

**STRATEGIC SITES PROGRAM
TERMS AND CONDITIONS FOR DEVELOPERS**

1. ACCEPTANCE OF TERMS AND CONDITIONS

- 1.1 By applying to register for the Program, you agree to be bound by these terms and conditions as varied from time to time.
- 1.2 The Council reserves the right to vary these terms and conditions at any time and without notice. Please check these terms and conditions on the Website at regular intervals for any changes.

2. ELIGIBILITY CRITERIA

- 2.1 To be eligible to participate in the Program, you must:
 - 2.1.1 be a developer, or an investor seeking to invest in developments, within the Council Area;
 - 2.1.2 have the knowledge and capacity to enter into or finance developments that satisfy one or more of the objectives listed at paragraph 4 of these terms and conditions;
 - 2.1.3 provide all of the information required by the Council to register for the Program.
- 2.2 The Council may require you to provide further proof of your eligibility to register for the Program to the Council's satisfaction.

3. REGISTRATION

- 3.1 You may only register for the Program in the form and manner required by the Council and must provide all information requested by the Council as part of the registration process.
- 3.2 You will be registered for a period of 18 months from the date on which the Council accepts your application to register for the Program.
- 3.3 You must inform the Council promptly in writing of any material change to any of your circumstances that may make affect your eligibility for registration.
- 3.4 The Council may in its absolute discretion and for any reason refuse your registration, or renewal of registration, in the Program.
- 3.5 The Council will not be liable for any loss or other consequence arising from its refusal to register you, or renew your registration, for the Program for any reason.

4. OBJECTIVES

The Council's objectives in promoting Strategic Sites are to:

- 4.1 promote quality urban design outcomes in the Council Area;
- 4.2 ensure that best practice environmental design is considered so that the built form will achieve high environmental ratings;

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- 4.3 ensure development contributes to the commercial, social and environmental fabric of the Council;
- 4.4 explore affordable housing options;
- 4.5 ensure affordability and socio-economic balance in projects;
- 4.6 promote the development of larger and underutilised sites;
- 4.7 promote development in the Council Area to a wide range of developers and investors;
- 4.8 promote the design, planning and implementation of smart, integrated construction and infrastructure techniques and projects; and
- 4.9 promote carbon neutral designs and developments.

5. PROMOTION OF STRATEGIC SITES

- 5.1 The Council will promote Strategic Sites to you in accordance with these terms and conditions, which may include:
 - 5.1.1 promoting the Strategic Sites at property events such as Prospect Property Network;
 - 5.1.2 introducing you to, or providing access to, Property Owners;
 - 5.1.3 uploading details of Strategic Sites on a database that is accessible to you.
- 5.2 The promotion of Strategic Sites by the Council does not:
 - 5.2.1 constitute any representation by the Council that:
 - 5.2.1.1 you will be introduced to one or more Property Owners;
 - 5.2.1.2 it has conducted any due diligence into the activities or financial position of Property Owners;
 - 5.2.1.3 any Strategic Site will be developed;
 - 5.2.1.4 the Council will approve a development application involving a Strategic Site;
 - 5.2.1.5 there will be any other development outcome sought by you;
 - 5.2.2 in any way fetter any of the Council's statutory discretions;
 - 5.2.3 override, waive or circumvent any of the Council's or your obligations in relation to developing or financing a Strategic Site.
- 5.3 For the avoidance of doubt:

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- 5.3.1 any promotion by the Council of a Strategic Site is separate from, and does not override, other legislative approval processes that you or a Property Owner may need to participate in order to progress the development of the Strategic Site (for example, planning approval processes); and
- 5.3.2 the Council will not undertake any additional works for a Strategic Site unless those additional works have been approved by a resolution of the Council.
- 5.4 The Council will use reasonable endeavours to avoid any a perceived conflict of interest arising from a publically stated position in relation to a development of a Strategic Site, and in this regard you must:
 - 5.4.1 inform the Council of any circumstances or relationships that may constitute a conflict or potential conflict of interest if you become involved in developing, or financing the development of, a Strategic Site; and
 - 5.4.2 advise the Council how you propose to address any conflict of interest.

6. CONFIDENTIAL INFORMATION

- 6.1 In this clause **Confidential Information** of a party (**Disclosing Party**) means all information:
 - 6.1.1 treated by the Disclosing Party as confidential; and
 - 6.1.2 disclosed by the Disclosing Party to the other party or of which the other party becomes aware, whether before or after the date of this agreement,except information:
 - 6.1.3 the other party creates (alone or jointly with a third person) independently of the Disclosing Party; or
 - 6.1.4 that is public knowledge (otherwise than as a result of a breach of confidentiality by the other party or any of its permitted disclosees).
- 6.2 A party (**Recipient**):
 - 6.2.1 may use Confidential Information of a Disclosing Party only for the purposes of the Program; and
 - 6.2.2 must keep confidential all Confidential Information of each Disclosing Party except:
 - 6.2.2.1 for disclosures to employees, officers and professional advisers of the Recipient who need to know for the purposes of the Program (and only to the extent that each needs to know); and

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6.2.2.2 where disclosure is required by law.

6.3 The *Freedom of Information Act 1991 (SA)* (**FOI Act**) gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by the Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the Council and other public authorities.

7. TERMINATION OF PARTICIPATION

7.1 The Council may terminate your registration without notice for any reason.

7.2 You may terminate your registration at any time by emailing notice to the Council at admin@prospect.sa.gov.au.

7.3 On termination of your registration for any reason:

7.3.1 the Council will cease to promote you to Property Owners; and

7.3.2 the Council will not be liable for any loss or other consequence arising from the termination of your registration.

8. SUSPENSION AND TERMINATION OF THE PROGRAM

The Council may suspend or terminate the Program at any time at its discretion without prior notice, and will not be liable for any loss or other consequence arising out of such suspension or termination whatsoever.

9. DISCLAIMER

Although the Council may provide you with the details of Property Owners and/or Strategic Sites, this is not a recommendation by the Council for you to use enter into any relationship with any Property Owner. The Council makes no representation or warranty about any Property Owner or their Strategic Sites and the Council disclaims all responsibility and liability for any dealings between you and Property Owners.

10. LIMITATION ON LIABILITY

10.1 To the fullest extent permitted by law:

10.1.1 any liability that the Council may have to you whether for negligence, breach of contract or otherwise in respect of the Program is, to the fullest extent permitted by law, limited to the promotion of Property Owners and Strategic Sites to you in accordance with these terms and conditions and the Property Owner Terms and Conditions;

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10.1.2 the Council will have no liability for any loss of profits or any other incidental, consequential or indirect loss or other consequence of you in connection with the Program.

10.2 You acknowledge and agree that the Council makes no warranty or representation that:

10.2.1 a person who holds themselves out to be a Property Owner has the right to deal with a Strategic Site;

10.2.2 any documents relating to a Strategic Site (including without limitation, development applications or feasibility studies) have been viewed or approved by the Council,

and you must make your own enquiries in this regard.

11. NO WAIVER

No granting of time indulgence or failure to enforce a provision of these terms and conditions shall constitute a waiver by the Council of the same.

12. RELATIONSHIP

12.1 Nothing in these terms and conditions gives rise to a relationship of agency, trust, partnership or employment between you and the Council and the parties acknowledge and agree that they do not have the authority to bind, commit or enter any contractual arrangements on behalf of the other party including officers, employees, agents or contractors.

12.2 You acknowledge that the Council is under no contractual or other legal obligation to you with respect to the receipt, assessment, consideration, acceptance or rejection of any development proposal or the failure to receive, assess, consider or accept any development proposal.

13. RELEASE AND INDEMNITY

You release and indemnify the Council from and against any liability arising from:

13.1 any breach of these terms and conditions by you;

13.2 any liability arising from you arising from your dealings one or more Property Owners in respect of one or more Strategic Sites;

13.3 any other conduct by you which entitles the Council to terminate your registration.

14. GOVERNING LAW

These terms and conditions are governed by the law of South Australia. The parties submit to the exclusive jurisdiction of the courts in South Australia.

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15. DEFINITIONS AND INTERPRETATION

In these terms and conditions, unless the context otherwise requires:

- 15.1 **Council** means the City of Prospect (ABN 58 758 236 361);
- 15.2 **Council Area** means the area comprising the City of Prospect;
- 15.3 **Program** means the “**STRATEGIC SITES PROGRAM**”, the details of which are available on the Website;
- 15.4 **Property Owner** means a person or entity that has registered to participate in the Program in accordance with the Property Owner Terms and Conditions;
- 15.5 **Property Owner Terms and Conditions** means the terms and conditions governing Property Owners’ participation in the Program, which can be viewed www.prospect.sa.gov.au/strategic-sites
- 15.6 **Strategic Site** means land in the Council Area that:
 - 15.6.1 has a total area (whether comprised by a single or multiple adjacent Certificates of Title) of 1,000m² or greater; and
 - 15.6.2 is not located in a Council Area zoned residential, unless the land has been identified as a strategic site by Council resolution
- 15.7 **Website** means www.prospect.sa.gov.au
- 15.8 **You** or **your** means the person or entity that has registered, or is seeking to register, to participate in the Program in accordance with these terms and conditions.
- 15.9 singular includes plural and plural includes singular;
- 15.10 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 15.11 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 15.12 a provision is not to be construed against a person because that person prepared it;
- 15.13 an unenforceable provision or part of a provision may be severed, and the remainder of the terms and conditions continues in force, unless this would materially change the intended effect of those terms and conditions.