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17 CONFIDENTIAL ITEMS**17.4 LICENCE RENEWAL FOR OPTUS TOWER PINNAROO****RECOMMENDATION**

That:

1. Pursuant to Section 90(2) & (3) of the Local Government Act 1999 the Council orders that the public, with the exception of the Acting Chief Executive Officer, Manager Corporate Services, Acting Manager Infrastructure Services, Manager Property and Development Services and the Coordinator Executive Services be excluded from attendance at the meeting held on Wednesday 19 April 2023 for Agenda Item 17.4 Licence Renewal for Optus Tower Pinnaroo;
2. The Council is satisfied that pursuant to section 90 (3) (d)(i) of the Local Government Act 1999, the information to be received, discussed or considered in relation to the Agenda Item 17.4 Licence Renewal for Optus Tower Pinnaroo is:

commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.
3. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed by the need to discuss this Agenda Item 17.4 in confidence.

**MOVED COUNCILLOR NEVILLE PFEIFFER
SECONDED COUNCILLOR TREVOR POCOCK**

That:

1. Pursuant to Section 90(2) & (3) of the Local Government Act 1999 the Council orders that the public, with the exception of the Acting Chief Executive Officer, Manager Corporate Services, Acting Manager Infrastructure Services, Manager Property and Development Services and the Coordinator Executive Services be excluded from attendance at the meeting held on Wednesday 19 April 2023 for Agenda Item 17.4 Licence Renewal for Optus Tower Pinnaroo;
2. The Council is satisfied that pursuant to section 90 (3) (d)(i) of the Local Government Act 1999, the information to be received, discussed or considered in relation to the Agenda Item 17.4 Licence Renewal for Optus Tower Pinnaroo is:

commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.
3. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed by the need to discuss this Agenda Item 17.4 in confidence.

CARRIED.

17.4 LICENCE RENEWAL FOR OPTUS TOWER PINNAROO

Responsible officer: Tony Secomb, Manager Corporate Services

Attachments: 1. Draft Licence Agreement

Section under the Act	The grounds on which part of the Council or Committee may be closed to the public are listed in Section 90(2) & (3) of the <i>Local Government Act 1999</i> .
Sub-clause and Reason:	(d)(i) - commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.

Executive Summary

The purpose of this report is to provide Council with direction regarding the granting of a licence extension for a portion of land occupied by a telecommunications facility at 280 Hanton Road, Pinnaroo.

RECOMMENDATION

That Council

1. Approves a 20 year licence extension to Indara Corporation Pty Ltd, subject to minor amendments, from the current expiry in May 2023.
2. Authorises the Mayor and ACEO under seal to approve the licence agreement.

**MOVED COUNCILLOR NEVILLE PFEIFFER
SECONDED COUNCILLOR LUKE KENNEDY**

That Council

1. Approves a 20 year licence extension to Indara Corporation Pty Ltd, subject to minor amendments, from the current expiry in May 2023.
2. Authorises the Mayor and ACEO under seal to approve the licence agreement.

CARRIED.

Context

Council had previously entered into a 20 year licence agreement with Optus Mobile Pty Limited in 2003, for a portion of Section 280 Hanton Road in Pinnaroo. This address is the site of Councils Depot and Council allowed the licence for a small portion of this land to be utilised for the purpose of erecting a mobile phone tower. The granting of the licence allowed for key infrastructure to be erected in the district and council would receive annual rental payments.

With the agreement expiring in 2023, Council was approached last year to begin discussions for a 20 year extension of the existing licence. As significant decisions could not be made during the caretaker period leading up to council elections, the negotiations did not really get under way until December 2022. Over the past few months Council has worked collaboratively with Indara Corporation Pty Ltd and our legal representatives Kelledy Jones Lawyers to review and update this agreement.

Kelledy Jones Lawyers have recently undertaken exactly the same process for other councils and their experience and expertise has been invaluable during negotiations to update and improve the agreement. Legislation has changed over the last 20 years and Kelledy Jones has worked hard to ensure that certain clauses were retained that protect council.

A significant amount of work was also performed by Corporate Services staff to review historical records and determine whether this piece of land was part of a community land management plan. The investigation determined that the said land was previously excluded from the community land management plan and this was reviewed and verified by our legal representatives. This was an important amount of work because it means that the licence agreement is not subject to community consultation and council can simply approve the extension through this council report.

The new draft agreement in attachment 1 allows for an annual rental amount beginning at \$8,750.00 plus GST paid annually in advance with annual increases of 3% which was negotiated up from earlier discussions.

Whilst the document in attachment 1 is still in draft form the commercial terms are largely agreed and the final version was not received back in time to meet the agenda deadline. Administration will give a verbal update at the council meeting.

Issues

Not renewing this licence agreement would potentially mean that Southern Mallee residents may lose a mobile phone tower and an additional revenue source, this is not recommended.

Date: [Council Draft
13.4.23]

Licence agreement

Southern Mallee District Council (**Council**)
Indara Corporation Pty Ltd (**Indara**)

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Licence agreement

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Information table

Date

Parties

Name	Southern Mallee District Council
ABN	26 208 717 728
Short form name	Council
Notice details	Postal Address: Day Street, Pinnaroo SA 5304 Telephone: 08 8577 8002 Email: council@southernmallee.sa.gov.au

Name	Indara Corporation Pty Ltd ABN 59 643 875 165
Short form name	Indara
Notice details	Postal address: Level 1, 110 Pacific Highway, St Leonards, NSW, 2065 Telephone: (02) 9495 9000 Email: property@indara.com Attention: Property Team, Indara Corporation Pty Ltd
Site Code	3500056 – Pinnaroo

Items

- Item 1** **Licensed Area (clause 1.1)**

That part of the Land occupied by the Telecommunications Equipment as shown as the area marked "Area A" on the plan in **Annexure A** being part of the property known as Lot 280 Gordon Terrace PINNAROO SA 5304
- Item 2** **Commencement Date (clause 1.1)**

[26 May 2023]
- Item 3** **Expiry Date (clause 1.1)**

[25 May 2043]
- Item 4** **Term (clause 1.1)**

20 years
- Item 5** **Licence Fee (clause 1.1)**

Eight Thousand and Seven Hundred Fifty Dollars (\$8,750) (plus GST) per annum paid annually in advance by electronic funds transfer.

- Item 6** **Break Date (clause 1.1)**
- Each of the following dates:
- (a) the date that is 15 years before the Expiry Date; and
 - (b) the date that is 10 years before the Expiry Date; and
 - (c) the date that is 5 years before the Expiry Date.

- Item 7** **Nominated Account (clause 4.1)**
- | | |
|---------------|----------------------------------|
| Bank: | ANZ Bank |
| Branch: | Pinnaroo |
| Account Name: | Southern Mallee District Council |
| BSB No: | 015-615 |
| Account No: | 1025 19495 |

Background

- A The Council has the care, control and management of the Land as custodian under the *Crown Land Management Act 2009 (SA)*.
- B The Council has agreed to grant Indara a licence to install, maintain and use the Telecommunications Equipment described in this Licence on that part of the Land identified in this Licence and access over part of the Land for those purposes. The terms and conditions of that licence are set out in this Licence.
- C By entering into this agreement, the parties acknowledge and agree that any prior agreements in relation to the Premises are terminated and/or expired (as the case may be).

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Licence:

Act means the *Telecommunications Act 1997* (Cth).

Break Date means the date(s) stated in Item 6.

Business Day means any day in the State which is not a Saturday, Sunday or Public Holiday.

Commencement Date means the date stated in Item 2.

Expiry Date means the date stated in Item 3.

Government Agency means any government or any governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST means a goods and services tax or like tax payable by the Council in respect of a supply under this Licence.

Information table means the part of this document described as Information table.

Item means an item appearing in the Information table.

Land means the whole of the land in Crown Record Volume 5759 Folio 587.

Licence means this document, as may be amended from time to time in writing.

Licensed Area means the area described in Item 1.

Licence Fee means the amount stated in Item 5.

Related Body Corporate where Indara is a holding company of another body corporate, a subsidiary of another body corporate or a subsidiary of a holding company of another body corporate means that other body corporate.

State means the State or Territory of the Commonwealth of Australia in which the Land is situated.

Statute means any statute, regulation, proclamation, ordinance or by-law of the Commonwealth of Australia or the State and includes all statutes, regulations, proclamations, ordinances or by-laws varying consolidating or replacing them and all regulations, proclamations, ordinances and by-laws issued under that statute.

Telecommunications Equipment means the communications facility and any fixtures, fittings, structures, additions, plant, machinery, cabling and equipment in or on the Licensed Area whether installed or carried out by, belonging to or brought onto the Licensed Area by Indara, its sublicensees, authorised users and invitees (as the case may be).

Term means the term of this Licence set out in Item 4.

1.2 Interpretation

(a) In this Licence unless a contrary intention appears:

(i) headings and underlinings are for convenience only and do not affect the interpretation of this Licence;

- (ii) words importing the singular include the plural and vice versa;
 - (iii) words importing a gender include any gender;
 - (iv) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
 - (v) a reference to any thing includes a part of that thing;
 - (vi) a reference to a part, clause, party, Information table, annexure, exhibit or schedule is a reference to a part and clause of and a party, Information table, annexure, exhibit and schedule to this Licence;
 - (vii) a reference to a party includes a reference to that party's employees, agents and contractors, and its successors and assigns;
 - (viii) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
 - (ix) where consent is required to be given under this Licence, unless otherwise expressly stated, such consent must not be unreasonably withheld or delayed or given with conditions which are inconsistent with the terms of this Licence.
 - (x) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Licence or any part of it; and
 - (xi) a covenant or agreement on the part of two or more persons binds them jointly and severally.
- (b) The parties acknowledge that the matters set out in the Background to this Agreement are true and correct, and that they form part of the terms of this Agreement.

2. Contravention of Statute - severance

Any provision of this Licence which is void, voidable, unenforceable or invalid because of any Statute must in any such case and to such extent be severed from this Licence, and this Licence must be read as though such provision did not form part of this Licence at that time.

3. Term of Licence and holding over

3.1 Term of this Licence

The Term commences on the Commencement Date and expires on the Expiry Date, subject to the provisions of this Licence.

3.2 Termination on a Break Date

If Indara gives the Council at least 6 months' prior notice that it wishes to end the Term on a Break Date stated in the notice, that Break Date becomes the Expiry Date.

3.3 Yearly holding over

If Indara occupies the Licensed Area after the Expiry Date (other than pursuant to the grant of a further licence) without demand for possession by the Council, Indara does so as a yearly licensee for yearly terms thereafter on the same terms and conditions as this Licence as far as they apply to a yearly licence, with the Licence Fee to be escalated in accordance with clause 4.1(b).

4. Payment

4.1 Indara to pay Licence Fee

- (a) Indara must pay the Licence Fee to the Council during the Term. The Licence Fee is a gross amount inclusive of all outgoings payable in respect of the Land and/or Licensed Area for the duration of the Term, except for electricity charges which are payable by Indara under clause 10.
- (b) The Licence Fee is to be increased on each anniversary of the Commencement Date during the Term (**Adjustment Date**) by 3%. Indara must pay the new Licence Fee from the Adjustment Date.

4.2 Payment of Licence Fee

The Licence Fee must be paid annually in advance on or before the Commencement Date and on each anniversary of the Commencement Date to the Council or to any other person the Council notifies to Indara provided such notification is received by the Indara at least 30 days prior to the date for payment of the Licence Fee.

4.3 EFT payments

Indara may pay the Licence Fee by Electronic Funds Transfer (EFT) to the account nominated in Item 7. The Council may notify another account in Australia to which payments may be made by EFT to replace the account stated in Item 7. The notification must be at least 30 days prior to the date for payment of the Licence Fee. Payment by EFT by Indara's banker to the relevant Nominated Account by the due date is a full discharge for the payment.

4.4 Rates, taxes and outgoings

The parties acknowledge and agree that:

- (a) the Licence Fee is a gross amount and Indara is not required to pay any rates, taxes, charges, levies or outgoings which are charged to, levied on or relate to the Land (including but not limited to the Licensed Area) except for electricity charges which are payable by Indara under clause 10); and
- (b) subject to clause 10, the Council must pay all rates, taxes, charges, levies and outgoings which are charged to, levied on or relate to the Land (including but not limited to the Licensed Area).

5. GST

5.1 Definitions

In this clause 5.1 and clauses 5.2 to 5.4:

- (a) **ABN** means Australian Business Number being an 11-digit identifying number allocated by the Australian Business Register (www.abr.business.gov.au);
- (b) **RCTI** means recipient created tax invoice;
- (c) words or expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning; and
- (d) a reference to the Council or Indara includes their GST group representative member (if applicable).

5.2 ABN

- (a) The Council warrants that the Council:
 - (i) has an ABN; or

- (ii) does not have an ABN, on the basis it is not entitled to have one under the *A New Tax System (Australian Business Number) Act 1999*; and
 - (iii) if it appoints a third party to manage the leasing/licensing of the Licensed Area on its behalf and the third party's ABN is quoted in any tax invoice, invoice or other document relating to this Licence, the third party does so as agent for the Council in accordance with Australian Taxation Office's public ruling GSTR 2000/37: agency relationships and the application of the law.
- (b) If the Council does not have an ABN or the Council's ABN is cancelled, the Council must immediately notify Indara and unless the Council provides evidence that the Council is not entitled to have an ABN under the *A New Tax System (Australian Business Number) Act 1999*, the Council acknowledges that Indara will be required to deduct from each payment to the Council, PAYG withholding tax pursuant to section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*.
- (c) If the Council does not comply with its obligations or breaches any warranty under this clause 5.2, the Council indemnifies Indara for any tax, charge, fine, penalty or other impost which Indara incurs or becomes liable to pay as a result of the Council's default or breach of warranty.

5.3 Council registered for GST

The following provisions apply in relation to GST:

- (a) Unless stated to the contrary, all payments to be made by Indara under this Licence (including but not limited to the Licence Fee) are calculated without regard to GST. If a payment by Indara to the Council under this Licence is consideration for a supply by the Council under this Licence on which the Council must pay GST, Indara must also pay the Council an additional amount equal to the GST payable by the Council on that supply.
- (b) The Council must issue a tax invoice to Indara for any excluded taxable supply made by the Council to Indara under this Licence before the consideration payable for that supply is due and Indara need not pay for a particular excluded taxable supply until such time as the Council has issued a tax invoice to Indara for that supply.
- (c) The parties agree that Indara will issue RCTIs for the taxable supplies made by the Council to Indara under this Licence except for any supplies that the parties agree in writing are excluded taxable supplies. As at the date of this Licence the only agreed excluded taxable supplies are those supplies for which the Council has already issued a tax invoice to Indara. For the purpose of Indara issuing RCTIs the parties agree:
 - (i) Indara may, to the extent it is legally entitled to do so, issue a single RCTI for more than one Licence Fee period;
 - (ii) the Council will not issue a tax invoice in respect of any supply it makes to Indara under this Licence other than an excluded taxable supply;
 - (iii) each party acknowledges and warrants that at the time of entering into this Licence, it is registered for GST; and
 - (iv) each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs. If the Council breaches its obligations under this 5.3(c)(iv) and the Australian Taxation Office determines the RCTI is not validly issued and requires Indara to repay any input tax credit, the Council:

- (A) must immediately refund the overclaimed input tax credit amount to Indara; and
 - (B) indemnifies Indara for any interest, fines or penalties imposed on Indara as a result of overclaiming any input tax credit.
- (d) If a payment to a party under this Licence is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (e) If Indara notifies the Council in writing that Indara will no longer issue RCTIs then clause 5.3(c) will not apply from the date specified in the notification until Indara withdraws the notification by a further written notice to the Council. While clause 5.3(c) does not apply the parties agree that all taxable supplies made by the Council to Indara under this Licence are excluded taxable supplies to which clause 5.3(b) applies.

5.4 Council not registered for GST

- (a) The Council must notify Indara of its GST registration status on or before execution of this Licence and must immediately notify Indara if it ceases to be registered for GST at any time during the Term.
- (b) Despite any other clause in this Licence, if the Council is not registered for GST or ceases to be registered for GST:
 - (i) Indara is not required to make a payment under this Licence (including but not limited to the Licence Fee) until the Council provides Indara with an invoice for the payment quoting either the Council's ABN or the Council's agent's ABN; and
 - (ii) if GST is incorrectly charged on any invoice or tax invoice issued by the Council or any third party on its behalf, the Council:
 - (A) must immediately refund the overcharged GST amount to Indara; and
 - (B) indemnifies Indara for any interest, fines or penalties imposed on Indara as a result of overclaiming any input tax credits.

6. Use of Licensed Area

6.1 Permitted use

Indara will use the Licensed Area for the purpose of constructing, maintaining and operating a communications facility including but not limited to installing, inspecting, constructing, storing, operating, repairing, maintaining, altering, upgrading and replacing Telecommunications Equipment and any incidental uses.

6.2 Adjoining land

- (a) Subject to clause 7, the Council grants to Indara the right to temporarily (and in any event, for a continuous period of not more than two (2) months) use so much of the Land adjoining and adjacent to the Licensed Area or any installation of Indara as is reasonably required during installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the Licensed Area for the Permitted Use (**Adjoining Land**).
- (b) When exercising its rights pursuant to this clause 6.2 Indara must use its reasonable endeavours to cause minimal disruption and inconvenience to the Council or to other occupants of the Land, as far as is practicable.

- (c) After temporarily using the Adjoining Land or any installation of Indara, Indara will restore the surface of the Adjoining Land as so used as near as practicably possible to its state prior to such use by Indara to the reasonable satisfaction of the Council.
- (d) The provisions of clause 8.2 will apply to the exercise by Indara of its rights pursuant to this clause 6.2.

6.3 Requirements of Government Agencies

Indara must comply promptly with any Statute in respect of Indara's use of the Licensed Area and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Licensed Area or the use of the Licensed Area. Indara will be under no liability for structural alterations on the Land unless caused or contributed to by Indara's use or occupation of the Licensed Area.

6.4 Cabling

- (a) For the purpose of the operation of Indara's Permitted Use, the Council will permit Indara to install, maintain, repair, replace and use above or below ground cabling to and from the Licensed Area on the Land and as reasonably required, to construct supports for that cabling.
- (b) In exercising its rights under this clause 6.4, Indara must:
 - (i) not cause any lasting material damage to the Land or material interference with the Council; and
 - (ii) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by Indara to the reasonable satisfaction of the Council.
- (c) The provisions of clause 8.2 will apply to the exercise by Indara of its rights pursuant to this clause 6.4.

6.5 Consents

The Council hereby irrevocably authorises Indara to make at the expense of Indara any application for consent or approval to any Government Agency to use or develop the Licensed Area for the use referred to in clause 6.1 and to exercise and procure (at Indara's expense) every right of appeal arising from the determination of any such application or the failure to determine the application. The Council must sign all documentation and do all such things as Indara or any person nominated by Indara reasonably requires in a timely manner (at the cost and expense of Indara) to authorise or assist in obtaining consent or approval from any Government Agency to use or develop the Licensed Area for the use referred to in clause 6.1. This clause 6.5 in no way fetters the power of the Council in its capacity as consent authority to exercise any statutory power or function.

7. Access to the Licensed Area

7.1 Access

- (a) Subject to clause 7.1(c) and on not less than twenty-four (24) hours' written notice, the Council consents to Indara and persons authorised by Indara with or without materials, plant and other apparatus and vehicles entering the Land for the purpose of using the Licensed Area or Adjoining Land
- (b) and exercising its rights under this Licence at all times of the day and night during the Term.
- (c) In the case of an emergency, the Council consents to Indara and persons authorised by Indara entering the Land with or without materials, plant and other apparatus and vehicles

for the purpose of using the Licensed Area and exercising its rights under this Licence after Indara has used reasonable endeavours to contact the Council.

8. Insurance, indemnities and releases

8.1 Obligation to insure

Indara will insure against any loss or damage which is commonly covered by public risk or liability insurance in respect of the Licensed Area. Indara will also take out and maintain, workers' compensation insurance as required by law.

8.2 Indara's assumption of responsibilities

Subject to clause 8.3, Indara indemnifies the Council against all costs, liability, claims, loss or damage incurred or suffered in respect of any loss, damage or injury to persons in or on any part of the Licensed Area and the Land (to the extent the Land is used by Indara) to the extent caused or contributed to by Indara or its agents, contractors, employees or sub-licensees.

8.3 Negligence or default of Council

The releases, responsibilities and indemnities in clause 8.2 do not apply to any act, matter, thing or consequence if it arises out of the negligence, omission or default of the Council.

9. Installation and maintenance

9.1 Repair and maintenance

Indara must maintain the Licensed Area in good repair, order and condition during the Term, fair wear and tear excepted.

9.2 Construction and alterations

- (a) Indara may, at Indara's option and expense, during the Term and after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law, with the prior consent of the Council (which consent must not be unreasonably withheld), install, erect, construct, dismantle, modify, repair, replace, renew, and maintain, strengthen and upgrade on the Licensed Area any security fencing, building or buildings required now or in the future to shelter communications equipment, a free-standing monopole, guy tower, multi-sided antenna structure or other antenna support structure or sufficient height now or in the future to accommodate communications equipment and all necessary connecting appurtenances.
- (b) Without limiting the generality of clause 9.2(a), Indara is not required to obtain the prior consent of Council:
 - (i) to undertake general maintenance of the Telecommunications Equipment;
 - (ii) to replace or renew "like for like" Telecommunications Equipment; or
 - (iii) in the case of a genuine emergency.

10. Electricity supply

For the purpose of carrying out Indara's use of the Licensed Area the Council must at Indara's request and at Indara's cost provide to Indara the ability to connect the Licensed Area to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of Indara's Telecommunications Equipment on the Licensed Area. The supply of this

electricity must be made through a dedicated usage meter so that Indara is directly accountable to the relevant authority for payment of electricity consumed by it on the Licensed Area.

11. Termination

11.1 Events of termination

If:

- (a) the Licensed Area is damaged or destroyed or if there is interruption to access to the Licensed Area so as to render the Licensed Area or any part of the Licensed Area wholly or substantially unfit for the occupation or use of Indara or inaccessible by any means of access;
- (b) Indara commits a material breach of any of its obligations and has not remedied that breach within a reasonable period of notice from the Council having regard to the nature of the breach;
- (c) any application to a Government Agency for a required consent or permit for the installation and use of the Licensed Area for the Permitted Use is granted to Indara with conditions unacceptable to it in its absolute and unfettered discretion or is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained;
- (d) the Licensed Area is rendered unfit for Indara's use by reason of the emergence of physical or radio interference;
- (e) the network of any of Indara, or any of Indara's sublicensees, ceases to operate from the Licensed Area; or
- (f) the Council commits a breach of a material obligation and has not remedied that breach within a reasonable period of notice from Indara having regard to the nature of the breach; or
- (g) Indara provides 6 months' notice at any time to the Council if the Licensed Area does not meet Indara's operational requirements,

then this Licence may be terminated immediately by notice, by Indara in the case of subclauses (a), (c), (d), (e), (f) or (g) and by the Council in the case of subclause (b).

11.2 Effect on rights or liabilities

Termination of this Licence does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to termination.

11.3 Indara to yield up

Subject to clause 11.4, Indara must at the expiration or sooner termination of the Term yield up the Licensed Area in good repair and clean condition fair wear and tear excepted having regard to their condition at the Commencement Date.

11.4 Removal of Indara's fixtures and chattels, termination of sublicences and yield up

- (a) Indara must:
 - (i) within 6 months of the Expiry Date (unless there is in place after this Licence a further licence between the Council and Indara);
 - (ii) within a reasonable period of earlier termination of this Licence; or
 - (iii) by such other date as the Council and Indara agree in writing,

remove from the Licensed Area all above ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Licensed Area. Indara will continue to pay the Licence Fee until such time it has complied with its obligations under this clause 11.4.

- (b) Indara must:
- (i) promptly take steps to terminate any sublicences granted to third parties under this Licence; and
 - (ii) use reasonable endeavours to require such sublicensees to remove their equipment from the Licensed Area and Land,

to meet its obligations under this clause 11.4.

11.5 Termination of holding over

Either the Council or Indara may terminate the yearly tenancy under clause 3.3 by giving the other twelve (12) months' prior written notice.

11.6 Additional Right of Termination

Indara may terminate this Licence by notice in writing to the Council served at any time before the second anniversary of the Commencement Date. Indara will not be entitled to any refund of prepaid Licence Fee in the event of Indara exercising its rights under this clause.

11.7 Resumption

- (a) The Council may terminate this Licence if the Council receives notice of resumption or acquisition of the Licensed Area or the Land (or any part of the Land affecting the Licensed Area) from or by any statutory authority by giving not less than twelve (12) months' written notice to Indara (or such shorter timeframe as required by the statutory authority), if the notice from or by any statutory authority does not act to also terminate, extinguish or end this Licence.
- (b) The Council may terminate this Licence by giving not less than twelve (12) months' written notice to Indara (or such shorter timeframe as evidenced by any order, notice or instrument, issued by the relevant Minister) because the Licensed Area or the Land (or any part of the Land affecting the Licensed Area) is Crown land dedicated to a particular purpose, and:
 - (i) is withdrawn from the Council's care control and management;
 - (ii) the purpose for which it has been dedicated is altered under section 18 of the *Crown Land Management Act 2009* (SA) such that the new purpose for which the land is dedicated no longer permits the grant of this Licence or the Permitted Use (or both); or
 - (iii) the dedication is revoked under section 19 of the *Crown Land Management Act 2009* (SA) or other legislation.
- (c) Termination of this Licence under this clause releases each party from further liability under this Licence, but does not affect a party's rights or liabilities for a prior breach.

11.8 Refund of Licence Fee on termination

If this Licence is terminated by Indara pursuant to clause 11.1(a), 11.1(c), 11.1(d), 11.1(e) or 11.1(f) the Council must, within 30 days of the date of termination, refund to Indara any Licence Fee paid in advance for the unexpired portion of the Term after the date of termination.

12. Notices

12.1 Method of service

Any notice to be given under this Licence by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by email addressed to the receiving party at the address set out in the notice details in the Information table.

12.2 Time of service

Any notice given in accordance with this Licence will be deemed to have been duly served in the case of posting at the expiration of two Business Days after the date of posting and in the case of an email transmission, on the first Business Day after the date of transmission (providing the sending party receives an email delivery receipt indicating that the notice has been transmitted).

12.3 Change of address

A party may at any time change its postal address or email address by giving notice to the other party.

13. Assignment, novation and sublicensing

13.1 Indara not to assign or novate

Indara must not assign or novate this Licence except under clause 13.2 or with the prior written consent of the Council under clause 13.3

13.2 Assignment or novation to a Related Body Corporate

Indara may from time to time without the consent of the Council assign or novate this Licence to a Related Body Corporate of Indara

13.3 Assignment or novation to others

Subject to clause 13.2, Indara may assign or novate this Licence with the prior written consent of Council (which consent must not be unreasonably withheld or delayed).

13.4 Sublicensing

- (a) Subject to subclause (b), Indara may grant a sublicense, part with or share its right to possession of the Licensed Area with the prior written consent of the Council (which consent must not be unreasonably withheld or delayed).
- (b) Without limiting clause 13.4(a), the Council acknowledges that:
 - (i) no consent is required under this clause 13.4 for any sublicences granted to any sublicensees who are on the Licensed Area on the Commencement Date; and
 - (ii) Indara has or will be granting a sublicense of all or part of the Licensed Area to Optus Mobile Pty Ltd ACN 054 365 969.

13.5 Council's costs

ATN must pay or reimburse to the Council the Council's reasonable costs and expenses incurred in considering any request for consent to a proposed assignment under clause 13, whether that consent is ultimately granted or withheld.

14. Council's covenants

14.1 Quiet enjoyment

The Council covenants that Indara may peaceably hold and enjoy the Licensed Area during the Term without any interruption by the Council or any person rightfully claiming through the Council.

14.2 Restriction on Council's use of the Land

The Council must not itself knowingly, nor will it knowingly permit any third party to do anything on the Land which is likely to cause physical or radio interference which obstructs, interrupts or impedes the use or operation of Indara's Permitted Use of the Licensed Area and in the event of Indara notifying the Council of any breach of this clause, the Council will, in good faith, use best endeavours to procure the removal of such interference, to the extent that it is able to do so.

14.3 Council's covenant

The Council covenants that the Council will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on, or transport to or over the Land any hazardous substance which is likely to cause interference with Indara's use of the Licensed Area and in the event of Indara notifying the Council of any breach by the Council of this clause, the Council must remove such hazardous substance.

14.4 Council's discretion

The Council enters into this Licence as a council acting under sections 7 and 36 of the *Local Government Act 1999* and not in any other capacity. This Licence does not preclude or pre-empt the exercise by the Council of any other regulatory function or power as a council.

15. Dealings by Council

- (a) Subject to clause 15(b), the Council will not sell, transfer, lease or mortgage the Land or any part of it comprising the Licensed Area without:
- (i) notifying and informing each purchaser, transferee, lessee or mortgagee of the terms and provisions of this Licence;
 - (ii) in the case of a mortgage, procuring the consent of the mortgagee to this Licence; and
 - (iii) in the case of a sale, transfer or grant of lease, procuring such purchaser, transferee or lessee to enter into a licence with Indara on the terms of this Licence.
- (b) Indara acknowledges that the Council is the custodian of the Land and that the Council is not obliged to comply with any of its obligations under clause in circumstances where the Crown, as the owner of the Land, exercises such rights. If the Council becomes aware that the Crown intends to exercise any of the rights set out in clause 15(a), the Council must:
- (i) inform Indara of the right the Crown intends to exercise as soon as practicable after the Council becomes aware of the Crown's intention; and
 - (ii) inform the Crown of this Licence and Indara's desire to enter a licence with Indara for the Telecommunications Equipment on the same terms of this Licence with the Crown (or with any relevant entity that has an interest over the Licensed Area) and use its best endeavours to provide Indara any contact details and make any introductions.

16. Miscellaneous

16.1 Oversight Legislation

- (a) Indara acknowledges that this transaction may be an administrative act and that the *Ombudsman Act 1972* may apply. Indara agrees to cooperate and to comply with all its legal obligations under that or any other Act.
- (b) Indara acknowledges that by entering into this Licence, the Council may be deemed to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) and it may be obliged to comply with the ICAC Act and the directions and guidelines issued pursuant to the ICAC Act.
- (c) Indara acknowledges that the Council is an 'agency' for the purposes of the *Freedom of Information Act 1991* and that documents, correspondence or other information relating to this Licence may be subject to disclosure under that Act.

16.2 Costs and Disbursements

Indara must pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Council) and the Council's legal fees to a maximum of \$3,000 (plus GST) in relation to the preparation and completion of this Licence.

16.3 Whole Agreement

This Licence is the entire agreement between the parties in respect of the subject matter of this Licence.

16.4 No partnership

Nothing contained in this Licence shall be deemed or construed by the Council or Indara or by any third party as creating the relationship of partnership, principal and agent or joint venture between the Council and Indara.

16.5 Governing law

This Licence is governed by the laws of the State and the Commonwealth of Australia and the Council and Indara submit to the non-exclusive jurisdiction of the Courts of the State.

Signing page

EXECUTED as an agreement

THE COMMON SEAL OF Southern Mallee District Council ABN 26 208 717 728 was affixed in the presence of:

Ron Valentine
Mayor

Matthew Sherman
Acting Chief Executive Officer

Executed by **Indara Corporation Pty Ltd**
ACN 643 875 165 by its attorney under Power
of Attorney Book 4795 No 570
in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney

Role of attorney

Annexure A

Plan referred to in Item 1

Annexure to Licence agreement

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17 CONFIDENTIAL ITEMS**17.4 LICENCE RENEWAL FOR OPTUS TOWER PINNAROO****RECOMMENDATION**

That having considered agenda Item 17.4 in confidence under section 90 (2) and (3) (d)(i) of the Local Government Act 1999, the Council pursuant to section 91 (7) of the Act orders that the documents considered by the Council, including the officer's report and all minutes be retained in confidence. This order is to be reviewed at or before the ordinary Council meeting to be held in January 2024, as to if this order is to continue in operation.

**MOVED COUNCILLOR TREVOR POCOCK
SECONDED COUNCILLOR LUKE KENNEDY**

That having considered agenda Item 17.4 in confidence under section 90 (2) and (3) (d)(i) of the Local Government Act 1999, the Council pursuant to section 91 (7) of the Act orders that the documents considered by the Council, including the officer's report and all minutes be retained in confidence. This order is to be reviewed at or before the ordinary Council meeting to be held in January 2024, as to if this order is to continue in operation.

CARRIED.