

9.12. The Natural Burial Ground Trust of Australia - Draft Lease Consultation outcomes

C258/07/25

Moved Cr Sue Miller seconded Cr Craig Maidment

That Council:

- 1. Receive and note the contents of this report titled The Natural Burial Ground Trust of Australia - Draft Lease Consultation Outcomes.**
- 2. Receive and note the *National Burial Ground Trust of Australia - Community Engagement Report* as provided at Attachment 2 contained in this meeting agenda, on the proposed draft lease with The Australian Natural Burial Authority Inc. as trustee for The Natural Burial Ground Trust of Australia for a portion of the Old Goolwa Cemetery.**

CARRIED UNANIMOUSLY

C259/07/25

Moved Cr Christie Thornton seconded Cr Michael Scott

That Council:

- 1. Grant consent to a 42-year lease with The Australian Natural Burial Authority Inc. as trustee for The Natural Burial Ground Trust of Australia for use of the land located at the Old Goolwa Cemetery site, Kessell Road Goolwa, Crown Record Volume 5674 Folio 782, in accordance with the draft lease as provided at Attachment 1 contained in this meeting agenda.**
- 2. Authorise the Mayor and Chief Executive Officer to sign and seal the lease agreement.**

CARRIED UNANIMOUSLY

9.12. The Natural Burial Ground Trust of Australia - Draft Lease Consultation outcomes

Decision Report

Responsible Officer: Tash Hunt (General Manager Corporate)

Report Author: Lisa Hoyle (Manager Property and Procurement Services)

Previous Decisions: C157/05/25, August 2024 C24395 & C24396, 17 June 2024 C24253

Report Purpose

To receive the results from the community engagement and grant consent or otherwise, to a 42-year ground lease with the Natural Burial Ground Trust of Australia over a portion of the Old Goolwa Cemetery site on Kessel Road Goolwa.

Recommendation

Recommendation Group A

That Council

1. Receive and note the contents of this report titled The Natural Burial Ground Trust of Australia - Draft Lease Consultation Outcomes.
2. Receive and note the *National Burial Ground Trust of Australia - Community Engagement Report* at Attachment 2, on the proposed draft lease with The Australian Natural Burial Authority Inc. as trustee for The Natural Burial Ground Trust of Australia for a portion of the Old Goolwa Cemetery.

Recommendation Group B

That Council:

1. Grant consent to a 42-year lease with The Australian Natural Burial Authority Inc. as trustee for The Natural Burial Ground Trust of Australia for use of the land located at the Old Goolwa Cemetery site, Kessell Road Goolwa, Crown Record Volume 5674 Folio 782, in accordance with the draft lease provided at Attachment 1 of this Report.
2. Authorise the Mayor and Chief Executive Officer to sign and seal the lease agreement.

Background

For context, the land that forms the subject of this report is outlined in red below.



At the 17 June 2024 Council Meeting, a proposal from The Natural Burial Trust of Australia in partnership with the Nature Foundation was considered, with Council resolving (C24253) to proceed to community engagement to broadly establish the community's position on a natural burial site at the Old Goolwa Cemetery. Consultation was held between June and July 2024, with the outcomes received by Council at the 19 August 2024 Council Meeting. The consultation received 57 responses, with 95% in support and 5% against the establishment of a restoration natural burial.

At the 19 May 2025 Council Meeting, Council resolved (C157/05/25) to proceed to community engagement on the draft 42-year ground lease for tenancy of the site by the Natural Burial Trust of Australia.

C157/05/25

Moved Cr Michael Scott seconded Cr Craig Maidment

That Council:

- 1. Receive and note the contents of the report.**
- 2. Treat the proposed lease with The Australian Natural Burial Authority Inc. as trustee for The Natural Burial Ground Trust of Australia, as an exception to Councils' *Lease and Licence Policy* position of a maximum term of 21 years.**
- 3. Grant consent for The Australian Natural Burial Authority Inc. as trustee for The Natural Burial Ground Trust of Australia, to be the Cemetery Authority for the leased area, therefore managing all interments in accordance with the relevant legislation, should a lease be executed.**
- 4. Proceed to community engagement on a 42-year draft lease with The Australian Natural Burial Authority Inc. as trustee for The Natural Burial Ground Trust of Australia, for use of the land located at the Old Goolwa Cemetery site, Kessell Road, Goolwa, Crown Record Volume 5674 Folio 782, in accordance with the essential terms and conditions of the lease excerpt, as provided at Attachment 1 and the Community Engagement Plan as provided at Attachment 2 of this Report.**
- 5. Receive a further report on the full draft lease and outcomes of the community engagement process.**

CARRIED UNANIMOUSLY

Discussion

Community engagement was held between the 29 May and 20 June 2025 through advertising in the Victor Harbor times, Southern Argus, Fleurieu Sun and Council's MySay page. In addition, further notifications were sent to adjacent landowners, the adjacent lessee, the Department for Environment and Water (DEW), the Cemetery Advisory Committee and those persons that lodged a submission during the original consultation held between June and July 2024.

At the close of public consultation, 28 submissions had been received. The full submissions were provided to Council Members via the CM Portal, along with a summary of submissions, as outlined in **Attachment 2**.

Recommendation Group A seeks for Council to receive and note the community engagement submissions with majority of the submissions in support of the proposal.

On the basis of the 19 May 2025 resolution and the results of the community engagement, Recommendation Group B seeks Council's consent to enter into a 42-year lease with The Australian Natural Burial Authority Inc. as trustee for The Natural Burial Ground Trust of Australia as per the draft lease contained in **Attachment 1**.

Financial Implications

In accordance with the Alexandrina Council's Adopted Budget / Long Term Financial Plan, the financial implications of adopting this recommendation are considered low. The overall proposal has no cost implications to Council as the site would be fully managed by the Natural Burial Trust of Australia and their collaboration with the Nature Foundation.

Risk Implications

In accordance with Alexandrina Council's Risk Assessment Matrix, the risk of adopting this recommendation is considered low. Round 1 of community engagement indicated strong support for a natural burial ground which was supported by Round 2 of consultation on the proposed 42-year draft lease. As endorsed at the 19 May 2025 Council Meeting, the Australian Natural Burial Authority Inc is to be the Cemetery Authority for the leased area during the term of the lease. As the proposed term of the draft lease is greater than 5 years, community engagement is required and has been undertaken, meeting Council's obligations under the *Local Government Act 1999*.

Attachments

Attachment 1 - *Natural Burial Ground Draft Lease*

Attachment 2 - *National Burial Ground Trust of Australia - Community Engagement Report*

Attachment 1 - Natural Burial Ground Draft Lease



Ground Lease

Alexandrina Council

The Australian Natural Burial Authority Inc. ABN 60 870 218 119 as trustee for The Natural Burial Ground Trust of Australia

Norman Waterhouse Lawyers Pty Ltd ACN 621 909 395

Level 11, 431 King William Street, Adelaide SA 5000
GPO Box 639, Adelaide SA 5001
www.normans.com.au

T +61 8 8210 1200



DATE

PARTIES

Alexandrina Council ABN 20 785 405 351 of PO Box 21 Goolwa SA 5214 (**Council**)

and

The Australian Natural Burial Authority Inc. ABN 60 870 218 119 as trustee for The Natural Burial Ground Trust of Australia ABN 51 551 827 253 of [REDACTED] SA 5067 (**Lessee**)

BACKGROUND

- A. Council is the registered proprietor of the Land and administers a portion of the Land as a public cemetery, known as the 'Old Goolwa Cemetery.'
- B. The Lessee is a charity registered under the *Australian Charities and Not-for-profits Commission Act 2012 (Commonwealth)* and is engaged in the business of developing and administering natural burial grounds in Australia.
- C. The Lessee has requested a ground lease of the Leased Area, which forms part of the Land.
- D. Council agrees to grant a ground lease of the Leased Area on the terms set out in this lease.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this lease:

Act means the *Retail and Commercial Leases Act 1995 (SA)*.

Agreed Consideration means the Rent, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Leased Area and any goods, services or other things provided by Council under this lease (other than tax payable under clause 17).

Approvals means all approvals required under any Legislation or by any Statutory Authorities (other than by the Burial Ground Authority).

Burial Ground Authority means the Lessee as the "relevant authority" within the meaning in the *Burial and Cremation Act 2013* during the term of this lease, regardless of whether the Leased Area remains a cemetery or has become a natural burial ground.

Business Day means a day which is not a Saturday, Sunday or public holiday in Adelaide.

Commencement Date means the commencement date of the Initial Term described in Item 3 of Schedule 1.

Council means the party described as 'Council' in this lease and where the context permits includes the employees, contractors, agents and other invitees of the Council.

Council's Assessment has the meaning given in clause 4.2.

Council's Equipment means all fixtures and fittings, plant, equipment, services, chattels and other goods (if any) installed or situated in or on the Leased Area that are owned or controlled by Council and that are made available for use by the Lessee.

Current Market Rent means the best rent that can be obtained for the Leased Area in an open market by a willing but not anxious lessor with or without vacant possession and on the following conditions:

- (a) on the terms of this lease for the whole of the Term (and not just the balance of the Term);
- (b) on the basis that the Lessee has complied with all its obligations under this lease;
- (c) not taking into account any damage or destruction to the Leased Area and not taking into account any resulting suspension or abatement of Rent;
- (d) not taking into account any disturbance or nuisance to the Lessee's use of the Leased Area caused by any act, default or negligence of the Council or any adjoining owner or occupier;
- (e) not taking into account any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted to remove at the end of this lease;
- (f) taking into account any increase in value of the Leased Area arising from any permanent improvements on the Leased Area at the expense of either the Lessee or the Council and which the Lessee is not entitled to remove;
- (g) not taking into account any goodwill attributable to the Leased Area by reason of any trade, business or actions carried on by the Lessee; and
- (h) taking into account any cash, premium, payment, abatement, allowance or other incentive paid, offered or allowed in respect of this lease or being offered or given in respect of comparable premises to induce lessees to take a lease of or remain in such comparable premises.

Default Rate means 2% per annum above the Local Government Finance Authority Cash Advance Debenture Rate and if there is more than one rate published the highest of those rates and if such rate is no longer published means 10% per annum.

GST has the meaning given to that term in the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any ancillary or similar legislation.

GST Rate means 10% or the rate of GST imposed from time to time under the GST Legislation.

Independent Valuer means a certified practising valuer appointed to make a determination under this lease:

- who will be appointed as agreed by the Council and the Lessee or, failing agreement within 14 days of either notifying the other of the requirement for such appointment, at the request of either the Council or the Lessee, by the person holding or acting in the position of Chair of the Institute;
- who must have practiced as a valuer with a minimum of five years relevant experience;
- who is licensed to practice as a valuer of the kind of Leased Area in respect of which the review is required; and
- who must act as an expert and not as an arbitrator.

Initial Term means the initial term of this lease commencing on the Commencement Date and for the period described in Item 3 of Schedule 1.

Institute means the South Australian office of the Australian Property Institute.

Land means the land described in Item 2 of Schedule 1 and includes any part of the Land.

Leased Area means the land described in Item 1 of Schedule 1 including the Council's Equipment (if any).

Legislation includes any relevant Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.

Lessee means the lessee under this lease, being the party described as 'Lessee' in this lease and where the context permits includes the members, employees, contractors, agents, customers and other invitees of the Lessee.

Lessee's Equipment means any and all fixtures and fittings and other equipment installed in or brought on to or kept on the Leased Area by the Lessee.

Lessee's Improvements means any buildings or other structures constructed on, or affixed to, the Leased Area by the Lessee.

Lessee's Proportion means the proportion the area of the Leased Area bears from time to time to the total area of the Land or such other reasonable method of measurement as the Council notifies the Lessee.

Nature Foundation means the Nature Foundation Limited (ACN 638 003 577).

Old Goolwa Cemetery means the portion of the Land excluding the Leased Area.

Outgoings means the total of all amounts paid or payable by the Council in connection with the ownership, management, administration and operation of the Leased Area including:

- (a) the cost of insuring the Council against public risk;
- (b) the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Council;
- (c) the cost of insuring the Council against loss of rent and other consequential loss for a period not exceeding 12 months;
- (d) all costs (including wages and other usual employment on-costs) of the management, control and administration of the Leased Area;
- (i) all costs of the Council in relation to establishing, maintaining, repairing and replacing common signs, notices and directory boards within the Leased Area (other than work of a structural or capital nature);
- (j) all costs of the Council in connection with providing security in, for and around the Land (including equipment, systems and security and other personnel); and
- (k) all costs of the Council in connection with preparing and providing any audited statement which is required to be prepared and/or provided under this lease or by Legislation; and
- (l) any Rates and Taxes.

Permitted Use means the use described in Item 7 of Schedule 1.

Rates and Taxes means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority (including Council in its separate capacity as local government authority), other department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Leased Area and includes water and sewer charges, council rates, emergency services levy and land tax (on a single holding basis).

Renewal Term means the term (if any) of renewal or extension in Item 4 of Schedule 1.

Rent means the rent described in Item 5 of Schedule 1.

Rent Review has the meaning given in clause 4.1.

Services includes all services (including gas, electricity, water, sewerage, and all plant, equipment, pipes, wires and cables in connection with them) to or within or associated with the Leased Area supplied by any authority, Council or any person Council authorises.

Statutory Authorities means any government or authorities created by or under any relevant Legislation (including Council in its separate capacity as local government authority), other than the Burial Ground Authority.

Statutory Requirements means all relevant Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation or by any Statutory Authorities.

Term means the Initial Term, the Renewal Term and any period during which the Lessee holds over or remains in occupation of the Leased Area.

Valuer means a certified practising valuer appointed by the Council to make a determination under this lease:

- who must have practiced as a valuer with a minimum of five years relevant experience;
- who is licensed to practice as a valuer of the kind of Leased Area in respect of which the review is required; and
- who must act as an expert and not as an arbitrator.

1.2 Interpretation

In this lease, 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 lease includes any schedules and annexures to this lease;
- 1.2.7 a reference to any document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.11 a provision is not construed against a party only because that party drafted it;
- 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this lease continues in force;
- 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that act at the date of this lease;
- 1.2.15 the covenants and powers implied in leases by virtue of sections 124 and 125 of the *Real Property Act 1886* apply and are implied in this lease unless they are expressly or impliedly excluded or modified; and
- 1.2.16 the special conditions in Schedule 2 prevail over the terms in the body of this lease to the extent of any inconsistency; and
- 1.2.17 Retail and Commercial Leases Act

The parties acknowledge and agree that this lease has been entered into on the basis that the Act does **not** apply to this lease.

1.3 Background

The Background forms part of this lease and is correct.

2. GRANT OF LEASE

Council grants and the Lessee accepts a ground lease of the Leased Area for the Term as set out in this lease.

3. RENT & OUTGOINGS

- 3.1 Subject to clause 3.3, no Rent or Outgoings will be payable by the Lessee in consideration for the Lessee:
 - 3.1.1 operating the Leased Area as the relevant authority for the purposes of the *Burial and Cremation Act 2013* (SA);
 - 3.1.2 developing and revegetating the Leased Area for the purposes of the Permitted Use;
 - 3.1.3 being responsible for all repairs and maintenance of the Leased Area, including (without limitation) fencing (except fencing adjoining the Old Goolwa Cemetery), signs, roads and access routes within or appurtenant to the Leased Area and any other improvements, in accordance with the Maintenance Schedule annexed to this lease; and

- 3.1.4 subject to clause 3.2, agreeing to direct their revenue to Nature Foundation for its work on conservation and restoration land projects.
- 3.2 The parties agree that revenue paid to the Nature Foundation in accordance with 3.1.4 will be applied in the following order of priority:
 - 3.2.1 in the first instance, towards restoration and management works in the Leased Area;
 - 3.2.2 secondly, any excess funds to be directed to conservation programs on other Nature Foundation Reserves within the Council area, including (without limitation) ongoing and future conservation works at Watchalunga Nature Reserve; and
 - 3.2.3 thirdly, any remaining funds after the funds referred to in subclauses 3.2.1 and 3.2.2 have been exhausted, are to be directed to conservation programs managed by Nature Foundation within South Australia, whether in or outside the area of the Council.
- 3.3 The Council may only charge Rent and Outgoings pursuant to a Rent Review under clause 4.1 of this lease.
- 3.4 If Rent and/or Outgoings become payable pursuant to a Rent Review, the Lessee must pay such annual Rent to the Council in successive calendar monthly instalments in advance equivalent to one twelfth of the annual Rent within fourteen (14) days of receiving a valid tax invoice.
- 3.5 If the use of the Leased Area by the Lessee includes improvements to the site by the Lessee or the Council during the term of the lease that create Outgoings (eg: Lessee connects power or water to the Leased Area), the Lessee is to pay Outgoings associated with these improvements, if the improvements are not separately metered for that Leased Area.

4. RENT REVIEWS

- 4.1 If the Lessee ceases to be a not-for-profit organisation at any time during the term of this lease, the Council reserves the right to review the rent applicable to the lease in accordance with the process outlined within clauses 4.2 to Clause 4.11, if, in the Council's reasonable opinion, the Lessee is no longer using the Leased Area on a non-commercial basis (**Rent Review**).
- 4.2 If there is a Rent Review, the Council will appoint a Valuer (at its own expense), to determine the Council's assessment of the rent (**Council's Assessment**).
- 4.3 The Council may give the Lessee written Notice (**Notice**) stating that the Council intends to charge Rent to the Lessee in accordance with the Council's Assessment.
- 4.4 The Rent is the amount stated in the Notice unless the Lessee gives the Council written notice disagreeing with that amount (**Objection**) within 14 days after the Council's notice.
- 4.5 If the Lessee gives the Council an Objection, then the Lessee and the Council must use their best endeavours and act in good faith to agree on the Rent which will be payable from the date of the Notice in accordance with clause 4.3.

- 4.6 If the Lessee and the Council are unable to come to an agreement within the period of thirty (30) days of the Objection, the Current Market Rent for the Leased Area will be determined by an Independent Valuer under this clause 4.
- 4.7 The Council and the Lessee may make written submissions to the Independent Valuer within 14 days after the Independent Valuer is appointed.
- 4.8 Each party must forward to the other a copy of the all the written material provided to the Independent Valuer when it is provided to the Independent Valuer.
- 4.9 Within 14 days after receiving the written materials, a party may give written comments to the Independent Valuer on the other party's written submissions.
- 4.10 The Independent Valuer must make the determination in writing within 60 days after appointment, giving detailed reasons and specifying the matters required to be taken into account under this lease. The determination is final and binding.
- 4.11 If the Independent Valuer's determination is more than the Council's assessment of the Current Market Value, the Lessee must pay all the costs of the valuation. In all other cases, the costs of the valuation must be shared equally between the Council and the Lessee.
- 4.12 The application of Rent to the lease will be administered as a Deed of Variation to the Lease at such time, to be administered by Council at the cost of Council.
- 4.13 For the purpose of clarity:
 - 4.13.1 the payment of the rates and taxes is the sole responsibility of the Council, unless a Rent Review occurs; and
 - 4.13.2 following a Rent Review, the Rent payable by the Lessee will continue at the amount determined in accordance with clause 4 for the balance of the Term without further review.

5. POWER, RATES AND OTHER UTILITIES

5.1 Power and other Services

- 5.1.1 The Lessee must pay when they are due for payment, all costs for the use of telephone, lights and other facilities and the consumption of electricity, gas, water and any and all other services and utilities supplied to or used from the Leased Area.
- 5.1.2 If there is no separate meter for recording or measuring the Services and utilities consumed on or from the Leased Area, then before the Lessee commences use of the Leased Area for the Permitted Use the Lessee must, at its own cost, install separate meters for recording or measuring the Services and utilities consumed on or from the Leased Area.
- 5.1.3 Without limiting the generality of this clause 5, the Lessee will comply in all respects with the *Electricity (General) Regulations 2012* and any other applicable electricity laws.

5.2 Rates and Taxes

- 5.2.1 The parties acknowledge and agree that payment of all Rates and Taxes by the Lessee as applicable in respect of the Leased Area will only apply if it is determined that the Lessee is no longer using the Leased Area on a non-commercial basis in accordance with clause 4.1.
- 5.2.2 Subject to clause 5.2.1, the Lessee must:
 - 5.2.2.1 pay all Rates and Taxes as and when they are due and payable to the relevant taxing, rating or charging authority or body or if the Rates and Taxes are not solely referable to the Leased Area, then to pay to the Council within fourteen (14) days of demand being made by the Council, the Lessee's Proportion of such Rates and Taxes; and
 - 5.2.2.2 arrange for the Lessee's Proportion of such Rates and Taxes to be invoiced directly to the Lessee and paid by the due date specified on the invoice. The Lessee must at the reasonable request of the Council provide the Council with a copy of the invoices and payment confirmation.

6. USE OF PREMISES

6.1 Permitted Use

- 6.1.1 The Lessee must use the Leased Area only for the Permitted Use and must not use or allow the Leased Area to be used for:
 - 6.1.1.1 residential purposes; or
 - 6.1.1.2 any other use,without Council's prior written consent (such consent not being unreasonably withheld or delayed).
- 6.1.2 The lease is located on land which forms part of Council's Community Land Management Plan (**CLMP**) and use of the land remains subject to the land remaining as community land and used at all times during the term of the lease solely for the purpose of a public cemetery.

6.2 Offensive activities

The Lessee must:

- 6.2.1 not carry on any offensive or dangerous activities on or from the Lased Area;
- 6.2.2 not create a nuisance or disturbance for Council or for the owners or occupiers of any adjoining property; and
- 6.2.3 ensure at all times that activities conducted on or from the Leased Area do not discredit Council.

6.3 Use of facilities

- 6.3.1 The Lessee must ensure that any Services are used carefully and responsibly and in accordance with any directions given by Council from time to time (acting reasonably).
- 6.3.2 The Lessee must repair or correct any damage or malfunction which results from any misuse or abuse of the Services by the Lessee.

6.4 Statutory Requirements

The Lessee must comply with all Statutory Requirements (including the *Work Health and Safety Act 2012* (SA)) relating to:

- 6.4.1 the Lessee's use and occupation of the Leased Area; and
- 6.4.2 the Permitted Use.

6.5 Approvals

- 6.5.1 Council does not warrant that it has any or all relevant Approvals for any current or proposed use of the Leased Area by the Lessee.
- 6.5.2 The Lessee acknowledges that it is solely responsible for obtaining any Approvals required for its occupation and use of the Leased Area during the Term.
- 6.5.3 Prior to making any application for any Approvals which are not within the normal purview of the Burial Ground Authority, the Lessee must first obtain Council's consent as lessor to such application.

6.6 No alcohol

The Lessee must not:

- 6.6.1 serve, sell or provide to persons; or
- 6.6.2 consume or allow persons to consume, alcoholic beverages on the Leased Area.

6.7 Signs

- 6.7.1 The Council will (at its cost) provide and install at its discretion, signage (e.g. road signage) outside of the Leased Area identifying and directing the public to the Burial Ground.
- 6.7.2 The Lessee must not place any sign or advertisement on the Leased Area, except a sign or advertisement that:
 - 6.7.2.1 is approved by Council.
 - 6.7.2.2 complies with any relevant Statutory Requirements; and
 - 6.7.2.3 includes signage (to be approved by Council), giving details of the Lessee's contact details for directing all enquiries.

- 6.7.3 For clarity, this clause 6.7 does not include temporary signage deployed for operational purposes, permitted by the *Burial and Cremation Act 2013* or reasonably necessary for the conduct of the Permitted Use.

6.8 Dangerous equipment and installations

The Lessee may only install or use within the Leased Area equipment and facilities that are reasonably necessary for and normally used in connection with the Permitted Use and must not install or bring onto the Leased Area:

- 6.8.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard;
- 6.8.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard; or
- 6.8.3 any heavy equipment or items that may damage the Leased Area or Land.

6.9 Fire precautions

The Lessee must, at its own cost:

- 6.9.1 comply with all requirements and directives of Council with regard to fire safety systems and procedures including fire evacuation drills and other procedures;
- 6.9.2 comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building works which are required as a consequence of the Lessee's particular use of the Leased Area; and
- 6.9.3 without limiting clauses 6.9.1 and 6.9.2, undertake maintenance of any fire safety equipment.
- 6.9.4 Undertake fire mitigation actions on the land, to reduce the spread of fire from or through the land to the satisfaction of the Council.

6.10 Notice of defect

The Lessee must:

- 6.10.1 give the Council prompt notice of any circumstance or event that the Lessee should reasonably be aware might cause danger, risk or hazard to the Leased Area or the Land or to any person on the Leased Area or the Land; and
- 6.10.2 if required by Council, promptly rectify any defect or want of repair caused by the wilful act, default or negligence of the Lessee to make the Leased Area safe from any danger, risk or hazard.

6.11 Security

The Lessee must keep the Leased Area secure, including by keeping any buildings securely locked at all times when the Leased Area is not occupied.

6.12 No warranty

Council makes no warranty or representation regarding the suitability of the Leased Area (structural or otherwise) for the Permitted Use or any other purpose.

7. ALTERATIONS BY LESSEE

- 7.1 The Lessee must not carry out any alterations or additions to the Leased Area (except as required for the Permitted Use) without the Council's written consent (such consent not being unreasonably withheld or delayed).
- 7.2 The Lessee must provide full details of the proposed alterations and additions to Council.
- 7.3 Council may impose any reasonable conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain Council's written consent to any agreements that the Lessee enters into in relation to the alterations or additions.
- 7.4 The Lessee must carry out any approved alterations and additions:
 - 7.4.1 in a proper and professional manner;
 - 7.4.2 in accordance with the conditions imposed by Council and with the approvals made by Council in its capacity as lessor under this lease;
 - 7.4.3 in accordance with all Statutory Requirements; and
 - 7.4.4 in a way to minimise disturbance to others.
- 7.5 The Lessee must pay all of Council's reasonable costs (including consultant's costs and legal costs) as a result of the Lessee's alterations and additions.

8. INSURANCE

8.1 Lessee must insure

The Lessee must keep current during the Term (in connection with the Leased Area):

- 8.1.1 public risk insurance for at least the amount in 8 of Schedule 1 (or any other amount Council reasonably requires) for each claim;
- 8.1.2 building insurance in respect of the Lessee's Improvements and contents insurance for the Lessee's Equipment for their full replacement value; and
- 8.1.3 other insurances required by any Statutory Requirement or that Council reasonably requires.

8.2 Requirements for policies

Each policy must:

- 8.2.1 be with an insurer and on terms reasonably approved by Council;

- 8.2.2 be in the name of the Lessee and note the interest of Council and any other person Council requires;
- 8.2.3 cover events occurring during the policy's currency regardless of when claims are made; and
- 8.2.4 note that despite any similar policies of Council, the Lessee's policies will be primary policies.

8.3 Evidence of insurance

The Lessee must give Council copies of certificates evidencing the currency of each of the policies the Lessee has taken out under this clause 8. During the Term the Lessee must:

- 8.3.1 pay each premium when it is due for payment;
- 8.3.2 give Council copies of certificates of currency each year when the policies are renewed and at other times Council requests (but no more often than once annually);
- 8.3.3 not vary, allow to lapse or cancel any insurance policy without Council's consent (such consent not being unreasonably withheld or delayed);
- 8.3.4 notify Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

8.4 Insurance affected

- 8.4.1 The Lessee must not do anything which may:
 - 8.4.1.1 prejudice any insurance of the Leased Area or the Land; or
 - 8.4.1.2 increase the premium for that insurance.
- 8.4.2 If the Lessee does anything (with or without Council's consent) that increases the premium of any insurance Council has in connection with the Leased Area or the Land, the Lessee must on demand pay the amount of that increase to the Lessee.

9. REPAIR AND MAINTENANCE

9.1 Repair, maintain and replace

- 9.1.1 The Lessee must, at its own cost:
 - 9.1.1.1 maintain the Leased Area and the Lessee's Equipment in good and safe condition and repair having regard to its condition as at the date of occupation and in accordance with the Maintenance Schedule in Annexure B;
 - 9.1.1.2 repair any graffiti or vandalism to the Leased Area or the Lessee's Improvements as soon as reasonably practicable after the Lessee becomes aware of such graffiti or vandalism; and

9.1.1.3 keep and maintain any Services situated in, on or under the Leased Area and that exclusively service the Leased Area and/or the Lessee's Improvements.

9.1.2 For the avoidance of doubt, clause 9.1.1 includes any structural or capital maintenance, repair and replacement required to the Lessee's Equipment and the Lessee's Improvements to ensure such equipment and improvements are kept in a good and safe condition (subject to fair wear and tear).

9.1.3 If Council requires the Lessee to do so, the Lessee must, at its own cost, promptly repair any damage to the Leased Area caused or contributed to by the act, omission, negligence or default of the Lessee.

9.2 Cleaning

9.2.1 The Lessee must keep and ensure that its invitees keep the Leased Area and the Lessee's Equipment clean and tidy and in a safe condition.

9.2.2 The Lessee must keep the Leased Area free of vermin and other pests.

9.2.3 On written request of the Council, the Lessee must undertake vermin control works to the satisfaction of Council, if deemed required.

9.3 No responsibility by Council

The Lessee acknowledges and agrees that Council has no responsibility in any way for the maintenance, repair, replacement or cleaning of the Leased Area, the Lessee's Equipment or the Lessee's Improvements.

10. TRANSFERRING, SUBLETTING AND CHARGING

10.1 Transfer

The Lessee must not transfer its interest in this lease without the prior written consent of Council (such consent not being unreasonably withheld or delayed).

10.2 Subletting

10.2.1 The Lessee must not sublet or sublicense any part of the Leased Area without the prior written consent of Council (such consent not being unreasonably withheld or delayed).

10.2.2 For the avoidance of doubt, internment rights (third party burials) are exempt from this clause.

10.3 Charging

The Lessee must not charge, or otherwise grant a security interest over, the Lessee's interest in this lease, the Lessee's Improvements or the Lessee's

Equipment without the Council's written consent (such consent not being unreasonably withheld or delayed).

10.4 Hiring out of the Leased Area

The Lessee must not hire out the Leased Area or the Lessee's Improvements without the prior written consent of Council. For clarity, this does not include uses of the Leased Area directly related to the Permitted Use or activities covered under the *Burial and Cremation Act 2013*.

10.5 Costs

The Lessee must pay all costs reasonably incurred by Council (including the costs of any consultant or any legal fees) in relation to any dealing, including in considering whether or not to grant any consent to a request by the Lessee under this clause 10.

11. LESSEE GOVERNANCE

11.1 The Lessee must provide to Council a copy of the Lessee's constitution and any other documents that regulate the governance and operations of the Lessee upon reasonable request by the Council.

11.2 As and when Council may reasonably require the Lessee must provide to the Council any information in relation to the Lessee's use and occupation of the Leased Area.

12. COUNCIL'S OBLIGATIONS AND RIGHTS

12.1 Quiet enjoyment

Subject to Council's rights and to the Lessee complying with the Lessee's obligations under this lease, the Lessee may occupy the Leased Area and is responsible for administration of the place constituted by the Leased Area during the Term without interference from Council.

12.2 Right to enter

Council may (except in an emergency when no notice is required) enter the Leased Area after giving the Lessee reasonable notice:

12.2.1 to see the state of repair of the Leased Area;

12.2.2 to verify the Lessee's compliance with the requirements of this lease;

12.2.3 to do repairs to the Leased Area or other works to the Land that cannot reasonably be done unless Council enters the Leased Area;

12.2.4 to do anything Council must or may do under this lease or must do under any Legislation or to satisfy the requirements of any Statutory Authority; and

12.2.5 to show prospective lessees through the Leased Area during the last six months of the Term.

12.3 Emergencies

In an emergency Council may close the Leased Area and/or prevent the Lessee from entering the Leased Area.

12.4 Restrictions

12.4.1 Council may install, use, maintain, repair, alter, and interrupt Services during the Term providing that any such works are congruent with and do not hinder the ability of the Lessee to carry out the Permitted Use

12.4.2 Council must (except in an emergency) take reasonable steps to minimise interference with the Lessee's use and occupation of the Leased Area.

13. RENEWAL

13.1 If a right of renewal is specified in Item 4 of Schedule 1 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to Council not less than 6 months and not more than 12 months before the expiry of the current term of this lease stating it wishes to renew this lease for the period specified in Item 4 of Schedule 1. If such notice is given Council must, subject to clause 13.2 renew this lease for the Renewal Term on the terms in this lease commencing immediately after the current term of this lease expires.

13.2 The Lessee is not entitled to renew this lease if:

13.2.1 the Lessee is in breach of this lease at the time of giving that notice; or

13.2.2 the Lessee is in breach or commits a breach of this lease after giving that notice but before commencement of the Renewal Term.

14. RIGHTS AND OBLIGATIONS ON EXPIRY

14.1 Expiry

This lease comes to an end at midnight on the last day of the Term unless it is terminated earlier by Council or the Lessee under this lease.

14.2 Handover of possession

- 14.2.1 At the Terminating Date or sooner determination of this Lease the Lessee will;
 - 14.2.1.1 transfer ownership of all or part of the Lessee's Improvements to the Lessor for \$1.00; and
 - 14.2.1.2 deliver the Premises to the Lessor in good repair, order and condition having regard to the Premises as at the Commencement Date.
- 14.2.2 On or before the date that the Lessee must leave the Premises, the Lessee must:
 - 14.2.2.1 remove all rubbish from the Premises (together with all signs or advertisements affixed by, or on behalf of, the Lessee);
 - 14.2.2.2 return the Premises in a clean, tidy and safe condition and in the state of repair and condition as at the Commencement Date;
 - 14.2.2.3 repair any damage to the Premises caused by the works;
 - 14.2.2.4 give the Lessor any keys, access cards and other security devices the Lessee and the Lessee's Agents have for the Premises.
- 14.2.3 If the Lessee fails to make good the Premises to the Lessor's satisfaction (acting reasonably), the Lessor may carry out any such works required and may recover the reasonable costs in doing so from the Lessee as a liquidated debt payable on demand.
- 14.2.4 Any such fittings, fixtures, plant, equipment or other articles not removed by the Lessee either as of right or by requirement of the Lessor as aforesaid may (at the option of the Lessor and at the cost of the Lessee) be dealt with in accordance with Section 76 of the Retail and Commercial Leases Act 1995. Except as provided in that Section, the Lessor will not be responsible to the Lessee or any other person for any loss or damage resulting from such dealing.

14.3 Abandoned goods

If, when this lease comes to an end, the Lessee leaves any goods or equipment on the Leased Area, Council will be entitled to deal with and dispose of those goods subject to and in accordance with the requirements of the *Unclaimed Goods Act 1987* (SA).

14.4 Holding over

If, with Council's consent, the Lessee continues to occupy the Leased Area after the end of this lease, the Lessee does so under a monthly tenancy that:

14.4.1 either party may terminate on one month's notice given at any time;
and

14.4.2 is on the same terms as this lease.

15. BREACH

15.1 Payment obligations

15.1.1 The Lessee must make payments due under this lease:

15.1.1.1 without demand (unless this lease provides that demand must be made);

15.1.1.2 without set-off, counter-claim, withholding or deduction;

15.1.1.3 to Council or as Council directs; and

15.1.1.4 by direct debit or other means directed by Council.

15.1.2 If a payment is stated to be due on a particular payment date and there is no such payment date, the Lessee must make that payment on demand.

15.2 Set off

Council may, by notice to the Lessee, set off against any amount due and payable under this lease by Council to the Lessee, any amount due and payable by the Lessee to Council under this lease or under any other agreement or arrangement.

15.3 Council's rights on breach

15.3.1 Council may come onto the Leased Area and remedy a breach of this lease without notice:

15.3.1.1 in an emergency; or

15.3.1.2 if the Lessee breaches any provision of this lease and fails to remedy the breach within 14 days after receiving notice requiring it to do so.

15.3.2 The Lessee must pay or reimburse Council on demand for all reasonable costs of remedying the breach.

15.4 Default, breach and re-entry

If:

15.4.1 the Lessee fails to pay a sum of money when due and fails to remedy that failure within fourteen (14) days after receiving notice requiring it to do so;

15.4.2 the Lessee breaches any other provision of this lease and fails to remedy the breach within fourteen (14) days after receiving notice requiring it to do so;

- 15.4.3 any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Lessee's assets, operations or business;
- 15.4.4 any step is taken to enter into any arrangement between the Lessee and its creditors;
- 15.4.5 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Lessee's assets or business;
- 15.4.6 the Lessee is deregistered or dissolved or any step is taken by any person towards that;
- 15.4.7 the Lessee is a natural person and commits an act of bankruptcy;
- 15.4.8 the Lessee (including any of the Lessee's trustees) is convicted of an indictable offence (other than a traffic offence);
- 15.4.9 execution is levied against the Lessee and not discharged within 14 days;

then despite any other clause of this lease, Council:

- 15.4.10 may re-enter and repossess the Leased Area, without prejudice to its other rights; and
- 15.4.11 is discharged from any claim by or obligation to the Lessee under this lease.

15.5 Rights of Council not limited

The rights of Council under this lease and at law resulting from a breach or repudiation of this lease by the Lessee shall not be excluded or limited in any way by reason of Council having or exercising any powers under this clause 15.

15.6 Landlord and Tenant Act

In the case of a breach or default of any term of this lease where notice is required to be given under Section 10 of the *Landlord and Tenant Act 1936*, such notices will provide that the period of 14 days is the period within which the Lessee is to remedy any such breach or default if it is capable of remedy or make reasonable compensation in money to the satisfaction of Council. No period of notice is required for the non-payment of rent payable pursuant to this lease.

15.7 Repudiation and damages

- 15.7.1 The Lessee acknowledges that following obligations under this lease are essential terms of this lease:
 - 15.7.1.1 the obligations and prohibitions in relation to use of the Leased Area;

- 15.7.1.2 the obligations and restrictions in relation to additions and alterations to the Leased Area; and
- 15.7.1.3 the restriction on assignment, sub-letting, mortgaging and licensing.
- 15.7.2 If Council accepts payment of Rent or any other moneys late or does not act or exercise any rights immediately or at all in respect of any breach of an essential term, that conduct on the part of Council will not be deemed to amount to a waiver of the essential nature of that essential term.
- 15.7.3 If the Lessee breaches any essential term, that conduct on the part of the Lessee will be deemed to constitute a repudiation of this lease and Council may at any time thereafter rescind this lease by accepting that repudiation.
- 15.7.4 The rights of Council under this clause 15.7 and any action taken by Council hereunder do not exclude or limit any other rights or entitlements that Council has under this lease or at law in respect of any breach or repudiatory conduct on the part of the Lessee.

15.8 **Interest on overdue amounts**

The Lessee must pay to Council interest on any overdue amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on outstanding daily balances at the Default Rate.

16. **INDEMNITY AND RELEASE**

16.1 **Risk**

The Lessee occupies and uses the Leased Area at the Lessee's risk and with the knowledge that Council does not warrant that the Leased Area is safe or suitable for the Permitted Use.

16.2 **Indemnity**

- 16.2.1 The Lessee is liable for and indemnifies Council against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly including in connection with:
 - 16.2.1.1 any act or omission of the Lessee;
 - 16.2.1.2 the overflow or leakage of water or any other harmful agent into or from the Leased Area;
 - 16.2.1.3 any fire on or from the Leased Area;
 - 16.2.1.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Leased Area by the Lessee or otherwise relating to the Leased Area;
 - 16.2.1.5 a breach of this lease by the Lessee; or

16.2.1.6 the Lessee's use or occupation of the Leased Area.

16.2.2 The Lessee liability under the indemnity referred to in clause 16.2.1 is reduced to the extent that the actions, liabilities, penalties, claims or demands for any loss, damage, injury or death is caused or contributed to by the wilful act, negligence or default of the Council or employees, agents, contractors or other persons claiming through or under the Council.

16.3 Release

The Lessee releases Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring on the Leased Area except to the extent that they are caused by the wilful act, negligence or default of the Council or employees, agents, contractors or other persons claiming through or under the Council.

16.4 Indemnities are independent

Each indemnity is independent from the Lessee's other obligations and continues during this lease and after this lease ends.

16.5 Limitation of liability

Despite anything else in this lease, Council is not liable (except to the extent of any wilful act, negligence or default of the Council or employees, agents, contractors or other persons claiming through or under the Council) for any loss or damage, and the Lessee has no right to terminate this lease or reduce payments under this lease, for any interruption to or defect or malfunction in any Services.

17. GOODS AND SERVICES TAX

17.1 If a GST applies to impose tax on the Agreed Consideration or any part of it or if the Council is liable to pay GST in connection with this lease or any goods, services or other things supplied under this Lease then:

17.1.1 the Agreed Consideration for that supply is exclusive of GST;

17.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by a percentage amount which is equal to the GST Rate; and

17.1.3 the Lessee must pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

17.2 Where the Agreed Consideration is increased under this clause 17, the Council must, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

17.3 If the Lessee does not comply with its obligations under this lease or with its obligations under GST Legislation in connection with this lease and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Council on demand an amount equal to the amount of the penalties and interest.

18. RULES AND REGULATIONS

- 18.1 Council may from time to time make such rules and regulations that Council considers necessary for the management, safety, security, care of or cleanliness of the Land.
- 18.2 Council reserves the right to amend from time to time the rules and regulations (acting reasonably).
- 18.3 The rules and regulations bind the Lessee when it receives notices of the rules and regulations from Council.
- 18.4 If there is any inconsistency between this lease and the rules and regulations, then this lease prevails.
- 18.5 A material failure by the Lessee to comply with the rules and regulations is a breach of this lease.

19. GENERAL

19.1 Costs

- 19.1.1 Each party shall pay their own costs (including legal costs) in respect of the preparing, negotiating, revising, engrossing and executing this lease and any document required to record any renewal, extension or variation of this lease.
- 19.1.2 All reasonable legal and other costs and expenses incurred by Council in consequence of any actual breach by the Lessee hereunder or in exercising or enforcing (or attempting to do so) any rights or remedies of Council hereunder or at law or otherwise arising in consequence of any actual breach by the Lessee.

19.2 Waiver

If Council accepts or waives any breach by the Lessee, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this lease.

19.3 Notice

- 19.3.1 Notice must be in writing and may be given by an authorised representative of the sender.
- 19.3.2 Notice may be given:
 - 19.3.2.1 personally;
 - 19.3.2.2 by sending it by pre-paid post to the party's address last notified;
 - 19.3.2.3 by sending it by electronic mail to the party's email address last notified.
- 19.3.3 Notice is deemed to be received:

19.3.3.1 if sent by pre-paid post , five Business Days after posting;
and

19.3.3.2 if sent by electronic mail, on the day the message is
showing on the sender's electronic mail system as having
been properly transferred or transmitted,

however if the notice is received after 5:00pm or on a day that is not a
Business Day it is deemed to be received on the next Business Day.

19.3.4 The parties' contact details for the purposes of notices as at the
Commencement Date are contained in Item 9 of Schedule 1.

19.4 Severance

If any part of this lease is found to be invalid or void or unenforceable, then that
part will be severed from this Lease and the remainder of this Lease will
continue to apply.

19.5 Entire agreement

Council and the Lessee acknowledge and agree that this lease contains and
represents the entire agreement reached between them with regard to the
Leased Area and that no promises, representations or undertakings, other than
those contained in this lease, were made or given or relied upon.

19.6 Exercise of power

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

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

19.7 Consent

A reference in this lease to Council's approval or consent, is to Council's prior
written approval or consent, which may be granted or withheld in the absolute
discretion of Council and if granted may be granted subject to any conditions as
Council sees fit.

20. RESUMPTION

20.1 Council may terminate this lease by giving at least three months' written notice
to the Lessee if the Council receives notice of resumption or acquisition of the
Leased Area from or by any Statutory Authority governmental or semi-
governmental body.

20.2 Termination of this lease under this clause releases each party from further
liability under this lease but does not affect a party's rights or liabilities for a
prior breach.

21. LESSEE'S LIMITATION OF LIABILITY

In this clause 21:

Assets include all assets, property and rights of the Trust (as the context may require) (real and personal of any value whatsoever).

Trust means The Natural Burial Ground Trust of Australia.

21.1 Lessee Limitation of Liability

- 21.1.1 The Lessee enters into, and incurs obligations under, this Lease only in its capacity as trustee of the Trust and in no other capacity.
- 21.1.2 Subject to clause 21.1.6, the Lessee:
 - 21.1.2.1 will not be liable to pay or satisfy any obligation or liability under this Lease out of any Assets held by it personally or in its capacity as trustee or responsible entity of any other trust or managed investment scheme, other than the Trust; and
 - 21.1.2.2 will only be liable to pay or satisfy any of its obligations or liabilities under this Lease to the extent to which these obligations or liabilities can be satisfied out of property of the Trust out of which the Lessee is actually indemnified for that liability.
- 21.1.3 Subject to clause 21.1.6, the Council may only enforce any rights it has under or in connection with this Lease against the Lessee in the Lessee's capacity as trustee of the Trust (and not in its personal capacity or any other capacity), and the remedies of the Council are limited to the right of that party to be subrogated to the Lessee's right of indemnity against the Assets of the Trust. Without limiting the generality of this clause 21.1.3, the Council must not take any action for the winding up, liquidation, administration, receivership or similar of the Lessee itself or seek recourse against the beneficiaries or members of the Trust.
- 21.1.4 The Council agrees that neither it nor any receiver or attorney that it appoints may incur any liability on behalf of or for the account of the Lessee unless that liability is subject to the limitation contained in this clause 21.1.
- 21.1.5 The provisions of this clause 21.1 are paramount and apply to this Lease regardless of any other provision of this Lease or any other document or instrument, even a provision which seeks to apply regardless of any other provision.
- 21.1.6 The provisions of clauses 21.1.2 to 21.1.4 (inclusive) shall not apply to any obligation or liability of the Lessee to the extent that it is not satisfied because, under the trust deed of the Trust or by operation of law, there is a reduction in the extent of the Lessee's indemnity out of the Assets of the Trust as a result of the Lessee's own fraud, gross negligence or breach of trust. In such a case, the Lessee's liability is limited to an amount equal to the value of the Assets held on trust by the Lessee for the Trust.

21.2 Representations and Warranties

21.2.1 The Lessee represents and warrants to the Council that:

- 21.2.1.1 it has the right to be indemnified out of, and a lien over, the Assets of the Trust for all liabilities incurred by it under this lease, and this right has not been limited, and it has no liability which may be set off against that right of indemnity;
- 21.2.1.2 it has power and authority to enter into and perform its obligations under this lease;
- 21.2.1.3 it enters into this lease for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust;
- 21.2.1.4 the Trust has not been terminated;
- 21.2.1.5 it is the sole trustee of the Trust and no step has been taken to remove it as trustee;
- 21.2.1.6 the constituent documents of the Trust comply with all applicable laws; and
- 21.2.1.7 the Lessee is not in breach of the Trust.

21.3 **Reliance**

The Lessee acknowledges that the Council enters into this lease in reliance on the representations and warranties in clause 21.2.

Schedule 1

Item 1

Leased Area

The portion of the Land being the area delineated in red on the plan attached at Annexure A

Item 2

Land

The whole of the land comprised in Certificate of Title Volume 5840 Folio 625

Item 3

Initial Term

Forty-two (42) years commencing on 1 July 2025 (**Commencement Date**) and expiring at midnight on 30 June 2067.

Item 4

Renewal(s)

Nil. Any further tenancy of the land would be considered in accordance with current Local Government Act legislation at such time.

Item 5

Rent

Nil, subject to review under clause 4.

Item 6

Rent Review Dates

Nil, subject to review under clause 4 and an associated Deed of Variation at such time to include rent review dates.

Item 7

Permitted Use

Natural burial ground including natural revegetation

Item 8

Public risk insurance

\$20,000,000.00

Item 9

Contact details

Council

Postal: PO Box 21 Goolwa SA 5214

Email: Property.Officers@alexandrina.sa.gov.au

Telephone: 8555 7000

Lessee

Postal: [REDACTED] SA 5067

Email: [REDACTED]

Contact: Executive Member -Treasurer and Secretary

Schedule 2 - Special conditions

1. DEVELOPMENT AND MAINTENANCE OF LEASED AREA

- 1.1 The Lessee must carry out all works on the Leased Area to make it suitable for the Permitted Use and is responsible for administration of the place constituted by the Leased Area in alignment with the intent of the Concept Plan provided at Annexure C and within the scope of the Burial and Cremation Act.
- 1.2 The Lessee must engage the Nature Foundation Limited (ACN 638 003 577) to play an active role in the preservation, transplanting, re-vegetation and re-generation of native flora and ecosystems in the Leased Area during the Term, of which an overview of this commitment is provided in Annexure D.
- 1.3 If the Nature Foundation is deregistered or ceases its operations, the Lessee must engage an alternative organisation or entity, which carries out the same or similar functions as the Nature Foundation, to carry out the functions specified under clause 1.2.
- 1.4 The Lessee and the Lessee's contractors (including the Nature Foundation) are permitted reasonable access to the Old Goolwa Cemetery for the sole purpose of gathering seeds or seedlings from existing flora and must exercise due care so as to avoid or minimise disruption to existing flora and gravesites within the Old Goolwa Cemetery.

2. LESSEE'S FURTHER OBLIGATIONS

- 2.1 The Lessee must inform the Council in writing within 14 days of any change in the trusteeship of the Lessee.
- 2.2 The Lessee is to furnish the Council with the following information during the Term:
 - 2.2.1 a report every twelve (12) months (or on written request from Council) containing:
 - 2.2.1.1 An itemised listing of what other activities have occurred in the Leased Area in accordance with the Permitted Use.
 - 2.2.1.2 A summary of financial contributions and activities provided to other community land or community projects within the area of the Council.

EXECUTED as an agreement

Council

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)

Lessee

Executed for and on behalf of **The Australian Natural Burial Authority Inc. ABN 60 870 218 119 as trustee for The Natural Burial Ground Trust of Australia** by two committee members:

Signature of committee member

Signature of committee member

Full name of committee member (print)

Full name of committee member (print)

Date

Annexure A Plan of Leased Area

EZK/10100/515996/3140929

LEASE PLAN



Portion of Certificate of Title Volume 5840 Folio 625

Section 371 Kessell Road Goolwa South Australia 5214

Lease area bounded in red.

Annexure B – Maintenance Schedule

EZK/10100/515996/3140929

SECOND SCHEDULE

Maintenance and Management Responsibilities

This schedule outlines the particular responsibilities of Council and the lessee where applicable.

It is recognised that this lease is a ground lease, with no existing improvements on the land (lease area). All improvements to the land are deemed severed from the agreement and remain the responsibility of the Lessee.

Item	LESSEE	COUNCIL
Improvements (eg: buildings, structures, sheds)	Full responsibility	Nil responsibility
Burial Interments	Full responsibility	Nil responsibility
Gravesite Preparation (digging and backfilling, removal of excess spoil as required)	Full responsibility	Nil responsibility
General maintenance and operations	Full responsibility	Nil responsibility
Onsite storage	Full responsibility	Nil responsibility
Customer enquiries	Full responsibility	Nil responsibility
Payments / creditors / financial matters	Full responsibility	Nil responsibility
Record keeping	Full responsibility	Nil responsibility
Cemetery entrance gate/s	Full responsibility	Nil responsibility

Entrance features	Full responsibility	Nil responsibility
Signage	Full responsibility	Nil responsibility
Fencing (boundary of lease area and any internal fencing within lease area)	Full responsibility (excluding fence surrounding the existing 'Old Goolwa Cemetery' which is a Council responsibility.	Nil responsibility
On-site carparking provisions	Full responsibility	Nil responsibility
Carpark surfaces	Full responsibility	Nil responsibility
Carpark Line marking	Full responsibility	Nil responsibility
Waste management and removal	Full responsibility	Nil responsibility
Garden areas	Full responsibility	Nil responsibility
Tree branches, tree removal, planting	Full responsibility, subject to prior Council consent for any removal of existing vegetation within lease area and consent under the <i>Native Vegetation Act 1991</i> where applicable.	Nil responsibility
Loose and fixed furniture	Full responsibility	Nil responsibility

Retaining walls (as applicable)	Full responsibility	Nil responsibility
Electrical services, switchboards, equipment, distribution boards, testing and tagging, power lighting circuits and meters.	Full responsibility	Nil responsibility
Telecommunications-phone/wifi etc	Full responsibility	Nil responsibility
Security	Full responsibility	Nil responsibility
Lighting	Full responsibility	Nil responsibility
Pipes	Full responsibility	Nil responsibility
Toilet & wastewater facilities	Full responsibility	Nil responsibility
Water	Full responsibility including services connections and supply	Nil responsibility
Electricity	Full responsibility including services connections and supply	Nil responsibility

Gas	Full responsibility including services connections and supply	Nil responsibility
Fire Prevention (land management fire mitigation)	Full responsibility	Nil responsibility
Fire Hose reels and hydrants/extinguishers	Full responsibility	Nil responsibility
Emergency exits and Evacuation Diagrams (as applicable)	Full responsibility	Nil responsibility
Painting	Full responsibility	Nil responsibility
General cleaning	Full responsibility	Nil responsibility
Graffiti removal	Full responsibility	Nil responsibility
Pest removal	Full responsibility on request by Council	Nil responsibility

General Council enquiries email property.officers@alexandrina.sa.gov.au

Annexure C – Concept Plan

EZK/10100/515996/3140929

ACKNOWLEDGEMENT

The project acknowledges the Ngarrindjeri people as the traditional custodians of the lands and waters of Goolwa. We respect their rights, interests and obligations to speak and care for their traditional lands and waters in accordance with their laws, customs, beliefs and traditions.

This Project also acknowledges and pays respect to Australian Indigenous Peoples who were separated from Clan and Country and also reside in the surrounding communities. May these journeys of healing be acknowledged, respected, supported and become mutual objectives for all Australians.

ENDEMIC PLANTING

1. Staged Planting:

- Initial stage 1 endemic planting to natural burial ground development areas
- 2nd stage planting and natural burial ground development areas

2. Indicative Planting List:

List sourced from Bush Forever Planting Old Goolwa Cemetery

Mysiphyllum asparagoides
Olea europaea
Oxalis purpurea
Pinus sp
Rosmarinus officinalis
Lycium ferocissimum
Acacia paradoxa
Acacia pycnantha
Acacia spinescens
Acacia novae-zelandiae or *echinata* *Acrotriche* sp.
Anthropodium strictum
Astroloma conostephioides
Astroloma humifusum
Billardiera cymosa
Callistemon rugulosus
Callitris preissii
Cassitya melanthae
Cornus reflexa
Dampiera rosmarinifolia
Danthonia sp.
Dianella revoluta
Dodonaea bursi
Dodonaea viscosa
Drosera whittakeri
Duiria maculata
Enchyleana tomentosa
Eucalyptus conglabata
Eucalyptus leptophylla
Eucalyptus odorata
Eucalyptus socialis
Eutaxia microphylla
Gahnia laterale
Gonocarpus meizianus
Goodenia ovata
Grevillea illicifolia
Hakea rugosa
Halimolobos
Hardenbergia violacea
Helichrysum leucopsideum
Hibbertia riparia
Lasiopetalum bauerii
Lepidosperma concavum
Lomandra effusa
Lomandra multiflora
Melaleuca acuminata
Melaleuca lanceolata
Melaleuca uncinata
Muehlenbeckia gunnii
Myoporum insulare
Olearia pinnosa
Operculina turpis
Pultenaea largiflorens
Rhagodia caradollana
Rhagodia crassifolia
Schoenus brevifolius
Spyridium eriocephalum
Stipa elegantissima
Tetragonia implexicoma
Vittadinia cuneata
Xanthorrhoea semiplana



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INITIAL CARPARK AREA



STAGE 1 BURIAL AREA



GRAVEL PATH EXAMPLE

DESIGN INTENT

1. Location and Setting:

- The natural burial ground is set against the backdrop of the Old Goolwa Cemetery and Bush Forever Site.

- Clearings for burial areas extend from the corner of this regenerated area.

- The surroundings are characterised by strong dense stands of local endemic vegetation, creating a natural and serene setting.

2. Bushland Regeneration:

- Staged bushland regeneration planting is employed to develop the clearings.

- The bushland stands serve to separate each clearing while also framing views beyond, providing a picturesque and personal human-scaled setting.

3. Pathways:

- A network of compacted gravel paths links the bushland clearings.

- These paths provide low-maintenance access for funeral vehicles and pedestrians of all abilities.

- Low-key wayfinding elements are incorporated to guide visitors to the burial areas.

4. Parking:

- Parking is provided alongside the bush forever site.

5. Shed Compound:

- The shed compound area has potential future uses including, but however not limited to parking, funeral staging, nursery, Nature Foundation depot, and toilets.

6. Stone Wall Feature and Signage:

- A low-key Natural Burial Grounds Trust of Australia stone wall feature is planned for the cemetery entrance(s).

- Directional road signage is placed across from each entrance and at the corner and entrances of Houlden and Kessell Roads to guide visitors.

Overall, the design prioritises the integration of natural elements, sustainability, accessibility, and ease of navigation for visitors while respecting the historical and environmental context of the site.



Reimagining the Old Goolwa Road Cemetery as a Restoration Natural Burial Ground

- Draft Concept Design for Illustrative Purposes Only

REV 2 - 14 FEB 2025

Annexure D – Nature Foundation Commitment

EZK/10100/515996/3140929

Steps to realisation





Community Consultation Feedback Report

**The Natural Burial Ground Trust of Australia –
Draft Lease Proposal**

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1.0 Background

Following strong community support during the 2024 consultation, Council began negotiating a draft agreement with the Natural Burial Trust of Australia to establish a proposed natural burial ground on the unused and unoccupied land at the Old Goolwa Cemetery. Lease area highlighted in red

Council now welcomes feedback on a proposal to enter into a 42-year lease with the Natural Burial Ground Trust of Australia, for the purpose of establishing a not-for-profit natural burial ground within the unused portion of the Goolwa Cemetery.

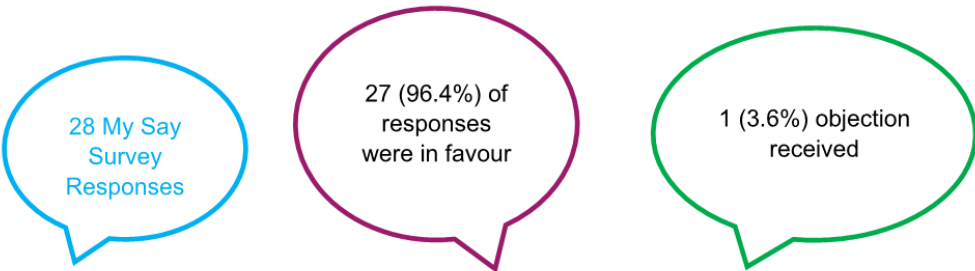
As the land is classified as community land and the term of the lease is greater than 5 years, community engagement is required to ensure the community is provided with the essential terms of the proposal and an opportunity to comment on the proposal should they choose to do so.



2.0 Engagement Snapshot

During the consultation period from 19 May – 20 June 2025, a total of 28 submissions were received across both the My Say platform and via email/hard copy.

Email and hard copy surveys were consolidated into the My Say platform to streamline data and keep it in one central location.



Who we heard from:



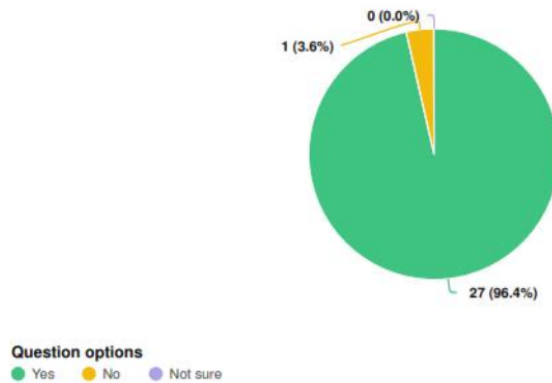
2.1 Engagement Snapshot Methods and Outcomes

Activity/ Method	Date	External stakeholder	Outcome/ Result
My Say project page	Live from 29 May	Public	877 total page visits 28 submissions via the online survey 63 document downloads
My Say e-newsletter		Those that registered for email updates via My Say	Email sent to 1,338 subscribers 53.6% open rate
Direct email	30 May	Those that responded to the 2024 consultation	Email sent to 57 respondents
Local Displays – Council Office, library, community noticeboards	29 May – 20 June	Notice to be placed on Council display boards including promotion of ways to get involved.	

3.0 Consultation Response Overview

3.1 Evaluation

Q5 Do you support the Natural Burial Ground Trust of Australia 42-year Draft Lease Proposal?



Two (2) questions were raised via the MySay engagement. Additional information was uploaded onto MySay on the 4 June 2025 as below:

Question: What happens to the burial site after 42 years?

Answer: It is anticipated that the Natural Burial Grounds will apply for a new lease on expiry of the current 42-year term. In accordance with the Local Government Act 1999, Council is unable to offer a lease term greater than 42 years. If the NBG or other body did not apply or where not successful with a new lease in 42 years' time, the Council will revert back to being the cemetery authority and continue to manage the cemetery in accordance with the requirements of the Burial and Cremation Act 2013 (SA) (or Act of that time).

Question - Will ratepayers have priority burial access if demand is high?

Answer - The NBG see no reason that Alexandrina residents would not be accommodated in this way. Practically, NBG will assess uptake and burial rates over the first years, and, with that knowledge, will engage in forward planning to manage natural burial space for residents across the duration of tenure.

Key themes in support of the proposal are:

- Good, fantastic idea
- Great and greener alternative
- Asset to our community and environment
- Plant humans and trees – awesome idea
- Environment will benefit
- Innovative idea and forward-thinking project
- Compliments existing adjacent cemetery
- Unique natural space to be laid to rest in the bush surrounded by nature

Key themes in objecting to the proposal are:

- Nonsense idea that will cost ratepayers money with no valuable return.

4.0 Self-nomination to participate

It is important to acknowledge that involvement in the public consultation process is voluntary, with participants self-nominating to contribute. As a result, the feedback gathered should not be regarded as statistically representative of all perspectives.

5.0 Consultation images

N/A

6.0 Communication channels and media reach

Website	Date	Results
Instagram post	29 May and 19 June	Over 900 views and 800 accounts reached
Facebook post	29 May and 19 June	Approximately 15,000 reached and over 2,000 engaged
Public Notice Fleurieu Sun and Southern Argus	29 May	ALEXANDRINA COUNCIL Community Consultations Council seeks community feedback on the following two (2) consultations. Please direct all written submissions via mysay.alexandrina.sa.gov.au, email alex@alexandrina.sa.gov.au or by post to the Chief Executive Officer, PO Box 21, Goolwa SA 5214. For further information, please call Council's Manager Property and Procurement Services on 8555 7000. The Natural Burial Ground Trust of Australia Draft Lease Council seeks community feedback on a proposal to enter into a 42-year lease with the Natural Burial Ground Trust of Australia for the purpose of establishing a not-for-profit natural burial ground within the unused portion of the Goolwa Cemetery. Submissions will be accepted by Council until 5 pm, 20 June 2025.

		PUBLIC NOTICES AND EVENT ALEXANDRINA COUNCIL Community Consultations Council seeks community feedback on the following two (2) consultations. Please direct all written submissions via mysay.alexandrina.sa.gov.au, email alex@alexandrina.sa.gov.au or by post to the Chief Executive Officer, PO Box 21, Goolwa SA 5214. For further information, please call Council's Manager Property and Procurement Services on 8555 7000. The Natural Burial Ground Trust of Australia Draft Lease Council seeks community feedback on a proposal to enter into a 42-year lease with the Natural Burial Ground Trust of Australia for the purpose of establishing a not-for-profit natural burial ground within the unused portion of the Goolwa Cemetery. Submissions will be accepted by Council until 5 pm, 20 June 2025.
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