The particular circumstances of the procurement activity.*
- 5.5 *The objectives of the procurement.*
- 5.6 *A global assessment of the risks associated with the relevant activity and /or project, including the risk profile of the procurement and any risks associated with the preferred procurement method.*

6. RISK



7. RECORDS

The Councils must record written reasons for utilising a specific procurement method in each activity and where it uses a procurement method other than tendering using the Council's Record Management System (CVH File No. FI.210; AC File No. 7.81.036).

8. EXEMPTIONS FROM THIS POLICY

This Policy contains general guidelines to be followed by the Project Control Group and the Project Manager in their procurement activities. There may be emergency purchases as approved by the CEOs, Project Control Group – Governance or the Project Manager in situations threatening life and property, or procurements in which a tender process would not necessarily deliver best value outcome for the Project.

9. DELEGATIONS

Value of Purchase \$	Financial Delegation	Procurement Delegation	Contract Delegation
Less than \$4,999	PM, PCG - Governance	PCG - Procurement	PMG, PCG - Governance
\$5,000 to \$99,999	PM, PCG - Governance	PCG - Procurement	PMG, PCG - Governance
Over \$100,000	PM, PCG - Governance	PCG - Procurement	Council Resolution

PM – Project Manager

PCG – Project Control Group - Governance

PCG – Project Control Group - Procurement

10. PRUDENTIAL REQUIREMENTS

As required under the Local Government (SA) Act, 1999, s.48, an Alexandrina and City of Victor Harbor Councils Fleurieu Regional Aquatic Centre Section 48 (Prudential) Report has been published and is available on Councils' website.

11. FURTHER INFORMATION

- 11.1 This Policy will be available on both City of Victor Harbor and Alexandrina Councils websites for public viewing.
- 11.2 This Policy will be required to be used for the duration of the Fleurieu Regional Aquatic Centre Construction Project.
- 11.3 Councils may revise or review this Policy at any time (but not so as to affect any process that has already commenced).

Schedule 7 – Communications Protocol

Schedule 7 to
Inter-Council Agreement

Fleurieu Regional Aquatic Centre (FRAC) Project Communications Protocol

This communications protocol outlines the process for approval and dissemination of information relating to the Fleurieu Regional Aquatic Centre. It ensures a controlled approach to communication and will aid in the delivery of clear, consistent messages.

This protocol applies to all communication relating to the Fleurieu Regional Aquatic Centre and all staff members of the Alexandrina Council and City of Victor Harbor must adhere to the processes set out in this document.

Responsibilities

-) The Communications Officer (Alexandrina) will lead the preparation of communications with support from the Communications Officer (Victor Harbor).
-) Councils will communicate with the community in accordance with the Communications Plan at *Schedule 4*.
-) Councils will ensure their project communication complies with the requirements of any State or Federal funding agreement.

Approval and endorsement of communications

-) All communications will be approved in the first instance by:
 - General Manager Environment and Infrastructure (Alexandrina Council); and
 - Director Corporate and Community Services (City of Victor Harbor).
-) After liaison with their Mayor, final approval of all communications must be given by:
 - Chief Executive (Alexandrina Council); and
 - Chief Executive Officer (City of Victor Harbor).

Branding

-) All communications relating to the Fleurieu Regional Aquatic Centre Project must use consistent joint branding.
-) Approved templates for external and internal communications will be provided to each council.

Media

-) Delegated spokespeople for the Fleurieu Regional Aquatic Centre are:
 - Mayor (Alexandrina Council);
 - Chief Executive (Alexandrina Council);
 - Mayor (City of Victor Harbor); and
 - Chief Executive Officer (City of Victor Harbor).
-) No other person may act as a spokesperson unless authorised by both the Chief Executive Officer (Alexandrina) and Chief Executive Officer (Victor Harbor).
-) Neither party (Alexandrina Council or City of Victor Harbor) will make independent public statements relating to the Fleurieu Regional Aquatic Centre.
-) All media enquiries relating to the Fleurieu Regional Aquatic Centre will be directed to the relevant communications officer who will then ensure their partner council is informed of both the enquiry and response.
-) All media releases will be sent to a distribution list specifically created for this project.

Accessibility

-) All communications released to the community will be posted on each councils' website in a timely manner.
-) All communications released to the community will be made available in hard copy at all public Council Offices.

Internal communications

-) The Chief Executive (Alexandrina Council) and Chief Executive Officer (City of Victor Harbor) are responsible for ensuring council staff are informed of the progress and developments throughout the duration of this project.

More information

Further enquires about this protocol should be directed to:

Alexandrina Council

Communications Officer
alex@alexandrina.sa.gov.au
8555 7000

City of Victor Harbor

Communications Officer
localgov@victor.sa.gov.au
8551 0500